CHAPTER-III
THE JUDICIAL RIGHTS

The ancient India had a sound legal system. *Arthaśāstra* gives us a vivid picture of administration, society, economy, law and justice of the country. The account of the foreigners like Megasthenes, Strabo etc also add to our knowledge about the judicial system of the country. The Buddhism, Jainism, *Puranas, Mahābhārata* and *Dharmaśāstra* also throw valuable information on the judicial system of the India. The inscriptions also throw welcome light on the court procedure. The procedure followed in the court in the ancient India was well defined and well organized making a way for equitable and fair for one and all. Ancient law-givers lay down certain rules and regulations for the functioning of the courts, the social responsibilities of the King for the protection of his subjects from disorder and anarchy. *Vedas* and *Smṛtis* speak highly of equality and brotherhood "*Vasudhaika Kutumbakam*" (One World One Family). The entire world is a family was the motto of Vedic civilization.[1] All had equal opportunity in all walks of life in ancient India. The king himself was a supreme judge and lists of priorities were laid down by him for the cases which were taken up for consideration. Kauṭilya and Manu both show concern about the people who are poor, disabled, sick, orphan, widow etc. and cannot go to court for one reason or the other and enjoined upon the king to settle their cases.[2] The special responsibility of the king and the judges for the protection of the interest of temples, minors, orphans, the helpless and others were recognized and emphasized by law givers in ancient India.[3] In the ancient times at every step the rights of human being were well taken care off. Different types of officers were appointed, who check the discrimination against the people and their freedom, function of the court and rights of the people, the rules of the civil and criminal law, role of the spies and fundamental aim of the state, etc.

Duties of the King

The foremost duty of the king has always been to protect the judicial rights of the people and impart unbiased/ unflinching justice to one and all.[4] That is why he was considered as the fountain head of justice. From earliest times the king enjoyed absolute powers in all aspects of administration like, the legislative, executive and judiciary. In the first *Adhikrana* of the *Arthaśāstra* there was a description of the

routine to be followed by the king every day. At fixed hours in the morning he had to enter the assembly hall and look into the affairs of his subjects. The *Arthaśāstra* describes that the day and the night should each be divided into eight parts. Even after the special judges were appointed, the King remained the final arbiter of the justice and he was the supreme head of the state.[5] Megasthenes states that "the king does not sleep in day time but remains in the court the whole day for the purpose of judging the cases and other public business which was not interrupted even when the hour arrived for massaging his body, even when the King had to be combed his hair and get dressed, he had no respite from public business. At that time he gave audience to his ambassadors." According to Manu, the king has been created to be the protector of the *varna* system and order of the dharama, who, all according to their rank, discharge their several duties. Manu declared that let the king, after rising early in the morning, worship Brāhmaṇas who are well versed in the threefold sacred science and learned in polity and follow their advice.[6] In the *Dharmaśāstra* and *Arthaśāstra*, there are strict rules to be followed by a King and he is repeatedly warned against the arbitrary exercise of power which is detrimental to the interest of the people. Manu writes, "They declare that king to be a just inflicter of punishment, who is truthful, who acts after due consideration, who is wise, and who knows (the respective value of) virtue, pleasure, and wealth. A king who properly inflicts (punishment), prospers with respect to (those) three (means of happiness); but he who is voluptuous, partial, and deceitful will be destroyed, even through the (unjust) punishment (which he inflicts)."[7] Only a just king augments the three means of happiness i.e. virtue, pleasure and wealth and an unjust destroys these means of happiness. The Ramayana also says that the sin of that king was great, who took one sixth of his subjects' income (as taxes), but did not protect them as his own children.[8] Valmiki says that if a king intent on pleasure does not show himself to litigants, who approach him for decision, he suffers like king Nṛga. King Nṛga is said to have been cursed to become a chameleon for a long period by two Brāhmaṇas who had a dispute about the ownership of a cow and could not see the king for many days.[9]

The King was to follow the rules and regulations prescribed in the scriptures and duly base his judgment on them. Ramayana state that, attending the *sabhā* in the morning formed an important part of the daily routine of a king and the evidence in the *Uttara-Kāṇḍa* reveals that a king failing in the discharge of this duty incurred sin

and at the same time invited displeasure of his subjects.[10] The king was not the creator or maker of law, it was enshrined in the Vedas and other scriptures, and the King was responsible only for its enforcement. Kauṭilya provides that the king should follow the advice of *purohita* as a pupil honours his teachers, as son follows his father or a servant his master.[11] It is mentioned by Manu that the king enter the *sabhā* (the hall of justice) for looking into the causes of litigants, accompanied by learned Brāhmaṇas and ministers proficient in statecraft.[12] According to Yājñavalkya, the king even after consulting the ministers must consult the *purohita* in all religious and secular matters.[13] Yājñavalkya also says that the king, along with learned Brāhmaṇa, looks into the causes of the litigants according to the *Dharmaśāstras* and he must be free from anger and greed. It is implied that the king had no legislative power.[14] Justice was primarily dispensed by the king, though he was enjoined to take the help of the learned men in making his decisions.[15] The administration of justice was the personal concern and duty of the king. Mitākṣarā says that the protection of the subjects is the highest duty of the king and that duty cannot be discharged without eradicating and punishing the wicked, which latter requires that the king should administer justice. (mitākṣarā in *Yāj*. II. 1). In *Mahābhārata* it has been clearly indicated that the king depended on the ministers in the same manner as the cattle depend on rains, Brāhmaṇas on Vedas, women on their husbands. King was the supreme *daṇḍa-dhara* on earth. This *daṇḍa* (i.e. the authority to punish) is inscribed in the Ramayana as the virtual protector of mankind[16] and it is emphasized that the king should not employ it arbitrarily or recklessly, for the sufferings of those who were wrongfully punished by the king were sure to ruin the king along with his family and belonging. As the guiding principles for a king in the exercise of *daṇḍa* and the administration of justice we may note the following: the wrong-doer must be punished, justice must be impartiality, through investigation and lastly, the punishment was to be impartial to the offence.[17] Kauṭilya emphasizes the concept that the King stands for *daṇḍa* which upholds *dharma,* the law that governs the four castes and Ashrams or stages of life and also the customs of the people based on it. Which protests all it was *Rāja-dharma* who protected all *dharmas* and it would have declined without his protection. The *daṇḍa*, enforces dharma equally among all.[18] The king was called the *daṇḍa-dhara*, to protect the subjects and to maintain law and order. Manu gives a vivid description of the function of *daṇḍa* and how anarchy would spread and *mātaya-nyāya* (the bigger fish swallowing the smaller ones) would prevail, if there was no *daṇḍa* (and no King)

to protect the weak against the strong.[19] The king had original jurisdiction to hear the cases personally from the litigants. When the king personally attended the court, he could decide the cases personally with the help of the judicial officers. In exceptional cases, the king could deal out justice even without the help of the judge or the assessors. If a thief, who had stolen a Brāhmaṇa's gold ran with disheveled hair to the king carrying an iron club or a heavy bludgeon of *khadira* wood or a spear sharp at both ends or an iron staff and declared his sin and requested the king to award the punishment, the king might then strike the man with the club and whether the man died or lived after receiving such a blow, he became free from his guilt.[20] Manu compared the king or the judge to a hunter, who follows the bloodstains of the wounded deer to find out the place where the dying deer lies. The king was to find the truth of the case by the force of inference and logic.[21]

It is mentioned in the *Mahābhārata* that, one should first select a king. Then should he select a wife and then earn wealth. If there be no king, what would become of his wife and acquisition.[22] People seek the protection of a competent king as birds seek refuge in a tree.[23] King's duties were comprise of all kinds of renunciation, initiation, learning and worldly behavior.[24] The king should behave towards his subjects as a mother towards her off-spring, disregarding all comforts and making all sacrifices in the interest of the people. If the king does not love his people, he inspires great anxiety. He must be discriminate and impartial. It is not safe to live in a country where good and evil are regarded in the same light mentioned in the *Mahābhārata*. The merit which the king earns by a single day's righteous protection of the people brings him a reward which lasts for ten thousand years. A monarch who can afford no protection is to be shunned like a leaky boat, or an ignorant priest.[25] The king who does not protect his people is a thief and sinks into hell. Protection is supremely important because it is the prime means of human happiness.[26] *Mahābhārata* state that, if righteousness and protection are absent from the policy of the king, he forfeits all title to obedience. If he falls under the influence of vicious and sinful ministers and destroys righteousness, he and his family deserve to be slain by his subjects.[27] It is mentioned in the *Mahābhārata* that, 'the king has to be clever and should milk the country every day like a cow, but he should not cut the cow's udders. He who treats the cow well, will always receives fresh milk; in the same way it will be possible for the king to enjoy the fruits of his country, if he rules over his country in orderly

manners.'[28] According to *Mahābhārata* that person should be considered as king who keeps in view the welfare of his people. He is the guardian of the people.

According to the *Arthaśāstra*, the king could make only regulatory laws and not substantive laws, making him arbitrary.[29] When the king could not attend to the work of administration of justice owing to pressure of other weighty business, he entrusted the work of deciding disputes to a judge and the *sabhyas*.[30] The decision of the judge was open to appeal to the king.[31] According to Manu, let the King appoint seven or eight ministers whose ancestors have been royal servant, who are versed in the sciences, heroes skilled in the use of weapons and descended from noble families and who have been tried.[32] Let him daily consider with them the ordinary business referring to peace and war, four subjects called *sthāna*, the revenue, the manner of protecting himself and his kingdom and the sanctification of his gains by pious gifts (*sthāna* means according to other commentators 'the army, the treasury, the town, the kingdom'). Having first ascertained the opinion of each minister separately and then the views of all together let him do what is most beneficial for him in his affairs.[33] He must also appoint other officials, men of integrity, who are wise, firm, well able to collect money and well tried. Among them let him employ the brave, the skillful, the high-born and the honest in offices for the collection of revenue.[34] Let him the annual revenue in his kingdom to be collected by trusty officials, let him obey the sacred law in his transactions with the people and become like a father towards all men.[35] The affairs of these officials, which are connected with their villages and their separate business, another minister of the king shall inspect, who must be loyal and never remiss. And in each town let him appoint one superintend of all affairs, elevated in rank, formidable, resembling a planet among the stars. Let that man always personally visit by turns all those other officials; let him properly explore their behavior in their districts through spies appointed to each. For the servants of the king who are appointed to protect the people, generally become knaves who seize the property of others, let him protect his subjects against such men. Let the king confiscate the whole property of those officials who are evil-minded, may take money from suitors and banish them. One *paṇa* must be given daily as wages to the lowest, six to the highest, likewise clothing every six months and one drone of grain every month.[36] When he is tired with the inspection of the business of men, let him place on that seat of justice his chief minister, who must be acquainted with the law, wise, self-controlled and

descended from a noble family. Having thus arranged all the affairs of his government, he shall zealously and carefully protect his subjects.[37]

Manu Smṛti has expressly declared that Vedas constitute the first and authoritative source of *dharma*. Thus equality of all human beings is one of the elements of basic structure of *dharma*. But we see a few patently discriminatory provisions in the *Smṛtis* in the matter of imposition of penalties. The division of the Hindu society into innumerable caste, some claiming to be superior to others with varying customs and usage which have brought about inequality, resulting in discrimination against certain classes of people, the worst of it being the practice of untouchability with all the incidental inhuman and humiliating treatment meted out to those regarded as untouchables. *Manu Smṛti* has laid down the doctrine of equality and a direction to the state to treat all equally, has been incorporated. The verse reads: The king (ruler) should support all his subjects without any discrimination, in the same manner as the earth supports all living beings. This is forceful declaration. Just as mother earth gives protection to all irrespective of religious or caste of individuals, it is obligatory for the state to give equal protection to all.[38] Kauṭilya clearly state that, the king had the duty to hear petitioners, because when the king made himself inaccessible to his subjects and entrusted his work to his immediate officers, he might engender confusion in business and cause thereby public disaffection and become himself a prey to his enemies. He had to hear all urgent calls at once and never put them off because if they were postponed they could prove too difficult or impossible to be settled. This duty of the king to hear petitions were not defined as clearly in any of the *Smṛtis* or *Dharmaśāstras*, as it was in Kauṭilya. The king was not necessarily obliged to perform this duty personally; he could entrust this work to his immediate officers.

Aśoka in his edicts expressed the relation between king and his subjects in a noble language. He wrote, "All men are my children, he said, just as I desire for my children that they may enjoy every kind of prosperity and happiness, in both this world and the next, so I desire the same for all men." Again he wrote in the same strain, "Just as a person feels confident after making over his off-spring to a cleaver nurse… even so have I appointed the *rajjūkas* for the welfare and happiness of the country people (*janapada*)."[39] The *rajjūkas* were probably in charge of the districts and corresponded to the district magistrates of the present day.

Aśoka's zeal for public business and sense of responsibility for the sacred trust imposed on him as king is further exemplified by another inscriptions. He wrote on his Rock Edicts-VI "For a long time past, runs the royal edicts, it has not happened that business has been dispatched and that records has been received at all hours. Now by me this arrangement has been made that at all hours and in all places whether I am dinning, or in the ladies apartments, in my bedroom, or in my closet, in my carriage, or in the palace garden the official reporters should report to me on the people's business, and I am ready to do the people's business in all places. I have commanded that immediate report must be made to me at any hour and in any place, because I never feel full satisfaction in my efforts and dispatch of business. For the welfare of all folk is what I must for and the root of that, again is in effort and dispatch of business. And whatever exertions I make are for the end that I made discharge my dept to animate beings and that will I make some happy here, they may in the next world again."[40]

Rama addressed the following words to Laksmana, "Go again and find out about those who have come with some request." When the state policy is formulated properly and executed well, unrighteousness does not obtain anywhere. Therefore all persons protect one another due to the fear from the king due to the apprehension of royal punishment. My officers protect the subjects like arrows shot by me. It is also described that, the king is the creator of all living beings and the king is the leader of men. The king remains awake, when others are asleep. The king protects the subjects. The king protects Dharma by pursuing right policy. When the king does not protect, the subjects perish soon. The king is the creator, protector and father of the entire world. The king is the time sets the trend of the times and the '*Yuga*' a particular age of the world. He sustains even his enemies, puts them on the right path and delights his subjects by '*dharma*'. This is the '*dharma*' in this life and the life hereafter that accrues from protecting the subjects.[41]

Priorities:

It was one of the primary duties of the king and the state to maintain the distressed members of the community and to provide suitable lodging and food for them. In the ancient times the orphans, the aged, the infirm, the afflicted, children and pregnant woman received special care and it was one of the cardinal tenets of dharmic life that in a well-ordered and efficient state no one should starve or suffer, for lack of

food and medical attention. The orphans were fed and educated by the state. There was free distribution of food among the poor. It is also described by Manu that, infants (bāla), aged persons (vṛddha), persons affected with diseases (vyādhita)[42] and distressed persons (ārta) had a peculiar and special place in the Indian law. According to Manu they should be always held in respect by the king.[43] Yājñavalkya smṛti mentioned that, they conquered all the worlds and therefore, one (snātaka) should not enter into a dispute with them.[44] The rule given in the Dharmaśāstras that a Brāhmaṇa should without hesitation given food to these persons even before his guests can well be taken as an illustrative example. According to Kautilya also they should be honoured, treated with kindness and should be the recipient of gifts. They were under a special protection of the state, because of their dependence and their inability to direct their own affairs.[45] Kautilya described rest houses for distressed travelers, excavations of tanks to supply water, hospitals for the supply of free medicine were constructed in important centers of the kingdom. There was an elaborate system of medical relief which was well-organized and controlled by the state. Distressed foreigners were well attended to by anikasthas (surgeons) and if dead, they were buried or burnt and their property was delivered to their relatives. Kauṭilya mentions the veterinary surgeons to administrating medicine for horses, elephants and other animals. Widows and helpless persons with mutilated limbs were given employment in weaving manufactories and respectable women were supplied with thread which they would manipulate into finished goods before selling them to the state.[46] In Arthaśāstra we find a very interesting and progressive rule which show that special privileges were provided to persons by the state who were under the service of the state. The state also accorded to deceased relatives of government servants special privileges; it was a type of widows and orphans pension scheme. Finally the state accorded to these persons also the right to petition the king personally. These privileges were also mentioned in the Dharmaśāstras.

In the court lists of priorities were laid down by the King for the cases which were taken up for consideration. The affairs of temples, hermitages, heretics, Brāhmaṇas learned in the Vedas are to be taken up first in this order and after that the minor cases, the cases of old persons, the sick persons and so on. But it was also added that in the urgent matters and in matters of great importance the rule about the priorities may be set aside. It shows that the king followed the procedure as laid down

in the *Dharmaśāstra*. It may be supposed that the same considerations were meant to apply to the cases coming before the *dharmasthas*. In the cases of affairs concerning about the temples, Brāhmaṇas, ascetics, women, minors, aged persons, sick persons and orphans, the *dharmasthas* were allowed to institute proceedings suo-moto, if these did not approach the court. It was laid down in that connection, that the affairs of these parties must not be dismissed on the plea of the absence of jurisdiction or by postponing them or on grounds of adverse possession.[47] Kauṭilya said that unless suits were disposed of expeditiously, it created serious difficulty or became uncontrollable. The special responsibility of the king and the judges for the protection of the interest of temples, minors, orphans, the helpless and others was recognized and emphasized by law givers in ancient India.[48]

On the other hand Manu said that the king give the priority to the cases of the higher castes. Manu considered the people of the higher castes to be privileged and gave them priority. In other words if as between two cases, one in which a Brāhmaṇa is a party to the suit must be tried prior to a suit in which a Kṣatriya or a Vaiśya or a Śūdra is a party.[49] It is not clear, however, when as between two suits in one of which a Brāhmaṇa is a plaintiff and a Vaiśya is the defendant and another in which a Vaiśya is the plaintiff and a Brāhmaṇa is the defendant, which suit would get priority.[50] It will be seen that Kauṭilya did not permit any special privilege or priority for the higher castes. Kauṭilya further said that in matters relating to the temples or idols, Brāhmaṇas, persons performing austerities, women, minor, the old, the diseased and the helpless, even if they did not come forward to complain, the judge should decide their cases expeditiously and should not delay such cases on any excuse of want of time or hear the excuse of long enjoyment by their opponents or of want of jurisdiction.[51]

Gautama went to the extent of saying that "the king is the ruler of all except the Brāhmaṇas. The king has no authority over the *Brāhmaṇas*."[52] Mitākṣarā does not accept this proposition wholly. A Brāhmaṇa could not be above the law by virtue of his birth. But Gautama states that priority and respect was only deserved by a true Brāhmaṇa from the king.[53]

It is stated by the ancient law-givers that the Brāhmaṇas claim some special consideration. They must be well-cared for and in return they will protect the king.

There is nothing higher than a Brāhmaṇa. Gods, ancestors, all are gratified when Brāhmaṇas are gratified. Brāhmaṇas should be protected like son and worshiped like father. A Kṣatriya, a hundred year old, should look upon a Brāhmaṇa boy of ten as a father mentioned in *Anuśāsana parva*, everything is protected by protecting the Brāhmaṇa's wealth in *Śānti parva*.[54] Only a Brāhmaṇa was entitled to be a teacher of the Vedas, to officiate as a priest and to accept gifts. Though a Brāhmaṇa could take up the occupation of a Kṣatriya or a Vaiśya, person of no other caste not even a Kṣatriya or Vaiśya could be a teacher of Veda or be a priest or accept gifts. The privileges and immunities enjoyed by the Kṣatriya were similar to but less than those enjoyed by the Brāhmaṇas, in case of special oath, like according to Kauṭilya, to a Brāhmaṇa the judge had to say simply, "speak the truth". He was addressed as Kṣatriya or a Vaiśya with the words "may you forfeit the reward of your meritorious deeds and May you go begging to your enemy's house, if you give false evidence" and the judge required a Kṣatriya to swear by his mount or weapons. [55]And Śūdra was admonished thus, "In case you give false evidence, your merit will go to the king, and his sins will pass on to you. Besides, you will be punished for perjury."[56] Manu said that a judge should ask a Brāhmaṇa witness only to speak-and no oath to be administered. For a Kṣatriya witness, the judge should ask him to speak 'the truth'. In case of a Vaiśya witness, he should be, asked to swear by "cow, seeds or gold" and a Śūdra should be sworn by "all the sins."[57] The Vaiśyas did not enjoy the privileges and immunities, which were available to the two higher castes and to the Brāhmaṇa in particular. Since most of the commercial transaction and money-lending (which occupied on important place in the legal literature in the ancient India) was the proper occupation of the Vaiśyas, it must be assumed that in most of civil litigations in ancient India, the Vaiśyas appeared as parties.[58] Ancient Indian law was very harsh on the Śūdras. Most of the rights and privileges granted to the higher castes denied to the Śūdras..

The Śūdras were not entitled to study the Vedas. Gautama said "if the Śūdra intentionally listens the Vedas for committing to memory, his ears should be filled with lead or lac, if he utters the Veda, then his tongue should be cut off, if he mastered the Veda, his body should be hacked" (Gautama XII 4). The Śūdra was not entitled to any *samskāra* (sacrament) except the marriage. But if the Śūdra labored under certain grave disabilities, he had certain compensating advantages. He could

follow almost any profession except the few especially reserved for Brāhmaṇas and Kṣatriyas. Even as to the latter many Śūdras became kings and Kauṭilya in his *Arthaśāstra* speaks of armies of Śūdras.[59] The Śūdra was free from the round of countless daily rites. He was compelled to undergo no *saṁskāra* (except marriage), he could indulge in any kind of food and drink wine, he had to undergo no penances for lapses from the rules of the *Śāstras*, he had to observe no restrictions of *gotra* and *pravara* in marriage.[60]

The state laws were also sensitive about the rights of the juvenile. Minors who were not sure of the rightness and wrongness of the crime committed were treated with compassion. Persons below the age of 16 years could not be arrested. Similarly persons with no intelligence quotient mad persons, idiots were liable neither to be arrested nor summoned to appear in court. They were incapable of making their defense and no purpose was served by restraining them or summoning them. Too old persons were also exempted from arrest for reason of senility and physical debility. Kane says that this age was above 70 years. Women of good families, a women who had recently given birth to a child, a young woman who had nobody in her husband's or father's family to take care of her, a woman belonging to a caste higher than that of the complainant and unmarried girls who were under the protection of male persons were exempt from summons or warrant. In their cases the guardians or protectors were summoned to appear and speak for them. But there were certain classes of women, like the woman who conducted business and appeared in public, there was no harm in summoning them. They could appear in the court as they appeared in public. Women who maintain their families including the husband, like milkmaids and women belonging to the caste of wine merchants were earning members of the family and hence were capable of making their defence in courts, women of loose character, professional prostitutes, out-caste women or women of low castes-all such women could be summoned as defendants or witnesses.[61]

As regards the cases in which the element of torture was required we find a humane approach. There was respite in certain cases. According to Kauṭilya, in the cases of the ignoramuses (*mandaparadha*), a person guilt, of a minor offence, youngsters, the aged, the affected, persons under intoxication, person suffering from hunger, thrust or fatigue journey, persons who have just taken more than enough meal, persons who have confessed of their own accord and persons who were very

weak these were not subjected to torture. Women who carrying or who had not passed a month after delivery was not tortured. Torture of women was half of the prescribed standard or women with no exception may be subjected to the trial of cross examination.[62] That who belongs to Brahman caste and learned in Vedas as well as ascetics was only subjected to espionage. The Brahmans enjoyed some exceptional privileges. Even the king should worship Brahmans who lived up to the ideals. They were as a rule exempted from corporal punishments. Even if they were guilty of highest crimes such as the murdered of a Brahman, violation of the bed of their preceptors or seniors, causing miscarriage, or treason against the state, they were only to be exiled mentioned in the *Śānti-parva*.[63]

Judges:

Maintenance of law and order is the perquisite condition for the smooth run of an empire. We do not find any references to any judicial organization in the Vedic literature. Vedic literature nowhere refers to the king as a judge either in civil or criminal cases. It has been suggested that *sabhāpati* of the later Vedic period may have been a judge.[64] But later for this purpose like modern days, judges were appointed, like in *Arthaśāstra* they were called *dharmasthas*, this name is unknown to the *Smṛtis*; only the Manu Smṛti makes a casual reference to it.[65] There are references to the *pradeshtris* as officers responsible for the suppression of criminals. Asoka's inscriptions do not mention the *dharmasthas*. Separate rock edict I refer to the judicial functions of the city *mahamatas*. It urges them to be impartial and sympathetic and to insure that no one was imprisoned and tortured without any good reason. It states that every five years, the king would dispatch a gentle officer, on a tour of investigation to insure that this was being done. Pillar edict IV refers to the judicial functions to the *rajjūkas* (in addition to their other duties). Pillar edict IV contains Asoka's claim that he has introduced *samata* in judicial procedure. This has been interpreted as uniformity all over the empire or as an abolition of *varna* distinction.[66]

The judge or the king had the duty and responsibility to find out the real truth, from probably a mass of perjured evidence, half truths and really true statements not easily distinguishable from one another. A wise judge was, however, expected to have a strong power of reasoning, which enabled him to distinguish between truth and falsehood.[67] Yājñavalkya said, "The king should ignore erroneous or perjured evidence and decide the case according to the real facts. Even the real facts, if not put

properly (in court), lead to defeat."[68] For the purpose of finding out the truth, the king was not to act blindly on the evidence of facts but also to make his own inference from the fact.

The ancient texts give details on the manner of selection and the qualification of Judges. The court consisted of three judges of the rank of minister of the king also called *amātyas*. The qualities and qualification for an *amātyas* are well laid down in the *Arthaśāstra*, he must be a native of the country, born of high family, influential, well trained in arts, farsighted, wise, of good memory, vigilant, eloquent, bold, intelligent, pure, well-disposed, family devoted (to the king), endowed with character, strength, health, spiritedness, free from arrogance and affectionate, who would not have recourse to hatred[69] and three learned men acquainted with sacred law were to carry on the administration of justice, they were called *dharmasthas*. *dharmasthas* looked into the cases rising out of mutual transaction among the subjects.[70] There was no reference to any gradation among the *dharmasthas* and all *dharmasthas* enjoyed the same status wherever they work. The person well-versed in Dharma as expounded above to be appointed as judges which were called *dharmasthas*.[71] They were recruited from amongst the *amātyas* who had qualified the tests of *dharam* or righteousness. Gautama prescribed the qualification of the chief judge. The chief judge was expected to be well versed in the Vedas and the six *vedangas*, logic (and able to ask questions to elicit the truth in a case), history and *Purāṇas*. He must not merely know the *Śāstras* but must practice the instructions thereof (like making gifts and sacrifices) must be purified by the several (24) *sanskāras* (hence preferably be a Brāhmaṇa) and thoroughly know the *Dharmaśāstras* and customs. But above all qualifications, he must be devoted to truth.[72] Yājñavalkya describes person who is well versed in the literature of the law, truthful and by temperament capable of complete impartiality between friend and foe appointed as a judge. According to Manu, a Śūdra could not be judge or propound what dharma was. Manu and Yājñavalkya lay down that when the king does not himself look into the litigation of people owing to pressure of other business, he should appoint a learned Brāhmaṇa as a judge.[73] Manu further says that a king may appoint as his judge even a Brāhmaṇa who is so by birth only (i.e. who does not perform the peculiar duties of Brāhmaṇa), but never a Śūdra. If Brāhmaṇa was not available a Kṣatriya or Vaiśya was to be appointed.[74] The *Mahābhārata* seems to indicate circle of followers from among

whom the officers were probably selected. The king it is said is surrounded by five kinds of men, those who have the same objects, those devoted to him, those related to him by birth, those who won over, and those who follow righteousness. The three and four classes of persons are never to be completely trusted. In any case, the king is never to be careless in keeping a watch over his friends, though he should always speak in smoothing terms to all his servants.[75] According to *Mahābhārata*, ministers should be appointed to offices for which they are fit and should possess such qualifications as are needed for their respective occupations. Appointments on unfit persons are not at all approved. The *Mahābhārata* says that the officers must be men; women are barred from consultation on high matters of state, probably because they are supposed to be incapable of keeping secret.[76]

Addition to the high court of judicature, there were a number of local courts in the provinces, districts and in the villages. It was stated that three judges of the status of an *amātya*, were appointed at each of the following places: *janapadasaṁdhi*-frontier post, *saṁgrahaṇa* -headquarters of ten villages, *droṇamukha*- headquarters of four hundred villages and *stānīya*-chief city among eight hundred villages.[77] Perhaps the appeal from Judgment of any court was directly made to the king, whose final authority in pronouncing a judgment.[78] The third book lays down the duties of the judges, giving us the entire law according to Kauṭilya.[79] It was not clear if the three judges who work at the same place were to sit as a bench in every case or if each judge was to try independently the cases that were brought before him.

Rajjūkas played an important role in the administration of justice described in the edicts of Aśoka. They had the power of life and death. They particularly enjoyed the impartial investigation of disputes and the award of punishments. In the reign of Aśoka, *rajjūkas* had the full royal authority. Aśoka described that the care of these officers, for the people should resemble that of an intelligent nurse for the child in her charge. Rajjūkas were kept in constant touch with the king by his agents called *purushas*, who knew the king's mind was constantly on the move (*P.E-IV*).[80] Rajjūkas were also to take a hand in the propagation of dhamma among the people (*P.E-VII*) and direct the *janapadas*. Aśoka also created the new class reporters (*prativedaks*) who were posted everywhere and they reported king the affairs of the people at any time. King said that *prativedaks* can report to me any time, "While I am eating, in the harem, in the inner apartment even at the cow pen and in the parks". In the matters of

the administration of justice and maintenance of equitable transaction of human affairs the *rajjūkas* were made free agents so that they initiated all necessary measure and proceedings on their own authority and responsibility with self confidence and without any fear of interference. As regard to criminal justice they were the supreme judges in the sense that they were allowed to function as a final court of appeal, a position which therefore belonged to the emperor himself. In the Pillar Edict IV it was clearly stated that in case of death sentence three days respite was granted for having the judgment reviewed by the *rajjūkas* as well as the offender was allowed to performed rituals before his death, in case if the appeal fails. The *rajjūkas* became the final court of appeal since the delegation of the royal authority. They enjoined to take deep concern in all matters affected the moral and material goods of the people.

To keep a check on the misuse of power by the *rajjūkas* the *dharma-mahāmātras* were appointed. The separate Rock Edict-I mentioned the city administration of justice (*nagala viyohalaka*) different from the *nagarakas* of the *Arthaśāstra* because these *mahāmātras* were refer to here as concerned with their judicial function in the town of Tosali. The superior officials of this kind were termed *dharma-mahāmātras*, which may be rendered censors, and the inferior were called *dhama-yuktas* or assistant censors.[81] The duties of the censors, as defined in general terms in Rock Edict- IV, XII and Pillar Edict- VII must have included jurisdiction in cases of injury inflicted on animals contrary to the regulations, exhibitions of gross filial disrespect, and other breaches of the moral rules prescribed by authority. They were also instructed to redress cases of wrongful confinement or corporal punishment and were empowered to grant remission and in certain cases relaxation of punishment were also considered such as advanced years, sudden calamity, or the burden of a large family. Aśoka in his Sarnath Pillar Edict-I spoke of another class of officer called *anta-mahāmātras*, they had the special jurisdiction over the frontier districts and were the wardens of the marches like the *antapala* of the *Arthaśāstra.*[82] *Dharma-mahāmātras* were different from *dharmasthas*. *Dharma-mahāmātras* was a new class instituted by Aśoka in the fourteenth year after his coronation. The only similarity between *dharmasthas* and *dharma-mahāmātra* was that the former too, had the authority to treat with mercy a *tirthakra*, and ascetic (*tapasvin*), a diseased person, one who was wearied due to hunger and thrust or invalid due to old age one who came from other country, one who had already suffer much from punishment, one who was

penniless or very poor but that again only in the capacity of the judge. The *dharma-mahāmātras* on the contrary figure prominently at royal almoners, dispensers of royal mercy and above all as helpers of the causes of religion. The duties of *dharma-mahāmātras* in connection with the jail administration was to provide one bound in chains with ransom, to protect him against molestation or to grant him release in certain special extraordinary circumstances. Thus they were given judicial power to revise suitable cases.[83]

In the Dauli Edict-I Aśoka explained the judicial officers. The word *devanampriya* and the *mahmātātras* were described as judicial officers. In his two special edicts he called upon his *mahattras* in Kalinga to administer justice impartially and to gain the affection of the people. Most of the other edicts of Aśoka dealt with the welfare and happiness of all people based on Aśoka's conception of Dharma. In his edicts he mentioned that the judges were sent out to different places on frequent occasions between the days of *tishya* (three times per year).[84] Aśoka in his Separate Rock Edict- I explained that *rajavachanika mahāmātras* were required to undertake the tours every five years to prevent the miscarriage of justice and high handed actions along with their usual administration duties.[85] In the Aśokan inscription it has been explained how the judges (*dharmasthas*) and Magistrates (*kaṇṭaśodhaneshu*) tested under religious allurement.

Role of the spies:

The spies played an important role in the administration of justice as they helped the courts in reaching the truth through various methods described by Kautilya. The objective was surely to impart equitable and fair trial to victim and the accused. The spies also kept an eye on the working of the judges and courts to eradicate the evil of corruption.[86]

Limbs of court procedure:

The ancient law-givers provided four types of limbs of the court procedure; these are proof, documents, witness, possession and ordeals. The first three was called human proofs and fourth one was called divine proof. Gautama speaks of witness to prove a case and also speaks of special oath. Most of the law-givers follows Yājñavalkya says that human evidence is preferable to divine proof.[87] Yājñavalkya says that if none of the first three proof is available divine proof may be accepted.[88] In

other words ordeals, as a proof, should be accepted as proof only in exceptional cases, where the first three modes are absent or there were no possibility of getting such evidence. *Gautama dharmasūtras* mentions the limbs of a court by saying that the king should look to the cases in the court with the help of (a) the *puruṣa* (bailiff), (b) the *sabhyas* (assessors), (c) the *gaṇaka* (accountant), (d) the clerk, (e) gold, (f) fire, (g) water, (h) the *prāḍvivāka* (chief judge) and others.[89] The judicial proceedings usually consist of four parts, viz. plaint, reply, evidence and judgment. Replies may be of four kinds, viz. admission, denial, demurrer or a special plea, relating to a former judgment. Baudhāyana and Āpastaṁba deal less with procedural law. Āpastaṁba refers to judges, ordeals, witnesses and punishments. Baudhāyana refers to witnesses and punishments. Manu deals in some details with the topics of the composition of courts, the different modes of proof, the administration of oaths and ordeals, the different punishments, the law of prescription, the decisions and other matters of procedure. Yājñavalkya is more systematic than Manu in dealing with the law. He divides his book into three chapters (a) *ācāra* (conduct), (b) v*yavahāra* (law), (c) *prāyaścitta* (expiation). In the beginning of the chapter on *vyavahāra*, we get the general and special rules of procedure, dealing with court, plaint, and reply and special rules dealing prescription etc. the law of oral and documentary evidence and ordeals is dealt with at a later stage.[90] Yājñavalkya says that soon after the defendant or the accused has made his defence (statement), the plaintiff or the party on whom the burden of proof lies) should give in writing or cause to be written, the mode, by which he is going to discharge that burden of proof.[91] Four heads of law are mentioned in the *Arthaśāstra* it is stated that a matter in disputes between two parties has four feet: *dharma*- To give out what has actually happened *vyavahāra*- To rest on evidence, *cārita*- Customs and Precedent, *rājaśāśna*- Royal proclamation or is described as the king' orders.[92]

About the procedure of trail there is a faint indication in a verse of *Ayodhyā-kanda*. It seems an accused was first taken into custody (*grihītaḥ*) by the royal officers. Next, an investigation was carried on with regard to the charge *(pṛishṭaḥ*), in course of which the accused was interrogated and the available evidence on the point was recorded. Last of all the decision was announced and executed, if the accused was found guilty (*sakāraṇaḥ*) he was awarded punishment and in case the guilt could not be proved against him, he was acquitted.[93]

Procedure:

The hierarchy was maintained in the judicial system. The case decided by a lower court proceeds to a higher court if the parties were dissatisfied. Appeal could be made against the decision of the lower court to the higher court. The final authority lay with the king and the Greek ambassador Megasthenes states that a large number of people sought the interference of the king as they were not satisfied with the decision of the lower court.[94] A person, whose right was denied by others, could approach the king's court directly with a plaint or complainant, as provided by Yājñavalkya[95] or he could bring up the matter, at the first instance, before the family councilor and approach the king or his officer at the appellate stage. He had the option.[96]

According to Manu the cases should be decided daily one after another. All cases which fall under the eighteen titles of the law according to principles drawn from local usages and from the institutes of the sacred law. 1: Of those (titles) the first is the non-payment of debts, then follows, 2: Deposit and pledge, 3: Sale without ownership, 4: Concerns among partners, 5: Resumption of gifts, 6: Non-payment of wages, 7: Non-performance of agreements, 8: Rescission of sale and purchase, 9: Disputes between the owner of cattle and his servants, 10: Disputes regarding boundaries, 11: Assault and 12: Defamations, 13: Theft, 14: Robbery and violence, 15: Adultery, 16: Duties of man and wife, 17: Partition of inheritance, 18. Gambling and betting, these are in this world the eighteen topics which give rise to lawsuits depending on the eternal law, Manu says the king have to decide the suits of man who mostly contend on the titles just mentioned.[97]

The procedure followed in the court was well defined and well organized in *Arthaśāstra*. Kauṭilya lays down certain rules and regulations for the functioning of the courts. The inscriptions of Aśoka also throw welcome light on the court procedure. The *Arthaśāstra* mention two kinds of law- the *dharmasthīya* or the courts where civil law was administrated and the *kantaśodhana* or criminal court of law. The criminal law court shows the combination of police functions with magisterial duties. It was also mentioned in the *Arthaśāstra* that when in the court the matter about the disagreement between history and sacred law or between evidence and sacred law, the matter was settled in accordance with sacred law. But whenever sacred law conflicts with rational law or king's law then reason was held authoritative.[98] But Rājaśāśna

superseded all the three. Rājaśāśna was the highest authority on the basis of which a case was to be decided, but it does not mean to say that king was a law-maker.[99]

There were some rules which were inscribed in edicts of Aśoka about justice. Judges were independent and exercised uniformity in procedure and punishment. Wrong doers were forgiven as much as possible. Capital punishment was used with restraint and the condemned had three days to appeal their sentence, it was not good to kill living beings etc. According to the *Arthaśāstra* the cases were decided by a jury of judges. Two kinds of tribunals was setup: one for the trial of civil suits and certain quasi criminal cases where the only fines were imposed and the other for the trial of criminal offences involving such punishment as arrest, imprisonment, mutilation of limbs and death sentence and some quasi civil cases. The first kind of tribunal was constituted of three *dharmasthas* and amātyas. The second kind of tribunal was constituted either by three *pradeshtris* or three other amātyas. *Arthaśāstra* explains some other functions of the *pradeshtris*, it explains that they constituted the administration of justice, collected the taxes, tracking the thieves and controlling the work of the superintendent and their subordinates. The *Arthaśāstras* does not however enlighten us clearly as appellate jurisdiction of the first kind of tribunals over the second and the procedure followed in preferring and hearing appeals.[100]

R.K. Mookerji writes, "Kauṭilya though a believer in the efficiency of a strong centralized monarchy admitted the utility of the village communities, allowed them freedom from central control and framed laws for their active cooperation in village life. Under Kauṭilyan system villages continued to exist as self sufficient little republics each under a *gramika*. The headman of a village was visited with minor magisterial authority and he had to expel thieves, criminals, adulterers and other undesirable man. When he had to travel on account of any business of the whole village, the villagers had to accompany him by turns. He was assisted by number of officers, probably elected by the people and he received rent free land for his living. Village elders were also entrusted with some social duties or functions related to the village. During the Mauryan period the village headman had to work under the supervision of the *gopas* who were the lowest representatives of the state authority in fiscal and police matters of the provinces. *Arthaśātras* also recognizes the authority of the village courts which were self-sufficient and independent from empirical control. *Gramvarddhas* or the village elders decided the cases arising in the village. Every

local usage, customs of the caste, community, clan and family, every bye-law of the corporate bodies, the guilds and such other organized non political communities in the disputes about boundaries in the villages were decided on the spot by the elders and the wise men of the neighboring five to ten villagers. There was a gradation of the courts of justice ranking from the local courts of village community to the supreme court of judicature."[101] Manu laid down the following rules regarding settlement of disputes of boundaries between two villages: "if there are no witness, let four men who dwell on all the four sides of the two villages made a decision concerning the boundary in the presence of the king."[102] Manu further said "the decision regarding boundary-marks of fields, well, tanks, of gardens and houses, depends upon (the evidence of) the neighbours."[103] In the pre-Mauryan age the "*gramikas*" were under the direct control of the king, as testified by the *Vinaya Pitaka* which mentions that Bimbisara once called eight thousand headmen of his kingdom to instruct them in worldly things. According to Kauṭilya, there should be a court for every ten villages called *sangrahaṇa,* for every four hundred villages (a district) a *droṇamukha* court, and for every eight hundred villages (a province) a *sthanīya* court.[104] These courts were evidently hierarchical. All these three kinds of courts mentioned by Kauṭilya must have been inferior to the king's court. Kauṭilya mentions courts on the borders of the kingdoms. Each of the courts mentioned above by Kauṭilya had three judges, known as *dharmasthas* to decide disputes about cases.

According to Yājñavalkya, there were the tribunals, who had the power to decide law suits. Yājñavalkya mentions (a) the king's officers, (b) the *pūgas*, (c) the *śreṇis* and (d) *kulas*, they were entitled to decide legal disputes and each one was superior to the succeeding ones.[105] *Vijñāneśvara* commenting on Yājñavalkya text on the tribunals of *kula*, *śreṇi* and *pūga* says that if a person is dissatisfied with the decision of the *kula*, he may appeal to *śreṇi*, a person dissatisfied with the decision of *śreṇi* may appeal to a *pūga* tribunal and from *pūga* to the officer of the court and from that decision he may appeal to the king. It was only the king, who could execute orders for fines or corporal punishment. Therefore, the arbitration courts (like *kula*, *śreṇi*, etc.) could not decide disputes not involving *sāhasa* and they had no power to execute their decrees about fines and corporal punishments, but their decisions had to be filed with the king, who, if he did not disapprove of them, put them into execution.[106]

When a complaint was brought before the court, the judge was required to get recorded the details of the same such as the year, the season, the month, the fortnight (*paksha*), the date, the nature, and place of the deed, the amount of the dept as well as the country, the residence, the caste, the name and occupation, residence and country were also recorded. In the procedure of trial whether an accused was a stranger or a relative to the complainant, his defense witness had to be in the presence of the complainant, be asked as to the defendant's country, caste, family, name, occupation, property, friends and residence. The answers obtained were compared with the defendant's own statements regarding the same.[107] Then the defendant was asked not only the nature of the work he did during the day previous to the theft and also the place where he spent the night till he was caught hold off, if his answers were attested and found reliable then he was acquitted, otherwise he was subjected to torture.[108]

When the defendant appeared in the court, and the plaintiff wanted adjournment for his detailed statement, he was given time according to the circumstances of the case. When the defendant heard the detailed statement of the plaintiff, made in his presence, he might not be in a position to make a statement forthwith. He might choose to seek an adjournment of the case for preparing his statement. The ancient law-givers laid down certain rules for granting adjournments to the parties.[109] The defence or the written statement of the defendant was called "the *uttara*" or the reply. It was the duty of the king or the judge to call upon the defendant to give an adequate reply to meet the case of the plaintiff as far as possible. There was no difference in procedure in the trail of criminal and civil disputes. Therefore, in a criminal case also, the accused was required to meet the charges of the complainant fully from the beginning. Under the modern law of criminal procedure, the accused is required to plead either guilty or not guilty in the beginning and his defence is not disclosed till the prosecution evidence is closed and some specific evidence incriminating him is produced in the court. In ancient India, the accused was required 'to place his cards on the table' from the beginning.[110] It has been stated that the plaintiff was assisted by the court to place his case in proper form. The *sabhyas* or the assessors with the help of the clerk, helped in drafting the pleadings of the plaintiff. They also help the defendant to prepare the written statements also. Where qualified pleaders (*niyogins* or *vipras*) were available, they could be engaged by the parties. Yājñavalkya said that the defendant must get his reply scribed in the presence of the

plaintiff. According to him the plaint was to be finalized in the presence of the defendant[111] and the defendant was to get his reply written in the presence of the plaintiff. The purpose obviously was to give the other party sufficient notice as under the modern law copies of pleadings of either party are required to be served on the opposite party. In ancient India, there was no facility of mechanical copies of writings to be prepared. Therefore, written copies of pleadings were not required to be served on or handed over to the opposite party or parties, the law-givers wisely provided that the final pleadings of a party was to be prepared and submitted to the court in the presence of the opposite parties. It has also been stated that the reply must be relevant to the charge and must not travel beyond it nor be irrelevant to the charge. The defendant was allowed for the period of three to seven days in which he could file his reply to the plaint and after that period if the defendant had failed to file the reply, fine was taken depending on the number of days he had taken to file the reply. If he was failed to file the reply within three fortnights means the loss of the suit in the court. The complaint also required to submit his counter reply on the same day on which the defendant's reply was filed, or otherwise he loses the suit and to be fined accordingly.[112] Kauṭilya said that the defendant might be granted adjournment of three to seven days to file his statement in defence. If he was not ready within that period, he was to be fined an amount ranging from 3 to 12 paṇas.[113] The injunction was not without any basis because the complaint was already in the knowledge of the facts of the case whereas, the defendant required some time to gather his information.

It is stated that an accused could not make a counter-charge without first absolving himself of the charge, there were some exceptions. Yājñavalkya said 'counter-charges can be made in *kalaha* (quarrel) and *sāhasa* (crimes with violence). Neither could two complaints by two different persons against the same accused be tried together. The second could be tried only after the disposal of the first criminal case. Of course, if in a single transaction two persons are assaulted by a man, the two could probably tried together. It was also described in the *Arthaśāstra* that except in the cases of *kalaha* (scuffle), *sāhasa* (forcible seizure), and *sarthasamavaya* (agreement) among the members of a caravan of the traders, the defendant was not allowed to file a counter- complaint so long as one complaint against a defendant was not disposed off, another complaint was not allowed to be filed against him.[114]

Suparakar compares this practice in ancient India with the code of criminal procedure prevalent modern times in these words, "when a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences (whether in respect of the same person or not) he may be charged with and tried at one trial for a number of them not exceeding three. Sudden and grave provocation may be an important extenuating circumstance".[115]

The ancient law-givers Yājñavalkya[116] and Gautama[117] believe that delay in justice would cause great harm to the victim. Great evils flow from delay and it may amount to denial of justice. Yājñavalkya laid down that in accusations of *sāhasa* (crimes with violence like murder robbery, etc.), theft, defamation and abuse, hurt and assault, and cow killing, in accusation of the major suits, and character of women, the cases should be disposed of speedily. In other cases the court could grant adjournment at its discretion.[118] In exceptional cases, however, a longer period of adjournment could be granted. Gautama said if the defendant is unable to answer the plaint at once; the judge may wait for one year, but in an action concerning kine, draught-oxen, women or the procreation of off-spring, the defendant shall answer immediately, the case will suffer by delay.[119] If the defendant was idiot, insane or afflicted with serious physical diseases, an adjournment of trial could be given for one year or more. This injunction meant to safeguard the interest of the sick and the wounded. Sufficient time was given to them so that they could depose in the court with a healthy mind and body. As under the present law, this permits the plaintiff suffering from legal disability like minority, insanity or idiocy, extension of time for filing his suit or claim after he gets rid of such disability. Similarly in ancient India, the plaintiff also got the benefit of filing his plaint, long after the occurrence or cause of action, if he was under one or more disabilities. The defendant also got similar latitude of seeking long adjournment, if he was a minor or insane etc.

To protect the judicial rights of the accused the practice of investigation was in vogue in our period of study. In all the matters of theft, robbery, murder, etc., suit could be filled in a court only after the procedure of investigation was carried. For redressal of wrong, only complaints could be lodged with state officers, the *pradeṣṭṛs*, who were to investigate the matter thoroughly and find out the culprit.[120] All

questionings of persons, whether suspected or witnesses were part of investigation, not of trial of the court.[121]

A person arrested for theft was to be questioned at length in the presence of the owner of the goods and witnesses. If his plea of innocence was corroborated by independent evidence, he was naturally to be let off. If circumstantial evidence points to the guilt of a person, but he was still denies the charge, the torturer or karma was recommended for securing a confession.[122] For murder the death, penalty was naturally prescribed. If after a scuffle, death was followed after some interval of time the punishment was reduced. In the *Arthaśāstra* it is description about the striking features of the penal laws, the punishments takes the form a fine, which was allowed to be substituted even when originally corporal punishment was prescribed. The preference for fines may perhaps be due to the circumstances that fines were important source of state revenue. Corporal punishment was prescribed for the theft and some other offences like entering in a fort without permission, deceitful gambling, sale of human flesh, etc. in all cases of physical punishment, excepting death; payment of fine was the alternative. Corporal punishment included cutting of limbs, the breaking of the neck, blinding of eyes. Death penalty appears to be of two kinds. Simple killing and killing by torture. Death by torture was of various kinds, e. g drowning, putting fire on the skinned head, putting burning substance on the palms and on the head, kicks by bulls, burning with fire, piercing with arrow, etc.[123] The principle of an eye for an eye, tooth for the tooth was followed to a certain extent in awarding punishments to criminals. For example, for cutting genital organ and testicles of a person, the same offender was to undergo similar punishment. For cutting off a limb of parents or certain other relatives the offender had to lose the very same limb by himself. Offences relating to sex were dealt with in the section called *kanyā-prakarma*. The actual criminal and his abettor suffered the same corporal punishment which could be avoided by paying the prescribed amount.[124]

As regard to the seizure of criminals in the very act, information regarding such articles was either lost or stolen, if the articles were not found out and be supplied to those who trade in the similar articles. Traders who conceal the articles as to the loss of which they had already received information were condemned as abettors. If they were not aware of the loss, they could be acquitted on restoring the articles. No person could, without giving information to the superintendent of

commerce, mortgage or purchase for himself any old or second-hand articles. On receiving information regarding the sale or mortgage of old articles, the superintendant had to ask the owner how he came by it. If his statement regarding the antecedent circumstances of the article was found true, he had to let it off. In the case of house-breaking, officers tried to get evidences, the investigating officers had to try certain firsts whether it was likely to be committed by an outsider or by someone inside the house itself or by both in collusion. A long list of evidence or indication was given which shows whether the offence was committed by someone inside the house or by some outsider. It shows a thorough knowledge of the ways of thieves and other criminals and their behavior before committing it.[125]

Offences of physical injury were referred to the *pradeṣṭṛs* for *kantakasodhara*.[126] That may partly because in the event of death the aggrieved party was there to file a suit in the court of *dharmastha*, also because it now becomes a matter of culpable homicide or murder, which requires a thorough investigation. It was obvious that the *dharmasthas* were concerned only with matters arising out of dealing between two parties and it was necessary before they could do anything about the matter that the aggrieved party was filed a suit in their court. In matters with which the *pradeṭṛs* were concerned, namely crimes such as theft, murder, robbery etc. the perpetrator of the offence was generally not known, hence no suit was filed in a court against any person for redress of wrong. Only complaints were lodged with state officers, the *pradeṭṛs*, who were investigate the matter thoroughly and if able to found the culprit, punished him. All questions of persons, whether suspects or witnesses were part of investigation in a court. Kauṭilya says that when a party was guilty of contradictory pleadings, or does not cite any witness though he said that he had witnesses and was defeated for these and similar reasons, he had to pay one-fifth of the claim and ten percent only if he relied on his own deposition.[127] Manu lays down that the *daṇḍa* depends on the *amātyas*.[128] Manu said that the judge should examine the causes of the suitors according to the order of the castes.[129] The higher caste litigants could claim priority.

In the case of certain death, *asumrtaka*, when murdered or suicide was suspected; a post-mortem examination was held. The body was prepared by smearing it with oil, obviously with the object of bringing to the light any marks of violence or wounds. We have a description of the condition and appearance of the body in the

case of the death resulting from various different causes. Thus, if death was caused by strangulation, there was a swelling in the hand and the feet, voiding of urine and stools, bulging of eyes and marks on the throat. If in addition there was a contraction of the arms and thighs, death by hanging was indicated. Closed eyes, a bitten tongue and a swollen bally indicate death by drowning. Other cases were similarly described. It was added that the officer had to be very careful in his investigation, since a case of murder was often made to appear as a case of suicide. If poisoning was suspected, the remains of the last meal eaten by the deceased were tested or a part of his heart was thrown in the fire, it's crackling sound or rainbow colour indicating the presence of poison. It was stated that a culprit in a case of poisoning could be a servant severely reprimanded or thrashed by the deceased, a wife in love with another, or a person hoping to inherit his property. The usual motives of murder were declared as, a woman, property, professional rivalry and pending law suit. If murder was definitely indicated, investigation was made to trace the murderer by questioning all those with whom the deceased was last seen and those who had been dealing with him just before the death. If on the other hand it was proved a suicide case, investigation was made to find out what led the person to commit it. At the same time, it was clear that suicide was regarded as a sin. He refer that the right to life was a sacred right of all the human being. If a person, under the influence of passion or anger or a woman infatuated by sin were to kill himself by means of a rope, a weapon or poison, he should cause them to be dragged with the robe on the royal highway by a chandala: there is to be no cremation rite for them nor obsequies by kinsmen.[130] Any person having miserable appearance, present on the occasion, associated with rogues or thieves, woman who was born in poor family or health placed her affection elsewhere, servants of similar condemnable character, any person addicted to too much of sleep or who was suffering from drowsiness, any person who showed sign of fatigue or whose face was pale and dry, with stammering voice and indistinct and who was watching the movements of other bewailing too much, and any person whose body was scratched or wounded with dress torn off, any one whose legs and hands bear the signs of rubbing and scratching, any one whose hair and nails were either full of dirt or freshly broken, anyone who had just bathed his body with sandal, and anyone who had smeared his body with oil and had just washed his hands and legs, any one whose footprints were identified with those made near the house during entry and exit, any person whose smell of sweat or drink was ascertained from the fragment of his dress

thrown out in or near the house, these and other suspected persons were examined. A citizen or a person of adulterous habits was also suspected.[131]

Cross-examination which gives an equal opportunity to the plaintiff and the defendant to set forth their side was a integral feature of the legal procedure. The suspect was not arrested for three days after the commission of the crime, as much as there was no room for questions unless there was strong evidence to bring home the charge. The suspected was arrested and kept in the police custody (*caraka*) until the next day when he was tried.[132] It was mentioned in the *Arthaśāstra* that the *dharmasthas* were allowed to put questions to the two parties as well as to the witnesses.[133]

The cases were decided on merits and in every case reasons and circumstances formed a significant part of the judgment. The judge passed on the judgment after listening to both parties and weighting all the evidence procured. A number of circumstances were mentioned as leading to loss of the suit, especially by the complainant. For example if the charge shifted to the complainant or if there was a contradiction between an earlier and a later part of the statement, or if the opposite party's statement was not proved to be false after being challenged, if the evidence cited was not forth coming, or if insufficient or irrelevant evidence was produce, or if evidence other than the one cited was produce, or if evidence produce by oneself was repudiated, and so on, the party concerned was declared to have lost the suit. Five circumstances which were helpful to the judge in arriving at a decision are a party being manifestly in the wrong, a free of the admission of the charge, straightforwardness in the questions and answers between two parties, reasoning and oath.[134] Of these, the third circumstance seems to refer to the examination and cross examination of the two parties and their witnesses. There was no reference in the text to professional lawyers. Most probably such a class did not exist. Oath or *sapatha* does not appear to contain a reference to ordeals as well. These are nowhere referred in the text.[135]

The persons who charge an innocent man with theft or conceal a thief, then they themselves had to be liable to the punishment for theft. When a person accused of theft proves in his defence the complainant's enmity or hatred towards himself, he had to be acquitted. A suspected person had to be established by the production of such evidences or abettors, the stolen article and middlemen involved in selling or

purchasing the stolen article. The validity of the above evidences was also tested with reference to both the scene of the theft and circumstances which were connected with the possession and distribution of the stolen article, when there were no such evidence then he was regarded as innocent. If any person was present on the accidental scenes of the theft or possession of the articles similar to those stolen or owing to one's presence near the stolen articles, in such type of cases the innocent was often seized as a thief. Hence the punishment was meted out only when the charge was quite established against the accused.[136]

According to law-givers, if the king does not personally investigate the suits, then let him appoint a learned Brāhmaṇas to try them.[137] Three Brahmans versed in the Vedas and the learned judges appointed by the king sit down, they call that the court of four-faced Brāhmaṇa.[138] In the court a man speak the truth, if a man who either nothing or speaks falsely, becomes sinful. According to Manu, where justice is destroyed by injustice or truth by falsehood, while the judges look on, there they shall also be destroyed.[139] Judge should know what is expedient or inexpedient, what is pure justice or injustice examining the causes of suitors according to the order of the caste (Varna). By external signs let him discover the internal disposition of men, by their voice, their colour, their motions, their aspects, their eyes and their gestures.[140] A king, who knows the sacred law, must inquire into the laws of castes (gāti), districts, guilds, and families, and thus settle the peculiar law of each.[141] The king shall discover on which side the right lies, by inferences from the facts as a hunter traces the lair of a (wounded) deer by the drops of blood.[142]

Witnesses and Evidence:

The evidence to be submitted in a court of law was called *deśa* in *Arthaśāstra*. It evidently refers to all kind of evidence, documents, and witnesses and so on. The *deśa* was also used in the text in the sense of 'Title' which establishes ownership over a thing that may have its original meanings. Another word for evidence was *karana*.[143]

The persons who were present at the time of the transaction of the question were cited as winnesses and are called *srotrs* 'Hearers'.[144] This word shows that in the beginning all transactions were carried out without a written document, people witness them and being listeners to what was taking place. When they used to come to

the court for giving evidence they were called *saksins*, eye-witnesses. The emphasis was giving on what they saw. We often find reliance placed on the testimony of *upadrastrs* and *upasrotrs*.[145]

It was stated that when witnesses were called in there then at least three witnesses had to be there at a time or two if both parties agreed, but never one in dispute concerning a debt. The persons who were trust worthy and honest and are acceptable to both the parties were naturally emphasized. Women as such appear to be inadmissible as witnesses.[146] Women according to lawgivers were not competent witness. Manu, who had strong prejudices against women said that evidence of female witnesses, even when they are pure is generally unacceptable. The reason he adducted that women are fickle by nature.[147] Commentary on Manu's dictum, *Medhātithi* says that women are disqualified as witnesses only where the plaintiff and defendant are both males, but where there is litigation between man and woman or only between women, a woman may be a competent witness. Exceptions were, however, allowed in the cases of abuse, assault, theft or adultery, when the only inadmissible witnesses were declared enemy of the accused, a wife's brother or an accomplice of the complainant. Manu also said that women are competent witnesses in disputes between women.[148] Some persons were inadmissible as witnesses, either because they had an interest in one of the parties to the suit, such as his kinsman or dependants, wife's brothers, co-partners, prisoners (*abaddha*), creditors, debtors, enemies, maimed persons or persons once punished by the government were not taken as witnesses. Likewise persons legally unfit to carry on transactions, the king, learned persons in the Vedas, persons depending for their maintenance on villages (*grambhataka*), lepers, person suffering from bodily eruptions, outcaste persons Chandālas, persons of mean avocation, the blind, the deaf, the dumb, egotistic persons, females or government servants were taken as witnesses excepting in the case of transactions in one's own community. In dispute concerning assault, theft or abduction, persons other than wife's brothers, enemies and co-partner were witnesses. In secret dealings, a single woman or a single man who had stealthily heard or seen them could be a witness, with the exception of the king or an ascetic.[149]According to Manu trustworthy men of all the four castes (*Varna*) may be made witnesses in lawsuits, men who know their whole duty, and are free from covetousness, but let him reject those of an opposite character.[150] Women should give evidence for women and for

twice-born men twice-born men of the same kind, virtuous Śūdras for Śūdras and men of the lowest castes for the lowest. But any person whatsoever, who has personal knowledge of an act committed in the interior apartments of a house, or in a forest, or of a crime causing loss of life, may taken as evidences between the parties. On failure of qualified witnesses, evidences may be given in such cases by a woman, by an infant, by an aged man, by a pupil, by a relative, by a slave, or by a hired servant.[151] The judge should not consider the evidence of infants, aged and diseased men, who are apt to speak untruly, as untrustworthy, likewise that of men with disordered minds. In all cases of violence, theft and adultery, defamation and assault, he must not examine the competence of witnesses too strictly. On a conflict of the witnesses, the king shall accept the evidence of the majority. If the conflicting parties are equal in number that of those distinguished by good qualities and their castes e.g. Kṣatriya witnesses were preferred as compared to the Vaiśya witnesses.[152] Evidence in accordance with what has actually been seen or heard, is admissible, a witness who speaks truth in those (cases), neither loses spiritual merit nor wealth (nor wealth i.e. he will not be fined).[153] A witness who deposes in an assembly of honourable men (arya) anything else but what he has seen or heard, falls after death headlong into hell and loses heaven.[154] When a man originally, not appointed to be a witness see or hears anything and is afterwards, examined regarding it, he must declare it exactly as he saw or heard it.[155] According to Kauṭilya, when different witnesses gave mutually contradictory evidence, the judge had to accept the testimony of the majority or that of those among them who were known as upright or who were accepted by both parties.[156] A Brāhmaṇa witness was entitled to higher credit in his evidence in court than a witness of any other castes. So if in a suit or case, the weight of the evidence of both sides is equally balanced, the court was expected to decide the case, in favour of the party, which produced better qualified witness. A Brāhmaṇa witness was, of course, better qualified according to *śāstric* standard.[157] If witnesses testify to an amount less than the one claimed by the plaintiff, a part of the excess claimed was imposed as a fine on him. If they testify to an amount larger than the one claimed, the excess was taken by the state. If because of the plaintiff's carelessness, the amount was heard wrongly by witnesses or was wrongly entered by him in the plaint, the testimony of witnesses had to prevail. Kauṭilya recommended a fine of 24 *paṇas* for giving false evidence and 12 *paṇas* for refusing to give evidence. Perhaps he thought

that too severe penalty might lay to difficulties in giving witnesses. The text *Arthaśāstra* knows the documentary evidence, but it does not discuss the question of their admissibility or validity. This shows that it gave more importance to the testimony of witnesses than to documentary evidence. It was obligatory to produce three witnesses who were reliable, honest and respected. At least two witnesses were accepted by the parties if necessary, but not one witness in case of debt. In the cases where the plaintiff proves himself stupid or where bad hearing (on the part of witness at the time of the transaction) and bad hand writing was the cause of the difficulty or where the debtor was dead, the evidence of the witnesses alone were depended on (sākshipratyayameva syāt).[158]

In the matter of special oaths, those administered to the higher castes were milder that those administered to the lower castes. According to Kauṭilya, to a Brāhmaṇa the judge had to say simply, "speak the truth." He was addressed as Kṣatriya or a Vaiśya with the words "may you forfeit the reward of your meritorious deeds and may you go begging to your enemy's house, if you give false evidence". And Śūdra was admonished thus, "In case you give false evidence, your merit will go to the king, and his sins will pass on to you. Besides, you will be punished for perjury".[159] If two parties dispute about matters for which no witnesses are available and the judge is unable to really ascertain the truth, he may cause it to be discovered even by an oath.[160] Evidence given from covetousness, distraction, terror, friendship, lust, wrath, ignorance and childishness is declared to be invalid. Before witnesses were called upon to tender evidence, they were adjured by the judge in the presence of Brāhmaṇas, a water pitcher and fire, to bear witness truthfully. The form of adjuration was varied with the Varna of the witnesses.[161] Manu said that a judge should ask a Brāhmaṇa witness only to speak-and no oath to be administered. For a Kṣatriya witness, the judge should ask him to speak 'the truth'. In case of a Vaiśya witness, he should be, asked to swear by "cow, seeds or gold" and a Śūdra should be sworn by "all the sins."[162] This privilege was, however, available to a true Brāhmaṇa-learned and to Vaiśya or other castes, such privileges were not available. A witness, when cited, was bound to give evidence. Else he had to lay himself open to a fine of twelve paṇas after seven days. If after three fortnights he still persist in and refuses to give evidence he made himself liable to pay the declared amount.[163]

On the side of prosecution masters against servants, priests or teachers against their disciples and parents against their sons could be witnesses (*nigrahaṇasākshyam kuryah*) persons other than these were witnesses in criminal cases. If the above persons (masters and the servants etc.) sue each other (*parasparābhiyoge*) they were punished with the highest amercement. Creditors guilty of *parokta* were fined of 10 times of the amount (*daśabhanda*), but if incapable to pay so much, than they had to pay at least five times the amount sued for (*pañchabandham*).[164]

Kauṭilya referred that parties should themselves produce witnesses who were not far removed either by time or place, witnesses who were very far and who were not stirred out, had to present themselves by the order of the judges.[165] The witnesses were required to attend the court and were then questioned closely, but they were not under oath, a solemn adjuration was read to them, warning them of corporal punishments which was inflicted on them in the case of false evidence, penalties were made more formidable by prospect of additional punishment after death that could affect their future. Despite of this warning, witnesses were still capable of using all sorts of ruses on behalf of the person whose case they had agreed to support, and consequently they were subjected to a careful scrutiny during their evidence. If a witness showed himself ill at ease or betray signs of apprehension, if his face becomes pale, or he suddenly broke out into a sweat, or if his mouth becomes so dry that he had to pass his tongue over his lips, then doubt was inevitably casted on the truth of his statement. The person convicted of bearing false witness suffered mutilation of his extremities. In the case of disputes about the ownership of fields, the decision was taken according to the opinion of the majority of witnesses known for their piety and popularity. It was referred in the Pillar Edict-XIV of Asoka that judge had to pass his judgment on the strength of the evidence.

Generally pious persons were fit for being witnesses. Anybody could be a witness if he was selected by both the parties. Perjury and suppression of evidence were punishable offences. If there were conflicting evidences given by the witness that of the majority was acceptable. In the case of two conflicting groups consisting of an equal number of witnesses the evidence of the one containing more qualified persons was acceptable. If two groups of qualified witnesses differ, the evidence of those, who were most qualified, was accepted. No one was punished on mere suspicion and that the king had to pass the sentence only after full investigation by

means of witnesses or by ordeal. There were three kinds of evidence during the trails, they were regarded as useful, namely usage, written evidence and oral evidence. The matter was decided by comparison of documents with other admitted documents.[166]

Sureties and Fines:

It is stated that both the parties must be eligible and fit to sue and defend the case. Both the parties were required to furnish the complete sureties to insure the fine received by the state. Having been registered first, the statements of the parties were taken down in such order as it was required by the case. These statements were then be thoroughly scrutinized. The clerk then record the questions put to both the parties alone with their replies. Before the case was preceded the judge had to ask both the parties to furnish competent sureties. This was intended to ensure that the fine was received by the state from the party whichever loses the suit. It seems that the law of procedure and law of evidence were first framed in connection with suits concerning the non-payment of depts. (*ṛṇadana*). For, in details about the filing of the suits the matter in dispute was referred to as *ṛṇa*.[167] Yājñavalkya said that both parties must furnish sureties adequate to meet the expenses of the case. Yājñavalkya said, "The court must take sureties from both parties-sureties who are solvent enough to satisfy the object or judgment in the action."[168] But the text is not very clear, whether the sureties were to ensure the attendance of the parties till the final disposal of the case or whether they were to guarantee the payment of the money, if any, was found due from the party in question. Yājñavalkya speaks of litigation with wager. This has some resemblance with the court fees payable in a modern suit. In most civil suits, Dr. Kane says, that certain money or fine, payable to the king after the decision in a suit, were in the nature of court fees.[169]

Kauṭilya uses the term (*parokta*) to indicate the categories of cases in which fines were imposed. He mentions them as follows: (a) one who deviates from his pleading and makes out another, (b) one whose subsequent statement does not support his earlier statement, (c) one who challenges the unchallengeable statement of the opposite side, (d) one who does not produce evidence, (f) changes his evidence, (g) when he tries to explain away a statement made earlier, (h) does not support the statement consistently made by his witnesses, and (i) one who holds secret conversation with witnesses (with whom he should not take). It is, however, possible

that the absence of a party or witness may not be deliberate defiance of summons but due to illness or natural calamity. Similarly, his silence may be due to forgetfulness or nervous confusion.[170]

According to Kautilya, fine for *parokta* was five times the amount (*paroktadandah pañchabandah*) and fine for self assertion (asserting without evidence) was ten times the amount.[171] Manu says that if a debtor admits the debt, he has to pay a fine of five per cent of the dues, but if he denies the fact altogether, he has to pay a fine of ten per cent.[172] In another place he says that if debtor denies the debt either wholly or partly, out of fraudulent motive, the debtor is liable to pay as fine twice the amount of difference between the sum due and the sum admitted.[173] The lighter fine prescribed by Manu applies to a denial due to loss of memory or negligence and the heavier fine applies to cases of fraudulent denials.[174] Manu says, "if a person goes back on his words (or pleadings) or contradicts his own statement or makes a (substantial) charge in his statement, or does not support his own statement, or if he holds conversation with witnesses, with whom he should not talk, or avoids or evades answering questions, one who remains silent even when asked, one who cannot prove his case or one who does not know the context of his case is bound to lose his case. If one says, "I have witness" but does not produce any, he also loses his case.[175] If a plaintiff does not speak; i.e. after bringing a suit', he may be punished corporally or fined according to the law, if a defendant does not placed within three fortnight, he has lost his course. When engaged in judicial proceedings he must pay full attention to the truth, to the object, (of the dispute) and to himself, next to the witnesses, to the place, to the time and to the aspect. He shall establish a law, if it be not opposed to the customs of countries, families and castes (gāti).[176] In the double of that sum which a defendant falsely denies or on which the plaintiff falsely declares, shall those two men offending against justice be fined by the king.[177] Yājñavalkya also says that the king or the judge in realizing the debt from the debtor for the creditor may take ten per cent from him as fine and deduct five per cent of the dues before paid to the creditor by way of cost. When a pledge was misappropriated, the guilty was liable to pay a fine to the king equal in value to the price of the goods pledged. The rates of fine in criminal cases were also fairly high. Instead of or in addition to inflicting corporal punishment, the judge could impose fine. Yājñavalkya speaks of plaint filed with *paṇa* (wager) according to the choice of the plaintiff; the

money is an earnest of his bona fide claim. The defendant might also offer money as an earnest of his bona fide defence. There was no legal obligation. If the plaintiff offers a hundred *paṇa* as earnest, and he loses the suit, he is bound to forfeit this amount and is liable to pay one hundred *paṇa* to the defendant besides losing his claim. He is also liable to pay fine to the state. If the plaintiff offers one hundred paṇas and the defendant loses, the defendant has to pay this money to the plaintiff over above the decretal dues. He has also to pay fine to the king.[178] Yājñavalkya also says that if the defendant denies the debt and loses the case, he must pay the king a sum equal to the decretal dues and if the plaintiff makes a false claim and loses, he must pay the king twice the sum which he put on the wager.[179]

The loser in the suit had to pay not only the legal costs but also the total amount. If the wagers engaged by the adversaries on the outcome of the deliberations when a defendant was found guilty at his trial and then lost his appeal, he had to pay double of this total amount, but if by chance he finally won the case, then the plaintiff was forced to pay the entire cost and the judge themselves had to pay a fine. The party that loses the suit was required to pay the state one fifth of the claimed amount as fine, which was reduced to one tenth of amount if the claim was admitted by the defended and the need to proceed with the case was obviated.[180] In suits between seniors and juniors, such as master and his servant or between teacher and his pupil or between parent and his child in that type of cases if the senior loses the suit was to pay the smaller fine of one tenth while the junior losing the suit was to pay the higher fine of one fifth.[181]

Punishment for judges:

It was necessary for the judges to decide the cases impartially otherwise they were liable for the punishment. For some offences they were liable to be dismissed from the service. According to Manu, ministers or judges who were at fault in the discharge of their duties should be fined a thousand *paṇas*.[182] There were certain rules mentioned in the *Arthaśāstra*. *Samāhartṛ* with the *pradeṣṭṛs* working under him mentioned in the *Arthaśāstra* was officer who was the responsible for the maintenance of the clean administration and controlled the judicial administration. A judge who showed temper on the bench by brow beating, rebuking, expelling or snubbing or defaming and abusing the suitor was punishable. If the judge does not put the question which had to be put, or ask what had not be asked, or does not take note

of the answers given to his own question, or tutors, prompts and hints to a witness, was punished. If a judge mislead to a truthful witness, to till out the patience of litigants and force them to leave the court by delay, to cloud the issue by not taking the statement of the witness in the order in which they were given, to had a collusion with the witness by helped him with hints and clues then the judge was dismissed. Tampering with deposition-taking liberties with the statement of witnesses, by not recording them faithfully or tempering with the records of depositions had made the clerk of the court concerned liable to punishment varying with the gravity of the offence. The necessity for the judges to decide the cases impartially was vividly brought out in the punishment laid down for dereliction of duty by them. The *dharmasthas* as well as the *pradeṣṭṛs* also make themselves liable to punishment for errors in pronouncing judgments and convicting persons. For fining an innocent person they were themselves to fined double the fine imposed. For making an innocent person suffer corporal punishment, they themselves were to undergo the same punishment.[183]

The reputation of a state depends on how effectively it is able to maintain law and order within its jurisdiction. Therefore, it is imperative that law and order is given adequate attention if we want a sound welfare state where development and law and order go hand in hand. From the law and order of the ancient India it can be deduced that welfare and happiness of the country people was their prime objective. The study of law and order make it clear that the punishments were given according to the offences and according to the status in the society. The government trapped the criminals with the help of the spies. Different type of tortures were applied to the criminals, but a women in the family way, a woman in the first month of delivery, Brahmins and ascetics were not subjected to torture. In some cases we find there was discrimination of punishments, the rates of fines were varied according the rank of people and the gravity of the crimes. Death sentence was provided for several offences but it was to be avoided as long as possible. King always tried to do fair and equal opportunity to. Megasthenes from his personal experience was able to testify that the sternness of the government kept crime in check and that in Chandragupta's capital with a population of 4,00,000 the total of the thefts reported in any one day did not exceed two hundred drachmae or about eight pounds sterling.[184]

The ancient wisdom of Indians was of an eye opener for the present day law makers and the general public. The well developed Legal framework and the Judiciary firmly bound on the Dharma principle and the pious nature of the Indian people was well defined in the ancient India. The ancient judicial system laid down by the great seers of India has all the requirements for a stable and workable judiciary as can be seen from the above discussion and it was matching even with the present day system. *Dharmaśāstra* says that a king must do justice without fear or favour. Therefore, when the king is to decide a case, he must do justice, even though in doing so, he may lose a powerful friend, against whom the case is decided. [185]

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