
KAUTILYA'S ARTHASHASTRA AND THE LAW

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Abstract

Kautilya (alternatively known as Chanakya or Vishnugupta) is a name familiar to us as a statesman, advisor and author of *Arthashastra*. A lot has been written about him and his work, and through this paper I analyse the instances in which Kautilya and his *Arthashastra* has been invoked by the Indian judiciary and law/constitution-making bodies. I trace the trajectory of the reliance placed on Kautilya and his *Arthashastra* by judges over the years to understand the impact of ancient texts and history in evolving legal jurisprudence in India. Other than the case-laws written over the years, I also explore invocations of Kautilya during the debates in our Constituent Assembly Debates. Through my research, we can see that the *Arthashastra* is often invoked in certain types of cases and to understand the practices and/or customs of ancient India. Over time, we also see that increasing reference is made to Kautilya and his *Arthashastra* and in ways that reflect a deeper understanding of the essence of the ancient text. This exploration is intriguing because it looks at the overlap of two distinct fields of study and how one has helped the other evolve.

Keywords: Kautilya, legal jurisprudence, ancient Indian texts, Indian history, law, Arthashastra

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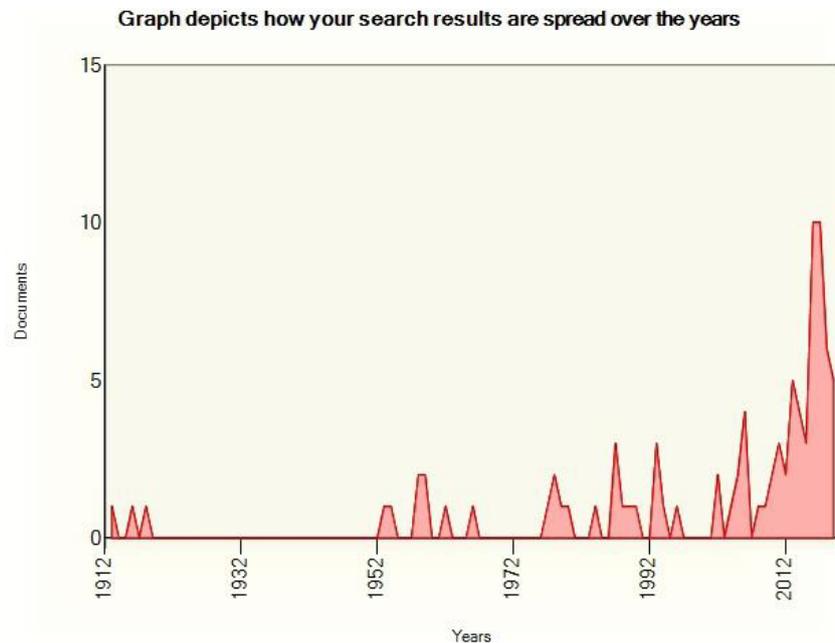
The *Arthashastra* is a text that has held the interest of a cross-section of people for decades now. In this essay, I look at when, how and in what manner the judiciary has relied on or referred to the *Arthashastra* over the years to interpret laws. The aim is to understand the impact that the *Arthashastra* has had on laws, and interpretation thereof, in India. Hence, I propose to do this not only by analysing the judgments pronounced by various Courts within India but also looking at the Constituent Assembly Debates¹. For the purposes of this essay, I look at three broad periods - the pre-independence era, the constitution-making process, and the post-independence era. I look at the pre-independence era and constitution-making process to put in context the references to the *Arthashastra* in the contemporary era which is the main focus of this essay. I begin by looking at the spread of the cases over the years, and then proceed chronologically to trace the evolution of reliance on the intermingling of legal jurisprudence with the *Arthashastra*, and then conclude by summing up the course set by courts in this arena.

The Timeline: Invocation of the *Arthashastra* in judgments/case laws of different Courts

The graph below is taken from *Manupatra*², and shows the frequency of usage of the word '*Arthashastra*' and/or 'Kautilya' in judgments of different Courts over different time periods. An interesting fact to note here is that though there are ample references to Kautilya or Koutilya from as early as 1913 to as late as 2019, there are only two references to 'Chanakya' (along with Kautilya, and none in isolation). Also, barring a brief lull in the 1920s-1940s, the invocation of Kautilya's *Arthashastra* appears to be on an upward trajectory as evinced from the graph below.

1 "Arthashastra" and/or "Kautilya" and/or "Chanakya" were the keywords used to search the database. https://www.constitutionofindia.net/constitution_assembly_debates

2 Manupatra is an Indian Legal database. "Arthashastra" and/or "Kautilya" and/or "Chanakya" were the keywords used to search the database for judgments pronounced by the Supreme Court and the High Courts. <https://www.manupatrafast.com/>



The *Arthashastra* and the Judiciary of the Pre-Independence Era

A total of three cases from the pre-independence era refer to *Arthashastra*. As the number is low, I look at all three cases. The case of *Hiralal Singha v. Tripura Charan Ray* (1913 [17] CLJ 438) before the Calcutta High Court appears to be the first recorded case available that mentions the *Arthashastra* /Kautilya. This is one of two cases that mention both Kautilya and *Arthashastra*. It is also the only judgment to refer to the ‘Vatsyayan Sutra’ and place substantial reliance on both these ancient texts to determine whether property could be inherited from a widow who had turned to prostitution.

The judgment in the *Seshachala Chetty and Ors. v. Para Chinnasami and Ors.* ([1917] ILR 40 Mad 410) case of 1916 was pronounced by a three-judge bench of the Madras High Court. Of the Bench consisting of only one Indian judge, the British Chief Justice’s written judgment was the sole judgment drawing upon the *Arthashastra* to trace ownership of unoccupied lands, which was one of the issues framed in this case. The judgment mentioned the ‘*Arthashastra* of Kautilya’ as having been published recently and dates it to 300 B.C. The judge relied on the *Arthashastra* to reinforce the right of the State to provide uncultivated land to cultivators to realise its true revenue potential, as a practise recognised and supposedly followed in India. He refers to ‘Bk. 2, C. 1’ which

stipulates, *inter alia*, that land may be confiscated from those who do not cultivate it, and that lands prepared for cultivation may be given only for life, and that unprepared lands may not be taken away from those who are preparing them for cultivation (Shamasastri, 1915).

The third judgment (*Muthukrishna Naicken v. Ramachandra Naicken and Ors.* [1919] 37 MLJ 489) is also of the Madras High Court and was pronounced by a two-judge bench in 1918. In this matter pertaining to property law, the Judge terms the second *adhyaya*³ of the fifth *adhikarana*⁴ as Chanakya's 'Machiavellian' and 'disingenuous' advice. He relies on the same to make a case that even in ancient sovereigns, revenues from temples were used on occasion for general administration of the land. This is substantiated by the sutras which empower the King or the Superintendent of Religious Institutions (acting on behalf of the King) to accept properties (Shamasastri, 1915). The Judge refers to the *Arthashastra* and then the practices of the East India Company to frame the action as a continued practise/custom.

The *Arthashastra* and the Constituent Assembly Debates

I continue to trace the trajectory with a search of the Constituent Assembly debates as this gives us insight into the thinking of the framers of our Constitution, which is the supreme law of the land. Interesting observations from the search are as follows:

- That nowhere is the term Chanakya used; references are made only to Kautilya and *Arthashastra* by the members of the Constituent Assembly.
- Reliance is placed by Shri Seth Govind Das on *Kautilya's Arthashastra* to substantiate his claim that India is a 'very ancient country' where villages held a very important place. He states that there are references to villages in the *Arthashastra*, and that modern historians also admit its truth.⁵ Making a point that the Constitution must be in Hindi and not English, Shri Algu Rai Shastri said that we have 'inherited our language from our ancient sages and from Kautilya's *Arthashastra*'⁶. Though the

3 Chapters contained in the *Arthashastra*

4 Books or topics of heads in the *Arthashastra*. The *Arthashastra* is split into different books. Under each book there are multiple chapters, and each chapter has multiple sections/topics/heads.

5 *Constituent Assembly Debates* of 22nd November 1948, Volume 7, Document No.57, Paragraph No. 167. https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-22

6 *Constituent Assembly Debates* of 4th November 1948, Volume 7, Document

first reference is technically true and the second is a case of overreaching, these two references show how the *Arthashastra* was used as validation by members to further their own opinion on a particular issue.

- In a bid to convince his peers that the ‘republican tradition’ was not alien to India, Shri S.Radhakrishnan states that Megasthenes and Kautilya refer to the Republics of ancient India⁷
- Shri Kamalapati Tiwari draws a comparison between the Constitution of India and the *Arthashastra* by terming the work of the Constituent Assembly the second constitution-making process, with the first having happened 2500 years back. This ‘Kautilyan Constitution’ has apparently remained a ‘brand product of the Indian mind over all these centuries’.⁸

The Arthashastra and the Judiciary of the Post-Independence Era

As there have been multiple judgments post 1947, I shall be focusing on a few judgments pronounced between 2010 to 2019 as being reflective of the contemporary take of the Judiciary on the *Arthashastra*.

The 2019 matter of *Vijay Namdeo Rao Wadettiwar & Ors. v. The State of Maharashtra & Ors.*⁹ pertains to anti-defection law and involves interpretation of constitutional provisions. This judgment refers to Chapter IX of the *Arthashastra* to understand the ‘background history of India and its Constitution’, and specifically the qualities that a minister must ideally possess. We see here a continuation of the parallel drawn between the *Arthashastra* and the Constitution which was observed in the Assembly debates. Further, the judgment calls Kautilya an ‘exponent of the art of government’ and states that it was compiled (not written) between 321-296 BC.¹⁰

No.48, Paragraph No. 161. https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-04

7 *Constituent Assembly Debates* of 20th January 1947, Volume 2, Document No.12, Paragraph Nos. 27 and 28. https://www.constitutionofindia.net/constitution_assembly_debates/volume/2/1947-01-20

8 *Constituent Assembly Debates* of 23rd November 1949, Volume 11, Document No.163, Paragraph No. 173. https://www.constitutionofindia.net/constitution_assembly_debates/volume/11/1949-11-23

9 2019 (6) ABR 205 - Two-judge bench of the Bombay High Court

10 Also finds mention in *Manoj Narula v. Union of India (UOI)* 2014 (8) SCJ 425

The case of *Riyaz Ahmad Bhat v. State of J&K and Ors.*¹¹ makes a passing reference to *Arthashastra* while stating that the rule of law has included principles of natural justice from the 'legendary days of Adam and of Kautilya's *Arthashastra*'. The similarity between Adam and Kautilya and their relevance to a property dispute in a country suffering from multiplicity of laws governing property matters is puzzling. A potential justification for this is found in other judgments¹² which specify that the Adam-Kautilya reference is being invoked to indicate that natural justice is a venerable, established, noble concept and not a new-fangled, passing fad. Another slew of judgments¹³ proceed a step further and state (while reiterating all of the above) that reliance must not be placed only on legend and history, but current legislation must evolve to sustain these principles.

The case of *Alim v. State of Uttarakhand & Ors.*¹⁴ is about a writ petition filed to stop the illegal slaughtering of cows on streets. While issuing directions prohibiting slaughter of cows, the Court placed reliance on the *Arthashastra* (and the *Isha Upanishad* and the Vedas) to emphasise the importance of cows. Another case¹⁵ on the same issue makes an argument that the *Arthashastra* (along with vedic texts) raises cows to the level of divinity by virtue of the fact that it has a Superintendent of Cows (and an entire *adhyaya* dedicated to it). However, the veracity of this assertion is questionable on a reading of the *Arthashastra*.

Other passing references to *Arthashastra* were made in matters of the ubiquity of corruption¹⁶, inheritance rights of women, and the culture of bribery.

Conclusion

The *Arthashastra* is the only ancient text that most of the judgments referring to the *Arthashastra* rely on, and they all seem to accept it as the authoritative

11 MANU/JK/0085/2018 - Single judge bench of the Jammu & Kashmir High Court

12 *Pruthweeraj Patnaik v. State of Odisha and Ors* 2018 (II) ILR-CUT 71; *Maneka Gandhi v. UOI* AIR 1978 SC 597; *Avinash v. Ganpat and Ors.* MANU/MH/0250/2014

13 *Committee of Management, Islamiya Inter College v. State of U.P. and Ors.* 2017 2 AWC 1534 All - High Court of Allahabad at Lucknow; *Tarsem Singh v. State of Jharkhand and Ors.* 2016 (4) AJR 242 - High Court of Jharkhand at Ranchi

14 MANU/UC/0567/2018 - Two judge bench of the High Court of Uttarakhand at Nainital

15 *Ramesh Sharma v. State of Himachal Pradesh* MANU/HP/0934/2014

16 *Neera Yadav v. Central Bureau of Investigation* AIR 2017 SC 3791 - Two judge bench of the Supreme Court

account of conditions/life/practices in ancient India. In the pre-independence era, the *Arthashastra* appears to be used as a tool to build a version of history wherein large phases of Indian history are glossed over and the *Arthashastra* is seemingly the sole representative of ancient India. In the Constituent Assembly Debates, we see reliance being placed on the *Arthashastra* to trace India's rich and ancient history. Jumping to contemporary times, we see that the judges have a slightly more historically accurate understanding of the *Arthashastra*, notwithstanding the equal footing that Adam and Kautilya are put on. Further, the judges do not rely solely on the *Arthashastra* but also refer to other ancient texts and sources to understand the issue at hand. Also, there is reference to the gist of the *Arthashastra*'s take on a specific *prakaran*¹⁷ instead of a meticulous reference to the book, chapter, and 'section' of the text as was observed in the earlier cases. The Courts also appear to be relying on the *Arthashastra* to develop legal jurisprudence shaped by our unique history, and not solely to drive an agenda. At the same time, we also see the *Arthashastra* being invoked (along with other texts) for deeply politicised issues such as slaughtering of cows. That said, the Courts do attempt to perform a balancing act and not show bias. To conclude, it may be said that the trend indicates that inferences are being increasingly drawn from Kautilya's *Arthashastra* by the Courts in their efforts to interpret statutes, and that despite the passage of time, it shall continue to stay relevant and help Indian legal jurisprudence evolve.

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17 A paragraph or section in the *Arthashastra*