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Economic Regulations, Competition, and Consumer Protection in Ancient India

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Abstract

The ancient Indian texts, mainly Manusmriti and Arthashastra, not only paint a vivid picture of flourishing trade and commerce in ancient India, but also provide detailed account of various regulations that were in force to tackle foul play in the markets. It is learned that the Ancient India was a "mixed economy" adhering to the socio-economic philosophy of a "welfare state". The reliance on market forces to deliver social goods was less. In general, the state was both regulator and competitor, including state enjoying monopoly over certain sectors, such as mines and mineral. This article is divided into four parts. The first part introduces the audience to the ancient Indian ethos, where dharma (duty) was the backbone of the civilisation that made the society righteous and duty-centred. The second part gives an overview of ancient India's economic activities along with a short account of sectoral regulations. The covered sectors are: mines and minerals, agriculture, industry, forest produce, liquor, trade and commerce, transport and communication, finance, and justice administration. The third part presents a competition analysis of the then regulations. It analysed the state monopolies, state as regulator and competitor, the prevalence of the guild system, differential regulatory treatments, price control, treatment of cartels and consumer protection. The fourth part is the conclusion.

Keywords

Ancient India, Economic Regulation, Competition, Cartel, Consumer Protection

I. Introduction

Indian civilization, which is viewed as more than four thousand years old, is one of the oldest civilizations of the world. Like other great ancient civilizations, it began in a large river valley—the Indus river valley.[1] The development of these ancient settlements was facilitated by natural causes

1. Egyptian civilization began in the valley of the Nile; the Assyrians and the Babylonians in the valley of the Euphrates and the Tigris; the Chinese Turanian civilization flourished in the valley of the Hoang Ho and the Yangse Kiang.

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such as the fertilizing power of great rivers, as well as a warm and genial climate conducive to crop production.

One of the greatest Indian historians, Romesh Dutt, has divided ancient Indian history into five epochs (era/age): Vedic Age (2000–1400 BC), Epic Epoch (1400–1000 BC), Rationalistic Epoch (1000–320 BC), Buddhist Epoch (320 BC to AD 400), and Puranic Epoch (AD 400–800).[2] Each epoch had its own unique characteristics in the process of transformation from wanderers and hunters to agrarian to introduction of other industries to formation of states and establishment of governance structures, which included formulation of rules and regulations.

From the accounts contained in various ancient texts, it can very well be inferred that the ancient Indian economic philosophy was directly connected with a social code (*dharma*), which apart from shaping spiritual and social aspects of life also determined political and economic aspects. In addition, the word *dharma* had multifarious meanings—law, duty, religion, and so forth. Society, therefore, was "duty-centered" (*dharma*-abiding) with high moral values intrinsic in people's behavior, which helped maintain just and fair play in economic activities and governance.

According to the then religious and spiritual philosophy, the prevalent codes defined four stages of life (*purusharthas*): *dharma* (duty), *artha* (wealth), *kama* (passions of life), and *moksha* (salvation). *Dharma* or duty was on the highest level. One was to do his or her duty that would yield *artha* (fruits of *dharma*). With *artha*, one can indulge in one or more of one's passion (*kama*); when these passions are satisfied or conquered, one can attain *moksha* (liberation, i.e., getting rid of craving and aversion).

The harmonious coordination amongst the four motives (stages) of life had an impact on the development of economic thought. *Artha* and *kama* as opposed to *dharma* had no value. *Dharma* or duty was regarded as the basis of all sorts of happiness. "Many socioeconomic crimes like hoarding, black-marketing, adulteration, and administrative corruption exist because of the failure to adhere to *dharma* and the lack of synthesis among the *purusharthas*."[3]

The *varna* system[4] and the *ashram* system[5] that prevailed during ancient India helped maintain harmonious coordination amongst the four motives. Particularly, the four ashrams (division of human life) were in sync with nature and made human life systematic, which in turn inspired men and women to follow their duties intrinsically.

The state was the result of a social contract and the king was privileged so long as he performed his duties (*rajdharma*) in the interest of the society. If the king deviated from his *dharma* and gave priority to his personal interests over societal interest, the people had the right to change the king. In the economic sphere, the state determined the priorities of needs and allocated the resources. The state was also a market player as well as regulator.[6] There were certain sectors, such as mining and commerce in minerals, that were under state monopoly.[7] The state had an overall influence in the socioeconomic functioning of society.

Two credible ancient literatures prescribed general regulations, including economic regulations, in ancient India—the *Manusmriti* and the *Arthashastra*. *Manusmriti* is a treatise written by Manu and is

2. Romesh Chunder Dutt, Ancient India, 2000 B.C.–800 A.D. (1904).
3. Arjun Das, Economic Philosophy of Ancient India 18 (1986).
4. The *varna* system was a functional classification of society into four groups: *Brahmana* (the priests and preachers), *Kshatriya* (the soldiers), *Vaishya* (the merchants and farmers), and *Shudra* (the laborers)—followed in ancient times (as accounted by Manu). The *varna* system later devolved into the present-day caste system. There is the fifth category after *Shudra* who are outside any caste and include untouchables.
5. The *ashrama* system described four divisions (of twenty-five years) of the span of life (of one hundred years)—*Brahmcharya* (for education), *Grihastha* (for family responsibilities), *Vanaprastha* (for forest life), and *Sanyas* (for the life of renunciation).
6. Even today in India and various developing countries, the state is often the provider and regulator of various services, in addition to being a policy-maker.
7. In India and many developing countries, the state holds a monopolistic right to exploit all minerals and oil.

considered the first law book in India and is also called the Code or Laws of Manu, which formed the basis of the present day Hindu Law. The Code also dealt with the duties of the king (*rajdharma*) and somewhat tended to establish rule of law. Although the period of writing of the *Manusmriti* is not certain, it has been provisionally ascribed to the period between 200 BC and AD 200.[8]

The *Arthashastra* was written by Vishnugupta, popularly called Kautilya or Chanakya, who was the prime minister of Chandragupta Maurya (313–289 BC). This ancient text is the most remarkable and comprehensive treatise on the political economy of ancient India. The *Arthashastra* can be said to be a practical guide to the socioeconomic welfare of human beings living in the world. Kautilya, unlike Manu, did not give any place to *dharma* and spirituality in *Arthashastra*, which is believed to have sown the seeds of the modern secular welfare state.[9]

The scope of this article is largely confined to regulations prescribed in the above two ancient texts. Therefore, the time period corresponds to the Buddhist Epoch (320 BC to AD 400) and to some extent the preceding and succeeding periods, that is, the Rationalistic Epoch and the Puranic Epoch, viewing the continuous nature of thought processes. Therefore, for the purpose of this article, the words "ancient India" should correspond to those periods.

II. An Overview of Economic Activities and Their Regulations in Ancient India

India was very rich in natural resources, which was one of the reasons that it was called the "golden bird" or "bird of gold." India had (and still has) highly fertile land of numerous river basins (Indus river valley, Ganga-Jamuna basin, etc.), a vast range of mountains (e.g., the Himalayas), a long stretch of sea and coastal areas, huge deposit of minerals, and so forth, all coupled with the presence of considerable manpower.

Kautilya believed, on the one hand, that "prosperity of commerce led to financial prosperity," and on the other, that "in the happiness of his subjects lies the king's happiness and in what is beneficial to the subjects his own benefit." The result was that the Kautilyan state was a welfare state with a regulatory framework designed to promote the public interest yet also to promote trade and commerce. Since the welfare state required a sound treasury, the state also became a market player, thus making ancient Indian economy a "mixed economy."

The following paragraphs give an overview of various economic activities in ancient India, including highlighting some of the rules and regulations governing such activities.

A. Mines and Minerals

It is clearly established in the records that India had considerable deposits of gold, silver, copper, and other important ores and metals and that it also possessed the know-how for their extraction, purification, and conversion into finished products for use within and outside the country. Ancient India also had a mineral policy that established a state monopoly over mining and commerce in minerals and

8. Das, *supra* note 3, at 10.

9. *Id.* at 10–11. Arjun Das explaining about *Arthashastra* states:

> Divided into 15 books known as *Adhikaranas* and 150 sub-divisions known as *Prakaranas*, it covers almost every aspect of the theory and practice of Political Economy. After discussing the general lines along which a prince should be trained for undertaking the governmental responsibilities, the *Arthashastra* explains the duties of a king and his daily routine, and also the duties of ministers, counsellors, superintendents and departmental heads. It also deals with military organisation, spying, planning of towns and villages, law and law of courts, marriage and divorce, diplomacy, technique of war and peace, agriculture, industry, collection of revenue, public expenditure and many other such topics of Politics and Economics, thus forming Political Economy.

mineral products. There was a superintendent of mines to oversee all mining activities, including examination of mines that had been exploited and newly discovered mines. The superintendent of mines also oversaw the price, division, quantity, storage, collection, fines, and punishments regarding minerals. The officer had to have knowledge of metallurgy and also methods of testing gems and mining exploration not only in the plains and mountains but also in the ocean. Trade routes were designed to cover as much mining zones as possible. According to Kautiliya, mines that could be worked without much outlay were directly developed by the state. But where large investments were required, mines were leased out for a fixed share of the output or for a fixed rent.

Similarly, there was a superintendent of metals, who was responsible for the extraction and manufacture of copper, lead, tin, steel, bronze, and so forth, as well as commodities that could be made out of them. He also supervised the development of industry and trade in these metals.

Further, the salt commissioner was responsible for regulating (lease-rent, pricing, etc.) and collecting various taxes on salt. The sale of salt was allowed only after the share and dues had been paid, which included a 5% surcharge, inspection fee, and manufacturing fee, as well as a one-sixth part that was imposed on imported salt. Interestingly, to discourage the importation of salt, there was a toll to compensate for the loss incurred by the state on salt commerce.

B. Agriculture

The ultimate property title to land belonged to the king, and people using it were supposed to pay a land tax called *bali*. Since ancient India was largely an agricultural economy, the value of land was immense. However, there were other uses of land apart from agriculture purposes.

Agriculture formed the most important economic activity in ancient India, which was comparatively quite advanced. "Agriculture was ranked at the highest position for livelihood, employment, State exchequer and national prosperity in ancient India."[10] Therefore, agriculture was under state patronage, which was sensitive to its responsibilities towards the cultivators; for instance, seeds, cattle, implements, manures, and marketing facilities were given to cultivators by the state. The most severe punishments were recommended for those who tried to cut the water supply line for agriculture purposes.

According to Kautilya, the king was to protect agriculture, livestock, and human labor from being attacked by thieves, wild animals, and crocodiles as well as by diseases. As a general rule formulated by Kautilya, except for locals no company, guilds, or ascetics were allowed to operate in the villages. In addition, actors, dancers, singers, musicians, professional story tellers, and so forth were barred from exploiting village money, labor, commodities, grains, or liquids.[11]

The superintendent of agriculture ensured that the crown lands were well ploughed and sowed. The superintendent of storehouse had the responsibility to supervise accounts of agriculture produce and to monitor transactions of grains before and after basic processing from the state's store. In addition, he had the duty to prevent famine, for which half of the total collection in store was to be kept in reserve to cater to natural calamities.[12]

C. Industry

Like agriculture, industries also were an important part of the national economy in ancient India. These industries, which produced a huge range of articles, were of many kinds, such as businesses owned and run by individual entrepreneurs or by a guild system or owned and run by state undertakings. In certain kinds of industry, the state had the monopoly. Overall regulation was done by the state, including those

10. Dutt, *supra* note 2, at 67.
11. *Id.* at 75.
12. J. N. Samaddar, Lectures on The Economic Condition of Ancient India 113 (2015).

where private and state undertakings were both allowed. The policy aimed at making rural society practically self-sufficient; therefore, cottage industries were treated with high importance.

The principal industries in ancient India included metal, textile (cotton, wool, silk etc.), dyeing and embroidery, jewelry, weapon making and armory, oil and perfumery, sugar (*Jaggery/gur*), hotels, liquors and pharmaceuticals, wood and stone work, leather, and miscellaneous. Apart from individual enterprises and state-owned industries, artisans and workers, tradesmen, and merchants formed guilds to avoid competition among one another or in order to reach high economies of scale to compete with rival groups. Guilds were common and resulted from the spirit of cooperation in ancient Indian society. It seems that the guilds had a distinct political status given the importance bestowed on them, including consultations with guilds in framing laws of the land. Guilds also worked as banks for their members and were used to support them in time of distress. Furthermore, a guild member was liable to be punished if she or he willfully broke the agreement with the guild.

The state patronization of industry can also be seen in ancient India in the provision of necessary finance, welfare schemes to artisans and their families, and the framing of regulations to check malpractices by artisans and others. In addition, the state also used to fix ratios of raw materials and finished goods, supervise production process, frame rules regarding wages and leave, and conduct policing and patrolling to drive away thieves.

D. Forest Produce

Forests were a good source of revenue for the state, and hence there was an elaborate classification of forest produce and timbers. The superintendent of forest was responsible for productive works in forests. He fixed adequate fines and compensation in the case of damage to productive forests. His jurisdiction extended to all timber, bamboo, creepers, leaves, flowers, poisons, and skins and bones of animals found in the forest.[13]

E. Liquor

Traffic in liquor was under direct control of the state. The superintendent of liquor, responsible for sale of liquor, had to employ those who knew its manufacturing process. People were to drink only in the shop and were not allowed to drink in public. Liquor had to be sold only in small quantities, and liquor shops were not allowed to be close to one another. Further, liquor was not allowed to be taken out of village.[14]

F. Trade and Commerce

From the ancient literature, it can very well be said that both internal and foreign trade were prevalent in ancient India. There were elaborate rules and regulations to govern trade, as well as the presence of a monetized economy. Although "trade" and "commerce" are two different concepts in the modern world, in the ancient literatures this distinction was blurred and a single term, *vanijya*, was used for both.

According to the *Arthashastra*, the superintendent of commerce, whose general duty was to facilitate internal and external trade, had primary duty to ascertain demand for various kinds of products, including monitoring rise and fall of prices of such products. In addition, he also had duty to aggregate and distribute for marketing of the products over which the state had monopoly.[15]

13. *Id.* at 115.
14. *Id.* at 118.
15. *Id.* at 114–15.

1. Internal trade. It was the duty of the state to keep the national highways free from all sorts of dangers for traders, who used to travel to distant places in caravans (called *Sartha*). Similarly, it was the duty of the state to provide market facilities. Though anybody could sell any commodity of his choice, there were some rules that restricted certain items to be traded by *Brahmanas* (the highest caste under the *Varna* system of *Manusmriti*).

There were also state interventions in the fixation of prices. The *Manusmriti* mentions that the place of production, place of selling, period of storage, and probable profit should be kept in mind while determining price of a commodity. There was a system of periodical revision of prices at reasonable intervals. The traders could not raise prices on their own. Similarly, Kautilya mentions that the director of trade was expected to fix a profit of 5% for indigenous commodities and 10% in the case of foreign goods. Any attempt to increase the price for higher profits was liable to fines.

Ancient India was also well advanced when it came to standard weights and measures as essential requirement for trade and commerce. The *Manusmriti* mentions that all weights and measures had to be duly marked and reexamined once every six months. Similarly, according to Kautilya's *Arthashastra*, one of the duties of the superintendent of standardization was to facilitate establishment of factories to manufacture standard weights and measures. It further mentions that weights should be made of iron or particular stone, which would not change its weight due to water or heat.

According to the prevailing rules in ancient India, the seller was supposed to sell unblemished goods to the buyer and inform the latter about any inherent defect in the commodity. Except in certain situations, a seller was liable to be fined (twelve *panas*) if he failed to deliver the sold commodity to the buyer, and similarly, a buyer was liable if he failed to accept delivery of the sold goods. There were also rules with respect to rescission of sold goods, which provided conditions and timelines for the same.

The ancient Indian rules and regulations not only provided for sale and purchase with clear rights and duties of buyers and sellers, but they also dealt with malpractices of business community. Such malpractices included not only trader offenses like adulteration, smuggling, hoarding, short weights, measures, and so forth, but also corruption among the state officials. The fine for adulteration of commodities like grains, fats, sugar, salts, perfumes and medicine was twelve *panas*, according to the *Arthashastra*.

There were also rules to punish smuggling. Export of goods under state monopoly (e.g., grains and cattle) or goods on forbidden list, when caught were to be confiscated. Traders who avoided the customs authority while importing goods or who made false statement before it, could be fined up to eight times the amount of duties involved. Similarly, hoarding and profiteering were regarded as punishable offences, and a fine as high as one thousand *panas* was imposed upon those indulging in such malpractices. Also, there were fines in cases of cheating on weights and measures.

2. External trade. While formulating export and import policies in ancient India, the national interest was given top priority. On the one hand, the import of goods that could be harmful for the country were prohibited, and on the other, for those items (such as rare seeds) that would be beneficial for the country, imports were encouraged by either exempting or lowering custom duties. The profit margins of imported goods were regulated: 10% of the total cost of import (i.e., price paid, interest on capital, expenses of import, custom duties, etc.).

Other trade facilitation measures included exemption of foreign traders from being sued in money matters, exemption from custom duties for goods imported for the purpose of marriage, gifts for religious ceremony or sacrifice, and so forth. Further, the special fee (*vartani*) collected for the use of roads was also used to protect and indemnify the loss that traders suffered in transportation.

There was a superintendent of passports responsible for issuing passes enabling people to come in or go out of the country. While foreign trade was encouraged, there was close watch to prevent smuggling. In this regard, even spies were appointed to monitor foreign merchandise and to ascertain the amount of toll, road-cess, conveyance cess, military cess, ferry fare, and so forth.

G. Transport and Communication

According to the available literature, roadways and waterways were present in ancient India. (In epics and other mythological books, there also has been mention of airplanes—*vimanas*.) The road transport in ancient India was used mainly for carriage of goods by various animal carts (horses, bullocks, donkeys, camels, yaks, elephants, etc.) according to local needs and conditions. There was a superintendent of chariots to establish and oversee the manufacturing of chariots. Similarly, importance was given to roads both from a military as well as an economic point of view and roads were made to connect villages, forts, mines, pastures, forests, and so forth.

For water transport, both rivers and seas were used. The art of boat and ship making was known in ancient India. According to the *Arthashastra*, there used to be a separate Department of Navigation to oversee matters relating to naval affairs like, among other things, maintenance of harbors, ferries, and bridges; regulation of water tariff; and protection of travelers against pirates. According to the *Manusmriti*, although there was some guidance relating to river boat tariffs based on place and time, there were no settled tariffs or freight for sea voyage.

The superintendent of ships had responsibility for the accounts related to navigation on oceans, rivers, and also artificial lakes, all with the authority to enforce relevant regulations.[16] People of coastal (of seas and rivers) villages had to regularly pay a fixed amount of tax. Merchants of the port towns were also levied a customary tax. Similarly, fishermen had to give one-sixth of their catch as fees for fishing licenses. Boats belonging to the government were also available for commercial ventures upon payment of certain fees.[17]

H. Finance Ecosystem

1. Coins. The *Arthashastra* talks about coins made of silver (called *rupya*) and copper (called *tamra-rupya*); they were further divided into smaller denominations. The smaller denominations of silver coins were in *panas* (one *pana*, one-half *pana*, one-fourth *pana*, and one-eighth *pana*) and the same for copper coins were in *masaka* (one *masaka* and one-half *masaka*) and *kakani* (one *kakani* and one-half *kakani*). Therefore, in ancient India, apart from a barter system, money was a major medium of exchange. According to the *Arthashastra*, minting of coins was a state monopoly, and a coining fee of 8% was charged if someone exchanged metal for coins. There was an examiner of coins for regulating currency both as a medium of exchange and as legal tender.[18]

2. Banking system. Existence of a credit system is sine qua non for any economy to be vibrant, and the same was true for the ancient Indian economy. There were elaborate rules and regulations regarding banking institutions; rights and duties of debtors, creditors, and sureties; a system of pledge and mortgage; and rules dealing with the security and recovery of debts. In addition, there was a policy regarding interest. While borrowing for private consumption was viewed as bad and was discouraged, borrowing for trade, commerce, and production was in vogue in ancient India.

According to the *Manusmriti*, settlement of debt disputes was among the first priorities to be adopted by the king. Manu also gave an account of vivid rules on relations between a debtor and creditor, reasonable rates of interest, necessary pledges, and so forth. According to *Manusmriti*,

16. *Id.* at 118.
17. *Id.* at 119.
18. *Id.* at 112.

banking was mainly for the *Vaishya* (business) community. A creditor could have recovered a loan through persuasion, by legal proceedings, by artful management, by customary proceedings, or even by force. Interestingly, according to Manu, a debtor may make good the debt of his creditor by personal labor if he belongs to the same caste or a lower caste, but a debtor of higher caste shall pay it gradually.

Manu also describes about the prevalence of written agreements between debtor and creditor in the presence of witnesses. Such a document could be produced before a court of law in cases of disputes. However, like modern contract laws, any such agreement made by a person intoxicated, insane, grievously disordered, or wholly dependent, as well as agreements with an infant, a very aged person, or any unauthorized party, were liable to be invalid.

According to the *Arthashastra*, sons or heirs or codebtors or sureties had to pay the debt of a deceased debtor, with interest. According to Kautilya, there were fines for creditors who failed to accept repayment without any valid reasons. There was a limitation period of ten years, subject to certain exception; if there was no notice given within that period, a creditor was barred from recovering the debt.

The state, which had assumed responsibility for agriculture and industry, also acted as lender and investor, in addition to individuals and the guilds of artisans and merchants. For instance, in times of need, the state used to advance loans to farmers in form of grains, cattle, and money, which were to be returned at their convenience. However, if any state official advanced a loan in his personal interest, he was liable to be punished. As per the *Arthashastra*, the state debt was to be refunded first. Such preference was also enjoyed by the privileged *Brahmins*.

3. Public finance. Being a welfare state, reliance on public finance was immense, and hence the importance of treasury (*kosha*) in the overall governing system. According to Kautilya, all undertakings depend upon the treasury, and hence it is very important. The superintendent of treasury was to look after the working of the treasury. There were other officials such as treasurer, prescriber, receiver, paymaster, and so forth in the treasury department. Monitoring of this department was of the highest order, and heavy punishments were prescribed if officials were found guilty of misuse of government funds.

According to the *Arthashastra*, there were seven sources of revenue: income from the fortified cities, income from rural areas, income from mines, income from irrigation works, income from forests, income from herds, and income from trade routes. There were both tax as well as nontax revenues. There were very elaborate rules for taxation, including exemptions, providing certainty to traders and the general public. It was only during state emergencies (emergency finance) that the tax rates were increased in an equitable manner.

As far as public expenditure was concerned, the account of it in the ancient texts is said to be poorly given, particularly when compared with the detail in which revenue had been dealt. Kautilya, however, divided expenditure under two heads—*nitya* (day-to-day expenditure) and *labham* (once in a fortnight, month, or year). According to another ancient author, Shukra, the state income was to be spent in the following manner: defense—50%; charity and donations—8.33%; public welfare schemes—8.33%; civil administration—8.33%; privy purse—8.33%; and reserve for surplus—16.33%.

There was a well-established administration of state finance with a superintendent of accounts, records and audit (called the *Akshapatalam-adhyaksha*) who was head of the department (similar to that of the accountant-general). This official was responsible to maintain records (the record book was called *Nibanadhapustaka*) of the total income of all departments and their expenses.

4. Labor and wages. In ancient India, labor was considered as the most important factor of production, and its demand came from the state, agriculture, industry, and other commercial sectors. There was awareness about nominal and real wages as well as justified wages. According to the *Manusmriti*, labor should be provided with grains every month and cloths every six months, apart from wages. Similarly, Kautilya recounts that employers should offer gifts to laborers during festivals and also grant sick leave to laborers, when they fell ill. There was also a rule for paying overtime wages in certain professions, such as spinning and weaving.

According to Manu, while fixing wages of a labor, apart from his efficiency and ability, his industry, and so forth, the minimum standard and size of his family should also be considered. Manu prescribed one *pana* for the least efficient labor and six *panas* to the most efficient ones. According to the *Arthashastra*, if the wage is not predetermined, the laborer should get 10% of the crop or anything produced by him. There also seem to have been experts for deciding on the amount of wages to be given to labor in a particular industry. There were also rules to fine a laborer who broke the agreement or failed to perform without any valid justification.

I. Justice Administration[19]

Although village headmen and village elders played a useful role in the justice system, there was a very elaborate court system in ancient India. The courts in ancient India were divided into two classes—*Dharmashashtriya* courts and *Kashtakshodhan* courts. The former generally decided cases that arose from personal grievances (against one or a few individuals), and punishment was in the form of fines only; the latter courts had jurisdiction over cases generally dealing with matters related to either the government (or the king himself), the public at large and large bodies of men, or to other heinous offences such as murder.

For instance, the *Dharmashashtriya* courts had jurisdiction over cases involving validity of contracts, violation of contracts, master-servant and employer-labor disputes, recovery of debts, deposits, defamation, boundary disputes, inheritance and succession, and so forth. The *Kashtakshodhan* courts tried cases involving protection of artisans, protection of merchants, measures against national calamities, discipline in government departments, capital punishment with or without torture, and so forth. The king with his ministers and learned Brahmans formed the highest court of appeal.

The following four factors were taken into account in the administration of justice: (1) sacred law (laws contained in *Dharma Sastras*), (2) contractual relations created by the parties, (3) customary laws, and (4) statutory or king-made laws. Further, the *Dharma Sastras* seems to be taken as supreme. For instance, any contract was treated as null and void if it went against the sacred law. Furthermore, in case of conflict between statutory law and customary law, the latter prevailed.

The judges, when deciding cases, were required to be free from all circumvention, steady in all circumstances, impartial, and diligent. One of the unique practices during the time of Kautilya was that even the judges were liable for penalty for their iniquity. They could not escape with impunity for any partiality or misconduct unworthy of a judge.

III. Competition Analysis

From the above description about the ancient Indian economy it is evident that while private entrepreneurs were encouraged, government intervention as market player and as regulator was significant. The reliance on market forces to deliver social goods seemed to be less in the ancient Indian welfare state.

The state concerns about market manipulations, as inferred from the *Arthashastra*, centered around three circumstances. First, the state was ultimately responsible to "maintain," among other objectives, "persons in distress when these are helpless," and to grant tax exemptions to those in distress. Second, a population impoverished by unscrupulous agents could be easily incited to unlawful action by rebel

19. This section is based on NARENDRA NATH LAW, 1 STUDIES IN ANCIENT HINDU POLITY 117–135 (1914).

princes/vassals or even foreign powers. Third, interstate traders could serve as spies to foreign kings; spies could manipulate markets to foment trouble and raise resources to challenge the state. In short, markets were too important to be left to the discretion of traders.[20]

Be that as it may, it would be a useful exercise to examine the above-described regulations from modern competition policy perspective. This article endeavors to present a competition analysis based on established competition principles, such as fostering competitive neutrality, ensuring free and fair market process, and so forth. The article examines public justification of deviation from competition principles.[21]

A. State Monopolies

According to Kautilya, accumulation of material wealth should be the first priority of a king. Therefore, the state was involved in almost all types of production, trade, and commerce and competed with private entrepreneurs. However, there were certain sectors that were under state monopoly and hence could be frowned upon from a competition policy perspective. Interestingly, state monopolies in such sectors can still be seen in many countries.

The state had a monopoly over mining and commerce in minerals and mineral products; however, external investments were also encouraged. According to Kautilya, mines that could be worked without much outlay were directly developed by the state, but where large investment were required, such mines were leased out for a fixed share of the output or for a fixed rent.

Similarly, the state enjoyed a monopoly over salt production. The salt commissioner was responsible for regulating (lease-rent, pricing, etc.) and collecting various taxes on salt. The sale of salt was allowed only after the share and dues had been paid, which included a 5% surcharge, inspection fee, and manufacturing fee. Most problematic from competition policy principle was that on imported salt, one-sixth was to be paid to the exchequer. This was to discourage the importation of salt and to compensate for the loss incurred by the state on salt commerce.

Also the state enjoyed absolute property title to land, which belonged to the king. Use of such land for agriculture or industry was permitted upon payment of a land tax. Similarly, traffic in liquor and minting of coins was also a state monopoly. Trade in goods under state monopoly by private persons when caught were to be confiscated, apart from attracting fines.

B. State as Regulator as well as Competitor

As we have seen, the ancient Indian economy was largely a mixed economy where the state was also a market player. We have also seen that the economy was heavily regulated by the state. This might raise alarm from competition policy in modern days. However, it is believed that the involvement of the king in the economy, as an entrepreneur, seems to have helped the state to shield people from extremes of market forces and also help people in distress.[22]

C. Guilds

We have seen above that industry guilds were promoted and used to enjoy a significant weight in law/policy making.

20. Vikas Kumar, *Cartels in the Kautiliya Arthasastra*, 6 Czech Econ. Rev. 59, 59–79 (2012).
21. Pradeep S. Mehta, CUTS' Competition Impact Assessment Toolkit: A Framework to Assess Competition Distortions Induced by Government Policies in the Developing World (2014).
22. Kumar, *supra* note 20, at 64.

> The guilds of all sorts – political, economic and social – enjoyed special importance in the kingdom. The guilds of economic nature used to enjoy special privileges and concessions, including reservation of special places for them in the buildings within the fort. Guilds also acted as banks as they were permitted to receive deposits.[23]

In modern times, such guild type associations are under the scrutiny of competition authorities, including their suspicions of collusive behavior. However, the exorbitant fine prescribed for cartelization (see below) might have acted as deterrence for such guilds to indulge in any collusion.

D. Differential Regulatory Treatments

From the above examples of rules and regulation, certain differential regulatory treatments have also been observed, which goes against the competition principles. For instance, access to finance for business was mainly for a particular community, the trading caste. Similarly, with respect to debt payment, agriculturists and government officials enjoyed certain advantages. In addition, in the rules for paying debt through personal labor, differential treatment was accorded based on caste hierarchy as per accounts given by Manu. Furthermore, payment of state debt enjoyed priority over private debts. Such preference was also enjoyed by learned Brahmins, the privileged and highest caste.

E. Price Control

There was intervention by the state to control prices, and the market was not free in ancient India. Price control has been a concern from a competition policy perspective because of its market distortionary effects. However, since the king had duty (*dharma*) to protect everybody in his kingdom, not only the general masses but also traders and producers, "just price" (fair price) may have been necessary at that time.

The superintendent of trade controlled prices by announcing "just prices" and by penalizing deviations. The prices were fixed using theoretical and practical approaches and were based on production, supply, investment, transportation cost, duties, interest, rent, risk, and demand. According to the *Manusmriti*, the state was to raise and settle the prices at reasonable intervals, say, once every five nights, or at the close of each fortnight. Traders could not raise their prices on their own.[24] The *Arthashastra* suggests a profit margin of 5% on domestic goods and 10% on foreign/imported goods.

The discussions in various ancient texts, including the *Arthashastra*, suggest that the announced prices were decided so as not to hurt any of the stakeholders—sellers, buyers, and the state. Just prices were meant not only to protect common consumers, but also to protect sellers from being harmed. If buyers bid up prices, then the excess profit made by sellers was liable to be confiscated by the state. Similarly, in the event of glut in the market, the state stepped in to stabilize prices.[25]

The state ensured that the announced prices were in agreement with market conditions by promoting beneficial imports, limiting competition in markets, imposing requisite import and export controls, and criminalizing trade at nondesignated locations. The superintendent of trade monitored violations. For instance, goods were sold at the city gate under the watch of the superintendent of trade through a process akin to auctioning.[26]

Traders were intended to benefit from such transparency. Contracts that were not made in an appropriate public forum were deemed invalid and attracted a fine. The state also criminalized

23. Samaddar, *supra* note 12, at 125–26.
24. Das, *supra* note 3, at 99.
25. Kumar, *supra* note 20, at 66.
26. *Id.*

counterfeiting, adulteration, use of improper weights and measures, and market collusion and monitored violations through the superintendent of market. In addition, the state actively participated in economic activities including trade, maintained buffer stocks, and checked corruption through secret investigations.[27]

Thus, the price control regime needs to be viewed from a wider perspective. The fact that trade and commerce were vibrant during that period suggests that the price control regime was just and not very distortive.

F. Treatment of Cartels

Kautilya displayed a lack of trust in traders, as he was aware of trades' propensity to form cartels in order to fix prices and make excessive profits. He prescribed heavy fines to discourage such offences with a view to protecting consumers.[28] Kautilya writes in the *Arthashastra*, "Traders, joining together and raising or lowering the prices of goods, make a profit of one hundred *panas* on one *pana* or of hundred *kumbhas* (unit of weight) on one *kumbha*."[29] For this behavior, the punishment he prescribes is that "for artisans and artists who by conspiring together bring about deterioration in the quality of a work or (increase in) profit or hindrance to purchase or sale, the fine is one thousand *panas*"; and "for traders, too, who by conspiring together hold back wares or sell them at a high price, the fine is one thousand *panas*."[30]

Fines of one thousand *panas*, for each member of the cartel irrespective of the extent of price manipulation and size of cartel was the highest penalty for any economic offence during that period. This shows that it was considered to be a very serious crime like robbery, murder, and so forth. Moreover, it seems that even after fines were imposed, cartel members' excess stock of goods was liable to be confiscated, which made the punishment much harsher.

The magnitude of the fine (one thousand *panas*) can be understood when it is compared with incomes and prices as mentioned in the *Arthashastra*. For instance, daily wage laborers were entitled to fifteen *panas* per annum (plus food and cloths as discussed); the smallest unit of money was the one-half *Kakani*, which was equal to 1/128 *pana*; goods priced at two *panas* and more were considered to be high-value goods.

Therefore, to earn one thousand *panas*, a trader had to sell huge units of high-value goods. Kumar, through econometric analysis, found that traders/producers in the Kautilyan world would opt for cartelization if the profits are of the order of 1,000% to 10,000%. In other words, one thousand *panas* must have been a severe penalty, particularly, because of a high perceived rate of detection and the additional threat of confiscation of stock of goods.[31]

The *Arthashastra* makes a distinction between collusive and individual attempts to manipulate prices and prescribes different fines for manipulation of markets by individuals. For individuals it prescribes penalties at the rate of "200 *panas* for an additional profit of five *panas* in 100 *panas*," whereas cartel members were individually fined one thousand *panas* irrespective of the level of profit and the size of cartel. The text does not provide an upper limit of fine for individuals found guilty of manipulating markets. However, one thousand *panas*, the highest fine for any kind of nonviolent crime in the *Arthashastra*, must have been the upper limit.[32]

27. *Id.* at 67.
28. Study of Cartel Case Laws in Select Jurisdictions – Learnings for the Competition Commission of India viii (2008).
29. Kumar, *supra* note 20, at 67.
30. *Id.* at 68.
31. *Id.* at 71.
32. *Id.* at 70.

The Kautilyan distinction between cartels and individuals is sensible because cartels have a greater capacity to distort prices and, therefore, need to be deterred using a stricter punishment. It seems that Kautilya does not appeal to the moral integrity of potential offenders. He simply uses fines to check financial misdemeanour.[33]

Detecting a cartel is one of the hardest tasks even in the modern world. When any cartel has tacit support from high officials and the political class, it becomes even more difficult to officially crack it. In ancient India, the *Arthashastra* talks about the use of spies and secret agents to keep an eye on traders, and informers were assured of rewards. In addition, the ancient text also prescribed heavy punishments for government officials in case they let go the cartel in lieu of bribes. Moreover, the rule that all market transaction were to take place in public must also have mitigated collusive and corrupt behaviors.

G. Consumer Protection

Kautilya viewed traders suspiciously—thieves who are not known as thieves—and hence the state was expected to keep "watch over traders" and cause goods to be sold "so as to favour subjects" and "avoid even a big profit that would be injurious to the subjects" because "in the happiness of his subjects lies the king's happiness and in what is beneficial to the subjects his own benefit."[34] This seems to be the prime aim of introducing rigorous regulations to control trade and commerce during ancient times. All the rules—mainly concerning with adulteration, hoarding, price fixing, weights and measures, price control, and so forth—were directly related to consumer protection.

The state also controlled and regulated medical practice, and there were laws to ensure that medical practitioners exercised due caution in the treatment of patients. It was mandatory for the physician to report cases of dangerous disease to the government, failing which he was fined. There was penalty provision for proved cases of carelessness (negligence) on the part of a physician causing death of a patient. Measures for prevention of diseases were also taken. For instance, adulteration of all kinds was a punishable offence.[35]

It has been observed that the respective guilds also used to punish its members if they were found to be violating any rules or regulation, particularly in respect of maintenance of quality and standard of products, as well as for indulging in price discriminations in the market.

IV. Conclusion

It would not be an exaggeration to say that the rules and regulations prescribed under the *Arthashastra* and *Manusmriti* not only shaped the evolution of society including trade and commerce, but also formed the basis of the development of the rules and regulations of modern times. The approach adopted in formulating and implementing such regulations seems to be holistic, where concerns of all stakeholders were taken into account. While the interests of subject (consumers) were supposed to be prime, those of the traders and producers were also not undermined.

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33. *Id.* at 70–71.
34. *Id.* at 65.
35. Law, *supra* note 19, at 93–94.

write this article, as none of the background information is available on the Internet, except one paper that has been cited in note 20.

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