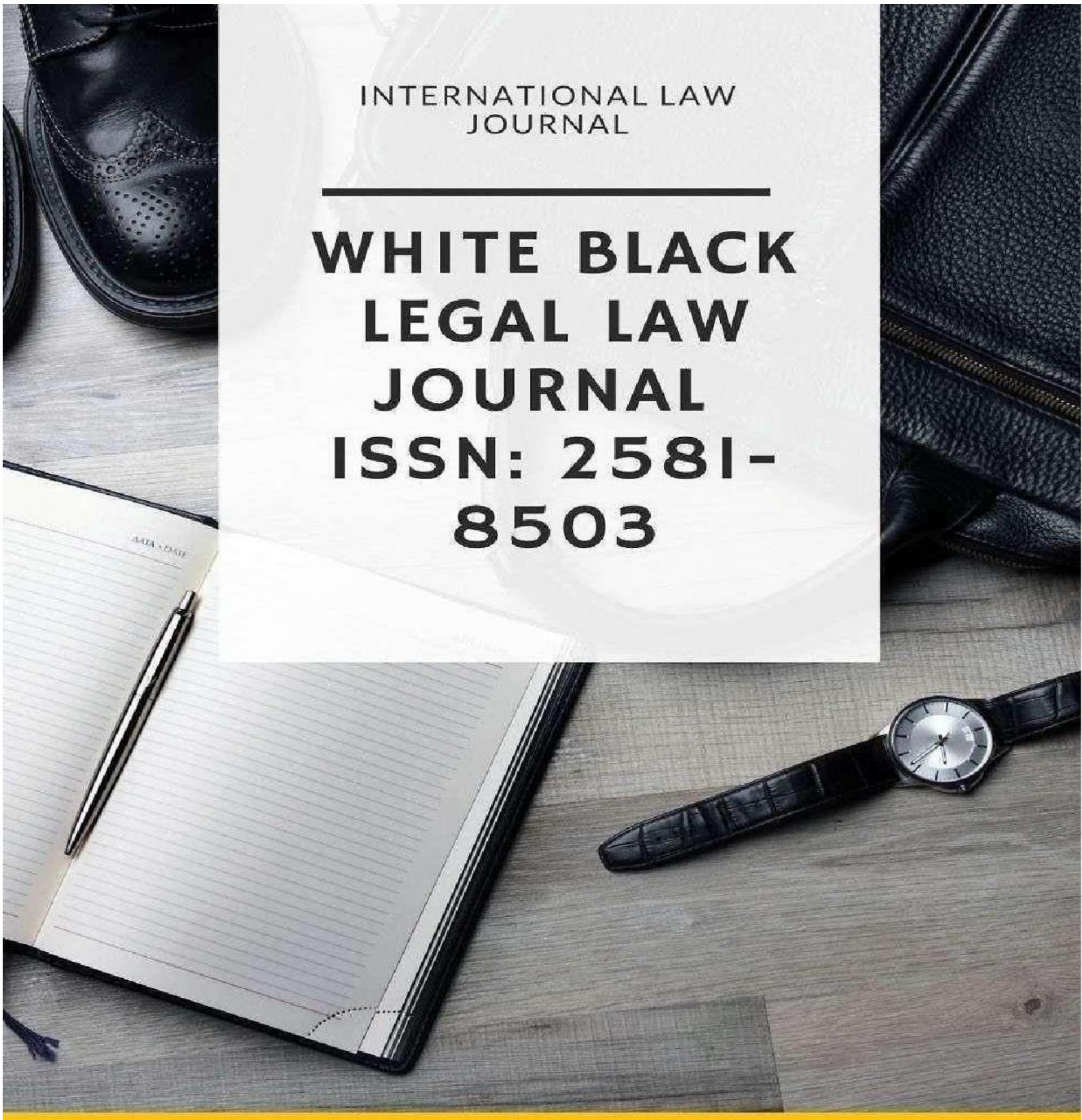

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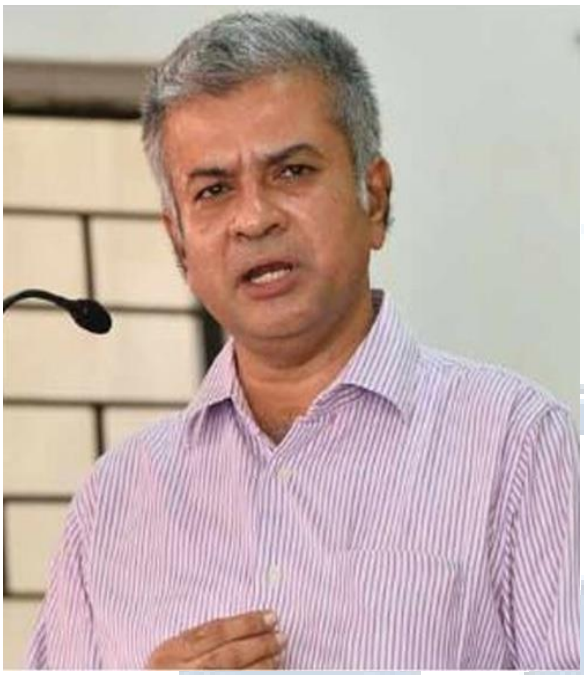

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PRISON SYSTEM IN ANCIENT INDIA

AUTHORED BY - MANASHI SARMA

INTRODUCTION:

In India, the terms prison and jail are used interchangeably, which may reflect the lack of attempt to differentiate between those awaiting trial and those already convicted. In India and almost every country of the world today, prisons are viewed as centers to reforms the criminals rather than just a means of punishment. Punishment basically is other name for "evil" which is given or implemented upon a person or group who has committed something wrong in the course of dealing with any matter. The legal system of our country or state lays down punishment for all kinds of wrong doing by the people against the society or the state violating the provision provided under various laws constituted by the state. Judgment administration was not a function of the state in ancient times. During this time, crimes like adultery, robbery, murder, and theft are mentioned, but it is not stated that the monarch or an authorized individual may rule on civil or criminal issues. The terms "jail" and "sutra" appear rather seldom in the ancient Indian texts.

Until trial and punishment were carried out, jails in ancient India served solely as places of imprisonment. Principles articulated by Yagnavalkya, Kautilya, and others, and recognized by Manu, formed the basis of ancient Indian society's structure. In ancient Indian penology, the most common forms of physical punishment were branding, hanging, mutilation, and death; nevertheless, the most moderate kind of punishment was incarceration. The primary objective of instituting incarceration was to detain lawbreakers so that they would not desecrate the members of society. Inmates were confined to dank, cold, dark, and unheated cells. No sanitary facilities were available, and there was no place for people to live.[1]

Kautilya Arthashastra: *"The authority to punish, when used fairly according to the degree of wrongdoing and without regard to whether the offender is a friend or foe of the king, is the only*

[1] A Mohanty and Narayan Hazare, 'Indian Prison system' P.19

thing that can safeguard both this world and the next, according to Chanakyaastra.
Written in the third and second centuries B.C., Kautilya's Arthashastra is an outstanding treatise on classical political philosophy. During Chandragupta Maurya's reign, Kautilya served as prime minister. The primary focus of Kautilya's Arthashastra is political art. The monarch was at the center of his administrative and political theories. The monarch, in his view, needed knowledge of the four Vedas as well as the four sciences of governance (Anvikashiki Trayi, Vartha, and Dandaneethihi) to ensure that the administration ran smoothly and that the people were well taken care of.

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The judicial and administrative systems of Kautilya were hierarchical. He stressed the need of equality and immediacy as principles of impartiality. Law and order, in his view, were the product of imperial decrees enforced via the use of punishments. In contrast to many of his contemporaries, the great Indian political philosopher Kautilya was also a brilliant politician. He was an active participant in many political and social upheavals of his day and derived from his research on war some timeless, universal ideas. The importance and debt of Kautilya's 'Arthashastra' are undeniable considering growing research in economics and politics as well as a contemporary perspective on global issues.[2]

According to Kautilya's teachings on law and justice, the government must always keep the peace. He uses the term "order" often, including not only social order but also law and order in the context of preventing and punishing illegal behavior. The elements of both civil and criminal law

[2] https://www.civilserviceindia.com/subject/Political-Science/notes/indian-political-thought-arthashastra.html

are present in Arthashastra. 'Dharma' was highly esteemed by Kautilya. "The ultimate source of all law is dharma," he claims. In the guise of "dharma," he wooed adherents to human dignity, moral obligation, enlightened allegiance, and a feeling of honor and duty. The judge's title as "dharmashta," meaning "upholder of dharma," in the Arthashastra makes perfect sense. According to him, social order may be maintained if each 'Arya' adheres to his'svadharma,' taking into consideration his 'varna' and 'ashrama,' and the monarch does the same.

The primary responsibility of the king, according to Kautilya, is to maintain social order. In Arthashastra he states, "Because the King is the guardian of right conduct of this world with four 'varnas' and four 'ashramas' he can enact and promulgate laws when all traditional codes of conduct perish." As a defender of dharma, the King was revered as a paragon of morality. Like every other citizen, he was also guided by his dharma. This meant that groups or individuals might challenge the King's acts if they ran counter to the prevailing dharma ideology. Every time he thinks about it, he brings back the idea that 'dharma' is the only compass that every king—or, more accurately, every person—can use to navigate life with honor and respect, regardless of the social order that may be in place.[3]

He adds, "A King who administers justice in accordance with 'dharma', evidence, customs, and written law will be able to conquer whole world" . The relevance of rational law, also known as the King's law, to dharma, vyayhara, and charitra was recognized by Kautilya. He maintained that the three Vedas, which specify the four "varnas" and "ashramas," must be followed by the king's laws. There were other dharma interpreters besides King. Actually, the power to interpret dharma did not descend to any one institution. Everyone was thought to be capable of reading it. This was a crucial component in ensuring that the Vedic state remained secular.

Law, according to Kautilya, is not a product of people's free choice. Therefore, the power to legislate, or sovereignty, did not rest with the locals. Dharma (or sacred law), vyavhara (or proof), charita (or history and tradition), and rajasasana (or edicts of the King) where the four main places from which laws were drawn. Disputes, according to Kautilya, should be resolved using the four pillars of justice. Following this, in descending order of significance, are:

[3] ibid

- 'Dharma', which is based on truth
- 'Evidence', which is based on witnesses
- 'Custom', i.e. tradition accepted by the people
- 'Royal Edicts', i.e. law as promulgated.
- In the event of a dispute between competing legal codes, dharma would take precedence. Case by case, the other legislation were arranged. Three main social groupings—the citizen, the association, and the state—were regulated by Rajasasana. A state's constitutional rules were laid down in the Rajasasana, but the association's members were to decide on the association's degree of constitutional rules. Although the state did pass legislation to protect individual members from the majority's tyranny in the organization, the members of the association also voted on the rules governing the group's operations and mutual choice. Arthashastra lays down what are now known as commercial laws, as well as a system of civil and criminal law.[4]

- **Kautilyan Penal Code:**

The intricate relationship between monetary and physical penalties was the foundation of Kautilya's punitive system. He believed in Dandaniti, the idea that the state should enforce law and order by the use of punishment. Despite his warnings, the monarch should not punish his subjects unfairly since it would cause widespread discontent. He allowed for a lot of room for maneuver and protections in his system, even if, at first glance, his idea seems harsh and reminiscent of an Orwellian regime. A certain amount of discretion was given to the Judiciary to execute the laws since the judge might alter the sentence as stipulated based on the specifics of the case and the local conditions. The goal of the punishment was to find a happy medium, where it was neither too light nor too heavy. The narrative makes no secret of the persistence of sexist and caste-based prejudice and the fact that the severity of punishment for some crimes varied according to the offender's caste. The severity of a crime's punishment was contingent upon the victim's and the offender's social class and standing, and these factors persisted throughout time. The text also forbade sexual relations that did not include the vagina.

[4] ibid

The judicial system was designed with checks and balances in mind. Failing to uphold one's ethical obligations as a judge might result in severe consequences, including fines and even removal from office. Corruption by government officials was to be met with harsh punishment. People in need, such as those experiencing hunger, disease, or extreme poverty, were granted leniency under the system, and everyone’s unique circumstances were to be considered when determining their punishment. The present justice system is frequently said to unfairly target exploited groups and ignore conditional differences, which makes the public feel disconnected from the system. However, the distinctive Kautilyan code did have a place for considering each person's unique situation. According to the Kautilyan legal system, there were three reasons to be arrested: suspicion, possession, and serious offenses like murder. It was considered that the inquiry was more challenging at that period. Arresting someone for a crime that occurred more than three days ago was not allowed. Each category of arrests has its own set of additional justifications. Murder, theft, and corruption are among the few offenses that might only lead to an arrest on suspicion. Detailed descriptions of the ways of questioning both witnesses and the accused are also provided. People at the crime site and those closely linked with the deceased were to be interrogated about the victim's everyday activities in instances involving suspicious deaths. Based on the evidence provided by these individuals, the inquiry had to be further investigated. The complainant and any witnesses to the alleged burglary were to question the suspects in public. The defendant was required to provide his identification and then detail his whereabouts on the specific day and the next day in order to establish his alibi. His acquittal was contingent upon the veracity and confirmation of the statements that proved his innocence. Without a modus operandi for the entrance, accomplices, and instruments, the operation would not have been possible. The use of torture to coerce a confession may be employed in cases when the accused's innocence could not be proven, but the prosecution could not utilize this tactic in isolation. Prior to imposing a sentence, the irrefutable evidence was crucial.

Torture was justified as a means to establish guilt in a criminal case. It was absolutely forbidden to subject certain categories of individuals to torture, including children, the elderly, the ill, pregnant women, and the mentally ill. No amount of torture could ever be considered acceptable as it would always lead to punishment if it succeeded in killing its victim. In addition, for various degrees of wrongdoing, Chanakya also specified techniques of torture. Instead of torturing a

suspect when the level of suspicion of guilt is minimal, it is possible to monitor his whereabouts for some time after the crime has occurred. There is a strong colonial impact on Indian criminal law, which upholds Macaulay's ideals within a framework that encourages cultural diversity and the harmony between humans and the natural world. Although we still mostly adhere to Macaulay's Penal Code 150 years later, Chanakya provides valuable insight into how criminal law jurisprudence can progress in the future by combining its fundamental principles with a more inclusive understanding of cultural stakeholders. We may see numerous similarities between our present judicial system and Kautilya's system of justice.

Even though he is still mostly ignored, he is nonetheless an important thinker. By reviving the synergies of each niche of India's criminal justice system and addressing the underrepresentation of social and environmental variables, his suggestions, if implemented across the domains of economics, politics, and law, would constitute an unprecedented landmark. We should not bury past lessons in order to make our system stronger and more robust; instead, we should reconsider techniques in light of Chanakya's ideas about the criminal justice system and strive to expand its reach, building upon the foundations laid by the Mauryan Empire. A conversation about where cultural and legal ideas meet is essential for closing this generational divide.

YAJNAVALKYA; (YAJNAVALKYA OF VIDEHA WAS A SAGE AND PHILOSOPHER OF VEDIC INDIA)

According to what Yajnavalkya had said, the prisoner who had played a key role in the breakout had been executed. If someone were to harm a man's eyes, Vishnu said that they should be imprisoned. According to Kautilya, the site of the jail is also the date and time of the inmates' release. Bhandanagaradhyaksa and Karka were the names of the prison officials. One was an assistant to the superintendent, while the other was a member of that position. Sannidhata was a pliable figure in the prison department. Inscriptions from Ashokan, particularly the sixth Rock Edict, make mention of captives. In addition, Kautilya has elaborated on the responsibilities of the jailors, who ensure that the inmates are safe and that the prison runs well by constantly monitoring their every move.

After 26 years on the reign, Ashoka mentions as many as twenty-five prison deliveries, leading Prof. Ramachandra Dikhitar (Dikshitar, V.R. Ramachandra (1932 "Mauryan Polity") to speculate that Ashoka had knowledge of the Arthashastra. Wartime prisoner releases are shown in the jatakas of the post-Ashokan era. According to Harsha Charitha, the inmates' living conditions were appalling. As far as Hiuen-Tsang is concerned, the treatment of inmates was typically severe. Parodies occurred at the coronation of the monarch. It is clear from the preceding discussion that ancient India did not have a typical jail system and that incarceration as a form of punishment was not common compared to the present system in India.

MANUSMRITI:

Manu-Smriti, meaning "Laws of Manu" or "The Remembered Tradition of Manu" in Sanskrit, is one of the canonical texts of Hindu law (Dharma-Shastra) in India. It is also known as Manava-dharma-shastra. Although it is formally called Manava-dharma-shastra, the prevalent term for the text is Manu-smriti. The illustrious first man and lawgiver, Manu, is said to have been its author. The received text is from about the year 100 CE. [5]

Devotional to Hindu law and jurisprudence in ancient India for at least fifteen centuries, Manu-Smriti, also known as "The Laws of Manu" or "The Institutions of Manu," is the most significant and authoritative text in Hindu law (Dharmashastra). For both Hindu and Vedic kings, it served as the gold standard for deciding civil and criminal issues up to the contemporary era. Though Hinduism is replete with canonical texts, the Manu-Smriti stands head and shoulders above the others. Gifts, sales without ownership, rescinding of sale and purchase, partition, bailment, non-payment of debt, loans, wages or hire, breaches of agreements and contracts, disputes between partners and master and servant, boundary disputes, assault and slander, defamation, trespass of cattle, damage to goods, and bodily injuries in general were some of the topics covered in the 18 general heads of law in Manu Smriti, which encompasses both modern civil and criminal law. It listed certain offenses as crimes, including gambling, assault, libel, theft, robbery, physical violence, adultery, and marital strife. Fornication, trespassing, and cheating were later added to the list of offenses by Manu. For these transgressions, the law imposed a variety of penalties, including

[5]https://www.britannica.com/topic/Manu-smriti

scolding, fines, confiscation of property, and even death, mutilation, exile, or jail. An established set of rules and the circumstances specified in the Code governed the king's determination of the severity of these penalties. After considering the offender's power, age, occupation, and money in addition to the time and location the offense occurred, Yajnavalkya follows Manu in stating that the King should punish deserving individuals. It was common practice in ancient India, like in other ancient societies, to compensate victims monetarily. Though recompense was important, the Hindu rule of punishment was paramount. Punishment was one area in which Manu Smriti distinguished between the upper and lower classes. The highest-caste Brahmins and ladies in Indian culture were protected from capital punishment. As a worse sentence for a Brahmin than the death penalty itself, his exile was to replace the death penalty. Some of his offenses were to have lighter sentences, while others were to carry sentences equal to or less than a fourth of the maximum. This clause was part of the old Travancore State Penal Code until quite recently. A Namboodiri lady claims that the death sentence would be meted out to men of lower castes who committed adultery with women of higher castes. In some instances, a woman's public humiliation, expulsion from the home and city, flogging, or even burning to death can result from her adultery with a man from a lower caste. varying forms of assault and slander were assigned varying damage costs. Before the Indian Penal Code of 1860 went into effect, these behaviors were widespread throughout Malabar. This led many to believe that the Brahmin caste was exempt from the law and that Manu Smriti advocated unfair punishment. But a criminal law researcher, seeing the logic and science behind this unfair penalty, finds it justified in its treatment of Brahmins as above the law. While Warren Hastings was India's Governor-General, the Pandits of Banaras were tasked with compiling a Hindu Code at his request. The Gentoo Code was the name of it. It established the death sentence as a crime. Similar to Roman law, there were distinct sanctions for blatant and disguised stealing. The former was subject to a fine, while the latter was punished with the most severe kind of corporal punishment, which may include the amputation of a limb at the judge's discretion. The death penalty

CONCLUSION:

In ancient India, prisons were seen as centers for reforming criminals rather than just punishment. Punishment was a form of evil, and the legal system outlined punishment for all wrongdoings. Prisoners were confined to unheated cells with no sanitary facilities. Kautilya's

Arthashastra, written in the third and second centuries B.C., is an outstanding treatise on classical political philosophy, emphasizing equality, immediacy, and impartiality. He believed that the ultimate source of all law is dharma, promoting human dignity and moral obligation. Law was not a product of people's free choice, and disputes were resolved using the four pillars of justice: 'Dharma', 'Evidence', 'Custom', and 'Royal Edicts'.