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PATRICK OLIVELLE

Kaṇṭakaśodhana
Courts of Criminal Justice in Ancient India

It is a matter of common knowledge that lawsuits in ancient India falling under the category of *vyavahāra* entailed disputes between private parties; the state was involved only as impartial judge to adjudicate such legal disputes. The principle that the state cannot and should not initiate a lawsuit is clearly articulated in ancient legal texts. Manu (8.43), for example, states:

> *notpādayet svayaṃ kāryaṃ rājā nāpy asya pūruṣaḥ, na ca prāpitam anyena grasetārthaṃ kathaṃcana.*
> Neither the king nor any official of his shall initiate a lawsuit independently; nor shall he in any way suppress an action brought before him by someone else.

This fundamental principle of jurisprudence has been interpreted in several ways. Medhātithi and Bhāruci, commenting on this verse, give an interpretation according to which the term *utpādayet* means that the king or his officials should not instigate lawsuits, that is, prompt someone to bring a lawsuit against another person. But the final opinion given by both and followed by most other commentators is that the king or any official of his is not allowed to initiate a lawsuit for any reason, including partiality toward one side or greed in view of the fines he may be able to collect. This is expressed in a verse ascribed to Kātyāyana:

> *na rājā tu vaśitvena dhanalobhena vā punaḥ, svayaṃ kāryāṇi kurvīta narāṇām avivādinām.*
> The king, however, should not institute a lawsuit because of his power[1] or because he is greedy for money between people who are not in litigation.

1 This is verse 27 in KANE's edition. The meaning of the Sanskrit *vaśitvena* is not altogether clear. Kane translates "through being won over" taking the term to mean that the king has being brought under the control of one of the litigants. But that does not fit the context, because the potential litigants are not litigating (*avivādi-*

This jurisprudential principle is implied by Nārada (18.1) when, at the beginning of his chapter called *prakīrṇakam* (miscellaneous) coming at the end of the *vyavahārapada*s (grounds for litigation), he says that the crimes listed in this chapter are *vyavahārā nr̥pāśrayāḥ* (litigations that depend on the king). The implication is that the topics listed in the *vyavahārapada*s are the subject of private litigations and cannot be initiated by the king.

Given, then, that lawsuits between private individuals or groups involve civil actions, the question arises whether ancient India knew a criminal justice system apart from police action aimed at suppressing and punishing criminal activities, a justice system that would parallel the civil court system given in the *vyavahāra* sections of Dharmaśāstras. The aim of this paper is to examine this issue afresh and to advance the thesis that the ancient institution of *kaṇṭakaśodhana* under the jurisdiction of an official known in the Arthaśāstra as *pradeṣṭr̥* was precisely such a magistrate's court different from the civil justice system, which is the focus of much of the legal literature.

Scholars have commented in passing on this institution prominent in the Arthaśāstra without taking it seriously as part of the ancient Indian criminal justice system. KANGLE (1965–1972 Vol. III: 233), for example, concludes that "The difference between the jurisdiction of the *dharmastha*s and the *pradeṣṭr̥*s does not quite correspond to the distinction between civil and criminal matters." He cites Nilakanta SASTRI (1952) with approval, who "rightly contested the view that *dharmasthīya* and *kaṇṭakaśodhana* laws correspond to the modern civil and criminal laws respectively" (KANGLE 1965–1972 Vol. III: 240). SCHARFE (1993) in his detailed study of the Arthaśāstra also concludes:

> The duty of the *pradeṣṭr̥-s* is the "removal of thorns," which is often equated with criminal justice by modern scholars, whereas civil justice is regarded as the domain of the *dharmastha*-s. This distinction is not quite correct.

KANE (1962–1975 Vol. III: 257, 259) wonders "Why Kauṭ[ilya] treats several offences under kaṇṭakaśodhana and not under dharmasthīya section," but denies the existence in ancient India of a double court system:

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nām). I take it to mean that the king initiates proceedings because he has the power to do so.

> Though in this way a distinction was made between civil and criminal disputes among the 18 titles of law […] the same courts tried both kinds of disputes and not as in modern times (when civil disputes are tried in one class of courts and criminal complaints in another).

Even though the area of responsibility of the *kaṇṭakaśodhana* office of the *pradeṣṭṛ* was much larger than the criminal courts of today, I will argue that it is nevertheless appropriate to see it as a broader criminal justice system that included both the suppression of criminal activity (i.e., police action) and the adjudication of the guilt or innocence of those accused of crimes (i.e., criminal court), something akin to, yet broader than, the position of magistrates with both judicial and executive powers in ancient Rome and in some contemporary European countries. My argument will show that KANGLE's (1962–1975 Vol. III: 233) conclusion is erroneous:

> No trial of the criminal appears to be contemplated, because though the Book describes at length the procedure of the investigation of various crimes, it says not a word about proceedings in a court.

The term *kaṇṭaka*, literally a thorn, is commonly used in Sanskrit literature metaphorically with reference to criminals within society. Given the close connection of kingship to land (hence the epithets, *pṛthivīpati* and *bhūmipa*), we can see how a fertile land without thorns can be a metaphor for a society without criminals: *rājyam akaṇṭakam*, as the Mahābhārata (5.139.13; 7.77.20) puts it. Thus *kaṇṭakaśodhana,* the clearing of social thorns, is viewed as one of the principal duties of a king by Manu (9.252–53):

> *samyaṅ niviṣṭadeśas tu kṛtadurgaś ca śāstrataḥ*, *kaṇṭakoddharaṇe nityam ātiṣṭhed yatnam uttamam*. *rakṣaṇād āryavṛttānāṃ kaṇṭakānāṃ ca śodhanāt*, *narendrās tridivaṃ yānti prajāpālanatatparāḥ*.
> After properly settling the country and building a fort according to textual norms, he should direct his maximum effort constantly at the eradication of thorns. By protecting those who follow the Ārya way of life and by clearing the thorns, kings devoted to the protection of their subjects reach the highest heaven.

Manu (9.252–293) deals with the topic of *kaṇṭakaśodhana* immediately after the eighteen *vyavahārapada*s, which are the grounds for civil litigation. This is the same order we find in the Arthaśāstra, and in all likelihood Manu is here following closely the structure of the Arthaśāstra. In

Manu, however, the *kaṇṭakaśodhana* is viewed merely as police action; security forces of the king are expected to eradicate all social thorns from the kingdom. The question, however, remains why this topic should be treated immediately after *vyavahāra* in Chapter 9 rather than under *rājadharma* in Chapter 7 if this was simply part of the duties of the king to protect his subjects. The answer is that Manu is following here the Arthaśāstra model but ignores the special judicial functions ascribed to this institution by the author of the Arthaśāstra.

The expression *kaṇṭakaśodhana* goes out of vogue in the Dharmaśāstric literature after Manu. We encounter it once in the Nārada-smṛti (15–16.6), and the related *kaṇṭakoddharaṇa* is used once in the Bṛhaspati-smṛti (1.1.38). It appears that the *kaṇṭakaśodhana* as a distinct organ of the state criminal justice system, as far as we can tell from the extant literature, became obsolete in the early centuries of the common era; only its general meaning of removing social thorns survived, although, as we will see, some echoes of the ancient institutions are discernible in medieval texts.

We find quite a different situation in the Arthaśāstra. Its third Adhikaraṇa is devoted to the *dharmasthīya*, that is, matters relating to the judge, *dharmastha*, in a civil court, and its fourth Adhikaraṇa deals with *kaṇṭakaśodhana*, where various kinds of anti-social behavior is dealt with, the principal of which is theft. That the *kaṇṭakaśodhana* is viewed by the author of the Arthaśāstra, or at least the author of the final redaction of the Arthaśāstra, as an institution parallel and similar to the civilian court system under the *dharmastha* judge is indicated by the very opening *sūtra*s of the two books. The Adhikaraṇa on the *dharmastha* opens with (3.1.1):

> *dharmasthās trayas trayo 'mātyā janapadasaṃdhisaṃgrahaṇadroṇamukhasthānīyeṣu vyāvahārikān arthān kuryuḥ.*
> Lawsuits relating to transactions should be tried by three judges, all of ministerial rank, in frontier posts, borough centers, district municipalities, and provincial capitals.

The Adhikaraṇa on the *kaṇṭakaśodhana* opens with (4.1.1):

> *pradeṣṭāras trayas trayo 'mātyāḥ kaṇṭakaśodhanaṃ kuryuḥ.*
> The eradication of thorns should be carried out by three magistrates, all of ministerial rank.

The parallel is unmistakable. Civil lawsuits are heard by a bench of three judges named *dharmastha* of ministerial rank, while the *kaṇṭakaśodhana* is carried out by a bench of three magistrates named *pradeṣṭṛ* also of ministerial rank. The specification that there should be three magistrates indicates that the reference must be to some sort of judicial deliberation rather than merely police activity. The fourth Adhikaraṇa, unfortunately, has been subject to widespread redaction, and the topic of *kaṇṭakaśodhana*, after its initial introduction in the very first *sūtra*, starts only in the fourth chapter of the book. The areas of concern for the magistrate are: people with secret means of income, testing the loyalty and honesty of state officials, employment of spies to detect criminal activities, arrest on suspicion with stolen goods, inquests into sudden deaths, investigations and interrogations using torture, and the violation of virgins. Now all these could simply be viewed as administrative and police actions, and indeed the magistrates appear to have had wide executive powers and were in charge of a large bureaucracy of police officers and secret agents.

The parallel between the civilian judges and the magistrates, however, as well as other evidence relating to the activities of the magistrates make it clear that the magistrates also ran a parallel court system for criminals where the guilt or innocence of people accused of crimes is adjudicated. This indicates that the department of *kaṇṭakaśodhana* had two branches. The one was involved in detecting crimes and catching criminals (police). The accused criminals were brought before the other branch, a criminal court presided over by three judges, that passed judgment on the guilt or innocence of the accused.

At Arthaśāstra 1.10.13 dealing with the appointment of officials, it is said:

> *dharmopadhāśuddhān dharmasthīyakaṇṭakaśodhaneṣu karmasu sthāpayet*.
> Those proven to be honest through the secret test of *dharma* should be appointed to positions in the judiciary and in the eradication of thorns.

Here the *dharmastha* and *pradeṣṭṛ* are treated as requiring similar personal virtues relating to *dharma* or justice.[2] Further, at Arthaśāstra 4.9.18 we have a strong parallel between *dharmastha* and *pradeṣṭṛ* in the area of judicial misconduct:

2 For the secret tests of *dharma,* see Arthaśāstra 1.10.2–6.

> *dharmasthaḥ pradeṣṭā vā hairaṇyadaṇḍam adaṇḍye kṣipati kṣepadviguṇam asmai daṇḍaṃ kuryāt, hīnātiriktāṣṭaguṇaṃ vā.*
> If a judge or a magistrate imposes a monetary punishment on a person who does not deserve punishment, he should make him pay a fine equivalent to double the amount he imposed; or eight times the amount by which it is less or more than the prescribed fine.

Even stronger evidence for considering *kaṇṭakaśodhana* as a court comes from a statement in the second Adhikaraṇa. The issue discussed is work carried out under the supervision of the Chief Goldsmith (*sauvarṇika*). When someone tries to evade the rule requiring the supervision of this official and gets work done elsewhere, the one commissioning the work is normally fined (Arthaśāstra 2.14.11). A fine is also imposed administratively on the artisan carrying out that work, if he can present a valid excuse (2.14.12). If he cannot, then he is sent to the *kaṇṭakaśodhana* for adjudication (2.14.13):

> *anapasāraḥ kaṇṭakaśodhanāya nīyeta.*
> If he has no excuse, he should be brought before the agency for the eradication of thorns.

What would be the reason for bringing the artisan before the *kaṇṭakaśodhana* other than to adjudicate his guilt? If he had a valid excuse, he was summarily fined; but when he is without an excuse, he has to face the court.

We have an almost identical provision in the third Adhikaraṇa on civil justice. The issue is physical assault (*daṇḍapāruṣya*), which is normally subject to civil litigation. After giving various punishments for different kinds of assault, including breaking bones and damaging the eyes (Arthaśāstra 3.19.2–14), the text goes on to deal with a situation when such an assault results in death and states (3.19.15):

> *vipattau kaṇṭakaśodhanāya nīyeta.*
> In the case of death, he (the perpetrator) should be brought before the agency for the eradication of thorns.

It is clear from this passage that under certain circumstances, especially when there is a murder involved, both the police and the civilian judges were expected to refer the matter to the *kaṇṭakaśodhana.* These passages also point to the fact that the *kaṇṭakaśodhana* was not only the name for

a state bureaucracy but also a location, a place to which criminals could be taken, in the same way as a civilian court often called *dharmādhikaraṇa.*

Unfortunately, the Arthaśāstra does not give us many details about how the *kaṇṭakaśodhana* court operated.[3] My guess is that these details were omitted because its rules of procedure were similar to, or identical with, those followed in the civilian courts and given in the previous Adhikaraṇa. There are, however, some passages that hint at a judicial procedure and confirm my assumption that the procedures in the two kinds of court were similar. At the beginning of the section in fourth Adhikaraṇa dealing with investigations of criminal activities through interrogation and torture, we have the following statement (4.8.1–5):

> *muṣitasaṃnidhau bāhyānām abhyantarāṇāṃ ca sākṣiṇām abhiśastasya deśajātigotranāmakarmasārasahāyanivāsān* anuyuñjīta. *tāṃś cāpadeśaiḥ pratisamānayet. tataḥ pūrvasyāhnaḥ pracāraṃ rātrau nivāsaṃ cā grahaṇād ity* anuyuñjīta. *tasyāpasārapratisaṃdhāne śuddhaḥ syād anyathā karmaprāptaḥ. trirātrād ūrdhvam agrāhyaḥ śaṅkitakaḥ pṛcchābhāvād anyatropakaraṇadarśanāt.*
> In the presence of the victim of the theft, as well internal and external witnesses, he should question the accused about his country, caste, lineage, name, occupation, wealth, associates, and residence. He should check these against affidavits made by others. Then he should question him about what he did the previous day and where he spent the night until his arrest. If he is corroborated by the person providing his defense, he is to be considered innocent; otherwise, he is to undergo torture. A suspect should not be arrested after the lapse of three days, because his interrogation is inadmissible, except when he is found with incriminating tools.

Here we have the magistrate questioning the accused in the presence of the victim and witnesses. The word used for questioning, *anuyuñjīta*, is a technical term for judicial interrogations found frequently in the third Adhikaraṇa in the context of a civilian court,[4] a term also used by Manu with this technical meaning (8.79, 259). Further, this passage gives a statute of limitation for such interrogations: within three days of the theft, after which time interrogations are inadmissible. What is even more significant is that an accused person can prove his innocence in this court, just as he can in a civil court.

3 This is the reason given by KANGLE (1962–1975 Vol. III: 233, cited above) for not taking the *kaṇṭakaśodhana* to be a real court.

4 See, for example, Arthaśāstra 3.12.51; 3.13.32; 3.16.12, 31.

We have a similar situation when a man is arrested with goods suspected of being stolen. Here also the suspect has the opportunity to clear himself by producing evidence that can be substantiated. Even though the passage uses the generic pronoun "he" with regard to the interrogator, it is evident that the context of the discussion is the work of the *kaṇṭakaśodhana* (4.6.7–8, 11):

> *tac cen niveditam āsādyeta rūpābhigṛhītam āgamaṃ pṛcchet* "*kutas te labdham*" *iti. sa ced brūyāt* "*dāyādyād avāptam amuṣmāl labdham krītaṃ kāritam ādhipracchannam ayam asya deśaḥ kālaś copasaṃprāpteḥ ayam asyārghaḥ pramāṇaṃ lakṣaṇaṃ mūlyaṃ ca*" *iti tasyāgamasamādhau mucyeta* […] *sa ced brūyāt* "*yācitakam avakrītakam āhitakaṃ nikṣepam upanidhiṃ vaiyāvṛtyakarma vāmuṣya*" *iti tasyāpasārapratisaṃdhānena mucyeta*.
> If he comes across the reported article, he should ask the man arrested with the article how he acquired it: "Where did you get this?" And if he were to say: "I obtained it through inheritance. I received it – bought it, got it made, received it as a secret pledge – from that individual. This is the place and the time of its acquisition. These are its price, size, distinguishing marks, and value"; he should be released when the manner of his acquiring the article has been substantiated. […] And if were to say: "This is something borrowed – rented, received as a pledge, a deposit, or a security, or received for sale on commission – from so-and-so"; he should be released when he is corroborated by the person providing his defense.

The Arthaśāstra is aware that people may be accused of theft for a variety of reasons, including enmity, and it is up to the judge to sift through the evidence (4.8.7–8):

> *coreṇābhiśasto vairadveṣābhyām apadiṣṭakaḥ śuddhaḥ syāt. śuddhaṃ parivāsayataḥ pūrvaḥ sāhasadaṇḍaḥ*.
> When a person accused of being a thief has been inculpated because of enmity or hatred, he is to be considered innocent. One who keeps an innocent man in custody should be assessed the lowest fine for forcible seizure.[5]

Here we have punishment for malfeasance by a magistrate just as we find similar provisions for civil judges. Even when a man confesses to a

5 The expression *sāhasadaṇḍa* is a technical term for a standard fine, *sāhasa* here meaning robbery or forcible seizure involving violence. There are three gradations of this fine: highest, middle, and lowest. Different texts give different amounts for these fines. In the Arthaśāstra (see 3.17.7–10) the highest is between 500 and 1'000 *paṇa*s; the middle is between 200 and 500 *paṇa*s; and the lowest is between 48 and 96 *paṇa*s.

theft, his confession should not be taken at face value. The magistrate is expected to investigate the case further and look at all the evidence (Arthaśāstra 4.8.11–13):

> *eteṣāṃ kāraṇāṇām anabhisaṃdhāne vipralapantam acoraṃ vidyāt. dṛśyate hy acoro 'pi coramārge yadṛcchayā saṃnipāte coraveṣaśastrabhāṇḍasāmānyena gṛhyamāṇaś corabhāṇḍasyopavāsena vā yathāṇimāṇḍavyaḥ karmakleśabhayād acoraḥ* "*coro 'smi*" *iti bruvāṇaḥ. tasmāt samāptakaraṇaṃ niyamayet*.
> When these kinds of evidence is lacking, he should consider him as just a blabbermouth and not the thief. For we see that even a person who is not a thief, when by chance he runs into some thieves on the way and is arrested because his clothing, weapons, and goods are similar to those of the thieves or because he was lingering near the stolen goods of the thieves, may, just like Aṇi-Māṇḍavya, confess "I am a thief" even though he is not a thief, because he fears the pain from torture. Therefore, he should discipline only a man against whom there is convincing evidence.

The distinction between the jurisdiction of the civil court system under the *dharmastha* and the criminal system falling within the *kaṇṭakaśodhana* is also indicated in the two kinds of prisons noted in Arthaśāstra 2.5.5:

> *pṛthag dharmasthīyaṃ mahāmātrīyaṃ vibhaktastrīpuruṣasthānam apasārataḥ suguptakakṣyaṃ bandhanāgāraṃ kārayet*.
> He should have separate prisons connected to the judiciary and tribunals of the high official with separate facilities for men and women constructed, and with well-guarded vaults to prevent escape.

Here the head of the parallel judiciary is called *mahāmātra*, a term that is used at Arthaśāstra 8.4.31 with reference to the Samāhartṛ, who is the official above the Pradeṣṭṛ. In all likelihood, here *mahāmātra* refers to the head of the *kaṇṭakaśodhana* court.

The close association of the *vyavahārapada*s representing civil litigation and the *kaṇṭakaśodhana* is also found in the Mahābhārata (12.59.53). In the middle of a long description of the contents of the text that Svayaṃbhū created on the *trivarga*, a text containing 1'000 Adhyāyas, we have the following stanza:

> *vyavahāraḥ susūkṣmaś ca tathā kaṇṭakaśodhanam*

James FITZGERALD (2004) appears to have missed the full import of this statement when he translates: "supersecret dealings and smoothing out of

annoyances." Indeed, here we have juxtaposed the topics of the third and fourth Adhikaraṇas of the Arthaśāstra: civil litigation (*vyavahāra*) and the criminal justice system under the magistrate (*kaṇṭakaśodhana*). We have the same juxtaposition in the table of contents of Manu (1.115), where, after enumerating the eighteen *vyavahārapada*s, he lists: *kaṇṭakānāṃ ca śodhanam* (eradication of thorns), almost as part of the discussion on *vyavahāra.*

Nevertheless, *kaṇṭakaśodhana* as a separate court system disappears from the legal literature of Dharmaśāstra. Manu, as we have seen, even though he devotes a separate section to *kaṇṭakaśodhana* immediately after the *vyavahārapada*s, does not consider it as a separate judicial system but simply as executive action against social parasites. Evidence for the amalgamation of the two judicial systems is found in the Mātṛkā section of the Nāradasmṛti (1.22) where, within the explanation of the *vyavahārapada*s, Nārada states that a lawsuit has "two kinds of accusations: those based on suspicion and those based on fact" – *dvyabhiyogas tu vijñeyaḥ śaṅkātattvābhiyogataḥ.* These two parallel exactly the two reasons for the arrest of a person – *śaṅkābhigraha* and *rūpābhigraha* – within the *kaṇṭakaśodhana* section of the Arthaśāstra (4.6.2–15).

A principal reason, at least a principal literary reason, for the demise of *kaṇṭakaśodhana* as a central topic of legal administration is probably the way theft is dealt with in the legal literature of Dharmaśāstra. It is a basic axiom of Indian political science that the suppression of theft is the single most important duty of a king. Indeed, the justification for taxation is given as the societal need to suppress theft; tax is simply an insurance premium paid to the king against theft. Yet, in all the Dharmaśāstras, except Nārada's, which we will examine shortly, theft is given as one of the *vyavahārapada*s, that is, as a subject of civil litigation. This, indeed, strikes one as quite odd, given the societal need to suppress and punish theft. I think the reason for its inclusion within the *vyavahārapada*s in Manu and later writers was the absorption of all topics falling within *kaṇṭakaśodhana* court system into the *vyavahārapada*s, which now assumed the central position in discussions of legal administration, leaving *kaṇṭakaśodhana* with only its police functions.

An exception appears to be the Nāradasmṛti. Nārada gives seventeen *vyavahārapada*s, along with an eighteenth called *prakīrṇaka*, miscellaneous, a category also found in the Yājñavalkyasmṛti and Arthaśāstra enumerations of the *vyavahārapada*s. It is after this that Nārada deals

with theft (19), a chapter that is traditionally viewed as a *pariśiṣṭa* or supplement. At the beginning of chapter 18 on the *prakīrṇaka*, Nārada makes this significant observation (18.1):

> *prakīrṇake punar jñeyā vyavahārā nṛpāśrayāḥ.*
> In the "Miscellaneous," one should know, are litigations dependent on the king.

I think the expression *nṛpāśrayāḥ* is meant to distinguish the crimes listed under "Miscellaneous" form those given in the first seventeen *vyavahārapada*s. The latter are subject to civil litigation brought by aggrieved parties, while in the case of the former the king himself can take the initiative. Nārada's discussion of theft mostly deals with police actions and the use of spies and other covert strategies. There is no direct statements about court proceedings, even though reference is made to interrogations (19.16) and oaths (19.19, 26). Coming as it does immediately after the *vyavahārapada*s, Nārada's discussion of theft occupies the same structural position as *kaṇṭakaśodhana* in the Arthaśāstra and Manu, and, perhaps the initial statement about *vyavahārā nṛpāśrayāḥ* may, indeed, apply to theft as well.

Some medieval authors also appear to be uncomfortable with Manu's injunction with which we opened this study, namely, that the state cannot initiate a legal proceeding *suo moto*. Medhātithi, for example, commenting on Manu 8.43, qualifies Manu's statement, saying that it applies to civil matters such as the non-payment of debts but not to criminal matters such as theft. In these cases the king can proceed on his own:

> *etac ca ṛṇādānādiṣv eva draṣṭavyam. ye tu stenasāhasikādayaḥ kaṇṭakasthānīyās tān rājā svayam evāvagamya gṛhṇīyāt.*
> This (the provision of Manu), moreover, should be viewed as referring only to such subjects as the non-payment of debts. In the case of people such as thieves and violent criminals, on the other hand, who are comparable to thorns, the king himself should uncover and capture them.

Clearly, Medhātithi makes no distinction here between police action initiated by the king and a judicial inquiry. He views the topic more broadly, because, according to one interpretation of Manu's injunction, the king is barred from initiating a lawsuit even when he in possession of evidence that a violation has taken place. He wants to limit this to civil matters.

Devaṇabhaṭṭa also, in his Smṛticandrikā (Vyavahārakāṇḍa, pp. 63–65) cites verses from Nārada, Saṃvarta, and Pitāmaha to show that the king can move on his own in the case of grievous offenses against public order, ten of which are enumerated by Nārada as *aparādha*s.

Even though the textual history of the Arthaśāstra is complicated, I think we can state with some degree of certainty that at some point in the legal history of India, the institution of *kaṇṭakaśodhana* was conceived as having a judicial function with regard to those accused of serious social crimes. This is the institution reflected in some measure in the fourth Adhikaraṇa and in other passages of the extant Arthaśāstra. As the discussion of jurisprudence moved to Dharmaśāstra, a tradition dominated by Brahmanical interests to an extent much greater than the Arthaśāstra, this aspect of the criminal justice system was left out of discussion. How this literary history of legal institutions reflects the actual social and political realities of ancient India is a question that cannot be answered with the available evidence.

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