

COMPARATIVE ANALYSIS OF COMMERCIAL LAWS IN KAUTILYA ARTHASHASTRA AND CURRENT INDIAN LAWS

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Abstract: The aim of this paper is to understand about different commercial laws which were applicable to commercial transactions carried around 2400 years ago and the similarities and differences in commercial laws in both periods.

Following matters have been discussed

I About Commercial Laws in Arthashastra

Book 3 contains both the civil law and criminal law and Acharya Chanakya has considered all situations and circumstances in detail covering all types of scenario which prevailed during that era.

II Commercial Laws in current period

Few of the Acts falling under commercial laws are The Indian Contract Act, 1872, The Sale of Goods Act, 1930, etc. On studying Commercial Laws of both era, one would come across many similarities and differences.

III Laws Applicable to Contracts / Transactions - Similarities & Differences

Similarities have been found in provisions relation to Validity of agreements, Persons competent to contract, Flaws in contract, Revocation / termination of contracts, Rights and obligations of parties, Revocation in case of perishable goods, Coercion, undue influence and illegal contracts. Few differences have been found in provisions related to Validity of agreements.

IV Deposits, Pledges and Similar Transactions - Similarities & Differences

Credit Facilities And Security have been covered and similarities have been found in respect of Pledges, Directive and Assignment, Borrowing and Hiring / Renting, Sale through an Agent, Entrusting articles to artisans and craftsmen and few differences in respect of same have been discussed.

V Conclusion

Overall we may notice that the roots of current laws can be found from the pages of Kautilya Arthashastra which have been of great significance globally and we can also bring improvements in current laws from our learning's of Arthashastra.

Key Words: Commercial Laws, Credit Facilities and Security, Directive and Assignment, Borrowing and Hiring / Renting, Sale through an Agent

Bhagvat Gita starts with the word “*dharma*” which means duty. It discusses about the duty of each and every person in this world. Even Kautilya Arthashastra is duty centric, thereby discussing about wealth creation and its management as one of the significant duty of everyone. Amongst different types of duties that were carried out, few people were responsible for providing goods or render services to the community, i.e., carry out commercial transactions. These transactions were required to be carried out within the framework of applicable rules and regulations as provided in Arthashastra.

The aim of this paper is to understand about different commercial laws which were applicable to commercial transactions carried around 2400 years ago and the similarities and differences in commercial laws in both periods.

Following matters have been discussed

I About Commercial Laws in Arthashastra

II Commercial Laws in current period

III Laws Applicable to Contracts / Transactions - Similarities & Differences

IV Deposits, Pledges and Similar Transactions - Similarities & Differences

V Conclusion

I - ABOUT COMMERCIAL LAWS IN ARTHASHASTRA

In Arthashastra Acharya Chanakya provides that it's an essential duty of government to maintain order. It contains both the civil law and criminal law. In Book 3 while covering all laws he has considered all situations and circumstances in detail covering all types of scenario which prevailed during that era. Further the laws provided in Arthashastra are so logically framed, that its concepts are even practically applicable in today's scenario. All laws applicable to transactions related to trading and services have been explicitly provided.

II - COMMERCIAL LAWS IN CURRENT PERIOD

Commercial law is related to the commercial activities of the people. It is applicable to trade and commerce in connection with various business transactions. Few of the Acts falling under commercial laws are The Indian Contract Act, 1872, The Sale of Goods Act, 1930, etc.

On studying Commercial Laws of both era, one would come across many similarities and differences.

III - LAWS APPLICABLE TO CONTRACTS / TRANSACTIONS

(A) SIMILARITIES

VALIDITY OF AGREEMENTS

(1) Currently the Indian Contract law¹ states that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. It also explains² fraud and states that contract is void in case any kind of fraud is involved in the transaction by either party and it is not enforceable by law. Treating an agreement to be void in case of³ fraud is a similar law on comparing with Arthashastra.

PERSONS COMPETENT TO CONTRACT

(2) As per Arthashastra,⁴ agreements entered into by dependent or unauthorised persons, such as a father's mother, a son, a father having a son, an outcast brother, the youngest brother of a family of undivided interests, a wife having her husband or son, a slave, a hired labourer, any person who is too young or too old to carry on business, a convict, a cripple, a wandering monk, or an afflicted person, shall be invalid, unless they are authorised. Primarily this provision prohibits an individual who is dependent and unauthorised cannot enter into any contract on behalf of his guardian or care taker. It can be observed that amongst female members only father's mother and wife have been considered. Relationships like sister and daughter have not been considered. This implies that due to conserved social system, females were normally not allowed to enter into any transaction with anyone.

Similarly the Indian Contract Act⁵ states that every person is competent to contract who is major, is of sound mind and is not disqualified from contracting by any law. The said law also provides that⁶ as between the principal and third persons, any person may become an agent, but he should not be minor and of unsound mind. It also provides that⁷ an authorised agent has authority to do every lawful thing necessary for the purpose of conducting such business. It can be noticed that the provisions about Agency has been explicitly made clear in the aforesaid law⁸.

The criteria of considering a person to be incompetent to contract between Arthashastra and the Contract laws are both different and similar in few aspects. Overall both consider few types of people to be incompetent to enter into

¹ The Indian Contract Act, 1872 - Section 10 - What agreements are contracts.

² The Indian Contract Act, 1872 - Section 17 defines Fraud

³ Kautilya Arthashastra – 3.1.15

⁴ Kautilya Arthashastra – 3.1.12

⁵ The Indian Contract Act, 1872 - Section 11 provides - Who are competent to contract

⁶ The Indian Contract Act, 1872 - Section 184 provides - Who may be an agent

⁷ Indian Contract Act, 1872 - Section 188 provides - Extent of agent's authority

⁸ Indian Contract Act, 1872 - Chapter X - Section 182 to 238 (Law of Agency)

any valid contracts. In case they enter, then they are void and cannot be enforced by law. As per the Indian Majority Act⁹, a minor is a person, who has not attained the age of 18 years. In one of the landmark judgement¹⁰ it has been decided that any contract with minor is void-ab-initio, i.e., invalid from the beginning.

FLAWS IN CONTRACT

(3) Further Arthashastra¹¹ also states that agreements will be void if at the time of making the agreements the person is under provocation, anxiety, or intoxication, or if he was a lunatic or a haunted person. These provisions of Arthashastra are applicable as on date also, however concepts like provocation is not covered.

Similarly the Contract law¹² clarifies that person is of sound mind who is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

Currently the law also states that a free consent¹³ is required of parties entering into a contract. Consent is said to be free when it is not caused by—

- (1) coercion¹⁴, or
- (2) undue influence¹⁵, or
- (3) fraud¹⁶, or
- (4) misrepresentation,¹⁷ or
- (5) mistake,¹⁸.

(4) Arthashastra¹⁹ states agreements are valid which are entered between persons of same community in suitable place and time, provided there is proof of ownership, i.e., the circumstances, the nature, the description, and the qualities of the case are credible. This concept is in line with current laws that an owner or his authorised person can enter into agreement. Absence of ownership will stop him from entering into any contract. Further when several agreements are entered into then the last one shall be considered the authoritative one. However this will not apply when contracts are related to hypothecation or when a property is entrusted to another for delivery to a third party.

Similarly as per the Sale of Goods Act²⁰, where goods are sold by a person who is not the owner and has no owner's authority, the buyer will not acquire any better title to goods than the seller. However in case a mercantile agent enters into a transaction, with owner's consent and is in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be valid. Thus we understand that a person cannot transfer a better title than his own. Both current and Arthashastra laws are similar in respect of who has rights to sell goods.

Further as per the said Act²¹, if one of several joint owners under permission of co-owners sells and the buyer buys them in good faith, then it is a valid contract.

REVOCAION / TERMINATION OF CONTRACTS

After understanding the concepts of laws applicable to transactions and contracts during 4th century BC and the existing laws, let us probe into events relating to cancelation or termination of the contracts and consequences of not complying with the obligations by the transacting parties. There are many similarities in laws related to termination of Contracts provided in both the Arthashastra and current laws.

⁹ Indian Majority Act, 1875 – Section 3 - Age of majority of persons domiciled in India

¹⁰ Mohiri Bibi v. Dharmodas Ghose (1903), 30 Cal. 539.

¹¹ Kautilya Arthashastra – 3.1.13

¹² Indian Contract Act, 1872 - Section 12 - What is a sound mind for the purposes of contracting

¹³ Section 14 defines “Free consent”

¹⁴ Indian Contract Act, 1872 - coercion, as defined in section 15

¹⁵ Indian Contract Act, 1872 - Undue influence defined in section 16

¹⁶ Indian Contract Act, 1872 – fraud defined in section 17

¹⁷ Indian Contract Act, 1872 - Misrepresentation defined in section 18

¹⁸ Indian Contract Act, 1872 - Mistake provisions of sections 20, 21 and 22

¹⁹ Kautilya Arthashastra – 3.1.15

²⁰ The Sale of Goods Act, 1930 section 27- Sale by person not the owner

²¹ The Sale of Goods Act, 1930 section 28 - Sale by one of joint owners

RIGHTS AND OBLIGATIONS OF PARTIES

(5) As per Arthashastra²² there is an obligation on seller to deliver and the buyer will have a right to receive goods transacted, which complies with all validity requirements of sale and purchase contracts. However the same will not be applicable in following circumstances when -

- the contract is terminated or revoked within the time limit as decided
- the goods or article is defective
- it was likely to be confiscated by the King, robbed by the thieves or destroyed by fire or floods
- In many respects it wasn't matching the specifications mentioned
- The sale was done in distress or under coercion.

Similar law is provided in the Sale of Goods Act²³ prescribing duty of the seller to deliver the goods and of the buyer to accept and pay for them, as per terms of the contract. Pursuant to the Contract law²⁴ the parties to a contract must perform, unless it is dispensed with or excused under this Act, or any other law. Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless the contract provides otherwise.

A contract is said to be terminated when the rights and obligations arising out of a contract are extinguished. Contracts may be discharged by → :

- (i) by performance
- (ii) mutual consent or agreement
- (iii) lapse of time
- (iv) operation of law
- (v) impossibility of performance
- (vi) breach of contract

We would find many similarities between both old and new laws in respect of grounds of termination of the contract or when a person loses, his rights and obligations to enforce any contract entered into, which may be valid at the time of execution, however because of reasons prescribed in laws, the same stands invalid or terminated and accordingly not enforceable anymore.

REVOCATION IN CASE OF PERISHABLE GOODS

(6) Pursuant to Arthashastra²⁵ in case of perishable goods, a buyer may agree to terminate contract on the condition that the seller does not sell the goods to anyone else. Currently as per Sale of Goods laws²⁶ where there is a contract for the sale of specific goods, the contract is void if the goods have perished or damaged without the knowledge of the seller. In case the goods damages, before the risk passes to the buyer, the agreement is thereby avoided. Here it seems that current laws have been picked up from the old laws keeping them same at par with few more additional provisions.

Further as per the said Act²⁷ where there is a contract for the sale of goods by description, there is an implied condition that the goods shall match with the description.

COERCION

(7) As per the Contract law²⁸ a contract will be void in case it lacks free consent and one of the factors is coercion, i.e., threatening to commit, any act which is illegal under Indian Penal Code or the unlawful detaining any property which will be unjust to any person, with the intention of forcing a person to enter into an agreement.

²² Kautilya Arthashastra – 3.15.3

²³ The Sale of Goods Act, 1930 Section 31 - Duties of seller and buyer

²⁴ Indian Contract Act, 1872 – section 37 - Obligation of parties to contracts

²⁵ Kautilya Arthashastra – 3.15.7

²⁶ The Sale of Goods Act, 1930 – Section 7. Goods perishing before making of contract and section 8. Goods perishing before sale but after agreement to sell

²⁷ The Sale of Goods Act, 1930 Section 15 - Sale by description

²⁸ Indian Contract Act, 1872 – Section 15 – defines “Coercion”

UNDUE INFLUENCE

(8) Arthashastra²⁹ states that when a person is in extreme distress such as swept away by a current, engulfed in flame or attacked by a wild animal, he may promise his rescuer everything. In such cases, the promise shall not be binding. Similarly under Contract law³⁰ a contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

ILLEGAL CONTRACTS

(9) Arthashastra and Contract Act has provided about illegal agreements in depth. So any contract influenced by mistake or misrepresentation are invalid and nothing can legalise it, however in case a consent is derived by coercion, undue-influence and fraud then the same is voidable at the option of the aggrieved party. Now in Arthashastra there is no concept of any voidable contract and they all are bifurcated as either valid or void.

From this we can derive that there have been many similar provisions in law relating to the Sale of Goods and Contract laws and other Acts thereby materialising a transaction. Further the said laws are even applicable today with few modifications related to current period.

(B) DIFFERENCES**VALIDITY OF AGREEMENTS**

(1) Arthashastra³¹ states that a contract is valid when entered between two persons of same class however it will be a void agreement in case the same is entered into in seclusion, inside the houses, in the dead of night, in forests, in secret, or with fraud.

Currently there is no such restriction. The validity of an agreement cannot be challenged on the grounds as mentioned in Arthashastra, except in case of fraud. Considering an agreement to be void, only because it is executed in seclusion or secretly or at night or in forest is quiet impractical as on date, however during that period the restrictions may be due the environment prevailing at that time, like in case of dark night people executing agreement may not be able to read it in an oil lamp so it's better to enter into an agreement when it's a bright day. Also in case of forest, it is possible that the parties could be attacked by dacoits or wild animals and so not being a safe place, the contracts should not be executed in forest. Further, previously many people were not educated and so they used to put their thumb impression in place of signature. There wasn't any concept of any person witnessing the agreement nor there were any forensically advanced techniques to verify the thumb impression of any person, if wrongly applied. However with the changing times now these restrictions are not reflected in current laws and incorporating such restrictions are not feasible.

(2) Arthashastra³² further provides that a contract will be valid when a debt is secured with an absent pledge or when they are viewed as not blame-worthy. Any transaction executed inside a house shall be valid when they are connected with inheritance, consignments, deposits and marriage or contracted by secluded women. It also states that certain transactions executed at night shall be valid when it is concerning loan which is secured in the absence of the object pledged or in case one of the party was absent at the time of the transaction provided that it is agreed by all others as a valid one.

Such provisions are not there in current laws. The validity of any contract is not determined on the basis of time of day or night when it is entered into. However in June, 2016 BMC issued a circular that now builders can carry out work on their construction sites till 10:00 pm, which was earlier allowed from 7:00 am to 7:00 pm. In fact a person can enter into contract at any time so far as the necessary laws of the Contract Act and any other applicable laws are complied with.

²⁹ Kautilya Arthashastra – 3.16.1 - 4

³⁰ Indian Contract Act, 1872 – Section 15 – defines “Undue influence”

³¹ Kautilya Arthashastra – 3.1.2

³² Kautilya Arthashastra – 3.1.6 – 8

(3) It may also be noted that as per Arthashastra³³, agreements entered into in forests shall be valid with those persons who live most part of their life in forests. Similar provisions are found in the Wildlife Protection laws³⁴ which provides that the Chief Wildlife Warden may permit a person to enter in a sanctuary to carry out a transaction of lawful business with any person residing in the sanctuary. Further, it can be noted that, there are no restrictions in current law with respect of disallowance of carrying out any transaction in forests. A person has a liberty to execute agreement at any place in India.

IV - DEPOSITS, PLEDGES AND SIMILAR TRANSACTIONS

George Bernard Shaw an Irish playwright has stated “Money is the most important thing in the world. It represents health, strength, honour, generosity, and beauty as conspicuously as the want of it represents illness, weakness, disgrace, meanness, and ugliness.” People need money to fulfil their needs. At times people have to borrow money to meet their expenses which may be either for personal or commercial purpose. In Kautilya Arthashastra the borrowings have been termed as debts and deposits. Both of them are closely related to each other.

CREDIT FACILITIES

Further as per Arthashastra³⁵ deposits includes other credit facilities like

- (i) pledges,
- (ii) mortgages,
- (iii) delivery orders,
- (iv) courier deliveries,
- (v) borrowings,
- (vi) hiring,
- (vii) sale through agents,
- (viii) entrusting articles to artisans and
- (ix) secret agreements.

SECURITY

In case of aforesaid credit facilities, goods are handed over as a guarantee for their repayments, from one party to another party for a temporary period. The lender earns interest from the borrower. Further one must enter into transactions with people of one's own group or with strangers openly in the presence of witnesses, properly disclosing the place, time, quantity and quality.

EXISTING APPLICABLE LAWS

Currently in commercial parlance there are different laws which would cover different types of credit facilities or loans availed by any borrower which will be dependent not only on the type of entity which is borrowing but also on the type of entity providing loan. In general following laws are applied like The Indian Contract Act, 1872, Negotiable Instruments Act, 1881, Code of Civil Procedure, 1908, Recovery of Debts due to Banks and Financial Institutions Act, 1993, Arbitration & Conciliation Act 1996, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, The Companies Act, 2013, The Debts Recovery Tribunal Regulations, 2015, Foreign Exchange Management (Deposit) Regulations, 2016 and Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.

Considering the customs of 2400 years ago and the current period, in respect of credit facilities provided we can understand that currently all credit facilities which used to be there in old era is still prevailing and effective in today's commercial transactions. All past credit facilities have been beautifully and in-depth covered by different current laws. An eye of details ingrained in Arthashastra is really commendable and acts as ideal principles even as on date.

³³ Kautilya Arthashastra – 3.1.9

³⁴ The Wildlife (Protection) Act, 1972 - Section 28 provides - Grant of permit

³⁵ Kautilya Arthashastra – 3.12

The Arthashastra describes that even though all the above mentioned credit facilities are of similar nature, it states that each and every one has its own peculiar feature, which makes them unique and different from each other. Pursuant to current laws also we find that each and every type of credit facility is different from others.

Let us now understand each and every type of credit facility in detail.

(A) SIMILARITIES

(i) Pledges:

(1) As per Arthashastra³⁶ in case of pledge the pawnee shall not use the security provided, for his own benefit without the prior permission of the owner. If he does so, he shall pay to the owner the profit earned less any interest due; he shall also pay a fine. A pledge that is useful to the lender, cannot be forfeited and no interest shall be payable by the borrower on the money lent against it and the debtor shall never lose his right to redeem it. A pledge that does not provide a benefit can be forfeited, and the principal it guarantees bears interest.

Thus a pledged article could be used by the creditor for his own benefit, example a house could be rented, a field is cultivated, a cow is milked. The person who does not return a pledge to the man who has come to redeem it is subject to fine. In case the borrower is absent and the lender fears about the destruction of the pledged material, then in that case he may sell it at the highest price with the consent of the judges or as per the satisfaction of the guardian of pledges. However in case of an immovable pledge, if the lender enjoys its yield fruits irrespective of applying any labour or not, the lender can keep all the earnings and he need not use the excess amount for towards reduction of the principal. Anyone who enjoys it without permission should give the returns above the amount of interest as also a security.

Indian Contract Act³⁷ provides about the pledge and its related provisions. It explains that the pawnee may retain the goods pledged, not only for payment of the debt but for the interest and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

The laws applicable to pledge transactions during both eras are same and one could hardly find any difference between them. Even the Arthashastra laws with respect of pledge, has been in-depth covering all aspects of the said nature of credit facilities. Thus we can also say that the provisions related to pledge has been completely taken from old Arthashastra laws which has its practical applications even today.

(ii) Directive and Assignment

(2) As per Arthashastra³⁸ there are two kinds of transactions in which a property is handed over to another for transport and delivery to a third person. The person in charge of the property to be delivered shall not be held responsible if:

- the caravan in which he was travelling does not reach its destination; or
- he and the caravan are robbed and abandoned on the way.

As per existing Sale of Goods Act³⁹ where, the seller is required to send the goods to the buyer and he delivers the goods to a carrier, for transportation or delivers goods to a wharfinger for safe custody, then it is considered to be a delivery of the goods to the buyer. However if the seller omits to make a contract with the carrier on behalf of the buyer, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

³⁶ Kautilya Arthashastra – 3.12.3 - 15

³⁷ The Indian Contract Act, 1872 – Sec. 172 to 179

³⁸ Kautilya Arthashastra – 3.12.19

³⁹ The Sale of Goods Act – Sec 39. Delivery to carrier or wharfinger.

The laws related to submission of goods for delivery to any carrier is also same in both cases. The rights, duties and responsibilities of person in charge of the goods is also found to be adequately discussed in Arthashastra along with current laws.

(iii) Borrowing and Hiring / Renting

(3) Arthashastra⁴⁰ states that anything borrowed or hired shall be returned in the same condition in which it was received. The borrower or hirer shall not be held responsible for damage or loss if the lender had placed restrictions as to time or place on its use, or if the damage was due to deterioration or an unforeseen calamity.

Correspondingly similar provisions are also found in Indian Contract Act⁴¹ which has discussed about “Bailment”.

The law also states that⁴² in all cases of bailment the bailee is bound to take care of the goods as a prudent man. Further⁴³ in the absence of any special contract, the bailee is not responsible for the loss or destruction of the things bailed, if he has taken reasonable care of it.

Further⁴⁴ it may be noted that in case the goods are bailed for a specific period or purpose, then it is bailee’s duty to return it without demand, on expiry of time or the purpose for which they were bailed has been accomplished. If⁴⁵, by the default of the bailee, the goods are not returned at the proper time, he is responsible to the bailor for any loss or destruction of the goods.

On analysing obligations of the bailor⁴⁶, bailor is responsible to the bailee for any loss which the bailee may sustain in case bailor was not entitled to make the bailment, or to receive back the goods.

Even in case of laws related to bailment it can be noted that the current laws are completely based on the old laws prevailing more than twenty centuries ago. Since the laws of both periods are totally same except for few additional provisions in current laws, the foundation of Contract Act has been definitely Kautilya’s Arthashastra.

(iv) Sale through an Agent

(4) Pursuant to Arthashastra⁴⁷ an agent selling goods on behalf of someone else, at the right time and place, shall hand over to the owner of the merchandise the price as received i.e., the cost price plus the profit made less their commission. If the price realised is lower because of missing the best opportunity for sale, the agent shall pay the owner the cost of the goods at the time he receive them and the normal profit.

When no profits are made, then the retail seller will pay only the price of the goods to the wholesaler, if it’s agreed in advance. If the price falls between the time of entrusting the goods and the time of sale, only the lower price actually realised shall be payable.

In case goods are sold abroad or if sold after a lapse of time, the amount payable i.e., the cost price and the profit shall be reduced by the expenses and losses, if any. A separate account shall be provided for each type of goods.

Similar provisions are also reflected in the Indian Contract Act which states that the authority of an agent may be expressed or implied. It also discusses about agent’s duty in conducting principal’s business⁴⁸. An agent is bound to conduct the business as per the directions given by the principal, or, according to the prevailing customs else he must pay for loss to his principal

⁴⁰ Kautilya Arthashastra – 3.12.22,23

⁴¹ Indian Contract Act - Chapter IX - Of Bailment

⁴² Indian Contract Act – Section 151 - Care to be taken by bailee

⁴³ Indian Contract Act – Section 152 - Bailee when not liable for loss, etc., of thing bailed

⁴⁴ Indian Contract Act – Section 160 - Return of goods bailed, on expiration of time or accomplishment of purpose

⁴⁵ Indian Contract Act – Section 116 - Bailee’s responsibility when goods are not duly returned.

⁴⁶ Indian Contract Act – Section 164. Bailor’s responsibility to bailee

⁴⁷ Kautilya Arthashastra – 3.12.25 – 30

⁴⁸ Indian Contract Act – Section 211 - Agent’s duty in conducting principal’s business

An Agent has a right to retain money out of sums received on principal's account.⁴⁹ An agent may retain all moneys due to himself.

The agent is bound to pay to his principal all sums received on his account after deducting prescribed amount. In the absence of any special contract⁵⁰, payment is due to the agent on completion of such act. Further ⁵¹ an agent who is guilty of misconduct is not entitled to any remuneration.

Currently the law on Agency are not only exhaustive but wide aspects from different transactions have been considered. However the groundwork of current laws seems to have been extracted from Arthashastra.

(v) Entrusting articles to artisans and craftsmen

(5) Chanakya has stated in Arthashastra⁵² that Artisans are by nature dishonest. An artisan who hands over an object to anyone other than the person who had entrusted it to him shall be deemed to have lost it. If an artisan is accused of misappropriation, the judges shall make a decision after enquiring into the character, antecedents and previous convictions, if any, of both the artisan and the accuser. Primarily considering all Artisans are dishonest is an improper approach. Dishonesty is very subjective and should not be generalised for any particular class of professionals.

When⁵³, after investigation, it is proved that the artisan had misappropriated property entrusted to him, he shall not only be made to return it but also be punished as a thief.

Similarly as per the Indian Contract Act⁵⁴ if it appears that it was the intention of the parties to any contract that it should be performed by the promisor himself, such promise must be performed by the promisor.

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

(6) Further, even Consumer Protection Act⁵⁵ explains "deficiency" means any fault imperfection, or shortcoming in the quality of performance which is required to be maintained in relation to any service. It also covers services which are hazardous which such person could have known with due diligence to be injurious to life and safety.

Specific Relief Act, 1963 provides large number of remedial aspects of law. As per the said Act⁵⁶ a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure" 1908. Further⁵⁷ a person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

(B) DIFFERENCES

(1) It may be noted that Arthashastra has focused on the obligations of the bailee, i.e., the person who has the possession of the goods or material. However, the current laws brings in responsibilities and obligations on both parties i.e., the bailor and bailee. It states ⁵⁸that the bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

⁴⁹ Indian Contract Act – Section 217 - Agent's right of retainer out of sums received on principal's account

⁵⁰ Indian Contract Act – Section 219 - When agent's remuneration becomes due

⁵¹ Indian Contract Act – Section 220 - Agent not entitled to remuneration for business misconducted

⁵² Kautilya Arthashastra – 3.12, 34 - 37

⁵³ Kautilya Arthashastra – 3.12.41,44,48,50

⁵⁴ Indian Contract Act, 1872 - section 40 - Person by whom promise is to be performed

⁵⁵ The Consumer Protection Act, 1986

⁵⁶ Specific Relief Act, 1963 - Section 5 - Recovery of specific immovable property

⁵⁷ Specific Relief Act, 1963 - Section 7 - Recovery of specific movable property

⁵⁸ Indian Contract Act – Section 150 - Bailor's duty to disclose faults in goods bailed

On overall analysis of Commercial Laws during both period, we would come across many interesting similarities and differences of which few of them have been covered above.

V – CONCLUSION

Any economy's stability is based on its legal system and its enforcement providing justice to its citizens. Overall we may notice that over the years the laws have become more and more detailed and exhaustive considering the complexity of the transactions involved, however the roots of the same can be found in the pages of Kautilya Arthashastra which have been of great significance and has played a vital role over all these centuries for framing laws not only at Indian level but even globally and other countries have accepted the principles of laws specially in the stream of Commercial Laws. We can further bring improvements in current laws from our learning's of Arthashastra like any contract entered under provocation should not be considered valid and so. Due to its exhaustive and unambiguous nature the disputes resolutions would have been quick in that period. Arthashastra maintained moral order which has been universal and overall it guided people to carry out their conduct as responsible human beings.

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3. *Kautilya - The Arthashastra – L.N. Rangarajan*
4. *King, Governance and Law in Ancient India – Patrick Olivelle*
5. *The Indian Contract Act, 1872*
6. *The Sale of Goods Act, 1930*
7. *Specific Relief Act, 1963*
8. *The Consumer Protection Act, 1986*
9. *The Wildlife (Protection) Act, 1972*
10. *Indian Majority Act, 1875*

