

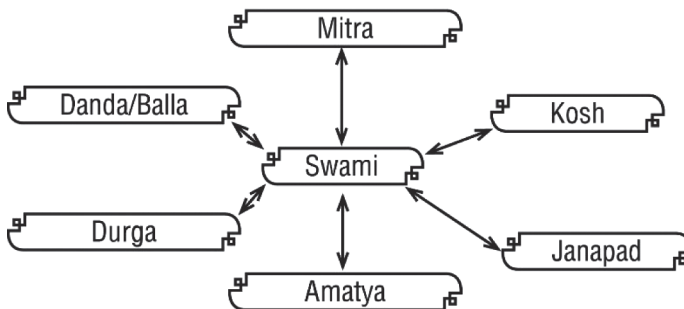
Integrity in State and Statecraft: Revisiting Kautilya

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Kautilya is a pioneer in the logical and unique treatise on the state and statecraft. He is a realist by tradition. A *chef-d'oeuvre* popularly read by the title *Arthashastra*, Kautilya delved into the art of statecraft or governance *par excellence*. His text has its pretext and context wherein every single aspect of human life falls under the jurisdiction of the State. Kautilya's text lays down an organizational set-up. It provides a neat and clean separation of ethics and politics. Integrity in state and statecraft includes ethics and more so applied ethics or ethics in action in a real-life situation. There is a dilemma in contemporary politics about whether to follow realism or ethics to resolve and manage public and state affairs. Revisiting Kautilya has become necessary to strike a balance on this dichotomy to pursue "liberal realism."

Figure1: Kautilya's Saptanga Theory of State



Kautilya was convinced that politics devoid of ethics posed a danger to the prosperity and security of the State. He believed that *dharma* or righteousness must govern the state of affairs. In this regard, to understand the entire state machinery Kautilya conceptualized the *Saptanga Theory of State*. In this theory, seven vital

elements/organs of the State are denoted for their functional operations, namely, *Swami* (the King or the Head), *Amatya* (the Minister), *Janapad* (the land and the people/population and territory ~ elements of the state by the western conception), *Durga* (the Fortress/*Gadhi* or *Garh*), *Kosh* (the Treasury), *Danda/Balla* (the Army/Punitive Agency/Law Enforcement Agency) and *Mitra* (the Allies/friends). This holistic set-up of the organs of the State is known as *the Saptanga Theory of State* in Kautilya's ancient India.

Swami is an indispensable, integral and inseparable part of the State in ancient India. *Swami* is *primus inter pares* (first among equals) and in all cases, belongs to the noble class who possess virtuous qualities in both head and heart. In other words, this chief or figurehead reigns by using the faculty of logic, reason and emotions. *Amatya* refers to all principal public officials who are involved in the functioning of the government. They ensure the proper functioning and adequate performance of the government. *Janapad* must be fertile and productive. The *Durga* is constructed on the borders of the territory. Kautilya divided these forts into water, hill, desert and forest forts. The fifth element is *Kosh* which Swami must conserve and acquire to promote the welfare, well-being and security of the State and its residents.

Swami and the Mantriparishad (the Council of Ministers)

Kautilya attached great importance to the *Mantriparishad* or the Council of Ministers. It is Swami who has to decide on the number of departments his State should have. In all important decisions, the Swami must consult his ministers and make particular policy decisions. He further provides essential criteria to become a minister. A minister must be a native of the territory, born in a high family, influential, highly trained in arts, must have foresight, be wise, bold, eloquent, skillful, intelligent, pure in character, staunchly loyal towards the Swami, excellent in conduct, strength, health and bravery, and free from all the six vices. After the Swami, the *Amatya* is of chief importance and sometimes in charge of the entire administration according to Kautilya. He suggested that the Swami must appoint not more than four ministers to function as a consultative body. The Ministers have to be summoned for their suggestions and the Swami must thoroughly and meticulously monitor the activities of all the Ministers.

In the ancient Indian political process, the *Dharmashastra* served as the guide for the delivery of justice. According to Kautilya, whenever there is a conflict between the sacred law and the law in practice, the Swami must give a judgment. He further supported the rule of law. When the Swami abides by the rules, he would one day

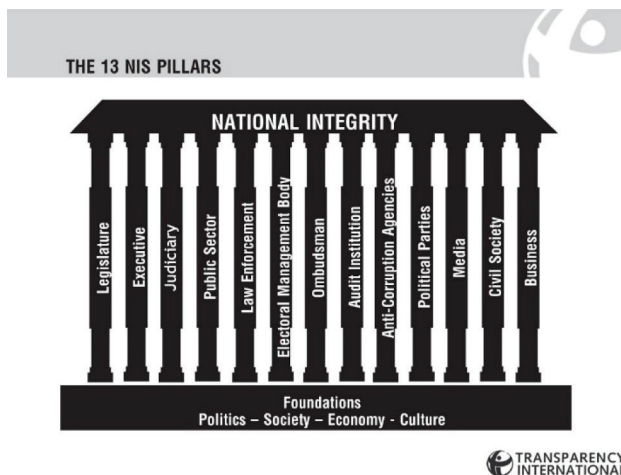
conquer the whole world. On the other hand, if he abuses or misuses power and authority, he would be condemned to hell.

About the qualities of a judge, Kautilya viewed that he must be a person of high caliber, selfrestraint, balanced and must be well-versed in the basic principles of law. It is binding upon a judge to familiarize himself with the people and also has thorough knowledge about the customs of the people. Then, it would enable him to give the correct judgments. Further, the judge should not be corrupt, greedy and contemptible. By being kind-hearted and capable of adjudicating, the judge must give punishment as per the magnitude of the crime committed. Kautilya also emphasized an eye witness, who is a person of integrity and character and is given due protection against injury or insult. It was widely believed by the entire ancient Indian society that *Dharma* and customs are inviolable and the Swami's commands are nothing but application of those sacred laws. To convey his decree, a group of secretaries and clerks were maintained and precautions were taken to prevent any connivance of existing laws.

National Integrity Context and System Analysis

When we evaluate the Constitution of Nepal 2072 which was promulgated on September 20, 2015, the principles of transparency, accountability and integrity in the pillars of the national integrity system are somewhat touched upon. To start with the main political document, we have to examine some principal pillars.

Figure 2: Pillars of a National Integrity System



At the outset is the Preamble. It is to be noted that it mirrors the spirit and letters of the Constitution - the main document in the political charter. The preamble lists aspirations of the competitive multi-party democratic system, entitlements of civil liberties, creation of independent, impartial and competent judiciary, the concept of the rule of law, socialism based on democratic norms and values, good governance, and sustainable peace-building in the federal democratic republic. The fundamental political essence has been covered and this constitution is the main source of law in the country (Part 1, Preliminary).

Under fundamental rights and duties, there are provisions of freedom of expression and views, right to peaceful assemblies, freedom to form political parties and associations (Article 17), freedom of media (Article 19) and its importance in a democratic society, right to information (Article 27), right to social justice (Article 20) and delivery of writ and petitions from the court if fundamental rights are infringed upon (Article 42). Public interest litigations can be filed to seek constitutional remedies for social justice and security. All these fundamental rights and duties are to be experienced, fully within three years of enactment of the Constitution.

In directive principles, fundamental policy and responsibility of the State, there is an emphasis on the minimum consensus of the State and its clear stance on governmental areas of work. Article 50 mentions the rule of law, fundamental rights, and norms and values of human rights, inclusiveness, participation and social justice, and mutual support of the federal state, province and local line agencies of the government. In the private sector (business) public-private partnership model is prescribed. Article 51 Clause B states about the policy related to political and governing systems to implement international treaties, agreements, conventions, and protocols (rule 3), stresses the public sector to be clean, competent, impartial, transparent and corruption-free, publicly accountable and participatory state of affairs to ensure good governance (rule 4); cordial and cooperative relations envisioned between the central/federal government and provinces.

On policy-related social justice and inclusion, clause 14 states the assistance and role extended by the community, national and international NGOs making it accountable, transparent and engaged in the needy areas and country's priority sector.

To make state and constitutional agencies accountable with built-in checks and balances, they annually present the report to the Government of Nepal through the Head of State and from the Head of State to the Prime Minister and then discuss it in the Federal Parliament.

Regarding the structure of state and division of power, federal law is supreme and laws that are in contradiction with the federal law stand null and void. Federal executive power is vested in the Council of Ministers of the Government of Nepal which is vested with the rule application power. It is accountable and responsible to the Federal Parliament.

Federal Parliament is bicameral, with representatives elected from the mixed electoral system. The sessions of the Parliament are summoned, prorogued and ended by the Head of State. A motion of confidence and no-confidence can be tabled in the House of Representatives with the provision of impeachment of the President and Vice-President if they do not follow integrity rules and code of conduct. All Bills except fiscal policy are tabled in the Federal Parliament which is vested with the rule formulation powers. An ordinance or the government by Act is enforced by the Federal Executive which needs concurrence from the Federal Parliament.

Judiciary has three tiers of the judicial system – Supreme Court, High Court and District Court are vested with the rule adjudication powers. It has the power of judicial review, judicial activism and acts as a custodian of the Constitution. An independent, fair and impartial judiciary with the Supreme Court follows the principle of separation of powers. In the parliamentary form of government, there is a fusion of powers as the Executive is formed within the Parliament. The Judicial Council and Judicial Service Commission report annually to the President and from the President, through the Prime Minister, to the Federal Parliament underlying norms and values of transparency, accountability and integrity.

Chief Commissioner and Commissioners of Commission for the Investigation of Abuse of Authority (in its scope it can probe retired judges of the Judicial Council and retired soldiers of Nepal army relieved from Army Act), Auditor-General of Auditor-General's Office (it does annual auditing of public expenditure of all three tiers of federal governance), Chief Commissioner and Commissioners of Election Commission and Chairman and Members of the Public Service Commission are relieved of the duty if they are not competent to execute their roles, responsibilities and tasks. These public officials of constitutional agencies must be of high integrity and caliber. They submit their annual report to the President and from the President through the Prime Minister who is accountable to the Parliament. However, the parliament follows the procedural method and the report is not discussed much nor implemented to the hilt.

In Article 269, related to the Political Parties, a party can be registered by submitting ByLaws, manifestos and additional documents required by federal laws

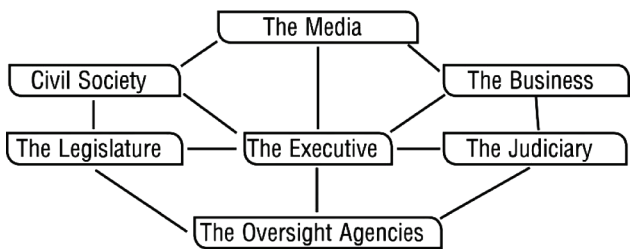
to the Election Commission. The annual auditor’s report of political parties also has to be submitted to the EC.

On the matter of public treasury, Public Expenditure Financial Accountability rests with the Federal Parliament. Legislative deliberations, oversight and implementation on this domain are not enforced to address grudges against this approach. The National Integrity System functions well if ideas and principles are followed and enforced astutely by exhibiting and acting on strong political will.

New Context in the Saptanga Theory of State

In the new context of the *Saptanga Theory of State*, there is a need to unveil seven crucial and major overarching elements derived from the standard national integrity system’s pillars, namely, the Parliament, the Executive including the public sector, the Judiciary, oversight agencies of the State, media, civil society and business. These are in the abstract form derived from the thirteen pillars of the standard national integrity system framework. This standard is devised in the concept of measuring good governance, transparency, accountability and integrity by Transparency International. It is developed to research national integrity systems to support strong advocacy based on evidence. This evidence reveals the discrepancy between the legal regime and practical application of law to maintain a clean, swift and smart government with efficient public service delivery institutions. It would assist the leadership with enough stamina to push toward reforms in the national integrity system. Thus, integrity in the state and the statecraft can be conserved, promoted and sustained. This innovative context by revisiting *Kautilyan Saptanga Theory of State* can address, redress and remedy the ever-growing creaks in the cogs of governance in the 21st century.

Figure 3: *New Context in the Saptanga Theory of State*



An abridged version of the original *Saptanga Theory* is honed to meet the reason with action-oriented solutions and knowledge. The principal in charge of **the Executive** should possess situational and decisive leadership in the critical transitional political system. This would determine the course of direction of the State and further enrich the statecraft. It would put a benchmark characterized by excellence and intelligence. This smart quality of leadership must be groomed and nurtured in every domain of the life of the state. Professionalism brings more goods avoiding a loss in money, time and resources.

The deliberative functions of **the Parliament** are not negated in the modern democratic state where democracy is being democratized. Voices of every Member of the Parliament should echo the vibrations of prudent questioning and answer across the floor and with the floor.

The Judiciary is another chief pillar in rule adjudication where legal and criminal cases are to be resolved. But the power of the judiciary is confined mostly to judicial review on administrative/executive decisions and in Nepal even inviting this sacred jurisdiction in examining political decisions in the form of politics of point or points of politics. Judicial activism is nowhere to be seen when the delivery of justice is delayed more frequently with the use of judicial discretion. This monolithic artifact of justice delivery institutions has become more and more obese and deformed as corruption has not spared it too.

On the other hand, **the oversight agencies** which scrutinize the proper functioning of state institutions are showing publicity stunts. They must resort to addressing recommendations and suggestions as mentioned in their constitutionally guaranteed annual reporting to the Head of State and Government.

The Media in the modern state and statecraft is an important element in pressurizing and bringing to notice the attention of stakeholders on the burning issues as well as concerns of life, liberty and security – human and social. Its space is ever more increasing, persuasive and influential. If we read in between the lines it is the Fourth Estate by its nomenclature.

The Business promotes employment, opportunities and peace. It unleashes prosperity and the potential to tap human and social capital as well. Its importance is underlined in any liberal democratic state where capitalism reigns but “invisible hand” rules.

The final element in this recipe of a new context in the *Saptanga Theory* is deliberations outside the domain of the state and market economy in **Civil Society**.

It enables the participative, collective and concerted interests of the citizens who converge to counterargue, counter-discuss and counteract the reasoning and praxis of the *Arthashastra*. It is perceived and experienced by citizens who deliberate on alternatives to their needs and wants if it is not addressed by the polity.

Thus, making these seven ingredients in a new context is an old wine in a new bottle. Leadership qualities have to muster experience in checks, balances and separation of powers making state organs truly democratic and attuned to the forces impinging on the Nepalese state in the need of the hour.

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