

Gutama 12

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GUATAMA CHAPTER XII.

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1. A Sudra who intentionally reviles twice-born men by criminal abuse, or criminally assaults them with blows, shall be deprived of the limb with which he offends.

[XII. 1. Apastamba II, 10, 27, 14; Manu VIII, 270, 279-283; Yagnavalkya II, 215. Haradatta adds that an abusive word or a blow given in jest must not be punished in the manner prescribed above, as the word 'parushya' presupposes criminal intent.]

2. If he has criminal intercourse with an Aryan woman, his organ shall be cut off, and all his property be confiscated.

3. If (the woman had) a protector, he shall be executed after (having undergone the punishments prescribed above).

4. Now if he listens intentionally to (a recitation of) the Veda, his ears shall be filled with (molten) tin or lac.

5. If he recites (Vedic texts), his tongue shall be cut out.

6. If he remembers them, his body shall be split in twain.

7. If he assumes a position equal (to that of twice-born men) in sitting, in lying down, in conversation or on the road, he shall undergo (corporal) punishment.

8. A Kshatriya (shall be fined) one hundred (Karshapanas) if he abuses a Brahmana,

9. In case of an assault, twice as much.

[2. Apastamba II, 10, 26, 20; Mayukha XIX, 7, where, however, arya has been altered to akarya. Haradatta adds that the two punishments are cumulative in the case of a Bramani only. If the offence is committed with a Kshatriya, the offender is liable to the first only; if he sins with a Vaisya, to the second.

3. Apastamba II, 10, 27, 9; Manu VIII, 359; Yagnavalkya II, 286.

7. Apastamba II, 10, 27, 15; Manu VIII, 281.-The translation follows Haradatta, who is guided by the parallel passages. But for the latter, one would translate 'he shall be fined.'

8. Manu VIII, 267; Yagnavalkya III, 204-207. Manu VIII, 136 states one Karshapana or copper Pana contains 80 Raktikis, which would correspond to 97-60 grammes of the metrical system.]

10. A Vaisya (who abuses a Brahmana, shall pay) one and a half (times as much as a Kshatriya).

11. But a Brahmana (who abuses) a Kshatriya (shall pay) fifty (Karshapanas),

12. One half of that (amount if he abuses) a Vaisya,

13. (And if he abuses) a Sudra, nothing.

14. A Kshatriya and a Vaisya (who abuse one another shall pay the same fines) as a Brahmana and a Kshatriya.

15. (The value of) property which a Ridra unrighteously acquires by theft, must

be repaid eightfold.

16. For each of the other castes (the fines must be) doubled.

17. If a learned man offends, the punishment shall be very much increased.

18. If fruits, green corn, and vegetables are appropriated in small amounts, (the fine is) five Krishnalas (of copper).

[10. Manu VIII, 267.

11. Manu VIII, 268.

12. Manu VIII, 268.

13. Manu VIII, 268. Haradatta adds that, as a Brahmana is declared to pay nothing for abusing a Sudra, a Kshatriya and a Vaisya are liable to be fined for that offence, and that according to Usanas a Kshatriya shall pay twenty-four Panas, and a Vaisya thirty-six,

14. I.e. a Vaisya shall pay one hundred Panas for abusing a Kshatriya, and a Kshatriya fifty for abusing a Vaisya.

15. Manu VIII, 337.

16. Manu VIII, 337-338. I.e. a Vaisya is to pay sixteen times the value of the stolen property, a Kshatriya thirty-two times, and a Brahmana sixty-four times.

17, Manu VIII, 338.

18. Manu VIII, 330. Krishnala is another name for Raktika, used also by Yagnavalkya I, 362. It equals 0.122 grammes of the metrical system, Prinsep, Useful Tables, p. 97.]

19. If damage is done by cattle, the responsibility falls on the owner.

20. But if (the cattle) were attended by a herdsman, (it falls) on the latter.

21. (If the damage was done) in an unenclosed field near the road, (the responsibility falls) on the herdsman and on the owner of the field.

22. Five Mashas (are the fine to be paid) for (damage done by) a cow,

23. Six for a camel or a donkey,

24. Ten for a horse or a buffalo,

25. Two for each goat or sheep.

26. If all is destroyed, (the value of) the whole crop (must be paid and a fine in addition).

27. If (a man) always neglects the prescribed (duties) and does that which is forbidden, his property beyond (the amount required for) raiment and food shall be taken from him (until he amends).

28. He may take, as his own, grass for a cow, and fuel for his fire, as well as the flowers of creepers and trees and their fruit, if they be unenclosed.

29. The legal interest for money lent (is at the rate of) five Mashas a month for twenty (Karshapanas).

[20-21. Manu VIII, 240; Yagnavalkya II, 162.

22-26. Manu VIII, 241; Yagnavalkya II, 159-161; Colebrooke III, Digest IV, 40. Haradatta, relying on Usanas everywhere, reckons twenty Mashas to the Karshapana.

27. Apastamba II, 11, 27, 18.

28. Apastamba I, 10, 28, 3; Colebrooke III, Digest IV, 22.

29. Manu VIII, 140; Yagnavalkya II, 37; Colebrooke I, Digest 25. Haradatta states that a Karshapana contains twenty Mishas. Thus the monthly interest for 400 Mishas being five Mishas, the rate is $1\frac{1}{4}$ per cent for the month, or 15

per cent per annum.]

30. Some (declare, that this rate should not be paid) longer than a year.

31. If (the loan) remains outstanding for a long time, the principal may be doubled (after which interest ceases).

32. A loan secured by a pledge that is used (by the creditor) bears no interest;

33. Nor money tendered, nor (a debt due by a debtor) who is forcibly prevented (from paying).

34. (Special forms of interest are) compound interest, periodical interest,

35. Stipulated interest, corporal interest, daily interest, and the use of a pledge.

[30. Colebrooke I, Digest 40; Manu VIII, 153.

31. Manu VIII, 151; Colebrooke I, Digest 59.

32. Manu VIII, 143; Colebrooke I, Digest 79.

33. Colebrooke I, Digest 79. 'Likewise the debt of a debtor who, being desirous to pay, is imprisoned by the king or others in a prison or the like, and who is thus unable to pay, does not increase from that day.'--Haradatta.

34. For this and the next Sutra, see also Colebrooke I, Digest 35-45, in the notes on which latter text the various explanations of these terms, found here, have been fully discussed. 'If a large or a small interest is taken on condition that the loan is to be repaid on a certain date, and that, in case of non-payment, 'it is to be trebled or quadrupled, that is called periodical interest'--Haradatta.

35. 'Where the lender and the borrower, having regard to the country, the time, the object, and the condition (of the borrower), agree between themselves (on a certain rate), e.g. of ten per cent per mensem, that is called stipulated interest. Corporal interest is that which is payable by bodily labour. Thus Brihaspati says, "Corporal interest is that connected with work." But Vyasa explains it thus, "Corporal interest is that which arises from the work (or use) of a (pledged female quadruped) to be milked, or of (a male) to carry burdens." Katyayana explains the daily interest (lit. the interest resembling the growth of the lock on the head), "That which is taken daily is called daily interest." . . . 'E.g. for a Prastha of grain lent a handful of grain is taken daily.'--Haradatta.]

36. The interest on products of animals, on wool, on the produce of a field, and on beasts of burden (shall) not (increase) more than the fivefold (value of the object lent).

37. The property of (a person who is) neither, an idiot nor a minor, having been used by strangers before his eyes for ten years, (belongs) to him who uses it,

38. (But) not (if it is used) by Srotriyas, ascetics, or royal officials.

39. Animals, land, and females are not lost (to the owner) by (another's) possession.

[36. Colebrooke I, Digest 62. Haradatta mentions also another explanation of the Sutra: 'Another (commentator) says, " If products of animals and the rest have been bought, and the price is not paid at once, that may increase fivefold by the addition of interest, but not, to a greater sum.'"

37. Manu VIII, 147-148; Yagnavalkya II, 24.

38. Haradatta adds that in the case of a Srotriya and of an ascetic, the owner may allow the use of his property for a long time, desiring to acquire merit by doing so, and that fear may prevent him from opposing the king's servants. Hence prolonged possession by such persons does not necessitate the conclusion that the owner had given up his rights. As ascetics cannot possess any property, the Sutra must refer to their occupying an empty house which has an owner.

39. Manu VIII, 149; Yagnavalkya II, 25. The translation given above agrees with an explanation of the Sutra which Haradatta mentions, but rejects. He himself prefers the following: 'Animals, i.e. quadrupeds; land, i.e. a field, a garden, and the like; females, i.e. female slaves and the like. No long possession of animals and the rest is necessary in order to acquire the rights of ownership over them. Even after a short period they become the property of the possessor. For how (would it be possible that) a person, who himself wants butter-milk and the like, should allow a cow which he himself has bought, and which gives daily a Drona of milk, to be milked in the house of another person?' &c. &c.]

40. The heirs shall pay the debts (of a deceased person).

41. Money due by a surety, a commercial debt, a fee (due to the parents of the bride), debts contracted for spirituous liquor or in gambling, and a fine shall not involve the sons (of the debtor).

42. An (open) deposit, a sealed deposit, an object lent for use, an object bought (but not paid), and a pledge, being lost without the fault of the holder, (shall not involve) any blameless person.

43. A man who has stolen (gold) shall approach the king, with flying hair, holding a club in his hand, and proclaim his deed.

[40. Manu VIII, 162; Yagnavalkya II, 51.

41. Manu VIII, 159-160; Yagnavalkya II, 47, 54; Colebrooke I, Digest 202.

Taking into account the parallel passages of Manu and Yagnavalkya, Haradatta very properly restricts this rule to a bail for the personal appearance of an offender. In explanation of the expression 'a commercial debt' he gives the following instance: 'If a person has borrowed money from somebody on the condition that he is to repay the principal together with the gain thereon, and if he dies in a foreign country, while travelling in order to trade, then that money shall not be repaid by the son.' The instance explaining the term 'fee' (sulka) is as follows: 'If a person has promised a fee (to the parents of a woman) and dies after the wedding, then that fee does not involve his son, i.e. need not be paid by him.' The word sulka is, however, ambiguous, and may also mean 'a tax or toll.'

42. Manu VIII, 189; Yagnavalkya II, 59-66; Colebrooke II, Digest I, 29.

Haradatta declares the meaning to be, that in case the bailee was guilty of no negligence and took the same care of the deposits &c. as of his own property, neither he nor his heirs need make good the value of those which were lost or destroyed.

43. Apastamba I, 9, 25, 4.]

44. Whether he be slain or be pardoned, he is purified (of his guilt).

45. If the king does not strike, the guilt falls on him.

46. Corporal punishment (must) not (be resorted to in the case) of a Brahmana.

47. Preventing (a repetition of) the deed, publicly proclaiming, his crime, banishment, and branding (are the punishments to which a Brahmana, may be subjected).

48. That (king) who does not do his duty (by inflicting punishment) becomes liable to perform a Penance.

49. (A man who) knowingly (becomes) the servant (of a thief shall be treated) like a thief,

50. Likewise he who (knowingly) receives (goods) from (a thief or) an unrighteous man.

51. The award of the punishment (must be regulated) by a consideration (of the status) of the criminal, of his (bodily) strength, of (the nature of) the crime, and whether the offence has been repeated.

52. Or a pardon (may be given) in accordance with the opinion of an assemblage of persons learned in the Vedas.

[45. Apastamba I, 9, 251, 5.

46. Manu VIII, 124; Macnaghten, Mitakshara III, 4, 9.

47. Manu IX, 239, 241; Apastamba II, 10, 27, 8, 17-19; Macnaghten loc. cit.

Karmaviviyoga, 'preventing (a repetition of) the deed,' may also mean 'suspension from (his priestly) functions.'

48. Apastamba II, 11, 28, 13.

49-50. Manu IX, 278; Yagnavalkya II, 276.

51. Manu VII, 16; VIII, 126; Yagnavalkya I, 367.]