

Kautilya's
Arthashastra

Translated into English by
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Book III, "Concerning Law"

CHAPTER I. DETERMINATION OF FORMS OF AGREEMENT; DETERMINATION OF LEGAL DISPUTES.

IN the cities of Sangrahana, Dronamukha, and Stháníya, and at places where districts meet, three members acquainted with Sacred Law (*dharmasthas*) and three ministers of the king (*amátayas*) shall carry on the administration of Justice.

(Valid and Invalid Transactions.)

They shall hold as void agreements (*vyavahára*) entered into in seclusion, inside the houses, in the dead of night, in forests, in secret, or with fraud.

The proposer and the accessory shall be punished with the first amercement [A fine ranging from 48 to 96 *panas* is called first amercement; from 200 to 500 *panas*, the middlemost; and from 500 to 1,000 *panas* the highest amercement. See Chap. XVII, Book III]; the witnesses (*srotri* = voluntary hearers) shall each be punished with half of the above fine; and accepters shall suffer the loss they may have sustained.

But agreements entered into within the hearing of others, as well as those not otherwise condemnable shall be valid.

Those agreements which relate to the division of inheritance, sealed or unsealed deposits, or marriage; or those in which are concerned women who are either afflicted with disease or who do

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not stir out; as well as those entered into by persons who are not known to be of unsound mind shall be valid though they might be entered into inside houses.

Transactions relating to robbery, duel, marriage, or the execution of the king's order, as well as agreements entered into by persons who usually do their business during the first part of the night shall be valid though they might be done at night.

With regard to those persons who live most part of their life in forests, whether as merchants, cowherds, hermits, hunters, or spies, their agreements though entered into in forests shall be valid.

If fraudulent agreements, only such shall be valid as are entered into by spies.

Agreements entered into by members of any association among themselves shall be valid though entered into in private.

Such agreements (*i.e.*, those entered into in seclusion, etc.) except as detailed above shall be void.

So also 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 (*abhisasta*), a cripple, or an afflicted person, shall not be valid. But it would be otherwise if he were authorised.

Even agreements entered into by an authorised person shall be void if he was at the time (of making the agreements) under provocation, anxiety, or intoxication, or if he was a lunatic or a haunted person.

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In all these cases, the proposer, his accessory, and witnesses shall each be punished as specified above.

But such agreements as are entered into in person by any one with others of his own community in suitable place and time are valid provided the circumstances, the nature, the description, and the qualities of the case are credible.

Such agreements with the exception of orders (*Adesa*=probably a bill of exchange) and hypothecations may be binding though entered into by a third person. Thus the determination of the forms of agreement.

(The Trial.)

The year, the season, the month, the fortnight (*paksha*), the date, the nature and place of the deed, the amount of the debt as well as the country, the residence, the caste, the *gotra*, the name and occupation of both the plaintiff and the defendant both of whom must be fit to sue and defend (*kritasamarthāvasthayoh*), having been registered first, the statements of the parties shall be taken down in such order as is required by the case. These statements shall then be thoroughly scrutinised.

(The offence of Parokta.)

Leaving out the question at issue, either of the parties takes resort to another; his previous statement is not consistent with his subsequent one; he insists on the necessity of considering the opinion of a third person, though it is not worthy of any such consideration; having commenced to answer the question at issue, he breaks off at once, even though he is ordered to continue; he introduces questions other than those specified by himself; he withdraws his own statement; he does not accept what his own

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witnesses have deposed to; and he holds secret conversation with his witnesses where he ought not to do so.

These constitute the offence of *Parokta*.
(*Punishment for Parokta.*)

Fine for *parokta* is five times the amount (*paroktadandah panchabandah*).

Fine for self assertion (*svayamvádi* = asserting without evidence) is ten times the amount (*dasabandha*.)

(*Payments for Witnesses.*)

Fees for witnesses (*purushabhritih*) shall cover 1/8th of the amount (*astánga*). Provision proportional to the amount sued for may also be made for the expenses incurred by witnesses in their journey. The defeated party shall pay these two kinds of costs.

(*Countersuits.*)

In cases other than duel, robbery, as well as disputes among merchants or trade-guilds, the defendant shall file no countercase against the plaintiff. Nor can there be a countercase for the defendant.

(*Adjournments.*)

The plaintiff shall ('rejoin') reply soon after the defendant has answered the questions at issue. Else he shall be guilty of *parokta*, for the plaintiff knows the determining factors of the case. But the defendant does not do so. The defendant may be allowed three or seven nights to prepare his defence. If he is not ready with his defence within that time, he shall be punished with a fine

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ranging from 3 to 12 *panas*. If he does not answer even after three fortnights, he shall be fined for *parokta*, and the plaintiff shall recover out of the defendant's property the amount of the case. But if the plaintiff sues for a mere return of gratitude (*pratyupakarana*), then no (decree shall be passed).

The same punishment shall be meted out to such of the defendants as fail in their defence.

If the plaintiff fails to prove his case, he shall (also) be guilty of *parokta*. If he fails to substantiate his case against a dead or diseased defendant, he shall pay a fine and perform the (funeral) ceremonies of the defendant, as determined by the witnesses. If he proves his case, he may be permitted to take possession of the property hypothecated to him.

But if he is not a *Bráhma*n, he may, on his failure to prove his case, be caused to perform such ceremonials as drive out demons (*rakshoghna rakshitakam*.)

* In virtue of his power to uphold the observance of the respective duties of the four castes and of the four divisions of religious life, and in virtue of his power to guard against the violation of the *Dharmas*, the king is the fountain of justice (*dharmapravartaka*.)

* Sacred law (*Dharma*), evidence (*Vyavahára*), history (*Charitra*), and edicts of kings (*Rájasásana*) are the four legs of Law. Of these four in order, the later is superior to the one previously named.

* *Dharma* is eternal truth holding its sway over the world; *Vyavahára*, evidence, is in witnesses; *Charitra*, history, is to be found in the tradition (*sangraha*), of the people; and the order of kings is what is called *sásana*.

* As the duty of a king consists in protecting his subjects with justice, its observance leads him to heaven. He who does not

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protect his people or upsets the social order wields his royal sceptre (*danda*) in vain.

* It is power and power (*danda*) alone which, only when exercised by the king with impartiality and in proportion to guilt either over his son or his enemy, maintains both this world and the next.

* The king who administers justice in accordance with sacred law (*Dharma*), evidence (*vyavahára*), history (*samsthá*) and edicts of kings (*Nyáya*) which is the fourth will be able to conquer the whole world bounded by the four quarters (*Chaturantám mahím*).

* Whenever there is disagreement between history and sacred law or between evidence and sacred law, then the matter shall be settled in accordance with sacred law.

* But whenever sacred law (*sástra*) is conflict with rational law (*Dharmanyáya*=kings' law), then reason shall be held authoritative; for there the original text (on which the sacred law has been based) is not available.

* Self-assertion (*svayamváda*) on the part of either of the parties has often been found faulty. Examination (*anuyoga*), honesty (*árjava*), evidence (*hetu*) and asseveration by oath (*sapatha*)---these alone can enable a man to win his cause.

* Whenever by means of the deposition of witnesses, the statements of either of the parties are found contradictory, and whenever the cause of either of the parties is found through the king's spies to be false, then the decree shall be passed against that party.

[Thus ends Chapter I, "Determination of forms of Agreement; Determination of Legal Disputes" in Book III, "Concerning Law," of the *Arthasástra* of Kautilya. End of the fifty-eighth chapter from the beginning.]

CHAPTER II. CONCERNING MARRIAGE. THE DUTY OF MARRIAGE, THE PROPERTY OF A WOMAN, AND COMPENSATIONS FOR REMARRIAGE.