GOVERNMENT ORIENTAL SERIES

Class B, No. 6.
GOVERNMENT ORIENTAL SERIES

Class B, No 6-

Prepared under the Supervision of the Publication Department of the Bhandarkar Oriental Research Institute, Poona

POONA
Bhandarkar Oriental Research Institute
1973
HISTORY OF DHARMAŚĀSTRA
(ANCIENT AND MEDIEVAL
RELIGIOUS AND CIVIL LAW)

By
the late Dr. PANDURANG VAMAN KANE
National Professor of Indology

Vol. III
Second Edition

Bhandarkar Oriental Research Institute, Poona
1973
The second volume of the History of Dharmaśāstra was published in the third quarter of 1941. In the Preface to that volume I held forth hopes that the next volume dealing with the remaining subjects comprised in Dharmaśāstra might be placed before scholars in about three years thereafter. The Great War was then being fought in Europe and it was generally believed that India would remain free from the fear of actual invasion. But such fond hopes were shattered by the sudden attack on Pearl Harbour by Japanese bombers on 7th December 1941. Japan gained rapid and phenomenal victories and within about three months from the attack on Pearl Harbour vast territories from the Philippines to Burma fell into the hands of the victors. Calcutta and Trincomalee were bombed. Serious fears were entertained about an invasion of the mainland of India by land, sea and air. There was great panic in such coastal cities as Madras, Bombay and Karachi. The matters uppermost in the minds of Government officials and the members of the public were A. R. P. measures, the recruiting of men for the army, navy and air force and the removal of families and valuables to places of safety in the interior. Important and rare books from the libraries of the Bombay Asiatic Society and of the University of Bombay were taken to distant places for reasons of security. During almost the whole of 1942 it was very difficult for me to work on the preparation of the third volume in the midst of a general atmosphere of panic caused by the fear of invasion and the removal of valuable reference books from Bombay. Owing to the war there has been great scarcity of paper and printing also has become very costly. I decided upon writing only on a few of the several subjects that remained to be dealt with and chose Rājadharma, Vyavahāra and Sadācāra, the treatment of which is now placed before the public. Scarcity of paper and labour is responsible for the fact that this third volume has been in the press for nearly three years. The present volume increased in bulk beyond expectation. The fourth and last volume will deal with the following subjects: Pātaka, karmavipāka and prāyaścitta; antyesti, aśauca and srāddha; tīrtha; vrata; kāla and muhūrta; śānti; Paurāṇa dharma; the influence of the Pūrvamimāṃsā and other śāstras on dharmaśāstra; the religious and philosophical background of dharmaśāstra; the essentials of our culture, its future, the coming
social and other trends and their impact on the dogmas and ideals of Dharmaśāstra. I am personally anxious to finish all the remaining work as early as possible. But looking to my age (I am nearly 67 now), to my ailments and to the number of subjects that remain to be dealt with, it is impossible for me to say when the next and last volume may be published. This volume also is full of quotations, refers to many inscriptions, judicial decisions and legislative enactments. The reasons for this have been stated at length in the Preface to the second volume and I do not desire to repeat them here. In the general index to the second volume full references to works like the Manusmṛti were not given, because such works were quoted on almost every page. But some critics found fault with this, therefore in the index to this volume full references to all works are inserted.

All that now remains is the pleasant duty of acknowledging my obligations to others. Bloomfield’s Vedic Concordance, the Vedic Index of Professors Macdonell and Keith and several volumes of the Sacred Books of the East have been very useful in preparing this volume as in the case of the preceding one. I wish to mention specially the debt I owe to the late Mahāmahopādhyāya Kamalakrsna Smrutiśrī for his editorial work on twelve volumes on the different branches of dharmaśāstra, which have been of great use to me in writing all the volumes of my History viz. Hāralatā, Vīvādaraṇākara, Gṛhastharaṇākara, Kṛtyaratnakara, Tirthacintāmāni, Varsakṛṣṇākumudī, Dānakṛṣṇākumudī, Śraddhakṛṣṇākumudī, Sudhakṛṣṇākumudī, Dandaviveka, Rājadharmaṇaṣṭubha and Agastyaṣamhitā. I am highly obliged to Paramahamsa Śvāmī Kevalananda Sarasvatī of Poona for frequent help and guidance in solving some intricate problems of Dharmaśāstra, to Prof. N. A. Gore, M. A. of Poona for help in the careful correction of proofs, to Tarkatīrtha Raghunāthaśāstri Kokjje of Lonavla and Mr. N. G. Chapekar, B. A., LL. B (retired F. C. Sub-Judge), of Badlapur for reading through the whole volume and suggesting some additions and corrections.

Assistance in various ways during the progress of the work for the last four years was very kindly rendered by a host of friends and acquaintances, among whom I should like to make special mention of Prof. H. D. Velāṇkār, Dr. R. N. Dandekar, Dr. S. K. Belvalkar, Rao Bahadur Prof. Rangswami Aiyangar, Dr. A. S. Altekar, Mr. P. K. Gode, Dr. Raghavan, Mr. S. N. Joshi of Bhārata-ītiḥāsa-samōdhaka-mandala at Poona, Mr. Bhābatosh
Bhattacharya (son of M M Kamalakrsna Smrtitirtha), Mr S L Katre of Ujjain, Prof. A. M. Patanaśivanandum of Pacchaiappa College at Madras, the late Pandit Rangacarya Raddi. Thanks are due to all these and many others for help and interest in this volume. It need not be expressly stated that I alone am responsible for the views and mistakes contained in this volume. I sincerely thank the Manager of the Aryabhushan Press, Poona, for carrying out the work of printing with care and promptitude in spite of difficulties caused by war conditions and paper and labour shortage.

In a work bristling with thousands of quotations and references it is likely that many slips have escaped attention. The indulgence of the reader is sought for forgiveness in the matter of several misprints in the footnotes caused by loss or displacement of the parts of letters in the process of printing.

BOMBAY,  
1st October, 1946,  
P. V. KANE
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LIST OF ABBREVIATIONS EMPLOYED

A. I. R. = All India Reporter of Nagpur
Ait Br. = Aitareya Brāhmana
All. = Indian Law Reports, Allahabad Series
A. L. J. = Allahabad Law Journal
Āp. = Āpastamba (generally the author of the Dharmasūtra is meant)
Āp. Dh S. = Āpastamba-dharmasūtra
Āp. M. P. = Āpastamba-mantra-pātha
A. S. W. I. = Archaeological survey of Western India
Āsv. G. i. = Āsvalāyana-grhyasūtra
Baud. Dh. S. = Baudhāyana-dharmasūtra
B I. = Bibliotheca Indica series, Calcutta
Bom. = I. L. Reports, Bombay Series
Bom. G. = Bombay Gazetteer volumes
Bom. H. C. R. = Bombay High Court Reports (vol. I-XII)
Bom. L. R. = Bombay Law Reporter (edited by Ratanlal and Dhirajlal)
B. O. R. I. = Bhandarkar Oriental Research Institute, Poona
Br = Smrīti of Brāhaspati
Br. Up. = Brhadāranyaka Upanisad
B R W. W. = Beal’s Buddhist Records of the Western world
Cal = Indian Law Reports, Calcutta Series
Catur. = Caturvimsatimata
Chān. Up. = Chāndogya Upanisad
C. L. I. or Corpus Inscriptionum Indicarum (vol. I relating to Inscriptions of the times of Asoka,
Corpus I. I. = vol. II relating to Kusana Inscriptions and vol. III relating to Gupta Inscriptions)
C. L. J. = Calcutta Law Journal
Com. = Commentary or Commentator (according to context)
Cr. ed. = Critical edition (of the Mahābhārata, Poona)
C. W. N. = Calcutta Weekly Notes (Law Reports)
D. B. = The Dāyabhāga of Jīmūtavāhana
D. C. = Dattaka-candrikā
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>D C</td>
<td>Deccan College Collection (when mss. are concerned)</td>
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<tr>
<td>Dh S.</td>
<td>Dharmasutra</td>
</tr>
<tr>
<td>D K. S.</td>
<td>Dayakramasangraha of Srikrsna</td>
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<tr>
<td>D. N.</td>
<td>Dattakamimamsa of Nandapandita</td>
</tr>
<tr>
<td>E C</td>
<td>Epigraphia Carnatica</td>
</tr>
<tr>
<td>E I</td>
<td>Epigraphia Indica</td>
</tr>
<tr>
<td>F B.</td>
<td>Full Bench (decision)</td>
</tr>
<tr>
<td>Fick</td>
<td>The Social organization in North-east India in Buddha's time (translated from German by Dr Shishunkunar Mitra, 1920)</td>
</tr>
<tr>
<td>Gaut.</td>
<td>Gautama-dharmasutra</td>
</tr>
<tr>
<td>Gr. R.</td>
<td>Grhastharatnakara of Candesvara</td>
</tr>
<tr>
<td>H D</td>
<td>History of Dharmaśāstra</td>
</tr>
<tr>
<td>H Dh</td>
<td>History of Dharmaśāstra</td>
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<tr>
<td>Hir gr</td>
<td>Hiranyakesi-grhya-sūtra</td>
</tr>
<tr>
<td>I. A.</td>
<td>Indian Antiquary</td>
</tr>
<tr>
<td>I. A.</td>
<td>Indian Appeals (Law Reports) The context will always indicate whether I. A stands for the volumes of the Indian Antiquary or for the Law Reports, Indian Appeals</td>
</tr>
<tr>
<td>I. H. Q.</td>
<td>Indian Historical Quarterly</td>
</tr>
<tr>
<td>I. L. R.</td>
<td>Indian Law Reports</td>
</tr>
<tr>
<td>Ins.</td>
<td>Inscription or Inscriptions</td>
</tr>
<tr>
<td>I. P. C.</td>
<td>Indian Penal Code</td>
</tr>
<tr>
<td>Jai</td>
<td>Jaimini's Purva-mimamsā-sūtra</td>
</tr>
<tr>
<td>J. A O. S.</td>
<td>Journal of the American Oriental Society</td>
</tr>
<tr>
<td>J. A S B.</td>
<td>Journal of the Asiatic Society of Bengal</td>
</tr>
<tr>
<td>J B. O. R. S.</td>
<td>Journal of the Bihar and Orissa Research Society</td>
</tr>
<tr>
<td>J R. A S</td>
<td>Journal of the Royal Asiatic Society (London)</td>
</tr>
<tr>
<td>Kām.</td>
<td>Kāmāndakiya-niti-sāra</td>
</tr>
<tr>
<td>Kāt.</td>
<td>Smṛti of Kātyāyana reconstructed by P V Kane</td>
</tr>
<tr>
<td>Kaut.</td>
<td>Kautilya's Arthasastra</td>
</tr>
<tr>
<td>K V N.</td>
<td>Kalivaryaviminnya (ms)</td>
</tr>
<tr>
<td>L R I A.</td>
<td>Law Reports, Indian Appeals (Privy Council)</td>
</tr>
<tr>
<td>Mad.</td>
<td>Indian Law Reports, Madras Series</td>
</tr>
<tr>
<td>Märk.</td>
<td>Märkandeyapurāṇa</td>
</tr>
<tr>
<td>Medh.</td>
<td>Medhatithi, the oldest commentator of Manusmrī</td>
</tr>
</tbody>
</table>
List of Abbreviations Employed

Mit = Mitāksara on the Yājñavalkya-smṛti
M. L. J. = Madras Law Journal
Moo I. A. = Moore’s Indian Appeals (Reports)
N. or n. = footnote
Nār. = Nārada-smṛti
Nir. S = Nīrṇayasindhu
Nītisāra = Kāmandakīya-nīti-sāra
N. I. A. = New Indian Antiquary, Poona
Pān. = Pāṇini’s Astādhyāyī
Pār. Gr. = Pāraskara-grhya-sūtra
Pār. M. = Pārāśāra-Mādhaviya
Patna = Indian Law Reports, Patna Series
P. C. = Privy Council
P. J. = Printed Judgments of the Bombay High Court
Q, or q = Quoted
Rāghu. = Raghuvamsa
R. D. K. = Rājadharmakānda of Kalpataru (on p. 43
Rāja Dh. K. = R. D. K. by mistake stands for Rājadharmakaustubha )
Rājadharma-K. = Rājadharmakaustubha of Anantadeva
Rāja N. P. = Rājanitipraṇāśa (a part of the Viramitrodaya
R. N. P. = of Mitramiśra )
Rājat. = Rājarātarangini
Rg. = Rgveda
Sam. K. = Samkāra-kaustubha
Sam Pr. = Samkārapraṇāśa (a part of the Viramitrodaya
Sam. Kau. = Smrti-kaustubha
Sam. M. = Smrtimuktāphala
Śr. = Śrautasūtra
S. V. = Sarasvatīvilāsa

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Sam. M. = Smrtimuktāphala
Śr. = Śrautasūtra
S. V. = Sarasvatīvilāsa
Sukra = Sukranitisāra
Tai A1. = Taittiriya Aranyaka
Tai Br. = Taittiriya Brāhmaṇa
Tai S = Taittiriya Samhitā
Tai Up = Taittiriya Upanisad
T. L. L. = Tagore Law Lecture
Tr = Translation or translated
Vāj S = Vājasaneyā-samhitā
Vas = Vasistha-dharma-sūtīa
V C = Vivāda-cintāmani
V M Mātrkā = Vyavahāra-mātrkā of Jimūtavāhana (except on p. 709)
V. Mayūkha = Vyavahāramayūkha (In a very few places such as on p. 709 through oversight V M stands for V Mayūkha)
V Nir V Nirnaya = Vyavahāranirnaya of Varadarāja
V P = Vyavahāraprakāsa (a part of the Viramitrodaya of Mitramiśra)
V R = Vivādatāndava of Kamalakāra
Visnu Visnu Dh S. = Visnudharma-sūtra
V. T. = Vivādatāndava of Kamalakāra
Vy Nir Vy Nirnaya = Vyavahāranirnaya of Varadarāja
Yāj = Yājñavalkyasūrītī
अवेद = अवेदेव
अवेदशास्त्र = कौटिल्यवैशाल्य
आप घ सू = आपस्तम्भबालमूल
आप म पा = आपस्तम्भकारपाठ
क्र. = क्रमिक
ऐ. भा = ऐतेरवशादाय
कलिकविऍ = कलिकविनिर्णय (ms)
काय. = कायाधिकतिसारोद्वर
काया. = कायाधिकतिसारपुत्र
काम = कामस्तोत्र
कामक = कामस्तोत्र
छत्त. = छत्तपोषक
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>कौ.</td>
<td>कौटिल्य अर्थशास्त्र</td>
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<td>कौटिल्य</td>
<td>कौटिल्य</td>
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<td>गृह.र.</td>
<td>गृहस्त्यरत्नकर</td>
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<td>गौ.</td>
<td>गौतममर्मसूत्र</td>
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<tr>
<td>गृहबिंब.</td>
<td>गृहस्त्यरत्नकर</td>
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<td>छ.</td>
<td>छुर्देयमोक्षपिनिष्ठ</td>
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<td>जै.</td>
<td>जैनमूर्त्तिसामायोगितारधिकार</td>
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<td>जै. ध्व.</td>
<td>जैनध्वनियायमालविचित्र</td>
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<td>जै. अध.</td>
<td>जैनध्वनियायमालविचित्र</td>
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<td>दत. भृ.</td>
<td>दत्तकभृतीमार्ग</td>
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<td>नीतितिवा (as quoted in digests)</td>
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<td>कामन्येन्नीतितिवा</td>
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<td>पराध्वमार्गीक</td>
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<td>पाणिनि’क वाणिकायी</td>
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<td>पुष्ण राजः</td>
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<td>ब्रह्मदर्शन.</td>
<td>ब्रह्मसत्सुधी</td>
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<td>बौद्धकारणमूर्तिर</td>
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<tr>
<td>वै. ध्व.</td>
<td>बौद्धकारणमूर्तिर</td>
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<td>मद. पा.</td>
<td>मद्यफासिरात</td>
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<td>मद.</td>
<td>मद्यसुधि</td>
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<td>सिंताल.</td>
<td>सिंतालकारका त्र किष्तनेषु</td>
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<td>सीमासूक्ति त्र किष्तनेषु</td>
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<td>मेच.</td>
<td>मेचातिसत्या माण्डल मद्यसुधि</td>
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<td>यागनाथसुधि</td>
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<td>राजध्वनि कौ. मद्यकौलिनी</td>
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<td>राजनीतिकौलिनी कौ. मद्यकौलिनी</td>
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वाज. सं = वाजसेनेवंशिहिता
वि वि = विवाददिन्तामणि
वि. ता = विवादताण्वं तत्कलाकर
वि र = विवादरताकर
व्यव. त = व्यवसापत्रवं तत्कलाकर
व्य. नि 01 व्यव. नि = व्यवहारनिर्णयं
व्य प्र = व्यवहारप्रकाशं तत्कलाकर
व्य. म अथ व्य. मयूष = व्यवहारमयूषम
व्य भा = व्यवहारभादुरः
व्यव सा. = व्यवहारसार
श्रवण
श्राकी
श्राकीतिसार
श्राकीतिति,
स की = संस्कारकीसुभाषित
सत्या. ब्रै. = सत्यावाक्ष्यांतिसुभाषित
स वि. = सर्वसत्याविष्कार
स्थितिच. = स्थितिचन्दिकार
स्थितिमु. = स्थितिमुखार्यारः
CHRONOLOGICAL TABLE
(of some important works and authors referred to in this volume)

<table>
<thead>
<tr>
<th>Date</th>
<th>Work/Author</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>4000 B.C.</td>
<td>—</td>
<td>The period of the Vedic Samhitās, Brāhmaṇas and Upaniṣads. Some hymns of the Rgveda, the Taittirīya Samhitā and Brāhmaṇa and the Atharvaveda may possibly go back to a period earlier than even 4000 B.C, and some of the Upaniṣads (even from among those that are regarded as the earliest ones) may be later than 1000 B.C.</td>
</tr>
<tr>
<td>300 B.C. — 500 B.C.</td>
<td>—</td>
<td>The Nirukta.</td>
</tr>
<tr>
<td>600 B.C. — 300 B.C.</td>
<td>—</td>
<td>The dharmaśūtras of Gautama, Āpastamba, Baudhayana, Vasistha and the Grhyasūtras of Pāraskara and a few others.</td>
</tr>
<tr>
<td>600 B.C. — 300 B.C.</td>
<td>—</td>
<td>Pānini</td>
</tr>
<tr>
<td>500 B.C. — 200 B.C.</td>
<td>—</td>
<td>Jaimini's Pūrvamāṁśasūtra</td>
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400 A.D. — 600 A.D. — Kāmandaśakyanitisaśāra

505 A.D. — 587 A.D. — Vaśāhāmihira, author of Bihatsamhitā, Brhaṇjataka, Pañcasiddhaṇṭika and other works

600 A.D. — 650 A.D. — Bāna, author of the Kādambari and the Harsacarita

650 A.D. — 750 A.D. — Kumārila-bhatta, author of Śloka-vārtika, Tantravārtika and Ṭup-tikā

600 A.D. — 900 A.D. — Most of the smṛtis and some of the Purānas

788 A.D. — 820 A.D. — Śiṅkarācārya, the great Advaita philosopher

800 A.D. — 850 A.D. — Viśvarūpa, com. of Yājñavalkyasmṛti

900 A.D. — Medhatithi, com. of Manusmṛti

900 A.D. — 1100 A.D. — Pārthaśārathimisra, author of Śāstra-dipikā, Tantraratna, Nyāyaratnakāra

966 A.D. — Utpala, com. of Bṛhat-samhitā and Brhaṇjataka

1000 A.D. — 1055 A.D. — Dharesvara (Bhōja)

1000 A.D. — 1100 A.D. — Viṇāneśvara, the author of the Mitakṣara com. on Yājñavalkya

1080 — 1140 A.D. — Govindarāja, author of a com. on Manusmṛti

1100 — 1150 A.D. — Lakṣmidhara, author of a large digest called Kṛtya-kalpataru or simply Kalpataru

1100 — 1150 A.D. — Jīmūtavāhana, author of Dāyabhāga, Kalaviveka and Vyavahāramātrkā

1114 — 1133 A.D. — Bhāskarācārya, author of Siddhāntasiromani, of which Lilāvati is a part

1125 A.D. — Aparārka, author of a com. on the Yājñavalkyasmṛti

1127 — 1138 A.D. — Mānasollāsa or Abhilaśitarthacintāmani of Somesvaradeva

1150 — 1160 A.D. — Rājatarangini of Kalhana

1150 — 1200 A.D. — Smṛtyarthasāra of Śrīdhara.
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<td>Candesvara, author of Rījantīrātākara, Vivādāratnākara, Grasthāratnākara, and other works</td>
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<td>Śūlapānī, author of Dipākālīkā, commentator on Yājñavalkya</td>
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<td>Nyāyasudhā of Someśvara, commentator on Tantravārtika</td>
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<td>Vācaspatimisra, author of Vivādacintāmāni and several other works</td>
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<td>Śankarabhātta, author of Dvaitanirnaya or Dharmadvaitanirnaya</td>
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<td>Nandapandita, author of the Dattakamāmsā and Vaijayanti, commentator on Vīśudhārmasūtra</td>
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<td>Kamalākarabhaṭṭa, author of Nīrṇayasaṅkṛita, Vivādatāndava, Śūdrakamalākara, and other works</td>
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History of Dharmaśāstra

1615 — 1645 A.D. — Nilakanthabhātta, author of Nītīmāyūkha, Vyavhaṃśānamāyūkha and other Mayūkhas

1615 — 1645 A.D. — Mitramiśra, author of Viśva-mitrodaya, divided into Rājanītisāra, Vyavhāraprakāsa and other prakāsas

1650 — 1680 A.D. — Ananṭadeva, author of Rājadharma-kaustubha

1750 — 1820 A.D. — Bālambhatta, author of the Bālambhatti, com. on the Mitaksara

1790 A.D. — Dharmasindhu of Kaśinātha
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WORKS CONSULTED

(with reference to editions &c)

(N.B.—Works referred to only once or twice and those already set out on pp. 14n and 413–414 have generally been omitted).

Ānan stands for Ānandāśrama Press edition, B.I. stands for Bibliotheca Indica Series (Calcutta) and JIV for Jivananda Viṣṇyasagara’s publications.

TEXTS

Vedic

Aitareya Āranyaka (ed. by Prof. Keith in Anecdota Oxoniensia)
Aitareya Brāhmaṇa with Sāyana’s commentary (Ānan,)
Atharvaveda Samhitā—ed. by S. P. Pandit
Brhadāranyakopanisad.
Chāndogypopanisad.
Gopatha-brāhmaṇa (in the B. I. series; but in one or two places Dr. Gastra’s edition has been relied upon).
Kāthaka Samhitā—ed. by L. von Schroeder (1900).
Kausitaki Āranyaka.
Kausitaki-brāhmaṇopanisad.
Malātīyanā Samhitā—ed. by Dr. Schroeder.
Ṛgveda Samhitā (Max Müller’s edition in 4 volumes has generally been used. Sometimes the edition of the Poona Vādika-samsodhana-mandala has been relied on)
Sāmavidhāna-brāhmaṇa—ed. by A. C. Burnell, 1873.
Sānkhyāna-brāhmaṇa, (Ānan.)
Śatapatha-brāhmaṇa—ed. by Weber.
Taittirīya-āranyaka (Ānan)
Taittirīya-brāhmaṇa (Ānan.)
Taittirīya Samhitā (Ānan, sometimes Weber’s transliteration in Indische Studien, volumes XI and XII, has been relied upon).
Tāndya-brāhmaṇa (also called Pañcavimśa-brāhmaṇa)—B I Series
Vājasaneyya Samhitā—edited by Weber.

xxv
Srauta, grhya and dharma sūtras, Vaiśeṣikas and similar works

Āpastamba Dharmasūtra with commentary of Haradatta published at Kumbhakonam by Halasyanātha Sastri

Āpastamba-grhyasūtra with the commentary of Śūdrasanaśārya (Mysore Government Oriental Library Series)

Āpastamba-mantrapatha—edited by Di Winternitz (1897)

Āpastamba-śautasūtra—edited by Dr Garbe (B I Series)

Āśvalāyana-sūtra-sūtra with Nārāyana’s commentary (Nīrṇaya-sāgara edition)

Āśvalāyana-śautasūtra with the commentary of Nārāyana (B I Series)

Baudhāyana-dharmasūtra (Ānan)

Baudhāyana-grhyasūtra—edited by Dr Shantilal Shastri in Mysore University Oriental Library publications, (1930)

Baudhāyana-grhyasūtra-paruḥsā (in the above edition)

Baudhāyana-pitrmedhasūtra (contained in the Mysore edition above)

Baudhāyana-śrauta-sūtra (ed by Dr Caland in B I Series)

Bhāradvāja-grhyasūtra, ed by Dr Salomons (Leyden, 1913)

Brhad-devatā, ed by Prof A A Macdonell in the Harvard Oriental Series (two volumes)

Gautama-dharmasūtra (Ānan)

Gobhila-grhyasūtra (B I Series)

Gobhila-smṛti (Ānan)

Hiranyakeshi-grhyasūtra, edited by Dr J Kirsele (Vienna 1889)

Jaimini’s Pūrva-mīmāṃsā-sūtra with the Bhāṣya of Sabara (Ānan)

Kāthaka-grhyasūtra, with the commentaries of Ādityadarśana, Devapāla and Brāhmaṇabala, ed by Di Caland (1925)

Katyāyana-srauta-sūtra, edited by Dr Weber, 1859

Kauśikasūtra, edited by Prof Bloomfield, 1890

Khāḍhika-grhyasūtra with the commentary of Rudrakanda (Mysore Government Oriental Library Series)

Mānavagṛhyasūtra with the commentary of Astāvakra (Guikvad Oriental Series, Baioda)

Nirukta of Yāṣka edited by Roth Sometimes the edition of Prof V K Rajwade with a translation and notes in Marathi has been relied upon
Works Consulted

Paraskara-grhya-sūtra edited by M.M. Shridharshastri Pathak with a Marathi translation
Sānkhyāyana-grhya-sūtra (same as Kauśitaki-grhya-sūtra), published in the Benares Sanskrit Series
Sānkhyāyanaśrutasūtra, edited by Dr. Hillebrandt (B I Series)
Satyasādhan-śrutasūtra (Ānan.)
Vaiṅāṅgasmṛta-smārt-sūtra, edited with English translation by Dr. Caland, Calcutta, 1927.
Vārāhagṛhya-sūtra (Gaikwad Oriental Series, Baroda)
Vastu-dharmasūtra (Bombay S Series).
Visnudharmasūtra, edited by Dr. Jolly

Śrūta

Āpastamba-smṛti (in verse) - Ānan.
Arthaśāstra of Kautilya—edited by Dr. Sham Sastrī (Mysore, 1919).
Atri-smṛti (Ānan.)
Aujñana-smṛti (Jiv.)
Brhat-Parāśarasūtra (Jiv.)
Caturvimsatimata-mata-samgraha (Benares Sanskrit Series)
Daksasmrī (Ānan.)
Devalasmṛti (Ānan.)
Harivamsa (Venkatāśvara Press edition).
Kātyāyana-smṛti on Vyavahāra (re-constructed by P. V. Kane under the title 'Kātyāyanasṃṛtisāroddhāra,' with English translation and notes).
Laghu-Aśvalāyana-smṛti (Ānan.)
Laghu-Hārita-smṛti (Ānan)
Laghu-Visnu-smṛti (Ānan.)
Laghu-Vyāsa (Jiv.)
Mahābhārata with the commentary of Nilakantha (the oblong Bombay edition). In some places the corresponding critical edition of the Epic issued from the Bhandarkar O. R Institute has been referred to.
Manusmṛti with the commentary of Kullūka (Nirmayasāgara edition); where other commentaries are referred to, it is Mandlik's edition with six commentaries that is cited.
Nāradasmrī, edited by Dr. Jolly.
Parāśarasūtra (Bombay S Series).
Prajāpati-smṛti (Ānan.)
Vedavyāsa-smṛti (Ānan)
Vṛddha-Gautama-smṛti (Jīv)
Vṛddha-Hārīta-smṛti (Ānan.)
Yājñavalkyasmṛti with the Mitāksarā (Nīrṇayāsāgara edition)

Pūrāṇas
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Brahmāṇḍapurāṇa (Venkatesvara Press, Bombay).
Brahmapurāṇa—(Ānan.)
Bṛhan-Nārādiya-purāṇa (Venkatesvara Press edition, Bombay)
Kālikā-purāṇa (Venkatesvara Press edition)
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Kūmārapurāṇa.
Līṅgapurāṇa (Venkatesvara Press edition)
Mārkandeya-purāṇa (B I Series)
Matsyapurāṇa (Ānan.)
Nārādiyapurāṇa (Venkatesvara Press ed., Bombay); sometimes cited as Bṛhan-Nārādiya
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Commentaries, digests, miscellaneous Sanskrit and Prakrit works and authors.
Abhilāsitarthacintāmanī (also called Mānasollāsa)—published in the Gaikwad Oriental Series, Baroda
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Asahāya—see under Nāradasmṛti
Bālambhatti—edited by Principal J. R. Gharpure.
Bārhaspatyasūtra, edited by Dr. F W Thomas, Lahore, 1921.
Bhāmati of Vācaspatimiśra, comm on Śaṅkara’s bhāṣya on the Vedāntasūtra (Nīrṇayāsāgara Press).
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Brhatt, commentary of Prabhākara on Jaimini's Pūrva-māṁsā-sūtra (Tarkapāda)—in the Madras University Sanskrit Press, 1936.

Brhatsamhitā of Varāhamihira with the commentary of Utpala edited by MM. Sudhakara Dvivedi in two volumes, Benares.

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Dandānti, of Keśavapandita, edited by V. S. Bendrey, Poona

Dandaviveka of Varāhamāna (Gaikwad Oriental Series)

Dāsakumārācarita of Dandin (Bombay Sanskrit Series).

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26 All 458  600n
29 All 667  577n.
31 All 454  760n
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2 Bom 573  763n
4 Bom, 37  601, 602
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26 Bom, 163  763n
26 Bom 206  450.
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46 Bom, 213  327n.
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5 Patna 646  710n.
23 Patna 599  576n.
P. J (for 1874) p. 250  867n.
### ADDITIONS AND CORRECTIONS

(A few misprints due to the loss or displacement of such loose parts as *anusvāras* have not been specified, since they can be easily detected.)

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<td>read विण्ण्वम् ३३ III. 95;</td>
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<td>31</td>
<td>n 41</td>
<td>read कालिन ५९ for कालिन ९</td>
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<td>57</td>
<td>n. 70</td>
<td>The verse हृदयः &amp;c occurs also in वराहमिहिरः कृत्यमात्रा २. ३३</td>
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<td>62</td>
<td>l. 3</td>
<td>read 'Śāntiparva (५६. ४५-४६)</td>
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<td>72</td>
<td>l. 31</td>
<td>read 'option for'</td>
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<td>143</td>
<td>n. 184</td>
<td>read 'Śābara' in line 3</td>
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<td>147</td>
<td>l. 16</td>
<td>Add 'Br. Sam. 23. 2 is: हस्तविवादः कुलक्मसृष्टिस्मात् मात्रमाणिनिदेशः। पदार्थकल- माक्रमणे मित्रायणाय परात्।।। खाल्ल explains 'हस्तविवादः कुलक्मि व्रतिति देवे संस्काराय तत्र बन्धनं पतिति तत्वार्जनेत। तथाति पत्रान्तरम् महति तद्र ब्रह्मणे ह्यः।।।'. On Br. Sam. 21. 32 uses quotes a verse of परदारः सस्त्विद्वादिकाश्च हिन्दुत्त्वलम्बं तोचिन्ते। साणे वर्तिति संपृक्षेऽन्यायात्वर्णम् ॥'. This shows the dimensions of a vessel used as a raingage.</td>
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<td>182</td>
<td>n. 230</td>
<td>read in line 3 राजयाहै।</td>
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<td>l 34</td>
<td>read 'Rajadharmakaustubha'.</td>
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<td>183</td>
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<td>&quot; &quot;</td>
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<td>193</td>
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<td>read संस्कारकोषकरतिदुर्गः</td>
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<td>227</td>
<td>n. 306</td>
<td>add at end 'Compare कृत्यमात्रा ५. १५ 'एक्षौ यथोऽनुमतिभेदस्य मुनसं परिवर्तितः। चेतासोऽस्त्र सहयोगः सर्वसंस्कृतस्य बिन्द्यामात्रं हृदयः॥।।'</td>
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<td>n 335</td>
<td>read in last line स्वतितिः.</td>
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<td>read ‘padās’</td>
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<td>n 395</td>
<td>read सन्ती.</td>
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<td>l. 6</td>
<td>read paham...pratān</td>
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<td>405</td>
<td>last line</td>
<td>put a full stop after ‘hanged’.</td>
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<td>n. 690</td>
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<td>should we read वामनुर्वन् for की कुर्वन्?</td>
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<td>n 995</td>
<td>read in first line बूत</td>
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<td>542</td>
<td>n. 1009</td>
<td>read in second line बूत</td>
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<td>570</td>
<td>n 1069</td>
<td>read पैतामहे</td>
</tr>
<tr>
<td>586</td>
<td>n 1104</td>
<td>read in line 9 च for च</td>
</tr>
<tr>
<td>588</td>
<td>n. 1111</td>
<td>read in line 2 हुग्नातिवाहं</td>
</tr>
<tr>
<td>605</td>
<td>n 1142</td>
<td>put a full stop after वैधायन in l. 5</td>
</tr>
<tr>
<td>627</td>
<td>n. 1197</td>
<td>read न लठाले अभुज्येत</td>
</tr>
<tr>
<td>651</td>
<td>n 1235</td>
<td>read in line 1 एक एकौरस and in line 2 वि. र.</td>
</tr>
<tr>
<td>659</td>
<td>n. 1248</td>
<td>read सीण्णुपाणा</td>
</tr>
<tr>
<td>677</td>
<td>n 1277</td>
<td>add at the end ‘For the words झण्णुषुः जुन्मोति झण्णुषुः जस्यं किमेति’ vide शतपथ ब्राह्मण II. 5 2. 23., vide te स. I. 6 4 for two बदिद्व in वर्णप्रमाण and वि. श्री. 5 5.</td>
</tr>
<tr>
<td>695</td>
<td>n 1321</td>
<td>Add at end ‘For अर्धम...वहितैवि compare स. VI. 6 4 and श्री. श्र. 9 4 2</td>
</tr>
<tr>
<td>702</td>
<td>l. 27</td>
<td>read ‘(Śākuntala Act VI)’</td>
</tr>
<tr>
<td>706</td>
<td>n 1349</td>
<td>read पल्लीनार्थस्मार्थेन्द्रम्</td>
</tr>
<tr>
<td></td>
<td>l. 15</td>
<td>read ‘her deceased sonless and separated husband’s wealth’.</td>
</tr>
<tr>
<td>Page</td>
<td>Line or note</td>
<td>Correction</td>
</tr>
<tr>
<td>------</td>
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<td>-------------</td>
</tr>
<tr>
<td>751</td>
<td>l. 30</td>
<td>Read after 'British rule' the words 'the widows of gotraja sapindas'.</td>
</tr>
<tr>
<td>776</td>
<td>n. 1499</td>
<td>Read in l. 2 'ब्रिटिश रुले'</td>
</tr>
<tr>
<td>781</td>
<td>n. 1509</td>
<td>Read in last line 'स्वातन्त्र्येय'</td>
</tr>
<tr>
<td>804</td>
<td>n. 1561</td>
<td>Add at the end 'Recently the Indian Legislature passed Act XIX of 1946 which confers on Hindu married women the rights to separate residence and maintenance as against the husbands in certain circumstances'.</td>
</tr>
<tr>
<td>846</td>
<td>l. 28</td>
<td>Read 'mother'</td>
</tr>
<tr>
<td>897</td>
<td>n. 1762</td>
<td>Read in line 7 'Institute' for 'Society'.</td>
</tr>
<tr>
<td>936</td>
<td>Last line</td>
<td>Read 'नांगमानाभावे'.</td>
</tr>
</tbody>
</table>
RÄJADHARMA
(GOVERNMENT AND STATECRAFT)

CHAPTER I

Rajadharma has been a subject of discussion in works on dharmaśāstra from very ancient times. The Āp. Dh. S. II 9 25.1 says 'The general and special dharmas of all varṇas have been explained; but now we shall declare the dharmas of a king in particular'. Āp then states that the king should cause to be built a capital and a palace, the gates of which both should face the south; that the palace should be in the heart of the capital; that in front of the capital there was to be a hall called 'āmantrana' (hall of invitation); that to the south of the town there was to be an assembly house with doors on the north and south. Āp requires that in the king's realm no brāhmaṇa should suffer hunger, sickness, cold or heat; Āp gives regulations about the assembly house and about persons who were to be allowed to engage in gambling; he prescribes that (the exercise in) arms, dancing, singing and music should not go on anywhere except in the houses of the king's servants, that the king was to see that there was no danger from thieves in villages and forests, that the king should donate fields and money to brāhmaṇas according to their worth without detriment to his servants, that the king who meets death in recovering the property of brāhmaṇas and other warlike persons who meet death in fighting for a similar worthy cause reap the merit of a sacrifice (i.e. reach heaven as reward); that the king should appoint in towns and villages officers and their subordinates, who are pure and truthful, for the protection of the subjects against thieves and who are to be made to make good what is stolen; that they are to collect lawful taxes for the king from the people except from learned brāhmaṇas, women of all castes, minors, students staying with teachers and ascetics fulfilling the rules of their order, śūdras who do menial work for the higher castes (such as washing their feet), persons that are blind, deaf or dumb Āp then lays down punishments for adultery and rape, for slander and defamation, for manslaughter, for theft and appropriation of another's land, for breach of contract to cultivate the field of another, for a herdsman leaving his herd or negligently allowing
it to perish. He states that if the king does not punish the guilty he incurs sin, that in disputes judges should be men of learning, clever and fulfilling their duties, that witnesses were to tell the truth and were to be punished if they be untruthful. It will be noticed how Ap briefly covers the whole field of rajadharma. In the Śāntiparva of the Mahābhārata rajadharma is dealt with at great length in chapters 56-130 and to some extent in 131-172. The Manusmṛti also states at the beginning of chap VII (1) that it will expound rajadharmas. That great literary activity on the science and art of government went on for many centuries before the Christian era follows from several considerations. The Anuśasana-parvā (chap 39) speaks of the śāstras composed by Brhaspati and Usanas. The Śāntiparva (58-1-3) names as expounders of āyusūtra Brhaspati, Bharadvāja, Gaurasiras, Kāvyā, Mahendra, Manu Pracetasa and Viśālākṣa. Śāntiparva (102 31-32) opposes the view of Śambara to that of ācāryas. The Arthasastra of Kautilya mentions five schools (viz those of the Mānava, the Bṛhaspatya, the Auśana, the Pāraśara and the Amṛhiya), seven individual teachers (V. 5, and I. 8) only once (viz Bāhudantiputra, Dirgha Cārāyaṇa, Ghotamukha, Kaninka Bāhṛadvāja, Kātyāyaṇa, Kīṭaṇa, Pisunaputra,) and several times mentions the views of Bāhṛadvāja, Kaunapadanta, Parāśara, Pīsuna, Vātavyādhi, Viśālākṣa. Kautilya also cites at least 53 times the views of ācāryas, almost in every case for dissent. Śānti 103 44 refers to a Bhāṣya on āyusūtra. Is it possible to see in this a reference to one of the Bhāṣyakārs indicated in the verse appended at the end of the Kautilya or to the Kautilya itself? Another fact indicative of the systematization of the science of government is that in the Mahābhārata, the Rāmāyaṇa, Manu and Kautilya ideas expressed by numbers had already been stereotyped long before those works were written viz such as saptāṅga rāṣya (State with seven constituent elements), sadgūnya (the six ways of policy viz alliance, declaration of war &c.), three sākṣa, the four upāyas (sāma, dāna, bheda, danda), astavarga, and pāṇicavarga (Manu VII. 155), the 18 and 15 tirthas (Sabhāparva 5 38). For detailed information

1. मन्यते कर्तर्किष्ठारुपः स्मार्या सर्वप्रति श्यामरः। अस्मात्तृ यदानल परेति महति कुम।। नेत्रसारस्वतौष्ण्यायाम् ॥ संग्रहिताः समानं शास्ति । 102 31-32.

2. द्रष्टव्यमण्डितकारणां व तत्तताः। अर्थपूर्विकम् च विद्याधिकारम् राजाः॥ कुर्चेव बिशालितिर्मेभ तथा महत्तितंमण्डलम्। अर्थार्थकारण 100. 68-69 कुस्तमेव means the
   ten व्यः.
about the Rājaśāstras of Brhaspati, Uśanas, Bhāradvāja culled from the Mahābhārata and other ancient works vide my paper on them in the Journal of the University of Bombay, vol. XI part 2 pp. 73-83, 1942.

The fulfilment of their duties and responsibilities by rulers was of paramount importance to the stability and orderly development of society and to the happiness of individuals in the State and therefore one often finds that rājadharma is said to be the root of or the quintessence of all dharmas. Sāntiparva (63.25) states 'know that all dharmas are merged in rājadharma; that rājadharms are at the head of all dharmas' and (141.9-10) 'the welfare, good rains, sickness, calamities and death among people owe their origin to the king'. It was the king's duty to see that the people in his kingdom acted according to the rules laid down in the smṛtis for the several varnas and āśramas, to administer justice and to interfere when his help was sought for by a pansad (assembly of learned men) in enforcing the prāyaścitta (penance) prescribed for various lapses. Vide Gautama X. 7–8, XI. 9–11, Āp. Dh. S II. 5 10. 13–16, Vasistha 19 1–2, Visnu III. 2–3, Nārada (prakīrnaka, 5–7 and 33–34), Sāntiparva 77.33 and 57.15, Mātsyapurāṇa 215.63, Mārkandeya- purāṇa 27.28 and 23.36 and H. Dh. vol. II p. 965. Therefore it may be said with truth (as done by the Mahābhārata) that rājadharma was the highest goal of all the world, that it comprehended within itself all rules of ucāra, vyavahāra (administration of justice) and prāyaścitta (penance). It is on account of this all-pervading influence of government or royal power that the Mahābhārata frequently emphasises that the king is the maker of his age, that it is he who can usher a golden age or an age of strife and misery for the country.

* * *

3. एवं धमांद राजमन्दु सर्वांनयव्यायाम नौमीनायकिषय | ... सर्व बिषय राजमन्दुः इतिहः सर्व होतह राजपमाध्यम | सर्वधर्मो राजाधमाध्यमांत। शास्तिवर्म 63 25, 26, 29; राजूत्माण महभारत भोगोहेजुः इति। मजाक्ल म्यागम्याय विरचित इति। 6 छात्र बैता हुमरे व वशिक्ष महाराजाः। राज्यूत्माण उत्तरण नानायत संसर्गाः। शास्त्र 141.9-10; सर्वधर्म जीवितकार्य राजांमः; पूर्वपायः। शास्त्र 56.3.

4. आय भ. 4 प. 5, 10, 13-16 तथा चैत्याल्लमतिवत्वठः राजां मेषेः। राजा यवृताय यमूनालकुकुलायः। पारम्परिकम् वच्चोवच्चाय निमेशरेष्ठानाः। प्रायस्चित्ताः।

5. कारो वा वारण धर्मो राजा वा कालकारणाः। इति इं संसारे मा भुताना कालकारण। उद्घोष 138.15 and शास्त्रिः 69 79; छात्र बैता हुमरे व वशिक्ष महाराजाः। राज्यूत्माण सर्वाधिक राजेन युभुक्तः। ... राजेन कारो भुताना राजेन व विनाशक। शास्त्रिः 91.6 अर शास्त्रिः 56.6; तथा चैत्याल्लमतिवत्वठः राज्यूत्माण सर्वां न मानवे व वशिक्ष महाराजाः। शास्त्रिः. 56.6; युभुक्तः राजा यमूनालकुकुलायः। युभुक्तः मा मानतः न देषः किंतु उपनस्तः। शुक्रसितसात सत्य IV. I. 60.
59-60) remarks that one should learn from śāstra what are good and evil actions, give up evil deeds and perform good ones and that the king is hence declared to be the cause of (good or evil) times according as he does good or evil acts. Śukra IV. 1, 60 states that the king is the prompter of his age.

Though rājadharma was thus an integral part of dharmāśāstra and was one of the most important subjects therein, yet apart from the works on dharmāśāstra separate treatises dealing with rājadharma alone came into existence in very early times. Śāntiparva (chap 59) states that originally in the Krta age there was no king nor punishment, that then moha (delusion), greed and lust entered men, that in order to provide against the complete destruction of dharma, Brahmā composed a work in one hundred thousand chapters on dharma, artha, kāma and moksa (verses 30 and 79), that part of this work on Niti (science of government) was abridged by Śankara Viśālakṣa (verse 80, and so it was called Vaisālakṣa) into 10000 chapters, that Indra studied it and reduced it to 5000 chapters (and the work was called Bāhudantaka, verse 83), that it was compressed into 3000 chapters by Brhaspati (and so was called Barhaspatya) and that Kāvyā (Uśanas) reduced the work to 1000 chapters.

The Kāmasūtra (I 5-8) contains a somewhat similar story that Prajāpati composed a work in one hundred thousand chapters, that Manu abridged it as regards dharma, Brhaspati as regards artha and Nandī abridged in 1000 chapters the science of erotics. The Śāntiparva (69) gives (verses 33-74) a summary of the contents of the work of Brahmā on rājadharma which remarkably agrees with the principal topics of the Kautilya.

The Nītīprakāsikā (I 21-22) states that Brahmā, Mahēśvara, Skanda, Indra, Pracetasa Manu, Brhaspati, Śukra, Bhāradvāja, Veda-Vyāsa, Gaurāśiras were the expounders of Rājasāstra, that Brahmā composed a work on rājasāstra in 100000 chapters, which was gradually reduced in size by each of the above-mentioned founders until Gaurāśiras reduced it to 500 chapters and Vyāsa to 300. The Śukranītisāra (I 2-4) states that Brahmā composed nītīsāstra in 100000 verses, which was subsequently abridged by Vasistha and others (including Śukra).

It is interesting to note the names given to the science of government. The most appropriate word is ‘rājasāstra’ and it is employed by the Mahābhārata, which speaks of Brhaspati, Bhāradvāja and others as ‘rājasāstra-pranetārah’ (vide p 2 above). The Nītīprakāsikā (I, 21-22) also dubs the divine and human
writers on government 'rājaśāstrānām pranetārah.' The same word is employed by such ancient classical writers as Āśvaghosa in his Buddhacarita (I. 46). The first verse in Prof. Edgerton's reconstructed Pañcatantra performs obeisance to Manu, Brhaspati, Sukra, Parāśara and his son and Cānakya as the authors of nyāsastra (science of kingship). Another name is Dandanāti. The Śāntiparva (59. 78) explains why Dandanāti is so called viz 'this world is led (on to the right path) by danda (the power of punishment, sanction) or this science carries (or sets forth) the rod of punishment; hence it is called dandanāti and it (faces) pervades the three worlds' In Śāntiparva 69. 76 it is stated that 'Dandanāti controls the four varnas so as to lead them on to the performance of their duties and when it is employed by the ruler properly, it makes them desist from adharma.' Śānti 63. 28 identifies Dandanāti with rājadharmas. The Kautiliya (I. 4) explains 'Danda is the means of the stability and welfare of Āṃvikṣikt, Trayā (the three Vedas) and Vārtā; the rules that treat of danda are called dandanāti, which is a means of acquiring what has not been acquired, which safeguards what is acquired, which increases what is guarded and distributes (increased wealth) among the deserving.' The Mahābhārata says (Śānti 69. 102) that a wise ksatriya, putting dandanāti in front, should always desire to acquire what is till then unacquired and should guard what is acquired. The Nītisāra (II. 15) says that dama (control or chastisement) is called danda, the king is called 'danda' because control is centered in him; that the nītī (rules) of danda is called dandanāti and nītī is so called because it leads (people). The Mahābhārata (Sānti 69. 104) says that dandanāti is the special concern of the ksatriya (rāja). It is said in the Vanaprāsa 150. 32 that without Dandanāti this

6. यद्विशासेः भुजुर्द्वित्रा ता च चक्रवर्तिकारायणी सदौ ॥ तथा: हुतो तो च तस्सन्तेन सर्वाणि दानकथा दुहितस्विन्य ॥ द्रव्याष्णित L 46.

7. द्रव्येन नीरते चतुर्थूर्ध्वं द्रव्यं भृपति व द्रुमाः । द्रव्यनीतिर्दर्शित चतुर्था धौरहोकात्स्याः क्षती ॥ शास्त्रपर्श 59. 78; द्रव्यनीतिः स्थिरप्रवृत्त्वर्णी विभिन्नाय। द्रव्यकार्यस्य सम्बन्धसवर्गीय विभिन्नाय। शास्त्र: 69. 76. द्रव्यपरस्यः इस क्षेत्रीय एव आदेवः इस अधिकारी एव "शास्त्रपर्श L 49 (p. 9).

8. आन्तिकोपाल्किन्मवर्गानां नीरोपसवर्गानां द्रुमाः । तस्य भीतिविद्धनीति अत्रध्यानानां नीरोपसवर्गानां नीरोपसवर्गानां द्रुमाः ॥ अर्धप्राङु एव "शास्त्रपर्श I 4 (p. 9).

9. द्रव्यनीतिः प्रस्तुताः विवादान्त शस्त्राः । चतुर्थूः। अवधारणा एव द्रव्यपरस्यः द्रुमाः ॥ परिपक्वस्येऽऽवधारणा एव "शास्त्र 69. 102.

10. द्रव्यम् द्रुमो तस्य द्रव्यभासोद्वाराभिषेकम् भीतिपरिवारे । तस्य भीतिविद्धानितिः नीरोपसवर्गानाम " शास्त्रपर्श II 15 एव द्रुमो I. 157 (latter reading द्रव्यमन्दिः) &c.)
whole world would break all bounds Vide also Śánti 15.39, 63.28, 69.74 ff (eulogy of Dandaniti) Dandaniti is said to be the support of the world (Śánti 121.24) and to have been produced by Devi Sarasvati (Śánti 122.25)

Arthaśāstra has been a synonym for dandaniti When the Āp. Dh. S. II 5 10 16 requires the king to appoint as purohita a brāhmaṇa well-versed in dharmas and artha, it is clear that Āpastamba has in view dharmasāstra and arthaśāstra The Anuśāsanaparva says that Brhaspati and others composed arthaśāstras (39.10–11) Dronaparva 6 1 speaks of a science of artha composed by Manu (Mānavi arthavidyā) Vide Jayaswal in ‘Manu and Yājñavalkya’ (pp. 5, 7, 16, 25, 26, 41, 42, 50, 84, for Manu and Artha) Śánti (71.14) states that a king whose sole concern is with arthaśāstra does not secure dharma and kāma and that all the wealth of such a king vanishes in (the pursuit of) improper objects. Vide Śánti 302.109 which speaks of arthaśātra as resorted to by the best among kings. The Rāmāyana (II 100.14) states that Sudhanvā, Upādhyāya of Rāma, was an adept in arthaśāstra. The arthaśāstra of Kautilya starts with the statement that it is the quintessence of all the arthaśāstras composed by former teachers in the whole world and at the end Kautilya states that that śāstra which is a means of acquiring and guarding the earth is arthaśāstra This mentions two of the four objects of dandaniti stated in the Kautilya itself (as shown in n 8 above) Only two objects are mentioned by Kautilya (as in Śánti 69.102) since they are the first and principal ones to be gained by the practice of the science of government It is not meant that there was, as regards the topics to be dealt with, any distinction between Dandaniti and Arthaśāstra The four objects mentioned by Kautilya are always placed before the kṣatriya by Manu (VII 99–100), Śánti 102 57 and 140 5, Yaj. I 317, Nītisāra I 18 (while I. 8 mentions only two purposes of rājavidyā) At the end (XV 1) Kautilya states ‘artha is the sustenance of human beings, that is, the earth peopled by men That śāstra which is a means of acquiring and guarding that earth is arthaśāstra’ Men derive their sustenance from the earth and all wealth also arises from the earth. Mr Jayaswal (Hindu Polity p 5) is not right when he translates ‘Artha is human population’ Vide U Ghoshal’s ‘Hindu Political Theories’ p 74 n and p 76 for the various interpretations of this passage by Jayaswal and others Authors a few centuries later than both the Mahābhārata and the Kautilya treat the two as
identical. Dandin in his Daśakumārīcarita (VIII.) expressly says that Visnugupta composed his work on dandanītī for the Maurya king in 6000 ślokas, though the Kautiliya states at the very beginning that the work is an arthaśāstra. Dandin in the same context refers to 'Arthaśāstras as helping to polish the intellect' and speaks of some of the predecessors mentioned by Kautiliya as writers on the śāstra (viz. the Arthaśāstra). The Amarakośa treats the two as identical.

Medhatithi on Manu VII. 43 holds that the word 'Dandanītī' therein refers to the works of Cānaka and others. The Mitaksara or Yāj. I 313 paraphrases dandanītī by arthaśāstra and on Yāj. I 311 explains dandanītī as the lore useful in the acquisition and guarding of wealth (only the two objects mentioned by Kautiliya in connection with arthaśāstra) According to the Śukranditisāra (IV. 3 56) 'that is said to be arthaśāstra in which instruction about the conduct of kings and the like is given without coming in conflict with Śruti and Śmṛti and in which the acquisition of wealth with great skill is taught'.

The words arthaśāstra and dandanītī are applied to the science of government from two different points of view. Artha is defined in the Kāmasūtra (I. 20) as 'education, lands, gold, cattle, corn, domestic utensils and friends and the augmenting of what is acquired' (vide H. Dh. Vol II part I. p. 9 note 22). Therefore when wealth and prosperity of all kinds is the spring and motive of giving a name the science treating of these is called arthaśāstra and when the government of the people and the punishment of offenders are the main ideas the same is called dandanītī. Though works like Kautilya's Arthaśāstra place a high value on dharma they are principally concerned with the treatment of central and local government, taxation, the employment of sāma and other upāyas, with alliances and wars, appointment of officers and punishment. Therefore Arthaśāstra is mainly what is called dṛṣṭārtha śmṛti, as stated by the Bhavisyapurāṇa (quoted by Aparārka p. 626, the Smrückstandrikā p 24, vyavahāra and Vīramitrodaya, parabhāṣā p. 19). Medhatithi on Manu VII. 1 explains that dharma in that verse means

11. अयोध्य वालसुन्दरीनातिव । द्रम्मित्रस्थतिमायागर्मिश्च।।शृद्धेति विद्वानः। सर्वोपरिश्रद्धेति । अपीति महाकाव्यः। सत्त्वां सत्त्वां सत्त्वां। येव शास्त्राय शास्त्राय शास्त्राय शास्त्राय।

12. अयोध्य वालसुन्दरीनातिवर्तितार्थेन्द्रियेऽपि । अमरकोर्त्र (अमरकोर्त्रम्)। श्रेष्ठभाषी द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा द्वारा
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of duties (dharmaśabdah kartavyatāvacanah), that the duties of the king are either dratartha (i.e., the effects of which are worldly and visible) such as the employment of six gunas (sandhi, vigraha &c) or adstrārtha (that have no visible effect but have a spiritual result) such as Agnihotra; here (in chap VII–IX of Manu) the remarks relate principally to drstrārtha matters since it is well-known that the word rājadharma is applicable to such matters (the six gunas &c.) only. Medhatithi here declares that the rules of rājanitī are not based on the canonical books of dharmaśāstra but principally on the experience of worldly affairs.

Another name for the science of government is Nitiśāstra or Rājanitīśāstra. Śānti 59 74 says that in the nitiśāstra are set forth all those means whereby people are prevented from forsaking the right path. The Nitiśāra of Kāmandaṇaka (i. 6) does obeisance to Vaiśnugupta who extracted the nectar of Nitiśāstra from the vast ocean of Arthaśāstra (works). The Pañcatantra p 2 holds that Arthaśāstra and Nitiśāstra are synonymous. The Mitākṣara on Yāj. II 21 remarks that the arthaśāstra referred to by Yāj. is rājanitīśāstra that is part and parcel of dharmaśāstra. The word ‘rājanitī’ occurs in Raghuvamsa 17 68 Vide Bhāgavadgītā X 38, Āśramaśākaparva 65, Manu VII 177, Śānti 111 73, 138,39, 43 and 196, 268 9 and Amuśāsana 163 7 for Nitiśāstra meaning Arthaśāstra or Rājanitī and Drona 152 29 and Śānti 37 9 for the word rājanitī. Another noteworthy word is ‘naya’ which means ‘line of policy’ and is employed by the Arthaśāstra (I. 2) when it says ‘naya and anaya (bad policy) are treated of in Dandaritī’. It is also used in several classical works, such as the Kīrtarjunīya (II 3, 12, 54, XIII 17).

The relation of arthaśāstra to dharmaśāstra has now to be understood. As stated above rājadharma is a very important subject of dharmaśāstra Arthaśāstra which is principally concerned with the rights, privileges and responsibilities of the ruler is therefore properly speaking a part of dharmaśāstra. As shown above it is supposed to have

13 धर्मशास्त्रः कार्यद्वारचन इत्यज्ञम्। कार्यः च हादयां पालणांवतैः। आदर्शार्थः मद्भविधि। ततः भाषणं हादयम् उपदेश्यते। हादयः च राजसमंदिरिः। मेधार on सूत्र VII I

14. शैवशास्त्रोपेयमस्त न ज्ञात्याध्यायाति। तताया राजसार्थः भैनितार्थप्रर्वत्तिः। कार्यम् 59 74

15 नीतिज्ञानान्तये जीवार्थशास्त्रनिवृत्ते। सब्ज्ञाने मनसस्मे विषयावत नेषये। कामनन्दानान्तितिसर I 6
like dharmaśāstra a divine source. But works on arthaśāstra enter into great details about the government of a country in all its aspects, while dharmaśāstra works generally deal only with a few salient features of rājaśāstra. Just as the Kāmasūtra (I. 2 14) states that dharma is the highest goal and kāma is the lowest of the three purusārthas (vide H. Dh. vol. II part 1 p 9), so Arthaśāstra also sets the highest value on dharma. The Kautūlya states (III. 1. at end)16 ‘In any matter where there is a conflict between dharmaśāstra and practices or between dharmaśāstra and any secular transaction, (the king) should decide that matter by relying on dharma. If śāstra comes in conflict with any rational and equitable rule then the latter shall be the deciding factor and the (strict) letter of the text will be nowhere’. But Kautūlya and other writers on arthaśāstra lay the greatest emphasis on artha. In the eager and relentless pursuit of worldly prosperity means may be recommended or followed which may come in conflict with the strictly ethical standpoint of the dictates of dharmaśāstra. In such cases of conflict dharmaśāstra works lay down (e.g. Āp. Dh. I. 9. 24. 23, Yāj. II. 21, Nārada, vyavahāramātṛkā chap. I. 39) that dharmaśāstra rules are to be preferred to the dictates of arthaśāstra. Viśvarūpa (on Yāj. II. 21) states that according to some predecessors of his the conflict between the dictates of dharmaśāstra and arthaśāstra is illustrated as follows. Manu VIII. 351 (which is the same as Vivasu-dharmaśutra V. 190 and Matsyapurāṇa 237. 116–117) when dealing with vyavahāra (a subject that pre-eminently belongs to arthaśāstra) provides that in killing an ātātīyin, no fault attaches to the killer; while Manu XI. 39 in the chapter on prāyaścittas (which is pre-eminently a topic of dharmaśāstra) states that no penance is prescribed (i.e. there is no prāyaścitta for removing the guilt) when a person of set purpose kills a brāhmaṇa. The result is that the latter rule prevails and sin is incurred by killing a brāhmaṇa even if the latter be an ātātīyin (though there may be no punishment by the king). Viśvarūpa does not accept

16. संस्कारां विशेष शरीरापीय गदुर्दशा या एकशैलिकम्। परमहर्षियों विशेष चालनाम विशिष्ठ शरीरान विशिष्ठ शरीरान। परस्परम िशिष्ठ विशेष ज्ञातीम शरीरान

(1) शास्त्र नियम प्रकार धर्मवाचन केन्द्रितम्। धर्मवाचन नियम प्रकार शास्त्र प्रकार हि कृति: शैलिकम् III. 1. p. 150. Prof. K V. Rangaswami Ayangar gives two inconsistent translations of these verses at pp. 54, 170 of his ‘Ancient Indian Polity’ (1935). प्राचीन राजवाल्लेश्वरम धर्मवाचन शास्त्रवाचन शिरोमणिसिद्धिः तत सर्वप्रियितिः। शैलिकम् IX. 7. p. 362
this illustration. The Mitāksara also refers to this example, disapproves of it and gives its own example. The Arthasastra declares that a king should endeavour to secure friends, since the acquisition of friends is superior to the acquisition of gold and land (as is laid down in Yaj I. 352) The rule of dharmaśāstra is that a king has to dispense justice, being free from anger and avarice and in accordance with dharmaśāstra. Therefore when a suit comes before a king he must decide it according to law, even though he may lose the friendship of a person if his decision goes against the latter. TheVīramitrodāya follows the Mitāksara. Dharmaśāstra went by the name of smṛti(Mam II 10), while arthasastra was treated as an Upaveda. The Visnupurāṇa III 6. 28, Vāyu 61. 79 and Brahmāṇda 35 88-89 mention the four Upavedas viz. Ayurveda, Dhanurveda, Gāndharvaveda and Arthasastra as affiliated to the four Vedas respectively. Vīgya, Yajurveda, Śāmaveda and Atharvaveda. Kautilya (I. 5) states that the king should listen to the recital of itihāsa in the latter part of the day and includes both dharmaśāstra and arthasastra under itihāsa and requires the minister knowing arthasastra to advise the king (with examples and precepts derived) from itihāsa and purāṇa.

Though Arthasastra is in theory for keeping to the path of dharma, one cannot blink one’s eyes to the fact that the Mahābhārata and the Kautiliya both support in several places the adoption of means entirely divorced from all rules of fair dealing and morality. In Adiparva 140 we have a discourse by Kanika said to have been a manthra of Dhrtaśāstra, and a profound student of Rājaśāstra, which is almost on the same lines as Sāntiparva chap 140 where Bhīma sets out what lines of policy (viha) should be followed by the ruler in adversity and how he should give up all thoughts of kindliness in such straits. He is supposed to give the substance of the dialogue between the sage Bhāradvāja and Śatrūntapa, king of Śauri. The whole chapter is full of Machiavellian advice. A few specimens may be set out here. One should be very courteous in speech, but like a razor at heart (verse 13); one desirous of prosperity may fold one’s hands, may take an oath, may use

17. अयुर्वेदी यथावृत्ति गर्गश्च, अयुर्वेदी च बिधया आद्वाज: न. II विष्णुपुराण III 6. 23 quoted by अस्वारक: P. 6

18. परिषद्विविधेहितायावस्था पृथ्विश्वस्तत्तत्वाद पुराणिकोवास्तम धर्मार्थसन्न: सूतितितदास:। कौदिकिष्म त. 5, p. 10.
sweet words, place his head on another’s feet and even shed tears, one may carry on one’s shoulders one’s enemy till one accomplishes one’s object and when a fit opportunity arises should break him like an earthen pot on a stone (17-18); the king should raise hopes promising their fulfilment at a distant day, but should put obstacles in the fulfilment of the hopes raised in others (32); when one is reduced to a wretched state one may extricate oneself from it by any act whatever whether gentle or horrible and practise dharma after one becomes able to do so (38); one should inspire confidence in one’s enemy by some means which appear to be true (to the enemy), but one should strike him down at the right moment when he takes a wrong step (44); whoever causes obstacles to the purpose of the king, whether son or brother or father or friend, should be killed by the king who desires to prosper (47); without cutting the vitals of others, without committing horrible deeds and without killing indiscriminately as the fisherman in the case of fish one does not secure high prosperity (50); when about to strike one should utter sweet words and even after striking one should use honeyed words; even after severing another’s head with a sword one should lament and shed tears (54); if some remainder is left in the case of a debt or fire or enemies, there is a tendency to grow and so no remainder should be left of these (58) It is to be noted that this chapter deals specially with what should be done in difficulties and cannot be supposed to be the real teaching of the Mahabharata which is generally in line with the higher code of dharma-sastra It embodied probably the words of earlier artha-sastra writers like Bhradva[.]a. After hearing this discourse on calculated cruelty and deceit Yudhisthira stood aghast and frankly told Bhima that the course of conduct outlined by him did not differ from that of robbers and that he felt bewildered and would not exert himself in the way pointed out In chap. 142 Bhima replies to this by saying that he did not base his discourse merely on the sacred texts, but also on reason and the essence was distilled by wise men, that the considered rule of conduct for the king is twofold, viz. straightforward and crooked, that one should not ordinarily employ the crooked course of conduct, but should employ it as against an enemy who employs a crooked policy and effectively meet him by such policy. He further says that rajadharma cannot be based on a single source (v.7) and that policies are to be pursued not merely by reliance on the sacred codes of law but on reason as well
(v 17) and that Indra himself has declared this rule which he derived from Brhaspati. In Śanti-parva a weak king is advised to harass a very powerful ruler’s state by sword, fire and poison. In chap 130 it is stated that the preservation of the state is the paramount consideration and that a king whose treasury is depleted and who is therefore in difficulties may replenish his treasury even by harassing his subjects (except tāpasas and learned brahmanas). In chap 138 it is said that self-interest makes friends or foes and that anusūsa (putting trust in no one) is the grand line of policy for kings. So it is clear that the Mahābhārata was prepared to give up in certain circumstances the strict rules of dharmaśāstra for kings and to allow them to pursue devious modes of action that were far from moral i.e., it tries to effect a synthesis of dharmaśāstra and arthasastra.

The Kautāliya also discloses how arthasastra writers did not shrink from giving advice which, to say the least, was most cruel, selfish and immoral. For example, in the section called ‘guarding the prince’ (Kauṭ I.17) the views of several teachers are set out. Bharadvāja says that princes are of the nature of crabs eating up their parent; so it is better to finish them in secret when they have no love for their father. Visālākṣa abhorred this advice as cruel, as unsanctioned murder and as destructive of the seed of ksatriyās and recommended that it was better to keep them confined in a single spot. Vātavyādhi recommended that princes should be made addicted to sensual excesses. Kauṭ disapproves of this as living death (for the princes), recommends proper care before conception and after birth and instruction in dharma. In Kauṭ V.6 Bharadvāja is quoted as saying that when the king is on his death-bed, the minister may set up the kinsmen of the king and the principal princes against one another, that whoever attacks should be killed by inciting the people against him, or having secretly punished the kinsmen and chief princes and brought them under control, the minister should himself take possession of the kingdom. Kautīya does not approve of this. But even he advises (XIV Apanisadīka) the employment of poison, herbs and incantations against those who are irreligious or wicked. In I.18 even Kauṭ does not shrink from advising that secret emissaries (of the reigning king) may kill an abandoned prince with weapons and poison and in V.1 Kauṭ remarks that when a king cannot openly put down the principal courtiers or chiefs.
who are dangerous to the kingdom, he may inflict punishment on them in secret or may induce the brother of the officer to be punished to attack the latter by promising to give him the position and wealth of the officer and then destroy that attacker with weapons or poison saying that he was guilty of fratricide. In V.2 for replenishing a depleted treasury, Kautilya coolly asks the king to deprive the temples in the kingdom of their wealth through the superintendent of religious endowments.

Sanskrit literature on rajaradharma is very extensive. Apart from the meagre materials contained in such ancient dharmaśūtras as that of Āpastamba, the following works deserve close study and have been utilized in this section; the Mahābhārata (Vanaprastha 150, Sabhā 5, Udyoga 33-34, Śantī 1-130, Āśrama-vasīka 5-7), the Rāmāyaṇa (Ayodhyā, chap. 15, 67, 100; Yuddha 17-18, 63), Manusmṛti VII-IX, Arthaśāstra of Kautilya (which is the leading work on rajaradharma), Yaj I 304-367, Vṛddha-Hṛitāsmitī chap VII, verses 188-271, Bhāt-Paśaṇa chap. X, pp. 277-285, Vismudharmasūtra III, the Nītisāra of Kāmandaka, Agnīpurāṇa chap. 218-242, Garudapurāṇa 108-115, Mātṣya 215-243, Vismudharmottara II, Mārkaṇḍeya 24, Kāti 87, the Nītuprakāsikā attributed to Vaiśampāyana (ed. by Oppert), Śukrāntīśāra (ed. by Jīvānanda, 1890), the Abhilaśitārthacintāmaṇi or Mānasollāsa (first four vīṁśatis) of Somesvara, Yuksi-kalpataru of Bhoja, Nītivaiśyāṃśa of Somadeva (959 A.D.), Bārhaspatyasūtra (ed. by Dr. F.W. Thomas), the Rājanitikādā of the Kṛtyakalpataru of Laksīdhara (edited from a single ms. by Jagadīś Lal Shastri at Lahore, 1942), Rājanītiratnākara of Candeśvara, Rājanītīprakāśa of Mitramīśra, Nītīmayukha of Nilakantha, Rājadharmakāustubha of Anantadeva, Budhābhusāna of Prince Sambah ji (between A.D. 1675-1680, ed. by Prof. H.D. Velankar), Dandanī of Kṛśavapandita (edited by V.S. Bendrey, Poona, 1943). In recent times there is a deluge of works mostly inspired by the publication of the Kautiliya dealing with ancient and medieval Indian polity in its various branches. The most important of these and a few other works independent of Kautilya are mentioned in the note below. 19

19. Some parts of the Sāntiparva may be later than Kāmandaka's work, since Śantī (123, 11-12) refers to the dialogue of Kāmandaka and Āgarasūtha king of Agra. But it need hardly be said that it is not absolutely necessary to hold that the extant Nītisāra of Kāmandaka is referred to by Sāntiparva.

(Continued on next page)
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It would be impossible to go into all details about government and politics within the space at my disposal. What is

(Continued from last page)

The reference may be only to a legend. The modern works referred to above are—'Some Aspects of Ancient Indian Polity' (1935) and 'Rājadharma' (1941) by Rao Bahadur K. V. Rangaswami Aiyangar; 'The Nature and grounds of political obligation in the Hindu state' by J. J. Anjāra (1938); 'Development of Hindu polity and Political Theories' (Calcutta, 1929) by N C. Bardopadhuya; 'Public Administration in Ancient India' (1916) by Dr. P. N. Bannerjea, 'Some Aspects of ancient Hindu Polity' (1921) by Prof. D R. Bhandarkar; 'The theory of Government in Ancient India', (1927) and 'The State in Ancient India' (1928) by Dr. Beni Prasad; 'Buddhism in India' (1903) by Rhybs Davids, 'Hindu Administrative Institutions' (Madras, 1929) and 'Manryan Polity' (Madras, 1932) by Prof. V R. Ramchandra Dikshitār, 'History of Hindu Political Theories' (2nd ed. Calcutta, 1927) by U. Ghoshal; Prof. E W. Hopkins 'Position of the Rājput Caste in Ancient India' in Journal of the American Oriental Society, vol. XIII. pp 57-372, 'Hindu Polity' (1924) by K. P. Jayaswal, 'Administration and Social Life under the Pallavas' (1938) by Dr. C. Minakshi, 'Studies in Ancient Hindu Polity' (vol. 1, 1914), 'Inter-state Relations in Ancient India' (London, 1920), 'Aspects of Ancient Indian Polity' (Oxford, 1921), 'Studies in Indian History and Culture' (1923) by Dr. Narendranath Law; 'Corporate Life in Ancient India' (Calcutta, 1919) by Dr. R. C. Majumdar, 'Local Government in Ancient India' (1919) by Dr. Radhabhumi Mukerjee, 'Study in the Economic condition of Ancient India' by Dr. Pran Nath, 'Positive Background of Hindu Sociology' (Allahabad, 1914) and 'The Political Institutions and Theories of the Hindus' (1922) by Prof. Benoy Kumar Sarkar, 'Sovereignty in Ancient Hindu Polity' by Dr. H. N. Sinha (London, 1938), 'International Law in Ancient India' by Prof. S. V. Viswanathan I have to make general acknowledgments to these works for much useful information, particularly to those of K. P. Jayaswal and N N. Law. For a list of Mess. on Polity or its sub-topics, vide N N. Law's articles in Modern Review for October 1917 to January 1918 and March and June 1918 and for a list of available Mess. and printed works on 'Vārtā' (economics) vide the same writer's 'Studies in Indian History and Culture' pp 384 ff. In my treatment of rājadharma I have generally restricted myself to data derived from Sanskrit works on dharmāstra and arthaśāstra and have rarely ventured into works in Pali. Similarly it has to be borne in mind that the works referred to cover a period of several centuries and further that India is not one country but a continent of which northern India formed one more or less homogeneous unit, while the Deccan formed another and South India formed a third unit. The institutions of these, particularly of the last of these, differ in many particulars from those of the other two. But the authentic data furnished by South India are later by centuries than those supplied by the north and besides are comparatively meagre. Therefore in this work one has to confine oneself principally to Sanskrit works composed in North India or the Deccan.
proposed is to indicate and dilate upon only the fundamental ideas and principles of the several matters falling under raja-
dharma. Nor is it possible to enter here into formal and lengthy refutations of the several views propounded by Western and Indian writers about the forms and functions of Government and the state of society in ancient India. Most of the modern works referred to in note 19 above are more or less based on the same material in Sanskrit and Páli, but the emotional or subjective element is different in each case. Some western writers have without very solid foundations indulged in a facile and sweeping generalization that the great Empires of antiquity such as those of the Assyrians, the Babylonians, the Medians and Persians and the Indians were mainly tax-gathering institutions (vide Sir Henry Maine's 'Early History of Institutions' 1875, pp. 384 and 390; and Prof. Rangaswami Aiyangar's 'Ancient Indian Polity' 1935, pp. 5—6 and pp. 66-69 (where passages from T. H. Green and others are cited); while some Indian writers vehemently assert that the Government in An-
cient India was always some form of limited monarchy. Both characterisations are in my opinion misleading. An endeavour will be made to present from the original texts as true a picture of the polity of ancient and medieval India as it is possible for me to do. It will do no good to label the ancient institutions of India with concepts and terms current in the West during the last one hundred and fifty years or so. Even in the West true democracies or real democratic governments did not exist and the masses in no country had elective popular assemblies or councils before the last quarter of the 18th century. Such assemblies do not exist even now in several countries of Europe. Even in the ancient Greek city states the number of slaves who had no voice in the government was several times as large as the free citizens and those states were no democracies at all in the strict sense. 19a Indian polity has a recorded history of over two thousand years from at least the 4th century B.C. Its growth was gradual but its aims and ideals and its main elements have been the same throughout the centuries. India need not feel ashamed or fear

19a. Berozlzheimer in 'the World's Legal Philosophies' (tr. by Jastrow, New York, 1929) p. 62 remarks 'Plato approved of slavery unreservedly, finding it a necessary condition for the maintenance of the proper status of the citizen. ... Thus in the maritime and industrial states there was a large slave class; in Corinth, 460000; Aegina, 470000, in Attica (according to the consuls of 309 B.C.) 400000'.
a comparison of its ideals and theories of State with the ideals and theories of western countries in ancient and medieval times. If western countries could boast of so-called republics and city states in ancient Greece and Rome, India also had several republics in ancient times. The ancient Hindus made their own contributions to political thought, though unfortunately Western scholars of the 19th century like Max Müller, Weber and Roth were concerned most with the Vedic and allied literature and either did not know or ignored the vast literature on politics contained in Sanskrit and Pali works. Vide 'Some Aspects of ancient Hindu Polity' by Prof D R Bhandarkar (1929) pp 2-3 for views of Max Muller and others and criticism thereof, also Dr Beni Prasad's 'Theory of Government &c' p 1, U Ghoshal 'History of Hindu Political Theories' pp 3-4
CHAPTER II

SEVEN ANGAS OF RĀJYA

According to almost all of our authorities a state (rājya) is constituted by seven elements\textsuperscript{20} viz. svāmin (ruler or sovereign), amātya (minister), janapada or rāṣtra (the territory of the State and its people), durga (fortified city or capital), kośa (accumulated wealth in the ruler's treasury), danda (army), mitra (friends or allies). These seven are called angas or prakṛtis. The word prakṛti in works on politics is also used for the constituents of a circle of states (of a mandala) Vide Manu VII. 156 and Kautilya (VI.2). The word also means ministers as in Śukranītisāra H. 70-73 and 'subjects' in Kāravela's Inscription (E. I vol. 20 p.79 l. 4), Nārada (prakṛimaka 5), Raghuvamsa VIII. 18. The order in which these are arranged and their names vary a good deal. The quotations given below will indicate how the order differs. The sequence is important for the reason that some of our authorities expressly state that when calamities befall or deterioration sets in each of the seven elements, those that befall each preceding one are more serious for the State than those of each succeeding one (Kautilya VIII. 1, Manu IX. 295). For janapada sometimes the word jana or rāṣtra is used, for 'danda' the word 'bala' and the word 'pura' for 'durga'. The Āśramavāsīparva (58) speaks of eight angas of rājya. According to Sumantu quoted by the Sarasvativilasa (p 46) danda means "punishment bodily or monetary" and 'army' is included under 'kośa'. Sumantu says that th esvāmin has to be preserved by himself, the ministers by showing them proper respect, the people by keeping them contented, the fortified capital by abundance of wealth and grain, the kośa by proper expenditure, danda
by following one's dharma, friends by truthfulness. The authorities are agreed that the ruler is the most important or the first of the seven. Kautilya puts the matter very forcibly and realistically when he states that the briefest exposition of the elements of rājya is to say that the king is the State. This is really not the same doctrine as that emphasized by Louis XIV of France when he said 'L'Etat c'est moi'. Kautilya makes his position clear (in VIII.1) by saying that it is the king who appoints ministers and servants and superintendents, who takes measures of relief against calamities befalling the other prakṛtas and measures of prosperity, that it is he who appoints other ministers when those already appointed are under calamities, that if the ruler is prosperous he transmits prosperity to his prakṛtras, that the prakṛtras bear that character which the king has and that hence the ruler occupies the position of a permanent, never-exhausted centre of power. The Śukranitiśāra II.4 remarks that if the king begins to act at his sweet will, it leads to calamities, to loss of ministers and of the kingdom. The Śukranitiśāra (I.61-62) compares the seven angas of rājya to the organs of the body viz., the king is the head, the ministers are the eyes, ally the ear, treasury the mouth, the army the mind, capital and rāstra are hands and feet. It is emphasized by Kām. (IV.1-2) that each of the seven elements is complementary to the others, that if the state is defective even in one out of the seven elements it does not pull well. The Śāntiparva it is stated that it is not possible to say categorically that any one of the seven excels the others in merit but that at different times a different element assumes importance over others, since that particular element is in the particular circumstances capable of accomplishing the purpose in hand. This shows that Mamu and the Mahābhārata held that there was an organic unity in the several elements of rājya. All must work harmoniously towards one ideal or end. Manu (IX.296-297) says this by means of a simile 'Just as among the three staves tied together (by a rope of cow's hair) used by a sannyāsin no particular staff is superior (to the others), so among

21. राजा राजस्विति मक्तितंत्, कोवि विह क्षी तव सप्त? कै विह विह? कै विह विह? कै विह विह? कै विह विह?

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the seven elements of the state no particular one can be said to excel the others, since each of them has a particular excellence of its own; a particular element is pre-eminent in some particular matter and therefore the superiority of one to the others when expressed (as e. g. in Manu IX. 295) is to be confined to that matter alone.' Manu here emphasizes the harmonious working or unity of the seven elements though they are diverse in their individual characters. The analysis of the elements and nature of the State led ancient Indian writers to hold that a mere conglomeration of people did not by itself constitute a State, but that for a State there must be people who live within certain definite geographical limits (rāstra), they must be bound by the bond to render allegiance to a ruler (svāmi), have a certain system of government (amātya), must have a regulated economic system, a force for defence and international relationships. That is, the most essential elements of a state are (1) a sovereign, (2) a system of government, (3) a definite territory and (4) a population of some size. These four were known even to the most ancient sūtras. Vide Gaut. XI. 1 (rājā), Ṛp. II. 6, 25. 10 (amātya), Ṛp. II. 10. 25. 11, II. 10. 26. 4 (visāya, nagara, grāma), Gaut XI. 5–8 (praśā).

These seven elements will now be dealt with one after another.

It should be noted that neither Kauṭilya nor Kāmandaka defines rājya. Etymologically it means the 'karma' or 'bhāva' (activity or state of a king'), being derived from 'rājan' with the affix 'ya' (syaṅī or 'yak', acc. to Panini V. 1. 124 and 128). This is the etymological meaning. But rājya is employed in the sense of 'kingdom' in popular parlance and also in the smṛtis and works on polity as in Manu VII. 111, Kām. XIII. 81-82. But when it is said that rājya has seven elements then rājya has a very wide meaning and stands for the king, the ministers, the country and its people and the economic and military resources and in such a case it is proper to translate the word as 'the State' (as including both the Government and the governed). In some cases rājya should be rendered as 'government' which includes only the king and his ministers and conveys also in modern times the agency or machinery through which the will of the State is formulated, realized or carried out; vide Mānasollāsa II. 8, verses 688, 689, 691. The Nītivākyāṁṛta (p. 43) says "rājya means the activity of the ruler that would be appropriate to protecting the earth".
Medhātithi on Manu VIII. 1 remarks that rājya means 'a prosperous people'. In XIII. 4 Kautilya states (na hṛṣyaṇo janapado rājyaṁ janapadam vā bhavatīti Kautilyak) it as his opinion that a territory without any inhabitants cannot become a rājya (a kingdom) or a janapada (as one of the seven elements). Śabara on Jai. II. 3, 3 has a discourse on the derivation of rājya.

Prof. Bhandarkar in 'Some Aspects of Ancient Indian Polity' (pp. 66–69), Jayaswal in 'Hindu Polity' part II p 9, Prof. B K Sarkar in 'Positive Background of Hindu Sociology' Book II pp 34–39 and others maintain that this ancient analysis of rājya into seven elements shows that the idea of the State as an organism, that is, the organic theory of the State was known to Hindu thinkers and that this doctrine of sapāṅga rājya* satisfies the definition of the State given by Bluntschli and others. On the other hand Mr Anjaria in chapter IV of his 'Nature and grounds of political obligation in the Hindu state' after pointing out how there are different versions of the organic theory of the state denies vehemently that the Hindu theory can be called a proper organic theory of the State, particularly because the Hindu thinkers did not regard the State as a moral organism, because they attached a permanent stigma of inferiority to large sections of the community on the bare ground of birth and that the Hindu conceptions did not harmonize the authority of the State and the liberty of the individual. It would be far beyond the scope of the present work to enter into any discussion of this problem. All that may be said is that Mr Anjaria tilts the balance to the other side too much. The faults he points out in the Hindu theory and practice beset almost all theories of the State almost in all countries. Even in the times of Plato and Aristotle huge populations of slaves had no voice in the affairs of the state. Up to the 19th century true democracies never existed even in Europe.

The Ruler—The necessity of a ruler is forcibly emphasized in several works. The Ait. Br. I. 14 says that the gods thought they were worsted because they had no king, that therefore they elected one by 'consent'. This shows that military necessities

21a Korkumov in 'General Theory of Law' (tr by W G Haschung, New York, 1922) says 'Bluntsch.' assimilates government to the head, as it is the head of the State, the ministry of the interior to the ears, and that of foreign affairs to the nose' (p. 274).
led to kingship. Manu VII 3 (= Sukranitiśāra I 71) says 'the Creator created the king for the protection of all this world when everything ran through fear hither and thither, as there was then no ruler in the world'. It goes on to say that the Creator proceeded to create Danda (the power of punishment) for the sake of the king and that if the king does not sedulously employ danda for punishing those that deserve it, the strong would torment the weak as fish are fried on a pike or as in water fish devour each other (Manu VII 14 and 20, the last also showing a variant 'jala' for 'śūla'). This idea of mātsyanyāya (the maxim of the larger fish devouring the smaller ones or the strong despoiling the weak) is frequently dwelt upon by Kautilya, the Mahābhārata and other works. It can be traced back to the Śatapatha-brāhmaṇa XI. 1. 6. 24 'whenever there is drought, then the stronger seizes upon the weaker, for the waters are the law', which appears to mean that when there is no rain, the reign of law comes to an end and mātsyanyāya begins to operate. Kautilya says 'if danda be not employed, it gives rise to the condition of mātsyanyāya, since in the absence of a chastiser the strong devour the weak' and 'the people overwhelmed by the operation of mātsyanyāya made Manu Vaivasvata their king.'

That in the absence of a king (arṣya) or when there is no fear of punishment, the condition of mātsyanyāya follows is declared by several works such as the Rāmāyana II. chap. 67, Śāntiparva 15. 30 and 67. 16, Kāmadaka II. 40, Mātsyapurāṇa 225. 9, Mānasollāsa II. 20 verse 1295. Numerous works contain eulogies of danda. The king is called dandadhara in many works e.g. in Śāntiparva 67. 16 and Kāma. I. 1. Gautama XI. 28 says that the word danda is derived by the wise from the root 'dam' (to control), that he (the king) should control by means of danda those who observe no restraint and (XI. 31) that the instructions of the teacher and the power of punishment (wielded by the king) guard those who violate the rules of varnas and āśramas. The Mātsyapurāṇa 22

22. (शुभः:) अत्यन्तीये हि सत्तयासत्याजयाप्रेमि । शधिनानं शस्ये हि प्रस्ते कुम्भचर- । अधे । कौलिक I. 4; सात्तानासपापसति। मन्त्र मनु वैकल्या राजां जाति । श्री । I. 13; मन्त्र दृढः जना विण्य सत्यार्याय परस्य । अचर्य शत । 31; दुर्गासेन भवलोकेन्द्रितबिनधे- । हुतिमा ॥ पाले सत्यालेश्वरयुक्तसंधर्षति। कलुकरः ॥ जातिः । 15, 30; पाले ब्राह्मण । । मोबालोकेन्द्रितबिनधे ॥ जातिः । कलुकरः ॥ जातिः । 15, 30; दुर्गासेन भवलोकेन्द्रितबिनधे ॥ कलुकरः । कामसूत्र II. 40.

23 यस्मादवृद्धिवृद्धिष्ठिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिवृद्धिअर्याप्रेमि । बुधमाहोगुहसूचक हस्त:वर्ग: स्विक- । हुदः ॥ जातिः । 15, 8, अचि. 225. 16 (reads बुधामोहयुक्तसंहस्त:वर्ग:स्विक- । हुदः । कलुकरः 225. 17 (reads बुधामोहयुक्तसंहस्त:सः ।)
225, 17, Agnipurāṇa 226, 16 and Śāntiparva 15 8 state that danda is so called because it suppresses those that are not restrained (from the root 'dam') and punishes those that are imprudent or ungentlemanlike (from the root 'dand'). Danda is raised to the position of a divinity by Manu VII. 25 (= Vismudharma-sūtra III. 95 = Matsya 225 8), Yaj I. 354, Śānti 121. 15. Danda rules over all people, it protects all of them, danda is awake even when (the guardians of law) have gone to sleep, the wise regard danda as dharma (Manu VII. 18 = Śānti 15. 2 = Matsya 225 14-15). The whole world is under the heel of danda, for it is difficult to find a man who is pure by nature (Manu VII. 22 = Śānti 15. 34). The conception of danda is therefore this that the State's will and coercive power keep the individual and nation within the bounds of dharma, punish for breaches and effect the good of the whole. The gods, dānava-gandharvas, the rāksasas and reptiles—these also tend to bring about enjoyment for men because they are pressed down by danda (Manu VII. 23) 24. The Bhagavadgītā (X. 38) identifies danda with the divine Kṛṣṇa 'I am danda in the hands of those who control others, I am nīl (i. e. rājanitī) for the conquerors'. For the detailed effects and long eulogies of danda, vide Manu VII. 14-31, Matsya 225. 4-17, Kāmandaka II. 38-44. These eulogies of danda presuppose the theory that people obey law and the dictates of the śastra through the fear of force or punishment. Danda should be neither too severe nor too mild, but should be appropriate to the fault committed (Kaut I. 4, Kāmandaka II. 37, Manu VII. 16, Śānti 15. 1ff, Śānti 56 21, 103 34) Śānti 57. 41 advises that one should first secure a king, then wife and then wealth, for in the absence of the ruler there would be no wife nor private property 25. This shows that the institutions of family and private property and the protection of the weak are bound up with the existence of a ruler. Kātyāyana (in Rāja N. p. 30) says the king is the

24. यज्ञद्वारे यज्ञद्वारे रूपाणि पापपदि पापादि । मनुस्मृतिः मनुस्मृतिः मनुस्मृतिः ।

25. This appears to be suggested by the words of the Tait. Up. II. 3

26. शास्त्रान्तर ॥ भीताय ॥ भीताय ॥ भीताय ॥ भीताय ॥
protector of the helpless, the home of the homeless, the son of the sonless and the father of the fatherless.

In order to magnify the importance of the kingly office, certain works state that the king has in him parts of the gods. For example, Manu says "the Creator created the king with the essential parts taken from Indra, the Wind god, Yama, the Sun, Agni, Varuna, the Moon and Kubera the lord of wealth and therefore he surpasses all beings by his majesty (VII. 4-5 and compare Manu V. 96); one should not disrespect a boy-king with the thought 'he is a human being (like others)' for it is a great deity that stands (before people) in human form as a king" (Manu VII. 8 = Śānti 68. 40). This conception goes back to Gautama XI. 32 ('Therefore a king and a spiritual teacher must not be reviled') and Āp. Dh. S. I. 11. 31. 5 ('he shall not speak harsh or abusive words of the gods or of the king'). Manu VII. 3-4 are the same as Śukranītisāra I. 71-72. The Matsyapurāṇa 226. 1 states that the king was created by Brahmā by taking portions of gods for wielding the power of punishment for the protection of all beings. Manu (IX. 303-311) puts forward a slightly diluted theory, viz. the king should possess the majesty of and imitate in his actions the first seven deities enumerated above with the Earth as the 8th and Manu sets out what the eight characteristic actions are. Matsya 226. 9-12 are the same as Manu IX. 303-306. The Agnipurāṇa (226. 17-20) states that as the king exercises the functions of nine deities viz. the Sun, the Moon, Vāyu, Yama, Varuna, Fire, Kubera, the Earth and Viṣṇu he has the form of these. Vide Śukranītisāra I. 73-79 for similar ideas. These verses do not amount to the express theory of divine origin, but assimilate by analogy the king's functions to those of certain deities. The Nārada-smṛti (prakrīyākā section, verses 20-31) contains several interesting dicta. It says that in the form of the king it is really Indra himself who moves about on the earth (v. 20), that a king even when devoid of qualities deserves honour from the people, that kings exercise the functions of five deities viz. of Agni, Indra, Soma, Yama...

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27. राजेति सार्वधर्मं पुरुषी समस्यासङ्गमः। महाभाष विद्यान्त्येव पुरुष एव मन्तवति॥
एवं सत्यमेव राजानि धार्मिकसयमीनिवदायुः। अदृश्यस्य सर्वत्र च मया तत्क्रियायात्वम्
महाधर्मसह गुप्तां दृवादुश्चतारामेति साततः॥
भविष्यातिहासिकमैव सत्यम् कर्म राजाः न दृश्यत॥
नारायणम्। महाभाष 20, 22, 26, 52, इदमेव महाभाषं विभा धार्मिकसयमीनिवदायुः॥
एवं सत्यमेव देश संख्यामुद्कयवः॥ शालिन 67. 4। कारवाचन सः सुराधवमर्यादिकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकायकाय
and Kubera (vv. 26-31). The Mārkandeyapurāṇa (27. 21-26) mentions the same five deities. ‘The Veda says that when a king is chosen it is Indra himself that is chosen; one desirous of prosperity should honour the king just as one worships Indra’—says Śānti 67 4 Śānti 69 states that all the gods are invisible, but the king is a deity that can be seen. The Vāyu-

purāṇa (57. 72) remarks **that in all past and future manvantaras universal emperors (caṅkara-varta) are born on the earth with parts of Visnub. The Matsya-purāṇa (226. 1-12) mixes up the theory of the creation of the king from parts of the gods with the lesser idea of his functions being similar to those of certain deities. The Bhāgavata-purāṇa (IV. 14. 26-27) states that Visnub, Brahmā, Śiva, Indra, Vāyu, Varuna—these and other gods—exist in the body of the king and that the king is full of (the parts of) all gods. It is to strengthen this conception that ancient keśa-rya dynasties and their panegyrist tried to trace for those dynasties descent from the Sun or the Moon and in later times from Fire. The practice of addressing the king as ‘deva’ in Sanskrit dramas is due to the same tendency of the glorification of the royal office. Aśoka was styled ‘devanām priya’ (beloved of the gods) and Kushan emperors like Kaniska and Huviska styled themselves Devaputra (E I. vol I. pp 371 at pp 381 and 386). This phenomenon is not confined to India. Alexander the Great and Julius Cæsar had their descent traced to gods and goddesses. Alexander was deified during his life-time in 324 B.C by the Greek world (vide Cambridge Ancient History, vol. VI p 433) and Cæsar’s image was carried among those of the immortal gods. Kautilya (I. 13) makes a spy say among pauras and jānapadas’ kings are (in) the place of (perform the functions of) Indra and Yama, since they visibly inflict punishment and bestow favours. Even divine punishment affects those who despise them (kings). Therefore kings should not be despised.’ Hence it must be said that the conception of the divine nature of the kingly office was well-known in Kautilya’s days and he was not above recommending the employment of this conception for safeguarding the king’s position. Vide Rāmāyana, III. 1. 18-19 and VII. 76. 37-45 and Mārkandeyapurāṇa 24. 23-28. Visnudharmottara II. 2. 9 for similar ideas. The phrase ‘nā visnub prithivipatiḥ’

28. विष्णुकोश जानने पुराणम् प्रवक्षितम्. * साधनाकोश सर्वे अहताननां केश * वर्ण विकृतम् कर्यवादीर्ष मीर्मु यादि भगवते चंद्रापिकाः पुष्पो विधिप्रेषणाः पुष्पिकोशीकमाय *.
The divine character of kingship is well-known and may be interpreted in two ways viz.: the ruler of the earth is Visnu incarnated as man or no king is not Visnu i.e. every king is Visnu. The Pañcatantra states 'Manu has declared that the king is made up (of parts) of all gods'. The Rajaniti Prakāśa is careful to point out that the idea of the king having in him parts of the deities applied only to the mahārāja (the sovereign ruler), while the idea of a ruler doing the functions of five deities applies to vassal kings. For eulogy of the kingly office, vide Manu VII 6-17, Śānti 63. 24-30, Śānti 68, Kam. I. 9-11, Rajaniti Prakāśa pp. 17-31.

But it should not be supposed that this glorification of the king resulted in the full-fledged theory of the divine right of kings or that every king, however bad, was looked upon as a divinity or could do what he liked. In the first place, the Rāja-nitīratnākara when speaking of the coronation of a prince by his abdicating royal father quotes a verse where the people (prājā) themselves are called Visnu. In the second place the king's authority over brāhmaṇas was limited. The Gautama-dharmasūtra (XI. 1, 7 and 8) says 'the king rules over all, except over brāhmaṇas; all, except brāhmaṇas, should while sitting low on the ground wait upon (worship) him (the king) who occupies a high seat; they (the brāhmaṇas) too should honour him'. From the time of the Ait. Br. (37. 5) the harmony between the king and the brāhmaṇas and the king's following the advice of brāhmaṇas had been insisted upon. Vide Ait. Br. 40. 1, Gaut. VIII. 1, XI. 27. Further the Śukranitiśāra (I. 70) states that a king who oppresses the subjects and causes loss of dharma is made up of the parts of rūṣasas. Manu (VII. 111-112) states that
the king who harasses his subjects loses his life, family and kingdom. Moreover stories of kings killed for their tyranny are found in the ancient Literature. For example, Vena, who was jealous of the gods, wanted sacrificial offerings to be made to himself (and not to the gods) and violated dharma, was killed by the brähmanas (Śantiparva 59 93–95, Bhāgavata-purāṇa IV. 14). The Anusāsanaparva 34 (61 32–33) solemnly sanctions the killing of a king in certain circumstances “The people should gird themselves up and kill a cruel king who does not protect his subjects, who extracts taxes and simply robs them of their wealth, who gives no lead. Such a king is Kali (evil and strife) incarnate. That king who after declaring ‘I shall protect you’ does not protect his subjects should be killed (by the people) after forming a confederacy, like a dog that is afflicted with madness.”. Manu (VII. 27–28) states that the great principle of danda if properly wielded conduces to the advancement of the three purusārthas, but if a voluptuous, mean and unjust king wields it, it recoils on his head and destroys the king together with his relations. Kām. 2. 38 makes it clear that danda foolishly wielded might exasperate even hermits. The Śantiparva 92 19 recommends that a king who has false and very wicked ministers and who puts down dharma should be killed by the people. Even as early as the Tai S. II. 3.1 it appears that kings were driven away, while the Śatapatha Brāhmaṇa (XII. 9 3.1 and 3) mentions a king Dustaritu Paumādyana who had been expelled from the kingdom which had descended to him through ten ancestors. The Satrāmani 34 is prescribed as a rite for a king to regain a kingdom from which he had been driven away (vide H. Dh. vol II p. 1227). Śānti 92. 6 and 9, Manu VII. 37 and 34, Yaj. I. 356 appear to justify at least deposing a king, if not tyrannicide. Similarly, the Śukranītisāra (II. 274–275) states 35 that a king, though of a noble pedigree, should be abandoned, if he violates dharma, if he hates good qualities (in others), lines of policy and the army and if his conduct would lead to the destruction of the kingdom and that the family priest with the consent of the principal.

34. अर्थशास्त्र हस्तरें हितोहासमात्मकः। हेघ्य राजकृति हिन्दुः मण्डा सच्चा निवृत्तम्।।
अर्थो स्वैरितिरेकका यो न कतः बुधिः।। स संहारं निवृत्तम्। नेव सरीवाद अनुपेयं।।
अभाषान 61 32–33, अर्थशास्त्रविवेचनो चप्पी छोटा महाशंके। ब्राह्मण 92 19

35. युगमोत्तरवेशी कुत्तुस्तृत्वन्धारतिकः। चुरौप्यां तपः रावण रुपवेशार्विगाधकः।।
हस्त्वद्वृत्त तथा कुलज्ञ युगवृत्त पुरोक्षितः।। महादेववर्ती हस्तव स्पन्दनवस्ततपदे।। भक्तं
II. 274–275.
officers of state should place on the throne another scion of the royal family who is possessed of the requisite virtues. Nārada propes up the theory of divine right by stating that the king secures dominion over (lit. purchased) his subjects by his austerities (performed in former lives) and therefore the king is their lord (prakṛtana 25). Śukranīti I. 20 also brings in the doctrine of Karma 'the king holds the earth by the actions of his former lives and by his austerities.' Compare Manu VII. 111-112, Śānti 78. 36. The Śukraṇītisāra (IV. 7. 332-333) says that brāhmaṇas may even fight and destroy an oppressive kṣatriya king and would thereby incur no sin. The Yaśaśīltaka (II. p. 451) gives examples of kings killed by their subjects, one being a Kalinga king who made a barber his commander-in-chief. In fact in all works on polity we find comparatively little about the king's rights and special privileges, but on the other hand the greatest emphasis is laid on the king's duties and responsibilities. Some works describe the king as a servant of the people whose wages or remuneration for the protection he affords is the taxes he raises. Vide Baud. Dh. Ś. I. 10. 1, Śukraṇīti I. 188, Nārada (prakṛtana 48), Śānti 71. 10. 26 It may be said here that the apparently inconsistent dicta about the divinity of the king and about his being liable to be deposed or even killed for evil deeds are delivered from two different standpoints and are addressed to different persons. The writers believed in maintaining the status quo about the duties of varnas and āśramas, in the privileges of the respective castes and in the progressive deterioration of dharma in the ages to come and wanted a strong king to preserve the social order; therefore the king was raised to divinity and absolute obedience to his orders was demanded. This was addressed to the people in general. There was danger however of bad kings and ministers oppressing the people by misrule. Hence the king and his ministers were threatened with destruction and death. These dicta were principally meant for the king and his advisers.

In the Kautilya V. 3 we meet with these words "In Rājasūya and other solemn (or elaborate) sacrifices the 'rāja' gets three times the salary given to others who are as learned as he is" (samānāvidyebhyas-trigunavetanō rāja rājasūyādīsa

36. अनन्यकाराकुरुचितराङुः प्रवन्ति। व्रतपालसंस्कः कालं तक्ष धिनित्वं प्रजापालन- वेदनम् ॥ नारद (क्योंकि तर्क वर्ण ४८)। चरित्रेण श्रवणेन द्रष्टव्याधारसिद्धिगान् । साक्षा- विदित विदम्भो वेदसृज ध्यामसम् ॥ शास्त्रम ७१. १०; श्रवणप्रयुक्त यथा वेदसच्च भवेन सत्या च तथा- भवेन । शास्त्रम । साक्षादिकेति प्रजायां धिरस्वतेषु शास्त्रम ॥ शुक्रसमालोकायत । शास्त्रम १. १८८.
kratusu). Jayaswal (in 'Hindu Polity' part II, p 136) seizes upon this passage to show that the king was a salaried person like the prime minister or the commander-in-chief. The words 'in Rājasūya and other kratus' should have raised doubts in his mind about his interpretation, but he entirely missed the significance of the passage Kautilya in that passage is not referring to the king himself but to his representative or deputy when the king is engaged in numerous ceremonial duties during sacrifices of long duration like the Aśvamedha The Āp Šrautasūtra (XX 3.1-2), Bauḍhayana Šrauta XV 4, Satyāśādha Šr. XIV. 1 24-25 state that the adhvariant priest was to deputize for the king when the latter was engaged in the Aśvamedha 37 (which was spread over a period of about two years) The salary referred to by Kautilya is to be paid to the adhvaryu when representing the king Vide H Dh vol II p 1232 for this. In X. 3 it is said by Kautilya that a virtuous king on the eve of a battle should urge on his soldiers the fact 'I am a wage-earner like yourselves, this kingdom is to be enjoyed by me along with you You have to strike down the enemy pointed out by me' 38 Here the theory of the king being a wage-earner or a servant of the State is emphasized in a striking manner.

The word 'rājan' is derived in the Nārāyana (II. 3) from the root 'rāj' to shine, but the Mahābhārata (Śaṁti 59. 125) likes to say that the king is styled 'rāja' since he keeps all people contented, that is, it derives the word 'rājan' from the root 'rañj'. Great poets like Kālidāsa (Raghu IV. 12) follow the Mahābhārata in this, as also in deriving the word 'ksatriya' from 'ksata' and the root 'trai', meaning one who protects from wound and injury (Śaṁti 59. 126 and Raghu-vaṁśa II. 53) Br. quoted in the Rāja Dh K. (I p 5) appears to derive the word both from 'rāj' and 'rañj' (balena caturangena yato rañjayati prajāh i dipyaṁśah sa vapusa tena raṣābhidhīyate).

There are in our authorities germs of several theories about the origin of kingship Rg X 173 (which corresponds to

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37. अर्थे ये अक्षरसारस्वतः कथ्यमामसंयोजितं । स आदि बालाकाल राजसनाये तथा संवर्डिता राजा मुक्तसमितं सुबर्धविभव प्राणो राजसनाये तथा प्रथमस्य तथा संवर्डिता राजा सचिवसनाये तथा ज्ञानस्य तथा अभासास्यार्थं । ब्रम्हा. ब्रह्म. XV. 4

38. निदिन्द्रकाव्यो धामिति: संवर्ध क्रमः क्रमादि । हर्षपद्मसिल्पम् । स्वविधिः सह नमयः नित्यं राजस्य । स्वपन्धितः प्रतिपन्धितः । कौँदिक X. 3. p. 367.
Atharvaveda VI. 87 and 88. 1–2) has been taken as an election
hymn by some writers (e.g. Jayaswal in 'Hindu polity' p. 7).
But one is constrained to say that it is probably nothing of the
kind. The only words that may lend some colour to the theory
of election are 'let all the people desire thee (as king)' in Rg.
X. 173. 1, but those words may apply as a benediction even in
the case of one who is already a king. In the Atharvaveda
III. 4 2 there 39 is a reference to the election of a king by the
people 'the people (viśah) chose thee to govern the kingdom,
these quarters, the five goddesses (chose thee)'. In Atharvaveda
III. 5, 6 and 7 also there is a faint allusion to the election of a
king by nobles, king-makers, sūtas and headmen of villages, by
the clever makers of chariots and the skilled workers in metals.
These 'king-makers' are called 'ratnins' in other Vedic texts
and the Tai. Br. I. 7. 3 states in connection with the twelve
offerings in the Rājasūya called 'ratninām hayānśi' that the
'ratnins' give the (rāstra) kingdom (to the king). Vide H. Dh.
vol. II. p. 1315 n 2648 and p. 1216 for the 'ratnins'. So it appears
that the conception was that the king got the kingdom from
nobles, high functionaries and the common people. For the
coronation bath (and its implications) mentioned in the Ait.
Br. vide note 105 below. The Ayodhyākanda (chap. 1 and 2)
describes how Daśaratha when he grew old desired to make his
eldest son Rāma the Crown Prince (yuvarāja), how he called
together an assembly of vassal kings, citizens and rural inhabi-
tants and placed before the assembly his idea, how they acclaimed
loudly the old emperor's proposal and readily gave their consent.
This shows that though kingship became hereditary in course of
time some element of popular approval was sought for. But
such passages referring to the approval of the people cannot be
stretched to mean that the king was chosen by a parliament the
members of which were elected by the people. All that happened
appears to have been only this that citizens that approved
assembled spontaneously and expressed their feelings in the
assembly. In the Rāmāyaṇa II. 67. 2 it is said that when Daśa-
ratna died sages like Mārkandeya and Vāmadeva declared along
with the amāhaṇya in the presence of the family priest (puρhiṇa)
Vasistha that as Rāma and Laksmana had gone into exile and
Bharata and Satrughna were in the Kekaya country, some scion

39. ला विशिः दुःखता राजवर्ग त्वा प्रसिद्धम-पद्धतिः पत्र श्रेयः। अद्यं III. 4. 2.
दे राजतया राजलये देवा भारामिष्ठे दे 
अपलोथाय पर्यायलेख सर्वोक्षणविशिः ज्ञात तीय
अयर्वी III. 5. 7.
of the Ikṣvāku race should be chosen as king. These sages and ministers are spoken of as king-makers ('rāja-kartārah') here and in chap. 79. 1. In the Adi-pārva 44. 6 it is stated that all the citizens of the capital in one voice elected Janamejaya, though a boy, as a king on the death of Parikshit and Janamejaya ruled with the help of his ministers and purohita. There are historical examples of the election of kings. The ksatriya Rudradaman was elected king by the people of Surāstra (who at one time formed a republic, according to Kautilya XI. 1) and he took an oath as stated in his Junagadh inscription in the year 72 (150 A.D.) 40 Vide E I Vol. VIII p 36 at p 40. Gopāla, the founder of the Pāla dynasty of Bengal (730-740 A.D.), was elected a king (E I Vol. IV. p. 243 at p 248 and Jayaswal’s 'History of India,' 150-350 A.D. pp 44-45) It appears that it was the business of the chief ministers and brāhmaṇas to propose somebody as king and such persons were called 'rājakartārah.' In Ayodhyā 67. 8 they say ‘our country is without a ruler and may therefore encounter disaster.’ Arājaka does not necessarily mean in Ayodhyā 67 anarchy but a condition in which there is no king nor ruler. Though this is so, it is not possible to agree with Mr. K. P. Jayaswal ('Hindu Polity', part I, pp 97-98, 134, 173) that 'arājaka' was ‘an idealistic constitution, that it was an extreme democracy almost Tolstoian in ideal, that it was based on a legal and communal basis, that it was a case of extreme individualism in which government itself was regarded as an evil.’ Ayodhyā 67 8-31, Ādi 41 27 ff, Śānti 67 3 ff, Matsyapurāṇa 225. 8-9 are the principal passages on arājaka. A perusal of these will convince any one not carried away by the over-patriotic desire to find the latest European thought in our ancient books that arājaka was viewed as a state of chaos and the negation of any constitution; that when a country was without a ruler, no private property in anything existed or was respected and people prayed upon each other like fishes (Ayodhyā 67 31) and that no Tolstoian ideals were present before the eyes of the writers that drew such a harrowing picture of a state without a ruler. The famous Chinese traveller Hiouen Thang notices (vide Beal’s Buddhist Records of the Western World, 1884, vol I pp 210-216) that when Rājyavardhana was

40. आ गर्भावस्तुविविधितसदर्शितस्किर्तिःविधिसहितसाधनम् रसायनशैली पुस्तके दृढ़ अ गर्भावस्तुविविधितसदर्शितस्किर्तिःविधिसहितसाधनम् रसायनशैली पुस्तके दृढ़ अ. E I vol. VIII. p 36 at p 40. भारतपरivaमस्थि: पुस्तिका:प्रतिइक्तिः वर्ण वाचकं अग्निपाल्य इति। क्षितिभूमि शिस्तां शुद्धविक्षेपणं:। E I. vol IV. p 248 at p. 248 about गोपाल
treacherously murdered by king Śaśānka, the great minister Bhandin (who was also a cousin of Harsa) called an assembly of ministers and made to the young Harsavardhana a proposal to assume the royal authority, which proposal was backed up by all the ministers and magistrates, that thereupon Harsa agreed to become king after consulting the oracle of Avalokiteśvara Bodhisattva. After the death of Parameśvaravarman II (of the Pallava dynasty), when the Pallava kingdom was subject to anarchy, the subjects chose a king. For the details of this election, vide the important constitutional document of the Vaikunṭha Perumal temple (Dr. C. Minakshi’s ‘Administration and Social life under the Pallavas’, 1938, p. 38). The Rājaratanginī narrates (V. 461–463) that Yaśaskara who was originally a poor man was chosen as king by the brahmanas.

In some other places a theory somewhat like the theory of social contract expounded by Rousseau is adumbrated. The theory of social contract is presented in modern times under two forms. In one there is supposed to be a tacit or explicit agreement between the Government and the people. In the 2nd form it is supposed that a political society was constituted by a compact among individuals (to which the ruler was not a party). This theory puts forward the notion that government depended on the consent of the people. Kautilya (I.13) refers to the legend that Manu Vaivasvata was made a king by the people, who agreed to assign one-sixth of the grain raised by them as the king’s share in return for the protection afforded by him. But Kautilya is silent as to whether Manu made any promise to the people. Śantiparva, chap. 59, states how Vaiñya, the first king, was called upon by the gods and sages to take an oath and how he promised them that he would protect the world, and would carry out his duties as laid down in the science of government and not act at his sweet will. When this theory of an agreement between the king who took an oath and the people spread among the people, the theory of the divine right of kings, if ever seriously held, would recede more and more into the background. Vide Dr Beni Prasad’s ‘Theory of Government in Ancient India’ chap. VIII and ‘Pre-Buddhist India’ (1939) by Mr R N. Mehta, chap. II pp. 79 ff. and 101 for election of

41. पतिक्षे कामिनिशस्व सनसा करमणा गिरा। पालिकिप्तमप्पहं मौम च्योत्तिष्वाय भालस्वः।। वधवय पवि नोलुकौ कृष्णगोतिप्नवायः।। तसालशः कारिपानि स्वच्छो न भैरवान।। शास्त्र 9. 108–108.
kings and for Buddhist theories of government. It is not possible to hold as Jayaswal, U. Ghosal and others do (e.g. ‘Manu and Yajñavalkya’ II, ‘Hindu Polity’ part II pp 54-57) that the theory of social contract was the earlier one and that the theory of divine right of kings was later on propounded by the Manusmṛti to support the brāhmaṇa empire of Pusyamutra. Jayaswal is wrong in saying (in ‘Hindu Polity’ part II p. 57) ‘the theory of the Manava was never approved or adopted by a single subsequent law-book’. It has been shown above that Narada and others espoused the same theory. Manu himself eulogises the supreme power of danda over the king himself (Manu VII. 28). He makes use of both the theories as occasion demands.

The germ of the theory of Divine Right of kings probably goes back even to the Rgveda. Rg IV. 42 is a hymn of king Trasadasyu, son of Purukutsa. Some of the ideas therein are startling enough. He says ‘the gods rely on the might of Varuna, while I am the lord of the people (verse 1, kratum sacante Varunasya devā rājām kṛṣṭeh &c); I am Indra and Varuna, I am the wide and the deep Heaven and Earth, I am the son of Aditi (verses 3 and 4)’. Here there is an explicit claim by a king to be identical with the mightiest and greatest gods of the Vedic pantheon. In the Atharvaveda VI. 87. 1–2 it is said about the king ‘May all the people long for you, may not the kingdom be lost from your hands, may you stand firm in the world like Indra and may you uphold the kingdom’. In the Śatapatha Brāhmaṇa V. 1. 5. 14 (when describing the shooting of arrows in the Vajapeya) it is said ‘the rājanya is most manifestly of Prajāpati, while being one he rules over many’. Here the position of the rājanya appears to be regarded as due to his being the representative of Prajāpati. In the Śat Br V. 4. 3. 4 the sacrificer in the Rājasūya is identified with Indra and it is said that that position is due to two causes viz. (1) his being a member of the ksatriya order and (2) his participating in a solemn sacrifice. But passages like the last and Śat. Br V. 1. 3. 4, V. 1. 4. 2, V. 2. 2. 14 should not be relied upon in support of the theory of the divine right of kings (as done by U. Ghoshal in ‘Hindu Political Theories’, pp. 28-29), since every participator (whether a brāhmaṇa or a ksatriya) in such solemn sacrifices as the Agnistoma and Vajapeya was supposed to possess a celestial body after dīkaṇḍa and Pravargya and was often spoken of as identified with Indra and other gods. Visvarūpa on Yaj. I. 350 quotes a long Vedic passage (āgama) in which it is stated ‘the gods said to Prajāpati ‘we shall arrange for a king in human
form by taking from the moon, the sun, Indra, Visnu, Vaisravana (Kubera) and Yama respectively majesty, brilliance, valour, victoriousness, liberality and control” and that the king thus formed asked the gods to give to him Dharma as his friend and that then he would protect the people and then the gods made Dharma (i. e. danda) his friend.

We may examine the theories of the origin of kingship in the Mahabharata. The Santiparva deals with this subject in two places, in chap. 59 and 67. In chap. 59 Yudhisthira asks the great warrior and statesman Bhisma how the title ‘king’ arose and how one man, who has fundamentally the same physical and mental equipment as other men, rules over all men. These are not really two questions but only two aspects of the same question. Then Bhisma starts by saying that there was originally a state of perfection (Ktityuga) in which there was no king, no kingdom, no punishment and no chastiser. Gradually moha (delusion or aberration of mind) spread among people and then greed, sexual desire and passions arose and the Vedas and dharma perished. The gods did not receive offerings and went to Brahma, who composed a vast treatise as stated above (p. 4) that dealt with the four goals of existence for the benefit of the world and that was the cream of learning. Then the gods went to Visnu and requested him to appoint (as king) one who deserved to be the best among men. Visnu created a son from his mind called Virajas who did not want to be a king. Fifth in descent from Virajas was Vena who destroyed dharma and so the brahmanas killed him and from his right arm they churned Prthu, handsome, well-armed and proficient in the Vedas, Vedangas and Dandaniti. Gods and sages asked him to follow settled dharma, to control his senses and to take an oath (set out above in note 41). He was crowned by the gods and sages for the protection of the people. Visnu himself established him saying ‘Oh king, no man will go contrary to your order’ and then Visnu entered the king Prthu (verse 128) and it is therefore that this world since then bows to kings as to gods. In this account the oath administered to Prthu was so administered by the gods and sages and not by the people in the mass, nor does Prthu expressly promise anything to the people as such. Probably it was thought that the promise to the sages was impliedly a promise to the people in general. But the account, such as it is, rather appears to emphasize the divine origin of kingship.
Chap 67 contains a much shorter version of the origin of kingship, probably because a few chapters before another version has already been given or because it embodies the views of some prior work or teacher. It begins by saying that the most desirable thing for a State is to crown a king, that in a kingless country there is no dharma, no security of life nor of property, that therefore the gods appointed kings for protecting people. Then it proceeds to say that the people assembled and made compacts (samayān) amongst themselves that whoever would commit libel or assault or adultery and break the compacts made by the people should be abandoned. All people went to Brahmā and requested him to appoint a ruler whom they would all honour and who would protect them. Brahmā appointed Manu for that purpose, but Manu did not at first like the idea, saying ‘Government is a very difficult business among men who are always deceitful and I am afraid of the sinful acts of men’. The people asked him not to be afraid as the sins committed by men will affect the perpetrators (and not Manu) and that the people would give him shares of produce (one-tenth of grain, one-fifth of cattle, one-fourth of their dharma &c.) Manu then agreed, went round the world, terrorizing evil-doers and making them conform to dharma. This story about Manu and the people is alluded to by Kautilya (vide p. 31 above). Even here Manu promises nothing expressly, while the people agree to pay taxes and answer for their own sins. There is no doubt that some of the details in the two chapters are different. In chap 67 there is no reference to an original state of perfection nor to a vast work nor to any oath; so also in one it is Vainya who becomes the first king and in the other it is Manu. But the conception in both is mythological and the fundamental fact in both is the same. God gives a king to the people in both, when they were without a king and degeneracy had set in. Though there is no offer to give a share in chap 59 yet it is to be inferred from the prayāṇa of Vainya that every subsequent king was deemed to do the same. It may be said that in chap 67 there is a blending of the theory of Divine Right and of an original compact between king and people. In both, however, the emphasis is on the theory of the divine origin of kingship. Śanti 67.4 states ‘one desirous of prosperity should honour the king as one honours Indra’, while chap. 59.139 asks ‘what is the cause but the divine character (the king possesses) on account of which people remain under his control’? It must be said that in both
chapters of the Śantiparva there is no proper theory of contract between king and people.

The Nāradasmṛti as indicated above (pp. 23, 27 and note 27) is a thorough-going advocate of the theory of divine right. It says (prakṛtāraṇa 20–22) 'It is Indra himself who moves about on the earth as king; people can nowhere live after transgressing his orders. Since the privilege of protection is his because of his supreme power (majesty) and on account of the fact that he is benign to all creatures, the settled rule is that whatever a king does is right. Just as the husband, though weak, must be honoured by the wife, so a ruler though devoid of qualities must be honoured by his subjects'. Verse 25 inculcates the duty of obedience to the king.

According to Mr. J. N. Figgis in his book 'The divine right of kings' (1934) pp. 5–6, the theory of the Divine Right of kings in its completest form involved the following propositions: (I) monarchy is a divinely ordained institution; (II) hereditary right is indefeasible i.e. the right acquired by birth and descend- ing by the law of primogeniture cannot be forfeited through any acts of usurpation, or by any incapacity of the heirs or by any act of deposition; (III) kings are accountable to God alone, i.e. a limited monarchy is a contradiction in terms; (IV) non-resistance and passive obedience are enjoined by God i.e. in any circumstances resistance to the king is a sin and leads to damnation and that when the king issues a command directly contrary to God's law, the latter is to be obeyed and also all penalties attached to the breach of the king's law are to be patiently borne. This theory was very much to the fore in the 16th and 17th centuries when in Europe theology and politics were in close union.

It is to be seen how far the ancient Hindu theory agreed with this full-fledged theory of the divine right of kings. As regards proposition I it has been shown above that the Manusmṛti, the Mahābhārata and other works held that the king was either God himself, or god's vicar or vicegerent performing functions similar to those of several gods. As regards proposition II all Sanskrit works recognised hereditary right and primogeniture, but they allowed exceptions as will be shown later on. Our ancient books did not accept the third and the fourth propositions in toto. They say that the king cannot do as he likes, that he has to carry out the dictates of dharma, his
power to make new rules is limited and if he does not act up to the rules of dharma he may be deposed, disobeyed or killed. Vide quotations from Śukraniti and Amuṣasanaparva cited above. When Manu (VII. 111-112) says that a king who harasses his kingdom loses his life, his family and his kingdom, it is implied that people are not bound to suffer silently all the wrongs heaped upon them by a bad king but that they may turn round and either depose him or kill him. Fick (pp. 103-104) gives examples from the Buddhist Jātakas where bad kings were killed by the people and others were elected in their place. There is no doubt that obedience to the king is enjoined from Narada and others, but is due to the king only so long as he does not swerve from the path of right and virtue. Narada⁴⁸ (prakṛtakā verses 12 and 29) says 'on account of his majesty and sanctity a king and brāhmaṇa are not to be abused if they do not swerve from the right path; one should not treat with contempt or scold the king, one should abide by his order, since (the penalty of) death may follow from violating it (king's order)'. Here the duty of obedience is not based on the divine origin of kingship, but on the practical worldly ground that an offended king may punish with death. Narada's doctrine does not lead to the requirement of absolute submission and non-resistance to a wicked king.

It is impossible to hold that the theory of divine right was put forward as a counterblast to the theory of social contract. The theory of divine right would arise very naturally even in the oldest days, while the theory of social contract is the product of a more advanced stage of political thought. The theory of divine right is not more absurd than the theory of social contract and was popularly held not only in India, but in many Christian countries, relying on passages in the Bible such as Daniel 4 and Romans 13. 1-7. The theory of divine right was circumscribed in India by another theory from very ancient times. The cry of the American colonists against England in the 18th century was that taxation and representation went hand in hand; that of the ancient Hindu political and dharmaśāstra writers was that taxation and protection went hand in hand (see n 45). Baud. Dh. S. I. 10. 1. says 'the king being hired for the sixth

⁴⁸ अनिद्द्धराजसनियोऽद राजा भाष्य एव च ईचिकालसत्वसत्त्व यदि न
स्यात्मकःस्वतःः || ततोऽकात्मा जात्राः प्रभावमाति तति यथा ||
तत्सत्तांवस्ति स्वेदमेतात्मा भाषा वा
व्यवस्थतः || तत्सृष्टि देनाधित्यपासाधारिनः विभेदः ||
आक्षेपः चार्य विकेतु दृष्टः चतुर्थः
व्यवस्थिताः || भाष्यं (प्रकरणे 12, 25, 32) Vide Manu VII. 12-13, Gautama
XI. 32. (राज्यवर्धनसन्दर्भ).
part (that he takes as tax) should protect the subjects'. Yāj. I. 337 states 'The king shares half of that evil which the subjects do when not protected by the king, since he takes taxes (from the people)' and Yāj. I. 334 lays down that a king who protects according to sāstras receives the 6th part of the merit (punya) of the subjects. Śantipurva (57. 44-45) states 'One should abandon six persons like a leaking boat in the ocean viz. a teacher who does not explain, a priest who does not study the Veda, a king who does not protect &c.' Sukraniti I. 121 affirms 'the gods destroy a king who does not protect, a brähmana who does not perform austerities, a wealthy man who makes no gifts.' Vide Vasistha I. 44-46, Gaut. XI 11, Vismu Dh S. III. 28, Udyogaparva 132. 12, Śanti 67. 27 (4th part of punya), Śanti 24. 12 (4th part), Śanti 72. 20, Āśramavāsī 3.40, Anuśāsana 61.34 and 36, Kām. II. 10 for the idea that the king receives a part (generally 6th part) of the punya (and also sin) of the people. The king had to protect even forest hermits who paid no taxes, as he would share in their punya. 42 Vide Rāmāyana III. 6. 14. Kalidāsa echoes this in the Śākuntala II. 13 Adiparva 213. 9 looks upon the king who takes the sixth part as tax and affords no protection as the arch-sinner in the world. Śanti 71. 29 says that the spiritual merit that a king gathers by protection according to the sacred code yields rewards for him in heaven for ten thousand years.

From the preceding pages it is clear that the following are put forward as the grounds on which the obligation to render obedience to the ruler is based: (1) the king has divinity in him, (2) the great utility of the ruler affording protection as regards life, liberty and property, (3) the fear of punishment (Manu VII. 22), (4) a primeval contract between the ruler and the people, (5) the interdependence of the ruler and the people as parts of one organism (viz. the State). Vide Medhātithi on Manu IX. 294 for this last.

Who should be king? There were several views on this point. One meaning of the word 'rājan' is 'ksatriya'. Manu (VII. 1) states that he will declare rūjadharmanas and in the very next verse he employs the word 'ksatriya' and remarks that a ksatriya who has undergone the upanayana satīnākara (or abhūṣeka according to some commentators) should afford protection to all in his kingdom. Therefore a ksatriya is the most proper person
to be a king. Some of the works such as the Rājadharma-kaustubha, Rājaṇiti-prakāśa, the Nītimayutkha, and Par. M. vol I. pp. 449-451 refer to the discussion in the Purvamīṃśā works on the topic of the Avesti sacrifice. On Jaimini II 3.3 Sabara and Kumārila hold an elaborate discussion. The Vedic texts say ‘rāja rājasūyena yajeta’ (‘the Rājasūya should be performed by a rāja’). Among the numerous constituents of that sacrifice there is an ēṣṭi called Avesti, with reference to which a vedic passage says ‘if a brāhmaṇa performs avesti, he places the ṛūḥu (offering) for Brhaspati in the middle, if a ksatriya performs it the offering to Indra is placed in the middle of the offerings &c.’. The pūrva-pāksa (prima facie view) is that the word ‘rājan’ applies to any one (whether a brāhmaṇa, a ksatriya or a vāisyā) who protects the people. The siddhānta (the established conclusion) is that in this text the word rājan means a ksatriya and that by the other passage about brāhmaṇas &c. what is meant is that brāhmaṇas and vāisyās may independently perform the Avesti sacrifice, but that only a ksatriya can perform the Avesti as part of the Rājasūya rites.

Sabara makes the interesting remark that in the Andhra country the word ‘rājan’ is applied to a man of the ksatriya caste even though he does not pursue the occupation of protecting a country or a city; while Kumārila observes that persons of all the four varnas are seen as rulers of kingdoms. In the literature on dharmāstāra the word ‘rājan’ is understood in the sense of ‘one who rules over or protects a country’ (i.e. the pūrva-pāksa view in the Purvamīṃśā). Vide Medhātithi on Manu VII 1. Aparāraka* (on Yāj I 366) remarks “when he who is not a ksatriya performs the work of a ksatriya (i.e. becomes a king) he should do all this (that a ksatriya king has to do) since the maxim is ‘that by assuming the position or the work of a particular person or thing one receives what is due to that other’ and the

44. अनेको वधवर्गवीकहुत्वेऽन्तुस्मात् । क; 38 3 । नन्तज्ञेद्वर्युपेक्षाणेन तिः ।

45. एवस्य यात्रिकं राज्यं कुर्वत:) सार्वदेशं । च वर्गवेदितः । क्षेत्रवाचाद्यं

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Kielhorn’s ed. vol I p 133. Its form in grammatical works is śatāpravāsē bhūṣaṇatā.
duty of protecting the subjects arises from the fact of taking taxes from them. For everyone when giving wealth does so with reference to a purpose related to himself and there is no purpose except one's protection that is intended in rendering taxes. Hence it is established that whoever receives taxes must secure protection of the subjects”. According to Kullūka the word ‘ṛājana’ means ‘any person who is crowned king and protects the country and capital’ and is not used in the sense of ‘a person of the ksatriya caste’. The Rājanitiratnākara (p. 2) after citing Kullūka and Kāmadhatu states that many hold that ‘ṛājana’ means ‘any one who takes upon himself the task of protecting the subjects’. The Rājanitiprakāśa holds\(^44\) a long discussion (pp. 10–15), states that the word ‘ṛājana’ may have three meanings viz. any one who protects people, a ksatriya in general or a ksatriya who is crowned and ultimately gives it as its opinion that the word ‘ṛājana’ is applied in popular usage to any one, whether crowned as king or not, who is the ruler of a country. The Vaijayanti on Viṣṇu Dh. S. III. 44 explains ‘ṛājām’ as ‘of ksatriyas’ by following the Avasti maxim.

Several brāhmaṇa families founded kingdoms and empires. Puṣyamitra, founder of the Śunga empire, was a brāhmaṇa (Hariyamāna III. 2. 35 ff, E. I vol. 20 p. 54); the Kānvaṇayas, who followed the Śungas, were brāhmaṇas and so were the Vakatakas, the Kadambas (vide Talagunda pillar Inscription of Kukusthavarman in E. I vol. VIII. p. 24) and several others. Vide H. Dh. vol. II. pp. 122–123 for texts on the question as to when a brāhmaṇa should follow the profession of arms. Manusmṛti 100 states that a brāhmaṇa who knows the Veda deserves to be made a king, a commander-in-chief, the wielder of the power of punishment. Kumārila’s dictum that persons of all varṇas are seen to be rulers has been already quoted. Gopāla the founder of the Pāla dynasty of Bengal was a sūdra. Manusmṛti IV. 61 directs a brāhmaṇa not to stay in a country where the ruler was a sūdra. Medhatithi\(^47\) explains this by saying

\(^44\) रुपचायन संस्कृत्रौपरिवर्तितादिलाभाय। अपायात् वसुस्वरूपाः हत वर्गस्य उपस्ते न सवेण ब्रह्मचाय। (३५ हृद्यः)। तथा विद्वान्यधिर्निधिः अभिप्रेताचिन्तिताः। रुपचायन संस्कृत्रौपरिवर्तितादिलाभाय। मानवात् अपायात् वसुस्वरूपाः हत वर्गस्य उपस्ते न सवेण। तथा विद्वान्यधिर्निधिः। अभिप्रेताचिन्तिताः। (३५ हृद्यः)।

\(^47\) वेदज्ञानविद् बुद्धविद्यार्थविद्याय वेदाङ्कुमालमातां श्रवणविद्याय प्रज्ञाविद्याय। (४७ हृद्यः)।
that the prohibition applies only to a country where all the seven
high functionaries such as the chief minister, the commander-
in-chief are of the sūdra caste; compare Ṛp. Dh. S 1. II. 32. 18.
Manu's dictum related to a time when there was hardly
any sūdra king. But the logic of facts was too much for
Medhātithi who had to twist the plain words of Manu Medhātithi
on Manu VIII 1 remarks that 'persons of other varnas who
sub sist by the mode prescribed for ksatriyas have power over
the kingdom and have to protect the people'. Śāntiparva
remarks, that whoever protects people from the hordes of dasyus
and wields the power of punishment according to sūrī rules
must be considered as king. The Harivamsa (III 3. 6
'aksatriyāsca rājāno viprāh śūdropaṣujinavah') and some of the
Purāṇas in depicting the awful degeneracy of the Kali age in a
prophetic strain state that the kings in the Kali age will be
mostly sūdras and that sūdra kings will celebrate Asvamedha
sacrifices Vide, for example, Matsya 144 40 and 43 and Linga-
purāṇa 40. 7 and 42. Hiouen Thsang notices that in the first
half of the 7th century A. D Sīnd was under a sūdra king
(Boal's B R W. W. vol II p 272)

It was almost a universal rule that a male alone was to be
the ruler. There appear to have been stray exceptions. The
Śāntiparva (33. 43-46) enjoins upon a conqueror the duty to
place on the throne of a conquered country the brother, son or
grandson of the vanquished king and if no prince be available,
then to crown even the daughter of the late king. The Rāja-
tarangini (V 249 and VI 332) describes at great length the
regime of the notorious queens Sugandhā (904-906 A. D ) and
Diddā (980-981 A. D ) of Kashmir. In India for many centuries
there has been no Salic Law expressly declaring that daughters
cannot inherit land, though on account of the general position
of women, the requirements of disturbed times and military
necessity women did not generally assume the role of sovereigns.
In a copper-plate grant from Ganjam (of about the 13th century)
it is stated that when a certain king named Subhākara died his
queen ascended the throne and after her daughter Dandi-
mahādevi, who is styled 'parama-bhattārka-mahārājādhirājā-
parameśvari' ruled the earth for a long time (E I vol VI p 133
at p. 138). Whether the grandiloquent titles were deserved by
the queen or were only the exaggerated effusions of a courtier,

48 तेव्र दुराचि राज्यांची सर्वां राज्य सहारुपां. अद्यास दुराचि विश्वांच रेवे राज्येचु भिवेश्वर. "... दुराचि तालिक येवच धार्यावलाचाचाचित्वाद. धालित 33. 43 आत 45
it is clear that the widow and daughter of the last male ruler succeeded to the throne. The Raghuvamśa (XIX. 55, 57) states that the widowed queen of king Agnivarna sat on the throne and carried on the government with the help of hereditary ministers.

Apart from conquest and election in rare cases, monarchy was hereditary and generally descended by primogeniture. The passage from the Satapatha Brāhmaṇa (XII. 9.3, 1 and 3) mentioning the descent of kingship for ten generations in succession has already been referred to (p 26) Though succession was hereditary it was the general rule that the eldest son ascended the throne when the reigning monarch died or abdicated. The rights of the eldest son or daughter as against the younger son or daughter were very jealously guarded in the vedic age. It has already been shown how marrying before one's elder brother or sister was condemned in the vedic age and also in the times of the smṛtis (R. Dh. II. pp. 546-549). Even the Rgveda several times refers to āsthiya (rights of seniority) of Indra (Rg. I 5.6, III 50 3). The Tai S. II. 2.11.5 states that the gods agreed to treat Indra as the 'yestha' (the eldest) and Tai. S. II.49 5.2.7 refers to the ancient practice of giving all wealth (of the father) to the eldest son. The Ait. Br. 19.4 narrates the story that the gods did not accept Indra's position as the eldest and most exalted among them and that Indra then induced Brhaspati to perform the Dvādaśāha sacrifice for him, whereby he secured that position. The Nirukta II. 10 sets out the interesting story that Devāpi and Santanu were two brothers, scions of the Kuru family, of whom Devāpi was the eldest, but Santanu the younger one got himself crowned king and so Devāpi practiced austerities. The result was that there was a drought in Santanu's kingdom for 12 years. The brāhmaṇas said to him 'You are guilty of having violated dharma in that passing over the eldest brother you got yourself crowned Therefore God does not send down rain' Then Santanu desired to give the kingdom to Devāpi, who however said that he would be his purohita and make him perform a sacrifice. The Rgveda hymn X 98 was then composed by Devāpi for bringing down rain. This story shows how long before Yāska the popular belief was that it was a great sin to

49 तस्मान प्राप्तेऽपि व ज्ञातं विद्यते स्वायत्तत्वादिव (२१९५) इसे प्रा. सू. ५. २. ७. अप. ध. ६ (१२. १७) से सों यदि न हानि तावभारस्तुिश, अग्नि दलिता एवं नहीं।
pass over an elder brother in marriage and other matters and doing so brought down the serious displeasure of the gods. Vide Brhad-dvaṭī VII. 156-157 and VIII. 1-9 for the same story in a little greater detail, viz that Dvāpi suffered from a skin disease, that when Dvāpi said to the subjects that he did not deserve the kingdom and that Santamu should be their king, the subjects crowned Santamu as king. When Yayāti desired to pass over his elder sons Yadu and others because they disobeyed him and wanted to make the younger Puru his successor the brahmanas and citizens protested 'How can the younger son secure the kingdom passing over the elder one?' Arjuna upbraids Bhimasena who got enraged against Yudhishthira 'who would act against one's eldest brother that follows the path of dharma?' (Sabba 68.8). In the Rāmacaṇḍa Daśaratha addresses Rāma (II. 3.40) 'you are born of my eldest queen, who is of the same class as myself (ie of ksatriya blood)' and Vasishtha says to Rāma 'Among all Ikṣvākus the eldest son becomes the king; a younger brother is not crowned king when the elder exists.' (II 110.36). The Ayodhyākanda in several places (8.23-24, 101.2) reiterates the idea that all the sons of a king do not succeed but only the eldest, although the other sons may be equally fit and endowed with qualities. Kautilya (17) states that people esteem rulership going to the eldest except in the case of some calamity. Manusmṛti IX. 106 says that by the very birth of the eldest son, a man becomes free from the debt he owes to his pītris and therefore the eldest deserves to get everything from the father. The Rajadharma-k. (pp. 234-235) after quoting the Kalikāpurāṇa and the Rāmacaṇḍa lays down the following propositions: (1) the auras son of a king alone succeeds in preference to the eleven kinds of secondary sons (whether he is junior or senior in age); (2) if the son of a junior queen (of the same caste) is senior by birth, he succeeds in preference to the son of the senior queen,

50 कर्ष ज्योतानितकर्म कनीयापार रत्यक्रि कर्मविश्वार्थी... महाराजोऽरसेवमहास्वरूपति: पदिष्ठ वः। स एव: इत्यदविष्ठ काले वित्तसायतु महाशिवः आदिवर्ष 85, 22 and 25 = गार्ह 93, 79 and 81.

51. ज्योतानितकर्मै: ते यज्ञः सत्यवर्तव्य यज्ञः। तथा ज्योतानितकर्मम् तस्मातः। एवं ज्योतानितकर्मम् तस्मातः। अयोध्याकर्तव्य 110.36

52. अयोध्याकर्तव्य ऐर्बक्षे ज्योतानितकर्मोऽविद्याद (1) तु पूर्वते। कालितिप I 17 last verse but one.
who (son) is younger in age; (3) if two sons are born to two queens at the same moment, the son of the senior queen is preferred; (4) if twins are born to the senior queen, the son who is born first is to be preferred.

If the eldest son suffers from a physical or mental defect (such as blindness or lunacy) he is to be passed over and his younger brother becomes king (vide Manu IX. 201 for grounds of exclusion from inheritance). Adiparva\textsuperscript{53} 109. 25 states that Dūtarāstra because he was blind did not succeed to the kingdom. Vide also Udyoga 147. 39. The Śukranitiśāra (I. 343-344) states that if the eldest prince suffers from deafness, dumbness, blindness, leprous or impotence he is unfit to rule and that in such a case his younger brother or son should succeed.\textsuperscript{54} The Śukranitiśāra further points out that by dividing a kingdom among the several princes no benefit results, but on the contrary the small parts would fall an easy prey to enemies; therefore when the eldest alone succeeds he should make his younger brothers provincial governors or superintendents over the treasury, horses &c. (I. 346-348). The Rājadharmacauśṭubha lays down a few additional propositions: (1) even if the eldest does not succeed owing to some mental or physical defect, his son's right will remain intact and R. D. K. quotes the words of the fisherman chief to Bāhtasia in Adi 100. 92.\textsuperscript{55} The Bālamhatai on Yāj. I. 309 and Rājanitiārakāsha p 40 say the same. Another example is that of Anśumān who became king when his father Asamaṇja was exiled from the state by Sagara for his misdeeds. (2) When a younger son is crowned king because the eldest is disqualified, then after the former's death his son succeeds and not the son of the disqualified eldest son who is born after the coronation of the younger (e.g. Yudhisthira deserved the kingdom on Pāndu's death and not Duryodhana). The Nītivākyāmrta (sec. 24 p. 249) lays down the order of succession in the case of kings as follows: the son, full brother, half-brother, uncle, a male of the same family, daughter's son, a stranger (who is either elected or who takes up the kingdom\textsuperscript{56}).

\textsuperscript{53} Dīda Rāmakṛṣṇa Pāṇḍita Sātrāyaṇa n caṇḍitam. Adbhūte 109. 25 quoted by Ranadeśe 125.

\textsuperscript{54} Kṣetraphi bhāgī bhūkṣaṇaṇaḥ: pradh ṛṣya ca nā. ca rājyaḥ pārtha pakṣaiḥ ānta samvid ev hi | saṃśayaḥ: I. 343-344.

\textsuperscript{55} Cīrī. 100. 92.

\textsuperscript{56} Kṣetraśatātāraṇyaśāstraḥ sūtradhāraṇaḥ purvopacārake bāhuvastraṇa samāpānti: Śaṅkaraśāstra (Bhāgavata-śāstra) p. 249.
Sometimes a king selected a younger son to succeed him. There are famous historical examples. The great Gupta Emperor Samudragupta though a younger son was nominated by his father Chandragupta I to succeed and by his brilliant and most successful career Samudragupta more than justified the choice. Vide the Allahabad Pillar Inscription verse 4 (Gupta Inscriptions p 6) Similarly Chandragupta II, though younger, was nominated by his father Samudragupta to succeed himself. Yayati selected his youngest son Püru because he was devoted and obedient and the eldest and other sons disobeyed him Vide Adiparva chap 75 ff and above p 42. The principle of hereditary succession was so strong that even a boy king was placed on the throne. Vide Raghu XVIII 39.

In almost all works on rājāśāstra there is a disposition on the qualities that a good king should possess Vide Kaut VI 1, Manu VII 32-44, Yaj I. 309-311 and 334, Sāṅkha-Lakhita quoted in R. D. K III p 14 and Rājaniti-prakāsa p 116, Śánti 57 12 ff and 70, Kām I. 21-22, IV 6-24, XV 31, Mānasollāsa II. 1 1-9 (p. 29), Śukra I 73-86, Vīṣṇudharmottara II. 3 Only one or two passages can be set out here Yaj I. 309-311 and 334) states 'a king should have great energy, should be generous, mindful of past (good or bad) turns done by others, dependent on those who are advanced (in austerities, knowledge and experience), possessed of a disciplined mind, endowed with an even temper (in good or bad luck), born of a noble family (on both sides), truthful, pure (in body and mind), prompt in action, of strong memory, not mean-minded, not harsh (in words or acts), observant of the rules of dharma (as to varnas and āśramas), free from vices, talented, brave, clever in concealing secrets (or acc. to Bhāruchī and Aparāṅka 'clever in scenting the secrets of his enemies'), guarding the weak points of his state, well-taught as regards logic, the science of government, the science of wealth and the three vedas He should be forbearing towards brāhmaṇas, straightforward towards his friends, wrathful towards his enemies, and should be (kind) like a father towards his servants and subjects'. Manu VII 32 is very similar to Yaj I 334 The Mit says that the qualities specified in Yaj I. 309-311 are antarāṅga (inward or more essential). The 2nd quality 'stūla-lakṣa' occurs also in the inscription of Rudradāman (E. I vol. VIII at p 44) From I 312 Yaj states the bahraṅga qualities viz selection of ministers, purohitā and sacrificial priests, gifts to worthy brāhmaṇas, protection &c.
Kautilya VI. I contains several lists of the king's qualities from several points of view. First, there is a list of qualities that make the king win the heart of the people (or make him approachable) viz. being of a noble family, godly, spirited, consulting the aged, virtuous, truthful, not failing in his promises, grateful, taking broad views (not pusillanimous), highly enthusiastic, not given to procrastination, powerful enough to control his feudatories, firm in mind, having a council of ministers of no mean calibre, desirous of self-discipline. These are called 'abhi-gānīka-gunas' which word occurs in the Palitana plates of Dharasena II (of Valabhi) in E.I vol. XI p 83 and in the Māliya plate of the same king (Gupta Ins. pp. 164, 169). The Daśakumāra-carita VIII appears to make a pointed reference to this list when it makes a character say that the king (there referred to) has in him all the qualities beginning from good family (sarvātma-sampad-abhijānāt-prabhrti &c.) Then the intellectual qualities he should possess are: desire to learn, study, understanding of what is studied and retaining it, reflection, discussion and devotion to the principles accepted after discussion. Almost the same qualities of the intellect (dhi) are mentioned by Kām. IV. 22. The word 'sakyasāmanta' (in Kaut. VI. I) occurs also in Agnipurāṇa 239. 4. The qualities that are the different aspects of his enthusiasm (or energy) are: valour, non-endurance (of the might of others), quickness (of action) and assiduity. The same occur in Kām. IV. 23. Then follows a long list of qualities that go to make up the personal endowment of the king (ātma-sampat). Gaut. (XI 2, 4–6) requires that the king should do what is right (acc. to śāstras) and speak (or decide) rightly, should be pure (at heart and externally), should control his senses, be possessed of qualified servants and endowed with knowledge of the means of policy, should be even-handed towards all his subjects and look after their welfare. The long list of Śāṅkha-likhita agrees more or less with those of Kautilya and Yāj. Śāntiparva 70 states that the king should possess 36 qualities, viz. he should not speak bitterly, he should be godly, not wicked, not haughty, of agreeable address &c. Kām. I. 21–22 mentions 15 qualities that lead to the well-equipped personality of the king (ātma-sampat), viz. study of śāstra (Dandanītī), intellect, serenity, cleverness, boldness, power of comprehension, energy, eloquence, firmness, capacity to endure the worries of adversities, majesty, purity, kindness, liberality, truthfulness, gratefulness, noble family, character, self-restraint. Then Kām. in IV. 15–19 sets out the qualities called ātma-sampat, which
generally agree with Kautâlyâ's enumeration (in VI. 1). Acc
to Kâm. IV 24 liberality, truthfulness and valour are the three
greatest qualities in a king, who, when endowed with these,
acquires all other qualities. The Mânasollâsa (II. 1 2–7) first
enumerates 44 qualities such as truthfulness, spiritedness (which
agree more or less with Kautâlyâ's enumeration) and then states
that the five most essential qualities in a king are truthfulness,
valour, forbearance, liberality and capacity to appreciate the
worth of others. The Agnipurâna (239. 2–5) enumerates 21
qualities such as noble family, character &c. In the Parasurâmâ-
pratâpa 96 qualities are enumerated in the Râjawallabhakânda
(Ms 239 of Visrâmabâg collection II, folio 21b). The Sabhâparva
5 107–109 and Râmâyana II. 100 65–67 require the king to avoid
14 faults viz. atheism, falsehood, hot temper, carelessness, pro-
crastination, not seeing the wise, laziness, addiction to five
pleasures of sense, considering state matters alone (without
mantrams), taking counsel with those who do not know politics,
not starting to do what is decided upon, not guarding secret
royal policy, not practising auspicious acts, taking up under-
takings on all sides at one and the same time. Vanaparva 251.
5 says that subjects do not like a king who is very timid, very
weak, procrastinating, careless and immersed in pleasures on
account of vices. Sabhâ 5 125 states that sleep (by day), lazi-
ness, timidity, hot temper, softness and dilatoriness are six
calamities in a king.

The works on dharmaśâstra and arthaśâstra devote a good
deal of space to the education of the king and to his moral dis-
cipline. Gaut XI. 3 requires that the king should have received
instruction in Travyâ (the three Vedas) and Ânviksikî. This last
has been differently interpreted by different writers. Kaut I. 2
says that Ânviksikî comprehends Sânkhya,57 Yoga and Loka-

57. सारयं चागो तोक्कर्ते चेरूवान्धीशिकिकी: तत्ततः चैताष्टु िहोभीषणम्
तोप्परोक्षोरिति नानाविशंके न दुव्याबिराजपति नायनमधीक्रियादिकानुमुद्यं
तत्र तत्र: सचिववादालाम्ब्यते स्वेदकरणां। कावित्व: सचिववादालाम्ब्यते सता II अर्थो-
शास्त्राः 1 2 This last verse occurs in बालत्यालाम्ब्यते on स्वारंस्व I 1 1, where
the 4th pâda is विहृदेशिः मक्खिविला. Some read आत्मशीक्षी (Jolly's ed of
अर्थशास्त्र) but शाश्वस्त्रका seems to be more grammatical and to be the reading
of most classical works. Thé Trivandrum ed reads आत्मशीक्षी Patañjâl
in his Mahâbhâsa has a sentence जलिका नायम्नी तोक्कारत (Bhâguri
expounds the Lokâyata system), vol III p 325 on Pânum VII 3 45. Later
on Lokâyata came to be identified with atheistic views that denied
the existence of a soul or the next world. Sankâra on Vedântasâstra II 2 1 and

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yata and that it examines the relative strength of the three other vidyās with reasons, and thereby benefits the world, steadies the mind in calamities and prosperity and imparts excellence in intellect, speech and actions. It is always the torch of (sheds light on) all vidyās, it is the means of (inducing to go in for) all undertakings, it is the source of all dharmas. Kautilya derives the name from the root ‘iks’ with ‘amu’ and he takes it to mean the science of ratiocination. It is somewhat strange that Lokāyata is included in Āvikṣikī, one of the subjects of study for the prince. But it appears from the remarks he makes that Kaut. uses it only in the sense of logic based on premises derived from ordinary experience (loka) though in later literature Lokāyata came to mean ‘nāstika’ (atheist, materialist). Acc. 58

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III. 3 53 and 54 states that the Laukāyatakas held the view that consciousness is a quality of the body (and there is no soul over and above the body). The Tantravārtika runs them down as fools and apes (on Jaimini 1. 3. 3). In the Rāmāyana Rāma asks Bharata not to resort to Lokāyata brāhmaṇas, who, though childish, look upon themselves as learned and who relying on the knowledge acquired by Āvikṣikī speak nonsense in spite of the fact that there are principal Dharmaśastras (that point out the sensible path). Kaṭhikā Lokaśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraš

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58. 'Continued from last page'
to the Amarakosa, Visvarūpa on Yāj I 306, Haradatta on Gaut. (Xi. 3), Aparārka and several others Ānvikṣikī means ‘Logic’. Acc. to Kām. II 7 and 11, the Mit on Yāj I 311, Śukraniti I 158 it means ‘Ātmavidyā’ (Metaphysics), while Śukraniti I, 153 and Rājaniti-prakāsa p 118 combine the two by saying that it is logic that leads on to or is useful for acquiring knowledge of the Self. The Nītimayūkha (p. 34) includes logic and Vedānta in Ānvikṣikī and Mīmasā and smṛtis under Trayā The Bārbhaspatyasūtra (II. 5–6) advises the king to follow the Laukāyatika doctrines at the time of securing artha (wealth) and the Kāpālika-sāstra in achieving his sexual and similar desires.

Great divergence of views prevailed as to the vidyās that were essential for the education of the king. According to the Manusmr̥ti VII 43, Śānti 59 33, Kaut I 2, Yāj I 311, Kām II. 2, Śukraniti I 152, Agni. 238 8, the subjects for the king’s education are four viz., Ānvikṣikī, Trayā, Vārtā and Dādanā. Kaut notes that the school of the Mānasas held the view that the vidyās were three and regarded Ānvikṣikī as a special branch of Trayā; that the Bārbhaspatya school was of opinion that they were only two, Vārtā and Dādanā, since Trayā only acted as a screen (to obscure the intellect) of one (the king) who wants to know the ways of the world; and the Ausanasas regarded Dādanā as the only vidyā for a king, since according to them, the efforts to learn all vidyās are tied down to it (i.e., are ultimately intended to lead on to the mastery of Dādanā). It will be seen how the Ausanasas and Bārbhaspatyas had an entirely secular view in the science of government and divorced it from the study of sacred books and metaphysics in the case of the king. The Dasakumāra-carita VIII (that displays a deep study of Kautilya) says that the vidyās for the king are four (catasro rājavidyās-trayāvārtānviṃśikīdādanāḥ). The Bārbhaspatyasūtra I 3 (Dādanātireva vidyā) holds that Dādanā is the only (essential) vidyā for the king. Kautilya further explains that dharma and its opposite are learnt from the three Vedas, viz., Śāma-veda, Rgveda and Yajurveda, that the Atharvaveda and Itihāsa-sastra (i.e., Itihāsa and Purāṇa) are the other Vedas and that the six Angas (viz., phonetics, ritual, grammar, etymology, metrics and astronomy) are comprehend-

59. सर्वसा तत्त्वदर्शिनिकिष्ठां शाक्तमर्थसारायणात् । कायविष्णुकिष्ठ कामसागरे । शास्त्रपत्रद्वारे II. 5–6
ed in the word 'Trayi'. Sukraniti I.155 says that the 14 vidyās (enumerated in Yaj. I.3) are comprehended in Trayi. Gaut. XI. 19 expressly says that in doing his duty of making the people observe the rules of the sacred codes the king would have to rely on the Veda, Dharmasāstras, the Angas, Upavedas and Purāṇa. In the Rāmāyana, Rāma and his brothers are often spoken of as proficient in the Vedas, Vedāṅgas, in Dhanurveda, Gāndharvaveda, Rājavidyā &c. (I.18. 24 and 26, II.1.20, II. 2. 34–35, V. 35. 13–14). In the Vanaprastha 277. 4 it is said that the princes were proficient in the Vedas with their secret doctrine and in Dhanurveda. In the Ādiyaparva 221. 72–74 Abhimanyu is said to have learned from Arjuna before he became 16 the Dhanurveda in four sections, the knowledge of astras, and the theory and practice of these. Vide also Amūsāsana 104. 146–147. Khāravela in his Hathigumpha Inscription (E.I. vol. XX. p. 79 II. 2 and 5) states that he learnt Lekhā (official correspondence), Rūpa (currency), Gananā (Accountancy) and the administration of justice, when he was the crown prince and also Gāndharvaveda (music). In the Junagadh Inscription of Rudradāman (E.I. vol. VIII at page 44) the Mahakṣatrapa is said to have attained great fame by his deep study, retention, and actual practice of grammar, artha (either lexicography or politics), music, logic and other vidyās and to have been a fine rider of horses, elephants, chariots and a great adept in wielding the sword and shield and in wrestling. The personal attainments of Samudragupta (in Gupta Inscriptions No. 1 pp. 12, 15–16) show how thorough the education of at least some princes was or at least what the ideal about their education was. Vide H. Dh. vol. II. p. 364 for the education of princes and Dr. Beni

60. धर्मशीयं व्रतयादिः अर्थायां वाराहक्ष तत्त्वात्मराम। भवयो वृत्तिबद्वयामसत्। ……… सन्तानस्य- 
वर्गास्यापि। अत्थपेयसिद्धास्येदि ते प्रेमव। श्रिष्टा कालो मगवधिमतिः द्वितीयो अत्थानुसारी। अन्थस्य इ. 2 तथा। In the Raghuvamsa XVIII. 50 Kālidāsa speaks of only three princely vidyās and Mallinātha quotes the very words of कौटिल्य cited here and also Kām. II. यदि शरीरादिकविश्वासौ विधा मनोर्षितः। वर्त्या केवल विवाहो येन साविकेष्कीय सत्ता न। It should be noted that the Śāmaveda is here mentioned first. Probably Kauṭilya was a student of that Veda. In the Brāhmaṇas and Upanisads Rgyveda comes first in the enumeration. Itu-bāsa and Purāṇa are called the fifth Veda in Chāndogya VII. 1. 2. Compare Agnputāņa 238, 9 for words similar to वृत्तित्वयामसत्, etc.

61. वृत्तित्वयामसत्त्वात्मराम। भवयो वृत्तित्वयामसत्त्वात्मराम। ……… (broken) विनासभाष्यविनासंधियसिद्धास्येदि
कौटिल्याष्ठद्विप्रविद्वि किंतु वर्त्यादिकविश्वासौ विधा मनोर्षितः। ……… (broken) विनासभाष्यविनासंधियसिद्धास्येदि
E.I. vol. VIII p. 44. 1. 13.
Prasad's 'Theory of Government in Ancient India' p. 218, for an ideal course of education for a prince quoted from the Buddhist work, Sūtrālankāra of Āśvaghosa. The Nītīvākyāmṛta adds a long list of the accomplishments which a prince should possess viz. all scripts, valuing of jewels, knowledge of arms &c. On reading the ideal courses prescribed for the education of the prince by ancient Indian writers one cannot help feeling that they were probably actuated by the same sentiments that are attributed to Socrates by Plato in his 'Republic' (tr. by Jowett, ed. of 1875, vol. III. p. 357) viz. 'Until philosophers are kings or the kings and princes of this world have the spirit and power of philosophy and political greatness and wisdom meet in one and these commoner natures who follow either to the exclusion of the other are compelled to stand aside, cities will never cease from ill-no, nor the human race as I believe—and then only will our State have a possibility of light and behold the light of day &c.' The Agnipurāṇa (225. 1–4) prescribes that the prince should be taught dharmāstāra, kāmaśāstra, arthaśāstra, science of archery (dhanurveda), the various arts and crafts by trusted teachers, that he should not be allowed to be associated with those who are angry with the king or disrespected by him or who are greedy and that if it is impossible to impart good qualities to him he should be confined, surrounded by pleasures. The princes were sometimes educated in their own capital or in a nearby college. Vide H. Dh. vol. II. p 364. Sometimes, it appears, princes went to such famous seats of learning as Takṣaśila (vide Jātakas ed. by Fausboll II. 87, 278, 319, 323, 400, III. 158, 168, 415, 463) The subjects of study there were the three vedas and 18 śūlpanī or vidyās (Jātakas, vol. II. 87, III. 115). Kautilya (I. 4) explains that Vārtha is constituted by agriculture, the rearing of cattle and trade; it benefits (the State) by bringing in grain, cattle, gold, baser metals, and free labour; by means of vārtha the king secures treasury and army whereby he brings under control his own side and the enemy. In the Sabhāparva, 5.79 and Ayodhyākanda 100.47 it is declared

62 शिष्याशिक्षिताश्रम: राजा: सबवां शिष्यां शिक्षित: पद्यालापतिवेदां विशिष्टान्वित: । भवानै संभवनी तपस्या: कारिणो भवानै: ।
63 वार्ता विहारां मृदुस्तात: होक्ष्यं ज्ञातेऽपि। समा 5.79, अर्णद्वा 100.47; पद्याः कर्मभिविधानं सकुल्यं गोजनाः सर्वयो संसार: । वार्ता भाषि सविव: ग्रन्थसौऽविष्ठातिनः । विद्येः 150 30, वार्ताविद्या सविव: होक्ष्यं ज्ञातेऽपि । वार्ता भाषि सविव: । वार्ता संसार: । वार्ता 263.3, वार्ता संसार: सविव: । पद्य: 93.
that when the world relies on vārtā it easily prospers. The Śanti-parva (263.3) gives the warning that this world would cease to exist if vārtā was given up, that this world is rooted in vārtā and is sustained by the three vedas (68.35). The Vanaprava (150.30) states that the whole world is sustained by vārtā i.e. by merchandise, mines, trade, agriculture and tending cows, she-goats and ewes. The Nitiyākyāmṛta (p.93) after defining vārtā as above emphasizes that the king secures the abundance of everything when vārtā is prosperous and that the man who has his own agriculture, milch-cattle, plot for growing vegetables and a well in his own house has indeed all the pleasures of this world. These quotations indicate what importance was attached to agriculture and the economic structure of society. The result is that in the Arthaśāstra economic matters occupy a very large space.

Kauṭilya (I.5) starts by saying that the three vidyās (except dandaṇīti) in the case of the prince depend upon danda, that danda in its turn is based upon discipline, which is of two kinds, natural and induced (or acquired). Vidyās produce discipline (of the 2nd kind) in him who possesses the qualities of intellect specified above. Then he goes on to say that the prince should learn the alphabet and arithmetic after his cauła is performed (in the 3rd year or later) and after upanayana he should learn the three vedas and ānvyāsiki from the śiṣṭas (those learned in the veda), vārtā from the heads or superintendents (of the various departments thereof) and dandaṇīti from expounders (of the vārtā) and from practical politicians. Vide Manu VII.43 (=Matsya 215.54 and Agni 225.21-22) for directions as to from whom the prince was to learn the four vidyās. Kauṭilya prescribes that the prince should study these up to the 16th year, should then marry and that in order to foster the growth of the discipline of the intellect he should always associate with those who are advanced in the vidyās enumerated above (after his 16th year) and that the king should spend the first part of the day in practising the riding of elephants, horses, chariots and in the science of arms and the latter part of the day in listening to Itihāsa which comprises Purāṇa, history, stories, panegyrics, dharmaśāstra and arthaśāstra. A king whose intellect is thus disciplined and who is devoted to disciplining his subjects also and to doing good to all will be the sole ruler of the earth. The Nitiyākyāmṛta (p.162) defines unaya as 'acting with humility towards those
who excel in vratas, vidyās and are aged.* Manu VII. 38–39. Kām. I 19–20 and 59–63, Śukra I. 92–93 (taken from Kām. I. 19–20) extol the value and importance of vinaya, and waiting upon the aged and the learned Manu (VII. 40–42) states that many kings perished with their vast paraphernalia through want of discipline while others, though residing in a forest (i.e. without an army &c.), gained kingdoms through vinaya, and names Vena, Nahusa, Sudās son of Pijavana and Sumukha Nimi as those who perished through lack of vinaya and gives Prthu and Manu as examples of those who secured kingdoms through vinaya. Mātaya 215.53 is the same as Manu VII. 40. Ancient Indian writers harp on the education of the prince so much because their ideal of kingship was that the king should be a rājāraṣṭ (a royal sage) Kālidāsa frequently speaks of this e.g. in Śīkuntalā II. 14 and Rāghuvamśa (I. 58) They were aware, like Socrates, that until either philosophers became kings or kings philosophers States will never succeed in remedying their short-comings (vide p. 50 above). Not only was an extensive course of intellectual training prescribed for the king, but both dharmasāstra and arthaśāstra works strongly and frequently insist upon the necessity of moral discipline and the right direction of the emotions and will in the case of the king.

Kautilya (I. 6) emphasizes that control of the organs of sense is the cause of (proficiency in) vidyās and discipline should be attempted by giving up the six enemical tendencies viz. lust, hot temper, greed, vanity (māna), haughtiness or insolence (mada), overjoy. He says that (the whole purpose or insistence of) all sāstras is the restraint of the senses, that even a supreme ruler of the whole earth up to its four borders whose senses are not under control will at once perish and cites two examples on each of these six tendencies, viz. Dandakāya Bhoja who attempted to rape a brāhmaṇa girl through lust and perished with his kingdom and kinsmen and Karāla king of Videha; Janamejaya (perished) who attacked brāhmaṇas through hot temper and Taḷajaṅgha who did so against the Bhrigu, Aila who exacted through greed excessive taxes from persons of the four varnas and Ajabindu, the king of Savīra; Rāvana who did not restore another’s wife through his concert and Duryodhana who did not give even a part from his kingdom; Dambhoḍbhava who despised all beings through his insolence and

54 The word ‘philosopher’ used by Plato has not the narrow meaning of modern times.
Arjuna of the Haihaya dynasty; Vatapi through overjoy when he attacked Agastya and also the oligarchy of the Vrnis when they attacked Dvaipayana. These six evil tendencies are called *krodha* or *saṭu-saḍ-śārga*. Kautilya adds that by the conquest of these six evil tendencies Jamadagnya (Paraşurāma) and Ambarisa enjoyed the earth for a long time. Kām. (I. 55–58) and Śukra. I. 144–146 give six of the twelve examples of Kaut and Kām. I. 58 is the same as the last verse of Kautilya I. 6. Vide Mārkandeya 27. 12–13. In the Vāsavadatta of Subandhu (Hall’s ed. pp. 273–276) there is a long list of the kings of antiquity (Purūravas, Nāhusa, Yayati, Sudyunna, Nala and nine others) who suffered owing to some failing or other in themselves. The Udyogaparva (74. 13–18) mentions by name 18 kings who by their evil career destroyed themselves, their friends and relatives (such as Mudāvarta of the Haihayas, Janamejaya of the Nipas, Bahula of Tālajanghas, Dhaumatālaka of the Īnas). This shows that Cīna does not probably stand for modern China in the epic. Manu VII. 44 (=Matsya 215. 55) also emphasizes the necessity for the king incessantly to curb the senses and not to fall a prey to vices arising from kāma and krodha. Manu (VII. 45–48) enumerates ten vicious tendencies due to kāma (desire for pleasures) viz. hunting, gambling, sleep by day, finding fault (with others), women, drunkenness, (excessive indulgence in) dancing, singing and instrumental music, and aimless wandering; and eight vicious tendencies due to krodha (hot temper) viz. tale-bearing, violence, treachery, envy, slander, (improper) seizure of property, reviling and assault. Manu further declares (VII. 50) that among the vices due to kāma, drinking wine, gambling, women and hunting are the most harmful, each preceding one being worse than each succeeding.

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65. Most of these stories occur in the Mahābhārata, Purāṇas, and Buddhist works Vide Jolly’s ed. of the Kautilya vol. II. p. 5. But the story of the Vrnis and Dvāpāyana is not known. For Janamejaya (different from the descendant of Arjuna, the Pândava) incurring the sin of brāhmaṅa-killing, vide Śānti 150 3. For Arjuna (called Kārtavīrya) king of Haihayas, vide Sabhāpā. va 22 24, Vanaprāpa 115 12, Anuṣāsana 153 3 ff, Śānti 49 35 ff. and Āvamedhikaparva 29, Matsyapurāṇa 43, Vāyu 94. For Agastya and Vatapi vide Vanaprāpa 96. In the Mārkandeya the instances of kings that came to grief through kāma, krodha, lobha &c. are different except that of Āda (chap. 27. 14–17). For Dambdodadbhava vide Sabhā 22 24 and Udyoga 96 7 (cr. ed. 94. 7) For the story of Danda who raped a maiden of the Bhrigu family vide Rāmāyana VII. 80–81. Dāndakaya Bhoja is mentioned (along with Rāvana and Kīcaka) by the Kāmasūtra I. 2. 44–45.
one and (VII. 52) that among the vices due to hot temper, causing physical injury, reviling and deprivation of wealth are the worst. Manu (VII. 52) has a sly hit that these seven vices are more or less prevalent among kings (sāvatratānānusangrnam), and therefore the only choice is that of the lesser or least of evils Kautilya (VIII. 3) has a lengthy disquisition on the views of his predecessors about the relative harmfulness of the three vices due to hot temper and of the four due to kāma and states his own opinion that arthādūsana meaning loss of the means of livelihood by gifts, exactions (by the king), loss or abandonment of property is more harmful than reviling and danda-pārasya is more harmful than arthādūsana. He points out the benefits derived from hunting viz exercise, the disappearance of phlegm, bile, fat and sweat, the acquisition of skill in aiming at stationary and moving bodies, the ascertainment of the minds of beasts when they are provoked and occasional travel. These are echoed, almost in the same words by Kām XIV 25 and in the Śākuntala (II. 25) by Kālidāsa Vide Sahā 68 20, Udyoga 33 92 for the seven principal vices Kām (XIV. 6 and 7) enumerates the three vices of hot temper and the four of kāma and holds an elaborate discussion on their respective demerits. He defines arthādūsana (XIV. 17) somewhat differently (viz as the abandoning of an important object or of great wealth in order to show that what really merits blame is not so) Vide the Viṣṇudharmottara II. 65 12-15 for the two meanings of arthādūsana. Kām does not agree that hunting has many good points in its favour and advises the king to prepare a separate well-guarded hunting ground of one-half yojana in length and breadth if he really desires to hunt (XIV. 28-42) The Maṇāsollāsa (vol II) in the 15th chapter of the 4th vimsati deals with hunting as a sport for kings and points out how a forest is to be preserved for royal hunting and how it is to be guarded and enumerates 31 methods of hunting. Kām warns the king who wants to retain

65. Śuṣṭhamānaḥ sa ṣaṣṭhamānaḥ. Ṣuṣṭhamānaḥ sa ṣaṣṭhamānaḥ śāstraḥḥ śaśrapeḥ bhāthāṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśaṁ śaśa
his kingdom against fondness for women (XIV. 57-58). He further says that a king may even indulge in fondness for women and may even drink moderately, but he must totally avoid gambling and hunting (XIV. 65). Kautilya regards gambling as the worst of the vices for a king (VIII. 3 last sentence in prose). In the Daśakumāracarita (VIII) there is an elaborate (but ironical) description of the mental and other benefits derived from the four principal vices due to kāma. Kām. I. 54 states that hunting, gambling and wine in the case of kings must be condemned, since calamities befell Pāṇḍu, Nala and the Vṛṣṇis (respectively) by being addicted to these. Even an ideal king like Rāma was fond of hunting. Śukra (I. 332-333) points out that hunting has much in its favour, but there is one great defect in it viz. slaughter of animals. Śukra (I. 109-119) denounces gambling, drinking and fondness for women as the worst of vices and points out that Indra, Dandakya, Nahusa and Rāvana came to grief through their passion for women (I. 114) and that a king who is excessively fond of dancers, singers, courtesans, wrestlers, eunuchs and men of low birth falls an easy prey to his enemies (I. 128). Kām. (I. 40-46, which are almost the same as Śukra I. 102-107) gives a poetic description of how animals like the deer, the elephant, the moth, the fish and the bee meet death or become confined by extreme attachment to one only out of the five objects of sense and emphasizes that men who can and does enjoy all the pleasures of the five senses must practise great restraint.
CHAPTER III

DUTIES AND RESPONSIBILITIES OF THE RULER.

All works are agreed that the first and foremost duty of the king is the protection of subjects. Sāntiparva (68 1–4) notes that all the seven expounders of polity (rājaśāstraprānapārah) named by it extol protection as the highest dharma of the king. Manu VII. 144 states that the protection of subjects is the highest dharma and Kālidāsa in Rāghuvamśa 14 67 alludes to this dictum of Manu. Protection consists in punishing internal aggression (such as by thieves and robbers and by persons who invade a man’s rights) and in meeting external aggression. Vide quotation from Brhaspati below. Gautama (X. 7–8) prescribes that the special responsibility of the king is to protect all beings, to award just punishment and that he has to protect the several varnas and āśramas according to the rules of śāstra and to bring them round to the path of their proper duties when they swerve from it (XL 9–10) Vasistha (19 1–2) states that the wise say that protection is a life-long sattra in which he has to give up fear and softness of heart. Vas 19 7–8 and Visnu Dh S III 2–3 are similar to Gaut XI 9–10. The Sāntiparva (23 15) repeats a gāthā of Brhaspati: “As a snake swallows mice lying in holes, so the earth swallows these two viz a king who does not fight (an invader) and a brāhmaṇa who does not go on a journey (for acquiring knowledge from famous teachers).” Manu IX 306 states that the king protecting his subjects according to the śāstra and meting out punishment to those who deserve it performs every day sacrifices in which the fees are one hundred thousand cows (i.e., he secures the spiritual reward of very solemn sacrifices). Yaj I 335 is to the same effect. Kautilya also lays emphasis on the duty to keep the varnas and āśramas to their duties. Therefore the
king should not allow the people to swerve from their duty. He, who keeps dharma intact (without breach), enjoys bliss in this world and the next'. Nārada 69 (prakirnaka 33) states 'His duty is to protect the subjects, to (honour or) listen to the aged and the wise, to look into the disputes of people and to be energetic in his functions as king'. Śukra (I.14) says that the highest dharma of the king is to protect the subjects and to put down the wicked. According to Atri (verse 28), 70 to punish the wicked, to honour the good, to increase the treasury in the right way, to deal impartially with litigants and to protect the kingdom—these five are declared to be sacrifices in the case of kings. The Vismudharmottara (III.323.25-26) refers to the five sacrifices in very similar words. In Śānti 77.33 the king's duty to restrain brāhmanas from engaging in unworthy actions is specially emphasized. These passages establish that the principal duties of the king were conceived to be to protect the subjects, to see that the rules of varnas and āśramas were carried out by them, to punish the wicked and to do justice.

The duty to protect involved fighting and probable death. Therefore the ancient works on dharma-śāstra always insist that it is the duty of the ksatriya to fight and that death on the battlefield is to be his highest ideal. Manu (VII.87-89) enjoins upon the king, when protecting his subjects against invasion, not to run away from battle and promises heaven as the reward for kings who die fighting in battle. Yāj I.324 holds forth the same reward for all soldiers who are killed in battle. Vide Striparva 2.16 and 18 and 11.8-9. The Bhagavadgītā (II.31-37) most solemnly declares that there is nothing higher for a ksatriya than a righteous war, that a ksatriya's duty requires him not to quail in battle, that if he dies in battle he goes to heaven and if he survives he rules over the world, that he should fight as a duty without caring for gain or loss, victory or defeat and if he fights with this attitude no sin attaches to him. Śāntiparva 78.31 states that just as those who join in the bath of the king at the end of the Aśvamedha are purified of all sins, so all

69. तत्र परमः प्रजाःपश्चात् इत्यमाधृत्सर्वसंस्कारम्। बृहस्पतिः व्यवहाराधिकारायनं च वर्षस्वरूपः।

70. यदा यथा यथा यथा पुरा व्यवहार फोराष्टिर्म वा संविब्रह्म। अवधिकोषांविद्धान राष्ट्रस्त्रधर्म प्रबृजय पञ्चाश। कार्याधिकाराणां। अर्ह्यां अवधिकोषांविद्धान राष्ट्रस्त्रधर्म प्रबृजय पञ्चाश। कार्याधिकाराणां। अर्ह्यां अवधिकोषांविद्धान राष्ट्रस्त्रधर्म प्रबृजय पञ्चाश। कार्याधिकाराणां। अर्ह्यां अवधिकोषांविद्धान राष्ट्रस्त्रधर्म प्रबृजय पञ्चाश।
soldiers (of whatever caste and on whatever side) killed in battle become pure by the destruction of their sins. Manu (VII 94-95) sets out the results for a soldier who flees from the battlefield. Parāśara 71 III. 37 says “Two men pierce the orb of the sun (i.e., reach heavenly worlds) viz. an ascetic endowed with Yoga and a soldier killed while facing the enemy” and the following verses (III. 38 ff) dilate upon how the slain warrior is waited upon in heaven by divine damsels. A verse of the Rgveda X 154 3 (= Atharva 18 2 17) appears to hold that warriors losing life in battle reap the same rewards that those who make gifts of a thousand cows in sacrifices secure. 78. It is probably this passage which Kautilya has in mind when in X. 3 he refers to the Veda for incaiting the soldiers to fight without regard to life. Ap Dh. S. (II. 10 26 2-3) states that a king, who strives to recover the wealth of brahmans (stolen by thieves) and dies in the effort, is said to perform a sacrifice, in which his body is the sacrificial post and the fees are incalculable and that other valiant men losing life in fighting for a (good) cause are in a similar position. To die fighting for the protection of cows and brahmans is specially commended (vide Śanti 21. 19 and 77, 28 and 30). The Visnudharmasūtra III. 44-46 prescribes “there is no duty for kings equal to losing one’s life in battle; those who meet death in protecting a cow, a brahman, a king, a friend, their own wealth and their wife enter heaven as also those who meet death in preventing confusion of varnas (caused by adultery &c.).” On the eve of battle the great warrior Bhīṣma says to his officers “it is a sinful act for a ksatriya to die in his house from some disease; the ancient code of conduct for him is that he should meet death from steel” (BhīṣmaParva 17 11). The same idea is presented in Śalyaparva 5 32, Śanti 97 23 and 25.

Kāmandaka 72 (V. 82-83) makes it clear that the subjects require protection against the king’s officers, thieves, enemies of the king, royal favourites (like the queen and the princes) and

71 ढ्राह्मिनी कितनी लोके तुर्यमछड़नेविदिनी। परिवारोपेच्छोक रों चापिसहृष्टा हि। परंपरार III 37, quoted by वेदालिकियों in भुव III 89. The same is उपमान 33. 61 which reads शुरुवंशमः in the first पादा.

72 चे शुरुवते मधनेवु शुरुसि वे करुपः। चे वा सहस्सर्वाभिशिष्टानयेव शुरुवते। X 154 3 = अध्वर्य 18 2 17. This also is quoted by वेदालिकियों. On भुव VII 89 अर्धशास्त्र (X 3) has चे शुरुवते चे शुरुवते — सांसारिकवान्यान्य वेदालिकियों, सा के गारिम्य शुरुवंशमिलिता।

73. आदेशकेशाकरवाद्ये, परम्परो मनुष्यवादः। उपविनाशतिमानार्यज्ञाना पञ्चवा भयस्। पञ्चवकारणस्तवद्विप्धोऽसेवंतिबिद्यै। कामनवुक V. 82-83.
the greed of the king himself. As an extension of the king’s
duty to protect, the works lay down that it is his duty to support
students, learned brāhmanas, and sacrificers. Vide Gaut X.
9-12, XVII 31, Kaut. II. 1, Anuśāsana 61. 28–30, Śānti 165. 6–7,
Vismudharmaśūtra III. 79–80, Manu VII. 82 and 134, Yaj I.
315 and 323 and III 44, Matsya 215. 58, Ātri 24 The Hindu
kings of ancient and medieval India followed this advice with
great liberality for centuries and the subject has already been
treated in vol II. pp 113, 856–864. The functions of Government
were not supposed to end with the maintenance of peace and order,
but Government must be an instrument of the diffusion of culture.
The king is also called upon to support helpless and aged people, the
blind, the cripple, lunatics, widows, orphans, those suffering from
diseases and calamities, pregnant women by giving them medi-
cines, lodging, food and clothing according to their requirements.
Vide Vas 19. 35–36, Vismudharmaśūtra III. 65, Matsya 215. 62,
Agni 225 25, Ādipāra 49. 11, Sabhā 18. 24, Virātaparva 18. 24,
Śānti 77. 18 The Rājantī-prakāśa (pp. 130–131) quotes the
Vismudharmaśūtra requiring the king to honour and protect chaste
women (pavatratās) and Śāṅkha-Likhita to the effect that even
kṣatriyas and vāisyas who cannot maintain themselves by the
methods prescribed by the śāstras for them should approach
the king who should help them with the means of livelihood and they
should work for the king in the manner laid down for them and
that śūdras also should apply their skill and crafts for the benefit
of the king when so maintained Medhātithi on Manu V. 94
states that when a king supports his subjects in a famine by
distributing food from his treasury no question of his being in
mourning would come in the way. These provisions for the old,
the blind, the widows, orphans and helpless persons and for the
relief of unemployed kṣatriyas, vāisyas and śūdras strike one as

74. कविताकार्यांहृदयोदितिम्। अक्क्रयाः-अवतरणायामः-आभिधल्यौक्तिकेन गया
पदवि। ... चन्द्रकुक्तिमवजित्सुः-वनायतिय राजा विश्वायां। फियसमनातीत मन्त्रायामः
वनुसार। कौदिन्य II. 1.

75. कृत्यव श्रद्धालाभासे सिद्धांत संबंध की स्वस्वाभासते। श्रुति 85. 24 (= रामचर 215 62 = अभिग्रहण 225. 25 with slight varia-
tions)। कृत्यव श्रद्धालाभासे सिद्धांत संबंध की स्वस्वाभासते। श्रुति 85. 24 quoted in राजनीतिलिपिः p 138, कविताकार्यांहृदयोदितिम्। अक्क्रयाः-अवतरणायामः-आभिधल्यौक्तिकेन गया
पदवि। फियसमनातीत मन्त्रायामः। कौदिन्य II. 1. सम्प. 5. 124.

76. सम्बन्धिता आयुर्वेदम्। अक्क्रयाः। चिन्ता सम्बन्धित 
अवतरणां। राजनीतिलिपिः p 130.

77. राजनीतियांहृदयोदितिम्। अक्क्रयाः। चिन्ता सम्बन्धित। 
अवतरणां। राजनीतिलिपिः p 141.
rather modern in tone. In many modern countries the State has become the means of providing services for the greater part of its subjects, not only armed forces and the police, but social services such as education, public health, medical attendance, insurance against unemployment, old age, widowhood, and orphanage, relief of poverty &c. In ancient India, though there were naturally no Acts of Parliament guaranteeing the above services to the subjects, public opinion, the views of eminent writers and the practice of the best kings created an atmosphere in which it was thought that it was imperative for the king representing the State and its resources to encourage learning, to care for the blind, the decrepit, the old and the widowed and to give employment to those who were unemployed. Asoka constructed hospitals for men and animals (2nd Rock Edict at Kalsi in C.I. vol 1, p 28), alms-houses, rest houses, watering places, shady trees on the highways and irrigation works, visited and supported the aged (8th Girnar Rock Edict in C.I. p 13). In the 2nd century B.C. Khāravela, emperor of Kalinga, declares in his Hāthigumpha Inscription (E I vol. XX p 71 at p 86) that in the very first year of his reign he constructed embankments round the Khibira lake in the Kalinga capital and renovated all public gardens. Rudradāman in the 2nd century A.D. repaired the Sudarśana lake at great cost from his own treasury without levying fresh taxes or benevolences (prāmaya) or forced labour. The Anuśāsanaparva says that good kings should construct meeting halls, prapūs, tanks, temples and lodging places for brahmanas. The Matsyapurāṇa 215. 64 remarks that the king should give to those who stay in hermitages food, oil and pots. Vide Āp. Dh S II. 2 4, 21 and Haradatta thereon as to provision for śūdra guests. It is quite possible that these rules of the texts were not literally followed by all kings, but it is well-known how even legislative enactments are carried out by the subordinate staff in all countries including those of the West. One has only to turn to Dickens' 'Oliver Twist' for some indication of the administration of Poor Laws and work-houses in England about a hundred years ago.

As regards the king's daily routine Kaut I 19, Manu VII. 145-147, 216-226, Yāj. I. 327-333, Śukranitī I. 276-285, Agnipurāṇa 235, Viṣṇudharmottara II. 151, Bhāgavata X 70 4-17, Nītīprakāśa VIII. 9 ff, Rājanitīprakāśa pp 153-169 and other works lay down

78. शासनप्रवर्तकानि वेदवायत्नानि च। भारतियसुपार्थेऽपि कर्मिणां दुस्पदविक। अहितातनवपूृतो देश मा. I. part 1 p 466.
detailed rules, which have been already set out (H. of Dh. vol. II pp. 805-806) Every day on rising from his bed the king was advised (by Manu VII. 37) to wait upon brāhmans learned in the three Vedas and endowed with wisdom and to abide by their directions. Vas. I. 39-41, Gānt. XI. 13-14 say the same. In giving this advice exaggerated claims were made for brāhmans which have been already set out before Vide H. Dh. vol II pp. 135-136 and Anuśāsana 33 2-8. The king was also expected to show himself to all people every day (Ayodhyā 100 51, Sabhā 5. 90) 79.

An extremely high ideal was placed before the king by the Kautilya, the Mahābhārata and other works. In the Arthasastra I. 19 Kautilya 80 proclaims the magnificent ideal 'in the happiness of the subjects lies the happiness of the king, in their welfare lies his welfare; the good of the king does not consist in what is pleasing to himself, but what is pleasing to the subjects constitutes his good'. Similar words occur in the Vismudharmasūtra III last verse 81 The Mahābhārata (Sānti 69, 72-73) purports to quote two verses of Angiras (i.e. Bṛhaspati), one of which says 'of what use is tapas to that king or of what use are even sacrifices to him who has well looked after his subjects? He is surely one who knows all dharma's' Kautilya compares the king to the performer of a sacrifice, in which his vrata 82 (in the case of the sacrificer observances about food, scratching the body &c.) consists in being ever active, the sacrifice consists in issuing orders for carrying out the business (of the State), the sacrificial fee (that the king pays) is his

79. कालिचर्चायस्ये निलथे महाधार्मिकमिधात । सभापे ५ ९०।
80 राजसि हि ब्रह्मस्यां पञ्चा कार्याचार्यानब्र । वृहस्तिः ब्रह्मस्यां पञ्चा वृहस्तिः ।
81. भाराक्रो दुर्धर्या श्रवणां यथा वृहस्तिः । कालिचर्चाये कौमतीसिन्न मेषेप्र
82. विशिष्टमेधम्ब्रार्थ्यां निलथे महाधार्मिकमिधात। भाराक्रो दुर्धर्या श्रवणां यथा वृहस्तिः ।

These words remind one of the famous proclamation of Queen Victoria in 1837 (called an impossible charter by a notably energetic but retrograde Viceroy) which breathes the same high and noble sentiments 'in their prosperity will be our strength, in their contentment our security and in their gratitude our best reward'.
impartiality to all (it behaving in the same way to all), and his coronation corresponds to the bath of the person who is consecrated for a sacrifice Śāntiparva 83 (56, 44 and 46) and Nitiiprakāśikā VIII 2 declare that a king like a pregnant woman should not do what is pleasing to him, but what would conduce to the good of the people and the ancient dharma for a king is to keep the subjects contented. In Śānti 90 1 and 5 it is said 'the king is there for the upholding of dharma and not for acting as he likes and that all beings have to depend on dharma which in its turn depends on the king'. In Udyogaparva 118. 13-14 a king exclaims 'the wealth I possess is for the benefit of the urban and rural population and not for my own enjoyment; for, that king who at his sweet will gives away what (really is not his but) belongs to others does not become endowed with spiritual merit nor with fame'. King Marutta is warned by his grand-mother in the Mārkandeya 84 (130. 33-34) that the king’s body is not meant for pleasures but for undergoing great trouble in protecting the earth and carrying out his duties. Ancient writers loved to dwell upon the rule of the king as paternal. Kautilya II 1 states that the king should favour like a father those who are outside the rules for remission of taxes Yaj I. 334 requires the king to be like a father to his subjects and servants Vide Śānti 139. 104-105 for the same idea. 85 In the Rāmāyana II. 2. 28-47 and V 35. 9-14 the virtues of the prince Rāma are set out in great detail, where it is said that Rāma behaved like a father (II. 2 39), that he sympathized with the people in their sorrows and was pleased like a father when the subjects celebrated festivals The Rāmāyana 86 III 6 11 declares that it would be a great adharma on the part of that king who takes a

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83. विवेकज्ञानसेवार शाका धर्मं सत्यतम। शास्त्रम्। 57 11। यथा हि गच्छनि हिता स्यं सियं मनसोऽरुपम्। गर्भवृत्तिर्मणे तथा राजस्यामर्शनम्। बलितार्येकुरुकेशं सवः भमोऽवतिना। स्यं सियं तु परिर्वयं व्याहोकालिनं अतंदर।। शास्त्रम्। 56 45-46; the first is वीरिकानिका VIII. 2 which reads the last pāda तथा कुरुकेशंजाहितम्। धर्मं राजा भवति त्व नामकरणायात्।। धर्मं विनितति भूतानि धर्मं राजनि विनितं।। शास्त्रम्। 90 1 and 5 यवज्ञानवदृढं हु ममाधिः नात्मानं।। क्षामतो हि भवस राजा तः पावकं मष्टिचरति।। स धर्मेऽरुपमं महर्षिनियते यशस्वा न न।। उपोष्यं 118 13-14.

84. राज्यं शीर्षसाध्यं न भोगं महति।। क्षीराय महते सुधर्मक्षयपिलिन्ते॥ मायेश्येऽय। 130 33-34.

85. पिता राजतं कुः। शास्त्रं भक्तिवृत्तिमयं यमं।। स सागरं दुर्गमज्ञातामाधुरुयां गामां।। पिता हि दासा लोक्यं मनयं गोऽदुष्क्मिता।। शास्त्रम्। 139. 104-105.

86. अन्यं: समाहारं भूतवयं महति।। चे हरेऽं वज्रदेवं य च सति दुवंसूतं।। अवयपकारं 6 11.
sixth part of the produce (of fields) and does not protect his subjects as if they were his children. These sentiments are echoed by classical poets like Kālidāsa in the Śākuntala V. 5 and VI. 23 and the Raghuvamśa (I. 24) In the Harsa-carita (V) the dying king Prabhākaravardhana consoles his young and favourite son Harsa by exhorting him to reflect over the idea that kings are to be deemed to have relatives in their subjects and not merely in agnates. 86a Asoka also in his Edicts harps on the paternal relation 'all men are my children' (the first separate Jaugadh Edict, C. I. I. pp. 111 and 114).

There were, it appears, several grades of rulers from the most ancient times. The word rājya occurs in numerous places in the Ṛgveda. It is applied to such gods as Mitra and Varuna (Ṛg. VII 64 2), Varuna (Ṛg. I 24 12 and 13, X. 173. 5) It appears to be used in two senses, viz (1) 'king' as in Ṛg. I. 65 7, III. 43. 5 ('will you make me the protector of people, the king, O Indra'), IV. 4 1, IX. 7. 5, X. 174. 4) and (2) 'noble' as in Ṛg. IX. 10. 3, X. 78. 1, X. 97. 6 ('where the plants come together as nobles in an assembly' rājunaḥ samātavā). In Ṛg. VIII. 21 18 it is said 87 'Citra who gave thousands and ten thousands is the only king, others are only small chiefs along the bank of the Sarasvati'. The word 'samrāj' is known to the Ṛgveda and is used as an epithet of Varuṇa (in Ṛg. VI. 68. 9) and of Indra (in Ṛg. VIII. 16. 1) and the word samrājya also occurs in relation to Varuna in Ṛg. I. 25 10. In Ṛg. VIII. 37. 3 Indra is said to be sole ruler of the world (ekarūt) It is not unlikely therefore that the idea of an emperor who had suzerainty over several kings was known, though it is possible that in Ṛg. VIII. 37. 3 the word is used only in a metaphorical sense. In Ṛg. VII. 83. 7-8 87a it is said that ten kings though they formed a confederacy could not vanquish king Sudās and that in the ten kings' battle (dūkarūṇe) Indra and Varuna helped Sudās who was surrounded by them on all sides. A very large number of kings is mentioned by name in numerous places in the Ṛgveda (e. g. I. 53. 8 and 10, I. 54. 6, I. 100 17, VII. 33. 2, VIII. 3. 12, VIII. 4. 2) Besides these it appears that there were

86a. महासिद्धः सन्तुस्ते राजाश्च न भासिमि। दर्ष्यति व।
87. चित्व इत्यतः राजस्त्या हर्ष्यपक्षं चेक सरसवतिः। पर्यवेच इत्य वर्णदिः वद्या सहभ्रमणो द्रुषुः। भ. भ. VIII. 21. 18.
87a दृष्ट राजान: समित सत्यीर्या हर्षासन्निधरनः न वयस्य। ॥....वासराक्षे परिप-पराष्ट्र विश्वेश्व इतिर्मण्याबिनिमित्वः। भ. VII. 83. 7-8.
tribal chiefs or governments of such clans or tribes as the Amus, Druhyus, Turvasas, Pūrus, Yadus (Rg I 108 8, all in the plural, VII 18 6 and VIII 6 46) But sometimes these words are used in the singular, when they mean ‘a king or chief of that clan’. Vide Rg VIII. 4, 7, VIII 10 5, IV 30 17 In the Atharvaveda III 4 1 (may you shine forth as the sole ruler of men) that word (ekarāt) is used in its literal sense and in Atharva VI 98 1 (may Indra conquer and may he never be defeated, may he shine as the overlord among kings) the idea of an emperor (adhirāja) is clearly set forth In Rg. X 128 98 the word ‘adhirāja’ must be taken in the same sense. The Atharvaveda speaks of an Ugra which word seems to mean a formidable king (or emperor) ‘Then you chase away disease as a formidable (king) who is in the midst (of many kings presses hard each of them).’ IV 9 4 In the Atharvaveda III 4 3 it is said ‘May the ugra see a lot of tribute’. In Rg X 34 8 the word ugra has probably the same sense viz ‘a formidable king’. In the Tai S II 6 2, 2 it is said that men are held (supported or restrained) by the king (tasmād rājā manusyā vidhṛtāḥ) In the Tai S I 8 10 2 occur the words in the and formula recited in the Rajasūya ‘May the gods extract for men great power, great overlordship, great sovereignty over people, this, O Bharatas, is your king, while Soma is king of us brāhmaṇas’. The exact relation of the two words ‘ādhipatiya’ and ‘jānarāya’ is not clear. Similar words occur in Vuj S IX 40 and X 18 and in Kāthaka XV 5 In the Ait Br (39 1) it is said that ‘whoever desires the king to attain supremacy over all kings, to attain to the rank of emperor and desires that he be the supreme ruler, the sole emperor (ekarāt) of the whole earth bounded by the sea up to its very extremities should be consecrated and crowned with the Aindrā Mahābhāsha after making him take an oath.’ In this passage the meanings of the words ‘bhauyya’, ‘svārāyya’, ‘vairāyya’ and ‘pārameṣṭhya’ in

87b ถ้าจะจุติไม่เห็นทุ่นต้านใจราษฎร์ราษฎร์แล้วก็ไม่ไป[VI 98 1]

88 ถ้าจะจุติไม่เห็นทุ่นต้านใจราษฎร์ราษฎร์แล้วก็ไม่ไป[VI 98 1]

89 ถ้าจะจุติไม่เห็นทุ่นต้านใจราษฎร์ราษฎร์แล้วก็ไม่ไป[VI 98 1]

90 ถ้าจะจุติไม่เห็นทุ่นต้านใจราษฎร์ราษฎร์แล้วก็ไม่ไป[VI 98 1]
Grades of sovereignty

relation to sovereignty over people are not clear. They are probably hyperbolical and grandiloquent words to convey supreme power. Even a brāhmaṇa, according to vedic texts, may perform the Vaiṣayeṣa if he desires 'svārajya' which means supreme eminence. Paramesthya means 'Prajāpati' and so paramesthya simply means godlike power. Further there is no apparent reason why, after rising high from sātāraja to 'paramesthya' there should be a descent to mere 'rājya' and 'māhārājya'. Sayana 91 takes 'rājya' and 'māhārājya' at the end of the passage as referring to the position of the king in the next world. This is rather far-fetched. Jayaswal (in 'Hindu Polity', part 1 pp. 89–90 and p. 133) takes these words to mean 'the Bhaujya constitution &c.' relying on the occurrence of the Bhosā in Asoka's Rock Edicts V and XIII and in Kharavela's Inscription, on the appearance of Bhosā as rulers in Western India and the town of Bhuj in Cutch and 'vairājya' as kingless system and 'svāraja' as 'self-ruling system'; but this is all unwarranted and is a fair sample of the way in which some of Jayaswal's theories are built up. It passes one's understanding how a paramount sovereign is promised svāraja (in Jayaswal's sense) in the Alt. Br. In the Rgveda (V. 66. 6) we have the word 'svāraja' (which probably means the same thing as 'svāraja') in 'Let us strive for an all-embracing sovereignty, which will afford protection to many'. 92 In the Śatapatha Brāhmaṇa the distinction between a king (rājan) and an emperor is very clearly expressed as follows: 'For, by offering the Rājasūya he becomes king and by the Vaiṣayeṣa he becomes emperor; and the office of king is the lower and that of emperor higher' (V. 1. 1. 13). Śatapatha IX. 3. 4. 8 contains the same idea again. In Śatapatha I 6. 4 21 it is said 'before the slaying of Vṛtra he was Indra, it is true; but after slaying Vṛtra he became Mahendrā, even as a king (rājan) becomes a māhārāja after obtaining victory'. These passages are sufficient to establish that the idea of a suzerainty extending over many kingdoms was known in the times of the Rgveda and had been fully developed before the composition of the Aitareya and Śatapatha Brāhmaṇas.

91. सारणें (on ए 1 ब्र. 37 2 where also these words occur) explains 'सपातर्ष्यं गमन पशुन्मोहैं नोगत्स्युद्दिः स्वाराज्यमपदाधिकाराय वैराज्यमितिर्मृगो सूरिज्ञो वैसिष्ठुपम। एदुक्ताचार्यकृद् आनातुर्मिकपायसि। परमेत्यं प्रत्यपतिलिङ्कसैः। वव राजमहाराज्यमपद तरिकेय प्रत्येकादिकाः। ्वादुवुद्रम् 45. 87 says 'अर्थ लोकनं भें सत्रतामायी विद्युद्दमसि। त्रिभुवनः स्वयं लोकः भुजबस्यां विविधमसि'।

92. त्र्य व्यदाःविभा निवान्व च भवन्ति । 'पविचित्र वन्नेन्न्यं प्रत्येको रवान्ये।॥' ब्र. V. 66. 6.
The Aitareya Brāhmaṇa mentions by name twelve emperors of ancient India and the Śatapatha thirteen (XIII. 5.4.1-19) Panini explains (V. 1.41-42) 'sārya-bhau' as 'the lord of the whole earth'. The Amarakośa states that the words 'rāy', 'pārthiva', 'kṣmābhrt', 'nrpa', 'bhūpa' and 'mahiksit' are synonyms and mean 'king', that a king before whom all feudatories humble themselves is styled 'adhistāvra', 'cakravartin', 'sārvabhauma' i.e these three last words are synonyms. The word 'cakravartin' is derived by Kṣrasvāmin as 'one who wields lordship over a circle of kings' or 'who makes the circle (i.e. kingdom) abide by his orders'. The word 'cakravartin', though not so ancient as 'sārvabhauma', has been employed from very ancient times. The Maitri Upanisad 1.4 mentions 15 cakravartins. The Rajanticpakaśa (p. 58) quotes a passage from the Śāmavidiḥāna Brāhmaṇa (III.5.2) 'the priest should perform the coronation with the Ekavyāsa Śāman for that king whom he desires to be the sole ruler and whose circle of territory (he does not desire) to be overwhelmed (by an enemy)'. Here probably is one of the earliest references to the derivation of the word cakravartin. In the Mahāvagga (Selasutta, S B E. vol X p 102). Lord Buddha is made to say 'I am a king, an incomparable, religious king (dharmarāja); with justice (dhammena) I turn the wheel, a wheel that is irresistible'. Here the idea of the secular cakravartin is carried into the moral and spiritual sphere. In the Nānāghatā Inscription (of about 200 B C) occurs the word 'aprathitacakasā' (i.e. —cakrasya) Vide ASWI, vol. V p 50 at p.60. Kharavela is styled Kalinga-cakravartin in the Mahāchaura record of his chief queen (E I vol XX p 86n), 'supavattayācaka' (supavṛttayācaka, in I.14) and 'pavata-caka' (pavṛtta-cakra in I.17) of his Ṣāthigumpha Inscription (E I vol. XX at pp. 88-89) Keatilaya (IX.1) defines the land of the cakravartin as the territory on the earth spreading towards the

93. यद्यपि राजकीय विधि स्थापित चाहें चाहें वर्तति तथा भक्तानि। कृपावती।
94. अथ फिक्षेत्तैव परेषेव भारतपरंपरावस्थितिः। कविकृतिःः तुस्यते भूमिः तुस्यते मन्त्राभिव्यक्तद् रूपावस्थिताः अभिभावितिः। अपि (नं मय) सर्वदिशायाः राधरश्रेेष्ठस्ते। गौर्जीर्षयाः ल. 4.
95. यत्र वा कार्यावकारस्ते व्याख्यातः चाहें विद्यायोगेश्वराविद्याशिवायिः। शास्त्रायाः
96. देशस्तु दृष्ट्याः ततो रहस्याव्यवस्थायाः प्रज्ञावस्थितिः प्रज्ञावस्थिती रहस्याव्यवस्थायाः
97. कोटिविद्ध न देशस्त्रायाः प्रज्ञावस्थिताः प्रज्ञावस्थिती रहस्याव्यवस्थायाः
98. वायुवम्यमाहर्ष्यप्रथम वायुवम्यमाहर्ष्यप्रथम वायुवम्यमाहर्ष्यप्रथम
99. 'History of India' plate IV after p 211 where there is a wheel with eight spokes on a pillar with an inscription (वाक्षतकानं).
north from the sea to the Himalaya, which is a thousand yojanas in extent when measured in a straight line. The same idea occurs in the Kāvyamīmāṃsā of Rājaśekhara (p. 92). Kautilya also employs the expression 'caturanto rājā' (a king of the earth up to its four boundaries). Sānti-parva 97 speaks of a ruler who brings the whole earth under one umbrella. On the birth of Harsa, the chief astrologer told his father Prabhākara-varaehana that the boy would be the leader of the seven cakravartins (Harsacarita IV). In some works the six cakravartins are said to be Māṇḍhāta, Dhundhumāra, Hariścandra, Purūravas, Bharata, Kārtavirya. The Sābhā-parva (15. 15-16) mentions five emperors of old viz. Yauvanāśva (Māṇḍhāta), Bhagiratha, Kārtavirya, Bharata and Marutta. Vide Dr. N. N. Law's 'Aspects of Ancient Indian Polity' pp. 17-21 for exhaustive lists of ancient emperors, from the Mahābhārata, the Śatapatha Brāhmaṇa and other works. This ideal of cakravartin was set before them by all ambitious and energetic Indian rulers from ancient times. The result was that constant wars took place. We have a galaxy of historical emperors that emulated such mythical heroes and emperors as Māṇḍhāta and Bharata and practically realized the ideal. To name only a few, Candragupta. Aśoka, Pusyamitra, Bhavanāga of the Bhārāśivas, Pravarasena Vākātaka, Samudragupta and Harsa are great names in our ancient history. Even if this ideal of universal empire had not been there, wars could not have been avoided. That was a very usual thing everywhere in the ancient world. Only about 700 years ago, Britain, which is a very small country compared to India, had three kingdoms engaged in constant warfare.

The Matsya-purāṇa (114 9-10) first gives the dimensions of Bharata-varsa from South to North (from Cape Comorin to the source of the Ganges) as one thousand yojanas, states that its extent is ten thousand yojanas (when measured upwards across the boundaries) and that on all borders of it there are Mlecchas and that Yavanas and Kīrātas dwell to its east and west (verse 11) and that the king who conquers the whole of Bharatavarsa is styled 'sāmāt' (verse 15). Vide Brahmapurāṇa 17. 8 ff for almost the same words. The Śukranitisāra (I. 163-167) states that a sāmanta is one whose yearly revenue is from 1 to 3 lakhs of silver karsas without oppressing the people, the revenue of a māṇḍalika is from 4 to 10 lakhs, that of a rājan is from 11 to 20

97. यह इसां सूक्ष्मिन्नदा सहस्राकाशचार्यां बहारतिः ह। सन्तिपर्वः.
lakhs, of a mahārāja from 21 to 50 lakhs, of a svarā from 51 lakhs to a crore, of a vīrāt from two crores to ten, of the sāryabhauma (who wields suzerainty over the whole earth i.e. Bharatavarṣa) from 11 crores to 50. Though these definitions may be regarded as scholastic and too rigid to have been practically followed they do convey a sufficiently clear idea about the power of a feudatory, a king and an emperor. The Sāhāparya98 (15. 2) says ‘there are kings in each house, who do what pleases them, but they do not reach the position of emperor, which title can be acquired with great difficulty’, and ‘that king under whose sole dominion the world abides secures the position of samraj’. In these and other places ‘world’ means ‘Bharatavarṣa’ for which see H. Dh vol. II pp 17–18. Sovereignty (sāmraży) consisted in ancient India not necessarily or invariably in acquiring control over vassal kings in all their affairs. Generally the supreme ruler did not hanker after territory so much as after having his superior prowess acknowledged. The descriptions of dyuṣyaṇas (world conquests) in the Mahābhārata (e.g. of Pāṇdu in Ādi 113, of Arjuna and the other Pāṇḍava brothers in Sāhā, chap. 26–32) show that there was no aggrandizement by acquiring fresh territory but all that was desired was to make the several kings submit and pay tribute or offer presents. Arjuna expressly says in Sāhā 25.3 that he would bring tribute from all kings and the conquered kings are generally represented as submitting and making presents of gems, golds, horses, cows to the conqueror. The Allahabad stone pillar99 Inscription of Samudragupta (Gupta Ins p 8) states that the pratyanta (bordering) kings of Samatata and other countries and the Mālava and other tribal oligarchies fully gratified Samudragupta’s commands by giving all tribute, by obeying his orders and by coming to perform obeisance. Sānti 96 insists that conquests should be made according to dharma. Empire did not mean imposition of the language or the government system of the conqueror on the conquered country. The conqueror’s duty as understood by ancient Indian works was quite different

98 यदै श्रेष्ठे वहि राजान् श्वस्य स्वह्य विपक्षात् । न च साम्राज्यमातर्मति साम्राज्योऽभिः हि कुष्ठमायेऽसमग्रिः स भयं ॥ समाह 15. 2. ।

99 समात-काव्य-कामक्षेत्रर्यं कात्यायानात्वयं परिकाशिक-विकायानन्नसोपशयं काशीस्मार्यन-नानकासिदिक-काशुर्वरिकाशिक-विकायानात्वयं सर्पक-स्वामिकारण्या समान-पालितिविह नवन-साम-सर्वे। Gupta Inscriptions p. 8.
as will be presently shown. Kautilya (XII. 1) declares that there are three kinds of invaders, viz. dharmavijayin (who is satisfied with mere submission or obeisance), lobhanvijayin (who is satisfied with gain in land and money), avanavijayin (who is not satisfied with land and money only but robs the defeated king of his son, wife and life). The Nitiyakymrtam (pp. 362-363, Yuddhasamuddeśa) defines the three almost in the same words. This shows that in the first two kinds of conquests the conquered state retained its own institutions, organization and government intact. Bāna gives in very striking language what Harsa proclaimed when he started against the treacherous king of Gauda and on diguṣṭya. It appears that even the queens of vanquished chiefs had to perform the duties of maids at the time of the coronation of the emperor and empress, as queen Yasomati says to Harsa (in Harsacarita). Vide Sabha 31, 73-74 where Bibhlsana is said to have come with presents to Sahadeva. Ásoka (in Kasi Edict No. XIII in C. I. I. I, pp. 44 and 46, ed by Hultsch) speaks of his conquest being dharmavyaya. This means that he foreswore greed and cruelty and wanted that his influence be only acknowledged. The Pallava king Śivāvakāndavarman (of Kāñci) who had performed the Agnistoma, Vājapeya and Ásvamedha sacrifices calls himself dharmmahānāyādhvijāya (a dharma-vijayi emperor) in E. I. vol. I. p. 5. In the Duidia plate of Pravarasena II, Prthvisena is styled dharmavijayin (E. I. vol. III p. 258 at p. 261). Samudragupta's conquest of South India seems to have been only a dharma-vijaya. As time went on the titles of kings grew in grandiloquence. Ásoka whose empire extended at least from Afghanistan to the Bay of Bengal and included some part of the Deccan and Mysore calls himself 'rāja'. Khāravela is styled only mahārāja and Kalingadhipati in the Hāthigumpha Inscription.

100. व्रतिमिथियाकारो धर्मार्थंतोऽभिजगिरिः दुःखः । सेवामयंवपर्या धर्मविजयिः पुत्रः । परेस्यामिर न वृद्धवेदमसे दौष्ट्यविजयिः हृदयः समस्यायंव- पक्षः । भूमिन्यज्वलनवर्मणंस्रविजयिः संभविता मायायमानवश्वायाः शैल्परिवर्तिः । कौतिल्य 12 र 1, स धर्मविजय राजा सिखेयमानवश्वाय भविष्यति: मायायमानवश्वायाः शैल्परिवर्तिः । वृद्धवेदमसे न भविष्यति: स दौष्ट्यविजय राजा यथेष्ठ भुविष्यति: मायायमानवश्वायाः शैल्परिवर्तिः । संभविता मायायमानवश्वायाः शैल्परिवर्तिः । निभित्तः: pp. 362-363, Vide विश्वामित्तर भ, 11 145 21 for धर्मविजयिः किंग और अथिर्प्रवाजिः.

101. ऋबेिर शराणो स्वजितिकानाय किरो कर्मणाम निरयानम् यथाशतश्च द्विश्वाय- मर्यादाः वा नमस्तु विरस्थितिः यद्वियः वा काँटार्भूषिकृतत्वायाः भगवताः वा क्षेत्रविश्रांति पाव- र्यस्ताः विश्रांतिः । पादवालवक्त किरिति कक्षाः । वथुवासेच्छयः यथाशत तुृत्वं हस्तोऽव्य कामा- तन्नयते नैवेद्यः ह्यवशेषोऽव्य कामात्स्वताः कुलपत्तिः श्वेताः किरिति: किरिति भविष्यताऽव्य। ॥ इवः चरित्रः VI,
Huviska, the Kusana emperor, is styled *Mahārāja-rajaśīvala-devaputra* (E I. vol. I. pp. 371, 386). Samudragupta is simply mahārāja (Gupta Inscriptions p 8). But later emperors styled themselves paramabhāttāraka-mahārājādhīrāja (Gupta Inscriptions p. 70, Indore copperplate of Skandagupta of Gupta year 146 i.e. 465-66 A.D.) or sometimes ‘parama-bhattāraka-maha-rājādhīrāja-paramesvara’ (Gupta Inscriptions No. 39, p. 176 copperplate of the Valabhi king Śiladitya in 447 of the Valabhi era i.e 766-67 A.D.). Ancient works are not very particular about the epithets they employ when speaking of a king or an emperor Śānti (68.54) says that a king is praised with the epithets rajan, bhoja, virāt, bāmbhārat, ksatriya, bhupati and nrpa.102 Dasaratha is styled rajā in Ayodhya 2.2 and mahārāja in 18.15 and 57.32. The Rājanītilātakara (pp 3-4) holds that kings are of three kinds; viz. emperor (samrāt), one who pays tribute and one who does not pay even tribute (but is not a samrāt), quotes several verses from a work of Nārada on politics and states that the words cakravartin, samrāt, adhīlsvara and mahārāja are synonyms. Kings aspiring to be called samrāt performed the Rājasūya and Āsvamedha in ancient India. The Śabhāparva 13.30 speaks of Rājasūya as fit to be performed by a samrāt. Senāpati Pusya-mitra (about 180 B.C) is said to have performed two Āsvamedhas (vide E. I. vol XX p 54, 57). The Ghosundi Inscription (E. I. vol. 16 p. 25 and E. I. vol 22 p 198) speaks of Sarvatāta, a great devotee of Viṣṇu, as a performer of Āsvamedha. Kharavela (who was a Jain) performed Rājasūya (E. I. vol. XX at p 79) The Vākātaka king Pravarasena I had performed four Āsvamedhas (E. I. vol. III p 258 and Gupta Inscriptions No 55). In the Vākātaka copperplates the Bhārāśivas are extolled as having performed ten Āsvamedhas (E. I. III 258 at p. 260) The Ālankārana king Vījaya-devavarma, whose capital was at Vengi in Andhra, is said to have performed an Āsvamedha (E. I. IX p 56, about 350 A.D) The Gālukya king Pulakeśin I had performed Āsvamedha (E. I. vol. VI p 1 and IX. p 100) about 550 A.D Pusyamitra is styled simply Senāpati in the Mālavikāgnimitra Act V when he sends a message to his son about attending the Rājasūya in which he had been engaged for the significance of the Abhisekārīya rite in Rājasūya vide H. of Dh. vol. II pp 1216-1218. The Kadambas are said to have performed Āsvamedhas in the Nilambur plates (E. I. vol. VIII p. 148) The Viṣṇukundin

102 शास्त्र में भी विशेष समाध स्वतः शास्त्रीय घोषित है: *च* एवं: सूतेति सश्वः: कल्ल नाचितायति **शास्त्रिः 68. 54.
Mahârâja Madhavaavarman performed eleven Âsvamedhas and one thousand Agnistomas (I. H. Q vol. IX p 278). Vide H. Dh. vol II pages 1338-1339 for a few more historic examples of the performers of Âsvamedha.

Kautâlya (VII. 16) prescribes that the conqueror should not covet the territory, wealth, sons and wives of the slain (in battle), that he should re-instate the late king's kinsmen in their proper places (or positions), that he should install the son of the deceased king on the throne of his father and adds that the emperor who kills or imprisons the kings that submit and covets their lands, wealth, sons or wives provokes the manâgala (the circle of States) and makes it rise against himself. Yâjñavalkya (I. 342-43) prescribes that it is the duty of the conqueror to protect the conquered country in the same way as his own country and the conqueror is to respect the customs of the conquered country, its laws and the usages of the families therein.

The Visnudharmasûtra 102 (III. 42 and 47-49) enjoins upon the conqueror not to uproot the usages of the conquered country, to establish in its capital some kinsman (of the slain king) and not to destroy the royal family unless it be of low birth Manu (VII. 202-203) and Agnipurâna 236-22 prescribe similar rules. The Râmâyana (VII. 62-18-19) requires the conqueror, after uprooting the king, to establish another king there in order to ensure stable government. Vide Sânti 33-43-46 quoted above on p. 40. Kâtyâyana (q in the Râjântiprakâsa p. 411) prescribes that even when the (vanquished) king is at fault, the conqueror should not ruin the country (for the fault of the vanquished king), since he (the vanquished king) did not start (on his career of) wrong-doing with the consent of his subjects. The Râjântiprakâsa draws from this the conclusion that the ministers with whose consent the war was started may be harassed by the conqueror. This advice was generally followed by ancient conquerors and emperors. Rudradâman (150 A. D.) is styled the establisher of kings that had lost their territories (in the Junâgadhs Ins., E. I. vol. VIII at p. 44) and in the Allahabad Stone Pillar Inscription of Samudragupta it is said that his fame travelled over the whole world because of his

102. कर्मचारी वह सब राजवास खेत्री । ... राजा परधारासी तु व तत्र तकालीन- निरंतरा विभव । न तमाकुलाकिंचित्यथा । अयांकुलीकरणकुला । विवाहमनसूयृ ॥ राजानु । बलमी सुखान । इह विवाहमनसूयृ ॥ विवाहमनसूयृ ॥ कर्मचारी वह सब राजवास खेत्री । ... राजा परधारासी तु व तत्र तकालीन- ॥ न तमाकुलाकिंचित्यथा । अयांकुलीकरणकुला । विवाहमनसूयृ ॥ राजानु । बलमी सुखान । इह विवाहमनसूयृ ॥ विवाहमनसूयृ ॥ कर्मचारी वह सब राजवास खेत्री । ... राजा परधारासी तु व तत्र तकालीन- ॥ न तमाकुलाकिंचित्यथा । अयांकुलीकरणकुला । विवाहमनसूयृ ॥ राजानु । बलमी सुखान । इह विवाहमनसूयृ ॥ विवाहमनसूयृ ॥ कर्मचारी वह सब राजवास खेत्री । ... राजा परधारासी तु व तत्र तकालीन- ॥ न तमाकुलाकिंचित्यथा । अयांकुलीकरणकुला । विवाहमनसूयृ ॥ राजानु । बलमी सुखान । इह विवाहमनसूयृ ॥ विवाहमनसूयृ ॥ कर्मचारी वह सब राजवास खेत्री । ... राजा परधारासी तु व तत्र तकालीन- ॥ न तमाकुलाकिंचित्यथा । अयांकुलीकरणकुला । विवाहमनसूयृ ॥ राजानु । बलमी सुखान । इह विवाहमनसूयृ ॥ विवाहमनसूयृ ॥ कर्मचारी वह सब राजवास खेत्री । ... राजा परधारासी तु व तत्र तकालीन-
having re-established several royal families that had lost their kingdoms (Gupta Inscriptions, p 8). The Śukranitisāra (IV. 7-397-399) requires the conqueror to support the well-behaved son and the queen of the vanquished king or to give a fourth of the conquered kingdom to him and only a part of it to one who is not endowed with good qualities and the conqueror may appropriate the whole treasury of the conquered.

The coronation of a king was a very solemn and important ceremony. Reasons of space forbid any lengthy treatment but something must be said about it. In the medieval text-books, various procedures are described from different sources. The Rājaniti-prakāśa (pp. 42-112), the Nītī-mayukha (pp 1-13) and the Rājadharma-kāustubha (pp. 237-374), the Rāja Dh K (II. pp. 6-10) quote procedures of coronation from the Ait Br., the Gopatha Br., the Sāmavēdhana Br, the Brahmapurāna, the Visnudharmottara and other works. The procedure from the Purāṇas probably originated when persons of the Sudra caste frequently became kings. The Rājaniti-prakāśa 104 (p 112) says that there being different procedures of coronation rites based on Vedic texts, some hold, following the dictum of Śabara (on Jaimini II. 4 9), that the coronation rite should comprehend all the different items mentioned in the several vedic texts (provided they do not contradict each other), while others hold that there should be no comprehensive inclusion of all items but each vedic or smṛti procedure should be followed separately by itself. Mitra-miśra concludes that the purohita should follow that course which is nearest to his own sākha. The Rājadharma-kāustubha (p 339) says that as the rite described in the Visnudharmottara contains the largest number of details, one who is able to do so, may follow that Purāṇa, while for those who cannot do so there is an option or students of the Rgveda may follow the Rgvidhāna mode, of the Śamaveda the Śamavēdhana Br and all may follow the Purāṇa mode of coronation. I shall first briefly indicate what procedure was followed in some vedic texts such as the Gopatha Brāhmaṇa, the Śamavēdhana Br. and in the Grhyasūtras, then point out what was done in the times of the

104. दुर्वौज्ञानां बौद्धतत्त्वादिभिः पुराणोपन्यासस्याः स्मलोभिः। अयो हृ वैमानिकं विमानं वत्तिविश्वासिनेऽपि कार्यं। वै याम वैवधातमादिलोकादिफः। महत्रेण वर्तमानं विनिर्मितं विविधं हृ। वै कार्यं वैवधातमादिलोकादिफः।
epics and set out the prominent items in the procedure of the purānas.

The Aitareya Brāhmaṇa (38) describes the Great Coronation of Indra (Aindra mahābhisekhā) and in that connection mentions how the kings of the Sātvatas in the south were called ‘Bhoja’ after coronation, the kings of the eastern countries were called ‘samrāt’, the kings in the west were called ‘svarāt’ and the kings of the north i.e., of countries beyond the Himalaya (viz. Uttarakurus and Uttaramadras) were called ‘virāt’. Then (in 39) it states that the ksatriya king is to be made to take an oath and is to be crowned in the manner of the Aindra Mahābhiseka 105. The oath which the ksatriya is to take before the priest with faith is: ‘the merit of sacrifices and good works that belongs to me from the night I was born up to the night on which I shall die, my worlds, good deeds, life, progeny,—these you may destroy if I hate (or prove false to) thee’. Vide note 41 above for the coronation oath in Śānti 59.106 ff. It will be noticed that this passage of the Ait. Br. contains no undertaking given by the king to the people to rule according to dharma or for their welfare. So this passage cannot strictly be interpreted as postulating a contractual basis for the authority or power of the king, as done by Jayaswal (‘in Hindu Polity’ part II. p. 28). The Ait. Br. sets out the materials (sambhāras) for the coronation of a king (in chap. 39-2) viz., fruits of nyagrodha, udumbara, aśvattha and plakṣa trees, grains of small rice, large-sized rice, priyangu and barley, a couch of udumbara with span-long feet, a spoon with a four-cornered scooped basin of udumbara and an udumbara vessel, on one of which two the other materials were to be placed and curds, honey, clarified butter and rain water gathered when the sun is shining. The mantras to be recited are mentioned in 39-3-4 and the fee in 39-6. In the Rājasūya (to be performed only by a ksatriya) described in the Brāhmaṇas and sūtras, the principal rite is the Abhisecanīya in which the king is bathed with waters brought from seventeen sources in seventeen vessels of udumbara wood. Vide H. Dh. vol. II pp. 1216–1218 for the rite. The Rājanttiprakāṣa (p. 92–107) explains the procedure of coronation from the Ait. Br. In the Rājasūya, among the preliminary rites are the offerings

105. एतैमै भाषाय शाक्य त्रिपुराणे क्षेत्राणे हारोपक्ष अभिनवरिष्ट...स सुम्भवत: भ्रमणम्

च च रामखलास्वहि च च सीतारस वहु तत्तत्र तरंगेन ये त्रोम श्रावकमां...महां मृणिया

पदि हि पुराविशिः। ए।-भ। 39. 1.
called 'ratninām havṁsi' (the offerings in the houses of the jewels, which are twelve). Vide H. Dh. vol. II pp. 1215-16. They have a symbolic value. The person to be crowned recognizes the importance of his high functionaries and is declared to be their king and they are supposed to approve of him as king. In the Abhisecaniya rite of the Rājasūya, there are two parts, a religious and a popular. First, the adhvaryu and the other priests sprinkle the king with holy water collected from various sources in vessels; then the king's brother, a friendly ksatriya and a vaśya also sprinkle him with the holy water. This last is symbolic of the popular approval of the coronation.

The Tai Br. II. 7. 15-17 deals with coronation. It first gives the seven mantras for seven āhūtas that are offered. A tiger skin is spread on which the king is seated and he is sprinkled with holy water in which sprouts of barley and dārvā grass are mixed up; the king ascends a chariot to the accompaniment of mantras, then the four wheels of the chariot are touched, the purohitā and charioter are addressed with mantras; Anumati, the Earth (as mother), and Heaven (as father) are implored to approve of the coronation, the king is made to look up towards the Sun and then the king looks on the subjects; the king then undergoes shaving when seated on a chair of uñumbara wood, then his arms and head are anointed with milk blended with clarified butter.

The Nītimāyukha pp. 4-5, Rājanitīprakāśa pp 42-49, Rājadharmakaustubha pp. 335-336 quote a passage from the Gopatha Brāhmaṇa 106 on the rites of coronation as follows.—We shall expound the rite of the coronation of the king Having

106. अध्यायः गोपाध्यमनमाहनागः—अय राज्योपमितिवर्तिक्या व्याख्यायाः। विशेषभीतका
स्माराम एवं रंगोदफलकल्पम् गोदाय विश्वासैं व्यवहारकार व शुचिकार सर्वस्त्रेष्ठा सर्वा
प्रीतज्ञाः। तत्र वचस्याः। तीनमाध्यस्तरी राजस्त्राक्षत्राभिमताय सर्वसत्त्रताः सुभवतः। सुमोहः। तत्सा
हुंदे सरसी पौर्णंती बालस्तास धृतरथकाल मुहर्वर्याते हेमद्राधि शिरसायोऽस्मातः कथा
व्युत्पत्ति। सर्वानुमाण सर्वादिष्ठान च पवित्रमायेच्ये हेमद्राधि महिमयातुर्यक्षमेन तेनस्य
सोमाणां संपत्तप्राप्ता। संसर्गाः। सत्कीष्टायेष्व राजस्वः। भैरवस्तरी हेमद्राधीश्वरी तेनस्य
स्वसंयोगाय शासनाः। मणिन्तु च हुमानपूर्वः। तत्सत्तरां कल्याणां दुःखली आशिर्वादम्। पवित्रस्य राजस्वान
ममित्वादोऽत्रुपतिहर्षाः। सुमित्रानुमाणच्ये च वाक्योपत्याच्या अश्विन स इति। (हेमद्राधि पौर्णां वाचिन माहिति)
तिरस्करणमाहेत्तिन्यामाहितवाचिनसभासुः। एवमभिप्रकाशेन सर्वमायावेदां विशेषाद्वः। व्यवहारस्तु
सबुतपर्वते। काश्चार्यवः। विपुलान पवित्राङ्गः। नातिरतिः हुमानाः धरा निर्विकुणः। सदृशं महानमित्रम्। काश्चा
चर्चीरमानाः। पूर्व- 106. पूर्वांचले। पूर्व- 42-43, राजस्वाः। काश्चार्योपपासू। पूर्व- 335-336, पौर्णाः। पूर्व- 4-5. There are a few
variants due to the scribes and the editors not being able to read the MSS properly. The कौशिकाचार 17. 28 reads 'हेमद्राधिः पौर्णां वाचिन माहिति में
which is अपवर्तनोऽवर्तन IV, 22, 1.
collected the materials required such as bilva fruit, viz. sixteen jars, sixteen bilva fruits, earth from an ant-hill, all kinds of husked grains, all liquids, and all kinds of grains (unhusked). There should be four jars each of gold, silver, copper and clay. Having filled them, keeping their mouths up, with water from a deep reservoir of water or a lake to the accompaniment of the mantra 'nāmaināma' (?) and having put the jars down on the surface of the altar, he (the priest) should place one bilva fruit apiece in each of the 16 jars and cast (into the jars) the husked and unhusked grains and all fluids, adding them (to the water) in the golden jars with the mantras called Abhaya (Atharvaveda 19.15), Aparājīta, Āyusya (Atharvaveda I. 30) and Svastiyana 107 (Atharvaveda I. 21, VII. 85, I, VII. 86, I, VII. 117.1), in the silver jars, with the mantras called samsrāvyā (Atharvaveda 19.1) and Samsikṣītya (Atharvaveda II. 26), in the copper jars with the mantras called Bhaisajya (Atharvya VII. 45 'janād') and Amhomuc and in the earthen jars with Samveṣa, Samvargya and Santāṭiyā mantras and with the Prāna hymn (Atharvaveda XI. 4). He should then bathe the king with (the water of) the jars held by very holy and learned brāhmaṇas (śrotriyas). He should consecrate the king seated on the throne with the mantra (Atharvaveda IV. 22.1) 'O Indra, make this my ksatriya prosper'. (The king) being thus bathed should eat the several liquids, should make gifts of a thousand cows to the brāhmaṇa priests who assist the chief priest, bestow a good village on the chief priest He (the king) thereby acquires great glory, enjoys the earth and always vanquishes his foes'.
The Śamavidhāna Brāhmaṇa \(^{108}\) (III. 5) describes a shorter rite: "(The priest) should crown the king when the moon is in the Purṣya or Śrāvana constellation. Having brought waters (separately in separate jars) from famous holy rivers (like the Ganges) \(^{109}\) and from the sea and having mixed in them rice, barley, sesame and māsa (black beans) grains and curds, honey, flowers and gold, he should bathe the king seated on an auspicious throne made of udumbara wood on which is spread tiger-skin with the hair outside, from horn-pipes cut off from the horns of living cows to the accompaniment of the ṛaḥasya mantra 'abhrātryayah' (you are without an enemy &c., Rg. VIII. 21.13, Śamaveda 399 and 1489). He should bathe the king to the accompaniment of the Ekavṛṣa hymn (instead of Rg. VIII. 21.13) whom he desires to be the sole ruler (of the earth) and whose circle of kings is desired by him not to be overwhelmed by an enemy. On the priest performing the coronation rite the king should bestow the best village, a hundred maid servants and a thousand cows and (the king) should be obedient to him (the officiating priest)".

The Baud. Grhyāśeṣasūtra (I. 23) contains the procedure of coronation, the whole of which is quoted by the Bālambhatti on the Mitāksāra on Yāj I 309. It is briefly as follows:—On the 5th or 13th tātha of the bright half when the moon is in Purṣya or Śrāvana or in any other auspicious constellation (naksātra), two brāhmaṇas are fed (the day previous). Then a worthy puroluṭa is chosen, who mutters certain texts. At sunset the purohitā makes a lotus-like circle in which are collected the materials viz. waters of the ocean and of rivers mixed with rice, barley, sesame, māsas and pāṇcāgāyā, and a bhadrāśana made of udumbara, a tiger-skin, and golden jars and horns of cows. In the north-east part of the palace, a homa is performed with eight thousand ākutus (oblations) of rice &c to the accompaniment of the vyāhṛtas, the Gāyatri and the manti to Tryambaka.

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108. सामविज्ञानबाध्यायी—राजमांडिरमंथकम् तिस्थेन्त्र सर्वोच्चएव। भीतिवै रीतिवैति सत्यवैति विशेष्यं विज्ञानं औपचारिकम् विज्ञानं शक्तिपूर्वकम्।

109. भारतीयरूपकार नाबन्धायुपदेशिकाय तत्सामस्मेवथितनि सामविज्ञानं।
Coronation according to Baudhāyana

(Tai. 8. I. 8. 6. 2). The priest first propitiates the goddess Laksñī with the hymn\(^\text{110}\) to Śri and then washes the crown with cow’s urine and dung, milk, curds, clarified butter and with water mixed with *kūkas* to the accompaniment of appropriate mantras, and ties an amulet (*pratīṣṭha*), and sprinkles the king and his conveyance (horse). At sunrise next day (the day of coronation) the tiger-skin is spread on the throne, the king sits thereon facing the east, the priest takes the golden jars and sprinkles the king with water falling upon him from the conch-like horns of cows with several mantras (such as those addressed to waters, Varuna &c.). After the king is made to take a bath, a fee of a thousand *nuskas* and a hundred *dīśis* is paid to the brāhmaṇas. Then the crown is placed on his head and drums are beaten.

The Kauśikasūtra of the Atharvaveda (in 17.1–10) describes the abhiṣeka (called *laghu*) performed on the Yuvarāja, Māndalika, Sāmanta and Senāpati and (in 17.11–34) describes the mahābhīseka of the king.

In the Rāmāyaṇa there are numerous references to coronation. In the Yuddhakāṇḍa 131 we have a lengthy description of the coronation of Rāma. Some of the salient features are: Rāma was shaved that day, had a bath and put on costly clothes. Śīta also was suitably dressed and ornamented. Rāma sat in a chariot and went through the capital, when Bharata held the reins, Śatrughna held the umbrella, Laksmana the white *chowme*; then Rāma rode an elephant; drums were beaten and conches were blown; as auspicious signs gold, cows, maidens, brāhmaṇas, men with sweetmeats in their hands passed in front of Rāma; the citizens had raised banners on every house; Jambāvān, Hanumān and two others brought four jars full of sea-water and waters of five hundred rivers were brought.

\(^{110}\) The Vismadharmottara (II. 128. 2–6) states that the hymn to Śri is different for each veda; the hymn of 15 verses beginning with ‘Hiranyakāṃvānāṃ hariṁ’ occurring in the parāṣṭa to the Rgveda is the one for Rgveda, the hymn of four verses beginning with ‘ratha aksaṁ vrahasa yāde’ (Tā. Br. II 7. 7) is the Śrīśūkta for the Yajurveda, the verse ‘śrayanta iva’ (267, 1319) for Sāmaveda and ‘śriyam dāturm mayi dehi’ is the one for Atharvaveda. The Agnipurāṇa (237. 2–17) contains a hymn to Śri, which is not vedaic but purānic. Similarly the Rājadharma-kaustubha (pp 367–370) contains a long purānic hymn (said to have been repeated by Indra) to Śri which is to be recited while the king was to be seated on the throne after coronation. It is taken from the Vismapurāṇa I. 9.
in jars; the aged Vasistha, the family priest, seated. Rāma and Sītā on a jewelled throne; Vasistha and other sages sprinkled Rāma with the holy and scented waters, then maidens, the ministers, soldiers, the guilds of merchants also sprinkled Rāma; Vasistha placed an ancient crown on Rāma's head, there was dancing and singing; Rāma gave presents to the priests and to his friends and to such helpers as Sugriva, Angada, Bibhisana and others and Sītā gave a necklace to Hanumān. In the Ayodhyākānda 15 we have a description of preparations for the abhiseka of Rāma as yuvāraja. The Rāghuvamsa XVII. 10 mentions the coronation of Kuśa's son with waters of holy rivers (tirthas) from golden jars.

In the Mahābhārata also there are several references to and descriptions of coronation. Vidē Śabhā 33 (where people of all castes including Śūdras were invited at the Rājasūya, vv 41–42) for the coronation of Yudhīṣṭhīra; Śānti 40 (in verses 9–13 the materials for coronation are described); Ādi 44, 85, 101 (only references).

The sambhāras (materials required) of coronation are stated in the Pratimānātaka (I, 1) ascribed to Bhāsa and in the Pāncatantra III (after verse 75).

In the Aṃquisā, chap 218 deals with coronation and chap 219 sets out the mantras. The following are the principal items in the ceremony; bath (with water in which sesame and mustard are mixed), seating on bhadrāsana, proclamation of abhaya (security and non-injury to all), releasing some prisoners from jail, Aindri Śānti, fast by king, recital of mantras, sanctifying the head and other limbs of the king with earth taken from the top of a mountain and from other places, sprinkling pāncagavya, sprinkling of water from four jars of gold, silver, copper and earth by āmatyas of the four varnas, abhiseka by a Rgvedin with water mixed with honey, by Chandoga with water mixed with kusa grass, by Yajurvedin and Athavavedin brāhmaṇas touching king's head and throat with yellow pigment, singing and beating of musical instruments, holding of chowrie and fan before the king, king's looking into a mirror and clarified butter, worship of Viṣṇu and other gods, sitting on a tiger-skin below which there are four skins viz of lion, cheeta, cat and bull; purohita to give madhuparka, to tie patta (a fillet or tiara) round the king's head and to place the crown on his head; presentation of ministers by the prabhāra;
king to give presents to the priests and other brāhmanas; going round fire; doing obeisance to elders; touching a bull; worshipping a cow with calf; riding a horse; honouring an elephant and riding it; procession in the capital; honouring all people and taking leave of them.

There are descriptions of the abhiseka of a yuvarāja (as of Bhima in Śanti 41), of a great commander (as of Bhīṣma in Udyogaparva 155.26-32), of Drona in Dronaparva 5.39-43, of Skanda in Salyaparva 45.

The Rajanitiprakāsa (pp. 49-83), the Rajadharmakaustubha (pp. 318-363) and Nītīnayukha pp. 1-4 quote from the Vīṣṇudharmottara almost the whole of chapters 21-22 of the 2nd khaṇḍa that deal with the rites and mantras of coronation. It appears that the Kaustubha appropriates all the glosses of Mitramiśra. The Vīṣṇudharmottara (II.19) sets out first the Śānti (propitiatory) rite in honour of Indra (called the Paurandari or Aindrī Śāntī). It is impossible to give the details here, but a few matters may be noticed. The purāṇa (in II 21) includes all the details from the Vedic texts (such as Svastyayana, Aṣṭvyaya, Abhaya and Aparajita hymns) and adds other rites also. It mentions the procedure stated above from the Agnipurāṇa and employs Vedic mantras in doing so. In II.22 the Vīṣṇudharmottara gives purāṇa mantras in 182 verses, in which such gods as Brahmā, Naksatras (from Kṛttikā to Bharani), the planets, 14 Manus, 11 Rudras, Viśve-Devas, Gandharvas and Apsarasas, dānavas, dākinis, birds like Garuda, nāgas, sages like Veda-Vyāsa, emperors like Prthu, Dillpa, Bharata, vedas and vidyās, rivers &c. are invoked to crown the king.

The Rajadharmakaustubha gives the most elaborate description of coronation. First a śānti rite is performed, then on the next (2nd) day, a sacrifice to Iśāna (Rudra); on the 3rd day worship of the planets and other deities like waters, the earth, Nārāyana, Indra &c and the invocation of naksatras; on the 4th day a yāga for naksatras; on the 5th day at night a sacrifice to the goddess Nīrṛti (a clay idol seated on an ass with dark vesture); on the sixth day Aindrī Śānti (propitiatory rite in honour of Indrī); then the rites prescribed in the Vīṣṇudharmottara purāṇa.

The Vīṣṇudharmottara notes (II.18.2-4) that on the death of the reigning king, there is no waiting for an auspicious time.
The successor should be bathed with water in which sesame and mustard are mixed, proclamation should be issued in his name that he has succeeded as king, the purohita and astrologer should show him to the people while he occupies a seat other than that occupied by the late king; the king should honour the people, proclaim peace and security, set free some prisoners and wait for the formal coronation. The Rājantīprakāśa (p. 62) adds that on the death of a king his successor should be crowned one year thereafter and that when a king abdicates his successor may be crowned on any auspicious day without waiting for a year. From the fact that the Kāliṅga king Khrāravela was crowned in his 25th year and the fact that the Bāharpātyasūtra 111 (I. 89-90) states that up to the 25th year the prince may spend his time in play and education and then in earning wealth, Jayaswal (in 'Hindu Polity' part II p 52) concludes that a Hindu coronation could not take place before the 25th year. This is proving too much. The Bāharpātya-sūtra says not a word about the age of coronation. Authorities like the Viṣṇu dharmottara require waiting for a year only after the death of the former king.

The Viṣṇu dharmottara 112 (II. 7) specifies at great length the qualities of the principal queen (agra-mahāsi), which are quoted by the Rājantīkaustubha pp. 249-250. The chief queen should have the coronation rite performed along with the king or she should be separately crowned after the king. Manu VII. 77 advises the king to marry a lady of noble family, of the same caste, of charming appearance and possessed of good qualities. The Rājatarangini (VIII. 82) notes that Jayamati, the queen of the good king Uccala of Kashmir (1101-1111 A.D.) always occupied half his throne.

The Nītīmayūkha and Rājadharma kaustubha give the most detailed description of the Aindrī Śānti. For want of space it has to be passed over. The Rājantīprakāśa (pp. 63-66) and Rājadharma kaustubha (pp 340-346) contain in one place a summary of the whole ceremony after Aindrī Śānti commencing one day previous to the actual day of coronation. One detail of the

111. पञ्चसंविद्याय पारंपूरिकं जीवनाविशेषं शतसाल्पः कुयायुः भव वर्तभरवं राजसमुन्दः
बारम्भिकम् भवेत् इति 89-90

112. एवं हुमलोकश्रेण तेषुवेण सहसनः अभिश्वर भवेत्रेषु राजस्वेतुण वुष्णू भवेत
दिष्यतुनिव भवेत् इति 7. 8 on which रा ध कृ रे. p 249 remarks राजा सहजमाविश्व अभिश्वर अभिश्वर राजा पवार्त्तकामार्णिक्काः इत्यष्टन।
rites in interesting, viz. after the learned brāhmaṇas and priests sprinkle the king with holy waters from several jars; to the accompaniment of mantras and a Ṛgvedin brāhmaṇa touches the king’s head and throat with powder of yaja oṣāṇī with the mantra ‘gauḍhādvārāṁ’ (Tat. A. X. 1.10), principal virtuous ladies, whose sons are alive, of the four varnas and also of mixed castes reciting auspicious songs (except the śudra ladies who remain silent) should sprinkle the king with the waters derived from the sea and other holy places.¹¹² There is a graphic description of the coronation of Shivaji¹¹³a the founder of the Maratha Empire in 1674 A. D. in the chronicle (balhar) compiled by Krishnaji Anant Sakhascad (ed. by K. N. Sane, pp. 98–104), where it is said that a costly throne was prepared, from 108 places waters were brought in 108 golden jars (95 tilhaś are actually named), Gagabhattacha and other brāhmaṇas officiated and sprinkled waters on the king, large gifts including the sixteen mahādānas were made. Eight ministers stood round the throne (whose names and offices are set out), the head of the ecclesiastical department called Panditrao being to the right and the prime minister (mukhya pradhāna) to the left, an umbrella (chatra) set with jewels was held over his head, new golden coins were struck and a new era was started called ‘Rājyābhiseka’ era commencing from that year. In a small work called ‘Shivarāja-rājyābhiseka-kaḷpa-taṇu’ (published in the quarterly Journal of the Bharata-īlhāsa-samśodhaka Manḍala at Poona, vol X part I pp. 28–40) in 236 verses it is stated that a Yogin named Nisalapuri, an adept in Tantrika rites, got a second coronation of Shivaji performed over three months after that performed by Gagabhatta, with Tantrika mantras on Wednesday the 5th of the bright half of Aśvina śaka 1596, one interesting fact stated being that Shivaji went through a form of marriage with vaidika mantras with his wives that had already been married to him with paurāṇic mantras.

¹¹² तत्तु खुला भ्राण्यात्त्विवेदनस्याः, पवित्रता खुलस्ये नामम् खुलायत्त्विवेदनस्याः.

¹¹³a For a detailed and graphic description of the coronation of King Shivaji in 1674 A. D. vide ‘Shiva-chatrapatimahārāja-caritra’ by Malhar Ramrao Chitna (ed. in 1882) pp. 120–125 (in Marathi). Shivaji’s upanayana was performed on the 5th of the bright half of Jyestha, for seven days various rites went on; Vinayakaśānti, Grahaśānti, Andraś and Pauruśaśānti are said to have been performed and he was actually crowned on the 13th of the bright half of Jyestha. In Sambhāji-raje-caritra by the same author (edited by Rao Babadur K N Sane, 3rd ed. of 1915) at p. 8 there is a description of the coronation of Sambhāji, son of Shivaji.
The symbols of royalty viz the umbrella, the crowns and the cane stick are brought in to the king by principal ministers. The Visnudharmottara (II. 12) states that the câmara for the king must be made from the tails of camari deer and must be all white with a handle of gold or silver and that the one for a councillor or purohita should be yellowish, while the same purâna in 11. 13 describes the requisites of a royal umbrella. That the umbrella and câmara were inseparable emblems of sovereignty is emphasized by Kâlidâsa in Raghuvamsa III. 16 Vide the Brhatsamhitâ, chap. 71 and 72, for câmara and umbrella.

It appears that sometimes a king took another name on coronation which was called abhisekanâma. Vide Dr. R. C. Majumdar’s ‘Champâ’ p. 157 for a list of such names from Champâ and Dr. Minakshi’s ‘Administrative and social life under Pallavas’ p. 39 for the Pallava Râjasinha having the coronation name Narasimhavarman. Certain kings, when they performed Âsvamedha, assumed new titles e.g. Kumâragupta I seems to have assumed the title of Mahendra, as is clear from some of his coins on which his name and title occur.

The Brhatsamhitâ of Varâhamihira (chap. 48) lays down that the patta (tiara) for the king and others should be made of pure gold, that their length should be double of the breadth in the middle of it, that there should be five aigrettes in the king’s tiara, three in the queen’s and yuvarâja’s, one in that of the commander-in-chief and none in the one that the king may give to a person as a mark of favour. Utpala in his com on the Brhatsamhitâ says that patta is the same as mukuta, while according to the Nîtimayûkha (p. 13) and other works patta is tied on the forehead and mukuta (crown) is placed on the king’s head. Vide Râjanitirâkâsa (pp. 54-55) and Rajadharmakanustubha (p. 324) for further details. The Visnudharmottara (II. 14) describes the characteristics of bhadrâsana (the throne) for the king; vide also Râjanitirâkâsa pp. 51-52 It must be made of gold, silver or copper or a tree from which milky juice oozes when cut, it was to be one cubit and half high for a saurât, 1½ cubit for a king and one cubit high for a feudatory (sâmanta).

The Visnudharmottara (II. 162) states that on every anniversary of the first coronation when the moon is in the same naksatra as that on which the first coronation took place the king should repeat the rites of coronation. The Brahmapurâna
quoted by the R. D. K. (p. 10) also says the same. 

Vide Rajanitiprakása p. 115 and Kaustubha p. 379 also.

Manu (VII. 217–220) warns the king against poisoning. 'The king should partake of food that is well examined and prepared by servants that are trust-worthy (lit. as if they were his own self), that know the proper times (for dining), that cannot be won over and over the food spells destroying poison should have been muttered. He should mix up in all that he partakes medicines that are antidotes against poison and should always wear gems that work against poison. Only women devoted to him and well examined and found safe as regards their dress and ornaments should be allowed to touch him when fanning or bathing or applying perfumes to his body. The king should take care in this way as regards his vehicles, bed, food, bath, applying perfumes and all ornamentation'. Kám VII. 8 and Matsya 219.10 are very similar to Manu VII. 220. Kautilya (I. 17) states that the king should first secure his personal safety against his sons and wives and then the security of the kingdom against near and distant enemies. He first deals with safety from his own sons, the princes. The opinions of various authors on polity are cited (some of which have been noted above) viz. secret punishment (acc. to Bhāradvāya), keeping under guard in one place (acc. to Viśālākṣa), keeping the prince in a fort under the boundary guard (acc. to the Pārśāras), keeping the prince away from his own kingdom in a fort belonging to a feudatory (acc. to Piśuna), sending him to his maternal relations (acc. to Kaunapadanta), making the prince addicted to sensual pleasures (acc. to Vātavyādhi), proper pre-natal care and proper education after birth about dharma and restraint (acc. to Kaut.). This symposium shows how the problem of the king's safety against bad princes taxed the ingenuity of all ancient writers on Arthasastra and how Kautilya advocated the only reasonable course possible. The Matsyapurāna, chap. 220, also relies on training, discipline and gradual transfer of responsibility and advises the imprisonment of a bad prince in a well-guarded place furnished with comforts suitable to his...

113b अनोनेव विधानेन कुर्ण्याहर्षपरं सदूर्त्त अभिशेकानि चर्चन पतिसंवस्तरं चुयं: "
बाध्यमुख्य व्यक्तिजः व्यक्तिन पतिसंवस्तरं चुयं: "
बाध्यमुख्य "मकुट" क्रियां विभागमे व्यक्तिन पतिसंवस्तर।
position 114 In I 20 Kautilya gives practical hints against the danger of fire and poisons: e.g. he says that poisonous snakes will not enter a building provided with Jivanti, Śveta and other plants; that cats, peacocks, mongoose and spotted deer when left loose eat serpents, that certain birds like parrots, manas, malabar bird shriek when they suspect snake poison, the heron loses his consciousness in the vicinity of poison, the pheasant (jivant-jivaka) feels exhausted; the young cuckoo dies, the eyes of rakna become red 115. Kam (VII 10-13) repeats the words of Kaut 1 20 and the Matsya (219 17-22) refers to the effects of poison on the same birds and a few others. The Matsyapurāṇa in chap 219-220 closely follows Kaut and Kam and appears to be based on them (e.g. Matsya 219 30 latter half is the same as Kam VII 24 first half). Vide Yaśactilaka III pp 511-512 for the effects of poison on birds almost in the same words as those of Kaut and Kam. Vide Śukra I 326-328. Kaut I 21, Kam VII 15-26, Matsya 219 9-32 state that part of the food for the king should first be cast into fire and offered to birds and the effects noted, they dwell at great length on the different tints of the flames of fire and of the smoke when different kinds of food are cast into fire, they point out the actions and gestures of the poisoner, they prescribe that the cook and the doctor giving medicines for mixing in food as antidotes should be made to partake of the food and then the king should himself partake of it. The king has to be careful in the harem, when receiving presents or anything sent by others, when sitting in a conveyance or riding a horse or travelling in a boat or when attending festivals (Kaut I 20-21, Kam VII 28-47). Kaut I 20 and Kam (VII 44 and 50) advise the king not to trust women and even the queen and to approach even the queen after she has been examined by men 80 years old and women over 50.


115. Vide in Kāṇḍaśi VII. 12 is explained by the com. as Ṛṣyāgānaḥ.
years in the harem and found safe. Kaut. (I. 20) and Kām. (VII. 51-54) both name seven kings that met death in their queen’s chambers by the stratagems of the queens themselves or those that were incited by them; viz. Bhadrasena killed by his brother concealed in the chamber of his queen (who was in love with the king’s brother), the king of Karūsa killed by his own son who had concealed himself under the bed of the queen (who was angered by the king’s promise to give the kingdom to the son of a rival queen), the king of Kāśi killed by his queen who mixed fried rice with poison pretending that it was honey; the queen of the king of Sauvira killed him with a jewel in her girdle that was smeared with poison; Vairantya was killed by his queen with her anklet smeared with poison; Jalūtha (or Jarūsa in Kām.) was killed with a mirror (with a razor-like edge) covered with poison; Vidūratha was killed by his queen who had concealed a weapon in her braided hair. The Harsacarita (VI) of Bāna mentions with additional details the cases of Bhadrasena king of Kalinga killed by his brother Virasena, the king of Karūsa (Dadhra by name), Kaśirāja (named Mahāsena) whose queen Suprabbha killed him to secure the kingdom to her son, Jarūtha king of Ayodhya, Vairantya named Rantideva, Vidūratha of the Vraṇis killed by Bindumati, the Sauvira king Virasena killed by queen Hamsavatī. In the Brhatamsāhita (77 1-2) two of these, Vidūratha and Kaśirāja, are mentioned, but the latter is said to have been killed by his estranged queen with an anklet smeared with poison. Medhātithi on Manu VII 153 quotes four of these seven The Nītikāvyāmrta (rājakāsasamuddeṣa 35-36, pp. 231-232) sets out six other examples of kings killed by their queens. The king has also to beware of treachery from ministers and officials. Kaut. (in I. 10) describes how ancient writers devised methods of ascertaining the purity or impurity of ministers by putting before them allurements regarding dharma, wealth, sexual desires and playing on their fears and gives it as his own opinion that temptations that have direct reference to the king or queen should not be placed in the way of the ministers. In the Harsacarita VI, Skanda-

116. अन्यतृत्वम्: त्वांपिरपिरिभाजते कृत्यं पदयेत्।।।असीत्वितम्: दुष्कोऽत्वासकाः।।।वियो त्वा माहुपद्दमया स्विंपिरिपिरिवा, कार्याशृंगारारोग्यायां।।।कृतित्वम्।।।

I 20; आसीत्वितक्षुः पुरुषः राजसः स्वासिकेष्यति।।।मुखप्रेमपद्धतिः श्रीमण्यमारिकायहि।।।

VII 44 and 50. Dr. Sham Sastri’s translation (p 46) of Kautiya ‘eighty men and fifty women’ is not correct.
gupta, the commander of the elephant arm of Harsa's army, warns the Emperor against putting trust in everybody and gives 19 instances of kings that met misfortunes, death or destruction through their own carelessness and the stratagems of those about them (apart from the seven mentioned above and two more who fell victims to the wiles of their queens) Some of them are famous and deserve mention here, viz. the king of Vatsa (i.e. Udayana) who was imprisoned by the soldiers of Mahasena that jumped out of a faked elephant; Maurya Brhadratha killed by his Senapati Pusyamitra (called 'anarya' by Bana on account of his treachery to his master); Kākavarna Śaisunāri (Śaisunāgi?), Sumitra, son of Agrimitra, whose head was cut off by Mitradava while the king fond of dancing was in the midst of actors, the Śunga Devabhūti killed by his minister Vasudeva; Candragupta (of the Gupta dynasty) who dressed as a charming woman cut off the king of Śakas; the foolish Maukhari king Kṣatrarvarman killed by bards Vide Kāmasūtra V 5 30 for two other examples of the Āhira king Kottarāja and Jayatsena king of Kāsi The Nītivākyāmṛta (Dūtamūdēśa) p 171 states that Cānaka ya killed one of the Nandas through a dūta and that two other kings met death from presents of poisoned clothes and a jewelled box containing snake poison. The Yaṣṭilakacampū (III pp 431–432) sets out many instances of kings that met with death from the wrath or the machinations of their ministers, purohita &c.

From these examples one should not draw the facile and sweeping conclusion that in India the life of no king was safe. In the vast continent of India there were always numerous kingdoms at the same time. It is no wonder that in the course of several thousand years and over such vast territories, some kings met death by treachery and stratagem. This is not a phenomenon restricted to India. In a small country like England we have within two hundred years instances of the murder of the boy king Edward V and his brother prince Richard, of Lady Jane Grey nominated by Edward VI as his successor and the further fact that Cromwell during the last few months of his life was afraid of being assassinated. During about 150 years from 1789 out of 30 Presidents of the U S A several such as Lincoln, Garfield and McKinley met death at the hands of assassins.

The truth is that in a monarchy the king was the pivot of the whole State. As the Matsyapurāṇa (219.34) finely puts it
the king was the root and the subjects were the tree; in saving the king from dangers the whole kingdom was on the road to prosperity and therefore all were to make efforts to guard the king.'

Hereditary monarchy was the norm of government in ancient and medieval India. Kautilya expressly states (I. 17 at end) that the practice to make the oldest son the king is honoured except in the case of a calamity. At or about the time of Buddha and a few centuries thereafter there were a few oligarchies or (as some scholars prefer to call them) republics. But our Dharmasästra or Arthasastra authorities contain rather very meagre references to them. The Mahabharata in Santi 107 furnishes the following data about ganarajyas (government by groups): Internal dissensions are the root of the ruin of ganas; it is very difficult to keep lines of policy secret when there are many (when the government is that of many, i.e. an oligarchy or a republic); all members of the gana in their entirety do not deserve to hear the line of policy decided upon, but the chief persons among the ganas should meet together and arrange among themselves to secure the welfare of the whole gana; if disputes that arise among the families (or clans) are connived at by the heads of the clan, the ruin of the clan takes place which leads on to dissensions among the whole group (gana). Danger from internal dissensions must be guarded against (in the case of ganas), external dangers are not serious (in the case of ganarajyas). All members of the gana are equal by birth and family, but they are not equal in energy, intelligence, bodily appearance and wealth. By their enemies ganas are broken by means of internal dissensions and bribes; therefore the greatest safety of ganas lies in union. In these words the author of the Mahabharata unerringly puts his finger on the weak spots of the rule of many viz. secrecy cannot be kept, there is corruption due to greed and jealousy, which bring about their downfall. In another place (Santi 81) the Mahabharata...

117. नेदुराजी विनाशी हि मण्डानाध्यायलक्ष्ये। सम्बसंस्थिरम् दुःख्या वृद्धशासिति ने मिति॥
8 ... न मान्यता क्षतिनशी मन्त्र अौत्सव्यति भारत। मण्डानाध्याय संस्कर्य वापिः गापिते सिम।
25 ... क्षतिं कस्य जाता: क्षतिः वृद्धमिजः। गीतसंस्कर्य नासी क्षतिस्वरुप्ताय गृहमथाय कार्यः।
अध्यार्थसारं खथमसारं वालसः न गया। ... तानया... च सददा... सर्वेभु गृहमथाय। न वृद्धमिजः कथा वा खथेयेन न्यून। नेदुराजी विनाशी विद्यालये विमलोऽर्थोऽसघीगानः।
तस्मात्स्थिराध्यायलक्ष्यानि शासित्योऽसतः॥ सामी 107. 27-32. नेदुराजी विनाशी... सामसार सर्वेभु खथेयित्वाद गृहा। यत्र तव माण्य... सन्धितमः सकृतस्तय... नागाचरुः खथेयित्वाद शासिताः॥ नागाचरुः गणसंस्थिराध्याय.... ॥ सामी 81. 25-26.
refers to the *saṅgha* of the Vṛṣṇis, of whom Kṛṣṇa was the presi-
dent, and the great truth that the ruin of sanghas is brought
about by internal dissensions and corruption and it hits off the
qualities required in the wise leader of the saṅgha to be four
viz sagacity, forbearance, self-control and giving up the acqui-
sitive spirit. The words *saṅgha* and *gana* are employed as
synonymous in the Mahābhārata Pāṇini (III 3-86) states that
*saṅgha* means gana. Pāṇini states that *saṅgha*, samāka and samudāya mean the same thing
Pāṇini knows two kinds of sanghas viz. *āuydhavijñā* (who practised
the profession of arms) and those that were not so and
further he also indicates that in the Vāhika country sanghas
included* brahmanas, ksatriyas and others (vide V. 3 114).
He names the sanghas of Vṛkas, Trigartas, Yaudheyas, Parsus
(V 3 115-117) as *āuydhiavijñā* Kātyāyana by his vāhika
'ksatriyādekarājat sanghapratisedhārtham' on Pāṇini IV 1168
shows that saṅgha was differentiated from monarchy. Acc to
Kautūliya (p 53 above) the saṅgha of the Vṛṣṇis perished when it
came in conflict with Dvālapāyana. In another place Kautūliya
says that (in some cases) the kingdom may be ruled by a
clan, for the confederacy* of a clan is invincible, it is free
from the calamity of a kingless State and therefore exists on the
earth very long Kautūliya devotes one section (Adhikarana
XI) to the dealings of the ambitious king with saṅghas. There
he states that securing the saṅgha on one's side is far better
than securing an army or allies and makes the most interesting
remark* that the corporation of the ksatriyas and others in

118 In the Karnaparva the country of Vāhika is severely condemned
and it is said to be the country between the Indus and the five rivers of the
Panjab (chap 44 7) पञ्जाबं सितविषुमां नवीनं वैविषुभिर्. ।
साय सङ्गहानां-

119 अन्यायात्मक ऐतिहासिक ज्ञेयभावी हुँ सायम। कूत्रप्रण वा भण्डारण कूलसंस्कृती वि

120 संस्कृतिक उच्चाविद्यालयाणाः। अर्थात्यसनाययः। काक्षास्तिर्येश्वरि विनिखिन्।

121 विनिखिन्य विनिखिन्य सुतुपायान सङ्गहानी नृषस्वलान। विषयादिपीति श्रेष्ठः।

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the countries of Kāmbhoja and Surāstra practise ṛgli (husbandry and trade) and the profession of arms, while those of the Licchīvikas, Vṛjikas, Mallakas, Madrakas, Kukuras, Kurus and Paṇḍalas live on the title of ṛjau applied to them (i.e. they are not cultivators of the soil and soldiers, but are only chiefs or nobles). What Kautilya means by ‘vārtā-sastropajivinah’ appears to be that they were agriculturists ordinarily but were ready with their swords to defend their country when occasion required Kautilya then describes in detail without any scruples how the conqueror may by various subterfuges cause dissensions among the members of the sangha and its leader or leaders (sangha-mulihya) In VIII. 3 Kautilya remarks that dissension becomes particularly rife owing to gambling among sanghas and noble clans that have the sangha constitution and they are destroyed. From about the 5th or 6th century A.D. the oligarchic States or Republics became rare and gradually disappeared. We get further data about these ganarājyas from Buddhist works, Greek sources (like the fragments of Megasthenes), coins and inscriptions. Rudradāman (in Junāgadh Inscription of 150 A.D.) boasts that he had uprooted the Yaudheyas who had become puffed up and unbending on account of the title of heroes (vīra) that was prominently applied to them among all ksatriyas121 (E.I. vol VIII at p. 44) Samudragupta (in the first half of the 4th century A.D.) subjugated the Yaudheyas, Mālavas, Ārjunāyanas &c. In Gupta Inscriptions No. 58 p. 251 there is mention of a mahārāja-malāsēnāpati who was made their leader by the Yaudheya-gana. The Brhatsamhitā in several places refers to the Yaudheyas and Ārjunāyanas (e.g. 4.25; 5.40, 67, 75; 14.25 and 28; 16.21; 17.19) and speaks of Yaudheya-nrpa in 9.11. Vide Rapson’s ‘Indian coins’ pp. 11 and 15 and Plate II, nos 13-15 and Plate III, no. 20 for the coins of the Yaudheyas and Ārjunāyanas Arrian writes in ‘Indika’ (tr. by MacCruddle IX. p. 208, ed. of 1926) ‘from Dionysus to Sandrakottos the Indians counted 153 kings and a period of 6042 years, but among them a republic was thrice established’. MacCruddle’s ‘Invasion of India’ (p. 121) speaks of an aristocratic government on the

121 सर्वायविकाशाक्षरावलिकोषकारियांणी शैविवां महासेनसिवे काल ए.K. VIII at p. 44, शैवविकाशाक्षरावलिकोषकारियांणी शैविवां महासेनसिवे काल ए. in Gupta Inscriptions pp 251-252. Vide Quarterly Journal of the Mythic Society of India (Silver Jubilee number) p 114 for Yaudheyas, and J. B. O. R. S. vol 23 p 148.
Hyphasis or Beas. The Greek writers describing the invasion of Alexander speak of the democracies of the Oxydrakai (Ksudrakas), Malloi (the Mālavas), the Śiboi (Śibs), Sambastaī (the Ambasthas) and several others; Vide K. P. Jayaswal’s ‘Hindu Polity’ part I, chap. VIII (pp 63–79) for Hindu Republics mentioned in Greek writings. Rhys Davids in ‘Buddhist India’ pp 19 ff. summarizes the data about Indian republics derived from Buddhist works. On p 22 he gives the names of eleven republican clans with their capitals, some of which like the Śākyas (of Kapilavastu), the Mallas (of Kusinārā and Pava), the Videhas (of Mithilā) and Licchavis (of Vesāli) are well-known. Rhys Davids states (p. 19) that the administrative and judicial business of the Śākyas was carried on in a mote-hall (saṃthāgāra) at Kapilavastu, that a single chief was chosen (but how and for what period is not known) who presided over the sessions and (when no sessions were being held) also over the State, that he bore the title of rājā. He mentions that at one time Buddha’s cousin Bhaddiya was rājā and that in another passage Buddha’s father Śuddhodana is styled rājā. He further points out (p. 26) that the Vajjans had eight confederate clans of which the Licchavis and the Videhas were the most important. K. P. Jayaswal in ‘Hindu Polity’ part I pp 25–165 brings together all the data about Hindu oligarchies (or republics as he calls them) and his work deserves the serious attention of all those who are interested in the study of ancient Indian political institutions, though here and there one cannot approve of his interpretations and theories. To take only one example, he holds that the procedure prescribed by Buddha for the deliberations of the sangha in the Mahāparinibbāna-sutta was borrowed from the procedure followed by the republics in their deliberations and therefore he describes the procedure of the Buddhist sangha in great detail (‘Hindu Polity,’ part I chap XI pp 103–117). Dr D R Bhandarkar also (in ‘Some Aspects of Ancient Hindu Polity’ pp 121–125) adopts this theory. This to say the least is a gratuitous assumption. The mere fact that Buddha told the prime minister of Ajātasatru, king of Magadha, who contemplated attacking the Vajjan confederacy, that the latter would not decline but prosper as long as they observed seven conditions and the fact that those very seven conditions were prescribed by the Buddha for the welfare of the sangha do not lead on to the further inference that the procedure followed by the monks in the deliberations of the meeting of the sangha (which is set out in such passages as the Mahāvagga IX 3, S.B.E.
vol. XVII p. 264 ff, Cullavagga IV. 9, S. B. E. vol. XX pp. 24–27) was the procedure of the meetings of the oligarchies. The seven conditions (both for the welfare of the Vajjians and the Sangha) are set out in the Mahāparinibbāna-sutta, chap. I. (S. B E. vol. XI. pp. 3–8) viz holding full and frequent public assemblies, meeting together in concord and carrying out undertakings in concord, enacting nothing not already established and abrogating nothing that has been already enacted and acting in accordance with ancient institutions established in former days, honouring and revering and supporting elders and hearkening to their words, not detaining women or girls of their clans by force or abduction, honouring and supporting Vajjian shrines in town or country and not allowing proper offerings and rites to fall into desuetude, protecting and supporting the Arahats among them. On the most important points in connection with a republic or oligarchy we have no information at all, viz. who were entitled to vote, what were the qualifications for membership of the assembly that governed the State, how voting took place, what was the period for which members of the assembly were elected, whether the president was elected for life or a shorter period or was elected at all, what were the powers and procedure of the assembly. Vide Dr. Beni Prasad in 'Hindu Political Theories' p 158 for criticisms. Rhys Davids (in 'Buddhist India' p. 41) says that according to the Jātakas there were at Vesāli (modern Basadh in the Muzaffarpur District), the capital of the Licchavis, 7707 rajās (or chiefs). In the Bhaddasāla-jātaka (Fausboll, vol. IV p 148) there is a reference to a tank reserved for the bath of the families of the ruling chiefs (rajas) of the gana in the city of Vesāli. In the Mahāvastu (ed by Senart vol. I. p. 271) it is stated that there were twice eighty-four thousand nobles (rajas) among the Licchavis. This explains what Kautilya means by 'rajasabdopajīvinah. These people called 'rajas' were probably the scions of the several branches of the Licchavis, who had in their hands the government and who were not doing manual (or agricultural) work. Vide Government Epigraphic Report for 1899 p 23 and Indian Historical Quarterly vol. IV. p. 652, where it is said that in an inscription from Uttaramallur the extent of land and of Vedic learning required in a candidate for election are specified as also the method of writing on tickets the names of candidates. But such records, even in South India, are very few and refer to village sabhās and there is nothing in the works on dharmaśāstra or arthaśāstra about the methods of
election to political assemblies and the qualifications of candidates. Vide Dr D R Bhandarkar's 'Some aspects of Ancient Hindu Polity' (1929) pp. 101-121 for a concise statement of several types of republics in Ancient India.

Another important question is whether in monarchical states there were popular assemblies of elected representatives or, in modern language, Parliaments. The words 'sabha' and 'samiti' require consideration in this connection. In Rg I 91 20 Soma is said to confer a son who is 'sādanyā, vidālīya and sābheya, from which it follows that sabhā is in some respects different from 'vidathā'. In Rg II 24 13 a vipra (a priest or composer of hymns) is said to be sābheya 'clever or eminent in a sabha'. In Rg X 34 6 'sabhā' 122 appears to mean a gambling hall. In Vāj S XXX 6 sabhācana seems to mean only 'sabhāsad', a member of a judicial tribunal, while in XXX 18 the sabhāsthāna is given up to Āskanda in the symbolic Purusamedha. In the Vāj. S XVI 24 there is an obeisance to sābhūs and sābhāpah (presidents of sabhās) in Átharvaveda VII 12 1 'sahās' and 'samiti' are said to be the two daughters of Prajāpati, from which it may be argued that they were very similar but somewhat different. In Átharvaveda XV. 9 2 also sabhā and samiti are separately mentioned. In Br III 7 4 the word sabhāpāla occurs and sabhā is explained as 'gambling-hall' by Sayana. In Rg X 97 6 and Vāj S XII. 80 it is said 'that vipra is said to be a doctor (bhīsak) in whom medicinal herbs come together as nobles (rājanāh) in a samiti (meeting or battle)'. In Rg. X 191 3 the word 'samiti' seems to mean no more than a meeting or meeting place. In Átharvaveda V 19 15 we have 'the assembly (samiti) does not suit him (or is not won over by him) who harasses a brāhmaṇa'. In the Chāndogya Up. (V 3. 1) Svetaketu is said to have repaired to the assembly (samiti) of the Pañcāla country, where the king Pravāhana Jávali asked him five questions which the former could not answer and then he approached the next morning the king who was in his sabhā. Here it seems that both words are applied to the same assembly. It is impossible to say how the sabhā or samiti was constituted in the Vedic period. All that we can say is that it was an assembly of people to which the king, learned men and others went. It is extremely doubtful whether it was an elective body. Probably it was an ad hoc assembly of such people as cared to

122. समामतिं किवि: पुष्पमग्नं जोयपसितीति तन्ना शूक्ष्णाः। एकं X 34. 6
123 न च विद्भेदाद्वर्त वाच्यमस्मितवर्तिः। जालस्य समामति। दार्श्येते न सिद्ध सन्ते ब्रह्माः। अधर्षं V. 19 15
be present. K. P. Jayaswal (in 'Hindu Polity', part I p 11) holds that 'samiti' in the vedic age was the national assembly of the whole people, that it was the king's duty to attend it (ibid. p. 12) and that 'sabhā' was the standing and stationary body of selected men working under the authority of the samiti (ibid. p. 18). This is all conjectural, as Jayaswal himself admits 'the sabhā was certainly related to the samiti, but its exact relationship is not deducible from the data available' (ibid. p. 18).

These frantic efforts by such scholars as Jayaswal to prove that India had elective assemblies are made to counteract the sinister propaganda of many English writers that East is East and West is West and that the democratic institutions of the West cannot be transplanted with success on the soil of India. This is mischievous propaganda. There were no democracies even in Europe a few hundred years ago; even in England, France and a few other countries democracies have been introduced and have thrived within a short time. There is no reason why they should not do so in India, if honest efforts are made and difficulties are not purposely created by vested interests.

Korkunov in 'General theory of law' (tr. by Hastings, 1922, New York p 296) says 'According to the historical school the political organization of England is good for England alone, for it corresponds to a natural genius very peculiar...This doctrine of the historical school is false, since we have already seen that a change produced in the social ideal may bring about a change in the whole social development. The influence of one people on the life of another is a proof of this. The ideal is a force supporting the social life and this ideal may be the result not merely of our own special experience, but also of the experience of neighbouring peoples'.

Two other words require consideration, viz. Pauna and Jānapada. The word 'pauna' occurs in Rg V. 74. 4 where it has three applications, viz. to the Aśvins, to the sage Paura (who was an Ātreya) and to the cloud (acc. to Sañyana). K. P. Jayaswal (in 'Hindu Polity', part II pp 60-108) devotes considerable space to 'Pauna' and 'Jānapada' and one may at once admit that he displays great learning, industry and ingenuity in his discourse on this subject. He holds that the Paura and the Jānapada were elective parliamentary bodies or what may be called the Hindu Diet and he sums up (on p. 108) their functions as follows 'we had an organism or a twin
at p. 45 or in the Rāmāyana II. 2, 51, II. 111. 19 ‘paurājana-padam ṛjanam’). Lastly if the paurājana-pada organization had (as said by Jayaswal in the quotation cited above) the power to depose kings and pass even hostile statutes, is it not a contradiction in terms to say that, instead of the Parliament or Diet deciding to remit certain taxes, it was the king who remitted taxes and bestowed favours (or privileges) of lakhs of rupees on the supposedly all powerful Paura-Jānapada assembly? In all passages that he quotes from the Rāmāyana and other classical sanskrit works the ordinary meaning of paurā (residents of the capital) and jānapada (inhabitants of the country other than the capital) is quite enough and it is impossible to hold that any elective body is meant. In most passages the plural ‘paurā- jana-padaṇ' is used. If ‘Paura-jānapada’ stands for one elective body or two bodies, no explanation is offered why the plural should generally be used and not the dual. Kautilya (I. 19) states that the king should in the 2nd part of the day (divided into eight parts) look into the causes of the paurā-jānapadas. Jayaswal (in ‘Hindu Polity’, part II p. 95) misinterprets this passage by saying that the king had to set apart one period daily for the business of the paurā-jānapada assembly. Here again the plural is used and the dictum of Kautilya is the same as that of Yāj. I. 327 who says that the king should look into the law-suits (vyavahārān) of the people. The word ‘kārya’ is employed by Manu VIII. 43, Nārada and other writers on vyavahāra in the sense of ‘law-suit’. Yāj. II. 36 says that the king should restore to the jānapada property stolen by thieves. Jayaswal (in ‘Hindu Polity’, part II p. 93) presses the singular ‘jānapadāya’ into his service and holds that it was the popular assembly that demanded the restoration of the things stolen. This, to say the least, is twisting the plain words of Yāj. The Mit paraphrases the word to mean ‘to the person dwelling in his country from whom the property was stolen’. The corresponding passage of Manu VIII 40 (dātavyam sarva-varnebhya rajā corai-hrtam dhanam) is quite clear, since it fortunately does not use the word jānapada and Medhatithi explains it as ‘it should be restored to those from whom it was stolen’. Jayaswal (in ‘Hindu Polity’ part II p. 79) holds that a passage in the Arthaśāstra (II. 14) refers to the fact that the Paura-Jānapada assembly got gold coins minted by the royal mint-master.

124. वीमांसिक पौराङ्गजनपद त्वाप्युपन्नवल्लभापितम् कार्येऽव। नितिविद्यकालकार्यं च
कम् कुशं। अर्जुस्त्रा II. 14.
But the plain meaning is that the mint-master was to mint standard silver and gold coins for all people when they brought bullion to him to have coins struck. One striking circumstance to be considered is that, though in all works on polity a rāṣṭra is said to have seven elements, none of them includes a political elective assembly (like the paura-janapada postulated by Jyāaswal) among them. They only enumerate the country and the capital and declare even these as of lesser importance than the king and the ministers. Another matter that makes the existence of powerful elective political assemblies in monarchies most unlikely is the total absence of any reference in works on polity to the method of election, the system of voting, the qualifications of members, the period for which the assembly was elected and allied matters. When medieval writers like Aparārka on Yājñ 11.1 (p 600) quote from Brhaspati verses about four kinds of sabhā, they refer only to judicial tribunals of various sorts and grades (the same verses are quoted as Hārita's in Rājuntiratnākara p 20) Vide n 368 below.

If elective popular assemblies did not exist, then it may be asked whether the king was an absolute monarch or a despot or whether there were any checks that mitigated or regulated the power and doings of monarchs. The answer is that there were such checks and limitations. These were of various kinds. Exhortations addressed to the king himself exercised a restraining influence. For example, Kāt (10) says 'the king who gives way to wrath without proper thought would reside in a horrible hell for half a Kalpa.' The importance of dharma as an all-embracing institution was impressed upon the king by our writers so frequently that it must have had its psychological effect on every king. The idea that danda personified as a Deity might strike down the bad king himself (Manu VII. 19, 27, 28, 30; Yāj I 354–356) would tend to keep even a whimsical king within bounds. The views of ancient writers have already been cited according to which the king was not to act as he pleased, but was to regard his high office as a sacred trust and was to rule according to the dictates of the sāstras. These views created public opinion which must have certainly influenced the king's acts. The ideal king Rāma is depicted as having abandoned his queen Sītā (whom he knew to be pure) because the people could not accept her as pure after her long stay in Rāvana's prison. Vide Rāmāyana VII. 45 Then there were the ministers whose advice the king was enjoined to seek. Besides there was the purohita and there were learned brāhmanas,
who were to propound what dharma was, whose directions he was to carry out and who were supposed to have power to ruin a bad king (vide Vas l 39-41, Gautama XI. 12-14, Manu IX. 320). Vide H. of Dh. vol. II. pp. 138-145 for the peculiar sanctity attaching to the person of a brāhmaṇa and the superior position of brāhmaṇas as a class vis-a-vis the king. There was a deep-rooted faith that the rules of the śāstras (the Śrauta and Śmārtā dharma) were divinely inspired and were above the king. Observance of dharma was the great social and political ideal from very ancient times for all including the king. This is most emphatically put in the Br. Up. I. 4. 11-14, where it is stated "even after creating the four varnas He (the Creator) did not think that stability had been attained. He then created the most excellent Dharma which is the might of the mighty (i.e. more powerful than the warrior caste). There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) with the help of the king. So what is called dharma is really truth. Therefore people say about a man who declares the truth that he is declaring dharma and about one who declares what dharma is they say that he speaks the truth. These two (dharma and truth) are this" (i.e. one). Kāmandaka I. 14 stated that the Yavana king ruled over the earth for a long time because he ruled according to the dictates of dharma. In his administration of justice the king was to be checked by the judge and sabhyas, who were fearlessly to render advice to the erring king (as will be shown in the section on vyavahāra). Besides corporations and guilds were powerful and had a sort of self-government. Manu (VIII. 336 and Yaj. II. 307) went so far as to prescribe a heavy fine which the king was to inflict on himself for his illegal exactions and punishments and to direct that the king should distribute among brāhmaṇas wealth forfeited by grave sinners (Manu IX. 243-244). Lastly there was the final sanction that the śāstras allowed the subjects to abandon a worthless king or even to kill a misguided one or tyrant, as stated above (vide Manu VII. 27-28, Arthāśāstra I. 4).
Kautilya (VIII. 3) when dealing\(^{127}\) with the evil results of want of discipline in a king states that kings who are hot-tempered are known to have fallen victims to popular fury (or the fury of ministers) We may say that in theory and so far as ordinary people were concerned the sovereign’s power was absolute and unlimited as Manu IX. 9–12 aptly illustrate and as Brhat-Parāśara states ‘the king is Brahmā, Śiva, Visnu, Indra, he is the giver, the destroyer, and the enforcer according to the karma of his subjects’. But there were (as stated above) very real checks and limitations that effectively prevented him from exercising his undoubtedly unlimited powers These checks, though real, cannot be called constitutional in the sense in which that word is used in modern times. As said by Nārada the subjects are dependent while the king is uncontrolled, but he could not go against the śāstra (vide Haradatta on Gaut XI. 2)

In modern times the activities of a sovereign person are three-fold, viz. executive, judicial and legislative. The judicial activities of the ancient Indian king will be dealt with in another section on law and the administration of justice. One great difference between ancient and modern societies is that the legislative action of the king was extremely limited in ancient times, while in modern times people are more and more looking to legislation for regulating all manner of things. Manu (VII. 13) lays down that since the king has in him the glory of all deities, whatever rule as regards desirable matters the king establishes and whatever action he declares as undesirable among those actions that are harmful, should not be transgressed by any one In his gloss on this verse Medhatithi carefully points out what orders the king can issue and on what subjects he cannot issue orders. He gives the following instances of orders of both kinds: ‘To-day all should observe a festival in the capital, all should attend a marriage ceremony at the house of the minister; animals should not be killed to-day by the butchers and birds should not be caught. debtors should not be harassed by creditors on these days (to be specified), no one should associate with such and such a man (an undesirable person); no one should allow a certain (undesirable) person to enter the house’. Medhatithi adds that the king is not authorised to interfere with the śastric rules governing the

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\(^{127}\) अविनाशी दि त्रस्त्रविवेचना य पराधित। ताषुद्वित्याय। कान्तज्ञानियोऽहम् कशुहुः। यो व्रताय सर्वत्र दि कोष्ठयान्ति। पारस्यवध कोष्ठकार राजान: सविते। कोष्ठै। अवेद्याश्व VIII. 3
Legislative powers of the king

Varnas and āśramas such as the performance of agnihotra.\footnote{127a} This gloss of Mādhavatīthi occurs word for word in the Rajaniti-
prakāśa (pp. 23–24), which gives a more correct text than the
printed editions of Mandlik and Gharpure. Kautiliya (II. 10)
devotes a chapter to the drawing up of sāsanas, particularly
with reference to their linguistic elegance and diplomatic
etiquette. The Śukrāntisāra (I.312–313) prescribes that the king’s
edicts (sāsana) should be proclaimed to the subjects by beat of
drum, that his edicts should be written and displayed where four
roads meet, and that the king should declare that breaches of the
orders would entail heavy fines. In I. 292–311 Śukra gives
instances of such orders, the most important of which are:
Watchmen should take rounds in the several streets every one
hour and a half at night in order to prevent thieves and
paramours moving about; people should not employ abuse or
beating towards their slave, servant, wife, son or pupil; no one
should practise deceit in respect of measures, weights, coins,
resins, metals, ghee, honey, milk, fat, flour; no document
should be got by force; no bribes should be taken nor should
any bribes be given to persons engaged in doing the king’s
work; no one should offer shelter to bad characters, thieves,
paramours, those who hate the king, the enemy; parents,
persons worthy of honour, learned men, men of good character
should not be disrespected or ridiculed; no dissensions should
be sown between husband and wife, master and servant, between
brothers, between teacher and pupil, between father and son;
no interference or obstruction should be caused to wells, parks,
boundaries, dharmāśālās, temples, roads or to those who are
deficient in a limb; without the king’s permission no one
should engage in gambling, selling liquor, hunting, bearing
arms, sale or purchase of cattle or elephants or horses or camels
or she-buffaloes or slaves or immoveable property or silver, gold,
gems, intoxicants, poisons, drugs, the profession of medicine or
should pass a sale deed, deed of gift or give a decision about a
debt; no one should falsely accuse another of the great sins,
nor take treasure trove, nor frame new rules for clubs or convi-
vivial gatherings (samājya) nor should publish slander against a
caste, nor should appropriate property which is without an
owner or has been lost, nor divulge the (king’s) lines of policy,
nor babble about the vices of the king; the people should not

\footnote{127a} वा लिपिभाष्यवेत्ताये वर्णमाला सालिंग राजा महात्मा सुभाष्यनिधिवंशवंज्ञातः
अविशेषे चात्माने विवेरे स्मरणस्वप्नवात् | नेपाले on मह. VII. 13.
even think of forsaking their dharma, speaking untruth, committing adultery with another's wife, giving false evidence or fabricating documents, accepting gifts secretly, committing theft and engaging in other desperate acts, engaging in sodomy; public servants should not exact more than the tax already settled; only such weights and measures are to be used as bear the royal stamp; all subjects should strive to possess good qualities; desperate cases should be arrested and handed over to the king; bulls let loose (in memory of the dead) should be kept well controlled and fed by those who let them loose. Medhatithi on Manu VIII 399 states that a king may prohibit the export of foodstuffs from the kingdom in a famine. The several edicts of Ashoka show that his orders were framed on the same lines that are contained centuries later on in the Śukra-uttisāra. Most of his proclamations insist on moral virtues such as truthfulness, obedience and reverence to parents, elders and preceptors, honouring brāhmaṇas and śramaṇas, kindness to animals, tolerance of other faiths. Proclamations that may be called positive laws are very few, such as his order in Pillar Edict IV to give three days' respite to criminals condemned to death (C I I. vol. I p 125) or his regulations restricting the killing of animals contained in the 5th Pillar Edict (C I I. vol. I. p 138) or in the First Rock Edict at Gāñnar (p 7)'no living being must be killed or sacrificed and no festival meeting must be held'. In the reign of Avantivarman of Kashmir the killing of living beings was prohibited for ten years (vide Rājatarangini V 64) Law-making in the modern sense is almost entirely lacking in the smṛtis. Gaut XI 19-25 show 128 that the king was to find the law required for the decision of causes from the following, viz (1) the Veda, Dharmasāstras, the Angas (lores auxiliary to the Veda such as grammar, exegesis, metrics etc.), Upavedas, Purāṇas; (2) customs of countries, castes and families that were not opposed to the Veda; (3) the usages of husbandmen, traders, herdsmen, money-lenders and artisans; (4) ratiocination,(5) the opinions128a delivered

128 तरस च भवायाद् वेदमाध्यायपरः सत्सन्ति: पुराणम् । देवाधिकृतपरमाः
धामान्येवविदितं मामगुणम्। कर्मसंगम्याद्विभासालस्यविदितां सदा श्लोकः। .... ध्वयाधि-
मे कस्तःसुपरमः। .....विभिन्न्यों भैविवंत्क्षेत्रः मत्विद्याय निष्ठा गम्येतु सत्र दास्य निरःस्त्रस
विदितं। भो XI 19-26

128a चतवारो बैवसशः पर्यथ: शैवशेषण: वा। सा मूले च स धर्म: श्वाल्लोके भार्या-
शास्त्रविद्वा: पय। I 9, on which विशेष्य remarks श्वाल्लोकपि श्वाल्लिंशो जैवशेर-शास्त्रविद्वा: निष्ठा: इति शाश्वार्यो: कालाहस्तेनकु रिति: च। These two show that
pratisad and trāyividya were more or less synonymous,
by the assembly (parisad) of men deeply learned in the three Vedas. The authoritativeness of customs, usages and conventions and their relation to śāstra will be discussed later on. In the decision of causes there were four deciding factors, dharma, vyuvahāra, carita and rājaśāana, which will also be dealt with later. So royal edicts or orders first came to be made in the administration of justice and probably served as laws or precedents in later times. Vide H. of Dh. vol. II. pp. 968-970 for the role of parisade in religious matters. Yāj I. 9 and Śankha speak of paryat or assembly of learned men as final authorities on dharma.

The executive functions of the king required a large number of ministers and officers. This topic will be dealt with immediately below.

There is another way of looking at the king's functions viz. they were religious and secular. The first required him to do certain acts for propitiating gods and unseen powers and removing dangers therefrom with the help of the purohita and sacrificial priests (vide Gaum XI. 15-17, Yāj I. 308) and he had to guard dharma. His secular functions included those that led to prosperity, that helped the people in famine and similar calamities, dealing even-handed justice, guarding person and property from thieves and trespassers and against invasion.

The Mahābhārata records the tradition that many kings of former times abdicated the throne in favour of their sons and resorted to the forest as hermits. Vanaprastha 202.8 mentions Bṛhadāyva who crowned his son Kuvalāsya. Vide also Vayu 88.32. Dṛtarāstrā says to Yudhisthira that in their family it was customary for kings to transfer the sovereignty to their sons and resort to a forest towards the close of their lives (Āśramavāsī 3.38). Vyāsa says that that was the practice of all rājarṣa (Āśramavāsī 4.5) and the Āśramavāsiparva (20) mentions the names of several such kings. Vide also Śānti 21.15. In Ayodhyā 23.37, 94.19 this practice is referred to. In the Rāghuvamsa (I. 8, XVIII. 7, 9, 28) Kalidāsa says that in the family of Rāghu kings in their old age became muni (hermits) and in chap. VIII. 11-23 he draws a fine contrast between the lives of Aja and his father Rāghu (who had become a yātu). There are Jain traditions of some antiquity that connect the...
great Jain sage Bhadrabahu, the last Śrutakevalin, with Candragupta Maurya, who is said to have abdicated in favour of his son and to have gone to Śravāna Belgola Vide Indian Antiquary, vol 21 pp. 156 ff where Fleet criticizes this tradition and rejects it. In the Divyavadana (XXIX p 431, ed. by Cowell and Neill) it is stated that Asoka died destitute of power¹ and possessions and Fleet (in J R A S for 1913 pp. 655-658) says that there is in this probably a reminiscence of abdication by Asoka. King Lavanapraśāda of the Vaghela dynasty in Gujarat abdicated in favour of his son Viradhavala (1233-38 A. D.). Vide Bombay Gazetteer, vol. 1 part 1 pp 198, 200, 206

Kautūlia (VIII. 2) speaks of a novel rule called ‘dvairājya’¹¹ (soverignty of two) and distinguishes it from ‘vairājya’. The Mss differ in their readings, but the reading given in the footnote by Dr Sham Sastri seems preferable. Kaut remarks "As between dvairājya and vairājya (foreign rule) the former perishes on account of mutual hatred and rivalry; but the latter according to the acārās is enjoyed by foreigners as it is, when it pays attention to winning over the subjects; 'No' says Kautūlia 'dvairājya' (generally) exists between father and son or between two brothers, their welfare is the same and therefore by reason of the influence of amālīyas (over the two rulers) it can last, but vairājya comes into existence by being seized from another king who is living and therefore the (foreign ruler) thinking 'this country is not mine' impoverishes it and carries off its wealth or treats it as a chattel (for sale) or when he finds that the country is disaffected towards him abandons it and goes away". This remarkable passage contains the mentality of foreign rulers in a nutshell. Manu IV 160 in a lucid and laconic manner states how individual and national happiness lies in freedom. Kalidas in his Mālavikāgnimitra¹¹² (Act V) appears to refer to the conception

¹¹ Tyāsa is made to say "dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairājya, dvairाज्य गीतिका V. 13-14
of dvairājya when he makes Agnimitra say that the latter desires to establish a dvairājya for the brothers Yajūnasena and Madhavasena on the north and south banks of the river Varadā, who would both remain under the command of the king (Agnimitra). In the Mahābhārata a similar rule of two brothers, Vinda and Anuvinda in Avanti, appears to be referred to (vide Udyogaparva 166, cr. ed. chap 163). MacCrindle in 'Invasion of India by Alexander' p. 296 quotes Diodorus to the effect that Alexander sailing up the river came to Taula (Patala?) a city of great note with a political constitution drawn on the same lines as the Spartan, for in this community the command in war was vested in two hereditary kings of two different houses, while a council of elders ruled the whole State with paramount authority. Vide Jayaswal's 'Hindu Polity' part I pp. 96-97 and Dr. D. R. Bhandarkar's 'Ancient Indian Polity' p. 99-100 for some further details on dvairājya from Buddhist and other sources.
CHAPTER IV
MINISTERS

Amātya—The second of the seven elements of rājya is the amātya, which word may be translated as 'minister.' There are three words that are interchangeable though sometimes distinguished, viz. amātya, sacava and mantrin, the first being the oldest of the three. A Kārikā on Pānini (IV. 2 104) teaches the formation of the word with the affix tyap (tya) from amā meaning 'near or with' (vide Mahābhāṣya, vol. II. p 292). In Rg IV. 4. 1 133 there is the germ of this word 'O Agni! Go like a king riding an elephant, accompanied by his ministers'. Yāska (in Nirukta VI. 12) explains 'amavān' as 'amātyavān,' though two more explanations of the word are offered by him. The word amātya itself occurs in Rg. VII. 15. 3, but there it is an adjective and means 'our own' or 'abiding in our house'.

In some of the sūtras like the Baudhāyanapitr-medhasūtra (I. 4. 13, I. 12 7) the word amātya is used in the sense of 'near male relations in the house'. Vide H. Dh. vol II. p. 588 n.1375. The word 'amātya' occurs in the sense of minister in Āp Dh. S II. 10. 25 10 'The king should not live better or more luxuriously than his gurus (elders) and his ministers (gurun-amātyāṇśca nātijīvet).'

The word 'saciva' occurs in the Ait Br (XII. 9) where it is said that Indra considered the Maruts as his 'sacivas' (helpers or comrades). The necessity of amātyas or sacivas is stated in graphic language by several writers Kautilya (I 7 last verse) says 'kingship is possible only with (the aid of) assistants, a single wheel cannot work (a chariot), therefore the king should appoint ministers and listen to their opinions'. Manu (VII 55 = Sukra II. 1) says 'it is difficult for a person single-handed to accomplish even an easy task, how can government particularly, which has great good as its aim, be accomplished without helpers'? The Matsya-purāṇa (215. 2) prescribes 'the king, while his head is still wet with the waters of coronation, if he wants to supervise his State, should choose his helpers, as in the latter the kingdom secures stability'. Matsya 215 3 is the same as Manu VII 55 Vide

133. कुष्ठव पाज. पातिरिच्छ न श्रुती पातिर चातवासनहृदयेः प्रेम सह IV 4 1. पातिर चातवा इव अमात्यवात्य अग्नवात्य द्वार यथा VI 12
Vismudharmottara II. 24. 2-3 which are the same as Matsya 215. 2-3; also Śānti 106. 11 and Rājaniṃiprakāśa p. 174. From Arthasastra I. 7 and 8, Manu VII. 54 and 60, Kām. IV. 25, 27, XIII. 24 and 64 it appears that they use the words sacīva and amātya as synonyms Rudradāman in his Junagadhi Inscription\(^{124}\) (E. I. vol. VIII. p. 36 at p. 44) states that his great enterprise to repair the Sudarsana lake was disapproved of by his advisory (mati-sacīva) and executive councillor (karmasacīva) who were all endowed with the qualities required in amātyas and yet who were averse to the project and had no enthusiasm for it, since the breach to be repaired was very great. Here sacīvas are divided into two sorts, those who give advice and those who execute the business decided upon and the word sacīva seems to be a synonym of amātya. Amara\(^{125}\) states that the amātya who is a dīṣacīva (i.e. matisacīva) is called a mantrin, while amātyas other than the mantrin are called karmasacīvas. These distinctions are often not observed. Sumantra is called amātya in Rāmāyana I. 7 3 and the best of mantrins in I. 8. 4. In Ayodhyā 112. 17 amātya and mantrin seem to be distinguished. From Kaut. I. 8 (last verse) \(^4\) Having divided the spheres of their powers and having taken into consideration the time and place and the work they have to do, all these persons should be appointed as ministers (amātyas), but not as mantrins, \(^1\) it follows that mantrins were regarded by Kautilya as of a higher grade than amātyas in general. The R. N. P. p. 178 says that the amātyas are also styled mantrins Kautilya states (I. 10) how amātyas are to be tested by upadhiṣṭas, i.e. by means of tempting them as regards each of dharmā, artha, kāma, and bhaya (fear) and to be employed if found honest after any one of the four tests, while mantrins were to be appointed only if their integrity and loyalty were proved by all the tests combined. Upadhiṣṭa\(^{126}\) is defined by the Nitrīvākyāṁṛta p. 111 as testing the mind of a person as regards dharma, artha, kāma and bhaya by various devices (employed by secret agents) Kāt (4-5) quoted by R. N. P. p. 136 states that the minds of kings always go astray on the (slightest) cause by

\(^{124}\) \(\text{E. I. VIII. p. 36 at p. 44, I. 17}\)

\(^{125}\) \(\text{Amara 125}\)

\(^{126}\) \(\text{Nitrīvākyāṁṛta 14 p. 111.}\)
reason of the fact that they possess great valour, knowledge, wealth and particularly the fact that they possess absolute power; therefore brāhmanas should always enlighten the mind of the king as to the duties of a king.

About the number of members in the council of ministers there has been a great divergence of views from ancient times. Kautilya, in his Arthasastra (III 67-68) stated that according to the Mānava school the council (parusad) of ministers should be constituted of twelve amātyas, acc. to the Bāhūsaptayyas of 16, acc to the Aṣānaṇas of 20, but Kautilya’s own opinion was that the number is determined by the power or exigencies of the State (yathāsāmarthyan). The Bāhūsaptaya (7 2-3) states that Daśaratha had eight honest and devoted amātyas (who are then named) Manu VII 54 and Manasollāsa (II 2, verse 57) require that the king should select seven or eight ministers who should be hereditary, versed in the śāstras, brave, born of high family and well-tested. This advice was followed by Shivaji, the founder of the Maratha empire, who had a council of eight ministers (Pradhānas). Vide Ranade’s ‘Rise of the Maratha Power’ pp 125-126 where he describes the functions of the eight ministers called ‘Mukhya-pradhāna’ (Prime minister), Pant Amātya (Finance minister), Pant Sāciva (General Accountant and Auditor), Sēnāpatya (Commander-in-chief), Māntri (in charge of king’s private affairs), Sumanta (Foreign Secretary), Panditrao (in charge of the Ecclesiastical Department), Nyāyādhistha (Chief Justice). This list was probably taken by Shivaji’s advisers from the Śukranāsa II 71-72 where almost, the same eight are said to be the ministers according to some. Vide also Grant Duff’s History of the Marathas, vol. I p. 193, and Rao Bahadur Wad’s selections of sanads and letters (in Marathi) published by Messrs. Mawajes and Parasnis in 1913, where the names of the eight ministers of Shivaji are stated and their duties are described (p. 123). In the Śanti-parva (85, 7-9) it is declared that the king should have 37 sacivas, of whom 4 should be learned and bold brāhmanas, 8 valiant ksatriyas, 21 prosperous vaisyas, 3 śūdras and one sīla versed in the Purāṇas, but verse 11 adds that the king should discuss and settle lines of policy in the midst of eight mantrins and Śanti 83 47 says that mantrins should not be less than three. In the Rāmāyana (II 100, 71) Rāma whom Bharata came to meet in the former’s exile asks him whether he held consultation with three or four mantrins and (in verse 18 = Sabhā-parva 5, 30) Rāma hopes
that Bharata did not settle his policies by himself alone or in consultation with too many ministers. Kautilya also (I.15) lays down that the king should hold consultation with three or four mantrins. The Nitiyakya-ajmrtta (mantrisamuddesa pp. 127-128) holds that they should be three, five or seven, that unanimity is difficult to secure in a group of persons of different characters and that when there are many ministers they are jealous and try to carry out their own ideas. These passages show that firstly there was to be a small cabinet of three or four ministers, secondly there was to be a council (parisad) of ministers who might be eight or more in number according to requirements and thirdly there was a large number of amaatyas or sacivas (high functionaries concerned with various departments). The council is mentioned in the 3rd and 6th Rock Edicts of Asoka (Corpus I. I. vol. I. p. 4 'parisa pi yute ajnayapayisati') in the words 'the council will order the officers called Yuktas'. The qualifications of ministers (amatyas) are laid down in several places e.g. in Kautilya I. 9, Manu VII. 54, Yaj. I. 312, Kâma. IV. 25-30 (of which verses 28-30 are almost the same as the words of Kautilya'), Śânti 118 2-3 (14 qualities of mantrins are mentioned), Śânti 80. 25-28, Bâlakânda 7. 7-14, Ayodhyâkânda 100. 15, Medhatithi on Manu VII. 54, Agnipurâna 239. 11-15 (= Kâma. IV. 25 and 28-31), Manasollása II. 2, verses 52-59, Nitiyakya-ajmrtta p. 108, Râjanitriratnakara pp. 13-14 (quoting Nârada and Harita), Rajantiprakâša pp. 174-178, Rajadharmakastubha pp. 251-254, Budhabhasana pp. 32, 57-58. Only the qualities required by Kautilya in amatyas are set out here: He must be a native of the country, born of high family, influential, well-trained in arts, far-sighted, wise, of good memory, vigilant, eloquent, bold, intelligent, endowed with enthusiasm and dignity, capable of endurance, pure (in mind and actions), well-disposed, firmly devoted (to the king), endowed with character, strength, health, spiritedness, free from arrogance and fickleness, affectionate, who would not have recourse to hatred (even when offended by the king). Kautilya states that amatyas are of three kinds, the best, middling and inferior, of which the first must be endowed in full with the qualities set out by him and the other two are deficient by one quarter and a half respectively. In Śânti 83. 35-40 the faults that disqualify a person for being a mantrin are stated and verses 41-46 set out the qualifications for a mantrin, one of which deserves special notice, viz. (verse 46) he should have secured the confidence of the pauras and jânapadas. Many works prescribe that the ministers were
to be hereditary if the son was capable like his father, e.g. 
Mann VII 54, Yaś I 312, Rāmāyaṇa II 100 26 (= Saṁbhāparva 
5. 43), Agni. 220 16–17, Śukra II 114. The Matsya 215 83–94 
and Agnipurāṇa (220 16–17) add the very sensible remark that 
such hereditary ministers should not be allowed to dispose of 
the cases of their dāyādās (agnates). The Vismudhamottara 
(II. 24 55–56) contains the same rule. This hereditary character 
is borne out by many inscriptions. For example, in the Allahabad 
stone pillar ins of Śāmudragupta, Harṣesna is himself a Mahā-
danda-nāyaka whose father Dhruvabhūti was also a Mahādanda-
nāyaka (Gupta Inscriptions pp 10, 15) and in the Udayagir 
cave Inscription of Candragupta II (ibid p 34) Virasena is 
described as ‘anvayaprāptasācivya’ (who hereditarily obtained 
the post of sahu). The RN P (p 176) after quoting the Matsya-
purāṇa expressly states that the hereditary principle was to be 
given up, if the son or grandson of a former minister had not 
the requisite qualifications, but that such a descendant was 
to be employed only in such state work as was suited to 
his attainments. The mantrins should, according to most 
authorities, be chosen from among brāhmaṇas, kṣatriyas and 
vaśyas, but not from śūdras, even if the latter be endowed with 
The consultation with the council of ministers was to be in 
secret. Kautilya (I 15) says ‘All administrative undertakings 
must be preceded by consultation with ministers. The place for 
consultation should be so secluded that the conversation going 
on inside will not be heard outside and that even birds cannot 
see it, for it is narrated that secret consultations were divulged 
by parrots, manas, dogs and other lower animals.’ 
The Harsacarita VI states that Nāgasena of the Nāga dynasty met 
destruction in Pādmāvatī because his secret policy was 
divulged.

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137. भगवदविविधार्थियोऽस्मात् सत्यमुपयोग्यम् तथा बिधाताः सुविदा: स्वयम्। कर्मेऽश्रेष्ठ विद्वृत्तीतेः पथायोपयेदु नागामः। अन्तः भाष्याःपः। परिः निलाः। नातीना अविर्त्ते तथा विद्वृत्तीताःतवमोऽपि-
पांडवान्तसत्यात्वतावेदण्यान्तर्यामैथ्या विद्योण्य यथायोपयेदुः कर्ममिः स्वयं मानसः। सत्याविवृत्ते विद्युक्ते न गु हत्वातिशौचानामशुद्धेषु तत्तज्ञ तत्तावविवृत्तार्थाय। दश स्वत्त भी। मप 176

137a. शास्त्रप्रवृत्तिभिषेकाणां स्ववेदेऽसत्याःसत्यांसिद्धविद्वृत्तीतिभिषेकाः पांडवान्तसत्याःविवृत्तसत्याः 
पांडवान्तसत्याःविवृत्तसत्याःविवृत्तसत्याःविवृत्तसत्याः। बिधाताः सुविदा: स्वयम्। कर्मेऽश्रेष्ठ विद्वृत्तीतेः पथायोपयेदु नागामः। अन्तः भाष्याःपः। परिः निलाः। 
शास्त्रप्रवृत्तिभिषेकाणां स्ववेदेऽसत्यांसिद्धविद्वृत्तीतिभिषेकाः पांडवान्तसत्याःविवृत्तसत्याः 
पांडवान्तसत्याःविवृत्तसत्याःविवृत्तसत्याःविवृत्तसत्याः। बिधाताः सुविदा: स्वयम्। कर्मेऽश्रेष्ठ विद्वृत्तीतेः पथायोपयेदु नागामः। अन्तः भाष्याःपः। परिः निलाः। 
138. शास्त्रप्रवृत्तिभिषेकाणां स्ववेदेऽसत्यांसिद्धविद्वृत्तीतिभिषेकाः पांडवान्तसत्याःविवृत्तसत्याः 
पांडवान्तसत्याःविवृत्तसत्याःविवृत्तसत्याः। बिधाताः सुविदा: स्वयम्। कर्मेऽश्रेष्ठ विद्वृत्तीतेः पथायोपयेदु नागामः। अन्तः भाष्याःपः। परिः निलाः। 
compare दृष्टिकोण VI ‘नामसूतुगुणन्त सर्वाविवृत्तिभिषेकाः सत्याःसिद्धार्थ्याः 
नामेण। पेत्याःपः। परिः निलाः। 
शास्त्रप्रवृत्तिभिषेकाणां स्ववेदेऽसत्यांसिद्धविद्वृत्तीतिभिषेकाः पांडवान्तसत्याःविवृत्तसत्याः 
पांडवान्तसत्याःविवृत्तसत्याःविवृत्तसत्याः। बिधाताः सुविदा: स्वयम्। कर्मेऽश्रेष्ठ विद्वृत्तीतेः पथायोपयेदु नागामः। अन्तः भाष्याःपः। निलाः।
by a manū, Śrūtavarman lost his kingdom in Srāvasti as his secret was disclosed by a parrot, and king Suvarṇacīda met his death in Mīttakāvātī by babbling in a dream about his policy. Vide also Manu VII. 147-150, Yaś. I. 344, Kām. XI. 53, 65-66, Agnipurāṇa 225. 19, Mānasollāsa II 9, verses 700-705 p. 92. Kaut. (I 15) has a verse 'no outsider should know the king's secret policy which he desires to carry out. Only those who are to carry it out should know it only when it is begun or accomplished'. Vide for a similar rule Manu VII. 105 (=Śānti. 140 24 which is also the last but one verse in Kaut. I 15). 139 The king presided in the council, but if he was not present the chief minister presided (Manu VII. 141). In the Malavikāgīnimitra (V) the king's decision to make a āraṇājya is conveyed to the council of ministers and then the amatya (who here means the chief minister or President of the council) informs the king that the council agreed with the king, whereupon the king asks the council to depute the commander-in-chief Virasena to carry out the proposal. Kaut. further says (I. 15) that all business was to be transacted in the presence of the ministers; but if any one was absent his opinion was to be elicited by despatching a letter. In matters of emergency (or great danger) the king is to call his cabinet ministers and the council of ministers and what the majority decide or what would lead to success is to be carried out by the king. Śukra I. 365 also refers to the view of the majority. It is the duty of the ministers, according to Kām. IV. 41-49, to prevent a king from pursuing an evil course, it is the duty of the king to listen to the advice of his ministers and such ministers are not merely his friends but are really his gurus. 140 Śukra (II. 82-83) asks 'How can the kingdom be brought to prosperity by those ministers whom the king is not afraid to offend? They are no better than ladies who are to be decked with ornaments and fine clothes. What is the use of those ministers, whose advice does not tend to the advancement of the kingdom, the people, the army, the treasury, good government and to the destruction

139. नारक छिँदे पर एवं वनविश्रामपरिवर्तन | मृत्तकीजुने परमावरामय | मालविकागीनिमित्र | शास्त्र 83. 49 and शास्त्र 140. 24 with slight variations; कृतिनिप्रेष्य नारक छिँदे पर विनंकिनियत || विमायित्र नारक 83. 49.

140. समन्तवर्षेण मन्त्रयन्त्रयित्रो द्वारा | शुक्लामिका चैव च संस्कृत: श्रवणाय: | अनुसारार्थवादार्थविषयनिर्दिष्टादि: || समन्तवर्षेण संस्कृतो वाक्याय: || सत्य ते वै राष्ट्री सागरी राजसो हि ते || कामनावर्ष नारक IV 41, 44-45.
The ministers, however, must have found it difficult to please the king and also to placate the subjects. A well-known subhāśita states that one who looks to the benefit of the king comes to be hated by the people and he who looks to the good of the people (only) is abandoned by the king; when there is this great conflict it is rare to find a person who can secure the aims of both the king and the people.\(^{140a}\) Manu (VII 56-59) proscribes the matters in which consultations are to be held with ministers and the procedure thereof, viz. peace and war, sthāna (i.e. army, treasury, capital and the country), sources of revenue, protection (of himself and of the country), the proper bestowal of the wealth obtained, the king is to ascertain the opinions of ministers separately and then jointly and then do what is beneficial; he is then to hold consultation on the most important affairs relating to the six means of policy with a wise brāhmaṇa who is the most distinguished of all ministers and always to rely upon him, to settle all lines of policy finally on his advice and then to act. \(^{140b}\) Yāj I 312 also requires the king to consult his mantrins, then a brāhmaṇa (purohita) and thereafter to decide himself the course of action. The principal matters which mantrins have to concentrate themselves upon, acc. to Kāma XIII 23-24 (=Agnipurāṇa 241 16-18), are: mantra, securing the fruit of the line of policy adopted (such as conquering a country and protecting it), the carrying out of the business (of the State), predicting the good or evil effects (of an action taken), revenue and expenditure, government (i.e. punishing those who deserve punishment), subduing enemies, measures against calamities like famine, guarding the king and the kingdom.\(^{141}\) The Nītīvākyāṃrita (p 185) concisely puts the same by saying that amatyas have to concern themselves with revenue, expenditure, guarding the ruler (i.e. his body, his dharma, wife and children), looking after the army in all its arms.

Yāj I 343 says, since the State depends upon mantra (i.e. lines of policy arrived at after consultation with ministers), the

\(^{140a}\) नरपुरिितवष्टां देशपतां पारिते लोके जनयुद्धितकार एवं ये पारिवर्तिते। हृदि महत्व रितिये वाक्यायकर समाने सुपर्याजवानानुिहं मुद्देम: कार्यकाः। g. by Ṛg. p. 116, last pada being read as वृष्रष्ठितकार एवं ये पारिवर्तिते।

\(^{141}\) सत्यं सर्वकल्पसत्यं ज्ञाप्यक्कालयपर्यथः। आरोपबं त्वमन्नीतितत्विकिरिति-

द्वेषयम्॥ धर्मसम्यक्ष्यो ज्ञात्यनुमतिरक्षायकः। इत्यत्तत्त्वं करतें हलिं द्वयसाना-

विनित्॥ कामद्वारा XIII 23-24 and अश्विनिमय 241 16-18, आयी ध्य: द्वयसाना

साक्षायन्या ज्ञात्यनुमतिरक्षात्। नीतिघराण्यथः (असारसहायकः) p 185
king should keep his lines of policy secret in such a way that people should not know them till the results of his undertakings manifest themselves’. Kautilya (X. 6 last verse) emphasizes the importance of mantra in ‘an arrow discharged by an archer may kill one man or none at all, but a (well-considered) scheme put into operation by a wise man may destroy even those who are only conceived.’

Both Sābhāpara 5. 27 and Ayodhya 100. 16 have the same verse, viz mantra is the root of victory. Kautilya and the Nītivākyāmṛta p. 114 say that mantra accomplishes the following, viz. the apprehension of what is not or cannot be seen, imparting the strength of definite conclusion to what is apprehended, removal of doubt when two courses or opinions are possible, inference of an entire matter when only a part is seen. In most works such as Kauṭ. I. 15, Kām. XI. 56, Agnipurāṇa 241. 4, Pāñcātāntara I. p 85, Mānasollāsa (II. 9 verse 697 ff, p 92) it is said that mantra has five elements which have to be considered (it is pāñcāṅga), viz. means of carrying out actions (or works), plenty of men and materials, proper allotment of time and place, remedies against pitfalls, the (happiness of the kingdom or people) that will result from the accomplishment of the course decided upon.

The high functionaries and office-holders have been different at different times. In the Vedic age, in the performance of the Rājasūya, there are certain offerings (generally twelve in number) which are called ‘ratnām, havānī’ Their order and names differ in different texts, though most are the same in all. Besides the king (the sacrificer), the eleven ‘ratnas’ (jewels) or ‘ratnins’ are (according to the Śat Br. V 3, 2), the commander-in-chief, the purohita, the crowned queen, sūta grāmāṇi, kṣattra (chamberlain), saṅghāḥitṛ (treasurer or charioteer?),

142. एके हन्त्यासा वा हन्त्याविंदु: किती प्रक्रमता ! मात्रेः हृति: सति: किता हन्त्यास्वर्ग-गतात्मि "अर्यवर्ष: X. 6 last verse, quoted in सासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासासाः
aksāvāpa (superintendent of gambling or of the records?), bhāgadugha (collector of taxes), govikartana (hunter), dūta (courier), parivṛkti (discarded queen). Vide H Dh, vol II p. 1215 n and 1216. In Tai. Br (I. 7 3) they are the same as above except that govikartana is omitted and the queen called ‘vāvātā’ is added. These are described in the Tai. Br., I. 7 3 as the attendants of the kingdom (ete vai rāstrasya pradātāraḥ). Vide also Tai. S I 8 9 1–2. It is clear from Sat. Br V 3, 2 2 and 4 that some of these jewels like the commander-in-chief and the huntsman were of low caste or of the śūdra caste. Later on certain functionaries began to be called tirthas, their number being 18; vide Sabhāparva 5 38 (= Ayodhya 100, 36) and Śānti 69 52 for a reference to the 18 tirthas.† Kautilya (I 13) speaks of the 18 tirthas and enumerates them. In the Rādhuvamśa 17.68 Kālidāsa employs the word tirtha in this sense. According to the Nātivākyāmṛta (p 29) persons who are helpers in dharma and state business are called tirtha. In the Edicts of Aśoka the high officers were called mahāmātṛas (in Rock Edict XII there are dharma-mahāmātṛas) and other officers were yuktas, rājakas and prādesikas (in Rock Edict III) of whom the first at least were subordinate to the council of ministers. Later writers like Govindaśāja on Ayodhya 100 36, the com

146. काध्वायुददातावऽम्भीतं सप्तयो धर्म पञ्च च। नितिभिषिकित्वातिदत्तेन नयापि चात्यसूत्र । अष्टोत्तर 100 36 शास्त्रके 5. 38 = नीतिभिषिकाः 1. 52.

147. तत्राच्य बुविपुव गति-तुलोकिते सेवानीति-सुशासन-धौपिनीका-साक्षादयुक्तं श्रीवर्ती-सत्यसुरिरचित्वसंतवसं-पालिकास्तिनुपन्नप्राप्तवर्ष-सुवर्णात्शिल्पकाण्ड-समस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंदू-सामस्मार्थार्योदया-महामात्र-विद्यार्थीकृष्णं वयावहिंd
on the Yasastilaka I. p. 91 differ as to the names of these 18. The Rājatarangini I. 120 informs us that in former times there were only seven departments (karmasthānas), that later on they became 18 and that five more were added to these eighteen (IV. 142–143 and 512) viz. mahāpratihāra, mahāsāndhivigraha, mahāśvāśāla, mahābhāndāgūra, mahāśādanabhāga (and so the Heads were called 'adhigata-paṇcamahāsabda' i.e. to whom five titles with 'mahā' in them were given). The Agni PURĀNA 220 mentions several high functionaries like the senāpati, pratihihāra, dūta and heads of departments. The ŚUKRA-NITIŚĀRA (II. 69–70) enumerates ten principal high functionaries of the king (prakṛtis) viz. purodhas (purohita), pratinidhi, pradhāna (President of council), sacīva (war minister), mantrin (Home minister), pradvavīka (minister of justice), amātya (Revenue minister) and dūta (minister of diplomatic relations) and remarks that others omitted purodhas and dūta from this list of ten and held that these eight should all receive the same pay (verses 71–72), while Śukra was of opinion that the ten high dignitaries should each receive in order one tenth more as pay than the succeeding one (v. 71), that the purohita was the most eminent of all, that among the rest each preceding was more eminent than each succeeding one (II. 74–77), that after these high dignitaries came the other officers (adhikārīganas, II. 279), that then came the dārsaka (secretary ?), and lekhaka (clerk), then the menial servants who waited on the king and lastly the lowest were those who carried out dirty work. In II. 84–87 Śukra briefly brings out the special functions of the

149 This is a meaning of paṇcamahāsabda which is peculiar to the Rājatarangini. Elsewhere that title generally means one before whom were beaten the five musical instruments In the Tācherg grant of Kulastambha in the 9th century the epithet ‘samādhigata-paṇcamahāsabda’ is applied to a king (mahārājādhūraja) in E. I. vol XII p 157, while in an Inscription from Yeωur of about 1040 A D it is applied to a mahāmaṅḍalasāvāra (E. I. vol XII. p 269). In the Phumari plates of Dhāravarsa Dhruvatraja dated Śaka 697 the same title is applied to a minister described as mahāsāndhivigraha-śivārta-lokeśu (E. I. vol. X, p. 89) Vide J B B R A S (New series) vol. I pp. 238–245, VII. 487, VIII. 93 for discussion.
ministers from pratinidhi to dūta\(^{150}\) and then in IL 88–105 at length. In I 353–361 Śukra lays down how the king’s public durbar should be arranged, viz. the king’s throne should be in the centre of the western half of the hall on which the king should sit well-dressed, wearing his crown, armour and a drawn sword; his sons, grandsons, brother’s and sister’s sons should sit behind him, his daughter’s sons should sit on his right and on his left should sit in order his uncles, chief agnates, members of the assembly, commanders; in front of the king to his right should be seated his maternal grandfather’s relatives, the mantrins, and to the left his father-in-law, wife’s brother, officers &c.

The Śukranitisāra (I 374–376) lays down certain very practical rules for the king: ‘he should personally observe villages, towns and districts every year; he should see whether his subjects are kept contented or are harassed by his officers, he should not side with the officers (with the man on the spot) but rather should take the side of the subjects, he should remove an officer who is hateful to many (i.e. a hundred) people and an amātya should be removed if he is found to commit several illegal acts Śukra (in II 107–113) further advises the change of portfolios among the ministers (e.g. sumantra should be appointed amātya or vice versa); he says that for each department three should be engaged, one the most clever being the head and two others being darsakas (secretaries) who should be changed every three, five, seven or ten years; one man should not be allowed to hold the same high office for a long time, since otherwise he becomes intoxicated with power,\(^{151}\) servants should not do any business without a written order nor should a king order anything to be done except in writing-(II 290).

The words in Asoka’s Edict III ‘pañcaasu pañcaasu vāsasu niyātā’ probably refer to the practice of the transfer of high

\(^{150}\) कार्यार्थविषयः स्थुः: महतिपित्र सः । सर्ववाक्यं पवानस्तिः सेनालितः साधिताः ॥ समी कृ न्तितिकुशम: प्रवधितो परमेक्षिणमः । होशशासनवप्यस्तः महाविषयकः स्वामः सब्रः ॥ इवादतविषयः धमामय: श्रवित: कथयो । अयायमविषयः समर्थः स च भाषितः ॥ खुशमनीतः II. 84–86

\(^{151}\) Compare what Kautilya says ‘चले हि विचर्चिते विचरोतिः’ (VII 14 p 305) That power corrupts is forcibly stated by Plato in his ‘Laws’ Book IV p 485 (Random House ed.) ‘Chronos knew that no human nature invested with supreme power is able to order human affairs and not overflow with insolence and wrong’
officers every five years. The 6th caste mentioned by Megasthenes (Fragment 1 p. 41 and Fragment XXXIII p. 85 in McCrindle’s ‘Ancient India’) was that of overseers who inquired into and superintended all that went on in India, and made reports to the king or, where there was no king, to the magistrate. Megasthenes probably confounded the ministers and adhyakṣas (who were often hereditary) with a caste. Vide also Fragment XXXIV pp. 86–88 about the officers of state and their duties. It is probably on account of some such rule as is stated in Śukra about frequent change of portfolios that in the inscriptions high functionaries have epithets prefixed to them which indicate their connection with several portfolios e.g. in the Banskhera plate of Emperor Harsa (E. I. vol. IV p. 208 at p. 211) Skandagupta (who is probably the same as the Skandagupta mentioned by Bāna in the Harsacaritā VI as commander of the elephant arm) was the dūtaka of the grant and is described as ‘mahāpramātāra-mahasāmanta’; in the Allahabad stone pillar Ins. of Emperor Samudragupta (Gupta Inscriptions p. 10 and p. 15 n. 4), Harisena is described as ‘Sāndhivigrahika’ (minister for peace and war), ‘Kumārāmātya’ (the minister of the Yuvarāja?) and Mahā-danda-nāyaka (commander of an army); Prthvisena (a brāhmaṇa) is described as mantrin, kumārāmātya and then mahābala-dhikṛta (in E. I. vol. X p. 72, of Gupta Samvat 117). In theory and practice the king was to issue orders in the presence or under the advice of his principal ministers. We read in the grant of Rājarāja I of the Eastern Čāḷukya dynasty that he issued his command in the presence of the mantrin, purohita, senāpati, yuvarāja, daupārīka and pradhāna (E. I. vol. IV. p. 300 at p. 302). Śukra (II. 362–370) describes the procedure followed in issuing orders about State business. First the mantrin, prādvīvāka (Chief Judge), pandita (head of ecclesiastical department), and dūta should write out the business relating to their departments, then the amātya should write thereon (sādhu likhanam-as, the writing is good), sumantra adds ‘samjag ucārādam’ (it is well considered), the pradhāna writes ‘satyam yathārtham’ (it is the truth, it is as the business requires), pratinidhi should write ‘āṅgikartuṃ yogyam’ (it is proper to accept this), the yuvarāja should write ‘āṅgikartavyam’ (it should be accepted), the purohita should write ‘lekhyam svā-

152. ‘Mahādaṇḍaṇāyaka’ means ‘the chief minister’ as Manu VII 65 states ‘on the amātya depends the control (of the government) and discipline (among subjects) depends on control (danda).’
bhima-tam' (this writing is approved by me); all then should make their seals after their remarks and then the king should write 'angikrtam' (it is accepted) and affix his seal.

The Rājaratnagīra shows that persons often rose to ministerial positions from low birth e.g. (V. 73) it states that an engineer of Avantivarman was a founding, (VII. 207) a watchman became chief minister.

It is necessary to say a few words about some of the great officers of State. First comes the Yuvarāja Kautūlya devotes one chapter (I. 17) to taking care of the prince. The subjects of the prince's education, his association with state business, treatment of princes, good or bad, the coronation of a yuvarāja have already been dealt with (pp. 49, 83 &c.). The younger brother or eldest son was made yuvarāja (Crown Prince) during the reigning king's life (Ayodhya, chap. 3-6, Kām. VII 6, Śukra II 14-16) Rāma on his coronation as king made Bharata the Crown Prince when Laksmana refused to be so (Yuddha 131, 93). The yuvarāja and princes were often sent as governors of different parts of the realm. The Divyāvardāna (XXVI p 371) states that Aśoka was sent by his father Bindusāra to Takṣasthā to pacify popular disturbances and Emperor Aśoka himself is said to have sent his son Kunāla from Pataliputra to the same town to pacify the citizens that had been offended by the arrogance of the amātyas (ibid pp 407-8) Khāravela in the Hāthigumpha Ins (E I. vol XX at pp. 79, 86) was a yuvarāja for nine years from his 16th to his 24th year From the Malavikāgnimitra we learn that while Pusyamitra was virtual emperor of Bharatavarṣa his son Āgnimitra was ruling at Vidiśā and had the authority to divide the kingdom of Berar between two brothers, Yajñasena and Mādhavasena. The yuvarāja is not generally enumerated in the lists of mantrins, but he is one of the 18 tirthas and from Śukra (above p 115) it appears that he had a seal and important matters passed through his hands along with those of the ministers. According to

153. Compare the word 'drstam' occurring at the beginning of Chammak and Sivan grants of the Vākāṭaka emperors Pravarasena II and the same word in the plate of the Pallava king Śvankandavarman (in E I. vol I at p 9) In most plates of the Vākāṭakas the word 'drstam' occurs at the beginning, vide E I. vol 22 p 167

154. जीवकस्य स्वाभिस्फलता युवे न प्रमाणपुलिका कवित्। स्वभावक्षेत्रुष्य महानि। सर्वस्य्यसिद्धां शिवमविशिष्टः। विज्ञानवैसूपी न इत्या रसरूपे स्वाभिषिक्ताः। स्वाभाव: स्वपलवेद ह सत्ये स्वाभिशिष्टाः॥ ध्रुवकृष्णोऽविना। V 17-18.
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Sukra (II, 12) the Yuvarāja and the group of amatyas are the two arms or eyes of the king, but Sukra V. 17 warns the king against transferring all power to the Crown Prince except when the king is about to die. The Matsyapurāṇa 220.7 quoted in the Budhabhūsana (p. 33) prescribes that the king should entrust to the well-disciplined prince at first unimportant offices and then gradually important ones. If a prince was ill-behaved he was not to be abandoned as he would go over to the enemies and harm the king, but he should be kept confined in a guarded place (Kām. VII 6, Budhabhūsana pp 33, 35, verses 77, 93). As regards his emoluments he was placed on the same footing as the mantrin, purohita, senāpati, the queen, the king’s mother (Kaut. V. 3). What office is meant by the Kumārāmātya in some of the Inscriptions (e. g. Gupta Ins. pp. 10, 50, E. I. vol. X p. 72, E. I. vol. XI p. 83) is not clear. It does not probably mean ‘a royal prince who was also an amatya’, but rather some minister attached to the Yuvarāja, as contradistinguished from rāgamātya (which office occurs in Gupta Inscriptions, p. 218).

It appears that in ancient times provincial governors could be total strangers to the royal family. From Rudradāman’s Junagadh Ins. we learn that the governor of Surāstra under Candragupta Maurya was a vāhya called Pusyagupta and under Asoka a Yavana noble or king called Tusāspa (E. I. VIII p. 36 at p. 43).

Next comes the purohita. In H. Dh vol. II pp. 40 and 363 it has been already shown how purohitas existed from the most ancient period of the Rgveda, how the purohita was thought to be half the soul of the king and how the co-operation of the spiritual teacher and the secular head (the king) was deemed absolutely necessary for the prosperity of the kingdom, how Gautama (XI 12-14) and Ap. Dh. S. II 5. 10. 16 prescribed the qualities of the purohita. Our authorities show that the purohita was not a mere priest. The Ait. Br. (40. 2) calls the purohita ‘rāstragopa’ (the saviour of the kingdom). The Śukraniti also...

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155. अधिकारेण संयुक्त विनितलिपिविनिपाल्लेद। आएव स्वस्त्वम तत्स्यात्रक्षेत्राय नाहलति। सत्य 220. 7, ठुम्ब p. 33

155a. It is strange that Dr. Buni Prasad in ‘The State in ancient India’ (p. 189) remarks ‘the former governor is designated rāstrīya while the latter is called adhisthāya’ ‘Adhystāya’ in Rudradāman’s Ins. is only a gerund of ‘adh’ with ‘adhi’ and means ‘having ruled over’ राज्य is formed from राज according to राज्यवायाराज्य वर्ण (पा. IV. 2. 93) and means ‘one ruling over a province, a Provincial Governor’ In dramas राज्य means ‘king’s brother-in-law’. Kṣirasvāmi says नागाशवस्य राज्य-भिक्षुः राज्याः.
though a very late work, similarly describes the purohita (II. 74) as 'rājarāstrabhūt' (the supporter of the king and the kingdom). In the Rgveda III. 53. 12 we find the idea that the hymns and the spiritual power of the purohita Viśvāmitra protected the Bharata clan. He made the king ready for battle and accompanied him in battle murmuring 'where the arrows fly &c'. (Rg. VI. 75. 17) while the fight went on (vide Āśv. Gr III. 12. 19 quoted below n. 308) The Visnudharmasūtra III. 70, Yāj. I. 313, Kām. IV. 32 require that the purohita was to be well versed in the vedas, itihāsa, dharmaśāstra or danda-nīti, in astrology and portents, in rites of propitiation contained in the Atharvaveda, of high family, endowed with all udyās and good acts as stated in the sāstras and with austerities. Kautilya (I. 9) states almost the same qualifications for the purohita, requires the king to honour his advice as a pupil honours his teacher or a son his father or a servant his master and says that royal power advanced by brāhmaṇas, enforced as with a spell by the consultations of mantrins and endowed as with a weapon by the observance of śāstric rules becomes invincible and secures success Vide Adi. 170. 74–75, 174. 14–15, Śānti. 72, 2–18 and chap. 73, Rāyajitipratkāśa pp. 59–61 and 136–137, Rājadharma-kaustubha pp. 255–257 for qualifications expected in the purohita. Kautilya (X. 3) states that while a battle is going on the (chief) minister and purohita should urge on and encourage the soldiers by exhorting them with verses from the Vedas and classical Sanskrit, promising great rewards in the next world for those who fall in battle. The Śukranītisāra (II. 78–80) requires in the purohita among other qualities the study of dhanurveda, proficiency in arms and in formations of armies for battle and possession of so much religious merit as to be able to pronounce an effective curse. A purohita was to be distinguished from a rta (a sacrificial priest) as Manu VII. 78 and Yāj. I. 314 show Vide Mānasollāsa II. 2. 60 (p. 34), Rājanitrītakānaka pp. 16–17, Visnudharmottara II. 5, Agni 239. 16–17 for further passages on purohita. Some authorities include

156 Bhāvanīsvari 233. 12
157 Vide Adi. 170. 74–75, 174. 14–15, Śānti. 72, 2–18 and chap. 73, Rājajitipratkāśa pp. 59–61 and 136–137, Rājadharma-kaustubha pp. 255–257 for qualifications expected in the purohita. Kautilya (X. 3) states that while a battle is going on the (chief) minister and purohita should urge on and encourage the soldiers by exhorting them with verses from the Vedas and classical Sanskrit, promising great rewards in the next world for those who fall in battle. The Śukranītisāra (II. 78–80) requires in the purohita among other qualities the study of dhanurveda, proficiency in arms and in formations of armies for battle and possession of so much religious merit as to be able to pronounce an effective curse. A purohita was to be distinguished from a rta (a sacrificial priest) as Manu VII. 78 and Yāj. I. 314 show Vide Mānasollāsa II. 2. 60 (p. 34), Rājanitrītakānaka pp. 16–17, Visnudharmottara II. 5, Agni 239. 16–17 for further passages on purohita. Some authorities include

156 Bhāvanīsvari 233. 12
The Purohita and the State

The purohita among amātyas or mantrins (e.g. Vijñāneśvara on Yāj. I. 353, Śukra II. 69-70), while others like Yāj. I. 312 regard him as distinct from mantrins. The purohita was often hereditary. Acc. to Kautilya quoted above he was to employ means declared in the Atharvaveda to remove calamities, divine and human. The great divine calamities acc. to Kautilya IV. 3 are fire, flood, disease, famine, rats, wild elephants, snakes and evil spirits.¹⁵⁸ According to Manu VII. 78 the purohita was concerned with the religious rites laid down in the śrāuta and grhya sūtras and Ap II. 5. 10. 14-17 show that the purohita had complete jurisdiction in matters of penance for offences. Vas. (19. 40-42) provides that if the king lets off an offender deserving to be punished the king had to fast for a day and the purohita for three days and to perform the heavy penance of Krochra if the king punished the innocent. According to most authorities he played a role that was pre-eminently religious. He is not mentioned among the 10 limbs of the sābhā in the administration of justice. Kat. 24 (quoted in S. V. p. 20) does not require him to be an expert in arthaśāstra, though Kat 56 quoted by the Mit. on Yāj. II. 2 and Sm. C. (II. p. 14) say that the king should enter the Hall of Justice with learned brāhmanas, the ministers, the chief justice, the purohita &c. Yāj. I. 312 and the Mit. on Yāj. I. 312-313 on the other hand prescribe that even after consulting all mantrins, the king was finally to consult the purohita in all secular and religious matters. The Nītivākyāṁita (purohitasamuddesa) p 160 states that the divine calamities are: shower of fire (fall of lightning?), excessive rainfall, epidemics, famine, damage or disease of crops, swarms of locusts and other vermin, diseases, goblins and female evil spirits, snakes, wild elephants, rats. The purohita is required to know ritual of five kinds,¹⁵⁹ viz. that dealing with the propitiation of Naksatras, that of śrāuta sacrifices, that of the sanhitas (of Tantra worship), that of Atharvaśiras and that of

¹⁵⁸ ईश्वर प्रभाकर सम्बन्धितं कारिकायम्।
¹⁵⁹ पञ्चशताय मिथिलायां काे। भारत सूत्रम्।
sāntis (such as grahaśānti &c.). Calamities, according to Kām. XIII. 20–21, are of two sorts, divine (daiva) and human; there are five kinds of the first viz. fire, flood, disease, famine and epidemic, all of which can be met by human effort and by propitiatory rites, while human calamities should be withstood by constant effort and by proper lines of policy. The same verses are Agnipurāṇa 241 14–16.

Acc to Kautāyana (V 3) 48000 pana were the salary of the (royal) sacrificial priest, acārya (teacher), mantrin, purohita, commander-in-chief, crown prince, the king’s mother, the queens and he holds that “with that amount of maintenance they would not yield to temptation or revolt (against the king)”. The amatyas, the chief judge and even the purohita could be punished by the king, acc to Manu, if any of them went wrong (VIII 335 and IX 234) and Kaut. (IX. 3 ) prescribes that when the purohita is guilty even of a great offence, the remedy is to imprison him or banish him. Some great ministers, though not exactly purohitas of the king, were learned brāhmaṇas and led simple lives such as Cānaka and Mādhava. There is divergence of views about the salaries set out in the Arthaśāstra (V. 3). Jayaswal (in ‘Hindu Polity’ part II p 136) holds that the salaries were yearly and the pana in which they were paid were silver ones. Prof Dikshitar (in ‘Mauryan Polity’ p 151) holds that the salaries were monthly. Confusion is caused by the fact that there were panas of copper, silver and gold Vide Rajantiprakāśa p 294 The Rajatarangini VII 950 speaks of dīmāças of gold, silver and copper. Rao Bahadur K. V. Rangaswami Aiyangar holds that the salaries (in the Arthaśāstra) were monthly and in golden panas (in ‘Ancient Indian Polity’ pp 44–45). Therefore this matter must be investigated. Manu (VIII 13) promises that those names of copper, silver and gold coins which are well-known among the people (of its day) for purposes of trade will be described by him. Acc to Manu VIII. 134 and 136, Vīṣṇu Dh S IV. 6–10, and Yāj I 363–365 five krsnālas are equal to a māsa, 16 māsas are equal to a suvarna, 4 suvarnas (or five acc. to some) are equal to a pala, a karsa is equal to ½ of a pala and a piece of copper one-fourth of a pala in weight is called a pana, which is the same as kārṣaṇa 161 (equal to 80 raktuśas or

160. कार्तिकापदम्यपमितां सनातनाभवतराजवधोपशास्त्रं श्वाल्लिङ्गमिर्योऽपि संगीतिकम् गीता। दुर्योधनस्यर्हस्यनास्यानानीव। निर्भयं नामोऽन्नमेव। किन्तु वैदिकेन्द्रियांस्यां यजुर्वेदेः।

161. कार्तिकापदम्यपमितां श्वाल्लिङ्गमिर्योऽपि संगीतिकम् गीता दुर्योधनस्यर्हस्यनानिब्रह्मान्यो। निर्भयं नामोऽन्नमेव। किन्तु वैदिकेन्द्रियांस्यां यजुर्वेदेः।
guīyā berries). A pala was equal to 320 raktikās. Kaut II. 19 says practically the same thing. In Kaut. V. 3 the salaries range from 48000 to 60 panas from the highest functionaries to the lowest servants. They must all be taken to be for the same period in every case and in the same metal, since Kaut expressly states no different periods and no difference in metal. Ordinarily the words pana and kārsāpana (as stated by Manu VIII. 136 and the Mit. on Yaś. I. 365 and the Īśkraniti IV. 1. 116) refer to copper pieces (used as coins) and bearing a stamp. Another table given by Manu VIII. 135-136, Visnu Dh. S. VI. 11-12, Yaś. I. 364 is: 2 raktikās 162 or kṛṣṇalas = one (silver) māsa, 16 māsas = one

162. A raktikā was found by General Cunningham after many experiments in weigh on an average 1.8 grams (vide his 'Coins of Ancient India' pp 45-46 and also Rapson's 'Coins' pp. 2-3). So that a silver dharana or purāṇa (of 32 raktikās) should weigh about 57.6 grams and a copper pana (of 80 raktikās) should weigh 144 grams. It appears that the weights of Indian coins in different parts and at different times varied a good deal. Cunningham ('Coins of Ancient India' p. 5) states that gold was cheap in India, being as one to eight rates of silver. But in medieval times i.e. about 1300 A.D. (vide Śukra IV. 2 92-93) gold was 16 times the price of the same weight of silver, which again was 80 times of the price of the same weight of copper. Though, as stated in ante 161 above, a copper pana was usually equal to eighty raktikās, a copper pana of 100 raktikās (i.e. of 20 māsas) was known. Nār. (pariṣṭa verse 58) speaks of māsa as the 20th part of the kārsāpana and the Mit on Yaś. I. 365 and Vy Nūnaya p. 207 quote a verse (attributed to Uśanas by Haradatta and Maskarin in Gaūt. XII 19) that a māsa is a twentieth part of pana (मासों विभागितो भागम् चक्रायु परिकीर्तित:). The Agnipūrṇā (227 2) appears to have known a pana of 120 kṛṣṇalas (कृष्णालां दश पद्यं कविण्यसि राम कीर्तितः) The verses in Nār. (pariṣṭa verse 58-60) are ascribed to Kāt by the Sm C II. p. 99 and it is stated by both that these terms are in vogue in Pañcanada (Punjab). When the pana of copper was equal to 20 māsas (and 100 guīyās), the copper coin would have been almost of the weight of the modern copper half pana coin. The table given by Nār. (pari 58-60) is: 4 kāknīs = māsa, 20 māsas = kārsāpana (which is the same as Andukā), 4 kārsāpanas = dhānaka, 12 dhānakas = suvarna (also called dināra). The table given by Br (as quoted in Sm. C. II p. 99 and V. R. p. 607) is the same. Br. as quoted by Aparāṇka p. 832 and V. R. p. 111 employs the word 'nānaka' for coin, which word also occurs in the Mṛchakatika and in Yaś. II. 240-241. The Amarakośa states that nūka and dināra are synonyms and also gives other meanings of nūka. Śabara on Jai. IV. 3 39 gives the striking example 'no one would spend a kārsāpana for finding out a kāknī that he had inst'. The Arthasāstra II 12 p 84 states that the superintendent of the mint should manufacture copper panas, half panas, kāknīs and half kāknīs. The Visnu Dh. S V. 96 refers to a gulden.

(Continued on the next page)
silver purāṇa or dharana; 10 dharanas = one (silver) satamāna. This table was used for silver coins. Thus a dharana would be 1/10th of a pāla as stated in the Bṛhatśamhitā (10.13 palada-

(Continued from last page)
māsaka. Under the Guptas golden coins are mentioned as dināras, vide 'Gupta Inscriptions' p. 29 at p. 31 where there is a gift of 25 dināras in the Gupta year 93 and pp 38, 41, 261 (where it is stated that one bhikṣu was to be fed every day throughout the year from the permanent endowment of 12 dināras), From the Baigam plate dated Gupta samvat 128 it appears that one dināra was equal to 16 rūpalas (silver coins) in E I vol XXI p 80. A Mathurā Ins of the 28th year of Huviska speaks of the deposit of 550 purāṇas (E. I. vol XXI p. 55 at 61). Bhāskaracārya (who was born in Śaka 1036 and wrote his Siddhāntasūramāṇi in 1072 Śāke 1 1150 A. D.) gives the following tabule (in Lilāvati 1-4): 20 varaśālas = kākūni, 4 kākūnis = pana, 16 panas = dārma, 16 dārmamas = nāsaka, 2 yavas = guṇāja, 3 guṇājas = valla (modern Marathi vāl), 8 vallas = dharana, 2 dharanas = gadyānaka, 5 guṇājas = māsa, 16 māsas = karsa, 4 karsas = pala and a kara of gold is called Snvara. It will be seen that Nar. and Ālañāvati differ as to कालक्रम Gadyānakas of gold are referred to in the Pattadakal pillar Ins of Kirtivarna I (754 A. D.) where it is stated that a field of 30 mvartanas was purchased for thirty gadyānakas of gold (E I vol III, pp 6-7) From a verse of the Caturvīmsatimata quoted by the Mit in Yaḻ III 258 it appears that gadyānaka was also a silver coin. From an inscription of Vikramādiya V near Gadag dated Śaika 934 it appears that fines for offences were levied in gadyānakas (E I vol XX p 64) The following works may be consulted for further information on Indian coins viz Cunningham's 'Coins of Ancient India' (1894), Rapson's 'Indian coins' (1897) in the Grundriss, C. J. Brown's 'Coins of India' (in the Heritage of India series, 1922) The Dharmaśāstra (pp 137-139) and the Vaijayantī nṛ Vams Dh S 4, 9 may be consulted for efforts to reconcile the various statements about Snvara, Nāska &c. For an informing paper on the most ancient Deran, vide Proceedings of the British Academy vol XVIII pp 211-266 where it is established that the earliest deran was period begins about 187 B C Therefore Jolly's assumption (in Recht und Sute p 23 followed by Winternitz in 'History of Indian Literature' vol II p. 216 n. 4 that all Indian works in which the word dūrara occurs cannot have been compiled before 2nd century A D is unwarranted. Prof. Keith (JRAS for 1915 p 504) does not accept Jolly's assumption. The dūrara was variously defined According to Visnugupta quoted in Hemādīn's Vratakhandha, a rūpaka is 1/8th of snvara and a dināra was equal to 28 rūpalas, while acc. to Nār. and Kāt. purāṇa and सूत्त are synonyms. The Dharmaśāstra says that a Lārāpana (of silver it seems) was equal in eight or ten dhabbukas. One of the verses of the Jānānāvari (compiled in 1290 A D) that speaks of gold as े (15 times in price of the same weight of silver) may be cited here 'रै सुत्तार जारी पाये तत्री राजश्लोके उसे तालै तेजे ते तिहारी' chap 17 verse 322 (Bhide's and Madgavkar's editions)
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\( \text{śabhāgo dharaṇam} \). Nārada (pariśista 57) expressly states that a silver kārśāpana is in vogue in the south i.e. a silver pana or kārśāpana was not universal. A golden suvarna also comprised 80 guṇjas, while the standard silver pana was of 32. Rhys Davids (in 'Buddhist India', p. 100) states that about the time of Buddha's birth transactions were carried on in terms of the kahāpana, a square copper coin weighing about 144 grains and guaranteed as to weight and fineness by punch marks made by private individuals, that there were half and quarter kalāpanas also, that a kahāpana would be now worth about 6ths of a penny, though its purchasing power was then equal to about one shilling of the present day. Therefore it is proper to understand that a pāna or kārśāpana, when the word is used without any qualification, was meant to be one of copper and that prima facie the salaries in Kautilya were meant to be in copper panas. This conclusion can be supported by various considerations. Manu VII. 126 prescribes that the wages for the lowest menial servant (such as one who sweeps the house or brings water) is one pana a day and of a superior menial servant 6 panas a day and that the former was to get in addition one pair of garments every six months and every month a drona of corn (which would be equal to 1024 muṣṭis according to the Mit. on Yaj III. 274). Whatever ages may be assigned to the Arthaśāstra and the present Manusmṛti the two works cannot be separated from each other, if at all, by more than a century or two. Therefore the economic conditions of the one may be held to have not differed much from those to which the other refers. It is impossible to hold that the lowest menial servant got one gold pāna a day besides over 30 muṣṭis of corn every day (1024 in a month). If that were so, the lowest menial servants of Kautilya's days would have to be supposed to be a hundred times better off than their confreres in big cities like Bombay towards the end of the 19th century (when menial servants got from five to ten rupees a month without any allowance of grain). Therefore the pana in Kautilya V. 3 is not of gold. Kautilya (in V. 3) says that a king who has a depleted treasury may make payment of salary by giving forest produce, cattle or fields along with small quantities of cash, that if he has undertaken to colonize a waste tract he may make payment of salary in cash only and not by bestowing a village. In connection

163. काक्ष्यायनी दक्षिणदिशा विषि रोपयं गवति। भारत (परिलिख 57): इत्यादिभिः पीत्यः दुहों संयमः। उत्तमवर्ति धिरुष्णतेन या पीयनताविदिति। कौशिकः V 3.
with this he says that 60 panas are to be the equivalent of one ādhaka of corn (sastivetanasyādhamkam kṛtvā hiranyañurūpam bhaktam kuryāt) 164. An ādhaka 165 came to only 256 mustis (handfuls) of corn and even in famine times one ādhaka could not have cost 60 silver panas, much less golden ones. In V. 3 Kautilya declares that an ordinary dīta should get ten panas for a journey of one yojana and twice the wages for each yojana up to one hundred. A yojana acc to Kaut, himself (II. 20) is equal to 8000 dhanus (acc to another reading 4000 dhanus), a dhanam being equal to four aratnīs (each aratni being 24 angulas). So taking the highest figure a yojana was at the

164 The word hiranya has two senses 'gold' and 'money or 'cash' whether in gold, silver or copper (as said by Amara who gives 'dravina' as a synonym). When Kautilya says that the king may pay 'hiranya' and not 'grāma' he means only cash payment and not necessarily only gold vide the copperplate grant of Śilāditya VII in Gupta Inscriptions p 179 at p 189 where the grant of a village is said to be 'sadbhāyahrānyādeyāh'. Here dhānya (payment of tax in kind) is contradistinguished from payment in hiranya, i.e. cash (either gold, silver or copper). When Patañjali states that the Mauryas being greedy of 'hiranya' founded or manufactured images (Mahābhāṣya vol II p. 429 on Pāṇ. V 3 99 quoted in H Dh vol II p 710 n 1696) what is meant is that they wanted cash and not merely gold.

165 The measures of capacity such as ādikula, jarṣ occur in the Mathura Ins of Huviska (E I XXI p 55 at p 61). According to Pārāśara (VI 70) two prasthas are equal in an ādhaka and 32 prasthas are equal to a drona. The Mitra in Yaj I 275 quotes a verse in this effect 8 mustis = one ādhaka (kṛtīc) or kūṭa (acc to some); 8 kūṭa = puskala; 4 puskala = ādhaka; 4 ādhakas = drma and 16 dronas = khāri Apanāra (pp 305 and 846) quotes two verses (which the Par. M II 1 p 141 ascribes to the Bhaiṣajya-purāṇa) which say 2 palas = prastī, 2 prastīs = kudava, 4 kudavas = prastha, 4 prasthas = ādhaka, 4 ādhakas = drna, 2 dronas = kumbha. Tho Danda viveka p. 135 refers to this, adds that same held the kumbha to be equal to 20 dronas (Kaut II 20 holds kumbha to be equal to 20 dronas) and quotes the following verse from चौधरेश्वर 'कुम्भमाकरे १६२। त्वेऽल्लान । कंदाध्वाक एवंकुम्भम् । त्वां। यद्राहै: राजकालसः कर्त्यति ।' The word drona occurs even in the Rgveda in the sense of a wooden trough used for holding water or soma juice. Vide Rg, VI 2 8, VI 37 2, VI 44 20, IX 28 4 etc in Rg IV 32 17 the sage prays Indra in grant a hundred khāris of soma. Tho words ādhaka and drona occur in the archaic group (Pāṇ. II. 4 31), Khāri in Pāṇ, V 1, 33 and V. 4 101. The Par M II 1 141 says on this difference about kumbha 'विद्येमेव शास्कद्वर्ग विद्याध्वाकोऽप्यकर्त्यति' Kaut (II. 19 p 104) himself tells us that the measure drona was of four varieties, 1628 palas, 175, 1875 or 200 palas according as it was used for measurement in the harem, or for servants or for ordinary dealings or for royal income.
most about 9 or 10 miles (or only 4½ or five miles according to the other reading). To hold that 10 silver panas were allowed to an ordinary āśura for going even ten miles (which he could cover in half a day or less) would be too much. Hence also the panas in Kaut. V. 3 are only copper ones. When once it is settled that the panas are of copper, it easily follows that the salaries in panas were monthly. Artisans and craftsmen were, acc. to Kaut., to get 120 panas. If this were yearly, they would get only 10 panas a month, while, according to Manu quoted above, even the lowest menial was to get a pana a day. Therefore 120 panas (of copper) were the monthly salary of an artisan. A monthly salary is more natural and practical than a yearly one. Other ancient writers like Śaṅkha-Likhita (in Rājanītīprakāśa p. 252) contemplate a monthly salary for soldiers (viz. two suvarnas a month). From the Nasika Inscription No. 12 (El. I. Vol. VIII.

166. शास्त्रिज्ञगतः वाहनधृष्टो सतमण्डियान् द्रिश्यितां द्रिश्यितमात्रेऽवर्तिताः पाणीये स्वर्गे पाणीये यत्। अस्मिततुद्वारमदि कवित्विवेकाध्यात्मानं कुलचारिकिल्लविधाक्षुखाण्याविक्रेत संसारः प्रस्तूतः। राजधर्मकाण्ड पृ. 58, राजधर्मसिद्धांत पृ. 252. राजधर्मकाण्ड explains राजकीय मूले योगेंदु नगरान्तरियों दूरन वापा पा राज्य विधा-हत्या। पसियंदु त्वायुे द्राम्येवनात्रादिपिष्करण्येव द्राम्येद्वेशितर्वः। त्रिश्रेष्ठ्युत्वा वाम्येवनात्रादिपिष्करण्येव द्राम्येद्वेशितर्वः। त्रिश्रेष्ठ्युत्वा वाम्येवनात्रादिपिष्करण्येव द्राम्येद्वेशितर्वः। त्रिश्रेष्ठ्युत्वा वाम्येवनात्रादिपिष्करण्येव द्राम्येद्वेशितर्वः। त्रिश्रेष्ठ्युत्वा वाम्येवनात्रादिपिष्करण्येव द्राम्येद्वेशितर्वः। त्रिश्रेष्ठ्युत्वा वाम्येवनात्रादिपिष्करण्येव द्राम्येद्वेशितर्वः।

A few words may be said about words like suvarna, śatamāṇa, niska &c. The word kṣrama occurs in the Tāl S II 3. 2. 1. Hiranyakāra (goldsmith) is found in Vīj S 30 17. In Rg I. 126 2 gifts of a hundred niskas and horses are mentioned and in Rg IV 37 4 the Rbhus are addressed as wearing 'good niskas' In Atharva V. 14 3 'niska' occurs and in the Ait. Br (39 8) damsels who are niskaśāntihya (whose necks are adorned with necklaces of niskas) are among the gifts. So 'niska' was probably a gold piece used as a coin or an ornament or a thin plate of gold like a modern pūša, several of which are even now worn by women in the form of a necklace. In Rg II 33 10 Rudra is said to wear 'viśvarūpa-niska' which is probably an allusion to golden pieces stamped with various figures. In Rg VI 47 23 the sage says that he received ten 'hīranyapindas' (golden pieces) from Divodāsa. In Rg VIII. 78 2 a prayer is offered to Indra for the bestowal of golden 'maṇa', which may be the precursor of 'śatamāṇa'. This last occurs in the Tāl, S VI. 10 2 Pāṇ (V. 1. 27, 29, 30) respectively mentions śatamāṇa (what is bought for a śatamāṇa is called śatamāṇa), kārśāpana, niska and V. I. 34 refers to pāṇa, pāda and maṇa Patañjali (Mahābhāṣya vol. III. p. 369 on Pāṇ. VIII 1. 12) gives the instance 'from this kārśāpana give one maṇa to each of these two persons who are here'.

The sūtra of Pāṇini V. 2. 120 (rūpād-āhātaprāśasīlayor-yap) conveys that

(Continued on next page)
p. 82) we learn that in the early centuries of the Christian era 35 kārsāpanas were equal to one suvarna.

Hopkins in 'Position of the ruling caste' J. A. O. S. vol. XIII. pp. 151-162 traces how the influence of the purohita grew. One cannot accept his views about there being three layers in the Mahābhārata and the conclusions from such dealing with the text that he draws, which are rather subjective. Gradually the importance of the purohita waned As the Śukrantisāra cited above (n 150) shows, long before that work he came to be omitted by several writers from the council of ministers and was supplanted by the Pandita. The same functions came to be exercised by an officer called dharmañḍhakṣa or dharmañḍhikaranika in Bengal and other countries. The Matsyapurāṇa (215.24) states the qualifications of a dharmañḍhakṣa. Vide E I vol. 14 p. 156 at p. 160 of the Nāhata grant of Bāllalasena, where we have both purohita and mahādharmañḍhakṣa mentioned among the great functionaries of State and the Benares copper-plate of the Cedi king Karmadeva in 1042 A. D. in E I vol. II. p 309 where we have mahādharmañḍhikaranika but no purohita. Besides another officer called sāmvatsara (astrologer) gradually took over some of the functions of the purohita. The Visnuñḍharmasūtra III. 75 (rājō ca sarvakārṇu sāmvāt-sūrādāṇām syāt) requires the king to depend on the sāmvatsara in all matters. The Brhat-samhitā (2.9) states that a king without a sāmvatsara mistakes his path like a blind man. Kām. 4.33 and Visnuñḍharmottāra II. 4.5-16 recommend reliance on him. Kautilya 167a IX. 4 was himself against too much reliance on astrology, while Yāj. I 307 holds that the rise and fall of kings depend on the (aspects or influence of) planets.

(Continued from last page)

Pāṇini knew metal pieces that were well beaten and trimmed into good-looking coins. The Vṛtika 'Kāññyāścopasankhyānam' (on Pāṇini V. I 33) establishes that kāññi was used in those days as a medium of purchasing goods. The Kāññā gives 'rūpyo dūnārah' as an example of the various ways in which the vṛtika mentions two types of rūpya, sāmkāra, and sāmāyapadhāra. 167. Sāmāyapadhāra as an example. 167a. Kāññā gives 'rūpya dūnārah' as an example of the various ways in which the vṛtika mentions two types of rūpya, sāmkāra, and sāmāyapadhāra. 167b. Kāññā gives 'rūpya dūnārah' as an example of the various ways in which the vṛtika mentions two types of rūpya, sāmkāra, and sāmāyapadhāra.
Senāpati: The qualities of a commander-in-chief are stated in several places such as Kauṭilya (II. 33), Ayodhyā 100.30 (=Sabhā 5. 46), Śānti 85, 31-32, Matsya 215. 8-10, Agnipurāṇa 220. 1 ff, Kām. XVIII 27-44, Visnudharmottara II. 24. 4-6, Mānasollāsa II. 2, verses 90-92 p. 37. Acc. to the Agnipurāṇa 220. 1, Matsya 215. 10 the commander-in-chief must be either a brāhmaṇa or a ksatriya. Śukra (II. 429-430) requires that a ksatriya should be preferred as senāpati, but if a valiant ksatriya be not available a brāhmaṇa may be chosen, but a śūdra should not be chosen. Acc. to the Mānasollāsa he should possess the following qualities: good family, character, courage, proficiency in (several) languages, cleverness in riding horses and elephants and in the science of arms, knowledge of omens and medicine, knowledge of the breeds of horses and of the difference between what is essential and non-essential, liberality, sweet speech, self-control, intelligence, resoluteness. In the Mahābhārata senāpatis are elected and consecrated (vide Udyoga 151, Drona 5, Karna 10), but this was not so in later times. He is appointed by the king on his own initiative.

Dūta: (Ambassador or messenger). The word and the office of dūta as messenger was known in the most ancient times. In Rg. I. 12.1, 1.161.3, VIII. 44.3 Agni is said to be the dūta and is requested to bring the gods to the sacrifice. There is also attached to the word the meaning of espionage, since Saramā, the bitch of the gods, is represented in Rg. X. 108. 2-4 as sent by Indra to find out the treasures of the Pānis. The Udyogaparva (37.27, cr. ed. 37.25) specifies the eight qualities of a dūta viz. he must not be stiff-necked, nor timid, nor dilatory, he must be kind and amiable, not liable to be won over by others, free from diseases, endowed with a fine mode of speech.Śānti 85.23 refers to seven qualities. Vide Ayodhyā 100.35, Mānu VII. 63-64, Matsyapurāṇa 215. 12-13 for the qualities of a dūta. The dūta should speak only what he has been ordered (by his king) to speak, otherwise he would be liable to be killed (Udyogaparva 72.7, cr. ed. 70.7). Śānti 85. 26-27 say that the person of the dūta is sacred. Kauṭilya devotes one chapter (I. 16) to the treatment of the subject of dūta. He states that the dūta is to be sent by the king after the line of

168. असाध्यश्रेष्ठप्रकृतिरात्रेऽर्थो रघुराधाराभिश्चतै:। असाध्यश्रेष्ठसुभृत्तिर्भवो वधस्य वधवत्तिर्भवस्य। अवधारणा 37. 27.

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policy has been settled at a council of ministers to the king who is to be attacked (vide Kām. XII. 1 also). A dūta is of three kinds: (1) nīsrārtha (one to whom is entrusted full discretion as to what is to be said) is one who is possessed of the qualifications required in a minister (aṁāhyā), such as Kṛṣṇa from the Pāndavas or the ambassadors in modern times; (2) pāramārtha (entrusted with a definite mission, an envoy) who possesses the same qualifications as the first less by one quarter; (3) sūsanakara (a mere carrier of royal writings or missives) who possesses only half the qualifications of the first. The Mit. on Yāj. I 328 lucidly explains the three varieties. Kauṭ. dilates at great length on the qualifications of the dūta, what he has to note while in the enemy country, how he is to behave (such as avoiding women and wine), how he is to gather information through spies; but all this has to be passed over for want of space. Vide Kām XII 2-24 for the same. Kām. (XII. 22-23) briefly sets out the following duties of the dūta; determining those who are inimical to the king to whom he is sent, winning over to his side the friends and relatives of the enemy king, finding out the (number and equipment of) forts, the economic resources and military strength of the enemy king, collection of news as to what the enemy intends to do, bringing over to his side the officers in charge of the districts of enemy country, collecting knowledge about the places of the enemy where battles can be waged by his king or whence he can pass away swiftly. Manu VII. 65 says that it is the dūta who brings about alliance or war. Kaut. says that when the ruler to whom the dūta is accredited becomes displeased at the message he brings, the dūta should reply.76 All kings, you and others, speak through their dūtas. Therefore dūtas have to deliver the message entrusted to them even if weapons are raised (to threaten them); even the lowest caste dūtas (cāndālas) are not to be killed, what need be said about a dūta who is a...

169. वद्याचतुर्तम् वो डृष्टिभविष्यति । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार । अध्ययन्त्यसचित्रो विद्वानाः । शास्त्रीयो शास्त्र धौक । अध्ययन्त्यसचित्रो विद्वानाः । अध्ययन्त्यसचित्रो विद्वानाः । पांढरपीढ़ी । परिवार ।

170 अं बौद्ध दुर्गाचन्द्र यें राजास्तन्त्र चार्ये च। तत्तमद्वृहोरसि शक्सेव परमक वा कार्तिकशास्त्राद्यगात्यस्वच्छ । किमां । उत्तमाकः । स्यायैकावः यथावतः । दृष्टिभवति । अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ। अध्यात्मक इ।
brāhmaṇa? This (that I utter) is the message of another. It is my duty to say it'. The Rāmāyana (V. 52. 14–15) says that good men do not allow the killing of a dūta, but certain modes of dealing with him (viz. lashing him, shaving his head) are allowed in certain cases.

A dūta is to be distinguished from a cara or cāra (spy), as done by Kaut, Kām. XII. 32, Yāj. I. 328. Kām. XII. 33 says that a dūta is an open (pruṅka) spy, while a cara is a spy who works in secret. In modern times also 'an ambassador is often nothing more than an honourable spy acting under the protection of the law of nations' (Encyclopædia Britannica on 'espionage'). Kaut. devotes four chapters to spies (I. 11–14) and Kām. (XII. 25–49) also deals at great length with them.

The Śukranītisāra (I. 334–336) states that the king should learn every day at night from his secret spies the intentions and actions of his subjects and officers, and the opinions of ministers, enemies, soldiers, the members of the assembly, relations and the women in the harem. The cara must, according to Kām. XII. 25, possess ability to infer the inner thoughts (of men), must have a good memory, must be soft in speech, have quick gait, be capable of enduring privations and heavy labour, swift in action, ready-witted. Kaut. (I. 11) says 171 that spies are those who work in the guise of a kāpaṭhā (a bold pupil capable of knowing the minds of others), udāsthata (a sham ascetic, who has fallen from the real duties of asceticism and is endowed with intelligence and pure character), grha-paṭhā (a householder who is a cultivator that has not the means to maintain himself, has intelligence and is of pure character), a vaṇḍehaka (a trader who cannot maintain himself by trade and is possessed of intelligence and pure character), a tāpasa (a spy practising austerities, who has either shaved his head or has matted hair and is desirous to maintain himself), a class-mate or colleague (sattīra), a desperate character (titṣṭa), a poisoner and a female mendicant.

The first five of these are called by Kautilya five somaḥīs (groups

171. Upanāmi: hṛtā-nārāyanaḥ śrūtā-pārāṣāṁ brāhmaṇaḥ | kāpāṭhā-viśvarādhvatavahyaḥ | vṛttavatā-dharmabhaṅgaḥ sātvatīśvaraprabhuvāyaḥ | pārśvānāṁ pārśvāṁ āhāraṁ caṇḍālaṁ caṇḍeṣaḥ | kāpāṭhāḥ | ... 

bhūta-dharmaparvaṁ | bhūtāṇāṁbhūtāṁ bhūta-brāhmaṇaḥ | ... caṇḍālaṁ kauśithāyaḥ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍālaṁ | ... caṇḍālaṁ caṇḍāla
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or institutions), which should be honoured by the king with awards of money and marks of respect and through which the king is to test the purity of the character of his servants. Kautilya says that the spy called udāśīnta should carry on agriculture, cattle-rearing and trade on land set apart for the purpose, should be supplied with plenty of gold and disciples and should afford to all (sham) ascetics food, clothing and lodging, direct them to detect particular crimes and report. The spy called tāpkṣa was to stay near the capital, to have many pupils, to pretend to eat once in a month or two only a handful of vegetables or grass and eat secretly his favourite dishes. His disciples were to proclaim that he possessed supernatural powers, he should pretend to make predictions about gain or fires or fear from robbers after ascertaining from his pupils by nods and signs such events. In I. 12 Kaut. deals with wandering spies (called satācara) viz. sattra (who are orphans that are to be maintained by the State and that are taught palmistry, sorcery, tricks of legerdemain &c), tīkṣaṇa (desperadoes who, regardless of their lives, may fight elephants for money), rasada (who have no affection even for their relatives, are indolent and cruel), bhūkṣula or paravrājkā (a poor brāhmana widow, clever and desirous to earn her livelihood, honoured in the king’s harem and visiting the families of mahāmātras or high ministers). These are to spy on the 13 tīrthas (mentioned on p. 112 above) in public. For spying on their private character persons pretending to be hump-backed, dwarfs, kirātas (pigmies), the deaf and dumb, idiots, the blind, and others that are actors, dancers, singers and the like and women are to be employed. This information is to be tested by the persons belonging to the five samsthas (mentioned above on p. 129), but these are to act without their being known by the wandering spies and vice versa. Then further testing by other spies follows. When the information received from these three sources tallies then it will be held reliable; if the information frequently disagrees, the spies should be secretly punished or discharged. A similar rule about sending several spies on the same mission without their knowing each other is laid down by Vismudharmottara II. 24, 66–67. Kaut in I. 13 deals with espionage on subjects in general (i.e. those in the capital and other parts of the country). Spies are to pretend to take sides, some praising the king as possessed of all good qualities, others qualifying that praise. They were also to report the rumours spreading among the people, to report whether there was discontent and the king was to honour those who were reported to be contented and to
bring round the discontented by conciliation, gifts, sowing dissensions among them or by punishing them. In I 14 Kautilya deals with the employment of spies for taking advantage of parties in a foreign State, i.e., groups of persons angry with the foreign king or afraid of him or of persons who are ambitious or proud, who are to be won over by appropriate words and stimuli. It will be seen how there was a network of spies of all kinds, so much so that Kâm. XII. 28 declares that spies are the king’s eyes (cāracaksur mahipalih"). The Vismudharmottara II. 24. 63 says the same (‘rūjānas-cāracaksusah’) and also Udyoga 34. 34 ‘cāraḥ pāryanti rājadhān’. In IV. 4-6 Kautilya dilates upon the employment by the samāhārtr (Collector) of a host of spies for suppressing those who are thorns (or disturbers of peace), these being employed for detecting judges (dharmaśtha) and superintendents of various departments that take bribes, counterfeiter’s of coins, adulterers, thieves and robbers and other criminals. Kautilya relies in extreme cases on spies even in the decision of judicial matters. He says (III. 1 last verse) ‘when owing to the depositions of witnesses the plaintiff’s case and the defendant’s case are both destroyed, when the cause of either of the parties is found through the spies to be false, then the decree shall be passed against that party’. In Dronaparva 75. 4 it is said that Kṛṣṇa had his spies in the army of Duryodhana and vice versa (74. 1). Śanti 69. 8-12 and 140. 39-42 mention the places where spies are to be set up and emphasizes that they should not know each other. One need not feel surprised at the machinery of espionage that Kautilya so elaborately describes. All governments in modern times employ spies, informers and secret agents to keep themselves informed of the activities, views and resources of their opponents. We know also how the Indian Police, in order to catch offenders against the Prevention of Gambling Act or other similar Acts, employ agents with marked coins or notes and draw in their net unsuspecting people.

172 समाहार्त जनपद विद्याधरसाम्राज्यकरप्रचीनकालमें कोइसीकालसात्तात्त्विक-निषिद्धकालकालमखंडपुनस्थलीकृतनियमों काल-वियोक्तिकालकालिकाकाल-विकासकालकालिककालोंमें समाधान नहीं प्रदान किया। उपर्युक्त बाबू कृष्णलाल बहुमुखी प्रति स्वतंत्र नोट्स नहीं प्रदान किया।

173. पुरातत्त्वविद्याधरसात्तात्त्विक नियमों के साहित्य में प्रयोग नहीं प्रदान किया। उपर्युक्त बहुमुखी नोट्स प्रदान करना चाहिए।

174. पुरातत्त्वविद्याधरसात्तात्त्विक नियमों के साहित्य में प्रयोग नहीं प्रदान किया। उपर्युक्त बहुमुखी नोट्स प्रदान करना चाहिए।
CHAPTER V

RASTRA (THE TERRITORY OF A STATE)

The word 'rastra' occurs even in the Rgveda (IV. 42.1, 'mama dvitā rāstram ksatriyasya')—'mine is the kingdom on both sides (or in both spheres) says king Trasadasyu. In Rg. VII. 34.11 Varuna is praised as the Lord of rāstras (rājā rāstrānām &c.). In Rg. VII. 84.2 and X 109.3 the word rāstra occurs. In a very famous benedictory passage of the Tai, S VII 5.18 1(= Vai. S. 22.22) one of the blessings invoked is 'may the king in this kingdom become brave, a skilled archer, and a great warrior.' Vide Tai. Br III 8.13 for explanation of the Tai. S. passage In the Atharvaveda XII. 1 8 and 10 the earth is called mother and invoked to impart to the rāstra strength and brilliance (or energy). Kām VI 3 says 175 that since all the elements of the State spring from the territory of the State, the king should raise up his territory with all his efforts. The Agnipurāṇa 239.2 holds that rāstra is the most important of all elements of the State. Manu VII. 69 prescribes that a king should make his home in a country that is not water-logged (i.e. is dry and not moist), 176 is rich in crops, inhabited mostly by Aryas (or well-conducted people), not disturbed (by epidemics &c.), that is charming (owing to trees, flowers and fruits), the chiefs in which have submitted to him and in which livelihood can be had easily. Yāj. I 321 and Visnudharmasūtra III 4–5 are to the same effect. Kām (IV 50–56) remarks 'the territory of

175. आ बढना नाद्वीणो बाध्यवर्ती जान्तातासारिन राहे राजस्य हुयथ: शुद्धं भन्यं राहे जान्तासारिन राहे राजस्य हुयथा।

175a. राज्यालक्षणं च सर्वेषा राज्यालक्षणं सर्वेषा च समासंसारस्वलेख राजस्य राहे समुज्येत्॥ काम. VI. 3

176. अनुमेकोमको वर्त माझे मल्ल: मुहुस्कं। स कृत्यो जागृकी वेषो वधुराववाचः

The statements quoted are from the Rgveda, Atharvaveda, and the Puranas.
the king depends for its prosperity on the qualities of the soil, the prosperity of the territory tends to the prosperity of the king; therefore a king should choose for the sake of his prosperity land possessing good qualities. That land is preferred for the sake of prosperity that is endowed with various crops and minerals, is full of merchandise, mines and various substances, that is favourable to cattle-rearing, that abounds in water, is inhabited by well-conducted people, is charming, has forests and elephants, has facilities of water and road transport and does not depend upon rain-water only.  

Land that is full of gravel and stones, full of forests always infested with thieves, that is waterless, full of thorny bushes and snakes is not fit for choosing as a rāṣṭra. A country is to be preferred that yields livelihood easily, is possessed of the qualities of good land (cited above), is full of water, that has hills in it, that consists mostly of śūdras, artisans and merchants, the husbandmen in which undertake great projects, that is loyal (to the king) and averse to the king’s enemy, that can put up with troubles and taxes, that is large in extent, full of people from various countries, that follows the right path, that possesses plenty of cattle and wealth, the principal men in which are not foolish nor vicious. These requirements show that the country must be prosperous, well-stocked with the necessaries of life and well suited to defence. There is also some difference of opinion among the smṛti writers about the composition of the population. Manu VII.69 requires that the kingdom should consist mostly of āryas (āryapraya), while Visnu Dh.Ś. III.5 holds that a country should be peopled mostly by vaśyās and śūdras. In another place (VIII.22) Manu says that that country in which śūdras abound, which is full of atheists and void of dvijas is overwhelmed by disease and famine and perishes. Similar provisions are found in the Matsyapurāṇa 217. 1–5, Visnudharmottara II. 26.1–5, Mānasollāsā (II. 3 verses 151–153), Niṭīvākyāṃta (Janapadasamud-desa p 191 which defines rāṣṭra, visaya, desa, janapada &c.) The Matsyapurāṇa 217 5 and Visnudharmottara II. 26.5, (evamudham yathātābham rāṣṭra visayamāvaset) point out that

177. अद्वेषात्मकः देवे शस्ये हृदिवृध्ये | काम 4 52 देवस द्विवस्यमांसकां महादक्षिणं | सत्यरामात्मकः देवस्यामांसकां पाराध्यायम् II अपवलोकनम्, where the rice crop depends solely on the rainfall the country is called देवस्यामांसक (देवे सत्यरामात्मक) and where it depends on the water of rivers, tanks &c. it is called सत्यरामात्मक.
every rāstra cannot be expected to possess all the qualities mentioned by them and that the king must do the best with such qualities as his country possesses. Kautiya II 1 advises the king to found a district of villages either on old sites or on new ones by inducing people from other countries to immigrate or by causing thickly populated parts of his own country to send its overflowing population and to see that each village consists of not less than one hundred families nor more than five hundred, is peopled mostly by śūdra cultivators, has an extent of one haka or two and is capable of offering help to its neighbours.

According to Paurānic geography there are seven dvipas, viz. Jambu, Plakṣa, Śālmala, Kuśa, Krauṇca, Śaka and Puskara (Visnupurāṇa II. 1. 11 ff) and each dvipa is divided into varsas. Jambudvīpa has 9 varsas of which Bharatavarsa is the first (Visnupurāṇa II. 2. 12 ff) The Mahābhārata speaks of 13 dvipas (Adi 75 19, Vanaparva 3 52 and 134 20) and 18 dvipas also (Droṇa 70. 15). For Bharatavarsa vide H Dh vol. II. pp 17–18. Manu II 20 looks upon the holy land of Kuruksetra, of the Matsyas, Pañcālas and Śūrasenas as ‘the chosen country’ the learned brāhmaṇas in which were to be the leaders and guides of the whole world in appropriate thoughts and actions. The Visnu (II 3 2), Brāhma, Mārkandeya 55 21–22 and other purāṇas proudly assert that Bharatavarsa is the land of action (karmabhūmi). This is patriotism of a sort but not of the kind we see in western countries Bharatavarsa itself has comprised numerous countries from the most ancient times. The names of countries and the tribes or people inhabiting them were the same (vide Pāṇini IV 1 168, 178).
IV. 2. 81) In the Rgveda we come across the tribes of Yadus, Turvaśas, Druhyus, Anus and Pūrus (Rg. I. 108. 8, VIII. 10. 5 etc.) and the countries of Cedi (VIII 5 39), Kikata (III 53. 4), Rijka (VIII. 7. 29), Ruṣama (V. 30 12), Vetasu (X. 49. 4). In the Atharvaveda V. 22 several peoples or countries are mentioned of which Bahlīkās (in vv 5 and 9), Mūjavat (vv 5 and 8), Gandhārī, Āṅga, Madadha (in v. 14) deserve notice. The Ait Br. (38. 3) divides India into five divisions in the east south, west and north (the Uttara Kuru and Uttara Madras) and in the centre (Kuru-Pañcāla and Vaśa-Uśinara) India was divided into two parts, Dakṣināpatha (from the Narmada southwards) and Uttarāpatha at least some centuries before Christ, since the Hāṭhigumpha Ins. (E. I vol 20 at p 70) mentions a great many kings of Uttarāpatha and the Mahābhāṣya refers to lakes in Dakṣināpatha. 179 In the Brāhmaṇas frequent mention is made of the Kuru-Pañcālas (Tai Br. I. 8. 4), Uttarākuru, Uttarā-madra, Kuru-Pañcālas, Vaśa-Uśinaras (in Ait Br. 38 3), Kuru-Pañcālas, Anga-Magadhas, Kāsi-Kosālas, Śālva-Matsyas, Vaśa-Uśinaras in Gopatha II. 10 (ed by Gastra). The Gandhāras occur in Chāndogya Up. (VI 14 1), Vīdeha in Br. Up. III 1. 1, Madras in Br. Up. III 3 1. In the Mahābhārata there are long lists of countries in various connections, which are more than 200 (e.g. Sabhā 4 21-32, 20 26-30, Sabhā 25 ff, Sabhā 52. 13-19 53, 5-9, Virāta 1 12-13, Bhisma. 9. 39-69, 50.47-53, Drona 11.15-18, 70.11-13. Aśvamedhika 73-78, 83.10 ff.) The Baudhāyana-gṛhyaśāsasūtra I 17 prescribes a mandala for the worship of the Sun and names nine countries in the eight directions and in the centre as representatives. The Purāṇas also contain long lists of countries e.g. Matsya 114 34-56, Mārkandeya 57 32-67 and chap 58, Brāhma 17.10.15 and 25 25-39. The same country sometimes has two names (e.g. Vidarbha and Krathakāṭika denote the same country in Rāghuvansā VII 1 and 32). ‘Buddhist India’ (by Rhys Davids p 23) mentions the sixteen peoples (or countries), lists of which occur in the Āṅguttaranikāya I. p. 213, IV. p 252 and in the Dīghamākāya.
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II. p. 200 viz. Angas, Magadhas, Kāśis, Kosalas, Vajis, Mallas, Cetis (Cedis), Vamsas (Vatas?), Kurus, Pāñcalas, Matsyas, Śūrasenas, Aśmakas, Avantis, Gandharas, Kambojas Varāhamihira’s Brhat Samhita, Baudhāyana-grhyaśesasūtra I 17, Kāmasūtra V 6 33–41, Bṛhaspatya Arthasāstra (III 83–117), the Kavyamimāṃsā of Rājaśekhara (17th chapter) name numerous countries. This last divides India into five regions and gives the names of about 70 countries in the four directions but none from Central India. The Bhavaprakāśana (pp. 309–310) gives a list of 64 countries and states, that Dakṣināpatha (Deccan) is a fourth of Bharatavarṣa and that in the Tretā and Dvāpara ages people afraid of being overwhelmed by ice came down to the south. 179a 56 countries are named in some Tantra works (vide ‘Indian Culture’ vol VIII. p. 33) In the lexicon called Vaijayanti of Yadavaprakāśa (11th century A.D.) edited by Dr. G. Oppert, over a hundred countries and capitals of some of the countries are named (in the Bhūmikāṇḍa and chapter on desa thereof).

To constitute a rāstra a territory of some size and a large population are required. There can hardly be a rāstra of a few villages or a few hundred inhabitants. The boundaries of the numerous countries mentioned in the works cited above must have been fluid and must have changed from country to country owing to conquests.

In ancient India the modern sentiment of nationalism had hardly taken root. Writers speak of rājya (State) and of rāstra (territory) as an element of rājya. They had no sense of nationality nor did they seriously work for national unity. The modern idea of a nation is more a question of feeling and sentiment than of objective fact. The State has been at all times a great co-ordinating agency, but as its boundaries were extremely variable in ancient India, the modern sentiment of nationality, of ‘my country, right or wrong’ hardly ever arose in India (except perhaps for over a century in Maharashtra in the 17th and 18th centuries and among the Sikhs). In the whole of Hindu India, there was no doubt a certain unity of religion, philosophy, literary forms and conventions of arts and forms of worship, and in reverence for holy places, but this did not make for a deep-seated and effective sentiment of nationhood or national unity.

179a. वैवाद्विये द्वारे च हिमाकान्तिभाज्जना | पाप पापे लिपुषे ते सप्ते दृशि- पापाध्य | भाष्यकात्सम p. 309.
Most of the ancient sêtrakaaras and smritis try to lay down the limits of the holy land of Âryâvarta and differentiate it from the lands of mlecchas. Vide H. of Dh. vol. II. pp. 11-18. The Vismu (II. 3. 1–2), Mârkandeya (55. 21) and other purânas wax eloquent over the importance of Bharatavarsa and describe it as the land of action for those who want to secure heaven or final release or as the land where alone sin and religious merit were to be found (karmabhûmî-âjyam svargam-apavargam âcachatum or tat-karmabhûmî-nânyastra sampi âptih piyapâpayoh in Mark.) Manu (II. 20) manifests great pride in and love for the holy countries of Brahmatvarta, Kuruksetra, Matsya, Pañcâla and Sûrasena by glorifying the brahmanas of these countries as those ‘from whom all men on this broad earth should learn the actions and usages appropriate to them’. Vas. I. 10 also says the same. Śaṅkhâ-Likhita (q. by Visvarûpa on Yâj I. 2) hold that the country of Âryâvarta is endowed with high qualities, is ancient and holy (desa Ârya guṇavâîn .... sanâtanah guṇyâh). As however the smritis were composed at different times, embodied the usages of different provinces in India and as they provided for the observances of all those who followed the Veda, they do not generally lay emphasis on localities but rather on what they thought was common to all Āryas in India (yat tu samânam tad vaksyânah, as Âsv. gr. says). There was no doubt a great emotional regard for Bharatavarsa or Âryâvarta as a unity for many centuries among all writers from a religious point of view, though not from a political standpoint. Therefore one element of modern nationhood viz. being under the same government was wanting. But it must be noted that from very ancient times there was always the aspiration among great kings and the people to bring the whole of Bharatavarsa “under one umbrella”. Even in the West the sentiment of nationality practically arose after the partition of Poland, and as a consequence of the French Revolution and of the Industrial revolution, which led manufacturing countries to search for markets and to exploit backward and less developed peoples. Vide Laski’s ‘Grammar of Politics’ chap VI. Modern nationalism undoubtedly leads to great self-sacrifice and produces certain virtues of high value in the individuals that are fired by that sentiment. But the ideals of the modern nation States are not high, particularly in their treatment of other peoples and in their attitude towards less favoured States. The one aim of the leading politicians of modern nation States and most of the inhabitants of these States seems to be to raise the standard of
living of their citizens to a high level and to maintain it at that level even by exploiting and robbing weaker races and lands. This is not the place to discuss these matters further. Whatever the value of nationalism to the individuals fired by it may be, from the point of the welfare of the whole of mankind, modern nation States do not deserve to survive, unless the so-called progressive nation States are prepared to give up their racial pride, their spirit of grabbing and exploitation and to extend a brotherly hand to all struggling States to improve themselves in their own way and attain to higher standards of living without let or hindrance. It cannot be gainsaid that for several centuries in the past and also at the present moment all modern nation States have two moralities, one for their own nation and the other for their dealings with foreign States and races.

Some remarks must now be made about provincial and local administration. Each kingdom comprised desas (countries) and subdivisions of desas. The governor of a rāstra was called rāstrapati or rāstriya. Vide p 117 above about Pusyagupta having been the rāstriya of Surāstra (Kathiawad) under Candragupta Maurya and Śanti 85, 12 (which describes what the rāstriya is to do).

According to the Amarakosa the words desa, rāstra, visaya and janapada are synonyms. Epigraphic usage is not uniform about the dimensions of these. Sometimes visaya appears to be a sub-division of desa (vide the words ‘rāstrapati-visayapati-grāmakūta’ in I A. vol. VIII at p. 20 in the grant of Calukya Tribhuvanamalla in sāke 999 and I A. vol. XII pp 247, 251 in the grant of Rātrakūta Govinda in sāke 855). But in the Hirahada-galli plates (E I vol I p. 5) ‘visaya’ occurs first and then ‘rāstra’, so it appears that there ‘visaya’ is deemed to be larger than rāstra. According to the Sahyādirkhandha (uttarārdha, chap 4) desa is made up of 100 villages, mandala is made up of 4 desas, a khandā of 100 mandalas and the earth has nine khandas 180. From the Cambay plate of sāke 852 (930 A. D.), we see that mandala was a sub-division of desa (E I. vol. 7 p 26, at p 40).

180. 'शताधीन मयेश्वरी देवस्तब्लारिता मण्डलयुः। शताधीन भवेश्वरी नववस्तया च मेद्विधी म सतारिकुर्वः, दच्चराघि च ap. 4. 'लाउरवेलैशयेनकावद्विवत्सादिकाविकामानानुपन्नानिमीवः' in E. I vol. 7 p. 40; 'श्रीपुरुषसुरकार्याय देवशिवपरिवर्ते सोल्लक्षिकामण्डलान्त्यति ... Bhāsā' in E. I. vol. 14 p. 324.
the Bangarh grant of Mahipāla I (E. I. vol. 14 p. 324) and the Amgachhi plate of Vigrāhapañña III we see that mandala was smaller than visaya which again was a subdivision of bhukti. The word bhoga (which is similar in origin to bhukti) appears to be applied to a sub-division of visaya (which in its turn is a sub-division of rāstra) in the Bhamdak plate of Krsnārāja I dated śaka 694 (E. I. 14 p. 121, 126) and also in the Jejuri plates of Vinayāditya in 609 śaka (E. I. vol. 19 p. 62 at p. 64 where the word rāstrapati does not occur). The Mitāksāra on Yāj. I. 319 explains that only a king (mahipāti) can make a grant of land and not a bhogapati (i.e. the officer over a bhoga). Another ancient word for a division of a country is ādīta which occurs in the Rupnath Rock inscription and Sarnath pillar Edict of Aśoka (Corpus I. I. vol. I pp. 162 and 166), in the Nasik Inscriptions No. 3 and 12 (Govardhanāhāra and Kāpurāhāra, E. I. vol. VIII pp. 65 and 82) and in the Karle Ins. No. 19 (E. I. VII. p. 64) where we have Māmalāhāra, modern Māval (in Poona District). For want of space it is not possible to pursue this subject here. For further information vide Dr. Fleet in J. R. A. S. for 1912 p. 707 and my paper on 'the Ancient Geography of Mahārāstrā' (JBBRAS. vol. XXIV for 1914-1917 pp. 648-653). In the epigraphic records particularly of the Deccan and South India we come across names of territorial divisions to which small as well as very large figures (indicating the number of villages they comprised) are affixed: e.g. a group of twelve villages in Aparānta on the sea near Kalvīvana (modern Kelvem) is mentioned in the Sanjan plates of Boddhavarasa (E. I. 14 p. 144 at p. 150), Nyāyapadra saptadasa in Bhoja's grant in samvats. 1076 (E. I. 18 at p. 322), Kiskūd 70 (E. I. 15 p. 73), Belvola 300 (in E I 13 at p. 40), Konkana 900 ruled over by the Kadamba king Jayakesi II (E. I. 13 pp. 298, 317), Tardavādi 1000 (E. I. 15 p. 25), Kund 3000 (E. I. 13 at p. 18), Pratyandaka 4000 (E. I. III p. 306), Karahāta 10000 (E. I. 13 p. 275), Banavāsi 12000 (E. I. 13 p. 179), Nolambavādi 32000 (E. I. 19 p. 187), Kavādīvīpa sapādaḷaksa (one and a quarter lakhs) in E I. 13 at p. 299, the country of 7½ lakhs (in the Lakshmeshwar Ins of Vikramāditya VI in E I. 16 p. 31). Vide Dr. Fleet in J. R. A. S. 1912 pp 707-710 as to the meaning of these figures.

181. राजभूमिविभिषिपतिभूगोपतिभूभूमिश्वरीवि समाक्ष्यांवसितः I E. I. vol. 14 p. 121 at p 126; समाहित यथाभिषिपतिभूमिश्वराय्य, राजभूमिविभिषिपतिभूगोपतिभूभूमिश्वरीवि समाक्ष्यांवसितः I E. I. vol. VII. p. 26 at p. 40.
Kauṭilya II. 1 says that in the kingdom groups of villages should be set up with a chief town or fort in each, a group of ten villages being called Sangrahana, of two hundred villages being called Khārvatika, of 400 villages being called Dronamukha, and in the midst of 800 villages there is the Śthāniya.

182. अष्टशताधीपत्यम् सप्तेष शतायणा मज्जनाधी स्त्रिसंया। जीर्णद्वार जीविताधिप: जीविसिक्षा दूसराधीसंयोगं संग्रहणं लघुवेरे | कौटिल्य II, 1| Vide Dr. Shāmāṣṭrī's note on these शासिक has a similarity in sound and meaning to modern thānā, Dr. Prān Nāth (in 'Study of the economic condition of Ancient India' p 26) principally relying on a commentator of the Jain work called Praṇāśanopāna (which he misunderstands) holds that 'grāma' does not mean 'a village', but 'an estate or survey village which can pay 18 kinds of Government taxes' The learned Doctor says that he consulted many Sanskrit lexicons, but did not find this interpretation in any one of them. That should have induced him to be cautious. But he makes the bold and facile assumption that 'lexicons were compiled from a literary viewpoint and are not of much assistance as far as the technical meanings of words are concerned'. His great authority, the Jain commentator, says 'काशीविनेषु द्वारपाली धर्मम् मयादति नागं यद्वि वा निवासं जीविसिद्धानामाधिमासम् कवारतातिति वामि'. Dr Prān Nāth's Jain authority is no better than lexicographers and their commentators. जीविसिक्षा on Amara derives grāma as 'स्त्रिये जीविसिक्षमति' i.e. the word वामि is derived from the root वाम. The Jain commentator first derives the word वामि from वाम and then from वाम Dr. Prān Nāth forgets that a fanciful or scholastic derivation is not a definition. The rest of the reasoning on the new meaning of grāma is on a par with this and cannot be examined in detail. A commentator expressly states (ibid p 27) that he gives only the vyutpatti (etymology) of grāma, but Dr Prān Nāth pays no heed to this. He has not correctly grasped the scholastic discussion in the commentary quoted on p 27. He misunderstands the word 'sama-grāmā' in Yājñī I 152. The Amarakośa expressly says that 'sama' and 'sāmāna' are synonyms. He is often very dogmatic without looking into all ancient and medieval authorities e.g. on p 51 he charges Dr. Fleet with misinterpretation of a Jātaka text (adābhā-hāyān āśā) which Dr. Fleet translated as 250, while Dr Prān Nāth is sure that the meaning is '150'. He probably never noticed that so far back as the 2nd century B.C. the Mahābhāṣya had explained the word 'ardhatrīya' as Dr. Fleet does (अर्थ तूर्तेषां अर्थ तूर्तेषां) vide Kielhorn, vol I p 426 on vārtika 22 on Pān II 2. 24). There is hardly any warrant for Dr Prān Nāth's assertion that each grāma (as interpreted by him) contained only about five families and had only about 15 or 20 acres of cropped area (pp: 39-40). Kant (note 178) states that a grāma contains from 100 to 500 families. If the inscriptions so far published are carefully searched it will be found that grāma ordinarily meant a village in the modern sense and included several hundred acres of land. For example, in a grant of Pallava Yuvarāja Visnugopavarmān (I. A vol V p 50)

(Continued on the next page)
Manu VII. 114 similarly observes that in the midst of two, three or five villages the king should place a central post of guards called 'gulma' and another called 'saṅgraha' in the midst of a hundred villages. Manu VII. 115-117, Visnudharma-sūtra III. 7-14, Śānti 87 3ff, Agnipurāṇa 223. 1-4, Visnudharmottara II. 61. 1-6, Mānasollāsa II. 2. 159-162 (p. 43) require the king to appoint a hierarchy of officers for one village, for groups of ten, twenty, hundred and thousand villages, who are to report what is wrong within their jurisdictions that they cannot themselves remedy to the officer next in grade above themselves and Manu VII. 120 prescribes that a minister of the king should supervise the doings and conflicts of all these officers. The Edicts of Asoka show that he had to employ a hierarchy of officers such as the mahāmatras, the yuktas and rājakus for the administration of his vast empire. A similar administrative system seems to have been continued under the Gupta Emperors From the Damodarpur, Baigrama and other plates (E I XV. p 113, E I XVII. pp 345ff, E I. XXI. p 78) it appears that the Provincial Governors were appointed by the Gupta Emperor himself and were called itparāka mahāraja, that either the Governors or Emperors appointed District officers (visayapati) who were often called Kumārāmātya, that the District officers were aided in their administrative work by a board of four advisers called nagara-sresthin (banker), sārthavāha (chief merchant), prathamakulika (chief of craft guilds) and prathama-kāyastha (chief secretary), that the District officer had his

very detailed and accurate boundaries of a village of 200 nivartanas are given. A nivartana was equal to a square of twenty vamās on each side, each vamā being equal to ten cubits, so that a nivartana covered an area of 40000 cubits (200 × 200) i.e. about 90000 square feet, while an acre is equal to 43560 square feet Therefore the village referred to in the above grant was over 400 acres in extent The Mahābhāṣya (on vārtika 8 on Pāṇ. I 1 7) has an interesting discussion on the several meanings of the word grāma in popular language viz a number of houses (as in 'the grāma was burnt'), the village wall or ditch (as in 'he entered the grāma'), 'men' (as in 'the grāma had gone'), a village with its forests and bushes, with its boundaries (such as rivers and hills) and with embanked fields (as in 'a grāma was acquired'). ‘ग्रामसङ्काैैव जन्मम्। अस्ते साधोनसुदूरे वै विद्य ... अस्य साधकसङ्काैम सर्वत्रसमिद्यते। तद्वा ग्रामम् तथा इति। As in modern times villages are found named after trees the same was the case in the days of Pāṇ. and Patanjali, ग्रामसांकाैम सर्वत्रसमिद्यते। तद्वा ग्रामसङ्काैम सर्वत्रसमिद्यते। सहासांख्य on p. I. 2. 51 (vol I. p 224.)
headquarters in a place called adhisthāna and had his several offices or courts (adhi karana), and that in sales of lands revenue officers called pustapūlas (keepers of records of rights) were consulted and had to report. In E I. vol. XVII pp 345, 348 a copperplate of Kumāragupta I has 'grāmāṣṭa-kulādhikaranam' which means an office having jurisdiction over 8 villages. Manu VII. 119 says that the officer over 10 villages was to have as his salary a kula of land and kula is here said to mean (by Kullūka) as much land as is ploughed by two ploughs having six oxen yoked to each. The Varjayanī on Visnu Dh. S. III. 15 says 'kula haladvaya- karsaniyā bhūh'. Śukra (I. 191–192) states that the lord of one hundred grāmās is called sāmanta, an officer appointed by a king over one hundred villages is called amasāmanta, one over ten villages is called nāyaka (compare modern 'naut'). Manu VII. 61 and 81, Yāj I. 322, Kām V. 75, Visnudharmāṣṭra III 16–21, Visnudharmottara II. 24 48–49 say that the king should appoint as many adhyakṣas (superintendents) as are required for the several departments of the state, who are clever, honest and of good family. Kautilya 183 II. 9 prescribes 'those who are possessed of the qualifications for amātyas (cited on p. 107 above) should be appointed, according to their abilities, as superintendents of the various departments and the king should constantly examine their work, since men are naturally fickle-minded and when appointed to do work exhibit like horses change of temper'. It is pointed out in works like the Visnudharmāṣṭra III 16–21 and the Visnudharmottara II. 24. 48–49, Śānti 69. 29, that those who are highly devoted to dharma should be appointed to the ecclesiastical or judicial department, the brave ones to military work, those who are skilled to revenue work and those who are very trustworthy should be placed in charge of mines, salts, toll-gates, ferries, elephant forests.

Kautilya in his 2nd adhikarana exhaustively deals with the work done in 28 departments and the duties of their superintendents. He enters into very minute details about each and his work is encyclopaedic in character on this subject.

183. अन्यायसप्तपूर्वका कर्य्योिपि शक्तिः कर्मणु निमोिप्या । कर्मणु वैहत्त निमोिपि ये हत्या कार्योिपिकालानुसारानां । अन्तस्यवर्धमाणे वि संरचयः निमोिप्यात् कर्मणु विनिद्व । कौरवसर्वस कौरवसर्वस निद्वपितामहऽ निद्वपितामहऽ कर्मणु विनिद्वकै ये तथा संरचयः विबिन्दुकौरवसर्वस । विकौरवसर्व । संरचयः विकौरवसर्व । विकौरवसर्व ।
Kautilya's work became the authority on Government and several inscriptions mention officers appointed according to the section on 'adhyakṣapracaśa', which is undoubtedly a reference to Kautilya's 2nd adhikarana. For example, in the Belava plate of Bhājavarmadeva (E. I. vol XII. at p. 40) and in the Barrackpur grant of Vijayasena (E. I. vol. XV. p 283) we have the words 'anyāṁśca sakalājavādopajvinodhyaksapracaśoktaṁ hiṅkirtiṁ cattabhata-jātiyān janapadān kṣetra-karamādya'. It is not possible to do anything more than indicate very briefly the sphere of each adhyakṣa.

The duty of the samāhartr (II 5) is to look after the construction of the treasury house, the store-houses for merchandise, for grain, for forest produce, for arms and of the jail. The samāhartr (the Collector-General) is to exercise superintendence over the collection of revenue from forts, the rural parts, mines, embankments, forests, herds of cattle and roads for traffic (II. 6). The samāhartr has to divide (II 35) the kingdom into four districts and to arrange the villages into three grades, viz., those that are exempted from taxes, those that supply soldiers and those that pay taxes in the form of grain, cattle, money, forest produce, free labour and other equivalents for taxes. It is the duty of the gopa to look after a group of five or ten villages under the orders of the samāhartr. The gopa has not only to register the total number of the inhabitants of all vargas in the houses that pay taxes and that are exempt in the villages, but also to keep a register of the number of cultivators, cowherds, merchants, artisans, labourers, slaves, biped and quadruped animals, of the amount of money, free labour, tolls and fines that are recovered, and the number of women, men, young and old persons, and the extent of their actions, occupations, usages, expenditures. The śilāṁka (in charge of each of the four districts) should look after his charge in the same way. The superintendent of records and accounts (aksapatalādhyakṣa) should have the account office constructed with its door facing the north or the east, with rooms

184. Both the samāhartr and the samādhātr are mentioned as officers in the copperplate of Mahābhavagupta of Trikalinga (E I. vol. VIII p 138 at p 141 and E I. vol XI at p 94). Sabara in his bhāṣya on Jaimini XII. 1. 28 refers to the samāhartr coming with his own phalanx of subordinates 'पर्याप्तात्तमोपति द्वारकाय वस्त्रहणनां समहवां निलेत च देवन राज द्वस्मितेति विभक्तम्'. From Hionen Thang's account of his travels (Beal's 'Buddhist Records' vol. I. p 78) we learn that each province kept a record of good and bad events.
(for the clerks) set apart and with shelves of account books well-arranged (II 7). This officer had to enter numerous matters in the accounts, recover the king's dues from the sureties of servants, to check embezzlement and to recover fines for loss due to neglect or fraud. The account year ended with the full moon of Aṣāḍha, the year being of 354 days and the salary for an intercalary month being separately paid. Among the duties of the Superintendent of records and accounts was the important one of noting in his register the dharma, method of judicial procedure and the usages of countries, villages, castes, families and corporations (desāgrāmavatī-kulasanāhātānām dharmā vyavahāra-caritra-samsthanām .. nibandha-pustakastham kārayet). In II 8 Kautilya specifies forty modes of embezzlement by Government servants (to which a reference is made in the Daśakumāracarita VIII). In II 9 he employs the picturesque figure that it is not possible to know exactly how officers appointed to the several businesses of the State extract wealth, just as fish always dwelling in water cannot be observed when they drink water. The superintendent of treasury (II. 11) shall in the presence of qualified persons receives into the treasury gems, pearls, articles of great or small value and forest produce (like sandal wood, aqvaru etc). The superintendent of mines and of government manufactories (II 12) must be proficient in the science of metals, mercury, liquids that ooze from the holes, caves and sides of mountains and hills. Under him are officers called lokaadhyaksa (who carries on the manufacture of vessels of copper and other metals), a laksanādhyaksa (a superintendent of mint, who manufactures silver and copper coins for the State), a śāpadānākāra 184a (examiner of coins, who regulates the dealings with panas as a medium of exchange among the people and for stocking in the treasury), līnagadhyaksa (who attends to conches, diamonds, pearls, coral and trade in them), a lavanādhyaksa (superintendent of salt). The suvarnādhyaksa (the superintendent of gold) has to construct a goldsmith's office for the manufacture of gold and silver articles with a single door and four halls, to appoint a skilful and trustworthy goldsmith to have a shop in the centre of the road (II. 13) and not to allow any one who is not an employee to

184a. Patañjali in the Mahābhāṣya on vārtika 4 on Pāṇ. I. 4 52 cites the example 'वृत्तिः व्यवस्थिनी कार्यप्रणाली। वृत्तिः व्यवस्थिनी कार्यप्रणाली', Here व्यवस्थिनी appears to mean one who can examine a coin or probably the same as व्यवस्थिनी in Kant. '०
enter the goldsmith's shop. If any one so entered he was to be beheaded. The State goldsmith (II. 14) has to manufacture gold and silver coins for the citizens and rural inhabitants through artisans employed by him. The superintendent of the storehouse (II. 15) has to keep together the produce of crown lands, taxes from the country districts, accidental revenue, manufacture of rice, oil &c. The superintendent of commerce (panyādīyakṣa, II. 16) should keep himself acquainted with the demand or absence of demand for and the rise and fall in the prices of various kinds of merchandise produced on land or from water and brought by land or water routes. The superintendent of forest produce (kūpyādīyakṣa, II. 17) was to collect forest produce through guards of forest and Kautilya gives a long list of trees, varieties of bamboos, creepers, fibrous plants and rope-making material, drugs and poisons, skins of various animals, that came under this officer's care. The superintendent of armoury (āyudhāgārādhyakṣa, II. 18) was to employ experienced artisans to manufacture arms, wheels, machines, armour &c. required in battle or for the defence of forts, or for battering the cities of the enemy. The superintendent of weights and measures was to manufacture weights from half mūsaka

185. The weights specified are: 10 seeds of māsa or 5 guṇīs = 1 suvarṇa-mūsaka, 16 suvarṇa-mūsakas = one suvarṇa or karsa, 4 karsas = one pala, 88 white mustard seeds = one rūpyamūsaka, 16 rūpyamūsakas or 20 śābiya seeds = one dharana. The Kaśāya on Pān II 421 furnishes the interesting item of information that weights and measures (probably in vogue in its day) were first introduced by the Nandas (nandopakramaṁ mānāṁ). The chief measures of distance given in II 20 are: 8 atoms = one particle of dust thrown up by a chariot wheel, 8 particles = likśā, 8 likśās = a medium-sized yūkā (house), 8 yūkās = yava (barley corn) of medium size, 8 yavas = one angula, 12 angulas = vitasti, 2 vitastis = aratna or one prājāpatya ḍand, 2 vitastis plus 4 angulas (called dhanurgraha) = one hasta used in measuring pastures and cubic measures, 4 aratnas = danda or dhanas or nālikā-paurusa, 10 dandas = rajju, 3 rajjus = mvaritana, 1000 dhanus (or 2000 acc to another reading) = goruta, 4 gorutas = one yojana. A mvaritana was probably so called because it represented a day's ploughing by a team of eight or six oxen (from the root vṛt with m), meaning the area from which they stopped after a day's work Vide H of Dh. vol. II p 859 note 2021 for mvaritana and gocarna. The extent of the mvaritana differed acc. to different authorities. The Mātysi said it was 30 dandas square, each danda being of the length of seven hastas, while Sātātapa held the danda to be of 10 hastas. The Lilāvatī (I 7) held that a mvaritana was 20 vamsas square, each vamsa being of 10 hastas. According to the lexicon Vaiṣṇayanti, in Kosalas the yojana was of four gavīyūtas, while

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onwards up to one hundred suvarnas, weights being made of iron or stones found in the Magadha country and the Mekala mountain. The superintendent of tolls (śulkādhyakṣa, II 21) was to erect near the principal gate of the capital a toll-house and its flag and when traders arrived with merchandise make four or five toll-collectors take down their names, whence they came, what merchandise they brought and whether it bore sealmark. In II. 22 Kautilya specifies various rates of tolls for imports and exports. The superintendent of weaving (II. 23) was to employ qualified persons to make threads, coats (of armour), cloths and ropes and he was to employ for cutting wool, fibres, cotton, hemp and flax, widows, cripple women, girls, ascetic women paying off fines by doing work, mothers of prostitutes, old women servants of the palace, devadāsis (temple girls) who have ceased to do temple services. This superintendent was charged with the task of providing work for women who do not leave their homes, the wives of persons who have gone abroad, women who are cripple or unmarried and who have to work for their own maintenance. He was to give to them spinning work through the maid-servants in his department. If he stared at their faces when they came to exchange their work for wages or spoke to them on any other matter he was fined in the first amercement. Thus the State helped home or cottage industry. It is to be noted that he had large powers of levying fines and

(Continued from the last page)

in Magadha it was only equal to two gavyūṭis (last verse of desādhyāya in bhūmikāhanda). Kaut gives hastas of various lengths for various purposes. Compare Manu VIII 132–134, Viśnudharmāsūtra IV 1–7, Yaj I 362–363, Nārada pariṣṭa 57–60, Brhatasamhitā, 57 1 ff; Vāyupurāṇa 101 118 for some of these, which differ in some details from Kautilya's statements. Kaut (II 20) states the duration of a nāḍikā to be the time required for the passage of one ēḍhaka of water from a pot through an aperture of the same diameter as a wire of 4 angulas in length and made out of four suvarnamāsakas, 2 nāḍikās are equal to a muhūrtā and 15 muhūrtās are equal to a day or a night. In II 19 he gives measures of corn as follows — 4 kudumbas = prastha, 4 prasthas = ēḍhaka, 4 ēḍhakas = drina, 16 dronas = kāri, 20 dronas = kumbha. The drina differed for various purposes. Vide above (p 124 note 165) for a quotation from Mit. on Yaj III 274. Hemādṛ, vratakhandā pp 51–57, gives quotations from various sources for measures of time, corn &c. These measures were different in different countries and at different times. The Līlāvatī (of 12th century A.D.) I 7 speaks of the kāri in Magadha being equal to 16 dronas. Vide n 165 above and H. of Db., vol. II p. 881 n. 2053 and L. D. Barnett's 'Antiquities of India' (pp. 206–210) for tables of weights and measures,
awarding bodily punishments e.g. if a woman refused to work after receiving the wages he could cut off her thumb (or bind up her thumb with the index finger so as to form a pair of tongs). The superintendent of agriculture (sitādhyaśa, 186 II. 24) himself knowing or assisted by those who know the science of agriculture and the Áyurveda (the ancient lore) of trees was to collect at the proper times all kinds of corn, flowers, fruits, vegetables, bulbs, hemp and cotton seeds and to employ slaves, labourers and prisoners who worked to pay off fines; they could not pay, to sow seeds on crown lands. In this chapter he makes interesting remark: about the extent of rainfall viz. the rainfall in a gāngala country (defined above at p. 132) is 16 dronas, in anūpa (very moist) countries 24 dronas, 13½ dronas in the Aśmaka country (modern Khandesh and part of Berar), 23 dronas in the Avanti country (round about modern Ujjain), an immense quantity in the Aparántas (west coast of India) and the Himalayan regions.

The superintendent of liquor was to carry on the traffic in liquor and ferments in the capital, the other parts of the country and in many camps by employing men familiar with them, he was to impose a fine of 600 panas if any one other than the manufacturers, licensed vendors and vendees sold or purchased liquor, he was not to allow liquor-shops to be opened close to each other, he was to see that liquor was sold in small quantities such as ¼ or ½ of a kṣuṇa or a half prastha to persons of known character in order that (lit. for fear) workmen employed should not cause loss through carelessness, that āryas might not violate the rules of good conduct and that desperadoes should not commit indiscreet acts. Śukra was even more strict as regards

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186 Sitā, according to the Amarakośa, means the 'lines or furrow made by the ploughshare'. Therefore Kauṭilya appears to employ the word 'sitā' in the sense of 'land that has been cultivated'. Prof. V. K. Ramchandra Dikshitar (in 'Hindu Administrative Institutions' p. 369) is not right when he explains सीता लादुल्लग्निः (of Amarn) as 'methods and means connected with the plough'. Paddhati only means the line or furrow made in the field by the ploughshare. Kāraśāwaṇi explains as स्त्रिति तृत्य सीता हल्लेक्ष्मा. In II 15 Kauṭilya himself explains 'sitā' as the collection of grain brought in by the superintendent of agriculture 'सीताय लिपणयाः संपथयाः सीता' The sitādhyaśa appears to have been concerned with crown lands, while the share of crops leviable on lands of private ownership was called 'bali.' Both these were the concern of the saṁhartr as stated in V. 1 (where rāstrā is said to include sitā, bhāga, bali, kara &c.) When in II 15 sitā and rāstrā are separately mentioned that is on the analogy of the maxim of brāhmaṇa-āśramana or of gobarīvarda.
wine, as he did not allow any one to drink wine in the day-time (IV. 4. 43). The superintendent of slaughter houses (śūnḍhyakṣa, II. 26) was entrusted with the power to regulate the killing of animals for meat and was to impose the highest amerce-
ment on those who trapped or beat or killed deer, cattle, birds or fish which were declared to be under State protection or that dwell in protected forests. The superintendent of nautch-girls (gaṇikādhyakṣa 187) is dealt with in II. 27. The topic of veśyās has already been treated of in H Dh. vol. II pp 657–639. Kaut. says that a gaṇikā was to be employed for a salary of one thousand panas, whether she was born in a prostitute’s family or not and she was to possess beauty, youth and accomplish-
ments (i.e. the 64 kalās enumerated in Kāmasūtra I. 3. 16). Kaut prescribes that, if she left the country or died, her daughter or sister took her place and estate or her mother could substitute some other gaṇikā in her place; when none of these existed the king took her wealth and her son did not inherit her wealth. A gaṇikā could purchase her freedom by paying to the king 24000 panas as ransom. She was to hold the umbrella, the golden pitcher and the fan for the king when he was seated on the throne or in a chariot or in his palanquin. There were grades among the gaṇikās as best, middling and inferior and salaries differed by a thousand. The sons of prostitutes were to be the chief actors on the royal stage. It appears from these provisions that the veśyās were more or less slaves. The superintendent of ships (nāvadhyakṣa, II. 28) was to look after the passage of ships not only over the seas and at the mouths of rivers, but also over lakes and rivers in the sūhānya (vide above p 140) and other sub-divisions of the kingdom. Kaut prescribes that villages on the sea-shore and river banks were to pay a fixed tax, fishermen were to render a sixth part of the haul of fish as fees for fishing licenses and merchants were to pay the customary tolls levied in port towns. This superintendent was to request the ships that touched at a harbour on their voyage to a distant port to pay the toll, he was to destroy pirate vessels bound for the country of an enemy as well as those that violated the usages of the port. The superintendent of cattle (II. 29) was entrusted with the rearing,

187. आशिष्मुच्यितां वैद्य शिक्षकमणिध्विता हृदयहमिका। सभे महिकाकाहः स्थान च जगः संस्थि दुष्किता शर सदृश राजा नागमयि संस्कारः। गार्भितानिगंभर च न हनंदात च जावले कामश्रुवः। II 3 20–21. This shows that every veśyā was not a gaṇikā, but only one that was honoured for her accomplishments (in 64 kalās) and who became the cynosure of all eyes.
preservation and care of cows, bulls, buffaloes and the dairy produce. The superintendent of horses (II. 30) was to record the breed, age, colour, marks, groups and places of origin of horses, which were to be classified as those kept in salehouses for sale, those that were recently purchased, those captured in battles, those that were pledged and those temporarily kept in stables &c. Kautilya notes that the breed of horses from Kāmboja, Sindhu (modern Sindh), Aratta (western Punjab) and Vanāyu (North-west of India) countries are the best of horses, Bahlīka (modern Balkh), Pāpeya, Sauvira (eastern Sindh and western Rajputana) and Taitila breeds are of middle quality and the rest are inferior. The superintendent of elephants (II. 31) had to take steps to guard elephant forests and supervise elephants that were in stables, the catching, training and feeding of them, their accoutrements &c. Kautilya devotes one chapter (II. 32) to the training and classification of elephants and medical treatment when they fell ill. The superintendent of chariots and that of infantry (II. 33) have the charge of the chariot department and of the six classes of infantry respectively. The superintendent of passports (mudrādhyakṣa) issued passes to inhabitants of the country or foreigners for entering into or going out and the superintendent of pastures (II. 34) was to see the passes and devote himself to the care of pastures. Kautilya provides that a pass (mudrā) was to be given on payment of a māsaka, that one could enter or go out of a country only when one had a pass, that a person who entered without a pass was to be fined twelve panas and that the superintendent of pastures and his men were to examine whether persons not going by the royal road but through pastures had a pass or not and that the superintendent of pastures and his men were to convey the approach of thieves and enemies by beating drums and blowing conches and were to send messages about the entrance of enemies into pastures by means of domesticated pigeons carrying letters bearing the official stamp or by means of smoke and fire. The nāgara (the mayor of the capital or cities or the chief of the police in the capital) was to look to the affairs of the capital (or the big cities). A gopa (under the nāgara) was to superintend a group of twenty or forty families in the capital and an officer designated sthānaka was to be in charge of each of four wards into which the capital was to be divided. Yāj II. 173 mentions an officer called sthānapāla in connection with the finding of lost goods who appears to be the same as sthānaka. The gopa and sthānaka had to keep a register of the caste, gotra,
name and occupation of the men and women in their districts and also of their income and expenditure Managers of charitable institutions had to send information to them about the heretics and travellers arriving to reside therein. Numerous rules about reporting and punishments for various defaults and wrongs are laid down, which are passed over. Manu VII. 121 and Śánti 87. 10 also provide for the appointment in each city (in the kingdom) of a high officer, who was to superintend all matters affecting the city and who had ample powers of restraint and coercion Many of the superintendents mentioned by Kautilya occur under the same names in the Kāmasūtra e.g. gavādhyaśaka, sūtrādhyaśaka, nāgaraka (explained by the com as dandapāśika), panyādhyāsaka (in V. 5. 7–10) Vide E I vol. 15 pp, 127–128 for a statement on the provincial administration under the Guptas.

As regards the emoluments of the officers in charge of a village, ten villages &c. Manu (VII. 118–119) has some interesting rules: 'The headman of a village should obtain (as his emoluments) those articles which the villagers have to furnish every day to the king viz. food, drink, fuel and the like. The officer over ten villages should enjoy one kūla, that over twenty villages should enjoy five kūlas, the superintendent of a hundred villages should receive the revenue of one village and the high officer over a thousand villages should enjoy (the revenue of) a town. All this, as Medhatithi says, is only approximate and recommendatory and was not literally followed, but

188. The word ‘pratyāhām’ (every day) excludes taxes on fields that are levied once a year or taxes levied on particular occasions only; while the words ‘food, drink and fuel’ exclude cattle, money &c. The word ‘kūla’ appears to be used as a technical term. It may mean as much land as would be required for the maintenance of a family. But there is another sense given by the commentators of Manu. Sarvajña-Nārāyana quotes a text that kūla means ‘two halas’. He and Kaliṣka quote Hārīta to the effect that a plough (yoked acc to dharma) is one of eight bullocks, one of six bullocks is employed by those who want only bare maintenance, householders employ one of four bullocks, while those who in their greed want to incur heavy sin employ a plough with two bulls only. So by kūla is meant as much land as can be ploughed with two ploughs to which either 8, 6 or 4 bullocks are yoked. That 6 or 8 or 12 oxen were yoked to the plough is stated in Atharva VI, 91.1 and Tait. S.V. 2.5.2. हरे हृदियां पुलिसीयति क्रमबाहु हृदियां हृदियां प्या कुल्ले चूजते चूलते हृदियांतिबिध्यम्। हृदियां चानाचार्यां चालानहिं सहस्रे जीवितमिथाय। चारायं सहस्रायं हिंगे अम्बापासितिमिथि हार्तिकेष्यं। यस्मिन्द प्रांणं

शहस्रायं च। स्त्रेयानारायणम् 10119.
only means that a salary commensurate with the position and responsibilities of each officer should be received by him. Vide Śānti 87. 6–8 for rules similar to Manu’s (where the officer over a thousand villages gets as his salary the revenues of a śākhānagara). Kautilya (in V. 3) sets out the salaries of many officers and servants as follows: the salary paid to the chief mantrin, purohita and a few others has been already stated above (p. 120); the dauvārika, the superintendent of the harem (antar-vaṃśika), the praśāstra, the samāhrtr and the saṃnīdhātṛ were to receive 24000 panas; the princes (other than the crown prince), the nurse (mātr, mother?) of the princes, nāyaka, the superintendent in charge of justice (or commercial transactions?) in the capital (the pauravyāvahārika), the superintendent of royal manufactories (karmāntika), the members of the council of ministers, the rāstrapāla (governor of a province), antapāla (the guardian of the borders) were to receive 12000 panas; the salary of the heads of śrenis (the military corporations?), the heads of the elephant army, cavalry, and chariot army, and the pradestr was 8000 panas; the superintendents (below the commanders) of infantry, cavalry, chariots and elephants, of the forest produce and elephant forests will each receive 4000; the chariot driver (anīka), the army physician, the trainer of horses, carpenters, yomposaka (?) will receive 2000; the foreteller (the reader of omens), astrologer (who finds auspicious times for undertakings), the reader of purāṇas, the sūta, māgadhā (bard), the assistants (puruṣa) of the purohita and adhyaksas will receive 1000; trained foot-soldiers, the accountants and scribes will receive 500; musicians 250, but trumpet-blowers will receive 500; artisans (kāru) and craftsmen (ālpa) 120; servants in charge of bipeds and quadrupeds, workers doing miscellaneous things, attendants near the king, bodyguard and the officer procuring free labour (vist) will receive 60; those appointed to do piece work (kāryayukta, v. 1 ārāyukta), the elephant driver, boys (mānava, a page?), mountain-diggers, all attendants, teachers and learned men shall receive honorarium (pūjāvetana) according to their merit from 500 to 1000; charioteer of the king 1000; spies of the five sorts (vide above p. 129) will receive 1000; the village servants (like washer-man), the spies of the type of sattrin, desperado, poisoner and ascetic women will receive 500; the wandering spies (vide above p. 130) three hundred or more according to the labour involved. The superintendents in charge of a group of hundred or a thousand (servants) were to regulate the subsistence (bhakta), cash salary, the perquisites,
the appointment and transfer of those under them. But there shall be no transfer of those who are the king's personal servants and of those who are appointed to guard forts and the country parts. The Sukranitisāra (I. 211) emphasizes that salaries should be in panas, that a king should not make a gift even of a finger-breath of land as emolument to any servant, but that if he does give land, it should be held only for the life-time of the officer. Kautilya (in II. 1) prescribes that lands may be granted as emoluments to superintendents (of the various departments), the accountants, to officers called gopa and sthanīka, to officers in the army, physicians, horse-trainers, but without power to sell or mortgage. Sukra II. 117–204 mentions numerous officers of the army, the treasury &c. Sukra IV. 7. 24–27 sets out the salaries of officers, when the king's income is one lakh of mudrās a year. Kaut provides for pensions and gratuities. He says 'the sons and wives of those that die while on duty shall get subsistence and wages. Young children, aged persons and ailing persons related to the (dying) officers shall be shown favour. On occasions of funerals, sickness or child-birth the king shall bestow money and honours on them.' The Mahābhārata (Sabha 5. 54) prescribes that it is the duty of the king to support the wives of those that meet death or calamities in the king's service. Sukra II 406–411 contains very modern-looking rules about sick-leave, casual leave, pension after 40 years of service &c.

The above provisions from Kautilya's work show how States in ancient India engaged in almost all the activities of modern States, had an equally complicated machinery of administration and an army of high and low officers. It will also be noticed how, as in India at present, comparatively very high salaries were paid to ministers and heads of departments as compared with the salaries of clerks (e.g. the ordinary clerks received five hundred, while the chief minister and samāhārī, the

189. न द्वादशास्त्रमध्ये शतशृंगस्वरूप एवं स्वतन्त्रितोत्तरसुतोत्तरस्वरूप। इत्यत: कल्पके वेदवित्त। वायुसर शतशृंगस्वरूप पूर्वम्। इत्यत: कल्पके वेदवित्त। वायुसर शतशृंगस्वरूप पूर्वम्।

190 कृष्णमहाभारतमध्ये तत्त्वज्ञान शवायं द्वादशास्त्रमध्ये। इत्यत: शास्त्रशृंगस्वरूप तत्त्वज्ञान सुचिमहाभारतमध्ये। इत्यत: शास्त्रशृंगस्वरूप।
collector-general, received respectively 48000 and 24000 i. e. 96 and 48 times as much respectively. If all the different officers mentioned in the works on dharmaśāstra, arthaśāstra and in inscriptions be collected together, they will make a formidably long list. A list from one inscription is set out below as a sample. Vide Vogel's 'Inscriptions from Chamba' pp 120-136 for explanations of about 30 titles of officers occurring in the inscriptions.

A few words must be said about local administration. The word grāma occurs oven in the Rgveda. In Rg. I. 114. 1 the poet offers his praise and prayer to Rudra so that he hopes that 'all bipeds and quadrupeds may fare well and all beings in this village may be free from disease and may enjoy prosperity'. In Rg. V. 54.8 'heroes (or men) conquering grāmas' are mentioned (grāmajito yathā narah). In Rg. X. 62. 11 Manu is styled 'grāmanti' and the bestower of a thousand (cows?) and in Rg. X. 107. 5 it is said that the 'grāmanti who is endowed with (or dispenses) dakṣiṇā (cows or wealth) walks in front (of the village people)'. In the Tai. S. II. 5.4.4 it is said 'the prosperous are three indeed, viz. the learned brahmaṇa, the village headman (grāmanti) and the rājanya (warrior)'.

In the Tai. Br. I. 1.4.8, the consecration of fire for a vaiśya sacrificer is made with the mantra 'manostvā grāmanyo vratappate vrataṇāḍadhāmi' where Manu is styled grāmanti.

In the Sat. Br. V. 4. 4. 19 the grāmanti is said to be stronger than his co-sharer (sajāta). Vide S. B. E. vol. 41 p. 111. We saw above...
(p 111) that among the ratmans, grāmam (the village headman) was one. Grāma did not necessarily mean a village but may have been applied to a town (though not a capital). The headman of a village was called grāmam, grāmika or grāmādhipati (in Manu VII, 115–116, Kaut III, 10), grāmakūta (in inscriptions e.g. E I vol. VII p 39 of Sake 552, E I vol. VII p 183, 188) and Pattākila, modern Patil (in Ujain plates of 975 and 1023 A.D. in I.A vol. 6 p. 51, 53, vol. 18 p 322 grant of Bhoja in sāvat 1076, I. A 16 p 254, E I vol. XI p 304, 310 of sāvat 1176.) In an inscription of the 13th century from the Poona District we have the form ‘pattela’ (E I vol VII at p 183). The word ‘gāvunda’ for a village headman in the Canarese Districts is derived from grāmakūta (E. I. vol. VII p 183). Paithinasi 193 quoted by Aparārka p. 239 states that the food of a grāmakūta could not be partaken by a brāhmaṇa. The Gāthāsaptāṣati frequently refers to the great influence of the grāmam and the love adventures of his son in the village (I. 30–31, VII. 24). The Kāmasūtra states (V. 5.5) that the young son of a grāmādhipati had certain women of the village at his beck and call 194. According to the Sukranītisāra I. 193 a grāma (village) is one krośa in extent and yields a revenue of one thousand silver karsas, while half a village is called pali and half of pali was lumbha. Hemāḍi in Dānakanda (p 288) quotes from the Mārkandeya-purāṇa definitions of pura, kheta, kharvata and grāma. Yaj II. 167 makes a distinction between grāma, kharvata and nagara (town) as regards the extent of the pasture lands to be preserved round them. Baudhāyana Dh S II 3. 58 and 60 condemn residence in a city for a religious brāhmaṇa where the body is covered with dust which enters one’s mouth and eyes and recommends for residence a grāma abounding in water, fuel, fodder, fuel-sticks, kuśa grass, flowers, which is full of well-to-do people, endowed with industrious people, where the majority are āryas and which cannot be entered by robbers. In the Sabhāparva 5 84 five officers of a village are referred to. It appears that from being a very high officer (a ratnum) in Vedic times the grāmam was reduced in his influence, came to be appointed by the king alone and the office became hereditary and could be given permanently Vide

193. पैटिनसी. साहित्यसंग्रहसिद्धांतकृतांकृति-विद्या. अवधारण p. 239.
194 वैषमयोपदेशातः तत्त्वविधिनां चूनी महानिधित्वशास्त्र विज्ञानात्मक शास्त्रार्थोत्कर्षणकल्पतत्र. ग्राम पृ. 5 5.
EL vol. VII p. 177, 188, 189 195. The Sukranitisāra (II 120–21) states that there were to be six officers in a village and (II. 428–29) prescribes their caste, viz. sāhasādhipati (i.e. a magistrate to deal with wrongs involving force) was to be a ksatriya, grāmanetr (the headman) a brāhmaṇa, bhāgahāra (the person collecting the state land revenue) a ksatriya, lekhaka (a scribe, corresponding to the modern kulharṇī in the Deccan) should be a kāyastha, śulkagrāha (the toll-gate keeper) a vaiśya, pratihāra (the guard at the gate of the village wall) a śūdra. Sukra (in II. 170–175) sets out their duties. The headman was to be alert in protecting the villagers like their parents from thieves, robbers and from the State officers, the bhāgahāra was to devote special care to the tending of trees; the lekhaka was to be skilled in accounting and proficient in several spoken languages; the pratihāra was to be of strong body, proficient in arms, humble and to call the villagers with the respect due to each; and the toll-gate keeper was to levy tolls in such a way that sellers did not incur loss of capital spent by them. From Kaut III 10 it appears that the village headman had the authority to inflict fines in certain cases e.g. when the headman (grāmikā) had to travel on some business of the whole village the villagers were to accompany him by turns, but if they failed to do so they had to pay a fine of one pana or a half pana. Similarly, if a villager does not co-operate in the getting up of a show (preksā) in the village, he or his people would not be allowed to see the show and he was to be fined if he clandestinely saw it. In villages, particularly in Karnātaka and South India and in brahmadeya grants (to learned brāhmaṇas) the village assemblies (sabhā) carried on local administration. From the Kotavumachgi inscription of Calukya Vikramāditya V dated śaka 934 (1012 A D) it appears that Ummachige was a great educational centre in the 11th century and 104 Mahājanas of the village were entrusted with the proper conduct of worship in the temple, the imparting of education, the feeding of ascetics, the supply of water to the village and the punishment of criminals (E. I, vol. 20 p. 59). Vide Gopalān’s ‘History of the Pallavas of Kāṇoī’ pp. 93, 158–157 for the working of the village assemblies (sabhās) from the 9th century onwards, but as he observes (p 154), ‘we do not know the nature of the rules that regulated their working, their exact sphere of action and their

195. अर्थ सङ्केतः श्राकृतवर्गः कहःसम्प्रदायकसङ्कृतमध्यग्रंहाय पूर्व साहित्यः। E.I. VII p. 177 at p. 188 (grant of Eastern Calukya Amma dated 945 A. D.)
relation to the central government.' An Inscription of king Paṇāntaka I (907–947 A.D.) at Uttaramerur deals with several classes of village committees that were appointed by vote (Annual Report of Archaeological Survey of India, 1904–5 pp 131 ff) Five committees, viz annual committee, garden committee, tank committee, gold committee (for currency or for collecting taxes in cash), pañcavāra committee, are described and reference is made to a sixth called 'justice committee' and the mode of election and the qualifications and disqualifications of members are described in detail (pp. 142–145). Prof Nilkanth Sastri in 'Studies in Cola History' (pp. 131–175) publishes the text of two Paṇāntaka Inscriptions with English translation and exhaustive notes. Vide also E. I. vol 22 p 5 for resolutions of the sabhā at Manur to be followed in future meetings, the qualifications in property, education and character of the members &c, E. I. vol. 24 p 28 about the regulations of sabhā from two Uttaramallūr Inscriptions and E. I. vol 23 p 22 for a note on the pañcavāra committee. For village communities as described in Buddhist works in the 7th century B.C., vide Rhys Davids in 'Buddhist India' pp. 45–51. It appears from Pānini and the commentary Kāśīkā thereon that certain craftsmen were attached hereditarily to the village, were probably paid a certain part of the crop produce yearly for their services and corresponded to the modern village servants (called the twelve baludetās) in the Deccan. For an account of these baludetās, vide Grant Duff's 'History of the Marathas' (Bombay ed of 1863, vol I pp 23–27) For example, Pānini (VI. 2 62) teaches the accent of a compound word formed from 'grāma' with another word denoting 'śilpī' (craftsmen), such as grāmanāpīta (village barber) or grāmakulā (village potter), which are two examples given by the Kāśīkā on this sūtra. From Pānini V 4 95 ('grāmakautābhyaṃ ca taksnah') it may be inferred that a carpenter also was a village servant as in modern times in the Deccan Brahaspatī contains very
important information about local administration in villages. A compact formed among villages, guilds and corporations (gana) is called a samaya (agreement); such an agreement must be observed in times of distress and for acts of dharma. Two, three or five persons shall be appointed as advisers of groups; their advice shall be followed by the villagers, the guilds, the corporations and others. Examples of agreement as to times of distress are: When there is drought, there may be a compact that for the performance of a sacrifice to the planets or the like each field or house should contribute so much money or when there is trouble from robbers, each house should send one able-bodied and armed man. Then examples are given by Brhaspati himself about acts of dharma. The village people should put down in writing what work they are going to do, such as the repair of a house for their assembly, a shed for distributing water to travellers, a temple, a tank or a garden, the performance of the necessary samskaras (upanayana or funeral rites) of the poor and helpless, gifts for the performance of sacrifices, prevention of famine-stricken groups of families, etc., from coming. Such conventions would be proper and should be respected by all the villagers. Whoever being able to carry out such agreements violates them should be punished with loss of all wealth and banishment. Brhaspati further says 197 that the heads of families, guilds and ganas and the inhabitants of towns and forts may pronounce the two punishments of reprimand and condemnation against wrong-doers and may also excommunicate them and the punishments and favours declared by them according to rules should be approved of by the king, since such power is regarded by the sages as delegated to them. For ejecting out of the village one who is not guilty of theft or adultery with another’s wife the village headman or the village was liable to pay, according to Kautilya III. 10, a fine of 24 panas. It will be seen from what has preceded that village administration was self-contained and would function whatever Government might happen to be at the centre. The central Government did not very much interfere with local administration, except in the matter of land revenue, protection against invasion and exercised only general control and supervision. The village communities were miniature states.

197 दृढ़विवाचनाख्यता: दृढ़विवाचनाख्यता:। कृतिधिः परिचयां अकुंकः। प्रवकारिणां।। हि न दृढ़विवाचनाख्यता। कृतिधिः परिचयां अकुंकः। प्रवकारिणां।।

quoted by sadarbh, p. 794, स्त्रियों II p. 225, सत्रवहिक्षिप्त p. 329.

There are some slight variations.
There was a great deal of decentralization or devolution of authority from the central government to the village committees and authorities. They were also entrusted with civil and criminal justice, as we shall see later on. For further details on the organization of a village as a political unit, Dr R C Majmudar's 'Corporate life in Ancient India' chap II, pp 135 ff. and Fick (p. 161) may be consulted. Just as there was some organization in villages in general, so also guilds (śrenis) and groups (ganas) had their own regulations and conventions. In XI 1 Kautūlya refers to ksatriya guilds in the countries of Kambhoja and Surāstra that maintained themselves on husbandry and followed the profession of arms (vide above p. 88 n. 120). In III. 14 he refers to guilds of workmen or labourers (sanghabhratāḥ) Manu (I. 118) declares that his work deals not only with the enduring dharmas of countries, castes and families, but also with the dharmas of heretical sects (pāsanda) and of groups (gana). Manu (VIII. 41) requires the righteous king to consider carefully the dharmas of castes, countries, guilds and families (to find out whether they are opposed to the Vedas) and uphold those dharmas (that are not opposed) as binding (on those respective persons) Yāj. II 192 prescribes that the king should respect the usages and conventions of occupational guilds, merchants, heretical sects, and groups (corporations &c) and allow them to pursue the course of action they had followed from ancient times. Nārada (samayasyānapā-karma, verses 2–6) and Brhaspati quoted in the Viramitrodāya (vyavahāra) contain very important directions as to what conventions of guilds the king should respect and what he is not bound to respect. Nārada says that the king should enforce the conventions agreed upon by heretic sects, naigamas (merchants), śrenis and other groups residing in the country or the capital. The king may allow them to follow their special rules (e.g. speaking the truth), their special actions (begging in the morning without having taken a bath), their mode of meeting (on hearing a drum being beaten), the means of livelihood they have been used to (e.g. dressing as an ascetic). But the king should prohibit (out of their usages and conventions) such as are opposed to the king's interest, or are disapproved of by the people in general, would be ruinous to the purposes of the king. The king should not tolerate their creating factious groups among themselves, taking up arms for a purpose detrimental to the State, and causing injury to each other. The king should specially curb those who cause dissensions among the several
Concerning guilds

Concerning guilds; if they are connived at in these activities they might cause terrible danger. A good deal has already been said about guilds and corporations in H. Dh. vol. II. pp. 66-69. Among inscriptions, the following may be studied: the Nasik Ins. No. 15 of the time of Ābhīra Īśvarasena (E. I vol. VIII p. 88, where the srenis of potters, oil-pressers and water-drawers receive deposits), Junnar Buddhist cave Inscription (A. S. W. I vol. 4 p. 97, where a deposit of money with srenis of bamboo-workers and braziers is made), Gupta Inscription No. 16 p. 70 (an endowment was entrusted to the guild of oil-men, whose head was Jīvanta), Gupta Inscriptions, No. 18 p. 79 (silk weavers from Lāta coming to Daśapura and building a Sun temple), E. I. vol. 15 p. 263, E. I. vol. 18 p. 326 and p. 30, E. I. 16 p. 332, E. I. vol. I. 155 (of 933 sākhāvat, inscription at Gopagiri, modern Gwalior, where the guilds of oil-millers and of gardeners are mentioned), I. 184 (Pehoa inscription, where a guild of 34 horse-dealers from different countries, some being brāhmaṇas, agreed to impose upon themselves and their customers tithes to be distributed to certain temples). Rhys Davids in 'Buddhist India ' (pp. 90-96) gives a list of the 18 guilds that probably existed in the times of the early Buddhist works (though two or three of them are of Subtle existence) and the number of which (18) is sometimes mentioned in the Jātakas (as in Mūgapakkha-jātaka No. 538, vol. VI p. 14 in Cowell's tr.). For further details about the working and organization of guilds, vide chap. I of Dr. R. C. Majmudar's 'Corporate life in ancient India', and 'Indian Culture vol. 6 (for 1940) pp. 421-28 (on the economic guilds of blacksmiths, barbers &b. in the Kusāna period).

In numerous places rules are laid down about the qualifications of the ordinary servants (parivāra, bhrtya or anujivin) of kings, how they should conduct themselves, how servants should

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198. पापद्विगमाक्षीपुष्पातालप्रयोगिन् । संख्येन सर्वम् राजां दुन्ते । अभियंते सर्व ॥ यो च पद्म]['यम यस्यांवासस्यस्याविविषयं तत्थ ॥ नाभिक्षु च पद्मनं न च यस्यांवासस्यस्याविविषयं तत्थ ॥ समुद्धवकरणं तस्य कामस्वाद ॥ परस्परप्रपतिः तत्थं राजा च तस्यांवासस्य तस्यांवासस्य तस्यांवासस्य ॥ समानसंस्थानं तस्यांवासस्य तस्यांवासस्य तस्यांवासस्य तस्यांवासस्य तस्यांवासस्य तस्यांवासस्य ॥ नाभिक्षु हृदयाभ्यस्तं दृष्टं ॥ नाभिक्षु हृदयाभ्यस्तं दृष्टं ॥ नाभिक्षु हृदयाभ्यस्तं दृष्टं ॥ नाभिक्षु हृदयाभ्यस्तं दृष्टं ॥ नाभिक्षु हृदयाभ्यस्तं दृष्टं ॥

In the Amraoti Inscriptions (E. I. vol. 15 p. 263) we find the words एव जातिकरणं नियमम् (of the trade guild of Dhanayakata). This place is variously identified (vide E. I. vol. 20 p. 9). The सर्व is the usual word for all. H. 192 explains 'सर्वस्य शासनशासनेण व्यवहारम् '. II. 192 explains 'सर्व शासनान्तराणानां शासनेण व्यवहारम् '.
find out whether the king is pleased or displeased with them. Vide Katyāyana V. 4, Virataparva 4 12–50 (where the refrain of most verses is 'sa rājayasatim vaset'), Matsyapurāṇa 216 (the whole of which is quoted in the Rājadhirakanda pp. 24–27 and in the Rājāntīprakāśa pp 189–192), Agnipurāṇa 221, Visnudharmottara II. 25, 2–28, Kām IV. 10–11, V 1–4, 6, 9, 11–63 (most of which are quoted in the Rājāntīrakara pp 51–58), Śukranitisāra H. 54–68, 205–253. On the word ‘aksudraparisad’ occurring in Yaj I. 310 (where the Mit. has the reading ‘aksudrosparasah’) Viśvārūpa quotes a passage from Śankha 199 ‘a hamsa (swan i.e. a good king) surrounded by vultures (greedy servants) is not desirable, but a vulture (i.e. a greedy king) surrounded by hamsas (servants of spotless character) may be preferred. The Rājāntīprakāśa (p 185) quotes the same passage from Śankha-Likhita with an addition viz. ‘faults arise from those who surround the king and such faults are enough to ruin (the king) Therefore the (king) should first (before engaging his servants) put down in writing whether servants are endowed with learning, character and good family.’ Śukra inculcates loyalty on servants in the following remarkable 200 words ‘one should not forsake a good master when he is in adversity. Should not one always and quickly desire the welfare of one’s protector whose salt (lit food) one has eaten with honour even once’ (II 246–247)? This sentiment pervaded most Hindu servants in ancient and medieval times, even under foreign rulers professing a different religion. The Rājāntīprakāśa p. 176 quotes a fine verse from the Garudapurāṇa as to matters to be principally considered in selecting servants, which are four, viz. education, character, family and

199 तथा च शुभे । न एतो भ्रात्यवाचकाः कार्तेः हृदी इत्समिवसतः स्याह । निम्नलिखितम् ।

200. अग्निनात्सु सुभाषी काब्याः न परिवर्जनेत् । एककालस्वरूपिंचर्याकालं हाद्देशः ।
actions, just as gold is tested in four ways, viz., by weighing it or by rubbing it (on a touchstone), by cutting it and by heating it 201.

Some responsibilities of the Government or king in ancient India towards the people will now be dealt with. From Kautilya (II. 29 and II. 34) we find that the State made great efforts for the rearing of cattle, made stringent rules for their protection and for the provision of pastures. Manu VIII. 237, Yāj II. 167, Matsya 227. 24 also make provision for pastures round villages, towns and cities. Kautilya requires the superintendent of cattle to classify cattle as calves, steers, tameables, draught oxen, bulls to be yoked, stud-bulls, bulls meant for carts, cattle meant for meat and buffaloes meant for carrying loads or for being yoked, pregnant cows, milk-cattle &c. and to mark them and note in a register of beasts the branded marks, natural marks, colour, the distance between the horns. He prescribes corporal punishments and fine for those who unauthorisedly kill or steal cattle or incite others to do so. He prescribes even the amount of fodder, oil-cakes, bran and salt on which different kinds of animals put to different kinds of work are to be fed. From the Mahābhārata also we learn that even princes 201a went to supervise and enumerate the herds of cattle belonging to the State. Vide Vanaparva 239. 4 and 240. 4-6. Even such a grammatical work as the Mahābhāṣya incidentally gives expression to the view that a country's wealth consists in its food-crops and in abundance of cattle.

We saw above (pp. 130-131) that spies were to be employed (acc to Kāut.) to test whether State officers took bribes. Yāj. (I 336, 338, 339) prescribes that the king should protect his subjects from the harassment caused by kāyaśtas (the accountants and scribes), that he should ascertain the doings of the State officers through spies, honour those that are well-conducted and severely punish those who are badly behaved and should deprive those who take bribes of their wealth and banish them from the country. Vide also Manu VII. 122-124 and Vinsudharmottara for similar rules. The Pañcatantra (I. 343) has the same verse as

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201. भच्छुराणिः। वयस वपुतिः कलंकं परिधिते हुतासाध्योपत्तमनेन। कयाक्तं भच्छुराणिः।
201a. स्मारकौ समयं गतिः वच्छुरागायविः वच्छुरानं। वनपार्वी 239. 4, on which
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Yāj. I. 336 (except the last pāda). Medhātithi on Manu IX. 294 remarks that the kingdom has no fear of ruin if kantakas (wicked people who are like thorns) are removed and justice is properly administered and that kantakas are generally under the protection of the queen, the prince, the king’s favourites or the commander-in-chief.

Great attention was paid to agriculture. In the Sābhāparva 5. 77 the king says is advised to have large tanks in different parts of the country full of water and to see that agriculture did not depend on the rains alone. Megasthenes (Fragment I p. 30 of McCrindle's work) notes that the greater part of the soil of India was in his day under irrigation and consequently bore two crops in the year. Even from the Tai S V 1 7 3 it appears that two crops were grown in the year (tasmād dvāḥ samvatsarasaya sasyam pacyate). The Vāj S. 18 12 contains a list of twelve different kinds of crops such as rice, yam, wheat, mūsa, sesame, mūḍa, māṣūa &c and the Br Up VI 3 13 enumerates ten kinds of grain (grāmyāni dhānyāni). In the Hathigumpha Inscription of Kāravala king of Kalinga (E I vol. 20 p. 71) it is stated that (p. 79) a canal which had already been opened in the 103rd year of the Nanda kings (i.e. in the 4th century B.C.) was extended by him in the 5th year of his reign. Rudradāman at great expense from his own treasury without any additional taxation or demand for free labour restored the famous Sudarsana lake near Junāgad (E I vol. VIII. p. 36) that had been built by the Governors of Candragupta and Aśoka and been breached by floods. Irrigation had been made use of from Vedic times Ṛg VII. 49 2 refers to rivers and springs naturally flowing and to channels that were dug up. South Indian Inscriptions show how the Pallavas and kings of other dynasties built tanks which were named after the kings themselves or after some distinguished chief of the locality and that are in existence even now. Vide S I I vol. II part III, p. 351, E. I vol. IV p. 152 (mention of tank called ‘paramesvaratatāka’), S I I vol. I p. 150, E I vol. VIII p. 145 (for mention of rājatatāka near which four nivartanas were granted by Carudevi). The great engineer Suyya under Avantivarman of Kashmir (833-858) successfully dammed the river Vitastā with the result that a khāri of rice which could formerly be purchased for 200 dināras could be had after the great irrigation.
Irrigation

work for 36 dināras (vide Rajatarangini V. 84-117). Kautilya (II. 24) refers to the various ways in which crops could be raised with water and the revenue to be demanded in each case, e.g. those who watered crops with manual labour had to pay 1/5th of the produce, those who carried water on their shoulders paid 4th, those who watered their crops by means of water-lifts or water-wheels from natural springs paid one-third and those who raised water from rivers, lakes, tanks and wells paid 4th. He notes that sugarcane crops are a heavy responsibility, as they are liable to many evils and entail great expense. Sugarcane had been grown even in the times of the Atharvaveda (I. 34. 5). The Śukranitisāra (IV. 4.60) remarks that the king should see to it that there is plenty of water in his kingdom by digging wells, wells with steps, tanks, lakes &c. Megasthenes (fragment XXXIV p. 86 of McCrindle’s ‘Ancient India’) says that some superintend the rivers, measure the land as is done in Egypt and inspect the sluices by which water is let out from the main canals into their branches so that every one may have an equal share of it. Kaut (IV. 3) devotes a special chapter to the king’s duty to save the kingdom from national calamities, viz. fires, floods, diseases, famines, rats, wild elephants (or beasts), snakes and evil spirits. He gives practical hints for human and religious remedies and rites against these calamities. The measures against famine suggested by him are: the king may provide the people with seeds and food, start works for those who are distressed, distribute either his own collection of provisions or that of the rich, call for help from his allies, tax the rich and make them disgorge their wealth, migrate to other countries that have abundant harvests. National calamities are called ft, which are six: excessive rainfall, drought, rats, locusts, parrots and too close presence of foreign kings.\(^{203}\) The work of Kamandaka states that calamities are either divine or human and that the first are of five kinds. In another place he gives a longer list of calamities. There are several references in ancient and medieval works to severe famines. In the Chāndogya Upanisad I. 10. 1-3 we

\(^{203}\) अर्थात् देशविद्युत्कालवेदानीस्मयो: सालम्: शुक्लः: अर्थसास्याः राजान्: बहुतः इत्यादिः। अर्थात् कालवेदानी राजन: बहुतः इत्यादिः।
have the story of Usasti Cākrāyana who took from another's plate kulmāsas that the other had been eating (i.e. he took uccasta food), when the country of Kurus was overwhelmed with a shower of hail (or by locusts). The Balakānda (chap. 9) refers to a famine in the country of Anga under Ranaḍa. The Nṛukta II 10 refers to a drought in the dun past for twelve years in the kingdom of Śantam. A Mauryan inscription from Mahāsthāna (ancient Pundranagara) shows that Gandā coins were distributed and also corn to famine-stricken people (J. A. S B for 1932 p. 123). The Sohagpur Copperplate Inscription (of Mauryan times) contains an order of the mahāmatras of Śrāvasti that the drañga storehouses were to be spent only in case of drought. Vide Annals of B. O. R. Institute, vol. XI p. 32ff., E I. vol. 22 p. 1 and J. A. S B vol. VII (for 1941) part 2 p. 203. The Rājatarangini records several times the occurrence of famines in Kashmir at different periods (e.g. vide II 17–54, V. 270–278, VII 1219 ff). The Manimekhalai (chap. 28) speaks of a famine for twelve years at Kāñci in South India. There was a terrible famine (called the famine of Durgādevī) for twelve years in the Deccan about 1396 A. D. (vide Grant Duff's 'History of the Marathas' vol. I. p. 43). Vide E. I. vol. 15 p. 12 for a reference to a severe famine in akṣe 1313 when paddy could not be had even at the rate of ten nālis a panam.

It has been shown (in H. Dh. vol. II. pp. 113, 369, 856–858) how it was the king's duty to support learned brāhmanas, to hold assemblies of poets and learned men, to make gifts of land to educational institutions and to promote learning in all ways. Vṛddha-Hārīta VII. 229–230 says that only learned brāhmanas who are endowed with tapas are proper objects of the king's bounty. Some emperors like Harsa went far beyond what was reasonable. The Chinese pilgrim tells us (Beal's 'Buddhist Records &c' vol I pp 214, 233) that at the end of every five years Harsa held an assembly (parśad) at Prayāga and gave away all in charity. The Śukranītisāra (I 368–369) holds that a king should be on the look-out for educated men, should appoint them to offices suited to their education, should honour every year those who have attained eminence in learning and the arts and take measures for the advancement of learning and arts. It has already been shown how this had been followed by ancient and medieval Indian kings to the letter. A comparison with the British Indian Government in the 18th century and the first decades of the 19th will be highly interesting. After the battle of
Plassey in 1757 the British East India Company got three such rich provinces as Bengal, Bihar and Orissa. During over 50 years the only thing that was done by the ruling power for the encouragement of learning among Indians was that in 1780 Warren Hastings started a Madrasa of Muslim religious learning at Calcutta with a moulvi and 40 stipendiaries and Lord Cornwallis founded a Sanskrit college at Benares in 1792. When the East India Company's Charter was renewed in 1813 the only provision that was made for education and encouragement of learning (by George III, 1813 chap 155, clause 43) was "that it shall and may be lawful for the Governor-General-in-Council to direct that out of any surplus which may remain of the rents, revenues and profits arising from the said territorial acquisitions, after defraying the expenses of the military, civil and commercial establishments and paying the interest of the debt, a sum of not less than one lakh of rupees in each year shall be set apart and applied to the revival and improvement of literature and the encouragement of the learned natives of India and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India." Detailed comment is not called for. More than 50 years after British rule began, when at least half of what is British India now had come into the hands of the British, and when the yearly income must have been many crores of rupees, the sum of a lakh of rupees was to be set apart for education of two kinds (Eastern and Western) in the whole of the then British India. Further this provision was not compulsory but only permissive, and was to be availed of only if some surplus was left after everything else had been provided for.

As in western Jurisprudence, so in India the king was looked upon as parens patriae, the protector or guardian of all minors. Gaut.204 X. 48-49 and Manu VIII. 27 prescribe that the king shall protect the property of a minor until he attains majority or until he returns from his teacher's house Medhātithi on Manu VIII 27 says that the minor's relatives like the uncles may contend that one of them is the guardian of the minor's property but it is the king who is to see that the minor's property is kept

204. शप वाङ्गनसायब्रुवगप्लागला | ससाभुधूर्षा | श्री. X. 48-49, श्रेष्ठपुड़ा वाङ्गाला पल्लामसायब्रुवगप्लागला पापपिनिक्यांनामम | श्रेष्ठपुड़ा पापपिनिक्यांनामम K. M. R. P 596, जाम्बनान शास्त्र नामपालिकापालागीय | अन्यपान मिनेतरपारिचाहत्या मने किंव शास्त्रीपान मठेण्य शास्त्रीपान मठेण्य मृत्युपिनिक्यांद्विन्द्र | श्रेष्ठपुड़ा राजा शास्त्राचाय | श्रेष्ठपुड़ा राजा शास्त्राचाय परिचय | तथा वाङ्गनसायब्रुवगप्लागला शास्त्राचाय शास्त्राचाय राजा शास्त्राचाय परिचय | तथा वाङ्गनसायब्रुवगप्लागला शास्त्राचाय शास्त्राचाय राजा शास्त्राचाय परिचय |
safe. Baud. Dh. S. II. 2 43, Vas. 16, 8–9, Visnu Dh. S. III. 65, Śankha-Likhita contain a similar rule. Nār (mādāna 35) declared that a person was a minor till the 16th year. Manu VIII. 28–29, Visnudharmasūtra III. 65 extend the same rule and say that the king must take care of barren women, women who have no sons, women whose families are extinct, wives and widows who are faithful to their husbands and of those who are afflicted with disease Nār. 205 as quoted by Medhatithi says that if a woman has nobody in her husband’s or father’s family to protect her, then it is the king who is to protect her. Kaut 206 (II 1) makes it a duty of the elders of the village to take care of and increase the properties of minors and of temples.

It was the special concern of the king to see that proper weights and measures were used. Kaut (II. 19) as stated above (pp 145–146) provides for a special superintendent of weights and measures. Vas 207 (19 13) and Manu VIII. 405 provide that all weights and measures must be duly marked (or stamped), that once in six months they must be re-examined and that the weights and measures for objects required by the class of householders must be guarded against falsifications. Yāj. II. 240 and Visnudharmasūtra V. 122 prescribe as punishment the highest amercement for those who fabricate false balances, edicts, measures and coins and also for those who use them in their transactions The Nitivākyāmṛta (p. 98) requires the king to be vigilant as regards merchandise, balances and measures, since there is none who excels traders in stealing people’s money before their very eyes. 208 Vide Alberuni (tr. by Sachau) vol I chap XV about weights and measures current in India in the 11th century

Another important responsibility of the king concerned thefts. Asvapati, king of Kekaya, boasted that in his kingdom there was no thief, no close-fisted person, no drinker of wine,

205. भिन्नेनामस्तेश्ण भरणे च स देवर । परिक्रिये पवित्रुक्ते निर्माण्ये निर्माणये । समस्तसिद्धु बाँधस्तु निवलुक्तुष्ठु लिथ्या । ।

206. चातुर्यम् जातिस्तेन वर्गंदेवद्रार्थविद्यायथाय । व्यापारः । । कौटिल्य

207. गांवकेकाभुजवनं स मानोमन्ने दशिते ध्याताम् । बसिल्द 19, 13.

208. पर्वतवासस्तेन राजा हर्षं जातिस्तम्भः । कवितम्य कितः परं पप्तोपरः ।

कौटिल्याय. p. 98.
King's duty in case of theft

(Chân. Up. V. 11, 5). Āp. Dh. S. 209 (II. 10. 26, 6-8) lays down that the officers should protect a city against theft for one yojana round it and in the case of villages for one krota round them and that whatever is stolen within those limits must be returned to the owners by the officers. Gautama X. 46–47, Manu VIII. 40, Yaj. II. 36, Visnudharmasûtra III. 66–67, Śànti 75. 10 prescribe that the king should recover from the thief stolen property and restore it to the owner (without distinction of caste), that if he cannot restore it he should compensate the sufferer from his own treasury, and that, if he retained the property recovered from a thief or did not make efforts to catch the thief and compensate the owner, the king incurred sin. Kaut. III. 16 contains a similar rule. 210 Viśvarûpa on Yaj. II. 38 quotes a prose passage 211 of Br. with a similar import. The Visnudharmottara 218 (II. 61. 52) remarks that if a person is robbed by his own servants then he (the king) may endeavour to recover it from the servants (by threatening or beating them), but need not restore it from his own treasury. Yaj. II. 270–272, Nâr. (pariśista 16–21) and Kât. 213 give further directions, viz. the thief should be made to restore the property stolen or its price; if the thief cannot be found the officers and wardens of the country pay the price of the stolen articles; the property stolen in the village should be made good by the headman of the village, if the thief's foot-steps

209 सत्तवी चौजन नगरेण तत्करणैः श्रयं। कोशि सामायः तत्र यथूपये तात्तमतिवृत्तं। अप. व. 9 II. 10, 26. 6-8.

210. नर्तकाहिरूपः तु मरणाधिक राजा यथास्तं परायं | चोखात्मविशालानां लग्नेयं परायं | कौनितकIII. 16 p 190

211. चौखात्मविशालानां यथास्तं गमवेदं | कौसापा वृद्धाः। हिं. X. 46–47: मरणाधि-हरं तथा तथा तथा तथा तथा तथा। तत्सौरवाद्वन्त्यं स्वास्तसौरवाद्वन्त्यं। शान्ति 75. 10. The Sûtra on पत्र. II. 36 quotes Gaut. and Śânti 75. 10, 'तथा तथा तथा तथा। चौखात्मविशालानां यथास्तं गमवेदं। अद्वृत्योरविमलितिकिर्मिण शौकं | विद्या तथा पि. II. 38 (of Tri. ed.).

212. न तत्तवः महात्तमः यद्य तत्तविरधारी:। प्रवरकितित्वं यद्य कार्यं तत्तवादितितिति:। विद्या तथा पि. II. 61. 52, quoted by व्यासदत्तां. p. 127

213. यद्य ह दृष्ट्वेता राजा चौखात्मविशालानां गमवेदं। अस्तकां बिकवातां यद्य चौखात्मविशालानां गमवेदं। विद्यां तथा तथा तथा तथा तथा। अद्वृत्योरविमलितिकिर्मिण विद्या तथा पि. 844 Vide 'Selections from Peshwa Daftar' vol. 43 p 131 (No 166) for a comparatively recent (18th century) instance of a village (Pâtas in this case) being held responsible collectively for a theft.
are not traced as going out of the village; if the theft takes place in a pasture land or forest (and the thief is not found), the owner of it should be made to pay; if however the theft is not committed in a forest but on the road then the officers appointed to arrest thieves should be made to pay; the whole village may be made to pay the compensation when the theft is within the boundaries of a village but outside the limit of the residential quarters, if the footsteps of the thief are not traced as going out of the village; if the theft takes place beyond one kosa from a village then the surrounding five or ten villages may be made to pay the compensation. Yaj II 271 and Kat mention an officer called ‘cauroddharta’ (‘or coroddharta’) The ‘cauroddharanika’ (thief-catcher) is an officer mentioned in numerous inscriptions e.g. in the Palitana plates of Dharrasena II of Valabhi in Guptan year 252 (E. I. vol. XI at p 83), in the inscription of Narayananapala where we have both cauroddharanika and kottapala, modern Kotwal (I A. vol XV p 304) and in the grant of Ballalasena quoted above (p. 153, n 191) Kautilya IV 13 also gives similar rules and mentions an officer called ‘corarajjuka’ who has to make good the loss of merchandise by theft between two villages or lands that are not pasture lands.

The first quality required in a king according to Yaj I 309 quoted above (p. 44) is great energy and Kaut also (in VI. 1) mentions ‘great energy’ (mahotsaha) among the qualities called ‘abhi-gamika’. Works on dharmasæstra and arthaæstra emphasize the fact that a king must always be full of activity and must not be lethargic or fatalistic. In the Mahabhñarmata the topic of human effort and daiva (fate or destiny) comes up for treatment in numerous places and is put in the mouth of several characters with different emphasis according to circumstances. In Adi 1 246-247, 39. 7-10, Sabha 46. 16, 47. 36, 58 14, Vanaprava 179. 27-28, Udyoga 3 52, 40 32, 159 4, 186 18, Asramavasika 10. 29 the emphasis is on daiva as all powerful, it being said that human effort is useless as against daiva. A golden mean is advocated in Adi. 123. 21, Sabha 16 12, Udyoga 79 5-6, Santi 56. 14-15, Sauptika 2. 3, in all of which it is said that worldly affairs require both prarukara (effort) and daiva. In certain other passages it is recommended that effort is superior to daiva and that one’s business is to make efforts and not to care for fate; e.g. in Drona 152. 27, Santi 27 32, 58 13-16, 153, 50, Anusasanam 6 1 ff, Sauptika 2 12-13 and 23-24. A few of the striking passages indicative of the three lines of thought are
Energetic action, according to Santi 58 13-15, is declared by Brhaspati to be the root of rajadharma. Nectar was obtained and asuras were killed by the gods by means of energetic action and Indra secured his high position in heaven and here by energetic action. Br. makes the characteristic remark 'A man who is a hero of action leads those who are heroes in speech and the latter are seen to cater for the pleasures of the former and wait humbly on him'. The Bhagavadgītā in its final summing up of the philosophy of Activism without an eye to the fruit of it but from a sense of duty declares (XVIII 13-16) 'that in the Sāṅkhyā philosophy five categories are mentioned as conducive to the accomplishment of all actions viz. the place, the agent, various kinds of instruments, diverse and separate activities and lastly dana; that whatever action a man commences either with his body, words or mind these five are its causes, whether the action be righteous (nyāya) or the opposite of it, and that this being the true state of things (i.e. the fruit depending on the co-operation of five elements and not on one alone) that man who regards himself alone as bringing about a result is a fool and has no correct perception'. Kauṭilya also (I.19 last two verses) says 'activity (utthāma) is the root of wealth and the opposite of it is the root of evil' In the absence of activity the loss of present and future acquisitions is sure; by activity a king can obtain his desired object and plenty of wealth'. Yaj (I.349 and 351) states that success in undertakings depends upon both fate and human effort, yet fate is nothing but the

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214 दैविक भावदिग्रेश्यो दृष्टिनिरस्थिति। विधा विप्रेक्ष्यति सा भावदिग्रेश्यो न भावदिग्रेश्यो। आदि 1. 246-247, दैविक भवदिग्रेश्यो निरस्थिति साधन । उदाहरण 186 18, दैविक भवदिग्रेश्यो साधन । सम्म 47 36, दैविक भवदिग्रेश्यो निरस्थिति। उदाहरण 40 32, (2) दैविक भवदिग्रेश्यो निरस्थिति। उदाहरण 123 21, जयपत हेतु: सिद्धिः कर्म दैविक दैविक संस्थितम्। सम्म 19 18, दैविक भवदिग्रेश्यो साधन । उदाहरण 79 5, न भवदिग्रेश्यो दैविक भवदिग्रेश्यो साधन । साधनम् कर्म दैविक भव�िग्रेश्यो न। साधनम् कर्म दैविक भवदिग्रेश्यो न। जातिः 56 14, न हैद्रविन जीवित जीवित जीवितवेशेः संस्थित। न जातिः साधनन्तर भवदिग्रेश्यो जीवितवेशे:। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्:। जातिः 3 2; (3) पणो न हैद्रविन जीवित जीवितवेशे:। जातिः 2 12, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 2 12; नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 2 12; नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। उदाहरणम् कल ग्रहण दैविक नृत्यविवरणवेशे:। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 2 12; नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 2 12; नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। उदाहरणम् कल ग्रहण दैविक नृत्यविवरणवेशे:। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 2 12; नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। उदाहरणम् कल ग्रहण दैविक नृत्यविवरणवेशे:। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 2 12; नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। उदाहरणम् कल ग्रहण दैविक नृत्यविवरणवेशे:। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 2 12; नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। उदाहरणम् कल ग्रहण दैविक नृत्यविवरणवेशे:। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 2 12; नृत्यविवरणवेश भावदिग्रेश्यो साधनम्। जातिः 135 50, नृत्यविवरणवेश भावदिग्रेश्यो साधनम्।
human effort of past lives manifesting its effect (in this life) and that as on a single wheel a chariot cannot progress, so fate cannot accomplish anything without human effort. Yaj. I 350 refers to other views viz fate alone leads to success, human effort alone does so, that success results of itself (without any cause), while others say that it is Time that brings about all results Manu VII 205, Matsya 221. 1-13 (all of which are quoted in the Rajaniti prakāśa pp.313-314) and Vismudharmottara II. 66 (which has the same verses as in Matsya 221) inculcate the same doctrine as that of Yaj. I 349 and 351 and emphasize that one must always make efforts (tasmat sadottānavatā hi bhāvyavān-Matsya 221. 12) The Matsya purāṇa 221. 2 emphatically states that effort is superior. Medhatithi on Manu IV. 137 quotes a subhāsita 'those devoid of effort are engaged in calculating the aspects of planets; there is nothing impossible of accomplishment for those who are determined and who are able to put forth spirited efforts.' Kaut (IX. 4 last two verses), Kām V 11, XIII. 3-11 emphasize the importance of strenuous efforts. Sukranītisāra (I. 46-58) holds a long disquisition on effort and dāva. It contains the following fine sentiments (I 48-49) "Men of intellect whose career is honourable regard human effort as the highest (and not fate), while impotent men not being able to make efforts have recourse to fate; but all is centred in both dāva and effort." Vide Rajaniti prakāśa pp 312-315 and Nimitayūkha pp. 52-53 for further remarks on dāva and effort. In one place the Mahābhārata (Udyoga 127. 19) contains the bravest and loftiest advice "man should always press forward (make efforts), should never bend; striving is manliness; one may even break at a point which is not the joint, but should never bend." The Brhat-Parāsara-śāstra X pp. 282-283 contains a long discourse on dāva and purusakāra. Vide Vāyu 9. 60-61 and Mārk. purāṇa 2. 51-62 and 23. 25-36 for similar passages on dāva and effort.

An important doctrine of the writers on Arthasastra is more or less based on the necessity of utsāha, viz: the doctrine of three

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215. समेत कार्म श्वेतवर्ण निविस्थ श्रेयात्सर्वार्थित्वम्।
तत्सर्वार्थेभादेहन्मान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।
सार्वार्थस्वदीपकुस्मवेदादेहमान्विनीष्ठ।

216. उद्योगप्रेयं न जनेकुपरि स्त्रेष वाचनम्।
अत्यंतमिः सर्वेऽधिः न जनेकुपरि स्त्रेष वाचनम्।
Udyog 127. 19.
The three saktis, i.e., of utsāha, prabhū (or prabhāra) and mantra. These three occur in the Mahābhārata (Ārasanavāsika 7.6). The S. V. p. 46 quotes a sūtra of Gautama (not found in the printed Dh. S.) ‘the three saktis, viz. prabhū, mantra and utsāha are based on that (kośa).’

In VI.2 Kautilya defines mantra-sakti as the power of the knowledge (of statecraft), prabhu-sakti as the power of treasury and army and utsāha-sakti as the force of the king’s bravery.

Kautilya (IX.1) holds a discussion about the relative superiority of these three and gives it as his opinion (as against that of the ācāryas) that prabhu-sakti is superior to utsāha-sakti and that mantra-sakti is superior to prabhu-sakti.

Kām. XV. 35 defines the three thus: ‘the employment of the proper line of policy out of the six upāyas (sandhi, vigraha &c.) is called mantra-sakti; a full treasury and army constitute prabhu-sakti and activity of the strong is called utsāha-sakti; the king possessed of all these three becomes the conqueror.’

The Nītivākyānātra (sādgunyasamuddesa) p. 322 defines them in the same way.

According to the Daśakumāracerita VIII the goal (or purpose) of a king is determined by mantra (consultation with ministers about policy), commencement of actions (for securing the goal) is due to prabhava and the successful termination of undertakings is brought about by energy. The Parasurāmaprātā (folio 15a) quotes a verse which defines ‘prabhu-sakti’ differently viz as the power to command. Vide also Agnipurāṇa 241.1, Mānasollāsa II.8-10 pp 91-94.

Kām. (XIII.41-58) brings together the numerous activities of the king.

A king endowed with valour has to employ several means (upāyas) to extend his dominions and to keep his hold on his own people. According to the Rāmāyanā V.41.2-3, Manu VII.109, Yāj. I.346, Sukra IV.1.27 and others the...
upāyas are four viz. sāma (conciliation), dāna (giving gifts or presents), bheda (causing dissensions) and danda (punishment or depriving of property or causing bodily harm).**' In the Hastigumpha Inscription, the king Khāravela (latter half of 2nd century B.C.) states that in the 10th year of his reign he sent, following the policy of danda, sandhi and sāma, an expedition against Bharatvārsa, conquered that land and obtained jewels and precious things (E I, vol. XX pp. 79, 88) This shows, that the theory of the upāyas must have been evolved several centuries before the Christian era. Some others such as Kām XVII 3, Matsya 222. 2, Agnipurāṇa 226 5–6, Bārhaspatyaśūtra V 1–3, Visnudharmottara II 146–149 add three more to the above four. Sabhā 5 21 mentions the number seven and Vanaparva 150. 42 mentions sāma, dāna, danda and upeksā. About the additional three there is some difference of opinion, most holding that the three are māyā, upeksā and indrajāla (Kām., Agnipurāṇa), while the Bārhaspatyaśūtra (V 263) says they are māyā, upeksā and vadha and others say they are māyā, akṣa (dice) and indrajāla (Sarasvativilāsa p 42) Māyā means ‘deceitful trick’. The Visnudharmottara II 148 gives illustrations, such as tying a firebrand to the tail of a bird that often perches on the enemy’s camp to produce the delusion that a meteor (an evil omen) fell down from the sky Kām XVII 54 cites the example of Bhīma’s meeting Kīcaka dressed as Draupād. Kām (XVII 51–53) gives other examples of māyā. Upeksā consists in not preventing a person from doing what is unjust or being addicted to some vice or engaging in a fight and is illustrated by king Virāta’s connivance at the death of Kīcaka (Kām XVII 55–57) Indrajāla means ‘creating an illusion by means of incantations and other tricks,’ e.g. creating the illusion before the eyes of the enemy that a vast army is coming to attack them or showing that angels are descending to fight against them or making a shower of blood fall in the enemy’s camp etc (Kām XVII 58–59, Visnudharmottara II 149) About the four well-known upāyas, Manu (VII 108–109) says that for the prosperity of one’s kingdom sāma and danda (punishment) are preferred, but if

221  अन्तःकरणिय ताहाँ दा०वषय्यादिविस्तरणम्

222  नाम तस्मा दुर्योधन निःस्वमिति ददाये न नेतृत्वादिति मन्याबाहिकाति जना

223  परकल्पनावस्य मरणे ऽरोपते || दुर्योधनां दर्शान् २-३, उपाध्यायेऽपकालातिदिवस्विति

224  शैवशुक्लमेवदुर्योधने उपायः || नीतिपरायामहाराजः ३३२.

225  मेहरावले (लालितकविता) विद्यमानाति विद्यमानोऽस्मिन्

222  न वध दुर्योधनां काःहरि घृसि किंतु वर्षंभरो भूस्वरं।

223  ताहां दा०वषय्यादिविस्तरणम् । नाम तस्मा दुर्योधन निःस्वमिति ददाये न नेतृत्वादि

224  परकल्पनावस्य मरणे ऽरोपते || दुर्योधनां दर्शान् २-३, उपाध्यायेऽपकालातिदिवस्विति

225  शैवशुक्लमेवदुर्योधने उपायः || नीतिपरायामहाराजः ३३२.
the king’s antagonists do not yield to him by the employment of the first three then he may bring them round by danda (i.e. fighting and harasing them) and that (VII. 198, 200) danda is to be employed as the last resort, since victory is not certain. In the Śantiparva 69. 23 the view of Brhaspati is quoted 222 that fighting should always be avoided (as far as possible) and that for securing one’s purpose three upāyas (other than fighting) are to be resorted to. Brhat-Parāśara X p. 280 also says that a wise man should not resort to fighting and that danda is to be resorted to only when there is no other course left In Udyoga 132. 29-30 (cr. ed. chap. 130) Kunti sends a message through Kṛṣṇa to her son: ‘begging is forbidden to you nor is agriculture appropriate for you; you are a kṣatriya living by the power of his arms and a protector against injury (kṣatāt trātā). Recover your ancestral share by sāma, dāna, bheda, danda and naya’. In Udyoga 150 (cr. ed. 148) Kṛṣṇa informs Yuddhīśṭhira how he first employed sāma, then bheda, then dāna (viz. giving up the whole kingdom for five villages) and how only danda is the proper recourse in the case of the wicked Kauravas. Hopkins, as very often, being obsessed with his ideas of three strata in the Mahābhārata says that three means appear to be the oldest form and four means a later idea. There is hardly any warrant for this opinion as for many others in the same strain (J. A. O. S vol. XIII pp. 182-183 n). The Visnuḍhamottara II. 146 speaks of the four upāyas and states that danda as regards a foreign state is open (prakāśa) i.e. burning and not-open (aprakāśa i.e. by poison or secret death) The Mit on Yaj. I. 346 and Kām XVIII 1 say the same thing. The Visnuḍhamasūtra III. 38 prescribes that the four upāyas are to be employed at the proper time and according to the attitudes of the hostile king, friendly king, the maḍhyamana and udāśīna kings 222. The Mit on Yaj. I. 346 expressly states that the four upāyas are to be employed not only in the affairs between kings but also in the lives of all ordinary people and cites a verse wherein a father or teacher addresses a son or pupil making use of all four means 224 Kām. XVII, Māṇḍollāsa II.

222. उपायोऽपि सत्तवां श्रद्धा राज्यवाणिने धीमता। उपायेशिरभिमात्रामयधिधिवात् हुस्तसत्तवा!। इश्वरोऽश्चालापि धीमता। सर्वभाग्यवात्। इश्वरेऽश्चालापि धीमता। सर्वभाग्यवात्।
223. विद्याधृतिं समानद्वायुण्ड्यन्नाधिकारं सामवेदद्वादन्न यथार्थं यथार्थात् सत्तव्यूहं।
224. यथा समानद्वायुण्ड्यन्नाधिकारं अथोप श्रद्धांजलिकारण्तं स्वास्तिकारणं। यथा-अविकृत स्वास्तिकारणं स्वास्तिकारणं। यथा-अविकृतं भविस्त्यात्मकं स्वास्तिकारणं।
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17–20 verses 972 ff (pp 117–122). Nītivākyāmṛta pp. 332–336 treat at length of these four upāyas. A few points only are noted here. Sāma is of five kinds viz. recounting the good turns done by each to the other; praising the qualities and actions of the persons to be won over; declaring the relationship of each other; representing the good that will result in future; declaring 'I am yours and I am at your service' (Kām XVII. 4–5) Dāna consists in returning, what is deposited with one by another, consenting to the taking away by another of one's things, making a gift of something new, giving what the other chooses to ask for, sending at fixed times what has to be given. Bheda (sowing dissensions) consists in giving heavy bribes or presents to ministers or feudatories, the crown prince and high officers of the enemy that are dissatisfied for various reasons, creating distrust between the king and his ministers, the rich men and the handsome men in the kingdom by the threat of the loss of life, honour, position, and wealth, by the fear of imprisonment, by the fear that the king may carry away the beautiful wife of a subject or by suggesting that a handsome young man has his eye on the king's harem, and suggesting to a king that a kinsman desires to secure the kingdom to himself and thereby inducing the king to put out his eyes or cut off his limbs. This is effected by secret spies or persons who are in the pay of both kings (ubhayavetana, acc to Mānasollāsa p 119 v. 995)225. Vide Kaut XI. 1, Matsya chap. 223 and Śūkra IV 1 25–54 for bheda, Kaut XI. I explain at length how an aspiring conqueror is to sow dissensions between corporations and the leaders of corporations, between chiefs and other people One or two passages may be quoted by way of sample "Spies gaining access to these corporations (of warriors and others) and finding out jealousy, hatred and other causes of quarrel among them should sow seeds of a well-planned dissension among them, and tell one of them 'this man deceives you'. Spies may give publicity to the consideration of priority shown to inferior persons in social intercourse in the face of the established custom of recognising the status of other persons by birth, bravery, and social position. In all these disputes the conqueror should help the inferior party with men and money and set them against the superior party. A woman who has disappointed her lover and has been for-

225 सन्तानजीवनाचारप्रेमीत्रेपतसंकेते: | भीतायमानिताकुजानन्देश्वरेऽपि उत्तमालम् | मानार्हे माणमहे धनालिनिः कार्मक: | कृताभिषिक्ताः कृत्वा तत्तेजोष्कष प्रविष्टः | माणसलोकः नाव 18, verses 988–989 p 118.
given may approach and say to a chief ‘this chief is troubling me when my mind is set on you; when he is alive I cannot stay here’ and thus induce the former to slay the latter.’” The Matyapurāṇa 223. 4 states that united people are more than a match even for Indra unless bheda is employed, that dissensions are of two kinds, internal and external, of which the former is more serious. External dissension means the quarrel with a chief, but internal dissension means dissension between a king and his queen or heir apparent or ministers. One should try to prevent dissension with one’s own relatives. Sānti 69. 23 also advises the conquest of territory by fomenting dissensions. Therefore the expedient of ‘dvide et impera’ has a respectable antiquity. Dāṇḍa in the case of a king’s country consists in sentencing to death or corporal punishment or fine and in the case of the enemy in fighting, destroying or devastating his country by seizing his crops and grain, cattle, wealth, forts and in imprisoning and injuring his people, burning his villages and forests.

There were certain privileges that the king enjoyed. His rights to treasure trove have already been referred to (H. Dh. vol II, p 146) Kaut (IV. 1) gives the following rules. The person giving information about the discovery of a mine, jewels or treasure trove gets one-sixth, but if the informer be a servant of the king he gets 1/5; treasure trove beyond 100000 panas went to the king wholly (the finder being entitled to a 1/4th share only up to 100000 panas of the whole); a subject who can prove that the treasure trove belonged to his ancestors would get the whole of it; if he takes it without establishing his ancestral ownership he is to be fined 500 panas and 1000 panas if he appropriated it secretly. The king also took by escheat the property of a person dying without leaving any heir except in the case of brāhmaṇas (vide H. Dh. II, p 146 where some authorities are cited). This subject will be dealt with at greater length under the next section on ‘law and justice’. The king was also entitled to all property that was lost or given up by the true owner. Vide Gaut. 226 X. 36–38, Vas 16. 19, Manu VIII. 30–33, Yaj. II. 33, 173–174, Śāṅkha-Likhita Gaut, and Baud. Dh. S. (I. 10. 17) say that the king should preserve for one year articles found after proclaiming the finding by beat of drum, while Manu says that

226. मणिरसमालिखितविविधप्रश्ने महुय:। विक्षण्य संस्कतरेषां राज्य शरयस:। उर्वर- । मविन्द्रकुशदुर्ग राज्यं शेष:। नी. X. 36–38, महर्भमध्यालिखितं राजस्वतिनि भवनि:। शास्त्रितिकितिः quoted in सङ्ग्रहकोश p. 599
the period is three years. The Mit on Yaj. II. 33 reconciles these texts by saying that if the true owner comes to the king and establishes his ownership he gets back the entire article without paying anything for safe custody, if the owner comes in the 2nd year he pays  \( \frac{1}{7} \) of the price for custody, if in the third year he pays \( \frac{1}{5} \) and \( \frac{1}{3} \) if he comes after three years The finder gets \( \frac{1}{2} \) of the share taken by the king. If the owner does not come at all the finder gets \( \frac{1}{2} \) and the king the rest. The king may dispose of the article if none claims it within that period, but if the owner comes after three years and the article has been disposed off, the king should return the equivalent of the portion taken by him. Yaj. II. 174 specifies other scales of charges for the custody of unclaimed animals such as four panas for a horse &c. Another special privilege of the king was that he could not be cited as a witness in a judicial proceeding between private parties. Vide Kaut. III. 11 (p 175), Manu VIII. 65, Vismudharma-sutra 8, 2.

Constitutionally there was no one who could directly bring to book the king guilty of injustice. But the Dharmaśāstra writers insisted that dharma was the king of kings (Br Up I 4, 14 quoted above p. 97 n. 125.), that Varuna was the chastiser of kings (Manu IX 245), therefore they appealed to the higher nature and conscience of the king and prescribed that if a king levied an unjust fine, he should offer thirty times of that amount to Varuna, throw the amount in water or distribute it among brāhmanas (Yaj. II 307) and that where an ordinary man would incur a fine of one kārṣāpana for a wrong, the king certainly deserves to be fined a thousand kārṣāpanas (Manu VIII 336). The remarks of Medhatithi on that verse quoted below are very interesting, when he insists on the principle that fines for the same wrong should vary with the capacity to pay.227 Even Kautilya (IV 13 last two verses) falls in line with Manu IX 245 and Yaj. II 307. But these prescriptions of Manu, Yaj. and Kaut were counsels of perfection and must have been futile. No king would ordinarily fine himself. Therefore some medieval


\[ \text{p. 55.} \]
digests like the Vivādaratnākara and the Dandaviveka (p 55) interpret these texts as meaning that the word ‘rajan’ applies here only to subordinate chiefs and not to a king who is independent.

The flourishing state of a kingdom well governed by a good, well-equipped and active king is very graphically described in the Rāmāyana (II. 100. 43–46) ‘I hope your country is full of hundreds of caṇyas (platforms for sacred trees) and of people who are well-placed; is rendered charming by temples, prapātis (sheds where water is distributed to travellers gālīs) and tanks, in which men and women are joyful; which is set off to advantage by merry gatherings and festivals; the whole extent of which is well cultivated; which is full of cattle and free from injury (to beings); which does not depend upon rains alone (for its crops); which is beautiful, free from beasts of prey and all kinds of dangers; which is endowed with mines; which is free from wicked men and enjoys prosperity and happiness’ The Adiparva chap 109 (cr. ed chap 102) also contains a fine description of a well-governed and prosperous country. The country was to be full of public wells, gardens and meeting-halls (sabhā). The Visnu-dharmottara I 13. 2–12 contains an ideal description of ancient Ayodhya. ‘It was endowed with hundreds of parks; it celebrated festivals and held gatherings of people, its population was free from disease and had valiant men, it always resounded with the music of lutes, flutes and tabors, it had fair complexioned, charming hetarās clever in brilliant conversation; its population was always gay; it resounded with the recitation of the Veda and was endowed with companies of brāhmaṇas, its market rows were full of men that had applied scents to their bodies; there was not a man there who was wretched, dirty or emaciated; it stretched for three yojanas on the bank of the Šarayū and was ten yojanas in the middle.’
Manu IX. 294 places the capital (pura) even before rāstra Medhātithi (on IX. 295) and Kullūka explain that the loss of the capital is a more serious danger than even the loss of some territory, because if the capital, which possesses all the stocks of food, in which are centred the principal elements and the army, is saved, then it is possible to retrieve even lost territory and to protect the country. It is as it were the pivot of the whole machinery of government. Other writers (and even Manu m VII 69–70) place the capital or fort after the rāstra. It is probably due to the geographical situation in North India and the nature of the fighting in ancient times that made the capital and forts of great importance in the several elements of the State. The capital mirrored the prosperity of the country and if properly walled also provided security. Yaj I. 321 says that forts are meant for the safety of the king, the people and the treasury (janakoshūmauguptaye). The reason for the construction of forts is well put by Manu VII. 74 viz that a single archer under the shelter of the fort-wall can fight a hundred of the enemy and a hundred can fight ten thousand. The Pāñcataṅktra (I. 229 and II. 14) has a similar verse. Brhaspati quoted by the Rājanītisprakāsa p 202 states that the king should construct a fort with walls and a gate for the protection of himself, his wives, the people and the (wealth) collected by him. Kaut (II. 3 and 4) deals at length with the construction of durgas and the laying out of the capital in one of them. He says that in the four quarters of the boundaries of the kingdom forts should be built for offering resistance (to the enemy) on ground naturally fitted for the purpose. He speaks of four kinds of forts viz ‘audaka’ (water-protected, which is on an island surrounded by water or on a plain surrounded by low ground), pārvata (mountain one, such as a rocky hill or a cave), dhūnvana (desert fort, on a waterless tract full of thickets or waste land), a forest fort full of wagtails and water and

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Kinds of durgas or forts

thickets of read. He says that the first two are suited for the protection of populous places and the last two for the protection of foresters. Vāyu 8. 108 refers to four kinds of durgas. Manu VII. 70, Śānti 56. 35 and 86. 4-5, Visnudharmasūtra III. 6, Matsya 217. 6-7, Agnipurāṇa 222. 4-5, Visnudharmottara II. 26. 6-9, III. 323. 16-21, Śukra IV. 6 speak of six kinds of forts viz dhanvādurga (which is waterless five yojanas round a raised plain), mahīdurga (a land fort, which is surrounded by a wall built of stones or burnt bricks, that is at least twelve feet high and twice as high as it is broad), nāladurga (water fort, surrounded on all sides by deep water), vārkaśa durga (fort that is surrounded for one yojana on all sides with thorny and tall trees and thorny creepers and bushes), nṛdurga (fort that is guarded by a numerous army of four sections on all sides), girīdurga (mountain fortress, difficult to climb and with only one narrow access). Manu VII. 71 says that the mountain fortress is the best of all, while Śānti 56. 35 states that nṛdurga is the most difficult to conquer. The Mānasollāsa (II. 5 p. 78) speaks of nine kinds of durgas (adding those built with stones, bricks and mud). The Paraśurāma-pratāpa enumerates eight kinds of durgas (Rājavallabhakānda, folio 1) and states that the wall of a fort may be of stones or of baked bricks or of mud Manu VII. 75-Sabhā 5. 36 (=Ayodhyā 100, 53), Matsya 217. 8, Kām. IV. 60, Mānasollāsa III. 5 (verses 550-555), Śukra IV. 6 12-13, Visnudharmottara II. 26. 20-38 prescribe that forts should possess plenty of arms, grain, drugs and other materials, wealth, horses, elephants, beasts of burden, brāhmaṇas, artisans, machines (called Sataghmc acc to Matsya, that kill a hundred), water and fodder. The Nītīvākyāmrta (durga-saṃuddesa p. 199) says that there must be means of leaving it secretly, otherwise it will be a prison and that no one should be allowed to enter it or leave it without a pass or without being searched. Kaut. (II. 3) gives detailed instructions for the construction of fort walls, towers, ditches, pillars, lotus ponds and buildings inside the fort, which are all passed over for want of space. Vide the Rājadharmakānda pp. 28-36 and the Rājadharmakaustubha pp. 115-117 for numerous quotations from the Dhanurveda of Usanas, the Mahābhārata, the Matsya, the Vīṣṇudharmottara and other works on durga.

In the Rgveda we have frequent mention of cities. In I. 63. 7 Indra is said to have shattered seven cities for Purukutṣa.
and in II 208 it is narrated that Indra killed the dasyus and destroyed their cities of ayus (copper, hubi dasyùn puru uṣasir m tāī′). This shows that walled cities were known even at that distant date. There is difference of opinion as to whether the walls were of mud and wood or of stones and bricks. Vide Hopkins in J. A O. S. XIII pp 174-176. The Tai S VI 2 3 1 speaks of the three cities of asuras constructed with ayus, silver and gold (humi) in the ayu-rayuna as described in the Sat Br. Thousands of baked bricks were required. The excavations at Moheno-daro show that walls were built of burnt bricks (Marshall, vol I, pp 15-26). There is no reason to assume that houses, palaces and city walls could not have been built of bricks, simply because no purely Hindu ruins anterior to Alexander have yet been discovered or because Megasthenes describes that Pataliputra had a wall of wooden palisades. One must demur to the remarks of Hopkins on pp. 174-175 of J. A O S vol XIII. Walls (prākāra), toranas (arched gates) and upper stories (attājakas), moats are very often spoken of in connection with capitals in both epics. The gates were sometimes called after cities e.g. in Vanaprava 1 9-10 the Pándavas are said to have gone out of Hastināpura from the gate called Vardhamānapura. Vide also Asramavāsī-parva 16 3. The Mahābhārata states that palaces had danamg halls (nartanāgāra) attached to them (Vīrā-parva 22 16 and 25-26). Sānti 69 60 states that the capital was rendered gay by natos (players) and dancers and Sānti 86 (4-15) describes how cities were to be founded in durgas, how they were to be full of music, festivals and merry gatherings (samājasa) and what stores they should contain. In the Rāmāyana (V. 2, 50-53) Lanka is described as having palaces of seven or eight stories and mosaic pavements. The Br̥hatasamhitā (chap 53) contains in 125 verses very accurate directions and measurements about palaces, houses &c (i.e. on vastuśāstra). It states that the best kind of royal palace was to be 108 cubits broad, that palaces of 100, 92, 84, 76 cubits may be built, that the length in each case was to be one-fourth as much more as the breadth. It speaks of the dimensions of mansions for the commander-in-chief, ministers, the queen, crown prince, purohit, physician &c. In v 23 it states that the walls may be of baked bricks or of wood.

229. वर्षभाण्डाराद्वितिकांकृत ताप्नव: | उद्यायनाः शालाप्रक: सह | कठोप्य || सप: 1. 10; स वर्षभाण्डारेण निपर्यो गणसाधयादिः | आराम्भासं 16. 3
The king was to have his capital inside a fort or independent of it Manu VII. 70, 76, Āṣramavāsī 5. 16–17, Śānti 86. 6–10, Kām. IV. 57, Matsya 217. 9ff, Śukra I 213–217 describe where and how a capital was to be built. Kautilya (in II. 4) describes at great length how the capital was to be laid out viz the extent should be demarcated by three royal roads from west to east and three from south to north, the capital should have twelve gates, provided with concealed land and water exits: the chariot roads, the royal roads and roads leading to drona-mukha, śāhāniya, the rāstra and pastures should be four dandas (16 cubits) in width. He then prescribes the width of roads for various other purposes. Occupying one-ninth of the whole area of the capital, but to the north from the centre of the capital and in the midst of people of all castes the king’s own palace should be built facing the east or north. To the north-east of the palace should be the residences of the king’s teacher (ācārya), purushita, ministers, and the sacrificial place and water reservoir. He then assigns appropriate places round about the palace for the offices of the several superintendents, to merchants, principal artisans, brāhmanas, ksatriyas, vaishyas, prostitutes, wool workers, südras &c. In the centre of the capital were to be constructed apartments for the images of Aparajita, Apratihata, Jayanta and Vaiṣṇava and the temples of Śiva, Kubera, the Aśvinī, Lakṣmi and Madīrā (Durgā?). The principal gates named after Brahmā, Yama, Indra and Karttikeya were to be constructed. At a distance of 100 bows (400 cubits) beyond the ditch, platforms for holy trees, groves and embankments should be built. The cemetery should be to the east or north but to the south for the higher varnas. Heretics and cāndālas should have a place of residence beyond the cemetery. For each group of ten families there must be a well; oil, grain, sugar, salt, medicines, dried vegetables, fire-wood, arms, and other essential commodities should be stored in such large quantities that they might last for several years in case of a siege or invasion. The Matsyapurāṇa (217. 9–87) differs from the above description in many ways. It prescribes four wide roads, at the ends of which a temple, the royal palace, the court of justice and the principal gate are to be respectively constructed. Almost the whole of the description in the Matsya is quoted by the Rājañītiprakāśa (pp. 208–213) and also in the Rājadharmanānda pp. 28–36. The former also quotes (pp 214–219) a long passage from the Devipurāṇa with regard to the construction of a nayava.
a pura, a hatka (market), a puri, a pattana and the temples of several deities that are to be built in each, the rites to be observed in measuring out the ground for each and accurately finding out of the east and other directions. Panini (VII 3, 14 pracam gramanagarana) distinguishes between grama and nagara, while Patajajali thereon (vol III. p. 321) explains that grama, ghosa, nagara, and sumava are the appellations of different groups or settlements of people. The Vayupurana (94 40) separately mentions cities (purani) ghosas (hamlets of cowherds), villages and pattanas Vide Sukranitisara I. 213-258 for provisions about the laying out of the capital, the palace, the court of justice, other state offices and public buildings, ditches &c and Yuktikalpataru pp 23 ff, Vayu 8. 108 ff, Matsya 130 Sukra (I. 260-267) describes how four royal roads should start from the palace in four directions, how the best, middling and inferior royal roads should be 30, 20 and 15 cubits in breadth; he defines padya (a foot-path), vithi (a lane) and margoa as respectively equal to 3, 5 and 10 cubits in breadth, that in the capital there should be no narrow street like a padya or vithi, that even in villages the public road should be at least 10 cubits in width, that all roads should slope down from their middle and that all houses should face the royal road. For a description of Ayodhya vide RamaYana II. 100. 40-42, which says that it was full of valiant men, had strong gates, was full of elephants, horses, and chariots, was inhabited by energetic people of all castes that were devoted to their duties, that had mansions of various sizes, that it was prosperous and had many physicians From the RamaYana (VI. 112. 42 sitalakhyantara) and the Mahabharata (Adi. 221 36) it appears that the roads of the capital were watered. In the Harsacarita (III) Bana gives a graphic description of Sthuvivvvara (modern Thanesari) For the local administration of the capital, vide the duties of the nagaraka described above (p 149) from Kautilya (II. 36) From the Paharpur plates (dated Gupta sahvat 159 i e 478-9 A. D.) it appears that a nagara-sresthin (the chief of the bankers and traders of the capital) was nominated (probably by the king) Vide E I. vol 20 p. 59 at p. 61. There was probably a board of the elders of the city (pauramukhyas or pauravrrdhas

230. Compare sama haadhidusapta, brahman by the authority of pauravrrdhas
as in Kautilya) appointed to help the Governor of the capital (nāgaraka) in administration. In the Damodarpur copper plates also a nagaraoresthin is mentioned along with others who were approached for consenting to a purchase of land (E I. vol XV at pp. 130, 133, dated Gupta samvat 139). Megasthenes (in McCrindle’s ‘Ancient India’, Fragment XXX IV p 187) describes the city of Palibothra (Pātaliputra) and its administration. He says that six committees of five each looked to the affairs of the city and were respectively in charge of (1) industrial arts, (2) entertainment and care of foreigners, (3) inquiries about births and deaths, (4) trade and commerce, weights and measures, (5) manufactured articles, (6) collection of the 10th of the prices of articles sold. Fragments XXV-XXVI (pp 65-67) inform us that Palibothra was 80 stadia in length and 15 in width, that in shape it was a parallelogram, that it was surrounded by a wooden wall with holes for discharging arrows and a ditch in front. Arrian states (pp 209-210 of McCrindle’s ‘Ancient India’) that Palibothra had 570 towers and 64 gates. Patañjali in his Mahābhāṣya frequently brings in Pātaliputra (e.g in vol I. p. 380 he states that Pātaliputra is alongside of the river Śona, on Pān. II. 1. 16), in vol. II. p 311 (vārtika 4 on Pān. IV 3. 66) he refers to its walls and to its palaces, in vol. II. p. 321 (on Pān. IV. 3. 134). In Fa-Hien’s time (399-414 A.D) the royal palace and halls in the midst of the city built of stone still existed and were so grand that they were then believed to have been the work of spirits (vide Legge p 77). Vide Rhys Davids’ ‘Buddhist India’ pp 34-41 for the ancient Indian capitals in the 7th century B.C.

In the Bhāgavatapurāṇa (IV. 18. 30-32) it is narrated that Prthu, son of Vena, first levelled the earth, established human habitations in villages, towns, capitals, forts &c., and that before Prthu people resided where they liked and there were no such groups as villages or towns. Bhrgu quoted by Śrīdhara according to Rājanīti-kaustubha defines grāma as the habituation of brāhmaṇas, their hired labourers and śūdras, that kharvāṭa is on the bank of a river and of a mixed character, one side being a village and the other a town. Śaunaka quoted by the Rājanīti-kaustubha (pp 103-4) defines kheta as a place where brāhmaṇas, ksatriyas and vaisyās reside, that a place where all castes reside is called a town, that brāhmaṇa householders should be established on soil that is whitish and has sweet odour, ksatriyas should be established in towns where the soil is reddish and wafts a sweet odour and vaisyās on yellowish soil.
CHAPTER VII
KOSA (TREASURY OR FINANCE)

Kaut (II 1) states that a king whose treasury is depleted preys upon the citizens and the rural population and (II. 8) very rightly remarks that all undertakings depend upon kośa (financial position of the king), therefore the king must pay the first attention to kośa. Gautama (as cited by S V p 46) holds that kośa is the basis or support of the other six elements of the State. The Śāntiparva 119, 16 calls upon the king to guard his finances with great effort, since kings depend upon kośa, which tends to the prosperity of the kingdom. Earn (as cited by S V p 46) states that it is on the lips of all that the king is dependent on kośa. Śanti 133 contains a eulogy of kośa. The Visnudharmottara 61. 17 says that kośa is the root of the tree of State. The two great pillars of the Indian States in ancient India were the revenue and the army. Manu VII. 65 says that kośa and the government of the realm depend on the king; he should be the personal concern of the king. Yāj. (I. 327-328) recommends that the king should personally look into the income and expenditure every day and keep in his treasury buildings whatever is brought by those who are appointed to bring gold and wealth. Kām V. 77 and Sukra I. 276–278 say the same. The Rājaratangini (VII 507–508) tells us that king Kalaśa of Kashmir (1063–1089 A.D.) kept accounts like a merchant, closely watched income and expenditure and had a clerk by his side with chalk and bhūrya (birch leaf) to write upon. The principal means of filling the treasury is taxation. It is therefore necessary to consider first the principles of taxation as evolved by our writers. The first principle was that the king could not levy, according to the smṛitis, taxes at his pleasure or sweet will, that the rates of taxes which the king was entitled to levy were fixed by the smṛitis and varied only according to the

231. कोशायांतः कोशायोऽस्मातः सर्वव्रतम्। सर्वव्रतैर्किनिवेदेऽकिवित्य। कोशायांतः किं राजान: कोशायोऽस्मातः सर्वव्रतिर्महते। शास्ति 119. 16; कोशायांतः किं राजान: सर्वव्रतवित्त नवर्मितिः। काम्पुर्कृष्ट XII. 33. This last occurs in वृषभ 36; कोशायाः सर्वव्रतेऽस्मातः असर्वव्रतेऽस्मातः। सत्वात्यावतः। स. वि. प. 46.
commodity and also according as the times were normal or there was danger of invasion or some other calamity impending. For example, Gaut. X. 24, Manu VII 130, Visnu Dh. S. III. 22-23 declare that the king may ordinarily take a sixth part of the grain-crops or produce of the soil, but Kautilyâ (V. 2), Manu (X. 118), Śānti 87, Śukra IV. 2. 9-10 permit the king to take even one-third or one-fourth part of the crops in times of distress (āpad). It has however to be noted that Kautilyâ requires the king to beg (yāceta) of the people for this heavy taxation, he employs the word pranayâ (request) for such demands, such taxation was not to be levied from inferior lands, and he expressly says that such a demand for excessive taxation is to be made only once and not twice in the same distress. Śānti (67. 26-33) contains a specimen of a long address to be given to the people when a king demands higher taxation in danger (such as if the enemy invades you, you will lose all including even your wives, the enemy will not restore to you what he robs you of &c.) The word ‘pranaya’ occurs in this sense in the Junāgadh Inscription of Rudradāman (E. I. vol VIII. p. 36 II 15-16). Another principle laid down in somewhat poetical and picturesque language is that taxation should be felt by those taxed as light and not heavy or excessive. The Udyogaparva (34. 17-18) states ‘just as a bee draws honey but at the same time leaves the flowers uninjured, so the king should take wealth from men without harming them. One (a bee) may search each flower (for honey) but should not cut the very root just like a garland-maker, but not like a coal-maker’. Manu (VII 129 and 140) laconically puts the matter thus ‘just as the leech, the calf and the bee take their sustenance little by little, so must the king draw from his kingdom annual taxes little by little. Let the king not cut up his own root (by levying no taxes) nor the root of others by excessive greed’. Śānti (88

232. कोशमाकोश: महामनसपरिग्रहण: संजयीति। जनवरुः महामनसपरिग्रहण वा ब्रम्हानां महमनसपरिग्रहण धात्यस्वरूपः हृदीयं खद्यवेय या परघेत। ... हृति कक्षिकु मण्यः। ... हृति ग्यात्तिकृति मण्यः। ... सङ्कृतः न हि मयोबिषयः। अपवाशां V. 2.

233 पथा महु समावुः सहासुः कुष्ठासुः। महामनसपरिग्रहण: य आद्याश्वासिनिस्य। हृति पुनः बिशिष्टर्थिः सुनंस्यः न कार्येदय। मालाकार तंत्रार्थम् ज मयाकाराङ्गः। उदयम 34. 17-18. वराणासः 62 is the same as the last of the two. Compare चतुस्प 49 ‘पवारिः सननी वराणसुः ब्रजार्थसुः। पालित उद्यानार्थार्थम् एवम् गामी छट्टी यथा। ’

234. पथा राजस्व कहतः स्मातण्याः विद्वत्वाः। संस्कारा हु तथा राजस्व कथा: सतताः कहाः। नीतिस्तातासनां सुवृं देवर्थ बाप्पिः दुष्याः। ईशान्तराचे संस्कार राजस्व संवीत्त्वम्। शालिनी 87. 17-18. महु. VII 139 has the half नीतिस्तातां &c.
4–6) states that the king should draw (taxes) from the realm lightly in the way the bee draws honey from the trees, he should do so in the way of the calf and should not bruise the udders (as the calf does not). Those verses also refer to the action of the leech, of the tigress carrying her cubs between her jaws and the rat gnawing at the feet of sleeping men. Those ideas pervaded society so much that the same figure of the bee is instanced as regards the Buddhist bhikkhu’s importunity for alms in the Dhammapada (verse 49). The king should act like a gardener who prepares garlands without harming the trees and their leaves and should not act like one who prepares coals from trees (Sānti 71 20).235 Manu VII 139 requires that the king should not through greed tax the subjects heavily, as he would thereby cut off the roots (i.e., prosperity and contentment) of the people, nor should he cut off his own roots (i.e., reduce himself to bankruptcy) by levying no taxes. A third principle of taxation was that when increasing taxes the rise should be gradual and a little at a time (Sānti 88 7–8). Taxes were to be recovered at a proper time and proper place (Sānti 88 12 and Kām. V 83–84).236 When taxing traders, the king should make allowance for the price they had to pay, for the chances of selling the commodity (in his kingdom), the distance over which the merchandise was brought, what they must have spent for their food and condiments and the cost of guard-

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235 मालासारोपितो राजनम्न भाषार्थकोशम्। शालि 71 20, vide शुकनीतिसार IV 2 113 for the same figure.

236 आदृती धर जाती विशेषार्थकोशम्॥ यथा सै। पायते जातवुद्धारे य तथा मना॥ कामनुच्च V 83–84. One may note the Moscow decree that all male and female peasants between 18 and 45 years were to work six days yearly without pay on roadwork. With the above principles of taxation one may compare Adam Smith’s famous canons (1) the subjects of every state ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities; i.e., in proportion to the revenue which they respectively enjoy under the protection of the State (2) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought to be clear and plain to the contributor and to every other person (3) Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it (4) Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury (vide ‘Wealth of nations’ ed by Rogers, 1860, vol. II, pp 414–416)
Principles of taxation

In the case of artisans, before taxing them, the king has to pay regard to the labour and skill involved and to the necessaries of life required by them (Śānti 87. 15). Every one, however poor, must contribute something to the finances of the realm. Manu (VII. 137-138) says that even a very poor man who maintains himself by following some occupation should be asked to contribute every year something in the nature of kara (a tax), while workers (like cooks), artisans (like blacksmiths), śūdras who subsist by manual labour (like porters) should be asked to contribute one day’s work to the king in a month. Vide Gaut. X. 31-34, Visnu Dh. Š. III 32 for the same. But Śukra IV. 2. 121 says that workers and artisans should do one day’s work for the king gratis in a fortnight. Gaut. X. 34 adds that the king must supply them with food on the day they work gratis. The importance of a gold and silver reserve was well understood. Kam (IV. 62-64) says that the king’s kosa should have many sources for filling it, but few outlets of expenditure, it should be full of all desired kinds of wealth, guarded by trusty officers, rich in pearls, gold and jewels, it should have been acquired according to śāstric rules, be capable of bearing great strain of expenditure and that kosa is to be preserved only for the purpose of securing the two goals viz. dharma and aṁṭha, for affording maintenance to the servants engaged by the king and as a safeguard against calamities. Śukra. IV. 2. 3 remarks that kosa is accumulated for the upkeep of the army and for the benefit of the people and for performing sacrifices. Gaut. X. 28-29, Manu VII. 128, VIII. 306-308, Nār. (prakārakas 48) and others say, as has been already stated, that taxation is meant for the protection of the subjects and that it is the king’s wages (vetana) for the protection he affords. Manu IX. 305 compares the king taking taxes to the sun that produces vapour from the seas (in order to return it in the form of rain, as the Raghu-vaṁśa I 18 very happily puts it). Kām. (V. 78-79) enumerates eight principal sources (called astavaṅga) of filling the treasury.

237. विक्रां वर्गमनकम् मर्यादा कहने च सप्तिरिद्वादुः। गोपकोपन च सल्लोक्यां बालिकोर्म चास्विदेशः। हास्य 87. 13, Manu VII. 127 reads मर्यादा च सप्तिरिद्वादुः। उत्तमति व्रजतुष्टि च शिल्पम्र केशवब्रह्मः। हरियो भवीति चास्विदेशः। हास्य 87. 15.

238. भरताइतरीगतिर्भिक्षु ज्ञापो मुखोदेश्वरः। इत्यागमप्पन्नुमाह हिरालिविविहितः। हरिन्धिनीश्वरस्य कथा कर्तव्योपरितः। इत्यागमप्पन्नुमाह हिरालिविविहितः। हरिन्धिनीश्वरस्य कथा कर्तव्योपरितः। इत्यागमप्पन्नुमाह हिरालिविविहितः। हरिन्धिनीश्वरस्य कथा कर्तव्योपरितः। "अयोध्यांगांधिक विषयो भवतिः कपिल:। आयात्युम्म च संस्कृतम्। कोण कोषास्त्वसः। का एव IV 62-64 quoted in शास्त्रभक्तगोपीत P 34
through the action of the heads of the departments viz. agriculture, trade-routes (both on land and water), the capital, water embankments, catching of elephants, working mines and collecting gold &c., levying wealth (from the rich), founding towns and villages in uninhabited spots. The Manasollasa (II. 4 verses 539-540 p 77) advises the king to spend ordinarily three-fourths of the yearly revenues and save one-fourth. Sukra (I. 315-317) prescribes that the king should save 1/6 of his total annual income and should spend 1/2 of the whole, the army and one-twelfth each on charity (to the learned, the poor and helpless &c.), ministers, inferior officials, and his private purse or expenses. Sukra IV. 2 26 requires the king to have as much stock of grain as would be required for three years' consumption in his country. In IV 2 13 he sets before the king the impossible ideal that his treasury should be so full that he can support his army for 20 years if no taxes from agriculture or tolls were raised or no fines were recovered. The Manasollasa (II. 4 394, 397 p 64) says that the king's treasury should be always full of gold, silver, jewels, ornaments, and costly clothes, that pure gold in the form of nikaas (coins) or bars or ornaments should be held in the treasury. Kaut (IV 3) as stated above permitted the king in famines to make the rich disgorge their wealth. In V 2 he remarks that if after making special requests for additional taxation, when the treasury is empty and some danger is impending, to the cultivators, merchants, wine-sellers, prostitutes, and those who rear pigs, poultry, cattle &c., the king may request the rich to give as much of their gold as they can and the king may honour them by bestowing on them a post at his court, or the dignity of an umbrella, a turban or some decoration in return for their wealth. He permits the king in calamities to take away the wealth of the corporations (vaughas) of heretics and of temples also, to set up all of a sudden on one night a god or a platform (caitya) for a holy tree or a sacred place for a man of miraculous powers and provide for fairs and merry gatherings there and secure the necessary money. He

239 सातरीतत्र व दिशणमानायः पाटियादिच। यथोपकारते व दशस्त्र च यथैतरकोषः स्थानः
उपनयनविसूचिवीचिहिरणैनमांहुभूतं अर्ज्जुना। V 2

240 Compare note 164 above about the Manurias who wanting money set up images, according to Patañjali. The Rājaratnaguni (V 166-177) describes the exactions of King Sakkara-varman of Kashmir (883-902) A.D. He plundered 64 temples under the pretext of supervision. He imposed taxes on grhakritya (i.e. on upanayana, marriage &c.). In the 11th century king Harsh of Kashmir plundered most of the temples (Rājaratnaguni VII 1090)
Special modes of taxation

recommends many other tricks and dudges for securing money, which are passed over. Perhaps the only redeeming feature of these devices is that Kautilya is careful to point out that they were to be employed only against the seditious and the irreligious and not against others (V. 2 ‘etam dāṣyaṇādūhān Mekṣu varteta netareṣu’). Vide Nītivākyānṛta (kosa-samuddesā) p. 260 for similar provisions to replenish a depleted treasury. The Parasurāmaprātāpa (Rājavallabhakānda, folio 27 b) quotes a verse which recommends resort to alchemy for replenishing the treasury.84a. Śukra IV. 2.11 advises the king when in financial difficulties to promise interest to the rich and take their wealth and to return it with interest when the difficulties are got over.84b. Sāntī (88. 29-30) asks the king to honour the wealthy men in his kingdom, since they constitute an important element of the realm and are the most eminent among all beings and to request them ‘confer along with me favours on the people’.

Several reasons are assigned for people’s payment of taxes to the king. Gauta X. 28 says that they should do so because he protects them. In some places the idea put forward is that taxes are the wages (vetana) of the king and that the subjects made a contract with the king Manu to that effect Vide Sāntī 67 and 70. 10, Baudh Dh. S. i. 10. 1, Nār. 18. 48, Kaut. I. 13 (quoted on p 21 above). Kāt 242 (verses 16-17) states that as the king is the owner of the earth but not of other kinds of wealth, he is entitled to get the sixth part of the produce of land and that since human beings reside on land they are declared to be owners (in ordinary parlance, but they have only a qualified ownership). Several kinds of taxes are mentioned in the dharmāsāstras, arthāsāstras and the inscriptions. The oldest

240. भागुपाद्योपोषिण विनिवेश्वरयेर्द्वद्यद्वादीनय। तालोण साधयेन द्राक्षे वद्वेद्य साध-... (राजः folio 27 b).

241 अनिन्दितो भूर्ति द्वूधा स्तापत्री द्वारे सहेश। राजा स्थायास्तान्तर्जलये कः खादास्ताचिन्न। कुर IV. 2. 11.

242 भूतिणि: ध्वनन्तियो नास्पन्नस्पन्नकांनां:। वर्तमानयात्मकीकणि मण्डा: सह मनो-... कि द्वारे अनुक्रमेतिस्वरूपे पाणिनी नाम भारतः। कहुङ्ग सर्पधुतानां धनरोधो नाम संसाय।। शास्त्र 85 29-30.

243 कार्यानम्। दृष्टामी ह स्थवरी राजा भान्येष्य सर्वदा । तत्तदस्य कि...प्रर्दितम् माण्यत्यान्तर्वतायि हु:। दृष्टामी तत्तित्वात्स्वात्स्वात्मितिः तेष कृत्यात्मकосновा राज्यातितिः। p 271. Vide H. Dh. vol III. pp 865-869 on the question of the king’s ownership of land. राजनेतिरिहैः explains ‘तत्तित्वात्स्वात्मितिः चूतियात्स्वात्मितिः। शास्त्राय राज्य... संहिता शेष. इ interpret differently
word for a tax paid to the king is ‘bali’. Rg VII 6 5 and X 173 6 speak of the common people as ‘baliyrt’ (bringers of bali, tribute or tax for the king) In the Tai Br (II 7 18 3) it is said ‘the people bring bali to him’ In the Ait Br (35 3) the vatsya is characterized as ‘balikrt’ (payer of taxes to another), since bramanas and kṣatriyas were mostly exempt from taxation. Vide Prof. Hopkins’ ‘Social condition of the ruling class’ J. A. O S vol XIII p 89 and Fick p 119 (as to the evidence of the Jātakas on taxation) Manu VII 80, Matsya 215 57, Rāmāyana III 6 11, Visnu Dh S III 22 employ the word ‘bali’ in the sense of the 6th part of the produce of land that the king levied as tax. In the Rummindell Pillar Inscription of Aśoka (Corpus I I. vol. I p 164) it is said that the village of Lumnini was made free from the payment of ‘bali’, but had to pay one-eighth share 245 Here ‘bali’ is contrasted with ‘bhāga’ which is a general term. The word ‘kara’ appears to mean a tax in general Vide Āp Dh S II 10 26 10, Manu VII 128, 129, 133, Vas 19. 23, Visnu Dh. S III 26-27. The word ‘bhāga’ (share) is also general and means the king’s dues on land, trees, drugs, cattle, wealth &c Vide Manu VII 130-131, VIII 305, Visnu Dh S III 25 This meaning of ‘bhāga’ is ancient. We saw above (p 112) that bhāgadugha is one of the ratnins of the king. The Amarakośa treats bali, kara, and bhāga as synonymous.

The word ‘sulka’ generally means the tolls or customs duties levied from vendors and purchasers on merchandise carried into or out of the kingdom (Śukramitiśāra IV 2. 108) The Mahābhāṣya on the vārtika ‘ayasthanebhastak’ on Pāṇ IV 2. 104 gives saukika and gaulmika as examples, indicating thereby that sulka or toll was levied as a source of income (āya) at the toll-gate.

The principal and perennial sources of income to the state were three viz the king’s share of the produce of land, tolls and customs duties, fines levied from wrongdoers or defeated litigants (vide Śaniti 71 10 and Śukra IV 2 13). From this and from Manu X. 119-120 it appears that the principal tax-payers

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244 त निश्चय नागर्य पदो अन्तर्विकाशकं बहस्ति: सहरसित । त् श्याम् । तस्मात् इत्यविद्रहः विद्याभिलाषस्तवः । प्रार्थित्कम् । त्य श्याम् । यस्मात् साधस्य मिह बलिस्य । ततः वि ॥ ॥ ॥

245 उत्तरिलागं उविडिक (उविडिक) कवे अधिमागे (अधिमाग) ॥
were agriculturists, traders, manual workers and artisans. In Manu VIII. 307 quoted in the Dandaviveka of Vardhamāna (p. 5) it is said that the king who, without affording protection, levies balt, kara, sulkā, pratibhoga (pratibhāga in the printed smṛti) and danāda (fines) goes at once to hell and Vardhamāna explains "kara as the dues recovered every month from villagers and city-dwellers (every month or twice a year in Bhadrāpada or Pausa according to Kullūka), sulkā as the twelfth share recovered from traders, pratibhoga as the dues in the form of fruits, flowers and vegetables presented every day. A few remarks on these and other taxes must be made here. Manu VII. 130, Gauṭ. X. 24, Vīṣṇu Dh. S. III. 22, Mānasollāsa (II. 3. 163 p. 44) and several others prescribe that the king is entitled to the 6th, 8th or 12th part (only sixth in Vīṣṇu, also 10th in Gauṭ.) of the yield of grain from land. Bṛhaspati and the Vismudharmotāra 246 (II. 61. 60–61) quoted in the Rājanitiprakāśa (pp. 262–263) make it clear under what circumstances these different shares are to be taken: viz the king takes 1/6 of śūkdhānya (awned or bearded grain like wheat and barley), 1/8 from śimbidhānya (grain in pods), 10th part from crops grown on land that was fallow for many years, 1/8th from lands sown in the rainy season and one-sixth from lands that have spring crops. The tax was to be paid once every year or once in six months according to the custom of the country. The varying rates prescribed by Kautilya have been indicated in describing the duties of the stādhyaśka Śukra (IV. 2 121–122) gives a salutary rule that if a cultivator constructs a tank, a well or an artificial water-course or brings under cultivation land previously fallow, the king should not levy a tax thereon till the person making the expenditure has recovered twice the amount spent by him. Kautil. (II. 1) provides that the king may show favour (anuṣāha) to the cultivators by supplying them with seed, cattle and money and that they should return the advances by easy instalments and that the king shall bestow favours and remissions (parīthāna) in such a way that they might tend to swell the treasury and not tend to its

246 निष्कामतिरंगे षुकधान्यस्तु सुमेद्रासाप्रायोगिकादेहास्यत : श्रावसर्वसम्पत्तिः पालणे सहायतासिद्धि धार्मिकी ददावति उत्पादनाय भवन। नवरत्न किसाना दशस्थीने वर्षाकाळांच्या कुन्यराणांमुक्तिः।
depletion.\footnote{247} It has already been stated that according to the smritis the ordinary share of the king was one-sixth, but that in case of the danger of invasion or similar calamity he was allowed to raise it to one-fourth. Megasthenes (Fragment I, p 42) says that no person is permitted to own land and that besides the land tribute people pay into the royal treasury a fourth part of the produce This shows that the tax on land was very heavy in the times of Candragupta probably owing to his wars to drive away the Greeks and the huge armies that he had to employ Manu VII 130, Gaut X. 25, Visnu Dh. S III 24, Mānasollāsa (II 3 163 p 44) hold that the king is entitled to the 50th part of the cattle reared by herdsmen and of the interest earned by those who lend money at interest This last appears to be analogous to modern income-tax The Śukranītisāra IV 2 128 makes the tax to be \(\frac{1}{4}\) on the interest earned by money-lending.\footnote{248} Visnu adds cloth to these two Manu VII 131-132, Gaut X 27, Visnu Dh S III 25, Visnudharmottara II 61 61-63 and Mānasollāsa lay down that the king is entitled to a sixth part of trees, meat, honey, clarified butter, perfumes (like sandal-wood), medicinal plants (like quāḍācī), rasa (salt &c), flowers, roots (like turmeric), fruits, leaves (like palm leaves), vegetables, grass, hides, articles manufactured from bamboo slips, earthenware, articles prepared from stones Visnu adds deer hides to these

Sulka is of two kinds, what is levied on goods carried by land and what is levied on goods carried by water (Mit on Vaiśāra 11 263) Gaut X 26 and Visnu Dh S. III 29 state that the sulka is 1/30th part on merchandise for sale (bought and sold in the country itself) which is interpreted by some (like Haradatta and Nandapandita) as meaning that 5 per cent of the price of articles sold should be taken by the king as tax, while the Rājanītīprakāśa (p 264) explains that the king is entitled only to five per cent of the difference between the cost price and the sale price of merchandise Manu VIII 398 also is susceptible of these two interpretations, as the commentaries of Medhatithi and Kullūka show. The Visnu Dh S (III 29-30) prescribes that the king takes one-tenth on merchandise produced in his own country and one-twentieth on goods imported from a foreign

\footnote[247]{वाहनवधिजितायोग्यानित्यकेराजानित्यक्षेत्रस्य । अभावविद्याति श्रेष्ठ। कोषारूढकारो वायास । तौरिन्न इ । प 47}
\footnote[248]{वाहनेकाराय कौशिकेन्द्रा द्राःसिद्धास्ते हरेऽहरे। धुक IV 2 128}
Different kinds of taxes

Country

Yaj. II. 261 says that the sulka on goods is twentieth part of the prices of the goods. Kautilya (II 21) in his chapter on the superintendent of tolls (sulkadhyaksa) sets out several rules, of which a few interesting ones are given here: Commodities intended for marriage or taken by a bride from her parents to her husband or meant as presents or for the purpose of sacrifices or the accompaniment of women or for the worship of gods, or for the ceremonies of evula, upanayana, godāma, or for the observance of a vata or for the consecration of a person for a sacrifice and for other special ceremonies shall be allowed to go free of tolls. Whatever commodities would cause harm to the realm or are useless should be destroyed; whatever is of great benefit and seeds not easily available should be allowed to be imported without charge. He further says (II. 22) that sulka is levied on exports and imports of merchandise and that on imports the tax will be one-fifth of the price of the commodities (as a general rule) and prescribes varying rates (1/6, 1/10, 1/15, 1/20, 1/25) on different kinds of articles. In II. 28 (on the superintendent of shipping) Kautilya gives further rules some of which have been already noted. He prescribes rules for ferries also, viz. that brāhmanas, ascetics, children, very old people, sick men, messengers, pregnant women are to be provided with free passes by the superintendent enabling them to use the ferries. A man with a load and small animals were to pay one māsa at a ferry, a cow or a horse two māsas and so on. The Manasollasa (II. 4. v. 374-376 p 62) prescribes that the king should well guard all harbours (telū-puul) that are near the sea, that when the boats of sailors residing in his own country return to the harbour the king should charge one-tenth (of the price of goods brought) as the duty and that when foreign boats are driven to his harbour by an unfavourable wind, the king should confiscate all their merchandise or may give a little to the owners of those boats. In this connection a very interesting inscription may be referred to The Motupalli pillar Inscription of the Kakatiya king Ganapatiladeva (of

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249 21, verse at end.

250 then a Telugu passage about the dues Vide I vol. XII p 195
1244-45 A. D. issues (E. I. vol. XII p. 195) a charter of security (abhaya-sāsana) to the sailors who ply between towns in different countries, islands and continents: 'when ships that made voyages from one country to another were driven or were shattered or touched at a place that was not meant as a place of call, owing to unfavourable winds, former kings forcibly took away all commodities therein such as gold, elephants, horses &c.; but we, considering that wealth is dearer than life itself, have with kindness decided to give everything except the fixed śulka to those sailors who undertake the great venture of crossing the sea, so that thereby we shall secure fame and righteousness; the śulka fixed is as follows'. About śulka to be levied on goods brought by the sea the Baud. Dh. S. (I. 10. 15-16) prescribes that it is 10 per cent of the cargo except one best article (which is totally exempted). In the Kharepatan grant of the Śilāra king Rattarāja dated sake 930 it is provided that one golden gadiyāna was levied as duty on each vessel that came from another country (dvipāntarāyāta-vahitrāt) and one golden dharana had to be paid on each vessel coming from the district of Kandalamālīya excepting Cemulīya (modern Cheul) and Candrapura. Vide E. I. vol. III. p. 292 at p. 301. Śukra (IV. 2 109-111) lays down some very reasonable rules viz on the same commodity śulka is to be taken in the same country by the king only once and never more than once; the king may take either 1/16, 1/20 or 1/32 from the vendee or vendor; no śulka is to be taken from the vendor when he has to sell his goods at the same price at which he bought them or for less than the cost price; the king should always take from the buyer the proper śulka after seeing what profit he is going to make. Nār (sambhūya-samutthāna verses 14-15) lays down that whatever is to be used by śrōtyāyas (bṛāhmanas learned in the Vedas) for domestic purposes is exempt, but not what they may employ in trade; the gifts received by bṛāhmanas, the property of stage-players, whatever is carried on a man’s shoulders—on all these no śulka must be levied. The exemption of bṛāhmanas and others from taxation has already been dealt with in H. Dh. vol. II pp 143-145. Gaut. X. 9-12, Ap Dh. S II. 10. 26 10-16, Vas I 42-46 and 19 23-24, Manu. VIII. 394 exempt a learned bṛāhmana, the women of all varnas, all boys before the signs of puberty appear, all those who stay with a teacher for study, ascetics who are intent on dharma, sādhus that do mental work such as washing the feet of higher varnas, the blind, the deaf and dumb, the diseased, the cripple, an old man of 70 years or
more. Though these really required more protection than most people, humanity and higher feelings made them exempt from taxes from very ancient times. The claims to exemption were probably exaggerated and not respected in practice. For example, Nārada (VI.14) states that the king is not to levy tolls or customs duties on articles required by śrotiyas for domestic use but if they engaged in trade they had to pay taxes on merchandise.\(^\text{251}\) The Mit. on Yaj. II.4 states that the six exemptions mentioned in Gaut. (VIII.12-13) apply only to a very learned brāhmaṇa and not to all brāhmaṇas. Manu. VII.133 provides that a king even when he has lost everything should not levy a tax on śrotiyas and relying on this the Vaijayantī explains Viṣṇu Dh S III 26 as referring only to learned brāhmaṇas. The Rāmāyana (III.6.14)\(^\text{251a}\) states, differing from other authorities, that the king shares one-fourth of the merit of mums (ascetics) dwelling in his kingdom. There was a corresponding liability on the king; viz. he shared half and half in the demerit due to the sins committed by the subjects that are not properly restrained by him (Yaj. I 337) Manu and Viṣṇu. Dh S. III.28 and Viṣṇudharmottara II.61 25 say that he reaps the sixth part of the sin of his subjects.

Kaut in II.15 mentions numerous kinds of taxes or dues that were levied by the king. It is not possible to explain many of the terms used by him. In the ancient inscriptions, when making grants of a village and the like, it is usual for the kings to specify the exemptions from taxes and dues that went with the grant. Such exemptions were called paṇṭhāra, which word occurs in Kautilya and also in the Ḫathigumpha Inscription of Khāravela (in the 2nd century BC, E I. vol. xx at p. 9) where we read 'bamhanānam jāhm paṭṭhāram dadātā'. In certain early records even, these exemptions are said to be eighteen, e.g. in the Hirahadagallī plate of Śivasvāntavarman (E I. vol I. p. 6) and \(^\text{258}\) the Omgudī plate of Vijayasvāntavarman.

\(^{251}\) Sthā Trātipravāsīni ṣvasthānasā: मन्नाताः | वहोपोषोगि पश्चातः न दृष्टिहस्तासि || तारसु VI.14, माहायेवः करात्सां न छुरीद | विश्वमबूधः III.26, on which Bāsūpāneś describes 'पाण्डवो श्रीविनायतः | विधायायो ... क्षर्तायन्ति मानवातः ||

\(^{251a}\) धर्मरचती परं च महमस्वस्वालहारः | तथाराजस्वानां मन्ना चमनेन रक्ताः || रामायण, अष्टम 6.14.

\(^{252}\) The passage in the plate of Śivasvāntavarman (E I. vol I pp 8-9) is rendered by Dr Bühler as 'thus garden is to be free from taxes, free from the taking of sweet and sour milk, free from troubles about

(Continued on the next page)
(E I 15 p. 250) Vide H Dh vol II pp 864-865 and notes thereon for grants containing names of numerous taxes that were remitted to the grantees and 'Pandyan kingdom' by Prof Nilkanta Sastri p 217 on the same subject.

Fines as a source of revenue will be discussed in the next section about 'law and justice'. The king had numerous other sources of income. Kaut (II 12) describes the duties of the superintendent of mines. Every thing dug up from mines belonged to the king (Visnudharmasutra III 55). According to Manu VIII 39 and Medhatithi thereon the king is entitled to a half (or some share ½, ⅓ &c) of the ore dug out of mines, as he is the lord of the earth and gives protection. In modern times under sec 69 of the Bombay Land Revenue Code, Government have a right to all mines and minerals. The 'Paraśurāmapratāpā' quotes a verse. 'Brahma arranged that the king was (to be) the owner of all wealth and specially (wealth) that is inside the earth,' while Kāt. (16-17) says (vide note 243) 'the king is declared to be the lord of the land, but never of other kinds of wealth; therefore he should secure the sixth part of the fruits of land, but not otherwise at all. Since human beings reside on it (land) their (qualified) ownership thereof has been declared.' For further discussion of the theory of the king's ownership of all land, vide H of Dh. vol II, pp 865-869. The State itself manufactured salt, took its share in salt manufactured by private persons and levied ½ as State dues on imported salt. Kautilya mentions ten kinds of revenue from mines. The

(Continued from the last page)

salt and sugar (alonagulacchobham = alavana — guda — kṣobham), free from taxes, forced labour, free from the taking of the oxen in succession, free from the taking of grass and wood, free from the taking of vegetables and flowers, with these and other immunities of eighteen kinds it must be exempted &c (evamādikah asthārasajātikāhārehs). Vide Vilavati grant of Pallava king Simhavaranam for a long enumeration of taxes collected from villages in South India in E I vol 24 p 296 and a copperplate grant of the Silāḥra king Aparājita dated Śake 915, where in granting a garden to a brāhmaṇa occur the following words 'सामुद्र द्रव्यं न हितार्थस्वरूपः प्राप्तिनीकृतमेव भारतः इतरसमस्ताहाराजाः — कुमारेऽसाहस्मद्वितीयामस्माति: पुर्वे वेवैस्वरूपः वाजमाध्यं वाजमाध्यं विनिः सत्साहनायांसहिति: तदुद्देहिति: — सुवेदि: इम्प्रोप्रायद्वीपायां। दुर्गशरीरसमाप्तिः।' Vide in 'Important Inscriptios from Baroda' vol. I edited by Mr A. S. Gadre (p 55 at p. 61). Kumārāśravas appears to mean the 'fine levied for violating a virgin or her modesty'.

252 a भननामिनिष्ठा राजा भद्रचा विकासं संरक्षित: ? वृषताना विक्षेपण वार्तासी विख्यातिः: ! q. io पर्यासमस्माय फोलो 27a.
Manasollasa (II. 3 verses 332 and 361) asks the king to guard mines of gems, gold and silver and declares that the Creator made the king the ruler over all wealth and especially over what is inside the earth. Rudradaman (150 A.D) boasts that he filled his treasury by means of bala, sūlka and bhūga levied according to the sāstras and that his treasury overflowed with heaps of gold, silver, diamonds, lapsa lavul and other gems (EI vol VIII p. 36 at p 44) Kaut (IV 1) says that those who sweep the dust (near mines &c) should get one-third of the valuable things found and the king should get two-thirds and all jewels. The king had also monopolies in certain matters. He alone could catch elephants. Kaut (II 31–32) and Manasollasa (II, 3, pp 44–58) deal with this matter, the latter describing several methods of catching elephants. Medhatithi253 on Manu VIII 400 says that kings have a monopoly as to elephants because it is well-known that they are most useful to them and he specifies certain monopolies such as those in saffron, silken cloth and wool, horses, pearls and jewels. Megasthenes (Fragment XXXVI p. 90) states that a private person was not allowed to keep an elephant or a horse and that those animals were held to be the special property of the king.

The king recovered a sort of road cess through officers called antapāla (guardians of borders or boundaries) viz 1½ pana on each cart loaded with merchandise, half a pana on each head of cattle, 1/2 pana on minor quadrupeds, and one māsaka on a load carried on a man's shoulders (Kaut. II 21 p 111). Śukra IV. 2. 129 permits for the repairs to the roads a tax on those who use roads. Revenues were raised in numerous other ways such as by charging for stamping weights and measures, by fees levied from keepers of gambling halls, from players, singers and musicians, from prostitutes, from forests and pastures &c. Bhāt-Parāsara X p 282 allows the king in a financial crisis to use even temple funds and make them good when freed from his difficult position. Similarly it allows the king (in difficulty) to take the wealth of usurers, of low people,

253. दसि महाभारत राजोपयोगिताय पद्धतिनः कास्मीरेण क्रुद्धममरेणु पद्धोत्तरी| पताकास्थिति वर्तवेयः कुस्मिरेष्व वल्लिकाभक्ति:। स्म, on मह 8 400 The passage as printed by Manik and Charpore is corrupt. We should rather read धारित: कास्मीरेण क्रुद्धम मरेणु वल्लिकाभक्ति। Saffron is still a monopoly in Kashmir 'सधवपद्ध्विकात: सारिविभागः क्रुद्धम नरेष्व। धारी राजा रद्व च । अर्थाद्वारय IV 1
of heretics and prostitutes, as the continuance and prosperity of temples and the others depend upon the king 254

The Rajatarangini (VII. 1008) notices that a tax was levied on Kashmirians performing śraddha at Gayā. An inscription of Vikramāditya V found near Gadag dated sa.lke 934 (1012–13 A. D.) refers to taxes levied on upanayana, marriages, vedic sacrifices &c. (E I. vol 20 p. 64). It appears that the king of Anahilavāḍ, Siddharājā (1094–1143 A. D.), levied a tax on pilgrims going to Somanātha at the frontier town Bāhuloda and it is said that the tax yielded 72 lakhs of rupees a year, which Siddharājā remitted for the sake of and at the intervention of his mother; vide Bom G. vol I. part 1 p. 172 and Prabandha-oñtāmanī (p. 84, Tawney). The amount is probably very highly exaggerated in order to glorify Siddharājā, but this shows that the yield of the pilgrim tax must have been substantial. The Mānasollāsa in its great desire to help the king with the accumulation of wealth advises the king even to resort to alchemy 255

A question may be asked. what were the means of preventing a king from being over-exacting and tyrannical in his taxes? Kaut. (VII. 5 pp 276–277) cites at great length the causes that lead to the impoverishment of the subjects, to their being greedy and disaffected Among these he mentions256 'not paying what ought to be paid and exacting what ought not to be exacted, not punishing the guilty and severely punishing the guilty, not protecting the people against thieves and robbing them of their wealth.' He then states that when the subjects become impoverished they become greedy and when greedy they become disaffected and voluntarily go over to the side of the king’s enemy or destroy their own king In another

254 ब्रम्भ बृह जीताबिन्धुराणी ब्रम्भनाथ्यारणी लोकानुसार आद्राय रहित चालान खरसत चोहदा च ब्रम्मद्रा ज्ञेये। विन्दुवालिकानां हु फक्तरमादारी वन्नवेद। पाठुकाणि कलिति मे विकारेण विश्रांगियंचनारणानि ब्रम्हसिद्धान्त। विजिनाशिकित्त तोर्य स्त्राये राजापि हारिष्कि महस्तायायाः X p 282.

255. चालसवद्यमाणां विशवेद्विषुरुद्धयो मात्रेष चापेद्य श्रीम श्रीव चतुर्वेद साहित्यमहानिविष्करणां बालसहाराः II 4, verse 327 p 63 Vide n 240 above

256 अपद्वारणी भुर्गानामद्यानि च साधिते अवद्वानिश्वरविश्वायां श्रावहुंदिने। इत्यादि अत्यधिष्ठित द्वारिष्य: परन्तु साधिते । इत्यादि भगवतावरी योगान्वितारि महावीरां कथा कथा वैमान्य: विश्वाय महात्मानं स्वयं प्रवर्तिति तथा लक्ष्येऽविशाल। विश्वा प्राप्तस्तिः च वालाङ निर्मृति तथा लक्ष्येऽविशाल। वैदिक VII 5
place Kautilya (XIII. 1) suggests that a conqueror may employ spies who should encourage the subjects of his enemy suffering from famine, depredations of thieves and wild tribes to tell their king, 'we shall beg the king for favours (remission of taxes or help in the way of seeds &c.) but if he does not agree to bestow favours we shall go to another country'. So the threat of disaffection and migrating to another country were the deterrents against the tyranny of heavy taxation according to Kautilya. Śānti 87. 36 says that if the vaiśyas (pominah, who bore the brunt of taxation) were neglected, they may disappear from the country and dwell in forests. Manu (VII. 111-112) warns kings who through folly rashly oppress their kingdoms that they may lose their own lives and those of their relatives and also their kingdoms. Yṣa (I. 340-341) is even more emphatic and says that the king who seeks to increase his treasury with wealth extracted by unjust means from his realm loses his wealth in no time and meets destruction along with his relatives. 'The fire springing from the wrath caused by the harassment of the subjects does not cease without burning the family, the wealth and the life of the king.' Kātyāyana (v. 19) harps on the spiritual consequences: the king who unjustly takes from his kingdom taxes, fines, share of crops and tolls, incurs sin. Śukra (II. 319-321 and 370) emphasizes the keeping of daily, monthly and yearly accounts and the entering of the several items of income on the left side of the account and of those of expenditure on the right. The Nītīvākyāntara refers to the appointment of auditors when there is discrepancy in the items of income and expenditure.

257. बुधवसिन्हस्ययुक्तं पारिजातायादुहसूदादयं सज्जितं युक्तं: । दानांकमित्वामेव पारामायुक्तं िङ्गितं: । सौ: सौ: XIX. 1.

257a. उपेक्षिता हि भवेद्यार्यं रिविषयिणासिद्धिः: । कसाठेषु विद्वेषाः: वुद्दुः वसन्न: समाशेषु: । इति 87. 36.

258. अर्धाढिकाः हि यो राजार्थे बुद्धी वर्षिण्य वापिधिः: । सरस्वामां व झुकं चात्मप्रवृत्ति स परामायुक्ता । काताकाशं q in राजसीतिसः p 276.

259. वसन्ने वसन्ने वापिधिः माति माति बिहि बिहि विहि: । हिःनपुपधारणार्थं सापं स्वाम- संख्यं: । दत्तेऽति कुदु: च वच्यार्थं च वच्यार्थं च वच्यार्थं च वच्यार्थं । अस्माताः हिःस्वेषस्ययुक्तं च वच्यार्थं च । काताकाशं q वापि वापि वापि वापि वापि वापि वापि वापि वापि वापि । सौ: सौ: सौ: XIX. 321, 370.

259a. अर्धाढिकाः हि इतिविविधाय बुद्धार्थं वापिधिः । न्त्विःतायात्तिः । p. 189 (अभावायसंहिता.)
CHAPTER VIII

BALA (THE ARMY).

Bala is also called danda in Kaut and elsewhere. According to Sumantu danda means 'punishment, corporal or monetary,' and the army with its four arms is included by Sumantu under kośa (acc to Ś V p 46) 260. In the Rgveda we have frequent references to armies, weapons, battles &c. The word vedi occurs in Rg X 84.2 where Māmpt (martial Fury) is invoked to be the Commander 261. Rg VI 75 is full of references to bows, arrows, armour, bow-strings, quiver, charioteer, horses, chariots &c. Kām. (XIII 34–37) states that the king possessed of a sound financial position increases his depleted army, supports his own subjects and is depended upon even by his enemies. All the following result from the possession of a (powerful) army viz. increase of the wealth of one's friends and enemies and of the (king's) territories, prompt attainment of objects that seemed distant, protection of what is already secured, destruction of the armies of the enemy, the keeping together of one's army. Most authorities agree in saying that troops are of six kinds viz. maula (hereditary), bhṛta or bhṛtaka or bhṛtya (hired troops), sīvem (guild troops), mūtra (troops of an ally or friendly power or feudatories), amūtra (troops that once belonged to the enemy), atāra or atāraka (wild tribes as troops). Vide Kaut IX. 2 (first sentence), Kām. XVIII 4, Agnipurāṇa 242 1–2, Manasollāsa (II 6, verse 556 p 76). The first three works say that each earlier variety of troops is superior to each later one. Maula troops corresponded to the modern standing army, since Kaut (IX 2) prefers them on the ground that they depend on the king for maintenance and are being constantly drilled. They most probably consisted of persons who and whose ancestors got tax-free lands in lieu of military service. The Saḥs-pārva 5.63 appears to refer to four kinds (omitting sreni and amitra) and Yuddhakānda 17 24 refers to five (omitting sreni).

260. वृष्ण: चातुरथ सैन्यं न भवति | आपराधिकायस्य शास्त्राचार्यायें विवेदिततिः परिवर्तितमपि
अप्रमाणिष्ठ - त्वनां चातुरथ सैन्यं। जैसा कृष्ण साधारण बुद्धि ईंति। य वि p 46

261. आदिकल्य समयो तिलवक्ते सर्वेऽस जंगलायानिः सहुर्व दृष्टि पदि | कर. X 84.2

262. साहस्यतःसर्वाधिराजसर्वाधिराजास सहुर्वमुक्ति | ... पूर्व पूर्व वैष्णव अथैः संसारविन्दु। कौटिल्य IX. 2.
The Āśramavāsikaparva\(^{263}\) (7 7–8) names five kinds (except anūtra) and states that maula and mitra armies are superior to the rest and hired troops and sreni troops are each other’s equals. This division of armies into various kinds is mentioned in the grant of Dhrusena I of Valabhi in Gupta-Valabhi year 206 (IE I. vol. XI p 168, where the king is said to have acquired the kingdom with the help of maula, bhūta, mitra and sreni armies). Mānasollāsa defines the ātavika\(^{264}\) army as consisting of niṣūdas, nićchas and similar castes dwelling in the vicinity of mountains and anūtra troops as soldiers who once belonged to an enemy king but being defeated were taken captive and made slaves. According to the Rājamitrāvata (p 38) ‘aribala’ means ‘troops that come to a king after leaving the king’s enemy’. Kām. XVIII 7 says that the ātavika troops are, by nature, irreligious, greedy, anāryas and non-observers of truth. They correspond to the pendhars and freebooters of later times. The reasons why hereditary and other troops are superior to anītra and ātavika varieties are explained at great length by Kaut. IX. 2 and Kām. XVIII 5–9. Kaut. (IX. 2) states that an amātā army led by an ārya is superior to wild tribe troops. Both of them are out for plunder and in case no plunder can be had or when there is a disaster they may prove as dangerous as snakes. By sreni-bala he has in mind the organised bands of soldiers to whom he refers elsewhere as ‘vārtāśastropajivinah’ (vide p. 89 above). As it is not unlikely that members of trade-guilds either themselves learnt the profession of arms or engaged soldiers for the protection of their merchandise and property, these could be pressed into his service by a king in case of need and were distinguished from the hereditary army and hired troops as ‘sreni-bala’. Differing from the anāryas that troops composed of brāhmaṇas, kṣatriyas, vāisyas and sūdras are superior for enlistment in the order of the castes, Kaut holds that an army of kṣatriyas well-trained in the wielding of arms or an army of

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263. आस्रमवासिकपर्व || अधिकारीकृत शब्द चैत्य तत्व अथाशिलं गरी || तत्व विपश्चिनश्च रजनी शौद चैत्य विशिष्टते || अथाशिलं श्रयौ चैत्य तथेऽत्यति से मति || सामाजाशास्त्रिक 7. 7–8.

264. पर्वातपाद्यातंः सवसिकनामन्येनाध्यायिकम् || अध्यात्म सवसमायेऽपि सवसार्वािनि || प्रेम तत्त्रतु वर्णशास्त्रविशेष बुधि || सामाजाशास्त्रिक 11. 6, वर्ष 559–560 प. 79.
vaisyas and südras having greater numerical strength is better 
than an army composed of brähmana soldiers, since an enemy 
may win over the latter army, by prostrating himself before 
them. Vide H Dh vol II pp 122-123 for discussion on the 
question whether brähmanas could become soldiers. In Udyoga-
parva 96 7 (or ed chap 94) it is said that king Dambod-
bhava every day asked in the morning whether there was any 
śūdra, vaiśya, ksatriya or brähmana equal or superior to him 
in armed conflict. That shows that soldiers of castes other 
than ksatriyas were not unheard of in the Epic age. Kām IV. 
(63, 65, 67) says that the hereditary army (pīta-pitāmaha) 
should consist mostly of ksatriyas. In the Mahāya copperplate 
of Mahārāja Dharasena II (252 Valabhi samvat i.e. 571-72 
A. D.) Bhatārka, the founder of the Valabhi dynasty, is 
said to have secured the kingdom with the help of maula, 
bhṛta, mitra and śreni troops (Gupta Inscriptions p. 165). 
Śukra (II. 137-139) says that the soldiers may be śūdras, 
ksatriyas, vaiśyas, mlecha or of mixed castes, provided they 
are brave, restrained, well-built, devoted to their master and 
their dharma, and hate the enemy. Śānti (101 3-5) describes 
in what respects soldiers from Gāndhāra, Sindhu and other 
countries and Yavana and Deccan soldiers excel, remarks that 
brave and strong men are to be found everywhere (verse 5) 
and that men from the border (i.e. bhuḷas and kavartas accord-
ing to Nīlakanṭha) are desperate fighters, would never run 
away from battle and so should be preferred for enlistment 
in the army (verse 19). The Yasastilaka III (pp 461-467) 
describes the characteristics of Northern Indian (auṭtarapatha), 
Deccan (dāksinātya), Dramila (South Indian), Tirhut (Taṭā-
hukta) and Gurjara soldiers. An army was said to be composed 
of four parts, viz. elephants, horses, chariots and foot-soldiers 
(caturanga bala). Kām. XVIII. 24 says that bala is sixfold, 
viz the four sections of infantry, cavalry, chariots and elephants 
together with mantra (line of policy) and kośa (treasury). In 
Śānti. 103. 38 the army is said to have six angas (the well-
known four plus kośa and roads for traffic). According to 
Kantīlya (II. 2, VII. 11) and Kām. XIX. 63 the destruction of
the enemy's forces and victory depended on elephants. Śānti-parva (100.24) says that an army in which the infantry predominates remains firm and that cavalry and chariots are all right when there is no rain. Śānti (59.41–42) enumerates eight elements of the army viz. the well-known four (elephants etc.), visti (labourers or porters who gave free labour and were only fed but were paid no wages), boats, spies, and guides (dāśika). Vide Śānti 121.44 also. In the Mahābhārata elephants do not, except in rare cases, play any role in the fighting that went on, while chariots and the other arms of an army are described everywhere. In the Viṇṇata-parva (65.6) Vikarna was seated on an elephant when he attacked Arjuna; Bhīmaparva 20.7 refers to Duryodhana as riding an elephant and (95.32–33) Bhagadatta is described as seated on an elephant when he attacked Bhīma. In this respect the Epic carries on the vedic tradition Megasthenes (Fragment 1 p.30) notes that in ancient India elephants were trained for war and turned the scale of victory. Vast armies were kept by ancient kings and emperors. When Satrughna started against the demon Lavana he had an army of 4000 horses, 2000 chariots and 100 elephants with him (Rāmāyanam VII.64.2–4). In the Daśakumāra-carita VIII the cynical jester Vihaṇḍrada reminds his master that the latter had 10000 elephants, three lakhs of horse and numberless foot-soldiers (B S. S p.133, ed of 1919).

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265. हसितमयानी विदित्य पालकम्। कौदियः II. 2: हसितमयानी विदित्य सरस्मतम्। कौदिय: VII. 11. वासिगु विदित्यां भिन्नवी भिन्नवावसादमावित्यां भुवित्यं बुध्यु नरायणस। कान्तसंहक XIX.62: वृष्णु वृष्णुपार्वती राजपत्रं सरस्म्य विजयखिद्याधि। तस्माति विषम्र कर्तवेन शतावर्त्य विद्यु द्विगु. कांसमिकास्त II. 8 verse 678 p.90: यस्य भारास्तत यास्य:। तृत्यु प p. 42: तृत्यु द्वितीयां मयानमात्रेण सर्वदीर्मयाद्वाद्वाद्वाद्वाद्वात्त्रिक्यां भल्लित्यं भल्लित्यं। नीतिवरस (वाङ्कसः) p. 207. The four feet, the two tusks, the trunk and the tail are the eight weapons of an elephant. Though the Budhaabhūṣanā (p.42) contains a glowing eulogy of elephants, the Nītisāhāsyaśamvat holds that elephants, if not properly trained, cause loss of wealth (because they eat vast quantities of fodder and grains) and of lives (they trample down their own soldiers through fright) 'असतित्वम हसितमयः केशवाभामाङ्गुणस।' 22 5 p. 208. The Yashatīkakam III p 491 notes 'ह विन्ना वर्ण वेदां केवल तेषां तेषु केशवाम्। क्षेत्रापिविन्यासालये व्यासस्याभ्यास्यानि वज्रमाण्डल ।।. This has often been illustrated in battles against early Moslem and other invaders e.g. vide Elphinstone's History of India (5th ed. of 1866) p 309 (the fate of Dahir king of Sindh against Mohammed bin Casim, when the former's elephant was struck with a fireball) and p 329 (Anangpal against Mahmud of Gazni) and also Cambridge History of India, vol III. (1928) pp. 5 and 16 for the same.

267. एक नामप तुषारेषप पाल输ाओषय पायवल। विदित्यस्वाभायवेस्तिका हवि वाहस्यम्। असृज्ञेयासि कौदियम कालासा सहस्र दु। नामित 59.41–42.
Megasthenes (in Fragment XXVII p 68) speaks of the camp of Śāndraṅkottos (Candragupta Maurya) that had 400000 men, notes (in Fragment LVI) that the king of Pañibothra had in his pay a standing army of six lakhs of foot-soldiers, 30000 cavalry and 9000 elephants (p 141, McCrindle), that the king of Horatae (Surāstra) had 150000 foot-soldiers, 5000 cavalry and 1600 elephants (ibid p. 150) and that even the Pāṇḍyan kingdom ruled by women had 150000 foot and 500 elephants (ibid. p. 147). Vide Beal's 'Buddhist Records &c.' vol. I p 213 for the armies collected by Harsa in his march against the murderer of his elder brother (viz 5000 elephants, 2000 horse and 50000 foot-soldiers) and the vast armies that he had after six years of conquest viz. 60000 elephants and 100000 cavalry. In the Āsvamedhikarpārva (60. 14–20) it is narrated that when Drona assumed the post of commander-in-chief the Kaurava army had been reduced to 9 aksauhinīs from eleven, that only five were left when Karna became Senāpati and the Pāṇḍavas had then only three left and under Śalya's command there were only three aksauhinīs and the Pāṇḍavas could oppose to him only one. In reply to a question from Dhrātarāṣṭra Yudhishthira states that in the great war the total number of warriors killed in battle came to the colossal figure of 1660020006 (Stri-parva 26. 9). The Udyogaparva gives (155. 24–26) the following table for an aksauhinī: 500 elephants, 500 chariots, 1500 cavalry and 2500 foot-soldiers constituted an army called senā, 10 senās=prānā, 10 prānās=vāhnī, 10 vāhnīs=duṣṭāni, 10 duṣṭānis=cātās and 10 cātās=aksauhinī. The Kauravas had eleven aksauhinīs and the Pāṇḍavas had 7. If we take the table in Aṣī 2. 19–22 one aksauhinī contained 21870 elephants, the same number of chariots, 65610 horses and 109350 foot-soldiers. But if the other tables be followed then the numbers may be much larger still. Another table furnished by Udyogaparva 155. 28–29 is: 55 men constituted patti, 3 pattis=senāmukha or gulma, 3 gulumas=gana and there were ayutas (10 thousands) of gana in the army of the Kauravas. The Aḍīparva (2 19–22)
differs from both tables in some respects. The Udyogaparva 155.24 further notes that each horseman was surrounded by ten men as attendants (narā đaša hayaścāsan pādaraksāh samantatah). Though throughout the centuries the infantry was theoretically and in practice more numerous than cavalry, much importance seems to have been attached to them as compared with chariots or horsemen. The lexicon called Vaijayanti says that patti consists of three horses, five foot-soldiers, one chariot and one elephant, that three pattis are equal to senāmukha and that senānukha, gulma, gana, vahini, prta, samū, anikini represent each three times as many as the preceding one and that 10 anikinis are equal to an aksauhini. The Nītriprakāśika 270 gives a table of groups from patti to aksauhini and remarks that each of these groups had in turn numerous supporting men e.g. each elephant was followed by a hundred horsemen and a thousand foot-soldiers and each horseman was supported by a thousand foot-soldiers (VII. 3–10). Mana VII. 192 refers to battles on water also. From references in the Mahābhārata it appears that chariots had only two wheels: Vide Bhīṣma 98. 47, Dronaparva 154. 3, Salya 16. 34. (Śaîneyo daksinam cakram Dhrstadyumnas-tathottaram) Two noted warriors were told off to guard the two wheels of the chariot of the principal commanders and are called ‘cakra-raksāu’ (vide Bhīṣma 54. 76, 108. 5, Drona 91, 36, Karnā 11. 31, 34. 44). Chariots of great warriors were drawn by four horses e.g. Ādi. 198. 15, Udyoga 48. 50, Drona 145. 81 Udyoga 83. 15–21 describe the chariot of Kṛṣṇa and Udyoga 140. 21 states that chariots had small tinkling bells attached to them and also screens of tiger-skin. The Rg contains very graphic descriptions of chariots. Chariots were generally drawn by two horses in the vedic age (Rg V 30. 1, V 36. 5, VI 23. 1) and had two wheels, but the chariot of the Āśvins is described as having three wheels (Rg. I. 118. 2, I. 157. 3, X. 41. 1) Ghatotkaca, however, had eight wheels to his chariot (Drona 156. 61, 175. 13). The Śukranītīśara (II. 140–148) mentions another method of grouping the army. Five or six foot-soldiers made a patti over which there

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270. पत्ती: सहस्तभूत धुतम गणो देव भालिकां तस: । धुतम तत्क्रमिकामि तत्तवात्तव निः हिनि स्वर्ता । पर्यायां भवविकिषुः सर्व: कमकुश्यप प्रमोदतः । अनातिकी धस्तुणामाश्व राजीवीरां धुषण । नीतिकालिकाः VII. 3 and 10; compare हिन्न: ज्ञातमाण धर्मस्वत धस्तुणां धुषणां । तै: यथा संहिरतपत्रादिकूलवधोपपराकारकत: । सहस्तभूतं धुतमां भालिकां धुतम चन्द्र । अनातिकीपरिविष्टव: इत्यस्मातां बल: verses 57–58 of the जन्मचाषण in the शून्यकारण of वैशेष्वरिः
was an officer called palliya, over 30 pattipālas there was the gaulmīka, over 100 gaulmikas was the officer called satānika, who had as his assistants an officer called anūṣāṭika, a senānī and a lekhaka (scribe), the officer over twenty elephants or horses was called nāyika (compare modern “naik”) Each of these officers should have a distinctive badge indicative of their position Ayodhyā 100. 32 (=Sabhā 5. 48) asks ‘I hope you give at the proper time pay and rations to your soldiers according to their deserts and do not delay payment.’ Both Nār (sambhūya-22) and Br state that among persons who work for hire the best is the soldier. The Mānasollāsa (II 6. 566-569 p 80) describes that the chiefs of the hereditary army should always be honoured by the king with presents of jewels, ornaments, costly clothes and sweet words and sumptuous provision for their maintenance should be made by bestowing on them a village, or two or more villages and heaps of gold, while hired soldiers should be paid every day or every month or once in three, four or six months or once in a year according to the needs of the king Megasthenes (Fragment XXXIV p. 88) describes the organization of the Indian army: ‘A third governing body directs military affairs, of which there were six divisions with five members to each One co-operates with the admiral of the fleet, another, with the superintendent of bullock trains; the third division has charge of foot-soldiers, the fourth of horses, the fifth of war chariots and the sixth of elephants’ In medieval times chariots appear to have become obsolete. In the graphic descriptions of armies contained in the Harsacarita (particularly in the 7th uchvāsa) war chariots are conspicuous by their absence. The Mahābhārata often speaks of horses from the countries to the north-west of India as the best; vide Sabhā 53 5 (for Kāmboja and Gāndhāra horses), Udyoga 86 6 (horses from Bālhi), Drona 125 25 and Sauntika 13 2 (Kāmboja horses) The Harsacarita II speaks of the best horses as coming from Vanāyu, Aratta, Kāmboja, Sinhudesa and Pāraskā Śukra lays down certain practical rules about the army (IV 7. 379-390) He says that the soldiers should be encamped outside the town or village but not far from it, that no money-lending should be allowed between the soldiers and the village people, that the king should open separate shops for goods required by soldiers, that no army should be encamped at one place for more than a year, that soldiers should not enter the village without the king’s permission, that receipts should be taken from soldiers
for payments made to them and they should be furnished with a writing about their pay. Some of these rules are very old. The Udyogaparva, 37, 30 mentions among persons with whom no contractual transactions should be entered into, the king, the king's servants and soldiers.

The Arthasastra contains an elaborate discussion (in IX. 1-7 and X. 1-6) about the organization of the king's army, the proper time and place for starting on an invasion, internal and external troubles and calamities and measures against them, means of dealing with traitors and enemies, religious remedies (worshipping gods and falling at the feet of brähmanas, magical rites based upon the Atharvaveda) against misfortunes like fire and flood, epidemics, famine &c., encampment (śakandhāvāra) of armies, treacherous and strategic fighting, proper battle grounds, encouragement to one's own army, free labourers and their work, different arrangements or formations (vyuhas) of armies. Considerations of space prevent any treatment of these matters. But a few notable points will be set out here. A king may invade his enemy's country either in Mārgaśīrṣa (when the crops sown in the rains are ready) or in Caiṭra or when the enemy is suffering from some calamity. Śānti (100. 10-11) says the same thing. Internal trouble arises when any minister, purohita, senāpati or the crown prince is angry or dissatisfied with the king, who should get rid of such trouble by giving up his own fault or by pointing out the danger arising from an enemy. If the crown prince causes trouble he should be kept in confinement or killed, if there is another son of good character. The trouble caused by a provincial Governor or the officer in charge of boundaries (antāpāla), the chief of wild tribes or a conquered king is termed external. The king should meet it by setting up one against the other. The encampment of an army is to be made on a site declared to be the best according to the science of buildings and measured by the nāyaka (the chief of the army), carpenter and astrologer, the encampment being circular, square or rectangular and having four gates, six roads and nine divisions. Disputes, drinking, holding merry gatherings (ānānāja) and gambling should be prohibited in the camp and the system of passes should be enforced (X. 1). Vanaparva (15. 14, 19) also refers to the system of passes and the fact that

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271. उद्योगपार्वः 37. 30 (संस्कृती विभाग 1872, भक्ति रचना 25. 6)
dancers and musicians were driven away, when Dvārakā was besieged by Śālva. From Udyoga 151 58 (cr ed. 149. 53), 195. 12–19 (cr ed. 196 12–19) it appears that markets, prostitutes, conveyances, oxen, machines, arms and physicians accompanied an army and that the camp (ṣenāniyēa or skandhāvāra) of Duryodhana looked like the capital itself and was five yojanas in extent. Physicians with surgical instruments, blunt instruments (like tweezers), medicines, curative oils and bandages in their hands and women (nurses) looking after the food and drink of the army should stand behind the soldiers uttering encouraging words. The Bhīṣmaparva 120 55 also states that doctors well-versed in extracting splinters or arrow-heads (from the body) approached with their surgical instruments to extract the darts from Bhīṣma's body. The duties of the labourers (vasth) were to examine the camp, roads, bridges, wells, and river ghata, to carry machines, weapons, armour, utensils, fodder, to remove from the battle-field wounded men along with their weapons and armour. Each commander had some distinguishing device as his banner e. g Bhīṣma had a golden tāla tree as his standard (Bhīṣmaparva VI 17 18, tālena maḥatā Bhīṣmah paṇcatāreṇa ketuṇā). In X 6 Kautilya speaks of several formations (vyūhas) called danda, bhoga, mandala, asanihata and the subdivisions such as gomūtrikā, makara &c In Kām. XVIII. 48–49, XIX 40 ff., Manu VII. 187–191, Nīlīprikāśikā, chap 6 and in the Mahābhārata many vyūhas are described Vanaprava (285 6–7) refers to Rāvana's arrangement of his army according to the rules of Uśanas and of Rāma's army according to Bārhapayata rules. The Āramāvāsiṇkaparva 7 15 refers to the formations called Śakata, Padma and Vāra described in the work of Uśanas Kautilya X 6 also refers to Ausanas and Bārhapayata arrangements of armies. Drona 75 27, 87 22–24, Karnaparva 11 14 and 28 mention certain vyūhas like Makara, Śakata &c Vide also Mānasollāsa II. 20 verses 1170–1181 pp 134–135, Agnipurāṇa 242 7–8 and 42–73 for vyūhas Though Kautilya recommends all sorts of tricks and treachery for securing a victory, the
High ideals in warfare

Mahābhārata holds up a high ideal. The Bhīṣmaparva remarks that conquerors do not secure victory so much by their armies and prowess as by truthfulness, freedom from cruelty, the observance of dharma and energetic actions. The Śānti-parva (95.17–18) states that it is better to die while fighting according to the rules of dharma rather than obtain a victory by wicked actions.

In the Bhīṣmaparva (I.27–32) certain rules of war agreed upon between the Kauravas and the Pāṇḍavas are set out, such as one should fight only with one similarly equipped (i.e. a foot-soldier with a foot-soldier and so on), one should not kill a soldier who is already in combat with another, or who has turned back from fight or is without armour. Āp. Dh. S. II. 5.10.12, Gauṭ. X.17–18, Yāj. I.326, Maunu VII.90–93, Śānti 95.7–14, 96.3, Śānti 98.48–49, 297.4, Dronāparva 143.8, Karna 90.111–113, Saunakīta 5.11–12, 6.21–23, Śaṅkha (quoted by the Mit on Yāj. I 326), Baud. Dh. S.I. 10.10–12, Vṛddha-Hārita VII.226, Brhat-Parāsara X p.281, Śukra IV.7.354–362, Yuddha-kānda 18.27–28 contain rules of war dictated by noble sentiments of humanity and chivalry. Some of these (that will bear comparison with the conventions of the Geneva and Hague Conferences) are set out here Gauṭ. (X 17-18) states: "no sin is committed by injuring or slaying men in battle excepting him who has lost his horse, charioteer or weapons, him who joins his hands (in supplication for life), whose hair are dishevelled (in flying), who turns away from the field, who sits down, who climbs an eminence or a tree (in flight), except envoys or messengers, except him who declares himself to be a cow or a brahmana." Vṛddha-Hārita VII 216 exempts spectators. Maunu (VII 90–93) declares "one should not fight with treacherous
(or concealed) weapons, or with barbed or poisoned weapons or with weapons the points of which are blazing with fire. Let a fighter not strike one who has climbed on an aminence, nor a eunuch, nor one who joins the palms of his hand (in supplication), nor one with flying hair (in flight), nor one who sits down or says 'I am thine,' nor one who is asleep, nor one who has lost armour, nor one who is naked or disarmed, nor one who is merely looking on without taking part in the fight, nor one who is fighting with another foe, nor one whose weapons are broken, nor one who is afflicted with sorrow, nor one seriously wounded, nor one who is in fear, nor one who has turned to flee.' Sankha adds that a soldier should not kill another while the latter is drinking water or taking his meals or is taking off his shoes, nor should one kill a woman, a female elephant, nor a charioteer, nor a bard nor a brahmana nor should one who is not a king (or noble) kill one who is a king. Dh S I 10 10 forbids the use of poisoned or barbed arrows (karna). Sānti 95. 11 also does the same. Sānti (95 13-14) enjoins that even an enemy soldier, when wounded, should be treated with medicine and allowed to go when his wounds are healed. Sānti adds that a soldier should not kill boys or old men nor from behind nor one who holds a blade of grass in his mouth (as a mark of submission). These rules, though probably ideal and not strictly followed in every case, are far more humane as compared with the practice in modern warfare when non-combatants are killed from the air even at night without warning. In ancient times non-combatants went generally unmolested, to which Megasthenes bears testimony when he says (Frag L p 32) 'Tillers of the soil even when battle is raging in the neighbourhood are undisturbed by any sense of danger, for the combatants allow those engaged in husbandry to remain quite unmolested.' Manu VII. 32 allows a king to harass his enemy's country, but Medhātithi on VII. 32 asks the invader to save his enemy's people if possible (particularly brahmans). The rule in gadāyuddha (fight with maces or clubs) was that no blow was to be struck below the navel (Salyaparva 60 6). But this rule was violated by Bhima when he struck Duryodhana on the thigh with his mace. Duryodhana recounts (in Śalya 61) all the bad deeds of Kṛṣṇa and the Pāṇḍavas and the only reply that Kṛṣṇa makes is that he too was guilty of
numeous breaches of morality and the chivalrous rules of war (such as the slaying of Abhimanyu by many engaging him at one time). The general rule was that fighting ceased when the sun went down (Bhishma 49. 52-53). But in Dronaparva 154 and 163. 16 ff we have a description of night battles and it is provided that chariots, elephants and horses should carry lamps.

It has already been shown how it was the duty of a ksatriya and of every soldier to fight and die in battle rather than run away. A fighting spirit was inculcated by holding out several rewards. One was the acquisition of booty and territory (Gaut. X. 41, Manu VII. 206, Bhagavadgītā II. 37); others were the satisfaction of having done one’s duty as a ksatriya (Gītā II. 31-33), honour and fame (Gītā II. 34-35), heaven and other-worldly rewards (Yāj. I. 324, Manu VII. 88-89), protection of brāhmaṇas (Āp. Dh S II. 10. 26. 2-3). Vīṣṇu Dh S III. 44-46 have already been quoted above (p 58). The Śaṅkī (98. 40-41) states that a soldier who runs away from the field falls into Hell. Yāṣ (I. 324-325) declares that those who, while fighting with weapons that are not treacherous (poisoned &c.) for the sake of the land (of their master or of the enemy) die in battle without turning back from it go to heaven like yogins, that each step of those who do not flee even when their comrades have been killed is equal to a solemn sacrifice (like the Asvamedha), the king (the master) takes away all the merit of those who run away from the battlefield and are then killed. Manu VII. 95 contains the same idea. These remarks were applicable not only to ksatriya soldiers, but to soldiers of all castes who maintained themselves by following the profession of arms. Vide Rājaniśprakāśa p. 407. Pāraśāra (III. 31) and Brhat-Parāśāra X. p 281 remark that a valiant soldier who does not seek mercy though surrounded by many enemies and falls fighting attains imperishable worlds and that when he reaches heaven divine damsels run after him to choose him as their Lord (III. 34-35). Pāraśāra III. 36 is a 277 verse which is
one of the two quoted by Kaut (X 3) when soldiers are to be urged on to fight Kautilya (in X 3) advises that the king himself and his mantri and purohita should urge on his soldiers by quoting Vedic and classical Sanskrit passages about the rewards waiting for those who fall fighting for their master and the religious punishments for those who run away. Astrologers should infuse spirit into their side by asserting that the heavenly aspects favour their side. The day before the battle the king should observe a fast, offer oblations into fire to the accompaniment of Atharvaveda mantras and cause benedictory texts to be repeated that refer to victory. Bards should recite lays describing heaven as the reward for the brave and hell for the timid and extol the caste, guild, family, deeds and character of the soldiers. The assistants of the purohita should declare that they have practised witchcraft against the enemy. The commander-in-chief and the officers under him should address the army as follows—'a hundred thousand (panas) will be the reward for him who kills the enemy, king, fifty thousand for him who kills the commander-in-chief or the crown prince, . . . a hundred for slaying the officer of the patti (a battalion), twenty for bringing the head (of a common soldier) and twice the pay and the booty seized by each to all soldiers.' Kam (XIX 18-21) says that the king should give the rewards (promised as in Kaut) to the soldiers after they succeed in the exploits mentioned vide also Mānasollāsa II 20 verses 1163-1167 (pp 133-134) for similar promises Gaut (X 20-23) prescribes that whatever wealth is acquired by a soldier by his individual effort should be given to him by the king, but the horse or elephant caught by a soldier goes to the king, that if many soldiers by a joint effort obtain some valuable plunder the king should choose and retain the best for himself and the rest should be divided among the soldiers according to their services in the battle Vide Manu VII. 96-97 (which allow even a chariot, horse or elephant to be retained as booty by the soldier and everything else including female slaves, except jewels, gold and silver), Kam XIX 278 21-22, Śukra IV. 7. 372

A treatise will be required to deal with the weapons of war from ancient times. Even in the Rgveda several weapons are mentioned eg rṣṭi (Rg V 52 6, V 57 2 and 6 on the shoulders

278 फूल प्रेम च फूल च य च बलवति कर्त्यं तत । दुश्चारा वस्तुवर्ग च य एवं धोधस्तारिज्ञ। ॥ काम XIX. 21-22 and शुक IV 7 372 (read: शुलकाराचरणः प भ... ग्रहरंगः).
of the Maruts), arrows (V. 57. 2, VI. 75. 17), quivers (V. 57. 2), the ankuśa (of Indra in VIII. 17. 10, X 44. 9), paraśu (X. 28. 8), kṛpāṇa (probably a dagger, in X 22. 10), vajra made of ajas (X. 48. 3, X. 113. 5). Atharvaveda IV. 6. 6. refers to poisoned arrows. In the Atharvaveda²²⁹ I. 16. 2 and 4 reference is made to lead as destroying sorcerers and it is said 'if you kill our cow or horse or man we shall pierce you with lead so that you will cease to kill our strong men'. In Tal S. I. 5 7. 6 it is said²³⁰ that when a samādh is offered into fire with the mantra 'indhānās-tvā ātām himāh' the sacrificer discharges against his enemy the sataghn (weapon killing a hundred) which acts like vajra itself'. Dr. Oppert in his Introduction to the Nṛtiprakāśikā pp 10–13 relies on these and other passages for holding that the ancient Indians knew fire-arms and that Atharvaveda I 16. 4 refers to leaden balls discharged from cylinders. Vide Dr. Oppert's work on the 'weapons, army organisation and political maxims of the ancient Hindus' (1880), where he describes several weapons and holds that gunpowder was known in India long before the 13th century A. D. Mr. G. T. Date's 'Art of war in Ancient India' (London 1929), Dr. P. C. Chakravarti's work (1941, Dacca) and Prof. Dikshitar's book on the same subject may be consulted for details. The numerous weapons mentioned in the Maḥābhārata (e.g. Udyoga 155. 3–9) also are passed over here. Vide Hopkins' paper in J. A. O. S. Vol XIII pp. 269–303 for detailed descriptions. The Allahabad Stone Pillar Inscription of Samudragupta (middle of 4th century A. D.) contains a long list of weapons (C I I. III pp. 6–7).²³¹ One important question is whether gunpowder and fire-arms were known to our ancient and medieval works. Śukra refers to gunpowder called agnīcūrṇa in II 93, 196, IV. 7. 203, guns (IV. 7. 209–211) and gives the formula of gunpowder in IV. 7. 201 (viz. the mixing of five palas of saltpetre, one pala of sulphur and one pala of coal powder). The Śukranitisāra is comparatively a later work and was probably

²²⁹. सीसर्यादाय कथनः सीसर्यानिर्देशानि। सीसर्य स मुन्यः प्राच्यचक्रवर्त्त प्राक्ष-हालम यदि न गति गति गति पुंखयति। ततं स्वा स्विस्व विद्याया वषा नोक्ते अवस्थाः। भार्गवेश्वर 16. 2 औ औ।

²³⁰. एव नागीना परिसंपणीत प्रकट मद्य भार्याणाः व्यवसायः। विहारिति कहेन तथा सहिष्णुद्वार्ती वस्मोऽवास्याय प्रहरित। हेतू स त 57 6 स्मरण।

²³¹. भार्याणां परिसंपणीत्वा। तस्मादानुभेदेऽवस्मोऽक्षरी। समयं प्रवर्त्तान्ति। भार्याणां परिसंपणी।... अनुभव भविष्याय लेप भविष्यायां वध्य कुलव ।

²³². 'सर्वस्त्रस्तम्भस्त्रियाः प्राप्ताः।' शुद्धमार्गवाच्यसारामायनेव वैदिकाचार्य वैदिकाचार्यनेव। ' गुप्त। ईश्वरिक निर्देशानि।
written in the 13th or 14th century when cannon came to be used in Europe for the first time. Both in the Rámâyana and the Mahābhārata the word śataghni (killing a hundred people) occurs frequently. In the Yuddhakānda\(^2\) 3.13 it is stated that at the gates of Lankā hundreds of iron śataghnis, looking burnished, sharp and terrible, had been arranged by the demons. In a poetic description of Lankā in the Sundararakānda chap 2, it is said that śataghnis and śulas were like the hair on the head of I anka (verse 21). In the Vanaprava 15 there is a fine description of Dvāravati (Dvārka) besieged by Śalva, in which it is said that the capital had numerous towers and turrets, machines, tomaras, ankuśas, śataghnis &c. In Adi. 207. 34, Vanaprava 169. 16, 284. 5, 290. 24, Drona 156. 70, Karna 11. 8, Śalya 45. 110 the śataghni is mentioned, but it is impossible to find from these what exactly it was like. From Vanaprava 284. 31 it appears that the śataghnis were discharged with force by the hands and had wheels and round balls or stones in it. In Drona 179. 46 it is said that the śataghni employed by Ghatotkaca had wheels and killed four horses at once. In Drona 199. 19 śataghnis are said to have two or four wheels. In Vanaprava\(^2\) 284. 4 it is said that the powder of sarjarasa (resin from Sal tree) had been collected. In the Harivamśa (Bhavisyaparva 44. 20), among the weapons hurled at Narasimha by Hiranyakaśipu were blazing śataghnis (sataghniḥbhiṣa dīptābhīṃ-dandaibhiḥ sūdaṃrānaiḥ). In Rāmāyaṇa VII. 32. 44 we are told that at the tip of the weapon called musala (club) blazed forth fire like a bunch of Anka flowers. The Sundararakānda couples together śataghni and musala (4. 18). It looks probable that resinous powder was used in some cylindrical contrivance (or rockets) mounted on wheels and capable of throwing stones. But gunpowder appears not to have been used. There is no description of smoke due to śataghnis.

Hopkins (J. A. O. S XIII pp 299–303) holds that gunpowder and fire-arms were unknown to the great Epic and in the present state of our knowledge this view seems to be correct.

The Nitiprakāśikā (chapters 2–5) names and describes numerous weapons divided into four classes viz. mukta (thrown

\(^{281}\) द्रवीतु संक्रम्भन मीलय भाज्यसमय सितित। तत्रतो शक्षिता चिराग तत्स्यो

\(^{282}\) कपयुरवन्दुत्रुधयः सन्तुष्ट र्ग्रेशुः। सतस्विविषयस्य गौर्जस सन्तुष्टवर्धनः।

\(^{284}\) अग्नितत्व शतार्जिनि समसूचर्चेवाद्यायः। वेनरः 284. 4–5.
or discharged such as arrows), *amukta* (not thrown such as swords), *muktāmukta* (thrown and not thrown, such as astras which after discharge can be taken back) and *mantramukta* (astras which cannot be taken back). The Agnipurāṇa (249–252) and the Vīsuddharmottara (II 178–182) give a summary of the Dhanurveda (both agreeing almost word for word, but the latter containing more verses than the former) and speak of five kinds of weapons viz yantramukta (discharged from a machine, a sling, yow &c.), pānimukta (thrown with the hand such as a stone or *tōmara*), muktāmukta (like a prāsa), amukta (sword) and niyuddha or bāhu-yuddha (wrestling). The science of astras was of a supernatural kind. In the epics and purāṇas, the great heroes are said to have learnt *astrayudhā* either from a teacher or from their father or by practising austerities and sometimes (as in the case of Kuśa and Lava) certain astras pass to the son by the mere fact of his birth and the wish of his father. Whether the Dhanurveda often referred to in the epics had consigned this science of astras to writing and could have enabled a reader to possess the miraculous powers attributed to astras is more than a modern can say. The Agnipurāṇa (chap. 134–135) contains magical incantations for victory in war and conquest of the worlds. The Parāśurāmaprātā (Rajavallabhakānda folios 9–12) contains numerous mantras and yantras and incantations derived from Tantra works like the Brahmayāmala.

The Mahābhārata is careful to point out that an army constitutes the most inferior kind of *bala* (power). Udyogaparva (37 52–55) states that *bala* is of five kinds viz, brute force (*bāhubala*), that due to the acquisition of ministers (*amātyalabhā*), that derived from wealth (*dhanalabhā*), that from noble descent (*abhjātabala*) and the power of wisdom (*prajñābala*), which last is the best of all. These are quoted by the Budhahūsana p. 79. In Śānti, 134 8 it is said that there is nothing that the strong cannot accomplish and that whatever the strong do is pure. In another place it is said ‘everything is wholesome to the powerful’ (Āśramavāsī 30, 24). In Ādi 175, 45 a warrior’s power is scorned and the power of the spiritual merit of brāhmaṇas is exulted as the real power.

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283 Pūrṇārthāh ēvaśreṣṭhā yathājñātam tathāpravattitam ābhāṣya pavamānāh sthānānām ṛgveda taśca śatāprapachyate | vadhau śatā pravritte 154, 8 | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śatā pravrittaḥ prachetā bhūtānām śatāḥ | śताम तिमिरिक्षेन तयाः परं वधुं | अदि 175 45–45 These dicta about the strong remind us of the words of Nietzsche in ‘Beyond Good and Evil’, section 29 ‘It is the business of the very few to be independent, it is a privilege of the strong’ (tr by H. Zimmern)
CHAPTER IX

SUHRT OR MITRA (ALLY OR FRIEND).

Maim inculcates the necessity of making friends in VII 208 and cites the qualities of a good friend (for a king) 'a king does not prosper by the acquisition of gold and land so much as by securing a firm friend who would be powerful in future, though he may be of depleted resources at the time, That friend, though a weak one, is commended, who is righteous, grateful, whose subjects (or ministers) are contented, who is attached and who pursues (to the end) work undertaken' According to Manu VII. 206 land, gold and ally are the three fruits of royal endeavour or policy. Yaj I 352 is similar to Manu VII. 208. In VII 9 Kautilya in opposition to the above holds that the acquisition of land is better than that of gold and friend and the acquisition of gold is superior to that of a friend284. The Mahabhārata (Śanti 138.110) states 'no one is the friend or enemy of any one else; friends or enemies are made by wealth (or objects pursued by a person)' 285 Kām, VIII. 52 says the same. Śukra, (IV.1.8–10) opines 'in the case of a brave, energetic, strong and politic king all others, though outwardly friendly, secretly cherish enmity to him and only wait for (the proper) time (to strike) There is no wonder in this. Are they not themselves greedy of conquering territories? A king has no friend and he is the friend of none'. Śanti (80.3) says286 that a friend is of four kinds, one who has the same goal, one who comes for protection or security, one who is naturally so and one who is acquired. Karnaparva 88.28 gives the four kinds somewhat differently viz. natural (sahaya), acquired by conciliatory words,

284 सहितवाणे मित्राद्रव्युपस्थितामानाहसतोत्सरो खाम: अन्यद्र: सिद्धिः प्रथम: द्वितीय: मित्रवतोपस्थिता मित्राय खामः सिद्धिः मित्रवतोप | कौशिक: VII 9.

285 न काशिकर्ष्यबिषयमित्राय न काशिकर्ष्यविषयमित्राय | अपवासु निवासमे मित्राय प्रि यस्त खामः मित्राय मित्राय मित्राय | काशिक: VII 52, नाटिः जाय निवारी निवारति मित्राय मित्राय मित्राय काशिक: VII 145 14=शालिक दारो. 5, न शालिक निवारति मित्राय मित्राय मित्राय काशिक: IV 1, 9.

286 सहएव ज्ञानाधारसहजाः काशिकस्तथा। शालिक 80 3 मानसम May mean 'सिद्धित्रियावलम्बनात्' and सहज friends are one's mother's sister's son and the like.
won by wealth and one drawn by one's prowess. Kām. (IV. 74) says that a mitra is of four kinds viz. by birth (such as one's father's father, mother &c.), made by relationship (i.e. marriage), hereditary (one's father's friend), one who is saved from calamities. According to Kām. (IV. 75–76) the qualities of a friendly king are purity (of heart), liberality, bravery, sharing happiness and sorrow, affection, vigilance (to carry out one's friend's object), truth; and briefly the characteristic of a true friend is devotion to the objects desired by his friend. The purpose for which a friend is made is to secure one of the three purusārthas, dharma, artha and kāma (Kām. IV. 72).

This subject of making friends leads on to the well-known theory of mandala i.e. of inter-state relationship. Kaut. VI. 2 and VII, Mānu VII. 154–211, Āśramaśīparva 6–7, Yāj. I 345–348, Kām. VIII–XI, Agnipurāṇa 233 and 240, Viṣṇudharmottara II. 145–150, Nītivākyāṁṛta pp. 317–343, Rajanītiprakāśa pp. 316–330, Nītimitāyukha pp. 44–46 deal with this theory of mandala and the six guṇas at great length. As the Kautiliya is probably the earliest of these and contains the most elaborate treatment of the subject, a brief outline from it is presented here. The Nītivākyāṁṛta (pp. 311–313) copies the very words of Kautiliya.

The yōgakṣema (welfare) of a State springs from peace (sama) and exertion (vyāyāma). The latter achieves the completion of works undertaken, while sama brings about the undisturbed enjoyment of the fruits of undertakings. The (proper) employment of the six guṇas (sandhi &c.) is the source of sama and vyāyāma. What results (udaya) from these six guṇas is either deterioration, stagnation or progress. Udaya depends upon human and divine causes which together govern the world. The human ones are naya and apanaya. Human causes are seen (anticipated) and can be operated (by men). Naya (good policy) is that out of the human causes from which results yōgakṣema (welfare); apanaya (impolitic way) is that which produces loss (or an unfavourable state). In VI. 1 (last verse) Kautilya says that a king who understands naya and is endowed with the ūtma-guṇas and all the elements of the State will conquer the whole world, though originally he may have a small kingdom. The mandala theory is set out in relation to a king who

287. औरते कृत्तस्नचित्र तथा कंडकानागृहः। रक्षिते न्यासमध्ये निने रोये चक्षुः।
रिष्टये कान. IV. 74.
is called *vīgīsu* (the ambitious ruler or conqueror). Kām. VIII 6 defines *vīgīsu* as a king who aspires to extend his territories, who is possessed of all the seven elements of sovereignty, who has great energy and who makes great efforts. In verses 7–11 he mentions at length his qualities. All our works place before kings this ideal of conquest, domination or self-aggrandizement at the expense of one's weak neighbours. A *vīgīsu* is a king who is endowed with good qualities (called ātmasampat on p. 45 above) and with the several elements of the State and who is the fountain of policy (naya), i.e. who has a definite good policy to pursue. An *ari* (actual or potential enemy) is a king or kings who are the immediate neighbours on the circumference of the kingdom of the *vīgīsu*. From this it follows that *ario* may comprehend one king, two kings or more who are the immediate neighbours of the *vīgīsu*. But it should be remembered as insisted upon by the Nātivakyaśāra (p. 321) that there is no inflexible rule that the immediate neighbour is an enemy and that the king whose dominion is beyond the immediate neighbour will be a friend. Contiguity or distance is not necessarily the cause of friendship or enmity, but rather it is the purpose (or object) that makes friends or enemies. All that is meant is that the immediate neighbour is most likely to be an *ario* (a real or potential enemy). A mitra (friend of the *vīgīsu*) is he who is separated (from the *vīgīsu*) by the intervention of the kingdom of the *ario*. A *śatri* is a neighbouring ruler possessed of the characteristics of an enemy (detailed in Kaut. VI 1) The *yātāya* (to be attacked or invaded by the *vīgīsu*) is an *ario* who is involved in difficulties. From this it is clear that in the terminology of Kautilya *ario* is a generic expression including actual and potential enemies who will generally be on the borders of the kingdom of the *vīgīsu*. A *śatri* is an *ario* who invites attack or destruction or harassment or reduction. That enemy who is plunged in vices or calamities may be

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288. सप्तसनं मन्त्रमित्रमेहोत्साहः कुव्वतम्। अनुदिश्येणशिल्प मित्रनितिस्मिति स्वतः। काम् VIII. 6.

289. अनपानं शासीकान्तं मित्रनितिः नै एकसूत्रः। कार्यं हि मित्रवातित्वं नै। कार्यं न दुनांविवक्षेषितकर्मः। नीतिसा (बाहुव्यस्तः)। P. 321.

290. अपास्वानीः स्वम्। भ्रष्टपरिषद्विचरकषुकित्वयदनिष्ट्या यद्यपि बिनः। क्लसे यूर्यपकः श्रीरतिनिनाथं श्री। श्रीमणि हि ब्रजः। पत्नी जयंवे। श्रीरतिनिनाथेऽवधिः। काम्हिणी VI. 1.
attacked and is then called yātavya\(^{291}\); one who has no support or has only a weak support is to be extirpated; an enemy who is the opposite of this last (i.e., who has a support or strong support) is to be either harassed or to be reduced. Support (āśraya) means a strong fort or a good friend (Kām. VIII. 60). So that a śatru

is of four sorts (yātavya, ucchēdyā, pīḍāniya, kārśāniya). Harassment is caused to him who is without mantra and a strong army, while one who is strong in mantra and army is to be rendered weak in these respects. Both a śatru or a mitra are of three kinds, sahaja, kṛtrima and prākṛta. A sahaja (natural) friend is one who is related through one's parents (such as maternal or paternal aunt's son); one who is resorted to for wealth or safety is kṛtrima (acquired) i.e. one who has obliged the viṣṇisu or has been under his obligations; and the king who is next to the neighbour (i.e., who is separated from the viṣṇisu by the intervention of the neighbour king) is prākṛta (i.e. because he is a prakṛti, an element in the mandala theory).

A sahaja enemy is one who is born of the same family (such as a step-brother), a kṛtrima is one who is antagonistic or incites antagonists (i.e. one who has caused harm to or who has been harmed by the viṣṇisu), while the immediate neighbour is a prākṛta enemy. The Mit. on Yāj. I. 345 very concisely but lucidly explains all these and the four kinds of śatru. The Viṣnuḥarmottara (II. 145. 15–16) and the Agnipurāṇa (233, 21–22) say that in their opinion the prākṛta is really kṛtrima. Kām. VIII. 56 also speaks of only two, sahaja and kṛtrima. Although it is possible that the viṣṇisu's realm is surrounded by many kings, the one who is taken for discussion is the enemy and is to be regarded as in front (purastā) of the viṣṇisu. Therefore in front of the viṣṇisu come in order the ari (immediate neighbour), then the mitra (whose domain is next after that of the ari), then the arimitra (the friend of the enemy who will be immediately after the mitra of the viṣṇisu and so will be the enemy of the mitra), then comes the mitra-mitra (friend of the friend of the viṣṇisu) and then arimitra-mitra (ally of the enemy's friend). When the ari is said

\(^{291}\) अरिक्लाप्याः: साधान्या झूठः। वस्तिभी प्रातिव अपनार्णो दुर्बाद्धार्यो मायच्छु। भ-मन्यः। तत्त्वेति वीर्यनी गवेशितः कर्मगतिः। बोधित्वा VI. 2, अर्थ: रुग्माच्छुः। 'वस्तिभी: प्रातिव: प्रातिव वस्तिभी: गवेशितः। वत वस्तिभी: प्रातिव: प्रातिव: प्रातिव: गवेशितः। रेखपुत्री: चतुर्विशेषत:। प्रचरणविशेषत: कर्मगतिः। वस्तिभी:। विशेषतः परिवृत्ते पंडिते विकल्पितः। कर्मगतिः। इति। विराजत्वा on ya. 1. 345 These very words are quoted in the साधान्या-विज्ञाप्त p 36.
to be in front of the vijīgīsu, the ruler of the territory in the opposite direction is said to be in the rear of the vijīgīsu (paścīt) and is called pārsnumāra 292 (lit one who may seize or attack the heels) He is really an enemy but this special term is applied to him and he causes trouble in the realm of the vijīgīsu when the latter has started on an invasion or is about to start on one. The king who is the ruler of the country beyond the pārsnumāra is called ākṛanda (lit one for whose help a cry is or may be raised by the vijīgīsu). He would ordinarily be a friend being separated from the vijīgīsu by the realm of the pārsnumāra. The friend of the pārsnumāra (who would be immediately next after the ākṛanda) is called pārsnumārāsāra and the friend of the ākṛanda who would be beyond the pārsnumārāsāra is called ākṛandsāra A madhyama 293 king is one whose realm is close to (is on the border of) that of the vijīgīsu and that of the āni (the immediate enemy in front) and who is capable of helping (or favouring) both of them whether both are combined in alliance or not and who is capable of resisting either of them individually when the two are not in combination. An udāśīna king is generally defined as one whose territory is beyond or outside of the sphere of the realms of the vijīgīsu, his enemy in front and the madhyama, who is very strong on account of his elements of sovereignty, is capable of helping the above three kings whether they be in combination or not and who is capable of resisting any of the three when they are not in combination Kullūka on Manu VII 153 differs from this explanation i.e the udāśīna is a powerful king whose realm may be situated in front or in the rear or even at a distance from that of the vijīgīsu, but he is indifferent for some reason or other to the activities of the vijīgīsu. The Mit on Yaj I. 345 observes that the udāśīna also is of three kinds and the prakṛta udāśīna is the overlord of the State that is separated from the central state (vijīgīsu) by two intervening States; the

292 यो विजिलीयो मर्दिशेयि पलिंद्रमसि द वज्ञलोकस्य जनयति स पालिणकाहि।
पालिण्यातादाः पालिका स आकर्षः पालिङ्गाहित्वानासारां आकर्षितकाहि च।
कौनिष्ठा बालप्रभु p 319.

293 अविजिलीयोऽद्यमताय संतानासहितपोपद्याद्वसंधिम नियते चासंधिनायः।
अविजिलीयोऽद्यमताय च असंधिको बलवत्यो संधिकासतानासिनितिकाने
मध्यसतानमान्याः संधियुते सतातानासिनिति प्रजाः।
कौनिष्ठर्व p 3 261; side
अद्यां 240 3-5 and रिज्य्युमान्तार II 145 11-12 for almost the same words in
verse मणिधारिकानुसारातिदृश्यमिति चलाविका। अद्यान्तः संधिकानां धर्माङ्गां च चेत चेत
भाष्यप्रणा 240 4-5 This is quoted by the सरसवतिमासं प 39 without
naming the source.
The theory of mandala

Madhyama (or madhyastha acc. to Nittivākyāṃṛta p. 318) is the immediate neighbour of both the viṣīgisu and his enemy, but wants to remain neutral in the conflict of the two for some reason. It will have been noticed that the viṣīgisu, the enemy, the madhyama and the udāśīna are independent categories, while four out of the remaining eight others viz. mitra, mitramitra, ākṛnda, ākrandāṣṭra can be grouped under viṣīgisu, while the other four viz arimitra, arimitramitra, pārsnigrāha and pārśnigrāhāṣṭra may be grouped under ari. It is therefore that Manu (VII. 155-156) speaks of the four prakṛtis (viṣīgisu, satru, madhyama and udāśīna) as the mūla (basis) of the mandala theory and Kām. VIII 20 informs us that Maya declared that a mandala was constituted by these four. Kām. VIII. 86 gives it as his own opinion that mandala is constituted by mitra, udāśīna and vis (enemy) only 294. Kautilya says that the mandala is constituted as explained above by twelve prakṛtis. Uṣanas was of the same opinion (Kām. VIII. 22) and Kām. VIII. 41 states that there were numerous views about the number of the elements of the mandala, but a mandala of twelve kings is quite clear and well-known among all people 295. Kām. (VIII 20-41) explains how by various combinations of the elements of the mandala with some elements of sovereignty (viz ministers, rāstra, durgā, kośa, bala) different writers held that the mandala comprised 18, 26, 54, 72, 108 and other numbers of prakṛtis. The Sarasvatīvilāsa (pp 37-41) shows how from different standpoints Uṣanas himself argued that the mandala was constituted by one prakṛti, two, three, 10, 21, 108 and that other writers speak also of 4, 5, 6, 14, 18, 30, 36, 44, 60, 72 prakṛtis. All these figures are due to the inveterate habit of scholastic minds to run an idea to the earth and to indulge in divisions and sub-divisions. Even Manu (VII. 157) states that combining each of the twelve members of mandala with the five elements of sovereignty from amātya onwards we get 60 which with the twelve 296 come to 72. It is to this that the

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294 Vide the Nittivāya on ya I 345 ‘पत्थिमाहाकर्त्यनासाराध्वासप्तश्चरेप्राप्तिः

इतिमेयेणात्माद्विषितो उदाभितवियोण न उपद्रवां’।

295. इतिकार्यां भवता मित्रां परिच्छेदे सवक्षोक्तिः तु हृदय हृदयारणवक्

मार्ग VIII 41. This is quoted as a verse of Uṣanas in the Sarasvatīvilāsa p. 41.

296. एवं यवथ्यमद्वेषयोः। इदं श्रेष्ठं स्वयं सन्दर्शयन प्रविश्यमहतं सहस्रप्रथेण हितसरोति। दर्ष यथां समयं: कथा: सिद्धिः सिद्धिः। तत् कथा: हृदय सिद्धिः। कथितसिद्धिः। कथितप्रक्रियā VI. 2 p. 261; मण्डलवेश च य बिन्ता राज्यो हृदयाशिनी। विसादतित्वादित्यो योक्य च रूपात्मकं। कथा: 59 70-71. नेरावकोण connects this half with medicine, while some read विसादतित्वादित्यो योक्य च रूपात्मकं।
Dasakumaracarita (VIII p 144) refers when speaking of the tree of naya that it has 72 prakrtis as its leaves (dvisaptatipra-krtipatrah nayavanaspatih). The central idea of the mandala was to keep a balance of power among a circle of States, some being friendly among themselves owing to their position and surroundings, while others would form an antagonistic group. Kautilya (VI 2) also refers to this number 72, out of which twelve are constituted by kings (rājapalākṛts) and 60 (five sovereignty elements of each of the twelve) are styled (dārangapalākṛts). The Śāntiparva (59 70-71) also refers to a mandala of 12 kings and to the number 72. Vide N. N. Law's 'Studies in Ancient Hindu Polity' pp 195-208 for elucidation of the theory of mandala. The theory of mandala has this element of truth in it that on a calculation of probabilities the kings who are the immediate neighbours of a ruler are likely to be his enemies (at least potential) and the kings that are beyond the immediate neighbours may make common cause with the central State taken for discourse in order to crush between them a hostile intermediate State. It suggests that diplomacy may take the lines indicated by position and probabilities. The diagram below will illustrate the idea. Manu (VII 177 and 180) declares that (state) policy consists briefly in this that a king must so arrange all things or means that the ally, the udāsina and the satru cannot harm him or become superior to him. Medhatithi (on Manu VII 177) remarks that even an ally may become an enemy if his interest so requires (svārthagatvādīca maturamaparyāvabhāval). Kautilya relates the theory of mandala to the theory of śakas (already referred to on p 171) and the six-fold policy (sādguna).
Everything secures success (i.e., his and his kingdom’s happiness) according as the king is able to put forth each of the saktis to their utmost. The aspiring king taking into account his three saktis may employ the six gunas (methods of policy). The circle of the twelve States gives rise to the employment of the six methods. Differing from Vatavyādhi (who said that there were only two methods, sandhi and vigraha) and for once agreeing with the ācāryas, Kautilya accepts the position that there are six gunas and briefly defines them. The Sarasvativilāsa (p. 42) quotes a sutra of Gautama about the six gunas, which is not found in the printed text. Kautilya defines the six as follows:

- **Sandhi** means making an arrangement or agreement;
- **vīgraha** means taking up a hostile attitude;
- **sāmā** means an attitude of indifference;
- **yāna** means preparing (for attacking one’s enemy);
- **dvaidhbhāva** means making peace with one king and adopting a hostile attitude to another.

He then states that a king who is less strong than his neighbour may make an agreement with him, one who is rising in power may take up a hostile attitude, whoever thinks “the hostile king cannot hurt me nor can I hurt him” may remain indifferent (or neutral) in his own State, one who is endowed with all advantages may march against the enemy, whoever is devoid of strength should seek the protection (of a powerful ruler), and one should resort to a two-fold attitude when one’s object can be accomplished by a friend. Some other works give more exact definitions and also define dvaidhbhāva somewhat differently, viz. dvaidhbhāva is dividing one’s army into two parts. Vide Vijnudharmottara, II, 150–5 and Mit, on Yaj. I, 346. Some say that sāmā means seeking the protection of the udāśma or madhyama king. Kautilya (book VII) gives the most elaborate treatment of these six gunas and so do...
Manu VII. 160 ff, Kām. IX–XVI, Vīṣṇudharmottara II. 145–150, Agnipurāṇa 240, Mānasollāsa pp 94–116, Rājāntīprakāśa pp. 324–413. Only a few remarks are all that considerations of space allow. Manu (VII 162–168) states that each of the gunas is of two sorts. Kām. IX. 2–18 and Agni 240 enumerate sixteen kinds of sandhis and Kām defines them. His treatment is based on Kautilya VII 3 Kautilya (VII. 3) says that when a weak king is attacked by a powerful king who is the leader in a circle of States, the former should at once submit and sue for peace on condition of offering his army, treasury, himself and his territory. Then he says that sandhis made on condition of offering the army are of three kinds viz ātmāmsa (lit offering himself as the prey, which involves the condition that the king himself with a fixed number of troops or with the flower of his army would present himself when called), ātmārakṣana (saving himself, where the condition is that the commander-in-chief or the crown prince would present himself with an army), ādṛṣṭagunaūsā (lit in which no person is definitely prescribed, where the agreement is that some one on the king’s behalf or the king himself should march with the army to some place as required by the invader). These sandhis are called dandopanāta (lit in which submission is made with the army) Sandhis made on condition of offering the treasury (koṣopanāta) are parikṛṣaya (lit. price, where by offering the treasury the other elements of rajya are kept free), upagraha (where as much money is offered as can be carried on a man’s shoulder), kapāla (lit. broken half of a pot, where an immense amount of money has to be paid) Sandhis called desopanāta (submission with offer of territory) are ādīsta (where a part of the realm is ceded and the rest saved from the invader), ucchanna (where all the realm except the capital which has been deprived of all its wealth is offered), apakṛṣaya where by offering the produce of the land the kingdom is freed, parbhūṣana where the agreement is to pay more than the produce of the land Kām adds some varieties and remarks (IX. 21–22) that upahāra (offering a present) is the only sandhi (of which all the rest are varieties) in his opinion, that only the maitra sandhi (alliance of friendship without the offer of land, money or anything else) does not come under upahāra. Kām. IX. 20 and Mānasollāsa. II. 11
pp. 94–95) speak of four sandhis, mātra, parasparopākara (agreement to help each other), sambandhaka (by offer of a princess in marriage) and upākāra. An interesting example of a sandhi is furnished by the Lekha-pancāśikā which gives a form of treaty dated Monday, Full Moon of Vaśākha in samvat 1288 (1232 A.D.) between Yadava king Singhana of Devagiri who is styled mahārajaśīrla and Lāvanaprāsāda (Lavanaprasāda) a Vāghela king who is styled tānaka and mahāmanḍaleśvarā, whereby the high contracting parties agreed not to invade each other's possessions, to combine and oppose anyone else who invaded one of them. Vide Bom. G. Vol I part 1 p. 200 based on Bhandarkar’s Report on the search for Mss. 1882–83 pp 38–40. Kam IX. 23–26 and Agnipurāṇa 240. 10–13 mention twenty kinds of persons with whom sandhī should not be made, Kam. (IX. 27–41) states the reasons why it should be so and in IX. 42–52 seven persons are enumerated with whom he recommends sandhī and gives reasons. A king should make sandhī even with one equal in strength (not only with one who is more powerful), since victory in battle is doubtful (Kam. IX. 59). Kant uses a striking simile when he says that if one king comes in conflict with an equal they both will be destroyed in the same way as two unbaked earthen pots striking against one another. If a more powerful king rejects the proposal of a weaker king for sandhī, the latter should take up the attitude of offering his army or follow the course prescribed in book XII (ū bahūsam) in VII. 12 when dealing with agreements between kings, about undertakings to build forts or irrigational works or forests &c. Kant makes very interesting remarks about land routes being superior to water routes and about the route to the Deccan and the south being more profitable than the one leading to the Himalayas. Kam X. 15 (= Agni 240. 19) says that avara (hostile attitude) is of five kinds viz that of step-brothers, that due to land (seizure or encroachment on lands or houses), due to woman (carrying away one's wife or loving the same woman), due to words (cutting speech) and due to wrongs. Kam. X. 2–5

303. सन्तमितिज्ञोद्विवतारि सन्तोष्यो विज्ञप्ती द्विः। न वि संसारितं कृत्तिदेयिनास्वयः
\[\text{हृदयप्रस्तर} I Kām. IX. 59.

304. वर्धनेषु हृदयोऽद्विवतारि द्विवतारिज्ञोद्विवतारि द्विवतारिज्ञोद्विवतारि। वर्धनेषु हृदयोऽद्विवतारि द्विवतारिज्ञोद्विवतारि। वर्धनेषु हृदयोऽद्विवतारि द्विवतारिज्ञोद्विवतारि। वर्धनेषु VII. 12

29
( = Agni. 240. 20-24) enlarges upon the 16 ways in which vagula (hostility) springs, such as seizing the kingdom, wife, districts, vehicles (horses, elephants) and wealth of another, pride, harassment of subjects &c. When a king feels that his own army is well-nourished and pleased, that his subjects are prosperous and contented and that the army and subjects of another are the opposite of this, then he may adopt a hostile attitude and when he feels sure that he will secure one of the three fruits of hostility (viz. land, ally and wealth—Kâm.X. 26-28). Kaut. VII. 15 deals with the attitude and conduct of a conquered king who has offered to the conqueror his army (dandouvanata-vrata), while VII. 16 speaks of the conduct of the dandopanâyi (an aspiring king who wants to make by means of his army another king submit to him). Yânâ means marching for invasion on the part of a vyâgisu whose army and prowess are of the highest and whose subjects are contented on account of his good qualities (Kâm. XI. 1) The Matsya 240 2 and the Agnipurâna (228. 1-2) add that when the enemy in the rear is overwhelmed by an úkranda, then the vyâgisu should start on an invasion or when the enemy is plunged in calamities but before actually invading the enemy who is yûtavya (chosen for attack) an ambassador (dâma) should be sent (Kâm. XII. 1) to see whether the enemy will submit without fighting. That is, there was to be no war without negotiations and an ultimatum. In the Mahâbhârata (Udyoga 83 5-7) it is said that Krsna started as an envoy from the Pândavas to the Kauravas at the end of sarad (autumn) on the Revati naksatra in the month of Kârtika (verse 7, Kaumude mûsa revâtyum saradante humâgame) In the Purânas and the medieval digests elaborate rules are laid down about the religious and propitiatory ceremonies before starting on an invasion. The Vismudharmottara II. 176 and Agnipurâna 236. 1-18 require that for seven days before starting on an invasion the king is to engage in the worship of and make offerings to various gods, first to Ganapati, then to all the guardians of the quarters, the planets, Asvins, Visnu and Siva and the images in the temples of his capital. Then he is to note what good and bad dreams he sees on those days in his sleep and judge accordingly. Vide Matsya 242, Agnipurâna 229 for dreams portending good and evil. This prognostication of good fortune from dreams is very ancient. The Chândogya Up (V 2 8-9) quotes a verse to the effect that when a man is engaged in the performance of solemn sacrifices for securing some object and sees a woman in a dream he should feel that his rite will be
crowned with reward. Similarly the Ait.305 Ar. III 2. 4 mentions the signs of approaching death, one of which is to see in a dream a dark person with black teeth. Both these passages are quoted by Śankara in his bhāṣya on Vedāntasūtra II 1. 14. The Visnudharmottara II. 132–144 (based on Garga), II. 164, Matsya 228–241, Agni 230–232 are concerned with the portents and omens in the heavens, in the sky and on the earth and rites (śāntis) meant to avert the evil prognostications from them. The Mānasollāsa II. 13 pp. 97–112 and Rājanitiprakāśa pp 331–351 also deal with these and other astrological matters, which are passed over here, though some of them are very interesting e.g. Visnudharmottara II. 135 1 refers to the weeping and dancing of images. On the 6th day from the time the rites begin which is the day previous to the starting of the invasion the king undergoes a ceremonial bath for victory called jayabhūseskā. This is described at great length in the Rājanitiprakāśa pp. 351–395 quoting extensive passages from the Lingapurāṇa. The ceremony of Jayasūna resembles the coronation ceremony in many respects. The Matsyapurāṇa 243 15–16 and the Visnudharmottara II. 163. 18–31 contain the same long list (with very slight variations) of articles, persons and animals the sight of which is auspicious when the king starts on an invasion and Matsya (243. 2–14) contains another long list of inauspicious sights. A few of the auspicious ones are white flowers, jars full of water, cows, horses, elephants, fire in flames, a courtesan, dūrvā grass, gold, silver, copper, all gems, sword, umbrella, banner, corpse not accompanied by crying persons, fruits, the svastikā sign. Among the inauspicious things and sights are dark grains, cotton, dried cowdung, fuel, jaggery, tonsured or naked man or man with dishevelled hair or wearing reddish robes, a lunatic, a candala, a pregnant woman, broken pot, chaff, ashes, bones. The Mānasollāsa II. 13 verses 811–823 (pp. 102–103), Nitimayūkha pp 58–59 also give long lists of inauspicious and auspicious sights or events. Matsya 243. 27 and Visnudharmottara II. 163. 32 are both careful to add that all evil signs are counterbalanced by the confident (or joyous) frame of the mind, which is the highest sign of victory.305 Gaut.

305. सचर्य खिर्य पद्मेशसुधु कर्मिति विषयात्। तदेव ् कृत्याय। यदा कर्मसु कामेन्दू प्रयोगे समेतु पत्रस्तिव। किंतु यथा यानिकाः सतिस्मृतिविद्धि। खान्त्रोपित V 2 8–9, च विकम्पित जीवितान्तीि विषयः। अय स्मृत। इत्यर्थवत् च ॥ इत्यथब से कविश्वरुक्षेत्रवर्षीयम् ॥ एत्य आर ॥ III 2 4

306. सन्तानसुकृतिविच । परमायुप्यां। एकत्र वाचनतिस्मृतिकृत:। मस्ते ॥ 243 27=विष्णुसम्बोधक II 163 32.
(XI. 15-17) prescribes that the king should heed the advice of astrologers and of those who are adepts in averting the effects of portents and perform the rites indicated by them such as grahaśānti, rites on auspicious days and of svastīyajña, rites of black magic against his enemy &c. Kaut. IX. 7 (at the end) says that the removal of divine calamities is brought about by the worship of deities and by honour to brāhmaṇas and by performing rites prescribed in the Atharvaveda. Manu VII 82 and Yāj. I. 315 state that gifts made to learned brāhmaṇas are an inexhaustible treasure for the king. The Rājadharmakānda (p 109) quotes the Brahmapurāṇa requiring the king to perform two Laksahomās every year and also a Kotihoma. The Rājadharmakānda (p 113) and Rājantiprakāśa (p 144) quote Udyogaparva 33, 93-95 which set out eight indications of a man’s approaching fall, viz. hating brāhmaṇas, opposing brāhmaṇas, depriving them of their wealth, desire to kill or harm them, taking pleasure in calumniating them, not liking their praise, not remembering them in religious acts and getting angry when they make requests.

It may be useful and interesting to see how in very ancient times the king was made ready for battle. The Ṇav. Gr. 8. (III. 12) says: when a battle is impending (the purohita) should make the king put on his armour (in the following way). The purohita should stand to the west of the chariot (of the king) muttering the hymn (Rg. X. 173) ‘I have brought thee &c.’ He should hand over to the king his armour with Rg. VI. 75. 1 ‘when the man with armour advances it is like the appearance of the cloud &c’. He hands over the bow with the next verse (Rg. VI. 75. 2 ‘dhanvanā gā’). The purohita should make the king recite the next verse (Rg. VI. 75. 3) and should himself mutter the 4th verse (Rg. VI. 75. 4) He should hand over the quiver to the king with the 5th verse (Rg. VI. 75. 5) When the chariot turns in the direction intended the purohita should mutter the sixth verse (Rg. VI. 75. 6) He should recite over the horses the 7th (Rg. VI. 75. 7) He makes the king recite the 8th (Rg. VI. 75. 8) when the latter looks at the arrows and makes the king recite Rg. VI. 75. 14 (‘he envelops his arm’ &c.) when the latter fastens to his arm the leather (that protects his arm against the bow-string) When the king is being taken forward in the chariot by the charioteer the purohita ascends the chariot near the king and makes him recite the hymn called Abhivarta (Rg. X. 174) and the two verses (Rg. VIII. 101. 3-4). Then the priest looks at the king with
the Apratiratha hymn (Rg. X. 103 'āṣuḥ śīśāno'), the Śāsa hymn (Rg. X. 192 śāśa itthā) and the Sauparna hymn 'pra dhārayantu madhuno gṛtasya'. Then the king should traverse in order all directions in his chariot. He should stand in that direction in which the Sun (by day) or Venus (by night) shines and give fight from that direction. The king should pass his hand over the drum with the three verses (Rg. VI. 47. 29-31 'fill with breath (or roar) the heaven and the earth'). The king should discharge arrows with Rg. VI. 75. 16 and the purohita should mutter Rg. VI. 75. 17 ('where the arrows fall together &c.') when soldiers are fighting, or the purohita may direct or teach (the king to recite from the above versus as are appropriate to his actions). In the Harssacarita (7th Ucchvāsa first paragraph) Bāna favours us with a realistic and graphic description of the preparations made when Harsa marched out from his palace on his dvijaya. The astrologers found out an auspicious day and lagna (sign of zodiac

307 This hymn is found in no sāṃhitā Śāyana in his comment on Alt Br. 29. 9 (where the sauparna hymn is mentioned) gives an alternative explanation saying that the sauparna hymn referred to is the one declared in the ghryasūtra viz 'pra dhāraḥ yantu &c', i.e. he does not read 'pradhārayantu' as in the printed Adv. Gr., on Alt Br. 37. 7 (where the Abhīvarta, Śāsa, Aapratiotha and Sauparna hymns are mentioned) the comment of Śāyana as printed reads 'pradhārayantu'.

308. संग्रास सहस्रो हस्तान् संशास्त्रेण । आ त्वा हर्षवेदित्रवति पामपास्त- स्वायं ते सर्वत्रस्वयं नाति वाचित्यमिति कालेक्षणोऽद्यतष्टेऽपि । उद्भवा ब्रह्म । द्वाराय भाष्यदेशः । सवन सब्दां जन्तु ॥ पद्मावधूः पद्मावधूः । अभिमर्गासमास बहुदशः । भार्यात् भार्याः । देवी-भलोधक्षाष्णम् स्वच्छीरित । ऋषिवर्गीयोऽद्यतष्टेऽपि स्वायम्याः । अपैत्य सर्वত्र- धर्माविशिष्टस्वायथरिति यथा यथा निर्धारणयोऽद्यः ॥ अथवा अलंकारसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यसाहित्यsāhītā śāyana in his comment on alt br. 29. 9 (where the sauparna hymn is mentioned) gives an alternative explanation saying that the sauparna hymn referred to is the one declared in the ghryasūtra viz 'pra dhāraḥ yantu &c', i.e. he does not read 'pradhārayantu' as in the printed adv. gr., on alt br. 37. 7 (where the abhīvarta, śāsa, apratiotha and sauparna hymns are mentioned) the comment of śāyana as printed reads 'pradhārayantu'.
rising on the eastern horizon) indicative of his conquest of all the four quarters, Harsa was bathed in water poured from silver and golden jars, performed worship of Śiva, offered oblations into fire that sent up flames turning from left to right, made gifts of jars full of sesame grains and of cows whose hoofs and horns were tipped with gold, sat on a throne on which tiger-skin was spread &c

When starting on an invasion the king was required to perform a rite called nirājanāvadhā which consisted in waving lights before horses, elephants, banners, armves &c. In II. 30 Kautilya prescribes that on the 9th day of Āsvina lights should be waved before horses and at the beginning and close of invasions and in times of diseases. In II. 32 Kautilya speaks of the waving of lights before elephants thrice in the cāturmāsya (from about July to October) and at the time when two seasons meet Kālidāsa in the Raghuvamsa 4:25 refers to the performance of this ceremony when Raghu started on his digvijaya and states (in 17-13) that dūrvā grass, barley sprouts and the bark of the palāśa tree were required in the Nīrājanāvadhā. Kām IV. 66 speaks of waving lights before horses and elephants (nirājita-hayadvipah). The Brhatasamhitā, chap. 44 (verses 16–28) deals with the ceremony of waving lamps before horses, elephants and men. This ceremony had to be performed every year in the month of Āsvina from the first to the 9th day of the bright half or on the 8th, 12th, or 15th of the bright half of Kartika (acc. to the Brhatasamhitā 44:2) by those who owned horses and also elephants. It is also described in the Saunakīya II 8, Agnīpurāṇa 268, Visnuharmottara II 159 (quoted at length in the Rājanīṭi-prakāśa pp 434–438), Kālikāpurāṇa 88:15 ff, Nīrāyasindhu II p 169, Yuktikalpataru p 178. The Brhatasamhitā describes it as follows:—In the north-east of the capital an ornamental arch of some holy tree was to be erected 10 cubits wide and 16 high. Round the necks of horses threads smeared

309. श्राज्ञा चावाचियि वर्ये निभीदारव चर्मवीरि। नेराजनावृढाहि छव्वा सैनिकाया-नाचेत । गणान्यप्रमाणानंस्तिमिः नागाशास्ति नान् । युक्तिकल्पततः प 178

310. नेराजनावृढाहि चावाचियि छव्वा सैनिकाया-नाचेत । गणान्यप्रमाणानंस्तिमिः नागाशास्ति नान् । अर्थात II. 30 last verse, तिरक सीताराज, कार्याष्ट्रप्रतापपतिः पुण्यावधिः। अर्थात II 32, last verse but one दस्यात थिल्लते नेराजनात प्राणी जगद्ध अत्रण गतिपदम (on बृहस्पतिः 43 1) It is possible to derive the word from नि + राज (from राज).

311. तस्मी तयाद्वयोऽक्षिरक्षिराजानावृढाहि। मदुक्षिणायिनि गतिपदम एवं तद् वद्वीः पठ्य 4. 25.
with saffron paste and marking nut, with rice grains and white mustard and kustha plants tied on them were to be sus-
pended. For seven days mantras addressed to the Sun, Varuna, Viśve-Devas, Prajāpati, Indra and Visnu were to be recited over
the horses, during those days the horses were not to be harshly
addressed nor struck with a whip and auspicious words were to
be addressed to them, conches were to be blown, drums beaten
and singing indulged in before them. On the 8th day, to the
south of the arch a shed with its face to the north and covered
with kuṣa grass and barks was to be erected and in front of it
on a vedi fire was to be lighted and various materials and plants
such as sandal-wood were to be collected and thrown into jars
full of water, various foods were to be offered as bali, fuel
sticks of khadra and other holy trees were to be brought. The
king seated on a tiger-skin and facing the east should sit near
the fire together with an astrologer and horse doctor and should
follow at the direction of the purohita the procedure laid down
for Grahayajña (sacrifice to planets) and the raising of Indra’s
banner. A horse and an elephant possessing the most auspici-
ous signs should be bathed and honoured with new white cloth,
sandal-wood paste, garlands and incense and should be brought
to the foot of the arch near the shed with sweet words to the
accompaniment of music and conch-blowing. The movements of
the horse and elephant should be watched and prognostications
made therefrom about victory &c. A ball of food over which
mantras have been recited should be offered to the horse and if
the latter smells it or eats it that is a sign of coming victory.
Dipping an udumbara twig in the jars filled with water and
plants the purohita should touch therewith the horse, the
elephant, the king and his soldiers to the accompaniment of
mantras. Then making an effigy of the enemy the purohita
should pierce it with a sharp and pointed stave in the region
of the heart with incantations from the Atharvaveda and break
it. The purohita should pronounce over the bridal vedic
mantras and insert it in the mouth of the horse, which the king
should ride and proceed in the north-east together with his army,
with drums beaten, conches blown and banners displayed. This
is a propitiatory rite (sānti) as said by Varāhamihira (Brhat-
samhita 44 2) and the Agnipurāṇa 26 8 and 31 and must have
been in vogue centuries before Kautilya flourished.

The duty of the conqueror, after vanquishing his opponent,
to place on the throne of the late king his son or a kinsman and
to respect the customs and usages of the territory conquered has
already been set forth above (p. 71) Conquests resulted in either loss of territory or more generally in the offering of tribute of various kinds to the conqueror viz. wealth (gold and silver), horses, elephants, pearls and gems, fine cloth &c. Particularly horses from Kamboja, Balhika, Gandhara and other countries in the north and west were highly prized Vide Sahā 51.10, 53 5, Udyoga 86. 6, Drona 156. 47, Saúptika 13. 2; and Sahā 27 27. 28 6 for horses as tribute. In Sahā 30, 28-30 all the above kinds of tribute are said to have been levied from the Mlecha kings by Bhūma.

Kautilya devotes one book (VIII) to the discussion of vyāsana. Vyasana means ‘what deprives a man of great good’ (from the root ‘as’ to throw with ‘vi’) According to Kaut vyāsana may be either the absence of qualities (such as noble birth) or the opposite of such qualities; faults (such as hot temper), excessive attachment (to women &c), harassment (by invasion or calamities like famines). So vyāsanas may broadly be divided into two classes viz. calamities and faults due to kāma (passion) and krodha (hot temper). The view of many acūryas is that of the vyāsanas of the king, ministers, the people of the realm, fort, treasury, army and ally, the vyāsanas of each succeeding one are more serious than those of each succeeding one. From the discussion in VIII 1 it appears that Kautilya in this case agrees with the acūryas. Differing from Bārdvāja Kaut holds that the calamities befalling a king or his vices are more serious in their consequences than those of the ministers, since it is the king who appoints the ministers, the purohita, other servants and superintendents of departments and he can employ others in their places and since the rise or fall of the people depends upon him. Disagreeing with Vīśalākṣa Kautilya holds that the vyāsanas of ministers have more serious consequences than those of the people, as all (national) undertakings proceed from the ministers, as the security of person and property from internal and external enemies, adoption of remedies to resist calamities, recruiting of army, collection of taxes are all in their hands. Differing from the school of

312. 313.
Parāśara, Kautilya is of opinion that the vyasana of the people has graver consequences than that of the fort (or capital), for forts, treasury and army, all irrigation and agricultural work, stability, bravery and abundance (of things) spring from the people. Against Piśuna, Kautilya states that the calamities befalling the fort (or capital) give rise to graver consequences than those of the army for the reason that it is in the fort that the treasury and army are kept safe. Kaut. (VIII. 2) holds that internal troubles are more serious than external ones and troubles due to ministers are the most serious of all internal troubles. Kaut. prefers an ignorant ruler (who has not studied śāstras) to a king who is bent on swerving from the dictates of śāstras which he knows; he prefers a king suffering from illness to a new king (a conqueror), a weak but a high-born king to a strong but low-born one. In VIII 3 he enumerates the several faults and vices which have already been stated above (p. 54).

After remarking that ignorance and lack of training are the causes of vices or faults, Kaut. discourses on the relative seriousness of the several faults or vices and holds that gambling is worse than hunting, that sexual passion is worse than gambling, that drinking is worse than sexual vice and that gambling is the special cause of dissension among sanghas (corporate assemblies) and among families of nobles that have the characteristics of sanghas. In VIII. 4 he states that among divine visitations like fire, flood, epidemics and famine, floods are more devastating than fire, diseases and epidemics are less destructive than famine, that the loss of outstanding men is more serious than that of common men even in large numbers; since there can hardly be one eminent man among a thousand ordinary or inferior men. He holds that the trouble caused by the Crown Prince is a lesser evil than that caused by a favourite queen. In VIII. 5 Kautilya holds a discussion on the troubles arising from the army and allies. He first enumerates thirty-three matters that may cause trouble with the army, such as not giving due respect to it, or showing contempt to it, not dispensing the pay at the proper time, not preventing diseases from attacking it, having soldiers who are very fond of their wives. He then takes pairs of troubles out of these and states which is the lesser evil of the two. Then he deals with causes that lead to the loss or defection of allies
In the Rājadharmakānda, the Rājanītiprakāśa and other works the king is advised to celebrate several rites and festivals, which may be briefly referred to here. They were meant as propitiatory rites to avert national calamities and also to keep the populace in good humour and to afford enjoyment to people. The Rājadharmakānda (pp 115-117) and the Rājanītiprakāśa (pp 416-419) quote about 35 verses from the Brahmapurāṇa to the effect that the king is to celebrate in one or more of the six months from Vaiśākha festivals (devayātra) in honour of various deities such as Brahmā, the gods, the Ganges, Viṇāyaka, Nāgas, Śkanda, the Ādityas, Indra and Rudra, the Mātris (Durgā and others), the Earth, Viśvakarman, Viṣṇu, Kāmadeva, Śiva, the Moon respectively on the tithis from the 1st to the 15th. The same two works quote a passage of 18 verses from the Skandapurāṇa about the festival of moonlight and also the rite of raising the banner of Indra and the latter quotes (pp 425-433) a long passage from the Viṣṇudharmottarapurāṇa also Vide H of Dh. vol. II pp 825-26 for description of the festival of Indra's banner. They describe the worship of Devī on the 8th and 9th days of Aśvina (from the Devīpurāṇa) when animals were sacrificed, the gifts of cows on the Amāvasyā of Kārtika, the rite called Vasordhārā (stream of wealth). The details of all these are passed over here for want of space.
CHAPTER X

PURPOSE OF THE STUDY OF RAJADHARMA AND THE ENDS OF THE STATE

In the preceding pages an attempt has been made to present a picture of the theory and practice of Government and statecraft as delineated by ancient and medieval Indian writers on dharmaśāstra and arthaśāstra. One feature that would strike any reader is the religious colouring with which all theories and ideals are suffused. Another is that the ideal set before rulers and their officers is a highly moral one. Several faults have been found in the theory and practice inculcated by the writers. Except for some centuries before and after the Christian era, monarchy has been the only form of government known in India and monarchy alone is generally envisaged by Indian writers. The result has been that the king came in practice to be almost synonymous with government and the State, though a very lofty sense of his duties and responsibilities was impressed on the king. Another defect lies in the almost total absence of discussion on the form and working of oligarchical or republican States. Besides, once the main outlines of the theory of the State were established by the first writers on polity, for about two thousand years succeeding generations of authors were content to follow in the old grooves and hardly ever made any fresh approach to the problems of government or started any rival conceptions or theories. Ancient authors were content to induce the kings and the people to support as far as possible the status quo. They thus provided for a more or less static society and did not encourage any dynamic thoughts or movements. There was no strong or assertive middle class nor was there any organized Church. Though the brāhmanas were a sacred class, they were not organized as a body and had to depend only on exhortations and texts to exert influence on the monarchs. It may no doubt be pointed out that similar conditions prevailed almost all the world over. Small States, constant wars and invasions were the commonest phenomena in Europe till the 15th or 16th century and no reproach should be levelled at the Indian writers alone. It cannot, however, be gainsaid that even after experiencing the constant plundering expeditions and religious persecutions of Scythian, Hun and Moslem invaders from the
1st to the 11th and the following centuries the able thinkers, warriors and statesmen of India did not enlarge their limited horizon and find means to consolidate and weld together into a united block the numerous small States that were scattered all over India. They could have put forward a common idea and ideal before all the provinces and peoples of India viz. meeting the onslaught of plundering and fanatical invaders, which, if properly handled, would have acted as a unifying force. It was to some extent only in Vijayānagara and Mahārāstra that in medieval times means were adopted to weaken the power of the invader, to present a solid front and establish powerful Hindu kingdoms. The old writers spun the same old webs of theories that had been there for centuries, they did not formulate new theories nor did they take steps to infuse into the common people a sense of solidarity and unity as Indians and did not inculcate deep and abiding sentiments of patriotism similar to those we find in Western countries for the last two or three hundred years. In spite of such drawbacks it will have to be conceded that ancient Indian writers made substantial and independent contributions to the theory and practice of Government and that their hardiwork can stand comparison with the ancient and medieval thought of most countries of the world.

It may be asked: What in these days is the use of the study of the theory and practice of Government in ancient India? It may be argued that the world is now hoping, as promised by the great leaders of the United Nations, to enjoy several freedoms, that great expectations are created in the minds of millions of down-trodden peoples, and that all peoples including Indians will be faced in the near future with democracy and great problems of reconstruction and that knowledge of the past cannot throw much light on the pressing needs of the present or the serious questions that will confront all in the latter half of the 20th century. It may be conceded that the situation in which we find ourselves now and in which we shall be placed in the near future is unique and much light cannot be thrown by a study of the past on the solution of the problems that will have to be tackled by us. But that study has certain useful purposes to serve. Millions of people in India as well as in the world are hardly better than hewers of wood and drawers of water in their own countries. They intensely desire to be masters in their own countries and of their own destinies. The iron has entered
deep in their souls that for countries as well as individuals freedom of action spells happiness and dependence on the will of others is misery (as Manu laconically puts in IV. 160), that men who have no independence are hardly human beings (as the Markandeya 125-29 says). 315 The study of the past will give us hope and convey the assurance that we have in the past conducted governments and administrations of vast empires, that we evolved theories and practices which were not inferior to those of some of the most advanced nations of the world, that, allowed opportunities and scope, we may rise equal to what the circumstances may demand of us. On the other hand, such a study will stimulate thought, focus our attention on our mistakes and short-comings, make us be careful to avoid pitfalls and give us indications of the directions in which we must make a new orientation in our ideals and practices.

At the end of this section on Rājadharmā, a question may be asked: what were the ends or purposes that the State in ancient India placed before itself or the dharmaśāstra and arthaśāstra writers said the State should place before itself? The end of the State has been differently stated by different philosophers and theorists of the West from ancient times to the present day. To take only a few examples To Plato and Aristotle 316 the end of the State was good life for the citizens. But it is not very easy to say what is meant by the good life. Bluntschli in 'Theory of the State' (Oxford, 1885) Book V Chap. IV p. 300 formulates the proper and direct end of the State to be 'the development of the national capacities, the perfection of the national life and finally its completion', provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity. This definition is not easy to grasp. There is no agreement as to what is the destiny of humanity and the concepts of nation and national life are hardly older than a few centuries even in Europe. For 'nation' one may substitute the word 'country'

315. सति परशार तुषार सर्वभागवते हरयाज्ये। परम्परासमासं पर्यंत्य हरयक्षणेषु। महात्मसुत्र 125. 29.
316. Aristotle in 'Politics' says 'A state exists for the sake of a good life and not for the sake of life only. Political society exists for the sake of noble actions and not of mere companionship' (Book III Chap. 9).
or 'kingdom'. Then it may be of some application to India. It is impossible to define the end of the State in a single word or in a few words. This question about the end of the State has been partly answered already when speaking of the ideals of kingship. At the risk of some repetition a reply to the above question may be given in the following words. The authors on Dharmasastra had a very low estimate of human nature, they believed that ordinarily men were depraved, that it was difficult to find a man pure by nature and that men were kept in the straight path by the fear of punishment (Manu VII 22 = Śānti 316a, 15.34). Yaj I 361 requires the king to punish and bring to the proper path castes and guilds when they swerve from their dharma. Kām. (II 40 and 42-43) says the same thing and adds that in the absence of danda the world will revert to the state of mātysya-nyāya (the strong devouring the weak). Sukra I. 23 says the same thing. The ancient writers did not rely on the natural moral impulses of man and on his will to do the right thing. The same ideas are expressed by some Western writers on law and politics. ‘A herd of wolves is quieter and more at one than so many men, unless they all had one reason in them or have one power over them’ says Jeremy Taylor Salmond (Jurisprudence p 65) states ‘man is by nature a fighting animal and force is the ultima ratio not of kings alone but of all mankind’. We must distinguish between immediate or proximate ends and the ultimate end. The ultimate end or goal of most of our philosophy was moksa (release or liberation from the ever-recurring cycle of births and deaths and from the miseries and suffering of life). The same was the ultimate goal of rājadharma. But the proximate goal of the State in India was to create such conditions and

316a सर्वातं दुश्चिन्तो दोको इत्यर्कौ हि दुर्विन्दोरः। दुर्बलपि हि भयानकमौ भागायिं। प्रत्येकंते सामनि 15 34। दशभर्स्या दिल्लितमेवें हृतः परसरं सीखन्तोध्यं ग्यानं। सनातने वेदम् साहसनकमेव निपत्ते कृत्यकार्योपरिकृत्य। II काम. II 42। राजसूयभागात् केशर्व: स्वस्त्वमर्मरो नमूनं।। युध्य I 23। This conception bears striking resemblance to the words of Machia.

‘Discourses I 3 quoted by H. Butterfield in ‘State craft of Machiavelli’ (1940) p 111. ‘Those who have discussed the problems of civic life demonstrate—and history is full of examples to confirm the fact—that whoever organizes a state and arranges laws for the government of it must presuppose that all men are wicked and that they will not fail to show their natural depravity whenever they have a clear opportunity, though possibly it may be concealed for a while.’
environments as would enable all men to live in peace and happiness, to pursue their avocations, to follow their own customs and usages and their 'svadharma', to enjoy without interference the fruits of their labour and the property acquired by them. The king was the divinely provided instrument to create the conditions of peace, order and happiness. If the king impartially exercises the power of danda over all, whether his own son or enemy, in proportion to their guilt, he secures this world and the next for himself and the people; the king's scrupulous performance of his own duties leads him and his people to heaven. The task of the State (or the king who represented the State) was to repress by the threat and use of force any violation of the rights of personal freedom and property, to enforce the practice of people's own traditional customs and usages and to take serious care of virtues and dharma. These were the sentiments of Kautilya himself (III 1.)

At the very threshold of his work he remarks 'therefore the king should not allow people to swerve from or fail in their duties (dharma); for whoever holds fast by his dharma, observes the rules laid down for āryas and those of castes and āśramas (the stages of life) will be happy in this world and the next. The members of society consisting of four castes and having four āśramas when guarded by the king with danda will abide by their respective paths, being devoted adherents of their respective duties and avocations'.

Both Kam. I. 13 and Śukra I. 67 state that a king following the path of righteousness confers upon himself and his subjects the group of three viz. the three puruṣārthas of dharma, artha and kāma; if he acts otherwise he certainly ruins (himself and the people). The same doctrine is inculcated by other works, such as Śānti 85. 2, Mārkandeya 27. 29-30.
Therefore what the king was to do was to see that the dharmas of \textit{varna} and \textit{aśrama} were observed by the people and if they swerved from them to bring them back by punishments. 

Śukra IV 4 39 says that each caste was to observe the rules of the caste handed down from generation to generation and that if its members behaved otherwise they were liable to be punished by the king. The principal works emphasize that each individual in the State should fulfill his own duties (svadharma) as belonging to a particular class (varna) or a particular stage of life (aśrama) or his own duties due to the position he occupies and those known as sāmānya dharma such as \textit{ahimsā}, truthfulness &c (for which see H of Dh vol II pp 10–11) and that the purpose of the State was to enable him to do so and to prevent others from interfering with him. All this laid undue emphasis on the preservation of the status quo, on current beliefs and practices as the ideal. The writers do not emphasize that each individual must actively pursue the good of the society as a whole. As the final goal was moksa, undue emphasis was laid on other-worldliness, on individual attainment and on detachment and running away from ordinary worldly affairs. The goal of the State was deemed to be to enable men to attain the four \textit{purusārthas}, particularly the first three (as the last viz. moksa depended only upon individual philosophical insight and mystical experience and was attainable only by a microscopic number). Even the Bāhrapatyā-sūtra\textsuperscript{319} (II.43) says that the fruit of polity was the attainment of dharma, artha and kāma. Somadeva begins his \textit{Nītivākyāmṛta} in a characteristic way when he performs obeisance to \textit{rāja} (the State) that yields the three fruits of dharma, artha and kāma.\textsuperscript{320} Kām.\textsuperscript{321} IV. 77 winds up his discussion of the seven elements of \textit{rājya} with the declaration that the entire State depends for its highest stability on wealth and the army and that the State when handled by a sagacious minister results in securing the three goals. Kautilya\textsuperscript{322} (in I. 7) first advises people not to eschew pleasures altogether,

\begin{itemize}
\item \textsuperscript{319} नीति. परो धर्मायाकामायाति। धर्मायाकामायाति परीक्षय। गाहिःस्तीवच्छः II 43–44
\item \textsuperscript{320} अय धर्मायाकामायाकामायार्यायार्यायार्यायार्याय नितिवकामायात प 7
\item \textsuperscript{321} इति सम राज्यं सकलं समीक्षितं पदा महादर्शं धृत सतसंघय। यद्इतत्त्विषः
\item \textsuperscript{322} परो धर्मायाकामायाति कामो लेजेत। न ति हुः स्वात। सम्ब सा नितिवकामायाकामायाति ।
\end{itemize}
but to enjoy pleasures in such a way as not to conflict with the requirements of dharma and artha, and adds that a man may enjoy in an equal degree the three goals of life that are dependent on each other, since any one of the three if pursued to excess harms not only the other two but also itself. The Dharma-śāstra authors held that Dharma was the supreme power in the State and was above the king, who was only the instrument to realize the goal of dharma. To these authors the State was not an end in itself but only a means to an end. Kautilya, true to his position as a writer on arthaśāstra, finally states his opinion that artha is the chief among the three goals, as the other two depend upon wealth for their realization. With this statement of Kautilya, one of the most renowned figures of Indian antiquity, this section on rājadharma may be appropriately brought to a close.
That to administer justice impartially and to punish the guilty were among the prime functions of the sovereign has been stated above (p. 57) The king was deemed to be the fountain (i.e. the distributor) of justice Kautilya\textsuperscript{323} (I. 19) prescribes that the king was to look into the disputes of citizens and country people in the 2nd part of the day (divided into eight parts). Manu (VIII. 1–3) states that the king desirous of looking into the disputes of people should enter the 'sābhā (the hall of justice) accompanied by brāhmaṇas, ministers and should there decide every day the causes of litigants. Śukra IV. 5-45 is the same as Manu VIII. 1, Vas 16 2, Śankha-Likhita, Yāj. I. 327 and II. 1, Visnu D. S. III. 72, Nār. (1. 2), Śukra IV. 5-5, Mānasollāsa II. 20, verse 1243 state that the administration of justice was the personal concern of the king. The Mit on Yāj. II. 1 says that protecting the subjects is the highest duty of a king and that that duty cannot be discharged without eradicating and punishing the wicked, which latter requires that the king should administer justice (vyavahārādarsana). Medhatithi on Manu VIII. 1 also says that protection consists in the removal of troubles, secular and spiritual (adrasta). Manu VIII. 12 and 14 (= Nār III. 8–9 p. 42) personifies the administration of justice as Dharma incarnate by representing that when justice is administered the dart of adharma or falsehood by which dharma is pierced is taken out from the body of Dharma. Yāj. (I. 359–360) declares that the impartial administration of justice yields the same rewards as solemn vedic sacrifices do. In this way administration of justice was held to be a very sacred duty. Manu V. II. 128 (= Vṛddha-Hārīta VII. 194) declares that a king who punishes those that do not deserve to be punished and who does not punish those that deserve punishment incurs great obloquy and goes to hell. Vas. (19.40–43) prescribes one day’s fast for the king and three ‘days’ fast for the purohita when the king lets off those that deserve punishment and three days’ fast for the king and the kṛchra penance for the purohita when the king

\textsuperscript{323} Kritipīya pariṣṭhita pravāhōnī paryayena. Dr. I. 19.
punishes the innocent. The Mahābhārata\textsuperscript{324} (Anuśāsana 6-38 and chap. 70) and Rāmāyana say that if a king intent on pleasures does not show himself to litigants who approach him for decision, he would suffer like king Nṛga. The Śukranītisāra (IV. 5-8) also says the same thing. In the Rāmāyana (VII. 53-54) king Nṛga is said to have been cursed to become a chameleon for a long period by two brāhmaṇas who had a dispute about the ownership of a cow and could not see the king for many days. Megasthenes (Frag. XXVII pp. 70-71) says 'the king remains the whole day in court without allowing the business to be interrupted.' Kaut\textsuperscript{325} (I. 19) gives the advice that, when in court, the king should not cause petitioners or litigants to wait long at the door, for when a king makes himself inaccessible, those who are near him create confusion about what should or should not be done, whereby the king engenders disaffection among his subjects and makes himself a prey to his foes. The king’s court\textsuperscript{326} of justice was called dharmasthāna (Śankha-Likhita), dharmāsana (Nārada I. 34, Manu VIII. 23, Śukra IV. 5-46) or dharmāḍhukarana (Kātyāyana and Śukra IV. 5-44). The place where the decision of the truth of the plaint (lit. the cause or root of dispute) is carried on by a consideration of the rules of the sacred law is called the dharmāḍhukarana (the Hall of Justice)—says Kātyāyana Kālidāsa (Śākuntala V) and Bhavabhūti (Uttarārāmcarita I) employ the word dharmāsana.

The authors of smṛtis believed that there was a golden age or era of perfect virtue in the dim past, when men were bent only on right conduct, that later ages saw the advent of sinful

\textsuperscript{324} अविलासपत्रभागा पद्मा नोतिति वर्णनः। हुष्टे महाको ज्ञाति स हृदेष्टे बुद्धी पवः॥ महाभारता quoted by युणलिके p. 13; अविलास कायसितुद्वृत्ति पस्मालच नैव दृश्याः॥ अविलासः स्वयंहुताति छुकालो हनिष्ठति । ... कायसितुद्वृत्ति परावर्तिनिः हि साधुर्जोशष्य किः।।

\textsuperscript{325} उपस्यायाः कायकारथसितावतासहस्रकारे । हुष्टे यः रजा कायाकारः विद्यमानसिताः कार्यते । ततं हत्वादिवेदांश्रयो दिवं प्रसंन्दित।।

\textsuperscript{326} अविलासपत्रभागा पद्मा नोतिति वर्णनः। हुष्टे महाको ज्ञाति स हृदेष्टे बुद्धी पवः॥ महाभारता quoted by युणलिके p. 13; अविलास कायसितुद्वृत्ति पस्मालच नैव दृश्याः॥ अविलासः स्वयंहुताति छुकालो हनिष्ठति । ... कायसितुद्वृत्ति परावर्तिनिः हि साधुर्जोशष्य किः।।
prompts, that therefore regulation of life by the learned and the king came into vogue (compare Gaut VIII. 1). Manu I. 81-82 (= Śāntiparva 231. 23-24) state that in the Kṛta age dharma prevailed in its perfection, there was no advent of adharma among men then and that in each of the three succeeding yugas dharma declined progressively by the introduction of theft, falsehood and deceit. The Śāntiparva (59. 13 ff) narrates that in the Kṛta age there was no king and no punishment, that gradually kāma (lust) and rāga (passion) began to wield sway and dharma dwindled away. This belief in an ideal or perfect past was universal and was probably depicted in order to induce men to rise higher and higher in goodness and virtue and to make them submit easily to the discipline of government and the priestly requirements. This ideal description of the past, is often found associated with the picture of anarchy that reigned in the dim past which was retrieved from horrors by the creation of the kingly office (vide pp 30-34 above). These diametrically opposite views of the past contained in the same works (such as Manu and the Mahābhārata) probably owe their origin to the desire of the writers to make the common people submit to the absolute rule of kings. Almost all works even from the Ṛgveda (X. 10. 10) downwards believe in the progressive deterioration of religion and morals. A state of anarchy is visualised in a few works only for the purpose of glorifying the great usefulness of the institution of kingship. Nār. I. 1 states 327 'when people were solely bent on dharma and were truthful, there existed neither administration of law and justice nor hatred nor jealousy. When dharma declined (or disappeared) among men, administration of law and justice came to be introduced and the king was declared to be the desider of disputes and the chastiser (of the guilty)'. Br. also (S. B E. 33 p. 277) says 'In bygone ages men were pre-eminently virtuous and free from cruel tendencies; now that men are overwhelmed by greed and hatred, judicial procedure has to be declared'.

The idea of Dharma took the place of the very ancient conception of rta. In the Rgveda rta denotes the supreme

327. धर्माधिकार्यानम् धर्मौ च दृष्टान्तसत्सवादितः: हत्वा न पवित्रहरेद्वृहे द्वीपेऽ भारि मत्सर: न ते धर्मं सत्सवांहि पवित्रां पयति। धर्मात्म च पवित्रांहि राजा दृष्टां पवित्रां। पुरूषस्ति। नान्ते य धर्मादेशो तथा तथा। नान्ते य धर्मादेशो तथा तथा। नान्ते य धर्मादेशो तथा तथा। नान्ते य धर्मादेशो तथा तथा।
The meaning of rta

Transcendental law or the cosmic order by which the universe and even the gods are governed and which is intimately connected with sacrifice. Vide Rg. I. 68. 2, I. 105. 12, I. 136. 2, I. 142. 7, I. 164. 11, II. 28. 4, IV. 23. 8-10 (in which the word rta occurs ten times), X. 190 1. On the relation of rta and law Berolzheimer in his 'The world's legal philosophies' (translated by Jastrow, New York, 1929) says: "closely connected with the religious and philosophical views of the Aryans are certain fundamental positions in regard to the philosophy of law which in turn became the antecedents of later legal and ethical developments among the Greeks and Romans. Foremost among these philosophical conceptions is 'rita', which is at once the organized principle of the universe and the divine ordering of earthly life; as the former it regulates the appearance of the sun and the moon, of day and night and embodies the unchangeable principle that pervades the succession of phenomena; as the latter it is affiliated with purpose and human benefit and is exemplified in the flow of the rivers which fertilize the fields; in the cattle useful to man; in the institutions of marriage, of the monarchical state, of the patriarchal home; and in man's sense of responsibility for his sins. The derivative conceptions of 'vrata', 'dharma', 'dhāma', 'svadhā' represent special aspects of 'rita'; thus 'vrata' refers to any specialized embodied 'rita'; while 'dharma' refers specifically to the moral function of rewarding good and punishing evil" (pp. 37-38). Vide Prof. V. M. Apte's paper or 'ṛta' in the Rgveda (pp. 55-60 of the Silver Jubilee Volume of the Annals of the B. O. R. Institute) in which he tries to prove that ṛta means primarily 'the belt of the Zodiac'.

The word vyavahāra is used in several senses in the sūtras and smṛtis. One meaning of vyavahāra is 'transaction or dealing' as in Udyogaparva 37. 30 quoted above (on p. 207) or in Āp. Dh. S. III. 7:16-17, I. 6:20. 11 and 16. It also means 'a dispute, a lawsuit' in Saṃti 69-28, Mānu VIII. 1., Vas. 161, Yaj. II. 1., Visnu Dh. S. III. 72, Nār. I. 1 and 2, Śukra IV. 5:5. A third sense is 'legal capacity to enter into transactions' (as in Gaut. X. 48,
A fourth but a rare sense is ‘the means of deciding a matter’ (as in Gaut XI. 19 ‘tasya vyavahāro vedo dharmasāstrānyangāni &c.). In this chapter the word vyavahāra is taken to mean ‘law-suit or dispute in a court’ and ‘legal procedure’. This sense is very ancient. In the Delhi-Topra Pillar Edict No. 1 of Ashoka (Corpus I. I. vol. I p. 123) we have the word ‘viyohālasamata’ (vyavahārasamata) and the word ‘vyavahāravidhi’ occurs in Kharavela’s Hathigumpha Inscription (E I. vol XX. p. 79). A ‘vohārika-mahāmatta’ (vyavahārika-mahāmātra, minister of justice) occurs in the Mahāvagga, I. 40 3 and Chullavagga VI 4 9. In the medieval digests, both law and procedure are sometimes dealt with in one book as in the Vyavahāra-nīrṇaya of Varadarāja and the Vyavahāra-mayukha, sometimes the titles of law are treated of in one work and judicial procedure in another. For example, Candēśvara composed the Vivadaratnakara (on titles of law) and Vyavahāraratnakara (on judicial procedure). The word vyavahāra is restricted in some works to judicial procedure alone (as in the Vyavahārāmātrkā of Jīmaiavahana and the Vyavahāratattva of Raghunandana). The word vivāda which means ‘dispute’ is often used as a synonym for vyavahāra in the sense of law-suit or legal procedure or both. In AP. Dh. S. II. 11-29 5 and in Nār. I. 5 vivāda means ‘law-suit’ In the Vivādacandra of Misarumisrā and the Vivādatāndava of Kamalakara both law and judicial procedure are treated of. Yāj. (II 8 and 305) appears to distinguish between vivāda (law-suit) and vyavahāra (judicial procedure).

The word ‘vyavahāra’ is defined by several smṛtis and commentators. Katyāyana gives two definitions, one based on etymology and referring principally to procedure and the other giving the conventional sense having in view a dispute “The (upasarga) vi is employed in the sense of ‘various’, ‘aśā’ in the sense of ‘doubt’, ‘hāra’ means ‘removing’; vyavahāra is so called because of its removing various doubts” (quoted by V. M.)
Definition of Vyavahāra

This definition places the administration of justice on a high plane. The purpose of all branches of Indian philosophy is the quest of Truth or Reality. The purpose of legal procedure is, according to Kat, the same viz. to find out the truth when there is a dispute. But there are some points of difference. The philosopher may take his own time in his search for truth; but justice has to be done as quickly as possible. Further, legal procedure has its own method and limitations in finding out the truth, that is, it depends on oral and documentary evidence, while a philosopher’s quest of truth may be purely intellectual and subjective. Another definition is: ‘When the ramifications of right conduct, that are together called dharma and that can be established with efforts (of various kinds such as truthful speech &c.), have been violated, the dispute (in a court between parties) which springs from what is sought to be proved (such as a debt), is said to be vyavahāra’. Harita gives an easier definition: ‘that is declared to be vyavahāra where the attainment of one’s wealth (taken away by another) and the avoidance of the dharmas of others (such as those of heretics) are secured with (the help of) the means of proof’ (quoted by the Sm. C. II. p. 1). The Mit. (on Yaj II. 1) defines vyavahāra as ‘avermint (about a matter) as related to oneself in opposition to another’. Śukra IV. 5. 4 gives another definition. The Vyavahāramayūkha gives a much.

327 a. वि नामायकं सदृशे हरणं हार उच्चते। नामात्मेष्वहरणां भवन्तर इत्यति
स्वहः। कार्याः quoted in स्व मा. p. 283, कुल्लूका on महा VIII. 1, श्रीककिका p. 36, which says ‘रणायानामायिनामायियायः धर्मायायियायः निराकारसङ्केतेऽति नामात्मेष्वहरारे
विचारः व्यवहारः’। यद्यपि चिन्तामिभज धर्मायायियायः व्यावहितरे। साधनमुद्धात्र भो वाचो
व्यवहारः स उच्चते। अरर्थां p 596, स्तुतिः. (II. p. 1), पार्षद मार. III. pp. 5–7, स्व. म.
pp. 3–4. This last verse is variously explained. Vide my notes to Kat. 25. The
मुन्तल (स्व मा in my possession) explains ‘मद्यलसाधरणं कस्तसाधरणं यथेऽतिसर्वेण विष्णुपाले
विष्णुपाले सन्तु भो भो मद्यलसाधरणं यथार्थं।’ स्तुतिः स्व धर्मायायियायः व्यावहितरे धर्मायायियायः
विचारः व्यावहितरे। स्वाभाविकायायः यथार्थं। साधनमुद्धात्र भो वाचो व्यावहितरे। साधनमुद्धात्र भो वाचो
व्यावहितरे। व्यावहितरे। साधनमुद्धात्र भो वाचो व्यावहितरे। साधनमुद्धात्र भो वाचो व्यावहितरे। साधनमुद्धात्र भो
वाचो व्यावहितरे। साधनमुद्धात्र भो वाचो व्यावहितरे। साधनमुद्धात्र भो वाचो व्यावहितरे। साधनमुद्धात्र भो वाचो
more elaborate definition (vide text p 1 and notes pp. 3–4 of my ed.).

A *vyavahārapada*\(^{328}\) means 'the topic or subject matter of litigation or dispute'. It is the same thing as 'vivādapada' which word occurs also in Kaut. (III·16 p 191 and IV. 7 p. 218) and in Nār. (dattapradānika 1, abhyupetyāsūrās 1). Manu VIII. 8 shows that 'pada' means 'sthāna'. Yāj II. 5 defines it as 'if a person, who is set at naught by others in a manner that is opposed to the rules of smṛti and to good usage or conventions, informs the king (or his judge), that is a *vyavahārapada*'. From very ancient times eighteen vyavahārapadas have been enumerated. The underlying idea is that most of the disputes between men can be classified under 18 heads. Even Manu (VIII. 8) was conscious of the fact that the enumeration of 18 vyavahārapadas was a matter of a convenient arrangement and that the number 18 did not embrace all disputes whatever but only the largest number of disputes and the most important among them. Medhātithi and Kullāka make this position quite clear.\(^{329}\)

There is some difference about the number and nomenclature of the vyavahārapadas among Manu and other writers of smṛtis. The following table will give some idea of the divergence as to nomenclature and the sequence in which they are treated of. All do not mention them in the same order as in Manu VIII. 4–7. For example, the order in Yāj is nādāna, upanidhi, dāyavībhāga, śīmā-vivāda, svāmipālavivāda, avāmi-vikrāya &c. Yāj. does not enumerate all of them in one place as Manu and Nārada do.

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\(^{328}\) व्यवहारां तत्त्व वृद्धिविपयः। निलाः on या, 11 6। पदः स्थानं निमित्ताविशिष्टं

\(^{329}\) भूतिविद्याधरण महान्। व्यवहारां तत्त्वमिति यथा निमित्ती नामः। तथापि यवाद 

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on the same.
<table>
<thead>
<tr>
<th>MANU</th>
<th>KAUTILYA</th>
<th>YAJNAVALKYA (acc. to Mit.)</th>
<th>NARADA</th>
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**BRHASPATI**

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<td>1 kusīda</td>
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It will be noticed that Yājūj omits the duties of husband and wife from the 18 topics of vyavahāra as he had already dealt with them in his section on ācāra, adds abhyupetāśuṛūsā and prakīrmaka (miscellaneous wrongs) and splits kraya vikrayauṇusāya into two and thus gives 20 topics. Narada (I. 16-19) has the same 15 topics as those of Manu (in some cases under slightly different names), omits svāmipālavivāda, steya and strisangrahana, adds abhyupetāśuṛūsā and another topic viz. prakīrmaka and splits kraya vikrayauṇusāya into two, viz. kriyauṇiṣa and ukrīyauṣampi udāna. He includes steya under sāhasā (sāhasa verse 21) and also in what is an appendix. Brhaspati as quoted in the Smrti-candrika (vyavahara p. 9) names the 18 vyavahārapadas and adds prakīrmaka, Kautīlya also adds prakīrmaka and omits 'steya' under his dharmasthyla section, though he deals with theft elsewhere (as in IV. 8 and 11). It is not to be supposed that the 18 topics were first started by the Manusmrti. Gaut. XII. 1 mentions vālpārusya and danḍapārusya, treats of some of the topics without specifying the technical names e.g. he refers to the subjects of sangrahana (in XII 2-3), of theft (XII 12-13), of svāmipālavivāda (in XII 16 ff.), of mādāna (in XII 26-33), of nidhi (in XII 39), of dāyavībhāga (in XXVIII). Similarly the Āp Dh. S speaks in scattered places of some of the topics of vyavahāra such as murder (i.e. sāhasa) in I. 9. 24, of adultery in I. 9. 25, 1-2 and I. 10. 28, 15-20, II. 10. 26, 18 ff., theft in I. 9. 25 4-11, dāyavībhāga in II. 6. 14, vākpārusya in II. 10. 27 14. Vas. also mentions the word dāyavībhāga (in XVII 40) and sets out rules about it and about means of proof (XVI. 13-15), about mādāna (XVI 31), about the twelve kinds of sons (XVII. 12-39). The Baudh Dh. S. (II. 2 8) employs the word dāyavībhāga and gives several rules on that subject. Thus some at least out of the eighteen vyavahārapadas (such as vākpārusya, danḍapārusya, dāyabhāga, steya) were distinctly recognized centuries before the present Manusmrti was composed. Somēśvara in Mānasollāsa (II 20 verses 1265-1273) enumerates 22 vyavahārapadas, by splitting dattasyānapākarma into two as datta and dattāpahāraka, adds svāmibhṛtyavivāda after svāmipālavivāda, counts kraya vikrayauṇusāya as two and dyūta samāhetsyāya as two distinct topics.

The definition of vyavahārapada in Yājūj II 5 (= Śukra IV. 5. 68) viz. 'if a person informs or complains to the king' (vedayate ced rājīte) conveys that vyavahārapada means and includes only those disputes that are started or brought before
the Court at the instance of the parties. Manu VIII. 43 prescribes that neither the king nor his officers should start a dispute (i.e., a legal proceeding), nor should he sit silent upon (hush up) a matter which has been brought before him by another (i.e., by a party). Gaut. XIII. 27 lays down that a party should humbly approach a judge with his complaint. Katyayana (27) states: 'The king should not, through influence or through greed of money, take upon himself the disputes of men, when they do not themselves want to contend (in a court)'. Mānasollāsa II. 20 verse 1274 and Śukra IV. 5. 69 say the same. There must have always been several matters, of which nobody might complain and which the king might have to look into suo motu. Manu after dealing with the 18 vyavahārapadas (in VIII. 1 to IX. 251) requires the king (in IX. 252–253) to make efforts to destroy kantakas (thorns, harmful persons) and dilates upon many aspects of his activities in this respect. Narada relegates all matters in which the king took action suo motu to a separate topic, prakīrnaka, about which he says 'under prakīrnaka are comprised lawsuits depending on the king (i.e., on the king's own action) such as transgressions of the king's commandments and obedience to his injunctions, grants of towns, dissensions among the constituent elements (such as ministers) of the State, the duties and breaches thereof of among heretics, followers of the veda, corporations (of merchants) and groups, dispute between father and son, neglect of prescribed penances, abstraction of gifts made to worthy persons, the wrath of hermits, sinful confusion of castes and the rules regarding their maintenance and (in short) whatever (matter) has been omitted in the preceding (vyavahārapadas)—these are treated under prakīrnaka'.

330 न राजा हुथितवेच पन्नलोकेन वा हुथ: | स्वर्यः कार्यांशः कुशः नदानामविवाचितः प्रोक्तम् ॥

331. क्षीराण्ये हुथःपूर्वस्फळः स्वप्पवः ॥ राजामाध्यायाधिकारलोककर्म कथा: ॥

(Continued on the next page)
the same way as Nārada Kautilya deals with the vyavahārapadas in his Dharmasthiya (III) section and in the Kantakāsodhana section (IV) speaks of matters that are similarly dealt with by officers called pradeśtras (who correspond to coroners and police magistrates of modern times), while matters falling under the dharmasthiya section (viz. the vyavahārapadas) were disposed off by judges (called dhanasthas). Kantaka means in Kautilya as in Manu IX. 252 'harmful persons.' The chief matters that fell within the purview of the kantakasodhana (removal or punishment of harmful persons) officers or courts were: Artisans like blacksmiths and carpenters were generally to work in guilds and receive from people materials for working them up; if they caused unreasonable delay in handing back finished articles, they were to receive one-fourth less than the proper wages and were to be fined twice the amount of wages, similar provisions are made for loss of wages and fines for weavers who do not increase the weight of cloth (cotton, linen, silk or woollen) woven up to the usual standard: washermen were to wash clothes on wooden planks or smooth stones, but if they washed them elsewhere, they were to pay compensation for loss caused and a fine of 6 panas; they were to be fined twelve panas for the sale, pledge or hiring out of other's clothes; they were also to be fined for keeping clothes with them beyond the time ordinarily required, for washing the best garments, garments of middling quality and inferior garments the wages were respectively one pana, ½ and ¼; trustworthy persons and experts were to decide disputes about colour and wages; similar rules apply to tailors; goldsmiths, who

(Continued from the last page)

In an interesting paper contributed to the Sir Denison Ross volume of papers pp 234-240 Dr. V. Raghavan describes a work called 'Vaiṣāyaṃs-sudhākara' composed by Kollācala Mallinātha, the renowned commentator of the five classical Sanskrit Kāvyas. This work is the report or decision given by a commission presided over by Mallinātha appointed to settle a dispute (which in these days might be called a caste question not cognisable by civil courts) that arose in the times of Devarāja II of Vidyānagarā (1422-1466 A.D.). Vaiṣāyas were given a license to trade in the 24 cities and 108 shrines of the realm, certain subcastes like the Komatis claimed to be vaiṣāyas and this privilege also. Mallinātha decides after a searching examination of authorities that the words vaiṣāya, vaṁk, nāga, ṛcṛa, trīya-pāṭiya are synonyms, that Komatu, who were styled vijātus by their rivals, were vaiṣāyas and entitled to all the privileges of vaiṣāyas. This decision would come under either प्रकृति ... विपय or अद्वितियतम.
without informing (government officers) purchased from unclean hands (i.e. from menial servants or slaves) without changing the form of the article or after changing the form, or purchased from a thief were to be fined respectively 12, 24 or 48 panas; for stealing one (gold) māsaka (one-sixteenth of a suvarna) from off a suvarna, the gold-smith was to be fined two hundred panas and for stealing one māsaka out of a silver dhawana there was a fine of twelve panas; fines are provided for loss of weight (beyond the recognised standard) in the case of working up copper, lead, brass, bell-metal, tin into vessels and articles; for manufacturing a counterfeit coin, for accepting it or passing it off to another the fine was a thousand panas and for entering a counterfeit coin in the royal treasury the punishment was death; a physician, who undertook the medical treatment of a patient without informing (government officers) of the dangerous nature of the disease, was to be punished with the first amercement if the patient died and with the middling fine if the patient died through the carelessness of the physician and if the patient suffered some vital injury, the matter was to be dealt with as assault (dandapārasya); musicians and actors shall stay in one place during the rainy season and shall avoid taking excessive gifts or indulging in excessive praise of one patron; for violating this rule the fine was twelve panas. The same rules apply to those who show dumb plays and to other mendicants, the latter receiving as many lashes as the fine imposed in similar cases on others. In IV. 2 Kautilya prescribes fines against merchants that use false measures, weights and balances; that sell timber, iron, jewels, ropes, clothes misrepresenting them as superior when they are inferior; that conspire to prevent the sale of merchandise; that cause adulteration of grains, oils, salt, medicines &c.; that raise the prices beyond those fixed by the superintendent of commerce for local commodities and for foreign produce. In IV. 3 Kaut. provides for measures against such calamities as fire, floods, pestilential diseases, famine, rats, tigers, serpents and prescribes a fine of twelve panas for catching or injuring cats and mongooses employed to destroy rats. In IV. 4 Kaut. prescribes the measures that the officer called samāhārty has to take to protect the subjects against those who prey upon the people secretly by employing foul means. He has to employ spies under various disguises to find out the honesty or corruption of officers in the villages, of superintendents, of judges, of magistrates and witnesses and the punishment in these cases is generally
banishment Kautilya IV, 5 deals with the detection of young men inclined to robbery and adultery by the employment of spies and agents πμ δυνατεβεσ in the guise of ascetics and persons reputed to possess miraculous powers. The Kautilya IV 6 and 7 respectively describe the seizure of criminals on suspicion or in the very act itself and examination in cases of sudden death. Kaut IV. 8 speaks of questioning in the presence of the wronged party of the witnesses of the accused, whether they are his relatives or total strangers, as regards the country, the caste, the family, the name, occupation, property, friends and residence of the accused and of the application of torture to the accused to elicit an admission of guilt. It is said that torture is to be applied only in the case of those whose guilt is believed to be established prima facie (इप्तादोसम कर्मा कृयायेत), that torture is not to be employed when the accused is guilty of a minor offence, is under age, old or diseased, is under the influence of intoxicants, or is a lunatic, or is overwhelmed by hunger or thirst or fatigue due to a journey, or has eaten to excess or is suffering from indigestion or is weak, nor is it to be employed in the case of a pregnant woman or a woman who was delivered of a child within a month; and in the case of other women only half the torture prescribed for males or only the asking of questions is to be employed. Learned brahmanas and ascetics (when accused) are to be subjected to espionage only. Those who violate these rules or incite others to do so and those who are guilty of causing the death of an accused by torture are to be punished with the highest amercement. Four kinds of torture were employed in the case of complaints about wrongs viz. six dandas, seven whippings, two kinds of suspension, and (fourthly) water-tube (i.e. injecting salt water in the nose from a tube). In this chapter Kaut states that one who

332 The exact meaning of the four kinds of torture is not clear. Prof V. R. Dikshitar in 'Hindu Administrative Institutions' pp 237-247 tries very hard to establish that Kaut recommends no torture in any case, that 'वाक्यामुयोग' means 'pronouncing of guilt by the jury' and 'कर्मानु-योग' means 'judgment of the Chief Justice.' Though the learned Professor's attempt to exculpate Kautilya may be due to laudable motives, the words of Kautilya are too clear to admit of any other interpretation than the one given above. If one dispassionately considers the fact that no karma was allowed to be employed in the case of the weak, the diseased, old men &c., that in the case of women 'नास्तकर्म' alone was allowed, that a heavy fine was imposed for causing death by karma (कर्मानु व्यपदानेन).
Kautlya on punishments for crimes

charges an innocent man with being a thief or who conceals a thief is to be punished like a thief and that even one who is not a thief may for fear of torture admit that he is a thief, as Māndavya did. Kaut in IV. 9 prescribes that the samāharta and pradastra should exercise control over all superintendents of the various State departments and their subordinates, that those who steal or seize valuable articles or jewels from State mines or manufactories should be simply sentenced to death, prescribes various fines and punishments for stealing or removing by force articles of different prices from the State granaries and store-houses, provides punishment for judges that threaten, browbeat, send out or unjustly silence or abuse litigants or that do not ask proper questions or ask improper questions, that cause unnecessary delay, unjustly reheat causes that have been heard or disposed of, and provides heavy punish-

(Continued from the last page)

that Māndavya, though really not a thief, declared that he was so through the fear of the torments of karma (karmakāleśabhyāṣā), that in the four karmas we find suspension and water-tube and that immediately after the words ‘karma kārayet’ we get the rule that in all crimes the brāhmaṇa was not to be subjected to bodily pain, it will have to be admitted that ‘karma’ in this chapter of the Arthāśāstra means ‘torture’. One fails to see what ‘ardhakarma’ in the case of women will mean if ‘karma’ signifies only the judgment of the chief justice or why Māndavya should have confessed theft through fear of ‘karmakāla’. And one need not feel apologetic if Kautiya recommends torture in certain well-defined cases. Torture was an essential part in the Roman Criminal Procedure and Augustus had issued an edict about it. Vide Stephens’ ‘History of English Criminal Law’ vol. I, pp. 47-49. Torture by the police and third-degree methods are not unknown in the 20th century in the West (even apart from the latest German methods) or in India, though they are not expressly mentioned in any text-book or Act as allowable. Vide Harry E. Barnes’ ‘Story of Punishment’ pp. 10-15 for various kinds of tortures employed in the West for several centuries and third-degree methods (pp. 15-24), which he asserts are even now in almost universal use by the Police Department in the U. S. A.

The story of Māndavya who though not a thief was held to be a thief, because he, owing to his vow of silence, did not reply when questioned and near whom was found the boot stolen and who was impaled, is found in Ādi. 63, 92-93 (cr ed chap. 57), Ādi. 107-108 (cr. ed chap 101), Anuśāsana 18, 46-50 and 18. Nāg., (I 42) and Br. quoted by Aparārka (p 599).
ments for releasing persons jailed or for rape on a woman in a 
lock-up. Kaut. IV. 10 prescribes alternative punishments of fines 
in lieu of the cutting off of fingers or mutilation of limbs for 
several offences such as theft or assault, abuse and defamation 
or showing contempt to the king by riding his horse or other 
conveyance or fabricating royal orders, prescribes death for 
selling human flesh, simple death or highest amercement for 
stealing images of gods or animals, for abducting human beings 
or for wrongfully seizing fields, houses, gold, gold coins, jewels 
and crops. Death with or without torture is provided for in 
Kaut. IV. 11 for murdering a man in a quarrel (but when the 
wounded man dies within a fortnight or a month after the quarrel, 
highest fine or fine of five hundred panas and the expenses of 
medical treatment); different kinds of punishments are provided 
for wounding with a weapon, impalement for causing violent 
death of men and women, burning alive for those who aim at 
securing the kingdom or force entrance into the royal harem 
or incite wild tribes or enemies or instigate disaffection in the 
capital or country or army, drowning (or solitary confinement 
in a dark room, acc. to another reading) for a brähmana 
offender of this sort, cutting of tongue for insulting or abuse of 
parents or a teacher or an ascetic, drowning for one destroying 
the dam of a tank or for a poisoner or for a woman murdering 
a man, tearing to death by bulls for a woman who murders her 
husband or child or her elders or administers poison or sets fire 
Kaut adds that the punishment of death with torture has been 
prescribed by ancient smṛti-writers, but that it is proper to order 
simple death in cases of offences in which no cruelty enters. 
Kaut. IV 12 starts by declaring that no man shall have sexual 
tercourse with a woman (not his wife) against her will, 
prescribes different punishments for forcible sexual intercourse 
with an immature girl or a girl that has attained maturity, of 
the same caste, or of a different caste, provides that for inter-
course with a willing maiden the fine will be 54 panas for the 
man and 27 for the maiden, further provides that it is no 
offence for a man of the same caste to have intercourse with a 
maiden who has not been got married for three years after the 
appearance of menses, provides fines for deceitfulness in substitut-
ing one girl at marriage while showing another before, provides 
that if a woman whose husband is gone abroad commits 
adultery a relative or servant of the husband may keep her 
under restraint and that if the husband on his return forgives 
the woman her paramour may not be proceeded against,
but if he does not condone, the nose and ears of the woman may be cut off and the paramour should be sentenced to death. Kaut. IV. 13 provides punishment for brāhmaṇas eating or drinking what is forbidden to them and varying fines for administering forbidden food or drink to members of the four varṇas, provides fines for house-trespass and lurking house-trespass by night, provides punishments for witchcraft, provides burning alive in a vessel for adultery with the queen and other punishments for adultery with women of the several castes, whether guarded or unguarded, prescribes a fine of 24 panas for adultery with a nun.

The above is a meagre summary of Kautilya's section on kantakasodhana. Kautilya is encyclopaedic on this subject as on several others. The number of offences dealt with by him is very large and his treatment in some respects compares favourably with such modern criminal codes as the Indian Penal Code. Many of the provisions contained in Kaut. IV are found in Yāj. (II. 273-304), in Nārada (in prakīrṇaka and elsewhere) and also in Manu (e.g. VIII. 365-368 about rape or adultery, VIII. 396-97 about washermen and weavers, IX. 225-236 about musicians and dancers, IX. 231-232, IX. 261-267). Why Kaut. treats of several offences under kantakasodhana and not under the dharmaśṭhiya section, it is somewhat difficult to say. It is probable that he included under dharmaśṭhiya only those complaints or actions that were fought out between the parties, even though many of the wrongs complained of under vākparusya, danda-parusya, sangrahana and steyā were criminal and the same as those treated of in the section on kantakasodhana. In wrongs dealt with in the kantakasodhana section it was the king or king's officers who themselves brought up the offenders for punishment and the offences were viewed not as mere private matters, but as matters in which the State was concerned for the eradication of crime in general. Kautilya in III. 20 speaks of prakīrṇaka but therein he seems to include some miscellaneous matters like non-return of borrowed articles or deposits (at the proper time and place), evading payment of ferry tax under the pretence of being a brāhmaṇa, connection with a public woman kept by another, misappropriating revenue collected as agent for a householder, a cāndāla's touching an Arya woman, inviting for dinner in honour of Gods and Manes Buddhist or Ajivaka or Śūdra mendicants, abandonment of parents, child, wife or husband, brother or sister, teacher or pupil (when not
guilty of a grave sin), wrongful confinement of a person &c. Kautilya does not apparently include under prakrṣaṇaka all matters in which the king acts suo motu as Nār., Br., and Kād do but includes these latter under kantakaśodhana. He, however, states here and there (IV. 1 and 13) that the matters dealt with under kantakaśodhana are quite analogous to those under such titles as dandapārusya treated of under the dharmasthālya section. For example, in IV. 1. he says that if a physician through negligence causes loss of a vital part to a patient then the matter may be treated as dandapārusya. So Kautilya probably represents a much earlier stage of judicial administration than Nār. or Br., who included under prakrṣaṇaka all matters in which the king acted of his own motion (i.e. all that falls under kantakaśodhana in Kaut.)

The enumeration of vyāvahārapadas is very ancient and authoritative, but there is hardly any scientific principle of classification underlying them. A writer called Nibandhanakāra quoted in the Sarasvativilāsa331 (p. 51) holds that in all the vyāvahārapadas from mādāna to dāgavabhāga the relief claimed is something to be given or rendered (deya) by one party to the other, while in vākpārusya, dandapārusya, sāhasa, gambling and betting the principal relief is in the form of danda (punishment). Here there is a glimmering of the distinction between civil and criminal litigation. Two deep-seated principles in the administration of law and justice everywhere are 'fulfil your promises' and 'cause injury (humsā) to no one'. It is therefore that we find Brhaspati stating that lawsuits are of two kinds according as they originate in (demands about) wealth or in injuries. Yāj II 23 speaks of arthauvāda (civil dispute) and so made a distinction between civil and criminal disputes. Lawsuits originating in wealth are divided into

333. भिस्तः ...... कामोपायिते विपस्वति सच्चमि। समयेयसयुक्तकरणं वुष्णयदधुवि विचारं। अवशास्त्र IV. 1., बुधकं देवां शाक्तमतः श्रायत्स्येनात्मकस्ययुक्तकरणं विचारं। अवशास्त्र IV. 13.

334. तत्त्व च गोकुलबद्धम्। हिस्त्लक्ष्यकोलः हिस्त्लक्ष्यकोलः। व्यवहार भ्रमणपदः। तत्त्व निप्रास्तारकरणं। अवशास्त्र IV. 13.

335. हिस्त्लक्ष्यकोलः हिस्त्लक्ष्यकोलः। हिस्त्लक्ष्यकोलः हिस्त्लक्ष्यकोलः। व्यवहार भ्रमणपदः। तत्त्व निप्रास्तारकरणं। अवशास्त्र IV. 13.
fourteen sorts and those originating in injuries are of four sorts. These last are vākpārusya (defamation and abuse), dandapārusya (assault and battery), sāhasa (murder and other forms of violence) and strīsangraha (adultery). Here there is a clear distinction made between civil disputes (anthamūla or dhanamūla) and criminal ones (himsā-mūla). Kāt, also says that disputes have their source in two viz. not rendering what should be given and injury (himsā). Though in this way a distinction was made between civil and criminal disputes among the 18 titles of law, it appears that the set of rules and the procedure in both were the same (except as to the time allowed for reply, as to the qualifications of witnesses and as to proxies), 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 and when the procedure also in both differs a great deal). There were not two sets of courts in ancient India as there were in England before the fusion of Law and Equity, but all courts in ancient and medieval India were required to administer the law of the texts tempered by common sense and reason as laid down by Br.: 'a decision should not be given by merely relying on the text of the sāstra; when consideration of a matter is divorced from reason and common sense loss of dharma results' (q by Aparārka p. 599).

Nār. (I. 8-29), Br., Kāt, the Agnipurāṇa (253. 1-12 which reproduce almost verbatim the verses of Nār.) and others predicate several things about vyavahāra, such as that it is dvipala (has two results) and so on. All these are brought together here below for convenience Vyavahāra is:

Catuspūd—having four feet, viz. dharma.336 vyavahāra, caritra, rajasāsana, acc. to Nār. (I. 10); while acc. to Yāj. II. 8

336. Among the verses at the end of IV. 1 of the Arthaśāstra the following two verses occur. सर्वक्ष्य व्यवहारक चारित्रेण राजसासनम्। विवाहारंवाद्यकारणाः पञ्चिमः पूर्ववाकाः। तत सवर्गविधियो च मघो व्यवहारस्तु साधितु।। चारित्रेण अंशं इति राजसासनम् ह। तान्त्रिकोऽप्रकाशित्राः।।

These two occur in Nār. (I 10-11) and Hārīta (q. in S V. p 58) with variations, viz. both read वस्त्रवाद्य व्यवहारोपकारणः पूर्वोऽ और चारित्रेण इत्येकरण:। Par M. III. p. 10 reads चारित्रेण ह स्विकारणे। Lengthy explanations of these verses are offered in Aparārka (p. 597), Smṛticandrākā (II. pp 10-11), Vyavahāra-prakāśa (pp. 7, 88-89) and other digests. It has to be noted that the four (dharma &c.) mentioned in these verses are the means of arriving at a decision in a law-suit, as Br. says: कर्मणं व्यवहरणं चारित्रेण बहुज्ञ:। भवतात्त्वारोऽन्निमित्तं संकन्तं विनिमित्तं।। (in सुतिलिन्दो II p 10, पुर. मा. III. p. 16, यव. मा. p 6): व्यवहारोऽि चारित्रेण पारयो व च। साहित्यम् साहित्यगतिर्मित्तं। हृदयत्वम् स्वयमिन्दित्वम् राजसासनम्।। चारित्रेण इति नित्यावस्थाशयति नित्यावस्थाशयति। अतत्र कर्मणं व्यवहारणं पञ्चादशिके सततं दृष्टं न प्राप्तं इतिः। अपरार्के p. 597 (on या. II. 17).
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and Br. they are the plaint, the reply, the proof (kuṣṭa) and decision (maya) or acc. to Kāt. 31 (q. by Aparārka p 616) plaint, reply, pratyaśalāta337 and kuṣṭa

Dharma and the other three are really the four feet of nirnaya (final decision), which is one of the four stages of a law-suit (vyavahāra) and so only in a secondary or far-fetched sense they are the four pādās of vyavahāra. Each of these four is said to be of two kinds. Vide Sm C. II. pp 10–11, Par. M III. pp. 198–199, V. P. pp. 87–88 where the verses of Br are set out and fully explained. A decision is said to be arrived at according to dharma when the wrong-doer admits his guilt or wrong-doing and the real owner secures his wealth or the relief due to him without having to undergo the trouble of a protracted trial by means of witnesses, documents &c. Similarly a decision to be arrived at by ordeals is said to be one by dharma. Dharma and satyā are often identified (vide note 125 above) and here the wrong-doer tells the truth and the decision is therefore said to be by dharma. When a litigation is fought out in Court by citing witnesses, the decision is said to be by vyavahāra. ‘Witnesses’ are mentioned only by way of illustration (and imply documents, possession and other means of proof) When a defendant is guilty of not giving a straight reply or when his reply is tainted with faults and so is unacceptable and a decision is given against him on that ground alone it is still a decision by vyavahāra. Caritra means ‘the usages of a country, village or family’ (deśasthāth pūrvakṛtā caritam samudāhrtam—Vyāsa q. in Sm C. II. p 11 and Vy Nīr. p 138). This seems to be the sense of caritra’ in ‘phalakavāre caritrarātāt’ occurring in Nasik Inscription No 12 in E. L. vol VIII p 82. In prakritnaka 24 Nār. seems to give the same sense ‘sthityartham prthivipālas-caritravisayāḥ kṛtāḥ’. Caritra also means ‘anumāna’ (possesion and presumptions). ‘Anumānena nirnitaṃ caritramiti-kathyate’—says Br. quoted in Vy Nīr. naya p. 139 and Par. M. III. p. 198. Usages are the means of decision in certain cases apart from the question whether they are supported by the smrtis or

337. Pratyākalāta means, acc. to Aparārka p 616, the deliberation of the judge and sabhyas as to where the burden of proof (onus probandi) lies and as to the method of proof. Acc. to the Mit. on Yāj. II 8, pratyaśalāta in this sense is not a vyavahārapāda, since it is not directly related to the litigants. Acc. to Nār. II. 21 pratyaśalāta seems to mean an addition to the plaint or to the reply (i.e. a supplementary written statement), येषां दिक्षिताद्विवेके पत्थरावत् दिवरि स्रवस्या। तथमन्यकलितं नाम स्वयंद्रे तर्य निर्मये ॥
not. 'Caritram pustakarane' means that such usages are valid means of decision if they have been written down or recorded by the king, while 'caritram tu svikarane' (the reading in Par. M.) means 'usages become the rule of decision when they are accepted as valid by the people and by the courts'. When a king issues in a matter of dispute an order which is not opposed to smrtis or local usages and which is thought out as the most appropriate one by the king's intellect or which is issued to decide a matter when the authorities on each of two sides are equally strong, it is a decision by royal command Br (in Par. M. III p. 148) and Kat (verses 35-38 q in Sm. C II p. 10, Par. M. III pp. 16-17, V P p 7) explain the above four. Brhaspati gives two meanings of caritra: (1) what is decided by inference; (2) the usages of a country. When it is said that each later one of the four stultifies each preceding one, the idea is not that in all cases it is so, but that it is so only in some cases. Vide Kat. (43 q by V. P. p 90) which makes this clear. Some examples may be given. If one litigant says that he would prove his case by an ordeal, while the other says that he will prove his contention by human means (documents or witnesses &c.), then the trial by ordeal is not to be resorted to but the hearing of the case is to proceed in the ordinary way. Vide Kat. 213 (q. by Mit. on Yaj. II. 22) for this rule. Here dharma is set aside in favour of vyavahāra. Another example is given in the Par M. III. p. 18. A person belonging to one of the four varnas commits a seditious act (rājadrañj) and through timidity admits his guilt (this is satya), but the witnesses (relying on Manu X. 130 that where the punishment would be death, a witness may tell a lie) deny that he was guilty of the act and he is let off. Here dharma is set aside in favour of vyavahāra (trial based on the depositions of witnesses). Vide Sm. C. (II. p. 11) for another similar example. In the country of Kerala visiting a prostitute was not condemned by custom. So even though it is established by witnesses that a person in Kerala did so, the local king may not punish him with a fine. Or suppose a person is charged with the offence of adultery with the wife of an ābhira and this fact is established by witnesses. Yet the man charged may show that among the ābhiras there is a usage (written down in the census records of the king) that adultery with an ābhira woman is not punishable. In such cases caritra (usage) annuls the (ordinary) vyavahāra. But suppose that in such cases the king, in order to improve the morals of a section of his subjects, issues a
proclamation that from the date of the proclamation one who is guilty of adultery with an ābhira woman will be punished, then in that case usage will be set aside by royal command, which will then be the rule of decision Similarly where there are no witnesses nor documents nor possession and no room for ordeal and there are no texts and local usages it is the king who has to decide as best as he can Vide Pitāmaha q in Sm C (II p 28) Kāt (verses 39-43 q in V. P p 89) describes how and when each later one sets aside each prior one

Catusūkhāna—having four bases viz satya, witnesses, pustakarana and rājasāsana

Catusādhāna—having four means viz śāma, dāna, bheda and danda

Catur ṛhita—benefitting the four (the four varnas and four āṣramas).

Caturmyāpun—that envelopes or reaches four viz the disputants, witnesses, the sabhyas and the king

Catuskāra—that brings about four results viz dharma (justice), gain, renown, love or regard of the people

Āstāṇga—it has eight limbs or members viz, the king, his good officer (chief judge), sabhyas (pūsne judges), sāstra (law books), accountant, scribe, gold, fire and water

Āstūdāśupada—has eighteen titles (viz rādāna and others enumerated above)

Sādaśākha—having a hundred branches This is approximate. Nār. (I. 20-25) states that the 18 titles have 132 sub-heads (rādāna 25, upanidhi 6, sambhāyasamutthāna 3, dattāpradānīka 4, aśuśrūṣā 9, vetana 4, asvāmivikraya 2, yikryādāna 1, kritānusaya 4, samayayānapakarma 1, ksetravāda 12, śtripumsayoga 20, dāyabhāga 19, sāhasa 12, yākpirusya and dandapārusya 3, dyūtasamāhīvaya 1, prakīrnaka 6)

Trīyom—having three springs or motives viz kāma (sexual desire), krodha (hot temper), lobha (greed).

Dvajabhūyoga—founded on two kinds of complaint viz on suspicion or on fact Nār I 27 says that a complaint on suspicion may be made against those who associate with men of evil repute (such as thieves, gamblers and dissolute persons) or it may be made on the ground that a certain person is really
Some aspects of the theft because the thing stolen is found with him (this is tattvābhinīyoga). This latter may take two forms i.e., the grievance of the plaintiff may be negative (e.g., the defendant took or borrowed a debt or article and does not return it) or positive (e.g., the defendant has dispossessed the plaintiff of land). Vide Mit on Yājñī II. 5.

Dvārā—having two openings i.e., it is based on the statements in the plaint and those in the reply.

Dvagā—having two issues, that is, the decision may be founded on truth or on error.

Dvāpā—having two aspects, viz. relating to wealth and so civil (dhanamūla), and relating to injury and so criminal (himsāmūla). This is acc to Kāt. 29.

Dvārattāhāna—having two springs or sources. It is the same as above. Härīta and Kāt. 30 mention this.

Dvāskandha—having two trunks viz. dharmaśāstra and arthaśāstra (acc to Kāt. 32).

Dvaphala—having two results, victory or failure (Kāt. 32).

Ekamūla—Härīta and Kāt mention this. It means ‘having only one (viz. what is to be established) as its root’.

Sapana and apana—where both parties to the litigation or one of the parties stakes (either through pride or anger or belief in the truth of his case) a certain sum of money to be paid by him in case of his defeat, that is called sapana law-suit (Yājñī II. 18); in this case the defeated party will pay to the king the usual fine for a defeated party and also the sum staked by him and will deliver to the successful party what is due to him. Vide also Vismudharmottara III. 324 44. A lawsuit may also be apana (without a stake being declared). Nār. (I. 4) employs the words sottāra and amatītāra for these two.

The Sm. C. (II. pp 27–28), Par. M. (III. pp 42–45), Sarvasvatāvilāsa pp. 73–74, V P. pp 36–38, state that, according to Pītāmaha, the king may take cognizance of his own motion without
the complaints of private persons of certain matters called aparādhas, padas and chalas and these works set out the lists of ten aparādhas, 22 padas and 50 chalas. The king may himself come to know about these or these matters may be brought to his notice by an officer called sūcaka or a private man called stobhaka, defined acc to Kāt. (33-34) as follows—

339. that man is declared to be sūcaka who is appointed by the king himself for finding out the wrong-doings of people and who on coming to know of them conveys them to the king; that man is a stobhaka who with a sole eye to money and without being urged by the king informs the king first of actions (among the people) that are condemned by the sāstras. Therefore a stobhaka is a private informant for money. The ten aparādhas, acc. to Nār, are: disobedience of the king’s order, murder of a woman, confusion of varnas, adultery, theft, pregnancy from one not the husband, abuse and defamation, obscenity, assault (danda-pārusya), abortion. They were called aparādhas because they were met with fine. It will be noticed that some of these come under several vyavahārapadas and some like ‘varṇasankara’ are included in prakirnaka by Nārada (v 4). The king could by his own action investigate these even if no private complaint be lodged. Samvarta (quoted by the Sm C II p 28, Par M III. pp 44-45) gives another list which differs in some respects from the above. In the Nālandā copperplate of Devapāladeva (E I vol XVII p 310, p 321) an officer called ‘dasāparādhuka’ is mentioned. In many grants from the 7th century onwards among the taxes remitted to the donees we often meet the expression ‘together with the ten aparādhas’ (sadasāparādha) in Valabhi grant of Dhruvasena III dated samvat 334 i.e 653-4 A.D., E I vol. I. p. 85, at p 88, E.I XVII p 310 at p 321, in Gupta Ins. No 39 p 179 of 766-767 A.D.), or ‘dasāparādhadisamastotpattisahito cattah’ (in E I vol VII p 26, p 40 of sake 853) or

339. शहुत्सि राजपालश्च पद्धति सय्यवत्तमः।
स्वयवाहरपदाश्च कैशीरः। 
तिनांहि प्रभुतिं दुर्भवांससदापराधां॥

340. श्वेतभैरवतिं श्वेतभैरवतिं श्वेतभैरवति श्वेतभैरवति।
श्वेतभैरवतिं श्वेतभैरवतिं श्वेतभैरवतिं श्वेतभैरवति।
श्वेतभैरवतिं श्वेतभैरवतिं श्वेतभैरवति श्वेतभैरवति।
काल्पनिकतिं दुर्भवांससदापराधां॥

341. अभिप्रजयक्षणात्तैः भाषयो भव्यसघः।
परस्मिभन्न चौरीम् ग्रामविभाग पार्थिवभाग।
सामाजिकपञ्चमयम् व्याख्यादिप्रकरणम्॥
ग्रामविभाग पत्रतं धैर्यवापद्यम् वृत्तिः इः
कर्मम् पत्रतं धैर्यवापद्यम् वृत्तिः इः

339-341. इतिहासिक इतिहासिक इतिहासिक इतिहासिक इतिहासिक।
Meaning of aparādha

'sadandadasapurādhabh' (E. I. vol. III p. 53 at p. 56, Torkheda plate of Govinda in šāke 735, and E. I. vol. III p. 265, 266, the Rajor inscription of Mathanadeva dated Vikrama satvat 1016). It is not correct to hold that the words refer to the right of the donee to be exempt from guilt arising from the commission of some traditional offences or that authority was conferred by the grant on the donee to deal with offenders committing the ten aparādhas and to recover the fines imposed by themselves (as suggested in J B O S for 1916 p. 53n). No king would ever think of exempting donees in pious gifts or the villages in those grants from the results of such grave aparādhas as the murder of a woman, adultery, theft and abortion, nor is it possible to hold that a king authorised a private individual or individuals to exercise judicial power in such crimes as murder when (as we shall see later on) the power of dealing with sāhasa was not conferred on śreni or gana tribunals. The real meaning appears to be that the fines levied by him for the commission of the aparādhas in the villages granted would be made over to the donees as part of the gift, when recovered by the king. The 22 vadas were called padas of the king to distinguish them from the vyavahārapadas. According to Pitāmaha they are: ripping open an animal’s body (with a sharp weapon), destruction of growing crops, incendiarism, rape of a maiden, concealment of treasure trove, making a breach in an embankment or thorny hedge, grazing cattle over the field of another, destruction of a public garden, poisoning, high treason, unauthorised breaking of the royal seal, divulging the secret line of policy of the king, releasing from jail a prisoner, appropriation of the taxes or fines to be levied by the king (these are two), appropriating gifts (made by the king) or the utseka.

342. उत्सेक विद्धान सर्वपल्लि वाच्यपरिप्रेक्ष्य तपैः स। विद्धानं निवधानस्यायं गोरक्षा ॥ सेवकायबिश्वास व भेषजस्वारस्तार्थं। भास्त्राभिवृक्षाक्षय गरुङ्ख तपैः ॥ रजस्ता ब्रह्माण्डकार व संतुसदेत्तकलयं ॥ तमाक्षाधिक्ष मे मेधां व पद्यचतु त नाचका ॥ भोगाभिकार व युद्धकार दूसरा सद्गोदेत्तकलयं ॥ तपाक्षरस्त मयेनं शुद्धिकार रूपं ॥ पत्वत्वाभापञ्चतामती दूषणाश्यिताः व पत्वं ॥ रासाल्लान्ति द्रवः पद्यवैधार्यविनाशानं ॥ भविष्यति पद्यवैधार्यविनाशानं पश्चिम ॥ स्वस्वतिः II. p. 26, पर. ना III. p. 45, स सि p 73, वर. म p. 37. The passage is somewhat corrupt; s. s. s. gives a summary in prose and begins with पिकुरकारक, while the rest read उत्सेकी or उत्सेनी. यथ. म and वयनीविनाशाना p. 12 reads द्रवः विकुरकार (which would mean ‘appropriating a gift or property sold by the king’).
(\textit{?utsarga}, dedication to the public), preventing the proclamation (of royal orders) by beat of drum from being heard, receiving property from a person who is not the owner, receiving articles that are enjoyed by the king (without his permission), causing destruction (or loss) of any one of the (seven) elements (of the State). The fifty \textit{chalas} were mostly breaches of etiquette before the eyes or in the presence of the king. According to Pitāmaha they are: obstructing the road, raising the hand threateningly, leaping over a fort-wall (without permission or reason), destroying a cistern, destroying a temple, filling up a ditch (dug round a fort), divulging the weak points of the king (to the enemy), unauthorized entrance into the harem or royal chamber or the treasury or the royal kitchen (these are four), prying when the king is taking his meals, voiding ordure or urinating or blowing the nose or passing wind in the presence of the king (these are four), to sit before the king on haunches (\textit{paryaukāśana}), to occupy the foremost seat in the king’s presence, to enter royal presence in a dress more resplendent than the king’s or supported by another or by the wrong-doer or at an improper time (these are four), to lie down on the bed or seat of the king or to put on his shoes (these are three), to go near the king (uncalled) when the latter is lying down on his bed, to serve the king’s enemies, to occupy a seat that is not offered, to use gold in the dress or ornaments (these are two), to take tambūla (from the king’s betel box) and chewing it (this is one), to speak loudly without being asked (by the king), to run down the king, to wear only one garment, to appear before the king with oil on the hair, to untie the hair (before him), to cover one’s face, to have a body painted with figures, to wear a garland, to shake one’s garment, to cover the head, to be bent on finding the weak points of the king, to be thick with evil men (or to touch the king), to have dishevelled hair, pointing out the nose, the ears and the eyes (these are three), to pick the teeth, to cleanse the ear or the nose (these are two). As the list of \textit{chalas} is a very long one the verses are not quoted below, but are given in the Appendix (note 342 a). Śukra (IV.5.73–83) quotes all the verses from Narada and Pitāmaha on the aparādhas, \textit{padas} and \textit{chalas} and in III.6 also gives a list of ten sins, which is different from that of the aparādhas.

In modern works on Jurisprudence various classifications of Law are stated. For example, Dr. E. Jenks in ‘New Jurisprudence’ (1933) furnishes at the end of his work a very


Ancient systems cannot be expected to present such a classification. Ancient Hindu smritis were content, as shown above, to elaborate classification which is set out in the note below.
divide the vyavaharapadas into civil and criminal. They more or less deal with most of the subjects brought out in modern classifications but not in an orderly manner. They also divide laws into substantive and adjective or procedural. The vyavaharapadas correspond to the former and the rules about procedure, the appointment of Judges and the constitution of courts, evidence and limitation are adjective law. Some of these are dealt with in the commentaries and digests under a section called vyavaharamātrakā (the elements of judicial procedure) and the rules of evidence are stated in Yāj, Nār. and others under the vyavaharapada ṛṇādana once alone. It would be more convenient to deal with adjective law first. That law is now of antiquarian or academic interest only and will therefore be treated somewhat briefly. The smṛtis lay down a high level of judicial procedure, but the procedure must have been modified to suit the requirements of different times and the resources and inclinations of different kings. Some of the vyavaharapadas visṛṇādana (recovery of debt), śripurnāyoga and dāyabhāga (partition of heritage) are of great practical importance even now, as all Hindus are governed in matters of partition, inheritance, debts, marriage and sonship by the rules of Hindu Law gathered from the Smṛtis and digests as modified by legislative enactments and judicial decisions. For description of Judicial administration in the Buddhist texts and times, vide Flocks pp. 107, 111–112 (which show that the administration of justice in Vesāli, the capital of the Licchavis, was a complicated affair, one of the courts being that of the aṭṭhakudakas i.e., of eight heads of families), Jayaswal’s ‘Hindu Polity’, part II pp. 156–157, Hiouen Thsang’s account in Beal’s B.R. W.W. Vol. I pp. 84–85; and Bombay Gazetteer, Vol. 24 pp. 266–267 (for the administration of Justice under the Marathas).

Justice was to be primarily dispensed by the king. He was an original court as well as an appellate tribunal. Smṛtis and digests insist that the king cannot dispense justice by himself alone, but must do so with the help and guidance of others. Manu VIII. 1–2 and Yāj II. 1 provide that the king wearing no gaudy dress or ornaments is to enter the sābhā (the Hall of Justice) for looking into the causes of litigants, accompanied by learned brāhmaṇas and ministers proficient in statecraft, is to be free from hot temper and greed and decide according to the law laid down in dharmaśāstras. Kāṭ. (55–56 quoted in V. M. p. 278, Mit. on Yāj. II. 2) says the same thing and adds that
a king who examines disputes in the presence of the Judge, the ministers, learned brāhmanas, the purohita and the sabhyas attains heaven. Vide Śukra IV. 5. 5 to the same effect (taking half verses from Yaj. and Kāt.). The king was not to decide by himself but was to follow the advice of his judge, though the responsibility even when he took advice was the king’s. Vide Śukra IV. 5.6 (naikah paśyecca kāryām). Nār. I. 35 says that the king has to abide by the view of the judge (prūdvavā-kamate sthutah). This sentiment that it is not safe for a single man, however clever he may be, to undertake to decide a dispute was so ingrained among all people that Kalidāsa gives expression to it in the Mālavikāgnimitra (Act I) when he pens the sentence ‘sarvajñasyāpyekkino nirnayābhyupagamo dosāya’. In Raghuvamśa 17.39, Kalidāsa states that king Atiṣī always looked into the causes of people himself with the help of judges (dharma)²⁴. Pitāmaха²⁴ states that a person even if he knows the rules (of dharma) should not give a decision single-handed. Justice was to be dispensed openly in the court and not secretly. Śukra (IV. 5. 6-7) states²⁶ that neither the king nor the judge nor the sabhyas were to hear a cause in secret and that there were five reasons that led to the charge of partiality in judges viz. hot temper, greed, threats, enmity and hearing disputes in private. Judicial action is divisible into two provinces, viz. that of law and that of fact. The latter is a field in which it is impossible to lay down rules for determination. On points of facts there was a vast scope for the king’s or judge’s discretion. And therefore the texts contented themselves by saying that the king or judge should keep an open or impartial mind, should be free from hot temper or greed, should hear causes under the glare of public view and should not decide at his own will alone but with the help of learned brāhmanas and sabhyas. As regards points of law the king or judge is

344. स परमसः शास्त्रविनिर्देशानि स्वयम्। दृढः संप्रभुवच्छर्णधरारूचिर्। सूचना। 17. 39. The word परमसः used here for judges may be noted. Kant uses the same word in III. 1. From a detailed examination of the Raghuvamśa it appears very probable that Kalidāsa had closely, studied Kantīya’s Arthaśāstra.

345. तत्साध राज्यप्रथेकसि विविधतासि कर्मति। इति वितामेऽन् एकत्र धर्मवदनविवेके-वादं। स वि. प. 67.

346. नैसः दृढः कायांसि वाक्षिमि। ययुष्मादि। यस्ति। तत्साध अतर्विहि अत्तिर्रिप्रसय कारणेऽति। एव एव। क्षणंकात्त्वकथा। वाक्षिमेऽथ। च चादं। एव। दृढः। IV. 5. 6-7.
required to decide according to the rules of dharmaśāstra (Manu VIII. 3, Yaj I. 1, Nār. I. 37, Sukra IV. 5. 11) and where there are no texts the king should decide in accordance with the recognized custom of the country. Kāt solemnly warns the king against legislating or deciding according to his own will in the face of the texts: ‘If a king decides (a case) by his own fiat where there is a text (of the śāstra applicable to it) it leads him away from heaven, it causes ruin to the people, it brings danger (to the king) from the armies of his foes and it strikes down the roots of (long) life; therefore a king should decide the causes of people according to the rules of śāstra; but in the absence of smṛti texts he should carry out (judicial administration) according to the usages (lit the views) of the country’. These are the same as Śukra (V. 5. 10-11). Kāt further prescribes that the usages established in a country by the approval of its people and that are not in direct conflict with Veda and Smṛtis should be recorded in writing under the seal of the king Pitāmaha quoted by the Sm. C. (II. p. 26) states that in certain cases it is the king’s own mind that is the deciding factor.

How the king directly dispensed justice is illustrated by the rules of Gaut. XII. 40-42 and Manu VIII. 314-316 that a thief who has stolen a brāhmaṇa’s gold may run with dishevelled hair to the king carrying an iron club or a heavy bludgeon of khadira wood, may declare the sin committed by him and request the king to award punishment, that the king may then strike him with the club and that whether the thief dies or lives after the king so strikes him he becomes free from the guilt. The king was also the highest court of appeal. The Rājarāṣṭrīgni (VI. 14-41) states how king Yaśāśakara heard the appeal of a person who had sold his house without the well, who on returning...

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347. अस्त्यर्थो त्वमनाशाय परानन्दमिहाय। भाँधृपीविक्षेत रश्यात सति वायेव सर्वे-कृते तत्तस्माचारामार्थार्थे शास्त्रा कार्यार्थिणि कार्यार्थिणि। वायेव तस्य सर्वेन वेषभिन्न सर्वेन। कार्याः q. by अभासां p 599, स्तुतिकविरित स विश्वास कार्यां विश्वास कार्यां विश्वास कार्यां। विश्वास कार्यां विश्वास कार्यां।

348 चतुर्विंशति भवते तद्यथा पारिवर्षवर्षाकालं विधाय स एव (विभाग पद)। चतुर्विंशति भवते तद्यथा पारिवर्षवर्षाकालं विधाय स एव (विभाग पद)।
The king as appellate court

III |

from a long absence abroad found the well usurped by the vendee and was defeated in the lower courts because the vendee had bribed the scribe to write 'kūparahita' instead of 'kūparahita' and how the king decided in the man's favour by exposing the vendee with a trick; while in VI.42-69 the same king is said to have reversed another decision about a contract by a man whose 100 coins had fallen into a well. The same work in another place (IV.82-108) states how a brāhmaṇa wife appealed to the king of Kashmir to find out the culprit who had murdered her husband in his sleep and how the king by superhuman means held a sorcerer to be the murderer.

When owing to pressure of other weighty business the king cannot attend to the work of administering justice, the king should appoint a learned brāhmaṇa together with three sabhyas to decide the disputes of people. Vide Manu VIII. 9-10, Yaj. II. 8, Kāt. 63349 (same as Śukra IV. 5. 12). The qualifications of a judge are set out in many places. Āp.350 Dh. S. II. 11-29. 5 prescribes that in law-suits judges shall be endowed with learning, good family, and should be old, clever, and careful about dharma. Nār. requires: 'The Judge should be proficient in the texts on the eighteen titles of law, their 8000 sub-heads, in logic (ānvikṣikī) and should be master of the Veda and Smṛtis. Just as a physician takes out from the body an iron dart by the employment of surgical instruments, so a judge should extricate from a law-suit the deceit (underlying it)'.351 Kāt. says that a judge should be restrained, born of a good family, impartial, not repellent (or harsh in his manners), steady, afraid of the next world, highly religious, assiduous and free from hot temper. A fine enumeration of the qualities required in a judge is given in the ancient drama Mrchakatika (IX. 4). Vide Mānasollāsa

349. यद्य कुर्यादि सप्तति: शर्म कार्यविधिपरम्। तद्दा तव नियुक्तिः बाध्रमणा श्वास-पारसाद हुन्ते कुड़िलेऽ मध्यस्थापवर्येकारर सियादः। परव भीवे धतिकिलान्त जोयविशिष्यात ||

350. विषये विसाम्भनमसम्बन्धु दुधा नेषाभिष्टो धमंगणविलासः। आप. प. II. 11. 29. 5.

351. आदास्युपत्येविनिर्मितज्ञेयांविकारविकारः। आत्माीकोकावयिकादेशातः। श्रविशृष्टामहाभागमन्वितामः। अप्पीविवकषोधाः।
वर्गायां मन्यतारूपितारूपिताः। माहोष्टिरस्य श्वासपत्रोद्स्य-हाराः। नाराय न शुरुलिस। II. p. 14. The 2nd is नाराय (III. 16). It is quoted as द्वारीर्षे in राज. R. p. 19.

The king as appellate court

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II. 2 verses 93–94. A Judge was generally styled प्रद्विवाक or sometimes धर्माध्यक्ष (as in राज र p. 18),352 or धर्मप्रवाकर (Manu VIII. 20) or धर्मधुकारिन (as in मानसोलसा II. 2. verse 93). प्रद्विवाक is an ancient word. It occurs in Gauś XIII. 26, 27 and 31, नार.33 (I 35), Brhaspati (q. by Aparākṣa p. 602). The word is a combination of ‘प्रद’ (one who puts questions to the suitors, from the root ‘prach’) and ‘वाक’ (who speaks out or analyses the truth, from the root ‘voc’ with ‘vi’). The derivation is given by नार. Brhaspati, Kaṭ, 68 and others. The word ‘प्रस्नवाक’ (which is quite close to प्रद्विवाक in sense and etymology) goes very far into antiquity and occurs in वैद. S. XXX. 10 and Ta. Br III. 5 6. The existence of the word प्रद्विवाक as early as Gautama (about 500 B.C.) and of प्रस्नवाक in the Vai. S and Ta. Br. clearly establishes that in ancient India judicial functions became separated very early from executive or political functions.

The chief Judge was preferably to be a learned brāhmaṇa (Manu VIII. 9, Vai. II. 3). Kaṭ. (67)354 and Śukra IV. 5. 14 prescribe, if a learned brāhmaṇa cannot be had for the post of the chief judge, then a क्षत्रिय or a vaisya who knows the

352. सत्तवत: ! कुत्सहित्यायोजि: सत्वपारपरप्रण: : प्रश्न वेधस्त्रव बासाहिति विधिकोऽति राज्य. r. p. 18.

353 विवासुरसिद्धं परं प्रच्छवति महोदय सत्तत:। विवेचनसतिः प्रशस्वश्चित्वायविवासतः।
सत्ततः। गार्ड q. in सत्तवत् II. p. 14, विवासुरसिद्धं परं प्रच्छवति महोदय सत्ततः।
विवेचनसतिः प्रशस्वश्चित्वायविवासतः।
वाप्यातः। वाप्यातः। सत्ततः। गार्ड q. in सत्तवत् II. p. 14.

354. ब्राह्मणं पदं न देश्मुहार्द्वर्तिः। बेदशेषं आश्चर्याय मूल पापणि।
वार्ता क्यों ज्ञातारुत यो योगीदेशं। बेदेशं आश्चर्याय मूल पापणि।

355. वेदार्थे। वेदार्थे। वेदार्थे। वेदार्थे। वेदार्थे। वेदार्थे।

356. वेदार्थे। वेदार्थे। वेदार्थे। वेदार्थे। वेदार्थे। वेदार्थे।
dharmāśāstras may be appointed, but the king should carefully avoid appointing a śūdra as a judge. Manu VIII. 20 says that the king may prefer a brāhmaṇa who is not learned and maintains himself by the mere fact of his caste, but should never have a śūdra as the expounder of dharma and that the country whose king has a śūdra as judge to expound dharma comes to ruin as a cow sinks in mud. Vyāsa (q. in S. V. p. 65) is to the same effect. Manu (VIII. 10–11), Yaj. (II. 3), Nār. (III. 4) and Śukra IV. 5. 17 state that the king should appoint at least three sabhyas (puṣne judges or members of the court of justice) to associate with the Chief Judge in the disposal of suits (the idea being that three are the least number of sabhyas to be appointed). Kaut. (III. 1) prescribes that the courts called 'dharmaśṭhiya' should be manned by three judges called dharmaśtihās who should possess the qualifications and status of amātyas and that such courts should be established on the borders of the provinces, for a group of ten villages (saṁtyahana), for a district (dronamukha, 400 villages) and provinces (sthānīya, 800 villages). Brhaspati says\(^{335}\) that the sabhyas may be seven, five or three. As in the case of the chief judge, the sabhyas should be preferably brāhmaṇas, but they may be kṣatriyas or vaśīyas. Manu (VIII. 11) and Br. say that when in a sābhā three brāhmaṇas learned in the Vedas sit along with the chief judge appointed by the king that is like the sābhā of Brahmā or it is like a sacrifice. Yaj. II. 2, Visnudharmāstātra III. 74, Kāt. 57, Nār. III. 4–5, Śukra IV. 5. 16–17 and others require the following qualifications in the sabhyas: they should be endowed with the study of the Vedas, should know dharmaśāstra, should speak the truth, should be impartial to friend or foe, should be steady, devoted to their work, intelligent, hereditary, proficient\(^{336}\) in arthaśāstra. Impartiality in the king and the judges is insisted on in the texts. Vide Vas. 16 3–5, Nār. (I. 34, III. 5) The king was not to appoint as sabhyas those who were ignorant of the usages of the country, who were atheists and devoid of the study of śāstras, who were either puffed up, hot-tempered, greedy or distressed (Br. q. in Sm. C.

\(^{335}\) तीनेवेरुबार्धाम्: सत तिक यथोऽक्ति द्वाराय। यज्ञोपविधा विनय: स्थाने परस्यां द्वारा।

\(^{336}\) स तथा: विशिष्टायं: परमेश्वरगृहिभिऽजयः। भर्गोदाताप्रेमसुकृतविभाषाय:।

Vide śāstras 83.2 for सर्वश्रृंखः.
II. p. 15). The chief justice (*prādvivāka*) with the sabhyas constituted the Court, being appointed (*myukta*) by the king. It was stated above that the king was to enter the Hall of Justice with the chief justice, sabhyas and brāhmaṇas. The distinction is that sabhyas were appointed by the king as judges, while brāhmaṇas were persons who were well-versed in dharmaśāstra, who could attend the Court, though not appointed (*anyukta*) and whose opinions on difficult points of law were respectfully received by the judges. They (the learned brāhmaṇas) were in the position of *amicus curiae*. All and sundry were not to intermeddle in trials before the court, but only those who were learned in dharmaśāstra were allowed to express their opinions on knotty points. Vide 357 Miton Yāj. II. 2. Manu VIII. 12–14 (same as Nar. III. 8–10 in a different order) say that either a person should not enter a *sabha* or if he enters should say what is proper, that a man remaining silent or declaring what is false becomes a sinner and that, where in spite of the opinion of some or all sabhyas, justice is not done by the king, they become participators in the king’s guilt. Kāt. (74–78) makes it the duty of the sabhyas to bring round a king gradually to the right path when the king is about to start on the path of injustice and to state the true decision. 358 In the case of the brāhmaṇas their duty ends with stating the rule according to the śāstras; they have not, like the sabhyas, to prevent the king from doing the wrong thing or to bring him round to the path of right and justice. Nar. (III. 1) states elsewhere that one who is not appointed by the king should not interfere by his speech in the decision of a case and that if he does so he would be fined. This applies to the people that are present in the court to see the trial or that accompany the litigants. It has no application to learned brāhmaṇas, who though not appointed by the king, can state their view of the law. 359 Vide Vyavahārasāra pp. 16–17. Nar. III. 17 requires that all the judges of the Court should give a unanimous decision, and that then only the decision leaves no grievance (in the

357. तद्भव नारायणाः अनित्यकाः समासस्वको नियुक्ता इवत भेदः | सिद्धान्तोऽपि इति परा. II 2.

358. अन्यायप्रकारे ते पार्श्वे वेदाङ्गायति समासस्वः | वेदविक न्यायिनिवेदनां प्रेषन्नीः

शिलौपूर्वः अधर्माय यदा राजा निदुर्जित विवाहिततादुः | विद्यायपुर्यं समयस्वालायि

विश्वविद्येऽव वहायाः। ग. in सूतिष्ठा II p 21. राज. र. pp. 24–25

359. नियुक्तो शास्त्रियोऽपि परिवारोऽपि पार्श्विणिः। कृत्यादि वाच्यं संस्कृतं प्राप्त एव। शास्त्रायपी

वृत्ति नारायण III. 2 ( = खं IV. 5. 28)
Concerning judges

The V. P. (p. 27) states, following Jaimini XII 2. 22, that the opinion of the majority of sabhyas is to prevail. According to Gaut, XI. 25 as interpreted by Aparārka p. 599, if there is a difference of opinion among the judges, the king is to seek the advice of those who are learned in the three Vedas (along with the other udyās) and decide the matter finally. Kat. (58-59) states that the court of justice should have associated with the task of deciding disputes some merchants who belong to a guild, who are men of good family and character, of mature age, endowed with wealth and decent conduct and free from malice. The Mit. and Sm. C. say that this is done to placate the common people in the country. This also shows the growing importance of the moneyed classes and of traders. In the Mrccchakatika a śreṣṭhin and a kāyastha are associated with the Judge.

The chief judge and the sabhyas were not to hold conversation in private with any one of the litigants while the suit was pending and if they did so they were liable to be fined (Kat. 70). Kaut IV. 9 prescribes fines and even corporal punishments for judges (dhaia āsthas) and pradeṣīs who corruptly give wrong decisions, cause loss or sentence to corporal punishment. If the sabhyas give a decision, which is opposed to smṛti and usage, through friendship, greed or fear, each was liable to be fined twice as much as the fine to be paid by the defeated party (Yaj. II. 4, Nār. I 67, Kat. 79-80). The Visnu Dh. S. V. 180 and Br prescribe banishment and forfeiture of all property for

350. The V. P. (p. 27) states, following Jaimini XII 2. 22, that the opinion of the majority of sabhyas is to prevail. According to Gaut, XI. 25 as interpreted by Aparārka p. 599, if there is a difference of opinion among the judges, the king is to seek the advice of those who are learned in the three Vedas (along with the other udyās) and decide the matter finally. Kat. (58-59) states that the court of justice should have associated with the task of deciding disputes some merchants who belong to a guild, who are men of good family and character, of mature age, endowed with wealth and decent conduct and free from malice. The Mit. and Sm. C. say that this is done to placate the common people in the country. This also shows the growing importance of the moneyed classes and of traders. In the Mrccchakatika a śreṣṭhin and a kāyastha are associated with the Judge.

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sabhyas that give an unjust decision or take bribes Kat 81 prescribes that the loss caused by the fault of sabhyas must be made good by them to the losing party, but the decision given by them will stand. \(^{366}\) Sukra (IV. 5 63-64) prescribes the punishment of a thief for a lekhaka (a scribe) taking down a different deposition from the one actually given or for a sabhya making use of such a deposition knowingly, IV 5 93 prescribes fine and removal from office if a sabhya gives a wrong decision through greed &c. and IV. 5. 282 prescribes a fine of 1000 panas against a judge giving a corrupt decision. There must have been a few cases of judges taking bribes in ancient India as in modern times (even Lord Bacon in the 17th century was found guilty of taking bribes as Lord Chancellor and confessed his guilt) In the Daśakumārācarita \(^{367}\) (VIII. p 131) the cynical jester Vīharabhadra says to his king that judges decide matters just as they please after taking bribes and the king thereby incurs infamy and the sin of doing injustice. It was believed that when a just decision was given, the king and the sabhyas became free from sin, the sin reaches him only who is guilty (whether plaintiff or defendant); but where an unjust decision is rendered a quarter of the sin falls on the litigant (plaintiff or defendant) who is guilty of adhaśma, one quarter each on the witnesses, the sabhyas and the king. The Baud Dh S I10 30-31, Manu VIII. 18-19, Nār (III 12-13) have the same two verses. The Vyāhāratattva (p 200) says that Hārīta also had the same verses. In the Mattavilasaprahasana (pp. 23-24) reference is made to the giving of bribes to the presiding officers of courts (we should read ‘adhukarama-karunikānām’ instead of ‘—karunikānām). Kaut IV 4 makes it a duty of the saṃhātra to employ spies in various disguises to test the honesty of judges (dharmasthas) and magistrates (pradestras) and, if they were found to be ready to succumb to bribes, to order their banishment.

As to sabhā, vide pp. 92-93 above. The Nirukta (III. 5) in explaining Rg. I. 124. 7 (gartriug-va samaye dhanānām) states that gartri means a wooden board or stump in a sabhā on which a sonless widow claiming her husband’s wealth had to stand when claiming it.

\(^{366}\) सम्प्रोक्त वहन देवस समेत सच्चाः। कर्शन हो कार्यितान्तेव निषेधत मिति कार्यशेष \| कार्यत \| भविष्य, II p. 23, स वि p 69

\(^{367}\) हिंदुविधिविवधासाय अव्यापीप्रकोपोव वृहमहानार्यः। कष्टो उपभोति \| हन्तापि भाहुविवचारूपः स्वेच्छया जवापदधिय विवधानात पापनासायं वा भावितानां चार्यित्याज्ञातिः वृहकुस्मार्यम् VIII. p. 131.
A court of justice was (acc. to Br.268) of four kinds, viz. one established (prātmālā) in a fixed place such as a town, apratīṣṭhā (not fixed in one place, but moving from place to place as on a circuit), mudrutā (the court of a judge appointed by the king, who is authorised to use the royal seal), śāstrī (or śastrītā, aco to S. V p. 68 and Par. M. III. p. 54) i.e. the court in which the king himself presides. The Court of justice (in the capital) was to be to the east of the palace as stated by Śankha and Br. (in Sm. C. II. p. 19) and was to face the east. The court-house should be decorated269 with flowers, statues, paintings, idols of gods and should be furnished with incense, throne or seat (for the king or judge), seeds, fire and water (Br. in Sm. C. II. p. 19). The sabhā was also called, as stated above, dharmaśāhīkarana or simply adhikarana (in Mṛchakatika IX and the Kādambari, para 85) or dharmamāna or dharmaśāna or sadas (Vas. 16. 2) The Kādambari (para 85) speaks of the royal palace as having a court of justice where the judges (dharmaśāhīkarins) sat on high cane seats. The time for holding the court is the morning, acc. to Manu VII. 145, Yāj. I 327. Kaut states that the king270 should look into the disputes of people in the 2nd part of the day divided into eight parts. The Dasakumārācarita (note 367 above) shows the same thing. Kāt. (61–62) prescribes that the time for holding the court as laid down in the śastras is three parts of the day after the first part (when the day is divided into eight parts) i.e. from 7–30 A.M. to noon. There were holidays on which courts were closed i.e. on 8th and 14th tithis, Full Moon day and the amāsā of every month (Samvarta acc. to Par. M. III. p. 23, Hārīta, acc. to S. V. p. 72). The sabhā is said to have ten aṅgas

368. अतिषिता पूरे द्वारे नाग्नायर्मध्ययतः | चूँच्यायथसंबंधः राजवर्गः च | शालिता || बुद्धास्त्र iby अवरावः प. 600, जन. R. p. 20 ascribes it to हारीत.

369. महाव्युष्णश्रीवाचर्जीनमभिमभिः | महामोक्षश्रीवाचर्जीनमभिमभिः हया द्वया, in राजवृक्षकाव्य प. 30, सदित्व, II. p. 19 and स्व. न्ति. p. 5. It is probably such a hall decorated with statues and pictures that is referred to in the play Kandamālā (p. 10) 'महाव्युष्णश्रीवाचर्जीनमभिमभिः' (in प्राकृत), in which some scholars find a reference to the play called Pratimā, one of the Trivandrum plays. अविभाज्यविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृष्टविनिकृ�
by Br. 371 viz the king, the chief judge appointed by him, the sabhyas, smṛti, ganaka (accountant), lekhaka (the scribe), gold, fire, water and svapūrṇa (a bailiff, otherwise called sādhyapāla) The chief judge declares (the law), the king awards punishment, the sabhyas examine the dispute, smṛti (dharmaśāstra) lays down the rule of decision, the success (of one party or the other) and the punishment; gold and fire are required for taking oaths, the water is for men when they feel thirsty, the ganaka counts the wealth or subject matter of dispute, the scribe writes down the pleadings, depositions and the decision, the purusa summons the sabhyas, the defendant, the witnesses and he guards the complainant and the defendant when they have furnished no surety (for appearance). It is further said that of these ten āngas (limbs) the king is the head, the judge the mouth &c. Acc to Br. (q. in Par. M III p 30) and Śūkra IV 5 43 the accountant and the scribe were to be proficient in grammar, lexicography and counting, were to be pure (in character) and conversant with several alphabets Purusā was called sādhyapāla, who was to be hereditary, strongly built, a śūdra and obedient to the sabhyas (Vyāsa in Par M. III p 30, V P p 31) The ten āngas enumerated above (viz. king &c) are respectively identified with the head, the mouth, the arms, the hands, the thighs (ganaka and lekhaka), the two eyes (gold and water), the heart, feet (Br. in V. P p 31, Hārīta in Rāj R p 20) In the Hall of Justice the king faces the east, the sabhyas, the accountant and the scribe respectively face the north, the west and the south (Br. in Par M III p 35, Vyavahāraśastra p 25) Omitting the king and the chief judge the sabhā is said to have eight āngas in certain works (e.g. S V p 72) The chief justice, the sabhyas and the learned brāhmaṇas were probably elderly people, as great emphasis is laid on this by Nār. (III 18) and Udyopārva 35.58 'that is not a real sabhā where there are no elderly men &c 372.

371. तुपार्विख्यातसम्वभ श्रवित्स्मृत्याके किं ज्ञातियुपायः साध्यवाहिनी वै है ८है ॥ ... पत्ताश्वथाय प्रय हः अन्यायं समाजम् कायांगोपनोत्तरतमा ॥ सुभूतितविवेचन्यो वै ज्ञाति दुर्ग तवथा । शुपवन्यं हितोपदेशाय अन्यु वै सत्ततात्तुपुषु ॥ गणको भयोपनस्तु तिलोकच्चः च हेमकः। मयापरिःपदेशाय तथाश्चातिकण च स्वस्युपुषु । कुर्सकुक्कुटाक्षः स्त्रोत्साहेययोगिनी सदा ॥ हेमकादिकृत्तः कि अन्तसन्धिके पुष्पद्वृक्षम । \[\text{verse} q \text{ in} \text{aparaks} \text{e} \text{p} \text{600}, \text{स्त्रिति} \text{II} \text{p} \text{20}, \text{वद्रे मा} \text{II} \text{p} \text{31}, \text{श्रृं} \text{र} \text{। pp} \text{20} \text{21} \text{।} \text{attributes these to पर्बीत} \text{Vide पुरुष IV} \text{5} \text{38} \text{42} \text{for the verses up to हेमकगु}।

372. त स त्योवं त्व न सः पञ्चन तुद्रवा हेमकः न ते ये न बस्नु शशस्यः। नासी थर्मा च न शतस्थि न दशस्ये चतुर्युपविविद्वारः \[\text{नाराय} \text{III} \text{18} \text{= उद्योगपर्व अं 35} \text{58} \text{। reads पुरुषन्युपदेशया} \text{।} \text{acc to a verse quoted from the पुरुषस्य by the भाष्य on सत्या श्रे श्रे a समुं य of three kinds सम्भवति तथा विवाद वधेयम् च काविगः। यथा वधेयमेनेह स्वविविद्वारः परुषपतेति ॥ the first (सम्भव) dealt with सवपार and वधेयम्, the 2nd (कावित्तम) was a hall where sacrifices were performed and the 3rd (राजस्था) was the royal दिनर in attended by brāhmaṇas, warriors, royal officers and servants.\]
In the drama Mrcchakatika (Act IX) we have a graphic, though brief, description of judicial procedure in ancient India. That drama is at least as old as the 4th or 5th century A.D. It is very instructive to compare the procedure described in it with that gathered from Nār., Br. and Kāt. who constitute the leading triumvirate on law and procedure in the smārtis and who probably flourished a little before and a little after the drama. It will be found on comparison that the procedure in the drama is in essentials the same as that of the three smārtis mentioned above, though there is some difference in minor details. The principal points in the drama bearing on judicial administration may be brought together here at one place. The court house was called ‘adhikarana’; the chief judge was called adhikarana; he was assisted by the ṣresthun (a prominent merchant or banker) and a kāyastha; all three are referred to as ‘adhikaranabhojaka’ and are addressed as adhuktra or myukta (appointed by the king); when a despot was on the throne, the judge’s position was precarious and he could be deprived of the post at the king’s sweet will (the Sakāra, king’s brother-in-law, threatens the chief justice with summary dismissal). There was a servant who arranged the seats in the court, inquired whether there was any litigant, summoned Vasantasena’s mother and Carudatta (this man corresponds to the purusa or sādhyapāla); inquiry was made by the judges as to whether any one wanted to file a suit or complaint; the ṣresthun and kāyastha are asked by the presiding judge to write down the important parts of the complainant’s statement; a private person (who was not a relative) could complain to the court about an alleged murder; the judge allowed an old person like the mother of Vasantasena and a respectable and well-known citizen like Carudatta to occupy a seat when replying to questions from the court, but Carudatta was deprived of this concession when a prima facie case was made out against him; the court-house (being probably situated near the palace) had near it mantrins, dūtas, spies, an elephant and a horse (and the chief of the city police is asked to ride the horse and find out whether the corpse of a woman lay in the public garden), and kāyasthas; Carudatta was called upon to state the truth and the judge tells him that in the court no trick (chāla) will be allowed to pass; when a strong case was

373. Compare चाले निष्ठय सृष्टि प्रवहारप्रकृति: 1 पारं. II. 19; शुभप्रभोक्तयस्त्रिविनाय किलिति कालदापि: 1 नारद 129, न तु सिद्ध च चाले राजा समवेत्नमात्वम्: 1 शुभमेव सभायत बलसूक्ता पत: विभिन्न: 1 नारद इ. 31.
made out against Carudatta by circumstantial evidence he was asked to confess his guilt, otherwise he was told that he would be whipped (i.e. this refers to whipping to extort a confession, vide above note 332); the judge was only to pronounce the judgment and recommend the legal punishment, while the king had the last word about the exact punishment, Manu's work was an authority; a brāhmaṇa offender was not to be sentenced to death, but was to be banished with all his wealth, though some kings did not act up to this rule; impalement was carried out by cāndālas, ordeals of fire, water, poison and balance were known and Śūdraka conveys (vaśasālāhālmāyāmrāthula me nacēre) that Carudatta had prayed for trial by ordeal, but that the chief justice, because there were witnesses and circumstantial evidence, refused that request.

The court so far described (i.e. where the king or the chief justice appointed by him presided) was the highest court. But other tribunals were recognized in the smṛtis and digests Yāj. I 30 and Nār. (I. 7) state 374 that law-suits may be decided by village councils (kulāṇi), corporations (śeṇa), assemblies (pūga in Yāj, gana in Nār.), the judges appointed by the king and the king himself, each later one being superior to each preceding one. The first three were practically arbitration tribunals like the modern panchayats. There are several words here require explanation and they have been differently interpreted by different digests Medhatithi on Manu VIII 2 explains these words at great length. Acc to him 'kulāṇi' means 'group of relatives' and also (acc. to some) 'impartial persons' (madhyasthapurasā) and 'gana' means 'builders of houses and mansions or brāhmaṇas dwelling in mathas'. Acc to the Mit and V P. p 29 'kulāṇi' means 'an assembly of the relations, agnatic and cognatic, of the litigants', acc. to the Sm. C. it means 'the agnates of the parties'; acc. to Aparārka it means 'husbandmen'. It appears likely that 'kulāṇi' means officers who presided over a group of eight or ten villages and who were granted the produce of one kula of land as their salary. Vide Manu VII. 119 and Kullūka thereon and Dāmodarpur plate of Gupta year 124 in which the head of the district (visayapati) is said to have been assisted by the nagaraśresthun, prathama-kulika and prathama-kāyaṭha (E. I. 15 p. 130) and

374 खुलासे ब्रेहमवेद गणवृत्तिकी द्वारा : मलिका भव्यवारणा एक्षेत्रस्तूलरी-वर्धनानारक (I. 7).
'grāmaṣṭa-kulādhikaranam' in E. I. vol. 17 p. 345 at p. 348 in the reign of Ku māragupta I. From the Sanchi stone Inscription of Chandragupta II (of the Gupta year 93 i. e 412–13 A.D.) it appears that pancaḥayats were called 'paṇcamandali' (Gupta Inscriptions pp. 28, 31). 'Śreni' means, acc. to most commentators, 'the corporation of persons following the same craft or avocation, though they may belong to different castes' such as horse-dealers, betel-leaf sellers, weavers and dealers in hides, Acc. to the V. M. p. 280, 'śreni' is an association of artisans or traders. 'Pūgas' are assemblies of men of one place (a village or a town) belonging to different castes and following different avocations. Kāt (225 and 682) distinguishes between gana and pūga which he respectively defines as 'assembly of families' (kulas) (Sm. C. II p. 18, Par. M. III. p. 352) and 'assemblies of traders and the like' (V. R. p. 668) V. P. p. 30 says gana and pūga are synonyms The king was thus the highest court of appeal and next to him was the court of the judges appointed by him. Brhaspati (S. B. E. vol. 33 p. 281 verse 28) ordains 375 that the kulas, śrenis and ganas that are well-known to the king may decide the disputes of litigants except those that fall under śāhasa and that it was only the king who could carry out the order for fines or corporal punishments, i.e. the arbitration courts could only decide disputes not involving śāhasa and they had no power to execute their decrees about fines and corporal punishments, but that their decisions had to be filed with the king, who, if he did not disapprove of them, put them into execution. Pitāmahā 376 appears to mention three classes of State courts, while Yāj and Nār. refer only to two (viz. that of the chief justice and that of the king himself): 'a dispute decided in a village may be taken to the city and one examined in the city (court) to the king; a dispute decided by the king whether correctly or incorrectly cannot be reviewed.' It is distinctly

375. याम्बूण्डो विविधवृक्ष विशालचाद्यप्राप्त कस्तनौ। आदिवर्धाकारो राजापतिवालसाये। राज्य देव विविधैं। सम्बदकत्वस्य मिथ्यान्युपायेः। सहसस्मयायाया सुधि। नारायणौ वते 

376. याम्बूण्डो विविधवृक्ष विशालचाद्यप्राप्त कस्तनौ। आदिवर्धाकारो राजापतिवालसाये। राज्य देव विविधैं। नारायणौ वते 

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provided by Br.\textsuperscript{377} (S B. E. vol 33 p. 282 verse 31) that the sabhyas are superior to the \textit{kulas} and the rest, the chief justice is superior to sabhyas and the king is superior to all Pitāmah\textsuperscript{377a} provides that when a litigant is not satisfied with the decision given by a kula tribunal or the others, he can carry the matter by way of appeal to the king. Besides these courts it appears from Kautilya that the village headman (\textit{grāmaka} or \textit{grāmakūta}) exercised certain summary powers such as driving out of the village a thief or an adulterer (III 10) and that he could try some offences (IV. 4, \textit{grāmakūtādāḥyakṣam vā satī brāyit &c.}).

Even in the 20th century in the Bombay Presidency under the Village Police Act (Bombay Act VIII of 1867) the village headman (called Police Patil) has the authority to try and on conviction to punish with confinement for a period not exceeding twenty-four hours any person charged with the commission of petty assault or abuse within the limits of a village and the person convicted has no right of appeal to any court or magistracy against such conviction and only the High Court has the power to entertain a petition for revision (which it hardly ever does). Burgu\textsuperscript{378} quoted in Sm. C II p 18 and other digests says that there are ten tribunals common to all men viz. the village people, the assembly of the citizens of the capital, gana, sreni, men learned in the four vedas (or \textit{vidyās} viz. \textit{ānyāksikī} and the rest), the \textit{vṛgīns}, \textit{kulas}, \textit{kukkas}, judges (appointed by

\textsuperscript{377} Bhṛgu

\textsuperscript{377a} Pitāmah

\textsuperscript{378} Burgu

\textsuperscript{379} Bhṛgu

\textsuperscript{379a} Pitāmah

\textsuperscript{380} Pitāmah
the king) and the king himself. The vargins\(^{379}\) are the groups of various kinds such as ganas, pugas, vratas, srenis and others Kulikas may be the elders of the families of the plaintiff and the defendant. In the Damodarpur plates (E. I. 15 p 130) we come across one Dharmitra who is described as ‘prathamakulika’. The word ‘pañcakula’ was applied to certain high officers in Gujarat and Kathiawad; vide I. A. vol. 11 p. 220 (Abu Ins. of Bhimadeva dated Vikrama year 1265) and Tawney’s translation of the Prabandha-cintamani pp. 18, 84, 129, 149, 190 for ‘pañcakula’. The provisions about the conflict between customs and usages on the one hand and smrī and smrī on the other will be dealt with in detail later on in another section. A few words may be said here about conflicts between smṛtis. In disputes between residents of the same country, the same city or the same hamlet of cowherds or of the same capital or village, the decision should be according to their own conventional usages, but in disputes between these and others (who are not residents of those respective places) the decision must be in accordance with the sacred texts\(^{380}\) (Kat. 47 q in S. V p 72, Par. M. III. p. 41). Another rule is that when there is an apparent conflict between two smṛtis, reasoning is to decide in ordinary life which should be followed or reasoning based on the actions of the aged and the experienced is to decide what text to follow (Yāj. II 21) and the business of the interpreter consists in holding that one of the smṛtis contains a general rule and the other an exception or that the two apply to different sets of circumstances (visaya-vyavastha) or that an option may be intended. Voluminous glosses have been written on this one text of Yāj. II. 21 right from Viṣvarūpa in the 9th century downwards. Another rule is that in the administration of justice dharmaśastra rules have superior force to those of arthaśastra. This has been already referred to above (p 9) Bhṛgu further provides that foresters may get their disputes settled by foresters, members of caravans by other members, soldiers by (a tribunal of) soldiers and those who stay in a village as well as in a forest may get their disputes settled either by villagers or by foresters by mutual

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\(^{379}\) गणा: पार्षडयुगाध माताध श्रेण्यतथा । समुदराध दै चालने बन्धवाच्यते दृष्टिमित् । कतं । q by स्पृहित । II p. 18, स. वि p. 67, भााभारोपये दै चालने बन्धवाच्य दृष्टिमित् । वेया चालने बन्धवाच्यते दृष्टिमित् । वर्णविभागम् q by व्य सि. p. 13.

\(^{380}\) वैषयिकनन्तिकं विश्रामयो वासिनां । तेजा समस्यकान्तात्माः स्वामित । सहा: कतं । q by परा मा. III p. 41, स वि p. 72 स्पृहित । II p 26 appears to a स्पृहित तो विषयां
agreement and that the five tribunals for foresters and others are *kulaścas* (high officers or heads of families), *śārthas* (members of caravans), headmen, villagers, citizens The texts further provide that in certain cases the court was to call in aid outsiders to help in deciding disputes. Vyāsa says: 'In the case of disputes among traders, artisans, husbandmen and actors it is impossible for others to give a (correct) decision, hence such matters should be got decided by experts in those various matters'. Br. states that in disputes among husbandmen, craftsmen (carpenters and the like), artisans (like painters), money-lenders, guilds, dancers, sectarians (like Pāśupatas) and criminal tribes the decision should be made with the help of those who understand the conventions made by them and their usages. In disputes about the boundaries of villages and about fields in a village, four, eight or ten neighbours were to settle the boundaries (vide Manu VIII. 258, Kaut. III. 9, Yāj. II. 150–152). Kaut. 19 and Br. (q in V P. p. 23) say that disputes between those who have performed austerities or between those who are adepts in witchcraft and Yoga should not be decided by the king (unaided), but with the help of those learned in the three Vedas, as otherwise they may feel offended. These quotations show that certain people could claim to be tried by their peers or at least by a jury. This jury system was resorted to for settling complicated questions of fact. It is a very ancient system, being mentioned even by Gautama XI. 21–22 'the king, having received help from the heads of husbandmen, merchants, cow-herds, money-lenders and artisans as regards disputes in their own groups, should finally decide what is just'.

It has already been stated above that the king is to decide according to the smṛtis He has also to take into consideration the duties and usages of the several varnas and the eighteen low

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381 वणिक्रविलिपिमानुतिदु किरिक्ले-पेप्पीविदिदु • अश्वशय निर्यय नागरिक-सुपीयक कार्यस • वास सार्वाय सर्व सार्वाय I मार्ग मा III p 42, वा म p 23, निवाला कार्यस: सिनिविदिपक्षियादिगिनता: • सिनिविदिना नस्तकार • बुझे मेंन परयतीय प्रकार • बुझेत, सार्वाय I म प 23 यह IS दुन IV 5 18.

382. सर्वीनामा हू कार्यसे वैद्योऽ तत्कार्यसे • मातामयोगिन्द्र नैय ह सह कोऽ- कार्यसे • करार्यसे 19 तowards end, बुझे I म प 23, वा मार प 281 ascribes it to both बुझे and कार्यसे.

383. नवर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुखर्यामुक्ति-कार्यसे नं नं 22.
castes \(^{384}\) (acc. to Manu VIII. 41 and Harita). The eighteen low castes said to be outside the pale of the four varnas and āśramas are enumerated by Pitāmaha, viz. washerman, shoemaker, nāta (dancer caste), bamboo-worker, fisherman, mleccha, bhilla, śābira, mātanga and nine others (the names of which are not given here as the text is corrupt).

The foregoing gradations of tribunals did not all exist at all times in ancient and medieval India. One thing is, however, quite clear. There was always a court of the Chief Justice appointed by the ruling power and final appeal lay to the ruler himself. But as regards inferior tribunals usage varied. For example, it appears from a decision of 1742 in which a ruling of king Shivaji about a Kulkarni vatan is set out that in Shivaji's time disputes could be taken before three different but inferior tribunals, viz. the got (i.e. the assembly of castemen) which is somewhat like the kula tribunal of the smrtis, or before arbitrators hailing from a place other than where the dispute took place or before the officers, balutedars and chief men of several villages round about.\(^{385}\)

Manu (VIII 23) prescribes that the king fully dressed and with an undisturbed mind, after taking his seat in the Hall of Justice; should perform obeisance to the gods, the guardians of the (eight) quarters (Indra and others, as specified in Manu VII 4) and should then commence the work of looking into the legal business. The transaction of legal business has four stages (from the king's or judge's point of view) viz. first receiving information from a person, then finding out under what title of law (vyavahārapada) the information falls, then consideration of the pleadings of the parties and the evidence.

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\(^{384}\) शास्त्रां वर्णपरार्धां भूमिः मयां च पुरुषः \(\ldots\) पञ्चायतरक्षणां च शास्त्रां वस्त्रसनातः

\(^{385}\) Vide 'Vatanpatream, Nivādapatream' edited by Messrs Mavji an Parasnis (1909 A D) in Marathi p 12 at p 18 'सब्रह्मन्यवेद्यांतः सकारां मनास आयूर देवा बादियमनां ज्ञैतेव कृतं तथैव गोतास शाक्ती असाधं तर गोतास पावृत्ति अगर \(\vdots\) नवे मातृसुद्धरे मातृसुद्धरे अगर हम्मानां मातृसुद्धरे अगर हम्मानां मातृसुद्धरे \(\vdots\) यथा कर्मोऽके संसारे मातृसुद्धरे अगर हम्मानां मातृसुद्धरे अगर हम्मानां मातृसुद्धरे \(\vdots\) कृतं तथैव गोतास शाक्ती असाधं तर गोतास पावृत्ति अगर हम्मानां मातृसुद्धरे अगर हम्मानां मातृसुद्धरे \(\vdots\) यथा कर्मोऽके संसारे मातृसुद्धरे अगर हम्मानां मातृसुद्धरे अगर हम्मानां मातृसुद्धरे \(\vdots\)
led by them and lastly the decision. When a litigant comes before the court at a proper time (i.e. when the court is sitting) and makes his bow, he (the king or judge) should address him as follows:—"What is your business? What is the injury done to you? Don't be afraid, speak out, man! By whom, when, where and why (was the injury caused)? When thus asked whatever he replies should be considered by (the judge) with the sahityas and brāhmaṇas and if the matter be legally entreatable he (the judge) should deliver the seal (sealed order) to the plaintiff or order the bailiff to summon (the defendant)". These observations are made by Kāt (86-88) Whatever a man, being excited by one of the emotions of love (or anger or greed), says before the court, should be first written down on a board or the like by the scribe (Nār. 388 II 18).

Very elaborate rules are laid down about the summoning of the defendant or accused by Nār. (I 52-54), Br, Kāt (96-100), Śukra (IV. 5-102-106) and others. A few of the rules are set out below. The first person to be summoned is the one against whom a complaint based on suspicion or truth is made by the plaintiff or complainant. But other persons may be called as defendants either when the person proceeded against by the plaintiff puts forward another as liable to plaintiff's claim or makes another liable along with himself or when another person is accepted by the plaintiff (on behalf of another who is a minor &c.) or (acc. to the Madanaratna) another person himself comes forward (as defendant). The king should not require the personal appearance of the following persons: the diseased, minors, very old (beyond 70), one in a calamity, one engaged in some

386. अनन्त: मध्ये कारों ध्वजारप्रसू तत्त:। द्विकिष्ठा द्विजपैथ इस्मान सहिष्णु । विधानः नारायण (I 36) For explanation, vide स्तुतिचर II. p 29, स वि. p 75.

387. कोर कार्यकिर्णे एवेकेनां सतर्क सिद्धम्। किं कार्यवर्तज्ज हे पीडा हा भैरवी । भैरवेनुमति: कृपाकारेऽवधेऽवधेऽ अनागतम्। एव पुरूष: पद्मुः पावणोऽनुप्रवेधाः। लोकः सद । विपुः कार्य न्यायं चेतुऽवधेऽनाभधिर्म्। परम । पुरुष: च विश्वेषनिर्धार्यं ना समाधिरूपम्। कार्यवर्तज्ज हे भेदाण्व श्रीमती: p 31, 52 The words किं कार्यवर्तमाना तीव्रता मानिता कार्यवर्तज्ज हे कार्यवर्तज्ज हे भेदाण्व (विज्ञाननु)

388. एकीधारिणा यथेके तोरीति कार्यवर्तज्ज हे तदायेक है थियेत्ता है धर्मी: कार्यवर्तज्ज हे नारायण (II 18)

389. अधिकारिकाशिल्पयुज्य निसर्गाधिकारयुज्य इति। इतिहासभित्रुस्त्र विद्वेशीकारयुज्य: स। समापत्तिज्ञा योग्य: च धार्मिकात्मकायो जतितायेक है यथाएव। महिमयुज्य स विद्वेशी। महिमयुज्य च: एवपि कार्य श्रोतायेक मानिता quoted by अध्यायकात p. 639 (reads महिमयुज्य स एवपि) स्तुतिचर II. p. 32, स वि. p 80.
Summoning the defendant

religious rite, one who would suffer irreparable loss by coming, one in misfortune (such as the death or disappearance of a dear relative), one engaged in the king’s business or in a (religious) festival, one intoxicated, a lunatic, one distressed, a servant, a woman who is young and whose family is in straitened circumstances or who is of good family or who is recently delivered, a maiden who is of a higher caste than that of the complainant. Nar. (1. 53) prescribes that cowherds when it is the season for taking cows for grazing, agriculturists in the sowing season, artisans actually engaged in work and soldiers engaged in war should not be summoned to appear in person, while so engaged. In these cases some one on their behalf should be summoned as a representative. But it is provided that even these persons may be summoned with proper safeguards in important cases or grave charges, such as the killing of human beings, theft, rape, eating forbidden food, counterfeiting coins, high treason &c. But women who by their earnings support their families, unchaste women, prostitutes, women without family and women excommunicated for grave sins may be summoned to appear personally. A person who is summoned and is able to appear but does not appear in person was to be fined according to the value or importance of the subject matter of dispute e. g. in slight causes fifty (copper) panas, two hundred at least in the cases of middling value and 500 panas at least in heavy causes (vide Kat. 100–101 quoted by Sm. C. II p 34, Aparārka p. 607.) After taking the fine and waiting for 30 days or a month and a half the king may give a judgment in favour of the plaintiff, due to defendant’s default. But if the defendant does come after that time, the suit may be restored and proceeded with. But when there is an invasion by an enemy or a famine or an epidemic or disease the king should not impose a fine, but send a second summons. In the case of those who are exempted from personal appearance (as above) their relatives (son, father &c.) or some other person


391. Vide Mit. on Yaj. II. 5 (for quotations about most of these rules), Aparārka p. 605, Par. M. III p 51, Vyavahāra-mayukha pp 9–10.

392 ‘वन्द्य यतािवलयित्वं वियङ्गघर वियङ्गघर (वियङ्गघर वियङ्गघर?)
’ यद्यर्था हलिनितिच्यायतं मुद्यात। ‘द्ये कुते पद्य महिनितायण्याति तु नदलि भवङ्गघरं बलिति’ श्य. चित. p. 29
appointed by them (such as a pupil, servant &c.) or one who can be recognised as their agent may be allowed to appear. But no representative was allowed in serious charges cited above (vide Kat 93–95 q by Aparârka p. 639, Sm C. II p 34). If a father, brother, a friend, or a relative appears before the court for the real litigant, the law-suit may be proceeded with. Whoever carries on anything through another by appointing him to that task should be understood to have done it himself and the business transacted by such a representative or agent cannot be annulled. If a person who is not a brother nor father nor son appointed to represent another prosecutes a law-suit for another, he is liable to be fined. As the king was supposed to be the guardian of a minor's wealth, it appears from this that a king-could have appointed a guardian for the suit when a minor was concerned. The above provisions show that maintenance and champerty were not encouraged by ancient Hindu lawyers.

An interesting question arises whether lawyers as an institution existed in ancient India. The answer must be that so far as the smritis are concerned, there is nothing to show that any class of persons whose profession was the same as that of modern counsel, solicitors or legal practitioners and who were regulated by the State existed. This does not preclude the idea that persons well-versed in the law of the smritis and the procedure of the courts were appointed (myukta) to represent a party and place his case before the court. The procedure prescribed by Nâr, Br and Kat reaches a very high level of technicalities and skilled help must often have been required in litigation. In the com. of Asahasya as edited by Kââyânabatta on Nâr. (rnâdâna 4) there is an instructive story from which it appears that persons who had studied the smritis helped parties in return for a monetary consideration to raise contentions.

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392a. श्रुतिविद्यालोकमलासंदर्भावः व वानायाः। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by विशालकृत्य p 89, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ।

393 श्रुतिः वानायाः श्रुतिविद्यालोकमलासंदर्भावः व वानायाः। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by विशालकृत्य p 89, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ। पूर्ववचनस्वतः कुपिनिः शङ्कस्तथा q by शङ्कस्तथा II p 33, औपनदनेदित्य महादेशसिंहसिंहि भागेननाथ।
before the court. But there also the helper comes forward saying that he is a very old friend of the family and has been appointed by the party to represent him. So he corresponded to what is called a recognized agent in the Indian Civil Pro-
Code, Order III r 2 (Act V of 1908). In Sukra IV. 5. 114–117 some important rules are given: 394 the person who is appointed to represent a party should get as his wages 1/16, 1/20, 1/40, 1/80 or 1/160 part of the amount in dispute, that the wages become less and less as the claim in dispute becomes higher or if several persons employ one representative; one who knows dharmasastra and the procedure of law-suite should be appointed as representative and not any one who is deficient in these; if the representative takes wages without knowing these he should be punished by the king. A representative is to be appointed by the party and not by the king at his will; if the representative allows the matter entrusted to him to fail owing to his greed he is liable to be fined 395. In the 'Questions of Milinda' (S. B.

394. नियोजित (लिये) तत्स्थाय जूति विनाहात बोधसागरकृत्। विनाहात्तहि सत्त्वानि सत्त्वानि तस्तवचा वस्तृविकार। पथा स्थापानिकारां जीवा जीवा वृत्तित्य भविष्यत। यदि ब्रह्मनियोजी स्थापितांगत सर पौर्णमित। धर्मस्तूलस्तूल नित्यसर्वोद्धर्यत व हि। अत्यथा जूतिजूति शुद्धूर्व बुध्येष्व बिन्दीपिताय। कार्यां सिद्धिर्नियोजी न सुरुण इव सारः। कोषीतो स्वप्नपर्यंत श्रद्धानिर्भरित। श्रुत्रं IV. 5. 114–117. The words जूति शुद्धूर्व जूति जूति present a difficulty. Probably there is a compound of जूति with शुद्धूर्व.

395 The story in the com. on Nár. is as follows: In Pataliputra (modern Pāṇa) a brāhmaṇa named Srūdhara acquired with great trouble a fortune and lent to a trader named Devadhara ten thousand drammas at the rate of 2 per cent per month. When one month passed Devadhara paid as interest 200 drammas. When the 2nd month was running, Devadhara died of high fever, his son died of cholera and only the great-grandson of Devadhara, by name Mahādhara, remained. He was a very young man addicted to gambling and other vices. His property was taken under their protection by his maternal uncles. They were advised by a brāhmaṇa who had a smattering of smṛiti lore and was called Śmaṭadānādhara 'Don't pay even a rupee to the creditor Śrūdhara. I shall save you even in Court by citing appropriate texts.' The uncles replied 'If you save us, we shall give you a thousand drammas as a reward.' When the 2nd month passed (from the date of borrowing), Śrūdhara called upon the uncles to pay 200 drammas as interest for the 2nd month. They replied 'You cannot claim even the principal (from the great-grandson of the original borrower), much less interest.' Śmaṭadānādhara, the legal adviser of the uncles, said 'Narada declares (मद्धा 4) 'grandsons should pay the debts of the grandfather; that (debt) ceases from the fourth'. On hearing this Śrūdhara was stunned, but gathering his wits filed a suit in the court and had summonses issued

(Continued on the next page)
E vol 36 p. 238) there is a passage about certain bhikkhus in the 'city of Righteousness' (dhammanaga) who are styled 'dhammapanikas' (dealers in dharma) and are described as follows: '(Bhikkhus), who in the spirit and the letter, in its arguments and explanations, its reasons and examples teach and repeat, utter forth and recapitulate the ninefold word of the Buddha; such bhikkhus are called, O king, lawyers in the blessed one’s city of Righteousness’ and on p 239 there are ‘dhammasettthino’ (bankers of dharma), which word reminds us of the sresthin in the Mrochakataka. The dhammapanikas probably correspond to such lawyers as Smārtadurdhara mentioned above. The rules of Šukra make a near approach to the modern institution of the Bar and the fees prescribed by Šukra are similar to those allowed by the Bombay Regulation II of 1827 and by Schedule III to the Bombay Pleaders’ Act (Bombay Act XVII of 1920). The first legislative enactment in India to deal with lawyers for representing parties passed by the British Government was the Bengal Regulation VII of 1793 which defined the privileges, the fees (five per cent up to 1000 and then on a sliding scale) and responsibilities of vakeels (which word originally means ‘agent’).

The plaintiff may put under restraint till the approach of the summoner (the bailiff) by the king’s order the defendant, who does not stand up to meet the claim (i.e., is about to abscond or may abscond) that is to be investigated (or when the plaintiff spoke to him about the claim before coming to court) and

(Continued from the last page)

to Mahidhara, great-grandson of Devadhara, and his uncles Suresh were taken from both sides. The uncles were asked (by the court) ‘why don’t you pay the interest to Šridhara?’ They appointed as their representative Smārtadurdhara, who said that he and his ancestors were friends of the family of Mahidhara and so he addressed the court ‘I rely on Nārada’s words (quoted above), and Mahidhara being the fourth from Devadhara (including the latter) is not liable to pay’. Bhatta Smārtasekha laughed at this and said ‘Smārtadurdhara, you are not deeply learned in the sacred texts nor have you studied glosses thereon. The whole of the debt of 10000 drammases lent by Šridhara is still due from Mahidhara, as he is the great-grandson of the borrower, as three male descendants of the borrower are liable to pay the ancestor’s debt and as Nārada means only this that the son of the great-grandson (who is the fourth from the borrower, excluding the latter from computation) is not liable to pay the debt of his great-great-grandfather’ and the learned speaker charged him with having been promised a gratification. Smārtadurdhara and his proteges lost the case.
who disregards the words of the claimant. This is called äsedha which is explained by the Mit. on Yaj. II. 5 as restraint under the king's order. It is of four kinds viz. restraint as to (sthāna) place (e.g. you are not to go elsewhere from your house or a temple), as to time (e.g. you must present yourself on the 5th of a certain month), restraint from going on (pi. vāsa) a journey (till the suit is decided) and restraint from doing certain actions (e.g. you are not to sell certain property or to plough a certain field till the disposal of the suit). The rules about äsedha are laid down by Nār. (I. 47-54), Br. (q. by V. P. p. 42, Sm. C II. pp. 30-31), Kāt. 103-110 (all quoted by V. P. pp 41-42, Sm. C. II. pp. 30-31) Nār. (I. 54) states that those persons whose personal appearance is dispensed with as stated above are not to be subjected to äsedha. Nārada provides that he who disregards the prohibitory order (äsedha) of the court should be punished and that he who obtains a restraint order against a person that should not have been thus proceeded against should also be punished. Acc to Kāt. that man who restrains the defendant so as to prevent him from exercising his limbs or from talking or breathing freely should be punished and not the defendant if he breaks such restraint. A defendant would not be liable to be fined, if he disregards a restraint order which ties him down to a river ford, or to a forest, to a bad place (infested by thieves and tigers) or at the time of an invasion (Nār I 49) There is a provision which looks like one for the appointment of a Receiver in modern times. Kāt. (120) says 'A king should not allow a litigant to proceed if the litigant retains the property or money which he has (been shown to have) seized: it should be delivered over to the opposing litigant (if he be trustworthy)' or it may be kept with a third person (as receiver for the successful party). When the defendant comes on being summoned, he and the plaintiff are both to be placed before the judges (Pitāmahā q. in Sm. C II p 34) Then a surety is to be taken from both who would be capable of carrying

396. It should be noted that these provisions about äsedha are analogous to those about attachment or arrest before judgment (section 94 and Order 38 of the Indian Civil Pro Code of 1908) and temporary injunction (Order 39 of the same).

397. यथा तदः यथा तत्समस्य शास्त्रार्थम् मापि वसयम् तत। सत्यवत् q. 18 सुध्दितं, II. 5 35, सिद्धाम्बुद्धर्ष्ट प. 94, which explains अधिगम सत्यविषसविनात्तीसनाविक्षमानसिद्धिर्मिनिष्ठा या शास्त्रार्थविषसविनात्तीसनाविक्षमानसिद्धिर्मिनिष्ठा न उत्तमम् । सर्वसंग्रहसमृद्धं विकार्यार्मविनित्तं सत्यवत्त्व स यथिगमः। तत्समस्य स्वाक्षरत् सुध्दितं सत्यवत्त्व सप्तं स्यायांसिद्धिर्मिनिष्ठं।
out the decree made by the court i. e. who would be able to pay the amount of fine to the king if the defendant denied the plaintiff's claim or who would be able to pay double the amount of the claim if the plaintiff's claim be found to be false (Yāj. II 10-11.) If any one of the parties cannot offer a surety, then he has to be kept in the custody of the court's bailiff (sādhyapāla) and has to pay the daily wages of the bailiff at the end of every 398 day (Kat 117 q. by Mit on Yāj II 10) The following persons could not be accepted as sureties (Kat. 114-116 q. by Mit on Yāj II 57) 'the master (in the case of a party being a servant), an enemy, one authorised by the master, one arrested, one fined, one accused of grave sins or offences, one who is a co-sharer in family property, a friend, one who is a perpetual student, one who is appointed to do the king's business, ascetics, one who would not be able to pay the amount decreed and the fine to the king, one whose father is living, one who incites the party for whom surety is demanded, one whose antecedents are unknown' When a person (of any caste) is kept guarded for want of a surety he is not to be prevented from doing necessary and obligatory acts (bath, sandhyā worship &c) and if he runs away from the guard he should be fined eight panas (Kat 119 q in Par M III 58).

When the defendant comes before the court, the information at first given by the plaintiff is to be written down accurately in his presence together with the year, month, fortnight, day, names (of parties), caste &c (Yāj. II 6.) When the aggrieved party first comes to the court, all that is taken down is the matter in dispute (i.e. the draft of the plaint), when the defendant comes, the plaint is written down with all details (including the grievance as stated in the beginning). The plaint is called by various names in Sanskrit viz. pakṣa, bhāṣā, prākyā (Mit on Yāj II 6) Sometimes the word 'pārvapakṣa' is used for pakṣa (as in Kat 131, Nar II.1) Vādin and pravādān generally mean the plaintiff and the defendant, though vādin sometimes means 'a litigant' (either the plaintiff or defendant) 'Aityān' (one who seeks the assistance of the court) and abhyaktrā (attacker) are synonyms of vādin, and prākyārāṇ and abhyakta (attacked) are synonyms of pravādān. Kat.

398. अथ वेशितज्ञानिति कार्ययोग्यता बालिका । श लक्ष्यो विकार्यानां वाचायास्व ग्रन्थभव । कार्य प्राप्त भवे । कार्य, quoted by Śiṅga. on Pa. II. 10 and V. P. p. 44
399 आपूर्वनामे कार्ययुक्तेष्विन्दित्व वन्यविनोदतः समागमादिस्वस्विभिषित तिर्यवशी इति विलोकः । भाषा मद्वज्जा यत् इति नाती नारेतरस । नित्या on Pa. II. 6.
Concerning plaints

(130-131) says that the judge should have the plaint written down on a board (or on the ground) with a piece of chalk as narrated naturally by the claimant and then on a leaf (palm leaf or bark or paper) when it is corrected (after the defendant appears) and that the plaintiff may delete some matters from the original (draft of) plaint and may fill in gaps and that such amendments may be made in the draft till the plaint is finally settled. It appears from the Vyavahararatattva (p. 205) that the pleadings (the plaint and the reply) could be written down in Sanskrit or in the vernacular of the parties if they were ignorant. The Mrchakatika (Act IX) shows how the presiding judge asks the áresthara and kāyastha to write down the words 'not by me' as the complaint of the Sākara when the latter averred that Vasantasena was killed by Cārūdatta and not by himself. The plaint could be amended till the filing of the reply (Nār II 7). Elaborate rules are laid down about the contents of the plaint by many writers from Kautilya (III 1) downwards. Kautilya states that in the plaint should be entered the year, season, month, fortnight, day, the documents (to be relied upon), the court (in which the plaint is lodged), the (amount of) debt (or other money due) and the country, village, caste, family, names and occupations of the plaintiff and defendant together with the relationship in which they stood to each other. Kāt (127-128 q by Mit on Yāj II 6 and Aparārka p. 608) requires that in suits about unmovable property, ten details should be recorded in the plaint viz the country, the place (town or village in which the property is situated), situation (boundaries or the figure such as a square &c.), the caste (of both parties), names,
the dwelling place (of the parties), the measure (so many murtānas &c.), the name of the field, (names of) the father, grandfather and great-grandfather, mention of the former kings Kat. 124–126, Br (q in Sm C. p. 36 and V M p. 294) give further details, which are passed over for want of space. All the details enumerated above need not occur in every plaint, but the necessary ones must be stated according to the facts of each case. 404

These rules about the contents of plaints are very similar to those in the Indian Civil Pro. Code, Order VII rules 1–5.

In modern India no suit or appeal can be filed unless the plaintiff or appellant pays substantial court-fees (Rs 7½ per cent upto Rs 1000 and 5 per cent for higher claims up to 5000 and so on at reduced rates as the claim rises). It is interesting to see how the litigants in ancient India fared in this respect. It appears that in disputes of a criminal nature no court fees had to be paid in ancient India. The person found guilty had to pay to the king the fine declared in the Smṛtis for offences or awarded by the Court. As regards civil disputes also nothing had to be paid at the inception of the suit. Certain rules are prescribed by Kant (III 1), Yaj, Visnuḍharmasūtra, Nār and others about payments to the king after the suit is decided, which payments may be regarded as in the nature of court fees. Yaj II 42 and Visnuḍharmasūtra VI. 20–21 state that in the case of suits for the recovery of debts the debtor who admitted that he was a debtor (but did not pay the creditor) should be made to pay to the king 10 per cent on the amount decreed and the successful creditor should pay five per cent out of the amount decreed (as birth, compensation or court fee) 405. When the debtor denies the fact of debt altogether and the creditor succeeds in establishing it, the debtor had to pay the amount decreed to the creditor and an equal amount to the king as fine, but if the plaintiff turns out to be a false claimant (i.e., the relationship and the amount of the debt are not proved) he had to pay to the king as fine twice as much as the amount claimed by him (Yāj II 11). Nār also (IV 132) says 406 that a debtor, who is able to repay a debt but does not

404. देवा मध्ये धर्मी सारकायांनी कामाक्षीपर्यंत सर्दीपालीन यांच्या मुक्तीने तथा त्यांनी लक्षापालन न सर्दीपाल नरोजनाभापत अवरोधां प्र 608
405 उचितमार्गाये दानांनी भानाभानीभिन्नता, राजी धनसम्पत्तिभिन्नता व यथा द्वारादिवससम्बन्धित विवेकसम्बन्धवाचकता प्र 20–21
406. अभिनव: समध्यम सर्वाश्रय स्वाभाविक मयसाधता भवान दुर्विशिष्ठ राज्य धर्मस्थित प्रबल महत्त्व IV 132. The επ. λογ. Pr 182 reads शुष्कस्वास्त औ भिक्षुक (1. c. 20 per cent)
do so through wickedness or malice, should be made to pay the debt after recovering five per cent from the debtor. The Sm. C. II. p. 121 says that this applies to a case where the debtor admits his liability to the plaintiff. Manu VIII. 139 gives milder rules: 'if a debtor admits before the Court that he is a debtor, then he has to pay a fine equal to five per cent on the amount decreed, but if he denied the fact of debt altogether, then he has to pay as fine ten per cent'. Manu VIII. 59 which prescribes a fine twice of that amount which the debtor falsely denies or which the creditor falsely claims contains a somewhat different rule (which Medhatithi says applies where parties are guilty of downright fraud, while VIII. 139 applies where there is negligence or loss of memory &c.). In suits other than for debts such fines are also prescribed e.g. in Yaj. II. 26 for one who misappropriates a pledge, II. 33, II. 188 (for breach of the rules of guilds and other groups), Yaj. II. 171 (where a person claiming to be the owner of lost goods and failing to prove his ownership of them was fined panca-bandha i.e. a fifth part of the price of the goods). Kant prescribes 407 that when a party is guilty of contradictory pleadings, or does not cite witnesses though saying he has witnesses and is defeated for these and similar reasons he has to pay a fine of 20 per cent of the claim and 10 per cent only if he relied on his own deposition (and called no witnesses) and further the defeated party has to pay the costs viz. the wages of the bailiff and of the subsistence allowance of witnesses. Therefore it may be said that in ancient times Indian litigants had an easy time, while in modern times litigation is often ruinous, what with the heavy court fees to be paid in several courts, the fees of legal practitioners and the expenses of witnesses and the delay of years 408. The remark of Dr. Hart (in 'Way to justice' p. 17) is as applicable to modern India as to England 'the plain truth is that the justice of the courts is unattainable by some citizens through want of the necessary financial resources; while in the case

407. परीक्षणं: प्रभावं: स्वतंत्रतादिवृज्ञो दुःख्य:। उपयुक्तिरिद्ध:। वत्त-भक्तमन्येविविधस्य। तदुत्तम नियमशीर्ष द्वधातु। अस्वाभाव III. 1.

408 In modern times a plaint or memorandum of appeal is to be rejected if not properly stamped Vide Order VII. r. 11 of the Indian Civil Pro Code. The Peshva’s Government appears to have taken one-fourth or one-fifth from the party whose claim for partition or for recovery of debt succeeded Vide ‘Peshwa’s Diaries’ ed by Ran Bahadur Wad, vol 2 pp 132, 146, 163
of many others it is not worth having at the cost which it involves.'

In one of his most famous soliloquies Shakespeare (in Hamlet III. 1 'Oppressor's wrong, the proud man's contumely; the pangs of despised love, the law's delays') enumerates law's delays among the principal evils of human life. In modern India as in England before 1873 delay in the decision of causes is a crying evil. In the rough and ready methods of administering justice in ancient India care seems to have been bestowed on disposing of cases as quickly as possible. The story of king Nrga who caused delay has already been referred to (p 249). Kaut (III.1) states that if the plaintiff, after the defendant files his answer, does not on the same day begin to support his case (by evidence) he would be declared to be defeated, since the plaintiff comes to court after determining the strength of his case, but the defendant does not do so (he is dragged to the court); that the defendant may be allowed an adjournment of three or seven days for his defence; if he is not ready with his defence within that time he may be punished with a fine ranging from 3 to 12 panas; if he does not answer even after three fortnights he shall be punished with fine for parokta (viz. pañcabantha or đātabantha as stated above in note 407) and the plaintiff's claim would be recovered from the property of the defendant. A similar rule is laid down in Manu VIII. 58. Yaj. II. 12 prescribes that disputes relating to sāhasa (killing by poison or weapon), theft, abuse, assault, cows, charges of grave sins and women (about the chastity of all women and about ownership in the case of female slaves), the defendant has to make his defence at once, and that in other cases time may be granted at the discretion of the court. Nār. I. 45 is to the same effect. Nār. I. 44 holds that adjournments may be granted in suits about debts and the like for finding out the truth as such disputes are complicated and as memory is weak. Pitāmaha (q. in Sm. C. II. p. 42) says that adjournments may be granted in disputes about deposits, sealed deposits, gifts, partnerships, transgression of conventions and partition of heritage. Gautama XIII. 28 speaks in general terms of an adjournment for one year, when the defendant does not remember the transaction, but prescribes immediate trial in

disputes about kine, women and children or when the matter is urgent i.e. where loss or abandonment of the thing will be the result of delay (Gaut. XIII. 29-30). Brhaspati allows time even to the plaintiff if he is not able to put forward his case owing to his immaturity or lack of boldness. Kat. (145-158 quoted by Aparârka p. 619, Sm. C II. p 42, Par. M; III. pp. 69-72) contains elaborate rules about adjournments. He says that according to the importance or otherwise of the dispute, one, three, five, or seven days may be allowed to the defendant to make his defence in disputes about debts, according as the debt was contracted three months ago or 6, 12, 20 or 30 years ago; that even more than a year may be allowed if the defendant is an idiot or lunatic or is suffering from disease or if the subject of dispute or the witnesses are in a foreign country; that more adjournments than one may be granted in such cases; that according to Brhaspati in disputes about immoveable property also no adjournments should be granted; that if the act of God (daiva) or the king prevents the defendant from making his defence he should not be declared defeated, but time should be granted to him to prove this. It is clear that with the advance of time adjournments became longer and more frequent in Kat. compared with the rigid rules of Kaut. Kat. and Śukra (IV. 5. 167, 209) contain the last word on this point. According to them delay in deciding causes is tantamount to denial of justice (dharmavyapath, lit. death of Justice).

The sequence of stages in a law-suit is as follows: first the plaintiff makes his averments, then the defendant makes his reply; when both have finished, the members of the court speak (or deliberate among themselves) and after them (speaks) the judge (Kat. 121 q by Aparârka p. 611, Par. M. III. p. 58). The four stages (pādas) of a law-suit, acc. to Yāj. II. 6-8, and

410 कर्णोपनिधित्वादिकृतवाक्यार्थाः। कस्यं बुद्धिभे च कालः कार्येऽपि प्रमापि। दितास्य। q. in स्वतितिः II. p. 42: अभिशोभाद्याम्बेन्द्रादृश्यि बहूँ नीतिस्यथे स्वः। सर्व चालः भुवैतर वाक्यपदार्थाय वस्तिः। शुद्धस्वत। q. in स्वतितिः II. p 40, अपरार्थः। p. 611.

411. व बालहरणं कार्यं रजा साधनमवङ्गः। सबान्तं दुःखं भावमितरः परमेषवापिः। वर्षिः। दुर्लक्षे युवयोऽत्यात् तु वालं साधनमवङ्गः। सर्वं च य तत्ततैं पैदामान्यं सन्ति। भ्रूक IV. 5 167 and 209. The first is almost the same as Kat. 339 (q. in स्वतितिः II. p. 92, व. स. p. 306, स. क. p. 148, which read साधनमवङ्गे and भगवापिः).
Br are named 112 *hūṣāyāpāda* (the plaint), *uttara-yāpāda* (the reply), *kriyāyāpāda* (the adducing of evidence), *sādhyāsuddha* 113 or *aruna* (the decision); while Kāt 31 states them as *pūrvapaksa, uttara, pratyākalita* and *kriyā Pratyākalita* means 'discussion or consideration among the *sādhyas* about the burden of proof' (vide p 260 n 337) If several persons come simultaneously with complaints or plaints, then the order of taking up the cases is regulated by the *rama* of the plaintiffs i.e. the suit of a brāhmaṇa is first taken up (Manu VIII 24) Kaut I 19 states 114 that the causes of temples (or idols), ascetics, heretics, brāhmaṇas learned in the Vedas, about cattle and sacred places, of minors, of the aged, of those afflicted with disease or misfortunes, of the helpless and of women are to be looked into in the order enumerated or according to the importance of the causes or their urgency. Kāt (132 q in Sm C II p 35, Par M III p. 59) says that preference should be given to that litigant whose injury is greater or whose cause is more important than those of the rest. Kaut III 20 went 415 so far as to say that judges should look into the causes of idols (or temples), brāhmaṇas, persons performing austerities, women, minors, the old, the diseased, the helpless, even if they did not come forward to complain nor should judges put forward the excuses of time (i.e. the long delay in taking cognisance of their causes), place, or (long) enjoyment (of their opponents).

Lengthy quotations and illustrations are cited in the commentaries and digests about the requirements of a good plaint. They are all passed over. They well illustrate the *penchant* of ancient Indian writers for divisions, sub-divisions, and subtle distinctions.

Kāt. (136 quoted by Aparārka p. 609) specifies several reasons which make a plaint unacceptable viz one that lack

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**412.** जूनियसः स्त्रीत पालों हितायतुल्लासरः स्यायवादवादूता निर्गात

**413.** *ततं क तिर्द्विशास्य सत्यमामात्मिक्षिपक्यप्रपालनयानार्थालकपेनेन

**414.** *सत्यादशप्रमाणसः सत्यात्मिक्षिपक्यप्रपालनयानार्थालकपेनेन

**415.** तेह्यात्त्राचार्यानीलिपित ज्ञानयानार्थालकपेनेन
the mention of the time and place (of the cause of action), that omits the statement of the material (drusya, which is the subject of dispute) or the amount thereof and that is wanting in (stating) the extent of the relief claimed, that is opposed (to the interests or usages) of the country, that is prohibited by the king’s order, that mixes up several vyavahārapadas.⁴¹⁶ Certain plaints are declared to be vitiates (paksāabhāsā)⁴¹⁷ and not entertainable viz. a plaint that contains an unknown (or imaginary) grievance, that discloses no injury, that contains letters or words making no coherent sense, that states no cause of action, that is incapable of proof or is self-contradictory (Kāṭ. 140 q. by Mit on Yāj. II 6, Par. M III. 61) Nār. II. 8 also points out the faults (dosas) of a plaint and explains them (II. 9–14) Bṛhaspati states that there is to be no law-suit between teacher and pupil, father and son, husband and wife, and master and servant. This does not mean that law-suits between these pairs are altogether prohibited but that suits between them are undesirable, that the king or judges should persuade them to desist from proceeding in Court, that if they persist the court has to decide the suits according to the sāstra.⁴¹⁸ Manus (VIII. 299–300) prescribing the same punishment as for a thief in cases where a wife, son, slave, servant or brother is beaten for correction more severely than is allowed in the sāstras by the husband, father, master, or elder brother respectively conveys by implication that a legal proceeding by these is possible The smṛtis did not encourage disputes based on

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⁴¹⁶ If a plaintif states ‘the defendant stole my gold, I deposited a thousand drammas with him which he does not return, he sold a cow to me without being its owner’, there is a jonder of three vyavahārapadas viz śīya, nīkaṇḍa, asvāmavakṣaṇa This is not a bad or altogether unacceptable plaint All that is meant is that the trial of all these cannot be carried on simultaneously, but one after another

⁴¹⁷ The sūtrānta II. 37 ascribes the same verse to भूवास वित्र (last pada being यथा वित्र विचित्र). Vide my notes to Kāṭ. 140 where it is shown how there is a good deal of divergence about the interpretation of this verse

⁴¹⁸ The latter remarks ‘स्वाभाविक व्यवहारिक व्यवहारिक व्यवहारिक व्यवहारिक स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छित्तिः स्वाधेयविकिशिच्छि...
flimsy or trumpery grounds. Brhaspati says that a plaint that is *mrañtha* (i.e., the injury in which is very small or the monetary value involved is negligible) should not be entertained by the king. This is on the principle of *de minimis non curat lex* (the law does not take account of trifles) also embodied in sec. 95 of the Indian Penal Code.

When the plaint has been finally settled, the defendant should be called on to reply in writing to the plaint in the presence of the plaintiff (Yaj II. 7, Nar. II 2). This is called *uttara* (reply) or *pratipaksa* (Nar. II 2). When time may be given to the defendant for putting in his answer has already been stated above.

The answer of the defendant must possess the following characteristics viz. it must completely meet all the points of the plaint, it must not deviate from the truth, must not employ vague words, must not be self-contradictory, it should not be such as to require further explanation (because of containing words in a foreign tongue or unknown or rarely used words or elliptical or badly arranged sentences). A reply is of four kinds, (1) *muthya* (of denial), *sampratipat* or *sathy* (confession or admission), *kaana* or *pratyavasakanda* (of special plea or demurrer), *prananyaya* or *purvanyaya* (of former judgment or res judicata). A reply of denial may take four forms (Nar. II 5) viz. (1) this (what is affirmed in the plaint) is false, I do not know anything about it, I was not present (when the transaction alleged in the plaint is said to have taken place), I was then not born. The first is a direct denial, the others are implied or indirect. Very strict rules of pleading were evolved by the...

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419 सत्यपारत्वं शर्योधितं तद्वित्तिः सुमुहृति  
420. शास्त्रं भास्मको शास्त्रोद्धारमानानकुलभ  
421. भास्कर्यं प्रविष्टिः भाष्यस्ति काल काल

^to^ II p 37, which explains तद्वित्तिः, which contains सत्यपारत्वविधिनि. **^to^** quoted by वित प. 612 (ascribes to नारदः), सुविष्टिः II. p. 42 (ascribes to प्रजापतिः), एक्ष IV. 5 139

^to^ 5 144 एक्षत्राधिकारिकं कार्यात्रेः

(reads शायधिः तिणाय) अध्यायः is probably derived from अध्यायः (meaning 'lower', 'weak' or 'inferior'). The एक्षः नारायण, which appears to be a wrong reading.
Strict rules of pleading

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time of Kāṭ, who provides (144) that if a statement asserted by the plaintiff in the hearing of the defendant is not traversed by the latter or if the latter remains silent when he should have given a reply, it is admitted (by the defendant). When the defendant declares the truth of the claim made in the plaint that is a reply of admission. Where the defendant accepting as correct the matters (or facts) set out by the plaintiff raises a plea, that is a reply of special plea. The same is designed by some as ādakṣayya or ādhārayya (rendering futile) of the plaint. For example, where plaintiff avers that defendant took one hundred rupees and defendant accepts that fact but adds either that he later on returned them or that they were really donated to him, that is a reply of special plea. Where a person though defeated in a (former) proceeding again causes a plaint to be written and is addressed (answered) with the words 'you were formerly defeated', that is a reply of former judgment. That there was a former judgment between the same parties may be proved by citing the judges or arbitrators or by citing other witnesses or by producing the writing itself i.e. the copy of the judgment (Kāṭ. 172). In a reply of admission there are only two stages of vyāvalāma viz. the plaint and the reply; there is no need of proof (so there is no krṣṇapāda) and the plaintiff succeeds as a matter of course (and so there is no necessity of a regular judgment, nṛnayya). Kāṭ. (173-190) states at great length the faults of a reply and also what are not proper replies The Mit (on Yāj. II. 7), Aparārka pp 613-614, Sm. C. II. pp. 43-46 and


423. Aṣṭādhyāyī II. 4. 148. Vide supra on ka. II. 7, vide कालाचार्य 170, q. by मा. मा p. 307 (reads राज्यवाच्यायं: योभुक्तम्), या. या p. 39 (which reads आपि योभुक्तम् as the last गादा).

424 विवधपाल मुख्यप्र: साधितिनिर्णयदेव्या. विवधपाल साधितिनिर्णयदेव्या. कारायण q. by मुख्यप्र II. 4. 43 which explains कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारितम् कुसम्बारि
other digests quote long passages from Kat, Br, Harita, Vyasa and others on faults of uttara and illustrate them at length. These have to be omitted for want of space. One of the faults is 'sankara' (mixture or confusion or misjoinder of pleas in defence). For example, if the plaintiff alleges 'the defendant took gold, a hundred rupees, certain valuable clothes and a quantity of corn and has not returned any of them,' and the defendant's reply is 'I took the gold, I never took any rupees, the plaintiff donated the clothes to me, as to the corn plaintiff had already filed a suit against me and failed.' Here the reply contains all four varieties, viz. the first is a reply of admission, the 2nd is one of denial, the third is a special plea and the 4th is a plea of former judgment. This is a sankara. But it is not meant that this reply would not be allowed. All that is meant is that, as the burden of proof varies, the adducing of evidence will not be allowed simultaneously, but one after another. Vide Mit, on Yaj II. 7, Par M III pp 77-30. These questions are concerned with cases in which several issues arise, the burden of proving some of which lies on the plaintiff and the burden of proving others lies on the defendant. If a defendant does not come forward to give a reply, the king or judge should make him give one by sama (conciliatory words), bheda (threats) and other ways and if he does not give a reply for seven days after that, he may be declared to have been defeated and a decree may be passed against him. Kaut (III.1), Yaj II. 9, Nar I. 55, Kat (163) state that a defendant cannot raise a counter-claim (madyabhuyoga) as long as he has not met the attack of the plaintiff, nor should another plaintiff attack a person who is a defendant in a suit already filed, except in the case of abuse and assault, sahasa (death or grievous hurt by a weapon &c.), theft or in a very urgent matter, or in disputes among members of caravans or guilds or in charges of adultery, Yaj II. 29, Nar. IV 93, Sukra IV. 5. 120 say that when a litigant dies while a suit is pending, his son (or other representative) who takes his estate should carry on the litigation or be habe for the claim and the son cannot add his own enjoyment (to make up

425 उपाख्यातिवाचनस्य न शुचिपुष्पिकः प्रभु:। अविकासनं सर्वाकारे जित्योजयः दृढ़

426 अभिलुक्त: न प्रविषादित्वात् अन्यप्रयोगकालादानसतिर्पस्मादेऽपि:। न वामिकु

427 वेक्षिणीयोक्तिः अथाब्रह्मण: III. 1, अभिलुक्तोद्वितीयमात्रात्मकसंयुक्तमात्रिकोति कार्यिण अर्थवर्धनावर्तते संख्यायोपकालस्वरूपः। कार्या:। ब्रमण:। प 299, should we not read नाभिलुक्त: न नाभिलुक्तः!
There were many grounds on account of which a litigant became what is called *hitna* (a losing party) and some times either had his plaint dismissed or his defence struck out and a decree passed against him or he was simply fined. For example, Nár. II. 33 speaks of five kinds of *hitna* viz. one who changes his statements (or pleading), who does not prosecute his pleading by adducing evidence (i.e. avoids investigation), who does not appear when summoned, who gives no reply, who disappears or runs away when summoned. Nár. I. 56–61, II. 24 explain some of these and other *hitna* parties. Kát. 202 (q. by Sm C. II. p. 47) prescribes that the above five should respectively be fined 5, 10, 12, 16 and 20 panas Nár. II. 25 states that in all civil disputes such as those about women, land or debts the litigant does not lose his cause even if he commits a mistake in his statements, but he is liable to fine. This conveys that in disputes arising out of wrath (manyukra i.e. in criminal matters) a person loses his cause if he is guilty of the above acts and he is prohibited from pursuing the matter again. Kaut III. 1, Manu VIII. 53–57 contain in almost the same words, certain similar rules, Kaut. calling the several actions causes of *parokta* (defeat). Vide Yāj. II. 16, Śukra. IV 5. 136, Kát. 191–210 for further details on dismissal for default and cognate matters. In these cases of *hitnadvāda*, though a fine was imposed, a retrial could be ordered. When defendant filed his reply and parties joined issue in court, Br. and Kát say that they should not then be allowed to compromise the dispute privately without the permission of the

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427. भोजिनियः परिस्थितिः स्पष्टम् रित्ििः तहुज्जुरैत्। य इत 29, मञ्जीपिल्ला पार्व इ ताधिमृ इ तुपूरी पद्धि।तात्पुरी निगमनवृज्ञ नाग्याम हु निगमनेषु॥ शुक्ल IV. 5. 120.

428. अनम्बधृति कित्यायके नोपनयता निश्चित। आहुलसलायणं च हृदां पञ्चाविचारं स्वयं॥ नारदृ II. 33.

429. युतंते संविधिते निरापि संक्षिप्ति। यहमं ने मनये रात्श्र दात्वा संक्षिप्ते दिशिते दुस्मदद॥... साहिलतमनवित्तल्क गर्भजोगीयोरदी। उद्विदापनी यि चार्क युवति हि विचारसि॥ मानार्चार्य च च भुदेश शा० बिखरितेषु॥ तव दाताकर्ता सतिचपितोरि सम्बंधे॥ युहु q 19 s शुचिर् ॥ II. p. 49, स कि. 104, पर भा. III. pp 84–85, वह. ग. p 77; अश्रदेश महुळायि महाम नाग्यि ने निदान। सर्वदा दिशितकर्ता शुचियविद्याभासरय हु॥ कल्याण 210, q, by शुचिर् ॥ II. p. 49, पर भा. III. p. 84, वह. र. p. 77. the वह. द. says (p 77) 'दिशिती बुधस्तु परजयनिनममभावधापक स न उद्विदापानिहुमल्कपारिः॥ अनुष्ठाविचारादित्॥' Vid S B. E. vol. 33 pp. 295–296 verses 10–12 for Br. (Dr. Jolly's tr of verse 10 is not correct) Compare Order 23 r 3 of the Indian Civil P. Code and sec. 345 of the Criminal P. Code for compounding offences).
court, if they did so they were both to pay double of the fine imposed on a defeated party, as they deprived the king of his dues (court fees). But a compromise with the court’s permission was allowed when the parties were in doubt as to what the witnesses might say or the sabhāyas might decide (in such cases it would be wisdom for the parties to compromise) and particularly when the evidence on both sides was evenly balanced or where there was a conflict between the different smṛtis and usages.

When the reply had been given the sabhāyas had to consider the question about the burden of proof. Br. 430 says ‘the sabhāyas after considering the nature of the reply should call upon one of the parties that are in court to establish his case’ (Sm C. II. p 50). What a party sets out to establish is called sādhyā and the means whereby the claim (of the litigant) in its entirety is established is called sādhana (Kāt. 213 in V. P. p. 79). Yāj. II. 7 and Nār. II. 27 say that the party (on whom the burden of proof lies) should immediately (after the reply is given) write down the means whereby he proposes to prove his averments. This third stage (pāda) is called kṛyā i.e. proof. Sādhyā and kārya are synonyms, kṛyā and sādhana also are synonyms (Kāt. in Aparārka p 616, Vyāsa in Sm. C. II. p 54). The rules about burden of proof are laid down by Hārīta (q in Mit en Yāj. II. 7, Aparārka p 616). In a reply of denial, the burden of proof is on the plaintiff, in a reply of former judgment or of a special plea, it is on the defendant and in a reply of admission no question of burden of proof arises Compare also Nār. II. 31. The Mit on Yāj. II. 80 states another rule that an affirmative proposition has to be proved by him who asserts it ( bhāṣyapraṇātma eva kṛyā) Yāj. II. 22, Nār. II. 28-29 and IV. 69, Br. (in Sm. C. II. p 54), and others say that means of proof are two-fold, human and divine, and that documents, witnesses and possession are the human means of proof (Vas. 16. 10 also), while the ordeals of balance and others are divine means. Yāj. II. 22, Nār. II. 29, Kāt. 217 expressly state that ordeals are to be resorted to only when none of the human means are possible or available. If one party relies on human means alone and the other offers divine means, the king (or judge) has to accept human means and not divine; in disputes among men, if there be human means of proof though reaching

430. वेद तिथिति कारणे सन्तभाविभवर्या कालिनिकोश सहभाष्याँक भादिश् इत्यतः स्त्रिपितको II. 50,
(or covering) only a portion (of the allegations in the plaint) then human means should be accepted and not divine ones even though the latter may cover the whole ground (Kat. 218-219 q by Mit. on Yaj. II 22). This latter rule is based on the proposition laid down in Yaj. II 20 and Vismudharasutra VI 22 that when a party totally denies a claim and the opponent establishes by evidence a substantial portion of it, the judge may pass a decree against the denying party for the whole of the claim. This is practically the same as the maxim 'omnia prasumuntur contra spoliatorum'. Therefore the general rule was that the divine mode of proof was to be resorted to only in the absence of any human means of proof. Kat. 229 (q. by Mit on Yaj. II 22, Aparśāka p. 629) allows witnesses or ordeals when the dispute is started with reference to sāhasa, assault or abuse and causes that spring from force and Kat. 230 (q in Sm. C. II p 51) provides that, in the case of a person guilty of sāhasa perpetrated in secret, investigation has to be made by divine proof. Kat. 225-228 (q. by Mit on Yaj. II 22, Aparśāka p. 629, Sm. C. II pp. 53-54) lay down certain rules about preference among the several means of proof: whatever are declared as the conventional usages of the associations of traders, of guilds (of artisans) and of groups (of brāhmans), the means of proving them are documents and not ordeals nor witnesses; enjoyment (or possession) alone is weightier in the case of the making and (the use of) doors and ways, as also in the case of water-courses and the like (i.e. in the case of easements) and not writing nor witnesses; in the case of things promised to be given but not given, when a decision is to be given in disputes of servants with masters, in the matter of taking back a thing after it is sold or when a person having purchased a thing does not pay the price, in gambling and prize fighting—when in these matters disputes arise the means

431 Vide H of Dh vol I p 204 and n. 357, where a half verse from the drama Vikramorvasiya (IV. 17) is quoted containing the same proposition and it is stated that Nārada as quoted in V. M. p. 311 and Far M III p. 203 contained the same half verse. The half verse is विमानश्वेत्येवेशे दृष्टे पथविविदुषः. The maxim cited above is relied upon in Ardecher v The Collector of Surat 3 Bom H. C. R (A. C. J.) p. 116 and in Framji v The Commissioner of Customs 7 Bom. H. C. R. (A. C. J.) p. 89.

431 a In Lalubhai v Bai Amrit L. L. R. 2 Bom 299 at p. 312 there is a reference to Kat. 226 द्वारास्किष्टाभोभो जलस्फलिकात� वा. दुर्गिरेष हु दुर्गिरेष स्त्रास्किष्टिर य च सार्यत्वं। There is a similar verse of Kat. 316 (q in स्वविषय) II p. 67) 'स्वविषयमतास्तवयास्वविषयितं विषयं।'
of proof are witnesses and not documents nor ordeals Marici (q. by Sm. C. II. 60, V. P. p. 141) states that as regards the sale, mortgage, gift or partition of immovable property a document (should be executed as it) enables the person (in whose favour it is executed) to acquire (clear) title and freedom from doubt even (even after the lapse of years). It is in consonance with this that the Indian Legislature (in the Transfer of Property Act, IV of 1882) requires writing and registration as regards the sale, mortgage and gift of immovable property Nârâda IV 75 very concisely hits the special characteristics of each pramâna: 'a document is always strong, witnesses are strong (as evidence) only as long as they are alive, possession becomes strong as time passes'. The comparative strength of the several kinds of evidence is well put by Brhaspati 432: 'Witnesses are superior to inference (circumstantial evidence), a document is superior to witnesses, undisturbed possession for three generations is superior to all these' Kat. 221 (q. by Mit on Yaj II 80 and V. P. p. 80) gives the warning that when a litigant abandoning a strong ground or means of proof resorts to a weak one to prove his case, he would not be again entitled to rely on that (strong ground of proof) after the members of the court have decided as to who should succeed This practically propounds the same rule as that of constructive res judicata contained in explanation 4 to section 11 of the Indian Civil Pro Code (of 1908).

The means of proof will now be briefly dealt with in order. And first come documents 'Those in search of an exhaustive treatment may usefully consult Dr Amarendra Thakur's 'Hindu Law of Evidence' (Calcutta, 1933).

When writing was first employed in India and how the Indian Brâhmi alphabet was derived have been moot points for many decades among scholars Max Muller's theory ('History of Ancient Sanskrit Literature' p. 507) that the use of writing for literary purposes was unknown to Pāṇini was thoroughly exploded by Goldstücker in 'Pāṇini and his place in Sanskrit Literature' and was later on abandoned by Max Muller himself.

432. राजस्वे विक्रयाये विज्ञाने दृश्य एव च लिखितेनातुष्यासिद्धिविशिष्ठवाचने च II नारादः q. by स्ट्रूविको II p. 60.

433. अनुष्ठानमुद्रक नासिका सालिन्यो लिखिवं हुए अत्याधाब तिलकाय शास्त्रियो गरीमसी इत्यदि II हुए 15 वम मा. P. 350, समस्तरस्व p. 224, the same is कालायं (315) acc. to वे. मा. P. 313. Probably बालवत took over इसस्वति वर्तः or there may be some mistake in quoting.
Then Bühler (in ‘the Origin of the Indian Brāhmi alphabet’) started the theory that Brāhmi was derived from a foreign Semitic script about 800 B.C. and this hypothesis held the field for a long time (vide e.g. Rhys Davids in ‘Buddhist India’ chapters VII and VIII). Even Western scholars are not now prepared to accept this dating of Buhler; vide Cambridge History of India, vol. Lp. 141 (1922) The excavations at Mohenjo-daro tend to throw grave doubts on this theory and discredit it. At Harappa and Mohenjo-daro there is writing (not satisfactorily deciphered yet) on burnt clay and pottery. The Piprahva vase shows writing on stone several centuries before the Christian era and the Sohagpur copperplate inscription is the earliest writing on copper plates yet discovered (vide Annals of B.O.R. Institute, Vol. XI, p. 32 ff). This is not the place to discuss the questions about the origin of the art of writing in India and of the Brāhmi script. It cannot be gainsaid that the most ancient dharmasūtras refer to writing as well-known. Gaut XIII, 4 appears to refer to a witness signing himself as such on a document (Vas. 16. 10, Vismudhrasūtra VI. 23), Yaj. II. 25 mentions likhita (document) as the first means of proof. Manu VIII. 51 uses the word karana in the sense of document (arthapayayamanam tu karana tvāhāvatam), in VIII. 168 refers to documents obtained by coercion and in IX. 232 to fabricated royal edicts (kutasāsana). Kaut. has a special chapter (II. 10) on royal writings (sāsana), in which he dilates upon the qualifications of the king’s scribe, on the contents of an official document, the good points required in an official missive, on various divisions of writings and on the faults in official writings that are to be avoided. In I.11 Kaut. prescribes that the king should hold consultations with absent ministers by sending a letter (patra, a leaf of palm or a piece of birch bark or similar material) and in I. 19 states that consultation by letter (patra) with the council of ministers should be held in the fifth part of the day. In II. 7 Kaut. advises the construction of rooms with shelves for books containing accounts (akṣapatalam nibandhapustakasthānam kārayet). Vide also Kaut. II. 21, II. 30, IV. 9, IV. 10 for references to writing in various other connections. Kaut. (III. 1) appears to use the word karana in the sense of document and gives a rule which is the same as Yaj. II. 23. Yaj. I. 319 speaks of land grants being written or

\[\text{\footnotesize\textsuperscript{434}}\text{. पश्चिम स्वागत श्री रवीन्द्रनाथ शर्मा} अध्याय: अर्थात् या. 23 लिखने कला में आन्तरिक थी किया। एक दूसरे पत्रों में यह स्पष्ट नहीं है।}\]
engraved on cloth or copperplate Megasthenes (McCrindle p. 69) no doubt says that Indians have no written laws, but there is no doubt that he is under some misapprehension as to what he was told, since in another place (p. 83) he refers to philosophers committing useful suggestions to writing. Similarly Strabo (XV. 1 53–54) states that the Indians were ignorant of writing, but (67) narrates that Nearchus states that Indians write letters on cloth. One of the oldest copperplate grants is the Taxila plate of Moga (identified with Moa of the Śakas) and is not later than 120 B.C. Vide E. I. Vol. IV. p. 54 and Rapson’s ‘Indian coins’ p. 7. It appears that wooden boards were used for writing ephemeral matters and paṭra for more permanent use, as Kāt (p. 293, n. 400 above) states that the first information was to be written on a board with chalk and the formal plaint on a leaf (paṭra). The Lalitavistara (10th chap. p. 143, B.L. ed.) states that the Buddha used a board of sandal-wood for learning the scripts (candanaśamayam lipi-phalakam-ādaya).

Yṣṭ. II. 34–94, Nār. IV. 69–75 and 135–146, Br., Kāt. 249–312, Śukra II. 291–318, IV. 172–182 and several digests devote great attention to documents. A few salient points only will be brought out here. Nār. (IV. 70–71) eulogises documents by saying that if the Creator had not created writing which is like an excellent eye, the world would have come to grief and that a document is an indubitable means of apprehending the time, the place, the object, the material, the extent and the duration of a transaction. Br. (q. in V. P p. 141) says that, since people begin to entertain doubts (about a transaction) even in six months (from an occurrence or transaction) the Creator therefore created in the hoary past letters which are recorded on writing material (paṭra). The Lalitavistara (about 2nd or 3rd century A.D.) mentions 64 scripts which were known to the Buddha, among which the first is Brāhmi (10th chap. p. 143). Nār., Br., and Śukra probably try to explain why the alphabet current in their days was called Brāhmi (it was created by Brahmap). Śukra II. 297, IV. 5. 172 are similar verses. The texts divide documents in different ways. Vīsnu 436 Dh. 8.
VII. 2 divides documents into three kinds viz. those written before the king (i.e. by public officers), those bearing the superscription of witnesses and those without witnesses. The first is a document written in a state office by a scribe appointed by the king and bearing the signature of the head or superintendent of the office. This is just like the registration of documents in modern India. Br. 437 (q by V. P. p. 141, V. May, p. 24) divides documents into three sorts viz. royal writing, writing made at a fixed place and that written in one's own hand. Nar. IV. 135 speaks of two kinds viz. one written by the executant himself in his own hand and that written by another; (the first of these is valid) without attesting witnesses, while the second requires to be attested. In the former no writer (lekhaka) nor witnesses are necessary, while in the latter both are necessary. Even now in India no deed concerning even immovable property is required by law to be attested except mortgages and gifts. The author of the Saṅgraha, the Mit. on Yāj. II. 84 and several others divide documents into rājakṛtya (public) and jānapada (private or of the common people). The V. Mayūkha (p. 24) says that lāulkika and jānapada are synonyms and jānapada document is of two kinds viz. written by the executant himself in his own hand and that written by another, and that the first may be without attestation of witnesses, but the other must be attested. On Yāj. II. 22 the Mit. divides documents into sāsana and ciraka. The first is the same as rājakṛtya (described in Yāj. I. 318-320) and ciraka is practically the same as jānapada writing. On Yāj. II. 89 the Mit. remarks that a royal deed must be written in correct and elegant language but a document executed by ordinary people is not required to be in correct Sanskrit, but may be written in the local dialect of the parties. Yāj. II. 89 states that a document written by the executant himself in his own hand is authoritative except when it is brought about by force or fraud. Yāj. II. 84-87 prescribe that a document of debt or the like should be written down by mutual agreement, that the creditor's name should be placed first, that it should

437. राजवैयस्य स्वाजस्तित्व राहस्ततितिस्ति तथा। तेषां तु श्रीतिष्ठ श्रीपदितिः निमित्ति सद्वेष्वरति

written in a well-known place by a professional scribe appointed by the king or his officers and attested by witnesses. राजवैयस्य जागरणयें हितिवें शिशिवें नृत्। सर्वसं जनसाधारणी तीर्थिति स्वास्तिति ग्रहणति। श्रीपदितिः श्रीपदितिः समाविश्वस्य ||

वस्त्रिः कर्मसङ्गराजी सत्त्वें स्वास्तितितिः निमित्ति सद्वेष्वरति।
mention the year, month, half month, *tithi* (day), the names, caste, gotras, the Vedic School, the names of the fathers of the parties, that when the writing is finished the debtor should write at the end that the deed is approved by N·N (the executant) son of so and so, that an even number (i.e. not less than two) should attest the document, stating their father's names and that they attest as witnesses and the scribe should write at the end that he wrote the document at the request of both parties. If the debtor or any witness cannot write, his signature should be made by another in the presence of all witnesses (Nār. q by Mit. on Yaj. II 87 and by Vy. Nār. p. 37 without name). Bājakiya documents are of three kinds (acc. to Br quoted in V P p 141, V May. p. 24) viz śāsana (a royal grant of land), jayapatha (a judgment deciding a law-suit), *prasāda-patra* (a deed showing the king's pleasure at the devoted service or bravery of a person); acc. to Vasīṣṭha (q in Sm. C. II p. 55 and V May p 28) it is of four kinds viz śāsana, jayapatra, ājñāpatra (a royal command addressed to feudatories, high or low officers like the wardens of the marches), *prajñāpanāpatra* (a writing of request addressed by the king to sacrificial priests, a purohita, teacher, learned brāhmans or other highly honoured persons), it is five-fold acc. to Sūrya pp. 111–113 viz śāsana, jayapatra, ājñāpatra, prajñāpanāpatra and prasadapatra. Kaut in II. 10 speaks of several kinds of royal orders and names them, such as prajñāpanā (request by a messenger about what another prays), ājñāpatra (as above), *pandana* (honour to the deserving or gift in distress), *parśāra* (remission of taxes for certain castes or villages by the king), *msristekha* (writing whereby the king accepts the actions or words of some trustworthy person as his own), *prā-vritikā* (conveying information about some portentous happening or some news about enemies etc.), *pāthkeha* (reply in accordance with discussion held with the king on a message from another), *saśattra* (order addressed to high functionaries and officers for the welfare of travellers). The contents and form of royal grants have been described in H. of Dh. vol. II pp 860–861. The jānapada writings are divided into various sorts, seven (acc. to Br. q. by Aparārka p 683, Sm C II p. 60) or eight (acc to Vṛṣāsa in Sm C II p. 59) and the Sm. C. remarks that there is no emphasis on the number and there may be many more varieties. Br. (S B. E vol. 33 p 305), Kāt. (254–257) and others mention and define the following jānapada writings; *bhāga* or *vibhāgapatra* (deed of partition), *dīnapatra* (deed of gift),
Varieties of documents

krayapatra (sale deed), ādhanapatra or ādhipatra (deed of pledge or mortgage), sthitipatra or samudrapatra (deed of convention, which is made by the inhabitants of a village or city or the members of a corporation or guild by mutual agreement for settling their conventions), dāsapatra (deed of bondage to serve executed by a person devoid of food or clothing), muulekha or uddhārpatra (bond of debt promising return at a future date with interest), viśuddhpatra (deed of purification given to a person with the attestation of witnesses when a penance for a sin has been performed), sandhipatra (deed of peace when a compromise in the presence of leading people after a charge of the commission of a crime has been made), simāpatra (deed of boundary when a dispute about it is settled), upagata (a receipt passed by the creditor to a debtor on payment of the whole or part of a debt, Yaj. II. 93), anuvādhipatra (a sub-mortgage i.e. where the mortgagee or pledgee mortgages or pledges the property or thing to another and hands over the former deed to his own creditor).

The two branches of private documents (jānapada) are either ciraka or not ciraka; ciraka is defined as a document written by hereditary scribes residing in the capital, who are approached by the parties and bearing the signatures of the parties and witnesses and the names of their fathers (Sangraha q by Sm. C. II. p 59, Par. M. III. p 127). Vide n. 437 above and Śukra II. 299–318 and IV. 5.172–177 for definitions of these and other kinds of documents. But acc to Vyāsa quoted by Sm. C. II. p 59 private documents are of eight kinds viz ciraka, upagata (a receipt), svaḥasta (written by the executant himself), ādhipatra, kravapatra, sthitipatra, sandhipatra, viśuddhpatra. Some works like the Vyavahārasāra (p 69) and the Mit write the word as ciraka and not ciraka. It was so called (viz ciraka) probably because it was written on the back (of the bark of the birch or some other tree). If the proper word is ciraka then it was employed because being executed by scribes appointed by the king, it had validity for all time (cira) as compared with purely private documents. ‘Ciraka’ in this last sense seems to be equal to ‘śaṅnakrta’ of other writers.

Nār. 438 IV. 136, Visnu. Dh. S VII. 11 and Kāt. (252) require that a document is held valid which is not adverse to the custom of the country, the contents of which follow the rules.

438. वेदांतकारार्तिक्षु परर्युक्तारयिधिशिस्तमारम् | सत्यमान्य स्त्र्यं शेषं यत्युक्तार्तिक्षुकमारम्
काद वाल्मीकिः 136, वेदांतकारार्तिक्षु परर्युक्तारयिधिशिस्तमारमारम्याम् |
विशेषसंधिः VII. 11.
regarding pledges (and other transactions) and the sequence of the sense and of the words in which is not contradictory or confusing. Sm C. II. p. 59 applies the word 439 pāṇcārūḍha (on which five are recorded) to documents that are signed by the creditor, the debtor, two witnesses and the scribe. The Sarasvatīvilāsa p. 114 holds that pāṇcārūḍha consists in having the creditor, debtor, witnesses (as one item), scribe and the matter to be written. Hārīta and Vyāsa (q in Sm. C. II. p. 59) employ the dual (sāksināv), while Yājñ. II. 87 employs the plural. Therefore ordinarily two witnesses sufficed, but in very important writings there should be more witnesses. Viśvarūpa reads ‘asamāh’ in Yājñ. II. 87 and requires three witnesses as the minimum. Nār. IV. 137, Visnu440 Dh. S VII. 6-10, Br. (S. B. E. vol 33 p. 307 v. 23.), Kāt. (271) state that a document is invalid that is executed by a person intoxicated, by one already charged (with an offence), by a woman, a minor, that has been brought about by threats or deceit or coercion, by one dying, by one diseased, by a lunatic, or by those that are dependent. Visnu Dh. S. (VII. 8-9) and Kāt. 273 (q by V. M. p. 338, Aparārka p. 686, Par. M. III p. 131) state that a document may be held invalid owing to defects in the witnesses or in the scribe or to the fraud of the creditor or executant.

Nār. IV. 145, Kāt. (306-307), Samvarta (both quoted by Aparārka pp. 691-692) and Br. (S. B. E. 33 p. 309 verse 31) say that no oral evidence should be allowed to contradict the (terms of a) document, that the mode of proving (a matter) by a document is always superior, that a writing can be refuted or superseded only by another document relating to the same matter and not by the oaths of witnesses and that if oral evidence

439 दस्माणाशितमि च सांस्कृतिकास्तु च समापेन चैत्येऽयस्तु कारित

440 दक्षिणात्यालालिकामन्यस्य अयोद्धापाल वर्षम् इव इविविभाकुन्तपत्रियम् सत्यातिकाति इव पूर्वदेवशेषकृति शिक्षितं च इव यथितसांस्कृतवेशोपयोगिताय

were allowed to overrule the force of documents there would be confusion and an end to all written transactions. If there is a conflict among documents then a jānapada document (written by a scribe and attested) is superior to one written in the hand of the executant himself and a public document is superior to a jānapada one (Vyāsa q. by Sm. C. II p 66 S. V p 122).

Yāj. II. 91, Nār. IV. 146 and Kāt. 312 (q. by Aparārka p. 687) prescribe that when a document is in another country or when it is illegibly written, when it is lost or its letters have become indistinct (by lapse of time or other causes) or it has been stolen or is crushed or burnt or shattered into pieces, another document may be caused to be written (if both parties agree), but if they do not agree and the contents have to be proved or if the executant denies his signature, then Nār. IV. 142 and Kāt. (382 q. by Sm C II p. 63) say that time may be given to bring it from the foreign country or the contents may be proved by the evidence of the attesting witnesses or of the scribe or of those that have seen it. This shows that the smṛti law required the production of the document itself as primary evidence, but allowed secondary evidence only in exceptional cases. If a document belonging to one man is produced by another the latter has to explain his custody of it (Vyāsa q. by Aparārka p. 690, Sm. C. II. 66) Kāt. (308 q. by Sm. C. II. p. 65) says that just as the reflection of a person or thing made in a mirror is seen as if it were real though it is unreal, so clever people can fabricate documents resembling (the genuine writing of a person). Vyāsa (in Aparārka p. 688, Sm. C. II. 65) and Br. (S. B. E vol 33 p. 307

441. न दिशाई साहित्यिनां ढोपे ठिकिते कातिल। लेख्यवर्ग: शब्द भोगी इति नाल्यें भिये॥ तुषकात्मिकस्मिनं साहित्यानं या सद्य। लेख्यकिन्य निररथेन न साहित्यायणः। भवेत॥ कायम् भ. या अपराधये p. 692। साहित्येपदः सामस्यसंशोधनं स्विष्णते। कितापदानुवृत्ताय या जापये॥ संविष्म भ. या अपराधये p. 692। Compare sec. 92 of the Indian Evidence Act. The poet Māgaha gives expression in his own laconic way to the same idea in निधारितिते लेखे भवेत कानुसर्फः। कितापदानुवृत्ताय या जापये॥ भ. अपराधये II. 70.

442. Compare sec 63 and 65 of the Indian Evidence Act about the meaning of secondary evidence and the circumstances under which it can be given.

443. भवाज्यत्स कानुसर्फः लेख्यसन्यासाये प्रदाने। अपराधये सम एकध्व एकसर्वभागमुङ्कः॥ भ. अपराधये p. 690.

444. बृहायत्स भागा विश्वसनसंशोधनं भवेत्। तथा लेख्यवर्ग विश्वसानी कुम्रोद्ध किता जाय॥ कायमा in साहित्याय द. ए. p. 148, एव. नन्द. p. 91 (it attributes the verse to भवाज्यत्).
vv. 20–21) say the same thing and add that documents have to be carefully scrutinized and that no certain conclusion can be established by documents alone (in every case), that women, minors and illiterate persons are deceived even by their relatives by the fabrication of documents bearing the names of these (women and others) and that this has to be investigated with skill. When there is a doubt about the genuineness of a document, it can be established by comparison with other documents admitted to be written or signed by the same person, by ratiocination, by the probability of the two parties being together at the time of the transaction, by citing the attesting witnesses, by the peculiarities or flourishes in writing certain letters or making certain signs (in the writing questioned and in other admitted writings), the previous transactions between the parties (or their subsequent conduct), and the source of the acquisition of the subject matter in dispute (Yāj II. 92, Visnu Dh. S. VII. 12, Nar. IV. 143–144, Kāṭ 283 q. in Mit. on Yāj II. 92). Visnu Dh. S. (VII. 13) and Kāṭ. 285–286 (q by Aparākṣa pp. 689–690) prescribe that if the debtor, creditor, witnesses or the scribe be dead the authenticity of the document has to be ascertained by (a comparison of the signatures on the disputed document) with other specimens of their handwriting or signatures or other documents executed by the debtor. Kāṭ 287 (q. by Aparākṣa p. 689, Sm. C. II. p. 64 and Par. M. III p. 134) states the striking rule that when a document bears the royal seal, that document is presumed to be authentic, even though all the three (viz. the debtor, the witnesses and the scribe) are dead. This shows that documents bearing the king’s seal or that of royal officers were regarded as prima facie genuine and this rule is analogous to the provisions in sec 79 of the Indian Evidence Act and sections 59–60 of the Indian Registration Act. That even copperplate grants were sometimes forged is clear from the reference in the Madhuban plate of Emperor

445. Viva sec. 68 of the Indian Evidence Act about the proof of attested documents

446. अथ यववमापणो लेखनां च तत्संयासार्थिः सिद्धां न स्पष्ट्यः न संयासात्स्वरूपेदात्स्यां भौतिकौ च युक्तिः य तत्संयासार्थिः। परमामिदम् निजित्यः । कार्यां। quoted by यव यव. p. 339, अयार्क. pp. 689–690, पप. III p. 134; सुधितः II p 63 ascribes the 2nd to शर्यां। Compare sec 69 and 73 (for proof of handwriting by comparison) of the Indian Evidence Act.

447. सद्धर्ष्टिः यद्वाभिः एवं तर्कां शर्यां। शर्यां। कार्यां। quoted by अयार्क. p. 689, सुधितः II. p. 64.
Harsa (E. I. VII. p. 155, 158), and from the Tarachandi Rock Inscription (in Bihar) of Mahanāyaka Pratapadhavaladeva (in E. I. XX. Appendix No. 340) of saimāt 1225 which declares that a certain copperplate purporting to be issued by Vijayacandra of Kanoj was forged. Vide Fleet in I. A. vol. 30 pp. 201-223 for many forged grants. Verses (variously attributed to Kāt. or Brhaspati by the digesta) state that when a loan (recorded in a document) has not been expressly claimed by the creditor able to claim from a debtor who is able to pay off and who is at hand, the document loses its validity because a suspicion arises that the debt has been paid off and that a document executed more than thirty years before which has never been seen (by any body) nor read out (by the creditor to any body) does not attain validity even though the witnesses on it are living. Nār. IV. 141 is very similar to this last. Kāt. 293-299, 301 (q by Par. M. III. 136, Mit. on Yāj. II. 24, Aparārka p. 690-691) prescribe that if no objection is raised for twenty years as regards a patent fault in a document of debt or pledge or of the settlement of boundaries, then the document ceases to be voidable Kāt. 275 and Br. (S. B. E vol. 33 p. 302 v. 25) both quoted by Aparārka p. 671 and V. P. p 122 require that the latent defects in documents or witnesses must be declared (pointed out) by the disputant at the (proper) time (i.e. when they are produced), while patent defects may be considered by the sabhyas at the time (of the consideration of the evidence) by reference to the rules of the sāstra. Yāj. II 93-94, Visnu Dh. S. VI. 25-26 448 prescribe that when a debtor pays part of a debt, the debtor should write on the back of the document how much he paid or the creditor may hand over to the debtor a writing of receipt signed or written by himself, particularly when the original document is not at hand, and when the whole debt is paid or the contract is fully performed the creditor should tear off the document or should execute another document in order to make clear the fact of satisfaction.

The fabrication of royal edicts and private documents was so much condemned by the sentiments of society that Mānu IX. 232 and Visnu Dh. S V. 9-10 prescribe the extreme penalty of death for such offences as in the case of the murder of women, minors and brāhmaṇas. Yāj. II 295 (= Matsya 227. 202)

448. लिखितार्थ निर्देश लिखित पादेश । असमझाने हेक्यासंबंधिनाने शीतलर्य: सत्कसितृ स्वायत् । शब्दकाव्यमञ्च VI 25-26
prescribes the highest fine for him who adds to or writes less than what was intended to be declared in a royal grant or edict. Śaṅkha also prescribes death or the excision of a limb for fabrication of documents (q. by V R. pp. 298, 369).

CHAPTER XII

BHUKTI or BHOGA (possession).

According to Gaut. X. 39 a man becomes an owner by inheritance, purchase, partition, seizure (appropriation of forest trees and other things which have no owner) and finding (i.e. appropriation of lost property the owner of which is unknown). Gaut. (X. 40–41) adds that in the case of brāhmanas acceptance (of a thing donated) is an additional mode (of becoming an owner), that conquest in the case of a ksatriya and gain (by trade or labour) in the case of a vaisya or sūdra are also additional modes. Vas. 16. 16 mentions eight modes. Br. (quoted in V. P. p 153, Aparārka p. 635, S. B. E. vol. 33 p 309 v. 2) mentions seven modes of acquiring immovable property viz. by learning, purchase, mortgage, valour (i.e. conquest), through the wife (as dowry), inheritance (from an ancestor) and succession to an issueless kinsman. Nārada (q. in Sm. C. II p. 70) mentions the same except mortgage. None of these expressly says that long possession is by itself a source of ownership. Great divergence has prevailed throughout the centuries among the sages and digests about the relation of title and possession and about the length of possession necessary for making a person secure in his right to property by reason of possession. Possession (bhukta) may be with title (sāgamā) or without title (anāgamā). Āgama means 'origin' or 'source of title' such as purchase or simply 'title'. Manu VIII. 200, Yaj. II. 27, Nār. IV. 84 employ that word in that sense. Vide Kat 317 (q. in Sm. C. II p. 73 and Par. M. III. p 141) If property is held in one of the modes of acquiring ownership stated above and there is also possession, one's right to that property is indefeasible (Nār. IV. 85, Br. q. by Sm. C. II. p. 70, S. B. E. 33 pp. 309 and 312 v. 3 and 22), but possession without a clear title.

449. Vide Lalubha & Bai Amrit L. L. R. 2 Bom 299, 304 ff., where Mr Justice West enters on an elaborate analysis of the doctrines of the Mit. and the Vyavahāramāyukha on title and possession.

450 अगगवेहर शक्वप्राप्ति आगमः। निम्नोऽवा या इ 27 आ गोष्टि मवते गोपये स्विकिवते देव शायमा। क्षुपार्निर्दिति श्चवद्वामावुका आगमः। शास्तिपद्विव-प्रकटिति दीपवनकिवकः। आगमो धनाधिनीयाः। क्षुपार्निर्दिति मैथिलः। श्चवद्वारतवश्च प. 225.
does not lead to (or ripen into) ownership with certain exceptions to be noted later on.) Vyāsa and Pitāmaha declare that possession in order to be valid must have five characteristics viz it must have title behind it, must be of long standing, unbroken, free from protest (by another person) and in the presence (i.e. before the very eyes) of the opponent (q in Mit on Yāj II 27 and Aparārka p 635) Even title, if not accompanied by some slight possession, has no strength, while title is stronger than possession not handed down hereditarily (Yāj II 27) Nār. IV. 85 states that possession becomes strong when backed by clear title. These passages present some difficulty and make title and possession depend on each other. Nār. IV. 77 states that even if there be a document or witnesses to support a man's title, when there is no enjoyment, particularly in the case of immovable property, there is no validity. All that is meant is that a transfer without possession though under a deed or before witnesses is risky and that title and possession lend support to each other as stated by Nār IV. 84–86, Br., Hārita and Pitāmaha (IV. 86–87) declares that one who pleads mere possession and no title at all should be considered a thief on account of his putting forward the deceptive plea of possession (which even a thief can assert) and that the king should punish as a thief one who enjoys a property even for hundreds of years without title. All that this last verse means is that the person in possession must prove legal origin or such a long possession that there is no possibility of an inference that the possession
of his ancestor originated is wrong. Delivery of possession was the principal mode of transferring ownership in ancient times in almost all systems of jurisprudence and so possession was given great weight as evidence of ownership. The Mit. on Yaj. II. 27 makes the position clear. In the case of a gift or sale there must be the cessation of the ownership of the transferor and the arising of the ownership of the transferee. This last occurs only when the transferee accepts the property and not otherwise. Acceptance is mental, vocal and physical (i.e. the acceptor makes a resolve to accept, says that he accepts and takes physical possession). These three may exist in the case of such movable articles as gold, clothes &c. But in the case of a field physical acceptance is not possible except by enjoying the fruits or profits thereof. Therefore in order to make a gift or sale perfect there must be some slight possession at least. In the absence of such possession mere title is weak. Title may succeed against the man in possession who has no title and who has not been in possession for the prescribed period (such as three generations). If the possessor proves possession for that period he will succeed against one who has bare title and no possession whatever. If it is known or proved that a man purchased from A but got no possession and that another purchased from A subsequently and got possession (but was not in continuous possession for the prescribed period) the prior title though without possession will prevail over the later one, acc. to Yaj. II. 23. But when it is doubtful as to which title is prior and which posterior the one with possession will prevail. Where the possession has been uninterruptedly with a man's ancestors for three generations he will succeed against one who has bare title. Therefore possession was not absolutely indispensable for transfer even acc. to the Mit. and other works, but title without possession was risky and so possession was insisted upon as it was 'nine points of law'. It follows, acc. to the Mit., that (1) when possession was comparatively of short duration and not supported by any title much weight was not attached to possession and title by itself would prevail against it, that (2) continuous possession for three generations (though there is

454. In English Law until the year 1845 (8 and 9 Vic. chap. 106, sec. 2) land could in theory be conveyed in no other method than by delivery of possession and no deed or conveyance was in itself of any effect. Vide Salmond's Jurisprudence, 9th ed. 1937, p. 620.
nothing to show there was title to begin with would prevail over a mere documentary title and that (3) a prior title with less than the possession for three generations (but with some possession) succeeds over a later title accompanied by possession. Long possession was assumed to have originated in legal title, although owing to lapse of time it was not possible to prove the origin 455 The main controversy has raged round the question of what is long possession. Yaj II 24 literally translated means 'loss of land results in twenty years when it is enjoyed by a stranger before the owner's very eyes and without any protest from him and loss of chattels (results under similar circumstances) in ten years'. Manu VIII 147-148 and Nārada IV. 79-80 have two verses in common which mean 'If the owner of anything silently looks on (i.e. raises no protest) when it is being enjoyed in his presence for ten years by strangers he does not deserve to recover it (i.e he loses the thing). When the owner is not an idiot nor a minor and his property is enjoyed within his sight then the property being lost by his conduct (yavahāra) comes to belong to the enjoyer'. Gauś. XII. 54 has almost 456 the same words as Manu VIII 148, Sankha (in V.R p 208) also refers to ten years. These passages apparently mean that at the end of 20 or 10 years' adverse possession by the wrongful possessor the ownership of the original owner is lost and the wrongful possessor becomes the owner. But there are several other smṛti passages where it is said that possession even for a hundred years originating in wrong cannot confer title and much longer periods are required for the loss of ownership and the acquisition of ownership by prescription Vide Nār IV. 86-87 cited. (on p 318 above) Nār. (IV 89) himself says elsewhere that possession requires

455 Under the Law of England 'Time immemorial or time whereas the memory of man runneth not to the contrary' was considered to include the whole period of time from the reign of Richard I. This was a very inconvenient and absurd rule which was abrogated by sec 1 of the Prescription Act of 1832 (2 and 3 William IV, chap 71) whereby the rights to any land became absolute and indefeasible by sixty years' uninterrupted enjoyment before that Act (except when the enjoyment was by some consent or agreement made under a deed). By French Law the time of memory was held to extend for one hundred years as done by the Mit and other Sanskrit digest. Vide Salmond's Jurisprudence (9th ed of 1937) p 265 note y.

456. अनालोकयोऽध्यक्षेऽवसंस्कारादाने वृत्तर्थस्या परिधिः साबित्रि स्मृति: ॥ मह. XII. 34. भ्रात्साबार
बिहान्तेनिधिधिः वृत्तर्थस्यास्ममप्रत्य सङ्कविचाराः ॥ सक्र. १. वि. र. १. प. २०८.
to be supported by title only during *smārtakāla* (during human memory), but in cases beyond human memory possession continued successively for three generations (or ancestors) is proof of ownership even in the absence of a document (or other title). Vismu Dh. S. V. 187 is in similar terms. The Mit. on Yāj. (II. 27) says that *smārtakāla* is a period of 100 years, as the Veda declares that the span of a man's life is 100 years. For a hundred years it is possible for witnesses to depose to the origin of possession. So if there is possession for less than one hundred years, oral evidence can be adduced for establishing its origin, and title will have to be proved by the possessor and if no oral evidence is adduced to prove title, it is a case in which it may be held as certain that there was no title to begin with. Mere possession is not enumerated by sages like Gautama among the means of acquiring ownership. As the Sarasvatīvilāsa (p. 124) puts it, long uninterrupted possession only leads to an inference that it originated in title acquired by sale, gift or the like i.e. there arises a presumption of lawful origin Therefore in order to enable a man to rely on possession alone as proof of ownership it must extend uninterruptedly over 100 years (acc. to the Mit.). The Smṛticandrika (II. p. 72) accepts this meaning, only requiring 105 years' possession instead of 100 years*. Acc. to a smṛti quoted by it each generation means 35 years and so when Nārada requires possession for three generations 105 years are meant (acc. to Sm. C.) Vismu Dh. S. V. 187, Kāt (327) also hold that continuous enjoyment for three generations makes the fourth generation owner of the land. Kāt. (321 q. by Mit. on Yāj. II. 27, Apārāka p 636) states *in cases falling within the memory of man it is desirable that possession must be accompanied with title

457 चिनित्यते दत्ता हुवेदेशांविभिन्नि व श्रीभावार्थप्रांत्यस्मातः सम्

साधृतपात मित्रसुधर्मप्रण V. 187. The same is ascribed to both विश्वर and वात्पात by यम मा p. 341 The मव. निः p 150 ascribes it to अस्यिरिय.

458 दुःखितविकृतवृत्तिपेशुःकः स्वतंत्रस्वदेशाविभिषिष्ठाकावयापनं

पतिः. अन्तःरत्कहचानांहास्यपतित्रपखानीया वात्मचक्षुतिः माणानवेत करसवीः

विलासं 124, these words are apparently taken from the मव. निः p 73.

459 अनुवादभाषांभाषाः सर्वाधिकारवपययतिकालचकालमये भाषा

हस्ति. स्वतंत्रवचारस्तवतत्तत्तमुखः स्वः माणानवेत्रे स्वः स्वेतमाणानवेत्रे स्वः स्वाधिकारवपययतिकालचकालमये भाषा

स्वदुर्वाचारस्तवतत्तत्तमुखः कालविवादां माणानवेत्रे स्वः माणानवेत्रे. हस्ति

II. p. 71.
(in order to be proof of ownership as to land); but in cases beyond the memory of man possession extending over three generations in succession (is independent proof of ownership), since there is no certainty that there was no title (to begin with)‘. Vide also Br. (in S. B. E. vol. 33 p 313 verses 28-28). ‘Three generations’ is a vague expression. The great-grandfather, the grandfather and the father of a man may die in the space of ten years and if the great-grandfather took possession wrongfully and all died within ten years of the time of taking possession one after another, the fourth in descent might urge that there was possession for three generations and that he had become owner. Therefore Kät. in another verse (318, q by Aparárka p 636 and V. P. p. 155) laid down that unbroken possession for three generations extending over sixty years becomes firm (independent means of proof of ownership) Thus triprusabhoga or pūrvakramāgatalbhoga (in Yāj II 27) means the same thing as possession continuing from a time beyond human memory (asmāta-kāla) and is equal to 60 years acc. to Kät., Vyasā, and a few other surti writers. Nārāda (q. by Aparárka p 636) says that as regards possession one generation means twenty years, while Br. (q by Sm. C. II p 72) says it means thirty years. It will be noticed from the above that early authors like Gānt, Manu., Yāj appear to lay down 20 years’ adverse enjoyment of land as sufficient to create ownership, while other and comparatively later authors like Nār. and Kät. require sixty years enjoyment. In order to remove this conflict and following the maxim that apparently conflicting texts should be reconciled as far as possible, the writers of commentaries and digests from Viśvarāpa and Medhatīthi (on Manu VIII: 148) downwards proposed various interpretations of Yāj. II 24 and similar texts. Some lay emphasis on possession and others on title. There are at least three explanations Aparárka (pp. 631-632), Kullāka and Raghunandana take the literal sense and say that on 20 years’ adverse possession there is less of ownership (1 a. there

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460 भूक्ष्या पैदानान्ती दुस्कृति पैदाकी वातारि समनता। विनिमेतेस्वर्णिभिविधाः विसाति विना। विभविघुमस्वर्णिभिविधाः विसाति विनाय ततात्त्रस्व। उपासनेति। बुद्धिकृति सा तीर्थां दुस्कृति स्वर्णिभिविधाः विसाति विनाय ततात्त्रस्व। उपासनेति। विभविघुमस्वर्णिभिविधाः विसाति विनाय ततात्त्रस्व। उपासनेति। बुद्धिकृति सा तीर्थां दुस्कृति स्वर्णिभिविधाः विसाति विनाय ततात्त्रस्व। उपासनेति।
Three views about twenty years' enjoyment

is śvataḥām)⁴⁶¹. The 2nd explanation is that the meaning of Yaj. II 24 is that after 20 years' enjoyment by a stranger, if the owner brings a suit and relies on a document in his favour, he runs the risk of being unable to prove his ownership barely on the strength of the document, since it is possible to argue that, even though he had a document, by his silence he acquiesced in the stranger taking possession and tacitly consented to it. Therefore all that Yaj. II 24 means or recommends is that an owner should not be negligent (upadeśa) or should not remain silent when a stranger takes wrongful possession. This view was first started by Visvarūpa among extant writers and it approaches the modern idea of requiring vigilance in the assertion of one's rights⁴⁶², that is there is only loss of the suit (vyavahārāhān). This view lays emphasis on a verse attributed to Nār. and the word yuvaḥāna in it and in Manu VIII 148 and Narada IV. 80, where the word means lawsuit also, the idea being that the sages declare only what would happen or be decided by the judges in a law court and do not intend to say that the decision would be just or righteous from the higher or the moralist's point. The third view is that of the Mit. (followed by the Vyavahāramātrkā, Mitramiśra and several others) which⁴⁶³ explains that the loss is not that of the ownership of the thing itself but of the produce of it (there is only 'phalāhān') i.e. if without protest the owner allows a stranger to remain in possession before his very eyes for twenty years and then he brings a suit, he may succeed in getting back his land but he would lose his claim to the profits of the land. The Mit., the Vyavahāramātrakā and V. P (pp 157–165) contain very

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⁴⁶¹ तत्सर्वात्माकल्पत्राद्वादिकोगायतात्मकत्वस्वशास्त्रविद्वानसङ्गीतेन एव सर्वं जन-पति तथा कालांसिद्धेऽल्लोकानुप्रेर्यति नरवियमिति तत्त्वत्वेऽक्षेत्रयात्राप्रभावशः मयौति श्रीजयेन शाश्वद्वारे निजरक्ती । एवमेव श्रीकर्षिकेषु प्राचीनोपन्यासस्वादार्थहीनरिचक्ती स्वलभक्तिकार्यं श्रीरस्वस्वनामविना यथार्थायायांश्च । गवस्त्रेण वात्स्येण । एवद्विभावद्वायं यथायथेनासिन । यथासम्बन्ध p 223, तत्सर्वात्माकल्पत्राद्वादिकतिरिक्तं यथानिजातं तथापिनः । अद्यान्तं p 632.

⁴⁶² हालिचन्द्र खिलितिहस्य्यमायिनिस्मादसाधकमायिनिमित । न बुध्युपशायां सर्वं तथा सवकाय यात्रावात नीपास्यावर्गीय सवकायावर्गीय। श्रीस्विनि II p 68, पर्यथायान्त नीपाय- नीपायनमस्मितमयालियानमंियानaye । उद्धस्यद्वायं चैता हालिचन्द्र तु निर्धरितात्मनिनिदेशयाय रचानार्थप्रसादसाधकमायिनिमितकं सत्य चाच बुध्युप । विश्वस्य on क a II 26, उपेन्द्रकृ तिकायत्वं पर्यायमयानैनिप्त । वालिकारात् उपेन्द्रकृ तिकायत्वं बुध्युप न सिद्धति । नासह Q by अद्यान्तं (p. 632), श्रीस्विनि II, 68.

⁴⁶³ तत्सर्वात्माकल्पत्राद्वादिकोगायतात्मकत्वस्वशास्त्रविद्वानसङ्गीतेन एव सर्वं जन-पति तथा कालांसिद्धेऽल्लोकानुप्रेर्यति नरवियमिति तत्त्वत्वेऽक्षेत्रयात्राप्रभावशः मयौति श्रीजयेन शाश्वद्वारे निजरक्ती । एवमेव श्रीकर्षिकेषु प्राचीनोपन्यासस्वादार्थहीनरिचक्ती स्वलभक्तिकार्यं श्रीरस्वस्वनामविना यथार्थायांश्च । गवस्त्रेण वात्स्येण । एवद्विभावद्वायं यथायथेनासिन । यथासम्बन्ध p 223, तत्सर्वात्माकल्पत्राद्वादिकतिरिक्तं यथानिजातं तथापिनः । अद्यान्तं p 632.
elaborate discussions on Yaj. II. 24; but considerations of space forbid any further reference to them. The V M connects Yaj II. 24 with the preceding verse (viz that in mortgages, gifts and sales a prior transaction prevails over a later one) and remarks that this verse (Yaj. II 24) says that if a person after a gift, sale, or mortgage to him allows the property to remain with the seller, donor or mortgagor, who subsequently transfers it to another with possession and the latter holds it for twenty years, then the first dealing though prior is of no avail (as it is not accompanied with possession for 20 years). Śrīkara (as stated in the Vyavahāramātrkā) tried to reconcile the conflicting smṛti texts by holding that in twenty years the real owner lost ownership if he was present and did not protest while a stranger was in possession, but passages speaking about possession for three generations (or sixty years) applied only where the owner was absent. The Mit. and others point out that Yaj. II 24 (who employs the words ‘pasyatah’ and ‘abruvatah’) conveys that if a stranger takes possession while the owner is absent or if the owner protests, then even 20 years' possession does not lead to the loss of anything. The text of Nār. IV. 87 quoted above (p. 318) shows that the sage held that possession for several hundred years even would not avail the possessor if it is certain or established that the possessor had no title at all to begin with or that his possession started wrongfully. This text is emphasized by those who favour title and want to discourage persons benefiting by their own wrongdoing. But there are other smṛti texts of a contrary tenor. For example, Nār. IV. 91 himself says ‘whatever has been enjoyed even unlawfully for three generations (i.e. by three ancestors) including the father cannot be recovered by the owner from the person (who is the 4th in succession) because it has gone through three lives in succession’; a text of Hārītā states ‘what has been enjoyed by three prior ancestors without any title whatever cannot be recovered back (from the present holder, who is 4th, since it has descended successively through three generations’. These two are relied upon by those who hold long possession as leading
to an inference of title (tripurusa-bhaktwadnauh, as Medhatithi on Manu VIII. 148 calls them). These like the Vyavaharata-ttta and Vivadaonandra who rely solely on possession boldly say that long possession even originating in wrong leads to ownership. Medhatithi says 'there can be no memory of the origin of title when there has been possession for hundreds of years and (if title had to be proved for the origin of such possession) a king may resume villages enjoyed by ancient temples, brähmanas and mathas; therefore ancient possession is evidence of ownership because it makes it extremely probable that the ancient possession originated in gift or the like'. The Mit, on Yaj. II. 27 (which is satavadi:) refers to all the three views, refutes the first two and accepts the view of loss of profits. It does not literally interpret the texts of Hārīta and Nārada quoted above, takes them to be over-statements and intended to convey that continuous possession for over three generations cannot be interfered with even if there is no clear proof of the origin of title. In modern India under the Indian Limitation Act (IX of 1908) the tendency is to prescribe the very short period of twelve years for adverse possession in order to defeat a title, following the English Real Property Limitation Act of 1833 (3 and 4 William IV chap. 27), sec. 2 of which insisting on vigilance by every one about one's rights however prescribes the period of 20 years within which to bring an action for recovery of land. Modern case law has rather gone too far and sets a premium on wrongful possession by holding that it is not necessary that adverse possession should have been brought to the knowledge of the real owner. Ancient Hindu lawyers put down the tendency to usurp another's property and placed many obstacles in the way of the wrongful possessor.

It may be noted that there were a few rare texts that referred to very short periods for possession causing loss of

465 अन्यायायालापि विने बबबवश्यको भोगः। मथायुनियं अन्यायायालापियं बद्रुकुपुरि विना यातसैदिने। । सचाकार्यसप्ताहः कामाजयुप्रजालयः । (भाषा श ३१) इति वचनात्। विशेषतः विद्वा सहेलयः। अन्यायायालापियान्यायानियावस्थायियाः। तेन कदनुति भोगा। इत्याय यात्सैदिने। मथायुनियं केतनिः। अथे हृ चक्ष्यचक्षुभैविविहियायायानियायिः। मथायुनियावतः।। । ज्ञातं यज्ञेऽपि मथायुनियः। विशेषतः वहा। इत्याय इत्सुभैविविहियाः। इत्याय यात्सैदिने।। सचाकार्यसप्ताहः।।

457 above for the verse विदिनिः।

466 Vide The Secretary of State for India v Debendra Lal Khan 61 I A p 78 at p 82 (=36 Bom. L R 249) and Srishchandra Nandy v. Bajnath, 62 I A 40 at p. 44 (=37 Bom. L R 323).
title, viz. 3 years for immovable property (provided there was no permissive origin, *ksamāḥya*) or one year for corn, cattle and other movables

This idea being opposed to innumerable texts was explained away as merely conveying the great importance of possession. Marici states that cows, beasts of burden, ornaments that are borrowed through friendship should be returned within four or five years, otherwise, the owner would lose them. This is opposed to Manu VIII. 146 and other texts and so is explained as being applicable only if there is no sufficient cause for allowing them to remain with the borrower.

The ancient Roman Law was very like this. Before Justinian the Roman Law gave the ownership of a thing by quiet possession bona fide and founded on good title if maintained during one year over movables and during two years over immovable property.

Justinian altered this and provided that possession during three years gave ownership of movables and possession during ten years (if parties resided in the same province) or during twenty years (if they did not) gave the ownership of immovable property.

Br (S. B E, vol. 33 p. 314 verse 31) lays down the proposition that if a person has title and is already in possession and is dispossessed by another then he may succeed in a lawsuit on the strength of his prior possession provided the dispossessor does not establish continuous possession for three generations.

This is similar to a suit in ejectment contemplated by Art 143 of the Indian Limitation Act.

Br (S B E vol 33 p. 310 v. 11) and Kat. 335 (both quoted by Aparārka p 637, V. P p. 166) state that what is enjoyed by a man’s agnates and cognates and his own people does not pass to their ownership by their mere possession; one should regard

467 तथा युद्धसत्तिकोर्कमाहार | विचारिष्य तुज्जस्य ईशन समवद युद्धसत्तिष्य | तत्र सा नास-हतेला यथातिक्षिप्त न केहीादृ | पन्नहायूर्यमानयाप्पि वर्तादसमस्याप्पि | स्वश्चर तुकेसावराय यथासत्त (न?) वयस्येव चन्द्रमत्रिकाव्याप्पि वत्तादृश्य | स स च प 135

Vide व्याक. नि. P 132 from which this is taken, which introduces these verses with the words 'अन पर्वतामाना, प्रहसति,' It is probable that the work of Br on vyāvahāra had five adhyāyas

468 यद्यपाल्लाक्षणं पार्यित सत्तिकर्मो व | चतुर पाराक्ष्यं समवदानाय दमिनाय | पाल्लाक्ष्णम in सुविष्टियाः II 59, यह या III p 148 (reads क्षेत्वात्)

469 Vide Sandar’s Introduction to the Institutes of Justinian, sec 72

470 सत्तिकर्मो विचारिष्य समाभीत निनिद्ध कम्यालाभिताय निनिद्धति | सत्तिकर्मो च ह य यह नीद्धान्याय | विचारिष्य हि सा चन्द्र या ह | नीद्धान्याया | इति | पर्या या III p 144-145, सुविष्टिया II p. 74.
In cases where possession is ineffective

PitSmaha states that possession by a stranger is powerful, but possession by members of one's own family has certainly not the same force. This appears to adumbrate the principle of modern law that possession by one co-owner or one tenant-in-common is ordinarily the possession of all co-owners and the mere fact that the profits of a property have been enjoyed by only one co-heir or tenant-in-common for many years does not by itself amount to the ouster of the other tenants-in-common. It is stated in Gaut. XII. 35 that property which is enjoyed for a long time by a stranger, an ascetic or a king’s officer is not lost to the owner by that enjoyment, since the owner may have thought that he would reap long-enduring spiritual merit by the first two enjoying this property (such as a vacant house) or that he might be prevented from asserting his right from fear (of the royal official). Compare Br. (S B. E. vol 33 p. 311 v. 12). Manu VIII. 149 (=När. IV. 81 and Vas. 16. 18), Yaj. II. 25, Br. (S. B. E. 33 p. 312 v. 21), Kat. (330) state the following exceptions to the rule of loss by long possession; a mortgaged or pledged property, boundary, minor’s property, an open deposit, a sealed deposit, women (female slaves), the property of the king i.e. (of the State) and the property of a brahmaṇa learned in the Veda are not lost by the possession of another (for twenty or ten years referred to in Manu VIII. 147 and Yaj. II. 24). Manu VIII. 145 provides that neither a pledge nor a deposit can be lost by lapse of time and that both are recoverable even if they have remained long (with the pledgee or depositee). Yaj. II. 25 adds to the above list the properties of idiots and of women. När. IV. 83 emphatically states that women’s property (stridhana) and state property (land) is not lost even after hundreds of years, when it is enjoyed without title. Kat. (330) adds to the above list temple property and what is inherited

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471. सना‌सिद्धिंस्यद्भृथं श्रवणाधिपतया। भोगाचार्य न च दिशक्षित। स्वरागस्मयं
कर्त्तयेत्॥ कात्यायनं। अनुसिद्ध्धिं ह। पद्यस्मे कुस्कान्तापाणिनीयं।
इदं भ्राह्मणस्माययं च। कुस्कान्तापाणिनि हिरण्ये॥ भुवं। both quoted by अन्तराकाति p. 637, एक. चित्र. pp. 128-129,
ए. श. p. 166, विनाध्विन्यु. p. 135 (2nd verse), the first is ascribed to both भुवं and कात्यायनं।
by Yaj. चित्र. 47कुस्कान्तापाणी सत्यं भोगाचार्यं जयति काश्चति। भोगाचार्य भोगाचार्यं
श्रवणाधिपतया। विनाध्विन्यु। II. p. 69

472. Vade I L. R. 46 Bom. 213, 31 Bom. L. R 199 and 1030 (P. C.), 47 Cal 274 for this proportion,

473. द्रहमद्राह्मणे। भोगाचार्य न च स्वराग ताज्ञाप्रचे। समें। इदं भ्राह्मणस्माययं
स्वरागस्मयं॥ भुवं। इन प्रसिद्धिः II. p. 69, परा मा. III. p. 149.
from the father or mother. All systems of jurisprudence throw protection round the interests of minors, persons of unsound mind and others similarly situated and provide longer periods of possession for loss of their right. The Mit. on Yaj (I. 25 gives reasons why the several exceptions are made. In the case of a pledge or mortgage the property is enjoyed by the pledgor or mortgagee under an agreement and so there is no fault on the part of the owner if he remains quiet while the property is being enjoyed by the creditor, boundaries between villages can be easily established by such signs as trees (growing on the border), streaks of chaff and coal (buried underground), deposits are entrusted to a person out of confidence for being pre-arrived and not for enjoyment; idiots and minors are ignorant or incapable of understanding their rights, the king being engrossed in numerous state affairs may not be able in time to look into the question about possession of state properties; women on account of their ignorance and timidity may not assert their rights and a learned brahmana being devoted to learning, teaching and performance of rites and duties may have no time to go to law. In modern times also the law favours minors and other persons as indicated in the note below.

Kat (331-334 q. by Par. M III p 148, Sm C II p 69

474. द भीमं कालपेश्चिन्दे देवराजपान्यः प्रव शालोपिनिरमिश्रे च नामपि. नित्यः कसात् कालं यो महत्। छात्रहि भिन्न भिन्न प्राणैव छिन्नः वेदांतारुपायं च नामेनव नित्यः। सूक्तिना, II 69 उपनिषधिः और नित्यधिः दिय नित्यम्। कदनातोपथपथिः नित्यधिः यो महत्। नित्यः। (q by नित्य on p.- II 65)

475 Under the Indian Limitation Act, a mortgagor can sue for redemption and possession within 60 years from the time when the right to redeem accrues (Art 148), though for ordinary suits for possession the period is 12 years, while a pawner of moveable property has 30 years (Art 143) from the date of the pawn, if a thing is entrusted to a man for a specific purpose as a trustee then sec 10 of the Limitation Act provides that no length of time will bar a suit for recovering from him his legal representatives or voluntary assigns the trust property or its proceeds (upadhas and nakshefa may be examples of trust), a suit on behalf of the Secretary of State for India can be brought within 60 years (Art. 149), sections 6-8 provide longer periods for persons who were minors, idiots or lunatics at the time when their rights were invaded. Under the Real Property Limitation Act of 1833 (3 and 4 William IV chap 27 sections 16 and 17) a suit could be brought within ten years of the time when the disability ceased in the case of minors, lunatics, idiots, those absent beyond the seas, but no suit can be

(Continued on the next page)
which ascribes them to Narada) prescribes that in the case of a \textit{brahmachari}, engaged in his vow of veda study extending over 36 years, and in the case of a man who remains in a foreign country in pursuit of wealth, enjoyment extending over 50 years will alone make him lose his property by the possession of another; that when a person has been a student for a shorter period than 36 years he may get longer additional periods proportionately and that when a person is in jail time does not run against him.

\[\text{(Continued from the last page)}\]

brought beyond forty years from the starting point. Section 13 of the Indian Limitation Act provides that when the defendant is absent from British India the plaintiff can add the period of defendant’s absence to the period prescribed for bringing a suit but does not provide for the rule of Kot which allows a longer period for loss of right when a person (who may have to sue) is absent in a foreign country. Under the Civil Law of Rome the rule was \textit{nullum tempus occurrit rege} (lapse of time does not bar the right of the crown). Vide \textit{Vyakunta v Government of Bombay} 12 Bom H C R (O. C J.) 1 at p 217 for this rule and its limitation under modern Indian Law.
CHAPTER XIII

WITNESSES (sakṣiṇah).

The word sākṣiṇa occurs in the Śvetāśvatara Upanisad\(^{476}\) (VI 11) where it is applied to the one immanent Spirit of the universe as All-seeing. Pāṇini\(^{477}\) V. 2. 91 explains the word sākṣiṇa as meaning 'one who has directly seen.' Gaut\(^{478}\) XIII. 1, Kauṭ. III. 11, Nār. IV. 147 state that when two persons litigate and there is a doubt or discrepancy between the two the determination of the truth in the dispute is due to witnesses. Manu VIII. 74, Sābhāparva\(^{479}\) 68 84, Nār. IV. 148, Visnu Dh. 8. 8 13, Kāt. 346 (q in V M p 317 and V. P p 106) provide that a (proper) witness is one who has himself either seen or heard or experienced the matter in dispute. This means that the evidence of a witness must be direct and should not be what is called hearsay. Medhatithi (on Manu VIII. 74) says\(^{480}\) that hearsay evidence occurs when a person who hears from another that has himself heard something from another comes forward as a witness and that hearsay is no legal evidence. Manu VIII. 76 prescribes that even though a man may not have been expressly asked or appointed by the parties (in the words 'you are the witness to this transaction'), he is a proper witness when asked as to any matter in dispute that he has himself seen or heard. The only exception to hearsay evidence allowed by

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\(^{476}\) एदो देव: सर्वेऽपेतु पुरुषः साक्षी जोता केवल निर्मिती || सार्वाधंतिदेवनेत्र विषुः।

\(^{477}\) साक्षिकपार्विक संज्ञानाय । या V. 2. 91.

\(^{478}\) विविषिपक्षी साक्षिकनिमित्त नास्त्यपरस्माया। गी XIII. 1, अत्याधिकयी हि साक्षी मनान्तः। कौटिल्य III 11

\(^{479}\) स्वादशुकालामहापार्वती साक्षिके घयंकिलस्थितः। नारः IV. 147, अशिपरिधिसं निधिभवतुभूतः हृदंचेत। सूक्ष्माल पाक्षिको वाक्यमात्यया न वृहस्तिती। कालया 10 या म प. 106, सम्बादीद्वारास्कर्तारी अवणात्मकेति प्राणायाम्। समावेश 68 84, सम्बादीद्वारास्कर्तारी अवणात्मा। विन्दुस्मुद्रः 8 13

\(^{480}\) सम्बादीद्वारास्कर्तारी श्वात्स्वाक्षरास्तेष्यन्ति साक्षीमात्रावजः वर्तते। यत्र कुत्भीषण देवेन श्रुतातुर्विलक्ष्यते सत्यसंसारात्तुद्धवेन प्रपुरवायुरी न साक्षी। मे on मह 8 74, वद्वृहाः आदित्यो व देव सिद्धाशिविषयं पुरूषः मक्षितः सत्य साक्षीरथयुः। चेत चो विविषिपक्षी देवेन यतित। स तस्माद्वृहाराजाः लोको सत्यगति स्वप्नात्मकः प्राण्यति। प्राण्यति देवताद्वाराघिन्यासिद्धिः। विभिन्नविशालिनि साक्षायमात्रावजः॥ सुपर्याय (ms)Compare वा म प. 109

For almost the same words.
III ]

Witnesses 331

the Visnu Dh S. VIII. 12 is that when a person that is appointed as a witness is dead or gone abroad, those who have heard what he said may give evidence. It has already been stated (p 297) that a king was not to delay the examination of witnesses. Kat. (340-341 q) by Aparārka pp 675, 677, Sm C. II. p 92, V. M p. 331) prescribes that the king (or the chief judge) should himself examine the witnesses that are present (in court) and should consider along with the sabhyas the statements made by witnesses and that, where it is doubtful who the witnesses on a disputed matter are, time should be given for producing the witnesses in order to ascertain the proper means of proof but that where it is clear who the witnesses may be he should make the hearing of the case proceed at once. Kat (352) further prescribes that when it is impossible to bring witnesses because they reside in a foreign country, evidence taken in writing before a man learned in the three Vedas and sent by him should be read in deciding the cause. Gaut. 13. 2, Manu VIII. 60, Yaj. II 69, Nār. IV. 153 and others require that ordinarily there should be at least three witnesses in a cause. Br. (S. B. E 33 p 301 v. 16) says that there may be nine, seven, five, four or three witnesses, or two only if they are learned brahmanas. Visnu Dh S VIII 5 and Br. (S. B. E vol. 33 p 301 v 16) emphasize that a single witness alone cannot be examined for deciding a matter.

481 विद्वंताय वृत्ते द्वेशानामस्य या तदभिनितोऽस्मात् कमालय । विविधपरमपूपुष वIII 12

482 अप्रकट आगमों एवं विस्तारं सतिवादित्वसा (विविधपरमपूपुषा? ) देशविशिष्टितथे वैपराकाः p 667

483 इस कोर्रेसपोंडिंग यूरोप से वाइफ जुड़ते कनिष्ठा या प्रभाव तथा जीवन p. 667)

484 वा या वागिनिय व्यापारी नैक युग्मेत ज्ञाति । यह p. 667 देशविशिष्टित शिक्षागतिता सिविलियांग थाकन p. 667

485 Vide Best on 'Evidence' (12th ed of 1922) p 515 The Mosaic law in some cases and the Civilians and Canonists in all exacted the evidence of more than one witness, a doctrine adopted by most nations in Europe and by the ecclesiastical and some other tribunals among us. According to the Common Law of England and the Indian Evidence Act (I of 1872) sec 134, no particular number of witnesses shall in any case be required for the proof of any fact. Best (tbd p 520) notices that in prosecutions for perjury the testimony of at least two witnesses is required by the Common Law of England (now confirmed by Statute) and that by Statute two witnesses at least are required in trials for treason. Vide Emperor v. Bal Gangadhar Tilak 6 Bom, L. R 324 where the rule about two witnesses in convictions for perjury according to the Common Law of England was relied on
But Yaj I 72, Visnu Dh S VIII. 9, Nar IV 192 state that one man alone may be a witness in a cause if he is endowed with the regular performance of his religious duties (is possessed of the qualities stated in Visnu Dh S VIII 8) and is accepted as a witness by both sides Vide Manu VIII 77 also Br (SBE vol 33 p 301 v 18) allows a single witness to furnish valid proof if he is a dūtaka (messenger), an accountant, one who has accidentally witnessed the transaction or if he is the king or the chief justice Vyāsa says that even a single person may be enough in a cause, especially in heinous offences called śāhva, if he be one whose actions are pure, who knows the daharma and whose truthfulness has been well attested before Kaut (III 11) says that a single witness (whether a man or a woman) may be enough in cases where the transaction in question was effected in secret (except the king and one performing austerities) Kat (353-355 q by V M pp 319-320, Sm. C II 76, V. P. pp. 112-113) states that even a single person may be allowed to depose as a witness if he was taken in confidence at the time of making a deposit; so also a messenger sent by a litigant for borrowing an article (such as an ornament) or the manufacturer of an article may alone be sufficient to prove the identity of the article or when a matter has been decided by the king or chief judge, the scribe, the chief justice or any one of the subbyas may alone prove the plea of res judicata or the point as to what was said by the plaintiff or the defendant in a suit Vide Br (S BE, 33 p 300 verses 13-14).

The qualifications of witnesses to be examined in a suit are stated in numerous places such as Gaut XIII. 2, Kaut III. 11, Manu VIII 62-63, Vas 16.28, Śankha-Likhita (q in S. V. p 138), Yaj II 68, Nar IV 153-154, Visnu Dh S VIII 8, Br (S BE vol 33 p 302 v 28), Kat 347 (in Sm C II p 76 and

486 Br (SBE vol 33 p 300 v 8) defines a dūtaka as one who is a respectable man esteemed and appointed by both parties and had come near to listen to the speeches of the parties.

487 दृष्टिनिबन्धर्थरस्त्र साक्षी पवित्रादिभवकः | सन्तासरसकीष्ठंसदीति चिन्तने विपासि स्वयं मे स्तविच ि II p 76, श्रं म p. 112

488 प्रेञ्यवधयुपंचेकाः क्री यूष्य उपशोता उपद्वता वा साक्षी यथासादासारंभ । कौशिकी III 11

489 अधिकारान्तरोऽस्त्र्यं पशुधराः धृतस्ता स्वयम् । स य स तन माही स्वयंस्वार्गी द्वियोधिक । स्तवम् सत्यस्वार्गी मारी रथात तद्नाश्चा । धृष्ट प । by अपराधि p 667, श्रं म p 108
The principal qualifications are:489 they should be born of a good family, should have lived hereditarily in the country, should be householders having a son or sons, should be well-to-do and men of character, should be trustworthy, should know dharma and act up to it, should not be covetous, and should have been cited by the parties as witnesses. Some Småti texts such as Kautt III 11, Manu VIII 68 (=Kat. 351 and Yas. 16-30), Kat 348 provide490 that ordinarily witnesses should be of the same varna or caste as the parties, that women should be witnesses in disputes between women, that men of the lowest castes (anyāya) should be witnesses for litigants of those castes and that a litigant of a lower caste should not try to prove his case by citing witnesses of a higher caste or a brāhmaṇa (unless the latter is an attesting witness on a deed.) But most (even including Gaut and Manu) give an option and say that persons of all castes (even śudras) may be witnesses for all Vide Gaut. XIII 3, Manu VIII 69, Yaj. II. 69, Nār. IV. 154, Yas. 16-29 (sātva sātva eva tā) Nār. IV 155 and Kat (349-50 q by Aparārka p 666 and V. P. pp 111-112) provide491 that in disputes between members of groups such as those who wear peculiar symbols (indicative of their sect), srenis (guilds), pugas (associations), companies of traders and all others who work in groups and who are therefore called iturugs and in the case of slaves, bondmen, wrestlers, elephant riders, horse-trainers and soldiers the heads (called iturgu) of these groups are the proper witnesses. Gaut. XI. 21 says that in disputes among members of classes of agriculturists, traders, cowherds, money-

489a शलमेष दानसेतनिहि: तत्वाभिनिहि: शास्त्रां निर्विशेषविविभिन्नाशाशास्त्रतर- 

हितविद्याः। तत्वां यथार्थस्य न हि कायम

महत्तेत् ।। कै िं III 11, कृत्वा इति विविर्शिवर्गविविषाणसिद्धिः षुञ्जनो मथना

अभिपि भये ।। सार्वप्रस्तावः ।१५६विज्ञानसिद्धिः। ब्रह्मां तत्त्वां विविद्याः।

सुलिन्दनो ब्रह्मां जनाना कर्मार्थमेव षुञ्जन: । षुञ्जन: सत्त्वावतहिः।

भौतसमार्थवयावसंसना विविद्याः। किंतु यथाकृत्तमथना अभिपि

वर्गाविभिः किंतुतीनी न जनाना किंतुतिः मातितिः ।। १५६विज्ञानाः तत्त्वां

हितविद्याः। सूत म-चि प १३८

490 ब्राह्मणद्वाराविविषाणसिद्धिः। कैतू XIII ४, विविद्याः

पाणिनो राजस्व सर्वसे सर्वप्रस्तावः। गोवरूपद्वाराविविषाणसिद्धिः तह्या q by

म-चि प ११२, ११२-११२ (which reads मोक्षी साधवाविषा, which seems to mean

'风机 a litigant of a higher caste should not be proved to be what he is alleged
to be by the evidence of witnesses of lower castes').

491 लिखितस: श्रेष्ठोपाधण विविधवाचाराविषगारः । समुदायवाय वे भाष्ये वर्गाविभी

विविद्याः। इति तत्त्वाविषाणसिद्धिः। इति सर्वप्रस्तावः। यथेकः समुदायवाय

नापकाविविद्याः। विनायक लाहुसु गोवरूपद्वाराविषाणसिद्धिः। कैतू q by

अपरार्कां प ६६६। For श्रेष्ठोपाधण विविधवाचाराविषगारः। पूर विनायक प २६० and note ३८३ above and H. of Dh vol. II. pp ६७-६८
lenders and craftsmen (such as carpenters and washermen),
the help of other members of the same calling may be taken as
witnesses and arbitrators.

Long lists of persons who are generally to be regarded as
incompetent to be witnesses are given in Kaut. III. 11, Manu
VIII 64–67, Udyogaparva 35, 44–47, Yaj, II 70–71, Nar. IV.
177–187, Visnu Dh. S. VIII 1–4, Br (S B E vol. 33 p. 303
vv. 29–30), Kāt 360–364 (q by Aparārka pp. 669–670, Sm C II
pp 77–78, V. P p. 119) Manu VIII 118 states the general
grounds why oral evidence tends to be false viz covetousness,
infatuation, fear, desire of pleasures, anger, friendship, igno-
rance, minority. As the list of incompetent witnesses in Nār.
is the longest, 492 that alone is set out here. one who has mon-
tary interest in the parties or the subject matter of the suit
(such as a co-sharer, creditor and debtor of the parties), a

492 Vide appendix for the verses of Nārada. The commentaries and
digests give various interpretations of some of the words. A few such are
stated in the next note.

493 The Mit explains 'ārthasaṃbandhān' as 'vipratipadyamānārtha
sambandhin' while V. P. p. 117 explains as 'creditor or debtor' of a party.
'Āpāṭh' is defined by Kāt 361 (quoted by Aparārka p 669) as 'those who
depend for livelihood on the subsistence given by a party to the suit or those
who serve him or cause benefit to him or those who are his relatives, friends
or servants.' Sm C explains 'cāṅkā' as a bard, while V. P. (p 118) as
oil-presser. The printed text of Nār reads 'āśāddha' (who is not invited
at a śāddha), while V. P and others read 'āśāddha', for vṛāya (one
whose upanayana has not been performed) vide H of Dh vol II p 376,
'prāg-dṛstodasa' is explained by Asabāya as 'one who suffers from a disease
which is the effect of evil actions done in past lives.' Kāt 362 (q by
Aparārka p 669) explains 'sanābhaya' as sons of one's mother's sister or
one's full sister or one's maternal uncle. The printed text reads 'śānta',
while Sm C II p 78 reads 'aśānta' (restless) and V. P. 117 reads 'aśānta'
(one constantly engaged in work). Kulika is explained as 'one appointed
by the king to decide causes' (by Kalpataru), while the Maṇḍanaratna says
'he is the person in authority over a kula i.e a group of brāhmaṇas or the
like'. Vide V. P p. 119 Sm C II p 78 and V. P p. 118 read 'śūcalā'
(one appointed by the king to find out crime among the people) for 'stāvāla'
of the printed Nār.
friend (or relative such as an uncle); associate (in undertakings); enemy; one who has already been held to have given false evidence; one charged with (or addicted to) sins; a slave; one who is in the habit of finding the weak points of others (or harming others); one who has no faith in religion; a very old man (above 80 years); a minor; a woman; an oil-presser; one intoxicated; a lunatic; one who is extremely inattentive; one distressed; a gambler; a village priest; one who undertakes long journeys (on the great roads); one who is a merchant engaged in sea voyages; an ascetic (who has renounced the world); one sick; one bereft of a limb; one who is the only witness; a brähmana learned in the Veda; one who does not perform the customary religious rites; an impotent person; an actor; an atheist; a vrātya; one who has abandoned his wife; one who has given up agnīhotra (daily offerings into śrauta or smārta fire); one that officiates as priest for persons who are not entitled to perform vedic sacrifices; one who is an associate in eating food from the same vessel in which food is cooked (i.e., who is in commensality with a party); a former enemy (arccra as one word); a spy; an agnate, a cognate (or born of the same womb); one whose evil doings in former lives are seen clearly; a public dancer (ālīśa, or one who makes his women actresses); one who lives by (i.e., buys or sells) poison; a snake-catcher; one who is a poisoner, an incendiary, a mean person (kīnāśa, or parsimonious person); the son of a śūdra woman (from one of a higher caste); one guilty of a minor sin (upapātaka); one fatigued; a desperado; one who has relinquished all attachments; a person who is penniless (through gambling or other extravagance); a member of the lowest (untouchable) caste; one leading a bad life; a brahmacārin who has not yet returned from his teacher’s house: an idiot; an oil-seller, a seller of roots; one possessed (by a ghost or demon); one hated by the king; a weather-prophet; an astrologer; one who proclaims to the public the sins of others; one who has sold himself (for money): one who has a limb too little (e.g., having four fingers to the hand); one who lives on the immorality of his wife, one who has bad nails: one with black teeth; one who has betrayed his friend; a rogue; a seller of liquor; a juggler, an avaricious man; a ferocious man; an opponent of a śreni (guild) or gana (association); a butcher; a hide-worker; a cripple; one excommunicated for a grave sin (like brahmana-murder); a forger (of documents or coins or weights &c); one who employs incantations and drugs for influencing
others: one who is an apostate from the order of ascetics (pratyavastha); a robber; a servant of the king, a brahmana who sells human beings, cattle, meat, bones, honey, milk, water or clarified butter; a member of the three higher castes who engages in usury; one who has given up the peculiar duties of his caste (or station); a kuhka; a bard; one who is the servant of a low person; one who has quarrelled with his father, one who causes dissensions. Kn. III, 11, Man. VIII 65, Vis. Dh S. VIII. 1 and several others say that the king cannot be cited as a witness (except possibly to prove the plea of res judicata or to prove what transpired before him when a litigation was going on).

The above is a formidable list of incompetent witnesses, therefore, most Sūtras such as G. XIII 9, Kn. III 11, Man. VIII 72, Yaj. II 72, Nār. IV 188-189, Vis. Dh S. III 6, Us. (q. in Sū. C. II p 79), Kāt 365-366 (q. in Sū. C. II p 79) expressly point out that strict examination of the character of witnesses should be entered upon in disputes about debts and

494 In Omchand v. Barker (Willes 1737-1860 p 538) where Willes (Lord Chief Justice) says (at p 551) that in Popish times and for some little time afterwards till the Reformation was fully established there was a notion that 'even an alien friend especially if he were an infidel could not sue in a court of justice here.' That shows how non-Christians found it difficult to sue in England for their just rights a few centuries back. In the case cited above Lord Chief Justice Willes had to deliver an elaborate judgment in 1745 for holding that evidence taken in India according to the oaths administered to non-Christian witnesses could be read in a trial held in England. So one need not laugh at Nār. who flourished at least about 1200 years before that date if he held an atheist or an apostate to be an incompetent witness. It should be noted that 'By the canon Law a Jew is not admitted to give evidence against a Christian, especially if he be a clergyman,' vide Taylor on Evidence (ed. of 1848, p 655 note C.)

495. Vide Taylor's 'Law of Evidence' (12th ed.) vol II p 872 para 1381 about the sovereign giving evidence on oath, his considered opinion being (after referring to the case of R v. Mylius in which the defendant was prosecuted for a libel upon King George V) 'that the sovereign if so pleased may be examined as a witness in any case, civil or criminal, but not without being sworn.' The श्रवणिद्वार, ed. p 100 says 'तत्त्व साक्षी बुध्वति कार्य इति तत्त्व साक्षी भविष्यसि।' और इति विदेशज्ञाति ज्ञाति, उपदेशे। व्यवहारादृशादिकासाधारणं तत्त्वेति साक्षी सुचितं, कालावधिकालत्वम् निषेधं। तथा व भा:। तत्त्व धमंशस्तेन एकसत्त्व साक्षी निषेधाः। नाना: वाक्यिल भवेत् चुल्लतः एकत्वार्थि निषेधाः। च इति। बुध्वचस्वार्थ। निर्विचारे न न हृद्यार्थी न एव भगवद्। अर्थस्व वाक्यसंस्कारः साक्षी इत्यादित्वम् नापि।’ The श्रवणिद्वार II. p 80 and para अन्तः III. p 103 have the verse of श्रवणिद्वार मा श्रवणिद्वार कार्येः स नापि VIII. 65.
the like which are of a fixed nature (of a civil nature), but that in complaints about all kinds of *sāhāsa* (heinous crime), in robbery, adultery or the two kinds of *pīrṇaśa* (viz. defamation and assault) there should be no (strict) inquiry into the character of witnesses (that is, all can be witnesses in such cases) and that even those like slaves and fault-finders who have been enumerated among incompetent witnesses can become witnesses in grave matters. The idea is that in such cases the witnesses need not be strictly examined as to their possessing the good qualities ordinarily required in witnesses. But this does not authorize the examination of such persons as lunatics or idiots as witnesses, because they have not the power to understand things. Manu VIII 77 emphatically states that even a single male, if he is free from greed, may be (sufficient as) a witness, but not women of good character, even though they be many, since the feminine intellect is apt to be unsteady. But even Manu had to concede (VIII 70) that a woman or a minor or a very old person or a pupil, relative, slave or a hired servant may be a (competent) witness, if it is impossible to find another witness (in matters that occurred inside a house or in a forest or in crimes where life is lost). Kāt 367 (q by Aparārka p. 671) says the same thing. Usanas (quoted in the Sm. C II p 79, V. P. p. 120) provides that even a slave, a blind man, a deaf person, a leper, a woman, a minor, a very old man may be (competent) witnesses in *sāhāsa*, provided they are not interested in the matter of dispute (or are not related or partial to the parties). Nār. (IV. 190–191) gives it as his view that even when there is to be no strict inquiry into the character of witnesses in *sāhāsa*, still a minor, a woman, a single person, one who forges deeds (or who is a

496 अन्यायाधिक परिशिष्ट तपस्या: चिररकमण्ड:। साहसाधारक्षक चाँ चर्ष परिशिष्ट कुश- चिन्तिता। स्थायित्वोऽथा युग्मतुष्ट:। संपर्कं तासदीतोऽथ:। लोपपपारन्तोऽथेन न परिपल्लति साहसः॥ अन्यायाधिकारी चाँ चर्ष परिपल्लति ॥ अद्यान्तः।

497 तामिल्यं विश्वाम न्याती साहसात्मकश्चिन्तिता:। अत्यावश्यकमिकसः। चाहिये साहसात्मकमन्तः॥ पा: युग्मतुष्टं चाय साहसे च चर्ष परिशिष्ट || ॥

496 कान्ति य (q by Aparārka p. 671) says the same thing. Usanas (quoted in the Sm. C II p 79, V. P. p. 120) provides that even a slave, a blind man, a deaf person, a leper, a woman, a minor, a very old man may be (competent) witnesses in *sāhāsa*, provided they are not interested in the matter of dispute (or are not related or partial to the parties). Nār. (IV. 190–191) gives it as his view that even when there is to be no strict inquiry into the character of witnesses in *sāhāsa*, still a minor, a woman, a single person, one who forges deeds (or who is a

497. तामिल्यं विश्वाम न्याती साहसात्मकश्चिन्तिता:। अत्यावश्यकमिकसः। चाहिये साहसात्मकमन्तः॥ पा: युग्मतुष्टं चाय साहसे च चर्ष परिशिष्ट || ॥

498 कान्ति य (q by Aparārka p. 671) says the same thing. Usanas (quoted in the Sm. C II p 79, V. P. p. 120) provides that even a slave, a blind man, a deaf person, a leper, a woman, a minor, a very old man may be (competent) witnesses in *sāhāsa*, provided they are not interested in the matter of dispute (or are not related or partial to the parties). Nār. (IV. 190–191) gives it as his view that even when there is to be no strict inquiry into the character of witnesses in *sāhāsa*, still a minor, a woman, a single person, one who forges deeds (or who is a
cheat), a relative and an enemy cannot be witnesses in sāhāsa, since a child through ignorance, a woman from her habit of untruthfulness, a forger (or cheat) because he is accustomed to doing evil deeds, a relative from affection and an enemy from the idea of taking revenge may speak falsely. There was no total disqualification of women as witnesses, since Manu quoted above allows them to be witnesses in disputes between women and in cases where it is not possible to have other witnesses. Medhātithi on Manu VIII. 68 holds that women are disqualified as witnesses only where the plaintiff and defendant are both males but that where there is a litigation between a man and a woman or between women alone, a woman may be a competent witness. Ancient Hindu Law is not singular in its partial rejection of the testimony of women. Vide Best on Evidence (12th ed. of 1922) pp 53–56 where it is shown how ancient Roman Law and the Medieval laws of several countries of Europe more or less excluded the testimony of women, how some States in the U.S.A. excluded the testimony of negroes and persons of coloured blood. By the Canon Law more credit was given to male than female witnesses (Taylor on Evidence, ed. of 1848 p. 655, note d).

Nār. (IV. 157–172) states that incompetent witnesses fall into five classes: (1) some like learned brāhmaṇas, very old men, ascetics, persons practising austerities are incompetent because ancient texts (vaśāna) say so and there is no other (special) reason for their exclusion. The Vyavahāratattva

498. असतवर्गाय निः शालेदेशसिन इति। प्रवचिन्हो हुदी। विकारादोषों नेवात्म-हिन्दुस्तानातः। ओमहिन्म, नवसा इति, ये च स शाक्तिता नता। असतवर्गानि वचनावार हिन्दुस्तानातः॥ सेना। साहित्यकाव्याः। किताबा यथाकथा ये। असतवर्गानि विकारादोषों नर्मा स विचारे॥ राजा परिश्रमितुं सातिनिष्कांश्वविचारे॥ वचने यथा भिक्षैते ते सुभृत्वाणमिति॥ अनितिभूतं सातिनिष्कान्यं सप्तमैवे यो बदेतु॥ सुचीनकुलभावित॥ साहेबस न स सातिनिष्कान्यि॥ योगी। आर्यविवधायं श्वासामिति नारिहित॥ अच दहसुध सातिनिष्कान्यं सूतनात:॥ नाराय IV 157-162, compare नाराय IV. 94 "सत्यवीय नारायण शंकुते झलनि सातिनि। अत्युच्छ आयतित्तमात्मसातिनिष्का शुद्धाय।" यथा तव नित्या यथा तव नित्या। This may be one of the texts to which Nār. refers in the words असतवर्गाय निः शालेदेशसिन। The सः म p 115 explains सुचीनकुलभावित॥ सातिनिष्कान्यं सूतनात:॥ कादिकूल सत्यविवधायं श्वासामिति तन सत्य सातिनिष्कान्यं सूतनात:॥ सातिनिष्कान्यं सूतनात:॥ The सः म p 115 and रचन न्यि p 106 explain सुचीनकुलभावित differently. माति ने अनुसूचीते न च ग्रहणे असती। सत्य सप्तमैवे इति सिद्धान्तदायकानुसारी शास्त्राय। आर्यविवधाय मुद्दा पाति आर्यविवधायानुसारी। सप्तमैवे यो बदेत। रचन न्यि p 106.
Five classes of incompetent witnesses

(p. 214) points out that śrōtriyas and others cannot be appointed as witnesses, but they may be what is called akṛta witnesses explained below (i.e., they may if they choose appear as witnesses in a cause). They are not competent like the king, not because they are untrustworthy but because it is not advisable to call them. They were privileged persons; (2) thieves, robbers, dangerous characters, gamblers, assassins are declared to be incompetent because there is the defect (dosa) of untruthfulness in them; (3) witnesses are rendered incompetent on the ground of contradiction (bheda), when the statement of witnesses who have been accepted by the king for determination of the same matter do not agree; (4) he who without having been appointed (by the parties to a transaction) as a witness (to it) comes of his own accord to depose is termed a sūci (i.e. a spy) in the śāstra as (and so was styled sujayamulka by Nār. IV. 157) and is unworthy to be a witness; (5) a person is incompetent as a witness by reason of intervening death (i.e., he is mrtāntara); when can any person bear testimony if the creditor (or claimant) is no longer alive, whose claim should have been heard by him specifically (but was not heard in that way)? Mrtāntara is a witness whom one or other of the parties informed in a general way that there was some dealing between the parties and who was asked to be a witness (but was not told the details of the dealing) and then subsequently the party died. In such a case the person told is not a good witness, as he cannot give the details. But Nār. (IV. 94) mentions an exception to this last rule viz when a father while on the point of death tells his sons and the like ‘these are the witnesses on such and such a matter,’ there even after the father’s death those witnesses would be competent though death intervenes.

Witnesses are divided by Nār. IV. 149 into two sorts; (1) those appointed (krta) by the parties and (2) those not appointed (akṛta); the first being of five kinds and the last of six kinds. The first five (see to Nār IV 150) are a subscribing witness (uktāta), one who has been reminded (smārtā) i.e., one who is called as a witness without there being a document and who is present at a transaction and is again and again reminded of it by a party to it in order that the transaction may be effectively proved thereafter (Kāt. 371 and 372 q. in Mit on Yāj. II. 68), a casual witness i.e., one, who, while a transaction is being entered into, comes there by mere chance and is then asked to be a witness (yadrucchādbhijña or yadrucchika,
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acc. to Br.), a secret witness i.e. one who is made to listen the speech of the debtor while concealed behind a wall screen, an indirect (uttara)499 witness (i.e. one who learn from a witness who has seen or heard of a transaction when the latter is going to a distant country or is on the point of death. The six akṣara witnesses (acc. to Nār. IV. 151–152) are co-villagers (in disputes about boundaries), the chief judge, the king (before whom a suit was tried), one who is closely acquainted with the transaction of the parties (i.e. kāryanadhyagata, acc. Br.), one who is deputed by a party (for borrowing an ornament or for settling a transaction, called dūlaka by Br.), members of the family (kula) in disputes among other members of the family (as regards partition &c.) Br. mentions twelve kinds of witnesses that are practically the same as the eleven of Nār. except one which he adds viz. lekhita500 (one whose name is caused to be written by a party in the presence of the witness when that party enters into some transaction in writing such as a loan with another). The only difference between 'likhita' and 'lekhita' seems to be that the first himself writes his own name as a witness on a document while the latter's name is written as a witness by one party in the presence of the other and of the witness Br. (S. B E. vol. 33 p. 299 verses 4–15 q. by Aparaśka pp 666–667) defines at great length all the twelve and Kāṭ also defines most of them, but these definitions are passed over as not very important. Visvarūpa remarks that these nice distinctions among eleven kinds of witnesses are made only for the sake of exposition and for the benefit of simple people501.

499. 4. Itapriirum the same as vm. Compare sec 32 of the Indian Evidence Act about verbal or written statements of a person who is dead or whose attendance cannot be procured except after unreasonable delay or expense.


Before a witness for a party begins to depose, it is the duty of the opposite party to point out the ground or grounds, if any, of the incompetence of the witness put forward for examination. Kat. adds\(^{502}\) that the latent defects of the witnesses of a party must be pointed out by the opposite party, but the patent defects will be considered by the members of the court at the time of giving their decision. Vyāsa\(^{503}\) states ‘the defects of the witnesses of a party should be pointed out by the opponent in open court by putting them down in writing and the witnesses should be called upon (by the judge) to refute them; if the witnesses admit (the faults pointed out) they do not deserve to be witnesses; if otherwise (if the faults are not admitted) they should be established by the opponent with evidence (other than those of other witnesses); for if the defects of the witnesses of a party were allowed to be established by other witnesses to be cited by the opponent, there would result the fault of a never-ending series (anavasthā), since the first party would then try to show defects in the latter set of witnesses and this may have to be carried on ad infinitum.’ Br. laid down that an opponent should not be allowed to point out the grounds of incompetency in witnesses after they have begun to depose and Kat. adds\(^{504}\) that he (that party), who points out, after the witnesses have deposed to a matter, faults in them in whom he found none at first and who can not set out a proper reason (for his not proclaiming the faults at first) should be fined in

\(^{502}\) Bhāgavata-purāṇa 11. 25. 5, 7, 26, 27.


\(^{504}\) Bhāgavata-purāṇa 11. 3. 12.
the first amercement. Br. further states\(^{505}\) that the defendant may point out the defects, if they exist, in the witnesses cited by the plaintiff; but if he finds faults which do not exist in the witnesses, he should be punished with a fine equal to the amount claimed (in monetary disputes) or equal to that which is levied from a false witness. If the witness of a party is not able to refute the defect pointed out by the opponent, the party calling him should try to clear his witness of the fault; otherwise he should not succeed in his suit.

When a witness is about\(^{506}\) to depose, he was, acc, to Br. (S B. E 33 p 302 v. 23), to put off his shoes and turban, raise his right hand (in order to draw the attention of the Court) and after touching gold, cowdung or darbha grass to depose to the truth \(\text{Ap Dh S. II. 11 29.7}\) says\(^{507}\) that a witness should depose to the truth on an auspicious day in the morning in the presence of kindled fire and near (a jar of) water in the hall presided over by the king (or chief justice) and after being exhorted as regards both (viz, the results of truthfulness and falsehood) and when accepted by all (the court and parties) as a competent witness. Kaut also (in III. 11) says that witnesses should be examined in the presence of brāhmanas, water-jar and fire. \(\text{Manu (VIII 79-80)}\) provides that the judge should in a conciliatory manner exhort all witnesses assembled inside the court in the presence of the plaintiff and defendant as follows: 'whatever acts of these two (litigants) between themselves you know as regards this matter (in dispute), narrate them all truthfully, since you are the witnesses in this case'. \(\text{Yaj II. 73}\) also states that witnesses should be made to depose, in the presence of the parties and \(\text{Gaut. XIII. 13 and Kāt (q by Mit on Yaj II. 73)}\) prescribe that witnesses\(^{508}\)

\(^{505}\) साक्षीयोपिच्छिद्रदिवासात् सांड सुभाषित दृष्टे प्रेतुः | अनुवादन्यायपथात् ततसंसूचना प्रणवे |

\(^{506}\) हिश्योपाध्यायविवेकेषाः सुक्ष्मदृष्टविज्ञानात् सम्बन्धवत् कथ वस्तुवः ।

\(^{507}\) शास्त्रविचारिकाः प्रकथयात् राजविज्ञानः समाजवाद्य समाभवते दृष्टां समान 

\(^{508}\) भवत्साक्षीयाः साक्षीयोपिच्छिद्रदिवासात् सांड सुभाषित दृष्टेः प्रेतुः | अनुवादन्यायपथात् ततसंसूचना प्रणवे 

\(\text{VIII. 87 and the 2nd is नारायण IV 198.}\)}
should face the east or north, are to be examined in the presence of the images of gods and brāhmaṇas in the first half of the day and should be exhorted to tell the truth by being bound with oaths. This examination in the public and after an oath went a long way in checking the tendency to depose falsely. The oath consisted of two parts, viz. (1) the requirement to tell the truth and (2) the exhortatory and imprecatory part. Both were administered by the presiding judge. Gaut. (XIII. 12–13) appears to prescribe that an oath (śāpatha) was not to be administered to brāhmaṇa witness, but Manu VIII. 113 ( = Nār. IV. 199) does not make this distinction. Gaut. (XIII. 14–23), Manu VIII. 81–86, 89–101, Visnu Dh. S. VIII. 24–37, Nār. IV. 201–228 contain very long exhortations addressed by the judge to the witnesses relating to the importance and high worth of truth, stating how the conscience of a man pricks him, what rewards await the truthful witness here and in the next world and what sin and terrible torments in Hell are the lot of an untruthful witness, what evil befalls even the deceased ancestors of an untruthful witness and how he is liable to be punished by the king. They are too long to be cited here509. Shorter exhortations are found in Yāj. II. 73–75, Vas 16. 32–34, Baud. Dh. S. I. 10. 19. 9–12 (S. B. Ā. vol. XIV p. 203), Br. (S. B. Ā. vol. 33 p. 301 verses 19–22), Kāt. 343. Nār. IV. 200 provides ‘let him (the judge) inspire them (the witnesses) with awe by (quoting) ancient texts, extolling the greatness of truth and denouncing falsehood’. Kaut. (III. 11), Manu VIII. 88 and 113 (= Nār. IV 199), Visnu Dh. S. VIII. 20–23 add further modes of speech and exhortations according to the varga of the witness: A brāhmaṇa witness is to be addressed by the judge as ‘speak’ and to be exhorted to swear by his veracity, a ksatriya one was to be addressed as ‘speak the truth’ and to be sworn by the animal he rides and his weapons (which he is to touch), a vaiśya is to be sworn by his kine, grain and gold and a śūdra is to be sworn by (imprecating on his head) all grave sins. Manu VIII. 88 provides that a brāhmaṇa should be asked to depose

509. Vide Appendix for Nārada’s verses

510. The exhortation in the अर्पकाला (III. 11) is somewhat different from Manu’s ‘तत्‍ ब्राह्मण मुम्बास्त्रयं मुर्गीर्ति पाणिविक्ष्य जैहार्य वा भा द्वेषपुरुषस्य कपास्य- इत्य नामकं भिन्नवै गयौरिति युक्तं जनमत्त्वाद्यथे यह। चुर्यपरङ्गनि शराजायं चक्षु, राज्यन निरित्ति रूमाकप्त्यादि। चुर्यमार्गयं पक्षपर्षिवः पा बाइकुम्बकतः अव- जयावः सार्ववस्तुरोऽसि।’ The text in Dr. Sham Shastri’s edition is rather corrupt and not properly arranged.
with the word 'speak', while VIII. 113 states that a brahmana is to be made to swear by his truth. Some explain that the first rule applies to excellent brahmans and the second to inferior ones and rely on Gauṭ (XIII 12-13) who prescribes that an oath to speak the truth is not to be administered to brāhmaṇas but only to others. Vide Haradatta on Gauṭ and Vivādacandra p 127. Manu VIII 102 (=Baudh Dīś S I. 5 95) is careful to point out that the exhortation is not to depend purely on the caste but that brāhmaṇas (and others) who tend kine, who engage in trade, who are craftsmen or actors, who are menial servants and usurers should be treated (by the judge) as Śūdras (in the matter of taking oaths). Witnesses after they are assembled before the Court are to be ordinarily examined separately (vide Kāṭ quoted in n. 508 above) But Gauṭ XIII 5 and Kāṭ 392 provide 512 that if a certain matter is seen by the witnesses as a body then they may be examined together. Manu VIII 78 and Kāṭ 392 prescribe that what the witnesses declare quite naturally (without hesitation and fear) should be taken down and that when the witnesses have declared (what they know) they should not be questioned again and again by the king (or judge). From the Smṛtis and the 9th Act of the Mṛcchakatika it appears that

511. The Mit on Yaj. II 73 explains Manu VIII 113 as follows a brahmana witness is to be sworn by being told that if he spoke untruth his truth will perish, a kṣatrya that his vehicle and arms will be fruitless, a vāṣya that his cattle, grain and gold will be lost and a Śūdra that all sins will be on his lot. Others explain differently The Vyavahāratvatī p 215 says 'Gauṭaśravaṇaśāstraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraśastraș
it was the chief judge or the judges who put questions and
that there was no elaborate cross-examination and re-examina-
tion of witnesses as in England (which practice is followed in
modern India). The only cross examination that appears to
have been allowed was about the faults or grounds that made
a person an incompetent witness. In this respect ancient Indian
practice resembled modern judicial practice in some European
countries other than England. Witnesses were compelled to
attend. Kaut III. 11 states that witnesses who are not far
removed by time or space should be produced by the parties
themselves, but those who are far away or who are unwilling
to stir shall be got summoned by order of the king. Manu
VIII. 107, Yaj. II. 77, Br., Kat and Visnu Dh. S. VIII. 37 say that
if a witness knowing all facts and not prevented from coming
by disease or similar causes refuses to come as a witness he
incurs the sin of false witness, has to pay the amount in dispute
and ten per cent thereof as fine to the king. This is in ac-
cordance with the principle enforced in modern times that it is the
duty of a citizen to appear before a court of justice when
summoned. Kaut (III 1) provides for subsistence allowance to
witnesses. It is not quite clear whether parties could be
regarded under ancient Hindu Law as competent witnesses on
their own behalf. Yaj (II. 13-15) appears to suggest that
parties could be regarded as witnesses in their own cause and
held to be false from their demeanour as in the case of witnesses.
Kaut. IV. 513 8 and the 9th Act of the Mrechakatika show that the
accused was questioned by the Court as to his movements about
the time of the alleged offence and till his arrest. Sukra.

513. Vide Stephens' 'History of the Criminal Law of England' (1883),
vol. I. chap. XII, where on p 431 he remarks 'cross examination is a highly
characteristic part of an English trial, whether civil or criminal, and hardly
any of the contrasts between the English and continental systems strikes
an English lawyer so forcibly as its absence in the continental system.'

514. कृष्णकास्यविहरस्वाभास्य साविक्षणा: मतिपवचयैः। दुर्य्योगसारस्त्रत्वा स्ताविवाहिनेन
सापेक्षा ॥ कृष्णकास्यविहरस्वाभास्य साविक्षणा: मतिपवचयैः। दुर्य्योगसारस्त्रत्वा स्ताविवाहिनेन
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515. ततः: दुर्योगपाल्यः मचार्य रावेन्य सत्त्वस्य चाच्यवस्यान्ति अनुभवितः। कृष्ण
किल्लिः IV. 8.

516. संस्कृतां कार्यविज्ञानी प्रमाण शास्त्री लोकाराप्रसादः। हिसाब्यद यस्तयथः भूषणाधिनो
दिया॥ चुग IV. 5. 184.
IV. 5. 184 defines sākṣī in such a way as to exclude the litigant himself. Ordinarily witnesses were examined in the open court in the presence of the parties and never behind their back, but Kāt (387-389) prescribes that in the case of immovable property oral evidence may be taken on the property itself and in some cases even elsewhere than these two (viz the Court and immovable property), that is, in the case of the death of living beings witnesses may be made to depose before the corpse (of the animal killed) or, in the absence of the body, before some mark (such as the horn of an animal) Br. and Mān. VIII. 25 state that the truth of the statements of witnesses should be examined by marking their tone, their change of colour, their eye, their gestures, and their demeanour Texts like Śāṅkha-Lukha (q by V. P. p 124), Nar IV 193-196, Vāstu Dh S VIII. 18, Yaj. II 13-15 and Kāt 386 point out the actions and appearances of a party or witness that deposes falsely, viz he appears restless, changes his place (i.e. moves from one spot to another), licks the corners of his lips, his forehead perspires, his face loses colour, he frequently coughs and heaves frequent sighs, he scratches the ground with his feet (toes), waves his hands and garment, his mouth becomes dry and his voice falters, he speaks incoherently, talks too much though not asked and does not reply straight to the questions asked and avoids meeting the eyes of the questioner. Such a witness may be looked upon as untrue and the king or judge should bring him under discipline (so that he will be afraid to lie). Merely on seeing these signs a witness was not to be punished or entirely disbelieved, since these signs raise only a probability of untruthfulness (as remarked by Mit. on Yaj. II 15 and V P p 124).

517. सभानां हैसतु पत्कर्ष सारत सत्तां साराशिकः | सर्वसंबोधयात परमप्र सातस्य शास्त्रेऽनु | अर्थोपनि पत्कर्ष परमप्रिष्ठी मित्रा कल्यकाः | चतुर्वेषयोऽपि धर्मनीयान्तिकादेव यद्य बध देवताविनिष्ठे सार्थकं | नामसङ्के निग्रास्य निष्ठेऽचरणैः || वाक्य q by स्थूलिक्ष प p 89, पदा मा III. pp 112-113, बह म p 41, बह. म. p. 125. The reading शास्त्रिक्षि for शास्त्रिक्षि is better. बह म p. 124 quotes a long prose passage from शास्त्रिक्षि about the demeanour of witnesses. The सिद्ध on बह. II 15 remarks "पुनः दृष्टसंबोधयात्रमधुर्यत्रे न दृष्टिकारणाः । शास्त्रातीक्षितकमङ्ककायस्यभियोगीकर्थकरुपोऽयैः।"

518. उपवासाः परिवर्तः कुष- सर्वविषयोऽत्तिसिद्धः || दूत q by स्थूलिक्ष प p 85, बह. म p 124. On कुषवासाः स विन्यासः पत्थर् विषयेऽऽसः (कार्य IV 196). बह. म. remarks विषयेऽऽसः तिलकस्याः कोटिबालाचालक्षित भिन्नत्वसंगतः। "मात्रिका-वास्तविको-विकार- विवेकं कुष काव्यकाल संभाषणामाश्र्यते ज्ञात्यात्माश्चमाश्चाचिति इरुपाः। (p 124), वदे अर्थं सिद्धे on बह. II 15 cited above.
When there are many witnesses but they differ in their statements certain rules are laid down by Manu VIII. 73 (=Visnu Dh S. VIII. 39), Yaj II. 78, Nar. IV. 229, Br. (S. B. E. vol. 33 p 303 v. 35), Kat. (408). They are briefly these:519 The statement of the majority of witnesses should be accepted, but if they are equally divided then the statement of those who are more pure (in character or more disinterested) should be accepted and if the meritorious are divided equally then those who are the best among them should be accepted as true. The Mit on Yaj. II. 78 adds that if there is a conflict of testimony between the statements of a few but eminently qualified witnesses on the one hand and those of a larger number of ordinary witnesses, then the former should be accepted as Yaj II. 72 requires i.e. it prefers quality to mere numbers. Kaut. III. 11 prescribes that when there is conflict in the oral evidence the decision should be according to the evidence of the majority of witnesses or of those who are pure in character or of those who are approved of by both sides as good witnesses or a mean should be drawn from their statements. Nar. IV 160 and Kat. 359 state 520 that if one out of the (three) witnesses attesting a document or out of (three) witnesses that are cited by a party deposes in a way contradictory to what is deposed to by the other two, then all the three become incompetent witnesses on account of contradiction. This has been interpreted by the Vyavahāra mātrā (p. 326) to mean that where all witnesses are of equal status and there is a majority of only one favouring one side, then all the witnesses are incompetent and oral evidence is in that case futile for decision.

The important question is how much has to be proved by the party calling witnesses Yaj. II. 79 (=Visnu Dh S VIII. 38), Nar. II. 27 and Br (q by Sm C. II. 91) state the general rule that that party whose averments are supported in their entirety as true by the witnesses becomes successful, while that litigant.

519 साभापैं पुष्पस्वे प्रायः सम्पे शुभाशिता. 1 शुभापैं किमपुस्कलस्वे शुभाशिता। शुभापैं किमपुस्कलस्वे शुभाशिता। बुद्धा की श्यामा दा p 325, वरा. मा III p 116 The मित्र on या II 76 explains 'प्रायः अतिश्बिंध्रिनिद्रा विविधाशिरसास्त्रेय शुभाशिता। अतिश्बिंध्रिनिद्रा विविधाशिरसास्त्रेय शुभाशिता। अतिश्बिंध्रिनिद्रा विविधाशिरसास्त्रेय शुभाशिता।' अथ त्यास्त्राङ्गकारिणी अतिश्बिंध्रिनिद्रा विविधाशिरसास्त्रेय अथ त्यास्त्राङ्गकारिणी अतिश्बिंध्रिनिद्रा विविधाशिरसास्त्रेय अथ त्यास्त्राङ्गकारिणी अतिश्बिंध्रिनिद्रा विविधाशिरसास्त्रेय अथ त्यास्त्राङ्गकारिणी अतिश्बिंध्रिनिद्रा विविधाशिरसास्त्रेय अथ त्यास्त्राङ्गकारिणी ।

520. साभापैं किमपुस्कलस्वे पुष्पस्वे प्रायः शुभाशिता। तेषां किमपुस्कलस्वे पुष्पस्वे प्रायः पुष्पस्वे । की श्यामा दा p 670, श्यामा p 325, वरा. मा. III. 116.
whose claim is declared by them to be false certainly loses.\textsuperscript{521} Nār. IV. 233 and 234, Kat. 396, 398 lay down\textsuperscript{522} the rule that in civil disputes that are of a non-urgent nature (like recovery of debts), if witnesses depositions are of more or less (than what is averred in the plaint), then the claim is not established in its entirety, where the witnesses depositions are of more or less (than the claim affirmed by the party) the deposition of the witnesses should be considered as not taken down or it should be omitted (from consideration)\textsuperscript{523}, the witnesses in such a case are not liable to fine; they may deserve to be fined if they do not deposite (to what they know) Similarly Nār. IV. 233 and Kat.\textsuperscript{524} 399 say that where the depositions of witnesses are in conflict as to the place, the time, the property, the amount, the colour, the species (or caste), the form (or shape), the age (as stated in the pleading of a party), the depositions are to be regarded as good as not given at all. The rule amounts to this that any discrepancy between the essential details or particulars of a claim

\textsuperscript{521} यस्तान् समापत्तिः शास्त्रमिद्धि सत्यसमापत्तिः।

\textsuperscript{522} अत्राधिक निवाद्यदु दिग्यपाण्डरु निविविवादः।

\textsuperscript{523} यासा अस्तव त्वत् साधारण तत् कथिताः।

\textsuperscript{524} यत्रादिक तत्र ज्ञातव ज्ञातवातः।
made in the plaint (such as the time, place, number &c.) and the case made out in the depositions as to any of these essential particulars will have the same consequence as tendering no oral evidence. This rule was not followed to the letter and besides other means of proof could be resorted to, as stated by the Mit., the Vivādacandra and others. Kaut. III. 11 states that when the witnesses depose to less than what is averred in the plaint, the plaintiff has to pay a fine (of a fifth part) on the excess and when they depose to more than the claim, the excess (held proved on the depositions) may be taken by the king.

In charges of adultery, heinous crimes (sāhasa) and theft the whole of the matter that is alleged may be held proved, when witnesses depose to only a part of the matter (says Kāt. 397).

Nārada IV. 165 prescribes that a litigant should not secretly approach a witness cited by his opponent, nor should he try to win him over (by bribes or threats) through another; if he does so, he would suffer the consequences of a losing party (hīna).

There were rules about the late production of evidence. It has been already shown how if a litigant adduces weak evidence, though strong evidence is available, he would not be allowed to rely on the latter after judgment is pronounced. It is said by Nār. I. 62 that when a law-suit has proceeded far enough (lit. has been cleansed or thrashed out), evidence such as a

525. यद क्रृतज्ञात्ययथ विशस्यादिदा भावाभासाय साहिष्णो व सत्यायुष्याति तथा मात्रात्ययथ निर्णयः काशः | मित्रा 08 या. II 79, एवंवा वासिदे सुर्ख्याभि या न ज्ञाती मयाति मात्रे वा निलिप्तदीप्यानि या पादल्यं रक्षकस्य क्रियास्वरूप निर्णयेऽति। महादन्तिरचिरागिकानां जय एव। महादन्तिरचिरागिकानां मद्यं एवेति। विषय- इत्यत्त् pp. 131-132.

526 साहिष्णेषुदिदिदागृहं भूयविर्भाविस्मयतः कान्ते वृधादतुः अतिरिक्ते वा भूयविर्भावितहिं राजा हतेतु। आर्यसङ्ग III. 11.

527. साहिष्णेषुदिदिदागृहं मात्रे मात्राभिषेकः साधिते भवेदुः क्रीयसः जासः जासः धार्मण अर्कत्वम परिलिङ्गादि || काव्या. q by मित्रा. on या II. 20, आराम्भ p. 678, संस्करण II. p 90.

528. The fact that a party requested a witness, to give false evidence is, admissible evidence against such a party, it being an admission by conduct that the party has a bad case. Vide Cockburn C. J. in Mortarly v. London Chatham and Dover Ry Co. L. R. 5 Q B p 314 at p. 319 *if you can show that a plaintiff has been suborning false testimony and has endeavoured to have recourse to perjury, it is strong evidence that he knew perfectly well his cause was an unrighteous one*. Vide illustration e to section 8 of the Indian Evidence Act.
document or witnesses, would then become useless, if that
evidence had not been announced before. After a reply is
filed by the defendant, the plaintiff has to give a list of his
evidence i.e., documents or witnesses (Yaj II 7) The meaning
briefly is as follows: If he does not do so, proceeds with the
trial and does not call all necessary witnesses or produce all
documents and the case is almost finished, but judgment is not
pronounced, even then he would not be allowed to produce fresh
evidence at that late stage. For if fresh evidence not previously
disclosed were allowed to be given at that late stage, it would
cause surprise to the defendant, who would then demand time
for adducing evidence in rebuttal and then the plaintiff may
again cite further evidence and this process is in danger of being
carried on ad infinitum. If however witnesses were already cited
but all were not examined (e.g., if ten witnesses were mentioned
and only three examined) and the plaintiff found that the evidence
of the few witnesses examined for him is contradictory or hostile,
then he may be allowed to produce even at a late stage the
remaining witnesses (who may be seven i.e., double the number
of those already examined or who may be more respectable or
purer in character). This proposition is contained in Yaj II 80
on which the Mitaksara remarks that even if witnesses are not
mentioned in a list, but before judgment is pronounced other
more reliable or respectable witnesses or double in number
(and of the same status as) of those examined are available,
they should be examined by the court even at a late stage. The
rule is that as long as witnesses are available resort to ordeals
should not be had. Yaj. II 80 also has given rise to various
interpretations. Vide Mit and Apararka on Yaj II 80, Sm C
II. p 94, V. P. p. 130-134. The Mit thinks that the verse
applies where the plaintiff or the party on whom lies the burden
of proving a positive proposition finds that the witnesses pro-
duced by him are hostile or contradictory and that in such a
case he may be allowed to cite other more respectable or more
numerous witnesses to prove his proposition and to show that
the first set of witnesses is false, while Apararka holds that
the verse says that when the party who has to prove his

529 निर्धारितावरूणु बमाजनसद्ध्रवित्रिक्षि राष्ट्र निर्धारितां नीतिः तेजसरां
धर्मसाधनां। तिथिः सारिति तावथिः दूर्घाताविविषिः नेत्रिः
प्रदेशाः। नारसेज. I. 62. निर्धारित दोष सत्यम्य सतायत, बूझिते (as यथा मु. p 8
says) लिट. washed out, cleansed (carried far) For detailed explanation of this
verse vide my notes to यथा म. pp 78-80. The Madanasarita introduces Nār.
I. 62 with the words 'अथ अ देवो निर्धारितामिति दण्डविश्वाससंसादनमानुस्मिति, न्यान्वयवित्रि.'
Late production of witnesses

The case cites witnesses which the opponent feels are false, the opponent may produce more respectable or more numerous witnesses to depose to the contrary and he would thus prove the first set to be false. Aparārka relies on Kāt. (408) for this proposition. It may be said that Aparārka’s interpretation appears more natural. V. P. (p 134) accepts Kātyāyana, but says that the interpretation of the Mit. (of Yaj. II. 80) is correct. Whatever view is accepted it leads to this that one set of witnesses not only may prove the truth of a party’s case but also establish that another set of that party’s witnesses are guilty of perjury.

Yaj. II. 82 provides that if a witness, having promised with other witnesses to depose to a state of things, denies at the time of his examination that he saw the matter in dispute, he should be fined eight times the amount that a defeated litigant would have to pay and a brāhmaṇa witness similarly guilty if unable to pay may be banished (or his house should be razed to the ground). Nār. IV. 197 says that such a person is worse than a false witness. Manu VIII. 107, Yaj II. 76, and Kāt. (405) prescribe that if a person who has witnessed a transaction does not depose (i.e. remains silent) about it, though not suffering from disease or some other calamity, he should be made (after waiting for three fortnights) to pay the amount of the debt or other matter in dispute and also one-tenth thereof as fine to the king.

After the witnesses have deposed the chief justice and sabhāyas have to consider the depositions of witnesses (as Kāt. 340 provides). The Court has to find out which set of witnesses are to be believed and what witnesses are perjured. Perjury entailed, according to dharmāśāstra works, both secular and other-worldly consequences. Ap. Dh. S. (II. 11. 29. 8–9) states: ‘When a witness deposes falsely the king should fine him and, in addition, the witness incurs hell after death’ and Gaut. provides (XIII. 7 and 23), ‘a witness telling the truth goes to heaven, but falls into hell if he does the reverse and when he deposes falsely he is to be censured and fined’. Manu VIII. 118 states that witnesses depose falsely through covetousness,

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530. चतु ्र्ते भावितं कार्ण साधितमयाक्षिति अन्तर्ग्। प्रतिवंशो वद्य त्व याबधवकार्यः।|gangā 408 q. by अपराञ्जी p. 679, भ. म. p 335, स्वातिक व. 94, ध. म. p 134.

531. सागितिप्राप्तिः कार्य तर्कम् च विशेष व रससूचयः।|कालपा 340 q. by विश्रवा. ओं भ. II. 80, अपराञ्जी p. 675, भ्य म. p 331.
wrong ideas, fear, friendship, sexual passion, wrath, ignorance and minority and prescribes (VIII 120-122) varying fines for perjury arising from these several causes. Br. (S. B. E. vol 33 p. 301 v. 21) regards a corrupt judge, a perjured witness and the murderer of a brāhmaṇa as equally sinful. Yāj. II. 81 and Kat. (407) prescribe that the litigant who procures perjured evidence and the witnesses guilty of perjury should each be separately fined double the amount of the fine prescribed for defeat in various disputes and a brāhmaṇa (guilty of doing the same) should be banished from the country (but not fined).

But when a person (of any of the three castes other than brāhmaṇa) is frequently guilty of perjury he should be fined and given physical punishment (as cutting the tongue or death) and a similarly guilty brāhmaṇa should be fined and banished (or degraded by being carried naked through the streets or deprived of his house). The Mit. on Yaj. JX 81 says that when Manu prescribes (VUL 380) that a brāhmaṇa guilty of a sin is not to be awarded death or corporal punishment and that he is to be banished with all his wealth, he refers to the brāhmaṇa being a first offender and not a confirmed one. Manu VIII 108 says "where within seven days from deposing in a cause a (serious or painful) disease or fire or the death of a relative befalls a witness, he should be (being held as a false witness owing to these portentous happenings) made to pay the debt in dispute to the opposite side and a fine to the king." The Sm. C. (II p. 94) explains that this applies to a witness who is the only one on a disputed matter such as a messenger and the king or judge should wait for seven days to see whether any of these calamities befalls that witness and then hold him to be perjured. Kat. (410) contains a similar rule, but he states that the king should wait one, two or three weeks or up to 45 days according to the value of the matter in dispute and the caste of the deponent. Manu VIII 117 (=Visnu Dh S VIII 40) prescribes that in

532. 533. 534. 535.
When false evidence was not convienced

whatever lawsuit it is established that witnesses perjured themselves, the judge should hear it again (from the beginning) or if the suit has ended he should set aside the decision and examine it again.

Gaut 13 24-25, Vas 16. 36, Manu VIII. 104, Yaj. II. 83, Visnu Dh. S. VIII. 15 prescribe that a witness may depose falsely in a cause when, if he were to speak the truth, a person of the four varnas is liable to suffer the sentence of death. Manu VIII. 105-106, Yaj. II. 83, Visnu Dh. S. VIII. 16 prescribe that as a penance for the falsehood a witness of the three higher castes may offer three oblations of boiled rice to the goddess of speech (Sarasvati) or he may offer into fire clarified butter with the mantras called Kusmanda (Vaj. S. XX. 14-16 or Tai A. X. 3-5), or with the three verses beginning with 'yaddeva devahedanam' or with the verse sacred to Varuna (viz Rg. I. 24 15, 'uduttamam varuna') or with three verses of which waters are the deity (Rg. X. 9. 1-3 'āpo hi sthā'). Visnu Dh. S. VIII. 17 adds that a śūdra guilty of perjury in the above case may by way of expiation feed ten cows for one day. It is strange that the dharmaśāstra works should permit perjury to save a culprit from being sentenced to death. Probably popular sentiment of old standing allowing the speaking of falsehood in certain cases was responsible for this. In the Mahābhārata frequent reference is made to the permission to speak untruth in ordinary life when one's own life or another's life is in imminent danger Vide Śanzi 536 45. 35, 109. 19. It is stated in Śanzi 165. 30 that speaking falsely is not a sin in five cases viz in jest, to women, at the time of (i. e. in bringing about) a marriage, for the preservation of great wealth and for one's life Vas. 16. 36 mentions those five occasions somewhat differently. Vide Manu VIII. 112 also for a similar rule. But so old a sage as Gaut (23 29) implies that he disapproves of this sentiment 537, when he states, 'according to some falsehood entails no fault (i. e. no expiation need be performed) in (bringing about or breaking promises made at)

536. भाण्डारणेऽद्वृत्तं चाचार्यमञ्जरी स्ये वरस्य व, स यथा चेत्युवं चक्षुसाश्वाकारणेऽद्वृत्तं च प यास्ति 34 25, न च नामाद्वृत्तं द्वितीयं न च चेत्युवं चक्षुसाश्वाकारणेऽद्वृत्तं च प यास्ति 165 30, उत्तमाकारं पठिंचिदवप्रयोगं महानाथं अवगद्ध न विद्विधानोध्विकारं यथा, मन्त्रेऽद्वृत्तं पठिंचिदवप्रयोगं अवगद्धानाथं यथा, मन्त्रेऽद्वृत्तं पठिंचिदवप्रयोगं अवगद्धानाथं यथा, मन्त्रेऽद्वृत्तं पठिंचिदवप्रयोगं अवगद्धानाथं यथा.

537. शिवादीवनमार्गेयस्येविश्वास्येव रसेयं दृष्ट्यं व, ग. 23. 29.
marriage, in sexual intercourse, in jest and in giving relief to one distressed'. Vide Gr. R. pp. 507–508 quoting Harita Dharmasutra on the same subject and mentioning four kinds of falsehood such as that by a witness, that in transactions of sale &c.

Nâr. (IV. 235–236) states that when through the carelessness of the creditor (who dies) there is no document nor witness to prove a debt and the defendant denies it, then one of three methods (of proof) may be resorted to, viz. codanâ pakhālam (dunning the debtor each time to repay), yuktāla (putting forth arguments) and sapalha (special oaths and ordeals) 538a. Kât. (233 q. by Sm C. II. p 52 and Par M. III. 91) has a similar verse Yuktâ according to Nârâda IV. 238 means 539 'the creditor should follow (the debtor) by arguments and by himself remembering and by reminding the debtor of the time, the place, the relation (subsisting between the two)'. Others interpret yuktâ differently, that is, it means 'logical reasoning'. Kåt (214) defines 540 'yukti' as 'the ascertainment or knowledge of a lagna' (i.e. a sign that leads on to an inference).

538 मनसादानेन सत्य न सुवेदितम् न सास्कितम्। अभि यात्रोऽस्मि वा तत्वात्मकविदाः

538a. The printed text of Nâr. IV. 236 reads 'chojuna mudita' as separate words The Sm C. II. p. 52 explains that as meaning 'pressing or urging the debtor three, four or five times in the presence of third persons without the debtor protesting against the demand'; The Madanarâta and V. P p. 168 appear to 'read,' 'chojuna muditâkârâ (equal to 'chojuna+अत्यतिकारmasked) and interpret 'if there is no denial or protest (by the debtor) when the creditor frequently demands the debt, then the court may presume that he is a debtor'; The Madanarâta explains 'chojuna muditâkârâ. भुजुकीको पद मे वृत्तिः मेलनाया अत्यतिकार}; अनिराकरणार्

539 चोजुनामुदिताकाराः तु इत्यक्षिप्तसहस्रसंयगमितैः। दशकांगतपतिस्यविदर्शायिका-क्रिया-मिनिः। नारायण IV 238, vavistha II, p 52 explains 'vavistha as 'अथुदिताकाराः अमुदिताकाराः कस्यपरमदेव वल्लकथायोऽस्मात् सूर्यस्वरूपाः'

540. तिरस्कर्षसूक्तम् इति: स्वाधिपार्श्वतिः स्वाहाः। कात्या (214) quoted by par. मा. III 91, स्वाधिकार p 43, पा. p 167 which explains 'तिरुच्चुप्राणोऽद्रिताः' स्वाधिकारिणि इत्यादि: द्राक्ष्याधिकारिणि इत्यादि: द्राक्ष्याधिकारिणि इत्यादि: 

History of Dharmasutra [Vol.
It is stated by Brhaspati that anumāṇa (inference\textsuperscript{541} or presumption), as a means of deciding a law suit, is of three kinds, but it is inferior to witnesses (vide note 433 above). Vyāsa (q. by Sm. C. II. p. 95) states that anumāṇa is the same as hetu and tarka V. P. (p 167) remarks that (long continued) possession and the frequent urging by the creditor both lead to the inference of title and the taking of a loan respectively and are therefore to be comprehended under yukti according to the definition of Kātyāyana. Yet by popular usage yukti is restricted to presumptions arising from certain circumstances on the analogy of the maxim of 'gobalivarda' explained below under 'steya.' Yukti therefore means circumstantial evidence from which an inference may be drawn about a fact in issue in a judicial proceeding. Ap. Dh.\textsuperscript{542} S. II. 11. 29 6 says that in case of doubt (judges) should decide from signs (i. e. by inference) or divine proof (ordeals). Vas. 19. 39 mentions the view of some sages that one who is found armed or wounded or in possession of the booty (stolen) may be declared to be (the thief or offender). Manu IX. 270 (= Matsya 227. 166) requires the just king not to condemn one accused of theft unless his guilt is proved as certain by proof that the accused had in his possession the articles stolen and tools for theft (for house-breaking). 'An adulterer is proved\textsuperscript{543} to be so by being caught in such acts as playing with the hair of another's wife, an incendiary by being caught with a firebrand in his hand (near the house set on fire), a murderer by being found (near the murdered man) armed and a thief when caught with some of the articles stolen in his possession'—say Sankha-Likhita\textsuperscript{544}.  

\textsuperscript{541} Anumāṇa स्वयं व्यवहार गोपनेय सत्यान्तर वैविध्यः किया। वृद्ध: q by परा. मा III. p 87. सरस्वतयप्रमाणतः स मात्रीस्रिविधिक्रिया। धर्मादिम्यान्तर च दैवी समविधा स्थवरः। वृहस्वातः q by सूर्विच्छा II. p 50, वचन. विन. p 73 and मात्रार्थ (ms) which latter remarks 'अत्र हुक्के पृथ्विनिद्वोधोपत्तिनियुक्तापि विद्याः। वचन विन. p 73 quotes यृहस्वातः अघुरा तत्र दिक्षितं एव एवथायम: सुणि: कैवित्तकरयोद्विविद्या स्वभेढः। सरस्वतयप्रमाणसंस्करणविभाराद् मात्रार्थति, अभुप्रदानान्तव का कालपरवियुक्तान्तविविद्या दिक्षितमसाहित्यवृहस्वातः।'  

\textsuperscript{542} सम्बूद्दित विवेकनिद्राय विविध प्रतिलोके। आय: प. II. 11 29 6  

\textsuperscript{543} केसारिसितकुमारालात्माकाध्यायान्तिक: वहस्तांत्रिको लोबुचा। शूराश्च देवत q by परा. मा III. 119, सूर्विच्छा II. p 95, वचन. विन. p 168  

\textsuperscript{544} Compare sec. 114 of the Indian Evidence Act which lays down how a court is to draw presumptions of fact from the common course of natural events in relation to the facts of the case before it, illustration (a) to which is 'the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.'
Kaut. 545 IV. 12 and Yāj. II. 283 similarly say that adultery may be inferred from (the man and woman) being caught in the act of dalliance with the hair or from the signs left (such as marks of nails or teeth on the lips, cheek &c) after carnal enjoyment or from the admission of the woman concerned (or of both) Nar. (IV. 172–175) declares that there are six kinds of disputes in which the indications (or circumstances) themselves serve as witnesses and lead to a conclusion without the testimony of witnesses viz. one found with a fire-brand in his hand (near the scene of arson) may be inferred to be the incendiary, one armed (found near the scene of murder) as the murderer, one caught dallying with the hair of another’s wife as an adulterer, one with a spade in his hand near a breached embankment as the person who caused the breach in it and one armed with an axe as the feller of a tree, a person guilty of an assault may be inferred to be so from visible signs (such as his club or sword being smeared with blood) But Nar. IV 176 gives the warning that in such cases it is necessary to be careful in arriving at a conclusion, since a person in order to bring into trouble another whom he hates may create marks of injury on himself Kat (337–338) further provides 546 that where one litigant proves as against his opponent (such as a debitor) either the offer of a bribe, or the effacing of the means of recognition (such as effacing one’s signature on a document) or holding out temptations (to the witnesses or sabhīyas) or the concealment of his wealth (to avoid its being attached in execution of a decree), there the original claim (such as a debt) may be presumed to be proved even if he (the opponent) denies his liability.

545 केशाकांक्षिन्य समर्थवातः 1 उपयोगः गाण्डः कारणिरिभोगायां कर्मिनिमयेऽभिश्व 1 वियतभद्राः वीरचन्द्राः कौटिल्य IV 12

546 Best ce 'Evidenoe' (12th ed 1922) sec 294 cites as an illustration of circumstantial evidence the fact of one armed being regarded as the probable murderer in certain cases Compare Wills on 'Circumstantial evidence' (7th ed of 1937 English and Indian combined) p 145 'Amongst the most forcible of presumptive indications may be mentioned all attempts to pollute or disturb the current of truth or justice, or to prevent a fair or impartial trial by codeavours to intimidate, suborn, bribe or otherwise tamper with the prosecutor, or the witnesses or the officers of justice, or by the cooealment, suppress etc, destruction, alteration of any article of real evidence'

547 दयाम महापाणमेऽद्वं तस्मिनकालिका च या विषाणुमयाः वैहेत्वो हि विग्रह वक्रत् । एपमयाण्यमस्य वच वातिस्य मालिकम मध्ये । मुलाकाया हु तत्र व्यवृत्त मालिकाः पारिपारि विनिस्थते ॥ कात्या (337–338) q by यज, म p 169, विषाणुवचनम् p 188 (only the first), which reads विषाणुमयनम्.
Dangers of circumstantial evidence

Judges often repeat from the Bench the words ‘witnesses may lie, but circumstances cannot’. But this so-called maxim is often dangerous. Circumstantial evidence leads to conclusions that are in several instances false. The ancient Hindu lawyers were quite aware of the dangers of drawing inferences from circumstantial evidence. Nārada’s warning has already been mentioned (p. 356). Kaut.,548 (in IV 8) remarks: ‘even one not a thief may by chance be on the way by which thieves pass and one meeting thieves is seen to be apprehended as a thief because he is mixed up in press, arms and articles carried with the thieves or is found near the articles stolen, just as Māndavya though not a thief declared himself to be a thief for fear of being subjected to torture; therefore (the king) should punish one only after thorough examination’ Māndavya’s is a leading case on the danger of relying on purely circumstantial evidence. Bṛhaspati549 also remarks that ‘a decision should not be arrived at merely by relying on the words of texts; for, if judges come to a conclusion without applying careful reasoning, loss of dharma results; a thief is held to be not a thief and a good man is held to be a wicked one in a judicial proceeding (not arrived at with proper reasoning). The sage Māndavya was held to be a thief on account of the decision being arrived at without proper reasoning’.550

The 9th Act of the Mṛchakatika is a standing literary condemnation of conclusions about guilt drawn from circumstantial evidence and of how judicial procedure is vitiated (of vyavahāra-dustata, as the author says in Act I)

Nār IV. 289 provides that when even circumstantial evidence and presumptions therefrom do not enable the court to arrive at a decision, the judge should press the litigant with

548 द्वारके द्वारकोरोपि चौरसागेः प्रदूषया संविपथ्यो चौरसाक्षरमाध्यमे युद्धाति हि, चौरसाक्षरीपयासिन वा पुष्या हि माध्यमः कामकक्षस्यध्वनिचौरसाक्षरसत्तातः मुरसिं तसा महत्त्वादाय विषययेषां। गौतिका IV. 8

549 केवल साधनात्मिक शास्त्रीयां हि निर्देश: ‘मुक्तिहस्तिश्वर; हि यहा; मजळयांचौरसाक्षरांत: सार्वाशुध्यात्मश्चस्य मन्त्रवाच:। मुक्ति विचार प्रत्येक साध्याविशेषतः यथा। ‘हेषु क्षे तथा धार्मिक प्रकाश III. p 39 The सूक्ष्मतम् II p 25 quotes a verse of नारायण (I. 42) ‘पांडुरोपितो चौरस्य चौरसाक्षरादिष्टर अवोर- क्षिपत यात साध्यां व्यवहारम् हु।’ Vide note 332 above for other references to माध्यमः

sapathas (oaths and ordeals) according to the place, time and strength of the litigant, such as fire, water, his spiritual merit and others. Manu VIII. 109 also says that when there are no witnesses the truth would have to be found out by sapathas. Divine proof is called daunikikryā or samayalikryā (Visnu Dh. S. IX. 1). Some writers make a distinction between sapathas (special oaths) and ordeals (dwyas), others (like Manu VIII. 109–114, Nar. IV. 239) do not. For example, the Vivādacandra quotes Nar. IV. 247 ‘when there is no witness in a dispute between litigants, there the judge should decide by means of ordeals551 and various sapathas’. Acc. to the Mit. (on Yaj. II. 96) and S V (p. 106) both special oaths and ordeals are divine proof (dwaya pramāna), but in disputes of small value sapathas (oaths) were generally employed, while ordeals were resorted to only in serious disputes or crimes. The Mit. (on Yaj. II. 96), the V May. p. 46 and V P (p. 170) state that ordeals are those that generally end in immediate decision of the dispute, while sapathas take time for decision (because after the oath the king has to wait for a week or more to see whether a calamity befalls the person taking the special oath). Vyāsa quoted by Sm C II. p. 96 employs the word sapathas for both special oaths (taken as to one’s ‘satya’) and ordeals like balance. Sāṅgha-Likhita state that divine proofs are the balance, eating poison, entering fire, holding a piece of (hot) iron, offering one’s merit acquired by sacrifices and charity and the king should make him undergo other sapathas552. Brhaspati says that where documents or witnesses do not lead to a certain decision or where inference from circumstantial evidence also is confusing, there the matter is to be decided by divine proof553.

Special oaths were taken not only in judicial proceedings, but also in ordinary dealings to clinch one’s assertion or to clear one’s character or reputation. Nar. (IV. 243–244) refers to

551 yadu sākṣi na viṣeṣat vivaśe vhatara bhūtyās. tad vivaśe: pershikṣa ājayatā saptās. II narāt IV. 247 q by vivaśeṣaḥ p. 112 and śv śv p. 106. arājjuḥ jātya śaḥpātā saptās. mitra in sāṅgha II 96.

552 tuḥ dhvīraḥ sarvāt hulaṁśaḥ śivaḥ samāyaṁhī∥paññā∥e lohasaṁśaṁ∥parā∥iṣaṁ∥yajnaṁ∥karatye. śivā∥jī∥saptās. q in puru śa. III p. 151, śiva II p. 96, apārāh p. 694. The śv śv p. 140 reads śivaḥ samāyaṁ yajnaṁ∥parā∥iṣaṁ∥yajnaṁ∥karatye.

553. dhvīraḥ sākṣi vivaśe vhatara bhūtyās. III q by śv. ma. p. 333, apārāh p. 629, vivaśeṣaḥ p. 111 (reads sāṅghaḥ as the last word).
the special oaths taken for clearing themselves by Vasistha
when he was suspected to be a yātudhāna (a demon or sorcerer)
and by the seven sages together with Indra, who (sages) were
suspected to have stolen lotus fibres (by each among them)\(^{554}\).
Manu VIII. 110 also speaks of the sapatha taken by Vasistha
before Sudās, son of Pijavana (when the sage was charged by
Viśvāmitra with the offence of devouring his own hundred sons).
Nārada (IV. 243) refers to Rg. VII.104 15–16 in the first of which
Vasistha made the imprecation,\(^{555}\)  ‘May I die this very day if
I am a yātudhāna or if I injured the life of a human being,
May be who falsely addressed me as yātudhāna be deprived of
his ten valiant sons’  \(^{1}\)  Manu VIII. 110 also refers to the same
hymn\(^{556}\). Manu VIII. 113 (=Nār. IV. 199) referred to above (p 343)
states the various oaths to be taken or administered to the parties
according to their respective castes. Manu VIII. 114 further pro-
vides for special oaths for litigants by touching the heads of their
sons and wives. That sapatha taken by satya was common in very
ancient times appears from Pan. V 4 66 (satyad-asapatha)\(^{557}\).
Nār. IV. 249 prescribes that in charges of grave offences ordeals
may be resorted to and sapathas in matters of small moment
Nār. IV. 248 mentions “truth, horses and arms, kine, grains and
gold, the feet of (the images of) gods and the ancestors, acts of
charity and good deeds (sukṛta) are to be employed in sapathas
as declared by Manu.” Brhaspaṭi\(^{558}\) enumerates the special

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\(^{554}\) In the Anuśaṇapaṇihṛtana 95 13–35 it is narrated that each of the
seven sages suspected the others of the theft of lotus-fibres and that they
cleared themselves by taking oaths. Indra is said to have taken an oath
when he was the subject of suspicion in relation to Āhatyā. Vide Best on
‘Evidence’ (12th ed. of 1922) pp 42–45 sections 56–59 for the employment
of oaths in all ancient societies in courts as well as outside, for the forms
and sanctions for the oaths and for the arguments urged against their use

\(^{555}\) अत्य छूटी यदि पाधः पाषाणी अर्थेद पाधः पाषाणी पूजपरः ।
अधि देविनाथमः निर्मिति यूपः यथा मा मर्या पाषाणीयथाय यथा \(=\)
VII 104 15 The Ṛgveda (VI. 33–34) refers to the story thus म्योहतुर ये
दुःखार्य अहम्य चैव बालवीरस्य नुक्ज्यामीपिताव्यः
इत्यदे विलिन्यितयेव \(\) इत्य दुःखार्य वाहिन्य बालवीरस्य
हर्मेङ्कैष सफळत छुपः सेवनिते वेद सुळः

\(^{556}\) The story of king Kalmāśapāda cursed to be a demon by Salī,
eldest son of Vasātha, who then devoured one hundred sons of Vasātha
is narrated in Adīparva 176 (cr. ed. 166).

\(^{557}\) On सत्यपाठप्रेक्षणे, the काशिका says. सर्वायोगः मन्त्यथासतत्त्वः।
कस्यि

\(^{558}\) सर्वायोगः मन्त्यथासतत्त्वः।

III p 151.
oaths mentioned by Manu and Nār. and adds that they are to be employed in small matters (civil and criminal). The Viśnu Dh. S. (IX. 5–10) prescribes that when the litigant is a südra and the dispute relates to a matter worth less than one, two, three, four or five kṛṣṇolās he should swear respectively by holding in his hand dūruṇa grass, sesame, silver, gold or earth taken from ploughed land, that (IX. 11–12) beyond that value various ordeals may be offered and that oaths with similar objects in the hands may be offered to vaisyas, ksatriyas and brāhmaṇas when the value of the subject matter is double, three times or four times of the value in the case of a südra Manu VIII. 113 gives the admonition that a wise man should not make a false oath, because by so doing he incurs loss (of reputation) here and after death (by falling into Hell) Yāj II. 236 prescribes a fine of 100 panaś for one who takes an improper or profane oath 559.

The benefit of doubt is to be given, according to modern ideas on the administration of justice, to the accused. This principle was put forward several centuries before Christ by Ṛg Dh. S II 5 11 2 ‘the king should not punish when there is a doubt’ (about a man’s guilt 560)

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559. The Māt explains विस्कर्तयं सातवं माति विषमार्गितिः शत्रं करोति
560 च च सध्यं द्वित्तीयं क्षणं आय य शु II 5 11. 2
CHAPTER XIV

ORDEALS

A brief history of ordeals may be set out here. Rg. I. 158. 4-5, wherein the sage Dirghatamas, son of Ucatha, prays that the fire of faggots heaped tenfold may not burn him and that the rivers in which he was thrown bound hand and foot may not engulf him, are regarded by some as a reference to the ordeal of fire and water. Yet in those verses there is probably no reference to ordeals, but to the cruel treatment of Dirghatamas by dásas headed by Traitana. Rg. III. 53. 22 also, where it is said ‘he heats the axe (or acc to Sāyana ‘just as the tree is injured by contact with the axe &c’), does not contain a clear or certain reference to the ordeal of holding the heated axe.

Atharvaveda II. 12 is held by several Western scholars to contain a reference to the fire ordeal. This also is far from certain, though verse 8 may lend some support to that view. The Pañcavimsa (or Tandya) Brāhmaṇa 14. 6. 6 refers to the story of Vatsa, who was abused by his step-brother that the former was the son of a śudra woman, against which Vatsa protested, urged that he was a brāhmaṇa, entered fire to prove the truth of his assertion and came out of fire unscathed. This is referred to by Manu VIII. 116. This is probably the earliest.

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561. ना सत्सिधु द्वात्रिधे पार्वत । शक्त्सक्षि भांदृति न न मा। ॥ ना मा परमधाय भाष्या तु सर्विन्द्र द्वस्तम्भयाय।। ॥ ना मा I. 158. 4-5

562. पर्येक्षा श्रविति सत्विति विस्थृति श्रविति रश्तति । जन्मश्वेतिः प्रेषन्ती प्रयत्नासयति ॥ जन्म ती III. 53. 22.

563. आदुधाति ते पद्म सन्दिते जातेवदति । अतिरी करीरे वेषेत्तवं स्फागति महायु ॥ अययेपु II. 12. 6.

564 Vide Proceedings of the American Oriental Society, vol XIII pp CCXXXI-XXVI where, after referring to the views of Ludwig (III p. 412), Weber (Indische Studien XIII. p 164) and Zimmer (Altindische Leben, p 184) about the mention of the fire ordeal in the above hymn, it is sought to be proved that the hymn refers to re-establishing a soiled reputation and reliance is placed on the Kauṣṭukasūtra (47. 25 ff) which does not treat it as a fire ordeal hymn.

565. वास्तव वं नेपालिष्ठवं काश्म्या अन्तः तत्र नेपालिष्ठिर्दात्रिकीवतामावभोजी दुःखपं । सोविकतात्तीगी स्थायव व्यवहारो नौ मोहयोगिति । प्राशीर्षन परस्तरे शेषर्मिलितवें नेपालिष्ठित्स्धारा न लोक च नौद्यु।। तांत्रिकवािमाण्डल १४. ६. ६.
and clearest reference in ancient Sanskrit Literature to the fire ordeal. Next comes the reference to holding in the hand the heated head of an axe by a person accused of theft to prove his innocence contained in the Chândogya 566 Upanisad VI.16.1. Ap. Dh S. II 11. 29 6 refers to inference and divine proof (quoted above n. 542). In another place (II.5.11.3) Āpastamba states that after carefully considering (the charge before him) by means of divine proof and questioning (of witnesses) the king should set about awarding punishment Śankha-Likhita (n. 552) names four ordeals, viz. those of balance, poison, water and holding red-hot iron 567. Manu VIII. 114 mentions only two viz. the holding of fire (i.e. red-hot iron) in the hand or plunging in water, but Nār. IV. 251 states that Manu declared five kinds of ordeals. Yaj. II 95, Visnu Dh. S. IX–XIV and Nār. IV. 252 mention five viz. balance, fire, water, poison and kośa (consecrated water). Narada, however, knew two more viz. taptamāsa (IV. 343) and tāndula (IV. 337). Brhaspati (S.B.E. vol. 33 p. 315 verses 4 and 5) and Pitāmaha speak of nine (Aparārka pp. 628, 694 respectively).

Yaj. II. 95–113, Visnu Dh. S. IX–XIV, Nār. IV. 239–248, Kāt. 411–461, Śukra IV. 5. 233–270 treat of the several ordeals Pitāmaha contained, as the quotations from the digests show, the most elaborate treatment. That ordeals had attained great vogue in the early centuries of the Christian era is shown by the Mṛcchakatika Act IX. 43 (where the ordeals of poison, water, balance and fire are expressly named) and by Bana who mentions the same four in Kādambari, para 47 568. Among the digests and commentaries the Mitāksāra, the Śrīmāṇḍava, the Divyāmatā of Raghunandana, the Vyavahāramayūkha and the Vyavahāraprakāśa contain the most elaborate treatment of ordeals 569.

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566. शुद्धेऽसोस्ये इतस्तत्त्वलमात्रस्थितं वैयक्तिकत वैस्मयकारविं वक्ष्युलायी तयोऽधि स 

567. पदार्थमार्गार्थं दौवी नावविजय किम्। हुष् त. क. उपराङ्क 628। अधी- 

568. नृपानुशासन दौवी नावविजय किम्। हुष् त. क. उपराङ्क 628॥ अधी- 

569. Those interested in the further study of ordeals may consult my 

translation of and notes on the Vyavahāramayūkha.
Divya is defined as 'that which decides a matter (in dispute) not determined by human means of proof' (V. Mayūkha) or 'that which decides what cannot be or is not to be decided by human means of proof' (Divyātattva p. 574). Medhātithi on Mann VIII 116 discusses the question how ordeals can be relied upon for the discovery of truth. The objection is raised that fire and water are natural forces that act in a uniform way and are not intelligent beings which may change their minds by an appeal to them. Therefore, the objector says, ordeals and oaths are like magic and are only meant to frighten the parties into telling the truth. It is further objected that thieves may (by some trick) not be burnt in the fire ordeal and good men are seen to suffer burns. The reply is: the usefulness of ordeals cannot be negatived by these examples of failures, as they are not frequent and as even direct perception and inference sometimes lead to uncertain results. No one, however, says that this latter should not be relied upon. Just as one relies on witnesses in deciding a matter (who may for aught one knows be telling lies), so reliance can be placed on ordeals. Where there is failure in case of ordeals, it must be held to be due to the results of the performer's actions in past lives. The general rule as stated by Yāj. II. 22, Nār. II. 29, IV. 239, Bhṛhatī 571, Kät (217) and Pitāmaha is that ordeals were to be resorted to only if no human evidence (witnesses, documents, possession) or circumstantial evidence was available. Kät (218-219) prescribes that 572 if one party relies on human means of proof and the other on divine proof, the king (or judge) is to accept human means and not divine and that if human means of proof reach (i.e., are able to establish) only a part of the allegations (in the plaint), then human means should be accepted and no divine modes of proof, even though they may be complete (i.e., completely cover all allegations). When Nār. II 30 (= IV. 241) states that divine means of proof are to be resorted to when a transaction takes place in a forest, in

570. तत्र जात्वर्णस्यज्ञानेऽपि निर्णयकमेव पतनानायामिति होक्तसिद्धम्। कथितम् मात्रात्वर्णस्य च वैर पञ्चाक्षरायिनमानव्येवत्तवीति सृविवृत्त। तिष्ठत: 15भ्रमरप 574
571. नमोबलामनवे अरुणायिने निर्णयम् देवीस्विद्विद्येक्याप्राप्त:। दृश्य: 16भ्रमरप 574। अरुणायिने निर्णयम् देवीस्विद्विद्येक्याप्राप्त:। दृश्य: 16भ्रमरप 574।
572 वदेव कात्यायनः 'पुरूषार्थ: वैविकीस्मात्। मात्रेऽत्वः दृष्टं दृष्टं दृष्टं। परस्परायिनेन निर्णयम् देवीस्विद्विद्येक्याप्राप्त:। दृश्य: 16भ्रमरप 574।
a lonely place, at night, inside a house, in cases of sūhasa and when a deposit is denied, or when Kāt (230) prescribes that trial by ordeals is to be resorted to in the case of persons accused of committing sūhasa in secret (i.e. by wearing masks &c.), those words only apply where it is impossible to have human evidence. Kāt. (229) states an exception to this viz., when the dispute investigated is about sūhasa or about assault or abuse and defamation and in causes that spring from the use of force there is an option that witnesses or divine proof may be resorted to. Nār. IV. 242 states that divine proof could be resorted to when the chastity of women was in question, in theft and sūhasa and in all cases of the denial of monetary liability. Sītā's ordeal of fire at once comes to mind as an illustration of Nārada's rule. Brhaspati575 and Pātramāha say that in disputes about immovable property divine proof should be avoided, which does not forbid dūnya altogether, but only where the evidence of neighbours or of a document is available and that in the latter case even if the defendant offers to pay a fine if he fails by the divine proof, dūnya is not to be resorted to. The ordinary rule was that ordeals were to be administered to the defendant576 (Kāt. 411 = Visnu Dh. S. IX. 21). But Yāj II. 96 gives an option that any one of the two litigants may by mutual agreement undergo an ordeal and the other should agree to pay on defeat a fine or undergo physical punishment. This means that human proof is adduced to prove a positive proposition, that divine proof may be resorted to prove a negative proposition as well (e.g. a defendant denying the claim for a debt may prove by dūnya that he did not borrow a loan). Making an offer to pay a fine or undergo corporal punishment is said to be being sirsakastha577 or śrasts

573 मूढासर्तिकायान्त भार्तीय धिष्ये: परीक्षणां । सरस्वति q. by स्तिता. on या। II 22. सुतिन्द्रa II p 51

574 रक्ष के साथे पाणि वाचन वण्डवाचिके । भवादुधुकुदुर्कायं जागोदियारी विनं- सेश वा। सार्थक in सिंता on या II 22, आराम p 629, सुतिन्द्रa II p 51.

575 स्तिस्तित्वैरुपद्वृत्तिष्ठविषयन पारद्वेत। सिन्धु in सिंता. on या II 22. सुतिन्द्रa II p 53 । वायःस्वमरम महर्छदे निविद्यच तैविक विका। दूसर q. by अराम p 629, सुतिन्द्रa II p 53.

576 न किंवठुलवायें। द्विगुपाविन्योजनेत। अभिनवस्कुल दृश्यं दिव्यं विश्वविकारनें। या । दूसर q. by अराम p 695, परा मा III 152, या म p 172

577 On दृविन्दरकारकविवर्ण (या. II 95) the सिंता. explains 'शक्ति किरी पथ्वार्यया चार्यां । कर्म विद्वान वर्णालक्षणां व दृष्टी होते तव तिर्तज्ञां श्रवण्याय।' वाक्य:सर्णयां भाष्याय। इलैस (head) indicates the fourth stage of a law-suit viz. success or defeat and since fine is imposed on the defeated party, it indicates fine or corporal punishment.
Employment of the several ordeals

(in Yäj. 95, Visnu Dh. S IX. 20, 22, Pitämaha, När IV. 257, Kät. 412-413) Yäj. II 95 prescribes that the ordeals of balance, fire, poison and water were to be prescribed in disputes of great value and not elsewhere and in II. 99 he says that all claims above 1000 panas (of copper) are to be regarded as of great value, but in charges of treason and of the committing of any one of the five grave sins (mahāpūtakas) any one of these four ordeals may be resorted to without regard to value and without any offer to pay fine on defeat. So also these four ordeals were to be offered to the defendant where the plaintiff offered to pay a fine on defeat. The ordeal of kośa was allowed in all claims whether of high value or low value or whether the plaintiff offered to pay a fine on defeat or not.

Yäj. II. 98 states that the ordeal of balance should be given to women, a minor (under 16), a very old person (above eighty years), the blind, the cripple, brāhmanas and the diseased; the fire ordeal (i.e. heated ploughshare and heated māśa) to kṣatriyas, water ordeal to vaisyas, poison to sūdras. När. IV. 335 assigns ordeals to the different varnas similarly. När IV. 256 prescribes that ordeals should not be undergone by those who are observing a vow, who are much distressed or who are performing austerities, and by women. Pitämaha quoted by Mit. (on Yäj. II. 98) adds minors and old persons to these. The Sm. C. II p. 103 explains this as referring to the ordeals of fire, poison and water only. Another Smrti (q. by Mit on Yäj. II. 98) prescribes that the ordeals of balance and kośamay be offered to women, minors and the others mentioned above. There is in all these rules a spirit of tolerance, kindness and concern for the weaknesses of mankind. Kät. (423) holds that persons of the higher castes who are cowherds, traders, artisans, bards, domestic servants and usurers should be given ordeals as if they were sūdras. Kät. (422) allows all ordeals to members of all castes, except that brāhmanas are not to undergo the poison ordeal. Kät. (424-426) prescribes that the ordeal of fire should not be offered to blacksmiths or those who are leprous nor of water to those who ply boats or who suffer from difficulty in breathing or cough, nor poison to those who are experts in incantations and yoga practices or who suffer from excess.

578. शेषकाळान्वितालंकारं कार्यकीर्तन्याय। वेदायतान्वितालंकारं याहेकहः
शब्द दिनाय। कार्योऽर्थाणपाकः प. 698, स. रि प. 180.
of) bile or phlegm, nor kośa to those who are drunkards, to persons fond of women, to gamblers and to those who are atheists. Visnu Dh. S. IX. 25, 29 and Nār. IV. 255, 332 contain similar provisions Kāt (427–430) further provides that no ordeal should be allowed to be performed personally by the following persons, viz. those charged with the murder of their father, mother, a brahmana, their teacher, a minor, a woman and the king; those guilty of the (five) grave sins; particularly those that are atheists; those who wear (or subsist by) peculiar sect marks; great rogues; those who are experts in incantations and yoga practices; those who are the progeny of unions of persons of different varnas; those who repeatedly engage in sin; in the case of these the king should offer ordeals to good men appointed by them on their behalf and if such good men are not willing then they should appoint their own relatives. Sāṅkha–Līkhaṭa also refer to the appointment of friends or relatives as representatives (Aparāka p. 842) 579 Kāt (433) 580 lays down the following rather remarkable provision, viz. when untouchables, men of lowest castes, slaves, mlecchas and those born of mixed unions in the reverse order of the castes are guilty of crimes, the determination of their guilt (by the above mentioned ordeals) should not be made by the king; he should indicate such ordeals as are in vogue among them. The Sm. C and Par M say that this applies

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579. असाहित्यनिरेक्ते विरुपम्। अथवा मिले। सम्पर्कोपल्लथा वा श्रीययैिद्वै। सचेतण्याकार्यम् वायुः सम्पर्कोपल्लथा। शालन्यासेर्व णे। अपराका p 842

580 असाहित्यनिरेक्ते विरुपम्। अथवा मिले। सम्पर्कोपल्लथा वा श्रीययैिद्वै। सचेतण्याकार्यम् वायुः सम्पर्कोपल्लथा। शालन्यासेर्व णे। अपराका p 842

In the Gadag Inscription of Vikramaśīrṣṭi VI dated 1098 A.D. (E I vol 15 p 348 at p 360) there is this passage 'we handle boiling water, we strike with the hand a great snake placed in a jar or we may well mount the balance'. In A I, vol 19 p 242 at p 246 it is stated in an inscription dated 1208 A.D. of the Mahāmāndalesvara Kārtavīrya IV that Candukā (or Candala-devi), the queen of Lāsimśhara of the Rattas of Sugandhavarta (Saundatti) was a pativrata and got success by ghatatasarma 'मालि भागतगणम् परितलन्तः वैः वैराग्यं संगमति शतपरिवातविनां बखरीतज्जस्ति'- The Bombay Gazetteer vol 1 part 2 p 556 n 5 gives a quotation from the Asiatic Researches vol 1 where the ordeal of putting a ring or coin in a vessel in which a snake has been already placed and asking a person to take it out is mentioned: Vide also Report of South Indian Epigraphy for 1924 para 66 for the ordeal of dipping the fingers in boiling ghee or oil.
only when they cannot secure relatives or other persons appointed by them to undergo the usual ordeals on their behalf. The Vyavahāratattva (p. 579) explains that the ordeals referred to among mlecchas and others are the snake in the jar and the like. This seems to have consisted in taking out a ring or coin with the hand from a jar in which a snake was placed; if there was no snake-bite or no effect even if the snake bit, the person was declared innocent. Vide note 580. Yāj. II. 97 and Nār. IV. 268, 320 prescribe that all ordeals are to be administered by the chief justice in the morning at sunrise or in the forenoon in the presence of the king, the sabhāyas and brāhmaṇas. The Mit. adds that a Sunday is the proper day according to the usage of respectable people (śīktas). Pitāmaha specially provides that the water ordeal should be administered in the noon and poison in the last watch of the night (Mit. on Yāj. II. 97). Certain seasons and months were either appropriate or inappropriate to certain ordeals e. g. Nār. IV. 254 states that the fire ordeal should be given in the rainy season, balance in the winter (śārīra), water in summer, poison when the season is cool. Nār. IV. 259 prohibits water ordeal in the cold season, fire in summer, poison in the rainy season and balance while the wind blows violently. The Mit. (on Yāj. II. 97) and Par. M. III. 163 quote Pitāmaha to the effect that the months of Caitra, Vaisākha and Mārgaśīrṣa are common to all ordeals, kṣota and balance may be administered in all months.

As regards the place, Pitāmaha prescribes that ordeals are to be administered by the king or the judge appointed by the king in the presence of learned brāhmaṇas and the public (or the ministers) 581. Kāt. (434-35 and 437) provides: 582 ordeals should be administered in some well-known temple in the case of men accused of grave sins and near the royal gate in the case

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581. भवयार चापेिन्धरय राजा भाषिकय कित । बाणानाथ श्वचार्थं भक्तिनां तथ्य च इवितावस्र. सा III. 164, स.ि p. 183.

582. ग्रामध्याधिकारिगम्यानां महापापकितां ब्रवणं भवयारे सहूलानाम शाहदः पक्तयोजयं। सातिनय पुस्तकम्यानां दिनित प्रयोगस्थि । मातिवेदन पवनानां दिनित प्रयोगस्थि । अनुविनाद समाचारदिनित प्रयोगस्थि । व्यासीमारे, सकुमारे विभूषित न संस्करनं। कायथम्। इवितास्र. (on या II. 99), एकास्मा ती. III. 163, सांस्कृति p. 105, स.ि p. 183, 'काश्यपं शरयायुवतात्त्वात्त्वामः' सांस्कृति p. 104 and स.ि p. 183; 'सुसरितं'। 'सुसरितं'। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। इवितात्। 'मित्रदेवेयायामारे दिनितामायायामातं से एव'.
of those charged with treason; in a public place where four roads meet in the case of those born of mixed unions in the reverse order of castes, in cases other than those in the hall of justice. When ordeals are administered in an improper place or at an improper time and when they are performed outside human habitation (in a lonely place) they fail as to the matter in hand (i.e., they cease to be decisive). Nār. IV 265 prescribes that the balance should be planted in the hall of justice or at the royal gate or near a temple or where four roads meet.

The procedure common to all ordeals and described in the Mit on Yaj. II 97 and 99, the V. May pp. 52-55, V.P. pp. 183-186 (all relying on Pitāmaha) and Vyavahāra-nirnaya pp. 148-53 (relying on Prajāpati, Pitāmaha, Br.) is briefly as follows—in ordeals the chief justice is to do every thing at the king's bidding as the adhvaryu priest does in all sacrifices. He should observe a fast and the ṣodhya (person undergoing the ordeal to clear himself) is also to do the same. Both are to bathe in the morning and the ṣodhya was to have his wet clothes on. The Chief Judge is to invoke the gods to the accompaniment of music and to offer flowers, sandal-wood paste and incense. He should fold his hands, face the east and invoke Dharma to be present at the ordeal (Dharma being the principal deity in ordeals) and assign places to Indra, Yama, Varuna and Kubera in the four principal quarters from the east and to Agni and other guardians of quarters in the corners of the principal quarters. He is to contemplate on the eight deities of the eight quarters as having different colours (viz Indra as yellow, Yama as dark &c.) He is to assign the eight Vasus (repeating their names) to the south of Indra, the twelve Ādityas (repeating their names) between Indra and Isāna (i.e., between east and north-east) assign a place to the eleven Rudras to the west of Agni, assign a place to the seven Mother goddesses between Yamā and Nirṛti (between south and southwest), assign a place to Ganesā to the north of Nirṛti, to the Maruts to the north of Varuna; to the north of the balance "(or the place of other ordeals) he should invoke Durgā. All these deities are to be invoked with appropriate Vedic mantras (set out in V. May.) He should offer the several items of worship from arghya (water offered by way of honour) to ornament to Dharma (as the principal deity) and then to the subsidiary deities from Indra to Durgā (according to appropriateness) and then sandalwood paste, flowers, incense, lamp and navedya to the deities from Dharma to Durgā. The
flowers for Dharma are to be red. Up to this is the work of the Chief Justice. Sacrificial priests should offer into fire in the four quarters 108 oblations of clarified butter, boiled rice and fuel sticks with syllable *Om* and the *Gāyatrī* and with *‘Om’* and *‘svāhā’* at the end of each. Having written down on a leaf the subject matter for which the party is undergoing ordeal the leaf should be placed on the head of the *sodhya* with the *mantra*, \(^583\) *‘the sun, the moon, the wind, fire, heaven and earth, waters, the heart, Yama, day and night, the two twilights and Dharma know (see or mark) the deeds of men’.*

The several ordeals will now be briefly described.

First comes *tulā* or *dhata* (balance) A sacrificial tree (such as *khadra* or *udumbara*) should be cut to the accompaniment of vedic mantras (employed in making a sacrificial post). Two wooden posts made of that tree should support a transverse beam (called *akṣa*). The posts should be fixed in the ground, the part above ground being four cubits and that below being two cubits. This frame should face the east (i.e. the posts must be in the south and north). Then the beam of the balance was to be made from the same tree and was to be suspended from the transverse beam of the frame by means of a hook. Three iron rings were to be fastened to the beam of the balance, two at the end and one in the middle for suspending the balance from the transverse beam by means of a chain or string. Two scales were to be suspended at the two ends of the beam by hooks and strings from the iron rings fixed at the ends of the beam. On the two sides of the balance there should be two arches in which the scales should move and which should be ten angulas higher than the balance. There should be two perpendicular pendants made of clay hanging down from the arches and touching the upper surface of the balance. In the pan to the west the *sodhya* should be placed and weighed against clay, bricks and stones placed in the other pan. Then traders or goldsmiths or braziers should examine the balance and bring it on a level with the two pendants hanging down from the arches and examine the perfect horizontality of the

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\(^583\) The मन्त्र is *आदिरशचन्द्रदामुलिनंदनं द्रिष्टिविग्राणे हुद्यं मन्त्रं आह्वं राशिकं उष्णं तथा सत्यं सत्यं ध्यानं ध्याति नरः पुरस्तः आदिरश ्74 30. It is to be noted that विनिमय quoted by the विनिमय regards this verse of the आदिरश as a मन्त्र and Prajāpati quoted by the Vyavaharānanmaya p. 153 does the same. Compare for a similar verse *Manu* VIII. 36.
beam of the balance by spilling a little water on the beam. When the person sitting in one pan is equal in weight to the materials (clay &c.) in the other, a line should be drawn with chalk by the experts on the arch (to show the exact position of the pans). Then the man is made to get down from the pan and he is to invoke the balance as stated in Yaj. II. 101-102. 'O balance, you are the abode of truth, you were created by the gods for this purpose, declare the truth, free me from this (cloud of) suspicion. Mother! if I am a sinner then take me lower, if I am pure take me upwards'. The person is then to hear exhortations about the result of untruth after putting the writing on his head (vide Nār. IV. 276 and Vismu Dh. S. X. 9), then he is again to be placed in the pan to the accompaniment of invocations (Nār. IV. 278-279, Vismu Dh. S. X 10-11). A worthy brāhmaṇa learned in astronomy is to calculate the time of five palas ⁵⁵⁴ or vānādīs. Then his weight is again to be marked. If the person goes up (i.e. is found lighter than what he formerly weighed) he is declared innocent (acc. to the com. on Nār. IV. 283, V. Mayūkha p. 60, Dipalkū ṇa on Yaj II. 102); if he weighs the same or goes down (i.e. weighs more) he is guilty. Then the person concerned is to distribute gifts to the judge, the brāhmaṇas and sacrificial priests and take leave of the deities invoked Brhaspati (SBE vol. 33 p 317 v. 19) states that he who weighs the same should be weighed once more. If the pan or the beam or the hooks break or the ropes give way owing to some visible cause then the procedure was to be repeated, but if the breaking is due to an unseen cause or accident, the person was to be declared guilty.

The ordeal of fire is as follows:—Nine circles with cowdung are to be drawn from west to east, they being meant for Agni, Varuṇa, Vayu, Yama, Indra, Kubera, Soma, Savitr and all gods. Each circle was to be 16 angulas in diameter and the space between two circles was to be 16 angulas. In each circle kūśa grass was to be spread and the person to be tested was to plant his feet on them; ghee was to be offered into fire 108 times. A blacksmith by birth should heat in fire a ball of iron weighing 50 palas (16 palas ⁵⁵⁵ in the case of a weak man) and eight

⁵⁵⁴ A vānādī is the time required for reciting 60 long syllables and 60 vānādīs make one ghatūkā. So five vānādīs will be equal to two minutes.

⁵⁵⁵ A pala weighed 320 guṇjās according to the Lilāvati (I. 4). Acc. to Duryatattvā (p. 608) 20 palas were equal to 66 tolas, five mānas and 4 guṇjās, which, while accepting the view that a pāla is equal to 320 guṇjās, gives the rather modern measurement into tolas (tolas).
angules in length till it becomes red-hot and emits sparks. Then all the details described above ending with the placing of the writing on the head of the śodhya are to be gone through by the judge and the fire (in the red-hot piece) is to be invoked with several mantras (such as Yāj. II. 104 and Visnu Dh. S. XI. 11–12). The śodhya should stand in the first circle facing the east. Having made red marks on all sores of the hands of the śodhya on which grains of rice have been rubbed, he (the judge) should place seven leaves of the atavattha tree on them and also grains of rice and curds and should fasten round them threads. Then the judge should carry the red-hot iron piece by means of a pair of tongs and place it in the hands of the śodhya (that are covered with leaves). Then the śodhya holding in both his hands the red-hot piece should walk from the first to the eighth circle not hurriedly but slowly and at ease. Having reached the 8th circle he should throw the red-hot iron piece on to the 9th circle. Then the judge should rub on the hands of the śodhya rice grains and when the latter shows no hesitation at the rubbing and no injury on his hand at the end of the day he is declared to be innocent. Kāt. (441) and Yāj. II. 107 provide that if the red-hot piece falls earlier (i.e. before reaching the 8th circle) or there is a doubt (whether his hands are injured or not) or if he loses his footing or is burnt elsewhere than on the hands he should again undergo the ordeal.

The ordeal of water as described in the smṛtis and digests is rather complicated. The Sm. C. (II. p. 116) remarks that as the ordeals of water and poison had gone out of vogue (in its day) it passes over the procedure of these and takes up the description of kośa ordeal after the fire ordeal. Having gone to a reservoir of water the judge should get erected on its bank a torana (an arch) as high as the ear of the śodhya on an even and cowduned plot. He should offer worship to Varuna (Lord of waters), to a bow of middling size and to three arrows (the points of which are made not of iron but of bamboo) with sandal

586. Before the red-hot iron is placed on his hands the śodhya repeats 'त्र्यं तससुर्युम्भोत्सन्ति तथ । सातिकद्विशुष्पणपेश्यो बुद्धि सर्वसं व वसे मि धि ।' Yāj. II. 104; the Śaṅk. II. 5. 27. (cr. ed. 5. 22) has the same verse (but reads शुपपापः तस्य त्र्यं तस्य बुद्धिः करे वच ।)

587. अथ सत्वादिव्यादित्सति पोहसत्वादित्सति होरादिव्यादित्सति सत्यादित्सति शुभादित्सति। शुभादित्सति in स्नितित्सति II. p. 112, भ्र. म प 196.

588 अथ तत्वादिव्यादित्सति ताम्रादित्सति तात्त्वादित्सति सत्यादित्सति। संहि। भ्र. m p 196.
paste, incense, lamp, flowers A target is to be fixed at the distance of 150 hastas (cubits) from the torana. A post of some sacred tree is to be fixed in the water and a strong man of one of the three higher castes free from love or hatred for the sodhya is to stand in navel-deep water facing the east and holding the post. Then the judge is to make the sodhya stand in water, invoke the deities from Dharma to Durga, perform all the rites up to the placing of the writing (embodifying the accusation) on the head of the sodhya. A ksatriya or a brahmana following the profession of arms who is of a pure heart and has observed a fast should discharge, while standing near the root of the torana, three arrows at the target. The sodhya should invoke the water with the mantra, ‘O Varuna! save me by means of truth’ (Yaj. II. 108)\textsuperscript{589}. Then a young but swift man should run to the spot where the second arrow struck the ground, and stand there holding that arrow in his hand. Another swift man stands at the root of the torana whence the arrows were discharged. Then the judge claps his hands thrice. At the third clap the sodhya dives into the water seizing the thighs of the man standing in water and at the same time the swift man near the arch runs at his best speed to the place where the second arrow fell. The other man who holds the arrow starts off the moment the first runner reaches him and comes running to the arch. If he does not see the sodhya or sees only his head (i.e., the back of the head) when he reaches the arch the sodhya is to be declared innocent; but if he sees other parts of the head (such as the ear or nose &c.) or if the sodhya floats to some part other than the one where he dived he is not innocent.

**Ordeal of poison** After worshipping Mahesvara with incense\textsuperscript{590} and the like (mentioned above) pola, a placed before the image of Mahesvara is to be administered in the presence of (images of)

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\textsuperscript{589} Several smritis give different mantras to be recited by the judge in invoking the waters (so that there is an option). Vide Vinsu Dh S XII 7–8 (tvamamahah &c.), Pitamaha (toya tvam prāṁnāṁ prānāḥ &c.) quoted by the Mit on Yaj. II. 108, Nār. IV. 316–317 (satyāntavibhāgasya &c.), Kāliṇāpurāna q. by V P. p 206. The mantra in Śankha-Lukhita (q. by Madanaraṇa and V. P. p 206) was śaṃcāra bhavayā Śaṃcāra. A Śaṃcāra, sarvā遍 sarvā遍 bhavayā śaṃcāra । Śaṃcāra śaṃcāraḥ caeṇaḥ śadāaśvat ।. The Ms of the narratives reads śaṃcāra śadāaśvat ।

\textsuperscript{590} It is most appropriate that Śiva is to be worshipped in the poison ordeal, since, according to the Paurāṇic mythology, he swallowed the Hālīhala poison produced at the churning of the sea. 960 pavaś make one pola.
Procedure of poison ordeal

The poison to be selected is śārṅga (derived from the śrṅga plant) or vatsanābbha (aconite) or hamavatā (Vīṣṇu Dh. S. XIII 3, Nār. IV. 322 &c.). Pitāmaha (q. by Aparārka p. 712) treats the three as distinct, while Yāj. II. 111 appears to prescribe śārṅga growing on the Himalaya as the poison to be selected. Vīṣṇu Dh S. (XIII. 2–3) also does the same. In the rains the quantity of poison is to be six yavas in weight, in summer five, in hemanta (and śīśra) seven or eight and in sarad (autumn) less than the latter (i.e. six yavas acc. to Mit. and three acc. to V. Mayukha). Poison is to be administered in the last watch of the night and never in the noon or afternoon or twilight; it was to be mixed with ghee thirty times as much. It may be administered to any one except a brāhmaṇa. Vīṣṇu Dh. S. XIII. 6–7 and Nār. IV. 325 are mantras with which the judge invokes poison and Yāj. II. 110 is the mantra which the śodhya repeats before taking poison viz. ‘O poison! thou art the son of Brahmā, thou art firm in the duty of (deciding) the truth. Save me from this accusation and be like nectar to me by truth (if I be innocent)’. Nār. IV. 326 states that then the śodhya should eat the poison, should be kept in shade without food and guarded the rest of the day and if he discloses no signs of the effect of poison should be declared innocent. If the dose of poison is large, the Mit. (on Yāj II. 111) says that when the śodhya shows no change till five hundred clapping of hands then he should be declared to be innocent and medical treatment should be resorted to. Pitāmaha says that, in order to prevent fraud, for three or five nights before the ordeal the intending śodhya should be kept under the supervision of the king’s servants and an examination should be made whether medicines, incantations or precious stones that are antidotes are secretly employed.

The ordeal of kōta. The śodhya is made to worship the stern deities (such as Rudra, Durgā, Āditya) with sandal wood paste, flowers etc. and made to bathe the images with water. Then the judge asks the śodhya to invoke the consecrated water with the mantra ‘satyena māḥurakaḥ’ (Yāj. II. 108) and makes him drink three handfuls (puruṣṭī) of that water. Pitāmaha gives some special rules. The water may be that of the bath of the image of that god of which the śodhya is a devotee or if he holds all images in equal esteem, then of the Sun. In the case of Durgā it is her spike (śūla) that is to be bathed, the orb in the case of the Sun and the weapons in the case of other
The water of the bath of Durgā is to be offered as ordeal to thieves and those who live by the profession of arms and the water of the bath of the Sun is not to be given to brāhmaṇas. In other divyas the result is declared immediately, but in the kośa ordeal there is a period of waiting which is more or less according to the value of the claim or the gravity of the offence. Acc to Yāj. II 113, Vīśnu Dh S 14. 4–5, Nār. IV. 330, if within fourteen days of taking the kośa ordeal the śodhya does not suffer any serious calamity due to the king's action or the act of God or does not fall seriously ill or does not lose by death his son or wife or other dear relative or his wealth, then he is to be declared innocent. Insignificant loss or illness did not matter as it is unavoidable in this world. Besides, the calamity or illness must not be one common to several people (such as an epidemic). Drinking holy water (kośapāṇa) was employed not only as an ordeal for proving innocence, but it was resorted to also for assuring another about one's good will and future honesty (vide Rājat V. 325).

Ordeal of Tandula (rice grains). It is to be administered in charges of theft or disputes about debts or other monetary matters. On the preceding day grains of rice should be made white (i.e. husked). The judge should perform all the rites on the previous day. The rice grains should be placed in an earthen vessel, exposed to the sun, water of the bath of (the image of) the sun should be poured over them in the vessel and the vessel should be kept in that state the whole night. The next day in the morning the śodhya should swallow thrice the rice grains. He should be made to spit on a pippala or birch leaf. If blood is found mixed in his saliva he should be declared guilty.

Ordeal of taplamāsa (heated piece of gold). In a vessel of copper, iron or clay sixteen angulas in diameter and four angulas deep, the judge should get twenty palas of ghee and oil poured and heat it to the boiling point. Then the judge should cast into it a golden piece weighing one māsaka (equal to five guṇījās). The śodhya should take out the heated golden piece with the thumb and the next two fingers. If he does not jerk his fingers or there is no scalded skin he should be declared to be innocent. There is another method. Cow's ghee should be poured in a vessel of gold, silver, copper, iron or clay and it should be heated to the boiling point so that when a green leaf is cast into it the sound 'churu' is produced. Into the
boiling ghee he should cast a golden, silver, copper or iron seal ring once washed. Then he should invoke the ghee with this mantra 'O ghee! thou art the holiest thing in sacrifices, thou art nectar; burn him (the sôdhya) if he is a sinner; be cool as ice if he be innocent.' Then the sôdhya takes out the ring from the boiling ghee. If there are no marks of scalding on his forefinger he is innocent.

Ordeal by phûla (ploughshare). This is described by Brhaspati (S. B. E. vol. 33 p. 318 verse 28) quoted by the Śm C II p. 119, V. P. p. 213 and others. A ploughshare of iron weighing twelve pâlakas, eight angulas long and four broad should be made red-hot and the thief should be made to lick it once with his tongue. If he is not burnt he establishes his innocence; if otherwise, he is guilty. The Vyâvahāratattva (p 608) mentions that accord to Maithila writers the thief meant is a cattle-lifter. The ordeal mentioned in the Chândogya Upanisad is a phûla dvûya.

Ordeal of dharma (i.e. of the images or pictures of Dharma). Men guilty of causing bodily injuries or who have monetary disputes or who desire to undergo this ordeal as an expiation for sins should undergo this. A silver image of Dharma and a leaden or iron one of Adharma should be prepared or the judge should draw on a birch leaf or a piece of cloth figures or pictures of Dharma and Adharma respectively white and dark in colour. Having sprinkled paûcayâsya over the two, he should worship them with white and dark flowers respectively. The images or figures should then be placed in two balls of clay or cowdung. The two balls should be then placed inside a new earthen vessel in a cowdunged spot in the presence of images of gods and in the presence of brâhmanas. Then the judge should perform all the rites from the invocation of Dharma to the placing of the writing on the head. The sôdhya should repeat the words 'if I am free from guilt may (the image or picture of) Dharma come to my hands'. Saying this he should take out one ball from the vessel. If he takes out Dharma he is innocent. This resembles the drawing of lots.

Ordeals played their part in the judicial systems of most ancient countries. In early England handling of red-hot iron and plunging the hand in boiling water were the commonest ordeals. In the ordeal of water sinking was a sign of innocence and floating of guilt. Stephens (History of Criminal Law of England, vol I p 73) suggests that the ordeal of water
was a form of honourable suicide. The Assize of Northampton
(1176 A. D ) prescribed the ordeal of water for murder, robbery,
theft, forgery and arson, but ordeals were abolished in England
from 1215 A. D. (ibid. vol I p. 300) In India 591 there is epigraphic
and other evidence to show that ordeals were resorted to
till the end of the 18th century and rarely even later. In the
Kittur Pillar Inscription (J. B. B R A. S vol IX. pp. 307-309)
dated in Kaliyugā era 4289 in the reign of Kadamba king
Jayakeshıdeva there is a description of the phāladūgā which was
administered by mutual agreement on Sunday to an acaraya
Śivaśakti who had a dispute about a plot of land with Kalyāna-
śakti the acaraya of another shrine and whose hand was exami-
ned the next day after he underwent the ordeal by all the
bankers of the agrahāra village Degāve In the Silimpur stone
slab Inscription of the time of Jayapāladeva (E. I vol XIII.
p. 283 at p. 291-292) there is a reference to the ordeal of

591 In Beal's 'Buddhist Records of the Western world,' vol I p. 84
(also Watters on Yuan Chwang's travels vol. I p 172) four kinds of ordeals
are mentioned as in vogue, viz. by water, fire, weight and posco. In the
water ordeal the accused is placed in a sack connected with a stone vessel
and thrown into deep water. If the man sinks and the stone floats he is
guilty, if the man floats and the stone sinks then he is pronounced innocent.
The ordeal by fire is they heat a plate of iron and make the accused sit on
it and again place his feet on it and apply it to the palms of his hands,
otherwise he is made to pass his tongue over it. If no scar results he is
innocent, if there are scars his guilt is proved In the ordeal by weight a
man and a stone are placed evenly in a balance If the accused is innocent
the stone rises in the balance, if he is guilty the man rises and the stone
falls In the ordeal of poison an incision is made in the right thigh of a ram,
all sorts of poison with a portion of the food of the accused are placed in the
incised wound If the man is guilty poison takes effect and the animal dies.
if he is innocent the poison has no effect and the animal survives It will
be noticed that these descriptions of the four ordeals do not agree in several
respects with the descriptions in the smrtis and digestes, while the poison
 ordeal in Beal has nothog in common with the smrti poison ordeal Alheran
(tr by Sachau, vol II. pp. 159-160) probably speaks of posco ordeal in the
words 'the accused person is invited to drink śīkḥ called bṛhmanā' (he is
probably referring to poison being called the offspring of Brahmā in
Yāj. II 110 and Nār. IV 325) In the ordeal of water the accused is simply
thrown into a deep and rapidly flowing river or a deep well and he was held
innocent if he was not drowned He describes the śūka ordeal and balance
ordal accurately, but states that if the man has spoken the truth he
weighs more than before He describes correctly teptamēa (gold piece
taken from boiling clarified butter) and also the ordeal of the red-hot iron
piece.
balance (about 1200 A.D.). The Visnukundin king, Mādhavāvarman in the 7th century A.D. (Journal of Andhra Historical Research Society, vol. VI pp. 17, 20, 24) is said to have carried out various ordeals (avarha-vandha-divyāh). The E.C. vol. III (Māndya Taluka Ins. No. 79 p. 47) records that a dispute having arisen about the boundaries of land bestowed by means of a copperplate grant by the Hoysala king Vira-Narasimhadeva, one Kannaya, a descendant of the original donee, performed an ordeal by holding consecrated food in the presence of the God Hoysalesvara in the capital Dorasamudra and came out successful. E.C. IV. p. 27 (Yelandur Jagir Ins. No. 2 page 27, about 1580 A.D.) is a charter to potters whose headmen underwent the ordeal of dipping their hands in boiling ghee as against barbers and washermen who denied that potters could pare their toe nails and tie on upper cloth (at the time of marriage). In the Indian Antiquary for 1931 (vol. 60 p 179) an extract is cited from the Archaeological Report for Travancore 1930 which describes the balance ordeal undergone by a brahmana 18 years before and seen by the writer himself in the temple of Śiva at Calicut. For the ordeal of red-hot ploughshare in the case of thefts, vide Report of South Indian Epigraphy for 1907, para. 27.

In the times of the Maratha kings ordeals were resorted to. For example, in 'Peshwa's Diaries' vol. 2 p. 150 (in 1764-65 A.D.) mention is made of taptakataha ordeal (i.e. taking out a coin or ring or a piece of metal from a large vessel in which either water or oil or ghee had been brought to the boiling point) in which the person undergoing it had his right hand burnt up to the middle joints of the fingers and was declared to be false. In a Marathi publication called 'Vatanpatarem, navepataram &c' pp. 46-56 edited by P. V. Mavje and D. B. Paranjpe (1909) there is a document which describes in great detail the ordeal of fire undergone in connection with a dispute about the office and emoluments of Deshpande in the district of Kalyan in šaka 1666 Pausa bright 11th, Thursday (1745 A.D.). It is stated therein that the ordeal was performed on the tank of the sacred river Godavari at Kopargaon in accordance with Dharmaśāstra in the presence of the Peshwa himself and learned brāhmānas and panchas near the temple of the god Śri Śuklesvara, that as the opponent was long in

592. संदिग्धितार्थो दुर्गमं ज्वक्तिवल्लक सवलस: 'पशव भवेत्रवर्म नासिकेवानात्मिकीस्रवका प E. I vol. XII at pp. 291–292.
possession the ordeal had to be performed by the man claiming title, that an iron ball of 50 palas (i.e. 166 tolas and two māsas) was heated red-hot and the ṣodhya carried it across seven circles and threw it in the 8th circle on flour and bundles which began to burn, that his hands were examined in the presence of the opponent and the respectable people and were found unaffected and the opponent was made to pass a document of victory to the ṣodhya called 'yejtapatra'. The description agrees very closely with that given above. In the same work at pp. 36-41 there is a remarkable description about an ordeal undergone (in 1742 A.D.) by Mahomedan litigants in their own mosque for 15 days by lighting lamps and sitting down in the shrine. There are several other yatnapatras in the same work which refer to ordeals.

For an informing article on divyas reference may be made to Dr. Dines Chandra Sirkar's 'The successors' of the Śatavāhanas' Appendix pp 354-376 (Calcutta, 1939) He quotes therein a passage from the ' Asiatic Researches' vol. 1, from which it appears that a magistrate named Ali Ibrahim Khan at Benares tried by phāla divya two cases in 1783 A.D. and reported them to the then Governor-General, Warren Hastings. In the 'Trtiya-sammelana-vṛtta' (pp. 18-26) and in the Caturtha-sammelana-vṛtta pp 100-154 of the Bhrata-itihāsa-samśodhaka-mandala at Poona (both in Marathi) Mr Bhaskar Vaman Bhat contributes two thoughtful and scholarly papers on the administration of Justice in the times of the Marathas in which the part played by ordeals is described at some length.

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593. It is somewhat strange that Dr. Sirkar refers to 'Divyatattva of Brhaspati' (in 'Successors of the Śatavāhanas' Appendix p. 360). A Divyatattva of Raghunandana is well-known. A Divyatattva of Brhaspati has so far been mentioned nowhere.
CHAPTER XV

DECISION

The last (i.e. 4th) stage in a judicial proceeding is siddhi (Ya, II. 8) or mūnaya (decision). If pratyakalita (as defined above on p. 298) is regarded as a pāda of vyavahāra (and since all are agreed that there are only four pādas) then the decision is not a pāda of a lawsuit but is the fruit thereof (V. P. p. 86). When the evidence has been led, the king (or chief justice) should with the help of the sabhyas decide upon the success or failure of the plaintiff.594. Nar. II. 42 says that the sabhyas should ask the parties to leave the court when they are considering their verdict or what decision was to be pronounced.595. It is stated by Vyāsa and Šukra IV. 5. 271 that the decision of a case is based on eight sources (6 acc to Šukra) viz. the three pramāṇas (possession, documents and witnesses), logical inference, the usages of the country, śapathas (oaths and ordeals), the king’s edict and the admission of the litigants. Pitamahā prescribes that, in disputes where there are no witnesses, no possession nor documents and no recourse can be had to divine proof, there the king is the final deciding factor as he is the lord of all.597.

It is stated by Nārada II. 41 and 43 that, whether a party is defeated by his own admission or by his own conduct (i.e. because he adduces false witnesses or forged documents) or

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594. उपाध्यक्षशास्त्र रस्मस्थापिता किया । राजा परिप्रेक्ष्य सम्मिश्र व्यावहारी ज्ञान-पराभृत ॥ संवादकार q. by स्वाभिन्द ॥ भारत ॥ १२०, परा. मा. III p. 199.

595. Dr Jolly (S. B. E. vol. 33 p 35) is not right when he translates När II. 42 as 'whenever the false assertions have been removed the judges shall pass a decree'. He has not also correctly rendered the com. of Asahāya. There is no word for 'assertions' in När II. 42 वाक्याग्रहणे हु सम्बृह कारणो विनिमय: सहाय । on which the comment of Asahāya is: यथा निरेशधारीभवति वाक्यमात्रा वायुपालितवादिनी। पर्यः सर्वत्रस्यमिद्धवायुमात्रां प्रह हावक्याग्रहणं सभृह विनिमय: कारण:।

596 महामायिक्षारती: सम्प्रेक्ष दुराक्षया। बायुपालितवादिनी शाक्त:।

597 ताक्यं इति न निवेदः न दुरक्षयं न साक्षिण:। तच विनिर्देशतात्त्विकः महामायं तत्त्वाधिकारिः। निवेदने वे न शक्यः। यथा वायु प्रहारिणिः। तेनाः दुर्देशः निमित्तं प्रहारणं। स्वाधिशीलधारिणिः। इतिनाति q. by स्वाभिन्द ॥ भारत ॥ २६, परा. मा. III p. 93. व्यावहारकार p. 43, महानगरल.
whether he is defeated after full trial and the adducing of proof, it is proper that the defeat should be declared by the sabhyas (the judges) and that a Jayapatra (a document of success i.e. a judgment) should be given to the successful party couched in fitting terms. Several verses of Nārada (quoted by Aparārka p.684), Brhaspati (S.B.E. vol. 33 p 307 verse 19), Kāṭ (259-265), Vrddha-Vasistha (q. by Mit. on Yāj. II 91- and Aparārka p.684) and Vyāsa (Sm C II p 57) lay down the contents of the judgment. It was to contain a brief statement of the plaint, the reply, the evidence, the depositions of witnesses, discussion thereof, arguments, the smrti texts applicable, the opinion of the sabhyas, the decision and the relief granted, and should be signed by the chief justice and bear the royal seal. Vas.19 10 refers to precedents also in the decision of cases and the awarding of punishments (āgamād-dṛṣṭāntāca). The Mit quotes a smrti text (on Yāj. II 91) that other members of the assembly (who are not judges) proficient in smrti may also sign the judgment to show that the decision is acceptable to them also. But this was not absolutely necessary, as is made clear by the Vividacandra p.146. Kāṭ (256) applies the word patsūlāra (refutation) to a judgment containing the above particulars given after a complete contest, while he restricts the word jayapatra to a document (given by the judge) when a plaintiff becomes what is called hīnāvidi (because he makes a change in his pleading or for similar cause) and when there has been no complete trial of an action; and such a document embodies only what happened. Kaut. (III.19) appears to employ the word pascatkāra in a somewhat different sense when he says ‘the

598. सकालं पूर्वपार्वं च सोचं सहितं तथा। साप्ताहिके बैठनेच लयाधकं।

dhāraṇa (q. by Aparārka p 684), yathōpyayastālampāraṁ'dhikā sājñākhyātyām। साप्ताहिके

599. विन्दुपालस्त खपा यानावेश बाधिता। स्वाभाविके विद्नण्डं न संपार्थं विभीषणीपथं।

कारया. q. by Śṛṣṭī. II 57-58, parā ma III.124-125, भाषा p 146 For

विवदचन्द्रानं श्लोकसूचना कथितत्त्वादिका न द्रावतर्विन्दसत्तै सविद्यपार्श्वकं। विद्यपार्श्ववं 145

Compare Order 20 r 4 of the Indian Civil Procedure code for the contents of the judgment.
person, who, when charged with murder, does not reply to the
charge that very day, stands refuted' (i. e. is found guilty). The Mit (on Yaj. II. 91) differing from Kāt holds a jayapatra
to be a judgment giving 'a summary of the plaint, the reply,
the evidence and the decision, while when a plaintiff is defeat-
ted for change of pleading or for default of appearance or for
non-prosecution the document stating this is called 'hinapatra
It is to be regretted that ancient jayapatras in Sanskrit have
not yet been discovered. In 25 Calcutta Weekly Notes
pp. CXL.11—III Dr. Jolly communicated the substance of a
jayapatra, couched in ancient Javanese, engraved on a copper-
plate found in the island of Java and described by Dr. Brandes
in a Dutch paper. That judgment is dated sake 849 (928 A. D.),
relates to a dispute about a debt of one swarna in which the
plaintiff failed because he did not appear at the trial. At the
end there are the signatures of four witnesses and the document
is styled jayapatra at the end. Vide for the same jayapatra
J. B. O. R. S. vol. VII pp. 117 ff The late Mr. K. P. Jayaswal
published in 24 Calcutta Weekly Notes (pp. CXLIX—CLX.1) a
jayapatra (text, translation and remarks) granted by the Hindu
court of Mithila in sake 1716 (1794 A. D.) and in J. B. O. R. S.
vol. VI pp 246—258, which strictly conforms to the rules of
procedure laid down in the smrtis and nibandhas and is couched
in dignified, technical and scrupulously formal language. It
related to the ownership of a slave girl. Plaintiff at first made
default in appearance; the judgment notes this and also refers
to the restoration of the suit. The defendant raised an objection
that a single witness to prove a matter was inadmissible. This
objection was upheld. Then plaintiff prayed that he might be
allowed to undergo an ordeal, but this request was disallowed
as human proof was possible and plaintiff ultimately lost his
suit. The judgment is written and signed by one Sacala-
niśra, who was the chief justice, and is addressed to other
members of the sabhā, called dharmādhyaksas and panditas,
seven of whom express their concurrence (sammah) at the top
of the document. Vide Journal of the Bihar and Orissa
Research Society vol XXVIII for 1942 for nine Sanskrit
jayapatras from the courts of Mithila in the 18th and 19th
centuries.

The Mit. (on Yaj. II. 91), and V. Māṭākā p. 309 note that a
jayapatra is given specially to prevent the same matter being

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600. पाल्लियोगमतिहीनस्वतःबृहस्पति एक्षालकार: । कृतिदेश III 19.
agitated again, while a document given where a party is hinavadi (i.e. a hinapatraka) serves the purpose of making that party liable later on to pay a fine. When a dispute was decided by a domestic tribunal (kula &c) there was no payapatra but only a nayapa-pata (kalādhīva nayaye jayapatrāhāvān-nayapātra tatra kāṛyam parattapratimā yāvat, as the Vy., Nṛnaye p. 85 says). It would be better to adopt the reading 'vrittapatra' as given by one Ms.

The defeated party has to pay a fine to the king and the successful party was complimented (or honoured) by the king (or chief justice) and was to be put in possession of the matter that he succeeded in proving 601. Manu VIII. 51 prescribes that in monetary matters (i.e. in civil disputes) the defeated party should be made by the king to pay the judgment debt to the successful party and also some fine to the king according to his ability, while Manu VIII. 139 lays down that when the defendant admits in the court his liability he has to pay to the king five per cent as fine and if the defendant denied his liability altogether and was proved to be false he had to pay as fine double of that (i.e. ten per cent) This is analogous to court fee, for which see above pp. 294-295. If one or both parties had laid down a stake or wager (viz. 'if I be defeated in this suit I shall pay a hundred panas') then he had to pay that stake to the king and a fine as above and the subject of dispute to the successful party (Yāj. II. 18 and Nṛ. II. 5) 602; compare Visnu Dh. S. V. 153-159 for similar rules. The punishments awarded in criminal matters will be discussed immediately below.

It would be necessary to see in what cases review of judgment was allowed. The general rule is stated by Manu IX. 233, 'whenever any legal proceeding has been completed (tirita) or has been carried out so far as to recover a fine from the defeated party, a wise king shall not annul it' (at his mere will or pleasure or through greed). The words 'tirita' and

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601. सिद्धेष्यायें संयोगी धार्मिक सत्कारपूर्वकः। लेकर्य स्वहलसंघकः हस्ते द्वारापि पारिः। कार्य गः क्र्विष्ण-म्व. प. 57, अर्घको प. 684, स्व. रि. प. 220 त्रो महतन्त (स्वयं, म्व.) एकी 'सिद्धेष्यायें साविकपितो। लेकर्य अपवसः। साविति करे तत्त्त्वमितिसहिष्ठ द्वारापिक एकी।'

602. बिशिष्टं सोत्सप्तने हुमोपकर्ष्यं ही फळम्। स एव हि पर्य वास्तो तिथ्यथ च प्राप्तं।
भाष्य इ. 5.
Meaning of Titra and Anusista

The word ‘tirita’ is very ancient and occurs in the Delhi Pillar Edict IV of Ashoka (E.I. Vol. II. p. 253) as ‘tirita-dandānam’ qualifying men imprisoned in jails. Medhatithi and Kulluka explain them as ‘decided according to the rules of the śāstra’ and ‘taken so far as to recover fine from the unsuccessful party’ respectively. Kāt. (495) defines them differently: “When a certain side is decided by the sabhāyas themselves (without the examination of witnesses) to be either true or false, it is said to be tirita and that matter or side is called ‘anusista’ which is declared (to be true or false) on the testimony of witnesses.” The lexicion called Vaijayantī seems to have Kāt. in mind and defines ‘tirita’ as a perverse decision given by the sabhāyas themselves and ‘anusista’ occurs where the evidence of witnesses makes what is true appear as false (Bhūmikādāna, vaiṣāyādhyāya, verses 11–12). Nar. II. 65 (S.B.E. vol 33 p 22) employs the two words, which the Mit on Yāj. II. 306 respectively explains as (tirita) ‘decided by reliance on documents and witnesses but not carried so far as to recover a fine’, and (anusista) as ‘decided so far as to recover a fine from the defeated party’. Vide Aparārka p. 866 and V. P p. 90 for explanations.

According to Kāt. quoted in the Vyavahārasāra (p 101) the decree should provide for the successful party receiving the interest on or accrations to the movable or immovable property placed (during the pendency of the suit) in the hands of a third party (as a sort of Receiver). Kāt. (477–480) points out the various ways in which a decree may be executed. The king should make a brāhmaṇa debtor return the decreatal debt

603. धीरति समार्थितिं निर्णयस्य पृष्ठ वाचितिमिति यथौ ... अनुभवति अथवाराध्यायिनि
604. मानसवधायित्वसे दुध्यं वाजं वा सिंहवरं ... पञ्चात्तलोकपरं जातिः पशुपारम् । कालं, विजये साधारण्यां प 101. This is ascribed to नारद in सूत्रितमा. II. p 120, and मुनित्व which reads सधेन बस्यातिति तस्मातीति जातिः पशुपारम् and explains ‘मानसवधायित्वसे विद्याविदते मानसवधायित्व’.
605. राजा दुध्यं तिं बनवन्ते कंवराशरीरं भाय बनवन्ते। देवधारीरं च बनवन्ते दुध्यं वाजं वा सिंहवरं ... पञ्चात्तलोकपरं जातिः पशुपारम् । कालं, विजये साधारण्यां प 121, 124, 129, म 364, सूत्रितमा. II. pp 121, 124, पर. म 300 and 209.
to the judgment creditor by conciliatory words, should make other debtors return it according to the usage of the country and compel bad people to satisfy the decree by means of physical pain (i.e. imprisonment). The king should make a co-sharer or friend (of the successful party) pay the decretal debt by means of a ruse (i.e. by borrowing an ornament or the like from him on a festive occasion and handing it over to the creditor) and also make traders, husbandmen and artisans (to pay) in a similar way. On finding that the debtor is unable to return the debt in cash, the king should make the debtor, whether a ksatriya, vaisya, sudra or husbandman, work (for the creditor) if he be unable to work the debtor should be sent to jail except when he is a brāhmaṇa. Manu also (IX. 229) says that if the members of the three varnas other than brāhmaṇa are unable to pay the fine imposed by the king they should be made to work for the king, but a brāhmaṇa may be allowed to pay in easy and small instalments. If a brāhmaṇa debtor was unable to pay, nothing could be done for recovery of the decretal debt except taking a surety from him if any one cared to be one. In modern times also judgment debtors are liable to be arrested and detained in civil jail in execution of decrees under rules 55-58 of the Indian Civil Procedure code (except women in execution of a decree for the payment of money). If in ancient times state policy exempted brāhmaṇas from arrest and detention in a civil jail for monetary debts on spiritual grounds and on the ground of caste, in modern times the State in Indra exempts agriculturists from arrest or imprisonment in execution of a decree for money on economic grounds under certain legislative enactments like sec. 21 of the Decree Agriculturists’ Relief Act (Bombay Act XVII of 1879). As regards women also Kat. (488-489) laid down certain prudent rules. "Women who are not independent should not be arrested (for offences like adultery); it is the male who should be regarded as the offender; women should be punished by their lord (i.e. the person on whom they depend) but the king should take away for punishment the male offender. Even if a woman whose husband has gone abroad be consigned to jail she should be kept imprisoned only till he returns." The Sm. C. IL p 323 explains that the first verse applies to a woman who can perform the

606. नारसन्ध्रा: नियोद ग्राह: दुगोरसगारपृथित । ममुषा शापस्वस्तता राजम है । कुव्वे भये । नाविदिकसाधिकारिण्याचिर यापित वधिष्टे । तात्त्विक मन्ये सराप्या राम- 
प्रस्थानति। चू।" कारणा. प. 323. न्याय-सूत्रित्वः II. p. 323.
expiation for adultery and who is dependent and the adultery is not with a male of a lower caste.

När (II. 40) lays down a qualification that when a party has been defeated by his own conduct (i.e. by his demeanour or by his having adduced manifestly false witnesses or forged documents) there is to be no retrial or review of judgment, but where a man has lost his cause through (the dishonesty of) witnesses or the sabhyas, the cause may be tried anew. There are four exceptions to the finality of the judgments of the king's court. Where a litigant either through folly or insolence thinks a decision to be wrong, he may be allowed a retrial, provided he agrees to pay double the fine inflicted on the losing party (Yaj. II 306, När. I. 65, Kat. 496). Secondly, where the former judgment is obtained by fraud or force, it may be set aside (Yaj. II.31). Thirdly, where the litigant was incompetent, i.e. was a woman or a minor or a lunatic or intoxicated, seriously ill or distressed by a calamity or where the proceeding was carried on by another on behalf of a litigant who did not appoint him or with whom he was not connected in any way or was held inside a house or outside a town or village (i.e. in a forest) or by an enemy, the decision may be set aside and a retrial ordered (När. I. 43 in S.B.E. vol. 33 p. 16, Yaj. II. 31-32). Fourthly, a king could set right a former decision of his predecessor which was unjust and arrived at through ignorance (Mit, on Yaj. II. 306).

Yaj. (II. 4 and 305) prescribes that legal proceedings that are suspected to have been wrongly decided by the sabhyas through partiality or greed or intimidation should again be tried by the king and if the suspicion turns out to be true he should levy from the sabhyas and the party who at first succeeded double the fine that is imposed on a defeated party. När. I. 66 (in S.B.E. vol. 33 p. 22) is similar. Mami IX. 231 (= Matsya 227, 158).

607. साधित्वप्रायस्यानि हुष्णेन वर्जनेन दुः \ स्वप्याधिकारिनां द्वारा पृष्ठार्को

608. शरीराम व्याख्यात व वी स्मरन्ति विचारमिति। निध्यान् बुध्मास्यान् तत्वार्की युन्न

609. अदीपेतिकारितानि स्वप्याधिकारितथाईस्वर कर्ताप्रण

610. क्षयात्वं कालित्वं बुध्माय्यात्वन्तं दीर्घ्यातिबिविष्यस्य दुन्नमयिति निध्यानं। स्पष्टि न. बी. बिम. द्वारा म. III. p. 582. तहे 13 बार्त्रू भारीणक 9.
and 334 prescribe that when officers appointed to administer justice cause loss to litigants by taking bribes, the king should deprive them of all their wealth and when the āmātyas (ministers) or chief justice disposes of a matter wrongly (but without being bribed), the king should himself decide the matter correctly and should impose on the āmātyas or chief justice a fine of 1000 panas.

Though there is hardly any express smṛti text for the transfer of cases from one court or judge to another court or judge, in practice this must have been done, though rarely. In "Selections from Peshwa’s Daftar" vol 43 p 108 there is a letter (of 12-8-1764 A. D.) written by the renowned minister Nana Phadnis to the Peshwa Madhavrao in which the former endeavours to persuade the latter to cancel his order for transfer of a case from the court of Rāmāśāstri, famed for his impartiality and strict life, to another judge on the ground that one of the litigants was afraid that Rāmāśāstri showed some partiality to the other litigant. Manu (VIII 174-175) states that the king who decides the causes of people unjustly through greed is soon subjugated by his enemies, while the king who curbing his own temper and desires impartially decides causes according to the dictates of śāstra becomes of one mind with his subjects as rivers merge in the ocean. Br. and Nar. I 74 (S.B.E vol. 33 p 24) lay emphasis on both the secular and spiritual effects of doing even justice, saying that when the king gives decisions according to śāstra he spreads his fame in this world and secures Heaven.

A crime may be defined as an act or omission that breaks the law and is subject to public punishment. But all kinds of breaches of the law do not result in punishment; only some do. Those breaches are crimes which are deemed to be menaces to the conditions of existence of society, which society, the ruler or legislation recognises as preventable only through punishment. The menace is not that of the specific action, but the abstract menace inherent in that type of action. A breach that is held to be a crime at one time may even be held not to be a crime at another time or in another country. For example, adultery is a crime under the Indian Penal Code (sec 497), while it is not a crime but a civil wrong in English Law.

611 एवं शाक्तिस्वर राजा कुदर्शितेयस्यपातानम्। नित्ययेद्य पवो तोके धर्मायादिपरो नेत्रेव। साधितिस्वरुपामतेन मुक्षस्वरुपायनिन्यैस्यः। नित्ययेद्य एवो राजा सशासनाधि रिवः। 
पुरूषो ग्र. ब्य स्वरूपाः इति।
II 123. परा. मा. III p. 273.
Many crimes and wrongs were sins and entailed secular punishments and also religious sanctions (viz expiations, *prāyaścittas*). Vide Manu IX. 236, 240, Br. (S. B. E. vol 33, p. 362, verse 22) and Paithinasi quoted below. Maine in his 'Ancient Law' chap. X (3rd ed of 1866) examines ancient western systems like those of Greece and Rome and makes the generalisation (p. 370) that the 'penal law of ancient communities is not the law of crimes; it is the law of wrongs or, to use the English technical word, of Torts. The person injured proceeds against the wrong-doer by an ordinary civil action and recovers compensation in the shape of money damages if he succeeds'. Dr. Priya Nath Sen in his Tagore Law Lectures on 'Hindu Jurisprudence' (1918, Lecture XII) rightly points out that this generalisation is not applicable to Ancient Hindu Law. It has already been shown (on pp. 264–266) that the king could of his own motion take cognisance of many wrongs called *chalas, padas* and *aparādhas* and it is clear that in such crimes as theft, assault, adultery, rape, and manslaughter the *smṛti* texts do not prescribe only a money compensation to the person wronged, but corporal punishment in the first instance and monetary compensation in addition. Vide for example, Mann VIII. 287, Yaś. II 222, Br. (SBE vol. 33 p. 358 verses 9–10), Kāṭ. (787) which prescribe a punishment for causing pain to the body or the loss of a limb and also the expenses of curing the person injured and some *solas*-tum to him. Āp. Dh S (I. 9. 24, 1 and 4) lays down that the slayer of a ksatriya should give a thousand cows in order to remove the enmity (i.e. as compensation to relatives) and one bull in addition for expiation. The Chāndogya Upanisad quoted above (p. 360) shows that a thief was punished with death in those early days. There is a passage in the Tai, S. II.

612. अध्यायतुर्गिराध्याय शास्त्रियोऽस्तु काव्यतेषु | यथार्थवस्तुसः स वृद्धी चैवं | कालवेदः ॥ तैत्तिरिः q. by दृष्टिशैल p. 76.

613. देवशिवियाः श्रेष्ठ श्रेष्ठ श्रेष्ठ श्रेष्ठाः | यथा तितिकर्षे सत्यवाच । | कालवेदः q. by स्वामिच. भ. p. 329, अन्तर्गत p. 816, परा जी III. pp. 419–420; दृष्टिशैलिकाः श्रुङ्गाकस्यालित्याः | इत्य तैत्तिरिः शास्त्रेऽपि कालवेदाः ॥ दृष्टि q. by रीढमतम on वा. II 226.

614. कालिण्य सुणा गर्भ सत्यवाच वैवैध्यतानां दृष्टादिः । ... सर्वं सत्यन्तिकः वर्णानि मार्गिकारः न जाप घुमन्तः । | अप. भ. छ. I. 9. 24, 1 and 4. दृष्टिः । in order to bring Āp in line with Manu XI. 127 and Yaś. III. 266 explains that 1000 cows and one bull are all for expiation.
6. 10. 1 (quoted in H. of Dh. vol. II. p. 151 n. 346) which states, 'He who threatens a brāhmaṇa should be made to pay a hundred, he who strikes a brāhmaṇa should be made to pay a thousand'. It is rather doubtful whether the figures stated are fines or are meant as *satādāya*, in Rg. II. 32. 4 (which also occurs in Tā. S. III. 3. 11. 5) the poet prays to Rākṣa (the Full Moon personified) that she may be pleased to grant the boon of a valiant son, who would be 'satādāya'. Sāyana's rendering of this word as 'possessed of plentiful heritage or wealth' appears to be the right one. The words 'satādāya' in the Tā. S. III. 3. 11. 5 are translated by Prof Keith as 'a hero whose wrongdoer is a hundred'. This is incorrect, confounding as it does the ideas of western Germanic tribes with the Rgveda composed several millenniums earlier. It would be a strange thing to pray to a goddess for a son and at the same time to have in mind or refer to the price set upon him if he happened to be killed.

The ancient *smṛti* writers were quite aware of the several purposes served by punishments for crimes,616 though they do not develop a regular science of penology. The person wronged feels a great urge for revenge or retaliation and other men sympathise with that emotion. The individual, however, could not, in civilized societies, take the law into his own hands and therefore the State saw to it that the emotion for retaliation or revenge was to some degree satisfied by the adequate punishment of the wrongdoer. Yāj. II. 16 and Nār. I. 46 (SBE vol. 35 p. 17) state that when a person without complaining to the king sets about to secure what is denied by the opposite side or is doubtful he becomes liable to punishment and he also cannot secure the object he wants.616a In all ancient societies the *lex talionis* (the law of retaliation, viz. an eye for an eye,

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615. राक्षसादेव द्रव्यम् छुतिः हुवे ... द्रव्यम् भी शतासःप्रत्ययः॥ आ क्ष 32. 4.

616. The work of Harry Elmer Barnes on 'The Study of punishment (1930, New York) may be read with great interest and profit. It will set off to great advantage the comparatively humane treatment of criminals in Ancient India as compared with the horrible and revolting methods for punishing criminals employed in the West.

616a. अराविषुद्ध हु यो राजे सत्वना वेशयेऽं मयं। मसंह ए प्रेक्षा स्वासः सत्सायां । न सिद्धर्थि। सत्साहि। आ 46.
a tooth for a tooth) prevailed.  

617. Manu VIII. 280 (which is almost the same as Nār., pārusya, verse 25), Yājñ II. 215, Visnu Dh. S. V. 19 and Śankha-Likhita prescribe that with whatever limb a man of low caste offends against a brāhmaṇa, that very limb of his shall be cut off. Another and the most important purpose of punishment is deterrent. Punishment of the evil-doer serves as an example and a warning to all others that might be tempted to tread the paths of violence and crime. This aspect of punishment (danda) has already been dwelt upon in the section on rājadharma (p. 21).

The end sought to be served by punishment was the protection of society and the securing of its happiness. The Śāntiparva (15 5–6) remarks that people do not commit sins through fear of punishment at the hands of the king, through fear of Yama and of the next world and through fear of others (i.e. public opinion).  

Gaut XI. 28 derives the word danda from the root dan to restrain or to deter. This purpose of punishment is well brought out in the Mrochakatika (X) when the sentence passed on Carudatta for the alleged murder of Vasantasena is proclaimed to the citizens by the executioners.  

Another purpose of punishment is preventive i.e. if a culprit is imprisoned for an offence he is prevented or disabled from repeating the same offence or  

618. Vide Deut XIX. 21, Lev, XXIV. 20 for the ancient Hebrew Code (eye for eye &c.), the code of Hammurabi (about 2200 B.C.) in Babylon and the law of the Twelve Tables in Romé. In the 8th Table in Ortolan’s ‘History of Roman Law’ (tr. by Prichard and Nasmyth, 1871) p. 114 the 2nd provision is: ‘retaliation against him who breaks the limb of another and does not offer compensation’. In Hammurabi’s Code (text tr. by C. H. W. Johns, 1903) sections 196 and 200 are: ‘If a man has caused the loss of a gentleman’s eye, his eye one shall cause to be lost. If a man has made a tooth of a man that is his equal to fall, one shall make his tooth to fall out’.  

619. Vide X. 3-5 for almost the same words (225, 16–17).
committing further offences for some time at least and if he be sentenced to death or transported for life or banished, the commission of offences by him is prevented for his life-time. Another purpose was that of reform or redemption of the evildoer. The punishment was deemed to be a sort of expiation, which purged the man of sinful promptings and reformed his character. Manusmriti VIII 318 (= Vas. 19 45) states that men who are guilty of crimes and have been punished by the king go to heaven, becoming pure like those who perform meritorious deeds. Medhatithi remarks on this verse that this applies only where the punishment is corporeal and not merely monetary. It will be seen from the early sutras like that of Gautama and from the Manusmriti that the more ancient criminal law in India was very severe and drastic, but that from the times of Yajñavalkya, Nár. and Br. the rigour of punishments was lessened and softened and fines came to be the ordinary punishments for many crimes, as is noted by Fa Hien (398-400 A.D.) in relation to middle India (Madhyadeśa) under the Guptas apparently 'The king governs without decapitation or other corporal punishments. Criminals are simply fined, lightly or heavily according to the circumstances. Even in circumstances of repeated attempts at wicked rebellion they only have their right hands cut off' (Legge, 1886 p 43). This may be contrasted with the state of things depicted by Megasthenes 700 years earlier than Fa Hien: (Fragment XXVII p. 71) 'a person bearing false witness suffers mutilation of his extremities. He who maims anyone not only suffers loss of the same limb but his hand also is cut off. If he causes an artisan to lose his hand and eye he is put to death'. The Daśakumāra-carita (II p 56) states that the Mauryas conferred a boon on traders that for certain offences they were not to be sentenced to death, but were to be deprived of all their wealth and banished. The first separate Rock Edict of Aśoka at Dhauli (Corpus I I pp. 93, 97) shows that great Emperor's anxiety that his judicial officers should strive to see that there is no undeserved fettering or no undeserved harsh treatment. In India the list of capital offences at any time was much shorter than in the West. Stephens is constrained to admit that in England 'there can be no doubt that the legislation of the 18th century in criminal matters was severe to the highest degree and destitute of any sort of principle or system' (His. of Cr. Law, vol I. p 471.) As stated by Dr. Hart (in 'Way to justice' p 94), at the beginning of the 19th century in England more than a hundred offences were
punishable by death. In 1832 a child was convicted at Ludgate Hill for stealing a box of paints worth two pence, was tried at the Old Bailey and hanged (vide ‘In the service of youth’, by Dr. J. M. Brew, 1943 chap XV. p 208).

Manu VIII. 129, Yas I 367 and Br. (S B E. 33 p. 387 verse 5), Vṛddha-Hārīta (7195) speak of four methods of punishment (danda) viz. by gentle admonition by severe reproof, by fine and by corporal punishment and declare that these punishments may be inflicted separately or together according to the nature of the offence. The first takes the form of saying ‘you have not done a proper thing’, the 2nd ‘lie upon you who are a wrongdoer and guilty of adharma’; Br. lays down that preceptors, pudhitas and sons should be sentenced to the punishment of wordy admonition, other persons who engage in disputes should be punished with reproof or fines and those guilty of mahāpātakas should be punished with corporal punishment. That admonition and reproof were two modes of punishment shows that ancient writers were alive to the notion that among very sensitive persons or in a very sensitive society verbal condemnation would be enough to achieve the main purposes of punishment Br. (SBE vol. 33 p. 388 verse 8) states that the first two are within the privilege of the brahmana (appointed as chief justice) but fines and corporal punishment are to be inflicted by the king (on the recommendation of the chief justice, prādavākamate sthitah). The Mrchhakatika (IX) bears this out when the judge says ‘We have authority only to pronounce the judgment; as to the rest the king is the final authority’ (urmāye vayjan prāmānām sese tu tuṛṣa) Gaut. XII. 51, Vās. 19 9, Manu VII. 16, VIII. 126 and Yas I. 368 (=Vṛddha-Hārīta VII. 195–196), Brhat Parāśara p. 284, Kaut IV. 10 lay down that the award of punishment must be regulated by a consideration of the motive and nature of the offence, the time and place, the strength, age, conduct (or duties), learning and monetary position of the offender and by the

621 The Daṇḍaviveka of Vardhamāna (published in Gaikwad Oriental series, 1931) deals exhaustively with the subject of punishments. The texts in the Dharmasastra and Āśrama lose their distinct identity in the Āśrama and Āśrama texts. The Rigveda is a source of the sentiments and ideas found in the Dharmasastra. The Dharmasastra is a source of the sentiments and ideas found in the Rigveda. The Q. by śatāvik I. 126 and śatāv. śr. p. 528.
fact whether the offence is repeated. This provision means that the dharmasastras did not hold that the same punishment must be meted out for the same offence irrespective of the antecedents, characteristics or physical and mental condition of the offender. They always took extenuating circumstances into account. Kaut (I. 4), differing from the view of the ācāryas that there is nothing like danda for bringing under one's complete control all beings, gives his own opinion that, as a king whose control and punishments are most severe makes the subjects disgusted with him and as the king who deals mild punishments is disregarded by the people, the king should distribute punishments according to the deserts of the offenders and would then command respect.

One reason why some of the works on dharmasastra prescribe mild punishments is the doctrine of karma-pākha (a man committing certain sins is born in the next life afflicted with certain diseases or bodily deficiencies or is born as a low or filthy beast or bird) Vide Manu XI 49-52, Yaj III 207-216, Visnu Dh. S 44-45. This doctrine will be dealt with later on under pātaka and pṛyaścitta. Gaut. XII 48 first provides that the king must take into account, when awarding punishment to the criminal, his physical or monetary circumstances, the nature of the crime, the fact of repetition of the crime and then adds that the king should award punishment after consulting an assembly of learned brāhmanas. The Dandaviveka (p. 36) quotes a verse in which the considerations that should weigh in awarding punishment are brought together viz. the offender's caste (as in Manu VIII 337-338 for theft), the value of the thing, the extent or measure (as in Manu VIII 380), use or usefulness of the thing with regard to which an offence is committed (as in Manu VIII 245), the person against whom an offence is committed (such as an idol or temple or king or brāhmana), age, ability (to pay).

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qualities, time, place, the nature of the offence (whether it is repeated or is a first offence). The Rājatarangini (VIII. 158) provides that in disputes where parties are in doubt as to their rights it is proper to award punishment with forbearance but where a man starts on an evil path of set purpose (the king and officers) must award severe punishment. In modern times there are controversies among several schools of criminology. Some hold that every man has freedom to act criminally or not or to act in the way he does and that each man has complete moral responsibility for his own acts. On the other hand there are some who go to the other extreme and propound that a so-called criminal act is mostly due to biological, physiological, pathological or sociological conditions, to the upbringing and environment of the person charged with crime. They favour determinism. The ancient Indian writers do not enter into these speculations. But when they said that regard must be paid to time and place and other considerations they were faintly conscious of or were groping towards the ideas of the 2nd school.

Fines are either fixed or not fixed (i. e. variable). They range from a kākāpi to the confiscation of all wealth; fixed fines were of three kinds called prathama sāhasa, madhyama sāhasa (middling amercement) and utkama sāhasa (highest). These are variously defined. According to Sankha-Likhita the first⁶²⁴ amercement is fine from 94 panas to 91, the middling one is from 200 to 500 panas and the highest is from six hundred to 1000

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624. विज्ञानेष्वराः प्रथमसाहसः। हिरण्य सञ्चारसः वैशालिकसाहसः। प्रयवः सहस्र स्वरूपम्। धनसाहसः विज्ञानेष्वराः। श्रीमद्भारतिः प. 664, पुस्तकाविकः प. 23.

There was great divergence of views about the metal in which the fines were to be paid. According to Vijnānesvara the figures of fines in such verses as Manu VIII. 378 (where no metal is specified) the panas are those of copper, while according to Bhāruchī (quoted in S. V. p 150) they are of gold. The S V. remarks that local usage is to be followed. The V. Mayūkha (p. 255) states that in all texts (about fines) the mention of a number without specifying the object to which it refers is to be deemed to refer to panas, that panas is a copper piece one kārṣa in weight and that kārṣa is one fourth of a pāla. Br. (q. by Sm C. II p. 99) states that the tables in Manu (VIII. 132-136) beginning with the dust particle in a beam and ending with kārṣapaṇa is to be followed in ordeals and fines. An interesting sidelight is shed on crimes and their punishments in the Inscription of Cālukya Vikramāditya V (dated saha 594) from Gadag which provides that the fines for abuse, assault, for drawing out a dagger, for stabbing and for adultery by a bachelor were respectively 2 panas, 12 panas, 3 gadyāṇas, 12 gadyāṇas and 3 gadyāṇas (vide E. I. vol. 20 p. 64.)
in proportion to the value of the matter in dispute or the injury caused. *Manu* VIII 138 (= *Visnu Dha S. IV. 10*) states that the first, middling and highest fines are respectively 250, 500 and 1000 panas, while Yājī I 366 puts these respectively at 270, 540 and 1080. The Mit explains that the lesser figures of *Manu* represent the fines to be awarded for offences committed without set purpose. Nār. (sāhasa, verses 7-8) prescribes that 100 panas is the lowest limit of fines for the lowest kind of sāhasa, 500 is the lowest for middling sāhasa, 1000 is the lowest fine in what is called the highest amercement (and might include death penalty, forfeiture of all property, banishment, branding and cutting off of a limb). Fines were supposed to be lesser than corporal punishment. Kāt (490-493) lays down the following rules: Whatever figure of fine is prescribed in the smrī texts for a wrong it is to be paid to the king in panas of copper or their equivalent. Where the fine is said to be one-fourth or one half of a māsa, there it is a golden māsa that is meant; when the fine is declared in māsas, they are to be understood as those of silver and where the fine is declared in krṣṇālas the same is to be understood; a māsa is 26th of a kāśapaṇa. The general rule that lesser punishment is to be inflicted on women is stated by Kāt. (487) 'In the case of all offences, women are to suffer half of the fine in money which is prescribed for a male offender (of the same kind) and when the punishment is death for a male, the punishment for a woman would be the excision of a limb.' Kaut (III 3) provides, 'a woman attains ability to enter into transactions on completion of 12 years and men when they are 16; if they disobey after that (i.e. after attaining majority) the woman shall be fined twelve panas and a man twice that amount.' Angiras quoted by the Mit (on Yāj)
III. 243) states that an old man over eighty, a boy below sixteen, women and persons suffering from diseases are to be given half prayāśītta and Śāṅkha quoted by the Mit. (on the same verse) that a child less than five commits no crime nor sin by any act and is not to suffer any punishment nor to undergo a prayāśītta. Under the Indian Penal Code, sec. 82, nothing is an offence which is done by a child under seven years of age. The severity of punishment depended on caste also. In the case of theft, Gaut. XII. 15-16, Manu VIII. 338-39 prescribe that a vaiśya, a ksatriya and a brāhmaṇa should respectively be fined twice, four times and eight times of the fine to be imposed upon a sūdra for a theft, since each of these is deemed more and more aware of the heinousness of the crime. Kāt (485) and Vyāsa state this as a general rule for all offences. In the case of abuse and defamation the scales are turned in favour of the higher castes as regards fines. Gaut. XII. 1, 8-12, Manu VIII. 267-268 (=Nār. pārura 15-16), Yaj. II. 206-207 prescribe that a ksatriya or a vaiśya or a sūdra abusing or defaming a brāhmaṇa was to be respectively punished with the fine of 100 panas, 150 panas and with corporal punishment (cutting off the tongue), while a brāhmaṇa defaming a ksatriya, vaiśya or sūdra was to be fined 50, 25 or 12 panas respectively (nothing in the last case acc to Gaut. XII. 13). In the case of adultery and rape the caste of the offender and of the woman concerned made great difference in the punishment awarded. For adultery with a woman of the same caste Yaj. II. 286 prescribed the highest amercement, the middling one when the paramour was of a lower caste, but if the male be of a lower caste than the woman, the male offender was sentenced to death and the woman had her ears cut off. Corporal punishment assumes (as pointed out by the Dandaviveka p. 20) various forms according as it is meant to cause only harassment (pain) or is

628. अष्टीत्वृत्ति कपालि चाले वाणपुरोदशा। मायणिक्षिखांत्विन्ति खिमिरे व्यापके एव च। समालोचनानवरूप वा शास्त्रविविदर्श च।।

629. Nār. IV. 85 holds that a boy is called śīku and is like an embryo till eight and balā or poṣandā thereafter till 16

630. तेन दृष्टिप्रभुष्टाः कुमारोऽवृत्तिः पापयं धर्मसः। तेन वेदवाचिकार्या हिंद्यों हिंद्यों भवन्ति इति पाण. 485 q. by सुधित- II 127, परम् मा III 211 (ascrives to सितात्र), । ।

पृष्टि पवित्र तद्दृष्टि न शृंग चाचां च पणाध्यायम्। कल्पवुत्तात्रज्ञाने मध्ये सध्येवनपरमसः। पृष्टि q. by समाधान on वा. 1. 17.
carried out by cutting off (or destroying) a limb or to cause death. Harassment or pain may be inflicted by imprisonment, beating, putting fetters, by making ridiculous (by the complete shaving of the head, declaring the offence by beat of drum in the presence of the convict, parading him through the streets on an ass) and marking him with signs indicative of offences like theft. Manu (VIII. 125) provides that punishment may fall upon any one (or more) of ten places in the case of the three higher castes, viz. the private parts, the belly, the tongue (either whole or half), the hands, the feet, the eyes, the nose, the ears, wealth and the whole body; but a brāhmaṇa shall depart unhurt from the country (i.e. he is to be only banished). Br. (SBE 33 p. 388 verses 9-10) speaks of fourteen places of punishment adding the neck, the thumb and index, the forehead, the lips, the hind part, hips, one half of the foot (to Manu's ten) and omitting wealth and the whole body therefrom. Gaut. XII. 43, Kaut. IV. 8, Manu (VIII. 125, 380-381), Yāj. II. 270, Nār. (sāhasa, 9-10), Visnu V. 1-8, Br. (SBE. vol 33 p. 388 verse 11), Vṛddha-Ārītra VII. 191 prescribes that a brāhmaṇa was not to be sentenced to death or corporal punishment for any offence whatever, but if he were guilty of an offence deserving the death penalty, he was to be punished by ordering his entire head to be shaved, he might be banished from the country (from the city acc. to Nār.), a mark appropriate to the grave sin committed by him might be branded on his forehead and he might be paraded on an ass.631 Yama,632 quoted by Sm. C. and V. P., while providing that a brāhmaṇa was to be free from undergoing corporal punishment, allows

631. सचाहेते भावणरथ न पर्ये भाज्यानोहैति । चित्रसे शनान दुःसति र निरालां गुरासु । वहादि चाभिनसादुः। परार्थ गर्गेन न ॥ नारदः (सास 9-10). In these days of fasts as part of the technique of satyāgraha for redress of grievances or for justice pursued by Mahāṁā Gāndhi and some of his ardent followers it is interesting to note that the widow of the murderer of brāhmaṇa referred to on p 397 had been undergoing voluntary starvation (prāyopaveśa) for four days for securing punishment of her husband's murderer (who she believed was a wizard) and that the King himself being unable to prove the guilt of the accused began to starve himself and found proof by supernatural means (Rājatarangini IV 82-105).

632. न जास्तिरो भावणरथ चाही भवति काहैनिति । चतुष्टय सस्य श्रवण रत्न भर्म । पदार्पणं आनंदप्राणं कर्म मे प्राप्तिः। गद्य अलिख्य दुःसति कार्य निर्भाव हरतः। यथायपराम लये ह विकामकारणं कार्यसतः । अर्धचर भावणरथ यावह हिन्नक्षिणिनाविभी भुंिति। वमिना quoted by सत्तुनिन्दा. II. p. 317, य. य. p. 393 (only the first).
the king to keep a brāhmaṇa offender in confinement in a secret place and give him bare maintenance or the king may
make him do the work of guarding cattle for a month or a
fortnight or make him perform other work not fit for a decent
brāhmaṇa. The Mīt. on Yāj. II. 270 explains that the mark
of female private parts for violating guru's bed, of a tavern
for drinking the liquor called surā, a dog's foot for theft, of a
headless corpse for brāhmaṇa murder (as laid down by Manu
IX. 237 and 240, Visnu Dh S. V. 4) is to be made on the
forehead only if the offender (whether a brāhmaṇa or not)
did not perform pṛayaścitā for those grave sins. Branding
with marks appropriate to the crime committed were in vogue
in Rome and in Britain up to 1699 (such as the mark of the
letter M. for murderers, T for thieves &c.). Vide Barnes'
'Story of punishment' p. 63. The Rājarāṇī (IV. 96–108)
refers to a case in the reign of king Candrapida of Kashmir
when a brāhmaṇa guilty of the murder of a brāhmaṇa was
exempted from death sentence because of the smrti rule.
Manu IX. 241 gives option that a brāhmaṇa (unintentionally)
guilt of grave offences may be punished with the middle
amercement or he may be banished from the realm keeping
all his wealth. The punishments for a brāhmaṇa offender,
according to Gaut. XII. 44, were preventing him from doing
the same thing again, depriving him of all wealth, taking
sureties from him, proclaiming him as a thief in the city
banishment, putting on his forehead the mark indicative of his
crime. Āp. Dh.S. (II. 10 27. 16–17) lays down that a brāhmaṇa
guilty of murder, theft, forcible seizure of another's land was
to have his eyes covered over with cloth for the whole of his life
(while a śādra guilty of any of the three was to receive the death
sentence). Vṛddha-Hārita (VII.309–310) says that a brāhmaṇa
should be branded on the body for all those offences that entailed
corporeal punishment for other offenders, that he should have his
head shaved, that he should be deprived of all his property and
banished from the realm. The force of popular feeling on the
point of exempting a brāhmaṇa offender from the death sentence
was so great that Elphinston (Governor of Bombay) in Regu-
lation 14 of 1827, sec. IV (cl. 5) exempted brāhmaṇas and women
from death sentence even for murder where public feeling would

633. युक्तपर्यं लोके युक्तिः तस्य वाक्यं धोरत्र रोहणं यथ: \ युक्तिः न्योत्तकालेदु भाषणम्।
अय व च भ II. 10. 27. 16-17.
be shocked. It is not to be supposed that this exemption of the brāhmana from the death sentence was unanimous or universal. Kat. (806) contains this remarkable statement.

'Even a brāhmana deserves to be killed if he be guilty of

634. पूनः शास्त्रोज्ञां 'असूप्तपशु नासाध्याः स्त्राकुशलिणिः परिवर्तानासमाभिः

जनसंप्रदायिका साधनावस्था' हि देवता. कार्यार्थन 'आचार्यस्तिस्मितमहाभानसमाभिः

वा। एकसङ्केत्रायामेव दृष्टि न्यून रिविधीपति हि रचितार्थार्थविषयाः न इतवैथार्थाः।

635. From this it is clear that the absence of a fine occurs only in the case of a brāhmana who was a first offender, who did not commit the offence with forethought and who was endowed with learning, good family and character. The Smrtis openly regarded the brāhmana's person as sacred and as saved his body. The smrti endeavoured to reach the ideal of the rule of law and succeeded to a great extent in dazing so. They held that every man, whatever his rank or condition, was subject in the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. The only differential treatment that we find is in the appointment of judges (pp. 272-273), in the order of taking up causes of litigants (p. 298), in the punishment for perjury (Manu VIII 123-124), in the matter of corporal punishment, in abuse, defamation and assault (pp. 395-397), in punishment for adultery, in the repayment of debts and in the punishment for theft, which was severer for a brāhmana. It will be shown below that from the 13th century, as indicated by the Sm C., S. V. and Madanaratan, differential punishments had gone out of vogue. The smrtis did not, like some modern freedom-loving people, declare the equality of all before the law on paper and in practice indulge in lynching. Further the smrtis required all offenders of whatever caste to be brought before the same tribunals. Mann VIII. 335 and Yaj. I 358 emphasise that there is none who is exempt from punishment in the king's court whether the person be the king's father or teacher or friend or mother or wife or a son or a family priest or brother or father-in-law or maternal uncle. Sankha-Likhita and Kat. (481) an doubt say that a king should not punish his parents, his family priest, teacher, near relatives, forest hermits, ascetics. But, as the Sm C. II. p. 126 explains, the real meaning is not that the king is to allow these to escape scot-free, but that he should not inflict corporal punishments or fines on these, but should employ admonition or severe reproof towards them. The smrtis do not contain rules like those in the Indian Criminal Pro. Code entitling Europeans and Americans in India to claim a jury preponderantly composed of their countrymen and claiming trial only by the High Court or like the privileges of the English Peers to be tried only by the House of Lords for felonies or the doctrine of the benefit of clergy abolished in 1827. Vide H., of Dh. vol. II. pp. 140-143 and 147-152 about certain privileges of brāhmans.
Death sentence for a brāhmaṇa

causing abortion, if he be a thief (of gold) or if he kills a brāhmaṇa woman with a sharp weapon or if he kills a chaste woman'. Kautilya (IV. 11) prescribes that a brāhmaṇa who aims at the kingdom or who forces entrance into the king's harem or who incites wild tribes or enemies (against his king) or who foments disaffection (or rebellion) in forts, the country or the army should be sentenced to death by drowning. The fact that Ċāruḍatā, a brāhmaṇa, is represented as having been condemned to death by king Pālaka in the Mṛcchakatika indicates that the sentence of death against brāhmaṇas was not entirely unheard of. It appears from Fick's 'Social organisation' &c p. 212 that in many Jātakas passages the execution of brāhmaṇas is referred to.

The Śāntiparva chap. 268 contains an interesting dialogue between king Dyumatsena and his son prince Satyavat on the subject of the punishment of death, which contains some of the arguments forcibly urged in these days by those that are opposed to capital punishment altogether. The prince pleads that punishment should be light even for grave offences, that when the sentence of death is carried out in the case of robbers, several innocent persons (such as the wife, the mother, the son of the condemned man) suffer great loss (and they may die also), that if offenders give themselves up to priests, swear before them that they will never commit sin, they may be let off after undergoing penance, that if great men go astray their punishment should be proportionate to their greatness. The king replies that in former ages when people were most truthful, soft-hearted, and not hot-tempered the punishment of saying 'fie on you' sufficed, then vocal remonstrances and upbraiding sufficed, but in the later ages (of Kali) corporal punishment and death sentence have to be resorted to and that some people are not deterred even by the fear of death sentence.

A few remarks will be made on each of the several modes of punishment. The sentence of death was, acc. to Kām XIV. 16, Śukra IV. 1 93, to be avoided even in the gravest offences

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636 राजनि कामंसतः दुर्योधनसमावेशति ग्राम्याधिपतिः व तिरीका धनापहरेष्व वालिनां राज्याणां धनेष्वरः अर्यंशास्त्र IV. 11

636a इत्यथाविद्यते वै शां जयसिद्धाप्रयात्मकः भार्या मतान्विता कषो हस्ये प्रसन्ने वै ॥ न मुनिभवान् वसैयस्य: &c. स्मार्कं 268 10-11.
History of Dharmaśāstra

except for the offence of subverting the state. Vismu Dh. S V. 1 provides that all persons except brāhmaṇas guilty of the maha-pātākas may be sentenced to death. But Manu IX. 236 says that this extreme penalty was to be awarded only if they performed no pāryāścitta. Kaut (IV. 11) prescribes death sentence for causing the death of any one with a sharp weapon. Vṛddha-Harīta (VII 190) prescribes it for incendiaries, poisoners, murderers, robbers, bad characters, rogues and those guilty of grave sins. The death sentence was carried out in various ways such as by giving poison or by trampling at the feet of an elephant, or by a sharp weapon (like a sword), by being burnt or drowned. Impalement was a punishment prescribed by Manu IX. 276 for thieves guilty of housebreaking by night (after first cutting off their hands), by Yāj II. 273 for those who made another a captive or stole horses and elephants or killed another by the use of force and by Vṛddha-Harīta VII. 202 for the murderer of a brāhmaṇa or for one who killed a woman, a child or a cow. Death sentence by being trampled under the feet of an elephant continued up to the times of the Marathas. The Daśakumāracarita 4th Ucchvāsa shows that a thief could be trampled upon by an elephant by way of punishment. Vide 'Selections from Peshwa's Daftar' (edited by Mr. G. S Sardesai) vol. 43 No. 143 p 114 (dated 7–9–1775 A.D.), where out of seven dacoits of the Berad caste two were ordered to be trampled to death at the feet of an elephant and five were ordered to be simply beheaded. Death sentence is said by the Daṇḍaviveka (p. 20) to be simple śuddha), which is of two kinds, vanca or when the offender is beheaded (with a sword), and citra or vucita (when the offender is impaled or burnt) and it is mītra (when his hands or feet or other limbs are cut off and then he is killed). Simple death
is prescribed by Manu IX. 271 for those who abet thieves by giving them subsistence, instruments of house-breaking or asylum. If a man of a low caste had sexual intercourse with a woman of a higher caste (with or without her consent) or kidnapped a maiden he was to be sentenced to death (Manu VIII. 366, Yaj. II. 286-288, 294) Vas. XXI. 1-5 prescribed for a śūdra, vaisya or ksatriya guilty of adultery with a brāhmaṇa woman the horrible punishment of being burnt to death after being respectively covered with viśa grass, with red daibhas and sara leaves respectively and similar punishment for a śūdra paramour of a ksatriya or vaisya woman and for a vaisya paramour of a ksatriya woman. The consenting woman (adulteress) was, acc. to Vas. XXI 1-3, to be shaved, to have her head anointed with clarified butter and to be paraded naked on an ass and left to die on the Great Journey, while, acc. to Gaut. XXIII.14 and Manu VIII. 371, an adulteress, vain of her charms or the wealth of her parents, was to be openly devoured by dogs, if her paramour was a man of lower caste. Śāṅkha śāstra prescribes this punishment (of being devoured by dogs) for a woman’s paramour of a lower caste and for the erring woman death by burning. Vṛddha-Harita VII. 193 prescribes that in the case of a woman who is a confirmed adulteress, or who destroys her foetus, her husband should have her ears, nose and lips cut off and then she should be banished and verses 220-221 prescribe death by being burnt with grass (katāgni) for those guilty of incest. These severe penalties for adultery were very much relaxed and softened by later smṛti writers as is shown in H. of Dh. vol II pp. 571-573.

A man who made a breach in the embankment of a lake or tank (and thereby caused it to become dry) may be sentenced to death by drowning (Manu IX, 279) or a woman who was extremely wicked (such as one who killed her own child in the womb) or who murdered a man or who destroyed the embankments of a tank may have a stone tied round her neck and be drowned, provided she be not pregnant at the time of the sentence (Yaj. II. 278). Yaj. II. 279 (=Matsyapurāṇa 237. 200) prescribes death by being gored by the horns of bulls (after the nose, lips, ears and hands are cut off) for a woman who is guilty of poisoning (the food or drink of another) or who is guilty of incendiaryism or who kills her husband, elders.
or her own child (provided she is not pregnant). The provision (Manu 282) provides death by being burnt with the fire of straw for those who set fire to growing crops, houses, forests, village, pastures and threshing floors or who approach the queen (Nār. (pārusya, verse 31) prescribes that one who strikes with a weapon the king, even though the latter be at fault, should be impaled and roasted in fire. These examples are enough to convey an idea of the crimes for which the sentence of death was provided in some of the ancient smritis. Manu VIII 272, Nār (pārusya 24), Visnu Dh. S. V. 24 prescribe the pouring of boiling oil in the mouth and ears of a śudra who through insolence tries to expound dharma to brāhmaṇas. Cutting off limbs as a punishment (particularly hands and feet or fingers) was common in the case of thieves, pickpockets and cut-purses (Manu IX. 276-277, Nār., pariṣista verse 32, Yāj II. 274). Excision of the tongue was the sentence when a śudra abused a brāhmaṇa or a ksatriya by falsely charging him with some grave sin (Ap. Dh. S. II. 10. 27. 14, Manu VIII. 270, Nārada, pārusya 22), when a śudra loudly repeated the Veda along with twice-born persons (Gaut. XII. 4), when a person abused the king (Nār., pārusya 30), when a person repeatedly proclaimed what was disliked by the king or divulged the secret policy of the king (Yāj. II. 302). Excision of the male organ was prescribed for a śudra who sexually approached a woman of the three higher varṇas (Gaut. XII 2), for any one guilty of the rape of another's wife (Virudha-Hārīta VII. 201 and also confiscation of all property), for any one guilty of incest or intercourse with mother, mother's sister, paternal aunt, sister,

642 The general rule was that women were not to be killed on any account. Vide H of Dh. vol II, pp. 575, 593-94. Certain offences were exceptions. Even as to them Vas, XXI, 10 and Yāj. I. 72 suggest another and very mild alternative viz. abandonment (tyāga), when a woman conceives from intercourse with a man of lower varṇa or when a woman was guilty of killing her husband or foetus. Acc to the Mit on Yāj. III 268 the king appears to have had to undergo some expiation for ordering the death of a guilty woman. In the 18th century the famous judge of the Peshwa's court, Rāmāśīr Prabhune, ordered a woman guilty of a brāhmaṇa's murder to undergo only the expiation of circumambulating the holy shrine and hill of Tryambakeshvara near Nasik ('Selections from Peshwa's Daftar', vol. 43 No 156 pp. 121-122) Under sec 382 of the Indian Crminal Procedure Code, if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to transportation for life.
the wife of an uncle, friend or pupil, daughter, daughter-in-law, teacher's wife, a woman come for refuge, the queen, an ascetic woman, a wet-nurse and any chaste woman or a woman of a higher varna (Nār., stripumsayoga 73–75) The nose, the ears and the hands were cut off in the case of an offender guilty of selling false gold or forbidden flesh such as that of a dog (Yāj. II. 297).

For branding, vide Gaut. XII. 44, Baud. Dh. S. I. 10, 19, Nār. (sāhase 10), Manu XI. 237 (= Matsya 227. 16), Visnu Dh. S. V. 3–7. The Daṇḍaviveka (p. 47) states that branding was to be resorted to if the proper penance was not performed and if the offence was intentional. Yāj. II. 202 provides branding for a gambler using false dice and (II. 294) for persons of the three higher varnas having intercourse with a very low caste woman and Daksā VII 33 prescribes it for an ascetic giving up his duties. The Rājatarangini mentions (VI. 108–112) that king Yasaskara (939–948 A. D.) of Kashmir branded on a brāhmaṇa's forehead the mark of dog's foot. Kēsavapandita in his Daṇḍaniti-prakarana (p. 6) quotes the author of the Vaijayaniti (Nanda-pandita) to the effect that the making of marks was to be effected with the juice of the marking nut in the case of brāhmaṇas and with a red-hot iron kālakā in the case of others. In England about a hundred years ago branding for desertion from the army was practised. Manu VIII. 370 prescribes the shaving of the head as a punishment for a woman who pollutes a maiden, Nār. (sāhase 10) prescribes it for a brāhmaṇa who is not sentenced to death on account of his caste, Śankha-Likhita (q. by Aparārka p 807) for one who abuses officers, brāhmaṇas and elders. Megasthenes (Fragment XXVII. p. 72) notes 'If one is guilty of a very heinous offence the king orders his hair to be cropped, this being a punishment to the last degree infamous'. Imprisonment for life is prescribed by Visnu V. 71 for striking out both eyes of a man and by Śukra IV. 1. 88 (for repeating an offence more than three times) for imprisonment with labour, vide Śukra IV. 1. 92 and 108–109. Flogging was prescribed by Vishnu Dh S. V. 105 for a woman.

643. The punishment of whipping is allowed in England for several offences; vide 'Laws of England' (ed. by Lord Hailsham, vol. IX, pp. 229–230). In India under the Prisons Act (IX of 1894) by section 46 whipping is allowed for certain prison offences and under the Whipping Act (IV of 1909) whipping is awarded for certain offences such as theft, house-breaking, dacoity, rape and for juvenile offenders. In modern times many persons interested in criminology and penology condemn most strongly the sentences of death and whipping. परतात्र च नेवे केदारसेवे च न बन्धुस्व। अराध्यति सनन्देहारं दुःखश्रवशं समाचार। व्रीमात्रस्ववेदकरं बुद्धिशारीरं दुस्मनिन्यात् संकालित्तिः परतात्र केदारसेवे च न बन्धुस्व। व्रीमात्रस्ववेदकरं बुद्धिशारीरं दुस्मनिन्यात् च नेवे केदारसेवे च न बन्धुस्व।
in her monthly course touching intentionally members of the higher castes. It was also prescribed for offenders who were slaves or who were dependents and for women, minors, lunatics, old men, poor men and those suffering from diseases (Kṣat). The punishment of banishment was prescribed for brāhmaṇas guilty of the gravest offences meriting death sentence (Gaut. XII. 44, Manu IX. 241, VIII. 380, Visnu Dh S V. 3 and 8, Baudh. Dh. S. I. 10, 19, Yaj. II. 270). It was often associated with branding. Banishment is also prescribed by Yaj 1 339 for officers taking bribes (and also confiscation of all wealth), for a perjured brāhmaṇa witness (Yaj. II. 81), for one who embezzles the money of a corporation or transgresses the conventions agreed upon by a guild or village &c (Yaj. II. 187, Manu VIII. 219, Visnu Dh S V. 167–168), for playing with false dice (Yaj. II. 203 and Nār., dyūtasamāhvaya 6), for a brāhmaṇa guilty of very heinous offences 641 (Śanti 14 116) Śukra (IV. I. 98–108) contains a long list of offenders that deserve to be sentenced to banishment. Confiscation of all property was the punishment for several offences such as the commission of the mahāpātakas by persons other than brāhmaṇas, provided they committed them unintentionally (Manu IX. 242), for perjury, for taking bribes by sabhysā (Visnu Dh. S V. 179–180) Nār (prakīrnaka 10–11) provides a humane rule that even when the king orders the confiscation of all the property of an offender he should not deprive the offender of the tools of his trade or the tools of his craft, such as arms in the case of a soldier, materials of art in the case of artisans, ornaments of courtiers, musical instruments of musicians Śāṅkha-Likhita 645 quoted by V. R p 656 contain a similar provision Enhanced punishment was prescribed for committing an offence again. Visnu Dh. S. III. 93 holds that a king should never pardon or let off a man who is guilty of a second

644. सहसारादित्य सिंहारुप विलाससेन च साहित्य 11. 116

645. शिक्षितं कालं सूर्यलोक स्थन्वितार्थबोधिनी शिल्पक्षाषणी सेकां । तदसाधन-प्रहिताभारस्यपाणि श्रीरूपीकारणां, श्रीप्रमोचाभारस्यपाणि यथार्थिती, आदिप्रस्तुतरामसातिसंगीती, प्राप्तेऽपि श्रीमान्यानिवितां संयते श्रवणप्राप्तिः प्रतादानाय ॥ अध्यासैकं दिशं इत्युपि पारस्यार्थश्रवणिः-प्रक्ष्य भवेत इत्यं यथे। पारस्यभवन्ता तस्मातप्राप्तरेवयते । कुर्यात्मकताः दिशं शृङ्गितमेव । शृङ्गितानि निशां: । कैस्तेकोश: स्वभावं राजस्यवेत: । शृङ्गितानि 16 दिम 1. 4. p. 556, which explains 'वाह्यप्रकृतं सर्पस्थलार्धाक्षेत्रं अयाहुः । न कुर्यात्मकः प्रक्ष्यः प्रक्ष्याचार्यः । कर्मचार्यं इत्यतिस्तुः'। Compare section 60 (a, b, c) of the Indian Civil Pro. Code for the property which is not liable to attachment and sale in execution of a decree.
offence (though a first offender may be let off with a mere admonition). Kaut. IV. 10 states that when a person is a first offender as to theft at a holy place or as a pickpocket or house-breaking from the roof, his thumb and index finger may be cut off or he may be fined 54 panas, for a second offence all fingers may be cut or a fine of 100 panas may be levied; for a third offence the punishment is cutting of the right hand or a fine of 400 panas and for the fourth death in any way the king may direct. Manu IX. 277, Yaj. II. 274, Visnu Dh. S. V. 136 contain a similar rule. Vide Ap. Dh. S. II. 10, 11-13 for adultery. If several people conspire together and kill or injure a single man the punishment was to be double of what a single man committing the same offence would receive (Kaut. III. 19, Yaj. II. 221, Visnu Dh. S. V. 73). As indicative of the superstitions of ancient (and even modern) times punishment for witchcraft may be mentioned. Kaut. IV. 4 prescribes the employment of spies to find out those who profess to use charms for securing illicit love and banish them and adds that persons who are engaged in witchcraft to injure others may be similarly dealt with. In the times of the Peshwas wizards and raisers of ghosts appear to have been frequent and were severely dealt with by the people themselves by being put to death, but the State generally confiscated the property or cut off the alleged wizard’s finger. Up to the beginning of the 18th century even in England wretched old women were frequently convicted as witches and hanged.

646 तथा मन्त्रयोगमुद्यानामिषि भवासातिकेयाँ सचिनन्तारामि मर्येदा ह सती व्रजाय अहंब भारां सुधित बा कामसे हा मां मतिकानिशास्यं चार्यं मातिस्वताशिनि। स वेदविधि कुपरस्वत्तन्तराक्षस इति मन्तरित। तेन वृषाब्दिव्याचारिकं च व्याकरणात्। कौतिकं य न 4।

647 Vide ‘Selections from Peshwa’s records’ vol. 43 pp. 25-26 about frequent witchcraft in Kolhapur territories (and a wizard of the mang caste being impaled), p. 32 (for a woman who was killed as a witch by the Patils without Government orders) and Rao Bahadur Wad’s extracts from Peshwa’s Diaries vol II p. 7 (for confiscation of Vatan and razing to the ground the house of a ghost-raiser) and vol. VIII p. 147 (for cutting off a finger).

648 Vide e.g. 6 State Trials p 647 (of a trial of witches held in 1665 A.D. before Sir Matthew Hale C. B., who condemned them to death) and 8 State Trials p. 1017 (in 1682) and Stephens’ ‘History of Cr. Law of England’ vol. II. p 435 for numerous cases of trials for witchcraft between 1653 to 1712 A.D. Vide Lea’s ‘Superstition and force’ (ed. of 1878) p. 425 as to torture of heretics for extracting confessions expressly allowed by Papal Bulls and pp. 506-507 for torture being allowed in sorcery and witchcraft cases in England up to the 17th century. Vide a very discerning and interesting paper on ’Witchcraft in Ancient India’ by Dr. Winternitz in Indian Antiquary, vol. 28 pp. 71-83.
Manu IX. 290 (=Matsya 227. 183) prescribes the very mild punishment of the fine of 200 panas for all incantations intended to destroy life, for magic rites and various kinds of raising ghosts and goblins. Medhābhi and Kullūka say that if the magic rites are successful the punishment would be that for murder. Br. (S B E. vol. 33 p. 361 verse 16) provides banishment for those who practise incantations with roots.

Kaut, in II 5 prescribes 649 that a jail should be constructed in the capital provided with separate accommodation for men and women kept apart and well guarded at the entrances. He further provides 650 that among the duties of the nāgaraka is to let out of the jail on the day of the festival of the birth constellation of the king and on the full moon day (of every month) such persons as are young, very old, suffering from diseases and helpless, or those who are charitably disposed may pay the fines or others bind themselves by an agreement to pay in cash the fines for the offences for which the prisoners are jailed (and then the prisoners may be released). The persons jailed may be set free on their working every day or once in five days or by undergoing corporal punishment (whipping &c.), paying fines in cash. Prisoners may be released from jail (as a favour) on the conquest of fresh territory or on the coronation of the Crown Prince or on the birth of a son to the king. In the Delhi Topra Pillar Edict No. IV (Corpus I. I vol. I. p. 123 and E. I. vol. II. pp. 253–54) Emperor Aśoka promulgates that he gives three days' respite to prisoners on whom judgment has been passed and who have been condemned to death and in the 5th Pillar Edict of Delhi Topra (Corpus I. I vol. I. p. 126–128 and E. I. vol. II. pp 258–259) he says that he let off prisoners 25 times in 26 years (which is in conformity with Kautilya's dictum cited above). In the first separate Edicts at Dhauli Aśoka addresses his officers of justice in the capital (Nagaravāyohārākāh) that they should so act that even a single person should not unnecessarily suffer imprisonment or pain. In spite of this if we are to believe Yuan Chwang, Aśoka in his early career was most cruel and had constructed a jail

649. विभक्तत्वोदशस्तापार्थसर्वस्तिकारः। कुक्तकप् जनमानावर कार्येत्। कौतिल्य II 5.

650 कार्यार्थं व च वास्तवमत्वाल्पात्वं व ज्ञातनाभवोपयोक्तिः। विन्द्रः।
हुष्मसेः। समरपाणधिः। दीपस्वन्धकः। दुः। ज्वरसेः। पादवर्ते व भवनन्दयामि। निहोः।
राज्यचा शास्त्रहितसध्यायेन। द्॥ अतर्वश्चासनाभिः। उद्जै।
जस्माः। च नाशो जनयनर्यो मतिपत्ते॥ कौतिल्य II 36.
that was called Hell-prison of Aśoka (vide Watters, vol. II. pp. 88-90). Manu IX 288 requires that all jails should be so built as to abut on the royal road where the offenders suffering pain and in bad condition would be seen by all (in order to deter others from committing offences). The Śilappadikārām, one of the earliest works in Tamil, mentions the release of prisoners on the king’s birthday and at the founding of a temple (pp. 38–39 of Mr Dikshitar’s translation). Kālidāsa in the Mālavikāgnimitra (Act IV) makes the Vidūsaka report to the king, ‘the astrologers think that, as the constellation on which Your Majesty was born is in evil aspect now, let all prisoners be released’. Kālidāsa (in Baghu 17, 19) alludes to the release of prisoners and the commutation of death sentences at the time of the coronation of king Atithi. The Brhat-Samhitā (47-81) states that when the king takes the Pusyaṃñāna (ceremonial bath on the day on which the moon is in conjunction with the Pusya constellation in the month of Pausa or every month) he may order release except as to those prisoners who were convicted for offences connected with his own person or with the harem. In the Mṛcchakatika (Act X) also various occasions for the release of prisoners are mentioned by the executioner. The Harsacarita (II. 2nd para) refers to the usage of releasing prisoners at the time of a coronation and on the birth of Harsa (IV.). The prisoners are described in the latter passage as having long beards and as darkened by the accumulation of dirt on their bodies.

Manu IX. 243 enjoins upon the king not to appropriate to himself the property of a man guilty of the maha-patakas (by way of fine or confiscation) and warns that if he takes it out of greed he is tainted by the guilt of the offender. Manu (IX. 244-45) recommends that such fine may be cast into water as an offering to Varuna (the Lord of waters) who wields sceptre even over kings or may be bestowed on learned and virtuous
brāhmanas, that are lords of the whole world Manu (IX. 246–247) further states that in the country where the king avoids taking the property of very wicked sinners men become long-lived, crops spring up, there is no infant mortality &c.

Generally no one was allowed to take the law into his own hands except as to recovery of debts (which will be discussed below). But Na. (pārṣuṣya. 11-14) contains the following remarkable passage: ‘If a śvapāka, a meda, a canḍāla, one devoid of a limb, one gaining livelihood by killing animals, an elephant driver, vrātya (i.e. deprived of caste for non-performance of upanayana), a slave, one who disregards his elders or spiritual teacher—if these should transgress the limits they must observe towards their superiors, they should be punished then and there by the person offended and the person so doing is not regarded as committing an offence (equal to theft). Should any such low person insult another (who is his superior) that man himself shall punish him and the king has nothing to do with the punishment. These people are like the refuse (dregs) of humanity and their property also is impure. The king is entitled to inflict bodily punishment (whipping), but he should not inflict fines on them’. The Mit. on Yaj. II 270 quotes a text of Vṛddha-Manu of similar import and explains that the words ‘the king should avoid taking fines’ refer to cases of grave offences.

Something must be said about the law of Limitation. In the smṛtis and digests rules of Limitation play very little part for several reasons. As on spiritual grounds, which will be set out under the title of nādāna, not only the debtor, but also his sons, grandsons and great-grandsons were liable to pay a debt (Mit. on Yaj. II 50), there was no scope at all for prescribing any period of limitation so far as recovery of debts was concerned. Unpaid purchase money was treated as a debt. In other matters also the smṛtis and dharmaśastras, under the influence of religious and other-worldly considerations always lean against

654. अधातोप्यक्षणायांस्यप्रस्तुतम् पञ्चपूंढ्रः। वर्ततिवर्तचस्ते चुर्णवापपमितेः पद्मल।

655. चन्द्रमहोदयं रत्नगम्यं...” अधातोप्यक्षणायांस्यप्रस्तुतम् पञ्चपूंढ्रः। वर्ततिवर्तचस्ते चुर्णवापपमितेः पद्मल।

For अधातोप्यक्षणायांस्यप्रस्तुतम्, वर्ततिवर्तचस्ते, चुर्णवापपमितेः and वर्ततिवर्तचस्ते vide H. of Dh. vol. II pp. 97, 92, 81, 378 respectively.
allowing mere lapse of time to prevent a man from asserting his just rights. But rarely there were writers who were more secular and laid down periods of limitation. For example, Kaundinya\(^6\) (quoted in V. Mātraksā p. 341) holds that a debt not claimed for ten years cannot be recovered except when the creditor was a minor or very old or was a woman or was suffering from disease or there was confusion due to invasion or (the creditor or debtor) had left the country. Some important rules on the law of Limitation are set out here in one place:

1. Manu VIII. 148, Yāj. II. 24, Gaut. XII. 35, Vas. 16. 17, Nār. IV. 79 and others state that enjoyment of immovable property in the presence of the real owner without protest from him causes loss of ownership and ten years' enjoyment of movables under similar circumstances leads to the same result. There are various views on the subject which have already been indicated above (on pp. 322–325).

2. An exception to the above rule is stated to be that no limitation applies to pledges, boundaries, deposits, and to the property of minors, idiots, the State, women and brāhmaṇas learned in the Vedas. Vide Gaut. XII. 35–36, Vas. 16. 18, Manu VIII. 149, Yāj. II. 25, Nār. IV. 81, Br. (S. B. E. vol. 33 p. 312 verse 21).

3. As the rules about deposit are extended by Nār. (upanidhi verse 14) to articles borrowed or given to artisans for being worked, and to avadhiṭṭa, nyāsa and pratyagyāna, in the case of these also there would be ordinarily no bar of limitation. Vide Manu VIII. 145–146, Yāj. II. 58, Visnu Dh. S. VI. 7–8. Here also there are dicta to the contrary. Mārici (q. in Sm C II. p. 69 quoted above on p. 326) says that cows, beasts of burden, ornaments and the like borrowed in a friendly way would have to be returned (at the latest) in four or five years, otherwise they are lost. Acco. to Vyāsa\(^6\) this rule would not apply to what is lent to

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\(^6\) Kaundinya quoted in Iṣṭ. Ma. p. 341; compare the very similar words of Kāśyapa (II. 16) 'यशास्त्रकृतिद्वारा द्वारकाएव द्वारकासस्य अर्थस्य बायकृत्यानुसार द्वारकायुक्त शैवालम्बीयो विज्ञानसाधनस्य अवधारणात्मक'। निर्देशितकार्यसमन्वितस्ततिः पालन न. द्वारकायुक्त। Is कृतिकार्य a misreading for कृतिकार्य in the शास्त्रार्थसारस्य? ।

\(^6\) Vyāsa quoted in Iṣṭ. Ma. II p 69
friends, relatives, brāhmanas and the servants of the
king on their request

4. It appears that a period of twenty years was prescribed for avoiding a document on the ground of patent defects by one who had seen it and was affected by it. Vide Kat 298-300 Similarly when a thing is enjoyed for twenty years on the basis of a writing in the presence of an opponent able (to challenge the enjoyment and the writing) then the writing becomes unassailable (even if the witnesses are all dead or there is no other document for comparison). Vide Kat (299).

5. A deed settling a boundary dispute becomes unassailable after twenty years. Vide Kat. (301).

6. No suit can lie on a document executed beyond thirty years, which has never been seen by any body nor read out (by the creditor to any body) even though the attesting witnesses may be living Vide Br. (S. B. E vol. 33 p. 308 verse 29).

In the preceding pages we have passed in review the law of judicial procedure, evidence and limitation. A careful perusal will convince any unbiased reader that the Dharmaśastras evolved during the course of centuries an indigenous system of judicial procedure of a high order. Nārada, Bhāspati and Kātyāyana represent the high water mark of ancient Indian adjective law. These writers flourished before 600 A.D. and the first two of them are probably older by several centuries than that date. They present an orderly system providing for the appointment and duties of judges, proper pleadings, the law of evidence and limitation, decrees and their execution, crimes and punishments. This system compares most favourably with any system of judicial procedure prevalent anywhere in the West up to the 18th century A. D.
CHAPTER XVI

CONTRACTS

There are only three titles of law, viz. recovery of debts, the relation of husband and wife (śrīputmsayoga) and partition of wealth (dāyabhāga) that are of importance to modern Hindus, since to a very large extent they are even now governed in these matters by the ancient Hindu Law as interpreted by the commentators. These three topics therefore have to be described in detail while other titles will not and cannot be allowed to occupy much space. In almost all smṛtis and digests of Hindu Law rṇādāna (recovery of debts) is treated of first. Therefore here also that subject will be taken up first. A good deal of the matter falling under the title of the relation of husband and wife has already been dealt with in the 2nd volume of the History of Dharmaśāstra pp. 427-636. The topic of dāyabhāga will be dealt with last of all, the other topics being taken up in the same order as in Manu. Many of the vyavahārāpadas are concerned with the law of contracts in various aspects, viz. the contract of debt, of pledge or mortgage, of bailments, of sale, of partnership, of hire and service.

Our writers do not set out with an analysis of the conception of contract in general. They had before them the ancient 18 titles of law, many of which related to various kinds of contracts and therefore they take up one title after another, in the order contained in Manu or in Nārada (as the Sm. C II. p. 206 expressly says). But it is not to be supposed that they did not evolve certain general principles about contracts. They do say a good deal about the competence of persons to enter into contracts, about fraud vitiating all contracts, about damages for breach of contract &c. Similarly the dharmaśāstras do not lay down a general Code of rules applicable to all transfers of immovable property, nor do they treat of transfers by way of sale, mortgage or gift in separate sections. What they have to say on these transfers is tacked on to some vyavahārāpada e. g. they speak about sales and exchanges of land under asvāmi-vikraya and simāvivāda, about gifts under dattśpadānīka and about mortgages under rṇādāna. As this work has to represent what the ancient law was like the same
arrangement has been followed here. Similarly the law of crimes is not to be found in one place. It is scattered under different titles of law such as vākparusya, dandaparusya, sahasa, strīsāngrahana and steya; nor is there a complete analysis of intention or motive or of the right of private defence, although all these subjects are briefly dealt with in the smṛtis in different places.

A great deal has been said by ancient writers about what persons are competent to enter into transactions (vyavahāra). The Arthasastra (in III. 1) has a lengthy disquisition on it. Briefly, it holds that dependent persons, minors, extremely old people, those charged with grave sins, sanâyāsas, persons who are devoid of a limb and those who are addicted to vices (like drinking and whoring) are incompetent and agreements made with such people are invalid. Among dependent people Kautilya mentions a son when the father is alive (and manages the affairs), a father when he has a son (who manages the family affairs), a brother who has left the family, a younger brother whose share has not been separated, a woman whose husband or son is alive, a slave or a hired servant. He states that these may enter into binding agreements if those on whom they are dependent authorize them to do so. He further says that contracts made by persons that are at the time of making them intoxicated or are under the influence of wrath or are distressed or are of unsound mind or under duress (imprisoned or confined) are invalid. Yāj (II. 31–32) concisely puts down the same propositions by saying that all transactions brought about by force or fraud should be declared (by the king) to be unenforceable, so also those entered into by women or the other persons specified above or entered into at night, or in the interior of the house or outside the town or village (in a forest &c.) or with one's enemy or by persons unconnected with or unauthorized by the persons who are to be bound by them. Manu (VIII 165 and 168) also declares that all transactions (such as sale, mortgage, gift) brought about by force or fraud are

661. अवातायथप्रिीय्यतं गुत्ता, वितृततार हुःक्षे, रिवरा इत्यतं, निखालेन भाग, कामभेदाविभकातः, पलिसत्यं इत्यतं व विनयं, वृतातिकायता, अवातायथप्रिीय्यतं
भेद, अभिसाधितिविश्वासनिभिस्वास्यं निसृपत्ताहिः: । सत्याते कुसङ्कृतमेव
मात्रेनेवत्सेनविभकातः वा गुत्ता ध्वजवाहा न हिच्येद: । अर्थसार 31. 1.

662. It should be noted that the rules of Kautilya and Yāj are in remarkable agreement with sections 11 to 19 of the Indian Contract Act (IX of 1872).
null and void. Nar. IV. 26-42 treat this subject exhaustively. Some of Narada’s dicta are interesting. He says: ‘in this world three are independent viz. the king, the Vedic teacher and the head of the house in his own house (32). Wives, sons and slaves are not independent; the head of the house has independent power as to what belongs to him by inheritance (34).’ Kat. (497) also prescribes that one should not give a loan to women, minors or slaves. When the texts say that women are incompetent to make contracts, what is meant is that they cannot make contracts binding on their husbands or family or against the family property. Women are not inherently incompetent to deal with their own separate property except that the husband has some control (these matters will be discussed at length later on under stridhana). Another proposition laid down by Yaj II 23, Nar. IV. 97, Kat. (517) and others is that in all transactions relating to a debt or any other title of law the last act is the deciding factor; but in the cases of gift, pledge or purchase each prior transaction (of gift &c.) is of superior efficacy to the succeeding one.

After the establishment of British rule in India during about 150 years numerous publications dealing with Hindu customs and usages and the Hindu law of debts, contracts, adoption, family rights, partition and inheritance have been published. It is impossible to give an exhaustive list of these nor is it necessary to do so. Most of them have now only an academic or historic interest. But a few of them must be mentioned for their worth, for purposes of study and for a knowledge of the modern Hindu Law as administered by the British Indian courts. They are: Bannerjee’s ‘Hindu Law of Marriage and stridhana’

663 The Vyavahāramārtki p 288 quotes five verses as from Kanadinya which are almost the same as Narada IV. 29, 30, 39, 34, 40 respectively. The learned editor does not notice this.

664 यद्यपि वस्त्रेऽच्यो प्रत्यक्षदृष्टियुक्त तथा नागरितप्रकृतिर्यत्। नारायण IV 97, आधिशक्ति उपोयोक्ता कुप्रोक्ता मिटितप्रकृतितेऽति। सत्यो युपक्षत्व सप्त संख्यानेन वर्ण-वर्ण-मय्यवस्तु । कालया 517 q by सुभाष तिम ल. p. 144, जि र p. 35, ख जि p 237

665. For example, if A establishes that he lent a sum to B but if the latter establishes that he repaid the amount, this later fact of repayment is decisive of the dispute if A files a suit for recovery of the money. If A mortgages a field to B for a loan and then mortgages the same field to C, the mortgage of B, being prior is superior to that made in favour of C. The same principle is laid down in section 48 of the Transfer of Property Act (IV of 1882).
The idea of the liability to pay off one's debts was developed in India in the most ancient times. In Rg VIII. 47. 17 the poet exclaims 'Let us drive away the evil effects of bad dreams as we pay off debts'. In Rg X 34. 10 (the gambler's lament) it is stated that the gambler, because he owes a (gambling) debt, is afraid and approaches the houses of others at night, desiring wealth. This indicates that a debtor was afraid of being detained by his creditor in those days. Rg. VIII. 66. 10 indicates that money-lenders made a stipulation to receive double of what they lent. 'Indra strikes by his power all those who make representations of taking double'. The Ait Br 33 1 (ram-asmin san-nayats) employs the very verb 'san-nayada' which occurs in Rg. VIII. 47. 17. The Atharvaveda VI 117. 3 and Tai Br III 7. 9. 8 contain the same verse about a man being free from the obligations of this world, the next
world (of plants) and the third world (the world of gods).\textsuperscript{670} The Tai. S. (III. 3. 1-2) uses the very word ‘kusida’, which occurs\textsuperscript{671} in the Dharmasūtras and smṛtis (for money-lending) when it says, ‘O Agni! whatever debt has not been paid back by me, the tribute that I owe to Yama, here do I make return of it; may I be freed from that debt!’ The Sat. Br. XIII. 4 3. 11 associates kusidā with black magic in the Pārśīlava. The Nirukta (VI. 32) while commenting on Rg. III. 53. 14 explains the word ‘Pramaganda’ occurring therein as ‘one who is born of a family that is extremely usurious’.\textsuperscript{672} Panini employs the technical word ‘uttamarṇa’ (creditor) in his sūtra ‘dharer-uttamarṇah’ (I. 4. 35), he speaks of ‘ādhāmarṇa’ (the position of a debtor) in II. 3. 70 and the word ‘pratibhū’ occurs in Panini II. 3. 39, the word ‘vṛddhi’ (interest) in V. 1. 47. Panini (IV. 4. 31) derives the words ‘kusida’ and ‘kusidīkī’ It is noteworthy that Panini does not derive or mention the word vārdhūṣka, which is employed by even Ap. Dh. S and Baud. Dh. S and which is derived by Katyāyana (the grammarian) in Vārtika 3 on Panini IV. 4. 30, in which Panini refers to such words as ‘dvālagunika’ or ‘traigunika’ which were applied to people who carried on the condemned methods of money-lending viz. extorting twofold or threefold of the money lent (the sūtra is ‘prayacchati gāryam’). Brahmanaspati is spoken of as ‘one who recovers a debt (raum-ādhūṭh) in Rg II. 24. 13 and the Ādityas as those ‘who, themselves being the observers of rta (the universal Law of Right), collect\textsuperscript{673} debts’ (Rg. II. 27 4) In Rg. VIII. 32. 16 it is said that those priests who extract (and offer) soma juice do not indeed owe a debt (to the gods) Divodāsa is said in Rg VI. 61. 1 to have been the gift of Sarasvatī to Vadhyrasva as a son to pay off debts (bacunjatam)\textsuperscript{674} These passages certainly establish that in the remote ages of the

\textsuperscript{670} अद्वेय अविकल्प्याः परसिनं हृद्वर्यं छोरं अद्वेयं र्याम्। ये द्वेषयताः उत्तर विवर्तणाः सर्वाच्छलो अद्वेयं आ श्रीमें।। भ. III 7 9 8, अधवेदुः VI. 117 3 (with very slight variations)

\textsuperscript{671} वदकुरकर्वसारसस्म मध्ये देव समस्य विन्यत्रियो ज्ञातिः।। इतरं सारवसायं स्वेतवर्त्ती आदुयं मनामिः।। भे से III 3 8 1-2, अधवेदुः VI. 117 1 closely agrees

\textsuperscript{672} मन्न्यं हृद्वर्यं मासमासिन्यमितिचस्तति तर्पयं गमगङ्गं अद्वेयं हृदविद्वृक्षिन्। निवर्तु VI. 32.

\textsuperscript{673} कृपाधिपि र्यामान्य अनुपचारायापत्रमान्य घण्यस्ति।। भर II 27 4

\textsuperscript{674} आयमद्रवसायं सुन्तुष्टकं द्विभोज्यं भययतमः।। भर. VI. 61. 1
Rgveda it was a firm belief that men were under obligations to gods and pitar, which could be fulfilled only by worship (yajña) and by the birth of a son. These passages contain the germ of the doctrine of the three religious and spiritual debts that a man owed to gods, Manas (pitar) and sages, which he paid off by sacrifices, by the birth of a son and by vedic study (vide Tal. S VI 3 10.5, Sat. Br. I 7. 2. 11 and Ait. Br. 33. 1 quoted in H, of D's vol II. pp.270, 560 notes 621 and 1302 and above n 669). Gradually further universal obligations came to be added to this theory of spiritual debts The Adiparva (120.17-20) holds that men owe four debts, viz the three vedic ones and the fourth to humanity in general (which is paid back by goodness to all) and Anusāsana 37.17 raises them to five (adding brāhmaṇas and guests to the well-known three)675. It appears to me that this theory of spiritual debts being already in the air, the same sanctity came gradually to be transferred to one's promises to repay monetary debts and carry out other secular engagements. The word rna had been applied both to spiritual and secular debts. It is on account of this that the son was not only desired for repaying the spiritual debt owed to one's ancestors, but he was also expected to free his father (if the father could not himself repay the monetary debt) from the liability he incurred to his creditor. Nār. IV. 5-9 puts this clearly and most emphatically: "fathers desire to have sons for their own benefit thinking in their heart 'he will release me from liability to creditors and debtors' (or probably 'from high or low debts' i.e spiritual and earthly debts). Three deceased ancestors must be honoured (by a man) and he must subsist on three (descendants) that come after him. These (the first three) series of ancestors rely (for repayment) of their twofold debts (spiritual and secular) on the fourth in descent. If a man fails to pay on demand a debt or promised gift that sum (by the addition of interest) goes on growing till it amounts to a hundred crores and when a hundred crores are reached he is born again and again in the house of his creditor as a slave in order to repay the debt (by his labour). If an ascetic or a brāhmaṇa perpetually keeping the sacred fire (agnihotra) dies

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675 अनुसासन 37.17
without discharging his debts, the whole merit due to his austerities and the perpetual tending of fire belongs to his creditors”. 676 Kāṭ. (551, 591) expresses the same idea but adds that a debtor who has not repaid money borrowed may be born as a slave, a servant, a woman or a beast in the house of his creditor. It was this belief that led to the doctrine of the pious obligation of the son to pay off his father's debts even if he received no property from the father. 677

Nārāda IV. 98 defines 'kusīdā' in a rather obscure verse as 'the receiving of money paid in consequence of the original (amount advanced) and the profit (agreed to be paid) thereon and those are called kusīdīnu who maintain themselves by this occupation'. Brhaspati (S. B. E 33 p. 320 verse 2) derives 678 kusīdā as 'that is called kusīdā, which is taken fourfold or (even) eightfold without any qualm (by a person) from a wretched man who is sinking (or distressed)'. Nār IV. 110 defines vārddhāna as the interest (in kind) on grain, 678a but Āp. Dh S I. 6. 18. 22 and Band. Dh. S employ the word 'vārddhikā' and Āp. Dh. S. I. 9. 27. 10 has a verse in which the word vṛddha occurs. Vās (II. 41-42 = Band. Dh. S I. 5. 93-94) quotes

676 नृसिद्धार्थोपेनीति उपाधि वार्तालोकप्रमाणात्। सत्यवचः स्थायित्रा च चतुर्गामी विचयः यत्वः। तत्कृष्णानित्यं च च गन्तिनिः। पालयत्। नारस इ. 6 औऽ 9। प्रियोत्त नुक्रियात्तैः । निमोक्षोत्त यत्सस्ततावपि युज्यति।

677 स्मारामाधिनि सि स्मारावतासन्निहास्ते। सत्यवल्लोभिति योंकेन तेन। त्रिविशिष्टेशु नारस इ. 98। तो निः निः निः निः निः निः। त्वत्युपालनस्तवन्नामि। निनवादनन्तर प्रस्तुत।

678 नृसिद्धार्थोपेनीति निविष्टिति स्त्रयः। चतुर्गाम च चतुर्गाम चतुर्गामयमः। स्तुतिः। इत्यसति। ख्यये सः। प्रस्तुत। नारस इ. 110।
two verses: 'a vārdhusika (usurer) is one who taking cheap grain lends it on condition of receiving a quantity of grain of high price and is condemned among the brahmaśādās (students of the vedas) Brāhmaṇa murder and usury were weighed in a balance; the murderer of a brāhmaṇa rose to the top while the usurer trembled'. Here usury of the type of the one described in Vas. II 41 (and not all lending of money at interest) is condemned as a great sin Gaut. XII 26, Vas II 50, Kant III 11, Manu VIII 140-141 and others declare it righteous (dharmā) moneylending when an 80th part is stipulated as the interest per month.679

Megasthenes (fragment XXVII B p. 72) states: 'The Indians neither put out money at usury nor know how to borrow,' but he is under some misapprehension, for he again says (p 73) 'one who is unable to recover a loan or deposit has no remedy at law. All the creditor can do is to blame himself for trusting a rogue.'

Nār. IV. 1 states that the principal topics under the title of rādāna are seven: what debts must be paid and what not; by whom, where and in what manner (they are to be paid); and the rules about advancing the loan and receiving it back. The first five of these relate to the debtor and the last two to the creditor. Brhaspati (S. B. E. 33 p. 320 v 4) says that interest (vṛddhu) is described to be of four kinds by some, of five kinds by others and of six kinds by still others. Nār. (IV 102-104) names four kinds and defines them, viz kārdā (interest that is stipulated by the debtor himself), kāthā (interest accruing and payable every month), kāyuḥ (interest of a pana or quarter, pana to be paid every day without the principal being liable to be reduced, whatever interest may have been recovered), cakṣavṛddhā (interest on interest called compound interest). Manu VIII 153 mentions these four and commentators thereon give varying interpretations. Brhaspati (S B. E. 33 p 321 verse 6) and Vyāsa (q by Sm C II p 154) define kāyuḥ as interest received from the body i.e. milk received from a cow pledged or the work put in by a slave or by a bull pledged Br (S B. E. vol 33 p 321 verses 7-8).
adds two more varieties viz. śikhāvṛddhi (hair-like interest) and a, interest payable every day and so growing every day, just as the top-knot on one’s head grows every day) and bhogalābha (profit by enjoyment i.e. making use of a house or taking the produce of a field in lieu of interest in the case of a mortgage). Gaut. (XII. 31–32) mentions the six, but instead of bhogalābha he uses the word ‘ādhabhoga’, which is defined by Kāt. (501.) as a transaction in which the complete enjoyment of the thing pledged or mortgaged is to be the interest. Kāt. (498–500) defines kārita, śikhāvṛddhi and bhogalābha

Br. (B B E 33 p. 319 verse 1) states that the creditor should always advance a loan after taking an adequate pledge or a deposit (with a mutual friend) or a reliable surety and after committing the transaction to writing or making the loan in the presence of witnesses. The interest may be either stipulated (kṛta) at the time of the loan or not stipulated (akṛta), as indicated in Visnu VI. 4. Yāj. II 38 and Visnu Dh. S. VI 3 state the general rule that debtors of all castes may pay to creditors of all castes the interest settled by mutual agreement and the rate of interest stipulated may be with reference to an

680 बुधसत्यवर्धिप रोका वरणवच्छ फकीरितित। पदविविपाठित स्मारस्ययता तत्तता निमोयत॥ दूहा ॥ क्ष. II p 154, यथा नि p 224 (reads पदविविपाठित); शा.अधिका कार्तेशुरुका सामाचारक हृ कार्तित। इसे उदाहरणकृतिदिविशिष्ट। कार्तिका कुर्णिना शुद्ध प्रत्यावर्धित कुर्णिन व श्वास्त। तुहारिमाय (सीतमृत 1) दूसरे देहावत्तमाय; विदितरिती ॥ शृद्धा q या (अयारके p 642, शृद्धा II p. 154, परम सत II pp. 220–221, यथा नि p 225 ascribes these to नारा. किस्में विवेक नियं नियं विनेत्र-विवेशतः स्वस्त। यात्रा II दृश्यम् on Sī. XII. 32 and स नि p 233, अतिरिक्तकृतियो थे आहसिः तरिकाः।। रत्नगीत एतेत् श्रवणुदिविमायम; स उदचे क्ष. II p 154, यथा नि p 12 नि नि p 4.

681 परीदीती सहीसमीक्षक व व नाराजःक्रमः रेवारक्ष नाराजानि दत्ता ॥ दूहा ॥ क्ष. II 135, यथा नि S III p 220, ‘परिदीतीसहीसमीक्षकर्त्तव्य-पर्यायान्यः ॥ शृद्धा II p 135 The words ādhi and bandha are treated as synonyms by the Amarakośa and by Br. (S. B. E vol 33 p 323 verse 17) himself. The difference made by some between the two is thus: ādhi is a pledge or mortgage of a chattel or immovable property to the creditor himself (with possession or without), while bandha consists in placing in the hands of a mutual friend a thing belonging to the debtor in order to inspire confidence (in the creditor). ‘तिस्वितिकर्मयद्यायायायाय नाराजः। विवेशयो विवेशयो सम्भवे विवेशयो सम्भवे ॥ दृष्टाः ॥ नाराजः q यथा म य p 224 यथा म य (p 165) defines bandha as an undertaking by the debtor that he would not alienate by sale, gift or mortgage the house, land or other property of his until the debt due to the creditor is paid off. This is clearly an hypothecation without possession. तत्रत्वात्तद्वयं तदाश्चेद्वयं दुर्योगाने विवेशयां विवेशयां जित्वे जित्वे जित्वे जित्वे जित्वे जित्वे ॥ विवेशयां देवमेय सम्भवे जित्वः ॥ विवेशयां देवमेय सम्भवे जित्वः ॥ नाराजः यथा म य (p 165).
article pledged or with reference to a surety given or with reference to a debt totally unsecured. Though this was the general rule, Manu VIII. 153 and Br condemn taking even agreed interest if it exceeds the rates (to be specified below)\textsuperscript{662} allowed by the sūtris or taking the agreed heavy interest for more than a year or taking compound interest or more than double the principal or the capitalization of interest. The sūtris lay down various rates of interest from different points of view Gaut XII 26, Yaj. II. 37, Baud. Dh S I. 5, 90-91, Manu VIII, 140 (=Nār IV. 99), Br (S B E vol 33 p 320 v. 3), Vṛdha-Hārīta VII 235 and others state the rule first laid down by Vasūthā that it is just and proper to take every month with part of the principal lent, so that the principal is doubled in six years and eight months\textsuperscript{663} and Vṛdha-Hārīta adds

\textsuperscript{662} [Quoted by vi p 6 which says:} as quoted by vi p 6 which says: and he is condemned and does recover compound interest and so on, 'when a man, having agreed to pay interest to borrow, afterwards,} explains the usurious rate, the ancient rules are observed and the evils of usurious interest. They condemned usury as a greater sin than even the murder of a learned brāhmaṇa. Vide Baud. Dh. S I 5.93 and Vas II 40-42 quoted above on pp 417-418

\textsuperscript{663} [We may note that in one passage in a grate of interest as ascribed to Vasūthā by Manu VIII 140, Nār IV 99 and others], then the pana, acc to those two, must be equal to 20 māsās (i.e. 100 rātikās), while acc to Baud the pana would be equal to 16 māsās. When Hārīta says that 8 panas are the monthly interest on 25 pūranas (which were silver coins and each of which weighed 32 rātikās) and that in 4 years and 2 months the interest on 25 pūranas at 8 panas per month came to be as much as the principal, it follows that a rātikā of silver was 40 times as valuable as a rātikā of copper (8×50×50 =32000 divided by 800). But this does not agree with what Śaṅka states (note 162 above). Probably the relative values of gold, silver and copper varied from age to age, according to the supply of some or all of these metals from foreign countries.
that double the interest stated above may be taken when there is nothing pledged to secure the debt. Yāj and Vyāsa provide that this rate is the proper one when some thing is pledged or mortgaged by way of security. Yāj. II. 37, Manu VIII. 142 (=Nār. IV. 100), Visnu Dh S VI. 2 provide an option that two, three, four or five per cent per month may be charged as interest in the order of the kaynas (i.e. 2 per cent per month for a brāhmaṇa debtor and so on). Yāj. II. 37 allows these rates only if there is nothing pledged by way of security. Vyāsa (in Par. M. III, p 221) provided that the monthly rate of interest was 1/8th of the principal lent when a pledge or mortgage was given as against the loan, 1/8th when only a surety was offered and two per cent per month when money was lent on personal security. The Amuśāsanaprāva 117, 20 condemns to Hēl those who take exorbitant interest. Kaut. prescribed (as stated in n. 688) fines for taking heavier interest than that allowed by him Kat (498) provides that if a debtor himself stipulates a higher rate of interest than is allowed by the āśā in times of difficulty (in order to induce the creditor to part with his money) that stipulated interest must be paid but a rate of interest imposed by the creditor otherwise (by force &c.) should not be enforced by the Court. It is probable that these rates are specified because of the economic conditions of those times which proved too much even for the ancient sages or different mercantile usages about interest prevailed in different countries at different times, as expressly stated by Nār. IV. 105-106 that these high rates (including eight per cent per month) had to be paid according to the law merchant in different countries. Manu VIII. 141 (=Nār. IV. 100) holds that to take two per cent per month (on unseured debts) is not improper. In medieval times also the rate of interest was rather high e.g. interest at 25 per cent is said to have been.

684. विशेषण on या II 39 quotes a sūtra of Br for raising the rate of interest according to the ātma of the debtor (पापवेश्वराभासदलवर्णसूत्राय)

685 सचने भाग भावीत. पापो भाग. सहस्रके। विप्रवांश विशेषत मातालाम उद्भु- दतः। कहाः पू. वि. परा. या. III p 221, 47 म p 227

686 विविध केन हु प या तृतीयां विसंगताः कार्य साधनन्तर ज्ञातम ∕ अयंत्रकालकृतिः सिस्य सुत्वायः कार्य साधनः आम । अर्थस विविधो इत्यतः दृश्यिन्ते कर्मचारण। कार्यः 498 q by साधनीय

687 या उपपतिलोकस्तवन्वयनमविधिते। विस्तृतः विषयस्य विधि धार्मवेयवभयस्य विधिमस्य सम्बन्धमयात्माः। महाभारतमहाशिवम्, देवं देवेष्टितये। नारायण IV. 105-106.
charged on a deposit of six qadyānas kept with the mahājanas of Śivapura (vide Yewur Ins. in E. I XII. p. 273) Yāj. II. 38 provides that those debtors who carry on trade by traversing dense forests and those who are sea-faring traders should respectively pay 10 per cent and 20 per cent per month and the Mit adds that these exorbitant rates are allowed because of the great danger of the loss of even the principal as the debtors may perish by ship-wreck or from the attacks of robbers and wild beasts. Manu VIII. 157 leaves the rate of interest in the case of seafaring merchants to those who are clever in these matters and who know the proper time and place. Kaut. (III. 11) states that the prescribed (dharmya) rate of interest is 1¼ pana per cent per month, but in transactions (or in commercial usage) it is five panas per cent per month (as the highest, it appears), that those who traverse forests and those who carry on maritime trade should pay respectively ten and twenty per cent per month, that those who exceed or induce creditors to exceed these rates should be punished with the first amercement, that each of the witnesses to such usurious transactions should be punished with half of the above fine.

Other rules laid down in the smṛtis relate to the maximum that can be recovered by a creditor from a debtor at one time. All are agreed that the creditor cannot recover at one time from the debtor for principal and interest more than double of the money lent. Vide Kaut. (III. 11), Manu VIII 151, Gaut. XII. 28, Yāj. II. 39, Visnu Dh. VI. 11, Nār. IV. 107, Kāt. (509). This is called the rule of avagūnya in the smṛtis and of dāmāyupat in modern times. It will be explained in detail a little below. As regards the interest in kind on articles lent there is some difference of opinion, which need not be gone into in great detail. Manu VIII. 151 and Gaut. XII. 33 state that on loans of grain, fruits, wool and beasts of burden, and products like ghee and milk had from cattle the total recoverable cannot exceed in any case five times of what is lent. Yāj. II. 39 states 689.

688 भावाद्वयं प्रयोगाज्ञानी नामसूची: प्रणतत्सर्वं भाषारिकी। व्यासमा कामनदक्षिणानां। विशेषतिः वासुदेवाणां। तत परे कार्यविशेषः हृदेय: साहित्यकर्मः। अद्वैतार्थां अभिप्रयोगां। अर्थशास्त्र III 11.

689 विद्याधराय वैषयक व्यायामस्त। दीप प्रकाश धर्मसत्त्वम्। विद्युतम्। VI. 11, विद्याधराय संस्कृतत्वभिंस्तो व ब्रह्मायुक्तम्। कालिकम् III 11, कलिन्दींचित्रित्रयम् नायेति सहस्राद्व। मञ्च VIII 151 There is another reading सहस्रवादिता.
that in the case of cattle and female slaves when loaned their progeny is the profit, in the case of liquids (like oil and ghee) when loaned the maximum recoverable is eightfold and in the case of clothes and grain it is respectively four and three times Vas. II. 44-47 says the maximum recoverable at one time in the case of grain, flowers, roots, fruits and fluids (like oil) is three-fold and eight-fold in the case of things that can be weighed Vide Visnu Dh. S VI. 12-15 Visnu VI 17 (anukālānām daguma) provides that where no special rule is laid down the maximum recoverable is to be only double of what is lent Kat. (570-593) states\(^690\) that the maximum recoverable in the case of precious stones, pearls, corals, gold, silver, fruits, silk, wool is double of what is loaned; of oils, liquors, ghee, raw-sugar and salt and land eight-fold, of baser metals five-fold Vide Br. (S B E vol. 33 p. 322 verses 13-16) and V Nīnaya p 229 (quoting Bharadvaja) for similar provisions.

The rule of what is called dāmduput in modern times expressed laconically by Manu VIII. 151 and Gaut XII. 28 is this that 'the amount of principal and interest recoverable at one time in a lump sum cannot be more than double of the money lent.' As a debt was recoverable not only from a man himself but also from his three descendants and as therefore there was practically no period of limitation for bringing a suit for money lent, creditors had great temptations to allow interest to go on increasing. Therefore the sages who condemned the profession of usury and particularly waiting long for the increase of interest\(^691\) laid down that whatever the length of time during which the principal was at interest and whatever the rate of interest might have been, the creditor could recover by suit in a lump sum only double of the money lent. This acted as a great

\(^690\) भारद्वाजास्वादनां तवं यस्य इत्यतः। विदम् विदः प्राप्तं च विद्यामागश्च।

\(^691\) एव च विद्वज्ञानां विद्यविद्यामागश्च अध्यात्मान्नागाश्च। विद्यामागाः

\(^692\) विद्वज्ञानां विद्यविद्यामागाः अध्यात्मान्नागाः। विद्यामागाः

\(^693\) विद्वज्ञानां विद्यविद्यामागाः अध्यात्मान्नागाः। विद्यामागाः
check on the creditors' rapacity. Several propositions are laid down in the Mit., the Vyavahāramayūkha and other digests that graft exceptions on the general rule, and that flow from the interpretation of Manu VIII. 151 in both readings. The first modification is that if interest is received every day, month or year and is not claimed in a lump sum at one time then the total interest received by a creditor may be even several times more than the principal lent. Br. provides (S B E. vol 33 p. 321 verse 11) that every day interest or bodily interest and bhogalābhā may be taken by the creditor (irrespective of the question of dvāgūnya) as long as the principal is not paid. (2) Further, if after the interest has accumulated for some time, there is a fresh agreement with the same debtor whereby the sum lent together with interest due is taken as the principal and interest is agreed to be paid on the amount so arrived at, then the total recoverable after this fresh agreement may exceed double the original sum lent. Manu (VIII 154-155) and Br (S. B. E. vol. 33 p 331 verse 60) allow such a fresh agreement. But if the debtor does not make a fresh agreement then the rule of damdudvat would apply. (3) If after the sum due to the creditor has become double of the principal lent, the creditor accepts another man as the debtor (who takes the liability on himself), then the creditor may recover from the substituted debtor after the lapse of years an amount which may be more than double of the sum originally lent. (4) If the debtor pays a part of the principal or if the creditor makes a concession (called ‘reka’ in the Mit on Yaj II 39) and reduces the total recoverable or if the debtor receives an additional amount of money (called ‘seka’ in the Mit) and it is added to the original amount borrowed and a fresh agreement is made between the parties to put the whole to interest, then the rule of damdudvat would not apply.
The rule of dāmdupat has been acted upon by the courts in India in modern times 694. Though under the Transfer of property Act before its amendment in 1929 there was a conflict of decisions, since 1929 it is settled that the rule of dāmdupat does not apply to mortgages governed by the Transfer of Property Act. But the rule is so reasonable and humane that the Deccan Agriculturists' Relief Act (XVII of 1879) has made (by sec. 13) the rule of dāmdupat applicable to all agriculturists as defined by the Act, whether Hindus or non-Hindus; and the Bombay Agricultural Debtors Relief Act (of 1939), sec. 42, the Madras Debt Conciliation Act (XI of 1936, sec. 16) do the same.

A loan has to be returned on demand if no time is fixed for repayment or on the expiry of the time (if one has been fixed by the parties) or when interest ceases on account of becoming equal to the principal (Br. in S. B. E. vol. 33 p. 328 verse 47) interest stops when on the debtor offering to pay the loan the creditor refuses to accept it and the debtor deposits the money in the hands of a third person (Gaut. XII. 30, Yâj. II. 44). With Yâj. II. 44 section 84 of the Transfer of Property Act (IV. of 1882) may be compared. Vas. II. 49 states the remarkable rule that interest stops the moment the king dies and begins to run only after the coronation of the successor. 695

694 Vide Balkrishna v Gopal I L R 1 Bom. 73 (where it was held that the rule of dāmdupat should not be extended to apply to the amount recoverable in execution of the decree of a civil court), Nanhand v Bafusahob I L R 3 Bom. 131 (held that the rule of dāmdupat does not apply when the defendant is a non-Hindu), Gopal v Gangaram I L. R. 20 Bom. 721 F B (the rule is excluded from mortgages the terms of which necessitate the existence of an account between the mortgagor and the mortgagee in possession about the rents and profits), Sundarabai v Jayawant I Bom. L. R. 551, 555 (rule applies between all Hindu debtors and creditors both in respect of simple as well as mortgage debts), Khumji v Chuntal 21 Bom. L. R. 419 (by agreement interest which does not exceed the principal may be capitalized). It is interesting to find that in ancient Egypt the legal maximum rate of interest was thirty per cent and it was forbidden to allow interest to increase beyond the double of the principal Vide Wilkison's 'Manners and Customs of the ancient Egyptians' (First Series), 1842; vol. II p. 50. Ussor was condemned to ancient Egypt, among the Jews (vide Psalm XV. 5, Ezek XVIII 8 and 17, Lev XXV. 36-37) and by the ancient scribes (as more heinous than even the murder of a brahmana, H. of Dh. vol. II. p 124 n 269).

695 रुज्जा हृदियौ तरिकहि तस्यायनं विनासयित्व गुण राजासमन्विक्षेपं गर्गयुगेऽऽध्विसं वि वेष्टि हस्तिन II. 49.
(S. B. E. vol. 33 p. 33) provides that no interest runs on the price of commodities, on wages, on a deposit, on a fine, on what has been idly promised (to bards and the like) and on the stake won in gambling, unless there is a special or express agreement to pay interest. Kat. (508) has a similar verse, but adds hides, crops, liquor, bride-price and suretyship debts to some of those mentioned by Nar. Kat. (III. 11) provides that no interest runs where the debtor is a person engaged in a Vedic sacrifice of long duration, or is suffering from a disease or is staying at his teacher's house (gurukula) for study or is a minor or is a man without any substance. As regards some cases where originally a thing is lent to a person out of friendship or because he asked a loan of it, Nar. (IV. 108) and Kat. (502-505) lay down certain rules which are quoted in the Mrt. (on Ya. II. 38) and other works Nar. (IV. 108) prescribes that no interest ever attaches to things loaned through friendship, unless there is an express stipulation to that effect; but even in the absence of a stipulation interest starts running after the expiry of six months. Nar. IV. 109 and Kat. (505) both lay down that a loan (of money or an article) made through friendship cannot begin to earn interest as long as no demand is made for its return. If the debtor refuses to return it after it is demanded interest begins to run at the rate of five per cent. Kat. (502-504) lays down three propositions about yajñakāra (a temporary loan of money or of an article) - (1) When a person takes such a loan and goes to another country without

696. पद्ममूलकः पुलिन्यासों कृष्णोऽद्धारारकाच् | उपाधारारिक्षण्या वर्तने नातिव- 

697. यायारयात्यंके पद्ममूलकः च सच्चेदा | श्रीनाथेनुकृष्णनाम- 

698. न हृदि: मौनदमृस्त्रा माधयाज्ञाकारिता कठिन | अन्यकालिनमुद्दृति विकारार- 

699. को वाटिकानादय तद्वद्वा स्वस्वम हिम्ब्रम | कृत्यं संस्कारारम्भ तत्तथं हिम्ब्रमाध्यु 

700. कृत्यं संस्कारारम्भ संस्कारारम्भ तत्तथं हिम्ब्रमाध्यु 

701. कृत्यं संस्कारारम्भ संस्कारारम्भ तत्तथं हिम्ब्रमाध्यु 

702-504) q. by लिना. on Ya. II. 38, बिर. प. 15-16, 

703. कृत्यं संस्कारारम्भ संस्कारारम्भ तत्तथं हिम्ब्रमाध्यु 

704. कृत्यं संस्कारारम्भ संस्कारारम्भ तत्तथं हिम्ब्रमाध्यु 

705. कृत्यं संस्कारारम्भ संस्कारारम्भ तत्तथं हिम्ब्रमाध्यु 

706. कृत्यं संस्कारारम्भ संस्कारारम्भ तत्तथं हिम्ब्रमाध्यु
returning it, that loan begins to acquire interest after a year from the date of the loan (though no demand be made); (2) if a person after taking a loan goes to another country without returning it even when pressed by the lender to return it that loan begins to acquire interest three months (after demand); (3) when the borrower of a thing does not return it even though he is pressed to return it, the king should make him pay interest from that day (i.e. day of demand), though it was not agreed upon, though he remained in the country and though he be unwilling to pay interest. The Madanaratna says that in these cases where no interest is settled beforehand and where the texts do not specify the rate (as Kät. 505-506 do viz. what is lent through friendship, a deposit, balance of interest, unpaid purchase money, if not returned on demand, begin to carry 'interest at five per cent per month), the rate of interest would be the one stated by Yăj. II. 37 (viz. 1/80th per month) and Visnu VI. 4. (akrtāmapi vatsaratākramena yathāṁhuṁś).

Adhi²⁰⁰ means pledge of a movable or mortgage of immovable property. Nār. IV. 117 remarks²⁰² that in lending money an adhi and surety are the two sources that inspire confidence (in the creditor that his money will be safe) and a document and witnesses are the two modes of proof that will establish (the existence of a debt). An adhi is so called because the creditor is authorised to wield power over it or it is placed within his power (Nār. IV. 124 and Mit. on Yăj. II. 58)²⁰⁷. The

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²⁰⁰ Compare Visnu Dh. S. VI. 4. with the first proposition. Pāṇini (IV 4. 21) derives yacitaka (in the sense ‘yācitena murvritam’) in Saundarāṣṭa v. Shivasarwa 31 Bom. 354 Mr. Justice Chandavarkar translates (at p. 361) Nār. IV. 108 and Kät. (502-504), discusses the explanations of those passages by the Mit on Yăj. II 38 and holds that these incidents are even now applicable to contracts of debts by Hindu debtors and that neither the Interest Act (XXXII of 1839) nor the Indian Contract Act affects the ancient Hindu Law. It should be noted that 31 Mad 250 and 53 Mad 549 at p 579 dissent from this view.

²⁰¹ For an illuminating discussion on pledges, vide Dr Sen’s ‘Hindu Jurisprudence’ chap VI pp. 176-206

²⁰² विज्ञानेन्द्रद्वारा द्वारा मोहकार्यविवेक च। तिकित्स साहित्यभूमि दे समावे तथाकथा” नारायण IV 117.

²⁰³ आचार्यां अविचारी द्वारा मोहकार्यविवेक किए जिनमें गर्भार्योत्सर्गविवेकोत्सर्गविवेको अधी-पाद इत्यादिः। पथाण नारायणः “अविचारित इत्यादिः” हि लिखः on वा, II. 58.
word ādhi occurs in Āp. Dh. S I 6 18, 20 704 (which includes among those who are unfit to be invited at a śraddha ‘one who subsists on ādhi’). Gaut. XII. 29 also refers to ādhi. Kaut (III 12) briefly deals with ādhi and after stating some rules extends the principles of upanadhī (deposet) and debt to it. Manu VIII, 165 employs the word ‘ādhāmana’ in the sense of ‘mortgage’. According to Br. 705 (S B E. vol. 33 p. 323 verse 17) an ādhi is of four kinds viz. of movable property, of immovable property, gopya (to be kept in custody of the pledgee only), bhogya (to be enjoyed). Nār. IV. 124 first divides ādhi into two sorts, viz. one that is to be redeemed within certain time fixed (by agreement at the time of contracting the debt) or to be retained till the debt is paid off and Nār. IV. 152 again subdivides each of these two into gopya and bhogya. This latter division was known to Gaut. XII. 32, Manu VIII. 143, Yaj. II. 59, Kāt. (576). The subdivisions of ādhi are made from several points of view viz. the nature of the property, the form of the pledge, the mention or non-mention of a period and the evidence to establish it. The Mit. on Yaj. II. 58 explains 706 that the first kind of ādhi mentioned in Nār. IV. 124 contains the conditions that the money will be repaid at a fixed time and that if the money be not so paid at the time fixed the thing pledged or mortgaged will belong to the creditor. Yaj. II. 58 sets out three provisions viz. (1) when a time is fixed for payment, the thing pledged or mortgaged is lost to the debtor if the time fixed is allowed to pass without there being any repayment (whether it be an ādhi that is to be merely kept or whether it is one to be enjoyed); (2) but if no time is fixed the thing given as security is not lost

704: ये च शरणमानीविधि मे ज्ञापितः निस्वरूपः वाचपादिकः || सत्वः च च च च च च \n
19-22 हरदास ज्ञापित महिलाओ तथा महिमा अन्यतया च \n
705: आचार्याष्ट्र: समालंकितः सं च ज्ञाताः \n
706: कुले काले आध्यात्मिको एतेऽपादस्यकाले समालांकोिस्यकाले तत्र्वैवाचर्याविश्वसः \n
to the debtor at all, when it is an adhi that is to be enjoyed; (3) if no time is fixed and the adhi is only to be kept (gopīga) then it is lost to the debtor only if it is not redeemed even when the debt has grown to double of the principal by non-payment of the interest agreed upon. There is a period of fourteen days' grace after this, as stated by Br. (S. B. E 707 vol. 33 p 324, verses 27-28) that when the principal has been doubled or the stipulated period in the case of a pledge delivered for a certain time only has expired, the creditor becomes the owner of the pledge, after waiting for a fortnight during which the debtor may repay the debt and redeem his property. Gaut. XII. 29, Manu VIII. 143, Yas. II. 58, Visnu Dh S. VI. 5 provide that an adhi which is mortgaged with the condition that the fruit or profits are to be enjoyed bears no interest nor can the creditor, even after keeping such an adhi for a long time, make a gift of it or sell it. Medhatithi on Manu VII. 143 holds that a mortgagees with possession who is to enjoy the produce cannot, by virtue of the last quarter of Manu VIII. 143, make a sub-mortgage (called avāda). Kullīka on 708 the other hand says that it is common practice in all countries for a mortgagee to execute a sub-mortgage of land and the like and that Manu VIII. 143 does not forbid it. Prajapati 709 (q. by Par. M. III. p. 242) defines a deed of sub-mortgage: 'if the creditor pledges to another the thing already pledged to him for the same amount (for which it was pledged to him) he should pass a fresh deed of pledge (or mortgage) and should hand over the former deed to his own creditor.' It appears that sub-mortgages came to be recognized rather late. Bharadvāja states that if a sub-mortgage be effected without the mortgagor's consent, the mortgagee would lose his money.

707. विस्त्र विस्त्र scrapes पृथ्वी जाते कृताये: | बन्धकर्ता पणी त्वामी विस्तारसायं मलिकयः प्राप्ताम् | हस्तन्तर धर्मं दृश्या कस्य बन्धनमन्वितयः | ब्रह्म. q. by लिखता. on पा. II. 58
Compare the description of mortgage by conditional sale in sec. 58 (c) of the Transfer of Property Act (of 1882).

708. अत इत्यदि विस्तारतिवासाय विकाशपाषायाराय | देशसु वि तो केनकिष्ठितम् सन्तुति on मुं. VIII. 143, नासिकलोगिन्युराजी तु अधिरिकलोगिन्युराजी न निर्मितम् बालम् बन्धनोन्नामसायित प्यान्यातेत | अतिः देशसिकालोडगीन्युराजी बन्धनकर्ता- 
वृद्धार्थ उपस्थीति प्रकारकारत्वात् बन्धनकर्ता- 
त्वामीवार्ता बालमानसायित प्यान्यातेत | इत्यदि on मुं. VIII. 143.

709. विस्त्र पक्षेभुवेव परमायं नोपत्तिः | इत्याः वर्धितस्विति इत्याः धार्मिकम् सम-
सवितः प्राप्तिः q. by सर्वितम्. II. 143, पर्या. म. III. 242, एतअ. m. p. 20; 'अयाम् 
वर्धितबंधनम् हृदये तस्य मन्दिरिः सति हृदये हृदयात्माप्यमायत्र वृद्धः' पर्या. म. III p 242; 
स्वर्धिता धार्मिकम् अधिकारिः बन्धनति चेतुः | स्वर्धिताम् हृदये हृदये धार्मिकार्यामि दृष्टात् ||
अन्तः in श्र. वि. pp. 234-235.
The general rule was that an adhi (whether of movable or immovable property) that was bhoga carried no interest but the profits were to be taken in lieu of interest (vide Kat 516) and the debtor would in this case get back his property on paying the principal. Kaut (III 12) states that immovable property mortgaged may be such that it can be enjoyed only by expending labour over it or without expending one's own labour the creditor may enjoy the fruits or income thereof. But as noted by Vyāsa and Bharadvāja the stipulation about a bhoga adhi may be that the income from the property is to be taken as in payment of the whole interest and part of the principal. This latter is called sapratyaya-bhogyadh and the other variety where the income is taken in lieu of interest only is called apatyaya-bhogyadh. The Mit. on Yaj. II. 64 after citing a text of Brhaspati refers to these two varieties (though it does not use these terms) and adds that if the income is not sufficient to meet the interest wholly then the debtor may have to pay the principal and the unpaid part of the debt before redeeming his property. The Mit. (on Yaj. II. 64) states that the appropriate name 'ksayadh' is given by the people to what is called (above) as sapratyaya-bhogyadh. Bharadvāja states that on taking an account (where there is an agreement to apply the income towards interest and reduction of the principal) if the creditor has been overpaid he is to restore the overpaid amount to the debtor and that if a portion of the principal remains unpaid the debtor has to repay it.

If a man first mortgaged his property and then sold it, the purchaser took it subject to the rights of the mortgagee (Vasistha quoted by Sm, C II. p 145). If a person executed a mortgage, a sale and a gift of the same thing on the same day, then the

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710. इत्यतः स्वकथया बुद्धते निष्प्रायां बुद्धते वेच्योऽवर । जातुः स्ववालं वारिष्टो मोहतः

711. सूक्ष्म वंशार्धाय यहाँ भगताः वेच्योऽधिक देवान || कार्यस. 516 q. by यथा, ति

712. अति भोगाभिषेक समग्रवाणि अभिषेको भावाभिषेको भावाभिषेको भावाभिषेको भावाभिषेको भावाभिषेको भावाभिषेको

सत्यार्धाय यहाँ भगताः कार्यस. 516 q. by यथा, ति

S.V. appears to have borrowed.
donees would take one-third of the thing and the mortgagee and purchaser would share the remaining two-thirds in proportion to the money paid by each.\textsuperscript{713} If a person was liable to pay several debts, some secured by a pledge or mortgage and some taken on personal security, the latter were to be paid first and redemption of the mortgage was to be ordered afterwards, according to Bharadvaja (q. by Vy. Nir p. 245).

The restriction that more money should not be taken from the sub-mortgagee than what was advanced to the mortgagee was for the benefit of the latter. The Par. M. (III p. 243) provides that a sub-mortgage can be made only when the amount due has risen to double the principal, but that if the owner consents a sub-mortgage may be made even before that contingency arises.

Kat. (522) requires that an ādhi becomes valid when such particulars as the boundaries of the field or house and the village (in which it is situated) are specified.\textsuperscript{714} Kat. (518) further provides that a writing of pledge or sale or gift is superior to a similar transaction made in the presence of witnesses only. If the same field or other thing is mortgaged or pledged to two persons separately, Vismu Dh. S. V. 185\textsuperscript{715} and Br. (S. B. E. 33 p 326 verse 34) prescribe\textsuperscript{716} that the one who got possession first (without force) is entitled to preference. This shows that under ancient Hindu Law possession was nine points of law and that hypothecation without delivery of possession was known to Kat. and other smṛti writers, even if earlier smṛtis did not recognise an hypothecation without possession. Yāj. II. 60 and Nār. IV. 139 emphatically assert that a pledge or mortgage becomes perfect or effective only if there

\textsuperscript{713} वद्वृत्तवर्धये विशेषायभिर दत्तं। विनिमयविवेश्यायर्थमानं। कार्यनामाति सर्वे कर्ष्य।\textsuperscript{714} वेदेऽस्मिनस्येतु विकत्त्वाच विविधत्वेऽस्मायं।\textsuperscript{715} वर्षपहोरित्वमधुनिद्रणाश्च। उभे किच्छन्ध्वतारं विदाशे मलिखेण। \textsuperscript{716} दशेस्ति q. by सूतसिवम् II. p. 145. वि. p. 238-239, Br quoted by both has similar verses

\textsuperscript{717} वर्षपहोरित्वमधुनिद्रणाश्च। उभे किच्छन्ध्वतारं विदाशे मलिखेण। कार्यव्यापें विदाशे मलिखे।\textsuperscript{718} विदाशेविदाशेः मलिखे।\textsuperscript{719} विदाशेविदाशेः मलिखे।\textsuperscript{720} मलिखे q. by सूतसिवम् II. p. 236. Compare sections 21 and 22 of the Indian Registration Act

\textsuperscript{717} वर्षपहोरित्वमधुनिद्रणाश्च। उभे किच्छन्ध्वतारं विदाशे मलिखे।\textsuperscript{718} विदाशेविदाशे मलिखे।\textsuperscript{719} विदाशेविदाशे मलिखे।\textsuperscript{720} मलिखे q. by सूतसिवम् II. p. 233, सूतसिवम् II p 144; vide a similar verse of विदाशे quoted in वच म. p. 173.
is enjoyment and not otherwise. This is to be taken along with Yāj. II. 23 and so the first in time shall prevail only if the first is accompanied with possession. If a sale or mortgage be made before witnesses to one man and in writing to another, the latter prevails over the former. If a debtor were to pledge or mortgage the same thing to another after pledging it to one and without redeeming the first debt, Visnu Dh. S. (V. 181-182) prescribed the drastic measure of corporal punishment (whipping or imprisonment) if the land mortgaged was a gocarna or more in extent or a fine of 16 suvarnas if it was less. Kāṭ (517) in similar circumstances made the debtor liable to the fine imposed on a thief. Kāṭ. (519-521 q. in Sm. C. II. pp. 144-145 and V. P. pp. 240-241) states that in a competition between a document of pledge which does not give particulars of the thing pledged or which refers to a thing not existing at the time and a document in which the thing pledged is described with particulars or in which the thing existed at the time the deed was executed, the latter is entitled to preference; similarly the pledge of a thing specifically described is superior to a prior pledge of all the debtor's property mentioned in general terms.

If an ādhu deteriorates in value (i.e., becomes inadequate to meet principal and interest) or if it be lost or destroyed though proper care be taken thereof by the creditor, then the debtor must either pledge another adequate thing (in substitution) or the debtor should return the amount due (Yāj. II. 60, Kāṭ 524) The Mit on Yāj. II. 60 remarks that it follows from this that it is the duty of the pledgee to take proper care of the thing pledged. Br. (S B E 33 p. 323 verse 19) expressly says

717 अध्याय विक्रीय द्वारा रूपयासाधनार्थ पद्धति । एक-कीमतीयन्त्रे होल्यं तत्तत्त्वस्थिरकरकः काला (518) q. by परा मा III 235. सत्वाचिन्द्र II p 144, स वि p. 237. Compare Kāṭ. 518 with sec 48 of the Registration Act which provides that a document relating to movable or immovable property shall prevail over an oral agreement or declaration unless the latter is accompanied or followed by delivery of possession.

718 गौरव्यमावराशिका खुशमन्यतार्थीकता तत्तत्त्वसङ्गीत्वायां यथः प्रस्तुतेऽपि। कला चिदां प्रायोगमिमांसाय दुःखम्। किंतु V. 181-182 गोल्पिं व a variously defined: समस्यानं कला गुणमयं गुणयतं निबिन्दुमयं। तु तस्तत्वेऽद्वारा गौरव्यमावराशिका तत्तत्त्वसङ्गीत्वायां यथः प्रस्तुतेऽपि॥ कृष्णप्रति-स्वदृढः 8 q. by शिना on या I 210 and अपराधकः p. 567. किंतु V. 183 एककिमतेऽवरणे भूतेऽवरणे । गौरव्यमावराशिका सा स्थानी स्वदृढः ॥ वदे also पराधक द्वारा XII 49, भुवोन्ति p. 539, अपराधकः p. 1225 for other definitions.

719 अध्याय विक्रीय द्वारा बुजाराजाः ॥ तत्र तत्तत्त्वसङ्गीत्वात् भविष्यतेऽपि ॥ वै चैत्यमान्यत्र निवेदेऽविशिष्टेऽपि यथा । आदिमयं स् दुःखम्। न्यायसाधनोपेत भविष्यकाला 523, 524 q. by सत्वाचिन्द्र II. pp. 137, 138, स वि p. 26-27.
that the pledge has to be kept carefully like a deposit, as otherwise interest is forfeited in case of its being damaged. If a pledge which is to be kept only is enjoyed by the creditor, then the interest stops and if it deteriorates or is lost the creditor has to restore it to its former condition or substitute another of equal value; if a pledge to be enjoyed is lost or deteriorates by use then also the interest stops; and the creditor has to restore it, otherwise he will lose his principal (Yaj. II. 59 and the Mit thereon, Nar. IV. 125, 127) If a pledge is lost without any fault or negligence of the creditor, but through fate (i.e. accidents like fire or flood) or the action of the king, the debtor has to furnish another pledge or to pay the amount due (Kät. 523, Nar IV. 126, 130, Yaj. II. 59, Visnu Dh S VI 6, Gaut. XII. 39, Br., S. B. E 33 p 323 verse 21). From the time of Gautama\(^{720}\) (about 500 B. C.) onwards the rule about the care required of a pledgee, bailee, depositee was the same viz that he is to take of another's property kept with him as much care as he would take of his own Nar. (\textit{muksepa} 14) and Yaj. II. 67 lay down the same rule for all kinds of bailments Manu VIII. 189 (=Nar., \textit{muksepa}, verse 12) illustrates what is meant by accidental loss.

The debtor cannot redeem the pledge or mortgage before the time fixed by mutual agreement, but by mutual agreement he can redeem even before (Br. S. B. E. p 325 verses 32–33). If the creditor does not allow redemption when the debtor has a right to redeem and is ready to do so, the creditor may be liable to be fined as a thief (Yaj. II. 62). Acc. to Kaut (III. 12) the fine is 12 panas\(^{721}\).

It has already been stated above (p 429) that in certain cases (i.e. when it is a \textit{gopya dhila}) the ownership is lost to the mortgagor (i.e. in the language of modern law there is a foreclosure), if the amount has risen to double of the money lent without payment (even after the period of grace) or if the period fixed has passed away without there being repayment (whether the

\(^{720}\) शिल्पोकारिषीतखीतायामो नन्दा. सर्वानननिवतिताग्रुहपापसेने | श्री XII. 39, on which हरसूचि says. 

\(^{721}\) उपरिगतद्विधितंविद्धसतापसिद्धान | अध्याय नीति III. 12.
amount has risen to double of that lent or not, acc. to Mit on Yaś. II. 58) But if at the time of contracting the debt the stipulation is to repay the sum lent with interest and there is no stipulation about loss of the ownership of the thing mortgaged (i.e. it is like a simple mortgage of modern times), then there is no loss of ownership. There is then only a power of sale in the mortgagor. So also in the case of a bhogyadhū the mortgagor or his heirs can redeem the property at any time by paying the principal and there is no loss of ownership to the mortgagor. According to Yaś. II. 63 and Br. 722 (S B E vol 33 p 325 verse 29) the creditor can sell in the presence of (the debtor’s relatives) and witnesses the ādhi, when the amount has grown to double of that lent or when the period fixed has passed, if the debtor has not redeemed and is absent or dead. After meeting his own dues the creditor has, as said by Kāt. 529, to hand over the balance of the sale price to the king (i.e. probably to the court of the locality). Kaut. 723 (III. 12) provides that if the debtor is present and the creditor is afraid of the loss of his money because it may exceed the market value of the ādhi he may sell it with the permission of the judges (dharmaśāstra) or he may demand a surety for assurance. It appears from these passages that a sale through court and a right of private sale were both recognised in the case of mortgages in ancient India (as in modern times under sections 65 and 69 of the Transfer of Property Act).

There were two other special kinds of ādhi described in Yaś. II. 61 viz. caṇṭrabandhaka724 and satyanākāra. The first

722 दिवसभोग दिरमावृत्ति हेतु नकक्षमात्। दर्श तद्वर्तं सर्वार्थ विकृतियता सत्मधि
करण्। खुष्ट ॥ भव ॥ स्य। स पृ. 174। परा सा III पृ 240 वरुणा अनुशासनही वरीया
तद्वर्तं सर्वार्थ विकृति तथा दर्शात। सय। स यात्रा कारण ॥ भव ॥ भव ॥ अनुपातमये
कारण। ॥ स्य। स पृ. 658। परा सा III। पृ 241। स। स पृ. 245। विजयाचार्य पृ. 9। यदा हेतु
स क्रूरम् सूचना व नामार्थशास्त्र। तद्वर्तं दूधार्दश हिज्ञातिरिप्पोधेशस्तस्त्तसृष्टि
मिधियेत् ॥ संस्कृत IV 113। नथा स साहिकार।

723 धार्मिकाश्रयही वा विशालाकारहुदारिनां वस्त्रधारा हस्य। विकृतियता
आविष्कृतम्। अखंडार्थ
यो। अस्तित्व III 12। अनुसारण तु संस्कृत C II। 150 अधिपीला विश्वासु सुरीयही वाराणसियों
विजयाचार्य पृ. 9। अनुपातमये। कारण। ॥ स्य। स पृ. 658। परा सा III। पृ 241। स। स पृ. 245। विजयाचार्य
पृ. 9। यदा हेतु। स क्रूरम्। सूचना व नामार्थशास्त्र।

724 त्रिनकारक संत दर्शन दुहृष्टीनावः। संतखंडोर् दर्शन दर्शनोपयोगी।
तद्वर्तं दूधार्दश हिज्ञातिरिप्पोधेशस्तस्त्तसृष्टि
मिधियेत् ॥ संस्कृत IV 113। नथा स साहिकार।

724 चारित्रयमपहि कर्ष। संस्कृत IV 113। नथा स साहिकार।
त्रिनकारक संत दर्शन दर्शनोपयोगी।
तद्वर्तं दूधार्दश हिज्ञातिरिप्पोधेशस्तस्त्तसृष्टि
मिधियेत् ॥ संस्कृत IV 113। नथा स साहिकार।

Two meanings are given of चारित्रयमपहि and संस्कृत IV 113.

724 चारित्रयमपहि कर्ष। संस्कृत IV 113। नथा स साहिकार।
त्रिनकारक संत दर्शन दर्शनोपयोगी।
तद्वर्तं दूधार्दश हिज्ञातिरिप्पोधेशस्तस्त्त
मिधियेत् ॥ संस्कृत IV 113। नथा स साहिकार।
occurs either when the creditor being known to be very honest the debtor gives as security a property of very great value for a small debt or where a debtor being known to be very honest a property of very small value is accepted as security for a large debt. In such a case there is no forfeiture or foreclosure of the property in any case but the king (or judge) should award only double the principal lent. Another meaning is that in a caritra bandhaka it is the merit (apūrva or punya) arising from bathing in the Ganges or from performance of agnihatra that is given as security (i.e. he will forfeit merit on non-payment). In this case the creditor will receive double and there is no loss or forfeiture of adhi. A pledge made with satyaṇkāra occurs when at the time of making a pledge the stipulation is ‘I am liable to pay only double but there will be no loss of the thing pledged’ or (a second meaning of) satyaṇkāra is that ‘when an earnest (a ring or the like) is given at the time of a sale and the vendor breaks the promise he has to pay double of the earnest’.

If the mortgagor is dead or absent abroad, and the debtor wants to redeem he may take back the ādhi after paying the amount due to the family i.e. to his sons and other ascetic relations or to his cognates and in the absence of these (if the creditor be a brāhmaṇa) to other brāhmaṇas (and if no brāhmaṇas be available) he may cast the money into water (Yāj. II. 62 and Nār. IV. 112–113) The Kaṇśika-sūtra 225 (46. 36–40) contains provisions about casting the debt in the cemetery or where four roads meet if the creditor is dead and there are no heirs. The Sangrahā says that it may be thrown into water with a pālaśa leaf to the accompaniment of Tai S. III. 3 4 1–2 quoted above (n 671). Another alternative is that the debtor may have a valuation of the ādhi made at the time when he wants to redeem (and the creditor is absent), and allow it to remain with the creditor but without interest (and redeem it at the valuation when the creditor comes or secure the price from the creditor if the ādhi be afterwards lost or destroyed, acc. to Mit. on Yāj II. 63)

Prabhū A prabhū or lagnaka (Br. quoted in n. 681 and Kät. 530) means ‘surety’. Prabhūnya (being a surety) was known to Gautama (XII. 38) and prabhū was known to Pāṇini

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225. उत्तमसंह कुले वधुपलय मपयोति । समीचाय । इम्येने विजयपति । जयपथे स ।
कालानिधिपति । नीरिककरु 46 36–40.
Suretyship requires the concurrence of three persons viz. the creditor, the borrower (called the principal debtor) and the person who agrees, for inspiring confidence in the creditor to pay or indemnify if the principal debtor commits default. Manu VIII. 160 speaks of surety for appearance and for repayment of debt. According to the purpose of the transaction a surety is of three kinds (Yaj. II. 53 = Visnu Dh. S VI 41 and Nâr. IV. 118) viz. for appearance, for payment and for honesty. The first undertakes to produce a person before a court and assures the court that the person concerned will not abscond from the country; the surety for payment agrees that in case the debtor does not pay the principal and interest, he will himself pay both; the surety for honesty assures the employer or other person with whom another man deals that the latter is an honest and good man, that he would not deceive and that reliance may be placed on him (vide Mit. on Yaj. II. 53 and Sm. C II. p 148 for these explanations). Br (S. B. E 727) vol. 33 p. 327 verses 39-40) speaks of four (including the three of Yaj. II. 53), his fourth being one who promises to deliver or restore the assets that are with the debtor (such as household furniture or ornaments). Yaj. and Nâr. must be deemed to include this last under the surety for payment. Katha (530) 728 says that a surety (lagnakâ) may be caused to be given for repayment (of a debt), for appearance (upasthâna), in lawsuits, for honesty and for taking oaths (or ordeals). Acc. to Hariya a surety is taken for five purposes viz. for keeping the peace (abhaya).

726. नामिनाय नाम विभासगर्य द्रुववाल्या गत समय । लिता यो वा II 53, द्य. म. प. 247.

727. जहि भनेन दुःखये दुर्गोविशालय तथा । चतुर्व्यायकरं मनोद्र ॥ शासन वहो मनी यशिनम् ॥ आहायो दर्शनमाकृति साधृप्रक्षसेवकमनृत्युष्मानः तत्र ॥ दृशा न्यायस्वलयुक्तस्य याम् ॥ तस्य q by अपारकम् p 655, सूतिः इ. 11 p 148 and व्य. म. p 247

728. द्रुववालिनाशनविभासवालास्याय च । तत्र द्रुववेद वाणायों विवरण ॥ कात्याय. 530 q, by अपारकम् p 655, वर. म. III 249, स ह. p 247 When a special oath or ordeal was to be taken or undergone at some future date, a surety was taken from the party. A surety was also to be taken from both parties to a litigation (Yaj. II. 10). Amshe मथये दुःखये उद्धारन खर्णनि। पहले कवारे महोदशि यथो दया विबुधिगृहे ॥ वारी q by सूतिः इ. 11 p 148 and व्य. म. p 248 'वपानशास्त्र बालिनाशन विभासवालास्याय पुत्रुश्च सुतिः सहस्रांश्च सुतिः सहस्रांश्च P. When a special oath or ordeal was to be taken or undergone at some future date, a surety was taken from the party. A surety was also to be taken from both parties to a litigation (Yaj. II. 10). Amshe मथये दुःखये उद्धारन खर्णनि। पहले कवारे महोदशि यथो दया विबुधिगृहे ॥ वारी q by सूतिः इ. 11 p 148 and व्य. म. p 248 'वपानशास्त्र बालिनाशन विभासवालास्याय पुत्रुश्च सुतिः सहस्रांश्च P. When a special oath or ordeal was to be taken or undergone at some future date, a surety was taken from the party. A surety was also to be taken from both parties to a litigation (Yaj. II. 10). Amshe मथये दुःखये उद्धारन खर्णनि। पहले कवारे महोदशि यथो दया विबुधिगृहे ॥ वारी q by सूतिः इ. 11 p 148 and व्य. म. p 248 'वपानशास्त्र बालिनाशन विभासवालास्याय पुत्रुश्च सुतिः सहस्रांश्च P. When a special oath or ordeal was to be taken or undergone at some future date, a surety was taken from the party. A surety was also to be taken from both parties to a litigation (Yaj. II. 10). Amshe मथये दुःखये उ�्धारन खर्णनि। पहले कवारे महोदशि यथो दया विबुधिगृहे ॥ वारी q by सूतिः इ. 11 p 148 and व्य. म. p 248 'वपानशास्त्र बालिनाशन विभासवालास्याय पुत्रुश्च सुतिः सहस्रांश्च P. When a special oath or ordeal was to be taken or undergone at some future date, a surety was taken from the party. A surety was also to be taken from both parties to a litigation (Yaj. II. 10). Amshe मथये दुःखये उद्धारन खर्णनि। पहले कवारे महोदशि यथो दया विबुधिगृहे ॥ वारी q by सूतिः इ. 11 p 148 and व्य. म. p 248 'वपानशास्त्र बालिनाशन विभासवालास्याय पुत्रुश्च सुतिः सहस्रांश्च P. When a special oath or ordeal was to be taken or undergone at some future date, a surety was taken from the party. A surety was also to be taken from both parties to a litigation (Yaj. II. 10). Amshe मथये दुःखये उद्धारन खर्णनि। पहले कवारे महोदशि यथो दया विबुधिगृहे ॥ वारी q by सूतिः इ. 11 p 148 and व्य. म. p 248 'वपानशास्त्र बालिनाशन विभासवालास्याय पुत्रुश्च सुतिः सहस्रांश्च P. When a special oath or ordeal was to be taken or undergone at some future date, a surety was taken from the party. A surety was also to be taken from both parties to a litigation (Yaj. II. 10). Amshe मथये दुःखये उद्धारन खर्णनि। पहले कवारे महोदशि यथो दया विबुधि

Vide see 145 of the Civil Pro Code (for sureties for the performance of a decretal order or repayment of money ordered by a Court to be paid, for restitution of property taken in execution). sec 55 (4), Order 25 rule 1, Order 38 r 5, Order 41 rules 6 and 10 of the Civil Pro. Code and Cr. Pro. Code, chap. VIII, sec 426, 499 &c in criminal matters.
for honesty, for repayment of debt, for delivering the debtor’s
property to the creditor, for appearance V. p. p 248 quotes
Vyāsa (who mentions seven kinds of sureties) and remarks that
all can ultimately be reduced to three varieties.

If the surety for appearance cannot produce the person at
the time and place agreed upon, he should in that case pay to
the creditor what he has bound himself to pay except where the
debtor is prevented from appearing by act of God or of the
king. But a period of a fortnight, a month or three fortnights
at the most should be allowed to the surety to find out the
absconding person. If he can produce him within that time
the surety would be free from liability (Kāt. 531, 532, Br. in
S. B. E vol 33 p. 327 verse 42). If the surety for appearance
cannot (even when time is given) produce the debtor or the
debtor dies then the surety has to pay from his own pocket the
money due from the debtor (Manu VIII. 158 and Kāt. 532–33).
All this is subject to the proviso of the act of God or of the
king.

Sureties of all kinds are personally liable to make good
the loss arising from the non-appearance of the debtor, or from
his dishonesty or non-payment (Yāj. II. 53, Visnu VI. 41, Br. in
S. B. E 33 p. 327 v. 41); but the sons of the surety for appear-
ance or honesty were not liable, if the surety died. Yet if the
surety for appearance or honesty stood surety only after taking
some security from the debtor for so doing, then even the son
would be liable to reimburse from such security the person
losing. The liability of sons and grandsons for the suretyship
debt of the father or grandfather will be discussed a little later
on. If there are several sureties, then each will have to pay a
proportionate part of the debt; but if each of the sureties has
undertaken the whole liability of the debtor (i.e. if the liability
of all is joint and several) then the creditor may at his will
recover the whole debt from any one of the several sureties

729. नहरप्रणेन्ये कार्य द्वारानिष्ठसे धनीं। वेषालुकत: पद्य मार्ग सारिमथाय ऐं।
हृद्यं। नहरप्रणेन्यायं हुः दे पवमय परम।। पद्यवति दुष्टिप्रस्त्र सौङ्गम्। मतिरुपिन्धर। काले
परितमुतिपूर्वादि सै अव दुष्टिपवक शस्त्रप्रस्त्र स्वायतेभै: जिन्दि। शस्त्रं। कार्यं।
both q by शस्त्रितस्मय II. p. 149, व्य p. 249, नियत on या II. 57.

730. अन्यथा हृतेः हि विवेधः चक्तोमिवितः धनेऽहुः। उच्चरसेव महतीदृढ्य सिद्धिनिः
तथा हृदः q by शस्त्रितस्मय II. p. 150, व्य p. 250; शरीरस्य: चनेव: पनु दुष्टिप्रवर्त
सिद्धिनिः भैरवः। नियत नियतम सर्वस्य धार्मिक कार्यं हुः। कार्यं। 534 q by नियत on
या II 54, अपराध p. 656, व्य p. 251.
History of Dharmaśāstra

(Yaj II 55, Nār. IV. 120) Kāt 538 states a special rule that whichever out of several sureties that have incurred joint and several liability is found present at the place (of the agreement) should be made to pay the debt, if such a surety has gone abroad his son may be made to pay the whole, but if the surety be dead the son should be made to pay only the share of his father (there being several sureties). If a surety being pressed or harassed by a creditor pays openly (before all people) the debt (wholly or in part) then the debtor will be made to pay after three fortnights double of what the surety has to pay (Yaj II 56, Nār. IV. 121, Visnu Dh. S. VI. 44, Kāt 539) But if the surety pays without being pressed he would get only what he paid and if the debtor reimburses the surety without loss of time then he has not to pay double. These rules apply to money lent, but in the case of grain, clothes and liquids the debtor must pay to the surety three, four or eight times respectively (Yaj II 57) Who could not be accepted as sureties has already been stated (on pp. 291–292).

Several were the modes of the recovery of debts. Manu (VIII. 47–48) requires the king to make the debtor repay his debt to the creditor in whatever way he can do it. There is a difference in the modes of recovery according as the liability is admitted by the debtor or not. If liability is denied then the only method is to file a suit for the recovery of the debt. But if the liability is admitted by the debtor, then Manu VIII 49 (=Nār IV 122), and Br (S B E vol 33 p 329 v. 54) mention five means of recovery viz ḍhāma (persuasion), ivaṭahāra (legal proceeding), chala or upadhi (trick), carita (sitting down at his door) or bala (compulsion to do work or confinement). It appears from Āp Dh S (I. 6 19 1) that the method of sitting at the door for recovery of debts was known to Āp (the creditor so doing is designated pratyapavasta). In a Marwad Inscription

731. भव्यर्थस्तिश्यो वद्युतेष्वर्भवितृष्टिः। अत्यपरिशिष्टिः नागरे धनिस्वपन्नकर विधिः।

732. मद्यमनेन धत्तम वद्युतेष्वर्भवितृष्टिः। अत्यपरिशिष्टिः नागरे धनिस्वपन्नकर विधिः।
dated sathvat 1198 (1141-42 A.D.) this practice is called kāya-vrata (yadi brāhmaṇah kāyam alam kṛtāh niryuṣṭe). Vide E. L. vol. XI p. 37 at p 40 These modes of recovery except vyavahāra are explained by Brhaspati as follows:733 The method of dharma consists in sending messages (to the debtor) from his friends and relatives, in persuading him to pay with sweet words, by following the debtor (i.e. by persistent dunning) and by frequent requests. Trick consists in the creditor borrowing from the debtor some ornament or other article under the pretext of its being required in a festival and not returning it or in retaining what the debtor has handed over to the creditor for being delivered to another, that is compulsion when the debtor is brought to the creditor's house, is then confined or beaten and thus induced to repay the debt; that is dānava where the creditor keeps tied his own wife or son or cattle at the debtor's house or sits down at his door (fasting). All these methods could not be employed in the case of all debtors Kāt. (477-480) has already been cited (on p. 383) to show how the king is to employ the various methods in the case of brahmanas, traders &c. If the creditor employs any one of the methods (other than vyavahāra) and harasses a debtor when the latter claims judicial investigation and there is a doubt or dispute between the two as to the amount, the rate of interest, the liability to pay, the creditor would lose his claim and would have to pay a fine equal (to the claim)734 Kāt 589 and Br 735 (S. B E vol 33, p. 331 verses 63-65) lay this down But when the debtor admits his liability and yet does not pay and when the creditor therefore employs one of the means (other than a suit) appropriate to the caste and position of the debtor, then, if the debtor complains to the king

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733 मतिप्रसून दुःखः सामादिरिपुक्षकम्। परमौचिविहारकारिकसूपके च। हस्तसुविरविवर्जिते। सामाकारपुजनम्। । मयेन्व ब्रजी द्वारो यमर्युश्य!।
734 न वायुप्राच्छ निकापाशी सलिनेपरं कथजन। अभिनेत्तरकारपशं दुःखो भवति। पत्नम्। महात्मस्य जन्मति व्यासस्तुतद्वाम्। ।
735 प्रयोगो भवी काव्यादिकों व्यापाराधितम्। सतमसुद्भावं हरिज वसलम्। चाणु-यम-दम्॥ कालम् 589, प. by मित्र on या II 40, अपराश p 645, व्य। म p 260.
against the creditor, the debtor would be compelled by the king to pay the debt and a fine for unnecessary complaint (Yaj II 49, Manu VIII. 176, Vishnu Dh S VI 19.) Kat (580-584) provides that where it is the custom of the country, the creditor may hold the debtor in restraint openly before an assembly of people until he pays what is due, that when a man so restrained has an inclination to answer calls of nature, he should be followed behind by the creditor or he should be allowed to go alone but fettered, that he should be allowed to go home for his meals and at night if he furnishes a surety, and that the surety will have to remain in restraint (while the debtor is absent), that if the debtor cannot secure a surety or does not accept the proposal of furnishing one he should be confined in jail or should be kept guarded by men, but that a respectable man who is trust-worthy and pure in conduct should not be put in jail, that he should be allowed to go without fetters or after being bound by an oath. Manu VIII 177, Yaj II 49, Nar. IV 131 lay down that if a debtor is unable to pay a debt then he should be made to do work suitable to his caste in the house of his creditor of the same or higher caste in order to gradually liquidate the debt (but without detriment to his own family) and a brahmana debtor should be made to pay by easy instalments. Kaut. III. 11 provides that agriculturists and king’s servants should not be seized (for debts) at the time when it is the season for them to work, nor a woman for her husband’s debt unless she has promised to repay her

736. धार्मिकज्ञानमतः समालं अननरिति। यवन्द द्वारोपे च देवायात्विविधिः। कलंकितो वृहस्पति: च वृहस्पतियो निविद्य संख्येन देशिः। 

737. विकर्षणाः कर्म गुणात्मक कार्येऽवधि। शरीरिकाया अव्ययायां नातील। यवन्द द्वारोपे च देवायात्विविधिः। कलंकितो वृहस्पति: च वृहस्पतियो निविद्य संख्येन देशिः। 

738. अव्ययाः कर्मात्वस्थाय च प्रत्यक्षता नवं विविधेऽवधि। शरीरिकाया अव्ययायां नातील। यवन्द द्वारोपे च देवायात्विविधिः। कलंकितो वृहस्पति: च वृहस्पतियो निविद्य संख्येन देशिः।
husband’s debt, but wives of cowherds and those who take a lease of lands for half produce may be arrested for non-payment by the husband. As compared with the harsh legislation against debtors in most ancient and medieval systems of jurisprudence the rules laid down by the smrtis are very mild and humane.\(^{739}\). If there were several creditors there was priority among them i.e. the earlier debt prevailed over the later one; a bramptona creditor however (whatever the date of his advance) was preferred to a ksatriya or other creditor (Yaj l. II. 41, Kat. 514). Kaut\(^{740}\) states that the debts owed to the Crown and a srotriya take precedence over other debts and that unless the debtor is going to abscond several creditors should not simultaneously proceed against one debtor. Section 56 of the Bombay Land Revenue Code makes Government assessment a paramount charge on the land. But acc. to Kat. (513) if several debts were contracted in writing on the same date, they should all be treated as equal and paid off \textit{pro rata} from the debtor’s assets if insufficient; but, if a creditor established that a particular article belonging to a debtor was manufactured by the debtor with his money only, that creditor alone got the money recovered by sale of the article (Kat. 515). Bharadv\=a\=j\=a states\(^{741}\) that if a debtor has no cash then the creditor should be paid by sale of the debtor’s other property in order viz. grain, gold, iron, cattle, clothes, land, slaves, and conveyances, (in the absence of fields) his garden and lastly his house and in the absence of even a house time should be granted to debtors of the three higher castes.

\(^{739}\) Under the law of the Twelve Tables in Rome a creditor could put the debtor to death or sell him to a stranger beyond the Tiber or, if there were several creditors, they could divide the body of the debtor among themselves after the third market day (Table III in Ortolan’s Roman Law p 106). Vide Sen’s ‘Hindu Jurisprudence’ pp 316-17 for later Roman and Irish rules.

\(^{740}\) जनानकसस्यां यु हवें द्वार जयन्ाटिष्ठयोऽध्यायऽध्यायं जयत्मानास्य व मवापि ग्रहीता- \\

gurun\=i. राजविविहरये वा वृह क्षमिवारे। कोमिलिय III. 11. सानीरमसस्यां ये पयथपृथिवते \\

| या तस्यसमयी देशे सङ्ग नर्त्ताविश्वासयुद्ध। कल्यानः। ते । चतुरियत्। II. p. 167, \\

\(^{741}\) जनानकसस्य युगारवे। देशोरेयोर्षेय ताकानात्य। धान्ये हिदुने अरों या गोरिविधया- \\

| विखय सच। या हृथिष्ठिन्ये ज वारानादिव जयजानाद।। गलिकान य जनानकय श्रेयसमहृ- \\

| देशायवे तस्यमत्तावशाये हृथिष्ठ।। जिनमयी जयन्यने कालहारी विलयो ये। भवधान। ते। नेत्र सा III, 259, भवधानासर p. 116. \\

In view of this passage the remark of Mr. Golap Chandra Sarkar in his ‘Hindu Law’ (7th ed. of 1933) p 432 ‘Hindu Law nowhere contemplates a compulsory sale of immovable property in execution of decrees’ seems hardly correct.
When a debtor was not able to return the entire debt in a lump, he should write on the back of the document of debt the sums paid by him from time to time or the creditor may pass a receipt (upagata or pravatapata, as the Mit designates it) to the debtor signed by himself (Yaj II 93, Nār IV. 114, Vīṣṇu Dh S VI 26). If the creditor, though requested by the debtor, would not pass a receipt he was to lose the balance of his debt (Nār. IV. 114) Nār. IV 115 and Br (S B E vol 33 p 332 verse 66) further provide that if the creditor does not write down (either on the bond itself or in a separate document) the money recovered by dharma or some other method then the debtor himself will be entitled to interest on the amount paid by him 741a When the whole debt is paid off, the creditor should tear off the bond of debt or he may execute another document in order to show that the debtor is freed from the debt (if the original is lost or is not within easy reach) and when a debt is borrowed in the presence of witnesses, it should be returned in the presence of the same or other witnesses (Yaj II 94, Vīṣṇu Dh S VI. 24–25) Nār IV 116 requires the creditor to return the document when the whole debt is paid off or to announce openly to others that it has been paid 742

It has now to be seen who (other than the man himself) are liable to pay a man’s debt. The liability to pay another’s debt may arise on three grounds, (1) religious, (2) equitable and moral, (3) legal, such as agency (express or implied) or authority. That the sons and grandsons of the original debtor are liable to pay on religious grounds the debt of the father is expressly stated by numerous writers such as Kaut 71s III 11, Yaj II 50, Nār. IV. 4, Br. (S. B. E vol 33 p. 328 verse 49), Kāṭ (560), Vṛddha-Hārīta VII. 250–51, Vīṣṇu Dh. S VI. 27.

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741a धर्मार्दिनोधियायाः धन वसुपरि न हेलपेन। न चैवपण्येऽवातत्स्ततुद्विद्मनात्पायत॥ शुद्धि।

742 लेख वृद्धाहिङ्गुर्गं तदभवे विविधरूपे। विविधानिनियोर्वे विनियमिति। स्वाक्षरत्वम।

743. विविधाभिवर्धत्वमात्रास्तमसमस्यात्विविधमकाल हुना। पौरा वा कर्णे।। अर्थः

744. जीत्वार्यायीहुनिमात्रभवान्न्यात्विविधमकाल हुना। पौरा वा कर्णे।। अर्थः

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71s III 11, 741a q. by ति य र p. 80, 742 ति य म p. 277

743. विविधाभिवर्धत्वमात्रास्तमसमस्यात्विविधमकाल हुना। पौरा वा कर्णे।। अर्थः

744. जीत्वार्यायीहुनिमात्रभवान्न्यात्विविधमकाल हुना। पौरा वा कर्णे।। अर्थः
The important question is whether the smrtis declare the liability of the great-grandson. It is clear that smrtis like that of Br. expressly say that the great-grandson is not liable to pay his great-grandfather's debt. The Visnu Dh. S. VI. 28 says that the descendants beyond the grandson need not pay if they are unwilling to pay. Others like Nãr. IV. 4 and Kãt. say that the obligation to return a debt ceases from the fourth. The question is what is meant by the fourth i.e. is it meant to exclude, in calculating, the original debtor or to include him? It is possible to hold (particularly because the great-grandson is not expressly mentioned in most smrtis) that the fourth means 'inclusive of the original debtor'. But this appears to be in conflict with the rule in Manu IX. 137 (which is the same as Baud. Dh. S. II 9. 6, Vasi. 17. 5, Visnu Dh. S. 15. 46) that the son, grandson, and great-grandson confer the greatest spiritual benefit on the ancestor, the rule (Manu IX. 136, Nãr. IV. 6) that pañjas (in ṣrāddha) are to be offered by three persons in descent and the general rule that whoever takes the inheritance must offer the pinda and pay the debts of the ancestor (Gaut. XII. 37, Yaj. II 51, Nãr. IV. 23, Visnu Dh. S XV. 40 and VI. 29). Therefore, following the canons, viz. the rights to property are co-extensive with the liability to perform ṣrāddha and to pay off debts (which is quite logical and reasonable), that the texts relating to the same subject matter must be harmonized and reconciled as far as it is reasonably possible to do (ekavādalyatā-vadā), that apparently conflicting texts are to be assigned their appropriate spheres (vatsayuva-vasthā), and that a direct conflict (and so an option) is to be presumed only if no other recourse is open, the Mitāksāra and other commentators put forward the interpretation that the texts stating that the great-grandson is not liable to pay the great-grandfather's debt apply only to cases where the great-grandson inherits no ancestral property, but that he is liable if he takes ancestral property.

Dr. Jolly in his note on Nãr. IV. 6 (in S. B. E. vol. 33 p 44) remarks: "the doctrine, viz. the liability to pay debts contracted..."
by an ancestor extends to the great-grandson, is opposed to the teaching of such an eminent authority as Vyānēśvarā, who maintains in the Mitākṣara that the great-grandson is not liable for debts contracted by his great-grandfather, and conversely that he does not inherit his property. He makes similar remarks in his Tagore Law Lectures for 1885 (on 'adoption, partition' &c. p. 171). Dr. Jolly is under some misapprehension since the Mitīn two places deals with this matter and expressly states that the great-grandson is liable to pay debts contracted by his great-grandfather if he has taken ancestral estate but not otherwise. The following propositions are deducible from the smṛti texts and authoritative commentaries like the Mitī and the Vīramitrodaya (Vyāvalḥāрапrakāśa). The first proposition is that the debts of a man must be paid by his three descendants (son, grandson and great-grandson) if they have ancestral estate in their hands (Mitī on Yāj II 51 quoted in note 745, Sm. C II p 171, V. P. p. 264). The 2nd proposition is that even when no ancestral estate was taken by the descendants the son was liable to pay his father's debts with interest, the grandson was liable to pay his grandfather's debt but without interest and the great-grandson was not liable to pay even the principal, if he was unwilling to pay. This proposition is enunciated by Vism Dh. S VI 27–28, Br. (S. B. E. vol. 33 p. 328)

745. On जगन्मलिन्म &c. of बुद्धरस्वति referred to above the दन्तित (on the II 50) remarks 'सम यातकस्थित साधकृत देश न इति' तत्कारणम् प्राचीनस्य सप्तसं कुलविवेके। एक्त्वत्ततांत्रीकृत शास्त्रविवेके। On the words बुद्धरस्वति रिविषा (on the II 51) the दन्तित explains 'सत्वत्वात्मावघितस्य सप्तसंकायी काव्य रिविष बुद्धरस्वति तथा अस्य दक्षरूपः नामयोगेवासर्वस्य। इत्यति तथ रिविषातप्रशासनमविवेकित्वात्'। Dr. Jolly probably misunderstood 'आपूर्वत्तमलिन्म' and held it to mean 'that a great-grandson does not take the ancestral estate', but it really means 'if he has not taken &c.' The शुभ्यकज्ञ, II p 171 says, 'वृत्ति कामविभावितकालानिवारणाधिकारिणिः भूतर्विदयनिवारणकालानिवारयितुस' न इत्ततत्तविवेकित्वात्त्वनत्वद्। ... इवितत्तर्विन्यासं न पौर्णानिवारणिकारिणिः श्रद्धाविवेकित्वात्त्वनत्वद्।

746. The first proposition is followed by modern decisions in British India. Vide Lachman Das v. Khumnu 19 All. 26 (F. B.) which holds that the mortgagee of a man who had mortgaged joint ancestral property can enforce his mortgage against the grandson of the mortgagor for the realization of interest as well as principal, Laddu Naram v. Gobardhan 4 Patna 478, Nazir Ullah v. Damodar Prasad 48 All. 518 (P. C.) where the Pady Council held that the great-grandson is liable for the debts of his great-grandfather as much as he is liable for those of his father or grandfather. In all these cases passages from the smṛtis of Yāj, Nār. and Br and from the Mitī and the Vīramitrodaya are quoted and discussed.
v. 49 referred to on p. 443) and Kat. 556. In Narasimharau v.\textit{ Antaji} 2 Bom. H. C R, 61 it was held (probably following Brhas\textendash patri, though not quoted in the judgment) that the grandson was liable to pay the debt of his grandfather without interest even if there was no ancestral estate. This was felt to be a great hardship on heirs (taking no ancestral estate) and in order to remove it Bombay Act VII of 1866 (the Hindu Heirs' Relief Act) was passed whereby it is provided that a son or grandson is not liable to be sued for the debts of his deceased ancestor merely by reason of his being such a son or grandson and that the son, grandson or other heir shall be liable only to the extent of the assets that come to his hands. The same is the law laid down in other parts of India by judicial decisions. Br. (S B. E. vol. 33 p. 328 verse 48) recommends that the father's debt must be paid first of all and after that one's own debt; but a debt of the grandfather must always be paid even before the preceeding two kinds of debt. These two propositions of Hindu jurists are very lucidly, but succinctly, set forth by the \textit{Vira\textendash mifrodaya} quoted below. The third proposition (which is an exception to the above two) is that even a son is not liable to pay certain illegal and immoral debts of his father. This proposition will be discussed a little further on. A fourth proposition is that even when the father is not dead, the son, grandson or great-grandson may be liable to pay the father's or other ancestor's debt under certain circumstances. Yaj. II. 50 provides that sons (and grandsons) must pay the debt of the father when he is dead or has gone to a distant country or is afflicted with an incurable disease. Nar. IV. 14, Visnu VI. 27, Kat.

\footnote{556 q. by \textit{Swa\textendash vin} II. p 170 and q r p. 48.}

\footnote{556 q by \textit{Swa\textendash vin} II. p 185, q r p. 47, \textit{Pap} III p 254}

\footnote{548-550 q by \textit{Swa\textendash vin} p 650, q r pp 50-51, \textit{Pap} III 264, \textit{Swa\textendash vin} II. p. 169, q r pp. 255-256 Some of these ascribe the last to \textit{Swa\textendash vin}}

The first and third verses of \textit{Kat} are quoted in \textit{Peda Venkanna v. Sree\textendash wada} 41 Mad. 136 at p 149. The \textit{Chet. \textit{Kat}} (p 256) remarks that these texts indicate that during the father's lifetime only the sons are liable for the father's debts and not the grandsons, but if no sons are alive then even grandsons will be liable.
548-550 state that when the father, though living and near, becomes an ascetic (acc. to Visnu), is afflicted with such diseases or calamities as blindness from birth or loss of caste (due to grave sins), lunacy, tuberculosis, leprosy and other (incurable) diseases or when he has left his country or has gone on a long journey or is very old (above 80) the son will have to pay the debt of the father after the twentieth year (from his going abroad). Acc. to V. R. (p 50) if the father's disease was incurable or if it was certain that he would not return from his journey then the son was bound to pay at once and was not entitled to wait for 20 years Kat (552-553) introduces a further restriction that even when the father is dead, if the son has not attained years of discretion (i.e. if he is a minor) he need not pay the debt of his father during his minority; but when the proper time to pay arrives he must pay the debt, otherwise the (ancestors) may remain in hell. Thus the son's liability during the father's lifetime or absence was not absolute but limited according to the smritis and digestes; judicial decisions, however, have brushed all this aside and the son's liability to pay his father's debts during the latter's lifetime is now as absolute as after his death. This will be discussed further on.

According to all smrti writers even the son, though he may have taken the ancestral estate, is not liable to pay certain debts of the father which are compendiously described as 'illegal or immoral' in the decisions of courts. Gaut.
What debts need not be paid by sons

38, Kaut. III. 16, Manu VIII. 159-160, Vas. 16. 31, Vyāj. II. 47 and 54, Nār. IV. 10, Br. (S. B. E. vol. 33 p 329 verse 51), Kāt. (564-565), Upanās and Vyāsa provide that the son is not bound to pay the following debts of his father viz. those incurred as a surety (for honesty or appearance), for drinking or in gambling, those arising from idle promises (to bard, wrestlers and the like), debts for promises made under the influence of wrath or ill-ōft love to women, the balance of a fine or toll and those that are not vyāvahārika. A debt arising from wrath is explained by Kāt as one where the father causes physical injury to another or destroys another's property through anger and then promises something to pacify the person wronged. As regards the suretyship debts of the father, Vyāj. II. 54, Vyāsa and Kāt. (561) provide that when the father was a surety for payment, then the son was bound to pay the principal of the debt for which the father stood surety, but the son of the son was not liable at all to pay the suretyship debt of his grandfather even when the latter was a surety for payment. These verses about the debts which the son was not bound to pay have been quoted and explained in numerous decisions of the courts. But as this work does not profess to be a treatise on modern Hindu Law those cases are passed over here. What is meant by 'debts that are not vyāvahārika' has presented the greatest difficulty to the medieval commentators and digests and also to modern courts as noted below.

733 कहा देवताम् परमः पाणिभोग्याणां स्वतः। सदा दुर्बलस्य दु:ः सत्यवाच्यविवेचनम्
   यष्ट त् अथात्सर्वाच्यविवेचनम्। अथात्सर्वाच्यविवेचनम्
   ब्रह्मचारिणाः।

734 यदा न भवायाहर्मिन भवायाहितस्य। अथात्सर्वाच्यविवेचनम्।
   अथात्सर्वाच्यविवेचनम्।

754, यदा न व्यावहारिकम् व व्यावहारिकम्। अथात्सर्वाच्यविवेचनम्।
   अथात्सर्वाच्यविवेचनम्। अथात्सर्वाच्यविवेचनम्।

Coleridge translates व्यावहारिकम् as 'debts for a cause repugnant to good morals'; other renderings are 'which as a decent and respectable man the father ought not to have incurred' (32 Bom. 348 at p. 351); 'not lawful, usual or customary' (39 Cal. p. 862 at pp. 868-869), 'not supportable as valid by legal arguments and on which no right could be established in a court of justice in the creditor's favour' (37 Mad, 438 at p 460); vide Ban Mani v. Usafaill 33 Bom. L. R. 130 (at p 138) and Bal v. Maneklal 56 Bom 36 where the various meanings of 'व्यावहारिकम्' and the conflict of judicial decisions are set out (at pp 50-53). In the latter case the wide meaning of the words given in 32 Bom 348 has been disapproved of (at p 53). In Govinda Prasad v. Raghunath Prasad I. L. R. (1939) Bom, 233 a Full Bench has dealt with the meaning of 'व्यावहारिकम्'.

In Hare v. Khemchand 1 L. R. (1943) All, 727 the Privy Council state the various renderings of व्यावहारिकम् given by different authors and judges and hold that Coleridge's rendering makes the nearest approach to the real meaning of the word as used in the smritis and that it is the character of the debt that is to be looked to and not the actions of the father.
where the father became a surety for appearance (or honesty) after receiving a pledge from the person whose surety he became, then the son of the surety may be made to pay the money due from that pledge in case the father is dead or has gone abroad 755.

The case law on the subject of the father’s debts and the son’s liability to pay them has assumed enormous proportions. This is not the place to discuss the case-law. But as the courts in India profess to follow the Hindu Law of the sages and medieval digests, it is necessary to examine some of the principles laid down by the latest decision of the Privy Council. In Bry Naran v. Mangla Prasad 51 L. A. 129 (=46 All. 95) the following five propositions are laid down by the Privy Council (at p 139): (1) the managing member of a joint undivided estate cannot alienate or burden the estate qua manager except for purposes of necessity; (2) if he is the father and the other members are the sons, he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt; (3) if he purports to burden the estate by mortgage then, unless that mortgage is to discharge an antecedent debt, it would not bind the estate; (4) antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached; (5) there is no rule that the result is affected by the question whether the father, who contracted the debt or burdened the estate, is alive or dead. It

755. सूक्तिक्रम मन्थन यज्ञ उथं दुर्गमत्र विनियोगल मेधगुर्जु विनियोग लगभग शुरु करता 554, q. by the Mit. on Yaj 54, अंपार्कपं 656, Vide Ghoudhuri Govund Chandra v Hayagriva 10 Patna 94, where it was held that when a father-stood surety for the honesty or good behaviour of another as guardian for a minor’s property, the son was not bound to pay the suretyship debt of the father. In Kottapalli v Kamalakar 58 Mad 375, where the father executed a surety bond that a certain judgment debtor would file an insolvency petition within a specified period and the debtor failed to do so, it was held that the guarantee was one for confidence or honesty and that the sons were not liable on the father’s death Similarly in Dhar Narain v Shova Sahay A. I R. 1935 Patna 27 it was held that sons are not liable under Hindu Law where the father stood surety for appearance only. In Narayan v Venkatagopala 6 Bom L. R 434 it was held that under the law of the Mitaksara a grandson is not liable to pay a debt which his grandfather contracted as a surety unless the latter in accepting the liability of a surety received some consideration for it.
is necessary to see how far these principles agree with or deviate from the law of the smṛitis and the digesta. The first proposition is in consonance with the law of the smṛitis and of the commentaries like, the Mit. Yaj. II. 45 provides that whatever debt is contracted by the head of the joint-family for the necessities of the family has to be paid by the members who take the ancestral estate when the head is dead or goes to a foreign country. The Mit. on Yaj II. 114 quotes and explains a smṛti text. Even one (the head or manager of a joint family) can make a mortgage, sale or gift of immovable property in a time of distress, for the necessities of the family and particularly for religious and charitable purposes. What is meant by 'debts in times of distress' and 'कुटुंबार्थोऽ' is explained by Kat (542-43) quoted in n. 756. This has been the foundation of numerous cases, the first and the most important of which is that of Hunoomanpersaud v. Mussamat Babooee 6 Moore’s Indian Appeals p. 393 (P.C.). The 2nd proposition laid down

756 अद्वितीय: कुटुंबार्थोऽ वहन तु क्रत्व मद्वादुतुकं दुस्मविधिनिः भेजे सापि या, कुड़ि- स्वितीता या या, 45, कुटुंबार्थमलेक भरती व्याबिलेन या। उपायानिमित्त व विवादास्पदते ह तत्। क्षत्रियानिविद्यैः कै ततासाहित्याः न परमतमाः। वैतर्नी महावाण वृहदाभिः। सावित्याः या भेजे मन्योः। भाष्या वायुः या भेजे मन्योः। भाष्याः परं तत्। परा तत्। पर्यायाः मत्र निर्णयाः। भाष्याः परं तत्। पर्यायाः मत्र निर्णयाः। भाष्याः परं तत्। पर्यायाः मत्र निर्णयाः। भाष्याः परं तत्। पर्यायाः मत्र निर्णयाः।

757. At pp 423 and 424 of 6 Moore’s Indian Appeals the Privy Council employ the following words that have become classical: ‘The power of the manager for an infant heir to charge an estate not his own is under the Hindu Law a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance, is the thing to be regarded....They think that if the lender does inquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge and they do not think that under such circumstances, he is bound to see to the application of the money'. The words 'the actual pressure, the benefit to be conferred' and the remarks about inquiry by the lender are a prolific source of litigation and have given rise to a mass of case law. In L.R. 51 I A 129 at p. 137 the Privy Council themselves say that the distinction made between secured and unsecured debts of the father is anomalous. They give an instance: 'A father who is manager borrows a like sum from A and B. To A he gives a mortgage on the family estate containing a personal covenant. To B he gives a simple acknowledgment of loan. B sees and gets a decree, on this decree execution can follow and the estate can be taken. A, suing on his mortgage, cannot recover' (because the debt was not antecedent).
above also follows from several smritis (such as Yaj. II. 5
Visnu Dh S. VI. 35, Nar. IV. 2, 4, 6) and the rules about immoral debts cited above. But it is difficult to understand why the Privy Council make a distinction between a simple personal-money debt of the father and a debt secured by mortgage (as in propositions 2 and 3). The ancient texts and commentaries make no such distinction. Vide 42 Mad 711 at p. 731, 26 Bom. 206 at pp. 217-219 (F. B.) and 60 Bom. 311 (F. B., where this is pointed out. With the greatest respect it must be said that the distinction is not only without dharmaśāstra authority, but is also anomalous. The distinction between 'antecedent debt' and a debt contracted at the time of executing a mortgage is unknown to the smritis or digests. The Privy Council had used for the first time in a very early case (viz. Suray Bunis v. Sheo Prashad 6 L A. 88 at p. 106 = 5 Cal. 148, 171) the words 'antecedent debt'758 for which there is nothing corresponding in the Sanskrit authorities and round which elaborate arguments came to be centred in numerous later cases. According to the Privy Council (proposition 5) the son's pious duty 'to pay his father's debt as absolute during the father's lifetime as after his death. It has been shown above that the duty was not absolute but qualified and limited during the father's life according to the smritis.

Yaj. II. 52, Kaut. (III. 11) provide759 that husband and wife, father and son and brothers cannot, as long as they are undivided, stand sureties for each other or be debtors and creditors of each other or be witnesses for each other. The Mit. has a long note on Yaj. II. 52. It shows that a wife may be divided as to estate from the husband if the latter desires (as laid down in Yaj. II. 114) and that in that case there may be the relation of debtor and creditor between them.

758 The proposition laid down in 6 I. A at p. 106 is 'where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt or in order to raise money for an antecedent debt or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted'.

759. अरुणाचल दुम्भरस्यात धिन्तं कुरतर जैव हि। आतिनिष्ठग्निः सात्वरमालविन्नो भो विदुर्दक्ष्य। या II. 52, दुम्भरस्य पिलांद्रवं: ब्राह्मणं ब्राह्मणां परस्परक्षुरवेदनताङ्गः कौशिकेऽयम् III. 11.
The Mit. further explains the sūtras of Āpastamba which lay down that there can be no division between husband and wife, for since the day of marriage they have to perform religious rites together, they also participate together in the rewards of merit arising from religious rites and also in the wealth acquired; for this reason when the husband has gone abroad if the wife spends on necessary occasions (out of the family wealth) it is not declared to be theft. The Mit. explains that the absence of division between husband and wife is restricted to religious rites performed with ātra fire or smārta fire and in the rewards of meritorious acts and not in all actions or as to all property. Therefore in other charities where no sacred fire is required (pūrta acts such as constructing a well or a public park) they have separate rights.


The father is not bound to pay his son’s personal debt; the husband is not liable to pay the wife’s debt, nor the wife her husband’s or son’s. But in all these cases if the debt is incurred for the benefit or purposes of the family by the son, the wife or the husband then the father, husband or wife respectively would be liable (Yaj II. 47, Nār. IV. 10–11, Kāt. 545, 579). If the father promised to pay his son’s individual debt or if he approved or acquiesced in it he was liable to pay it. Manu VIII. 167, Yaj II. 45, Nār. IV. 12, Br. (S. B. E. 33 p. 329 v. 50), Kāt. (545) provide that a debt incurred for the purposes of the family by any one such as the son, brother, uncle, the wife, the mother, the pupil or a servant or a slave even without the consent of the head of the family when he has gone abroad, should be paid by the head of the family. This liability and the liability when the manager of a family contracts a debt for the benefit or necessities of the family arise from agency (implied) or authority. Kaut. (III. 11) holds that the husband may be seized (for work)

760. जातपथ्येऽऽतिम निभाति विषये | पाणिव्रहणादि सहलं कर्मद। तथा प्रथवकल्दु | जुण्यतिमदे च | न हि भद्विस्वासः नैनिसिद्धिः वा सेवकपदिशिश्च। आप. म. श. इ. II. 6. 14. 16–19.

761. मेलितस्यानेनापि कुख्यात्प्रणामयुं कुत्म | वास्तिमागुणितिः विधाणाधुः वा | स्थि: || कात्य (545) q. by अपराजेय: p. 548, परा. नार. p. 268, वि. र. 56. अपराजेय reads प्रसन्नवन्तिप्रार्जितीयेऽऽतिहाः अनित्य वै वर्तमानवपदिशिश्च। आपाजा: would mean agnates residing in the house. This verse is quoted in Virasvami v. Ākṣavas 1 Mad. H. C. R p 375, 379n. प्रवत्तिमागुणितिः स्वाभाविकाः प्रार्जितिः | यद्र शाशिते कुद्र्यादि तद्र शाशिते \kuh. q. by स्वाहिता. II. p. 174.
if he starts to go abroad without providing for the return of the debt contracted by his wife.

The general rule that the husband was not liable to pay the wife's debt had an exception viz. the husband was liable for the debts of the wife in the case of cowherds, vintners, actors, washermen and hunters (and the like) whose income depends on their wives and whose household expenses are defrayed by their wives (Yaj II. 48, Visnu Dh S VI. 37, Nar IV. 19). Similarly the rule that the wife was not liable for the husband's debt had certain exceptions, viz a debt of the husband which she promised to pay because he was dying or going abroad or which was contracted jointly with her husband. (Yaj II. 49, Nar IV 16-17) The Mit. on Yaj. II. 49 answers the objection raised by some that, as according to Manu VIII. 416 (=Udyogaparva 33. 64) the wife, son and slave are without property and whatever they earn is acquired for him to whom they belong, the wife would not be able to pay anything at all. The reply is that this verse of Manu does not mean that a wife or son can own no property at all, but all that it declares is that they have no independent power to dispose of their property.

The order in which persons are liable to pay a man's debts after his death is declared by Yaj II. 51, Nar IV. 23, Br. (S.B.E. vol. 33 p. 329 verse 52), Kat. (562, 577), Visnu 264 VI. 29-30.
Whoever takes the wealth of the deceased (whether a son or a collateral heir) is primarily responsible to pay the debts of the deceased; but if the deceased died without leaving any property, then he who takes his wife has to pay the deceased’s debts; if there be no wealth or taker of the deceased’s widow, then the son even if he succeeds to no wealth has to pay. This liability may be said to be based on the equitable and moral principle that whoever takes the wealth of the deceased or his widow (over whom the deceased had a sort of dominion) was bound to pay his debts. There appears to be some conflict between the texts; but it is more apparent than real. Verses (like Kat 577) where the son is placed after the taker of wealth and before the taker of the widow refer to a son who has separate and independent wealth of his own and is more wealthy than the taker of the widow (though he himself being disqualified did not succeed to, ancestral wealth). When there is no wealth and there are several sons one of whom is congenitally blind or otherwise incompetent to succeed then the other sons are liable. From the fact that the taker of the widow is made liable for the debts of the first husband it should not be supposed that the ancient sages approved of widow-remarriage. On the contrary they condemned it (vide Manu V. 162), but, as the Mit. (on Yaj. II. 51) remarks, remarriages took place by custom among certain castes and nothing could prevent persons from taking widows as kept mistresses. Therefore as the wife was half of the husband (acc. to Vedic and other passages q. in H. of Dh. vol. II. pp. 428, 584 n. ) she was practically the husband’s wealth (Når. IV. 22 expressly says so)765 and so the taker of the widow was saddled with the obligation to pay the debts of the deceased. This sentiment continued to modern times and in the Bombay Presidency the Legislature had to declare (by Bombay Act. VII of 1866, sec 4 ) that ‘no person who has married a widow shall merely by reason of such marriage, be liable for any of the debts of any prior husband of such widow’. The Vaijayanti on Visnu Dh. S. VI 30 quotes Yaj. II. 51 and Når. IV. 23 and

765. अनन्तः व्रजात्रस्वतन्त्रवादति यथः भिष्मः | स अनन्तादेव गोकुः सैयं तत्सि धर्मं वतः || नारद् IV 22 : गौड़स्याहो वादति शाम्रविनेन न संभवति विद्याविद्वादिनिवेदः पुष्पपरित्याग्याकर्मणिविष्कायामहत्रेभ | गौड़स्याहो यथवर्त्य स्वरूपान्वत्सन्विनेनस्य भमिति यथः दुर्गृही विवधाय मधुकास | सिता. on या II. 51. Then नारदः (क्षीरुकुसवम) verses 45-53 are quoted by the Mit.
explains them differently. According to it the word ‘putra’ (in Yaj II. 51) is qualified by all the three adjectives viz ‘rikthagrāha’, ‘yosidgrāha’ (one who is married) and ‘ananyā-srītadravya’ (one who has no wife nor child and one who has taken no ancestral wealth, either because he does not desire it or because none exists). Therefore according to it among sons, the son that takes ancestral wealth has to pay the debts of the father, on failure of such a son when some of the sons are married and some are not, the married ones have to repay ancestral debts and lastly when there are no married sons the one that is wifeless, childless and also without wealth has to pay them.

Nikṣepa (deposit). The words miksēpa, upamdh and nyāsa are sometimes said to be synonyms (as done by Amara), though several ancient works define them separately. According to Yaj II. 65 upamdhi is the deposit of an article enclosed in a box or the like made with another without telling him of the contents of the box. Yaj II. 67 holds nyāsa and nikṣepa to be different from upanidhi. Nārada as quoted in the Mit. on Yaj. II. 65 defines upanidhi as the deposit of an article in a sealed receptacle without counting it in the presence of the person to whom it is entrusted and without telling him what the receptacle contains, while a nikṣepa is a deposit entrusted to a man after counting the articles in his presence. Manu VIII 149 (= Vas. 16.18), Kaut. III. 12 hold nikṣepa and upanidhi to be distinct. A verse quoted by Keśaravāmin on Amara defines nyāsa as an open deposit and nikṣepa as the delivery of some goods to an artist or craftsman for being worked up or manufactured. Nār. (V. 1 and 5) defines nikṣepa as the deposit of one’s articles with another through confidence, while upanidhi is defined in the same way as Yaj II. 65. Viśvarūpa defines nyāsa as an open deposit for safe custody and nikṣepa as delivery of one’s article to another for handing over to a

766 पुनात्तेलितिस्वार्थम् पतितमार्य वद्य्यजौम. असर्वकार्यः, स्वाभो जेठो ज्ञेयार्थः. शास्त्रः नस्ति. नरय यद्यदिनम्. कुन्यज्ञानितिस्वार्थम्. प्रकाशम् शवापितं म यत्र. लिपिं विलितार इ भार्यं रथयाक्षेतिद्वाद्. किङ्करसानी इति असर्वकाराः

767. राहु वर्तमानः असर्वाशालक्षरां संधक्य यक्षिजीयोते तन्त्रानीयायुपिनिवि लिपेये गतिते विङ्कु। लिपिं इति इति इति. य य सर्वकाराः।

768. तथासे निनिर्मितस्य दार्ये ज्ञानवाच वस्मास्वतः. निनित्रितश्च एव वर्तमाने वेश्वेतु निंकितान्. विनियोगस्तिस्य इति इति। इति इति इति. य य सर्वकाराः।
third. Kāt. (592) makes upandalu a generic term for all bailments such as a sold article remaining in the hands of the vendor, a deposit, a pledge, bailment to one for delivery to another; loan of article for temporary use, goods handed over for sale to an agent. The Mit. on Yāj. II 67 defines nyāsa as handing over to some member in the house an article in the absence of the head of the house for delivery to the head of the house and nikṣepa as a deposit in the presence of the depositer himself. The V. P. p 280 briefly distinguishes the three as noted below.770

Nikṣepa or upandalu was a bailment made in trust and differed from an adalu in this that the former was not given by way of security for a debt or for collecting interest but in confidence for safe custody.771 Br. (SBE vol. 33 p. 332 verse 2) says that such a deposit is made with another when one is leaving one's home, or through fear of the king or for depriving one's kinsmen.771 Manu VIII 179 (=Nār. V. 2) says that one should entrust a deposit to a person who is born of a good family, is well-conducted, knows dharma, speaks the truth, has a large family, is wealthy and straightforward. The person with whom a deposit is made generally receives no personal benefit from it; hence the smṛtis (such as Br. in SBE 33 p. 333 verses 6-8) extol the holder772 of a deposit made in trust to be as meritorious as one who makes gifts of gold or other inferior

769. कथा ऋषिनिनिधिस्ते वधानावहितपालितय:।
वैद्यवृत्तिपिते बृंज सोपदेशप्रियः।
śrutas. II kāraya 592 q. by स्तुतिचिर्मी. II. p 3, अदारार्क p 562, विग्रहवन्द्र (p 27, reads कथा ऋषिनिनिधिः).

770. श्रावकर्ता सवालं गणितं स्फारिष्ठं निश्चितं।
हर्षद्विविद्यत्सकं गणितमार्गं
वा विविद्यत्सकं एकात्महत्त्वः।
अनुवादः समन्तमार्गं
स्फारिष्ठयोऽपिनिश्चिति।
भ. म. p. 280

771. उपेन्द्रकुशालेश्वरया पवस्ति कूष्कमुखः
तत्त्वपेशस्या शक्तावहितपालयाः।
उपालक्षिप्राप्तैः कृष्णावहितपालितयः।
स वै p 265

772. श्वात्स्यमालोकानमहाभाँ द्राक्षाराणी भवनादान।
श्वात्स्यमालोकः नस्ते निक्षेपे
षाड़मावतः तद्भवे।
भूष q. by स्तुतिचिर्मी II p 178, राजचौरिपालित्वाद्वारायणाच भवनादान।
श्वात्स्यमालोकः हर्षवं व्यावः ।
भ. म. p. 279

773. द्रव्यस्ती पद्धिकुशालं हेमस्या मालावहितपालकः।
तत्त्वालोकः व्यावः ।
भ. म. प. 279

(First two only).
metals or clothes and condemn the misappropriation of a deposit or the losing of it through negligence as very sinful. The idea is that no one is bound to accept a deposit, but when a person accepts it, his primary duty is to preserve it with care and the next duty is to return it at the time agreed or on demand. The obligation arises from the trust reposed in a person. The rights of the bailee are limited as compared to those of the mortgagee or pledgee, but the very fact of his custody in trust clothes him with certain rights. The amount of care required of the depositee is the same as in the case of an ādhu, viz he is to take the same care of it as he takes of his own goods and is not liable if the deposit is lost (along with his own property) through act of God or the king or is stolen by thieves (Manu VIII. 189, Yaj. II. 66, Nār. V. 9 and 12, Br. in SBE 33 p. 333, verse 10, Kāt. 593). In the Mṛchakatika Candatā accepts liability for the loss of the ornaments deposited with him by Vasantasena, though they were stolen, because of his high sense of chivalry and of his idea that proper care was not taken by him or his friend. But Nār V 9 is careful to add that the loss through us major or through theft must be real and not fraudulently brought about. Nār. V. 6 and Br (in SBE 33 p. 334 verse 14) state that a deposit may be made in the presence of witnesses or without them, that it should be returned in the same way and condition in which it was made and that if there is a dispute, it may be settled by ordeal (when there are no witnesses). The article deposited must be returned in the same condition (as regards seal &c.) in which it was handed over (Yaj. II 65). It must also be returned to the man himself who made the deposit and not to his co-owners (Manu VIII 185, Br. in SBE 33 p 333 verse 9). He is estopped

774 वैद्यास्तवसनस्वभाय तथा वाङ्गनामापथात। वृद्धित्वस्वपविवतं तत्र दोषोऽन विधमि।

775 वृद्धित्वस्वपविवतं तत्र दोषोऽन विधमि।

776 वृद्धित्वस्वपविवतं तत्र दोषोऽन विधमि।

777. वृद्धित्वस्वपविवतं तत्र दोषोऽन विधमि।
from recognising the title of any one except the depositor, as in section 116 of the Indian Evidence Act. But if the bailor be dead the bailee can return it of his own accord without demand to the co-owners (Manu VIII. 186 = Nar. V. 10). In doing so however he must not return it to one of several heirs, but to all or in the presence of all. The loss of a deposit may be due to the fact that the bailee consumes it by using it, or to the bailee’s negligence or to his ignorance. In these cases the bailee was made to reimburse the bailor for the loss. But Kāt. (597)\(^{778}\) makes a difference, viz. when a bailee consumes the deposit by use he should be made to pay the price with interest, when he loses it through negligence he is to pay only the price (but without interest) and if he loses through ignorance, then he is to pay a little less (i.e. less by one-fourth) than the price. Vide Br. (S B E vol. 33 p. 333 verse 11) and Nar. V. 8. If a bailor knowing the proposed bailee to be a careless man deposits his goods with him, the bailee is not liable even if the goods are lost from any cause whatever (Kāt. 599).\(^{779}\) If immediately on demand by the depositor the bailee does not return the thing deposited or it is lost after demand from any cause whatever (including act of God or king), the bailee has to return the thing or the price of the thing (when lost) and also is liable to be fined by the king in the same amount (Vaj. II. 66, Nar. V. 7). If the bailor makes use of the article bailed without the permission of the bailor, he should be fined by the king and should be made to return the thing bailed with interest (Vaj. II. 67, Nar. V. 8). In the Rāj. T. (VIII 124–157) occurs the story of a person who had deposited one lakh of dināras with a merchant and had withdrawn some money from time to time. It further states that, when the balance was demanded, the merchant furnished a statement of accounts giving a list of

\(^{778}\) नारायणसिद्धिलोकसिद्धिष्ठ । अज्ञातानालिपि वैविलेन द्वारा: स एव संह ॥ मशिरी स्त्रियारुपं दृष्ट्योऽस्मे नावम्य उपेशिष्ठ । कुर्भमन्दूर्ब्वं श्वाप्यं श्वाल्काय नालिष्ठ ॥ ब्राह्मण: 596–597, quoted by प्रक. मा. III. p. 283 (ascribes 597 to वाराणस), प्रक. म. p. 282 (ascribes 597 to both ब्राह्मण and साहाय), सिद्धार्थ. on वा. II. 67 (597 only). Bṛha. q. by प्रक. मा. III. p. 283 and प्रक. म. p. 282 has a similar verse भौषणविवश्च वसुरोद्धर बहीत ना वर्ण्येत:। नारायणसिद्धिलोकसिद्धिष्ठ ॥ 'कुर्भमन्दूर्वाष्टिवभौवास्तीकिनित्' सिद्धार्थ. Compare Sec. 161 of the Indian Contract Act.

\(^{779}\) श्रावण ्शुचिविनिष्ठ ॥ बुद्ध पभ वितरिकट । सोमपार्वतिनासितौ वहीत वैविलेन ॥ ब्राह्मण: q by स्वानित्व. II. p. 179, प्रक. मा. III. p. 283, वि. र. 89, प्रक. म. p. 282.
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fictitious items of withdrawals for many years with interest and showing that very little of the deposit was lost. The king brought home the fraud to the merchant and ordered that the original deposit being used by the merchant should bear interest.

Kat. (506) provides that when a deposit, a balance of interest, purchase price (not paid though the article be delivered to vendee), or sale price (articulo sold being retained by vendor though price is paid) is not returned or paid when demand is made, it carries interest at 5 per cent (from the date of demand). Manu VIII. 191 (which is almost the same as Nar. V. 13) provides that where a bailee does not return the deposit though demanded or where a person without making a deposit claims it from a person, both are to be punished as a thief by the king and to be made to pay a fine equal in amount to the price of the bailed article (claimed). The deposit has to be taken back at the proper time by the depositor and the bailee has to avoid returning it at an improper time; if the latter returns at an improper time he should be made to pay a fine double of the value of the thing. 771 (Kat. 601).

Yāj. II. 67, Nar. V. 14, Br. 781 (S. B. E. vol. 33 p. 334 verse 15) extend these rules about ṅūṣeṣa to other kinds of bailments viz. to yacītaka (an article such as an ornament borrowed from a man on a festive occasion), amāhita (what is handed over to a third man and is the property of another and has been pledged with a man), nyēsa, upanidhi, tīpamūśa (giving an article such as gold to an artisan like a goldsmith for preparing an ear-ring or the like), pratamūśa (mutual deposit). Some of the rules about yacītaka are stated above.

780. निलोकं यूक्ति का कृपा किल्लनेत्र च। पार्थसरस्ते न बुधाधिपति पञ्चन लावते। कार्य। ग। इमिता या या। II. 67, परलं. मा. III. p. 224. वि. 15. 'यो मूलं युक्ती में विकलितचर्य बुधातिवत्ते याचित्रि न बुधगति केला द बौक्ता कोपसाधनाय याचित्रि न बुधगति स पञ्चकायकमेव बुधिनी बुधाधिपति।' वि. 15.

781. भागाभूप्वतानि. कार्यान् कालोपनि हु जर्जति। कालोपनि बुधु बुधुं दिष्टा च कार्यान्ते। कार्यान् 601 गं. इमिता 663. स्थानिच। II. p 181, परलं. मा. III. p 286, वि. म. न. 285 which remarks (following Sm. C) बुधाधिपतिविभागस्तं हले न्यक्तसंघीतति कार्यान् म बुधानु प्रभां। कालोपनि तिक्तिति कार्यान् समानेता नागाधिकारायणस्तं तिक्तिति संक्तिष्टिकारायणस्तं भूतानि कालोपनि तरव दुन्नह दिलेक्षेरिति तस्यतीर्थनि दुन्नहु तुजा। Compare sec. 159-160 of the Indian Contract Act

782. अनुसारति याचित्रिक स्तिमिताते समानेतारे। इन एवं तिक्तिति भूमिलयमा व भूमि-गमे। धृष्टं. गं. इमिता II. p 182, वि. न. 287.
Rules about loss of yācitaka

(pp. 426–427). Kaut.\textsuperscript{783} III. 12 states that a yācitaka or avakrita (lent on hire) article should be returned in the same condition in which it was received. If lost through act of God or king or through theft (after taking proper care) the depositee would not be liable. Kaut. (610) provides\textsuperscript{784} that he who having taken the loan of an article for use does not deliver it even on demand should be restrained (by the owner) and forcibly made to return it and fined by the king if he does not return it; he should be made to pay the price with interest (if the thing be lost after demand). If the loan of an article was taken for a specified period or for a particular occasion or purpose and a demand for return be made in the middle and the article is not returned when demanded, the person taking the loan would not be made to pay the price: but if a person who has taken on loan an article does not return it after the period fixed has expired or the purpose is served, the borrower must offer to the owner the price if the article be destroyed or lost and if he does not return even after demand (when the period has ended) the borrower would have to pay the price with interest.

Kaut. (609) states a reasonable counter-exception to the rule in 606 viz. ‘when the owner of an article borrowed by another is likely to sustain loss if the article borrowed were not returned on demand, then the borrower should be made to deliver it even though the time fixed has not ended or the purpose of the loan was only half fulfilled’.

There are some special rules about śālpunyāsa also. Kaut. (608–604) provides that if an artisan or craftsman retains an article delivered to him beyond the time that was settled (or

\textsuperscript{783} Kaut. 573

\textsuperscript{784} Kaut. 608 q by Siv. r. p. 664, Śūlūṭic. II. p. 184, Śiv. r. p. 92. This shows that he could at once resort to the remedy of ātā.
agreed) for finishing the work he should be made to pay (its price) even if the article was lost through act of God, but the artisan shall not be liable to pay the price if the article were to be lost through defects in the article itself; if (however) what is delivered for being worked or polished is destroyed through the fault of the artisan he should be made to pay the price.  

From the fact that Kat. 596 (quoted above in n. 778) employs the expression 'dāpyah sa eva tat' (he alone who misappropriates or causes loss of a deposit by negligence), the words of Gaut. XII 39 (quoted above under ādha) and the fact that niksēpa is a title distinct from rnādāna (under which alone the liability of sons, grandsons, and great-grandsons is expressly declared) it follows that sons are not liable for the misappropriation or loss of a deposit or article bailed to their father or other ancestor provided they have not themselves joined or helped in the embezzlement or loss. This is made clear by Haradatta on Gaut. XII 39, the Vivādacintāmani and the Vivādacandra quoted below.

It is interesting to note that Nār.787 V. 15 places on the same level (as to liability for loss) with the depositee and the like the man who takes in his charge a minor that has a good deal of wealth i.e. the person undertaking the position of the guardian of a minor’s property has to take as much care of it as of his own and is liable in the same circumstances as a
depositee would be for loss of the minor's property. Vide section 27 of the Guardian and Wards Act (VIII of 1890) for the care required of a guardian 788.

788. The British India Courts have been very much exercised over the question of the liability of ancestral property in the hands of the son for the obligations incurred by the father by his misconduct or embezzlement either as agent or manager for another or as guardian of a minor's property. It would follow from the passages quoted in n. 786 that ancestral property in the hands of the sons is not liable, acc. to some of our digests, if the father used or lost a deposit or loaned article by his negligence or mismanaged a minor's property. It is firmly established that the son is not liable for a debt incurred by the father in circumstances which would render the father liable to a criminal prosecution. Vide Toshaqat Singh v District Judge of Agra 61 I. A 350. In the latest case on the point, Govindprasad v. Raghunathprasad 41 Bom L. R. 589 (F. B.) the exemption is carried further and it is recognized that as to the exemption of the son for 'apyāv-ahārīka' debts of the father, there are many cases which cannot be reconciled, that it is repugnant to good sense to construe ancient texts in the light of a system of criminal jurisprudence developed long after and that the correct rule is to hold that 'the son can claim immunity when he proves that the debt of the father was of a character which was illegal, dishonest or immoral (p 602)' though difficult cases may arise in the application of this rule. It would be far beyond the scope of this work to cite or discuss the other numerous decisions.
CHAPTER XVII

ASVĀMIVIKRAYA (sale by one not the owner).

The different modes of the sources of ownership have already been referred to (H. of Dh. vol. II pp. 130 ff.) and will be referred to again under dāyabhāga. According to Nār. VII 1 and Br. (SBE vol. 33 p. 335 verse 2) when a person, who holds an open deposit, a sealed deposit, an article bailed for delivery to another, stolen property, an article borrowed for some festival, a pledge, or property lost by a stranger and found (by him), sells it in secret (or behind the back of the owner) it is to be considered as a sale by one who is not the rightful owner. Vyāsa has a similar verse. The word 'sells' is only illustrative and includes gifts and pledges. Similarly as most sales by one not the owner are clandestinely brought about, Br. employs the words 'in secret' but even if the sale is effected openly the same consequences may follow. The same rules will apply to an article lost by the owner and found by a stranger. Kāṭ. (612) provides that a sale, gift, or pledge, made by one who is not the owner, should be rescinded (by the king or judge), Manu VIII. 199 and Nār. (q. by Sm. C. II. p. 213, V. P. p. 291) and others say the same thing. Yāj. II. 168, Nār. VII. 2 provide that the owner is entitled to recover his property from the person that purchases from one who is not the owner. If the buyer purchases an article not in the open market, then he is liable for punishment; if he purchases from one who could have no means of possessing the thing sold (such as a slave without the master's consent) or for a very inadequate price or at a very unusual hour (at midnight or...
the like) or from bad characters then he is to be punished as a thief (Yāj. II. 168, Viṣṇu Dh. S. V. 166, Nār. VII. 3, Manu VIII. 202, Br. in SBE vol. 33 p. 336 verse 11). Such a sale is a fraudulent one. If the buyer purchases (through ignorance) in market overt from one who is not the owner, he incurs no blame (no punishment), but he may have to hand over the article to the real owner (Viṣṇu Dh. S. V 164-166).

The purchaser from one not the real owner can free himself by producing the vendor (called mūla in Manu VIII. 202, Br. and Kāt.) and should not attempt to conceal from whom came the thing, otherwise he would be liable to be punished equally with the vendor as a thief (Nār. VII. 4). Br. (SBE 33 p. 335 verse 3), Manu VIII. 201 and Yāj. II. 170 say that when the vendor has been produced by the vendee, then the latter is not to be proceeded against, but the vendor has to litigate with the real owner who has lost his property and when the vendor loses the suit he has to pay the price to the buyer and a fine to the king and the owner gets his property back.

If the vendor has gone abroad adequate time should be granted to the purchaser to produce him (Kāt. 615). The purchaser in order to escape blame (punishment) has to produce the vendor and if that cannot be done owing to the vendor’s absence he has to prove that he purchased openly (Br. in SBE 33 p. 335 v. 4, Manu VIII. 202, Kāt. 615, 618-619). If he cannot do any of these two, then the purchaser would be liable to pay the price to the real owner as claimed and a fine to the king.

Manu VIII. 198 prescribes that one who sells without being the owner but being a member of the owner’s family should be fined 600 panas, while a vendor unconnected with the real owner’s family should be dealt with as a thief. The same rule applies to a
vendor selling another's article through ignorance or mistake and one doing so with full knowledge. The person who has lost a chattel and claims it from the finder is described as *nāśaka* in Kaut. III. 16, Manu VIII. 202, Kāt. (614) and elsewhere, the word being derived from *nasta* (what is lost). The idea is that openly purchasing an article in the presence of a number of people for an adequate price negatives fraudulent intent and leads to the inference of a purchase in good faith and such a purchaser even though he may have to part with the chattel to the real owner when the latter proves his title, incurs no blame and is entitled to recover from the vendor, if he has to surrender the article, the price paid by him. When a person claims a lost article as his he has first to prove his title and possession by evidence — (such as that of his kinsmen or a document &c.) and that he had not sold or donated or abandoned it; after he has proved his title the purchaser is called upon to prove his purchase as honest by evidence i.e. by producing the vendor or by showing that he purchased openly and for adequate price (Kāt 613, Yāj. II. 170). When this is done the purchaser escapes blame but has to surrender the article to the true owner. Kāt. (616) adds that in the case of *asvāmi-vikraya* no other means of proof whether divine or human (except the evidence of witnesses such as kinsmen) is declared to be proper. Acco to the V. P p 293 other evidence and even ordeals may be admissible in sale without ownership, but the Sm. C. p. 216 and the Madanaratna say that on account of the express' words of Kāt. this is not possible. If the owner who alleges the loss of an article fails to prove his title and prior possession he has to pay a fine to the king equal to 1/2 the price of the article. Kāt. (620) and Kaut. (III. 16) state that on failure to prove his title the person claiming the article as his should be fined as a thief, in order to deter (others) from taking undue advantage (i.e. preferring false claims). Kaut 798 III. 16 and Yāj. II. 169

794. नपहचेतानी नालिकाः। नपस्यस्यकृष्टिपर्यथ तथ्य इति *ग्राहितसात्त्वसीमिति* कतर्वगोऽ। नवेद प्रभोऽजस्यन्येन वा। केधराः on man VIII. 202 The sūtras referred to are यातिभिन्न V. 2 115, V. 4 38 and V. 1 109.

795. नालिकाकुमार महुषीति तब तदन्तः मादुविन्यस्कर्तम्। अन्तर्यत्वकारकरं कृतस्य स ततोऽभावः। कारया 614 q. by अर्घराजः प 777, वि. र. p. 104 स वि. p 306.

796. मकारां च कर्मु कुष्ठसात्त्वसीमिति स्वार्थी । न तत्वात्मकाः किंवा महुषाः इत्यिथेऽ। न च मानान्तिः कारया। 616 q. by अर्घराजः p 717, पराग. 296, वि. र. p. 106.

797. यदि स स्येव कुष्ठुः मादुसात्त्वसीमिति कृतस्य। महुषां महुषशुद्धः चौरसिंहभारती । कारया। 620 q. by अर्घराजः p 777, वि. र. p. 105, पराग मा III. 297.

798. नवेद अनन्त्याभावस्य स्वामी चिन्होन्य प्राप्तेऽर। वेगमनातिपदाः वा स्वयं प्राप्तिलो-पहेलेऽ। अर्घराजः III. 16.
provide that when the real owner finds his lost article in the hands of a stranger he should get him apprehended by the royal officers (such as shaurodharayaka, acc. to Mit.), but that if the owner thinks that much time will be lost or distance will have to be traversed (for going to officers) he should himself seize the person and bring him before the court. The Mit explains that the buyer should have the seller arrested and, if the seller is dead or gone abroad, that he should hand over the article to the real owner. Where a purchase has been made in the midst of a row of traders to the knowledge of the king’s officers, but from a vendor whose habitation was unknown or where (after the purchase) the vendor dies, the real owner (of the thing sold by one not the owner) will recover his own property after paying half the price to the purchaser, since the rule of justice in such a case so requires, because to purchase from one (whose habitation is) not known is a fault (in the purchaser) and not taking proper care (of one’s goods) is also a fault in the real owner (Br. in S B. E. vol. 33 pp. 335-36 verses 7-9 or Kät. 621-623) 799. Marici (q by Aparārka p. 775, Sm. C. II. p. 217) has similar provisions. Br. (S. B. E. vol. 33 p. 335 verse 6) provides that in a suit where there is no evidence the king shall take into consideration the character of the litigants and give a decision according as the credibility of the parties is equal, greater or less.

As regards articles lost and found by the king’s officers, vide above (pp. 175-176).
CHAPTER XVIII

SAMBHŪYA-SAMUTTHĀNA

(A joint undertaking, partnership)

Where traders or others (like actors, musicians or artisans) carry on a business jointly it is termed a partnership (Nār. VI 1 and Kat. 624). Br (SBE vol. 33 p. 336 verses 1-2) says that a man should carry on a joint business with other persons of good family, that are clever, active, intelligent (or educated), familiar with coins, skilled in (controlling) expenditure and income, honest and valiant (or enterprising) and that joint undertakings like trade should not be carried on by prudent men with persons (partners) who are weak or lazy or afflicted with disease or are unlucky or destitute (of money). The meaning is not that all the above qualities must exist in all partners, but that according to the nature of the undertaking some of these qualities will be absolutely necessary Nār. VI. 2-3, Yāj. II. 259, Br. (SBE vol. 33 pp. 336-337 verses 3 and 4) prescribe that the expenses, loss, profit or work of those who jointly lend gold, grain or liquids shall be according to the capital put in by each. The duty of each is to act honestly towards the others, whether they are present or absent.

801 सम्ब्रथ किमीति पार्थिव परिपत्राय सुन्दर तदनिति अविभवन शुचिप्रति आते तत्ततः सम्ब्रथ ॥ काल्या ५२४ q by आपराके p ३३२, एवं तृतीय p ३०४।

802 कहीं कहीं दु:खीं कहीं कुपोषणकारकोर्तिसिः। आपस्यन्यः शुचिकिर्तिः हुः ॥ कुशलार्थकारणकारिणिः ॥ अवस्थकालसाधनकारिणिः ॥ बालिकायाः सहितेऽनु तक्तया हुः ॥ किरिता ॥ शुचिकिर्ति II p १८४, आपराके pp ८३१-८३२ 'शुचिकिर्ति शुचिकिर्तिः ज्ञात्विज्ञातार्थासाधनकारिणिः ॥ तत्त शुचिकिर्तिः ॥ काल्याः प्रकृतिकारणकारिणिः ॥ आपस्यन्यः ॥ शुचिकिर्ति II p १८४।

803 यज्ञोर्भिः श्रवणविस्मयादित्वतात्मकाः। सम्बृथविधिः श्रवणविस्मयादित्वतात्मकाः ॥ सत्त्वविस्मयादित्वतात्मकाः ॥ वाच्यायाः हुः ॥ किरिता ॥ शुचिकिर्ति II p १८५, एवं तृतीय p २९८, आपराके p ३३२ अर्थांके।
in sales or purchases of various commodities.\[^{805}\] Br. (SBE vol 33 p 337 verses 5-7) provides that whatever property one partner may give (or transfer), being authorised to do so by the rest, or whatever document (or transaction) he may cause to be executed, all that is to be deemed as done by all partners; the partners themselves are declared to be the judges (the deciding persons) or witnesses among themselves in a doubtful case and in case of fraud, provided they are not already at feud among themselves. It follows from this that by entering into an agreement of partnership, each partner agrees that he submits to the decision of the other partners in cases of doubt. If any one from them is found out to have practised fraud on the others in sales or purchases he should clear himself by special oaths or ordeals. Yâj II. 260, Nar. VI. 5.\[^{807}\] Br. (SBE vol. 33 p. 337 verse 9) provide that each partner is responsible to make good what has been lost through his negligence or in consequence of his acting against the instructions of the others or of his acting without their authority or consent. If any one of the partners saves partnership property from act of God or the king or thieves (or similar calamity) by his own exertions, he is to be awarded (as his special share) one tenth of the property saved (Yâj II. 260, Kat 631,\[^{808}\] Nar. VI. 6) If any partner is crooked or fraudulent, the rest may expel him without giving him any profit; a partner who is incompetent to work (personally) should get the partnership business done through another (Yâj II. 265) Yâj. II. 264 and Nar. VI. 7 and 17-18 state that if one partner

\[^{805}\] Nar. I. 92, verse 130.

\[^{806}\] Br. (SBE vol 33 p 337 verses 5-7).

\[^{807}\] Br. (SBE vol. 33 p. 337 verse 9).

\[^{808}\] Nar. I. 92, verse 130.
goes to a foreign country and dies, his share should be taken by his heirs (son &c.) or by his agnates or cognates; in default of these the other partners may take it and in default of them the king may take it after waiting for ten years to see whether any heir or claimant turns up. Katyayana states that in the case of artisans who together carry out some work, those among them who are directors of new methods get four shares, those who are adepts in the craft three shares, those who have studied the craft two shares and the apprentices only one share. Whatever is given to strangers by all together (i.e. by the partnership firm) should be claimed back by the firm as such; any single partner should not claim it; if he does so he will lose his share of the profit. Some rules are prescribed by Br that among dancers, singers and musicians, the singers get equal shares, while those who beat the tune only get half share each; similarly in the joint construction of a mansion or a temple the head of the artisans gets two shares. An artisan (61) is one who manufactures or works upon gold, silver, yarn, wood, stone and hides or one who has mastered one of the arts. If a king has ordered a band of adventurers from among his subjects to make a plundering expedition in enemy country, Br. (in V. R. p. 125) and Kat. (633-635) prescribe that the king gets one tenth (as acc. to Br.), the leader gets four shares in the remainder, the valiant among his followers three shares, the more capable two shares and the rest one each and that if any one of them is caught the money for his ransom should be contributed by all according to their shares. When no agreement is made as to shares in property by traders, husbandmen, thieves and artisans similar rules apply.

809. शिथ्याकान्तखाला आचार्याःतेनिएश्चित्तिलिपिः। एकत्रितेनभारार्थार्थिरुद्धे वषीः
चतसः॥ कार्त्त. 632, q by वि. म. p 201, अप. राक्ष. 835, दि. र. p 124.
810. समयोत्सु यद्यसांध्यायिनेष्यतस्य त्वद्। च वाचित च य: काव्य ज्ञातासा पार्थियते॥
श्व. q. by अप. अम्ब. 833, दि. र. p 123, वि. म. p 300.
811. हिष्णुकक्ष्यांनि कांभार्यांमणस्याय। संस्कारं च कालामित्रं वितिकी बोधीती
महाविशिष्टम्॥ बृह. q by वि. र. p 124, वि. म. p. 304 (reads हिष्णुक्कुल्या.)
812. पराष्ट्रायान पलिपानलिपि: स्वायम्भोगम हि। रशः वाचाकक्षरसकारस्य विभेधपत्रोत्तरसिंहितिः।
कार्त्तां क्षयस्य नापि च चन्द्रोपास्य सदाः। कृत्यो च चन्द्रोपास्य तदादि। शुभराजाप्रियांगोष्ठी हृ! वेद्वेदोपाणिस्व कार्त्तां
वां तेनां वीर्यमितानि वो यथासं सम्प्रभुव।}
It is interesting to note that the ancient Dharmasūtras of Gautama, Apastamba and Baudhāyana are silent about partnerships, that Manu (VIII.206-210) lays down rules about the distribution of fees among the priests at a sacrifice and that in one verse (VIII.211) he remarks that the same principles are to be applied in all matters where men work conjointly (i.e. each is to be paid according to the importance and volume of the work he does). The rules about sacrificial priests in Manu are: If a priest chosen to do work in a sacrifice abandons his work a share only of the fee in proportion to the work (done) shall be given to him by those conjointly working with him; if a priest leaves after the fees are distributed (as at the time of midday extraction of Soma in the great sacrifices like Jyotistoma) then he keeps the whole of it and shall cause the remaining work to be performed by another (who will be paid by the sacrificer, acc. to Medhātithi) When specific fees are prescribed to be paid to individual priests at the performance of the several parts in a complicated sacrifice, the individual priests are to receive them and all are not to participate; as for example, the adhvaryu takes the chariot, the brāhma priest takes the horse in Agnyādāna, the hotr also takes the horse and the udgātr the cart used in purchasing the soma plant. The four chief priests are entitled to one half of the fees, the first group of their assistants will get half of what the chief ones get, the 2nd group \(\frac{1}{4}\) and the fourth \(\frac{1}{4}\). Nār. VI.10 and Br (in V. R. p. 120) state that sacrificial priests are of three kinds viz. one hereditary and honoured by the ancestors of the sacrificer, one appointed by the sacrificer himself and one who performs the functions of his own accord through friendship and that (VI.9 and 11) if an officiating priest forsakes a sacrificer who is free from any fault and who has caused no harm or if a sacrificer abandons a priest who is faultless, they both shall be punished but this does not apply to the third kind of priest. Śankha-Likhita, as quoted in V. R. pp. 117 and 130-131 and Sm. C. II. p. 188, give elaborate rules about sacrificial priests dying or leaving work and the fines to be imposed on them. Kaut. III.14 lays down rules for the receipt of fees by priests when they leave off at different stages of such solemn sacrifices as the Agnistoma and also when the sacrificer dies without completing the sacrifice. The Vy. Nir. (pp.284-285) quotes a few sentences from Kaut. III.14.

The above shows that in the times of the ancient sūtras, secular partnerships had not attained sufficient importance and
CHAPTER XIX

DATATTĀNA PAKARMA (resumption of gift).

This title is also called dattāprādāmka 815 (lit. that which is concerned with the non-delivery or resumption of a gift). Nar. VII. 1 defines it as that title where a man desires to resume what has been given by him because it has been improperly (in a manner opposed to law) given by him. Nar. (VII. 2) divides this title into four topics viz what may not be given, what may be given, what are valid gifts and what are invalid gifts. Nar. VII. 3–5 and Br (SBE vol. 33 p. 342 verse 2) state that there are eight things that cannot be given (adeya) viz an anvāhita, a deposit, yūcātaka, a pledge, property jointly owned with others, a deposit, son and wife, the entire property in the case of one who has offspring, and what has been already promised to another. Vide Kaut. III. 16, Yaj. II. 175 816 for a similar but more compendious statement, and Kāt. 638. These cannot be given either because they are not one’s absolute property or because the gift of them is forbidden by the sages. In the case of even those who hold that one has ownership over one’s son or wife, the gift of them is not possible because it is forbidden, just as though one owns rice, yuvas and māśa beans, one cannot make offerings of māśa because the veda prohibits their use in the words ‘ayajniyā vai māśāḥ’ (q by Sābara on Jai. VI. 3, 20). So son and wife cannot be given on account of the prohibition in the smṛtis. The general rule of what may be given is stated

815 मेधातिष्ठे ग्रहणा ग्रहणा VIII. 214 explains it as अपवित्राद्वियुक्तयत्र तद्यत्मकनेव। द्राक्षप्रदाने न च प्रज्ञिनाहति। भएष द्राक्षे विधिविविधति ग्रहणे। कत्रथो मित्राद्वियुक्तानां धम्मं न विधिविविधति नैव द्राक्षप्रदाने। एवं प्रज्ञिनाम यथा नैव द्राक्षे दुःखे यथा प्रवर्षे।

So acc. to this द्राक्षप्रदाने ग्रहणे means ‘not improper abstraction of what is given or promised to be given’. The नित्य on या II. 173 explains both द्राक्षप्रदाने and द्राक्षप्रदाने as follows: द्राक्षप्रदाने यथा द्राक्षप्रदाने यथा द्राक्षप्रदाने नैव द्राक्षप्रदाने नैव द्राक्षप्रदाने नैव द्राक्षप्रदाने नैव द्राक्षप्रदाने। एवं प्रज्ञिनाम यथा नैव द्राक्षे दुःखे यथा प्रवर्षे।

Acc. to this द्राक्षप्रदाने ग्रहणे means ‘that in which what is donated cannot be taken back because the gift is according to law’ (also implied the converse of it).

816 संस्कृतमं द्राक्षप्रदाने ग्रहणे ग्रहणे ग्रहणे: ग्रहणे अर्थादिकाः III. 16 सामाग्री-द्राक्षप्रदाने ग्रहणे ग्रहणे ग्रहणे। मित्राद्वियुक्तानां तपस्याय दुःखे यथा प्रवर्षे। कत्रथो मित्राद्वियुक्तानां तपस्याय दुःखे यथा प्रवर्षे। II. 189, वै. र. p. 306; similar verses of Nar. VII. 4–5 and Dākṣa III. 19–20 have been quoted in (H. of D. vol. II. p 850 n. 2005).
by Yāj. II 175, Nar. VII. 6 and Br. (SBE 33 p. 342 verse 3), Kāt 640 viz. whatever is absolutely one’s own excepting that required for the maintenance of one’s family may be given. Manu (XI. 9-10), Nar. VII. 6 and Br. (quoted in H. of Dh. vol II pp. 850-851 n. 2007) condemn those who stint their family or servants in order to be charitable to others and say that he who does so would incur sin. Manu XI. 7 (=Nar. VII. 7), Vas VIII. 10, Yāj I. 124, Visnu Dh S. 59.8 prescribe that he alone who has property sufficient to provide for three years’ maintenance for those whom he is bound to maintain or has more wealth than that may drink soma i.e. may engage in a soma sacrifice (which costs much)

Nar. VII. 8 states that there are seven kinds of dātta gifts, i.e. gifts or transfers that cannot be resumed because they are made by a person in full possession of his faculties and of things that belong to him absolutely and are not forbidden. They are: the price paid for goods bought, wages, what is paid for pleasure (derived from dancing, singing, wrestling), a gift through affection, a gift made in gratitude, money paid to a bride’s kinsmen, and gifts for spiritual or charitable purposes. Acc. to Br.885 (SBE vol. 33 p. 343 verse 8) there are eight kinds of valid gifts. Nar. VII 9-11 mentions sixteen kinds of invalid gifts, which have already been set out (in H. of Dh. vol. II p. 887 where Gaut. V. 22 that specifies some invalid gifts has also been cited). Vide Kāt. 647. The difference between gifts of adeya and adatta gifts is this. In the first class of cases, the gifts being forbidden are entirely null and void, while adatta gifts are those that are voidable and may be set aside by the court on the application of the donor himself, because, of the incapacity of the donor due to intoxication, lunacy, old age, minority, mistake etc. Kāt 646 and Kaut (III. 13) state

817. सर्वेऽऽल्कात्स्रयस्य हुन्नार्यमयात्मिकाः । पद्यपुरणम् तत्स्ववज्ज्यति स्वायताः । भाष्यः । बालाय. 640 q. by ब्रह्मा. तत्र III. 214. वि. r p 129. वि p 283
Kāt. prohibits the gift of a house if a man owns only one

818. रुपस्य द्वारा पयमन्द्रवर्गमिवमनुभावपरमाँसः । अद्यावतारं सद्यस्मिन्नुस्मातमस्य निर्देशः । विदु. 8 मूल. q by विदु. व ब्रह्मा. 193. बालाय. 644-645 explain शुभि and शुभकार occurring in वार्ता and मूल, the first being a reward for finding out a lost article or an unknown offender and the second, being a reward for protecting a man from danger or for guarding the donor’s property when he was a minor or effecting some object desired by the donor (such as his marriage &c)
that if a man is in danger of life and promises the gift of all his property to whomsoever may save him, he may resile from the promise and pay only what an expert or arbitrator may award. Kat. (650-651) defines *uktaka* (bribe) as what is obtained in these ways viz., by giving (or threatening to give false) information about a person as a thief or a felon, or as one who breaks the rules of decent conduct, or as an adulterous person, or by pointing out those who are of bad character or by spreading false reports about a person. He further provides that a person offering the bribe should not be fined, but the intermediary may be fined and if the person accepting the bribe has been appointed to an office by the king he should be made to return the bribe and pay a fine eleven times as much to the king. But Kat. adds that where a person not holding a public appointment obtains some gratification for work done, he would not be held guilty and would not have to return what he received as a reward or in gratitude. Hārīta holds out other worldly evil consequences for not actually delivering what is promised or for resuming what has been already delivered as a gift viz., the person doing so falls into Hell and is born as one of the lower animals and adds that what is promised as a gift for a religious purpose in so many words but is not actually delivered becomes a debt in this world and the next i.e., the king should make the promisor give the

819. A man, if he promises to give property to him who may save him, he may resile from the promise and pay only what an expert or arbitrator may award. Cat. (650-651) defines *uktaka* (bribe) as what is obtained in these ways viz., by giving (or threatening to give false) information about a person as a thief or a felon, or as one who breaks the rules of decent conduct, or as an adulterous person, or by pointing out those who are of bad character or by spreading false reports about a person. He further provides that a person offering the bribe should not be fined, but the intermediary may be fined and if the person accepting the bribe has been appointed to an office by the king he should be made to return the bribe and pay a fine eleven times as much to the king. But Cat. adds that where a person not holding a public appointment obtains some gratification for work done, he would not be held guilty and would not have to return what he received as a reward or in gratitude. Hārīta holds out other worldly evil consequences for not actually delivering what is promised or for resuming what has been already delivered as a gift viz., the person doing so falls into Hell and is born as one of the lower animals and adds that what is promised as a gift for a religious purpose in so many words but not actually delivered becomes a debt in this world and the next i.e., the king should make the promisor give the

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promised gift and should inflict a fine. Kät. (642) provides that a man who having voluntarily promised a gift to a brāhmaṇa does not deliver it should be made to render it as a debt and should be awarded the lowest amercement and further (verse 566) that if a man promises a gift for a religious purpose whether in good health or in disease, his son (or other heir) should be made to pay it if the promisor died without actually delivering it. These verses show that in two cases gifts though not completed by delivery of possession were enforced by ancient Indian courts viz. when the gift was promised to a brāhmaṇa or when the gift was declared to be made for a religious and charitable purpose. The last verse contains the beginnings of the idea of a will, since the mere declaration of the intention of a man to give for a religious purpose is made enforceable after his death against his son or heir. But this germ could not evolve into a full-fledged law of testamentary succession on account of the practice of adoption, the requirement that a gift must be accompanied by present possession and the incidents of the joint family on account of which no single member could alienate family property except for legal necessity and which involved the doctrine that on the death of a member his rights ended and passed by survivorship to other members. Br. expressly states this. But a gift though promised need not be paid or carried out if the promisee turns out to be an irreligious man (Gaut. V. 21), Nār. VII 12 and Br. provide that he who enjoys an invalid gift and he who makes a forbidden gift are both to be punished by the king.

In H. of Dh. vol. II p. 841 it has been stated that gift consists in the cessation of the ownership of the donor in a thing and creating ownership in another. This latter is effected by acceptance (svikāra) by the donee. Acceptance may be made mentally, vocally or physically. For the formalities accompanying a gift such as sprinkling water on the thing donated and the

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822. संवेदनम् प्रभासित्व ब्रह्माण्डः प्रतिपाद्य । न वस्त्राणिविद्यायः आण्विकः
| सहायः ॥ कार्यं q. by श्लोकिंच. II p. 192, स. वि. p. 285, च. म. p. 310, स्वरेत
| नालेति तत्र हृद्यं ब्रह्मविद्यायं मर्मकाणात् । अवर्ग दृष्टे सर्वर्ग्वतुम्बलो नाव संसारः ॥ कार्या
| q. by वि. वि. p. 16, च. म. p. 313, स. वि. p. 287, श्लोकिक्य. p. 37, प्रकृतिधार
| यहाँ रूपवर्ग्यायं । माष्यिुरण 227. 8 q. by च. म. p. 310, प्रकृतिधारतपरमैं
| संसारस न वस्त्राणः ॥ गौत. V 21.

823. महाकर्मिति ब्रह्मचर्य न तलवक्षायेव भवति । चार्याविर्योग्यस्थानोति रिश्यतंपरमेत्
| प्रकृ. q. by श्लोकिंच. p. 298

**"" चार्याँ " ब्रह्मचर्य: स्पर्शविद्यायुः प्रकृतिधारतः " प्रकृ. q. by श्लोकिंच. p. 288,
offering of a \textit{daksinā} to the donee, vide H. of Diu. vol. II. p. 355. Some writers like Jimūtavahana dispute the statement\footnote{825} that acceptance is necessary to constitute a gift. The Dayabhāga states that by the mere relinquishment of a thing by the donor (i.e. by the activity of the donor himself) the ownership of the thing passes to the person intended as the donee, that the ownership of the other man does not arise by acceptance, that though ownership in the donee does arise by the mere activity of the donor, yet acceptance (svikāra) which is an activity of the donee makes the thing donated capable of being disposed off by the donee as he likes on account of his idea, 'this is mine.' The Dayabhāga indulges in casuistical reasoning in support of its view, which it is not necessary to set out here. But the remarks of the Dayabhāga are, not satisfactory, since it does not adequately explain what is to happen if the intended donee refuses the gift. On its hypothesis ownership has passed to the donee without acceptance being necessary. If the donee refuses, or dies without accepting, who is the owner? Can it be said that the thing becomes the property of whosoever first takes it up and that the donor cannot prevent a third person taking it up? The V. P. pp. 426-428 severely criticizes the Dayabhāga for its views.

\footnote{825}{रत्र च लोकवर्ग वृत्ति वि चित्रोद्वापिक्षिपत्यायनवेयो दानवप्रदातासम्बन्धाय प्रमेय स्तानित्वम्। न च स्तीत्कारस्ततो स्तवं स्तीत्सरवित्र दानवलापनः। ...}
CHAPTER XX

VETANASYANAPĀKARMA, ABHYUPETYĀŚUŚRŪṢĀ AND SVĀMIPĀLAVIVADĀ

(Non-payment of wages, non-rendition of service, dispute between master and herdsman).

The question about the payment or non-payment of wages to those whose services are hired for work is dealt with under this title (Nār. IX. 1). According to Br. there are three titles of law in which the question of hiring enters, viz. abhyupetayāśuśrūṣā, vetanasyānapākarma and svāmipālāvivāda. Manu and Kaut. do not treat of the first of these three. Here vetanasyānapākarma will be first dealt with, then abhyupetayāśuśrūṣā and svāmipālāvivāda will be separately treated of. All these three topics are concerned with masters and servants or employers and employees. The rules are different according as the contract of service is for a fixed term or for an indefinite period or is for executing a definite piece of work and according as the rate of wages or the hire is fixed beforehand or is not fixed. We have further to remember that the rules are spread over a large period i.e. from about 6th century B.C. to about 500 A.D. (from Gaut. and Ap. to Br. and Kāt.) The rules deal with the liabilities of both masters and servants. Nār. IX. 2 states that the wages agreed upon may be paid at the beginning, in the middle or at the end of the work undertaken. But when no wages are settled beforehand Nār. IX. 3, Ya. II. 194, Kaut. III. 827 provide that the (agent of a) trader, the cowherd, the husbandman should receive a tenth part respectively of the profit, of the milk and of the crops. This latter according to the Sm. C. II p. 201 holds good where the crops are raised easily. But Br.

826. अन्वेषादिनांत्यां भूतानांक्षयस्व विधीः। तुम्हारास्तुस्वामिक्षेत्रस्य निषादसः
बलातेजापालकं विदुष्युपलंधुः। कामकाः कर्तव्यस्व गविन्देव बिधिम्॥
वृ. 10 वि. 4. 139. वि. 41.
827. कर्मदारायसंभावनानिवेशस्व। कर्माण स्त्रायां सुपाठकः सप्तम शैलात्सः
वषानामालकान्तो वषानामालकस्य बिधिम्॥ अर्थाताः इद. 13. सुपाठकः
बच्चिनां दुस्मानां रंगक्षमः। शास्त्रोपत्वानां शास्त्रोपत्वानिवेशसः।
ताभिः इद. नाव. 9. 3.
This is ascribed to कार्यका. by स. वि. 298.
Determination of proper wages

[Verse 13] lays down the rule that if

the employer supplies food and clothing to the servant, the

latter should get a fifth part of the crops (if no wages are

settled) or a third part if the servant is given no food nor

clothing by the employer. When no wages are settled Vyādhā-

Manu prescribes that proper wages will be determined by

experts in carrying maritime trade (and other traders) who

take into consideration the time, the place and the purpose. Even

when the wages were settled the employer could give less or

more according to his pleasure in certain cases viz when a

servant or agent acts against the restrictions of time and

place prescribed by his employer and consequently the profit

is much less, the employer may give less than what is agreed

but if the agent brings more profit (than expected) he may

give more (Yaj. II. 195). When two or more employees under-

take to finish a work but cannot finish it (owing to ill-health

or similar obstacle) each of them should be given the wages

appropriate to the portion done by each (as settled by an

arbitrator), but if the whole work is finished by them the

agreed wages must be paid to all of them together (Yaj. II. 196).

Yaj. II. 193, Nar. IX. 4 and 829 Br. state that it is the duty of the

employed or servant to take as much care of the utensils

 supplied by the employer as he would take of his own, and

that he should not act in that respect wantonly (or crookedly)

and that if he did so his wages would become less. If a hired

servant, after receiving his wages, does not do the work agreed

to be done though able to do so, he should be made to repay

to the employer the wages received and a fine equal to double

of the wages and if he had not received wages but left the

work without cause he should be made to pay to the employer


828. भक्ताप्रादेशं सीधार्मव द्रव्यपत्र यज्ञसम्। जस्तकल्पस्व तिर्यग्यं ह पुहेीप्राप्तः

पापुषः: दूह । यज्ञः ॥ व्याघ्र. II. p 202, भव. म. p 324, स. व. p 298.

829. सक्तव्याजनकृतता देशामिलार्थदृशिन्। निमान्यस्वपुर्णं च दूह: सरस्वतं मनावदता

चालः दूहस्वः दूहं। व्याघ्र. II. p 158, भव. म. p 324. The व्याघ्र. II. 202 ascribes

it to Manu Compare अर्यावृत्त्व III 13 ‘काव्यविविष्कृतमिथिकितिनमवतीगनवति-

धाराविरास्तात्ततिर्थमार्थं यज्ञपरस्तस्थितं कुणौं यथा न नृस्तात न कलीनस्वस्थूपं वेतन

मेंतेन।’

830. क्षीयोपकारं पैदा किल्ला दशमुयवाहयवं। तस्मात्तत्त्वं कृष्णं न चिन्हे समाल-

वेन। दशमुय नारायणे ॥ व्याघ्र. II p 202 and पत्र पा. III, 324: read आसामविन

वत्तमच न जेन्द्रवेन &c.; शुचकान्त न कृष्णं स्वतं हतसपष्टमृ। वृहितार्थं समामिति स्वतं

वादः वेतनं। दूहं। व्याघ्र. II. p 202, पत्रा. पा. III. p 324.
an amount equal to the wages (Yaj II 193, Nar. IX. 5, Br. in ast S B. E., vol. 33 p. 345 verse 15). Kaut (III. 14) prescribes a fine of 12 panas for a hired servant who does not do the work undertaken even after receiving the wages and that he should be compelled to do the work. Nar. IX. 5 and Kât. 657 provide that that the king should compel him to do the work and then the agreed wages may be paid to him; but if he does not do it he should be fined 632 The fine in such cases acc to Vrddha-
Manu was 200 panas. Manu VIII. 215 and Br. (S. B. E., 33 p. 345 verse 16) and Matsya 227. 9 provide that a hired servant, who though not ill, does not arrogantly do the work agreed should be fined eight krsnulas and would not get wages at all. This applies where a substantial portion is left undone, but where only a little of the work undertaken is left undone than the servant is not to be fined, but he would lose all the wages (Manu VIII. 217). But if a servant falls ill, then he may do the work after he becomes well and would get the agreed wages even if a long time may have elapsed (Manu VIII. 216). Kaut. (III. 14) also provides that if the servant suffers from illness or is overwhelmed by a calamity, concession may be given to him or he may offer a substitute. The Ap. Dh. S. (II. 11. 28. 2-4) prescribes that if a husbandman who is not a slave but is hired for work) gives up the work or a cowherd acts similarly he should be punished with flogging and the animals handed over to the cowherd should be taken back from him. This may have been the ancient law, but it was modified in later ages. Kaut. (III. 13) states that if the employer does not pay the wages he should be fined six panas or a tenth part of the proper wages or the wages agreed upon and if the hired person denies the receipt of wages (though he really received them) he should be fined twelve panas or a fifth part of the wages 633 Kaut. (III. 14) further provides that in the contract of service it may be provided that the master is not to employ

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831. श्रीदित्वमः कर्म न केवलिते चुड़ा कुंडः। सर्वधे श्रीमद्भारतम् महान् कर्माधियोगः। तत्र परं प्राप्तम् कर्माधिकारं निर्देशना वृद्धि द्वारा। Br. q by सुविचार. II. p. 203, वि. p. 110. यहीं वाणिज्य कर्मोर्थोत्सवं द्वारा कर्माधिकारं द्वारा। अपेक्षाकृत III. 14.

832. अन्तरूप्यम् न कुर्यते। स कार्यं वचनम् वत्। स चेष्टा कुर्यात्तमां मानसगुणं द्वितीयं वृद्धि कर्म द्वारा। Br. q by सुविचार. II. p. 203, वि. p. 110. यहीं वाणिज्य कर्मोर्थोत्सवं द्वारा। अपेक्षाकृत III. 14.

833. वेदानात्तमां वृद्धि वृद्धि पायसांणं वा। अन्तरूप्यम् वाणिज्य कर्म द्वारा। अपेक्षाकृत III. 15.
another servant or that the servant is not to work for another master during the period fixed.

Yāj. II. 197, Nār IX. 9, Kāt. 659, Visnu Dh. S. 834 V. 155–156 provide that if through the fault of a carrier (and not through act of God or the king) goods entrusted to him for carrying are lost or become deteriorated, he should be made to pay for the loss. Vṛddha-Manu specifies that if the goods are lost through the negligence of the servant he has to pay only the price, but if through spite then he should be made to pay double the price. If a hired servant (such as a palanquin-bearer or an armed guard) causes obstruction (by refusing to work) at the time of starting for an auspicious matter (such as a marriage), he should be made to pay double the amount of the wages agreed upon and another servant may be engaged (Yāj. II. 197, Nār. IX. 8, Kāt. 658, Vṛddha-Manu in V R. p. 163). Yāj. II. 198, Nār. IX. 7 provide that if a servant abandons his work (as a bearer or guard) after a start is made (when not seized by illness) he should be made to pay \( \frac{1}{4} \) or \( \frac{1}{2} \) or the whole of the wages according to the distance traversed and a master abandoning a servant in similar circumstances should be made to pay similarly.

If a servant agrees to take a lump sum for some work to be done for a certain period and leaves the work before the period elapses he would lose all the wages, but if he leaves in the middle of the period through the fault of the employer (such as scolding without any fault of the servant) he would be entitled to receive a proportionate part of the wages (Nār. q. by V. R. p. 161). 835 Visnu Dh. S V. 153–154 and 157–158 provide that in the same circumstances the servant would have to pay a fine

834. भाग्य धृतरास्त्रकृ ष्णकृ दानकाशिका। स वायदौ परस्परस्त्रम् व्याधि कृष्णामुखिर्भवति । नारायण IX. 9: नु दु धाराय दुः शीर्षितगंगुह ज्ञोजन था। कारणा 659 q. by सुवज्ञ T. p. 203, अथार्य q. p 799, स. वि p. 300. रामायणातिं त्वाद्यथः सर्वं ब्रह्माण्डामण्डलम्। इत्युत्स भयं भयं यत्र T. p. 203, वि. र. p. 162. सन्धिपिण महिमेऽत्तथातिमी। अध्येत श्रवणपारदाते। विषुपरशुसू त्व भवन् मर्म्यार्थे दिल्लिन्युं दुर्भव। कारणा 658 q. by सुवज्ञ T. p. 203, परा. ता. III. p. 327. The provisions for breach of contract of personal service during a journey and the lake set here are very mild as compared with the severe punishment provided for it under section 490 of the Indian Penal Code (repealed in 1925).

835. वाक्येऽपि मुनि लोकशास्त्र भूमि धृतरास्त्र कृष्णामुखिर्भवति। स्त्राधिकारिहोपकृति शासनबाधवं लोकद्वसतायां ॥ नारायण q. in सि. र. p. 161, वा न p. 326. राजेश्याहि सहायेते थ। भारत राग्वन्यात्रा भव। वाक्येऽपि मुनि लोकशास्त्रकृति ॥ कारणा 660 q. by सि. र. p. 665, अथार्य q. p. 800.
of 100 panas and that if the employer abandons the servant before the period fixed has expired he would have to pay the whole of the wages to the servant and a fine of one hundred panas (except in the case of act of God and the king). Kāt (660) provides that a master deserting on a journey his servant that is tired or falls ill should be fined the first amercement if he does not wait for three days in the village. If a trader after engaging a vehicle or draught animals for carrying his merchandise for hire, does not employ them to carry his goods he should be made to pay a fourth of the hire settled and the whole of it if he discharges them when only a part of the journey has been made (Nār. IX. 7) If the merchandise be attached (by the king's officers for toll &c.) or be stolen the servant engaged to carry the goods will receive a proportionate amount (out of the lump sum agreed to be paid for a certain journey) according to the distance travelled (Kāt. 661) If the employer does not pay the wagee of a servant even though the latter has done his work the king should make him pay the wages and also a proper fine (Br in S. B. E vol. 33 p 346 verse 18). If a man having hired elephants, horses, bulls, asses or camels does not return them even though the work (for which he hired them) is finished he should be made to restore them together with the hire (up to the day of return) The same rule applies to a man taking on rent a house or water (reservoir) or a market and not giving it up at the time fixed (Kāt. 662-663) Nār. (IX. 20-21) provides that if a person builds a house on another's land by paying rent (stoma) for the land, he may take away when vacating the land the bricks, the timber and grass (thatch) of the house built by him, but if a man builds a house on another's land without paying rent and against the owner's wish then he has to leave.

836. बहुत ज्ञाति तत्त्राण्याकारिणांतः प्रदेशः।धार्मिक भाषात्वादि प्रदेशः। Kātāya 661 q by सङ्क्षिप्त भाषाः II 204. वि r p 164, हूँ कार्याति न. सादि न वृद्धानि भूति। पुजः सादिकिणी, सर्वानि वाचुपनि भूति in सङ्क्षिप्त भाषाः II p 204, वि r p 165

837. हस्ताक्षराङ्गोऽदिति शृद्धिता भाष्करेन भाषा। Kātāya 662-663 q by सङ्क्षिप्त भाषाः II p 205, वि r pp 168-169, पण भाषा III pp. 330-331. The word भाषक (which corresponds to the word भाषा in Marathi and other vernaculars) appears to be a प्रेक्षक equivalent of the old Sanskrit word श्रृद्धि (treated again as a Sanskrit word) In Sanskrit श्रृद्धि or श्रृढ़ि is used for wages, while भाषक or स्तोत्र means rent of a house or land or the like
the materials of his house to the owner of the land when he has to give up the land. An important rule is stated by Br. (S. B. E. vol. 33 p. 346 verse 17) that when a servant employed by an employer does some improper act (such as a theft), to another for the benefit of his master, the latter would be held responsible for the loss. The Matsyapurāṇa says that if a teacher having agreed to teach a lore or craft for money which he receives fails to do so, he should be fined the whole of the amount of the fee.

From the above it will be clear that contracts of service and letting on hire are lumped together under one head by the smritis.

Kaut, III. 14 provides that persons may be paid wages by a guild or corporation of workers of which they are members. The earnings of such guilds may be divided equally among all workers or as agreed upon among themselves. Yāj. II. 265 also refers to the fact that rules similar to those of partnerships may apply to guilds of husbandmen and artisans.

Certain rules are laid down in Nār. IX. 18, Yāj. II. 292 and Matsyapurāṇa 227. 144-146 about the monetary liabilities of prostitutes and persons visiting them. Vide H. of Dh. vol. II. pp. 638-39 above. The Matsyapurāṇa (227. 144-146) states that a brāhmaṇa who visits a prostitute should be fined as many panas as he paid to her, that if a prostitute after receiving her fee does not receive the visitor and goes elsewhere she should be made to pay to the visitor double the fee and a similar sum as fine to the king, and that if one, after telling a prostitute that she is to visit a certain person, takes her to a different person, he should be fined one gold māsaka.

The Matsyapurāṇa (227.147) further states that a visitor who has had sexual intercourse with a prostitute and yet has not paid her fee should be made to pay double the (agreed) fee to her and a similar sum as fine to the king. Nārada provides that the chief prostitutes and the voluptuaries that stay with them

838. भूमण सिद्धकं सय सङ्को विद्वधारि यदि। तद्रथन्धृपं कर्म स्वामीतत्त्रत्र
परायणं। दुः. q by स्वतिष्ठ II. p 204. वि. R. P. 162 Compare section 238 of the Indian Contract Act as to the principal’s liability for his agent’s misrepresentation or fraud

839. मुख्यमादान वो दयां दित्तं वा न प्रभुचति। सुउच्छः स सुउच्छः संवादं धातवनम्
दहिष्टुः। नम्भारशाखा 227. 6 q. by वि. R. P 163.
should help in deciding monetary disputes in which prostitutes are concerned \(840\) (q in Sm. C. II. p. 206 and others). Nār. (IX. 18-19) prescribes the payment of eight times the fee and a similar fine in the case contemplated in Mataya 227.147.

**Abhyupetyāśākraśa** (non-rendition of service after making a contract to serve or obey) \(841\). Nār VIII. 1 defines it as the title in which after having undertaken to serve or obey one does not act up to it. The ancient dharmasūtras mention only two kinds of servants viz. agricultural labourers and herdsman Vide Āp. Dh. S. II. 11. 28. 2-3 and Gaut. XII. 16-17 \(842\). Acc. to Nār. VIII. 2 and 3 there are five kinds of servers (or attendants) viz. four that are called karmakara (performers of labour) and the fifth class comprehends slaves of fifteen kinds; and the four karmakaras are pupil (śīṣya), apprentice (anteśāsn), a hired servant (bhṛtaka) and one who supervises hired servants (ādhyāmākraśa). Not being free to do as they like is the common attribute of these five kinds of attendants, but there is a distinction among them due to their castes, their peculiar actions and their mode of maintaining themselves (Nār VIII. 4). A śīṣya (pupil) is one who desires (from his teacher) instruction in Vedic learning, an antevāśin is one who receives instruction in some craft such as goldsmith’s work or dancing, a hired servant is one that does some work for wages, an adhyāmākraśa is one who supervises hired servants. Work is of two kinds, śubha (i.e. pure, done by the four kinds of karmakaras) and aśubha (i.e. impure (done only by slaves). Āsubha acts comprise \(843\) (Nār. VIII. 6-7 and Kat. 720) sweeping the doors of houses, pits in which leavings of food are thrown, roads, rubbish heaps; scratching or shampooing the private parts (of the masters); collecting and throwing away leavings of food, ordure and urine and making use of one’s limbs (hand & co.) at the master’s desire for wiping off the master’s private parts, all other actions are pure. Karmakaras do work for securing Vedic learning or uṣṭana (art or craft), some desire or money.

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840 वैदिक: मध्यान्य पत्तन कार्यकालदश्यादिविवि। कस्तताधर्मोऽऽश्नित्विभी यथाय प्रथमे विकष। नाद् ६ क्षुद्रित्व II p 206, वि \(\text{र} \) p 167, व्य व p 330

841 अवशेषत्वम् श्वस्तुमोऽर्थो माणुखयते: माणुलिपि तस्मात्यमिन्या। श्वसुभक्षणं। नित्या प्रयो II. 182

842 अवशेषत: बिनोक्तश्रवण कवित्वादवा बुधकालोष। तथा माणुलिपि आय व्र. II. 11. 28. 2-3.

843. विभृत्तचार्यः चैत नारायणपरिमाणम्। नारो व्यासपरः हूँदराष्ट्रजय न पद्द। कार्याः 720 q. by वि \(\text{र} \) p. 144
Duties of karmakaras

Duties of a Vedic student are described by Nār. VIII 8-15 and have been set out above in H. of Dh. vol. II. pp. 305-312 viz. to wait upon the teacher, his wife and son, to beg for food, to sleep on the ground, to do the bidding of the teacher, to learn the vedas, to offer fare to the teacher at the end of Vedic study. An apprentice is distinguished in his actions and mode of maintenance from a sīya. The antevāsin, acc. to Yaj. II. 184, Nār. VIII 16-21, Br. (S. B. E. vol. 33 p. 344 verse 6) and Kāt. 713, resides with a master craftsman to learn some art or craft (such as goldsmith's work, singing, dancing, housebuilding), agreeing to work under him for a stated period, the master craftsman gives him food and teaches him in his own house, does not put him to any other work; if the apprentice leaves the teacher even though the latter is willing to teach him, he (the pupil) should be made to stay with the teacher and may be whipped or confined; the pupil even though he may have become an adept has to stay with the master till the end of the agreed period and the teacher appropriates the fruits of the apprentice's labour. If the master does not instruct the apprentice in the craft and makes him do other work, he would be liable to pay the first amerement and the pupil may leave him.

Hired servants have different grades among them arising from the work they do, the wages they receive and the period for which they are employed and they are distinguished from apprentices in these respects and not as regards caste or mode of maintenance. According to Nār. VIII 22-23 and Br. (S. B. E. vol. 33, p 344 verse 8) a hired servant is of three kinds and his wages depend on the work he does and his ability to do it. The three kinds are the highest (viz a soldier), middling (an agriculturist), the lowest (a porter). A hired servant may

844. अनेकोनां देशपतिनां जातिकामृतस्य, निर्भरिलामागम्यस्यत् स्मार्यमित्रा।
पञ्चमं, इत्यहैं निर्माणस्मायार्यस्य, निर्माण विद्या वर्गीय समाजपति स्वस्तमार्यस्य।
तत्र श्रीमते निर्माणस्मायार्यस्य, निर्माण विद्या वर्गीय समाजपति स्वस्तमार्यस्य।
हुष्टि विद्यार्यस्य अंतः पुण्यार्यस्य, निर्माणस्मायार्यस्य, निर्माण विद्या वर्गीय समाजपति स्वस्तमार्यस्य।
उत्तरार्यस्य राजशोभा कुलोद्भविष्यं \\

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845. वसू न वद्वानविधित्व समाजपतिनां स्वस्तमार्यस्य।
वाणिज्यासहस्ते पुरुष समाजपतिनां निर्माणविधिति वा कारणमार्यय स्वस्तमार्यस्य।
पुरुष मीन प्रभूति पुरुष वद्वानविधिति वा कारणमार्यस्य, परस्य सत्यमार्यस्य।
सत्यमार्यस्तिविधिति निर्माणविधिति वा कारणमार्यस्य।

846. द्वद्वारायस्य अंतः पुण्यार्यस्य, निर्माणविधिति वा कारणमार्यस्य।
अंतः पुण्यार्यस्य, निर्माणविधिति वा कारणमार्यस्य।
अंतः पुण्यार्यस्य, निर्माणविधिति वा कारणमार्यस्य।
अंतः पुण्यार्यस्य, निर्माणविधिति वा कारणमार्यस्य।
be engaged for a day, a fortnight, a month or for longer periods, should perform the work undertaken and get the wages agreed upon. He may be paid in cash or by giving him a share of crops or a share in the milk of the cattle he tends.

A person who is employed and given authority over all servants and also one who looks to the affairs (expenditure &c.) of the household is called ‘adhikarmak is (or-krt), acc. to Nar. VIII. 24. All these four are called workers in clean occupations, while the fifteen kinds of slaves are employed in the lowest and dirtiest work (Nar. VIII. 25). The difference between the hired servants and slaves is this that the latter surrender all their freedom and themselves entirely to another, while the former, though dependent to some extent, do retain some freedom (Kāt. 715), but a brāhmaṇa was not to be a slave. In very ancient times the master’s liability for the acts of his servant does not seem to have been recognized. For example, Gaut. XII. 17 states that if cattle entrusted to a herdsman cause loss to crops, then the herdsman is to be held responsible (and not the owner who employs the herdsman). But Manu, VIII. 248, Yāj. II. 161, Nār XIV. 29 appear to hold the master liable to make good the loss caused by the herdsman’s default. Vide Br. quoted above under veḷanavyu-nupākarma.

The kinds of slaves and the incidents of slavery have been already dealt with in H. of Dh. vol. II pp 180–189. A few matters not referred to there may be dealt with here. ‘Buddhist India’ p. 55 (by Rhys Davids) shows how slavery in the Buddhist period was not as miserable as under the Greeks. The Rajatarangini IV. 39 states that king Vajraditya of Kashmir (in the 8th Century A.D.) sold many men as slaves to Mlechchas. One cannot help blaming the British Indian Government for the Assam Labour and Emigration Act (VI of 1901) whereby a modified form of serfdom or slavery was legalized for the benefit of the tea planters of Assam, Bengal and other provinces and by sections 168–169 of which poor indentured labourers who were induced to labour on the sumptuous monthly wages of five rupees were liable to be sentenced to fine or in

847 द्रव्यक्रय भागपूर्त| कुम्भोमीरत्न स्मृत| अतप्रस्थान बिशेष तत्त्वे | संग्राम| तृतु | by स्वरत्याज | II p. 196, अभिज्ञम प 136, वि. p. 143

848 सूरतदागामयः द्रव्यादिपावस्तु वादरच्यु| बिचु| गंधर्व| मिजीर| वायुं| निर्देशात| काल्य 715 q by अण्डकारण प 788, स्वरत्याज | II p. 197.
default to imprisonment, if they left off the work to which by agreement they were tied down in unhealthy districts and unhealthier surroundings.

Kât. (725) provides that if a woman who is not a slave marries a slave she becomes a slave since her husband is her lord and is dependent on his master. If a person buys or sells a brâhmana woman as a slave the king should annul that transaction and all persons (concerned in it) should be fined by him and the same holds good in the case of a woman of a respectable family who took shelter with a person and was made a slave by him or transferred by him to another as a slave (Kât. 726–727). The punishment of first amercement is prescribed for a person who has sexual intercourse with the nurse of his child or with another woman who is not a slave and the wife of his attendant as if she were a slave; and a fine of two hundred panas is provided in case a master who is not in difficulties and is well-off desires to sell a female slave who is faithful and weeps bitterly (being unwilling to leave him). Nar. VIII. 40 provides that if a slave leaves his master and goes over to another saying 'I am your slave' that would not help the slave, as his former owner would be entitled to claim him back. Uûanas states that a guru (elderly person), a sapinda, a brâhmana and persons of the lowest castes (candâlas &c.) cannot be made slaves, nor can any one (of the higher castes) who is superior in learning be the slave of one of the same caste.

849 दुस्तीपाद सरसवरी या सारी वासवीलनाधकारात्। प्रसादार्थं महृत्युः साम्यहियम्।
850 आद्यनाथ जन्ममार्ग यहद्विजित्तो निधि तद्यद्यति। जयः सक्षाय सारीं दुर्गांकृततरतिः॥ संहाराय। वासप्रवृत्त दुर्गाप्रवृत्त वीरं वातार्थीयम्। जयः सक्षारं नवार्थं दुर्गा विश महाराजः॥
851 न मुहर्द भक्तिऽव न निनो भक्तियोऽव नोऽपि यो: विद्याज्ञीनम्। उदाहरां प्रवृत्त जयः सक्षारं नवार्थं दुर्गाप्रवृत्त वीरं वातार्थीयम्॥

[Note: The numbers 849, 850, 851 are likely references to specific legal or historical texts, but without further context, the exact meaning is unclear.]
När. (XIII, 1) employs the expression समयस्युपाकुर्या. Manu VIII, 5 employs the first expression. Manu (VIII, 218-219) has both names in view, when he says 'I shall now declare the rules applicable to those who violate समयाः (conventions) He who having entered into a compact (समय) under (the sanction of) an oath with the inhabitants of a village or a district or with a group of traders or other persons breaks it through greed should be banished from the kingdom by the king.' In एप. ध, स. I, 1, 2 and II, 4, 8, 13 the word 'समया' is employed in the sense of 'convention or accepted doctrine'. The same word is also used in the sense of 'agreement' as in क्यू. I, 61 (गौरवस्या समयांनमंत्वह) In this title it means 'the acceptance of a certain rule or convention arrived at by many', as explained by Medhātithi on Manu VIII, 219. It signifies a local or caste usage or convention made by groups of people (such as guilds and corporations) binding on all members that form or join the several groups. The Amarakosa holds that अधिर and सम्य are among the several meanings of समया Medhātithi explains that, if the inhabitants of a village come to a decision that they would oppose the inhabitants of a neighbouring village who were indulging in grazing their cattle in the pastures of the former village or diverting the watercourse, and that if in doing so there was a riot or a suit were filed before the king, all should

852 धर्मसम्पद्या समय सम्मत । आप च पर । 1 2, अनुभवा यु मातारंपदेन्

853 अरपसिद्धि (समय स्कृद । सर्वज्ञ सया हसनामवं निरिताति राजप्रेष्ट) वायुणम । न्यायः न्यायायानिर्देशितात्मन्त्यतिः। कालसर्वत्र

Medh on Manu VIII, 220 takes the word 'समया' by itself and ?- यिं

(S एल. वो. 25 प्र 293) is misled (probably by some corruptions) translating as 'belonging to a corporation inhabiting a village or a etc.'

नेवा says 'यथा मातारंपदां स्त्रिया (वेग समय) वायुणायानिर्देशितात्मन्त्यतिः

ता नामात्मनीपाठिनी नामात्मनी नापुनी रथ विधिनां मातारंपदेन गुरुकृतां स्त्रियां साधारणम्" तत्र इति।
be of one mind, that any one of those who encouraged this decision would be liable to be punished if he backed out of it through some inducement offered by the headman of the other village. Nār. XIII. 1 explains that samayu means the rules (or conventions) settled among heretics, naitamūnas[''] and the like. Yaś I. 192 and Nār. XIII. 2 provide that the conventions of guilds, naitamūnas, heretics, śrenis, pūgas, ganas and in towns and districts should be enforced by the king and their traditional mode of conducting their business should be protected. Some remarks have already been made on guilds and corporations above (pp. 156-57 notes 196-198). Vīda also H. of Dh. vol. II pp. 66-69 for the guilds and corporations and the meanings of words like krem, pūga, gana etc. Some further information is added here. The Sm. C. (II. p. 223) has a very interesting note illustrating the various conventions of several groups and its remarks are copied verbatim by the V. P. pp. 332-333. It says: 'Even heretics have certain rules made for the benefit of their monasteries. Among naigamas there is a practice that those who disregard messages brought by servants wearing a specific jacket (as a uniform) should be fined. Śrenis are guilds of craftsmen such as weavers. They have rules that certain articles are to be sold only by a certain guild and by no other. Pūgas are groups of elephant riders and horse riders.' Vṛata is defined by Kāṭ. as a body of persons armed with various weapons, while the Mahābhāṣya on Pāṇini V. 2. 21 (vṛtena jivati) explains it as a 'group of men of several castes and several occupations who make a living by relying on their formidable bodies.' Acc to the Mit. heretics are those like the Bāuddhas who do not regard the Veda as authoritative. Gana means, acc.
to Mit "an assemblage of armed persons subsisting by following one occupation", while Kat (680) says it is a corporation of brāhmanas. In the Rājat II. 132 reference is made to corporations of puṇḥitas at temples and tirthas (sacred places). Tho Sm. C states that among pūgas and vratas there is a convention that they must go to battle all together and not separately. Among ganas there is a usage that the lobes of the ear (of a child) are to be pierced on the 5th day or in the fifth year from birth. Among mahūganas in a settlement of brāhmanas there is a convention that a brāhmana repairing to them for collecting fees to be paid to his teacher (at the close of Vedic study) should be honoured (i.e., should be paid some contribution). In certain districts there is a usage that either the seller or the buyer should keep in his hand 1/3 of the price (probably for finding out whether the article is useful for the purpose in hand and resiling from the bargain if it is not). In forts or capitals there is a rule that corn taken out of it by a person with him when going out elsewhere should not be sold by him. In villages there is a rule that in pastures no digging would be allowed. In the hamlets inhabited by abhiras there is a convention that for adultery by a male or female there is to be no fine. It does credit to the ancient writers on dharmāśāstra that they were tolerant enough to require the king, whatever his own religious persuasion might be, to honour and enforce the usages of even heretics among themselves. The only requirement was that the enforcement of their usages must not be opposed to the interest of the country or the capital and must not cause commotion and must not be plainly immoral856 (Nār XIII. 4–5 and 7 and Mediḥāṭhi on Manu VIII. 220) Yāj (II. 188–192) lays down the following rules: there should be a committee (of two, three or five, 200 to Br.)857 to look after the business of the guilds &c (called kāraṇacantaka) who should be religious, pure, not covetous and all members should carry out what they decide upon; when the committee members approach the king on some business of their guild he should bestow on them gifts and

856 विद्वत्करण पत्रपालनायामायकालिततम । महुसादि सदाभ्राज अर्थशास्त्री निर्विशेष तथा वाचतु (सन्मानयातारक? ) on which the यज p. 337 has the following instructive note यदितिम्नन्दिस्वबीकरण शृविद्वाच निर्मिति विशेषाय विवाहालोकाधिक वाचतुतिर्निर्मिति ।

857. क्रि यज् पञ्च या कारोि ससाहित्वादिन्त । क्षित्य विषय तथा ग्राहारूपणा। निर्मिति वृह p in सुसति II. p 224, यज p 334 For the qualities of the committee members (similar to Yāj II. 191) vde Br (S.B.E vol. 33)

856 r. 01 o hv यज्, य p. 334.
honour them. Whatever is obtained by any one sent on the business of the group must be handed over by him to the heads of the group (also Br. in S. B. E., vol. 33, p. 349, verse 22)\(^{858}\) and if he does not do so he should be fined eleven times as much. Whoever goes against the heads of the group that are working for its benefit should be punished in the first amercement (by the group itself, acc. to Sm. C. II, p. 224). Kāt. (677) states the general rule that whatever is obtained (by the committee or advisers of the group) or is saved by them or whatever debts are incurred by them for their group and whatever they obtain through the king's favour should be shared equally by all (members of the group). Kāt. (674-675) provides that whatever debt was professedly incurred by the committee for the group but was misappropriated by them or applied to their individual purposes must be paid by them and that those who subsequently join the groups already formed become equally entitled to the property and liable for the debts previously acquired or incurred. Manu VIII. 220 and Br. (S. B. E., vol. 33, p. 348, v. 14) provide a fine of six nīskas of four suvarnas each (or six nīskas and four suvarnas) for him who falls out with his associates. Kāt. (671) provides that that member (of a group) who opposes what is reasonable, who gives no scope to (i.e. obstructs or persistently interrupts) a speaker (in a meeting of the group) or who speaks absurdly should be made to pay the first amercement. Yāj. II. 187 prescribes forfeiture of all property and banishment for him, who misappropriates the property of the group or corporation or who violates the conventions made by the group (or the king). As stated by the Mitthis and other sentences depended upon the nature and gravity of the offence and the capacity of the offender\(^{859}\).

**Krauvikasyānusaya (repentance after purchase or sale).** Manu VIII. 222 and Kaut. III. 15 regard this as one title of law. But Nār. (XI and XII) splits this into two titles viz. uktīyāsampaadi (non-delivery of a thing after it is sold for a price) and kritivānusaya (repentance after buying). Manu states the general rule that whenever a person after buying

\(^{858}\) नौःः: गाः गाः प्रकरणं गाः प्रकरणं कार्यं गाः। राजमिष्टोत्सवं गाः सन्माताय गाः।

\(^{859}\) सत्तौः गाः सत्तौः गाः प्रकरणं गाः प्रकरणं कार्यं गाः। राजमिष्टोत्सवं गाः सन्माताय गाः।
or selling anything repents of having done so, he may return or take back that thing within ten days. Nār. XI 2 states that property is of two kinds in this world viz movable and immovable and that all property is designated as panyā (saleable) in rules about purchase and sale. According to Yāj. II. 254, Nār. XI. 4-5, Visnu Dh. S. V. 127, if a man sells property and does not deliver it to the purchaser, he should be made to deliver it to the purchaser together with profits (between the time of sale and delivery) and if it is movable together with the price of profits arising from it (such as milk in the case of a cow) Visnu Dh. S. V. 128 prescribes a fine of 100 panas against the vendor. Kaut. III. 15 prescribes a fine of 12 panas against the vendor who after selling a thing does not deliver it and also against a buyer who having purchased does not take delivery of it, except when the thing itself is defective or is lost by act of king or theft or by fire or flood or unless the transaction was for inadequate price or brought about in distress. If the article sold is not delivered by the vendor after demand by the vendee and it is injured, destroyed by fire or stolen, the loss will fall on the vendor (Nār. XI. 6, Visnu Dh. S. V. 129, Yāj. II. 256). These rules apply when the vendor does not feel repentance for having sold the thing, but if he feels repentance then Manu VIII. 222 will apply and the vendor may pay back the price and recover the article within ten days from the sale. Kāt. (684) provides the same rule. No one, either buyer or vendor, can rescind the sale after ten days and if any one uses force in

860 विक्रियाय एवं मूलाभ केतुपृणं न प्रधच्छति। स्थानसर्पस्तुत्षु दुष्कथो ज्ञात्मकम्। किष्ण-पत्ति नार. XI. 4. The निषा on ya II. 254, विवाचनं (p 50), खा. p. 342 and others read राजसर्पस्तुत्षु and explain 'विक्रयान्तरं जातातुपोष जनसंस्कृत' (ण घ) and 'किष्णद्वाग्नादिका पार्थुद्धादि' (सामान्यस्थ) (विवाचनं p 50).

861 'Udaya' in Nār. and Yāj. may mean either the profits from the property that the vendor enjoyed or the difference in price between the date of sale and the date of delivery if the property became less in value. This applies when both parties are inhabitants of the same place, but if the purchaser is one who comes from another country then he may be awarded the profit that he would have made in the other country by selling it if it had been delivered to him at once.

862 कृतिमानन्तरो या नामित। सा केतुस्तु रथाय। विवाचनं V. 129, विक्रीयाय एवं समयस्तुत्षु हीर्दारपीड़ा। सूचीपोषननिपतादिक्यं। किष्णक प्रणवसतवादी। हीर्दारपीड़ा वृत्तिः। ग्राम्य। कृतित्रव III. 15.

863 एवं वर्णी युक्तारः परस्तुद्वादेऽन हु। कार्या 684 q. by सुकर्मनच II. p. 218, वि. p. 192, परसा III. p. 367.
recovering the article sold or bought after that period the
king should fine him 600 panes Manu VIII 228 extends these
rules about repentance and recovery within ten days to all
transactions whatever. Kat. (685) prescribes that the period
of ten days for repentance is allowed to vendors and vendees
only in the case of land, and that the period is 12 days when
the parties to sale of land are sapindas of one another and
that in other cases the period is even shorter. 864 Yaj. II. 257,
Nâr. XI. 7–8, Br. (S. B. E. vol. 33 p. 350 verse 4) provide that
when a vendor having sold a thing to one man for a price
received sells it to another or having concealed the defects of
an article sells it as free from defects he should be made to
return double the price to the purchaser and a fine equal to
double the price to the king. 865 The above rules apply where
the purchaser has paid the price, but if there is a mere agree-
ment and no price is paid, then the vendor or vendee is guilty
of no wrong if he resiles from the bare agreement to sell or buy
unless they have made an express stipulation that the agree-
ment cannot be rescinded (Nâr. XI. 10). When at the time of the
agreement for sale, the vendee pays something by way of ear-
nest, then if the sale goes off through the fault of the vendor,
the latter has to return to the vendee double of the earnest; 866
but if the purchaser does not finally take it he loses the thing
and also the earnest. Nâr. XII. 1 prescribes that when a vendee
after having purchased a thing for a price repents of the pur-
chase that is the title of law called ‘rescission of purchase,’
Nâr. XII. 2 prescribes that if the purchaser thinks that he has
made a bad bargain he may return the thing purchased to the
vendor on the same day in an undamaged condition (and may
receive back the price paid); but if he returns it on the 2nd
or 3rd day after the purchase (including the day of purchase)
he will have to lose respectively one-thirtieth or one-fifteenth of
the price and after the third day he cannot return the thing at
all (Nâr. XII. 3). But Yaj. II. 177 and Nâr. XII. 5–6 lay down

864. सूक्ष्मसंदर्शनः विक्रेतारूप्यकल्याणेऽनि । ज्वालाः संयोजनानवति व्याप्तम् परस् ॥
कत्रम (685) q. by prap. ma. III p. 364

865. ज्वाला संघीय वर्णम्य विक्रेतारूप्यकल्याणेऽनि । तत्स्रेष्ठ मित्रस्य विक्रेतारूपम् विचारं
तथा च भूषण q. by सत्तवित्र पद प 220, परा. मा III p. 370.

866. सत्यप्रकृतं दुर्योग विष्णुम विचारं इति । पालम् II. 61. vide the mitra thereon.
सर्वप्रकृतं वै दूसरा बनाद्रास्त्रि वन दूसरा । पालम् II. 61. vide the mitra thereon.
अन्तर कामोऽस, on which कृतिरामी says अद्वैतं स्थानं विक्रेतारूपम् विचारं
सर्वप्रकृतं वै दूसरा । तथा च नावनन्दा विष्णुम विचारं इति । कृतिरामी.
and for अद्वैतं स्थानं विक्रेतारूपम् विचारं इति भाषणम् वै दूसरा ।
the following periods for examination of things purchased, viz. one, three, five, seven, ten days, half a month and one month respectively in the case of iron (and clothes), milch cattle, beasts of burden, jewels (precious stones, pearls and corals), all sorts of grain, a male slave and a female slave. It must be supposed that these verses contain exceptions to the general rule in Manu VIII 222 cited above. Kaut. (III.15) allows only one night, three nights, five nights and seven nights for repentance to traders, husbandmen, cowherds, the mixed castes and higher castes and provides that where the articles sold are perishable a very short time only may be allowed. The above rules apply only when the purchaser made no examination at the time of purchase Nār. 867 XII 4 and Br. (S. B. E vol 38 p. 350 verse 3) recommend that a purchaser should himself closely examine an article before buying it and also show it to others in order to find out its defects and good qualities and provide that when he has approved of an article after close examination he cannot return it to the vendor. Vyāsa provides that hides, fuel, bricks, yarn, grain, intoxicants, fluids, gold, inferior metals (like lead and tin) and other wealth should be carefully examined then and there i.e. when once bought after close examination none of these can be returned even if some defect 868 is found therein Nār. (XII. 5–6) cited above contains exceptions to this Nār. XII. 7 gives an example of a purchase being not liable to be rescinded when a defective article is purchased with open eyes viz. a worn garment which is soiled with dust and is in ragged condition cannot be returned to the vendor if it was in that state at the time of the purchase i.e. the maxim 'caveat emptor' applies. If a purchaser does not take delivery of the thing sold to him, the vendor may sell it again to another 869 and if the thing is lost through act of God or the king the loss falls on the buyer alone (Yāj. II. 255, Nār XI 9) Kāt (692) provides 870 that what has been sold by a lunatic or an intoxicated

867 परिवेशक लघुप्रस्तावा च मदेभिः। परिवेशक चहुमत श्रीस्वयम न दुस्तरप्रेत त्रूह. q by स्तुतिचं II. p 220, वि र. p 198
868 परिवेशकारणातं भगावतसरससम हु। वालुकालिपित्तं यथा तथाविशेष यथा। स्तुतिचं II. 220, वि र. p 198 (read तुभाषकाल तथा वालुकाल)
869 Compare section 46 of the Indian Sale of Goods Act (III of 1930) for the vendor’s right of resale and sec 26 about the person who has to bear the loss of goods
870 मलोष्किने नवीत हीमानुष भयेन वा। अस्त्रस्वरूप भुगैय श्रायं शरण पुनः अविनेता कात्या। q by स. वि p 312, वि सि p 57, त्वाय. वि p 354 and र. वि p 345 ascribe it to त्वाय
person or through intimidation or for an inadequate price or by one who is dependent or by an idiot should be relinquished by the purchaser; it still belongs to the seller Kat. (705-706) lays down a novel rule to find out what is adequate or inadequate price. What is decided by the neighbours assembled together, who know (the land &c and its value) and who are afraid of committing sin, as the price of fields, gardens, houses and the like, of bipeds and quadrupeds, is declared to be the proper price; a price which is less or more than it by one-eighth is declared to be improper; what is sold for an improper price may be annulled even after a hundred years Kat. (704) states that when the owner of a field absconds together with the surety for the payment of the land tax, the judges of the court may order a sale for recovery of the tax and that such a sale may be set aside up to ten years and a compromise or exchange up to three generations, if it is inequitable. Bharadvaja provides that when taxes are not paid both by the tax-payer and his surety even when called upon to do so, then the king may order a charge on the land or sale of the land.

Uktalabha is defined as a conditional sale, where a man borrows only a portion of the proper price of a land and stipulates that he would return the money on a certain day and that if he did not do so his ownership over the land would come to an end. Kat (711) adds that a sale of the uktalabha kind will be valid if it is for more than half (the proper price of the land), provided more than ten years have elapsed after

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871 साम्येश्वर सामाजिक घर्प साधन: | शेस्वरमुख: जानवर जानवर। कल्लिका मुखलिप्ताङ्कर्णीय ज्ञानी ज्ञानी | एकमात्रातिरिक्त अथ जीवन जीवनरिति सुरुष्ण || समाजातिरिक्त जीवन जीवनरिति सुरुष्ण || कार्य Q by स || प 325, नवम Q by स || प 326 | सुन्दर्व स्नातांमिक्त स्नातांसुरुष्ण || कल्लिकाकिची शैव रामास्मर्णरा लिङ्गश्राव ||

872 पंचाति हे काश्या परामिताः सह | कार्यशंक परामितेश्वर विद्वान् वा विद्वानाः | आज्ञायणां कार्याधिकारी दुश्लाभ्य विद्वान्तर्शिष्याः || कार्यशंक and हुक्काराथ राय लिङ्गश्राव respectively Q by स || प 324 and 320, नवम Q || प 345 reads slightly differently, आज्ञायणांकाश्यामकः कार्याधिकारी विद्वान् || उक्तावर्गां न रघुनाथिणी रघुनाथिणी सिद्ध || भाद्राष्टेन Q by स || प 324.

873 युतिक्रिया दस्तान्वार्थ सह दस्तान्वार्थः कार्यिक्याः | आज्ञायणां कार्याधिकारी विद्वान् विद्वान्तर्शिष्याः | उक्तावर्गां न रघुनाथिणी रघुनाथिणी || भाद्राष्टेन Q by स || प 351, नवम Q || प 324. This is similar to the mortgage by conditional sale defined in section 58 of the Transfer of Property Act.
the period fixed for repayment.) An avakraya \(^874\) becomes valid after possession for over three generations and a (regular) purchase by mutual agreement becomes valid at once Kat. \(^712\) further \(^875\) prescribes that the unpaid purchase money carries compound interest after demand if no time is fixed for payment, but, if a time is fixed, then only the balance has to be paid up to the end of that period Br provides that in all sales, the sale deed should mention the wells and trees (on the land), the water and ways and that the crops, trees and fruits, wells, tanks and house standing on the land sold would belong to the vendor if they are not put down in the deed of sale. \(^876\) According to Harita the rules of sales are to be extended to exchanges. \(^877\)

From the Rājatarangini VI 41 it appears that a fraudulent purchaser, who, by means of the heavy bribe of 1000 dināras, induced the officially authorized scribe to include a well in the sale of a house when it was intended to be excluded from it, was banished from the country by the king, his property being confiscated and given over to the cheated vendor.

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\(^874\) अपावृतिके क्रय विक्रयविरुद्धकालमो बुधास्विदिक।अवक्रयविरुद्धकालम यह एव विदिकः।

\(^875\) कायया, (711) q by वेष लिः p 349 (which reads कायकिर्मा at the end, that makes hardly any sense) and स वि p 326 The word सावधान is explained in various ways. The Mit on यक, II. 238 defines it as a transaction whereby a bailee (e.g. a washerman) transfers an article bailed to him (for washing &c.) to another for hire. पाण्न IV 4 50 employs the word 'avakraya', but the Siddhāntakumudī explains it as the due to be recovered by a king from a market (or the like). Gant XII 39 employs the word 'avakrīta' which is explained by Haradatta as meaning 'what is purchased, but the price of which is unpaid or only partly paid'. This last seems to be the sense intended by Kat. who provides that a sale of land, the price being wholly or partly unpaid, would become indefeasible only after enjoyment for three generations. हुसानु as quoted in S V p 321 defines अवक्रय as 'अर्थ००० क्रयारुति दुर्क्रयायथक्कालः।अवक्रयी विक्रियः पदा दाते न दीयो ॥

\(^876\) शृगालविक्रयविरुद्धकालमो क्रयासंसिद्धः कुला भोले। चक्राशोर यदात्तरे वेष तत्तम।

\(^877\) सत्ताबुद्धिमित्राविकृतिसिद्धः क्रुद्। चक्राशोरिष्टूर्य यदात्तरे तत्तिनियतीः हारिकर्षणः।
The Vyavahāranirnaya, after quoting Br. and Vyāsa, very 

luckily explains what is meant by sale, purchase, exchange &c. Gold and the like which a man desires to render or pay is called 

price, while land, house and the like are said to be ‘panya’ (saleable thing) Purchase means acceptance of a thing pre-

ceded by the offering of a price (either paid or agreed to be paid); sale is the acceptance of a price preceded by the offering of a saleable thing Paṇīrt or paṇivarīnā is the acceptance of an article for an article of the same kind; if there is a disparity in value between the two articles exchanged the exchange is called ‘avakraya’; when there is an exchange of 
two articles of different kinds but of the same value it is called vumaya 878 The Vyavahāranirnaya makes elaborate pro-

visions for sale of land at the order of the king for non-payment of land tax It quotes Prajāpati (p. 350) to the effect that the purchaser at such a sale must offer half or at least one-fourth of the real price of the field and that the original owner could get back his property sold for the royal dues by paying the full price to the purchaser up to three generations. Other elaborates rules on the same subject are passed over here for reasons of space These provisions indicate that ownership in cultivated fields belonged to individuals and that the State had only the right to levy taxes Vide H of Dh. vol. II pp 865–869 and Kāṭ quoted above (on p. 196) for a discussion of the theory of the State’s ownership of all lands. Taking into consideration the Purvamāṃsā texts, the Vyavahāramayūkha and the verses of Kāṭ, and others it appears that the State was deemed to be the owner of all lands as a general proposition, but that where individuals or bodies of persons had been in long possession of lands that they cultivated, the ownership of the State was 

qualified and restricted only to the recovery of a tax or share

878 स (चुंचुपति) एवधा—आपीयखु विजातीयं द्व्यसाधारं ज्ञापत: । चौदी-

रुतां (क्रमोपयो) परिपलोपां साधैं सु करिन्तम: । इति। प्रापरात् । आपीयखु विजातीयं द्व्यसाधारं ज्ञापत: । को पूर्णारु संतानं स्वल्हुतं परिपलोप: । परिपलोप । सजातीयखु विनिधम चौदी 

रुतां वित्तिकारण । चौदी बहुपरसंवदय ॥ प्रापरात् । इति। सील्हुत्संकन्तनका पंते चावत्तिष्टिति परिपलोप: । इति। चौदी बहुपरसंवदय ॥ प्रापरात् । इति।

स्वल्हुतं परिपलोप: । इति। सील्हुत्संकन्तनका पंते चावत्तिष्टिति परिपलोप: । इति। चौदी बहुपरसंवदय ॥ प्रापरात् । इति।

स्वल्हुतं परिपलोप: । इति। सील्हुत्संकन्तनका पंते चावत्तिष्टिति परिपलोप: । इति। चौदी बहुपरसंवदय ॥ प्रापरात् । इति। का

पूर्णारु संतानं स्वल्हुतं परिपलोप: । इति। सील्हुत्संकन्तनका पंते चावत्तिष्टिति परिपलोप: । इति। चौदी बहुपरसंवदय ॥ प्रापरात् ।
of crops and that individuals and groups that had cultivated lands in their possession were regarded practically as owners of the land subject to the liability to pay land tax and to the right of the State to sell the land for non-payment of tax. The Vyavaharaniyana quotes Br and another smrti text that sadras, persons excommunicated for grave sins (pasta), candalis and desperate characters cannot be allowed to possess the lands of a brahmana by sale, partition or in lieu of wages, the same work further quotes Vyasa, Bharadvaja and Br that when land is sold there is a right of pre-emption in favour of full brothers, sapindas, samnadakas, sagotras, neighbours, creditors and one's co-villagers in order.

Gifts of immovables were looked upon in very ancient times with disfavour, though they were made even in the times of the Upanisads Vide H. of Dh vol II pp 740-41 But sales of land must have been rarer still in ancient times owing to the patriarchal and joint family systems. The Mit on Yas II 114 quotes a verse forbidding the sale of immovable property; but sales of lands are mentioned in many copperplate grants. Vide Paharpur plate grant of Gupta year 159 i.e 478-79 A.D. in E. I. vol 20 p. 55 (where one kulyavapasa of land is stated to have been sold for two dinaras to a brahmana and his wife named Rami by the city council for the provision of the worship with sandal-wood paste &c of the divine arhats at a vhata), E. I. vol 17 p 345 (grant of the time of Kumargupta i in Gupta year 113), the Damodarpur plates (E I vol. 15 p 113), Faridpur plates (Ind Ant vol. 39 p 193), E I vol 18 p 74 From these records of the 5th and 6th centuries A.D. it appears that land was owned by private individuals or by

879 तावरस्य पतिताश्रयं च भवदामशास्तात्तत्तत्त्तत्त्तरण | नामानि दिव्येऽवर्धानं कृत्यविकृतम्
कर्मणि || सूत्र | विभागमने क्रयैणापि वेतनापयोपि वा | श्रीमानमेव क्रयाय ि विवस्तितविधिः
कृत्यतात्र q by व्यय नि p 354 With these provisions prescribed at least 1500 years ago one may compare the South African legislation passed in the midst of the Second World War (alleged to be fought for different land, of freedoms) against Indians preventing the purchase by them of lands in areas reserved for Whites

880 शासनः ज्ञातासम्साधिन्या क्रमेन कर्षर्तम् | तदस्तवतः दौवी महिमाः
प्रवेश मति || सूत्रस्पतिः | सोवराष्ट्र सदिक्यमत सादिक्याय समाधिः | मामला महिमाः मध्यो
संस्कृत शूर्येन सता q by व्यय नि pp 355-56

881 शासने विक्रयश नामश्रुपांश्चितिमुदासः | q. by मित्र on या II 113
joint families or by the village community or by the king and there was a fixed procedure when land was to be sold, that the purchaser approached the District Officers who consulted the *pustapālas* that kept a record of titles and that the villagers and headmen were consulted and asked to mark off the land to be sold. It appears that the smṛtis recommended that sales should be clothed in the formalities of gifts, probably because gifts were frequent and sales were not. A smṛti quoted by the Mit (on Yaj. II 114) states 'land passes (i.e., is transferred) with the assent of the villagers, the agnatic relations, the neighbours, the co-sharers and with the offering of gold and water.' The Mit explains that these are not absolutely necessary formalities of a sale, but that they are recommended for the sake of greater caution and convenience, that the assent of the villagers is to be secured for the publication of the transaction of sale, as a text says that acceptance, particularly of immoveables, should be made openly, that the neighbours' assent should be secured for preventing boundary disputes, that the assent of agnates and co-sharers is desired for making it easy to complete the transaction, that it does not follow that without the assent of these the sale of land is not valid or complete. Water and gold are to be offered because gifts being highly commended, a sale should be clothed outwardly with the same formalities. Vide Dr. P. N. Sen's *Hindu Jurisprudence* pp. 76–78 for the opposite procedure of the ancient Roman Law that gifts were to be clothed with the formalities of sale. For water and gold in the case of gifts vide above under *dattapradānta*.

*Svāmāpānamārā (dispute between the owner of cattle and herdsman who is engaged to look after them)* In ancient times this must have been a prominent source of litigation in a predominantly agricultural country like India. Nār. appears to have included this title under *vetanasyānapāka ma*. Yaj. II 164, Nār. IX. 11 provide that the cowherd has to bring back to the owner in the evening the cows (and other domestic animals) handed over to him in the morning by

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882. *व्यूँपि-ख्यामागतिसामान्यामुखायाकारवाल वा।* *विरणमकायांनेन चयिरिम्युष्यानिः* केवली। *इति तत्त्वाध्यायोऽनुपत्ती-नविदेशः प्रताशा दृश्यदि स्वामान्यान्यान्यायं नविदेशः स्वामान्यान्यायं*। *विक्रेताय अथवा सार्थकास्वते पुज्या वाणिज्यान्यायं स्वामान्यान्यायं कुशलतिप्रवर्यः।* *नित्रत ओम या II. 114. नित्रितः; &c 15 वा, I 176*
the owner, after grazing them in the pastures and making them drink water. Manu VIII, 230 says that during the day the responsibility for the safety of the cattle rests on the herdsman and during the night on the owner provided they are in the latter’s house. When there is no express agreement as to wages Nār. IX, 10 and Br (S. B. E. 33 p. 346 verse 19) prescribe that a cowherd will get as his wages all the milk of the cows tended by him on every eighth day plus a heifer (two years old) every year out of every one hundred cows tended by him or a milch cow with her calf every year for every two hundred cows looked after by him. Manu VIII, 231 provides another method when no wages are fixed by agreement viz. a hired herdsman, who is paid with milk, may milk as hire the best cow out of ten chosen by agreement. Br (S. B. E. 33 p. 346 verse 20) states that the cowherd shall save cattle from the danger of worms (or reptiles), robbers, tigers and from caverns and pits and that he should try to protect them to the best of his ability, should call out for help or inform his master. If the herdsman does not struggle to protect the cows, nor raise a hue and cry nor inform his master he must make good the value of the cow lust and must pay a fine to the king (Nār. IX, 12). Br (S. B. E. 33 p. 346 verse 20) states that the cowherd shall save cattle from the danger of worms (or reptiles), robbers, tigers and from caverns and pits and that he should try to protect them to the best of his ability, should call out for help or inform his master. If the herdsman does not struggle to protect the cows, nor raise a hue and cry nor inform his master he must make good the value of the cow lust and must pay a fine to the king (Nār. IX, 12). Br (S. B. E. 33 p. 346 verse 20) states that the cowherd shall save cattle from the danger of worms (or reptiles), robbers, tigers and from caverns and pits and that he should try to protect them to the best of his ability, should call out for help or inform his master. If the herdsman does not struggle to protect the cows, nor raise a hue and cry nor inform his master he must make good the value of the cow lust and must pay a fine to the king (Nār. IX, 12). Br (S. B. E. 33 p. 346 verse 20) states that the cowherd shall save cattle from the danger of worms (or reptiles), robbers, tigers and from caverns and pits and that he should try to protect them to the best of his ability, should call out for help or inform his master. If the herdsman does not struggle to protect the cows, nor raise a hue and cry nor inform his master he must make good the value of the cow lust and must pay a fine to the king (Nār. IX, 12).
to pay a fine of 12½ panas\(^{886}\) to the king (Yāj. II 165) Ap. Dh. 8 II. 11, 28, 6 makes\(^{887}\) the herdsman liable to pay the price if an animal in his charge dies or is lost (by theft &c.). Manu VIII. 233, 236, Nār. IX 16, Vyāsa state exceptions to the above viz. where an animal is carried away \(^{888}\) by robbers though the herdsman raised a cry, he would not be liable to make good the loss provided he gave information to his master at the proper time (immediately after the animal is carried away) and proper place; or when the herdsman himself is seized or the village is attacked or the country is invaded, the herdsman would not be liable for loss or seizure of any animal under his charge; and also where, while the herd is grazing in a proper order near a forest, a wolf suddenly kills an animal. Manu VIII. 234, Nār. IX 17 state that when cattle die through act of God or king or die without any fault of his while in charge of a herdsman, he has to free himself from liability or from the suspicion of himself having\(^{889}\) carried away surreptitiously the animal by producing before his master their ears, skin, tails, bladders, tendons and yellow bile or by showing their limbs (viz. their characteristic marks). Vyāsa states that if a herdsman, who has received his wages, abandons cattle in an untenanted forest and moves about in the village he should be fined by the king.\(^{890}\)

Yāj. II 166 provides that a portion of land should be set apart at the discretion of the villagers or that of the king as pasture for cows Manu VIII. 237, Yāj. II. 167 prescribe

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\(^{886}\) अर्थसिद्धा in या. II. 165 means, acc. to the Māt. Sm C. II. p 308 and भपरसत् p 773, 134, while पौर मा III. p 375 and व्या. म. p 348 say that it means 12½, 'अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च: सार्थकाश्च आश्च आश्च आश्च आश्च आश्च:।

\(^{887}\) अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च: सार्थकाश्च आश्च आश्च आश्च आश्च आश्च:।

\(^{888}\) अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च: सार्थकाश्च आश्च आश्च आश्च आश्च आश्च:।

\(^{889}\) अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च: सार्थकाश्च आश्च आश्च आश्च आश्च आश्च:।

\(^{886}\) अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च: सार्थकाश्च आश्च आश्च आश्च आश्च आश्च:।

\(^{886}\) अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च अर्थसिद्धाश्च: सार्थकाश्च आश्च आश्च आश्च आश्च आश्च:।
that on all sides round a village, a *khawata* and a town an uncultivated space for pastures (between it and the fields) shall be kept respectively of 100, 200, 400 *dhanus* in extent. *Kat* (666) prescribes that the owner of a field (which is near a forest) should construct a high palisade before the crops have grown, for animals (or deer) when they have once tasted the sweet (crops) can be warded off with difficulty. *Manu* VIII 239 = (Mataya 227 25), *Nar. XIV* 41 prescribe that a hedge should be constructed for a field that is near a public way so high that a camel cannot look inside it or a horse or cattle cannot jump over or so thick that a dog or bear should not be able to thrust its head inside it through holes. *Manu* VIII 238 (= Matayapurana 227 26), *Yaj. II* 162, *Nar. XIV* 40 provide that if a field situated near a village or a pasture or near a public road is not protected by a hedge and cattle straying into it cause loss, the herdsman is not to be held guilty. It is provided by *Ap. Dh. S* II 11 28 5, *Manu* VIII 240, *Nar. XIV* 28, *Kat* 664-665 that if cattle enter into fields, parks or pastures that are situated near a village or a public road and are enclosed by a hedge, they may be seized or beaten off, the herdsman is to be fined (a hundred *panas*).

*Yaj. II* 159-161, *Manu* VIII 241, *Nar. XIV* 28-29, *Kat* 667 and others lay down that where cattle enter fields (not near a village or road) and cause loss, the herdsman is to be fined or whipped, the owner of the cattle is to make good the loss and

891 A *vallu* is 4 cubits (or about 6 feet) *Manu* VIII 237 ordains having a space of 300 *dhanus* round a city, it also says that the space round a village for pastures should be three throws of *samrya*. *Ap. Dh. S* I 3 9 6 and 23 employ the expression *dhampar* for stating distance. *Kat* means yoke-pun. (क्षणकिंकर) *Vide* p 145 note 185 above for *dhanus* and other measures of distance. *In E I* *val I*, pp 154-155 a *पलाप* (the king's hand) is mentioned in an inscription dated *सहवत* 933 at Gwahor. A *दुःख* was 4 *हस्तम* but there were *दुःखस* of 7 or 10 hastas. *Vide* *तिका* on *ya* II 106. It was but natural that in ancient times men relied upon his own fingar kn hand nx height as a measure of length. *Vide* H. *Vide* also H of Dh *val* II p 209 n 485 and n 2041 (in *हस्तम*, *दुःख* and *निर्लभ*), p 1034 (in *वैद* being as much in length as the height of the sacrificer) and *purusa* as a measure of nx length in *स* V 2 5 1 and *कार्ययज्ञिनी* 16. 8.

21-25 *Vide* also H of Dh *val* II p 989 n

892 अन्तःच्छेदेण सर्वेण्युक्तिः कृषिदृष्टान्तः गहनः/ कुं लेखेष निर्माणन्तः कृषियाशुदः गहनः।

*कारय* 664 q *by* *अपरश्च* p 770, *सूत्रित्वः* II p 209

893. क्षणिकातिपदितः रूपेछ पद्मशालः। गदनः सत्त्विकितः गहनः श्रुतः।

*कारया* 664 q *by* *सूत्रित्वः* 208, *सिव* p 241, *हितसन्त्राथिनः* 11 25. 5.
pay the fine prescribed and the fines vary e.g. Yāj. II. 159
prescribes fines of 2, 4 and 8 māsas respectively when a goat,
or a cow or a she-buffalo strays and causes loss of crops, while
Sat. (667) prescribes only ½ pana in the case of cows and
sheep and ¾ in the case of she-buffaloes Vide Gaut. XII 19-22
and Kaut. III. 10 also. Those who purposely set cattle to eat
or destroy crops were to be punished as thieves (Nār. XIV 34)

Ancient India entertained tender feelings for certain
animals and in certain circumstances Nār. XIV 30, Yāj II. 163,
Manu VIII. 242, Kaut III 10 894 and Usanas provide that cows
within ten days after calving, a stud bull, a horse, an elephant,
animals let loose in honour of ancestors or deities, and cattle
that have strayed from the herd or that have no herdsman to
look after them and have met with an accident are to be
warded off when causing harm to crops, but the owner is not
to be fined. Usanas 895 states that the reason for this leniency is
that horses and elephants are protectors of people Aparāraka.
(p 771) explains that this exemption applies only to the king’s
horses and elephants. Usanas adds that (owners of) cows
should not be fined when they cause some loss at the time of
festivals and śrāddhas. The great veneration for cows led
Usanas to lay down that he who requires the owner of a cow
to re-imburse the loss of crops that are eaten up or destroyed
by a cow will find that his putra and the gods do not receive the
offerings made 896 by him. This is explained by the Par. M. III.
p 385 as referring to crops in fields near a village not enclosed
by a hedge and by the Madanaratta to crops eaten at the time
of śrāddha Br., Yāj II. 161 and Nār. XIV. 38 require the owner
of the cow to re-imburse the owner of the crops for the loss as
settled by the neighbours. Vide under ‘steya’ for cases in
which there is no offence of theft even if a person takes certain
things belonging to another without his permission.

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894 गाय के रूप में अथवा जानवरों के रूप में घायल करने का मामला। अथवा जानवर में यह निरीक्षण देता है। काव्यांकों के द्वारा
पाया गया स्थान।
895 अथवा हस्तियों का हस्तियों के रूप में घायल करना। अथवा स्तन्त्री स्तन्त्री के रूप में घायल करना। वर्तमान काल में गाय
के रूप में घायल होना। 
896 गोविड़ के रूप में श्वेतपुष्प में निरीक्षण की गई है। वर्तमान काल में गाय के रूप में घायल करना।
CHAPTER XXII

SĪMĀVIVĀDA (boundary disputes).

This is called kṣetrayuvāda\(^{897}\) (disputes relating to fields) by Nārāda XIV. 1, who defines it as 'dispute with regard to land in which questions about dikes or embankments, the boundaries of fields, ploughed land and fallow land have to be decided.' Nārāda's idea appears to be that the word 'sīmāvivāda' in Manu is only illustrative and is a compendious way of mentioning disputes about land in general. According to Kāśyapa (732) there are six causes\(^{898}\) of land disputes viz. claiming more land, claim that a person is entitled to less than he possesses, claim to a share, denial of a share, seizing possession when previously there was none, boundary. In all these cases boundaries have directly or indirectly to be settled and therefore all these are included under the topic of sīmāvivāda. A boundary dispute may relate to the boundaries of a district (janapada), a village, a field and a house. Boundaries, acc. to Nārāda, may be of five kinds.\(^{899}\) They are described as follows: dukṣapāni is what is indicated by trees which are like a flagstaff. Manu (VIII. 246-247) prescribes that trees such as asvattha, the silk cotton, sāla, tāla (palmyra palm), that have milky juice (like udumbara) should be planted to indicate boundaries and also bamboo clumps, bushes, reeds &c. A matusāni (lit. having fish) boundary is provided by rivers flowing naturally and full of fish and tortoises or by tanks and reservoirs of water (Manu VIII 248). A nārdhāni boundary is one indicated by concealed signs (just as nīdhāna i.e. a treasure is concealed in the earth), such as pots filled with chaff, coal, bricks, bones and similar things that the earth does not corrode.

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897 भक्तेनाज्ञानेऽपिद्धिः भक्तेनाज्ञानेऽपिद्धिः। क्षेत्राविवादः गत्त स्वात्तिवादः। शेषेन तु \[संधि स]

898. आक्रिक्य स्युद्धता बाह्रे अस्तिन्नासिनिनेव घ। अभोगतयिं श्रेयं घ। प्रहुः यशस हेतुः। कार्य 732 घ द्विषा नीति घ या 11. 150, वि । द्विषा 201, अधार्क ।

899. अर्थित्य मन्त्रिको विवेद्विवाद्य भविष्यते। राजसाधनमेव विवेद्विवाद्य श्रवण । कार्य 732 घ द्विषा नीति घ या 11. 150.
and are buried inside the earth. Manu (VIII. 250–251) enumerates those objects that should be buried in the earth, which would serve to indicate the boundaries of a village or field and which are therefore called concealed (upacchanna) by him. A bhyaṇamātā (free from danger) boundary is settled by the agreement of the parties. The fifth kind is the one that is laid down by order of the king. Bī (S. B. E. 33 p 351 verse 2) prescribes that at the time of founding a village definite boundaries should be erected or constructed by means of visible or patent (maṅga) and concealed (upāra or upacchanna) signs and the Sm C II. 228 explains that a row of big stones should be employed to indicate the boundary. Brhaṇpati (S. B. E. vol 33 p 351 verses 3–7) states what patent and concealed boundary marks should be and requires elderly persons to point them out to youths and children who in their turn when old are to point out the boundaries to other youths and in this way traditional knowledge of boundaries may be kept up. Manu (VIII. 252–253) states that in disputes boundaries should be settled in accordance with the visible and concealed signs described above, by reliance on long former enjoyment and by the constant flow of water and that if there be doubt even after observing the signs then the dispute has to be decided on the evidence of witnesses. Witnesses could either depose to the marks of boundaries or to the boundaries themselves. Those who could not point out the marks but were to define the boundaries themselves were to follow a certain procedure. Manu VIII. 254 states that the witnesses should be asked about the marks of boundaries in the presence of the litigating parties and groups (or families) of the villagers. The witnesses on being asked were to trace, point out and settle the boundary unanimously, being clad in red garments, wearing red chaplets and being exorted to depose truly by their spiritual merit and carrying clods of earth on their heads, by reference to moulds or depressions, coals, bones and chaff (buried underground, concealed).
in a vessel, embankments, anthills, platforms of stones or bricks (Manu VIII. 255, 256, Yajñ II. 151, Nâr XIV 4-6). Vas 16 13, Kaut. III. 9, Yajñ II. 150, Manu VIII. 258, 260, Nâr (XIV 2-3) prescribe that on failure of witnesses of the adjoining villages, neighbours (sâmanta), old men, cowherds, husbandmen who plough the fields near the one in dispute, hunters, fowlers, fishermen, snake catchers and foresters should settle the disputed boundary in the presence of the king. The Mit. on Yajñ II. 153 quotes Kat (743-745, 51) to show that witnesses were divided into sâmanta, mana, urdhila and udhipta, each preceding group being superior to the succeeding. The Mit. further says that the neighbours as witnesses are to be arranged in the form of the layers of the petals of a lotus. the nearest ones (samanâlaka) are those most preferred, (but if this group has faults) then a second but a more removed group and then a third group still more remote may be examined. Sankha-Likhita and Vas. 16.13-15 prescribe that in boundary disputes the decision depends on neighbours, in the case of conflict of witnesses on documents and then on the old men in the town or village and the guilds. Yajñ II. 152 and Manu VIII. 258 require that the neighbours who are to settle the boundary should be four, eight or ten (even in number) and inhabitants of the same village (if possible). Br. (S B E 33 p 352 verse 14) requires that the witnesses should know the source of title (to the disputed land), the measurement (in murtanas, ukandus &c.), the length of enjoyment or possession, the names of persons (in possession) and the characteristic geography or lie of the land. The general rule was as stated by Nâr XIV 9)

902 सम्बन्धसा, सामंता: च चालसु दिस्तन्त्वादामाद्यते च गतिनिष्ठे। विशेष्यम् ग्रामसामंत: क्षेत्रेष्यं कृतितिशयः। गृहेण शरस निविद्यं समकाल चिन्हपि। इति कात्यायनवचनादृश्यादिः। ग्रामविद्याये तत्स्थष गुणाः। तत: पण्यते। काव्यां स, II 151।

903 सेवामध्ये सामान्यिकः स्वरूपावति । स्वभावे पद्धतार्थी कार्याः नाम निर्णयं । काव्यां 737, q by निमंत्र या II 152, चि. 396।

904. शस्त्रभिगत: सामान्याय: | सामान्यिकः स्वतंत्रपथाय: | क्षेत्रनिर्देशिकोऽद्वारा । शास्त्रेय:भिगत: सामान्यायः | क्षेत्रनिर्देशिकोऽद्वारा । शास्त्रेय:भिगत: सामान्यायः | क्षेत्रनिर्देशिकोऽद्वारा । काव्यां 33 चिन्त. 9, II 258, सारिकम गृहस्ताः। गृहमाध्यनवचनादृश्यादिः। ग्रामविद्याये तत्स्थष गुणाः। तत्स्थष पण्यते। काव्यां च, स, II 152।

905 अभावं ख स्मारणं गोत्वा कार्यानि तच नानां । गृहस्तानस्त्यं दैभूभे निविद्यं अनुभूतिः। काव्यां च, स, II 152, यास्य मा III 359, चि. 355।

Some works read भोगं कार्यं च
that a single witness however confident he might be (or however reliable) should not take upon himself to point out and settle the boundary, since this (boundary) dispute being a very important (difficult) matter, its decision should rest with many. The Mit. (on Yaj. II. 152) explains that this prohibition holds good only if the single witness is one not accepted by both sides as reliable. But Nar. (XIV. 10) and Br. (S. B. E. 906 33 p. 352 verse 11) hold that where a single witness accepted by both sides has to settle the boundary (in the absence of more witnesses and in the absence of reliable patent or concealed signs) he should do so after placing a clod of earth on his head, after being dressed in red robes and wearing red flowers and after observing a fast. If it was a śūdra who was to trace or lay down a boundary Visvarūpa, 907 on Yaj. II. 156 quotes a prose passage of Brhaspati that he was to be decked in red pieces of cloth, his face was to be smeared with ashes from a cemetery, a mark was to be made on his chest with five fingers dipped in the blood of a goat and the entrails of the sacrificed goat were to be tied round his neck and he was to hold a clod of earth in the right hand. All this was to impress upon him the gravity of the work and the necessity of doing his best impartially. If no knowing witness or no patent or concealed signs are available the king has himself to settle the boundary between the two villages at his own discretion (Yaj. II. 153, Nar. XIV. 11, Manu VIII. 265). He may divide the land between the two villages equally and construct new marks of boundaries, but if the disputed land will be of greater benefit to one village than to the other the king may assign the whole of the disputed land to the former Manu VIII. 245 prescribes that when there is a boundary dispute between two villages the king should decide it in the month of Jyestha when the embankment (marks) become quite clear (owing to water being dried up in summer). The decision made by the witnesses or neighbours became final only after the lapse of three weeks if no calamity (from act
of (and or king) before the witnesses (Kāt 751). Mau
moscribes (VIII. 261) that the boundary settled by witnesses
should be fixed by the king (or recorded in a document
containing the names of witnesses). An ancient instance of
the fixing of boundaries by two feudatory chiefs is recorded
in the Bhumara stone Pillar inscription of the Parivraja
Mahārāja Hastin and Mahārāja Śravanātha, who erected a
pillar at Amblođa to show the boundary between their
territories about 510 A.D. (vide Fleet's Gupta Inscriptions No 24
p. 110). Vide also E. I. vol. 24 pp. 32-34 for inscriptional
evidence about the carrying out of all the details laid down in
dharmāstātra works on the settlement of boundaries. Mau
VIII. 263, Yāj II. 153, Nār. XIV. 7 prescribe the middle amerce-
ment for each one of the sāmanitas that falsely settle the
boundaries, while Mau (VIII. 257) and Nār. XIV. 8 prescribe
the first amercement only for other witnesses such as members
of corporations and elderly villagers. If through friendship,
greed or fear the witnesses who know the facts do not come
forward to settle the boundary they are each to be fined in the
highest amercement (Kāt. 750).

Br. (S. B. E. 33 p. 353 verses 19-21) lays down certain
interesting rules about alluvium and diluvion. Where a river
is the boundary between two villages and the river carries away
soil from one village and attaches it to another, the accretion
belongs to the village to which it becomes attached, but this is
so when the soil carried away has no crops growing on it; if
however soil with growing crops is separated from a village and
joined to another by a river in flood, the former owner can reap
only the crops and the land will belong to the village or field
to which it has become attached.

908. सीमाचक्षुकारणी कोनेण पादस्पर्शं सचेत च। निमित्तपयतंसतः पौर्णातिकि
ताप्य 751 q. by निदतां. on यथा II 152 V. P (q 359) adds 'व्यासस्वादयमी 
सेषं.'

909. सहवा ह उस्तादानं न सेवं निमक्य पद्म। कुंণिभेषणं निमाङ्गां विमर्शस्ततमस्
सात्संगमः II कार्य 750 q by निदतां. on यथा II 152, अभेदां 1 p 763.

910. उदारोदयंस्वर्णं कर्मानु निमित्ता मही। कुंकु मेव भूमिदेहानं मासाभित्तास्तमावादा
थाष। एकं धुर्तवानं हु सूर्यस्तमध्य सतिदाहिणम। नारी तीनं भक्तियानं धर्मं न विचारितं। कृत्यं
संसद्धिरुक्तं नृसिंहं यदा मनोस्त। नारीस्वपदमा भवेन निधव चत्वारिकं। दु:। q by
स्विन्देशी। II p 234, पृष्ठ नार. III pp 398, 399, विर 1 217, ध्य. p 362, the
latter explains तथा मध्यवासाम्बुधिकारणं ता यथा भूमिः न विचारितं नानार्थं दुः:।
पूर्णवासमी नानाप्रियवित्तियांतर्यां तथाद्विकारविगतविसर्जनं। उचिततरेश्वरेशु हु हं एवं-श्रेष्ठं
ता संबन्ध नृसिंहं। वस्तुस्वतथाधारे मयेपक्षेऽवस्तु न नृसिंहां यत्र भूमि
पूर्णचक्तरे नृसिंहांनायस्तत। The विर 1 p 217 holds a different view. 'भत्र' यह नारी
धेशशाखिक संबद्धत्वम् यथात्तत् दूर्योगात्मक सा नृसिंहरिवर्धः।'
Decision of boundaries of fields &c.

Manu VIII. 262, Yaj. II. 154, Nār. XIV. 12, Kät 749 prescribe that the decision of disputes about the boundaries of fields, wells, tanks, groves and parks, palaces, houses, cottages, temples and channels carrying rain water is to be similarly arrived at by the testimony of witnesses (śūnandā and others)

Several rules are laid down by Nār., Br. and Kät, about easements and water-courses

Br. (S B. E. 33 p 354 verse 24) prescribes that no 911 interference should be caused to the manner of the enjoyment of houses (as regards doors, compounds &c.), to the enjoyment of water and markets in the way in which they had been enjoyed from the time the village or house was established or built. This means, acc. to the Sm. C. II. p. 234 and V. P. p. 363 that if a new mode of enjoyment is started in the case of these after the village was established or the house was built then interference may be allowed. Br. (S. B. E 33 p. 354 verse 25) further says that ancient windows, 912 watercourses, balconies (pages?), raised platforms on the borders of streets, waterspouts carrying rainwater from a square of houses (and cottages) enjoyed from former days should not be allowed to be interfered with, even if they might cause some inconvenience to the neighbouring house Kät (752-753) similarly provides 'one should not interfere with the base of the wall, a drain (or waterspout), a balcony, window, watercourse and dwelling house of another. These are not to be added to one's house after the first building of it (so as to cause obstruction or annoyance to another), one should not open a window 913 (so as to command a view) in the interior of another's house or open a spout (that will drain off

911 निविकारायणम् स्थायिकम् यथास्थायिकम् । रेत धातुस्थायी तत्त्व तथ निविकारकः ।

912 Compare section 15 of the Easements Act (Act V of 1882) for the acquisition by prescription of easements of light and air for a building, of support or of right of way &c

913 'One should not open a window &c.'—This right of privacy is recognized even now by the courts as enforceable in Gujarat Vide Nathubhai v Chhaganalal 2 Bom L R 454, Maneklal v Mohanlal 22 Bom L R 226.
water) on to another’s house. One should construct places (pits) for depositing ordure, urine and filthy water, a fireplace and a pit at a distance of at least two cubits from the walls of other people (his neighbours) and should not construct these very near to another’s house (vide also Br S. B. E. vol 33 p. 354 verses 25-26).

Br. (S. B. E. 33 p. 354 verse 27) defines a samasa as the road by which men and beasts pass to and fro without let or hindrance Kat. (755) calls it catuspatha and defines rūjā-mūrga as the road by which people are allowed to pass at certain times (and not at all times). Several rules are prescribed by Kautilya and others for obviating nuisances on public roads or near private houses. Br. (S. B. E. 33 p. 354 verse 28) and Kat (756) provide that roads should not be obstructed by parking carts and the like thereon, that no one should plant anything on a public road, that a man who puts obstruction on the public road, makes pits or plants trees or wilfully voids excrement thereon should be fined a māsaka, and one who does not give precedence on the road to his guru, preceptor or the king should be fined. Manu IX. 283 prescribes the fine of two kānā supanas for voiding or dropping ordure on the public road in the absence of distress and requires the wrongdoer to clean the road, but Manu (IX. 283) makes an exception in the case of persons diseased, very old men, a pregnant woman and a child, who are not to be fined but only reproved for voiding ordure on the road. Vide Matśya 227. 175-76 for the same two verses Kaut II. 36 prescribes the fine of $\frac{3}{2}$ of a pana for throwing dust on a cart-road and $\frac{1}{2}$ for obstructing it with mud and a fine double of these.

914. यास्यमापित जना चेत पञ्चव्याधिवारिताः सरसः सरसरिताः सरसरिताः केनान्विताः।

915. पत्रि सकृतु अस्व दुक्षारिवेशं देव। कामाक्षी। पुष्पाक्ष्य तरं दुष्कुलवहनं साधनः।

916. For precedence on the road, vide H. of Dh. vol. II. pp. 146-147.

917. पात्र-पात्रस्ते रथसाधनार्थाभास वृपन। परंतुकवकमिरोद्री सदृश। साधनां विकालः।

पुष्पाक्ष्य तरं दुष्कुलवहनं। पुष्पाक्ष्य तरं दुष्कुलवहनं। कामाक्षी। पुष्पाक्ष्य तरं दुष्कुलवहनं।
for doing the same on a royal road; prescribes a fine of one, two, three or four panas respectively for voiding ordure on or near a holy place, or a place whence water is taken, or a temple or the king’s buildings and exempts from fine such persons as those mentioned in Manu IX. 283. Kât. (758-759) provides that he who defiles a tank, a garden or holy water (or ghats) by throwing filthy matter (ordure &c.) therein should be made to remove the filth and fined the first amercement and also one who pollutes by washing soiled clothes in holy and purifying sacred places (ghats &c.) established by great or saintly persons. Yaj. II. 155 prescribes the first, the highest and middling amercements respectively for making breaches in the boundary (between two or more fields), for ploughing a field beyond the boundary of one’s field and for depriving a man of his field by intimidation and the like. Vide also Visnu Dh. S. V. 172 and Śankha-Likhitra, who prescribe a fine of 1008 panas for transgressing (the whole of) the boundary (of a field). Manu VIII. 264 (= Matsya 227. 30) provides a fine of 200 panas for seizing another’s field, garden or house through inadvertance, but 500 for seizing any one of these by intimidation. Nâr. XIV. 13-14 and Kât. (760-761) states that the fruits and flowers of those trees that grow on the boundary between two fields should be declared (by the Judge) as joint between the owners of the two fields and that if the branches of trees growing in one man’s field spread over another man’s field that man should be understood to be the owner of the trees and branches (together with fruit &c.) in whose field the trees are born (have taken root). The first proposition implies that if one owner
alone takes all the fruits he is liable to be fined for taking half the fruits.

A *setu* (watercourse) is said by Nār (XIV. 18) to be of two kinds, viz. that which is dug (*klīga*) into the soil in order to drain off excessive water and that which is constructed (*bhūlīga*) as an embankment to prevent water from flowing away. Yāj II. 156 and Nār XIV. 17 provide that a *setu* made by the owner of one field in the neighbouring field should not be forbidden by the owner of that field, if the loss of soil it causes (to the latter) is small as compared with the great benefit that it may confer. Nār (XIV. 20–21) and Yāj II. 157 prescribe that one should make a dike or watercourse on another's land with the permission of that man or with the permission of the king as otherwise he cannot reap the benefit thereof. Kāt (762–63) provides a similar rule about the repairs to a house or garden or tank made by a stranger without the owner's or the king's permission. It is stated by Nār (XIV. 23–25) that when the owner of a field is unable (to cultivate it) or is dead or is not heard of, if a stranger cultivates the field without objection from any body, the stranger shall enjoy the produce of the field, that if the owner (or his son) returns while the field is being tilled by a stranger, he can get his field back on repayment to the stranger of all the money expended on making the land (ready for crops). If the owner is unable to return the expenses, the stranger may retain ⅓th of the produce every year for eight years giving ⅓th to the owner every year and should hand over the field to the owner when the 8th year arrives. Yāj II. 158 and Vyāsa provide that if a person takes a field from the owner on rent for cultivation, but gives up the cultivation after slightly ploughing it and does not employ someone else to complete the cultivation, then he should be made to pay the produce that would have been recovered from the field if properly cultivated and also should be fined and the field may be taken from him and given to another tenant.\(^{921}\)

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\(^{921}\) नेत्र *श्रद्धिः* व कथितः कुर्यांश च कारितम्। स्तवति श्रद्धिः शर्न शापः धनेषु शुभः

च ततसः ॥ यथासः ॥ यथासः ॥ विष्णुः ॥ विष्णुः ॥ प्रभुः ॥ प्रभुः ॥ विष्णुः ॥ प्रभुः ॥

III. p 408 ascribe this to नेत्र
CHAPTER XXIII

VAKPĀRUSYA AND DANDAPĀRUSYA

( Abuse and defamation; assault)

Vakparasya, dandapārusya, steya, strīsangrahana, sāhasa are five titles out of 18 that are concerned with what may be called criminal matters or crimes in modern nomenclature. Vide under sāhasa below.

Nār. XVIII.1 defines vakparusya as 'abusive words that loudly proclaim censure of another's country, caste, family and the like and that cause mental pain or offence to that man.' Kāt. (768) defines it as consisting in making the sound 'hum' (of defiance) before another or coughing before him, of imitating or uttering before another whatever is censurable according to popular notions. Nār. (XVIII.2-3) says that abuse is of three kinds, uṣṭhura (reproachful such as calling a man a fool or a rogue), āṭīṭa (obscene or insulting), hīra (mercilessly severe such as charging a man with such grave sins as brahmana-murder or drinking liquor) and that the punishment for each later one is more severe than for each preceding one. Examples of the abuse of country, caste and family are respectively 'the Gaudas are quarrelsome', 'brahmanas are extremely greedy', 'persons of the Viśvāmitra gotra commit cruel deeds'. Br. (S. B. E. vol, 33 p. 355 verses 2-4) divided vakparusya into three kinds viz. lowest (when the country, caste or family of a person is abused or sinfulness is ascribed without specifying any definite act), middling (speaking that the abuser will have sexual intercourse with the mother or sister of the abused or ascribing the commission of upāpātakas or minor sins to the abused), highest (charging him with taking forbidden food or drink or mercilessly exposing or ascribing the grave sins to a person). Various fines are prescribed in the smṛtis that depend upon the above distinctions and also on the castes of the abuser and the

922. द्रव्यांक काले च तीर्थ कोने प्रत्य निर्नाितसमुद्रै। असुकृतवर्तवर्त्तमादि चतुष्पार्थ नक मतानविने ॥ काव्य (763) q. by अन्तराय द्वारा p. 805, सूतिरवच II. p 6

923. For upāpātakas vide Manu XI, 59-66 (such as govadha, adultery), Yāj. III. 234-242, Visnuśīhāmasaūra (37) which contain long lists of them.
abused. For example, Manu VIII. 267 (= Nār. XVIII. 15 = Matayīśa, 227, 66) prescribes the punishments of 100 panas, 150 or 200 panas, corporal punishment respectively against a kṣatriya or a vaiśya or a śūdra abusing a brāhmaṇa and conversely Manu VIII. 268 (= Nār. XVIII. 16) provides that a brāhmaṇa calumniating a kṣatriya, vaiśya or śūdra should respectively be fined 50, 25 or 12 panas. In the case of the abuser and the abused being of the same varna the fine for ordinary abuse is 12 panas, but double of this if the abuse is, according to Manu VIII. 269 (= Nār. XVIII. 17), foul (relating to mother, sister &c.). Vide Yājñavalkya. 206–207, Visnudharmasūtra V. 35.

From the remarks of the Sm. C. and the Madanaratna it appears that these discriminating provisions924 based on the castes925 and the ascription of minor or grave sins had become a dead letter and were not being enforced by the kings in India by the 12th century A. D. at least. One or two matters, however, may be noted. Manu VIII. 268–272 and 274 are the same as Nār. XVIII. 16–17, 22–24. Even the truth of an imputation926 afforded no complete exemption e.g. if a person angrily calls a man a thief (who was once convicted of it) or speaks of him as blind or cripple, the former would be fined at least one kārṣāpamāṇa (Manu VIII. 274 = Nār. XVIII. 18). Kāut. (III 18) provides in this case three pānas927 as fine and Visnudharmasūtra (V. 27) two panas. When the

924. एवं जातिनिहितविविधीपद्धतिः तथापश्चाचाष्टयसांभारे विशिष्टिणिः
शवकावलिहायके मेवद्धतिः तत्या निषुधिकृतिविविधीपद्धतिः तथापश्चाच
जातिनिहितान्वयाविविधपद्धतिः। सत्सन्यासो यथार्थशास्त्रायामेव निषुधिकृतिः।
सत्सन्यासो मात्रायामेव निषुधिकृतिः।

925. विषयशास्त्रायामेव निषुधिकृतिः।

926. Vide ताढाकालिकः 14 4 6, for an abuse as to अवर्गो यन्त्रमि विद्येन्महाकालिकः तथा अभन्तिकृतिमार्मिकाविविधितश्चाष्टयसांभारे
विशिष्टिणिः।

927. अभन्तिकृतिमार्मिकाविविधितश्चाष्टयसांभारे विशिष्टिणिः।
Punishment for abuse

imputation is false all provide for a fine double of that provided in case the imputation is true. Ironic praise of a man (such as describing one who is blind of one eye as one endowed with a beautiful eye) is made punishable by Kaut. (III. 18). To warn a man against associating with a person who is guilty of a grave sin or of theft does not entail punishment if the truth of the imputation be established (Kät. 776). Acc to Kaut and Kät (775) the king was to award only half the fine prescribed if the accused said 'what I uttered in abuse was done through ignorance, carelessness, rivalry or friendship; I shall not again do so.' A person who abuses a king doing his duty was to have his tongue cut off or forfeited all his property (När XVIII. 30, Yaj. II. 302). Ap. II. 10. 27. 14 prescribed for a sūdra that abused any one of the three higher castes leading a religious life the punishment of the cutting of the tongue.

Dandaśūrasya (assault). Kaut III.19 begins his treatment of this topic by saying that it comprises touching, threatening to strike and actually striking another. När. XVIII. 4 defines it as injuring the limbs of another with the hand, foot, weapon or other means (such as stones) or defiling or causing pain by (bringing) ashes and similar substances in contact with another. The Mit. on Yaj. II. 212 explains that even causing injury to animals and trees would fall under this title. När XVIII. 5–6 provide that assault may be of three kinds viz. mild, middling and highly punishable according as a person merely makes preparations to assault or attacks without any qualm or causes a wound and that this crime can further be divided into three kinds according as the object attacked is low in value or middling or high. A verse from the Pariśīṭa (quoted by Sm. C. II. p. 327 and V. P. p. 370) states 'whoever causes pain or draws blood, wounds, breaks, cuts off, pierces (the limbs or bodies) of living beings is guilty of dandaśūrasya.' According to Br. (S. B. E. vol. 33 p 357 verse

928. यज्ञ स्याति (परि) फलसाधिता (विद्वान्) केशवाचकर्ण न स्याति दक्षिणो यज्ञ विषयवेदः। कार्यो (775) q. by स्वतिक्ष (II. p. 327, vi. r. p. 258. Compare exceptions 9 and 10 of sec. 499 of the I. P. C.

929. यज्ञ स्याति (परि) फलसाधिता (विद्वान्) केशवाचकर्ण न स्याति दक्षिणो यज्ञ विषयवेदः। कार्यो (775) q. by वि. र. p. 245, वि. चि. p. 70 (both ascribe to कार्यो and वंशयं) स्वतिक्ष (II. p. 327, चि. म. 229, चि. र. p. 384 ascribe to वंशयं alone. तद्यथासन्निवैविद्वानतपायत्। अर्यशास्त्र III. 18

930. यज्ञ स्याति (परि) फलसाधिता (विद्वान्) केशवाचकर्ण न स्याति दक्षिणो यज्ञ विषयवेदः। अर्यशास्त्र II. 10. 27. 14.

931. यज्ञ स्याति (परि) फलसाधिता (विद्वान्) केशवाचकर्ण न स्याति दक्षिणो यज्ञ विषयवेदः। अर्यशास्त्र III. 19.
1) "damāpāṇa" [932] consists in striking (a person) with the hand, with a stone, a club, ashes, mud, dust or a weapon. The Mitra on Yaj II 212 following Nār XVIII 7-12 lays down certain propositions about both abuse and assault. A person who does not return abuse or does not assault when abused or assaulted, deserves to be commended, if he returns the abuse or assaults in return, the person who began the quarrel is to be dealt with more severely than the other. When two persons [933] attack each other and there are no means for finding who began the quarrel equal punishment is to be awarded to both, but when two quarrel he who began the quarrel or he who persists longer than the other is to be fined more than the other party and lastly if men of the lowest [934] castes such as śiṣṭākā, maṇi, cāṇḍāla, hunters, elephant riders, vṛatayas and dāsas (slaves) assault respectable men and ācāryas then they are to be punished (whipped) by good men then and there, but if such punishment is not possible, then the king should award corporal punishment (of various kinds according to the nature of the crime) and should not take fines from them, since they are the foulest among men and their wealth also is foul. Kāt (783) and Br (S. B. E 33 p 359 verse 15) are to the same effect. The several smṛtis lay down various punishments for various kinds of assaults but no useful purpose will be served by going into details. Kāt [935] (786) provides that just as in abuse punishments depend on the castes of the abuser and the abused so also in assaults higher punishment is to be awarded if the attacker is of a lower caste than the person attacked or lower punishment if the person attacked is of a lower caste. Manu VIII 286 and Uṣanas [936] lay down that the punishment for the offence should be commensurate with

[932] इसतपावणालोपिंदेसकर्क्किद्वपालितम्। आतुपत्य पहरण दुष्यपाश्चात्वर्योऽस: ॥

[933] इसों मारता दृढः समयोऽसु सम। स्तुत:। आसामकोशक्ति व दारार शासित दृष्टा ॥ ४२२।

[934] असुप्रभुवशंसारहं स्वेदं ज्ञातसारामणी । प्रतितिमधुरानं तन्तन नार्धम्।

[935] बायायवेव गृहस्थीमार वतित्रवाप्रक्षरितम।

[936] वश नासंसो द्रुम सत्तेनद्वादूरं महामणि। तत् कार्यं परितप स्वर्ण हुमाण धाराय।

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932 "dasaśayāṇa dāṣṭādharmaśāstraśāstraḥ". 933 "yayasya mārataḥ prabhāḥ su mām su. śrutā". 934 "asūṣpatuvāduśārā namōdām ādintiḥvāmaḥ ।

935 "vatsaśva nevāsitaḥ vartikothāvalīḥ ।

936 "yayasya mārataḥ prabhāḥ su mām su. śrutā". (which explains kārte śatārāḥ aksarartah- vācakānā tu.)
the pain or injury caused by the offender to a man or beast. A few examples may be set out. Probably the oldest reference to fines for assault in Sanskrit literature is contained in the Tattvādīya Samhitā: He who threatens to strike a brāhmaṇa shall be fined with a hundred (cows or niskas?); he who strikes a brāhmaṇa shall be fined with a thousand, he who draws blood from him shall not behold the pūtris for as many years as there are particles of dust mixed with the blood that falls on them. This passage is interpreted in Jai III 338 4 17 as being a reformatory injunction (purusāthaka) to all at all times to desist from assaulting a brāhmaṇa. Gaut (21 20-23) and Manu XI. 206-207 appear to take the Tali. S passage differently and refer the figures of 100 and 1000 to years. Kaut III 19 prescribes various fines for various kinds of assaults. BR (S. B. E 33 p 337 verses 2, 3 and 7) says that if a person throws ashes or the like at another or beats him with the hand the fine should be one muṣya, but if he strikes with a brick, stone or stick the fine should be two māsakas; this however applies when both are of the same caste, but if he assaults a woman who is another’s wife or a person of a higher caste, the fine may be higher and higher. For one who bruises the skin of another or draws blood by assault the fine is one hundred panas, and for him who causes a wound by removing some flesh the fine is six māsakas and he who causes breaking of bones should be banished (Manu VII 284 = Nar XVIII 29). Kaut prescribes the highest amercement for cutting off the ear, the hip, the nose, the foot, the eye, the tongue, the penis, the hand, and the middle amercement for causing injury (or wounding) (Gaut XII 1, Kaut III 19, Manu VIII 339 279, Yaj II. 215). BR provide the punishment of the cutting of that limb which a śudra strikes a person of the three higher castes. And the Mait. on Yaj II 215 applies by analogy the same rule to a vāsya striking a kṣatriya. Manu XXIII 230 extends the same pum-jūna, to a śudra for

937 यी ब्राह्मणायामुस्तिः न ाद्वश यत्वान् यो विनयमस सदाध्य यत्वान् यो दोहिते साध्यामितर्यं पालत संयत्वात्स्म सत्वसमस्म विदेशधार्म न यज्ञानाध्यः। सर्वाद्वारा विनयमस स निनयमस दोहितं कुर्यात्। वे स II 6 II 2. 438 शुभे: शर्यपरिषयाः ये III 4 17 अन्वय con&uacute;clusion उ यथार्थमय मार्यममालर्य्य वर्तियोऽवेदं न पद्विपुण्यमास्मातस्म नवयत्वार्थमाऽक्षरत्वमहिः। 339 यी द्विजाविभिध्यावस्थामहिः स साध्यायामहिः सत्वसमस्म यज्ञानाध्यः। वे XII 1. बहुदो ब्राह्मणोऽभिध्यावस्थायमहिः साध्यायामहिः। अर्थार्थविन्यस्ति राजस्वाद्विपुण्यमहिः। अधिकोल III 19, वेनाह्न कालाविभिध्यावस्थायमहिः साध्यायामहिः। अर्थार्थविन्यस्ति। अधिकोल III 19. वेनाह्न विनेयाविभिध्यावस्थायमहि। साध्यायामहिः। अर्थार्थविन्यस्ति। अधिकोल II 328
merely raising the hand or a club to strike one of a higher caste. Manu VIII 281-283 (=Nar. XVIII 26-28) provide that a person of a low caste defiantly sitting on the same seat with one of a higher caste was to be first branded on the waist and then banished or his hips were to be gashed (in such a way that he might not die), that a śūdra defiantly spitting on the body of a brāhmaṇa had his lips cut off or a śūdra voiding urine or faeces on a brāhmaṇa had those offending limbs cut off, or a śūdra defiantly seizing a brāhmaṇa by the hair or the feet or beard or neck or testicles would have both his hands cut off. If several conspire and strike a person who is alone, each one was to be sentenced to twice the punishment prescribed for the offence (Yāj II. 221, Kaut 940 III 19, Visnu Dh. S. V 73) Kaut. III. 19, Manu VIII 287, Yāj II. 222, Br., Kāt 787, Visnu Dh S. V. 75-76 provide that the king should make an offender pay a fine and also the expenses of medical treatment and diet till the wound is healed up and the person attacked is able to do his usual work (vide note 613 above) For mischief to property 941 and for killing or maiming animals, Kaut., Manu, Yañavalkya, and others provide various fines. For example, Kaut. III 19 prescribes that when property of small value is destroyed by a man he should be punished with fine equal to the value of the article and should be made to restore the article or its value to the owner; but in the case of articles of substantial value the fine is double of the value. Manu VIII 288 is of similar import. Yāj II. 223 provides varying fines if a person wrongfully causes damage to a wall by knocking it (with a club), or pierces it or divides it into two or demolishes it and makes the offender pay to the owner the cost of restoring it Manu. VIII. 296-298, Yāj II 225-226 prescribe fines for causing death or injury to animals of small value (such as goats) and big animals like elephants, horses and cows Yāj II 227-229, Kaut III 19, and Kāt 793 provide fines for causing loss by injuring or felling trees, shrubs and creepers Yāj II. 214 holds 942 that if a person throws mud,

940 महाजनयोक्ष चतूषीमा घी धृतीनी वृक्षाः। अप्रयोगम् III 19.

941 ममापो माण्यसूत्स दुःखात्वस्थातिनिप्रकाशः। तत्त्वात्स्यं मुद्य ता दुःखात्वस्थातिनिप्रकाशः। कायम् 792 q by पर्य ते मम III p 425, सि १ 284; वनस्पतिः। सत्यात्मकोचोपदेशीयो यथा। तथा तथा तथा कारण सत्यापित धारणाः। मृ। VIII 285. This last is cited as कायम् 792s in सि १ 284.

942 होनेपर्यांती सोपर्याविशिष्टविषयपूर्ण | या २. 214, होनेपर्यावर्त शास्त्रीय | हिंदुस्तान | अनुवादक प्रभाव अप्रयोगम् III 19.
Right of private defence  517

dust or saliva or filthy things on another or strikes with his feet, he should not be fined if he is under the influence of intoxicants at the time or is not in his right mind or does it through mistake, while Kaut. III. 19 prescribes half of the usual fine in such cases.

An important question is how far the right of private defence of person or property was recognised by the dharma-sāstra works. This subject has partly been dealt with in H. of Dh. vol. II. pp. 148–151 in connection with an ātātāyin (a desperate man) who is an incendiary or a poisoner or is armed with a weapon, is a robber, one carrying away another's wife or seizing by force (a field). Although there is great diversity of views about killing a brāhmaṇa ātātāyin, there is no difference of opinion as to repelling with force culminating even in death an ātātāyin of any other caste. Gaut. VII. 25 allows even a brāhmaṇa to arm himself when his life is in danger.\footnote{943. आज्ञारैये बाङ्गायो शास्माधीन। सी VII. 25.}

Baudh. Dh. S. II. 2. 80, Manu VIII. 348–349 lay down that brāhmaṇas and vāisyas may oppose with force when they are prevented from doing their religious duties by felons or when there are disturbances caused by invasion or the like, for saving their own lives, for preventing the seizure of their cows or other wealth or for protecting women or brāhmaṇas. The Mit.\footnote{944. मते याज्ञारैये वा वर्णाणां वाचि स्तुतिः। गौतमोऽविविठपूर्वतं च वयं वर्णप्रथमचेत। मनु VIII 348, which the महनर्ल (ms) explains वर्णकर्मकादिद्रुतेऽद्व तृतीये कार्यं य नन्दधूनधूनविनोक्छ-प्रमथे तत्र।... तथा तुलिपानां स्तुति। यथा यथाध्यथमतिर्दट वज्रे। श्रीविभागापतीं कुण्ठलिप्तसारित्रायने शक्तिद्रोहं न कृपयाति।} on Yaj. II. 286 remarks that these rules of Manu are applicable when there is no time to report to the king or when delay in opposing violence will mean loss or ruin. According to Kāt.\footnote{945 यदा तु याज्ञारैये निजेन्द्रेण कालाकिलस्तेन काल्पनिक्पापाताशुद्धा। सत्यकमेव जाज्ञारै- नालपत्र। यथा दिहितासंबिज्ञापतं एवं कस्तोपप्रति दृष्टि। मित्र on or II. 286.} (800) no blame attaches to a man who kills wicked men that are about to kill another, but when they have desisted from their attempt, they should be arrested and not killed. Aparāśka\footnote{946. उपदानादि यदा पापानं हस्ततुद्धवसं न विसं। निम्नुस्तुति यदाः भासुभासृहणं न वर्णः सूत्रः। कात्या 800 q by शूकरिखा।} on Yaj. III. 227 remarks that persons are to be regarded as ātātāyin while they are about to set fire or to kill or they are in the act of setting fire or killing and the like, that where it is not possible to prevent them from doing what
they intend to do except by killing them; there only the text allows killing; but that where it is possible to prevent them by merely wounding them with a weapon or stick, killing them would be an offence. Medhatithi on Manu VIII 348 differs from this and allows the killing of a desperado even after he has carried out his purpose and not only when he is about to carry it out or is in the act of carrying it out. The view of the Mit on Yaj II 21 is that one has a right to oppose and kill another in self-defence, in defence of women and other weak people, who cannot defend themselves against a murderous or violent attack and that even if a wrongdoer of the brahmana caste was killed in the exercise of such right there is no punishment at the hands of the king and the prayaschitta (for killing a brahmana) is a light one. Similarly a man can kill with impunity animals having claws, horns or fangs or horses or elephants if they attack a person (Kat. 805 q by Sin C II. p 316)

947 अथ च वातिक्षिद्वानाजिप्पायार एमातापिन उत्तरेऽ। तद्राक्षरनियर्भयं च पञ्चवधुवपत्रं न सम्भापति तत्रत्रात् तद्वत्तान्। पञ्च हु दुष्टाधिक्षिद्वाराजैरः ठारिणि

947a आयामानिष्टि व्हन्तादातावं द्वेषामिवधार्यां हराय न जिद्वन्त लघुस्य हुयेऽ। दूप्य शिष्यस्यक्षरनियर्भयां इति गृहमेव तद्गुणा यथा भस्मनोपवें भीति कथा। भगवद्गुणैन्तिक्षिद्वारायूपूर्व मयात्रादातावं हराय न जिद्वन्त। उत्तरेऽ। तस्मात् वातिकिनिर्भयं च अलापनामिष्टि। अलापनिजाभासंगे हराय न च कुरारचन अलापनायुद्धं।
CHAPTER XXIV

STEYA (theft).

In the Rg. there is frequent mention of taskara, stena and tāyu. In Rg. VI. 28. 3 the sage ⁹⁴⁸ says ‘may the cows not disappear from us, may a thief not injure them’. In Rg. VIII. 29. 6 it is said ‘Pūsan guards the ways and knows of concealed treasures as a thief does’. From Rg. X. 4. 6 it appears that thieves were desperate and bound people with ropes and (from Rg. I. 191. 5) that thieves (taskaras) appeared at night. Tāyu (thief) occurs in Rg. I. 50. 2, IV. 38. 5, VI. 12. 5 and is an Indo-Iranian word. The word ‘stena’ occurs in Rg. VI. 28. 7 and means ‘one who is a cattle-lifter’. Rg. VIII. 67. 14 indicates that a stena was bound with ropes (when caught). In Rg. VII. 55. 3 the dog is asked to run after a stena and a taskara, the first being probably a thief (who secretly carries away property) and the second a thief who openly carries it away. In the Vāj. ⁹⁴⁹ S XI. 79 (≡ Tai. S. IV. 1. 10. 2) we have the malimlu in addition to stena and taskara. Atharvaveda IV. 3 contains charms against wolves, tigers and thieves (taskaras).

Steya is distinguished from sāhasa in Manu VIII. 332, Kaut. III. 17, Nār. XVII. 12 and other works as stated under sāhasa below. Kāt. 810 defines ⁹⁴⁹ it as ‘depriving a man of his wealth either clandestinely or openly and either by night or by day’. Nār. XVII. 17 defines it as ‘deprivation of wealth by various means from people that are asleep, careless or intoxicated’. It may be of three kinds according to the value of the thing stolen viz. trifling (when earthen-ware, seats, cots, wood, hides, grass, beans in pods or cooked food is stolen) or middling (when the theft relates to clothes except silken

⁹⁴⁸ ⁹⁴⁸ न ता नागान्ति न वणाति स्तकरो नासामानिको भविष्यति || कृ. VI. 28 ३ || पयन एक पीयाम स्तकरो यथाव्यौह सेदौ निधिरपयो || कृ. VIII. 29 ६ || सन्तुष्ट्येव स्तकरा बनयुः सर्वान्यिनेयैहूः || कृ. X. 4. ६ (explained in निकत्रौ III. १४).

⁹⁴⁸a ये जनेनु महिम्मकु. सेटासांसकरा कवे । ये कालेविसार्तंसे दुःखायि जगत्वोऽव || वाज. S XI. ७९. The com. on Tai. S explains. ‘सेताः: सूमशेराः: तस्करा. वकसाराः अतिकावे नित्यं घामे दुःखायि: महिम्मः’.

⁹⁴⁸b पदवर्षा वा वतितेऽवा निकालामयस्तिवा । पत्यव्यवहर्षणं स्तेयं हर्षाक्षरिन्तिवे || कृत्या ८१० q by ब्राम्बाया VI. ९. p. २२४.
ones, animals except cows and bulls, metals except gold, rice and barley), grave or high (when gold, jewels, silken cloth, women, men, cattle, elephants, horses and the wealth of brāhmaṇas or temples is stolen) Vide Nār. XVII 13-16 and Yāj II 275. Thieves are either prakāśa (open or patent) or anapakāśa (secret) accord to Manu IX 256, Br 949 (S B E 33 p 359 v 2) Acc to Manu IX 258-260, Nār. (pariṣista 2-3) and Br (S B E. 33 p 360 verses 3-4) patent thieves are traders who employ false weights and balances, gamblers, quacks, bribers of subḥyās, prostitutes, those who profess to arbitrate, those who manufacture imitation articles, those who subsist by prognosticating good fortune or portents or by magic or palmistry, false witnesses &c Manu (IX 261-266) states that in order to find out such thieves the king should employ spies in various disguises at various places such as meeting halls, refreshment rooms, brothels, wineshops, theatres &c. The concealed thieves are those who move about with tools for house-breaking without being observed and whose residence is not known, they are principally of nine kinds viz. one who quietly relieves a man of his money when the latter is attending to something else, a house-breaker, a highway robber (who robs travellers), a cut-purse, one who steals (or kidnaps) a woman or a man, cattle, horses and other animals. Yāj II 266-268 and Nār. (pariṣista 9-12) indicate the various ways in which thieves may be detected and caught viz. by the (police) officers recovering a part of the booty from a man or by tracing foot-steps, or by seizing one who has been often found to be a thief, or by finding out that the man suspected cannot state his place of residence; and they recommend that on suspicion others may be caught, if on being questioned they attempt to conceal their caste or name or if they are found addicted to gambling, wine and women or if their mouth becomes dry or their voice changes or if they spend lavishly though they have no ostensible means of earning, or those who sell lost or second-hand goods or who move about in disguise or who are found making inquiries about others‘ houses

949. रक्षाद्वायुक्तित्वाय दिविनासिस्तिः स्कृता । महामहर्ष्यनाशिः निलिचाते सहस्रः ॥ बृह त् II p 317, यं. म. p 386.

950 उल्लेखः समितिभाषा पर्यायस्यसथानिभाष्यः । क्रीडेनर्वयन्तस्ती जोरे मात् निलिचः स्कृता ॥ ब्राह्मण II p. 518, यं. म. p. 387.
or wealth. The Mit. on Yāj II 266 quotes Nār and gives the warning that the king must carefully examine whether the man caught is really the thief and should not convict merely on suspicion, since even an innocent man may have stolen property near him or betray some of the signs noted above. When property alleged to be stolen is found with a man, it may be that the articles came to his hands from another's hand or he may have taken it up when it lay unclaimed on the ground or he may have taken it as a thief; liars often have the appearance of honest men and theorr (Nār I 71) Nāiada's dictum (I. 42) that one who is not a thief may be held to be a thief as in the case of Māndavya has already been quoted above (p 357 n 549). Vide Manu IX 270 (= Matsya 227. 166) cited on p 355 above. When a person is seized on suspicion of being a thief he could not be acquitted on his mere denial of the offence. He had to prove innocence by ordinary evidence (such as proof that he was elsewhere when the theft was committed) or ordeals (Yāj II. 269). The general rule about the punishment of patent thieves was that the punishment was to be proportionate to the lightness or gravity of the crime and not to their wealth (Vyāsa) Br. (S B E 33 p 361 verses 10 ff) quoted in Par. M. III pp. 439-440 and V P pp 387-88 prescribes various punishments for particular kinds of patent thieves e.g. sabhyas giving wrong decisions (śabūr) or those who deceive by betraying the trust imposed in them are to be banished. Manu IX 292 (= Matsya 227 184-185) holds that the goldsmith is the worst of all deceitful persons (kantakas) and if he is found committing fraud his limbs should be cut off bit by bit.

As regards the concealed thieves the texts lay down special rules. Nār XVII 21 extends to theft of the three kinds, mentioned above the same punishments that are awarded in the three kinds of sāhasa. Manu VIII 323 prescribes death sentence for kidnapping men of good family and particularly women.

951 अन्यस्मातप्रियस्मातमादुरुक्तः दुःस्वरः। वीरण न त्तेषम् लोपस्य वहनायणीमासेतुः॥ काठया । acc to Aṣṭādhyāyī p 841, vii r p 337 निर) on या II 266 and परा मा. III p 437 ascribe it to Nāraka. The remarks are due to the interchange of शतावरस्त्तावरस्तरम्यन्तपण्याद्वितीयमिलितमेव। अर्धवरस्तभारितोइन्द्रमेवसम्बन्धितमासु। 952 परि-सत्ताभिमा सर्वाःशास्त्रायमिनिमाः । बृहत्तते विविधम् भागाःसम्बुद्धम् परिक्रमा॥ Nārada I 71. in the śāstras 111 65-66 this very verse occurs with the variation that सम्ब and अस्म भगत स्मृति and are substituted for सम्ब and अस्म. 953 नामगङ्गाय दृष्टविद्य दृष्टविद्य न्यायसक्कृतः । वदा नेत्र तिरिक्षत विद्यमेव सभ्ये तथा॥ पारा. p by समुत्तिन्य II p 317, बग्ग p 387 60
and for theft of costly jewels; while Vyāsa prescribes death by burning on red-hot iron rods for kidnapping women and mutilation of hands and feet for kidnapping a man. Yajñ II 273 provides impalement for those who confine others as captives, for those who steal horses and elephants and who strike others with violence, while Manu IX. 280 prescribes death for those who break royal store-houses and armours, the inner shrine in a temple and who steal horses, chariots and elephants. For him who commits theft by housebreaking at night Manu (IX 276) and Br. (S B E 33 p 361, verse 17) provide impalement after cutting off his hands. Yajñ. II 274, Manu IX 277, Visnu Dh S. V 136 prescribe for the cut-purse the punishment of the cutting of the thumb and index finger for the first offence, the cutting of the hand and foot if it is the second offence and death if he repeats the same offence a third time. Not only was the thief made to undergo punishment but he was also liable to make good the loss of property to the person robbed (Manu VIII 320, Yajñ. II 270, Visnu Dh S. V. 89, Nār. parisista 21). According to Nār. (parisīsta 22-24) for thefts of articles of small value the fine was five times their price, while Manu (VIII. 326-329) said it was twice as much as the price. Gaut XII 12-14,955 Manu VIII. 337-338, Nār. (parisīsta 51-52) lay down that the fine for theft is higher in the case of the higher castes i.e., if the śūdra thief is fined eight times the value of the article stolen, the vaiśya, ksatriya and brāhmaṇa thieves were respectively fined 16, 32 and 64 times the price of the article, as each is deemed to know better owing to his higher status and culture. Manu VIII 380 lays down the general rule that a brāhmaṇa offender was not to be killed whatever the offence might be but he was to be banished from the country allowing him to take with him all his wealth. But there were other provisions and exceptions also. Kāt. 956 (823) states that

954. सामसूत्रित्वम् जाता ज्ञातामायात्मेद्धवम्। भृष्ट यो भवे य म प 388
955 अहाराय पुनर्विचित्तिपर । दिक्षाप्राच्यातिरूपस्य एव। निशचित्तप्रविधम्। द्रवणसप्ताहो। म ० ।
956 मनसा। सव एवं, सवहः सवहः सवसन्नः। गौतमसम्मिलित्व कालाद्विंशिकः।
विशिष्टसप्ताहो। सवहः सवहः सवहः सवहः सवहः सवहः सवहः।
अय सवहः सवहः सवहः सवहः सवहः सवहः सवहः।
मनु पुस्तकम्। भृष्ट यो भवे य म प 332, भिन्न म प 94, अर्द्धम प 849 (लास तिस वर्षों)
अय सवहः सवहः सवहः सवहः सवहः सवहः सवहः।
मनु पुस्तकम्। भृष्ट यो भवे य म प 332, अर्द्धम रेड्स।
मनुसाधिकालिकम् ज्ञातामायात्मेद्धवम्। उपमानं देशम्, जिनसने मनसा ज्ञातामायात्मेद्धवम्, जिनसने मनसा ज्ञातामायात्मेद्धवम्, which seems to mean that his guilt and the steps whereby
the school of the Mānavas declared that thieves caught with the stolen things on them should be at once banished but that the school of Gautama disapproved of this mode, since it is condemned because it entails loss (reduction) of people in the country. The V. R. p. 332 explains this verse as referring to a learned brāhmaṇa. Two more verses of Kāt. (824–825) are quoted by V. R. p. 332 and V. C. p. 92 the first of which provides that a brāhmaṇa who is not learned whether caught with booty or not should be branded (with the appropriate signs) and deprived of all his property, provided his guilt is brought home with certainty and the second provides that a brāhmaṇa thief who is neither learned nor rich but is strongly built should be kept under guard with fetters on his feet, should be fed on meagre food and made to do hard labour for the king till his death. Gaut. XII. 46–48, Nar. (pariśista 13–14), Manu IX. 271 and 278, Kāt (827) hold that the punishment for those who knowingly give food, fire (when they feel cold), water or asylum to thieves or who receive or purchase stolen property or who conceal them are to be punished like the thieves themselves.

In certain cases a person could take without being liable to be punished as a thief certain things belonging to another even if he had not the latter’s permission. Gaut. XII. 358, 25, Manu VIII. 339 (= Matsya 227. 112–113), Yāj. II. 166 allow a person of the three higher castes to take grass, fuel-sticks, flowers of trees and plants for feeding cows and for the worship of fire from any place as if they belonged to himself and also fruits of trees that were not enclosed. In such cases he would not be liable to a fine nor does he incur sin (Kullūka on Manu VIII. 339). A smṛti passage stating that if a man takes

957 Compare sec. 212 (about harbouring an offender) and 411 (on receiving stolen property) of the I P C.

958. प्रभुप्रदम्यं तुण्डेष्यांशीस्वतःसृजनस्तत्तत: सुप्रभावकयता फलानि तपरिषदेत तत्तमानस। कृ त. XII 25 अपराधि p. 773 remarks that this is so only when there is difficulty in getting these (आपददि ) पवणकुकस्तवा वा कालोऽदेव व विद्वा वा फलद्। अन्मूच्रयानि युध्योऽजस्तेष्यां गृहरूपायादनहेति। इति-दह विजयकाविरितसतिशय्यमानवाने- विदित न विलयितसतिशय्यमानवाने-विदित न वत्सता या या या II 166, अपराधि p. 774 says तदनापदम्यं सुप्रभावकयताः।
grass or fuel or flowers or fruits without permission deserves to have his hand cut off is explained by the Mit. (on Yaj 166), Aparârka p. 774 and others as meant to apply to persons other than dasyus or as meant to refer to a case where they are taken by a person who has really no difficulty in securing these or where these are not taken for the use of cows or for worship. This matter had been a subject of discussion from ancient times. Ap. Dh S 959 (I 10 28 1–5) contains a discussion from which it appears that Kautsa, Harita, Kanva and Puskarasâdi were of the opinion that whatever (however trifling or in whatever circumstances) a man took without the consent of the owner, he became a thief, that Vârsyâyana held that there were exceptions to this rule viz. that owners should not forbid the taking (of a small quantity of) grain in pods (such as mudga or mûsa) or grass for bulls yoked to carts, but that if large quantities even of these were taken there would be theft. Śaut. 165. 11–13, Manu XI. 16–18 and Yaj III. 43 state that when a brahmana or other person has fasted for three days because he has had no grain with him, he may on the 4th day take grain for one day’s meal from anywhere he can get, whether from a threshing floor or from a field or a house, and that if the owner questioned he should declare to him the reason, but a person of a lower caste should not in this way take grain belonging to one of a higher caste, unless the latter pursues a sinful course or does not perform the duties of his caste. Vyâsa quoted by Sm. C. I. p. 175 allows a man to commit even theft, when he is in distress for food, first from a person of a lower caste, then from one of the same caste and then from one of a higher caste Manu VIII. 341 (= Matyâ 227. 110, 114), Nâr (prakârana 39), Śankha and Kât (822A) state that a traveller whose food has run out may take from another’s land without being liable to punishment two sugarcane stalks, two mûlâkas (esculent roots), two cucumbers or melons, five mangoes or pomegranate fruit.

959. यथा कथा च पदपरिवर्तानमिभिष्यते स्त्रीणु ह भवतिति कौस्तहारोती तथा कालः।

960. आयुष्य विशिष्टानि सौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजसौरष्रयसमीति गरवजас् मुक्तायि स्त्रीणु ह भवतिति कौस्तहारोती तथा कालः।
and a handful of dates and of such corn as rice, wheat, gram &c.\footnote{961}

*Sāhasā (crimes of violence).* Manu VIII 332, Kaut. III 17, Nār. XVII 1, Yāj. II. 230, Kāt. (795–796) define sāhasā\footnote{962} as any act which is done with violence in defiance of or in spite of the presence of royal officers or guards or people. The word sāhasā is a derivative from 'sahas' meaning 'force' (Nār. XVII 1). Sometimes it is distinguished from theft (as in Manu VIII 332, Kaut. III 17 and Nār. XVII 12) by saying that theft consists in depriving a person of his wealth stealthily (without force), while in sāhasā there is the use of force or violence.\footnote{963} Nār. XVII 2 and Br (S. B. E. vol 33 p. 359 verse 1) state that sāhasā\footnote{964} is of four kinds viz. manslaughter, theft, violence to the wives of others, and the two kinds of pārūṣya (treated as one head). Although these topics can be comprehended under sāhasā, they are generally dealt with separately in the smritis and digests as a matter of convenience and in order to provide heavier punishment for crimes of violence, since a man guilty of a crime of violence is a worse sinner than one guilty of abuse, theft or assault (Manu VIII 345 and Mit. on Yāj. II. 230) and Manu VIII 244 enjoins upon the king not to tolerate for a moment a man guilty of violence. The

\footnote{961} śuddhāṣṭra-पारमार्गचारीणाः सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच., I. p 176, जयः साहसः हृ इति पादसनम्। शब्दाः साहसरासास्त्रा हृ इति साहसः कृपया। तु एव साहसः कर्म तथा। पीतसा तत्त्वसा। 

\footnote{962} सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच., I. p 176, जयः साहसः हृ इति पादसनम्। शब्दाः साहसरासास्त्रा हृ इति साहसः कृपया। तु एव साहसः कर्म तथा। पीतसा तत्त्वसा। नारायणम्। सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच. II p 316 and विद. I p 287 (the last two quote 796 only)

\footnote{963} सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच., I. p 176, जयः साहसः हृ इति पादसनम्। शब्दाः साहसरासास्त्रा हृ इति साहसः कृपया। तु एव साहसः कर्म तथा। पीतसा तत्त्वसा। नारायणम्। सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच. II p 316 and विद. I p 287 (the last two quote 796 only)

\footnote{964} सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच., I. p 176, जयः साहसः हृ इति पादसनम्। शब्दाः साहसरासास्त्रा हृ इति साहसः कृपया। तु एव साहसः कर्म तथा। पीतसा तत्त्वसा। नारायणम्। सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच. II p 316 and विद. I p 287 (the last two quote 796 only)

\footnote{965} सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच., I. p 176, जयः साहसः हृ इति पादसनम्। शब्दाः साहसरासास्त्रा हृ इति साहसः कृपया। तु एव साहसः कर्म तथा। पीतसा तत्त्वसा। नारायणम्। सत्कार्कितवङ्गेऽसु न दोषः पापिकानाम्। साहस q by स्तुतिच. II p 316 and विद. I p 287 (the last two quote 796 only)
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May. (text p 2) says that in differentiating steeya from sāhasa the maxim of 'cows' and 'bulls' is applicable.

Sāhasa is divided by Nār. XVII 3–6 and Br (S B E 33 p 363 verse 24) into three varieties, viz. the lowest (destruction, abuse and trampling of fruits, roots, water, agricultural implements), middling (destruction &c of clothes, food and drink, household utensils), highest (killing with weapons or poison, violence to others' wives and whatever causes pain to sentient beings) These three kinds are respectively punished with the three kinds of punishments described above (pp. 393–94) The principal crimes included under sāhasa in its narrow sense are homicide, rape and robbery Rape will be dealt with under viṣanuṣṭhāna Br. states the general rule that one guilty of murder by violence should be punished with death and not with fines (S B. E 33 p. 363 v 29) To this the brāhmaṇa offender was an exception (Manu IX. 241), who was only to be banished Manu IX 242 introduces another exception viz. persons other than brāhmaṇas when guilty of the great sins (specified in IX 235) through negligence should be only deprived of all their property but if they murder a man intentionally then only are they to be sentenced to death. Manu IX. 232 and Visnu Dv S V 9–11 provide the punishment of death for those who fabricate false royal edicts, or who tamper with the loyalty of the elements of the State or who kill women, children and brāhmaṇas. Baud Bh S I 10. 20–21, Br and Vyāsa prescribe that if a brāhmaṇa is killed by a kṣatriya, vaiśya or śūdra, the king should sentence...
the offender to death in various ways and confiscate all his property, but if a man kills another of his own caste or of a lower caste then the king may punish the offender with some punishment appropriate to the crime and the strength of the offender. In IV. 11 Kaut. provides sentences of death in various ways for murder following ancient śāstras, but remarks that if murderers have not been guilty of cruelty they should simply be sentenced to death without torture or the like\(^969\). One special rule deserves notice Gaut 22.12, Āp Dh. S. I. 9.24 6-9, Manu XI. 87, Vas 20.34, Yāj III. 251 prescribe the same prāyācittā for murdering a brāhmaṇa woman who is an ātreyi as for one who kills a brāhmaṇa male. The different meanings of ‘ātreyi’ given from ancient times are noted below\(^970\). Texts

969 नेत्रे शास्त्रेवृत्तम् कृत्यादिः महाअङ्कम्। अखिलादि मु पापाना धर्मम्: झेस्वः स्वत:॥ अध्यात्म IV 11, last verse.

970 अखिलायथि। नेत्रे 22 12, आत्रेयी च विशयम्। अय द्व च 9 24 9। आत्रेयी is variously explained. The word occurs as early as the Sat. Br I. 4, 5, 13 where in explaining why the offerings to Prajapati are made in a low tone a legend about the goddess 'Vāc' is narrated and it is said that in having sexual intercourse with an ātreyi, a man incurs sin (तत्साधुप्रार्थ्य चोषायिनसि)। Here the word appears to mean a woman who is in her monthly illness Vas (20.35-36) defines ātreyi as a woman who has taken the purificatory bath on the 4th day after her monthly illness begins and derives the word from अत्र 'आत्रेयी व्यायामो रक्तलाभातुतनानातामायिनसि। अत्र तेषुस्वरूपं भक्तीतिः।' Yavatihina either cites or summarises a Vedic passage (as stated by Visvārīpā) which means 'here (i.e. in the womb of this woman) a child is to come'. In SBE vol. 14 p 107 the same is translated as ‘if the husband approaches her at that (time) he will have offspring’. But this is not correct 'Eṣyat' qualifies ‘apatyam’ and is not in the masculine. Vas derives the word from अत्र and the root हृ Visnu Dh S 36 I and 50 9 appear to hold that ātreyi means a woman of the Atṛgrotta Haradatta on both Gaut, and Āp explains ātreyi as Vasatī does and states that others interpreted it as ‘अखिलोऽ्््’, on यां 111.251 (तथायेवमिन्द्रुकः) विश्वामिर अट्रेयी as a woman within 16 days from the beginning of the monthly illness and quotes वसितू 20 36 and also says अट्रेयी अत्रेयी व्यायामो रक्तलाभातुतनानातामायिनसि। तदृशि इत्यादिः। तथा धान्यायां तस्तसि। सम्भूपुरुषक्षात् तत्साधुप्रार्थ्य चोषायिनसितामायिनसि। तेनेन्द्रे सम्भूपुरुषाचारे एव।। From Sabara on Jai VI 1 7 it appears that some derived the word as ‘अत्र कुसास्या विलय इत्यायेयी’, while Sabara himself preferred the meaning ‘अखिलोऽ््’ and regarded the prohibition to kill an ātreyi as simply meant for praising that gotra ‘तथा गौर्यसंसाराय आत्रेया अवस्थासन्तथा न च चाकस्वला आत्रेयी। गौर्ये दोषत्। न दर्ष अवस्थायं विवशितं उपयोग। सम्भूपुरुषा न विवशितं उपयोगे। न च अवस्थासन्तथा विवशितं। (on jai VI. 1.9) Yam quoted by para मा 11 I p 103 gives two meanings ‘अखिलायथि संसारे सत्तु सार्वपव्यायात्। गौर्ये वि विवशितम् गौर्ये विवशितम्॥। The अमरकोश gives ātreyi as a synonym of जातकोशः।
like Ap I 9 24. 1-5, Gaut XXII prescribe different prāyaścittas for murder depending upon the castes and sexes of the murderer and the murdered. These will be briefly dealt with under prāyaścitta later on. In certain cases acc. to Manu VIII 291–292, Yaj II 298–299, Kaut IV 13, though death or injury to persons or loss of property results, no punishment was prescribed viz when the nose-string of bulls yoked to a cart snaps, when the yoke breaks, when the cart swerves on one side owing to the unevenness of the ground, when the axle or wheel breaks or when the leather thongs with which the several parts of the cart are tied give way, or when the rope cast round the necks of bulls or the reins break or when in spite of the driver loudly calling upon a person to move aside from the way an accident occurs. But Manu VIII 293, 294 (=Matsya 227. 95–96) provide that where through the want of skill of the driver knowingly engaged by a master the cart is overturned and injury is caused, the master should be fined 200 panas, but if the driver employed be known to be skilful, then when injury is caused the driver should be fined (and not the employer.) Further if the driver, though seeing that the road is blocked by cattle or other caits, rashly drives and kills men and animals he should be punished (Manu VIII. 295). It is stated by Nar (pārusya 32, S B. E vol 33 p 212) that the father is not liable for his son's offence, nor is the owner of a horse, dog or ape liable to punishment (for injury caused by any of these) provided they are not set up (to do harm) by the owner. If a driver kills a man by rash or negligent driving he is to be punished like a thief, if he kills any one of the larger animals (such as a cow, a horse, a camel or elephant) the punishment would be half of the preceding, if he kills one of the inferior animals, the fine would be two hundred. Kaut III 19, Manu (VIII 285), Yaj. II 227–229 and Visnu Dh S. V 55–59 prescribe graduated fines for the destruction of trees, plants and branches, flowers and fruits according to their usefulness and sanctity. The sūtras made a distinction as regards punishments between crimes of violence and crimes due to negligence or mistake. For example, Mann VIII 264 (=Matsya 227 30) prescribes a fine of 500 panas for depriving a man of his house, garden or field by threats of violence, but only prescribes a fine of two hundred if a man deprives another of his house &c by mistake.
Various rules were laid down about inciters or abettors. Yaj II. 251 and Kaut 971 III. 17 prescribe for the man who incites another to crimes of violence double the punishment to be inflicted on the perpetrator himself and four times for one who incites another by assuring him ‘I shall give as much money as will be required’. Kät. (798) and Br 972 (S.B.E 33 p 363 vers 31) prescribe that if several violently beat a man to death, he who gives the fatal blow on a vital part is declared to be the murderer and is to suffer the full punishment for murder. Kät (832–834) 972 and Br. (S B. E. 33 p. 364 verse 32) provide that he who commences a crime of violence, who is a helper, who gives advice as to the way (in which sāhasa is to be carried out), who gives refuge (asylum) to the offender or supplies weapons, who gives food to wrongdoers, who incites (offenders) to put up a fight, who shows how the person (killed) is to be destroyed, who connives (at the commission of an offence), who exposes the faults (of the person killed), who gives his approval (to the offence), who though able does not forbid or prevent the commission of the offence—all these are (practically) perpetrators of the crime and the king should award punishment according to their ability and their guilt. Vide also Āp Dh. S. II. 11 29.1 974 For those who begin an offence or abet its commission Br (S B. E. 33 p. 364 verse 32) prescribes half the punishment prescribed for the wrongdoer. 975 Yaj. (II. 232–242) enumerates several kinds of offences as allied to sāhasa and prescribes punishments therefor, such as breaking a house that is closed under seal, causing harm to neighbours and kulikar.
(one's agnates), abandoning one's parents or sons or brothers or sisters even though they be not pādita, sexual intercourse with a widow, (intentional) defilement of the higher castes by cāndālas, making counterfeit coins or false weights and measures, giving quack medicines to royal officers or other men. These are all passed over here.
CHAPTER XXV

STRIŚAṅGRAHAṆA (Adultery or unlawful intercourse with a woman).

The Mit. (on Yāj. II.976 283) states that saṅghāna means
the unlawful coming together of a man and a woman for sexual enjoyment. Br. (S. B. E. 33 p 365 verses 1-2) says that sinful977
saṅghāna is of three kinds, viz. brought about by force, deceit or sensual passion. The first (which is rape) occurs when intercourse is had in a secluded place against the will of a woman, or with a woman who is intoxicated or is disorderly in mind or is under a mistake or when she raises a cry; the second occurs when a woman is brought to one’s house by some trick or pretence, an intoxicant (such as Dhatvā) is administered to her or her mind is brought under control (by chants or otherwise) and sexual intercourse takes place; the third occurs when intercourse takes place by conveying (passion) to each other by means of the eyes (glances) or by employing a go-between and when the parties are drawn to each other by the temptation of beauty or of wealth. This last is again of three kinds acc. to Vyāsa and Br. (S. B. E. 33 p. 365–66 verses 6–8 q. by Sm. C. II. p. 8) viz. trifling, middling and grave. The first is characterised by winking at a woman, smiling at her, sending a go-between, touching her ornaments or clothes; the second by the sending of flowers, unguents, fruits, incense, food, clothes, and indulging in private talks; the third is characterised by lying on the same bed, dalliance, kissing and embraces. Strī-

976 छींसवाणिमितुष्माव संग्रहणाः लिताय या II. 283; सम्बन्धन परिक्षया सह

977. पपयुं संहारं विमकार वियोधतं। चतोपाध्यायो वेत् हु सदर्शतमुदरामाय्। अनि-


draṣṭā सुधर्थानां सत्यस्मात्मस्तायम्। प्रकाश्या च दुःसि पञ्चाकारकं हं तद्। छुस्मा सह-


to तक्ष्या या गमयानांगाः। सपोर्कर्मितं पत्र तत्त्वाभिषिक्त विदुः। अन्योग्रहरिश्चंगमेष


d्विचक्षणेन या। इत्य लाब्धदिक्षितं भेद तबुर्षराजय। बहु q. by अयत्यां p 854,


d्विचित्र II. p. 8, यत्या p 397, क्रि. र. p. 379, पत्र सा III. p. 462. There are


dन्यां various readings The स्वतित explains काव्यम् as कामक्या चत्रिकारणो

Compare section 375 of the I. P. C with the first kind, sec. 493 with the

2nd kind and sections 497, 498 with the 3rd kind.
sāhita, 978 as stated by the Madanaratna, the V. P. pp. 386-397 and others. The punishments for rape were very heavy. Br (S. B. E 799 33 p 366 verse 10) states that if a man commits rape on a woman of the same caste, he was to forfeit all his property, to have his penis and testicles cut out and was to be paraded on the back of an ass, that if the woman raped was of a lower caste, then half of this punishment was to be awarded and if she was of a higher caste, he was to be sentenced to death together with confiscation of all property. Kat (830) prescribes that when 980 a man has forcibly had sexual intercourse with a woman capital punishment is to be inflicted inasmuch as it is a violation of (proper) conduct. When sexual intercourse was had by deceit the man was punished with confiscation of all property, with branding on the forehead of the sign of the female private parts and banishment from the town (Br. in S. B. E 33 p. 366 verse 981 11). Here also the rule of Br cited above (about the reduction of sentence according to the caste of the woman concerned) applies. In the case of rape and sexual intercourse by deceit the woman was not at all punished 982 but she had to undergo a penance (praṣascīta) of krochra or puṇāka for contact with a male other than her husband and till she performed the praṣascīta she was to be kept well-guarded in the house, was to remain dirty (i. e.

978. तत्र कालाकार्यं श्रीमय्यपर्यथानां साइसन्नपृयौतस्तं तस्यकर्षे अनुदृष्ट दृष्टिम्।
शब्दरूपः Compare sec 376 of the I P C which prescribes transportation for life as the maximum punishment for rape Vide Russell on Crimes (9th ed 1936) vol I pp 613-614 for the ancient law of England (which provided death sentence and the sentence of castration and loss of eyes) and modern law which provides penal servitude for life as the maximum.

979 सहसा कामयाप्ति धन तद्यथाभिं हरेय।|कक्ष्य यत्रिपणो भागमिपिपेन।| "|।
कुंभक नेत्र न समापा तु हीनारयामविकल्पत।|इन्ह कार्योद्विकारा तु गमने समाधानम।|हर्ष।|।
qu. in śrū年に II p. 320, vy. m. pp 396-397, वह म. III 466

980 लीतुयुक्तप्रान्याया स्थायतवसाय हृत्व पदव।|द्वे तत्र भवगत कार्याविन्दनां हि गत।|।
काराय 830 q. by śrūणिक II p 320, vy. m. p 397, vy. m. p 244 All 11-3e three works differ as to the circumstances in which this verse applies.

981. ब्राह्मण कामयाप्ति तद्य सर्वारो दुः।|अनुदृष्ट प्रकार दुः शुष्कशास्त्ररूपम्।|।
qu. by śrūणिक।II p. 320, लि ॥ p 389.

982 अनिवशेषं तु या शुका दुःता तासर्वेदनां।|गहिनशुचिगति भाष्ययो विचारवानां।
कार्योद्विकाराः कार्यम् सर्वारो धर्मवान्।|।
qu. by śrūणिक II p 321, लि ॥ 400 For हर्षु कर्त्यां तत्त्र सुरसम्।|।
सन XI 212 and 216 The śrūणिक II. p 320 śvys "तासर्वेदनांश्चश्च शुष्कवाः|।
पान्यां समाप्ते।|श्चार्हनिवायर्यां अस्थिद्वायायामिन साधना।|।
सत्यधिशिरोमद्विती तेनि कार्योद्विकारःश्च।|।
अनिवशेषाः &c.
not to deck herself or apply or use perfumes &c., to lie on the ground (not on a bed-stead or couch), was to receive bare maintenance. After performing āśācitta she was restored to her former position. Acc. to Yaj. II. 286 and Br (S. B. E. 33 p. 366 verse 12), for adultery (in which there is consent) the highest fine is prescribed for the male in the case of a woman of the same caste, half of this in the case of a woman lower in caste (than the paramour), but when adultery is committed with a woman of a higher caste the male shall be put to death and the woman shall have her ears and the like cut off. Vide Shakespeare’s Othello IV. 1, where Othello exclaims ‘I see that nose of yours but not that dog I shall throw it to’.

There were other sages who were humane and opposed to the punishment of disfigurement by way of the cutting of the ear or the nose. Yama\textsuperscript{982a} states that in the case of a woman guilty of adultery at her will, there was to be no punishment of death or disfigurement, but only abandonment. Kat (487) lays down the general rule that in all offences women should be sentenced to half the fine in money which is prescribed for a male and that when the punishment is death for a male the punishment for a woman would be cutting off a limb (vide note 628).

Nar. (XV. 73–75) holds\textsuperscript{983} that sexual intercourse with the step-mother, sister’s sister, mother-in-law, the paternal or maternal uncle’s wife, father’s sister, a friend’s or pupil’s wife, sister, sister’s friend, daughter-in-law, daughter, the wife of one’s vedic teacher, a woman of the same gotra, a woman that has sought protection, with the queen or an ascetic woman (pravrajita) or a wet-nurse or a virtuous wife (śādīvī) or a woman of a higher caste is incestuous and the punishment to be prescribed for this crime is the excision of the penis and no less. Vide Manu XI. 170–71, Kaut. IV. 13,\textsuperscript{984} Yaj III. 231–233, Matsya-

\textsuperscript{982a} \textsuperscript{983} \textsuperscript{984} \textsuperscript{985}

\textsuperscript{982a} \textsuperscript{983} \textsuperscript{984} \textsuperscript{985}
purāṇa 227 139-141, which latter (three) prescribe excision of
the penis and death by way of punishment (except for a brāhma-
mana) and expiation and for the woman (if she was a consent-
ing party) death sentence Brhad-Yama III 7, Āp (in verse)
IX, 1 (Jivananda ed.,) and Yama (Ānandāśrama) 35 prescribe
that there is no expiation except that of entering fire for incest
with mother, teacher's wife, sister or daughter. It is remarka-
ble that Kaut, 985 and Yāj (II 293) prescribe only a fine of 24
panas for adultery with a female ascetic, while Nār XV. 74
and Matsya 227. 141 deem it a most heinous offence. The
explanation probably lies in the fact that Kaut and Yāj refer
to female ascetics of the lowest castes not following the
orthodox religion, while Nār refers to nuns of a higher order
Vide Manu VIII. 363 also. For forcible intercourse with a
prostitute against 986 her will Kaut, IV. 13 and Yāj II 291
prescribe a fine of 12 and 24 panas respectively. For unnatural
offences or offences against the order of nature, Kaut IV 13,
Yāj. II 289, 293, Vīrūṇa Dh S V. 44, Nār. XV. 76 provide fines
of 12, 24, 100, 500 panas 987

Manu IV. 134 (= Anusāsana 104. 21 = Mārkandeya-purāṇa
34. 63-63) forbids a man to have sexual intercourse with an-
other's wife and states that there is nothing so detrimental to
long life as that. There are stray indications in the Vedic
literature about sexual intercourse outside marriage. Vide H.
of Dh. II pp. 637-639. In Rg. I 92. 4 ( adhi potiṇī paśute atūr
va) there appears to be a reference to a dancing girl or hetaura.
Wives hating (or proving false) to their husbands are believed
to go to Hell in Rg IV. 5 5 (patrispo na janayo durevāḥ). In
Rg II 29 the sage prays to the Adityas 'remove away from
me sin as a woman who gives birth to a child in secret removes
it' (ū ne matkara rahasūr-vaṅgah). The gambler (in Rg X. 34. 4)
states 'others have intercourse with his wife' ( anye jujām pak
urāntyaśya). The word pumācali occurs in Yāj. S XXX 22.
We have already seen (H. of Dh II. pp 576, 1098) how in the
Varunapragāśa (one of the Cāturānyas) the wife of the sacriifer
had to confess if she had a lover and how even after

985 महंतिनागमने चतुष्मिश्लिपणी वुष्कः। सत्नामा तद्रेष्व लिन्द। अर्थसार 14 13
986 स्नातिनागमने महंतिनागमने हत्रविदित्ती हुष्कः। अर्थसार 14 13। तथा बाल
नितिना भारी जणितिकता तन्ज्ञे। हुष्कमवित्ति हथिविदित्ती हु गन्ते तन्ज्ञे। फिङित्ती
तेजुनु भुजातावशे। मस्त्र 227 141
987. किपमविननान्य श्रवणा। पूर्वा सारसंहुष्क। हुष्कमवित्ति तथा। श्रीयुते हत्रविदित्ती
श्रेष्ठमिश्लिपनामां। अर्थसार 14 13.
she confessed to having had one she was allowed to co-operate in
the sacrifice on undergoing an expiation. After a man performed
the solemn sacrifice called Agnicayana he was enjoined (Tait.
S. V. 6. 8. 3)\textsuperscript{988} not to approach a śūdra woman and after he
performed Agnicayana twice he was not to approach another's
wife (H. of Dh. vol. II. p. 1255).

The punishment for sangrahana (rape and adultery) varied
according to the caste of the man and the woman, according as
the woman was married or unmarried and according as she was
guarded (guptā) or unguarded. Vide Gaut. XII. 2, Vas XXI.
1-5, Manu VIII. 359, Visnu Dh. S V. 41, Yaj. II. 286, 294,
Nār. XV 70 (as to higher or lower caste of offender), Gaut. XII.
3, Manu VIII. 374-378, 382-385, Kaut. IV. 13 (about offence
against guarded or unguarded woman), Manu VIII. 364-370,
Yaj. II 285, 287, Kaut IV. 12, Nār. XV. 71-72 (about maiden). Furtber the ancient sutras and smṛtis prescribe more severe
sentences than later smṛtis. Details of these matters are passed
over here for want of space and as being now of academic
interest only. But some examples may be noted. Gaut. XXIII.
14-15 and Manu VIII. 371 prescribe for an adulterous death by
being devoured by dogs, but Yajr. II. 286 softened the rigour of
this. Ap. Dh. S. (II 10. 26. 20-21) prescribed the penalty of
cutting the penis and testicles for the male if guilty of adultery
with a married woman, but only confiscation of all property if
he committed adultery with an unmarried woman. But Yajj. II.
288, Manu VIII. 366, Nār. XV. 72 went so far as to say that if a
man had sexual intercourse with a maiden (of the same caste)
who encouraged his advances, then there is no offence punishable
by the king, but he was to bestow ornaments on her, honour her
and must marry her.

It has further to be noted that Yajj. II. 290 and Nār.
(XV 79)\textsuperscript{989} make it punishable to visit a āsāl kept by a man
in his own house or outside and Yaj. prescribes the fine of
50 panas for so doing. Vide H. of Dh. vol. II pp. 637-639 about
prostitutes. But Manu VIII 362 states that the rules making
conversation with others' wives in lonely places punishable
does not hold good in the case of the wives of actors, singers

\textsuperscript{988} नारायण विनिंता रामायणांभित्र देशे भारतमौलि न द्वितीय दिनान्दुपरिवर्तन स्थित-
हस्तेश्वर निरीक्षित स्वा व भेदेतार तै से V 6. 8 3-4.

\textsuperscript{989} आलसेन द हुसैनखान टेईस. स्थानीमेज्वारवस्तु गगना अयति दिना मिस्त्र। यथा
परपारिब्रह्मण्यये नारायण XV 79.
and those who live on the earnings of their wives, since they themselves introduce their wives to others and make them mix among men (while they themselves remain concealed)

**Strypundharmā** (duties of husband and wife). Most of the matters falling under this head have been dealt with in **II** of Dh. vol. II. pp. 556–592. The liability of the husband or wife for the debts of the other has been already dealt with under **ṛṣṭādāna**. The rights of partition, inheritance and maintenance will be discussed later on under **dāyabhāga**. Nār. XV. 1 defines this title of law as that in which the rules of the marriage of women and men and other related matters are described. Under this head Nār. speaks of the essential ceremonies of marriage, the rules about selecting a bride and a bridegroom, restrictions as to the caste of the bride, the guardians for marriage, faults or defects in a proposed bride or bridegroom, the forms of marriage, women called **punarbhūti** and **śwarūti**, the practice of **uṣṇa**, illicit sexual intercourse, punishment of women for adultery, remarriage, **uarnaśankara**, mixed castes. In IX. 1 Manu promises that he will dilate upon the obligatory duties of man and wife, whether they are staying together or apart. Manu IX. 2 holds that the first duty of the husband and the males in his family is to keep women dependent and under their control if they become attached to a life of pleasure and Nār. XVI. 30 states that even women of good family come to ruin by independence. The next most important matter acc. to Manu IX. 5 and Br. (S B. E. 33 p 367 verse 2) is to guard women against improper attachments however trifling, since if they go astray they bring sorrow to both families (of the husband and of the father). Acc. to Hārīta, Śankha-Likhita, Manu (IX. 7, 9) and others the husband has to guard the wife from the approaches of other men in order to ensure the purity of the issue and by guarding her the husband guards his reputation, family, soul and his **dharma**.
since a woman gives birth to a son similar to the male with whom she consorts or on whom she sets her heart during the days after the monthly illness. Here there is some anticipation of modern Eugenics. Manu IX. 10 was quite clear that women could not be completely guarded by confining them with force in seclusion, that their minds must be occupied in family work as stated by him in IX 11 and by Br. (S. B. E. 33 p. 368993 verse 4), that the husband must try to deserve her regard and affection and show her honour (Manu IX. 22-24, 26, Yaj. I 82). Divorce has been already dealt with in H. of Dh. vol. II pp 619-623 Vide 'Selections from Peshwa's doftar' vol. 43 p. 112 where the divorce of a woman (ghatasphota) is ordered because the husband was really a converted Mahomedan who had been illegally admitted to caste after an incorrect method of expiation.

993. आवरणार्थे धीमृत्युस्तर धीरजस्तरमदये । स्त्रीलिङ्गाणि सत्योजया धीरणा धारितरिः
स्वतः हुदः ५ ब्रू प्र के प ४०९
CHAPTER XXVI

DYUTASAMĀHVAYA

(Gambling and prize-fighting)

Manu IX. 223, Nār. XIX. 1 and Br. (S B. E. 33 p. 385 verse 3) define dyūta (gambling) as that sport which is carried on with inanimate objects such as dice, pieces of leather, ivory and the like and in which there is a stake, while sport carried on with animate objects such as cocks, pigeons, rams, buffaloes and wrestlers is called samāhvaya. The attitude of Manu towards gambling was uncompromising. Manu (IX 221-222, 224-226) calls upon the king to suppress gambling and prize-fighting in his country as they cause the destruction of the State; he states that gambling is open theft and therefore the king should endeavour to put it down and that the king should punish with corporal punishment all those who engage in gambling or who induce or help others to gamble, and that he should banish gamblers from the city because gamblers residing in the country harass well-conducted subjects by their deceitful tricks. Manu IX. 227 (= Udyogaparva 37. 19) states that in ancient times gambling engendered great enmities and therefore a wise man should not resort to it even for amusement or in jest. Kāt (934) is to the same effect Yaj II. 203 and Kaut. III. 20 993 allowed gambling in a central place under State supervision as it led to the detection of thieves. Br 993 (S B. E. 33 p. 385 verse 1) refers to this divergence of views: 'Gambling that causes loss of truth, purity and wealth was forbidden by Manu, but others allowed it because it led to the detection of thieves, provided it was carried on in the presence of a master of the gambling hall and provided it yielded revenue to the king.' The person who was in charge of the

994 श्रुलसेवकायं कार्यं तस्करसानकार्यार्थं पापं ॥ पापं 203, शूलावल्लो श्रुलसेवकायं कार्येनमृत्यूर्व रूपाँश्च ॥ ॥
995 शूल निधिभिः सङ्कल्पसंज्ञायानाध्यायायः। अर्थयुक्तायांनैः श्रवणविद्यासमाविष्टाः।

993 निधिभिः सङ्कल्पसंज्ञायानाध्यायायः। अर्थयुक्तायांनैः श्रवणविद्यासमाविष्टाः।
995 निधिभिः सङ्कल्पसंज्ञायानाध्यायायः। अर्थयुक्तायांनैः श्रवणविद्यासमाविष्टाः।

993 निधिभिः सङ्कल्पसंज्ञायानाध्यायायः। अर्थयुक्तायांनैः श्रवणविद्यासमाविष्टाः।
Royal control over gambling

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gambling hall which gamblers made their haunt and who supplied the dice and other instruments of gambling was called "sabhika" and the stake or money agreed to be paid by the defeated gambler to the winning gambler was called "panu" or "glaha" (Yaj. II 199). Nār. XIX. 8 provides an optional method viz. instead 996 of gambling in a hall presided over by a sabhika, gamblers may give the king his share in the stakes, then indulge in gambling openly and if they do so they incur no punishment. Acc. to Yaj. II. 199 as interpreted by Par. M. III p. 574 and V. P. p 565 the sabhika was to receive five per cent or 3⁄20th part when the stake was 100 panas or more and 10 per cent or 1⁄10th when the stake was less than 100 panas. Aparārka (p. 802) explains that the sabhika was to receive as his fee five per cent from the victorious gambler and ten per cent from the losing gambler. Nār. XIX. 2 prescribes a flat rate of ten per cent on the stake as the fee of the sabhika, while Kaut. 997 III 20 lays down the fee as five per cent and allows the sabhika to charge hire for supplying gambling accessories (such as dice, leather pieces) and for supplying water and accommodation. The sabhika receiving protection from the king was to pay to the king the tax agreed upon by him, was to recover from the defeated gambler the stake (by means of confinement or restraint order) and pay it over to the victor and was to be honest and forbearing 998 (Yaj. II 200, Kāṭ 940, Nār. XIX 2) Kāṭ (937) states that the sabhika 999 may give to the winner the money won out of his own pocket and may recover from the losing gambler within three fortights or at once if there is fear of losing the money. Kāṭ (935) 1000 holds that if gambling was to be allowed it must be carried on openly with an arch constructed near the door in order that respectable people might not be misled (about its real nature) and it should yield revenue to the king. If the sabhika is

996. अथवा सितवा राजि दुर्गा भाव यथोत्तितम विभागं देवन कृतदेवम् मेको न सितवन्ते।

997 जितुन्धिमनवधिमहः प्रकटः सत्मादृष्टि काकष्पकालाशलाकाकाकास्कविकाविन-पाँकाय आर्यशास्त्री III. 20.

998. बद्धत दूरार्धशं तपस्यायो न चालया। समिति सच सबंकमस्य जितुम् कालाया 920 q. by अपश्रेष्ठ प 804, वि. r p 615

999 जितुदिकास्वद्धम में जितुम् गाढ़ विविधानाय। सर्वो तम समितिप्रवृत्तिम् कितवास्यकालाशलाकाकालाया 937 q. by अपश्रेष्ठ p 803, प्रति मा III. 575, वि. r p 612.

1000 शर्त चेतुत प्रकाश्य हु दुरार्धशिष्टितोरणः। असमीतावर्धास्यायणां काकालाशलाकाकालाया। कालायें 935 q. by वि. r p 611
unable to make the defeated gambler pay the stake to the victor, 
the king would make the former pay to the latter provided the 
gambling was done openly in the presence of the sabhika and a 
group of gamblers and the king's dues were paid by the sabhika, 
but not otherwise (Yaj II 201). Nar. XIX 6-7 and Yaj II 202 
provide that when gambling is carried on secretly and without 
the king's permission or with false dice or other deceitful tricks, 
the gamblers and the sabhika would not be able to gain their 
object (i.e., recovering bets won or the fee) and would be liable 
to punishment, viz. branding on the head (with dog's foot and 
the like) and banishment Nar. XIX. 6 adds that the banished 
gamblers would have wreaths of dice tied round their necks. 
Kät. (941) and Br. (S. B. E. 33 p. 386 verse 7) state that a person 
ignorant of gambling should, if defeated in gambling in private, 
be released from his liability, but one who is an adept in 
gambling should not be relieved when defeated, but even an 
adept in gambling if he has lost the whole of his wealth as a 
share should not be made to pay the whole.1001 In disputes 
among gamblers, in deciding on victory or in the matter of 
gain to the winner, and as regards the question of false dice 
the keeper of the gaming house, if honest, is the final authority 
(Kät. 942). Nar. XIX. 4, Yaj. II. 202, Br (S. B. E 33 p. 386 
verse 6), Kät. (943) provide that when there is a dispute as to 
success or defeat the king should appoint gamblers to decide the 
dispute and gamblers will also be the witnesses in such a dispute 
in spite of the rule stated above on p. 335 that gamblers are not 
competent witnesses), but if the gamblers are alleged to be 
inimical to the disputants the king may then himself decide 
the matter. Yaj. II 203 extends all the rules about gambling 
to samāhvaya Br. (S. B. E. 33 p 386 verse 4) notes that the 
stake is to be paid by the owner of the animal that is defeated. 
The S. V. (p. 487) quotes a text of Visnu and a (Bharuci's?) gloss

1001 Kät. 942, Br. (S. B. E. 33 p. 386 verse 7). 
1002 Kät. 942. 
1003 Br. (S. B. E. 33 p. 386 verse 6). 
1004 Br. (S. B. E. 33 p. 386 verse 4).
thereon that the king gets one-fourth of the stake from each of the owners of the fighting animals and that the animal that is defeated (except a wrestler or a buffalo) is to be made over, whether living or dead, to the owner of the winner. The Manasollāsa (vol. III, p 229) contains an elaborate description of a king’s amusements by way of wrestling matches, cock-fights &c. The Daśakumārācarita makes frequent reference to gambling In Uočvāsa II. (p. 47) we are told that there are 25 kalās on which gambling depends, that legal proceedings between gamblers were decided by reliance on the sabhika and that out of a stake of 16000 dināśas, the successful gambler took half and distributed the other half among the sabhika and the denizens of the gambling hall

Gambling is one of the most ancient vices. Rg. X. 34 is a hymn which contains the lament of a gambler. Elsewhere also in the Rg. gambling is referred to Vide Rg. I. 41. 9 (explained in Nirukta III. 16), VII. 86 6 (where it is said that dice made of Vibhidaka tree are one of the sources of sin), Rg X. 42. 9, X. 43 5. In the Atharvaveda also dice and glaha occur frequently. Vide Atharva IV. 16 5, IV. 38 (a hymn for good luck in gambling) In Vāj. S. 30. 18 we have the words ‘aksarājaya kitavam’. In certain solemn sacrifices like the Rājasūya dice play was an important item. Vide H. of Dh vol II. p 1219. Pāṇini teaches the formation of many words relating to gambling In II. 1. 10 he teaches the formation of Auyayiḥdhāna compounds like ‘aksapari’ or ‘salakapani’ in the sense ‘that loss was caused by one dice being cast in a way different from the way in which it was cast in a prior game’. In IV. 4. 2 he teaches that ‘aksika’ means one who uses dice in gambling or wins by using dice and in IV. 4. 19 he states that ‘aksadyātika’ 1007 means ‘(enmity) brought about by using dice in gambling’. Vide also Pāṇ., II 3. 57–58 Ap. Dh. S. II. 1008 10 25 12–13 prescribe that in the
midst of the sābhā (hall) having raised a table for playing dice one should place thereon dice even in number and made from the vibhitaka wood and that players should be men of the three higher castes, pure and devoted to truth. In the Mahābhārata Yudhishthira\textsuperscript{1009} is made to say that it was his vow not to refuse dice play when he was challenged to it. It was well-known that gambling affects the minds even of the good, while in the case of those who were not ordinarily good it led to dissensions and calamities. Many modern people justify the action of Yudhishthira on the ground that the code of ksatriya chivalry and morality of those ancient days required that he should not be afraid to play with dice when challenged by an adversary Conceding for the sake of argument that indulgence in gambling even on the part of such a virtuous, noble and philosophic warrior as Yudhishthira was justified or at least excusable, there is nothing to show that the code of ksatriya chivalry permitted him to gamble away his own spirited, devoted and virtuous queen and his four valiant brothers. It appears that the real aim of the great author of the Mahābhārata is to emphasize that gambling is such a reprehensible pastime and so ruinous and degrading that even the greatest and the best, when once they indulge in it, lose all sense of duty, morality and of the claims of love and affection. It has already been seen how gambling was looked upon as a great vice in the king by writers on politics and also on dharmaśāstra. Even the Purāṇas here and there condemn gambling. For example, the Brahma-purāṇa (171. 29-38) condemns it in strong language. It says that the gambler’s wife is always in distress and the gambler on seeing the condition of his wife is also worried (this is in almost the same words as Rg X. 34 10-11), that the Veda condemns gambling and that there is no sin comparable to gambling.

\textsuperscript{1009} आक्षेपः न निवर्तेऽप्रविष्कारत्वं ज्ञातनव वै वत्ते न एव सामाप्त्य 58 16. अतः

द्रव्यमाणेन सत्य महत्विनाशनं। अतएव हत्व जाप्ते नेवान्य चतुर्दशैः ॥

उष्ण 128 6
CHAPTER XXVII

DĀYABHĀGA

(Partition of wealth)

The word dāya has been used even in the oldest period of the Vedic Literature Rg. II. 32 4 (dādātu vīram śatādāyam-
nikthayam) has already been quoted above (on p. 388). In Rg. X. 114 10 (śrāmaṇya dāyum vahatraṇyeybhyaḥ) the meaning of the word seems to be 'a share' or 'reward'. In the Tai and the Brāhmaṇas the word dāya appears to be employed in the sense of 'paternal wealth' or simply 'wealth'. In the story of Nabhānedistha it is stated that Manu divided his dāya among (for) his sons' (Tai S III 1 9 4). That 'dāya' here stands for 'dhanam' follows from another passage of the Tai S. (II. 5 2 7) 'Therefore they distinguish (or establish) the eldest son by wealth'. In the Tândya Brāhmaṇa 1011 16. 4 3-5 also it is said 'Therefore whoever among (a man's) sons secures the best or major portion of wealth as dāya, him they regard as the son who would be the lord of all'. Another word viz. rītīha occurring in the sūtra and smṛti literature is also employed in the Rgveda 1012 III 31 2 'the son of the body does not give to his sister the ancestral wealth, but makes her the receptacle for the son of her husband'. The word dāyāh (meaning a co-sharer, one who takes a share) occurs frequently in the Vedic Literature. In the Tai. S VI. 5 8 2 1013 it is said 'Therefore women being destitute of strength take no portion (of Soma)
and speak more weakly than even a wretched (low) man. In the Atharvaveda V 18 6 Soma is said to be the dāyāda of the brāhmaṇas. Visvāmitra invites Sunahsepa to share in the spiritual wealth (dāya) belonging to him (Ait Br 33 5), calls upon his sons to follow him and states that he (Sunahsepa) would accept them, his wealth (dāya) and his learning. The Nīr III 4 quotes or summarizes other Vedic passages in which the words dāya and dāyāda occur. In Pāṇini II 3 39 and VI. 2. 5 the word dāyāda occurs.

The principal heads discussed under the vyavahārapada called dāyabhaṣa are two, viz. partition and inheritance. For at least a thousand years there have been two schools that widely differ on these two heads; they are respectively known as the school of the Mitakṣara and that of the Dāyabhaga on account of the pre-eminent position of these works in the respective schools. The latter school is predominant in Bengal while the former prevails in the whole of India excepting Bengal. But even in Bengal there are in modern times families governed by the law of the Mitakṣara. This work in intention and scope does not profess to be a treatise on modern Hindu Law. It concerns itself with pointing out what the law of the Smṛtis and writers of medieval digests was and has to eschew an exhaustive discussion of the modern case-law and legislative enactments that have made the Hindu Law appear in many respects to be entirely different from the law of the commentaries and digests. Generally speaking, only very important divergences made by legislation and case law in the ancient and medieval Hindu Law can and may be pointed out here.

The principal Sanskrit works of the Dāyabhaga school are three viz. the Dāyabhaga of Jimūtavāhana, the Dāyatattva of Raghuṇandana and the Dāyakramasangraha of Śrīkṛṣṇa Tarkālakāra. The Mitakṣara school is subdivided into four sub-schools in which besides the Mitakṣara, the supreme authority, other works are referred to as supplementary to it and as modifying some of its doctrines viz. the Benares school (which regards the Viṣṇudvīpasūrya as of high authority), the

1014. न भावयो हि विरुत्त्दर्शिक्षित्वा विज्ञातनौपि । सोचो व बदयो भवावर्षो अवपर" 

1015. उपयो बृहन्म व तथा तेन व विश्वदभ्यं इस्ति। ने भा. 33 5। वेय व तुलिंगा 

Mithilā school (which relies on the Vivādaratnakara, the Vivādacintāmani), the Mahārāṣtra or Bombay school (where the Vyavahāramayūkha is of the highest authority in Gujerat, Bombay Island and Northern Konkan even superseding the Mitāksara in some matters and the Vira-mitrodaya and the Nirnayasindhu are also relied upon), the Dravida or Madras school (where the Śmrтиcandrika, the Vyavahāranirnaya of Varadarāja, the Parāśara-mādhavīya and the Sarasvatīvīlāsa are also works of authority) In spite of some differences in the rules accepted in different provinces in all of which the Mitāksara is of high authority, all the provinces except Bengal are held to be governed by one school. Vide Ambabai v. Keskar I. L. R. (1941) Bom. 250.

The words dāya and ubhāga have been variously defined in thedigests Nār. (dāyabhāga, verse 1) defines the vyavahārapada dāyabhāga as one in which sons arrange for the partition of their father's wealth. The Madanaratna as noted by the V. Mayūkha (text p. 94) reads arthasya pitryādeh (wealth of the father and others) for pitryasya in Nārada's verse The Śmrṭisangraha quoted in the Sm, C, and other works states that the word dāya applies to wealth that comes to a man through the father or the mother and the Nighantu defines dāya as the paternal wealth that is to be divided. The Dāyabhāga, the Mit. and others explain that the words pitryasya (father's) and putrāḥ (by the sons) in Nār, are only illustrative, the real meaning being that the word dāyabhāga applies wherever the wealth of a relative (father, grand-father &c) is distributed among his relatives (sons, grandsons &c) simply on account of their relation to the deceased owner. This is borne out by the fact that Manu and Nārada both speak of the distribution of the mother's wealth also under dāyabhāga The Mit while introducing Yāj II. 114 says that the word dāya means the wealth which becomes another's property simply by reason of the fact of his relation to the owner. The V. Mayūkha (p. 93) defines dāya as that wealth which is to be divided and which is not the wealth of re-united members.
The word ‘daya’ though derived from the root ‘da’ (to give) does not apply to ‘heritable wealth’ in the literal sense (of gift). The word daya is rather conventionally used, though derived from the root ‘di’. In a gift (as stated in H. of Dh. vol. II p. 341) there are two chief ingredients viz. ‘abandoning one’s ownership even a thing’ and ‘bringing about the ownership of another in that thing’. But in the case of daya the deceased does not of his own accord abandon his ownership with the idea of creating ownership in another. The two (dana and daya) are analogous, in that in both there is cessation of the ownership of a man in a thing.

The Mit., the Par. M., the Madanaratna, the V. Mayukha, the V. P. and other works that follow the doctrines of the Mit. divide daya into two varieties viz. upratbandha (unobstructible) and saptabandha (obstructible). The first occurs in the case of sons, grandsons and great-grandsons, who, by the very fact of their being the sons or grandsons, obtain ownership in the (ancestral) wealth held by the father or the grandfather. In this case the existence of the father or grandfather presents no obstacle (pratbandha) to the son’s or grandson’s taking an interest by the very fact of his birth in the family property that is in the hands of the father or grandfather. Therefore this is called upratbandha daya. But when a man takes the wealth of his paternal uncle or a father succeeds to the wealth of his son because the uncle or the son dies issueless, it is saptabandha daya, as in these cases the nephew or the father has no right in the uncle’s or son’s property as long as the uncle or the son is alive or as long as the uncle or son has a son or grandson. That is, the life of the owner or the existence of a son presents an obstacle to the nephew’s or father’s succession. Hence it is saptabandha daya.

It is to be noted that the Dayabhaga, the Dayatattva and a few other works do not divide daya into two kinds. According

1018 \textit{Vide} saptabandha daya. \textit{Saptabandha}

1019 \textit{Vide} saptabandha daya. \textit{Saptabandha}
to them, all daya is *sāpatībhandha* i.e. ownership arises in another only on the death of the previous owner \(^{1020}\) or on the cessation of the latter's ownership owing to his becoming *patita* or a *sannyāsin* (ascetic). \(^{1021}\) The doctrine of this school is called *uparamasatvatvāda* (ownership arising on death), while the school of the Mit.-holds the view of *janmasatvatvāda*. This is the great difference between the school of the Dayabhāga and that of the Mitakṣara. The former does not recognise that the son, grandson or great-grandson acquires by birth any right of ownership in the ancestral property held by the father or other ancestor.

The two words *suki* and *svāmin* are correlative, the idea underlying both is the same and they are two aspects of the same question. *Sva* means 'what belongs to a person' i.e. 'property'. It has direct reference to a thing and indirect reference to the owner of the thing. *Svāmin* means 'master or owner' and directly refers to the person owning and indirectly to the thing. Vide Salmond's Jurisprudence, chap. XII, pp. 339–340 (9th ed. of 1937) for the idea of ownership. According to Śiromani bhātacarāya *svātsa* is a separate *padārtha* (category) by itself, while others say that it is a capacity. \(^{1022}\)

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\(^{1021}\) *The Journal of the Royal Asiatic Society* (1916) 187, 271-272

Since in defining daitya the idea of svatva (ownership) was
brought in, many of the digestes enter upon a learned disquisition
on the question whether svatva is to be understood
from the śāstra alone or is a matter of popular understanding.
There is also an ulterior purpose in the minds of some writers
in this discussion, viz. that of denying that svatva can arise by
mere birth. The reasoning of those who say that svatva is to be
understood from śāstra alone is as follows Gaut (X, 39-42)
lays down five sources of ownership common to all viz.
rūdha (inheritance), purchase, partition, seizure, finding (of
treasure and the like) and further states that in the case of
brāhmaṇas acceptance of gifts as an additional source of
ownership, conquest in the case of kṣatrīyas, gain by agriculture
and service in the cases of vaisyas and śūdras respectively.
If ownership were to be apprehended from means other than
śāstras, then this text of Gautama laying down sources of
ownership that are common to all varnas and that are peculiar
to each of the several varnas would serve no useful purpose and
would be superfluous. Further Manu (VIII, 340) states that if
a brāhmaṇa seeks wealth even by teaching or officiating as a
priest for a man whom he knows to be a thief, he would be
punishable like a thief. If svatva is a matter of popular under-
standing then this is not proper, since the priest or teacher who
obtains the wealth from one who is in possession of stolen things
would have to be regarded as guilty of no offence as he merely
pursues the methods of earning wealth specially prescribed for
him by the smṛti texts. Further, if svatva is not to be apprehen-
ded from śāstra, such complaints as ‘a thing that belongs to
me has been stolen by this man’ would not be possible, as svatva
being a purely secular matter the thief would himself be (or
would have to be deemed to be) the owner of the thing, because
the latter is in possession of it. Thieving is forbidden by śāstra
and so on the view of svatva being apprehended from śāstra
alone, such a complaint is understandable. Besides eminent

1022a ज्ञानी रिक्षकयसविभागार्यारिहिताशिष्यां । कान्तान्तर्यात्तं दुःख शास्त्रिणां
विविषान विधित वैध कृत्यकृत । भौ X 39-42. The Ms explains भूभाषिप्रयोगः प्रथमें
शिक्षित । ज्ञान अन्वित । सुविकास शास्त्रिणां द्वारा । परस्परात्मकस्वर्णन अन्तःकरणामादि
शिक्षां। अथवस्त्रितयामेवः मर्यकः।
1023 न्वतं यथा पद्धते तत्र ज्ञानी स एव न । अयस्तसंक्रमः तु ज्ञानी किं ग
इत्यतः तत्संक्रमः एव शास्त्रायस ज्ञानमार्गः। अयस्तसंक्रमः न एतः शास्त्रस्तम्यः।
विविषायणम् ज्ञानमें पुनः पुनः पुनः। न तथा पुनः पुनः पुनः पुनः पुनः।
विविषायणम् तद्विद्य शास्त्रस्तम्यः। अयस्तसंक्रमः किं ग इत्यतः। ज्ञानमेंं
तद्विद्य पुनः पुनः पुनः पुनः। अयस्तसंक्रमः न एतः स्वाक्षरस्तम्यः।
सुविकासंतत्तम तद्विद्य शास्त्रस्तम्यः। अयस्तसंक्रमः किं ग इत्यतः।
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प्रणयते।
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works and writers like the Smritisangraha and Dhāresvara support the view. Those who hold that svatva is known only from śāstra explain that riktha in Gautama’s śūtra means simply dāya and samvibhāga means partition of dāya which establishes the separate ownership of a person on a portion of dāya (vide V. P. p. 415). They further urge that Gautama’s text does not specifically mention birth as a source of ownership.

Others headed by the Mit. hold that svatva is apprehended from worldly usage and not from śāstra. Their reasoning is:

1. Just as rice effects an ordinary worldly purpose, so svatva brings about worldly transactions such as sale. What is not owned by a man does not enable him to effect such worldly objects and transactions as sale or mortgage. Such matters as the Āhavaniya fire that are prescribed by the śāstras are not useful in effecting secular purposes, but only śāstric ones. The Āhavaniya fire may be used in cooking rice, but that is in virtue of its ordinary nature as fire and not in its śāstric nature of being the Āhavaniya fire.

2. Even among Mlecchas and lowest peoples who are quite innocent of the knowledge of śāstras, the ideas of ownership arising from transactions of sale and the like do exist. Further (3) learned men well-versed in

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1024 समस्याणकारणं वारेश्वरभवेत्तो भविष्यति। मद्यार्थम् (folio 90), मयंकितं
वेक्षणकर्षणम्। स्वरूपिनं II, p 257 It is somewhat strange that Dhāresvara who is no other than the celebrated king Bhoja of Dhārā should be styled bhatta by the Madanaratna and ācārya by the Mit (on Yaj, III 24) and the V Mayūkha (p. 89).

1025 When a man dies his wealth is the dāya which several persons may inherit. In their case, it becomes their joint property. So their ownership, being joint, is denoted by the word ‘riktha’. The joint owners become exclusive owners of definite parts of the dāya by partition, thus partition is a source of ownership (in this case exclusive ownership of distinct parts by several). But if there is a single heir then there can be no samvibhāga (partition) and so the source of his ownership is riktha and not samvibhāga. When there are several heirs riktha is on this view a source of joint ownership only. It must be said that on the hypothesis of Jīmūtavāhana, riktha and samvibhāga rather coalesce with one another and cannot be distinguished so well as on the theory of the Mit.

1026 Vide the Mit (on Yaj II 114), V P pp 419–422, V. Mayūkha pp 89–90, Par M. III, pp 482–483 for elaboration of this view. The S. V. p 396 ff while accepting the view that svatva is laukika does not accept the reasoning of the Mit, particularly with regard to the Āhavaniya fire.
the Mīmāṃsā such as Prabhākara\textsuperscript{1022} (on Jaimini IV.1.2) and

1027. The Mit (on Yaj. II.114) quotes a passage of Prabhākara on the \textit{Iṣṭāśītra} and explains it. Jaimini's \textit{sūtra} (IV.1.2) is विनयविद्यानिश्चकविशिष्टाम्. In this \textit{sūtra} the word \textit{iṣṭāśītra} occurs Therefore this is called \textit{iṣṭāśītra}. The words विनयविद्यानिश्चकविशिष्टाम् occur in the Dāyabhāga also (II. 67 p 49) and in Medhātithi on \textit{Manu} VIII 417. These words are quoted in the Mit. as taken from Prabhākara (called Guru) and so it follows that even Medhātithi quotes from Prabhākara. The earliest extant commentary of Sabara offers three explanations of this \textit{sūtra}, which deals with the question of \textit{what} is \textit{kraṇavārtha} and \textit{what} is \textit{puruṣārtha}. The third explanation concerns itself with the rules about acquiring wealth (which is necessary for performing every sacrifice) such as acceptance of gifts in the case of \textit{abhimānas} The question is whether these rules about the means of acquiring wealth are \textit{kraṇavārtha} or \textit{puruṣārtha} If they are the former (i.e., if they are meant to be directly connected with the sacrifice) then a sacrifice performed with wealth not acquired according to the rules of \textit{sāstra} will be defective or a nullity. But if the rules are \textit{puruṣārtha} (i.e. addressed to the sacrificer only or to his consequence and sense of \textit{dharma}) then even if the sacrifice is performed with wealth not acquired in accordance with \textit{sāstra} there will be no defect in the sacrifice itself, only the sacrificer will be at fault and may have to perform \textit{pāyāśītra}. Says Sabara. च यदैव वर्णमेऽतत् वर्णमेऽत्सर्वः। तद्र वर्णां प्रेमिलेरितोऽन्तं तुवनां दिव।

The Mit points out that in the plausible view (\textit{Pūrvapakṣa}) and the established conclusion (\textit{siddhānta}) it is assumed that acquisition of wealth by acceptance of gift is a matter known from worldly usage (\textit{lokasiddha}). The comment of Prabhākara (called Guru) on this \textit{sūtra} is not yet available in print. The \textit{Sm. C.} II pp 257-258, the \textit{Madanaratna}, and \textit{V. P.} p 420 quote a passage from the \textit{Nāyavītaka} of Bhavanātha on the same subject and explain it. The \textit{Madhuśudana} says 'विनयविद्यानिश्चकां विनयविद्यानिश्चकां अनवरात् अस्तब्रह्माय तत्स्वर्णां अनवरात्' हृदयकोप स्या अवैत्तिकोऽस्त्राद्। अति विनयविद्यानिश्चकार्याय तत्स्वर्णां अनवरात् अस्तब्रह्माय 'दक्षगुप्तराजाय' हृदयकोप स्या अवैत्तिकोऽस्त्राद्। The passage as printed in \textit{V. P.} p 220 (अन् एवानिस्वर्णविनयविद्यार्याय अनवरात् अस्तब्रह्माय 'दक्षगुप्तराजाय') is corrupt and hardly makes any sense. The \textit{V.} \textit{Mayākha} simply refers to Bhavanātha without quoting him. The \textit{विनय} (folio 95) remarks 'भीमन्याश्वस्तुकं अनवरात्तितिनिष्ठानं दक्षगुप्तराजाय तेन किन्तु अवैत्तिकोऽस्त्राद् दक्षगुप्तराजाय अनवरात्तितिनिष्ठानं '। Vide H. of Dh vol III pp 129-130 for quotations from several sūtras laying down various means of livelihood. \textit{Manu} X. 115 enumerates seven sources of wealth as sanctioned by \textit{sāstra} viz. finding (of treasure), \textit{dāya} (inheritance), purchase, conquest, lending for interest, work (agriculture and trade), acceptance of a gift from a worthy person and in X. 116 mentions ten means of maintaining oneself (in distress). The Mahābhāṣya (vol I p 483) on \textit{Pāṇini} II. 35 states that a thing becomes one's own in four ways viz. by purchase, by seizure, by begging or by exchange 'विनयविद्यानिश्चकां अनवरात् अनवरात्तितिनिष्ठानं दक्षगुप्तराजाय अनवरात्तितिनिष्ठानं' It must be remembered that the enumeration of the means of acquiring property in the dharmāṣṭra is not exhaustive but only illustrative.
Ownership is understood from worldly usage

Bhavanātha, author of the Navavivaka, hold that ownership which springs from certain fixed sources only (such as purchase) is a matter of worldly usage or experience. Bhavanātha says: the sources of acquisition such as birth and purchase &c. are known from the world. The conception about the sources of ownership was not started for the first time by the śastra, but such sources have been known from times immemorial (long before the smritis). That is, the recognition of the sources of ownership is prior and śastra only systematises them subsequently. Therefore the smriti of Gautama (X. 39) only assigns their proper spheres to the several sources of ownership that are already well-known (viz. five are common to all, acceptance of gifts is peculiar to brāhmaṇas and so on.). In this respect it is like the grammar of Panini. Panini does not create or lay down new words but he takes the words already current in the language and introduces a system about their formation. Similarly Gautama only voices a certain fixed system among the several sources of ownership. The Mit. and its followers say that Gautama simply repeats the several sources of ownership known in ordinary worldly life (as the V. Mayūkha says ‘lokasiddha-kāranāntvādekaṃ’). The Mit., Par. M. III. p. 481, S V. p. 402 and others hold that riktha and samvibhāga in Gautama’s sūtra stand for apratibandha dāya and apratibandha dāya respectively. 1028 The Mit. meets the other arguments of its opponents by replying that in the first place that even ordinary popular usage does not recognise that the thief becomes the rightful owner by simply possessing the thing stolen and that in the case where a person says ‘this man has stolen my property’ there is doubt and dispute whether the man charged has got ownership by purchase or the like.

The purpose of this discussion of the topic whether ownership is only known from śastra or is a secular matter is, according to the Mit., as follows:—Manu XI. 193 (=Visnu Dh. S 54. 28) states that when brahmaṇas acquire wealth by reprehensible actions (such as accepting a gift from an unworthy person or engaging in the sale of articles which he should not sell.)

1028. The word riktha is often used in the sense of apratibandha dāya also as in Gaut XII. 37 (rikthabhāga rnam pratkuryul) and Yaj II. 51 (rikthagubha rnam dāpyaḥ), Baud (riktham nātīṣyāḥ kanyāyāḥ) q. by the Mit. on Yaj II. 146. Vide Bai Parson v Bai Semt 36 Bom 424 at pp. 428-434 for an exhaustive exposition of the basic principles underlying the two kinds of dāya in the Mit. and the Vyavahāra-mayūkha.
they are purified from the sin by abandoning that wealth, by repeating the sacred texts (like the Gayatri) and by austerities. If ownership springs from śāstra alone, what is earned by a person in ways condemned by śāstra cannot become the property of that man and so his sons cannot divide, what is not his property. But if ownership is deemed to be a secular matter (laukika) then even what is obtained by condemned means becomes the property of that man, his sons incur no blame (though the acquirer may have to perform penance) and can divide that wealth (which is dāya), since Manu X. 115 enumerates dāya among the seven approved sources of wealth. The Madanaratna does not approve of this. Its reason briefly is that Manu XI. 193 simply lays down a penance, but does not say that wealth so obtained does not become the acquirer's property, that it is on account of this that Manu does not prescribe any special fine or punishment for one who acquires wealth by means of a bad gift, as he prescribes for a thief and that what is acquired by theft does not become the property of the thief and his sons cannot divide it and would incur punishment if they do so. V. P. (pp. 423–424) refers to the views of the Mit. and the Madanaratna and approves of the views of the former.

This discussion leads on to the next question, viz. whether ownership arises from partition or whether partition takes place of what already belongs to oneself (by birth) This subject has exercised the minds of writers on Dharmaśāstra from very ancient times. It should be noted that the difference of opinion relates only to the case of sons, grandsons and great-grandsons. All writers are agreed that persons other than these have no rights by birth in the wealth of their relatives. Those who oppose the view that sons acquire right by birth argue as follows:—

If sons have ownership by birth in ancestral property, then, on the birth of a son, the father cannot enter upon such religious duties as consecrating Vedic fires (which entail the expenditure of ancestral wealth) without the consent of the son. This would be opposed to the Vedic injunction “a man, whose hair is yet dark and who has had a son, should consecrate the sacred Vedic fires.” Further, Śmrī passages stating that a gift made by the father to one out of several sons as a favour (Nār. dāyabhāga 6) or by the husband to his wife out of affection is not liable to partition would be meaningless, since such gifts cannot be made without the consent of the sons (on the
Theory of son’s right by birth

Besides, there are smṛti texts like those of Devala, which expressly negative the son’s ownership during the father’s lifetime. Manu IX. 104 and Nār. (dāyabhāga 2) enjoining that sons should divide wealth after the father goes to heaven (because the sons are not masters when the parents are alive, as Manu says) indicate that sons have no ownership by birth. Moreover svaṭva is apprehended only from śāstras (like Gautama), which do not expressly enumerate birth as a source of ownership along with purchase and the like. Therefore the ownership of the son or sons arises on the cessation of the ownership of the previous owner (by his death or by his becoming patita or becoming an ascetic). When there is a single son, he inherits on the death of the father and there is no necessity of a partition. But when there are several sons, they jointly inherit paternal wealth and can become exclusive owners of separate parts of the paternal wealth by partition alone. As this last is the most usual case, it is said that svaṭva arises from partition (abhitāt svaṭvum). If this doctrine that ownership arises by partition alone were literally interpreted, then an only son inheriting his father’s property will have no ownership as urged by the Vyavahāra-nirnaya, since there can be no partition in his case.1039

The arguments advanced by those who hold that ownership in ancestral wealth arises by birth are as follows.

It has been established that ownership is a matter of ordinary worldly usage. It cannot be denied that it is quite well-known to all ordinary people that sons acquire ownership by birth. Besides there is the text of Gautama, "the ācāryas hold that one acquires ownership by birth itself." Moreover there are numerous smṛti passages like those of Yāj. II 131,

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1029. वितत्तुपरे पुत्रा वितत्त्वयुग्म मित्रा। अस्वाम्य त्व अवेद्वर्त नित्येष्य सिद्धि रिते॥

1030. तथा विमानवस्त्रक्षेपे कादुर्जारः मातावियोजीत्र विश्व भाभवार्थ स्वजन स्थावर्ते।

1031. तथा "उपर्या व्यासस्वाक्सितः श्रमेतिवाचारः। इति मूलसूत्रानां।" निता यद्यानुसारः।

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1030. "It has been established that ownership is a matter of ordinary worldly usage. It cannot be denied that it is quite well-known to all ordinary people that sons acquire ownership by birth. Besides there is the text of Gautama, "the ācāryas hold that one acquires ownership by birth itself." Moreover there are numerous smṛti passages like those of Yāj. II 131,"

Source: The Maṇḍarataṇa, Sm C. II. p. 258 and Dāyatattva p. 162 read उत्तप्पृवयी स्वास्थ्यात्मानात्मायाः. The अ न p. 89 reads एवमय स्वास्थ्याः, while स ब व प. 402. Other Sm C. and S V. explain उत्तप्पृवयी मात्रायाः श्रिववैद्येऽवद्याः, while the स्थायीभिः and the नाममभूति on the सिद्धांतः explain उत्तप्पृवयी as जन्मसहाय.
Ownership has to be distinguished from possession and custody. Further, ownership is of various kinds, such as corporeal and incorporeal, sole ownership and joint ownership, ownership as trustee and beneficial ownership, vested and contingent. Even Western writers on Jurisprudence like Austin, Pollock and Salmond, find it difficult to define the exact meaning of ownership. Austin (Lecture XLVII) defines

1032. वृहेष्वर सिन्धुते वर्धमाणि जहाँ तथा वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि। वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि।

1033. वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि। वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि। वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि। वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि। वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि। वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि। वर्धनमाणिन्यानां विकृत्तिः स्तुतिः दस्रासंहितानि।
property or dominion as the right to use or deal with some
given subject in a manner or to an extent, which though not
unlimited, is indefinite. Pollock defines ownership as the
entirety of the powers of use and disposal allowed by law. But
the idea of ownership does not require, according to Sanskrit
works on Dharmaśāstra, that the owner should always be able
to do with his property as he pleases. On the contrary the
śastras lay down restrictions on the owner, enjoining upon him
not to make gifts to the detriment of his family (vide Yāj. IL 175
"śaṃ kutaṃbān odhena deyaṃ" and the verse of the Smṛti-
sangraha "na ca svamucayate" quoted in note 963 above).
Therefore property does not comprise only what one can dispose
of at one’s sweet will, but what is capable (in appropriate
circumstances only) of being disposed of as one1034 likes. A
person may be prevented from dealing with his property as he
likes by the king or by the rules of śāstra, by public opinion,
by his own inclinations and by the pressure of those around
him. But what he owns is theoretically capable of being dis-
posed of by him as he likes. The Madanaratna puts forth the
illustration that seeds kept dry in a granary do not sprout,
yet they have the capacity of sprouting and so are as well
denominated seeds as others that sprout. There are various
grades of the limitations on property, such as the father’s
power, the widow’s power and so on. What a person earns should
belong to him, should be his property. But there are passages
like Manu VIII. 416 and Nār. (abhūpsyāsūrūsā, verse 41 )
that state1035 “three are declared to be without wealth viz. the
wife, the son and the slave; whatever they earn is for him to
whom they (wife, son and slave) belong.” It has been stated

1034. न च पश्चिमनियोग्यताः सतामिति वर्ण भव लिङ्गहि तथार्च पश्चिमनियोग्योपयोगताः।
तथान्तरात् कुदक्षस्त्रापति-पश्चिमनियोग्यताःि-सतामिति तत्त्वानन्तरात्। पत्नी शुद्धमान्यतेऽथ
croṣṭोपयोग्यताःि-सतामिति तत्त्वानन्तरात्। नाम च अपविकेते। तत्त्व तत्त्वात् चेनान्तराति तथार्च
पश्चिमनियोग्योपयोगताः। रत्नमात्सुलारिणि तत्त्रातिंैपिं। वधेशिनियोग्यताःि-सतामिति तत्त्वानन्तरात्।
वधेशिनियोग्यताःि-सतामिति तत्त्वानन्तरात्। नाम च अपविकेते। तत्त्व तत्त्वात् चेनान्तराति तथार्च
पश्चिमनियोग्योपयोगताः। रत्नमात्सुलारिणि तत्त्रातिंैपिं। वधेशिनियोग्यताःि-सतामिति तत्त्वानन्तरात्।
वधेशिनियोग्यताःि-सतामिति तत्त्वानन्तरात्। नाम च अपविकेते। तत्त्व तत्त्वात् चेनान्तराति तथार्च
पश्चिमनियोग्योपयोगताः। रत्नमात्सुलारिणि तत्त्रातिंैपिं। वधेशिनियोग्यताःि-सतामिति तत्त्वानन्तरात्।
वधेशिनियोग्यताःि-सतामिति तत्त्वानन्तरात्। नाम च अपविकेते।

1035 भार्य श्रुतिः द्राक्षयुति चय एवपि। स्वानि। च त्यस्मात्स्वरुपस्तिः द्राक्षयुति चय एवपि।
मप नाम VIII. 416, उद्योगसन्दुहो 33 64 ७६ द्राक्षयुति एवपि। एवपि एवरुपस्तिः एवपि।
by such an ancient writer as Šabara-svāmin\textsuperscript{1036} that this passage does not deny the ownership of the wife or son in what she or he earns, but is only intended to lay down that the wife or son cannot independently (without the consent of the husband or father) dispose of what she or he earns. This view of the text of Manu is accepted by the Dāyabhāga as well as by the Mitakṣara School. The latter holds on the analogy of the interpretation of Manu VIII. 416 that the texts of Devala, Nar and Manu IX. 104 which apparently deny ownership (svāmya)\textsuperscript{1037} to the son during the father's lifetime over property in the hands of the father are to be interpreted only as denying the son's power of independent dealing with such property during the father's lifetime or as referring to the self-acquisitions of the father. On the other hand the Dāyabhāga and the Dayatattva try to explain away such passages as those of Yāj II. 121, Visnū and others (quoted above) that speak of the son's ownership by birth. The Dāyabhāga offers two explanations of Yāj II. 121.\textsuperscript{1038} The first explanation offered by it and taken from Udyota is—

If A has two sons B and C of whom C dies first, leaving a son D and then A dies, then Yāj says that both B (son of A) and D (grandson of A) will be equally entitled to the wealth left by A and not B alone, though he is nearer to A than D, because both B and D offer pindas of the same efficacy to A in the pārvana-sraddha and so there should be no difference between the two. The words "sadrāṣṭam svāmyam" refer to this equality of the son and grandson. The 2nd explanation is that of

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{1036} On \textit{cf.} VI 1 12 \textit{svāmyam}, \textit{svāmyam}, \textit{svāmyam}.
\item \textsuperscript{1037} Then \textit{cf.} VI 1 14 he remarks \textit{svāmyam}.
\item \textsuperscript{1038} On \textit{cf.} VI 1 12^\textsuperscript{a}.
\end{enumerate}
\end{footnotesize}
Dhārēśvara viz. that when the father desires to make a partition, he may distribute his self-acquired property as he likes among his sons, but as to the property he got from his own father (i.e. the grandfather of his sons) he has the same ownership that sons have and he cannot make an unequal division at his sweet will. The Dayabhāga\textsuperscript{1039} rejects the view that Yāj. II. 121 enables the son to demand partition of the grand-father's property from the father even against the will of the father or that father and son have equal shares in the grandfather's property. The same remarks apply to the texts of Visnu and others viz. that in the grandfather's property father and son are equally owners and that the words "tulyam svāmyam" or "samamāṃśītvaṃ" do not mean that father and son take the same share therein.

From the above discussion it will be clear that the two schools of the Dayabhāga and of the Mitāksara were not started by them for the first time, but each had respectable antiquity behind it. Smritis like those of Manu, Nārada and Devaţa and eminent authors like Udyota and Dhārēśvara had put forward the doctrine of upānāma-svātavāda, while the Smritis of Yāj., Visnu, Br. espoused the doctrine of janamāsvātavāda. Viśvarūpa, who commented on Yāj (in the first half of the 9th century) holds that ownership arises by birth\textsuperscript{1040}. The Mitāksara further supports that theory by citing a sūtra of Gautama (upātīya etc.) which is not found in the extant Gautama-dharma-sūtra. This sūtra does not occur in Aparārka and several other works and is stated by Śrīkṛṣṇa Tarkālakāra (on Dayabhāga I. 21 p 14) to be not authoritative (āmūla). These facts emboldened Dr. Jolly to go so far as to make the facile suggestion that it was fabricated by Viśāneśvara or his predecessors (Tagore Law Lectures p. 110). We have seen that so early a writer as Viśvarūpa was excited over the question whether ownership arises on partition or by birth. The learned Doctor has failed to note that the ancient commentator Medhatithi (about 900 A.D.) favoured the view of ownership by birth and quotes (without name) the sūtra in a slightly different form (on Manu

\textsuperscript{1039} अत्-विताधुत्रश्. वैभवाद्यो समविभावाय सहस्र खस्म्रययति वचने दुःखान् त्र विभावसत्यत्वपर्यंतिति भवत्वनाय गूढः। दुर्रोहम II. 18 p 31.

\textsuperscript{1040} या विच्छयति विभावस्तुतिः सा स्थपुपास्मत्वेति दुःखाय। अत् स्तले सति विभाव हृदि सिद्धम्। विभ्य हृदि 'भूर्या विताधुत्रश्च' (या II. 124).
IX. 156).\textsuperscript{401} So it was not necessary for Viśnūnāyana to fabricate a sūtra nor for ārya one else, for even in the absence of Gautama's sūtra the texts of Yāj and others were quite capable of the interpretation put on them by the Mitākasāra. It has to be noted that the Dāyabhāga\textsuperscript{402} does admit that in some (texts?) ownership is stated to arise by birth itself (\textit{kva ca janmanavehi}) and it explains that the words are not to be taken literally but that birth is said to be the source in an indirect way, as the relation of father and son is based upon birth and on the death of the father the son's ownership arises (therefore though ownership directly arises on death, birth may be said to be the source of it as the son is the first heir because of his being born as a son to the father). The Dāyatattva does not say that the sūtra of Gautama is not authoritative, but explains it away on lines similar to those of the Dāyabhāga. It may be stated here briefly that the Dāyabhāga differs from the Mitākasāra in four main points:— (1) The Dāyabhāga denies the theory that property is by birth, while the Mit. accepts it; (2) the Dāyabhāga lays down that the right to inherit and the order of heirs is determined by the principle of religious efficacy, while the Mit. school holds that blood relationship is the governing factor in this matter; (3) the Dāyabhāga holds that members of a joint family (such as brothers or cousins) hold their shares in quasi-severalty and can dispose of them even when there is no partition by metes and bounds; (4) the Dāyabhāga holds that even in an undivided family the widow succeeds...

\textsuperscript{401} On \textit{ibidem} IX. 209 says 1\textsuperscript{st} Vasudeva the liar says the Viśnūnāyana who wrote these words says 'Vasudeva writes the liar...'. The \textit{ibidem} says the 

\textsuperscript{402} On IX. 156 he says...the Mitākasāra who says there is an agreement among the Mitākasāra and the Dāyabhāga that this right to inherit and the order of heirs is determined by the principle of religious efficacy, while the Mit. school holds that blood relationship is the governing factor in this matter; the Dāyabhāga holds that members of a joint family (such as brothers or cousins) hold their shares in quasi-severalty and can dispose of them even when there is no partition by metes and bounds; the Dāyabhāga holds that even in an undivided family the widow succeeds...
to her husband’s share on his death without male issue, while the Mit school holds that she does not do so.

Various attempts have been made to explain why in Bengal alone the laws of succession and inheritance should diverge materially from the laws prevailing in the rest of India. In two learned papers ‘on the origin and development of the Bengal school of Hindu Law’ contributed to the Law Quarterly Review (vol. XXI for 1905 pp. 380–392 and vol. XXII for 1906 pp. 50–63) Mr. Justice Saradacharan Mitra tries at some length to advance a theory of his own: ‘The commercial spirit of the newly formed nation in the eastern corner of the Indian peninsula with its deltaic character and nearness to the sea, the new ideas which other nations trading with it were bringing in every day, the necessary admixture of races in some parts of the country, the religion of Buddhism which for centuries was here the religion of the sovereign as well as of the people and the influence of the Buddhistic tantras combined to bring about a law of property dissimilar in material respects from the rules propounded by Brahmanical sages of old and explained and commented upon in the Mitaksarā and the books based on the same’. His idea is that, as Buddhism profoundly affected the position of women and as tantras like the Mahānirvāna subscribed to the exaltation of the feminine element in nature, the ancient law of property, particularly in relation to women, came to be affected and conceptions of individual ownership, freedom from restrictions on alienation and of the rights of females arose in Bengal which were incorporated by Jimitāvāhana in his Dāyabhāga. With the greatest respect to the learned writer, it must be said that the grounds he urges are far from convincing. A thorough examination of his thesis cannot be undertaken here for want of space. But a few remarks must be made. As regards maritime activity the West coast of India was far more in touch with seafaring and commerce with the West than even Bengal, as the mention of the ports of Broach (Bud) and Kallīnē (modern Kalyan) by Greek writers, the finding of hoards of Roman coins and the existence of Syrians on the West Coast clearly establish. Buddhism had spread to central and western India as early (if not earlier than) the period when it could have spread to Eastern Bengal and Assam. Sanchi, Bhilā, Bharhut, the Nasik and Karla caves bear eloquent testimony to the influence of Buddhism in central and western India for centuries before and after the Christian era. Besides as Mr. Justice Mitra himself
admits 'Buddhism had not its own law of property' (Law Quarterly Review vol. XXI p. 388) Buddhist countries like Burma themselves borrowed their laws of succession and inheritance from the Manusmrti. Vijnānēśvara is far more liberal to women than Jimūtavāhana, who does not allow any woman to succeed as heir unless she is expressly mentioned as an heir in the smṛti texts. The Mahānirvāṇa-tantra treats a sister and stepmother as near heirs and allows even a paternal uncle's widow and son's daughter to succeed, but under the Dāyabhāga these are not at all heirs. One branch of the Mitāksara school, viz that of the V. Mayūkha in Western India is far more liberal about the claims of women than any school. The Marumakkatayam and Aliyasantan law in force in some districts of South India and among certain communities like the Nambudri brāhmaṇas and Naivas go to the other extreme in their regard for women but no one has so far traced that law to Buddhist or Tantric influence. The peculiarity of the Dāyabhāga, viz the principle of religious efficacy is far more remote from rules of affinity given in the Mahānirvāṇa-tantra than the principle of consanguinity espoused by the Mitāksara school. Mr. Justice Mitra is wrong in his estimate of the age of Jimūtavāhana. As stated above (on p. 557) Jimūtavāhana relies on authors like Udyota and the smṛtas of Devala and others. It is best to admit that no satisfactory explanation can be given of the peculiar doctrines of the Dāyabhāga. They have an indigenous and independent origin and growth.

Vibhaga (partition) is defined by the Mitāksara as the allotment to individuals of definite portions of aggregates of wealth over which many persons have joint ownership. The Dāyabhāga found several faults with this definition, the principal criticism being that it is cumbrous and farfetched to assume that the (joint) ownership of several (sons and the like) is first produced in the entire wealth of the father and then to hold that this joint ownership is subsequently destroyed. Its own definition is: "Vibhaga means the indication of the ownership (of one out of many) by the casting of a ball or pebble (on a definite part of the land or cash), which (ownership) arises with

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1043. बिभाग नाम उपवसान किरितिकान्तकायाजनांकायाविशिष्टमानहृत्य वद्यां वद्यांस्वरूपेण। निता १२ या II 114, एवरवासरां प २१२, अपराजपी एव पृ ७२९ अतिप्रेरण, आपहोर्किलामकः विनियोगाधिकारायणमुद्याय प्रेमिकप्रेमकिलामकः राजनिष्ठभावमुद्याय इतिनिष्ठुपार्लितः भवन्ति विभागः। विनिष्ठुपार्लितमानन्यी स्वाभाविक विभागः। भूषण भाषण लक्षणाधारां पर भवन्ति। दुर्योधना II 8-9, प ६.
reference to a portion only (of the heritage of land and cash), but which is indefinite because it is not possible (for one man) to deal specifically with a particular portion (of the heritage) since there is nothing to show for certain what portion belongs to whom". The Dayabhaga denies that ownership jointly arises in all co-sharers (before partition) over every portion of the heritage and states that it arises in portions of it but there is no certain indication to show which part belongs to whom and that the portion of each is made definite and ascertained by partition effected by casting a ball or pebble on a portion (saying ‘this is A’s exclusive portion’ etc.). The Dayatattva¹⁰¹⁴ (p. 163) criticizes this definition. If before partition each of the co-heirs has ownership in part only of the entire heritage, what assurance is there that the allotment of a part to one co-heir by means of casting a ball will be as to the same portion over which his ownership arose before the partition? The Dayatattva, though differing¹⁰¹⁵ from the Mit, as to the doctrine of ownership by birth, agrees with it as to the definition of vibhaga. The differing definitions of vibhaga given by the Mit. and the Dayabhaga lead to different results. Under the Mit when there is a joint family of father and sons or grandsons, all these are coparceners and the ownership of the coparcenary property is in the whole body of coparceners i.e., there is unity of ownership while the family remains joint, no coparcener can say that he is owner of a definite share, one fourth or one fifth etc. A coparcener’s interest is fluctuating, is capable of being enlarged by deaths and is liable to be diminished by births. It is only on partition that a coparcener becomes entitled to a definite share. On the other hand according to the Dayabhaga there is no ownership by birth, the sons on the father’s death constitute a coparcenary but the ownership of the family property is not in all the sons as a body. Every son takes a defined share, the moment the ownership of the father ceases (owing to death etc.). The share so taken does not fluctuate with births and deaths. The sons are coparceners in the sense that their possession of the property

¹⁰¹⁴ तद्विपिनोत्सम्महाधीनप्रभावाग्रेष्यत्रहेतुपरिपत्ति श्रवितांत्वकोपपचा प्रामाणिकत्वादि अवस्था-प्रद्धिते स्वाभाविकप्रकृति निर्देशीति राजा सन्तीप्रसादसः। पतल्यापनी ।

¹⁰¹⁵ वहनवध्रेष्यरूपेण स्याधि-वहनवध्रेष्य अन्यवध्रेष्यस्य अधिकारादित्यत्र अपभ्रंशः। वर्तमानप्राप्तिके वहनवध्रेष्य श्रवितांत्वकोपपचा प्रामाणिकत्वादि निर्देशीति राजा सन्तीप्रसादसः । पतल्यापनी।
inherited from the father is joint i.e. there is unity of possession, though there is no unity of ownership.

According to the Mitakṣara sons take by birth an interest in ancestral estate. Suppose A is sole owner of an ancestral estate and has no issue. In that case there is no coparcenary. But the moment a son is born to him, a coparcenary is started. That is, under the Mitakṣara the birth of a son starts a coparcenary. Under the Dayabhāga there is no coparcenary between father and sons as the latter acquire no rights by birth even in ancestral property but it may subsist between brothers or uncles and nephews. Under the Dayabhāga, the death of a man may start a coparcenary among his sons (who will be brothers).

Partition has two senses, (1) division by metes and bounds and (2) separation or severance in interest. Under the Mitakṣara it is possible to have partition in both these senses. The members of a coparcenary may define, at a particular moment, the shares that each would be entitled to; but the actual division of property by metes and bounds may be postponed to a future date and in the intervening period they may enjoy the property in common as before. This is clearly brought out by the Vyavahāramayukha when it says "even in the absence of joint (family) property severance (of interest) takes place also by a mere declaration in the form 'I am separate from thee'; for severance is merely a particular mode (of state) of the mind and this declaration merely manifests that (state or mode of the mind)". The S. V. (p. 347) has a similar passage. It is here stated that an unequivocal declaration of intention to separate effects the severance of a member from the joint family and that it is not absolutely necessary that there should be any joint property or that the property be divided by metes and bounds. This last follows as a matter of course when there is a severance of interest. This proposition has been accepted by the Privy Council and this passage of the Vyavahāra-
mayukha has been quoted in several cases. What constitutes an unequivocal declaration of intention to separate has as usual given rise to a good deal of case law which has to be passed over here. Under the Dayabhaga heirs succeed on the death of the previous owner in certain definite shares and therefore partition has ordinarily only the first sense viz. assigning to the coparceners specific portions of the property inherited. Another way of separating a member is also mentioned by Manu IX. 207 and Yadu II. 116, viz. that when a member of the family is able to fare for himself and does not desire to have a share in the family property, he should be separated by giving him some trifle (as a token). The Mit. adds that the trifle is given as a piece of evidence to prevent his sons claiming a share later on.

The principal matters to be discussed under Dayabhaga or Dayavabha are, as stated by the Sangraha and the Mit., four, viz. the time of partition, the property liable to partition, the mode of partition and the persons entitled to partition.

Time for partition. The evolution of the son's right to demand a partition has been a process of ages. It would not be out of place to say a few words on this topic here. In most primitive societies where the patriarchal family system prevailed, the father had absolute power over the son, it was the son's duty to obey the father, alienation of family property was not allowed, the father had power over the acquisitions of all persons including the son and women were incompetent to hold property. Faint traces of these can be detected in the Vedic literature. The legend of Sunahsepa narrated in the Ait. Br. (33 1 ff.), where we are told that Ajigarta sold his son for being offered as a victim to Varuna, that Visvanatra adopted Sunahsepa as his son, though he had already a hundred and one sons, and that he cursed and disinherited his fifty sons for their disobedience to.

1048. शास्त्रार्थीमानसर कविविवेचना पुष्पकू बिरिया। पा II 116 on which the mitra explained पा II. 116 and सख IX. 207 differently (taking अपराधमान्य as meaning 'who does not work though able to do so') 'कामाकारसूत्रोऽये भामितु धनार्थ श्वरूपैः भावान्तरपाद्यिता नेत्रित्व न व्यापितं साहाय्यं कृतं सूक्तिः सकारात्मनस्य चाप्यथं पार्यतार्थं रक्तं सातृविक्रमीष्ठं कस्तीपि सदैव स सकारात्मानस वैपथ्यार्थार्थतिविद्यामाग्नात् बलीः कार्यः कविविवेचनान रुपाः मृदमेनमानस्यपार्थिवार्थतिविद्यात्।' अयथार्थ प ७१९ gives both these meanings.

1049. चकितापरा प्रय नानायत्र मैतिष्ठ किपरसी न। गातिभास स दुर्ग्रस्त यथासारं पहारिण। शर्क प ५ः प्रस्तुतिः पा II. २५५, सार. विप. प ३४५, हड्डिमिय तिकृत्तीयाय। कविविवेचनात् पार्य कार्य प्राधु सभाय विभागार्थ कल्याण वृत्ती। सिता on पा. II. 114.
his order, indicates that in the days of the Ait Br. it was believed that in hoary ages long before it, the father's power over his sons was absolute. But a caution is necessary. It is possible to over-emphasize the legend of Sunahsepa; it has to be remembered that it is a mere legend and that the Ait Br. itself shows that the conduct of Aijgarta was condemned as most unworthy of a decent man even according to the legend.352 In modern times there are rare instances where parents insure their children and then poison them or maim them for earning the insurance money. But no one says that this is usual or that modern law allows it. In Rg. I. 117. 17 it is stated that the eyes of Rjrasva were put out by his father because the former gave a hundred rams to a she-wolf. This is a solitary instance and it is probable that the verse has some esoteric meaning or refers to some terrestial or celestial phenomenon. In the Kathaka Samhita XI. 4 it is said “the father rules over the son” (pita putrasyese). But it must be said that ideas about the father’s absolute power over the sons lingered on in historic times. The Nir. (in III. 4) puts forward the argument of some predecessors that daughters did not succeed to the father’s wealth because women could be donated, sold or abandoned and not men, while others said that males also were liable to the same treatment as evidenced by the story of Sunahsepa.353 Vasistha (XV. 2) states that father and mother have power to make a gift or sale of the son or to abandon him. We saw above (n 1035) that Manu stated that a son’s earnings belonged to his father. The Ap. Dh. S. (II. 6. 13. 10-11) emphatically says that the right to give away or sell one’s child is not recognized and that the word “sale” used in connection with a bride is used only metaphorically. About the word “sale” in relation to marriage vide H. of Dh. vol. II pp. 503-505.

On the other hand even in the Rg. we find that sons divided the father’s property during his lifetime when the father grew old. “O Agui! men worship you in many places in various ways; they take (from you) wealth as from an aged father”

1050. स हेंसच्छ मण हैण्ये न सद्वस्वाधक् हुण्टलसर्वभस्मादपर्व । नापागा।

1051. सह्मा द्रावनित्यातिसर्वं विषयं न इतः । इसलेखिक हैण हैण देवमात ||

1052. तस्य (इड्य प) पदुनित्याधिगमेनु मातार्यिती मभयत । वसिद्र 15. 2. 

In the Ait Br. (22.9) the story of Nabhānedistha, the youngest son of Manu, shows that the elder brothers divided all the father’s property among themselves, and excluded Nabhānedistha during the father’s lifetime apparently without any protest from him or in spite of it. In the Tai S. III 1. 9. 4-5 the version of the same story is different, since it is there said that Manu himself divided his wealth among his sons and did not give any share of the paternal wealth to Nabhānedistha who was away at a teacher’s house as a Vedic student. In the Gopatha Brāhmaṇa (IV. 17) it is said “therefore in their childhood sons subsist on their father, while in his advancing years the father subsists on the son.” In the Sat. Br. (S. B. K. vol. 44, p. 157) we read “whence in early life the sons subsist on the father... whence in later life, the father subsists on his sons.” In the Kausitaki Br. Upanisad (II. 15) after describing the symbolical handing over to the son of all his physical and mental powers by a father who is expecting death it is said that if after this rite the father recovers he has either to remain under the son’s dominion or go out as a wanderer (a sannyāsin). From some of the above passages, it appears that in rare cases sons divided paternal wealth even during the lifetime of the father and against his will. The remark of Dr. Jolly that “it may be unhesitatingly set down as a fact that in the earliest period of Indian Law, partition of property was an entirely unknown proceeding” (Tagore Law Lectures p. 90) goes too far and is not fully warranted by Vedic texts. Just as the Tai S. (III. 1. 9. 4) narrates that Manu distributed his wealth among his sons, it also speaks of the eldest son being established with ancestral
wealth. The Ap. Dh. S. (II. 6. 14. 6 and 10–12) refers to both these passages of the Tai. S. but concludes that equal division among sons is the proper mode and that giving a major part of the estate to the eldest alone is forbidden by the sāstras. These lead to the conclusion that equal distribution among all sons was believed to be the rule and giving the major portion to the eldest son was an exception (and a rare case) even in the Vedic age. The Alt. Br. (19. 3) speaks of the right of Indra to primogeniture (jyaisthya) and pre-eminence (śraisthya). This right of the eldest son to special treatment at the time of partition persisted in the times of Manu (IX. 112 ff) and Yāj (II. 114) also and even in modern times it is recognized to some extent in the case of impartible estates and even in ordinary families on the ground of custom or from the nature of the grants made by the former Governments or the British Government (such as Jaghirs and Saranjama). Both Kauṭ. and Kāt. declare that customs of countries, castes, villages and groups varying rules of partition and inheritance should be enforced by the king. Dr. Jolly (ibid. p. 98) further relies on the fact that the Āpastamba-dharmaśūtra mentions no other kind of partition than that made by the father. But this is far from conclusive. Āpastamba was a great purist and idealist. He ignores several matters which are well known to have existed long before his time. For example, he takes no notice of the several kinds of secondary sons and he does not allow a brāhmaṇa to take up a weapon even for examining it except when he is murderously attacked (I. 10. 29 7–8), while Manu (VIII. 345–349), Gautama VII. 6 and 25 and others allow a brāhmaṇa much greater latitude. Therefore Āpastamba’s silence cannot lead to the positive conclusion of the absence of any other method of partition. As a matter of fact, Gautama (15. 19) who is generally regarded as prior to Āpastamba states that brāhmaṇas that had separated from their fathers against the latter’s will were not fit to be

1059. ज्ञेशो दानाधृति हन्येपि । तत्कालाण्नितिविक्रमः । सतु श्रेष्ठेण द्वारे धमन-विरक्तिविलेचित्र ज्ञुते । अयायं समास्त्येष्ठ पुरुष बलेन निर्वल्लाभमित्वेष्ठुष्टे । आप ।

1060. श्रीलोकीति बहुरतिः राजमयं श्रीमानविहेनेति तस्मातप्रकाशितो व तत्स्ते वेया जैत्यवार्य आौध्यात्मिकतमः । ऐ मा 19 3

1061. चेतां प्रजाया सब्रृहस्त धनो गृहस्तं व ब्राह्मणं काल यो ब्राह्मणं चतुर्विध्युपितम् || अर्थसास्त्र III. 7 (last verse), ब्राह्मण । वि । प. 505 reads वेशस्त्र ... गृहस्तं ने च नमः । उदित: स्पार्श वेने ब्राह्मणं मनो।
invited for dinner at a brāddha. That shows that partition of sons from the father against the father’s will was wellknown long before Gautama. Dr. Jolly also (ibid. p. 90) relies on an anonymous smṛti text (quoted by the Mit in its introduction to Yaj. II 114) which absolutely prohibits the sale of land. But this is irrelevant. The text could not be taken literally when we have seen that sales of land have been taking place for at least two thousand years. All that the text means is that a sale should be clothed in the form of a gift. Similarly the few smṛti passages that include lands and houses among indivisible properties are to be explained as having in view the fragmentation of a field into small uneconomic plots or holdings or the division of a single small house among numerous co-sharers. It is impossible to believe that the texts meant that houses could never be partitioned among co-heirs. All that we can reasonably infer is that as a general rule such partitions were looked upon with disfavour by society. One may concede that this sentiment continued long after even Gautama and Āpastamba and even in the 20th century a Hindu son suing his father for partition incurs great opprobrium.

Apart from the inference to be drawn from some of the Vedic passages quoted above, it follows that partition did take place, though probably rarely, during the father’s lifetime and even against his will, as indicated by Gautama’s dictum. It is now to be seen what the smṛtis and the medieval writers say about the time of partition. One time was when the father divided the property among his sons during his lifetime as evidenced by the Tai. S. III. 1 9. 4, Ap. Dh. S. II. 6. 14. 1, Gaut. 28 2, Band. Dh.S. II. 3. 8, Yaj. II. 114, När. dāyabhaṅga 4. Another time was after the death of the father (Gaut. 28. 1, Manu IX. 104, Yaj. II. 117, När. dāyabhāṅga 2). The Dāyabhāṅga admits only these two times for partition viz. on the cessation of the father’s
ownership (by death or renunciation of, the world as an ascetic or because he has lost all desires) and during the father's lifetime at his own desire. The V. P. (pp. 429 and 434, 435) strongly criticizes the Dayabhāga as to these two. Some writers like Jimīmatāyana went so far as to hold that even though the father be dead there should be no partition among the sons during their mother's life 1065. The Mit (following Gaut. 28. 1–2) indicates three principal times for partition, viz (1) at the father's desire during his lifetime, (2) when the father has lost all desire for worldly goods, desists from sexual intercourse and the mother is past the age of child-bearing, partition may take place at the desire of the sons even against the wish of the father (Gaut. 28. 2, Nār. dāyabhāga 3, Br S B E, 33 p 369 verse 1); (3) after the death of the father. The Mit relying on Sāṅkhā's 1067 text adds that even though the father may not be past child-bearing, yet the sons can partition at
their desire, even against the father’s will if the father pursues an immoral or irreligious mode of life or is afflicted with a chronic disease or is very old. När. (dayabhāga 16) is similar. It should not be supposed that the Mit. holds that there are only three times for partition; according to it there are other times also (as in the text of Śankha quoted by it). This is made clear by the V. P. p. 434. The Dayabhāga reads the text of Śankha–Likhitā differently and takes it to mean that as long as the father is alive there can be no partition against his will even if he be very old or suffering from a chronic disease or has not all his wits about him, and that in such a contingency the eldest son or with his consent the next younger brother who is capable may manage the family affairs. The Dayabhāga quotes a similar passage of Ḥarita (which is also quoted by the Madanaratna, the Vyavahāramayūkha and other digests). On account of the remarks of the Mit. some works like the Madanapārijāta (pp. 645 ff) speak of four times for partition, viz. during the father’s lifetime at his choice (Yaj. II. 114), even against his will when the mother is past child-bearing and the father is free from all sexual desires and does not care for wealth (När. dayabhāga 3), when the father is old or follows the path of adharma or suffers from an incurable disease then against his will (relying on Śankha as quoted in the Mit.), and after the father’s death. The V. Nir. (p. 408) is almost of the same view.

The Mitāksara is quite clear on the point that the son has an absolute right of partition of ancestral property during his father’s lifetime even against the father’s wish. The discussion in the Mitāksara may be briefly set out here. In Yaj. II. 120 (latter half) it is stated that in the case of grandsons the partition is according to (or through) the fathers i. e. it is per stirpes and not per capita. The text of Yaj (onekaputrākām to putrā bhāgakalpanā) is explained by the Mitāksara in this way that although sons and grandsons have rights of ownership by birth in the grandfather’s property, yet when each of several sons dies leaving a differing number of sons (one leaves two, another three and so on) or when some sons are alive and others die leaving their own sons, then partition takes place per stirpes i.e. the grandsons born of a particular deceased son

1068 It may be noted that the Bālambhāti (p. 150) and V. P. (p. 449) support the reading मनोकालपत्रांग त इत्यादिकदान क हृ in Yaj. II. 120.
get among themselves the share which their deceased father would have got if living i.e. grandsons appear to get partition of property through the son (their father) and not directly by themselves. On this a doubt arises as follows:—If the father of several sons is separated from his brothers as to the grandfather’s property or if the father has no brother and is joint with his father (i.e. the grandfather of the grandson) the grandson cannot demand a share in the grandfather’s wealth (since Yaj I 120 has been explained as meaning that when the father is dead then the assignment of shares among grandsons is according to the share of the father). Another doubt is — even if a partition can be had by the grandsons in these cases it will be only if the father so desires. To this the Mit replies emphatically\(^{1069}\) that in the grandfather’s property the ownership of father and son is wellknown in the world and therefore partition (in the above two cases of doubt) does take place. The Mit, further on expressly says that even when the mother is not past child-bearing and the father still cares for wealth and worldly affairs, partition of grandfather’s wealth does take place at the desire of the son even if the father is unwilling. The Mit makes it clear that the rule of division per stirpes is a special rule laid down by the texts (vācamāt vyaavasthā) for a special case and that in other cases the primary rule of ownership by birth applies. From Manu IX, 209 the Mitaksara further draws the inference that even against the father’s wish a son can demand partition of property acquired by the grandfather. This is the modern Hindu Law in the Mitaksara school generally recognised by the Courts in British India. In Apya Narhar\(^{1070}\) v. Ramchandra a majority of the Full Bench of the

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\(^{1069}\) नना सवन के सुभाष सिद्धांतमा हस्त वाचनिकी व्यवस्था। अयुग विलेके शिक्षकोको विचारसमास्थलके या पीढ़िया पतालके सबै विबन्धके नातिन्द्र अधिकारिको विचारी विदुषी भाला-कल्याणकल्याण। यद्य वा स्वतिततुत पितुरिश्चैतिष्ठलालके अहत। चुम्रा विद्वा (प्राप्त दसा I 122) ... तथा विद्वा: पुत्रस्तु च स्वाम्य तीक्ष्निज्ञानिति कहता विवाहसंस्थति। तत्काल पितुरिश्चैतिष्ठविबन्धनानि नाति पितुरिश्चैतिष्ठविबन्धनानि: तत्त्व च सर्वसाधारणं समांतर सम्बन्ध च नित्तिति विभागमानितविचारापि भूतपूर्वा पत्तमानितविचारां चतुर्थि। विज्ञान। The भावभूषण (पृ 151-152, of Gharpure’s edition) very clearly explains this passage, The या (प 460) also says अन्तः च वृत्त्वा या प्राप्तचिकित्तलाल सवि-भूतपूर्वापि भावभूषणाग्राह: स बत्तापिया: भावभूषणाग्राह:। अः अः प्राप्तात्मा विभागाः वृत्त्वा विशेषित्तलाल समांतरस्वामिनिति: अयासाकारोतिस्वामिनिति। उदाहरणां तिथामानं वर्तमानं विभागायनिनितिः कक्ष 13। vide स्त्रीलिखतु द य. 279 for a similar passage

1070. Vide 16 Bom 29, where Telang J., who was great as a Sanskrit scholar as well as a judge, differed from three learned judges. On pp. 43-51 Telang J. gives a very lucid explanation of the words of the Mit.
Bombay High Court held that a son cannot in the lifetime of his father sue his father and uncles for a partition of the family property and for possession of his share therein, when the father does not assent to such a suit, although the son has a right by birth in ancestral property. The other High Courts have dissented from this view of the majority of the Bombay Full Bench and have followed the dissenting judgment of Telang J.  

When the son’s right of ownership by birth in ancestral property came to be recognised by such smritis as that of Yāj., it followed as a logical consequence that any person who acquires a right by birth can demand partition and separate possession of his share at any time. It has been already seen that even before Gautama sons separated from their father against his will, but this was condemned by the sages and obloquy and infamy attached to such conduct. Some of the smritis recognised the son’s right to partition even in the father’s lifetime under great restrictions. More than fifteen centuries passed (from Gautama to the Mitaksara) before the son’s right to separate from his father during the latter’s lifetime and against his desire was clearly, ungrudgingly and emphatically recognized. The Viramitrodaya also clearly recognizes this right of the son. But even among writers that generally follow the Mit. there were some that could not bring themselves to admit this right of the son. For example, the Madanapārijāta (p. 662) asserts that merely at the will of the son there can be no partition. Under the Dayabhāga, these questions cannot arise, as the son has no right by birth in ancestral property.

This evolution of the son’s right to demand partition even during the father’s lifetime received a fillip from certain religious sentiments entertained in ancient times. Gaut. (28 4) remarks that if, instead of remaining united, brothers separate there is increase of spiritual merit (ubhāge tu dharma-varddhā). Manu IX. 111 states “they (the brothers) may stay united or may stay separate if they desire an increase of dharma; by living separate dharma increases; therefore separation is meritorious.”

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1072. श्रीमती IX. 111 is quoted as महापति by विजय. ख. p 408. The अनुवाद regards महापति and महापति as different ‘प्रभु विद्वान् वायकानकरणशास्त्रिको ज्ञानम् वेदामणि धिन्धेज्ञेचिराग्नासुविद्यमणि दधादिव वर्णि सः सत्तपूर्वः वर्णि सादिव प्रतिमिति वेदामणि प्रौढः’ etc.
This shows that there was an option either to remain joint after the father's death or to become separate. Sankha-Likhita say that brothers may stay together since being united they will prosper (materially).\textsuperscript{1073} Br. provides that in the case of members of a joint family that live together and have a common kitchen the worship of gods, Manes and brāhmanas is single for all, while when they become separate such worship will be separately carried on in each house.\textsuperscript{1074} Nār. (dāyahāga 37) lays down that when brothers are undivided the performance of religious acts is single for all of them, but when there is a partition, the religious acts are separately performed by each Dharma means here mainly such religious acts as the performance\textsuperscript{1075} of the five great daily sacrifices (pañca mañjñās). When the family is joint, worship of gods, Vaiśvadeva, honouring of family guests are only single for the whole family and all participate in the spiritual benefits derived from such acts, but when the members become separate, each performs these religious acts separately. Manu III. 67 lays down that each householder has to perform with the grhyā fire kindled at the time of marriage all grhyā rites such as morning and evening offerings, the five great sacrifices and the daily cooking of food. The Sangraha seems to have held that dharma refers to the performance of agnihotra, but the Sm. C. II. p. 259 and V. P. (437-438) do not accept this and hold that even when joint any coparcener can perform all śrauta and smārta rites like agnihotra with the help of the undivided joint estate and so dharma means only the worship of gods and Manes and the honouring of guests. Vyāsa\textsuperscript{1076} also has a verse similar to Nār. and Br.

\textsuperscript{1073} Kāraṃ kṣastreṇāt' sādhatra dhārmāyvāsāraśc. \textbf{शरत्रिलिखिताः} in \textit{वि.} \textsc{II.} p. 458. The \textit{कौमुदिकर} reads \textit{सह कौमुदेण} and \textit{अनापेयः}

\textsuperscript{1074} \textbf{एकाभिलेख वस्तता विद्वृद्धि कर्णमार्गसम्योऽऽ} \textbf{एक भोगीहर्वजाना} तः सा श्राद्ध रचे सहे f\textbf{द्रुष्ट्रे} q. by \textbf{अपराक्ष्य} p. 719, \textit{व्यव} \textit{वि.} p. 468, \textit{कृतकृत्य} on \textit{सह} IX. 111, \textit{हर्षकृत्} on \textit{व्या.} 28 4, \textit{वि.} \textit{र.} p. 459

\textsuperscript{1075} \textbf{अधीनोपेक्षे} अस्तित्ववेदवर्धत्त्वाणिनामनोऽऽति विद्वृद्धि एव अन्तःपन्न \textbf{अपराक्ष्य} p. 719; धर्मी- \textbf{विद्वृद्धि कर्णमार्गसम्योऽऽ तर्क} च तत्रैव समासप्रकारण। \textbf{त्रयों} तथा \textbf{विभागेन दुःखता} वहः \textbf{साधे सहि} मम्मतः \textbf{सरसाधनाः} गृहसः निबलम् \textbf{ поряд} \textbf{सहि} मम्मतांस सह- 
\textbf{सरसाधारणां तितीय श्लोक}; \textbf{अत्यधिके} एव \textbf{चतुर्थिः} III. p 259, \textit{तत्साधारणां-} 
\textbf{शास्त्रीयते} एव धर्मादश्च वर्त्तमानः। \textit{म.} \textit{p} 438, \textit{स्त्राविरोधपुष्माविनीतावन्द्यमणेऽ} \textit{वर्त्तम} 
\textit{तत्र} \textit{हस्तां} \textit{कर्मसंयोऽनुविधानामिनालिक्ये} \textit{वापस्तर} \textit{p} 164

\textsuperscript{1076} \textbf{आदियुगा} जीवोऽधि सहायसि विविधोऽधि \textbf{तद्यथे} \textbf{विभागाः} \textbf{थम्मलेपार्थिवे} \textbf{विविधोऽधि} \textbf{व्यास} \textbf{q.} \textbf{by} \textbf{अपराक्ष्य} p. 719, \textit{व्यव} \textit{वि.} p. 409, \textit{शास्त्रमय} III. 8.
Partition was generally made when all the coparceners were major, but from Kaut (III 5), Baud Dh. S. (II 2 42) and Kat. (844-45) it appears that the minority of a coparcener did not operate as a bar to partition. Kaut. (III 5) says “partition takes place when the persons separating have attained majority; but (the separating coparceners) should keep in the custody of the mother’s relatives of those coparceners who are minors or of the elders of the village the share of the minors after all debts of the family are paid off, till the minor coparceners attain majority. The same rule applies to a member (of a joint family) that has gone abroad”. Baud, employs almost the same words. Kat. provides “partition is ordained among coparceners who have attained (years of) understanding of worldly affairs and in the case of males they attain this understanding at the 16th year. The property (share in joint family estate) of those who have not attained years of discretion, being made free from expenses (debts etc.), should be kept (by the other major coparceners) with the relatives or friends of the minor members. The same should be done to the share of those who have gone abroad.” This shows that partition could take place even when some members of the family were minors and even a single member could demand at his will a partition of his share as expressly stated by the Dayabhāga (III 16-17), the V P. and other works. There is a controversy among commentators whether minority terminated at the beginning or end of the 16th year. Nār. IV. 35 states that a person is a minor (bāla) till the 16th year. From a verse (attributed to Angiras by Mit. on Yāj III 243 and quoted without name by Haradatta on Gaut. II 6) it appears that one was to be regarded as a bāla till

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the beginning of the 16th year.\(^{1080}\) A verse of Kat appears to hold that minority ends at the beginning of the 16th year; many commentators also hold this view, but several such as Haradatta (on Gaut X. 48), V. R p. 599, V. P p. 263 expressly state that minority ends at the end of the 16th year.\(^{1081}\) It may be stated that according to Gaut X. 48-49, Manu VIII. 27, Vas. 16, 8, Visnu Dh. S. III. 65 the king was to guard the property of minors, women and helpless people. In modern times under the Indian Majority Act (Act IX of 1875) the age of majority is 18 (or 21 in certain cases only) except in matters of marriage, dower, divorce and adoption. In these last matters the ancient Hindu Law will apply to Hindus.\(^{1081a}\) Similarly a partition could be made even though the wife of a coparcener was pregnant. It was therefore that Vas. 17. 41 advised postponing partition till the delivery of the pregnant wives of coparceners, or Yaj. II. 122 and Manu IX. 316 provide for a son born after partition between father and sons.

The next question is what property is liable to be partitioned. A few preliminary remarks on property must be made here. Property is generally divided by most smrtis into two kinds, \textit{sthāvra} (immovable, such as lands and houses) and \textit{jāmaṣṭhā} (moveable). For example, Br. (S.B E. vol. 33 p 323 verse 17) and Kat (516) speak of both kinds of property as subjects of pledges or mortgages. There is another classification in Yaj, II. 121 and a few other smrtis viz. property is of three kinds.

\(^{1080}\) अध्यायसङ्क्रमण वार्तालो काले घात्यान्विति वाचि वर्तनिः एव ततः नामदेव तिरिक्षितः।

\(^{1081}\) याबद्धती कथायास्थाय भवति। हरस्वरे नाम ततः केतु भवति। नामस्थावर्दन्तिः।

\(^{1081a}\) In Bengal minority was held to terminate at the end of the 15th year, vide \textit{Cally Churn v Bhuggobutt} 10 Bengal L R 231 (G. B.) at p 240 and \textit{Mothoo Mohan v Seuqdrndro} 1 Cal 103 (G. B.) In Bombay and Madras it has been held to terminate at the end of the 16th year, vide \textit{Shwaj v Datu} 12 Bom. H. C. R. 281, \textit{Rade v. Krishna} 9 Mad. 391, 397. But see 40 Mad 925, 929. As the Indian Majority Act does not apply to adoption, it was held in \textit{Basappa v Sidrampaa} 43 Bom. 481 that a Hindu widow who was about 15 years old could validly adopt a son, even though a contract by her would have been void on the ground of minority.
bhū (land including houses), mbanāṇāḥ (inaccurately rendered as ‘corrody’) and dravya (gold, silver and other moveables). Sometimes however the word “dravya” is employed in the sense of all property, whether movable or immovable, as in Br. (dravye pitāmahopātte jangane sthācare tathā) quoted in note 1032 above. Property, according to ancient Hindu Law,
may be divided into two classes, (1) joint family property, (2) separate property. Joint family property is either ancestral property or property jointly acquired\(^{1083}\) with or without the aid of ancestral property or property acquired separately but thrown into the common stock (Manu IX. 204). The Mit on Yaj I 120 states ‘among unseparated brothers, if the common stock be improved or augmented by one of them through agriculture, trade or similar means, an equal distribution nevertheless takes place and a double share is not allotted to the acquirer.’ This contains the doctrine of merger of estate by blending. Vide Subayprasad v Prayag Kumar, L. R. 59 I. A. 331 = 34 Bom. L. R. 1567. Ancestral property (aprabandha dāya) is all property inherited by a male from his father, paternal grandfather or paternal great-grandfather, in which according to the Mit, School, the sons, grandsons and great-grandsons\(^{1083}\) of the person who inherits it acquire an interest by birth. Separate property also includes what is called self-acquired property (svārūpā), which will be discussed a little later on. If a person obtains a share of ancestral property on partition, it has been held that it is his separate property if he has no son, grandson or great-grandson, but if there be any of these then it is ancestral property in his hands so far as he and any of his male descendants are concerned. Under the Dāyabhāga, as the son does not acquire ownership by birth in ancestral property, there is hardly any distinction between ancestral property and separate property so far as the father’s powers of alienation are concerned. A few of the outstanding features of the Dāyabhāga system have already been set out above and some may be discussed later.

1083 सामान्यापरम्परानां विभागत सम: स्वतः. शा. II 120, सनलिगादल पश्चात् सर्वेत तद समाक्षिणम्।ततुज्ज्वलिन्यं विनिवत्तमः। सुतान्त: २४५ ब्रम्हाधीनः। तंत्रं तद् ४२६, वि. र प् २४५, त्रायुक्तान्तद्भिं विभिन्नताम् अवस्था । स पुनःस्वयं वियम्यक्षिता तु युद्धविकार नाल वर्ष IX 215 (= अध्यात्मसर्व 105 13).

1084 The Mit. speaks only of the son’s and grandson’s right by birth in ancestral property and does not expressly mention the great-grandson. But other writers like the author of the Vramaśīra quoted above in note 1069 mention the great-grandson as having a right by birth and this has been accepted by the courts. The words ‘ancestral property’ have a technical sense viz it is patiśāraka i.e. paternal grandfather’s or great-grandfather’s property. Vide Muhammad Husain v Krishna Nandan 64 I. A. 230 where this is made clear. In a recent case from Patna, 23 Patna 599 (F B), it has been held that, where a grandfather makes a gift of his self-acquired property to his son (the father), the son or sons of the latter can treat it as ancestral property and take an interest in it by birth unless the gift makes it clear that it was made exclusively for the donee’s benefit only.
A person while he is a member of a joint Hindu family under the Mit and has an interest in joint family property may have separate property of his own acquired in various ways. The different sources of ownership have been already mentioned above (pp. 517 and 548) The different kinds of separate property are mainly these: (1) property taken as obstructed heritage, that is, property inherited from any person other than the father, father's father or father's father's father (such as a brother, uncle etc.)

(2) a gift of a small portion of ancestral movable property made through affection by the father to his issue (smrti quoted by Mit.)

(3) gift or bequest of separate property made by the father to his sons; (4) gifts and bequests made by other relations and friends and gifts at the time of marriage; (5) ancestral property lost to the family and recovered from a stranger by a member of a joint family with his own efforts without assistance from joint family property; (6) separate earnings and gains of learning or science (udyādhana). A few remarks will be made on some of these in the sequel.

It is a remarkable fact that the smrti texts on separate property do not expressly mention gifts received from strangers by a member of a joint family as the separate property of that particular member. The only gifts mentioned are those from friends, or those received at the time of marriage (called auḍuvāluka in Yāj. II. 118 and Manu IX 206) or at a madhuparka in

1085 A decision of the P C, from Madras held that property inherited by two brothers living as members of a joint family from their maternal grandfather became joint property in their hands with rights of survivorship Vide Venkayyamman v. Venkataramanayamman L R 29 I A 156 See 27 Mad 300 (F B) and 29 All 667 for the difficulties caused by L R. 29 I A. 156 But it may be taken that even in Madras such property inherited from the maternal grandfather will now be held to be the separate property of the two brothers Vide Muhammad Husain Khan v Kishva Nandan Sahai L R 64 I A 250 which explains away (on pp. 264-265) the case of L R. 29 I A 156

1086 सौरसर्वायथे जोभ्य प्राच्य विद्यायत्वं भवेंति। दोषेतात्त्वविभागानि प्रसादि च Ḍेव दीन्तुक्ति। तै भवेने, in intro. to cha. II. 114; तथा, भवे. भवे. p 443, भवे. p 501 ascribe it to Navalda (it is नारद, दोषेतात्त्वविभागानि प्रसादि च.)

1087 In Bombay, Allahabad and Oudh such gifts by the father of his separate property are held to be separate property of the son or sons Vide Jugmohandas v. Sr Mangaldas 10 Bom 528, 579 But in Calcutta they are held to be ancestral (Hazarib Mill v. Abanmash 17 C W. N. 280) and in Madras it is a question of intention (Nagalingam v. Rameshchandra 24 Mad. 429.)
honour of a learned man, a priest etc. It is probable that gifts from strangers to a member of the joint family that did not fall within the several classes of separate property mentioned above belonged to the whole family. The concept of the separate property of a member of a joint family was of slow growth. Originally all property however acquired by any member might have been held to belong to the whole family. This is indicated to some extent by Manu VIII, 416, which was (as shown above on pp. 555-556) however interpreted by Śabara, Medhātithi, the Dāyabhāga and others in subsequent times, as meaning that the acquirer (son or wife) had no independent power of disposal though he or she was owner of what was earned by him or her. It is noticeable that so late a writer as Haradatta relies on this verse of Manu and remarks that while the father is alive whatever is earned by a member, whether learned or not, belongs to the father (on Gaut 28 29). The Dāyabhāga (II.66-72) quotes a text of Kāt (851) “the father gets two shares or half of the wealth acquired by the son” and explains it in two ways. If the son acquires wealth with the help of ancestral funds, the father takes half of it, the acquirer gets two shares and the other sons one share each. If the son acquires wealth without using ancestral funds, the father and acquirer take two shares each and the others take nothing. Another meaning is that if the father is learned he takes half, but if he is not so, he takes only two shares. The V. P. (pp.444-45) severely criticizes the Dāyabhāga for these remarks. The first inroad on the conception that the earnings of all in the family belonged to the head of the family was made in the times of the sūtras by the recognition of vādyādhana as separate property. Manu I.X. 208 (= Visnu Dh. S. 18, 42) states that what one (member of a joint family, a brother, etc.) may acquire by his own labour without using (or without detriment to) paternal estate he shall

1088. तत् चूज्यापांच चैतन्य अभाववर्म्येऽव | विनरूपायितां चास-। विभ्रमकारिति विनिवेसे। भवया दुध्ध | तत्रान्तर॥ हस्तव 09 माथ 28 29
1089. तत् चूज्याणितेपि यो चित्तेन दुध्धन्दर्जन वार्याधिकर्षित वार्याधिकर्षित चाचविशेषम् ।
| इत्यांतरः कान्तपावः सचाहि वार्याधिकर्षिते विधिततां विधिततान्तरं पुद्धेन पुद्धेन-।
| वार्याधिकर्षिता स्वामिनि । च विभ्रमकारिति अर्थसम्बन्धी इति। तत् विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां।
| पद्धां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां
| विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां।
| विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां विधिततां।
| विधिततां 11.66-72, pp.49-52
1090. अद्दासार्यां 105.12 closely resembles नदु IX 208 It is ‘अद्दासार्यां
| विधिततां जनार्धनालोच्चां। ब्राह्मणशिलं तु नानासंद्रविशेषति।’
III | What is separate property

not share with others if he does not desire to do so, because that acquisition was made by his own activity. Manu IX. 206 mentions besides vidyadhana, gifts from friends, gifts at the time of marriage and at madhuparka as the separate property of a person Yaj. (II. 118–119) prescribes: 'whatever is acquired by a person himself without detriment to or expenditure of paternal wealth, gifts from friends, gifts at marriage, these are not liable to be divided among a man's coparceners; similarly he who recovers ancestral property lost to the family (and not recovered by the father and others) would not have to share it at a parition with his coparceners nor his gains of learning'. The construction to be put on these words was a bone of contention even before Viśvarūpa. The Mit. understands that the words 'whatever is acquired without detriment to the paternal wealth' are to be understood as qualifying each of the following four kinds of property. The result is that if a gift is acquired by a member from a grateful person who was placed under obligation by spending family wealth, if property was acquired by gift from a father-in-law who was paid from the family property some wealth for securing the bride for that member (as in an asura marriage) or if the property lost to the family was recovered with the help of paternal estate or if a man learnt at the expense of the family and made gains from that learning, then these kinds of properties were liable to be partitioned among all members. The result of taking the first half of Yaj. II 118 as a qualification of the subsequent four kinds of property (as done by the Mit.) is that if a man receives a gift from a stranger even without detriment to the paternal estate the gift was liable to be divided among all members. The reason of the Mit is that, if the first half of Yaj. II 118 is not a qualifying clause of the four kinds of property, then the following four kinds need not be expressly mentioned at all. If whatever is acquired by a member himself without

1091. अत्र च मित्रसमाविष्करितं शक्तिसहितस्मितिः स्वस्वेतं ... तथा मित्र-समाविष्करितं वशेषस्थलादिकं सितारस्तवम्। मित्रसमाविष्करितं मतिबद्धतमभविः विभागनियत। स्थितं सा पा. II. 118–119. The word शेख is used here in the technical sense of Java- mini III 1 2 (सैसाह परार्थतात्व) on which Sabara says 'यहु अर्थम् परार्थनां शेख देव इति ज्ञातः' विभाग 18 is opposed to this 'दितिष्ठ्यात्म्यात्मभाजयामी शेखादिविभाजयाम, आरभवसामवात्। अतो तु सैद्धान्तिके दितिष्ठ्यात्ममार्गान्तिनिवालोक्तिष्ठ्यात्।' On the other hand remarks देवविभागः महाभारतायेन and again (VI. 1. 39 p 115) तत्ततसाधारणविनायकार्थिज्ञानं विभागविभिन्तिः स्विभीतिः। शौरविभिप्पयं च बाक्येशु महाभारतायेन।
detriment to paternal or joint estate is by itself separate property then the following four will only be particular illustrations of the proposition contained in the first half of Yaj II 118. It would be opposed to the usage of sistas to say that gifts from friends or gifts at the time of marriage or gains of learning acquired at the expense of the family estate become the separate property of a person and, as to vahyadhana acquired from learning at the expense of the family, opposed to the express text of Naṛ. (dāyabhāga 10) "when one brother maintains the family of another brother who is engaged in studying the śāstras, he shall receive a share of the wealth gained by that study, though he (the supporting brother) be ignorant himself". Further, if the first half of Yaj II 118 were taken as a separate and independent clause by itself then it would follow that what is acquired by pratigraha (as a gift to a learned brahmana) without detriment to the paternal estate would be indivisible but the usage of the sistas is the opposite of this. That there was such a usage about pratigraha is admitted by the Dāyabhāga (VI. 1 54 p 121). It must be stated however that this view of the Mit. about the first half of Yaj II 118 is not shared by several writers and works such as the Dāyabhāga VI. 1. 8 p. 106, Dipakalika, Viśvarūpa, V. R p 501, Aparārka p. 723.

As regards family property lost to the family by the adverse acts of a stranger but recovered by a member with his own efforts without using ancestral estate, certain provisions deserve notice. Manu IX. 209 (= Visnu Dh. S. 18 43), Br. (S. B. E 33 p 371 verse 12) and Kaṭ 102 (866) lay down the special rule that if the father recovers property lost to the family, whether movable or immovable, with his own effort without using joint family funds, he may retain the whole of it as his self-acquisition. The rule of Yaj. II 119 applies only where the property lost and recovered by one member (not the father) with his own effort and without assistance from joint estate is movable (which then becomes wholly his self-acquisition), but if the property so recovered by one member (who is

1092 अनाभियत विनृपर्य स्वसत्यपदायत यज्ञमलने दुःप्राप्तेऽपनि न तद्व्राधिपात्तते न प्रज्ञयावेये। यथा जि र य 502, स्त्रीसिध्दि ी र 276, दुयागण VI. 1 5 p 106 and VI. 1 36 p 113, स्वसत्यपदायत यज्ञमलने दुःप्राप्तेऽपनि न प्रज्ञयावेये। गातस्वर्य दिवी विपसिध्दि ी र 866 q या अपराधा p. 728, स्त्रीसिध्दि ी र 280, गाता भा III. p 498
not the father) is land, then the recoverer gets one fourth of it as his reward (according to Śankha) \(^{1093}\) and the remainder is divided equally among all members of the family including the recoverer. These rules have been followed in modern times by the British Indian Courts \(^{1094}\).

**Vidyādhan**a (gains of learning) has undergone the greatest changes of fortune since the earliest times to modern days. It was probably the first kind of self-acquisition recognised in very early times. Though the Āp. Dh S and Baud. Dh S., say nothing about it, yet Gaut \(^{1095}\) (28. 28-29) lays down that all members (of a joint family), if not learned, should divide equally whatever is earned by them (by agriculture etc.) but what a learned man himself acquires by his learning he may not share with his unlearned brothers if he so desires. Haradatta says that this applies only between brothers that are joint. Vasistha 17. 51 appears \(^{1095}\) to give two shares to the acquirer of wealth at a partition among brothers and his rule probably represents a very early stage when the acquirer could not retain the whole of his self-acquisition but got only two shares.

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\(^{1093}\) यद ज पूर्वनाथ या यो जीत्यात्मकप्रेक्षेयेन प्राप्यार्थ। व्याप्तान्त्वात् भवत् ये । व्याप्तान्त्वात् भवत् ये ।

\(^{1094}\) वैद्याधन (ग्राहन अर्जन) के लिए उपयुक्त उपादेय स्वरूप अंतर्गत आयुष्य विधित्वात्। अतः श्रेय दुर्गणांश्च शैवलीकृत्वा आयुष्यानां विशेषतेन स्वाधि।

\(^{1095}\) वैद्याधन (gains of learning) has undergone the greatest changes of fortune since the earliest times to modern days. It was probably the first kind of self-acquisition recognised in very early times. Though the Āp. Dh S and Baud. Dh S. say nothing about it, yet Gaut (28. 28-29) lays down that all members (of a joint family), if not learned, should divide equally whatever is earned by them (by agriculture etc.) but what a learned man himself acquires by his learning he may not share with his unlearned brothers if he so desires. Haradatta says that this applies only between brothers that are joint. Vasistha 17. 51 appears to give two shares to the acquirer of wealth at a partition among brothers and his rule probably represents a very early stage when the acquirer could not retain the whole of his self-acquisition but got only two shares.

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\(^{1093}\) यद ज पूर्वनाथ च यो जीत्यात्मकप्रेक्षेयेन प्राप्यार्थ। व्याप्तान्त्वात् भवत् ये । व्याप्तान्त्वात् भवत् ये ।

\(^{1094}\) वैद्याधन (gains of learning) has undergone the greatest changes of fortune since the earliest times to modern days. It was probably the first kind of self-acquisition recognised in very early times. Though the Āp. Dh S and Baud. Dh S. say nothing about it, yet Gaut (28. 28-29) lays down that all members (of a joint family), if not learned, should divide equally whatever is earned by them (by agriculture etc.) but what a learned man himself acquires by his learning he may not share with his unlearned brothers if he so desires. Haradatta says that this applies only between brothers that are joint. Vasistha 17. 51 appears to give two shares to the acquirer of wealth at a partition among brothers and his rule probably represents a very early stage when the acquirer could not retain the whole of his self-acquisition but got only two shares.
in it and the rest of the joint family members took one share each in it. Manu IX. 206, Yāj. II. 119, Nar (dāyabhāga 11), Kāt 1096 (368) and Vyāsa say generally that vidyādhana is not liable to be divided at a partition. Among writers of sūtris Kāt contains the most elaborate treatment of vidyāadhana and of self-acquisitions in general. It will be set out in the sequel. But some of the sūtris point out that even vidyāadhana is partible, if learning was acquired at the expense of the family funds (as in Nar dāyabhāga 10 referred to above) or when the learning was acquired in the family house itself from the father or an elder brother (Kāt 1097 874). The Dāyabhāga (VI 1 42–49) discusses at great length the views of Śrīkara on Yāj. II. 118 and Manu IX. 208 and dissents from them and states his conclusion as follows: A man since his birth depends upon his family for food and maintenance and so if the words “without expending ancestral estate” were literally and widely interpreted, hardly any man can say that no paternal wealth was expended on him and so earnings of whatever kind would have to be deemed to be partible and there would be no propriety or purpose in the words of Manu IX. 208. Therefore it must be understood as done by Viśvarūpa that the detriment meant is not the expenditure of food in maintaining a person in the house from infancy, but that when a member acquires estate by his learning or in any other way without giving or spending paternal wealth for acquiring that, then only it becomes his self-acquisition 1098.

1096. उपन्यासोऽह शायते विशय पण्यार्थायत्र! विशापाध्ये तुह तविवाद विभागे न विभक्ते। कात्या, 868 q. by आपरांक p 724, कुलहसूक्त 738. यायधावन VI 2 1 p 122, विशापाध्ये शौनकायं यथा शौनकायिक मध्ये। विशापाध्ये तत्र नाबेद्वर्त साधिकायिक। कथा q by आपरांक p 725 सूचिक II p 274.

1097 बैशो शेषाय नाकारो धार्मिकां स्वरूप धन्यत। घिम बुद्धम समाभिर्य न चेतन बहुधतय ॥ नाराय, यायधावन 11; हुठे बिनीतसिद्धांत आदुरुणा वित्तोपिष्ठा। शौनकायां हे पार्थित्व विभाज्य तथा बुद्धसनं। कात्या, 874 q by सूचिक II p 275, यायधावन III p 560, यथा 868 q. सूचिक III p 126 From this verse it appears that Kāt echoes the views of Br. In the कथा it p. 447 this verse is ascribed to बुद्ध.

1098. यति विनिष्णुमार्थायान्वित्तम भक्तान्त्रंयोगोपपुनजोपरतात्त्वस्यन्योपस्यायात्त्व सूत्रस्थत्वादिक। अत एवैतम विप्रृपेयम विद्वृत्तेऽदुः कार्य नैव योगादित्थ द्यन्त तथ। तत्प्रसङ्क्यायां वैश्विन्त्वकासिकों न ह महायात्र्त्रोपपप्पिसायात्त्व सत्यत्वादिकृत्वविद्यविद्यविद्यविद्यविद्यविद्यात्त्वादिक। यायधावन VI 147 and 49 pp. 118–119 The printed विभाग has no corresponding passage.
Kāt. (867-873) defines and illustrates vidyādhanā as follows:

That wealth is said to be the gains of vidyā which is acquired by means of learning received from another while subsisting on food furnished by others, when a matter (a doubt or difficult point) has been placed (before an assembly of learned men) with a wager, whatever is gained by (the display of) one's learning is known as vidyādhanā, which is not divided at a partition. What is acquired from a pupil (i.e. by following the profession of teaching), by performing the work of a priest at a sacrifice, by propounding a question, by solving a doubtful point, by exhibiting one's knowledge, by disputation with a rival, what is gained by deep learning—all these are declared to be vidyādhanā, which is not divided at a partition. The same is the rule in the case of artisans and as to whatever is obtained (as a reward) over and above the proper price of an article (which surplus becomes the self-acquisition of the member selling it.) After vanquishing a rival in a wager whatever is obtained by (superior) knowledge should be known as vidyādhana and it is not liable to be partitioned. This is the view of Brhaspati. What is earned by an assertion of one's learning, what is obtained from a pupil (i.e. by teaching) and what is acquired on the analogy of priests officiating at a sacrifice—all these are known as vidyādhanā, according to Bhrigu. What is obtained by the superiority of one's learning and from a sacrificer and from a pupil—all this is declared to be vidyādhanā; acquisitions other than these are common (i.e. jointly owned) with others.

Kāt distinguishes between sauryadhana (reward given by the king or a master when pleased with a soldier or servant

1099. परस्मौपाये विद्या भास्मौषदकृत्र यथा । सच्चा मात्र यथा विद्या मात्र सत्यवचनम् ॥
उपयोगे हन पवित्रत्वं निर्वाचनां । विद्यादेश हन हिंदुद्रहरे न विजयवर्गे ॥
विद्याप्ये हन पवित्रत्वं न विजयवर्गे ॥ विद्याप्ते हन हिंदुद्रहरे न विजयवर्गे ॥
यह निराकार ब्रह्माण्डकृत्र यथा । सच्चा मात्र यथा विद्या मात्र सत्यवचनम् ॥
एक ज्ञातवर्गे विद्यादेश हन हिंदुद्रहरे न विजयवर्गे ॥
विद्याप्ते हन हिंदुद्रहरे न विजयवर्गे ॥
यह निराकार ब्रह्माण्डकृत्र यथा । सच्चा मात्र यथा विद्या मात्र सत्यवचनम् ॥
विद्याप्ते हन हिंदुद्रहरे न विजयवर्गे ॥
विद्याप्ते हन हिंदुद्रहरे न विजयवर्गे ॥
who putting his life in danger did an act of valour) and dhujāhṛta (what is recovered in a battle after putting one's life in danger of death and after putting to flight the army of the adversary) Nār (dāyabhāga 6) and Br (S B E vol. 33 p. 381 verse 78) appear to put both under saunyadhana. Kāṭ divides the bhūryādhana of Nār and Br into two, viz kanyāñata (what is obtained at the time of marriage with a maiden of the same caste) and uadāhka (wealth that comes with one's wife). So it is the same as the uadāhka (of Manu IX 206) and the audāhka (of Yāj. II 118). Vyāsa mentions a limitation that even wealth acquired by valour does not become the exclusive property of the acquirer if he used a horse and weapons belonging to the joint family; in such a case the acquirer gets two shares and the other members of the family one share each.

In modern times vidyādhana has been a fruitful source of litigation. The first verse of Kāṭ quoted above has been cited in several cases such as Dungi Dat v. Ganesh Dat 32 All. 305 at p 312, where it is said that Kātyāyana's definition of vidyādhana is not exhaustive, but only illustrative (the same is the view of the Dāyabhāga).

The leading cases that discuss the texts and lay down propositions are noted below.

Two propositions were well established by the cases, viz (1) that money earned by a member of a joint Hindu family by the practice of a profession requiring special training was joint family property, provided such training was imparted at the expense of joint family property; (2) that gains made by personal labour and without the use or help of joint family funds by a member of a joint Hindu family, who was maintained out of joint family funds and received no more than an elementary or ordinary education suitable to his position as a member of that particular family were the self-acquisitions of such member. But all doubts and disputes are now set at rest by the Hindu

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1100. सर्वार्थ समाधिक्य वर्क्ष्यक्ष्यादनांपि श्रीराधासागरिति द्वारा प्रत्येक भाविन । तस्य भावन्ती सुपर्यायात् समाभाविन ॥ च्यास q by अपराकरे p. 725, पत्र तिथि p 446, व्य म म p 127

Gains of Learning Act (Act XXX of 1930) which provides that, notwithstanding any custom, rule or interpretation of Hindu Law, no gains of learning (i.e. education whether elementary, technical, scientific, special or general and training of every kind which enables a person to pursue any trade, industry or avocation), whether made before or after the commencement of the Act, shall be held not to be the exclusive and separate property of the acquirer merely by reason of his learning having been wholly or in part imparted to him by any member, living or deceased, of his family or with the aid of the funds of the joint family or of any member thereof or by reason of himself or his family having, while he was acquiring his learning, been supported wholly or in part by the joint funds of the family or the funds of any member thereof. This Act is thus retrospective.

All property of a joint family other than the separate property of individual members is liable to partition, i.e. as stated by Kaṭ., property of the grandfather, of the father and whatever is acquired by each member (by the use of joint funds) is so liable). Separate property is said to be impartible (anibhāya) on account of the source from which or the manner in which it is acquired. But there are certain kinds of property which from their very nature are not allowed to be partitioned and have to be enjoyed in common or by turns.

The oldest provision on this point is contained in Gautama (28, 44-45) that water (well), (property set apart or destined for) pious uses or sacrifices and food prepared (for festivals etc.) shall not be divided nor women connected with individual

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1102 येतासहं च सिद्धे च याक्षिकिस्तथापसिद्धे तथा आपालान चित्कि च सर्वविद्येः

1103 उद्धवोपेयेमहायगाः सिद्धे च संजुक्ताः। ती 28 44-45.

This applies, acc to Haradatta, to the concubines not only of the father but also to those of any member of the joint family. Vide Nagubas v. Monghabas 53 I. A. 153, 159-160 where Gaut. and Mit are quoted.
members of the family (as concubines). Śankha-Likhita forbids the division of a building, water vessels, ornaments and clothes that are daily worn by the respective members. Similarly Uśanas says, "there is no partition among agnates even up to the thousandth generation of what is acquired by officiating as priests, of a field, of vehicles, prepared food, water and women." Prajāpāti (quoted by Sm. C. II p 277) asserts that there is no partition of houses, fields and temples (yāhya), gifts made through favour by the father or mother. The prohibition against dividing a house or a field is explained in three ways. The Mit. on Ya. II. 119 explains that it has in view a brāhmaṇa’s son from a wife of the kṣatriya or vaśya class, when the brāhmaṇa acquired it as a religious gift made to him for his learning, since Br. (S. B. E. 39 p 374 verse 30) states "land bestowed as a gift on a brāhmaṇa should not be given to the son of a wife of the kṣatriya caste; even if the father gives it to the son of the kṣatriya wife, after the father’s death, the son of the wife of the brāhmaṇa class.

1104 न पात्रविभवाय सीरुपावालहार्डकुक्षासाराः स्तुतितिष्ठा पुष्याद्विष्टि दुर्योगमा। पुष्याद्विष्टि पुष्याद्विष्टि क्षणमसाराः स्तुतितिष्ठा पुष्याद्विष्टि।

1105 अविभावय समोदिताम वसब्रुद्धासाराः ब्रज्ञ्य ने पूर्व क्षत्रय साराः स्तुतितिष्ठा पुष्याद्विष्टि।

1106 न वर्तमानसिद्धा शैवपािविपुस्वादाः स्तुतितिष्ठा पुष्याद्विष्टि। वायुसरस्या पित्त्रिष्टि प्रविभ्यावचाराय। पुष्याद्विष्टि पुष्याद्विष्टि क्षणमसाराः स्तुतितिष्ठा पुष्याद्विष्टि।
may take it away". Another explanation is that the prohibition refers to a site or dwelling for religious purposes and to a field that is meant for grazing cows. The third explanation is that the prohibition implies that when the house or field is of small value it should not be partitioned by metes and bounds, but there should be partitioning of the price only. The Dāyabhāga gives yet another explanation (VI. 2. 30 p. 128) that if during the father's lifetime any of the sons builds a house or lays out a garden on a family site, then it should not be divided at a partition but assigned to him only.

The basic verse on things impartible from their very nature is Manu IX. 219

\[\text{(Manu IX. 219)}\]

\[\text{(Visnu Dh. S. 18. 44)}\]

which says "clothes, vehicles, ornaments, cooked food, water (well etc.), women, yogakṣema and ways—these are declared to be impartible". All commentators explain that clothes ordinarily worn by the several members are impartible; provided they are more or less equal in value but not costly ones nor new ones. The same remark applies to vehicles and ornaments. Pracāra means either "ways leading to the house, garden and the like" (Mit., Aparārka, and V. P.) and also 'ways and pasture lands for cows and the like' (Sm. C. II. p. 277, Kullūka). The Mit. (on Yāj. II. 118-119) states a special rule from Br. that

\[\text{the clothes and ornaments worn by the father, the bed and the vehicle used by him should on his death be donated to the brahmana invited at the father's śraddha. As to ornaments the Mit. following Manu IX. 200 says that those ornaments that are ordinarily worn by the respective members or their wives should not be divided, but those that are not so used everyday should be divided. A well is to be enjoyed by turns and not to}

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1107. इसे प्रत्ययार्थे तत्तत्त्ववुद्धि क्विप्। योगक्षेम सम्बारे च न विभाज्य प्रक्रिये॥

Manu IX. 219, which reads योगक्षेम सम्बारे च न विभाज्य प्रक्रिये॥

The express mention of books in Visnu Dh. S is an indication of its posteriority to Manu. Several meanings are assigned to प्रक्रिये, योगक्षेम and सम्बारे by different writers. All commentators of Manu except Nandana explain प्रक्रिये as vehicle (i.e. horse, cart &c.), while Nandana reads प्रत्ययार्थे (water vessel) and Aparārka p. 725, विष. २. 504, मह. पा. p 685 explain प्रक्रिये as document evidencing a debt.

1108. सिद्ध सत्यावादानि तु प्रत्ययार्थे सिद्धांग्नोक्तं वृत्तप्रस्ति। प्रवक्त द्वारे-

स्वाधिकारार्थवायो विखयद्विधाताप्रिक्षिप्तं गत्वानमाले सम्पर्यर्थार्थ-क्रियति। सिद्धान्तादिकम्। on ya. II, 119.
be partitioned by valuing it.¹¹⁰ If there be a single female slave (not a concubine) she was to be made to work for the divided members by turns, but if there be several slaves they could be assigned to each or their price could be divided. The expression “yogakṣema” has been variously explained from very ancient times. Laugāksi (quoted by the Mit.) states “those who know the truth say that ‘yoga’ means ‘sacrifices’ and kṣema means pūrta (i.e. works of charity like wells). They both (i.e. the money set apart for these or the merit derived from these) are impartible, as are also the bed and the (wooden) seat (used by the father or other member).” From this verse the Mit. concludes that yogakṣema means sacrificial acts performed with śrāuta or śāradā fire and charitable gifts such as constructing a tank or park etc. For pūrta vide H. of Dh. vol. II pp. 147, 843–844 and pp. 914–915 n. 2112 for the Mit. on yogakṣema. The words “yoga” and “kṣema” occur even in the Rgveda VII 86. 8, X. 89 10, X. 166. 5 and in Tai Br III 9, 19. 3 and Ait. Br. 37, 2. Even though joint family funds are spent for these still they are impartible. The Mit. further states that according to some yogakṣema means¹¹¹ “royal ministers and purohitas” who bring about the welfare of people, while others hold that the word means “umbrella, chowrav, weapons, shoes, and the like”. From Gaut IX. 63 and XI. 16 it appears that yogakṣema came to mean even before Gautama’s time “comfortable life” or “easy and happy way of maintenance” (particularly for a learned brāhmaṇa). The V. R. p 504 tells¹¹² us that,

¹¹⁰ Vide Shantaram v. Waman 47 Bom 389 for the proposition that, both according to the Mit. and the Vyabhāra-mayūkha, a piece of land reserved as a common passage at the time of partition cannot be subsequently divided and Nathubhās v. Bas Hansgavī 36 Bom 379 and Govind v. Trimbak 36 Bom 275 for the propositions that rights of way and rights to wells and water belonging to a joint family are, if numerically unequal, indivisible, that there is a presumption that they continue joint and undivided even after partition, unless it is proved that at the partition a right of way or to water was exclusively allotted to a single member (at p. 277 and p. 282 the texts about water are quoted).

¹¹¹ Vide Parthasarathy v. T. S. Venugada 30 Mad 340, 343–4 for yogakṣema in the Mit

¹¹² Vide Fakir v. G. S. V. 1919 6 Mad 191. The meaning given by Fakir appears to be the one intended in some medieval grants called yogakṣema grants, for an instance of which vide Vaman v. the Collector of Thanjavur 6 Bom. H. C. R. (A. C. J.) n. 191 at p. 196.
according to Prakāśa, yogaksema means "maintenance or annuity descending from the father (to the son) at a royal "palace" and that Halāyudha explained yoga as meaning a ship or the like and ksama as forb. The Sm. C. II p. 277 after quoting Laugaksi gives an alternative explanation that yogaksema means the wealth gained by a learned brāhmaṇa resorting to a rich man for his maintenance.¹¹¹²

Kaut. (III. 5) states¹¹¹³ the view of the ācāryas that those who are poor may divide even their water vessels and Kaut. adds that this dictum is fallacious or contradictory. Kāt. (882-884) brings together several things that are impartible¹¹¹⁴ "money that is entered in a document and is set apart for a religious purpose, water, women, a subandha (periodic gain) that descends hereditarily, clothes worn (on the body every day), ornaments, whatever else that is not fit to be divided—these should be so employed by co-sharers that they may be enjoyed (in common by all) at the proper time. A pasture for cattle, ways, clothes worn on the body (every day), money lent and what is set apart for religious purposes—these should not be divided. This is the view of Brhaspati."

Brhaspati (S. B. E. 38 p. 382 verses 79-84) has a good deal to say about things impartible. He finds fault with Mān. IX. 219 for his somewhat wide proposition that clothes, ornaments

¹¹¹² अथ योगक्षेमायं दातायराज्यम् न विभाजनानां लाभः स एव योग-क्षेमायराज्यम्। स्कृतिं पृ. 277, मौ. IX 63 एव योगक्षेमायराज्यम् 63, 1 प्रस्तुत योगक्षेमायराज्यमार्पणम्।

¹¹¹³ अथ योगक्षेमायं सोम प्रस्तुत योगक्षेमायराज्यमार्पणम्। 1 उदाहरणमयात् नौरात्र्य:। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्। अथवा योगक्षेमायं राज्यम्।

¹¹¹⁴ एवं पदभिविंदुः दुःधारणं च सन्भिवितवः। नोढ़कं च दूरार्थं विश्वास्यः। कथा अति तत् विशाल च सा विशालान् विद्युषिन्तः। नोढ़कं च दूरार्थं विश्वास्यः। कथा अति तत् विशाल च सा विशालान् विद्युषिन्तः। नोढ़कं च दूरार्थं विश्वास्यः। कथा अति तत् विशाल च सा विशालान् विद्युषिन्तः। नोढ़कं च दूरार्थं विश्वास्यः। कथा अति तत् विशाल च सा विशालान् विद्युषिन्तः।
and the like are impartable. He says "those who declared that clothes and the like are impartable have not given proper thought. In the case of the rich, their wealth may consist of (valuable) clothes and ornaments. If these (clothes and ornaments) be kept joint (i.e. undivided) they cannot yield subsistence nor can they be assigned to one alone (out of many co-sharers). They should therefore be distributed with skill, otherwise they will become useless. Clothes and ornaments may be divided by selling them (i.e. by dividing the proceeds of sale), debt consigned to writing is divided after recovering it (i.e. the bond itself is not divided), cooked food (may be divided) by exchanging it for uncooked food. The waters of wells that have flights of steps and of other wells is to be enjoyed by drawing it out according to the needs (of the co-sharers); in the same way a field or a water course is to be enjoyed according to respective shares; a single female slave is to be made to work in the houses of the co-sharers according to their shares; if there be several female slaves, they are to be allotted in equal shares (to the sharers); this very rule applies to male slaves also; the income derived from a yogaksema grant is to be equally divided and pasture lands (or ways) are to be used by the co-sharers according to their respective shares."

The next points to be dealt with are what persons are entitled to partition and what is the mode of partition. But before doing so some preliminary remarks must be made on the expressions coparcenary and 'joint family', which occur at every stop in modern works on Hindu Law. In the smritis and commentaries we come across the words kutumba (Nār., dattāpradānaka 6 or Yāj II 175), or ambhaka-kutumba (Yāj. II. 45). A joint Hindu family consists of all males lineally descended from a common male ancestor and includes their wives and unmarried daughters. A daughter on marriage ceases to be a member of her father's.
family and becomes a member of her husband's family. Under the Mitaksara a Hindu coparcenary strictly so called is a much narrower group than the joint family. It comprises only those males who take by birth an interest in the joint or coparcenary property i.e. a person himself and his sons, son's sons and son's grandsons form for the time being a coparcenary. The diagram and the note below

A coparcenary is purely a creation of law; it cannot be created by act of parties, except by adoption. In order to be able to claim a partition, it does not matter how remote from the common ancestor a person may be, provided he is not more than four degrees removed from the last male owner who has himself taken an interest by birth.

Some characteristic features of the Mitaksara coparcenary may be briefly stated. There is in the first place unity of ownership i.e. the whole body of coparceners is the owner and no individual member can say, while the family is undivided, that he has a definite share, as his interest is always fluctuating, being liable to be enlarged by deaths and diminished by births in the family. There is also unity of possession and enjoyment i.e. all are entitled to possession and enjoyment of the family

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III Coparcenary and joint family

Here all are to be assumed to be males A and his sons B and C may form a coparcenary. So also, if B and C have each a son, then A, B, C, D, E, will form a coparcenary. If D and E have respectively F and G as sons, all persons from A to G will form a coparcenary. But here the limit is reached if X is born during the lifetime of A, he being the son of the great-grandson of A takes no interest by birth and is outside the coparcenary during A's lifetime. But if X is born after the death of A, then he forms a coparcenary with B, D, F. Suppose that B dies before A, That will not however introduce X into the coparcenary of which A is the head, as X being the son of A's great-grandson F takes no interest by birth in ancestral property held by A. Suppose that B C D E F and G all die in the lifetime of A, then A becomes the sole surviving coparcener and X is not a coparcener along with A, because he is 5th in descent (counting both A and X) from A. Suppose A the only surviving coparcener dies. Then X will take A's property as an heir and not by survivorship as a coparcener.

1117. Vide Moor v. Ganesh 10 Bom. H. C. R. p 444, pp 461-468 where Mr Justice Nanahal Haridas very lucidly explains by several diagrams the limits of a coparcenary and what persons are entitled to demand a partition and from whom.
property and the possession of one is ordinarily possession on behalf of all. Further, while the family is joint and some coparceners have many children and others have few or none or some are absent, they cannot complain at the time of partition about some coparceners having exhausted the whole income and cannot ask for an account of past income and expenditure Kat. (883) expressly states so. Moreover, the joint family property devolves by survivorship i.e. on the death of a coparcener his interest lapses and goes to the other coparceners, subject to this that if the deceased has left a son, grand son, or great-grandson, the latter represents and occupies the place of the deceased coparcener when a partition takes place. A female cannot be a coparcener (even if she be the wife or the mother).

Another characteristic is that each coparcener has a right to enforce a partition. The affairs of the family are managed by the father and if he be very old or dead, by the senior brother or member or by any other member with the consent of the senior member (När., dāyabhāga 5 and Śāṅkha quoted above in note 1067). The manager is called karī in modern times though the smritis and digestes employ words like kutumbak (Yāj. II. 45), guhn, gṛhapālī, prabhu (Kat. 543) and not karī. He has special powers of disposition (by mortgage, sale or gift) of family property in a season of distress (for debts), for the purposes and benefit of the family (maintenance, education and marriages of members and other dependents) and particularly for religious purposes (śrāddhas and the like). The father has the same powers as manager and certain other special powers, which no other coparcener has. The father can separate his sons from himself and also among themselves if he so desires, even if they do not desire to separate (Yāj. II. 114); while an ordinary

1118 श्रस्वायुक्तं तयं बलवते न्यायमेव। श्रस्वायुक्तं तयं बलवते ग्रहम् परायमेव। कालप्र. डॉः द्वारकर्म एक्षीतम् XIII 7 p 222. सि. र. p. 526. द्वारकर्मा एक्षीतम्

1119. पक्षी प्रभासः कुञ्जमयो वासमनात्मकम्। आपलाक्षण्यावरुणेकियो नवनिवेदनं विविधं वाः। अश्वम्। अमात्यावरुणेकियो जीरकं प्रजीवितं वासमनात्मकम्। आपलाक्षण्यावरुणेकियो नवनिवेदनं विविधं वाः।

1120. तुस्मिदि स्वास्तिक्षिप्ताः कुञ्जमयो वासमनात्मकम्। आपलाक्षण्यावरुणेकियो नवनिवेदनं विविधं वाः। अश्वम्।

The verse ekahī is ascribed to व्यासाय व्यास नि. p 411.

1120. This power of the father has been recognized even in modern times. Vide Kandašānu v Doraisānu 2 Mad. 317, 321-322, Nirman v Fatih 52 All. 178. But it has been held that the grandfather has no power to separate his grandsons inter se. Vide A. I. R. (1945) Mad. 327.
coparcener can only separate himself from the family. The father can make within reasonable limits gifts of ancestral movable property without the consent of his sons for performing indispensable acts of duty and for purposes laid down by the texts, such as gifts through affection (to wife, daughter, son or the like), the support of the family and relief from distress. The father can make a gift of even immovable property within reasonable limits for pious purposes only (such as to a family idol or to an idol in a temple at the time of obsequies). The father can sell or mortgage the joint family property to pay off an antecedent debt contracted by him for his own personal benefit, provided it is not illegal or immoral (vide p. 448 above). No coparcener (except the father or manager as stated above) can dispose of his undivided interest by gift, sale or mortgage according to the strict theory of the Mitaksara except with the consent of the other coparceners. This right to oblige alienations made without consent or made without legal necessity is another characteristic of the joint Hindu family under the Mitaksara. Br. (S. B. E. 33 p. 384 verse 93) says "whether kinsmen are joint or separate they are alike as regards immovable property, since a single one from among them has no power in any case to make a gift, sale or mortgage of it."

But in modern times the courts in Bombay, Madras and the Central Provinces have loosened this strict rule by holding that

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1121 Sivachidawbara v. powers 33
1122 Mitaksara vv. 33

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a coparcener may sell, mortgage or alienate for *value* his undivided interest in coparcenary property without the consent of the other coparceners\(^{1124}\) and the courts have allowed the undivided interest of a coparcener in joint family property to be attached at the instance of a creditor for the individual debts of a coparcener. This is one of the most serious departures from ancient and medieval Hindu Law made by the Courts on the ground of equity. One more right of all members of the joint Hindu family is the right to be maintained from the property and income of the joint family. Such matters as the remedies of the purchaser or mortgagee from an individual coparcener are here left out of consideration as appropriate only in a treatise on modern Hindu Law.

The conception of a coparcenary under the Dāyabhāga system is entirely different from that of the Mitāksara. Under the Dāyabhāga, sons do not acquire any interest by birth in ancestral property, but the son's rights arise for the first time on the father's death and the sons take as heirs and not by survivorship. There is hence no coparcenary in the sense of the Mitāksara between a father and his sons. The father has absolute power to dispose of all kinds of ancestral property by sale, mortgage, gift, will or otherwise in the same way as he can dispose of his separate property. The son has no right to demand a partition during his father's lifetime. A coparcenary starts on the death of the father between the latter's sons or grandsons, i.e. between brothers, uncles and nephews, or between cousins. If a coparcener dies without male issue, there is no right of survivorship in the other coparceners but the deceased member's widow or daughter may succeed to his share and thus even females may become members of a coparcenary under the Dāyabhāga. Each coparcener takes a defined share under the Dāyabhāga (not an indefinite one as under the Mitāksara). Any coparcener under the Dāyabhāga can sell, mortgage, or dispose off by gift or will his share (Dāyabhāga II. 28-31) \(^{1125}\)

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\(^{1124}\) Numerous cases lay down this proposition, vide, for example, *Vasudeva v. Venkatesh* 10 Bom. H C R p 139 which was approved of by the Full Bench in *Pakhraja v. Chana* 10 Bom H C R p. 162, *Villa Butte v. Yamenamma* 8 Mad. H C R 6

\(^{1125}\) On विधि "... एको दानीस" etc. the दर्जन (II. 28-30 p 34-35) remarks 'व्यासरर्तनं हु रातिलेण अरुगन्नवर्तकं विकार्यान्तः हु लल्लवर्तकम् भागिताजः विनामिन्य न हु रिकायान्तिकरणपदोऽदि एस च शासन विधिदु... विज्ञान -\(\hat{H}\)रत्नाबल्विन्य सहस्रयोगवर्त्तकम् । ... तेन वहंकारकरणाविश्वासः सहस्राकारवलिङ्गिन् यस्मिन् विश्वासिने भागित न हु दानांस्यायिन्यम् । वस्तुतितेनाशी वस्तुतीस्य वस्तुतिनाशिन्:।
Every coparcener is entitled to a share on partition. It has been already stated (on pp. 570–571) how in Bombay a son is not entitled to a partition if the father is joint with his own father, brothers or other coparceners and does not assent to the son's claim. There is a volume of case-law about a suit for partition brought on behalf of a minor, but it has to be passed over here, as there is hardly anything corresponding to this in the works on dharmaśāstra. The texts provide for the case of a son who was in the mother's womb at the time of partition but was born after it. If A and his sons B and C, who are members of a joint family, come to a partition and take one third each of the family property and six months later A's wife gives birth to a son D, then the partition has to be reopened and D will get \( \frac{1}{3} \) (\( \frac{1}{3} \) if the mother is given a share) of the family property that will remain after meeting all proper charges since the first partition and taking into account all income and accruals during the interval. The same rule applies to a partition among brothers, when the widow of a predeceased brother gives birth to a posthumous son conceived before the partition but born after it. Vide Yaj.1126 II. 122 and Visnu Dh. S. 17. 3. Vasistha (17. 40–41) therefore recommends that when it is known that the wives of some brothers (predeceased) are pregnant the other brothers should postpone partition till the delivery of those women. Where a son is born as well as conceived after partition between a father and his sons the rights of the afterborn son are declared by Gaut.1127 28. 27, Manu IX. 216, Yaj II. 122,1128 Nar (diyabhāga 44.), Dr. (S B. E 33 p. 372 verses 17 and 19) that he takes the share allotted to the father and also all the self-

1126. सिद्धिकल्प निम्नानुसारसोपरिश्रव्य भाग बृहुः। सिद्धिृष्टिः १७ ३। हर्षादा तद्भवम्। स्त्राचार्यामयाविसिदिष्टार्थम्। पर् II. 122, on which the निता. remarks 'एतिह निर्भमात्र धातुकीर्यामयासंपन्नसत्तमाय। द्वितीयम्। स्त्राचार्यामयाविभागितार्थम्। करण्याः। यथा दशिः। अयं भागुणयुपविभागी। यथा करण्याः। विपलासामुपुत्राभादित्यों' दृष्टि।

1127. निता कार्यत whose q. by निता. on पर II 122, हर्षाद vision on मी २८. २७। हर्षादसह विनिर्भमात्र तद्भवम्। प्रवृत्तम्। स्त्राचार्य। स्त्राचार्यामयाविसिदिष्टार्थम्। करण्याः। यथा दशिः। प्रवृत्तम्। II p 307, दृष्टिः VII, ५ p १३१, तथा अं p १०४।

1128 There is great divergence among commentators about Yaj, II. 122 निता कार्यत हृदे जात सर्ण्याः। निर्भमात्र, यथा दृष्टिः स्त्राचार्यामयाविसिदिष्टार्थम्।
acquisitions of the father made after the partition. The Mit understands that the first half (of Yaj. II. 122) refers to a partition during the father’s lifetime and provides that if a son was conceived and born to the father after partition he took the share allotted to the father and all the self-acquisitions of the father made after partition (tathā vibhāgottarakālam purā yat kāṣṭya aryaṇm tat sāram vibhadārayaśaya) and the Mit, relies on Manu IX. 216 and Br. for this. The Mit takes the 2nd half of Yaj. II 122 as referring to a partition made after the father’s death and states that, if a son was in the mother’s womb when the brothers separated after the father’s death and was born subsequently, the posthumous son would be entitled to reopen the partition and would get a share out of the property (not as it stood at the date of partition) that would be there after allowing for proper expenditure (e.g. payment of debts etc.) and accretions. The Mit, extends the same rule to a posthumous son born after partition to the widow of a brother who died before the partition and

1129. In Nawat Singh v. Bhagwan Singh 4 Ali, 427, where after the father separated from his three sons he married a second wife, had a son from her and died leaving certain property inherited by him from a third person, it was held, relying on Manu, the Mit, Br. and the Viramitrodaya, that the son born after partition was entitled to the whole of the property acquired by the father to the exclusion of the three sons that had separated from him. In Chengama v. Munisamy 20 Mad 75 (where a father partitioned his ancestral property half and half between his two sons, reserved no share for himself and subsequently another son was born to him) it was held that the subsequently born son was entitled to one-third by partition not only in the property as it stood at the date of partition, but also in the property acquired by the two sons by means of the produce of that property (relying on the words of Yaj. II 122 “āyavīyavasodhitat”) The dates of the partition and of the birth of the son are not clear from the report. In Ganpat v. Gopalrao 23 Bom 636 (where in 1875 a father separated his son born of his first wife by giving him one-third of the estate and gave two thirds to his two minor sons from the second wife and lived with them and another son was born to him in 1880, who sued in 1894 claiming one-fourth of all property) it was held that the one-third given to the son by the first wife could not be affected and the plaintiff was only entitled to claim a share in the property given to the other two sons, and further that the texts of Visnu and Yajnaśvalīya are somewhat vague and are applicable only to the case of posthumous sons who have no provision made for them. Vide also Shivagir- rao v. Vasant Rao 33 Bom 267 for further limitations on this rule in favour of the after-born son.
when the fact of the pregnancy was not known to the separating brothers. Viśvarūpa regards the whole verse as laying down one proposition, the first half declaring that if a son (who had been already conceived) were born to the father after partition with the sons, he would be entitled to the share taken by the father, while the 2nd half declares that if the father took no share then the son so born would be entitled to reopen the partition and take a share of the property remaining after taking into account accretions and expenses. The Dipakalikā seems to be of the same opinion as Viśvarūpa, but it adds that Manu IX. 216 provides for the case where the son is both conceived and born after partition. The Sm. C. (II. pp. 306–307) holds that when in the father’s lifetime partition takes place the sons separating should give a share to the after-born son, but the father should retain his, while the whole of Yāj. II. 122 applies to the case where partition is made after the father’s death and a posthumous son is born to the mother or to the widow of a brother dying before partition. In such a case the partition should be reopened and a share given out of the property as it stood at the first partition or out of the property as found to exist at the reopened partition after allowing for accretions and proper expenses (for payment of debts, for samskarās of brothers and sisters); vide V. P. p. 463 for explanation of ‘drāyād’ etc. The Vyavahāra-mayukha (p. 105) follows the Sm. C. and V. R. (p. 539) in explaining the whole of Yāj II. 122 as referring to the case of a posthumous son conceived before partition made on the father’s death but born after partition from the mother or step-mother of the separating brothers or from the wife of a brother dying before partition.

An adopted son, if adopted by a coparcener in a joint family or by a sole surviving coparcener, becomes under the Mitāksara law a member of the coparcenary from the moment of his adoption and has the same rights to demand a partition as an aurasa son has. Under the Dayabhaga even an aurasa son cannot claim partition during his father’s life and so an adopted son would be in no better position. If after a person adopts he has an aurasa son, the adopted son’s share becomes reduced according to most commentators, but this subject will be dealt with later on under adoption.

The smṛtis and some of the medieval and later digestes ever enter into elaborate discussions about the rights of a son or sons born from wives of classes lower than that of the father. Vid
Gaut 28. 33–37, Baud. Dh. S. II. 2. 10, Kaut. III. 6, Vas 17. 48–50, Manu IX. 148–155, Yaj. II. 125, Visnu Dh. S. 18. 1–33, Nâr. (dāyabhāga 14), Br. (S. B. E 33 p. 374 verses 27–29), Śankha (quoted in V R. p. 531) It is not necessary to deal in detail with the varying provisions made in these works, as marriages with women of a lower class have not been in vogue for several centuries; but a few remarks will have to be made. Manu IX. 153 and Yaj. II. 125, Br. (S. B. E. 33 p. 374 v. 27) clearly state that if a brāhmaṇa has sons from wives of the four classes, the whole property should be divided into ten parts which should be distributed as follows:—four for the son of the wife of the brāhmaṇa caste, three for the son of the ksatriya caste wife, two for the son of the vaiśya caste wife and one for the son of the śudra class wife Manu IX. 154 (almost the same as Anuśāsana 47 21) further provides that whether a brāhmaṇa leaves sons or no sons born (of wives of the three twice-born classes) the heir shall give, according to the law, to the son of a śudra class wife no more than a tenth part of his estate. V. P. p. 487 and the Mit (on Yaj. II. 133) after quoting Manu, make this quite clear. But as remarked by the Mit on Yaj. II. 125 the son of a brāhmaṇa from a wife of the ksatriya or other lower class was not to share in land obtained by the brāhmaṇa by way of gift (vide Br. quoted in note 1106 above) though he could share land acquired by purchase or the like. A verse (attributed to Br. by Dāy IX 22 and V. R. p. 534 and to Devala by V. P. p. 466) denies altogether a share in land to a śudra class wife's son of a brāhmaṇa, while Manu IX. 155 (the son of a person of the three higher classes from a śudra woman gets no share in the paternal wealth) is variously explained, the Mit saying that it applies only where the son has already got some property from his father while the Mayūkha and some others say that it applies to the son of a śudra woman who is not married to the person of higher caste but is only a mistress Kaut III 6 and Br (quoted by V. R. p. 534) provide that the pānātava son gets 9 of his father's estate and the nearest sapinda gets the remaining two thirds. Śankha-Lākhita (quoted by Medhatithi on Manu IX. 155) have the same rule as in Manu IX. 155. It is remarkable that early medieval writers like Viśāṁśvara (about 1100 A.D.) or even later ones like Mitramisra (first half of 17th century) in V. P. pp 464–466 enter with zest into elaborate explanations of Manu IX. 153 and Yaj. II. 125 and never expressly state that these varnas had ceased to be applicable in their days, though there
are a few other medieval works like the Sm. C. II. pp. 288–289 and the Madanaratna\(^\text{1130}\) that either do not explain these verses at all or say that these verses are applicable to a different age. According to Manu (IX. 178, 160) the son of a brāhmaṇa from a śūdra class wife is called śaudra or pā拉萨va, while according to Yāj I. 91 he is called both nisāda and pā拉萨va. (vide H. of Dh. vol. II pp. 86–87 for nisāda and pā拉萨va.) But he is one of the secondary sons (gauna-putra) according to Manu (IX. 180), Vaa. 17, 38 and others. Writers from Aparākṣa downwards quote certain\(^\text{1131}\) verses from Śaunaka on matters forbidden in the Kali age (kali-rāja) one of which is the acceptance of sons other than sūrasa and dattaka.\(^\text{1132}\)

1130. असांपेयो दुस्ते हुमवकर्षिणाणां विषयेन विज्ञानम्—हि आहिद्धितार्थ सांस्कृतिके कर्तव्यमयां अस्त्याविधिपरं निर्विहाय सामान न्यायात्माकर्तव्यम् यथा प्राथमिकाः। समांतर्यन्यायार्थायं कहिलट्योनयोक्तिकानि

1131. आत एव काली निवेष्ट्ये तथा शीवान्तोऽसौ तथार्थोऽसौ हुमवलेन परिष्ठ हि। अर्थार्थ प 739 Vide also पराश. मा I. 2. p. 97, यथार्थमुद्राल प. 107 (अत्र इत्यक्षिताः गौता ना काली बनयी।। तथार्थोऽसौ हुमवलेन परिष्ठ हि तत्किंविद्धु पावल)।

1132 In Natha v. Chotalal 55 Bom. 1 the son of a brāhmaṇa from a śūdra wife was held entitled to a tenth share in the estate of his father and uncle and that the remaining nine-tenths would go to the nearest agnate, and Yāj and Yāj are relied upon. But this would be opposed to the view of the Mayūra that secondary sons are not allowed now and is also against the spirit of the warning given by the Privy Council to judges of modern times over 75 years ago in Collector of Madura v. Mootoo Ramlinga 12 Moo. I. A 397 at p. 436 "the duty of an European Judge who is under an obligation to administer Hindu Law is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal and has there been sanctioned by usage. For under the Hindu system of law, clear proof of usage will outweigh the written text of the law. This passage (omitting the word "European") is quoted by the P. C. in Atmaram v. Bajravu 62 I. A 139 where it is further held that in a conflict between surti texts and commentators the opinion of the latter prevails in the provinces where their authority is recognized Natha v. Chotalal 55 Bom. 1 purports to follow Bai Gulab v. Jivanlal 46 Bom 871. In both cases the parties came from

(Continued on the next page)
An illegitimate son has in certain circumstances rights of partition in the property of his putative father. An illegitimate son may be a son by a concubine who is a dāsi (one who is in exclusive and continuous keeping) or he may be the son of a woman who is not a dāsi. The first is called dāsiputra and the second is hardly ever dealt with in dharmasastra works.

(Continued from the last page)

Gujarat where the Vyavahāramayūkha is of paramount authority. In both cases not a word is said about the proof of the usage of marriages between a brahmana and a śūdra woman takiog place in Gujarat but reliance is placed solely on the recognition of anuloma marriages by Manu and Yājñavalkya, the strong condemnation of pratiloma marriages by both and the inference drawn from the comment of Vijnānēśvara and the remarks of Nilakantha that anuloma marriages are not prohibited. With the most profound respect for the learned Judges who decided those two cases, it has to be said that they took up the position of legislators and did not merely interpret the Hindu Law in accordance with usage and ignored the text of the Mayūkha itself stating that all secondary sons (among which the son of a brahmana from a śūdra caste wife is included by Manu) except aurasa sons (who are defined by Yaj. II, 128 himself and the Mit. as the son of a wife of the same class) and dattaka are forbidden in the present age. The decision in Bai Gunab v. Jivatna was opposed to the considered view expressed by Chandavarkar J. in Bai Kashi v. Jannadas, 14 Bom. L R 547 at p 553. From this gloss of the Mitaksara from which Nilakantha expressed nowhere any dissent it is reasonable to infer that, according to the leading authorities on Hindu Law as recognised in this Presidency, a śūdra wife is not permitted to a brahmin, a kshatriya or a vaishya and to the decisions of some other High Courts on Iodia (vide 28 All 458 for example) it should not be supposed that the present writer is entirely against such marriages. What he is cooercing to emphasize is that the Legislature should deal with these matters, that Judges should not assume the role of legislators and give rise to conflict of laws which are inequivocal if the same kind of marriage is held valid by the Bombay High Court and invalid by the Allahabad or Madras High Court.


1134. Yaj. II 290 appears to distinguish between a dāsi in general and one who is avaruddha (to the exclusive and continuous keeping of a man). "Avasthāt śūdriṇā mahānā vyavahārāh vā c. सम्बन्धिता हमानार्धान्या वाज्ञान्यस्य। वद्याय। इति। भविष्यति।" Vide the com. of the Mit. vide n. 1595 below.
From ancient times it had been settled that the dāsiputra of a person belonging to the twice-born classes is not entitled to a share on partition or to inherit, but is entitled to maintenance only Gaut 28 37 provides\(^\text{1135}\) that even the son of a brāhmaṇa who is issueless from a śudra woman (a concubine) should receive the means of maintenance provided he is obedient in the manner of a pupil Br. (S B. E. vol. 33 p. 374 verse 31) contains a similar rule for the maintenance of an illegitimate son born of a śudra woman after the father’s death. But as regards the son of a śudra from a dāsi Manu IX. 179 provides that such an illegitimate son may take a share in the father’s property if the father allows him to do so. The classical passage on the rights of the illegitimate son of a śudra from a dāsi is Yāj II. 133-134 which verses are introduced by the V. Mayūkha\(^\text{1136}\) with the words “Yāj declares a special rule as regards one begotten by a śudra on a woman (of the same caste) not married to him” and which may be rendered thus “even a son begotten by a śudra on a dāsi may partake of a share at the choice (of his father). But, when the father is dead, the brothers should make him the recipient of a half share”. This passage and the comments of the Mit., the V. Mayūkha, the Dāyabhāga have been cited and explained in numerous cases The following propositions as deduced from the texts and the case-law may be set out here:—(1) the illegitimate son of a śudra even under the Mit. does not acquire by birth any interest in the estate held by the father and so cannot enforce a partition in his father’s lifetime, but the father may give him a share in his lifetime, which may even be equal to that of a legitimate son (4 Bom. 37, 44-45, 23 Mad 16); (2) on the father’s death an illegitimate son of a deceased śudra

\(^{1135}\) श्रुतिपूर्वकम् । घुटु औषधिकाल इतिस्मृतस्वेच्छातिविवधम् यो. 28 37, अनपरपातशुद्धितान्वस्य शुद्धयोगिता मन्त्रेति जीवन शेषवतान्वितम् समस्तविधाय । दु: खु व भृगुवाम च्या सात्विनाय प्रकरणम् तथा । नित्य विभाज्य तत्त्वम् तद्विशेषम् जीवनाय प्रकरणम् तथा ।

\(^{1136}\) श्रुतिपूर्वकम् । घुटु औषधिकाल इतिस्मृतस्वेच्छातिविवधम् यो. 28 37, अनपरपातशुद्धितान्वस्य शुद्धयोगिता मन्त्रेति जीवन शेषवतान्वितम् समस्तविधाय । दु: खु व भृगुवाम च्या सात्विनाय प्रकरणम् तथा ।

In Rahi v Gound 1 Bom 97 at p 113 and in other cases the word ‘aparñitaṇyām’ in the V Mayūkha has been wrongly translated as meaning ‘an unmarried woman’, when it really means ‘a woman not married (to the śudra)’. 
becomes a coparcener along with the legitimate sons and the former is entitled to seek partition (4 Bom. 37 F. B.); (3) on a partition the illegitimate son takes only one half of what he would have taken if he were a legitimate son, i.e., if there be one legitimate and one illegitimate son, the latter would take one-fourth and the former three-fourths, (4) if no partition takes place and the legitimate son or sons all die without partition, the illegitimate son would take the whole as the last survivor of the coparcenary (L. R. 17, L. A. 128); (5) if there be no legitimate sons, grandsons, or great-grandsons of the Sudra father, the illegitimate son takes the whole estate; (6) as the text of Yajur, refers only to a son, an illegitimate daughter is not entitled to any inheritance or even to maintenance (32 Bom. 562); (7) if the Sudra father be joint with his collaterals such as brothers, uncles or nephews, the illegitimate

1137. The decisions establish that dasi is not to be taken in the strict literal sense (a female slave), but means a woman kept as a concubine, the connection being continuous, exclusive and lawful. In order that the illegitimate son of a Sudra may take a share or inherit, it must be shown that the connection between the Sudra man and the woman was not incestuous or adulterous or though adulterous at the beginning had ceased to be so when the illegitimate son was born. Vide Rais v. Govind 1. Bom. 97 at p. 110, Sadu v. Baisa 4 Bom. 37 (F. B.) at p. 44, Vithabas v. Pandu 28 Bom. L. R. 595, Soundararajan v. Arunachalam 39 Mad. 136 (F. B.) pp. 152-159, Tukaram v. Dinkar 33 Bom. L. R. 289. But even the son of an adulterous intercourse has been held entitled to maintenance (1 Mad. 306, 34 Mad. 68, 47 Bom. L. R. 5 F. B.). The earlier cases in Calcutta (as in 1 Cal. 1, 19 Cal. 91, 28 Cal. 194), held that dasi meant only a female slave and as slavery was abolished in India, there could be no dasiputra strictly so called. But in Rayamnath v. Nita 48 Cal. 643 (F. B.) the former Calcutta decisions were overruled and the Bombay High Court’s interpretation of dasiputra has been accepted. The passage of the Dayabhaga (IX. 29 p. 143) which was to be correctly interpreted in the Calcutta cases runs “... Sudras, Sudra-Parvaniyas, Sudrawandavah, Hasta, Sudrawandavah, Sudrawandavah, Sudrawandavah...” The passage is quoted on pp. 650 and 723 of 48 Cal. 643 (F. B.).

1138. अय पहल्वानासंस्कृतस्वभावविश्वारितिः न भूतस्मायः। सति सदृशः भास्मायथं सति भास्मायथं।

The reference is to the use of aphorisms in a prose aphorism according to which the illegitimate son succeeds, when there is no legitimate son, grandson or great-grandson, to the whole estate with the king’s permission.
Rights of an illegitimate son

son cannot demand a partition of the joint family property though he is entitled to maintenance as a member of the family provided the father left no separate estate (L. R. 58 I. A. 402). It has been held that if a śūdra keeps a woman of the brāhmaṇa caste as his exclusive mistress and has a son from her, he is not a dātiputra (but acc. ancient works a cāndāla) and is not entitled to inherit the estate the śūdra father as an illegitimate son Vide Ramchandra v. Hanamnaik 37 Bom L. R. 920 followed in 18 Lucknow 585. Further rules about the inheritance of the illegitimate son when in competition with the widow, legitimate daughter or legitimate daughter’s son will be dealt with later on (vide n. 1356 below).

An absent coparcener stood on the same footing as a minor (vide note 1077 above); in modern times he would be subject to the law of Limitation (Articles 127 and 144 of the Indian Limitation Act of 1908)

The wife cannot herself demand a partition, but if the husband himself separates his sons during his lifetime or if the sons claim a partition during the father’s lifetime, the wife was entitled to a share equal to that of a son, according to Yajn. II. 115. If there be several wives each gets a share equal to that of a son. There is a proviso that the wife or wives must not be in possession of śridhana property given by the husband or by the father-in-law and that if there is śridhana, then only as much more will be allotted to her as will make her share equal to that of a son (as stated in Yajn II. 148). The Mit. on Yajn. II. 52 states that at the husband’s will the wife also gets a share of the family wealth but not by her own will. The Madanaratna explains that the meaning is simply this that the

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1139 तत्साधिक्रिष्टया भार्याया अधिक मन्यविभागी भवभेद न स्थितीया। यथा परश्रति यदि श्रुर्धात् । हृति । मित । on या II. 52.

1140 पय: इति गुरुप्रत्यामायाविपत्ती स्तान्योऽन्नतमं गुरीपाष हृति। गुरुकृत्यां श्रीरं विषये नीतिः दारोदनवं विरोधाध्यधीसः। श्रीरं (ms. folio 91 h) It is curious that the Shrāvāna ascribes गुरुप्रत्यामायाविपत्ति तथा दारोदनवं विरोधाध्यधीसः to दारोदनवं; this sūtra is applied श्रीरं II. 6. 14. 16, vide above p 451 and H. of Dh. vol. II pp 429 and 518 for quotation from Āp and p. 556 for a verse from Tāt Br. quoted in Mit on या II. 52 about husband and wife enjoying together in heaven the rewards of religious acts नाना जायामयाबिभागी बच्चों देन दारोदनवं विरोधाध्यधीसः। किं तु पयः च गुरुप्रत्यामायाविपत्ति तथा दारोदनवं विरोधाध्यधीसः। एप. p. 441-442 It is worthy of note that the आप. म. p. 510 elsewhere

(Continued on the next page)
father when separating from the sons should take for each of his wives a share equal to that of each son, but it is not meant that the husband is to carve out separate portions of the joint property and hand them over to his wives, since such a procedure would be opposed to the *dictum* "there is no partition between husband and wife". The V P (pp 441-42) after quoting this view of the Madanaratna refutes it by saying that Yāj is not here speaking of the partition between husband and wife but between the father and sons and that the husband assigns to the wife a share as he may give a gift of affection to his wife. It deserves to be noted that the ancient commentator Viśvarūpa (on Yāj II 119 of Tri edition) anticipates modern legislation as he states that the widows of pre-deceased sons and grandsons also should be given the shares that would have been taken by their husbands if living along with his own wives by the father at the time of partition with his sons. Recently by the Hindu Women's Rights to Property Act (Act XVIII of 1937 as amended by Act XI of 1938), it is provided that when after the Act comes into force a Hindu governed by the Dāyabhāga School dies intestate or where a Hindu governed by any other school dies living separate property, his widow will be entitled to the same share as that of a son and the widow of a pre-deceased son or grandson shall inherit in the same manner as a son or grandson and further where a Hindu governed by any school other than the Dāyabhāga dies having an interest in joint family property his widow will succeed to a Hindu widow's estate as regards the interest he himself had. This last provision brings the law of the Mitakṣara into line with that of the Dāyabhāga and makes the widow of a deceased coparcener a member of the coparcenary and at one stroke does away with the fundamental doctrine of the Mit about

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refers the *sūtras* जापयायसौऽ विभागोऽ विभागे पादिखरधागचि सहल्य कर्न्द्व तो श्रीस. It further says that the wife's ownership in the husband's property is only technical and not real and that when the husband dies and the ownership in joint family estate lapes her technical ownership comes to an end "पादिखरधागचि हदेहु वैति तौदत्तत्वायत्वव्र अर्थ वस्मविविन्यस्तविश्वस सततम् किःति तत्सि कत्वेह रति जेल्स अहैपास्तिवस शुद्धरिष्या पयायवि विविप्रस्य
सतब्ध नीरक्षरङ्गकोलकोलार्गसताहिमकाक्रिकोविविप्रस्य न छ एव अवृत्त पत्रमारू " एव म प ५१०, समीक्षात्रयस्त हनीसम्युल्लता पुप्पीप्रत्यः सप्ताह्वाण भुर्मिङ्गानां कार्यं।

विद्याध्य on या II 119
male coparceners alone taking by survivoipship joint family property.\textsuperscript{1144}  

The mother (or step-mother) also, when the sons come to a partition after the father’s death, is entitled to a share equal to that of a son in the coparcenary property.\textsuperscript{1144}a But she cannot compel a partition so long as the sons choose to remain joint. But her share is liable to be reduced on account of her possession of stridhana as in the case of the wife \textit{Vide Yāj II 123, Visnu Dh. S. 18.34 and Nār. (dayabhaga, 12)} The Mit. (on Yāj II 135) combats the view of some predecessors that the mother does not take a share but only as much wealth as would be necessary for her maintenance, by relying on the words “equal share” occurring in Yāj, Visnu, and Nār which would be meaningless on that view. It also refutes another view that the mother takes an equal share with the sons when the ancestral property is small, while she takes only as much as would be necessary for her maintenance when the property is large, by stating that this view is liable to the fault of \textit{vādbhavan uppa} according to the conclusion established in the Pūrvaśāstras, that is, here the same sentence will be interpreted as laying down two different propositions in different sets of circumstances, which is not a legitimate or reasonable way of interpretation. The Sm C (II p 268) held the same view about the mother having no right to a share and was criticized by the Madanaratna (by name) Several works like the \textit{Vyavahārasāra} (p 225) and the \textit{Vivadacandra} (p 67)\textsuperscript{1142} hold the

\textsuperscript{1141} Vide \textit{Saradambai v S Subbarana I L R (1942) Mad 630, Jodu Rosamma v Jodu Chennula (1943) 2 M L J p 172} for the effect of the Act XVIII of 1937 on the status of widows

\textsuperscript{1141a} \textit{Jnanaśruti} same \textit{Saradambai v S Subbarana I L R (1942) Mad 630, Jodu Rosamma v Jodu Chennula (1943) 2 M L J p 172} for the effect of the Act XVIII of 1937 on the status of widows

\textsuperscript{1142} \textit{Saradambai v S Subbarana I L R (1942) Mad 630, Jodu Rosamma v Jodu Chennula (1943) 2 M L J p 172} for the effect of the Act XVIII of 1937 on the status of widows

\textsuperscript{1144} \textit{Saradambai v S Subbarana I L R (1942) Mad 630, Jodu Rosamma v Jodu Chennula (1943) 2 M L J p 172} for the effect of the Act XVIII of 1937 on the status of widows
view that no woman (whether wife or mother) should get a share of the ancestral wealth but only as much wealth as is necessary for maintenance and rely on the words of Baudhāyana “there is a Vedic text that women are devoid of strength and take no share”, which refers to a passage in the Tai S. VI 5 8 2, occurring in the context of the ritual of the Soma sacrifice “therefore women being destitute of strength take no portion (of Soma drink) and speak more weakly than even a wretched (low) man”. Manu IX 18 also contains an echo of this passage of the Tai S and of Baudh D. S. There was an intermediate stage in the evolution of the rights of the wife or mother. The highest she could get in the husband’s wealth was two thousand panas, according to Vyāsa, which is variously read and explained, the Sm. C. (II p 281) saying that it means as much wealth as would every year yield an income of 2000 panas.

In modern times some High Courts such as those at Bombay and Calcutta allow wives and mothers to have a share when the husband or the sons divide ancestral estate by metes and bounds, while in Southern India the practice of allotting shares to them has gone out of vogue long since and the Madras High Court does not allow a share to the mother but only maintenance. The Dāyabhāga seems to have held that a step-mother who was herself sonless was not entitled to a share when her step-sons came to a partition, but was only entitled to maintenance (vide Srimati Hemangini v. Kedarnath L. R. 16 I A. p. 115 at p 117).

1143. दिताविस: यथा याय: खि़ले भेजो धरातल च। व्यास न क या स्त्रियौः II p 281, श्रेष्ठ वि p 450, विभाषण on या II 119

1144 Vide Dular Koeri v Dwarkanath 32 Cal 234, Danodardas v Uttamram 17 Bom 271, Jairam v Nathu 31 Bom 54, Hoshanna v Devarina 48 Bom 468 for cases of a share allotted to the mother or step-mother. But see Subramaniam v Arunachalam 28 Mad 1, 3 for the statement that the right of a mother to a share on a partition between the sons is not enforced in the Madras Presidency. Vide Nanuram v Radhakrishna 1 I R. (1942) Nag p 24 where it was held that the mother gets only maintenance when there is only a severance of interest between father and sons but no partition by metes and bounds.

1145. दिताविस: यथा याय: खि़ले भेजो धरातल च। व्यास न क या स्त्रियौः II p 281, श्रेष्ठ वि p 450, विभाषण on या II 119.
If a person had several wives and several sons from each wife, some of the texts prescribed from very ancient times that the sons should divide according to the wives or mothers (i.e. \textit{patnibhaga}, or which is practically the same thing, \textit{mātrabhaga} was recommended), though the generally recognized rule formerly as well as now is to divide according to the number of sons i.e. \textit{putrābhaga} (ignoring the fact of their being born from different mothers). For example, Gaut 28.15 recommends that partition should be made by grouping the sons according to their mothers and then allowing a special share to the eldest among each group of sons. Both Br. (S.B E 33 p 372 verse 15) and Vyāsa\textsuperscript{1147} lay down that if there be many sons sprung from the same father, who are equal in caste and number but who are the sons of different mothers, a division according to mothers may be legally made. Such a partition on the basis of mothers is recognized in rare cases even now on the ground of custom in certain places and among certain castes.

A paternal grandmother or step-grandmother cannot herself demand a partition, but when a partition takes place between her son's sons, her own son being dead or when it takes place between her son and the sons of a deceased son she is entitled to a share. A text of Vyāsa says\textsuperscript{1149} "the childless wives of the father are declared to be entitled to a share equal (to that of a son) and all grandmothers are declared equal to the mother". The Allahabad and Bombay High Courts hold that the grandmother is not entitled to a share when a partition takes place between her son and his sons, while the High Courts

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\textsuperscript{1146} महिष्रावा वा श्वस्य भागिनेयः || मा 28 15

\textsuperscript{1147} समाजसत्तांशद्वयं च जातासमैथिन वर्णः। विनिष्मनालकाव्यां भागनां

\textsuperscript{1148} विदे \textit{Patnamappa v. Alayan} 48 I A 539 for a case from the Madura District in the Madras Presidency, where a custom among the chettis of allowing a partition on the principle of \textit{patnibhaga} (division of property according to wives or mothers) was upheld.

\textsuperscript{1149} अपूजार्थ सिंह गलिया समाजसत्तां महत्वपूर्णः। विनिष्मनालकां सर्वार्थं भागनां

\textsuperscript{1146} विप्रायः 9 by अपयक p 730, \textit{दुर्भाग अ} 2 p 68, रुद्रिखच व 2

\textsuperscript{1147} p 267, \textit{दुर्भाग अ} (p 664) remarks बहुत हु विनिष्मनालकाक्षण धर्म

\textsuperscript{1148} वितिमथलकान्त िविसमतो गमय िविसमतो गमयिन्दरार्थ िविमार्कां सर्वार्थं भागनां सत्तां महत्वपूर्ण िविसमतो गमयिन्दरार्थ िविमार्कां सर्वार्थं भागनां सत्तां महत्वपूर्ण
of Calcutta and Patna hold that she is entitled to a share even in this last case.\footnote{1150}

On account of certain bodily, mental or other defects and certain conduct also persons were excluded in ancient India from demanding a share on partition and also from taking by inheritance. Gaut 28 41, Āp Dh. S. II 6 14 1, Vas. 17 52-53, Visnu Dh S 15 32-39, Baud Dh S II 2. 43-46, Kaut III 5 speak\footnote{1151} of various grounds of exclusion from partition (and inheritance) such as lunacy, idiocy, impotence, excommunication for grave sins or lapses of conduct, blindness, incurable disease, entering a different āśrama (viz that of forest hermit or śaunyūṇa). These grounds of exclusion probably arose from the fact of the persons labouring under them being regarded as incompetent to perform religious acts and from the close connection between property and its use for religious purposes. Jaimini\footnote{1152} (VI 1. 41-42) lays down two propositions, viz that one who is suffering from an incurable or irremediable bodily defect is not entitled to undertake vedic rites, such as Agnihotra, but that one who has some defect which is remediable may engage in them and Sabara gives a blind man, a deaf man and a cripple as persons who are incompetent to engage in Vedic rites. The story of the brothers Devapi and Šantamū (vide

\footnote{1150} Vide Viśhal v Prahlad 39 Bom 373 (partition among grandsons), Kanhaya Lat v Gaura 47 All 127 (partition between grandsons), Babina v Jagat Narain 50 All 532 (partition between one son and his predeceased brother's son), in all of which the grandmother was held entitled to a share. See Sheonaram v Jan ji Prasad 34 All 505 (F B.), Jamnabai v Vasudev 54 Bom 417 for the proposition that in a suit for partition between father and his son only the paternal grandmother is not entitled to a share, but vide Badri Roy v Bhugat 8 Cal 649, Krishnalal v. Nandeshwar 4 Pat L J 39, 42-44 (for the opposite proposition that the grandmother would be entitled to a share in a partition between her only son and the latter's son). In view of the fact that Vyasa declares the grandmother to be equal to the mother it appears that all grand-mothers, whether sonless or not, should secure a share.

\footnote{1151} ज्योतिर्लिंग महत्यागी | श्री. 28 41, एकसमुख ज्योति शोभिताला जीवन शुद्धगो यथावतेषति सम कृष्णरूपस्त परितत्स च परितापित्य | आय व्र सू 2 II 6 14 1, अकित् स्वयंदर्शिनःत्तत्त्वदायित्वस्य अकित्यस्य | पतितस्तवितात्वर्ष+ | श्री व्र सू 2 43-46; यत्रास्तुत्सर्वात्मानस्तार्तमात्र | कृष्णरूपस्ततिसत्य | वसिद 17. 52-53, पतितस्तवितात्यजतात्यजता | कृष्णरूपस्तयात्मात्र | यद्य प्रथमादुपायः | जयदेवचार्यसुकुमारिः | अयोध्यास III. 5.

\footnote{1152} अकृतीत्वं तद्यथा उपनो निर्यत्स्तिनिगात्र | श्री. VI 1 41-42.
H. of Dh. vol. II. p. 109) as narrated in the Brhad-devatā, states that the elder brother Devapi suffered from a skin disease and so refused the kingdom which went to his younger brother Santamu. We know from the Mahābhārata that Dhartrāstra who was blind from birth, though elder, had to give up the kingdom in favour of his younger brother Pāṇdu. The Mit. (on Yaṭ. II. 135) energetically combats the view put forward by some predecessors that all wealth is meant for sacrifices. They relied on two smṛti passages, "all dārya (all kinds of wealth or movable property) has been created for the sake of sacrifice; therefore all those who are not competent to perform sacrifices are not entitled to share ancestral wealth but are only entitled to food and raiment. Wealth has been created for sacrifices; therefore one should employ it (or spend it) on purposes of dharma and not on women, fools and irreligious people". Kaṭ. (552) and Br (S. B. E. 33 p 371 verse 10) contain similar remarks. The Mit. does not accept this proposition, which argues that on that hypothesis no gifts (apart from sacrifices) that are recommended by the śāstras will be possible, nor can one accomplish two of the purusārthas, viz. artha and kāma (as required by Gānt. IX. 46, Yaṭ. I. 115) and that the verses quoted above only mean that whatever wealth is collected for sacrifices should be spent only for that purpose even by the sons of the man who collected it, since a smṛti text condemns generally everyone who does not spend wealth collected for a sacrifice for that purpose to becoming a crow or a hāsya (a cock or water fowl) in the next life. The Mit. further argues that the view would be opposed to the conclusion of Jaimini III 4, 20–24 that the Veda injunction "one should wear gold on one's person" is merely purusārtha and not 'kṛtvavaiḥ'. Aparāśka

1153. भगवानी राजा, विषयं गृहस्तोधस्वरूपः। भगवतिष्क भवेत वर्तन भवेत।

1154. अन्तः करणदिनं बडाँ राजा विषयं तत्। उदाहरणं ए 147 39, veda आदिवेद और 106 (chap 100 of cr ed.) for the congenital blindness of भूसमारहाता

1155. पक्षार्थार्थः स्मृतिः स्मृतिः निर्माणार्थः। पक्षार्थार्थार्थः स्मृतिः स्मृतिः निर्माणार्थः।

1156. Vide H of Dh. vol. II. pp 8–9 for the purusārthas
also holds the same view\textsuperscript{1157} and adds that women have the authority to perform pūrtadharma (acts of charity such as construction of wells, temples etc.). Vide H. of Dh vol I pp. 844–45 for ista and pūtta

The most famous passages on the grounds of exclusion from inheritance are Manu IX 201, Yaj II. 140 and Nār. (dayabhaga, 21–22). Manu IX 201 provides\textsuperscript{1158} “impotent persons, outcasts (pātita), persons blind or deaf from birth, insane persons, idiots, the dumb and those deficient in any organ (or sense) are

\textsuperscript{1157} 1157. सत्संपर्कं एव धनोविनयवाले प्रतानामावलाव म भै ब्रह्माब्द्व जातिरितिः सहस्त्तितं शरीरसिद्धां ज्ञाति धनोविनयवालाः शास्त्र अपातिं वल्लाका। 

\textsuperscript{1158} 1158. अन्यत्र क्रियाविनाशिताः जातियाब्द्विरिः तथा। उ-सत्तमयुक्तायैं च क कौशिकिनिर- 

निपुना। सुस भूमि IX 201, चैत्येष्य पतितवत्सलम् प्रथुधंसहायकम् ज्ञाता। अन्योक्षिकोकम। भविष्यता स्वतान्त्रताः। या इ 140, ततो चिन्तित त्र च ज्ञात्सत्तमयुक्ताय। पतित विनय्यविनयविनयसिद्धां नास्ति विनयविनयविनयसिद्धां। 

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entitled to no share". Yāj II. 140 declares that the impotent, the outcast and his son, a lame man, a mad man, an idiot, a blind man and one afflicted with an incurable disease are not entitled to a share. It will be noticed that Yāj expressly excludes the son of an outcast, as do also Baud. and Devala. Nar. (dayabhāga 21–22) says 'one hostile to his father, an outcast (pātita), an impotent person, one who goes to another continent by sea (from India)—these even though they be āmāsa sons shall not get a share; how can a kṣetraja (a son of the wife raised by another person by appointment) get a share (if he has these defects) and persons afflicted with long standing (like phthisis) and severe diseases (like leprosy), persons who are either idiots, insane or lame—these must be maintained by the family, but their sons are entitled to a share'. These verses of Manu, Yāj and Nar, have been quoted and explained in numerous decisions of the courts in India, but all such cases are mostly of academic interest now since the passing of the Hindu Inheritance (Disabilities Removal) Act of 1928 and hence need not be dwelt upon here. The Act (XII of 1928) applies to the whole of British India except to persons governed by the Dāyabhāga school and provides that no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity or physical or mental defect. This Act is not retrospective and does not confer on any person any right in respect of any religious office or service or any right to the management of any religious or charitable trust which he would not have had before the Act. Therefore under the Act the only defects that would disqualify a person governed by the Mitāksara school from claiming partition or inheritance are congenital lunacy and congenital idiocy. Under the Dāyabhāga school the grounds of exclusion will still remain as before except as modified by judicial decisions and by other Acts. An important question under the Mit school arises in this way. What is the exact position of a son that is congenitally idiotic or insane? Both Manu (IX. 201 and 203) and Yāj (II 140, 141) declare that they are anāmsa or naranāsaka (not entitled to a share of the ancestral estate), but must be given maintenance and if maintenance be not given by those who are liable to give it, they would incur sin (as Manu IX. 202 expressly says) and that the sons of disqualified persons take a share, if they are themselves free from defects. If A has a son B who is congenitally idiotic, is B still a copar-
cener of A (though not entitled to a share or to claim partition) so that A cannot make a gift of the whole or a portion of the property or a bequest thereof to his widow? This question arose in *Amrithammal v. Vallimayi* I L R (1942) Mad. 807 (F. B.), where it was decided that, when A made a will in the above circumstances bequeathing all family property absolutely to his widow and two sons were born to the disqualified man B after A's death, the father had no power to make a will as the disqualified member B was still a coparcener (though not entitled to a share) and that he transmitted the heritage to his sons. The chief ground of the decision was a passage of the Sarasvativilása (explained on pp. 817 and 828-830) which is quoted below.1159

The grounds of disqualification apply to males and females alike, as stated by the Madras Law Journal for 1942 (Journal portion pp 63-82) for a reasoned criticism of the F. B. case.

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The meaning of this Rgveda verse is doubtful. The Nris distinguishes between *bindu* and *binduḥ. For the various meanings of *bindu*, vide H. of Dh vol II p. 131 n 290 and p 148 n 334. In the Nris, *bindu* probably means 'foetus', as it does in Gaut XXI. 9 ' bindunati hiranyakashipya ca hrīṃ paśaḥ. Vas 20 23 (bindurātan brahmāṇa hraṇa śrṇgāna abhastakṣānta ca gāmuy) appears to give two senses to 'bindurātna' (killer of a brahmaṇa or killer of a foetus when its sex is not known)
Bṛg. X. 56 "the wise made seven boundaries (restrictions) by transgressing even any one of which a man becomes sinful", the Nirukta VI 27 enumerates the seven sins as "theft, violating the bed (of the guru), murder of a brāhmaṇa, murder of a bhrūna, continual performance of sinful acts, telling a lie as to a sinful matter". In the Tai. S. II 5 1.1, Śat. Br. XIII. 3 1.1 and other Brāhmaṇa texts, the murder of a brāhmaṇa seems to have been regarded as the gravest of all sins (vide H of Dh. vol II p 147 and n 333) in the Chāndogya.2162 Up. V. 10.3 the five great sinners are declared to be the thief of gold, the drunker of liquor, the violator of the guru's bed, the murderer of a brāhmaṇa and one who associates with them. Gant (XXI 1-3) declares that the murderer of a brāhmaṇa, the drunker of liquor, one guilty of sexual intercourse with the wife of his guru (elder or teacher) or with women who are the sapindas of his father or mother, a thief (who steals a brāhmaṇa's gold), an atheist, one who continually does forbidden acts, one who does not abandon a patita (son or the like through affection) and one who deserts his relations though they are not patita are patitas and so is one who incites another to commit a grave sin and also one who associates with a patita for a year (as regards a vehicle, a seat and bed). Āp. Dh. S (I. 7. 21. 8-11) contains a longer list of grave sins (palaniya). Vas (I. 19-21) states that there are five grave sins (mahāpātakas) viz. violating the bed of the guru, drinking liquor, murder of a learned brāhmaṇa, robbing a brāhmaṇa of gold and contact with a patita by being his teacher or pupil or priest or by contracting a matrimonial alliance with him. The Baud. Dh. S II 1. 50-56 has a somewhat different list of palaniya actions viz. sea voyage, robbing a brāhmaṇa of his wealth and misappropriating a deposit, perjury for land, trading in (forbidden) articles, service under a sūdra and having a child from a sūdra woman. Manu XI 54, Yaj III 287 and Visnu Dh. S 35 1 enumerate the five well-

2162. सूची हितप्रथम हूँ विवेच्य हतरस्तिपत्यस्यप्रमाणस्यद्रव्याः पद्मिनी चतुर: प्रवर्तकारस्यहितप्रथाम। प्रायोगिक स्यो। वि. 10. 9, दुहाँ उप. IV 3 22 mentions as great sinners the thief and the शुद्धस्य ति. Though some later smṛtis employ the word शुद्धेऽ, it is always restricted by the commentators (e.g Mit on Yaj III, 227) to the theft of brāhmaṇa's gold. Vide H. of Dh. vol II p 583 for ancient texts asking a person to desert one's father who is patita or a regicide &c., but never his mother even though she be patita. Vide स्वरूपसमार्थ 37 1-5 ‘अथ त्वस्य अः स्वर्यः’ पद्मिनी। विभूषण मातृक, विभूषणमातृकः | सर्वं एवायां- पति मातापतिविचाराः।
known mahāpātakas, viz. murder of a brāhmaṇa, drinking of liquor, theft, incest and continuous association for a year with these. Association with any sinner of any sort for one year made the associater guilty of the same sin (Yāj. III. 261). Samsarga or samyoga (contact or association) was of various kinds. Manu XI 180 ( = Śantī 165.37 = Band. Dh. Ś. II. 1. 88 = Vas. I. 22 ) states that a person who associates with a patita for a year as regards using the same vehicle or seat or taking food with him in the same row becomes patita; but he becomes patita at once by being his sacrificial priest or by being his teacher of the Veda or by entering into a matrimonial alliance with him. Vṛddha-Bṛhaspati1164 ( quoted by Mitāksāra on Yāj III. 261 ) states that association ( sankāra ) with a patita is of nine kinds viz. occupying the same seat or bed, taking dinner in the same row with him, cooking food in his cooking pots, partaking of cooked food prepared by him, being a sacrificial priest or employing him as a priest, being his teacher of the Veda or making him one’s teacher of the Veda, giving him one’s daughter in marriage or taking his daughter in marriage, taking food with him in the same pot. Devala1165 declares that sin is passed on from one man to another by conversation ( with a sinner ), by touching him, by his breath ( coming in close contact with one’s nose ), by occupying the same vehicle ( horse ) or seat, by eating ( in his company ), by being a priest for him or by making him one’s priest, by being his teacher of Veda or making him one’s teacher or by matrimonial alliance. The same causes that led to a male being patita operated in the case of a woman to make her patita; there was one additional cause viz a woman became patita by sexual connection with a male of a lower class than herself ( Gaut 21 9, Yāj III. 297 and Śaunakā 1166 ) The ancient sages were very considerate even

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1163. सवस्तेऽपि पतिति पतिते सहाचयास्य | एकपक्षीयपाल्लास्यायिनी। पीतसीतांगी सम्मवैदू सय एव। विबाण्डु 35 3–5 ’पूवकंवते पायमननवित्वसे मीलुस्त्रयाल्लासं इत्यक्षयेऽन्यद्वारात्’ सिद्धान्त यात् III. 261
1164 यद्याद् इद्यवहस्त्व:एकपक्षीयपाल्लास्यायिनी। याजनास्त्रोप्चन्दो पैने पांविन्ताय च सहाचयास्य। विवाहसहदूर्ये पांविन्ताय च सहाचयास्य। सिद्धान्त यात् III. 261 ( printed text reads एकपक्षाः for पक्षाः, but this seems to be wrong if we look at the explanation ), अपराधाः p. 1086, यस्य तथा p. 587 ( both ascribe to श्रुचुः ) These verses are ascribed to देवलं in तृतीयाकलिका p. 99.
1165. सततस्यस्त्वाद्यास्त्व स्यायानस्त्वायास्य | याजनास्त्रोप्चन्दो यायास्यायास्य सहाचयास्य दुष्कृतपवीत संस्कारात्। यथा सत्त पवीतपतिते न संस्कारात्। इत्यक्षयेऽ ब्रह्मा ब्रह्मा यात् III. 261, अपराधाः p. 1087
1166 यद्याद् श्रुचुः इद्यवहस्त्व:एकपक्षीयपाल्लास्यायिनी। पीतसीतांगी सम्मवैदू सय एव। सिद्धान्त यात् III. 261
to fallen women. They provide that even women that are *patita* and have not yet performed the proper penance were not to be cast on the streets, but they were to be given a hut (near the house) for residence and bare maintenance that would keep body and soul together and were to be guarded against further lapses (Yaj. III. 296). Vide H. of Dh. vol. II pp. 571–573.

How far unchastity will debar a female from inheritance will be discussed a little later on. Adultery in general was an upapātaka only according to Manu XI. 59 and the ordinary penance for it was *candrāyana* or *govrata* (Manu XI. 117). But if the adultery was with a person of low caste, the woman became *patita* and would not have been entitled to a share on partition (as a wife or mother) under the old Hindu Law.

In the case of those guilty of grave sins who did not perform the prāyāscittas prescribed for such sins there was a peculiar procedure called *ghatasphota* prescribed for excommunicating them and severing all connection with them and treating them as dead, which has been described in H. of Dh. vol. II p. 388. Vide Gaut. 20. 2–7, Mann XI. 182–184, Yaj. III 294. But when the sinner performed the appropriate prāyāscitta (penance), the smrtis declare that he became fit to be associated with (*vyawahārya*), he was to be welcomed by his relatives who were to take a bath along with him in a holy river or the like and who were to throw in the water an unused jar filled with water, he should offer grass to cows in the midst of his relations, they were not to find fault with him later on. Vide Mann XI. 186–187, Yaj III. 295, 299, Vas. 15. 20, Gaut 20-10-14 (which prescribes the recital of certain Vedic mantras and the offering of clarified butter into fire). Ap Dh. S. I. 9. 24. 24–25 and I. 10. 29. 1–2 prescribe for the sinner who kills a guru or a śrotṛya that has performed *soma* sacrifice or a bhrūna certain observances till death, but declare that such a person can never get rid of the loss of the right of association with all people, that there is no return for him to his relatives.1167 In the Nīrṇaya-sindhu (III. Uttarārāha pp. 567–68) and in the Dharmasindhu (III. Uttarārāha pp. 453–54) the rite of *ghatasphota* for a *patita* and the rite for taking him back are concisely described.1168

The smrtis state that when a man knowingly committed a sin, penances did not necessarily remove the otherworldly con-

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1167. Vide Appendix.

1168. Vide Appendix.
sequences of the sin altogether but the sinner became fit to be associated with (Yaj. III. 226). In the case of the patita, even his son born after he committed a grave sin was held to be patita by most writers of smritis (Yaj II. 140, Visnu Dh. S. 15, 35-36, Kaut III. 5) 1169. But in the case of the daughter a difference was mercifully made. Vas. (13 51-53) 1170 states "the sages say that one born of a patita becomes a patita, except a female child, since she is to go to another (person as his wife); one may marry her without accepting any wealth (of her patita father) along with her." Yaj I-II 226 also says that the daughter of a patita may be married after making her fast and after making her leave everything (belonging to the patita father) in her father's house. Visvarupa (on Yaj III. 257) quotes a prose passage from Harita to the following effect: the daughter of a patita should have fasted one day and night, should take a bath without clothes, should put on white and new garments in the morning, should loudly repeat thrice ‘I do not belong to him (my patita father) nor is he anyone to me’ and then she may be married at a sacred place (river etc.) or in one’s (the bridegroom’s) house.

These rules about a patita led to this result that if a Hindu changed his religion or was excommunicated or was made an outcast for some lapse that his caste looked upon with great disfavour, he was deemed to have lost his rights of partition or inheritance. The Caste Disabilities Removal Act (XXI of 1850) abrogates these rules of the ancient 1171 Hindu Law

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1169 Yaj II 140: 'patita... patita sasyam... patita krtam... bhagav... karte...'
1170 Yaj III 226: 'patita... patita... patita... patita... patita...'
1171 Vide Kshnun Lax v. Gobind L. R. 38 I. A. p 87 where A and B, being father and son and forming a joint family and A becoming a convert to the Moslem religion, It was held that A did not forfeit his interest in the joint family property and that the only effect of the conversion was that it operated as a severance of A from the family and that one half of the property immediately vested in A and the other half in B. Vide p. 101 where the P. C. say that the Legislature virtually set aside the provisons of the Hindu Law. The Act of 1850 is felt by many Hindus as a great hardship and should be removed from the statute book. In England the Blasphemy Act of 1698 is still in force.
All the smritis say that those who are deprived of their rights to partition on account of the several defects mentioned are entitled to maintenance out of the family property as long as they are alive (Gaut, 28. 41, Vas. 17. 54, Visnu Dh. S. 15. 33, Manu IX. 202, Yaj. II. 140 etc.). If the disqualified persons want to marry or are married, then those sonless wives that are chaste should be maintained (Yaj. II. 142), but those that are unchaste should be driven out and so also those wives that are hostile to the family; but the Mit. adds that even hostile wives of disqualified heirs must be maintained provided they are chaste. If the disqualified person has an aurastra son or ksetraja son who is free from the defects mentioned above (such as impotence) he becomes entitled to a share of the joint family property and the daughters of disqualified persons are entitled to be maintained in the family and provision must be made for their marriages (Manu IX. 203, Yaj. II. 141). It follows that disqualified heirs could not adopt, since Yaj. II. 141 mentions only aurastra and ksetraja sons. Many of the smritis did not allow even maintenance to the pasha and his son (vide Baud. Dh. S. II. 46, Kaut. III. 5, Devala, Visnu Dh. S. 15. 35-36). Coparceners were prevented from claiming a share at a partition if at the time of the partition they were labouring under the defects mentioned above. But if after partition 1172 the defect which disqualified a member be

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1171a. तस जीवकर के शक्ति: इनः संभवरणसामीतिता खरि! जीवनसासामीतिपूर्ण-निर्दोषानुर्द्धसताप्य ॥ निर्गि उप य. 111. 141. In former ages a ksetrajs son was possible in the case of an impotent person. The Mitra also (III. 5) states that a person is entitled to maintenance if he is deprived of all his property. But the Mitra adds that if a son has aurastra or ksetraja sons then he becomes entitled to maintenance, provided they are chaste. If the disqualified person has an aurastra son or ksetraja son who is free from the defects mentioned above (such as impotence) he becomes entitled to a share of the joint family property and the daughters of disqualified persons are entitled to be maintained in the family and provision must be made for their marriages (Manu IX. 203, Yaj. II. 141). It follows that disqualified heirs could not adopt, since Yaj. II. 141 mentions only aurastra and ksetraja sons. Many of the smritis did not allow even maintenance to the pasha and his son (vide Baud. Dh. S. II. 46, Kaut. III. 5, Devala, Visnu Dh. S. 15. 35-36). Coparceners were prevented from claiming a share at a partition if at the time of the partition they were labouring under the defects mentioned above. But if after partition 1172 the defect which disqualified a member be

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1172. दैवः निभायमा गर्वेऽन्य स्रीमायालकार्णसमाजस्वप्न न: इन्द्रियात्यावरः। जीवनसासामीतिपूर्ण-निर्दोषानुर्द्धसताप्य ॥ निर्गि उप य. 111. 140. Vide Dea Kishen v. Budh Frock 5 All. 599 (F. B) and Abidah v. Bhadhi 22 Cal. 564 for cases respectively of insanity at the time of inheritance barring succession and superceding insanity not divesting a person.
removed by medical treatment or the like then the disqualified member was entitled to reopen the partition on the analogy of a posthumous son born after partition. So also if a person is quite free from defect when he takes at a partition a share in joint family property or inherits, subsequently supervening defect does not divest the property once vested in him.

Some of the smrtis contain rules that appear to be only recommendatory. Ap. Dh.1173 S. II. 6. 14. 15 says that if even the eldest son or brother were to waste joint wealth in immoral or improper ways he should be given no share (by the father or brothers at a partition). To the same effect are Gaut. 28. 38 and Manu IX. 214.

Gaut. 28. 43 and Visnu Dh. S. 15. 37 provide1174 that the sons of prahloma unions (i.e. of a man with a woman of a higher class) are to be dealt with like the sons of a brahmana from a šūdra woman i.e. they would be entitled to maintenance from their father, though prahloma unions were condemned. Kāṭ. (863-864) provides that the son of a woman married out of her order, one who is born of a sugotra union and one who is an apostate from the order of ascetics do not obtain ancestral wealth; but the son of a woman married in the wrong order takes the ancestral wealth if he is of the same class as his father, and the son of a woman who is not of the same caste as the husband (but of a lower caste) and is married in the proper order takes the wealth of the father. But the son of a woman

1173. पक्षवर्धनं दुष्पापि प्रतिपद्धति वाहीरि तममां कृप्ति। आप. प. २२ II. 6. 14. 15; सतमानवाग्राम्यथुति न हनमेवेकियाद। मौ. 28 38.

1174. शुद्धपुपलावविरुद्धारण! मौ. 28 43; प्रतिपद्धति श्रीदी चोलासाह्यायालिय! विक्षुप्तवेद्धि 15. 37; अक्षरोदाधारात्रिच सर्गोत्तरतम साबृहत्वाद जार्यते। मन्बरुपसिद्धात्रि जलिक्ष वेंदुप्राप्तिः। असर्वसन्नयुक्त कर्मावधान च ये भोदो। अवशोषणमुख्याय रत्स्याय प्रकटाय न निरस्त्राय! यमातव हथाद्रहनमन्तरपति यथे तत्वविन्याधिकव। नर्थपलपापावस्थी हृ विश्रेणं द्वृष्ण वदुपयुपाल। कार्यान। (863-864) q. by दृश्यावन्त V. 14 p. 103, दिर. R. P. 491, दिर. शिर. पी 133-134, दिर. मणिव p 163-164. The word आपेन्द्रम is interpreted in two ways: (1) If a brāhmaṇa married a ksatriya girl first and then married a brāhmaṇa girl, both women became sāhāya (as the procedure was against Manu III 12) The son of the ksatriya woman in such a case did not take the wealth of his father but only the son of the other woman took it. The other interpretation (given by the परिश्रमाकृति) is based upon the doctrine of परीक्षित, for which vide H. of Dh vol. II. pp 546-549 and Manu. III. 172. The son of a younger sister married before her elder sister and of the latter married after a younger one were both excluded from inheritance to their father. Kāṭ. (862) is quoted in Natha v. Chotaela 55 Bom. 1 at p. 8.
united with a man in the reverse order of castes does not take
the ancestral estate; but the approved view is that he should be
given food and raiment till his death by the kinsmen. In case
there are no kinsmen such a son takes the whole wealth of his
father and if the father left no wealth kinsmen are not bound to
maintain him.

Provision must also be made before ordering partition in
a suit for partition by a brother for the marriage expenses of the
unmarried sister or sisters of the brothers. Here there has been
a great divergence of views among the writers of digests and
commentaries. Kaut. III. 5 (quoted below in n. 1181), Visnu Dh. S. 18,
35 and 15, 31 and Br. simply state that wealth for the marriage
expenses of the unmarried sisters must be set apart. But Manu
IX. 118, Yaj. II. 124 and Kāt. (858) 1175 state that the brothers
should get their unmarried sisters married by giving them one
fourth share. The Mit. explains 1176 that this does not mean that
each brother is to give one fourth of his share to the sister (for in
that case if there are five brothers and one unmarried sister she
may get more than each brother) but that the unmarried sister
is to get one fourth of what she would have got if she were a
male and that if a person has sons and daughters from wives
of different classes than the unmarried daughter of the wife of
each class will take one fourth of what her brother from the
same mother would have taken. The Mit. further adds that
one should not explain that the word "one fourth" is not to
be taken literally and that the unmarried sister gets only as
much as is necessary for her marriage, since such an explana-
tion is opposed to the express words of Manu IX. 118 and since
Manu declares sinfulness as the consequence of not giving
one fourth share. The Mit. informs us that its explanation was
the same as that of Asahēya and Medhatithi and that Bhāruci
gave another explanation (viz. that an unmarried sister was
entitled to as much wealth as would be necessary for her

1175. जनपकानामधेवसतानि ब्रह्ममें भाग इत्यस्ते। युज्याणां तत्त्वं भागः। स्त्राय
लघुत्वस्ते ॥ वातं ग. द्वारणे मानिसः III. 35 p. 69, ॥ निबिन्यतः II. 268. धि ॥
भ. p. 494. This text is cited in 53 Mad. 84 at p. 97.

1176. द्विवयेशावेशविशालस्यातं इत्यस्ते। अलावम प्रदिश्वरते विगीत्वमानानामातिरं इति
हल्लयते॥ भ. न च निजायेशाय द्विस्तां हुयं यथावत्तति द्विस्तायातिका तिर्थं सत्तायातिका यथातिका
विस्तरिति विस्तान्तं नुवं नवतं नवतं नवतं ॥ श्रयस्यातिका करितं...पतिता देहविष्टः। इति.
... पतिता देहविष्टः इत्यस्ते भारवातस्वालाभायं वात्स्यायं महीयते। भ. on या.
II. 124.
marriage and not to a definite share). The Dayabhāga held the opinion\(^{1177}\) that if ancestral wealth was small, the provision for the marriage of the unmarried daughter should be made by giving her a fourth share but if the wealth was ample then she should get only as much as was necessary for her marriage. The Sm. C. V. R. p 494, V. C. p. 134 follow the view of Bāhūra, while the V. M. (p. 106), Madanaratna and V. P. (p. 456 ff) follow the Mit. The former group particularly relies on the texts of Devala\(^{1178}\) (wealth necessary for marriage should be given to unmarried daughters from the paternal estate), Sankha (when partition of heritage takes place the unmarried daughter takes the maidenly trinkets, wealth for her marriage expenses and stridhana) and Visnu Dh. S. 15. 31. In modern times the Courts allow no share to unmarried daughters but only provision for marriage expenses and this too is restricted to the unmarried sister of a person who requires or sues for partition and does not hold good as to the daughters of brothers or other collaterals\(^{1179}\). In Bhagaditi Shukul v. Ram Jalan 45 All. 297 it was held (at p. 299) that “quarter share” in the text means as much money as will suffice for marriage expenses, and that where the daughter was a cripple and blind and all the property was worth Rs 500 an alienation of the whole of it by the widowed mother for raising a dowry for the daughter was justifiable.

\(^{1177}\) अन्धकेम् पुैः स्वाःसत्तास्तास्तास्ताप वालास्तापारोऽसी वालास्त। रम्यानां वोः स्वेभ्यौः। एवं वर च बद्धरिज्ये विवाहितिकरिमन व्रातवये न चादर्थरिज्ये विदी विनिधिति।

\(^{1178}\) फराभास्वा विद्वदेस्वा स्वेभ्यौ वद्य। अशुकरस्व सेव कराया धनमहाया द्रव्यमहाया देतृ। देयत व भस्मभस्मविभविषादो कन्यारी विबिधोचित्रित्व देवानंरथ।

\(^{1179}\) विद्वदेस्वा विद्वदेस्वा वद्य। विद्वदेस्वा वद्य। अशुकरस्व सेव कराया धनमहाया द्रव्यमहाया देतृ। देयत व भस्मभस्मविभविषादो कन्यारी विबिधोचित्रित्व देवानंरथ।

Vide Sūbbaryya v. Anant 53 Mad. 84, where A had a son S by one wife and a son S1 and three daughters D1, D2, and D3 by another wife and Samed A and S1 for partition and D1 was married after the institution of the suit, one-third of the marriage expenses of D1 were deducted from the one-third share of S1 and as regards one-third of the marriage expenses of D2 and D3 (which were yet to be incurred) his share (one-third) was charged with one-third expenses of marriage, but it was held that he was not liable for the marriage expenses of the daughter of his brother S 1.
Mode of partition and allotment of shares.

Before allotting shares provision must be made out of the joint family property for the payment of joint family debts, for the personal debts of the father that are not immoral or illegal, for small gifts of affection made by the father, the maintenance of disqualified coparceners and female dependent members and for marriage expenses. Vide Manu VIII.166 (as to family debts), Yaj II.117, Nar. (dāyabhāga 32) and Kāti 850 (for payment of father's debts and gifts of affection) and 542-43 (for the various legal necessities). If brothers want to separate and some of them are already married and others are unmarried then provision must be made for the samskāras (such as marriages) of the latter from the joint family property. Even Kautiliya makes provision for the marriage of unmarried brothers and sisters 1181. Yaj II 124, Nar. (dāyabhāga 33), Br. (S.B. E. 33 p. 373 verse 21) lay down that the samskāras (upanayana, marriage &c.) of younger brothers must be provided for out of paternal wealth 1182.

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1179 a. कामप्रकारोऽस्मि शरीर विभागस्। अध्यात्मः भीमः भीमाधिनां च वृत्ता शरीर विभागः। ततार्थम् 850 q by सहस्रिह् II p. 273, वपूः, लिङ् p. 446 (reads रिङ् for रुणि)। The verse is quoted in Potaptho v Pappuvayyangar 4 Mad. I (F. B.) at p. 49.

1180. कृत्वापरस्मश्रेष्ठेऽहार्ते व्यवहिते एव। उपहारंभिते च विविावपद्धतेऽहुऽ ततः। कामप्रकारोऽस्मि शरीर विभागः। एकस्व वस्त्राद्वेयः कृहुदेखन्त्रा चतुष्पच्च प्रभुवः। तरसार्या 542-543 q by अपराधः p. 647, सहस्रिह् II pp 174-175, विष्. c. p. 56 महोऽस्मि।

1181. सन्निविद्यसमसनिविद्यमैव वैभवमिः क्रुः। कामप्रकारः श्राद्धिनेन। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां। अर्ध-श्राद्धः भीमः भीमाधिनां।

1182. This rule, according to Yaj II 124, was restricted to brothers only and was not to be extended. If, for example, there is a joint family consisting of several cousins with their sons and the marriages of some of the sons of the cousins are performed at the expense of the joint family, then when a suit is filed for partition no provision can be made for the marriages of other sons of the cousins. Vide Ramlingsa v Narayan L. R. 49 I. A. 168 In Jairam v Nathu 31 Bom. 54, it was held that in a partition suit (Continued on the next page)
It has already been seen that a father could during his life time separate his sons from himself and also among themselves and that he could assign shares of property to his sons. This power of the father is indicated even in the Tai, S. III. 1. 9. 4 (quoted above in note 1055) which refers to the story of Manu having distributed his wealth among his sons. It is argued by Ap. Dh. S. II 6. 14. 11 that, as this Vedic text (Tai. S.) does not expressly state that any difference was made by Manu as to the shares of his sons, the division must have been equal, that therefore the preference of the eldest son is forbidden by the śāstras and that when the Tai. S. II. 5. 3. 7 states that "they distinguish the eldest by (a larger share of) the wealth" that is not a rule, but a mere anuvāda (a statement of fact) and the Vedic passage only recites what some people do in spite of the rule of the śāstras. The general rule, in the absence of express provision to the contrary, is equal distribution, as stated in Jai. X. 3. 53 (saman svad-ātmukta) which is relied upon by the prima facie view in Mit. on Yaj. II. 265. From the Tai S. it appears that both practices viz. equal division of property among all sons and giving a larger share to the eldest were wellknown in those far-off ages. Ap. II. 6.

(Continued from the last page)

between father and sons, a minor son is entitled to have provision made for his thread, betrothal and marriage ceremonies out of the joint family property before the property is partitioned. In Sundrabu v. Shv Narayan 32 Bom. 81 it was held that marriage is one of the samskaras which both Yājna and Nārada refer to. In 38 Mad. 556 the same principle was established. But in Venkataramudu v. Svaramārshuṣaya 58 Mad. 126 and in Pranayam v. Motiram 29 Bom. L R 1412 it has been held that the decisions in 38 Mad. 556 and in 31 Bom. 54 must be regarded as overruled by the P. C. decision in L R 49 I. A. 168, and in 58 Mad. 126 it was held that an unmarried brother is not entitled to have provision made for his marriage in a decree for partition. It is submitted with great respect that these Madras and Bombay decisions are wrong so far as unmarried brothers are concerned, that they go against the express texts of several writers like Kanittdya, Nārada, Br., Viśvarūpa, Madanapārīṭa (p. 648) and that the Privy Council in 49 I. A. 168 was dealing with the provision for marriages of the children of coparceners and not of brothers.

1182a. It has been held in Ekallu Subharani v. Ekallu Chenchura ghaven (1945) 1 M L J. p 151 that the paternal grandfather has no power to separate his grandsons among themselves and that it is only the father who has this power.
14. Clearly states that in some countries gold or black corn or black produce of the earth is the (special) share of the eldest. Almost all the sūtras and śruti prescribe the rule of equal division among the sons of wives of the same class as the father (vide A. P. Dh. S. II. 6. 14. 1, Bandh. Dh. S. II. 2. 2–3, Maunu IX. 156, Yaj. II. 117, Visnu Dh. S. 18. 36, Kaut. III. 5, Br. S. B. E. 33 p. 371 v. 10, Kāt. 838). Some of these no doubt refer to the special share or provision given to the eldest (called uddhāra). Kaut. says “the father in a partition during his own life should not give a special share to one out of several sons, nor should he deprive a son of a share without any cause (such as blindness etc.).” Kāt. 843 says the same thing in almost the same words. But from certain passages when construed literally (such as Yaj. II. 116, Nār. dayabhāga 15) it appears that the early Indian father often distributed the ancestral wealth among his sons just as he pleased. Nār. (dayabhāga 15) says: “When a father has distributed his property amongst his sons that is a lawful distribution for them (and cannot be set aside), whether the share of one be less or greater than or equal to the shares of the rest; for the father is the lord of all”. To the same effect is Br. (S. B. E. vol. 33 p. 370 v. 4) who adds that if they try to alter the arrangement (made by the father) they shall be punished. But later on these passages were either held to apply to former ages (V. Mayūkha p. 99 says so) or to the self-acquired property of the father (Mit. on Yaj. II. 114) or were so interpreted as to mean that the partition made by the father could not be annulled if it was legal, but if illegal it could be set aside (Mit. on Yaj. II. 116, Madanaratna, Madanapārījāta p. 646). Nār. (dayabhāga 16) himself denies authority to the father to give shares to the sons as he pleases.

1183. एकाचेत घेण्ये तेष्वपरि... योंहि दानादित घोर्ये। रेष्विति, यये तत्त्वं गया| मुँह भोग गृह योद्धारं।... तत्त्वद्विविविधित्वम्। मह. वृंदवदिः करते व्यभिचारपाठ्यशिष्यं बुद्धि। अथवा तत्त्वद्विविविधित्वम् दुःखः भैरव तत्सरस्यपतित्तिसरस्यकृत्यं। अथवा तिन्तुस्य दत्तवति मार्गविद्यान्न्यायविद्याः यथा तस्तवति अवति।... सत्रां हि भगदृढः भाविकं। आप. प. द. II. 6 14. 1, 6–7, 10–13.

1184. उपस्थितमेव रिः ताः तिष्ठेनेव। न चैव नाशिकार्यायाविभिन्नेऽत्यं अर्थाशाखाहि III 5 p. 161, जीतेश्वः श्री पिता नैवेद्य युजस्य स्वं विशेषेन्द्र। निर्मित्येशः चैव नाधिक्यायायान्तिरं विरः। भगदृढः परः 843 Q. by श्रायणार्य I. 84 (p. 56), प. म. p. 439.

1185 विषेशं कु न विनिवेशं, किं नाशिकार्यायाविभिन्नोऽस्य। तेषां हृद यथा। स्तानाधिक रिः पिता, भव। पुराष्ठ (पूर्वभाषां 15): समाजाविद्वा भावाः। विरः येश्वै भैरवस्याः। तथेऽति तल्लितया। नित्यान दस्य श्रायणार्या।... हृद। Q. by अथोपकां p. 717, स्निवल्ल. IX. p. 261, चिन्ह. चिन्ह. p. 413, रिः।। p. 468 (सर्वस्य नारः भृगु नारः)। The रिः, सन्धुक (p. 99) says, "पद्य नारः—निषेध... नारः—दृष्टि तथागार्यायादि").
when he is suffering from diseases, is angry (with a son or sons), or is engrossed in pleasures or pursues paths opposed to śāstras.

The eldest son has received special treatment in all ages down to modern times (vide p 566 above). That treatment took various forms. Sometimes the texts say that the eldest son took the whole estate. Āp. II. 6. 14. 6, Manu IX. 105–107, Nār. (dāyabhāga 5) refer to this view. Manu (IX. 105–107) allows the eldest son to take the entire paternal estate, provides that the other sons should depend for their maintenance on the eldest son as on the father, remarks that the eldest by the mere fact of his birth enables the father to free himself from the debt to the ancestors and that therefore he (the eldest) deserves to get from the father the entire estate.\(^{1186}\)

Another mode of dealing with the privileges of the eldest son was to give him some excellent or valuable article and then to distribute the rest equally. The Tai S. II 2, 2. 7 seems to have been understood by Āp. Dh. S. II. 6, 14. 1 and Baud. Dh. S. II. 2. 2–5\(^{1187}\) in this sense. Manu IX. 114 says that the eldest may get the best of all the items of wealth, whatever is the most eminent and the best of a group of ten cattle. Br. (S. B. E 33 p. 371 verse 8) is to the same effect. Kaut. III. 6 points out that according to Usanas among the sons born of the same mother, goats shall be the special share of the eldest among brāhmanas, horses among ksatriyas, cows among vaisyas and sheep among śūdras, that if there be no quadrupeds the eldest was to take an additional share of one-tenth of the whole property excepting precious stones, since he releases his father from fetters (of Hell) by offering śrāddha. Kauṭ. himself holds that the eldest should get the vehicle and ornaments of his father (after the latter's death); the middle-most his bed, seat and the bronze plate from which the father took his meals; and the youngest should get black grain (like sesame),

\(^{1186}\) Compare the Vedic passages about the three debts owed to gods, ancestors and sages quoted in H. of Dh. vol. II. pp 270 (n. 621), 425 (n. 1008), 560 (n. 1302).

\(^{1187}\) "सेव पुस्ते हृद्वन दर्शनानिदिति कृति। सस्त्र स्वैनाथिविशेषः। यदं घर कृप- क्षुद्रप्रेमी।। इसान्यो व्रज घने निर्लक्षापनतीति कृति।। ग्र. च ल। II 2, 2–3 तिलक- सारपति is explained as तीनपति by स्वैनाथि. II. p 260 and मृग also (II 6, 14. 1) employs the words एकचरेन चैव चौपति (having satisfied the eldest by giving him an excellent article of wealth). श. र. p. 467 explains क्षतेच ग्रज घने निदित्तमानाणि सूलझापति इत्यश्रुः। प्रकृत कृतिः."
iron, domestic utensils and the bullock cart. Harita 1188 says: "at a partition the eldest should get a bull, the most precious wealth, the images for worship and the ancestral house, the other brothers should go out and build new houses or if there be a single house the eldest should get the southern (or best) portion". This special allotment to the eldest is called uddhāra (11b. what is first taken out) in Manu IX. 115–116 and Vishnu Dh. S. 18. 37, and Baud, employs the form "uddharet". There were other methods also prescribed for special distribution of wealth. Gaut. 38. 5 says that the eldest should get one-twentieth of the whole as a special share, a bull and a cow, a cow, a chariot to which horses, asses or mules are yoked and a bull. Manu IX. 112 provides that the special share of the eldest was one-twentieth of the whole property and whatever was the most valuable out of the ancestral property, the middlemost son should get half of this (i.e. one-fortieth part) and the youngest one-fourth of this (one-eighthieth of the whole). Manu IX. 117 states that when no valuable items are taken out for the eldest the latter should get two shares, the son next to him one share and a half and the other sons one share each. Vas. 17. 42, Nār. (dāyabhāga 13), Br. (S. B. E. vol. 33 p. 371 verse 9) also give two shares to the eldest, the latter 1189 making it depend on the possession of learning and good qualities by the eldest. Similarly Nār (dāyabhāga 12), Br. (S. B. E. vol 33 p. 370 verse 5) provide 1190 that when the father makes a division during his lifetime he may retain two shares for himself. Śāṅkha-Likhitā allowed this right to the father only when he had an only son 1191.

1188. विनिष्ठिलिपमाणे गर्भं समुद्रं वृणभक्तस्य १३ वरिष्ठा व लोकाय वृणभक्तां श्रेष्ठ च उत्तराचार्य य एकसिद्धां चौकश्मी कुले।।
1189. जन्मविषयारूपस्येद हथां वृणभक्तयुपतां । समाधानारूपस्येद हथां विनिष्ठेन समस्त सं।।
1190. जीविविषयमेव विनिष्ठ वृणित्तिकां स्वभावं । बुढ़ा. q. by वृणभाम दृश्या. 42 p. 42, वि. r. p. 490, स्वतिष्ठ. दृश्या. p. 266, पत्र सा. III. p. 490 वृणभामारं विनिष्ठित तत्त्वमार्ग द्वि. (p. 218).
1191. म पदार्थां प्रथम प्रभाव हो भाषात्मानं बुढ़ा।।
The special share for the eldest son 625

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The special share for the eldest son 625

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In course of time there was a revulsion of popular feeling against allowing a special share to the eldest son and even to the father. Kāt. (838)\textsuperscript{1192} states that where the parents and brothers divide the whole joint property in equal shares that is a just (or legal) division. Br. (S. B. E. 33\textsuperscript{1193} p. 370 verse 2) declares that the father and sons are entitled to equal shares in lands and houses that are ancestral, but in property acquired by the father the sons cannot claim a share against the will of the father. The V. M. (p. 95) remarks on this that it follows impliedly that in the wealth acquired by the grand-father or other (remoter) ancestor, the sons can demand a partition even against the father's desire.

According to Manu IX. 125,\textsuperscript{1194} if all wives of a person are of the same caste, then the son who is born first (even from a wife who is junior i.e. married later) is the eldest son and that among twins the one that is born first is the eldest (verse 126), just as in the Subrahmanya\textsuperscript{1195} texts the invocation of Indra is made by the name of the first-born. But if he has wives of different castes then the son of the wife of his own caste is the eldest (though born later) and the son of a wife of a lower caste though born first would be postponed. Devala\textsuperscript{1196} quoted in V. R. p. 477 and V. C. p. 128 says the

\textsuperscript{1192} Sūkta śrutam atreyaśāstraḥ brāhmaṇadiśāntam utṣasī. 
\textsuperscript{1193} gāt. 838 q by śrutīśchara. II p. 260, subhadrā (folio 91 b), va śrutisūtra p. 98, va, m p. 448 which last remarks "mātānurūpaḥ kudācasya pravasanaḥ ca samyakānyayam dhanayam annaṁ. " 'āt oṣadhiśvaroḥ ca sarvāt sarvāt samādyottamāt pravasanaḥ. " 
\textsuperscript{1194} gāt. 1193. kātāravyāt kātāravyāt kātāravyāt kātāravyāt. 
\textsuperscript{1195} gāt. 1193. va śrutisūtra p. 95 which adds 'ādityaśāstraḥ pravasanaḥ sarvāt sarvāt sarvāt sarvāt samādyottamāt pravasanaḥ. " 
\textsuperscript{1196} gāt. 838 q by va śrutisūtra p. 477 which adds 'śrutīścharaḥ pravasanaḥ sarvāt sarvāt sarvāt sarvāt sarvāt samādyottamāt pravasanaḥ. "
Seniority among twins

same as Manu IX. 125. Manu IX. 123 and Gaut. 28. 16 appear to conflict with Manu IX. 125 and probably refer to some other ancient text or opinion The V. Mayūkha (pp. 97–99) notes that in some medical works and in the (commentary on the) Bhāgavata Purāṇa III 17. 18, it is said that among twins the one born later is deemed to be the elder, but that this, being opposed to the indications contained in the Vedic Subrahmanya formula and in Manu IX. 126, has no bearing here (but only in medical matters). The Nirmayasindhu (III Pūrvārdha p. 251) makes a reference to the Bhāgavata.

General feeling went so much against allowing a special share to the eldest or allowing the father to make an unequal division among his sons, that such action was condemned in the same breath with myoga,1196 or the sacrifice of the cow called Anubandhyā. It is very instructive to follow the arguments of the Mit. and other writers on this point. The oldest extant commentator, Medhatithi, on Manu IX. 112 shows that even before his time there were writers that held that the texts of Manu on myoga and on the special share to the eldest at a partition were in vogue only in bygone days and not in their days, that the rules of the smṛtis were conditioned by time and country, just as satras of long duration, though declared in the Vedic texts committed to memory by Vedic students, were not being performed and just as Manu (I. 85) declares that the dharmas were different in different yugas. But Medhatithi1197 does not accept this reasoning; denies that different dharmas are prescribed for different yugas and holds that there is no restriction as to the dharmas to be performed in a country. Though satras may not be performed now still it is possible to perform them. The argument of the Mit. on Yaj.

1196. For myoga vide H. of Dh vol II pp. 599–607. The anubandhyā (or anu- bandhyā, a barren cow) was sacrificed after the Udayaniyā tests performed at the end of the Agnīstoma. Even in the times of the sūtras (such as Āp Srauta XIII 24. 10 and Kāt Srauta X, 9. 14–15) āmiksā (curds mixed in heated milk) was optionally offered. Vide, H. of Dh vol. II pp. 1200–1201.

1197. इनमें त्रिवर्तिनीप्रज्ञारूपातत्त्वप्राप्तात्मकानिर्देशों न लगाये | अतःस्त्रियें निलिकान्तकालिकाजीयांमितिषे केषितं। ... तत्राः त्रिवर्तिनिप्रज्ञाप्रयुक्तां उपदिव्या नामकेय: | नदिये- मदीपादि on मद इक्षु. 112.
II. 117 is briefly as follows:—Unequal division though found in the sāstras (e.g. Manu IX. 105, 112, 116, 117, Yāj. II. 114) should not be practised because it has come to be condemned (or has become hateful to) by the people, since there is the prohibition (in Yāj. I. 156) that an action, though prescribed in the sāstras, should not be performed when it has come to be condemned by the people, since such an action does not lead to the attainment of Heaven. For example, though Yāj. I. 109 prescribes the offering of a big ox or a goat to a learned brāhmaṇa guest, it is not now practised because people have come to hate it; or just as, although there is a Vedic text laying down the sacrificing of a cow “one should sacrifice a barren cow called anubandhāṣa for Mitra and Varuna”, still it is not done because people condemn it. And it has been said “just as the practice of nyoga or the killing of the unubandhāṣa cow is not now in vogue, so also division after giving a special share (to the eldest son) does not now exist.” Apatamba also (II. 6. 14. 1–14) prescribes equal division, refers to the view of some that the eldest takes the whole estate, shows that allotting a special share to the eldest is the view of some and refutes it as opposed to the sāstras by quoting the Vedic text “Manu divided his wealth among his sons”. Therefore unequal division though found in the sastras should not be practised as it is opposed to popular sentiments and to the Veda and so Yāj. (II. 117) gives the restrictive rule that in partitioning there must be equal division. The Sm. C. (II. p. 266) tells us that Dhāresvara also did not discuss passages like Manu IX. 112 since he said that the practice (of uddhāravibhāga) had been altogether given up by the people.

\[1198\]  अर्थ विपिनी विभागी वाक्वल्लमित्रादिरी मोक्षविविधालुचारकारीः। अहर्वत्म वीरविन्धे धर्मयोगचरणं ई-ृतिः विनेपतात्। यथा-वहोऽसम च सहस्त्रं तथा शैवियाजाएत| हि विविधालुतलोकविविधसाक्षातत्। यथा धर्शकृतावरणी शाक्तसाक्षातलाभसक्षात। जयां धर्मयोगसाक्षात् शाक्तसाक्षातसक्षातः।

\[1199\]  एकत्र विपिनी कामः। स्महारिः विन्द्रवयायादिरी मोक्षविविहित् विनेपसोऽसम। विविधा

The verse विनेपताः is attributed to the सुकितादिक्षरत्र by the सुधरि (folio 92r) and विने, p. 443 and to the सहस्त्र by सुकितादिक्षरत्र II. p. 266 which reads अर्थियादिनिः and explains अर्थियादिनिः कर्तृस्वादिनिः विनेपताः। The विने, p. 414 ascribes it to श्रवणकातसे, the पर्व, यत्र. III. 492, विनेपताः p. 219, and others attribute it to संबंधारां।
The Sm. C. finds fault with Viṣṇavatīra for saying that just as the offering of an ox or a goat to a learned brāhmaṇa is not practised because the practice of the śīstas is against it, so uddhāra is not practised. It says that when there is a conflict between a smṛti text and śistācāra, the latter is the weaker (of the two) and cannot refute the smṛti text as laid down by Vas. I 4-5. Further not offering a bull cannot be said to be śistācāra, but it is really the absence of śistācāra. The Sm. C. finds fault with the Mit. for saying that people have come to condemn a special share for the eldest. It says that, on the contrary, if a special share is given to the eldest who is endowed with learning, good qualities or holy actions then people commend such a procedure. The Madanaratna quotes the verse “yathā niyoga &c.,” and a verse from the Adipurāṇa. The V. P. (pp 442-443) generally follows the Mit., but criticizes it by saying that there is no real śruti-vrddha (opposition to a Vedic text). If that were so, as śruti (the Veda) is promulgated for all ages, unequal division would be forbidden in all ages and it would follow that the particular śruti passages speaking of

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1200. अन्वयं हृद्यान्तिः धर्मसम्प्रवर्धना हु। इति योगीरसम्बन्धात्। अन्त तोष्णं पदेन मुद्यते। इत्यमर्त्यांतिः दुःस्मायते मतिनिधिः क्षचावेदिः।। अन्तः परमेश्वरसम्प्रवर्धिः। शास्त्राद्विविधिः प्रविध्यते ।। उद्वत्त्वामिष्यमन्यं-विद्रोहम् नासर्वपलायनकृतीयमन्यतिः।। द्विविधिः सहस्राद्विविधि।। भ्य. म. p 442. It should be noted that विध्यासि reads the verse of Yāj. as अस्वर्न होक्तमिण्डे and takes अलस as (अ + श + अल past p participle of अल) ‘अस्त्रतयं अस्वर्नत। अस्त्रपतिर्विकतिर्विविधिः।। He then notices another reading लश्वि which means अस्त्रामन्तर (not bringing about welfare in the end). He further explains ‘तोषों कर्मसंग्रहं ये जनानि से होक्तविवी नववायः। तैैंति नान्नरेद।।'
unequal division are without authority, since it (unequal division) could not have been practised in other ages also (but as a matter of fact it was); besides Baud, sets out another Vedic text which mentions unequal division. The V. P, desiring to guard against the rather wide statement that whatever is condemned by the people should not be practised holds that the word "loka" in Yaj. I. 156 means "yuga"; otherwise there would be confusion about what is proper conduct and what does not lead to Heaven. The condemnation by low or ordinary people who are quite innocent of śāstras cannot make an action incapable of leading to Heaven, since such people might condemn the hṃsā (slaughtering) of the animal offered to Agni and Soma. The above discussion illustrates how practices once recognized by Vedic passages and by the people gradually fell into disuse and how reason and the common sense of ordinary people asserted themselves even against Vedic and smṛti texts. The Mit. is very clear in its statement that whatever comes to be hated by the people in general should not be practised, even though it was once practised and has the support and authority of Vedic and smṛti texts behind it. Those who desire change in social customs and the practices of the people in various directions rely on this text of Yaj. and on similar texts 1352 of Manu IV. 176 and Vism Dh. S. 71. 85 and on the Mit. for authority. Orthodox writers like Mitramiśra therefore have to twist plain words like "loka", since they cannot tolerate the idea that common people can have anything to say in what these writers believe to be the injunctions of the śāstra. Instead of candidly saying that ancient practices came to be modified by common people, writers like Mitramiśra say that common people should not be listened to in these matters, that each yuga has its own peculiar practices and that common people have no authority to change śāstric practices prescribed by the texts for a particular age. It is sheer quibbling to say that not offering a bull is not śāstācāra, but absence of śāstācāra; what is clear is that common people abhorred the practice of niyoga and the killing of a cow in a sacrifice and writers of śātras and smṛtis fell into line with them and prohibited such practices in the

1352. परिस्थिति-दृष्टिजोतिः च सन्ता धर्मविजितोऽस्मात् । धर्म-चारणसौरियोऽदृश्यतिकुष्टेऽव । धर्म-चारणसौरियोऽदृश्यतिकुष्टेऽव ।

परिस्थिति-दृष्टिजोतिः ।

विना ।

सन्ता धर्मविजितोऽस्मात् ।

विना ।

परिस्थिति-दृष्टिजोतिः ।

सन्ता धर्मविजितोऽस्मात् ।

विना ।

सन्ता धर्मविजितोऽस्मात् ।
Kali age, though they were either permitted or (even) enjoined by the Vedic texts; that is, the voice of the common man or his revolt was allowed to prevail over the word of the sacred Veda.

Though the assignment of a larger share to the eldest son or giving him the whole property ceased to be generally prevalent, vestiges of it are still found. There are certain estates in the nature of zamindaries or a rāj that are impartible and descend by the rule of primogeniture to a single heir. Vide Baboo Gunesh Dutta v. Maharaja Moheshun 6 Moo. I A. 164, Neelkasto v. Beer Chunder 12 Moo. I A. 523, Mohesh v. Sah ughan 29 I A. 62, Ram Nundun v. Maharani Janka 29 I A. 178 for examples of impartible estates. Sometimes by custom certain estates such as Deshmukh and Deshpande vatams have been held to be impartible. Vide Ramrao v. Yeshvantrao 10 Bom. 327 and Gopalrao v. Trimbakrao 10 Bom. 598. In certain other cases a larger share (called neetthānēva or motap) has been allowed by custom to the eldest son at a partition. Vide Mamkchand v. Hiratal 30 Cal. 45 (P. O.), Pruthusniga v. Umadasniga 6 Bom. L. R. 98, Malubhai v. Sursangji 7 Bom. L. R. 821.

The following propositions may be laid down about the allotment of shares on a partition: (1) When there is a partition between a father and his sons each son takes a share equal to that of the father; (2) where the partition is only between brothers all of them share equally; (3) on the death of a member leaving male issue his right to a share on partition passes to and is represented by his male issue; (4) when there is a partition among members who are uncles and nephews or cousins, the allotment is per stirpes (according to the stock) as regards each branch and per capita among the members of the same branch. This rule is expressly laid down by Kaut-

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123. अनौपका कहीं चु जाते अधूरुपात्मक निश्चियस्यां जे रेखा। शोद्धार्यासन्माचे- विविधार्थां विद्वतो दुर्प्रभासम। अर्थात् इ III, 5, अनौपकाप्रायां हेम पिद्यते अवकाशना।
य न. 1068. समवेत यथा घरावास सदा तत्र समावेशिनि ततावा बिनमसग्रोऽ विलक्षणम्। 
युर्य यु अपराध के p 727, शुभविच II p 278, 
यथा भि p 424, भि t. p. 481-82, अविभाजनानियो जै में भिन्न विविधाविभिन्न। कुर्सित जीन वें घन जै विज्ञानादयिं में भिन्न तु भिन्न विविधास्या या हृदात् स प्रयोगिन्न वातिलिये अधूरुपात्मक माहू। 
(Continued on the next page)
III. 5., Yaj. II. 120, Br. (S. B. E. 33 p. 372 v. 14) and Kat. (855–56). This last rule requires to be explained and illustrated. Yaj. II. 120 concisely states: “in the case of those who claim through different fathers, the assignment of shares is according to the fathers”. Kat. says: “if an undivided younger brother dies, he (the elder brother or the other brother) should make the son of the former a partaker of the ancestral wealth, when he has not obtained from his grandfather livelihood (i.e. share of heritage); he should obtain from his paternal uncle or the uncle’s son the share which his father would have got (if alive); that very share would be the share according to law of all the brothers (who are the sons of the deceased brother). Or even a son (of that son of the brother dying) would obtain that share; beyond this (i.e. beyond the grandson of the deceased brother) there is cessation (of the right to demand a share)”. It was stated that in the ancestral property (putāmaha dravya) sons and grandsons equally have rights by birth, but in the case of the grandsons assignment of shares is made to them through their

(Continued from the last page)

lucidly explained in Moro v. Ganesh 10 Bom H. C R. 444 (at pp 461, 465–67) and are quoted in Dobi Parshad v. Thakur Dutt 1 All 105 (F B.) at p 111 On these verses of भाष्यानम् the श्रवय (p. 101) says that they do not refer to undivided co-parceners, but rather to those who are re-united. Why it says so is not clear. The first verse of Kat. starts with the words अविभक्तविभक्ताः and therefore the topic is that of undivided family and there is no express indication that it has changed to reunion in the following verse. The reason appears to be that निसिद्धार्थ takes the verse of द्वेसक ‘अतिभक्ति’ एव परिवारवधान सदाथ जयते (दूसरी दार्शनिकान्त) शास्त्रपादुपंशुविद्वतिः सिद्धार्थाः as referring to re-union on account of the word जयः in it. The words अतिभक्ति (in द्वेसक) and निसिद्धार्थ एव शास्त्रपादुपंशु (in शास्त्रान्वयन) mean the same thing and so निसिद्धार्थ probably thought that they referred to the same subject. The interpretation of द्वेसक (by शास्त्रपादुपंशु) is forced and is opposed to the explanation of most works like the विठ्ठुविनाकार (p 482) and सर्वप. p. 449, सुनिधिः श्रवय. II p. 279 They take अविभक्तविभक्ताः as a dvanda compound meaning ‘those who are undivided’ and ‘those who are divided’, while शास्त्रपादुपंशु takes that word to mean ‘those who being once undivided are divided’ (i.e. as a कर्मावलम्) सह वस्त्रताः—aeq. to the other digests means either ‘who dwell together’ (in the case of the undivided) and ‘who reunite’ (in the case of the divided). ’अविभक्तविभक्ताः’ एव शास्त्रपादुपंशु श्रवय एव शास्त्रान्वयन् एव आम। शास्त्रान्वयन् ततुपादुपंशुविद्वतिः सिद्धार्थाः (१००) श्रवयः प. ४५२, शास्त्रपादुपंशुविद्वतिः शास्त्रान्वयन् एव (१००) शास्त्रान्वयन् ततुपादुपंशुविद्वतिः सिद्धार्थाः एव शास्त्रान्वयन्। वस्त्रताः सह वस्त्रताः (Sarv. p. 449). Vide Moro v Ganesh 10 Bom. H. C R. p. 444 at pp 465–68 for several objections to the explanation of Devala’s verse offered by Nilakantha.
fathers and not in their separate individual capacity. This may be illustrated by some examples.

Suppose A, B, C, D, E, F, G, H, J, K formed a joint family and that A, B, C, D all die without making a partition, leaving two sons F, G, and D dying leaving three sons H, J, K. If E, F, G, H, J, K want to partition, then these six will not take one-sixth each, but the partition will be through their fathers i.e. E the only son of B will take one-third, F and G (the two sons of C) will take one-third (i.e. each will take one-sixth) and H, J, K will together take one-third (i.e. one-ninth each) The same will be the result if only A, B, C die, leaving D to K. Here D, the uncle of E, F, G, along with his three sons H, J, K will take one-third only.

To take another example.

Suppose A the head of the joint family dies leaving a son B, two grandsons C1 and C2, three great-grandsons F1, F2, F3, and one great-great-grandson K. Here K cannot demand a share, as he is beyond 4th from A the common ancestor A that died last. Therefore the joint property will be divided per stipes into three parts, B taking one-third, C1 and C2 together taking one-third and F1, F2, F3 together taking one-third.

One more illustration may be given.
Suppose A, the head of a Hindu joint family, dies leaving four sons, B, C, D, E and five grand-sons, B1, B2, B3, C1, D1 and then B dies. Then B3 receives his share, which is one-third of one-fourth (=one-twelfth), goes out of the family and the rest continue joint. Then C dies, then D, then E, and then B2. Then B1 sues C1 and D1 for his share. Here if we again apply the rule of per stirpes division, the property that remained at the date of the suit of B1 will be divided into three parts and B1, C1 and D1 (who represent three stocks, B, C, D) will each get one-third of that property. This was so decided in Pranvundas v Ichharam 39 Bom. 734. The Madras High Court, however, holds that the rule of per stirpes applies only when all the coparceners desire a partition at the same time and that if only some members separate at one time and others on a later occasion, regard should be had to the share allotted at the first partition in computing the share to be allotted at the second partition. That is, according to the Madras High Court in the above case B1 will be entitled to one-third minus one-twelfth (which latter was allotted to B3 when he left the family). The Madras High Court says that its views are based not on strict principles of Hindu Law, but on necessary considerations of equity. Vide Manjanatha v Narayana 5 Mad. 362 and Narayana v Shankar 53 Mad. 1 (F B at p. 6).

Manu (IX. 47) emphatically states: 1203a “once is a partition made, once is a maiden given in marriage, once does a man say ‘I shall make a gift of this or that’; these three are done only once by the good”. This means that a partition once made is final and cannot ordinarily be reopened. But there are exceptions to this rule. One viz. about the posthumous son born after partition has already been mentioned above (pp. 595-597). Br. 1204 (S. B E 33 pp 373-74 verses 24-26) says, "If a man

1203a. सहचरिः निवत्तिः सहारक्षय मद्यर्थः। सहश्राह द्रुमालि चिन्नेतालि सत्यं सहक्रिः॥ महा IX. 47 which is the same as नारायण (सीतारंग 28) and बनर्जी 294-295.

1204. गीतारागर्ग स्वक्त चम्येकु चम्येकु समावेशस। तहस्तस्वस्यवर्णम् मद्यर्थम् हृदेषु॥ तत्तदेषु प्रत्यथात् सत्यम् तस्मात् परस्यवर्णम् ॥ न तद्रुव्यतिर तस्मात् सत्यम् तस्मात् परस्यवर्णम् ॥ न तहस्तस्वस्यवर्णम् प्रत्यथात् सत्यम् तस्मात् परस्यवर्णम् ॥

1204. गीतारागर्ग स्वक्त चम्येकु चम्येकु समावेशस। तहस्तस्वस्यवर्णम् मद्यर्थम् हृदेषु॥ तत्तदेषु प्रत्यथात् सत्यम् तस्मात् परस्यवर्णम् ॥ न तद्रुव्यतिर तस्मात् सत्यम् तस्मात् परस्यवर्णम् ॥ न तहस्तस्वस्यवर्णम् प्रत्यथात् सत्यम् तस्मात् परस्यवर्णम् ॥

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1205. (S. B E 33 pp 373-74 verses 24-26) says, "If a man
leaving the country common to himself and his co-sharers goes to another country, his share must undoubtedly be given to his descendant when the latter comes back to the original country. Whether he (the descendant) be the third or fifth or even seventh in descent (from the man who left the country) he would get the share that descends hereditarily provided his birth and family name are ascertained. The gotajas (agnatic members of the family) should allow (a share in the ancestral) lands to the descendant of a man whom the maultas and neighbours know to be a co-owner (in the lands) by descent, when he comes (after a partition) to demand his share”. The V. R. explains 1205 that the rule of Devala (given above) about a claim to a share being allowed up to the fourth applies when all the members stay together in the same place or country, while the above rule of Br. allowing even the seventh in descent to claim his share after a partition has taken place applies where such descendant and his forefathers had migrated to a distant land. These rules of Br. indicate that, even after a long time, a descendant could claim his share in a joint family estate and no bar of limitation was allowed.

Another rule is that where some property of the joint family had been fraudulently concealed by one member and was discovered afterwards, or where some property was left out from partition either through mistake or accident, such property should be divided according to their shares among the persons who made the first partition. In this case there is no reopening of the partition once made, but there is another partition.

Manu IX. 218, Yaj II. 126, Kaut. III. 5 and Käit 385-36 lay down 1206 this. Käit says: 'If (joint) wealth was concealed, but

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1205. पत्ता चतुर्भात्तिविश्वासविद्याविदा ज्ञानाधीन तत्वं सहवासानि। अर्थं उ दूसर्विश्वासाधीन विद्याधीन। भवीतां प. 541. The स्त्रिति, II. p 308 states that the last verse applies only to lands (i.e. a partition can be reopened only as to immovable property). विमोचन दानों वित्त-वित्त सम्बन्धों अथवा राज्य बांधन ज्ञाता विरोधैः। हरसभन्धन VIII 4 Compare Art. 127 of the Indian Limitation Act.

1206 तुर्जितकम्योऽस्तुतस्तवक्षुस्तिविद्याधीश्वरस्थति तथा ज्ञातसाध्व। अर्थशास्त्र अर्थशास्त्र III 5. पदस्यं सत्तिरं वर्ण दूरवासाय तस्मात्। मन्त्रालय वाणिज्य सार्थभाषी हि पिता तर्कं। 'अयोग्ययापूर्वक् दय ज्ञातसाध्व। पदस्यं सत्तिरं वर्ण दूरवासाय तस्मात्।' कार्यं 885-886 q by अर्थशास्त्र pp 732-733 (which reads last half as हस नर्त च पुनर्धर्य महानं च ज्ञातसाध्व), स्त्रिति, II pp 308-309, हरसभन्धन XIII 4 p. 221, कि त 526 विमोचन दानों वित्त-वित्त ज्ञाता विरोधैः। हितों से या II. 126; श्रेष्ठ गण्य विविधाकेन रूप बदलनार्थ वायु ज्ञातसाध्व। कार्यं तृतीय सत्तिरं च ज्ञातसाध्व। हरसभन्धन XIII 3.
is afterwards discovered, the sons should divide it equally with their brothers in the absence of the father (i.e. even after his death). Whatever is concealed from each other (by the co-sharers) or what was divided in an unjust manner and whatever was recovered (such as debts) after (partition) should be partitioned in equal shares. This is the view of Bhrgu.

In the Ait Br. (VI. 7) it is said: ‘He who deprives a person entitled to a share of his share, him he (who is deprived) punishes (or destroys). If he does not punish (or destroy) him (the depriver), then he punishes his son or grandson; but he does punish him’. Manu IX. 213 declares that even the eldest brother who through greed deprives his younger brothers (of their shares) ceases to be the eldest (i.e. forfeits his position as the eldest), is deprived of his (special) share (as eldest) and should be punished by the king. From these passages it follows that fraudulently concealing joint property or depriving a person of his share is condemned. This leads on to a divergence of views among commentators and digests. If a man conceals joint property at a partition, is he a wrongdoer or not? What he conceals is partly his own. Therefore the Dayabhaga (XIII. 8) holds that there is no theft in this case, since a thief is commonly understood to be one who knowing that some thing belongs to another, makes it his own without any ground for so doing; while a co-sharer cannot be said to be no owner at all of the joint property. The Dayabhaga (XIII. 11–12) says that Visvarupa and Jitenadiya both held the same opinion that even if technically it may be called theft, still there is no sin attaching to it as smritis allow him also who conceals joint property to share in it at the subsequent partition. The Vivadaratnakara (p. 526) states that Halayudha also held the opinion that in suppressing some joint property the co-sharer did not incur the sin of theft. On the other hand the Mit., Apararka (p. 732), V. P. p. 555 hold that in view of Manu IX. 213

1207 यो वै महातित महात्मादुः च चर्यं स याति स प्रदेशं स चैतस्य जगतं नीचे स चर्यं स लघुवेज्यमयमि। ऐ वा VI. 7. This is cited as श्रीराम प्रदेश के the मित्र व. II. 126, in the वा 3. p. 131. The वा नाम. III. p. 566, स. वि. p. 438, ये म. 555 correctly refer to it as श्रुति.

1208 समुद्र निवेद्यस्याहै। अवस्थापत्रायात्वां नातीतत्व चचितामरभासाध्यादृः लेखनोः प्राचीनमित्वास्विरसिष्ठिनियमित्वाः। यदोपयो वा स्कूपयेनस्यादृः विकाशगणयेनस्या स्वेतवेणु। अवस्थामित्वास्यनन्दिनिक्षे महत्त्वम भास्यो न स्थानं। यथावत् XIII. 11 and 13 pp. 224–225
(which declares even the oldest as punishable by the king if he deprives his younger brothers of their due share) and the Arya. Br. there is the fault of theft in case a co-sharer fraudulently conceals joint property. The Mit. and V. P. further rely upon an example derived from the Purvamimansa in support of their view. When a caru’ (boiled food’) of mudga pulse is prescribed and mudgas are not available, some substitute must be employed just as when rice is not available aivára grain may be employed. The parts of mása resemble those of mudga and some one may plausibly say that in the absence of mudgas, a caru of mäsas may be used. To this Jai. VI 3 201209 replies that, since mäsas, vākäsas and kodrausas are forbidden as being unfit for use in sacrifices, one cannot take parts of mäsas as substitute for parts of mudgas though both may be so similar as not to be easily distinguishable. So the general prohibition against depriving another of his wealth holds good even in the case of goods that belong jointly to oneself and to others. The Dāyabhāga (XIII. 16 pp 227–228) tells us that a predecessor of it named Bālaka relied on this very nyāya of Jaimini and finds fault with him. It should be noted however that Kāt. (888) recommends that the king1210 even if a complaint be lodged about fraudulent suppression by a co-sharer should not use force against the fraudulent suppressor but should make him give up the concealed property by persuasion or trick. Br. and Kāt.1211 declare that if there is a suspicion that some joint wealth has been concealed by a co-sharer, the koṭa ordeal may be resorted to.

1209. मतिप्रिय चायलिपियों में तथ्यतिष्ठति। जै. VI. 5. 20, अथ चतुरचतुर्द आर, जियाए जैं वकरा कीदेना अपासिया वे माया हृति। किं तप्रसर्वाध्यायों में मतिप्रियताध्याय नेति। किं चतुर मतिलिपियों सतिति। एवं चतुर दूषेन। मतिप्रिय च न मतिप्रियताध्याय सतिति। अविलिपियों होनुपड़ये न यज्ञार्थाय माया वकरा। कोयलिपियों। यज्ञार्थार्थ एवं सतिति। श्लोक। यथा मैदो च रायों चिन्दो महारतया मयेदुयु अपवित्रया वे माया हृति निषिद्धो न मतिप्रिय हस्ताक्षरासुया यज्ञार्थार्थार्थ एवं हस्ताक्षरार्थार्थ एवं हस्ताक्षरार्थार्थ अधिकृत प्रशांत प्रशांत निषिद्ध। मतिप्रिय वेदेष्टित सिद्धार्थनिनोसूस प्रक्षार्थ भन्ति न जोर प्रस्तर्थ चारार्थ प्रस्तर्थदेव देवोज्ञेश्वरिति सिद्धर्थ। निषिद्धो ब्रह्म च आ 126

1210. चर्यायापूर्त्तं प्रथम वद्यमेव प्रत्येक तितृति। कारण q. by सुप्रसाद XIII 7 (p 222), सुप्रसाद p. 183, वि r. p. 526, व्या म. 556 which says ‘हास भाईतिः निषिद्धविस्मृति प्रत्येक रीतिकारार्थ नेतन सामाजिक सम्बन्धेनिषिद्ध हस्ताक्षरित भोगविशेष्याविशेष्याविन्दुमयों

1211. यहोपसर्वस्त्राध्यायं दोषाक्षरार्थकामिन। इत्यथा न्यायद्रव्ययों किंतु गृहाविश्वेष्य- दुष्पति। कारण q. by सुप्रसाद II. p. 273, वि r. p. 498. The सुप्रसाद quotes a very similar verse of दुस्सून (on the same page) 112. यहोपसर्वस्त्राध्यायं- दोषाक्षरार्थकामिन। । गृहेऽ किंतु रीतिकारार्थ ।
If there was a dispute whether a partition had already taken place, Yaj. II 149 mentions some of the indications that lead to the inference or proof of partition viz. 'the determination of the dispute follows from the testimony of kinsmen, cognates (like maternal uncle), other witnesses, a deed (of partition) and by (the fact of) houses and fields being separately held.' Nar. (dayabhaga 36–41) gives more elaborate rules on the subject viz. that the status of division can be determined from the fact of their transactions (agriculture &c.) being separate, that the separate performance of religious rites is another indication of separation. 'Receiving and returning a debt, the beasts (kine &c.), food, houses and fields and servants must be separate in the case of those who are divided, as also cooking food, performance of religious rites, income and expenditure. It is only divided persons (and not undivided ones) that can become in respect of each other witnesses, sureties or debtors and creditors. People should regard them to be divided even though there be no deed of partition, in whose case these transactions are entered into openly with their co-sharers.' Yaj. II 53 also declares that between brothers, husband and wife, father and son there cannot be, as long as they are undivided, the relationship of being sureties or witnesses for each other or of being debtor and creditor. Nar. (dayabhaga 41) and Kat. (893) state that when for ten years brothers (and other members of a family) reside (separately) doing religious observances separately and have separate transactions, they should be known as separate so far as the ancestral estate is concerned. It is on account of these passages that the courts say that presumably every Hindu family is joint in food, worship and estate and that cessation of commensality is an element which may properly be considered in determining the question whether there has been


1213. Vide Sri Raghunadha v. Sri Broco Kishoro L.R. 3 I.A. 154 (at p 191)
a partition of joint family property, but it is not conclusive.\textsuperscript{1215} Br. says that where there are no witnesses nor a document to prove partition, a conclusion may be arrived at by inference.

A few words may be said about the self-acquired property of the father or grand-father. According to the strict theory of the Mit the son\textsuperscript{1216} acquires by birth an interest even in the self-acquired property of the father, but the Mit makes it clear that the son has no power to prevent his father from disposing of his own self-acquisitions, but has to "give his approval to his father's alienations of his self-acquisitions. The Mit sets out two smriti texts viz. 'though immovable property and bipeds may have been acquired by the father himself, there can be no gift nor sale of them without (calling together or) consulting all the sons. Those that are born, those that are in (their mother's) womb expect maintenance (and therefore) there can be no gift nor sale'. But these have been treated by the Mit. and the Dāyabhāga also as more or less recommendatory. If the father alienates his self-acquisitions without his son's consent he may be held guilty of transgressing a smrti precept but the transaction does hold good and is valid,\textsuperscript{1217} since a fact cannot be altered by even a hundred texts (as the Dāyabhāga puts it). It should not be supposed that the Mit was the first to propound this right as to self-acquisitions. Centuries before, the Vismu Dh. S. 17. I expressly declared that as regards self-acquired property the father has absolute discretion to divide it as he pleases.
Kät. (339) also says that the son has no ownership in the father’s self-acquisition. When Yaj. II. 114 allows the father either to give the best share to the eldest son or to make an equal division among all sons, the Mit. explains that this unequal division holds good only as to the self-acquisitions of the father. Similarly when Nār. (dāyabhāga 12) or Śankha-Likhita says that the father may take two shares for himself, that is with reference to self-acquisitions, acc. to the Mit. Manu IX. 104 stating that sons have no power over property during the life of the parents refers to the self-acquisitions of the parent. In modern times courts have followed the view that a Hindu father (or any Hindu person whatever) may give, sell or bequeath by will his self-acquired property (whether movable or immovable) to any body he likes (vide Rao Balwant Singh v Rani Kishori 25 I.A. p. 54 at pp. 67-68 where the two verses cited by the Mit were held to contain only a moral precept and not a rule of law capable of being enforced).

Mr Kishori Lal Sarkar in his Tagore Law Lectures on the Mīmāṃsā rules of interpretation states (p 21) that ‘Mitākṣara bears the impress of Buddhistic influence’. Mr Kishori Lal Sarkar advances hardly any substantial evidence that will bear scrutiny. His reasons are mostly subjective and he refers to no ancient or medieval Buddhistic texts that elaborate the principle of taking property by birth or the rule of propinquity in deciding questions of inheritance, which two are the most fundamental tenets of the Mitākṣara system. It appears that the evolution of the son’s right to partition, of his equality with his father, of the absolute rights of a person to his self-acquisitions was a gradual indigenous growth and had nothing to do with Buddhistic thought. Buddhists had hardly any independent set of juristic ideas or works different from those of the Brahmancal jurists and in medieval times countries like Burma professing Buddhism turned to Brahmancal codes like that of Manu for regulating succession, inheritance and allied

1218. रैतामह समान स्पालितः पुरुषम् चोभयोः । सर्वं चोपाभिः पिन्या न उपः।
स्ताम्यक्षरिः कारणः q. by स्पालितः II. pp. 279-280, यथा. ति. p. 410.
principal and subsidiary sons

III]

Vide pp. 559-560 about the origin of Dayabhaga doctrines.

In the preceding pages reference has been frequently made to sons, to their rights in ancestral property by birth and to their shares on partition. It is now time to refer to the various kinds of sons, principal (mukhya) and gana (subsidiary or secondary).

In H. of Dh. vol. II, pp. 560-561 passages from the Rgveda, the Taï, S, Sat. Br., Ait. Br., the sūtras and smritis emphasizing the importance of a son for the spiritual welfare of a man have been cited. The principal purposes served by the birth of a son are succinctly stated in the Ait. Br. 33. 1. viz. the son enables the father to pay off the debt he owes to his ancestors, to secure immortality (amritatva) and heavenly realms. These were the main purposes deemed to be served by a son in most remote times. Manu (IX. 106-107) and Yaj I. 78 also mention these benefits. The desire was to continue and perpetuate the family (vamsasya avacchedah as the Mit. has it) and to provide for the performance and preservation of religious sacra and offerings. This desire was common in ancient societies almost everywhere. The Sat. Br. XII. 4 3. 1 (S B. E. vol. 44 p 157) states 'the father in later life subsists on the son and the son in early life subsists on the father'. The Nirukta 1220 (III. 4) quotes a śra verse, thou

1219. Vide 'Notes on Buddhist Law' by John Jardine and 'Principles of Buddhist Law' by Chan-toon (Rangoon, 1894) for the Dhammathats (Dharmaśastras), their origin from Indian Codes and works and contents and Nah Kön Bwun v. U. Schw. Gone L. R. 41 I A. 121 pp. 131-139 for detailed remarks on the 36 Dhammathats of which the Manu Nyay is the most important and which were derived in their remotest origin from the laws of Manu. In 'Champa' by Dr. R C Majumdar in Inscription No 65 of Jaya-Indravaranman II dated śaka 1010 it is said 'He followed 18 titles of law prescribed by Manu ('Manumārga')' Manu VIII, 3 employs the words अध्यात्मम् सामोऽ तिष्ठति Vide also 'Indian influence on the Literature of Java and Bali' by Himansu Bhushan Sarkar pp 93-94 and 104 for the influence of Manu on Javanese and Balinese codes and Dr. Majumdar on 'Savaradvipa' part II pp. 1-23

1220. दृश्वतवश्चैवायपमप्रदात। अध्यात्माचारसंस्थायति इम्याविभिन्नमल्लि अग्नि त् इ दुजयमाणे स जीव संप्रस्थतश्च शासन। विषय: III. 4 This verse is found in जीवनीकृति अरारक्ष 4 II and is prescribed as a mantra in the अष्टमात्मार्त्थa II. 11. 33 for recital in jātakarma in अष्टमा च 1. 15 12 and सत्त्वकम च I. 18. 6 Vide H of Dh vol II p 235 n 537. It occurs also in की. च 2. 2, 15-16 (as a quotation) and in मुक्तिनिर्विन्न्ति (q by वि. र. pp 554-555). The first half occurs in जीवनीकृति. VI 4 9 in another connection and the whole of it in अष्टमात्मार्त्थ 74. 63.
art born from each of the limbs, from the heart (of the father),
thou art indeed one's own self called son; mayst though live
for a hundred autumns!'. Gradually the idea arose (probably
suggested by etymologists) that the son saved the father from
the Hell called puṭ,\(^{1221}\) as stated by Manu IX. 138 ( = Adiparva
229. 14 = Visnu Dh. 8. 15, 44). The son's close connection with
the offering of pindas to the ancestors is not much emphasized
in the oldest works. But in the sūtras, in Manu and the other
sūtras this aspect of the benefits derived from the son is far
more prominent than the others. In speaking of the pitṛkā-
putra Manu (IX 136) declares 'he should offer pinda' (to his
maternal grandfather) and take the latter's wealth. As three
descendants (son, grandson and great-grandson) presented
pindas to the ancestor, all three had extravagant praises bestow-
ed on them Manu IX. 137 says: 'a man secures the (higher)
worlds through (the birth of) a son, he obtains permanence
(in those worlds) through a grandson, through the son of a
grandson he wins the world of the Sun'\(^{1222}\). The Vismudharma-
sūtra 85. 67 declares\(^{1223}\) 'A man should desire to have many sons
(with the thought) that some one out of them may go to Gayā
or offer the Āsvamedha sacrifice or let loose (in honour of the
deceased father) a dark bull'. Br (q. in Par M. I. 2 p. 305)
states: 'the pīṭras afraid of falling into Hell desire to have sons;
(they think) one of them may go to Gayā and that one will
save us; he will set at liberty a bull, he may perform sacrifices
and execute works of public utility (like tanks, temples and
parks), he will take care of us in our old age, he will offer
śrāddha day by day'. The Matsyapurāṇa 204 (3–17) contains
verses (that are called pūrṇāgāthās, verses sung by pīṭras) which
breath the hankering of deceased ancestors after what

\(^{1221}\) The Br. Yudāparṁapāna I 2 5 quotes 'पुस्तिति चरकसपर्क्षा ह क च नरव
विकु कु पुस्ति चारास्त्य: पुस्तिशिश्चन्ति परव च च'; शाकुहितिष्व य by वि. र व p 555 state
आलमु चरव आस्तित मौन्य: पिरुतुधीयाके युनान्त्यारं यक्षित:।

\(^{1222}\) अद्वैत तीक्षाविवेचरते तीव्रेंत्यास्यमपन्नेऽवि–
पद्यः म् सु. 137. This verse occurs in Vas 17. 5, वै. घ. च. 11 9. 7 (reads
last pāda as नाककेनविविदिति), बक्त्रस्य च. 15. 46

\(^{1223}\) एवव याया बसः हुजा पृथिको गया यानी। नमेन नामागैवेचे नाना ता
पुस्तिशिश्चन्ति। विज्ञायमाणु 85. 67 = मत्स्यपर्वाण 22. 6।तात्त 150 10 = महाभाग 220
32–33 (which reads मूत्रः वाप्तुद्विषेक्यां नानात् &c. सङ्कर (237 39–40) calls this
verse an ancient gāthā and reads as in महाभाग Compare अद्वैताम् verse 55 for
almost the same verse कालस्तिति पितर् पुहुस्यास्यापीतिः। नपत्यं वायुपदि तः काकिन–
स्त्रीसामस्यापीतिः। कारिष्ठां मुनोत्सकष्टेऽवृत्तो तर्पे च। पालिकाशि पुस्तिते चारु
कुर्विति चानवषय। युत. q. by वि. वार. सा. I. 2, p. 305.
they expect their descendants to do such as offering water in holy rivers, śrāddhas, going to Gayā, gifts of various kinds, construction of tanks, &c.

It is not, however, to be supposed that purely secular benefits to be derived from sons were not thought of at all. People were alive to them but those benefits were submerged under the flood of extravagant ideas about the spiritual benefits derived from sons. For example, the Br.¹²²⁴ Up. I. 5. 16, after mentioning the three worlds of men, pītṛs and gods, declares that the world of men can be won only through the son (while in I. 5. 17 there is eulogy of the son and instruction to him that he is Brahma, he is yajña, he is the heavenly world). Nār. IV 5 says¹²²⁵ "fathers wish to have sons on their own account thinking in their hearts ‘He will free me from low and high debits’". Kāt. (551) has a similar verse and makes the meaning of Nār. clear¹²²⁶. Vide above (under rṇādāna pp. 416–417).

Besides the aurāsa, eleven or twelve kinds of subsidiary sons are mentioned by most ancient smṛti writers. Āp. Dh. S. does not recognize any son except the aurāsa. Āp. quotes certain verses which express the view of an ancient sage called Aupajanghani and which are also quoted by the Baud. Dh. S. according to which the aurāsa was to be recognized as the only son (vide H. of Dh. Vol. II. p. 602 n 1417 for the quotation) Āp. II. 5. 13 10 emphasizes that there can be no real gift or sale of one's child (dānam krayadha; maścāpattyaṣya na vidyate). But Āp. Dh. S. clearly shows that it knew that kṣetraja sons were

¹²²⁴. अप जयो नाम लोका श्रवणलोकान्सा पित्तुरुकी वैश्वलोके इति सीताय मुन्दलोकान्: द्वारकेश जननी मात्येन कर्मणा कर्मणा पित्तुरुकी विषया वैश्वलोके। भुव. जय. I. 5. 16.

¹²²⁵. द्वारकेश वितंति: दुमान तालापंश्रितस्वलयात। उत्तमाधिपमायो मासरी मोचाशिवपति। नाप्पु (क्रमांक: 5), कृपणास यो यदलक्ष इन श्रीनाथ्य 173 54। "द्वारकेश वितंति नालापंश्रितस्वलयात। वह होकेतरी लोकस्तितिं श्रीनाथ्य ते हितम्"। 'प्रायः-मानी' इति तुलके विद्वानादत्तमे द्वारकेश दैवतयाददमिलस्यपि।" ति साहो 181.

¹²²⁶. संबंधं द्वारकेशाभिमानिभ्रमन्त्यचारणार्य। विषोषकूट यतलस्मादिश्रित्तिं वितंति दुतान तात्त्या। q by स्मृतिज्य. II. p 168. पारं: मा. III. 263.
raised and forbids that practice. In II. 6. 13. 1–5 it states, ‘sons begotten by a man, who approaches in the proper season a woman of equal caste that has not belonged to another man (as wife) and that has been married to him according to the sāstras, have the privilege to follow the occupations (peculiar to their castes) and to inherit property; if a man has sexual intercourse with a woman who had been married before to another or was not married legally to him or belongs to a different caste, they both incur sin and through that (i.e their sinfulness) the son also becomes sinful’. In II. 10. 27. 2–6 Ṛṣi condemns the practice of myoga ‘a husband (or his elders) shall not appoint a wife who occupies the position of a sagotra to others (who are not sagotra), for they declare that a bride is given to the family (of the husband and not to the husband alone). This (practice of appointment) is forbidden (now) on account of the weakness of (men’s) senses. The hand of even a sagotra is (deemed in law to be) that of a stranger, as well as that of any other person (except the husband). If the marriage vow is violated, both (husband and wife) go to Hell.’ Gaut. 28. 30–31, Baud. Dh S II 2. 14–37, Vas 17. 12–38, Arthaśāstra III. 7, Śankha-Likhita (q by V. R. p 547), Harita (q by V. R. p. 548), Manu IX. 158–160, Yaj. II. 128–132, Nar. (dāyabhāga 45–46), Kāt (q. by V. Nir pp. 434–435), Br. (S. B. E. vol 33 pp. 375–376 verses 33–35, 39–41), Devala (q by Haradatta on Gaut. 28. 32, Dāyabhāga X. 7–8 p 147, V. R p 550), Visnu Dh. S. 15 1–30, Mahābhārata (Ādi-parva 120 31–34), Brahmapurāṇa (q. by Aparārka p. 737), Yama (q. by V. R. p. 147 and D. C. pp. 80–81) enumerate the several sons in different sequences and sometimes under different names also. Taking the order in the Manusmṛti as the basis, the following table will, it is hoped, convey some idea about their number, rank and importance.

1227: सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति। सक्मगुर्वसाक्षरविहितां युध्यस्मविभावति दुर्बत्तेऽष्ठं कर्मित्व सम्भवति। वृद्धेन इति।
### Table of several kinds of sons

<table>
<thead>
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<th>Kind of son (acc. to Manu)</th>
<th>Gautama</th>
<th>Brhadhrayana</th>
<th>Kautilya</th>
<th>Vasishtha</th>
<th>Hārīta</th>
<th>Saṁkha-Lakṣmī</th>
<th>Yaj., Nārada</th>
<th>Brahagupta</th>
<th>Devaka</th>
<th>Viṣṇu</th>
<th>Aulīyā</th>
<th>Yama</th>
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1228. The प्रेम is called सन्ततीन in आदिपरेः 120 33 I understand यज्ञ, परिश्रित and सैन्यिक in the आदिपरेः to be the same as यज्ञ, परिश्रित and सैन्यिक respectively. सन्ततीन: प्रेम, परिश्रित परिश्रितवर्य द्वा: जुनु। परिश्रितकालनी. सैन्यिक्षः धार जातिये। यज्ञ: कृत:। कुर्ऻ्यन्त उपस्थितस्यां च च य। सहेष्ठो ज्ञातिराध्विष्ठ निर्देशितुच्छः। पूर्वपूर्वसायमान सत्य ज्ञातिये जैहुण्य। उत्तमशरास्तिः काय्यशत्रु पृथ्वी-पादिः। आदिपरेः 120. 33–35. I take ज्ञातिराध्विष्ठ as an adjective of सहेष्ठ and निर्देशितुच्छः as खोजः. It has to be noted that the अत्युक्तस्यां (49 3–11) mentions 20 sons in all and employs a peculiar terminology in several cases, viz औस (also called अनन्तस्य), निर्देशितु (for क्रेश्य), महतु (meaning अनियोगित्व), पतितात्सरामायण्यां जात, and speaks of द्वृत, कृत, अध्ययन (अउस्त), 6 अवर्ड्वर्तन (िै अउस्तो), महतीन and 6 अर्घ्य (चायुण्य, ज्ञात, वैश, मान्य, वास्तव and बल). The Anusasana (49, 11) expressly states that it is not possible to deny altogether the statuses of sonship to these sons (पुष्प होतेन सहेष्ठो ज्ञातिराध्विष्ठ कृतां नासा) It then says (49. 20–21) that when a boy is abandoned by his parents and is brought up by another and his natural parents are not known, he belongs to the caste of the man who brings him up and that even for कालित्व and अपराध (अउस्त) sons सांकाराः are to be performed as if they were one's sons (49 23–26).  

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1228. The प्रेम is called सन्ततीन in आदिपरेः 120 33 I understand यज्ञ, परिश्रित and सैन्यिक in the आदिपरेः to be the same as यज्ञ, परिश्रित and सैन्यिक respectively. सन्ततीन: प्रेम, परिश्रित परिश्रितवर्य द्वा: जुनु। परिश्रितकालनी. सैन्यिक्षः धार जातिये। यज्ञ: कृत:। कुर्ऻ्यन्त उपस्थितस्यां च च य। सहेष्ठो ज्ञातिराध्विष्ठ निर्देशितुच्छः। पूर्वपूर्वसायमान सत्य ज्ञातिये जैहुण्य। उत्तमशरास्तिः काय्यशत्रु पृथ्वी-पादिः। आदिपरेः 120. 33–35. I take ज्ञातिराध्विष्ठ as an adjective of सहेष्ठ and निर्देशितुच्छः as खोजः. It has to be noted that the अत्युक्तस्यां (49 3–11) mentions 20 sons in all and employs a peculiar terminology in several cases, viz औस (also called अनन्तस्य), निर्देशितु (for क्रेश्य), महतु (meaning अनियोगित्व), पतितात्सरामायण्यां जात, and speaks of द्वृत, कृत, अध्ययन (अउस्त), 6 अवर्ड्वर्तन (िै अउस्तो), महतीन and 6 अर्घ्य (चायुण्य, ज्ञात, वैश, मान्य, वास्तव and बल). The Anusasana (49, 11) expressly states that it is not possible to deny altogether the statuses of sonship to these sons (पुष्प होतेन सहेष्ठो ज्ञातिराध्विष्ठ कृतां नासा) It then says (49. 20–21) that when a boy is abandoned by his parents and is brought up by another and his natural parents are not known, he belongs to the caste of the man who brings him up and that even for कालित्व and अपराध (अउस्त) sons सांकाराः are to be performed as if they were one's sons (49 23–26).
Visnu Dh. S. (15. 27) mentions 'yatrac-kvacakopadita' (procreated anywhere) as the 12th and last. The com. Valjayanti explains it in two ways: (1) procreated by a person on a woman, regardless of whether she is his own or another's wife or whether she is of the same caste or not, whether she is married or unmarried, whether her marriage has been consummated or not; (2) the son of a man from a sudra woman not married to him. Even in the last sense he cannot be called sudra (whom Manu IX. 178 and Yaj. I. 91 define as the son of a sudra wife from a brâhmana). Harita as quoted in the V R p 549 mentions a son called 'sahasâ drsta' (seen by chance), who seems to be probably the same as krtriga. The sudra is omitted by several writers (even ancient ones) like Gautama, Kântilya and Harita. Manu speaks of only twelve sons (IX. 158) and does not enumerate the putrikâputra among them, though he speaks of the putrika (IX. 127 and 134 and elsewhere) as equal to the son. It is therefore that Br. (S. B E. 33 p 375 verse 33) states that of the thirteen sons mentioned in succession by Manu the legitimate son of the body (aurasa) and the putrika (the daughter appointed as a son) continues the family. Vas. 17. 13 emphatically declares (dvâdata utsena purâb by purinadrâtâh) that only twelve sons have been noticed by the ancient (sages) and it is no doubt true that most writers generally enumerate twelve. A smrâti text quoted by Haradatta on Gautama and by the Dattaka-mimânsâ mentions 15 kinds of sons. Vide note below \(^{1229}\). The number is arrived at by counting the putrika

\(^{1229}\) औरस हसिना भीनिस्मेष्ट्विनिर्विदिकाणा | पीयासश्च कानिता सनोतो \\

| पुज्जा बहां लब्धिन | कृतिकृपाप्रविनिः | यदि कविरायाश्च दूसरपर वर्णित च न स्तूति न्यायस्य | बन स्थानः न् | हस्तिनां शिवसवादाः |

| T. Jolly in Tagore Law Lectures on partition &c. p 146 is wrong in taking 'bijan' as 'the son procreated with another man's wife'. 'Bijan' is employed by Gaut. IV 3 and Manu IX 51-53 in the sense given above. Vide H. of Dh. II p 599 n. 1409 for bijan, ksetra (meaning wife) and ksetrot. भूमिस्वरियाः पुज्जा बहां लब्धिन इत्यवषयाः। परस्यो जीवित्वेनुष्ण, रघुनाथेनं भूरं गोदस्तः \& औरस्र्विदिकाणा पुज्जा लब्धिन इत्यवषयाः। तुः तुकां तथामतिः परस्यो जीवित्वेनुष्णो भूरं गोदस्तः \& सतारं IV. 23-24. Laghu-Asvalâyana (21 14-15) says that though certain sages provide that the Kunda and Golaka sons should have the samâkâras performed on them, that was the practice in other ages and that it is prohibited in the Kali age.
Several kinds of sons

(daughter appointed as a son) and the putrikāputra (the son of the appointed daughter) as two, dividing the ksetraja into two viz. as the son of the begetter (bijā) and as the son of the wife (i.e. of the husband of the wife) and the son produced anywhere (as mentioned by Vigna Dh. S.) is 15th and the last. The Parāśarasmrti (IV. 23–24) mentions, besides Kunda and Golaka, only five kinds of sons.

It is necessary, before proceeding further, to give brief definitions of the twelve or thirteen kinds of sons from Manu and other writers. The legitimate son (aurāsa) is one begotten by a man on his own wedded wife of the same caste. The putrikāputra is of two kinds: (1) a soulless man may appoint his daughter as his son (she is then called putrikā and treated as a son); (2) or she may be given to a person in marriage with the stipulation 'I give you in marriage this brotherless girl decked with ornaments; the son born of her will be my son.' In this case the son born of the daughter so given becomes the son of his maternal grandfather. The ksetraja (the son of the wife) is one who is begotten on a man's wife (or widow) by a sāgutra (agnatic kinman) or by one not of the same gotra, according to the rules of nyōga, when the man himself is either dead or impotent or suffering from (an incurable) disease. That is the son given (dattaka or dattrama) whom his father or mother gives as a son affectionately in a time of distress with water and who is of the same caste (as the adopter). He is the son called kṛtrama (made) whom a man makes his son, the latter being of the same caste, being clever in distinguishing between right and wrong and being endowed with the qualities a son should possess. He is the son born secretly (yudhotpanna or yudhaja as he is called by Baud, and Yāj), who is born in a man’s house, it being not known who is his begetter; and he belongs to him of whose wife he is born. He is the son called aparuddha (cast off) whom a man receives as his son after he has been abandoned by his parents or by one of them. The kāminē (maiden’s son) is one whom a maiden bears secretly in the house of her father and he belongs to him who marries her afterwards.

1230 उँचकायलो देवता। तत्रायवत बलिस्तिक| (१५. १५)–अयाब्दुको ग्वर्कल्मवाभवभएसु कथामहादुस्त्राय। अभीतो यो जात्युत् इति संस्कृतं भविष्यति। (१५)–अयाहातस् हि एवैः

In the first sense mentioned above in the text the word उँचकाय is dissolved as उँचकाय एव दुः (a karmayaya) and in the second as उँचकायः दुः (a sākṣa compound). The निःसा on या II, 125 gives the same explanation.
The *sahodha* (received together with the bride) is the son born of a woman who was pregnant at the time of marriage, whether that fact was known or unknown (to the person marrying her) and he belongs to the person who weds the (pregnant) woman. The *krītā* (son bought) is one who is bought by a person from his father and mother for making the boy his son, whether the boy be equal or unequal (in qualities) The *pauṇarbhava* (the son of a remarried woman) is one to whom a woman, being abandoned by her husband or being a widow, gives birth after she contracts a second marriage of her own accord. He, who, having lost his parents or being abandoned by them without proper cause, gives himself to a man (as a son) is called *svayādatta* (a son self-given). The son whom a brāhmaṇa begets through lust from a śūdra wife is called *pāraśava* (or śaudra), since he, though living, is (like a) corpse.

The list of twelve or thirteen kinds of sons looks rather formidable, has puzzled and misled even great scholars into making all sorts of sweeping assertions and putting forward untenable theories about the origin and necessity of so many sons. For example, Dr. Jolly in his 'Recht und Sitt' (English tr. p. 156) observes 'The twelve kinds of sonship, which to some extent are based on the illicit connection of the mother and for the greater part have nothing to do with the blood-relationship of the son with the father, are probably the most striking feature of Indian family law. The cause of this abnormal importance being attached to male issue is to be sought, according to the smṛtis, in the offering of sacrifices to the manes which depends upon the male issue; yet, however, originally an economic motive was perhaps a more important factor in it—to get for the family as many powerful workers as possible.' The learned writer appears to hold that the smṛtis regarded all the secondary sons as equally competent to confer spiritual benefit and that at one and the same time a man could have all or most of them as sons. But he is mistaken in both these respects. The very definition of *putrikāputra*, *kṣetraja*, and *dattaka* given by many of the smṛtis show that one who has already an aurasa

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1231 अपुरोधीतिः दिवया शता ज्यार्य विश्वाम्। कथ. IX. 127, विवेकसुऽस्य
पुरुःकामानायः। वृद्धार्याः ज्यार्याः। ज्यार्याः। बृद्धमानार्थगत्वात्मिति सवाय। गी 28. 16, इतरकार्त
सत्त्वबा विवया। सत्त्वबा विवया। प्रचैत्यार्थगत्वात्मिति सत्त्वार्याः। कथ. IX. 59, अपुरोधीतिः
कार्याः प्रजातिमिति। ज्यार्याः। प्रजाति प्रजातियोपायोपायार्थगत्वात्मिति। आदि 52
q. by कथ. मी. p. 3 and कथ. च. p. 2.
son, grandson or great-grandson could not have a putrikāputra, a ksetraja or an adopted son. If the definitions of all the 12 or 13 kinds of sons are carefully analysed, it will be quite apparent that the long list is due to the ancient writers’ great penchant for divisions and sub-divisions based upon very slight differences of circumstances. The several kinds can be classified into three or four groups as done by Devala. All the five sons called daitaka, krita, kṛtrima, svayandatta and upaśiddha are sons who are affiliated by a person under various circumstances. There is no tinge of any illicit connection of the mother in any one of these, the one thing common to all of them being that they are the sons of one man and are treated by another as his. Similarly the paumarbhava and aṇḍra are the legal sons of the man himself, but there is opprobrium attaching to them, because in the first case the mother contracted a remarriage (which was very much condemned by the smritis) and in the other a brāhmana married a śūdra woman (which also was locked down upon, if not absolutely forbidden as done by Yāj. I. 56) The paumarbhava son of a dīva is still called a dīva by Manu III. 181, but Manu only provides that he is not fit to be invited at a śrāddha. The putrikā (the daughter appointed as a son) is the man’s own child and the putrikāputra also is the man’s own grandchild and both these are special cases of adoption and no question of mother’s illicit connection arises in these. So out of 13 kinds of sons, nine were entirely free from any taint of illicit connection. There remain only the four viz. ksetraja, gādhotpanna, kānina, sahodha. The ksetraja was in a class by himself and was a survival of an ancient practice prevalent in many countries all the world over, which had been condemned in India by Ṛp. (as shown above on p 644) and his predecessors several centuries before the Christian era. It may, however, be pointed out that some medieval writers held the view that several secondary sons like the daitaka, krita &c. could be had by a man having no aurasa son.

1232 Vide the वृत्तानिगृहृन्यावली of बालकुण्ड (D. C. Ms. No. 203 of 1886-92, folio 11b) ‘सन्तुष्टकालस्यनांतिविनिं कामगुणसारोपनां गृहत्त्वानांतिनिंप्रमेयं मुद्रत्त्वसारणात्त्वं साक्षात्त्वे निःबृत्विंगृहत्त्वं विद्यः समासान्तिविनिं सिद्धात्मः।'
The chief concern of the smritis as shown clearly by the Anuśasana-parvā (chap. 49 quoted above on p. 645) and the com. of Nīlakanṭha was to provide for the maintenance and the performance of the samskarās of those children that may be either abandoned by their parents or may be under the cloud of illegitimacy.

There is great confusion and contradiction among the sūtras and smritis about the place of the several kinds of sons and about their rights. For example, Gautama (probably the most ancient among extant sūtrakāras) assigns the 10th place to the putrikāputra, while Baud., Kant., Yāj, Br. and Devala give him the 2nd place and Vasiṣṭha, Sankha-Lokhita, Nār., and Visnu put him 3rd. The dātaka is placed very low in the list by most works except by Manu, Gaut., Baud., Br. and Brahmapurāṇa (which put him 3rd or 4th). The 12 kinds are put in two groups by some works. Gaut. (28, 30–31) provides that the aurasa, kṣetraja, datta, kṛtrima, gūḍhotpanna and apaviddha are rikhabāhyāja (take the wealth) and also belong to the gotra of the man whose sons they are, while the other six take only the gotra but not the wealth. Baud. Dh. S. (II. 2, 36–37) employs the same words rikhabāhyāja and gotabāhyāja but differs from Gaut. in including putrikāputra among 'rikhabāhyāja' and omitting him from the group of 'gotrabāhyāja' \(1\). Another division (each having six kinds) is into bandhu-dāgāda or dāgādabāndhana (Manu IX. 158–159 and Nār. dāyabhāga 47) and adāyabhāndhana (Manu IX. 160, Vas. 17, 38, Nār. dayabhāga. 47). The first group, acc. to Manu, comprises aurasa (also putrika), kṣetraja, datta, kṛtrima, gūḍhotpanna and apaviddha. They are so called because they take the wealth of their father and also of his kinsmen (in the absence of nearer heirs), while the members of the 2nd group (which acc. to Manu IX. 160 comprises kārṇa,

\[1\] See also *Sādhokṣethpālaṇi Smṛti-vyākhyāṇa* (rāṣṭraṇā), *Sādhokṣethpālaṇi Smṛti-vyākhyāṇa* (rāṣṭraṇā) ( kararı 30–31; ये गौतमस्य गोविन्दादिपैते भगवते न रिस्य । ये हि सहिष्णुवो गौतमाज्ञातोत्सव सहभाविष्यति । सह कै सहायित्य एवरेवः।

What is meant by *रिक्षभाहिजः* is not quite certain. Does it mean ‘they take the wealth of their father and of his kinsmen’ or does it mean ‘they take the wealth of their father alone and of no one else’? It appears to hold that *सामवाणि* has the first sense तेऽस न जनोदुधावाऽत्र दृष्टः *किं देव मनोऽस्मि सहिष्णावित्तमिह दृष्टः । अन्ये देशायत् सिद्धार्थस: यस्मात्... दृष्टः X. 8 p. 147. *राजवादः* *सिद्धार्थसः*... दृष्टः III. 7.
sahodha, krita, paunarbhava, savyamadatta and saudra) are only bandsphas (i.e. belong to the gotra of their father), but cannot succeed to the wealth of their father's kinsmen. Here also there is no agreement among the smritis. Vas. (17. 5-25), Šankha-Likhita (q. in V R p 247), Nar. dayabhāga 47 and Hārīta include in the first group aurasa, ksetraja, putrikāputra, paunarbhava, kāmīna and gūdhaja and the rest in the 2nd group. Kaut asserts that only the aurasa son succeeds as heir to the kinsmen of his father while the others (that are not procreated by him) succeed only to the father who brings them up, but not to his kinsmen. Yāj II. 132 states that each of the twelve kinds mentioned by him takes the wealth of the father and offers puna to him in default of the preceding one and further requires that this is so only if it is certain that the sons are of the same caste as that of the father. Gaut. 28. 32 states that the kāmīna and the other sons called gotrabhitajā (in 28. 31) take only one fourth of the estate of the father if no aurasa nor any of the other sons called rikhabhitajā exists (and the rest of the estate is taken by the sapindas), while Kaut, Devala and Kät. (857) state that the dattaka, ksetraja and other kinds of sons are entitled to one third share only if an aurasa is born provided they are of the same varṇa and that if they are of a different caste, they are only entitled to food and raiment. If a man, having no son, made his daughter a putrikā or thinking himself to be impotent had a ksetraja son or adopted a son and then an aurasa son was born, difficult questions of the distribution of his property arose on which there was no unanimity. Manu IX. 163 says that only the aurasa son is entitled to all the paternal wealth and all the other kinds should be given maintenance in order to avoid the fault of being cruel. But as regards the case where a putrikā is first made and then an aurasa is born Manu (IX. 134) prescribes that these two should divide the paternal estate equally, while

1234. चतुर्भिषिष्ठ और साध्वाणां । ग्रे. 28 32; तेषां सविंषे पद्वाये वत्रिवांशीः। निर्वतुश्चर्यातुस्वतिवा क्षात्रायुन-वृत्तमस्य। वेदः । q by yavagal X 7 p 147, उसके चाराते जिने चारावदातं सुवस्तु । सविंषे अवस्वथाशु वायुपाद्यायुनमाजना:। ग्राश्च। \( q \) by निर्वत, IV 112 धनवाग X, 13 p. 148 and \( q \) । विद्याधिकारिणां मधुरकुशिकाः। निर्वत उपस्वयमयुनमाजना । अर्थशास्त्री इ. 7. The मदिनः (folio 93b) says दानवस्त्र जाजसते (१३३४)।

1235. चतुर्भिषिष्ठ appears to combine Manu IX 163 and 134 'एक एव निष्क पद्वाये लक्षी लक्षी' मित्यादि सत्तारे सुवस्तुम्तो । q by विद्याधिकारिणां मधुरकुशिकाः। निर्वत उपस्वयमयुनमाजना । अर्थशास्त्री इ. 7. The मदिनः (folio 93b) says दानवस्त्र जाजसते (१३३४)।
Manu IX. 164 asks the aurasas to give 1/5 or 1/6 of the paternal wealth to the ksetraja. This confusion and contradiction about the places and the shares of the several sons leads one to infer that the institution of several kinds of sons was not very common or generally recognized, was rather confined to some localities or communities and was dying out even in the times of the ancient smrtis, if it ever existed in full force at all any time.

As regards gudhaja, kāntina and sahodha there is this to be said. They were the result of illicit connection; but some one had to maintain them, to bring them up and be their guardian. The smrtis when they assign these as the sons of the husbands of the women of whom they are born are really providing for these matters of maintenance and guardianship. Br. says that dattaka, apaviddha, kṛta, kṛta, and śaudra, if of pure caste and pure actions, are middling, while the ksetraja, pnnabhava, kāntina, sahodha and gudhaja are condemned by the good (S. B. E. 33 p. 376 verses 40–41). The kāntina was to be under the guardianship of the father of the girl (Yāj. II. 129) till she remained unmarried, but when she married the damsel’s son came under the dominion of the person who married her (Manu IX. 172). The very fact that the kāntina was assigned to the husband who married the girl shows that this was done because it was deemed that by marrying such a girl the husband condoned her past lapses. Similarly in the case of sahodha, it was deemed that either the child must have been procreated by the husband himself before marriage or that he condoned the conduct of the wife. It appears to have been thought that when the husband (the party most concerned) did not openly object it was not open or allowable for any one else even by proof that the child was kāntina or sahodha to call

1236. कृति: 
क्षेत्रसन्ते च। यही वार्ता करण्यादिकारू सन्तानोन्नति। 
प्रदेशमिति सन्तानहो सन्तानमिति। 
सहोद्रो सन्तानसन्ताने। 
सुधृ. q. by वि. r. p 552; हार्दिक (q by वि. r. 553) designates कृति, स्वपवत्व and 
क्षेत्रसन्ते कारणेण श्रुतात्। स्वपवत्वमेके स्वमष्टि कृतिवादः। 
सन्तानमेके कारणेण श्रुतात्। स्वपवत्वेण न स्वमष्टि। 
सन्तानते कृतिवादः। क्षेत्रसन्ते कारणेण न 
लेखान्। 
The 2nd verse is quoted by अवरारक P 455 नागद IV 50 calls a यूर्क्षेत्र 
who persists in the profession of arms after a season of distress is over 
कारणे। 
The अद्वान्तवर्ग 23 22 has that word, कुतुहलावनस्वपवत्वाद श्रुतिः 
कृति ने जाग। 
तथा वैणसत्रो प. स्वपवत्वे कृति विनिमेयस्त। 
चन्द्र q by वि. r. p 455 ज्यो ज्यो ज्यो ज्यो ज्यो 
which also quotes the verse चन्द्रेण from भद्वा and शुरुः both separately कारणेण 
literally means one who carries on his back arrows’ (i.e. probably 
ब्रह्माण्ड whose profession is that of a soldier)
for the abandonment of the child. Similar remarks apply to the gūdhaja. As shown in H. of Dh vol. II pp. 571-573 if the wife was guilty of adultery the husband had certain powers of correction over the wife, but if he chose to be complaisant, then the smṛtis did not compel him to disown or abandon the child. These very smṛtis (like Gautama, Vas, Nār.) that are very harsh on women for adultery allow the gūdhaja, kānina and sahoḍha to be secondary sons. So the only way in which these two attitudes can be reconciled is by holding that when the husband condones moral lapses on the part of the woman whom he had accepted as his wife the smṛtis provide for the maintenance, guardianship and succession of such offspring of illicit connection. Even among medieval commentators there was divergence about paunarbhava, kānina, sahoḍha and gūdhaja; Medhāti on Manu IX. 181 holds that they are entitled to nothing but food and raiment in any case, while the Mit. (on Yāj. II. 132) holds that even the kānina and the rest take the father’s wealth in default of aurasa and the other kinds of sons. The Mit. (on Yāj. I. 90), however, holds that kānina, sahoḍha and gūdhaja being the outcome of adultery cannot be savarna with the husband of their mother, are really different from savarna sons and even anuloma and pratiloma sons.

A good deal can be said about the spiritual benefit supposed to be derived from secondary sons.

The high eulogy bestowed on the son in the Vedic and smṛti literature has reference only to the aurasa son. Manu IX. 180 asserts that the eleven kinds of sons viz. ksetraja and the rest (except aurasa and putrika) are merely substitutes for the real son, admitted to prevent the cessation of religious rites and in IX. 181 Manu states the final conclusion that such sons as the ksetraja that are procreated from the seed of others really belong to him from whose seed they spring and not to the other man (who takes them up). Br[1237] (S B E. 33 p. 375 verses 35–36) declares: ‘thirteen sons were enumerated in

1237. युवाबाल्यस्य सौर्षा महान पेठयूक्तः। संतानकारण संवादिष्कत: पुरिका तथा॥ आत्म वित्तं वथा तेन संधः पारिवारिको श्रुत:॥ तद्भवतुर्गुणकेस्त्रक्सिदित्योरित्रः॥ पूर्वपातितः थ. अभिभाव्य ॥ पुनर्लोकनाम पुण्यवर्षायोऽश्रुतत्त्र॥ पूर्वकालिकता पूर्वमेव उपलब्धिताः॥

The 2nd is attributed to युवाबाल्यस्य by कुलेश्वर on संवादि, 181 The युवाबाल्यस्य is quoted वेदेष्ये मे नवोपस्तिसिदित्योऽश्रुतत्र (p. 73) and as follows ‘आत्मानां तेन संपूर्विकारणेन सुवर्णविनान्तरेऽकल्याणां युवाबाल्यस्य[1237] संवादि श्रुतिः॥ तद्भवतुर्गुणकेस्त्रक्सिदित्योऽश्रुतत्र॥ पूर्वकालिकता पूर्वमेव उपलब्धिताः॥

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order by Manu, out of whom only the aurasa and putrika are the cause of propagating the line. Just as oil is declared by the good to be a substitute (in sacrifices) in the absence of clarified butter, so the eleven kinds of sons in the absence of aurasa and putrika (are admitted merely as substitutes and not the real thing). 

Although Yaj. II. 133 declares that each succeeding one out of the twelve kinds of sons takes the estate in the absence of each preceding one and offers pinda to the deceased owner, yet the efficacy of the pindas offered by the several sons was deemed to differ very much. Manu leaves no room for doubt on this point when he says (IX. 161) 'a man desiring to cross beyond the gloom (of bad worlds, hells) through (or with the help of) bad sons (such as the kṣetra) secures a result similar to what a person crossing (a sheet of) water in a leaking boat secures.' The idea is that secondary sons cannot confer the same spiritual benefit as the aurasa son can. Madhatithi on Manu IX. 166 and the D. M. explain this very clearly. An aurasa son confers the highest spiritual benefit. The substitute sons (as indicated by the very use of the word *pratidhi*) confer a much less benefit. Even a man's widow can perform his śrāddha if he be sonless, but as she could not offer the pūrva śrāddha her act was not deemed to be as efficacious as a śrāddha performed by a son. 1238 Jaimini devotes several sūtras to the subject of *pratidhi* (a substitute) in VI. 3. 13-41. The main conclusion established is that generally speaking there can be no substitute as regards the *devātā* (the deity to which a particular offering is directed by the Veda to be offered in a particular sacrifice), the fire (āhavanīya and other consecrated fires), the mantra (which is to accompany a particular offering) and certain rites specifically prescribed to be done in a sacrifice (such as 'samidho yajati' in Darśa-pūrṇamāsa) and the *svarūpī* (the sacrificer). On Jaimini VI.

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1238. कार्यिन्तलोकायिन्मसातः स्वपन्नास्वप्नाक्षरियाः न स्वप्नाशामा निर्माथाकोऽन्तातः कृतां स्वप्नाति भार्तीते। 

1239. यदाहि दुःर्गामसे हु यथी स्वाधिकरितम ज्ञातातिशादिशाः न ज्ञाताशामाशाः निर्माथाकोऽन्तातः कृतां स्वप्नाति भार्तीते।
3. 35 Šabara makes it clear that in employing a prahārī the vedic rite becomes deficient and does not yield the full reward of the religious act. The Satyāśādha Sr. S. III. 1. asserts that there can be no substitute for the sacrificer, the wife, the son, the place, time &c. (prescribed by the Vedic texts for any rite). Therefore it is clear that there was difference of view among very ancient writers about the spiritual benefit to be derived from substitute sons. The natural human tendency to simplify matters and water down strict injunctions prevailed and it began to be thought that even subsidiary sons conferred some spiritual benefit (though not as much as the aurasa son).

For about two thousand years the kṣetraja and other sons have been prohibited by the smṛtis. For example, Br states that Manu first describes the procedure of nyoga and then forbids it, that it is impossible to practise nyoga in the dvāpara and kāla ages owing to the deterioration in man's knowledge and tapas (vide H. of Dh. vol. II. p. 603 n. 1418 for the quotation). The passage from Saunaka forbidding sons other than aurasa and ājñaka in the Kali age quoted by Aparāśka and others has been cited above (n. 1131).

A few remarks will be made on each of the several sons.

Aurasa. Baud. Dh. S. II. 2. 14, Manu IX. 166, Vaiś. 17. 13, Visnu Dh. S. 15 2, Kaut. III. 7 and others define the aurasa as the son procreated by a man himself from his wife married acc. to sacramental forms prescribed by the śāstrā. From Ap. (quoted above in n. 1227) and Baud it follows that the aurasa is only the son procreated on a wife of the same varṇa as that of the husband; but this was the purists' view. Others including

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1240 अभावे दि कुस्तस्यकेशव: मतिनिधि:। क्षते दि सकला धनयः:। मतिनिधी विकलताः। शब्र एन जै वि 3 35.

1241 न स्मारिष्यते भार्य्यपि पुत्रस्य वेश्यकर्त्तव्योक्त्वताः। कर्मण: स्मारिक्षे पर मतिनिधिरियते। सत्यार्थशैल तृतीय म. 1 The D. M. (pp 33-34) explains this sūtra about there being no मतिनिधि in place of a son by saying that it is restricted to certain śramaṇa matters only such as the 'Pitāṃprṛya śaṃman', or the uttering of a benediction in the words 'tantiyajyotismatam &c', and that if the sūtra were taken as forbidding a substitute for a son everywhere, it would be opposed to Manu (IX. 180) pūrvaśāstricchālaḥ and Attri: 'न स्मारिष्यते मतिनिधि' इति सत्यार्थशैलोऽनि पुर्वस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यस्मारिष्यs

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The text is a translation and analysis of ancient Sanskrit verses and smṛtis, discussing the rules about the prahārī and the role of substitute sons in Vedic rituals. It highlights the natural human tendency to simplify matters and the differences in the views of ancient scholars regarding the spiritual benefit of substitute sons. The text also cites specific verses and authors to support its conclusions.
such medieval works as the Mit. (on Yaj II. 133), the Pārijata and Aparārka hold that even the son procreated on a wife married in the anuloma order\(^2\) (e.g. the son of a brāhmaṇa from a ksatriya wife or of a ksatriya from a vaisya caste wife) was also anuraśa. The exception was the son of a brāhmaṇa from a śūdra wife, who was called śaudra or pāraśava and distinguished from the technical anuraśa. From the definition of anuraśa given by all smṛti writers (and the dicta of such commentaries as the Mit) it follows that in order to be anuraśa the procreation and the birth of the son must both be after the marriage. But the Privy Council held long ago in *Pedda Amani v Zemundar of Marungpur* (1 I. A. 282, 293) that procreation after marriage is not distinctly necessary for legitimacy as a son even according to the ancient texts, that to hold so would be an inconvenient doctrine and that the Hindu Law is the same in that respect as the English Law.\(^3\)

From the times of the Rgveda people prayed for the birth of an anuraśa son and did not like to adopt the son of another. An Rgvedic poet exclaims (VII. 4. 7-8) ‘As the wealth (son)}

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1242 स्मयनाः कृष्णकारणार्यांसहः \*अर्थावलः III 7, सवर्णार्य राजवांशी स्मय- 
हस्यादिविवाहसहु विवाहत \*प्र. प. त्र. II 2 14, ‘सवर्ण विज्ञापन हिंगास, वर्तमान श्रुवः \* 
of another (who is unconnected) is to be avoided, so may we be masters of wealth of our own (i.e. son of our body); Of Agni, the child of another cannot be one's offspring; it may be so in the case of the fool; do not spoil our path. A stranger, born of another's loins, though very pleasing, should not be taken, should not be even thought of in the mind (as one's son). Then he goes back to the same house (from which he came); may a vigorous, victorious, newly born son come to us!"  

In modern times the courts generally recognize only two kinds of sons, viz. aurusa and dattaka, the other kinds of sons being held to be long since obsolete. Vide Nagindas v. Bacheo-43 I. A. 56, 67. But two more kinds of sons have been recognized in modern times in certain provinces only, viz. the krttima (modern Tirhoot) and the putrikaputra among the Nambudri brähmanas of Malabar, both of which will be dealt with below.

Putrikaputra. The two meanings of this word given by the Mit. and others relying on Vas. have been stated above (p. 647) Kaut III. 7, Yaj. II. 128, Manu IX. 134 declare the putrikā or putrikaputra to be equal to the aurasa son. The conception underlying the putrikā has a hoary antiquity. There are traces of the putrikā in the Rgveda itself. Vas 1245 XVII. 16 refers to

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1244. परिबंध खराबन वेशा निर्मय हारण: पायः हयात्। त शेषो अध्ये अवश्यानामस्य शास्त्रंशत्रयोत्सव तस्थी ति हुसा। न ति प्रभवायणः। निषेधीपुर्वस्य संस्करणम्। अन्या विद्वेषः। जनातित्वं पुरवतु ते पायः हयातिः। नन्या स्वादिष्ठ ॥ व्रतं VII 4. 7-8. The verses are rather obscure, particularly the first one. The meaning given above is that of such an ancient writer as Yāska in Nir. III 1-3. He says that these two verses support the view that the son belongs to the begetter (and not to the adopter): 'तस्य जगतादि भगा प्रमोदकामा विशेषितः। परिबंधः।' Compare अन. ध. 111 6. 13. 5 'उद्वादनेषु: पुत्र इति हि मात्रायादि। The निर्मयः नित्या says that the verse (न हि ग्रन्थाः) does not really mean to prohibit the adoption of sons but is intended to extol the aurasa, as otherwise it would be opposed to the indications contained in the story of the acceptance of Śraddhā as a son and to the words of the latter 'मयं I become your son', योय न हि ग्रन्थाः। मन्त्रां उ-हृदति दुष्टिकामिपे। सौम्यसाधितयाः। अन्यत्वं दुष्ट शेषाधिविद्वेषायिद्विशेषित्वादिष्ठविवेशतां! । वरेणं तत् दुष्टाधिविवेशतां! नित्या नित्या III वृत्तां प 250 वरेणं तत् दुष्टस्य तत् दुष्टाः। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव। आयेशी च एव।
RG I 194.7 in connection with putriks. That verse contains four similes in describing the advent of Usas (Dawn) 'As a woman that has no brother comes back to (her) male relations... like a smiling damsel the Dawn unmasks objects (or her beauty)'

The Nirukta III 5 explains the first quarter as meaning that a brotherless maiden (after marriage) comes back to her paternal line for continuing that line and for offering pindas (to her paternal ancestors) and does not go to her husband's line. The RG in several places refers to the difficulty of getting brotherless maidens married and to the fact of their remaining in their father's house as old maidens; vide RG II 17.7 'amujuriva pitroh saudii atii' and IV 5.5. The Atharvaveda I 17.1 states 'like brotherless sisters let these stand still with their splendours gone'. Yâska explains that, as brotherless maidens, when married, bar the way to the continuance of the family of their husbands and to offering of pindas (through their son), so are these red arteries &c. Yâska (Nirukta III 4) relies for the appointment of a brotherless daughter as a son upon another very obscure verse of the RG (III 31 1)1246 'the husband declares (or promises) that the father may regard (the daughter's son) as his son's son'. The Nirukta122 (III 5) quotes a Vedic text 'one should not marry a brotherless (girl), for she becomes (her father's) son' and holds that it expressly prohibits marriage with a brotherless maiden and also declares that such a girl becomes a son to her father. The brotherless maiden is appointed as a son by express agreement, but according to Gautama 28.17 the opinion of one school (which he does not approve) was that a brotherless girl became a putrika by the mere unilateral intention of the father and therefore one should not marry a brotherless maiden for fear that the father (without expressly stipulating so) might intend her to be putrika. Manu III 11 contains a similar caution. This recommendation not to marry a brotherless maiden continued down to the days of Yâj (I 53 'araginim bhârâmatim'), though in modern times many would prefer to marry such a girl, provided the father was well-off. Manu IX 140 states that the

1246 शामस्वसहिष्णुपञ्चाङ्गपति गार्हिताः पत्रस्य दूरितिः पत्रस्यम् मिति वच हुस्विति

1247 नामानुमयपथस्वरूपे ब्रह्म सत्व्विनि—इवि अमानसपि उपपायमानिति।
three pindas that the putrikāputra offered were respectively to his mother, to the mother’s father and to the mother’s paternal grand-father.


Kṣetraja This kind of son arose from the practice of *niyoga*. The origin of this practice and the limitations under which it was allowed have been dealt with at length in H. of Dh. vol. II pp 599–607. One matter not mentioned therein is this that the Brahmapurāṇa states that kṣetraja sons were very common among kṣatriyas since they had no progeny either because they were cursed (by sages for their misdeeds) or because they were constantly engaged in war. The Baud. Dh. S. II. 21–23 and Kauṭ. III. 7 declare the kṣetraja to be the son of two fathers, to have two gotras and to offer pindas to both fathers (provided there is no aurasa son born subsequently) and to take their wealth and that in offering each pinda they have to associate it with two names. It is to be noted that the Mit. on Yaj. II. 127 introduces the kṣetraja as dīvāmasyāyana, although that word, as will be seen later on, has another significance also. The Madanapārījāta (p. 651) also regards kṣetraja and dīvāmasyāyana as synonyms. The *Vivādatā..dava* (folio 122) states that the dīvāmasyāyana and sons of intercaste marriages being forbidden in Kali it does not enter into any discussion about the rules of allotting shares to them.

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1248 अर पराश्विनिर्दशायम् इत्यकेतर्यं गामुद्यन्ती दुविकायातात्स्ततयाः प साधिताः न च विविधते न चुपपहस्यायास्वाधु न च सन्यस्तावपस्ते। सुलिख।

1249 यहाँ हु साधितान्त्यं नित्य स्वयंत्रता तथा। अथ संयम्भूस्तानां न च विविधता। विविधता न च हि तेस्वा हु विविधता।

1250 मदनार्जुन विभुतिपति अयुधपुराण्यों। विभुतिपति अयुधपुराण्यों। विभुतिपति अयुधपुराण्यों। विभुतिपति अयुधपुराण्यों।
Dattaka. This will be dealt with separately later on.

Kṛtrima—(or krta, as in Nār. dayabhāga 46). According to Manu IX 169, Yāj. II. 131, Baud. Dh. S II. 2 25 and the Mit, and other works a krtrima is a person (of the same caste as the adopter) who has no parents and who is adopted with his own consent by the tempting offer of wealth. He is distinguished from the dattaka by the fact that he is not given by the father or mother and by the fact that his own consent is necessary (so that he must be major according to the ancient Hindu Law). Such a son is recognized in modern times only in Mithilā (Tirhoot) and the adjoining districts and among the Nambudri brāhmaṇas of Malabar (as held in Vasudevan v Secretary of State 11 Mad. 157). Considerable case law exists about the krtrima adoption, for which Mulla's Hindu Law pp 563–564 (9th ed) and Mayne's Hindu Law (10th ed.) pp 293–294 may be consulted.

Gūḍhaṭa. There is probably a reference to such a son in the Rg. II 29. 1

Kāṅāna. This word is derived from the word kanyā (a maiden). Pāṇini IV. 1. 116 (kanyāyah kāṇāna ca) derives the word in the sense of "child of a maiden" and the Kaśika gives Karna and Vyāsa as instances of kāṇāna sons. The word kāṇāna occurs in the Atharvaveda V. 5. 8 and kumāriputra occurs in the Vājasaneyasamhitā 30. 6. Nār. (dayabhāga 17) says that the kāṇāna, sahodha and gūḍhaṭa are the sons of the man who marries the mother of these and they take the wealth of the husband of their mother. The Pārijāta (q by V. R. p. 565) states that the kāṇāna and sahodha become the sons of their mother's father if the latter is sonless, but if he has a son then they become the sons of the husband of their mother and if both have no sons then they become the sons of both.

Kṛita—(the son bought). Vās. (17. 30–32) states that Hariścandra purchased Sunahsepa from Ajigarta and that

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1251. भूमस्त्रता आदित्याच द्विदी आरे मक्तां 'दृष्टिकोण'। ये II. 29 1.
1252. कानौन्त्व सघौन्त्व युवाण्यं यथै जायते। ते सिद्धि पिठा स्वस्तस्ते च भानास।
सूतां नार् नार्यभाग 17, on thus वि र प 565 states 'अर्धांशु वाक्ष मातास्त्रादेह्यं
तथ यथा कानौन्त्व सगौन्त्वं। सत्रद्वेणु वेदां वेदान्तोषिनिव पारित्वरति।
The माह. वि प 562, however, says about कानौन्त्व 'तथा विद्वेदान्तोषिनिव पारित्वरति।
Śunahśepa was a kṛta son. *Svayamātta*—Vas. (17. 33–35) says that Śunahśepa became the svayamātta son of Viśvāmitra as stated in the Ait. Br. (referred to above in n. 1244). *Paunarbhava* (the son of a *punarbhū*)—vide H. of Dh. vol. II. pp. 608–610 for the meaning of punarbhū and the remarriage of widows (pp. 611–621).
CHAPTER XXVIII

DATTAKA (adopted son)

No branch of Hindu Law in modern times has been so fruitful in litigation as adoption. There are instances, where, fifty years after a point in the law of adoption was deemed to have been settled by a Full Bench decision, the Privy Council intervened and overruled the Full Bench decision in spite of its usual practice to follow the rule of stare decisis. The medieval digests are full of varying interpretations of the same smrti texts and the law of adoption differs from province to province according to the authoritative medieval works and modern case law. Voluminous works like those of Shastri Golapchandra Sarkar and of Mr. Kapur have been written on the subject of adoption in all its details. There is so much bewildering confusion and so much case law on the several aspects of adoption that it is only legislation that can resolve the tangled skein of the modern law of adoption. In this section an attempt will be made to present the law of adoption as evolved by the smrtis and medieval works and only some important cases bearing in various ways on the ancient law will be cited.

It has been shown above (pp. 641,657) how even in the times of the Rgveda the son of the body was eagerly sought for and how the adoption of another man’s son was declared to be not worthy of being thought of. Even so late an author as Šukra (II. 31) says that the adopted and other secondary sons should never be thought as one’s sons, since on seeing a rich man they desire to be adopted. Yet Vedic Literature contains some references to adopted sons. In the Tai S. VII. 1 8 1 we come across the the story of Atri, who gave an only son in adoption to Aurva in these words: ‘Atri gave his son in adoption to Aurva

1252a. नानावे ते मनुक्तया श्रद्धाया. स्वायत्तः स्यैः हां न श्रवेदयति ददति पद् पधितम् गदय।। द्वामानीति II 31.

1252b नानावे ते मनुक्तया श्रद्धाया। स निरितांगहुभयति निरौप्यं निग्नियो धातयात् तत्र च ददृडऽभदन्तहयमाहस्यते।। तत्र स विघ्नयात् यथाहं शस्येत् श्वरः श्वरस्य धातयेत्।।

For चद्दृढः, vide कालपा, कृष्ण II 23. 1. 7 and आम्, कृष्ण XI 1.16-26.
who desired to have a son. He (Atri), having become empty (as it were, by giving away his only son), thought himself to be destitute of strength, to be weak and worn out (lit. stale). He (Atri) saw this  Caitaratra (a sacrifice of that name lasting for four days). He made preparations for it and performed that sacrifice. Then he had four valiant sons born to him, a good Hotr, a good Udgātr, a good Adhvaryu and a good sabheya (skilful speaker in an assembly)’. The story of Sunāhśepe in the Ait. Br. (33) shows that Viśvāmitra, though he had already one hundred and one sons, adopted Sunāhśepe under the name Devarāta, with the consent of his fifty-one sons (with Madhucchandās1253 at their head), though the elder 50 sons disobeyed their father. It must be supposed that the later rule allowing only a sonless man to adopt did not apply to Viśvāmitra.

The sūtras and smṛtis contain hardly anything about the  dattaka except his name (among the 12 kinds of sons) or the definition, as in Baud. Dh. S. II 2. 24, Manu IX 168, Yaj. II. 130, Visnu Dh. S 15 18-19, Nar. (dāyabhāga 46) The Vas Dh. S is an exception. It not only gives a definition (in 17 28-29), but is one of the earliest smṛti texts to dilate on the rules about adoption (in 15. 1-9). What it says may be set forth in one place. “Man produced from seed and blood owes his birth to his mother and father. (Hence) the mother and father have power to give, to sell or to abandon him. But one should not give or accept an only son, for, he is required to continue the line of his ancestors. A woman should neither give nor receive a son (in adoption) except with the permission of her husband. One about to take a son in adoption should, after having invited his kinsmen, having informed the ruler (of the intended adoption) and having performed in the middle part of his house a ṛtī with the vyāhṛṭa, take only him who is closely related and who is a kinsman not remote (in habitation and speech). If a doubt arises (as to the family of the person to be adopted) he (the person desiring to adopt) should treat one whose kinsmen are in a remote place as if he were a sūdra; for it is declared (in the Brāhmaṇa or Vedic works) ‘by means of one (son, aurāsa or adopted) he (the adopter) saves many.’ If, after a son is taken (in adoption), an aurāsa is born (to the adopter) the adopted son shall be the recipient of a fourth

1253. वीरायक सत्यभाद्यः। पवयायतां सार्वेद। सौदन सजायकार्य सत्यभाद्यकृतम पयम्। हृदयो विवेकौ कुप्यायं लामण्डकां पयं स्मितां। इति। ऐ ब्र. 33, 6 This is q, by the वृत्त. नी. p. 17
share.” 1254. Manu IX, 141 refers to the adoption of a son who is not of the same gotra as the adopter and IX. 143 sets out the results of adoption. The other principal ancient texts quoted by the D. M. and V. Mayūkha are those of Atri, Śaunaka, 1255 Sakala and the Kaiikāpurāṇa. The Mit. does not contain more than a few lines on the dattaka. It is only in such late works (belonging to the 17th century and later times) like the V. Mayūkha, the Dattakamñmansā, the Saṃkāra-kaustubha, the Dattakacandrika, that the dattaka receives an elaborate treatise. In modern times the D. M. and D. C (which is branded as a forgery by some Bengal writers) 1256 have been regarded by

1254. ग्रह्यासेससृत्र द्वितीयमभ: नुयभो मधवेतत मातापिःतिविनिसितम्: । तस्य अंगातसदिशयः । गेहुः मातापिःः नववकाः । न स लेख यदुपवायतः । म श्री । इवतुत्सात्तिष्ठुएवायतः । इव तज्ज्ञातिपिः च ज्ञातिपिः सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः । इव तद्यथासहस्त्र सतगीतवायतः ।

1255. Vide Appendix for Saunaka's verses on adoption and for Band grhya-śesasūtra

1256. As to the tradition among Bengal Pandits that the Dattaka-candrika was fabricated by a pandit called Raghuman to support the claim of an adopted son to a Rāj, vide Golapchandra Sarkar's Tagore Law Lectures on adoption (2nd. ed. of 1916 pp. 122-126) It may, however, be noted that in Bhagwan v Bhagwan 17 All. 294, 313 Mr. Justice Banerji refused to place any reliance on the tradition.
the Privy Council as of the highest authority in matters of adoption. In *Collector of Madura v. Mootoo* 12 Moo. I. A. 397 at p. 437 the P. C. observe: 'Of the Dattakamimāṃsā of Nanda Pandita and the Dattaka, Candrikā of Devanna Bhatta, two treatises on the particular subject of adoption, Sir William Macnaghten says that they are respected all over India; but that when they differ the doctrine of the latter is adhered to in Bengal and by the southern Jurists, while the former is said to be the infallible guide in the provinces of Mithila and Benares'. But Jolly (T. L. L. p. 166) gives a far more correct estimate of the value of the D. M. when he says 'It is simply a misfortune that so much authority should have been attributed in the courts all over India to such a treatise as Nanda Pandita's Mimāṃsā which abounds more in fanciful distinctions than perhaps any other work on adoption and it is high time that the numerous other treatises on adoption should be thoroughly examined and given their due weight'. In *Bhagwan v. Bhagwan* 26 I. A. 153 at p. 161 the P. C. observe 'To call it (the Dattakamimāṃsā) infallible is too strong an expression and the estimates of Sutherland and of West and Buhler seem nearer the true mark; but it is clear that both works must be accepted as bearing high authority for so long a time that they have become embedded in the general law'. Yet even these works have been set at naught and departed from by Courts in India on many points as will appear in the sequel.

The principal matters to be discussed under adoption are: objects of adoption, persons that may legally take in adoption, persons that may give in adoption, persons that may be taken in adoption, the requisites and ceremonies of adoption and the results of adoption.

*The objects of adoption*—Atri (verse 52) quoted above in note 1231 declares that that man alone who has no son should always secure a substitute for a son with all possible effort for the sake of securing the offering of pindas (funeral and śraddha cakes) and water. The D. C. quotes this verse and also another ascribed by it to Manu1237 in which the object of adoption is said to be twofold, viz securing spiritual benefit from the pindas and water (offered by him) and perpetuating the name and family of the adopter. In one of the latest cases on adop-

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1237. नन्दन पद्म । अनुभेत गुत्त कार्त्त यात्रक ताहक नपलताः । बिंडदुब्बात्ताक्षेत्रायी ।\(\) नामसुधचिकायत्र च न बुद्धते च प 2.
tion that revolutionized the law the Privy Council 1238 emphasize the peculiar religious significance that has attached to the son among all classes of Hindus, refer to the 9th chapter of Manu verses 106, 107, 137, 138 of which are instinct with this doctrine, hold that the foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuation of the line and the solemnization of the necessary rites and that in this doctrine the devolution of property, though recognized as the inherent right of the son, is altogether a secondary consideration.

Persons who can give in adoption—The primary right to give in adoption is that of the father, who can do so without consulting the mother. 1239 The mother cannot without the husband's permission give her son in adoption while the father is alive and capable of consenting. But the mother alone can (as said by Manu IX. 168, Yaj. II. 130) give her son in adoption if the father be dead or if he is incapable of giving consent or has entered the order of ascetics, provided he has not expressly or impliedly prohibited her to do so. If both parents are dead no one else, not even the paternal grand-father or the step-mother or a brother, can give a man in adoption. If A has a son B and is then given in adoption by his mother into another family, it was held in Marland v. Narayan that A still retained his power as father to give away B in adoption (1 L. R. 1939 Bom. 586 F. B.). This decision has been dissented from by the Nagpur High Court in Shradhatandra v. Shankod (I L. R. 1944 Nag. p. 544, F. B.). But the reasons given by the Nagpur High Court are not convincing and the judges seem to be influenced by the dictum of the P. C. that the adopted son is

1238. Vide Amarendra Man Singh v Senatan 60 I A. p. 242. Though it may be conceded that in the majority of cases the object of the adopter is religious, the object of the giver and of the person adopted (if he is grown up) is far from religious. The main object of the latter two at least in modern times is to secure wealth without effort and hardly any religious motives enter into their minds. No one gives a son in adoption to a poor man, though a poor man has a soul to save as much as a rich man. Besides in adoption by widows, their motive is very often far from religious. They often adopt out of pique against their husband's brothers or nephews and for benefiting themselves monetarily by making agreements with the adopted sons to share the property with them.

1239. अय एव सात स्रिंत धा कुमारालिते महा मानुरिििदसजानसप्नांदम्बरस्मणि वेगुताःकसीर्षसदिलकनात्तण्वि कुपोष्णपवसमदिय ग्रामायससानाः-कुमारालितेप्रियताः। दुस्स. सी pp. 119-121.
just like an aurasa son except in a few well defined cases. It cannot be supposed that the P. C. knew all the texts of the nibandhas dealing with adoption. Though the Bombay High Court held in *Patalabai v. Mahadu* 33 Bom. 107 that a mother did not by her remarriage forfeit her right to give in adoption her son by the first husband, that decision was subsequently overruled in *Fakrappa v. Sastrewa* 23 Bom. L. R. 482 (F B.) which decided that after remarriage a widow has no power to give in adoption her son by the first husband. The same High Court held in *Shamsing v Shantabai* (25 Bom. 551) that a Hindu father, who, after the birth of a son, became a convert to the Moslem faith, did not by reason of his conversion lose his power of giving his son, who remained a Hindu, in adoption though the physical act of giving in adoption, being accompanied by religious ceremonies, may have to be delegated by him to a Hindu. This decision was based on the Caste Disabilities Removal Act of 1851 (for which see above p. 547, n. 1021). This decision is against the spirit of the ancient Hindu Law.

*What persons may adopt a son.*—Every male Hindu, who is of sound mind and has attained the age of discretion though he may be a minor according to the Indian Majority Act (III of 1875), can take a son in adoption provided he has no son, grandson or great-grandson, natural or adopted, living at the time of adoption. The word 'aputrena' in the verse of Atri (quoted above in n. 1231) is explained by the D. M. as meaning one who had no son at all or whose son is dead and as including the grandson and great-grandson. It would appear from a Bombay decision that even if a Hindu has a son, grandson or great-grandson disqualified from inheriting on the grounds mentioned above he cannot adopt (vide Bharmappa v. Ujjangauda 46 Bom. 455). In the Dattasiddhantamâñjarî of Balakrsna (folio 11b) it is stated that if the aurasa son of a person is congenitally blind, dumb or deaf he can take a boy in adoption. In *Krishnu v. Raghavendra* I. L. R. (1942) Bom. 492 it has been held, relying upon 46 Bom. 455, that a widow
idea is that the permission (anujñāna) of the husband is not required to be given just at the time of the adoption and that it may be given long before the actual adoption. (3) In Madras a widow may also adopt without1263 her husband’s authority, provided she secures the consent of the father-in-law or (if the latter be dead) of all the co-parceners of the husband, if her husband died as a member of a joint family, and if the husband was separate at the time of his death, then the consent of the father-in-law or (if he were dead) of a substantial majority of her husband’s nearest sapindas. In this view the word ‘of the husband’ (in Vasistha) is taken as only illustrative and not literally. (4) The Vyavahāramayūkha,1264 the Nirnayāsindhu, the Samskāra-kastubha, the Dharmasindhu, that are regarded as authoritative in Bombay and Western India, hold that the passage of Vasistha refers only to a wife whose husband is alive and that a widow may adopt without the husband’s authority. According to this school the husband’s authority to adopt is always to be presumed, unless he has prohibited his widow expressly or by necessary implication from adopting. The D. C. appeals to the general maxim ‘another’s (or the opponent’s) view if not dissented from may be taken as having been approved’.

1263 In Balsubramanya v M Subbaaya L.R. 65 I. A. 93 at p. 99 the Prwy Council say, ‘their Lordships are not laying down that the requisite authority must necessarily be express but they agree with the District Judge that in order to constitute an implied authority there must be circumstantial evidence of a cogent character’. Vide The Collector of Madura v. Mootoo 12 Moo. I. A. 397 pp. 435–36 where three of these four interpretations are pointed out.

1264. भर्त्तः पृथ्वी जय सम्राज्ञा द्व द्वरायित । धिवधाम्यति तां धिवधाम्यति धिवधाम्यति । इति। \(1 \text{st} \) यस्यमयायां पश्चात्त्वत्वात् सामायवादुपरि न समयते। अतिर धिवधाम्यति धिवधाम्यति। ॥ \(2 \text{nd} \) \(p. 113 \); चतुर धिवधाम्यति। \(3 \) न लयेकै पूजये \(4 \). अस्य समायवादुपरि धिवधाम्यति तां धिवधाम्यति। अतिर धिवधाम्यति धिवधाम्यति। ॥ \(p. 249 \); किंचिं धिवधाम्यति धिवधाम्यति। \(5 \text{th} \) \(p. 249 \). अति तत्त्वं निर्यवादुपरि निर्यवादुपरि। अति तत्त्वं निर्यवादुपरि। \(6 \text{th} \) \(p. 249 \); किंचिं धिवधाम्यति धिवधाम्यति। अति तत्त्वं निर्यवादुपरि। \(7 \text{th} \) \(p. 249 \); किंचिं धिवधाम्यति धिवधाम्यति। अति तत्त्वं निर्यवादुपरि। \(8 \text{th} \) \(p. 249 \); किंचिं धिवधाम्यति धिवधाम्यति। अति तत्त्वं निर्यवादुपरि। \(9 \text{th} \) \(p. 249 \); किंचिं धिवधाम्यति धिवधाम्यति। अति तत्त्वं निर्यवादुपरि। \(10 \text{th} \) \(p. 249 \); किंचिं धिवधाम्यति धिवधाम्यति। अति तत्त्वं निर्यवादुपरि। \(11 \text{th} \) \(p. 249 \); किंचिं धिवधाम्यति धिवधाम्यति। अति तत्त्वं निर्यवादुपरि। \(12 \text{th} \) \(p. 249 \); किंचिं धिवधाम्यति धिवधाम्यति। अति तत्त्वं निर्यवादुपरि।
There is a large volume of case law about the construction of the authority to adopt, about the rights of co-widows in the matter of adoption, about the limits of a widow’s power, which are deemed to be outside the purview of this work.

As regards the power of a widow to adopt in the Bombay school, when her husband was joint at the time of his death, the case law has fluctuated from time to time. Only a few cases may be referred to here. In *Ramji v. Ghame* 6 Bom. 498 (F. B.) a Full Bench of the Bombay High Court held that a widow, whose husband was a member of a joint family at the time of his death, could not adopt when she has not the authority of her husband or the consent of the husband’s undivided coparceners. After this decision had stood for 50 years the Privy Council held in *Bhimabai v. Gurunathouda* 1265 L. R. 60 I. A. p. 25 that the Full Bench decision had already been overruled in *Yadao v. Namdeo* (48 I. A. 513) and that a Hindu widow can adopt without the consent of her husband’s

1265. In Bhimabai’s case the Privy Council purport to follow the case of *Rakhmabas v. Radhabas* 5 Bom. H. C. R (A C. J.) p 181. But in that case the husband was separate at the time of his death. The P. C. however point out that in *Yadao v. Namdeo* (48 I. A. 513 at p. 529) it was said that the decision in Rakhmabas’s case was not based on the fact that the husband was separate at his death or on the fact that the widow when she made the adoption had the estate vested in her and it was held that that decision was equally applicable where the husband was joint. Apart from the fact that the decision of the P. C. is opposed to the general sentiment of Hindu society at present, with the greatest respect two criticisms have to be offered against the decision in Bhimabai’s case. The passage of the *Vyavaharamayokba* relied upon in Rakhmabas’s case and in Bhimabai’s case has not been correctly understood. The Mayūkha was combating the view of others that a widow cannot adopt at all. Therefore he tried to establish that a widow can adopt without her husband’s authority. But the Mayūkha did not say expressly that she can adopt without any body’s authority or that she can adopt even in a joint family without the consent of the coparceners or even against their wishes. On the contrary if we look at the whole context where he quotes *Yaj. 1 82 and a verse of *Yaj. (930)* it would appear that he meant to convey that the consent of the father of the husband or of his kinsmen would be necessary. Further, no one drew the attention of the P. C. to another passage of the *V. Mayūkha* where it summarizes the rite of adoption and states *‘Women whose husbands are alive are entitled to adopt with the permission of their husbands; failing the husband, a woman can adopt with the permission of the (husband’s) father and the rest’*.
co-parceners, when the husband was a member of a joint family at the time of his death. This decision was carried further by Amarendra's case (60 I. A. 242) by holding that when a widow, who had authority to adopt, adopted even after the estate had devolved on a male collateral heir such adopted son would take the estate and deprive the heir of it. As any widow was held to be able to adopt in Bombay without anybody's consent, hundreds of adoptions have taken place, which came and are coming before the courts. Another Full Bench case held that when a Hindu coparcenary came to an end on the death of the last surviving coparcener and the family property became vested in his heir, a subsequent adoption by the widow of a predeceased coparcener was valid, but it did not revive the coparcenary nor did it vest the property of the former coparcenary in the adopted son (Balu v. Lahoo I. L. R. 1937 Bom. 508). When a co-parcenary was broken up by partition among the members, it was held that the widow of a coparcener who died long before the partition cannot make a valid adoption and reliance was placed on a passage of the Vramitrodaya (quoted below).

But these decisions have been dissented from in Bajirao v. Ramkrishna I. L. R. (1941) Nagpur 707 and in K. R. Sankaringam Pillai v. Veluchami Pillai I. L. R (1943) Mad. 309 (F. B.), where it has been laid down that when the surviving coparceners of a joint Hindu family were in possession of the joint family properties which they obtained in a partition among themselves after the death of a coparcener and subsequent to the partition a valid adoption was made to the deceased coparcener by his widow the adopted son was entitled to reopen the partition. They rely by way of analogy on the provisions of Yaj that the posthumous son can reopen a partition already made and also on that of the disqualified heir when the disqualification is removed and on the dicta in some cases that an adoption dates back to the date of the death of the adoptive father. But no smriti text and no digest has extended the exceptional rules about the posthumous son and the disqualified heir to a son


1267. अत्र भूवा पत्रिकादुससंहतिः प्रस्तावान्वितमकालमिः सम्प्रदेशि च सम्प्रेषि। परस्पर-विभाजितम परस्परसम्भावायुक्तमे तांति सम्प्रेषि। परस्परविभाजि प्रदेशे न काश्युपरिप्रेषि। । प्रत्यापत्तिपरिशिक्षणं अप्नेकुड़े अव्यवहारानांतिक अप्नेप्रेषि। अत्र एव विनास-नान्दकत्वं न तु सलाम्नाद्याव्यक्तिकप्यं। वच म. pp. 431-32.
adopted after partition. Their reasoning as regards the Bombay cases is not satisfactory. It amounts to this that as between the separating co-parceners the coparcenary may be extinct but as to the subsequently adopted son it exists i.e. a co-parcenary is extinct and existing at the same time, which, to use no stronger expression, appears rather strange. Besides the general rule is that partition is made only once (Mann IX, 47). The cases of the posthumous son and of the disqualified heir are expressly provided by way of exceptions. The usual rule is that exceptions are to be strictly limited to the matters expressly stated and are not to be extended by analogy to cases not covered by the words of the exception and that other cases are governed by the general rule. It is a canon of interpretation in Hindu Law that a special text forming an exception to a general text should be construed strictly and applied only to the cases clearly falling within it (Ganou v. Chandrabbhagabas 32 Bom. 275, 283, Hanmant v. Ganesh 43 Bom. 612, 624). Further, a Hindu widow is not compelled to adopt at any particular time; she may adopt at any time during her life. In Vaje Vjjankatrao v. Jayavantrao 4 Bom. H. C. R (A. C. J.) 191 it is noticed that the widow in that case adopted 71 years after her husband's death. If the reasoning of the learned Judges of Nagpur and Madras is correct then when three or four generations have succeeded to the separating coparceners, an adopted son can reopen the partition after three quarters of a century. This result, to say the least, would be most unreasonable. The Nagpur High Court observes that every Hindu widow is a potential mother. This is a fiction which has been carried too far by that court and by the Privy Council. A woman in the order of nature can hardly ever have an apana son beyond the age of fifty or so, but when a fiction is employed a woman can bring into existence a son even when she is 80 or 90. The Privy Council have approved of the Nagpur and Madras decisions recently in Anant v. Shankar 46 Bom. L. R. 1. They hold that a Hindu family cannot be brought to an end while it is possible in nature or law to add a male member to it or while there is still a potential mother if that mother in the way of nature or law brings in a new member. In Ramchandra v. Shankar 47 Bom. L. R. 131 (F B) the Privy Council decision in Anant v. Shankar has been followed and it is held that the decision in Bahu v. Lahoo has been expressly overruled by the Privy Council. The consequences of these latest decisions will be most disastrous for Hindus. In Amarendra's case the P. C. state that there
must be some limit to the power of a widow to adopt or some conditions in which it would be contrary to the spirit of the doctrine to admit its continuance or inequitable in the face of other rights to allow it to take effect (L.R. 60 I. A. 242 at p. 249). In Madana Mohana v. Purshothama L.R. 45 I.A. 156 the P. C. approving of Ramlkrshna v. Shamrao 26 Bom. 526 (F.B.) held that, when a man dies leaving a widow and a son and that son dies leaving his own son or a widow to continue the line by adoption, the power of the former widow comes to an end and cannot be revived; that is, they were prepared to hold that the grandmother succeeding to her grandson who died unmarried could not make a valid adoption and allowed the grandfather and his ancestors to remain without the religious benefits that a son adopted by the grandmother would have conferred (in spite of the 9th chapter of Manu on which they rely in Amarendra's case). According to the recent rulings any widow whose husband died a member of a joint Hindu family may adopt at any time even when the other members become separate and may remain separate for 50 years or more and yet a large slice of the estate may be taken away after several generations have succeeded, laboured and acquired a vast estate. Further, it is not clear how far the P.C. will go in their solicitude for the adopted son. Suppose three brothers separate and one of them sells the property that came to his share. If the partition is to be opened for the benefit of a son subsequently adopted by a predeceased member's widow, will the purchaser be affected or not (supposing the sale is within 12 years of the adoption)? Supposing that the last surviving member of a family dies leaving a married daughter and a predeceased son's widow and the daughter inherits an absolute estate (as she does in Bombay) and remains in possession for 30 years, is it meant that a son thereafter adopted by the widowed daughter-in-law can divest an estate vested for thirty years in a married daughter who is not a member of the family at all after her marriage? The recent P.C. decision in Anant v. Shankar appears to indicate that whatever the length of time the adopted son will out a collateral to whom the estate may have gone by inheritance. Intending purchasers have become afraid that there is no knowing how far the P.C. may go. These decisions will lead on to hurried sale of joint family property at whatever price may be fetched immediately a coparcener dies leaving a widow. The result of the several decisions of the P.C. has been that properties of
Hindu families in which widows of predeceased coparceners exist are not easily saleable and do not yield their proper market value. The inroads on the ancient joint family system of the Mitakṣara have been so many that only the shell remains; the burdens are there, but the soul is gone, what with the right of each coparcener to alienate his share for consideration, the Gains of learning Act, Act 18 of 1937, the decisions of the P C. about adoption, sec 39 of the Transfer of Property Act. It would be better if the Legislature declared that the joint family system of the Mitakṣara type has been abrogated, if all the innovations introduced by legislation and judicial decisions are to be kept intact.

A widow who has attained years of discretion may adopt although she is a minor according to the Indian Majority Act (of 1875) It has been held in Bengal that an unchaste widow cannot adopt, but in the Bombay Presidency it has been held that a śūdra widow, though unchaste, may make a valid adoption. If a man dies leaving a widow D and two sons A and B, who form a joint Hindu family, and subsequently A dies leaving a widow C and his brother B, and if B dies unmarried and the mother D succeeds as heir to her unmarried son B, she has still the power to adopt a son. The duty of continuing the line was cast upon both A and B and not on A alone and therefore when A dies that duty is cast on the surviving coparcener B Therefore the proposition laid down in Ramkrishna v Shamrao cannot apply and the mother of B can adopt (vide Anant v. Dnyaneshwar 46 Bom. L. R. 353)

Who may be adopted.

The person to be adopted must be a male according to the Vyavahāramayukha which relies on the analogy of upanayana (that only a male undergoes, as stated in the ancient text 'aśtvarsati brāhmaṇam-upanayita). This has been followed by

1268. Vide Sayamatāl v Saudamini 5 Beng. L. R. 362.
1269. Vide Basvant v Malappā 45 Bom 459
1270. दुबुधक दुर्गमेश वधति न करया। स जेजे दृष्टिम, दुस (मत ५.१६५) —दुबुधक सेवासितिसम्बंधयोपयोगयतने न दृष्टि सुर्यनानमा सातापिकुल्कक-भित्रिन्दितैण्यपिति-नितंत्रक्षनमणीयताजनाशिकारिष्ठुव—एतद्वस्त्रैं भार्तयुथपिता तथा भार्तेऽपुरुषोपवेषस्यां नहिं संकटस्तः । च चूर्ता pp. 106-107
For another भार्तयुथपिता, vide Adi, 4 IV 10.2 and सुनामलार्तर्'s gloss thereon. The चूर्तार्थसुब्र चाक of भार्तयुथपिता भावना दृष्टिहीनमात्रा विदेशयोगियतामथा । तत्र एकत्रिष्ठुवानाम न विदि-नेत्रायशवर्जितयोगियतामथा । भार्तयुथपिता भावस्त्रमेव रितान्य-मालिकाः (III बूँरार्थ p. 162)
the Indian Courts. But the D. M. (pp 112–116), Sam. K. (p. 188) and Dharmasindhu relying upon such instances as that of Sánta, the daughter of king Dasaratha (who was adopted by king Lomapāda) and of Prithä, who was the daughter of Śūra and was adopted by Kuntibhoja, say that even a girl may be adopted. Pannalal in 'Kumaun local customs' states that a girl may be adopted as a daughter in Kumaun by custom. The person to be adopted must be of the same caste as the adopting father Yāj. I. 133, providing that the twelve kinds of sons that offer the pinda and take the wealth one after another in order, applies only to sons of the same caste. Saunaaka also requires sameness of caste. Manu IX 168 employs the word 'sadrśam', which was interpreted by Medhatithi as meaning 'similar to the adopter in qualities and not in caste'. Medhatithi expressly states that a brähmana may adopt a ksatriya boy. But Kullāka and the other commentators of Manu, the V. Mayūkha and other works hold that the boy must be of the same caste. The Sam K. p 150 and Dharmasindhu go a step further by saying that even a brähmana should adopt another of the same country. The Vayupurāṇa (99 137–139) narrates that Bharata, son of Dusyanta, adopted Bharadvāja, son of Brhaspati and a brähmana, who then became a ksatriya.

The courts accept the view of Kullāka and the rest. It is likely that courts may allow a boy from a subcaste of each of the four principal varnas to be adopted by a man belonging to another subcaste of the same varna. Saunaaka and Vṛddha-Yāj q by D. C. provide

1271. Vide Gangahai v Anant 13 Bom 690, where the Vyavahāra-mayūkha is expressly referred to and followed in preference to D. M. and Saṁśāra-lausthāna. Vide also In Re Munshiram 12 Lahore 658 at p 661.

1272. For the quotation from the sūtra, vide H. of Dh vol I. p 449 n 1119. The D. M. adds passages from the śastra-dhāraṇa, śiśu-dhāraṇa, śāstra and āśāstra Vidē śāstra 111. 2–3 (cr. ed chap 104) for the adoption of kūrta, and śastra, śāstra-kārta, 9th chap. for that of śāstra.

1273. सहै न जानिते: किसलिं कुलाकुत्सीक्षणं। श्रविविद्यदिनि आदि गम्यस्य बुद्धिको अङ्गोऽवलोकयते सः. तस्य on Mad. IX. 168. दिवार्तितिविनाशं समाधिश्व एव। तत्तत्त वेदेन्तदम्यक- ज्ञातवत्ताश्रयं समानान्तरैव एव. भ्रातसिंह दुरित्परम 158

1274. सुभाषद्वियो ब्राह्मणं आदि गम्यस्य बुद्धिको अङ्गोऽवलोकयते सः तस्य दिवार्तितिविनाशं सः. पाल 95 157. भ्रातसिंह दुरित्परम seems to be a corrupt form of वेदेन्तदम्यक-

1274a In Raj Nandu v Aswini Kumar I. L. R. (1941) I Cal 437 the adoption of a Vaidya child by a Kāyastha was upheld in the Sylhet district, as both are now treated as śūdras.
that the dattaka may be of a different caste, but that such a son will not take the wealth. In spite of the words of Vrs. 15. 3 and of Śaunaka (that one having an only son should not give him) the courts have held that even an only son may be given or taken in adoption and that the words of Vasistha are merely recommendatory. Vide Śrī Balusu Gurungaswami v. Śrī Balusu Ramalakshmamma 26 I. A. p. 113 and Vyāsa Chimanṭal v. Vyāsa Ramchandra 24 Bom. 367 (F. B.) In connection with the force of the words of Vrs. 15. 3-4 stating why an only son should not be given or taken, Jaimini’s rule contained in what is called the ‘heuvan-nigadadhikarana’1276 (Jai. I. 2. 26-30) came in for very exhaustive discussion in Ben Prasad v. Hardā Bū Ḍ 14 All. 67 (F. B.) and Radha Mohun v. Hardā Bū Ḍ 26 I. A. pp. 113, 146. There are several Vedic passages like this, ‘he offers the grains into the fire with a winnowing basket, for food is prepared with the help of it’ (Tai Br. I. 6. 5). The question is whether such sentences put forward a reason for what is enjoined in the preceding portion or whether they are intended merely as arthavādas (i.e. for the praise of what is stated in the preceding part of the passage). Jaimini concludes that they are for the purpose of praise1277 alone.

1275. यदि स्त्राशुर्यजातिपर βωλλούντει हुज: कथित। जेनामान न ते कौर्षष्ठोक्तर 'पति जीतत:। वजनात्य:। नन्दो: प्राय: विभूदाता स विभूधातु।
1276 स्वततिशु भगुर्णश्रीपततिपय:। स्वततिशु स्त्राशुर्यजातिपर स्वततिशु स्त्राशुर्यजातिपर स्बततिशु ॥
1277 नृगदा मान स्त्राशुर्यजातिपर। स्त्राशुर्यजातिपर भेंत त्य त्य त्य प्राय गजाववयते ववभागा: ॥

(Continued on the next page)
The eldest son also should not be taken in adoption, since, as the Mit (on Yaj. II. 130) puts it, it is the eldest son alone who is the foremost in serving the purposes of a son as regards his genetive father acc. to Manu IX. 106 which says 'a man becomes one having a son (a father) by the mere fact of the birth of his (first) son and becomes free from the debt owed to

(Continued from the last page)

prepared) may equally be used instead of the śūrpa. But the object of the latter half is not to assign a reason, but rather to praise and recommend the śūrpa as the means of making the home and so nothing but the śūrpa can be employed in making the offering. The Veda is the final authority in all matters pertaining to sacrifice; it does not stand in need of giving reasons for its prescriptions but it may enliven an act to induce people to perform it. Therefore in the hetuvan-nigadādhikarana Jamini does not lay down (as thought by Mandlik and by the High Court in 14 All. 67, pp. 73, 84, 125) that when a text is supported by a clause containing words of reason, it should be regarded as merely recommendatory (and not obligatory), but what Jamini lays down is that clauses containing words generally meaning 'reason' are to be construed as arthavādas (praises) of the obligatory rule contained in a previous clause. Mr. Mandlik says (p. 499 of his 'Hindu Law') 'It is a rule of the Pūrvaśrāvaka that all texts supported by the assigning of a reason are to be deemed not as vidhī but simply as arthavāda (recommendatory). When a text is treated as an arthavāda it follows that it has no obligatory force whatever. Šabaraśrāvaka constructs an adhākarana on this head which he calls 'hetumā-nigadādhikarana' (quoted in 14 All. 67 at p. 73). Thus is entirely wrong as shown above and the adhākarana is not called 'hetumā etc. but 'hetuvan etc. Acc to Jamini's rule the words of Vas. 15. 3 'nākam putram' contain a vidhī (an obligatory rule), while the following clause containing the word 'hi' (indicative of a reason) 'sa hi santi-coma pūrvaśrām is merely an arthavāda, which praises the vidhī by emphasizing the importance of a son. Sarpas in his 'Mīmāṃsā Rules' (pp. 175-176) correctly represents the meaning of Jamini, though in somewhat obscure language. The decisions in 14 All. 67 and 26 I. A. 113 are correct so far as the Mit. and the Mayūka are concerned, though the judgments in the former case are wrong in what is regarded to be the meaning of Jamini's aphorisms constituting 'hetuvan-nigadādhikarana.' The Privy Council in 26 I. A. 113 at p. 146 refer to the supposed rule of Jamini that all precepts supported by the assignment of a reason are to be taken as recommendations only, but they express themselves guardedly and say that the rule is rather startling and they would not admit it to be true unless they made an intimate study of the smṛtis. The commentaries will make the Pūrvaśrāvaka position clear. अनुसरणे हुत: दयुः सुदृढः। तेन हार्ष सिपत \nहृति इत्सत्सनानायायम् न च इत्सत्सनानायायम् किं तत्त्व गौरवार्तः। तस्मादेत्रेवमिदुर्लभ्यं \nद्रव्यविपरिवर्तनियोगैव द्रव्यविपरिवर्तनियोगै वायुर्मिति शब्दो 10 से 1 2 30। तस्मादेत्रेवमिदुर्लभ्यं \nउपेतो हृतित्वात्तथावस्तवं द्वितीयर्यं वेदान्तात्। अर्याद्वैतपरमेयः \nप्रेमवन्याक्षरः। तत्समादेत्रेवमिदुर्लभ्यं 17।
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History o/ DharmaiSslra

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But, in modern times this rule is taken to be only
recommendatory and the adoption of the eldest son is held valid
as also that of an only son 1" 8 The V. Mayukha (p. 108) states:
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Manu IX. 106 does not forbid the giving of the eldest son, but
only provides that by the birth of the first son a man becomes
free from debt (to pitrs). So the V. Mayukha goes a step fur-

and holds that there is no prohibition at all either to give
or take in adoption the eldest son, while the Mit., though it
does not hold the adoption bad, seems to hold that the giver
incurred blame. The Sam. K. p. 150 also does not allow the
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adoption of the eldest son. Two or more persons cannot adopt
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for adoption another boy should not be adopted. A similar explanation had been given by an ancient commentator Deva-swāmin. The D. M., D. C. (pp. 5–6) and Sam. K. p. 150 quote passages of Saunaka¹²⁸¹ and Sakala that a man should prefer a sapinda or a sagotra to one who is not a sapinda or of the same gotra. The D. M., D. C., the Sam. K. p. 150, the Dharma-sindhu recommend the following order: the full brother’s son, then a sagotra sapinda, then a sapinda though not of the same gotra (such as a boy from one’s maternal uncle’s line or a paternal aunt’s descendant), then one not a sapinda though of the same gotra, then one who is neither a sapinda nor a sagotra. This order is purely recommendatory and an adoption in breach of it is quite valid. It has been recently held that an adoption is invalid if the boy adopted be congenitally and incurably deaf and dumb though not an idiot. Vide Surendra v Bhola Nath I L. R. (1944) I Cal. 139

As to the age of the boy to be adopted there is great divergence among the medieval writers which is also reflected in the case law. In this connection certain verses of the Kālikāpurāṇa assume¹²⁸² great importance. The V. Mayukha and the D. C.

¹²⁸¹ Bhāratvānaśaṁphaleśu karṣṇe pūjāstabhāḥ tadvāsāṃphalirvinśaḥ ahautesu hū na kāryateśu śoukādopādipakvāc āśeṣa saṃsāraśāpatayeṣaḥ. Aśeṣa, bhavānāhaleśu pāśeṣaśāvatayeṣaḥ. Sākaraḥ. both q. by ṛṣṭ. Mi. p. 41 and 48, and ṛṣṭ. ch. pp 5–6. A comparatively late work called āra-dīvaṇaśāmājāvīśvarāiṇaḥ (composed after about 1700 A. D., since it mentions the vṛttramāṇa-saṅgraha and śrībāskaraśālī) after an elaborate discussion of Rg. VII 4. 7–8 and the above passages of Saunaka and Sākala states the following conclusion (D C College Ms No 133 of 1886–92 folio 16 b) ‘... vāyāṇa prāyāyaṁ samajeyatām saḥradāpaścāraṇīḥ ... śāntaḥ astaśāmāvibhīṣṭāṁ pāśeṣaḥ tṛyāṇeḥ. chetayāṃ डूधेनादिष्ठिता सूक्ष्मवृत्तिः त्वस्य वृत्तिः’.¹²⁸²

¹²⁸² Bhāratvānaśaṁphaleśu karṣṇe pūjāstabhāḥ ahautesu hū na kāryateśu śoukādopādipakvāc āśeṣa saṃsāraśāpatayeṣaḥ. Aśeṣa, bhavānāhaleśu pāśeṣaśāvatayeṣaḥ. Sākaraḥ. both q. by ṛṣṭ. Mi. p. 41 and 48, and ṛṣṭ. ch. pp 5–6. A comparatively late work called āra-dīvaṇaśāmājāvīśvarāiṇaḥ (composed after about 1700 A. D., since it mentions the vṛttramāṇa-saṅgraha and śrībāskaraśālī) after an elaborate discussion of Rg. VII 4. 7–8 and the above passages of Saunaka and Sākala states the following conclusion (D C College Ms No 133 of 1886–92 folio 16 b) ‘... vāyāṇa prāyāyaṁ samajeyatām saḥradāpaścāraṇīḥ ... śāntaḥ astaśāmāvibhīṣṭāṁ pāśeṣaḥ tṛyāṇeḥ. chetayāṃ डूधेनादिष्ठिता सूक्ष्मवृत्तिः त्वस्य वृत्तिः’. The cūdā was usually performed in the third year and the locks that were kept on the boy’s head depended upon the number of the pravara sages of the gotra of the father. Vide H. of Dh vol. II pp 260–265 for cūdākaraṇa. So if a boy (who was sāpana) was adopted after cūdā, his position would be this that some sāpana would have been performed with one gotra, while others would be performed with another gotra i.e. he would thus belong to two gotras. To prevent this and to complete his affiliation into the adoptive family the putresṭi had to be performed.
hold that the passage is of doubtful authenticity (as the verses are not found in several mss.), while the D. M. and the Nirnaya-
sindhru hold them to be genuine and the Sam K. pp. (168-172) after referring to these views states that those verses are opposed to what is stated in the Ait. Br. about Śunahṣepa who was adopted by Viśvāmitra as a son even after upanayana. The verses are. 'O King! that son, whose samskāras up to (including) the cūḍā (tonsure) ceremony are performed with the gotra of his (natural) father, does not (i.e. cannot) attain the status of the adopted son of another. When the ceremonies of cūḍā and upanayana are performed under his own gotra (by the adoptive father) the dattaka and the other kinds become (recognised as) sons (in the adoptive family); otherwise they are called dāsa (slave). After the fifth year the adopted son and the rest cannot be (recognised as) sons. Having taken one who is five years old, one (the adopter) should first perform the putresṭi.

These verses state four propositions: (1) If all samskāras from jātakarma to cūḍā (i.e. including it) have been performed in the family of birth that boy cannot be adopted in another family; (2) If a boy's cūḍā and other later ceremonies are performed in the family of adoption he is fully an adopted son; (3) A boy over five years of age cannot be adopted at all; (4) A boy whose cūḍā has been performed in the family of birth may be adopted up to five years, provided the rite called putresṭi is first performed in the adoptive family before any other ceremony is performed on the adopted boy. The D. M. says that the best time for adoption is up to three years, then from three years to five is the next best (gauṇa) and that after five no boy can be adopted. The D C. (p. 36) holds that a boy of the three higher classes can be adopted up to upanayana and that a śudra boy can be adopted till his marriage. The Nirnaya-
sindhru seems to be of the same opinion. The V. Mayūkha.

1283 About the dattaka, the vrat-śīl p 132 says 'A man who has undergone dattaka is called a dattaka. Referring to such a dattaka the verses state: The Dattaka is the father of the adopted. After marriage, the Dattaka is the son of the adopted. And the putresh is the son of the adopter. The father, the son, the adopter, and the samskaras are the four. When a man is adopted by another, that man is the adopter. The D C. views the adoption as an institution. When a man is adopted by another, the adopter is the father. The Dattaka is the son. The samskaras of the adopter are considered as those of the adoptee.' The s. 17 p 173 contains the words according to Veda ārya Shīl II. 10 'पुकलिपियानां तु सुती' (1284). Dattakāra refers to a man who has undergone the dattaka. When a Dattaka refers to the adoption of an asagotta boy, that is not his real opinion; he only concedes that that passage may, if at all, refer to the adoption of an asagotta boy. These verses are stated in the Nirnayaśāstra, the Śūra-yuga, the Siddhāntaśāstra, and other works. The Śūra-yuga of Śūra-yuga.
and Sam. K. both hold that even a boy not of the same gotra may be taken in adoption after upanayana or after marriage and even when the person to be adopted has himself had a son. In Bengal, Benares and Bihar the courts hold that the boy must be adopted before upanayana. The same rule holds good in Madras; but there it is further held that if the boy to be adopted is of the same gotra as the adopter, the adoption may be made after upanayana but before marriage. In Bombay a person may be adopted at any age, even after marriage and even after he has had children and he may be even older than the adopter. In the whole of India, a śūdra may be adopted only before his marriage, but in the Bombay Presidency the adoption of a, married man and of one having even a child is allowed also among śūdras.

1285. Vide Ganga Sahai v. Lekhray 9 All. 253 (at p. 306 the translations of the Kālikāpurāṇa verses by Sutherland and Colebrooke are quoted and at p. 318 the authenticity of those verses is held to be extremely doubtful); Raja Mukund v. Jagannath 2 Patna 469, 477 (where the passage of the Kālikāpurāṇa is quoted), in which it was held that a boy may be adopted till upanayana and that it does not matter if the cāyā ceremony is performed in the family of birth and the putreṣṭi is omitted at the time of adoption; Chandreshwar v. Bisheshwara 5 Patna 777 at p. 844 (where the passage as to five years was held not binding); vide Surabala Devi v. Sudhirkumār AIR (1944) Cal 265.

1286. Viraragava v. Ramalinga 9 Mad. 148 (F B.) for the validity of the adoption of a sagota after upanayana and Pichhwayyan v. Subbayan 13 Mad. 128 for the invalidity of a married man's adoption.

1287. Vide Dharma v. Ramkrishna 10 Bom. 80, 84 (where it is said that though Nīlakantha's explanation that the Kālikāpurāṇa verses refer to an asagota causes a difficulty, yet it does not follow that he adopts that interpretation as his own) in which the adoption of a married asagota brāhmaṇa was upheld; Kaligava v. Somappa 33 Bom. 669 where the adoption of a married man having a son was upheld, but it was decided that the son born before adoption remained for purposes of inheritance in the natural family; Batabai v. Mahadu 48 Bom. 387 (where the adopted man was older than the adopter).

1288. Lingayya v. Chengalammal 48 Mad. 407 where it was held that even a śūdra cannot be adopted after his marriage, (which decision follows the D. C.)
Saunaka required that the boy to be adopted must be putrachāyāvaha\(^{1289}\) (one who bears resemblance to or is a reflection of the aurasa son). This has led to differing explanations by the commentators and contradictory decisions in the several Indian High Courts. The D. M. and D. C (p 21) both explain that the resemblance consists in the possibility of being procreated by the adopter himself by niyoga and the like. The meaning of the D. M. is: A brother's son or a sapinda's son or a sagotra's son can be adopted because the adopter could have procreated a son by the practice of niyoga on the wife of a brother or a sapinda or a sagotra (according to the rules of niyoga); but he could not have done so as regards his mother, or grandmother, daughter or sister or his mother's sister. Therefore a man cannot adopt his own brother, paternal or maternal uncle, a daughter's son or a sister's son and the like. One strange thing is that, though niyoga had been forbidden for many centuries before the D. M., the author of it brings in the rules of the long obsolete practice of niyoga\(^{1290}\) to find out who could or could not be adopted. But stranger things were to happen Sutherland who translated both the D.M. and the D.C explained in his notes the word 'niyogādīna' as 'by such an appointment or marriage and the like'. Vide Stoke's Hindu Law Texts p. 590 (Dattakāmilāmsa, sec. V. plāctum 16 note). There was no warrant for introducing the word 'marriage' after 'niyoga'. The rules of niyoga are different from those of marriage. The judges most of whom were generally ignorant of Sanskrit and had yet to decide cases among Hindus according to Hindu Law as understood by them (vide 26 i. a. 113 at page 188 about the ignorance of Sanskrit among judges) seized upon this explanation and evolved the curious rule that no one could be adopted whose mother the adopter could not have married in her maiden state (i.e. the relationship has reference to a time prior to

\(^{1289}\) For the rules of niyoga vide H. of Dh. vol. II. pp. 599-601.

\(^{1290}\) Vide Dharmāstra, Vol. Saunaka required that the boy to be adopted must be putrachāyāvaha (one who bears resemblance to or is a reflection of the aurasa son). This has led to differing explanations by the commentators and contradictory decisions in the several Indian High Courts. The D. M. and D. C (p 21) both explain that the resemblance consists in the possibility of being procreated by the adopter himself by niyoga and the like. The meaning of the D. M. is: A brother's son or a sapinda's son or a sagotra's son can be adopted because the adopter could have procreated a son by the practice of niyoga on the wife of a brother or a sapinda or a sagotra (according to the rules of niyoga); but he could not have done so as regards his mother, or grandmother, daughter or sister or his mother's sister. Therefore a man cannot adopt his own brother, paternal or maternal uncle, a daughter's son or a sister's son and the like. One strange thing is that, though niyoga had been forbidden for many centuries before the D. M., the author of it brings in the rules of the long obsolete practice of niyoga\(^{1290}\) to find out who could or could not be adopted. But stranger things were to happen Sutherland who translated both the D.M. and the D.C explained in his notes the word 'niyogādīna' as 'by such an appointment or marriage and the like'. Vide Stoke's Hindu Law Texts p. 590 (Dattakāmilāmsa, sec. V. plāctum 16 note). There was no warrant for introducing the word 'marriage' after 'niyoga'. The rules of niyoga are different from those of marriage. The judges most of whom were generally ignorant of Sanskrit and had yet to decide cases among Hindus according to Hindu Law as understood by them (vide 26 i. a. 113 at page 188 about the ignorance of Sanskrit among judges) seized upon this explanation and evolved the curious rule that no one could be adopted whose mother the adopter could not have married in her maiden state (i.e. the relationship has reference to a time prior to

\(^{1290}\) For the rules of niyoga vide H. of Dh. vol. II. pp. 599-601.
marriage). This is still the law in all Presidencies except Bombay. Although the D. M. stated that the boy to be adopted must be capable of being procreated by niyoga, at another place it remarks, after quoting verses of Saunaka and Sakala, that a boy of another gotra may be adopted except a daughter’s son, a sister’s son and a mother’s sister’s son. The Bombay High Court holds that any one may be adopted except these three (vide Ramchandra v Gopal 32 Bom 619, Wadn v Heerabai 34 Bom. 491 holding that a man cannot adopt his mother’s sister’s son, Ramkrishna v Chimnaji 15 Bom. L. R 824 holding the adoption of father’s sister’s son valid). Very strange results have followed from this viz. the Bombay High Court has upheld the validity of the adoption as a son by a man of his own half-brother (vide Gajanan v Kashmash 39 Bom. 410), of his own maternal uncle’s son, and the adoption by a widow of her deceased husband’s son-in-law (vide Sitabai v Parvatibai 47 Bom 35). It should be noted that the Dvaitanirnaya or Dharmadvaitanirnaya (of Sankarabhatta, father of Nilakantha) and the V. Mayukha both hold after a very abstruse reasoning based on several Mimamsa rules, that men of the three higher classes may

1291. Vide Munshi v. Ramanada 11 Mad. 49 (F. B.), Bhagwan Singh v. Bhagwan Singh L. R. 26 I. A. 153, 160, in the latter of which the texts of Saunaka and Sakala are relied upon.

1292 तथा च शौक्तः। तौतिर्वृद्धि भानिनयेऽथ स्रुविकृत विषयं स: भाष्णादि- वयं भूतैर्विभिन्नोऽविभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं। तौतिर्वृद्धि भानिन्यायं च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं। तौतिर्वृद्धि भानिन्यायं च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं। तौतिर्वृद्धि भानिन्यायं च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं। तौतिर्वृद्धि भानिन्यायं च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं। तौतिर्वृद्धि भानिन्यायं च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं। तौतिर्वृद्धि भानिन्यायं च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं। तौतिर्वृद्धि भानिन्यायं च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं। तौतिर्वृद्धि भानिन्यायं च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि भानिन्यायं च महत्यहतां विषयं।

1293. Vide the text of the V. Mayukha p. 111 and notes pp 173-179 in my edition of the V. Mayukha for explanation. The Dvaitanirnaya (p. 105) concludes. तथा तौतिर्वृद्धि च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तौतिर्वृद्धि च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। The V. Mayukha p. 111 follows the Dvaitanirnaya and states that usage is in accordance with its explanation तथा तौतिर्वृद्धि च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। तथा तौतिर्वृद्धि च भूतैर्विभावः। समानावहितात्मायेऽपि पाल- पेष्ट्यस्यांवेयं। In Gopal v Hanmant 3 Bom 273 at p 280 it was held that Nilakantha also interdicted the adoption of the daughter’s son and of the other two by the regenerate classes. It is submitted that this view as to the position of the V; Mayukha on this point is entirely wrong.
adopt a daughter's son, a sister's son or a mother's sister's son and that a śūdra must adopt one of these if available in preference to any one else. The Bombay High Court follows the interpretation of Saunaka's verse given by Nandapandita in preference to Nilakantha's, but in its turn disregards the authority of Nandapandita who forbade the adoption of a brother or uncle. It would have been far better if it had generally brushed aside everywhere the dicta of Nandapandita and preferred the interpretation of the Mayūkha. Popular sentiment is in favour of the daughter's son or sister's son being adopted, as they are the nearest and often the dearest relations, and yet the High Court shuts the door against them, while it opens it ajar for the adoption of a brother or maternal uncle or his son or one's own daughter's husband, which appears absurd to people. Besides the High Courts have recognised the adoption even of a daughter's son on the ground of custom by Dēṣastha śāṃśtra brāhmaṇas in the Dharwar District (vide Sundarrām v. Hanumāt 56 Bom. 298), by Telugu brāhmaṇas (Visvasundara v. Somasundara 43 Mad. 876). Śūdras can adopt a daughter's or sister's or mother's sister's son all over India. The D. M. went so far as to say that a widow could not adopt her brother's son. The D. M. ignored the fact that the widow adopts to her husband (and not to herself) who bore no relation to his wife's brother's wife and who could have himself adopted that son. The Bombay High Court and the Privy Council have discarded this absurd proposition of the D. M. Pannalal in 'Kumaon Local customs'.

1294 It may be noted that the question of the adoption of the daughter's son cropped up even in the times of the Peshwas. In 'Selections from Peshwa's Records' vol 43 No 146 pp 116–117 the opinion of Rāmāśīrī, the Chief Justice of the Peshwa's court, is sought on the adoption of a daughter's son from the Ratnagiri District. The Prthvīrāja Rāṣṭra states that the famous Chohan hero Prthvīrāja had been adopted by his maternal grand-father Anangapāla of the Tomara dynasty of Delhi. But modern historians say that this is imaginary (vide 'History of Medieval India' by Prof Ishwara Prasad p 9 ff).

1295 तत्रात् बुद्धिनीर्माणम्। भाषानिविद्येऽन्ति भाषानिविद् युतः काव्यः। प्रति। भाषानिविद्यान्ति भाषानिविद्यान्ति येन भाषानिविद्यान्ति येन। पृष्ठं भी pp. 56–57. Vide Bas Nāns v. Chumilāl 22 Bom. 973, Puttīlāl v. Parbhāt 42 I. A. p. 155, where after admitting that the Dattakamakamā is embedded in law, the P C say that caution is required in accepting the glosses of Nanda Pandita where they deviate from or add to the samāna (p 161).
notes that in that part of India a daughter's or a sister's son may be adopted (p. 14 para 56). It has been recently held that the adoption of the illegitimate son of a woman even among śudras is invalid. Vide Apya v. Ramakka I.L.R. (1941) Bom. 350. This was relied upon for holding that a woman cannot give in adoption an illegitimate son among Lingayats in Tirkangauuda v. Shirappa A. I. R. (1944) Bom. 40.

It is now necessary to say a few words about the dvyāmasyayana. A dattaka is of two kinds, kevala (simple or ordinary) and dvyāmasyayana (the son of two fathers). When a man gives his only son in adoption to another under an agreement that he is to be considered as the son of both the natural father (janaka or janaka-pitr) and of the adoptive father (pālaka), the son so given is called dvyāmasyayana. The Bombay High Court has held that in order to constitute a dvyāmasyayana an express agreement as stated above must be proved even when one brother adopts the only son of another.

A dvyāmasyayana inherits both in the natural and adoptive families. The word dvyāmasyayana was employed in some of

1296. अथ च दृढ़को हिरिलिः केनतः हुमास्यायणक्षः। सतिदुः हिवा दृष्ट आदिः। आयोिरसाधिते सतिह दृष्टिस्तल्यः। व्य. चंद्रेश इ. p 114. The दृष्ट. च (pp 61,66) employs the word श्रृंखला for केवलकः Vide Laxnimpatrao v. Venkatesh 41 Bom 315, Huchrao v. Bhimarao 42 Bom 277. It has already been seen (p. 659) that the Mit employs the words श्रृंखला and केवलकः as synonyms. Nār. (dāyabhāga 23) appears to use it in the same sense, 'हिरिलिः दृष्टिकम् विपरीतिकी द्रुकुः। रिवाचायं सतिदुः हिवा दृष्टिस्तल्यः। श्रृंखला' In this verse Nār. does not employ the form श्रृंखला, but the word नम्भर्ष्यायण with the adverb 'dvil' meaning 'twice'. The word dvyāmasyayana is made up of 'dvil' (two) and 'नम्भर्ष्याय' (issue of this man, issue of so and so). The word नम्भर्ष्याय occurs in the Tal Br. II 7 7. 7 (अर्थय जनक रससागरम् आधुपाययाचः अज्ञता साधिम् युति) and in the Atharvaveda IV 16 9, X. 5. 36 and 44, XVI. 7 8 in the form 'नम्भर्ष्यायाना नम्भर्ष्यायः पुत्रा'. In the Hir gr. I, 9 19 we have 'स्यायणान्येन सम्रंभयुष्णौ अज्ञता साधिम् युति'. Similar words occur in the Bhāradvāja gr II. 19. Kātyāyana has vārtika 2 'आधुपाययानान्येन सम्रंभयुष्णान्येन' on Pān. VI. 3 21. 'नम्भर्ष्यायाना' is formed from 'नम्भर्ष्याय' (of this or that man) in the sense of 'अपत्या' acc to Pānini IV. 1. 99 (naddādhyāḥ phak) in the Āśv. Sr. S (Uttarasatka 6 13) the word 'dvipravācana' is employed for नम्भर्ष्याय, 'अर्थय एवं द्रिप्पः श्रृंखला लेकिकायु' on which Nārāyana explains, 'व एवं श्रृंखला हुमास्यायणां सोपांचते सोऽधिकारी हुमास्यायणां सोपांचते सोऽधिकारी हुमास्यायणां सोपांचते'.

the smrtis as applicable to all such sons as the dattaka, krita. The V. Mayukha quotes a prose passage from Kātyāyana (which is attributed to Pañthinast in D. o) and the V. Mayukha, D M. and D C. all quote a verse (which is ascribed to Pravarādhyāya by the first and to Pārīkṣita by the D. M.) that supports this. The D. M and D C. both quote two sūtras of Satyāsādha and Śabara's gloss (bhāṣya) thereon in which the kṣetra is called nīya dvāyamusyāyana and the dattaka and others are called anīya dvāyamusyāyana Yaj II. 128 and Baud. Dh. S. II. 2. 21 provide that a kṣetra is the son of both the begetter and of the husband of the wife on whom the son is procreated. Therefore such a son is called nīya dvāyamusyāyana (because he is always the son of two fathers). When the kṣetra became obsolete and forbidden, the only dvāyamusyāyana was an only son taken in adoption with a stipulation as described above. About the dattaka Manu IX. 142 states the general rule that the dattaka loses the gotra of his genitivē father and assumes that of the adopter. But a dattaka belonged to two gotras according to some, if his samskāras up to cauta were performed in his natural family and the samskāra of upanayana and those that follow were performed in the adoptive family. Therefore it was not a general proposition that a dattaka always belonged to two gotras. If all the samskāras from jātalka ma were performed by the adopter, then the dattaka would take the gotra of the adopter alone. Hence the sons called dattaka and 'the bought' were styled anīya dvāyamusyāyanas (who were not in all cases dvāyamusyāyanas). The D. M. states this twofold division of dvāyamusyāyanas and employs the words nīyavat or nīya and anīyavat or anīya.
to denote the two varieties and restricts the former only to a son adopted with a stipulation as stated above. The kṣetraja became quite obsolete many centuries ago and the courts have held that the anitiya dvāmasyāyana is also now obsolete. It is now held that every adoption is presumed to be in the simple (kṣetraja) form, unless a stipulation that the boy will be the son of both is proved (when it will be a dvāmasyāyana adoption).

When a man is adopted in the dvāmasyāyana form, his son born after such adoption has been held to inherit as grand-son to the adoptive father, if the dvāmasyāyana son died before the adoptive father.

Ceremonies of Adoption.—The most essential ingredient in adoption is the giving of the boy by the natural father and the taking of the boy by the adopter with the intention to transfer the boy to the family of the adopter. Another requisite (in some cases) is the homa called dattahoma which as described by Saunaka and Baud. is given in the Appendix. It is not necessary that the dattahoma must be performed immediately after the giving and taking, but it may be performed later and its performance may be delegated to others when the giver or taker is a widow or a sūdra or is ill &c. Although in Vedic times women composed hymns and although Harita and Yama stated that women had the upanayana performed on them and could study the Veda (H. Dh. vol. II pp. 293–295), in later times it was held that women could not study the Veda, could not repeat Vedic mantras and therefore could not perform any homa (including dattahoma). Therefore some writers said that a widow could not adopt at all, while others like the V. Mayukha said that women are to be assimilated to sūdras and so just as a sūdra can get the dattahoma performed through a brāhmaṇa, so a widow, though she cannot herself engage in homa, may employ a brāhmaṇa to perform the dattahoma Vide H. Dh. vol II. pp 365–368 (for deterioration in the

1300 Vide Bazaar v. Gurungawa 57 Bom. 74, 77, where the two kinds of dvāmasyāyanas are mentioned and it is stated that the anitiya dvāmasyāyana is now obsolete.


1302 Vide Appendix.
position of women), and note 1362 above and V. Mayükha quoted below. 1303 It has been held that the dattahoma is not necessary among twice-born classes if the boy to be adopted belongs to the same gotra as that of the adoptive father. Jolly (in T. L. L. p. 160) states that the Dattakadarpans refers to a text of Yama from the Sarasvativilāsa to the effect that homa is not absolutely essential in all cases. From Colebrooke's Digest V. 4 CCLXXXIII it appears that Jagannātha held the same view. The Dharmaśindhū remarks that in certain countries an adoption of a sgotra sapinda boy can be validly effected with the mere assent of the giver and adopter without Vedic ceremonies. There is a good deal of conflict in the case law on this point, which is passed over. Among the dāsas no homa is necessary. The ceremony of adoption as described by Baud. gr sesasātra II 6 4–9 (which is probably the oldest on record and which was the one to be followed by the Taṅtriyas or followers of the Black Yajurveda, according to D. M., Sam K. p. 177 and the Dharmaśindhū p. 161) is as follows: When about to take (in adoption) the adopter makes ready (or collects) the following viz. two pieces of cloth, two ear-rings, a finger ring, an ācārya (officiating priest) who is well versed in the Veda, a bundle of kuśa grass, fuel sticks of palāśa (Buta Frondosa). Then in the midst of invited relatives, after informing the ruler, he serves food to the brahmanas in the assembly hall or in the middle of the house. He (the adopter) makes (the brahmanas) pronounce the benedictions 'May the day be auspicious! May you fare well! May there be prosperity!' and performs the acts (usual in all homas) from drawing lines on the altar up to carrying forward the Pranītā water. Vide H. of Dh. vol II pp 209–212 for the procedure common to all homas. Then he goes into the

1303 ज्ञाने विवेक वर्ग, वैदिकमलांसाधारणतः सहित उल्लेखिते शून्यवानाधिकार द्वीतीयलावके। सन्नात्याहोम्य सत्य विभाषा स्थगिता। आधिकारि अधिक, अधिकारि प्रस्ताव। तीसरे दुःखदर्श संपर्कः—द्वीतीय वाक्यादि। वह सबूत प ११२ (text) Vide H. Dh. vol II Pp 594–595 notes 1392–1395 for other texts treating women (of higher castes) and dāsas alike

1304. Vide Valubar v Govinda 24 Bom. 218, Bal Gangadhar v Shrinivas 39 Bom. 441 (F C), Govindayyar v Dorasami 11 Mad 3 (F B); Muthuvariyangar v Thiruvangadanmai 1 I.R. (1942) Mad p 682 विपरीतोप्य होमासंस्कारसाधनोपरं विभाजितकाव्यासो विरलित दर्शनाश्च। समस्तोपरोपरे प्रदेशीय प्रस्तावी। रूपे सुधूराधीन सीडूः सम्पर्क। तत्र तितितर। एव एव शून्यवानाधिकारिगता प्रदर्शनेण। स्थिरपरिशिष्ट इति पूर्वी प 249, किंतु इंद्रि वैदिकविवेचना विनायक शून्यवानाधि संस्कारसाधनोपरं विभाजितकाव्यासो। सर्वसिद्धीस्य परि इति पूर्वी प 158.
presence of the giver and begs of him 'give me your son'. The other one (the giver) says 'I give'. He (adopter) then takes hold of the boy with the words 'I accept thee for the continuity (of my family)'. Then he decks (the boy) with the pieces of cloth, the ear-rings, the finger ring and performs the acts from laying fuel sticks round the altar up to the offering of oblations into fire; he offers boiled rice into fire with the mantra 'yastvā hrda' (Rg. V. 4. 10 or Tai. S. I. 4. 46 1) as a pu omuvākyā\textsuperscript{1305} (prayer of invitation) and with the mantra 'yasmai tvam sukṛte' (Rg. V 4. 11, Tai. S. I. 4. 46. 1) as a yājya (prayer of worship or offering). Then having offered oblations of clarified butter with the vyāhṛti\textsuperscript{1306} he performs the acts from the offering to Agni Svistakṛt down to the giving of the cow and presents. He (the adopter) gives as dāksinā (fee) to the priest these very pieces of cloth and rings (with which the boy was decked).

The procedure laid down by Saunaka, who appears to be much later than Baud., is somewhat different (though there is a good deal common to both) and is meant for the students of the Rgyeda (acc to Sam. K. p. 175). A few salient points may be noted. The adopter should fast the previous day, he should offer madhuparka to the officiating priest, should perform all the details from the placing of fuel sticks on the fire up to the purification of clarified butter with the blades of kusa grass. The giver recites (when begged) the five verses beginning with 'ye yaśena' (Rg X 62 1–5) and the adopter holds the boy with both hands while repeating the mantra 'devasya tvā' (Āśv gr I. 20. 4), mutters the rk 'angād-angād' (quoted above on p 641 n. 1202) and smells the boy on his head. The adopter offers boiled rice with Rg V 4 10, X. 85. 38, X. 85. 41–46. A much more elaborate procedure is set out in the V. Mayūkha (pp. 120–123 text) and the Dharmaśiudhu (III pūrvārdha pp. 160–161).

The results of adoption—Adoption has the effect of transferring the adopted person from his natural family into the adoptive family. Adoption confers upon the adopted person the same rights and privileges in the family of adoption as the son

\textsuperscript{1305} For the meaning of Puṣruṇuvākyā and Yāyā, vide H. of Dh vol. II. p 1060 n 2372 and pp 1058–59 respectively. For the offering to Agni Svistakṛt vide H. of Dh vol. II p 208 and appendix p 1257 n. 481.

\textsuperscript{1306} The vyāhṛtis are the mystic syllables bhūḥ, bhūvah and svah. The offerings will be accompanied with these syllables as follows: 'om bhūḥ 'āhā', 'om bhūvah svāhā', 'om svah svāhā', 'om bhūr bhūvah svah svāhā'.

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of the body (aurasa) except in a few well defined cases. The basic text on this point is that of Manu\textsuperscript{1307} IX. 142 which may be literally rendered as follows: 'The son given should not take the gotra (the family name) and the wealth of his natural father; the pinda (the cake of boiled rice offered to deceased ancestors in sraddhā) follows the gotra and the wealth (i. e. is invariably concomitant with them); of him who gives (his son in adoption) the savdhā (obsequial rites) ceases (so far as that son is concerned). The preceding verse (Manu IX. 141) states that the adopted son takes the wealth of his adoptive father and all that this verse says is that, after adoption, the son given in adoption does not take the name of his natural father and has no right in the wealth that then is the natural father's and that he does not perform the obsequial and sraddhā rites for his natural father. But from this verse a learned Hindu Judge derived the sweeping proposition that 'the theory of adoption depends upon the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and maternal line, and his complete substitution into the adopter's family as if he were born in it'. There is no warrant for the idea of complete severance emphasized here. This dictum was followed in many cases and was accepted by the Privy Council\textsuperscript{1308}. Another great Judge went so far as to

\textsuperscript{1307} गीत्रिीत्रघ्यं नरपिण्यूर्म हरेश्वय त्रुदिन्य: कृष्णित्वागुप्फः सिद्धस्य ध्यानिति ब्रह्मस्य स्वाधु ॥ समू इ. १४२॥ The Mit. on Yaj. II 132 and V. Mayūkha p. 115 read 'र जसेष हविषेस, हरेश'. But this reading makes no change whatever in the meaning, since in ancient sūtras and smṛti, the roots 'bhaj' and 'hr' and derivatives from them are used promiscuously in the same sense with regard to gotra and riktha. Vide the words gotra-bhājyaḥ and riktha-bhājyaḥ cited above (on p. 650) from Baud. Dh S 11 2 36-37 and Gant 28 30-31, the words 'riktham bhajeran' (in Gant. 28. 19) and 'rikthabhāk' (in Gant. 28. 26), Vas 17 84 (tayorābhaḥ राजा हरेश), Yaj 11 132 (विश्वासोशस्त्रवेगः) and II. 138 (दशापत्रयोस्बांशि), विश्वसंबन्ध 15. 40 (भ्रायायहरा र रित्रस्वयम). Even 'apaharet' which ordinarily means 'should steal or take away' is used by Yaj II 138 only in the sense of 'should take or claim'. Manu (IX 153 and 154) employs the words 'haret' and 'ādādyāt' in the same sense Vide also विश्वसंबन्ध (in Manu IX. 155) and वर्जय (in IX. 192). Therefore the learned Judges in Dattatraya v. Govind 40 Bom. 429 and in Bat Kesara v. Shrusangy 34 Bom. L. R. 1332 (at pp. 1340-41) unnecessarily enter into a long discussion on 'haret' and 'bbajet' and the several translations of these words by Golapchandra Sarkar and others.

\textsuperscript{1308} Vide Uma Shanker Mottu v. Kali Komul 6 Cal. 256 (F. B.) at p. 260. Vide Kali Komul v. Uma Shankur L. R. 10 I. A. 138, 149 for the acceptance by the P. C,
say that 'an absolute adoption appears to operate as birth of the boy in the family of adoption and as civil death in the family of birth, having regard to the legal consequences that are incidents of such adoption.'

But then the P. C felt that matters were being carried too far and administered the warning that "As has been more than once observed the expressions ‘civilly dead or as if he had never been born in the family’ are not for all purposes correct or logically applicable but they are complimentary to the term ‘new birth’." We have to see what construction was put upon the verse of Manu by authoritative digests. The V. Mayükha explains Manu IX. 142 and arrives at the conclusion that the four words gotra, riñha, pinda and svadhā are not to be taken literally but they are only used to indicate all those consequences only in relation to the natural father and the like that are brought about by their connection with the pinda and the verse of Manu conveys the cessation of all those consequences only. It further adds that the son on being given away in adoption ceases to have similar relationship to his brother, paternal uncle (in the family of birth). It should be noted that the V. Mayükha does not say that the son given away is dead to the family of birth or ceases to have any connection whatever with the members of the family of birth, but restricts the cessation of relation to the offering of pinda and the taking of the estate after he is adopted. The D. M. quotes the Sm. C. (II. 289) and holds that by the gift the adopted son ceases to have the same gotra as the giver. The D. C. (pp 23-24) states the same proposition, without naming the Sm. C. The learned Judges who had to decide cases of adoption, even if they knew Sanskrit, do not generally appear to have consulted authoritative works other than the few that had been translated and were quite unaware as

1309. Per Sir Asutosh Mukerji J. in Barbhadra v Kalpatara 1 C. L. J 388 at p. 400 (where Manu IX. 142 is cited in the original for thus)


1311. The learned Judges who had to decide cases of adoption, even if they knew Sanskrit, do not generally appear to have consulted authoritative works other than the few that had been translated and were quite unaware as

to whether even the cessation of the pinda and gotra and of the right to wealth when a son was given away was so universally accepted by the leading Dharmaśāstra works as they thought. The Sarvasvatītvāsa (p. 394) quotes a text of Viṣṇu 1343 that even the adopted son should perform the obsequial rites of the natural father and explains that Manu IX. 142 applies when the natural father has no issue at the time of his death. Rudraskanda on Khādīra gr. III. 5. 16 says the same. Kamalakara, the author of the Nirnayasindhu 1371 and a first cousin and contemporary of Nilakantha expressly states that Manu IX. 148 only applies when the natural father has a son or sons (other than the one given away) and quotes Kātyāyana and Laugakṣi cited in the Pravaramañjari (p. 146) in support. The Dharmaśindhu 1315 also says that when a boy of another gotra is adopted after his upanayana is performed in the family of birth or when only the upanayana is performed by the adoptive father, the adopted boy should repeat both gotras at the time of bowing at the feet of elders or in śrāddha and other rites; but when all the ceremonies including the cūḍā are performed by the adoptive father then the adopted boy has only one gotra (viz. that of the adopter).

The plain meaning of the verse of Manu (IX 142) is that when a man gives away his son in adoption, then that son is transferred into another family, does not perform the śrāddha and similar rites for the giver and cannot claim to take the wealth of his natural father as a son on the father’s death or demand a partition from his father. The other son or sons

1313. नरवें—मौलिकः । स्था—उर्लत मधुर्वचाल बिजितसत्स सत्यकायोतस्तो—
विन्यासोपीतजयस्त्र वधादिपिं टुकातिधि वधादिपिं विमण्डित विमण्डित चेतुदुहते ।

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1315. प्रायोगपरं यद्यकारः प्रायोगक्षेत्रस्त्र तत्कारः न्योतेति न्योतेतिरः ।

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Vide note 1298 above for a portion of it. The vi. Z folio 127 says “मौलिकः ।

स्था। कैपि जनकस्य दुःखस्वेते तत्कारः जन्मकारः तिष्ठति ।

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of the giver are to perform the śrāddhas for the father and to succeed to the family wealth. But this verse has been twisted by some High Court decisions to yield another rule. Suppose A, a Hindu, has an only son B. On A's death B takes the whole ancestral property as the only surviving co-parcener and then B is given in adoption by his mother to X. Suppose B has a daughter C born to him before his adoption to X. Does B forfeit the estate taken by him as the last surviving male with the result that on B's adoption to X his daughter C takes the estate (which had already vested absolutely in B) as if he was dead in the family of A. The Bombay High Court has held in two decisions that on B's adoption to X in the above illustration he loses or forfeits the property he took as the last surviving co-parcener in the family of A and his daughter C would take the estate of B as if he were then dead (though he is actually living). The result of these decisions is that the verse of Manu is construed as laying down that though a man may have been absolutely entitled to certain property as a member of one family, on his adoption into another family he loses that estate which then passes on to his heir as if he had died on the day of adoption. This construction of the verse of Manu has not been accepted by the Madras and Calcutta High Courts, which hold that an adoption does not divest any property which has vested in a man previous to his adoption into another family. It may be noted that the Bombay High Court itself gave a decision which is inconsistent in principle with the two decisions.

1316 Vide Dattatraya v Govind 40 Bom 429 (where Manu IX 142 is relied on for this proposition at pp 433-434) and Manikbai v Gokuldas 49 Bom 520.

1317 Vide Venkat Narasimha v Rangappa 29 Mad. 437; Behari Lal v Kalas Chunder 1 C W N 121; Shyama Charan v Sricharan 56 Cal. 1135.

1318 Vide Mahabaleshwar v Subramanya 47 Bom 542 In Manikbai v Gokuldas 49 Bom 520 (at p 525) both the cases viz 40 Bom 429 and 47 Bom. 542 are apparently quoted with approval, but it is extremely difficult to reconcile the last two cases. If on adoption a separated coparcener is not divested of the estate already taken by him at a partition because the share taken by him cannot be said to be the estate of his natural father within the meaning of Manu IX 142, the estate taken by a sole surviving co-parcener also cannot be divested by his subsequent adoption, because at the adoption it had ceased to be the estate of his natural father long before the adoption, because when a co-parcener dies his rights lapse to the other co-parceners and because the root cause of being entitled to partition and taking as surviving coparcener is the same viz the birthright of a son under the Mitaksara.
cited above, when it held that where a father and his four sons partitioned ancestral family property and one of the sons was subsequently given in adoption into another family, the son so adopted was not divested by the subsequent adoption of the property already taken by the son on partition. In a still later case the Bombay High Court approves of its first decision in 40 Bom 429 and observes: 1319 'the verse of Manu refers not only to the riktha of the natural father but also to the gotra of the natural father. It is quite clear that the gotra of the natural father is vested in the son by his birth. The gotra so vested in the son ceases after the son is given in adoption. It is difficult to understand why the riktha which is spoken of in the same manner as gotra in the verse should not cease by the entire cessation of connection with the natural family. The gotra and riktha are inextricably joined together in a dvandva compound and it would follow logically as well as grammatically that the adopted son must lose both together and cannot lose the former and keep the latter.' In this passage the premises that there is entire cessation of connection with the natural family is entirely wrong as has already been shown and will be shown a little later on. The adoptee's connection with the gotra of the natural family does not cease for all purposes at all. Therefore the reasoning of the passage quoted above is entirely misconceived and is further opposed to two well known rules of the Mīmāṃsā evolved for the construction of texts. On the interpretation given to Manu IX. 142 by the Bombay decisions that verse lays down two rules (vidhis), viz. (1) a person adopted into another family will not take the wealth of his natural father or any one in that family after adoption; (2) that a person adopted into another family loses or forfeits on adoption wealth that he may have already taken absolutely in the natural family as a member of that family before adoption. These are two entirely different propositions and the rule of Mīmāṃsā is that one and the same sentence 1320 should not be construed as laying down two rules (vidhis) applicable to different sets of circumstances. To so construe a text is to be guilty

1319 Vide Bas Kesarba v Shivsangji 34 Bom. L R 1332 which accepts 'na haret' as meaning 'shall not take', and quotes on pp 1341-42 the D. M., D C and V Mayukha on this verse. The P C decision in Raghu Ray Chandra v Subhadra L R. 55 I A 139 does not approve of 40 Bom 429 as regards the exact point of decision viz. the forfeiture of property already vested before adoption.

1320 अविकलिप्ति हि विकटमभेदः वजः। तद्प्रसादिकः प. 551 ओ भृ. II. 2 26
of the fault of \textit{vākyabheda} (splitting up of a sentence so as to yield two distinct rules). The V. Mayūkha construed Manu IX. 142 so as to indicate only one sense and avoid the fault of \textit{vākyabheda} on the analogy of two examples discussed in the \textit{Pārvammānśā}. works, but if the reasoning of the Bombay High Court were followed the same fault to avoid which Nīlakantha strives hard would be committed. There is another mīmāṃśā rule \textsuperscript{122} which will be violated by the Bombay High Court's interpretation of Manu IX. 142 viz. when an already existing thing or entity and something to be accomplished or brought about in future are spoken of together in a sentence the thing already existing or accomplished is mentioned simply for the sake of the thing to be accomplished. The accomplished fact \textit{is} adoption itself. Manu who mentions adoption or the adopted son which is an accomplished entity also mentions along with it the taking of property (rikthahaśāna); hence that taking must have reference to the future bringing about and not the undoing of rikthahaśāna which had already taken place long before.

That the gotra of the natural family persists in some matters even after a person is adopted is made clear by the digests. The Sam \textsuperscript{123} K. (p. 182) says that every dattaka must, when entering on marriage, avoid the gotra of his natural as also of his adoptive father. The \textit{Dharmasindhu} (III. p. 161) says the same and states that the prohibition against marriage

\textsuperscript{121} Yathā जातुपु: भूषणाश्रीमाणाश्रीप-ब्रह्म वायुवर्क्ककी, यथा श्र— अर्निकृतम् (समीकरणः महान—महानेन सुभाषिताः श्रमयास्य नरविश्वासपिन्याक्षार- पद्यांस्ः काश्ठनावात् बिन्दुमयविमुक्तम् कार्याकासम् वायुवर्क्कका तत्काल: निहत्तितिः योः।} \textit{भूषणकारणालितुत्तरिः सिद्धा स्वत:।} व. म. 115. Vide my notes to V. M. pp. 189-191 for explanations. 

\textsuperscript{122} यथात्मममस्ववर्क्कके भूषणसम्भावनानायाः। शाबर on कृ त, III. 4. 40, p 976 अर्निकृत हि युथाविविलयो वनयाः।। यथात्मममस्ववर्क्कके न युथाविविलयो शाबर on कृत, IX. 19 p 1652; युथाविविलयो शाबर on कृत, IV 1 18 p 1207. This is called यथात्मममस्ववर्क्कके न in the तत्कालिक on III 4 24 and II. 1 2 and it has been employed elsewhere by the यथासाहस्रूङ्ग (p. 111 text) शाबर very frequently employs this maxim, vide e.g on कृत, II. 2. 4.

\textsuperscript{123} बिनिर्देशभागि मीर्जामहात्मेही विनिर्देशभागि मार्गस्थानानाः कार्याः। तत्सम्— पवित्रिनिवर्तयो तत्कृतस्मिनौः। सं. कृत, 182। बिनिर्देशभागि मार्गस्थानानाः। तत्सम्— जलस्मार्गस्थानानाः। तत्सम— विनिर्देशभागि मार्गस्थानानाः। तत्सम्— अस्मिनौः। अन्या सामान्या पालकीयवर्तमानी इत्रक्षणस्मृत्याः। एमहद्यूः III. 4859 p. 161.
with a girl of the gotras of the natural and adoptive fathers is absolute and not restricted to seven or five degrees. Thus if there is no total or absolute cessation of gotra relation with the natural family for all purposes there is no reason why in the case of wealth already taken before adoption there should be a cessation or forfeiture or why the cessation of relation as to nukha, should not be restricted to the future. As regards sapinda relationship there is some conflict among the digests. The D. M. states that the dvāmasyāyana has to observe the prohibitions against marrying a sapinda girl up to three degrees in the families of the natural father and of the adoptive father, while the simple dattaka has to observe sapinda relationship based upon the presentation of rice balls in the adoptive father’s family for three generations (since the adopted son can generally have no particles of the body in common with the adoptive father) and in the natural family sapinda relationship based upon particles of the same body for seven generations. The Nyāyasaṁdhi (III pp. 290–291) sets out the various conflicting views and gives it as its own opinion that the sapinda relationship must be looked to in marriage up to seven generations in the natural as well as in the adoptive family (in the latter it being based on the offering of balls of rice). According to the V. Mayūkha (p. 119) the simple adopted son has sapinda relationship in the adoptive father’s family for seven generations and in the adoptive mother’s family for five generations and it seems to hold that there is no sapinda relationship in the natural family (owing to Manu IX, 142). The D. C. (pp. 61–66) appears to hold that the dvāmasyāyana has to observe sapinda relationship (as stated in the D. M.), while as to the simple dattaka there is sapinda relationship only in the adoptive family for seven generations (as indicated by Manu IX 142). The Dharmasāṁdhi (III p. 161) states that sapinda relationship depends in its degrees on the question whether the adoption is made after upanayana in the natural family or before upanayana or whether all samskāras from jūlahana are performed in the adoptive family.

1324. यविद्वद्वभन्न बिद्वसाधिप्रवेधिण्याभिषिक्तं विष द्वान्वत ।
होवतस्य बिद्वसाढिप्रवेधिण्याभिषिक्तं विष्म बिद्वसाधिप्रवेधिण्याभिषिक्तं
साधिप्रवेधिण्याभिषिक्तं ज्ञात्वाद्विक्षितं साधिप्रवेधिण्याभिषिक्तं ज्ञात्वाद्विक्षितं
साधिप्रवेधिण्याभिषिक्तं ज्ञात्वाद्विक्षितं साधिप्रवेधिण्याभिषिक्तं
साधिप्रवेधिण्याभिषिक्तं ज्ञात्वाद्विक्षितं साधिप्रवेधिण्याभिषिक्तं
साधिप्रवेधिण्याभिषिक्तं ज्ञात्वाद्विक्षितं साधिप्रवेधिण्याभिषिक्तं
साधिप्रवेधिण्याभिषिक्तं ज्ञात्वाद्विक्षितं साधिप्रवेधिण्याभिषिक्तं
साधिप्रवेधिण्याभिषिक्तं ज्ञात्वाद्विक्षितं साधिप्रवेधिण्याभिषिक्तं

V. Mayūkha, p. 187, states that if palakṣṇa (the adoption) is after the seven generations of family it is not considered as upanayana, but is considered as samskāra. Therefore the wards of the palakṣṇa are also considered as upanayana.
The Bombay High Court\textsuperscript{1325} has held that the adopted son cannot marry within prohibited degrees in the natural family, that to that extent an adopted son cannot be considered as not to have been born in his natural family and that the sapinda relationship is recognized in both the families for the purpose of prohibition of marriage.

The Nir. S., the Dharmanidhau\textsuperscript{1326} and the D. C pp. 48–49 declare that the adopted son can perform the śrāddha of his natural father if the latter has at his death no son or other qualified person to perform it. The Nir S. and the Sam\textsuperscript{1327} K. (pp. 185–186) both say that the adopted son has to observe three days' mourning on the death of the natural father and \textit{vice versa}; but the D M. and D. C (p. 68) differ and state that the simple adopted son has to observe no mourning for his natural father or other relatives in the natural family. If a married man having a son is given in adoption (which is possible in the Bombay Presidency) the son (born before the adoption) remains in the natural family and does not acquire the gotra and rights to property of the family into which his father is adopted. Yet the father who has gone into another family by adoption has been held to retain his right to give in adoption his son who was born before his own adoption and who remains in the natural family\textsuperscript{1328}.

From the above discussion it follows that the person adopted retains the tie of blood with his natural family (so that he cannot marry a girl within the prohibited degrees from that family), the samskaras already performed in the natural family are not repeated on him after adoption, he still retains the gotra so far that he cannot marry a girl having the same gotra as his natural father and further he has according to most writers to observe mourning for his natural father. Therefore it is clear that the severance from the natural family brought about by adoption is only partial and restricted to pinda and riktha.

\begin{itemize}
\item \textsuperscript{1325} Vide \textit{Bat Kesarba v. Shivasangji} 34 Bom. L. R. 1332 at p 1352 and \textit{Basaqba v. Gurisingan} 57 Bom 74 at p. 81.
\item \textsuperscript{1326} Dvaparakshu \textit{Jyotisamaya} \textit{Jatagaputra} : आदि कृपाले च युहीरादि। जनकपात्रं गजीवस्थो । मिलो । सत्यभावे दृष्टो जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति, आदि च महत्वाकारी तथा। कृपाले । नागरिक 11 III उत्तरार्ण 671.
\item \textsuperscript{1327} Dvaparakshu \textit{Jyotisamaya} \textit{Jatagaputra} : आदि जनकपात्रं गजीवस्थो । सत्यभावे दृष्टो जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति । ... सम्प्रतीनिष्ठादि जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान । नागरिक 11 III उत्तरार्ण 671. हुशाद्रवतं जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। जनकपात्रादिसम्प्रतीनिष्ठादि सन्मान हैति। ...
\item \textsuperscript{1328} Vide \textit{Harland v. Narayan} I. L. R. \textit{(1929)} Bom. 586 (F I.)
\end{itemize}
and connected matters and not complete as stated or assumed in some decided cases.

The adopted son is entitled to inherit in the adoptive family as fully as if he were a natural born son i.e., he may inherit not only to his adoptive father, but also to that father's brother or cousin if the latter have no son or no other nearer heir. The adopted son also inherits to the adoptive mother and her relations\textsuperscript{1329}, viz., her father and brother. Conversely, the adoptive mother and her relations in her father's family are entitled to inherit to him.

Vas. and Baud, both laid down that if after a son is taken in adoption an \textit{aurasa} son is born to the adoptive father the former takes a fourth share. There is conflict among the smritis and the digests about the share of the adopted son when an \textit{aurasa} is subsequently born, and about the meaning of 'a fourth share'. The \textit{Dayabhāga} (X. 13 p. 148) and V. C. p. 150 quote a verse of \textit{Kātyāyana}\textsuperscript{1430} that when an aurasa son is born, other kinds of sons, if of the same caste as the father, take only a third of the estate. It has been held in Bengal that in these circumstances the adopted son takes one third of his adoptive father's estate. In Benares and among Jains\textsuperscript{1331} the adopted son gets one fourth of the estate. The S. V. p. 393 holds that he gets\textsuperscript{1332} \textit{\textfrac{1}{4}th}. In Bombay it\textsuperscript{1333} has been held that the adopted son takes not \textit{\textfrac{1}{4}th} of the whole estate, but \textit{\textfrac{1}{4}th} of the share of the aurasa son i.e., \textit{\textfrac{1}{4}th} (the aurasa son taking \textit{\textfrac{3}{4}ths}). In Bombay the same rule applies among \textit{sūdras}\textsuperscript{1334} But in Bengal and Madras it has been decided, relying on a passage in the

\begin{footnotesize}
\textsuperscript{1329} Kurukṣetridīna mātām mātār aapī maṃgīrīśiḥ ca mātapārśvāṇaṃ maṃgīrīśiḥ samajalagāh. \textit{Iv} \textit{\textfrac{1}{4}} \textit{\textfrac{3}{4}}; \textit{\textfrac{1}{4}} \textit{\textfrac{3}{4}}; \textit{\textfrac{3}{4}}; \textit{\textfrac{1}{4}} maṃgīrīśiḥ; \textit{\textfrac{1}{4}} maṃgīrīśiḥ; \textit{\textfrac{1}{4}} maṃgīrīśiḥ. \textit{Vedānta pitamah}\textsuperscript{1430} that when an aurasa son is born, other kinds of sons, if of the same caste as the father, take only a third of the estate. It has been held in Bengal that in these circumstances the adopted son takes one third of his adoptive father's estate. In Benares and among Jains\textsuperscript{1331} the adopted son gets one fourth of the estate. The S. V. p. 393 holds that he gets\textsuperscript{1332} \textit{\textfrac{1}{4}th}. In Bombay it\textsuperscript{1333} has been held that the adopted son takes not \textit{\textfrac{1}{4}th} of the whole estate, but \textit{\textfrac{1}{4}th} of the share of the aurasa son i.e., \textit{\textfrac{1}{4}th} (the aurasa son taking \textit{\textfrac{3}{4}ths}). In Bombay the same rule applies among \textit{sūdras}\textsuperscript{1334} But in Bengal and Madras it has been decided, relying on a passage in the
\end{footnotesize}
Dattakacandrikā (p. 98) that the adopted son and the subsequently born aurasa son of a śudra share equally. If the estate is impartible property or an estate to be taken by lineal primogeniture and the owner first adopted a son and then he had an aurasa son, it has been held that the subsequently born aurasa son takes the whole estate. If there are two brothers who form a joint Hindu family and one of them has a natural born son and the other adopts a son, the adopted son of one brother gets on partition a share of the family estate equal to that of the natural born son of the other brother, since the rule of Vas. applies only as between the aurasa and dattaka sons of the same man.

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1335. अत एव बुधुद्वे यथाजाते कदाचिद्विद्वृत्ती संक्षेपं। विद्वं रविचारं सर्वस्य भवते। समस्मायिना। \(\text{द्वितीये व्यक्तं शुद्धिविवर्तं एवं योजनगुणं}। \) \(\text{दुन. च. प. 98.}\)


1338. Vide Nagendras v. Baahoo L. R. 43 I. A. 56 where a passage of the D. C. is explained (at p. 65) which is as follows: \(\text{एवं पलिनं सुद्धुन्त्वं सवेया शुद्धविद्वृत्तसप्त्वं शुद्धविद्वृत्तसप्त्वं सवेया सुद्धविद्वृत्तसप्त्वं}। \) \(\text{ते सीधतें शुद्धविद्वृत्तसप्त्वं}। \) \(\text{कौशल्याचे सात्तसप्त्वं तदार्थं}। \)

1338a. It appears to me that the V. Mayūkha went far beyond the spirit of the ancient smṛti texts and of most of the medieval digests when it allowed the adoption of a married man or even of one who had already had a son. The son to be adopted, it was declared by Saunaka and others, should be a reflection of an aurasa son. Therefore he must be adopted at an age when by proper training and environment he will come to entertain towards the adoptive parents the same feeling that an aurasa son has. Hence it appears to me that the Legislature should intervine and provide that no one can be adopted after his upanayana, or at all events after his marriage, in the natural family. It is natural for a sonless man or a widow to feel, apart from religious considerations, the necessity of a young person as a solace, security and help in old age, and to adopt a person. Even in England by the Adoption of Children Act (16 and 17 Geo V chap. 29) the adoption of a minor is now allowed after observing certain formalities. Further, no adoption by a widow who has not become major according to the Indian Majority Act should be held valid. An agreement or a transfer of the smallest property by a person who is a minor according to that Act is held to be absolutely null and void. There is no reason why an adoption by a widow of 15 or 16 should be upheld when that adoption divests her of all (or now half of) the property of the husband held by her.
CHAPTER XXIX

ORDER OF SUCCESSION AFTER THE SON

It has been stated above that dāya is either apratibandha or sapratibandha and that sons, grandsons and great-grandsons take the first kind of dāya. If a man has no son either aurasa or secondary (viz. the dattaka, the other kinds of sons being now forbidden or obsolete), then his property devolves in a certain order. When a man dies sonless and is a member of a joint Hindu family then on the surviving coparceners the whole estate devolves except that after 1937 (by Act XVIII of 1937) his widow takes his place as to the joint family property. But if he dies separated and has male issue (from whom also he is separate) then his male issue will succeed to him in a body viz. his son, grandson (son of a predeceased son) and great-grandson (son of a predeceased son’s predeceased son) will together take his separate property per stirpes. From Manu IX. 137 (which is the same as Vas. 17-5 and Visnu Dh. S. 15. 46) and 186 and Yāj. I 78 it follows that the son, grandson and great-grandson equally confer great spiritual benefit and so are the principal group of heirs. According to the strict theory of the Mitaksaras as stated above, son, grandson and great-grandson take by birth an interest even in property acquired by a man himself, but they have no power to prevent him from alienating it. If one or more out of a man’s sons, grandsons or great-grandsons are separate from him then on his death his self-acquired property will first be taken by those sons, grandsons and great-grandsons that are joint with him and if none of these is joint with him, the separated son, grandson and great-grandson will succeed per stirpes to his estate.1339

This view is at least as old as the Baud.1340 Dh. S. I. 5. 113-115 which speak of the three ascendants of a man, of himself,

1339. Vide Gangadhar v. Ibrahim 47 Bom. 556, Harudayi v Dhorasani 30 Mad 348 In Ramappa v. Sthammal 2 Mad. 182 (F. B.) a separated son was preferred as an heir to the widow of the deceased.

1340. अरुि च गवितादानि: विदानानि विस्तारं सोवयं ब्राह्मण: सवणा: द्वस्य प्रेषि मनीक्रकश्याचूँ तेषां च बुद्धायत्वतिमतिस्वाच्छायानाय प्राप्तवे विदेशावतवल्लस्य विविधवार्ता कर्मबुध:। असताप्यवेछू तहांमी भर्ती भवति । वि. च. च. 1 5. 113-115. The Brahma (XI. 4. 5. 57) and बुधानाम् p. 189 quote या, विषुष्य एव श्राणि, read 'सतर्थजेयु तहांमी भर्ती' and अविभक्तार्यवाच्छा and explain त्रि. at length.
of his full brothers and of his son, grandson and great-grandson from a savarna wife as one group called *ambhalata-dāya* sapindas and that in the absence of these only, the wealth of a man goes to his sakulyas.

On the succession to the property of a man dying without male issue (i.e. without son, grandson or great-grandson) the basic texts are two verses of Yañavalkya\(^{1341}\) (II. 135–136): The lawfully wedded wife, the daughters and (the daughter's son), the parents, the brothers, their sons, *gotrayas* (agnatic kinsmen), *bandhu* (cognatic relation), a pupil, a fellow student—on failure of each preceding one out of these each succeeding one is entitled to take the wealth of a man who is dead (lit. who has gone to heaven) and who leaves no male issue. This rule applies to all varnas. The Visnu Dh. S. (17. 4–15) is almost to the same effect. The word 'aputrasya' in Yañ. is taken to mean one having no son, grandson or great-grandson (at the time of death) by V. C., Raghunandana and Mitramiśra\(^ {1342}\). The Mit. explains the words 'to all varnas' as applying even to all that are the offspring of *anuloma* or *pratiloma* unions.

We have separate rules for inheritance to the property of males and to that of females. Then there is great difference as to the rights of women as heirs. First, inheritance to the property of males will be taken up. Here again the fundamental principles are different acc. to the Mit and the Dayabhāga.

Among the heirs (apart from male issue) of a man as regards his separate property the first is the widow. The wife's right to succeed to her deceased husband's estate, when he died separated and un-reunited, was acknowledged only after a long struggle extending over centuries. The passage of the Tai. S. VI. 5. 8. 2 speaking of women as 'adāyādiḥ' has already

\(^{1341}\) Patni *dātikam* sītīdī śātrāsya! tattvā  gōcīrya  pnutīśivaśabdakāśārya! dhārīya! eva kātyāyī pūrabī patañjālovairya! svarośṭutā nāyūr aśvarṃvāyī varnhī!  ya. II. 135–136. The first is also लहुरारि 64–65. Translations of these verses are cited in many cases; vide, for example, *Lalitabha* v. *Mankoreshai* 2 Bom 388, 416

\(^{1342}\) Antyaśrva purnaścharīniśvatāya! hritā pātriśvā na–kṛtamādīna amagīvō pātikāśeśe śātrārīkāre śatīśe tattvāmścāniśvatā rishyabhavaścalārya śātrāmścāniśvatā। रि हि \(p. 151\):  sat  abhāyāya  hṛtāmścāniśvatāmścānyāya  āryā  pātrānāmścāniśvatā । वृत्तत्त्व p. 189:  अनुजप्रद  पत्तीराज्विंश्च  खुचरणेण पोतलमीत्रामोहोदयाः । वि. म. p. 503.
been quoted (on p. 606). The meaning of that word is somewhat dubious, as will be shown later on. The Ap. Dh. S. II. 6. 14. 2 states generally that in default of a son the nearest sapinda succeeds but does not expressly mention the wife as an heir, though it mentions (in II 6. 14. 4) the daughter as a possible heir. Baud also omits the wife as an heir. Vas mentions no woman as heir. Gaut 28. 19 appears to state that the wealth of one who dies without issue should be taken by his sapindas, sagotras and sapravaras or his wife (i.e. according to Haradatta, the wife takes a share only along with the nearest sapinda or sagota and not exclusively). Haradatta himself was of this view. Manu does not declare that the wife is the heir of a sonless man and there are certain passages which impliedly exclude her, as e.g. Mann IX. 185 (the father takes the wealth of a man dying sonless or his brothers take it), IX. 217 (the mother should take the wealth of a sonless man). Śankha (q. by the Mit. Dāyabhāga XI. 1. 15) prescribes that the wealth of a man dying without issue goes to his brothers, failing them the parents take it or the eldest wife. Devala (q. by the Dāyabhāga XI. 1. 17-18 and V. R. p 593) arranges the heirs in order as full brothers, daughters, father, half brothers, mother and wife. It may be noticed that in the days of Kālidāsa the sonless widow did not succeed to the wealth of her deceased husband, but was only entitled to maintenance and that the estate escheated to the king. This is clear from the letter written by the minister to king Dusyanta about the wealth of a merchant who perished in a ship-wreck (Act VI). Yāj. and Vīśnu among smṛti writers were probably the first to clearly enunciate the rule that the wife was the foremost heir of a man dying without male issue. Br. makes the wife the first heir of a sonless man and supports his...

1343. ज्ञानाभाव या नामाभाव: सत्यभाग | आप. प. ए. II. 6. 14 2, विन्यास-विन्यासः 
सन्तुष्ट: विन्यास-मन्त्ररक्षक श्री कान्तपत्रस्य। भी 28. 19 on which हर्बुदं सय: 'श्री हु सत्य- 
सत्यभागेति सन्तुष्ट:। यदृश सत्यभागी एकार्थता सत्यभागेति। सत्यभागेति एकार्थता सत्यभागेति।
... परिमाणस्थितालोच्चारणयो एको न भवति हः। On आप. II. 6. 14. 2 he gives the 
view of सन्तुष्टम्, 'सन्तुष्टम् ज्ञानाभाव पत्र्या: सत्यभागेति: सन्तुष्टम्। विन्यास-विन्यासः 
परिमाणस्थितालोच्चारणयो एको न भवति हः।'

1344. ज्ञानाभाव या नामाभाव ज्ञानाभाव या नामाभाव विन्यास-मन्त्ररक्षक श्री कान्तपत्रस्य। भी 135 and अपराधक p. 741) दायवाण से. 1. 15 p 154 
ascribes this text to ज्ञानाभाव, मण्डलीस्वरुप कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंपण्डि कंप�
opinion with reasons. He says:1345 'In the Veda and in the
doctrines of the smritis and in popular usage the wife is declared
to be half the body of the husband, equally sharing the consequ-
ences of good and evil acts. Of him whose wife is not dead half
the body survives. How can another obtain the property, while
half the body (of the deceased) lives? Although kinmen, although
his father, mother or his relatives may be alive, the wife of a man
dying without issue succeeds to his share.
A wife dying before her husband takes away his sacred fires
(i.e. she is cremated with the sacred Vedic fires, if he be an
Agnihotrin); but when the husband dies before the wife, she
takes his property, if she be chaste'. Even when Yaj. proclai-
med the paramount right of succession in the case of widows
there were other smritis and some early commentators who did
not subscribe to that view. Nār. (dāyabhāga, 25-26) provides
that if among several brothers one who is childless dies or
becomes an ascetic the others should divide the property excepting
strīdhanas, that they should make provision for his women
till their death in case they remain faithful but if they are
otherwise (i.e. unfaithful) they may cut off the allowance'.
Nār. (dāyabhāga, 50-51) provides that on failure of sons, the
daughter, sakulīgas, bandīhus, a man of the same caste, the king
succeed in order and thus omits the wife altogether. Vyāsa1346
(quated by Haradatta on Gant. 28-19 and by Sm. C. II. p. 281)
holds that a wife may take the whole of the husband's property
if it does not exceed 2000 panas in value. The Mit. tells us that
Śrīkara espoused this position that the wife takes the whole if

1345. आपापे स्त्रुतितत्वेष च लोकावधारी च शृदिति: | शाश्मतिः स्तुता जाया दुधाचा-
हुणकं समग || यथा लोकन्त्र भार्ती बोधिः तदादाय जीवित || जीववल्लरणरी समरणस्य समाज्यसंधां
प्रतिहारिणमार्गु सिद्धान्तवाच स्वतिः || अनुजनम संस्कारस्य पलि सन्याज्यावर्गी ||
पूर्वे शुद्र सिद्धान्तानुसारे पुत्रे भरती पलिष्मत || भिष्नुतः पतितस्य भारी धमे एव सन्तानसा ||
शुद्ध- q. by अवसृषणप. pp. 740-41, द्वायभाग XI. 2 pp 149-150, शुद्धेक्न on महा IX. 187,
स्त्रुतितत्त्व, II pp 250-91. (ascribes the last to ब्रजार्श्य). द्वितीय reads the
third verse as शुद्धेक्न शिवान्तसेतुः सन्तानसी. The से सं. VI. 1. 8. 5 reads 'पतितस्य
वा एव आलमनी भरतीस्य', Vide H. of Dh. vol. II p 428 a 1015 for passages
from the Veda and Mahābhārata for the wife being deemed to be half of
the body, pp pp 556-57 for husband and wife enjoying the fruits of their
actions together, and p 558 for wife's cremation with the Vedic fires and the
sacred utensils of the husband. Both क्रिस्त 21. 15 and खास X 26 say
'पतितस्य भरतीस्य च भार्ती शुद्धे शिवितः पतितार्श्यास्रेष्ठ सिद्धातिः शिविरेः' ||

1346 हिस्कर्पणं शुद्धम शतां शृद्धे श्रद्धे श्रद्धे हृदयः। नद्या भरतप्रति घण्टे सा पथानानाम-
प्रस्तुतः || भृत्सद्य q. by हद्यद्वेक्न on महा 28 19, द्वाय. सिः p 450, श्रवात्सुर्धः p 72. The
अथात्त्वम 47. 23 reads, 'हिस्कर्पणं शुद्धाः शताः शृद्धे श्रद्धे श्रद्धे श्रद्धे भोक्तासहि' ||
the property is small, but only maintenance if the property is large and refutes it by saying that it is opposed to the spirit of Yaj. who allows a share to the wife and the mother even along with sons when even joint family property is being partitioned and that the view is also liable to the fault of *vindhuva* *vani* on the analogy of the *Mimamsa* rule stated above on p. 605. 1347 The same text of Yaj. will have to be held as laying down only maintenance when the husband left great wealth, and also laying down a share equal to that of a son when the husband leaves inconsiderable wealth. 1347a Another view was maintained

1347 विन्दुवा यन्ति ... न तत्तवं। बीजाः वा लिप्तेऽति । गी 28. 19-20 This is explained by धारीनः नसुः बीजाः लिप्तेऽति। The धारीः says that this really means that there are two courses open to the widow, viz. she may remain chaste and succeed along with the sapindas or she may resort to *niyoga.

1347a JII. VII. 3 19-25 as understood by the Mt. may be briefly explained as follows: The *Caturmasyas* (seasonal sacrificial) are four, Varsavedva, Varunapraghasa, Sākamedha, Sunāsiriyā (vide H of Dh vol II, pp 1091-1105 for description). In regard to these the following texts occur in the Veda and are cited by Sabara and others: इन्द्र वन्यनिमित्तम् तस्मात दृश्यं भविष्यं भायतां मभायां कालायां भक्तिः सहस्त्रोऽयं यत्र तनासिरिये। (They carry forward the fire in these two; therefore they march on two, indeed the Varunapraghasa and Sākamedha are the two thighs of *yaatra*; therefore they (are said to) march on two; they fill with earth (the *uttaraaveda*) here, but not so in Varsavedva nor in Sunāsiriyā). Sabara reads 'उत्तरावेदः' while Mt. reads as above. *Pranayana* means 'carrying towards the east fire from the *Gārhapatya* fire to the *Āhavanīya*.' There is pranayana in the Darśapūrnamāsā which is simple (and without details) and there is also pranayana in Agnistoma which is full of details (and not simple). An *uttaraaveda* (vide H of Dh vol. II pp. 1096-1097 for description) is not required in Darśapūrnamāsā, but it is required in a *Soma* sacrifice. The *cāturmāsas* are modifications (*vikriti*) of the Darśapūrnamāsā, so that whatever is prescribed in the latter follows in the absence of express directions as a matter of course in the former. In the texts quoted above the words 'dvayoh pranayantu' lay down a *vidhu* and the words 'tasmād sākamedhaśca' contain an *arthavāda* which forms a syntactical whole with the *vidhu* and which only eulogizes it. The * śūraṇjaya* argues: As *cāturmāsas* are modifications of Darśapūrnamāsā, it is unnecessary to lay down expressly a simple pranayana in them, therefore, the pranayana prescribed in 'dvayoh pranayantu' must be the pranayana as described in a *Soma* sacrifice. Further the prohibition of an *uttaraaveda* in Vālsaveda and Sunāsiriyā indicates the same, since a prohibition implies that there was a fear that what is prohibited would have otherwise followed and since an

(Continued on the next page)
The Smrtisañggra ha and Dhareśvara, viz., that the wife would

(Continued from the last page)

utrara ved i is required only in a Soma sacrifice. Therefore the pranayana prescribed in ‘dhyayoh pranayanti’ is of the Soma pratirayana type. To this a part of the śiddhānta (śiddhāntaśaikdesāni) replies as follows:—The real view is that in dhyayoh pranayanti the pranayana is of the simple dāśāpāyanaśa type and the prohibition about Vausādeva and Sunāśiriya is not to be explained as you do; in the words ‘upātra vapaṇata’ an uttaravedi is generally (without exception) prescribed for all cāturmāṣyas, but in the following two sentences ‘as vauśavadeva &c.’ the preparation of uttaravedi is forbidden in the case of Vausādeva and Sunāśiriya, therefore the partisans say that the idea is that, though the pranayana is of the simple dāśāpāyanaśa type, yet an uttaravedi is prepared in the 2nd and 3rd but not in the first and fourth of the cāturmāṣyas. The pūrvapaksa retorts that even on this construction vidiśivasamaya would still be there as follows: as there is prescription of uttaravedi in all four and prohibition in two (viz. the first and fourth of the four cāturmāṣyas), there is an option of uttaravedi in these latter two (as the rule is ‘tulyabala-yrodhe vikalpa’ and there is no option as to the other two and there will arise the fault of vidiśvasamaya, the same sentence viz. ‘upātra vapaṇata’ being taken as an unqualified and independent rule about the 2nd and 3rd of the cāturmāṣyas and taken as an optional rule as to the 1st and 4th.

The proper siddhānta view is as follows: Though the words ‘dhyayoh pranayanti’ are very general, they are to be narrowed down so as to refer to only two (viz. 2nd and 3rd of the cāturmāṣyas) on account of the recommendatory passage that follows (speaking of Varunaprabhāsa and Sākamedha as the thighs of cāturmāṣya yājña). The vidiśi and the following arthavāda form one syntactical whole (āhavāya), as laid down by Jai I, 2 7. The arthavāda passage means that just as a man marches on in strength if his thighs are strong, so the cāturmāṣya sacrifice reaches a successful close by means of Varunaprabhāsa and Sākamedha in which an uttaravedi is specially prepared and fire is laid thereon (being taken from the āhavaniya fire by the adhvaryu and pratipurāñhā). Therefore the meaning is that there is pranayana in the 2nd and 3rd out of the four cāturmāṣyas and uttaravedi is prescribed in those two alone and the words ‘there is no uttaravedi in Vauśavadeva and Sunāśiṭita’ are mere anuvāda (repetition of what is already known) and not a prohibition, as in the words ‘fire should be kindled on the earth and not in the sky nor in heaven’. On this interpretation there is no vidiśivasamaya. Sabara makes two adhikaranas of Jai VII, 3, 19-25, while Kumārila makes one adhikaraṇa of these seven sūtras. He further differs as to the siddhānta, which, according to him, is that in dhyayoh pranayanti there is a special (aṅgana) kind of pranayana prescribed, pāhāta (of dāśāpāyanaśa type) and saṁuṣa pranayana being the two other views which he rejects. The Subodhini on the Mat, very lucidly explains this discussion and concludes. वन च वैवशेषिं निधिभुवनं तुपर्यथा 'पात्र: धार्षित: समसाधितः । 'सततापि सम दृष्टेऽः' द्वयं ज सहस्त्रसाती अहस्तसहस्तर्वथा

The Bharadvājasamhita also repeats the Subodhini almost word for word. This nīpaṇa occurs in Dāyabhaga XI, 5, 16 also.
take the estate of her soulless deceased husband if she submitted to niyoga and procured a son for the husband. This view derived support from Gautama 28·19-20, Vas. 17 65 (who prohibits niyoga if resorted to through greed of wealth), and Manu IX·146 and 190 (which call upon the surviving brother to procure a son on the widow of his brother and to hand over the deceased's share to that son). This view is refuted by the Mit.,1348 Sm. C. II p. 294, V. P. pp 495-497.

Even Medhatithi,1349 generally a liberal writer, holds that the widow is prohibited from inheriting her husband's wealth.

The Mit. after an elaborate statement and refutation of the views of Śrīkara, Dhārēśvara and others due to the conflict among smṛti texts on the question of the widow's right of succession, establishes the proposition that the widow, if chaste, is entitled to the whole of her deceased sonless husband's wealth.1350 Almost all writers since the time of the Mit. accept the widow's right to succeed to her husband's wealth. Many writers note that the smṛti texts on the heirship of the widow are in conflict.1351 They explain verses like those of Nār. (dayabāga 25·26) providing only maintenance for women either as

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1348. तथा सर्वव्यक्तार | अन्यहु गृहविधि संबंधैत्यपालसु | गृहविधीयां वर्गपथा पत्नी धनवनस्तुपाल । इति । गृहविधीयां वर्गपथा पत्नी धनवनस्तुपाल । गृहविधीयां वर्गपथा पत्नी धनवनस्तुपाल ।

1349. अर्थे वर्णद्वारात्तथा पत्नीपरवेदान्तिः गृहविधीयां वर्गपथा पत्नी धनवनस्तुपाल । गृहविधीयां वर्गपथा पत्नी धनवनस्तुपाल ।

1350. वसंवा गृहविधीयां वर्गपथा पत्नी परवेदान्तिः गृहविधीयां वर्गपथा पत्नी धनवनस्तुपाल ।

1351. अथादूहु सत्तार | अथादूहु सत्तार | अथादूहु सत्तार | अथादूहु सत्तार |

It may, however, be noted that in a small treatise called "Buddhavāpaṭhānīśa" of which there are three Mss. in the Maharaja's Sarasvatī Mahāl Library at Tanjore (Nos. 19003-5 described in vol. XVIII of their new Descriptive Catalogue) an attempt is made to establish that, if a man does leaving a widow and his mother, both take equal shares in the estate. The mainstay of the argument is a verse of Ṛkī, quoted in the Ṛg. 10035:1; it states "सत्तारति क्राञ्चनां क्राञ्चनां" which states, it is likely that the conclusion drawn in "Buddhavāpaṭhānīśa" is drawn from the conclusion drawn in "Buddhavāpaṭhānīśa".
referring to exclusively kept concubines of the deceased or to the wives of re-united coparceners.

*Pati* means a woman who is married to the deceased, the word being formed from 'pati' with an affix in the sense of 'being fit to join with the husband in the performance of sacrifice' (Pānini IV. 1. 33). The Sm. C. II. p. 290 quotes a verse that a woman, who is procured for sexual intercourse in exchange for money is only a *āsī* and is not a *pāti* and therefore is not entitled to inherit to a soulless paramour. The Band. Dh. S. I. 11. 20 quotes a similar verse. Several texts require that the widow must be chaste before she can claim the inheritance of the deceased. A text attributed to Vṛddha-Manu says, 'The wife alone, being sonless and keeping the bed of her lord unsullied and leading a life of religious observances, may offer pinda to her deceased husband and take his entire estate'. Kāt. (926) also declares that 'the wife who is chaste takes the wealth of her husband'. The widow must be chaste at the time the inheritance opens. The courts have held that once the husband's estate is vested in the widow, it will not be divested or forfeited by reason of unchastity subsequent to the death of the husband. If the widow remarries after inheriting, then, though the remarriage of a widow is legalized by the Hindu Widows' Remarriage Act (XV of 1856), she forfeits the estate of the husband taken by her or the estate which she took as a widowed mother of her deceased son and it passes to the other heirs of the husband or son as if she were then dead and this applies to widows of all castes according to almost all High Courts (even when remarriage

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1352. | \(\text{अधीनकाली त या नारी न सा पत्नी विपीतते | स सा वृद्धे न सा विषये पञ्चीरी हो कथयो विदुः} \) q. by \(\text{स्वरूपितम्, II. p 290, वप. र. p. 488, तीता ब्रह्मण या नारी सा न पत्नी विपीतते | सा न दैवे न सा विषये पञ्चीरी हो कार्यविचारः} \) q. \(\text{I. I. 11. 20}
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1353. | \(\text{अधीनकाली त या नारी न सा पत्नी विपीतते | स सा वृद्धे न सा विषये पञ्चीरी हो कथयो विदुः} \) q. by \(\text{स्वरूपितम्, II. p 290, वप. र. p. 488, तीता ब्रह्मण या नारी सा न पत्नी विपीतते | सा न दैवे न सा विषये पञ्चीरी हो कार्यविचारः} \) q. \(\text{I. I. 11. 20}

1354. | \(\text{रिमिनृः केरी L R. 7 I. A 115; सेल्लम व चिन्नाम्मल 24 मद, 441; नेहालो व किशन 2 अल. 150 (F. B.)} \)
According to the Dayabhāga there being no apratibandha dāya, the widow of a sonless member even in a joint family succeeds to his share in the family property and there is no difference between joint family property and separate property.

In the case of śudras, if the owner dies leaving a widow or a daughter or a daughter's son and an illegitimate son, it has been held by the courts following Yāj. II. 134, the Mit. and Dāyabhāga IX. 31 that the widow or daughter or daughter's son takes one half and the illegitimate son takes the other half.

The rights of the widow in property inherited by her from her husband are limited. Kaut. III. 2 was probably the first to propound clearly the characteristics of the Hindu widow's estate and the verse of Kāt quoted below is remarkably close to the words of Kaut. The Mahābhārata (Amsāsana 47. 24) states that women have only the right to enjoy the estate of their husbands and that they should not waste or destroy the property.

1355. Vide Vśthu v. Goumd 22 Bom. 321 (F. B.) and Bhurugayu v. Vramakāla I Mad. 226; but Bhota v. Kausila 55 All. 24 (F. B.) holds that a woman belonging to a caste in which remarriage of widows is allowed by custom does not forfeit on remarriage the estate of the first husband which she took as his widow, the principal reasons being, that there is no express text about forfeiture on subsequent unchastity and that it would be absurd to hold that a widow, who, on the P. C. ruling in 71. A., does not forfeit the estate taken as heir by subsequent unchastity, should be liable to forfeit it by remarriage (which presumes that she wants to live a decent life). Looking to the expressed object of the Hindu Widows' Remarriage Act, section 2 should not have been so interpreted as to apply to widows who could remarry according to caste custom before the Act.

1356. Vide Shesgari v. Greva 14 Bom'. 282; Meenakshu v. Appakutti 33 Mad. 226 (in this case the original authorities are mentioned and discussed). Vide Abhākūkä hariśvarāyana āndāvānitye 1 Pa. II. 134; Abhā parinītānuṣṭhaṇa n saṁbha tṛṣṇaṁ āsāsitaṁ vā vāsūrumānāṁ parinītānuṣṭhitaṁ labhāt vā vā labhīm. Tattvabhedāḥ yaḥ apārthāpi mādhyamābhā moṣyakṣaṁ, uṣnabhāsya nāssaghaṁ, paryāśaḥ pāsayukṣaṁ. Abhā, ṣvete ṣvete samśaya pāṣyantāḥ saṁvāpitāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣāṅgārakṣार
Characteristics of widow’s estate

husband’s estate (by gift, sale &c.). Br.138 (S. B. E. vol. 33 pp. 377-78 verses 50-51 and 53) states: ‘when the husband is separate his widow takes all his various kinds of property such as a pledge, except immovable property. After having received movable and immovable property, gold, inferior metals, grain, liquids and clothes the widow shall cause (her husband’s) monthly, six-monthly and annual śrāddhas to be performed. Let her honour with funeral offerings and pious charity her husband’s paternal uncle, gurus (elders), daughter’s son, sister’s son and maternal uncle as also aged or helpless persons, guests and women’. Mādhava (Par M. III. p. 536) explains that ‘except immovable property’ means that she is prohibited from making a sale of immovable property without the consent of the male kinsmen. The V. Mayūkha (p. 138) accepts this interpretation and modern courts have done the same. In Damodardas v. Purmanandas 7 Bom. 155 it was held that a widow to whom movable property was bequeathed by the will of her husband takes it absolutely But here the movable property was not inherited by her and as it was a bequest by will it became her śrāddhana according to Nar (q. by V. M. on p. 155). Besides, this was a case from Bombay Island and was governed by the law of V. Mayūkha. In some early cases in Bombay it had been held that a widow in Western India under the Mitāksara had absolute power over the movable property inherited by her from her husband. In Gadadhāra v. Chandahabagabai 17 Bom. 690 (F. B.) it was held that under the law of the Mitāksara a widow has no power to bequeath movable property inherited by her from her husband and that to that extent the decision in Damodar v. Purmanandas must be treated as of no authority if it be interpreted to have decided the point in that way. In Sha Chamanlal v. Doshi Ganesh 28 Bom. 453 it was decided that even under the Mayūkha a widow inheriting movable property from her husband has no
power to dispose of it by will. Lastly in Pandharinath v. Govind 32 Bom. 59 it was held, after an elaborate examination of authorities, that a widow is not under the Mitaksara competent to make a gift of the movables inherited by her from her husband and it was said (on p. 75) that possibly with the spread of education amongst, and the general emancipation of, their women Hindus may be led to call in aid the relief of Legislature. In cases arising under the Mayûkha a widow may dispose of movable property inherited by her from her husband by gift _inter vivos_ but not by will. Kat. 1359 (921, 924–925) propounds the limitations of the widow’s rights as follows: ‘A sonless widow, preserving the bed of her husband (unsullied) and residing with her elders and being self-controlled, should enjoy (her husband’s property) till her death; after her the (other) heirs (of the husband) would get it. A wife who preserves (the honour of) the family would get the share of her husband when he is dead till her death, but she has no power to make a gift, sale or mortgage. A widow engrossed in religious observances and fasts, fixed in the vow of celibacy, always intent on restraining her senses and making gifts goes to heaven even though sonless’. 1360 These verses show that the widow was to enjoy the income of her husband’s property till her death; that she could not sell or mortgage or give away immovable property without the consent of the heirs that would come after her and that for religious and charitable purposes or those that conduce to the spiritual welfare of her husband a widow had large powers of disposition. These rules

1359. अनुच्छेद स्थापित महिला पातलवी नहीं रिहातां ज्ञेश्वरसंगमानवते ज्ञापनहृदयस्ते अभि-सतत्तुष्टे कायरा ।।

1360. These verses are quoted in Bhugwandeo v. Myna Roa 11 Moo I. A. 487 at p. 517, 8 Mad. 290, 292, 5 Patna 646, 678. These verses are quoted or referred to in 8 Mad. 290, 292, Pandharinath v. Govind 32 Bom 59 (which holds that according to the Mitaksara a Hindu widow cannot make a gift even of the movables inherited by her from her husband), 42 Bom. 136, 143.

1260. It was believed that one to whom no son was born did not go to heaven (vide Alt Br. ‘nânaprasya lokostī’ quoted above on p. 634 n. 2239). An exception was made in the case of those who observed perpetual studenthood (Åp Db. S. 1. 1. 4, 29) and Manu extends it to chaste widows (V. 159–160). Vide Visnu Dh. S. 25. 17.
have been accepted by modern decisions; vide Collector of Masulipatam v. Cudly Venkata 8 Moo. I. A. 500 at p. 551 for an oftquoted passage about the widow's powers of disposal. There is a large volume of case law on the widow's powers of alienation, on what are religious and charitable purposes and about the consent of the kinsmen, which have to be passed over here. The heir or heirs expectant on the death of a widow are called reversioners or reversionary heirs in the decided cases. There is no exact Sanskrit word to convey the same idea except 'dayāda' that occurs in Kāt quoted above and in D. B., which makes it clear that the reversioners take the estate after the widow's estate ends (by death, remarriage, surrender &c.). The doctrine of the surrender by the widow of her estate in favour of the next heirs (the reversioners) whose estate is said to be accelerated is based on meagre foundations viz. the words of Kāt. and the D. B. quoted in n. 1359. Judicial decisions, however, have raised a stupendous structure on these slight foundations; but they are passed over here.

If a man dies leaving several widows then they may partition the property equally among themselves, as stated by the Mit.\(^{1361}\)

If after partitioning among themselves, one of the widows dies, the portion given to her comes to the other widow or widows i.e. there is survivorship among them and no one else can succeed to the husband's property as long as there is any widow alive and not remarried. Hindu Law does not favour the distribution of a deceased man's estate among his several relatives, as some other systems (like that of the Moslems) do. It gives the whole estate to one heir or one class of heirs to the exclusion of all others. It is greatly to the credit of the ancient Hindu Law that it boldly gave all the separate property of a deceased male to women, viz. to the widow and after her to the daughter in preference to the man's own father or brother or nephew. Attempts are now being made through the Legislature that even when there are sons, the widow and daughters of the deceased should be given shares. Though these efforts spring from the laudable motive of enlarging the rights of women, they do not deserve unqualified encouragement. They will produce friction, cause fragmenta-

\(^{1361}\) ताथ धर्मविशेषजनालेला निजाभिषेक तत्तथा पथांतं निर्विवेक दुःखित । निता, ५५ पा. II. 133.
tion of lands, make holdings uneconomic and it is extremely doubtful whether they are in the best interests of society or nation as a whole and whether the vast mass of Hindus want them. Prajapati 1362 says that the king should punish as thieves those apāṇis and relatives that oppose or obstruct a widow in succeeding to her husband's estate.

The words of the Tai S. quoted above (p. 606) about women being without strength and not entitled to dāya (adāyādāh) really occur in the ritual of Soma offerings and should mean that women are not allowed to share in the drinking of Soma. But the Baud, Dh. S. (S. B. E vol. 14 p. 231) appears to have taken them as excluding women from inheritance. Manu IX. 18 also relies on it and declares that the smārkaras on women (except marriage) are not to be performed with Vedic mantras, as the Veda declares them to be 'nirindriya' and 'ānta'. Later writers like Haradatta (on Gaut. 28. 19, Āp. Dh. S. II. 6. 14. 1) and V. P. pp. 517 and 554 base the exclusion of women from inheritance on this passage of the Veda. They say that, though the Vedic text is very sweeping and general, it is meant to exclude only women other than those expressly mentioned in the smrtis as entitled to inherit. For example, the Dāyabhāga XI. 6. 11 quotes Baud, and remarks that the wife is entitled to inherit because of special texts (like those of Yāj and Vīṣṇu) in her favour. The Sm. C II. p. 294 1363 says that the Vedic passage is only an arthavāda (meant for praise) and not an absolute rule and it must be taken as not referring to those women that are expressly mentioned (lit. by being seized by the horn). The V. P. says the same. Aparāṁka (p. 743) holds that the Vedic passage is merely an anuvāda and excludes women only when there is a son. It should be noted that the Par. M. (III. p. 536) holds that the Tai S passage merely means that the wife of the sacrificer is not entitled to partake of Soma

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1362. सत्सम्ब्राज वाच्यवाक्यो तथा वाच्यवाक्यो विनिष्कसितस्य अदुर्गापव: हस्ति सवृपि न इति

1363. प्रमुक्तीर्ष वाच्यवाक्यो विनिष्कसितस्य अदुर्गापव: हस्ति सवृपि न इति

taken in the Pātnivata cup and that 'indriya' means Soma
drink. 1364 But Mādhavacārya in his comment on the Tai. S. I. 4.27
quotes Tai. S. VI. 5, 8, 2 and explains it somewhat differently
as meaning that women being without strength do not take
the heritage when there are children. It is very remarkable
that both the Mit. and the V. Mayukha do not at all refer to
the Tai. S. or Baud. Dh. S. in speaking of the rights of women
to inheritance. It cannot be said that they were unaware of
them, but probably they took the Tai. S. text in the sense in
which the Par. M. explains it. The result of the reliance on
the Tai. S. and on Baud. by most medieval digests has been
that in the whole of India except in the Madras and Bombay
provinces only five females are recognized as heirs viz the
widow, the daughter, the mother, the father's mother and
paternal grand-father's mother, because they were expressly
mentioned as heirs in the smritis or early commentaries. This
subject will be pursued further a little later on.

The right of the wife to maintenance during her husband's
life time has already been dealt with in H. of Dh. II pp 568-569.
If the wife was guilty of unchastity but reputed of her lapse,
she was still entitled to be maintained by the husband (vide
H. of Dh. II pp. 571-573). As regards the rights of mainten-
ance of the widows of deceased members of a joint Hindu family,
there is a good deal of case law which is passed over here.
One or two points may be noted. The right of the widows in a
joint Hindu family are conditional upon their leading a life of
chastity. Male members are often unwilling to maintain widows
who are often compelled to go to court. In the 'Selections from
Peshwa Daftar', vol. 43, there is an order (letter No. 142) of
Ramaśrī, the chief justice of the Peshwa's court, calling
upon one Bapuji Tambavekar under threat of penalties to
restore the ornaments of the widow of his elder brother (that
had died only seven days after marriage) and to give her a
yearly maintenance of Rs. 125.

Daughters.—Daughters do not inherit as long as any widow
of the deceased owner is alive. The daughter also had to

1364. या च खृति—संसाधियः ... अद्वायाः खृति सा पत्नीलक्ष्यं सत्त्व अठाघो जातीर्येपिष्टः। हिन्दुवर्तादेशं हिन्दिपिणे खृति सौभगीन्यातानां।
पत. मा. III. p 536. This explanation of the पत्र. मा. is noted by the ध. म. p. 517, which adds that the sentence is only meant to extol the importance
of the Pātnivata cup (of Soma). The ध. म. नि. p. 459 has almost the same
words as those of पत्र. मा.
struggle hard for recognition as heir just as the widow had. Gaut., Baud and Vas omit the daughter as an heir. Ap Dv. S. II. 6. 143 recognizes the daughter as an optional heir (probably with sapinda). When Manu IX. 130 declares, 'one's son is like one's self and one's daughter is equal to one's son; how can another person take the wealth (of the deceased) when she who is the very self (of the deceased) lives', it appears from the context (IX. 128-129) that it is the putrika (the daughter appointed as a son) that is intended to be referred to therein. Medhatithi, Narayana and Kulluka interpret the word 'duhita' in Manu IX. 130 as applicable to the putrika only. In the Nirukta, Yaska cites Rg. III. 31 1 as relied upon by those who support the claims of the daughter to inheritance and also derives the word 'duhita' in various ways, but from his explanation of Rg. III. 31 1 it appears that he is referring to the putrika's right of inheritance. As the usage of appointing a daughter as a son became gradually obsolete, the ordinary daughter came to be recognized by analogy as the heir of a sonless man after the widow. Yaj. and Visnu both recognize the daughter as an heir after the widow. Nar. (dayabhaga, 50) recognizes the daughter as an heir after the son on the ground that she continues the lineage (of the deceased father) just like a son. When Nar. (dayabhaga, 27) speaks of the daughter being entitled to maintenance till marriage, the context shows (as remarked by the Sm. C II. p. 296) that he is referring to the daughter of a person who was re-united at the time of his death. Br. declares (S. B. E. 33 p. 378 verses 55-56), 'the wife is declared to be the inheritor of the husband's wealth and, in default of her, the daughter; the daughter, like a son, springs from the limbs of a man: how can another man inherit her father's property while she lives?'. Though the words of Yaj. Visnu and Br. were clear enough ancient com-

1365. अभैश विविदुःशृंगि ज्ञानधातिः' | पुत्रविधा इस्वेते | माताविधि ज्ञानधातिः | दुहितम् | अभैशविविदुःशृंगियाः | गात्रः | 'गात्रः २१९. १ | पुत्रविधि ज्ञानधातिः | भावाविधि ज्ञानधातिः | दुहितम् | अभैशविविदुःशृंगियाः | गात्रः | निरुक्तः III. 3-4.

1366. दुहितम् | अभैशविविदुःशृंगियाः | गात्रः | निरुक्तः II. p 296.

1367. भृत्यकर्मी पत्नी सा दिना दुहिता स्रव्या | अबैशविविदुःशृंगियाः | दुहितम् | अभैशविविदुःशृंगियाः | गात्रः | ज्ञानधातिः | भावाविधि ज्ञानधातिः | दुहितम् | अभैशविविदुःशृंगियाः | गात्रः | निरुक्तः II. p 294, वि. १ ४५५.
mentators were not prepared to accept them in their literal sense. Viṣvarūpa holds that Yāj. means only the putrikā and employs the plural in order to convey that several daughters may be appointed as sons. The Sm C. II. p 295 informs us that the same opinion was held by Dhāresvara, Devavāmin and Devarāta.\textsuperscript{1368} The Mit rightly refutes these views by saying that the word ‘duhitara’ in Yāj. cannot refer to ‘putrikā’, since Yāj. has himself stated the putrikā as equal to the aurasa son (in II. 128), as the putrikā is included among the sons by Vas and as the widow and the daughters are declared by him as heirs in the absence of all the sons, principal and secondary Yāj., Visnu, Br. are silent as to whether any discrimination was made between daughters as heirs. Kāt. (926) gives\textsuperscript{1369} a preference to the unmarried daughter and the Mit. and the subsequent digests follow Kāt. The Dāyabhāga\textsuperscript{1370} (XI. 2. 4 p. 175) quotes a prose passage of Pārāśara preferring an unmarried daughter as an heir to a married daughter. Among married daughters the Mit., pressing into service a text of Gaut, on succession to stridhana, holds by analogy that among married daughters the indigent (or unprovided for) one is to be preferred to one who is well-placed.\textsuperscript{1371} Herein the Mit. follows common sense and the natural inclination of a father to feel more concern for a poor daughter. The Dāyabhāga prefers the unmarried daughter to the married daughter as is done by the Mit., but among married daughters Jīmūtaḥāhana, following an author called Diksita, prefers one who has had a

\textsuperscript{1368} एवं सापथविश्रसी पौर्णाति क्रिता शुद्धस्पन्धिनः परं शुद्धस्पन्धिनः प्रतिलक्षण विशारिकर् मनसः जन्यतासः सुद्धविनान्विते म नुभवानिकाःसुद्धविनान्विते वास्मययमार्गसमाविनादसताः स्मृतितत्रमिथीति। सशास्त्रोती. II. p. 295.

\textsuperscript{1369} तदुपयो यु दुहित्रा यथव्रक्ष अस्तेन। कारण । ये by सिद्ध. on ये II. 135, सज्जनाकल। II. p. 296 (reads वायुद्वामितिका), संज. पा. p. 672, पत्र. मा. III. p. 524.

\textsuperscript{1370} तत्समयं जानपदं वितेकुलशास्त्री। यदा पारसारः अनुद्वप्तृक्तं युधितस्तन्त्रो स्त्रांन्त्र रिख्यं चूड़ीकायं ददृवमैः भोजः। जम्बूदत्तं पुरुषविकालेश्वम्। ब्रह्मणे XI. 2. 4 p. 175, Vide Jāmnabah. v. Khimś 14 Bom. 1, 13 (for preference of unmarried daughter).

\textsuperscript{1371} तथा शास्त्रविद्यामितिज्ञाताः सम्बन्धे असाध्यतेऽपि तदुपयो अस्तेन। शास्त्रं शुद्धस्पन्धाश्चालानलकातितातथ। यदद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। तिता। on ये II. 135. ‘शास्त्रं … वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. ‘शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. ‘शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. ‘शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. ‘शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. 'शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. 'शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. 'शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. 'शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135. 'शास्त्रं ... वितेकुलशास्त्री। यदा मात्र अनुद्वप्तिकालेन विद्यामितिज्ञाताः समानात्त्व। मिता। on ये II. 135.
son or who is likely to have a son to a widowed or barren daughter or to one who has given birth only to daughters. This preference is due to the principle of the Dayabhāga that spiritual benefit is the governing factor in succession. The barren daughter or widowed daughter is unable to confer spiritual benefit on her father since she will have no son that will offer pindas to the deceased owner (who will be the maternal grand-father.). The Mitra on the other hand relies on nearness of blood (pratītyāsthā) as the guiding principle. But, as pointed out by the Vīpa,p. 519, the Dayabhāga is inconsistent. There is no reason on its own principle why the unmarried daughter should be preferred to a married daughter who has a son. The latter is then and there capable of conferring spiritual benefit while it is problematical whether the unmarried daughter will confer spiritual benefit (since she may after all be blessed with no son after marriage). Aparārka (p. 721) and V. R (p. 517) give three meanings of the word 'apratisthita' viz. 'childless, poor, widowed'. In deciding whether a particular married daughter is indigent as compared with another, the Courts refuse to go into nice or minute questions of the respective monetary positions of their husbands and prefer one to the other only if there is great disparity or marked difference between their positions.

According to all High Courts in India except that of Bombay a daughter's estate is similar to that of the widow. She takes only a limited interest, can only enjoy the usufruct of the property and cannot alienate it. On her death the estate passes not to her heirs, but to the next heir of her father. In Bombay, however, the daughter takes an absolute interest.
in her father's estate when she succeeds as heir and on her death the estate will go to her own heirs.

A daughter is entitled to succeed, according to the decided cases, to her father's estate even if she be unchaste at the time of his death (except in cases governed by the Dayabhaga). The reason assigned is that Kat. and other smrti writers do not expressly mention the requirement of chastity in the case of the daughter or mother as they do as regards the widow. According to the Dayabhaga (XI. 2. 8) Br. declares: 'a daughter equal in caste to the father and married to a husband of the same caste as her own, who is virtuous and intent on serving her husband, inherits her father's property.' Therefore a daughter who is unchaste cannot inherit. Further a daughter succeeds not because she is the daughter, but because she satisfies all conditions laid down by Br. The Dayabhaga (XI. 2. 31) further says that the word 'wife' (in XI. 1. 56) is merely illustrative and whatever restrictions are imposed on the wife apply to all women as heirs: The illegitimate daughter, even of a śūdra, has no right of inheritance to her father.

By virtue of local or family custom daughters have in some cases been held to be excluded from inheritance.

It may be noted that in his Vaijayanti (on Visnu Dh. S. XVII. 5-6) Nandapandita appears to have preferred a daughter-in-law to a daughter; but he stands practically alone in this. Vide Jolly's T. L. L. p. 199 and p. 286 for quotation which however is not found in the D. O. Ms. No. 69 of the Vaijayanti. The daughter-in-law is not an heir at all in the whole of India.

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1375. Vide Adyaṣṭha v. Rudrava 4 Bom 104 (where the original Smṛtis and digests are cited at length and discussed); Ṛṣṭrayudha v. Lakṣmī 5 Mad. 149, 156.

1376. Vide Bṛihṣṭa v. Babu 32 Bom 562 (holds that the illegitimate daughter of a śūdra has no right of inheritance as against the son of the śūdra's brother).

1377. Vide Bṛihṣṭa v. Babu 32 Bom 562 (holds that the illegitimate daughter of a śūdra has no right of inheritance as against the son of the śūdra's brother).

except in Bombay (where she inherits as the widow of a gotraja sapinda.) The Bālabhāti criticizes Nandapandita without naming him and holds that a daughter-in-law inherits only as a gotraja and not before a daughter.

Raghunandana in his comment on the Dāyabhāga makes the position about unchaste daughters quite clear. The smritis give preference among daughters to an unmarried daughter i.e. to a daughter who is a virgin (kumārī). It has been held by the Indian High Courts that though chastity is not required in the case of daughters to entitle them to inherit, yet in a competition between a married daughter and a daughter who was never married, but became a concubine or prostitute, the latter would be postponed to the former as the latter is not a virgin though unmarried. Some smritis like Parāśara employ the word kumārī in speaking of daughters' succession, while others employ the word 'kanyā', but both words are synonymous. In Govinda v. Bhiku 46 Bom. L. R. 699, where a man died leaving as heirs a married daughter and another daughter who never married, but was living as the permanent concubine of another man, it was held that the latter cannot inherit the property of her soulless father to the exclusion of or along with his married daughter. The old texts speak of only unmarried daughters and married daughters and prefer the former to the latter. Medhātithi on Manu IX 132 says that kanyā means a girl who has had no sexual intercourse with any man. The Mit., makes three classes of daughters succeed one after another viz (1) unmarried daughter, (2) indigent married daughter, (3) well-to-do married daughter. Judicial decisions have added a fourth variety viz unmarried daughter who has become a prostitute. This fourth class being a new one must be placed after the other three classes expressly mentioned by the texts and commentaries on the basis of the maxim (intruders or uninvited persons must be seated at the end of or after those.

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1389 गर्भीपुष्पक्षणिकिः अद्विता द्वियादेवं तथा तदभवेयकामायसुह् —हस्तिरि वालप्रतीकर्मवर्धयानएवेवेवेवे अहृतावहरि पतिः तव विना विश्वविगतियाश्रितं दुःखित पुरुषाँ उपेन तु काव्यं कह्ये वालसम्बन्धवलिन्यं अति स्थायिति पवित्रविस्तृतं विविधानयानार्थ मह्यामि निर्णये। राणाजननम् नदिनम्। खुदज़ान न दुरागं भवितो न। 12.2.31 This is quoted in Trilokya Nath v. Radha 30 C. L. J 235 (about mother) at p 240.

1380 अद्वितियस्व विध्यार्थि सिद्धि लाभाच्यांलाभे निवद्व तैत्तिक पवित्रविस्तृतण्येवैमथसम्मति भगवान्। ती. ती. P 153; the Vallāhāki also quotes पवित्रविस्तृतपदेशीय अनुसार अन्त ती. ती. 9495 (where the original authorities about the word 'kanyā' are exhaustively dealt with).
The daughter's son (daughtra). On failure of daughters the daughter's son inherits. Gaut., Āp., Vas., are all silent about the daughter's son and so are Yāj. and Visnu. But it has been plausibly urged by Viśvarūpa that, since Yāj. himself has (in II. 134) stated that the illegitimate son of a Śūdra takes the whole estate if there be no legitimate son provided there exists no heir up to the daughter's son, the latter must have been intended to be an heir by Yāj. taking after the daughters. The Madanapārijāta (p. 672) relies on the word 'ca' in Yāj. to bring in the daughter's son. Though the printed text of Visnu Dh. S. is silent about the daughter's son, the Mit., the Dayabhāga and others quote a verse of Visnu, 1382 'when there is no continuance of lineage through sons and son's son the daughter's sons take the wealth (of the deceased owner); in offering śraddha to the ancestors, daughter's sons are regarded as son's sons'. The V. Mayūkha (p. 142) includes a sūtra about the daughtra in Visnu Dh. S. Govindarāja, a commentator of Manu, is said by the Dayabhāga, to have held, relying on this verse of Visnu, that the daughter's son inherited the estate even before a married daughter of the deceased. But the Dayabhāga did not approve of this view. The Dayabhāga (XI. 2. 27) notes that Bālaka held that as the daughter's son was not expressly named by Yāj. he came in as an heir after all those that were expressly mentioned as heirs. Baud. Dh. S. II. 2. 17 distinguished 1383 between the putrikaputra and daughter but it is not clear whether Baud. intended to lay down that the daughtra was an heir. In IX. 131–133 Manu expressly says that the daughtra

1381. अनुभवता कुलुपुरुसायत्तानिच सर्वसमान: स्पातायानाय धर्मसास्त्राचार्या कुलरूपिक्षणन्याय। अनालमिन्ति। श्रेणि दत्ता धर्मसास्त्राय वाक्रागाधि इति। असावेद च इन्द्रि स्वभावेन्द्राय अनालमिन्ति। श्रेणि दत्ता धर्मसास्त्राय वाक्रागाधि इति। अनालमिन्ति। श्रेणि दत्ता धर्मसास्त्राय वाक्रागाधि इति। अनालमिन्ति। श्रेणि दत्ता धर्मसास्त्राय वाक्रागाधि इति।

1382. तत्त्वानुसार जातस्य मुहुर्तानि भक्तिकाराय। अनुभवतां सर्वसह अन्तराय। धर्मसास्त्राय तत्त्वानुसार जातस्य मुहुर्तानि भक्तिकाराय।

1383. अनुभवता कुलुपुरुसायत्तानिच सर्वसमान: स्पातायानाय धर्मसास्त्राचार्या कुलरूपिक्षणन्याय।
should inherit the entire wealth of a sonless man, that he should offer one pinda to his father and another to the maternal grandfather and that in religious matters there is no difference between a son’s son and a daughter’s son, since their father and mother (respectively) spring from the body of the deceased owner. The context and the wording of these verses show, as held by Kulluka and other commentators, that the daughter’s son here referred to is the son of the appointed daughter: But Manu IX. 136 is somewhat clearer. It says, ‘through a son born to a daughter from a husband of the same class, whether she be appointed (as a son) or not, the maternal grandfather becomes one having a son’s son; that son should offer pinda and take the wealth of the maternal grandfather’. The Mitaksha takes the word ‘akrhta’ in this verse as referring to the ordinary daughter, while Madhatithi and Kulluka hold that this verse also only refers to the son of the putrika and that krtta means an appointed daughter with regard to whom an express agreement was made with her husband, while akrtha means one (who is intended mentally to be appointed as a son) about whom there is no such express agreement. Br. (B.B. E. 33 p. 379. verse 53) provides: ‘just as (the daughter) gets ownership in her father’s property (as an heir), though there may be other relatives, so her son also becomes the owner of his mother’s and maternal grandfather’s property’.

The daughter’s sons inherit per capita and not per stirpes. Suppose that A has two daughters B and C, that B has three sons and C has two sons, that then both B and C die in A’s lifetime; on A’s death his estate will be divided into five parts, each daughter’s son taking one fifth.

A daughter’s son is really a bandhu and a bhunanagotra sapinda, but owing to historical causes and the high religious efficacy of the sraddha offered by him he has been given a very high place among heirs by express texts.

Parents (putara). Great divergence prevails among medieval digests on the position of the father and the mother as heirs to their son Yaj gives no clue as to which among the parents is to be preferred if both are alive when their son dies. The text of the
Visnu Dh.\textsuperscript{1385} S. as read by most digests places the father before the mother. 

Manu IX 217 states that when the son dies issueless the mother takes his wealth, while Manu IX. 185 provides that the father takes the wealth of a sonless man and the brothers also. So Manu is not definite about the preference among parents. \textsuperscript{1386} Kat. (937) observes, \textsuperscript{1387} 'of a sonless man (the heirs) are declared to be the wife of good family, the daughters, the father on failure of them, the mother, the brother and (the brother's) sons'. Br. (S. B. II. 33 p. 379 v 63) says, \textsuperscript{1387} 'when a son dies without leaving his own wife or male issue, his mother is to be considered as her son's heir or a brother may succeed with the consent of the mother'. In this conflict it may be stated that the Mit, the Madanapārṇātā, S. V (p. 416), the V. C, the V. P. prefer the mother to the father, while the Dāyabhāga, the Sm. C, the Madanaratna, the V. Mayākha prefer the father to the mother. Śrikara\textsuperscript{1388} held that both parents, if alive, succeed together. But the Dāyabhāga, Sm. C

\textsuperscript{1385} The विनिधवमनवचः 17. 4-16 read अवषयचन पत्यमिणाति || तदभावे कुत्सिताः गाति || तदभावे दानागाति || तदभावे महागाति || तदभावे महागाति || तदभावे वस्त्रगाति || तदभावे महागाति || तदभावे महागाति || तदभावे अखनागाति || शास्त्रस्वरूपाय वैभवमिणातिभवा व || These passages are cited as दुहेलिणयः in the \textsuperscript{स्मृतिचर} महाबनर (folio 100 b), \textsuperscript{स्मृतिचर} र एव \textsuperscript{एवम} and some other digests and as दुहेलिणयः by the \textsuperscript{स्मृतिचर}, the \textsuperscript{परा शा}, \textsuperscript{व्यवहारसार} (p 253). The \textsuperscript{स्मृतिचर} महाभाव र and स्मृतिचर र add तदभावे दानागाति after दुहेलिणयः. The धर्म र p. 595 and धर्म र p. 151 reverse the order and read तदभावे महागाति तदभावे दानागाति But the धर्म र p. 524 notes, that such an order is found in no other work and so must be taken to be a mistake. Even the printed \textsuperscript{स्मृतिचर} reads दानागाति first. तमसस्वति संस्कृतिकार-संदर्भनकार-काश्यप-रामण्ड-परिजनाकाराद्यैयः शक्ति तिथिग्रहः माता। दुहेलिणयः उल्लेख सिद्धांतः। वाच- \\
\textsuperscript{स्मृतिचर} र तदभावे महागाति तदभावे दानागाति-प्रति दुहेलिणयः पड़ताः चिन्तामिताः संस्कृतिकारार्थे सिद्धांतातिः। तदु दुहेलिणयः तदितिरिक्तग्रहः तथा पाठसन्तिक्रियाः। वाच- र p. 524. It is, however, to be noted that in the printed धर्म (p. 592) the father is placed after the mother (मातृभावने मात्रानिर्मातरस्य शिक्षकवृता). So it is probable that the text of the \textsuperscript{स्मृतिचर} र was tampered with after the time of the \textsuperscript{स्मृतिचर}.

\textsuperscript{1386} अवषयचन कुलणा पन्ने कुलितारंपि व। तदभावे रिता माता भावा अवषयचन पौर्वितिः॥ कारणः q by दिता on र p II 135 (reads चारणकुलणा), \textsuperscript{स्मृतिचर} II p. 299, राय मा. III p. 526, \textsuperscript{स्मृतिचर} महाभाष p 141.

\textsuperscript{1387} भार्यानुदिलुणयः तदवचन बवनचन व माता रितरी ज्ञेत्र माता व तदन्त्यज्ञा॥ धर्म q. by अर्थरास p. 744, \textsuperscript{स्मृतिचर} II. 299, दायभाग XI 3. 2 p 186.

\textsuperscript{1388} अत एव ब्राह्मण विनिधवम्बनय भार्यानुदिलुणयः तदवचनकुलणा। रिता इदानिलुणय रिष्य, लघुपतिः लघुचन माता दुर्मिल्लामिल्लामताः स्पष्टतमाः ब्राह्मणविनिर्णयसाध्यतमः विनिधवमिल्लामिल्लामताः। \textsuperscript{स्मृतिचर} II. p. 297.
and others criticise this view. The reasons why the Mit. prefers the mother before the father are three, out of which two are based on grammar. The word 'pitarau' in Yaj. is what is called an 'ekāśesa' dvandva compound and in dissolving it or in the full-fledged dvandva the mother comes first in order and hence she should be preferred. Another reason is. A father may have several wives and sons from them all, so that a mother is directly related to her own son only and not to the other sons of her husband. So (the Mit. says) the mother has greater nearness (prattyāsati) to her son than the father has. The Sm. C. (II p 297) refers to Jat. V. 1 14 where the Vedic sentence 'sārasvatat bhavataḥ' is interpreted and it is stated that the first oblation is offered to Sarasvati because the Yaj. and Anuvākyā verses as first set out are meant for Sarasvati (and not on the ground of the method in which the ekāśesa is dissolved); therefore as to pitarau also no reliance should be placed on the dissolution of the compound Nilakantha in the V. Mayūkha denies the assumptions based upon grammar, says that Pāṇini does not direct that in dissolving the compound word mātā must be employed first and there is no authority for doing so. But the V. P. says that though Pāṇini may

1389. वित्त सप्ततीमे चेष्वति साधारण, | माता हु न साधारणतित मयात्रसति- | इमेदेश्वतित विनिक्षयवतिसिद्ध न दि जननिविजनायोण भवित सत्कार्यवतसत्यमीति। | स्युतिक्ष्य ॥ p 297.

1390. The general rule is that several words that would be in the same case when separately used may be compounded together to form a dvandva, when they are employed to convey the sense of 'ca', as said in 'cārthe dvandvah' (Pāṇ. II. 2 29). Such a compound is called dvandva and mātī-putarau is an example of it. Another sūtra (I 2 64) of Pāṇini states that when words denoting several individuals of the same kind are to be compounded together, only one of them may be retained and that is called an ekāśesa compound, which is of two kinds, sarūpa (e. g. hamsaśca hamsaśca hamsau) and vrīḍa (when the two words are of different genders). The latter kind of ekāśesa is of restricted use. In such a compound when a male and female are associated together only the word in the masculine gender remains or the word 'pitr' when compounded with mātr (vide Pāṇ. I. 2. 67 and I 2. 70). There fore we have two forms to denote the idea of parents viz. mātā-pitarau or pitarau. In dissolving this compound (pitarau) we employ the phraseology 'mātā ca puti ca' and in the word 'mātā-pitarau' the word for mother comes first. Therefore among parents as heirs mother should come first. Vide pp. 242-244 of my notes to the V. Mayūkha (ed. of text) where both the Mit. passage and its criticism by the V. Mayūkha are explained at length. In Balākṛṣṇa v. Lakṣmīnār 14 Bom. 605 both the Mit. and Mayūkha's criticism thereof are set out (pp. 608-609).
contain no such direction, all grammatical works like the Kāśikā dissolve the compound as ‘mātā ca pītā ca’ and grammatical usage for centuries supports the argument that the word mātā comes first. The argument about the mother being nearer is quite specious. Looked at from the son (whose inheritance is in question), the mother and father are both equally proximate. The V. P. holds that according to the maxim that even a slight ground of difference leads one to determine (priority) the mother should be preferred to the father (since we dissolve the compound as mātā ca pītā ca).

The V. P. (p 525) further tries to get over the text of Visnu (putting the father before the mother) by explaining that if the mother is most worthy as a pahurata and the father an ordinary man she should be preferred but if the father is more worthy than the mother he should be preferred. Hardly any one supports V. P. and the courts have not followed this. Owing to the difference of opinion among the digestes on the question of the preference between parents as heirs, queer results follow. For example, in the province of Bombay itself the father is preferred as an heir to the mother in Gujerat, the island of Bombay and in Northern Konkan (because in these regions the V. Mayukha has been held to be of paramount authority), while in the rest of the Bombay Presidency the mother is preferred to the father as an heir. The mother takes a limited interest as an heir which is the same as the interest taken by a widow as heir to her husband. The father would take an absolute interest. The word mother includes an adoptive mother; that is, if an adopted son dies leaving no son, widow, daughter or daughter’s son, the adoptive mother would succeed to him as an heir (and even in preference to the adoptive father in those provinces where the Mit. is the supreme authority). In the case of a dvyāmusyāyana adoption, if the son adopted in that form dies leaving only his adoptive mother and natural mother, it has been held that both the mothers take his estate.

1391. Vide Anand v Hari Suba 33 Bom. 404 (where, in the case of a simple adopted son, the adoptive mother was preferred to the adoptive father).
as co-heiresses. It has further been held that if, after succeeding as adoptive mother to a dvajamasyayana son, the adoptive mother again adopts a son, the latter does not deprive the natural mother of the half share taken by her as heir of the deceased dvajamasyayana son.

The word 'mother' in the Mit. does not include a stepmother. The latter is not recognised as an heir of her step-son at all in the whole of India (except in Bombay) on account of the rule of the exclusion of women from inheritance except where texts expressly mention them as heirs and the property would go to the crown instead of to the step-mother, if the latter alone were left, but she would be entitled to maintenance. In Bombay the step-mother would inherit as the widow of a gotraja sapinda, but she is assigned a remote place among gotraja sapindas. If a widow remarries and then her son by her first husband dies without leaving a child, a widow, a daughter or daughter's son his remarried mother is allowed to inherit him by the Bombay High Court, though if she inherited first as a mother and then remarried, she is held by the same court to forfeit the inheritance taken (on account of section 2 of the Hindu Widows' Remarriage Act of 1856).

The mother succeeding to her son takes only a limited estate i.e. she cannot alienate it except for legal necessity. If Vijanasesvara's definition of stridhana be literally interpreted even property inherited from a son would be stridhana. There is a striking example in E. I. vol. XIV p. 83 (the Srirangam plates of Mummadi Nayaka in sakte 1280) where a mother inheriting a village granted to her son Parasabarhatta made a gift of it to the god Ranganatha at Srirangam.

1393 Basappa v. Gurusingawa 57 Bom. 74 (which holds that the adoptive mother and natural mother inherit equally). Vide Kantawv. Sangangowda I. L. R. (1942) Bom. 303 for the effect of adoption by the adoptive mother on the estate taken by the natural mother from a dvajamasyayana son.

1394 Vide Rama Nand v. Surglaus 16 All. 221; Tahilal v. Gaya Pershad 37 Cal. 214; Seetha v. Naohar 37 Mad. 286, all holding that the step-mother does not inherit to her step-son.

1395 Vide Kesserbas v. Value 4 Bom. 188 at p. 298 (for holding that 'step-mother' is not included in the term 'mother' in the Mit., but that she would inherit as the widow of a gotraja sapinda and so as gotraja sapinda herself). In this case numerous authorities are examined at length.

1396 Vide Basappa v. Rayava 29 Bom. 91 (F. B.) for remarried mother inheriting to her son (by the first husband) dying after her remarriage.
Brothers (bhrātarah) and brother's sons. Acc. to both Yāj. and Vīsu, on failure of the parents the brothers succeed and on failure of brothers, brother's sons inherit. There were apparently conflicting texts, Śankha, Manu (IX. 185) and others giving the inheritance to the brothers even before the parents. All these are somehow reconciled and almost all digestes from the Mit. downwards are agreed that brothers inherit after the parents. But again a conflict of views ensues. The Mit says that among brothers, those of full blood inherit in preference to half brothers (i.e. sons of the same father but sprung from a different mother). It then says that on failure of both kinds of brothers, the inheritance goes to brother's sons; but even here the sons of full brothers are preferred to sons of half brothers. This view of the Mit. is shared by the Dayabhāga and almost all eminent writers of digestes except the author of the V. Mayūkha. The Mit. prefers the full brother to the half brother on the ground that the full brother has particles of the bodies of both the father and the mother of the deceased, while the half brother has only the particles of the father's body (the mother being different). Therefore the full brother is nearer than the half brother. The Dayabhāga argues that the full brother offers pindas to the same three paternal ancestors and the same three maternal ancestors to whom the deceased was bound to offer pindas and is to be preferred to the half brother who offers pindas to the three paternal ancestors of the deceased alone (but not to the maternal ancestors of the deceased). This view of spiritual benefit being the governing principle in preferring the full brother to the half brother is accepted by Aparārka (p. 745) The reasons of the V. Mayūkha for preferring even the full brother's son to the half brother are: the word 'brothers' principally stands for 'brothers of the whole blood' (sodara) and only secondarily for brothers of the half blood. The general rule of Mīmāṁsā is that the same word is

1397. सापवतश्र क संस्कृतमुद्रोद्योगिनेष्विविवक्षार्थमवयेनभविकिरितीश्चयिनित्रिकानिपरिचितत्व जनपदस्य | द्वाराभमा XI. 5 12.
1398. संस्कृतवकानाम्बुको मिविविवक्षार्थमवयेनभविकिरितीश्चयिनित्रिकानिपरिचितत्व जनपदस्य | द्वाराभमा XI. 5 12.
1399. हृदय एव विविविवक्षार्थमवयेनभविकिरितीश्चयिनित्रिकानिपरिचितत्व जनपदस्य | द्वाराभमा XI. 5 12.

and in the Vedānta-sūtras: एकस्मिन्न प्रकटे एक्ष्यं: सहा: सह-विवक्षार्थमवयेनभविकिरितीश्चयिनित्रिकानिपरिचितत्व जनपदस्य: संस्कृतवकानाम्बुको मिविविवक्षार्थमवयेनभविकिरितीश्चयिनित्रिकानिपरिचितत्व जनपदस्य | द्वाराभमा XI. 5 12.

for this maxim.
not to be understood in the same sentence or rule as used in the primary and also in the secondary sense. Just as the word 'mother' applies only to the natural mother (and not to the step-mother), so bhratarah should not include both full and half brothers. The V. Mayūkha is however wrong. As pointed out by the Dāyabhāga, when Yāj wants to speak of the full brother he employs the words 'sodara' (Yāj. II. 138) and when he wants to refer to the half brother he employs the word 'anyodarya' or 'anyamātrja' (Yāj. II. 139). Therefore the word 'bhratarah' applies to both full and half brothers in the primary sense. There are other smṛti texts such as that of the Smṛti-sangraha stating that brothers are of two kinds viz. those of full blood and those of half blood.\footnote{1400}

The Sm.\footnote{1401} C. II. 300 refutes the view of some that the word 'bhratarah' in Yāj. is an ekāśesa dvanda compound that it means 'brothers and sisters' according to Pān. I. 2 68 (bhrāt-putrau śvas-duḥatrbrhyām) and that on failure of brothers sisters inherit. The V. Mayūkha\footnote{1402} also does not accept this interpretation of 'bhratarah' advanced by some, since there is no reason why 'bhratarah' should be taken as an ekāśesa of the varūpa kind (which is restricted only to rare cases) and not of the sarūpa kind. The Balambhattī supports the wider interpretation of 'bhratarah' and at one time the Bombay High Court was inclined to accept this.

\footnote{1400} सीतयाः दस्यसीतयाः आतरी हितिपापे च। विद्यानीतिस्पात्याः सीतयाः एव भाविनः। संग्र. q. by स्वतितिः II p 300, वण म. p. 527

\footnote{1401} यदविः आद्यात्री द्वधिद्विद्वियोपामिते श्रायुस्त्रुश्यम द्वीप्यम द्वीप्य विकूलकोवेणे

\footnote{1402} केवलेव आतर १३० आद्यात्री द्वधिद्विद्वियोपामिते श्रायुस्त्रुश्यम द्वीप्यम द्वीप्य विकूलकोवेणे

\(\text{भाष्य} \text{समूह} \text{प} \text{142} \text{; आद्यात्री द्वधिद्विद्वियोपामिते श्रायुस्त्रुश्यम द्वीप्यम द्वीप्य विकूलकोवेणे}} \)
interpretation. The above shows that some at least of the medieval and later Hindu jurists were more sympathetic and well disposed to the enlargement of the rights of women, though their views failed to secure general acceptance. It has been held that brothers by the same father (though by different mothers) are preferred to brothers by the same mother (though by different fathers), it being pointed out that "there is no provision in the Mitaksara or elsewhere for the sons born of the same mother after her remarriage being treated as brothers of the same womb for the purpose of inheritance so as to be included in the meaning of the word 'bhratarah' used in the texts." But Nandapandita expressly provides in his Vaijayanti the following order of succession among brother's and sisters of the whole and of the half blood: (1) brothers of the whole blood, (2) sisters of the whole blood, (3) brothers who are sons of the same father, (4) brothers who are sons of the same mother (vide Jolly T. L. L. pp. 208 and 287). Because Manu IX. 217 says that the wealth of a childless man is taken by the mother and that if the mother be dead, the father's mother would take it, the Sm. C. II. p. 299 places the paternal grand-mother before the brothers, but it stands almost alone in this and the Mit. observes that Manu does not lay down the order but only provides that the paternal grand-mother is an heir capable of inheriting. The V. P. (p. 527) expresses its dissatisfaction with this method of the Mit. whereby only Yaj. and Vismu are deemed to lay down the order in which heirs

1403 Sahkaram v. Stotabas 3 Bom. 353 at p. 359-368 (where the Mayukha, Nandapandita and Balambhatti on the interpretation of 'brothers' in Yaj. are referred to), but vide Mulya v. Cursandas 24 Bom. 563 and Bhagwan v. Warnabas 32 Bom. 300 for the proposition that the interpretation of the Balambhatti has not been accepted by the courts as authoritative so far as the districts governed by the Mit. are concerned.

1404. Vide Ekoba v. Kashiram 46 Bom. 716 at p. 718. In Narayan v. Laxman 51 Bom. 784 it was held that the sister of a prostitute is entitled to succeed to the prostitute's property as a sapinda before the property goes to the Crown by escheat, relying (at p. 793) on the analogy afforded by a passage from the Vaijayanti of Nandapandita on the Visnudharmasutra quoted in Dr. Jolly's T. L. L. on 'Parution &c.' pp. 208 and 287.

take, while Manu, Śankha and others are deemed to be only concerned with declaring the right of certain persons to inherit.

The V. Mayūkha proposes a special order of inheritance as follows:—(1) full brothers; (2) then full brother's sons, (3) the gotra japapindas of whom the first is the paternal grandmother, (4) then the sister, (5) then the paternal grandfather and the half brother at the same time, (6) then the paternal great-grandfather, paternal uncle and the half brother's son together. It should be noted that this conjoint inheritance by heirs of different degrees of ascent and descent which is peculiar to the Mayūkha has been regarded by the Bombay High Court as unknown in practice and obsolete 1406. Therefore it is probable that even in districts governed by the Mayūkha the order of heirs after the paternal grandmother and full sister would be half brother, then half sister and then half brother's son and then it will be the same both according to the Mit and the Mayūkha.

The Mit. does not expressly mention the sister at all but the Bombay High Court has held her to be a very near heir even where the Mit. is paramount, placing her after the brothers (whether full or half), brother's sons (whether of the whole blood or half blood) and paternal grandmother, the difference from the Mayūkha being that under the latter the full sister comes only after the full brothers and full brother's sons and paternal grandmother and before half brothers and half brother's sons.

One passage of the Mayūkha, being wrongly translated by Borradaile, has led the courts (including the P. C.) to decide that full brothers succeed along with the sons of a deceased full brother wherever the Mayūkha is supreme. The passage of the Mayūkha as translated by Borradaile (vide Stokes H. L. Books p. 88, IV. 8. 17) runs "the sons of a brother also, if themselves fatherless, at the time of the paternal uncle's death, provided they are capable of understanding (the use of) property, will divide the father's share with their father's other brothers, after the example 'among grandsons by different fathers, the allotment of shares is according to the fathers'".

The text of the Mayūkha is given in the note below. It is\textsuperscript{1407} almost the same as a passage of the Mitakṣara, which has not been misunderstood. Both passages contemplate a case like this: A dies leaving B, C, D, his brothers, as his nearest heirs, so that A’s estate vests in interest in B, C, D. Before the estate of A is actually divided by metes and bounds, B dies leaving three sons E, F, G. The last three had no right to the property of A at their uncle A’s death because their father B was living at the time (i.e., \textit{pitruyamanaś tathā jivatpitrkatai āsaiyātu-dhanasambandhāḥ}). Yet when the property is later on actually to be divided, they (E, F, G) will take the share which their father B would have taken if the property of A had been divided at the moment of A’s death. Here a distinction is drawn between vesting of property (\textit{dhanasambandha}) and its actual partition. But, in order to entitle nephews to take by actual partition, their father should have survived the deceased. This is the real meaning.

The Privy\textsuperscript{1408} Council, following a wrong translation, held that, under the law of the V. Mayūkha, brothers and the sons

\textsuperscript{1407} 8122 8122 8122

\textsuperscript{1408} Vide Chāndīka v Madn L. R. 29 I. A. 70 where this rule was applied to Abhan Thakurs that had migrated from Gujarāt to the United Provinces of Agra and Oudh before the V. Mayūkha was composed, on the ground that the Mayūkha only embodied and defined pre-existing customs. There was thus a double error. The Mayūkha was misunderstood and further the Mayūkha had nothing to do with Gujarāt usages as it was composed by a Mahārāṣṭra brahmana whose family had migrated to Benares. It may be true to some extent as a general proposition that commentators and digest writers embody pre-existing customs of the districts where they wrote. But often times this is not so and varying statements of the law are due to individual opinions. For example, the Mayūkha provides for the simultaneous succession of the paternal great-grandfather, the paternal uncle and the half brother’s son; but the Bombay High Court has discarded this view of the Mayūkha. The Mayūkha places the father before the mother as an heir, but V. T. composed by Nilakantha’s own first cousin

(Continued on the next page)
of a brother that died before the propositus (the brother inheritance to whom is in question) shared the estate of the latter. This erroneous decision has been persisted in to this day on the principle of stare decisis. The view of the Valjyanti about the sons of the same woman from different husbands being sapindas of each other has already been noted (p. 727). Govindaraja on Manu III 11 says that it is well known that children of different fathers but of the same mother are spoken of as brother and sister. Kulluca on Manu III 11 refers to this view of Govindaraja. 1409

A question arises whether the distinction between full blood and half blood made by the Mit in the case of brothers and nephews was to be carried beyond them. Though a Full Bench 1410 of the Bombay High Court held that the distinction was not to be carried beyond brothers and nephews and that paternal uncles of the half blood inherited along with paternal uncles of the full blood, the Privy Council overruled this decision and held that the preference of the whole blood to the half blood extends to all sapindas of the same degree from the common ancestor (and therefore a paternal uncle of the whole blood excludes one of the half blood). The Madanaparijata 1411 p. 674 expressly extends the preference of the whole blood to paternal uncles.

(Continued from the last page)

places the mother before the father (folios 139-140). Following this case it was held in Haridas v. Rangchowdas 5 Bom. L R. 516 that the son of a predeceased brother inherited along with the brothers of the deceased. This rule is not to be carried beyond brothers and brothers' sons. In Kesarilal v. Jagubhai 49 Bom 282 the differing translations of the Mayukha were referred to (at p 286), it was held that the principle of stare decisis required that the Privy Council decision should be followed and the estate of a deceased brother was allowed to devolve on the sons of a brother that had died before the deceased along with the surviving brother.

1409 भिक्षुदितिकृतरूपप्रकाशमाणिकीमाधवसचिवी। गोविन्दराजान मनु 111 11.

1410 Vide Shankar v. Kashmirth 51 Bom 194 (F B.), where the relevant texts are discussed, overruled in Mahant Garuddas v. Mahant Laitdas L R 60 I A 189

1411. पितृधर्मां आदर्शः पितृपक्षः पितृकियां चांति भर्तरिविद्वाद्रवस्य भुवो च हार्यावतांस्त्रोत्तराः भुवमाजस्वविभागः ततात्त्वविद्वानिः। मदु. प. 674.
It is noteworthy that the Viramitrodaya which generally follows the Mit invokes the principle of spiritual benefit in preferring the full brother's son to the half brother's son.\footnote{1412}

The heirs from the wife to the brother's sons are spoken of as 'baddhakrama' (lit whose order is fixed) in the Mit, the V. Mayūkha (p. 143) and other works and as 'the compact series (of heirs)' in the case law. For example, in rejecting the view of some that rely on Manu IX. 217 that the father's mother succeeds immediately after the mother, it is said that the heirs from the parents to the brother's son being mentioned in a fixed order (by Yaj.), no place can be found for the father's mother in the fixed series of heirs and that Manu IX. 187 indicates only this that the father's mother is an heir.\footnote{1413} The V. Mayūkha relies on the popular maxim that when certain persons are specially invited for a meeting or a dinner they are seated on seats definitely allotted to them but that those who come uninvited are assigned places at the end of the row of those who were specially invited.\footnote{1414}

The question arises whether the brother's son's son inherits immediately after the brother's son and before any other heir. There is a conflict among Sanskrit writers on this point. The Sm. C. II p. 300,\footnote{1415} the Subodhini, the Madanapārījāta (p. 673) say that the compact series ends with the brother's son, while Aparārka, Varadarāja (V. Nir. p. 458) and the Vaijayanti of Nandapandīta hold that the brother's son's son comes immediate-
ly after the brother’s son. A Full Bench of the 1416 Bombay High Court holds, basing its decision on the usage of the province that the compact series ends with the brother’s son, while the Privy Council would seem to lend colour to the view that in the Benares school it ends with the brother’s son’s son. The Dāyabhāga (XI. 6. 6 p. 208) places the brother’s son’s son immediately after the brother’s son on the ground of the superior efficacy of the pindas offered by him.

Gotrajās (lit. ‘those born in the same gotra’ oragnates), Yāj, says that on failure of the heirs up to brother’s sons the gotrajās succeed. Though one’s father, brothers and brother’s sons also are really gotrajās, they are expressly assigned certain fixed places in the order of heirs and other persons born in the gotra are included in the term gotrajās on the analogy of such an example as ‘let the cattle be brought and also the bulls’ where the bulls, though really included under ‘cattle’ (gāṃgh), are separately mentioned in order to emphasize that special attention must be paid to them on account of their intractable nature. Vide p 526 note 966 above. Acc. to the Mit. gotrajās are the father’s mother (as the first among them), then other sapindas and samānodakas. The V. Mayūkha (p 143) also says the same thing and places the father’s mother as the first among gotrāja sapindas. It may be remarked that Yāj avoids the word sapinda and employs the word gotrāja. The Mit. and Mayūkha state that sapindas succeed as heirs and that sapindas are of two kinds, viz. gotrajās (born in or having the same gotra as the propostus) and those that are born in (or are of) a different gotra. These latter (viz bhamagotra sapindas) are designated as bandhus by Yāj. Therefore it comes to this that, though Yāj does not employ the word sapinda, the inheritance goes after the brother’s son to the nearest sapinda. Yāj knew the word ‘sapinda’ (I. 52) and defines the limits of sapinda relationship for marriage (in I. 53), from which it follows that he does not use the word sapinda in the sense given to the word by Jimūtavāhana In I 68 Yāj mentions both sapinda and sagoṭra (in the matter of nyuṣa) and thereby indicates two things viz. that the words were not synonymous and that sagoṭra had the same sense as gotrāja

1416. Vide Ṭhapan v. Mohanlal 54 Bom 564 (G B), in which Buddhā Singhe v. Lalit Singh L. R. 42 I. A. 208 was distinguished on the ground that it was not an express decision on the question whether the compact series of heirs ended with the brother’s son.
Ap. Dh. S. II 6. 14. 2 provides\(^{1417}\) that 'on failure of sons the nearest sapinda.' (Inherites). \(^{1418}\) IX. 187 is the classical text on this point, which appears to mean literally, 'whoever is nearest from among the sapindas, to him the estate (of the deceased) shall belong.' This verse has been variously explained by the commentators and digests and variously translated by eminent Judges and writers on Hindu Law. The chief difficulty lies in the expression 'sapindāyah' and the words 'tasya tasya'. Some take the first as equal to two words 'sapindat yah' and others as one word 'sapindāyah' (sapinda and the like). Some take one 'tasya,' (of him) as referring to the deceased and the other to the inheritor; while others take 'tasya tasya' as both referring to the inheritor alone, corresponding to 'yah' (one more 'yah' being suppressed for the sake of metre). Though the printed text and most of the commentaries read the half verse of Manu as in the note below there are several digests that read it differently. For example, the Sm. C II. p. 301 reads it as 'yo yo byanantarah pindat' and quotes Dhāraśvara's explanation that 'pindat' means 'sapindat'. Kulāka and the Dāyatattva p. 195 explain 'pindat' as 'sapindamadhyat' (from among sapindas) and this appears to be the best explanation. Br.\(^{1419}\) (S. B. E. 33 p. 379 verse 62)

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\(^{1417}\) उन्नानि यो तस्मात्स शरिप्रा:। आपे च यो II 6. 14 2.

\(^{1418}\) अनन्तर सपिंदायाः सर्वस्य न शरिप्रा:। मानू उ. 187 Ved Bühler's note on this in S. B. E. vol. 25 pp. 356-358 for the varying interpretations of commentators. Bühler is not right when he emphatically says, "On philological grounds it seems to me improbable that 'anantarah sapindat' can mean anything else than 'nearest to the sapinda', and that this sapinda can be anybody else than the deceased." In the first place the singular 'sapindat' can be easily interpreted as need in a generic sense (jatāvakavanam) i.e. as meaning 'sapiṇḍebhayah' (from among sapindas). In Ap., Br., and other works wherever inheritance is spoken of, it is the inheritor who is required to be the sapinda or hāndhava or sakalya and the deceased is hardly anywhere spoken of as the sapinda of the inheritor but rather as 'myt,' 'svaryā,' 'dhana' &c. The verse of Manu is variously read. अनन्तर सपिंदायाः पल्लव तथापि यहं शरिप्रा:। शब्द निः p 451. मद्यमन (पुष्प 100 a), पो यो श्रान्तर विभाजतयां तथा परं भवेत् । तथवर्ग परंत्यपथ्यां ध्वनिहो यो यो द्राकृतम विभाजनसंभाविष्टो विद्वेषः। सुभिष्टित II 301, शब्दारात p 254 reads as यो यो यो श्वर्य अनन्तर सपिंदायाः प्रवेश यो सपिंदासंभाविष्टतः तथापि सपिंदायाः सन्मिष्टतः परं भवेत् । उपदेशिनी p. 71.

\(^{1419}\) यथाश्रयव तथ सकुलय श्रान्तरात्मकः। प्रसादाकर्तव्यस्त्व सोपन्धस्तवः। एवेद् II पृष्ठ 28 एण्ड II p 301, मद्यमन (फुला 101 a.), परम मा III p 529, सुप्पलम p 195, एण्ड मा p 527. The सुभिष्टित and मद्यमन explain ज्ञातप: सन्मिष्टः सकुलया समानीकृतः। बाध्यत ... शुद्धार्थे दृष्टिता। आस्तिवयवपवः। आया ॥
says, 'when there are several cognates, sakulgas and bandharas (cognates), whosoever of them is the nearest shall take the wealth of him that dies without issue'.

The important question is: what is the meaning of the word 'sapinda'. The Mitakesara and the Dayabhaga propound two different meanings of the word that have been explained at length in II. of Dh vol. II, pp. 452–458 and 473–477. Therefore it is not necessary to repeat those explanations. The word 'sapinda' is employed by Panini (IV. 1 165) in connection with the technical definition of gotra (Pan. IV. 1. 162) given by him. It appears to have been used in the sense of blood relationship as stated by the Kasika. According to the Mit the right to inheritance depends upon blood relationship (connection through particles of the same body, ekaakarirāyaavānaya) and the preference among those who are blood relations is determined by nearness or propinquity (pratyāsattā). According to the Dayabhaga, sapinda relationships is based on religious efficacy i.e., on the capacity to offer the cake or ball of rice in śrāddha and it has evolved a peculiar method of determining preference which will be explained immediately below. That there appears to have been a close connection between taking the wealth of the deceased and offering śrāddha to him may be admitted. But the question is whether a person was deemed to be an heir and entitled to take the estate of the deceased because he offered śrāddha to that person or whether the heirship was originally determined on other grounds and whoever took the estate was saddled with the responsibility of performing śrāddhas for the benefit of the soul of the deceased. It is difficult to give a convincing answer to this. It appears, however, that ancient sūtras do not emphasize the religious efficacy of pindas as the determining principle in heirship. Ap., Manu, Br. (particularly the first and last) speak only of nearness (which more naturally means 'nearness of blood'). Yaj omits the word sapinda altogether in mentioning heirs. Manu IX. 142 states that pinda follows the gotra and riktha (wealth) Visnu Dh. S. XV. 40 declares, 'whoever inherits the estate (of the deceased) has to offer pinda to him'. This rule is emphasized even by those works (like V. Mayukha) that make blood relationship
the test of heirship by saying that whoever even including the king (who takes by escheat on failure of all heirs) that takes the estate of the deceased must perform or arrange for the performance of the funeral ceremonies of the deceased up to 10 days after death and the sraddhas, as said by the Brahma-purāṇa 230 79 (tadabhāve ca nrpatih kārayetvakutumbhāni1 tajātiyair-narath samyak-dāhādyāh sakalāh kriyāh) The Mit. view is upheld by V. R., V. C., Par. M., Madanapārijata, Sarasvatīvilāsa, V. Mayūkha, Bālabhattī and many other works. The theory of the Dayabhaga is propounded by only a few medieval works and writers like Aparārka (quoted above on p 725), Raghunandana, Nandapandita. The Vīrāmitrādīya generally follows the Mit. but in certain cases it relies on or refers to the principle of religious efficacy in preferring one heir to another, as for example, in preferring the full brother to the step-brother (compare note 1397 and V. P p 528) or in preferring three male descendants to the widow. It is therefore that the Privy Council remark, 1421 'now it is absolutely clear that under the Mitākṣarā while the right of inheritance arises from blood relationship or community of blood, in judging of the nearness of blood relationship or propinquity among the gotrājas the test to be applied to discover the preferential heir is the capacity to offer oblations'. Its position is peculiar. 1422 It says that the capacity to offer pindas is not the governing principle as to heirship, but it is only useful in finding out the preferential heir among gotrājas.

Vīṣṇu quoted by the Mit (not found in the printed Dharmasūtra) prescribes: 'If there be no son or grandson left for continuing the line, the daughter's sons shall take the wealth, for in regard to the obsequies of ancestors daughter's sons are regarded as son's sons'. This is in line with Manusmṛti IX. 136 (cited above on p 720) which says that the daughter's son should offer the pinda and take the wealth. Therefore it appears that Manus, Vīṣṇu and others relied upon the capacity for the offering of pinda as the reason for being entitled as heir, but that this idea was vague and not elaborated in any way. The idea that blood relationship settled the right to inheritance is implicit in the order of heirs in Yāj Yāj (II. 127) in speaking of the ksetraja son says that he inherits the wealth of both (the

1421 Vedic Buddha Singh & Lati Singh 42 I, A 208 at p 327.
1422 मर्यमनिघरण एव, वा कास्यके वायुर्मिनय, वा कास्यके वायुप्वानधारितं काश्यके वायुप्वानधारितं।
गृहसाङ्गरेण वार्यसाङ्ग गायकारिक तब वायुप्वानधारितं लोकसाङ्गरेण। यथा म प 461.
begetter and the husband of the wife on whom he is begotten) and offers pinda to both. He does not state that because he offers pinda to both he inherits the wealth. So this verse also favours the view that offering of pinda was a duty laid upon him who took the wealth (except in the case of male issue). Hence it appears that the theory of the Mit. also has a very respectable antiquity and further it has been followed by most medieval writers throughout India (except in Bengal).

The argument of the Dāyabhāga (which was propounded before it by a writer probably named Udyota\(^2\)) that the taking of a deceased person's estate depends upon the spiritual benefit conferred on him is briefly as follows. It relies principally on Baud Dh. S and Manu. In the section on the partition of wealth (which begins from IX. 103) Manu (IX. 137) declares the super-eminent spiritual benefits conferred by the son, grandson and great-grandson; further (in IX. 106) Manu states that the son gets all wealth from his father because he frees the latter from debt, that (in IX. 139) the daughter's son also is spoken of as saving the grandfather in the next world and that the verse immediately preceding Manu IX. 187 (declaring that the nearest amongst sapindas inherits) speaks of the offering of pinda to three ancestors; and since it is reasonable to presume that the blind and the like are excluded from inheritance (Manu IX. 201) because they are incapable of performing religious rites, it follows that Manu and others regarded the taking of wealth as dependent on the conferring of spiritual benefit. This point of view the Dāyabhāga emphasizes at every step. It\(^3\) says: "There are two purposes for which wealth is acquired, viz. for worldly enjoyment and for the unseen or spiritual benefit derived from making gifts and the like; but when the acquirer is dead, he cannot have enjoyment of the wealth and the only purpose that remains is the unseen purpose or benefit. It is therefore that Br. says, 'from the wealth inherited, the inheritor should carefully set apart half for the benefit of the deceased for defraying the expenses of the

\(^{1423}\) उपकारकलेखक धनाज्ञ भाषायाती स्वाभाविक संस्कृतिमण्डित इति सम्प्ले। इति निम्नविशिष्टोऽविक शास्त्रितेन इतिविलयकर्णिः। वर्णनाति XI 6. 31–32 p. 216.

\(^{1424}\) धनाज्ञेश्वर हि गरीज्यस्य ऊपरार्ज्यम् धर्मार्ज्यम् धर्मार्ज्यमेऽव। तत्तवावधारणे हि बुद्ध लाल्ये भोगस्यमुपेनात्मकर्ष्यं हृद्य। अतः पदविस्तरः। सतस्रवाहुः धर्मार्ज्यम् वर्णेः स्वाभाविक स्वतः। नास्यप्रकाशिक ार्णे वाक्यक्षी ज यथवतत।। वर्णनाति XI. 6. 13. The verse of धृत is q. by सि. r. p. 595, धृत, सि. p. 447, चित्रैवन्द्र p. 81.
monthly, six-monthly and annual śrāddhas”. The subject of śrāddhas will be dealt with in another volume. But here it is necessary to say a few words, for making the position of the Dāyabhāga clear. Among the several kinds of śrāddhas two deserve notice, viz. Ekoddhāsta and Pārvana. The first (ekoddhāsta) is performed for the benefit of a single deceased person. There are sixteen such śrāddhas performed for the benefit of the deceased during the course of one year after his death or on the 11th day of death. And every year on the anniversary of death an ekoddhāsta śrāddha may be performed for a deceased person. The pārvana śrāddha is performed on certain specified days, such as the amāvāsyā of a month, or particularly in the dark half or on the amāvāsyā of Bhādrapada, on a samkrānti. In this śrāddha the three deceased paternal ancestors of the performer are principally invoked and the three deceased paternal ancestors of his mother are also invoked but their invocation is secondary and is dependent on the principal invocation. There is one more word that must be explained here viz. sapnādana or sapnātikarana. This is a śrāddha rite performed one year after the death of a person or on the 12th day from his death. By this śrāddha the person recently deceased ceases to be a preta (a departed spirit) and is elevated to the rank of pātra (Manes). The widow and daughter can perform only the ekoddhāta śrāddha, while sons, grandsons and great-grandsons can perform the pārvana śrāddha also. The Dāyabhāga refers (XI. 1. 34 p. 162) to the fact that the three male descendants, by performing the pārvana śrāddha, confer great spiritual benefit on the owner (compare note 1342 above). Elsewhere (XI. 7. 17 p. 211) it designates the pārvana as ‘traipurusika’ (i.e., performed for the benefit of three ancestors). When speaking of the right of the widow to inherit it emphasizes (XI. 1. 43 p. 165), by quoting verses from Vyāsa, that

1425, “एक दिनांकच पर्याय आये तथा कौश्यिसतमति कर्माश्रयेि” मिता या या I 251, तत्र चिदम्बरेदीशम परिक्रस्ये तरारपापायः एकान्तथाविपिन देवार्यसेय मिता या या I 217. गंगायां मीता भो गंगायां मीता III 11.118 the parvan days are, अभायोर, विधिष, चतुर्दशी, अच्छी and रसितासामि भविष्यदृष्टा q in आद्यत्र ण p 192 defines the पांय भारत as “अभावोरयां परिक्रस्ये तरारपापायः एकान्तथाविपिन देवार्यसेय मिता या या I 251, तत्र चिदम्बरेदीशम परिक्रस्ये तरारपापायः एकान्तथाविपिन देवार्यसेय मिता या या I 217. गंगायां मीता भो गंगायां मीता III 11.118 the parvan days are, अभायोर, विधिष, चतुर्दशी, अच्छी and रसितासामि भविष्यदृष्टा q in आद्यत्र ण p 192 defines the पांय भारत as

1426 तथापि ध्यानं सूत्रं भूतं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूतभूतिः तिपातं सूत्रं भूत�
a widow by leading a chaste life, by offering water mixed with sesame every day to her deceased husband, by making gifts and observing fasts saves himself and her husband in the next world. It adds that if the widow misbehaves she makes her husband fall, as husband and wife share in the fruits of each other's good and evil deeds. Therefore the widow takes her husband's wealth for his benefit Brhan-Manu (q. by the Dāyabhāga XI. 1, 7 and by the Mit.) declares that a soulless chaste widow should offer pinda to her husband and take his entire estate. Similarly Prajāpati (cited above on p 709 and quoted by even the V. Mayūkha and other works of the Mitakṣara school) requires the widow who inherits all the movable and immovable property of her deceased husband to perform the monthly, six-monthly and annual śrāddhas of her husband. Similarly the Dāyabhāga allows the unmarried daughter or a married daughter having a son (or who is likely to have a son) to inherit because her son will offer pinda to the owner who will be the maternal grand-father. It prefers the daughter's son as an heir even to the father because the former offers a pinda to the owner himself, while the father offers pinda to two of the three paternal ancestors to whom the owner would have been bound to offer pindas. The D. B. winds up by saying that the order of inheritors must be followed in such a way that the wealth of the deceased may be most beneficial to (the soul of) the deceased. In certain respects the D. B. does not strictly and logically follow its own theory but is compelled to twist it by reason of the places assigned by special

1427. On आद्याप ज्ञानेवेयाज्ञान मारणमानसिकारिकं (vide n 1358 above), वि. र p 590 says: केवलविषया पार्वेणमात्मान्मानसिकारिकं आद्याप परिवर्णयसिका मारणमानसिकारिकं आद्याप \\n1428. विषयार्थमेव न हमेंगं निर्विवाहस्वायत्तुष्टहरिति । उदा विवेकप्रेषितम \n1429. तस्माद यथा विषयार्थमेव विकृतित्यथा तथा तथ्यिकारिकोत्तरेऽरीपि । \n1428. विश्रुद्ध-वेय न हमें निरीक्षानब्धित मुद्धस्वहरिति | उदा विवेकप्रेषितम विश्रुद्ध-बद्धम् ॥
1429. तस्माद यथा विश्रुद्ध-बद्धम् भवति तथा तथ्यिकारिकोत्तरेऽरीपि । 
1428. विश्रुद्ध-वेय न हमें निरीक्षानब्धित मुद्धस्वहरिति | उदा विवेकप्रेषितम विश्रुद्ध-बद्धम् ॥ 
1429. तस्माद यथा विश्रुद्ध-बद्धम् भवति तथा तथ्यिकारिकोत्तरेऽरीपि । 
1428. विश्रुद्ध-बद्धम् न हमें निरीक्षानब्धित मुद्धस्वहरिति | उदा विवेकप्रेषितम विश्रुद्ध-बद्धम् ॥ 
1429. तस्माद यथा विश्रुद्ध-बद्धम् भवति तथा तथ्यिकारिकोत्तरेऽरीपि ।
texts to certain heirs.\textsuperscript{1430} For example, the order of heirs according to the D. B. is; son, grandson and great grandson; widow; daughter; daughter's son; father; mother; full brother; half brother; full brother's son; half brother's son. But the persons entitled to perform the śrāddha of the deceased in order are somewhat different. In fact the order of succession does not strictly follow in any school the order of those that are called śrāddhādikārins. The order of those who are entitled to offer śrāddha to a deceased separated male (śrāddhādikārins) given in most works is as follows; son (aurasa or adopted); grandson; great-grandson; widow; married daughter; unmarried daughter who has succeeded to the deceased's wealth; daughter's son who succeeds to the wealth; full brother; half brother (son of a different mother); full brother's son; half brother's son; father; mother; daughter-in-law; full sister; half sister; full sister's son; half sister's son; paternal uncle; maternal uncle's son; other gotraja sapindas; sodaka; any gotraja; cognates such as maternal grandfather, maternal uncle, maternal uncle's son (i. e. the bandhus of the three kinds in order); pupil; son-in-law; father-in-law; friend; any brāhmaṇa who takes a brāhmaṇa's wealth or king who takes by escheat. Vide Nīrnayasindhu III uttarārdha pp.382-386, Dharmasindhu III uttarārdha pp.368-369, Śrāddhviveka p 48. If the principle of the capacity to offer or of the offering of pindas regulating the right to succeed is to be strictly and logically followed, there is no reason why the mother or the paternal grandmother should succeed immediately after the father or the paternal grandfather respectively. Her recognition in the D. B. school is due to the fact she is expressly mentioned in Manu as an heir. Similarly in the rules about the succession to re-united coparceners, the school of D. B. gives preference to re-united co-parceners and does not apply the theory of spiritual benefit. Further the Dāyatattva says that all that is required is the capacity

\textsuperscript{1430} Vide Akṣhaya Chandra v. Haridas 35 Cal 721 at p. 726 and Nālaṅkaśa v. Rajanukanta 58 Cal. 1592 for the propositions that the doctrine of spiritual benefit cannot be applied consistently in all cases such as the succession of females to males, the succession of sāmanodakas &c. and that in cases not contemplated by Jīmūtavāhana or his followers in the Bengal school, the principle of propriety and of natural love and affection should be followed. The Dāyatattva p. 195 after quoting Br. cited above observes that both the superiority of pindas offered and nearness of line are to be considered in inheritance, 'विन्ध्यानस्मिन्स्मिन्स्मिन्स्मिन्स्मिन् अस्मिन्स्मिन्स्मिनि-समिनि स परिपरिषिकारी ।'}
to receive pinda or the capacity to participate in the pinda offered by others and not the actual offering of pindas. For example, if a man performs śrāddha for his ancestors, then dies, but no one performs his sapindana and therefore he does not participate in the pindas given to his ancestors, still his wealth will be inherited on the principle of religious efficacy. Owing to considerations of space it is not possible to go into great detail about the several propositions established in relation to the theory of religious benefit as the determining factor in matters of inheritance. But the following propositions may be set out in one place:

(1) Benefits are conferred on the deceased by means of the ekoddista or the pārvana śrāddha. The capacity to perform the pārvāna śrāddha is not the sole ground on which rests the right to inheritance to a man. Therefore the widow, the daughter and the pupil were recognized as heirs though they perform only the ekoddista śrāddha. But those who are competent to perform the pārvāna śrāddha have a preferable claim to those who are entitled to perform only the ekoddista śrāddha. Therefore the male issue of a deceased person are preferred to a widow or daughter.

(2) Spiritual benefit is conferred on a man by presenting pinda directly to him or by offering pinda to one or more of his paternal ancestors to whom he presents pindas during his own life time and with whom he participates in pindas offered after his death by others or by offering a pinda to one or more of his maternal ancestors (mother’s father, mother’s father’s father and the latter’s father) to whom he was bound to offer pindas during his life (but with whom he does not participate in the pinda offered to them).

(3) The pinda offered to a man himself directly is of greater efficacy than the pinda offered to a paternal ancestor in which he participates after his own death as one of the Manas. Therefore the son, grandson or great-grandson is preferred to everyone else. The brother offers a pinda to the father and two more...
paternal ancestors of the deceased in which he (the deceased owner) only participates after his death. Therefore the brother is postposed to the son or daughter's son (who offers a pinda directly to the deceased himself as his maternal grandfather).

(4) The pindas offered to paternal ancestors have greater efficacy than those offered to maternal ancestors (hence a brother's son is preferred to a sister's son because the former offers pindas to his own and the owner's paternal ancestors, while the latter offers pindas to his maternal ancestors who are the paternal ancestors of the owner).

(5) The pinda offered to the owner's father is of greater efficacy than that offered to the paternal grandfather or great-grandfather. Therefore a brother's son or grandson is preferred to a paternal uncle. Hence it should follow that all agnatic and cognatic descendants of the father of the deceased would be preferred to any descendant of the paternal grandfather or great-grandfather.

(6) Where the number of pindas offered by two claimants is the same, he who offers a pinda to the nearer ancestor is to be preferred.

The Dayabhāga, starting with Baud. Dh. S. (I. 5. 113 ff.), Manu (IX. 186-187) and the Mātisyāpurāṇa elaborates its own definition in the following way. A man's son and a daughter are both born in the family. The daughter's son springs from the family of his maternal grandfather but he belongs to another gotra (viz. his own father's gotra); similarly, a man's sister (i.e. father's daughter) is born in his family but her son, though mediately sprung from the deceased owner's family, belongs to another gotra (viz. that of the sister's husband): the same is true of a father's sister's son and the paternal grandfather's sister's son. A sister's son offers a pinda to the father.

1433. विनाष्ट्यो व विनिन: विल्क्षणप्रभावमणाः: विन्यास: समाः. दुर्बल विनिन प्रभाव वित्तरेववासुपुरुषदश्युरामहं विन्यासेषो तथा विनाष्ट्यो विनिन दश्युरामहं प्रभावमणाः।

1434 तस्तमयो पोलपोलेवस्तस्माभायो मन्निप्पमपिभायो विनिन विनाष्ट्यो विनिन दश्युरामहं प्रभावमणाः।

1435 तेन मुनिपद्धपूविपीविनिनपिभायो विनिन विनाष्ट्यो विनिन दश्युरामहं प्रभावमणाः।
of the deceased, as the owner's father is the former's maternal grandfather and therefore he is connected as sapinda with the owner. A father's sister's son offers a pinda to the paternal grandfather of the owner, who (paternal grandfather) is the maternal grandfather of the father's sister's son. A maternal uncle is not sprung even mediatly from the family of the owner, but he offers a pinda to his own father who is the maternal grandfather of the deceased owner. Therefore the maternal uncle or his son or son's son being connected with a pinda that is offered to the maternal grandfather or maternal great-grandfather respectively of the deceased owner is a sapinda of the deceased owner. A maternal aunt's son also offers a pinda to his mother's father, who is also the owner's mother's father and so the maternal aunt's son is a sapinda of the owner. The pindas offered to the maternal ancestors by him are inferior and secondary. Further, one's own mother, the father's mother, father's father's mother were associated with their respective husbands as to the pindas offered to the male ancestors and the same holds good about the wives of the maternal ancestors also.\footnote{1435}

The result of this way of defining a sapinda is to obliterate the distinction between a gotraja and a bandhu. Yāj (II.136) expressly says that a bandhu can succeed only on failure of all gotrajas and so according to him a bandhu is one who is not a gotraja. The Dayabhāga brings in the sister's son immediately after the the brother's son's son and before the paternal grandfather (i.e. even before a near agnatic ancestor) who is literally a gotraja, while the sister's son is literally not a gotraja. When the Dayabhāga designates one's sister's son as sprung from the kula of the owner though not of the same gotra, he does violence to popular usage prevalent throughout India. An ordinary person in India hardly ever says that his sister's son or father's sister's son is born in his own kula. The Dayabhāga only quibbles over the word 'gotraja' in Yāj which it reads in the singular (gotrajah) and not in the plural (gotrajah) as the Mit. does. Under the Mit. the sister's son is only a bandhu and cannot succeed before a paternal uncle or his son or a paternal grand-uncle or any other gotraja. The Dayabhāga thus gives the go-by to the text of Yāj and shuffles in several

\footnote{1435: सापिंदाः स्वविद्यार्थी निदुस्तीती निदवधुत्वतत्तती नलोप आयुक्तसंसाद्व! रथात स्मृत मतत्ता भाज उद्धरे कवयागम। विदवारी च वेदकर्म स्मृतत्ता मरितायस्वैरी सपुष्पीमाध्यमाम च पाल्यमहाकालोभी! विखिल एत। दुर्गमम् XI. 6.3 p 207।}
The following diagrams will illustrate the working of the theory of religious efficacy. A person is a sapinda of those to whom he is bound to offer a pinda while he is alive, of those who on his death are bound to offer pinda to him (viz his three male descendants, his daughter's son, his son's daughter's son and his son's son's daughter's son) and of those who are bound to offer a pinda to the ancestors to whom he is bound to offer a pinda viz. to his three paternal ancestors and his three maternal ancestors and all of these are his sapindas. The last of these three groups has four sub-groups.—sub-group No. I comprises those who offer pindas to their own paternal ancestors who are also the paternal ancestors of the owner. sub-group II contains those who offer pindas to their three maternal ancestors who are all or some of them the paternal ancestors of the owner, to whom he was bound to offer a pinda; sub-group III comprises those who offer pindas to their paternal ancestors all or some of whom are the maternal ancestors of the owner; sub-group IV exhibits those who offer pindas to their own maternal ancestors who are also the maternal ancestors of the owner. Each of these sub-groups contains 9 persons (as the minimum) who are all shown in thick type. If the owner has several brothers, sisters, uncles and aunts &c. the number of possible sapindas will be much larger. All heirs in the three sub-groups H—IV will be bandhus according to the Mitakṣara and will be postponed to gotrajas under the Mitakṣara. It should be noticed that Jīmatavahana brought in the father's daughter's son immediately after the father's great-grandson, the paternal grandfather's daughter's son after the paternal grandfather's great-grandson and the paternal great-grandfather's daughter's son immediately after that ancestor's great-grandson on the analogy of the rights of the owner's daughter's son and on the basis of Manu IX. 139 that the dauhitra (daughter's son) saves an ancestor in the next world just as a son's son does.1438

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1438 दिन ब्राह्मणसमयालापनके धर्मान्वितभाषाधिकारों में अनेक धार्मिक-ब्रह्मण। वर भीलामाधिकारसमयालापनके धार्मिक ब्रह्मण। धर्मान्वितभाषाधिकारों में अनेक धार्मिक-ब्रह्मण। नृत्यधारिजी मध्यमसमयालापनके धार्मिक ब्रह्मण। धर्मान्वितभाषाधिकारों में अनेक धार्मिक-ब्रह्मण। नृत्यधारिजी मध्यमसमयालापनके धार्मिक ब्रह्मण। धर्मान्वितभाषाधिकारों में अनेक धार्मिक-ब्रह्मण। नृत्यधारिजी मध्यमसमयालापनके धार्मिक ब्रह्मण। धर्मान्वितभाषाधिकारों में अनेक धार्मिक-ब्रह्मण। नृत्यधारिजी मध्यमसमयालापनके धार्मिक ब्रह्मण।

In Hurn Das v. Bama Churpa 15 Cal. 789 at p. 796 these places were considered and it was held that they are not to be extended to the brother's

(Continued on the next page)
daughter's son and that the latter though a sapinda of the owner and an heir was not to be preferred to the great-grand son of the paternal grandfather of the propositor Sarvadhikari (T. L. L. on Inheritance, 2nd ed. of 1922 pp. 701-702) criticizes this decision as wrong, but it does not appear that the Calcutta High Court is prepared to follow him. A similar conflict arises as to several cognate heirs. For example, the son's daughter's son and the son's son's daughter's son offer pendas to the owner himself directly as a maternal ancestor (just as the daughter's son does) and therefore should be placed immediately after the daughter's son as heirs. But the Calcutta High Court would refuse to do so if the reasoning in 15 Cal. 780 be followed. Sarvadhikari (p. 709) however would place them immediately after the daughter's son.
The D. B. says that the word 'gotrajah' (mas. singular) is employed by Yāj. for excluding all sapinda women (except

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1437. याज्ञवल्क्येन च पितारिब्वृहस्पतियस्य तद्वाराखरस्य विद्यमानस्यकर्मांपि कार्यसिद्धस्य हलचलादेव हूँ रत्निभीवां च यथूसार्य वाससंत्रस्त्रात्ततवात् इत्यादि याज्ञवल्क्येन च पितारिब्वृहस्पतियस्य तद्वाराखरस्य विद्यमानस्यकर्मांपि कार्यसिद्धस्य हलचलादेव हूँ रत्निभीवां च यथूसार्य वाससंत्रस्त्रात्ततवात् इत्यादि

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those that are expressly named as heirs by special texts since they are not born or (even mediately) sprung from the family of the owner, as the sister's son or the father's sister's son that is held by it to be so sprung, that the word 'bandhu' employed by Yaj to include a maternal uncle and the like among heritable sapindas, since they are not sprung even mediately from the huta of the owner and are also not of the same gotra, that the maternal uncle and the like come in only after all descendants in the lines of the paternal ancestor, inclusive of the great-grandfather up to the latter's daughter's son are exhausted, and that Manu had not to enter into these details as its two verses (IX 186-187) were quite enough to lead to all that has been elaborated by the D. B. about the working of the theory of religious efficacy.

It will have been noticed that no female except the huf expressly mentioned can inherit under the Dayabhaga scheme and the result is that a man's own son's daughter or daughter's daughter does not take as heir, whereas a distant relative like the father's father's sister's son takes it. The same is also the case even under the Mitaksara in the whole of India (except in Bombay and to some extent in Madras for which see a little later on).

A man offers only the leavings or remnants of the pindas that stick to his hand (when offering pindas to his three paternal ancestors) and that (leavings) are cast on kusa grass to three paternal ancestors above the paternal great-grandfather (Manu III. 216). So also the three male descendants beyond the great-grandson offer the leavings (called pindoleya) to the owner; these three remote paternal ancestors and the three remote male descendants (spoken of as 'vibhaktadajña in Baud. Dh. S. I. 5 114) are designated sakulya by Baud, and

1438. Vide Kavlasha Chandra v. Karuna Nath 18 C W N. 777 where the above passages are considered at large and it is held that the paternal grand-uncle's daughter's son (though not expressly mentioned in the D B) is entitled to preference over the maternal uncle (who is expressly mentioned as an heir and a sapinda by D B), since the former offers a pinda to the paternal great-grandfather of the owner to whom the owner was bound to offer a pinda in which the owner participated after his own death, while the latter offers a pinda to the maternal grandfather of the owner to whom the owner was bound to offer a pinda in which, however, the owner did not participate after his death.
the D. B.¹⁴³⁹ (XI. 1. 38) According to D. B sakulyas succeed after all sapindas are exhausted. Just as a man participates after his death in the pindas offered to his paternal ancestors so he would participate in the leavings also offered to his paternal ancestors from the 4th to 6th by their descendants (from 4th to 6th) The D. B. remarks that this difference between sapindas and sakulyas is made only in the matter of inheritance. But in the matter of the periods of mourning both the sapindas (strictly so called in the section on inheritance) and the sakulyas are designated sapindas by Manu (V. 60) and by the Markandeya-puṇāna (28. 4).¹⁴⁴⁰ According to Manu IX. 187 sakulyas succeed on failure of sapindas, while Visnu Dh S (XVII. 9–11) prescribes¹⁴⁴¹ that on failure of bandhus, sakulyas succeed. It appears that Visnu employs the word bandhu in the sense of sapinda. Nār (dāyabhāga, 51) states that on failure of daughters and sakulyas, bandhavas and persons of the same caste succeed. Here it appears that sakulya and bāndhavā are employed in the sense of gotraja and bāndhava as done in Yāj. The Bālambhatti says that gotraja and sakulya are synonymous. The Dāyabhāga appears to be somewhat inconsistent in its references to sakulyas. In XI. 6 15 and 23 it includes samānodakas among sakulyas, while in XI. 6 21–22 it defines sakulya as stated above. The Mit on the other hand comprehends the sakulyas of the D. B. (as defined in XI. 6, 21) under its gotraja sapindas.

¹⁴³⁹ विभज्ञापायसम् सकुल्यानांपक्षे . . . विविधाभावे सकुल्यं। वै च पृष्ठ समायः सकुल्यं। वै 5. 114–116, यस्य इत्याविस्मितिः प्रमुखयं पृष्ठयां न विविधाभावे सकुल्यते। विकास योगश्रेयसः यस्य सविदिता। बालामभत्ति (B. B. 9–11) देते। वराहभु (XI. 1 38 p. 163, वानदेव सोमसिद्धार्थे रामकेशवरायः श्रमणावलिः प्रकाशितायां सकुल्यां दृष्टार्थे)। वराहभु (XI. 1 38 p. 163, वानदेव सोमसिद्धार्थे रामकेशवरायः श्रमणावलिः प्रकाशितायां सकुल्यां दृष्टार्थे)। वराहभु (XI. 1 22–23 p. 213). ¹⁴⁴⁰ विशेषार्थे वनपत्तिः पितामहसामायां बजनास्य। वनपत्तिः वनपत्तिः अतिशयां पितामहसामायां बजनास्य। वनपत्तिः वनपत्तिः अतिशयां पितामहसामायां बजनास्य। वनपत्तिः वनपत्तिः अतिशयां पितामहसामायां बजनास्य।

¹⁴⁴¹ तद्भवेश्वसमुस्तेऽपि विभवविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभावविभाववि
The Mit. states that the gotrajas are the paternal grandmother, the sapindas and samānodakas of the deceased. It then proceeds to say that the paternal grandmother is the first among gotrajas, then comes paternal grandfather. It paraphrases the word gotraja (born in the gotra) as samānaqotra (having the same gotra) and then proceeds, 'on failure of the father's line (santāna) the heirs are the paternal grandmother, the paternal grandfather, the paternal uncles and their sons in order; on failure of the paternal grandfather's line the paternal great-grandmother, the paternal great-grandfather, his sons and son's sons inherit. In this manner must be understood the succession of sapindas belonging to the same gotra (as the deceased) up to the 7th degree'. According to the Mit. sapinda relationship extends up to the 7th degree (reckoned from and inclusive of the owner) Therefore the owner's sapindas for purposes of inheritance according to the Mit. are the owner's (1) 6 male descendants in the male line, (2) 6 male ascendants in the male line and the wives of the first three of them (that are expressly so declared, viz. mother, paternal grandmother and paternal great-grandmother) and probably the wives of the next three also, (3) the six male descendants of each of his six male ascendants in the collateral male lines. Besides, a man's wife and daughter are treated as his sapindas and the daughter's son, though a bhūmaqotra sapinda, is placed high among the gotraja sapinda heirs.

Even under the Mitaksara in the whole of India (except in the Bombay and Madras schools), no women succeed as gotraja sapindas (except five expressly named and cited above on p. 713). In Bombay the sister (full or half) is brought in as a gotraja by the V Mayūkha (though the Mitaksara is entirely silent) and placed by it immediately after the paternal grandmother. It relies on the general words of Manusmṛti IX. 137 and of Br. (quoted above on p. 733) that to the nearest person in blood the inheritance goes and then proceeds.' She is also a gotraja as being born in the gotra in which her brother (the deceased owner) was born. She is, however, not a sagotra (of the deceased brother), but being a sagotra is not mentioned here (in Yaj) as the condition that leads on to the taking of the wealth of the deceased'. Here the V Mayūkha plays upon the word gotraja and takes its literal meaning. But, that is a specious argument. The
widow and mother are not gotrajas (in this sense of being born in the gotra) but on marriage they enter the gotra of their husbands and become sagotra. Further, on the same reasoning, a son’s daughter, brother’s daughter, father’s sister and other women born in the family of the deceased will become his gotrajas (though not sagotras because on marriage they pass into the gotra of their husbands). But these other women are not expressly recognised even by the V. Mayukha as gotrajas. Even though she was not mentioned in the Mit the sister has been recognised as a gotraja sapinda by the Bombay High Court in parts of the Bombay Presidency where the Mit is the paramount authority. The order of heirs under the Mit would be as follows:—full brother, half brother, full brother’s son, half brother’s son, paternal grandmother, sister (full being preferred to half), paternal grandfather. According to the V. Mayukha the order is slightly different, viz. full brothers along with sons of full brothers that are dead, full brother’s son, grandmother, full sister, halfbrother, halfsister, paternal grandfather. The unmarried sister had been recognized as entitled to a share when brothers came to a partition and they had to provide for her marriage expenses Vide above pp. 619-620 and När 1443 (Dāyabhāga, 13), Visnu Dh. S. 18. 35, Manu IX. 118, Yāj II. 124. In Madras the sister had been recognized as a bandhu The Legislature has intervened and laid down (Hindu Law of Inheritance Amendment Act II of 1929) that in territories governed by the law of the Mitakaśa and in respect of the property of males not held in coparcenary and not disposed by will, a son’s daughter, daughter’s daughter, sister and sister’s son shall be entitled to rank as heirs in the order specified in the Act next after a father’s father and before a father’s brother. The first three of these were before this Act not at all recognized as heirs in the whole of India except in Bombay (where the sister was recognized as a gotraja sapinda and the first two as bandhus) and except in Madras (where the first three were recognized only as bandhus). The sister’s son was given a very high place as a sapinda under the Dāyabhāga and was treated as a bandhu elsewhere in India. This enactment does not affect the Dāyabhāga scheme and so the three females mentioned in the Act are not heirs even now under the Dāyabhāga. The sister’s place as settled by Bombay decisions is after the paternal

1443. उपेतातांतोपितो बृहति कस्तो च जनजासादं देशं । समवादाय शेषां शतपतः भविष्यं तथा ॥ नारदः (श्रुतिभाष 13)
grandmother and before the paternal grandfather, while the above Act places her after the paternal grandfather. In *Bau Mahatavum v The Deputy Naun* 45 Bom. L. R. 434 it has for this reason been held that the Act does not apply to the Bombay Province. If it be held that the Act does apply to Bombay (except as to the sister), then the same Act will have to be deemed to be laying down two different orders of succession as to the same four heirs in different provinces, which, to say the least, is not a reasonable or desirable way of interpreting statutes (just as in the case of texts).

Some difficulty is caused by the use of the word *sautānu* in the Mit. as regards the father's, grandfather's and great-grandfather's line. It has been seen above (p 731) that the compact series ends with the brother's son (father's son's son i.e. after two descendants of the father) according to the Bombay High Court, while elsewhere in India it is supposed to end with the brother's son's son (i.e. after three descendants of the father). The Mit expressly mentions only two descendants in the grandfather's and great-grandfather's line. The general rule is that sapinda relationship extends to six descendants of each line (excluding the man or ancestor from whom the counting is made). The further general rule gathered from the meagre words of the Mit. is that the nearer line excludes the more remote (e.g. the grandfather, his son and grandson are expressly mentioned by the Mit. as taking before the great-grandfather, his son and grandson). The question is whether the 3rd, 4th, 5th and 6th descendants of a nearer line would exclude even the 1st or 2nd descendant of a remoter line e.g. whether the great-grandson of the grandfather would take before the son or grandson of the great-grandfather or whether the 6th descendant of the grandfather would take before the son of the great-grandfather. There were three views on this point.

1444. Vide Buddha Singh v. Lalit Singh L. R. 42 I. A 208 pp 220-24 for the three views and their expounders. The P. C. overruled the first view and held (p 227) that the descendants in each ascending line up to the fixed limit should be exhausted at any rate to the third degree before making the ascent to the next line in order of succession. The Subodhini also says (विद्वानो वाहुलकुण्यां) p. 74, vide सब्द: प. p. 674 also for the same view.
The first view, relying upon certain words of the Shu C, held that after two descents in each line, one should ascend into a remoter line and after the two descendants of that line are exhausted, one should revert to the 3rd to 6th descendants of a nearer line. The 2nd view was that in each line three generations were to be first exhausted, because the word putra' in several places in the Mit. includes the three male descendants. The 3rd view was that in each line six descendants were to be exhausted before ascending to the next remoter line (as sapinda relationship extended to six degrees).

Another question is whether the widows of agnatic relations (such as the son's widow, brother's widow, step-mother, or paternal uncle's widow) are included in the term 'gotraja' for purposes of inheritance. Under the Dayabhaga, as well as under the Mitaksara throughout India (except in the Bombay School), the widows of gotraja sapindas are not heirs at all, since according to almost all writers, women do not inherit except when expressly mentioned by texts. In the Bombay School the position is different. According to both the Mit and the Mayukha, wives enter by marriage the gotra of their husbands and become sapindas of their husbands. The Balambhatti declared the son's widow to be an 'heir', even before the paternal grandmother and includes females also in the word gotraja. When gotraja was rendered as samadangotra, the term became wide enough not only to include those born in the gotra but even those who entered the gotra by marriage.

Besides, it was argued that if the paternal grandmother or paternal great-grandmother succeeded as a gotraja there was no reason why other widows of other gotrajas should not succeed. From the earliest days of British rule the gotraja sapindas (such as the son's, brother's, paternal uncle's widows) have been recognized as heirs in the Bombay Presidency. They take only a limited estate like the owner's widow or mother or

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1445 The third view was propounded by Telang J in Rachava Kalinga 16 Bom 716, which is referred to by the P C in 42 I, 208, at pp 220 and 226. The P C do not dissent from Telang J but do not expressly approve of his views as it was not necessary to do so in that case, where the question was whether the great-grandson of the grandfather of the deceased was to be preferred to the grandson of the great-grandfather and it was held by the P C that he was to be preferred. The 2nd view appears to be supported by the words of Parārka p 745 'पर अव नव मुक्ति रामेश्वर उत्तर प्रिय विद्वानहृदयम् सत्प्रियम् सत्सचार्यम् ध्रुवम्'.
paternal grandmother. They are recognized rather on the
ground of 'positive acceptance and usage' by the Privy Council
than on the ground of any texts. They occupy the same
place as their husbands, succeed after the compact series, the
sister and half-sister and only after all the male gotraja
sapindas (up to the 7th degree inclusive of the ancestor)
properly belonging to the line to which their husbands belonged;
e g the son’s widow would succeed before the brother’s son’s
son, the brother’s widow or step-mother would succeed after all
the six male descendants of the husband’s father, but before the
father’s father, paternal uncle or his son &c. These widows of
gotraja sapindas succeed before any bandhu. Since Act XVIII of
1937 a man’s own widow, his predeceased son’s widow and
the widow of a predeceased son’s predeceased son succeed along
with his son or sons throughout India.

Samānodakas According to the Mit gotrajas are either
sapindas or samānodakas. The word ‘samānodaka’ has a
technical meaning Acc. to Mam V.60, ‘the sapinda relationship
ceases with the seventh person, the relationship of samānodaka’
ends when birth (in the family) and name are no longer
known’. This occurs in the chapter on impurity. The Mit
declares that the samānodakas comprise males seven generations
beyond the sapindas or all males (beyond sapindas) whose
birth (in the same family as that of the deceased) and name
are known. It quotes a text of Brihan-Manu, ‘the sapinda
relationship ceases with the seventh person; the relation of

1446 Vide Lalitbhas v. Mankuwar 2 Bom 388, 447, which went
up to the Privy Council as Lalitbhas v. Cassiboy C R 7 I A 222 at
p 237. In Gandhi Nagaral v Bar Jadab 24 Bom 192 (P. B.) at p 212
it was observed: ‘The grandmother’s claim was indeed found so strong that
it served to help the widows of collateral sapindas to be also recognized as
gotraja sapindas’.

1447 Vide Abhay v Mohanlal 54 Bom. 564 (P. B.) the daughter
in-law being preferred to a brother’s grandson, Kashibai v. Moreshwar 35
Bom 389 (where the paternal uncle’s grandson was preferred to a paternal
uncle’s widow because he was a male gotraja sapinda of the same line within
seven degrees, to which the widow’s husband belonged), Basanguda v.
Basangavada 39 Bom. 87 where the brother’s widow was preferred to the
paternal uncle’s son (as she belonged to a nearer line).

1448 सापिन्धा हृ बहुपके सपिन्धे सिनितति । समानोटुपपगरवत ज्ञानागाभोवति ।
स्वते व 60, प्रायाद्र शिलसाद। सापिन्धा श्रद्धा श्रद्धा ज्ञानों ऋषिवेदां ज्ञानालोगों
शुद्धदेवतेऽबधवं तत्तदायां। नमस्ते. on p. II 136 These verses are
attributed to श्रुतां द्रव्य म. र. p. 454
Succession of samānodakas 753

samānodaka ceases after the 14th; according to some it extends as far as the memory of name and family (or birth) reach; the gotra is said to extend up to that*. The samānodakas comprise the 7 ascendants of a person after the great-grandfather’s great-grandfather, the 13 descendents of these seven ascendants, the 7 descendents after the 6th descendant of his 6 male ancestors from his own father; and descendents of himself from the 7th to the 13th. The Privy Council have ruled1449 in a recent case that, according to the Mitāksara school, samānodaka relationship does not extend beyond the 14th degree (from and inclusive of the common ancestor of the claimant and the propositus).

The word ‘samānodaka’ literally means ‘those who offer to or receive water from the same person’. The word is employed by Vas.1450 17. 79. But in the law of inheritance it has a technical meaning as stated above.

Bandhu (cognate).1451 It has been seen above (on p. 742) how the Dāyabhāga shuffles cognates among the gotrajās.

1449. Vide Atmaram v. Bajirao L. R. 62 I. A. p. 139 where it was said that in the event of a conflict between the ancient text writers and the commentators the opinion of the latter prevails in the provinces where their authority is recognized on the ground that the commentators only voiced the usage of the time and of the country in which they lived. The case of Bas Devkore v. Amritram 10 Bom. 372 where the word samānodaka was interpreted to include any agnate without any limit of degree was not overruled but was distinguished on the ground that it was governed by the law of the Vyavahāra—mayūka which quotes only Manu V. 60 and does not quote Brhad-Manu.

1450. अतः जवः समाणान्दर्जनेमिनेश्वरकाकोकालणा पूरथ पुत्राण गर्यावर्। सरसिद्ध 17 79.

1451. The word ‘bandhu’ is a very ancient one and has been used in various senses throughout the ages. In Rg. 1 113. 2 Night and Dawn (Usas) are called samānabandhū (bound together or having a common relative). In Rg 1, 154. 5 (urukramasya sa hi bandhur-sīthā) the word appears to be used in the sense of ‘friend’. In Rg I 164. 33 ‘nābhi’ and ‘bandhu’ are employed one after another. The sage Vasistha tells Aśvins (Rg VII, 72. 2) that their mutual friendship is ancestral and their relation is common (yuvorhi naḥ sakhyā prityāḥ samāna bandhurān tasya vittam). Vide also Rg. V. 73 4, VIII. 21. 4, VIII 100. 6, IX 14. 2 In the Atharva-veda V 11. 11 Atharvan is said to be the bandha of the gods and Varuna is said to be both the friend (sakhyā) and bandhu (relative) of the sage. In Atharvaceda VI. 15. 2 and VI 54. 3 the same half verse occurs, ‘whoever

(Continued on the next page)
literally so called. According to the Mit bandhus are sapindas of the deceased belonging to a different gotra. Bandhus succeed under the Mit, the V: Mayūkha and all other authorities except those of the Dāyabhāga school only on failure of samānodakas (or sodakas)... It will have been noticed from the discussion above that gotrajas, whether sapindas and samānodakas, are all agnates (and in some cases their wives) i.e., persons related to the deceased by unbroken male descent. The bandhus are persons related to the deceased through one or more females. The basic texts on the inheritance of bandhus are three verses attributed to Vṛddha-Satātapa

(Continued from the last page)
or Baudhāyana. They may be translated as follows: 'The sons of one's father's sister, the sons of one's mother's sister and the sons of one's maternal uncle—these are to be known as ātmabandhus (one's own bandhus); the sons of one's father's father's sister, the sons of one's father's mother's sister, the son's of one's father's maternal uncle—these are to be known as one's pitrabandhus (father's bandhus), the sons of one's mother's father's sister, the sons of one's mother's mother's sister, the sons of one's mother's maternal uncle—these are to be known as the mātrbandhus (mother's bandhus). The Mit. states on this text that bandhus are of three kinds viz. ātmabandhus, pitrabandhus and mātrbandhus and that ātmabandhus succeed before pitrabandhus on account of their greater propinquity to the deceased and pitrabandhus succeed before the mātrbandhus. The treatment of the rights of bandhus in the Mit and other commentaries and digest is very meagre. This has led in modern times to a bewildering mass of case law on the inheritance of bandhus.

The first question is whether the enumeration of bandhus in the verses quoted is exhaustive or only illustrative. The V. P. expressly states that if the enumeration be held to be exhaustive absurd results would follow. For example, a maternal uncle's son is expressly named as an ātmabandhu in the verses quoted above, but his father (the maternal uncle), being not mentioned, would on that hypothesis be excluded. Therefore it was held by the Privy Council in a very early case that the enumeration of bandhus is only illustrative, that the maternal uncle though not mentioned is a nearer...


III p 528 and IV p. 455 and to hāraśārātya by the pad. 


bandhu and would succeed in preference to his own son wh
is expressly mentioned. In Balasubrahmanyam v. Subbaya 65
A. 93 it was held that under the Mitaksara the principle of
proximity of blood relationship applies to the succession of
bandhus, that in determining which of two atmabandhus is enti-
ted to succeed nearness of degree and not religious efficacy is the
proper test to apply, that when the atmabandhus are equal in
degree the test of religious efficacy may be applied to determine
preference and that the maternal uncle of the deceased is en-
titled to preference over the deceased's father's half sister's
son. This was followed in Prangaunda v. Yellappa I. L R (1943)
Bom. 259 (F. B.) where the mother's brother of the deceased
was preferred to the father's sister's son. So also the mother's
father would be a bandhu. It is strange that the deceased's
own descendants through a female or the deceased's father's
descendants through a female such as the son's daughter's son,
daughter's son's son, daughter's daughter's son, sister's son
or sister's daughter's son, are not mentioned in any authorita-
tive commentaries or digests as his bandhus. Further, the bandhus
enumerated in the three verses do not go beyond the 4th degree
from the common ancestor. But bandhu relationship extends
up to five degrees at least. There is an ancient instance of the
sister's daughter's son having succeeded to a Buddhist bhikṣu
in Cambodia (in stage 586). This would be so only according
to the principles of the Mit. Vide 'Indian Cultural Influence
in Cambodia' p 55 by Dr. Bijan Raj Chatterji (Cal.1928). All
the above (such as the son's daughter's son) have been recog-
nized by the Indian Courts as atmabandhus entitled to inherit.
In United Provinces v. Kauhatiya Lal 16 Lucknow 551 it has been held that the father's father's daughter's son's son
would be an atmabandhu of the deceased. In an early case in
British India two propositions were laid down, viz. (1) there
must be mutuality of sapinda relation between the deceased
and the claimant (i.e. each must be a sapinda of the other) and
(2) that in order that a man may be an heritable bandhu of the
decayed they must be related directly through themselves or

1456. Vide Umaid Bahadur v. Udoo Chand 6 Cal. 119 (F. B.), 128
where it was held that a man's sister's daughter's son is a heritable bandhu
but a remark was made (which was an obiter dictum) that the sister's
daughter's son's son would not be a bandhu of the propositor because the
latter was not a descendant of the grandfather of the former, his father
or mother.
through their mother or father. These propositions were accepted by the Privy Council,¹⁴⁵⁷ which further said that sapinda relationship extends in the case of bandhus only up to five degrees. The first proposition about mutuality has some support in the interpretation put on the famous verse of Manu IX. 137 by the Bālambhātī and the Subodhinī (vide above note 1418). But difficulty is created about mutuality by the unwarranted assumption that the common ancestor must be a member of one out of four families as stated by Sarvadhikari. The other propositions, however, are not supported by any texts or sound reasoning. Since the enumeration of bandhus is admitted to be not exhaustive, no sound inference can be drawn from the list of nine bandhus that a heritable bandhu must be connected with the deceased in any particular way. All that can be required is that he must be a bandhu as defined by the Mit and connected with the deceased by having particles of the body of a common ancestor within the limits of sapinda relationship as laid down by the Mit. The limit of five degrees categorically laid down by the P. C is not, it is submitted with great respect, based on very sure or strong foundations. The Mit says that sapinda relationship extends to seven degrees when traced through the father, that wherever the word ‘sapinda’ is employed this meaning has to be understood and it extends up to five degrees when traced through the mother. Vide H. of Dh. Vol. II. pp. 454–455. What is material is

¹⁴⁵⁷ Vide Ramchandra v. Vinayak L. R. 41 I. A 290 (= 42 Cal. 384 at pp. 418–421) for the propositions about mutuality, relationship through himself, father or mother and restriction to five degrees. Dr. Sarvadhikari (T. L. L. p 630f) is not right in inferring from the nine bandhus expressly mentioned in the verses quoted above that the propositions must be a descendant of a common ancestor who is a member of the following families, viz (1) claimant’s agnate family, (2) claimant’s mother’s agnate family, (3) claimant’s father’s mother’s agnate family, (4) claimant’s mother’s mother’s agnate family. Following this opinion, it was held in Laxji v. Mithabai 2 Bom L R 842 that the great-grandson of a sister is not an heir under Hindu Law. But this decision is against the definition of sapinda given by the Mit and is wrong. Vide Chirnua v Padmanabha 44 Mad. 121 pp 128–130 for a reasoned and trenchant criticism of the requirement of mutuality laid down without any discussion or explanation in the case of 6 Cal 119 and the views of Sarvadhikari. It is to be regretted that owing to the ignorance of Sanskrit on the part of most judges that had to decide cases of Hindu Law, the opinions of individual learned authors like Mayne and Sarvadhikari were followed without personal examination by judges of the authorities on which the opinions of authors were based.
not whether a female intervenes somewhere, but whether the person about whose sapindaship a question is raised traces his descent to a common ancestor through his father or through his mother. In the P. C. case the claimant claimed sapindaship with the deceased through his mother, and it was rightly decided that he being 6th from the common ancestor was not a bandhu. But to lay down as a universal rule that a bandhu in order to inherit under the Mit. should not be beyond five degrees from the common ancestor is against the definition of sapinda given by the Mit. itself and unduly narrows the express words of the Mit. The words of the P. C. "the sapinda relationship, on which the heritable right of collaterals is founded, ceases in the case of the bhinna-gotra sapinda with the fifth degree from the common ancestor" (L. R. 41 I. A. 290 at p. 312) are very generally expressed and are susceptible of the interpretation that they lay down the rule of five degrees even when the claimant claims relationship with the deceased through his own father. Some support for the Privy Council rule that sapinda relationship ceases with the 5th

1458 Vide Brij Mohan v. Kishun Lal (1938) A. I. 670 where the Allahabad High Court held that, even when the claimant traced sapinda relationship through his father, heritable bandhu relation ceases after the fifth degree. But in Kesar Singh v. Secretary of State for India 49 Mad 652 at p. 690 it is said that, though in the P. C. decision there are some observations which at first sight imply that sapinda relationship of bandhus for inheritance ceases with the 5th degree in all cases, there is nothing to suggest that the Privy Council intended to do away with the well-known distinction between bhinne-gotra sapindas that claim relationship through their father and those that trace it through their mother. There is great diversity of view yet about what the P. C. meant in 41 I. A. 290. In Seelam Nagamma v. Reddam I. L. R. (1943) Mad 739 (F B) it was held that Dr Saradhabhram is wrong in his restrictions of heritable bandhus to the lines he propounds, that 54 All. 698 is wrongly decided and that 49 Mad 652 lays down the correct law. On the other hand, in Harnam v. Vasudev I. L. R. (1943) Bom 465 it has been held that the P. C. means that heritable bandhus whether claiming through the father or the mother must be within five degrees from the common ancestor. Vide Deb Das v. Mukat Behari I. L. R. (1943) All p 131 which lays down several rules deducible from an examination of numerous cases. As an illustration of how the law of the succession of bandhus is in a benederous state, the following two cases may be read. In Sakharan v. Raikrishna 49 Bom. 739 (F B) it was held that a father's sister's son is to be preferred under the V. Mayyaka to the maternal uncle, but the P. C. decided in Balsubramanya v. Subbaya I. R. 65 I. A. 93 that the maternal uncle is entitled to preference over the father's sister's son.
degree from the common ancestor in the case of bhinnagotra sapindas may be found in the words of Mitramiśra in his commentary on Yajñ I. 52, in the implication of the words of Kullāka 1459 on Manu V. 60 and in the remarks of the Bālamabhātī (p 191). But this view is opposed to other weighty authorities such as the Nīrnayasindhu and the Dharmaśindhu.

The whole law about the succession of bandhus is in a confused state owing to conflicting decisions, but the P. C. has laid down certain propositions which may be set down here: (1) ātmabandhas succeed before pitṛbandhus and pitṛbandhus before mātrbandhus; (2) the nearer in degree in each class of bandhus is preferable to the more remote; (3) as between bandhus of the same class, the conferring of spiritual benefit would be a ground of preference, as the Viramitrodaya invokes that principle in several cases and so the father’s half sister’s son would be preferred to the mother’s sister’s son, though both are ātmabandhas and of equal degree; (4) if the above three rules fail, bandhus ex parte paterna (on the father’s side) succeed before bandhus ex parte materna (on the mother’s side); (5) the bandhu between whom and the propositus a lesser number of females intervenes is to be preferred. As a corollary of the 2nd rule it should follow, that the descendants of the propositus would be preferred to ascendants and collaterals and that bandhus of the same class that are descendants of a nearer line would succeed in preference to descendants of a remoter line though of the same class. But this last proposition has not yet been settled by the Privy Council. It has been, however, held in Debi Das v Mukat Behari I.L.R (1943) All. 131 that a sister’s son’s son should be preferred to the deceased’s cousin’s daughter’s son, since the former belongs to a nearer line.

For the purposes of this work it is irrelevant and unnecessary to wade through the mass of case-law on the succession of

1459. कुलका after quoting the सरस्वतिर on the question of sapundashhip based on the offerings of pūdas remarks, 'समौपले चेथ सतिप्रदत। अति एव सहु- हितनिःसर्वंपर्व सतिप्रदत।' नितिप्रेमिन समी या I. 52 quotes the सरस्वतिर, 'समीरे खुद सतिप्रदत। इतिविपरीत च रामसमस्य।' जितिके खुद सतिप्रदत। इतिविपरीत। विनिसु तथा नितिसमस्य।' and remarks 'तेन म्द्वीतलतादिश्यः अचि विनितलताय विनिसु ज्ञातवद। बलाच च त्यजयोज्जक-विशेषणां शायो। तेन विनितलतामण्डकप्यस्यस्य।' एवं च विनितलतामण्डकप्यस्यस्य।
bandhus. One or two matters, however, call for remark. If the theory of spiritual benefit be strictly applied, many of those who would inherit as bandhus under the Mit. system would be barred from inheritance. For example, the daughter’s son’s son or daughter’s daughter’s son would be a heritable bandhu under the Mitaksara, but under the Dayabhaṣa he would not be so, as he offers no pinda to the deceased or to any of the latter’s ancestors. It is probably to obviate this unnatural and unjust consequence that the Dayatattva refers to the text of Br. (quoted above in n 1419) in which the word ‘bandhavah’ occurs, remarks that the relatives of the father and mother of (the deceased) inherit in the order of their nearness to the latter and quotes the three verses about the three classes of bandhus, indicating thereby that spiritual benefit is not the sole test, but that where it fails the test of blood relationship may be applied.¹⁴⁵⁹

Very elaborate rules have been evolved by Sarvadhikari in his Tagore Law Lectures on the Hindu Law of inheritance (2nd ed. of 1932, pp. 571-640). The author devoted great industry, labour and ingenuity in evolving those rules. But one regrets to say that he raised a stupendous structure on very slippery and meagre foundations. And the pity of it is that many Judges have more or less followed his lead, though emphatic disapproval of his views, whereby the list of bandhus capable of inheriting has been very much restricted, has not been wanting.¹⁶¹ It is not possible to examine here in detail his reasonings and results. But the futility of much that he has evolved can and must be briefly shown. The only solid foundations that we have in the Mit. are: (1) the definition of sapinda given by it on Yaj 1.53; (2) the remark that bandhus are bhinnagotra sapindas (as contrasted with gotrajas); (3) that the bandhus of a man may be described under three classes; (4) that those that may be called astambandhus succeed before those called pitrabandhus and these latter inherit before mātrabandhus. It is agreed on all hands that

¹⁴⁵⁹ Vide 11 Mad. 287, 17 All. 523, 50 Mad. 406 (for the daughter’s son’s son’s succession) and 31 All. 454, 58 Mad. 238 (for the daughter’s daughter’s son’s succession).

¹⁴⁶¹ वृत्तवश्यामनाथ वृत्तवश्यामनाथकविवृत्तवश्यामनाथ वश्यामनाथविभाषिकारिणै ते अं ‘यामवश्यामनाथवश्यामनाथवश्यामनाथांश्वायमानाथविभाषिकारिणै।

¹⁴⁶¹ Vide Kesav Singh v. The Secretary of State for India 49 Mad. 652 at pp. 661, 668-89 for dissent from Sarvadhikari’s views.
the nine bandhus enumerated in the verses of Śatātapa or Baudhāyana are only illustrative. Therefore, the nine bandhus expressly mentioned should not have been used to exclude any one as not a heritable bandhu, as we have not got anywhere an exhaustive enumeration. Any one who satisfied the first two requirements stated above was a bandhu. Of the nine bandhus enumerated in the verses quoted above, none is connected by direct descent with the propositus, his father or mother; but one is a descendant of his paternal grandfather, one of his paternal great-grandfather, two of his father's maternal grandfather, one of his mother's paternal grandfather, two of his mother's maternal grandfather. Sarvadhikari makes a different classification of these (p. 627) viz.: 'two are connected through the father, three through the mother, two through the paternal grandmother and two through the maternal grandmother'. The whole trouble has been caused by this latter grouping. Instead of emphasizing lines of direct descent, he catches hold of females who are never spoken of in ancient works in connection with tracing descent (except in the case of the mother of the man concerned). If, because the illustrations given happen to be connected only with four lines of families, persons connected with the propositus through other lines are to be excluded, there is no reason why a man's own daughter's son, son's daughter's son, sister's son, or sister's son's son should be held to be bandhus. They bear no close analogy to the ātma-bandhus enumerated by Śatātapa. But it is admitted by Sarvadhikari that they are ātma-bandhus. The terms ātma-bandhu, pitr-bandhu and mātr-bandhu are mere labels or devices to show nearness and preference among bandhus. Acc. to the V. Mayūkha the words pitr-bandhu and mātr-bandhu are to be dissolved as sasthī-talvurusa compounds (pitoḥ bandhavah

1462 नल दत्त्पतीर्णां सर्वां नाभीकरणानातिविध धनभास्ते वाच्यवातानादि तद्यथादुः।
अतिं कार्य पितुमित्राः शार्यवातां धनसम्बन्धः । पितर शिरुमाः पुरुषात्मकः हि संज्ञा-
दक्षिणामणिनारूढः न धनसम्बन्धानिविहितेः शेषुपथे। नियतिवा श्रवयम: नियुषीतयागः।
शिरुमाद्यात्मिकार्योऽविधे संख्या निर्देशिते स्वविशेषितोऽस्मिन्।
तेन बन्यूनिर्देश धनसम्बन्धं धशस्मिनाग्यायत्यविना।
बन्यूनिर्देशनासाहित्यविनियोऽविनियोऽस्मिन्।
विविधसंप्रेक्षनेति विविधाद्यात्मिकाविनियोऽविनियोऽस्मिन्।
अनि मण्डल्यं c. मण्डल्यं शास्त्राधिकार: विविधाद्यात्मिकाविनियोऽस्मिन्।
पदमण्डल्यं p. 144 In Gayadhara Prasad v Gauri Shankar
54 All 698 (F, B) Mukerji J. (at pp. 725–26) prefers to dissolve the
word विविधाद्यात्मिक ऐसा च as either पदमण्डल्योऽस्मिन्।
而非 विविधाद्यात्मिक ऐसा च as धनसम्बन्धoऽस्मिन्। No Sanskrit authority is quoted for doing
this and this view of his is opposed to the view of the च. धनसम्बन्ध, the सरस्वती-
विनियोऽविनियोऽस्मिन् and some other works.
or mātuh bāndhavāḥ) i. e. according to it pīṭha-bandhus or māṭr-bandhus are bandhus of the father or mother and must also be bandhus of the propositus if they are to inherit. It is not known in what context the three verses quoted in the Mit. and other digestes from Śātātapa or Baudhāyana occurred. In Manu V. 81 it is laid down that one should observe mourning on the death of a pupil, sacrificial priest and bāndhavas for the duration of pāksaṁ. It is possible that the three verses only illustrate what is meant by bāndhavas in such a connection.

The Bālambhāti (vyāvahāra p. 214) here also explains that females are included in the word ‘bandhu’, although the verses quoted speak of ‘putrah’ only and the Bombay and Madras High Courts have allowed female bandhus to inherit, though in Madras the position assigned to female bandhus is very much lower than in Bombay.

Strangers as Heirs—In default of even bandhus, the Mit states† that the teacher (of the veda) is the heir of the deceased, in default of the teacher the pupil (and relies on Ṛp. Dh. S II. 6. 14. 3) and that in default of pupil a sābrahmācārin (fellow student whose upanayana was performed by the same teacher as that of the deceased and who studied the veda under the same teacher)† takes the wealth. In the absence of even a fellow student the wealth of a brahmana was to be given to some śrotiṣya (a learned brahmana learned in the Veda) as laid down by Gaut (28. 39) and in default of a śrotiṣya in the same village, as said by the Dāyabhāga XI. 6. 27, to any brahmana, since Manu (IX. 188–189) says, ‘in the absence of all (heirs), brahmans that have studied the three vedas, that are pure and restrained, take the wealth; in this way dharma does not suffer: the rule is that the wealth of a brahmana should never be taken by the king’. Nār.† (dāyabhāga, 51–52) is to the same effect. To the same

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† 1463. brahmādārāmaḥ pārāṣāraṁ. tato bhavati śiṣyaḥ. iṣṭa-bhave yaḥ. pārāṣāraṁ. sāmanānāḥ bhavasyāḥ śiṣyaḥ.  
† 1464. śiṣyaḥ pārāṣāraṁ sākṣātātāraḥ brahmā. dhātaṃ śiṣyātātāraḥ śiṣyātātāram. sākṣātātāraḥ.  
† 1465. śastraṃ saṃsthānte rājñāyāti tat. ahaṃ pravargyāt.  
† 1466. pravargyāt. tathā. dhātaḥ (dāyabhāga, 51–52).  
† 1467. the word śiṣyaḥ is derived from Pāṇini VI. 3. 86 as  'śastraṃ pravargyāt. the śiṣyaḥ explains  'brahmādārāmaḥ pārāṣāraṁ. sāmanānāḥ  
† 1468. śastraṃ saṃsthānte rājñāyāti tat. ahaṃ pravargyāt.  
† 1469. pravargyāt. tathā. dhātaḥ (dāyabhāga, 51–52).  
† 1470. the śiṣyaḥ has a different verse 'nāmaḥ  
† 1471. sākṣātātāraḥ brahmādārāmaḥ pravargyāt. dhātaḥ pārāṣāraṁ. śiṣyaḥ.  
† 1472.
effect are Vismu\textsuperscript{1466} Dh. S. 17. 13–14, Band. Dh. S. I. 5. 120–122 and Śankha-Likhita, Devala (q. by V. p. 597 and V. C. p. 155). This direction of so many ancient sages has not been respected in modern times.\textsuperscript{1467} Manus (IX. 189) and Br.\textsuperscript{1468} (S. B. E. vol. 33, p. 380 verse 67) say that the wealth of ksatriyas, vaiśyas and sūdras escheats to the king in default of heirs up to a fellow student. When the king takes by escheat heirless property he has to set apart a portion of the wealth of the deceased for the maintenance of his concubines and servants and for the performance of his funeral rites and śrāddhas as stated by Kāthā\textsuperscript{1469} 931, Kaut. III. 5, Nār. (dāyabhāga, 52) provide that the king (when he takes heirless property) should provide maintenance for his women and both the Mit. and the V. Mayūkha explain that the word ‘women’ stands for avaruddhastrī (exclusively kept concubine) and not for his wives (who would succeed as heirs and then there would be no escheat), because the word ‘patni’ is not employed in the verse. These verses of Nār. and Kāth. are the foundation of the right to maintenance of a concubine against the heirs of the deceased paramour in modern times.\textsuperscript{1470}

\textsuperscript{1466} तत्तथावेच्छा भाषामण्डली राज्यातील भाषाशास्त्रात भाषाशास्त्रांशी भाषाशास्त्राच्या विन्यासाच्या विशेषतः 17. 12–13; अध्यात्मवादाली भाषाशास्त्रांशी भाषाशास्त्रांशी विन्यासाच्या विशेषतः 18. 5. 120–122: (his is q. by वि. p. 597 (except the half verse न विशेषतः), वि. वि. pp. 155–155; परिभाषांचा अर्थ भाषाशास्त्रांशी राज्यातील भाषाशास्त्रांशी विशेषतः दिल्ली q. by वि. p. 598, दिल्ली p. 155. This is quoted as वैदिकसाहित्यांशी अर्थार्थाली वि. p. 746.

\textsuperscript{1467} Vide Collector of Masulipatam v Cavatya Venkata 5 Moore's I. A. 500 at pp 526–527.

\textsuperscript{1468} श्रेयसातहेतु: पररीभाषा सापेक्षता:। तेसं चापहेतु परा सर्वसापेक्षिता: पारिवर्तित सः। कृष्ण q. by अयार्थाशी वि. p. 746, वि. र. p. 598.

\textsuperscript{1469} अद्रापिका राज्यातील परीभाषांशी परीभाषांशी विवेचनासारे। अपरंपर अद्रापिका परीभाषांशी अद्रापिका विवेचनासारे। अद्रापिका परीभाषांशी परीभाषांशी अद्रापिका विवेचनासारे। कारण q. by अयार्थाशी वि. p. 746, वि. p. 746, वि. p. 135, परा. मा. III. p 535, च. मुद्रण p. 139, तद्वर्तिकाशीतीश्च परीभाषांशी अद्रापिका विवेचनासारे। कारण q. by अयार्थाशी वि. p. 746, वि. p. 135, तद्वर्तिकाशीतीश्च परीभाषांशी अद्रापिका विवेचनासारे। तत्त दैविकम्य: परशुन्मय: अर्थार्थाशी वि. p. 746, वि. p. 135, तद्वर्तिकाशी अर्थार्थाशी राज्यातील भाषाशास्त्रांशी विशेषतः 18. 5.

\textsuperscript{1470} Vide 2 Bom. 573, 607, 12 Bom. 26 (in both Kāth. is quoted), 26 Bom. 163, L. R. 53 I. A at p 163 for the concubine's right. In 48 Bom. 203 a woman whose husband was alive was not treated as a concubine entitled to maintenance from the heirs of her deceased paramour, but this decision has been recently overruled by a Full Bench in 47 Bom. L. R. p. 5 (F. B.).
Yaj. (II.137) states a special rule which is an exception to the general rule of inheritance laid down in II.135-136 viz. '(the heirs) who take the wealth of a forest hermit, a yati (ascetic), a (perpetual) Vedic student are in order the (Vedic) teacher, a virtuous pupil, one who is looked upon as a brother and belongs to the same order'. According to the Mit, the heirs mentioned are to be taken in the reverse order of the words of the text i.e. the Scārya (who is mentioned first among the three heirs) is to be taken as the heir of the last of the three mentioned in the first half of the verse, so that the teacher, good pupil and the person looked upon as brother are respectively the heirs of the perpetual student, the ascetic and the forest hermit. According to the Dāyabhāga also the reverse order has to be taken, but it says that the wealth of the forest hermit, yati and perpetual student is taken respectively by one looked upon as brother, a worthy pupil and teacher, but that in the absence of these, any one who is in the same śāstra as the deceased may take it. According to the Madanaratanā the order of heirs is the direct one, that is, the teacher, good pupil and accepted brother take the wealth of the forest hermit, ascetic and perpetual student, since the Viṣṇu Dh. S. (17, 15-16) expressly says so. The Mit. adds that a brahmācārin is of two kinds viz. perpetual (nāsthaka) and upakāravyā (who intends to remain as a student for some time and then marry in order to confer the benefit of male progeny on his ancestors), that

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1471. बनन्दश्चतिविनिष्कारिण्या विधानानां। बाजेनास्तिकाराः। स्वाभाविको योगविषये युक्तविद्वेदपत्तनः। वर्ज्यालं विनिष्कारिण्याः। यथा। बाजेनास्तिकाराः। स्वाभाविको योगविषये युक्तविद्वेदपत्तनः। वर्ज्यालं विनिष्कारिण्याः। यथा। बाजेनास्तिकाराः। स्वाभाविको योगविषये युक्तविद्वेदपत्तनः। वर्ज्यालं विनिष्कारिण्याः। यथा।

1472. एवं बनन्दश्चतिविनिष्कारिण्या विधानानां। बाजेनास्तिकाराः। स्वाभाविको योगविषये युक्तविद्वेदपत्तनः। वर्ज्यालं विनिष्कारिण्याः। यथा।

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This view of the Madanaratanā is referred to by the Bh. Mpuṣṭa p. 145.
Yāñavalkya’s words apply only to the former, that if the latter (upakurvaṇa) leaves any wealth of his own it is taken by his mother, father and the other heirs. The Mit. further says that a worthy pupil is one who is capable of studying the philosophical parts of the Veda, of understanding them and of acting up to them, that a badly behaved pupil will not succeed, so also a badly conducted teacher shall not succeed. The Mit explains that Yāj. III. 47 allowed a forest hermit to accumulate materials that will be enough to meet his needs for a day, a month or six months or a year and so he may on his death leave some wealth. Similarly, though an ascetic was required by Gautama (III.10) to make no accumulation of wealth, yet even an ascetic requires clothes to cover his body, he has his sandals and books on Yoga and the like; and so also the perpetual student requires these.

The heirs enumerated above succeed to persons in those religious orders in priority of their kindred. It has been held that members of the three twice-born classes alone can be ascetics with the result that their pupils inherit and not the kindred and that in the case1473 of śudra ascetics their kindred succeed unless some usage to the effect that a pupil inherits is proved. For the foundation and administration of mathas and properties attached to them, the selection of the heads of mathas and their powers and duties and about ascetics and their pupils, vide H. of Dh. vol. II. pp. 906–914 and pp. 944–952.

Reunion.—A reunion properly so called can take place only between those who were parties to the original partition. Reunion, therefore, postulates three stages, viz. (1) joint family, (2) partition between members of a joint family, (3) an intention and an agreement, express or implied, to reunite in estate among members who were parties to the partition. If persons who had separated in interest merely stay together, that is not

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1473. Vide Dharmāpuram v. Viraṇḍiyam 22 Mad. 302 (holds that the ordinary law of succession applies to a śudra ascetic); Ramadas v. Baldevadasi 39 Bom. 168; Somasundaram v. Vatthilnga 40 Mad. 846, at p. 869, Haris Chandra v. Atri 40 Cal. 545; but see Sambasivam v. Secretary of State 44 Mad. 704 (holding that the disciple of a śudra ascetic who dies without leaving any blood relations is an heir under the Hindu Law, but that strict proof would be required of the claimant's spiritual relationship)
reunion in law, as said by the Sm. C. II. p. 302 and Vivādacandra\textsuperscript{1476} p. 82. The Vivādacandra quoting Visnupurāṇa says that reunion may be implied from a course of conduct, even though an express agreement cannot be proved. There is a divergence of views as to who can reunite. The Mit., the Dāyabhāga\textsuperscript{1475}, the Sm. C. hold, literally construing a verse of Br. (S. B. E. 33 p. 381 verse 72), that a member of a joint family when once divided can reunite only with his father, brother or paternal uncle, but not with any other relation (such as a paternal uncle's son or paternal grand-father), while the V. C. (p. 157), the V. Mayūkha (p. 146), the V. P. (p. 533) hold that the members expressly mentioned by Br. are only illustrative and that a person may reunite with any member who was a party to the original partition. A reunited person is called samsrsta or samsrstin\textsuperscript{1476} (who has reunited wealth). The subject of reunion has a comparatively ancient history. Gaut. 28. 26 states the general rule that on the death of a reunited co-parcener the surviving reunited member succeeds to the share of the deceased Kaut. (I. I. 5 p. 160) states\textsuperscript{1477} that those, who live together though they may have no ancestral estate or do so after dividing their ancestral estate, may divide their reunited estate again in equal shares. Manu IX. 310 (=Visnu Dh. S 18. 41) is similar to it.

\textsuperscript{1474} संस्तासे इवमानसारेय संस्ताभावानमानहारेय संस्तानं बाबु इति तत्तत्त्वस्य
    युताया दूसरायोऽनुवचनी विनिमाणं प्रधानी दुहुःक्रमाचारीकरणपर्यंत संस्तानं न इति सहवा
    सम्भवात्मिति सर्वसंदृष्टम्। स्वरूपः II. p 302, संस्तानं नायकाद्वारासारं संस्तापुस्तकाय महत्वपुर्ण किं तु विभाषावलिपिवलीमः।... पञ्चवृहदानिवार्यमं सम परस्पर तव तथा गति
    लिंगार कर च कहन्दित्वानिनि कहन्दित्राहारायेयः। विभाषावन्द्य p 82, यह संस्तानं
    ममात्मात्मार्कर्तशाति तत्तवाधिकारीते तत्तस्यात्मानिनिग्नाति ममात्माः। न च तात्समसंगमे
    भवे तद्भवः। अरुक्तवाली करवा र्तप्रहारास्त्रीिः। तुहुन्ते विभाषावन्द्य। अरुक्तवाली यथा
    कहन्दित्र न तद्भवति कर्माणि। हर्ति। विभाषावन्द्य p. 86, संस्तानं इ संस्तापुस्तकायविवेशः।
    सि. सि. p 157, विधामान भाषि च धर्माश्चिच। हनुमानपाणिसे साधारणसनियतारिक।
    हर्तिविधिय द्वा संस्तानं। यह. मद्दर p. 146.

\textsuperscript{1475} संस्तासे च न देन केनादि किं तु देवा भाषा देवाण्येष च। वहार देवान्तर।
    विभाषाय च इति रिखा भाषा बैकार संस्तानं। विभाषावन्द्या भाषी स तात्समसंगमे
    नहोऽस्ति। देवता यो च III. p 138, संस्तानं च विभाषावन्द्या नामसंगम नावेन्द्र विभाषी य।
    इत्यदि रिखा इत्यादि मातालिकसिवकिसिन्दित्रायणं विभाषावन्द्या मिर्यादी यथा विभाषावन्द्या। यह. म p 533.

\textsuperscript{1476} विभाषा य इ्यकस्मिन्हभूतं संस्तानं तत्समसंगमस्तं संस्तानं। देवता यो च III. p 138

\textsuperscript{1477} संस्तानस्य के संस्तरी रिखामान्यं। नी. 28 26। अविभाषाय विभाषाविभाषाय
    द्वा सह जीवनं। हनुमानपाणिसे। अग्रेष्ठा III. 5.
The verses of Yāj. (II. 138–139) on succession to a deceased reunited person are understood by the Mit. to be an exception to the rules contained in Yāj II. 135–136 laying down that the wife and others inherit the property of a person dying sonless. Therefore it follows that where a person reunites with his brother and then dies leaving a son not reunited with him, it is the son who will inherit and not the brother, though reunited. But if A separates from two sons B and C of whom B reunites with him and C does not and then A dies, then the reunited son B succeeds to A’s interest and C takes nothing. This is expressly stated by the Vivādacandra p. 85 that relies on the Śrītisāra. The two verses of Yāj (II. 138–139) are variously read and interpreted by the Mit. and other commentators and it is not possible nor quite necessary to set out all these readings and explanations. Acc. to the Mit. the two verses mean: ‘in the case of a deceased reunited person, the (surviving) reunited member should give (to the posthumous son of the former) the share of the deceased but may take it himself if there is no son (but only a wife); but from among the reunited brothers, the full brother, if reunited, should similarly give to the posthumous son of the deceased the latter’s share and (if there be no son) he should take it himself to the exclusion of reunited half brothers; a reunited half brother takes the wealth of the deceased reunited member (dying sonless) and not another half brother who is not reunited; a full brother, though not reunited, may take the wealth along with a half brother who is reunited but the latter will not alone be entitled’. In this interpretation the word ‘asamsṛsti’ in the latter half of II. 139 has to be taken in two connections, once with ‘anyodaryāh’ in the first half and then again with ‘samsṛstāh’ (in the 2nd half). This last word is to be understood in two senses, viz.

1478. संस्कन्तवत संस्कृत संस्कृत हु संस्कृत | द्रापृथिब्दश्रयोंक्षक ज्ञातर्य व शून्यस्बः | असंस्क्रितप्रायों वादप्राशाको नान्यमागाजः -- या. II. 138–139. The first is विश्वासमिद्वादः 17 17 also अमरकृत (p 747) reads ‘नान्यमात्यवर्ण हुस्तेस्वरम्’ and आदवासीद्वारों नान्यमागाजः विश्वारम्म, निदेशितम् and विश्वादब्रजः p 84 read ‘वादप्राशाको नान्यमागाजः’

1479 Vide Fehrappa v. Yellappa 22 Bom. 101, 104 for the proposition that a reunited son has a preferential right of inheritance to a grandson who remains separate. Vide विश्वादब्रजः p 85 ‘यदू हिः या विलासा गैन्धिमयांसिंहस्ता दलितवेत्र संस्कृतां तु दलिते विचारोऽयतः । अव या श्रुतिसारेत् यदा विलिः गैन्धिमयांसिंहस्ता संस्कृतां संस्कृतां गैन्धिमयांसिंहस्ता विभक्तवेत्र संस्कृतांसिंहस्ती विभक्तवेत्र संस्कृतां लघुमासिंहस्ती विभक्तवेत्र।
(1) full brother (with the preceding word asamsri) and (2) 'reunited' (with the word 'anyamatrja'). Further, acc. to the Mit. we have to understand 'eva' after 'anyamatrja'. Aparārka (p. 748) reads differently and he, Viśvarūpa and Śrīkara (Dāyabhāga XI. 5-16) explain that a full brother though not reunited takes the whole estate and not the half brother though reunited with the deceased. The V. Mayūka differs from the Mit. when it says that the word apustasya (of one dying sonless) is not to be understood with Yāj (II 138). It derives two propositions from the first half of Yāj II. 138, viz (1) the wealth of one dying reunited is taken by the surviving reunited member or members; (2) in a competition between reunited full brother and reunited half-brother, the former takes the whole. The latter half of II. 138 is an independent sentence (and not joined with the preceding half as the Mit. understands) and applies where a reunited member dies leaving a wife who is pregnant but that fact being unknown the other reunited members divide the estate. In such a case if a son is born the surviving members should hand over to the son the share of the deceased reunited member. But if no such son is born then the survivors may take the estate. In II. 139 the Mayūka holds that the words 'anyodarya' and 'anyamatrja' are not restricted to brothers only, but apply to a paternal uncle or his sons or other persons who were reunited, because their mother is also different from the mother of the deceased. The Dāyabhāga discusses Yāj II. 138-139 under the topic of succession to the separate property of a sonless man and its treatment of succession to reunited property is very meagre (vide XII.)

The V. P. p. 533 notices this and levels against Jīmutavāhana the criticism that he got confused. Aparārka (pp. 748-749) seems to be of the same opinion as the Dāyabhāga. The V. P. follows the Mit. and criticizes the explanation given by Śrīkara, Sm. C. and others (pp. 535-538). It says that the texts of Śankha, Narada and others conflict with the text of Yāj. II 135 and that the order of heirs as to a reunited co-parcener is based on express texts and not on Yāj. II. 135 or logical reasoning. According to the V. P. the order of succession to a deceased reunited

\[ 1480. \text{V. p. 533.} \]

\[ 1481. \text{V. p. 539.} \]
Succession to a reunited person

A reunited person seems to be: (1–3) son, grandson, great-grandson; (4) reunited full brother; (5) reunited half brother and separated full brother; (6) reunited mother; (7) reunited father; (8) any other reunited member; (9) half brother not reunited; (10) mother not reunited; (11) father not reunited; (12) widow; (13) daughter; (14) daughter's son; (15) sister. The V. Mayūkha gives the order as follows: (1) son if reunited, (2) son not reunited, though there may be reunited members (other than a son); (3) the parents if reunited in preference to other reunited persons (other than a son); (4) full brother if reunited; (5) full brother not reunited and half brother reunited; (6) half brothers and uncles, if reunited; (7) other male members reunited (in preference to wife though she be reunited); (8) wife if she be reunited; (9) full sister (or daughter according to another reading);

It is to be noted that Manu IX. 212 prescribes a peculiar rule of succession for reunited co-parceners viz. that full brothers (not reunited) and full sisters of the deceased reunited co-parcener equally inherit along with half brothers that are reunited the wealth of the deceased. This verse of Manu has been variously explained by Kullūka, Aparārka p. 749, Sm. C. (II pp 304–305), Nilakantha, Vivādacandra (p. 83) and others.

It may be stated here that cases of reunion come very rarely before the courts.

\[1482\] या तरप मगितिः सा ता सेतो ममुष्रहिति। अनापतिरस्य धर्मोपयोगमापापार्णितुवकरस्य

\[152\] by \[53\] तव रूपुपृक्त नव मृदू पु भव प। भव म्। p 539. The \[81\] म्। says के। चित्तु सा तरप मुहििति पु भव। भुधितुमतिभुदप्रेक्षकलेखनसंविद्यः। Vide \[51\] ता। म्। III। p 541 for similar words
CHAPTER XXX

STRIDHANA

Stridhana (woman's property). This subject abounds with differing views on several topics that fall under it, as will be seen below.

The gorms of the topic of stridhana can be traced to the Vedic Literature. As Sir Gooroodas Bannorjee remarks (in ‘Marriage and Stridhana’ p 370), ‘nowhere were proprietary rights of women recognized so early as in India; and in very few ancient systems of law have these rights been so largely conceded as in our own’. The wedding hymn in the Rgveda (X. 85) contains two verses1483 (13 and 38) which indicate that gifts were sent to the bridegroom's house with the bride. They are, 'the bridjal gifts of Surya that Savitur sent off have gone forth; in the Aghis (Magha constellation) are struck the kine and in the Arjunis (Pausgum constellation) is carried (the bridal gift); for thee in the beginning they carried about Surya together with the bridjal gifts &c.' Sayana explains 'vahatu' as 'cows and other objects given for pleasing the girl to be married', while Lamman (Harvard O series vol. VIII p. 753) renders it as 'bridal car'. Sayana's interpretation suits the context much better. In the Taï. S VI 2.1 we read,1484 'the wife (of the sacrificer) holds on (to the cart), for the wife is the mistress of the household gear'. Manu IX, 11 uses the word 'pārānabha' (household gear) and states that the wife should be entrusted among other matters with the supervision over it. Jaimini1485, according to Sabara, refers to

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1483. चुराया यदानः ममालक्षित यमवासुजदाः। अपाराह हर्षयात गायित्तिकः। पहुँचके हनुमासः पयस्तहः । सूर्याय चक्षुषाय शतासः। हुः: परिवर्त्यो जयस्या कुर्व अन्ते तयाय सहः। ते X. 85, 13 and 38. These are almost the same as अथवादेः 14 1 13 and 14 2 1.

1484. पल्लवारमो यही हि परिवर्तः । है स VI 2. 1. 1 (in connection with आत्मोपाधि).

1485. स्वस्तानमिष्ठ वर्यति । तै VI. 1. 15. तस्मां व पारिवार्यायणेन परमेव गतमद्रुमसेवी किष्टि । साप्रय The printed text differs from the Taś S. text पारिवारणेन would mean 'nuptial gifts'. The चि ्र p 517 explains पारिवारणेन (in Vas. 17 46) as पारिवारवेद पवित्रहृद्य आदुर्वसूधङ्गद्रिः (paraphernalia, mirrors and bracelets). चि चि p 142 reads धनुऽक्षुलिताविः (comb &c) चि तव (folio 160) says: पारिवारवेद पवित्रहृद्य आदुर्वसूधङ्गद्रिः (paraphernalia, mirrors and bracelets). पारिवारवेद पवित्रहृद्यान्तस्य वेदाक्षरोऽक्षुलिताविः कहलवचः।
this passage of the Tai S. for establishing that women do own certain property. Medhatithi 1486 on Manu VIII 416 (cited above on p 452) quotes this passage of the Tai S. and argues that if Manu VIII 416 (saying that whatever a wife earns is her husband’s) were literally understood passages like the one in Tai S would have no scope and that therefore Manu simply means that though women may be owners they cannot dispose of the property independently. It appears from these ancient passages that the properties, which in early days were held to be owned by women, were presents made at the time of marriage (such as ornaments and costly dresses) and household articles that are generally under the control of women and that the later smriti rules about the devolution of stridhana in the female line arose from the peculiar nature of the articles over which dominion was conceded to women. This early state of things is indicated by some of the early sūtras. Āp Dh 1487 8 (II 6.14.9) states the view of some predecessors (which Āp himself does not approve) that the ornaments belong to the wife and also such wealth as came to her from her agnates (father, brother &c.). Baud. Dh S. II 2.49 says that daughters get the ornaments of their mother and whatever else it is customary for them to get. Vas 17.46 prescribes that women (daughters) should divide the nuptial presents given to their mother. Śankha (q by Sam. Pr. p. 851) prescribes that in all forms of marriage ornaments and stridhana should be given to the girl. It may be that Manu VIII 416 only gives expression to an ancient opinion, that the literal meaning of that verse was given up long before and that all that Manu meant was that during coverture a woman was subject to the control of the husband as regards her stridhana. 

Three principal topics have to be discussed under stridhana viz what constitutes stridhana, woman’s dominion over her

1486. असति जा खीणा स्त्रायं वत्सैवाण्छानम् किवते पङ्क्री वे पारिणाः पदेयेऽपलम् हतस्यहि

1487 अनानुसारं भाषणं ज्ञातिषयें चैति। आप ते ते। II 6 14 9 महात्मत्त्वा

stridhana and inheritance to stridhana. On each one of these
topics great diversity of views prevails and the subject has
become very complicated, as the Dayabhāga remarks.

Gautama contains three sūtras about the devolution of
stridhana, but he does not define or describe it. Kaut (III 2
p. 153) defines: 'means of subsistence and what could
be tied on the body (i.e. ornaments and jewellery) constitute
stridhana. The means of subsistence should be fixed at 2000
(panas) as the maximum, while there is no limit to (what may
be given) as ābadhya (ornaments &c.).' This may be
compared with a verse of Kāt. (902) and a similar verse of
Vyāsa viz. 'the father, the mother, the husband, brother and
kinsmen should give stridhana to a woman according to their
means up to two thousand (panas) except immovable
property' The Sm. C. and V. Mayūkha explain that this limit of
2000 applies to gifts made every year, but that if a gift is to be
made once for all, then more may be given and even immovable
property may be given.

The term stridhana literally means 'woman's property'.
But in the ancient smṛti works the word was restricted to
certain special kinds of property given to a woman on certain
certain occasions or at different stages of her life. Gradually such
cinds of property went on increasing in extent and value. We
have to follow this evolution of the meaning and content of the
word stridhana. One characteristic feature of stridhana from
the times of Gautama downwards has been that it developed on
females in the first instance The oldest extant definition of it
in Dharmaśāstra works is that of Manu\(^{1491}\) IX. 194: 'what (was given) before the nuptial fire, what was given on the bridal procession, what was given in token of love, what was received from her brother, mother or father, that is called the sixfold woman's property'. The Mit. on Yāj II 143 explains that the number six is intended to exclude a smaller number of the kinds of strīdhanā and does not exclude a larger number. In IX. 195 Manu appears to mention one more kind viz. 'anvā-dhēya' (gift subsequent) Nār. (dāyabhāga, 8) has the same six kinds as Manu IX. 194, but reads 'bhātṛdāya' (the husband's gift) for Manu's 'what is given in token of affection', the latter being thus wider than Nārada's words Yāj. (II. 143-44) enumerates\(^{1492}\) the several kinds of strīdhanā as follows: 'what was given (to a woman) by the father, mother, husband or brother or was received by her before the nuptial fire, or what was presented on her husband's marrying another wife (ādhuvedamāla) and the like—these are denominated strīdhanās; so also what is given by the cognate relations (of the woman), the sūlca (fee), and gifts subsequent to marriage'. The Mit. and most of its followers read 'ādhuvedanikādya ca', while Aparāraka and the Dāyabhāga read 'ādhuvedanikam caiva', the difference being that if one reads as the Mit. does, several other kinds not expressly enumerated can be easily included under strīdhanā. But it should be noted that even without reading 'kādya,' Aparāraka explains the verse in the same way as the Mit. does. Visnu\(^{1492}\) Dh. S. 17. 18 enumerates almost the same kinds of strīdhanā as Yāj, but omits the word 'ādya.'

Among smṛti writers Katyāyana gives the most elaborate treatment of strīdhanā in about twenty-seven verses. He

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1491 आध्यायवधेतुनियुतशक्ति तन्त्र सन्नद्धतिमतद्विधान स्त्रीपने स्वरूपम् मुनी IX. 194 कारणः (894) acc to चूर्णभाग (IV. 1 p. 72), वि. र. 522 and वि. चिव. p 138 had prachically the same verse (reading श्रीतिमतद्विधान)
The Mit. says, 'सर्वनामानुचितः .. श्रीदनाय पद्मिधिरस्तः नयूर्यनुसारस्वरूपम् नाविकसंस्कारस्वरूपम्', \(^{1492}\) अध्यायवधेतुनियुतष्ठाक्तिभविभाजि सन्नद्धतिमतद्विधान स्त्रीपने स्वरूपम् मुनी (चूर्णभाग, 8).

1492 रिहुमायद्यनिमित्तसंस्कारस्वरूपमन्युसारतः \(^{1492}\) आध्यायवधेतुनियुतष्ठाक्ति यद्यनिमित्त सन्नद्धतिमतद्विधान स्त्रीपने स्वरूपम् मुनी. पा. II. 143-144 On अध्यायवधेतुनियुतष्ठाक्ति चिंत्य, अपराधाने p 751 says चासनु माध्यमः \(^{1493}\) तेन च श्रीदिपास्तिरसहिः। तत्वमा-कारणः-पर्य: समानार्थकः; नाविकसंस्कारस्वरूपम्, मन्त्रिः समानः देवताः। लक्षणसा-सन्नद्धतिमतां, मनु परिष्ठानां सिंहों सिंहारी-हर, अस्त्युनि सातर्कता समानार्थकम् तत्त्वमा स्वरूपम् \(^{1493}\) श्रीदत्तम् धर्माभिः।

1493 रिहुमायद्यनिमित्तसंस्कारस्वरूपमन्युसारतः क्षमां प्रथमानि सदस्यानि भविष्यति मन्त्रिः प्रथमानि स्वरूपाय न सुकृतः, नवान्तरामनु चापरंसव, नवान्तरामनु च चापरंसव नवान्तरामनु चापरंसव नवान्तरामनु चापरंसव स्वरूपाय नस्माति।'
defines several kinds of stridhana enumerated by Manu, Yaj., Nār., and Visnu (in all six) as follows⁴⁹⁴: what is given to women at the time of marriage before the nuptial fire is declared by the wise to be adhyāyam⁴⁹⁵ stridhana. That again which a woman obtains when she is being taken (in a procession) from her father's house (to the bridegroom's) is declared to be adhyāyavahamka stridhana. Whatever is given to a woman through affection by the father-in-law or mother-in-law and what is received by her at the time of doing obeisance at the feet (of elders) is said to be priti-datta (gift through affection) stridhana. That is declared to be suka (bride's fee) which is obtained as the price of household utensils, of beasts of burden, of milch cattle, ornaments and slaves. Whatever is obtained by a woman after marriage through affection from her husband or as from the family of her (father's) kinsmen is said to be anvādheya (gift subsequent). According to Bhṛgū whatever is obtained by a woman after marriage through affection from her husband or from her parents is anvādheya. It may be noted that Kātyāyana's definitions of adhyāyagī and adhyāyavahamka are wide.
Definition of śrīdhāma

enough to include gifts made even by strangers on those occasions.

These definitions given by Kātyāyana have been accepted by all digests including even the Dāyabhāga.

"That is known as saundāyika which is obtained by a married woman or by a maiden in her husband’s or father’s house from her brother or from her parents" (Kāt.). Some of the divergences in readings and in interpretation deserve to be noted. Acc. to the reading adopted by the Mit adhyāvaḥānika includes all gifts made by any one when the newly married girl is taken from her father’s house in a procession, while the reading adopted by the Dāyabhāga and some others (patrakā) restricts the adhyāvaḥānika to gifts made by the father’s or mother’s family only. The V. R (p. 523) includes under adhyāvaḥānika also the gifts made by the father-in-law and others when the girl is taken back to her father’s house and the V. C. (p 138) says that it is what is obtained at the time of ‘dānāgamaṇa’. The Dāyabhāga (IV. 3, 19–20 p. 93) explains ‘dohyāharana-karminā’ differently as ‘the gratification paid by house-builders or goldsmiths to induce her to press her husband to engage them’ or as Vyāsa says ‘what is given to a woman to induce her (cheerfully) to go to her husband’s house’. The Sm. C. and V. P. explain śulka as the price of the articles which the bridegroom was in the habit of presenting to the bride at the time of marriage or when he started a house. The V.

\[\text{Continued on the next page}\]
Nir. (p. 468) states that śulka has two senses; (1) what is given as the price of the girl to the guardians of the girl which goes to the mother and brother (on her death); (2) what is given (by the bridegroom) as the price of the ornaments for the girl and of the household gear. Another verse of Kāt. (904) has been quoted by many writers, which restricts the literal sense of the word strīdhana, 'over that wealth that is obtained by a woman by mechanical arts (such as spinning) or from a stranger through affection, the husband has ownership.'

(Continued from the last page)

Gaut. 28 23 and in Sankha (svayam śulka vadhā) q by V. R. p 521. In very ancient days there appears to have been a practice to offer in some cases considerable wealth to the father of the bride to induce him to give her in marriage. Rg I 109. 2 refers to this 'O Indra and Agni! I have heard that you are more liberal than even an unsuitable (or deficient) son-in-law or even a brother-in-law.' Yāska (VI. 9) in explaining this verse remarks that the southern people speak of the husband of the bride that he purchased as 'vijāmātr' (गिजामात्रति वाम विजामात्रतिः) But this verse also shows that the bride's brother (विजळ) had to give wealth to his sister's husband. Vide H. of Dh. Vol II. pp 503-506 for passages about the sale and purchase of girls in marriage from ancient times right down to 1800 A.D. Though sometimes girls were purchased for marriage, popular feeling gradually asserted itself against this. In the Vanaparva (115. 23) Gādhu claims as the custom of his family one thousand horses of the best kind from Rekha when the latter preferred his suit for the hand of Gādh's daughter (उद्विल नव एके विकिष्ट पौरिती पौरिती विकिष्ट पौरिती) Vide Anuśāsana 4. 12 (for a similar statement) and 2. 31. Mann III 51 forbids the taking of even a small gratuity through greed by the father when giving away his daughter in marriage and says that if he does so he would be guilty of the sale of his child and in III 54 (almost the same as Anuśāsana 46. 1-2) Mann says that when agnates do not appropriate to themselves the gratuity paid (by the bridegroom) for the bride but hand it over to the bride then it is not sale, but it is honour shown to the girl and is merely kindness to her. The Mīf. defines śulka as the gratuity after getting which the girl is given. The V. C. P 139 defines it as what is obtained from the husband on condition of furnishing household gear &c. 'नवानुस्थितिविकिष्टाः द्वारा नवानुस्थितिविकिष्टाः सभिः सिम्भिः'

1499. ततः धरण्यश्व प्रश्नित्व नवानुस्थितिविकिष्टैः कर्मयुक्तोर्नवानुस्थितिविकिष्टैः कर्मयुक्तोर्नवानुस्थितिविकिष्टैः कर्मयुक्तोर्नवानुस्थितिविकिष्टैः सत्त्वस्थितिविकिष्टैः सत्त्वस्थितिविकिष्टैः सत्त्वस्थितिविकिष्टैः सत्त्वस्थितिविकिष्टैः सत्त्वस्थितिविकिष्टैः सत्त्वस्थितिविकिष्टैः सत्त्वस्थितिविकिष्टैः तन्नुस्थितिविकिष्टैः
the rest is declared to be stridhana'. The prima facie view (parvapaksa) in Jai. VI. 1. 12 urges that what a woman gets by serving cooked food or by cutting clothes does not belong to her. The gifts from strangers here referred to are other than those made by a stranger before the nuptial fire or at the time of the bridal procession. This definition makes it clear that what is obtained even from a stranger by a maiden or by a woman who is a widow at the time of the gift is pure stridhana Devala says, 'maintenance (what was given for maintenance), ornaments, sulka (bride's gratuity), the profits of money-lending are a woman's stridhana. She alone is entitled to enjoy it and the husband is not entitled to enjoy it except in the case of distress'. Manu IX. 200 states, 'the heirs of the husband should not divide (among themselves) the ornaments worn by women during the lifetime of their husband; if they divide them they incur sin'. In the printed editions of Manu there is no comment of Medhatithi on this verse, but the V. R (p. 509), V. C. p. 139, Dayatattva p. 184 all say that acc. to Medhatithi even ornaments, though not donated expressly, become stridhana, if worn with the husband's consent. According to the Valjayanti such ornaments should be assigned to the share of the woman's husband so that she alone might put them on and that it is not meant that such ornaments are not to be taken into account at all at the time of partition.

1500. श्रीरूढितमथुष्य श्रीमरूढितमथुष्य

1501. पूर्विसिद्धयुग्म शालावत् श्रीगंगा भेदुत

1502. परी जीवारिः प्रीतिनिर्देशैरि धीरो भेदुत

In the rest is declared to be stridhana. The prima facie view (parvapaksa) in Jai. VI. 1. 12 urges that what a woman gets by serving cooked food or by cutting clothes does not belong to her. The gifts from strangers here referred to are other than those made by a stranger before the nuptial fire or at the time of the bridal procession. This definition makes it clear that what is obtained even from a stranger by a maiden or by a woman who is a widow at the time of the gift is pure stridhana Devala says, 'maintenance (what was given for maintenance), ornaments, sulka (bride's gratuity), the profits of money-lending are a woman's stridhana. She alone is entitled to enjoy it and the husband is not entitled to enjoy it except in the case of distress'. Manu IX. 200 states, 'the heirs of the husband should not divide (among themselves) the ornaments worn by women during the lifetime of their husband; if they divide them they incur sin'. In the printed editions of Manu there is no comment of Medhatithi on this verse, but the V. R (p. 509), V. C. p. 139, Dayatattva p. 184 all say that acc. to Medhatithi even ornaments, though not donated expressly, become stridhana, if worn with the husband's consent. According to the Valjayanti such ornaments should be assigned to the share of the woman's husband so that she alone might put them on and that it is not meant that such ornaments are not to be taken into account at all at the time of partition.

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Saudāyika is not a special kind of stridhana. It is rather a comprehensive term for several kinds of stridhana as the definition given by Kāt shows and as the V. C. (p. 139) expressly states. It is almost synonymous with stridhana in the technical sense. Acc. to most writers, it is wealth received by a woman, whether, as a maiden or as a married woman, in her father's or husband's house from her parents or relatives of the father and mother. The Sm C. II. p. 282 and V. R. p. 511 hold that saudāyika is all wealth obtained by a woman whether as a maiden or as a married woman from her mother, father or paternal relatives only, while the Dayabhāga IV. 1. 23 pp 76-77 and V. C. hold that saudāyika includes also all property donated by the husband except immovable property, which latter she cannot alienate even after her husband's death. There is a verse of Vyāsa—

Amarakośa says that 'sudāya' means 'gifts of yautaka and the like' and that saudāyaka is merely a derivative without change of meaning.

Another word requiring explanation is 'yautaka'. It occurs in Manu IX. 131, 'whatever is the yautaka of the mother goes to the maiden daughter' (and not to the married daughter or son). So yautaka seems to be a synonym for stridhana in such a case.

1503. एवं दीर्घराधि भवन्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति।

1504. एवं दीर्घराधि भवन्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति।

1505. एवं दीर्घराधि भवन्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति। एवं दोषेऽविश्वासी दीर्घ तथा कार्यान्ति।

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the technical sense. The Śm 1506 C II p. 285, Maṇḍanaratna (folio 105 b) and V. Mayūkha remark 'yautaka is that wealth that is received as a gift from anybody by a woman while she is seated together with her husband at the time of marriage and the like'. It is derived from *yuta* (joined). It should, however, be noted that Yāj II. 149 employs the word *yautaka* as an adjective in the sense of 'separated' and that Medhatithi on Maṇu IX 131 explains 'yautaka' as the separate property of a woman, her strīdhana. The Śm C II. p. 285 remarks that Devasvāmi derived 'yautaka' from 'yu' (to separate) and held it to mean 'wealth obtained from the family of the woman's father which is separate in its characteristics'. The V. C. p. 142 and Vivādacandra p. 74 read 'yautuka' and the former explains it as gifts from the father and the like at the time of marriage. The Dāyatattva (p. 186) states that both forms 'yautaka' and 'yautuka' are in vogue and relies on Vācaspati and Rāyamukuta in support.

Kaut (III.2. p. 153) names śulka, anvādhaya, ādhivedanika and bandhudatta as kinds of strīdhana.

The above are the principal smṛti texts on the question of what constitutes strīdhana. It will be seen that the smṛtis only enumerate and describe certain kinds of property as strīdhana, which word is not used by them in the etymological sense of 'all kinds of property possessed by a woman'. They do not attempt a comprehensive definition of strīdhana. From the texts of the smṛtis it follows that strīdhana was a technical term, which at first included only six kinds of property, then nine and ultimately by the time of Kātyāyana it included all property (whether movable or immovable) obtained by a woman, either as a maiden or at marriage or after marriage.

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1506 चौतर्क विशिष्टदिकारे एकानानीपतिदाता सत्यप्रमी। अत एवोर्क विशिष्ट-वारुसायायितमिति। नामनस्तुता फोला 105 b च। भुवन 158 quotes the महुवरान्वि। रा. प. 517 explains 'यातकम्य वार्षणकारे पत्ताद्वितियः' चिन्ते बुध्। यह। मा। रा. प. 522 explains as पितृकुक्तस्मायः चौतर्क समामानीपतिवायसाधारणे पितृस्य पितृस्य। नेपाल द्वारकाप्राय। परन्तुप्रायः अतपारात्रवाय। स्वयं। न. प. 285. Vide मा। प. 463 explains पौरक्षम as मातुकुक्तस्मायः 'यातकस्मायः पुण्यवाद्वितियः च भृस्यायः न यहि तथा एव कैलायः वालायः अरवे। च सारे अखेरबब्बा हस्तक्षणि च च यहि तथा स्वतःस्मायः। मैचा। नत्र। रा। न। न। न। प। 186.
from her parents or the family or relatives of the parents or from the husband and his family (except immovable property given by the husband) and that what was obtained by a woman after her marriage by her own labour or from strangers did not become stridhana. Most smrtis employ the word 'datta' (donated), but Kāt. and Vyāsa sometimes use the word 'obtained' (prāpta or labdhā), which is ordinarily wider than 'datta'. But it is clear that the commentators do not expressly say that 'obtained' includes 'inherited', though from their general remarks to be quoted below it is arguable that they probably included inherited property under property obtained.

This is stridhana in a technical sense.

It is now necessary to find how stridhana was defined by the several commentators and digests that are held authoritative in the several schools. This is a most important matter for practical purposes, since the courts have to follow the opinions of commentators that are authoritative in each school and are not at liberty to put their own construction upon ancient smrti texts, if such construction would run counter to the express opinions of the authoritative commentators. First then comes the Mitāksarā. Its gloss on Yaj. II. 143 may be translated as follows: 'whatever is given by the father, mother, husband and brother; what was presented by the maternal uncle and the like at the time of marriage before the nuptial fire; and adhvetsyaka, that is, gift made (by the husband) at the time of marrying a second wife as will be described subsequently in the words 'he should give to the wife that is superseded' (Yaj. II. 148); by the word 'adya' (meaning 'and the like') is indicated property that is obtained by succession, purchase, partition, seizure or finding—all this is declared by Manu and others to be stridhana. The word stridhana is employed here in its etymological sense and not in a technical sense, since, when the etymological sense is possible, it is improper to resort to the technical sense.' The Mitāksarā expanded the

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1508. Wilna sārva adhyātma śabdā vā prāptā vā labdhā śabdā na śrīśitaṃ bhūta, āpariveśika śraddhaṇā śarīrodhitā śanāthā nāmaśārīyaṃ. Astadityaś jñānagnimitraś vedamārgaś ugalīdhanam apanāyaścakravyo. Brahmadāsastu bhante kāryānudhāyam prashāstāyaṣ nāraṇāyanaś ca. Vide on p II. 143 As against the last sentence of the Mit may be compared the maxim (nyāya) 'śraddha bhūropadārāì' (relied upon in purāṇa sa I. I. p. 300)
definition of stridhana so as to include under it the five kinds of property of which a man becomes owner in various ways according to Gautama X. 39. The result is that, according to the Mit, property of any description belonging to a woman becomes stridhana even if it be inherited by her from a male as a widow or as a mother or even if it be obtained at a partition by a wife or mother (acc. to Yaj. II 115 or 123 respectively). The same interpretation of the word 'ādyā' has been accepted by several works, such as the Madanapārijāta (p. 671), the S. V. (p. 379), V. P. (p. 542), the Bālamabhāti. Aparārēka without reading 'ādyā' gave the same explanation of 'ēa' as stated above (on p. 773). On the other hand, the Dāyabhāga gave a restricted meaning to the word. Jīmatavāhana reads Yaj. II. 143 as 'ādīvedanakam caiva', quotes the verse of Devala (in note 1501), remarks that stridhana is not restricted to the six kinds of Manu (IX. 194) but includes other kinds mentioned by other smṛtis and finally 1509 observes: 'that alone is stridhana which a woman has authority to donate, sell or enjoy independently of her husband's control'. The Dāyabhāga does not expressly state the kinds of property that a woman can dispose of independently of her husband, but immediately after defining stridhana it quotes the texts of Kāti (about earnings from mechanical arts and gifts from strangers) and Nār. (IV. 28), 'what has been given to a wife by her loving husband, she may spend or give away as she likes even after his death excepting immovables'. From this it follows that, according to the Dāyabhāga, all gifts from relations except a gift of immovable property made by the husband and gifts from even strangers made before the nuptial fire or on the bridal procession constitute stridhana, but property inherited by a woman or obtained at partition, gifts from strangers (other than the two kinds noted above) and property acquired by her by mechanical arts or by her labour are not stridhana. The Dāyatattvā closely follows the Dāyabhāga.

The Sm. C. does not give a definition of stridhana, but it does not adopt the interpretation of the word 'ādyā' given by

1509. संस्कृतमध्येंतरसंस्कृतीधानकाश्च यद्यत्तुषा सिद्धिता सिंह श्रीप्रभ- 
वीत संस्कृतस्य पत्राध्यायम् च ।
也就是说，如果它被继承给女性，她甚至可以在丈夫去世后出售、赠送或独立使用。从这可以推断，根据《Dāyabhāga》，所有礼物都包括亲戚的礼物，除了由丈夫或陌生人赠送的房产，制作时必须在婚礼火或婚礼仪式上。Dāyatattvā遵循《Dāyabhāga》的解释。Sm. C.不提供stridhana的定义，但并不采纳“ādyā”一词的解释。
the Mit. Therefore it may be said that it is in line with the Dayabhaga. The Par. M. III, p. 547 1510 (another Madras authority) appears to follow the Mit., since it says: "'ādyā' includes 'adhivedanika' and what is acquired by inheritance, sale and the like." The Viyādacintāmāni (the leading authority in Mithilā) does not define stridhana in general, but enumerates the several kinds of stridhana described by Manu, Yājñavalkya, Kāt, and Devala and so is on a par with the Dayabhaga. The V. Mayūkha divides stridhana into two kinds, paribhāṣa (technical) and aparibhāṣa (non-technical). The former comprises properties expressly stated to be stridhana by the sages, while the latter includes all other property belonging to a woman (except what is called technical) and acquired by her by partition or cutting (sewing or other mechanical arts). 1511 This division is peculiar to the V. Mayūkha. The Viramitrādaya (the paramount authority in the Benares school) agrees with Mit. as stated above.

It is beyond the scope of this work to go deeply into modern caselaw. But it is necessary to show how the Indian Courts have in modern times dealt with stridhana as defined by the commentators. It may be said at once that the inclusion by the Mit. of property inherited by a woman or obtained at a partition under stridhana has been totally discarded by the Privy Council for all provinces in India except Bombay 1512. A woman may inherit property from a male, such as from her husband, father or son or she may inherit property from a female, that is, from her mother, daughter &c. Both these kinds of property

1510. अधाश्चेत्त्र अध्यायानिकालस्थः रिक्रः कयदियमां च | पत्रा ० म ॥ III प. ५४७.

1511. चतु विभाजनाभियुः विभाजनं रिक्रपूर्णं सामाजिक याज्ञवल्लभोऽधिकारिकालाभिज्ञानादित्युपरतः । पु. सं. ५ जु. १. १६०.

1512. Vide Sheo Shankar v. Debi Sahai L. R. 30 I. A. 202 (a case from Allahabad) for the proposition that according to the law of the Benares school even property inherited by a woman from a female is not her stridhana and does not pass to her heirs. The principal grounds for the decision were that as regards property inherited by a female from males the rule deducible from the gloss of Vijnānāvara had already been discarded and that even as to property inherited from a female the same rule had been applied in most High Courts (p. 208). Vide also Balvanttrao v. Bays Rai L. R. 47 I. A. 213, 223 where the Privy Council approve of the Bombay High Court's decision in Bhu v. Raghunath 30 Bom 229 that a daughter succeeding to her father takes the property absolutely as stridhana in the Bombay Presidency.
are stridhana according to the Mit, but the Privy Council has held as to both these kinds that they are not stridhana; e.g. if a daughter inherits property from her father or inherits the stridhana property of her mother, it does not become her stridhana, that on the death of the daughter, the property does not pass to her heirs, but to the next heir of the person from whom she inherited it. The Bombay school makes a distinction. If a woman enters a family by marriage and then inherits to a male of that family (as e.g. a widow succeeding to her husband, a mother to her son or a predeceased son's widow to her father-in-law), the property she inherits is not her stridhana, she takes only a limited estate in it and on her death it passes to the next heir of the male from whom she inherited. But if a woman inherits from a male belonging to the family in which she was born (e.g. a daughter succeeding to her father, a sister to her brother) or if a woman inherits property from a female, the property so inherited becomes her stridhana (in Bombay). As to property acquired by a wife or mother on partition, it has been held by the Privy Council that it is not stridhana even in provinces governed by the Mitaksara (including Bombay).

Kät (903) declares, 'whatever was given to a woman for wearing only on some occasion (or on condition) or with fraudulent intent by the father, brother or husband is not held to be stridhana.' The idea is that if the father or husband gives some ornament to his daughter or wife for wearing on some special occasion (upūdhi) or if a father or husband in fraud of his co-parceners gives some family property to his daughter or wife it cannot become stridhana.

Dominion over stridhana.—What is stridhana and what dominion a woman has over stridhana depend on three things, viz. the source of acquiring the property, her status at the time of acquisition (i.e. whether she was a maiden or a married woman whose husband was living or a widow), the school of law by which she is governed. Certain verses of Kät and När are the principal texts on this subject. Kät (905–907, 911)

1513 Vide Deb. Marga Prasad v. Mahkaro Prasad I l. 39 I A 171, 151–152 (about the share of immovable property on partition not being stridhana and not passing on her death to her stridhana heirs)

1514 त्यो उत्तराचार्य भाग्यविषयतत्तत्परिप्रेमिन्यो अद्वैतार्थिक दृष्टिप्राप्त चक्वच यादातात्रिकांद्वैतार्थिक दृष्टि प्राप्तम् विद्यताते दृष्टि प्राप्तम् गंगायः । विद्यताते दृष्टिप्राप्तम् गंगायः गंगायः । विद्यताते दृष्टिप्राप्तम् गंगायः गंगायः ।

The verse 1513 quoted by Patr. II p. 319, Vish. Naurā p. 151 (or do. Naurā p. 201)
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... says: on obtaining wealth of the saudāyika kind it is declared (lit. desired) that women have independent power over it, since it was given by them (the kindred) as support (or maintenance) in order that they (women) may not be reduced to a terrible (or wretched) condition. It has been declared that women always have independence in saudāyika property as regards sale or gift at their pleasure and even in immovables (if saudāyika). A woman, when her husband is dead, may deal with the gift (of movables) given by the husband as she pleases, but she should preserve it as long as he is alive or she may spend it on his family. Neither the husband nor the son, nor the father nor the brothers have power to use or alienate the stridhanā of a woman. The verse of Kāta about property acquired by labour or about the gift from strangers through affection and that of Narada about the gift of immovable property made by the husband have already been quoted. From these texts it follows that a Hindu woman during her maidenhood could dispose of her stridhanā property of every description at her pleasure, that during her widowhood she could dispose of every kind of stridhanā including movable property given by the husband but not immovable property given by him and that a married woman whose husband was living could dispose of at her pleasure only that kind of property called saudāyika (i.e., gifts from relations except those made by the husband). Under modern decisions the distinction between saudāyika and

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1515. बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिव� बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको धन मायेय श्रीयः स्वातंत्र्येतेष्ये। वस्ततिठुर्युसङ्कल्पाद्यस्वातंत्र्य-विनम्रादिवष बौद्धायणको ध

1516. So long as a Hindu maiden is a minor she cannot alienate her property or dispose of it by will; only her guardian can alienate it for purposes laid down in Hunooman Pershad's case, vide 6 Moo 1. A 393 (cited above on p. 449).
non-saudāyika is retained, but the distinction between saudāyika given by the relations and that given by the husband is not kept. Now the woman’s power to dispose off as she likes depends on the question whether the gift was meant to pass an absolute estate or a limited estate even if the husband was the donor. During marriage when the husband is living her dominion depends under modern law upon the character of the stridhana. If it is of the kind called saudāyika she can dispose of it by sale, gift or will as she likes without her husband’s consent; but as to other kinds of stridhana property (such as gifts from strangers, property acquired by mechanical arts or property inherited) she cannot dispose of it without her husband’s consent. If she disposes of it without such consent the alienation is void. According to the D B IV. 1.20 property acquired by a married woman by mechanical arts or by gift from a stranger is subject to the husband’s dominion during his life and may be taken by him even when there is no distress No one else (except the husband) has got control over even such stridhana After the husband’s death, she can dispose of even non-saudāyika stridhana as she likes. But even as regards saudāyika the texts concede certain rights to the husband in certain circumstances Yaj II. 147 says: ‘the husband is not liable to return to the wife her stridhana taken (i.e. used) by him in a famine, for (indispensable) religious acts, in disease, or when imprisoned (by the creditor or by the king or an enemy)’

1517. Vide Bhav v Raghunath 30 Bom 229 (where it was held that property inherited by a woman from her father could not be bequeathed by her without the consent of the husband who survived her) Bequests to a woman are on the same footing as a gift for the purposes of stridhana Vide Danudar v. Purmanandas 7 Bom 155

1518. Vide Shakti Ram v Charanjit Lat 57 I. A. 282, 289
Kat. (914) has a similar verse which says that he may return stridhana wealth if he chooses to do so when it is used by him in a disease or in calamities or when harassed by creditors. Kaut. (III 2 p. 152) is closely similar to Yāj, and adds that the woman can spend it without blame for the maintenance of herself, her son and daughter-in-law or when the husband has gone abroad without making provision for the maintenance of these. Kaut (III 2 p. 152) further provides that there should be no complaint (by the wife) as regards the expenditure of stridhana made more than three years before by joint action of the husband and wife when they have given birth to two children (or to twins) and when the marriage has been in the most approved forms (brahma and the other three), that when stridhana has been expended by (the husband and wife) that are married in the gandharva or āśura form both should be made to restore it with interest and that what is expended when the marriage is in the rākotra or bātācra form the expenditure of stridhana should be dealt with as theft. The meaning of ‘mithunam prajātayoh’ and ‘trivasopabhuiktam’ in Kaut is not quite clear. It is probable that Kautilya lays down a rule of limitation. If more than three years are allowed to pass without complaint, then no complaint made later (than three years after the expenditure) would be entertained. So also if there be no children of the marriage and the husband expends stridhana without objection by the wife then also no complaint would be entertained as the restraint on alienation of stridhana by the husband and wife was meant for the benefit and advancement of the children. None of the later smritis like those of Yāj, Nar. or Kat, makes these distinctions and so Kaut probably represents an early stage in the evolution of the husband’s dominion over stridhana. These later smritis hold that the husband and wife may be entirely separate as regards their properties and as a general rule the husband’s debts are not binding on the wife’s properties nor are the wife’s separate debts binding on the husband or his properties (Yāj. II. 48,
Visnu Dh. S. VI. 31-32). But the same smrtis make it clear that under certain distressing circumstances the wife's separate property was liable for the maintenance or debts of the husband. The Mit. expressly states 1521a that if the husband uses his wife's stridhana under any other circumstances (than those specified by Yaj. II. 147 and Kat.) then he has to return it, that no relation except the husband has any right to use a woman's stridhana during her lifetime even in distress or disease &c., and relies on Manu VIII. 29 which requires the righteous king to award the punishment for theft against such relatives as appropriate the wealth of women. The Sm. C. and V. Mayûkha follow the Mit., but the V. R. and V. C. hold that Kâtyâyana's verse applies not only to the husband, but also to the son, father and brothers of the woman. Kat. (913-913) provides 1521a that if any one of the four persons (q. in n. 1515 above) forcibly consumes stridhana he should be made to return it with interest and should be also liable to fine (or punishment) and that if any one of these consumes stridhana amicably after securing her consent then he would be liable to return only the principal amount, when he becomes well-off (i. e. able to pay). Devala 1522 also states, 'if the husband makes a gift of stridhana without cause or enjoys it, he must pay it back with interest, but he may use the stridhana of his wife for relieving the distress of a son (and also of the family, aco. to V. Mayûkha). Kat. (908) 1523 adds a special rule, 'if the husband has two wives and he does not reside with one of them (i. e. neglects her), he should be forcibly made to return (the stridhana of his neglected wife) by the king even though she bestowed it upon him through affection.' The texts of Kat., Devala and Nâr, quoted above about the dominion of the woman over her stridhana and about the husband's power over it are

1521a. यदि कोत्तरी पीरां बीरां भवन्ति नक्षे० गतात्। सहिष्ठिति स वृत्त: स्वाध पुरुष सै० समायोपात्। तदेष पत्नामाप्र सहवेनिविद्धतेषाः। दुःखीन वहुभाष: स्वाधायसैं पत्नासाय भैतृ कारता। q by अरवर्थ p 755, सृजनाम IV. 1. 24 p. 78, स्वरिच. II. p 282.

1522. दुःखा मोसे च मये च सिंहे बुद्धासहकरकम्। प्रजस्रितामेव दायि बीरां मोक्ष सहिष्ठि वै देशत् Q by स्वरिच. II. p 283 (हस्तवर्णं कुरुशापसर्गवर्णं), अरवर्थ p 755, भा. मदुंक p. 156.

1523. अप पीस किंवा: स्वाध च सं भजते हुन। श्रीया निकृष्टस्य कृतमिविधाय:। क तत्र नलात् कारता। q. by अरवर्थ p. 755, सृजनाम IV. 1. 24 p. 78, स्वरिच. II, p. 283. The यथा p 156 ascribes this verse to देशत.
authoritative in all schools even now. *Manu* IX. 199 provides: ‘wives should not spend (for their own benefit) from the property of their families which is common to many, nor from their own property without the husband’s permission.’ The V. *Mayukha* interprets this as meaning that she has no independent power even over *adhivedanika* and the like, but this would be opposed to the express texts of *Kāt*, *Vyāsa*, and *Devala*. Therefore the words must be taken as only recommendatory.

*Kāt.* (916) delivers a special rule viz ‘stridhana’ which was promised (to a woman) by her husband should be paid to her as a debt by the sons (i.e. by her own sons or stepsons) provided she resides in the husband’s family, she should not reside with her paternal family.’ The Sm. C. and V. P. (p 546) explain that even grandsons and great-grandsons are liable to pay just as sons are. According to *Kāt.* as understood by the Sm. C and others a wife who is full of evil acts, is immodest, wastes property and is given up to adultery, does not deserve (to dispose of) stridhana and V. P. and V. C. explain that it may be taken away from her in such a case. In modern times this rule of forfeiture of rights would not be enforced by the courts as regards stridhana. Some explain this verse as referring to the widow as heir and separate the words as ‘strī dhanam.’

**Succession to Stridhana.**—The several schools of Hindu Law differ from each other perhaps more widely on this subject than

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1524. न पितारेण सिद्धः कुर्यदुःखमाचारमुमेयत्। स्वकारुणि व हिसाबत् स्वेत
अहंप्राप्या। सच 199 This verse is variously explained गुजुरुक्तम, पञ्चयात
कल्याण and others explain विक्रेता as ‘रलचछातस्य धनस्य’, while सवेज्ञानायण
and ध. नामकृत्य explain as ‘चतुराय’ and सवेज्ञ explains सकारात्मक as ‘सत्तातारात्मक’

1525 भर्ति प्रतिष्ठात् प्रेममूलकक्षीयः हैं। विक्रेता भूपकुटे तद न सा नौकोते
सकर्। कार्यः के वृत्तिः पद 283 (first half), विर. c. p 514, विर. विर. p 142.
The ध. m. p. 153 quotes the first half as सुनितः

1526. अपवासितस्यादि निर्देशानि चार्च्यानि लिखितम्। न्यायिकारणम् या च चीरणम् सा च
अहिति। कार्यः के मेधां नाम विन 108 (without name), स्वतितिः पय 283,
विर. विर. p 141-142, एवं m. p 157, एवं n. p. 545 ‘या पुनः अविष्कृतिः स्री सा लक्षण-
निभुद्यस्यि मिनयनयूः नास्तिविवाहं स एव’ स्वतितिः

1527. For a comparison of the ancient and medieval Hindu Law of stridhana with the Roman, French and English law, vide *Bannerjee’s Marriage and Stridhana* pp. 394-399.
on any other. But one thing is generally common to all schools viz. that as regards succession to stridhana daughters are preferred to sons, though in later days sons were introduced by some writers as heirs along with daughters or even as preferable to daughters for certain kinds of stridhana. This was probably due to the fact that the value of stridhana property became considerable in later times and society which held to the doctrine of the dependence and inferior position of women could not tolerate the idea that large estates should go to women alone. The causes of the variance among writers on the devolution of stridhana are historical. The text-writers wrote at different times and in different countries and probably reflect the popular sentiments of their own countries and times tinged now and then by personal predilections also. The digests sometimes expressly say that their interpretation follows the usage of their times (vide V Mayûkha in note 1529 below).

The succession to stridhana varies according as the woman is unmarried or married, according as the marriage was in an approved or an unapproved form, and also according to the species of stridhana and the school of law to which she is subject.

First, the important texts of the smrtis on succession to stridhana may be brought together. The oldest extant text is that of Gaut 28.22 which provides,1528 ‘stridhana devolves (first) on daughters; (in a competition among daughters) it goes to those that are unmarried (apratâ, lit. not given away in marriage) and (in a competition among married daughters) to those that are not well provided for (i.e. that are indigent).’ Manu (IX 192–193) provides: ‘when the mother dies all the full brothers and full sisters should equally divide the mother’s estate. Even to the daughters of those daughters some thing should be given (that is) as much as would be seemly out of the estate of their grandmother on the ground of affection’. In Manu IX. 195 it is said that the six kinds of stridhana, as also anvâdheya stridhana and gifts made by the husband through affection, should go to her progeny if she dies in her husband’s lifetime. The verses of Manu (IX. 192–3) are variously explained by the commentators, Sarvajña-Nârâyana holding that mother’s estate means estate other than technical stridhana. Most of them rely on a text of Br. and

1528. सूत्रम् इति दिक्षितस्ममायमस्ममनिमित्ताम् च च. गी. 28 22.
hold that full brothers and unmarried sisters succeed together and married sisters (i.e. daughters of the woman whose heirs are to be found) get some trifles (⅓ of each brother acc. to Kullūka). Manu IX. 196–197 further provide that when a woman was married in one of the five forms of marriage viz. Brāhma, Daiva, Ārṣa, Prājapatiya and Gandharva and died without issue her strīdhana goes to her husband and if she was married in the Āsura and the other two forms it went, if she died issueless, to her mother and father. Yaj. II.1529 117 provides that daughters take the strīdhana estate of their mother and on failure of them the (male) issue. In II.1530 144 Yaj again says that strīdhana goes to daughters, but that if the woman dies without issue then it goes to the husband if she was married in one of the four forms (brāhma, daiva, ārṣa, prājapatiya) but to her parents if she was married in the other four forms. Visnu Dh. S. (17. 19–21) and Nār. (dayabhāga, 9) contain the same rules as Yaj. II. 144–145, while Nār. (dayabhāga 2) states that the mother’s wealth should be divided among the daughters and in the absence of daughters the latter’s issue takes it. Saṅkha-Likhita1531 declare that the mother’s estate is taken in equal shares by the full brothers (sons of the deceased mother) and their unmarried sisters. Br.1532 (S. B. E.

1529. मातृदुःधिः देवशुष्कशरणस्य भरतेष्वरः ॥ यज. II. 117 on which the fram. says, 'दुहितुष्णामपि अवस्य दुहित्रिपीहियायः ॥' some construe the word अवस्य as meaning the issue of the daughters (i.e. daughter’s daughters and daughter’s sons). Vide वां. स. p. 159, "यदृ पालवक्ता 'मातृदुःधिः ... नारं' इति सन्तानवलयस्त्र धर्मसाक्षातदेवकौड़ि वै " परिः दुहितुष्णाः पुरा एव र्हापि, नारसिन्हिं तदस्त्र मातृदृधिः पालानियायाः। आचारसाधारी चार्यः पञ्चमः।। 1॥ नार (ब्राह्मण, 2) मातृदुःधिः गर्भां दुहितुष्णात् तदस्त्र ॥, about which the śiṣṭ, on यज्. II. 145 remarks "तत्चैर्येण सन्हिनियुद्धिरितिरारामानं।। The sutra, यज् (p. 667) explains नारायण यजुर्वेदार् आदिवर्गवायुक्त सुहितुष्णाः सौहित्ययः तदादिके न जाता सौहित्ययात्क्रिययः। the śiṣṭ, p. 75 says 'दुहितुष्णामपि दयापरलमालविभूतिविभूतिः। मातृदृधिः इति चतुरकृष्णः।।'

1530. अश्रुद्वाय्य अश्रुद्वाय्य रंगादारस्वाय्यः। अर्जुन, श्रीरथ परमेश्वरहिंश्वरं हृदबर्तिः।। दुहितुष्णाः महत जेत्रयेत्र गदायिती तदस्त्र ॥ यज्. II. 144–145, मातृदृधिः चादृधिः सिद्धांवनयाचारसाधाराः गर्भाः।। । ततो च विरा विश्ववर्गं कुर्लेच्छ धर्मकौड़िकिः। धर्मवर्गम् 17. 19–21, श्रीरथल दयापरलामालविभूतिविभूतिः।। धर्मसाक्षातदेवकौड़िमेवति च नारायण (ब्राह्मण, वर्ष नौ)।।

1531. सर्वसंहितं सर्वश्रेष्ठं मातृदृधिः रिष्यतिकेति कलामायेऽः। सर्वश्रेष्ठितिः प्रथमे धर्मवर्गं यजुदं वर्गम्।। पार्थ ॥ by व्रमण IV. 24 p. 79, यज् III. 551, मातृदृधिः यज् II. 145 हर्षवं गो श्री 28.22 reads सर्वसंहितं सर्वश्रेष्ठं क्रियावन्येऽः।।

1532. क्षीरो श्रीरथवर्गाः दुहितत्वात् तदादिके। अन्यत्र ब्राह्मणं हि तदादिके मातृदृधिः।। प्रथमे यजुदं वर्गम्।। पिः यजुदं यजुदं। II. 285, हर्षवं गो श्री 28.22, ब्राह्मण IV 2.3 p. 79 (अन्यत्र ब्राह्मणं हि तदादिके) मातृदृधिः।। पार्थ III. p. 552 (रिष्यतिकेति कलामायेऽः, निमायेऽः)।।
Devolution of stridhana

stridhana goes to her progeny, but the unmarried daughter is preferred, while the married one gets only some trifle as a token of regard'. Parāśara holds that the unmarried daughters take all the stridhana, but in a competition between married daughters alone and sons they all take equal shares. Devala states, 'on the death of a woman her stridhana is taken in equal shares by her sons and daughters; if she leaves no issue it would be taken by her husband, mother, brother or father'. Parāśara (q. by Par. M. III. 552) states that stridhana devolves on the unmarried daughter, that the son does not get it, but that he shares equally with a married daughter. Kautāśa (III. 2 p. 153) prescribes that if a woman dies during her husband's lifetime her sons and daughters divide her stridhana; if she has no son then daughters divide it, on failure of both sons and daughters the husband takes it and that the śūlka, anvādaśeya or any other kind of stridhana given by her relatives is taken by her relatives. Katyāyana (917–920) whose treatment of stridhana is the most detailed of all smṛti writers has the following verses on succession to stridhana: 'Sisters whose husbands are living should share with their brothers the stridhana (of their mother); this is the rule of law about stridhana and partition (among brothers and sisters) is prescribed. On failure of daughters the (stridhana) wealth devolves on sons (of the deceased woman); the wealth given to a woman by her kinsmen (paternal or maternal) goes in the absence of the kinsmen (that gave it) to the husband.

1533. गामाय सुनसा वाणासां वृत्तान्त स्रीचनाः स्थिरवादोः। अतृपत्याः हरेत्तवं माता व्रत्र किसंसा विवाहः । कृत्य q. by द्वारवतिण्य IV. 2 p. 79, द्वारवतिण्य संहिताय on p. 466, द्वारवतिण्य II. 2, 145.

1534. अपूर्ववतस्तु कुपूरवतस्तु किसंसा परिशिष्ठस्तु । प्रकृतिः q. by पाल शा III. 552 (सन्धिभिन्नता), श्वब. संहिता p. 463. Is it परासारः?

1535. कृत्य विवाहः स्रीचनाः: स्रीचत्र विवाहेष्टः। अपूर्ववतस्तु कुपूरवतस्तु । स्रीचनाः श्रवणाः। ... स्रीचनाः विवाहः। अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतস्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु । कृत्य विवाहः । अपूर्ववतस्तु कुपूरवतस्तु । अपूर्ववतस्तु कुपूरवतस्तु ।
Whatever immovable property was given by the parents to their daughter always goes to her brother if she dies without issue. Whatever wealth was obtained by a woman from her parents in the forms of marriage beginning with āśūra is declared as going to her parents on failure of her progeny. The first two verses are apparently in conflict and must be read with Gauṭa 28 22. So probably the following propositions were laid down by Kāt., viz. (1) unmarried daughters are preferred; (2) married daughters whose husbands are living share along with their brothers, if there be no unmarried daughter; (3) widowed daughters take only if there are no daughters whose husbands are living or if there are no sons; (4) wealth given by paternal and maternal kinsmen goes to them and on failure of these, to the husband; (5) immovable property given by parents goes to the brother of the woman on failure of issue; (6) wealth given in the āśūra, rāksasa and paśa forms goes to parents on failure of issue. Yama has a verse very similar to Kātyāyana's about a woman married in the āśūra and the following forms. The commentaries and digests make valiant efforts to reconcile the conflicts among the smṛti texts quoted above. It is not quite necessary to go into that question here in detail for fear of encumbering this work too much.

How the devolution of strīdhana was dealt with by the commentators has now to be seen. They all prefer daughters to sons for certain kinds of strīdhana. Why the devolution of strīdhana property should be different from that of the property of a male is not clearly explained anywhere. The Mit. on Yaj. II. 117 gives the reason that woman's property goes to the daughter because in her more particles of the mother's body inhere than in the son. Probably the daughters were preferred as heirs to strīdhana as a sort of equity, when sons were allowed to exclude daughters in the inheritance to the father's wealth.

According to the Mit., there are two lines of succession to strīdhana, one for sulka and the other for all other kinds of strīdhana. Sulka, acc. to the Mit. that quotes Gauṭ, devolves first

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1537. [Footnote: आहृरातिषु यद्र कर्णे विग्राहः मद्वीपविन्यसे। अंज्ञानेरोमितिसमीयः सितेश्वर हृ अनहस्ता ‘या या’ यान प्रकाशकम्।] II. p. 286, दुर्योधन IV 2. 28 p 88

1538. [Footnote: महाकुदासुपुण्डु द्वारकासाकामोऽन्म मुदितविग्यत। कलमा पालिताः स प्रत्येक श्रीदेवीनिर्मितः। दुर्योधन पुरुषैव खुके वी महास्वाभिमान श्रीदेवीनिर्मित:। बुधदेवं तुम्हारामसों विज्रव्यापान दुष्कृत्याः मुदितविग्यत।] सिद्धान्तं दुर्योधनं विज्रव्यापानं दुष्कृत्याः मुदितविग्यत। प्रवाहं द्वितीयतः दुर्योधनं अन्नविग्यत। समिति. on p. II. 117. दुर्योधन समीति &c. is महात् III. 49,
on the full brothers, then on the mother.\textsuperscript{1539} Some like the Subodhini, the Dipakalika, Haradatta on Gaut. 28. 23 hold that it devolves on the mother first and then on the full brothers; but many works such as the Dāyabhāga IV. 3. 28 (p. 95), Sm. C., Par. M., V. P., V. C. follow the Mit. It is somewhat strange that the Madanapārījātā p. 668 (which was really composed by the author of the Subodhini in the name of his patron Madanapāla, holds that the śulka is first taken by the brothers and then by the mother. This raises a doubt whether the printed Subodhini is correct or whether the author changed his opinion.

As regards succession to the property of a maiden there is no difference at all between the Mit. and other works. The Mit. quotes a text of Bauḍhāyana\textsuperscript{1540} that the wealth of a deceased maiden first devolves on her full brothers, then on the mother and then on the father. The V. P. adds that on failure of the father the maiden's wealth goes to the parents' nearest sapinda.\textsuperscript{1541} Yāj. II. 146 provides that if a girl who had been promised in marriage dies before marriage, the intending bridegroom was entitled to take back the śulka or other gifts

\textsuperscript{1539} बांधवेनां कोिळाणार्थ सत्यवाचः सत्यवाच तथा दुष्टवाचः सत्यवाचाः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः सत्यवाचः
made by him after deducting his own expenses and those of her family.

The Mitakṣara order of succession for all kinds of stridhana, other than sulka and maiden's property, is as follows: (1) unmarried daughter; (2) married daughter who is indigent; (3) married daughter who is well provided for; (4) daughter's daughters; (5) daughter's son; (6) sons; (7) son's sons (here also the rule of per stirpes applies); (8) husband (if the woman was married in one of the four approved forms); (9) sapinda of the husband in the order of propinquity; on failure of any sapinda of the husband, her mother, then her father and then the sapinda of the father (before it goes to the Crown). But if the woman was married in one of the unapproved forms, then on failure of her descendants her stridhana went to her mother, then to her father and then to the father's sapinda in the order of propinquity. On failure of the sapindas of the father it would (by analogy) go to her husband and then to his sapindas (before going to the Crown). When grand-daughters directly inherit the stridhana of their grandmother they take per stirpes (see to the Mit which quotes Gaut. 28 15), if they are the daughters of several daughters.1542 The Mit (on Yaś. II. 145), Aparārka (p. 731) and several others provide (following Manu IX. 198 = Amuśāsana 47,25) that if a woman of a lower caste dies issueless leaving stridhana, then the daughter of her co-wife of a higher class inherits that stridhana and on failure of such step-daughter, the son of the latter inherits. It may be noted that as regards succession to stridhana, the rule of representation which holds good in relation to succession to males does not apply. When a male dies leaving separate property and a son and a grandson (son of a predeceased son) both succeed together, the grandson representing his deceased father. But if a woman possessed of stridhana dies having only a son and a predeceased son's son, the son will take the whole of the stridhana excluding the son's son. Vide Bā Rāman v Jagjwandas 41 Bom 618.

It is not possible nor necessary to deal exhaustively with the devolution of stridhana according to the various schools of Hindu Law. But a few indications from the important text

1542. तात्त्विकासः विलोकनाचार्य विनिष्ठाय तस्माति मातृरूपेण भावकल्पनां। प्रतिशासनी

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books having authority in the different provinces will be offered. According to the Sm. C. (which is the leading authority in Madras after the Mit.) stridhana includes only those kinds of property that are so described in the smrtis (i.e., only technical stridhana) and the lines of devolution are as follows: (1) Sulka devolves in the same way as laid down by the Mit. cited above (Sm. C. II. p. 287); (2) Yautaka devolves on unmarried daughters first (Sm. C. II. p. 285); (3) Anvadhayaka and Bhartrdatta pass to sons and married daughters whose husbands are living, all inheriting together in equal shares (Sm. C. II. p. 284); (4) other kinds of technical stridhana such as adhyagami &c. pass first to the maiden daughters and married daughters who are aprasthitata,¹⁵⁴⁳ then to married daughters that are provided for; then to daughter's daughters, then to daughter's sons, then to sons, then to son's sons &c., then to the husband or father (according to the form of marriage). The Madras High Court follows the Mit. (in preference to the Sm. C.) as to the devolution of Anvadhayaka and Bhartrdatta and holds that certain kinds of non-technical stridhana (such as gifts by strangers during coverture) devolve acc. to the rules of the Mit. Vide Salemma v. Lutchman. 21 Mad. 100.

The Vyadacintamani, the leading authority in Mithila, restricts stridhana to the technical stridhana recognized by the smrtis and lays down the devolution of it as follows: (1) Sulka¹⁵⁴⁴ (defined as property received by a woman at the time of her marriage, if in an unapproved form) passes as under the Mit. cited above; (2) Yautaka passes first to unmarried daughters, then in the way laid down by the Mit. for all stridhana; (3) all technical stridhana other than the two preceding varieties passes to sons and unmarried daughters together, then to sons and married daughters jointly, then to daughter's daughters, then to daughter's sons and then as under the Mit. system (for stridhana in general.)

The Vyavaharamayukha which is held to be of paramount authority in Gujarat, Bombay Island and Northern

¹⁵⁴³ The word aprasthitata is explained by the Sm. C. as follows, 'apatihatata anaparava nityamanipada vichya an tath aptihatata anaparava dharatva yathapadyatva ' aham vishayatvamatra prasthitasthyata prastijapanam prastirnibidhastha samah sarvah samah sarvah ' samuhikamatrikamaharivikusumagalam ' samuhikam, II. p. 285
¹⁵⁴⁴ Mit. p. 147 also says, 'apatihatata anaparava nityamanipada vichya an tath aprasthitatala
Prasthatyata prastirnibidhastha samah sarvah samah sarvah ' samuhikamatrikamaharivikusumagalam ' samuhikam, II. p. 143.
Konkan proposes various lines of succession to stridhana. Its treatment is based on the Sm. C. and the Madanaratna. It first divides stridhana as stated above into technical (pārībhāṣikā) and non-technical (apārībhāṣikā). The first is subdivided into four classes for the purpose of inheritance; (1) sūkha which passes as stated above under the Mitāksara; (II) yatālaka goes to unmarried daughters, (if there be no unmarried daughters).

1545. For the territory in which the V Mayūkha is supreme, vide Lallubhai v. Mankuvarbai 2 Bom. 388 (F B.) at p. 418, Jankibai v. Sundra 14 Bom. 612 at pp. 623–24, Vyas Chimanlal v. Vyas Ramchandra 24 Bom. 367 (F B.) at p. 373. How the Vyavahāramayūkha composed by a Mahārāstra brāhmaṇa whose family had settled at Benares came to be regarded as a work of high authority in Gujarat is explained in Lallubhai v. Mankuvarbai 2 Bom. 388 at pp. 418–419 and Bhagiribhai v. Khemyivan 11 Bom. 285 (F B.) at pp. 294–95. As there is divergence between the views of the Mit and the Mayūkha in the rules of succession, it becomes a matter of great practical importance to settle with precision the exact limits in Northern Konkan up to which the Mayūkha must be regarded as a work of paramount authority. It has been judicially decided that Karanja, an island opposite the Bombay harbour, is governed by the Mayūkha (in Sakharan v. Setabai 3 Bom. 353), that Mahad, the southernmost Taluka of the Kolaba District, is not so governed and that the predominance of the Mayūkha cannot be taken further south than Cheul and Nagothana in the Kolaba District (vide Narhar v. Bhau 40 Bom. 621.) Similarly difficult questions arise whether Kathiawar which is quite contiguous to Gujarat and some territory bordering on Gujarat towards the north or east is governed by the views of the Mayūkha in preference to those of the Mit. Some parts of Kathiawar which were (and even now are) under the domination of the Gaikwad of Baroda may, on the analogy of the grounds on which the Mayūkha is held to be of paramount authority in Gujarat, be deemed to be governed by the Mayūkha. It appears to me that the tendency of courts should be to restrict the extent of the territory in which the Mayūkha is supreme and to hold that everywhere the Mitāksara is supreme, except in those territories where the Mayūkha has been expressly recognized as supreme by the feudatory States contiguous to Gujarat or by judicial decisions. The Mit is the paramount authority in the whole of India except in Bengal, therefore on the analogy of the maxim that a general rule is applicable and is supreme in all cases except where an exception clearly covers the matter (अपवाढ़विधि-परिवर्तितेऽवस्तुपविधिमयंैथिमिति) districts outside modern Gujarat but bordering on it should not be held to be governed by the Mayūkha.
then probably to the married daughters; (III) anvādheya, and bhatpriti-datta (husband’s gift of affection) are inherited by sons and unmarried daughters together in accordance with Manu (IX. 192 and 195), (if there be no unmarried daughters) by sons and married daughters, then daughter’s issue, then son’s sons; (IV) other kinds of technical stridhana devolves as under the Mit; (V) non-technical stridhana is inherited in the following order; sons, son’s sons, sons’ sons, daughters, daughter’s sons, daughter’s daughters. When there is no issue of the woman the succession depends in all cases as under the Mit on the question whether the woman was married in an approved or an un-approved form. The V. Mayūkha employs language somewhat different from that of the Mit, in speaking of the inheritance to stridhana when a woman dies without

1545a Vide Sitabas v. Vasantrao 3 Bom L. R. 201 (where a long passage from the V. Mayūkha is quoted in translation and it is held that anvādheya incenses gifts or bequests from parents after marriage as well as from the husband and that sons and daughters succeed equally to anvādheya), Dayaldas v Savitrihas 34 Bom 385 (F B), where it was held that a passage of the Mayūkha wherein the view of the Mit was first stated and then the view of others really meant that the latter was the view of the Mayūkha, that sons and daughters inherited anvādheya together and that if there were both married and unmarried daughters, the unmarried daughters and the sons inherited together.

1546. As above.

1547. Vide Manial Rewatad v. Bar Rewa 17 Bom. 758 (as to inheritance of non-technical stridhana) where it was held that as regards stridhana under the Mayūkha the woman is recognized as a fresh source of devolution, that the words 'sons and the rest' mean no more than sons, grandsons and great-grandsons, that as regards property which does not class as pārībhāṣa, the sons and the rest take precedence over the “daughters and the rest (i.e. their issue)”, that failing sons and daughters the heirs to pārībhāṣa stridhana and aparībhāṣa stridhana are the same, save that as between male and female offspring the latter have a preferential right as to pārībhāṣa, while the former have a similar right as to aparībhāṣa.
issue. But it has now been judicially held that both mean the same thing.\(^{1548}\)

In the Dayabhaga school the devolution of various kinds of stridhana according to the Dayabhaga and D. K. S. is as follows: (I) sulka devolves\(^{1549}\) in the following order: (1) full brother, (2) mother, (3) father, (4) husband; (II) Yautaka devolves\(^{1550}\) in the following order: (1) unmarried and unbetrothed daughters, (2) betrothed daughters, (3) married daughters, who have or are likely to have sons, (4) barren married daughters and childless widowed daughters taking together in equal shares, (5) sons, (6) daughter's sons, (7) sons' sons, (8) son's son's sons, (9) step-son, (10 and 11) stepson's son, stepson's grandson. Then if the marriage was in an approved form, yautaka passed in the absence of any of the above in order to husband, brother, mother and father. If the marriage of the woman was celebrated in an unapproved form then her stridhana passed in order to mother, brother, father, husband. (III) Anvâdheya gifts\(^{1551}\) (gifts or bequests) made subsequent to marriage by the father

\(^{1548}\) Vide Dwharam v. Narayan 36 Bom 339 (F. B.), where there is an elaborate discussion about the following passages of the Mit. and the Mayûkha.

\(^{1549}\) Vide Tukaram v. Sarayan 36 Bom 339 (F. B.), where there is an elaborate discussion about the following passages of the Mit. and the Mayûkha.

\(^{1550}\) Vide Bannerjee's 'Marriage and Stridhana', pp 161.

\(^{1551}\) Vide Bhanu v. Harman 33 Cal. 315 (mother held entitled to preference over the husband of a childless woman who died leaving property gifted to her by her father after marriage).
Dāyabhāga devolution of stridhana

(Dāyabhāga IV. 2.13-16 pp 92-93) devolve in the same order as for Yautaka except in a few respects, viz. the son takes before married daughters and in case the woman dies without issue the brother, mother, father and husband succeed in that order. As regards Ayautaka (i.e all technical stridhana other than the above three) there is a conflict of authority between the Dāyabhāga (IV. 2. 1-12 pp 79-81) on the one hand and Raghunandana and Śrīkrṣna on the other. Acī to the former the order\(^{1552}\) is: son and kumārī daughter (or to either on failure of the other), (on failure of both) married daughters that have sons or are likely to have sons; son’s sons; daughter’s sons; barren and widowed daughters. But Raghunandana and Śrīkrṣna interpolate son’s son, son’s son’s son, stepson, stepson’s son, stepson’s grandson between daughter’s sons and barren and widowed daughters. In the decided cases the latter order has generally been followed.

If there be none of the above both Yautaka and Ayautaka stridhana pass in order (acc to Dāyabhāga IV. 3, 37 p. 98) to six heirs\(^{1553}\) viz. the husband’s younger brother, husband’s

\(^{1552}\) Dāyabhāga IV. 2.13-16 pp 92-93.

\(^{1553}\) Dāyabhāga IV. 2.13-16 pp 92-93.
brother's son, sister's son, husband's sister's son, brother's son, daughter's husband. Br. says that the mother's sister, maternal uncle's wife, paternal uncle's wife, father's sister, mother-in-law, elder brother's wife are declared to be like one's mother, that when these women have no aurasa child or a son of their co-wife or a daughter's son or a son's son or stepson's son, then the sister's son and the rest may take their wealth. This text acc. to the Dāyabhāga, simply declares that a sister's son and others may be heirs to the stridhana of the maternal aunt and the rest but the priority is determined among the six heirs mentioned above in Brhaspati's text by the principle of religious benefit. Though the sister's son is the first in Brhaspati's text, it is the husband's younger brother who stands really the first among the six if regard is had to the principle of religious benefit. The Vīr. (V. P. p. 554) states that in the absence of heirs up to the stepson and stepson's sons, the sister's son and the rest (mentioned in Br.) are the heirs to a woman's stridhana even when sapindas like her father-in-law are alive, since mere sapinda relationship would not count when in conflict with a special text. It does not appear that the V. P. holds that the six take in the order stated in the text of Br.;\textsuperscript{1554} It rather states that among these six the choice of the preferential heir

\textit{(Continued from the last page)}

\emph{বার্তাবর্ণ} I প্রবাহমণ IV 3 31, 35, 36-38 pp 96-98 Vde also pp 187-188

The verses of Br. occur in Sm C II p 287, V. Nir p 472, Pāt M III p 555, V. Mayūkha p 161, V. P pp 553-554. The above verses of Br. mean that males who are a woman's sister's son or her husband's sister's son or her husband's brother's son or her own brother's son or her daughter's husband or her husband's younger brother are like her son and inherit her stridhana in certain circumstances.

\textsuperscript{1554} In Bas Kessorbar v. Hunsray L. R. 33 I A. 176 the above text of Brhaspati was discussed in a Bombay case at great length (pp 190-197) and it was held that under the Mayūkha a co-widow was entitled to succeed to the stridhana of a widow in preference to her husband's brother or brother's son, that the text of Br. must be taken distributively, that is, when the marriage is in an approved form the husband's sister's son will succeed and that when the marriage is in an unapproved form the brother's son or sister's son will succeed, that the text does not indicate the order of succession which is governed by the principle of propinquity under the Mit or the Mayūkha. It may be noted that the V. Nir p 472 expressly gives the distributive order Acc. to the Sm C the six heirs referred to in the text of Br. take in the order stated therein. The Dāyabhāga does not hold this view.
would be determined by greater or less propinquity. On failure of these six the husband's sapindas, sakulyas and samānodakas take and then the father's kinsmen.

The question of an unchaste daughter's succession to strīdhana would be decided in the same way as her succession to her father's property. Under the Dayabhāga an unchaste daughter will not succeed. But under the Mitakṣara as interpreted by modern courts an unchaste daughter who is a kept mistress or a prostitute may succeed but only after virgin daughters or married daughters as the case may be. The Mit. on Yaj. II 290 relies upon the Skandapurāṇa for the proposition that prostitutes are a fifth caste descended from certain apsarasas.

It has been held by the courts that though prostitution entailed degradation according to ancient Hindu Law, it did not sever the tie of blood. So the strīdhana of a naiakī (a dancing girl) or of a married woman who becomes a prostitute may be inherited by her brother or sister or her husband or her husband's relations.

It may not be out of place here to suggest how strīdhana should be dealt with when Hindu Law comes to be codified as it is likely to be in the near future. It may be urged that all distinctions on the ground of sex should be altogether done away with and whenever a woman succeeds to any property whether of a male or of a female she should take an absolute estate. But if this change is opposed by a large volume of opinion as it is quite possible, then it should at least be provided

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1555. द्वेषाभावायं सत्तरी भ्रातारिवशु सचिवेश्वरवसरसमित्वकैरूपजन्माविश्वाशृंगने पत्रासासितारतस्तथेनाचिकारः। सचिवालाहु य सपाश्चात्युपन-मात्रभावतः। स्वतन्त्रिशुष्क सचिवेश्वरवसरसमित्येकपोजनकानु। यथा। म. प 554।


1557 यथाविषयं स्वाभावायं प्रकृत्युपे नाम कान्तराम्भारसरसस्वासितीष्ठाक्ये प्राप्ती जातिविनः। तिरा। यथा। II 290.

1558 Hiratāl v. Tripura 40 Cal. 650, F. B (holds that brother's son inherited the strīdhana of a woman who had become a prostitute), Narayan v. Laxman 51 Bom. 784 (sister of a prostitute was held to be her heir), Narain Das v. Tirlok 29 All 4 (husband held entitled to property acquired by a woman after she deserted him), Subbaraya v. Ramesh 23 Ind. 171 (stepson was held entitled to succeed to a woman's property though she had deserted her husband and led a life of unchastity).
that all property which a woman inherits from a female should be her absolute property. Then as regards inheritance to stridhana one simple and straightforward rule should be laid down that the woman's sons and daughters should succeed together taking equal shares. A third suggestion would be that when there are no descendants of the woman herself, then the husband should be the next heir. When the stridhana is that of a maiden, the heirs in order should be her brothers and sisters, then her mother, then her father and after the father the latter's nearest heir. It is not quite necessary at this stage to specify what further rules of devolution should be prescribed.
CHAPTER XXXI

MAINTENANCE AND OTHER TOPICS

The subject of maintenance occupies an important place in modern Hindu Law. A brief statement of the law of the smrtis and the digests on this subject must be made here.

The liability to provide maintenance for certain persons arises under the ancient Hindu Law in either of two ways viz. (1) on account of bare relationship between the parties or (2) on the ground of the possession of property. A verse quoted by Medhatithi on Manu III. 73 and IV. 251, by the Mit. on Yaj. I. 224 and II. 175 and occurring in some ms. of the Manusmruti after XI 10 provides, ‘Manu declares that one must maintain one’s aged parents, a virtuous wife and a minor son by doing even a hundred bad acts.’ From this verse it follows that irrespective of the possession of property there is a personal legal obligation on the father to maintain his minor son, on the husband to maintain his wife and on the son to maintain his aged parents. Baud. Dh. S (II. 2. 48) goes further and provides that a son is bound to maintain a mother even if she be *pālita.

To the same effect are Āp. Dh. S I. 10. 28. 9 and Ṛṣa. 13. 47.

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1559. इतौः च मातापितली साधी मार्गा हृद्विषाद् । अवकारणाःखला महत्या महर्षि-बीलौ मे याय न शास्को। ग्रन्थास्या महर्षि बीलौ मे याय न शास्को।

1560. परितांमीपि हृद मातारं बिस्मृतायुगमंभर्मणाः। चौ-पु. छु. II. 2. 48; परितां-पिता परिस्थितिनः माता हुये न परितिः। वस्तिक्ष 13. 47; अर्थात् माताया माता ह्या पिता सर्वथा युग्मन्त सर्व शास्कपूर्वः। परिस्थितामात्रारूपमविस्तार जस दृष्टि आदिपास्तः ब्रिस्तिपारिहारः। राजसन्दितिर चौ-पु. अपरांक 523।
Manu VIII, 389 prescribes that the man who abandons and does not maintain his parents, wife and son, when they are not *patita*, should be fined 600 panas by the king. Nār., also (S. B. E. 33 p. 184 verse 95) provides punishment for such a husband. Yāj. I. 76 states that if a man abandoned a wife who was obedient, diligent, the mother of a son and agreeable in speech he was to be made to give one third of his property to the wife and to maintain her, if he had no property. Visnu D. S. V. 163 made the husband punishable like a thief if he abandoned his blameless wife. Kaut. II. 1 prescribes if a man being able fails to maintain his child or wife, parents, minor brothers and sisters, unmarried daughters, widowed daughters, when these are not *patita*, should be fined twelve panas. These dicta have been followed even by modern courts in India. In Subbarayana v. Subbokka it has been held that a son is bound to maintain his aged mother whether he has inherited property from his father or not.

The manager of a joint Hindu family is under a legal obligation to maintain all male members of the family, their wives and children. Nārada states that if any one among several (undivided) brothers dies without issue or becomes an ascetic the rest should take the estate and give maintenance to his wife till their death, provided they keep the bed of their husband unsullied but that they may cut off the maintenance if they (wives) behave otherwise. This is because the surviving brothers succeed to the estate in which the deceased had an interest during his lifetime. This is made quite clear.

1561. अर्थात् च नारद्। पा।। प्रत्येकविध्यता: साध्यों च एकेन आश्चर्यं वा। तत्ततं माणिक्यं च विनिःसृष्टिः प्रवृत्तिः प्राप्तं । तत: विवेकसंहरणं वहनासनं। आप्ति स्थानिकी स्वे सर्वत्राभ्यासंभवति। अविभाज्याः न तत्र भाषासंस्कृतमित्व।। ॥

1562. ॥३ मड. २३६, रेटूर्न ३१ मड. ३३ ॥पृ. ३४२ ॥

1563. ॥३ मड. २३६, रेटूर्न ३१ मड. ३३ ॥पृ. ३४२ ॥

1564. ततो व नारदः। पा।। प्रत्येकविध्यता: साध्यों च एकेन आश्चर्यं वा। तत्ततं माणिक्यं च विनिःसृष्टिः प्रवृत्तिः प्राप्तं । तत: विवेकसंहरणं वहनासनं। आप्ति स्थानिकी स्वे सर्वत्राभ्यासंभवति। अविभाज्याः न तत्र भाषासंस्कृतमित्व।। ॥

1564. तथा व नारदः। पा।। प्रत्येकविध्यता: साध्यों च एकेन आश्चर्यं वा। तत्ततं माणिक्यं च विनिःसृष्टिः प्रवृत्तिः प्राप्तं । तत: विवेकसंहरणं वहनासनं। आप्ति स्थानिकी स्वे सर्वत्राभ्यासंभवति। अविभाज्याः न तत्र भाषासंस्कृतमित्व।। ॥

(The passage of Kātāyana in Mr. Gharpure's edition is rather corrupt)
in the Sm. C. explaining a verse of Nar. viz. 'widows that are virtuous must be maintained with food and raiment by the eldest brother (of the deceased) or by the father-in-law or by any other gotraja' on which it remarks: "The words 'by him who takes the estate' must be understood before all the words such as 'the eldest brother'." Kat. (922) states, 'when the husband goes to heaven the wife is entitled only to food and raiment if he was unseparated or she may get a share in (ancestral) property till her death'. The Sm. C. remarks that as maintenance depends upon taking wealth, Kat. provides two alternatives. In cases too numerous to cite this has been followed by all High Courts. Similarly an heir is bound to maintain out of the estate taken by him those persons whom the deceased was legally or morally bound to maintain. Those persons who are excluded from inheritance or partition are entitled to maintenance and their virtuous wives and unmarried daughters also are entitled to be maintained (Yaj. II. 140-142 Manu IX. 202, Vas 17. 54). The Baud. Dh. S. (II. 2. 43-46) provides that those who are past undertaking transactions (i.e., are very old) should be given food and raiment and also those who are blind, idiotic, impotent, immersed in vice and suffering from (incurable) diseases, and those that engage in prohibited acts, except the pātita and his issue. Devala (quoted in the V Mayūkha p. 165) has a similar passage, 'when the father is dead (or even when being alive he makes a partition) the impotent, the leper, the lunatic, the idiot, the blind, an outcast and his offspring, a person wearing a heretical sect mark—these are not entitled to a share of the heritage; to these except the pātita food and raiment are to be given'. These persons suffer from a personal disqualification and maintenance is given to them in lieu of a share not because their status is denied but because they are incapable of management and enjoyment of property. Vide Raja Ram Rao v. Raja of Puttapur.

The general principle is that an heir is legally bound to provide out of the estate taken by him as heir maintenance for those persons, male or female, whom the late owner was morally or legally bound to maintain. For example, if there is no ancestral property the father-in-law who possesses only self-

1565 Vide note 1151 above for श्र. उ. रु. II. 2. 43-46. This and the text of Devala are quoted in Murariji v. Parvatibai 1 Bom. 177 at p. 183.
1566 45 l. A 148 at p 154.
acquired property is not legally bound to maintain his daughter-in-law (widow of a predeceased son); but on the death of the father-in-law, his heir i.e. son, widow, or daughter would be legally bound to maintain a widowed daughter-in-law. The Bombay High Court, however, adds the condition that the predeceased son must have been in union with his father when he died; vide 23 Bom. 608.

By Act XVIII of 1937 it has been provided that in a family governed by the Mitaksara the widows of deceased coparceners such as the daughter-in-law and the grand-daughter-in-law are entitled to their husband's interest. The Act does not expressly state that their rights to maintenance are taken away. In many cases such widows may prefer to take a share instead of being allotted only maintenance and so far the law of maintenance will tend to become obsolete.

Another important question is what is the effect of unchastity on the right to maintenance? As regards the wife's right to maintenance and the effect of unchastity thereon during the husband's lifetime, vide H. of Dh. vol. II pp. 571-73 above. Manu XI. 176 says that a wife guilty of adultery should be confined by the husband in the same house and should be made to undergo the same penance as a man guilty of adultery has to undergo; Yaj I. 70 also says that a wife guilty of adultery should be deprived of her status as a wife as to wealth and religious observances, should be given bare maintenance and should be confined to a part of the house. Unchastity on the part of a Hindu widow disentitles her to maintenance under certain circumstances Vas 21. 10 provides that four classes of wives must be abandoned viz. one who yields herself to her husband's pupil or to his guru and especially one who attempts the life of her husband or who commits adultery with a man of a degraded caste and in 21. 12 Vasistha states that the wives of brāhmanas, ksatriyas and vaisyes, who commit adultery with a śūdra, may be purified by penance if no child is born (of the adulterous intercourse) but not otherwise. It is provided by Yaj. I. 72 that if a woman (of the three higher castes) conceives through adultery with a śūdra or kills her foetus or attempts the death of her husband or is guilty of grave sins (such as brāhma-murder) she shall be abandoned.

1566a Vide Ragam Kant v. Sayam Sundar 61 I. A 29; Yamunabai v. Manubai 23 B m. 608.
Manu IX. 188 provides that when women become *parita*, the rite called *ghatasphota* (the procedure of which may be seen at p. 388 of the H. of Dh. vol. II and in note 1168 in the Appendix to this volume) may be performed, but they must be given food and raiment and they must be provided with a hut near the family house. Yaj. III. 296 has a similar provision. The result is that there is no text which provides that a widow who is once unchaste must be deemed unchaste for ever and must for ever forfeit her claim even to a starving maintenance even if she repents, reforms her ways and gives up an immoral life. On the contrary the texts say that widows guilty of adultery are purified by penance and may be restored to all their social privileges. For example, Manu 1567 XI. 189 says generally about all persons that after they perform the appropriate *prayaścita*, they should not be rebuked or avoided (but should be restored to all social intercourse). The Mit. on Yaj. I. 72 expressly says that the abandonment of even such women as are referred to in that verse consists in not associating with them conjugal and in religious matters, but does not mean that they are to be driven out of the house. 1568

On Yaj. III 297 (which states that in the case of women there are three peculiarly grave sins viz. adultery with a low-caste man, killing the foetus and attempt to murder the husband) the Mit sums up the whole position as follows: (1) total abandonment of women for the four grave sins laid down in Vas. 21. 10 takes place when they do not perform penance; (2) women guilty of adultery not of the aggravated kind mentioned in Vas 21. 10 are to be given starving maintenance that would keep body and soul together and are to be lodged in a hut near the house and to be afforded protection (Yaj. I. 70 and III. 296), even if they do not perform the requisite penance. But the Mit. is silent as to the claim to maintenance of widows that at first led a life of incontinence (but not of the aggravated kind) and subsequently reformed their ways. But from Manu XI. 189 it may be inferred that widows not guilty of

1567. एवमननिर्देशनेन्द्रीयः विभिन्नस्वामित्वः व आयुर्मेध्य वार्ता- 
कथि ॥ मद्य XI 189 = विद्याधिकारिक 54 31. अधिकारी p. 98 says on p. I. 70, कुमारप्रकरणा: दु: संगिन्याय भति-कलहिमय... कालिन्दित्व-हति नाभवनात् ॥

1568. रघुनाथारायणस्वामी क दु: निवासतमुहत्वपाय... निषिद्धपरमेक्षेत्रस्य निषिद्धिनियतां। निषिद्धपरमेक्षेत्रस्य नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां। नियतां।

This passage of the Mit is quoted in Bhikurin v Harba 27 Bom L. R. 13 at p 20 (=49 Bom 463 at p 467).
aggravated adultery that have undergone the proper prāyuṣṭalla and that return to decent life would have been entitled to ordinary maintenance from the period they turned over a new leaf. 1569

A brief reference to the modern case law on this point may be made here. In Bhikubai v. Hariba 1570 Sir Lallubhai Shah (after an elaborate examination of ancient and medieval authorities and decided cases) held that a widow who had been unchaste, but who is proved to have given up the life of unchastity is entitled to bare maintenance. In Lakshmanand v. Anand the Privy Council make the general observation. 1571 ‘It is true that the right of a Hindu widow to maintenance is conditional upon her leading a life of chastity and that she loses that right if she becomes unchaste’. In Ksany v. Lakshmi 1572 it was held that subsequent unchastity disentitled a widow from recovering maintenance, even though it is claimable under an agreement made with the deceased husband’s father and brother. In Musammat Ganga v. Ghasita 1 All. 46 (F. B.) it has been held that unchastity does not incapacitate a daughter from inheriting stridhana. In Angammal v. Venkata 26 Mad 509 the same rule was laid down.

The illegitimate son born of a śudra concubine to a man of the three higher castes appears to have been held entitled to maintenance from very early times. Gaut. 28. 37 provides, 'the son from a śudra woman of a man (of the three higher varnas) who is without issue receives maintenance (lit source of maintenance), if he is obedient, in the same way as a pupil might receive'. And Gautama (28 43) extends the same rule to the offspring of prādāma unions. Vide p. 601 above and note 1135 for the text of Gaut and Br. on the point. Manu IX.

1569. Vide Sathyabhama v. Kesavacharya 39 Mad 658 at p 660 where it is said, 'But in none of these texts is there any provision for a woman who has repented and was subsequently leading an honest life. It is not to be presumed from the omission to provide for such a contingency that the resumption once made is to be irrevocable and that the fallen woman who had reformed is to be doubted even a starving allowance'. Vide also Bhikubai v. Hariba 27 Bom L R 13 at pp 23 and 26 and Ramtunar v. Bhagawanta 36 All 392, 394.

1570. 27 Bom L R. 13 = 49 Bom 459.
1571. 62 I. A 250 at p. 255
1572. 33 Bom L R. 510 Both cases seems to be in conflict with the decision in Shival v. Bai Shanki 21 Bom L. R. 429.
155 also provides that the son of a man of the three higher castes from a śūdra woman (not married to him) is not entitled to share in the ancestral estate. Br. (S.B.E. 33 p. 374 v. 31) states\(^{1573}\) that an obedient and meritorious son born from a woman of the śūdra caste to a man who has no other child should get maintenance and that the sapindas should divide the rest of the wealth of the deceased. Both the Mit and the V. Mayūkha, while explaining Yaj. II. 133–134 about the rights of the illegitimate son of a śūdra from a śūdra woman, remark that one who is begotten on a dāsi\(^{1574}\) by a member of the regenerate classes is not entitled to a share even at the father’s choice nor to a half share after his father’s death but that he is only entitled to maintenance.\(^{1575}\)

There is a good deal of case law on this subject, but much of it is irrelevant in this treatise. The right of maintenance attaches in the first instance to the separate property of the putative father and if the latter leaves no such property but was a member of a joint family it attaches to the property of the joint family of which the putative father was a member.\(^{1576}\) It has further been held that it does not matter if the woman was not a dāsi (a slave) or a permanent concubine in the exclusive keeping of a man or that the intercourse was adulterous.\(^{1577}\) It has been also held that the illegitimate son’s right to maintenance is a personal right and cannot be transmitted to his son\(^{1578}\) and that maintenance has to be provided for him till his death\(^{1579}\) (and not merely up to his attaining majority).}

\(^{1573}\) अन्वयायपरय...सामान्यदृष्टि...इनमें...cited above in n. 1135 and q. by \(\text{व्रतमाणा} \text{Y. 28, वृ. सप्तशतृखः p. 103). This verse of Br is cited and translated in }\)

\(^{1574}\) For the meaning of dāsi vide above p. 602 n. 1137.

\(^{1575}\) अद्व दुल्हा वणहारी...कि स्वकृतिसंज्ञानांत्तरं उभयें...सिद्धां य सत्ता \(\text{पी. 1136 Video वृ. सप्तशतृखः p. 104 and वृ. च. p. 488 for almost the same words The word अवबिनंतमां दोष नहीं में mean ‘bare maintenance’ or ‘bare necessities of life,’ has no reference to the amount of maintenance but is used to distinguish it from anisa (share). Vide Hiratal v. Meghray I. L. R. (1938) Bom 779 at pp. 787 and 794.


\(^{1577}\) Vide Raki v. Gound 1 Bom. 97.

\(^{1578}\) Roshan Singh v. Balwant Singh 27 I. A. 51 = 22 All. 191.

except in Bengal. The fact that the texts employ the word "śūdrāputra" (in the masculine gender) has been interpreted by the decided cases as involving that an illegitimate daughter is not entitled under Hindu Law to maintenance. Vide Parvati v. Ganpatrao and Vellayapra v. Natarajan.

Another frequent subject of litigation in modern times has been a concubine's right of maintenance under the Hindu Law. It has been held that a concubine has no legal right to claim maintenance from her paramour during the latter's lifetime, as he can discard her at any time and as she cannot compel him to keep her. So also a Hindu is not entitled to transfer joint family property to a concubine for her maintenance during his lifetime. But on the death of the paramour a great difference is made in the rights of a concubine that was in his exclusive keeping till his death. Such a concubine has been held to possess a legal right to maintenance payable out of the estate, ancestral or self-acquired as the case may be, in the hands of those who take it after the death of the paramour. The rights of women, who are not wives, to maintenance are based mainly on two texts, viz. of Nārāda and Kātyāyana, that are explained in the Mit, the V. Mayūkha and other medieval works. Nārāda says: "A king devoted to dharma should give maintenance to the women (stī) of a deceased person (when the king succeeds as heir by escheat), except when the deceased person is a brāhmaṇa"; while Kātyāyana states, "heirless property goes to the king after keeping aside (wealth sufficient to provide) for the women (yost), the dependents (or servants) and the funeral rites and śrāddhas (of the deceased)."

1581. 18 Bom. 177, 183.
1582. 50 Mad. 340.
1584. Thakur Rab Prasad v. Chhotay Munwan 12 Lucknow 466.

Maintenance of concubine

Kaut, also similarly prescribes (III.1587 5. p. 161), 'the king takes heirless property except that of śrotiyas, setting apart (wealth) for the maintenance of women (of the deceased), for funeral rites and for poor or wretched (dependents of the deceased). The Mit., the V. Mayūkha, the Par. M. and others state that the verses of Nār. and Kāt refer to avaruddha-stri alone, since the word paṭnī (duly wedded wife) does not occur therein, but only the words 'yosū' and 'stri'. There has been a great divergence of views in the decided cases about the significance of avaruddha stri. It is generally rendered as a concubine or mistress in the exclusive keeping of a person till the latter's death. Several conditions are necessary to constitute a woman an avaruddha stri capable of claiming maintenance from the estate of her deceased paramour in the hands of his sons or other heirs. In the first place, she must have been continuously and exclusively in his keeping till his death. How long she should have been thus in his keeping cannot be fixed by any hard and fast rules. She must have been so long in his keeping continuously till his death that it can be said that the connection had become permanent. In Bai Nagubai v Bai Monghoba a period of five years was deemed to be sufficient. In the second place the concubine1589 must observe sexual fidelity to her deceased paramour after his death in order to be able to claim maintenance from the estate in the hands of his heirs or successors. In Bai Monghoba v Bai Nagubai1590 a third condition was laid down viz. that the connection of the concubine with the deceased paramour should be perfectly open and recognized and she must have been kept practically as a member of the family. But in Bai Nagubai v Bai Monghoba1591 the Privy Council overruled the above decision and held that in order to entitle a mistress to maintenance it is not necessary that she should have resided in the same

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1587. अवरुद्धस्त्री राजा हरेस्वरसिद्धि-नैत-काव्यवस्त्रस्त्रा ओतियबलिता। यदद दशमेश्याम: माथ्यं:। कौ. III. 5 p 161, Dr Sham Shastri's translation (p 205) 'property for which no claimant is found shall go to the king, except the property of a woman, of a dead man for whom no funeral rites have been performed or of a niggardly man' is clearly inaccurate and hardly in consonance with the actual words of the text.

1588 प्रवहि निरालवधेनोरस्त्रा-व्यावहिते—पनित-वति—वन्यवयवधेनोरविषयः भोक्त्रखल्लकै। नारकचन्द्रम अर्घ अर्घ...स्वक्षुद-'वन्यवयवधेनोरविषयमेव। करसाब-प्रखरणात्। मिति. on पा. II. 114.


house with the deceased together with his wife and the ordinary members of his family. And in Dayavat v Kesara the 1592 it was further held that the concubine need not prove that she was recognized by the family of the deceased or that his relationship with her was known to the family. A further restriction was imposed by the case of Ananddal v Chandraban 1593 that the intercourse with the paramour should not have been adulterous. But this case has been overruled by a recent Full Bench decision in Akku v Ganesh 1594 which holds that a permanently kept concubine is entitled to be maintained out of the estate of her deceased paramour, although she has a husband living (who was examined in the case as a witness), provided she observes sexual fidelity to the deceased paramour after his death. It becomes, therefore, necessary to examine the Sanskrit medieval commentaries and digests in order to arrive at a correct interpretation of the expression 'avaruddha stri'. Strangely enough, the Mit. does not define the word in the section on ṽāyabhāga, but only under 'strī-sangrabhāna'. Yāj II 290 provides, 'a man should be awarded a fine of fifty panas, if he has intercourse with dāsīs that are avaruddhā or that are bhujisye and also (other women such as prostitutes and suvarnis), even though ordinarily they (i.e. dāsīs and others) are approachable (without incurring the consequence of punishment)' The Mit. explains that the word 'ca' placed after 'bhujisyāsu' in Yāj. II. 290 is meant to include vesyas and suvarnis along with bhujisyās. Acc. to the Mit., the verse prescribes the same fine for intercourse with three kinds of women, viz. dāsīs that are avaruddhā, dāsīs that are bhujisye and other women such as vesyās (who are ordinarily approachable by all males of their own or higher castes) and suvarnis (who abandon their husbands and resort at their desire to some other male of their own caste, as defined by Yāj. I. 67). A woman though originally a vesyā or a suvarni may be known to be kept by a man. In that case if another man approaches her, Yāj. II 290 declares that he would be liable to be fined in the same amount as if he approached an avaruddhā dāsī or bhujisyā, because being in the keeping of another at the time she would be like a wife (as the other two classes do) so far as punishment for approaching a kept woman is concerned. This verse is not concerned with the maintenance.

1592. 36 Bom. L. R. 61.
1593. 48 Bom. 203 = 26 Bom. L. R. 63
of women at all. The Mit. here defines 'avaruddha dāsi' as "a slave woman who is prohibited by her master from intercourse with other men with an order to stay in the master's house alone in order that there may be no loss of attendance (on the master)." The Mit. defines a bhujisya dāsi as 'one who is restricted (as to enjoyment) to certain definite males' (purusāmyata-pragrahā bhujisyāḥ)\(^\text{1595}\). It is worthy of note that the Mit. employs different phraseology in defining the two words. In defining a bhujisya it employs the word 'nyata', which generally means 'fixed or definite', while in defining 'avaruddha' it employs the word 'niruddhā' meaning 'prevented or prohibited'. If the two words were intended to convey the same meaning, there is no reason why the Mit. should not have employed the same word ('niruddhā) in defining a bhujisya. The difference between an avaruddha dāsi and a bhujisya is that the former is ordered to stay in the master's house, while the bhujisya is not so ordered and secondly the avaruddha is forbidden to have sexual intercourse with any one except the master, while the bhujisya is not so forbidden, but she is to restrict herself to enjoyment by certain specified males (friends or men of the master's family) and not necessarily by the master alone. This is the meaning assigned to those words by Mitramiśra in his commentary\(^\text{1596}\) (not his digest) on Yaj II 290. The Mit. itself indicates the meaning of 'niyata' by saying elsewhere that ownership springs from certain fixed sources (nyatopāyakān svatvam on Yaj II 114). It is respectfully submitted that the Privy Council gave a wrong interpretation of the word 'avaruddha' in Bān Naqubai v. Bāt Monghiban\(^\text{1597}\). Though slavery is now abolished in India there is no reason why the two characteristics of avaruddha (viz staying in the master's house and being

1595. \textit{Vide note 1134 for }\textit{ya II 290.} इच्छाकृत्य वाणिज्यी वाणिज्या एव 
स्वाभिन ज्ञातिविद्याधिकारिः गुरु एव स्वाभित्वधिकारिः हृदयकारोपितां निकृप्या अव-
रुद्धा। हेक्ष्यतानुपालन स्युनिज्या। \textit{Yaj II 114).} तथा व्यासी हेक्ष्यतानुपालनानि वाणिज्यानि साधारणप्राणी ज्ञातिविद्याः अम् प्रदायु। नितिः, on }\textit{ya II, \textit{290.}}

1596. \textit{समग्न गृहस्वत्तममवृत्ति।} अवकृपादिकथिताघिः। \textit{Bātī हेक्ष्यतानुपालन स्युनिज्या परिष्कृतिः च विविधा।} (एकं दृष्टेन स्वभिन ज्ञानानि हृदयकारोपितां निकृप्या, ज्ञानिः प्रवेशा वेदान्त। \textit{Yaj II 114).} तथा व्यासी हेक्ष्यतानुपालनानि स्युनिज्यानि स्युनिज्यानि। ... \textit{Ya II 290.}}

1597 53 I. A. 153 = 50 Bom, 604.
exclusively kept by the master) stated by the Mit. should not have been strictly adhered to by the Privy Council, particularly when they were holding heirs liable for the maintenance of kept mistresses, which is hardly ever allowed in any other system of law. With the greatest respect to the Full Bench, it must be said they went wrong in holding that bhujisya means 'a mistress who is restrained from intercourse with other persons (other than the master)’ and in holding that the only distinction between an avaruddha and a bhujisya is that the former is required to stay in the house of the paramour, while the latter is not (47 Bom. L. R. at pp. 13 and 22). The learned judges have not correctly interpreted the word ‘niyata’ and also the explanation of ‘bhujisya’ given by the Bālambhatri. The meaning of the Bālambhatri was misunderstood on account of the wrong meaning attached to the word ‘niyata’. What the Bālambhatri means in explaining the definition of bhujisya is 'one who is to be enjoyed by certain definite males only other than the master' (i.e., by the master and also certain defined males) and it does not mean 'who is forbidden to be enjoyed by males other than the master'.

The F. B. further rely upon a passage of the Mit. in support of their conclusion (47 Bom. L. R. at pp. 14 and 22) On the question of what properties are impartible, the Mit. on Yaj. II. 119 quotes Manu IX. 219 viz. 'clothes, conveyances, ornaments, cooked food, water (wells &c.), women, yogaksena and pastures (or ways)—these they declare are impartible.' The Mit explanation of the word ‘striyah’ may be translated as follows: 'striyah' here means 'female slaves'; if they are uneven in number they should not be divided by taking their price into consideration, but they are to be made to work in turns (for the separated members of the family), but as regards women kept by the father such as svairins and the rest, they are not to be divided by the sons even though they be even in number''. It is difficult to see how this passage supports the Full Bench decision. That
passage can be explained in two or three different ways. In the first place, the Mit. having itself clearly distinguished and defined three classes, viz avaruddhā, bhujisyā and svairinīs (together with vēyas also) it cannot be lightly supposed that elsewhere it gives up that distinction. Therefore it would be difficult to say that here (on Yāj. II. 119) the Mit. means that svairinīs are also the same as avaruddhā. Hence the interpretation should be that women who are avaruddhā (kept exclusively by the father) and even other women also like svairinīs (who had sexual connection with the father though not as avaruddhā) should not be divided i. e. a ‘ca’ should be understood after ‘svairinīdyāyah’. Or it is possible to hold that the word ‘avaruddhā’ in that passage is not employed in the strict technical sense (as defined by the Mit. on Yāj. II. 290), but in its etymological sense meaning ‘women who are svairinīs and the like that are taken into his harem (or under his protection) by the father should not be divided’. This interpretation derives support from the explanation offered by the Subodhini (which is repeated almost verbatim by the Balambhattī) about the text of Gautama quoted by the Mit. that ‘samyukta’ in Gaut. means ‘enjoyed’ or ‘confined’ (in the house). This shows that the words ‘ruddhā’ and ‘avaruddhā’ were used in the etymological sense by distinguished writers. The Sm. C. II p. 321 while explaining the word ‘ruddhā’ in Manu IX. 12 applied to a wife guilty of adultery explains it as meaning ‘confined in a part of the house’ (grhe avaruddhām). When the Mit. states (p. 811) that the verses of Nār. and Kāt. refer to avaruddhā stri it follows that these verses do not refer to bhujisyā, who would therefore be deemed not entitled to maintenance at all.

There is a large body of caselaw about the right of a widow in a joint Hindu family to reside in the family house, about the right of a daughter-in-law against her deceased husband’s father who has no ancestral property in his hands and against the heirs of the father-in-law, about the amount of maintenance to be allowed to a widow and about the rate at which arrears of maintenance are to be allowed, about the period for which arrears may be awarded, about making the maintenance a charge on the estate in the hands of the heirs, about varying the rate of maintenance fixed by a decree or an agreement &c. These are not quite germane to the present volume, particularly because most of the decisions on these
matters are not based on the words of the smrtis or of the medieval digests, but are based on logic and principles of justice and equity. But there is one matter which deserves a passing reference. Ancient Hindu Law attached the highest spiritual importance to the payment of debts (vide pp. 414-417 above). Therefore debts contracted by a Hindu are held by the Courts to take precedence over the right of maintenance of a man’s wife, his infant child or his widow after his death. 1600 Similarly debts contracted by the manager of the joint family of which the widow’s husband was a member would take precedence over the widow’s right of maintenance, provided the debts were for the benefit of the family or were for legal necessity.

The last vyavahāra apada is prakīrnaka, which is defined by Visnu Dh. S. 42 1 as ‘miscellaneous’ (yadanuktaṁ tat prakīrmakaḥ) or by Nār. as matters that were to be set in motion by the king himself (vide note 331). These have been dealt with above and do not require any further treatment here.

At the end of this section on Vyavahāra it would not be out of place to say a few words about wills. Owing to the joint family system and the custom of adoption testamentary dispositions did not come into vogue in ancient India. Among the many kinds of documents (telkhyā) mentioned by Kaut., Br., Kāṭ and others cited above there is no term for a document which can convey the idea of a modern will. But it need not be supposed that the idea had not at all dawned upon the minds of people before the advent of the British 1601. Wills were known among Mahomedans and contact with them would naturally suggest the idea of a will. Oral or written instructions by a man expecting death to his heirs intended to affect the disposal of his property must have been given occasionally and should not


1601. In Nagalutchmees Ummal v. Gopoo Nadaraya 6 Moo I A. p 309 the P. C. said (at p. 344): ‘It must be allowed that in the ancient Hindu Law, as it was understood through the whole of Hindustan, testamentary instruments in the sense affixed by English lawyers to that expression were unknown; and it is stated by a writer of authority (Sir Thomas Strange) that the Hindoo language has no terms to express what we mean by a will. But it does not necessarily follow that what in effect though not in form are testamentary instruments which are only to come into operation and affect property after the death of the maker of the instrument were equally unknown.
be supposed to have been entirely unknown. Verses 341–359 of the Rajatarangini IV. appear to embody the political testament of king Lalitāditya of Kashmir in the first half of the 8th century. Kāt. (566) makes a very near approach to the modern conception of a will. He says, 'if a gift was promised by a man for a religious purpose whether in good health or when afflicted with disease, the son should be made to pay it, if the father dies without giving it over.' Here the mere declaration of the intention of a person was made enforceable after his death against the son or other heir. Brhaspati's verse saying that a promise or direction to take effect after the death of the promisor was not ordinarily enforceable has already been quoted above (n. 823). In the quarterly of the Bharata-Itihasa-samsodhaka Mandala of Poona, vol. XX p. 210 (for May 1940) there is a letter (dated 1775 A. D.) written by one Naro Babaji, who, after referring to his illness, provides on a generous scale for his funeral and śrāddha expenses and makes dispositions in favour of his daughter-in-law, of another widow, and for the marriage of his kinsman's sons and distribution of the balance of his assets.
One of the earliest wills to come before the British Indian Courts was that of the notorious Umichand (who died in 1758 A.D.). Bengal Regulation XI of 1793 recognized by section VI the power of a Hindu proprietor to make a will or declaration giving, prior or subsequent to 1st July 1794, his entire landed estate to his eldest son or next heir or other son or heir or to any person or persons. In a Bombay case the will of a Hindu made in 1789 is referred to. A Pundit of the Recorder's court of Bombay gave it as his opinion in 1812 A.D., 'there is no mention of wills in our Shaster; therefore they ought not to be made' (vide Strange's Hindu Law, vol. II p. 449). In I. L. R. (1940) 1 Cal. 415 at p. 424 the Privy Council observe that the Hindu will in its present form is a development since the middle of the 18th century.

It is beyond the scope of this work to dilate on the modern Acts dealing with Testamentary dispositions such as the Indian Succession Act (Act 39 of 1925).

Now that the foregoing lengthy presentation of the ancient and medieval Hindu judicial procedure and substantive law has been brought to a close a few general observations may be indulged in here. The Hindu Law of pleading and evidence compares favourably with similar laws of many other countries and has extorted the admiration and encomiums of such

(Continued from the last page)

1604. The will is set out in an English translation in W. A. Montros's 'The Hindu Will in Bengal' (Calcutta, 1870) pp. 99ff.

eminent Jurists and Judges as Sir William Jones, Sir Thomas Strange and others. For example, Sir Thomas Strange in 'Hindu Law' (1830) vol. I observes (at p. 311), "sufficient be it to observe that Hindu pleading was noticed with commendation by Sir William Jones and that, with some trifling exceptions, the Hindu doctrine of evidence is, for the most part, distinguished nearly as much as our own, by the excellent sense that determines the competency and designates the choice of witnesses with the manner of examining and the credit to be given them; as well as by the solemn earnestness with which the obligation of truth is urged and inculcated; insomuch that less cannot be said of this part of their law than that it will be read by every English lawyer with a mixture of admiration and delight, as it may be studied by him to advantage. Even the mous perjury which it has been supposed to sanction being resolvable after all into no greater liberty than what our juries (not indeed with perfect approbation) have long been allowed to take, where the life of a prisoner on trial before them is at stake; credit is to be given to the pregnant brevity of the Hindu oath viz. 'what you know .. declare at large and with truth' (Manu VIII 30); as also to the noble warning, with which the subject as detailed by Manu is ushered in, that 'either the court must not be entered by judges, parties and witnesses or law and truth must be openly declared' (Manu VIII 13)." The medieval digests made a very near approach to the modern ideal of equality of all men before the law. How even in the 20th century the much vaunted equality before the law of all people in England is far from being achieved and how it often proves quite illusory where the poor or the labouring classes are concerned is well brought out in a book entitled 'Justice in England' by a Barrister published by Victor Gollancz in 1938, especially in chapters I and VI. The Hindu jurists evolved tolerably clear and sound ideas about contracts, debts, deposits and pledges, sales, mortgages and gifts of immovable properties, developed a system of joint family rights and liabilities and laid down a peculiar law of inheritance and succession to males and females. The Hindu system of inheritance and succession

1605a This is a reference to the texts of Gaut, 23 29, the Mahābhārata, Manu, Yājñavalkya and others cited on p. 353 above Sir William Jones remarks (in Works, vol. VIII p. 445, ed. of 1807) ‘In the great system of contracts and the common intercourse between man and man, the Pooeis (Pothis?) of the Indians and the Digest of the Romans are by no means dissimilar’. 
pursues a middle course. It does not distribute the estate of a deceased person simultaneously among several heirs as under the Mahomedan Law (where the widow, the father, mother, sons and daughters of a man take the estate together if they are all alive at the time). Nor did the Hindu system confine the descent to a single person among a group of heirs of the same degree and sex as in the English system before 1926 (where the eldest son succeeded to the real estate of an intestate person).

It has further been seen how the ancient and medieval Hindu rules as to debts, adoption, partition and inheritance have been moulded for over a century by Legislation and by decisions of the Privy Council and the Courts in India. Many persons feel that the time has now arrived for the codification of Hindu Law. A Committee presided over by Sir B N. Rau has prepared a draft code which attempts to codify certain branches of Hindu Law. From several quarters there has been vehement opposition to this draft code. The objections raised are many. It is not possible to deal here with the several objections in detail. But some of them which raise questions of fundamental importance will have to be briefly stated and answered. The first objection is that in view of Queen Victoria’s proclamation of 1858 the Indian Legislature should not interfere with the customs and usages of the people that are part and parcel of the Hindu religious system. But this objection is hollow and unsubstantial and conveniently ignores what has happened during the last hundred years or so. All that the Queen proclaimed was: ‘Firmly relying ourselves on the truth of Christianity and acknowledging with gratitude the solace of religion we disclaim alike the right and the desire to impose our convictions on any of our subjects. We desire it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.’ Notwithstanding the noble sentiments expressed here, the Indian Legislature both before and after the proclamation passed numerous laws that more or less impinged upon or affected the religious theories, sentiments and practices of millions of Hindus! The following is a list of some of the important laws of this character which will convince any one of the fact that
people have always submitted to laws passed by the Governor-General or the Legislature that prevented them from carrying out their cherished ideas and practices: Regulation XVII of 1829 which declared the practice of Sati illegal and a crime punishable by the courts; the Caste Disabilities Removal Act (XXI of 1850); Hindu Widows' Remarriage Act (XV of 1856, which legalises the marriages of Hindu widows notwithstanding any custom or interpretation of the Hindu Law to the contrary; the Indian Penal Code (XLV of 1860, which makes sexual intercourse by a man with his own wife that is under thirteen years of age punishable as rape); the Child Marriage Restraint Act (XIX of 1929), which makes the marriage of a male below 18 and of a female below 14 punishable as a crime; the Hindu Inheritance (Removal of Disabilities) Act (XII of 1928) which sets aside the Mitaksara rules about exclusion from partition and inheritance except in the case of those that have been lunatics or idiots from birth; the Hindu Law of Inheritance Amendment Act (II of 1929, which enables the son's daughter, daughter's daughter, sister and sister's son to succeed under the Mitaksara in that order after the paternal grandfather and before a father's brother); the Hindu Gains of Learning Act (XXX of 1930); the Hindu Women's Rights to Property Act (XVIII of 1937, which enables the widow of a deceased member of a joint Hindu family to succeed to the interest of her husband in the joint family property and to succeed to her deceased husband's separate property for the same share as that of a son). The Privy Council claimed more than 70 years ago that 'the British Government by virtue of its sovereign power asserted, as the former rulers of the country had done, the right to visit endowments of this kind (viz temples) and to prevent and redress abuses in their management' (Raja Muttu Ramalinga v. Peramayagum I L A 209 at p.233). Non-Hindu Judges of the Privy Council and the High Courts have been interpreting and laying down the Hindu Law for over a hundred years and on many points the law declared by them has thoroughly changed the law of the smritis and digests. If all this has been allowed to happen without hardly a demur, there is apparently no satisfactory or convincing reason why an elected Indian Legislature the majority of whose members are likely to be Hindus should not pass an Act dealing with Hindu Law.

Another objection raised even by some retired judges of the High Court is that the present system of laying down the
Hindu Law by means of judicial decisions is quite satisfactory and there is no need of a code of Hindu Law. This objection merely shows that change is rather a painful process for most men. The present method may be a veritable El Dorado or paradise for lawyers and busy bodies fomenting longdrawn litigations. One must stand appalled at the colossal expenditure of time, labour and money which must have been involved during the last hundred years or more in fighting out doubtful points of Hindu Law from the lowest court to the Privy Council. It not unfrequently happens that after a point had been settled by a Full Bench decision of a High Court and after common people and lawyers had followed the law thus settled for fifty years the Privy Council upsets the decision on an appeal by an enterprising litigant. For example, the Bombay High Court decided in 1879 in *Ramp v. Ghamau* (6 Bom. 498) that the adoption by the widow of a deceased co-parcener, who had not her husband’s express authority to adopt, was invalid, if made without the consent of the surviving co-parceners. But in 1933 the Privy Council held that *Ramp v. Ghamau* was wrongly decided and that a widow can adopt without her husband’s express authority and even in the teeth of the opposition of the surviving members of her husband’s family. And when an appeal was made to the principle of ‘*stare decisis*’ the Privy Council was pleased to observe, ‘It was pressed on their Lordships that *Ramp v. Ghamau* had been accepted and acted upon in the Presidency of Bombay since 1879 and that the decision should not be disturbed. But this is a belated appeal. It should have been made when *Yadav v. Namdeo* was before the Board’. To ordinary minds this dictum, speaking with the utmost respect, appears strange. If for some reason or other a certain line of argument is not placed before the Privy Council by the counsel of a private party and a wrong decision is given, is it to be supposed that all litigants are to be precluded from trying to set the wrong decision right for all time to come? The Privy Council has not seldom set right a wrong decision given by the Board in a prior appeal. In *Sahu Ram v. Bhup Singh* 44 I. A. 126 the Privy Council held that the pious duty of the son to discharge his father’s or grandfather’s debts does not attach while the father or grandfather is alive; but in *Brij Narain v. Mangla Prasad* 51 I. A. 129 the Privy Council held (at p. 134) that the pious duty is always there irrespective of the question whether the father or grandfather is alive or dead.
Others opine that one Code for the whole of India is not and cannot be a practicable proposition. In support of their objection they rely on the existence of the several schools of law now prevalent in the whole of India. If India desires to be a self-governing political unity in the future, there is a compelling reason why it should be governed by a single Code of Hindu Law, as it has been governed and will be governed in other substantial provinces of law by codes applicable to all alike. That will help in the direction of solidarity and will be of some use in doing away with fissiparous tendencies. There are really only two schools of Hindu Law. And the unification of Hindu Law will be helped by the abolition of the right by birth which is the cornerstone of the Mitaksara school and which the draft Hindu Code seeks to abolish. Many people are vehemently opposed to the change. But they forget that, what with the rule that any member of a joint Hindu family may alienate his interest for value, what with the Gains of Learning Act, the Hindu Women's Rights to Property Act and other enactments, the real core of the ancient Hindu family system has been removed and only the outer moribund shell remains (vide p. 604 above). Some are opposed to giving along with sons a share to daughters, particularly to married daughters. But here a compromise may be effected by allowing a share to unmarried daughters alone (as Yāj II 124 and the Mitaksara thereon expressly provide).

Another provision in the draft Hindu Code which has come in for severe animadversion is the provision that a woman even when taking by inheritance an estate from a male or by partition should be held to become absolute owner thereof. In the first place, if a man's agnate of the 13th degree or a male cognate up to the 5th degree takes an estate absolutely and may squander it away as he pleases, one fails to see why his own widow should not have a like power in the 20th century, whatever may have been the view of ancient works. In the second place, this objection can be met by means of a compromise, viz. that a widow inheriting her husband's estate will take only a limited estate if at the time of her husband's death any one of the compact series of heirs or any direct lineal descendant of her husband (such as a son's daughter or daughter's daughter) be alive, but she will take an absolute estate if none of these exists. Such a compromise should allay all fears about the widow unfairly disposing of the estate against near relations.
like the daughter or daughter’s son or husband’s brother &c. There are numerous other objections, but they are in matters of detail and if once it is agreed that there should be a Code of Hindu Law passed by the Indian Legislature these matters of detail may be adjusted to the satisfaction of most people.

Similarly serious objections are raised to the provisions of the Code as regards marriages and divorce. The draft code proposes to do away with the prohibitions based on sameness of gotra and pravara. This is a desirable change and being optional should not be opposed. Some reasons for this change have been advanced in H. of Dh. vol II. p 498. Besides, this provision will affect only a small percentage of the Hindu population. Similarly the insistence on monogamy is opposed by many. In this case some compromise may be arrived at as regards classes to whom two wives are an economic advantage. The provisions about divorce have been overdue. Among the higher castes no divorce has been allowed on any ground whatever. Many hard cases occur where there is no redress and the draft code proposes to give relief in such cases.

On the most contentious subject of adoption the draft code, it is satisfactory to note, has made certain provisions which are in line with the suggestions put forth by me in note 1338a above.

Compelling reasons exist why Hindu Law should be codified as early as possible. Men naturally desire that they should have easy access to the laws by which they are to be governed in all their actions, dealings and relations. It is hardly a commendable or desirable state of things that people should be forced to consult lawyers or bulky textbooks every now and then and even in small and simple matters. The general outlines and provisions of Hindu Law must be within easy reach of every intelligent or inquiring Hindu. This can only happen if there is a code for all Hindus or, if that is deemed impracticable for the present, at least for a large province or for a number of provinces.
CHAPTER XXXII

SADĀCĀRA

CUSTOMS AND MODERN CUSTOMARY LAW

From Gautama downards many writers dilate upon the sources of dharma. Gautama I 1-2 states: 'the Veda is the source (mula) of dharma and also the tradition (or smriti) and practice of those who know the Veda'. Similarly Āp. Dh. S. (I. 1. 1. 1-2) says: 'we shall propound the acts (that produce merit) which are evolved from conventions and practices; the authority (for finding out the dharmas) are the conventions of those who know the dharma and the Vedas'. Vas. I. 4-7 provides: 'dharma is declared by the Vedas and Smrtis; on failure of these two the practice of the āsistas is the authority (for finding out what dharma is); a āista however is one whose heart is free from (worldly) desires and (only) such acts of āsistas are (to be held as) dharma for which no (worldly...

1606. This chapter and the next represent, with a few minor additions, two of the four lectures I delivered in November 1944 at the Bombay University as the Sir Lallubhai Shah Lecturer. I am thankful to the Syndicate of the Bombay University for permission to incorporate these two lectures in this volume.

1606a. भिन्नः परम्पूर्वः सदाचारिः विविधāनं स्थवितिति तथा. नी. I 1-2, अयत्ता: साम्राज्याचारिकां विविधानं स्थवितिति तथा. नी. I 1-2, अयत्ता: साम्राज्याचारिकां विविधानं स्थवितिति तथा. नी. I 1-2. 

According to kūlīka and others, such moral qualities as 'devotion to learning, to gods and to parents' are mentioned in Hārīta (quoted by Kūlīka). All commentators connect 'svāsya' in Manu II 12 and Yaj I 7 with 'pryam', but Pandit Gattalal connects it with 'sadācāra' which means according to him 'sāmpadāya' (in Satyadhāntamārtanda I. 5 p. 49, Nand ed. 1942).
or secular) cause (or motive) can be assigned.\textsuperscript{1607} Manu II. and Yaj. I. 7 declare that Veda (or śruti), smṛti and the practices of the good are the principal sources of dharma. The words employed in these works are śīla, samayya, ācāra or sadācārā or śīstācārā\textsuperscript{1607} (the latter three meaning the same thing). \textsuperscript{1608} Ap. employs both words viz. samayya and ācāra, the first of which probably means 'agreement or convention or usage', while the latter means 'custom'. The word 'custom' now conveys the idea of some antiquity,\textsuperscript{1608} while usage or convention does not necessarily convey that idea. A usage may be recent or it may be established by agreement among a certain class of persons (such as traders or craftsmen). We have to see what is meant when it is said that ācāra or śīstācārā or sadācārā is the source (mūla) of dharma. An indication of the meaning is furnished by the word pramāṇa employed by Ap. and Vas. The meaning is that just as the revealed books (Veda) and the smṛtis authoritatively lay down what dharma is, so also in our quest to find out what dharma is in the varying circumstances of life the practices of those who may be called śāstras furnish us with the necessary criterion or norm i.e. śīstācārā is the touchstone for judging whether an act is in consonance with what the śāstras require us to do. The theory of the ancient writers was that the smṛtis were based on parts of Veda (that consists of mantras and Brāhmaṇa texts) which though formerly existent are not now extant or available, that similarly the practices of those who were learned in the Vedas and were deemed to be śīstras must be inferred to have been based on portions of Veda not now available. This theory was advanced by such ancient

\textsuperscript{1607} As to the qualifications of śīstras, vide H. of Dh. vol. II. pp. 971-72 where references are given to Baud Db S., Mann, the Matsyapurāṇa and a few other works. The Tai. Up. I. 11 contains perhaps the oldest extant indication as to who should be regarded as śīstras, though that word itself is not used. अथ वावः वे कर्तव्यसिद्धिकास वा इसविविधिकास वा स्पष्टः। वे तत्र भाषणां संहितायध्यात्मिका अद्वैतव धर्मवाच्यात्म। रूपः यथा ते तत्र तत्त्वं तथा तत्र तत्त्वं। अध्यात्मिकां समाप्तं वे तत्र भाषणां... परांतिकाम्। रूपः यथा ते तेषु भवन्ति तथा तेषु भवेत्।

\textsuperscript{1608} Vide Dalglish v. Guzuffer 23 Cal. 427, 429 and Saratullah v. Prau Nath 26 Cal. 184, 187 for the meaning of usage in modern enactments as distinguished from 'custom'. In Juggomohun Ghose v. Manuckchund 7 Moo I A. 264 at p. 282 (mercantile) usage is sharply distinguished from custom in that the former need not possess the characteristics of antiquity, uniformity and notoriety that the latter must possess.
Inference as to practices of śīlās

writers as Āp.1609 and was taken up by many subsequent works. Manu II. 7 also states that whatever dharma has been ordained for any person by Manu, all that has been entirely declared in the Veda for the Veda is full of all knowledge. But it does not follow from this nor is it ever meant that all practices of śīlās are authoritative in matters of dharma. The qualification was added that where the practices of śīlās are clearly referable to or are prompted by a seen motive or by the desire to secure pleasure, there they are not authoritative. Manu (II. 18) restricted the word sādācāra to the customs handed down from generation to generation among the four varṇas and the mixed castes in the country called by him Brahmāvarta (II. 17). But many other writers did not so restrict it in this way.

We have to distinguish between what are called the sources (mūla or pramāṇa) of dharma and the śāhānas of dharma (Yaj I. 3 and 7).1610 The former indicate to the inquiring spirit what dharma is (i.e. they are what are called jñāpaka hetu), while the latter must be studied as aids by the expounders of dharma in order to correctly grasp what dharma is, i.e. the different lores (other than Veda and smrī) are not directly the sources of dharma, but are only meditatively so. This distinction is an ancient one as even Gautama XI. 19 provides that the king is helped in his administration of justice by the Veda, the dharmaśāstras, the auxiliary lores (āṅgas), the Upavedas and the Purāṇa.1611

The position of the Pūrvamāṃsā in relation to the authoritateness of smrīs and customs requires careful and

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1609. आर्यसम्बन्धृधर्मानिष्कारणः | ... भाष्यानको भिषयस्तेनाद्वितीय: पाण्डु- 
वेदोपदेशार्थस्य| विवेकादुस्मिथान्ये। वच हि मीत्याबिधः महाविच च वच शास्त्रार्थः । तदुपदेशार्थानि नाराय ध्यानाद: | आद। प्रौ, I. 4 12, 8, 10-13 The first sūtra may be used for explaining Vas I. 4. सृष्टिनिर्माणायार्थाश्च समाधिराज्यम्. विधाः। भाष्यानको विधानानि बर्तस्म त्व। जन्हेर्वेद धर्माश्च विधानानि हेतु; । जति या जैकोधेनेहातानि, while निर्देशनम् explains, 'विधानानि भीवार्तरामलानाबन्धानानि। य त्स पदधर्मानि श्च नाराय' विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। जति या जैकोधेनेहातानि, while निर्देशनम् explains, 'विधानानि भीवार्तरामलानाबन्धानानि। य त्स पदधर्मानि श्च नाराय' विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः।

1610 नूदानान्यायासंसारधार्मिकसङ्गीताः। वेदानि: भाष्यानको विधानानि बर्तस्म त्व। जन्हेर्वेद धर्माश्च विधानानि हेतु; । जति या जैकोधेनेहातानि, while निर्देशनम् explains, 'विधानानि भीवार्तरामलानाबन्धानानि। य त्स पदधर्मानि श्च नाराय' विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। जति या जैकोधेनेहातानि, while निर्देशनम् explains, 'विधानानि भीवार्तरामलानाबन्धानानि। य त्स पदधर्मानि श्च नाराय' विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। जति या जैकोधेनेहातानि, while निर्देशनम् explains, 'विधानानि भीवार्तरामलानाबन्धानानि। य त्स पदधर्मानि श्च नाराय' विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। जति या जैकोधेनेहातानि, while निर्देशनम् explains, 'विधानानि भीवार्तरामलानाबन्धानानि। य त्स पदधर्मानि श्च नाराय' विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः। मात्र विन्दितया ब्रह्माण्यान्ययि विधायिकाः।

1611 तत्र च स्यद्वारा पैदि: पर्माधाराश्रयं धनेवेश्वर पुराणसः भी। XI, 19,
detailed consideration. In I. 3, 1–2 Jaimini considers the
question whether such smrti injunctions as 'one should perform
the Astakā śrāddhas' or 'one should construct a tank or
set up a prapā (place for free distribution of water to thirsty
travellers'), or 'tufts of hair should be kept on the head' (at
caula according to the gotra) are authoritative and establishes
the conclusion that they are authoritative, since such smrti
injunctions equally with Vedic ones are addressed to the same
persons (viz. the followers of the Veda) who have to act
according to them. The idea is that those who perform the acts
expressly enjoined by the Veda are also seen to perform the
acts enjoined by such smrtis as that of Manu and therefore the
principal reason why these smrtis are authoritative is the fact
that those who know the Veda accept these smrtis as authorita-
tive and hold fast by them, as Medhatithi on Manu II. 6 says
citing some verses from his own work called Smrtiviveka. Sabara
endeavours to show that there are indications (tinga) in
the Vedic texts pointing to the existence of what is prescribed in
the smrtis. e.g. he cites the Vedic verse 'yām janāh' as indicative
of astakas, Rg X. 4. 1 of prapas, Rg. VI. 75. 17 of tufts of hair. The objection may be stated as follows:—The smritis are composed by human authors (i.e. they are purusaya) and so have no independent authority in matters of dharma, as a man may say what is either false or mistaken. If it be said that the smritis really propound what is stated by the Veda, then they are practically superfluous and useless. and not being Veda they should be discarded (anapeksta). To this the reply is that smritis are generally authoritative, as they must be held to be based on Veda because they are composed by men (like Manu) who were followers of the Veda, because what the smritis say has been consistently followed from generation to generation by the sistas and because it is possible to regard the Veda as their source. To the question why the Vedic passages on which the smriti rules are postulated have been based are not seen or found by us several answers were proposed by different writers. One view was that just as Vedic indications about locks of hair lead to the inference of sruti texts enjoining the keeping of tufts on the head, so the fact of the existence of such rules leads to the inference that sruti must have contained injunctions corresponding to all smrti prescriptions. Kumarila raises objections to this view. Inference is based on perception (pratyaksha) and invariable concomitance (vyapti). There is no vyapti between the smritis and sruti texts that are never found pronounced by any one, so no inference is possible and it would be like one blind man following another.1615 Manu must have composed his smriti on finding that acaryas preceding him performed certain acts as based on Veda. These last must have believed that their predecessors also acted on the same belief. Hence there is what is called an 'andha-parampara' on this hypothesis. And further this hypothesis of the inference of Sruti in all cases is opposed to perception, since as a matter of fact hundreds of Sruti passages are known that can be the basis of corresponding smriti texts. Another view is (and Kumarila holds that it is somewhat better than the preceding view) that one should infer that the Vedic passages that were the basis of smritis are lost (utsamma or pralina). Some support is lent to this by such Vedic texts as 'ananta vai vedah' (Tel. Br. III 10.

1615. सत्यमुक्तमत्रद्योगःमण्डलम्। यदि चौदमनं न कत्वानिद्वार्ष्यापरं तथा वर्त्तमानवादिगामिनि सत्यस्य दुःसंततिसि।।। तोऽद्वैतीयं हु नित्यसाधिभधात्व- तिरिदु द्वामात्रकारायमविवाहू। सैन पदे मध्येकरुपुरुषःमानाय। तत्सवातकं प १६४ यस्ति । १३. २।
1616. यद्य हेतु व्यवस्थापनातिस्थितिकृतिसूचयते। कथाप्राप्तविव्विधितितिसूचयने। शास्त्रीय संस्कृतिप्रति सूचयते। पश्चात् यथा ववस्थितमार्गस्मृतिः तथा निर्देशितमार्गस्मृतिः। 
1617. यद्य हेतु समस्तिकृतिकृतिसूचयने। कथाप्राप्तविव्विधितितिसूचयने। शास्त्रीय संस्कृतिप्रति सूचयते। पश्चात् यथा ववस्थितमार्गस्मृतिः तथा निर्देशितमार्गस्मृतिः।
with sacrifices, though now and then there are rules addressed to men for regulating conduct only. People would only study the Vedic sentences contained in the smrtis (that are concerned principally with conduct) where they would be arranged in a different order according to subjects and there would thus be loss of the arrangement of the Veda as originally delivered. Viśvarūpa 1618 (on Yāj. I. 7) quotes the above verse of Kumārila and states that there are thousands of smrti rules that have their source in the Veda; he and Kumārila instance the rules against talking with (or coming in contact with) a woman in her monthly illness or the rule against assaulting a brāhmaṇa, or the rule about the sin of killing an ātreyī woman &c. Medhātithi on Manu II. 6 has an elaborate discussion on this very topic and quotes several verses from his own work called Smṛtiyīvēka 1619. He does not approve of the first two views and follows Kumārila’s view. Mīmāṃsā writers and commentators like Medhātithi say that Manu and other authors of smṛtis brought together for easy comprehension matters that are scattered about in the various Vedic texts, that are either not known to the students of the several śākhas or that cannot be brought together by men of ordinary or weak intellect. 1619a

The general proposition that smṛtis are authoritative being established, a further question arises. What is to happen if a smṛti rule conflicts with the rule of the Veda? Jaimini deals

1618 स्मृतिमूला हि विषयः सम्बन्धित चेत्वेँ सहस्रसः। सम्बन्धितविवाहातः भैरर साधारणसः सह। न सम्बन्धितविवाहेऽविचि। स्मृतिमूलसम्बन्धः।

1619. शास्त्राः कार्यप्रस्तुतसर्वसः पश्चि नेव मतो मनः। पश्चिमस्थायिनां हि बहुर्वयः प्रकृतीः। उच्चारोपतः पश्चि विशिष्टानां तत्ततः। उच्चरान्ति इत्यस्माहार मायको इत्यते हास्यः।

1619a. अद्वायर्वः पेक्षाः एव तः। शास्त्राः किंतु विशिष्टानां स्रव्या कार्य्यासंत्रावेषमेव तत्तद्यथातः। कार्य्यानिर्देशाः कार्यास्तिकाः कार्यान्ति स्रव्याः। मन्नार्थोपवेष्ठाः हुस्तान्तरणानि च। नेपालः।

1619b. सम्पूर्णानि विनिर्देशाः कार्यासंत्रावेषमेव तत्तद्यथातः। कार्य्यासंत्रावेषमेव तत्तद्यथातः।
with this question in I. 3. 3–4, which form a topic that states an exception to the general rule contained in Jai. I.3.1–2. Sabara gives three instances where there is apparently a conflict between the prescriptions of the śrutis and those of smritis. The Veda says, 'the priest should chant (the stotra) after touching the audumbari post', while smriti says 'the whole of the audumbari post should be covered with cloth'. The Veda says 'one to whom a son has been born and whose hair is still dark (and has not turned grey) should consecrate the Vedic fires', while smriti says 'a man should observe Vedic studenthood for 48 years'; the Veda says 'when the Agnisomlya rite is finished then one may eat (the food prepared) in the house of the sacrificer', while smriti says 'the food of one who has undergone dikṣa for a sacrifice may be eaten after he purchases the soma plant'.

In these cases the proposition enunciated by Jaimini is that 'in case of conflict (between an express śruti rule and a smriti rule) the smriti rule should be discarded, for when there is no conflict (with an express śruti) inference may be made (that a smriti rule is based upon some Vedic text).'

The examples may be explained as follows: The 'audumbari' is a post of udumbara planted in the ādadās in the performance of the Agnistoma; the stotras (other than Bahispadavamāna) are chanted near the audumbari post in the ādadās. Vide H. of Dh. vol. II. p. 1135 for the fixing of the audumbari post in the ādadās and p. 1185 for the chanting of stotras near the audumbari. If the whole of the post be covered with cloth, it would not be possible to touch the post, but only the cloth would be touched. So there is contradiction. If a man is to consecrate Vedic fires when he has a son and his hair is dark, he must be between about 20 and 40 (i.e. a young man), but if a man were to observe brahmacarya for

1620. विदाते िजर्मया िवाकोलितं िवात्मगमानं। देहतुष्णसः। ते इ 3 3–4, अथ यह िश्विनिरीपकनं कथम्। यथोदशम्यं। सवन्तन्ति। आदित्यसः िवात्मगमानं। हति वर्तम विवधाः। अंधाजािलातिदािलावितं वेदमवजकिव मभांछ। 'जातदुः क्षणकेस्वनिगृहीतं। विदातन विवधाः। कृििराजसहिमायिकाङ्गम। हति 'तस्तादुिगुणिनिनी िवािलितं यवागमनं। यवहिनिगृहीतं। विदातन विवधाः। तस्तादुिगुणिनिगृहीतं। दुर्योपदातृति भाति भाजेः। अथावनवासप्रसेवानि इववथा। इववथा॥... तस्तादुिगुणिनि िश्विनिरीपकनं िश्विनिरीपकनं िमािरति। आत्म िववेदपति नादासरिणी॥ शब्दाः।

1621. For आदित्याजािलाति एव विदाते व्र. च. I. 2 1–5 अन्तरकारितिदिवशिवितं पौराणं देहज्ञामयेः। चतुिवति इवदाहन वा िमािवदविः।... वहिनां तत् िश्विनिरीपकाः। इववथा। क्षणकेस्वनिगृहीतिति हति। ते फलात्मकते एव विदाते व्र. च. I. 6 18 16 and 23 'सत्तमनमोभिः। बोधितीकः। कृििराजसहिमायिकाः। इववथाः॥... तस्तादुिगुणिनि िश्विनिरीपकनं िश्विनिरीपकनं। दुर्योपदातृति भाति भाजेः॥। इववथाः॥... तस्तादुिगुणिनि िश्विनिरीपकनं िश्विनिरीपकनं। दुर्योपदातृति भाति भाजेः॥।

It may be noted that आत्म mentions also several other views such as 'अपििगृहिणीसमघाताः इववथा॥... तस्तादुिगुणिनि िश्विनिरीपकनं िश्विनिरीपकनं। दुर्योपदातृति भाति भाजेः॥। इववथाः॥... तस्तादुिगुणिनि िश्विनिरीपकनं िश्विनिरीपकनं। दुर्योपदातृति भाति भाजेः॥।
48 years, he would be about 52 to 56 years of age before he married (as the upanayana of a brāhmaṇa was to be performed generally in the 8th year or from the 5th year onwards at the most). Only a married man could consecrate Vedic fires. But a man's hair when he is fiftytwo years of age or more can hardly be all dark. Therefore there is contradiction between the rule derived from the Veda and that derived from smṛti.

In the Jyotistoma (which generally occupied five days), the dīksa (purification and initiation of the sacrificer) takes place on the first day in the afternoon (vide H. of Dh. vol. II pp. 1134-1136). Soma is purchased on the 2nd day of the Jyoti-

stoma (Tbd. 1140-4) and the animal is sacrificed for Agni and Soma on the 4th day (Tbd. pp. 1158-59). According to śrutī; therefore the food prepared in the house of a dīksita may be eaten only after the 4th day, while smṛti says that it may be eaten after the purchase of soma on the 2nd day. In this way there is contradiction. Kumārila does not agree with Śabara as regards these examples in particular and as regards the general attitude towards smṛtis that are accepted by Vedic followers. He makes great efforts to explain how there is no real conflict in the cases cited by Śabara. As regards the cloth covering the audumbari he says that it may cover the bottom and the upper portion of the post and leave a space of two or three finger-breadths in the middle uncovered (so that the audumbari post can be touched in that particular portion), that (p. 188) there is a passage in the Śatyayānī

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1622. The sūtra (Jai. I. 3 3) is read as anapēṣa or anapēṣeḥ and with both readings it has been explained in different ways at ancient times. The Śabaraśāstra says 'śrutisāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraśāstraš
Brāhmaṇa which refers to the cloth covering the audumbari (and so there may at most be an option), that as regards the taking of food in the house of a dīksita after the purchase of soma there is a sruti passage in the Atharvaveda (pp. 181 and 189) similar to the smṛti passage (and thus there is no conflict between sruti and smṛti, but between sruti and sruti, which would lead to an option) and further the smṛti rule may apply in the case of a man in distress (āpad-dharma), that smṛti does not prescribe an absolute period of 48 years for the study of Veda, but Baud. Dh. S. itself allows several alternative or optional periods and so no question of conflict with sruti arises. Kumārila's own position is this: In the case of apparent conflicts between sruti and smṛti, various methods of interpretation and reconciliation are possible. Each of the two may be given its proper scope as referring to different subject matters (which is called uṣaya-avavasthā); it is also possible to hold that smṛti is based on some sruti texts already existing but not found at the time of discussion, but which may ultimately be found, in which case there will be an option, though the latter is to be avoided as far as possible as it is liable to eight faults (vide Tantravārttika pp. 174-175); or the two may be reconciled even when referring to the same subject matter e.g., a man may have dark hair even when he is 52 or more and the smṛti may be taken as meant to refer to such a man, while the sruti states the general rule about the age when consecration of Vedic fires was to be made. Therefore Kumārila holds that all that is meant by Jaimini and even by Śābara is that there is a great distinction between sruti and smṛti in that the former is apanurṣeya and an independent authority, while the latter has a human author (liable to err), is either actually based on the Veda or is inferred to be so based, that the two therefore can never be said to be quite alike each other as regards their authoritativeness and that lastly smṛti is not in itself to be regarded as unauthoritative. Kumārila therefore suggests that the proper subject of discussion in Jai. I 3 3–4 is the works of Baudhās, Sāṅkhya, Yoga, Pānicarātra, Pāṣupata and other heretical sects and the practices of nićcchas. These works contain some matters such as the emphasis on ahimsā, truthfulness, restraint of senses, charity and compassion, which are also emphasized in the Veda, but these works are not

1623. अतिवेषं हृदित्स्वर्गविशेषाचारं विद्यते। वायव्यमेव चार्यस्रवेन नं ज्ञात्सनमथ-नवहस्त। तथायतिः। प. 194.
generally accepted by the followers of the Veda, are based on specious and false reasoning only (they are ḫatukas in the words of Manu), that they deny the authority of the Veda. Therefore Jaimini means that these works of heretic sects are not authoritative in matters of dharma as they are opposed to the Veda and should be discarded. For want of space it is not possible to set out in detail the interesting discussion in the Tantravārtika. The Jaiminiya-nyāya-mālavistāra also gives another explanation of Jai. I. 3. 3.

Śabara (on Jai. I. 3. 4) explains that the three smṛti passages stated above are not authoritative since it is possible to point out how they originated in a visible worldly motive such as greed. When a visible motive can be pointed out for any smṛti text, it is not proper to infer that it is based on the Veda and has an unseen spiritual motive. Šabara postulates the reasons in the way of a modern man finding fault with priests. Some priests covered the whole of the Audumbari post with cloth, because they coveted the cloth as part of the fee; others who desired a free meal when hungry took food at the house of a diksita even after he had purchased the Soma plant; certain others in order to conceal their absence of virility went in for Veda study for 48 years. The Tantravārtika tries to show that in all these cases there is really no visible motive such as covetousness (pp. 188-189)

Śabara gives an alternative explanation of this sūtra (Jai. I. 3.4) and makes a separate topic (adhikarāya) of it. The reasons for giving an alternative explanation of a sūtra or adhikarana are two, viz. dissatisfaction with the explanation already given or the wide scope of the subject under discussion. In I. 3. 3 passages from smṛtis were cited which were apparently in conflict with ārtti. If they were really in conflict, that one reason alone is more than sufficient to render the smṛtis invalid. Therefore to say further that those smṛti passages originate in worldly motives like greed does not add any very substantial reason for the abandonment of smṛtis as authoritative. Therefore Śabara makes another adhikarana of sūtra 4 of Jai. I. 3.

1624. देवदर्शनाच । ते I. 3. 4: लोमाभास आहितसमाना आचुव्वरी दृष्टां विषयात्तैतका कैशीति । तत्तैतकं ज्ञात्त। ज्ञातासम्या कैशीति कैलासज्ञात्रण । भोजनमाध्यमिक्षेत। अनुस्थान! यथात्तैतकाधिकार्यात्तैतक्तिः वेदभाष्यः वायिक्तकिः । तत् एवं स्तुतिप्रयोगमेतः । क्षयः।

1625. स्वयंपापाविक्षिप्त्यां दृष्टान्त स्योजनाः | इत्यद्वितीयाः ध वित्तस्याविविध च तत्तपवातिक p. 186.
He cites smrti passages which are not opposed to Veda at all and says that such passages have been seen a worldly motive such as covetousness and it is not proper to suppose that they are based on Veda and are therefore authoritative, when a visible purpose or motive can be ascribed to them. The result of the explanations of I. 3. 3–4 given by Sahara would be that smrti rules that are opposed to sruti rules and smrti prescriptions that can be shown to have a clear worldly motive are not authoritative or absolutely binding, while the rest of smrti texts are authoritative. 1626

Sahara cites on Jai. I. 3. 4 (when taken as a separate topic) 1626a two examples; (1) the adhvaryu priest takes (as his fee) the cloth used in the Vaisarjana homa; (2) they perform the gift of the elephant (i.e. the cloth covering) of the sacrificial post. Sahara says that these passages are not opposed to any sruti text but instead of inferring a Vedic text as their basis it is far better to hold that there is a manifest worldly motive for these rules (viz. covetousness of the adhvaryu) and so these smrti passages need not be looked upon as authoritative. 1627

This discussion raises an important doctrine which frequently figures in dharmaśāstra works. The doctrine is expressed

1626. न इसे हेतु हेतुवतांसमावेश करते । इद्भवान तोम एव हेतुविति । अतः
सूतिस्वाधेषु हेतुवायन्ते यथायेनमस्ति तथोपययमस्ति । शाब्दिकविकारम्।
1. 3. 4

1626a. आंविकयान्त्वाद दथ। वैसुत्तक्तनिधिन्यों वासोदार्शनहरूका विविधा राजनिष्ठो राजनिष्ठो राजनीतिज्ञो राजनीतिज्ञो राजनीतिज्ञो
माताज्ञाति हि । तदायुतन्त्रमाताज्ञाति माति । अपमाने सम्बन्धा हि । अवस्थानुसारे।
दोभा
बुधसिद्धललितं कैलितवले एवं सम्पर्कित । विपरीतवसंस्कृतवसंकल्पावर्ते।
चार्य दन दन ।
1. 3. 4 यथाकर एव बुध सम्बन्ध मभावित किस्मतिति।

1627. For the Vaisarjana homa, vude H of Dh II p 1158. In this a piece of fresh cloth is spread over the sacrificer (who touches the adhvaryu), the sacrificer’s wife (who touches the yajamāṇa), the brother and sons of the sacrificer (who touch the wife) In the Vajapeya, the sacrificial post was 17 arātma in height and 17 pieces of cloth were employed to prepare the appearance of a turban on the tip when enveloping the yūpa with a girdle. The figure presented by the cloth covering the yūpa was called वृक्षशिल्प (probably because it looked like the head and trunk of an elephant). न कुपिष्ठनण्डा शूकरपरियोगकालांकृत शूकरसिद्धान्तयां। सम्पूर्णविविधार्थ्यो शूकरसिद्धान्तयां। सम्पूर्ण
वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब वेब

1626. न इसे हेतु हेतुवतांसमावेश करते । इद्भवान तोम एव हेतुविति । अतः
सूतिस्वाधेषु हेतुवायन्ते यथायेनमस्ति तथोपययमस्ति । शाब्दिकविकारम्।
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माताज्ञाति हि । तदायुतन्त्रमाताज्ञाति माति । अपमाने सम्बन्धा हि । अवस्थानुसारे।
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1. 3. 4 यथाकर एव बुध सम्बन्ध मभावित किस्मतिति।
in this form viz. when a visible motive or purpose is obvious in the case of a rule or prescription it is not proper to ascribe an unseen or spiritual purpose or reason for it. This doctrine is older than even Ap. Dh. S. I. 4. 12 11 which says, 'where men act because they find pleasure in so doing, there sāstra has no scope'. Sabara also says, \[1628\] 'those rules (in the smṛti) that have a seen purpose derive their authority from that fact, while those that have no visible purpose may be inferred to be based upon the Veda (and derive their authority from that).' These words of Sabara are quoted by Kullūka on Manu III. 7 where Manu states that a girl should not be selected as a bride from a family that neglects the samskāras, in which no male children are born, in which there is no Veda study, the members of which have on their bodies long and thick hair, that suffers from such diseases as piles, dyspepsia, epilepsy, black and white leprous. Kullūka remarks that the works on medicine hold that such diseases are inherited and so if such a girl be married the progeny might suffer from these diseases, and thus this prohibition is based on a visible motive. From this a very important conclusion is drawn by dharmaśāstra writers viz. if one while performing a rite or when engaged in any matter acts contrary to a rule that has a seen purpose, the rite or matter does not become invalid or void, while where a rule is based on an unseen or spiritual purpose and it is infringed, the act itself becomes void or invalid. Yaj I. 52 and 53 \[1629\] prescribe among other things that the bride to be chosen by a man must be free from (incurable) diseases, must have a brother living, must not be a sapinda of the bridegroom or must not have the same gotra or prayāra as that of the bridegroom. On this the Mit. remarks that if a man marries a girl who is suffering from an incurable disease, the marriage is valid, only he does an act which runs counter to seen results (i.e. he may suffer the consequence that

1628. तथा मधुपरिवालितमाना सामाजिकाधाराः इदानिष्टताहि आत्माभिष्यति।
1629. अन्तर्भाष्यानि दीर्घ्यम् खिययस्य तस्मात् आत्माभिष्यति।

\[1628\] तथा मधुपरिवालितमाना सामाजिकाधाराः इदानिष्टताहि आत्माभिष्यति।
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his children may be diseased), but if he goes through a ceremony of marriage with a girl who is a sapinda or of the same gotra or pravara there is no valid marriage and the girl is not his legal wife. No clear visible purpose can be associated with the prohibition against marrying a sapinda or sagotra girl; hence there must be a spiritual purpose in that prohibition and so if one infringes it the act itself (viz. marriage) becomes void.1630

The Tantravărtika of Kumārila has as usual a very long note on this discussion. He does not see eye to eye with Śabara. He says1631 that the Mīmāṃsā is concerned with the investigation of dharma, that śrutī is the prime authority in matters of dharma, that Mīmāṃsā has concern with smṛtis only so far as their authoritativeness in matters of dharma goes, that just as agriculture and the like are not discussed in Mīmāṃsā works because they have a purely secular purpose, so all acts that men do for a visible worldly purpose have no bearing on the investigation of dharma and that therefore the bhasyakāra (Śabara) was not quite right in saying that such practices as rising to receive an old man or a teacher have a visible purpose and are authoritative on that ground. He further remarks that visible and invisible or spiritual purposes are often inextricably mixed up. When the Veda prescribes 'he pounds the grains of paddy' or enjoins a sacrifice like the Kārīrita for bringing down rain, there is a visible purpose therein (e.g. the rice grains have to be freed from husk before boiled rice for obligations can be prepared). So even when an act has a seen purpose it may still have Veda as the basis; so also an act such as rising to show respect to a teacher may have a seen result (such as the teacher being pleased teaches the pupils with enthusiasm) as well as an unseen result (viz. completion of Veda study without obstacles). Therefore he argues that all

1630. In a very recent case (Madhavrao v. Raghavendra Rao 48 Bom L. R. 196) the Bombay High Court has expressed doubts about the logic or reasonableness of this doctrine of the Pūrvamīmāṃsā in relation to marriages of sagotra parties.

1631 ब्राह्मणवादमात्रायं भवते। यथा गीतम यथा सिद्धान्तम भवते। तस्मात् मात्रावादितिवैदिकवादायं भवते। न च बाह्यविद्वादितिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च बाह्यविद्वादितिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवैदिकवादायं। न च चक्रवातिवै�
sūtras\(^{1632}\) are authoritative according to the purpose they serve, that whatever portion of the sūtras is concerned with dharma and mokṣa (final release from saṃsāra) has its origin in the Veda and whatever is concerned with wealth and the satisfaction of desires (artha and kāma) is based on worldly practices. In this way are to be explained the didactic portions of the Mahābhārata and the Purāṇas, the episodes in these being useful as arthavādās (eulogies of what are prescribed as religious duties), the description of the several divisions of the earth being useful for indicating what countries are suitable for the performance of dharma and the enjoyment of its rewards and being based partly on Veda and partly on direct experience. Similarly the auxiliary lores (angas) of the Veda (such as phonetics, grammar, metrics &c.) are partly based on the Veda and partly on worldly experience. Mīmāṃsā and Nyāya (logic) are necessary for the correct interpretation and understanding of the Veda (as stated by Manu in XII. 105–106) He is even prepared to concede that systems\(^{1633}\) like the Sāṅkhya (which postulates a prime cause of the world called Pradhāna) or Vedānts (which postulates Purusa as the cause of the world), the theory of atoms (propounded by Kanāda) serve the purpose of explaining the creation and dissolution of the world, lead one to understand how the performance of sacrifices gives rise to the subtle apūrva which leads on to heaven and also exemplify how human effort and fate have their own spheres of operation (i.e. without human effort the world is produced and in spite of human effort it may be dissolved). Kumārila goes a step further and states that even the Buddhist philosophies of nyāsā (cognitions being the only reality), of the non-existence of the soul or of eternal flux arise from the arthavāda

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1632. तेन सर्वसूत्रियाँ मौनौनाति भाषायतिति]' तत्त्व याकृत्वमोक्षसमबन्धिन  
सदेवब्रह्मल। चत्वारहुशब्दविवर्त वाकोयमववर्ष-पृक्षविविर्ष विबेकपथ। एवेशेषविदममुदायये- 
रद्धपुरुषविवर्तवृत्तता पदविति। उपायविविर्षमधुभातुमाननां पदित।  
व्यभिचारसन्दर्भभित्तितां कदचिदं विवर्तकर्मिन।  
पूर्व तत्त्व विविविकित्तिति प्रबोधित।  
पर्यायाति परंपरारूपमार्णाः प्रभातित।  
पुस्तकातिक प 166-167।

1633. पाचबैः प्राचन्दात्वपारपारमार्णार्थावदिकिः ब्रह्मल्पुन्त्वदैवो विवित्ताः।  
सर्वो भाषायतितिवर्तण्यानुपायमहहभालोकविकारभालोकविन्न च वुढळः ।  
प्रयोगेन च सर्वपूर्वविवाक्यविवाक्यविविकितात्वभालोकन।  
स्त्रां विवाहाविकारविवाहाविकारभालोकन ।  
प्रभातिति प 168।
passages of the Upanisads and serve the purpose of inducing men to give up extreme attachment to sensual pleasures and therefore may be useful in their own way. He winds up by saying that in the case of all knowledge or works wherever the result (or reward) of the course laid down in them is to take place in the future and there is no possibility of experiencing its happening in the present such work may be deemed to be based on the Veda; but where, as in the science of medicine, the result can be seen taking place in other people, that knowledge is authoritative only because of the visible result.

This discussion about smritis based on the Veda or on perceptible purposes or motives is taken up in the digests on dharmaśāstra. For example, Aparāraka\(^\text{1634}\) (pp. 626–627) quotes long passages from the Bhavisyapurāṇa dividing the contents of smritis into five categories and exemplifying that division, viz., (1) those based on a visible purpose or motive, (2) those based on unseen or spiritual motives or purposes, (3) those based on both visible purposes and unseen or spiritual purposes, (4) those based on reasoning, (5) those that merely re-iterate what is already well-known or determined. All these except the first variety are based according to the Bhavisyapurāṇa on the Veda. The examples of the five kinds given by the same Purāna are respectively as follows: (1) the smrī (viz. Arthaśāstra or Dandaśāstra) in which there is a discussion about six gunas (sandhyā &c.), the four upāyas (śāma, dāna &c.), the various superintendents of state departments (adhyaṅka) and of lantalas, (2) the prescription that one should perform the sandhyā worship or that one should not partake of dog's flesh; (3) a brahmacārīn

\(^{1634}\) तथा न भविष्यवर्णद्य। हथार्यं तः स्मर्ति: कार्यिधर्माः तथा परः। हाथार्यायक्षणाय ज्ञायमुला तत्यान्तरः। अखंडाच्छलितस्त्रिक्ष्या शिक्षितस्त्र घरम्मि। सर्भे
एत वेदेशुन्ला तद्यार्ये (भैं: ?) परिबंधने शु। प्रासुप्रमण सर्भेन्द्राणि प्रश्नवाचायांगिनावः।
(मयी: कार्यं न) सतामानानामपानाय पीयो व्याससमस्त। अखंडाच्छलि च निषेधे। कार्यानावानुदिव्य। हाथार्यं स्मर्ति। मोक्षा कार्यिधर्माकायार्य। सुन्दरप्रशांते सदृशायं
झुन्ने भाृस न म्यूयेद। अखंडायं स्मर्ति। मोक्षा कार्यिधर्माकायार्य। पाल्यायं पार्ष्वायं
हुमाण्यायं विदुहिष्ठात। विदुहिष्ठात विकारण: ग्यासायनानिहस्ती यथाः। यथाः दृढे यथाः कार्ये
स्मृति न शर्स्ते पदिः। अनुजायानां सा दृस्यपायाय स्मर्ति; परिबंधने नम भवार्। अपराकस प प 626–627,
रिमिश्रित in his comment on ए न. 3 quotes the first two verses and in his
पिरानामकायाय प 19 quotes all कुलसूक्तिः on महान. 7 quotes from the महिषी
the half verse 'सत्ये ... हाथार्य शिक्षित हृ.. The महिषी II. P 24 quotes
from आत्मावा the two verses चार्यायाः श्रवणविहयायाः। एवं ज सन्तानविहयाः हुदार्थविहया महिषीयाः शिक्षितायाः सन्तानायाः।
should we not read 'स्मृति न शर्स्ते ?')
Illustrations of five kinds of smrtis

should carry a staff of palaka (the staff serves for one's protection, which is a seen purpose, but that it should be of palaka and of no other tree is based on an unseen motive); (4) when one text declares that homa should be performed after sunrise and another declares that it should be performed before sunrise, reasoning requires that there should be an option (vide Manu II 15), (5) when Manu declares (in VI 38) that a brahmana should leave home to become a wandering ascetic he simply re-iterates what is laid down in such Vedic passages as Br Up. III 5 1 (vyutthayatha bhiksauryam caranti) or Jäbala Up 4.

In I. 3. 5–7 Jaimini as interpreted by Śabara deals with the topic of the authoritativeness of certain usages laid down in the smrtis in relation to Vedic rites. Śabara states: śista say that religious rites should be performed after sipping water (i.e. after ucamana), one should wear the sacred thread in the upavita way in the worship of gods, one should do with the right hand all religious acts The question is whether these acts should be done if not opposed to the sruti or should not be performed if opposed to what is taught in the Veda. The pūrva-paksa view is that these acts should not be done because they counter to the sequence of the acts laid down in the Veda. For example, the Veda says, ‘after getting ready a bundle (or handful) of kusa grass called veda one should prepare the vedि (altar)’ Here the preparation of the vedi is declared to follow immediately after the getting ready of a handful of kuśas. If after the handful is got ready a man has a sneeze he has according to Manu V 145 and Vas III 38 to sip water before going on with the preparation of the vedi. This would be against the sequence (krama) of acts laid down in the Veda. Strangely enough Mr. K. L. Sarkar in T.L.L (on Mimamsa rules) translates the words 'vedam kṛtvā vedim karoti' as 'make the vedi and

1635 śistaśatvarṣiyaḥvinivṛttati cha । न जारविधिधात । अयो था कारणार्थं यथौ ज्ञानी वाचिकरू । जे इ ३ ५–७ । आचार्येन कार्यं ज्ञानपूर्वितं सत्यम् विकार्यमहोरेष तारया। देवविलेखनं पञ्चापालि। विवेकानन्द विविधविषयां न कार्यापूर्ववत् सत्यविषयामिनि वीरं विवेकानन्दरामार्थविवेकानन्दि। वेदविधि । वाचिकरू ॥

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The words 'vedam kṛtvā vedim karoti' which may also be taken as part of the 8th sūtra and relates on the maxim of the crow's eye. The words madhurānti Vedapratis mean 'śista-

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then recite the vedas' (p. 241), thereby committing two mistakes. He misunderstands the word 'veda' which in this passage only means a 'handful of kuśas' and inverts the sequence of the acts denoted by the gerundial termination 'tvā'. On account of these two mistakes the discussion on pp 240-242 is misleading and obscure. If a man were to do the things required in a vedic rite with both hands, he would be able to do them quickly. The smṛti rule that every religious act should be done with the right hand alone interferes with the quick performance of religious acts. The established conclusion is that these religious acts (such as ācamana) are performed by the śistas, are prompted by no visible motive (such as covetousness) and are therefore to be looked upon as authoritative, being not opposed to sruti. Kumārila does not like this way of explaining the sūtras, since the instances given by Śabara really do not deserve to be put forth as even prima facie opposed to Śruti. The Tantravārtika (p. 201) sets out śruti passages wherein the wearing of the sacred thread in the upavīta form¹⁶³⁶ (Tai. S. II. 5. 11. 1 and Tai. Ār. II. 1), ācamana (Tai. Ā. II. 11), are enjoined. Therefore it explains the sūtras in a different way. It splits up Jai I 3. 5-7 into two adhikaranas. The first two constitute one topic. The pūrvapakṣa¹⁶³⁷ is those precepts of Buddha and other founders of sects, such as the construction of monasteries and parks, the insistence on desirelessness, the practice of meditation, ahamŚ, truthfulness, restraint of senses, charity and kindness, are such that they are also laid down by the Veda, are not opposed to the ideas of śistas or do not run counter to nor rouse those who know the Veda to anger and therefore they must be held to be authoritative. This is denied by saying that the Bauddha doctrines even on the abovesaid matters are not to

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¹⁶³⁶ Vide H. of Dh. vol II pp 287, 288, notes 671, 677 for the passages of Tai S and Tai Ā.

¹⁶³⁷. बुद्धपालयोऽवस्थेन: सुस्स्ते महाभारतम् । चामन्त्येव नृपान्त महाभारतम्। तथा ब्रह्मणोऽवस्थेन: कात्यायिनीसुत्रम् । तत: चामन्त्येव नृपान्त। परिवर्त्तिते महाभारतम्। विवेकशास्त्रम्। जयद्विप्यचारणम्। परमात्मां नृपान्त। परिवर्त्तिते महाभारतम्। तत: चामन्त्येव नृपान्त। जयद्विप्यचारणम्। परमात्मां नृपान्त। परिवर्त्तिते महाभारतम्। तत: चामन्त्येव नृपान्त। जयद्विप्यचारणम्। परमात्मां नृपान्त। परिवर्त्तिते महाभारतम्। तत: चामन्त्येव नृपान्त। जयद्विप्यचारणम्। परमात्मां नृपान्त। परिवर्त्तिते महाभारतम्। तत: चामन्त्येव नृपान्त। जयद्विप्यचारणम्। परमात्मां नृपान्त।
be accepted as authoritative since only a limited\textsuperscript{1638} number (14 or 18) of viy\=yas (the four vedas, the upavedas, the angas of the veda, the 18 smritis, pur\=anas, Dandaniti) have been accepted by the vedic sistas as authoritative on matters of dharma and the works of the Baudh\=has and Jainas are not included therein. Just as milk though originally pure becomes useless and unreliable when put into a bag of dog-skin, so the doctrines of Baudh\=has such as ahims\=a, though based on truth, are useless and are not authoritative in themselves for the followers of the Veda,

The Tantrav\=artika holds that Jai. I. 3. 7 is an adhikarana by itself and is concerned with the authoritativness of sad\=ac\=ara (the customs and usages of sistas). Its position is that those usages are authoritative that are not opposed to express Vedic texts, that are practised by Vedic sistas under the belief that they are right conduct (dharma) and for which no visible motive (such as pleasure or the satisfaction of desires or the acquisition of wealth) can be predicated. Sistas are those who perform the religious acts expressly enjoined by the Veda. They are not so called because they practise what is said to be sad\=ac\=ara; otherwise there will be an argument in a circle (in the form 'sad\=ac\=ara means what is practised by sistas and sistas are those who practise sad\=ac\=ara'). The practices traditionally handed down from generation to generation which are observed by sistas (as stated above) with the idea that they constitute a part of dharma must be regarded as dharma and as leading to heaven\textsuperscript{1639}. Practices do not become authoritative by the mere fact that no such motive or purpose can be postulated for them, but they become so only when they are observed by sistas as

\textsuperscript{1638} Vide Y\=aj I 3 for the 14 Viy\=ast\=ahan\=as. For the four upavedas which raise the number to 18 vide n 17 p 10 above. Acc. to the Ny\=yasudh\=a (p 183) \=Ayurveda, Dhana\=veda, G\=andhar\=aveda and Artha\=astr\=a are four Upavedas, Mim\=\=ansa and Ny\=\=ya (logic) are two up\=agnas, \=\=ak\=\=a (not the Ved\=\=anga on phonetics) is separately mentioned because there are works on phonetics like that of K\=\=aty\=yana laying down special rules for distinct \=\=ak\=\=a. Dandan\=iti is the same as Artha\=astr\=a

\textsuperscript{1639} ददरकरणविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविविवি঵ি঵ি঵िवি঵िवি঵िविवি঵िवি঵िविविविविविविवি঵ি঵िविवি঵िविविविविविविवি঵ি঵ি঵िविविविविविविविविविवি঵ি঵ি঵िविविविविविविविविविविविविवি঵िवি঵िविविवি঵ি঵ি঵ি঵ি঵ি঵िविविविविविविविविविविविवি঵ি঵ি঵ি঵ি঵ি঵िवি঵ি঵ি঵ি঵ি঵ি঵िविविविविविविवি঵ি঵ি঵ি঵िवি঵िविविविविवি঵ি঵ি঵िविविवি঵िविविवি঵िविविविविविविविवি঵ি঵ি঵ি঵िविवি঵िविवি঵िविविविविविविवি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵िवি঵ি঵ি঵ি঵िवি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵िविवি঵िविविवি঵िवি঵ি঵िविवি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঵ি঴िविविविविविविविविवি঵ি঵िविविविविविविविविवि
part of dharma. The Tantravārtika (p. 205) gives certain illustrations of such practices viz gifts, japa, mātrayāṇā (offering to the mother Goddesses), the festival of Indra's banner, fairs held at temples, fasting by maidsens on the 4th day of a month, gifts of lamps on the first day of Kartika, the spring festival on the first day of the dark half of Phālguna and The Tantravārtika is careful to point out that many activities such as agriculture, menial service or trade that are the means of securing wealth and pleasures and that give rise to several fixed and varying acts and also such actions as eating sumptuous food, drinking, sleeping on soft beds, possessing a charming house and garden, engaging in painting, singing and dancing, enjoying the fragrance of sandalwood and flowers, all of which are common to mlecchas and Āryas, are not deemed by any one to be part of dharma and that it does not follow that, because a few actions (of sistas) are accepted as dharma, all their actions are to be looked upon as dharma. In ordinary life certain practices only are deemed to be āstācāra, while there are certain other acts that are common to all human beings (including 'sistas'), but are not so regarded. Certain practices such as worship of gods and honouring brahmanas are seen to be common among all people and yet do constitute dharma, because that is deemed to be so by the sistas. These practices alone are dharma that are observed by sistas only as obligatory on them and not other practices that are common to all beings. The Tantravārtika then refers to the Dharmasāstra.

The festival called Indramaha, vide H of Dh. vol II pp 825-826. The spring festival was one in which on the first day of the dark half of Phālguna people went about drenching each other in ordinary or coloured water discharged from syringes and the like. For the festival called Indramaha, vide H of Dh. vol II pp 825-826. The spring festival was one in which on the first day of the dark half of Phālguna people went about drenching each other in ordinary or coloured water discharged from syringes and the like. Modern practice combines this with the lighting of bonfires on the Full moon of Phālguna. The mythic origin of āstācāra of modern days on the Full moon of Phālguna is described in Brhatsāstra (Yuddhāp chapter 132).
sūtra\textsuperscript{1642} of Gaut. (I. 3) and Āp. Dh. S. (II. 6. 13. 7–8) which say that ancient (or great) men in several instances were guilty of transgressions of dharma and of committing desperate acts, that on account of their spiritual merit they did not incur sin, but if a man of later days were to follow them in the same acts he would sink into hell. It then gives twelve instances of lapses from good conduct (attributed even to avatāras) that were transgressions and either explains them away or says that they were due to wrath, hatred or other passions, were not intended by the authors (of those acts) themselves to be dharma and are not to be looked upon as śīstācāra by modern men. The instances are: (1) Prajāpatī who is said to have approached Usas, his daughter (Śat. Br. I. 7 4. 1 or Alt. Br. 13 9); (2) Indra, who is described as the paramour of Abalyā (in the Subrahmanya lītany); (3) Nahusa, who occupied the position of Indra, made approaches to Śacī, the wife of Indra (Udyoga, chap. 13 ff) and was transformed into an ayagā (Boa Constrictor); (4) Vasistha, who when his 100 sons were devoured by a demon, was so struck with grief that he threw himself bound into the Vīpāśa river (Nirukta IX.26, Adiparva chap 177 1–6 = cr. ed. 167. 1–6, Vanaparva 130. 8–9, Anuśāsana 3 12–13); (5) Purūravas who thought of dying by hanging or by being devoured by wolves (Ṛg. X. 95. 14, Śat. Br. XI. 5. 1–8) when separated from Urvasī; (6) Viśvāmitra, who officiated as priest at the sacrifice of Trīśanku that had become a cāndāla through a curse (Adiparva 71. 31–33); (7) Yudhīśthira who took Draupadī as wife although she had been won by his younger brother Arjuna by his skill in archery and who prevaricated in order to bring about the death of his brāhmaṇa teacher Drona (Dronaparva 190 55); (8) Kṛṣṇa Dvāpāyana (Vyāsa), who thought himself a perpetual student, procreated by myogā at the request of his mother Satyavatī two sons on the widows of his brother Vīcitravīrya; (9) Bhīma who lived on without belonging to any (of the four) āśramas and who is said to have performed several Asvamedhas though he had no wife; (10)

\textsuperscript{1642} इति प्रत्येकात्मकम् साधस च न ज्ञाताम् । अर्पणमुल्लवाद् । गी. I 3-4: दूःढी
- साधस च पूर्वः। वेद वेदीनितिणेय ज्ञाताय न विधाते। तदवैद्यं महुःस्तद्। सीद्ध-शपर। आय च छ। II 6 13 7-9. भागवतपरार्थ X (पूर्वार्थ 33. 30) has a verse to the same effect.
Rāma who performed Aśvamedha accompanied by a golden image of Sītā; (11) Dhṛtarāṣtra, though blind, performed sacrifices; (12) Vāsudeva and Arjuna are described as being drunk and as having married Rukmini and Subhadrā respectively who were their maternal uncle’s daughters (such marriages being forbidden). Kumārila, like a modern comparative mythologist explains (Tantravārttikā p. 208) that Prajāpati means ‘the Sun’ who approaches (i.e., rises after) the Dawn. This explanation is as old as the Ait. Br. 13. 9 where it is said that there are two views viz. it is either ‘Heaven’ or ‘Usas’ that is meant by the word ‘daughter.’ Similarly Indra and Ahalyā respectively mean the Sun and the Night and yēra means literally ‘one who makes to disappear or wither away’ (and not paramour) in that passage. Vide H. of Dh. vol. II. p. 1145 note 2550 for the epithet ‘Ahalyāyai yēra’ in the Veda and quotation from Tantravārttikā. The story of Ahalyā and Indra varies in its details in the epics. Vide Rāmāyana I. 48, Udyoga 12. 6. These two are instances of transgression of dharma (dharma-vyatikrama) and the next case of Vasishtha is an example of sūhasa (through sorrow). Kumārila says that Vīśvāmitra was prompted by his hatred of Vasishtha and his pride, that the sin accruing from his act would be neutralized by his great austerities. So his actions cannot serve as a model for imitation by others. Vyāsa, who was a son of Satya-vatī from Pārasara when she was a maiden, had Vicitravirya as (his uterine) brother after Satyavatī married Śantanu. In the case of a brahmācārin, sexual intercourse is most reprehensible (vide H. of Dh. vol. II. p 374). But Vyāsa agreed to myoga because of his regard for his mother, as allowed by Gaut. 18 4–5. Kumārila adds that Vyāsa could do so on account of his great past and future austerities, that another person with similar qualifications may do so even in spite of all prohibitions, since the Mahābhārata (Āṣrama-vāsika 30. 24) says ‘sarvam balavatām pathyam’ (to the strong everything is wholesome or allowable). He gives an apt illustration. An elephant can devour branches of trees without harm, but others doing so would meet death. Dakṣa’s V.10 prescribes ‘anāśraṃ na tīstheta ksanamekamapi dvijah’ (a twice-born person should not stay even for a moment unattached to some āśrama). Bhīṣma remained unmarried out of filial devotion to his father and Rāma could not think of another wife as he was so much attached to Sītā. Kumārila boldly asserts that Bhīṣma had a wife only for the purpose of the sacrifices he performed (though this is mentioned in no Itiḥāsa or Purāṇa) and relies upon the
mode of proof called *arthāpattā* for this. His words are given below. This and some other explanations offered by Kumārila shed a very interesting light on the theological apologetics of Mimamsakas. Vide H. of Dh. vol. II pp. 558 and 684 for Rāma and the golden image of Sita. As to Yudhisthira's bringing about the death of his brāhmaṇa teacher the explanation is that the former performed *Āsvamedha* after the end of the war by way of prāyaścitta (vide H. of Dh. vol. II p. 147 n 333 and pp. 1236-37 notes 2674-75 for *Āsvamedha* as the remover of all sins). As to Draupadi being the wife of five brothers Kumārila quotes *Ādiparva* 198. 14 (= or ed. 190 14) and offers several explanations (p 209), the most astounding being that there were five wives of the five brothers who were so similar that they were all referred to as one. As the Nyāyasudhā (p. 194) remarks, these various explanations were offered to show off great resourcefulness of interpretation (parīhāra-vaihavārtham), the proper one being that the practice of the Pāṇḍavas was an evil one and was not to be imitated. A blind man could not perform sacrifices and was excluded from inheritance. Vide H. of Dh. vol. II p. 157 n. 369 and vol. III p 609 n 1154. But Kumārila says that as Dhrterāstra was blessed with sight for a while and saw his deceased sons through the miraculous power of Vyāsa (*Āsravāśiparva* chap. 32-37) he might have been endowed with sight at the time of the sacrifices or what is meant is that he made gifts which are spoken of as sacrifices. As regards Subhadra, Kumārila asserts that in spite of the fact that Subhadra was said in the *Adiparva* (219, 18 = cr. ed 211. 18) to have been the daughter of Vasudeva and sister of Kṛṣṇa, she was really the daughter of Kṛṣṇa's step-mother's sister or the daughter's daughter of the sister of his step-mother's father (a female cousin being often called a sister among the Lātas). Vide H. of Dh. vol. II pp. 459-460 and notes to my edition of the text of V. Mayūkha (p. 200-202). Kṛṣṇa's marriage with Rukminī is to be similarly explained. It is somewhat surpris-

1643 लोभाबद्धभिमसचायनिःसिद्धान्तसारद्वितीयसारमार्थमथितिकम्। इतिहासान- । नारप्रवाणानादुपुष्पधारचर्चाराजास education p 185. आदिवाणिक... महत्वपर । (मत र 1. 117) — इत्यिङिं स्थिरान्तििहेतुः। ग्रुप्पजराधातुनयासुलगान्निधिरं केवलमार्याध्यायार्थानां । अस्याद्वितीयधातुनयासुलगान्निधिरं गम्यते॥ यो या निष्ण निष्ण द्व्यो निष्ण निष्ण न द्व्यो निष्ण निष्ण निष्ण निष्ण। | आदिवाणिकतिकनादीति पदकीक्रामस्य कथापूणिकः। | तत्रः p 298, अध्यय युक्ते एवं तत्र सत्यसप श्रीपद | एकान्तेन विज्ञानितरी दुर्द्वैद्याध्यात्मिकापूणिकः। तत्र प 299, श्रमवृद्धवृद्धिकेस्वर्गः। | शुभार्थात्रां यानिकाैंध्रां ज्ञात्राद्रा शुभार्थात्राद्रयाण्यात्राद्रातां शुभार्थात्राद। | तत्र p 48; but the *Adiparva* 219 18 Subhadra is expressly stated to be the daughter of Vasudeva कुलदत्त वर्णोत्तर वर्णोत्तर ज्ञमानात्रात्रात्राद्रातां शुभार्थात्राद।
Khandadeva states that it is nowhere found that Subhadra was the daughter of Vasudeva. Probably he had a corrupt reading of the Mahabharata passage before him. As to the charge of drinking spirituous liquor (ubhau madhūva-vaksibhau in Udyogaparva 59.5) against both Vasudeva and Arjuna, they were both ksatriyas and only brāhmanas were prohibited from drinking any kind of intoxicating drink (Gaut II. 25), while to ksatriyas and vaisyās two kinds of wine called madhu (liquor from honey or madhuka flowers) and sthū (rum) were allowed and only paisti (spirituous liquor distilled from flour) was forbidden (by Gaut II. 25, Manu XI. 93-94).

Kumarila offers some other explanations of Jai 1644 I 3 5-7 which need not be set out here.

Kumarila mentions certain practices of his times and concludes that they are to be condemned and not to be followed or regarded as authoritative. He says: 1645 even in these days brāhmana women of Ahicchatra and Mathurā drink wine; northerners (northern brāhmanas) engage in such transactions as the gift and sale of horses and mules that have a mane, asses, and animals with two rows of teeth, where Tai S. II. 2, 6, 3 and II. 3, 12, 1, and Jai. III 4. 28-31 are cited.
camels and animals with two rows of teeth and eat from the same plate with their wives, children and friends; brahmanas of the south enter into matrimony with the maternal uncle’s daughter and take their meals while seated on a couch (of wicker work); both (brahmanas of the north and south) take cooked food (kept in pots) that remains after their friends or relatives have partaken of it or that has been touched by them (at the time of eating); they chew betelnut leaves that have been touched by persons of all varnas, do not perform sipping of water (acamana) at the end of the chewing of betelnut, wear clothes washed by washermen and brought on the back of asses; they do not avoid contact even with persons guilty of grave sins (except of brahmana murder). There are everywhere an infinite number of very obvious transgressions of the subtle dictates of dharma laid down for each man, caste or family, that (transgressions) are contrary to śruti, smṛti and each other and that have a visible purpose behind them. It is not possible to regard such practices as authoritative. Similarly Varadarāja, (1600–1660 A. D.) a pupil of Bhattojī Diksita, in his work styled the Girvānapadamañjari in a dialogue between a Kānyakubja brahmana and a sannyāsin hailing from Vijayanagara makes the brahmana host say that each country has certain practices which are durācāras such as marrying a maternal uncle’s daughter in the south, marriage of girls among southerners even before they are four years old, sitting down to a meal without bathing in Karnātaka, in Mahārāstra the marriage of a younger brother before an elder one, in the hilly country the practice of nyogā (vide Mr. P. K. Gode’s interesting paper in ‘Bhāratiyā-vidyā’ vol VI pp 27–30).

According to Śabara, Jaimini in I. 3. 8–9 deals with certain words like yau, varāha and velasa, that have different significances among Aryas and Mlecchas (and therefore these sūtras constitute what is called yavavarāhādhipakaraṇa). But Kumārila does not like this view of Śabara and proposes another topic for these two sūtras, viz. the relative strength of smṛti and sādācāra where they are in conflict. Here there are three possible

1616. तेन्मातस्तदीपस्य समस्य नेव हुयते। सुस्तिनां या भलीयकया जाकर्षणां वेली बना। उसमधे शर्तिकृत्वा न सुयिवाक्षारोऽन समस्यं। समरयपर्यावलं दिः शर्तिः शर्तिविपिनस्य परणः तथा दुयमयामवालं दिः शतिविपिनस्य परणस्य। आचारं शर्तिः जात्वा शर्तिविपिनस्य तत्र। हेतु हृददर्शीते सर्व अनाश्यः विमुक्तत्वे। …… तेनाशार सुर्वीद वतदर्शानूतां प्रवतते। सुर्वितेपस्यनितसम्भविनिवारणस्यौ। सत्नादाः चररेण‘ सुर्वितेपिनितोत्तरस्य साधितमनेन। तत्र पप 220–221.
views, viz. that both are equally strong and so there is an option in case of conflict, that ācāra is stronger, that smṛti is the stronger of the two. The prima facie view is that both are equally strong, since smṛti and sadācāra are both inferred to be based upon Veda. Kumārila’s own final conclusion is that smṛti is of greater force than ācāra, that is, where they come in direct conflict smṛti should prevail. His position is that, though both smṛti and ācāra are to be deemed to be based on Veda, there is a difference between the two. People have full faith in such smṛtis as that of Manu and Manu and others are believed to have been inspired sages and are the propounders of the rules of dharma scattered about in various Vedic śākhas, while the same cannot be said about modern men and their practices cannot claim or possess the same weight and allegiance that the practices laid down by Manu and other sages can. From the practice of sīstas one may infer a smṛti as the root thereof and then further one may infer a śrutī as the root of the smṛti. Therefore ācāra is removed by two stages from the Veda, while smṛti is removed only by one stage from the Veda. Hence Kumārila says that in case of conflict smṛti should prevail over ācāra. The practices that are discussed here (acc. to Kumārila, Parthasārāti and others) are such as the marriage with a maternal uncle’s daughter or with a paternal aunt’s daughter and the like that are in vogue among certain people and that are yet opposed to smṛtis (such as Manu XI. 171-72) and for which a visible motive can easily be found (kāmādhēvanataram spasta-meva drāṣṭate, as the Śastraḍipikā says).

Kumārila gives another (and so a third) explanation of Jai. I 3. 8-9 1647 which need not detain us here.

1647. सना विनिर्विविचित्रं, स्पषां। साहस्यथा, वा विशिष्टित्वभावं। जै. I 3. 8-9 Acc to Kumārīka here śāsā means स्वत: while acc. to Sabara’s gloss शास्यथा means स्वतः. Sir G. Jha in ‘Purvamāmāsā in its sources’ p. 226 translates ‘giving and accepting in gift and buying and selling lions, horses’. केसांतिवि means ‘hon’ also, but it is hardly possible to believe that gifts of lions were made to brāhmans or that they accepted them. केसांतिर must be taken as an adjective of ‘āśva’ here. The शास्यथाकं on III 434 remarks, ‘ब्रह्मणां धोषकरं’ the तोषकरं of Jha. The ‘स्वतः’ of these sources must presumably be based on the Sanskrit दशिन or तोषिन. This shows that the prohibition against the gift of ‘kesara’ refers to the gift of horses. Sabara on Jai VI. 7 4 makes this quite clear when he says that in the Viśvajit where the sacrificer had to make a gift of all his wealth, horses

(Continued on the next page)
Jai I. 3. 15-23 constitute what is called Holākādhikarana, or Sāmānyāsrutikalpanānhikarana. The first two and the last two sūtras are the most important. Certain practices like the Holāka (spring) festival are observed by the easterners, certain others like Āhūnāibuka (worfship of growing Karafi or Arka or other trees as handed down in one’s family) by the southerners, and the Udvrabhayāṅga (honouring oxen on the Full Moon of Jyeṣṭha and making them run a race) by the northerners. The question is whether, in making an inference about these practices being based on Veda, one was to suppose that the inferred Vedic text also should be restricted to the easterners and the like. 1649. The pûrvapaksa view is that the sruti to be inferred as the basis of the respective practices must be deemed to be restricted to certain parsons only (such as the easterners i. e. prācyas &c.). The established conclusion is that

(Continued from the last page)

should not be girted on account of the prohibition contained in ‘he does not give keśarīn’. The Abhidharmaśāstraśāstrasavatraśvēṇīyaḥ ādanaścavāṇaḥ yāvānapādānānātmyata parānātmyataḥ parānātmyataḥ. The śiśapāsākṣi. (pp 60-61) explains the sūtra 'Avaśyakādva etaḥ ātmanḥ... tadbhāvāne 'pitā nāma viśeṣatītiḥ bandhunāmāṃ ānāvāsaḥ. The śiśapāsākṣi. explains that there is no evidence in the sūtras. The sūtra of śiśapāsākṣi. strengthens the deduction that the sūtra in question should not be girted on account of the prohibition contained in ‘he does not give keśarīn’. 1648. Abhidharmakosasaṃgātaśāstraśvēṇīyaḥ ādanaścavāṇaḥ yāvānapādānātmyata parānātmyataḥ. The śiśapāsākṣi. strengthens the deduction that the sūtra in question should not be girted on account of the prohibition contained in ‘he does not give keśarīn’.
such practices must be deemed to be meant for all, since the general rule about Vedic injunctions is that they are applicable to all. The performer specially meant by each Vedic injunction is known in either of three ways, viz. by capability, by non-prohibition and by the employment of a special epithet or attribute. When it is said ‘śvargaṁno yājeta’ then only the three twice-born classes are meant, for, they alone are capable of tending the sacred fires and of possessing Vedic learning and a śūdra is not a fit person to whom that injunction can apply. Those who are guilty of grave sins (pañca) and the impotent are prohibited from performing Vedic rites. When the Veda says ‘rājan rājasūyaṇa yājeta’ there is a special attribute of the performer (viz. being a ksatriya) prescribed by the śrutī and so no one else can perform Rājasūya. When none of these three exists a Vedic udāha is in general meant for all (sauvadharmā). The practices of Holākā, Vrsabhabhyāṇa and the like should not be held to be restricted to certain countries or people only, but should be inferred to be applicable to all. When a man leaves the east and goes to the south, he may still perform the Holākā festival; while a man from the eastern country itself may not perform it at all. Further the words ‘southern, eastern and northern’ are relative. A country that is called southern may be to the north of another. Therefore Holākā and other practices are not invariably concomitant with particular countries or peoples. Nor can it be said that those practices require those particular countries for their performance in the way in which ārṇti expressly requires the Vaiśvadeva rite (one of the four cātur-māyas) to be performed on a spot that slopes towards the east. The Tāntravārttika points out that persons receive apppellations from names of countries on various grounds as being born in a country or as residing therein or as coming from that country or as going to that country. Medhātithi on Manu VIII. 46 says the same.

The Tantravārtika explains that the first two sūtras are meant to refer to another question also, viz. whether the rules of the grhāsūtras and of such dharmasūtra works as the sūtra of Gautama are authoritative only as to certain groups or are meant to be authoritative for all. He begins by saying that the Purāṇas, the Manusmṛti and Itihāsa (i.e. the Mahābhārata) are equally authoritative for all people and then points out that the Gobhila-grhā and Gautama-dharmasūtra are traditionally accepted by the students of the Sāmaveda, that the dharmasūtra of Vasistha is accepted by the students of the Rgveda, the sūtra of Śankha-Likhita by the followers of the white Yajurveda and the sūtras of Apastamba and Baudhāyana by the followers of the Taittiriya Śākhā. The Śastradīpikā explains that an author who was a student of the Sāmaveda taught his own work to his pupils who also learned the Sāmaveda under him, that these pupils in their turn taught that work to others and in that way there arose a tradition among the students of the Sāmaveda to study the sūtra of Gautama. Therefore, to say even as to grhā works that they are restricted to particular groups of persons is not correct. Similarly in the case of practices there is no epithet or attribute that is common to all those who practise them or which distinguishes those who do not observe them from those that observe them and therefore it is not possible to restrict such practices as Holācala to particular countries or groups of people.

The requisites of valid customs as laid down by the eminent writer of the Pūrva-mimamsā school may now be summarised: Such customs must be ancient, must not be opposed to the express texts of the Veda or of smṛti, must be such as to be regarded as obligatory by the sūtras and must be observed.

1652. उपवासमयाद्वारम् संपरवेत्तर्थिवार्त्तेऽपि किं ध्याविनिवृत्तसति किं वैभा सर्वाचर्यः

...अर्थ चेष्ट यथाश्रय्ये निर्दृश्ययौ। शुद्धरूपसूत्रानि भाववस्त्रवस्त्रणसंप्राप्ति। पुराणाः

धर्मसूत्रसन्तालिकादिनेवत्तर्थिवार्त्तेऽपि सर्वाचर्याद्वारम्। बुध-प्रस्तावः च नामार्थसन्तवत्ति।

तत्त्वा तद्यथा योनिसन्त्रस्तिं अपथ्योनिसन्त्रस्तिः। वाति तदाय दश्य पृथक्कारिकाः।

त्वाः वायूसन्त्रस्तिः। अपस्तावेश्वरीयानां तैत्तिरीयानां भाष्यस्तिः।

तत्त्वेऽव तदाय च नामार्थसन्तर्थ्यायनां वर्ग साधुप्रति। चिकित्सा-विचार-विरितस्य।

मी तताः हेतुसूक्ष्म महामायानिः, उप सर्वाचर्याद्वारसंप्राप्ति। तत्त्वा pp 243-244.,

कौँ ते चूक्रकाण्डकत्वादिनेवत्तर्थिवार्त्तेऽपि योनिसन्त्रस्तिः। नामार्थसन्तर्थ्यायनां तिक- मानंतवादिनेवत्तर्थिवार्त्तेऽपि।

तत्त्वेऽव तदाय हेतुसूक्ष्म महामायानां। चिकित्सा-विचार-विरितस्य।

अवामास्या तस्य ज्ञातसाधनवस्त्रवस्त्रणसङ्ग्रहस्य व्यवस्थानिवृत्तिः। प्रतियोगितांस्वतांगृहस्यादिनेवत्तर्थिवार्त्तेऽपि।

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by them with the consciousness that they are so, they must not have a seen or visible purpose, and they must not be immoral. It has to be remembered that the purvamimamsa writers did not lay down anything about the binding character of usages that were peculiarly secular but restricted their remarks to customs and usages that had more or less an unseen or spiritual purpose. Khandadeva emphasizes this by stating ‘only those customs can be deemed to be based on the Veda that are not opposed to the Veda and smrtis and that are observed by respectable people under the belief that thereby they are carrying what dharma dictates.’ Medhatithi on Manu 1654 makes this position quite clear after quoting a verse of Kumārila ‘a smrī that is opposed to the Veda or is self-contradictory, or has a visible secular purpose or expressly states a motive (for observing its precepts) cannot be deemed to be based on the Veda’. The Mīmāṁsā-kaustubha (p. 51 on Jai. I 3. 7) quotes a verse to the effects that ‘only those whose ancestors also observed certain usages handed down from generation to generation would not incur blame by observing them (if they are opposed to śruti or smṛtī), but not others (who

1653. यदृ अत्यदेशमेवारः श्रुतिसमाधिर्ययात्राः पद्मालदायितवादि
नस्ते कथिष्ठा परिधिर्ययाः ‘पेयम परमप्रसादा पूर्वीर्मधुरःिताः।
तस्य एव तथा कुहुरसुचारेन्ते
जनाः’ हस्यपश्यमयानन्दम्। ‘पेयनाय सिद्धिः दृष्टि सन्नवनायां
स्निःस्वाच्छारेष्वा’ महामयेः। अतः यत्रहिङ्ग देवेन य आचार्याः
परार्थवर्तमानाः। अतेकं रंगवभिमव
सिद्धिवेय तन्माश्चितस्मयिति न निरोध हुति। तत्।
आचार्यार्थम् हु शूद्दशिकारणवर्मणाः
व्यायामेव महावेग सु स्मृता मार्गित्व सिद्धिविवेदिवधिवधाराः
स्वाभावितस्मयिति न निरोध।
अत्यदेशमेवारः श्रुतिसमाधिर्ययात्राः पद्मालदायितवादि
नस्ते कथिष्ठा परिधिर्ययाः। भी. कौ. p. 51 (on जै. I. 3. 7).

1654. शूद्दशिकारणवर्मणाः इतिभेदकृष्णवर्मणनामानामानामारणुपत्तिः
अत एव सूतीः। ‘शूद्दशिकारणवर्मणाः’ या स सदृढ़ार्थ उपायश्
दुर्घस्वां। वाविक हु आर्यादत्ती
पारार्थवर्त्मानास्तित्वम्। सदृढ़ार्थ
लोकोपत्तिः। अत: वेशण शूद्दशिकारणवर्मणाः।
शैलव आर्याद्वारा
नामालोकोपत्तिः। वाङ्मयम्। आर्याद्वारा।
शूद्दशिकारणवर्मणाः। भीयानासालोकम् pp. 43-44
(ON जै. I. 3. 7).

1655. न तच्चुदाकारणिः स्निःस्वाच्छारेष्वा नानाव्यात्। उक्ते च
महायुद्धः। विद्वान च
विनितम् च शूद्दार्थविविद्वारणाः। सूतिते शूद्दहृद्याः
राध्याः चैवा सम्भवविद्वारणाः। भी. 30 गायिकाः
II. 18. This verse refers to five classes of smrti texts that cannot be based on शूद्द शूद्दार्थविविद्वारणाः च शूद्दार्थविविद्वारणाः (शूद्दी); या तथा सम्भवति
is the fifth class, but the meaning is not clear. Sir Ganganath Jha in his translation of Medhatithi does not say whence this verse is taken, nor does he correctly render the words शूद्दी and शूद्दार्थविविद्वारणाः and he omits altogether the fourth pāda. The words या चैवा सम्भवति appear to mean ‘that smrī which declares its promulgation (by a sage) is not to be deemed to be based on Veda (since otherwise Veda will be held to be not नित्या).
cannot rely on such a state of things). In a learned discussion on bādhaka Kumārila in his Tantravārtika (on Jai. III. 3. 14 pp. 859-860) brings together many bādhas out of which those that are relevant to this discussion are given in the note below. It says that inference is set aside by direct perception, smṛti by śruti, a smṛti not composed by an authoritative person and that is self-contradictory is set aside by a smṛti that is authoritative and not self-contradictory, a smṛti that has a visible worldly purpose by one that has an unseen spiritual purpose, a smṛti based on inference drawn from a śruti or based upon a commendatory vedic passage is set aside by a smṛti based upon (a direct) śruti text, a usage is set aside by a smṛti and one usage is set aside by another usage that is accepted by more respectable people &c.
CHAPTER XXXIII

CUSTOMS AND DHARMAŚĀSTRA WORKS

It is now necessary to see how Dharmaśāstra works have dealt with the authority and binding force of customs and usages. Sadācāra is defined by Harita as follows:— the word ‘eat’ means ‘good’ and the good are those who are free from (moral) taint; the practices of such people are called sadācāra. Vide Manu II. 18, which also defines sadācāra. Even the most ancient śūtras testify to the fact that numerous customs and usages had arisen in different countries and villages. The Āśv. gr. (I. 7. 1–2) says, ‘various indeed are the observances of (different) countries and villages; one should follow those in marriages; what, however, is common (to all or most) shall be declared by us’. The Āp. gr. (II. 15) declares, ‘people should understand from women what procedure is to be observed (according to custom)’ and the Āp Dīśa provides (I. 7. 20. 8 = II. 11. 29. 14) that one should regulate one’s course of action (in difficult or doubtful matters) according to the conduct which is unanimously approved of in all countries by the Āryas (men of the three higher castes), who have been properly disciplined, who are aged, who have restrained their senses and who are neither covetous nor hypocritical and concludes with the aphorism (II. 11. 29. 15) ‘some teachers hold that the rest of the dharmas (not set out in this work) may be understood from women and from men of all castes’. Baud. Dīśa (I. 5. 13) states (on the subject of śrāddha) ‘the usages of people should be followed as to other rites to be performed’. Several grhyasūtras (like Pāraskara II. 17, Mānava

1657. साया स्रीणवद्रा श्व: सच्चत: साधुचक:। तेजामारणे पदु: स सबद्धार उच्चते || हरित p. by परा. मान. I. part I p. 144. This is विषयुक्ती III. 11. 3 quoted by the धर्मविवेक on गा. I. 7 as from that द्वार.

1658. अथ सबद्धारा जगन्धुमारा ज्ञानपरम्परा तद्विवेक महात्म।। आयु p. I. 7 1–2, vide H of Dīśa. vol. II. p. 441 n. 1049 for remarks of हरित and नारायण on these śūtras.

1659. सर्वज्ञानपुवष्टिसारसािपति सादरमारणं दुस्तृ साम्यसूतिनां सदासारमारणं। सारसािपति दुस्तृ साम्यसूतिनां सदासारमारणं। अथु पु. ज्ञ. II. 11. 29. 14–15 The first śūtra is the same as मान. व. ज्ञ. I. 7. 20. 8.

1660. यत्कर्मिताः कर्मविपरीतोऽवऽ:। श्री। ज्ञ. II. I. 5. 13.
gr. I. 4. 6) refer to the practices of people that should be followed in such matters as commencing agricultural operations, holidays &c. It is needless to set out these in detail here. Manu\(^{1661}\) IV. 178 pronounces the general prescription for all men, ‘one should walk in the path of good men which their fathers and grandfathers trod; by so doing one will come to no harm.’ For ordinary men this procedure is easy to understand and to follow. This dictum sets a premium on the attitude of no change in any matter for fear that change may lead to some unexpected harm and has been throughout the ages up to the present the motto of most people in India. As \acs or \sads is tangible and requires no effort to decide between conflicting views, we find eulogies of it in the earliest smritis and purānas. Vide Manu IV. 155–158, Vas. VI. 6–8 (the first and last of which are the same as Manu IV. 157–158), Anuśānaparva 104, 6–9, Visnu Dh. S 71, 90–92 (which are almost the same as Manu IV. 155, 156, 158), Markandeya chap 34, Brahmapurāṇa 121, 6–9, Visnupurāṇa III chapters 11–12, Kurmaṇḍapurāṇa (uttarārdha, chap 15).

The general rule about the binding character of customs is set out as follows. Gaut (XI. 20) observes,\(^{1662}\) ‘the dharmas (customs) of countries, castes and families, which are not opposed to the Vedic scriptures, are authoritative and binding.’ Gaut provides in the next two sūtras that cultivators, traders, herdsmen, money-lenders and artisans can lay down conventions or usages that would be binding on the respective classes, that when a dispute arises as to these usages the king should learn affairs from those who wield authority over those classes and decide the dispute accordingly. Vas I. 17 states, ‘Manu has declared that the (peculiar) customs of countries, castes and families may be followed in the absence of rules propounded by the Veda’, and in XIX. 7 prescribes that the king should

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1661 वेदार्थ विदर्शे जाते वेद दासा विद्वान्दि: जेन यादामातं सागी जेन गच्छथि विद्वद्वि। मनु IV. 178 The statement p 211 (on Jai I 3. 7) quotes this reads दुस्परिवतितिः for दुस्परिवतिः and remarks ‘वेदार्थ न व विद्वान्दिविद्विदः नाचरितं स्मृतप्रत्ययित्वदी वेदार्थं परिोपितस्य.’ ऐसा very appositely explains. अविचक्ष्यता बुद्धिः ज्ञानानादसौधेश्वरसिद्धिः 165. पदि यिङ्गि तैत्तिरिधिभि योगिकप्रतिटिवन्न भाजनिदिष्टद्र स न आचार्यानी दहि तत्त्व सागित्विद्धाः। Vide also सिद्धि on पा I 254 where महा IV. 178 is quoted and H of Dh vol II p 460 n 1086 where नेता. on महा II. 18 is quoted.

1662 वेदार्थ विदर्शे जाते वेद दासा विद्वान्दि: जेन यादामातं सागी जेन गच्छथि विद्वद्वि। मनु IV. 178 is quoted and H of Dh vol II p 460 n 1086 where नेता. on महा II. 18 is quoted.
entice these among the four varnas Ap. Dh. 8, II. 6, 15, 1 appears to lay down that the customs of countries and families (if not opposed to Veda) are authoritative and are to be followed in the respective countries or families. But this view seems to be unacceptable to Baudh. Dh. 8 (I. 1. 19-26) which says, 'there is difference of opinion regarding five (practices) in the South as well as in the North. We shall explain those peculiar to the south. They are to eat in the company of (in the same plate with) one whose upanayana is not performed, to eat in the company of one's wife, to partake of stale food, to marry the daughter of a maternal uncle or of a paternal aunt. Now (the customs peculiar) to the north are: to sell wool, to drink rum, to deal in the sale of animals with an upper and a lower row of teeth, to follow the profession of arms and to travel by sea. He who follows (these practices) in any other country than where they are generally in vogue commits sin. For, in respect of these customs the authoritativeness must be restricted to the respective countries. Gautama declares that this is false. And one should not approve of (accept) either (of the two sets of practices), because they are opposed to the tradition of sistas (or opposed to the smritis and the views of sistas).'. The Tantravartika (p. 211) mentions the argument of some concerning these passages of Ap and Baud, viz, that Apastamba's very general statement that practices of countries and families are authoritative in the respective countries cannot be accepted.

1663. एव विनेतिपतिति विशिष्टितिनिर्दिष्टिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्तितिविवर्ति
as valid, as it is opposed to the views of Gaut. (XI. 20), as Baud. expressly states that certain practices though prevalent in certain localities cannot be accepted as valid and binding even in those localities because they are opposed to the express words of such authoritative and highly venerated smritis (as those of Manu) Manu in several places provides for the enforceability of customs and usages. In Manu VII. 203 it is said, ‘the conqueror should hold as authoritative and binding the lawful customs of the conquered country, just as they are stated to be’ and in Manu VIII. 41 and 46 it is provided, ‘A king who knows dharma (sacred law) should carefully inquire into the customs of castes, of countries, of guilds and of families and settle (or enforce) the customs peculiar to each. Whatever may have been practised by the good and by twice-born men devoted to dharma, that shall be established (by the king) as the law, provided it be not opposed to the (customs of) countries, families and castes’. Medhatithi adds that the king has to see whether the customs of countries, families, castes and guilds are directly in conflict with the Veda or are harmful to others or utterly immoral (such as marrying one’s mother) and only those that are found not to be so are to be enforced by the king and he adds on Manu II. 6 that the practices of sītas (persons who are well conducted, free from greed and learned in the Veda) on matters on which the Veda and smriti are silent and which they observe with the consciousness that they (practices) are right (dharma) should be deemed to be based on Veda. He offers certain illustrations of such practices and also

1665 जातिजनानयुद्धपर्वमांसैं सौन्तमानमांसैं यथा परमांसैं परमांसैं कृतद्वारा परमांसैं संसारे तथा सामाजिक ध्येमां संसारे तथा सामाजिक ध्येमां संसारे

1666 अर्थात् साधुमान चारुकुटिय पठ्यावादित्तत्व सामाजिक ध्येमां संसारे तथा सामाजिक ध्येमां संसारे

1666 श्रीकृष्ण सुप्रभानु दशरथाश्वानु विवेकानु कर्तव्यानु परमांसैं संसारे तथा सामाजिक ध्येमां संसारे

1666 अर्थात् साधुमान चारुकुटिय पठ्यावादित्तत्व सामाजिक ध्येमां संसारे तथा सामाजिक ध्येमां संसारे
relies upon the words of the Mahābhārata (Vanaparva 313. 117), 'what is true dharma is concealed as in a dark cave; the (only) path is to follow great men'. In I.118 Mann declares that the ancient (or long enduring) laws (or customs) of countries, castes, families and the rules among heretics and companies (of traders and the like) have been dealt with by him in the sāstra (Institutes). Yāj. I. 343 provides that when a conqueror reduces a country to subjection he should preserve intact whatever customs, laws and judicial procedure, and family usages are handed down from generation to generation therein (provided they are not opposed to sāstras and, as the Mit. says, he should not cause confusion by imposing the usages of his own country on the conquered country). Yāj. II. 192 (like Manu and Gaut.) provides that the varying usages and conventions of śrenis (guilds of artisans), naigamas (traders), heretics and associations (of soldiers and the like) should be respected by the king in the same way as he honours the usages of learned brāhmaṇas. About the latter Yāj. II. 186 says that the king should sedulously enforce the conventions of learned brāhmaṇas which are not opposed to the dictates of the Veda and smṛti (such as about pastures, water-courses and wells and the preservation of temples) and he should also enforce his edicts that are not opposed to Veda and smṛti (such as making provision for travellers and prohibiting the sale of horses to an enemy &c.). Kautilya prescribes that the king should follow as regards inheritance and partition the customs that are in vogue in a country, a caste, a saṅgha (company or guild) or a village. Devala and Brhatparāśara (X. p. 281) have a verse very similar to Yāj. I. 343. The Mahābhārata remarks that there is no custom or practice that can be said to be beneficial

1667. अथापत्यं न्यायं महाजनो चेत गता स पर्यावं ह्रति...। चित्तांशी श्रवणिन्यासान।
प्रतिमिग्निः अनिवार्यं लोकमाया। अपायमाणिकणि मन्त्रिणी। सारं वेदवायामपातिं चित्रवेति। नेतरं
on महा II. 1. The whole verse is: तटयौ निभिवद्धा श्रुतिः विभिन्न नैकौ काविरंय गते मन्त्राणां। धर्मसम्बं सत्यं निधिने श्रुताया महाजनो चेत गता स पर्याता।। नेतरं। ॥ वनपरं 313. 117; the words 'धर्मसम्बं यथरं निधिने श्रुताया' are quoted by नेतरं on या. I. 9.

1668. वेदस्य ज्ञाता सद्भवस्य धर्मस्य ग्रामस्य वाणी या। ज्ञानस्यन तेनेव अवार्णम प्रबोधितम्॥ अर्थसास्त्र III. 7. p. 165. अस्मच्छतत्त्वत्त्वं निष्पक्षिपत्त्वं निष्पक्षिपत्त्वं निष्पक्षिपत्त्वं ज्ञातिकरणानि संख्या॥ वेदस्यागर्भितात्म्यं धर्मसः परस्यवहारचारितस्यस्यं निष्पक्षिपत्त्वं अर्थसास्त्र II. 7 p. 62.

1669. नातिन्वेंद्रे द्रे अभायं तैतत्त्वं नाणेन्द्रिति या। यो च न ह निःशिषो धर्मसं धर्मम न विवाहे।।
कंतू। वेदस्य सत्तितम्। I. p. 10.
King was to tolerate peculiar practices

to all alike. From this it follows that variations in practices were to be tolerated by the king. Bṛhaspati¹ advises the king to keep intact the customs of countries, castes and families that have been long in vogue in them and states that otherwise the subjects become irritated and disaffected and there is loss of wealth and army. He gives certain striking illustrations of peculiar practices: 'members of the twice-born classes in the southern countries take in marriage their maternal uncle’s daughter; in the middle country (the country between the Himalaya and the Vindhya lying to the west of Prayāga and to the east of Vīnasāna where the Sarasvatī disappears, as said by Manu II. 21) artisans and mental workers eat the flesh of a cow; in the eastern countries people (all including brāhmanas) eat fish and women are given to adultery; in the north women drink liquor and contact with them even in their monthly illness is allowed; the people of the Khāka country take as wives the widows of their own brothers; these several people are not liable to undergo punishment or penance because of their doing these things in the respective countries'. Mediaeval writers differed about the meaning of the last half verse. The Madanaratna said (acc. to V. P. p 22) that there is neither punishment nor prāyaścittā when the above practices which are opposed to śruti texts are indulged in by the inhabitants of the countries specified, while the V. P. p. 28 holds that there is only absence of punishment at the king’s hands for these people in those countries, but they are still liable to undergo prāyaścittā and that if these practices are followed in other countries both punishment and prāyaścittā have to be undergone.

¹ Madanaratna Ed. 261. 17

1670. य हि सर्वत्र विनोदिता काव्यविशेषता संक्षेपित हि : श्रृंगित 261. 17

1671. देशाधिकृतकलाना च वे धर्माचरणविनोदिता। सौरूज्ये पवित्रनीया: विरूपस्वरूपभाद्रा पद्मा। जनसाधिकृतप्रति वर्णो कौशल्य नदयात। उदात्तेऽरुत्तिसिद्धायैनौलकृत हलस्तु हिदुम्। वन्यदेश्यां कर्मकादः। स्तिकृतसिद्धायैनौलकृत। मदनाविक्षतवता। विशारदायु: नतं: दूहे विचारारसता। खिर।।। उच्चरे मदना वर्ष्योऽवर्ष्यौऽवर्ष्य। स्वर्गः सुरमा वहल्ल। खावारात्ता: सत्त्विकृत सत्त्विकृतायामण्डिलकाः। अविन्द कर्मकादः जैसे महाभिधरुसरकारः॥ बृह. q. in स्वतिः; I. 10 (except जगाय...नदयात and last half), व्र. बन. p. 16 (except first verse and a half). मदनरतन (folio 5a except half verse स्नासाताः), स्वात्तिक (र्गण्ड्रम p 130), युक्तीत्तिः IV. 5. 48-52, यथ मदय p 7 (except the half verse स्नासāc. and mentions नतं सहे वै व. 1.) यथ म p 22 र्गण्ड्रम represents the Khakha tribe in the Vitastā valley उक्ते वृहस्पतिं। अमृतकामाृतकामाृतकामाृतकामाृतकामाृतकामाृतकामाृतकामाृतकामाृतकाम। उक्ते कर्मार्थानां च बृहस्पतेः। देशाधिकृतकलाना च वे धर्माचरणविनोदिता।
Kāt, defines what is meant by the customs of countries and families and states how and when they are to be enforced: 'That is said to be the custom of a country, which is in vogue in a country, is of long standing and is not opposed to the Veda and Smṛti. That is called family custom which has come down hereditarily in a family as right conduct (dharma) to be observed (by members of that family); the king should preserve it as it is.' In disputes between the residents of the same country or capital, hamlet of cowherds, town or village the decision should be based on their own conventional usages, but in disputes between inhabitants of these and others the decision must be in accordance with the sacred texts. Therefore the king should decide the causes of people according to the rules of śāstra: but in the absence of texts he should carry out (the administration of justice) according to the usage of the country. Whatever conventions are settled in accordance with the consent of the people of a country should always be preserved in writing sealed with the royal seal. Such conventions should be sedulously upheld as if they were the dictates of śāstra and the king should decide disputes after carefully considering them. Here Kāt is principally concerned with the decision of legal disputes on the basis of the customs of countries and families, but his rules also have a general application. He also states that in the case of the conflict of laws by which the parties are governed śāstra prevails. Pitāmaha has a similar verse about the usages of towns, villages and guilds and mentions that Br held the same view. Manu also (VIII. 3) requires the king to decide the disputes of people according to principles drawn from local customs (deśadṛṣṭa hetu) and from the Institutes of law (śāstradṛṣṭa). Medhātithi (on Manu VIII. 3) gives some interesting illustrations of local customs; viz in certain southern localities a sonless widow

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1672. पर्य ूं श्रेष्ठप भृ भगवर्णयवादानिर्विद्यनिवर्तनी च। दृष्टिनिर्विद्यनिवर्तनी वेदानिद्य तथा।

1673. भास्मोपदेशसम्बन्धितानिद्यनिवर्तनीययात्। दृष्टिनिर्विद्यनिवर्तनी वेदानिद्य तथा।
occupies a square low table in the hall of justice, when she is
asked with dice by the judicial officers and then she gets her
husband's property (this is a reminiscence of Nirukta III. 5
claiming Reg. I. 25. 7), in the north there is a custom that
when certain persons come on behalf of a bridegroom seeking
a virgin in marriage and they are fed at the house of the
girl's father then it is implied that there is a promise to give
her in marriage to that particular bridegroom. These two
customs are not opposed to any śruti or smṛti (and even the
P. p. 10 refers to the second as prevalent in the north and
adhyādesa). But Medhātithī mentions other local usages
that are opposed to smṛti e.g. grain is lent in spring and in the
autumn of the same year double of it is taken. This is opposed
to the rules of smṛti laying down rates of interest.

Very difficult questions arise in regard to the relative force
of śruti, smṛti and sadācāra and numerous rules have been laid
down in cases of apparent and real conflicts among them. As
Manu II. 6, Vas. I. 4-5 and Yaj. I. 7 mention the sources of
harma to be śruti, smṛti and sadācāra in that order, the Mitāk-
śara remarks\(^{1674}\) that 'in case of conflict, each preceding one of
these three has more force (or binding character) than each
ucceeding one.' Śruti or Veda is recognised by all smṛti writers
as the highest or supreme authority for those who desire to know
that dharma\(^{1675}\) is (vide Manu II. 13 and Yaj. I. 40). If two
Vedic texts of equal authority are in conflict, then Gaut\(^{1676}\) I. 5,
Manu II. 14 and Jābālī declare that there is an option. For
example, there are two Vedic texts 'he takes the sōdasān cup in
the Ātrātra sacrifice' and 'he does not take the sōdasān cup in
the Ātrātra'. In this case there is an option. Similarly Vedic
texts say that the daily Vedic agnihotra may be performed
after sunrise, or before sunrise or when neither the sun nor stars
are visible. Therefore there is an option, viz. the daily agni-
hotra offering may be made at any one of the three times speci-
fi ed (Manu II. 15). But a vedic text which is in apparent con-
flict with another is not always of equal force with that other.
In such a case there is no option, and various rules are laid

\(^{1674}\) एवेदा निरोधे पृथक्कृतिः चाहीः यथास्थितः। विवाह वा। यजः I. 7.

\(^{1675}\) यथास्मात् विद्यामर्गानम् यथाक्रमं परमेष्टम्। मनु II 13 तथास्तम्। यजः इति।

\(^{1676}\) यथास्थितम् विद्यात्म विद्यात्म अन्तःसन्धिः। इद्धार्जितम् XIV. p 599. विद्याह यजः I 40.

\(^{1676}\) एवेदा निरोधे पृथक्कृतिः विवाह वा। यजः I 5; सुल्लैट्रिः वा पच्च स्वार्थम् धम्मदीनी तुमः।

\(^{1676}\) एवेदा निरोधे पृथक्कृतिः विवाह वा। यजः I 5; सुल्लैट्रिः वा पच्च स्वार्थम् धम्मदीनी तुमः।

\(^{1676}\) एवेदा निरोधे पृथक्कृतिः विवाह वा। यजः I 5; सुल्लैट्रिः वा पच्च स्वार्थम् धम्मदीनी तुमः।
down in the Pūrvaśāstras some important ones among which will be discussed at length in the section on Pūrvaśāstras. Such texts may be explained by holding that one lays down a general rule (śamānya), while the other lays down a special rule (viśesa) or an exception, or that one is a veda and the other merely an aśuṣṭāda or that the two texts have different scopes or refer to different ages &c. All these rules about the interpretation of Vedic texts have been held to apply to smṛti passages. For example, Manu VIII. 381 is a general rule absolutely prohibiting the killing of a brahmana. While Manu VIII. 350 allowing the killing of a brahmana in self-defence is a special rule or may be regarded as a mere arthavāda (viz. even a guru who is really not to be killed on any account may be killed when he is an ātātāyaṇa, what of others, as the Mit. or Yaj. II. 21 explains). Similarly Manu VIII. 351 saying that there is no fault (i.e. no sin, no punishment and no prāyacchita) in slaying an ātātāyaṇa has restricted scope as applying only to an ātātāyaṇa who is not a brahmana. A few more examples will be given immediately below.

In cases of conflict between sruti and smṛti, the rules laid down by the Pūrvaśāstras have already been explained (pp 832–34) Jaimini VI. 1. 13–14 and Śabara furnish an example. If, relying on Manu VIII. 416, the pūrvapaksa were to argue that women own no wealth and so should not engage in a veda sacrifice than as that smṛti so interpreted is opposed to the Veda it may be discarded by women. Smṛtis also lay down certain general rules on that point. Laugāksi! and Jābala lay down that in case of contradiction between sruti and smṛti, the former has greater force and that if there is no contradiction then what is laid down in the smṛti should be observed as if it were laid down by the Veda. The Mit on Yaj. III. 46 admits that a proposition of the Veda cannot be set aside (bādhita) by even a special proposition in a smṛti text. But in spite of the general proposition commentators like Viśvarūpa, Medhātithi and Viññānesvara

\[1677\] कऽकुकसाहास्याश्च पैर। धे VI 113; परि सारितमत्स्मसनं परस्य निर्भरणं व शरदं, शतक्तःकृणि तत्ति न पवेदेन। तत सत्तवा सरितस्मिबिज्ञात। तापितिर्घर्षयं। ततापि विषयिन्निति सती सारितमत्स्मिभद्रिश्च वरिष्ठानाः परिवर्ध्यापद्धति वेंकिण्य। नूतन निर्धारिणी।

\[1678\] वृत्तेवतिविदेशे वृत्तेवति गौरिष्ण। अनित्रोह सूचनार्थ सरिता वृत्तेवतिविदेशे वृत्तेवति गौरिष्ण।

But in spite of the general proposition commentators like Viśvarūpa, Medhātithi and Viññānesvara...
had to admit that what was laid down by śruti texts was set aside or contradicted or abandoned by smṛti texts or by popular sentiment. After the Udayanīyā (concluding śāstrī) in the Agnistoma sacrifice was finished, a rite was prescribed by Vedic texts in which a barren cow (called Anubandhīyā) was sacrificed for Mitra and Varuna. But later on this was condemned and in lieu of a cow āmikṣā (mixture of heated milk and curds) was substituted. Vide H. D. II pp. 1200–1201 for the anubandhīyā cow and p. 628 n. 1198 above for the verse quoted by the Mit. on Yāj, II. 117 condemning cow sacrifice in Kaliyuga. Yaj. III. 234 puts gosadha (slaughter of a cow) at the head of upapātakaś. Medhātithi on Manu IV. 176 after stating that even such acts as donating all one’s property in the Viśvajīti sacrifice or killing a cow should not be done (though sanctioned by the Veda) remarks that he gives that explanation following his predecessors’ views but that to him it appears that an express śruti text cannot be set aside by a smṛti passage. Viṣvarūpa also (on pp. 25–26) after advertising to the fact that Yaj. III. 234 places gosadha at the head of Upapātakaś remarks that this may apply to the killing of cows spoken of in smṛtis such as at the time of samāvartana (vide Manu III. 3) and that the rule must be upheld that a smṛti that is in conflict with an express text of the Veda is to be set aside. Sometimes even a smṛti text though theoretically weaker than śruti was allowed to prevail over a śruti. For example, the Veda prescribes the filling of the cups of wine in Sautrāmani īsti, but this is one of the matters prohibited in Kali (vide chapter on Kalivarjyas below).

The general rule is that when a custom or usage is opposed to the text of the Veda the latter must prevail. So early a writer as Āpastamba states this rule emphatically in several places. In Āp. Dh. S. I. I. 4. 8 it is stated: ‘For, an explicit śruti text has greater force than śaṣāra (usage) from which a śruti text (on which it may be supposed to be based)

1679 न इत्यस्थवात्सीतिविदितस्य शर्यत्वाय यात्रेः स्मर्यत्। सेधा on मण्ड IV. 176; तेन वेदवृत्तायाः स्त्रूत्संपन्न इति रिविद्धति। विश्वकथ प्र. 26 on या I. 7.
1680. वाशिष्ठ Ṛgवेदलालिति स्वतः धर्मसंस्कृतिम वीरसम्बन्धितर वर्धश्रवर्धैः कहीं अन्वयम् धर्मस्वर्धैः स्वर्यवादमंर्यस्यप्रमाणम्।—इति शर्यत्। अन्यदायार्यथा-पदालं परिधियात्मकार प्र. 27.
1681 श्रवणीति वादिपतप्रमाणिनित्याचारप्रधान। आप. की. II. 1. 4. 8, विश्वकथिते स्रुवित-लक्षण त्रयम्। आप. I. 11. 30. 9, विशेषद्वेषवादां तु वेधा। विनाधिपति निविद्। तद्व वादि वृद्धेन्ति श्रवणीयमतप्रमाणकारामधेनुम एकायमिति श्रवयिद्य आचाराध्यमाणिनिति स्वपदन्ते। आप. की. II. 9. 23. 9.
may be inferred.' In I. 11. 30. 8-9 Āp Dh. S. says, 'during the morning and evening twilights a snātaka should be seated outside the village and should restrain his speech (should not speak about worldly matters); but (an agnīhotra must not go out for) what is enjoined by śruti is of more force in case of conflict of duties'. Similarly in Āp. II 9. 23. 8-9, 'It is the settled view of those who are deeply learned in the three Vedas that they are (highest) authority. They consider that the rites which are there prescribed for performance with rice, yau, animals, clarified butter, milk, potsherds (in conjunction) with the wife and accompanied by loudly or inaudibly recited (mantras) must be performed and that a usage opposed to these rites is without authority'. In spite of this and the doctrine of the Purvamāmasā stated above (p. 843) usages sprang up that were opposed to or gave the go-by to the prescriptions of the Veda as will appear a little below and particularly in the section on Kalivarjya.

The conflict of śrātras among themselves presents much greater difficulties. From very ancient times authors of śrātras differed greatly among themselves. A few striking examples may be cited. Āp. Dh S. (I. 6. 19 2-13) cites the views of ten predecessors on the question of the persons whose food may be partaken of by a brāhmaṇa (ka ūṣyānāh). The difference between Gautama and Baudhāyana on the one hand and Āp. on the other on the question of the validity of certain usages in certain localities has already been referred to (p. 858). In III 16 Manu mentions three views (and four sages) on the question of the position of a brāhmaṇa who marries a sūdra wife or has a son or a child from her. Baud. Dh. S. I. 8 2, Manu III. 13, Viṣṇu Dh. S. 24. 1-4, Pār. Gr. I. 4, Vas. I. 25 show that brāhmaṇas were allowed to have sūdra women as wives. But Yāj. I 56 emphatically dissent from this by stating 'this is not my view'. In this state of affairs the medieval digests and commentators were hard put to it to evolve rules of interpretation. One rule early evolved was that when two śrātra texts were in conflict, 'reasoning based on the practices of elders (śistas) was of greater force' (Yāj. II. 21)1682. The Mit explains that raticolca-

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1682 सुधारकर्षिते स्मारता बच्चात् स्मारकाः | पा. II 21, on which the या. 2, p. 13 remarks 'स्मारतेन्द्रत्वेत्वर्धितेः स्मारतेन्द्रितेः स्मारतेन्द्रस्तितिः स्मारतेन्द्रपञ्चः स्मारतेन्द्रविस्तः स्मारतेन्द्रस्तितिः स्मारतेन्द्रपञ्चः कर्षितेः | तस्य जीतसमास्तप-विज्ञापनस्तप-वित्तदिशितवस्तः Policy (Continued on the next page)
tion may take the form of holding that one text lays down a general rule and the other lays down a special rule (which prevails over a general rule), or the text may be held to relate to different sets of circumstances or in the last resort it may be held that there is an option, but in arriving at these conclusions the practice of the old or of śṛṣṭas who follow the rule in one text and discard or avoid the rule in the other text is the guide. Br.\(^{1681}\) gives the following warning to those who do not take reasoning into consideration: 'The decision (in a cause) should not be given by merely relying on śṛṣtras, for in the case of a decision devoid of reasoning loss of dharma results'. Nār. (I. 40) provides in a strain similar to the Mit, 'when there is conflict between two texts of dharmaśāstra, it is declared that the method to adopt is to resort to reasoning, for the practices (of śṛṣṭas) are of great force and the strict letter of the law is overruled by them (or properly understood through them)'. These provisions remind us of the working of the principle of *aequitas* applied by the prāstors in Rome to the rigid older legislation or the influence of Equity in English Law. When

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(Continued from the last page)

1683. In *Bhaṇu v Sundarabha* P. J. for 1874 p. 250, where the question was whether daughters were excluded from inheritance as regards the Utpat family of priests at the temple of Vithoba at Pandharpur, Yāj. II 21 was translated (at p 252) as follows, 'if two texts be opposed *usage* is of force for their construction'. In *Chunilal v Saraswati* 33 Bom. 433 at p. 439 Yāj. II 21 is rendered as 'where there is a conflict between two or more śṛṣtras that one should be accepted, which is conformable to equity'. The former rendering is rather obscure and the latter does not translate Yāj. closely. The exact meaning of 'equity' in this translation is not clear. It certainly does not mean 'equity' in the strict sense of English Law.

1684. *Śrīdharmadnīpatinī* 139Yāj. 354. 1. *śrīdharmadnīpatinī* 139Yāj. 354. 1. Kēśav śaśankāśrama may not lay one's Lýi

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old rules become too narrow or are deemed to be not in harmony with the views of a changing or progressive society, it was thought to be the privilege of the king or the judge to adopt his practice to the existing state of society and not to decide a case by a too strict adherence to ancient dicta.

Another rule that was laid down was that in case of conflict between dharmaśāstra and arthaśāstra, the former is of more weight or authority or that one should discard the rule in the arthaśāstra (Ap. Dh. S. I. 9 24. 23; Yaj. II. 21; Nar. I. 39; Kat. 20) Vide pp. 8–9 above for an explanation of this rule. The rule of the arthaśāstra has the accomplishment of a visible or worldly purpose as the goal, while the dharmaśāstra rule has as its purpose the securing of unseen or spiritual results. Therefore the latter from a spiritual or ethical point of view is superior to the former.

Several other methods of resolving conflicts between smṛtis may be mentioned here. Br. states: ‘Manusmṛti occupies a pre-eminent position because it puts together the purport of the Vedas; that smṛti which is in conflict with the purport of Manus is not commended’. Angiras also states that to follow the words (of another smṛti) disregarding the unrivalled dharmaśāstra of Manu would not be beneficial to a person. The Mit. on Yaj III. 300 speaks of the Manusmṛti and others as the great smṛtis (mahā-smṛtī). Some writers quote the Vedic text ‘whatever Manu said is indeed medicine’ in this connection, thereby identifying the author of the Manusmṛti with the Manu named in the Vedas. But this does not afford much help. Another principle evolved was that certain rules of conduct and certain smṛtis were of special authority in certain cycles of time. Manu (I. 35–36 = Śaṅti 232. 27–28 = Pārāśara I 22–23

1685. च तिमतिपति स्यादद्धार्मिकदार्थान्यक्षरोऽस्मातशरीयास्यायां। अर्थसासीत्वक्षयन्यायर्तिकोऽपरालक्‌

1686. वेदापूर्णिनित्रोऽष्टुधुः। वाराज्ञाय विहि समयोऽविलित त्वरि स मात्स्याय हि च च वै ध्र्मवाय" तत्वज्ञाय श्रीयते तत्वभाविकान्तः च। अन्तत्त्वात्मोखोऽपरते तत्वस्य-मात्स्याय हि समयोऽविलित त्वरि स मात्स्याय हि च च वै ध्र्मवाय। अन्तत्त्वात्मोखोऽपरते तत्वस्य-मात्स्याय हि समयोऽविलित त्वरि स मात्स्याय हि च च वै ध्र्मवाय।

1687. श्रुतिपितौ वै ज्ञानं त्व महावत्यत्वस्यविषयं। स्वविद्यां (परस्परं) पी. ४। तस्मात् स्थिरिष्ट (बायोग्राम) पु ६। तस्मात् स्थिरिष्ट (बायोग्राम) पु ६। तस्मात् स्थिरिष्ट (बायोग्राम) पु ६। तस्मात् स्थिरिष्ट (बायोग्राम) पु ६। तस्मात् स्थिरिष्ट (बायोग्राम) पु ६। तस्मात् स्थिरिष्ट (बायोग्राम) पु ६।

This text is in संस्कृतम्. II. 2 10. 2 and Kāthaka XI. 5 has almost the same words.
Usages of several yugas differ

= Bṛhat-Parāśara I. p. 55) himself says that the dharmas differ according to which of the four yugas is current, viz. tapas is the highest dharma in the Kṛta age, knowledge in Tretā, yajña in Dvāpara and only dāna in Kali. This verse only means that in a particular yuga the predominant or easily performed dharma is the one indicated but the verse does not mean that a dharma predominant in one yuga was prohibited in another. Parāśara-I. 24\(^{1688}\) (= Bṛhat-Parāśara I. p. 55) declares that in the Kṛta age the dharmas (to be observed) were those promulgated by Manu, in Tretā those of Gautama, in Dvāpara those of Śankha-Likhita and in Kali those of Parāśara. This also did not solve all difficulties, since the medieval digests and commentaries found that even what was allowed by Parāśara came to be disapproved of or condemned by the people: Many prescriptions of the smṛtis were therefore included under Kāśyapa (acts forbidden in the Kali age) on the ground that, though at one time prescribed or sanctioned by the śāstra, should not be resorted to, if it has become hateful to the people, since it would not lead to heaven\(^ {1689}\) (if persisted in). This was the dictum of Yāj. I. 156 (= Brāhma-Nārada-purāṇa 24. 12), Manu IV. 176, Visnu Dh. S. (71. 84-85), the Visnupurāṇa (III. 11. 7), Śukra III. 64, Barhaśpatya-sūtra (on Arthaśāstra) V. 16. Vide p. 630 and n. 1202 above. These texts were relied upon for prohibiting certain acts (though done in former times) by the Mit. (on Yāj. II. 117, III. 18), V. P. (p. 442) and others. But these devices of interpretation also proved futile in certain cases. On the question of the periods of mourning due to death for ksatriyas and others the texts are so various and so conflicting that even the great Viśnāneśvara declares (on Yāj. III. 22) that he is not going to furnish any orderly presentation of the smṛti texts assigning to each its proper province, since it would be useless to do so in view of the fact that the usage of sūstras did not agree with most of them\(^ {1690}\). Viśvarūpa also (on Yāj. III. 30) is in the same predicament. The commentators (such as

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\(^{1688}\) कृते हू मानको धर्ममिति गीतम् गृहस्: हारेर धार्मिकलिखितः कलेन पाराशर:। गृहोऽयसः 24 ग. संस्कृते-मूल 1. p. 11. This is ascribed to Bṛih. In the आचार्यका p. 12 quoting from the यजुर मा.

\(^{1689}\) उपनवेश्यज्ञानिः कस्मीपिधाकारी च च। परस्यवा मित्रको लोकसाधिको च। च च। शिष्यपरम पृया 11. 7. धर्मसंग्रही तीव्रकमप्तेः न कुतसार धर्मसंग्रही मात्रेऽति। शिष्यपरम। च 16.

\(^{1690}\) चर्चेनामेवकाव्यादीपदासनकपयुते दुःखितः। वेदा लोके चतुर्वत्ततानन्नमृतस्वस्तिति नानं ध्याज्यात्मनां मद्दर्षै। निःसृ या III. 22.
Mādhava in Par. M. on I. 1, p. 84) were aware that people would not go in for religious practices that called for great effort and would seek for such rules as would be easy of observance.

In some cases it was provided that where there is a conflict among smṛtis the view of the majority should prevail. Gobhila-smṛti (III 148–149) provides that where there is a conflict among passages (of smṛtis), authoritativeness rests with that view which is supported by a majority of the texts, but where two passages are of equal authority then reasoning has to be employed. The assumption or axiom was, according to Medhātithi (on Manu II. 29 and XI. 216), Mit (on III. 325), Sm. C. (I. p. 5), Aparāraka p. 1053, Madanapārājita (pp. 11, 91) and others that all smṛtis form one sāstra, that if some smṛti texts on the same subject are in conflict there is an option and when there is no conflict all rules from all smṛtis should be held applicable to the subject matter; this was based on the analogy of the maxim called ‘sarva-ṣaḥkāpratyayanyāya’ or ‘sākhāntarādhikarana’ (vide Jai. II. 4, 9 and Sabara thereon).

It is further provided that works of heretical sects were to be left out of consideration. Manu calls them smṛtis, but they are outside the pale of Vedic orthodoxy. Manu (XII. 95) declared, ‘the smṛtis that are outside the (pale of) Veda and all false or fallacious doctrines are of no avail after death, because they are all based on ignorance’. In the Vedāntasūtra (II. 1.1) also the word smṛti is applied to the works on the

1691. अन्तः कर्त्ता भाषिनः पवासाभ्यां धर्मेऽपि नीपपस्मभ्यां सुखवस्तरं ध्यातं वृद्धिता ||
पति मा या पावन ॥ परि ॥ खणाि I part 1 p 84.

1692. अथातः यी विनासः स्पतसः पार्थे पुष्पिकं सुधां ।
पायासस्तिः (माण्ड ॥)
तु वादः वासिते यथा || विस्तारी प्रज वल्लभाला भाष्यां तथा भूवयां ।
तुवन्यापेशेऽहुः पुष्पान्युः (यवाय एव(?) तस्मै तस्मै) ॥ मोनिष्ठयुति III 148–149 प्राणस्मिती: बैद्यस्त्रय 15 अलिक XI 57 (about the length of the staff of a vāṣya brāhmaṇī). The verse विनासी यथा is quoted (without name) in Mahāasūtra p 767.

1693. यथा सर्ववार्ता वा विवेकवायतयगिशी ||
यथा भुवनावश्यकमां पार्थे एव सर्ववृद्धिकयतयगिशी ॥
तथात भा भाषायाकथिताकथार्थानां विभाग सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान II 29, पावनस्मिताः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XII 216, पावनस्मिताः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XI 325, अवदेषाः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XI 325, अवदेषाः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XI 325, अवदेषाः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XI 325, अवदेषाः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XI 325, अवदेषाः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XI 325, अवदेषाः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XI 325, अवदेषाः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
तेषाः, on महान XI 325, अवदेषाः महावर्ताकथिताः सर्ववृद्धिकयतयगिशी ॥
তেষা on VIII 333

1694. यद्यवेद्यमानं स्तुतपो यथः काल्य युद्धपः ।
सर्वसङ्कन्तयता वेदं यवाय निष्कर्षिता हि ता स्थुताः । महान XII 25. This is quoted by the तन्त्रसाधिक्य on एकात्र 3 5 p. 196 with the remark ‘पत्रविच्छेदम् स्थुतया न तन्त्रसाधिक्यम् परिवर्तितोऽवस्त्रय। यथा वेद्यमानं...महानिष्ठः हि ता स्थुताः’ द्वितीय। तन्त्रावली मति चार्यपालसेविन्तजीविका मानांतयानन्येशय रघुदिति सिद्धां ।
Sānkhyā philosophy. The Tantravārtika (p. 195) says that the Baudhāyas and other heretical sects do not admit that their doctrines are based on the Veda, like a bad son hating his parents; the prescriptions contained in their works are opposed to all the 14 ādyas except in the case of a few sentences laying down restraint of senses, charity and the like; they were promulgated by persons like the Buddha who had given up the path of the Veda and did acts contrary to the Veda and they were propounded to persons that were beyond the pale of the three Vedas and that mostly were śūdras and persons outside the system of the four varnas and āśramas. Medhātithi on Manu II. 6 adopts this and remarks\(^\text{1695}\) that the Śākyas, Bhojakas and Kārpanakas do not admit the Veda as authoritative, they openly declare the Veda to be unauthoritative and they teach doctrines directly opposed to the Veda. The Caturvīmśatimatā\(^\text{1696}\) states that the words of Arhat (Jina), of Cārvāka and of Baudhāyas, should be abandoned as they lead to delusion.

Then comes the question of the conflict between smṛtis and purāṇas. It has been shown in the H. of Dh., vol. I. pp. 160–167, how the Purāṇas are rich in Dharmaśāstra material. The śūtras and early smṛtis do not look upon the Purāṇas as a source of dharma, though Gaut. XI. 19 and Yāj. I. 3 mention Purāṇa as one of the classes of works on which the king or any one else may draw for knowledge of dharma and though the Āp. Dh. S. quotes from a Purāṇa in I. 6. 19. 13, I. 10. 29. 8 and II. 9. 23. 3 and names a Bhavisyatpurāṇa in II. 9. 24. 6. It is to be noted that the views quoted by Āp. from the Purāṇas in the first three passages are opposed to the views of the Kalivarjya section alleged to be taken from the Ādityapurāṇa in medieval digests. The passage of the Tantravārtika stating that Purāṇas, Manusmṛti and Itihāsa are universally accepted throughout India has been already quoted (on p. 853). When Manu states that smṛti is a source of dharma he does not obviously comprehend Purāṇas under smṛti as Manu II. 10 clearly shows (dharmaśāstram tu vai smṛtiḥ). Manu III. 231 and Yāj. III. 189 employ the plural ‘Purāṇāṇī’ and so those smṛtis obviously

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\(^{1695}\) नैदि शरणभीमकालस्वाध्यायकारौं वेदरूपयोगसंगमं येन तन्त्रप्रतिक्षा स्विच्छवं मन्यायत्स् शब्दनगरपणास्वमेष वेदप्रामाण्यप्रमाणविधानात् मतशृवद्विभाष्यतारोपदेशतादात्।

\(^{1696}\) अन्तःवर्त्त्वस्वाध्यायानि भौज्यादिप्रकटितानि च। ब्रह्मसमस्यायानि तत्त्व सर्वानि वर्णशेषः II नवरूपन्तिनां (q. 10. स्वरूपस्य, नवरूपस्य, P. 7. स्वरूपस्य, I p. 5).
knew several Purāṇas and Medhātithī notes that they were composed by Vyāsa and described the creation of the world &c. The Sūtrā-parva (13, 2) also employs the plural and the Sātvamrohanikaparva (5, 46–47) speaks of Kṛṣṇa Dvaipāyana as the author of 18 Purāṇas. The Adīparva¹⁶⁹⁷ (I, 293–34) prescribes that one should strengthen the Veda by (the study of) the Itihāsā and Purāṇa and that the Veda fears the man whose knowledge is insignificant 'this man will harm me'. According to the Bhāgavata-purāṇa I 4, 25 the purpose¹⁶⁹⁸ of the composition of the Mahābhārata was this that as the Veda cannot be learnt by women, śudras and brāhmaṇas who are so only by birth (and do not study) the sage Vyāsa took compassion on them and composed the Mahābhārata for their benefit. The same must be deemed to be the purpose of the composition of the purāṇas. The Daksasūrti II. 69 prescribes¹⁶⁹⁹ the recitation of itihāsā and purāṇa in the 6th and 7th parts of the day (divided into 8 parts). The Ausanasa sūrti (III. p. 515, Jīvananda) prescribes the study of the Veda in the bright half of the months from Magha after utṣarjana and the study of the Vedāṅgas and of Purāṇa in the dark half. It appears that some at least of the extant Purāṇas were composed in the first centuries of the Christian era and that from early times they contained dharmāstātra material. In another section the paurāṇadharma will be separately dealt with hereafter. Gradually the Purāṇas became very popular in the course of centuries, some of the original rites prescribed by the Veda and the early smṛtis went out of vogue and new modes of worship and rites provided by the Purāṇas came into general observance. The Vedavyāsa sūrti¹⁷⁰⁰ (I, 4) and the Sangraha state that in case of conflict between smṛti and purāṇa smṛti is to be

¹⁶⁹⁷. इतिदेशासूत्रार्थान्ये बैंडे सन्नुपमर्यथे। विभेदस्यरुपावदेशो महामय महिष्याति (v. 1 मतारिन्याति) व आदिप्रय 1. 293–304 (= पूजःपरी च प च प 30, Jīvananda, वाप्तपरी 1 201, वसिद 27. 6). It is ascribed to बृहसपति in the स्तविसव. I. p 3. बृहसपति II. p. 320 (Jīvananda) reads the first half as वेरसिसपति।

¹⁶⁹⁸. इतिवृत्तवर्ता सूत्रावर्ता। इति विजयनाथाः पूर्वया कृष्णाः सूतर्वतः भारत 1 4 25, तेजोक तासात ततः पुज्याचार शर्क्षितार्थिः। वर श्रीदेव विजयाचार शंकाराय कृष्णां तथा। q, by the परमाथमकान (P 24) from the भागदत्तपरम॥

¹⁶⁹⁹. इतिवृत्तवर्ता सूत्रावर्ता। वहतासात्वानी नवेद। वृष्ण II 69 q by अयपरिः p 157।

¹⁷⁰⁰. इतिवृत्तवर्ता राष्ट्रावर्ता। शर्क्षितार्थिः। तप्त राज्यमाणसुणात तेर्विति सूतिर्वर्ताः। कृष्णाः भारत 1 4। इतिवृत्तवर्ता राष्ट्रावर्ता। शर्क्षितार्थिः। गर्भवत व च सर्वदा यथा विलोकनः। संन्याता यद्य एकत्रो विलोकनः। संस्कार q, by स्थतिदिः (स्वामीश्रम) p. 7।
preferred. Aparārka (p. 9) quotes\textsuperscript{1701} a smṛti text, "that is highest dharma which is understood from the Veda, that is to be known as inferior dharma that is declared in the Purānās and the like". Aparārka (p. 15) further tells us that\textsuperscript{1702} according to the Bhāvīṣyātpurāṇā the purānās are of authority in declaring dharma that is \textit{vijāmiśra} (i.e. mixed up and not purely Vedic). Medieval writers were often divided as to the authoritativeness of purānās. Mitramiśra (in his commentary\textsuperscript{1703} on Yāj. II. 21) asserts that dharmaśāstra (viz. smṛti) is not more authoritative than purāna and that in case of conflict between a smṛti text and a purāna text recourse must be had to reasoning as in the case of conflict between two smṛtis. On the other hand, the V. Mayūkha,\textsuperscript{1704} after quoting Manu IX. 128 and Devala about the first born among twins being regarded as the eldest and after referring to a half verse from the Bhāgavatapurāṇā (rather from the commentary of Śrīdhara thereon) which holds that among twins the one born later is to be deemed as the elder, remarks that the Purāna passage is to be set aside in favour of the smṛti passages and that in the purānās usages opposed to the smṛtis are very frequently met with. It says that this view is preferable to that of some others according to whom in this matter the custom of the country should be followed. The Nirnayasindhu (III. p. 251) also says the same. The respect for the purānās carried away late medieval writers so far that relying on some prophetic passages in the purānās about the disappearance of four varnas in the Kāli age and the subsistence of only brāhmaṇas and śūdras therein, they denied the existence of ksatriyas and vaisyās in the Kāli age, in spite of the fact that all smṛtis (like Manu, Yāj, Parāśara) and many commentaries (including the Mitākṣarā) hold that the four varnas exist in the Kāli age

\textsuperscript{1701} अव: स परमो धर्मं ये वेदार्थविधिपति । आदण: स हि विज्ञप्तः न पुराणादिनु स्वतः ॥ स्वास श्र मियच यह अपरार्कशः प. 9, नररांगात्मका p. 29, फुर्तप. p. 39. 

\textsuperscript{1702} एवं मतिष्ठानन्दी दुरास्यूपूर्वयोजितवत्त्वमाप्न्य नान्यायं । तेपानेव व्यासिनार्थम- मन्यामलेन भविष्यतुपरायणा परिज्ञातवादां । अपराज्यः प. 15. 

\textsuperscript{1703} तेन दुरास्युपूर्वत्त्वमभिमते दुरास्युपूर्वम न चतुर्वत् । किं त दुरास्युपूर्वमोहितविद्वारणयो- पिपासपिपासे व्यासदत्तपति । मित्रमिश्र अन मा II 21, नृ धर्मिनमपायार्थपत्रस्मां विषपते । संस्कारात्मका बोल 14 a (part of दुरास्युपूर्वसाधारण). 

\textsuperscript{1704} यथु हि ततः मात्रसि गमयम मुखित्विविष्कृतपञ्चाङ्गस्वरूपादिना भाग्यते पक्षयास्तरसे गौतेरस्यश्रवणश्रवणभूत्व तत्पति । पुराणशीत्तिविविक्षाश्रवणार्यं बहुदो दर्शनात। इत्यादिः 

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The case of conflict between smṛti and customs has now to be considered. The general rule deduced from Vas. I. 5, Yaj. I. 7 and supported by the Mit. (on Yaj. I. 7 and II. 117), the Sm. C. (II. p. 266), Kullāka (on Manu. II 10) and several others is that smṛti is of superior authority to the usages of the śīstas. But from early times there have been dissenting voices. Viśvarūpa on Yaj. III. 250 states that that purport of the smṛtis is to be followed which in accordance with the settled practice of the śīstas resident in Aryāvarta. On Manu IV. 176 Medhātithi points out that niyoga is permitted by such smṛtis as Gaut. 13.4–14, Yaj. I. 68–69, Vas. 17. 56–65, but being condemned by the people it is not practised. Therefore the principle that may be deduced from these is that the prescriptions of smṛtis (and even of śrutis) need not be observed and should not be observed when they are vehemently condemned by the people. The chapter on Kalivarjya will make this clear. Commentators like Medhātithi (on Manu II. 10) went so far as to say that Dharmāstra is that which prescribes what is to be done for attaining dharma, that is smṛti from which dharma which one performs as a duty is understood and therefore śīstācāra also is smṛti. The smṛtis themselves embodied the practices of the people current in their days, as Manu I. 107 declares, 'in this work dharma has been fully stated as well as the good and evil qualities of (human) actions and the ancient customs and usages of the four varṇas.' Manu adds (I. 108), 'acāra (customs and usages) are transcendental law, and so are the practices declared in the Veda and the smṛtis; therefore a twice-born person desirous of his own welfare should always

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1705. भवेक द्वारा यज्ञारूढ़कार्यानिविष्टिति नातीस द्रष्टानिष्टः एवं भवेक प्राप्तिः अनुपाय विनाभिप्रेरणाः।

1706. यज्ञारूढ़कार्यानिविष्टिति स्वयं जिधितो लोकसात् कुट्रणगच्छिन्ति।

1707. हेतु इद सत्यारूढ़कार्यानिविष्टिति स्वयं जिधितो हेतु इद सत्यारूढ़कार्यानिविष्टिति।

1708. अनुपायारूढ़कार्यानिविष्टिति नातीस द्रष्टानिष्टिः कर्मदेहः।
make efforts to follow it.' This has been the basic text in modern decisions that recognize the binding nature of customs. It is therefore necessary to understand the exact meaning of this verse. Two constructions are possible; (1) that the word acara is qualified by the words ‘śruta-yukta’ and ‘śmaṛta’ and that the first half declares that usages declared in the Veda or smṛti are transcendental law (this is the meaning given by most commentators of Manu); (2) that acara by itself and other rules of conduct declared in the śruti or smṛti are transcendental (i.e. here in the first half of the verse there is a reference to three kinds of acarās, as Govindarāja and Nandana explain).

If we look to the preceding verse and the following verses (that eulogise acara) the 2nd construction looks more natural and has been accepted by the decided cases when they lay down that 'immemorial usage is transcendental law' (Sir William Jones' translation of Manu I, 108) and that “under the Hindu system of law clear proof of usage will outweigh the written text of the law”. The Anuśāsana (141. 65) and Śānti 354. 6 expressly state that dharma is threefold viz. that declared in the Veda, that declared in the smṛtis and the third is what is practised by śīstas. Sumantu emphatically declares that family usage should be preferred to the prescriptions of śāstra. The Kurmapurāṇa (171z) (Uttarārdha 15. 19) appears to support the 2nd interpretation when it says, 'one should observe that acara which is declared by the śruti and smṛti and which is rightly followed by the good'. The exact import of the word acara (or sadācara) has been shifting from age to age and among commentators. In the earliest days, as shown by the Tai. Up., Gaut. (28. 48, 51.), Baud. Dh. S. I. 4–9, Manu XII 108–109,
Vas. I. 6, the ācāra to be followed was that observed or declared by learned brāhmaṇas who were highly moral and selfless (the sīstas). Madhātithi on Mann II. 6 states that binding ācāra is that of sīstas learned in the Vedas. Gradually every usage that had no visible secular purpose came to be looked upon as binding and lastly the usages of śūdras, of pratīloma castes and even of heterodox sects became, as will be shown in the sequel, enforceable by the king. As observed in 39 Mad. 298, 301 the commentaries indicate an attempt to reconcile the text law with the actual usages of the people.

The requisites of valid customs, according to the smṛtis and commentaries and digestes, are similar to those laid down by the writers on Pūrvamimāṃsā i.e. they must be ancient, must not be opposed to śrutis and smṛtis, must be such that they are regarded by respectable people as obligatory on them and such as are observed with that consciousness by the sīstas, they must be strictly construed and cannot be availed of by others not within their purview and must not be immoral or severely condemned by popular sentiment. Customs once in vogue may be abandoned by the people as the chapter on Kālavarṣa will show.

From Gauṭa, Manu, Br., Kāṭ and other writers quoted above it follows that the customs and usages of which account has to be taken are those of districts (deśa or janapada), towns and villages, castes, families, guilds or corporations or groups (gana, śreni, sangha, nālgama, varga). A few words on each of these and on usages of gotras and śākhās will be said later on and a few illustrations of each will be given. But first of all certain preliminary observations have to be made about customs in general. The medieval writers on Dharmaśāstra make it clear that customs that depart from the generally received smṛti prescriptions must be strictly construed and that they cannot be extended on the ground of analogy to other matters outside the specific acknowledged customs. For example, both the Sm. C (I. 71) and the Smrtimuktāphala1713 (on Varnāśrama p 31) say that, though one’s maternal uncle’s daughter can be married (by custom) yet one’s mother’s sister or mother’s sister’s daughter

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1713 अ those ब्राह्मणतिथिः निबुधसिद्धां भावया भावसिद्धां भावसिद्धात्तुष्टा परि- परि- औषधि। एव रूपवर्धार्य । न च तथाच्छिन्न भाबवसात् तत्स्वत्त्र न च किमिति न परिग्रहिति- किमिति न परिग्रहिति वर्णणम्। मात्राएवर्षिनि लोकविषयंस्वपन्नमि लोकविष्यं स्वपन्नमि तत्स्वत्त्रवर्णणम्। तु तुत्तु संहस्ताः अस्ताः।... च ज्ञेषु हृदि! च ज्ञेषु (वर्णस्मृति p 131). Vide H. Dh. vol II, p. 467 n. 1096 for the passage of the Sm. C, almost in the same words.
cannot be married, because popular sentiment is opposed to the latter kind of marriages and popular sentiment has to be respected as Manu declares (in IV. 176). Similarly the Saṃskāra-kaustubha⁷¹⁴ and the Dharmasindhu provide that where there is a local or family usage for narrowing down the limits of sapinda relationship in marriage, only those who belong to that locality or family can avail themselves of such narrowing down, but if a person in a different locality or belonging to a different family were to follow the practice of narrowing down the sapinda relationship, he would incur blame. Owing to the vastness of Bharatavarṣa it was recognised that what was said elsewhere in one country would not be so in another, as is noted by the Par. M. (I. 2. p. 65) in relation to marriage with one’s maternal uncle’s daughter.¹⁷¹⁵

A few words may now be said about customs of countries. That usages about details of ritual varied a great deal even in the Vedic times is quite clear. The Saṅg. Br. (I. 1. 4 13) notes that ‘in former times it was the wife of the sacrificer that rose at the Haviskṛt call, but that in its own day the wife or a priest (the Āgnidhra) rises in answer to the call. Vide H. of Dh. vol. II p. 1027 and n. 2311 on the Haviskṛt call. For similar differences in practices vide the same Brāhmaṇa XII. 3, 5.1 and XII. 6. 1. 41. The Ait. Br. frequently refers to one view and refutes it by saying that one should not do so (tat tathā na lārgāt) or one should discard it (tat tathā nādhyām) e.g. vide chap. 12, 7, 17. 1, 18, 8, 28, 1, 29. 5. ’ Vide also Tai. Br. I. 1, 8, I.3.1, III. 3. 8 for similar words. That different districts had different customs about marriages and other matters even before the times of the grhyasūtras and dharmasūtras has been

¹⁷¹⁴ Vide H. of Dh vol. II p 465 n. 1093d for the quotation from the Dharmasindhu. The Śr. Br. p. 613 remarks ‘तद्ध्रेयः श्रेष्ठस्मैः प्रकृतस्मार्थः ’ उपयोगितितपालन । तृतीयां ताथासुः तथा तत्ततं विपरीतस्वाभासः। विवाहःस्थानं गाढः परश्चायामेकदर्शितम् । इति चन्द्रिका-पारिपालनोद्वैतत्वविषयस्तान । and adds (p 620) अतः सिद्धेनातु भाषांगतिः पैठिः वै उपयोगितात्त्वातत्र। इति तत्तताः स्तवार्थः निदा नोतिः। इति तत्तताः इतिनाम कोष्य! अतिः च सबूतानिधिः। अयोग्याः में, सत्य व्यवहारे नेत्र हुवः। स्तवयु तु कुठेश्वरविद्येयावर्त्तिः। वैभस्यस्त्रौर्वेन इव सर्वधिर्वेदनार्थ! तद्वलये वै नीतिः। The two verses तद्ध्रेयः and तृतीयां are quoted by the वैभवस्त्रौर्वेन 24. 10.

¹⁷¹⁵ यद्यपि भूतान्तरायनस्यहस्तिज्ञविद्यविद्याद्वितिः तथो प्राचीनार्थनिशाचतुर्यादिः। न यथाथासुः तथामर्कस्तु द्वितीयां अथवकलोक्यकारिनैप्रतिवेदिः। भूतान्तरायनस्यहस्तिज्ञां श्लोकार्यो तत्तताः। परम मा I. part 2 p 65.
noted above (pp. 856–857) Baudhāyana made a distinction about the customs of the northern and southern people (countries). That customs of the northern and southern countries differed is emphasized by many commentators and writers of digests. For example, the Mit. on Vāj. I 256 refers to the differing views of dākṣinātyas and udīyatas on Ekoddista-śrāddha, Śāṅkara-bhaṭṭa in the introductory verses of the Dvaitanīrṇaya (or Dharma-dvaita–) expressly states that he will furnish solutions of knotty points in Dharmaśāstra after abiding by the views of southern writers. The Nirnayasindhu in its section on śāpindya speaks of Śūlapāṇi, Vācaspati and Śuddhiviveka as Gaudas and Maithilas, and points out that Śūlapāṇi in the Sambandhaviveka and the Sambandhataṭṭva (a Gauda work) allow marriage with a girl separated by three gotras from the bride-groom, while the southern writers (dākṣinātyas) do not accept the view. But in those days there were no rigid territorial boundaries for certain practices or doctrines. For example, Vijñāneśvara, Madana-ratna, Pārijāta, Vācaspati and Śūlapāṇi accepted the view that śāpindya arises from community of the particles of the body, while Aparārka, Śrītacāndrika and Mādhava (though they were southern writers like Vijñāneśvara) held that śāpindya was based on the offering of pinda in śrāddhas. The fashion of dividing Hindu works into schools and assigning them definite territorial limits started with Colebrooke and has been perpetuated by decisions of the Privy Council and of the Indian High courts Vide Collector of Madura v. Mootoo 12 Mad. I.A. 397 at p. 432 (for reference to Colebrooke), p. 435 (as to how schools arose), pp. 436–437 (as to different schools) Strange results have flowed from this. The Vyavahāra-mayūkha, written by Nilakantha, whose family belonged to Paithān in Mahārāstrā and migrated to Benares and who himself wrote under the patronage of a Bundella chief, came to be regarded as a work of the highest authority in Gujarāt and North Konkan (even superseding the Mitāksara), while in Mahārāstrā proper its authority is subordinate to that of the Mitāksara. The Mit (on Vāj. II. 119) avers that in the section on the partition of heritage the texts generally repeat what is

1716. नीमोसाहित्यसाहित्यमात्मरस्वादिः भावाध्येयः।... खरेख विस्थापितेदकृतांजाय सन्तानिः।व्वाहिकायमार्थत सिंहला धर्मात्मिके निष्पादिः। तत्त्वे साक्षात्कित्व नात्सत्यत्व धर्मचतुर्भिन्नभाविनिनिपथि Intro. verses 5–8.
already current among the people and that if Yaj. II. 118-119 were interpreted to mean that the words what is acquired at the cost of paternal estate by a person himself stand by themselves and do not qualify the other clauses, then what is acquired through friendship even at the cost of the paternal estate would not be liable to partition, which would be opposed to the practice among people. The Vyavahara-mayukha also says on Manu IX. 210 (about reunion) that the law and administration of justice are generally based as is the case with grammar on people’s usages. The Viramitrodaya also states that all writers of digests are agreed that surslis on Vyavahara generally re-iterate recognized popular usages.

Customs of countries and families have been specially recognized from very ancient times in the sphere of marriage. The Aṣv. gr. (I. 7, 1-2) has been already cited above (p. 856). The commentators on Aṣv. gr., Haradatta and Nārāyana, both mention that in certain countries sexual intercourse is commenced immediately after marriage, that this practice is opposed to the rule in Aṣv. gr. I 1. 10 that the married couple should be celibate after marriage for at least three nights (if not for a longer period) and that one should follow the rule laid down in the grhyāśūtra and not the usage of the country. The Āp. gr. (II. 15) remarks, ‘people should understand from women (and others) what procedure is (to be followed according to the custom of the country)’ and the commentator Sudarśanacārya notes that certain rites like the worship of planets, aṅkurāropana and the tying of pratsara (a string or ribbon tied round the wrist) are usual and are performed with Vedic Mantras The Kāthakagriya (25. 7) allows the usages of countries and families to be observed in marriage and the
commentators mention some usages, viz. Devapala refers to stating the purpose of the visit, announcing the name of the maiden, worship of family deity, striking with flowers and crespers. The com. Brahmanabala states that in Kashmir at the time of marriage the mother-in-law or some other woman whose husband is alive ties an auspicious wreath on the heads of the bride and the bridegroom, that the mother-in-law places flowers on the feet, knees, shoulders and head of the bridegroom and on the same seven places of the bride’s body flowers are placed but in the reverse order (i.e. first on the left limb and then on the right).

Haradatta on Gaut, XI. 20 (cited above in n 1663) mentions the following usages: in the Cola country while the sun is in the zodiacal sign of Aries maidens draw with powders of various colours on the ground an orb of the sun together with attendants and offer worship in the morning and evening; on the full moon day of Mārgaśīrṣa maidens putting on ornaments walk about in the village and offer to a temple idol whatever they get in their wanderings; when the sun is in the sign of the Crab, maidens worship the goddess Umā while the moon is in the constellation of the Pūrva Phalgunīs and offer to the gods mudga beans that have put forth sprouts and salt; when the sun is in the sign of Pisces, house-holders worship the Goddess of wealth while the moon is in the constellation of Uttarā Phalgunī. Ap. Dh. S. II. 6. 13, 7 notes that in certain countries the special portions of the eldest son in paternal wealth are gold, dark-coloured cattle and black-coloured produce of the soil (i.e. black grain). Vide Br. and Tantravārtika quoted above (as to customs of certain countries).

Several such illustrations may be furnished from other writers, but considerations of space make it necessary to omit reference to them.

The Pār. gr. S. I. 8 states that the usages of villages may be followed, since a text says ‘one should enter a village (i.e. follow the opinion of village elders) in case of marriage and funeral rites’ and since the Veda says that ‘the village is the authority in these two.’

1720. एश्वर्ग्य: न च कुदार्बाध्यसमाजमयोगां धकास्माधिष्ठित: वशनास्मातरथोभिः। धार. द. ल. 1. 38
Numerous caste customs have been recognized from ancient times to these days. Gaut. XI. 20, Vas I. 17, Manu I. 118, VIII. 41 and 46, Kaut. III. 7, Šukra IV. 5. 47 emphasize the validity of caste customs and call upon the king to enforce them. Yaj. I. 361 advises the king to punish those who swerve from the usages of their family, caste, guild, or group. Kātyāyana (40) enjoins\textsuperscript{1721} that the king should not disregard the fixed usages even of pratiroma castes and of the inhabitants of inaccessible places (mountain forts or habitations), even if they be opposed (to the rules of smṛtis). In the Paribhāṣāprakāśa Mitramiśra holds\textsuperscript{1722} that the usages of good śūdras free from moral defects are binding on their sons and others even though they do not know the Veda.

Compared to Western Christian countries very great religious tolerance prevailed in ancient India. Vide H. of Dh. vol. II pp 388 (n. 928 a.), 723–724 for some remarks on this. Asoka in his Pillar Edict VII (E I. vol. II p. 272) says that he looked after sanghas, brāhmaṇas, Ājivakas and all other sects (pāṇḍaṇa). The Bhagavadgītā (IX. 23–25) proclaims that the devotees that worship other gods do worship Kṛṣṇa himself though in an irregular way and that those who offer worship to the Manes or to the elements reach the goals they desire. The Manasollāsa enjoins\textsuperscript{1723} that one should give up condemnation of or hatred towards other gods, that one should show reverence on seeing an image or a temple and should not pass it over (in contempt). People of different countries no doubt twitted each other on the customs and usages peculiar to each; but it rarely went beyond the bandying of words. For example, even such a

\textsuperscript{1721} महत्तमसमस्यूद्र तथा कुर्मन्वितासिद्धु तिष्ठति निष्ठाते महारत पर्य न निवचत्वेदु। कार्य q. by व्य न. p. 89. The व्य, वि p. 16 reads महत्तमसमस्यूद्र तथा कुर्मिन्वितासिद्धु। निवंचतेदु। व्यासदत्त illum. the verse as ‘महत्तमसमस्यूद्रेऽ...’ निवंचतेदु। Acc to the Vyavahāra-Kalpataru, एवं निवंचतेदु। read the verse as ‘महत्तमसमस्यूद्रेऽ...’ निवंचतेदु। व्यासदत्त illum. the verse as ‘महत्तमसमस्यूद्रेऽ...’ निवंचतेदु। (quoted in ‘Ṛgadharma’ p. 155 by Prof. K. V. Rangaswami Ayyangar).

\textsuperscript{1722} अवा आचार्यवीव साप्ताहितिसिद्धु। व्यासदत्त illum. शैलदेशिष्ठवात्सर्यांनवाचरणानि मनकाणि। तथा ज सन्तुष्टाधारानुसारसेवासम्बन्धतः भवति मनकाणि। परिभाषाप्रकाश p. 9.

\textsuperscript{1723} अन्येषामपि देशानि चिन्त्यवेद च परम्परेऽ... देशेऽ...निस्सिद्धवा नान्याश्वराण सवल्पमेव। मानसोद्वस, verse 105 p. 11.
philosophical work as the Jivanmuktiveka remarks that brahmanas of the south condemn even the learned brahmanas of the north as flesh-eaters and brahmanas of the north condemn southern brahmanas because they marry their maternal uncle's daughters and because they carry earthen vessels in fairs or on pilgrimages. It was on account of the general attitude of religious tolerance that the smritis and digests prescribe that even the usages of heretical sects should be enforced by the king. Yaj. II. 192 prescribes that the king should guard against breach of the distinctive usages and conventions of guilds (of artisans), of traders, of heretical sects and bands (of soldiers). Narada (samayasyanapakarma 1-3) states that the king should uphold the conventions of heretical sects, of traders, guilds and other groups and that whatever traditional usages, activities, modes of attendance and means of maintenance were peculiar to them should be permitted to them by the king without introducing any change. Among the matters of which the king was to take cognizance suo motu and included under prakhirnaka by Narada (verse 2) was the transgression of the usages of heretics, traders, guilds and ganas. Brhaspati provides that in disputes among husbandmen, artisans, wrestlers, money-lenders, guilds, dancers, heretics, thieves, a decision is to be given in accordance with their conventions. It is no doubt true that certain smritis present a sterner treatment of heretics and

1724. तथाहि देवार्थकेष्यं परस्यं निश्चितपादलुप्तन्ते। दाशिनिभैरस्मैन्वितस्तः। 
ब्रह्मास्तिधि निश्चितामिव स्मृतामिव। 
\(\text{Yaj, II. 192,} \) नैमा. धे पेदुर्यासपमित्वेवेव प्रावाश्च विद्हित। 
पाश्चिमिनि ये वैद्यृप प्रामाण्यदेव नेष्ठितं नह विनितं नव्या। 
सौपतालुकं। \(\text{नारदा (समायस्यानपाकर्म 1-3) प्रकाशित हैं।} \)

1725. नारदिनेत्रपादपिन्यगानमंच्छविधिम्। 
सेव तीघा तौ रोहेनुप्रसर्यं च पाषं। स्वेत। \(\text{Yaj. II 192,} \) नैमाया। धे पेदुर्यासपमित्वेवेव प्रावाश्च विद्हित। 
पाश्चिमिनि ये वैद्यृप प्रामाण्यदेव नेष्ठितं नह विनितं नव्या। 
सौपतालुकं। \(\text{नारदा (समायस्यानपाकर्म 1-3) प्रकाशित हैं।} \)

1726. पापश्चादित्वाद्विनं शिवति समयं हृष्यभिः। 
पापश्चादित्वाद्वित्वभिः॥ \(\text{Yaj. II 192,} \) नैमाया। धे पेदुर्यासपमित्वेवेव प्रावाश्च विद्हित। 
पाश्चिमिनि ये वैद्यृप प्रामाण्यदेव नेष्ठितं नह विनितं नव्या। 
सौपतालुकं। \(\text{नारदा (समायस्यानपाकर्म 1-3) प्रकाशित हैं।} \)

1727. नारदिनेत्रित्वादित्वाद्रित्वभिः॥ \(\text{Yaj. II 192,} \) नैमाया। धे पेदुर्यासपमित्वेवेव प्रावाश्च विद्हित। 
पाश्चिमिनि ये वैद्यृप प्रामाण्यदेव नेष्ठितं नह विनितं नव्या। 
सौपतालुकं। \(\text{नारदा (समायस्यानपाकर्म 1-3) प्रकाशित हैं।} \)
the like Gaut. IX. 17 provides that a snātaka should not talk with mlecchas, impure persons and sinners. Manu IX. 225 prescribes that the king should banish from his capital gamblers, dancers, heretics, vintners &c. Manu IV. 30 holds that one should not honour as guests even by words persons who are heretics, rogues &c. and recommends that one should not reside in a country which is overrun by groups of heretics. Yāj II. 70 and Nār. (ruddāna 180) say that a heretic (pākhandī) or an atheist is not a proper witness. These passages may be explained in various ways. Probably the prescriptions of Gautama and Manu refer to an age when the schism caused by Buddhists and Jainas was not very old and feelings between the followers of the Veda and the heretics ran high. But most of these prescriptions are addressed to the followers of the Veda as individuals. They do not negative the requirements laid down by Nār., Br, and others that the king (though of a different persuasion) was to enforce among heretics their own usages. It can be said without any fear of contradiction that at least from the 4th century A. D. onwards the policy of the State in India was 'to protect all religions, but to interfere with none'. 1729

Customs of families will be briefly referred to later on in connection with modern law cases. Among family customs the customs about the year when caula was performed and the locks of hair kept on the head in the caula ceremony are frequently mentioned in the grhya sūtras and other works. Vide H of Dh. vol. II pp. 260 and 265

The digests contain numerous examples about the customs and usages that were adhered to among the followers of the several Vedic branches (sākhās) and the grhya sūtras in performing several religious rites. A few examples may be set out here by way of illustration. According to Yaj. I. 242 the offering of pindas to the pitra in a śrāddha takes place after the brahmanas invited at the śrāddha are fed, while Manu III. 261 shows that they were offered also before the brahmanas were fed. The Sm C (on śrāddha, p. 471) says that one should follow the practice of one's own Vedic sākhā. Among the five daily sacrifices (mahāyajñas) one is pitryajña, which acc. to some (such as Katyāyana) means tarpana, while according to Manu

1728 न वस्त्रहस्तपयाक्षामिदं सह समस्मयेत। गृह IX 17.
1729 Vide Vasudeva v Vamanaj 5 Bom 80 at p 82 where Melvill J states that this is the policy of the British Courts in modern India
III. 81 It means śrāddha and the Sm. C. (I, p. 208) provides that one should follow one’s śākhā. The same remark applies to the number of handfuls of water offered in tarpana (Sm. C. I, p. 191 and Madanapāraṇāśāstra p. 286). About the month of pregnancy in which the ceremony of simantonnayana was to be performed each person was to follow his own grhyasūtra (Sm. C. I, p. 17, and Par. M. I, part 2, p. 22). The same holds good as to the day of nāmakarana (Sm. C. I, p. 21, Par. M. I, part 2, p. 25). It is not necessary to multiply examples. According to Gaut. XI. 21–22 and others already cited above, the king has to enforce the usages of guilds (śreni) and corporations. Several such usages have been cited above (pp. 487–488)
CHAPTER XXXIV

KALIVARJYA

(ACTIONS FORBIDDEN IN THE KALI AGE.)

It has been stated above (pp. 865-866) that one of the several ways in which the conflict between several smṛti texts was got over was to hold some of them as legislating for a bygone age (yugāntara). For example, when Harita allowed upanayana to women, both the Śr. C. (I. 24) and Par. M. (I. 2. p. 88) hold that the text refers to another kalpa (aeon). In H of Dh. vol. II (on pp. 151, 162, 424, 451, 603, 612, 620, 750, 790, 796, 928, 929, 934, 953, 1005 n, 1201 n) reference has been made to several matters forbidden in the Kali age. It is remarkable in this connection to note that, though the Parāśarasamṛti (in I. 24) claims par excellence to lay down the dharma for the Kali age, several important provisions contained in it, viz., the remarriage of a married woman1730 (Parāśara IV. 30), the variation in the period of impurity due to births and deaths depending on the learning and character of a brāhmaṇa (Parāśara III. 5-6), permission for a brāhmaṇa to partake of the food of five classes among śūdras (XI. 21) are included among Kalivarjayas by the Ādityapurāṇa (as quoted by writers of the 12th and later centuries). It is necessary, therefore, to investigate into the origin and development of the Yuga theory and of the topic of Kalivarjya.

From the Mahābhārata (Śānti 59), Manu (I. 81), Nārada (I. 1-2), Brhaspati and the Purāṇas it is clear that they all believed in the existence of an ideally perfect community in the dim past followed by gradual degeneracy and decline in morals, health and length of life. But they also believed that a cycle of decline would be followed in the far distant future.

1730 Some of the printed editions of Parāśara (IV. 30) read न चूँके ... पतिर्रणो न निधित्ते ... But the Par. M. on it (vol. II part I p 53) makes it clear that this reading was fabricated by orthodox people and that Mādhava at least read it as पतिर्रणो निधित्ते, as he remarks 'अर्थ न युनकप्यो इसात्तरितप्यात्रा'.

by another of moral perfection. The only pity is that all works that are extant think that they are in the midst of a very sinful age and there is not a single work which thinks that the era of perfection may dawn in the very near future.

The germ of the theory of progressive deterioration in morals is found even in the Rgveda. In the famous dialogue of Yama and Yami the former exclaims in one place\(^{1731}\) (Rg X. 10. 10) ‘those later ages are yet to come when sisters would do what is not sister-like’. The word ‘yuga’ occurs at least 33 times in the Rg., but the exact meaning is somewhat doubtful. In a few places it means ‘yoke’ (Rg X. 60 8, X. 101. 3 and 4). In several places it appears to stand for a very brief period of time (e.g. Rg. III. 26. 3) Generally it means ‘a generation’ (as in Rg. I. 92 11, I. 103. 4, I. 124 2, II 2 2, III. 33 8, V. 52 4) In Rg. I. 158. 6, ‘dirghatama māmateyo jujurvan daśame yuge’ *yuga* probably means ‘a period of four or five years’, while in Rg. VI. 15 8, VI. 8 5, X. 72 2, X. 94 12, X. 97. 1 it should mean\(^{1732}\) ‘a long period of time’. In the Atharvaveda VIII. 2, 21 yuga appears to mean a period of several thousand years, two yugas being indicated as longer than 10000 years (śatam teṣyutam hāyanān die yuge hīna cāvhitā kṛṇmah). Here there is a clear reference to four yugas and to the fact that yuga meant a very long period of time. Whatever be the meaning of the word in each passage, the Rgveda does not contain the names of all the four well-known yugas viz. Kṛta, Tretā, Dvāpara and Kali. The word ‘Kṛta’ when used in the Rgveda appears to mean ‘the best throw of dice or of the seeds of vibhītaka in gambling’ (X. 34. 6, X. 43 5). In the Atharvaveda VII. 52. 2, 5, 6 kṛta has the same meaning Kali is the name of the author of Rg. VIII. 66 and in verse 15

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1731. आ या ता गच्छावतारा युगानि पञ्च जासम् कुणलवजानि। द्र. X 10. 10. The Nirukta (IV. 20) understood this verse in the sense given above ‘आयामय्यायति युगानि उत्तराणी युगानि पञ्च जासम् निर्विन्याति अवजानिकंगायि’ Rg I. 113. 13 and III. 33. 8 make it clear that उत्तर must mean ‘future’, खश्युताचा पुत्राचा धृष्टिन धृष्टियो अर्नेत्व ग्यानो मनावी। अथ्य गच्छावतारा अवजानिकंगायि चलति लवाः।‘\(^{1732}\) चर I 113 13. Here the occurrence and sequence of उत्तर, आय and उत्तराधिन leave no doubt about the meaning of the last word.

1732. चा आयादिति। पुर्णं जाता वैवेष्यालिकृतम् हुर। द्र. X 97 1. Here what is meant by विस्तय is doubtful. The Nirukta IX 28 explains वैवेष्यालिकृतम् युगानि हुर, while Baran says युगालिकृतपर्यं। In the Bhāṣā VII 2. 4 26 विस्तय means ‘three seasons of spring, rains and autumn’ (S. B. E. vol. 41 pp. 359-340).
of that hymn we read 'kalayo mā bibhitana' (O descendants of Kali! do not be afraid). In Rg. X. 39. 8 the Aśvins are said to have rejuvenated Kali who had become old. Vide also Rg. I. 112. 15 (where Kali is said to have got a wife from Aśvins). But Kali as a throw of dice does not occur in the Rgveda. In the Atharvaveda VII 114 1 Kali\(^{1733}\) means a throw of dice. The words kṛta, tretā, dvāpara and āśkanda occur in the Tai S. IV. 3. 3, Vaj S. 30. 18\(^{1734}\) and in the Śat. Br. XIII. 6. 9-10 (S. B. E. vol. 44 p. 416). In later literature Kali is also called Tisya (as in Bhismaparva 10. 3). In the Tai Br. III. 4. 16 the word Kali is used\(^{1735}\) in place of Āskanda. In all the above places Kṛta and the other three words denote throws in gambling, Kṛta being the most lucky and Kali being the most unlucky. In another passage of the Tai\(^{1736}\) Br. (I.5.11) we read ‘the four stomas (Trivṛt, Pañcadaśa, Saptadaśa and Ekavimsa) are Kṛta and the five are Kal; therefore the catusstoma (should be performed in the Jyotistoma)’. This shows that Kṛta meant a throw of four or any multiple of four and Kali a throw which when divided by four left one as remainder. The Aitareya Br. employs the words Kṛta\(^{1737}\) and the other three in a metaphorical sense as representing progressively more desirable states of human activity, ‘one lying down becomes Kali, when about to leave the bed he becomes Dvāpara, when rising he becomes Tretā, and when he moves about he

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1733. इदुस्तुप्रयच्छ चर्मे गनी यो असोदू तद्दूसी। पूुनेन कार्य शिषासि स नौ चंदालि।

1734. अक्षाराय जित्तल पुत्रापिठ्इनतदर्थि वेदार्यं कल्पनया ह्यप्रपारापिधिकपियनमस्कर्मयां समाचाराशः।

1735. कुटाय समाचारिन्त वेदार्यं आदिनवदासी द्यप्रपारापि वेदोऽवस्तु कल्पे भस्माशाशः।

1736. ये श्लोक श्लोमाः कृत्य सदृश । अथ प्रथ प्राप्त कार्यं सन। तत्सर्वार्थोदोस्य।

1737. कलिः द्यापनः भस्म सतीप्रयासस्तु द्यापर । उत्तिक्षेत्रवात भस्मि कृत्य सम्पद्योऽवस्तुः।

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The meanings of these technical expressions in gambling are extremely uncertain.
becomes Krta'. The Sat. Br. V. 4. 4. 6 speaks of Kali\textsuperscript{1738} as 'abhibhūt' (the vanquisher) and suggests that Kali is a throw of five that vanquishes all others. In the Chan. Up. IV. 1. 4 it is said 'as (in a game\textsuperscript{1739} of dice) all the lower throws are included in the Krta throw which becomes victorious, so to him (to Raikva) comes (the merit of) all the good acts that people do'. Here Śaṅkara explains that Krta is a throw of dice having four marks, while other throws that have three, two or one mark are called Treta, Dwāpara and Kali respectively. The Mundaka Up. I. 2. 1 refers to Treta\textsuperscript{1740}. 'This is the truth; the sacrificial rites which the sages saw in the mantras (i.e. as prescribed in the hymns of the Rgveda and other Vedas) have been performed in many ways in the Treta'. This last word is explained by Śaṅkarācārya in two ways, first as referring to the threefold priestly duties (of hotr, adhvaryu and udgātr) which are based on the three Vedas and alternatively as referring to the Treta age. From this resume it appears that even up to the times of the latest period of Vedic literature (i.e. Upanisads) the words Krta, Treta, Dwāpara and Kali were used in the sense of throws of dice in gambling and that it is very doubtful whether they were used in the sense of different ages of the world. Even in the Mahābhārata Krta\textsuperscript{1741} and Dwāpara are used also in the sense of throws of dice (vide Virātā 50. 24). In the Gopatha Brāhmaṇa (I. 28) there is a reference to the beginning of the Dwāpara age.

Even in the Vedāṅga Jyotisa\textsuperscript{1742} (of Rg.) the word yuga is used in the sense of a period of five years (pañcasamvatsaramayam

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\textsuperscript{1738} अवर्ती स्म जगात्मानान्यां द्वारा प्रचलितं। अभिप्रीतस्तात्त्विकः परिव्रजन्त्य वा अपवालितार्द्धम हि सम्बन्धवानन्यां ब्रह्मादात्मानस्वतः। हि तत्र वि. 4. 4. 6. इति। इति। इति।

\textsuperscript{1739} यथा क्षतर्विविधैर्यायपरे। संयोगन्तः सौर्यसान्तः । स सम्बंधितः वह विन्यासः क्षतर्विविधायाय। अध्वर्योग IV. 1. 4. 6 अत्र च। इति। इति।

\textsuperscript{1740} 'ततः ज च कृत्वा व दूष्ट्रे कपाले युद्धः संस्कृतः कपाले।' तारानं इति। इति।

\textsuperscript{1741} उपनिषद्यमानी । इति। इति।

\textsuperscript{1742} विवेक "मायाविषयकः पौष्टिकमात्रामाणि। इति। इति। इति।
yugadhyaksam prejakatim). The ancient Pitamaha-Siddhanta which is not now extant, stated, according to the Panasidhantika of Varahamihira (XII. 1), that yuga means five years of the Sun and the Moon (ravisasinoh paíca yugam varśani Pitamaha-paddistāni). This sense of the word is still found in the Sabhaparva 11. 38.

The Nirukta (I. 20) distinguishes between ancient sages and those of later days in the words, the (ancient) sages had an intuitive perception of dharma and they imparted the Vedic mantras by instruction to later (sages) who had no intuitive perception of dharma. But it does not mention or refer to any theory of four yugas. Both Gaut. I. 3–4 and Āp. Dh. S. II. 6. 13. 7–9 give expression to the view that among sages of old transgressions of dharma and violent actions are observed, but that on account of their distinguished spiritual greatness they incurred no sin, while a person of later days, being weak in spiritual merit, should not imitate them, otherwise he would come to grief. Here a distinction is drawn between very ancient sages and later sages as regards the endowment of spiritual merit, but nothing is said about the names or the theory of the four yugas. Āp. Dh. S. I. 2. 5. 4 further says that sages are not born among men of later days (avaresu) on account of the transgressions of religious ordinances (prevalent in later ages). Therefore, it would not be quite wrong to assume that the theory had not been fully developed even in the times of the early dharma-sūtras of Gaut, and Āp. even though both held that they were living in an age of decline and that sages coming after the authors of the mantras were inferior.

Here epigraphic evidence affords some help in fixing the lower limit of the period when the theory of yugas must have been developed.

In the Rock Edicts of Aśoka No. 4 and No 5 we have at Kalsi and two other places the words ‘āva kapam’ (yavat kalpa) and at Girnar the words ‘āva samvata kapa’ which mean ‘up to the end of the kalpa’ or ‘up to the end of the kalpa when the clouds or fires of destruction called samvarta

1743. तात्त्विकम हर्षसार अवशोषितसासासासासममथि उवडेिेि सार्वानस्रामु.।
विकल I. 20. Almost the same words occur in वज्ञ 183. 67

1744. तस्मायत्रकेिेिं जापते नियमतिहकयु.। अप. यू. छ. I. 2. 5.4

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will arise'.

Vide C. I. I. vol I. pp. 8, 10, 30–33. This indicates the idea of a kalpa (a vast period of time at the end of which the universe would be dissolved) which is part of the theory of the yugas had been developed in the 3rd century B.C. The Junagadh Inscription of Rudradāman 1746 (150 A.D.) refers to 'wind the velocity of which was as terrible as that at the end of the yuga'. In certain very early inscriptions of Pallava 1747 kings (of about the 3rd or 4th century A.D.) they are described as 'always ready to extricate dharma that had sunk deep owing to the evil effects of the Kali age'. In one of the Gupta Inscriptions dated in the 96th year of the Gupta era (415–16 A.D.) Dhruvasarman is praised as following the path of righteous conduct which prevailed in Kṛtayuga, 1748 while the Chammak copperplate of the Vakataka emperor Pravara-sena II also speaks of Kṛtayuga (Gupta Inscriptions No. 55 pp. 237 at p. 240) The Talgunda inscription of the early Kadamba king Kākusthavārman refers to Kaliyuga (E. I. vol. VIII p. 34) It is not necessary to adduce passages from inscriptions of a later date. From the above it may be said that the theory of yugas and kalpas had begun to take shape at least in the 4th or 3rd century B.C. and that in the first centuries of the Christian era it had been fully developed. It must have gone through several stages in the course of its development. For example, Brahmagupta (Brāhmaśphuta-siddhānta XI. 10) states that the theory of yugas, Manus and kalpas set out by Āryabhata was not like that of the sūtras.

The same conclusion is arrived at from a consideration of the classical Sanskrit literature. The theory of yugas and manvantaras as detailed in the Mahābhārata (Vanaprastha chapters 149, 188, Śānti chapters 69, 231–232), Manu chap. I, Visnu-dharma-sūtra XX. 1–21, the Purāṇas (such as Visnu I. 3, VI. 3, Mārkaṇḍeya 46, Brahma 229–230, Mātṛya 142–144) and astronomical writers from Brahmagupta is briefly as follows: Kṛta, Tretā, Dwāpara and Kali comprise together with the period

1745. Compare: ततः संवत्सरोपयोगी यथा भारतम्। लोकमातिरते वर्षामकर्षणे-रूपविशेषं। जनपदं 188. 69.

1746. वर्षामकर्षणे-रूपविशेषं। जनपदं 188. 69.

1747. Vide कल्हवदाधिकारसंप्रतिपालकविवश्रेणितिविशेषविश्रेणितिविश्रेणितिविश्रेणितिविश्रेणितिविश्रेणितिविश्रेणिति—which occurs as an epithet of Yuvamahārāja Vismugoparvarman in I A vol V. p. 50 at p. 51 and of Simhavarman in the Pikira grant in E. I. vol. VIII p. 159 at p. 162.

1748. कालांगुणवाचरसंप्रतिपालकविवश्रेणिति। ... मृतसंस्करण। In Gupta Inscription No. 10 pp. 44–45.
called sandhyā (that precedes each yuga) and the period called sandhyāmsa (that follows each yuga) 12000 years, i.e. Kṛta, Tretā, Dvāpara and Kali extend respectively over 4000, 3000, 2000, 1000 years and sandhyā and sandhyāmsa of these four extend over 400, 300, 200 and 100 years each (i.e. the sandhyā of Kṛta is 400 years and the sandhyāmsa of Kṛta is 400 years and so on). But these are divine years. Each divine year is equal to 360 human years. Therefore we have to multiply 12000 by 360 to arrive at the number of human years in the four yugas (i.e. the figure is 4320000). The Kṛtayuga with its sandhyā and sandhyāmsa comes to 1728000 human years, Tretā to 1296000, Dvāpara to 864000 and Kali to 432000. These four yugas are together called sometimes chahuryuga (Manu I 71) or simply yuga also (Vanaparva 188. 27, Śānti 232. 29); 1000 of these four yugas constitute a day of Brahmā, which is called Kalpa. The night of Brahmā is of the same duration. At the end of a kalpa the universe is resolved into Brahmā (and this is called pālaya) and at the end of Brahmā's night the world is created again. In one day of Brahmā there are 14 Manus and therefore each Manvantara is equal to about 71 caturyugas (1000 divided by 14). The life of Brahmā is 100, out of which half is gone and therefore the present is said to be the 2nd or latter half (dvitiya pariśadha) of the life of Brahmā and at present the kalpa that is running is called Vārāha. From the above it will be seen that, according to the Purāṇas, the universe has been created and dissolved many times and there have been numerous Manvantaras also (vide Manu I 80). The four yugas in various ways differ in their characteristics. Kṛta is so called because it is an age in which everything is fulfilled by every one and nothing is left to be done. The symbolic colours of the four yugas are respectively white, yellow, red and dark (Vanaparva 189. 32). In Kṛta, Dharma prevails in all its perfection and it stands with all its four feet (dharma being figuratively spoken of as vṛsana, a bull, in Manu VIII. 16 and Vanaparva 190. 9) and it declines or deteriorates by a quarter in each of the following yugas (Manu I. 81–82 = Śānti 232. 23–24), so that in Kali only one quarter (or one foot) of dharma remains and adharma occupies three quarters. In Kṛta people are entirely free from diseases, secure all that

1749 ृत्तमेव न कर्त्तथ बलिन्य चालिते सुश्रीमसे । भवावर्ष १४९ २१।
1750. उहे वातपालतको निर्माणाः पाणिविकिलित। धृष्प पतितितिन धर्मो मद्यवे मरते
पिण्ड ॥ भवावर्ष १९० ९।
they desire and the length of human life is four hundred years, all of which decline by one quarter successively in the following three yugas (Manu I. 83 = Śānti 232 25). The dharmas in each of the four yugas are different; *tapas* was the highest in Krta, philosophic knowledge in Tretā, sacrifice in Dvāpara and charity alone in Kali (Manu I. 85–86 = Parāśara I. 22–23 = Śānti 232. 27–28). Manu I. 85, Śānti 232 27 and 261. 8, Parāśara I. 22 all have the same verse stating that the dharmas prescribed for men in each yuga differ.

In Krta, Tretā, Dvāpara and Kali the dharmas (that should be observed) are respectively declared by Manu, Gautama, Śāṅkhā-Likhitā and Parāśara (Parāśara I. 24). In Krta there was a single varna but at the end of Kali almost all will be śūdras (Brahma 229. 52, Matsya 144. 78) Parāśara (I. 25–28) points out other characteristics of the four yugas, which need not be detailed here. Manu IX. 301 and 302, however, indicate that the yugas are not watertight parts of Time. It is the king who can by his conduct introduce the characteristics of one yuga into another. Medhatithi on Manu IX. 301 explains that the king should not be misled into thinking that Kali is a historical part of Time and that he (the king) cannot therefore be Kali or Krta, but that it is the king's way of conducting himself that will produce the conditions of the several yugas among his people.

In Vanarṣya 149. 11–38, Vāyu 32 and 57–58, Līlā 39, Matsya 142–144, Garuda 223, Nārāyana (pūrvārtha 41) and in several other purāṇas there are descriptions of the nature of the four yugas, which are passed over here. But it is important to see how the Great Epic and the Purāṇas describe the nature of Kaliyuga. Vanaprasta chapter of the Gargasamhitā (published in the J. B. O. R. S. vol. 14 pp. 400 ff. by K. P. Jayaswal), Harivamśa (Bhavisya chap. 3.5 ff.), the Brahmapurāṇa 229–230, Vāyu 58 and 99. 391–428, Matsya 144. 32–47, Kūrma I. 30, Viṣṇu VI. 1–2, Bhāgavata XII. 2, Brahmanda II. 31, Nārādyā (Pūrvārtha 41, verses 21–59), Līlā 40, Nṛsiṁha 54. 11–49 and several others present, often in identical verses, a very pessimistic, dismal and harrowing account of what will happen in the Kali age. One extract taken from the Vanarṣya (188) is added at the end by way of sample, of which a summary is given below. All men will generally be liars; in

1251. Vide Appendix.
the Kali age substitutes will be invented for yajñas, gifts and 
vratas; brāhmanas will do actions prescribed as peculiar to 
śūdras and śūdras will be acquiring wealth (which is the 
peculiar privilege of vaśiyas) or they will maintain themselves 
by following the profession of arms; brāhmanas giving up the 
study of the Veda and the performance of sacrifices and devoid 
of the staff and deer skin will eat anything (i.e. will not 
observe rules about bhaksyabhaksya); brāhmanas will not 
engage in japa (muttering of Vedic mantras), while śūdras 
will be intent on japa; when the world will be turned topsy-

turvy, it will be the first indication of coming destruction; many 
mleccha kings will rule over the earth, who will be sinful, will 
issue false edicts and will be engaged in fruitless wrangling; 
there will be Andhras, Śakas, Pulindas, Yavanas, Kāmbojas, 
Bahlīkas (from Balkh) and valiant Abhāras (as rulers); no 
brāhmana will maintain himself by pursuing his own dharma; 
ksatriyas and vaśiyas will indulge in prohibited or bad activ-
ties; people will be short-lived, have little strength, their 
valour and prowess will be insignificant, their spirits will be 
low and their bodies diminutive and they will speak words 
that have very little truth; countries will be mostly untenanted 
and the spāces will be occupied by beasts and snakes: people 
will be engaged in dry discussions about brahma (they will have 
no realisation or experience of brahma), śūdras will employ 
the word ‘bhoh’ (in addressing others\textsuperscript{1752} of higher classes) 
and brāhmanas will employ the word ārya (in addressing peo-
ples other than brāhmanas); swarms of insects will abound; 
all perfumes will not smell as fragrant as before and fluids 
will lose their sweet taste; women will have numerous progeny, 
will be of short stature, devoid of character and good conduct 
and engage in sexual intercourse against the order of nature; 
countries will suffer pangs of hunger\textsuperscript{1753}, squares where four

\textsuperscript{1752} This would be against the rules of dharmaśūtras and smṛtis 
about abhivādana Vide H. of Dh vol II pp 336-339.

\textsuperscript{1753} Nilakantha notes that the verse अन्ध्राष्ट्र जनपद ् एव, कव was vari-
ously explained before him, अव meant either 'food' or 'sulka': शूल means 
विकार, शिव means Veda, चतुर्वय व means वार्ता or the square where four roads 
meet, श्रेष्ठ means भ्रम; नीलते himself explains differently. According to him 
the explanation is, अन्ध्राष्ट्र तदन्त शूल कु-वटु घेता है शुद्धस्वामित्व है, शिव' सर्व- 
तपस्यायनायक वहतथापयव: शूलः पश्चात्तथे वेंदू वे सिवेश्वर विज्ञानयायण: विम्बो 
पतिवस्थानार्थ केरीचण्डातिहि सौम्याय चर्चायुगै शुचि मु दु कष्ठ वर्णय च 
चासो ता केराचायु: भ्रमविहिष्ठ चलनात्म। The मूलबमसाकार प 244 quotes the verse 
अन्ध्राष्ट्र and then remarks 'अन्वर्यायन शूलारम । आमम सिवो वेंदू शूली विकार एव 
च केराच भाषास्वाद्यदुमदस्यार्याद्विषिदिन II'.
roads meet will be full of nautch girls, and women will give up their chastity; cows will yield little milk; trees will produce few flowers and fruits and will abound in crows; brahmanas will receive gifts from kings that are guilty of brahmana murder and that falsely accuse others of grave sins, people in the various spaces will be dunned for alms by brahmanas steeped in greed and ignorance, who falsely make a pretence of their being religious; householders afraid of the burden of taxation, guilty of thieving and subsisting on trade, will remain concealed under the false garb of ascetics; brahmanas pretending to be brahmacarins will, through greed of wealth, fraudulently allow their nails and hair to grow; persons in the various stages of life, that observe false rules of conduct but are drunkards and indulge in incest, will desire mundane objects and the increase of flesh and blood, the āśramas (forest dwellings) will be full of various heretical opinions and will extol the merits of food provided by others (out of charity), Indra will not send down rain at the proper season and all seeds will not put forth proper growth; people will take delight in killing and will be impure and abundant will be the fruit of adharma; whoever will then be acting according to his dharma may be regarded as having a short time to live, since there will be no dharma whatever (in Kaliyuga); people will sell goods mostly with false weights and measures and traders will be full of many tricks; the righteous will wither away, the sinful will prosper; dharma will lose its strength and adharma will be powerful; those who follow dharma will have short lives and will be poor, while those who give up dharma will have long lives and will be prosperous, in the sporting grounds of cities people will be sinful (or adulterous) and people will enter into transactions by sinful means; people, that have saved a little, will be puffed up with the pride of the rich; people with whom wealth was deposited privately through trust will mostly be ready to deny the deposit, shamelessly saying ‘it was never so deposited;’ the sporting grounds of towns and temples belonging to towns will be infested by beasts and birds that prey upon human beings; girls of seven or eight years will become pregnant and males of ten or twelve years old will have sons born to them; people will be bald-headed in the 16th year and there will be quick decline in the length of the lives of men; young men whose lives will be short will act like old people and old people will have the habits of the young; women acting contrary to their duty
will deceive worthy husbands, will be of bad character and will have intercourse with slaves and even beasts; wives of heroes will resort to other men and will be guilty of adultery even while their husbands are alive.\textsuperscript{1754}

The dates of the composition of the Purānas not being beyond controversy, it would be difficult to point to a particular period as the time when the full-fledged theory of the yugas was developed. But this much can be stated with certainty that by the 4th century A.D. at the latest the theory had been completely developed. Āryabhaṭa\textsuperscript{1755} (in Kālakriyāpāda 10) states that when three pādas of the yuga (i.e. Kṛta, Treta and Dvāpara) and 3600 years more had elapsed, he was 23 years old i.e. (accepting the calculations current at present) in 499 A.D. Āryabhaṭa was 23 years old and so was born in 476 A.D. In his Pañcasiddhāntika Varāhamihira\textsuperscript{1756} (505 to 587 A.D.) summarises the data of several astronomical

\begin{itemize}
\item \textsuperscript{1754} It would be interesting to compare the descriptions of Kali given in the Mahābhārata and the several Purānas. Some verses are common to several of them and the ideas are almost the same throughout. The principal counts in the indictment are that there will be śūdra and Mleccha kings, that heretical sects will predominate, that the ordered duties and privileges of the several castes will be turned topsy-turvy and there will be great physical and moral decline. After Vanaparva chap. 188 there is an additional description in chap 190 of what will happen in the Kali age, which appears, from the express words of Vanaparva 191. 16, to have been taken from the Vāyu purāṇa. So this chapter is a later interpolation. The verse \textit{abhibhūtā t.} occurs again in Vanaparva 190 52 and also in Harivamśa (Bhāvīṣyaparva 5. 12), Brahmāpurāṇa 230. 11, Matsya 47 238. Two characteristic verses are: \textit{dhanuṣaśnayo bhāvaśuddha śūdra.} Kārayavasās. \textit{ātma jātānta sahaṇañjūnajātim.} II (Varaha purāṇa 230. 13, Bhūṣya 58 59, Bhāṣya II 31 59–60, Harivamśa, Bhāvīṣya parva 3. 15) and \textit{śwastaya vṛttaṃ tayātañgādha nāgāhanālāghoṣa uṣā.} Āraṇyaka purāṇa i. 190 67. The first says that śūdras with white teeth and (profession to have) curved their senses, with the head shaved and wearing ochre-coloured robes and maintaining themselves on false doctrines will proponnd dharma. This is a direct attack on Buddhist monks taken from the class of śūdras. The 2nd says that the earth will be covered with edifices enshrining bones (of Buddha) and not with temples of gods. The idea about girls of 5, 6 and 7 being mothers occurs in Visṇupurāṇa VI 1 41–42, Brahma 229, 41–42, Nārāyaṇa Purāṇa 41. 64 and elsewhere.
\item \textsuperscript{1755} The term is taken from the word \textit{deśi} meaning \textit{desa} or \textit{yuga}. The term \textit{viśvāsāyāraṇī} means \textit{viśvāsāyāraṇī} and \textit{śrī} means the same. \textit{śrī} is used in the sense of \textit{śrī} in \textit{śrī} or \textit{śrī}.
\item \textsuperscript{1756} This does not necessarily mean that he composed this work when he was only 23.
\item Vide J. A. S. B for 1912 pp. 275–278 for the date of Varāhamihira.
\end{itemize}
Siddhântas of which Romaka is one, about which Brahmagupta remarks that the Romaka siddhânta is outside the pale of smritis because it omits all mention of yugas, manvantaras and kalpas that have been regarded by the smritis as useful in measuring time. Kâlidâsa in Raghuvamśa 15. 96 speaks of dharma as having only three feet (in Treta) when Rama made up his mind to depart from this world. No scholar will assign to Kâlidâsa a date later than the middle of the 5th century A. D. Therefore the theory of yugas must be deemed to have been perfected long before 400 A. D. K. P. Jayaswal holds that the Yugapurâna chapter of the Garga-samhitâ was composed about 50 B. C. (J. B. O. R. S. vol. 14 p. 399) and he is probably right.

At present it is the practice to hold Kali 5046 (expired) as equal to 1945 A. D., or sake 1867 or samvat 2001-2. But it appears that there were several views about the date of the beginning of the Kaliyuga. The exact starting point on the above computation was Friday, 18th February 3102 B. C. One view was that Kaliyuga was about to begin when the great Mahâbhârata war was fought out. This view is expressed in the Aihole Inscription which appears to equate the beginning of Kali with the Bhârata war and states that 3735 years (expired) from the Bhârata war are equal to 556 years of the sake era. Aryabhata knew this computation, since he says that he was 23 years old when three parts of the (great) yuga and 3600 had elapsed (Kâla-kriyâpada, verse 10). Another view set forth in the Purânas is that Kaliyuga began when Krsna finished his avatâra and went to heaven. This would put the beginning

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1757 सुभास्थलसकल्पा कालोत्पन्नेऽदुक्ता स्थापानाम: परागः रोकिः ते सविताको रूपकदानम्। भारताकृति: स्वरूपाक्ष च मात्र प्रवृत्ति:। वरिकृतिः मानवशास्त्रपुस्तकः। नासिकेन 13 q. by S. B. Dikshit (2nd ed. of 1931) in Bharatâkârâyi: p. 155. भारताकृति: मानवशास्त्रपुस्तकः। नासिकेन 13 q. by S. B. Dikshit (2nd ed. of 1931) in Bharatâkârâyi: p. 155.

1758. तत्तत्तवात्वात्तचरितम् महानाकामक्षयसुधी। राधे शिविकं तत्यो दृष्टि जगतिः पादस्व।" सुभास्तिन्द्र 15 96.

1759. अन्यते चैव सत्यं कलिकास्परिपरसुरं। समस्तप्रभुं हि दुर्गाधारिणेन।" आश्च. 2. 13. मात कातिपुण विशिष्ट। शल्य 60. 25. पदकातिपुण नामासीतासामतिः। वर्गनान 149. 38.

1760. विसन्तन्यानं विस्तारेऽदुक्ता भारताकृति:। परागायवरोहेऽदुक्ता गोहवेषेऽदुक्ता पशुस्। धरासनानं द्वारे चतुर्दश्मात्माः।। समाहु समस्ताताः सुभास्तिन्द्र 15 96। E. I. vol. VI p. 1 at p. 7.

1761. परिसङ्केत्य विविध भारताकृति: तथाप्रयोगस्तितिो तथाप्रयोगस्तितिो। महात्मा:। कृतिगुरुत्वसंस्काराः संस्काराः। विशिष्ट 99. 428-429. भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The mahâsâstra XII. 2. 33 reads महात्मा। कृतिगुरुः। भारताकृति: III. 74. 241। The ma...
of Kaliyuga several years after the date arrived at on the first view.\footnote{1762 Vide Mausalaparva chap. 1. 13 and 2. 20 for reference to the lapse of 36 years before Krṣṇa's passing away. The Yugapurāṇa appears to make Kaliyuga start on the day Draupadī died (vide J. B. O. R. S vol. 14 p. 400). Another view is that of Varāhamihira who says that the constellation of the Great Bear was in Māgha when Yuddhābhira was on the throne and that that time is arrived at by adding 2526 years to the śāka year.\footnote{1763 This would place Yuddhābhira in 653 of the Kali age (as calculated at present) and not at the end of Dvāpāra and the beginning of Kali. The Rājaratangini I. 56 quotes the Brhat-samhitā and holds that Kuruś and Pāṇḍavas flourished in 653 of the Kali yuga (I. 51). Great efforts have

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1762. Vide J. R. A. S for 1911 pp 479ff and 675ff about the Kaliyuga and its era; 'Five thousand years ago, the Mahābhārata war' a paper by Dr. D. S. Triveda in Festschrift Kane pp 515-525 in which after setting out many divergent views and criticising them, it is held that the Mahābhārata war was fought out in 3137 B C, 'Purānic date of Mahābhārata', a paper by Mr. M. Raja Rao in the Bulletin of the Ganganath Jha Research Society, vol II pp. 125-143, which mentions numerous dates suggested by various scholars. I am not at all convinced of the correctness of Dr. Triveda's conclusions, in spite of the great learning that he brings to bear on the problem. Vide also his paper in 'Bhāratiya Vidyā', vol. VI (1945) pp. 117-120.

1763. आस्ं मयासु हुनम. शासिति एर्भोऽ बुद्धिष्ठरे चुव्दले। महाबिकस्ममिसित षञ्ज- काहेंनातकों राज्यूङ्। बुहेलिसिऽं 13 3 This is not a verse of Garga as some scholars assert. In 13 2 Varāhamihira promises that he will dilate on the movements of the seven sages (mucirā) according to the opinion of Vṛddhagarga. It appears that 13 3 is his own verse. Garga held the opinion that the Great Bear remained in one constellation for one hundred years. That is all Utpala quotes the verse of Garga, but it is in the Annstuhā metre. It was believed by the authors of the Purāṇas and even by such astronomers as Varāhamihira that the constellation of the Great Bear remained in each nakṣatra for a hundred years. Vide Br. Sam. 13 4, Bhāgavata XII 2 27-28, Matsya 273. 40-44, Vāyu 99. 421-422, Viṣṇu IV 24 33 Mr. Velandi Gopal Aiyer in 'Chronology of Ancient India' (p 75) holds that 'ṣad-dvāka- paścārc dri' means 26 times 25 i e 650 years and that we should read 'ṣākyakāla' or 'ṣākyakāla' (p. 73) instead of 'ṣākakāla' in Br. Sam. 13 3 in order to correct the error of one mātrā in the 4th quarter of the verse. In this last he is in error; he forgets that, according to works on chanda-śāstra, a short syllable at the end of a pāda is deemed to be prosodically long (and therefore the last syllable in Br. Sam 13. 3 is long). Besides, he is not able to cite a single example to show why the usual rule of 44-44

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been made by several scholars to meet this discrepancy by explaining the word ‘sad-dvika-pañoa-dvityutah’ (in the Brhat-samhitā) in various fanciful ways, which are far from satisfactory. There is no reason why _dvikā_ should not straightforwardly be taken in the sense of ‘two’,\(^\text{1764}\) as the Lilāvati and Br. Sam. 71. 5 itself do.

It is difficult to believe that the Śākakāla referred to in that verse is different from the Śakendrakāla or Śakbhūpakāla, which the Pañcasiddhāntikā (I 8) and the Brhat-samhitā (8, 20–21) make use of in several places. At least Varahamihira gives no such indication. Mr. C. V. Vaidya in his ‘Mahābhārata, a criticism’ pp. 80–81 holds that the Śākakāla referred to in the verse ‘āsan maghāsu &c.’ is the era of Buddha’s Nirvāṇa. There is hardly any warrant for this assumption. His interpretation of ‘sad-dvika-pañoa-dvityutah’ as meaning 2556 (and not 2526) is not bad and does not seriously affect the argument about the date of Yudhisthira. On that interpretation Yudhisthira would be placed in 2488 B.C. (instead of in 2448 B.C.). But there is no reason why the usual values of _sat_ (six), _dvika_ (two) and other words should not be understood to be meant here.

The data contained in the Nidhanpur plates of Bhāskaravarman (E. I. vol. XII p. 65), when properly scrutinized, appear to favour the position of Varahamihira. Those plates in setting out the genealogy of Bhāskaravarman start with Nāraka, whose son Bhagadatta fought on the side of the Kauravas in the Mahābhārata war and was killed by Arjuna (vide Dronaparva chap 29) Bhagadatta’s son is said to have been Vajradatta. After Vajradatta his descendants ruled over Kāmarūpa for 3000 years and then Pusyavarman, a scion of the Bhagadatta family, became king of Kāmarūpa. King Bhāskaravarman was 12th from Pusyavarman and was a contemporary of Emperor Harsa (first half of the 7th century A.D.). Taking an average of 20 years for the reign of each ruler, Pusyavarman should be taken as having flourished about the beginning of the 5th century A.D. Adding 3000 years which are alleged by the plates to have intervened between Pusyavarman and Vajradatta, we arrive at about 2500 B.C. as the time of Vajradatta and therefore approximately of the Mahābhārata war. This

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\(^{1764}\) The श्रीमती (अनुवादक सम्पर्कः वर्ष 262, अनांद राय) reads दिकार्क-कारण विचाराङ्कः, where the _opm._ says स्थ्येव दिक्षः.
corresponds rather very closely with the statement of Varahamihira who puts Yudhishthira's reign at 653 Kaliyuga (i.e. 2448 B.C.). On the other hand, if we assume that the Mahabharata war was fought in or that Kallyuga started in 3101 B.C., then Pusyavarman who flourished 3000 years after the Mahabharata war would have to be placed about 101 B.C. and there will be an interval of about 700 or 750 years between Pusyavarman and Bhaskararavaman. A period of 700 or 750 years for 12 rulers would work at about 60 years for each ruler, which is a very improbable average. Therefore the Nidhanpur'plates do not support the hypothesis that the Mahabharata war was fought about 3101 B.C., but rather support the statement of Varahamihira that it was fought about 2500 B.C.

Another epoch for the Mahabharata war and the beginning of Kaliyuga is indicated by some passages of historic importance found in some of the Puranas. The Vayupurana (99, 4-15) and the Matsyapurana (273, 36) say that from the birth of Parikshit to the coronation of Mahapadma (Nanda) a period of 1050 years elapsed, while the Bhagavata XII, 2, 26 assigns 1015 years for the same. There is some mistake in the Purana texts here. The Matsya (in chap. 271, 17-30) enumerates the kings of the Bhradhratha dynasty of Magadha descended from Sahadeva, son of Jarasandha, and states that the dynasty will rule (i.e. ruled) for a thousand years. Then chap. 272 (verses 1-5) speaks of five kings, who will be followed by the Siisunaka dynasty, that together reigned for 360 years and the last king in which was Mahanandi (verses 6-13) whose son from a sudra wife was Mahapadma (272, 18). So if the years of these three dynasties are added we get the period of about 1500 years. This is supported by the Bhagavatapurana (IX, 22, 48 and XII, 1-2) and Vayupurana (99, 308-321), which latter says that 32 kings of the Bhradhratha dynasty will rule for 1000, then five Vithothra kings for 138 years (Pradyota and others) and then the Siisunaka (Siisunaga in the Bhagavata and in the Brahmanda-purana III, 74, 134-135) dynasty for 362 (in all exactly 1500 years). The same periods are given by the Visnupurana (IV, 23 and 24) and by the Brahmanda-purana III, 74, 121-135. Sridhara in his comment on Bhagavata XII, 2, 26 states that the interval between Parikshit and Nanda is 1498 as the Bhagavata holds that the Siisunaka dynasty ruled for 360 years (XII, 1, 4-6). Therefore the proper reading in the Vayupurana or Matsyapurana or the Bhagavata should be 'paicsaratottaram'
instead of 'pañcāśaduttaram' or 'pañcadasottaram.' Taking the interval between Pariksit and Nanda to be 1500 years and holding as most modern scholars do that the Nandas flourished in the 4th century B.C., Pariksit, the grandson of Arjuna, the Mahābhārata war and the beginning of Kaliyuga would have to be placed in the 19th century B.C. Therefore there are so far three main different epochs for the Mahābhārata war viz. 3101 B.C., 2448 B.C. and about 1900 B.C. All the three are well attested by evidence dating at least from about the 5th century A.D. One cannot dogmatically say that a certain tradition alone out of these three is the only correct one. All that one can say is that one prefers a particular tradition to the other two. Since the epoch of 1900 B.C. is supported by the Purāṇas in great detail by citing the names of the several kings and their regnal years I personally regard the epoch of 1900 B.C. for the Mahābhārata war as more probable than the other two. It is best to acknowledge one's inability to assign a certain date to the Mahābhārata war rather than twist plain words or ignore altogether inconvenient passages or put on them fanciful or far-fetched interpretations. The first desideratum is to prepare critical editions of the important purāṇas from the best mss material. Even then it is doubtful whether unanimity among scholars can be secured. A scholarly beginning was made by Pargiter in his book 'The Purāṇa texts of the dynasties of the Kali Age' (1913). He compares the material available in the printed editions of several Purāṇas and Mss on the subject of royal dynasties. One cannot or may not agree with many of the assumptions and inferences that he makes or draws, yet one cannot withhold admiration for his industry and method. For example, I cannot agree with him when he takes 'bhavisye pathitān' of the Matsyapurāṇa or 'bhavisye patitān' of Vāyu (99, 267) as referring to the Bhavisyapurāṇa. In many passages of the Purāṇas we have references to 'bhavisyajñā' (Brahmānda III. 74 105), which simply means 'those who are conversant with sections on the future' contained in ancient works like the Mahābhārata.

It is not possible owing to limitations of space to enter into detailed examination of the theories of several scholars about the date of the Mahābhārata war. But one or two important matters will have to be referred to here.

Mr. Velandi Gopala Ayer in 'The chronology of Ancient India' in chap. II. (pp. 51–104) examines the astronomical data
furnished by the Mahābhārata and relying on the far-fetched and wrong interpretation put by him on the words of the Brhat-
samhitā (quoted above) and on the fact that the Kollam era
in Malabar appears to take 1177 B.C as the starting point for
Kaliyuga arrives at the conclusion that the Mahābhārata war
took place in the latter part of 1194 B.C. This theory goes
against all the three other starting points which are supported
by comparatively ancient and authoritative evidence.

The information derived from the fragments of the work
of Megasthenes on India are supposed to shed some light
on this vexed problem in one fragment (p. 115 of ‘Ancient
India as described by Megasthenes &c.’) occurs the passage:
‘From him (i.e. Bacchus) to Alexander the Great 6451 years
are reckoned with three months additional, the calculation
being made by counting the kings that reigned in the inter-
mediate period to the number of 153’. An extract from Pliny
makes out the number of kings to be 154. As against this we
have the statement in the ‘Indika’ of Arrian (2nd century
A.D., translated by McCrindle, p. 203): ‘From the time of
Dionysos to Sandrakottus, the Indians counted 153 kings and
a period of 6042 years, but among these a republic was thrice
established ... another to 300 years and another to 120 years.
The Indians also tell us that Dionysos was earlier than Heracles
by fifteen generations and that except him no one made a
hostile invasion of India’. This passage is of very great im-
portance for one reason, viz. that it proves that in the 4th
century B.C there was a persistent Indian tradition which
carried back Indian civilization and ordered government to
6000 years before the 4th century B.C. But there is great
doubt as to what Megasthenes actually wrote and there is some
divergence as to the number of years and kings also. Besides,
this has no direct bearing on the date of the Mahābhārata war
or the beginning of Kaliyuga, unless Heracles is taken to be
Harl-Kṛṣṇa, as some scholars1765 do. The account of Heracles
(pp 201-203 of McCrindle’s work) agrees in some respects with
the legends about Kṛṣṇa viz. that he was honoured by the
Sourasenoi (Śūrasenas), an Indian tribe who possess two large

1765 Vide Mr, C V. Vaidya’s ‘Mahābhārata, a criticism’ pp. 75-76,
where ignoring the figures of total years (viz. 6042 or 6451) he comes to
the conclusion that Kṛṣṇa flourished about 3101 B.C. since 138 kings
between Heracles and Sandrakottus (i.e. Candragupta) may have ruled in
all about 2760 years, taking 20 years as the average for each reign.
cities Methora (Māthura) and Cleisobora and that Heracles had many wives; but then there are other anecdotes about Heracles which do not at all agree viz his having a daughter Pandea with whom when she was only seven Heracles had intercourse for raising a mighty race. Here there is some confusion with the Pāṇḍavas and Kunti or with the Pandyan kingdom in the South. Moreover, 6000 years for 153 or 154 kings is rather a very long period. It cannot be said that a king is only a unit of time in these computations (40 years on an average), since such Purāṇas as the Vāyu and the Matsya expressly mention the number of years that each dynasty held sway, the number of kings belonging to each dynasty and the lengths of the reigns of several kings. It is no doubt true that the details of the names of the several kings, the number of kings and the duration of their reigns do not always tally. It appears that the Purāṇas that contain historical material were recast at different times, e. g. the Vāyupurāṇa (99.383) refers to the Guptas while the Matsyapurāṇa is silent about them. The extant Purāṇas cannot be supposed to have given imaginary details about historical dynasties, but they must have had before them older records or traditions. The Purāṇas do not appear to have invented names of new kings or given imaginary lengths of reigns. The authors surely knew that the total of the several dynasties between Parikṣit and Nanda did not square with the total of the lengths of the reigns of the several individual kings. But they gave both these without trying to solve the discrepancies as they wanted to record all the traditions they had got before them. The Purāṇas have a claim on our attention, but in the present state of our knowledge they cannot unfortunately form the basis of any certain or connected history and chronology of ancient times.

A few words may here be said about the attempts made to deduce the age of the Mahābhārata war from the astronomical references in the Epic.

The number of works and papers in which the dates of the Bhārata war and of Kaliyuga are discussed is very large. A few of them only are noted here. The late Shankar Balkrishna Dikshit in his exhaustive volume on 'the History of Indian Astronomy' (in Marathi, 2nd ed. of 1931) deals with this subject at pp. 107-127. Mr. C.V. Vaidya in 'Mahābhārata, a criticism, 1904' devotes one chapter (pp. 55-78) and appendix note Y (pp. 180-190) to the date of the Mahābhārata war. He holds fast to the traditional
view that the Mahābhārata war was fought in 3101 B.C. Mr. N. Jagannatha Rao writes a book on 'the Age of the Mahābhārata war' (Bezwada, 1931), in which he disputes the identity of Candragupta Maurya with Sandracottus mentioned by Megasthenes, holds that Sandracottus is the Gupta Emperor Candragupta, that the date of Candragupta Maurya would be about 1535 B.C., that the word 'Śakakāla' in the Brhatsamhitā refers really to the era of the Persian Emperor Cyrus about 550 B.C. and that the Great War was fought in 3139 B.C. The work does not go deeply into anything and is rather superficial. There is a lengthy and interesting article by Mr. K. G. Sankar on 'some problems of Indian Chronology' in Annals of the B. O. R. Institute, Poona, vol. XII pp. 301–361 in which he seems to favour 1198 B.C. as the date of the Mahābhārata war. Mr. J. S. Karandikar, editor of the 'Kesari' (Poona), contributed certain articles (in Marathi) which are now issued as a booklet (1939), in which he examines many of the astronomical references in the Mahābhārata and the Paurānic lists about the dynasties of ancient Indian kings and arrives at the conclusion that the Mahābhārata war was fought in 1931 B.C. Though I differ from him in important details, I think that the date arrived at by him appears to be one of the two probable or best authenticated dates among the several dates proposed by various scholars Prof. P. C. Sen-Gupta contributed a paper to the Journal of the Bengal Asiatic Society in 1937, vol. III pp. 101–119, in which he discusses the date of the Mahābhārata war and arrives at the conclusion that the Bharata war was fought about 2449 B.C. This also is a very probable date and has the authority of the tradition mentioned in the Brhatsamhitā that the śaka era is 2526 years after the era of Yuddhiṣṭhira. In J. A. S. B. for 1938, vol. IV pp. 393–413 Prof. Sen-Gupta again examines 'Bhārata battle traditions' and confirms the date 2449 B.C. already arrived at by him. Dr. K. L. Daftari delivered some lectures in the University of Nagpur on 'the astronomical method and its application to the chronology of Ancient India', which are published in book form (Nagpur, 1942). This work exhaustively deals with almost all the passages of astronomical importance contained in the Mahābhārata and is characterized by great industry, patient calculations and ingenious explanations of conflicting passages. His conclusion is that the Bhārata war was fought in 1197 B.C. Although one feels nothing but admiration for the author's great learning and acumen, it is not possible to agree with the date arrived at by him or with
the method and theories adopted by him. Apart from details one cannot accede to the following theories propounded by him viz. his division of the astronomical references into two groups, his assumption that a passage in the Dronaparva (chap 184) about the rising of the moon at about 2 A.M. is an interpolation (because it does not square with his explanations of the other passages), his bold expedient of changing 'citrām' to 'cātām' in Bhusma 3 12 and his transposition of Śravana and Pusya in Salyaparva 34, 6, his taking 'angaraka' to mean Venus (and not Mars). Dr. Daftari's work was reviewed by Prof Sen-Gupta in JASB for 1943, vol. IX pp. 221–228 and after submitting it to a searching analysis and calculations, the learned Professor arrives at the conclusion that he cannot accept Dr. Daftari's method, which is useless for all practical purposes. Prof K. V. Abhyankar contributes an article to the Annals of B. O. R. I. for 1944, vol. XXV. pp. 116–136 on 'the date and time of the Bhārata war', in which he takes into account only the material available in the Epic itself and bases his conclusions on the principle of following the voice of the majority. He furnishes a useful table in an appendix that shows at a glance some of the important astronomical passages of the Mahābhārata with their interpretations given by the commentators Arjunamisra and Nilakantha and by Mr. Karandikar and himself and finally gives his opinion that the traditional view of the date (3101 B.C.) is approximately correct. It appears that he had not, when he wrote the article, the work of Dr Daftari before him nor Prof. Sen-Gupta's devastating criticism of it. It will be apparent from the above that the attempts to settle the exact date of the Mahābhārata war on the strength of the astronomical materials contained therein are dismal failures. Hardly any two scholars agree on the exact dates so arrived at, which range from 1193 B.C. to 3101 B.C. and even beyond. There are many reasons for this disappointing result. In the first place, several of the criteria mentioned in the epic are hopelessly inconsistent, as will be made clear a little below by a few examples. Further, several scholars assume that the epic was composed within a short time (about three years according to Adiparva, 62, 52, or ed. chap 36, 32) after the war. Many (including my humble self) cannot subscribe to this view. Besides, we are totally in the dark about the details of the system of the calendar generally adopted at the period of the war. Many suppose that it largely resembled the rules contained in the Vedāṅga Jyotisa (of the Rgveda). There is no unanimity on the question whether the months
ended with amāvāsyā (i.e. whether they were amānta) or whether they ended with Full Moon (i.e. whether they were pūrṇimānta). That a pūrṇimānta month was in vogue in Vedic times is beyond dispute. For example, Tai S states that Pūrvā Phalguni is the last night of the year and Uttarā Phalguni is the mouth (i.e. beginning) Similarly Tai S VII 4. 8. 2 declares that the citrāpūrṇanaśa is the mouth of the year; while Śan Br. IV. 4 declares that the Phalguni Purna-māsī is the mukha of the year. The author or authors of the Mahābhārata, in describing the evil portents of an impending tragic or catastrophic event, often assemble together (as in Udyoga 143.5-23, Bhīṣma 2 16-33) all of them irrespective of the fact whether some of them are possible in the very order of nature. For example, it is stated that Arundhati went before Vasistha (Bhīṣma 2. 31), that a mare gave birth to a cow calf and that a bitch gave birth to a jackal (Bhīṣma 3. 6) and that images of gods trembled, laughed and vomited blood (Bhīṣma 2. 26, which may be compared with Brhatamhitā 45. 8 and the verses of Garga quoted by Utpala thereon); it is several times said that the Moon and the Sun are seized (i.e. eclipsed) at an unusual season (aparvānta) or simultaneously by Rāhu (vide...

**1766** That the months in North-west India were pūrṇimānta in the Kharoṣṭhī records drawn up in Kaniska's era is shown in E I. vol. 16 p 266 and E. I. vol. 19 at p. 10 Aparāṅka (p. 423) quotes a verse from Brāhmaṇa 'अय्युक्तसह तु माण्डि वारि द्विन्द्रिति' and remarks that Bhādrapada dark half is in that verse said to be the dark half of Āśvina. In the Bhavisya-parāśa (Uttara-parva, chap. 132 17) the Full Moon of Phālugna is said to be the end of the month' (किंतु बालुकत्वादे वौर्णवत्त्वादे नववाचुक | उसवो जालि नैने गालि गालि चूल्ले चूल्ले) In the Matsya-parāśa (159 4-6) it is said that Skandha and Viśākha were born on the 15th of the dark half of Caiṭra, that in the bright half of Caiṭra itself on the 5th Indra made one boy out of the two and on the 6th crowned him as Lord. This shows that in the Matsya Caiṭra was pūrṇimānta and not amānta. When the month is pūrṇimānta, the first fortnight ending with amāvāsyā is assigned to a month which is one month in advance of the amānta reckoning; e what is Kartika dark half with amānta reckoning becomes Mārgaśīrṣa dark half with the pūrṇimānta reckoning. On Jāt VI. 5. 31 Sabara quotes a Vedic passage about Śvaragrasa 'तस्या लोकसहायतास्कुम्भो दशस्यादि। कल्याणे बैया पौर्णमसि संवस्स्यश्रय या भुजीं गीवानासीं', which seems to indicate that the year began with the Full Moon of Caiṭra and that the pūrṇimānta reckoning was not unknown.
Further, these very verses state that the eclipses of the Sun and the Moon took place on the same day and on the 13th and in the same month. Dr. Daftari interprets 'ekahna' as meaning on the same week-day and 'on the 13th titthi' (pp. 5-6 of his work) calculated according to the wrong method of those days. It is extremely doubtful whether week-days had been known or named at the time of the Bhārata war or even at the time of the composition of the Epic. It is too much to assume that the astronomers of the Mahābhārata war days, while they could predict eclipses and state accurately the position of the planets, were so clumsy as to allow a mistake of two tithis to occur in their calendar with respect to the occurrence of a solar eclipse. The words in Bhīmsaparva 3, 28 and 32-33 appear to be a mere exaggerated statement of portents. If real observed eclipses are meant they would have to be taken in the order of the words in the text, viz. first an eclipse of the Moon (on Kṛttika peurnīmā) and then an eclipse of the Sun (on Kṛttika amāvāsyā) and further it must be assumed that the dark half of Kṛttika contained only 13 days. Dr. Daftari (pp. 44-46 of his work) holds that first there was a solar eclipse on Āśvina amāvāsyā, then a lunar eclipse and then again a solar eclipse. In that case we should expect the order to be 'sūrya-candrau' and not 'candra-sūryau'. Besides, hardly any other scholar holds that there were three eclipses one after another. Therefore, it is hardly possible to say with certainty that the author accurately states astronomical facts observed by him or even traditionally handed down as definite facts and does not draw on his own imagination about the portents or does not exaggerate.
as a rhetorical device. In Brhadarsanitiki 5. 26, 97-98 Varahamihira states the evil consequences if a moon eclipse precedes or follows a sun eclipse in the period of one fortnight.

Most of the important astronomical details will now be set out from the time when Lord Krishna is said to have started as a peace-maker to the Kauravas. In Udyogaparva 83. 6-7

It is said that Krsna started in the month of Kartika (Kannude māsa) at the end of the Sarad season and about the advent of winter, when the moon was in Revati naksatra and on maitra muhūrta. Āsvina and Kārtika are at present said to form the season of Sarad, and Margasīrsa and Pausa form hemanta. This verse itself presents a difficulty On the Full Moon day of Kārtika, the moon is in Krittikā naksatra and the moon would be in Revati three days before i.e. on or about the 12th of the bright half of Kārtika. 'If we take this along with the words 'at the end of Sarad' it follows that the month was pūrmimāṇa; otherwise (i.e. if the month were amāṇa) it would be highly improper to say that the 12th of the bright half of Kārtika was at the end of Sarad' After Krsna failed in his mission he returned to the Pandavas (for all of which we must allow a few days after the 12th of Kārtika śukla) and reported what Duryodhana and he himself said. Two of the statements reported by him are very material. Duryodhana said to his allies: 'March towards Kuruksetra (for battle); to-day the moon is (in) Pusya naksatra' If Krsna started on his mission when the moon was in Revati (on the 12th of the bright half of Kārtika), then these above words must have been uttered in his presence on or about the 5th of the dark half of Kārtika (or of Margasīrsa if the month was pūrmimāṇa). Another important statement is that Krsna in his conversation with Karna (whom he had tried to win over) stated to him: 'this is a mild month in

1768 मैः सबूत संगते शुद्धविषि द्विवकरे | कौड़े माति मेत्रत्र यादप्रते हिमागमे ||
उद्योगपर्व 83 6-7. 15 muhūrtas of the day and 15 of the night are referred to even in the ज्योतिसाधिक्यम् X 4 2. 18, 25, 27 and the शैलीविवस्थम् (III 10 11) mentions the names of the 15 muhūrtas of the day (such as Citra, Ketu &c.). In the Kumārasamhava VII. 6 the maitra muhūrta is mentioned in connection with ceremonies preceding marriage. The commentators explain maitra as the 3rd muhūrta after sunrise. In the Atharva Jyotisā fifteen muhūrtas of the day are enumerated of which the first three are Raurdra, Śveta and Maitra.

1769 अत्रापार्य्य रण्ध्रसान्त पतितायमुख्यते || प्राप्तच में कुंतवेऽदुप्लोयोति
मुनि उपम 150 3.
which fodder and fuel can be easily had, which is neither too hot nor too cold; on the 7th day (from today) there will be amāvāsyā; battle may be joined on that day; they regard it as having Indra for its (guardian) deity. Therefore this must have been said on or about the 8th of the dark half of the month. But what was the name of the month? If the reckoning was pūrṇimānta, the month must be Mārgāṣīra, but if the reckoning was amānta, the month must be Kārtika. The words 'this month' taken along with Udyoga 83 6-7 would indicate that the month meant was Kārtika. Further, Indra was the deity of Jyeṣṭha nāksātra and the amāvāsyā (as stated in Udyoga 142. 16-18) had Jyeṣṭha nāksātra. In modern times this is possible on Kārtika amavasya, while there cannot be Jyeṣṭha nāksātra in modern times on Mārgāṣīra amavasyā, but only on or about the 13th of the dark half of it. But this passage itself (Udyoga 142. 16-18) is in conflict with Sālya 35. 10 where Kṛṣṇa says: 'the Kauravas do not act up to my words, being driven to do so by the Time Spirit; O descendants of Pāṇḍu, go out (for battle) together with me when the moon is in Pusya'. If the moon was in Jyeṣṭha on amavasyā when Kṛṣṇa had proposed to Karna that the war should be begun, this passage of Sālyaparva would put the beginning of the war 16 or 17 days after Kārtika amavasyā, which is not warranted by any other passage and which no scholar puts forward. In Udyoga 143 11 it is stated,1771 the spot on the moon has turned away (disappeared) and Rāhu approaches the Sun. The exact meaning of the first quarter is not quite clear. Some interpret it to mean that an eclipse of the Moon has already taken place. The moon looks beautiful with the spot thereon (compare Sākuntala I mānuṣāmi lākṣaṁ laksitām lurdo.) The disappearance of the spot might have been looked upon as an evil portent. Even supposing that the first quarter refers to an eclipse of the moon, it does not matter much. The second quarter states that an eclipse of the Sun was expected when Karna addressed these words to Kṛṣṇa, the envoy of the...
Pândavas. Later on in Bhishma 2.23 it is stated\textsuperscript{1772} that the Moon had become devoid of brightness, was without its spot on the Full moon day of Kārtika and assumed the colour of fire while the sky retained its original hue; so that if there was an eclipse of the moon it was on KārtiKa Paunmī and an eclipse of the sun was yet to take place. On the whole, therefore, one may assume, though not without hesitation, that the months were amānta, that possibly there was an eclipse of the moon on KārtiKa Full Moon when Kṛṣṇa had gone as a peace-maker and that there was a solar eclipse on the amāvāsyā of KārtiKa just about the time the war began. In Sālayaparva 56.10 we again meet with the words (at the beginning of the mace duel) 'Rāhu swallowed the Sun at an unusual season'. This passage and Āsvamedhika 77.15 (Rāhu-agrasadādityam yugapat soma-meva ca) rather suggest that the eclipse of the sun at an unusual time had become a stock example of an evil portent without the actual occurrence thereof. The words in Sālayaparva refer to the last day of the war before the mace duel between Duryodhana and Bhīma and the passage says that Rāhu seized the sun and there was an earth-quake also Hardly any one (except Dr. Daftari) holds that there was another eclipse on the last day of the war, when just before the war there there had been an eclipse on KārtiKa amāvāsyā.

As to the exact 	extit{tithi} and 	extit{naksatra} on which the Great War began, there are many conflicting statements. In the Bhrātasa-vitri it is stated that the Bhrāta war started in the first month (i.e. Mārgasīrṣa) of Hemanta on the 13th of the bright half when the moon was in the naksatra presided over by Yama (i.e. Bhrānali)\textsuperscript{1772}. The Bhrāta-savitri is no part of the

\textsuperscript{1772} अङ्गः मेधया होतः पौर्णासासिः व फाल्गुनीशी, " जयेऽपूर्णिन्ययां सूमम्" (२२ पश्चादेऽ) नामसतेऽः भीमसे २३।

\textsuperscript{1773} The following verses of the Bhrātasa-vitri are material for the days of the important events of the war: ‘हृदये श्रीमः साधने न्यूपेने जयेऽपूर्णेः । बरुति भरते युक्त नृत यमन्तितां || कालालिताः विहर्त भीमसे गृहन्यं सामी। अहस्यं वैन सौमदेहो नन्यतरे च जयेऽपूर्णे। तुहस्यं महायुधं सहयुधं भेदिति। एकादश्यामप्रस्थरी महायुधं भेदिति। वैन बिः सौमदेहो नन्यतानां।' इत्यतः सादृश्यां भोजनानां राज्ये हस्त। बरुतिदलं हु साधने नुपेने विभाजिति। ’वतुहस्यं हु दुश्मनं बुधे सादृश्यां दस्त।’

(Continued on the next page)
Mahābhārata, yet it has some traditional value, being probably earlier than all the commentators of the Mahābhārata and later than the text of Sauti. In conflict with this passage of the Bhārata-sāvitrī we have the words of Udyoga 142.18 (quoted above) where Kṛṣṇa says to Karna that battle may be joined on amāvāsyā when the moon is in Jyesthā. The Mahābhārata itself states that after the disposition of the vast armies were made and commanders were appointed, Duryodhana called Uluka and sent him to the Pāṇḍavas to inflame their feelings with the words1774 (Udyoga 160.93) ‘the worship of steel (weapons) has been performed, the site of Kurukṣetra is dried up (has no mud), your horses are well fed, warriors are hired by you; fight tomorrow.’ This Lohābhīhāra (or-sāra) is the same as the rite of nirajjana (according to the Amarakośa) or is performed immediately after nirajjana (for which see pp. 230–231 above). Kautilya (II 30 p.135) prescribes a nirajjana rite at the start of an invasion and when two seasons meet. So a nirajjana rite on Karthika amāvāsyā would be most appropriate (both because a battle was to be begun and because at the end of Karthika the season of Śarad ended). The Brhat-samhitā (43.1–2) prescribes a nirajjana rite for horses, elephants and men on the 8th or 12th of Karthika bright half or on the 15th of Karthika (Full Moon or amāvāsyā). It is extremely doubtful

was killed on the third day after Drona became commander-in-chief. It may be noted that Nilakantha explains yamadunata differently as meaning Mrgaśira which has a double duty as its presiding deity. It may be noted that this text of the Bhārata-sāvitrī as printed is not quite reliable, since Śiṅgaleśa in his commentary on Śīλम 17.2, reads ‘�ख्यातं हस्ती शीलाय मायास्वामित्वादिकाः’ for वाल्कुण्याः सत्सीक्षा and ‘अनोदुष्टो सु सच्चार्थे भायत्सा निरापाकित्वाले’ for ‘द्राक्षरः दोषे हस्तीः.’ If these readings are accepted it follows that the Bhārata-sāvitrī implicitly recognizes the existence of a tithikṣya, since Drona is there said to have been killed on the 13th tithi of dark half when the ceps itself says that he died on the 15th day after the battle began. As the war commenced on the 13th of bright half, there would be 16 days on 13th of dark half.

1774 ढोहाभिहारी निर्हारः कुर्कमस्त्रकुर्ममः / युधस्तेत्य प्रता चोद्याः द्रोहाः संकेतः. (Udyoga 160.93). About this, Amrītārjuna says ढोहाभिहारायर्हेक्षु राज्ये नित्तभाजी विभि (v.1 नीराज्जनातिभिहि). The विभिन्नतयम of Devprāṇa quotes (Jivananda p 35) a passage from the Devipurāṇa that on the 6th of Cātur Skanda is to be worshipped and it is called सकन्तुपूर्ण. The निर्भरार्थस्या II (on मार्गीतिकाल) says ‘मार्गीतिकाल महायात्मिति सहारायणच मलिकं’... इपेक्ष सकन्तुपूर्ण. 2
whether Mr. Karandikar is right in saying that Lohābhihāra (or-sāra) refers to Skandasasthi. In the first place, the worship of weapons can be done at any time, particularly when a battle is to be commenced. In the second place, it is not necessary to postulate the lapse of six days and more for the sending of Ulāka and his return from the time when Kṛṣṇa said that battle may be begun on amāvāsyā. The armies had taken up opposite positions on the field of Kuruksetra and Ulāka could have come and gone in a day or two. Further, we have no evidence that Skanda-sasthi was performed in northern India in Margāśīrṣa, though very late works composed by dākṣapūtinas like the Nīrṇayasindhu say that Skandasasthi is the same as Campāsasthi in Mahārāstra and is observed on the 6th of Margāśīrṣa. Raghunandana quoting Devipurāṇa places Skandasasthi on Caitra 6th of the bright half and is supported by the Matsyapurāṇa quoted above in n.1766. There is no reason why the actual fight should commence so late as the 13th day of Margāśīrṣa (or even 11th as Mr. Karandikar suggests) when Kṛṣṇa said that it should be joined on amāvāsyā. It is quite possible that the war began on or about Kārtiκa amāvāsyā. The observance of ‘lohaḥbhihāra’ does not lead to the certain inference that the war was not begun till several days after the 6th of the bright half of Margāśīrṣa. Similarly, Mr. Karandikar says that the moon is ordinarily in Bharani on the 11th or 12th of the bright half of Margāśīrṣa. It may be so. But it is possible to have the moon in Bharani even on the 13th. I am inclined to hold that the Bhāratasāvitri dates of the beginning of the war embody a different tradition altogether from the one contained in the Mahābhārata itself. The Bhāratasāvitri is silent about nakṣatras on which the principal events of the war took place except at the commencement of the war. It mentions no tūthakṣaya or tūhuṣyddha. Kṛṣṇa sends a message with Ulāka to Duryodhana (Udyoga 162. 57) ‘tomorrow you will be seen’ (in your true colours) and Arjuna does the same (Udyoga 163. 14).

The Mahābhārata nowhere states quite explicitly the tūthu or nakṣatra on which the battle actually commenced. We have to rely upon various indications to arrive at the tūthu or nakṣatra. Balarāma could not bear to see the fight between Duryodhana and Bhima, both of whom were his pupils in mace-duel and went on a pilgrimage (Udyoga 157. 33–35 and 158 39). Balarāma returned on the 16th day of the war and (in Śalyaprāva 34. 6)
he remarks, ‘it is 42 days since I left (on a pilgrimage); I started when the moon was in Pusya and I have come here again on Sravana.’ In Śalya 35.13-14 it is stated that Balarama went to the river Sarasvati on pilgrimage on ‘maitra-naksatra-yoga’ (i.e. when the moon was in Anurādhā). This conflict may be resolved by holding, as Nilakantha does, that Balarama left the Pāndavas on Pusya, reached the Sarasvati on Anurādhā and returned on Śravana. If we follow Śalya 34.6 the war commenced when the moon was in or near Mṛgaśīra (18 naksatras before Śravana). This would be in direct conflict with a passage in Bhīṣmaparva 17.2 that ‘on the day of battle the moon was in the province of Maghā’ and also other passages that will be indicated later on. This last passage should ordinarily mean that the moon was near Maghā. Mr. Karandikar looks upon Śalya 34.6 as an interpolation and takes Bhīśma 17.2 to mean that the moon was in an insuspicious naksatra of the category of Maghā. This would suit Bhaṭarī but not Rohini or Mṛgaśīra. His meaning is far-fetched and he does not explain why Bhaṭarī was not directly mentioned in the Epic, when in several other places the epic does mention directly the naksatra concerned. His explanation gives the go-by to the 13th tuḥi. Dr. Daftari boldly asserts that we must transpose the naksatras (in Śalya 34.6) and read ‘Sravane samprayātosmi pusyena punarāgataḥ’. If we once resort to these methods followed by these two learned writers, there is no knowing where one should stop. There are scholars who might with equal or greater plausibility claim that most of these astronomical references are either of very late date or are interpolations (vide Vāndya’s ‘Mahābhārata’ p. 71). Similarly, if we once concede that we are at liberty to change readings to suit our theories even in the total absence of all manuscript evidence, then there is no sure foundation on which we can build. The Mahābhārata passages have a tradition of centuries behind them. We must, in the absence of good mss. evidence to the contrary, either accept them all and try to explain them or we must give up the job of reconciling them as a hopeless tangle and rely on other evidence to arrive at the date of the

1775. चलारिससब्धान्यमह द्वे च निर्वद्यम हैं। नवयेष्य संयातोतिं भाणे हना-ग्नात। बलप 34.6.

1776. समसांनिषयम्: शोरस्तत्वशं मस्यपश्यत। श्रीप्रसादनाथ शेष्टुतविषय सतं महाप्राय। भाषा. 17. 2. भीरजमान् explains. मधा पित्रोऽवाऽ तरय विषयं देहः विद्वद्वकृपय। सीमा।
Bharata war as best as we can. We saw above that Jyestha was the nakṣatra on Kaṭṭika āmāvāsyā and, if the war began then, the nakṣatra on the 18th day from then would be Pusya. Nīlakaṇṭha, following the Mīmāṁsā rules of interpretation, holds that the concluding passage (upasamhāraśākhyā) is superior in strength to passages that occur at the beginning of a work, that the passage in Salya 34.6 is the dominant one and other conflicting passages must be either brushed aside or explained away in conformity with Salya 34.6 and gives an explanation of 'Maḥāvīsa-yagāḥ somaḥ' which is quite unsatisfactory. Dr Daftari also holds, relying on Atharva Jyotisa, that the passage means 'the moon was in Mula' (p. 27 para 62-65 of his work 'Astronomical method' &c.) The explanation is ingenious but one fails to see why this round-about way was resorted to and why the text did not simply say 'maṇalanakṣatra-yagāḥ somaḥ', which violates no metrical requirements. In Anuśāsana parva (167.26-28) Bhīsma, while on the bed of darts, states 1777 'the sun has turned (towards the north); 58 days have passed by since I laid myself down on this (arrow bed) This is the mild month of Mahā that is now current, three parts of it remain and this fortnight should be śukla'. Bhīsma was struck down on the 10th day of the war; so 67 nights had passed from the day when the war began to the day in Mahā on which this was uttered. The difficulty is how to connect 'trīhāgaśeṣaḥ', whether as an adjective of 'māsa' or of 'pakṣa'. If we take it in the first way, these words were uttered on 8th of Mahā śukla: if we take it as an adjective of 'pakṣa', then they will have to be taken as uttered on the 4th of the bright half or on the 4th of the dark half which may be regarded in its astrological effects as equal to śuklapakṣa (though the tithi itself is in the dark half) If the words were uttered on the 8th of Mahā śukla, the Bharata war began on Kaṭṭika āmāvāsyā (which will be in consonance with Udyoga 14.18 quoted in n 1770). The passage in Anuśāsana (167.26-28) is supported by two other passages. After the war was over, Yudhisthira went to the capital and stayed there for 50 nights and when he found that the Sun had started on its apparent northward path (uttarāyana) he came to Bhīsma (Anuśāsana 167.5). In Śantiparva 51.14 Kṛṣṇa says to Bhīsma: 'You have yet to live 56 days' Niḷa-kantha, who takes Salya 34.6 as the dominant passage, puts a

1777 अपूर्णावस्त्र सर्वं शापान्तरा ने गता। मायेय सप्ताहधीन मस्त। सैन्यो। गुप्तितिः चिन्मण्डः पश्चायं द्विः भूतिमेति॥ अनुशासन 167.26-28.
most far-fetched construction on the word ‘astapañcaśatam’, which he takes to mean ‘one hundred minus 58’, i.e. 42 nights and explains ‘pascasatam sat ca’ as equal to 30. This shows to what straits commentators are reduced when conflicting passages have got to be explained away. One more indication about the tithi on which the war commenced is afforded by Ćroñaparva chap. 184, where it is stated that a grim fight went on till midnight when Ghatotkaca was killed, that the fatigued armies then snatched some sleep, that then the moon rose at about 2 A.M. (verse 48) and that the fight was then resumed1778 (chap. 186. 1 ‘tribhagamatrañesāyam rātryām yuddham-avartata.) This description of moonrise shows that Ghatotkaca was killed on or about the 11th of the dark half. We know from the Mahābhārata itself that Ghatotkaca was killed on the night of the 4th day of Drona’s command or on the 14th day after the war began. This would establish that the war began on the 12th or 13th of the bright half and ended on the 14th of the dark half or on amāvāsyā of Magaśīrśa. Dr. Daftari holds that this description is an interpolation.

If we try to find out the nakṣatra on which the war began, we have one sure criterion in Śalya 34, 6 viz. that the war ended on Śravana nakṣatra when Balarāma returned from pilgrimage. Now the moon cannot be in Śravana at all in Magaśīrśa dark half, but may be in it on the first or 2nd of the bright half of Pausa. So between the tithi and nakṣatra as disclosed by the Mahābhārata itself there is a slight discrepancy of a day or two. There is another way of looking at the data. Bhisma was waiting for Uttarayana to begin and we know that he passed away on the 59th day after he was mortally wounded on the 10th day of the war. Therefore, a period of 67 days (58 nights of his lying on arrow-bed plus 9 nights of the battle when he slept on his usual bed) elapsed between the beginning of the war and the beginning of Uttarayana, which undoubtedly occurred in Māgha in that year (as Amuṣāsana 167. 28 expressly states) The real difficulty is to find out the tithi of the commencement of Uttarayana. But if we accept the approximate tithi and nakṣatra (as stated above) of the end of

1778. विभागभितिसे शय्यार् राज्या युद्धमलते। कुछानं पण्डवाना च मदुराया विद्यावदी।
सो ग्रन्थाः 186. 1. नीतिकाभ्यासकाराः। तत्र कुपेदूषाएः कथवार्यं
वर्णर्मः नाना: 11. He supposed that Ghatotkac was killed on the 12th of the dark half.
the war (i.e. Mārgaśīrṣa amāvāsyā or 1st of Pauṣa and Śravaṇa nakṣatra), uttarāyana began 49 days thereafter i.e. on or about the 4th of the dark half of Māgha. According to the Vedāṅga-jyotisa, 4th of the dark half of Māgha is one of the tithis on which uttarāyana may begin (vide Dikshī’s work pp 75, 91).

How scholars accept one of the data and reject others is well illustrated here. Acc. to Śalya 34 6 the war ended on Śravaṇa (and so should have begun when the moon was in Mrgaśīrṣa). Acc to the Bhārataśāvitrī the war began on Bharani and on the 13th of the bright half of Mrgaśīrṣa and ended on Amāvāsyā (and therefore the nakṣatra was Mūla or Pūrvasadha). Arjunaṁisra gives up the nakṣatras and sticks to the tithis. Mr. Karandikar gives up the express verse about Śravaṇa (and regards that whole chapter as an interpolation), he gives up the 13th tithi of the beginning of the war as given in the Bhārataśāvitrī, holds that the war began on 11th instead and sticks fast to the Bharani nakṣatra given in the Bhārataśāvitrī. Dr. Daftari altogether changes the reading of Śalya 34 6 by transposing the nakṣatras mentioned.

The difference between the day of Uttarāyana in Māgha stated in the Mahābhārata and the day thereof at present is utilised by scholars for arriving at the date of the Mahābhārata war.

There are other data in the Mahābhārata from which also the date of the Mahābhārata war is sought to be deduced. Before entering into details, some matters that are accepted by most scholars may be stated here. It is generally held that there were two eclipses, first, one of the moon immediately followed by a solar eclipse, that there was a fortnight of 13 days which was looked upon as very unusual and a very evil omen. Vide Bhīṣma 3 28 quoted in n 1767. In Bhīsmaparva 3 31-32Vyāsa is reported as saying, ‘I have known amāvāsyā occurring on the 14th, 15th or 16th day (of a pāksa), but I do not know an amāvāsyā occurring on the 13th day (of a pāksa); both the moon and the sun were eclipsed in the same month on the 13th day.’ In the Mausala-parva 1779 2 18-19, when Kṛṣṇa, 36 years after the war, beheld certain portents it is said, “on observing those portents on the amāvāsyā occurring on the 13th day he declared ‘Rāhu had made this (13th day) appear as the 14th and 15th (when usually there is amāvāsyā) when the Bhārata

1779 यथ पृष्ठो दृष्टिश्च संभाव दक्षपमार्गीश्च च, चशस्यलशभावतस्त्व तत्त्व हृदया मामीविद्यादिन च चावदेशी मयुरभी चंतोम रामणो दुःत। माते ये भास्ते तुम्हे माता चाचा क्षयप 

न नां तालगवे २. १८-१९,
war took place; to-day it has again occurred for our destruction'. From these words it is clear that the occurrence of an āvāsyā at the end of a pāla of 13 days was looked upon as a very evil omen. Then many scholars hold that a comet had also appeared at the time of the great war Bhīṣma 3 13\textsuperscript{1780} states, 'a very frightful comet stands in the sky covering the constellation of Pusya.' There are grave doubts whether the statement is made from actual observation. The appearance of a comet has always been associated in ancient times with great calamities. Compare Kumārasambhava II 32 'upaplavāya lokānām dhūmakaṭurīvat-thitatāh'. As indicated above, the Mahābhārata gathers together several possible and impossible things to emphasize their significance as to impending calamities. Therefore the inclusion of a comet among portents does not establish that a comet had actually appeared at the time of the Bhārata war. Supposing for argument that a comet had appeared, that circumstance is of no help at all in settling the date. A large number of comets is included in the sun's retinue. The number of comets of long periods that approach the sun in a century is said to be 300. There is nothing to show what particular comet appeared at the time of the war and no one has data to connect the Mahābhārata comet with Halley's comet or any other comet well-known in modern times. Therefore the datum about a comet is entirely worthless for purposes of chronology. According to Brāhmaṇḍa 11. 5 and Utpala thereon the ancient writer Parāśara held the view that there were 101 hetus and Garga said that there were a thousand. The description in Bhīṣma 3 13 states that the perihelion of the comet was in Pusya. In Udyogaparva 143 10 it is said 'since a graha specially afflicts Citṛā, a great calamity is indeed approaching the Kauravas.' This may probably refer to a comet. Two other verses appear to have some bearing on this. Bhīṣma 3 12 states\textsuperscript{1781} that the white graha stands traversing

\textsuperscript{1780} Bhāsa sāstrapa bhūttā samāvākṣya śīleśa। अभय हि विद्वीपण कृष्णा ततः प्रभृति॥ प्रवेदकोः साहाय्योऽस्मात् कृष्ण चालक्य शीलेश। सेवामिरिक्षिव चौर करिप्यति साराधू।।

\textsuperscript{1781} Bhūra Mahānte Hitopadeśa Prāvatitam 11. 39 'Chetra dātī jantarakāro kṛṣṇa. Śvadāsī niṣāpararāt । viśiṣṭāsūtrāya viśiṣṭāsūtrāya mahā kṛṣṇe ।'. Upadhyāya explains 'kṛṣṇa pūraṇa śvadāsī kṛṣṇeṇa ।'. It is remarkable that Bhāsa 11. 57 is viśiṣṭāsūtrāya viśiṣṭāsūtrāya mahā kṛṣṇeṃ ।, thus agreeing very closely with Bhāsa 3 12.
The white graha is fiery like fire emitting smoke and stands occupying Jyesthā which is a bright star presided over by Indra. What is meant by ‘white graha’? The words ‘sveto grahaḥ’ should ordinarily denote Venus. Nilakantha takes them to mean Ketu (node) in Bhīṣma 3.13 and another comet in 3.16. If this latter explanation be accepted there were two comets seen at the time. Even if we hold that Bhīṣma 3.16 describes the tail of the comet mentioned in 3.13, that is of very little help. All that would be meant would be that the tail of the comet was a very long one. Bhīṣma 3.17 has been taken to refer to Rāhu by Nilakantha, while some modern scholars hold that it refers to a comet. It means, ‘a cruel comet standing between Cīrā and Svātī, afflicts Rohini and also the sun and the moon’. The description of the Ketu called Śveta in Brhat-samhitā 11.39 agrees very closely with the description in the Bhīṣnaparva and Parāśara quoted by Upāla thereon states that the Ketu called ‘Śveta’ becomes visible after 115 years and portends the destruction of two-thirds of the population.

Then there are several passages which state the positions of several planets just before the battle or on the day the battle began. Here again at least two different positions are assigned to each planet except Mercury. It is first to be noted that at the beginning of the war all the seven planets excluding Rāhu and Ketu are declared to have been near each other (Bhīṣma 17.2, q in note 1776 above). We know from the Mahābhārata itself that the Sun and the Moon on Kāṭikā āmāvāsyā were in Jyesthā. If the war began on āmāvāsyā or a day later, the planets must be near Jyesthā. If the Bhūratasāvītī be followed then the war began on Mārgasīrṣa bright 13 and on Bharani. If that were so, the sun and the moon cannot be together. Mr Karandikar takes 11th of the bright half of Mārgasīrṣa to be the tithi of the beginning of the war and holds that the Sun was in naksatra Jyesthā and that the moon was in Bharani (following the Bhūratasāvītī as to this last). I should hold that we are not at liberty to take one datum from one group of statements and another from another group and then say that it is proved that the war was fought at a particular time. It is further noted in Karnaparva 37.4 that on Karna’s death (i.e. 17 days after the war began), the seven planets were seen going away from the Sun 1782. The positions of the planets at the beginning of the war were as follows:

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1782 ।ि सरस्वती यज्ञस्य यज्ञस्यमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्रमात्र
SUN —

Udyoga 143. 11 (Rāhu approaches the Sun)
Bhīṣma 3. 11
Bhīṣma 3. 28, 32 (q. above in n. 1767)
The Sun was either in Jyesthā or near Mrgaśīrṣa.

MOON —

Bhīṣma 3.17 (parusa graha i.e. Rāhu afflicted both the Sun and the Moon) and Rohini
Bhīṣma 3. 28, 32 (q. above in n. 1767)
Bhīṣma 17. 2 (the Moon was in the province of Maghā q. above in n. 1776).

MERCURY —

Karnaparva 94. 49 says that on Karna's death the son of the Moon (i.e. Mercury), the white luminary, rose slantingly resembling in hue fire and the Sun. The Śalyaparva 11. 18 states that Mars, Venus and Mercury were in conjunction. If Mars was in Maghā as stated in Bhīṣma 3.14 and Mars and Mercury were in conjunction Mercury would be in Maghā, which forebodes destruction of people by war, as stated in Brhatsamhitā 7.3

MARS —

Udyoga 143. 9 states, 'Mars having made a retrograde motion in Jyesthā seeks (to reach or afflict?) Amṛādhā, the nakṣatra presided over by Mritā, as if bringing death (to friends)'
Bhīṣma 3. 14 states: 'Mars is retrograde in Maghā.' What is the meaning of this? Literally it means that Mars was in Maghā and was retrograde in motion. Mr Karandikar holds that Mars had only drṣṭi on Maghā and was in Pusya. Supposing this is correct, Mars was not near the Sun but far away.

Bhīṣma 3. 18 declares: 'Mars, having changed its motion after being retrograde and with the lustre of fire, stands covering Sravana, the mansion of Brhaspati.'

1723. व्रतव तिरवे ज्ञताकार्येः सौमय युवीपुदंपिपाग मिर्नपुंक्तः ॥ कर्णपाल ॥ ॥ ॥
1784 कुम्भा चालायस्ततो बक्षोपदाय स्त्रुतसुद्रः। अद्वरायां भार्यां नात्ति सरसविदा भृगुस्त्रेषु दशस्त्रेषु ॥ संस्कृतम् स्मार्तस्माताः स्वरूपिणः ॥

(Continued on the next page)
We find that the Mahābhārata employs two classes of expressions. When it uses words like ‘tishtati’ (stands), ‘ākramya’ (having traversed), ‘samvrtya or samparivārya’ (having covered or concealed) it means that the planet was in or very near that naksatra. When words meaning ‘afflicts (piḍayati)’ are employed, the meaning is probably that the planet has only drṣṭi on the naksatra. It is impossible to say whether the rules and theories about drṣṭi or pūrṇa drṣṭi and partial drṣṭi had been evolved at the time of the Mahābhārata War. If the war was fought about 3101 B.C or even 1931 B.C there is nothing to establish that the theories about drṣṭi contained even in the Atharvayotisa (which is certainly later than the Vedāṅga-yotisa of the Rgveda i.e. much later than about 1200 B.C) were known then. Vide under Venus for further difficulties.

**JUPITER**— Bhisma 3.14 states that Jupiter was retrograde in Śravana; Bhisma 3.27 states, 1785 ‘Both Jupiter and Saturn that had stayed together for a year are near Visākha and are both fiery’. Jupiter cannot stay for one year in one naksatra; it traverses $2\frac{1}{2}$ naksatras in a year. If at the time of the war Jupiter was near Visākha it could not have been near it for a year. Eleven months before that it would have been very near Citra. If it was near Visākha at the time of the war and the Sun was in Jyestha, it can hardly be correct to say that seven planets had come together in the sky (there being a distance of about two naksatras or about 26

(Continued from the last page)
degrees between the two.) Even if we hold the meaning to be that Jupiter and Saturn had remained near Viśākhā for one year and are (now at the time of the war) fiery, that does not solve the difficulty. In the first place, it is not a natural construction. This meaning would leave the exact position of the two planets at the time of the war unspecified. But Jupiter and Saturn must be supposed to be in or near Jyesthā if the Sun was in Jyesthā at the beginning of the war. If Saturn was in Jyesthā at the time of the war it could have been one year in Viśākhā about two years before the war. What is the propriety of mentioning Saturn’s position two years before the war? The relevant point is to state that position at the time of the war. Therefore it must be held that Bhīsma 3.27 states their position at the time of the war and adds one more circumstance that they were there for one year.

Karnaparva 94.51 says: ‘Brhaspati having entirely covered Rohini has become like the Sun and the Moon’. If at the beginning of the war Brhaspati was retrograde and was near Viśākhā, it passes one’s understanding how in a fortnight it came to Rohini. Mr. Karandikar suggests that Rohini here is the name of Jyesthā as in the Tai S IV 4.10 1-3. Again in this explanation there are several difficulties. There is nothing to show that at the time of the Bharata war or of the epic Jyesthā was called Rohini. The Tai S does not employ the name Jyesthā in its list. It speaks of Rohini once as having Prajāpati for its presiding deity and then as having Indra as its presiding deity. Jyesthā is well-known to the Mahābhārata and the word is employed by it in other passages. Further, if Brhaspati had covered Jyesthā it can hardly be correct or even useful (for the purposes of chronology) to say that Jupiter was near Viśākhā.
Bhīma 3.15 states that Venus\textsuperscript{1786} having ascended (i.e. occupied) the Purvābhadrpadā nakṣatra shines charmingly and it looks up to Uttarābhadrpadā together with (?) The meaning of ‘parikramya sahitah’ is not at all clear. However the first half is as clear as possible. Venus was in Purvā Prosthapadā. If the Sun was in Jyestha on Kārtika amāvāsyā, it is impossible that Venus could have been in the 8th nakṣatra from Jyestha. Venus is never more than four nakṣatras from the Sun in the sky. This would completely knock on the head the principal statement that seven planets were near each other. Mr. Karandikar in desperation suggests that we should understand Purvāsādhā for ‘Prosthapade Purve’ and also that the word ‘Prosthapade’ was an interpolation inserted by some busy body later on. As I have frequently said above, this is a most unjustifiable way of dealing with the so-called astronomical data in the Mahābhārata. ‘Prosthapade Purve’ can never mean ‘Purvāsādhā’. In the Tai, S.IV.4. 10. 1–3, and the Tai, Br. I. 5. 1 and III. 1. 1 the word Prosthapadā is expressly employed for Purvā Bhadrpadā. Why should one word in a verse be held to be interpolated? Is it because it does not agree with one’s hypothesis? In Śalya 11. 18 Venus and Mars are said to be in conjunction with the Moon. If the war started on Bharani as the Bhāratasāvitri says, then at the time of the mace-duel the moon might be in Jyestha and therefore both Mars and Venus will have to be in Jyestha. But this is opposed to two of the passages cited above referring to the position of Mars. If the war began on Jyestha and Kārtika amāvāsyā, then on the 18th day the moon will be in Pusya or Aślesā and both Venus and Mars would have to be in one of these two. In any case, if Venus was in Purvā-bhadrpadā at the beginning of the

\textsuperscript{1786} यद्यप. सौरभद्रपदे यही नक्षत्र उपस्थित। उच्चरे इ परिक्रमण सहितं। सहस्रताते। भीम 3.15.
war, on the 18th day it can neither be in Jyesthā nor in Pushya nor in Āśleṣa. Besides, it is debatable whether Bhāṣma 3.16 (where ‘sveto grahah’ is mentioned) refers to Venus or not. Venus is often called ‘Sita’ in ancient astronomical works (e.g. in Bṛhat-samhīta 9.42, 45).

SATURN—

We have four statements about Saturn. In Udyoga 143.8, we read, ‘A refulgent and malignant planet, Saturn, afflicts the nakṣatra presided over by Prajāpati (i.e. Rohini)’. Bhāṣma 2.32 states, ‘Saturn afflicts Rohini’; Bhāṣma 3.14 says, ‘the nakṣatra presided over by Bhaga is covered and afflicted by Saturn’. Jupiter and Saturn are near Viśākhā (Bhāṣma 3.27 considered above). In the first three passages the root ‘pīd’ occurs and therefore it is possible to argue that some kind of aspect (dṛṣṭa or vedha) of the nakṣatra mentioned in the text is meant. But in the third passage both ‘ākramya’ and ‘pīdyata’ are used about the same nakṣatra. This makes that passage inexplicable in the usual way. The ‘prājapatyā nakṣatra’ must be Rohini as in the 2nd passage, Rohini is expressly named. All authorities agree that Prajāpati is the deity of Rohini. ‘Prājapatyā nakṣatra’ cannot be taken to mean Mūla, since the presiding deity of Mūla is ‘pitarah’ in Tai. S. IV. 4.10 1-3 and Nirṛti (in the Tai. Br. I 5.1 and in the Vedāṅga-jyotisa) and Prajāpati only in some later works. Bhaga is the presiding deity of Uttarā Phalguna in the Tai S IV 4.10.1-3 and Tai Br. I 5 1, and III. 1 1, while in the Vedāṅga-jyotisa (Ṛgveda, verse 25), Viṣṇu Dh. S. (78 16), Śān. Gr (I. 26 9, SBE vol 29 p 53) Bhaga is the deity of Pūrvā Phalguna. The 4th passage about Saturn being near Viśākhā has been already dealt with under Jupiter.

1787 बाजारेस्वहि नक्षत्रा ग्रहश्वरीयां निरायकः। सन्धेष्यां ग्रहश्वरीयां ब्रह्माण्डः। नौककण्वः। उब्बीम 145.8, स secrecy वीडियेर स्तिरते राजय अन्तर्यां । भाष्यम 2.32, भूमि नक्षत्रमाकारं लघुप्पुद्रण सीखलेत । भाष्यम 3.14.
The above detailed statement about the astronomical passages of the Mahābhārata will induce any unbiased reader who has no axe to grind that they are hopelessly inconsistent and that no certain chronological conclusion can be drawn therefrom. In the above discussion I have generally not cited the various explanations indulged in by several scholars, as that would have involved me in a very lengthy discourse without any adequate benefit. To me it appears probable that the final redactor of the Mahābhārata had two or more sets of astronomical data about the war before him and without trying to examine and sift them he included them all in his work. The Bhārata-savītī probably represents one (and a later) tradition about the positions of the planets at the time of the war. As I hold that either the Mahābhārata passages on the positions of the planets were interpolated at a very late stage or are hopelessly inconsistent I deem it unnecessary to enter upon an examination of the mathematical calculations made by several scholars to find out the date of the Bhārata war from the shifting of the solstices and the position of the planets.

Since only 5046 years have elapsed (in 1945 A.D.) from the beginning of the Kali age and as Kaliyuga extends to 432000 years according to Paurānic computations we are just on the threshold of the Kaliyuga and it is beyond one’s comprehension to visualize what will happen towards the end of the vast period of about 427000 years that are still to pass before Kaliyuga ends. It is very small consolation to read in the Purāṇas in a prophetic strain that at the end of that colossal period Viṣṇu will be incarnated as Kalkin in a village Śambhala, will destroy all Mlechhas, Sudra kings and heretics and will establish dharma, so that the Krta age will then be ushered in. Here again as in almost all matters there are differences in the legend. The Vāyu (58 75-90) and the Matsya (144, 50-64) state that it will be Pramati Bhārgava who will be the avatāra of Viṣṇu and uproot the Mlechhas, heretics and Sudra kings, while Vāyu 98, 104-110 and 99 396-7, Vanapravas 190 93-97, Bhāgavata XII 2 16-23 state that Kalkin will conquer the Mlechhas, will become a universal emperor (cakravartin) of the dharmavyayun type and will start the Krta age. In some passages he is called Kalki (nom. of Kalkin) as in Vanapravas 190 93, Bhārma 213.164, Vāyu 99 396, Matsya 47.248, Nrṣimha 54 3; while in others as Kalkih (nom. of Kalki) as in Vāyu 98.104, Kalki 2 28, Bhāgavata XII 2 16, Matsya 47.251. In
some passages he is said to be the son of a brahmana Visnu-
yāśas who will be the head of the village called Sambhala
(Bhāgavata XII. 2, 16, Visnupurāṇa IV. 24, 26, Agni 16. 8,
Nṛśimha 54. 3, Kālīpurāṇa 2. 34), while in other passages he is
himself styled Visnuyāśas (Vāyu 98, 104, Vanapravya 190. 93,
Brahma 213. 164, Visnudharmottara I. 74, 40)1788. In some places

1788 शम्भलमनुष्काणक्ष्य भार्त्तरिण्य महासांस्करं भरातम्।
चब्राह्मणी कालिन्दी यसुपः
विद्यादिगतिः अयस्मात्रयुगानन्दनस्य प्रभासिति।
शब्दावर्त्तिणि। भगवद्कल्पिकाधिपतिंहरि।
इति। विद्यादिगतिः नारद्युपपतिकां सांस्कितिः।
भागवत XII. 2 16-23

1788a Various efforts have been made about finding germs of history
in the legend of Kalkin in I A vol 48 pp. 123-128 Prof. H. B. Bhōde
tries to show how Jain authorities about Kalkin are conflicting
Mr. K. P. Jayaswal in I A vol 46 (for 1917) p. 145 holds that Kalkin must be
identified with the great hero Yāsūdharma who ruled over India from the
Brahmapurāṇa to the Western Ocean and from the Himalaya to Mahendra
and who conquered the Hun Mihurakula and made him pay homage to his
feet as stated in the Mandasor inscription (vide Gupta Ins. p. 149).
Prof Pathak on the other hand relying upon certain Jaina sources identifies
Kalkin with Mibarakula himself (I A for 1918 at p. 19). Otto Schrader
in Brahmapurāṇa vol I pp 17-27 discusses how the names Kalkin or Kalki
came to be given to the savour of India from Mlecchas, heretics and the
like. Kalka means 'sin' or 'sediment' and Karka means 'a white horse'.
Therefore he thinks that Kalkin is a form of karka (one riding a white
horse). Vide also N I A vol. IV pp 337-343 (on Kalki from the Kalki-
purāṇa). It is probable that the dishal accounts of Kalyuga were put
forth in the first centuries of the Christian era when the ancient varmā-
āśrama-dharma had suffered a great set-back owing to the ascendancy of
Buddhism and Jainism and the invasions of foreigners like the Sakas and
Hūnas, that when Yāsūdharma defeated the great Hun invader Mihurakula,
people believed that the dark ages were at an end and that an era of per-
fect dharma was at hand. That Mibarakula was a most ruthless and blood-
thirsty invader who in his long career of 70 years slaughtered myriads of
men and women is stated by the Rājaranagini I 310 (which speaks of him
as śrīkotshana) and 322 (which narrates that he slaughtered three crores
of women of respectable birth together with their husbands, brothers and
sons) Hionen Chwang (Beal's B. R. W W pp. 171-172) narrates that
Mihurakula either slaughtered or made slaves of nine lakhs of people in
Gaudhāra. Passages in a prophetic vein were added about the time of
Yāsūdharman to those already existing about the decline of dharma in Kali-
yuga. This will of course necessitate that all passages about Kalkin in any
work whatever were put in later than about 530 A.D. There are two
theories as to who defeated Mibarakula. Hionen Chwang's account gives
the name of the victor as Bāljīditya of Magadha (vide Beal's B. R. W, part I. pp. 167-171). On the other hand there are three inscriptions, the

(Continued on the next page)
he is said to have already flourished (Vayu 98. 111, Matsuya 47. 255), in other places the texts employ the future (Vayu 99. 396, Bhagavata XII 2. 16). This last discrepancy is probably due to the fact that the writers sometimes forget their role of prophets. Further, it has to be remembered that according to the Puranas the four yugas (and therefore the Kalki avatara) have been repeated again and again. The Kalki-purana (I. 2. 33 and I. 3 32–33) states that Kalki was a contemporary of Visakhayupa king of Mahismati, while the Vayu (99. 312–314), Matsuya (272. 4) and Visnu (IV. 24) state that Visakhayupa was the 3rd of the Pradyota dynasty that preceded the Siunaga dynasty. Though the Kalki-purana several times uses the past tense about Kalki, yet at the very beginning it says (I. 10) that what is narrated is an akhyana (story) of the future. It is interesting to note that in the Parnalapavata-grahakan-akhyana of Jayarana composed about 1673 A.D. Bahlolkhan,

(Continued from the last page)

Gwalior stone Inscription of Mhiurakula (Gupta Ins. No. 37 p. 161), the Mandasor stone Pillar Inscription of Yasodharman (Gupta Ins. No. 33 p 142), and the Mandasor Stone Inscription of Yasodharman Visnvardhana (Gupta Ins No 35 p 150) in none of which is Bailaditya referred to. But in the Saranath Stone of Prakataditya, son of Bailaditya, another Bailaditya is referred to (Gupta Ins. No 79 p. 284). In the Mandasor Stone Pillar Inscription (Gupta Ins. p. 147) occur these words relating to Mhiurakula ‘नृथैष्टिकावर पशु परशुरामजनवार्तचारिणिः पुराणोपकालीभिन्निकाराधयारिणिः पादवर्धमकरणीकाहनीकाराधयारिणिः पादवर्धमानतिह।’. In the Mandasor Stone Inscription (Gupta Ins. No. 35 at p 153) lines 4 and 5 read यथा जनति निःसागर: ध्रुवमयोगसागरादिरकस्यरूपादर्शापनम अज्ञातं निःसागरं जनति जनति यथा निःसागरस्थिता पूवर्तविरज्जवेणिविभंप्रवृत्तिः। and the future. Dr. Fleet held that Yasodharman and Visnvardhana were different, but the reasons he assigns are unconvincing and Jayaswal appears to be right in holding that Visnvardhana is the same as Yasodharman (in ‘Imperial History’ pp. 39-41) and that Visnvardhana was the overlord of Bailaditya. It appears likely that the compilers of the extant Puranas combined the two principal parts of the two names Visnvardhana and Yasodharman and that the conqueror of the Miechas was said to be Visnuyasas Vide I H Q. vol. XII p 531 and vol XV pp 302-306 for Yasodharman, Visnvardhana and Mhiurakula and Dr. R. G. Basak in ‘History of North-East India’ (1934) pp 97-101 (who holds that Yasodharman and Visnvardhana were two different kings). Pargter’s ‘Ancient Indian tradition’ and ‘Dynasties of the Kali age’ and Dr Pradhan’s ‘Chronology of Ancient India’ may be read with advantage in connection with the historic material in the Puranas.

1788b. श्रेष्ठते किदिन्तु दूरस्तः शासने दैविकार्याद्वादुम्। लक्ष्मी विभार्यारणं दूरस्तः समर्थ- विद्वद इति दहस्ति तेन साधन चतुर्वाय च महास्मद्रवः। इत्येव कालिनपूर्वसार्वसंबंधे समवत:। इन्द्राय दैविकतार्याद्वादुर्द्विमुद्यान्वै। पर्यावर्तसत्वर्यार्यान्वयन V 5–8, published by भारत-इतिहास-सार्वभौम at Poona, 1923.
commander-in-chief of the Bijapur army, is made to say to Khawaskhan, the Vazir, as follows, 'In the Hindu śastras some say that Kalkin, the 10th avatarā of Visnu will be born and he will destroy the hordes of Yavanas. Shivaji appears to be the first harbinger of that Kalkin'.

Even though the Purāṇas are carried away by their over-zeal in condemning the moral and physical decline of the Kali age, almost all of them exhibit no verses about matters forbidden in the Kali age. We have to see when the topic of Kalivarṣya attained prominence and what the matters are that were once practised by people without objection and that later on came to be prohibited or condemned.

The Āp. Dh S (II 6. 14. 6–10) condemns the practice of giving all or most of the ancestral property to the eldest son as opposed to śastras. The Āp. Dh. S (II 10. 27. 2–6), after referring to the view of some that a woman when being married is given to the whole family of the bridegroom, condemns the practice of nyoya. Both these practices (of udbhānambhūga and of nyoya) are among those included in the texts on Kalivarṣya. Among the earliest references in the sūtras to practices once current, but forbidden in the Kali age is a passage of Brhadapati quoted by Aparārka p. 97, where nyoya and the numerous secondary sons are said to be impossible owing to the decadence of spiritual power among men of the Dvāpura and Kali ages. Aparārka p. 739 and the D M quote a passage of Śaunaka to the effect that sons other than the aurasa or dattaka are not allowed in the Kali age. Pjavapati (verse 151) refers to the ancient practice of offering meat and wine in śraddhas, but prescribes that these should be eschewed in the Kali age. Vyāsa quoted in the Nirnayasindhu and other works forbids

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1789 समाजस्थानीय न परेश्यः समाचक्रीति। कलय हि सी महायत दुःखप्रियशचि।
विनिश्चित्वतैर्विद्याविद्याधिकृतम्। अभिषिक्त हि परत्व पाने। तत्तत्वतिक्षमे सबदुन्ममणिर्नेत्रकाः।
आय प. थ। II 10. 27. 2–6

1790 Vide H. of Dh vol. II. p 603 n. 1418 for the quotation

1791 अत एवैः कर्ती निपटते। दुःखप्रियति शोकोलोक-दुःखोत्साते य इप्लोह इति। अपारार्का p. 739. This is cited as from आदिशुरुवाण in several other works

1792 नरमन्तरस्यं भांधे कालो तद्विवजितः। नरसाधनी हि सर्वादि उपदर्ममहाभेदः।
स्वप्निक्षे काय सर्वादि उपदर्ममहाभेदः।
भवेत इति। यज्ञपाठित 151

1793 चतुर्थांशदावार्थैः चतुर्थांशमाला च। कर्तुष्पुस्य मनोविर्भवति तद्वा। ते ते-पूर्वाभिः। असंवरस्यं च। कर्त्तेष्यान्यावर्त्ये निविद निविद।
व्यासद्विस्तातित p 55 Vide H of Dh vol II. p. 953 n. 2481 for other references to this text.
the setting of the three Vedic fires and of resorting to sannyasa after 4400 years of Kali. The Laghu-Asvalayana1794 smṛti (21 14–15) states that the two kinds of sons called Kunda and Golaka were permitted in former ages and had the samskāras performed on them, but are condemned in the Kali age. Viśvarūpa and Medhātithi, it is worth noting, do not quote a single verse about Kalivarjya. On Yāj. III. 30 Viśvarūpa tries to reconcile Parāśara III. 5 (saying that a brāhmana who is learned in the Veda and keeps the sacred Vedic fires becomes free from impurity in a day) with Parāśara III. 8 (that for ten days on impurity due to birth or death the food of that family becomes unpastakatable for others). He does not accept the idea that the period of impurity is only one day for a learned man, but explains that Parāśara III. 5 is only an arthavāda meant for glorifying the study of Veda and the keeping of sacred fires. Among later commentators it is stated that the narrowing down of the periods of impurity on the ground of Veda study is forbidden in the Kali age. As this explanation is not offered by Viśvarūpa it is not unreasonable to infer that Viśvarūpa was not aware of the passage on this point quoted from the Adityapurāṇa. Medhātithi1795 also (on Manu IX. 112) refers to the opinion of some that the smṛti passages about niyoga and uḍḍhāra-vibhāga were applicable only in bygone ages, since smṛtis are restricted to certain ages (vide Manu I. 85); but he refutes that view and explains Manu I. 85 by saying that the meaning is that the dharmas (i.e. qualities or natures of things) change from age to age as they do from season to season. From this it is clear that he did not accept that certain practices current in one age were forbidden in others. Viñaśeṣvara1796 quotes a single verse which condemns the practice of niyoga, the giving of a special share to the eldest son and the killing of a cow in a sacrifice as not allowable in the Kali age. That

1794 संस्कृतार्थी विविधाविषयी मुलिमि। कुष्ठगोचरकी। हंगासः स धर्मं स्याद कलो
नियुऽ वृत्ति मूः। परिपरिवर्त्य सुतं। कुष्ठो व्याख्यातस्यस्वतः। वृत्तीकी विधायाः च विशिष्टः।
स्यालको स्वतः। लेखवनस्यायन 21 14–15.

1795 Vide n. 1197 above for Keśavāditya's remarks भ्रमुस्खारयोগं … कवे–
काव्यकर्त्तव्यः। Then he says, continues, न देवतिस्थितः। कालगत्वम्। कर्यकुमः कृपाते सार्ययस्यः।
प्राक्कतिस्माभिपुल्यः। तदन्याये स्तवाद्री वर्षी द्विती तत्तथाय वृहदवागस्यः। केशव 00 मन्व IX 112 On मन्व I 85 अत्र भूताय धर्मां हे यस्य धर्मवादे न यागपरायणम् एव शिष–
श्रवणे पदार्थायथे। यथार्थायां स्त्रायोद्धर्मे प्रतिमेयम् एव पदवान्
केशवादिति

1796. Vide above p. 628 n. 1198 for the verse यथा श्रीरामायणम् भः.
verse is said by the Sm. C II p 266 to have occurred in the Sangraha (i.e the work called Smrtisangraha). The Sm. C quotes a verse of Krtau which forbids four acts in Kali, viz. nyoga, remarriage of a married girl, killing a cow in sacrifices and the taking of a jar.

The Naradiya-mahāpuraṇa contains four verses about Kalivarjya stating that certain practices which were once allowed are forbidden in the Kali age, viz. sea voyage, offering of flesh in śrāddhas, the stage of a forest hermit, remarriage of a married girl when the marriage was not consummated, perpetual student-hood, human sacrifice, horse sacrifice, starting on the great journey, the sacrifice of a cow.

Aparārka (pp. 15, 63) quotes one verse and a half from the Brahmapūrāṇa about certain Kalivarjyas viz. perpetual student-hood, the carrying of a jar of water, marrying a girl of a class lower than one's own, nyoga, killing of an animal in Madhuparka, remarriage of a married girl, killing of a cow, human sacrifice, horse sacrifice, drinking intoxicating liquors.

This could not be traced to the Brahmapūrāṇa, but the Prāyaścitta-tattva (p 520) ex-
Kālivarṣya

pressly states that these were cited from the Brahmapurāṇa in the works of Halāyudha, Sūlapaṇi and in the Gṛhaśṭhāratnākara (i.e., from about the 12th century onwards). Aparārka (p. 98) quotes another passage from the Brahmapurāṇa, which condemns remarriage of women, niyoga, independence of women, on the ground that men in the Kāli age are sinners. Aparārka (p. 233) quotes two verses from a smṛti (without name) the first of which prohibits six acts, viz., killing a cow in sacrifice, niyoga (of husband's brother), the performance of saṁtṛas, taking a water jar, use of wine (in sutrāmāni), being an ascetic (of the parāmahamsa type) and the second prohibits five, viz. human sacrifice, cow sacrifice, the taking of a kamandalu, niyoga, and the remarriage of a girl whose marriage has not been consummated. Aparārka (p. 233) quotes a passage from the Mārkandeya recommending the offering of a golden vessel in place of the cow in Madhuparka and stating that Bṛhaspati laid down that no animal was to be sacrificed in Kāli. The Sm. C. (I. p. 12) quotes a Purāṇa passage that 'the remarriage of a married woman, special share to the eldest son, the killing of a cow, niyoga and the taking of a kamandalu—these five are to be avoided in Kāli.'

Hemadri and the Sāhyādri-khaṇḍa state, 'Agniḥotra, the killing of a cow, samyāğa, offering of meat in śraddhā and raising of a son by the husband's brother—these five were to be avoided in Kāli. Hemadri in Dānakhaṇḍa quotes a passage from the Garudapurāṇa in which seven matters are mentioned as forbidden in Kāli, viz. 'Aṣvamedha, Gṛhasa, human sacrifice, Rājasūya, remarriage even of a girl whose first marriage was not consummated, the carrying of a kamandalu and procreation of a son on a widow by her husband's brother. The Smṛtyarthasāra (p. 2) mentions twenty-six Kāli varṣyas without expressly citing the name of any work. In the Sm. C., the Caturvargacintāmani of Hemadri (III. part 2 p. 666), the Par. M. I part 1 pp. 131-137, the Madanapārījata (pp. 15-16),

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1800. Ṛṣiṇa ṛṣiṇibhādhu dveṣṭāhuṣṭāḥ saṁsthāti | ṛṣiṇibhādhu dveṣṭāḥ ca kāśyaḥ kāśyaḥ ca kāśyaḥ ca

1801. Ṛṣiṇibhādhu dveṣṭāḥ ca kāśyaḥ kāśyaḥ ca kāśyaḥ ca kāśyaḥ ca kāśyaḥ ca kāśyaḥ ca

1802. Ṛṣiṇibhādhu dveṣṭāḥ ca kāśyaḥ kāśyaḥ ca kāśyaḥ ca kāśyaḥ ca kāśyaḥ ca kāśyaḥ ca kāśyaḥ ca

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Madanaratna (samayoddyota), the Udvāha-tattva (p 112), the Samaya-mayūkha, the Samayaprakāsa of Mitramiśra (pp. 261-263), the Nirnayaśindhu (III, pūrvādha at end), Bhattōji on Caturvīṁśati-mata, the Smrtimuktāphala (varāṣrama p.13), the Smrtikaustubha, the Dharma-sindhu (pp. 357-358) and some other works quote long passages from a purāṇa (which in some of them is specified as the Adityapurāṇa) that mentions about 50 Kalivarjivas. There is a work called Kalivarjyavīnīnirnaya or Kalivarjyanīnirnaya composed by Dāmodara elder brother of Nīlakanta (first half of 17th century A. D.) who in his Samaya-mayūkha refers to it. It quotes the Adityapurāṇa, Brahmapurāṇa and other texts that are quoted here from Hemādri and other older digests.

In the passage quoted the several Kalivarjyvas are not arranged on any systematic basis. Here, first of all a few Kalivarjyvas that have a bearing on law will be mentioned and then the rest will be taken up one after another in the order in which they appear in the extract and lastly those that do not appear in that extract will also be dealt with. The first verse states that certain actions were discarded by the wise though this was unauthorized (by śruti or smṛti) after arriving at a convention among themselves through fear of the loss of dharma (if they were persisted in), because in the Kali age there is absence of good men. The last verse and a half again state that at the beginning of the Kali great men arrived at certain conventions and discarded certain actions in order to guard the people (against harm and sin) and (it is well known) that the conventions of good men are authoritative like Veda.

1. Giving a larger share of ancestral property or the whole of it to the eldest son (this is called nyesthamā or uddhāra or uddhāraunabhāga). Vide pp. 624-631 above for this.

1803. Vide Appendix for the passage.

1804. A ms. of this work existing in the Central Library at Baroda was very kindly lent to me through the Bhandarkar Oriental Institute at Poona. There are eleven folios with ten lines on each side and about 40 letters in each line.

1805. Compare Ap Db. S. 1. 1. 1. 2-3 ' तथा निर्मितिः पराक्रमः विद्युषः', and Vas. I 4-5.

1806. The earliest reference in English to Kalivarjya matters is found in a translation of the passage of the Samayoddyota section of the Madanaratna contained in Sir William Jones' Works vol. VIII (ed of 1807), General Note, vide also Strange's Hindu Law, vol. II pp 164-174 for reference in a modern work on Hindu Law to several topics of Kalivarjya.
2. Appointing the husband’s brother (or a sagotra &c.) to raise issue on the wife of a sonless man. This is called *nityopa* and has been dealt with at length in *H.* of *Dh.* vol. II. pp. 599-607. It may be added here that in the *K. V. N.* there is a long discussion on the question whether an elder brother of the deceased could have been appointed to raise issue on his younger brother’s widow and gives it as the opinion of some that he could not be so appointed, but that only a younger brother could be appointed to raise issue on his elder brother’s widow. They rely on the *Mit.* on *Yaj.* I. 68 where ‘devara’ is paraphrased as ‘kanyān bhrātā’. The *K. V. N.* (folio 5 b and 6 a) relying on *Manu* IX. 62 and the words of the *Mit.* on *Yaj.* II. 127 (where *Manu* IX. 69-70 are cited and explained as ‘devaras-tasya jyesthah kanistho vā’) holds that any brother whether elder or younger than the husband could be appointed.

3. The admission of several kinds of secondary sons other than the aurasa and the dattaka. For this vide above pp. 647-653.

4. Remarriage of widows. This subject has been dealt with in *H.* of *Dh.* vol. II. pp. 608ff. Some texts such as *Vas.* 17. 74 make a distinction between the remarriage of a woman whose marriage was not consummated and of a woman whose marriage was consummated, remarriage being allowed in the first case but not in the 2nd. The *Kalivarjya* texts forbid remarriage in both cases.1807

5. Intercaste marriages. This subject has been treated of in *H.* of *Dh.* vol. II. pp 447-451. It has been shown by me above (pp. 599-600) that the decisitons in 46 *Bom.* 871 and 55 *Bom.* 1 are based upon a misunderstanding about the real views of *Nilakantha*.

6. Marriage with sagotra girls or with girls that are sapindas of the mother (such as the maternal uncle’s daughter). *Vide* *H.* of *Dh.* vol. II. pp. 452-478 for prohibition on the ground

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1807. शाश्वसनाद यथा यदा केवल अर्थात सत्यसुर्यरक्त्वा। सा चेष्यक्ष्योपरि: स्वतःसंपुर्ण: संस्कारः-समहर्षिल देशन 17. 74. The half verse शाश्वसनादःवातीतादिपरपादम्यंहर्मायनेन सर्वकथितः refers to both kinds of widows viz शाश्विका (whose marriage is not consummated) and शाश्विका (whose marriage is consummated). The reading of हेमचल्दि and शाश्विक्षर्वसिंहि (folio 1) ‘शाश्विक्षाशाश्विक्षाशाश्विक्ष (or—स्वाभ) is to be understood as referring only to the first kind (शाश्विका खाती अक्षयपरिशिल). The निम्नश्वित्रसिंहि (p 368) reads शाश्विका: शाश्विक्षाशाश्विक्षा.
of sapinda relationship, pp. 497 ff. for prohibition on the ground of gotra and pp. 458-463 for marriage with maternal uncle’s daughter. The custom of marrying the maternal uncle’s daughter has persisted to this day in many castes in spite of the inclusion of it among Kalivarjyas. An inscription at Nāgarjunikonda (3rd century A.D.) shows that Virapurusa-datta, son of Sāntamūla, married three daughters of his paternal aunts (E. I. vol XX p. 1).

7. Slaying a brahmana who comes as an ātatāyin in a properly conducted fight Vide H. of Dh. vol. II. pp. 148-151 and p. 517 above for this subject.

8. Awarding of fines against witnesses who depose in disputes between father and son It has already been seen (p 299) how ordinarily suits between husband and wife, father and son were not encouraged in ancient India. But when such a dispute came to the king’s notice he could take action suo motu, as Nār. includes ‘pitāputra-vivāda’ among the miscellaneous matters (prakīrnaka verse 3) which the king was to set in motion. Even in ancient times this rule must not have been strictly enforced. As time went on and separation of father and son became frequent the rule must have appeared to be unreasonable. Vide Mit. on Yāj. II. 32 referred to above in n. 418. Yāj. II. 239 ( = Matsya. 227. 198) prescribed a fine of 3 panas for those who (instead of composing the quarrel between father and son and being able to do so) undertake to be witnesses. Viśvarūpa read ‘a fine of two hundred panas’. Viśnu Dh. S V. 120 prescribes a fine of ten panas. This shows that at the time of the Matsyapurāṇa this act was probably not included among Kalivarjyas.

9. Taking (or stealing) of corn even from one whose actions are lowly (i.e. even from a śūdra), when a brahmana has been without food for six times (i.e. three days). Gaut. 18. 28-29, Manu XI. 16 and Yāj. III. 43 provide that when a brahmana cannot earn his maintenance in a season of distress even in any one of the ways indicated in Yāj. III. 42 and has been hungry for three days he may steal or take away one day’s food even from a low person such as a śūdra. It should be noted that this Kalivarjiya text pointedly repeats the very

1808. विनाशांविर्योऽविश्वासानां साक्षी न लिङ्गव परिभेष्यस दुष्कर्मां कार्यसाधिताय विद्याच्युतस्य व्याप्यवसात् दानम्। इ सङ्कीर्तितानि 9. विकृतार्दभावानि वायुं विवीर्यानि तात्त्विकायम्। इ भवतिजीतिः पृ. अवर्तकं पृ. 824.
words of Manu XI. 16 'bhaktani sad-anasi....harmyam bhararo maraha'). In ancient times theft of such a minor nature was permitted when the brâhmana was famished. But later times took a stricter view of the matter.

10. 'The admission to intercourse of a brähmana who undertakes a sea voyage, even though he may have performed the penance prescribed for the same' (I. 7 in the appendix) Here the word used is 'dvijasya'. It may mean either any person of the three higher castes or a brähmana. If a man who has made a sea voyage took prâyaascittâ he expiated only the sin, but did not become fit, according to this dictum, to be associated with by others. Whether the Vedic Aryans knew the sea has been doubted. Vide 'Vedic Index' on 'samudra', vol. II. pp. 431-433. The Nirukta II. 10 refers to the fact that a doubt arises whether the word 'samudra' in a particular vedic verse refers to the sea or to the sky. In some verses as in Rg X. 98. 5 'he discharged divine rain waters from the higher to the lower samudra' both the meanings of 'samudra' (viz. sea, sky) are pointedly brought out. Vide also Rg. VII. 6. 7 (a samudrâd-avarâd-a parasmât). In Rg. VII. 95. 2 Sarasvatî is mentioned as going from the mountains to the sea In Rg. X. 136. 5 the two seas, Eastern and Western, are mentioned (ubhau samudrâvâ kseti yaśca pûrva utâparah). In Rg. VIII. 6. 4 it is said, 'all people bend down to him, as the siûdhâs (rivers) flow to the Ocean.' Rg. I. 116. 4-5, X. 39. 4 and X. 143. 5 refer to the story that Äsvins saved Bhuju from the waters of the sea.180 The Atharvaveda XI. 2. 25 refers to eastern sea and northern sea. There is no doubt that in the Brâhmans the sea was well-known. The Tai Br. II. 2. 5. 6 remarks, 'there is no end to desire and also to samudra' (neva hi kâmasaíeosti na samudrasya). The Ait. Br (40. 2) remarks 'just as the sea stands surrounding the earth' (tâbhii râjânâm parigrhya tisthati samudra iva bhûmim). It has already been seen that among the five practices peculiar to the north the Baudh. Dh. S. (I. 1. 22) enumerates sea voyage (samudra-samâyâna) as the last and condemns it. Baudh. (II. 1. 51) places sea voyage at the head of grave sins (pataniyâm) along with misappropriating a brähmana's wealth kept as a deposit. The Mit.

1809 Vide 'Vedic Hymns' by Max Muller (S B E vol 32 pp. 57-62) for a note on the question whether the Indians of 'the Vedic age' knew the surging sea (terrestrial),
on Yaj. III. 288 quotes the sūtra of Baud. Manu (III. 158 and 166-167) provides that a brāhmaṇa who had been on a sea voyage was sinful and was not to be invited at a śraddhā. But it is clear that Manu does not say that such a brāhmaṇa altogether loses caste or that he becomes altogether unfit to be associated with; all that Manu provides is that such a brāhmaṇa became unfit for invitation at a śraddhā. The Ausanasasūrti (IV. pp. 525-526) declares that those who sell the Veda, who marry a widow, who undertake a sea voyage are paḥta and are not to be invited at a śraddhā. These passages show that the prohibition against sea voyage affected only brāhmaṇas and even then they did not apparently become altogether unfit to be associated with. That brāhmaṇas crossed the ocean and went to such distant countries as Siam, Cambodia, Java, Sumatra and Borneo can be easily proved. E. L. vol. 17 p. 314 gives references to inscriptions from Borneo to show that brāhmaṇas from India migrated to that country about 400 A.D. That kings and merchants undertook sea voyages is also clear from several considerations. The Bāvru Jātaka (vol. III No 339, Fausboll) tells us that merchants from Benares went to Babylon in order to sell Indian goods. The ‘Questions of Milinda’ S. B. E. vol. 36 p. 269 refers to a ship-owner voyaging by sea to distant countries. The Rajatarangini refers to the sea voyage of an envoy of king Jayāpīta of Kashmir to Ceylon (IV 503-506). Manu VIII. 157 prescribes that the king should allow that rate of interest which those who are adepts in sea voyages and land journeys and who understand what is required to be the interest at certain times and in certain

1810. Vide Dr. R. C. Majumdar’s ‘Champa’ (1927) and ‘Suvardvipa’ (1937 and 1938): ‘Indian influence in the Literature of Java and Bali’ by Himansu Bhussana Sarkar, ‘India and Java’ by Dr. Bijan Ray Chatterjee (1933), G. Gor’s ‘Bali and Angkor’; ‘Sanskrit texts from Bōh’ edited by M. Sylvain Levi in G. O. S. Annual Bibliography of Indian Archaeology, vol. IX. pp. 39-50. The standard writings of Brandes, Bergaigne, Kern, Krom, Parmentier and other scholars on Java, Champa and other countries of the Eastern Archipelago are not mentioned here, as they are not in English. They are referred to by Dr. Majumdar and others.

1811. The whole passage is interesting and may be set out here: ‘Just as a shipowner, who has become wealthy by constantly levying freight in some seaport town, will be able to traverse the high seas and go to Vanga or Takkola or China or Sovra, Surat or Alexandria or Coromandal coast or Further India or any other place where ships do congregate’ &c (S. B. E vol. 36 p. 269).
places determine to be the proper one. Yāj. II. 38 provides for very high interest (20 per cent per month) from those who engage in trade by sea. Nār. IV. 179 says that a trader (saṃudra-vanik) who makes sea voyages is not a proper witness. The Vāyu (45. 78–80) and other purāṇas state that Bharata-varṣa\(^{1812}\) has nine divisions called dvīpas, all of which are separated from each other by the sea and are not easily accessible, that Jambuvipa (India proper) is the 9th dvīpa and the other eight are Indra, Kāseru, Tāmraparṇī, Gabhastimath, Nāga, Saumya (Siam?), Gandharva, Vāruna (Borneo?). Therefore Bharata-varṣa according to Paurāṇic Geography included modern India and also Greater India. None of the ancient works at least says anything against śūdras undertaking sea voyages; but now even śūdras, probably in their desire to emulate the brāhmaṇa and rise higher in social esteem, think that sea voyage is forbidden to them also.

When during the latter half of the 19th century some brāhmaṇas went to England on a political mission or for study and returned to India, the question whether after taking the appropriate praśācita those brāhmaṇas could be associated with fully as before was referred to many orthodox and learned Pandits (such as the late Tārānātha Tarkavacāspati) and it is creditable to the Pandits and gratifying to note that many of them came to the conclusion that they could be associated with by others. The two principal texts referred to were those of the Brha-Nāradapurāṇa (note 1798 above) and the one from the Ādityapurāṇa translated at the head of this particular Kālīvarjya. Very interesting and hairsplitting arguments and explanations were advanced by the learned Pandits in 1872. Some of them may be noted here. As regards the Nāradiya passage, it is argued that only that seavoyage is forbidden in the Kali, which was a righteous act (dharma) in former times. In Parāśara-smṛti XII. 58 the following praśācita\(^{1813}\) is prescribed for brāhmaṇa murder: ‘the sinner should

\[1812\] भारतवर्षस्य वर्षरणः नवभेम्युष्महतित्वा स महतात्तरिता स्वाम्यः पराशरस्य इति।

\[1813\] संधर्मस्य सहस्रस्य स्वाम्यः पराशरस्य सहस्रस्य स्वाम्यः प्रासात्तात्तरिता।
be directed to perform the penance of going to the setu on the ocean; he should beg for alms on the road to the setu from men of the four classes that are free from improper acts, should walk barefooted and without umbrella, should declare his sin in all towns, villages and hamlets of cowherds on the way while resting there or in forests, sacred places and rivers and after reaching the sea and on seeing the setu, 100 yojanas long and 10 yojanas broad, constructed with heaps of stones at the bidding of Rāma by Nala he will get rid of the sin of brāhma murder. Here brāhma murder being a most heinous offence it cannot be supposed that a mere sight of the setu from land would absolve the sinner and the words about the length and breadth of the setu would be otherwise meaningless. Therefore what is meant is that he must undertake a sea-voyage and go along the whole length and breadth of the setu in a vessel. Such a voyage was religious conduct in former ages, but in Kali this is forbidden. The word ‘holding a kamandalu’ (which also was prescribed as dharma in former ages) conveys that a similar or analogous practice is referred to in the immediately preceding words. The words ‘dvijasyābdhau &c.’ are to be interpreted as follows: ‘nauyātrah’ is the genitive singular of ‘nauyāṭr’. The affix ‘tr’ is not the ordinary ‘tr’ but it is ‘tr’ used in the sense of ‘one who habitually does a thing’, according to Panini III. 2. 134-135. Therefore the words of the Adityapurāṇa apply only to a dvija who habitually engages in a sea voyage either as a trader or as a helmsman or sailor. When Nārada (Dāyabhāga 21) states that even an aurasa son who is hostile to his father or who is patita (guilty of one of the five great sins) or is impotent or is ‘apayātrita’ he does not get a share of ancestral wealth, the Vyavahāramayukha explains the last word as ‘one who goes to another continent (other than Jambudvīpa) through mid ocean by means of a vessel for purposes of trade’ and relies on this passage (dvijasyābdhau &c.) for support. So according to the author of the V. Mayūkha only that dvija who constantly undertakes sea voyages for trade is here declared to be unfit for social intercourse though he may have taken a prayāścitta, and not one who casually or once in a life undertakes a sea voyage. No text prescribes a prayāścitta merely for going in a vessel on the sea. If that were intended in this passage the text would have read differently viz. ‘samudre naugamana-bhāve &c.’ Even sītas have been
crossing the sea to Ceylon for purposes of trade. In dramas like the Ratnavali (where the kañcukam Babhravya undertakes a sea voyage and a merchant from Kauśāmbi is said to have gone to Ceylon) and in romances like the Daśakumārakarita frequent references are made to sea voyages to Ceylon and other countries. What is aimed to be hit when pṛayaścittā for sea voyage is prescribed is the fact that on such voyages a man may give up for long such daily duties as the performance of sandhyā and may have come in very close contact with mlecchas as regards food etc. If he has done these two, then only he is not fit for intercourse even though he may have undergone a pṛayaścittā. If he performs his daily duties wherever he may dwell and does not come in too close a contact with mlecchas he may have to perform no pṛayaścittā, much less would he become unfit for social intercourse. The view of Medhatithi on Manu II. 23 that any country by itself is not unfit for the residence of an ārya, that if mlecchas overrun a country in India and permanently reside there it may become a mlechchadesa, that even a mlechcha country, if it be conquered by an Indian king and if the system of the four varnas be introduced therein, would be a fit one for the performance of Vedic sacrifices, has already been noted (in H. of Dh vol. II p 16). It has to be remembered that the Adiparva (85. 34) states that mlecchas and yuvanas sprang from Anu and Turvasu, sons of Yayāti. The Sahāparva notes that Bhima made mlecchas dwelling beyond the seas and in Anūpa bring tribute (30. 25–27) and that mlecchas came to see the Rājasūya sacrifice along with Bhagadatta of Prāgyotisa (Sabha 34. 9–10). The following propositions follow from the above discussion: (1) As the word 'dvija' is used a śūdra or a person of the mixed castes (sankīrma-jūṭā) does not become unfit for social intercourse even by habitually undertaking a sea voyage, but he may have to undergo a pṛayaścittā, (2) a dvija who casually undertakes a sea voyage to a place outside India either at the king's bidding or for any other purpose has to undergo a pṛayaścittā, but if he does so he becomes fit for social intercourse; (3) a dvija habitually undertaking a sea voyage for trade or as a sailor would become unfit for intercourse even after undergoing pṛayaścittā. Manu IX. 314, when enlarging upon the devastating power of brāhmaṇas, mentions that the sea was made undrinkable by brāhmaṇas, which, according to Medhatithi and other commentators, has in view the story in Śanti 343 60–61. It is difficult to say whether this story had any influence in leading to the prohibition against sea voyage.
The Smritikaustubha explains that 'samudrayātra' means 'tirthayātra' i e. pilgrimage to holy places beyond the sea and that is forbidden here. But this seems to be wrong, as stated by Ksanabhata on the Nīr. S. The latter says that expiation is to be undergone only where a sea voyage is undertaken from worldly motives, but where a sea voyage has to be undertaken for reaching a holy place like the Śankhodhāra-tirtha, it is an inseparable part of the pilgrimage and therefore there is no necessity to undergo a prāyaścitta.1815

11. 'The initiation for a sattra' (1. 8) Sattras were sacrificial sessions the duration of which varied from 12 days to a year, 12 years or even more. Only brāhmanas could perform them (Jal. VI 6 16-23). Aco. to Śabara on Jal. VI. 2.1 persons who engaged in them must not be less than 17 nor more than 24. All of them were both sacrificers (yajamāna) as well as priests. Vide H. of Dh. vol. II pp. 1239-1246 for sattras. The prohibition against engaging in sattras is a clear indication that people had become tired of the ancient Vedic sacrifices, of the great demands they made on time and wealth and had begun to prefer other and easier modes of worship.

12. 'Carrying a jar of water' (1. 8). The Baud. Dh. S 14 devotes numerous 1816 sūtras (1-27) to the subject of carrying an earthen or wooden jar full of water. Every snātaka was always to carry a jar of water from which he was to take water for śauca. He was to wash it with water and rub it with his hand. This was declared to be equal to paryagākarana (encircling with fire for purification, vide H. Dh. vol. II p. 1130 n. 2501). He was not to go to another's house or to the village boundary or on a journey without the jar. Vas. 12. 14-17, Man. IV. 36, Yāj. 1. 133 contain similar provisions. Visvarūpa explains that the snātaka himself need not carry it and that it may be carried for him by another. It was an encumbrance, gave rise to unhygienic and unclean habits and so gradually it came to be dispensed with. This practice was regularised by declaring that in the Kali age a water jar was

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1815 तस्य गाथां राजमैति साधुपानां एव। द्वीपारीविग्रहादिष्टरथाधिपितांस्य।

1816. अथ कस्माद्युगेरथपितावानिति। द तस्माच्छलतद्वरावपि \ तस्माच्छलसमस्या धर्मसिद्धांतनां नौकार्य विनियत हुया।
not to be carried at all. The Madanapāriśā (p. 16) explained that "kamandaluvīdharana" refers to perpetual studenthood, but this explanation cannot be accepted, because in the Nāradaṇīpya (note 1798 above) both are mentioned separately. The K. V. N. (foll. 3 a.) notes that some explained 'kamandaluvīdharana' as standing for 'dirghakālam brahmacaryam' (studenthood for long periods).

13. 'Starting on the Great Journey' (1. 9). The Brhad- Nāraṇyaprāna (pūrvārda 24. 16) also forbids this. According to Manu VI 31 and Yāj. III 55 a forest hermit, when he suffered from an incurable disease and could not perform the duties of his order, was allowed to start towards the north-east on the Great Journey (mahāprasthāna) till the body fell down to rise no more. Similarly, a man guilty of brāhmaṇa murder was allowed to meet death at the hands of archers or to throw himself head foremost into fire. Vide H. of Dh. vol. II, pp. 924-928 for Mahāprasthānanaganama Aparakṣa 1817 (p. 877-879) quotes long passages from the Ādi purāṇa to the effect that if a man suffering from an incurable disease starts on the Great Journey in the Himalaya or commits suicide by entering fire or water or by falling from a precipice, not only does he not incur sin, but on the contrary he goes to heaven. It is rather inconsistent that the Ādi purāṇa (or Ādiyapurāṇa) should in one place extol the starting on the Great Journey and in another place should forbid it in the Kali age. The K. V. N. cites the instance of the Pāṇḍavas that are said to have started on the Great Journey. This makes one suspicious about the authenticity of the passages on Kalivarjya quoted from the Ādiyapurāṇa by some and from Ādi purāṇa by others.

14. 'The killing of a cow in the sacrifice called Gosava' (1. 9).

There were various occasions on which in ancient times a cow was sacrificed. The Anūhandhyā cow killed at the end of the Udayanīya āsta in Agnistoma has been referred to above (p. 627 n. 1196). In the Madhuparka which was offered

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1817. तत्र जाति: प्रेमदास नसिलिक्रमस्माहारातै: परिणितात$ुपाल्यादि विवेकान्ती लिङ्गाधियनं दृष्टे कार्तिक्यवत्तेन स्नातनं स्नातकस्यानि यथा अनुस्कर्त्यवद्यक्षमा दुर्गमवत्तेन स्नातकस्यानि यथा। गृहस्त-सम्प्रतिपद्यां वार्षिकमीतिसादिना धनादेशांकारणे कृत्यर्थादिति। सर्वं दुष्टविश्वास्तनं कार्यादिति महाजनिति। विज्ञान-मुशुपादाहकारसाधितानि अदेक्त्विविद्या । q. by Sarvārka p. 877 and by Sar. Sar. 1. 2. 228 (as from Anurādhapura) Sarvārka (p. 879) further quotes 'सहार्धात्मकायाचयाच दृष्टे कार्यवित्तीयारः आचार्यः शराय शराय शरायः शरायः च शरः'.
to an honoured guest a cow was either killed or let loose at the
desire of the guest. Vide H of Dh. vol. II pp. 543-545. A cow
was killed in one of the three or four astakā śrāddhas (vide
25 states that if cow’s flesh is offered in śrāddha for the pātṛa,
the latter are gratified for one year. There was a sacrifice
called Gosava or Gomedha, that was an Ukthya in which the
fees were ten thousand cows and which according to some could
be performed only by a vālīva (Kāṭ. Śr. 22. 11.1818 3-8). A
bull was killed as an offering in the rite called śūlagava (vide
H. of Dh. vol. II pp. 851-852). As flesh-eating came to be
looked down upon, cow sacrifice became most abhorrent and
Kalivarjya texts only register a prohibition which had been
acted upon centuries before.

15. 'The employment of cups of wine in the Sautṛāmanı' (I. 10).

The Sautṛāmanı is not a soma sacrifice but it is a combina-
tion of an āstā with an animal sacrifice. It was so called
from ‘sutrāmanı’ (an epithet of Indra). Its peculiar charac-
theristic was the offering of surā in cups. In modern times mukh
is offered in its place and Āp Śr. allowed it even in ancient times1819. It was included among the seven hāvyāyānas by
Gaut. (VIII. 20). At the end of the Rājasuya it was performed
or in Agnicayana or for one who suffered vomiting or purging
from the excessive drinking of soma. For sautṛāmanı and the
preparation of surā in it, vide H. of Dh. vol. II pp. 1225-1228.
Bhattōjī (in com. on Caturvīṁśati-mata p. 53) and the Nīrṇaya-
sindhū construe this to mean ‘having social intercourse with
one who employs surā in Sautṛāmanı’ but this is not satis-
factory. The Dharmasindhū explains as above (III. pūrvārdha
p. 357)1820.

1818. जन्मयोक्षीयो... उक्तो गोसवो अक्षतुस्विमिन। बैहकमः इत्यके। सरसा
जातो विशिष्टों पं हस्तकंपित। कायण। श्री 22. 11 3, 6-8.

1819. चालावस्ते मारोग्यव्यवस्थितं करे हुरामधक, युक्तिन्।... बणोमहा हा राजः।
आप. श्री. 19. 2. 7. 13.

1820. हृदाभासंहि हुरामधकां लध्यं श्वदर्श। भंडवसं गोविष्कितां
p 53, सौभाग्यवधिकर्मिन्ति हुरामधकांनि। धर्मसिद्धौ III p 337 The बलिजन्यकर्मी
(folio 6b) remarks, ‘हुरामधकांनि सत्वं प्रायोगितिनिधिहतकां। भद्वमे राजमहा
पं कमालसारां हुरामधकांनि कालिनिधित्व यथा तथा संग्रह यथा तथा
स्वाष्ट्य तथा। तस्य दुर्गतिः सत्याङ्कितां हुरामधकांनि प्रायोगितिनिधित्वाद्। किं वै सति सति कालिनिधित्वां
सत्वं हुरामधकांनि सिद्धिः स्वाष्ट्याः। तत्वं स्मार्थातिनिधित्वाद्।'
16. 'The licking of the Agnihotrahavanī and the use of it even after it was licked' (I. 11) In the Agnihotra the sruva ladle is held in the right hand and the sruca called agnihotrahavanī is held in the left and the milk is poured into the latter from the milk pot with sruva. After the Agnihotra homa is offered the agnihotrahavanī is licked twice in order to take out the remnants of the milk and after wiping it with darbha blades it is used again. Ordinarily a vessel when it is once licked by a man cannot be used again in a religious rite unless proper purification is resorted to. But this did not apply to the Agnihotrahavanī and camasas of soma. Vide H. of Dh. vol. II p. 1002, n. 2663 for agnihotrahavanī, p. 1005 for its licking and p. 1177 (n. 2598) for the drinking of soma from the same camasa by the several priests. The licking of the agnihotrahavanī and its use constitute really the subject of the prohibition.¹²²¹

17. 'Entering on the stage of forest hermit as laid down in the texts about it' (I. 12). Gaut. III. 25-34, Ap. Dh. S (II. 9, 21, 18 to II. 9, 23, 2), Manu VI. 1-32, Vas IX 1-11, Yāj. III. 45-55 lay down elaborate rules for the stage of forest hermits. Vide H. of Dh vol. II pp. 917-929 for a description and remarks on sannyāsa to be made later on.

18. 'The narrowing down or curtailment of the periods of impurity depending upon the Vedic learning and the mode of life of a person' (I. 13). 'Agha' means 'āśauca'; ‘vṛtta’ (mode of life) refers to tending sacred fires or maintaining oneself in the way described by Manu IV. 7-10. The general rule about the period of impurity for a brāhmaṇa on the death of a sapindā was stated by Gaut. 14. 1, Manu V. 59 and 83 to be that it was ten days and Angīras quoted by the Mit. on Yāj. III. 22 prescribes impurity for ten days for all varnas, but Manu V. 59 also spoke of the period being four days, three days or one day, which, acc to the Mit. on Yāj. III. 28-29, refers respectively to kumbhidhānaya, one who has collected food for three days or one who collects nothing for the morrow. Dakṣa VI. 6 and Parā-

¹²²¹ भवत्वपेतुपोर्वपर्यंतत्त्वे खलु खलि हिर्मचामाति दिध् ग्निः विनयं। सर्वं भ्रो III 7

19, लिङ्गाणमा देशितपश्चातूपापय विना परिनामं परित्व बहिर्दत्त्वं निद्धित्वलिङ्गांगित्वम्।

भबम न भुविनियम् परिवहयम्। समुद्धिकृतम् p 471, अद्वितीयं पुनः पवम् खल्लि सा वैकान्ती आदिदिवद्वितीयम् सस्यम श्रीमाननार हुवासित्विविषिद्धि मनोरिगार्य दैहो हिर्म्य-श्वाहुः भविष्यति परिवहयम्।

भविष्यति, भूमः 7a.


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III. 5 both state that a brāhmaṇa who keeps the Vedic fires and has studied the Veda becomes free from impurity in a day, one who has only studied the Veda (but does not tend sacred fires) becomes free in three days, while one devoid of both becomes free after ten days. Aparākṣa (p. 894) and Haradatta on Gaut. 14. 1 quote Brhaspati to the same effect.

The Mit. remarks 1823 (on Yāj. III. 28–29) that the curtailment of the period of impurity is not absolute but is restricted only to certain special matters viz. the receiving of gifts, the performance of Agnīhotra, the study of the Veda and such matters in which distress would be caused if the period were not curtailed. This explanation clearly proves that Vijnānesvara (end of 11th century) was not aware of the prohibition of the curtailment of the periods of impurity or treated it with scant respect. The curtailment of the period of impurity was laid down probably because curtailment led to confusion, since a person may claim to be learned, while his neighbours may not concede that claim.

19. 'Prescribing death as the penance for brāhmaṇas'. (1.14)

Manu XI. 89 provides that if a person intentionally murders a brāhmaṇa there is no expiation for it. Manu XI 90 prescribes death by drinking boiling wine for the sin of drinking surī, while Manu XI 146 provides 1821 that if a man knowingly drinks wine there is no expiation for it, but only death. The Visnudharmasūtra (chap. 34) states that incest with the mother, daughter or daughter-in-law is atipatāka, such sinners have to

1822. एकाहाःप्रयणे विनो वैरिकेऽवस्मरिन्ति। ब्राह्मणांत्शप्क विनीतो वैसरसी- विनेष्ये । इति VI. 6 and परार्प II. 3, quoted by विश्वास on पा. III. 30 । विराजमान श्रमणं विनो वैरिकेऽवस्मरिन्ति। पञ्चमिविद्यायं इति ब्राह्मणम। ॥ विके- वायुपरिपली तीक्ष्णं सधा श्रमणं विनेष्ये। गर्भवियं यस्मात् तिरर सङ्क्रमणं च। न करोति भ्रात्सं च भवन संदर्भ संभवेद । बहु. Q by Aparākṣa p. 894.

1823. अय चारित्रस्त्रक्रोणो वैवेदि गतिकहादिं विगतिकहादिः न संज्ञयकाल- प्रयत्निः ॥ अतः काविकमेवश्रमणिः चतुष्कोणिः विद्यात । नै नै सत्रसंक्रमपादियो विद्यात। विस्मयं on पा. III. 28–29

1824. मातुतहसेषोऽविवर्तितः मातुतहसेषोऽविवर्तितः सतमतुतहसेष विद्यात। मृत्यु XI 146 Most of the commentators of Manu explain this half differently as meaning 'a penance destructive of life should not be prescribed'. But this explanation is opposed to Gaut 21. 7 (शीष श्रावस्यपति श्रीविनो दहन) and to Medhānta Vide काविककातिस फलोऽविवर्तितः ॥ यथा कवित्रो श्रावस्यपम मातुतहसेष दहनादि विद्यात। दहनादि मातुतहसेषाः प्रयत्नेऽविवर्तित ॥ तथा काविककतिस फलोऽविवर्तितः, तथा काविककतिस मातुतहसेषाः प्रयत्नेऽविवर्तित ॥

1. भाष्य कवित्रो श्रावस्यपम मातुतहसेषाः प्रयत्नेऽविवर्तितः, तथा काविककतिस मातुतहसेषाः प्रयत्नेऽविवर्तितः, तथा काविककतिस मातुतहसेषाः प्रयत्नेऽविवर्तितः. ॥

2. श्रावस्यपम मातुतहसेषाः प्रयत्नेऽविवर्तितः, तथा काविककतिस मातुतहसेषाः प्रयत्नेऽविवर्तितः, तथा काविककतिस मातुतहसेषाः प्रयत्नेऽविवर्तितः. ॥

3. श्रावस्यपम मातुतहसेषाः प्रयत्नेऽविवर्तितः, तथा काविककतिस मातुतहसेषाः प्रयत्नेऽविवर्तितः, तथा काविककतिस मातुतहसेषाः प्रयत्नेऽविवर्तितः. ॥
enter fire and there is no other penance for this sin. Vide Gaut. 21. 7 also. Some smṛtis held that there was no-prāyaścītta for certain grave sins except falling from a precipe or into fire. As a brāhmaṇa’s person became more and more sacred with the march of time, death ceased to be a penance for a brāhmaṇa sinner, however grave the sin might be. But this did not apply to a ksatriya or any one else (other than a brāhmaṇa).

20. ‘Pollution through contact with a sinner’ (1.15).

Manu XI. 180 (= Śānti 155. 37 = Baud. Dh. S. II. 1. 88), \(^1\) 1825 Visnu Dh. S. 35. 2–5 provide that if a person continues for one year in close association (samsarga) with one guilty of the grave sins (enumerated in Manu XI. 54), in respect of occupying the same conveyance or seat with him or dining in the same row with him he becomes patita; but he becomes patita immediately if he officiates as a priest for such a sinner or performs his upanayana for teaching him the sacred Gāyatrī and the Veda or if he enters into a matrimonial alliance with him. Parāśara (I. 25–26) states that in the Kṛta age a person became patita by speaking with a patita, in Tretā by seeing him, in Dvāpara by partaking of food prepared in his house, but in Kali by actually committing a (sinful) deed and that when a grave sin was committed by a man, in the Kṛta age the whole district in which he lived was to be abandoned, in Tretā the village, in Dvāpara his family alone and in Kali only the perpetrator. \(^2\) 1826 Parāśara (XII. 79) no doubt \(^3\) 1827 says that sins (i.e. pollutions are caused) are transferred, as a drop of oil (spreads) on water, by sitting or sleeping together or by using the same conveyance, by speaking with or by dining in the same row with a sinner; but this only means that to associate with a sinner is bad, but it does not mean that to associate with a patita immediately makes the associator himself a patita. The Mit. on Yāj III. 261 quotes Devala \(^4\) 1828 and Vṛddha-Brhaspati to the effect.

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\(^1\) 1825. संस्कृतरैः पदिति पतितम सहायतेऽव साधारणः | याजनांगतापणातीधीनाश इ पराःसनाध- नादः | महात् XVI 180, बौध ध. 3. II. 1. 88.

\(^2\) 1826 रष्णदेव्य भूतपूर्वं चेतायाः प्रामसुतदेव | द्वारणे भूतपूर्वे च वातार्यं च काले इति | कयी सामग्रियाणां चेतायां चैव धृर्ष्टनात् | द्वारणे काव्यायाय काले पतिति कर्मना || पराशार I. 25–26.

\(^3\) 1827. अाषनांबधपाणातीतसंभावतृ सतिनीजनात् || संकालिन्त्रि हि पायारी तैल- सिद्धिदिविलम्बित || वराशा XII, 79, which is the same as कव्य q by प्राग मा II. 1 p 28 (where वस्त्रभार is read for सामग्रियात्).

\(^4\) 1828 संहारपराणाः भासपाणातीतसंभावतृ साधारणाः | याजनांधपाणारीधीनायां संकालसं- भ्रणाः || द्वारले p. by सिना on याः, III. 261, आधारके p. 1087
that *samsarga* arises in nine ways viz. by talk, by touch, by breathing the same air (i.e. by being in the same room), by being in the same conveyance or on the same seat or bed, by dining in the same row, by being a sinner's priest or Vedic teacher or entering into matrimonial alliance with him. The Par M. says that Parāśara held the view that there was no *pāhita* by the various kinds of contact in Kali and so provided no *prāyaścitta* for *samsarga*. The Nirnayasindhu" and Bhattoji make similar remarks. The Udvahatattva says that Parāśara 135 is to be interpreted in this way that merely speaking or touching a *patita* or receiving money from him does not make another liable to any *prāyaścitta*, but that if the association with a *patita* goes quite beyond these, then sin may be incurred by association. So almost all the digests are agreed that the rigour of the very strict rules about *samsarga* in Mam and Baud. was modified by declaring that speech or sight of a sinner involved no sin in Kali. 1830

21. 'Undergoing (secret) expiation for the grave sins (mahapātakas) except theft' (I. 15). Harita (q by Par. M. II 1831 part 2, p 153) prescribes secret expiation for a brāhmaṇa who has studied dharmasāstra and committed a sin without anyone knowing it. Gaut. (chap. 24) prescribes certain expiations to be undergone secretly (without any third person knowing of such performance) for even mahapātakas such as brāhmaṇa murder, drinking surā, incest and theft of gold. Vas. (chap. 25) also does the same and states (25. 2) that only those who have kept the sacred Vedic fires, who are disciplined and old or learned are entitled to secret expiations for sins and not other people. The Vismu Dh. S. 55 deals with secret expiations. Parāśara IX. 61 (last verse) laid down 1832 the general rule that one should openly

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1829 अध्यात्मज्ञान कालस्य सर्वसंस्कारग्रन्थानिदित्वादि सर्वसंस्कारबिंत नामधर्मात । अतएव स्वरुपनन्दे काली पर्यायस्यमुज्जले सेवनविधिः परमिव इत्युक्तः। परं नाम II part 2 p 90, it may be noted that the प्रерьशिनिकरम् (p 132) quotes this passage and criticizes it; काली कालस्य निष्घे—इति व्यासोऽव: परितसंस्कारोऽपेक्षाणि पाठयं तेलवेत्। निर्यात्सिद्धि III. p 366.

1830. कालस्य निष्घे—इत्युक्ते सम्भाषणस्य निःश्रव्यासिकश्च प्रवर्तकोपि निर्देश ' सर्वसंस्कारबिंतः।

1831. अद्य भाष्यार्थं स्वरुपस्य निष्घे सहस्रपदश्रव्यासिकश्च। इत्युक्ते दहरणे प्रकाशे वक्तश्। परं नाम II part 2, p 153.

1832. निष्घे सहस्रपदश्रव्यासिकश्च। प्रकाशे वक्तश्। दीपादशान्योऽनिश्चितिकोषं विवर्णे।
declare one's sin. The Kalivarjya text provides that secret expiation is allowed as regards only theft among the mahāpātakas in the Kali age, though in earlier ages it was allowed as to other mahāpātakas also. The Niranayasindhu says that secret expiation is allowed only to brähmanas. According to the Dharmasindhu, in the Kali age if a man is guilty of the murder of a brähmana or of other mahāpātakas he does not avoid the consequences of falling into Hell when he undergoes an expiation but he becomes only fit for social intercourse, while as regards theft of gold (a mahāpātaka) by undergoing praṣāḍita he avoids the fall into hell and also becomes fit for social intercourse. The Kalivarjyavinirnaya appears to hold that all secret expiations are forbidden in Kali.1883

22. 'The act of offering an animal with the recital of Vedic mantras to the bridegroom, to a guest and in honour of pitras' (1 16) Madhuparka was offered in ancient times on several occasions and to several persons such as to śvēks at sacrifices, to the king, to a snātaka, to one's acārya, father-in-law, paternal or maternal uncle and to a bridegroom. Vide H. of Dh. vol. II. pp 542–546 for details about Madhuparka. Originally a cow or a bull was killed for an honoured guest, later on when the cow came to be extremely sacred the flesh of some other animal was offered; when flesh-eating itself came to be looked down upon then only pāyasa and other vegetarian eatables came to be prescribed. Vide H. of Dh vol. II pp. 777–782 on flesh-eating. This half line forbids the offering of flesh to a bridegroom or to an honoured guest (in madhuparka) and the feeding of

1883. The Kalivarjya (folio 8a) notes, 'अत एव भूखारातिरितिविविधपूर्णादिवन्हु-रात्रिकथित वरदेव सवेक्षे पायकमिसि। वरदेव कुपश्न्त महापातिकाः कलोः पत्निये सवेक्षे विनिद्वीति तन्त्रा।' It should be noticed that the Niranyasindhu and a few others read sasamādnīlātupadaksitakarmādhvaktahinādhvänta as one word meaning 'secret expiation for mahāpātakas other than theft and other than association with those guilty of grave sins.' The śurapadāsaar (p 2), nand p 16 and udāndhav (p. 112) read this half line as sāsamanīlā pāyapete sāmāṇyo pāyapete. 'महापातिकाः मयावायते मयावायते मयाबनसितम भवति किं विभेद ते क्योऽयति मयावायतां कलो मयाबनसितम।' śurapadāsaar. p 358.

1834. Upākāra has a technical sense. It means 'touching the animal to be sacrificed with several mantras.' Mann V 7 employs the word in that sense and Kuñika comments, 'पशुमातानि ममवरदेः पशौः सवात्प्रद्यावकारणम्.' The Kalivarjya (9a) quotes देवतामातंद्रितेः त्वा रुद्रपावारीतिः With reference to śraddha the word upākāra is used in a secondary sense and not in the literal sense. For the upākāra mantra अनुकूली कहते, vid. आद्य वृ. 11.2
brāhmaṇas with flesh at śrāddhas. Comparatively so late a
writer as Yāj (I. 258–259) extols the high gratification that the
Manes feel when flesh of various animals is offered in śrāddhas.
This one prohibition includes in itself several prohibitions that
are separately mentioned in other texts such as ‘govadha’(in
notes 1797 and 1799), the killing of an animal in a Madhuparka
(in n. 1798), ‘gavālambha’ and ‘palapaitrka’ (in note 1802). It
is noteworthy that even so late as the first half of the 17th century
Viśvanātha, a great logician, takes up the cudgels on behalf of
flesh-eating by brāhmaṇas in sacrifices, śrāddha, madhuparka,
in danger to life and when ordered by a brāhmaṇa and charges
those who totally forbid flesh-eating with being the followers of
the doctrines of Baudhāṇa, while the latter at the same time
prescribe expiations for even murderers of brāhmaṇas through
greed of money and marry their maternal uncle’s daughters
or other sapindas of their mother, though both of these latter
are forbidden by the Kālivarṣya texts. 1835

23. ‘Association with those that are guilty of intercourse
with women who are not of the same varna, even though the
former may have undergone proper expiation for the lapse’
(I. 18). There was great divergence of views as regards the
prāyaścitā for adultery by a male with a female of the same
class, of a higher class or of a lower class. Further the ancient
śrutis were rather hard on the guilty parties, the harsh rules
being relaxed by later smṛti writers. For example, Gaut 23
14–15 and Vas. 21. 1–3 prescribe for a male of a lower caste
having intercourse with a woman of a higher caste death in
various ways. If a brāhmaṇa had sexual intercourse with a
cāndāla or śvapaka woman Parāśara (X. 5–7) prescribes that he
has to undergo a fast for three days, tonsure of the head together
with the top knot, three Prāyāpyatas, Brahmakūra, feeding
brāhmaṇas, constant recital of the Gāyatrī, gift of two pairs of
cows and then he becomes pure, while a śūdra doing the same had
to undergo the expiation of one Prāyāpyatya and had to make a

1835 सनातने आदेश्ये महुये मणिरवये भद्रवणाग्राणे व भोज्यं शदाकालाधिकारिकाणि
पृष्टभरणाधिकारिक इति भविष्याधिकारिकाणि च भवत्ताणाति प्राणिभाष्याति भवते भवते। मोहनेण
विस्मृति विशिष्टक विवरण (Sarasvatibhavana series, Benares, 1927). ये है कलिंगके-
स्थान मात्रां के विनेत्ये जेदलाई प्रकटकनादिकारिकाणि कुलवर्तकाधिकारिकम्र भद्रवणालसिं
सबवर्तमाले विभव्यापक हाथायकारिकाणि माहूर्तविषयात्पति (साहित्यकारिकाणि 1) ज न विद्वन्ते
प्रायोज्योचितात्तत्त्वी इत्यादि विवादी वें तत्त्वी विवादी वें माहूर्तविषयात्पति (साहित्यकारिकाणि 2)
साधारणं विशेष्यात्पति। सद्भद्योतिः परीपुस्तकात्पति। इत्यादि pp. 28–29.
gift of two cows. If a person of a low caste has intercourse with a woman of a higher caste (e.g., a śūdra has intercourse with a brāhmaṇa woman) Samvarta (verses 166–167) prescribes the expiation of subsisting for a month on cow's urine and yūmaka (barley gruel) for him. If a brāhmaṇa commits adultery with a śūdra or cāndraya woman Samvarta (verses 169–170) prescribes the expiation of cāndraya, while Parāśara (X. 17–20) prescribes a far more severe expiation. The present text prescribes that, even after undergoing expiation, men guilty of intercourse with women of castes other than their own cannot be allowed to have social intercourse with their castemen. The Dharmasindhu1835 says that śūdras that have intercourse with brāhmaṇa or other women of a higher caste are hereby declared to be unfit for social intercourse even after they undergo expiation. This no doubt made for strictness in morals, but it also led to the preservation of caste exclusiveness.

24. 'Abandonment of a mother (or other woman who is to be honoured owing to relationship) because she has had sexual intercourse with one of low class' (1. 19).

The provisions of the sūtras and smṛtis on the subject of expiation for adultery by women varied from time to time. Gaut 23. 14 and Manu VIII. 371 prescribe that a woman who has intercourse with a man of low caste is to be punished by the king with being devoured by dogs. But other smṛtis and Manu himself (XI. 177) are not so harsh, but are rather humane in their treatment of adulteresses. Manu XI. 176 says that the husband should keep confined to one apartment his corrupt wife and compel her to perform the expiation which is prescribed for males in cases of adultery. Manu XI. 59 and Yāj. III. 235 regard adultery by a male (pāradārya) as an upapātaka, and Manu XI. 117 and Yāj. III. 265 prescribe cāndraya as an expiation for all upapātakas. Vas. XXI. 12 prescribes that the wives of men of the three higher castes who are guilty of adultery with a śūdra may be purified by an expiation if no child is born of the intercourse but not otherwise Yāj. I. 72 provides that a woman becomes free from the taint of adultery when she has her monthly illness after the adultery but if she conceives in adulterous intercourse she may be abandoned. The Mit. on Yāj. I. 72 states that both Yāj. and Vas. are to be

1835. विद्याबक्षीसमूहोऽन प्रदाना ज्ञातिः आयुक्तोऽपि संसारः निविद्य: । धर्म-सिन्धु III. फूलार्ये p. 358.
understood in the same sense and abandonment does not mean driving out of the house but only not allowing her to participate in religious acts and not having sexual intercourse with her. Vas. XXI. 10 states that only four kinds of women are to be abandoned, viz. one who has intercourse with the husband’s pupil or with the husband’s guru, one who attempts to kill her husband or one who commits adultery with a man of a degraded caste. Yṣj. (III. 296-7) provides that to women that are patita the same rules apply as to men, they should be given food, raiment and protection and that intercourse with a man of low caste is one of the three gravest sins for women. Vide Mit. on Yṣj. III. 297. The present text states that a woman (such as a mother) who is entitled to honour from a person because of her relationship (as mother, elder sister etc.) is not to be abandoned and cast on the street by him, although she may be guilty of adultery with a degraded or low caste man, in spite of Vas. XXI. 10 and other texts (such as Br.).1837 That is, this text was more humane to such women than ancient texts. Kṛṣṇa-bhatta explains that ‘gurustriyah’ means ‘of a brāhmaṇa woman’. Vide H. of Dh. vol. II pp. 571-573 for further remarks on adulterous women. Āp. Dh. S. 1. 10. 28. 9 requires the son always to serve and wait upon the mother even though she may be patita. Atri1838 (195-196) and Devala (50-51) contain two verses (almost in the same words) which are lax as compared with other ancient texts. They say: ‘If a woman conceives through intercourse with a male who is not of her caste, she becomes impure till her delivery. When she is delivered or she has her monthly illness after the intercourse she becomes like pure gold’. Atri (197-198) further provides that whether a woman willingly has sexual intercourse or is deceived or is enjoyed against her will or in secret, she should not be abandoned; one should wait till the monthly illness and she becomes purified by that illness’. This comparative laxity of

1837. अतिवचारी तु या बुधस्य गुष्टी हि बासपेयि यहि । पूर्ववत्ती विचार कार्यापिकास्मिनिन्दन । कार्यरिकाः प्रत्येक परागाः व सद्भवत यथािः । बुधस्य दश्यस्य तथा श्रद्धाशन । इत्यादि च. प. 400 व विपपेदार्ज्जुक च. 360 (लखी हाफ्)

1838. अति वाकार्यी या राज्याः दूषणी निमित्ते । अदुहस्य सा अभिलाल वास्तवम् न दूषणिः । निर्देशे हि तत्क ियेधि स्वाभाविक महत्त्वे । तत्र िये दूषणि नारी िमिति वायुष्ण यथा । सर्वे िमविनि तथा न दूषणिः निमित्ते । वाहचारी नििष्का या चौस्य तथावति या न तपस्या दुष्किति नारी न कामोष्ठा निमित्ते । अदुहस्य उपासित दुष्कितेऽनुष्ठान । इत्यादि 195-198.
the later smritis of Devala and Atri is remedied by this Kali-
variya text which forbids abandonment of only such women as
the mother, but allows the abandonment of others when guilty
of intercourse with a male of low caste. Devala prescribes ex-
piation by śāntapana in the case of those women that are
raped by mlecchas and conceive (verses 47–49) Vide also
Atri 201–202 The Sm Kau restricts this half verse to the
mother alone. Parāśara (X 24–25) prescribes that if a woman
be raped once she becomes free from pollution by undergoing
Prajāpatya after she has her monthly illness and in other cases
of rape she has to undergo Śāntapana.

25. ‘Sacrificing one’s life for the sake of another’ (1. 20).
The Visnu Dh. S III. 45 states 1839 that those who are killed in
saving the life of a cow, a brāhmaṇa, the king, a friend, one’s
wealth and one’s wife go to heaven and XVI. 18 provides that
even those (untouchables) who are outside (the pale of the four
varnas) and sacrifice their life for brāhmaṇas, for cows and for
women and children attain heaven The Ādityapurāṇa quoted
in Rajadhamakānda (p. 91) has a similar verse. The Samaya-
mayukha and Bhattoji quote a smṛti, ‘one should at once sacri-
fice one’s life for cows and brāhmaṇas’. 1840 This text forbids
self-sacrifice of one’s life simply for the promised reward of
heaven in the cases specified. The K. V. N. (folio 9b) offers
two more (rather far-fetched) explanations of this phrase, one of
which is ‘offering one’s services as a serf to another’. This is
prohibited to members of the three twice-born classes in Kāli,
but not to the śūdras, acc to K. V. N.

26. ‘Offering (of food) to another that remains after one
has partaken of it’ (1 20). In the Madhuparka the honoured
guest used to partake of a part of the offering of honey, milk

1839. मीभाषानुपलिपिशुद्धिनाराजस्वितरस्यः हतास्ते सर्वभासः। विनिश्चयन-
वृत III 45; भाषान्यां गवायं वा ब्रह्माणीराघवः। दीपादावप्रतीती च भाषाना
सिद्धिकारणम्। ibid XVI. 18, आदित्यपुराणे- भाषानां गवा चैव रक्षायं हन्यते यथिः।
स दूसरे जीतिते हिरला हल्लुलोके कथवहि। राजस्वधर्मसाहित्य p 91.

1840. परेश गोभाषानुपलिपीस्याददेष्येन वदारपतिः सर्वा भाषायां
‘गवाः भाषाः
ा वा सया भाषायां परिशिष्टाः’ एस्तवादित्यिनेकः। भद्रके 08 चतुर्भूषणिः साहित्यः
साहित्य 45. Almost the same words ‘परेशया... यथा देष्येन सिद्धितेन वदा... गवाः भाषाः
इलामुक्तः’ occur in कलिवर्षयि. folio 9a We find in the वारत्निक (I, verse 205) this verse
quoted. ‘गवाः भाषायां वदारपतिः सया भाषायां सिद्धिते तथा। एस्तवादित्यिः
साहित्य 45 हि’ and I 420 द्व गवाः भाषायाः च माणावायां करोति हि। एकृष्ण मण्डल
पिन्चा स पाति परस्य गतिमिः हि.’
and curds and was to give the remainder to a brahmana (or a son or a younger brother). This is prohibited by this Kalivarjya text Vide H. of Dh. vol. II p. 544 for this practice. Ap Dh. S. (I 1. 4. 1-6) provides that the pupil may partake of the leavings of his teacher’s food, but the teacher should not give him honey or meat or other food which will be opposed to the observances of a vedic student The Nirnayasindhu reads ‘uddistasyāpi varjanam’\(^{1841}\), which means ‘not accepting what has been donated.’ Yaj. I 213 says that if a person worthy of accepting a gift does not keep it for himself (but passes it on to others), he secures the highest worlds obtained by those who make generous gifts Bhattoji gives another explanation. Vas (14. 21) forbids a man to eat the remnants of his own food or to eat food that comes in contact with the leavings of food. This Kalivarjya text sets aside for the Kali age the prohibition contained in Vas. 14. 21 (acc to Bhattoji) The K. V. N. (folio 10 a) states that this is the explanation given by some, but does not approve of it. The Sm. Kau. gives yet another but extremely far-fetched explanation.\(^{1852}\) These several explanations of the same half verse indicate how some of the Kalivarjya texts are comparatively recent and have no settled meaning even according to comparatively late writers of digests.

27. ‘The resolve to offer worship (throughout life) with various details to a certain idol (1. 21)

It is not easy to see why such a resolve should have been prohibited. Therefore this explanation given by Bhattoji, K. V. N. (folio 10 a), the Samayamayūkha and others is not satisfactory. It is better to accept the explanation of the Nir S. that this forbids the undertaking of the worship of a particular image for wages Aparårka (pp. 450 and 923) quotes a smṛti text defining a devallaka as a brahmana who performs the worship of an image for wages for three years and who thereby becomes unfit

\(^{1841}\) उत्तमवर्षिप नर्जरमानिति। रत्नादिभुविद्विचारकम् चेत्याविसंसिद्धाकुरु। निर्मलीन बहुविधिनिविद्धिः। नित्येकालाय विषयापेक्ष एवपर्यः।

\(^{1852}\) रक्षसस्म उत्तिक्ष्ठस्त्रेष्ठवेदतनोढं पिबार्थकोढिर्म निर्मित निन्दितं निन्दितं एवपर्यः।
to officiate at śrāddhas. Manu III. 152 declares the devalakas to be unfit for being invited for śrāddhas or rites in honour of gods and Kullūka quotes Devala to the effect that one who maintains himself on the treasury of a shrine is called devalaka. It is remarkable that Vṛddha-Hārīta (VIII. 77–80) says that only the worshippers of Śiva for wages are called devalaka and those of Viṣṇu are not. Acc. to the Sm. Kau. what is forbidden is the resolve to worship an image for securing a direct vision of the Deity. This is rather pedantic and far-fetched.

28. 'Touching the bodies of those (who are impure on the death of a relative) after the collection of the bones' (I. 22). The day on which the bones were to be collected after the body was cremated differed greatly according to various writers. The Mit. on Yāj. III. 17 notes that according to Samvarā (verse 38) the bones may be collected on the first, third, seventh or 9th day, that the Viṣṇu Dh. S (19. 10–11) prescribes the 4th day for it and recommends the casting of them into the Ganges, that some did it on the 2nd day and that therefore everyone should follow his own Grhyasūtra. The Mit. on Yāj. III. 18 quotes Devala to the effect that, after the lapse of one-third of the period of impurity prescribed for members of the four varṇas (as in Yāj. III. 22), persons who lost relatives become touchable, that members of the four varṇas become touchable in three, four, five and ten days respectively. Samvarā (verses 39–40) states that, after the collection of bones, touching those who are under pollution due to death is allowed on the 4th, 6th, 8th and 10th day respectively in the case of brāhmaṇas, kṣatriyas, vaisyas and śūdras. The present Kalivarja text forbids this and becomes stricter as to the rules about impurity.

29. 'The performance by a brāhmaṇa of the duties of the killer of the victim in a sacrifice' (I. 23.).
The animal in a srauta sacrifice was to be killed by choking it and strangling it. The person who did so was called samitr. Different views were entertained as to who was to be the samitr. According to Jai. III. 7. 28-291846 the adhvaryu himself was to be the samitr; the usual opinion was that he was to be some one other than the rtwls. The Asv. Sr. (XII. 9. 12-13) shows that he may be a brāhmaṇa or a non-brāhmaṇa. For further details vide H. of Dh. vol. II. pp 1121-22, n. 2504. As animal sacrifices themselves came to be looked down upon or even forbidden, this text forbids a brāhmaṇa from being a samitr.

30. 'The sale of the soma plant by brāhmanas' (1. 23).

Soma beverage was to be drunk only by brāhmanas. The soma plant had to be purchased and there was a symbolic haggling for it. The vendor of soma in ancient1847 times was, acc. to Kät. Sr. VII. 6. 2-4 and Āp Sr. X 20. 12, either a brāhmaṇa of Kutsa gotra or any brāhmaṇa or a śūdra.1847 In later times, though Manu I. 7 (= Śānti,165. 7) and Nār. (dattāpradānika 7)1848 allow a brāhmaṇa who has wealth sufficient for the maintenance of himself and his dependents for three years or more to perform a soma sacrifice, yet Manu III. 158, Yāj I. 165 and Vas 14. 3 hold that a brāhmaṇa who sells the soma plant is unfit to be invited at a śrāddha and that one should not partake of food at his house. Manu X. 88 forbids a brāhmaṇa to sell water, arms, poison, soma &c vide H. of Dh. vol. II. pp 1141-1143 for purchase of soma and the dramatic haggling for it.

31. 'Allowing a brāhmaṇa householder to eat food at the houses of four classes of people among śūdras viz. his slave, his cowherd, a hereditary family friend and one who cultivates his fields on the basis of paying a half or other portion of the produce to him' (II. 25-26).

Gaut. 17. 6, Manu IV. 253 (= Visnu Dh. S. 1849 57 16), Yāj I. 166 and Parāśara XI. 19 say that a brāhmaṇa may eat the

1846 ज्ञाबर on Sr. III. 7. 29 remarks, 'नामित्रमित्र आच्छये समासमात्मद्वादुत्तित्ति कार्यस्वरूपं तस्मात्मात्मद्वादुत्तित्ति: नामित्रा।

1847. कौशलमण्डले विशिष्टे प्रसादमस्तः कार्यस्वरूपमात्मात्मद्वादुत्तित्ति। आप और X 20. 12.

1848. गृह जातिं विषयं विशिष्टेन परमेत सुप्यादेति। अद्वितीय विशिष्टेन सीतवव दुःखी नाराय (वृत्तान्त 7)। This is the same as मनु XI. 7, but Nārāyaṇa reads विशिष्टेन विशिष्टानि ।

1849. अद्वितीय कृति स्वात: ब्रह्माण्डपमण्डले। एते शुद्ध: भगवान्मण्डपमलोक्ष्ण: दिशर्यमस्त: दिशर्यमस्त: 57. 16.
food of these four and of his own barber. Haradatta on Gaut. 17. 6 and Aparārtha (p. 244) remark that a brāhmaṇa can take the food of these persons among Śūdras only in the event of extreme calamities. From this it appears that up to the 12th century A. D. the peremptory prohibition contained in this text was either unknown or was not much respected. The exclusiveness of caste in matters of food and marriage was made more strict by the Kalivarja texts. Vide above (pp. 869 and 885) as to how Parāśara himself was overruled by this text.

32. 'Pilgrimages to very distant holy places' (1. 26).

A brāhmaṇa was called upon to tend his Vedic or grhyā fires. If he went to distant places on pilgrimage this duty would be interfered with. It is provided by Ap. 1850 Sr. IV 16. 18 that even when on a journey the agnihotra has, after turning his face in the direction of his fire altar, to go mentally over the whole procedure of his daily fire worship and the Darśapūrṇamāsa. The Gobhila-smrti II. 157 says the same. The Smṛtikaustuba 1851 says that this prohibits pilgrimage to holy places beyond the sea or on the borders of Bharatavarṣa. This text prohibits a brāhmaṇa from going to distant places on pilgrimage, but it does not prevent him from undertaking a journey for earning wealth for performing sacrifices. K. V. N. (folio 10a) quotes a text of Satyavrata to this effect.

33. 'The rule that a pupil should habitually observe the same behaviour towards the wife of the guru as towards the guru himself' (1. 27). Ap. Dh. 1852 S. I. 2. 7. 27, Gaut. II. 31-34, Manu II. 210, Vīṣṇu Dh. S. 32. 1-2 prescribe that a student should perform the same acts of honour and obedience towards the wife or wives of his teacher as towards the teacher (except holding her feet in doing obeisance and eating the leavings of the food). As students were often grown-up young men and the teacher's wife might often be a young lady, Manu II. 212,

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1850 अलक विद्वानसमस्थिकी रागसाम नपाति । आप. श्री. IV. 16 18. सनास जैसक कर्म प्रभावपार्थिता । उपविषय श्रृवचिं तत्री श्राकालमर्गवेद । गोविष्ठ II. 157.

1851 यो च अपयप्रयाससत्तबिधायताज वैराग्या स तथाथ गीत । स्त्रावतिकों । p. 478। प्राद्यान्यंत्रिते तुक्के भवसिद्धाय । घनोपीतस्तमथितिः त्यार्थायः न द्वार नेत्रिति संवलक्षणात् । कालिकवति। फोलो 10a

1852. अन्योपरिपोप्ययेवादयुक्तसमस्पर्शार्यस्वत्वार्थार्थवेतु वृत्ति । आप. ध. I. 2, 7. 27, राजायांद्र्येतेकौ वैद्य । नोक्षटराणस्यप्रर्वम्बिधायानामशालान्तोर्गुप्तकर्मर्गानि । किमोन्यांस्वर्गं युधभाग्यानि। गो. II. 37-39.
216, 217 (that are the same as Visnu Dh. S. 32. 13-15) provide that a pupil full twenty years old should not show honour to the young wife of his teacher by clasping her feet, but that he may prostrate himself on the ground before the teacher's young wife in performing obeisance and that he may hold her feet in obeisance only (once) when he returns from a journey. This text accepts the principle underlying the special rules laid down by Manu and Visnu and prohibits the daily touching of the feet of the guru's wife on the part of the pupil. The Sm 1853 Kau, and Dharmasindhu (III p. 353) hold that this sets aside the rule laid down in Yaj I 49 that a perpetual student may stay till his death with his teacher or with the teacher's son or (in default of both) with the teacher's wife.

34. 'The modes of maintenance conceded to brahmanas in times of distress (or calamity)’ (1. 28).

The special modes of maintenance prescribed for brahmanas were receiving gifts, teaching the Veda and officiating as priests (Gaut. X. 2, Ap. Dh. S. II. 5. 10. 5, Manu X. 76, I. 88, Vas. II. 14, Yaj. I. 118). But it was recognised from very ancient times that if a brahmana could not maintain himself by following the above modes of earning wealth he could in a season of distress pursue the avocations peculiar to a ksatriya or vaisya (Gaut. VII. 6-7, Baud. Dh. S. II. 2. 77-81, Vas II. 22, Manu X. 81-82, Yaj. III 35) 1854. Vide H. of Dh vol. II. pp. 118-133 for detailed treatment of this matter and for the restrictions imposed even when brahmanas were allowed to follow the avocations of ksatriyas and vaisyas. The Kalivarjya prohibition is merely one on paper. From ancient times till now brahmanas have pursued all sorts of avocations and hardly any importance has been attached to this dictum.

35. 'Not accumulating any wealth (or grains) for the morrow’ (1. 28). Manu IV. 7 and Yaj. I. 128 provide that brahmanas are of four kinds, viz. those who accumulate grain of the capacity of a kusāla, those who accumulate grain of the capacity of a kumbhi, those that accumulate grain enough to satisfy

1853. तदपत्यज्ञानीये सुभद्रकाम्ये विषर दिशाधित्विदा सा निर्विविधते। नु हुर्वधाति ।
1854. कलिषा भविष्यद्विभी वाज्यायी श्रब्धेन्द्र शीतोष्ण । न तस्माय तामयास्मान पाव-
their needs for three days and those who do not collect grain even for the next day. The smrtis prescribe that each later one is superior in merit to each preceding one. The commentators differ as to the meaning conveyed by kusūladhānya (some holding that it means one who has accumulated grain for three years, while others say it means one who has grain for 12 days) and kumbhidhānya (a person accumulating grain for a year, or grain for six days). Vide H. of Dh. vol. II. p. 110, note 234 and p. 641 note 1502. The Mit. on Yaj. I. 128 says that the advice not to accumulate corn even for three days or one day is not addressed to all brāhmaṇas, but to those only who are called yāyāvara. This explanation of the Mit. indicates that the Kalivarjya text on this point was either not known to the Mit. or was not much thought of by it. The Kalivarjya text provides that the ideal of extreme poverty and absence of acquisitiveness for brāhmaṇas was not to be insisted upon in the Kali age.

36. "The acceptance of the kindling of a log of wood (i.e. setting up sacred Vedic fire) at the time of the homa of Jātakarma for the purpose of securing long life to the child born to a person" (I. 29). The arcaīs are two logs of Asvattha tree from which fire is produced by attrition, which (fire) is used for kindling the gārhapatiya fire. In certain sākhas, it is the practice to kindle fire from aranis and to use it for the homa in the Jātakarma rite. This fire was to be used in the subsequent rites for the child such as śūḍa, upanayana, marriage. It was supposed that this enabled the child to live long. The Sam K quotes a parāśīsta text to this effect.

37. 'Constant journeys by brāhmaṇas' (I. 30). The Mahābhārata (Śānti 23. 15) says, 'As a snake swallows mice hiding in holes, the earth swallows two persons viz. a king who does not fight (an invader) and a brāhmaṇa who does not engage

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1855. For the two kinds of brāhmaṇas, viz śālīna and yāyāvara, vide H. of Dh. vol. II pp 641–42 n 1502–1505.
1856. कृतिच्यालयान् जातकर्मे विद्यमानार्थं त्वस्मात् परिश्रमित:। तुष्यम्भर ।
1857. परिश्रास्तु तु हं सारस्य जातर्यं अवर्णी जोंकस्यक्ष्मान्तः। आकार्य चोरवर-स्वयं सत्यार्यी तथा भरमित: ।
1858. भूमिन्दे निगिर्यं तर्थं ब्रिह्यभाष्यानि। राजानं च भौर्वसारं भाग्रं साम्वा- सिन्धुः।। सार्वस 23 15. Vide also Sabhā 55. 14 Śānti 57. 3 and Anuśāsana 36 16 for almost the same words.
in travel' (for acquiring learning from famous teachers) This text only forbids taking aimlessly to long journeys but not those for study or for religious purposes.

38. 'Blowing on fire with the mouth' in order to kindle it into flames (I. 30). Gant. IX. 32, Manu IV. 53 and Brahmapurāṇa 221. 102 forbid the blowing on fire with the mouth (as in doing so it is likely that drops of saliva from the mouth may fall into the fire and pollute it). Haradatta on Ap. Dh. S. I. 5. 15. 20 notices that in the Vajasaneya Śākhas it is said that fire should be kindled into flames by blowing upon it with the breath from the mouth since it sprung from the mouth of the Creator (as stated in the Purusāsūktas, Rg. X. 90. 13). Therefore, acc. to Haradatta and the Gobhila-smṛti (I. 135–136)¹⁸⁵⁹ the śrauta fire could be kindled by blowing upon it with the mouth, but smārta fire or ordinary fire should not be kindled in that way (but only by using a fan or a bamboo cylindrical piece). The Kālivarjiya text forbids blowing with the mouth even on śrauta fire.

39. 'Allowing social intercourse to women who have become polluted by rape and the like (when they have performed prayācittas) as prescribed in the sāstras' (I. 31).¹⁸⁶⁰ Vas. 23. 2–3 state, 'when a woman is polluted by being raped or kidnapped by a thief, she should not be abandoned; one should wait till her monthly illness (making her undergo certain expiations till then) and she becomes pure after it.' Atri (V. 2–3) has the same verses, which are quoted (from Vas.) by Viṣvarūpa on Yāj. III. 256 (p 133, Tri. ed.) and explained at great length. The Matsyapurāṇa 227. 126 is liberal enough to say that the man who commits rape should be punished with death but the woman raped incurs no blame. Parasara (X. 27) provides that if a woman is raped by an evil-doer only once since she becomes pure by undergoing the Prajapatyā expiation and after the following monthly illness, even so late a smṛti writer as Devala provides that if a woman of any class is raped by mlecchas and she conceives she can be purified by the expiation of Sāntapana.

¹⁸⁵⁹. क्षेत्रेनीः पताक्षरः क्षेत्रेणाश्रेष्ठायकः। भाव श्रेष्ठेनिः ज्ञाहारिकः। श्रीवर्तिः यहीं। गोविंदसुन्दरः I. 135. This is q. by the सुनिधिः. I. p. 212. नामिः। क्षेत्रेन 13 महा IV. 53.

¹⁸⁶⁰. नामिः गोविंद विपर्तिः यहीं श्रेरात्माश्रेष्ठायकः। भावात्रि श्रीमातिः वेदात्मा हुष्टा। विपर्तिः यहीं। अश्वाश्रेष्ठ्यं क्षेत्रायाः। श्रीविंद्यांता। भाव अश्वाश्रेष्ठ्यं। क्षेत्रेतीन। श्रीविंद्याय पाण्डवः। वेदात्मा 48–49.
But this text is harsher on such innocent and unlucky women when it says that they cannot be restored to social intercourse even after undergoing expiation.

40. 'Begging of food by a *sannyāsa* from members of all varnas (including *sudras*) according to the rules of the *śāstra*.' (1. 32.) The Śr. M. p. 201 (on *varṇāśrama*) quotes *Kāthaka Brāhmaṇa*,¹⁸⁶¹ Aruni Up., *Parāśara* (in prose) to the effect that a *yati* may beg for food from members of all varnas. *Baudh. Dh. S. II. 10* ⁶⁹ ¹⁸⁶² also quotes a verse which allows the begging of food from all varnas to a *yati*. *Vas. X. 7* requires a *yati* to beg at seven houses not selected beforehand and in *X. 24* states that he should subsist on what food he gets at the houses of *brāhmaṇas*.¹⁸⁶³ The present text requires even the *yati* to observe caste rules as to food.

41. 'Not using for ten days fresh rain water' (1. 33.). Haradatta on *Āp. Dh. S. I. 5. 15. 2*, Bhattoji on *Catur.* (p. 54), Śr. *Kau.* p. 479 quote a verse, 'she-goats, cows, she-buffaloes and *brāhmaṇa* women become free from impurity (due to delivery) after ten nights and so does fresh rain water accumulated on the ground'. According to this the long period of ten days in the case of rain water is set aside. But Bhattoji notes that according to another *smṛti* 'rain water falling at the proper season is pure, but it is not to be used for drinking for three days; when rain falls at an unusual season rain water is impure for ten days and if a man drinks it within that period he should abstain from food for one day and night'. Bhattoji remarks that the *Kalivarjya* text only sets aside waiting for ten days, but does not set aside the rule against drinking it for three days.

42. '(Payment of) the fee demanded by the teacher' at the end of the period of *brahmacarya* (1. 33.).

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¹⁸⁶¹. *Kāthaka Brāhmaṇa* *chaturvēnduḥ* *bhaiścapayēḥ* chāndī *pāliyapāyananaṃ kṣurāṁvīdayāvocanaṃ* *śrīyāparāśaramāyāraṃ* *yataḥ* *nēbhoḍādhitumīn jayante*! *śrutisūtra* (varnā.) p. 201.

¹⁸⁶². *Bhaiśrapya* *sahīkāraṃ* *yapita* *dhiyāściduḥ*! *āri* *kṣarbhaṇeṣye* *nā caikāraṃ* *dhiyāściduḥ*! *vai.* *ph. S. II. 10* ⁶⁹.

¹⁸⁶³. *Svāyamprakāramadhyamagaiti* *chāndīśriyāraṃ*! *bhaiśrapyaṃ* *yaśvayet* *tadvikiḥ* *sāpayā mārāyāpanāvat中断! *vasīkta X. 7* and ²⁴.

¹⁸⁶⁴. *Apana* *ghaṃśāyā raṃ bhaiśrapyaṃ* *ca* *vaśiṣṭhakṣaṃ* p by *harshav* on *apam. ph. S. I. 5. 15. ²*! *kāti* *nāvāvāt* *caturā*! *n̄* *vicyav* * USSR* *caturā*! *n̄* *vaśiṣṭhakṣaṃ*! *nāvāvāt* *caturā*! *n̄* *vicyav*! *harshav* on *bhaiśrapya* p. ⁵³.
The ancient practice was to make no agreement as to fees for teaching. Vide Br. Up. IV. 1. 2. Gaut. (II. 54–55) prescribes that at the end of his studies the student should request the teacher to accept the wealth that he could offer or ask the teacher what should be given and after paying or doing what was required by the guru or if the teacher permitted him to go without demanding anything the student should take the ceremonial bath. Vide Manu II. 245–246 and H. of Dh. vol. II. pp. 360–361 for details. Yaj. I. 51 provides that at the end of his studies the student may give to the teacher what he desires (or a cow) according to his ability or may with his permission take the ceremonial bath (without paying anything). On account of these provisions we have stories in the ancient literature that very rarely teachers or their wives made fanciful demands. This Kalivarjya text only sets aside the requirement of paying what the guru demands, but does not prohibit the voluntary gift of a fee by the student.

43. ‘The engagement of a śūdra for such acts as cooking and the like in the houses of brāhmanas and the rest’ (I. 34). Āp. Dh. S. (II. 2. 3 1–8) requires that the food for Vaiśvadeva should be prepared by pure men of the first three varnas and also optionally allows a śūdra to be a cook for an ārya provided he is under the supervision of men of the first three varnas, provided he sips water whenever he touches the hair, any limb or his garment, provided he cuts the hair (on his head and his body), the beard and nails every day or every 8th day of the month or on the new and full moon day and provided he bathes with the clothes on. It is this permission that is set aside by this Kalivarjya text.

44. ‘Suicide of very old people by falling into fire or from a precipice’ (1. 35).

This is analogous to No. 13 above. Atri did not condemn suicide in certain cases. He states, (verses 218–219) if one be

1865. विद्यान्ते सुरवेशं निषधयः। कुवाक्षालस्य न रसान। गी II. 54–55.
1866. विद्यान्ते युक्ते व्यक्ति दृष्टिपाल्यं बधा वानं वैण्ये भूतक्रमेण वृद्धवर्षसः। व इ
1867. आपी: मयादता भवेन्द्रवेदवर्तकारीः। स्युः। आपदभिषिता वा श्वसोः। सर्वभोगाः।
1868. तेषां स एवाचास्मकाः। अधिकमदवहः। कैलकवण्डज्ञानवर्ध्यं। वाक्योपयोगसः ज
1869. व इ II. 2. 3. 1–8.
old (beyond 70), if one cannot observe the rules of bodily purification (owing to extreme weakness), if one is so ill that all medical help is discarded, and if one in these circumstances kills himself by throwing himself from a precipice or into fire or water or by fasting, mourning should be observed for him for three days and śrāddha may be performed for him.' Aparārka (p. 536) quotes several smṛtis to the effect that a very old man or one suffering from very serious illness, one who has no desires left and has carried out his tasks may bring about his death by entering fire or water or falling from a precipice and he will incur no sin. Vide II. of Dh. vol. II. pp. 926-927 for further details. This text may also be taken as forbidding suicide by falling from a precipice or into fire as an expiation in the case of those that are guilty of mahāpittakaś knowingly committed. The Mit. on Yaj. III. 226 quotes a smṛti to this effect\(^{1869}\) The Śuddhitattva holds (pp. 284-285) that suicide by entering water and the like is allowed in Kali only to śūdras and forbidden to brahmanas and others.

45. ‘The performance of ācamana (purificatory sipping of water) by śīstas in as much water as is sufficient for slaking the thirst of a cow’ (1. 36).

Manu V. 128, Vas. III. 35, Baud. Dh. S. I. 5. 65, Yaj. I. 192, Visnu 23. 43 provide\(^{1870}\) that water collected on the ground is pure (and may be used for ācamana) provided it is sufficient in quantity to slake the thirst of a cow. But this text forbids on hygienic grounds the use of small quantities of water collected on the ground for sipping and similar purposes.

46. ‘The residence of an ascetic in the house near which he happens to be in the evening’ (1. 38).

Acc. to Āp. Dh. S. II. 9. 21. 10 and Manu VI. 43, 55–56, an ascetic was to kindle no fire, was to be houseless and was to beg only once a day in the afternoon or evening when no smoke ascends from the kitchens of people, when the embers have been extinguished, when people have finished their meals &c. Vas. (X-

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1869. य: कामतो महावारं नात्र: कुर्या कर्माचेतन। न तत्स निम्नांविवेकं शुभस्विपला

1870. कुर्या गीतस्विन्द्रा स्त्रियं शरीरिन्यं। य: I. 192: महबवरि या

13–15) provides\textsuperscript{1871} that a sannyāsin was to change his residence frequently, was to stay at the boundary of the village or in a temple, or in an empty house or at the bottom of a tree and should constantly live in a forest. Śankha (VII. 6) states that an ascetic should stay in an empty house or he may stay wherever he may be when the sun sets. This provision of Śankha is set aside by the Kalivarjya text. Another meaning of the words, according to Kṛṣṇabhatta on the Nir. S. (p. 1310), is that this runs counter to the recommendation of Manu VI. 56 that an ascetic should go for begging to the houses in a village in the evening when all smoke from kitchens has ceased i.e., by this text he is allowed to beg in the noon. In a way this appears to be a better explanation.

The above is a complete list of all Kalivarjyas quoted from the Ādityapurāṇa (except one or two). Some of the Kalivarjyas not included here, but included in other texts cited above will also be now set out for the sake of completeness of treatment.

47. ‘Resorting to sannyāsa’. Vyāsa quoted above (n. 1793) forbade sannyāsa in the Kali age after 4400 years of it had elapsed, but then Devāla\textsuperscript{1872} made an exception to this extent that as long as the division of society into four varnas existed and as long as the Veda was studied sannyāsa could be resorted to even in Kali. The Nir. S. explains that what is forbidden is the sannyāsa with three dandaśas and not the sannyāsa with one danda. Baudā II. 10. 53 (ekadanda va) gives an option that a sannyāsin may carry three staffs or one, while Yāj. III. 58 speaks of a y ut as only tridandā. Danda means a staff and also ‘restraint, curbing’. Manu XII. 10 (same as Daksá VII. 30) declares that that man is called tridandā who has restraint over his body, speech and mind. Daksá\textsuperscript{1873} also says that a y ut is not called tridandā by carrying three bamboo staffs, that he is called tridandā who has

\textsuperscript{1871} अतिलाभ वस्त्राय बसवे | अपमाणे इतरसुधारे त्यथा इतरसुधारे | \textsuperscript{1872} The words याक्षरेष्योऽसि occur also in Baud. 12. 11, Śrāvaṇeśvaraputra, सापाश्चाद्वैतस्थव वक्रस | ... भिक्षायस्य भिक्षुस्कप द्वार काले यथासौ पुरुषम् | अति एव क्षितिः | \textsuperscript{1873} Several verses of Baudā VII are quoted by Kṛṣṇabhatta on p. 370, Śrāvaṇeśvara (वर्णणम प 176 quoting it as from व्यास) | परिवर्तसंयंह pp. 2–3.

\textsuperscript{1874} वाक्षरे विभूतसिद्धसत्यरीत: प्रकटस्त। त्यावस्थादेशोऽव त्यावस्थां द्वन दुधः ॥ वेदम् q. by तिरिक्त सृजन p. 370, Śrāvaṇeśvara (वर्णणम प 176 quoting it as from व्यास) | परिवर्तसंयंह pp. 2–3.
the spiritual restraint in him (v. 29) In 1.12-13 Daksa says that just as a girdle, deer skin and a wooden staff are the outward signs of a vedic student, so three staffs are the peculiar sign of a yati. Vide H. of Dh vol II. pp. 397-398 for further details. If the Kalivarjya text were meant to forbid sannyāsa altogether, it must be said that it was never honoured and even now thousands become sannyāsins every year. If, as the Nir. S. says, this text only forbids the carrying of three dandas, it is a meaningless prohibition, giving importance only to outward symbols and not to the substance of the matter.

48. 'The observance of agnihotra' or 'the acceptance of three fires'. Vyāsa (n. 1793) forbade the performance of śrāvita agnihotra along with sannyāsa in Kali, but an exception was made by Devala in favour of its observance as also of resort to sannyāsa on the grounds stated above (in No. 47). Some digests and authors such as the Nīrmayasindhu and Bhattoji explain that agnihotra of the sarvādāhana type is forbidden in Kali, but that of the ardadhāhana type is allowed. Agnihotra means 'ādhūna', that is, setting up of the śrāvita fires. When a man consecrates the three śrāvita fires he may do so with half of his śmāṛta fire and keep up the other half of the śmāṛta fire. This is called ardadhāhana. If he does not keep the śmāṛta fire separate, it is sauvadhāna. Langākṣai quoted by the Nir. S. (III, p. 370), Bhattoji and others state this. The Mit. on Ya. III. 45 mentions these two modes. Therefore, according to these explanations, sarvādāhana was allowed in former ages (and acc. to one interpretation up to 4400 years of Kali), while in Kali (or at least after 4400 years of Kali) only ardadhāna is allowed.

49. 'Human sacrifice' (vide note 1798 giving extract from Nārada purāṇa).

The Tai. Br. (III 4 1-19) contains a description of the procedure of human sacrifice. The oldest texts even do not show that a human being was killed. The whole procedure is

1874 अष्ट्याण नृसर्ष शास्त्ररूपान्तरान्तरोप श्रयकृति । सप्ताधान सवरूपस्वरूप । पूर्णः पुष्पाश्रयं होगितिष्ठिति Q. 19 स्त्रितिग्र. acc. to स्वरूपान्तरान्तरान्तरोप III. p. 370. अष्ठ्याणमं शास्त्ररूपान्तरान्तरोप । सप्ताधानमं शास्त्ररूपान्तरान्तरोप । पूर्णः पुष्पाश्रयं होगितिष्ठिति Q. 19 स्त्रितिग्र. acc. to स्वरूपान्तरान्तरान्तरोप III. p. 370. अष्ठ्याणमं शास्त्ररूपान्तरान्तरोप । सप्ताधानमं शास्त्ररूपान्तरान्तरोप । पूर्णः पुष्पाश्रयं होगितिष्ठिति Q. 19 स्त्रितिग्र. acc. to स्वरूपान्तरान्तरान्तरोप III. p. 370.

1875 अष्ठ्याणमं शास्त्ररूपान्तरान्तरान्तरोप । सप्ताधानमं शास्त्ररूपान्तरान्तरान्तरोप । पूर्णः पुष्पाश्रयं होगितिष्ठिति Q. 19 स्त्रितिग्र. acc. to स्वरूपान्तरान्तरान्तरोप III. p. 370.
symbolical. The Vaj. S. (XXX. 5 ff.) has many passages in common with the Tai. Br. The Tai. Br. III. 4. 1 (= Vaj. S. 30. 5) begins, 'the brahmana should be offered to brahman (spiritual power), the ksatriya to ksatra (military power), the vaiśya to the Maruts' &c. Acc. to Ap. Śr. XX. 24, a brahmana or ksatriya performs this sacrifice, whereby he attains power and valour and all prosperity. There are eleven sacrifical posts and eleven animals to be offered to Agni and Soma. After the rite of paryāgnakaraṇa is performed on the brahmana and others, they are presented to the several deities and then discharged from the sacrificial posts, eleven goats are killed and oblations of their flesh and limbs are offered. Acc. to the con. on Vaj. S., it is begun on the 10th day of the bright half of Caitra and goes on for 40 days, which are occupied with 23 dikṣās, 12 upaṣads and five sūticas (days on which soma is extracted). After this yāga, the yajamāna usually resorted to a forest as a sannyāsin. 1876

50. 'Aśvamedha' (n. 1798). The Tai. S. V. 3. 12. 2 states,1877 'he who performs the Aśvamedha becomes free from (the sin of) brahmana murder'. In spite of this Vedic authority the Brhad-Nārādyā and other purāṇas prohibited it. But no one heeded this prohibition and numerous historic kings performed this sacrifice from at least 300 B. C. to Jayasing in the 18th century A. D. Vide H. of Dh. vol. II. pp. 1238–1239 and pp. 70–71 above for numerous historical performers of Aśvamedha.

51. 'Rājasūya' (acc. to the Garudapurāṇa, p. 329 above). This was a very complex rite extending over two years and could be performed only by a ksatriya. Vide H. of Dh. vol. II. pp. 1214–1223 for a brief description. The Rājasūya was performed by the Kalinga Emperor Khāravela as he proclaims in his Hāthigumpha Inscription (E. I. vol. XX. p. 71 at p. 79) and by queen Nāyanikā as stated in the Nānāghat Inscription (A. S. W. I. vol. V. p. 60).

52. 'Perpetual studenthood' (n. 1798). Vedic students were of two kinds, upakurvāṇa (who offered some return or fee at the time when they returned home) and the asthikā (who remained students till death). Vide p. 764 n. 1471 above.

1876. शीतलाभिकियोक्तिसां सतांवर्णश्रीकालरीवत्रवृत्ताश्रवणवासोत्तप्तसाधितः
एष्याकर्मिते। राज्य पथिविव शीतलाभिकियो योजने। आद. श्री. XX. 24. 16–17.

1877. तथा जान्धीवर्त्यं योध्यमेवं बहुधे। है. श्री. V. 3. 12. 2.
Hārīta, Dakṣa\textsuperscript{1578} (I. 7) and others mention these two varieties, while Yāj. I 49, Vedāyāsa I. 41 and Viṣṇu Dh. S. 28. 46 name and describe the naisthika. Manu II. 243–244, Yāj. I. 49–50, Vas. VII. 4–5 provide that a perpetual Vedic student should stay with his teacher till his own death, that on the teacher's death he should stay with the teacher's son or the teacher's wife or should tend fire, that if he curbs his senses till his death, he reaches the world of brahma (immortality) and is not born again. This was a very difficult mode of life, there were great temptations as the flesh is weak and therefore the Brhad-Nāradiya and others prohibited perpetual studenthood. Some works such as the Madanapārijata (p. 16), the Kalivarjyavīrṇayā of Dāmodara, and the Nir. S. read 'dirgha-kālam brahmacaryam' in place of 'naisthikam brahmacaryam' in the Brhad-Nārādīva.

53. 'Brahmacarya for long periods' (n. 1799). The Baud. Dh. S. (I.2.1–5) declares, "the term of studentship for Veda study as observed in ancient times lasted for 48 years, or 24 years, or 12 years for each Veda or at least one year for each kānda (of the Tai.S.) or it lasted till the Veda was committed to memory, as life is evanescent and as the Veda ordains 'let him kindle the sacred fires while his hair is still black'." The Āp. Dh. S. (I. 1 2. 11–16) provides that the student's stay with the teacher's household should be 48 years, 24 years or 12 years at the lowest. Manu III. 1 also states that the vow of studying the three Vedas under a guru must be observed for 36 years or for half of that time or for a quarter of it or until the student has mastered (the Veda). These long periods of 48 years, 36 or 24 years for Veda study (before a man could become an householder) are here forbidden in Kali. This was nothing new. Yāj. I. 36 had allowed 12 years for each Veda or five and if a man did not want to study all Vedas but only one he could finish his studentship in five years. Only an extremely small number could have spent 48 or 36 years in Veda study. Śabarā on Yai. I. 3. 3 held that this text of Baud. was opposed to the ārut about kindling fires when a man was a young householder with black hair and was to be discarded. Vide pp. 832–834 above for a

\textsuperscript{1578} द्रिपिधी ब्रह्मचारी तपकुर्वायो नैविकः | तर्पदयुक्ताः क्षास्यात् । नित्योऽ| चेत् न्योहृत्यस्त शारीरिकामुलो गुरुप्रवदित । हरित q. by अदरकवें p. 71: द्रिपिधी ब्रह्मचारी \| स्वच्छायासुपकुर्वायक । द्रिपिधी नैविकः तरिकेभ्य सती रिपः । द्वस I 7 q. by सूतिलिचन I. 64.
discussion of this. The authors of the Samayamayukha and
the Sm. Kau, both of whom had before them the reading
‘dirghakalan brhamacaryam’ held that this prohibition was
aimed at the words of Ap. and Baud, and that the vow of
perpetual studentship which was undertaken with a special
purpose in view (viz. realization of brahma and non-return
to satasarama) was not prohibited by the Kalivarjya text and that
there was nothing wrong in the practice of perpetual student-
hood among the Dravidas.

54. ‘Animal sacrifice.’ In the Markandeya as quoted in
Aparārka p. 929 above animal sacrifice was forbidden in the Kali
age. Though popular feeling had gradually veered round to the
view that meat should not be offered in śrāddhas, in madhuparka
(No. 22 above), yet animal sacrifices were performed at all
times and are even now performed, though very rarely.

55. ‘Intoxicating drinks (madya)’. There were startling
vicissitudes in the attitude to intoxicants.

In Vedic times soma was a beverage drunk by the priests
and surā was a beverage for common men and usually not
meant to be offered to the gods. Soma and sura are sharply
5. 28). The Sat. Br. (V. 1. 5. 28) has the striking antithesis
‘For, Soma is truth, prosperity, light; and surā is untruth,
misery, darkness’. In the Sautrāmanī āhāra had to be
hired for drinking the dregs of sura offered in it and if a
brāhmaṇa could not be found the sura was poured on an ant-
hill (Tai. Br. I 8. 6 and Šabara on Jai. III. 5. 14-15). It appears
from the Kāthaka-samhitā XII. 12 that brāhmaṇas had by
that time come to regard the drinking of sura as sinful. From
Chān. Up. V. 10. 9 it appears that a drinker of sura was enumerated
among five grave sinners. In the Āśv. gr. II. 5. 3-5 it is said
that in the rites of the Anvastaka day when pindas are offered
to the male ancestors, the female ancestors viz. the mother, the
paternal grandmother and great-grandmother are offered sura
and the scum of boiled rice in addition. 1889. The Nir. S. (III.

1879. तथमै जागृत्यां चूर न किंचित पात्रमन नेतरसयमा ह्रित: काव्यकत्ते (XII. 12,
quoted by the तथ्यासारिक on केत इ. 3. 7 p. 210 and by शब्दारामय on वेदांनु
सुवृष III. 4. 31.

1880. निर्बन्धपत्रस्थितः दुल्ला महुनमकर्तवविद्यमो वधातः कृष्णमुख द्वारामाचारः
महिमपदि क आदम् य II. 5. 3-5.
Kalvarjya

p. 367) refers to this passage of the Āśv. Gr. and holds that the Kalivarjya text against intoxicants forbids this also.

Madya is a generic term applicable to all intoxicating drinks; surā is said to be of three kinds, viz. that prepared from molasses, that from honey (or madhūka flowers or from grapes) and that from corn flour (Manu XI. 94, Visnu Dh. S. 22. 82 and Sanvarta 117). The Visnu Dh. S. (22. 33-84) specifies ten kinds of madya, all of which a brāhmaṇa was not even to touch. Gaut. II. 25, Ap. Dh. S. I. 5. 17. 21, Manu XI. 95 forbid all kinds of madya to brāhmaṇas at all stages of life. Ap. I. 7. 21. 8, Vas. I. 20, Manu XI. 54, Visnu Dh. S. 35. 1 hold that the drinking of surā is one of the five grave sins (mahāpātakas), while Yaj. III. 227 employs the word 'madya' in place of surā in this connection. Baud. Dh. S. I. 1. 22 however notes that among the five practices peculiar to the brāhmaṇas of the north was that of drinking rum and Baud. condemns it. The verses of Manu XI. 93-94 about the three kinds of surā have been the subject of frequent and varying interpretations. Viśvarūpa on Yaj. III. 222, the Mit. on Yaj. III. 253, Aparārka p 1069 and others establish that the word 'surā' primarily applies to paśṭi (liquor prepared from flour) alone, that paśṭi is forbidden to all brāhmaṇas, ksatriyas and vaiśyas, that it is the drinking of paśṭi alone that constitutes a mahāpātaka, that all intoxicating drinks are forbidden to brāhmaṇas in all ages, but intoxicants other than paśṭi (such as those prepared from molasses or madhūka flowers) are not forbidden to ksatriyas and vaiśyas. Manu XI. 93 says that surā is the refuse of cooked food (rice); therefore members of the three higher castes should not drink surā. This clearly shows that Manu took surā as meaning only paśṭi (liquor prepared from rice flour). The Visnu Dh. S. (22. 84) expressly says that ksatriyas and vaiśyas are not polluted by touching the ten kinds of madyas specified by it. In the Udyogaparva (59 5) both Vāsudeva (Kṛṣṇa) and Arjuna are described as intoxicated by drinking the liquor prepared from honey and the Tantravārtika establishes that there was nothing wrong in this as both were ksatriyas. Intoxicants were not forbidden to sudras. Brahmacārins of whatever varna had to abstain from intoxicants of all kinds. Aparārka1882 (p 63):

1881. सचं निर्देश बाल्यः: २००४, २१। आय. २००५ ४, २१।
1882. सचं निर्देश बाल्यः: २००४, २१। आय. २००५ ४, २१।
after quoting the Brahmapurāṇa states that intoxicating drinks were forbidden to the three varnas in Kali and to brāhmaṇas in all yugas (ages). But this is opposed to tradition. The Adi-parvā (chap. 76) narrates that Śukrāchārya prohibited for the first time brāhmaṇas from drinking intoxicants (vide H. Dhr. vol II, pp 792–799 for detailed discussion of this topic). The Kalivarjya text forbids the drinking of intoxicants to all the three twice-born classes. But ksatriyas and vaśyas pay scant attention to this prohibition and even some brāhmaṇas in these days have taken to drink as a fashionable indulgence. The K. V. N. (folio 5a), Kṛṣṇabhaṭṭa and Sm. Kau. note that in the sākta treatises (called Vamagama) madya is allowed to be offered to the idol for all the three varnas and to ksatriyas in the propitiatory rites for Viṣṇyaka and for birth on the Mula constellation but this kalivarjya text forbids all that.

An analysis of these 55 kalivarjyas yields very interesting results. About one-fourth out of the above 55 relate to Śrauta matters. There are several texts forbidding āgniḥotra, aśvamedha, Rajarṣīya, Purusāmedha, sattras, Gosava, animal sacrifices, while a few others are concerned with matters of detail in sacrifices (vide No. 11, 14–16, 29–30, 38, 48–51, 54). The first nine of these 55 are concerned with legal matters and relations. Some prohibitions are due to growing caste exclusiveness (No. 5, 10, 31, 40, 43). Others again spring from ideas of greater insistence on the sacredness of the marriage tie, a stricter morality and a demand for greater decency and purity, particularly in women (No. 2, 3, 4, 9, 15, 23, 24, 33, 35, 55). A few are based on notions of compassion, justice and equity (No. 1, 8, 24, 25, 42). Some owe their origin to the growing sacredness of the brāhmaṇa’s person and his high social position (No. 7, 10, 27, 29, 30). Some must have been suggested by hygienic considerations (No. 12, 16, 28, 33, 43, 45), some arose from strict ideas of sin, expiation and ceremonial purity and impurity (No. 13, 18–21, 28, 44). Two of these, when they
prohibit the stage of forest hermit and of sannyāsa, strike at the very root of the ancient scheme of āśramas.

The chapter on Kalivarjyas can be employed as a very effective answer to those who trot out the theory of the 'unchanging East'. Social ideas and practices undergo substantial changes even in the most static societies. Many of the practices, that had the authority of the Veda (which was supposed to be self-existent and eternal) and of such ancient sūtras as those of Āp, Manu and Yāj, had either come to be given up or had become obnoxious to popular sentiment. This fiction of great men meeting together and laying down conventions for the Kali age was the method that was hit upon to admit changes in religious practices and ideas of morality. The Kalivarjya texts are also a complete answer to those who hold fast to the notion that dharma (particularly acaradharma) is immutable and unchangeable (aparvarthanīya). This chapter on Kalivarjya unmistakably shows how the most authoritative dicta of the Veda and of ancient sages and law-givers were set aside and held to be of no binding authority because they ran counter to prevailing notions and furnishes a powerful weapon in the hands of those who want to introduce reforms in the incidents of marriage, inheritance and other matters touching modern Hindu society. One can further see how some practices still persist in spite of the prohibitions in the Kalivarjya texts viz. marriage with one's maternal uncle's daughter, sannyāsa, agnihartha and even śrāuta animal sacrifices (rarely).

Some works add two more to the Kalivarjya verses which mean, 'imprecations, omens, dreams, palmistry, listening for supernatural voices or messages, promises to make presents to a deity if a certain prayer were granted, prophetic replies by astrologers to questions, may rarely turn out to be true. One should not, however, resort to these through the desire to secure results from them.' Similarly there are other actions also (that have to be abandoned) in the Kali age, because they have come to be included (by people) under improper acts (adharma).  

1885. अत्र शास्त्रं काशीश्वरकोलासेतीस्तीवानानुवातः। शास्त्रं पूर्वकमाहुः। शास्त्रं एव। द्रष्टव्यं कृत्यं गृह्यं विनियोज्यते। अधिकारं सर्वसम्भवं बलसि चक्रवर्त्यां विनियोज्य। उपयोगं च नियोज्य। कार्यं तथा। श्रावणं कृत्यं बलसि च कार्यं नियोज्य। आदिनास। गृह्यं गृह्यं नियोज्य। (Continued on the next page)
From the fact that no ancient smrti speaks of Kalivarjya, that the ancient commentaries of Viśvarūpa, Medhātithi and even Viṣṇāneśvara do not cite long lists of Kalivarjyas, that such lists first make their appearance in the Śṛṅgīyasaṇḍha, the Śr. C., and Hemādri (works and authors of 12th and 13th centuries), the most probable inference is that these lists of Kalivarjyas were first put together at the earliest in the 10th or 11th century A.D. 1386

1386 An attempt at a systematical collection of the Kalivarjya texts and elucidation thereof was made by me in a paper submitted to the 8th All India Oriental Conference held at Mysore in December 1935. The paper was published in the Journal of the Bombay Branch of the Royal Asiatic Society, vol. 12 pp. 1–18 (New Series), 1936. Recently (1943) Mr Batulkhat Bhattacharya has published a book which contains a full treatment of Kalivarjyas. He states in the preface that it is "an exact reprint of the thesis for Jogendrachandra Ghose Research Prize in Comparative Indian Law for 1933", that the subject is "comparatively fresh and unexplored" and that the treatment is on lines marked out by the writer himself. He claims that his work is "original as a whole except one section on secondary sons". He does not state exactly in what year the thesis for a prize of 1933 was submitted to the Calcutta University. Presumably a thesis for a prize of 1933 should have been submitted in 1934 or 1935 at the latest. No satisfactory explanation is given why the thesis was published in 1943, so long after the year of the prize, nor does he mention my paper published so far back as 1936. It appears from quotations in the book as printed that it was probably retouched, if not actually written, after 1937. For example, on p. 76 he quotes a passage from the Śṛṅgīyasaṇḍha (section on Varnāśrama p. 201), which was published by Principal J. R. Garpura only in 1937 in Devānāgari. If the original thesis was written or revised in or after 1937 my paper published in 1936 should have been mentioned. Mr Batulkhat Bhattacharya in his paper "the sources of dharma and their comparative authority" published in the Proceedings of the 10th Oriental Conference at Tirupati held in 1940 refers to my paper on Kalivarjya (p. 160) as "brief and compact". This shows that he knew my paper years before he published his work in 1943. The claim of the subject being 'unexplored' and the thesis being 'original' is hardly admissible.
CHAPTER XXXV

CUSTOMS IN MODERN INDIAN LAW

Though an elaborate treatment of customs in modern Anglo-Indian Law is far beyond the scope of the present work, yet a few words on customs in modern times may not be altogether out of place here. When the British began to acquire political domination in India they realized the importance attached to customs by all persons in India and the Charter of the Mayor's court at Bombay in 1753, unconsciously following the ancient dicta of Manu (VII. 203) and Yaj (I. 343), contains the earliest trace in British royal charters of a reservation to the peoples of India of their laws and customs. The British Parliament and the Indian Legislatures have allowed customs to occupy a very high place in the administration of law and justice. The preamble to 21 Geo. III chap. 70 (1781 A.D.) recited that one of the purposes for which the Act was passed was that the inhabitants of Bengal, Bihar and Orissa should be maintained and protected in the enjoyment of all their laws, usages, rights and privileges and sec. 17 of that Act provided among other things that, in the case of the inhabitants of Calcutta, their inheritance and succession to lands, rents and goods and all matters of contract and dealing between party and party shall be determined in the case of Mahomedans by the laws and usages of Mahomedans and in the case of Gentoos by the laws and usages of Gentus and, where only one of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant. 37 Geo. III chap. 142 (1796 A.D.), sec 13, Bombay Regulation IV of 1827, sec. 26, the Government of India Act of 1915 (5 and 6 Geo V chap 61, sec. 112), Government of India Act 1935 (25 Geo. V chap. 2, sec 223), the

1887. Vide Lopes v Lopes 5 Bom. H. C. R. (O C J.) 172, 183.
1888. The word ‘Gentu’ (or Gentoos) was the Portuguese word for ‘Gentile’ and appears to mean a pagan inhabitant of Hindostan who is not a Mahomedan. Its use in a judicial document first occurs in the judgment of Lord Chief Justice Willes in Omichand v. Barker (Durnford’s Reports of cases, 1737-1769, p 538) Vide on the word Gentoos ‘Khojas and Memons case’ in Perry’s Oriental cases 110, 123 and Lopes v Lopes 5 Bom. H. C. R. (O C J.) 172, 185-186.
Madras Civil Courts Act (III of 1873, sec 16), the Bengal, North-west Provinces and Assam Civil Courts Act (XII of 1887 sec. 37), Central Provinces Laws Act (XX of 1875, sec 5), the Oudh Laws Act (XVIII of 1876, sec. 3), the Bengal Laws Act (XVI of 1872, sec 5) enact that the custom of the parties or of the defendant shall be the rule of decision in matters of succession and inheritance, marriage, caste, religious institutions and the like.

The burden of proving a custom opposed to the general law or in derogation of the ordinary rights of another lies heavily on the person alleging it. The decided cases lay down several essentials of a valid custom. In order to make a particular custom valid it must be proved to be immemorial or ancient, uniform, certain, reasonable, obligatory and it must not be immoral or opposed to public policy or to any express enactment of the Legislature. What antiquity must be proved before a custom can be accepted as valid depends upon the circumstances of each case. When it is said that a custom must be ancient it is not meant that the antiquity must be carried back to a period beyond the memory of man. According to the Mit. on Yāj. II. 27 smārta-lūla (time within living memory) in relation to possession means a period of one hundred years, while according to Katyāyana and Vyāsa it is only a period of sixty years. On evidence of the prevalence of a custom even for 20, 30, 80 or 90 years the Courts have held that a presumption may arise that the custom is ancient and that if the presumption is not rebutted the Court may accept it as a valid and ancient custom. Many instances have generally to be adduced for proof of a custom. No hard and fast rule can be laid down about the number of instances required to prove a


custom. In certain cases it has been held that specific instances are not absolutely necessary, but the opinions of persons likely to know the existence of the custom is entitled to great weight, even though they may not be able to cite specific instances. Customs once prevalent, particularly family customs, may come to be discontinued on account of accident, change in popular sentiment or by the concurrent will of all the members concerned. Customs must be strictly construed and cannot be extended by analogy or parity of reasoning. Because in a particular caste marriage with a maternal uncle's daughter is allowed by custom it does not follow that marriage with a maternal aunt's or paternal aunt's daughter will necessarily be valid. Vide H. of Dh. vol II p. 467 notes 1095–6. The evidence about a custom should be such as to prove the uniformity and continuity of the usage, the conviction of those following it that they were acting in accordance with law and the consciousness of obligatoriness and the custom should not spring from mere habit, imitation and ignorance or mutual arrangement. A custom must not be unreasonable. A custom of excluding daughters from inheritance was held to be not unreasonable according to the ideas of the Hindu community. A custom that only members of certain castes (and not of others) were entitled to make use of a temple and to worship therein was held not unreasonable in India, though it may appear obnoxious to cultured people at the present day.

Customs must not be immoral. Whether a custom is immoral is to be judged by the sense of the whole community.

1898 Devanayaga v. Muthu 44 Mad. 329, 333.
A custom which authorizes a woman of the lower castes to contract a second marriage without divorce on payment of a certain sum to the caste was held to be immoral \(^\text{1899}\) and the Bombay High Court refused to recognize the authority of the caste to declare a marriage void or to give a woman permission to remarry without a release from the husband. \(^\text{1900}\) The adoption of girls by dancing girls (vālams) has not been recognized by the Bombay High Court, \(^\text{1901}\) though the Madras High Court would recognize such an adoption if there was no intention to make it for purposes of prostitution. \(^\text{1902}\) Dagger marriages are practised among certain castes. The Brahmapurāṇa (chap. 111, 15 and 44-46) states that among ksatriyas there are several forms of marriage such as forcibly carrying away the bride (which is the form called rākṣasa) or marriage with the weapons (of the bridegroom). In modern times dagger or sword marriages have not been held valid by the courts even among śūdras; vide Maharaja of Kolhapur v. Sundaram 48 Mad. 1, Ram Saran v. Mahabir 61 I. A. 106.

Many customs and usages have been expressly forbidden by the Central Indian or Provincial Legislatures e. g. Saṅgha, female infanticide, \(^\text{1903}\) slavery, \(^\text{1904}\) marriages of children under a certain age, \(^\text{1905}\) the dedication of women as devadāsis to temples or idols. \(^\text{1906}\) This being so, no court will allow a party to plead a custom against these positive enactments. It was recognised in a number of cases that in the Bombay Presidency \(^\text{1907}\) a vatandar joshi had the right to recover by suit from...
a *yajaman* who had employed another priest to perform religious ceremonies the amount of the fees which would properly be payable to the *vatandar joshi* if he had been employed to perform such ceremonies and also the right to recover damages from a person who intrudes upon his office. But Bombay Act XI of 1926 (the Invalidation of Hindu Ceremonial Emoluments Act) now enacts (by sec. 4) that no person shall be entitled to claim as a matter of right any ceremonial emoluments from any Hindu who does not call in the services of the person claiming those emoluments. Therefore, suits of the nature described above cannot be brought now in Bombay by a *vatandar joshi*.

How customs and practices once prevalent may come to be discontinued or abrogated is well illustrated in the section on Kalivarjyas. Some of those that have a legal bearing have been already discussed above.
APPENDIX

NOTE 191

Long lists of high functionaries and other officers occur in several inscriptions. Vide E. I. vol. VII at p. 91 (Kahla plate of Soḍhadeva), E. I. vol. XII at p. 40, E. I. vol. XIV at p. 327 (grant of Mahipāla). There are about 40 titles in some inscriptions. They are generally arranged in order of dignity and importance, the highest coming first. Sometimes several offices are held by the same man. For example, in the Jesar plate of Śilāditya (dated in Valabhi year 357) the high officer Mammaka is styled ‘sandhivigrahādikṛta, divirapati, maha-prathāra, sāmanta’ (E. I. XXII at p. 120). It is not claimed that the following is a thoroughly exhaustive list. It is, however, exhaustive enough. Titles and dignitaries in South Indian languages have been generally omitted. Vogel stands for Dr. Vogel’s work on ‘Antiquities of Chamba State’ where, on pp. 120-136, he furnishes informing notes on some officers. There is difference of opinion among scholars about the exact meaning of certain office names. The individual functions of several officers are not quite clear. The references given here as to where an office occurs are not exhaustive. Chronologically older references alone are generally given and they are mostly taken (so far as inscriptions are concerned) from the Epigraphia Indica (E. I.) and the Indian Antiquary (I.A.). Many official titles have the word ‘mahā’ prefixed without any change in meaning in some cases. Vide India Office Plate of Laksmanasena in his 27th year (E.I. XXVI. p. 1 at p. 7) for many official titles beginning with ‘mahā’.

अक्षपातलिक—Vide Mahāksapatalika below. ‘Aksapatala’ means ‘Account office’ (Stein) or ‘Record office’ (Fleet). There is ‘grāmāksapatalika’ mentioned in the Harsacarita (VII, para 2). Vide Chandela plate dated satvat 1108 (E I XX at p. 128) and Candrāvati plate of Candradeva dated satvat 1148 (E I IX at p. 305). Kautilya has a section on the superintendent of ‘aksapatala’ (II. 7).

अक्षपातलिकाधिकृत—This is synonymous with ‘aksapatalika’. This word occurs in Gupta Ins No. 60 p. 257 and in Rājatarangini V. 301, 397-398.
Vide Kautilya II. 7 and p. 143 above for his duties.

Vide Komanda plate of Nettabhanja in E. I. XXIV p. 172 at p. 173 (about 4th century A.D.)

He was one of the 'ratmanas' mentioned in the Tai. S and Sat Br. Vide H. of Dh. vol. II p. 1216 and above p. 112.

Vide also Chamba Ins. No. 15 p. 166 for the same and Vogel (pp. 125-126).
Minister. Vide p. 104 and note 150 above.

A petty officer in charge of the fodder for horses. Vide Rājat. III. 489.


Officer in charge of the account or record office. Vide E. I. vol. I pp 316, 318 (grant of Karna I dated samvat 1148).

Officer in charge of an agrahāra or agrahāras. Vide Gupta Ins. No. 12 (Bihar stone Ins. of Skandagupta) p. 47 at p. 52 and Mallasarul plate of Vijayasena in E. I. XXIII p. 155 at p 159 The word may also be 'agrahārika' or 'agrahārin'. Vide E I XXIV at p. 127 for a note on 'agrahāra'.

One who communicates at the order of the king the details about a landgrant to local officers (probably the same as dütaka). This word occurs in some of the earliest Ins. of Pallava Śivaskandavarman (in E. I. VI p. 84 at p. 88). Vide also E I VIII at p. 146 (plates of the great Pallava queen Cārudevi), JBBRAS vol. X p 365 of śake 532 (where the ajnapti is Durgapati), E I XII p. 3, E. I. XV p. 70 (plate of Sundara Cola) In the grant of the eastern Calukya king Amma II we have 'ajnaptih katakadhāso bhattadevaśca lekhakah' (E. I. VII at p. 188). Vide p. 184 of the same for a discussion of the meaning.

A synonym of आज्ञाति. Vide Parle plate of Indravarman in E I. XIV p 360 at p. 362 (of the Ganga year 149) where the words are 'ājnā mahāmahattaraŚivavarmā'. When in the Gupta Ins. No 25 at p. 115 (of Mahārāja Sanksobha) or in the plate of Dronasimha in the Valabhi year 183 in E I. XVI at p. 19 the words at the end are 'svayam-ajnā' the meaning is that the king employed no dütaka to convey the details of his grant to the local officers but that he gave the details in person.

Probably the same as 'ajnāpti' or 'dütaka'. Vide I A. 14 p. 161 in the record of Vākpatirāja of Dhārā dated samvat 1036.

Officer in charge of forest tracts. The word occurs in Kautilya I. 12 among the 18 tīrthas.

The exact function cannot be indicated. Vide grant of Dhārāvarsa in śake 702 (E. I. XXIV p. 176

अभिभावक—Officers specially intimate or in close contact with the king. Vide Rājat. VIII 426.

अन्—An officer. The exact duties are not clear. Pānini II, 3 40 indicates that he knows the word in the sense of a servant or officer. Vide Gupta Ins. No. 1 p. 1 at p. 8 (Allahabad Stone pillar Ins. of Samudragupta) which has ‘ayukt-purusa’.

अन्तुक—Same as अन्. The word occurs in Kāmasūtra V, 5, 5 and Kāmandaka V, 83 (q. in nōte 73 above). Vide Omgudur grant of Vījayaskandavarman (E. I. XI at p. 250), Paharpur plate (E I XX p. 59 at p 61 in Gupta year 159), plate of Dronaśimha in Valabhi year 183 (E I XI p. 17), grant of Dharasena II in Valabhi year 252 (in I. A. vol. 15 p. 187), the Maitraka plate in Gupta year 252 (E I XI p 88).

श्रावद्युत—(Pārāsīkt अन्तुक) occurs in Brahmāgiri Rock Inscription of Aśoka (in Corpus I. I. I. p 175)

अश्वाशाय—lit. guardian of quarters. Acc to Sukra I 192 he is a chief ruling over 10,000 villages

उपयुक्त—A subordinate officer Kautilya II 5 has that word The duties cannot be specified

उपयुक्त—Probably the same as ‘upayukta’. The word occurs in Karhad plates of Kṛṣṇa III dated śāke 880 (E I IV p 278, at p 285), the Cambay plates of Govinda IV in śāke 852 (in E I VII p 26 at p 40).

उपरि—A very high officer, somewhat like a Governor of a province. Vide Damodarpur plate of Kumāragupta I in the Gupta year 125 (i. e. 443–44 A. D ) where an uparika is said to have been selected by Emperor Kumāragupta to govern Fundravardhanabhukti and where the uparika is said to have appointed the kumaramatya Vetravarmman to govern the district (visaya) of Kotivarsha (E I XV p 130). He is sometimes styled mahārāja and rājaputra. Vide also Gupta Inscriptions pp. 213, 216, the Bhagalpur plate of Nārāyanapala (I. A 15 p. 304 at p. 306), the Banskhera plate of Harsa (E I IV p. 208 at p. 211) where uparika occurs after ‘kumaramatya’ and before ‘visayapati Visvarūpa on Yāj. I. 307 quotes a prose passage from
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Brahmāpati where the qualities requisite in an upānka are set out. Vide Dr. R. G. Bhandarkar Festschrift pp. 231-233 for note and Vogel p 123.

एकाद—The exact meaning is not certain; probably an officer belonging to a body organized in military fashion for collecting revenue or performing police duties. The word occurs in Rājat V 249, VII 1604.

कडके ला or कडकराज or कडकाधिक—Superintendent of the royal camp Vide E I. VII at p. 185 (grant of Amma II who ruled from 945 to 970 A. D.).

कडक—Exact function not known. The word occurs in two Taleśvara plates in E I XIII at p 117. Vide सहकडक below.

कम्पनाधिपि or कम्पनाधि or कम्पनेन—Commander-in-chief Vide Rājat V. 447, VII 1362 and 1366.

कम्पनाधिक—An officer connected with the army Vide Rājat. VIII 1430


कराणिक—Officer in charge of a State department or office. The word occurs in the Nālandā stone Ins of Yaśovarmadeva’s reign about 530 A. D. in E I. XX p 37 at p 44, in the Chatsu Ins. of Guhilot Bālāditya of about the 10th century in E I. XII p. 10 at p. 17, in a grant dated samvat 1203 of Govindacandra’s son in E I. VIII p 158 (where we have ‘karanika-thakkura-śrīvivika’), in E I. XX Appendix p 52 No. 350 of saṃvat 1228 (about the donation of a karanika-brāhmaṇa-Chāhada.)

कर्णिक—Same as ‘karanika’. The word occurs in the Harsacarita VII para 2 (sakala-karanam-pankarakah).

क्षेतरचिव—Executive minister. The word occurs in Rudradāman’s Junagadh Ins of 150 A. D. in E I. vol. VIII p 36 Vide p 105 above

कामस्य—A scribe or writer in the revenue department of the king. The oldest references are probably those in Yaj I. 322, Visnu Dh. S. VII 3 and Br. Sam 86, 12. Vide Aśvaghōsa-
kāyastha above and grāmakāyastha in Rājat. V. 175 and Indian Historical Quarterly, vol. IX p 12 (a grant of Gupta year 120 i. e. 439-40 A. D.) Vide H. of Dh. vol. II. pp. 75-77 for a note on Kāyastha.

कामांतित्र—Superintendent of all mines and State manufactories. Kautilya I. 12 mentions him among the 18 tirāhas. Kautilya II. 12 is headed ‘ākara-karmāntapraśavatana’ i. e. ‘conducting mining operations and manufactories’.

कुमार—A prince younger than a Yuvarāja (the heir apparent). The word ‘Kumāla’ occurs in the first separate Rock Edict of Asoka at Dhauli (Corpus I. I vol I pp. 93, 97). Vide also Corpus I. I. vol. II pp. 40 and 48 (Mathura Lion Pillar capital).

कुमारामाथ—A high officer below a provincial Governor. Vide ‘upārīka’ above. In the Allahabad prakāsa of Samudragupta, Harisena is described as kumārāmāthya and also sūndhūvigrāhaka and mahādānapānāyaka (Gupta Ins. No. 1 at p. 16) Vide Gupta Ins. No. 46 p. 213 at p. 216, the Banskhera plate of Harśa (E. I. IV p 208 at p. 211 ), E. I. X at p. 72 in the reign of Kumāragupta in Gupta year 117 (a brāhmaṇa is described as mantrin, kumārāmāthya and mahā-balādhikṛta) Vide Dr. U. N Ghoshal’s paper on ‘kumārāmāthya’ in the proceedings of the 6th All India Oriental Conference pp. 211 ff, p 117 above and Vogel p. 123.

कुलकर्णि—a hereditary clerk or officer. The word occurs in the Südi Ins. of sāke 981 in E I. XV p. 85 at p. 91.

कुलिक—An officer in charge of ten villages who was granted a ‘kula’ of land for his salary. Vide Manu VII. 119 and Kullukā thereon. In the Damodarpur plate of Gupta year 124 it is said that the head of the district was assisted by the nagara-śrestha, prathama-kulika and prathama-kāyastha (E. I. XV at p 130). In the Nālandā plate of Devasēladeva we read ‘Odra-mālava-khāsa-kulika-kārṇāta-hūna-cāta-bha-tasevakādīn’ (E. I. XVII at p. 321). Vide Chamba Ins. No. 15 at p. 166. Vogel says that ‘Kulika’ is a tribe (pp. 126-127) Probably the passage means ‘officers in Orissa, Khaṣa and Mālva and the cātas and soldiers of Kārṇāta and Hūna origin’. Kulika also means ‘an arbitrator as a tribunal’. Vide pp 280-282 above and Indian Historical Quarterly, vol. 19 p. 13 at p 14. Vide शास्त्रपालकः
Officer in charge of a fort. The word occurs in the Bhagalpur plate of Narayanapala (I.A. 15 p. 304 at p. 306) and in the Nalanda plate of Devapaladeva in E.I. XVII at p. 321 where the word is read as kotapala.

Chamberlain—Vide p. 111 above. He is one of the ‘rakunus’. According to Manu X. 16 and Yaj I. 94 the offspring of a ksatriya woman from a sudra male was called ksattr and it is probable that such mixed offspring were employed as door-keepers or chamberlains.

A provincial chief. The word occurs in Corpus I.I. vol. II p. XXXIV and pp. 23, 28 (Taxila plate of Pataka of the year 78) and in the plate of Vidagdh in ‘Antiquities of Chamba’, Ins. No. 15 p. 164 at p. 166. Vogel says it must be read as ‘ksetrapa’. Vide ‘mahaksetrapa’ below. The word is probably a Sanskritized form of Persian ‘satrap’.

The word occurs in the Bhagalpur plate of Nārāyanapala (I.A. 15 p. 304 at 306).

Occurs in the Nalanda plate of Devapaladeva (E.I. XVII at p. 321).


Occurs in the Khalimpur plate of Dharmapaladeva (E.I. vol. IV p. 243 at p. 250). The meaning is uncertain.

Officer in charge of the elephant arm in an army. The word occurs in the plate of Jayacandra of Kanoj dated samvat 1225 in I.A. vol. 15 at p. 7.


(a Persian word for ‘treasurer’)—occurs in the Ins of Mahaksetrapa Sodasa found at Mathura (in E.I. IX p. 247) Vide Rajat V. 177.
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गमागमिक—The meaning is uncertain. It probably means some kind of messenger. It occurs in Bhagalpur plate of Nārayanapāla (I.A 15 p 304 at p. 306), the Nalanda plate of Devapāla (E I. XVII at p. 321), the Rajor Ins. of Mathanadeva in samat 1016 (in E I vol III p. 263 at p 266) and in the Khalimpur plate (E. I. vol. IV pp. 243, 250) the words द्वात्तेकमागमिकांतिकर्माणां occur one after another.

गालुव—Same as grāmakāta below Vide Ins. from Hottur in E I. XVI p 74 (of sāke 929)

गालुव—Same as above It occurs in the Ratta Ins from Saundatti of sāke 902 (in JBRRAS. vol X at p. 208)

गुलपाति—Officer in charge of a गुल, for which see p 205 above. It occurs in the Fanchobh plate of Śrāmaṇagupta (12th century) in JBORS. vol V p. 582 at p. 588


गोष—Officer over five or ten villages. Vide Kaut. II. 35 and p 143 above.

गौलिक—‘Superintendent of woods and forests’ (Fleet). The word occurs in Gupta Ins. No. 12 p. 47 at p. 50, in the Nalanda plate of Devapāla (E I. XVII at p 321), Bhagalpur plate of Nārayanapāla (I.A. 15 p 304 at p 306), in the grant of Laksmanasena (E. I. XII p. 6 at p 9). The word is formed from ‘gulma’ acc. to Vārtika 13.(āyatshanabhyaṃsthaka) on Panini IV. 2. 104 Vogel (p. 127) boldly asserts that ‘the words saulkika and gulmika are unknown in Sanskrit Literature’ in spite of Buhler’s note in E I. vol I p. 2 at p. 7. saulkikas are frequently mentioned in inscriptions. But saulkikas also occurs in Yaj. II. 173 and both words occur in the Mahābhāṣya. Gulma means a post of guards. Vide p. 141 above. The word ‘gumike’ read in the grant of Pallava Śivaśakandavarman (E. I. vol I p. 2 at p 5) is correctly held by Buhler to stand for ‘gaulmika’.

गामाकाश्य—Village scribe. Occurs in Rājat V. 175

गामाकु—Village headman. Vide p 154 for reference from Paithinasi Kaut. IV. 4 has that word and the con on Kāmasūtra V. 5 5 explains ‘halotthavṛtti’ as ‘grāmākuta’ Vide also Karhad plates of Kṛṣṇa III dated sāke 880 (E I.
IV p. 278 at p. 285), the Sanjan plates of Buddha-varasa (E. I XIV p. 144 at p. 150), the grant of Karka Suvarnavarsa in śake 746 (E. I XXIV p. 77 at p. 84), Cambay plates of Govinda IV in śake 852 (E. I. VII pp. 26, 39).

Prāmittera—Same as above. This form occurs in Kauthem plate of Vikramāditya V dated śake 930 (I. A. vol. 16 p. 15 at p. 24).

Prāmāṇī—Village headman. Vide pp. 153–154 above for ancient references Pāṇini V. 2 78 has this word.

Prāmāṇya—Same as above. Occurs in Śukra II. 120.

Prāmāṇya—Occurs in the Mit. on Yāj. II. 271.

Prāmāṇya—Occurs in Yāj. II. 271.

Prāmāṇya—Vide Kāmasūtra V. 5 5.

Prāmāṇya—Village headman. Occurs in Manu VII. 116, Kaut. III. 10 and in Bhūmara stone Pillar Ins. of Hastin and Sarvanātha in Gupta year 189 (Gupta Inscription No. 24 p. 112).

Prabhāsik—Officer in charge of quays or landing places (ghats). Occurs in Kahliya plate of Sodhadeva in samvat 1134 (E. I. VII. p. 85 at p. 91). For प्रभासक vide JBORS vol. V pp. 582, 588.

Chāt—This word has given rise to various opinions. Fleet and Buhler translate as ‘irregular soldiers’. Vogel (pp. 130–132) points out that Chamba is the only place where the ancient word ‘cāta’ is still extant in the modern form ‘chat’ meaning ‘head of a pargana’. Grants of villages are often expressed as ‘acātabhatapravesya’ (not to be entered by cātas and bhatas)’. For example, in the Surat plate of Māitraka Vyāghrasena (E. I. XI at p. 221) it is stated that the granted land was not to be entered by cātas and bhatas except for (seizing) robbers and those guilty of harm or treason to the king. Similar words occur in the Betul plates of Sankobha in Gupta year 199 (acātabhatapravesyaṃ coradrohakavajram) in E. I. VIII p. 287. The words occur also in the Khoch plate of Mahārāja Hastin in Gupta year 191 (Gupta Ins. No. 23 p. 106). Yāj I 336 states that it is the duty of the king to protect people from the harassment caused by cūtas, robbers and kāyasthas and the Mit explains cāta’ as persons who deprive people of their wealth after producing false confidence in them. Three quarters of the same verse occur in the Pañcatantra I p. 72 verse 343 Aparārka (p. 792) quotes Brhaspati that ‘dangers common to all are those arising from cātas and thieves’.
Prof. Pathak while editing the Abhona plates of Sankaragana dated Kalacuri samvat 347 in E. I. IX p. 296 quotes the words of Śankarācārya (tār̥kika-cāta-bhatarājapraveṣyam) in his Bhāṣya on Br Up. and Anandagīrī's explanation thereon viz. cātas are those that transgress the rules of conduct for decent people and bhatas are servants telling falsehoods. Vide the Valabhi grant of Dharasana II in 252 Gupta year (I. A. 15 p 187) and the Palitana plates of the same king and of the same year in E I. XI p. 80 at p. 83 and the Banskhera plate of Harsa (E I. IV p 208, at p. 211 where we read 'bhacāta-sevakādīn') for other early occurrences of the word. In the Naihati grant of Ballalabena we have the words 'cattabhacca-jātiyān janapadān' (E I. XIV p. 156 at p. 160)

चोरसाहित्य—Thief-catcher. The word occurs in Nārada (parīśista verse 18) and in Kāṭāśāhita quoted by Aparākṣa p 844

चोररक्षक—Probably an officer whose duty it was to secure robbers with ropes. Kaut. IV. 13 mentions this officer and II. 6 refers to 'corarajju' as one constituent of 'rāstra'.

चौरोकुदक—Thief-catcher or one who exterminates thieves. This word occurs in Gupta Ins No. 46 p 213 at p 216, the Valabhi grant of Dharasena II in Gupta year 252 (I. A. 15 p. 187) and the Palitana plate of the same king in the same year (E I. XI p. 80 at p. 83), the Rastrakūta grant of Saka 697 (JBBRAS vol 16 p 105 at p. 108), Bhagalpur plate of Nārāyanapāla (I. A. 15 p 304 at p. 306), the grant of Laksmanasena (E I. XI p. 6 at p. 9).

चौरोकुदाहु—Same as above. The word occurs in Yāj II. 271 and in Katyāyana quoted by Aparākṣa p 844

छालकार—Umbrella bearer. This word occurs in 'Antiquities of Chamba', Ins. No. 15 at p 166 Vide Vogel p 128

ढंगुर—It appears to have been a mere title and not an office whereby the holder was entitled to wield some kind of power in the State. The word occurs in samvat 1005 (E I. XIX p. 243), in the plate of Govindacandra in samvat 1186 (in E. I. XIII p 295 at p 297), the Sevadī plate of Cāhamāna Ratnapāla in samvat 1176 (E. I. XI p 304 at p 310) It occurs as a title in Rājat VII. 290, 706, 738

तच्छरधिक—A Judge (dharmaṭhikārī) Occurs in Rājat VIII 2422.
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Seems to mean some officer like "Charged' affairs."
The word occurs in a record at Südi in Ron Taluka of Calukya Somesvara I in sākhatā 973 (E. I, V at p. 77) and in Partabgarh Ins. of Prathāra king Mahendrapāla in saṁvat 1003 (in E. I. XIV p. 176 at p. 185), one Mādhava being styled 'tantrapāla-mahāsamanta-mahādandanāyaka'.

Superintendent of all ferries. Vide Nālandā plate of Devalā (E. I. XVII at p. 321) and Kahla plate of Sodhadeva in saṁvat 1134 (E. I. VII at p. 91). In the Nālandā plate 'tarika' and 'tantrapāla' come immediately after one another and must be distinguished as to meaning.

Probably means 'one who plies a ferry boat'. Occurs in Nālandā plate of Devalā (E. I. XVII at p. 321), Bhagalpur plate of Nārayanapāla (I. A. 15 p. 304 at p. 306).

Meaning uncertain. The word occurs in the Ins. of Samarasimha of Mewar in saṁvat 1330 (E. I. vol. XX, Appendix No. 579 p. 32). In Punjab a subdivision of high class khaṭris is called Tālāwār.

Meaning not apparent. Bhagavanlal suggested that it is the same as modern 'Talāti' (petty revenue officer). It occurs in the Deo-Baranark Ins. of Jivitagupta (Gupta Ins. No. 46 p. 213 at p. 216).

Commander of an army. In E. I. vol. V. p. 28 at p. 31 mention is made of a Dandanātha Sahadeva under the Yādava king Jaitugi or Jaitapāla (about 1200 A. D.).

Various meanings are assigned by several scholars. Stein on Rājat. VII. 951 takes it to mean 'prefect of police'. In many cases it appears to mean a 'General or Magistrate'. In E. I. VII, Appendix No. 291, 292 and 296 Ins. of the years 1178 to 1181 A.D. there is one Keśimayya styled 'dandanāyaka' lower in rank than mahāmandalesvara. Vide also Ins. of Jayakesi Kadamba of 1125 A.D. in E. I. XIII p. 298 and 317 (Dandanāyaka Lakharasa), JBBRAS XII p. 21 in sākhatā 1145 (Dandanāyaka Purusottama of Yādava Singhana), the Abhir Ins. in E. I. V p. 234 where one Mahādevarasa is styled mahāsāṃstādhipati and dandanāyaka and his subordinate Māyideva is also called 'dandanāyaka' (about 1153 A.D.), in several Kalacurya Inscriptions (E. I. V p. 24 at p. 28, E. I. V. p. 213 at p. 215). Lakanna and Mādanna were dandanāyakas of Devaraya II of Viḍyānagara (about 1333 sākhatā) in E. I. XV at p. 15. Vide p. 115 and n. 152 above. E. I. XIX p. 265 at p. 269 (grant of
Dharmarāja) reads 'dāndanāyaka'. In Br. Samh. 72. 4 the queen, yuvarāja, senāpati and dāndanāyaka are placed on the same level in the matter of the staff (danda) to be prepared for them.

वृष्णपति—Commander of forces or a governor. Vide Abu Vimala temple Ins. dated samvat 1378 in E. I. IX pp. 143, 156.

वृष्णपाल—An officer in charge of all branches of the army. Vide Kauṭ. I. 12 and p. 112 n. 147 above.

वृष्णपालिक—Officer in charge of punishment i.e. criminal justice. The word occurs in the Palitana plates of Dharasena II dated in Gupta year 252 (E. I. XI p. 83), in the Valabhi grant of the same king in the same year (L. A. 15 p. 187), in the Bhagalpur plate of Nārāyanapāla (L. A. 15 p. 304 at p. 306 which reads 'dāndapāśika') and Laksmanasena's grant (E. I. XII at p. 9), also in Yaśastilaka I. p. 50.


वृष्णविनाय—Same as dandapāla. The word occurs in the Chittur plates of Kullottunga Codadeva (L. A. 14 p. 55 in take 1056).


वृष्णविक—Same as 'dāndavāśika'. Vide Chamba Ins. No. 15 at p. 166.

वृष्णेश—Same as वृष्णनाय. In J. B. B. R. A. S. vol. 15 p. 386 (of take 1160) there is a commander (dandeśa) Bichāra under Yādava king Singhana.

वृष्णपालिक—Same as 'dandapāśika'. This word occurs in the Pañcatantra II, Kāhā 4 (as dandapāśaka meaning a watchman), in the grant of Mahābhavagupta I (E. I. XI at p. 94), in the Nālandā plate of Devapāla (E. I. XVII at p. 321), in E. I. XIX p. 265 at p. 269. Vide Vogel p. 129.

वृष्णसौरिक—Probably the same as वृष्णपालिक. The word occurs in the Wala plate of Guhasena in Valabhi year 246 (E. I. XIII at p. 339).

In this last 'dandika' and 'dandapāsika' come immediately after one another.

Appears to be the same as 'dūtaka'. The word occurs in the grant of Paramāra king Silakadeva dated saṃvat 1036 (in E. I. XIX p. 177) and in E. I. XIX at p. 243 (dated saṃvat 1005).

meaning doubtful. Probably an officer whose concern was with the ten aparādhās of which the king could take cognisance suo motu. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and in the Bhagalpur plate of Nārāyanapāla (L. A. 15 p. 304 at p. 306). Vide p. 264 above for the ten aparādhās.

—a clerk. The Rājat. VIII 131 makes it clear that 'divira' was distinct from the 'kāyastha'. The word occurs in the Gupta Ins. No. 27 at p. 122 of Mahārāja Jayanātha in Gupta year 177 (where one of the donees is a divira Sarvasādha).

or chief of clerks. In the grant of Śilāditya of the Gupta year 286 a certain officer is styled 'śāndhivigraha- dhiktra-divirapati' (E. I. XI p. 174 at p. 180); vide also Jesar plate of Śilāditya in 357 Valabhi year (E. I. XXII p. 114 at p. 117) where a person called Mammaka is styled 'divirapati' and also śāndhivigraha-mahāgrahāśāvīrā and sāmanta'.

Vide Śāstrī’s above.

Superintendent of a fort. Vide p. 112 note 147 above.

meaning uncertain. The word occurs in the Kahela plate of Sodhadeva of saṃvat 1134 (E. I. VII at p. 91).


A high officer or delegate who conveys the king’s command about the grant of land to local officers. The word occurs in the Betul plate of Saṅksobha in 199 Gupta year (Gupta Ins. pp. 286–289), and in the plate of Mahārāja Jayanātha of Gupta year 174 (Gupta Ins. No 26 p. 117 at
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p. 119 where the 'dūtaka' is Uparikadiksita Sarvadatta), in the Banskhara plate of Harsa in E. I. IV p. 208 (dūtakotra mahāpramātāra-mahāsāmantā-srī-Skandagupta) and also in the Madhuban plate of Harsa (E. I. VII at p. 158). In the Daulatpur plate of Bhajadeva I in Harsa samvat 100 the dūtaka is said to be 'Yuvaraja-Nāgabhata'. Vide also E. I. VI p 285, E. I. VIII 287, XI p 80 In the Khalimpur plate of Dharmanāla (in E. I. vol. IV p. 243 at p 250) the king states that he was requested to make a grant by Mahāsāmantādhipati Nārāyanavarman through the Prince Tri-bhuvanāla as dūtaka.

दूतकृत्—Meaning doubtful. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306)

देशाधिकता—(Prakrit 'desadhikata')—Governor of a Province. The Prakrit form occurs in the Ins. of Pallava Sīvaskandavarman in the year 8 (E. I. vol. I at p. 5).

देशाधिकार—Meaning doubtful. Probably means 'those who catch dangerous robbers whom it is difficult to secure'. The word occurs in the Banskhara plate of Harsa (E. I. IV p. 208 at p 211). The form 'duhsādha-sādhana' occurs in the Sovadi plates of Cāhamāna Ratnapāla in samvat 1176 (E. I. XI at p. 310). Vide also E. I. XXVI at p. 206 and 'mahāsādhanika' below.

देशाधिक—Probably the same as above. The word occurs in the grant of Laksmanasena in the 3rd year of his reign (i.e. 1122 A. D.) in E. I. XII at p. 9.


मार्गदेशी—Officer in charge of a city station or watch tower for collecting customs duties. 'Dranga' means either 'a town' (as in E. I. XX, No. 810 of īake 1509) or 'a watch station' (as in Rajat. VIII, 2010). The word occurs in Valabhi plate of Dharasena II in Valabhi samvat 252 (I. A. 15 p 187), Gupta Ins. No. 38 at p. 169, Palitana plate of Simhāditya in 255 Valabhi year (E. I. XI p. 16 at p. 18), Bhavanagar plate of Dharasena I in Valabhi year 210 (E. I. XV p. 257), Wala plate of Guhasena (E. I. XIII at p. 339), the Navalakhā plate of Śīlāditya (E. I. XI at p. 179).

विद्वान—Guardian of frontiers. Vide Stein's translation of Rajat. vol II no 291–293 for the meaning of 'dranga'.
High functionaries and officers

Superintendent of passes leading into the kingdom (Stein). Vide Rājat. V. 214.


Collector of the royal share of grain. The word occurs in the Bhinmal Ins. of saṃvat 1320 (Bombay Gazetteer, vol. I part 1 p. 477).

—Probably the same as above. The word occurs in Gupta Ins. No. 38 pp. 164–166 (Māliya plate of Dharasena II in Gupta year 252), the Wala plate of Guhasena (E. I. VII at p. 339 of Valabhi year 246).

City Prefect. The word occurs in the Śilāra grant of tāke 1016 (I. A. vol. 9 p. 33 at p. 35).


City Banker or guild president of the town. The word occurs in the Damodarpur plate No. 4 of the time of Budhpura (E. I. XV at p. 115) and in the Paharpur plate (E. I. XX at p. 63).

Chief of the police. The word occurs in the Vikramorvasīya V (after verse 3), the Daśakumārācarita II pp. 58 and 59. The Vaijayanti explains the word as ‘karapati,’ (Jail Superintendent).
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नाथक—Head of (ten) villages. The word occurs in Kautilya I 12, Śukra I. 192.

निन्दक—An officer, whose exact function is not known. The word occurs in the grant of Karka dated śaka 746 (E I XXIV p. 77 at p 84), in the Kauthem plate of Vikramāditya V dated śaka 930 (I. A. vol. 16 p 15 at p 24), in the Rajar Ins. of Mathanadeva dated samvat 1016 (E. I. III p. 263 at p 266).

निन्देन्यक—Governor of some part of a kingdom. In Chamba Ins. No. 15 p 164 at p 166 we read in Vidagda’s plate ‘Visayaspati-nilhabapati—ksatrpa’. Vide Vogel p. 124 In Gupta Ins. No. 80 p. 286 at p. 289 the ‘dūta’ of the grant is ‘nilhabapati’ Kuśala-prakāśa. So ‘nīhila’ and ‘nīhela’ probably mean the same thing.

नामिकद—Probably ‘soothsayer or astrologer’. The word occurs in the plate of Candradeva of Kanoj of samvat 1143 (E. I. IX p. 302 at p. 305).

पक्कल—An officer over a certain number of villages. The word occurs in the grant of Arjunadeva of Anahillapātaka in Vikrama year 1320 (I. A. vol. 11 at p. 242, where we read ‘Sri—Abhayashprabhrī—pañcakulapratipattau’), in the Bhinmal Ins. No. 12 dated samvat 1333 (Bombay Gazetteer vol. I part I p 480) where we read ‘tan—niyuktā—mahā—Gajasimha—prabhrī—pañcakulapa—pratipattau’. In E. I. XXIV at p. 89 (in an Ins. from Udaipur) we have a Pañcolt of the Gughavata family. Here, it appears that ‘pañcakula’ was a board of officers of whom Gajasimha was one (or the chief). Vide नामिकद below.

पक्कमण्डल—A board of five officers or a panchayat. The word occurs in the Sanchi Stone Ins. of Candragupta II in Gupt year 93 (vide Gupta Ins. No. 5 at p. 31)


पक्कत—Vide note 150 above.
High functionaries and officers

- **High functionaries and officers**—probably means 'an officer who drives away undesirable persons with a cane'. The word occurs in the plate of Mahṣbhavagupta I (E I. XI p 93 at p 94).

- **Pāṭhārā—**Meaning uncertain The word occurs in the Belava plate of Bhovaramadeva (E I. XII p 37 at p 40).

- **Pūṣā—**means 'inferior servant' (as in Kautilya II. 5) or a bailiff attached to a Court of justice (as in Br.). Vide p. 278 above.

- **Pūrṇāḥ—**Vide pp. 111-112 and 117 above. The pūrṇāḥ occurs in the list of functionaries in the Candrāvatī plate of Candradeva of Kanoj in saṃvat 1148 (E I. IX at p. 305) and in the grant of Laksmanasena (E I. XII p 6 at p. 9).

- **Pūlī—**Keeper of land records The word occurs in the Damodarpur plates dated Gupta year 124 and 129 (E I XV p. 113, at p. 130) and in the Paharpur plates (E. I. vol XX. p. 61).

- **Pātālāḥāriḥ—**Vide p. 112 note 147 above. Compare 'nagalāvīyohālaka' above under 'nagara-vyāvahārika'.

- **Pātīḥāra—**Herald This word occurs in Gupta Ins No. 39 p 171 at p. 190 dated 766-67 A. D (The words are 'tan-niyukta-pratinarta-kulaputra-kuhena').

- **Pātiniḥ—**Vide note 150 above.

- **Pātihāra—**Chamberlain or 'inditer of grants'. In Nasik Ins. No. 5 the word pātihāra (pratihāra) occurs (E I VIII p. 73). Brhaspati quoted by Viśvarūpa on Yāj. I 307 states the qualifications of a 'pratihāra'. Vide Ādiparva 65, 28-29, Visnudharmottara II. 24, 12, Śukra I. 131 for definitions. In the grant of Dhruvasena dated Valabhi year 206 the dītaka of the grant is pratihāra Mammaka.

- **Pātihāra—**Same as above. The form occurs in the Vasantagadh Ins. of Varmaḷatā (E I IX p 187 at p 192), in the Candrāvatī plate of Candradeva of Kanoj in saṃvat 1148 (E I IX at p 305); in E I IX p 117 at p. 119 Paramāra king Jayavarma II causes pratihāra Gaṅgadeva to give a village to three brāhmans (in saṃvat 1317).

- **Pātihāra—**Chief scribe The word occurs in the Damodarpur plate 1 of Kumāragupta in Gupta year 124 (E. I. XV at p 130).

- **Pātihāra—**Police Magistrate. Vide Kautilya I. 12, IV. 1, IV. 10 (last verse). The word occurs in the Irda plate of the
Kamboja king Nayapaladeva (of about the 10th century) in E. I. XXII. pp. 150 at p. 156.

—Vide note 150 above. The word occurs in the Śilāra plate of Mahāmandalesvara Anantadeva (I. A 9 p. 33 at p. 35 where 'mantrin', 'anātya' and 'pradhāna' are mentioned.)

—Vogel (pp. 122-123) holds that this officer was concerned with the administration of justice. The word occurs in the Banskhera plate of Harsa (E. I. IV p. 208 at p. 211).

—Probably 'civil judge'. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and in the grant of Dhruvasena III in the Gupta year 334 (E. I. vol. 1 p. 85 at p. 88). Vide also E. I vol. 1 at p. 115

—Meaning doubtful. Stein conjectures that he is a subordinate officer of the treasury who received cash payments. The word occurs in Rājat. VIII. 278.

—Probably chief magistrate. The word occurs in Kaut. I. 12; vide p. 112 n. 147 above.

—Medical adviser to the king. Vide Viśnudharmottara II. 24, 33-34 for his qualifications.

—Chief Justice Vide Manu IX. 234 and p. 372 above.

—Meaning doubtful. The word occurs in the Valabhi grant of Dharasena II dated Gupta year 252 (I. A. 15 p. 187)

—An officer under Aśoka, probably the same as the mahāmātra. The word occurs in the 3rd Rock Edict of Aśoka at Girnar (Corpus I. I. vol. I pp. 4-5).

—Governor of a Province or guardian of the frontiers. The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. vol. 15 p. 304, at p. 306) and in 'Antiquities of Chamba' Ins. No. 15 at p. 166. Vide Vogel p. 124.

—Officer who watched those that had resolved to fast unto death. Vide Rājat. VI. 14.

—Commander of an army. The word occurs in the Kādambarī (para 74) of Bāna (where Balāhaka is so called) and in the Rāstrakūta (Gujarat branch) grant of Śakre 679 (J. B. B. R. A. S. vol. 16 p. 105 at p. 108 where 'balādhikrta' follows 'senāpati').

—A class of royal servants (as distinguished from 'antaranges'). Vide Rājat. VIII. 428, 680, 1542.
Great Governor of a province. The word occurs in the grant of Laksmanasena (E. I. XII p. 6 at p. 9). See “uparika” above.

The word occurs very frequently in conjunction with ‘cāta’ for which see above. Vide also Dudia plates of Pravara-
sena II in E I III p. 258 at p. 261 and Banskhera plate of Harsa (E. I. IV p. 208 at p. 211), grant of Śivaskanda-
varman (E. I. vol. I. p 2 at p 5) where ‘bhada’ stands for ‘bhatta’.

Vide p. 112 above.

He who recovers the king’s share of the produce of land; one of the six officers of each village, acc. to Śukra
II. 120

Meaning uncertain. The word has something to do with ‘bhāga’ and ‘bhoga’ which frequently occur in the Gupta
Inscriptions (e.g. ‘bhogabhāgam’ in Gupta Ins. No. 40 at
p. 194 and No. 41 at p. 198). Vide two Taleśvara plates
(E. I. XIII, p 109 at p 115) and ‘Antiquities of Chamba’
(Ins No. 15 p 166) where both ‘bhāgika’ and ‘bhogika
are found. Mr. Y. R. Gpute renders it as ‘owner of land’.
Vide Vogel p. 130.

The chief of the royal store-house or treasury. The
word occurs in the Ambarnath Ins. of Mamvāni in sake
782 (J B B R A S. vol. 9 p. 219).

A storekeeper or keeper of royal treasury. The
word occurs as ‘bhandākarikaya’ (‘bhandāgārikasya’, of
a store-keeper) in Nasik Ins No. 19 (E I VIII p 91) and
in the Candravatl plate of Candradeva of Kanoj dated
śamvat 1148 (E. I IX p. 302 at p. 305).

King’s medical adviser. Vide E. I IX p. 302 at p. 305.

Head of a district. It occurs in the Mitāksara on Yāj.
I. 320, in E. I. IX p 296 at p 298 plates of Śankarkagana
where we read ‘anyairvāgāminpati-bhogapatibhih’, as
contrasted with a king and in ‘Antiquities of Chamba’ Ins.
No 45 at p. 166.

Head of a district or Collector of the State share of land
produce taken in kind (Bombay Gazetteer I part I p 82).
The word occurs in Gupta Ins No. 21 p 93 at p 96 and
No 22 p 100 at p 104 (of the Gupta year 163), No 23 p. 106
at p 108 (of the Gupta year 191), in the Kavi grant of

मोहेश्वरिक—The same as 'bhogika' above

मोहक—A village headman or 'freeholder' (Buhler). The word occurs in the Deo Baranark Ins. of Jivitagupta II (Gupta Ins. No. 46 p. 213 at p. 216) and in the grant of Pallava Śivaskandavarman (E. I. vol I p 2 at p 5)

मण्डेश्वर—'Lord of a manḍala', a provincial governor Vide Rājat VI. 73, VII. 996, VIII. 1228, 1814, 2029.

मण्डेश्वर—Same meaning as above. The word occurs frequently in the inscriptions of the Rattas of Saundatti. Vide Bombay Gazetteer, vol. 21 p 354 and 'mahāmandaśalesvara' below

महिसरिव—Councillor. The word occurs in the Inscription of Rudradāman. Vide p 105 above.

महान्—Minister or councillor. The word occurs in Kaut. I. 8, Yaj. I. 312 and in Candrāvatī plate of Candradeva of Kanōj dated saṁvat 1148 (E. I. IX p. 302 at p. 305). Vide pp. 105-106 and n. 150 above.

महःसक्र—Meaning uncertain. The word occurs as Mahāmahattaka in the Bodh Gaya Ins. dated in the 74th year of the Laksmana-sena era (i.e. about 1194 A. D.) in E. I. XII p 27 at p. 30.

महसव—Meaning uncertain. The word occurs in the Bhagalpur plate of Nārśyanapāla (I.A. vol. 15 at p. 306) and the Rajor grant of Mathanadeva in saṁvat 1016 (E. I. III p 263 at p 266 where both 'mahattara' and 'mahattama' occur one after another) and in Rājat VII. 438.

High functionaries and officers

vol. 16 p. 15 at p. 24 (sake 930) In the Daśakumāra-carita III p 77 there is 'janapada-mahattara'. Vide note 148 above.

The word occurs in the Benares plate of Cedi king Karnadeva in Cedi era 793 (i.e. 1042 A.D) in E. I vol II p. 297 at p. 309.

Meaning uncertain. The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. vol. 15 p. 304 at p. 306) and in the Nālandā plate of Devapāla (E. I. XVII at p 321) and the Wāla grant of Dhruvasena I in Gupta year 216 (I A vol 4 p. 105).

Vide 'Kumārāmātya' above. The word occurs in the same two plates as are mentioned under 'mahākarta-kritika'.

The great satrāp or provincial Governor. The Mathurā Lion Pillar capital (Corpus I. I. vol. II p. 30 at p. 48) and the coins of Rajula are the earliest to mention this word. Vide the Mathurā stone Ins. of Sondāsa (E. I. IX p. 247) and Rudradāman's Ins. (E. I. VIII p. 36 at p. 44).

Vide 'aksapatatika' above. The word occurs in Gupta Ins No 39 at p 120 (in 766 A.D.), in the Bhagalpur plate (I. A. 15 pp 304, 316), Benares plate of Karnadeva (A. D. 1042) in E. I. vol II p. 309, in Laksmanasena's grant (E. I. XII p 91), E. I. X at p. 100 (Vikrama year 1253). In the Madhuban plate of Harsa (E. I. VII p. 155 at p. 158) we have 'mahāksapatālādhikaranādhikrta'.

Meaning uncertain. The word occurs in the Naihati grant of Ballalasena (E. I. vol XIV p. 156 at p. 160).

The functions of this high officer are not clear. See the Nagarjunikonda Ins. in E. I. XX at pp 6 and 16 where a person is styled mahāsenāpati and mahātalavara. Has the word anything to do with the modern word 'talvār' meaning a sword? If it has then it would mean 'a great swordsman'. The word 'talvār' in the sense of a double-edged sword occurs in the Yasastilaka I. p. 50.

Vide 'dandanāyaka' above and p. 115 note 152. In the Gupta Ins No. 1 pp 10, 15 Harisena, the author of the prasasti, is styled sāndhīvigrahika, kumārāmātya and mahā-dandanāyaka; vide also Gupta Ins No 46 pp. 213, 216, Mathurā (Kusana) Ins of the year 74 (E. I. IX p. 242), E. I. XVI p. 230 the Kankhera stone
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Ins. of the year 201 (279 A.D.) where we read 'mahādandaṇāyaṇaṇa śakena sṛdharaṇavarmanā', in Nagarjunikonda Ins (3rd century A.D.) in E.I. XX at p. 7; in the Wāla grant of the Valabhi king Dhruvasena I in the Gupta year 216, there are five titles applied to Dhruvasena of which mahādandaṇāyaṇaṇa is one (I.A. vol 4 p 105), the other four being mahāsāmanta, mahāpratihāra, mahākārtakṛtika and mahārāja.

The great lord of gifts. The word occurs probably as a title only in the Taxila plate of Patīka of the year 78 (Corpus I. I. vol. II p. 23 at p. 28).

Officer superintending the great gifts of the king called mahādānas. For mahādānas vide H. of Dh. vol II pp 869-870 The word occurs in the Kahla plate of Sodha-deva (E.I. vol. VII at p. 91).

The first wife of a king. The mahādevi or mahārājāḥ often heads the list of persons to whom royal grants are addressed Vide Karnadeva's plate dated in 1077 A.D. (E. I. XI. at p 141).

Vide 'dausādhāsādhanika' above. The word occurs in Nārāyanapāla's plate (I. A. 15 p 304 at p. 306) and Devapāla's Nālandā plate (E. I. XVII p 310 at p. 321).

The chief justice. The word occurs in the Benares plate of Karnadeva in A.D. 1042 (E. I. II p 309) and also in his Goharwa plate (E. I. XI p 139 at p 141).

Vide 'dharmādhyakṣa' above. The word occurs in Laksmanasena's grant (E. I. XII p. 6 at p. 9).

Vide 'pandgaḍu' above. The word occurs in Sangrāmasimha's Panchabhā plate (JBORS vol. V p 582 at p 588).

The great superintendent of elephants. Mahāpiṇḍapatī Pāṇḍupaṭa was the dīkaka of the Ahhona plates of Katacouri Śankaragana in Katacouri samvat 347 (i.e. 595-6 A.D.) in E.I. IX p 296 at p. 298. The word also occurs in Laksmanasena's grant (E. I. XII p 6 at p 9).

Superior officer above all doorkeepers, great chamberlain. The word occurs in the Kādambarī of Bāṇa para 97, in the Rājat IV. 142. It occurs in the plates of Saṅgamasimha (541 A.D.) in E. I. X p 72 at p. 75, in the Jesar plate of Siladitya in 357 Valabhi year (E. I. XXII p. 117), in Gupta Ins. No. 46 pp 213, 216, Benares plate of Karnadeva in 1042 A.D. (E. I. vol. II p. 309).
mahaprana—Great Minister (or Prime Minister). A mahapradhana and dandanayaka Bramhadeva is found in an ins of Kalacurya Sankama's time in 1178 A. D. (E. I. V p 26 at p. 28) Vide also E. I. XV p 32 at p. 36, I. A. vol. 9 p 35 at p. 35 (where a mahapradhana Mahadevaiya under mahamanadaleśvara Anantadeva is mentioned in śake 1016.)

mahaprada—Governor. Vide Ehūra record of 1173 A. D. (E. I. XII at p 335)

mahapramatar ( mahapramatar)—Vide the Godharvā plate of Karnadeva dated 1047 A. D. (E. I. XI p 141.)

mahapramatar—see āmatar above. The word occurs in the Banskhela plate of Harsa (E. I. IV p. 308) and Benares plate of Karnadeva (1042 A. D.) in E. I. vol. II p 297 at p. 309.

mahakalyaniśāstra—Great commander. Vide Gupta Ins. No 23 at p. 109 in 191 Gupta year, the same person being also the dīkṣāka of the grant; E. I. X at p 72 (valabhi samat 117 in Kumāragupta's reign), E. I. VI p. 294 at p. 299 (609-610 A. D.), E. I. XI at p 83 (Maitraka grant of Gupta year 252), E. I. XII p. 30 at p. 35.


mahamahāvijñā—Same as mahamanadaleśvara. The word occurs in the Waghli ins. of Seuna dated śake 991 (E. I. II at p 227)

mahamahātikā—Same as the next. Occurs in Śilāra plate of Anantadeva in śake 1016 (I. A. vol. 9 p 33 at p 35).

mahamahāpuruṣa—Lord of a great territory. This title is borne by many of the Rattas of Saundatti (vide Bombay Gazetteer vol. 21 p 354 for Belgaum), by Śilahāra chiefs of the Konkan, by the Kadambas of Hangal and other cities and several other chiefs throughout central and south India. Vide E. I. XIII at p 16 (for Rattas of Saundatti, 1204 A. D.), E. I. XIII p 299 (for Kadamba Jayakesi II being so called in A. D. 1125), E. I. V p. 234 at p 236 and p 238, E. I. XII p 250 (for Bhandup plates of Śilahāra Chittarājadeva in 1026 A. D.), J. B. B. R. A. S. vol. 9 p 219 (Ambarnath Ins dated śake 732), I. A. vol 12 p 119 (Bassein plates of

Mahāmāttīya—*Great Minister or councillor*. Occurs in the Benares plate of Cedi king Karnadeva (E I. vol II p 309 in 1042 A. D.) and his Goharwa plate dated 1047 A. D. (E I. XI p 141)

Mahāmāttaka—Vide mahattaka above. The word occurs in the Bodh Gaya Ins. dated in Laksmanasena year 74 (E I. XII p. 27 at p. 30).

Mahāmāttara—Vide mahattara above The word occurs in the Purle plate of Ganga year 149 (E. I. XIV p. 362, where we read ājūṇa mahāmahattara-Śivasarmā)

Mahāmāttaka—Occurs in the Kahla plate of Sodhadeva in *śāhrat* 1184 (E I. VII p. 85 at p. 91)

Mahāmālī—*Great or Prime Minister*. Vide note 148 above and Vogel p 122. Occurs in Ambarnath Ins of *śake* 782 (J B R A S, vol. 9 p 219.), Bhadana plates of Śilāra Aparājīta in *śake* 919 (E I. III p 267 at p. 290), plate of Karnadāva in 1042 A. D. (E I. vol. II p 309), I. A. vol. 11 p 242 in Vikrama year 1320 equal to Valabhi year 945 where mahāmāt̤yarānaka-Māladeva is said to have done all the business of the seal of Veraval Ins of Arjunavarmadeva of Anahillapātaka and where a Mahomedan donor from Hurmūs grants some income to a masynd built by him, Musulman congregations of Somanātha being appointed trustees.

Mahāmahāy—High Officer Vide Kautilya I. 12, V 1 &c and Kāmasūtra V. 5 17, 33 and 35 The word occurs frequently in the Aśoka inscriptions e.g the two separate Rock Edicts at Dhauli are addressed to the Mahāmātras of Tosali (Corpus I. I. vol I pp 92, 95, 97, 99 and 175). In the Schagpur plate (of about 300 B. C) also the ‘Mahāmatas’ of Savastī are mentioned (E I. XXII p 1) In Nasik Ins No. 22 in E I. VIII p 93 (about 1st Century B. C) the word ‘mahāmatena’ is interpreted as mahāmāt̤yena in Bombay Gazetteer vol 16 p 592, but it is better to take it as mahāmāt̤rena. Manu employs the word mahāmātrāh
(in IX. 259, which Medhatithi explains as 'mantrins, purohita and others', while Kulluka explains it as meaning those whose profession is to tame elephants)

**Mahratsa**—Officer in charge of the Royal seal. Occurs in the grant of Laksmanasena in E. I. XII p 6 at p. 9.

**Mahrat**—'King or feudatory'. This is not an official under a king, but in some inscriptions an emperor addresses his order as to a grant of land to 'maharaja maharajji-maharaja-japutra' &c. Vide Banskhera plate of Harsa (E. I. IV p. 208 at p. 211).

**Maharatya**—'Great prince'—occurs in Benares plate of Karnadeva (E. I. vol. II p 309 of 1042 A.D.) and his Goharwa plate in 1047 A.D. (E. I. XII p 141) and Kahla plate of Sodhadeva in samvat 1134 (E. I. VII p 85 at p. 91).

**Maharaj**—Vide E. I. VII p. 85 at p. 91.

**Maharatya**—Vide E. A. vol 18 p 214 (of samvat 1216)

**Mahayudhput**—'Chief Master of battle arrays' Occurs in the plate of Bhojavarmadeva in E. I. XII p 37 at p. 40

**Mahabhiputra**—Great banker. Occurs in Kahla plate of Sodhadeva (E. I. VII pp 85, 91)

**Mahavishal**—One of the five high offices instituted by Lalitaditya of Kashmir. Vide Rajat. IV 142


**Mahavishvanik**—Great minister of peace and war. Occurs in Benares plate of Karnadeva in 1041 A.D. (E. I. II p. 309)

**Mahavishvanik**—Great minister of peace and war. Occurs in the Falitana plate of Dharasena II in Gupta year 252 (E. I. XI p. 80), in plate of Buddharaja (E. I. VI at p 299 in 609-10 A.D.), in the Pimpri plate of Dhruraja (E. I. XII at p 89) in samvat 697. In the Harsacarita (VI) Harsa is said to have dictated his proclamation of digvijaya to 'Mahâ. krta' who sat near him. In E. I. IX at p. 290 (plates of Sankaragana) and E. I. XII p 30 at p. 35, we have 'mahasandhivigrahasahdhikaranadhitkta.

**Mahavishvanik**—Great Commander. Occurs in Kahla plate of Sodhadeva in Vikrama 1134 (E. I. VII p 85 at p. 91).
महागाथनभया—One of five high officers instituted by Lalitaditya of Kashmir. Vide Rajat. IV 142-43.

महासामन्तविविधिक—Same as महासामन्तविविधिक. Occurs in Gupta Ins No 22 p. 100 at p 104 (the Khoth plate of Gupta year 163), the Ambarnath Ins dated şake 782 (JBBRAS vol 9 p 219), the Bhagalpur plate of Nārāyanapāla (I A 15 p 304 at p 306), E. I. XI p 141, E. I. XII p. 6 at p 9 (Laksmanasena's grant).

महासामन्त—Great chieftain The Yādavas of Sindinagam (vide E I II p 317 of sake 922, I A. 17 p 120 of sake 948) and the Rattas of Saundatti were often so styled (Bombay Gazetteer vol. 21 p 354) The Valabhi king Dhruvasena is called mahārāja and mahāsāmanta in E I XI p 107 (in Gupta year 206) and E I. XV at 256 (in Gupta Year 210) and E I XLIX p 302 and p 304 The word occurs in the Bauskhera plate of Harsa in his 22nd year i.e about 628-29 A.D (E I IV p 208, at p 211) and in the Madhuban plate of the 25th year of Harsa's reign (E I vol. I pp 63, 67) Vide also Bhagalpur plate of Nārāyanapāla (I A. vol 15 pp 304, 306), Rastrakūta grant of šake 679 (JBBRAS vol 16 pp 105, 108), E I XV p 85 in šake 981 (where one Nāgadeva is both mahāsāmantaśāhipati and dandanāyaka of Someśvara I), E I vol. II p. 309 (Benares plate of Karnadeva)

महासामन्ततात्विति—Probably means the same thing as महासामन्त. In E I. IV p 299 one Bhogadevarasa is styled mahāsāmantāśāhipati and dandanāyaka (Kelavad Ins of the time of Someśvara I in 1053 A.D.), E I. VI pp 285, 292 (plate of Mahā-Dandivarma of Gujerat in šake 789), E I XX p 61 (one Kesavayya is dandanāyaka and mahā- of Belvola 300 in šake 934), E I. V p 234, I A. vol 48 p 1, E I. I IV p. 243 at p. 250

महासेनापति—Great Commander of armies The word occurs in the Nasik Ins No. 24. We have a mahāsēnapati Bhavagopa (E I VIII at p 94) and in Nasik Ins. No. 3 of Vasītihiputa Siripulumāvi (Bombay Gazetteer vol 16 p. 556), in the Nagarjunikonda Ins (of 3rd century A.D.) Chāntīsi is said to have been married to a person entitled mahāo and mahātalavara (E. I. XX p. 1 and pp 6 and 16), in E. I. XII p. 6, 9 (Laksmanasena's grant).
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>JIT</strong></td>
<td>High functionaries and officers. Occurs in Nālandā stone Ins of Yaśovarmadeva’s time about 530 A.D. in E.I. XX pp 37, 41.</td>
</tr>
<tr>
<td><strong>वार्षिक</strong></td>
<td>Same as above. Occurs in Narada quoted by the Mit on Yāj II 271. Vide dīl, pāla above for the reference.</td>
</tr>
<tr>
<td><strong>वादिक</strong></td>
<td>‘staff bearer’, an attendant on a king. Vide Rājat VI. 203. The word is derived from ‘yasti’ acc. to Pān IV. 4 59 (meaning ‘yastih praharanami-asya’).</td>
</tr>
<tr>
<td><strong>बुधक</strong></td>
<td>An officer, whose exact function is not known; but in the inscriptions of Asoka it is said that yulas are to receive orders from the parīsād (council of ministers). Vide the 3rd Rock Edict at Girnar (Corpus I.I. vol I p 4). The word also occurs in Kautilya II. 5 and 9.</td>
</tr>
<tr>
<td><strong>बुधक</strong></td>
<td>Same as above. Occurs in the Cambay plates of Govinda IV in sake 852 (E.I VII pp. 26, 39) and the Karhad plates of Kṛṣṇa III of sake 880 (E.I. IV pp. 278, 285).</td>
</tr>
<tr>
<td><strong>बुधराज</strong></td>
<td>Crown Prince. Occurs in Kauṭ.I.12 among the 18 tirthas. The word occurs in the Mathurā Lion pillar capital (Corpus I.I. vol. II p. 40) and in the Candrāvatī plates of Candradeva of Kanoj (E.I. IX. p. 302 at p. 304).</td>
</tr>
<tr>
<td><strong>रस्तूक</strong> (or रस्तुक) or रस्तुक</td>
<td>An officer of land survey and revenue department. The word occurs (as rajuka) in the 3rd Rock Edict of Aśoka at Girnar in Corpus I.I. vol I pp 4-5 and in E.I. XXIV p. 52 (under Vākāṣṭha Emperor Pravarasena II).</td>
</tr>
<tr>
<td><strong>रहस्याधिकुट</strong></td>
<td>Private Secretary. The word occurs in the Pallava Śivaskandavarman’s grant (E.I. vol. I p. 2 at p. 7), in the Vilavatti grant of Pallava Simhavarman (E.I. XXII. p. 296 at p 298), in a Kadamba plate (E.I. VI p 13).</td>
</tr>
<tr>
<td><strong>राजकुमार</strong></td>
<td>A prince. Occurs in the grant of Śivaskandavarman (E.I. vol. I p 2 at p 5).</td>
</tr>
<tr>
<td><strong>राजकुल</strong> (modern Rāval or Rāul). Vide E.I. XX Appendix No 324 for the Ins of mahāmāndaleśvara-rajakula-Ranashideva in Vikrama year 1223, E.I. XXV at p. 156 Mayūrabhaṣṭija grant (where rājakula Heramba is said to be the lēkha)</td>
<td></td>
</tr>
<tr>
<td><strong>राजकुल</strong></td>
<td>Occurs frequently in the Inscriptions of the Rattas of Saundatti (Bombay Gazetteer, vol 21 p 354 for Belgaum) and in the plate of Yādava Seupacandra (I.A. vol. 12 p. 119 at p. 120).</td>
</tr>
</tbody>
</table>
History of Dharmaśāstra

राजन—Either a mere title or 'a feudatory'. This is often the first among the several persons addressed in several grants. The word occurs in Abhona plates of Śankaragana in 595 A.D. (E. IX p. 287), in the Candrāvatī plate of Candradeva of samvat 1148 (E I. IX p. 305), in Laksmanasena's grant (E I. XII at p. 9) Vide Vogel p. 121

राजन्यक—a ksatriya chief. It occurs in Laksmanasena's grant (E I. XII p. 6 at p. 9).

राजपुज—ld. 'a prince', but in many inscriptions it has some technical meaning such as 'nobleman' or 'knight'. The word occurs in the Nālandā plate of Devapāla (E I. XVII at p. 321 where the order is 'rāja-rānaka-rājaputra-rājātmeya'), in Gupta Ins. No. 46 at pp. 213, 216, Bhagalpur plate of Nārāyanapāla (I.A vol. 15 pp. 304, 306), in Laksmanasena's grant (E I. VII p. 6 at p. 9). Vide Vogel p. 131 and Fleet's note 1 on p. 218 of Gupta Ins.

राजधोड़िर—King's banker or chief of bankers. Occurs in Com. on Yaśastilaka I. p. 91. Vide note 148 above

राजस्थालीय—Exact function uncertain. In Gupta Ins. No. 35 at p. 157 he appears to be a high officer, but a low one in Gupta Ins. No. 38 at p. 170. In the Rājat VIII 2618 he appears to be chief justice Buhler in I.A vol. V p. 207 takes the word to mean 'an officer who carries out the object of protecting the subjects'. In J R A.S 1895 p. 382 rājasthānyā Bhaṭṭi is the dātaka of the grant. In the plates of Simhaditva in Gupta—Valabhi year 255 (574 A.D.) the order is 'rājaputra-rājasthānyāmātya'. Vide the Banskhera plate of Harsa (E. L. IV pp. 208, 211), Gupta Ins. No. 46 pp. 213, 216, Vasantadādhi Ins. of Varmalāta in samvat 682 (E. L. IX p. 192), Palitana plate of Dharasena (E. L. XI p. 83), the Gujarāt Rāstrakūta grant of śaka 697 in J B B R A. S vol. 16 pp. 105, 108, Vogel p. 122 and explanation in E. L. XI p. 176

राजानक—A minister. The title occurs frequently in the Rājat (vide VI. 117, 261). It was given for services to the king and survives in the form 'Rāzān' as a family name among Kashmir brāhmaṇas. The word occurs in the Bhagalpur plate of Nārāyanapāla (I.A vol. 15 pp. 304, 306), in the Parikud plate of Madhyama-rājadēva of Śailodbhava dynasty (E. L. XI pp. 281, 286). Vide Vogel p. 121 who
remarks that the vassals of the Chamba king designated themselves in this way.

राजामाल्य—King's minister. In the Nasik Ins. No. 19 (E. I. VIII p. 91) this word occurs in the Prakrit form ‘रायमाका’. The word also occurs in Gupta Ins. No. 46 (pp. 213, 216), Nalanda plate of Devapala (E. I. XVII at p. 321), Bhagalpur plate of Narayanapala (I. A. vol. 15 pp. 304, 306).

राज्ञी—Queen. Vide Candrawati plate of Candra deva in साँवल 1148 (E. I. IX at p. 305), the grant of Lakshmanasena in E. I. XII at p. 9 (the order being ‘ाशेसा-राजा-राजनयका-राजका-राजपुत्रा-राजमात्या &c’) and the plate of Vijayasena (E. I. XV at p. 283).


राजनूत—Head of a district (on the analogy of grāmakūṭa). Vide J. B. B. A. S vol. 16 at p. 117.


राजपाल—Head of a province. The word occurs in Kauṭ V. I.

राज्ञि—Ruler of a province. In the Prakrit form ‘राज्यिका’ the word occurs in the grant of Śivasandavafman (E. I. vol. I p 2 at p 5).

राज्येण—Ruler of a district or province. Vide p 117 and note 155a above and दृष्टिपार्व 85. 12.

राज्येवर—Examiner of coins. The word occurs in Kauṭ. II. 5, for which see note 184a. In E. I. XXII p 30 there is a statement that in the Jogimāra inscription rūpadakha (rūpadarśa or rūpadaksa?) occurs. Prof. D. R. Bhandarkar takes it to mean 'banker'.

वितवत्त—Writer of an edict or order. The word occurs in the Brahmagiri Rock Ins. in Corpus I. I. vol. I at p. 176. Pāṇini IV. 1. 2. 21 teaches the formation of ‘lipikara’. 
Scribe or clerk in a public office. The word occurs in Nasik Ins No. 16 and No. 26 (Bombay Gazetteer vol. 16 pp. 582 and 605), in the Visnudharmottara II. 24 25-28, Śukra II. 120.


A Secretary. Occurs in Rajat III. 206

Director of education. In the Kondavidu Ins one Śrīnātha is said to have been the Vidyadhikarin of Vema in E. I. XI. p. 313 at p. 314

An officer, whose functions are not clear. The word occurs in the Bhavnagar plate of Dhruvasena I in 539 A.D. (E. I. XV. p. 256), in the Valabhi grant of Dharasena II in Gupta year 252 (I. A. vol. 15 p. 187), in the Gupta Ins No. 38 p. 164 at p. 169 (the Maliya plate of Dharasena II in Gupta year 252), the Bhagalpur plate of Nārāyanapāla (I. A. 15 pp. 304, 306).

Same as above. The word occurs in the grant of Dharasena II in Gupta year 252 (E. I. XI. pp. 80, 83), in the Nālandā plate of Devapāla in E. I. XVII at p. 321 (where the word is preceded by ‘āyuktaka’).


Same as above. The word occurs in the grant of Śiva-skandavarman (E. I. vol. I at p. 5).

Probably elder of a vithi (a district). Occurs in a grant of Gupta year 120 (Indian Historical Quarterly vol. 19 p. 12 at pp. 16, 21)


Meaning uncertain, but it may mean ‘bearer of a Vitika’ (betel). It occurs in Chamba Ins. No. 15 at p. 166. Vide Vogel p. 128.
High functionaries and officers

1005

- Meaning uncertain. The word occurs frequently in the Rajat. (V. 226, VI 73, 106, 127).

- Function unknown. It occurs in E. I XXVI at p. 306 (six Saindhava grants from Ghumli) of about 9th century A.D.

- Meaning uncertain. It occurs in the plate of Jayanāga from Karna-suvarna (E I. XVIII pp 60, 63).


- Guardian of the bed-chamber. Vide 'Inscriptions from Baroda' edited by Mr. A. S Gadre p. 72 (a village was donated to a Nāgara-brähmana Prabhākara who was 'sayyāgrāhaka of Karpūradevi').

- It occurs in the Nālandā plate of Devapāla (E I XVII at 321) and in Chamba Ins. No. 15 at p 166 (where it is read as 'sarabhānga' Vide Vogel p 133 and 'Indian Culture' Vol. VII p. 305 at p 309. Has the word anything to do with the words 'śarayantra' and 'śarayantri'? The latter was a title bestowed in Mithila upon a very learned man who faced the ordeal of answering satisfactorily all questions on any sāstra put to him by learned ācāryas and also the questions put by common people. Vide a paper 'Declaration of śarayantri', contributed to the All India Oriental Conference at Benares (in 1943) by Pandit Ramānātha Jha of Darbhanga.

- An official who recovered tolls or customs duties. Occurs in Sukra II 120.


- Head of all scribes or head of all departments. In E I XIII at p 17 one Bicana or Bicīrāja is said to have been the Śīrka- of mahāmandalesvara Kārtavirya IV of Hangal Hemādrī is styled 'samastakaranaśālpī' or 'samastakaranādhipati'. Vide H. of Dh. vol I pp. 356-357 notes 850-851.
Minister. Vide p. 105 and note 150 above.

A spy. It occurs in the grant of Śīrvakandavarman (E.I. vol. I p. 2 at p. 5). In I. 12 Kautilya speaks of sañcāras (wandering spies like tiksna, rasada &c.).

Minister. Vide p. 111 above.

The Superintendent of the construction of the royal treasury, store houses &c. The word occurs in Kaut. II. 5, I. 13 and in the plate of Mahābhavagupta (E.I. VIII pp. 133, 141 and E.I. XI pp. 93, 94). Vide p. 143 above.

Collector-General. The word occurs in Kaut. I. 12 and II. 6, Sābara on Jai. XII. 1. 28 and in the plate of Mahābhavagupta (E.I. VIII at p. 141 and XI at p. 94). Vide p. 143 and note 184 above.


Prime Minister. Occurs in Rajat. VII. 568.

Probably the same as above. The word occurs in the Purle plate of Indravarman in the Ganga year 149 i.e. 605 A.D. (E.I. XIV pp. 360, 362).


Astrologer. Occurs in Paithinasi Vide note 193 above.

Bailiff who summoned parties and witnesses. Vide p. 278 above.

Minister for peace and war. Occurs in Visnudharmottara II. 24. 17 and in the Mit on Yaj. I. 320 (which quotes a verse to the effect that the 'sandhivigrāhakārīn' is to issue a royal grant) and in Gupta Ins. No. 1 at p. 15 (the prasasti of Samudragupta).

feudatory chief. Under the Rattas of Saundatti certain high officials are often so called (Bom. Gazetteer vol. 21 p. 354 for Belgaum). The word occurs in Abhona plates of

वाचाध्यक्ष—Occurs in Šukra I. 120.

सीमाधेक—Officer who looked to the work of boundaries. Occurs in Gupta Ins No. 46 pp 213, 216.

हमन—Vide p. 114 and note 150.

सूत—One of the ratnus. Vide p. 111 above.

सूक्ष्मकर्मी—Head cook. The word occurs in Talesvara plates (E. I. XIII pp. 109, 115)


शूचिपिण्ड—State goldsmith. Vide pp 144-145 above.

श्रूद्र—A petty officer, probably head of the village administration. Vide Bajat. V. 175.

श्वचतवालमृत्तक—Officer superintendent of the harem. The word occurs in the 13th rock Edict of Aśoka in a prākrit form (Corpus I. I. vol. I at p 20).


श्वालपाल—Officer in charge of a police post. Vide p. 149 above

श्वानिक—An officer in charge of a ward of a city or a district. Vide pp. 143 and 149 above.

हस्तयास्योद्योगिन्तक—Officers in charge of the elephant arm, cavalry, camel corps of an army. This occurs in Chamba Ins No. 15 at p 166. In the Nalanda plate of Devapāla (E. I. XVII at p 321) we have 'hastyaśvostra-na-bala-vaśprataka'.

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Note 342a—अत एवाह विद्याम्

चलानि चारणायशं पदानि सूपकल्य; सर्वभक्ति श्रीहानिनामुपस्वतंवाते।

Note 343—म्

पावेश्चकस्वयं प्राकरोपमीरत्वादि।

Note 344—प्रवक्तानि नवादि च तथा वानितास्य च।

Note 509—नये पुष्कः कपालादोद्विक्षिण्यिन्सि। अध्यात्माश्च भक्ति स्वप्नस्वतंत्रते।

Note 492—भवंदना भवेन्दना निन्दितस्य

Note 509—नये पुष्कः कपालादोद्विक्षिण्यिन्सि। अध्यात्माश्च भक्ति स्वप्नस्वतंत्रते।

Note 492—भवंदना भवेन्दना निन्दितस्य

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Note 492—भवंदना भवेन्दना निन्दितस्य
Appendix (on exhorting witnesses)  1009

Seven verses out of these occur elsewhere also. Verse 1 is the same as Manu 8, 93 and Vas. 16, 33; verse 3 is the same as Udyoga 35, 31; verses 7-9 are the same as Manu 8, 97-99, while verses 8-9 are the same as Udyogaparva 35, 33-34 and verse 8 occurs also in Baudh. Dh S. I. 10, 35 and Vas. 16, 34; verse 11 is the same as Adiparva 74, 103, Sántiparva 162, 26 and Anuśāsana 75, 29; verse 25 is almost the same as Manu 8, 89.

Note 1168 on chakṣuś—

काननिलोकाण्वयं कविता भय भाविष्यतानिश्चयों परित्याग पदस्तेऽस। तथाहि!
भावसाधनार्थं वा भावितो यदृ भावितर्न न करोति तदा व गुणयं चार्यवायं राज्यं समस्माहकु म तत्परं प्रकटवायं दू। पुनः भावितो भावितर्न कर्मसेवति। स यथेव नाशिकोभो तदा विज्ञानिनिर्देशनात्माय साधिय। सहायया वार्ताय कर्म-हर्षतानिताय दत्तात्त्वक चतुर्थं वास्याय कर्मवशं। नानानार्थं यथवार्तेऽविप्रत्य प्रकृतिरुपेयं सोरं दायसाध्यनवेशं करि स्वार्थो दायस दायस्य वा। अपावदेहि नयं च विशेषस्य विकृतिर्विसाहित सामवेदाय चतुर्वेदाय। चतुर्वेदाय। भक्तिसिद्धान्तिकों सुधाहिष्ठत् स्वार्थं। नतोऽविवार्तेऽविप्रत्य प्रकृतिरुपेयं सोरं दायसाध्यनवेशं करि स्वार्थो दायस दायस्य वा। अपावदेहि नयं च विशेषस्य विकृतिर्विसाहित सामवेदाय चतुर्वेदाय। चतुर्वेदाय। भक्तिसिद्धान्तिकों सुधाहिष्ठत् स्वार्थं। नतोऽविवार्तेऽविप्रत्य प्रकृतिरुपेयं सोरं दायसाध्यनवेशं करि स्वार्थो दायस दायस्य वा। अपावदेहि नयं च विशेषस्य विकृतिर्विसाहित सामवेदाय चतुर्वेदाय। चतुर्वेदाय। भक्तिसिद्धान्तिकों सुधाहिष्ठत् स्वार्थं। नतोऽविवार्तेऽविप्रत्य प्रकृतिरुपेयं सोरं दायसाध्यनवेशं करि स्वार्थो दायस दायस्य वा। अपावदेहि नयं च विशेषस्य विकृतिर्विसाहित सामवेदाय चतुर्वेदाय। चतुर्वेदाय। भक्तिसिद्धान्तिकों सुधाहिष्ठत् स्वार्थं। नतोऽविवार्तेऽविप्रत्य प्रकृतिरुपेयं सोरं दायसाध्यनवेशं करि स्वार्थो दायस दायस्य वा। अपावदेहि नयं च विशेषस्य विकृतिर्विसाहित सामवेदाय चतुर्वेदाय। चतुर्वेदाय। भक्तिसिद्धान्तिकों सुधाहिष्ठत् स्वार्थं। नतोऽविवार्तेऽविप्रत्य प्रकृतिरुपेयं सोरं दायसाध्यनवेशं करि स्वार्थो दायस दायस्य वा। अपावदेहि नयं च विशेषस्य विकृतिर्विसाहित सामवेदाय चतुर्वेदाय। चतुर्वेदाय। भक्तिसिद्धान्तिकों सुधाहिष्ठत् स्वार्थं। नतोऽविवार्तेऽविप्रत्य प्रकृतिरुपेयं सोरं दायसाध्यनवेशं करि स्वार्थो दायस दायस्य वा। अपावदेहि नयं च विशेषस्य विकृतिर्विसाहित सामवेदाय चतुर्वेदाय। चतुर्वेदाय। भक्तिसिद्धान्तिकों सुधाहिष्ठत् स्वार्थं।
As to taking back into the social fold a man who repents after ghatasphota is performed the following procedure is prescribed in the Dharmaśāstra:

This is a summary of a longer passage on the same subject from the Dharmaśāstra, Part III, Chapter 15.

NOTE 1302—The Śr. p. Dharmaśāstra (II. 6. 1–10) is as follows:—

This is quoted in the Journal of the Bengal Asiatic Society vol. 35 pp 161-164.
The above text of Saunaka is based on the भव. मगुद्व, नि. सि. (which does not quote all verses), दुह. मी. दुत. च., सं. की. and Dr. Bühlers text prepared from several mss. and published in the Journal of the Bengal Asiatic Society, vol 35 at pp. 158-159. The भवनीय text printed at Trivandrum, 1935, has 14½ verses on पुनान्यायिनि (L. 8) The principal various readings are noted below.

Verse 1—सं. की. reads ‘मन्या वा सत्तपुष्या वा’; श्री. reads सत्तपूणा वा. The half verse 3a मुद्दकेष्म प्रि. is omitted by Bühler, भव. मगुद्व, नि. सि., सं. की. In 5a दुह. मी. and दुत. च. read भवामायानिधिं तत्त, and श्री., सं. की. and Bühler भवामायानिधिः; and श्री. reads ‘भवामायानिधि’. In 6a श्री. reads सदाशीनया द्वितीयवाक्यम्. The भव. सि. omits 7b and 8a and सं. की. reads जन्त्र-भावायानिधि सत्तम् in 7b and श्री. जन्त्रभावायानिधि. In 8b सं. की. and श्री. read जन्त्रभावायानिधिः. In 9a सं. की. and श्री. read भव्यता हृदयित्वा द्वार्यम् च and in 10a सिद्धामायादिः च कुला होमे. In 11b दुह. मी., Bühler and दुत. च. read जन्त्रभावायानिधिः. In 13a Bühler and सं. की. read दैवित्वं मानिषयं वा दृढः पावेद; दुह. मी. reads सृद्धेव किंवते हतं and also recognizes the reading भवामायानिधिः विनयः: The सिद्धिः (सिद्धातम) p. 102 and श्री. read दैवित्वं मानिषयं वा दृढः पावेद... कवितः. 13b (भव्य ... कवितः) is omitted by the भव. मगुद्व, सं. की. and Bühler. In 15b सं. की. and श्री. read रत्नमायानिधि. The order of the verses also slightly varies in some of the works.
Note 1751—Volume 188, 30-64

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Appendix (verses on Kalvarya)
A few important readings have already been noted in the text and notes there. The most extensive lists of Kalivarjyas occur in Sm C, Hemadri (parissesakmanda, vol. III. part 2 pp. 666-668), Par M, vol I part 1 pp. 134-137, Madanarabnapradipa (Samayanirnaya) Ms. No 146 of Viś collection I (now in the Govt. Miss. Library at B.O.R. Institute, Poona), Udvāhātattva (p 112-113) and Sudhitattva pp 273-274 (Jitv.), Nirnaya-śindhu, Samayamayākha, Bhattoji on CaturvimSatimata and Smṛti-kaustubha. Detailed explanations are given in the last four of these and in Kṛṣṇabhatta's com. on the Nir. S.

2. Some works such as the kālakāryaṅī. read sarapani nityatāni, which kālakāryaṅī. explains as jnanētvijayatmaṇaḥ and kṛṣṇa on n. vi. p 1292 explains similarly.

4. Madvāntrādhyā (folio 209a) reads brajaṁaḥshastraṇāṇaḥ.
18. The samyākṣara reads 'ṣaṃśūnaṁ tathā hṛṣiḥ samsāry' &c.

20-21 These are omitted in srutical, pari. ma., udvāhātaraḥ and some other works, though found in hemaḍri, mahāṛṣi, kālakāryaṅī. and nirvāṇaśūla.

26. śrutiskṛṣṇaṣaṅkar (ālaḥk p. 447) reads bhṛṣya[nāṣa] kṛṣṇa naṣṭaṁ tīrthasvātāṁ c varūṇa:

33. mahāṛṣi and kālakāryaṅī. read niḥṣrṇoṇiṣṭaḥ for yudha.

38. pari. ma., samyāmasyuḥ p. 109, kālakāryaṅī. and mahāṛṣi read caturvāyaṁ-yaḥsalta n.

42-45. These are omitted by many of our authorities, though they occur in hemaḍri, samyāmasyuḥ, śrutical, samyākṣara.
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