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Jogendra Chandra Ghosh Research Prize

THE
'KALIVARJYAS'
OR
PROHIBITIONS IN THE 'KALI' AGE

THEIR ORIGIN AND EVOLUTION
AND
THEIR PRESENT LEGAL BEARING

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To

DR. SYAMAPRASAD MOOKERJEE

M.A., D.Litt., LL.D.

Whose Dedicated Life

Shines

Like a Flame from a Flame Enkindled

At the Altar

of

Hindu Culture and Polity

CONTENTS

	PAGES
PREFACE	vii
I. (a) The Texts chronologically arranged ...	1-11
(b) The Prohibited Practices classified and arranged in the order of their treatment	11-15
II. The origin and evolution of the several practices and usages :	
(a) <i>Ācāra</i> (i) Ceremonial	15-46
(ii) relating to the Four Orders of life	46-78
(b) <i>Prāyaścitta</i> —Impurity and Expiation ...	78-102
(c) <i>Vyavahāra</i> —Legal	103-165
III. The Origin and Authority of the <i>Kali</i> Prohibitions :	
(a) Conception of the <i>Kali</i> age	165-168
(b) Authority of Samaya-Dharma and Purāṇa	169-176
(c) Date of the Convention on <i>Kali</i> Prohibitions	176-177
(d) Present Legal Bearing	177-195
(e) Authority of the <i>Kalivarjyas</i> ...	195-203
INDEX	205-212



PREFACE

The subject of this treatise, which is an exact reprint of the Thesis for the Jogendrachandra Ghose Research Prize in Comparative Indian Law for 1933, is comparatively fresh and unexplored, and the treatment, therefore, is on lines marked out by the writer himself. It is original as a whole, except in the Section on *Sons other than the Legitimate and the Adopted*, in regard to which G. Sarkār-Śāstrī's work on Adoption has been largely helpful. The importance of the subject is dwelt upon in the opening and concluding paragraphs. The original texts of passages cited from the Vedic literature, unless of particular importance, have not been reproduced at length where authoritative English translations are given. The books mainly consulted and referred to will appear from the Index at the end, together with a few corrections admitting of insertion therein. In the Sanskrit Index, besides the authorities, are included the *Kalivarjya* topics in italics.

The writer takes this opportunity of gratefully acknowledging his obligations to the authorities of the Sanskrit College in Calcutta and of the Saraswati Bhavan at Benares for facilities afforded to consult their libraries, to Mahāmahopādhyāya Cinnasvāmī Śāstrī, now Principal, College of Theology, Benares Hindu University, for a transcription of the *Kalivarjya* portion of the *Smṛtimuktāphala*, and to Pandit Vanamālī Vedāntatīrtha, M.A., for reference to the extract from the *Nityācārapaddhati*, and last but not least, to the Superintendent and the Proof Readers of the Calcutta University Press, without whose ready help and careful corrections a work of this nature, with numerous references, quotations and diacritical marks, could, even as it is, hardly have been presentable, to the public.

KALIVARJYAS

OR

THE PROHIBITIONS IN THE KALI AGE

THE TEXTS

The Kalivarjyas or practices prohibited in the Kali Age constitute a subject of varied and remarkable interest to a student of the Hindu Law and Dharma-śāstras and of the history of the Hindu society. Modern writers on Indian history and Hindu Law have been drawn to an incidental discussion of this topic, but a comprehensive enquiry into the nature and sources of these prohibitions, the circumstances that led to their promulgation, their varied acceptance and modifications by the writers of the Digests or Nibandhas, the light they throw on the history of the Hindu society and the extent to which they have in practice been observed in later times together with their legal bearing at the present time has not yet been attempted. Such an enquiry seems specially called for in view of the speculations that have of late been afoot on the lines of growth and development of the Hindu society and the evolution of its laws and customs in historical times.

The several practices prohibited in the Kali Age number in all above fifty. This number is obtained by piecing together several scattered texts. There are texts which ban some of these practices singly whether with special reference to the Kali Age or not, e.g., marriage with the maternal uncle's daughter prohibited in several Dharma-sūtras and

Samhitās or Niyoga or Levirate which Āpastamba declares as unfit for practice in a degenerate later age or Manu's repudiation of widow-remarriage as unsupported by Vedic hymeneal Mantras or the text purporting to be Baudhāyana's cited in the Smṛti-candrikā¹ or the espousal of a Śūdra wife to which Yājñavalkya is personally 'opposed or Śaunaka's text permitting only two kinds of sons in this age, etc. These texts will appear in their proper places in the treatment of the several usages. There are other texts which ban the practices in groups of two, five, seven, etc. These texts are here arranged according to their order in time as far as ascertainable, since they give at a glance the whole list in a connected form.

I. यथा नियोगधर्म्मी^I नो नानुबन्ध्यावधोऽपि वा ।^{II}

तयोद्धारविभागोऽपि नैव सम्प्रति वर्त्तते ॥^{III}

cited in the Mitakṣarā and attributed to Nighaṇṭukārikā; in Hemādri the first line runs thus :

यथानियोगं धर्म्माणां न हि धेन्वा वधोऽपि च ।

II. देवराच्च सुतोत्पत्तिर्दत्ता कन्या न दीयते ।^{IV}

न यज्ञे गोवधः कार्यः कलौ न च कमण्डलुः ।^V

cited as Kratu's in Smṛti-candrikā. Kratu is cited in Mit. on Yāj. III. 29 but not this text.

III. दीर्घकालं ब्रह्मचर्यं धारणञ्च कमण्डलोः ।^{VI}

गोत्रान्मातृसपिण्डाच्च विवाहो गोवधस्तथा ।^{VII}

नराश्वमेधौ मद्यञ्च कलौ वर्ज्यं हिजातिभिः ॥^{VIII IX X}

as Brahmapurāṇa text cited by Aparārka and Mādhava and as Ādi-purāṇa text in Smṛti-candrikā.

¹ विधिर्योऽनुष्ठितः पूर्व क्रियते नेह साम्यतम् ।
पुराकल्पः स विज्ञेयो विधवाया नियोजनम् ॥

IV. गोपशुं देवरात् पुत्रं सत्रयागं कमण्डलुम् ।

सुराप्रयोगं भिक्षुञ्च न कुर्वीत कलौ युगे ॥

anonymously cited by Aparārka on Yāj. I. 56.

V. अक्षता नरमेधश्च गोयज्ञश्च कमण्डलुः ।

देवराच्च सुतोत्पत्तिः कलौ पञ्च विवर्जयेत् ॥

anonymous text in Aparārka on Yāj. I. 56. Also in Madana-pārijāta from Nigama and in Smṛti-kaustubha with the first line as :

अक्षता गोपशुश्चैव आद्वे मांसं तथा मधु ॥

Smṛti-candrikā quotes it anonymously in the altered form :

देवराच्च सुतोत्पत्तिं गोमेधश्च कमण्डलुम् ।

अक्षतां पौरुषं मेधं कलौ पञ्च विवर्जयेत् ॥

VI. Smṛtyarthasāra of Śrīdhara (composed between 1150 and 1200) is cited as an authority in Smṛti-candrikā. This work is based on previous authorities mentioned in the two following ślokas which preface each section :

कामधेनौ प्रदीप्तेऽब्धौ कल्पवृक्षलतासु च ।

शम्भुद्रविड़केदारलोल्लटाद्यैश्च भाषितम् ।

मन्वाद्यनेकस्मृतिषु व्याख्यातप्रतिपादितम् ।

स्मृत्यर्थसारं वक्ष्यामि सुखानुष्ठानसिद्धये ॥

Śrīdhara introduces the Kalivarjyas in connection with Yuga-dharmas in these lines :

समयाचरिता धर्मा जातिदेशकुलोद्भवाः ।

ग्रामावाराः परियाह्या ये च विध्यविरोधिनः ।

युगधर्माः परियाह्या सर्वत्रैव यथोदितम् ॥

He then gives the following passage—the earliest long list on the subject :

देवरेण सुतोत्पत्तिर्वानप्रस्थाश्रमग्रहः । दत्ताक्षतायाः कन्यायाः पुनर्दानं^{XIV}
वरस्य च । समुद्रयात्रास्त्रीकारः कमण्डलुविधारणम् । महाप्रस्थानगमनं^{XV}
गोपशुश्रु सुराग्रहः । अग्निहोत्रहवन्याश्र लेहो लीढापरिग्रहः । असवर्णासु^{XVI}
कन्यासु विवाहश्च द्विजातिभिः । वृत्तस्त्राध्यायसापेक्षं अघसंकीचनं तथा ।^{XVII}
अस्थिसञ्चयनादूर्ध्वमङ्गस्यर्शनमेव च । प्रायश्चित्तविधानञ्च विप्राणां^{XVIII}
मरणान्तिकम् । संसर्गदोषः पापेषु मधुपर्कं पशोर्वधः । दत्तोरसेतरेषाञ्च^{XX}
पुत्रत्वेन परिग्रहः । सत्रदोक्षा च स्तोत्रान्यमहापातकनिष्कृतिः ।^{XXI}
प्रतिमाभ्यर्चनार्थाय सङ्कल्पश्च सधर्मकः । सवर्णान्याङ्गनादुष्टैः संसर्गः^{XXII}
शोधितैरपि । शामित्रञ्चैव विप्राणां सोमविक्रयणन्तथा । दीर्घकालं ब्रह्मचर्यं^{XXIII}
नरमेधाश्वमेधकौ । कलौ युगे त्विमान् धर्मान् वर्ज्यानादुर्मनोषिणः ॥^{XXIV}

VII. Garuḍa-purāṇa though usually referred to about the same time is later than Parāśara (circum 750 A.C.) as it sets forth the Parāśara-dharma in Ch. 107, First Part, thus :

दानं कलियुगे धर्मः कर्त्तारञ्च कलौ युगे । औरसः क्षेत्रजः पुत्रः पितृजौ
पिण्डदौ तथा । नष्टे मृते प्रव्रजिते क्लीवे च पतिते पतौ । पञ्चस्त्रापल्लु
नारोणां पतिरन्यो विधोयते ।

The lines—

न कलौ क्रियते अश्वमेधो वाप्यथ गोसवः । नरमेधोऽक्षता नारी देवरात्
पुत्रसन्ततिः । गर्हितं सप्तकं ह्येतद् राजसूयः कमण्डलुः ।—^{XXIX}

are quoted as from Garuḍa-purāṇa in Hemādri as also the following verses :

जढ़ायाः पुनरुदाहं जेगृष्टां गोवधस्तथा ।

कलौ पञ्च न कुर्वीति भ्रातृजायां कमण्डलुम् ॥

These lines are cited presumably as a Brahma-purāṇa text in Smṛti-candrikā and by Hemādri. They are cited anonymously and again as an Āditya-purāṇa text by Mādhava, p. 492 (Note on Parāśara's śloka 125).

VIII. यस्तु कार्त्तयुगो धर्मो न कर्त्तव्यः कलौ युगे । पापप्रसक्तास्तु
यतः कलौ नार्थो नरास्तथा । न विदत्ता न शुद्धोऽर्थो न शुद्धिर्मनसः कलौ ।
यतोऽतः सत्यमेवैकं नराणामुपकारकम् । दीर्घकालं ब्रह्मचर्यं धारणञ्च
कमण्डलोः । गोदान्मातृसपिण्डाञ्च विवाहो गोवधस्तथा नराश्वमेधौ मयञ्च
कलौ वर्ज्यं द्विजातिभिः ॥

The last three lines are quoted as from Brahma-purāṇa by Aparārka; cited as from Ādi-purāṇa (often another name for Brahma-purāṇa) in Smṛti-candrikā; as from Āditya-purāṇa by Hemādri, Catur.-Cintā. Pāśesa-khaṇḍa, Ch. IV ; without the second and fourth lines and with the opening words as अयम् and the first two lines as from Āditya-purāṇa by Mādhava.

IX. देवराञ्च सुतोत्पत्तिं गोमेधञ्च कमण्डलुम् ।
अन्नतां पौरुषं मेधं कलौ पञ्च विवर्जयेत् ॥

cited anonymously in Smṛti-candrikā and by Hemādri and in Dāmodara's Kali-varjya-vinirṇaya.

X. Vyāsa :

(a) चत्वार्यब्दसहस्राणि चत्वार्यब्दशतानि च ।
कलेर्यदा गमिष्यन्ति तदा त्रेतापरिग्रहः ।
सन्नगसञ्च न कर्त्तव्यो ब्राह्मणेन विजानता ॥

not found in the printed Saṃhitā : cited in Smṛti-candrikā, Nirṇayasindhu and Smṛti-kaustubha together with a contrary text of Devala :

(b) यावद्वर्णविभागोऽस्ति यावद्देदः प्रवर्त्तते ।
सन्नगसं चाग्निहोत्रञ्च तावत् कुर्यात् कलौ युगे ।

XI. Smṛti-candrikā by Devaṇṇa¹ or Devānanda Bhaṭṭa, a digest of the highest authority in the South next to Mitākṣarā, has a longer extract prefaced with the words: तथान्येऽपि धर्मज्ञसमयं प्रमाणमाहुः ।

विधवायां प्रजोत्पत्तौ देवरस्य नियोजनम् । वालिकाक्षतयोन्मोश्च
वरिणान्येन संस्कृतिः । कन्यानामसर्वर्णानां विवाहश्च द्विजातिभिः ।
आततायि-द्विजाग्र्याणां धर्मयुद्धेन हिंसनम् । द्विजस्याब्धौ तु नौयातुः-
शोधितस्यापि संग्रहः । सत्रदीक्षा च सर्व्वेषां कमण्डलुविधारणम् ।
महाप्रस्थानगमनं गोहिंसा चैव गोसवे । सौत्रामण्यामपि सुराग्रहणस्य
च संग्रहः । अग्निहोत्रहवन्याश्च लेहो लोढापरिग्रहः । वानप्रस्थायमस्यापि
प्रवेशो विधिचोदितः । वृत्तस्वाध्यायसापेक्षमघसंकोचनन्तथा । प्रायश्चित्त-
विधानञ्च विप्राणां मरणान्तिकम् । संसर्गदोषः स्तेनाद्यैर्महापातकनिष्कृतिः ।
वरातिथिपितृभ्यश्च पशूपहननक्रिया । दत्तोरसेतरेषान्तु पुत्रत्वेन परिग्रहः ।
सर्व्वर्णानां तथा दुष्टैः संसर्गः शोधितैरपि । अयोनी संग्रहे वृत्ते परित्यागो
गुरुस्त्रियाः । अस्थिसञ्चयनादूर्द्ध्वमङ्गस्पर्शनमेव च । षड्भक्तानशनेनान्नहरणं
होनकर्मणः । शूद्रेषु दासगोपालकुलमिवार्द्धसौरिणां । भोज्यान्नता गृहस्थस्य
तोर्यसेवातिदूरतः । शिष्यस्य गुरुदारिषु गुरुवदवृत्तिरीरिता । आपद्-
वृत्तिर्द्विजाग्र्याणामश्वस्तनिकता तथा । प्रजार्थन्तु द्विजाग्र्याणां प्रजारणि-
परिग्रहः । ब्राह्मणानां प्रवासित्वं सुखाग्निधमनक्रिया । बलात्कारादि
दुष्टस्त्रीसंग्रहो विधिचोदितः । यतेषु सर्व्ववर्णेषु भिक्षाचर्या विधानतः ।
नवोदके दशाहञ्च दक्षिणा गुरुचोदिता । ब्राह्मणादिषु शूद्रस्य पक्तादि-

¹ In Buddhasing v. Laltusing (P C) 34A. 663, Devaṇṇa is said to have been a contemporary of Aparārka. He is dated before 1225 by Kane (p 346), i e , a generation earlier than Hemādri.

XLVII क्रियापि च । भृग्वग्निपतनैश्चैव वृद्धादिमरणन्तथा । गोतृप्तिशिष्टे पयसि
 शिष्टैराचमनक्रिया । पितापुत्रविरोधेषु साक्षिणां दण्डकल्पनम् । यत्रसायं^L
 गृहस्थत्वं सूरिभिः सत्यतत्परैः । एतानि लोकगुप्तार्थं कलेरादौ महात्मभिः ।
 निवर्त्तितानि कर्माणि व्यवस्थापूर्वकं बुधैः । समयश्चापि साधूनां प्रमाणं
 वेदवद् भवेत् ।^{LI}

XII. Pṛthvī-candrodaya mentioned in Hemādri's Caturcintā. III. 182 and of a date earlier than 1250 had a Kalivarjya text similar to that in Parāśara-mādhava. It is mentioned as a source in Nirṇayasindhu.

XIII which precedes XIII (a) in Hemādri :

आदित्यपुराणे—शपथाः शकुनाः स्वप्नाः सामुद्रिकमुपश्रुतिः । उपयाचित-
 मादेशाः सम्भवन्ति कलौ क्वचित् । तस्मात्तन्मात्रलाभेन पञ्च (१) न कारयेत् ।
 तथा कर्मसमावेशादन्यान्यपि कलौ युगे ।

XIII (a). Hemādri's Caturvarga-cintāmaṇi dated between 1260 and 1270 has a long passage which consists of the first 17 lines of the Smṛti-candrikā text on Kalivarjya followed by the following lines thus prefaced :

वर्ज्यानि—विहितान्यपि कर्माणि धर्मलोपभयाद् बुधैः ।

समयेन निवृत्तानि साक्ष्यभावात् कलौ युगे ।

परोद्देशात्मसंल्याग उच्छिष्टस्यापि वर्जनम् । प्रतिमाभ्यर्चनार्थाय सङ्कल्पश्च
 सधर्मकः । अस्थिसञ्चयनादूर्द्ध्वमङ्गस्पर्शनमेव च । सौमित्रञ्चैव विप्राणां
 सोमविक्रयणन्तथा । षड्भक्तानशनेनान्नहरणं हीनकर्मणः । एतानि
 लोकगुप्तार्थं कलेरादौ महात्मभिः । निवर्त्तितानि कर्माणि व्यवस्थापूर्वकं
 बुधैः । समयश्चापि साधूनां प्रमाणं वेदवद् भवेत् । and concluding in
 the last three lines as in Smṛti-candrikā.

XIII (b). अग्निहोत्रं गवालम्बं संन्यासं पलपैतृकम् ।

देवराच्च सुतोत्पत्तिं कलौ पञ्च विवर्जयेत् ।

Hemādri—Prāy Khaṇḍa, p. 90.

XIV. Mādhava, son of Māyaṇa, in his commentary on Parāśara-smṛti, dated between 1335-1360 A.C. reproduces the Smṛti-candrikā passage with the same preface and with variant readings shown above. As Ādityapurāṇa passage he cites :

जड़ायाः पुनरुद्वाहं ज्येष्ठां गोवधं तथा ।
कलौ पञ्च न कुर्वीत भ्रातृजार्यां कमण्डलुम् ।

These verses are followed by the last six lines of Text XI.

XV. Madana-pārijāta composed by Viśveśvara Bhatta under the patronage of King Madanapāla between 1360 and 1390 quotes the Smṛtyarthasāra on Kalivarjya with lines 8 and 12 to 14 left out and purporting to be taken from Sāra-saṅgraha (a work referred to also by Raghunandana and Anantadeva). Mad. Pār. although citing other passages from Āditya- and Garuḍa-purāṇas has none from them on Kalivarjya.

XV (a). Madanaratna-pradīpa (circ. 1425-50)—in Ms.—has a collection rendered in Sir W. Jones's general note to his translation of Manu : The sacrifices of a bull, of a man, or of a horse and all spirituous liquor must in the Kali age be avoided by twice-born men ; so must a second gift of a married woman and the larger portion of the eldest son, etc.

XVI. Raghunandana, a contemporary of Śrīcaitanya (born 1490), who wrote in the first half of the 16th century cites on the authority of Hemādri and Mādhava an Ādityapurāṇa passage in his Udvāhatattva running thus :

दीर्घकालं ब्रह्मचर्यं धारणञ्च कमण्डलीः । देवरेण सुतोत्पत्तिर्दत्ता
कन्या प्रदीयते । कन्यानामसवर्णानां विवाहश्च द्विजातिभिः । आततायि-
द्विजाग्रारणां धर्मयुद्धेन हिंसनम् । वानप्रस्थाश्रमस्यापि प्रवेशो विधिचोदितः ।
वृत्तस्वाध्यायसापेक्षमघसंकीचनन्तथा । प्रायश्चित्तविधानञ्च विप्राणां
मरणान्तिकम् ।

संसर्गदोषः पापेषु मधुपर्कं पशोर्वधः । दत्तोरसेतरेष्वान्तु पुत्रत्वेन परिग्रहः ।
 शूद्रेषु दासगोपालकुलमिवार्द्धसौरिणाम् । भोज्यान्नता गृहस्थस्य तीर्थयात्राति-
 दूरतः । ब्राह्मणादिषु शूद्रस्य पक्वतादिक्रियापि च । भृग्वग्निमरणञ्चैव
 वृद्धादिमरणन्तथा । इत्यादीन्यभिधाय—एतानि लोकगुप्तार्थं कलेरादौ
 महात्मभिः । निवर्त्तितानि कर्माणि व्यवस्थापूर्वकं बुधैः । समयश्चापि
 साधूनां प्रमाणं वेदवद् भवेत् ।

Excepting the first two lines which couple the first line of the Brahma-purāṇa and the first line of the Kratu text, the rest of the passage is that in Smṛti-candrikā.

XVII. From Bṛhannāradiya-purāṇa he quotes :

समुद्रयात्रास्त्रीकारः कमण्डलुविधारणम् ॥
 विजानामसवर्णासु कन्यासूपयमस्तथा ।
देवरेण सुतोत्पत्तिर्मधुपर्कं पशोर्वधः ।
मांसदानं तथा आह्वे वानप्रस्थाश्रमस्तथा ।
 दत्तायाश्चैव कन्यायाः पुनर्दानं परस्य च ।
दीर्घकालं ब्रह्मचर्यं नरमेधाश्वमेधकौ ।
 महाप्रस्थानगमनं गोमेधञ्च तथा मखम् ।
 इमान् धर्मान् कलियुगे वर्ज्यानाहुर्म्मनीषिणः ॥

These verses are also cited in Parāśara-Mādhava. They occur in Pūrvārdha, Chap XXIV, of the printed Nāradiya and as Śls. 12-16, Chap. 22, of Bṛhan-nāradiya-purāṇa where for the underlined words are read :

LIV

देवरात्र, मांसदानं, वराय, नैष्ठिकम् ।

XVIII. Dalapati's Nṛsiṃhaprasāda—an encyclopaedic work (composed between 1490 and 1512) has a short section on this topic giving a bare list in prose of 27 of these prohibitions and suggesting others.

दीर्घकालं ब्रह्मचर्यं कमण्डलुधारणं गोत्रान्नातुः सपिण्डविवाहो गोवध-
 नरमेधाश्वमेध-मद्य-देवरसुतोत्पत्ति-दत्तकन्याप्रदान-ज्येष्ठांशोद्धारण-भ्रातृ-

जायागमन-विधवाप्रजोत्पत्ति-देवरसुतोत्पत्ति- अक्षतयोनिवालिकापुनर्विवाह-
 आततायिब्राह्मणवध - सप्तदीक्षा- महाप्रस्थानगमन - गोसवगोवध - सौत्रामणी
 सुराग्रहणाग्निहोत्र - वानप्रस्थाश्रमस्वीकार - ब्राह्मणमरणान्तप्रायश्चित्तोपदेश-
 संसर्गदोषस्तोयान्य - महापातकनिष्कृति - दत्तोरसेतरपुत्रपरिग्रह-सोमविक्रयण-
 प्रभृतिधर्माः कलौ निषिद्धाः ।

XIX. Kalivarjya-vinirṇaya, is a whole treatise by Dāmodara, son of Śankara Bhaṭṭa and the grandson of Nārāyana Bhaṭṭa (born 1513), of which the manuscript is in the Gaekwad Library. Dāmodara preceded Kamalākara. A copy of it has been obtained through the kindness of the Principal, Benares Sanskrit College.

XX. Nirṇaya-sindhu composed in 1612 by Kamalākara Bhatta has a section on Kalivarjya in which the passages from Bṛhan-nāradya and Āditya-purāṇa (taken partly from Hemādri and partly from Mādhaviya and Pṛthvī-candrodaya) are cited as authorities.

XXI. Similarly Anantadeva, the son of Āpadeva, the great writer on Mimāṃsā, devotes a section of his Smṛti-kaustubha (of the third quarter of the 17th century) to this topic in which he cites the passage from Smṛtyarthasāra supplemented by extracts from Āditya-purāṇa, Madana-pārijāta and Mādhaviya.

XXII. Smṛti-muktāphala of Vaidyanātha Dikṣita is a popular Southern digest of about 1700 A.C. (1600?—Kane, p. 671) since it quotes from Dharma-śāstra-sudhānidhi (of Divākara, son of Mādhava and the sister of Nilakaṇṭha, author of the Mayūkhas composed in 1686). In the treatment of this topic it cites the Garuḍa-purāṇa text from Mādhava, the Smṛtyarthasāra passage omitting three lines and the Smṛti-candrikā passage from Dharma-śāstra-sudhānidhi changing the order and omitting certain items.

XXIII. Dharma-sindhu of Kāśinātha Upādhyāya is the latest work (dated 1790-91) to deal with this subject. It

gives a list of 44 of these prohibitions in verses slightly altered from the original text with a few of his own composition thrown in "for the satisfaction," as he says, "of the learned and for the lessening of the trouble of the unlearned."

Here Text XVII above is followed by :

मद्यं वर्ज्यं मद्वापापे मरणान्तविशोधनम् । सौत्रामण्यादियज्ञेऽपि
सुरापानग्रहस्तथा । मद्यभक्ष्या वामाद्यागमस्य तु न मानता ।
मीमांसादिनये सर्व्वशिष्टेषु तदनादरात् । औरसो दत्तकश्चैतौ पुत्रौ कलियुगे
स्मृतौ । अन्यान् दशविधान् पुत्रान् क्रीताद्यान् वर्ज्जयेत् कलौ । कौसुमे तु
स्वयंदत्तस्तृतीयोऽपि कलौ विहितः । ज्येष्ठादिसर्व्वभ्रातृणां समभागः कलौ
स्मृतः । आततायिद्विजानां नो धर्म्ययुद्धेन द्विसनम् । अर्ध्या नौयातुर्द्विजस्य
प्रायश्चित्तेऽपि न संसर्गः । गवार्थं ब्राह्मणार्थं च प्राणत्यागः कलौ न हि ।
शिशुस्य गुरुपत्नीषु न चिरं वासशीलता । आपदि क्षत्रवैश्यादिवृत्तिं विप्रः
कलौ त्यजेत् । कलौ द्विजो नहि भवेदश्वस्तनिकजीविकः । द्वादशाब्दं
गुरौ वासं सुखाग्निधमनक्रियाम् । यतेर्भिक्षां सर्व्ववर्णं कलौ त्रीणि
विवर्ज्जयेत् । नवोदकनिषेधश्च दक्षिणां गुरुवाञ्छिताम् । वृद्धरुग्नादिमरणं
जलाग्निपतनादिभिः । गोहृत्सिमात्रे भूमिष्ठे पयस्याचमनक्रियाम् । पितृवादे
साक्षिदण्डं कलौ पञ्च विवर्ज्जयेत् । घृतदुग्धादिभिः पक्वमन्नं शूद्रात् कलौ
त्यजेत् । भिक्षामटन्वती रात्रौ न वसेद् गृहिणां गृहे । विधूमे सन्नमुसले
काले भिक्षां कलौ त्यजेत् । चत्वार्य्यब्दसहस्राणि चत्वार्य्यब्दशतानि च ।
कलेर्यदा गमिष्यन्ति तदा त्रेतापरिग्रहः । संन्यासश्च न कर्त्तव्यो ब्राह्मणेन
विजानता । शपथाः शकुनाः स्वप्नाः सामुद्रिकमुपश्रुतिः । देवपूजोपहारादेः
संकल्पः कार्य्यसिद्धये । प्रश्नोत्तरं कालविदां संभवन्ति कलौ क्वचित् ।

THE PROHIBITED PRACTICES

The fifty-five items that make up the prohibitions in the Kali Age cover the different departments of Hindu life and conduct—religious, social and legal. It is difficult to place them in categories that do not overlap at all in view of the Hindu conception of life in which the distinction between duties, secular and sacred, between social conduct, ceremonial practices, law and morals is far from rigidly observed—all coming under the comprehensive designation of Dharma. The threefold division of the Kalpasūtras—into Śrauta, Gṛhya and Dharma—does not furnish a perfect principle of classification since the treatment of any practice in one or other is sometimes accidental. As Medhātithi says : “A Gṛhya act is that which is treated in Gṛhyasūtra.”¹ The authority of the Dharmasūtras is not confined to any particular Vedic school but extends over the conduct of the whole Aryan family and they often deal with ceremonial matters which properly pertain to the Śrauta Sūtras. As pointed out by Sir G. D. Banerjee in his Tagore Law Lecture : No such clear division is to be seen in the code of Manu, the highest authority, who in more instances than one provides purely religious sanctions for rules of civil life and Yājñavalkya himself treats of marriage, an important topic of law, in the section dealing with Ācāra. The principle adopted in the present treatise is roughly that of Yājñavalkya—the division into Ācāra, Vyavahāra and Prāyaścitta but the order is a little changed, the third being placed in the middle. In Ācāra the ceremonial topics are

¹ न गृह्यं नाम किञ्चित् कर्माणि । तत्र गृह्यस्मृतिकारोक्तं गृह्यमिति लक्षणया मतम्—
Medhātithi on Manu III. 67.

included and in Vyavahāra those that have a marked legal bearing and these naturally lead up to the conclusion—the present legal bearing of the prohibitions in the Kali Age. The order in which the Prohibitions are taken up for treatment is as follows :

I. A. Ritualistic and Ceremonial

	Number in the Texts
1. Agnihotra or fire-sacrifice—अग्निहोत्र, वेतापरिग्रह	XXX.
2. Natal Agnihotra—प्रजारक्षिपरिग्रह	XL.
3. Use of the Agnihotra-ladle after licking—लीढापरिग्रह	XVII.
4. Blowing of the fire with the breath—सुखाग्निधमन	XLII.
5. Human Sacrifice—नरमेध	VIII.
6. Horse Sacrifice—अश्वमेध	IX.
7. Royal Sacrifice—राजसूय	XXIX.
8. Cow Sacrifice—गोमेध	II.
9. Offering of the Cow to the Fathers, Guests, etc.— वरातिथिपितृभ्यः पशूपाहरणम्	XIII
10. Slaying of the sacrificial animal by the Priest —शामिव	XXVII.
11. The use of Surā (spirituous liquor) in Sautrāmanī— सौत्रामण्या सुराग्रहः	XXXII.
12. The use of Surā in general—मद्य	X.
13. Soma-selling—सोमविक्रय	XXVIII.
14. Initiation into <i>Satras</i> or prolonged sacrifices— सत्रदोषा	XI.
15. Worship of a deity under a vow—सधर्मक-प्रतिमापूजा	XXV.

B. The Duties of the Four Orders of Life

16. Long-continued student-hood—दीर्घकाल-ब्रह्मचर्य	VI.
17. Perpetual student-hood—नैष्ठिक-ब्रह्मचर्य	LIV.
18. Behaviour with the Preceptor's wife—गुरुवद- गुरुदारवृत्ति	XXXVII.
19. The Preceptor's fee—गुरुचीदितर्दाना	XLVI.
20. The use of the water-bowl or Kamaṇḍalu— कमण्डलुचर्या	V.
21. The householder's pious improvidence— अश्वसन्निकता	XXXIX.

22. Inferior occupations in distress—आपदवृत्ति	...	XXXVIII.
23. Śūdra cooks—शूद्रपाचकता	...	XLVII.
24. Śūdra-cooked food—शूद्रपक्वान्नभोजन	..	XXXV.
25. Offering of leavings—उच्छिष्टापवर्जन	...	LIII.
26. Stay-away from home—प्रवासित्व	...	XLI.
27. Distant Pilgrimage—दूरतीर्थयात्रा	..	XXXVI.
28. Retirement to the Forest—वानप्रस्थ	..	XIV.
29. Journey to Death—महाम्रस्थानगमन	...	XVI.
30. Suicide from pious motives—भृग्विघ्नमरण	...	XLVIII.
31. The Anchorite's life—संन्यास	...	XII.
32. Begging from all classes—सर्ववर्णं भिक्षाचर्या	...	XLIV.
33. Staying where night falls—ग्रहसाय-गृहस्थत्व	...	LI.

II. Ceremonial Impurity and Purification

34. Sipping of cow-drunk water—गोहृत्तिशिष्टपयसाचमनम्		XLIX.
35. Ten days' Impurity of Rain-water—नवोदके दशाहम्		XLV.
36. Curtailment of the period of impurity—अवसकोचन		XIX.
37. Purification after bone-picking—अस्थिसञ्चयनोद्वाहस्यर्ष		XX.
38. Prescribing of Death-penance—मरणान्तराद्यश्चित्तवधान		XX.
39. Sacrifice of life for Brahmins, etc.—परोद्देशात्मसंन्यास		LII.
40. Contact with sinners—पापिसंसर्गदोष	...	XXII.
41. Social intercourse after expiation—क्षेयात्म-महा- पातकनिष्कृति	..	XXIV.
42. Social intercourse with those corrupted with low-caste women—शीषितासवर्णादुष्टसंस्पर्श		XXVI.
43. Admission of women ravished into society— बलात्कृतासंसर्ग	..	XLIII.
44. Abandonment of a corrupt mother—गुरुस्त्रीत्याग	..	XXXIII.
45. Sea-voyage—समुद्रयात्रा		XV.
46. Social dealings with Sea-goers—शीषितनौयाह्वयग्रह	...	XXXIa.

III. Legal

47. Punishment of witnesses in disputes between father and son—पितापुत्रविरोधे साचिदण्डः		L.
48. Slaying of a Brahmin assailant—आततायिब्राह्मणवध		XXXI.
49. Theft from the vile after three days' fasting— हीनसत्तमभक्तहरण	..	XXXIV.

Number in the Texts

50. Marriage with the maternal uncle's daughter— मातुलकन्याविवाह	VII.
51. Inter-caste marriage—असवर्णाविवाह	XVIII
52. Levirate—नयोग	I.
53. Widow-remarriage—विधवाविवाह	IV.
54. Sons other than the legitimate and adopted— दत्तौरसैसरपुत्र	XXIII.
55. Preferential share of the eldest—अ्येष्टांश	III.

Text XIII—also found in *Nirṇaya-sindhu* and *Smṛti-kaustubha*—bars implicit reliance on omens and auguries—such as (śapatha) an oath at bathing at the Lolārka-tīrtha (near the Asi at Benares), (śākuna) auspicious signs such as a full pitcher at leaving home, (svapna) dreams, (sāmudrika) chiromancy, (upajācita) vows to make offerings to deities in certain events, (upaśruti) prognostications such as cries heard under certain conditions, and (ādeśa) oracles of astrologers and prophecies—which rarely succeed in the Kali age.'

Agnihotra

The prohibition of Agnihotra appears under two heads : (1) Agnihotra in general, and (2) Agnihotra of a special kind,—Natal Agnihotra. There is, besides, the prohibition of a practice connected with this sacrifice, that is, the licking of the large ladle (havanī) used in the sacrifice and the repeated use of the same without washing or cleaning.

No Vedic injunction is perhaps more imperative than the tending of the sacred fire by a Brāhmin.¹ Śat. Br., Kāṇḍa XII, Ch. IV, Br. 1. 1 says, Agnihotra is indeed a sacrificial session (*Satva*) ensuring death in old age, for people

¹ अग्निहोतृं जुहोति स्वर्गकामः Tait. (Sam. I, v. 9—in Śabara's commentary on Jaimini Sūtra I. iv. 3.

are set free from it either by old age or death. The sacred fires were three and bore different names¹ The abandonment of the sacred fires was a sin and ancient Smṛti texts abound with condemnations of such a lapse and expiations are prescribed therefor.² The difficulties of the daily performance of the rites on leaving home are touched upon in Śat. Br. XI. iii. 1. 6-8. According to one Vedic text to abandon the sacred fire is to incur the sin of slaying a Vira where the word 'Vira' is taken to mean the son.³ The Agnihotrin was required to be a married house-holder to whom a son was born.⁴ In the Aitareya Brāhmaṇa the question is asked whether a widower should perform the daily fire-offering and the answer is given in the positive.⁵ At another place in the Aitareya Brāhmaṇa the same question being raised the answer is given to the effect that if he does not marry again he should make over the duty to his son, son's son or daughter's son and Dakṣa says that a regenerate person should not be without an Āśrama even for a day.⁶

In regard to the penances for the abandonment of the sacred fires Manu prescribes different kinds according to the period for which one is without them.⁷ According to Viṣṇu to be without the sacred fire is one of the sins (XXXVII. 28, 34; also Manu XI. 66).

¹ गार्हपत्य, आहवनीय, दक्षिण ।

² Manu XI. 41 — अग्निहोत्रपविध्याग्नीन् ब्राह्मणः कामकारतः । चान्द्रायणं चरेन् मासं वीरहत्यासमं हि तत् । And again अग्निहोत्रपविध्याग्नीन् मासादूर्ध्वं तं कामतः । कच्छ चान्द्रायणञ्चैव कुर्यादेवाविचारयन् ।

³ वीरहा वा एष देवानां भवति योऽग्निमुदवासयते । Kullūka on Manu XI. 41.

⁴ जातपुत्रः कृष्णकेशो अग्नीनादधीत । Śavara on Jaimini I. iii. 2-3.

⁵ उदास्य पुनरादधीत भागधेयेनैवमेतं संवर्धयति अथो शान्तिरेव अस्मैषा ।

⁶ I. 10 अनाश्रमी न तिष्ठेत्तु दिनमेकमपि दिनः ।

⁷ Manu XI. 41.

In case of impurity of any kind expiation and re-habilitation of the sacred fire by means of a fresh rite as at the start were necessary. The question of fire-offering in the case of a widower is discussed in many places in the Smṛtis—Manu V. 168, Yājñavalkya I. 89¹. On the latter śloka Vijñāneśvara comments that the house-holder who has begotten no son or performed no sacrifice nor is entitled to any other Āśrama shall in the absence of another wife remarry and re-install the fire.² He quotes two texts to the effect that during the life of the first wife to cremate the second with the sacred fire is a sin equal to the drinking of Surā.³ On the death of the second wife the man who gives up the sacred fire is to be regarded as the slayer of a Brāhmin. These provisions are repeated by the later Smṛtikāras, such as Kātyāyana (XX. 9, XXI. 1).⁴

Vyāsa in I. 15 describing Tretāgnihotra as one of the sixteen Saṃskāras also shows the obligatory character of Agnihotra. Parāśara says that one who abandons the sacred fire turns into a vrsala or śūdra⁵. (XII. 29). In V. 13-14 he provides for the case of an Agnihotrin who dies

¹ Manu V. 168—भार्यायै पूर्वमारिण्यै दत्त्वाग्नीनन्यकर्मणि पुनर्दारक्रियां कुर्यात् पुनराधानमेव च । Yāj. I. 89 दाहयित्वाग्निहोत्रेण स्त्रियं वृत्तवतीं पतिः । आहरेत् विधिवद्द्वारानग्नीर्धैवविलम्बयन् ।

² अनुत्पादितपुत्रोऽनिष्टयज्ञो वायमान्तरिक्षनधिकृतो वा स्त्रान्तराभावे ।

³ द्वितीयाच्चैव यो भार्यां दहेद् वैतानिकाग्निभिः । जीवन्त्या प्रथमायान्त् सुरापानसमं हि तत् । मृतायान्त् द्वितीयायां षोडशिहीतं समुत्सृजेत् । ब्रह्मघ्नं तं विज्ञानीयाद् यश्च कामात् समुत्सृजेत् ।

⁴ मृतायामपि भार्यायां वैदिकाग्निं न हि त्यजेत् । उपधिनापि तत् कर्म यावज्जीवं समापयेत् * * स्वयं होमासमर्थस्य समीपमुपसर्पणम् । तवाप्यशक्तस्य सतः शयनाच्चोपवेशनम् ।

⁵ कृतदारोऽग्रपत्नीभ्या कृतवेद्यसा गृहं वसेत् । स्वगतं वित्तमासाद्य वैतानाग्निं न ह्यपयेत् । स्मार्त्तं वैवाहिके वज्रौ श्रौतं वैतानिकाग्निषु । कर्म कुर्यात् प्रतिदिनं विधिवत् प्रीतिपूर्वतः । साय-सन्ध्यामुपासते हुत्वाग्निं मृत्युसयुतः । वेताग्निसंग्रहयेति संस्काराः षोडश स्मृताः—Vyāsa I. 15.

Parāśara XII. 29—अग्निकार्यात् परिभ्रष्टा सन्ध्यापोसनवर्जिताः । वेदधैवानधीयानाः सर्वे ते वृक्षलाः क्षृताः ।

while away from home¹. Gobhila-smṛti a late work also prescribes the rehabilitation of the sacred fire when a man loses one of his many wives². It is clear from these passages that the practice of Agnihotra was beset with difficulties. It was eminently suited to a settled condition of society in which, assured of royal patronage or popular support, the Brāhmin lived at home and had rarely to leave it for the sake of livelihood. It also required proper training and Vedic learning. Without these the performance of Agnihotra is prohibited by Manu³. Since the time of the Buddha Vedic rites and sacrifices were falling more and more into desuetude, and strenuous efforts to revive them were made, as is well-known, by Kumārila *Parāśara who is placed in the 8th century pictures the Kali age as one in which Agnihotra languishes⁴. But inspite of the decay of Vedic rites and practices there has been even in later times a marked reluctance to give it up altogether. Maskari the commentator on Gautama is unaware of the prohibition. He quotes Jātukarṇi a Smṛtikāra of the third or the fourth century A. C. enjoining its practice⁵, and also a lesser known sage Vyāghra⁶. The

¹ V. 13-14 आहिताग्निर्हिज कश्चित् प्रवसन् कालवोदितः । देहनाशमनुप्राप्तकस्याग्नि-
वर्धते यद्दे । औताग्निहोत्रमंस्कारः श्रूयता ऋषिसत्तमाः ।

² ज्येष्ठा चेद् बहुभार्यस्य अतिचारेण गच्छति । पुनराधानमनैक इच्छन्ति न तु शौतमः ।
दाहयित्वाग्निभिर्भार्या सहशौ पूर्वसंस्थिता पातैश्चाथोऽग्निमादधात कृतदारोऽविलम्बितः । III. 4-5.

³ न वै कन्या न युवतिर्नात्यविद्यो न वालिशः । होता स्यादग्निहोत्रस्य नार्चो नारुंक्षतस्तथा ।
नरके हि पतन्त्येते जुहवतः स च यस्य तत् । तस्माद्वैतानकुशलो होता स्याद् वेदपारगः । XI. 36-37,

* Cf. Mahābhārata. Vana P. CXLIX. 34, CLXXXVIII. 32-33,
CXC 26, Śānti P. XC. 1-8 अग्निदेता तयो विद्या यज्ञाश्च सहदक्षिणाः । सर्वं एव प्रमादयन्ति
यदा राजा प्रमादयति । CCXXXVII. 68—दृश्यन्ते न च दृश्यन्ते वेदाः कलियुगेऽखिलाः ।
उत्सीदन्ते सयज्ञाश्च केवलाधर्मोऽपीडिताः ।

⁴ सोदन्ति चाग्निहोत्राणि गुरुपूजा प्रणश्यति । कुमार्यश्च प्रसूयन्ते तस्मिन् कलियुगे मदा ॥ I. 31.

⁵ अतीतकालं जुह्यादग्नौ विप्राय वाग्ययम् । नष्टेऽग्नौ विधिवद् दद्यात् कृत्वाधानं पुनर्हिजः ।

⁶ योऽग्नींस्थजति नास्तिक्यात् प्राजापत्यं चरेद्भिजः अन्यत्र पुनराधानं दानमिवमयैव च ।

prohibition of Agnihotra in the Kali age is not universally admitted. At any rate its validity is narrowly restricted. The prohibition of Agnihotra rests on three texts—one of *Nigama*¹ anonymously quoted in Hemādri's *Prāyaścitta-Khaṇḍa*, p. 90; another of *Vyāsa*² quoted in *Smṛti-candrikā* and *Nirṇaya-sindhu* and a third of *Laugākṣi*³ quoted in *Smṛti-candrikā*. This last passage distinguishes two kinds of installation of the sacred fire and says that the one kind obtained in *Pūrva-yuga* (either former yugas which preceded Kali or in the earlier part of the Kali age). But all these texts are qualified by Devala⁴, according to whom so long as the authority of the Vedas and the Caste-system are acknowledged both *Sannyāsa* and *Agnihotra* are to be practised. Upon a reconciliation of all these texts the conclusion is deduced that the second kind of installation (*ardhādhāna*)⁵ is permissible so long as respect for the Vedas, and the social structure comprising the four *Vaṇas* continue.⁶ Mr. Vaidya opines that

¹ Kalivarjya Text—XIII(b).

² Kalivarjya Text—X(a) This gives the year 1199 as the date from which Agnihotra was to cease

³ अङ्गोधानं स्मृतं श्रौतस्मार्त्ताग्नीष्टु पृथक् कृतिः । सर्वोधानं तयोरेककृतिः पूर्वयुगाग्रथा (श्रिता) ।

⁴ Kalivarjya Text X(b).

⁵ The two kinds of installation are thus distinguished स्मार्त्ताग्निर्दिष्टा विभज्यते । एकस्मार्त्ततोऽङ्गोद गृहीतेन अग्निना अरणिं प्रतप्य मन्थनद्वारा अग्निमुत्पाद्य श्रौताग्निं क्रियते । एतदङ्गोधानम् । यत् तु विभागमन्तरा समग्र एव स्मार्त्ताग्नौ अरणिप्रतापनम्, तत्तत्र श्रौताग्नि-समुत्पादनम्, तत्र सर्वोधानम् । स्मार्त्ताग्निः गृह्यः आवसथ्यः औपासन इत्यनर्थान्तरम् । तस्य आधानकालः—आवसथ्याधानं दारकाले दायादकाले एकैषाम् (पार-गृ-मू—२।२।१२) । भाष्योदिरिदृयादिर्वा (गौतम-ध-मू—५।७) । कर्म स्मार्त्तं विवाहाद्यौ कुर्वीत प्रत्यहं गृही । दायकालाहते वापि श्रौतं वैतानिकाग्निषु । याज्ञ-स—१।६७ ।

⁶ A different view is taken by Anantadeva in *Smṛti-kaustubha* : एतच्च सर्वोधानपरमिति अङ्गोधानमित्यादि लौगाक्षिवचनादिति केचित् । तत्र कृतिद्वयसुत्यर्थमन्ते षडितस्य विशेषणस्य परिरुद्धाश्ववर्णनं कलौ तदुत्तरार्द्धे चानिषेधपरत्वकल्पनाया अनुचितत्वात् ।

the prohibition of Agnihotra belongs to the period 1000-1200 A.D. and it was due to the greater vogue of the worship of the five deities;¹ He says, further, that “to a *Karmāṭha* the sacred fire is everything, to a “sannyāsin it is a nuisance.” “Śaṅkara acting in tune with the absorbing sentiment of the age which favoured the life of renunciation, preached sannyāsa and deprecated Agnihotra.” In the *Smṛtyarthasāra* in which the long list of Kalivarjyas is first found the prohibition relates to the installation of the *Prajāraṇi* by Brahmins for the progeny. Vyāsa to whom the text limiting the period for the practice of Agnihotra to the first four thousand years of Kali is ascribed distinguishes in I. 14-15 two kinds of installation of the sacred fire—*vivāhāgniparigraha* and *tretāgniparigraha*. The term *Tretāparigraha* is explained by some as the adoption of Sannyāsa along with the *Tridaṇḍa* but seeing that Sannyāsa is generally prohibited in the same text, the mention of this special variety once again would be illogical. In the *Dharma-sindhu*, a digest composed in 1790-91, the term is better explained as the adoption of Agnihotra.² The term *prajāraṇiparigraha* is explained by Ananta-deva in his *Smṛti-kaustubha* as the adoption of Agnihotra on the occasion of the Homa in Jātakarma (natal ceremony) which obtains in some branches. It is so explained in the *Kalivarjya-vinirṇaya*.³ The incident of Agnihotra

अतएव “यावद्वर्षेविभागेऽस्ति” इत्यादि देवलवचनं सर्वोपधान-प्रतिप्रसवार्थमित्यपि निरुक्तम् । वर्षाविभागाभावे वेदप्रवृत्त्यभावे च अधिकारसम्भवेनास्य वचनस्य न्यायप्राप्त्यानुवादत्वमित्यपि न शङ्काम् । उक्तसंख्योत्तरं व्यासवचनेन निवारितयोः सन्धासाग्निहोत्रयोर्वर्षविभागादिकालीऽप्यप्राप्तयोः प्रति-प्रसवार्थं भवात् सुख्यगोणकालप्रापकत्वेन विरोधपरिहारसंभवाच्चेत्यलम् ।

¹ पञ्चोपासना ।

² अग्निहोत्रस्वीकारः सर्वोपधानम् ।

³ केषाञ्चिच्छाखनां जातकर्महोमे अरणिपरिग्रहो विहितो यः — Cf. Jābāla, जाते कुमारैः-रणिं मथित्वा तस्मिन्नायुष्यहोमान् जुहोति, तस्मिंश्चुडाकरणोपनयनव्रतादिषु गोदानक्रियास्तस्मिन्नेवैत-सुहाह्वयेदतः स शालाग्निः । (cited by Raghunandana—Prāy. Tat., p 550, Jiv. Edn) विप्राणां सन्ततिजीवनाय जातारणिपरिग्रहः—*Kalivarjyavinirṇaya*.

known as the licking of the agnihotra-ladle and its use as such was also prohibited due to stricter ideas of ceremonial purity which grew up in later times. The *Havanī* was a large ladle into which offerings like milk were put in small quantities from a smaller ladle called *Sruva* before the whole was poured into the fire. After the Agnihotra Homa the ladle was licked and thereafter it was again used in the sacrifice. Sacrificial utensils like the *camasa* did not require cleaning. Thus Āpas. Śr. Sū. XXIV. 13 says that for drinking Soma, the *camasa* does not become unclean.¹

So also Baudh. Dh. S. I. v. 43-45.² That special cleaning of the ladle used in Agnihotra is not needed is elsewhere laid down in the same work (I. vi).³

Blowing the Fire with the Mouth

The prohibition of this practice was due to the ascendancy of stricter ideas of ceremonial purity. The sacrificial fire used to be kindled by blowing with the mouth. But it was objected to in early times. Thus Āpas. Dh. S. I. 15-20—Nor shall he blow on fire with his breath.⁴ This rule applied to one not clean and initiated, *aprayata*. The commentator Haradatta adds that in the case of one initiated this is not to be blamed.⁵ On this point there are contradictory texts: Vāj. Śr. S. : Fire was created from the mouth

¹ सोमपानार्थचमसस्य अशुचित्वाभावः ।

² अतैत्रसानामिवभूतानामुत्सर्गः । . वचनाद् यज्ञे चमसपात्राणां न सोमनोच्छिष्टा भवन्ति इति श्रुतिः ।

³ उच्छिष्टलिपोपहृतानामवतक्षणम् (28) । तदेतदन्यत्र निर्द्देशात् (30) । यथैतदग्निहोत्रे घर्माच्छिष्टे दधिघर्मे च कुण्डपायिनामयने दर्भैरङ्गि प्रक्षालनम् (31) । तेषु . . अग्निहोत्रहवत्यादीनामुच्छिष्ट-समन्वारस्ये लिपोपघाते च । दर्भैरङ्गि प्रक्षालनमेव शौच नावल्लेखनादि ।—Govindasvāmin on 30.

⁴ न चैनमुपधमेत् ।

⁵ अप्रयत इत्येव एवमग्निमप्रयतो नोपधमेत् । प्रयतस्य न दोषः ।

hence one should kindle it by blowing with the mouth.¹ Gautama IX. 33, on the other hand, forbids it.² This conflict of opinions is evident in Manu IV. 53. Haradatta says that in view of the Vājasaneyā text the blowing of the Śrauta (sacrificial) fire is permitted but not of the Smārta or domestic fire. And there is also another view that the rule is obsolete, a hollow reed or bellows being fit to be used to avoid saliva falling into the fire. Kātyāyana IX. 14-15 (corr. to Gobhila Smṛti VII. 135-136) shows the conflict of views : While about to offer the oblation or actually pouring it, one must not kindle the fire with the hand (*pāṇi*) or the sacrificial utensil called *vajra* or with a piece of wood but may do so with a fan. Some enjoin kindling with the breath since fire sprang from the mouth, *i.e.*, from uttered mantras and they apply the prohibition to the kindling of domestic fire.³ This conflict is ended by the Kalivarjya which applies to the kindling of sacrificial fire, ancient texts having prohibited the kindling of domestic fire.

Human Sacrifice

The prevalence of Human sacrifice in Vedic society is almost unanimously denied by Western scholars but indigenous Pandits although concerned to dispute practices such as widow re-marriage and the marriage with the maternal uncle's daughter have not been anxious to challenge that this sacrifice at one time obtained. On the other hand, the injunction for it is pointed out by the Digest-writers such

¹ सुखाङ्गाग्निं राजयत । तस्मान् सुखेनोपसमिस्थादिति । Haradatta quotes an anonymous text (possibly Kātyāyana's). सुखेनोपसमेदग्निं सुखाङ्गाग्निं राजयत ।

² अग्निं सुखोपधमनम् वज्रयेत् ।

³ होतव्यं च इति चैव पाणिशूल्कादौ । न कुर्यादग्निधमनं कुर्याद् वा व्यजनादिना । सुखेनैके धमन्त्यग्निं सुखाङ्गो(वेदो)ऽराजयत । नाग्निं सुखेनेति च यज्ञौकिकं योजयन्ति तत् ।

as Kamalākara and Anantadeva.¹ And the belief that great merit was gained by its preformance lies behind the relics of it that have come down to modern times.² There is also the mention of *Purusamedha* in Vedic passages but this is generally taken to have been a symbolical sacrifice. Certain verses (as in the *Puruṣa-sūkta*), however, read as clearly suggestive of the ritual of human sacrifice.³ The legend of Śunahṣepha (in *Āitareya Brāhmaṇa*, VII. 13. 18 and also *Kauṣītaki Brāhmaṇa*) is a definite piece of evidence for the existence of the sacrifice in ancient times. Hariścandra, an Ikṣāku king, the lord of a hundred wives, yet childless, had at last, under the boon of Varuṇa, an only son Rohita by name. According to his previous vow he was called upon by the deity to sacrifice this only scion. Delaying to do so, he was stricken with dropsy. At last, Rohita persuaded Ajigarta, a poor Brāhmin, to sell his son Śunahṣepha for a price to be sacrificed to the god. No man coming forth to immolate him, at last the poor father agreed to do so himself. But Śunahṣepha by hymning the god had his bonds loosened (whence his name *Devarāta*) and he was adopted as a son by the sage, Viśvāmitra. The refusal of all people to kill the boy and Viśvāmitra's rejoicing at the

¹ Yajurveda, Ch XXX, gives a long list of the classes of men prescribed for sacrifice for different purposes. Nirṇayasindhu cites from *Kandikā V*—ब्राह्मणे ब्राह्मणम् (आत्मैत) and *Smṛti-kaustubha* from *Kandikā XXII*—ते प्राजापत्याः। The ritual is thus described by Mahidhara under *Kandikā II*—ब्राह्मणराजन्ययोरतिष्ठाकामयोः पुरुषमेधसंचको यज्ञो भवति। चैवशुक्लदशम्यामारभः। अत्र त्रयोविंशतिर्दोषा भवन्ति द्वादशोपसदः पञ्च सुत्या इति चत्वारिंशद्दिने सिध्यति। अत्र यूषेकादशिनो भवति एकादशाग्निषोमीया, पशवो भवन्ति तेषाञ्च प्रतियूप् मध्यमे वा यूषे यथेच्छं नियोजनम्। Under *Kandikā XXII* ततः सर्वान् ब्राह्मणादीन् यूषेभ्यो विमुच्योत्सृजति।

² Dharmasindhu-Pariccheda II आषाढस्य शुक्लद्वादश्यां वामनपूजनेन नरमेधफलम्।

³ त यज्ञं बर्हिषि प्रीचन् पुरुषं जातमगतः देवा यद् यज्ञं तत्त्वानां अवध्नन् पुरुषं पशुम्।—*Rg veda X. 90.*

failure of the sacrifice suggest that this form of sacrifice was no longer common.¹ Narmedha must have fallen into disuse at a very early date and hence the early Smṛti-sūtras and Saṃhitās did not think it necessary to treat it as one of the current yet reprehensible practices calling for express prohibition. The prohibition occurs in Brahmapurāṇa, Garudapurāṇa and Bṛhannāradya-purāṇa. This prohibition was perhaps felt to be necessary as a warning or protest against the revival of human sacrifice as a Tāntrika or Kāpālīka rite. King Yaśovarman visited Bindhyavāsini to whom human sacrifices were still offered.

*The Horse Sacrifice and the Royal Sacrifice :
Aśvamedha and Rājasūya.*

Historical evidence of the celebration of Aśvamedha is obtained down to about the end of the first millennium of the Christian era. In Śat. Br. XIII. 5. 4 * a list is found of the performers of this sacrifice, Indrota, Daivāpa, Śaunaka (Janamejaya-Parikṣit), etc., down to Śatānika-Śatarātra and the list agrees more or less with that of the performers of the Royal sacrifice.† Puṣyamitra in the 2nd century B.C., is known to have performed it under the direction of Patañjali². The practice continued in the first six centuries of the Christian era, and to the time of Harṣavardhana and even later. The Cālukyas, according

¹ Thus Mahābhārata—Sabhāparva, Ch. XXII, Śl 11—नृणां ममालम्बो न च दृष्टः कदाचन । स कथं मानुषैर् यष्टुमिच्छसि शङ्करम् । But in Āśva-medhikaparva, Ch. III, Śl 8—its performance is advised राजसूयाश्चमेधौ च सर्वमेवञ्च भारत । नरमेधञ्च नृपते त्वमाह्वर युधिष्ठिर ।

* Also in Śāṅkhāyana Śrauta Sūtra XVI. 9.

† In Aitareya Brāhmaṇa VIII. 21-23.

² वर्माने लट् । इह पुष्यमित्रं याजयामः—Mahābhāṣya III. II. 123

V. Smith—Early History, p. 304.

to an inscription of Kirtivarman, dated 578 A.C., were devout followers of Vedic rites and performed many sacrifices including the *Aśvamedha*.¹ In a stone-pillar inscription of Skandagupta, Samudragupta (middle of 4th Cent., A.C.) is described as the reviver of *Aśvamedha* then long in abeyance during the Buddhist Kushan rule.² Indra-*viṣṇu* a Brahmin king is stated to have performed several *Kratu*s or sacrifices.³ Pravara Sena II is described as the daughter's son of Mahārāja Bhavanāga in a line of "*bathers after ten Aśvamedhas*."⁴

Kumāra Gupta I, a son of Vikramāditya and King in 413, performed it (Smith, p. 316). It seems that the horse-sacrifice was revived under the Gupta Kings although bloody animal-slaughter was on the wane under the influence of Buddhism and the Paurāṇik religions of a later date. The Karkataka dynasty of Kashmir is said never to have performed *Aśvamedha*.⁵ Pulakeśin the First (d 567 A.C.) is known to have performed the horse-sacrifice.⁶ Lalitāditya (according to Chāchānāmā) conquered the different quarters of the globe (including Baluchistan and Turkestan) about 712 A.D. like Samudragupta but refrained from it. Among the Pallavas of Kānci who were orthodox followers of the Vedic religion, this practice was found, as in the case of Śivaskandavarman.

¹ Badami Cave Inscription—Indian Antiquary, Vol. VI, p. 363.

² Corp. Ins., Vol. III, No. 12 विरोत्सन्नाश्वमेधस्यार्त्ता । Also proved by coins struck on the occasion and the stone-figure of a horse found in Oudh and now in the Lucknow Museum

³ Corp. Ins., Vol. III, No. 36.

⁴ दशाश्वमेधावभ्यस्ताना .. सहाराज्यीभवनागदीदिवः ।

⁵ Vaidya—Medieval India.

⁶ Smith—Early History of India, p. 441. Ādityasena of later Gupta Dynasty (642) performed it, *Ibid.*, p. 332

Among the Varmans of Kanauj who rose to prominence in the 7th and 8th centuries, adherence to the Vedic religion was marked. The conquests of Yaśovarman, their greatest King, are described by Vākpatirāja (in Gaudavaha) as having extended down to the Malaya coast and even against the Pārasikas although he was defeated finally by the Cālukyas. According to C. V. Vaidya, the first set of Hindu kingdoms in medieval India (600-800 A.C.) signalised the assumption of royal power by the performance of the Aśvamedha but not so the second set (800-1000 A.C.).¹ He opines that by 700 A.C. aversion to animal sacrifice reasserted itself and Vedic animal sacrifices died out finally. In the 9th century India was totally changed. Buddhism had, no doubt, disappeared except from isolated places like Magadha. But Vedic Aryanism also was no more. According to Todd horse-worship and Aśvamedha among the Rajputs prove their Scythian origin.² By the close of the tenth century the Rajputs began to assume their place in the political arena of India. The Rajputs, according to Mr. Ishwariprasad, idealised chivalry which led to fierce wars among themselves. The numerous Rajput princes hopelessly blinded by petty jealousies failed to visualise the future that lay in store for them. It is reasonable to conclude that the prohibition of Aśvamedha and Rājasūya in the Kali age was felt to be a necessity in these conditions. Rājā Jaycānd, the contemporary and rival of Pṛthvirāj, is said to have celebrated Aśvamedha.³

¹ Vaidya—Medieval India.

² Rajasthan, Vol. I, Ch. VI.

³ "Jeysing, the founder of Amber, it is said, intended to get up the ceremony of the *ashvamedha jugga* or sacrifice of the horse—a rite which... had entailed destruction upon all who had attempted it, from the days of Janamejaya the Pandu to Jeichund, the last Rajput monarch of Canauj"—Rajasthan, Vol. II, p. 1220. Jeysing's date—1st half of 18th century.

and, according to tradition, Śivāji in later times had the advice of Gāgābhata to perform the long-disused triumphal rite.¹

The performance of these two sacrifices is enjoined in the Vedas not merely in the case of princes. It was prescribed as an expiation for the slaying of a Brahmin (Gautama XIX).²

Some of the later Smṛtis also repeat the injunction of the sacrifice, such as Parāśara, XII.64 and Śankhalikhita (cited in Vir. Mit.—Rājanīti, p. 252) in the case of a Sārvabhauma king.³

That the Aśvamedha was a sacrifice difficult of performance was realised in Vedic times. The conditions for the performance of the horse-sacrifice were difficult of fulfilment as realised in early Vedic times Āpas. Gr. S. XXI. 1 : A Sārvabhauma (i e., a king of all the land) may perform the Aśvamedha. Also one not so (अपि वा असार्वभौमः). This addition is regarded by Keith as made by a later hand (cf. Baudh. XV 1 : A king victorious and of all the land should sacrifice). Warning is given in Tait. Br. III. 8, 9. 4 : He is poured aside who being weak offers the Aśvamedha (Keith's Introd. to Black Yajurveda, p. 132). It is spoken of as an *uśannayañña*. Śat. Br. XIII. 3. 3. 6 : Aśvamedha is indeed as it were a disused sacrifice, for what is performed thereof and what is not? Tait. Sam. V. 4. 12. 3 : Aśvamedha is indeed a disused sacrifice, for, say they, who knows if the whole of it is performed or not? Eggeling (S. B. E. XLIV, p. 334) has a note :

¹ Cf. Matsya-purāṇa, Ch. CXLIV, śl 83—यजन्ति ह्यश्वमेधेस्तु राजानः युद्धयोनयः ।

² ब्राह्मणोऽनेनैवा तरति सर्वं पाप्मानं तरति ब्रह्महत्या योऽश्वमेधेन यजते ।

³ Parāśara—यजेत वाश्वमेधेन राजा तु पृथिवीपतिः । पुनः प्रत्यागतो वेश्म वासार्ध-
मुपसर्पति ॥ Likhita—एष्टव्या बहवः । तत्रा यद्यप्येको गथा व्रजेत् । यजेत वाश्वमेधेन नीलं
वा व्रथसुत्सजेत् ॥

“ Perhaps, however, *Utsannayajña* rather means a decayed sacrifice, i.e., one which has lost (or in the usual performance is apt to lose) some of its original elements, whence the *Samṣkṛti* tune is to be used for the purpose of making up the lost parts.”¹

The prohibition of these two sacrifices rests on texts from Brahmapurāṇa, Garuḍa purāṇa, and Bṛhan-nāradya-purāṇa.

Cow-sacrifice

The prohibition of cow-killing is under these heads:—

- (a) The cow-sacrifice—गोमवः, गोमेधः, यज्ञे गोवधः ।
- (b) The killing of the cow by the Brāhmin in the sacrifice—गोसवे गोसंज्ञतिः ।
- (c) The sacrifice of cows in honour of the bridegroom, the guest, the manes or *pitṛs* or the king वरातिथि-पितृभ्यः पशूपाकरणक्रिया ।
- (d) The killing of the sacrificial animal by the priest is also prohibited—शमितम् ।

The extent to which and the forms in which animal sacrifice (*Paśu-yāga*) prevailed in Vedic times need not be detailed here. The three main divisions of sacrifices were *Iṣṭi*, *Paśu* and *Soma*. The extensiveness of *Paśu-yāga* led by a revulsion of feeling to the Buddha's teachings of *ahiṃsā* and as a result to a shrinkage of Vedic usages altogether. Cow-sacrifice is prescribed in the Vedas.² Akin to *Gosava* or *Gomedha*³ is *Gosavā* the name of

¹ The expression *utsannayajña* is otherwise interpreted—“Or as the *Saṃhitā* has it—essentially like the fire-offering an *utsannayajña*—a sacrifice of great extent and elaboration” (Keith's Introduction to the Black Yajurveda, p. 132).

² मैत्रावरुणो या वशामालमेत । cf V. S. 24. 8, M S. 3. 13 9; 170 7, V S. 28. 33.

³ Rgveda VII. 25 8.

an *ekāha* (one-day) sacrifice.¹ *Gosatra* occurs in Tait. Saṃ. VIII. V 1. 1. According to Gobhila-Gṛhya-sūtra III. vi x, *Gosavā* was 'a sacrifice by which a thriving condition for cows is obtained' (Max Müller). There was also a *Smārta-yāga* called *Śūla-gava*.² Hiran Gr. Sūtra II. 3. 8. 1 runs thus :—

Now (follows) the sacrifice of the *śūla-gava* (or spit-ox for propitiating Rudra and averting plague in cattle).

The killing of cows was also a part of other functions as honorific offerings to a Brahmin, a King or a guest.³ Sāṅkh. Gr. S. II. 15 (2): Let the *arghya* not be without flesh. (3) On the occasion of a sacrifice and of a wedding let (the guest say) make it (ready). (4) The animal offered to the teacher is sacred to Agni (5) If offered to an officiating priest, to *Brhaspati* (6) If to the father-in-law, to *Prajāpati* (7) If to a King, to Indra. (8) If to a friend, to *Mitra*. (9) If to a *Snataka*, to Indra and Agni. (10) Even if he performs more than one *Soma*-sacrifice during a year, let only priests who have received (from him) the *arghya*-reception officiate for him, not such who have not received. Sāṅkh. Gr. S. I. 12. 10: At the wedding one cow when the *arghya* ceremony has been performed; in the house one time; these are the two *Madhuparka* cows. There were thus two occasions in connection with wedding—on reception of the bride-groom and on arrival of the newly-married couple at their own house—this being offered by the *Ācārya*.

¹ Tait. Br II

² Pār. Gr. S. III. viii, Kāt. Śr. S.—Vidyādhara Śāstri's note.

“अथ शूलगवः” इत्यादिना विहितो गोद्रव्यकः कर्मविशेषः, अस्यापि कलौ निषिद्धत्वात् अननुष्ठानमेव, शास्त्रान्तरीयाणाम् “ईशानाय स्थालीपाकं अर्पयित्वा” (अ.प. गृ.सू. ९.३३) इति गोः स्थाने स्थालीपाकविधानादनुष्ठानम्।

³ Vās. IV—अथापि ब्राह्मणाय राजन्याय वा अभ्यागताय वा महोत्सवं वा महोज्ञं वा पचेद्देवमस्यातिथ्यं कुर्यात्।

Oldenberg has a note on Sāṅkh Gr. S. II. 15. 2 and 3—two verses “which seem to contradict each other. Perhaps it is not necessary except in the cases of a sacrifice and of a wedding to kill a cow but in any case, even if the cow offered to the guest be declined by him, the host should take care that some flesh be served at that meal.”

Nārāyaṇa on Āśvalāyana Gr. Ś. I. 24. 33 says that “in case of slaying, the feast is to be on its meat, in case of letting off, on some other.” Similarly, Buddhists distinguish between eating flesh and eating flesh of animal killed expressly to entertain a guest. (S.B E.)

Hiraṇ Gr. S. I. 4. 13 describes the procedure thus :

10. Then he utters to him the announcement “The cow.” 11. That (cow) is either killed or let loose. Even in the present-day weddings the barber cries out, “The cow,” “The cow.”

Āś. Gr. S. I. 24. 23 : When he has sipped water they announce to him ‘The cow.’

24. Having murmured, “Destroyed is my sin, my sin is destroyed,” he says “Om, do it,” if he chooses to have her killed.

Aṣṭakā was a *Śrāddha* performed on the four Aṣṭamī Tithis of the dark fortnights in Hemanta and Śiśira as required by Pāras. Gr. S. III. iii.² and it had to be per-

¹ पशुपाकरणपक्षे तन्मासेन भोजनम्, उत्सर्जनपक्षे मासेतरेण ।

² ऊर्द्धमाश्वयुज्यास्त्रिस्त्रीऽष्टका । Acc. to Mit. there are four such days and acc. to Raghunandana three—in Agraḥāyana, Māgha and in Phālguna. Aparārka on Yaj. I. 146 cites Paṭhinasi—पौषः श्रतयः कृष्णे भवत्स्त्रिस्त्रीऽष्टकाः, मार्गशीर्षे प्रथमत्रय इत्येके । and Śaunaka हेमन्तशिशिरयोश्चतुर्नामपरपक्षाणां अष्टमीष्वष्टकाः । Viśvanātha's bhāṣya—विद्यमानत्वेऽपि चतुर्थ्यास्त्रिषु कृष्णपक्षेषु क्रमेणानुष्ठेयमानत्वात्तच्च इत्युक्तम् । यदा स्वतन्त्रे च स्य नियोगपर्यन्तुयोगानर्हत्वात्तच्च इत्युक्तिः ।

formed with offerings of cakes, beef, green vegetables to Indra, Viśva-deva, Prajāpati and the Pitṛs (Manes) It was obligatory on the Agni-hotrin according to Āś. Gṛ. S. II. iv. 11.¹ Directions for the Aṣṭakā *Śrāddha* with the cow are given in Gobh. Gṛ. S. III. 10 and for the Anvaṣṭakā in IV. 1 and IV. 4 (*vide* Viṣṇu, XLVII)².

* In Khādīra Gṛ. S. III. 4 they are thus given : (5) On the middle (Aṣṭakā) a cow (is sacrificed). (6) Going in a northern direction (from the Fire) he should kill (the cow), the head of which is turned to the West, the feet to the North. (13) He should sacrifice with (the formula) : to the Aṣṭakā svāhā (14) The *abadānas* (portions cut off) he should have taken from all its limbs, (15) not from the left thigh and the lungs (16) The left thigh he keeps for the Anvaṣṭakā. (17) He should cook the *abadāna* and the mess of sacrificial food (stirring up the one and the other) with two different pot ladles (18) The juice he lets drop into a brazen vessel. (19) The *abadānas* he cooks on branches of the *plakṣa* tree (20) From each (*abadāna*) he should cut off (prescribed portions and put them) into a brazen vessel. (21) And from the mess of cooked food (22) let him take four portions or eight portions of Ājya and let him sacrifice it with "into Agni" (M.B. II ii ix). (23) let him make oblations out of the brazen vessels, each oblation with two of the following : (24) The oblation to (Agni) Sviṣṭa-kṛt with the eighth verse (25) At a sacrifice to the fathers the omentum (*bapā*) is sacrificed with "carry the omentum" (M.B.II. 3. 16) (26) At one to the Gods with Jāta-vedas. (27) If (the deity is unknown) assigning that. (28) As "to the Aṣṭakā." (29) An animal is the

¹ अथ श्रीभुतेऽष्टकाः पशुना स्थालीपाकेन च अयनद्वन्द्वौ यवसमाहरेत् अग्निना वा कक्षसुपौषेत् एषा मेऽष्टमेति, न त्वेवानष्टकः स्यात् ।

² अष्टकासु देवपूर्व शकमासापूर्वैः आहुः कृत्वा त्वनष्टकास्तष्टकावत् षष्ठे देवपूर्वमेव इत्यादि etc.

sacrificial fee at (the sacrifice of an animal). (30) A full vessel at (that of a mess of cooked food). Compare Pār, Gr. S. III. 3 on Śrāddha with meat. Āp. Dh. S. II vii. xvi : (25) Beef satisfies the manes for a year. (26) Buffalo's (meat) for a longer time than that. (27) By this permission of the use of buffalo's meat, it has been declared that the meat (of another) tamed and wild animal is also fit for offerings Vidyādhara Śarmā in his edition 'of Kātyāyana Śrauta Sūtra says : In the Kāṇva and Mādhyandina branches the rite has disappeared with the prohibition of beef. In other branches it is still obligatory since no meat is prescribed in them.¹

The cow was called *Ātithya* which Śat Br. III. iv. 1-2 thus explains Now as to why it is called guest-offering. He, the purchased Soma, truly comes as his (the sacrificer's) guest; to him (if offered) that (hospitable reception), even as for a King or a Brāhmaṇa one would cook a large ox or a large he goat—for that is human (fare offered to a guest) and the oblation is that of the Gods; so he prepares for him that guest-offering.

But the slaying of the cow was optional; it rested on the pleasure of the guest. Thus Pār. Gr. S. I. iii 26-31 When (the guest) has sipped water (the host) holding a butcher's knife says to him three times, "A cow." He replies : "The mother of the Rudras, the daughter of the Vasus, the sister of the Ādityas, the navel of immortality." To the people who understand me I say, "Do not kill the guiltless cow which is Aditi."² I kill my sin and N N.'s. sin Thus if he chooses to have it killed. But if he

¹ सायिकस्य अवश्यकर्तव्यता-बोधनेऽपि तत्र गोमांसस्य द्रव्यत्वेन विधानात् लोप एव । अस्मच्छाखीयानां तु येषां मांसस्य न विधानम् तेषां नित्यतयानुष्ठानम् ।

² प्र नु बोधं चिकितुषे जनाय मागामनाशमर्दिनि वधिष्ठ । मम चासुष्य च पाप्मानं हनोमीति यदालमेत । यद्यत्सृजेन्मम चासुष्य च पाप्मा हत ओसुत्सृजत दृष्टान्यस्त्विति ब्रूयात् । न त्वेवासांसीऽर्थं स्यात् ।

chooses to let it loose, he should say, "My sin and N.N.'s sin has been killed. Om : Let it loose : Let it eat grass." But let the *arghya* not be without flesh. On the occasion of a sacrifice and of a wedding let (the guest) say, 'Make it (ready)'. Even if he performs more than one Soma sacrifice during one year, let only priests who have received from him the *arghya*-reception officiate for him, not such who have not received it, for this has been prescribed in the Śruti (Ap. Gr. S. I. v. 13-17).

Āp. Gr. S. I. iii. 9-17 reviews the occasions for cow-killing ; (9) These are the occasions for killing a cow, (the arrival of) a guest, (the Aṣṭakā sacrifice offered to) the fathers, and marriage. Likewise Āp. Dh. S. in 2. 4 8. 7, A cow and the *madhuparka* (shall be offered) to the teacher, to an officiating priest,¹ to the father-in-law and to a King, if they come after a year has elapsed.

Doubts arose as to whether such meat-offering was fit to be eaten² and it is declared in Āp. Dh. S. I. v. 17. 30. (But the meat of milch-cows and oxen may be eaten. (31) The Vājasaneyaka declares 'Bull's flesh is fit for offerings'. That such doubts were expressed even in the earliest times is shown by Śat. Br. III. i. 2. 21 : Let him (the consecrated) not eat of either the cow or the ox, for the cow and the ox support everything here on earth. They (the Gods) bestowed on the cow and the ox whatever vigour belongs to other species (of animals) and therefore the cow and the ox eat most. Hence, were one to eat of an ox or a cow, there would be as it were un-eating of every thing or as it were a going on to the end (or to destruction) Such a one would be likely to be born again as a strange being (as

¹ Śaunaka cited by Aparārka

ऋत्विजो ब्रूवा मधुपर्कमाहरेत् स्नातकाद्योपस्थिताय राज्ञे चाचार्य्यश्चरपितृव्यमातृलानां च ।

² In R̥gveda the cow is called *aghnyā*—not to be slain—16 times. —Vedic Index.

one of whom there is) evil report such as 'he has expelled an embryo from a woman, 'he has committed a sin'; let him therefore not eat (the flesh) of the cow and the ox. Nevertheless Yājñavalkya said—'I for one eat it, provided that it is tender.'

But the ancient tradition lost its force by slow degrees. In the earliest Dharma-sūtras we find repeated the various views given in the Vedic texts quoted above. For the sin of expulsion of an embryo, *Baudhāyana* prescribes the expiation of *Gosava*, *Aśvamedha* or *Agniṣṭut* (II. 1). In II. iii. 63-64 he mentions the occasions for cow-sacrifice. *Gautama* 17.28¹ mentions the cow and the ox as forbidden meat. *Āpastamba* I. 26. 1 prescribes a penance for cow-killing.

Vaśiṣṭha XI² prescribes the performance of *Śrāddha* with meat. While subscribing to the cult of non-injury, he makes an exception in the case of sacrifice.

A tendency is thus evident to restrict animal sacrifice and meat-eating to the Śāstraic prescriptions. It is difficult to deny that this was due to the re-action against animal slaughter noticeable after the time of the Buddha, and to the wave of *Ahiṃsā* or cult of non-injury that Buddhism created. The position of *Manu* is in accord with that of the writers of the Dharma-sūtras just mentioned. He also recites the occasions for animal slaughter³ and while stressing the virtue of non-injury puts forth a strong plea in

¹ अथैव न, पवरमातुल्यश्रुतत्विजः । एतेऽप्यां शास्त्रविहिताः स्मृताः कालविभागशः । अश्विविहङ्गपाः प्रासाः क्रियारम्भे वरत्विजौ । मातुल्यश्रुतौ पूज्यौ बत्सरगतागतौ । 63-64

² भक्ष्यत्वमसुच्यार्थशकार, तस्मिन् भक्ष्यत्वपक्षे तयोरेव ग्रहणं यथा स्यान्न वत्सादीनामपि इत्येवमर्थ उपदेश — मस्तु रमायम् । *Vaśiṣṭha* is quoted in support—भक्ष्यौ त धेनव-इहौ मेज्यौ वाजसनेद्येकं विज्ञायेते । तवातिथिरुपेणागतस्य धेनवइहौ भक्ष्यौ इतरेषामभक्ष्यौ । वशिष्ठलिङ्गाद् यथा—पितृदेवातिथिपूजायामप्येवं पयून् हिंस्यादिति मानवमथापि ।

³ V. 41—मधुपर्कं च यज्ञं च पितृदेवतकर्मणिः अतैव पशवो हिंस्याः नान्यथेत्यब्रवीन् मनुः । Also III. 119, 120, 123.

favour of sacrifices ordained in the sacred texts.¹ Amongst the kinds of meat meant for *Śrāddha*, *Manu* omits beef and instead prescribes milk-preparations.² In him, therefore, there is a see-saw between the higher ideal of non-injury and respect for the letter of the Vedas. The scale turns a little more towards the former in *Viṣṇu*. He regards the killing of the cow as a minor sin and prescribes penalties for it in the shape of *Cāndrāyana* or *Parāka* or *Gomedha* or *Govrata* (L. 24). Chapter LI ends with a long discourse on non-injury repeating some of *Manu*'s verses. The cultus of the cow is developed in Chapter XXIII which sets forth the many virtues of the cow but he retains the old tradition still (LXXIV-1 and LXXX-2). *Yājñavalkya* is opposed to meat-eating on other than occasions prescribed.³ He also adheres to the old usages and like *Manu* omits beef from the kinds of meat fit for *Śrāddha*. *Kātyayana*'s ritualistic *Samhitā* (printed as *Gobhila* in the *Ānandāśrama* series) prescribes the performance of *Śrāddha* without meat,⁴ which seems to have become the rule about his time. *Śātātapakarma-vipāka*, Chapter II, details penances for cow-killing. This topic is dealt with at increasing length in the *Smṛti* works henceforth. *Kāśyapa* on penances for cow-killing is quoted by *Viśva-rūpa* on *Yājñavalkya* III-263 and also by *Maskari* on *Gautama* (22.18). He also quotes

¹ यो वस्त्रनवधक्षेत्रान् प्राणिना न चिकीर्षति । स सर्वस्व द्वितप्रेम्नः सुखमत्यन्तमश्नुते । V. 46. Also V 42-44.

² सवत्सरन्तु गव्येन पयसा पायसेन तु । III. 271. *Medhātithi* on III. 123—(meat-*śrāddha*) अथच मुख्यः कल्पस्तदभावे दधिघृतपयोऽपूपोऽदि विवाशिष्यते ।

³ प्राणान्ये तथा शङ्गे प्रोक्षितं हिज्रकाम्यया । देवान् पितॄन् समभ्यर्च्य खादन् मास न दोषभाक् ।—I. 179. महोच वा महार्ज वा शोचिष्यायं पकल्पयेत् ।—I 109.

⁴ I 18. वसिष्ठोक्तो विधिः कृत्स्नो द्रष्टव्योऽन निरामिषः । XVII. 25—स्थालीपाकं पशुस्थाने कुर्याद् यद्यनुकल्पितम् । अपयेत् तं सवत्सायास्तदप्या गोः पयस्यु ।

verses and a prose passage from Bṛhaspati.¹ Hemādri Prāyaścitta Khaṇḍa pages 80-96 gives extracts from Purāṇas mostly of a late date on the same topic.² With the reaction against bloody animal sacrifices necessarily came a feeling of disgust towards the function called *go-samgnapana* that is the killing of the cow by suffocation which used to be performed by a Brahmin.

Śāmitra (शमित्र) was merely one of the functions of the priest slayer—the *Śāmitā* Āś. Gr. S. I. 11 (1). Now (follows) the ritual of the animal sacrifice. (10) To the west of the *Śāmitra* (fire) he (the *Śāmitr*) kills (the animal), the head of which is turned to the East or the West, the feet to the North; and having placed a grass blade on his side of the (animal's) navel, (the performer) draws out the omentum, cuts off the omentum, seizes it with the two *Agni-sprāṇis*, sprinkles with water, warms it at the *Śāmitra* (fire), takes it before that fire, roasts it, being seated to the South, goes round (the two fires) and sacrifices it. In the *Jaimini Sūtra* as also 'in *Śabara-bhāṣya* and in the *Tantravārtika*, the place of the *Śāmitā* among the priests officiating at a sacrifice is discussed (III. vii. 28-29).

The use of Surā or Spirituous Liquor

The prohibition of drinking forms two topics in the *Kalivarjya* texts.—(1) the restriction of drinking in course of the sacrifice called *Sautrāmanī*—सौत्रामण्यामपि सुराग्रहणस्य

¹ बृहस्पतिना तु “द्वादशाह्निन गोघाती तस्मात् पापात् प्रमुच्यते । क्षीराहारी भवेत्तत्र क्षीर-
दध्याशनोऽपि वा । द्वादशरात्रं पञ्चग-ऋतारः षड् रात्र- वा यावत्काहारी गोष्ठे वसित ब्राह्मणान्
भोजयित्वा शुद्धेदित्याह बृहस्पतिः ।

² गोसव एव कारणं हनने सवपकेश्य तथोरभावात् गोहंसन गह्वितमेव कलियुगे ।

On the sacredness of the cow he cites *Mārkaṇḍeya Purāṇa*—
सर्वेषामेव वर्णानां ब्राह्मणं परमो गुरुः । तथा च पशुजन्तूनां गोमर्ततेति प्रगीयते । विप्रहत्या च
गोदत्या सममेतद्वयं नृणाम् ॥

च संग्रहः (2) the ban on spirituous liquor in general—on सुरा, मद्य or मधु.

No injunction in the Hindu sacred law is more insistent than that for abstinence from spirituous drink, and it dates from the remotest period. *Surā* is spoken of in Vedic literature with approval in some places¹ and with disapproval in others.² It is contrasted with Soma and seems to have been the drink of ordinary life.³ *Śat. Br.* XII. 7. 3. 8 There are both milk and *surā*—liquor; for milk is Soma and the *surā* liquor-food; through the milk he secures the Soma-drink and through the *surā* liquor-food And milk is the nobility (chieftaincy) and *surā* (liquor) the peasantry (clan); the milk he purifies after purifying the *surā*-liquor; he thus produces the nobility from out of the peasantry, for the nobility is produced from out of the peasantry.

Surā was the drink of men in assembly or Sabhā and caused broils.⁴ It is regarded as an evil thing, and classed with meat and dicing.⁵ In *Śat. Br.* 1 6 3.4 there is a fanciful explanation of the stammering speech of the drunken. From the one which was spirit-drinking further a sparrow sprang; whence the latter talks as if stammering, for he, who has drunk spirits, talks as if he stammers.

It had its place, however, in the animal sacrifice called Sautrāmaṇi. This sacrifice was so-called from its deity Sutrāmā (Indra). It was of three types—obligatory (*nitya*), optional (*kāmya*) and occasional (*naimittika*). When

¹ Rgveda I. 116.7; Atharvaveda XIV. 34.6, X. 6.5; Śat. Brāhmaṇa XII. 7. 3. 8.

² Rgveda VIII. 2. 12, VIII. 21. 14, Maitr. sam. I. 11. 6; II. 4. 2, IV. 2. 1

³ Tait sam I. iii. 3. 2

⁴ Rgveda VIII. 11. 12, xxi. 14 Kāth sam XIV. 6, Śat Brāh. I. vi. 3. 4, Mait sam II. iv. 2

⁵ Ath. veda VI. 70. 1, Ath. veda XIV. 1. 35-36, XV ix. 1-2.

obligatory, it was included in *haviryajña* (Gautama and Dhūrta-svāmin in his commentary on *Āpas Śr. S.*), performed for prosperity it was optional. If done for purification upon vomiting *soma*, it was occasional. The Brahmin alone was competent to perform it. The animals proper for sacrifice in the three types are respectively the goat, the sheep and the bull (*Āp Śr S. Prapā. 19*). And the respective deities are the two Aśvins, Sarasvatī and Indra. There was another type called *Kaukila-Sautrāmaṇi* which was performed with five animals. For this milk-cups as well as liquor-cups were prescribed¹. The former kind of offerings might also serve the purpose, says *Āp. Śr. S. XVI. 2. 23*. The *surā* or malted rice was bought from the Soma-seller in the *Sautrāmaṇi* sacrifice. *Śat. Br. XII. 7. 2. 12*. Let him rather buy them from a vendor of Soma for the *Sautrāmaṇi* is Soma. In *XII. 8. 1. 5*: For unpropitious as it were to a Brahmin is that drink—the *surā*-liquor.² The purpose of the rite (*Sautrāmaṇi*) has been conjectured by Hillebrandt to be the taking over from an un-Brahmanical and therefore though Aryan yet barbarous race of the *Surā*-drinking and the modelling of it on the analogy of a four-day Soma sacrifice and he thinks that *surā* was once a drink akin to *Madhu* and connected with the Aśvins. This is ingenious, says Dr. Keith (*Introduction to Black Yajurveda*, p. 122) but not very probable. And the view of Bloomfield is that the rite is a deliberate copy of a mystic process—the healing of Indra by the Aśvins after excessive *soma*-drinking.

The round of ceremonies spread over two years that made up *Rājasūya* concluded with *Sautrāmaṇi*.—an *Iṣṭi*—the object of which was to expiate for any excess that might

¹ The *Caraka-sautrāmaṇi* pertains to *Rājasūya*. The *Kaukila* was meant for those desiring Heaven.

² Truly the *soma*-juice is the Brahmin's food—*Śat. Br. XII. vii. 2. 1*

have been committed in consuming *Soma*-liquor. Thus Śat. Br. VI. 1. 5. 8 says—the *Soma* is truth, prosperity, light; and the *Surā* is untruth, misery, darkness. The *neṣṭr* taking the cups of *Surā* steps out by the back door. He walks round by the back of the hall and placing one (of the cups) in the *Vaiśya*'s, or *Rājanya*'s hand, he says "With this I buy him of thee." Elsewhere (XII. 8 1. 6) we have: "Other *Adhvaryus* hire some *Rājanya* or *Vaiśya* with the wine that he shall drink that (liquor) but let him not do this; for indeed the *Soma*-drink falls to the share of the fathers and grand-fathers of whoever drinks the liquor on this occasion." Here is the germ of the principle that it was no reproach to the *Kṣatriyas* and *Vaiśyas* to drink although it was so to a *Brahmin* "Verily from this sacrifice (that is *Sautrāmaṇi*) the man is born and whatever food a man consumes in this world, that (food) in return consumes him in yonder world. Now this sacrifice is performed by means of spirituous liquor (*Parisrut*) and spirituous liquor is not to be consumed by a *Brāhmaṇa*; he thus is born from that which is not (to be) consumed; and the food does not in return consume him in yonder world. Therefore this (sacrifice), the *Sautrāmaṇi*, is a *Brāhmaṇa*'s sacrifice. (Note): Therefore to a man of another caste the spirituous liquor would not be *ānādyā* but consumable and hence it would consume him in the other world." (Śat. Br. XII. 9. 1. 1).¹ As already pointed out, according to *Āpastamba-Śrauta Sūtra*, the use of *surā* in *Sautrāmaṇi* *Yāga* was optional.² But in *Vājapeya* it was not so. *Āś. Gr. S.* prescribes the use of *surā* in this context.³

¹ Oldenberg considers that the *surā* was never anything but a popular drink which was turned to sacred uses by the priests (Keith—Intr to *Black Yajurveda*, p. 122).

² पयोयज्ञा वा स्य । XIX. ii. 10

³ स्त्रोभ्यश्च सुरानाचमम् । In the context अग्नेर्यद्वत्कम् । *Nirṇayasindhu*.

The use of *surā* by Brahmins was forbidden at a very ancient date. Thus Kāthaka Saṃhitā XII. 12 prohibits the drinking of *surā*.¹ *Gautama* II. 12 repeats the same prohibition.² His Sūtra, as quoted by Haradatta, adds a rider that it is prohibited also in the case of Brahmacārins of the Ksatriya and Vaiśya castes.³ In Ch. XXIV a penance is prescribed for violation of this rule.⁴ *Baudhāyana* II. 1 et seq. lays down the penance as the scorching of the body with hot liquor. For drinking without knowledge (*amatyā*) there is another penance followed by re-initiation. And a śloka is cited to the effect that in such cases men of the three re-generate castes equally require fresh initiation.⁵ Drinking from a wine-vessel also calls for penance.

In *Āpastamba* the same rules are repeated. Every kind of spirituous liquor is forbidden. Entering into fire is a further penance prescribed.⁶

Vasiṣṭha in Chapter XX has the same provisions.⁷ He prescribes the drinking of scorching wine in the case of repeated or habitual indulgence. According to *Mitāksharā* on Yāj. III. 253 this applies to spirits other than *surā*.

Manu recites the rules found in his predecessors in XI. 94-95.⁸ In 94 he declares *surā* to be the excrement of

¹ तस्माद् ब्राह्मणः सुरा न पिबेत् ।

² मद्यं नित्यं ब्राह्मणः ।

³ मद्यं नित्यं ब्राह्मणं यच्च विद्यवेद्ययोस्तु ब्रह्मचारिणो ।

⁴ सुरापस्य ब्राह्मणस्योष्णामसिञ्चेयुः सुरामास्ये, सतः शुष्यदमन्या पाने पयोघृतमुदकं वायुं प्रतिवाह्य तस्मानि स ऋच्छः ततोऽस्य संस्कारः ।

⁵ अमन्या वारुणी पीत्वा ब्राह्मणः चतुर्विंशे वैश्यः पुनः संस्कारमर्हति ।

⁶ सर्वं मद्यमपेयम् । (I. 17. 21) सुरापः अग्निस्पर्शा सुरा पिबेत् । (I. 25. 3) । अग्निं वा प्रविशेत् (Ibid. 6) I. XXV. 11 prescribes the three years' penance.

⁷ मद्यपाने क्लोवयवहारि चैवम् । मद्यभाण्डे स्थिता आपो यदि कश्चिद्विजोऽर्धवित् । पञ्चोऽम्बर-विल्लपलाशानामुदकं पीत्वा तिरातेष्वेव शुध्यति । अथ्यासे सुराया अग्निवणां तां हिजः पिबेत् ।

⁸ सुरा वै मलमन्त्रानां पापमा च मलमुच्यते । तस्माद् ब्राह्मणराजन्यौ वैश्यश्च न सुरा पिबेत् । 94. गौडी माखी च पैष्टी च विज्ञेया त्रिविधा सुरा । यथैवेका तथा सर्वा न पातव्या द्विजीतमैः । 95.

food and hence sin itself and forbids it for the three higher castes. In 95 he divides *surā* into three classes and all three are forbidden to Brahmins. Thus the restriction is total in the case of the highest caste; for the other two malted rice (that is *surā*) alone is prohibited. *Manu* as usual is stricter than his predecessors for in XI. 68 he holds even the smell of *surā* as a sin causing loss of caste and eating from a wine-vessel as a contaminating sin (71).

Viṣṇu (XXII. 81-83) has a ten-fold division and all the kinds are forbidden to Brahmins as impure in their very touch, but not so in regard to the two other castes. His śloka 81 is the same as *Manu* XI. 95.¹

Yājñavalkya repeats *Manu*'s injunctions in III. 252-255. In the last of the ślokas he declares that a Brāhmin woman tasting liquor is transformed into an unclean animal.²

Uśanas prohibits the drinking as well as the touching of liquor.³

Samvarta I. 115 echoes *Manu* XI. 95. His changed reading of the last word, however, makes the prohibition applicable to all the three regenerate castes.⁴

The Kali ban on drinking may be regarded as a mere re-statement of the old law, even though it be construed as the restriction of the drinking of the two varieties Gaud and Mādhvi for Kṣātriyas and Vaiśyas (*vide* Mit. III. 253).⁵

¹ माधूकमैचवं टाङ्गं कौलं खार्जूरपानसं । सद्विकार-समाध्वोके मौर्यं नारिकेरजम् ।
अमेध्यानि दशैतानि मद्यानि ब्राह्मणस्य तु । राजन्यश्चैव वैश्यश्च स्पृष्टैतानि न दुष्यत ।

² पतिलोकं न सा याति ब्राह्मणी या सुरां पिबेत् । इहेव तु शुनी गृध्रो यूकरी चाभिजायते ।

³ मद्यमदेयमपेयमनिर्गच्छमिति ।

⁴ द्विजैः सदा for द्विजोत्तमैः ।

⁵ Cf. Kumāravacana (cited in *Prāyaś. Viv*, p. 111)—सुरापान-
निषेधोऽयं जात्याश्रय इति स्थितिः । न पिबेद् ब्राह्मणो मद्यं निषिद्धमपि चापरम् ।

Mitākṣarā in the same passage cites a text of *Pulastya* showing the 12 kinds of spirits.¹

Brhaspati quoted in the same commentary says that on drinking with knowledge, purification is obtained through swallowing scalding liquor till it burns to death.²

Brhat-Yājñavalkya says that the Kṣatriya and the Vaiśya incur no sin even by deliberate drinking.³ *Brhat-Viṣṇu* cited in *Mitākṣarā* and 'Madana-pārijāta' gives 10 classes as in *Pulastya* omitting *āriṣṭa* and *drākṣa* and forbids all the varieties to a Brahmin. *Vijñāneśvara* has a note to the effect that *surā* properly means malted rice and that it is forbidden to all the three castes. He argues that *surā* is so used in *Sautrāmaṇī* but he does not state the ban on the use of spirituous liquor in that sacrifice.⁴ He cites the authority of *Vyāsa* to show that liquors other than this particular kind are permitted to the other two regenerate castes.⁵

The exact import of the prohibition is differently construed by different writers. According to *Dāmodara*, it means the prohibition of all kinds of liquor in the case of the second and third regenerate castes and in Tāntric rites.⁶ *Smṛti-*

¹ पानसं द्राक्षमाधूकं खाज्जरं तालमैक्षवं । मधूतं सैरमारिष्टं सैरिथं नारिकेरजम् ।
समानानि विजानीयान् मद्यानेकादशैव तु । द्वादशं तु सुरा मयं सर्वेषामधमं स्मृतं ।

² सुरापाने कामकृते ज्वलन्तीन्ता विनिक्षिपेत । मुखे तथा विनिर्दग्धो स्रतः शुद्धिमवाप्नुयात् ।

³ कामादपि हि राजन्यो वैश्यो वापि कथञ्चन । मद्यमेव सुरां पीत्वा न दोषं प्रतिपद्यते ।
(*Vṛddha-Yājñavalkya* cited in *Prāy. Viv.*, p. 109)

⁴ ब्राह्मणस्य तु मद्यमात्रनिषेधोऽस्तुत्पत्तिप्रभृत्येव, राजन्यवैश्ययोस्तु न कदाचिदपि गौड्यादि-
मद्यप्रतिषेधः । शुद्रस्य तु न सुराप्रतिषेधः नापि मद्यमात्रप्रतिषेधः । * * * अथच सुरानिषेधो-
ऽनुपनीतस्य अनूदायाश्च कन्याया भवत्येव ।

⁵ उभौ मध्यासवच्चौबी उभौ चन्दनचर्चिती । एकपर्यङ्कशयिती दृष्टौ मे उशवाज्जुनौ ॥

⁶ मद्यं गौडीमाध्वादिरूपं क्षत्रियवैश्ययो न ब्राह्मणस्य । *Kalivarjya-vinirṇaya*—यद् वा
यद् वामागमादौ तैर्वर्णिकपुरस्कारेणोक्तं तैर्वैवेद्यादौ मद्यं तदिह निषिध्यते । अथवा विनायकशाली
मूलजातशाली च पुष्यं चित्रं सुगन्धं वा सुरा न विविधामपि सुरापीलिकामासाद्यैर्नैवेद्यैर्भोजनादिभि-
रित्येताभ्यां यन्मद्यं प्राप्तं तच्च ।

kaustubha criticising his view says that the restriction applies to the use of spirituous liquor in Vedic sacrifices and in propitiatory ceremonies prescribed in the Smṛtis. It has no reference to the use of Surā in Tāntric rites ¹

Further the expression सौत्रामण्यां सुराग्रहणस्य संग्रहः does not mean social intercourse with one who uses Surā in such rites, but only the practice of using spirituous liquor in this particular sacrifice. ²

Soma-selling

The drinking of soma in sacrifices was a privilege of Brāhmins (*vide* Sec. on Surā). The performance of the optional (*kāmya*) soma-sacrifice was competent to well-to-do householders. Thus Manu (XI. 7-8) permits it to one who had more than 3 years' provisions. But the selling of the sacred plant by a Brahmin was held in disesteem to the same degree that its drinking was esteemed. Compare soma-purchase in *Kṛṣṇa-Yajurveda Kāṇḍa* I, *Prapā* ii. 7. According to Eggeling the purchase was symbolical (S. B. E. Vol. XXVI. 71. n. 1). The plant was obtained from the ritual of the conquered peoples; it was a drug causing an orgiastic result which was really strange to the Aryan temperament; this would explain among other things the contempt shown for the soma-seller in the Vedic ritual. This was due to the inglorious part played by the seller in the little mock-drama of soma-selling and buying described in *Āpastamba*, II. 71. The soma-seller was beaten (*Śat. Brāh. Kāṇḍa* III,

¹ वस्तुतस्तु मेधपदोक्तयज्ञसाहचर्यात् श्रोतेषु यज्ञेषु सौत्रामण्यादिषु स्वात्तेषु विनायकशान्त्यादिषु विनियुक्तमयनिषेधोऽयम् । यत्तु वामागमादौ विहितस्य निषेध इति तदमत् ।

² सौत्रामण्यां यजेत वा सौत्रामण्या इत्यादिना विहिते । अथ सुराग्रहान् ग्राहति इति विहित-सुराग्रहग्रहणस्य संग्रहः प्रयोगविधिना अनुष्ठापनम् । यत्तु संग्रहपदस्वारस्यानुसारेण सुराग्रहणस्यैत्यनेन सुराग्रहण-कर्तार (१) विवक्षितत्वात्तस्य संग्रहो व्यवहार इति व्याख्यातं तत्र ।—*Kalivarjya-vinirṇaya*.

Adh. iii. Brāhmaṇa 3) and driven away with blows (Kāt. VII 8-27) given with a speckled cane. He buys off the *soma*-cow with another cow and then dismisses her to the cowpen and if the *soma*-seller objects, he is to be beaten with a speckled cane. The Mānava Śr. Sūtra simply says that they are to give the *soma*-seller something for compensation

The *soma*-selling Brahmin was regarded as degraded. Thus *Manu* (III. 158) classes him with an incendiary, a poisoner, a sea-voyager as unfit to be invited to sacrifices and exequies (हव्य कव्य). Gifts to him only ensure filth and dirt in life hereafter (III. 180). *Vaśiṣṭha* ranks him with a thief, an impotent man and as one whose food should not be eaten (Ch. XIV). Such is also the rule laid down by *Yājñavalkya* (I. 165). The Kalivarjya text (XII) of Śrīdhara formally prohibits this practice¹ (*vide* Mādhavācārya on Jaimini III. vii. 15).

Initiation into Satras

Soma-sacrifices were of different varieties—the one-day (*ekāha*), the *ahīna* (from 2 to 12 days) and *satra* (from 12 days upwards). The last was a long sacrificial session consisting of a hundred *Agniśtomas*, *Ukthyas* and *Atirātras*. In Ait. Br. and Harivaṃśam it is described as lasting for 13 to 100 days and sometimes for 1000 years. The word *saṃvatsara* (year) in this context signifies a day (Kāty. Śr. Sūtra, Adh. 1, Kaṇḍikā VI). Such a protracted sacrifice was beset with difficulties. Śat. Br. XII. ii. 1.1 says that a year's sacrifice is like crossing an ocean. Elsewhere in the same Brāhmaṇa the difficulties in the way of performance of *satras* are dwelt upon: Such indeed are the wild ravines of sacrifice and they (take) hundreds upon hundreds of days' carriage-drives; and if any venture into them without

¹ क्रय एव ज्योतिष्टोमाङ्गलेन श्रुतेन न विक्रयः। न चाविहितसत्विजः कुर्वन्ति। तस्मादन्वो विक्रेता।—*Nyāyamālāvistara*.

knowledge, then hunger and thirst, evil-doers and fiends harass them, even as fiends would harass foolish men wandering in a wild forest; but if those who know this do so, they pass from one duty to another, as from one street into another and from one safe place to another, and obtain well-being, the world of heaven. Kāty. Śr. S. I. vi. 16.

Śavarabhāṣya on Jaimini Sūtra VI. vi. 16-23 has a discussion on this topic and declares the Brahmin alone competent to do it.¹ According to Dāmodara this prohibition invalidates the performance of *satras* in the Kali age—*satras* in which the *yajamāna* (institutor of sacrifices) took part.

Worship of an Idol under a Vow

The meaning of the title of this prohibition is disputed. According to Dāmodara it means 'a sacred vow of lifelong worship of idols like Viṣṇu' taken in words like 'This image only I will worship as long as I live'² In ancient works, the practice is sometimes condemned, such as the worship of Mahādeva in Baudh. Gr. Sūtra—Praśna VII. Those who performed such worship were called *haradvijas*. Likewise the *vaiḥhānasas* were a sect of Vaiṣṇava Brahmins who attended on an idol of Viṣṇu for payment. Devala Brahmins have always been held in disesteem. Manu and *Sannyāsa* (II. 3) and *Nārada-parivrājaka* (III. 1) *Upaniṣads* declare them ineligible for *Sannyāsa*. Ananta-deva disputes this interpretation on the ground that there is no *Śāstraic* sanction for such practice. His explanation turns on the preposition *abhi* (अभि) and he says that *abhyarcana* means worship with a view to gaining a direct vision of the deity such as is illustrated in the case of

¹ गवामयनादौ सप्तदशवराश्चतुर्दशतिथयः सवसासीरद्वित्यादिना विहिता दीक्षा यजमानानाम्, अनेन च सवदीक्षासुखेन विप्राणां सवाधिकार एव कलौ पर्युदस्यते—कलिबर्ज्यविनिर्गमः ।

² So also Nirayasinidhu—वेतन गृहणेन प्रतिमापूजा ।

Dhruva and others in the Purāṇas. But he also fails to cite any Smṛti text either enjoining or prohibiting such worship. The view of Dāmodara seems to be better and the prohibition confirms the condemnation of *devalas* or priests attached to private temples who perform the worship for pay.¹

Lifelong and long-continued Śtudentship

Of the two kinds of Brahmacārins the *naiṣṭhika* (perpetual) and the *upakurvāṇa* (would-be householder), the former continued the life of the student-celibate to the end, till his death (Manu II. 243) in the house of his preceptor and thereby attained his highest spiritual destiny (II. 249). The latter (otherwise known as the *snātaka*) was according to Pār. Gr. Sū. II. 5. 32 of three varieties according as he finished by completing studies or his vows or both.² For the student-celibate the rule is laid down in Baudh. Dh. S. 1. 2. 1 that he is to study for forty-eight years or twenty-four or twelve for each Veda.³ On this Govinda-svāmin comments that these alternatives turned on capacity. Baudhāyana⁴ adds ' Since life is uncertain. And there is the Vedic text that one should instal the sacred fires while yet one's hair is black.'⁵ In Āpas. Dh. S. I. 2. 12. 14, the periods of residence are prescribed as forty-eight, thirty-six or twenty-four years and in sūtra 16 he adds that 12 years should be the shortest term. Gautama says

¹ Manu III. 152—Kullūka's comment—देवलः प्रतिमापरिचारकः, वर्त्तनार्थ-
त्वन्नेतत् कर्म कुर्वतीत्यं निषेधो न तु धर्मार्थम् ।

² See under the Preceptor's Fee

³ अष्टचत्वारिंशद् वर्षाणि पौराणं वेदब्रह्मचर्यम्, चतुर्विंशति हादश वा प्रतिवेदम् ।
भवत्सरावसे वा प्रतिकाण्डम् ग्रहणान् वा ।

⁴ एते च विकल्पाः सामर्थ्यापेक्षया द्रष्टव्याः ।

⁵ जीवेतस्यास्थिरत्वात् । कृष्णकेशोऽग्नीनादधीतेति श्रुतिः ।

that 12 years should be given to the study of each of the Vedas. *Manu* III. 1. 2 lays down the rule that 36 years' residence in the family of the preceptor for the study of three Vedas or one-half or one quarter thereof should be the period.¹ Similar provision is found in *Vaśiṣṭha* VII. 1.² In *Yājñavalkya* 1. 36 the period for the study of one Veda is shown as either 12 or 5 years.³ The term of 12 years for one Veda is prescribed by Devala (cited in *Madana-pārijāta*, p. 96).⁴ The curtailment of the period to 5 years in *Yāj.* is significant as showing that the extreme length of the period enjoined in the earlier *Smṛtis* was felt as a hardship.⁵ Śavara (not later than 5th century A.C.) commenting on Jaimini Sūtra 1. 3. 2 remarks on the absurdity of the prescription.⁶ He says that the *Smṛti* injunction is unreliable since it is evidently the outcome of a desire to conceal lack of manhood by those who framed it. And a rule for which a secular motive can be found is not an authentic *Smṛti*. Also on 1. 3. 23 he says that the rule is opposed to the Vedic injunction that a man while yet black-haired having begotten a son should consecrate the

¹ षट्विंशद्विकं चर्यं गुरौ वैदिकं व्रतम् । तद्विकं पादिकं वा गृहणान्तिकमेव । वा वेदानधीत्य वेदौ वा वेद वापि यथाक्रमम् ।

² चत्वार आश्रमाः * * * तेषां वेदमधीत्य वेदौ वेदान् वा अविशीर्णं ब्रह्मचर्यं ऽपि निश्चेत् मावसेत् ।

³ प्रतिवेदं ब्रह्मचर्यं द्वादशाब्दानि पञ्च वा । गृहणान्तिकमित्येके ।

⁴ अशक्त्येत्त षट्विंशद्विकं चर्यं चतुर्विंशतिर्द्वादश वा प्रतिवेदम् This text of Devala in prose was evidently other and earlier than the Devala-smṛti in *Smṛti-samuccaya* (Ānandāśram Edn.).

⁵ Also proved by Āpas. Dh S. I. v 4-5. Hence in these later times no sages are born on account of the violation of the rules (of student-life).

⁶ हेतुदर्शनाच्च । अपुंस्त्वं प्रच्छादयन्त्याष्टचत्वारिंशद् वर्षाणि वेदब्रह्मचर्यं चरितवन्तः । तत्र एषा ऋतिरवगम्यते ।

sacred fires. *Kumārīlabhaṭṭa*¹ in his *Tantravārttika* on the same *Sūtra*, however, seeks to reconcile the different texts prescribing periods of studentship and to meet the criticism of his predecessor. He says that the different alternatives are found in different authentic *Smṛtis* and, therefore, there is no conflict between them, since they lay down alternatives. *Gautama*, he says, after declaring the observance of 12 years' studentship for those who wanted early to become householders had laid down the second alternative in the form of 12 years for each Veda or 48 years in all.

Modern commentators hold that by this particular prohibition perpetual studentship is barred.² Some also think that studentship with a view to the study of the Veda is restricted but not perpetual studentship. Hence the practice of the latter among the people of the South is quite in accordance with the *śāstras*. The prohibition of life-long studentship rests on two texts—*Brahmapurāṇa* (quoted by *Aparārṇava*) and *Bṛhannāradyapurāṇa*.³ (Chap. XXIII verse 15).

Behaviour towards a Preceptor's Wife

The meaning of the title is disputed. According to Anantadeva it means residence on the part of a perpetual student-celibate till death under the care of the preceptor's

¹ अष्टचत्वारिंशद्वै वेदब्रह्मचर्यार्चरः स्यापि स्मृतविषयपञ्चान्तर-विकल्पोपनिषत्सनादाश्रयान्तर-विषयत्व-सम्भवाद् वा विरोधाभावः । तथाहि वेदानधीत्य वेदी वा वेदं वापि यथाक्रमम् । सामर्थ्या-श्रमयोग्यत्वमङ्गीकृत्यैतदुच्यते । गौतमेनापि द्वादश वर्षाणि एकवेदब्रह्मचर्यं चरेदिति प्रथमकल्प-माशुगार्हस्थ्यप्रतिपत्त्यर्थमुक्त्वा द्वितीये कल्पे द्वादश प्रतिवेदं वा सर्व्वेति अष्टचत्वारिंशत-परिग्रहं कृतः ।

² Kalivarjya-vinirṇaya refers to the view of Rāmacandrācārya—दोषकालं ब्रह्मचर्यम् इति पादार्थं संगृह्य ब्रह्मचर्यमिति नैष्ठिकमिति रामचन्द्राचार्योक्तिः ।

³ अतश्च प्रत्यूहप्रवृत्तनैष्ठिकं ब्रह्मचर्यं विधित एव तत्कला वध्यनुष्ठेयमिति भाति—Kalivarjya-vinirṇaya. Also Anantadeva नत फलकामं प्रति नैष्ठिको ब्रह्मचारी तु वसीदाचार्यसन्निधौ इति प्रकृत्य “अनेन विधिना देहं साधयन् विजितेन्द्रियः” ब्रह्मलोकमवाप्नोति न चेह जायते पुनरिति नित्यवद्विहित-नैष्ठिकब्रह्मचर्यनिष्ठतिरपूर्वा विधीयते । गौरवात्—Smṛti-kaustubha, p. 474.

wife as under the preceptor himself.¹ In this construction he differs from Dāmodara who understands by the expression the observance of the forms of salutation towards the wife of the Guru as towards the Guru himself.² But the wording exactly agrees with *Manu's* śloka II. 247.³ According to Medhātithi 'behaviour as towards the Guru' in this śloka means duties like offering of the gains of begging, etc.,⁴ and according to Kullūka it means service, etc.⁵ The usage goes back to the Vedic times. Thus Āpas. Dh. S. 1. 2. 6. 1 : Every night he shall put his teacher to bed after having washed his (teacher's) feet and after having rubbed him. I. 2. 7. 27 He shall behave towards his teacher's wife as towards the teacher himself, but he shall not embrace her feet nor eat the residue of her food. The same rules occur in *Gautama* (Ch. 2).⁶ *Vaśiṣṭha* (VII) lays down that after the death of the Ācārya the student-celibate shall tend the sacred fire till the dissolution of his body; here there is no mention of the wife and the son of the preceptor.⁷ In *Viṣṇu* the order in which the alternative courses should be adopted is somewhat different from that in *Gautama*.⁸ According to him upon the demise of the Ācārya, the perpetual student should seek residence with the Ācārya's son or with his wife or his *savarṇas*. Failing these he should tend the sacred fire (XXX. 45-46). In II. 210 *Manu* declares that like the Guru, his wives of the same *varṇa* are to be honoured.⁹ Hārīta

¹ Smṛti-kaustubha.

² Kalivarjya-vinirṇaya.

³ आचार्यं तु खलु प्रेते गुरुपुत्रे गुणान्विते । गुरुदारि सपिण्डे वा गुरुवद्वृत्तिमाचरेत् ।

⁴ गुरुवद्वृत्तिः भैक्ष्यनिवेदनादि ।

⁵ गुरुजनशुश्रूषा ।

⁶ Gautama—तदभाष्यापुत्रेषु चैवम् । नोच्छिष्टाशनक्षपनप्रसाधनपादप्रक्षालनोपमर्दनोपसंग्रहणादि । विप्रोऽथ उपसंग्रहणं गुरुभाष्याणां तत्पुत्रस्य च । नैके युवतीनाम् ।

⁷ Vaśiṣṭha—आचार्यं प्रमोक्षेऽग्निं परिचरेत् आशरीरविमोक्षणात् ।

⁸ तत्राचार्यं प्रेते गुरुवद्वृत्तिं वृत्तं । गुरुदारिषु सवर्णेषु वा । तदभावे अग्निशुश्रूषेर्नैष्ठिको ब्रह्मचारी स्यात् । Chap XVIII, 45-46

⁹ गुरुवत् प्रतिपूज्याश्च सवर्णा गुरुयोषितः ।

Samhitā, a later Smṛti work, also leaves out the teacher's wife in this connection.¹

According to some texts, perpetual studentship is prohibited in the Kali age.² In view of these the prohibition of this detail about the mode of life is superfluous. This circumstance along with the words in *Manu's* text with which the title exactly agrees shows Dāmodara's interpretation to be better. But even that is not free from objection. The forms of salutation enjoined by the earlier writers on sacred law towards the teacher's wife are restricted in the later works. And so far as these restricted forms meant for observance by Brahmacārins are concerned, the rules still have their application.

The Preceptor's Fee

Brahmacārins of the Snātaka variety were of three kinds—those that completed studies, those that completed their vows and those that completed both (Pār. Gr. S. and Hārīta).³ On completion of his term, the Brahmacārīn had to pay a fee to his preceptor (Āś. Gr. S.).⁴ Āpas. Dh. S. 1. 7 19⁵ says that the fee had to be paid according to the capacity of the pupil. And the Sūtras following permit the fee to be procured even from an *Ugra* or *Sūdra*. The fee had to be up to the pupil's highest capacity, for the debt to the *guru* was unrepayable. *Vir. Mit.* quotes Vedic texts to the effect that the whole earth did not

¹ तस्मिन्नेव नयेत् कालमाचार्यं यावदायुषम् ।

तदभावे च तत्पुत्रे तच्छिष्ये वाथवा कुले ॥ III. 14.

² नैष्ठिकं ब्रह्मचर्यम् ।

³ त्रयः स्नातका भवन्ति विद्यास्नातको व्रतस्नातको विद्याव्रतस्नातक इति—Kāṇḍa II, Kāṇḍikā V, Sūtra 32.

⁴ विद्यान्ते गुरुरर्थे निमन्त्रा स्नातः कृतानुज्ञानस्य स्नानम् ।

⁵ कृत्वा विद्यां यावतीं शक्तं याद वेददक्षिणामाहरेद् धर्मतो यथाशक्ति ।

suffice for the purpose.¹ The payment was not, however, absolutely indispensable. In fit cases the mere permission of the Guru to the pupil to pass on to the next order of life might be enough. *Manu* (II. 245-6) specifies the different kinds of payment.² On this *Mitra Miśra* comments that, in case of capacity, what is desired by the Guru is enjoined to be given. Failing that, a cow may be given for, according to Śruti, the cow is called the *vara* or the boon desired.³ (Cf. *Yāj.* I. 51.)⁴ *Vyāsa* (or *Vedavyāsa*) declares that the fee had to be paid as desired by the Guru.⁵ On the word Cow in this text *Vir. Mit.* cites a Śruti text which says that the cow is the boon desired since there is no measure of its value. *Laghuhārīta* cited in the same digest says that the debt to the teacher who teaches even a single letter could not be repaid with any equivalent on this earth.⁶ *Kālidāsa's* *Raghuvamśam*, Canto V, Ślokas 20-21 imply that the fee demanded by the preceptor had to be secured anyhow. *Mitākṣarā* speaks of two alternatives according to capacity, age, etc.,—the fee desired or the preceptor's permission.⁷ Anantadeva (of the 17th century)

¹ *Sāma-veda*—यद्यात्मा इत्या परिगृहीता धनेन पूर्णा दद्यादितदेव भूयः । *Tāpaniya Śruti*—सप्तहोपवती भूमिर्दक्षिणार्थं न कल्पते ।

² न पूर्वं गुरवे किञ्चिदुपकुर्वीत धर्मवित् । स्नातस्तु गुरुणाज्ञप्तः शक्त्या गुर्वर्थमाहरेत् ॥
चेत्तं हिरण्यं गामश्च कञ्चोपानहमासनम् । धान्यं शाकञ्च वासांसि गुरवे प्रीतिमावहेत् ॥

³ अनेन सत्या शक्तौ गुर्वभिलषितमेव देयमित्युक्तं भवति तदसम्भवे गौर्त्वा गौर्त्वा वर इति श्रुतेः ।

⁴ गुरवे तु वरं दत्त्वा स्थायीत तदनुज्ञया । वेदं व्रतानि वा पारं नीत्वा ह्युभयमेव वा ।

⁵ गुरुगुण्यया विद्या समाप्य विधिवद् द्विजः । स्थायीत गुर्वनुज्ञातो दत्त्वास्मै दक्षिणं हि गाम ।
समाप्य वेदौ वेदान् वा वेदं वा प्रसभं द्विजः । स्थायीत गुर्वनुज्ञातः प्रदत्तोदितदक्षिणः ॥ (I. 43)

⁶ *Vir. Mit.*—गौर्वरत्नं मावाहीनत्वात् । गोस्तु मावा न विद्यते इति श्रुतिः । *Laghu-Hārīta* cited in *Vir. Mit.*—एकमप्यत्र यस्तु गुरुः शिष्ये निवेदयेत् । पृथिव्यां नास्ति तद्वत्त्वं यददत्त्वा त्वनृणी भवेत् ॥

⁷ वरमभिलषितं यथाशक्ति दत्त्वा स्नायादशक्तौ तदनुज्ञयाऽदत्तवरीऽपि एषाञ्च पक्षाणां शक्ति-
कालायपेक्षया व्यवस्था । On *Yāj.* I. 51.

says that by the fee was not meant any payment but the gift demanded by the preceptor, as in the case of Śrīkṛṣṇa reviving the dead son of Sāndīpani.¹ The Kalivarjya text repeals formally the ancient usage as to the obligation to pay the demanded fee.

The Use of the Water-bowl or Kamaṇḍalu

The bar against the use of the water-bowl whether by the Brahmācārī or the Sannyāsī in the Kali age illustrates the ascendancy of stricter ideas of ceremonial cleanliness in later times. The Kamaṇḍalu is a wooden or earthen bowl to hold water. The smaller ones are called *Karakās*. The Kamaṇḍalu was carried by Snātakas and by Yatis (*Vaiṣṇ. Sm. S. X 1, Baudh. Dh. S. 1 3 8*; also *Manu VI. 54-55*).² Very particular directions are given by Baudhāyana : (1) Those learned in the Vedas prescribed the mode of use of the *Kamaṇḍalu*. (3) Should his mind so misgive that it has become impure he should burn it all round in fire made of Kuśa or other grass (4) Hereafter should it be polluted by dogs or crows it is ordered to be burnt to the colour of flame. (5) On pollution by excrements, etc., giving up. (6) (In case of its being broken) in the fire or in the *Kamaṇḍalu* do the Homa a hundred times with the *Vyāhrtis* or simply repeat them. (7) Picking up the potsherds and throwing them into water and repeating the sacred Gāyatrī not less than ten times, take another. (9) If taken from a *Sūdra*, do it a hundred times and if

¹ विद्यान्ते गुरुः, रणया दक्षिणादानं यथा सान्दीपनये श्रीकृष्णो मृतपुत्रस्य न तु गुरुवे दक्षिणा-
मात्रम् ।

² गृहस्थाश्रमौ हे यज्ञोपवीतं वैश्वं दण्डं कमण्डलुञ्च धारयेत्—*Vaiṣṇ. Sm. Sūtra*.
दाद्यायणी ब्रह्मसूती वेणुमान् सकमण्डलु — *Yāj. I. 133*. मेखलामजिनं दण्डमुपवीतं कमण्डलुम् ।
अप्सु प्राप्य विनष्टानि गृह्णीताभ्यानि मन्त्रवत्—*Manu II. 64* स्नातकानां द्वितीयं स्यादन्तर्वासक्त-
द्योत्तरम् । यज्ञोपवीते हे यष्टिः सोदकञ्च कमण्डलुः । *Vasīṣṭha Ch. XII*.

from a *Vaiśya* half a hundred, if from a *Kṣatriya* 25 and if from a *Brahmin* 10 times. The minutiae of the manner of use are also set forth, e.g., as to whether the *Kamaṇḍalu* is to be filled or not, the answer is that it should be with the *Prāṇāyāma*. Whether the *Kamaṇḍalu* used according to directions conduces to ceremonial purity or not is also considered. (14) Having washed the hands and feet with the water of the *Kamaṇḍalu*, one is unclean towards others so long as wet but cleanses only himself; hence he is known not to do any other act. (15) Baudhāyana says that so it is, since every time washing is done up to the elbow, washing with other water (is needed). (16) Also they cite. The *Kamaṇḍalu* was prescribed of yore by Brahman and the chief sages for the purification of the twice-born, hence it should be carried always. Washing, drinking and the performance of the *Sandhyā* are to be done with it without any misgiving, if one desires one's good. The learned should do so with a pure mind and must not think it wrong ¹ (18) While easing himself, he holds it in his right hand and in the left the water for washing. (19) This succeeds with *Sādhus*, that is, good men. The word *Sādhus* means those who do not doubt the import of the Śāstras.² Āpas. Dh. S. I 3.25 Bringing all he obtains to his teacher he shall go a-begging with this vessel morning and evening (and he may) beg (from everybody) except low-class people unfit for association (with Āryas) and *abhiśastas*. The use of the *Kamaṇḍalu* is prescribed by the writers of the *Samhitās* also, e.g., *Manu* II. 64, IV. 36 and *Vaśiṣṭha* in dealing with the life of the *Snātaka*.³

¹ कमण्डलुर्विजातीना शौचार्थं विहितः पुरा । ब्रह्मणा मुनिसुख्यैश्च तस्मात्तं धारयेत् सदा ॥ ततः शौचं ततः पानं सन्ध्योपासनमेव च । निर्विशङ्केन कर्तव्यं य इच्छेच्छेयमात्मनः ॥ कुर्याच्छुद्धेन मनसा न चित्तं दूषयेद् बुधः । I. iv. 19-20.

² साधूनां निर्विशङ्कित-शास्त्रार्थानाम् ।

³ *Manu*, IV 36 — वैश्वी धारयेद् यष्टिं सोदकञ्च कमण्डलुम् । यज्ञोपवीतं वेदञ्च शुभे रुक्मे च कुण्डले ॥ *Vaśiṣṭha*, Ch XII—यज्ञोपवीते हे यष्टिः सोदकञ्च कमण्डलुः ।

The *Kamaṇḍalu* was carried also by those in the third and fourth orders of life (Yāj. III. 58)¹ This sage does not mention the water-bowl in the case of the Brahmachārin. The *Mitākṣarā* on this śloka cites an anonymous Smṛti and also a text of *Devala*²

— *Aparārka* quotes from *Brahma-purāṇa* a text forbidding the practice.³ *Dāmodara* remarks that the expression “carrying the *Kamaṇḍalu*” refers to long-continued studentship which is otherwise forbidden. *Madanapārijāta* takes it to signify life-long celibate studentship.⁴ But the prohibition of this practice may also be taken to follow from the same text. It cannot similarly refer to the third stage of life, the adoption of which is separately prohibited.

From *Baudhāyana Sūtra* it is clear that the usage was a matter of comment which is the origin of the prohibition. Thus *Baudh. Dh. S. I 4. 23* :— Just as the utensil for Soma-drinking called *camasa* is sacred through contact with the soma, the *Kamaṇḍalu* also is always sacred through contact with water.⁵ (25) Therefore without it he should not go a-journey, nor to the boundary of his habitation, nor from house to house. (26) Some say, nor even a single pace and others, not beyond the flight of an arrow. (27) If he desires the increase of his merit.

The usage was a subject of frequent controversy. *Govindarāja*, the commentator of *Manu*, dealt with it in his

¹ सर्वभूतहितः शान्तस्त्रिदण्डौ सकमण्डलुः । एकारामः परिव्रज्य भिक्षार्थं यामसाश्रयेत् ॥

Yājñavalkya.

² Anonymous—वीन् वैश्वान् दण्डान् मूर्धप्रमाणान् दक्षिणेन पाणिना धारयेत् सव्येन सोदकं कमण्डलुम् । *Devala*—काषायौ सुण्डस्त्रिदण्डौ कमण्डलु-पवित्र-पादुकासन-कन्यासाचः ।

³ Kalivarjya Text III.

⁴ कमण्डलुविधारणमिति नैष्ठिकप्रज्ञाचारी गृह्यते—*Mad. Pār.*, p. 16

⁵ Cf. *Vaśiṣṭha*, Ch. XII—अथ, पाणौ च काष्ठे च कथितं पावकं शुचि । तस्मादुदक-पाणिभ्याम् परिस्नय्यात् कमण्डलुम् ॥ पथ्यग्निकरणं ह्येतन्मनुराह प्रजापतिः । कृत्वा चावश्यकार्याणि आचामिच्छीचवित्ततः ॥

Smṛti-mañjarī referred to in his Ṭikā on *Manu* III. (24) *Madana-pārijāta* says that by the term “carrying of the *Kamaṇḍalu*” the life-long student-celibate is understood. According to *Anantadeva* the prohibition is of the carrying of the water-bowl at all times prescribed as a duty for the *Snātaka* and not that enjoined by *Baudhāyana* from a motive of increase of merit.¹

Govindasvāmin on Baudh. Dh. S. I. 3. 1 regards *Kamaṇḍalu-caryā* as a duty of the *Snātaka*.

Despite the prohibition the water-bowl is carried by *sannyāsins*,

Making No Provision for the Morrow

This practice was an extreme form of pious improvidence commended in the ancient works on sacred law. Householders were of four classes—*Vārtāvṛtti*, *Śālina*, *Yāyāvara* and *Ghorācāriḥa* (Vaikh Gr. Sū. VIII 5). Of this the third kind, that is *Yāyāvara*, was a Brahmin in easy circumstances who followed the six pursuits proper to his caste and tended the sacred fires and regularly entertained guests, and performed the sacrifices. In Baudh. Dh. S. III. 1. 4 the term is defined as one who lives by the best avocation.² *Devala* cited in *Mitākṣarā* defines the same as the better type of householders who avoiding priestly work, teaching, acceptance of gifts and saving of money, live by the modes called *Sila*, *Uñcha* and *Aśvastānikatā*, i.e., picking up paddy by single ears or by bunches from the field or making no provision for the morrow at all. For this type the highest ideal was prescribed as the avoidance of all

¹ मनुना स्नातकधर्ममध्ये विहितं यत् सदा यज्ञोपवीतवत् कमण्डलुधारणं तन्निषिध्यते यक्षु वीधायनीकं सधर्मकं निषिध्यति इति तत्र । धर्माधिक्येऽपि कर्ममेदाभावात् । धर्माणामेव निषिधाङ्गीकारे तद्व्यवस्थाया अन्याय्यत्वात् ।—Smṛti-kaustubha, p. 470.

² ह्यथा वरया यातीति याथावरत्नम् ।

saving. *Manu* IV. 7-8: Those that saved for one year were called “Kusūladhānya”, those that stored up for six months were called “Kumbhīdhānya” according to *Medhātithi*.¹ According to *Kullūka* the periods are three years and one year respectively. Others again stored up substance for three days but the highest type did not provide for the morrow at all. Each following kind excels the preceding one, for by cutting down the means of livelihood one gains the worlds beyond (*i.e.*, Heaven, etc.). *Yājñavalkya* I. 128² closely repeats the same rule in one verse. *Aparārka* does not know of the Kali ban on this rule. He explains *Yājñavalkya*’s text thus: So also these practices are for the Brahmin for avocations like acceptance of gifts, etc., are not possible to any other. *Vijñāneśvara* also is unaware of the prohibition. Referring to the rule of life here laid down, he says that it is addressed to the best-conditioned and self-controlled *Yāyāvara* and not to Brahmins as a class; for then there would be a conflict with texts which require three years’ provision in a *soma*-drinker. The prohibition in *Śrīdhara* shows that the mode of life was either obsolete or an impossibility in the changed social conditions of the age.

Inferior Occupations for Brahmins in Distress

The earlier writers on the sacred law generally deal with the occupations of Brahmins—both ordinary and exceptional. The former comprise teaching, priesthood and acceptance of gifts (*Manu*, X. 76).³ But failing these some other means of livelihood were also prescribed under definite restrictions.

¹ कुसुलधान्यको वा स्यात् कुम्भीधान्यक एव वा । त्र्यहैहिको वापि भवेदश्वस्तनिक एव वा ॥ चतुर्णामपि चैतेषां द्विजानां गृहमेधिनाम् । ज्यायान् परः परो ज्ञेयो धर्मतो लोकजित्तमः ॥—*Manu*.

² कुसुलकुम्भीधान्यो वा त्र्यहैहिकोऽश्वस्तनोऽपि वा । जीवेद्वापि शिलोञ्छेन श्रेयानेषां परः परः ॥

³ षष्ठान्तु कर्मणामस्य त्रीणि कर्माणि जीविका । याजनाध्यापने चैव विशुद्धाच्च प्रतिग्रहः ॥

—*Cf.* *Baudh. Dh. S.*, I. X 2 which enumerates all six.

Gautama says that the occupation of a Kṣatriya or of a Vaiśya may be adopted but the Brahmin must not trade in certain unworthy commodities and in no case should he adopt the occupation of a Sūdra.¹ *Baudhāyana* (II. ii. 77. 8) says that the next lower occupation should be adopted and he adds that according to *Gautama* that of a Kṣatriya being too cruel was not fit for a Brahmin. Trading (indiscriminately) in all kinds of wares he holds as a degrading sin so also the service of a Sūdra.² Among minor sins he specifies certain kinds of occupation, such as *making of drugs, village-priesthood, histrionics, theatrical teaching, tending of cattle*.³ And he also prescribes penances for degrading pursuits.⁴ Agriculture and learning he holds to be inimical to each other (I. 5. 85).⁵

Āpastamba also formulates the general principle that trade is not permitted to a Brahmin but in distress it may be adopted to the exclusion of forbidden commodities. He also mentions these forbidden articles (I. 20. 10, 11, 12).⁶ But exchange of some articles is allowed. In I. 21. 3 he says that a Brahmin must not reduce himself to extreme distress by avoiding forbidden trades.⁷ And also after making a livelihood he should desist (Yāj. III. 35). These rules are repeated by *Manu* in Ch. 10 in which he further

¹ तदलाभि चववृत्तिः । तदलाभि वैश्यवृत्तिः । तस्य अपण्यम् । पशवश्च हिंसा 'योग' । सर्वथा वृत्तिरशक्तावशौद्रेण । प्राणसंशयं ब्राह्मणोऽपि शस्त्रमाददतीति । (Ch. VII)

² सर्वपण्यैर्व्यवहरणम् । शूद्रसेवनम् ।

³ भेषजकरणम् । शमशानम् । रङ्गोपजीवनम् । नाट्याचार्यता । गीमहिषीरक्षणम् । (61)

⁴ तेषान्तु निर्व्यंशः । पतितवृत्तिर्हो संवत्सरौ (80) । Permitted trades are—
पशवश्चैकतीदन्ता अश्वा च खवणोद्भूतः । एतद् ब्राह्मण ते पण्यं तन्तुशरजनीकृतः ।

⁵ वेदः कृषिविनाशाय कृषिर्देविनाशिनी । शक्तिमानुभयं कुर्यादशक्तस्तु कृषिं त्यजेत् ॥

⁶ अविहता ब्राह्मणं स्ववणिज्या । आपादि ववहरेत पण्यानामपण्यानि व्युदसन् ।

⁷ नात्यन्तमन्ववस्तेत् । वृत्तिं प्राप्य विरमेत् ।

Yāj.—निकीर्त्य तामथात्मानं पारयित्वा पथि न्यसेत् ।

lays down that in order to avoid the occupations of a Kṣatriya or a Vaiśya, a Brahmin may be a teacher to degraded classes or accept gifts from them. (Śl. 103.) He is not polluted thereby for he is like fire and water. The Śūdra's life is strictly forbidden.¹

Nārada who made a re-cast of *Manu's* *Samhitā*, repeats most of these rules. In I. 57 he says: "At no time must a Brahmin follow the occupation of a man of the vile caste or a vile man that of a Brahmin"; in either case expulsion from the caste would be the immediate consequence. In 59 he echoes *Āps. Dh. S I 21. 4* and *Yāj. III. 35*. He says further: When, however, a Brahmin takes delight in these occupations (of a Kṣatriya) and persists in them, he is declared a *Kāṇḍapr̥sthā* (a professional soldier) and must be expelled from society because he has swerved from the path of duty, i.e., he must not be invited to obsequial feasts and other religious ceremonies—*Asahāya*.

In S. III (corr. to *Manu X. 117*) he declares that a Brahmin must never resort to usury, not even in extreme distress.²

Parāśara permits agriculture to a larger extent (2. 3. 4. 5) but cruelty to beasts must be avoided.³ The Brahmin is freed from the incidental sin by performing sacrifices. *Parāśara Smṛti* (8th century) has been taken by Mr. Vaidya to prove that agriculture was largely pursued and hence these dispensations. In the *Āpastamba Samhitā*—a late work—these verses bearing on agriculture also occur.⁴

¹ Cf. *Vaśistha*, Ch. II—ब्राह्मणं क्षात्री, क्षत्रियेण वैश्यसम्बन्धिनी । वैश्येन च शूद्रोत्थेव खानन्तरङ्गीनवृत्तिरेव । अजीवन्तः स्वधर्म्येणानन्तरागमपापीयसी वृत्तिमार्तष्ठेरन् ।

² ब्राह्मण, क्षत्रियो वापि वृद्धिं नैव प्रयोजयेत् ।

³ षट्कर्मनिरतो विप्रः कृषिकर्माणि कारयेत् ।

⁴ हलसृष्टगव धर्म्मौ षड्गव जीवितार्थिनाम् । चतुर्गव नृशंसाना द्विगवन्तु जिघामिनाम् ॥
द्विगवं वृषघातिनामित्यपि पाठः ।

THE PROHIBITED PRACTICES

The prohibition of distress-occupations in the Kali Text (XI) is not seriously taken note of by the digest-writer. *Mitākṣarā* did not know of this prohibition. *Madana-pārijāta* does not mention the ban. It merely says (p. 233) that even in distress to a Brahmin his own occupation is better than other occupations.¹ He quotes *Manu* (X. 97, 101-103) to show that rather than adopt the livelihood of other castes, a Brahmin should be a teacher or a priest to degraded classes, and, in the next place, accept gifts from one and all.² The occupations pursued since the time of the Kalivarjya and at present by Brahmins of the highest status in society show how little importance is attached to this particular prohibition in the Kali age.

Sūdra Cooks and Sūdra-cooked Food

Vedic literature is not without traces of the idea of pollution by the touch of *Sūdras*. The *Sūdra* is not to milk the cow for the *agnihotra*.³ Sometimes, however, he is given a place in the *Soma* sacrifice.⁴ The *rathaḥkāra* may place the sacrificial fire like the twice-born classes.⁵ Contact with a *Sūdra* and eating in company with him are not banned except for the preservation of sacrificial or ritual sanctity. The danger of contact with their food is emphasised in later writings. *Āpastamba* 1. 18. 13. 14 allows eating from all castes who observe their duties under the

¹ आपयप्यव्यहृतिभ्यः स्वहृतिरेव ब्राह्मणस्य ज्ञायसीत्याह मनुरेव ।

² वैश्यहृतिमनातिष्ठन् ब्राह्मणः स्वे पथि स्थितः । अव्यहृतिर्कर्मितः सौदन्निमम् धर्मं समाचरेत् ॥ सर्व्वतः प्रतिगृह्णीयाद् ब्राह्मणस्त्वनयं गतः । पवि ' दुष्यतीत्येतद् धर्मतो नोपपद्यते ॥ नाध्यापनाद् याजनाद् वा गर्हिताद् वा प्रतिगृह्णात् । दीषो भवति विप्राणां ज्वलनार्कसमा हि ते ।

³ *Kāthaḥa Samhitā*, XXXI. 2. *Maitrāyaṇi Samhitā*, IV. 1. 3.

⁴ *Satapatha Brāhmaṇa*, V v. 4, 9 and I. i. 4, 12 *Kātyāyana Śrauta Sūtra*, I i. 6.

⁵ *Taittiriya Brāhmaṇa*, I. 1. 418.

Law.¹ According to some the *Sūdra* is excepted but of him also may be eaten, if he is devoted to the higher castes according to the sacred law. In 1. 6. 18. 6 he stresses the danger of contact with the food given by *Sūdras*.² At the same time, he lays down rules for the guidance of *Sūdra* cooks in the houses of *Brahmins*.³ In 'II. 2. 3. 4 he says : Or *Sūdras* may prepare the food under the superintendence of men of the first three castes. *Sūtra* IX runs : He, the householder, himself shall place on the fire that food which has been prepared by *Sūdras* without supervision and shall sprinkle with water. Such food also they state to be fit for the Gods. 1. 5. 16. 22 declares : But what has been brought (be it touched or not) by an impure *Sūdra* must not be taken. 1. 6. 18. 3 says : Or they (*Brahmin* householders) may accept from an *Ugra* (a vile twice-born man or the offspring of a *Vaiśya* by a *Sūdra* woman) uncooked or (4) (a little) unflavoured boiled food. (5) (of such food they shall not take a great quantity but only so much as suffices to support life). (6) If (in times of distress) he is unable to keep himself, he may eat (food obtained from anybody) after having touched it with gold. *Haradatta*, the commentator, quotes *Chāndogya Up.* 1. 10. 1 and *Rg Veda* IV. 18. 3 to show that it is lawful to eat even impure food as a dog's entrails under such circumstances.⁴ Others explain the *Sūtra* thus : If he does not himself find any livelihood (in times of distress, he may dwell even with low-caste people who give him something to eat), he may eat (food given by them) paying for it (with some small gift in) gold or with animals. In connection with the rule

¹ सव्ववर्णानां स्वधर्मं वर्त्तमानानां भोक्तव्यं शुद्धवर्जमित्येके । तस्यापि धर्मोपनतस्य ।

² स्वयमपि अहन्ती सुवर्णं दत्त्वा पशुं वा भुञ्जीत ।

³ आर्याविष्टिता वा शुद्राः सक्तर्तारः स्युः ।

⁴ अवर्त्या शुनं अन्वाणि पेचे—*Rg.* v. मटचीहतेषु कुरुष्वारिका जायया सहोषस्तिर्हं चाक्रायण इभ्यसि प्रदायक उवास । स हेभ्य कुम्भाषान् खादन्तं विभिक्षे ।—*Ch. Up.*, I. x. 1-2.

of conduct for a *Brahmin* student he says—(13) According to some (food offered by people) of any caste who follow the rules prescribed for them except (that) of *Śūdras* may be eaten. (14) (In times of distress) even the food of a *Śūdra* who lives under one's protection for the sake of spiritual merit (may be eaten). (15) He may eat it after having touched it (once) with gold or with fire. He shall not be too eager after (such a way of living). He shall leave it when he obtains a (lawful) livelihood. (18) Food offered by an artisan must not be eaten. (19) Nor (that of men) who live by the use of arms (except *Kṣatriyas*). 1. 19. 13 : Now they quote also from a *Purāṇa* the following two verses :¹ The Lord of creatures has declared that food offered unasked and brought by the giver himself may be eaten, though (the giver be) a sinner provided the gift has not been announced beforehand. The manes or the ancestors of that man who spurns such food do not eat (his oblations) for 15 years nor does the fire carry his offerings (to the Gods). (14) Another verse from a *Purāṇa* declares : The food given by a physician, a hunter, a sergeant, a fowler, an unfaithful wife, or a eunuch must not be eaten. These rules came to be affirmed, modified, elaborated and stiffened in course of time. Thus in *Gautama* (XVII. 1) where the food of a *Śūdra* is permitted in distress, a trader and a non-artisan are barred but those of a cowherd, a tiller of one's lands, a family-friend and a servant are declared otherwise.² In *Maskari's* comment the servant is a slave and from this indication the *Śūdrahood* of the barber is determined.³ In

¹ अथ पुराणे श्लोकाबुदाहरन्ति—उद्यतामाहता भिक्षा पुरस्तादप्रवेदिताम् । भोज्या भेने प्रजापतिरपि दुष्कृतकारिण ॥ न तस्य पितरंऽश्नन्ति दश वर्षाणि पञ्च च । न च हव्यं वह्न्यग्नि-र्यक्षामभ्यधिमन्यते ॥

² प्रशस्तानां स्वकर्म्मसु द्विजातीनां ब्राह्मणो भुञ्जीत । वृत्तिवेदान्तरेण शूद्रात् वणिक् चाशिल्पी । नित्यमभोज्या । पशुपालचितकर्षककुलसङ्गत-कारयित-परिचारकाः भोज्यान्नाः ।

³ परिचारको दासः * * एतस्माद्विद्वान् नापितस्य शूद्रत्वमध्यवसीयते ।

Vasistha the food of a *Sūdra* is declared as degrading.¹ The stricter law is formulated by *Manu* also who says 'a learned twice-born shall not eat cooked food from a *Sūdra* who does not practise exequial rites (therefore low-class) but when without livelihood he may take uncooked food enough for a night's meal.'² To this prohibition penalties are also attached by the *Smṛti-kāras*, such as *Manu*, *Yama*, *Śaṅkha* and *Vyāsa*.³

Angiras permits taking of food from *Vaiśyas* in times of distress but never from *Sūdras*, and evil consequences are predicated by *Hārīta*, *Samvarta*,⁴ *Jamadagni*.⁵ *Yājñavalkya* and *Paīṭhinasi* also prohibit it.⁶ *Bhaviṣyapurāṇa* and *Parāśara* equally declare that contact with a *Sūdra* through acceptance of food or acquisition of knowledge or in any other way causes the fall of a *Brahmin*.⁷ The latter,

¹ Ch. VI—पावाणामपि तत् पातं शूद्रान्नं यस्य नोदरे ।

Ch. X—वृषलान्नपानवर्जो न ह्यीयते ब्रह्मलोकाद् ब्रह्मलोकात् ।

² नाद्याच्छूद्रस्य पक्वान्नं विधानश्राद्धिनो हिज्ज । आददीताममेवास्मादवृत्तावेकराविकम् ॥

³ *Manu*, IV. 218 and *Angiras* (72)—राजान्नं हरते तेजः शूद्रान्नं ब्रह्मवर्चसम् ।

Śaṅkha—शूद्रान्नरससम्पत्ताः ब्राह्मणाः पङ्क्तिदूषकाः ।

Vyāsa, IV. 64—शूद्राग्नेनोदरस्थेन यदि कश्चिन् म्रियते नृः । स भवेच्छूकरो नृगं तस्य वा जायते कुलम् ॥ 68—यस्य शूद्रा पचन्निव शूद्रा वा गृहमेधिनी । वर्ज्यं तः पितृदेवैस्तु रौरवं याति स हिज्जः ॥

⁴ *Angiras*—देश्येष्वापतसु भुञ्जीत न शूद्रेऽपि कदाचन । *Hārīta*—शूद्राग्नेन तु मुनेन जठरस्थेन यो मृतः । स वै खरत्वमुपलब्धं शूद्रत्वञ्चोपगच्छति ॥ *Yama*—शूद्राग्नेनोदरस्थेन ब्राह्मणो यत्पुत्रं जन्तुम् । आहिताग्निरुपा यज्वा स शूद्रगतिमाप्नुयात् ॥ *Samvarta*—शूद्रहस्तेन योऽग्नीयात् पानीयं वा पिबेत् कश्चित् । अहोरात्रोषितो भूत्वा पञ्चगव्येन शुष्यति ।

⁵ *Jamadagni* (also *Hārīta*)—ब्राह्मणान्नेन दारिद्र्यं क्षत्रियान्नेन प्रेष्यताम् । वैश्याग्नेन तु शूद्रत्वं शूद्राग्नेनैकं व्रजेत् ॥

⁶ *Paīṭhinasi*—गृहमेधी न शूद्रान्नमश्नीयात्, आयुर्वेदं तेनेत्यपक्रामति । *Jājñavalkya*, I. 160—अग्निहोत्रस्य नान्नमद्यादनापदि । *Mitākṣarā* comments—अग्निहोत्रस्य श्रौत-कार्त्तव्याधिकाररहितस्य शूद्रस्य * * अनापदि न भुञ्जीत, न प्रतिगृह्णीयाद् वा ।

⁷ शूद्रान्नं शूद्रसम्पर्कः शूद्रेण च सद्वसनम् । शूद्राज् ज्ञानागमश्चेति ज्वलन्तमपि पातयेत् ॥
Also *Angiras*, I. 49

however, prescribes expiation in the form of repentance and repetition of sacred *mantras*.¹

This extreme position of aloofness from the *Sūdras* was a practical impossibility in a society in which they far outnumbered the twice-born classes. A compromise due to practical considerations resulted in exceptions in favour of certain occupational sub-castes among the *Sūdras*. Germs of these exceptions can be detected in the *Dharma Sūtras* from which extracts are given above. But they are elaborated in later writings. Thus *Uśanas*, *Viṣṇu*, *Manu*, *Yājñavalkya*, *Yama*, *Devala*, *Vyāsa* and *Parāśara* add to the castes indicated in *Āpastamba* and *Gautama* above.²

Another compromise was the relaxation of the prohibition in the case of certain kinds of cooked food. Texts specifying these excepted kinds of food are from *Hārīta*, *Āṅgīras*, *Atri*, *Parāśara*, and *Kūrma-purāna*.³ The *Vīramitrodaya* shows a large collection of these texts.

¹ आपत्काऽतु विप्रेण भुक्तं यद्गृहे यदि । मनस्वापि न श्रुतेन दुपदा वा शतं जपेत् ॥—XI 9.

² Uśanas—खगोपालो भोज्यान् खलेष्वर्पकश्च । Viṣṇu—आर्द्धिकः कुलमित्रश्च दासगोपालनापितौ । एते यद्गृहे भोज्यान् यश्चात्मानं निवेदयेत् ॥ Manu—आर्द्धिकः कुलमित्रश्च गोपालदासनापितौ । एते यद्गृहे भोज्यान् यश्चात्मानं निवेदयेत् ॥ IV 253, Yāj—I 168, Yama—Śl. 20, Vyāsa—III. 51-52; Pār—XI. 20, Hārīta—

कुलमित्रं कुलपुत्रो भैक्ष्यकः शुद्धः । भवेद् यस्य सुखं लाभे भये वाता च यो भवेत् ॥

एते यद्गृहे भोज्यान्नाः मनो यत्र विभाव्यते ।

Devala—खदासो नापितो गोपः कुम्भकारः कृषीवलः । ब्राह्मणैरपि भोज्यान्नाः पच्येते यद्गृहोन्नयः ॥

Parāśara defines the castes—

यद्गृहस्था समुत्पन्नो ब्राह्मणेन तु संस्कृतः । संस्कृतस्तु भवेद् दासो ह्यसंस्कारे तु नापितः ॥

चन्निद्याच्छूद्रकन्याया समुत्पन्नस्तु यः सुतः । स गोपाल इति ज्ञेयो भोज्यो विप्रैर्न संशयः ॥

वैश्यकन्यासमुत्पन्नो ब्राह्मणेन तु संस्कृतः । आर्द्धिकः स तु विज्ञेयो भोज्यो विप्रैर्न संशयः ।

³ Angīras—

गोरसं चैव सक्तूश्च तैलं पिण्याकमेव च । अपूपान् भक्षयेच्छूद्राद् यश्चात्मानं पयसा कृतम् ।

Hārīta—कन्दुपक्वं क्षेहपक्वं पायसं दधिसक्तवः । एतानि यद्गृहोन्नयजो भोज्यानि सनुरब्रवीत् ॥

On this Vira-Mitr comments—कचित्तु अयद्गृहोन्नयज इति पाठः । तत्र यद्गृहस्थ जलार्घ्य-पक्वं यो नाश्नाति तेनापि भोज्यमित्यर्थः ।

But the prohibition of *Sūdra*-cooked food which is enjoined by the Kalivarjya text is not wholly accepted by the writers of the digests. *Aparārka* on Yāj. I. 166 after citing the verses of *Hārta* and *Manu* says that seven kinds of cooked foods may be eaten by others and after specifying them concludes thus: The favour of eating cooked food from *Sūdras* should be regarded as relating to a condition of distress only. *Mitākṣarā* does not seem to know the ban on eating the food of *Sūdras*.¹ Nor does *Maṣkari* know it. *Vijñāneśvara* does not refer to the long list of Kali prohibitions and in particular to this prohibition in the matter of eating although cow-sacrifice, appointment of a wife and mixed marriage are declared by him as obsolete. *Smṛtyarthasāra* which first gives the long list prescribes penance in the form of fasting and taking the five things of the cow upon eating *Sūdra*-cooked food.² *Raghunandana* in his *Sūdra-kṛtyatattva* also does not literally accept the prohibition. After citing the *Kūrmapurāṇa* passage, he says that in *Śrāddhas* it is proper to serve cooked food of the fried kind to *Brahmins*.³

Viramitrodaya distinguishes between *Sūdras* worthy and *Sūdras* unworthy and holds the interdiction of *Sūdra*-cooked food to apply to the latter, and in regard to the former he holds the prohibition to refer to 7 kinds of cooked food

Atri—आरनालं तथा चौरं कन्दुकं दधिसक्तवः । स्नेहपक्वञ्च तन्नञ्च शूद्रस्यापि न दुष्यति ॥

Also Parāśara, XI. 14, 18. *Kūrma Purāṇa*—

कन्दुपक्वानि तैलिन पायस दधिसक्तवः । द्विजैरेतानि भोज्यानि शूद्रगेहकृतान्यपि ॥

—Raghunandana cites the text in *Sūdrakṛtyatattva*.

¹ एते दासादयः शूद्राणां मध्ये भोज्यान्नाः, चकारात् कुम्भकारश्च, गोपनापितकुम्भकारकुल-मिवाहंसीरिणो निवेदितात्मानो भोज्यान्ना इति वचनात् ।

² शूद्रेण पक्वं वामेध्यसेविकीटोपहृतं च भुञ्जानि शूद्रस्पर्शे..... उपवास पञ्चगव्यञ्च कुर्यात् ।

³ शूद्रकर्तृक-कन्दुपक्वादिर्ब्राह्मणभक्ष्यत्वेन श्राद्धे दीयत्वं युक्तम् । He adds—दिनवयोदशे प्राप्ते पात्रेण भोजयेद्विजान् । अयं विधिः प्रयोक्तव्यः शूद्राणां मन्त्रवर्जितः ॥ इति श्राद्धचिन्तामणिकृत-वराहपुराण-वचनमपि कन्दुपक्वपरम् । एवन्तु एतच्च चर्चं सच्छूद्रपरम् सैथिलीकृतम् हेयम् ।

only¹ The position of *Kalpataru* is similar. The *Mādhavīya* and *Madana-pārijāta* require the servant, cow-herd, family friend, etc., to be worthy *Śūdras*.

Actual usage in modern times amongst the orthodox also shows that the *Kaliyarjya* text is not strictly observed. In Upper India barbers serve the food bought from confectioners at feasts given to *Brahmins*. As regards this particular item orthodox practice follows usages handed down from the past without strict regard to the prohibitive text and varies in different provinces.

Giving of Tasted Remainder to a Pupil

The practice referred to had become so obsolete in the time of the digest-writers that the precise significance of this title is missed by some and disputed by others. In *Āp. Gr. S. V. 13* the origin of the practice may be detected. The guest to whom the honey-mixture (*madhuparkā*) was offered might give the remainder after he had partaken of it to one to whom he was kindly disposed—i.e., to his son or his brother returned from the preceptor's house.² But whether it could be given to a student still observing his vows is discussed by *Āpastamba* in his *Dharma-sūtra Prāśna I Kāṇḍikā IV*: The pupil shall eat of the tasted food. For it is like the remainder of an oblation. But he

¹ सच्छूद्रातिरिक्तानामपि दासगोपालादीनाम् आपदि पक्वान्नमपि याच्छाम् । अनापदि त्वाममेव । दास्यतिरिक्तानां त्वसच्छूद्राणामापद्येकरात्रिकमाममेव याच्छामिति व्यवस्था । कल्पतरु-खरसोऽप्येवम् । माधव-मदनपारिजातयोस्तु दासादीनामपि सच्छूद्राणामेव भोज्यान्नत्वमुक्तम् । नाद्याच्छूद्र-स्येति मनुवाक्यैकवाक्यत्वात् । योऽपि च शूद्रपक्वान्नभोजननिषेधः सोऽपि कतिपयपक्वान्न-व्यतिरिक्त-विषयः ।

² उत्तराभ्यामभिमन्त्र्य यदुर्ध्वम् अप आचामति पुरस्तादुपरिष्टाच्चोत्तरस्यां त्रिः प्राश्य अनुकम्पयाय प्रयच्छेत् । Haradatta explains—शेषं मधुपर्कप्राशनशेषम् अनुयाज्ञाय पुनराय भति वा समा-हृत्ताय एव प्रयच्छेत् । सोऽपि एतं प्राश्नाति । सोमसन्नये मधुपर्कप्राशने भोजने च मध्ये नोच्छिष्टा इति शिष्टाः स्मरन्ति ।

must not be given the remainder of any food forbidden by the *Śruti*, such as, salt, honey, meat, etc. By this, other rules (such as giving of remainder of ointments, scents, garlands, etc.) are to be gathered. But the objection that such was the usage is met by the greater force of *Śruti* over a practice giving rise to an inferential text. For the reason of the practice is evident which is an affectionate or kindly feeling. The leavings of a father's or an elder brother's repast should be eaten except where it is opposed to the sacred law governing the conduct of a student.¹ *Kamalākara* chooses to read the title so as to mean abstaining from acceptance of gifts according to *Manu*'s praise of such (IV. 186) on the part of learned *Brahmins*.² But the prohibition of such conduct praised by *Manu* can hardly be contemplated by the *Kalivarjya* texts considering their general tenour (e.g., prohibition of inferior avocations in distress).

Stay-away from Home

The origin of the prohibition is traceable to *Āpas. Śr. Sūtra* and seems to have been due to the necessities of tending the sacred fires. Stay-away from home is described as caused by pleasure or secular purpose (*Ibid.*, *Praśna* VI. *Kaṇḍikā* 28).³ *Pr.* IV. *Kaṇ.* 16. enjoins that while sojourning away from home the sacrificer has to make the offerings mentally at the right time with his face turned

¹ *Āp. Dh. S.*, I. 14 1-2—यदुच्छिष्टं प्राप्नाति हविरुच्छिष्टमेव तत् । 5—न चास्मै श्रुतिविप्रतिषिद्धम् उच्छिष्टं दद्यात् । 6—यथा चारलवणमधुमांसानीति । 7—एतेनास्य नियमाः व्याख्याताः । 8—श्रुतिर्हि बलीयस्यानुमानिकादाचारात् । 9—दृश्यते चापि प्रवृत्तिकारणम् । 10—प्रीतिर्ह्युपलभ्यते । 11—पितृज्यैष्ठ्यस्य च भातुरुच्छिष्टं भोक्तव्यम् । 12—धर्मविप्रतिपत्ताव-भोज्यम् ।

² उद्दिष्टस्य त्यक्तस्य वर्जनं “प्रतिग्रहसमर्थोऽपि” इत्युक्तम् । प्रतिग्रहसमर्थोऽपि प्रसङ्गः तव वर्जयेत् । प्रतिग्रहेण छास्याश्च ब्राह्मणं तेजः प्रशस्यति ।

³ प्रवासी रागप्राप्तः ।



homeward.¹ *Kātyāyana Saṃhitā* XIX. 1-2; A Brahmin who tends the sacred fires may on unavoidable business go away from home leaving the fire in the care of his wife and after having engaged a priest, but never long without such business. While away from home he shall meditate at the proper hours on his daily duties, being clean and seated.² *Devanna Bhaṭṭa* (in *Sm. C., Āhnikakāṇḍa*, pp. 575-76) quotes verses from *Kātyāyana Pariśiṣṭa* showing the imperative character of the *Vaiśvadeva* rites.³ Living away from home was fraught with many evils and dangers in former times (see Section on Widow-remarriage), one of the subjects regularly treated in the Digests being the duties of a wife whose husband is absent from home. From the text of *Kātyāyana Dāmodara* argues that long stay-away is prohibited. *Anantadeva* understands by *pravāsa*—residence in the preceptor's house (which is otherwise forbidden) and supports his construction on the ground of presumption of one *Śruti* text to cover both and a passage in which the word is used with the same meaning.⁴ This is evidently a forced construction.

The Householder's Distant Pilgrimage

This topic is akin to the preceding one. Visiting sacred places is prescribed in *Viṣṇu Smṛti* Ch. LXXXV. And the *Purāṇas* (e.g., *Brahma*, *Skānda*, etc.), are replete with accounts of the different holy places and praises of the merit accruing from pilgrimage to them. A general prohibition of such pilgrimage would conflict with these teachings.

¹ प्रवसन् काले विहारामिसुखं याजमानं यजति । IV. 16-18.

² निचिप्याग्निं स्वदारेषु परिकल्प्यार्जिजं तथा । प्रवसेत् कार्यवान् विप्रो वृधैव न चिरं कचित् ॥
सनसा नैत्यकं कर्म प्रवसन्नप्यतन्द्रितः । उपविश्य शुचिः सर्व्वं यथाकालमनुद्वेत् ॥

³ प्रवसेदाहिताग्निथेत् कदाचित् कालपर्य्यात् । यस्मिन्नग्नौ भवेत् पाको वैश्वदेवन्तु तच्च वै ॥
तद्वाहुत्वा च यो भुङ्क्ते स भुङ्क्ते किल्बिषं नरः । प्रोषितोऽप्यात्मसंस्कारं कुर्यादेवाविचारयन् ॥

⁴ द्वाविमौ यसते भूमिः सर्पो विलशयानिव । राजानं चाप्ययोद्धारं ब्राह्मणं चाप्रवासिनम् ॥

Hence *Dāmodara* citing a text from *Satyavrata Smṛti* lays stress on the word *gṛhastha* meaning the *Brahmin* tending the sacred fires in whose case only the prohibition applies.¹ *Anantadeva*'s interpretation is more plausible and suggests the insecurity of the times when India was occupied in parts by foreign invaders and in which pilgrimages to holy places on the borders of the country or beyond were not advisable.² Many digests pass in silence over or ignore this prohibition, e.g., *Madana-pārijāta* or *Nirṇayasindhu*.

Vānaprastha and Sannyāsa

Like Agnihotra, Sannyāsa is prohibited by the four texts of Nigama, Laugākshi, Vyāsa and Devala. The authority and scope of this ban are variously understood. *Vaiṣṇānasa Gṛhya-Sūtra* VIII. 9 says that ascetics seeking salvation are of four kinds—*Kuṭīcaka*, *Bahūdaka*, *Haṃsa*, and *Paramahaṃsa*. Of these, the first dwells in the hermitages of Gautama, Bharadvāja, Yājñavalkya, Hārīta and the like and go round eight villages for begging and are proficient in Yoga. The second class carrying the three Daṇḍas (the staff of three sticks), the water-vessel (*Kamaṇḍalu*), ochre robes, dwells in the homes of the Brahmarṣis and other saints, giving up meat and salt and stale food and beg from seven houses. The *Haṃsa* stays for a night only in villages and for five nights in towns but not longer, feeds on the excrements of cows or fasts by the month and daily performs the *Cāndrāyana* penance. The *Paramahaṃsa* dwells under trees or in deserted habitations or in the cremation-ground and is either clothed or naked. They are above the duality of piety and impiety, truth and untruth, purity and impurity,

¹ धनान्वर्जयितुं दुक्तः प्रवासो ह्यग्निहोत्रिणः । धनैर्हत सम्भवेद्व्या तीर्थार्थं न तु व्रजित् ॥ इति सत्यव्रत-स्मरणात् ।

² या च प्रत्यन्तदेशगत-तीर्थयात्रा पीराणी सा कलौ नेति ।

equal to all, one with all, regarding brick-bats and lumps of gold with an equal eye, and beg from men of all castes. According to the *Āśramopaniṣad* of the *Atharvaveda*, the Kuṭīcakas seek the spirit and practise begging at the houses of their sons.¹ *Manu* VI. 95 also says that they live upon the substance of their sons.

The motive of these ascetics is only one, that is, spiritual salvation, and hence they differ essentially from monks living under an organised system or vowed to social service like the Buddhist Bhikkhus. Theirs was a life of study, loneliness and rigour—based on a true spirit of renunciation and distaste for the attractions of life. The Yatis had always to be on the move, had to keep aloof from society and the haunts of men. They were not to live in groups among themselves.² From the passage quoted above, the Bahūdaka carried a *tri-daṇḍa* and the Hamsa a staff of one stick or *eḷa-daṇḍa*, the others bear no mark or appendage of asceticism.

Vaiṣṇ. Gr. Sūtra VIII. I says that for the Brāhmaṇa there are four stages of life, for the Kshatriya the first three, and for the Vaiśya two only. A *Vṛddha-Yājñavalkya* text quoted in the *Nirṇaya-Sindhu* says the same and so also *Manu*.³ But there was another view also, viz., that the four orders

¹ कुटीचकाः स्वपुत्रगृहेषु भिक्षाचर्यं चरन्तः आत्मानं प्रायेयन्ते । *Manu*, VI. 95—
पुत्रैश्चर्यं सुखं वसेत् ।

² अष्टौ मासान् विहारः स्याद् यतीनां संयतात्मनाम् । महाक्षेत्रप्रविष्टानां विहारस्तु न विद्यते ॥
इत्याजल्यं पातलोभं सञ्चर्य शिष्यसंग्रहम् । इत्थं कथं तथात्र च वृज्जं येन सदा यतिः ॥ न तीर्थवासी
नित्यं स्थानं नोपवासपरो यतिः । न चाध्ययनशीलः स्थानं व्याख्यानपरो भवेत् ॥ *Dakṣa*—एको
मिच्छुर्गृहीतस्तु द्वौ चैव मिथुनं स्मृतम् । तयो यामस्तथा ख्याता ऊर्ध्वं नु नगरायते ॥ *Devala*—
सर्वसङ्गपरित्यागी यतिर्यदि मठाधिपः । तस्यैव निष्कृतिर्नास्ति चाण्डालाञ्जनगर्हितात् ॥

³ *Yāj.*—quoted in *Nirṇayasindhu*—चलारो ब्राह्मणस्थोक्ता आश्रमाः श्रुति-
चोदिताः । क्षत्रियस्य त्रयः प्रोक्ता हावेको वैश्यश्चतुर्द्वयोः ॥ *Manu*—एष वो विहितो धर्मो ब्राह्मणस्य
चतुर्विधः ।

were open to all the three regenerate castes. *Kāthaka Grhya* quoted in the *Vīramitrodaya* is of this view, also a text of the *Kūrmapurāṇa* cited in the *Nirṇaya-sindhu*.¹ The great Śāṅkarācārya held the former view although his disciple Sureśvara differed from his master.²

Again Sannyāsa is distinguished into *Vidvat* and *Vividiṣā* and *Dharma-sindhu* giving the modern *Smārta* view says that the former is open to Kṣatriyas and Vaiśyas also.³ Further the four kinds of Sannyāsin mentioned above fall into two classes according as the staff they carry is made of three sticks or one. *Nirṇaya-sindhu* cites texts to show that the Kuṭicaka and the Bahūdaka carried a *tri-daṇḍa* and the other two *eka-daṇḍa*.⁴

Under the Brāhmanic scheme the main stress lay all

¹ Kāth. Gr.—त्रयाणां वर्णाणां चत्वार आश्रमाः ।—Vir. Mit —संस्कारप्रकाश ।
Kūrma Purāṇa—ब्राह्मणः क्षत्रियो वाय वैश्यो वा प्रव्रजेद् गृह्णात्—इति कौर्मोद्युक्ते; वर्षेभ्यः-
स्याधिकारः ।

² Vide Bṛhadāraṇyaka-Bhāṣya-Vārttika—88, 89, 191—Ch. III.
Brah. v—अधिकारिविशेषस्य ज्ञानाय ब्राह्मणग्रहः । न संन्यासविधिर्यस्माच्छ्रुतौ क्षत्रिय-वैश्ययोः ॥
त्रयाणामविशेषेण संन्यासः श्रूयते श्रुतौ । यदोपलक्ष्यार्थं स्याद् ब्राह्मणग्रहणं तदा ॥
इमानवस्थां संप्राप्य सर्वो ब्राह्मण उच्यते । ब्राह्मण्यं गौणमन्यव पूर्वभूमिषु नाज्जसा ॥

³ संन्यासे दण्डग्रहणादिरूपे विप्रस्यैवाधिकारः । विद्वत्संन्यासी तु क्षत्रियवैश्ययोरपि ।

⁴ प्रथमद्वितीयौ त्रिदण्डौ, तृतीयचतुर्थौ एकदण्डौ । स्कान्दे—एकस्तु वैश्वं दण्डं धारयेन्नित्य-
मादरात् । विश्वरूपि—यज्ञोपवीतं वस्त्रञ्च दण्डं जन्तुनिवारणम् । तावान् परियहः प्रोक्ता नान्यो हंस-
परियहः ॥ स्कान्देऽपि—परमहंसस्त्रिदण्डं च रज्जु गोबालनिर्मिताम् । शिखां यज्ञोपवीतञ्च नित्यं
कर्म्म परित्यजेत् ॥ अयमष्टोक्तदण्ड एव । यत्तु सिधातिथिः—यावन्न सुस्त्रयो दण्डास्तावदेकेन वर्त्तयेत्—
इति तदपि तत्परमेव । यच्चातिः—चतुर्धा भिचवः प्रोक्ताः सर्वे एव चिदण्डिनः इति तद् बाग्दण्डादि-
परं न यष्टिपरम् । तस्मात् परमहंसस्य एकदण्ड एव । सोऽपि अविदुषः । विदुषस्तु सोऽपि नास्ति ।

कठकद्वीपनिषत्—कुण्डिका चमसं शिखं विविष्टपसुपानहौ ।

श्रीतोपधातिनीं कत्यां कौपीनाच्छादनं तथा । यज्ञोपवीत वेदाय सर्व्वं तद् वर्ज्जयेद् यतिः ॥

Also Hārta, VI. 6—चिदण्डं वणवं सम्यक् सन्ततं समपूर्व्वकम् ।

वेष्टितं कृष्णगोपालरज्जुमञ्चतुरङ्गुलम् ॥

along on the house-holder's life.¹ The two later stages Vānaprastha and Sannyāsa were intended for those specially fitted for them by the ascetic impulse of their nature. Thus *Āpastamba* says that there are four orders, each of which properly pursued leads to salvation.² He favours all the four Āśramas while *Baudhāyana* II. vi. regards the house-holder's life as the most important and declares that the division into four orders was made by an *Asura*.³

Gautama (Ch. III) says that after the life of studentship one has the option of being a Brahmacārin, a house-holder, a Bhikṣu or a Vaikhānasa. Of these the house-holder is the sole support for the others leave no issue. The importance of the second order is brought out by the *Vīramitrodaya* in its comments on *Gautama Sūtra*.⁴ *Vasiṣṭha* like-wise declares that the house-holder performs all sacred rites and duties.⁵

Traces of this line of thought are scattered over the *Smṛtis*. Thus *Manu* says in VI. 37 that the seeking of salvation

¹ Vasiṣṭha, VIII—यथा मातरमाश्रित्य सर्वे जीवन्ति जन्तवः । एवं गृहस्थमाश्रित्य सर्वे जीवन्ति भिक्षुकाः । Ascribed to Manu by Mallinātha on Raghuvamśam, V. 10.

² चत्वार आश्रमाः * * तेषु सर्वेषु यथोपदेशमव्ययी वर्त्तमानः क्षेमं गच्छति ।
Āp. Dh. S.

³ एकाश्रमं त्वाचार्या अप्रजननत्वादितरेषाम् । 29—ततोदाहरन्ति—प्राज्ञादिर्ह वै कापिल नामासुर आस । स एतान् भेदाश्चकार देवैः सह स्पर्द्धमानः । तान् मनीषी नाद्रियेत । अदृष्टत्वात् । ये चत्वार इति कर्मवाद ऐष्टिक-पाशुक-सौमिक-दार्ढी ह्येमानाम् । (29-34)

⁴ तुशब्दो विशेषवाची सर्वेषु वेदशास्त्रेतिहासपुराणेषु गृहस्थधर्मा एवाग्निहोवादयः प्राचुर्येण विधीयन्ते । ततः सर्वे एव आचार्याः गृहस्थस्य एकाश्रमं प्राधान्यं मन्यन्ते । तवापि अशक्तानाम् इतराश्रमधर्मा विधीयते प्रत्यक्षविधानादितराप्रामाण्यं प्रत्यक्षेण उपजीव्यत्वात् ।—on *Gautama* (Ch. III, end)—एकाश्रमं त्वाचार्या प्रत्यक्षविधानात् गार्हस्थ्यस्य ।

⁵ गृहस्थ एव यजते गृहस्थस्त्वाप्यते तपः ।

चतुर्णामाश्रमाणान् गृहस्थस्तु विशिष्यते ॥—Vas. VIII,

without the study of the Vedas, the begetting of sons and the performance of sacrifices leads a man downward. The Grhastha supporting the other three orders is the best, in him men of all the orders find shelter like streams in the ocean (89-90).¹

Viṣṇu LIX. 28-29 echoes the same sentiments, also *Yājñavalkya* III. 205 and *Vyāsa* IV. ii.²

The first two descriptions of Sannyāsins had a more or less fixed habitation. The Kuṭīcaka lived on the means of life supplied by his son. The Bahūdaka dwelt in holy places where the sages of old had their seats and did not move away from these. According to the distinction made by the writers of the Digests, it is these two varieties that are prohibited in the present age, possibly because they are not inspired by the highest spirit of renunciation.³ The emphasis is laid on the true ascetic spirit to which this stage or order of life is still open. The objection is to ascetics who

¹ अनधीत्य द्विजो वेदाननुत्पाद्य तथा सुतान् । अनिहा चैव यज्ञैश्च मोचमिच्छन् व्रजत्यथः । (37)
सर्वेषामपि चैतेषां वेदस्मृतिविधानतः गृहस्थ उच्यते श्रेष्ठः स चैनेतान् विभर्ति हि । (89) यथा
नदीनदाः सर्वे सागरे यान्ति संस्थितिम् । तथैवाश्रमिणः सर्वे गृहस्थे यान्ति संस्थितिम् । (90)

² गृहस्थ एव यजते गृहस्थस्तयते तपः । ददाति च गृहस्थस्तु तस्माज्जोषी गृहाश्रमी ॥

ऋषयः पितरो देवा भूतान्यतिथयस्तथा । आशासते कुटुम्बिभ्यस्तस्माज्जोषी गृहाश्रमी ॥

Viṣṇu, LIX, 28-29—

न्यायागतधनस्तत्त्वज्ञानिष्ठोऽतिथिप्रियः ।

आह्वकृत् सत्यवादी च गृहस्थोऽपि हि मुच्यते ॥

Yājñavalkya—

गृहाश्रमात् परी धर्म्मो नास्ति नास्ति पुनः पुनः ।

Vyāsa, IV, 2—

सर्वतीर्थफलं तस्य यथोक्तं यस्तु पालयेत् ।

³ *Dakṣa Saṃhitā*—

तस्माच्चतुर्कषायेण कर्त्तव्यं दण्डधारणम् । इतरस्तु न शक्नोति विषयैरभिभूयते ॥

निदण्ड्यपदेशेन जीवन्ति बहुवो नराः । यो हि ब्रह्म न जानाति न निदण्डार्ह एव सः ।

Cf. Jabāla Śruti—यदहरेव विरज्येत तदहरेव प्रव्रजेत् । गृहाद्वा वनाद्वा ।

despite the garb and appendages of the order lack the spirit. Hence *Vīramitrodaya* cites *Yama* to the effect that a dire hell awaits one who carries the staff but eats all and is without knowledge.¹ It also cites another anonymous *Smṛti* saying that many men carry the single staff as a means of livelihood but they go to hell by giving up their duties in life.² *Mitra-miśra* adds that the *Mahābhārata* text as to a Yati, whatever his garb, being fit to be honoured, should be understood in the same spirit i.e., that honour should be given to a true ascetic be whatever, his outfit. *Madana-pārijāta*, pp. 365-373 after setting forth the arguments³ in favour of the eligibility of Kṣatriyas and Vaiśyas for the fourth order gives its own opinion in favour of the Brahmin alone being so entitled.⁴

Smṛti-mukṭāphala a Deccanese digest reconciles the texts by saying that the prohibition relates to the wearing of the coloured robe and the carrying of the staff.

It mentions the cases of *Appaya Dīkṣita* and *Dharmarājā-dhvarindra* among the performers of Agnihotra and Sannyāsa. To this may be added the names of Śankara, the reputed founder of a powerful monastic order—the Daśnāmī—and his disciples who have succeeded to the four seats created by him, i.e., Śāradā, Joshī, Govardhana and Śringeri. Amongst the Sādhus of the Daśnāmī order founded by him there are men of all the three castes—one of the, *Maṇḍaleśvaras* at Benares at this date being a Vaiśya.

The prohibition of Sannyāsa may have been due to a reaction against Monachism brought about by irregularities

¹ काष्ठदण्डो धृतो येन सर्वथाज्ञी ज्ञानवर्जितः । स याति नरकान् घोरान् महारौरवसंज्ञितान् ॥

² एकं दण्डं समाश्रित्य जीवन्ति बहवो नराः । नरके रौरवे घोरे कर्मत्यागात् पतन्ति ते ॥

³ एकदण्डो त्रिदण्डो वा शिखामुण्डित एव वा । काषायमात्रसरोऽपि यतिः पूज्यो युधिष्ठिर ॥

⁴ लिङ्गनिषेध एव न त्वाश्रमनिषेध इति । दण्डधारणम् बहिरङ्गं विषयविराग एव मुख्यः, विरागाभावे अधिकाराभावात् । * * क्षत्रियवैश्ययोर्दण्डग्रहणमात्रनिषेधो न त्वाश्रमनिषेध इति । p. 367.

in the lives of Buddhist monks as evidenced by the Pātimokkhas. But despite academic objections to the competency for Sannyāsa in the present age, the vogue still continues unfettered by the Kalivarjya ban.

Suicide From Pious Motive

The practice of suicide in extreme old age or in decrepitude due to disease may in its origin be traced to Vedic times. Exposure of the aged has been inferred from certain passages (*R̥g Veda* VIII. 51. 2 and *Atharva Veda* XVIII. 2. 34). Some, however, argue that the exposure was of 'dead bodies after the Parsi fashion. But considering the persistence of usages which have their source in the Vedas and the prevalence of suicide from pious motive, it is reasonable to construe the texts as evidence of such usage. In later times the practice was regularly enjoined by works of sacred law.¹ In the *Mahābhārata* examples of the observance of this practice are found. *Manu* (VI. 31-32)² prescribes it for a person in the third order; so also does 'Atri. A text quoted by *Kṛṣṇam Bhaṭṭa* in his commentary on *Nirṇaya-sindhu* is to the same effect. Self-immolation was also prescribed as a penance for heinous offences. It seems that doubts sometimes arose as to whether this form of suicide was approved or not.³ Those who failed of death

¹ *Manu*, VI. 31-32—

अपराजितां वास्थाय ब्रजेद्दिशमजिह्वगः । आनिपाताच्छरीरस्य युक्तो वार्येनिलाशनः ॥

आसां महर्षिचर्याणां त्यक्तान्यतमया तनुम् । दीतशोकमयो विप्रो ब्रह्मलोके महीयते ॥

Atri, 214—

वृद्धः शौचक्षुतेर्लुप्तः प्रत्याख्यात-भिषक्क्रियः ।

आत्मानं घातयेद् यस्तु भृग्वध्ननशनाम्बुभिः ॥ तस्य विरातमाशौचं द्वितीये त्वस्थिसञ्चयम् ।

² यो जीवितुं न शक्नोति महाव्याध्युपपीडितः । सोऽग्न्युदकमहायात्रां कुर्वन् वा न प्रदुष्यति ॥

³ यः कामतो नरः कुर्यान्महापापं कथञ्चन । न तस्य निष्कृतिर्ह्येता भृग्वध्नपतनादृते ।

in carrying out a resolve of this sort were subjected to a penance as is enjoined by *Yama* (Śls. 2-3).¹

A universal tradition describes that *Bhaṭṭa Kumārila* burnt himself to death in slow fire which shows that the usage still prevailed in the seventh century. It continued to a much later date. *Vijñāneśvara* (on Yāj. III. 6) quotes the text of *Atri* anonymously to show that the ordinary exequal rites were to be performed for these decrepit foresters. *Aparārka*'s commentary on the same śloka quotes long passages from the *Ādipurāṇa* extolling the merit resulting from such self-immolation.² Also, high merit attached to death in this manner at sacred places like Prayāga or Kāśī and at Vṛddhatīrtha or Agnitīrtha.³ The very names suggest that such deaths regularly occurred at these places. Other texts are quoted in the same work declaring that journey over snow-clad mountains with the object of departing this life conduces to the attainment of Heaven.⁴ Raghu-nandana construes the Kalivarjya text (XI, XLVI) to the effect that although prohibited in the case of the twice-born classes, the practice may be observed by Śūdras even in this age.⁵ *Viramitrodaya* ascribes the origin of pious suicide to heretical scripture (p. 206).

Begging From All Classes

In the earliest Vedic society Brahmins in the fourth order of life were permitted to beg from men of the four

¹ जलाग्नौ ब्रह्मन्मभक्षः प्रब्रज्यान्शनच्युताः । विषप्रपतनप्रायश्चस्त्रघातच्युताश्च ये ॥

सर्वे ते प्रत्यवसिताः सर्वलोकवहिस्तृताः । चान्द्रायणेन शुध्यन्ति तप्तकृच्छयेन वा ॥

² उत्तमान् प्राप्नुयाद्भोक्तान् नात्मघाती भवेत् क्वचित् । महापापक्षयात् स्वर्गे दिव्यान् भोगान् समश्नुते ।

³ वृद्धतीर्थादीनि काश्मीरदेशे नौबस्नगिरिर्मूले विज्ञेयानि ।

⁴ महाप्रस्थानयात्रा च कर्त्तव्या तुहिनोपरि । आश्रित्य सत्त्वं वैद्यैश्च सदाः स्वर्गप्रदा च सा ॥

⁵ जलप्रवेशादिकन्तु कलौ यूद्धस्यैव । ब्राह्मणादीनान्तु आदित्यपुराणेन सगुणायशौचप्रकरणोक्तेन निषेधात् ।—*Suddhi-tattvam*, p. 285.

varṇas. *Kāthaka Brāhmaṇa* so lays down the rule, also *Maitrāyaṇī*¹ and *Āruni Upaniṣads*.² So also, *Baudhāyana*.³ The practice is sanctioned by *Yama* also as cited in *Smṛti-Mukṭāphala*.⁴ A text of *Parāśara* in prose (*op. cit.*) says that *Yatis* stay for one night in villages and five nights in towns and *Tirthas* and with their stomachs as their begging-bowls, beg from all the four *varṇas* excepting reprobates and the fallen, and attain steady self-realisation.⁵ But there was a tendency from early times to restrict the begging to the regenerate classes and preferably still to Brahmins. Thus *Vasiṣṭha* says (Ch. X): He shall eat that which he gains from a Brahmin family.⁶ Begging from the three twice-born castes is enjoined in certain texts cited in *Smṛti-Mukṭāphala*.⁷ *Baudhāyana* (*op. cit.*) says that he should obtain food from worthy Brahmins, Kṣatriyas and Vaiśyas, failing the first from the other two, one after another. Failing all three and not eating two meals, he may

¹ भिक्षार्थं ग्रामं प्रविशेत् । आसायं प्रदक्षिणेन अविचिकित्सन् सर्व्ववर्णं भैक्ष्यचरण अभिशक्ष-
पतितवर्जम् (cited in *Smṛti-Mukṭāphala*) *Kāthaka Brāhmaṇa*—चतुर्वर्णेषु भैक्ष्य-
चर्य्यं चरेत् । पाणि-पात्रेषु अन्नं कुर्व्यात् । औषधवत् प्राश्नीयात् । प्राणसन्धारणार्थं यथा भेदीवृद्धिर्न
जायते ।

² यतथो भिक्षार्थं ग्रामं प्रविशन्ति पाणिपात्रं उदरपात्रं वा (*op. cit.*)

³ भैक्ष्यं वा सर्व्ववर्णेष्वेकान्नं वा विजातिषु ।

अपि वा सर्व्ववर्णेष्वेकान्नं विजातिषु ॥—II. x. 69.

⁴ यश्चरेत् सर्व्ववर्णेषु भैक्ष्यमभ्यवहारतः ।

न स किञ्चिदुप्राश्नीयात् यावद् भैक्ष्यमिति स्थितिः ॥

⁵ ग्रामिकरात्रवासिनो नगरतीर्थावसथेषु पक्षरात्रवासिनः उदरपात्रिणः अभिशक्षपतितवर्जं
चतुर्वर्ण्यं भैक्ष्यं चरन्तः आत्मत्वेन अवतिष्ठन्ते ।

⁶ ब्राह्मणकुले यज्ञमेत तद् मुञ्जीत ।

⁷ त्रिषु वर्णेषु एकागारं भैक्ष्यमश्नीयात्—*Maitrāyaṇī* (?) *Śruti*. त्रिषु वर्णेषु भिक्षार्थं
चरेत्—*Sannyāsopaniṣat*.

ब्राह्मणचतुर्विंशतिं शिष्यानामन्नमाहरेत् । असम्भवे तु पूर्व्वस्य आददीतीत्तरीत्तरम् ॥

सर्व्वेषामन्नमात्रं तु भक्तदयमनश्नतः । भैक्ष्यं यद्वापि शास्त्रं रक्ष्या प्राणा विजानता ।

also beg from Śūdras for life has to be maintained by the enlightened. The conclusion of the writer of this digest of the South is that begging from all the *varṇas* is permissible only in distress.

Lodging where Night Falls

The usage referred to in the title is met with in connection with both Brahmacārins and anchorites (*Parivrājakas* in *Baudhāyana's* and *Āpastamba's* nomenclature).¹ The latter are to beg in ochre robes when the pestle and mortar have been laid aside, the fire gone out in the oven and the plates have ceased to be laid, *i.e.*, in the evening.² So also *Vasiṣṭha*.³ To lodge and feed him was a duty incumbent on the house-holder. (*Vyāsa* III. 70, *Śaṅkha* VII. 2).⁴ In *Uśanas*, VIII the Brahmin-slayer is enjoined to practise Mahāvratā for 12 years begging in the evening like a Yati. The Yati as a guest had to be honoured and entertained.⁵ *Vide Hārīta* IV. 56; *Dakṣa* VII. 44-47; also *Viṣṇupurāṇa* Part III. Ch. IX. 13-14.⁶ Here the guests in the evening are Brahmins (house-holders or students celibate) who wander

¹ ब्रह्मचारी गृहस्थो वानप्रस्थः परिव्राजकः।—Baudh II. vi. 17 परिव्राजः—Āp. Dh. S. II. ix. 7.

² काषायवासाः सन्नसुसले व्यङ्गारि निवृत्तशरावरुम्याते भिक्षित। Baudh. II. iv. 24.

³ सप्तागाराणि असंकल्पितानि चरेद् भैक्ष्यं विधूमे सन्नसुसले। Vas. X.

⁴ विधूमे सन्नसुसले व्यङ्गारि भुक्तवज्जने अतीते पादसम्पाते नियं भिक्षा यतिश्चरेत्।

—Śaṅkha, VII. 2; also Manu, VI. 56.

⁵ वेदाहरणकार्येण तीर्थस्नानाय च प्रभो। अटन्ति वसुधां विप्राः पृथिवीदर्शनाय च ॥

तेषां स्वागतदानादि वक्तव्यं मधुरं च। गृहागतानां दद्याच्च शयनासनभोजनम् ॥

⁶ सायमतिथिं प्राप्तं प्रयत्ने नार्चयेत्।—Viṣṇu Sam., Ch. LXVII, Śl. 45.

मायंप्रातस्सतिथये प्रदद्यादासनीदके। अन्नञ्चैव यथाशक्ति संस्क्रुत्य विधिपूर्वकम्।

प्राणयाचानिभिक्षा व्यङ्गारि भुक्तवज्जने। काले प्रशस्तवर्णानां भिक्षार्थं पर्यट्टेद् गृहान् ॥

—Viṣṇupurāṇa, III. 67. 29.

either to collect the Vedas or to visit holy places or to observe the world.

According to *Pr̥thvican̄drodaya* the usage sanctioned in *Viṣṇupurāṇa* III. 13-14 is prohibited in the Kali age. Hence, says *Kamalākara*, travellers of unknown birth and conduct, etc., are not to be employed in *Śrāddhas* and such other functions ¹ *Anantadeva* says that the stay of Bhikshus in the houses of house-holders which they have entered for begging, etc., in the afternoon, is forbidden for the *Śruti* says—He shall enter the village before sunset.²

Ceremonial Sipping of Cow-drunk Water

Ācamana or purificatory sipping of water taken from the earth in a natural state is now a forbidden usage which prevailed in ancient times. Such Ācamana is permitted by *Baudhāyana* (I. 4. 57).³ *Manu* has the same provision almost in the same words, so also *Viṣṇu* and *Vyāsa* and *Bṛhaspati* quoted in *Madana-pārijāta*, p. 464.⁴ *Yājñavalkya's* śloka⁵ on the same is thus explained by *Aparārka* : Such

¹ पृथ्वीचन्द्रोदयेन तु विष्णुपुराणोक्तो निषिद्धः । तेन अज्ञातकुलशीलपात्यादिः आह्लादौ विनियोगो न कार्यः ।

² सायंशब्दः प्रदोषवाचकः । प्रदोषान्तो होमकाल इति होमाङ्ग-सायंकालस्य आश्रयायनेन विवरणात् । अतएव श्रुतिः—यासं प्रविशेदासायम् इति ।

³ आपः पवित्रा भूमिगता गीतसिर्थासु जायते । अग्न्याप्ताश्चेदमीधेन गन्धर्वैरसात्विताः ॥

—Baudh. I. v.

Cf. also—खलचेतेषु यद् धान्यं कूपवापीषु यज्जलम् ।

अभोज्यादपि तद् भीज्यं यच्च गीष्टगतं पयः ॥

—cited by Vijñāneśvara.

⁴ *Manu*, V. 128—आपः शुद्धा भूमिगता वैदृण्यां यासु गोर्भवेत् ।

अग्न्याप्ताश्चेदमीधेन गन्धर्वैरसात्विताः ॥

Viṣṇupurāṇa, XIII. 43—भूमिसुदकं पुण्यं वैदृण्यां यव गोर्भवेत् ।

अग्न्याप्ताश्चेदमीधेन तददेव शिलागतम् ॥

⁵ शुचिं गीतसिक्कतोयं प्रकृतिस्थं सहोगतम् ।—*Yāj.* I. 192.

as can quench the thirst of cows and is in a natural state, that is, has its natural colour, taste and smell—such water is pure and fit for ceremonial sipping. The continuance of the practice down to a late period is shown by a text of *Devala* of the same import quoted by *Vijñāneśvara*.¹ Neither this commentator nor *Aparārka* are aware of the ban on this ancient practice. Thus *Vijñāneśvara* says : This provision is for removing the impurity of water fallen on unclean soil and not for taking away the purity of sky-water (*i.e.*, rain-water) nor that of water stored up.² It also declares that there is nothing wrong in the use of water 'from tanks, etc., made by Caṇḍālas and other vile persons. The prohibition appears in the anonymous *Kalivarjya* text quoted in *Smṛti-candrikā*. *Madana-pārijāta* of a later date explaining the verses of *Devala* quoted above brings out the significance of the prohibition.³

Ten Days' Impurity For Rain-Water

This is connected with the previous topic and relates to a detail of ceremonial purification by sipping water. The provision for such practice occurs in *Āpas. Dh. S. 1. 15. 2* : By sipping (pure) water that has been collected on the ground, he becomes pure. (4) He shall not sip rain-drops, (5) (He shall not sip water) from a (natural) cleft in the

1

अविगन्धा रसोपेता निर्मलाः पृथिवीगता ।

अक्षीणाश्चैव गोपानादापः शुद्धिकराः स्रुताः ॥

उद्धृत्य ताः प्रशस्ताः स्युः शुद्धे पात्रे यथाविधि ।

एकरात्रीषितानानु त्यजेदापः समुद्धृताः ॥

1

—Devala cited by Aparārka, I. 192.

✓²

अशुद्धभूगतस्याशुचित्वनिषेधार्थं न तन्नरीचोदकस्य शुद्धत्वव्यावृत्त्यर्थनाशुद्धतस्य ।

✓³

ता इति सर्व्वेनाम्नो गोहृत्तिमात्रपर्याप्ताः अल्पा एव ताः पराश्रयन्ति अतो बह्वदकादेरुद्धृतानां रात्रौषितानां न दोषः । तडागादिरुद्धृता अथापो रात्रौषितोदकान्तरसम्भवे अशुद्धा एव । तथा—
अक्षीभ्यानि तडागानि नदीवापीसरासि च । चण्डालाद्यशुचिस्पर्शातीर्थतः परिवर्जयेत् ।

ground. On this *Haradatta* has the note : Some think that this *Sūtra* (4) is intended to forbid also the drinking of rain-water. Other commentators declare that according to this *Sūtra*, it is allowed to use for sipping drops of water which fall from a vessel suspended by ropes. But the meaning is made clear by other texts, such as an anonymous text quoted by the same commentator 'and also another in *Kṛṣṇa Bhaṭṭa's* commentary on *Nirṇaya-sindhu*.¹ It seems that rain-water collected and allowed to clear for three days during the rainy season was used for ceremonial washing. But in other seasons the period was ten days. This latter provision in regard to rain-water collected in other seasons is here abrogated. *Manu* says that cows, she-buffaloes and Brahmin women in maternity are purified after ten nights as also rain-water collected on the ground² *Manu's* rule, therefore, has to be taken to apply to the same case. So that by the *Kalivarjya* text, the longer period of impurity is rescinded.³ The prohibition of this archaic practice is first found in the text cited in *Smṛti-candrikā*.

Curtailment of the Period of Impurity

The rules regarding ceremonial impurity at birth or death have been reduced to a strictly graded system by the

- ¹ श्रावणे मासि सप्राप्ते सर्वा नद्यो रजस्वलाः ।
विदिनञ्च चतुर्थेऽङ्गि शुद्धाः सुजाङ्गवी यथा ॥

Quoted by *Haradatta*—

- काले नवीदकं शुद्धेन पिबेच्च त्राहन्तु तत् ।
अकाले तु दशाहं स्यात् पीत्वा नाद्यादहर्निशम् ॥
² अत्रा गावो महिष्यश्च ब्राह्मण्यश्च प्रसूतिकाः ।
दशरात्रेण शुद्धान्ति भूमिष्ठञ्च नवीदकम् ॥

Cited as *Manu's* text by *Haradatta* on *Ap. Dh. S.*, I. xv. 2.

- ³ दशाहप्रतिषेधस्यापवादः । अन्यथा काले त्राहप्रतिषेधः अकाले तु न किञ्चिदित्य-
नौचित्यापत्तेः ।

compilers of Digests in later times. This system is the outcome of a process of growth of which the beginnings are traceable in the earlier works on the sacred law. *Pār. Gr. S.* III. 10. 29-30, 38: The impurity caused by death lasts through three nights; through ten nights according to some (teachers). Their (that is of those who have touched the body) impurity lasts through one or two fortnights. In *Baudhāyana* 1.5 ten days' impurity is ordained for the parents (125); according to some, for the mother (126); according to others, for the father owing to the greater importance of the seed (127). To this general law exception was provided in the case of certain classes of people—a priest, one engaged in a sacrifice, a Brahmacārin and a King.¹ Such is the provision also in *Gautama* (Ch. XIV) who explains that it may interfere with the duty of a king or the Vedic study of a Brahmin, hence in their case the impurity terminates at once.² *Manu* V. 93-94 For Kings there is no taint of impurity nor for those who are under a vow, nor for those engaged in a sacrifice, since seated in the position of Indra they are always become, as it were, Brahman. In the exalted seat of a King purification on the instant is enjoined; his seat, meant for the protection of the subjects, is the reason therefor. Further, purity and impurity arise and cease³ from the rulers of men. Thus in the matter of prescribing periods of impurity the King is declared to be supreme. *Viṣṇu* (XXII. 47 *et seq.*) also adds the cases of craftsmen and of servants of the King and

¹ सपिण्डेष्वद्वादशाहशौचमिति जननमरणयोरधिकृत्य वदन्तृगुल्लिङ्ग-दीक्षित-ब्रह्मचारि वर्जम् ।

—I v. 107

² सद्यःशौचं राज्ञाञ्च कार्यविरोधात् ब्राह्मणस्य च स्वाध्यायनिवृत्त्यर्थम् ।

³ राज्ञामघदोषं ऽस्य व्रतिनां न च सतिष्णाम् । ऐन्द्र स्थानमुपासीना ब्रह्मभूता हि ते सदा ॥
राज्ञो माहात्मिके स्थाने सद्यःशौचं विधीयते । प्रजानां परिरक्षार्थं आसनञ्चात्र कारणम् ॥

* * * * *

शौचाशौचं हि मर्त्यानां लोकेश्वरमवाप्यते । (१७)

occasions of installation of deities (already commenced), marriage, revolution, extreme distress.¹ The same rule is repeated by *Atri* who further declares that there is no impurity in one's case at the option of a Brahmin.² Here the power of dispensing with the impurity is vested in the Brahmin.³ There is a resumé of the different rules in *Yāj.* III. 27-29. *Atri* further says that in the case of the vicious, those always dependent on others, those who are without sacred duties, the impurity is perpetual.⁴ *Uśanas* (VI. 61) says that in the case of the perpetual student celibate or those who have retired to the forest, those who are Sannyāsins or Brahmacārins there is no impurity.⁵ *Śaṅkha* says (XV. 1 and 21): Amongst sapinḍas of a Brahmin who is given to tending the sacred fires or to the pursuit of Vedic study, purification ensues after the third day. A Sannyāsin, one under a vow of Brahmacārin, a confectioner, one initiated in a sacrifice and the servants of the King suffer no impurity.⁶ An anonymous Smṛti text cited in *Mitākṣarā* (on *Yāj.* III. 27-29) says that a Brahmin given to daily sacrifice in the fire and Vedic study becomes pure after one day ; he who has one of these qualifications, after three days and he who

¹ न राज्ञां राजकर्माणि न व्रतिनां व्रते । न सविष्ठा सते । न कारुणा कारुकर्माणि ।
न राजाज्ञाकारिणा तदिच्छया । न देवप्रतिष्ठोत्सर्गविवाहेषु न देशविभ्रमे नापद्यि च कष्टाया-
माशौचम् ।

² व्रतिनः शस्त्रपुत्रस्य आहिताग्रेऽसथैव च । राजसू सूतकं नास्ति यस्य चेच्छति ब्राह्मणः ॥

³ महीपतीना नाशौचं हतानां विद्यता तथा । ग्रीवाब्रह्मणार्थे स्यामि यस्य चेच्छति भूमिपः ॥

—*Yāj.*, III. 27.

⁴ व्यसनासक्तचित्तस्य पराधीनस्य नित्यशः । स्वाध्यायव्रतहीनस्य सततं सूतकं भवेत् ॥

—*Atri*, 103.

⁵ दैष्टिकानां वनस्थानां यतीनां ब्रह्मचारिणाम् । नाशौचं विद्यते सङ्घिः पतिते च तथा मृते ॥

—*Uśanas*, VI. 61.

⁶ जनने मरणे चैव सपिण्डानां द्विजोत्तमाः । चण्डालाश्च हिमयाग्रीति योऽग्निवेदसमन्वितः ॥

यती व्रती ब्रह्मचारी सूपकारश्च दीक्षितः । नाशौचभाजः कथिता राजाज्ञाकारिणश्च ये ॥

is devoid of both, in ten days ¹ *Parāśara* adds a few more exceptions to the general rule ² as to the term of impurity. By the later *Smṛtikāras* these long lists of persons exempted from impurity are repeated—for example, in *Pracetā* and *Śātātapa* cited in *Mit.* on *Yāj.* III. 27 where anonymous *Smṛti* texts³ of the same import are also cited.

Devala quoted in *Mādhaviya* sets forth a gradation of periods of impurity according as a Brahmin is engaged in Vedic study or under a duty to preserve the sacred fires. It appears that till the time of *Devala* these rules continued to be repeated and in some cases amplified.⁴ *Vijñāneśvara* (on *Yāj.* III. 27-29) appears to be unaware of the ban on the ancient usage. He reviews and reconciles the divergent passages and specifies the classes of persons who are entitled to the reduced impurity, and also discusses whether the exemption attaches to the person or is connected with the occasion. The *Kalivarjya* text of Śrīdhara prohibits reduction of impurity on the ground of mode of life and Vedic study.⁵ *Vijñāneśvara* says that house-holders who did not save for the morrow or provided for three days only (*Manu.* IV. 7) had their term of impurity correspondingly reduced. The *Brahmacārin*, the *Vānaprastha* and the *Sannyasin* were always free from impurity. According to him the reduction of the period of impurity relates to certain exceptional occasions and not to all social dealings of the person so

¹ एकाहाद् ब्राह्मणः शुभ्येद् योऽग्निवेदसमन्वितः । ब्रह्मात् केवल एकस्मिन् विहीनो दशभिर्दिनैः ॥

² शिल्पिनः कारुका वैद्या दासीदासाश्च नापिताः । श्रोत्रियाश्चैव राजानः सद्यःशौचा प्रकीर्तिताः ॥

—III. 27.

³ सद्यःस्पृश्यो गर्भदासी भक्तदासस्त्राहाच्छुचिः ।

Also—चिकित्सको यत् कुरुते तदन्येन न शक्यते । तस्माच्चिकित्सकः स्पर्शं शुद्धो भवति नित्यशः ॥

✓ चत्वार्यधीतवेदाना अहान्याशौचमिष्यते । वेदाद्ययुक्तविप्रस्य ब्राह्मणाशौचमिष्यते ॥

एताभ्यां श्रुतयुक्तस्य दिनमेकं विधीयते । एतैः सार्कं कर्मयुक्तः सद्यःशुचिरसशयः ॥

⁵ K. V. Text, VI, Item xix.

exempted.¹ The exceptional privilege of immunity from impurity was found to be inapplicable to a society in which Vedic practices were in disuse and persons who might claim such immunity were getting rare.

Purification after Bone-picking of the Cremated

This ancient usage may be gathered from *Āś. Gr. S.* IV. 5. 1-10 : “The gathering (of the bones is performed) after the tenth (*tithi* from the death) on a *tithi* with an odd number of the dark fortnight under a single *Nakṣatra* (like *Āsā-dhās*). A man into a male urn without special marks, a woman into a female one without special marks. Aged persons of an odd number, not men and women together (gather the bones). The performer of the ceremony walks three times round the spot with his left side turned towards it and sprinkles on it, with a *śamī* branch, milk mixed with water, with the verse ‘O, cool one, O, thou that art full of coolness’ (R. V. X. 16. 14). With the thumb and the fourth finger they should pick each single bone (and put into the urn), without making noise. The feet first, the head last. Having well gathered them and purified them with a winnowing basket, they should put (the urn) into a pit, at a place where the waters from the different sides do not flow together, except rain-water, with (the verse): ‘Go to thy mother earth, there’ (R. V. X. 18. 10) With the following (verse) he should throw earth (into the pit). After he has done so (he should repeat) the following (verse). Having covered (the urn) with a lid with (the verse) ‘I fasten to thee’ (R. V. X. 18. 13) they

¹ अथश्च अशौचसङ्कोचो येनैव प्रतिगृहादिना विना आर्चिकुक्षिप्यो न सर्व्ववेत्यवगन्तव्यम्
* * यावत्प्रवाधितेऽनुपपत्तिप्रशमो न भवति तावद् वाधशून्यम् * * अग्निवेदप्रदयो
कार्यान्वयित्वं भवति * * अतः क्वाचित्कर्मैवदमशौचसङ्कोचविधानं न पुनः सर्व्वव्यवहारादि-
गोचरम् ।

then should go away without looking back, should bathe in water, and perform a *śrāddha* for the deceased.' But it seems that the practice underwent some changes in regard to the time. *Viṣṇu* prescribes its observance on the fourth day of death (XIX. 10 *et seq*).¹ He prescribes the throwing of the bones into the Ganges. To the same effect a text of *Kūrmapurāṇa* is quoted by Raghunandana in his *Śuddhi-tattva*.² In *Yājñavalkya* (III. 17) the rite is not specially mentioned but the omission is supplied by *Vijñāneśvara*.³ He also cites *Devala* to the effect that after the lapse of one-third of the period of impurity, touching the body of men of all the four castes is permitted.⁴ It is to be noted that though in the same passage he repudiates (as resented by public opinion) the observance of graduated periods of impurity by the relations of the dead in the fifth, sixth, seventh degree as enjoined by another *Smṛti*, in regard to the usage itself, the *Mitākṣarā* knows no bar. *Āṅgiras* (cited in *Vir. Mit.*) permits feeding in the houses of the *sapiṇḍas* (relations of the deceased) after the bone-picking.⁵ *Dakṣa* VI. 16 (corr. to *Samvarta* in Raghunāṇḍana) repeats the ancient rule as to bone-picking on the fourth day.⁶ The later *Smṛti-kāras* also set forth the graduated periods. *Laghu-Hārīta* (lxxxv-lxxxvi) another *Smṛti-kāra* of a

¹ चतुर्थं दिवसेऽस्थिसञ्चयनं कुर्युः । तेषाञ्च गङ्गाभसि निक्षेपः यावत्सहस्रमस्थि पुरुषस्य गङ्गाभसि तिष्ठति तावद्वर्षसहस्राणि स्वर्गलोकाभ्यतिष्ठति ।

² P. 308, Vol. II (Jib. Edn.).

³ Under Śl. 16—विरावाशौचिना पुनः पारस्करेण विशेषो दर्शितः । द्वितीये चतुरो दद्यादस्थिसञ्चयनं तथा । त्रीस्तु दद्यात्तृतीयेऽङ्गि वस्त्रा दद्यात्तृतीये तथा ।

⁴ Devala—स्वाशौचकालाद्विज्ञेयं स्पर्शनन्तु विभागतः । शूद्रविद्वच्चर्वविप्राणा यथाशास्त्रं प्रचोदितम् । इत्येतच्च अमुपनोतप्रयाणनिमित्ते अतिक्रान्ताशौचे च विरावादीं वेदितव्यम् । उपनौत-विषयेऽपि तेनैवोक्तम्—दशाह्वादि-विभागेन कृते सञ्चयने क्रमात् ।

अङ्गस्पर्शनमिच्छन्ति वर्षाणां तत्त्वदर्शनं ॥ विचतुःपञ्चदशभिः स्पृश्या वर्षां क्रमेण तु ।

⁵ ब्रह्मचक्षुर्विश्वं भुङ्क्ते न दोषस्त्वग्निहोत्रिणाम् । सूतके शाव आशौचे त्वस्थिसञ्चयनात् परम् ॥

⁶ चतुर्थेऽह न कर्तव्यमस्थिसञ्चयनं द्विजेः । ततः सञ्चयनादूर्ध्वमङ्गस्पर्शो विधीयते ॥

late date also formulates the old rule.¹ The law of ceremonial impurity upon the death of a *Sapiṇḍa* has become stricter and the cessation of impurity after one-third of the period has become obsolete, although the rite of bone-picking and throwing the bones into the Ganges is still observed. Raghunandana,² Kamalākara and Kāśinātha (the author of *Dharma-sindhu*) while prescribing the latter and citing and discussing the pertinent texts practically ignore the importance of the rule as to cessation of impurity.

Prescribing Death-penance for Brahmins

Sins are graded into seven classes in *Viṣṇu*, Ch. xxxiii Sūtras 3 and 4, the most heinous being certain forms of incest called *Atipātakas* (Ch. xxxiv, s. 1). For those guilty of these sins the penance is prescribed as plunging into fire for they have no other means of atonement (s. 2).³ *Hārīta* also lays down the same rule.⁴ The next grade of sins called *Mahāpātakas* (*Manu*. XI. 55) when committed with knowledge and intention entails the same penance, *viz.*, death. Also violation of a superior's bed (*Manu*. XI. 104, *Samvarta*, *Āṅgiras* cited in *Pr. Viv.* and *Ṣaṭtriṃśanmatam* cited in *Pr. Viv.*)⁵; likewise the slaying of a Brahmin

¹ सर्वेषामेव वर्णानां विभागात् स्पृशेन भवेत् । यद्योक्तेनाव शुद्धिः स्यात् सूतके सूतके तथा ॥

² त्विचतु पञ्चदशभिः स्पृश्या वर्णाः क्रमेण तु ।

³ In ref. to text in Note 3 p. 85 above Raghunandana says—वस्त्रादि चालयेत् इति प्रागुक्तचौरादि-समस्ताशौचान्तकृत्यपरम् ।

—*Sūddhi-tattva*, p. 333.

⁴ अतिपातकिनस्त्वे ते प्रविशेयुर्मुताशनम् ।

न ह्यन्या निष्कृतिरुपां विद्यते हि कथञ्चन ॥

⁵ Cited in *Prā. Viv.*—सद्योऽग्रप्रवेशादतिपातकिनः । Also *Āp. Dh. S*—नास्यास्मिन् लोके प्रत्यासत्तिर्दियते । I. xxiv. 26.

⁶ इयं विशुद्धिरुदिता प्रमाप्याकामती दिवसः । कामती ब्राह्मणवधे जीवती नास्ति निष्कृतिः ॥

—*Kālikāpurāṇa* (cited in *Prāy. Viv.*, p. 72).

is expiated by death (*Manu*. XI. 74, 80, *Ibid.*, 73). Also *Kālikāpurāṇa*¹ and *Bhaviṣya-purāṇa*² cited in *Prā. Viv.* With regard to a Brahmin's drinking spirits (*M.* XI. 147; *Yaj.* III. 252, *Yama*,³ *Bhaviṣya*⁴), or the theft of a Brahmin's gold, more than 80 *ratīs* being technically called *Suvarṇa* (*M.* XI. 100-101 = *Bhaviṣya*, cited in *Prā. Viv.*; also *Ṣaṭtriṃśanmatam* cited in *Prā. Viv.*).⁵ For association of an intimate kind also the same atonement is prescribed (*M.* XI. 182).⁶ In all these cases the atonement is death or its equivalent—the 24 years' penance.

Śūlapāṇi says that where death is prescribed for an act with intent, there its alternative is to be twice the period of 12 years for penance which is the expiation for an act without intent.⁷ And he further says that “in reality texts

^{1, 2} Angiras—

प्राणान्तिकन्तु यत् प्रोक्तं प्रायश्चित्तं मनौषिभिः ।

तच्च कामकृतं प्राप्य विज्ञेयं नात्र संशयः ॥

Bhaviṣya Purāṇa—

ब्राह्मणस्य ब्राह्मणयोर्ब्राह्मणानाञ्च पुनर्क । प्रायश्चित्तस्य चैकत्वं जातिसाश्रित्य लक्ष्यते ॥

ब्राह्मणं ब्राह्मणो वीर ब्राह्मणान् सुब्रह्मणपि । निहत्य युगपद् वीर एक प्राणान्तिकं चरेत् ॥

—*Prā. Viv.*, p. 77. *Bhaviṣya Purāṇa* (cited in *Prā. Viv.* 73)—

गुणान्वितन्तु यो विप्रं गुणैर्हीनस्तु क्षत्रिय । क्षिण्यते बुद्धिपूर्वन्तु न भवेत्तस्य निष्कृतिः ॥

विट्शूद्राणां विशेषेण हनतां कामतो हिजान् । प्राणान्तिकौ भवेद् यत्र कामतो निर्गुणे हते ॥

सगुणे निहत्य कामान्निष्कृतिर्न विधीयते ।

³ असकृन् ज्ञानतः पीत्वा वारुण्यं पतति हिजः । मरण तस्य निर्दिष्टं प्रायश्चित्तं विधीयते ॥

⁴ मतिपूर्वम् सुरापाने प्राणान्तिकमुदाहृतम् । गौडीभाष्योक्तथाभ्यासे प्राणान्तिकमुदाहृतम् ॥

—*Bhaviṣya Purāṇa*.

⁵ सुवर्णादल्पहरणे वत्सरः परिकीर्तितः । ऊर्ध्वं प्राणान्तिकं ज्ञेयं यदा ऽ ब्रह्मलो व्रतम् ॥

—*Ṣaṭtriṃśanmatam*, cited in *Prā. Viv.* (119).

⁶ यो येन पतितेनैषा संसर्गं याति मानवः । स तस्मैव व्रतं कुर्यात् तत्संसर्गविशुद्धये ॥

⁷ यच्च तु कामकृते मरणमुद्दिष्टमस्ति तत्र अकामकृतस्य प्रायश्चित्तं यद्वादशवार्षिकहैगुणं मरणीन सह विकल्पितं कर्तव्यम् । यथा ब्रह्महत्यामभिधाय आह व्यास — गलैतदेव कुर्वीत गुरुतल्प-मकामतः । कामतो विगुणं प्रोक्तं पूर्वेषु च यदुच्यते । *Prā. Viv.*, p. 27.

importing absence of expiation negative eligibility for social intercourse even after performance of the 24 years' penance—the alternative to death, and not existence of penance'' (p 73)¹. In regard to the title of this prohibition opinions differ Dāmodara says that it means the performance of penance of death by fall from a height or from plunging into fire prescribed in another text and he rejects the other view that, as in the case of secret penance, a learned assembly is not to prescribe the penance to the sinning Brahmin, but he is to gather it somehow and perform it.²

According to Anantadeva it signifies that in the Kali age there is no effect of averting hell in the penance of the performance of a vow since Yājñavalkya says Where the sin is intentional, however, by virtue of express text the sinner after expiation becomes eligible for social intercourse (p 472 bottom).

Penance of Self-sacrifice

The origin of this form of penance is traceable to Āpastamba who prescribes it for the killing of a Brahmin male or a Brahmin woman bathed after monthly illness or for destroying her child in the womb.³ The murderer is to

¹ वस्तुतस्तु निष्कृत्यभाववचनं मरणविकल्पित-चतुर्विंशतिवार्षिकप्रायश्चित्ते कृतेऽपि व्यवहार्यताभावपर न तु प्रायश्चित्ताभावपरम् ।

² विधानं तत्प्रयुक्तमनुष्ठानमिति यावत् । यत्तु सम्यग्भरणं नक्तं नोपदेष्टव्यं तैस्तु रक्षस्व-प्रायश्चित्तवत् यथाकथञ्चित् अनुष्ठेयमिति तन्मन्दम् । मनुस्मृतेरितदयुगविषयत्वे प्रमाणाभावात् युगान्तरे खलु यत् प्राप्तं तत् कलौ निषेद्धव्यं, यगान्तरे च मनुवाक्येनैवाग्रमर्थः प्राप्तस्त्व कलौ निषेधे व्यर्थत्वान्नात । Yāj—III 226, *contra* Āp Dh. S—I xxiv 26, cited in note 4, p. 86. But *vide* द्वादशवर्षाणि चरित्वा सिद्धं सङ्गि, सम्यग्योगः । Āp. Dh. S.—I. xxiv. 20.

³ I xxiv. 18—गाय रक्षेत् । 19—तासां निष्क्रमणे प्रवेशने द्वितीयो यामः । 21—आजिपथे वा कुटिं कृत्वा ब्राह्मणगळीपजिगीषमाणी वसेत् द्वि प्रतिराहोऽपजित्य वा मुक्तः । J. xxv, 12—प्रथमं वर्षं परिहाप्य प्रथम वर्षं हत्वा संयामं गत्वावतिष्ठेत् । तत्रेनं हन्तुः स मृतः शुध्यति ।

build a hut in the path of robbers for the defence of Brahmins and the sacred animal or he is to plunge into the thick of the fight to be killed by soldiers as a part of their duty. The metrical Smṛtis repeat the law, e.g., *Manu* XI. 74 and 80.¹ Also *Yāj.* III. 243, 245, 247.² The latter introduces another occasion, i.e., the rescue of a Brahmin's property stolen or robbed ; if successful or wounded or killed in such attempt the delinquent becomes sinless. For Brāhmaṇicide *Manu* prescribes 13 forms of penance.³ Quotations from the Purāṇas in Prāy. Viv. show that other alternatives were prescribed such as, in the case of the rich, giving up of all properties to Brahmins.⁴ The *Arthaśāstra* has not these sacerdotal punishments.⁵ Their abrogation was necessitated by changed social conditions and the humanizing influence traceable in many of the prohibitions. The title is otherwise explained by some⁶ as ceremonial gift to an absent person with libation of water poured on the earth ; but this is rejected by Anantadeva.⁷

Expiation for Association with Sinners and for Sins other than Theft of Gold

This compound title has been construed in two different ways. It has been split up into two, (1) pollution by contact

¹ लस्यं शस्त्रभृतां वा स्याद्विदुषा इच्छयात्मनः । * * ब्राह्मणार्थं गवार्थं वा सद्यः प्राणान् परित्यजन् । सुच्यते ब्रह्महत्याया गोमा गोब्राह्मणस्य च ।

² ब्राह्मणस्य परिव्राणाद् गवा द्वादशकस्य वा । तथाश्वमेषावभृथस्नानाद्वा शुद्धिमाप्नुयात् ।

आनीय विप्रसर्वस्वं हृत घातित एव वा । तन्निमित्तं क्षतः शस्त्रैर्जीवन्नपि विशुध्यति ॥

मशामे वा हृती लस्यीभूतः शुद्धिमाप्नुयात् । सृतकल्पः प्रहाराती जीवन्नपि विशुध्यति ॥

³ मनुना कौर्त्तितानीह त्रयोदश यथाक्रमम् ।—भविष्यपुराणम् ।

⁴ सर्वस्व वा वेदविदे ब्राह्मणायापपादयेत् । धनं वा जीवनायालं गृहं वा सपरिच्छदम् ॥

⁵ A. S. II. 73—विपत्तौ कष्टकशोधनाय नीयेत ।

⁶ Nir. Sm.—यद्वा परोद्दे शास्त्रसंन्यागो गोदान मनसा पादसुद्दिश्य इत्युक्तम् ।

⁷ केचित्, परोद्दे शास्त्रसंन्यागो दानं मनसा पादसुद्दिश्य इत्युक्तं तन्निमित्तं इत्याहुः । तन्न ।

उद्देशेन प्रतिगृह्यतामित्यादि व्यवहारनिवृत्तिलक्षणाया निर्मूलत्वात् ।

and (2) expiation for heinous offences other than theft of gold. The first is treated separately. The word *niṣkṛti* is understood as penance of death by Kamalākara.¹ In the Kalivarjya-vinirṇaya it is taken to mean secret penance which according to Dāmodara would be effective in the case of theft of gold only, and not the other great sins. His argument runs thus :—It (the term *niṣkṛti*) does not mean penance generally for that would involve conflict with the injunction contained in the original text, nor mortal penance since its prescription for others being forbidden, its performance of one's own accord is permitted; nor social intercourse for that would disagree with the injunction as to the feeding of Brahmins; nor purification in the other world since that is not capable of achievement directly by human action (compare Mitākṣara on Yāj. III 226)² nor the prohibition of the means thereto as conflicting with the aforesaid injunction. Hence *niṣkṛti* or absolution is to be explained as secret penance.³

In support of this view Dāmodara cites texts from *Bṛhannāradiya* and *Viṣṇu-purāṇa* to the effect⁴ that people in the Kali age carefully conceal their sin and perform penances in secret. Purification of the impure-minded does not result therefrom. And such secret penance, he adds,

¹ अन्यानि महापातकानि ब्रह्महत्यासुरापगुरुतत्त्वानि चोचि. तेषामकामकृतानां मरणान्त-
प्रायश्चित्तं वप्राणा कलौ नैत्यर्थः।—Nirn. Sin.

² Gautama XIX—न हि कर्म जीयत इति under the verse प्रायश्चरैरेपेक्षेनो
यदज्ञानकृतं भवेत् कामतो व्यवहार्यस्तु वचनादहं जायते।

³ स्त्रियान्मिन् सुवर्णस्त्रियवतिरिक्ते महापातके निष्क तौरहस्यपात्रं शक्तम् न प्रायश्चित्तसाधनम्,
स्त्रीकृतद्विधिविरोधात्। नापि प्रायश्चित्तिकं तस्योपदेशनिषेधेन स्वयकर्त्तव्यताभ्यनुष्ठानात्, नापि
व्यवहारो ब्राह्मणभोजनादिविधिविरोधात्। नापि परलोकशुद्धिकस्याः साक्षात् पुरुषत्रयसाध्यतेना-
वर्जनोपपत्त्यात्। नाप्युपायतन्निषेधः पूर्वोक्तविधिविरोधात्। तस्माद्रहस्यपात्राद्यश्चित्तमेव निष्कृतिरिति
व्याख्येयम्।

⁴ कदाद्यन्ति प्रयत्नेन स्वदोष पापकर्षिणः। रहस्यामेव कुर्वन्ति प्रायश्चित्तक्रिया कलौ।
मनःशुद्धिविहीनाना निष्कृतिर्न ततो भवेत्।

is condemned in texts which enjoin confession.¹ Nor is this exception in the case of the sin of theft of gold unreasonable since in the Kali age such theft being easy, the prescription of penance by the assembly of learned Brahmins is rarely obtained. Hence this provision has been made to sanction secret penance (in the case of theft of gold only).

Sins are of different grades—the most heinous being the killing of a Brahmin, the drinking of wine, the theft of gold and the violation of the bed of a Guru and association with those who have committed any of these sins. (*Baudh. Dh. S. II. 16, 15, 17, 21, Yāj. III. 227 ; Likhita 72*)² Theft of gold was technically of an amount exceeding 80 *ratīs*. The modes of expiation provided for these offences were not always of a spiritual character. Often they took the form of royal punishment; thus *Baudhāyana* (II. i. 16), says that the thief should approach the King with a club on his shoulder and ask him to punish him with that in accordance with the duty of a Kṣatriya. On punishment or release the thief is freed from sin (*Gautama*, Ch. XII³ and *Manu*, XI. 100; *Uśanas*, VIII. 15, 16; and *Parāśara*, XII. 70).

The killing of a Brahmin was inexpiable. *Baudhāyana* cites an older text according to which intentional slaying of a Brahmin is inexpiable and expiation is provided by the sages where it is unintentional.⁴ For drinking spirituous

¹ न चेन्न सुवर्णक्षेयपर्युदासीऽसङ्गतः तस्य कलावनायासिन सुवर्णक्षेयनिष्पत्त्या प्रतिनिमिश्रं पर्यटपदेशासंभवेन रहस्यप्रायश्चित्ताभ्यनुज्ञानार्थत्वादिति केचित् ।

² ब्रह्महत्या ऋषापानं क्षेयं गुर्वङ्गनाशम् ।

महानि पातकान्याहुः संसर्गश्चापि तैः सह ॥—*Manu*, XI. 55.

³ *Gautama*—क्षेपेन प्रकीर्णकेशो सुषली राजानमियात् कर्माचक्षाणः पूतो वधमोक्षार्थम्, अघ्नन्नेनस्त्री राजा ।

⁴ अमत्या ब्राह्मणं हत्वा दृष्टो भवति धर्मतः । ऋषयो निष्कृतिं तस्य वदन्त्यमतिपूर्वके ॥
मतिपूर्वं घ्नतस्तस्य निष्कृतिर्नोपलभ्यते ।—III. 1. 6-7.

liquor also the drinking of liquor scorching hot is prescribed and also re-initiation in the case of the twice-born.¹ For violation of a *Guru's* bed equally severe penance is provided.² For associating with these offenders, *Manu* declares that one becomes like the original sinners³ and should perform the penance prescribed for them. The association had to be of a certain specified kind and duration. (*Vide* next section.)

The import of the prohibition is that secret penance for these heinous offences is not effective in the present age but open confession coupled with the performance of the penance prescribed is needed.

Pollution by Contact with Sinners

As already indicated under the allied topic, those who associated with sinners of the most heinous kind were also regarded as offenders of the first degree. *Āpas. Dh. S. I. 21. 5 et seq.* : Intercourse with the fallen is not ordained. (6) Nor with *Āpapātras* (outcasts).

(7) Now the actions which cause loss of caste follow. (8) These are theft (of gold), offences rendering one *Abhiśasta*, homicide, neglect of the Vedas, causing abortion, incestuous connection with descendants of the parents or the offspring of such persons, drinking spirits; and intercourse with persons with whom it is forbidden.

The interdiction of association with sinners was very strict in ancient times. Thus, according to *Vaśiṣṭha* : Wives, sons and disciples involved in sinful acts and those

¹ सुरा पीला उष्णया कायं द हित *Also* अमत्या वारुणी पीला ब्राह्मणः क्षत्रियो वैश्यः पुनः संस्कारमर्हति । *Praśna II. Ch i. 21, 25.*

² गुरुतल्यगस्त्रे लोहशयने शयीत — *Ibid.* 14 स्मिं वा ज्वलन्ती स्निष्येत ।—15.

³ यो येन पतितेनैषां संसर्गं याति मानव ।

स तस्यैव व्रतं कुर्यात् तत्संसर्गविशुद्धये ॥—XI. 182.

⁴ *Baudh. Dh. Sūtra—II* 1 88

संवत्सरेण पतति पतिनेन समाचरन् । याजनाध्यापनाद् यौनान्न तु यानासनाश्रनात् ॥

who are otherwise fallen are to be abandoned upon declaration¹ *Viṣṇu* (LXXXII, 23) ordains that those who associate with the fallen are not to be invited to *śrāddhas*. *Baudhāyana* (II. 1. 62) says that the association for one year in the form of the performance of priestly duties, teaching or sexual connexion causes one's fall but not journeying or sitting or dining together. So also *Uśanas* (VIII. 30 *et seq*) who prescribes penances for different cases.² *Vyāsa* has a text to the effect that the sinner alone becomes tainted in Kali.³ *Parāśara* recapitulates the older law on the subject and its modification in later ages. According to him in Kṛtayuga speaking with sinners contaminated, in the Tretā the sight of them, in the Dvāpara the taking of food and in Kali a man falls through his own sinful acts.⁴ In the first age the country had to be given up, in the second the village, in the third the family of the sinner, and in the present age the sinner alone should be avoided.⁵ Association with sinners may be, according to the Smṛtis, of nine kinds, of which the minor ones are declared by

¹ भार्या पुत्रश्च शिष्याश्च संस्पृष्टा, पापकर्म्मभिः ।

पारमार्थ्य परित्याज्याः पतितो योऽन्यथा भवेत् ॥—Ch. XIII.

✓² Devala (cited in *Prāya Viv.*) enumerates the nine kinds of association—

सलापस्पर्शनःश्वाससहशय्यासनाशनात् । याजनाध्यापनाद्यैनात् पापं संक्रमते नृणाम् ॥

Also Bṛhaspati (*op. cit.*)—

एकशय्यासन पङ्क्तिर्भाण्डपक्रान्तिशयम् । याजनाध्यापनं योनिस्तथा च सहभोजनम् ॥

नवधा संकरः प्रोक्तो न कर्तव्योऽधर्मै सह ।

³ कलौ कर्त्तव्यं लिप्यते—इति व्यासोक्तेः । *Kṛṣṇam Bhatta's commentary on Nirṇ. Sindhu.*

⁴ I. 25—कृते सम्भाषणात् पापं वेताया चैव दर्शनात् ।

द्वापरे चाद्भमादाय कलौ पतति कर्म्मणा ॥

⁵ I. 24—त्यजिद्देशं कृतयुगे वेताया गामसुत्सृजेत् ।

द्वापरे कुलमेकान्तु कर्त्तारश्च कलौ युगे ॥

the Kalivarjya texts to be permissible in the present age.¹

Social Intercourse with the Corrupted.

The Kalivarjya texts given by Śrīdhara and Devaṇṇa contain three provisions in regard to the sexually corrupted :—

(1) Association with men corrupted with women of other *varnas*, even after expiation.²

(2) Acceptance into society of women ravished or otherwise fallen so far as permitted by the sacred law³

(3) Abandonment of the wife of a superior or a wife who has conceived through connection with a low-class man.⁴

A survey of the rules in the different treatises shows that the ancient law had been somewhat lax in this matter ; this was followed by stricter rules which again tended to decline to the earliest stage and the Kalivarjya texts were an attempt at the restoration of the stricter principle.

The irregularities of a primitive state of society are illustrated by *Śat. Br.* II. v. 2. 20 in which a woman joining her husband in a sacrifice is asked to confess her lapses and thereby to purify herself for the function. Such purification, if the lapse was of the minor kind, is also proved by *Manu* IX. 20-21.⁵ The expiation here referred to is,

¹ आसनाच्छयनादयानात् सभाषात् सहभोजनात् ।

संक्रामन्ति हि पापानि तैलविन्दुरिवान्मसि ॥—Parāśara, XII. 71,

Devala cited in *Prāy. Viv.*—

पतितेन सङ्गाषित्वा जानन् संवत्सरं नरः । मिश्रितस्तेन सोऽब्दान्ते स्वयञ्च पतिवो भवेत् ॥

याजनं योनिसंबन्धं स्वाध्याय-सहभोजनम् । कृत्वा सद्यः पतन्त्येते पतितेन न संशयः ॥

² सवर्णाभ्याङ्गनादुष्टेः संसर्गं शोषितैरपि । (26)

³ बलात्कारादिदुष्टस्त्रीसंयुक्तो विधिचोदितः । (43)

⁴ अयोनी सयहृ हन्ते परित्यागो गुह्यस्त्रियाः । (33)

⁵ यन्मे माता प्रलुलुभे विचरन्त्यपतिव्रता । तन्मे रेतः पिता वृङ्क्षामित्यस्यतन्निदशनम् ॥

ध्यायत्यनिष्टं यत् किञ्चित् पाणिशाहस्य जितम् । तथैव च भिचारस्य निजैव सम्यगुच्यते

according to Medhātithi and Kullūka, for mental lapse, although elsewhere the sage declares the monthly illness to be enough to purge such sin (V. 108).¹

The well-known story of Jabālā (*Chānd. Upan* IV. iv) also points to a primitive condition of society.² From this state of things, sexual morality was sought to be lifted to the utmost strictness by the provisions of both sacred and secular law.

Gautama (XXII) says that on connection with a man of a low-class a woman becomes fallen.

XXIII. An adulterous wife is to be kept in confinement and given bare sustenance.

XXIV. For cohabiting with a Śūdra woman a man requires penance. For adulterous connection between a high-class female and a low-caste male the punishment for either is to be publicly thrown to the dogs at the King's command. *Baudhāyana* mentions procreation on a Śūdra woman among the degrading sins (II. i. 55). *Sūtras* 67 *et seq.* provide that the fallen are to live in a class by themselves. But their issue may separate from them and unite with the Āryas but this is disputed by *Hārīta*. The discussion on the point is given in 68-72.³ Some consideration, however, is shown to women in this matter. *Baudhāyanā* (II. 2) cites ślokas to show that women cannot lose their purity. He also prescribes penances for inter-

¹ रजसा स्त्री मनोदुष्टा ।

² सा ह्येनमुवाच नाहमेतद्देद तात यदगीतस्त्वमसि, बह्वह चरन्ती परिचारिणी यौवने त्वामलभे साहमेतन्न वेद यदगीतस्त्वमसि, जवाला तु नामाहमस्मि सत्यकामो नाम त्वमसि ।

³ अथापि न सेन्द्रियः पतति । तदेतन् वेदितव्यमङ्गहीनो हि साङ्ग जनयेत् । मिथ्येतादिति हारीतः । दधिधानीसधर्मास्त्रियः सूर्योहि दधिधान्यामप्रयते पय आतप्य मन्थात न तच्छिष्टा धर्म-कार्येषूपयोजयन्ति । एवमशुचि शुक्लं यन्निर्वर्त्तते न तेन सह सम्प्रयोगो वर्त्तते ।

course with women of the lowest class.¹ *Āpastamba Dh. S.* (I. 28. 9) says that a mother, even though fallen, is not to be abandoned.² In II 27 he lays down the rule that an Ārya on connection with Śūdra women is to be banished. In the reverse case the Śūdra is to be killed and the female consort to be emaciated.³

In the first Sūtra of the same *Kaṇḍikā* he says that penance being performed, the adulteress is to be treated as before, for relation between husband and wife is established by the sacred law.⁴

Vasiṣṭha provides milder punishment than *Gautama* for a female of a higher caste in adultery with a male of a lower caste; the former after public disgrace becomes pure but the male is to be burned to death in various ways. For the mental lapse of the wife, he enjoins three nights' penance (Chap. XXI).

The secular law as embodied in *Kauṭīliya* is milder than the sacred law on the punishment of adultery. The capital punishment enjoined by *Gautama* and by *Āpastamba* had been reduced to torture, and the *Arthaśāstra* abolished the latter also⁵ except for a Śūdra or a Cāṇḍāla corrupting a woman of a higher caste.

¹ 61—अब्राह्मणस्य शारीरो दण्डः संयहणे भवेत् । 62—न तु चारणदारेषु न रज्जावतरे वध्यः । 63—स्त्रियः पवित्रमतुल नैता दृष्यन्ति कर्हिचित् । मासि मासि रज्जासा दुरितान्धप-
कर्षति । 72—एतेन चाण्डालौव्यवायो व्याख्यातः । अथाप्युदाहरन्ति—

चण्डालो ब्राह्मणो गत्वा भुङ्क्ता च प्रतिगृह्य च । अज्ञानात् पतितो विप्रो ज्ञानात् तु समता व्रजेत् ॥

² माता पुत्रत्वस्य भूयासि कर्माणि आरभते तस्या शुश्रूषा नित्या पतितायामपि ।

³ नाश्य (निर्वात्यः) आर्यः, शुद्रायाम् । वध्यः शुद्र आर्याया दारद्वयस्य कर्षयेत् ।—*Ujvalā*
cites a śloka as *Manu's* which perhaps occurred after IX. 178

ब्राह्मणक्षत्रियविशा स्त्रियः शुद्रेण सङ्गताः । अप्रजाता विशुद्धा न प्राश्रयितेन नेतराः ॥

⁴ चरिते यथापुरं धर्माद्वि सवन्धः ।

⁵ ब्राह्मणक्षत्रियगुप्ताया क्षत्रियस्त्रीक्षमः, सर्वस्व वैश्यस्य । शुद्रः कटाग्रिना दह्येत ।—Ch. 90,
cf. *Manu*, VIII. 374-76. परचक्राटवीहतामोचप्रवृद्धामरणेषु दुर्भिक्षेषु वा त्यक्तां प्रेत-

In *Manu* there is a resumé of the rules regarding the treatment in society of these offenders—male and female, but he himself inclines to the stricter view. Thus in Ch VIII he ordains death for a non-Brahmin guilty of this offence (359). But if the parties are of the same caste, the man who corrupts the female is not punishable with death (364). If the female seeks a man of low caste, she is to be restrained at home (365). He makes distinctions according to the social status of the parties. Within the caste the highest punishment is enjoined for forcible abductions; for a man of a lower caste, the punishment is of the middle grade; if it be against a higher caste, for the male it is death, and for the female, the cutting off of the nose, etc. (II. 86).¹ In this connection, Haradatta commenting on *Āpas. Dh. S.*, II. 27. 10 quotes a śloka which in some recensions occurs after XI. 179 (cited above).

In *Yājñavalkya* the rigour of *Manu* is somewhat softened. In II. 286 he reproduces the provisions of *Āpas. Dh. S.* II. 27. In I. 72 he declares that in adultery the woman is purified by the monthly illness; abandonment is prescribed in case of conception. III. 231 ranks connection with a woman of the lowest class with violation of the bed of a Guru and śloka 241 classes connection with a woman of a lower caste as a minor sin (*upapātaka*). III. 296 lays down

भावेत्सृष्टा वा परस्त्रियं निस्तारयित्वा यथासम्भाषितं समुपभुञ्जीत । जातिविशिष्टा अकामापत्यवती निष्कृयेण दद्यात् ।

चौरहस्तान्नदीविगादं दर्भिचाद्देशविभ्रमात् ।

निस्तारयित्वा कान्तारान्नष्टा त्यक्ता सृतेति वा ॥

भुञ्जीत स्त्रियमन्वेषा यथासम्भाषितां नरः ।

न तु राजप्रतापेन प्रसुक्तां स्वजनेन वा ॥

न चोत्तमां न चाकामां पूर्यापत्यवतीं न च ।

ईदृशी त्वनुरूपेण निष्कृयेणापवाहयेत् । (Ch 89).

1

सजातावृत्तमो दण्ड आनुलोम्ये तु मध्यमः ।

प्रा तन्मोस्ये वध पंसा स्त्रीणां नासादिकर्त्तनम् । II 289

the rule for fallen women : They are to be lodged near home and given food and clothes and restrained. Intercourse with a vile person is a specially degrading offence in women.¹

In *Atri* the relaxation of the old rigour is even more marked. He enumerates the seven classes of Antyajas and says that for connection with their women, if knowingly had, the penance is *krcchrābda*, and if unknowingly, *cāndrāyana*. His doctrines on the incorruptibility of women are somewhat startling.²

Samvarta cited by Kṛṣṇam Bhatta has the text which prescribes punishment for a woman forcibly corrupted. He provides penances for different classes of sexual offenders (śloka 149-54 and 164-68). In śloka 171 he says that his rules agree with those of Yama³

Kātyāyana awards death to forcible intercourse (N. Banerjee's *Matasaṅgraha*, śl. 667) and says further that for all offences of this sort where fines are imposed on men, half the amount is the punishment for women; for her mutilation is enjoined where death is awarded to the male.⁴ He says further that sexual relations with a woman rescued from the hands of robbers or from drowning, flood or

¹ पतिनानामिष एव विधिः स्त्रीणां प्रकीर्तितः । सम्परिकीर्तितः १ ।

वासो गृहान्तिके दीयमङ्गं वासः सरक्षणम् ॥

² न स्त्री दुष्यति जारिण (18-19)

पूर्वं स्त्रियः सुरैर्भुक्ताः सोमगन्धर्ववज्रिभिः । सुञ्जति मानवाः पथान्न ता दुष्यन्त कर्हिचित् ॥ (190)

असवरेस्तु यो गमः स्त्रीणां योनौ निषेव्यते । अगृह्णा सा भवेन्नारो यावद् गर्भं न सुञ्जति ॥ (191)

विमुक्ता तु ततः शल्ये रजश्चापि प्रदृश्यते । तदा सा शुष्यति नारी विमलं काञ्च यथा ॥ (192)

स्वयं विप्रतिपन्ना वा यदि वा विप्रतारिता । बलान्नारी भुक्ता वा चौरभुक्ता तथापि वा ॥ (193)

न त्याज्या दूषिता नारी न कामोऽस्या विधीयते । ऋतुकाल उपसीत दुष्यकालेन शुष्यति ॥ (194)

सकृद् भुक्ता तु या नारी स्त्रीच्छैर्वा पापकर्मभिः । प्राजापत्येन शुष्यति ऋतुप्रसवणेन तु ॥ (197)

बलाद् धृता स्वयं वापि परप्रतारिता यदि । सकृद् भुक्ता तु या नारी प्राजापत्येन शुष्यति ॥ (198)

³ बलात् प्रसव्य भुक्ता चेद् दह्यमानेन चेतसा । प्राजापत्येन शुद्धिः स्यात् तत्तस्य पावनं स्मृतम् ॥

⁴ सर्वेषु चापराधेषु पुंसो ह्यदमस्तथा । तदङ्गं योषितो द्युर्धमे पुंसोऽङ्गकर्तनम् ॥

famine are justified (Banerjee, 686-87). But this is not so, where the woman is of a higher caste or is an unwilling party (688-89).¹

Parāśara also declares purification by monthly illness except in conception (VII. iv); in that case, she is to be banished (X. 30). A fallen Brahmin woman cannot return to society. A woman who leaves her home and family is lost, both in this world and hereafter (X. 31, 32). From the tenth day of her disappearance her offence is inextinguishable and she should be treated as an outcast (X. 33).

Devala, whose extant *Smṛti* bears evident traces of a late date, amplifies and extends the laxer provisions of *Atri* to cases of abduction and corruption of males by *Mlecchās* (śls. 8 ff.) and also of females (śls. 36 ff.) and to cases of conception through rape by *Mlecchās* (śls. 47 ff.). Śl 50 says that after delivery, a woman with child through intercourse with a man of a lower caste is purified by penance.²

Aparārka on *Yāj.* I. 70 says that after the performance of the penance the woman is again fit for social intercourse. This repeats *Manu's* text, XI. 190³ as well as *Āpas. Dh. S.*, II. 27. 1.

Vijñāneśvara on śl 72 says that for a woman corrupted with a man of a low class abandonment is prescribed, i.e. exclusion from enjoyment and religious functions but she is not to be driven away from home since the rule is to restrain her in a separate dwelling. The *Kalivarjya* texts were evidently intended to counteract this tendency of allowing social intercourse after the performance of penance and to revive the strictness of the code of *Manu*.

¹ Śls. 686-89 almost agree with *Kautilya*, Ch. 89 (Ślokas quoted above).

² Ślokas 49-50 agree almost with *Atri*—ślokas 191-92

³ *Aparārka*—ऋतप्रायश्चित्ता तु संव्यवहारा भवति। *Manu* XI. 190—ऋत-निर्नेकनाशैव न जुगुप्सेत कश्चित्।

Sea-voyage

Although directly opposite views have been taken as to the construction of diverse revealed texts, it would be hazardous to assert that sea-voyage was unknown to the Aryans in Vedic times. The story of Bhujyu, son of Tugra, who is repeatedly mentioned in the Veda as being saved from the deep by the Aśvins¹ and the references to the treasures of the ocean and gains of sea-trade point to marine navigation.² The word *samudra* occurs frequently in the Rgveda and later texts and though the meaning of the word in the earlier passages is disputed, in regard to the later passages there is little difference of opinion³. Recent investigations into India's relations with the Far East have brought to light overwhelming data in support of the continuance of the maritime activities of the Hindus till about the fifteenth century A.D. Evidence of commercial relations with the West at the beginning of the Christian era is found in the *Periplus of the Erythrean Sea*. Ideas of ceremonial purity perhaps led to the dislike of sea-voyages and the consequent contact with strange races and other creeds from a very early date. But concession was made to territorial practice. Thus *Baudhāyana* speaking of the disparities in Aryan practice in different parts of India refers Sea-voyage to the North and holds it as a practice that would pollute men of the South.⁴ It follows that Sea-voyages were commonly performed by Northern people and were not regarded as reprehensible for them. The

¹ As in Rgveda—I. 112. 6 ; X. 40 7, etc.

² As in Rgveda—I. 47. 6.

³ As also about Rgveda—VII. 95. 2

⁴ I. 1. 19—पञ्चधा विप्रतिपत्तिर्दक्षिणतन्मद्योत्तरतः । 22—अद्योत्तरतः... समुद्रयान-मिति । 23—इतरदितरस्मिन् कुर्वन् दुष्यति इतरदितरस्मिन् । 24—तत्र तत्र देशप्रामाण्यमेव स्यात् ।

early history of Indian colonies in the Far East and the traditions current in them as to their original home show that the colonists generally started from Northern India.¹ There were four centres from which the colonisers started—Tāmra-līpta on the coast of Bengal, Gopālpur and ancient Kalinga and three unidentified harbours near Mushpattam and Broach. M. Pelliot has shown that from as early as the second century B.C. there was also a regular trade-route by land between Eastern India and China through Upper Burma and Yunnan, which, obstructed for a time by barbarous tribes, was reopened again in the eighth century A.D. The Indian colonies in the Far East were established before the second century A.D. M. Parmentier and other historians have tried to show that events in the mother country—the progress of cults and changes in usage and political conditions at home—were felt in the Eastern colonies. “For nearly three centuries after India was conquered by the Mahomedans” (the disaster at Tarain, 1194, preceded by the submission of Rājyapāla of Kanauj to Mahmud of Ghazni, 1019), “the banner of Hindu independence was hoisted up in those far-off lands.” But like a fountain with a dried up spring these colonies decayed with the downfall of their motherland. “Champa fell before Annamite invasions in 1543. In Java the last Hindu Dynasty was overthrown in 1479” (Fergusson).

The prejudice against sea-voyage despite the traces of it available in Vedic literature had an early origin. Thus *Baudhāyana* prescribes penances for sea-voyage.² At the same time, in 1.10.13 he ordains that the customs duty on Sea-trade belongs to the King. The term *samudra-sūlka* is

¹ Dr. R. C. Mazumdar's *Champa*.

² II. 1 50-51, 55-56—अथ पतनीयानि .. समुद्रसंयानम्... शूद्राभिजननम् तद-
पत्यत्वञ्च । 57—एषामन्यतमं कृत्वा । 58—चतुर्थकालाग्निभोजिनः स्मुरपोऽभ्युपेयुः सवनानु-
कल्पम् । स्थानासनाभ्याम् विहरन् एते विभिर्वर्षैस्तदपन्नानि पापम् ।

so explained by Govinda-svāmin¹. *Manu* declares a Brahmin who has voyaged across the Sea as one who pollutes the row of seats (pankti) at a feast.² As in Baudhāyana, so also in the Mānava Code provisions for sea-captains and ship-owners occur. These prove, according to Mr. Jayaswal, the increasing commercial enterprise of the Hindus in the third century B.C. (*vide Manu* VIII. 406). In *Yāj.* II. 250-264 new rules are formulated for companies formed for Sea-trade and Sea-voyages. *Uśanas Saṃhitā* (IV. 33-34)³ declares that a Sea-goer is to be excluded from Śrāddha ceremonies. The total prohibition of Sea-voyages for the twice-born cannot but be connected with the historical circumstances set forth above and the growing religious obsession of the Hindu mind which is clearly imprinted on the later writings on Law and Usage. Certain writers choose to take the prohibition to apply to voyages performed to places of pilgrimage across the Sea.⁴ But this construction is shown to be unreasonable by the other prohibition in the Kalivarjya Text XI which forbids social commerce with the twice-born who have journeyed across the Sea even after the performance of expiation.⁵ The interpretation that Sea-voyage refers to pilgrimage to a holy place across the Sea such as Dwārakā, is met with in Nirṇaya-sindhu and in the Smṛti-Kaustubha.

¹ द्वीपान्तरादाहत समुद्र वस्तु पण्यद्रव्यम् ।

² III. 158-167—एतान् विगर्हिताचारानपाङ्क्त्यान् द्विजाधमान् । द्विजातिप्रवरो विद्वान्-भयत्र विवर्जयेत् ॥

³ समुद्रयायी ज्ञतद्वा रथ्या-समथभेदकः । ते वर्ज्याः आह्वकर्मसु ।

⁴ समुद्रेति तीर्थयात्रा निषिध्यते । तीर्थयात्रातिदूरतः इति माधवोदाहृतवचसैकमूलश्रुति-कल्पनालाभवात् ।—Smṛti-Kaustubha.

⁵ (विहितप्रायश्चित्तम्) तदपि कलौ कर्त्तव्यमेवेति तत्करणानन्तरं तद्व्यवहारी निषिध्यते । एतच्च प्रायश्चित्तं रागप्राप्ते समुद्रयान एव । शङ्खोद्वारादितीर्थं यात्राविधिना अन्तरीयकं समुद्रयानम् अतो दोषाभावात् प्रायश्चित्तम् । अत्र क्रत्वर्थमात्रनिषेधेऽपि न जतिः पुरुषार्थनिषेधान्तरसत्त्वात् ।

Punishment of Witnesses in Disputes between Father and Son

This incident of archaic law appears to have become well-nigh obsolete by its very crudity and unsuitability to developed social condition, even before its formal prohibition in *Brahma-purāṇa* and *Smṛtyarthasāra*. It was early felt to be suited only to the patriarchal state. Under *patria potestas* no action could be maintained between the father and the son. But with a change in the domestic status of persons along with the growth of society, it was necessarily modified. *Viṣṇu* (V. 119-120) formulates the primitive law¹. A fine of ten *paṇas* was to be imposed on witnesses in disputes between father and son and the highest amercement on those who intervened in them as sureties for either party. *Yājñavalkya* (II. 242) versifies these two *Sūtras* with the difference that the fines in the two cases are ordained as three and twenty-four *paṇas* respectively.² But litigation between such parties cognisable by the King might arise. Hence *Kauṭilya* specifies persons who should be witnesses in such litigation and also states the penalty for the defeated party in mutual accusation between father and son.³ *Nārada* says (I. 152): In family quarrels members of that family shall be witnesses.

Ordinarily such quarrels are not cognisable by the courts, so says *Bṛhaspati*.⁴ An anonymous text similar to this is cited in *Mitākṣarā* on *Yāj.* II. 32. But, as both *Vijñāneśvara* and *Jīmūtavāhana* in *Vyavahāra-mātrkā* point out, this rule is to be followed where the offence is of a minor character.⁵

¹ पितापुत्रविरोधे तु साक्षिणा दशपणो दण्डः । यत्नयोश्चान्तरः स्यात् तस्योत्तमसाहसम् ।

² पितापुत्रविरोधे तु साक्षिणां त्रिपणो दण्डः । अन्तरे च तयोर्थः स्यात् तस्याप्यष्टगुणो दण्डः ।

³ स्वामिनो भृत्यानामृत्विगाचाध्याः शिष्याणां मातापितरौ पुत्राणां चानियद्दण्डेण सार्द्धं कर्तुं तेषामितरे वा । परस्परामिद्वेगे चैषामुत्तमा. परीक्षा दण्डवत्सं दयुरवराः पञ्चवत्सम् ।

⁴ गुरुशिष्यौ पितापुत्रौ दम्पती स्वामिभृत्यकौ । एतेषां समवेतानां व्यवहारो न सिध्यति ॥

⁵ अल्पापराधविषयम् ।

Yāj. II. 5 defines litigation as what arises when one petitions the King, injured by *others* in violation of *Smṛtis* and usages.¹ Here according to the *Mitākṣarā* *others* (*paraiḥ*) exclude the relations aforesaid. When, however, the *Śāstraic* rules permitting a certain degree of punishment by the superior, etc. are exceeded, the King is bound to take cognizance. Also a vicious father may waste ancestral property or in punishment he may go beyond the limits prescribed by the sacred law.² In such cases no doubt witnesses may have to be produced and punishment meted out to the superior.³

Slaying of a Brahmin Aggressor

The killing of a Brahmin assailant in self-defence is an exception to the general rule that the Brahmin is immune from the punishment of death⁴ and that the slaying of a Brahmin is a most heinous offence.⁵ This principle is enunciated in *Baudhāyana* I. 10-18 and *Viṣṇu* V. 3-8.⁶ The prohibition of this permissible self-defence which had testified to the growing juristic fairness of the early Hindus was the outcome of the accentuation of caste-privileges in

¹ सृत्याचारव्यपेतेन मार्गेणार्थवर्धितः परैः । आविदयति चेद्राज्ञी व्यवहारपदं हि तत् ॥

² पिता वा व्यसनाविष्टः सर्वस्वं देश्याकिरातादिभ्यो दातुमिच्छति ।—*Vyavahāramātṛkā*. पितामहोपात्ते भूम्यादौ पितापुत्रयोः स्वाभ्ये समाने यदि पिता विक्रयादिना पितामहोपात्तं भूम्यादि नाशयति तदा यदि धर्माधिकरणं प्रविशति तदा पितापुत्रयोर्भवेत्येव व्यवहारः ।

³ एवमादिव्यवहारो द्रष्टव्य एव अन्यथा अनुचितक्रियाप्रवृत्तस्य राज्ञीऽधर्मापत्तेः अवश्यं ज्ञात्वा दण्डस्य कर्तव्यत्वात् ।—*Vyavahāramātṛkā*. As to the limits of domestic punishment Yama says :—

भार्या पुत्रश्च दासश्च दासी शिष्यश्च पञ्चमः । प्राप्तापराधास्ताड्याः सुगः रज्ज्वा वैशुदलीन वा ॥

अधस्तात् प्रहर्तव्यं नीत्तमाह्ने कदाचन । अतीत्यथा प्रवृत्तस्तु यथोक्तं दण्डमर्हति ॥

⁴ *Baudh. Dh. S.* I. X. 18—अवध्यो वै ब्राह्मणः सर्वोपराधिषु ।

⁵ Vide §§ on समर्गदोषः and स्तेयान्धमहापातकनिष्कृतिः ।

⁶ स्वदेशाद् ब्राह्मणं कृताहं विवासयेत् । अन्यत्रापि वध्योऽर्क्षेण तिष्ठत समयधनमचत विवासयेत् ।—*Viṣṇu* Cf. *Manu* VIII 380.

न जातु ब्राह्मणं हन्यात् सर्वपापेष्ववस्थितम् । राष्ट्रदिनं बहिष्कृत्यात् समयधनमचतम् ॥

later times. The ancient law is stated by *Gautama* (VII. 25) who says that when life is in danger a Brahmin also may take up a weapon.¹ Here the term *api* (also) indicates that it was a general rule for all castes *Baudhāyana Dh. S.* (I. 10. 11-14) also sets forth the same law and cites an ancient text to the effect that a teacher born in a worthy family, if he is an aggressor, may be killed; thereby one does not incur the sin of destroying a foetus for in such a case wrath meets wrath.² The law of self-defence is also enunciated in *Āpastamba Dh. S.* I. 29. 7. which declares it as an ancient law.³ Assailants are of six kinds according to *Vasiṣṭha* (III. 15-18).⁴ A restatement of the old law is contained in *Manu* VIII. 348-51⁵ where a few more situations justifying the taking up of arms by the twice-born are mentioned, such as a quarrel over the sacrificial fee, defence of women; and not even the preceptor or a boy, an old man or a deeply learned Brahmin is to be spared. One of the justifying circumstances is, according to *Manu*, an attack upon Dharma, and this rule, in the opinion of Mr. Jayswal, refers to the social revolution in the time of the Mauryas. These provisions are repeated in *Viṣṇu*

¹ प्राणमंश्ये ब्राह्मणोऽपि शस्त्रमाददीत ।

² भीतोन्मत्त स्त्रीबालवृद्धब्राह्मणैर्न युष्येत । अन्वयात्तायिनः । अथाप्युदाहरन्ति । अध्यापक कुले जातं यो हन्यादात्तायिनम् । न तेन भूण्हा भवति मृत्युं मृत्युमुच्छति, इति ।

³ यो हिंसार्थमभिक्रान्तं हन्ति मन्त्रैव मन्त्रं स्पृशति न तस्य दोष इति पुराणे । His own view is . परीक्षार्थोऽपि ब्राह्मण आयुधं नाददीत ।

⁴ अग्निदो गरदशैव शस्त्रपाणिर्धनापहः । क्षेवदारहरश्चैव षष्ठेऽत आत्तायिनः ॥
आत्तायिनमायान्तमपि वेदान्तपारगम् । जिघांसन्तं जिघांसीयान्न तेन भूण्हा भवेत् ॥
स्वाध्यायिनं कुले जातं यो हन्यादात्तायिनम् । न तेन भूण्हा स त्यान् मृत्युमुच्छति ॥

⁵ शस्त्रं हिंसातिभिर्ग्राह्यं धर्मो यच्चोपकृष्यते । हिजातीनाञ्च वर्णानां वप्रवै कालकारिते ॥
आत्मनश्च परिव्राणे दक्षिणानाञ्च सङ्गरे । स्त्रीबालाभ्युपपत्तौ च धर्मो घ्नन् न दुष्यति ॥
गृहं वा बालवृद्धं वा ब्राह्मणं वा बहुश्रुतम् । आत्तायिनमायान्तं हन्यादेवाविचारयन् ॥

Also in *Viṣṇu*—

नाततायिवधे दीपो हन्तुर्भवति कश्चन । प्रकाशं वाप्रकाशं वा मृत्युमुच्छति ॥

V. 185-186 corresponding to *Manu* VIII. 350-351. *Viṣṇu* distinguishes seven kinds of assailants.¹ *Yaj.* (II. 218) enacts a stricter law to the prejudice of persons other than Brahmins in cases of battery. He says further that the limb of a non-Brahmin who causes pain or hurt to a Brahmin is to be cut off; if raised in the act of striking, the first amercement; in case of touching weapons for such a purpose half of the above prescribed penalty is ordained.² *Yaj.* (first verse of 218 above) is in accord with *Artha-śāstra* (Ch. 76).³ *Sumantu*, an early *Smṛti*-writer, is quoted by *Viśvarūpa* without comment, which indicates that in the time of *Viśvarūpa* the law as to the inviolability of the person of a Brahmin did obtain.⁴ *Nārada* repeats the lenient penal provision in regard to Brahmins (XIV. 10).⁵ In *Bṛhaspati* we find the general law coupled with the exception in favour of Brahmins, in the matter of capital punishment. In II. 15 he lays down the principle that by killing an aggressor a man does not commit sin by any means. He who takes the life of one approaching with intent to murder is no offender. As cited in *Vivāda-Ratnākara* *Bṛhaspati* provides the punishment of a Brahmin offender in the form of shaving of the head and banishment.⁶ Other texts of *Bṛhaspati* forbid slaying of

¹ उद्यतासिविषाग्निश्च शापोद्यतकरं तथा । आथर्वणेन हन्तारं पिशुनश्चैव राजसु ॥

भार्यातिक्रान्तिश्चैव विद्यात् ससाततायिनः ।

² विप्रपीडाकरं केचमङ्गमब्राह्मणस्य तु । उदगूर्णं प्रथमो दण्डः संस्पृशे तु तदर्द्धिकः ॥

उदगूर्णं हस्तपादे च दण्डश्चितिकौ दमौ । परस्परन्तु सर्वेषां शस्त्रे मध्यमसाहसः ॥

³ विशिष्टेषु द्विगुणाः । ह्रीनेषु त्र्यर्धदण्डाः । Also यूदो येनाङ्गेन ब्राह्मणमभिहन्ता तद्वद् केदयेत् ।

⁴ नाततायिवधि दोषोऽन्यत्र गोब्राह्मणवधात् ।

⁵ शिरसौ सुख्यं दण्डस्तस्य निर्वासनं पुरात् । ललाटे चाभिगच्छाङ्गः प्रयाणं गृहमेव च ॥

⁶ Cited in *Viv.-Ratn.*—

महापातकयुक्तोऽपि न विप्रो वधमर्हति । निर्वासाङ्गनं मौख्यं च तस्य कुर्वन्नराधिपः ॥

Cited in *Prāy.-viveka* (p. 67)—

आततायिनस्तृकष्टं व्रतस्त्राध्यायसयुतम् । यो न हन्याद् वधप्राप्तं सोऽश्वमेधफलं लभेत् ॥

a Brahmin given to Vedic study and born in a worthy family and praise the act of desisting from self-defence in such a case as equal in merit to the performance of Aśvamedha. Attempts to modify the earlier law of self-defence may also be traced in the commentaries. *Viśvarūpa* on Yāj. II. 221 attributes the ancient law to the Artha-śāstra and holds that it should yield to the rule of the Dharma-śāstra.¹ *Vijñāneśvara* commenting on the same śloka tries to show that this rule is a case of opposition between the rules of Artha-śāstra and Dharma-śāstra. *Sarvajñanārāyaṇa* seeks to soften the import of Manu, VIII. 350 by saying that the blow in self-defence must not be excessive and it was not to be given where the assailant was a Brahmin.² *Kullūka* on the same śloka says that striking in self-defence was to be done where it was not possible to save oneself by flight.³ A text of Parāśara is quoted by a later commentator on the Nirṇaya-sindhu to the effect that to a slayer of a Brahmin the penance of pilgrimage to the sea-side should be prescribed by a learned Brahmin.⁴ The abrogation of the right of self-defence against a Brahmin assailant in the Kalivarjya texts is the outcome of ideas that gained ascendancy in later times as shown by Devala above and Bhaviṣya-purāṇa (cited in Prāy.-viv., p. 66⁵). The tradition of inviolability of a Brahmin's person continued to British times. In early British days the Brahmin's immunity from death-sentence was

Cf. Devala cited in the same book—स्वाध्यायिनं कुले जातं न हन्यादाततायिनम् ।
निहत्वा भूयहा न स्यादहत्वा भूयहा भवेत् । (भूयो ब्राह्मणविशेषः ।)

¹ यथार्थशास्त्रे व्यवहारप्रकरणे उक्तम्—नाततायिवधे दोषो हन्तुर्भवति कश्चन इति पुनर्धर्मशास्त्रे प्रायश्चित्तप्रकरणे कामतो ब्राह्मणवधे निष्कृतिर्न विधीयत इति ।

² आततायिनं हननप्रवृत्तं हन्यादेव अङ्गच्छेदादिरूपघातेन न त्वत्यन्तमन्दव गोब्राह्मणात् ।

³ पलायनादिभिरपि स्निह्यस्वशाश्वतौ ।

⁴ आतुर्विद्योपपन्नस्तु विधिवद् ब्रह्मघातके । समुद्रसीतुगमनं प्रायश्चित्तं विनिर्दिशेत् ।

⁵ क्षिप्रानमपि गोविप्रं न हन्याद्, वै कदाचन ।

removed by statute as in Benares by Regulation XVII of 1817 (sec. xv) The significance of the change in law is shown in Lord Bentinck's Minute—"It is impossible to conceive a more direct and open violation of their Śāstras or one more at variance with general feelings of the Hindu population. To this day, in all Hindu states the life of a Brahmin, I believe, is still held sacred.' (Life, in Rulers of India Series).

Theft from the Vile after Three Days' Fasting

The ancient Dharma Law permitted minor theft from a man of a low caste to a Brahmin in the last stage of indigence. Thus *Gautama* (XVIII. 32):¹ After going without the seventh meal, one may steal even from other than the vile. If questioned by the King, he should disclose all. If endowed with learning and right conduct, he should be maintained. Fasting at the ninth meal-time through poverty, a Brahmin may take away from one of uncondemned mode of life what is just enough to satisfy his hunger, and also from one of an approved mode of life (such as an Agnihotrin and a Soma-drinker). Thus *Maskari* explains *Gautama*. On this point *Medhātithi* quotes an anonymous *Smṛti*-text to the effect that one may take from a vile man first and failing such, from one of equal rank and on failure of that, from a distinguished man also.² *Āpas. Dh. Sū.*, II. 28. 13 lays down the same rule briefly and declares that the man who does so is not punishable.³ As to the sort of produce that may be thus taken away,

¹ सप्तमी चाभुक्ता निचयाय । अप्यहीनकर्मभ्यः । आचक्षीत राज्ञा पृष्टः । तेन हि भर्त्तव्यः सुतशीलसम्यग्रश्चेत् । धर्मतन्त्रपीडाया तस्य करणेऽदीषोऽदीषः ।

² हीनादादेशमादौ स्यात्तदलाभे समादपि । असमवेत्त्वादीत विशिष्टादपि धार्मिकात् ।
(under *Manu* XI. 16)

³ अदण्ड्यः कामकृते तथा प्राणसंशये भोजनमाददानः ।

specific directions are given in *Āpas. Dh. S.*, I. 28. 3.¹ The commentator Haradatta quotes a Smṛti text specifying the kinds of corn which may be so stolen, agreeing with *Āpas. Dh. S.* just cited.² Both *Manu* XI. 16-17³ and *Yāj.* III. 43-44 embody this rule in their codes. *Yāj.* III. 41 lays down the general principle that no sin attaches to one in extreme distress, who roaming hither and thither so helps himself to what barely suffices to keep one alive.⁴ This text agrees with *Manu* VIII. 341.⁵ The same text is cited without mention of the source in Madana-pārijāta, p. 231. The ban on this permissible minor theft by a distressed Brahmin is not known to the earlier commentators like Medhātithi and Vijñāneśvara. It is found for the first time in Smṛtyarthasāra. This irregular mode of acquisition is turned to account by Mitra-miśra in supporting the doctrine of the secular nature of ownership upheld by Dhāreśvara and Vijñāneśvara.⁶ The license here permitted to a Brahmin in distress must have been a subject of discussion to jurists and moralists as proved by the above Vir. Mit. passage. And although prohibited by Śrīdhara, the

¹ शस्योषा युग्यघासो न स्वाग्निन प्रतिषेधयन्ति ।

² चणकब्रोहिगोधूमयवानां सूक्ष्माण्योः अनिषिद्धैर्गृहीतव्या सुष्टुरिकाध्वनि स्थितैः ।

³ *Manu* XI. 16-17—तथैव सप्तमे भक्ते भक्तानि षडनग्रता । अश्वस्त्रविधानेन हर्तव्यं हीनकर्म्मणः । खलात् क्षेपादगाराद्वा यतो वाप्युपलभ्यते । आख्यातव्यं च तत् तस्मै पृच्छते यदि पृच्छति ।

⁴ आपद्गतः सप्रगृह्णन् भुञ्जानो वा यतस्ततः । न निष्येतेनसा विप्रो ज्वलनाकंसमो हि सः ।

⁵ Cf. *Nārada* XVIII 39—दित्रोऽध्वगः क्षीणवृत्तिर्होविष्णुं द्वे च मूलके । आददानः परक्षेवान्न दण्डं दातुमर्हति । Also cited by Haradatta under *Āp. Dh. S.*, I. xxviii. 3

⁶ यद्यपि चौर्यस्य स्वलोत्पादकत्वं न लोकसिद्धं तथाप्यनेनैव सप्तमभक्ताशनकाले षड्भक्तानशिरोऽप्यभिधानाद् गम्यते । स्वत्वमाधस्य हि शास्त्रीयं विरुद्धमतज्ञाना क्रयादिसत्त्वसाध्यव्यवहारानुपपत्तेः । अतश्चौर्यनिषेधो दण्डोपायमात्रबोधक एव । Vir Mit , Ch I 348 (G. Śāstri's Edn)

usage has not become wholly extinct. Jayswal remarks : “If a hungry man took a handful from a field it was no theft. This is a living law in the villages up to this time.”¹ Only the license has now merged in the larger law of charity.

Marriage with the Maternal Uncle's Daughter

The usage of marrying the maternal uncle's daughter or the father's sister's daughter has been a subject of controversy since the earliest times and yet has lived down to the present age with as much persistence as the controversy itself. The *Vīramitrodaya* in the section *Samskāra-Prakāśa* sets forth the arguments for and against the practice at some length. The Vedic texts cited therein as bearing upon it are the following :

(1) Come, Oh Indra ! by ways lauded, to this sacrifice of ours and accept with grace your own share—the omentum treated with clarified butter which is offered by the priests, like the maternal uncle's daughter and the father's sister's daughter (the share of a person).² The original of this text as can be found out from *Ṛk-Pratiśākhya* is not in the *Ṛg-veda* and hence is referred to the *Ṛk-Parīṣṭa*.

(2) The God who makes all forms and sends all good and evil and pervades all and is the generous giver will make the issue—brother and sister—born of our wombs, man and wife. For the doings of this (*Prajāpati*) none resents or undoes and his doings in us (in creating son and daughter who would mate) neither the earth nor heaven know.³

¹ Manu and Yājñavalkya.

² आयाहीन्द्र पथिभिरोलितेभिर्यज्ञसिन् नो भागधेयं जुषस्व ।

दृष्ट्वां जहुर्मातुलस्येव योषा भागस्ते पैतृष्यसेयौ वपामिव ।

³ गर्भे तु नौ जनिता दम्पती कर्द्द्वे व स्तष्टा सविता विश्वरूपः ।

नकिरस्य प्रसिनन्ति व्रतानि वेद नावस्य पृथिवी उत द्यौः ।

(3) Hence from the same male, the eater and the eaten are born, in the third degree (counted from the original ancestor) or in the fourth we shall unite.¹ The Southerners infer Vedic injunctions from this Mantrārthavāda (मन्त्रार्थवाद) and add that it must not be apprehended that the inference of injunctions will be wrongly extended to such passages as :- Prajāpati ran after his own daughter like a woman after her paramour², since such cases proceed from natural inclination.

From Śaṭtrimśanmatam and Caturvimśatimatam texts are cited which are claimed to be based on the Śruti : Manu, Vyāsa, Angirasa, and Yama have declared that the third or the fourth on the two sides one should marry.³ Paurāṇic precedents also are referred to. Thus a śloka in the *Bhāgavata* says that Rukmī insulted by Kṛṣṇa, though remembering the enmity, gave away his daughter to his sister's son in order to do her a pleasure.⁴ Another śloka in the same work says that Rukmī in order to please his sister bestowed his son's daughter, a pleasing damsel, to his daughter's son, Aniruddha, although of rooted enmity to Hari, being bound by the chains of love, not knowing it to be according to the sacred law relating to marriage.⁵ Of the last line of this passage the proper construction, according to Southern writers, consistently with the intention of Vyāsa is—"gave away not because he knew it to be according to the sacred law pertaining to the sexes but being bound by the

¹ तस्मात् समानादेव पुरुषादत्ता चायश्च जायेते ।

तृतीये संगच्छावद्वा उत चतुर्थे संगच्छावद्वा ।

² प्रजापतिः स्वा दुहितरमभ्यधावद् योषा जारमिव प्रियमित्यादि ।

³ तृतीया वा चतुर्थी' वा पचयोरुभयोरपि । विवाहयेन् मनु प्राह पाराशर्योऽङ्गिरा यमः ।

⁴ यद्यप्यनुस्मरन् वैरं (रुक्मीं कृष्णावसानितं) व्यतरद् भागिनेयाय सुता कुर्वन् स्वसुः प्रियम् ।

X. lxi 23

⁵ दौहित्रायानिरुद्धाय पौत्रीं रुक्मप्रददद्द्वरः । रोचना वद्वैरोऽपि स्वसुः प्रियचिकीर्षया ।

आनन्द धर्मं त यौनं स्त्रीहपाशानुव तः । X lxi. 25

snare of affection." In the Mahābhārata also there is the case of the marriage of Subhadrā by Arjuna who was her father's sister's son. Besides it is argued that the uninterrupted observance of the usage by generations of worthy men in society in the South should prove its Śāstraic origin.

Writers on the sacred law of the North, East and West demur to these arguments. The reading and interpretation of the Vedic texts are disputed. Thus the first text as read¹ and interpreted² by Aparārka is quite different.

The second text according to Vidyāraṇya means—"The God made us (while in the womb) man and wife." Support to this construction is lent, according to the Vīramitrodaya, by what is found later in the same Sūkta. Here the dialogue between Yama and Yamī is the context in which Yama in the end refuses the offer of Yamī saying: Oh blessed one, I shall not unite my body with yours. Men and Gods call him a sinner who goes in unto his sister. Hence how can I have such satisfaction?³

In regard to the third text the argument of those who dissent is that it is reasonable to conclude that this Vedic text is the root of the Smṛti rule⁴. Count from him from whom the lines diverge. And the Caturviṃśatismṛti deduces the same purport. It must not be explained as tending to

¹ आशाहीन्द्र पथिमिरोलितेभिर्यज्ञमिम नो वानसातौ लुपस । तस्मा जहुर्मातुलस्येव ते तव भागः
पैतृष्वस्यौमपामिवौघः ।

² ये ते सोमपतयो भवता सहाशतास्ते सठत्सोमपानेन तस्माः सन्तः सोमं जहुर्लुपवन्तः ।
किमिव, यथा पैतृष्वस्यौ भगिनी भार्यात्वेन अत्यन्तानभिलषणीयां त्यजन्ति स्वकीयमातुलस्य
सम्बन्धायोग्यतया, तद् भवदुद्देशेन सोमं त्यक्तवन्तो निराकाङ्क्षतया । यदपि श्रुतौ 'तृतीयं पुरुषं गच्छामहे'
इति तदपि स गव्यह्ननपरत्वेन अन्यार्थत्वात् । Aparārka on Yāj I 53

³ न वा उते तन्वा तन्वा सम्पृच्या पापमाहुयैः स्वसारं निगच्छात् । अन्येन मत्प्रसुदः कल्पयस्व
न ते भ्राता सुभगे वष्टेऽतदु इति ।

⁴ यतो वंशमेदस्मादाय गण्येदित्यादि स्मृतिमूलत्वेवास्याः श्रुतेः कल्पयितुं युक्तम् । उपसंहृत-
यायमर्थश्चतुर्विंशतिस्मरणेऽपि । नेदं मातुलकान्वापरिणयपरत्वेन व्याख्येयं , किन्तु हि पुरुष-
सापिङ्गुकीर्त्तनं प्रतिलोमजविवर्धनं व्याख्येयम् ।

the marriage of the maternal uncle's daughter but as declaring Sāpiṇḍya relationship to the second degree in case of the issue of Pratiloma union.

In spite of these laboured and ingenious attempts to explain away the Vedic texts upon which the usage rests, its prevalence from the earliest times is undeniable. *Śatapatha Brāhmaṇa* which pertains to the Vājasaneyī Samhitā has in l. viii. 3-6 a passage corresponding to the third text quoted above, and it has been thus rendered in S.B.E :

Thus the separation (of the eater and the eaten) is effected in one and the same act : and hence from one and the same man spring both the enjoyer (the husband) and the enjoyee (wife) for now kinsfolk (jātyāḥ) live sporting and rejoicing together, saying "In the fourth (or) third man (that is generation) we unite." On this passage the commentator Harisvāmin remarks : The Kāṇvas allow inter-marriage in such cases from the third generation ; the Kāṇva text of Śat. Br. reads—'In the third man we unite, in the fourth man we unite' ; and the Saurāṣṭras from the fourth generation and also the Dākṣiṇātyas allow marriage with the daughters of the mother's brother and with sons of the father's sister. It would seem that the prohibition of marriage between near kinsfolk (Āp. Dh. Sūtra II. xi. 15-16)¹ and the avoidance of a spouse of the same Gotra or a Sapiṇḍa of one's mother (Gobhila III. iv. 3-5)² were not firmly established.³

But since the age of the Kalpasūtras disapproval of the practice has been frequently expressed. Thus *Baudhāyana*,

¹ सगोत्राय दुहितरं न प्रयच्छेत् । मातुश्च योनिसम्बन्धेभ्यः ।

² दारान् कुर्वीतासगोत्रान् । मातुरसपिण्डा ।

³ Cf. Paṭhīnāsī—वीन् मातुः पञ्च पितृतो वा—which is the utmost limit according to the Smārtas. In *Vaśiṣṭha* VIII पञ्चनौ मातृवन्मुभ्यः सप्तनौ पितृवन्मुभ्यः prescribes the accepted rule.

I. i. 18 *et seq.*, showing the disagreement between Northern and Southern practices, mentions the instance of the marriage of the mother's brother's daughter and the father's sister's daughter as peculiar to the South and declares that a usage is valid in the country to which it is peculiar but reprehensible elsewhere.¹ But this principle of the validity of a local usage was not undisputed. *Baudhāyana* himself cites the objection of Gautama and disapproves of both connections.² *Smṛti-candrikā* an early Southern digest makes a significant comment on this objection of Gautama and seeks to justify the practice of the South.³

The validity of local custom is upheld amongst the later *Smṛtikāras* by *Bṛhaspati* in the section *Prakīrṇaka* xxvii. 19: Forbidden practices are found among the Southerners in the present day, (such as) matches with the maternal uncle's daughter, inspite of the prohibited degree of relationship on the mother's side (causing such unions to be illegal). Also in Chapter IV. xxvii and xxix he says: The time-honoured institutions of each country, caste and family should be preserved. The maternal uncle's daughter is taken in marriage among the twice-born inhabitants of the South.

¹ पञ्चधा विप्रतिपत्तिर्दक्षिणतस्तथोत्तरतः । यथैतदनुपनीतेन सङ्गं भोजनं मातुलपितृष्वष्ट-
द्विहृत्तमनम् इति । तथोत्तरत ऊर्णाविक्रयः सौधुपानमुभयतोद्विष्यवद्धार आयुधीयकम् समुद्र-
यानमिति । इतरदितरस्मिन् कुर्वन् दुष्यति इतरदितरस्मिन् । तत्र तत्र देशप्रामाण्यमेव स्यात् ।

² मिथ्यैतदिति गौतमः । उभयश्चैव नाद्रिथेयं शिष्टागमविरोधदर्शनाच्छिष्टस्मृतिविरोध-
दर्शनाच्च ।

³ इतरो दाक्षिणात्य इतरस्मिन् उत्तरदेशे मातुलसम्बन्धादिकं कुर्वन् दुष्यति न तु स्वदेशे ।
यस्य बौधायनेन देशप्रामाण्यमित्येवमन्तमुक्त्वा उक्तम्—“मिथ्यैतद...दर्शनाच्च” इति तत्र, पूर्वोक्त-
निराकरणार्थं गौतमग्रहणात् । किन्तु शिष्टस्मृतिविरोधदर्शनाद् गौतमस्य मातृसपिण्यापरिणयनमनभि-
प्रेतमिति दर्शयितुम् । एवं यदुक्तमन्यैः स्यादेव यद्यनन्तरमेव मिथ्यैतदिति न ब्रूयात् इति तदप्युपासम् ।
तेन श्रुतेः स्मृतेराचाराच्च सिद्धं मातुलद्विहृत्पैतृष्वस्योपरिणयनमिति सर्वमनवयम् ।

—*Saṃskāra-kāṇḍa*, pp. 199-200.

But against these stand the series of utterances of the authors of the versified Smṛtis. *Manu* prescribes the penance Cāndrāyaṇa for marriages of this nature.¹ Such is the view of *Uśanas* IX. 3, 4.² and also of *Śātātapa*.³ *Sumantu* prescribes the same expiation.⁴ *Paṭṭhinasi* enjoins the avoidance of brides so related since they are sisters according to the sacred law.⁵

These Smṛti texts are, however, construed by the Southerners as applying to the issue of Āsura and other disapproved forms of marriage which do not sever the Sagotra and Sapiṇḍa relationship of a girl with her father's family. They do not apply to the issue of Brāhma and other approved forms of marriage which effect such severance just like the institution of adoption. These texts are not, therefore, altogether deprived of their scope or left without application. In support of this contention a passage from the *Mārkaṇḍeya Purāṇa* is turned to account.⁶

To this contention the Northern exponents of the Dharma-śāstras replied that there is no express word declaring the cessation of Sapiṇḍa relationship in Brāhma marriage. As for the severance from the father's Gotra, Āsura and other disapproved forms of marriage also cause it. Further

¹ पैलषस्यै भगिनी स्त्रीयां मातुरेव च । मातुश्चातुरातस्य गत्वा चान्द्रायणं चरेत् ॥

—*Manu* XI. 172. Also *Uśanas* IX. 3-4.

² उद्वहेत्तु सगोत्रां यस्मिन्मातुलस्य च । ऋषिभिश्चैव तुल्या च स तु चान्द्रायणं चरेत् ॥

³ मातुलस्य सुतामूढ्वा मातृगोत्रां तथैव च । समानप्रवराच्चैव द्विजश्चान्द्रायणं चरेत् ।

—in *Vir. Mit.*

⁴ पितृष्वसुतां मातृष्वसुतां मातृसगोत्रां समानप्रवराच्च विवाह्य चान्द्रायणं चरेत् ।

—in *Vir. Mit.*

⁵ कुलीत्पन्ना साध्याचारा वरयेत् पितृष्वसुमातृष्वसुदुहितरो मातुलसुता च धर्मतस्ता भगिन्यो व्रजयेत् ।—in *Vir. Mit.*

⁶ ब्राह्मादिषु विवाहेषु यान्ता कन्यका भवेत् । भर्तृगोत्रेण कर्तव्यास्तस्याः पिण्डोदकक्रियाः ॥

आसुरादिविवाहेषु पितृगोत्रेण धर्मवित् ।—in *Vir. Mit.*

there are texts which negative the view that Sapiṇḍa relationship ceases in Brāhma marriage.¹ The performance of the obsequies of the maternal grand-father is enjoined on the part of the issue of all marriages. The Putrikā-putra, it may be pointed out, is regarded as continuing in the lineage of his maternal grand-father.²

Approval and disapproval of the usage have not been divided according to the province to which the writer belonged. Kumārila Bhaṭṭa, although he flourished in the South, condemns the usage in clear and emphatic language.³ Apararka commenting on Yājñavalkya I. 53 cites the authority of Vaśiṣṭha and holds that a usage is valid if only it is not opposed to the Veda and should not simply as such be blindly followed.⁴ Govindarāja the commentator of Manu who flourished about 1050-1080 in the North says that the prohibition of marriage into the mother's line pertains to the case of Putrikā-putra.⁵ Again he opines that its purport is the avoidance of the maternal uncle's daughter begotten by *niyoga*.⁶ Hemādri quotes a text of the Brāhma-purāṇa setting forth the Kali ban on this sort of union along with four other practices.⁷ Upon this Kamalākara comments

¹ पितरो यव पूज्यन्ते तत्र मातामहा अपि । अविशेषेण कर्तव्यं विश्वामित्रक व्रजेत् ।

in Vir. Mit

² कात्यायनसंहिता—सातुः प्रथमतः पिण्डं निर्वपेत् पुत्रिकासुतः । द्वितीयन्तु पितृकुल्यादृतीयन्तु पितुः पितुः । XVI. 23,

³ Tantra-vārttika—I. 3 स्वमातुलसुता प्राप्य दाक्षिणात्यस्तु नृत्यति ।

⁴ After citing Vaśiṣṭha—देशकुलाचारा आचार्याविरुद्धाः प्रमाणम् । आचार्यो वेदः तदविरोधोऽस्तीति चेत्, नैतत् । भगिन्यादिगमनेऽपि तदविरोधदर्शनादतिप्रसक्तेः । तस्मान् नान्यपरम्परान्वायागतस्य व्यवहारस्य प्रामाण्यम् ।

⁵ मातृगोत्रपरिणयननिषेधः पुत्रिकापुत्रविषयः । यतः पाण्ड्यहण्डिका मन्त्राः पितृगोत्रा-
पहारकाः ।

⁶ मातुलसुता परिणयननिषेधो नियोगोत्पादितमातुलसुतायहणार्थः ।

⁷ गोचान्मातुः सपिण्डाश्च विवाहो गोवधस्तथा । नराश्वमेधौ मद्यञ्च कलौ वर्ज्यं हिजातिभिः ॥

that the texts sanctioning such marriages referred to previous ages ; in the Kali age they are not valid.¹

Maskarī, the commentator of Gautama, thus disapprovingly remarks that the inference of a Vedic text in support was uncalled for seeing that matches of this sort originated from the desires of men.² Nṛsiṃhaprasāda which was compiled by Dalapati, a minister of Ahmad, the Nizam-shahi ruler of Dēvagiri (1490-1508) or his son Burha (1508-1533), while dealing with the topic Kalivarjya in the section Saṃskārasāra says that in reality marriage with the maternal uncle's daughter being sanctioned by the Veda is not reprehensible.³

Mādhavācārya's position is ambiguous. As pointed out by MM Candrakānta Tarkālankāra in his notes on Parāśara-mādhava, he approves of it in one place and disapproves of it in another.⁴

The Paurāṇic precedents of Aniruddha and Arjuna are set down by Mitrāmīśra as violations of the sacred law but excusable on the ground formulated by Gautama.⁵ But they are not to be imitated in later ages in which, as remarked long ago by Āpastamba, the senses of men are weak.⁶ And

¹ गोवाद् गोवजाया, पितृष्वसुः मातृसपिण्डात् मातुलात् तत्कन्यायाः विवाहः कलौ न कार्यः । तेन यानि तद्विधायकवाक्यानि तानि युगान्तरविषयाणि । तथा च व्यासः—तृतीया मातृतः कन्या तृतीया पितृतस्तथा । शुल्कं न चोदवद्भिष्यन्ति विप्राः पापविमोहिताः ।

² यत्तु पितृष्वसुमातुलसुतापरिणयमादौ प्रीत्युपलब्धितः प्रवृत्तिर्न तत्र उत्सन्नपाठं शास्त्रमनु-मीयते, प्रीतेरेव प्रवृत्तिर्हेतोः संभवात् ।

³ वस्तुतस्तु मातुलसुतापरिणयान् वेदाभिहिततया न दोषः ।—संस्कारसारः ।

⁴ न्यायमालायां संगृहे प्रवृत्तौ ग्रन्थकारो मातुलकन्यापरिणयाचारस्य अप्रामाण्यं मीमांसका-चार्यस्य वार्तिककारस्यानुमतमेव संजयाह । अत्र तु दृश्याचारस्य स्मृतिसिद्धतया प्रामाण्यमेव स्वस्यानु-मतं व्यवस्थापयामास इति कथञ्चित् समाधानम् आस्थेयं धीमदभिः । (A. S. B Edn., p. 474—Parāśara-mādhava). न्यायमाला I. 3. 5. ८. आदौदृश्याचारस्याप्रामाण्यमभ्युपेयम् ।

⁵ दृष्टो धर्मव्यतिक्रमः साहसञ्च महताम् ।

⁶ अवरदीर्घल्यात् । तदिन्द्रियदीर्घल्याद् विप्रतिपन्नम् । II. xxvii. 4.

he further quotes a text to the effect that the deeds of the gods and sages are not to be attempted by men who are to do what is prescribed for them.¹ The *Bhāgavata* also declares that like the fire which consumes everything persons of the highest spiritual power are not open to blame.² Mitra-miśra is, therefore, clearly of opinion that this usage is a breach of the established marital rules as to prohibited degrees. And he supports himself by the authority of Bṛhaspati cited above and by Vyāsa's own condemnation of the practice as one that will come into vogue in the degenerate Kali age.³ Kṛṣṇam Bhaṭṭa in his note on the Nirṇaya-sindhu says that Vedic texts no doubt support the usage and admits that the Paurāṇic precedents belong to the first part of the Kali age, but quotes verses to the effect that these irregular practices were prohibited at the end of the Aśvamedha sacrifice performed by Janamejaya.⁴ Dāmodara Bhaṭṭa says that the usage is sanctioned by Śruti, Smṛti and the conduct of the worthy.

By its prohibition the texts of Manu and the other law-givers are rendered applicable to the present Kali age. So he concludes by saying that although the practice has been elaborately defended by the author of the Candrikā, by Mādhava Bhaṭṭa, Someśvara and others, it was condemned by Prabhākara in his Tīkā on Śāstra-dīpikā. This usage clearly proves the persistence of custom even in the face of clear texts of law. Since the time of the codes it has been repeatedly cried down and yet it is so deeply rooted that

¹ अनुष्ठितानु यद् वैमुनिभिर्यदनुष्ठितम् । नानुष्ठियं मनुष्यैस्तदुक्तं कर्मा समाचरेत् ।

² तेजोयसां न दोषाय वक्त्रैः सर्व्वमुजो यथा ।

³ तृतीया मातुः कन्या तृतीयां पितृतस्तथा । शुक्लेन चोदवद्विष्यन्ति विप्रा पापविमोहिताः ।

⁴ विहितान्यपि कर्माणि धर्मलोपभयाद् बुधैः । समापने निवृत्तानि साध्वभावात् कलौ युगे ।
समापने जनमेजयाश्वमेधसमाप्तौ । But *vide* K. V. Text XIII where the reading is समयेन ।

THE PROHIBITED PRACTICES

nothing has been able to shake it. The Nāmbudris, whom the practice obtains, are the highest class of Brahmins in Malabar.

Inter-caste Marriage

In Vedic society there was considerable freedom in regard to inter-caste marital relations. Hypergamy or *anuloma*-marriage by the three upper castes was usual in the remotest times at least to a degree permitted by the Dharma-sūtras. *Pāraskara-gr̥hya-sūtra* and *Bṛhaddevatā* regard this as normal. A Śūdra woman might marry a member of any of the four castes. Rules to the contrary (e.g., *Gobhila* III. ii. 32) are for special reasons. Vatsa and Kavasa are reproached as sons of a Śūdrā and a Dāsī respectively (*Panc. Brāh.* xiv. 6. 6 and *Ait. Brāh.* XI. 19. 1), which, however, proves the occurrence of these marriages. But a gradual stiffening of the prohibition against this kind of marriage is traceable from the earliest sacred literature. Marriages between members of the regenerate classes were common. *Pāras. Gr. S.* I. iv. 8-11 states the law thus: Three (wives are allowed) to a Brāhmin in accordance with the order of the castes. Two to a Rājanya. One to a Vaiśya. One Śūdra wife, besides, to all according to some (teachers) without using mantras (at the ceremonies of wedding, etc.). *Bṛhaddevatā* V. 79 shows that inter-marriage was normal between Brahmins and Kṣatriyas. Śyāvāśva, grand-son of the sage Atri, wanted to marry the daughter of King Rathaviti but was refused her hand till he became a sage himself. Possibly the three upper orders were kindred in blood. They participated in Vedic rites and sacrifices and pronounced Mantras. "Truly whoever sacrifices sacrifices after becoming a Brāhmaṇa, as it were. Let him therefore, begin it (that is *Aśvamedha*) in spring" (*Śat. Br.* XIII. iv. 50. 3). He thus produces the Kṣatra from out of the Brāhmaṇa, for from out of the priesthood the nobility is

produced (*Sat. Br.* XII.vii.3.12). But marriage between an Ārya and a Śūdra woman was for pleasure and was regarded as reprehensible from an early date.¹

Gobhila lays down rules (III. 2. 5. 2) to interdict the practice but these are for special reasons. *Āpastamba* does not provide for hypergamy or its issue. An Aryan attached to a Śūdrā is to be banished. Co-habiting with her entails penance. The issue of such a union are not to be invited to *Śrāddhas*. Exchanging glances with a Śūdra woman causes suspension of Vedic study.² According to *Gautama* the son by a Śūdra wife, if serviceable to his father who has no other issue, should be maintained.³ *Baudhāyana* regards marriage with a Śūdrā and procreation on her as a sin calling for penance. It is a degrading sin or *patanīya*.⁴ Such a connection for twelve years reduces a man to Śūdrahood.⁵ A night in the company of a dark-skinned wife is expiable by three years' penance.⁶ At the same time he sets forth the mode of division of the heritage amongst sons by wives of different castes.⁷ These passages hold in them the germs of the divergent views on inter-caste marriages found in later codes. Thus *Manu* III. 17 declares how such a union

¹ रासा रमयायोपेयते न धर्माय कृष्णजातीयः—Yāska's Nirukta.

² Āp. Dh. S. II. 27. 8. नाश्व्यः आर्यः शूद्रायाम् II. 17. 21. शूद्रोत्पन्नः..... याद्वे भुञ्जानाः पंक्तिदूषणाः। I. 26. 7. शूद्राया रेतः सिक्ता.....अपः स्पृशेद् वारुणौभिर्वा न्यैर्वा पविच-मन्तैर्यथा कर्माभ्यासः। I. 9 11. शूद्रायां प्रेक्षणाप्रतिप्रेक्षणायोरेवानध्यायः।

³ XXVIII. 40. शूद्रापुत्रोऽप्यनपत्यस्य शुश्रूषयेत्तमेत इत्तिमूलमन्तेवासिविधिना।

⁴ II. i 55

⁵ II. III. 59 उदपानोदके यामि ब्राह्मणो हृषणीयतिः। उप्रित्वा द्वादशसमाः शूद्रसाधर्मा-मच्छति।

⁶ यदेकरात्रेण करोति पापं कृष्णं वर्णं ब्राह्मणः सेवमानः। चतुर्थकाल उदकाभवाद्यौ विभिर्वर्षे-स्तदपहन्ति पापम्—II. i. 59.

⁷ II ii. 10. नानावर्णस्त्रीपुत्रसमवाये दायं दशांशान् कृत्वा चतुरस्त्रीन् द्वावेकमिति यथाक्रमं विभजेरन् 11. औरसे तूत्पन्ने सवर्णाकृतीयांशहरा। 12 सवर्णापुत्रानन्तरा-पुत्रयोरनन्तरापुत्रश्चेद् गुणवान् स ज्येष्ठांशं हरेत्। गुणवान् हि श्रेष्ठाणा भर्ता भवति।

degrades a Brahmin.¹ This śloka is taken by Kullūka to refer to the case of one who has no other issue than the Śūdra wife's. Again his interdiction of the Śūdra wife in III. 14 has been taken as applying to a violation of the strict order in which marriages with women of lower castes should be contracted.² At the same time directions are given as to how such marriages should be contracted.³ Further, giving the Brahmin son a preferential share, he divides the remaining property amongst the issue of inter-caste marriages in the proportion 3 : 2 : 1. *Vaśiṣṭha* also disfavours the marriage of a Śūdra wife.⁴ He gives to the issue of such a marriage the lowest position and a share according to Manu's proportion. According to the unpublished *Uśanas Dharmasūtra* Sec. IV, a Brahmin's son by a Kṣatriyā or a Kṣatriya's by a Vaiśyā or a Vaiśya's by a Śūdrā belongs to the father's caste (Jolly—Law and Custom, p. 136). *Uśanas Saṃhitā* (IV. 44-46) prescribes periods of *aśauca* upon death of relatives of other castes. Another phase is represented by *Viṣṇu* XVI. 2 according to which the issue of hypergamy belong to the mother's caste.⁵ *Viṣṇu Smṛti* while disapproving of the usage proves its prevalence (XVIII. 1-40).⁶ He works

¹ यद्वा शयनमारोप्य ब्राह्मणो यात्यधोगतिम् । जनयित्वा सुतास्तस्या ब्रह्मण्यादेव ह्येयते । III. 17
हीनजातिस्त्रियं मोहादुद्वहन्ती हिजातयः । कुलान्येव नयन्त्याशु ससन्तानानि यद्गताम् ॥ III. 15.
यद्वावेदी पत्यवेकतथ्यतनयस्य च शौनकास्य सुतोतपत्या तदपत्यतया ऋगुः ॥ III. 16.

² न ब्राह्मणचवियथोरापयपि हि तिष्ठतोः । कस्मिंश्चिदपि वृत्तान्ते यद्भार्य्योपदिश्यते । III. 14.
पूर्वं सवर्णानुक्रमेणानुलोध्येन विवाहाभ्यनुष्ठानात् अयं निषेधः प्रातिलोध्येन विवाहविषयो बाह्यः ।

Kullūka on Manu III 14.

Vide also यद्वाविवाहः सर्वेषामनुज्ञातत्वात् न गर्हितः स च कृतसजातीयपरिणयस्यानुज्ञातः । अतोऽसत्या सजातीयाया इषत्या भर्ता प्रतिबिध्यते—*Medhātithi* on III. 155.

³ III. 12, III. 14. सवर्णयोः द्विजातीनां प्रशक्ता दारकर्माणि । कामवस्तु प्रवृत्तानामिमाः स्तुः क्रमशोऽवराः । श्वरः चक्षियया याज्ञः प्रतोदो वैश्यकन्यया । वसुनस्य दशा याज्ञा यद्द्रयोत्कृष्टवेदने ॥

⁴ यद्वायामध्येके मन्त्रवर्जम् । तदु तया न कुर्यात् । अंहोभिर्भुवं कुलापकर्षः । प्रत्युतास्त्रगाः ।
vide Kane, p. 114.

⁵ अनुलोमास्तु मातृवर्णाः ।

⁶ अथ ब्राह्मणस्य वर्णानुक्रमेण चतस्रो भार्या भवन्ति । XXIV. 1. द्विजस्य भार्या यद्वा तु न धर्मार्य्यं भवेत् कचित् । XXVI. 5.

out Manu's principle of division with minuteness, according as the father is of a caste other than the Brāhmaṇa or as there are several sons or none at all of a particular caste and so on. The Śūdra son never conduces to spiritual ends and is never allowed the whole property of his father.

Gautama (generally held to be of an earlier date than most of the Dharmasūtra-kāras) is more favourable to the Kṣatriya and Vaiśya son (XXVIII. 35-38 : Cf. Baudh. II. ii. 3-12). He lays down rules as to periods of mourning and performance of obsequies for the issue of such marriages,¹ and also the mode of division of the patrimony among them.

Kauṭilya unlike Manu IX. 155 allows a share to the son of a man of the regenerate classes by a Śūdra wife when sons of higher castes exist or one-third when there are none. He does not condemn inter-caste marriages.²

Although enumerating the issue of the union of different castes *Yājñavalkya* declares himself strongly against mixed marriages with Śūdras.³ *Śaṅkha* is even more emphatic in condemning such unions.⁴

¹ Visnu XIX. 4 न द्विजम् पितरमपि शूद्रा (निर्हरेयुः)। XXII. 18. पत्नीना दासानामानुलोभ्येन स्मामिनस्तुल्यमाशौचम्। 21. ब्राह्मणस्य चतुर्विंशद्वर्षेषु सपिण्डेषु षड्राचविरादैक-रुदैः। XVIII ब्राह्मणस्य चतुर्षु वर्षेण चेत् पुत्रा भवेयुस्ते पैत्रिकं ऋक्थं दशधा विभजेयुः। तत्र ब्राह्मणौपवस्यतुरोऽशनादद्यात्। चतियापुत्रस्त्रीन्। द्वावशौ वैश्यापुत्रः। शूद्रापुत्रस्तेकम्।

² चातुर्वर्ण्यपुत्राणा ब्राह्मणौपवस्यतुरोऽशान् हरित्, चतियापुत्रस्त्रीन् अशान्, वैश्यापुत्रो द्वावशौ, एकं शूद्रापुत्रः। तेन त्रिवर्णपुत्रविभागः चतियवैश्यायोर्ब्याख्यातः। ब्राह्मणस्यानन्तरापुत्रस्तुत्याशः। चतिय श्ययोरर्वाशः। तुल्याशो वा मानुषोपेतः। ब्राह्मणानां तु पारशवसृतीयमंश लभेत। द्वावशौ सपिण्डः कृत्यो वासन्नः स्वधादानहेतोः। *Arthaśāstra*, Chap 63

³ तिस्रो वर्णानुपूर्व्येण द्व तथेका यथाक्रमम्। ब्राह्मणत्रयविधिश भाग्यो, स्वा शूद्रजन्मनः। यदुच्यते द्विजातीनां शूद्राहारोपसयहः। न तन्मम मतं यस्मात् तवात्मा जायते स्वयम्।

⁴ Śaṅkha, IV. 6-8 For Brahmins, Kṣatriyas, Vaiśyas the wives are 3, 2 and 1 respectively. 9. आनयपि न कर्तव्या शूद्रा भाग्यो द्विजन्मना। अस्यां तस्य प्रसूतस्य निष्कृतिर्न विधीयते ॥

Kātyāyana like *Śaṅkha* elaborates the topic of participation by wives of different castes in the husband's sacred duties.¹ The *Samhitā* of *Uśanas* deals with the question of impurity upon death as between persons related through mixed marriages.² Among the later law-givers *Vyāsa* also opposes a marriage between a *Sūdra* woman and a man of the regenerate classes.³

Yama holds that three days' impurity ensues upon a Brahmin cohabiting with a *Sūdra*.⁴ *Paithinasi* regards the contraction of such a marriage as the opinion of some.⁵ Penance for it is laid down in *Caturviṃśati-matam* (137-139—Benares Sanskrit Series). The later commentators and writers of digests are unanimous in prohibiting the inter-mixture of castes with the exception of *Medhātithi*,⁶ and *Vijñāneśvara*.⁷ Mixed marriages are mentioned without disapproval by the *Dāyabhāga* (Ch. IX), *Smṛti-candrikā* (II. 2.

¹ वर्णव्येष्टेन ब्रह्मीभिः सवर्णाभिश्च जन्मतः । कार्यमग्निकृतेराभिः साध्वीभिर्मथनं पुनः । नात्र यद्रीं प्रयुञ्जीत . VIII. 6, 7.

² शूद्रविद्वद्विद्याणान्तु ब्राह्मणे सस्थिते यदि । एकरात्रेण शुद्धिः स्यादित्याह कमलोद्भवः । VI. 39. एकाहात् चतुर्ये शुद्धिः वैश्ये तु स्याद् द्व्यहं सति । शूद्रेषु च ब्राह्मं प्रोक्तं प्राणायामशतं पुनः । VI. 44-5.

³ ऊढाया हि सवर्णायामन्या वा काममुद्वहेत् । तस्यासुत्पादितः पुत्रो न सवर्णात् प्रहोयते । उद्वहेत् चतुर्या विप्रो वैश्या वा चतुर्यो विशाम् । न तु शूद्रा द्विजः कश्चिन् नाधमो पूर्ववर्णजाम् । Also II. 12. नानावर्णैः सवर्णा सहचारिणी । धर्मप्राधर्म्येषु धर्मिष्ठा ज्येष्ठा तस्य सजातिषु ।

⁴ ब्राह्मणो वृषलो गत्वा ब्राह्मं भवति सूतकी । अथास्या गर्भमाधत्ते ब्राह्मणादेव ह्योयते ।

⁵ सवर्णालाभि चतुर्यादिविवाहमाह—अलाभि कन्यकायाः सातकन्नतं चरेदपि वा चतुर्यायां पुत्रानुत्पादयेत्, वैश्यायां शूद्राया वैत्यन्ये ।

⁶ On Manu III. 140. भवन्ति च शूद्रस्य ब्राह्मणाः अर्थसम्बन्धिनः पारश्वस्य ज्ञात-योऽपि । On III. 155. शूद्राविवाहश्च सर्वेषामनुज्ञातत्वात् न गृहीतः । स च ज्ञातसजातीय-परिणयस्यानुज्ञातः । अतोऽसत्या सजातीयया वृषल्या भर्ता प्रतिषिध्यते ।

⁷ On Yāj. I. 56. कास्ये पुत्रोत्पादने ब्राह्मणस्य चतुर्यावैश्ये चतुर्यस्य च वैश्या अभ्यनुज्ञाता भवति । On 57. एष विधिः स्मृत इति तद्वरतिकामस्य आश्रममावाभिका इच्छा वा नान्वरितकथा उत्पन्नस्य ।

§ 8. 163-167), Viramitrodaya (p. 101 § 2) and Mādhaviya (Section 24). But the treatment is perhaps for completeness' sake rather than as exposition of existing usage. Caṇḍeśvara the author of Smṛti-ratnākara in the Section on Householders upholds the ban on such unions.

The prevalence of marriages between members of different castes down to the end of the first millennium is proved by many historical instances. Mr. Vaidya in his Mediaeval Hindu India points out such matrimonial connections in various princely families. The custom had been observed by Megasthenes who recorded that Brahmins were allowed to marry wives from the lower castes. (McCrindle—Megasthenes and Arrian, p. 86). In the first four centuries such cases are furnished by history. Bāṇa the author of Harṣacarita (in Uchhvāsa I, p. 91), records that he had two *pāraśava* brothers—legitimate sons of a Brahmin by a Śūdra wife. Harṣavardhana himself (presumably a Vaiśya King from his title Vardhana) married his daughter to a Kṣatriya. In Kālidāsa's Mālavikāgnimitra the King's brother of an inferior caste is appointed Governor of the Narmada region.

The Mandasōr inscription (Corpus Inscriptionem, Vol. III, pp. 152-154) shows that Ravikīrti a Brahmin married Bhānuguptā a Vaiśya and had three sons by her, one of whom Abhayadatta was governor (Rājasthāniya) of the Narmada province under Yaśodharman. Dr. Fleet cites the Ghaṭotkacha cave inscription according to which Hastibhoja's ancestor, a Brahmin, married conformably to the precepts of revelation and tradition a Kṣatriya wife along with Brahmin wives, who bore him sons "given to the study of the Vedas." Chāchā, a Brahmin, who supplanted Agham Lohana of Brahmanabad, himself married the widow of Lohana although he degraded the Lohanas for their custom of widow-remarriage to the rank of Vaiśyas. He also married the widow of Sāhasi, a Śūdra King of Sind

of Buddhistic faith, for political reasons (according to the *Chāchānāmā*). Sometimes these marriages extended beyond the caste system as in the plastic period of Hindu social development.

Thus although the Śakas of Ujjain were a foreign people, Rudradāman's daughter was married to a Sātavāhana King just as Chandragupta married a Yavana princess. The Pallavas of Kāñchi, though orthodox Kṣatriyas, who boasted of their adherence to their duties as prescribed by the *Śāstras*,¹ contracted marriages with Śūdra women. In the minor Himalayan states of the period marriages between Kunet wives and Brahmins and Kṣatriyas were common. In the Aphsad grant of Ādityasena (*Corp. Ins.*, Vol. III, No. 42, p. 200) occur verses,² which would point to a case of Pratiloma marriage which the *Smṛtis* are so careful to interdict.³

A Pratihāra inscription records that a Brāhmaṇa married a Brāhmaṇa as well as a Kṣatriya woman and the issue respectively became Paṇḍihāra Brāhmaṇas and Paṇḍihāra Kṣatriyas. In trying to account for the dictum that in the Kali age there are only two castes—the first and the last—Mr. Vaidya opines that in the Northern, Southern and Eastern parts of India Kṣatriyas contracted intercaste marriages, and came in consequence to be degraded. But it was not so in the middle country where pure Kṣatriya families continued, which kept aloof from the mixed Kṣatriyas, but as the commentators and digest-writers belonged to Southern India they imposed their own views on the rest of India, thus leading to the doctrine of the extinction of the Kṣatriyas and Vaiśyas in the Kali age.⁴

¹ अत्र ब्रह्मण्यसौ सयागसययाप्रस्थानदण्डोद्यमं . . जातं यत् नरेश्वर न शृणुमो युद्धेपु वा विह्वलम् ।

² गुणवद्विजकन्यानां नानालङ्कारयौवनवतीनां परिणयितवान् स वृषः शतं निवृत्त्यहाराणाम् ।

³ But परिणयितवान्, as according to ordinary grammar, means 'gave away in marriage.'

⁴ The existence of all the four castes despite such texts as कलावाद्यन्तयोः स्थितिः has been judicially upheld—*vide* VII Moore's *Indian Appeals*, p. 18.

Levirate or Niyoga

From the provisions regarding Levirate found in almost all the treatises on Dharma the prevalence of this custom in Hindu society may be legitimately inferred. It was connected with the primitive joint family system under which, along with the chattels of the deceased, the sonless widow also passed to the survivors. In a poor family a natural way of providing for her is to marry her to her brother-in-law but rich widows could not be treated like paupers and a temporary intercourse with a view to begetting of a son was provided, upon which she gained control over the estate which she retained till the son was of age. (Cf. *Manu* IX. 146).¹ But from the very earliest times the attitude of writers on the sacred law has been divergent and since the age of the Sūtras the practice has been a matter of dispute, the results of which can be traced in the later works on Adoption. *Āpastamba* II. xxvii. 2-7 lays down that for the purpose of *niyoga* the wife is not to be made over to non-gentiles and says that the bride is given to the family.² And even appointment to a gentile is forbidden, according to him, in the present age owing to the weakness of men's senses. The hand of a gentile is also considered as that of a stranger. Transgression of this principle leads to hell for both husband and wife. Reward in the next world due to obedience to the sacred law is preferable to offspring obtained by *niyoga*. Again in II. xiii. 3-9 he says that approaching a woman already married to another

¹ धनं यो विभ्रयाद् भातुर्धनस्य स्त्रियमेव च । सोऽपत्यं भातुरप्याय दद्यात्तस्यैव तदनम् ।

² Many European scholars have tried to see in it polyandry and the communal marriage of primitive society but *niyoga* has prevailed amongst many races that did not know polyandry. Besides it need not have been due to polyandry which is referred to with repugnance by *Āpas*. II. 27. 2-4 and by *Bṛhaspati* in the list of forbidden practices. II. 30, 31.

or not duly married to oneself or belonging to another caste is reprehensible.¹ The son also becomes sinful. And there is besides a Brāhmaṇa text to the effect that the son belongs to the begetter. And a Vedic *gāthā* is also cited stating that the son belongs to the begetter in the next world and a husband knowing that makes the begetting of children by another useless for himself. Transgression of the law and violence were found amongst the ancient sages. They committed no sin owing to the greatness of their lustre. A man of later times, who seeing their deeds, follows them falls.

According to the commentator Haradatta the Vedic *gāthā* does not refer to or prevent the appointment of a eunuch's wife or of a childless widow to a relation. And he cites the example of Satyavatī, the soil of Vicitravīrya, appointed to Vyāsa. In such a case the offspring belongs to both the begetter and the husband. And this rule he deduces from *Āpas. Śr. S. I. ix. 7.*² But Haradatta's views, as pointed out in S. B. E., cannot be reconciled with the Sūtras cited above which plainly forbid *niyoga*. The practice of *niyoga* was hedged in by restrictions from the outset. *Gautama* (XVIII. 4, 6, 12, 15 also XXVIII. 22-23), however, knows no ban.³ And since he is generally regarded as posterior to Āpastamba, his attitude would show that, whatever the stricter view, the practice continued. According to him the offspring is to be obtained from the husband's younger brother or those connected through

¹ Cf. ज्येष्ठो यवोद्यमो भार्या यवोद्यान् वायजस्त्रियम् । पतितौ भवतो गत्वा नियुक्तौ वाप्यनापदि —Manu, IX 58.

² यदि द्विपिता स्यादेकैकस्मिन् पिण्डे द्वौ दातुमर्हयत् —Āp. Śr. S.

³ Gaut. XXVIII. 18-19 is construed by some to mean that a widow was only entitled to succeed if she raised up issue for her husband and hence her right is not personal but as guardian for her son.—Mit. II. i. 88.

piṇḍa, *gotra* or *ṛṣi* or from one of the same caste. He refers to the opinion of some that from other than the husband's younger brother offspring is not to be desired. In regard to the number of children to be thus obtained he allows considerable latitude. If more than two are begotten the excess belongs to the begetter except in case of an agreement to the contrary between the parties. If the husband be alive, however, whatever be the number, and even without such an agreement, he is entitled to all the issue. And this is so, even though the begetter be other than the husband's brother. Gautama further lays down that when the husband is lost, the wife is to wait for six years and then to have recourse to appointment.

Baudhāyana (II. 2. 66-70) enjoins the practice of *brahmacharya*—a chaste and continent life for a year or, in case of inability to wait, for six months and thereafter permits appointment to the husband's younger brother only if the wife be desirous of issue and not incapable of child-bearing through age or disease.¹ Elsewhere he cites the view of Aupajaṅghani, a former *ācārya*, according to whom, of the twelve descriptions of sons, the *aurasa* or the son begotten by oneself on the legitimate wife is alone to be regarded as *putra*.² The Vedic *gāthā* cited by Āpastamba is ascribed by him to the sage Aupajāṅghani who was asked by Yama whether the son belonged to the begetter or the owner of the soil and in reply repeated the saying of the wise that the former was the case and later on before Janaka related the whole episode and added that

¹ संवत्सरं प्रेतपत्नीं मधुमासलवणानि वज्जयेत् (तच्च यावज्जीविकम्—गोविन्दस्वामी) ।
व्रण्णामानिति मौद्गल्यः । [अशक्तावनुग्रहोऽयम्, अन्यथा पितृसंधकल्पोक्तो “यावज्जीव प्रेतपत्नी” इत्यनेन
विरोधः स्यात् ।] अत ऊर्ध्वं गुरुभिरनुमता देवराज्जनयेत् पुत्रमपुत्रा [पुत्रसंकां जनयेत् विवक्षितत्वात्
एकवचनस्य] [अत्र देवरनियोगो न स्यादित्याह] अथाप्युदाहरन्ति । वशा चोत्पन्नपुत्रा च गौरजस्त्रा गत-
प्रजा । नाकामा सन्निधौज्या स्यात् फलं यस्या न विद्यते ॥

² तेषां प्रथममित्याह औपजङ्घनिः ।—II, ii. 38.

he had since then grown jealous. The *Arthasāstra* clearly sanctions *niyoga* (Chap. LXI, p. 159).¹ *Manu's* views are divided on this question. In IX. 60-70 he first lays down the directions as to the observance of the practice and then condemns it as one not sanctioned by the Veda. The offspring is to be sought either from the husband's younger brother or from a *sapiṇḍa* by a woman appointed properly by the guardians on her husband's side in case of extinction of the line.² The intercourse is to be such as not to lead to affectionate relationship between the parties and the sons are to be limited in number to two at the utmost. For those versed in the law of *niyoga*, finding the purpose of levirate unfulfilled by the begetting of one son, approve of the raising of a second³ son on women as in accord with Dharma. After laying down these specific directions, he says that there is no Vedic *mantra* countenancing it.⁴ Medhātithi is puzzled over this dictum and he cites a Vedic verse.⁵ The prohibition of *niyoga* which follows immediately had, according to Dr. Jolly (pp. 121, 155), been tacked on to the detailed rules at a time when the practice had fallen into disuse. There is an analogy in śloka lxxvi to Gautama's rule as

¹ सवर्णतश्च प्रजाता नापवादं लभेत ... अन्ततः परं यथेष्ट विन्देत ।

² नान्यस्मिन् विधवा नारी निधोक्तव्या हिजातिभिः ।

अन्यस्मिन् हि नियुञ्जानो धर्म्मं हन्युः सनातनम् ॥—IX. 64.

या नियुक्तान्यतः पुनं देवराद् वाप्यवप्रायात् ।

तं कामजमरिक्योर्धं ह्यथोत्पन्नं प्रचक्षते ।—IX. 147.

भातुर्धं तस्य भार्यायां योऽनुरज्येत कामतः ।

धर्म्मोऽपि नियुक्ताया स ऋयो दिधिषुपतिः ॥—III. 173.

³ द्वितीयमेके प्रजनं मन्यन्ते स्त्रीषु तद्विदः ।

अनिर्द्धं नियोगार्थं पश्यन्तो धर्म्मतत्त्वयोः ॥—IX. 61.

⁴ नौद्वाहिकेषु मन्त्रेषु नियोगः कीर्त्यते कश्चित् ।—IX. 65.

Also अयं हि जैर्हि विद्वद्भिः पश्यधर्म्मो विगर्हितः ।—IX. 66.

⁵ ननु च लिङ्गानि नैव सन्ति इत्युक्तम्, नैवम्, श्रीद्वाहिकेषु मन्त्रेषु न सन्तीत्युक्तम् । अन्यत् तद् दृश्यते की वा अयुवा विधवेव देवरम् मर्यं न योषा कृणुते स्वधस्य सा—Rgveda-X. 40. 2.

to the period of waiting in the case of the unprovided wife separated from her husband. Nandana supplies the omission by allowing remarriage, which however is disapproved by Medhātithi. The position of Manu in regard to Levirate is divided between approval and disapproval. He cannot ignore a practice deep-rooted in society, and hence has to make provisions for the issue of this kind of union in the law of inheritance (IX. 120, 146, 164).¹ At the same time his Puritanic bent would fain stop the practice.² This is a tendency that runs right across Manu's whole treatise. Medhātithi frankly confesses the difficulty of reconciling the dicta of Manu on this subject.³ Jayaswal explains Manu's position as the necessary consequence of his resolve to fight the law of marital dissolution found in Kauṭilya and hence he is led to the denial of the old practice altogether.

Directions as to *niyoga* contained in the older law-books are repeated in *Vaśiṣṭha*, XVII. 14, 55, 56. He discusses who is competent after the husband to make the appointment or *niyoga* and in sec. 56, ordains that the father or brother of the sonless widow shall assemble the *Gurus* who taught or sacrificed (for her deceased husband) as well as his relatives and these shall appoint her. This procedure, it would seem, took about six months. *Yājñavalkya* (I. 68-69) re-affirms the

¹ यवीयान् ज्येष्ठभार्यायां योऽनुरज्येत कामतः ।

समस्तत्र विभागः स्यादिति धर्मो व्यवस्थितः ॥—120.

धनं यो विष्टयाद् भ्रातुर्ह्येतत् स्त्रियमेव च ।

सोऽपत्यं भ्रातुस्तथा दद्यात्तस्यैव तद्धनम् ॥—146.

षष्ठं तु क्षेत्रजस्याश्च प्रदद्यात् पैत्रकाद् धनात् ।

पौरसा विजन् दायं पित्रो पञ्चममेव वा ॥—164.

² The whole purpose of Niyoga is repudiated in—

य एतेऽभिहितः पुत्राः प्रसङ्गादन्वबीजजाः ।

यस्य ते बीजतो जातास्तस्य ते नेतरस्य तु ॥—IX. 181.

³ अनयोस्तु स्मृत्योः कतमा स्मृतिज्यायमीति न शक्यं कर्तुमतिशयावधारणम् वैकल्याण्य
अन्यवास्याः संयमः समयोरपि वस्तु निर्व्वहति on V, 163.

ancient law as to levirate.¹ He does not, like Manu, restrict the choice of the appointed to the husband's younger brother but agrees with Gautama. In its original form *niyoga* was perhaps restricted to sonless widows (as suggested by Rg-Veda X.40 and Vāśiṣṭha). Manu speaks of the appointment of the wife in IX. 161 but in his detailed directions he has in mind the widow only. Gautama refers to the appointment of a wife but only as an appendix to the rules concerning the widow's appointment. Manu and Baudhāyana in defining the Kṣetrajña son speak of the *niyoga* of a wife.

Niyoga was permitted by Śāṅkha-Likhita Dharma-sūtra (Kane, p. 78).² *Nārada* in XII. 80, 86, 88 sets forth the law on this subject. He traces the need of authorisation by the relations of the widow failing which the issue is declared illegitimate and incapable of inheriting by the expounders of the Veda. He contemplates cases of appointment both to the elder and the younger brother.

Bṛhaspati is perhaps the first among the law-givers expressly to bring in the Kali age as the time of prohibition of the practice and by this means attempts to reconcile the apparent contradiction in Manu.³

Brahma-Purāṇa also pronounces the Kali ban in a passage quoted by Hemādri which, from the context, one would take as coming from the Āditya-purāṇa. *Baudhāyana* (a metri-

¹ अपुत्रा शुर्व्वमुज्जातो देवरः पुत्रकाम्यया । सपिण्डो वा सगोत्री वा सृताभ्यक्तः कृताविधात् ॥
आगर्भसम्भवाद् गच्छेत् पतितस्त्वन्या भवेत् । अनेन विधिना जातः क्षेत्रजोऽस्य भवेत् सुतः ॥

² अनौरसेषु पुत्रेषु भार्यासम्पत्तासु च । परपूज्यासु च स्त्रीषु द्वाहाच्छुद्धिरिच्छते ।

—Śāṅkha, XV. 13.

उक्ता नियोगो मनुना निषिद्धः स्वयमेव तु । युगज्जाहादशक्योऽयं कर्तुं सर्व्वैर्विधानतः ॥
तपोज्ञानसमायुक्ताः कृते तैतायुगे नराः । हापरे तु कलौ दृष्ट्वा शक्तिहानिर्विनिर्मिता ॥
अनेकधा कृताः पुत्राः कृषिभिर्धैः पुरातनैः । न शक्यान्तेऽपुना कर्तुं शक्तिहोनतया नरैः ॥

—XXV. 12-14.

³ ऊदायाः पुनरुद्वाहं न्येष्टाशं गोवधं तथा । कलौ पञ्च न कुर्व्वीत आदित्या कर्मण्डलुम् ॥

cal smṛti ?) cited in the Smṛti-candrikā has a prohibitive text.¹ *Kātyāyana* prescribes a penance after *niyoga* and condemns connections for pleasure and not for the purpose of procuring issue for the husband.²

Bhaṭṭa Kumārila is clearly of opinion that *niyoga* was a breach of the sacred law. He does not acknowledge its validity in former ages or its invalidity only in later ages. In reality a violation, it is justified only in the case of the spiritually strong and is dangerous for the weak.³ Asahāya's commentary on Nārada-Smṛti which is not later than 750 A.D. since it speaks of Pāṭaliputra (ruined in 700) as still flourishing, says that *niyoga* and widow-marriage though permitted by the Dharma-Śāstra are given up in actual practice.⁴

Viśvarūpa on *Yājñavalkya* while nowhere quoting the Kalivarjya texts refutes the Smṛtisaṅgraha⁵ and the opinion of Dhāreśvara which agrees with it. He allows *niyoga* to Śūdras and to Kṣatriya kings whose line is in danger of extinction while Mitākṣarā forbids it altogether.

Medhātithi's position partially indicated above is rather ambiguous. He also does not accept the fiction of Kalivarjya. Thus on Manu 1. 26 he comments⁶ that intercourse with the husband's younger brother is for women a

¹ विधियोऽनुष्ठितः पूर्व्वं क्षियते नेह साम्प्रतम् । पुराकल्पःसद्यदश्च विधवाया नियोजनम् ।

² नियोगात् पावनं कुर्यात् यथोक्तं तद्विशुद्धये । हिजस्य स्त्रीषु धर्मोऽयं शूद्रस्यैके तदाश्रयः । सुखायं वा प्रवृत्ता स्त्री न भर्तुः सुतकाम्यया । पुत्रस्तु जनयेद्देवं निन्द्या पापा च सा कृता ।

—Baneji, Śls. 681-82.

³ Tantravārttika, I. iii. 3.—हैपायनस्यापि गुरुनियोगाद् भ्रातृजायापुत्रजननं प्राक्-
कृतपश्चात्करिष्यमाणतपं बलेन नातिदुष्करम् । अन्येऽपि भ्रातृकृतपौत्रलो निर्बहेत् स कुर्यादेव ।

⁴ तथाच धर्मशास्त्रोक्तम् “अपवा गुर्वनुज्ञातो ” तथाच “नष्टे मृते प्रव्रजिते — ”
इत्यादिकम् धर्मशास्त्रोक्तमपि लोकाचारे व्यवहारे च परित्यक्तम् ।

⁵ भ्रातृषु प्रविभक्तोषु रुद्रष्टेष्वप्यसत्सु च । गुर्वर्द्धशान्निद्योगस्या पत्नी धनमवाप्नुयात् ।

⁶ एवं देवरगमनं स्त्रीणामवर्ज्यं गुरुनियुक्तानां पुत्रार्थिनीनां वृताकायनुरूपेण धर्मः ।

violation of the sacred law but sanctioned under certain restrictions only.

In illustrating Manu IV. 176 he says¹: This is a fitter illustration. The duty of *niyoga* though prescribed by Smṛti is not practised being deprecated by society. This sentence bears witness to the growing volume of public opinion against the old practice.

Vijñāneśvara, as already pointed out, is definitely opposed to it and, as his commentary is far from a speculative work, it may be taken to indicate the actual law of the times². Commenting on II. 118 he cites from the Nighaṇṭukārikā two verses declaring that *niyoga* is not for this age and remarks that it is resented by public opinion.³ In his commentary on II. 128 he gives a detailed resumé of Manu's position regarding this usage and concludes that, the appointment of a married wife being altogether forbidden by the sage and not merely made optional, the appointment of the betrothed only is sanctioned by II. 129.⁴

Pārijāta, a work different from the well-known Madana-pārijāta (contra I. L. R. 12 Calcutta 348—Kāne, p. 309) and quoted by Kalpataru and Mitākṣarā, prescribes *niyoga* and assigns the putative father's estate to the son born thereof. This is also the view of Dhāreśvara and Halāyudha (cited in Smṛti-sāra—Kane, p. 296) according to whom the sonless widow not submitting to *niyoga* should be deprived of the estate.

That the prohibition of *niyoga*, however, came to be the law of the land about this time is proved by evidence gathered from different sources. Thus a Saṅgraha or work

¹ इदं नु युक्ततरमुदाहरणम् नियोगधर्मः स्मृत्या विहितोऽपि लोकसक्रुष्टत्वाद् न क्रियते ।

² On I. 68-9 — एतच्च वाग्दत्ताविषयमित्याचार्याः—यस्या मियेत कन्याया ... इति मनु-स्मरणात् ।

³ यथा नियोगधर्मो नो नानुबन्धावधोऽपि वा । तथोद्धारविभागीऽपि नैव सप्रति वर्त्तते ॥

⁴ नियोक्तृणां निन्दाश्च वशात् स्वीधर्मेषु व्यभिचारस्य बहुदोषश्च वशात् संयमस्य प्राशस्त्याच्च ।

of compilation (Nighaṇtukārikā ?) cited by Smṛticandrikā gives these verses.¹ Smṛti-Muktāphala, a widely used Deccanese digest by Vaidyanātha Dikṣita (quoting from Haradatta but not referring to Nirṇayasindhu and hence dated 1600 A.D. according to Kane) holds that *niyoga* is altogether prohibited at present.²

It may be pointed out that a son born of *niyoga* came to be realised as of little spiritual service to the reputed father. As a rule *niyoga* cut off the natural relation between the begetter and his son but some writers (Baudhāyana II. 2. 40-41, Uśanas, as quoted by Śaṅkha-Likhita and Kātyayana) hold that the Kṣetraja son presents funeral oblations both to his natural father and to his mother's husband. Yājñavalkya II. 128 recognises the continuance of such a son in his natural family only when the begetter had no other son. Manu allows it as a result of a special contract between the two fathers (IX. 53) and Hārīta, where he had been begotten on a widow. Nārada (XIII. 23) says that the *Bijin* or *Dvyāmuṣyāyaṇa* succeeds to half the property of each of his two fathers.

Widow-remarriage

Of the different usages banned in the Kali age the remarriage of widows has been a subject of the keenest controversy. At present the controversy is more or less academic in interest after the validation of the remarriage of Hindu widows by Act XV of 1856. The controversy has not, however, ceased since the opponents of the usage are still concerned to show that it is nowhere sanctioned by the sacred law and to prove that all the relevant texts bear out the proposition that only the remarriage of a betrothed girl is permitted. The advocates of the revival

¹ *Vi*de note (3) on previous page.

² इति न्ययले विप्रतिपन्न विप्रतिषिद्धम् ।

of the usage, on the other side, not satisfied with the progress of the measure still resort to Śāstraic disputation as the means of popularising it. A volume of literature has of late gathered round the subject. The present treatment, however, is purely historical, and seeks to show the origin and evolution of the prohibition.

For Vedic support five texts are cited.—¹ R̥gVeda X. xl. 2: Oh Aświns, where do you two stay during the night and day? What worshipper comes up before you in order to make offerings to you on the altar just as on the bed the widow turns towards herself her *devara* (her husband's brother or her second husband) and the wives of all men, their husbands?

The meaning of *devara* is disputed. According as the first or the second meaning is admitted, the passage would bear upon levirate or remarriage. Sāyaṇa's comment favours the first meaning as also Swāmī Dayānanda's in recent times.

R̥g Veda X. xviii. 8: Oh Woman, you are lying beside this deceased husband; give him up and come unto the world of the living, agree to accept the wifehood of this *Didhiṣu* (one who wants to marry you) who holds you by the hand. This rendering is according to Sāyaṇa's commentary on the Yajurveda text.² The second line is, however, otherwise paraphrased by Sāyaṇa in R̥g Veda³ which

¹ कुहस्विद् दोषा कुहवस्तोरश्विना कुहाभिपित्वं करतः कुहोषतुः ।

कीवा शयुवा विधवेव देवरं मर्यं न योषा कृणुते स्वधस्य आ ॥

Cf. नारी तु पत्यभावे वै देवरं कुरुते पतिम्—Mahābhārata Anuśāsana Parva, Ch. VIII, Śl. 22.

² उदीर्ष्य नार्यंभि जीवलीकं गतासु मेतमुपशषएहि ।

हस्तयाभ्य दिधिषोस्तवेदं पत्युर्जनितमभिसम्बभूय ॥

Variant to underlined portion—स्ममेतत् पत्युर्जनितमभिसम्बभूय ।

³ हस्तयाभस्य पाणिश्याहस्य दिधिषोः (पनविवाहिच्छोः) एतत् जनितं ज्ञाशालं अभिसम्बभूय अभिसुखेन प्राप्नुहि इत्यर्थः ।

would give another version. Come, since you have resolved to follow in view of your wifehood to this husband who accepted your hand and gave you children.¹ The word *Didhiṣu* is here taken to mean "one who got you with child."

Rg Veda² X. xviii. 7: May these women who are not widows, who have good husbands and who are mothers enter with unguents and clarified butter; without fear and without sorrow let them first go up into the dwelling (Wilson).

Colebrooke accepting the reading (given in Raghunandana's *Śuddhi-Tattva*, Chap. I) rendered it thus: Let these women not be widowed, good wives, adorned with collyrium, holding clarified butter, consign themselves to fire. Immortal, not childless, not husbandless, excellent, let them pass into fire whose original element is water.

The two readings have been used respectively in support of widow-remarriage and Sati.

Ath. Veda³ XVIII. iii. 1: Tait. Ār. VI. i. 3: Oh mortal, this woman desiring the world of her husband and performing the time-honoured duty of a wife comes near you, who are dead; give her (leave to live in this world and to have) issue and wealth.

Ath. Veda⁴ IX. v. 27-29: She who, having married one, marries another offering the *Pañcaudana* and *Aja*, they

¹ एहि आगच्छ यस्मात् त्वं हस्तयाभस्य पाणिशाहं कुर्वतः दिधिषो गर्भस्य निधातुः तवास्य पत्युः संवन्धादागतम् इतं जनित्वं जायात्वमभिलक्ष्य संवभृथ सभूतासि अनुसरणनिश्चयमकार्षीः तस्मादागच्छ ॥

² इमा नारीरविधवाः सुपत्नी राज्ञेन सर्पिषा संविशन्तु ।

अनश्वरोऽनमीवाः सुरता आरोहन्तु जनयोयीनिमये ॥

Variants to portions underlined—सपत्नी . अनश्वरी ... जलयोनिमये ।

³ इयं नारी पतिलोकं वृणाना नि पद्यत उप त्वा मर्त्यं प्रेतम् ।

धर्मं पुराणमनुपालयन्ती तस्यै प्रजां द्रविणं च धेहि ॥

⁴ या पूर्व्यं पतिं वित्वाद्यान्वं विन्दतेपरम् । पञ्चौदनं च तावजं ददाती न वि योषतः । समान लोकी भवति पुनर्मुवापरः पतिः । योऽजं पञ्चौदनं दक्षिणाज्योतिषं ददाति । अनुपूर्व्यवस्तां देव-मनङ्गाहसुपवर्णम् । वासी हिरण्यं दत्वा ते यन्ति दिवसुत्तमम् ॥

(she and her second husband) do not separate. The second husband dwells with the rewedded wife if he offers the *Aja* and *Pañcaudana*.

These texts leaving out the disputed ones show that remarriage was not unknown to the Vedic social system. The word *Gartāruḥ* (*Rg-Veda* I. cxxiv. 7) as explained by *Yāska* in his *Nirukta* III. 5 may be noted. Also *Rg-Veda* VI. xlix. 8 furnishes evidence of remarriage in case the husband disappeared or was not heard of. (Cf. *Mahābhārata* III. lxx 26).¹ The word *Vidhavā* though rather uncommon also occurs in a few places in Vedic literature.² Coming down to the writers on the sacred law both in aphorisms and verses, we notice sharp differences of opinion. *Gautama* in xviii. 15-17 prescribes terms of waiting for the wife of a husband gone abroad.³

Baudhāyana Dh. S. IV 1. 17-18 describes some of the seven kinds of *punarbhūs* but disapproves of them. At the same time in the case of a girl violated by force but not married, he recommends bestowal of her hand on another and in the case of a virgin married but not deflowered, he recommends remarriage in the *Punarbhū* process.⁴

¹ सूर्योदये द्वितीयं सा भर्तारं वरयिष्यति । न हि स ज्ञायते वीरो न लो जीवति वा न वा ॥

—Mahā., Vana, Ch. LXX, Śl 26.

² *Rg-Veda* IV. 18 12, X. 40 2, Śat. Br III 7, *Nirukta* III. 5

³ नष्टे भर्तारि षाड्वार्षिकं क्षपणं श्रूयमाणेऽभिगमनम् । प्रज्जिते तु निवृत्तिः प्रसवात् द्वादश वर्षाणि ब्राह्मणस्य विद्यासम्बन्धे ।

⁴ बलाच्चेत् प्रहृता कन्या मन्त्रैर्यदि न संस्कृता । *कन्यसौ विधिवद्दद्या यथा कन्या तथैव सा । निवृष्टाया हुते वापि यस्यै भर्ता म्रियेत सः । सा चेदक्षतयोनिः स्यादगतप्रत्यागता सती । पौनर्भवेण विधिना पुनः संस्कारमर्हति —IV. i 16-18.

The seven kinds are : वाग्दत्ता, मनोदत्ता, अग्निं परिगता, रुप्तमं पद नीता, मुक्ता, गृहीतगर्भा, प्रहृता चेति सप्तविधा पुनर्भूः । ता गृहीत्वा वृथाकारी स्यात् न प्रजा न धर्मं वा विन्देत् ।

—Baudhāyana cited in *Vir.-mit.*, pp. 735-6.

Vaśiṣṭha has similar provisions (XVII. 75-80).¹ He allows marriage of the betrothed girl and also of the married where there has been no consummation. For the wives of husbands gone abroad, he recommends seeking the company of relations after waiting for some time. He defines *punar-bhūs* as women who give up an impotent, fallen or insane husband and take to another, but such unions, according to him, are sinful.² Raghunandana in his *Udvāhatattva* quotes a text purporting to be *Vaśiṣṭha*'s which allows a gift afresh of a girl married to a defective or *sagotra* husband.³ In other words in certain cases of marital ineligibility the marriage is void.

Unqualified condemnation of the usage is met with in *Manu* who in certain verses altogether repudiates widow-remarriage. The extant recension of his code is, as is well known, far from complete and consistent. It is marked by some obvious lacunae. He provides for the bestowal of the betrothed, at the same time he regards such practice as unworthy of the righteous⁴. The only exception is in the case of the bride for whom a price has been paid. If willing, she may be given to the betrothed husband's brother⁵. The ideal of gift of a girl in marriage once for

¹ अङ्गिर्वाचा च दत्ताया म्रियेताथ वरो यदि । न च मन्त्रोपनीता स्यात् कुमारी पितुरेव सा ।
यावच्चेदाहता कन्या मन्त्रैर्यदि न संस्कृता । अन्यस्मै विधिवद् देया यथा कन्या तथैव सा ॥ पाणिग्राह्ये सृते
बाला केवलं मन्त्रसंस्कृता । या च त्वत्ततयोनिः स्यात् पुनः संस्कारमर्हति ॥ Readings: बलाच्चेत् .
प्रहृता . . सा चेद ... ।

² प्रायश्चित्तं वाप्युपनिषद्ग्राह्येके—Ch. XVII.

³ कुलशैलविहीनस्य षण्डस्य पतितस्य च अपस्मारिविधर्म्मस्य रोगिणां वेशधारिणाम् । दत्तामपि
हरेत् कन्यां सगोत्रोढां तथैव च.—p. 128.

⁴ न दत्त्वा कस्यचित् कन्या पुनर्देयाद् विचक्षणः । दत्त्वा पुनः प्रयच्छन् हि प्राप्नोति पुरुषा
व्रतम् । IX. 71. एतच्च न परे चक्रुर्नापरे चापि साधवः । यदन्यस्याभ्यनुज्ञाय पुनरन्यस्य दीयते ॥

—IX. 99.

⁵ कन्यायां दत्तशुल्कायां म्रियेत यदि शुल्कदः । देवराय प्रदातव्या यदि कन्यानुमन्यते । IX. 97.

all is stressed by him in many places¹. For widows he prescribes a life of chastity and declares that spiritual welfare hereafter is not imperilled by failure to have sons.² There cannot be progeny begotten by another or upon another's wife, nor is a second husband anywhere prescribed for a chaste wife, he declares³. This rule, however, is opposed to both *niyoga* and remarriage in widowhood. But provisions for *niyoga* are made by the sage elsewhere. Two other cases also arise—long absence of the husband from home and his death. Compared with Vasiṣṭha's rules in this behalf, Manu IX. śls. 75-78 appear a little disjointed. After prescribing the duty of a wife left provided by the husband, he considers the case of a wife left without any provision and says: (Living by blameless work) she must wait for 8, 6 and 3 years respectively according as the husband is gone abroad on religious duty, for study or for pleasure.⁴ But Manu is silent as to what is to be done after this period and the commentators disagree. According to Nandana remarriage is allowed but according to Medhātithi it is disallowed. Kullūka says that thereafter she should go out in search of the husband. Bühler's note on IX. 76 may be noted in the connection. Kullūka quotes Vasiṣṭha in support of his view.⁵

Manu is emphatic in denying remarriage of widows.⁶ But IX. 175-176 repeat the views of Baudhāyana and

¹ सकृदंशो निपतति सकृत् कन्या प्रदीयते । सकृदाह ददानीति जीव्येतामि सकृत् सकृत् । IX. 47.

² V. 157-162.

³ नाभ्योत्पन्ना प्रजास्तीह न चाप्यन्यपरिग्रहे । न द्वितीयश्च साध्वीना कचिदुभयोपदिश्यते ।—V. 162.

⁴ प्रोषिते धर्मकार्यार्थं प्रतीत्योऽष्टौ नरः समाः । विद्यार्थं षड्व्यशोऽर्थं वा कामार्थं त्रींस्तु वत्सरान् ।

⁵ प्रोषितपत्नी पञ्च वर्षाणि उपसीत ऊर्ध्वं पतिसकारं गच्छेत् ।

⁶ पाणिग्रहणिकामन्वा नियतं दारलक्षणाः । तेषां निष्ठा तु विज्ञेया विवर्द्धिः सक्षमे पदे '... न विवाहविधायुक्ते विधवावेदने कचित् । ... पाणिग्रहणिकामन्वाः कन्यास्तेव प्रतिष्ठाताः । नाकन्यासु कचिन्नया लुप्तधर्मक्रिया हि ताः ।—VIII. 226.

Vaśiṣṭha.¹ These verses speak of both the sacrament and procreation and hence they are in harmony, according to the opponents of widow-remarriage, with the provisions for the husband's younger brother marrying the betrothed bride of his deceased elder brother.² But it is to be noted that if betrothal is the promise to give a girl in marriage (*abhyānujñā*), in that case, also remarriage is condemned by the law-giver in a passage already quoted (IX. 47).

An express text distinguishing marriage (*pāṇigrahaṇa*) from betrothal is ascribed to *Nārada* in the *Smṛti-candrikā*.³ These discrepancies are perhaps due to the incompleteness of the extant recension of *Manu* by *Sumati Bhārgava* which contains much less than its full content of four thousand *śloka*s.

It may be pointed out that both *Devanṇa Bhaṭṭa* (*Sm. C.*, p. 221) and *Mādhavācārya* ascribed to *Manu* a *śloka* just like *Parāśara*'s on remarriage in case of five kinds of mishaps. Only instead of '*patau*' the word in it is '*tathā*.'⁴

The *Mahābhārata* furnishes cases of widow-remarriage—for instance *Arjuna*'s marrying *Ulupī*, the widowed daughter of *Irāvān* (son of *Airāvata*) and having issue by her. *Bhīṣma-parva*, Ch. 90. Śls. 7-8; *Ādi-parva*, Ch. 120, śls. 35-36 may be noted⁵ in this connection.

The strictness of *Manu*'s law of marriage contrasts with the provisions in the *Arthaśāstra*, Ch. III, which state the periods of waiting and permit remarriage with the husband's younger brother or an agnate if the husband is

¹ या पत्या वा परित्यक्ता विधवा वा सखेच्छया । उत्पादयेत् पुनर्भूत्वा स पौनर्भव उच्यते ।
सा चेदक्षतयोनिः स्याद् गतप्रत्यागतापि वा । पौनर्भवेण भवती सा पुनःसंस्कारमर्हति ॥

² यस्या सिधेत कन्याया वाचा सख्ये कृते पतिः । तामनेन विधानेन द्विजो विन्देत देवरः ॥ IX.69.

³ वरणाद् ग्रहणं पाणिः संस्कारो हि विलक्षणः । तयोरनियं प्रोक्तं वरणं दोषदर्शनात् ।

⁴ नष्टे सृते प्रव्रजिते क्लीवे च पतिते पतौ । पञ्चस्वापत्सु नारीणां पतिरन्यो विधीयते ।

⁵ पूर्व्वं पूर्व्वतमाभावं मत्वा लिखितं वै सुतम् । उक्तमाह वरात् पुं सः काङ्क्षन्ते पुत्रमापदि ।

away for a long time.¹ Kauṭilya also provides for the abandonment of the husband in certain special cases (III. 2).²

But the Dharma law has always strained after a purer domestic life. Whether Manu's extant code be an endeavour to reassert the Brāhmaṇic law exactly in the time of the Sunga dynasty (as held by Mr. Jayaswal, XV, C. W. Notes, p. ccc) or not, it is in its arrangement and doctrines much in advance of the earlier Dharmasūtras of Gautama, Baudhāyana and Āpastamba. *Yājñavalkya* also aims at the same ideal. A widow remarried whether deflowered or not is, according to him, a wanton woman or *svairiṇī* and her issue *paunarbhavas*. The woman who is faithful to her husband, alive or dead, he says, gains praise on earth and dwells with *Umā* hereafter.³ He also enjoins that the husband of the *punarbhū* should repay the debts of her first consort (II. 51. Cf. *Nārada* I 20-24, *Viṣṇu* VI. 30, *Bṛhaspati* II. 52).

Nārada who recast Manu's *Smṛti* and is exclusively concerned with *vyavahāra* reproduces the older secular law

¹ ऋषप्रवासिना यूद्धवैश्वक्चविद्यब्राह्मणानां भार्याः संवत्सरोत्तरं कालमाकाङ्क्षेरन्नप्रजाताः, संवत्सराधिकं प्रजाताः, प्रतिविहिताः द्विगुणं कालम् । अप्रतिविहिताः सुखावस्था विभ्रयुः, परं चत्वारि वर्षाण्यष्टौ वा ज्ञातयः । ततो यथादत्तमादाय प्रमुञ्चेयुः । ब्राह्मणमधीयानं दश वर्षाण्य-प्रजाता, द्वादश प्रजाता । राजपुरुष आ आयुःक्षयादाकाङ्क्षेत । सर्वर्णतश्च प्रजाता नापवादं लभेत । कुटुम्बर्जिलोपे वा सुखावस्थैर्मुक्ता यथेष्टं विन्देत जीवितार्थमापदगता वा । धर्मविवाहात् कुमारी परिग्रहीतारमनाख्याय प्रेषितमशूयमाणं सप्त तीर्थान्याकाङ्क्षेत, संवत्सरं शूयमाणम् । * * * ततःप' धर्मस्थैर्विदृष्टा यथेष्टं विन्देत । तीर्थोपरोधो हि धर्मवध इति कौटिल्यः । दीर्घप्रवासिनः प्रज्जितस्य प्रेतस्य वा भार्या सप्त तीर्थान्याकाङ्क्षेत, संवत्सरं प्रजाता । ततः पतिसौदर्यं गच्छेत् । बहुषु प्रत्यासन्नं धार्मिकं भर्तृसमर्थं कनिष्ठमभार्यं वा । तदभावेऽपि असौदर्यं सपिण्डं कुल्यं वा । आसन्नमेतेषाम् । एष एव क्रमः ।

² नीचत्वं परदेशं वा प्रस्थितो राजकिल्बिषी । प्राणभिद्वन्ता पतितस्त्याज्यः क्लीबोऽपि वा पतिः । III. ii.

³ I. 67. अचता वा चता चैव पुनर्भूः संकृता पुनः । स्त्रैरिणी या पतिं हित्वा स्वर्णं कामतः अयेत् । अचताया चताया वा जातः पौनर्भवः सुतः । 75. मृते जीवति वा पत्यौ या नान्यसुप-गच्छति । सैव कौत्तिमवाप्नोति मोदते चोमया रुद्ध ।

on the subject of marriage in Chapter XII. In verse 15, he says that after a year's wait, the wife of an impotent man of certain descriptions shall procure another husband (19). For one incapable of procreation is unworthy of having a wife (24). For a bridegroom going abroad after a marriage, the wife is to wait for three monthly courses and then remarry.¹ He also defines the seven kinds of *punarbhūs*. In śl. 107 he lays down the rule also found in *Parāśara* and *Vaśiṣṭha* as to remarriage.² This is found in a Jaina work of 1014 A.D. (*Bhāṇḍārkār Report on 1884-87 [Bom. 1897]*, p. 16). The *Smṛti-candrikā* assigns to him a *śloka* permitting remarriage of an undeflowered wife.³ In 98-100 he repeats the terms of waiting as prescribed by *Manu* and *Kautilya*, 8 and 4 years for a Brahmin wife with and without issue respectively, 6 and 3 for a Kṣatriya, and 4 and 2 for a Vaiśya. And in śl. 101 he concludes thus: The above series of rules were laid down by the Creator of the world for those cases where a man disappeared. No offence attaches to a woman if she lives with another man thereafter.

The main support of the case for widow-remarriage in the present age, however, is the text of *Parāśara* the acknowledged law-giver of Kali (corresponding to *Nārada* XII. 97 above). The *Maskari-bhāṣya* on *Gautama* quotes the same *śloka* as *Bṛhaspati*'s. *Bhaṭṭojī Dikṣita* in his commentary on *Caturviṃśatimatam* (*Ben. Skt. Series*) says on the strength of this text that widow-remarriage is not prohibited. The word *patau* in the *sloka* being grammatically incorrect,

¹ प्रतिगृह्य च यः कन्या वरो दीशान्नरं व्रजित् । वीन् षट्त्नू समतिक्रम्य कन्यान् वरयेद् वरम् ।
Also *Śātātapa* (quoted by *Mādhava*) and *Laghu Śātātapa*—

समुदगृह्य तु तां कन्या सा चेदचतथीनिका । कुलशीलवते दद्यादिति शातातपोऽब्रवीत् ॥

² नष्टे मृते प्रव्रजिते क्लीवे च पतिते पतौ । पञ्चस्यापत्सु नारीणां पतिरन्यो विधीयते ॥ Also in *Agni-purāṇa*. Also *Brahmapurāṇa*—यदि सा बालविधवा बलात्कृताथवा क्वचित् । तदा भूयस्तु संस्कार्या गृहीता येन केनचित् ॥

³ उद्वाहितापि या कन्या न चेत् सम्यागमैद्युना । पुनः संस्कारमर्हेत् यथा कन्या तथैव सा ॥

orthodox Pandits read it as *apatau* that is, a husband not formally wedded but only betrothed, so that Parāśara may be at one with Manu. But the peculiar form is an instance of archaic usage found elsewhere in Parāśara (Ch. X, śl. 30)¹ and also in Nārada (XII. 97).

While allowing remarriage in these exceptional cases Parāśara also subscribes to the high ideal of widowhood found in Manu.² In view of the Kalivarjya texts Parāśara's permission of remarriage is referred by orthodox Pandits to the first part of the Kali age. (*Vide* note, p. 349, Bangabāsi Edn., of the XIX Smṛtis).

Kātyāyana, of the same age as Parāśara, states the old law of remarriage but in a tone of disapproval. (N. Banerjee—*Kātyāyana-mata-sangraha*, 681-689). By remarriage he intends that of the betrothed not that of the formally wedded wife.³ He makes out re-marriage as an offence calling for corporal punishment.⁴ This rigour is a little strange beside his laxer provision that intercourse is permissible with a woman rescued from robbers or drowning, flood or famine, if she be not unwilling or with children or of a higher caste.⁵ On remarriage his text is cited in the Smṛti-candrikā and Parāśara-bhāṣya.⁶ He has also a *śloka* permitting the seeking of

¹ जारिण जमयेद् गर्भं गर्भे त्यक्ते सृते पतौ ।

² सृते भर्त्तरि या नारी ब्रह्मचर्यव्रते स्थिता ।

सा सृता लभते स्वर्गं यथा ते ब्रह्मचारिणः ॥

³ अनेकेभ्यो हि दत्तायामनूदाया तु यव वै । वरागमश्च सर्वेषां लभेतादिवरस्तु ताम् ।
अथागच्छेयुरुदायां न ता पूर्ववरो हरति ॥ in *Smr. Can.*

⁴ भर्त्तृगोत्रं समुत्सृज्य नारी यदन्यमाश्रिता । निन्दैव सा स्मृता लोके परपूर्व्वेति चोच्यते ।
परपूर्व्वी स्थिता यच्च तच्च स्थानाश्रितः प्रभुः । क्रमादृते तु धर्मोऽयं लब्ध्वा वा स्वामिनी भवेत् ।
निरोद्धव्या च त्याज्या च परपूर्व्वीपराधतः । अक्षमाञ्जानवेचनी ताडयन् दण्डमर्हति ।

⁵ N Banerji—*Kātyāyana-mata-sangraha*—चौरहस्तान्नदीवेगाद् दुर्मिच्छाद् देश-
विप्लवात् । निसार्थं वापि कालान्तरात् त्यक्ता लब्ध्वा क्रमागता । p. 68.

⁶ स तु यदन्यजातीयः पतितः क्लीव एव वा । विकर्षा वा सगोत्रो वा दासो दीर्घामयोऽपि
वा । ऊढापि देया सान्धौ सप्तावरणभूषणा । नीचत्वं परदेशं वा प्रस्थितो राजकिल्बिषी । प्राणाभिहन्ता
पतितस्त्यान्यः क्लीवोऽपि वा पतिः ।

another husband by a woman whose husband is lost after espousing her.¹ He also holds the issue begotten by the second husband as clearly belonging to him.²

In spite of the absence of exact chronology the gradual stiffening of the bar against the remarriage of girls once married is traceable with the progress of time. The earlier writers on sacred law excepting Vaśiṣṭha enjoined that the husband of a twice-married girl and her issue should be excluded from obsequial feasts. The former is held by Vaśiṣṭha to be a sinner.³ Hārīta-saṃhitā quoted by Aparārka declares a *punarbhū* and the wanton woman as fit to be regarded as Śūdra-born.⁴ Āpastamba-saṃhitā IX. 29 (like Aṅgiras) prescribes the penance *cāndrāyana* for those who feed in feasts given on the first conception of a *punarbhū* (Cf. Aṅgiras 65).⁵

Kāśyapa (cited in the Smṛti-candrikā, p. 202 and by Haradatta on Āpastamba II. 13. 2), after describing the seven kinds of *Punarbhūs*, says that all these destroy the family like fire.⁶ According to Jolly he was the first to extend the category of *punarbhū* to include girls whom their father had promised or intended to give in marriage to another person or whose mother was a *punarbhū* (Law and Custom,

¹ वरयित्वा तु यः कश्चित् प्रणश्येत् पुरुषो यदा । ऋत्वागमास्त्रीनतीत्य कन्यान् वरयेद् वरम् ।
Smr. Can. reads रक्ता for ऋत्वा ।

² कौत्रं विहाय पतितं या पुनर्लभते पतिम् । तस्या पौनर्भवी जाती व्यक्तसुत्पादकस्य सः ॥
Kāt.-mat.-san. 706.

³ Cited on p. 138.

⁴ स्त्रैरिणी या पुनर्भू रेतोधा कामचारिणी । सर्वभक्ष्या च पञ्चैव विज्ञेया शूद्रयोनयः ।

⁵ Aṅgiras—अन्यदत्ता तु या कन्या पुनरन्यस्य दीयते ।

तस्याद्यैव न भोक्तव्यं पुनर्भूः कीर्त्तिता बुधैः ॥

Āpas. saṃ.—पुनर्भूः पुनरेता च रेतोधा कामचारिणी ।

आसा प्रथमगर्भेषु भुक्त्वा चान्द्रायणं चरेत् ॥

⁶ द्रव्यताः काश्यपिनोक्ता दहन्ति कुक्षमग्रिवत् ।

p. 133). *Āśvalāyana-smṛti* says that a widow married unknowingly should be abandoned and a penance performed.¹

Brahma-purāṇa quoted by Aparārka says that the house of a man remarrying a widow is always polluted.² But the same writer quotes some more texts which show that the usage was still in vogue.³ The practice is altogether prohibited by *Kratu*.⁴

Sons other than the Legitimate and the Adopted

Although the different varieties of sons mentioned by the sages, are nominally seventeen, really they make up only twelve kinds. Such is the view of *Vaśiṣṭha* (Ch. XVII) and *Viṣṇu* (XV.1).⁵ According to *Devala* (Dat. Can., p. 36)⁶ all these kinds are divisible into four classes: (i) *Begotten by oneself*, the legitimate, the maiden-born, the re-married woman's son, the appointed daughter's son ;

¹ अज्ञातश्च द्विजो यस्तु विधायासुदृढहृदि यदि । परित्यज्य च वै ताञ्च प्रायश्चित्तं समाचरेत् ।
अव्यसेनं विधायादाववकीर्णव्रतं चरेत् । पुनश्चेज्जायते तस्मात्सौ गोत्रक उच्यते ॥

² परपूर्वा यस्य नेह भार्या तस्य हि नित्यशः । अशौचं सर्वकारेषु देहे भवति सर्वदा * *
स्त्रीणां पुनर्विवाहस्तु देवरात् पुत्रसन्ततिः । स्वातन्त्र्यं वा कलियुगे न कर्तव्यं कदाचन । यतः पातकिनी
लोकं नराः सन्ति कली युगे । Aparārka, pp. 68-69

³ मृते भर्तारि या नारी त्यक्तवत्यथ तं स्वयम् । सवर्णाज्जनयेद्गर्भं भर्तुः पौनर्भवं सुतम् ।
यदि सा बालविधवा बलात्कृताथवा कचित् । तदा भूयस्तु संस्कार्या गृहीता येन केनचित् । त्यक्त्वा
भर्तुर्गृहं गच्छेद् यदि दोषं विना पुनः । भर्ता सा संस्कर्तव्या च प्रायश्चित्तादिभिः क्रमात् । Cited
from *Brahmapurāṇa* in Aparārka, pp. 68-9.

⁴ *Kratu*—Kalivarjya Text II.

The absolute indissolubility of the marital relation by the wife is inculcated in *Bhāgavata*—X. Ch. 29, Śl. 25 .

तु शौलो दुर्मनो ब्रह्मो जडो रोग्यधनोऽपि वा । पतिः स्त्रीभिर्न ह्यतव्यो लोकेऽपि भिरपातकौ ॥

⁵ बह्वीना द्वादश ह्येव पुत्रा पुराणदृष्टाः । *Vaśiṣṭha* XVII

अथ द्वादश पुत्रा भवन्ति—*Viṣṇu* XV

⁶ *Devala*—एते द्वादश पुत्रास्तु सत्यव्यर्थमुदाहृताः । आत्मजाः परजाश्चैव लब्धा यादृच्छि-
कास्तथा । (D.B. X. 7).

(ii) *begotten by another*—the wife's son, the secret-born son, the pregnant bride's son ; (iii) *the son obtained*—the discarded son, the self-given son ; (iv) *the optional*—the adopted, the artificial and the son bought.

Among these the pre-eminence of the *aurasa*, i.e., the son of the body was assured from the beginning. He is the first in rank (Cf. Manu IX. 166).¹ Such is the view of Viṣṇu (XV. 2) and of Śaṅkha-Likhita cited in Dāyabhāga (XI. 1. 31). The man himself is born as the son and the wife is called *jāyā* for that reason (Manu IX. 8). This pre-eminence rested on the spiritual benefit rendered by him. He is specially qualified for the worship of the *pitṛs* or manes, which is a cardinal duty of a Hindu dating from Vedic times.² The word *puttra* is construed so as to bring out this spiritual purpose.³ All religious acts are not one-sixteenth in value compared to having a son.⁴ Procreation is one of the debts a man is born with (Manu VI. 35-37).⁵ The term *puttra* signified the real legitimate son—the primary sense in which it is to be understood as a general rule (Dat. Mīm. VI. 28).⁶ He is the heir and is under a duty to maintain the others. (Baudh. II. 2.3.33 ; Manu IX.163).⁷ *Yāskā* says a *puttra* is one that

¹ Manu—स्वे चैवे संस्क्रतायानु स्वयमुत्पादयेद्भि यम् । तमौरसं विजानीयात् पुं प्रथमकल्पितम् । Viṣṇu—स्वे चैवे संस्क्रतायाम् उत्पादितः स्वयमौरसः प्रथमः ।

² जायायास्तद्धि जायात्वं यदस्या जायते पुन । Rg-Veda, VI. 52. 4, VII. 35, X. 15.

³ Hārīta—पुत्राणां निरयः प्रोक्तस्त्विन्नतन्तुश्च नैरयः । तव वै त्रायते यस्मात् तस्मात् पुत्र इति स्मृतः ।

⁴ Śaṅkha-Likhita—अग्निहोत्रं त्रयो वेदा यज्ञाश्च शतदक्षिणाः । ज्येष्ठपुत्रप्रसूतस्य कलां नाहन्ति षोडशीम् । (D. B., XI 1. 31).

⁵ Vedic text . जायमानो ह वै ब्राह्मणस्त्रिभिर्ऋषेर्ऋणवाञ् जायते । यज्ञेन देवेभ्य प्रजया पितृभ्यः स्वाध्यायेन ऋषिभ्य एष वा अमृतः । Tait. Sam. VI. iii. 10. 5.

⁶ स्वे चैवे संस्क्रतायानु स्वयमुत्पादयेद्भि यम् । तमौरसं विजानीयात् पुं प्रथमकल्पितम् ।

Manu IX. 166.

⁷ Manu—एक एवौरसः पुत्रः पितरस्य वसुनः प्रभुः । शेषाणामामृतं सार्धं प्रदद्यात् प्रजीवनम् ।

aids much or assists in old age or delivers from the hell called *put*. *Manu* speaks of the different worlds that a man gains through the birth of successive descendants (IX. 137-138).¹ So also *Vasiṣṭha* XVII. 1-2, *Viṣṇu* XV. 44 and *Yājñavalkya* I. 78. But the *aurasa* is not any son of the body but one begotten upon a wife of the same caste after an approved form of marriage. In other words he should be borne by a *patnī*—a wife who associates in sacrifices and participates in religious merit. (*Pāṇini* IV. I.35)²; also *Mit.* II. 1. 5 and *Vir. Mit.* text, p. 55).³ Virginhood is essential to the status of *patnī*. No *punarbhū* can be such (*Yāj.* I. 52 and 67).⁴ The widow's right to inherit is made to rest on this status in *Dayabhāga* IX 1.48.⁵ The quality of the marriage depends upon the quality of the marriage-rites⁶ (*Baudh.* I. ix. 17; *Manu* III. 42 also 37-38; *Yāj.* I. 58-59). Wives secured for a present (of a bull and a cow as in *Ārṣa*) or bought for a price or *Śulka* are deprecated. (*Cf.* *Manu* III. 53). *Baudhāyana* holds the father of such a bride to be

¹ पुत्रेण लोकाञ्जयति पौत्रेणानन्यमयुते । अथ पौत्रस्य पुत्रेण ब्रध्नस्याप्नोति विष्टम् ।
मनु-शङ्ख-लिखित-विश्व-वशिष्ठ-हारीतः । D.B. XI 1. 31.

Yājñavalkya—लोकानन्यं दिव प्राप्तिः पुत्रपौत्रप्रपौत्रकैः । यस्मात्तस्मात् स्त्रियः सेव्याः
कर्त्तव्याश्च सुरक्षिताः ।

² स च धर्मपत्नीजः, सवर्णा धर्मविवाहोदा धर्मपत्नी, तस्या जातः औरसः पुत्रो सुख्यः ।

Mit. II. 131.

Pāṇini—पत्युर्नो यज्ञसंयोगः ।

³ *Mit.* तव प्रथम पत्नी धनभाक् पत्नी विवाहसंस्कृता पत्युर्नो यज्ञसंयोग इति स्मरणात् ।

⁴ अविप्रतब्रह्मचर्यं लक्षणा स्त्रियमुच्यते । अनन्यपूर्विका कान्तामसपिण्डां यवीयसीम् ।

⁵ अनेनैव पत्नीभावक्रमेण घनाधिकारिता बोद्धव्या ।

⁶ यथायुक्तो विवाहः । यथायुक्तो विवाहस्तथायुक्ता प्रजा भवतीति विज्ञायते । *Baudh.*

अनिन्दितैः स्त्रीविवाहैरनिन्द्या भवति प्रजा । निन्दितैर्निन्दिता नृणां तस्मान्निन्द्यान् विवर्जयेत् ॥

—*Manu* III. 42.

दशपूर्वान् परान् श्यानात्मानं चैकविंशकम् । ब्राह्मीपुत्रः सुकृतकृन्मोचयत्येनसः
पितृन् । द्वौडाजः सुतश्चैव सप्त सप्त परावरान् । आर्षोडाजः सुतस्त्रीस्त्रीन् षट् षट्
कायोदजः सुतः । (III. 37, 38).

guilty of the sin of child-selling.¹ Āsura, Rākṣasa and Paiśāca forms are disapproved by Manu (III. 41) but not Gāndharva to the same degree (III. 24-26).² The wife married in the Brāhma form is preferred as the heir to those in Āsura and other disapproved forms of marriage (Vir. Mit text, p. 35).³

These ideas which upheld the pre-eminence of the *aurasa* also lay at the root of the disapproval and the ultimate elimination of the other kinds of sons. The subsidiary or substituted sons are to be thought of failing the legitimate sons. So say Manu and Atri.⁴ Again subsidiary sons are not indispensable for spiritual weal (Manu V. 159).⁵ All these sons, however, are pronounced heirs of their fathers who have no real legitimate sons; but should a real legitimate son be afterwards born, they have no right of primogeniture (Dāyabhāga X. 7).⁶

The *Śaudra* or the son by a Śūdra wife disappeared by degrees with the repudiation of inter-caste marriage particularly with a Śūdra woman (*vide* Sec. *Inter-caste Marriage*). The *aurasa* is defined in Baudhāyana and Āpastamba as a son begotten by oneself on a wife of the same

¹ क्रीता द्रव्येण या नारी सा न पत्नी विधीयते । सा न देव न सा पित्र दासी ता काश्यपोऽब्रवीत् । शुक्ले न ये प्रयच्छन्ति स्वसुता लोभमोहिताः । आत्मविक्रयिणः पापा महाकिल्बिषकारकाः ।
I. XI. 20-21.

² पृथक् पृथक् वा मित्रौ वा विवाहौ पूर्वचोदितौ । गान्धर्वो राक्षसश्चैव धर्मज्ञौ चक्षुरौ सौम्यौ ।
(26)

³ पत्नीशब्दादामुरादिविवाहोदाया ग्रहणं धर्मविवाहोदपत्नीसदृभावे नास्तीति गम्यते ।

⁴ चैवजादीन् सुतानितानेकादश यथोदितान् । पुत्रप्रतिनिधीनाहुः क्रियालोपान् मनोषिणः ।
Manu IX. 180.

अपुत्रैश्चैव कर्त्तव्यः पुत्रप्रतिनिधिः सदा । पिण्डोदकक्रियाहेतोरेष्ट्यात् तस्मात् प्रयत्नतः ।

Atri I. 52.

⁵ अनकानि सहस्राणि कुमारव्रत्तचारिणाम् । दिव गतानि विप्राणामकृत्वा कुलसन्ततिम् ।

⁶ Devala (*op cit.*)—सर्वे स्त्रीरसम्यैते पुत्रा दाशहराः स्मृताः । औरसे पुनरुतपन्ने तेषु ज्येष्ठः न विद्यते ।

caste married with religious rites (which might not include the Śūdra even when inter-caste marriage prevailed).¹ And this usage of mixed marriages came to be restricted early in the Dharma-śāstras. Manu (III. 17 and III. 14) shows how different stages of intercourse with a Śūdra woman caused one's fall.² He and Yājñavalkya totally prohibit it. As already pointed out caste became an element in the wife's gaining the status of a *patnī*.³ (Manu XI. 166; Vāsiṣṭha XVII. 13; Yāj. II. 228).

In Yāj. II. 137 direction is given as to how the patrimony is to be divided with the son of a Śūdra wife.⁴ Atri (191) says that a woman of a lower caste becomes impure on conceiving through a man of a higher caste and becomes pure when she is delivered.⁵ A text of *Devala* cited in *Ujjvalā* (Āpas. Dh. S., page 235) shows the share to be given to a son born of a wife lower in caste.⁶ *Brhaspati* cited in the *Ujjvalā* says that a Śūdrā-born son is not entitled to a share of the land.⁷ The son of a wife belonging to an inferior tribe or espoused in a disapproved form of marriage is an *aurasa* son for secular purposes though he be worthless in a spiritual view.

The elimination of the maiden's son (*kānina*) and the pregnant bride's son (*sahodhaja*) followed from the institution of early marriage. The highest eligibility of a girl as

¹ सवर्णापूर्वशास्त्रविहिताया यद्यत् गच्छतः पुत्राक्षेपां कर्मभिः सम्बन्धः। दायिन चाव्यतिक्रमश्चोभयोः। Āp. Dh. S. II. 13. 1-2.

² Already cited in § on Inter-caste Marriage.

³ Cf. Āp. Dh. S. II. xiii 3-4. पूर्ववत्यामसंस्कृताया वर्णान्तरे च मैथुने दीपः। तत्रापि दीपवान् पुत्र एव।

⁴ सते पितरि कुर्युस्तं भ्रातरस्वर्द्धभागिनम। अभातको हरेत् सर्वं दुहितृणा सुतादृते।

⁵ असर्वोस्तु यो गर्भः स्त्रीणा योनौ निषेव्यते। अशुद्धा सा भवेन्नारी यावद् गर्भं न सुञ्चति।

⁶ आनुलोम्येकपुत्रस्तु पितुः सर्वस्वभाग् भवेत्। निषाद एकपुत्रस्तु विप्रसस्य तृतीयभाग्। ह्री सपिण्डसकुल्यौ वा स्वधादाता नृ तं हरेत्।

⁷ शूद्रा द्विजातिभिर्जातो न भूमेर्भागमर्हति। स्वजातावाप्रयात् सर्वमिति धर्मो व्यवस्थितः।

a bride is laid down in many texts including Gobhila-grhya sūtra,¹ where, however, for 'naked' (*nagnikā*), the opposite reading (*a-nagnikā*) is also met with

The *sahodhaja*, the *kṣetraja* and the *gūḍhaja* sons were checked by certain ideas which date from a very early period. Discussions began in Vedic times as to who should be considered their true father, and whether sons of these kinds had their place in society. Thus Baudh Dh. S II. 2. 34 cites : Now O Janaka, I jealously watch my wife though I did not do it formerly. Āpastamba, II. 13. 6 holds that the son is of the progenitor only.² Vasiṣṭha, XVII. 8. 9, records the dispute as to whether the son begotten by another belongs to the begetter or the husband of the woman and he concludes that he belongs to the former.³ So also Manu, in IX. 32, refers to the difference of opinion⁴ He says that the ancient sages held sons like the *kṣetraja* to be capable of performing the obsequies (IX. 180)⁵ But with his stricter ideas he holds them to belong to their begetter (IX. 181).⁶ These other sons are called by him 'contemptible and conducive to little spiritual benefit (IX. 161).⁷

Besides, *niyoga* and widow-remarriage and promiscuity which resulted in *kṣetraja* and *paunarbhava* sons were steadily discountenanced by the writers of the Smritis since the time of Āpastamba. In reference to these ancient usages, the sage declares that practices opposed to the sacred law should not be followed (II. 13. 9; II. 27. 4).

¹ नग्निका तु श्रेष्ठा [Read. अनग्निका तु श्रेष्ठा]—Satyabrata Sāmaśrami's Edn.

² जनयितुः पुत्रो भवति सत्परायि मोघं वेत्ता कुरुते तन्मुमेतम् ।

Corr to Baudh. II. 11 41.

³ क्षेत्रिणः पुत्रो जनयितुः पुत्र इति विवदन्ते । Et seq.

⁴ भर्तुः पु ' विजानन्ति श्रुतिद्वैधन्तु भर्तुरि । आहुतृत्पादकं केचिदपरे क्षेत्रिण विदुः ।

⁵ Already cited.

⁶ य एतेऽभिहितः पुत्रा प्रसङ्गादन्यवीजजाः । यस्य ते वीजतो जातास्तस्य ते नेतरस्य तु ।

⁷ यादृशं फलमाप्नोति कुपुत्रैः सन्तरज् जलम् । तादृशं फलमाप्नोति कुपुत्रैः सन्तरसमः ।

The reward in the next world resulting from the observance of the rules imposed by the sacred law is preferable to the offspring obtained in this manner. A text cited in *Dat. Mim.*, I. 64, p. 30, says : The sons made in various ways by the ancient sages, powerless modern people are not competent to make now.¹

Brhaspati (Digest V, p. 337) : The appointed wife's son is condemned by good men; and so are the son of the twice married woman, the son of an unmarried one, the son received with a pregnant wife and the secretly-born son of an adulterous wife.

Parāśara holds that the son of the appointed wife belongs to her husband and not to the begetter, so also the secretly-born son of the wife and the son of the widow.² He sanctions the twice-married woman's son by implication by his text on widow-remarriage (IV. 26). As the lawgiver of the Kali age he recognises four kinds of sons—the legitimate, the wife's son, the son given and the son made.³ According to Nanda Paṇḍita the term *kṣetrajā* is an adjective and, therefore, according to *Dat. Mim.*, Sec. I, p. 68, the wife's son is in effect barred out by him.

Śaunaka quoted in Devānanda Bhatta's (?) *Dattaka-candrikā*, Sec. I, p. 9 and also in *Dat. Mim.*, p. 30, admits only two kinds of sons in the present age.⁴

The five remaining descriptions of sons are neither sons of the body nor the wife's sons. The *kṛita* or the son bought is akin to the *datta* or the son gifted except that a price is paid for the transfer of power over him from his natural father to the father by purchase. The *kṛitima* and the *svayamdatta*

¹ अनेकशः कृताः पुत्रा अपिभिर्नै पुरातनैः । न शक्यन्तेऽधुना कर्तुं शक्तिहीनतया नरैः ।

² ओषवाताहतं वीजं यथा क्षेपे प्ररोहति । क्षेपी तल्लभते वीजं न वीजी भागमर्हति । तद्वत् परस्त्रियाः पुत्री ह्यै सुतौ कुण्डगोलकौ । पत्न्यै जीवति कुण्डः स्थान् मृते भर्तारि गोलकः । IV. 17.

³ औरसः क्षेपजश्चैव दत्तः कृत्रिमकः सुतः । IV. 19.

⁴ दत्तोरसैतरेषाम् पुत्रत्वेन परिग्रहः । Found in *Aparārka*,

are both *sui juris* and not under their parents' power, the former being adopted on the adopter's proposal and the latter upon his own offer. The *apaviddha* is a foundling, incapable of giving or withholding consent, and is adopted without any such. The *dattaḥ* is a sacramental son since according to Manu the ceremony of adoption is in its effect like that of marriage. The libations of water which accompany the gift of a son are a rite enjoined or *vidhāna* (according to the *Smṛti-candrikā*—Vyavahārakhaṇḍa, II, p. 609) and *dharma* according to Viśvarūpa (on Yāj. II. 134) and essential according to Raghunandana.¹ And this rite completely severs the son from his natural ancestors to whom he no longer offers oblations and completely affiliates him to the adopter's family (Manu IX. 142).²

These archaic varieties of sons had to fight hard to maintain their places in the face of disapproval expressed from a very early age. Yāska (Nirukta III. 3) declares against a son other than that of the body.³ The transfer of dominion followed from the father's power of sale over his children. This power, however, was never undisputed. Thus the Nirukta (III. 4) says that the power of gift, sale or abandonment extends over women not over the man (the male child); also over the latter, according to some, from the instance of Śunaḥśepha.⁴ This power was deduced from the view of marriage not as a sacrament but as a purchase for *śulka* or consideration.

Although Gautama (xxxviii. 32) and Baudhāyana (II. 20.31 and VII. 5) mention the son given, Āpastamba (II. 13. 10)

¹ Manu IX. 168. माता पिता वा दद्याता अमङ्गिः पुत्रमापदि । Raghunandana comments—अङ्गिरित्यवश्यम् ।

² गोत्ररिक्थे जनयितुर्न हरेद्द्विजसः कश्चित् । गोत्ररिक्थानुगः पिण्डो व्यपेत ददतः रूपा ।

³ अन्योदर्थी मनसापि न मन्तव्यः ।

⁴ स्त्रीणां दानविक्रयातिसर्गा विद्यन्ते न पुंसः । पुंसोऽपीत्येके । शौन.श्रौ. दर्शनात् ।

opposes the view that there could be a gift or sale of the issue¹.

The opposite view is *Vaśiṣṭha's* (Chap. XVII). He also, like *Yāska*, supports the case of the sons bought and self-given by the precedent of *Śunahśepha*.² Most of the sages include the five sons by adoption together with the twice-married wife's son in the second of the two groups into which sons are divided. They are regarded as *bandhus* or members of the *gotra* but not as heirs.

Of these five kinds the *dattaka* was preferred as a sacramental son; hence he stands third in the list of *Gautama*, *Baudhāyana* and *Manu*, and also of *Bṛhaspati* who closely follows *Manu*. *Vaśiṣṭha*, who holds marriage to be a contract and the father to have the power of gift and sale over the son, assigns to the *dattaka* the eighth place; so also *Viṣṇu*. *Āpastamba* who denies such power to the father and is opposed to the institution of subsidiary sons omits the *dattaka* altogether. According to him (II. 13. 6) the son is the progenitor's. *Kautilya* with his secular outlook places the appointed daughter's son next to the *aurāsa* as also *Devala*. *Yājñavalkya's* list agrees with *Kautilya's* except in that the *sahodha* and the *apavidha* are relegated by him to the lowest position. This was probably because the two varieties had become in his time almost obsolete and were so regarded by the law of the Royal Courts.

This is also suggested by *Bṛhaspati's* text: "One alone, namely, the son of the body, is declared to be the owner of the wealth left by the father, the appointed daughter is equal to him. But the other sons shall only be maintained. The son given, the deserted son, the son purchased, the

¹ दानं क्रयधर्मश्चापत्यस्य न विद्यते ।

² पुरुषो मातापितृनिमित्तकस्य प्रदानविक्रयत्यागेषु मातापितरौ प्रभवतः । Ch. XV.
क्रीतस्तौयस्तच्छुनःश्रेष्ठेन व्याख्यातम् । स्वयमुपागतश्चतुर्थस्तच्छुनःश्रेष्ठेन व्याख्यातम् । Ch. XVII.

son made and the son by a Sūdra wife—these, if pure by class and of irreproachable conduct, are held in the middle degree of estimation.” “The position of the *dattaka*,” says Mr. Jayaswal, “in spite of the Mānava laws, in actual life had not improved. ✓ This explains the attitude of Devala, Nārada and Yama (cited in the Digest, Vol. II, pp. 331-2).” It seems that “in the later Gupta time, Juristic opinion ultimately crystallised in favour of the higher position for the *dattaka* son as advocated by the Mānava code, for Brhaspati gives him that position. Kātyāyana is not quoted to prove a contrary opinion.” A tendency is noticeable from this period onward to favour the *dattaka*. After Brhaspati and Kātyāyana, the compilers of the digests from Viśvarūpa and Vijñāneśvara to Mitra-miśra stick to the order given by Manu and re-affirmed by Brhaspati and disregard Yājñavalkya altogether. The different view of Jīmūtavāhana (D.B. X.7)¹ is discarded by Jagannātha and other later commentators who represent the changed attitude of the public mind in Bengal.²

The gradual rise of the *dattaka* to pre-eminence is seen also in connection with the twofold division of sons. In Gautama's terms the two classes are the inheritors and the bearers of the names of both the *gotras*.³ According to Manu (IX. 158-160) the classes are designated ‘heirs to collaterals’ or ‘no heirs to them’ (*bandhu-dāyādāḥ* and *abandhu-dāyādāḥ*). The same principle of division is admitted by Kautilya (III. 7. 60).⁴ The principle is not recog-

¹ औरसेन तु चेषजादीनां विभागे ये पितृसवर्णा औरसपुत्राश्चोत्तमसमवर्णा पुत्रिका-क्षेत्रज-कान्तीन-गूढजापविद्ध-सहोदज-गौनभैव-दत्तक-स्वयसुपागत-कृतक-क्रीताः पुत्रास्ते औरसपुत्रभागस्य तृतीयांशभागिनः। * * * औरसादयः षट् न केवलं पितृदायहाराः किन्तु बन्धूनामपि सपिण्डादीनां दायहाराः अन्ये परभूताः पितुरेव परं दायहाराः न सपिण्डादीनाम्।

² Mayne—7th Edn., p. 216.

³ रिक्त्यभाजः गोत्रभाजः।

⁴ स्वयंजातः पितृबन्धूनां च दायदः। परं जातः संस्कारैरेव न बन्धूनाम्।

nised by Baudhāyana, Viṣṇu and Yājñavalkya. The collateral succession is opened to the *dattaka* and *kṛtrima* by Manu and also by Bṛhaspati who calls the son bought and the son found, along with these, inheriting sons or *rikṭhabhājah*. This limitation on the inheriting capacity of the son given was removed by degrees by the commentators outside Bengal. Asahāya (cited in the Vivāda-ratnākara, p. 544) includes him in the first class against Nārada upon whose text he wrote his commentary.¹ Viśvarūpa (on Yāj. II. 136) upholds Manu's views. The Mitākṣarā (I. xi. 30-35) refuses to recognise Manu's distinction and explains it in a way as based on differences in merit amongst sons.² He is followed in this interpretation by the commentators who come after him.

In the Parāśara-mādhava, Hārita's view is rejected and the Madana-pārijāta upholds the order given in the Subodhinī on the Mitākṣarā.³ The Vīramitrodaya upon a review of the authorities holds their conflict to be due to local customs or differences in caste among the sons.⁴ The Sarasvatī-vilāsa reckons the *dattaka* as the fourth in order.⁵ In the Dattaka-candrikā which is most likely a digest of a very late date and of doubtful authenticity the conflict between the sages as to the *dattaka* being an heir to the collaterals or not is held to be reconcilable on the principle of his having or lacking merit.⁶

¹ दश दत्तकादयः क्रमशः पूर्वपूर्वाभावे गौतमभागिनः जातिकार्यकारिणः इत्यसङ्गाध्याचार्यः ।

² On Yāj. II. 135, वशिष्ठादिषु वर्गेष्वपि कस्यचिद् व्यत्ययेन पाठो गुणवदगुणविषयो वेदितव्यः ।

³ Par. mād. (Setlur, p. 330) § 52, Mad. pār. (Setlur, p. 521).

⁴ Vīr. Mit. (pp. 618-621).

⁵ Sar. Vil. (Setlur, p. 161).

⁶ तथा केनापि मुनिना दत्तकस्य बन्धुदायादत्वमन्येन चादायादत्तमुक्तं तदगुणवदगुणभेदेन समाधेयम् (p. 37).

The gradual elimination of the subsidiary sons not merely by the force of Smṛti texts but through changes in social usages and public opinion may be traced in the commentaries and digests. The commentators of Manu (Medhātithi, Govindarāja and Kullūka) do not admit the restriction of the sage's authority in regard to the different varieties of sons.¹ Jimūtavāhana also accepts the supreme authority of Manu on the strength of Bṛhaspati's text (D. B. XII. 6. 16). He deals with the twelve kinds of sons and cites Devala's text on the respective shares of legitimate and subsidiary sons and reconciles it with Manu on the principle of superiority or inferiority in caste. Both Jimūtavāhana and Vijñāneśvara may be taken to have been expositors of the actual law, and not speculators. The latter evidently recognises the twelve varieties of sons as still in vogue in his age. He is the first to notice the circumstances in which the wife's son turns into a son of two fathers (Sec. X—Colebrooke). He is aware of the prohibition of appointment. But this may refer to compulsory appointment since his dissent is from Dhāreśvara who held a widow to be entitled to inherit her husband's property if only she agreed to appointment. *Aparārka* is the first to notice Śaunaka's text admitting only two kinds of sons in the Kali Age. "It is to be noted that the prohibitions in the Kali age as cited by him are not found in all copies of his work," says G. Sarkar (p. 106).² But these prohibitions gain increasing recognition evidently from this age onward. Devānanda omits the topic of distribution of heritage amongst sons of different tribes and among secondary sons other than the *dattaka* and between the appointed daughter and her

¹ Medhātithi—end of 10th Cent. Govindarāja—11th Cent. Kullūka—13th Cent.

² "e.g., not in Skt. College MS. Copy".—This statement is not correct—the Skt. College MS. (examined by the writer) has the quotation in question.

son as uselessly swelling the size of the work, since these usages should no longer be followed. Caṇḍeśvara's Vivāda-ratnākara—a Mithilā treatise of the first half of the fourteenth century remarks no change in regard to the twelve kinds of sons. Viśveśvara of the latter half of the same century in his Subodhinī holds Vijñāneśvara as confusing current and obsolete usages in this connection.

Mādhavācārya in his Vyavahāra-mādhava remarks that the law relating to different kinds of secondary sons and their rights prevailed in former ages and has no force in the present age although he deals with the topic in full as also with the distribution of heritage amongst sons of different tribes. He cites an anonymous text on the Kali prohibition on this point.¹ In the commentary on Parāśara he takes the four kinds of sons as illustrative and suggestive of the twelve kinds. On the strength of Āditya Purāṇa he refers widow-remarriage to previous ages although Parāśara is known to be the law-giver of the present age.

The Vivāda-cintāmaṇi of Vācaspati Miśra—a Mithilā treatise (1450-1470 A.D.)—indicates no change in regard to the varieties of sonship. Raghunandana in his Dāyatattva while abridging the Dāyabhāga treatment of the twelve kinds of sons holds inter-marriage and the institution of having sons other than the *dattaka* and *aurasa* to be obsolete. Kamalākara's Vivādatāṇḍava treats of the primary and secondary sons but regards only two kinds as permissible on the authority of the Āditya-purāṇa. He remarks that the *puttrikā-puttra* is equal to the son of the body. The son bought, the self-given son, and the son made are similar to the son given and all these six are recognised in the present age by virtue of Bṛhaspati's text. He discusses also the rights of a Śūdra son although he refuses to consider the distribution of property amongst sons of different tribes. (Sanskrit College

¹ दत्तौरसैतरेषां पुत्रत्वेन परिग्रहः । देवरेण सुतोत्पत्तिर्वानप्रस्थाश्रमग्रहः । इमान् धर्मान् कलियुगे वज्रार्जुनाहुर्मनीषिणः ।

MS. copy, p. 122). In the Nirṇaya-sindhu he opines that failing the *aurasa*, his son and his grandson, the eleven other kinds are competent to perform the *śrāddha*. But elsewhere in the same work he says that sons other than the given and the lawfully begotten are forbidden.

Nilakaṇṭha's Vyavahāra-mayūkha (Ch. IV, Sec. iv, p. 41) deals with partition amongst sons of different tribes but in citing Yājñavalkya's text on the twelve kinds he adds that the secondary sons other than the legitimate and the given are to be avoided in this age.

The Viramitrodaya of the Benares School does not defer to the authority of the Kalivarjya text so far as to hold any kind of son as obsolete, although it considers unequal distribution amongst sons as a practice to be avoided.

Nanda Paṇḍita in his gloss on the Viṣṇu-Smṛiti minutely describes ten kinds of sons and their relative rights. Yet in the Dattaka-mimāṃsā he cites Brhaspati's and Śaunaka's text on the validity of only two kinds of sons. The son made, according to him, is included in the son adopted since the former also is admitted by Parāśara. He regards the wife's son as inadmissible.¹ But in Chapter IV, secs 64-74, he deals with the son of a twice-married woman.²

His writings, therefore, point to a difference between *śāstraic* prohibition and actual usage. Balambhatta also follows Mādhava in holding only two varieties as lawful, and refers the Mitākṣarā exposition to former ages. But the *puttrikā-puttra* is admitted by this writer on the ground that Manu does not mention him as a secondary son. Dharma-sindhu agrees with the view of the validity of only two kinds. In the Kaustubha, it is said, a third kind also, namely

¹ कथन्तस्तत्र चैवजगद्व्यभिचारेणैव तत् औसव्यविशेषणत्वेनेति ब्रूमः। (p. 31)

² योऽयं पौनर्भवादीनां राज्यनिर्धो जनाभावः स औसव्यतिरिक्ताभाव एव। सत्यौरसे चैवजादीन् राज्ये नैवाभिषेचयेत्, पितृणां नित्यश्राद्धादि च नैव साधयेत्, न कारयेदित्यर्थः।

(Dat. Mim., pp. 75, 76.)

the self-given, is permissible in this age, and only nine are prohibited. Jagannātha's Vivāda-bhaṅgārṇava cites the Āditya-purāṇa and yet treats of the twelve kinds in order to complete that part of the book as well as for the use of those who not having seen such prohibitory texts admit the other kinds of sons. The practice of appointment in the country of Oḍra is due to ignorance of these prohibitions, according to him.

According to G. Śāstrī, the restriction of sons to only two varieties in the present age rests on the texts of Śaunaka and Bṛhaspati and the Bṛhannāradiya and Āditya Purāṇas. But there are other texts not noticed by the learned writer such as the passage in the Smṛtyarthasāra. In what light the prohibition has been regarded in the digests appears from the above resumè. The ancient modes of filiation, however, show, persistence in some varieties in disregard of the authorities and the digests. The history of Kulinism in Bengal proves the practical recognition of the wife's son and the secretly born son. Even before Act XV of 1856 the remarriage of widows under custom in certain ranks of society necessarily tended to legitimise the twice-married woman's son. (*Vide* § Legal Bearing of Kalivarjyas)

The Preferential Share of the Eldest Son

The award of the preferential share (*jyesthāṃśa* or *uddhāra*) to the eldest son or brother is a usage closely connected with primogeniture under which the eldest son is the sole heir subject to the maintenance of his younger brothers. Traces of both are found in the Vedas. Primogeniture, according to Dr. Sarvādhikārī, was the settled law of succession in ancient India (Tagore Law Lectures 1880, p. 176). Macdonell and Keith in the Vedic Index opine that it is clear from the Taittiriya Saṃhitā that

the eldest son was usually preferred ; perhaps this was also the case after the father's death. There are evidences both of unequal distribution amongst sons by the father and of his nominating any one son to succeed him at his pleasure.¹ The position of the *primogenitus* was covetable as appears from R̥g-Veda IV. 17. 11 which speaks of Indra as such and as the enjoyer of all riches and divider of all properties. "He officiates at the sacrifice. Then the gods admitted Indra's right of primogeniture and leadership. He who has such a knowledge is acknowledged as the first-born and leader. All his relations agree as to his right to the leadership."² Śunaḥśepha is described as agreeing to be adopted as son by Viśvāmitra if only he was made the first-born. Primogeniture, in the opinion of Dr. Sarvādhikārī, was weakened by polygamy—the espousal of wives of different ages and castes who bore sons whose status varied according to both these circumstances. It seems that ideas of equitable distribution among the sons bore upon the law of primogeniture from the earliest times. The ancient institution followed from the Patriarchal system under which the father ruled the family as a King his subjects, a teacher his pupils, or as a lord his slaves.³ And on the father's death the eldest son as the heir stepped into his place as the head of the family and maintained the younger sons. This view is embodied in Gautama xxviii. 3, Āpastamba II. 14. 6, Manu IX. 105-110, Mahābhārata Anuśāsana Parva, Chaps.

¹ Pañcaviṃśa Brāhmana, XVI. 4 4

Śatapatha Brāhmana, V. iv. 2. 8

² तमयाज्यत्ततो वे तस्मै देवान्यैष्टाय यैष्टाय अतिष्ठन् इति तिष्ठन्त्येष्टे स्वाज्यैष्टाय समस्मिन्
स्वाः यैष्टतायां जानते य एवं वेद । Ait Br IV. 25.

³ Nārada, I. 32-42.

105-17 and Nārada XIII. 5¹. Āpastamba is, however, opposed to unequal division and he says (II. 13. 12) that the father should please the eldest with some choice portion of his wealth.²

This pre-eminence of the eldest son, according to another and perhaps later view, rested on fitness and higher capacity on which ground it may pass to a younger son, for the fortune of the family depends on ability. Such is the view of Baudhāyana (II. 2. 13) but he goes further and holds that if the son of a lower tribe possesses the requisite qualifications he should have the share of the eldest.³

Another principle also intervened, viz., that seniority was to be determined by the caste of the mother amongst sons born of mothers of different castes. Such is the view of Vasiṣṭha (XVII), Manu (IX. 149-153) and Nārada (XIII. 13).⁴

In the case of the father's loss of sanity and his incapacity to manage the family property, the eldest son may take over

¹ Gaut : सर्वं वा पूर्वजस्य, इतरान् विभ्रयात् ।

Āpas : ज्येष्ठो दायद इत्येके । तच्छास्त्रैर्निर्दिष्टमिदम् । मनुः पुत्रेभ्यो दायमभजदित्यविशेषेण श्रूयते ।

Manu—ज्येष्ठ एव तु गृह्णीयात् पितरं धनमशेषतः । शेषास्तसुपुत्रजीवेयुर्यद्यैव पितरं तथा ।

✓ Mahābh.—स ह्येषां वृत्तिदाता स्यात् स चेत्तान् प्रतिपालयेत् ।

कनिष्ठास्तसुपुत्रजीविरन् सर्वं कृन्दातुवर्तिनः । Anu. P., Ch. 105, Sl. 17.

² मनुः पुत्रेभ्यो दायं व्यभजदित्यविशेषेण श्रूयते । अथापि तस्माज्ज्येष्ठं पुत्रं धनेन निरवसायशक्तौल्येकवच्छ्रूयते । अथापि नित्यानुवादमविधिमाहुर्न्यायविदः * * ।

सर्वं हि धर्मयुक्ता भागिनः । II. xiv 11-14. एकधनेन ज्येष्ठं तोषयित्वा । II. xiii. 12.

³ गुणवान् हि शेषाणां भर्ता भवति । (13)

सवर्णापुत्रानन्तरापुत्रधोरनन्तरापुत्रश्वेद गुणवान् स ज्येष्ठार्थं हरति । (12)

⁴ Vās—यदि ब्राह्मणस्य ब्राह्मणचतुर्विधवैश्यासु पुत्राः सुस्त्राश्च ब्राह्मण्याः पुत्रो हरति इदं राजन्यायाः पुत्रः समितरे विभजेरन् । Also Manu IX. 156—समवर्णेषु ये जाताः सर्वे पुत्रा विजन्मनाम् । उद्धारं व्यापसे दत्त्वा भजेरन्नितरे समम् ।=Nārada, XIII. 13.

the management. According to Hārīta (IV. 3) this is so, if the father is decrepit (or 'improvident', according to another reading), absent or ill. Śaṅkha-Likhita, quoted in the Mitākṣarā on Yāj. II. 115, hold the same view.¹

The eldest son has many privileges such as salutation, incapability of being given in adoption, competency to perform obsequies, etc., all which show that he is the natural head of the family after the father's demise. But this position was lost, according to Manu IX. 213, Mahābhārata Anu. Parva 105. 7, if he cheated the younger brother.² According to the great epic, he cannot take anything of the common family-property without compensation to the brothers.³

But the power of the cadets increased by degrees. This followed from the equal right of disposition over the property descended from the grandfather. (Viṣṇu XVII. 2 ; Yāj. II. 121).

Besides, we find that the mode of partition according to the ancient law-makers provided for graded shares according to seniority among the sons.⁴

From inheritance of the whole, the share of the eldest came to be specified and restricted to a definite portion. According to Gautama (xxviii. 5-8) the eldest should receive one-twentieth as his preferential share together with a prescribed division of the cattle, the middle-most also has his defined quota and so also the youngest.⁵ These details point to an

¹ अकामे पितरि रिक्तविभागो ब्रह्म विपरीतचेतसि रोमिणि चेति ।

² अथ यो विनिकुर्वीत ज्येष्ठो भ्राता यवीयसः । अज्येष्ठः स्यादभागश्च नियम्यो राजभिश्च सः । Also Āp. Dh. S., II. 14, 15—यस्तु धर्म्येण द्रव्याणि प्रतिपादयति ज्येष्ठोऽपि तमभागं कुर्यात् । Manu IX. 213—यो ज्येष्ठो विनिकुर्वीत लोभाद् भ्रातृन् यवीयसः । सोऽज्येष्ठः स्यादभागश्च नियन्त्यश्च राजभिः । Corr. to Mahābh. Anu. P. 105. 7.

³ Manu IX. 214—न चादत्त्वा कनिष्ठेभ्यो ज्येष्ठः कुर्वीत दौतकम् (आत्मार्थमसाधारण-धनम्) ।

⁴ Tait. Sam., II. v. 2, 7,

⁵ विंशविभागो ज्येष्ठस्य मिथुनसुभयतोददयुक्तो रथः.....इ'प्रश्नौ वा पूर्वजः स्यात् ।

agricultural state of society and the distribution of possessions suited to it. In regard to property obtained by other pursuits the shares are arithmetically calculated. Gautama (xxviii 9) and Manu (ix 112) lay down this rule.¹ The intermediate sons have the share of the middle-most (śl. 113). In Vasiṣṭha (Chap. xvii) the eldest is allowed two shares of cows and horses.² Manu further says that the son of the first wife though junior in years should have a bull to mark the honour due to him, and the first son of each wife is to have an inferior kind of bull according to the mother's status. As already pointed out, the right of primogeniture was disputed in early times as also the father's power of unequal division. Āpastamba II. 14. 7 speaks of the reservation of share for the eldest as a local custom, the general rule being equality of shares amongst brothers.³ The latter was particularly the rule when the partition occurred after the father's death.

Further the father's power of unequal division was restricted to his self-acquisition, ancestral property being subject to the general rule of equal distribution (Gautama xxviii, Viṣṇu xvii. 1, 2).⁴ The unequal distribution in favour of the eldest son though disapproved by the early law-makers did not soon disappear. In the Artha-śāstra (Ch. 63), which is a treatise of positive law, the right of the first-born to an extra chattel is allowed. Kauṭilya approves of the rule in view of the 'duties to the *pitṛs* that fell to the eldest son.'⁵

¹ Manu—ज्येष्ठस्य िशं चङ्गारः सर्वद्रव्याश्च यदवरम् । ततोऽर्द्धं मध्यमस्य स्यात्, तुरीयान् यवीयसः । Also 156—समवर्णेषु ये जाताः सर्वे पुत्राः द्विजन्मनाम् । चङ्गारं न्यायसे दत्त्वा भजेरन्नितरे समम् ।

² द्वंशं ज्येष्ठो हरेद् गवाश्चस्य । ³ देशविशेषे सुवर्णं कृष्णं गावः कृष्णं भीमं ज्येष्ठस्य ।

⁴ Viṣṇu—पिता चेत् पुत्रान् विभजेत् तस्य स्वेच्छा स्वयमुपात्तेऽथै । पैतामहे त्वयै पिता-पुत्रयोस्तुल्यं स्वामित्वम् ।

⁵ एकस्त्रीपुत्राणां ज्येष्ठंशो ब्राह्मणानामजाः क्षत्रियाणामश्वाः वैश्यानां गावः शूद्राणामवयः । काणलिङ्गाक्षिणाम् मध्यमांशः, भिन्नवर्णाः कनिष्ठांशः । चतुष्पदामावे रत्नवर्ज्यानां दशानां भागं द्रव्याणामेकं ज्येष्ठो हरेत् । प्रतिसुक्तस्वधापाशो हि भवतीत्यौशनसो विभागः ।

If Manu's extant *saṃhitā* be later than Kauṭilya, as is held by Mr. Jayaswal, we find in him a continuation of the older law which, being based on express Vedic text, he is reluctant to do away with. But he shows his own inclination by whittling down the eldest son's share and making it exceptional.¹

Yājñavalkya further develops the principle of equal division (II. 116-119).² Here the award of the preferential share to the eldest son is one among three possible alternatives—the decision depending on the father's pleasure. And in divisions after the father's death, even this concession disappears, according to *Yājñavalkya*, for then equality becomes the rule. The provision of graduated shares for sons born of mothers of different tribes is however retained by *Yājñavalkya* (II. 128).

This dispute as to the validity of the preferential share is settled by the *Smṛti-saṅgraha* by means of a text (K. V. Text I) which prohibits it in the present age. *Aparārka* does not know any Kali prohibition against *jyēṣṭhāṃśa*. *Vijñāneśvara*, however, repeatedly describes the usage as disliked by people.³ He remarks (on *Yāj.* II. 116) that the unequal division relates to the father's self-acquisition in regard to which he is quite free. *Āpastamba's sūtras* are cited and it is argued that according to that sage the preferential share though favoured by some was disapproved by the sage himself, and wholly forbidden. *Vijñāneśvara* further says (on *Yāj.* II. 127) that the prohibition of unequal division

¹ उद्धारो न दशस्वति सम्पन्नानां स्वकर्म्मसु। यत् किञ्चिदेव दयन्तु ज्यायसे मानवईनम्।
Manu IX. 115 with which may be read śls. 115-117. सर्वेषां धनजाताना-
माददीताग्रामयजः। यच्च सातिशयं किञ्चिद्दशतयाप्राप्याद वरम्। एकाधिकं हरेज्ज्येष्ठः पुत्रोऽप्यर्द्धं
ततोऽनुजः। अशमंशं यवीयांसमिति धर्म्मो व्यवस्थितः।

² विभागचेत् पिता कुर्यात् स्वेच्छया विभजेत् सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्वे वा स्युः
समांशिनः। * * * विभजेरन् सुताः पितोर्द्वैष्टक्यमर्थं समम्।

³ तस्माद्विषमो विभागः शास्त्रदृष्टोऽपि लोकविरोधाच्चतिविरोधाच्च नानुष्ठेयः।

applies also to property appropriated by the sons and discovered after partition which has to be equally divided. Devānanda criticises the Mitākṣarā view that the preferential share was resented by people.¹ On the contrary, he holds that people favour the award of a larger share to the meritorious eldest son.² The Viramitrodaya comments that the Mitākṣarā is wrong in regarding this usage as not based on the Veda, since in that case it would not have been valid in any age or required to be prohibited in the Kali age.³

The Conception of the Kali Age

The Prohibitions in the Kali Age cover some practices which even in Vedic times were considered of questionable propriety or disputed worthiness such as *soma*-selling, or cow-killing or the use of liquor in sacrifices, together with a certain number in regard to which the note of disapproval is sounded in the Dharmasūtras and Saṃhitās (like *niyoga* or widow-remarriage or marriage with the maternal uncle's daughter) as also some banned for the first time by the Kalivarjya texts (such as suicide from pious motives or Agni-hotra or perpetual studentship or Vānaprastha). In regard

¹ एतदपि बाङ्मावेष्टेतदुद्धारविषमविभागादौ लोकविहेषोऽपि, प्रत्युत विद्यागुणपुण्यकर्म्मसम्पन्न-ज्येष्ठादौ भागाधिक्ये लोक्कानुरागो दृश्यते। But elsewhere (Vyavahāra Kāṇḍa, pp. 621-2) Devānanda writes ये पुन स्मृतिसमुच्चयकाराः शम्भुश्रीकरदेवस्वाम्यादय उद्दारादिविषयाणि बहूनि स्मृतिवाक्यानि विचारयितुं गत्यविस्तरं चक्रिरे, तेषा धर्म्यज्ञसमय-पुराणवचनाभ्या कसौ सर्व्वेच शिष्टाचाराभावस्य निश्चितत्वाद् द्वयैव प्रयासो गत्यविस्तरस्य जात इत्यस्माभिरुद्दारादिविषये दिङ्मावसेव प्रदर्शितम्।

² So also remarks Madana-pārijāta यत्र च विषमविभागे लोकविहेषाभावस्तत्र विषमविभागो भवत्येव। p. 647.

³ यत्तु मिताचराकृता स्मृतिविरोध इत्युक्तं तद्विचार्य्यम्। स्मृतिविरोधे हि सति युगान्तरेऽपि तस्मानुष्ठाने तद्विधकवचनानां सर्व्वथाप्रामाण्यमेव स्यात् इति कलिवर्ण्यतथोपन्यासो विरुद्धः।

to the third of these classes only it is evident that the prohibitions have reference to the Kali age and they arose with that limitation as to time stamped on them. But it is not so in regard to the other two. It may not be amiss to inquire how far back the prohibitions expressly on the ground of Kali age can be traced. The division of time into the declining cycle of Kṛta, Tretā, Dvāpara and Kali is not a concept clearly met with in early Vedic literature. The names, no doubt, occur but they generally designate throws at dice. Śat. Br. V. iv. 4-6: He then throws the five dice into his hand with (Vāj. Sam. X. 28) 'Dominant thou art; may these five regions of thine prosper'—now that one, the Kali, is indeed dominant over the (other) dice, for that one dominates over all the dice; therefore he says, 'Dominant thou art; may these five regions of thine prosper,' for there are indeed, five regions, and all the regions he thereby causes to prosper for him (Macdonell and Keith). The terms Puṣya, Dvāpara, Kharva and Kṛta to signify the four ages occur in Ṣaḍviṃśa Brāh. V. 6 and the word Dvāpara in Gopatha Brāh. I. i. 28. In Aitareya Brāh. VII. 15. 4 in describing the merits of exertion,¹ the terms are applied to different attitudes thus: Lying down, he is Kali; rousing himself, he is Dvāpara; getting up, he is Tretā and moving, Kṛta. Cf. Manu IX. 301-2 where the King in his different moods towards his subjects is called after the four names.²

In Gautama whose work is held to be the earliest of the extant Dharmasūtras the idea of the degenerate later age finds expression in Chap. I.³ On the word Sāhasam (rashness or violence) Maskarī's comment furnishes instances such as mixed marriage, etc.

¹ कलिः शयानी भवति सज्जिह्वानस्तु दापरः । उत्तिष्ठंस्त्रेता भवति कृतं सम्पद्यते चलन् ।

² Mahābhārata—Udyoga-parva. Ch 132, śl 17; Śānti Parva, Ch. 21, śl. 29.

³ दृष्टो धर्मव्यतिक्रमः साहसं च महता, न तु दृष्टार्थेऽवरदौर्बल्यात् ।

In the time of Gautama, Bühler remarks, Kaliyuga was not a definite period of calculated duration but the Iron Age of Sin opposed to happier times when Justice dwelt on earth (S. B. E.). This idea of his own age being a later fallen age occurs more than once in Āpastamba and becomes more definite. In I. v. 4 he remarks that no sages are born in these later times owing to violation of the rules of conduct. In reference to sons like the twice-married woman's or the adopted son or the son bought he admits that such usage was no doubt seen among the ancients as also acts of violence but these were breaches of the sacred law and owing to their great power they incurred no sin, but a later-born man acting in imitation thereof falls into sin.¹ *Niyoga* is not permitted, he says, owing to the weakness of men's senses.² The concept of Kali as a definite epoch of calculated duration in the cosmic cycle is met with in Manu Ch. I. 70-71. Thus Kali becomes a period of 1200 celestial years, i.e., 1200×360 terrestrial years.³ In Matsya Purāṇa Ch. 142.27,31 the duration is 40 lakhs instead of 4. The sage also declares that the sacred law varies from age to age (I.85-86), owing to the diminution in men's powers in the succeeding ages. Bṛhaspati xxv. 13: 'In the ages, Kṛta, Tretā and Dvāpara, men were endowed with devotion and sacred knowledge; in the (present) Kali age, a decrease of power has been ordained for the human race.'⁴

Gloomy and elaborate forecasts of the Kali age occur in

¹ दृष्टो धर्म्यतिक्रमः साहसञ्च पूर्वेषाम् । तेषां तेजोविशेषेण प्रत्यवायो न विद्यते तदन्वीत्य प्रयुञ्जानः सोदत्यवरः II. xiii. 7-9

² II. 27.4. तदिन्द्रियदौर्बल्याद् विप्रतिपन्नम् ।

³ इतरेषु ससम्येषु ससम्याशेषु च विषु । एकापायेन वत्सन्ते सहस्राणि शतानि च । Also Mahābhārata Vāna P, Ch. 174, śl. 25. Also Viṣṇu xx. 6.

⁴ तयोज्ञानसमायुक्ताः कृते वेतायुगे नराः ।

हापरे च काली नृणां शक्तिहानिर्विनिर्दिता ॥ Aparārka on Yāj. I. 68-9.

the Mahābhārata.¹ The Great War is said to have taken place in the transition from Dvāpara to Kali—Ādi-parva II. 13. Again the Kuru King Duryodhana is said to be an embodiment of Kali (*Ibid.* lxvii. 87-8). Kali possessed Nala (Vanaparva lix. 9) and he won at dice. Elsewhere Kali is described as possessing the Asuras (Vana. xciv. 12).

A marked feature of the Kali age is the decline of Vedic rites. This idea, embodied in the accounts given in the Great Epic, recurs in the other Purāṇas.²

The prohibition of Vedic rites and practices in the Kalivarjya texts was the necessary consequence of the conditions described in these passages which are reproduced in the Purāṇas, e.g., in the Matsya Purāṇa which has many links with the Mahābhārata and Harivaṃśa (Ch. 144) as also in Ch. 58. 6 of Vāyu Purāṇa—a comparatively early Purāṇa (between 5th and 8th century).³ Kūrma—a late Purāṇa—echoes the same statement in I. 29.⁴

These passages argue a decay of the social order and the scheme of life that had obtained in earlier ages and clearly point to the conditions which necessitated modifications and recession of the rules of conduct laid down in the Dharmasūtras. The prohibitions of *Agnihotra*, initiation into *Satras*, cow-sacrifice, and in part of the Horse-sacrifice, the Royal sacrifice and the restrictions on studentship, Vānaprastha and Sannyāsa were the outcome of these conditions.

¹ Vana Parva, Ch. 149, śl. 34—वेदाचाराः प्रशस्यन्ति धर्मयज्ञक्रियास्तथा । Also śl. 37; also Ch. 188, śl. 32 निवृत्तयज्ञस्वाध्यायदण्डाजिनविवर्जिताः । Also śl. 33, also Ch. 190, śls. 26, 29 : Śānti P., Ch. 91. 8 अग्निवेता त्रयो विद्या यज्ञाश्च सहस्रदक्षिणाः । सर्वे एव प्रमादन्ति यदा राजा प्रमादति—*Ibid.*, Ch. 231, śl. 68

² Matsya P., Ch 144, Sl. 17; also Ch. 166 आश्रमाणां विपर्ययाः कलौ संपरिवर्तन्ते ।

³ Ch. 58, śl. 6, and śl. 64. सत्सौदन्ति तया यज्ञाः । केवलाधर्मपीडिताः ।

⁴ नाधीयते तदा वेदान् न यजन्ति द्विजातयः । I. 29.5.

यतयश्च भविष्यन्ति शतशोऽथ सहस्रशः । I. 29.23.

The Authority of Samaya-dharma and Purāṇa

A fundamental question in regard to the prohibitions in the Kali age is the source and basis of their authority. It is evident from the foregoing treatment that many of the practices banned rest on express Vedic texts and where expressions of disapproval occur regarding any they are balanced by other passages which sanction and approve of them. The Dharmasūtras and the metrical Smṛtis reveal similar conflict in regard to certain practices. The Kali-varjya texts comprise some verses of the sages forbidding certain practices in the Kali age, some from the Purāṇas, (Brahma, Ādi, Garuḍa, Āditya and Bṛhannāradiya) but the longest passages (in Śrīdhara and Devaṇṇa Bhatta) which string together the prohibitions and on which the Āditya and Bṛhannāradiya Texts seem to be moulded (as shown by remarkable verbal similarity and their emergence at a subsequent date) are anonymous and they conclude with the dictum that the prohibitions rest on convention made in the beginning of Kali by the wise whose conventions are authoritative like the Vedas.¹

It seems, therefore, that the conflict of texts and doubts as to whether these practices should be discontinued were meant finally to be set at rest by these conventions and Paurāṇic texts. The question, therefore, inevitably arises whether injunctions in the Śruti and Smṛti can be restricted by conventions or Purāṇas—in other words, what is the relative authority of the several divisions of the Dharmaśāstras. G. Sarkar-Śāstrī (Adoption, p. 107) says: But there is no authority for the proposition that any rule clearly and unmistakably propounded by the śāstras may be abrogated in the way in which those persons (the Pariṣad

¹ इमान् धर्मान् कलियुगे वर्ज्यानाहुर्गन्धीषणः । K. V. Text VI.

समयश्चापि साधूना प्रमाणं वेदवद्वद्वत् । K. V. Text XI.

or assembly of Brāhmaṇas learned in law) are said to have done. It is not necessary to traverse the large question often discussed in Mīmāṃsā treatises of the sources or proofs (*pramāṇas*) of Dharma. In connection with the Kalivarjyas the ground is narrow, viz., the authority of conventions and Purāṇas.

The authority of *samayas*, i.e., conventions, was recognised by the early Dharmasūtras. These were decisions either of learned assemblies or of lay bodies. Sarvādhikari at page 116 says : “ These were rules which could not be said to be founded upon divine injunctions, but had grown out of the customs of the times for the better regulation of social affairs. The legal relation between man and man, as is sometimes said, arises out of mutual agreement or is deduced from approved usages ” Thus Āpas. Dh. S. in its first *sūtra* indicating the scope and purpose of the work says :¹ Hence, therefore, we shall explain the sacred duties arising from practices based on conventions; and in the next *sūtra* : Authority is a convention made by those learned in the sacred law² and also the Vedas. Haradatta gives the traditional interpretation. The expletive (*ca*) translated as ‘also’ is for emphasis, says Haradatta, for the Vedas are the main authority in regard to what is or is not duty. He brings this dictum into line with Gautama The Veda is the source of the sacred law and the recollection and conduct of the knowers of the Veda (as in Manu II. 6).³ And he adds that though we may not get at the invisible (*apratyakṣa*) Vedas it is inferred that Manu and the others had them. For Āpastamba himself says that their lost texts are inferred from actual application.⁴ Haradatta

¹ अथातः समयाचारिकान् धर्मान् व्याख्यास्यामः ।

² धर्मज्ञसमग्रं प्रमाणं वेदाद्य ।

³ वेदी धर्मसूत्रं तद्विदां च स्मृतिशीले ।

⁴ ब्राह्मणोक्ता विधयस्तेषामुत्सन्नपाठाः प्रयोगादनुमीयन्ते । I. xii. 10.

explains Where, as in marriage with the father's or mother's sister's daughter, the impulse is derived from pleasure, there no *śāstra* or lost text is inferred, the pleasure itself being sufficient to account for the impulse. In I. xx. 6-7 (Chapter on Dharma) Āpastamba says : Righteousness and unrighteousness do not stalk over the earth saying 'Here we are,' neither the gods nor the fathers declare "This is Dharma and this is not." What being done the Āryas praise is the sacred duty and what they blame is unrighteousness. The word Āryas means the twice-born of approved conduct, according to Haradatta. Vasiṣṭha also emphasises the importance of decisions of those learned in *traividya*. There can be no doubt that what men versed in the sacred law, who have grown aged in the study of *traividya*, declare as the law is such in regard to purity and expiation. The Vedas being silent Manu declared the laws governing different lands, tribes and castes (Ch. I).²

In the light of these *sūtras* the expression 'conventions of the knowers of the sacred law' means something more than rules contained in the Smṛtis, it means a decision of learned assemblies.

According to Mr. Jayaswal this source of sacred law was ignored by the later Dharmasūtras. The *samaya*-source which was the main in Āpastamba disappears in the later *Sūtras*. The laws had already been settled and no need of the *samayas* remained. In place of the *samaya* we get Smṛti, i.e., literature takes the place of the living organism. But that it did not altogether disappear is proved by passages in the metrical Smṛtis. Custom and social conduct were determined by consultations and discussions among the learned (Manu and Yājñavalkya).

¹ न धर्माधर्मौ चरत आवां स्व इति । य त्वाय्याः क्रियमाणं संसन्ति स धर्मो यं गृह्णन्ति सोऽधर्मः ।

² तैविरावृद्धा य ब्रूयुधर्मं धर्मविदी नराः । पवने पावने चैव स धर्मो नात्र संशयः ।
देशजातिकुलधर्मान् श्रुत्यभावादब्रवीन् मनुः ।

Samaya is defined in Nārada X. 1: The aggregate of the rules settled amongst heretics, followers of the Veda (Naigamas) and others is called *samaya* (compact or established usage). He also points out the possibility of the modification of the sacred law to suit custom

I. 40: When it is impossible to act up to the precepts of sacred law, it becomes necessary to adopt a method founded on reasoning, because custom decides everything and over-rules the sacred law.

According to Asahāya, Custom is shown to be superior to the sacred law (e.g., in the case of widow-remarriage and *niyoga*). He quotes a verse to the effect that immemorial usages of every province which have been handed down from generation to generation can never be overruled by a rule of sacred law.

Kātyāyana, Ch. 29, śl. 12, suggests that among the lawgivers also decisions were reached by means of deliberation and exchange of opinions.¹ And that at such assemblies the rule of majority obtained may be argued from certain texts.²

Bṛhaspati likewise refers to the authority of *samaya* in xxvii. 24. Such customs as are not opposed to the laws of particular countries and castes or other corporations every King should confirm in accordance with the sacred law after consulting the law-books.

The authority of *Purāṇas* as a source of Dharma or the sacred law though traceable from an early period in the history of Dharmaśāstra has varied in different ages. In Chānd. Upan.³ (Ch. VII. 2) *Purāṇa* with *Itihāsa* is spoken of as the fifth of the Vedas. Cf. Gautama xi.

¹ विद्वन्मतसुपादाय समाप्यतद्बुद्धिं स्थितम् ।

² विरोधो यत्त वाक्यानां प्रामाण्यं तत्त भूयसां । तुल्यप्रमाणकले तु न्याय एव प्रकीर्तितः ।
Gobhila III. 149 in *Smṛti Samuccaya* (Ānandāśrama Pubn.).

³ ऋग्वेदे भगवोऽप्येभि यजुर्वेदे सामवेदमाथर्षेण चतुर्थमितिहासपुराणम् पञ्चमं वेदानां वेदम् ।

19,¹ Vāyu Purāṇa² and Yājñavalkya I. iii. It is clear that the origin of Purāṇa goes back to Vedic times but this root cannot be recovered and is buried under the luxuriant growth of later times.

Bhaviṣyapurāṇa is cited as an authority by Āpastamba. Āpas. Dh. S I xix. 13 supports by a Purāṇa text the propriety of eating food offered by anybody without previous arrangement or appointment. - In I. xxix. 7 he supports the slaying of an assailant by the same authority and in II. xxii. 3-4 he recommends a life of continence. Cf. Manu V. 159 cited on p. 148.

These three texts commend practices and usages forbidden in the Kali age as is found in the sections on Śūdra-cooked food, the slaying of an aggressor and the life of celibacy (whether as Brahmacārins or Yatis).³ Hence a curious case of conflict between ancient and recent Purāṇas arises, which militates against consistency and continuity between Purāṇas old and new.

But the authority of the Purāṇa is next to the Veda and Smṛti (revelation and recollection) which are the primary sources of the sacred law. Cf. Hārīta I. 25.⁴ Indeed Manu and the other law-givers do not mention the Purāṇa as a source of Dharma (see II. 6-10). Further Vyāsa in śloka 15 sets forth the comparative authority of the three sources to the effect that in case of a conflict between Śruti, Smṛti and Purāṇa the authority of the first prevails and in a conflict between the other two, Smṛti is of greater

¹ धर्मशास्त्राख्यज्ञान्यपवेदाः पुराणम् ।

² इतिहामपुराणाभ्यां वेदं समुपहृत्येत । Cf. Viṣṇu cited in Smṛti-candrikā, Saṃskāra Kānda, p. 4—पुराण मानवो धर्मः साङ्गो वेदश्चित्सितम् । आत्रासिद्धानि चत्वारि न हनन्त्यानि हेतुभिः ।

³ Cited on p. 61 (i) and p. 105 (iii) above.

⁴ श्रुतिस्मर्ती च विप्राणा चक्षुषी देवनिर्मिते । काण्वस्तैकया हौनो दाभ्यामभ्यः प्रकीर्तितः । Hārīta, I. 25.

force.¹ Jaimini's aphorisms do not consider the Purāṇas as sources of the sacred law. The recognition of Purāṇas as a source of the sacred law is only qualified as remarked by Śūlapāṇi.²

The Purāṇas are not authorities in law; they may be received in explanation or illustration not in proof, remarks Prof. Wilson in the Introduction to Viṣṇupurāṇa.

Purāṇas are ancient records of certain usages and as such they are fit to be consulted, whenever a question as to such usages occurs. Again sometimes some Purāṇas reproduce Smṛti texts and in so far as a Purāṇa contains such reproduction it may be regarded as a different reading of some particular Smṛti to which it corresponds, remarks K. L. Sarkar.

The discrepancies in the enumerations of the Purāṇas are sought to be reconciled in the Viramitrodaya and their authority established (Paribhāṣāprakāśa, p. 12). The Upapurāṇas also, it holds to be as authoritative as the main Purāṇas (p. 14)

The Kalivarjyas furnish the last instance in which the institution of *samaya* or convention was called into play to determine the rules of conduct. But it was an institution the authority of which had come to be much weakened since the time of the Dharmasūtras and this explains the reluctance shown by Digest-writers after Devaṇṇa Bhaṭṭa to invoke its authority and their reliance on the texts of the Purāṇas to support the Prohibitions in the Kālī age. On a comparison of the passages it will be evident that the Purāṇa texts (Ādi, Āditya or Brhannārādiya), which make their appearance in the digests later than the Madana-pārijāta, agree remarkably in their wording with the anonymous *samaya-dharma* passages cited by Śrīdhara and Devaṇṇa Bhaṭṭa.

¹ श्रुतिस्मृतिपुराणानां विरोधो यत्र दृश्यते । तत्र श्रुति प्रमाणं तु तयोर्द्वेभ्यः स्मृतिर्वरा ।

² इतिहासपुराणानि च क्वचिदलौकिकमर्थं प्रमाणयन्ति अतो धर्मोऽपि प्रमाणम् ।

Raghunandana's Ādityapurāṇa passage has the same concluding lines as the Smṛti-Candrikā Text XI and his Bṛhannāradiya passage closes with the same words as the passage in Śrīdhara (K. V. Text VI). The iteration of the authority of *samaya-dharma* in these Purāṇa texts seems to be gratuitous, for precepts in the Purāṇas according to the orthodox view do not require such support.

These coincidences could not have been accidental. The consensus of scholarly opinion regards Agnipurāṇa as a compilation of texts on a variety of subjects taken from standard works dealing with them and its date is taken to be 9th century A. C. The Devala-smṛti quoted by Viṇṇāneśvara is evidently a work different from the Devala-smṛti included in the Smṛti-samuccaya (published by the Ānandāśram Press) and the opening lines of the latter prove that it was composed in the beginning of the 10th century at a time when repeated attacks of the Mahomedans necessitated provisions for the reclamation of ravished women and kidnapped males.¹ Aparārka quotes a number of passages from both Ādī- and Ādityapurāṇa among which the Kalivarjya texts do not appear. Ādityapurāṇa cannot be traced in these days and if Ādipurāṇa be the same as Brahmapurāṇa, it does not contain the Kalivarjya passage ascribed to it. Verses from Brahmapurāṇa are cited in land-grants of 5th century A. D., but the work has undergone interpolations as shown by the reference to the Konārka temple erected in 1241 A. C. Garuḍapurāṇa is clearly later than Parāśara-smṛti, the rules of which it recapitulates (Ch 107—Pūrvārdha).

These circumstances point to one conclusion that the Paurāṇic passages in question were interpolated into Ādī or Ādityapurāṇa after the time of Śrīdhara and Devaṇṇa Bhatta and that the Bṛhannāradiyapurāṇa, a minor Purāṇa, was a work posterior to these digests.

¹ D. R. Bhandarkar in *The Calcutta Review*, October, 1933.

G. Sarkar-Śāstrī goes so far as to assert that the authority attached to the Purāṇas dates from the time of Mādhavācārya (14th century) on account of the designation which he gives to himself in the prefaces to his Parāśara-bhāṣya and Vyavahāra-mādhava, viz., 'originator or compiler of the collections of all the Purāṇas.' "What he means to say is not very clear" he writes in his T. L. Lectures on Adoption (p. 103)—"probably he intends to intimate that it was through his influence that the Purāṇas were collected and invested with importance." And he adds: "It was from his time that the Purāṇas have come to be regarded as authority by subsequent writers." The short discussion of the authority of Purāṇas immediately preceding would show that these remarks are not correct; for the citation of Paurāṇic texts to support some of the Kali prohibitions goes back to the time of Aparārka (K. V. Text III). And as already shown, although varying in measure from age to age, deference to the authority of the Purāṇas can be traced back to the Dharma-sūtra period although nothing like the enormous growth observed in later times marked the Purāṇa literature of that age.

The Date of the Convention on the Kali Prohibitions.

A glance at the collection of Kalivarjya texts suggests the probable date when the convention prohibiting a large number of ancient practices originated. No doubt certain practices had fallen into disuse or had been separately condemned much earlier. The tendency to do so goes back to a remote past in the history of Dharmaśāstra. But after the close of the first millennium conditions in India were so changed that the formal abrogation of practices either unsuitable or obsolete was felt to be a necessity. Text I states that certain practices no longer prevailed but the texts that follow not merely declare such desuetude but prohibit. The Brahmapurāṇa Text III first cited by Aparārka prohibits

Horse-sacrifice. His *ñikā* on Yājñavalkya is dated about 1125 A. D. (Kane—Dharmaśāstra, p. 334). Joy Chand was the last Hindu King to perform the sacrifice. He fell before Mahammad Ghori in 1194. Further Śrīdhara (Text VI) declares Sea-voyage as a practice prohibited by the wise in his *Smṛtyarthasāra* dated between 1150 and 1200. The disastrous defeat at Tarain in 1192 must have given a rude shock to the Hindu mind under which the hopes of a Hindu revival attempted by the Gupta dynasty or a re-assertion of Brahminic religion contemplated by Kumārila finally melted away. The spiritual conquest of Far Eastern countries and islands which Brahminic missionaries had carried on for centuries could no longer be pursued with safety. The Indian Ocean was infested by war-like pirates. That this was about the time of the origin of the Kali prohibitions is further suggested by Text X of Vyāsa according to which at the end of 4400 years of the Kali age a Brahmin should not practise either Agnihotra or Sannyāsa. This gives the year 1199. Putting all these circumstances together it may be reasonably concluded that the latter half of the 12th century was the time when the prohibitions were formulated by a convention of the Brahminic society.

The Present Legal Bearing of the Kalivarjyas

The authority of usage so far as upheld in the original Sanskrit texts and proved in connection with the Kali Prohibitions has been shown above. Legislation and decisions of British Courts have also accorded equal authority, if not greater, to usage. The law to be administered in Civil Cases in regard to Hindus is laid down in Sec. 15, Regulation IV of 1793 and affirmed in Secs. 8 and 9, Regulation VII of 1832. Section IV of Regulation II of 1798 defines how the exposition of the law is to be obtained from Hindu and Mahomedan Law Officers of the Court. "The Charters of the High Courts and the Regulations of the Legislature

give the next place in authority after the statute law to usage and, however in learned speculations the sacred texts may be exalted above mere human practice, there can be no doubt that the Hindu lawyers had arrived at substantially the same conclusion that the British Government has defined" (Bühler, p. 786). The texts of the sages bearing on this topic are cited and discussed in *Rawut Urjun Singh vs. Rawut Ghanasiam Singh*.¹ "The duty of a European Judge who is under the obligation to administer Hindu Law is not so much to enquire whether a disputed doctrine is 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."² This dictum of the Privy Council in the *Ramnad case* 1868 has had a far-reaching effect on the course and development of Hindu Law ever since. Provincial customs were carefully and industriously collected and recorded. Custom well-established has practically been held supreme. Observations to the same effect also occur in *Kudomee Dosee vs. Joteeram Kolita*³ ; "The text lays down that reason and justice are more to be regarded than mere text, and that wherever a good custom exists it has the force of law. The sacred law as contained in the texts of the sages and the digests has in consequence been widely departed from in the actual usages of different parts of the country and different sections of the community generally known as Hindus. There can be no doubt that the Hindu Law has been affected in particular

¹ 5 M. I. A., 179-181 (1851).

² *Collector of Madura vs. Mootoo Ramalinga*, B. L. R, I. (P. C.), p. 12, 12 M. I. A. (1868), p. 397.

³ 1, L. R, 3 Cal. at p. 306.

districts by particular usages and these usages have hitherto been respected unless clearly repugnant to the principles of Hindu Law."

Custom made rigid

The work of collecting and recording customs has had, however, the effect of giving fixity to them. No doubt the Hindu tenacity in regard to custom has been marked. "Orientals are commonly tenacious of their usages and customs, and more specially of their family and religious observances."¹ But the common view expressed by Macnaghten² that society in India is not progressive is a superficial generalisation which has come later on to be modified and revised. "In theory Hindu law seems not to admit of growth. The greatest impediment in the way of progress of Hindu Jurisprudence was offered by the theory of its Divine origin which stamped a stationary character on it"—says G. Sarkar-Śāstri.³ The British Judicial system has not been favourable to the natural evolution of Hindu Law and this has been realised by the highest Jurists. "The Hindu law is a body of rules intimately mixed up with religion and it was originally administered for the most part by private tribunals. The system was highly elastic, and had been gradually growing up by the assimilation of new usages and the modification of ancient text-law under the guise of interpretation, when its spontaneous growth was suddenly arrested by the administration of the country passing to the hands of the English, and a degree of rigidity was given to it which it never before possessed"⁴

¹ Soorendronath vs. Mt. Heeramonee, 12 M. 1 A. at p. 92.

² Hindu Law, Vol. I, p. xx. ³ Adoption, p. 84.

⁴ Banerji—Marriage and Stridhan (5th Edn., pp. 7-8).

Even stronger opinions have been expressed. "Misunderstood and misapplied texts are thus playing havoc with all customs, and traditions, especially when applied with all the logical acumen and unbending rigidity of the genius of English lawyers. These gentlemen lose sight of the fact that the original texts were being constantly modified by the indefatigable labours of a host of commentators and digest-writers and learned Mimāṃsakas. All this plasticity has been replaced by the rigidity of inert case-made law.

* * This has put a stop to the normal evolution of Hindu Law which went on unimpeded till about the middle of the 18th century—the Bālabhaṭṭi commentary on the Mitākṣarā (1760-80 A. C.) being the last representative of the old digests. About this time the petrifying influence of the British Courts of Justice began to fall upon Hindu Law."¹ Change has all along been brought about by custom which has proved one of the principal instruments of legal development.² And it has been judicially recognised that Hindu Law and Custom have not stood still.³ Whatever the theory, no society can remain altogether static and change in social conditions and moral and legal ideas can never be arrested. In modern Hindu Law, the function of the Digest-writers of old has largely, under pressure of circumstances, been assumed by the British Indian legislatures. The indigenous and natural agencies have no doubt been put out of action by the new system. But social legislation though not always directed by a proper regard for the tradition of the land or fully informed by an adequate knowledge of the evolution of Dharmaśāstras has registered the inevitable process of growth and to some extent made up for the atrophy of the organ of the social body that through the ages had helped on and kept pace with the normal development of the Hindu society.

¹ Govinda Das—Prel. Note to Vir. Mit

² The Position of Women in Hindu Law, pp. 17-23.

³ Nagin Das vs. Bachoo, 20 C. W. N. at p. 708

Sannyāsa

Preference between conflicting Smṛtis has all along been determined by usage.¹ The authority of custom is considered so high by Mitramiśra that he declares that what is illegal in one generation may by usage alone be made legal and even obligatory in another.² Similarly Nilakaṇṭha referring to many breaches of the sacred law sanctioned by custom holds that its approval may even exempt harlotry from penance.³ This paramount force of customs is illustrated most markedly in connection with the Kali prohibitions. The varied acceptance of the authority of the texts by the Digest-writers has been shown under the several sections. And actual usage in the present age in different parts of India, as recorded in judicial decisions and reports on the customs prevalent among castes and in the provinces, shows how far the import of the texts has been modified in practice. This is apparent not merely in connection with those practices that have a legal bearing or relate to *vyavahāra* but also in regard to other practices barred.

Sannyāsa though forbidden is still practised and not by Brahmins only as permitted by the construction favoured by most Digest-writers. Now if it be really illegal in the case of other castes, succession to the property of those who prefer it should be governed not by the special rules applying to Sannyāsins but by the ordinary law of succession. A virtuous pupil takes the property of a Yati or ascetic.⁴ The Gosāvis⁵ consider themselves as

¹ Vir. Mit. Tr., p. 127, *Utpat* case, 11 Bombay H.C.R., p. 267.

² Vir. Mit. Tr., p. 107

³ Vyav. Mayū., Ch. I, para 13.

⁴ Digest, p. 355, Bk. V, Texts 458-9.

⁵ Steele's Law of Castes, App. B, p. 644

Sannyāsins, follow the rules of Śankarācārya and pretend to obey the laws of Manu and other Dharmaśāstras. They are considered as true Sannyāsins.¹ And they bear the titles Purī, Giri or Bhārati. At the same time they admit Śūdras and women into their order.² They cannot therefore be considered either as Sannyāsins or Gṛhasthas.³ The rules of the different religious orders based generally on a real or fancied analogy to those of Brahmin ascetics have frequently been submitted to the Śāstris and a general idea of the law of inheritance prevailing amongst their members may be gathered from cases.⁴ It is evident that many caste usages contrary to the śāstras designed generally or chiefly for guidance and control of Brahmins obtain amongst such classes and at the same time the lower orders have a tendency to adopt the śāstraic practices. In regard to such classes the rule hitherto followed is stated thus : A section acting against orthodox Hinduism and its law is judged according to its law or custom in its disputes.⁵ But many differences still subsist which make it hazardous to apply the rules of any but the higher castes in the sphere of status and of family law, of adoption and of inheritance.⁶ In view of the extensive growth of religious orders of an ascetic character in modern times the legal bearing of the prohibition of Sannyāsa to other than Brahmins may require closer attention. Succession to professed or perpetual students (an order banned by the Kalivarjya text) as also their exclusion from inheritance and share in the family property possess similar legal interest.



¹ Gungapoore vs. Musst. Jenee, 9 N.W.P. S.D. A.R., 212 ; Sungram Singh vs. Debee Dutt, 10 *Ibid.*, 477.

² Buhler, p. 519. ³ *Ibid.*, p. 519. ⁴ *Ibid.*, pp. 517, 518.

⁵ Bhau Nanaji vs. Sundarabai, 11 Bom. H.C. R.P. 249. (*Utpat case*).

* Buhler, p. 517

Marriage with the Maternal Uncle's Daughter

Marriage with the maternal uncle's daughter or the father's sister's daughter, despite the prohibitions noted, still prevails in the Deccan—e.g., in the Konga caste and among the Kallans who marry the latter description of relation.¹ Even amongst the Brahmins of Madras the *bhinnagotra sapinda* relationship for marriage extends only to two degrees from the mother, because there they marry even their father's sister's daughter and their mother's brother's daughter. So also among the Chhatris or Rajputs claiming to be Kṣatriyas domiciled in Bengal and Chotanagpur very few cognate girls are eschewed for marriage.²

Incontinence and Loss of Caste

The legal position of men and women in adulterous connection with the vile or extremely low castes needs examination in view of the Kali prohibition of social intercourse with them even after expiation. A distinction is made in favour of the mother in this respect. The cases of an adulterous wife and mother are provided by special texts and Mitramiśra insists on the distinction.³ The outcast mother is not an outcast to her son and the outcast wife is not a trespasser in her husband's house⁴ though to be kept apart. "The law, however, does not recognise the loss of social status arising from excommunication from caste as of itself depriving a wife of the right to enjoyment of her husband's property." The adulterous wife and the incontinent widow cannot, according to Nilakaṇṭha, be heirs if *ghaṭasphoṭa* (breaking of the pitcher—the excommunicatory rite) has been performed. In *Ramia vs. Bhagi*⁵ it was laid

¹ Mayne, H.L., p. 106.

² Shastri, H.L. (5th Edn.), p. 90.

³ Vir Mit. Tī., p. 153

⁴ Queen vs Marimuttu, I.L R. 4 Mad., p. 243.

⁵ I. Bom, H.C.R., p. 66.

down that a wife guilty of such lapse cannot inherit whether *ghaṭasphoṭa* has been performed or not. From a widow in an undivided family grossly misbehaving maintenance may be withheld according to the *Smṛti-candrikā*.¹ This has been confirmed by the decision in *Valu vs. Ganga*² in which the Court declined to follow *Honamma vs. Timanna-bhat*, which had held that a woman having got a decree for maintenance against representatives of her deceased husband is not to be deprived of its benefit for leading an incontinent life since.³

An adulterous wife may claim starving maintenance from her husband only, according to the *Smṛti-candrikā*,⁴ but not while she lives apart. This has been held in *Narmada v. Gangesh*.⁵ Supposing the connexion has not been with a man of the lowest caste but for adultery with a low-caste man the husband may repudiate his wife while he himself incurs only a penance by keeping a low-caste concubine. Adultery by wife is generally atoned for by penance unless the husband chooses to discard her which he can equally do though at the cost of some discredit without any reason at all.⁶ Even amongst Brahmins of the Deccan simple adultery entails only a penance, after which the wife "may return to her husband's embraces." The widow may not be divested of the husband's estates inherited by her for subsequent unchastity and made an exception to the general rule "once vested cannot be divested."⁷ It is unnecessary to determine what would have been the effect of Act XXI of 1850 if she had been degraded or deprived of her caste in consequence of her unchastity, observed Sir B. Peacock in *Moniram*

¹ Chapter 10, sec. 1—paras 47 and 48

² Bom. H.C.P.J. 1882, p. 399

³ 1 L.R. 1 Bom. 559

⁴ Ch. XI, sec. 1, para. 49

⁵ Bom. H. C. P. J. 1881, p. 215

^{6, 7} Buhler, p. 401.

vs. Keri.¹ If she had been, the case might have been different subject to the question as to the construction of Act XXI of 1850, for upon degradation from caste, before that Act, a Hindu whether male or female was considered as dead by the Hindu law, so much so that libations were directed to be offered to his manes as though he were naturally dead."

Caste Disabilities Removal Act XXI of 1850, Section I, runs thus :—"So much of any law or usage now in force as inflicts on any person forfeiture of rights of property or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion or having been deprived of caste, shall cease to be enforced in Courts." Cases under this Act have decided that incontinence does not work forfeiture of the rights of a Hindu widow.² Also out-casting or conversion does not deprive the father³ or the mother⁴ of his or her guardianship. A Hindu daughter has been held not to lose her inheritance,⁵ or the degraded their proprietary rights.⁶ This Act has proved a powerful solvent of many usages covered by the Kalivarjyas.

Sea-voyage

The prohibition of sea-voyage and the excommunication of sea-goers have been a live source of controversy since the British connexion and the time of Rājā Rāmmohan

¹ I. L. R. 5 Cal. Moniram *vs.* Keri Kolitani (1879) at p. 788.

² Parbati *vs.* Bhiku 4 B. H. C. R. A. C. 25 ; Honamma *v.* Timmanabhat 1 Bom. 559; Moniram *vs.* Keri 5 Cal 776.

³ Kanahi *vs.* Biddya 1 All. 549, Shamsing *vs.* Santabai on father's right to give in adoption 25 Bom 551

⁴ Kaulesra *vs.* Jorai 28 All 233, also Dwijapada *vs.* Baileau 20 Cal. 608.

⁵ Advyapa *vs.* Rudrava 4 Bom. 104.

⁶ Vedammal *vs.* Vēdanayaga 31 Mad. 100,

Roy. In view of the ban on social intercourse with the twice born who voyage across the Sea even though they perform the penance, the prohibition in the Kalivarjya texts seems to be mandatory and not merely recommendatory. And it is so construed by some orthodox Pandits in Bengal who hold Sea-voyage as expiable in the case of other than Brahmins. Outside Bengal the view held is that penance re-establishes social commerce. The two views turn on the construction of Yāj. III. 226.¹ In practice, however, the ban in these days has come to be mostly ignored in Bengal and outside and the expiation is performed or not at the option of the party. It is undoubtedly a lapse from orthodox practice but, whatever its consequence may have been formerly, it entails no legal disabilities after Act XXI of 1850. Loss of caste has been held to disqualify for inheriting in certain cases.² In *Bhagwan vs. Bose*³, however, it has been held that lapses from orthodox practice in matters of diet and ceremonial observance could not have the effect of excluding one who was born as such from the category of Hindu in Probate and Administration Act, 1881.⁴

Inter-caste Marriages

Although according to the Kalivarjya texts strictly taken marriages between different castes would entail loss of caste, these still prevail in parts of India particularly the South. For example, Nambudri Brahmins and Nayars enter into connections which are not strictly marriages. The cadets of a Nambudri Brahmin family do not marry within their own caste and this is sought to be justified on the ground of

¹ प्रायश्चित्तैरपेक्ष्यो यदज्ञानकृतं भवेत् । कामतो व्यवहार्यं तु वचनादिह जायते ।

² *Bhagwant vs. Kallu* 11 All. 100, *Gobind vs. Abdul* 8 All. 546.

³ 31 Cal 11.

⁴ *Ma Yait vs. Maung Chit Maung* 49 Cal 310. *Suraj vs. Attar* 1 Pat. at pp. 713-14.

local usage—the fifty-ninth of the 64 rules called Kerala Anācāram said to have been promulgated by Śaṅkarācārya in A.D. 825. The peculiarities of this custom governing Nambudris are discussed in *Vasudevan vs. Secy. of State*.¹ Marriages between Tapodhana Gurabas (temple-keepers) and Idol-washers (Vaiśyas),² and between Kāyasthas and Vaidyas in Assam, Chittagong and Tipperah are permitted.³ Generally, however, marriage between different castes is impossible without a specific allowance by the Caste custom.⁴ The prohibition of intercaste marriages has been unwarrantably extended sometimes to marriages between sub-castes. In *Narayan Dhara vs. Raḥhal Gain*⁵ a marriage between a Kaivarta and a Tanti woman was held invalid. Mitter J. in deciding the case observed : “In this case there is no room for it, the parties are of different castes and a valid marriage between her and the deceased Radhu is impossible unless sanctioned by any peculiar social custom governing them.” Markby J. observed in connection with restrictions on such marriages : “Whether the comparatively modern prohibition against intermarriage of persons of a different class or caste extends in this part of India to the modern sub-divisions of the Śūdra caste or class is a matter of very great importance... If the law does recognise them, of course, they cannot be ignored but if it does not, it would be wrong to impose them and I feel great hesitation in saying for the first time that there is a legal bar to these marriages.” “There is nothing in the Smṛtis or Digests to prohibit such marriages,” remarks Dr. Mitter on the authority of Hemādri’s text⁶ in *The Position of Women in Hindu Society* (p. 240).

¹ 11 Mad. 157

² Buhler, p. 410.

³ Ramlal vs. Akhoycharan, 7 C. W. N. 619.

⁴ 1 Cal. 1.

⁵ 1 Cal., p. 11.

⁶ Parīśeṣa Khaṇḍa, Vol. III, Pt. I, p. 381. अतो न कन्यादाने न चापि द्विविदानि स्वशास्त्रीयद्विजनियम इति सिद्धम् ।

G. Sarkar remarks that several of the sub-divisions are not modern but existed also in the Tretā and Dvāpara Yugas¹ but a comparison of the castes in Census Reports and in the Smṛtis and Purāṇas clearly proves that all the modern sub-divisions can hardly be identified with and included in the ancient castes.² Earlier decisions laid down that the general Hindu law being against the marriage between persons of different castes, local custom can alone sanction it. Hence a marriage between a Dome-Brahmin and a Hari girl was pronounced invalid in *Melaram vs. Thanooram*³. In an earlier case, however, it had been held that according to family custom the sons of the Rajah of Keonghur by wives of a lower caste rank after the sons by wives of the same caste.⁴

In later cases such marriages have been generally held valid.⁵ In England the Divorce Court held a marriage between a caste Hindu and an Englishwoman valid and refused to recognise a disability to marry imposed by the Hindu Law.⁶ The Marriage Rules of the Hindus have been considerably loosened as a result of the amendment of the Special Marriage Act III of 1872 by Act XXX of 1923. Section 2 of the Act of 1872 now applies to persons marrying, each of whom professes one or other of the

¹ G. Sastri, Hindu Law, 134, 138.

² Manu, Ch. 10. Bṛhad-dharma-Purāṇa, Ch. XXX.

³ Sutherland W. R. IX, p. 552.

⁴ *Ranee Bistooprea vs. Basoodev*, Suth W. R. II, p. 232.

⁵ *Inderun vs. Ramaswamy*, 13 M. I. A. 141, *Ramamani vs. Kulanthai* 14. *Ibid.*, 346; *Pandaya vs. Pulī Telaver*, 1 Mad H C. 478; *Fakirgauda vs. Ganji*, 22 Bom. 277; *Mahantawa vs. Gangawa*, 33 Bom. 693; *Muthuswami vs. Masilamani*, 33 Mad. 342; *Upoma Kuchain vs. Bholaram Dhubi*, 15 Cal 708; *Bishwanath vs. Sarasi*, 25 Cal. W. N. 639; *Mayne*, p. 108.

⁶ *Chetti vs. Chetti*, 1909, Probate 67. Marriage with a Burman is discussed in *Ma Yait vs. Maung Chit*, 48 I. A. 563 (37 I. C. 780).

following religions, *i.e.*, the Hindu, Buddhist, Sikh or Jain, but the Act imposes certain conditions such as severance from the joint family, incompetence in regard to any religious office or service or management of any religious or charitable trust, the loss of the right of adoption, the regulation of succession by the Indian Succession Act, 1865—all which practically mean a loss of the Hindu status. The Marriage Validation Act of 1928 permits marriages between persons of whom only one is a native Christian.

Levirate

The practice of *niyoga* which was admitted as obsolete in the *Ramnad case*¹ is stated by Colebrooke to prevail in Orissa. According to Sarvadhikari², it is highly reprobated amongst the higher classes and if it exists among the lower classes at all, it exists in such a form that it is of no importance whatever from a juridical point of view. He adds that amongst some of the rich and noble classes in Orissa the practice has probably assumed the modernised form of marriage with an elder brother's widow. Bühler, on the strength of Tupper's Punjab Customary Law, says that some Brahmins have adopted or retained the levirate³.

Widow Marriage

The prevalence of widow-remarriage under custom in spite of the Śāstraic prohibition is still found in many parts of India⁴, although the spread of Brahminical influence has tended to restrict and stop the usage. Among Jats, the Lingayets of South Canara, lower Mahratta castes and in general among those least affected by Brahminical influence

¹ 12 M I A at pp 415-6

² *Principles of Hindu Law*, p. 415

³ H. L., p. 399.

⁴ Mayne, H. L., pp. 115-8.

the usage still obtains. Children by *pat* or *natra* marriages are held to be as legitimate as by the first marriage. Bombay Courts have repeatedly affirmed such widow-marriages¹. In Madras widow-marriages are common among lower castes.² In Southern India the prohibition exists among Brahmins and among castes desirous of obtaining a high relative position by close observance of Brahminical customs but the restriction is entirely foreign to Dravidian ideas. According to Census Reports, *pat* marriage is found among Brahmins and Ksatriyas and high class Śūdras, shepherds, the Komaty caste, writers, the five artisan classes who wear the thread and claim to be equal to Brahmins³. Among Namaśūdras of Bengal it was held valid⁴. In Behar Baniya sub-castes adhere to widow-marriage. In North Behar, Orissa and Chotanagpur it is eschewed by Brahmins, Kāyasthas, Baniyas and Rajputs. Among Darjeeling tribes it is universal. A distinction between betrothal and marriage is sometimes drawn in this connection⁵. In some communities, after actual marriage and before cohabitation another ceremony is performed, before which the girl may lawfully marry again.⁶ The remarriage of Hindu widows is now expressly legalised by Act XV of 1856, the preamble to which states: "This imputed legal incapacity, although it is in accordance with established custom,

¹ Hurkoonwar *vs* Rutton Bae 1 Bor. 475; Treekumjee *vs* Mt. Laros 2 Bor. 397; Bae Rutton *vs* Lalla Manoochar, Bellasis 86; Baesheo *vs* Ruttonjee, Morris Pt. 1. 103, Bahi *vs* Govinda 1 Bom. 114.

² Murugayi *vs* Viramakali 1 Mad 226; Kattama Nachiar *vs* Dora Singa 6 Mad H. C 329, Virasangappa *vs* Rudrappa 8 Mad. 440, Sankaralingam *vs* Subban Chetti 17 Mad. 479.

³ Mayne H. L., pp. 115-8.

⁴ Hurrycharan *vs* Nimaichand, 10 Cal. 138.

⁵ Gatharam *vs* Moohita, 14 B. L. R. 298; Kallychurn *vs* Dukhee, 5 Cal. 692.

⁶ Boolchand *vs* Janokee, 25 W. R. 386.

is not in accordance with a true interpretation of the precepts of the Hindu religion." And it provides that the Civil Law shall no longer prevent Hindus from adopting a different custom. Where the marriage is recognised by caste-custom, the widow does not lose guardianship of the person and property of minors¹. Under the Act also she is not precluded from being the guardian of her minor children by previous marriage². But she cannot give her son in adoption.³ The Act has been held not to apply where remarriage is allowed by custom⁴, e.g., among Taga Brahmins⁵, or Kurmis.⁶ Decisions conflict on the question whether remarriage of a widow entails forfeiture of the right of inheritance to the husband's estate. In Bengal it has been held that remarriage according to caste-custom previous to the Act caused forfeiture⁷. But it has been otherwise held by Bombay and Allahabad Courts.⁸

The widow is, however, not divested of her son's estate⁹ or the daughter's.¹⁰ But it has been otherwise held in some Bombay cases which hold that she forfeits interest in the son's property.¹¹ The case of a widow remarrying

¹ Strange H. L., Vol. I, p. 160.

² Gunga *vs.* Jhalo, 15 C. W. N. 579

³ Panchappa *vs.* Sangnbasawa, 24 Bom. 89.

⁴ Parekh *vs.* Bai Vakhat, 11 Bom. 119, Gajadhar *vs.* Kaunsilla, 31 All. 161, 15 C. W. N. 579 ⁵ Mula *vs.* Partab, 32 All. 489

⁶ Ranjit *vs.* Radha, 20 All. 476.

⁷ Rasul Jehan *vs.* Ramsarun, 22 Cal. 589, Nitya *vs.* Srinath, 8 C. L. J. 542, also Murugayi *vs.* Viramkali, 1 Mad. 226.

⁸ Har Saran *vs.* Nandi, 11 All. 330, Ranjit *vs.* Radharani, 20 All. 476; Khuddo *vs.* Durga, 29 All. 122 Gajadhar *vs.* Kaunsila, 31 All. 161; Parekh *vs.* Bai Vakhat, 11 Bom. 119.

⁹ Akora *vs.* Boreani, 2 B. L. R. (A C J.), 199, Basappa *vs.* Rayava, 29 Bom. 91; Chamar *vs.* Kashi, 26 Bom. 388.

¹⁰ Mulla, H. L., 11th Edn., p. 34.

¹¹ Vithu *vs.* Govindo, 22 Bom. 321; Panchappa *vs.* Sangnbasawa, 24 Bom. 89.

during the life-time of the son by her former husband is not within Section 2 of the Act.¹ But if she marries a non-Hindu after conversion under Act III of 1872, she has been held to forfeit her estate in the husband's property.²

Subsidiary Sons

Although the adoption of sons other than the *dattaka* (adopted son) is regarded as obsolete in the present age, the rule has been considerably modified by usage. The Kṛtrima, for instance, still continues in vogue among the Hindus of Madras and the Punjab and not merely in outlying parts of Mithila and the contiguous districts of Behar and Benares.³ The appointed daughter's son still persists in Dravida in the institution known as the *Illatom* son-in-law.⁴ The adoption of the *putrikā-putra* was held invalid in *Nursing vs. Bhartan*.⁵ The validity of such a son was left undecided in *Thakur Jeebnath vs. Court of Wards*.⁶ The point may be taken, says G. Sastri, to be undecided since, under the law of the Benares School which governed that case, the Mitākṣarā and the Vīramitrodaya, which are the authorities, recognise all kinds of sons and Kamalākara's Vivādatāṇḍava holds the *putrikā-putra* to be included in the *aurasa* in the Āditya-purāṇa passage.⁷

The issue of *sarvasvadhanam* marriage becomes the son of the mother's father. On failure of his issue the

¹ Lakshmana vs. Shiba, 28 Mad. 425; 11 A. L. J. 678.

² Matangini vs. Ram Rutton, 19 Cal 289.

³ Shiookaree vs. Jugun Singh, 8 Suth. W. R. Civil Rule 155; Collector of Tirhut vs. Haropersad, 7 *Ibid.*, p. 500; Lachman Lall vs. Mohanlall, 16 *Ibid.*, 179.

⁴ Nalluri vs. Kamepalli, 23 C. W. N. 1010.

⁵ Suther. W R, Jany.-July, 1864, p. 194.

⁶ 2. I. A. 163.

⁷ Adoption, p. 135.

property inherited reverts to the mother's father's family.¹ The self-given son though an adult has been held unfit for adoption.² The *sahodhaja* or the pregnant bride's son was by implication recognised by the Privy Council in an early case³ endorsing the view of the High Court that the child, born after marriage but begotten before it, is legitimate. In the South the gift of a son by the parents for a consideration still prevails.⁴ On this side of India adoption by purchase is obsolete.⁵ The only practice analogous to it is the purchase of children by Gossains, Sannyāsins and other professed ascetics for initiation into their order of devotion, the disciple becoming the heir of the master. This, however, is not adoption but a practice grounded on other provisions of the Hindu Law and on the peculiar custom of the mendicant tribes. In another case it has been declared that an adoption of this type after payment of price is not recognised in the present age.

*Pālaka*putras are also invalid⁶; they resemble the discarded or *apavidha* son, and it has been held that such a son does not lose his right of inheritance in his natural family or become entitled to a share in the property of

¹ Vasudevan *vs* Secy of State, 11 Mad 157, Kumaran *vs* Narayanan, 9 Mad. 260; Chemanautha *vs*. Palakuzhu, 25 Mad. 662

² Bashetiappa *vs*. Shivalingappa, 10 Bom. H. C. R. 268, Brij *vs*. Gokool, 1 Bor 195 (217); Balvant *vs* Bayabai, 6 Bom. H.C. R. 83 (the case of an orphan boy), Collector of Surat *vs*. Dhirsingji, 10 Bom H. C. R 235; Subbaluvammal *vs* Ammakutti, 2 Mad H C. R. 129; Jogesh *vs*. Nritya, 30 Cal. 965 The question of the adoption of a married boy under custom among Agarwalla Jains of a twice-born Hindu caste is discussed in 14 C W. N. 545.

³ Paddamani *vs*. Zamindar of Marundapuli, L R. I I. A. 287; also Collector of Trichi *vs*. Lekhamani, S. C. 14 B. L. R. 115.

⁴ Strange, H. L., Vol. 2, p. 123. ⁵ *Ibid.*, Vol. II, p. 132.

⁶ Kalee *vs*. Shib, W. R., Vol II, p. 281; Nilmadhava *vs*. Bishumbhur (P C.), B. L. R, Vol. III, p. 27.

the adoptive family. Among the Oudich (Kaletiya) Brahmins either a foster-son or an adopted son might be taken. He would share equally with an after-born son and he might get both estates failing any other son of his real father.¹ Although the son of a twice-married woman is interdicted in the present age, the 'son of a Śūdra by a concubine has been held entitled to inherit provided she was under the absolute control of the begetter.² The exclusively kept woman may have been married before.³ The question of the inheritance of a son by a concubine of a Śūdra is finally decided in *Rajani vs. Netai*.⁴

The Eldest Son's Preferential Share

The preferential share of the eldest son prohibited by Kalivarjya texts is no longer recognised. In a division of property among Hindus priority of birth does not entitle to a larger portion, the same being forbidden in the present age.⁵ The right of Jethans was disallowed in many cases.⁶ An opinion of Pandits, recorded by S. C. Sarkar, says that an ancient and immemorial usage in a particular country to divide immovable or other property allotting a greater share in favour of the first-born must be upheld,⁷ but in general the spirit of the Hindu Law in the matter of

¹ Buhler, H. L., p. 213.

² Chatturbhuj Sing vs. Krishna, 17 C.W.N. 442.

³ Rahi vs. Govind 1 Bom 113.

⁴ *F. B* 48 Cal. 643. The Kali prohibition has, however, been regarded as applicable to Śūdras in the matter of sonship in the Fatwah of the Pandits of Tanjore—Strange, H. L., Vol. II., p. 163.

⁵ *Tahwur vs. Puhlwand* Sel S. D. A. Rep. Vol. III, p. 301. Such a woman is a *punarbhū*. Digest IV, iv. Sec. 3—CLVIII. 7-8.

⁶ *Bhyrochand vs. Rusomonee*, 1, S. D. 28 (36), Nilkaunt vs. Munee, *Ibid*, 58 (77); *Sheo Buksh vs. Heirs of Futteh Singh*, *Ibid*, Vol II, p. 265; *Lakshman vs Ramchandra*, 1 Bom. 561.

⁷ Vyav, Dar., Vol. 2., p. 718

inheritance has been judicially accepted to be entire equality'. "By the general law prevailing in this district and indeed generally under the Hindu law estates are divisible amongst the sons when there are more than one son; they do not descend to the eldest son but are divisible among all."

The Authority of the Kalivarjyas

The different sections dealing with the practices abrogated show that some of them (e.g., *Agnihotra*, cow-sacrifice, horse-sacrifice, etc.) have an undisputed Vedic origin (in the *Saṃhitās* and *Brāhmaṇas*); others date from the time of the *Dharmasūtras* (e.g., pious improvidence, curtailment of the period of impurity, etc.). The orthodox view regards the *Dharmasūtras* as not an integral part of the *Vedas* (*Tantravārttika*—Ch. I, p. iii, śls. 11-14).² Express injunctions may be traced in the *Vedas* in a few cases, but in some others analogies and precedents are all the Vedic origins. Exegetical subtlety may discover such origins perhaps for all the practices as well as their prohibitions. Śābaraswāmī questioned the validity of many *Smṛti* precepts which he held had secular motives behind them.³ Kumārila sought to reconcile cases of conflict between the sacred law and precepts presumed to be secular—an attempt carried still further by Khaṇḍadeva.⁴ But that all the precepts of the *Smṛtis* are not of the same authentic and obligatory nature is a traditional view dating from the time of Jaimini. In his *Sūtra* (I. iii. 2) he lays down the rule that the agent being the

¹ Soorjeemoney vs. Deenobundoo, 6 M. I. A. 526 at p. 555.

² तथापि तर्कवत्तेषां ह्यन्तस्त्वं नोपपद्यते । मन्त्रब्राह्मणयोरेव च्छान्दसा विधयः स्थिताः * * * ॥
* * * वेदशब्दामिधेयत्वं नैषामध्येष्टेषु स्थितम् । षडङ्गमेक इत्येतन्न च सिद्धान्तभाषितम् ॥

³ On Jaimini *Sūtra*—I. iii. 14.

⁴ C. Sastri—Fictions in Hindu Law, p. 101.

same, the authority of the Smṛti is a matter of inference.¹ Next he says : In case of conflict between the two the Smṛti is to be rejected since the inference of Vedic origin arises only in case of no conflict.² This qualifies the general proposition of the previous aphorism and suggests that in cases of conflict Smṛti rules require to be checked. In regard to matters of law there is not much chance of conflict between Śruti and Smṛti since few direct precepts of law are found in the Vedas but in regard to practices and usages comprised in *Ācāra* such conflicts may be found. Sūtra 4 says : A Smṛti for which a secular motive is evident is also to be disregarded.³ Some take this aphorism as holding that an injunction coupled with a statement of reason is not obligatory but recommendatory (*arthavāda*), in other words that this aphorism has the same purport as I. ii. 26-30.⁴ The traditional view (Śavara and Mādhavācārya) on the contrary takes it to mean that a secular motive inconsistent with the spiritual sanction (*apūrvā*) behind the Vedic precept would invalidate the Smṛti rule. This agrees with Āpas. Dh. S., I. xii. 11. Besides, the section on Injunctions with statement of reasons⁵ lays down that the reason assigned does not control the *Vedic vidhi* to which it is attached but is an *arthavāda*.

Important for the present discussion is the 4th section on the Validity of Usage (Sūtra 7). Section 7 enforces the principle : Secular reason not being found. This rule lays down that the practice of good men would not validate a usage but it must also be without a secular motive.⁶

¹ अपि वा कर्त्तृसामान्यात् प्रमाणमनुमानं स्यात् ।

² विरोधे त्वनपेक्ष्यं स्यादसति ह्यनुमानम् ।

³ हेतुदर्शनाच्च । ⁴ हेतुवन्निगदाधिकरण - Mandlik and Dr. Śiromaṇi—*vide* also Beni Prasad *vs.* Hardai Bibi, 14 All 67

⁵ हेतुवन्निगदाधिकरण ।

⁶ अपि वा कारणाग्रहणे सम्प्रयुक्तानि प्रतीयेरन् ।

That resentment of the people is a reason for abandonment of a practice is held by both Manu and Yājñavalkya.¹

The validity of local usages is upheld by both Manu and Yājñavalkya. A practice like marriage with the maternal uncle's daughter has since Baudhāyana's time been sought to be supported on this ground. Jaimini's position is gathered from I. iii. Adhikaraṇa 8: The scope of a Smṛti rule or usage is to be determined by analogy to the form of a universal Vedic injunction.² Sutra 16: But the duty must conform to a universal injunction, every duty resting on that principle.³ S. 17: The application of the injunction must be governed by facts noted.⁴ S. 18: Also an eternal *vidhi* contains no modifying sign.⁵ S. 19 answers: It derives its name from its place-connection.⁶ S. 20 objects: In that case it would have no force in other localities.⁷ S. 21 answers Naming by place-connection is possible as (they say) this man is of Mathurā (wherever he might go).⁸

The foregoing discussion in Jaimini's Sūtras shows that he entertains the possibility of general injunctions being restricted in application to localities. Kumārila, however, is inclined to regard local usages as invalid (Tant. Vār., Ch. I, sec. 3).⁹ But just as in regard to conflicting Smṛti texts he insists on conformity to the Śruti in the first instance and failing that acceptance by the worthy coupled with absence of a secular motive, so in regard to usages also he prefers that which has a Śāstraic sanction to one that has not.

¹ Manu iV. 176, Yāj —I. 156.

² सामान्यश्रुतिकल्पनाधिकरण ।

³ अपि वा सर्वधर्मः स्यात्तथायत्नाद्विधानस्य ।

⁴ दर्शनाहिनियोगः स्यात् ।

⁵ लिङ्गाभावे च नित्यस्य ।

⁶ आख्या हि देशसंयोगात् ।

⁷ न स्याद्देशान्तरेषु इति चेत् ।

⁸ स्याद्योगाख्या हि माशुरवत् ।

⁹ अद्यत्वेऽपि अहिच्छन्नमशुरानिवासिब्राह्मण्योना सुरापानं * * * मातुलदुहितृवाहासन्दीर्य भोजनादीनि दाक्षिणात्यानां * * * अतिस्थूलानि प्रतिपुरुषजातिकुलावस्थित-सूक्ष्मधर्मै व्यतिक्रमणानि त्वनन्तमेदानि सर्वत्र विमानहेतुदर्शनानि च प्रायेणैव सम्भवन्तीति नैतज्जातीयक मिश्रसदाचारकर्म्मलाभ्यवसानसंभवः ।

This may be gathered from the section on the Validity of Usage sanctioned by the Śāstras (Jaimini I. iii. Adhikaraṇa 5).¹ S. 8 objects : Conflict (with the Vedas) not being visible (in usages), confusion of co-ordinates would arise.² S. 9 answers : The one embodied in express texts or following from them prevails.³ Kumārila is decidedly of opinion that usages opposed to the Smṛtis have no validity.⁴

The question of the Validity of the Kalivarjyas has exercised the minds of the digest-writers from an early date. Hemādri prefaces K. V. Text 13 with verses to the effect that practices enjoined formerly were prohibited by the learned by convention in the Kali age owing to the absence of virtuous men. He then quotes the long Smṛticandrikā passage (Text XII) and, to support the authority of conventions referred to in its concluding lines, cites Āpas. Dh. S I. i. 2. Next he gives his reasons for the acceptance of the authority of the convention. His argument may be thus rendered : Now the question is whether what is prohibited in the Kali age rests on presumed (Vedic) text or on an evident (ritualistic) purpose. It is not for any evident purpose (relation to some rite) for, as it conduces to no positive act, no such purpose should be assumed. Nor can it be otherwise (*i. e.*, due to a presumed text) on account of the objection of discrepancy (between injunctive and prohibitive texts). Although it does not import the performance of any act, still as leading to a knowledge of discrimination (from practices permitted), and being thus for an evident purpose, it is not open to that objection. Otherwise, if no text be valid that does not uphold a ritual there cannot be the perusal of texts on Rājasūya, etc. on the part of a

¹ पदार्थप्रावल्याधिकरण ।

² तेष्वदर्शनाद् विरोधस्य समा विप्रतिपत्तिः स्यात् ।

³ शास्त्रस्था वा तन्निमित्तत्वात् ।

⁴ ततश्च मन्वादिवाक्यप्रतिषिद्धाचारानां प्रामाण्यमशक्यमभ्युपगन्तुम् ।

Brahmin. Further the course to be taken in regard to Rājasūya, etc. holds here also. Besides to say that is to declare the invalidity of other Smṛti texts (*i.e.*, other than the one resting on convention) on Kali prohibitions. From the absence of a visible purpose such as pertains to the injunction on the perusal of the Vedas, no invalidity results, since, as in their case so also in regard to this, strict acceptance by the twice-born orthodox is common. Therefore, if a visible purpose such as lies behind the texts on the daily Vedic recitation be lacking in this case, what does it matter? (Catur. Cint —Pariśeṣakhaṇḍa, Ch. XIV). Hence the sanction behind the Kalivarjya text is concluded to be acceptance by the orthodox twice-born, in other words, the sanction of usage.

In the Viramitrodaya the question of the relative force of conflicting Smṛtis is discussed.¹ A Bhaviṣyapurāṇa passage is cited distinguishing Smṛtis into five kinds :—(1) for a visible purpose, (2) for an invisible or spiritual purpose, (3) for both, (4) based on reason and (5) repetitive. And then he adds: In a conflict between Smṛti and usage the former prevails since it directly argues a Śruti text. Usage is weak since it leads to an inference of Śruti through a Smṛti. For instance, by the Smṛti prescribing the present of the bride's cloth to the knower of the Sūrya Rks, the usage of the bride putting on the cloth on the fourth day is negatived. So also the marriage of the maternal uncle's daughter is opposed by the Smṛti "by marrying the maternal uncle's daughter (a Brahmin should perform a penance)." So also between Smṛti texts "One shall fling oneself down from the hill *Kedāra*"²—this un-authentic heretical Smṛti is opposed by the canonical texts of Manu and others—"The wise man shall never kill himself." So also the authentic Smṛti "to the Brahmin

¹ Paribhāṣāprakāśa, p. 19

² Paribhāṣāprakāśa, p. 26.

four wives are ordained” is disapproved by the commendable Smṛti texts of Yājñavalkya and others as to the marriage of the twice-born, etc. Similarly “In no case shall one kill a Brahmin”—this Smṛti being of an invisible, *i.e.*, spiritual import, negatives the Smṛti with an evident secular purpose “Slay the slayer, etc.” * * * Also the Smṛti based on Arthavāda and connected with churning “They slay the ox or the cow when a king of men comes or any other worthy man” is negated by an injunctive Śruti “Do not slay the innocent cow who is Aditi.” So also in regard to usages. As the Mitākṣarā says: Of usage, approval of conscience, desire based on righteous resolve, each preceding one is of more authority than the following. In some cases even by a weak precept a strong one may be barred. For example, even the express Śruti text “In Sautrāmanī he takes liquor-cups” is barred by the Smṛti “In the Kali age these practices though sanctioned by the sacred law are prohibited by the wise. Otherwise there would be the objection of inapplicability (for the latter)”. He also quotes verses from Viśvāmitra (= Apas. Dh. S. I. x. 6): What the Āryas knowing the Vedas commend when done is Dharma or sacred duty and what they disapprove is its opposite.

There were two views on the import of the Prohibitions. According to the followers of the Vārttika (by Kumārila) they denote condemnation of the practices as sinful. According to the followers of the Digests they are unqualified prohibitions since otherwise there would be an overthrow of the sacred law. So comments Dāmodara Bhaṭṭa.¹

In recent times Judges in British Courts as well as Jurists have considered the force of the Kali prohibitions. In regard to those with a legal bearing, the view generally

¹ एते च निषेधा इति वार्त्तिकानुसारिणः । निषेधानुसारिणस्तु धर्मविप्रवापत्तेरिते पशुंदासा एवेति सन्त्यन्ते । निषेध = declaration of sinfulness. पशुंदासा = nvalidation.

held is that they are obligatory, but in the case of marriage with the maternal uncle's daughter local custom has been held to override the clearest texts. Certain kinds of subsidiary sons other than the adopted have also been held valid on the same ground. The force of the prohibitions has not yet been comprehensively examined. G. Śāstrī observes: The innovations under the name of Kalivarjya or practices to be avoided must have acquired their present authority as Sir William Jones was misled into giving prominence to them by inserting at the end of his translation of *Manu* an English version of the texts of the *Upapurāṇas*, one of which was palmed off on him as *Smṛti* or a passage of law (Intr. to *Viv. Rat.*, p. xxxviii). Jagannātha's *Vivādabhaṅgārṇava* of which Colebrooke's Digest is the translation accords similar weight to the Kalivarjya texts cited therein. G. Śāstrī further remarks (*Ibid.*, p. xxxiv): As the doctrine of certain practices being unnecessary to be observed in this Kali age, though sanctioned and commanded by the Śāstras, was comparatively recently introduced, the Pandits who were appointed to advise the English Judges on points of Hindu Law and usage, somehow or other misled them by incorrectly representing the doctrine to be an authoritative and imperative one which the Judges were bound to act upon, although it was really intended by its propounders to be merely recommendatory and preceptive. But it is hardly possible to regard all the usages comprised in the Kalivarjyas in this light. The distinction between positive law and moral precept goes back to the time of Jaimini and corresponds to *kratudharma* and *puruṣadharma* (The Position of Women in Hindu Law, p. 15). According to K. L. Sarkar (T. L. lectures, 1905, p. 52) the *Mīmāṃsā Sūtras* make another division of the Vedic law, viz., Vedic law relating to individual culture and Vedic law relating to duties of man as a member of the Vedic community. The latter, he

holds, is of a positively obligatory character while the former is of the nature of religious precepts. The distinction between positive rule and moral precept is clearly recognised by Vijñāneśvara and Jimūtavāhana and followed by both the Bengal School and the Mitākṣarā School (*Wooma vs. Goḥoolanund*, I. L. R. 3 Cal., p. 587, P. C.). To some extent the distinction may seem to apply to the Kalivarjyas, the practices relating to *vyavahāra* appear to be more generally eschewed than those pertaining to *ācāra* (such as, *sannyāsa* perpetual studentship, or *Agnihotra*) which are still clung to. But many of the latter also are scrupulously avoided (such as, cow-sacrifice or the use of liquor in Sautramani). It is therefore not possible to regard all the prohibitions as either mandatory or preceptive.

Vidyākara Vājapeyī—who is cited as an authority by Raghunandana—in his Nityācārapaddhati (A. S. B. Pbn) says: “The prohibition of the carrying of the *kaṇḍalu* is rightly held as of optional import by the rule: An option where the enjoined is interdicted. So also the ban on *surāgraha-homa*, curtailment of impurity in consideration of *Agnihotra* and Vedic recitation imports option. As for what is said as to the begetting of son by the husband’s younger brother, the gift to a better groom of a girl already given, the killing of a cow in sacrifice or for guest-offering, the marriage of a woman of another caste, the taking of sons other than the begotten and the adopted—all these being forbidden in the Kali age, that is only for preventing excessive addiction, on the ground of the impropriety of prohibiting what is ordained. Hence there is nothing wrong in doing these. Likewise the avoidance of the third stage of retirement to the forest, prolonged student-ship and expiation by death is merely of the nature of *arthavāda* (commendatory statement) in view of the weakened vitality of men.” The prohibitions are thus deprived of all force by this digest-writer of Orissa.

Their force has been determined by usage in varying degrees in the case of the different practices. They were called into existence by social conditions, necessities of the times and public opinion. Behind them lie changed ideas of social relations and ceremonial conduct. Tenacity in adhering to the past, its usages and institutions, which is a marked trait of the Hindu character, has kept some of the forbidden practices still alive and different conflicting texts have been construed and reconciled in the Digests to support the retention of these in the present age.¹ For these reasons a study of the Kalivarjyas is of value both to the student of Hindu social history and to the Jurist. It will help to turn the light of public attention upon corners of the life of the Hindu community through the ages which have hitherto been imperfectly illuminated and serve to show how despite the charge of unchangeability generally brought against the Hindu society it has moved and adapted itself to changing ideas and conditions.

¹ The necessities of social existence have forced commentators by degrees from uninquiring submission to the letter of inspired precepts and a sufficient authority can now be found within the Hindu Law itself for a development of its principles in accordance with improved moral consciousness of the castes—*Mathura vs. Esu Naiḱin*, 4 Bom., p. 545.

SANSKRIT INDEX

- Agnipurāṇa, 175.
 agnihotra, 15-21.
 aghasamkocana, 80-84.
 Angiras, 62, 63, 85, 86, 111, 144
 Atri, 63, 70, 74, 75, 82, 98, 99, 148,
 149.
 Atharva-veda, 37, 69, 74, 136.
 Aparārka, 2, 3, 5, 6, 30, 33, 54, 56,
 64, 75, 78, 79, 99, 112, 116,
 144, 145, 151, 156, 164, 167,
 175, 176,
 arghya, 29
 Arthaśāstra, 89, 96, 99, 103, 106,
 122, 129, 130, 140, 141, 142,
 153, 154, 163, 164.
 aśvamedha, 24-28
 aśvastanikāta, 55-56.
 astakā, 30-32, 34-35
 asavarṇādustasangraha, 94-99, 183-
 185.
 asavarṇāvivāha, 119-125, 186-189.
 Asahāya, 58, 132, 155, 172
 asthisamcayanordhāngasparśa, 84-
 85.
 ātatāyi-brāhmaṇa-vadha, 104-108
 ātithya, 32.
 Ādityapurāṇa, 5, 7, 8, 10, 131, 157,
 159, 169, 174, 175, 192.
 Ādipurāṇa, 2, 5, 75, 169, 174, 175.
 āpadvṛtti, 56-59.
 Āpastambagrhyasūtra, 27, 29, 33,
 65, 66
 Āpastambadharmasūtra, 2, 21, 32,
 33, 34, 40, 46, 47, 49, 57, 58,
 59, 65, 66, 71, 77, 79, 86, 88,
 92, 95, 96, 97, 105, 108, 109,
 113, 117, 120, 126, 127, 141,
 148, 149, 150, 152, 153, 160,
 161, 162, 163, 164, 167, 170,
 171, 173, 196, 198, 200.
 Āpastambaśrautasūtra 10, 21, 38,
 39, 43, 66, 127
 Āpastambasamhitā, 58, 144.
 Āruṇikopanisad, 76.
 Āśramopaniṣad 69.
 Āśvalāyanagrhyasūtra, 30, 31, 36,
 39, 84.
 Āśvalāyanasmṛti, 145
 ucchistāpavarjana, 65-66.
 Uśanas, 41, 62, 63, 77, 82, 91, 93,
 102, 115, 121, 123, 134.
 Rk-parīśista, 110.
 Rg-veda, 23, 28, 37, 60, 74, 84,
 100, 129, 135, 136, 137, 146,
 160.
 Atareya-brāhmaṇa, 16, 23, 24, 44, .
 119, 160, 166.
 Aupajanghani, 128
 Kaṭharudropanisad, 70.
 kamaṇḍalucaryā, 52-55.
 Kaliyuga, 165-168.
 Kalivarjya-vinirnaya, 5, 10, 20, 42,
 43, 45, 46, 48, 50, 51, 54,
 67, 68, 70, 71, 88, 90, 118, 200.
 Kalpataru, 65
 Kāthaka-grhyasūtra, 70
 Kāthaka-brāhmaṇa, 76.
 Kāthakasamhitā, 37, 40, 59.
 Kātyāyana, 17, 22, 35, 44, 67, 116,
 127, 132, 134, 143, 154, 172
 Kātyāyanamatasangraha, 98, 99,
 132, 143,
 Kātyāyana-śrautasūtra, 29, 44, 45,
 59.

- Kālikāpurāṇa, 86, 87.
 Kālidāsa, Raghu. 71; Mālavikā.
 124.
 Kāśyapa, 35, 144.
 Kumārasmṛti, 41.
 Kullūka, 46, 49, 56, 95, 107, 121,
 139, 156.
 Kūmapurāṇa, 63, 70, 85, 168.
 Kṛṣṇa Bhaṭṭa, 74, 80, 93, 98, 102,
 107, 118.
 Keśava-vaijayanti (Nanda
 Pandita), 158,
 Kauśitaki-brāhmaṇa, 23.
 Kratu, 2, 145.
 Khaṇḍadeva, 195.
 Khādiragṛhyasūtra, 31
 Garuḍapurāṇa, 4, 8, 10, 24, 28
 169, 175.
gurudakṣiṇā, 50-52,
gurudāravṛtti, 48-50.
gurustrītyāga, 94-99, 183.
gotṭptīśiśapūya-ācamana, 78-79.
 Gopatha-brāhmaṇa, 166
 Gobhilaṅgṛhyasūtra, 29, 31, 113,
 119, 120, 150
 Gobhila (= Kātyāyana)-smṛti, 18,
 22, 172.
gomedha, 28 29.
 Govindarāja, 54, 116 156.
 Govindasvāmin, 21, 46, 55, 102.
gosaṃjñāpāna, 36.
gosava, 28 29, 34
 Gauḍavaha, 26.
 Gautama, 19, 22, 27, 34, 38, 39,
 40, 46, 48, 49, 57, 61, 71, 81,
 90, 91, 95, 96, 105, 108, 114,
 122, 127, 128, 129, 131, 137,
 141, 152, 153, 154, 160,
 161, 162, 163, 166, 167, 170,
 173,
 Caturvargacintāmaṇi, 2, 4, 5, 7, 8,
 10, 19, 36, 116, 187, 198, 199.
 Caturviṃśatimatam, 111, 112 123,
 142.
 Chāndogyopaniṣad, 60, 95, 172.
 Jamadagni, 62
 Jātukarni, 18.
 Jābālopaniṣad, 72.
 Jaiminīsūtra, 36, 174, 195, 196,
 197, 198.
jyesthāmśa, 159-165, 194-195
 Tantravārttika, 18, 36, 48 116,
 132, 195, 197, 198.
 Tāpanīyaśruti, 51.
tīrthayātrā, 67-68
 Taittirīyabrāhmaṇa, 27, 29, 59,
 136.
 Taittirīyasamhitā, 15, 27, 29, 37,
 43, 159, 162
tretāparigraha, 17, 20
 Dakṣa, 16, 69, 72, 77, 85.
 Dattakacandrikā, 145, 151, 155.
 Dattakamīmāṃsā, 146, 151, 158
dattaurasetaraputra, 145-159, 192-
 194.
 Dayabhāga, 123, 145, 146, 147,
 148, 154, 156, 202.
 Devala, 5, 19, 54, 55, 63, 68, 69,
 79, 83, 85, 93, 99, 145, 148,
 149, 153, 154, 156, 175.
 Devānanda (Devanṇa), 156, 165.
 Dharmasindhu, 10, 23, 27, 70, 86,
 158.
 Dharmasāstrasudhānidhi, 10.
 Dhāreśvara, against secular'y of
 property, 109, 132, 156.
 Dhūrtasvāmin, 38.
 Nandana (Manu-ṭīkā), 130, 139.
naramedha, 22-24.
navodaḥa-daśāha, 79, 80,

- Nārada, 58, 103, 106, 109, 131, 134, 140, 141, 142, 143, 154, 160, 161, 172.
 Nāradapañirvājakopaniṣad, 45.
 Nāradiyapurāṇa, 9.
 Nārāyaṇa (on Āś. Gr. S), 30
 Nigama, 3, 7, 19, 68.
 Nighaṇṭukārikā, 2, 133, 134 (?).
 Nityācārapaddhati, 202.
 niyoga, 126-134, 189.
 Nirmayasindhu, 5, 7, 10, 15, 19, 23, 39, 66, 68, 69, 70, 78, 86, 89, 90, 102, 116, 158
 Nṛsiṃhaprasāda, 9, 117
 naiṣṭhika-brahmacarya, 46, 48.
 Nyāyamālāvistara, 44, 196
 Pañcaviṃśa-brāhmaṇa, 119, 160.
 Parāśara, 4, 17, 18, 27, 58, 62, 63, 76, 83, 91, 93, 99, 107, 142, 143, 151, 157, 158.
 Parāśaramādhava, 2, 5, 8, 9, 10, 17, 18, 27, 64, 83, 117, 124, 140, 142, 143, 155, 157, 158, 176.
 paroddeśātmasantyāga, 88-89.
 Pāṇini, 147.
 Pāraskaraḡhyasūtra, 19, 29, 30, 32, 46, 81, 119.
 Pārjāta, 133
 pītāputravirodha-sākṣi-danda, 103-104.
 Purāṇas, 172-176,
 Pulastya, 42.
 Pṛthvicandrodaya, 7, 10, 78
 Paiṭhinasī, 30, 62, 113, 115, 123
 Pracetas, 83
 prajāraṇi-parigraha, 20
 pravāsitva, 66-67.
 Prāyaścittaviveka, 41, 86, 87, 89 106, 107, 174.
 balātkeṛtāsangraha, 94-99
 Bālabhāta, 158, 180
 Bṛhadāranyakabhāṣyavārttika, 70
 Bṛhaddevatā, 119.
 Bṛhaddharmapurāṇa, 188.
 Bṛhad (or Vṛddha)-yājñavalkya, 42, 69.
 Bṛhadviṣṇu, 42.
 Bṛhannāradiyapurāṇa, 9, 10, 28, 48, 90, 159, 169, 174, 175
 Bṛhaspati, 36, 42, 78, 93, 103, 106, 114, 118, 126, 131, 141, 142, 149, 151, 153, 154, 155, 156, 157, 158, 159, 167, 172.
 Baudhayana-ḡhyasūtra, 27, 45.
 Baudhāyana-dharmasūtra, 2, 21, 33, 40, 46, 52, 53, 54, 55, 57, 71, 76, 77, 78, 81, 91, 92, 93, 95, 100, 101, 104, 105, 113, 114, 120, 122, 128, 131, 132, 134, 137, 139, 141, 146, 147, 148, 150, 152, 153, 155, 161, 197.
 Bhaṭṭojī Dikṣita, 142.
 Bhāgavata, 111, 116; 145.
 bhṛḡvagnimaraṇa, 74-75.
 brahmacarya, 46-48.
 Brahmapurāṇa, 2, 5, 24, 28, 48, 54, 67, 131, 142, 145, 175, 176.
 Brahmapurāṇa, 24.
 Bhaviṣyapurāṇa, 62, 87, 107, 173, 199.
 Matsyapurāṇa, 24, 167, 168.
 Madanapārjāta, 3, 8, 10, 47, 54, 55, 59, 64, 68, 73, 78, 79, 109, 155, 164
 Madanaratnapradīpa, 8.
 madya, 37.
 madhuparka-paśu-vadha, 29-30.

- Manusamhitā, 2, 8, 16, 17, 18, 22, 34, 35, 40, 41, 43, 44, 46, 49, 51, 52, 53, 56, 57, 59, 62, 63, 66, 69, 74, 78, 80, 81, 83, 86, 87, 89, 91, 92, 94, 96, 97, 99, 102, 104, 105, 106, 107, 108, 109, 111, 115, 120, 121, 126, 127, 129, 131, 132, 133, 134, 138, 139, 140, 142, 143, 146, 147, 148, 149, 150, 152, 153, 154, 155, 156, 160, 161, 162, 163, 164, 166, 167, 170, 173, 188, 197, 199
maranaprāyaścitta, 86-88.
 Maskaribhāṣya, 61, 64, 108, 117, 142, 166.
mahāprasthānagamana, 74-75
 Mahābhārata, 18, 24, 67, 73, 74, 112, 135, 137, 140, 160, 161, 162, 166, 167, 168
 Mahābhāṣya, 24.
 Mahidhara, 23.
mātulaḥanyāvivāha, 110-119, 183
 Mādhava Bhaṭṭa, 118
 Mānavaśrautāsūtra, 44
 Mārkaṇḍeyapurāṇa, 36, 115.
 Mitākṣarā, 2, 6, 17, 30, 40, 41, 42, 51, 54, 55, 56, 59, 62, 64, 75, 79, 82, 83, 85, 90, 99, 103, 104, 106, 109, 123, 127, 132, 133, 147, 154, 155, 156, 162, 164, 192, 200, 202.
mukhāgnidhamana, 21-22.
 Medhātithi, 12, 35, 49, 70, 95, 108, 109, 121, 123, 129, 130, 132, 133, 139, 156.
 Maitrāyaṇī-upaniṣad, 76
 Maitrāyaṇī-saṃhitā, 28, 37, 59.
 Yajurveda, 23.
yatrasāyamgrasthatva, 77-78.
 Yama, 62, 63, 73, 75, 76, 87, 98, 104, 111, 123, 154.
 Yājñavalkya, 2, 3, 12, 16, 17, 19, 34, 35, 41, 44, 47, 51, 52, 54, 56, 57, 58, 62, 63, 64, 69, 72, 78, 82, 83, 85, 87, 88, 89, 90, 91, 97, 102, 103, 104, 106, 109, 116, 122, 130, 131, 134, 141, 147, 149, 152, 153, 154, 155, 158, 161, 162, 164, 173, 186, 197, 200.
 Yāska, 137, 146, 152.
rājasūya, 24-28.
 Laghuśātātapa, 142.
 Laghuhārīta, 51, 85
 Likhita, 27, 91, 131, 134, 146, 162.
lidhāparigraha, 20-21
 Laugākṣi, 19, 68
varātithipitr-paśūpākaraṇa, 28, 29-30, 32-34
 Vasiṣṭha-dharma-sūtra, 29, 34, 40, 44, 47, 49, 53, 62, 71, 76, 92, 96, 105, 113, 116, 121, 130, 138, 139, 140, 142, 143, 145, 147, 149, 150, 153, 161, 163, 171.
 Vājasaneyisaṃhitā, 21, 28, 113, 166.
vānaprastha, 68-74
 Vāyupurāṇa, 168, 173.
 Vidyādhara Śāstri, 29
 Vidyāranya, 112.
vidhavāvivāha, 134-145, 189-192.
 Vivādacintāmaṇi, 157.
 Vivādatāṇḍava, 157, 192.
 Vivādashangārṇava, 154, 159.
 Vivādaratnākara, 106, 155, 157.
 Viśvanātha (on Pār. Gr S.), 30.
 Viśvarūpa, 35, 106, 107, 132, 152, 154, 155.
 Viśvāmītra, 200

- Viṣṇu, 16, 31, 35, 41, 49, 63, 67,
 70, 72, 77, 78, 81, 85, 86, 93,
 103, 104, 105, 106, 121, 122,
 141, 145, 146, 147, 153, 155,
 162, 163, 173.
 Viṣṇu-purāṇa, 77, 78, 90.
 Viramītrodaya, 27, 50, 51, 63, 64,
 70, 71, 73, 75, 85, 109, 110, 112,
 115, 116, 117, 118, 124, 137,
 147, 148, 154, 155, 164, 174,
 181, 183, 192, 199.
 Vaikhāṇasasmārtasūtra, 52, 55,
 68, 69.
 Vyavahāramayūkha, 158, 181,
 183.
 Vyavahāramātkā, 103, 104.
 Vyavahāramādhava, 157, 176.
 Vyāghra, 18.
 Vyāsa, 5, 17, 19, 20, 42, 51, 62,
 63, 68, 72, 77, 78, 93, 111, 118,
 123, 173, 177.
 Śāṅkara Bhaṭṭa, 10, (not Prabhā-
 kara) 118, 124.
 Śāṅkarācārya, 182, 187.
 Śāṅkha, 38, 62, 77, 82, 122, 131,
 134, 146, 162.
 Śatapathabrāhmaṇa, 15, 16, 24, 27,
 32, 33, 37, 38, 39, 44, 59, 94,
 113, 119, 120, 137, 160, 166.
 Śabarabhāṣya, 15, 16, 36, 45, 47,
 195, 196.
 Śāṅkhāyanagrhyasūtra, 29, 30.
 Śāṅkhāyanaśrautasūtra, 24.
 Śātātapa, 35, 83, 115, 142.
 śūdrapaḥvāṇa, 60-65.
 śūdrapācakatā, 59-60.
 śodhitanaṇḍyaśraṅgraha, 100-102.
 Śaunaka, 2, 30, 33, 151, 156, 158,
 159.
 Saṅgītanmatam, 86, 87, 111.
 Sadviṃśabrāhmaṇa, 166.
 Satyavrata-smṛti, 68.
 satradikṣā, 44-45.
 sa-dharma-pūṣaṃkalpa, 45-46.
 saṇṇyāsa, 68-74, 181-182.
 Saṇṇyāsopaniṣad, 45, 76.
 samayadharmā, 169-172.
 samudrayātrā, 100-102, 185-186.
 Samvarta, 41, 62, 85, 86, 98.
 saṃsargadosa, 89-94.
 Sarasvativilāsa, 155.
 Sarvajñanārāyaṇa, 107.
 sarvavarnabhikṣācaryā, 75-77.
 Sāma-veda, 51.
 Sāyana, 135.
 Sārasaṅgraha, 8.
 Subodhinī, 155, 157.
 Sumantu, 106, 115.
 surā, 37, 40-42.
 somavikṛaya, 43-44.
 Someśvara, 118.
 sautrāmaṇi-surāgraha, 37-39, 42,
 43.
 Skandapurāṇa, 67, 70.
 steṇyānamahāpātakaṇḥkṛti, 89-92.
 Smṛtikaustubha, 3, 5, 8, 10, 15,
 19, 20, 23, 43, 45, 48, 49, 51,
 55, 67, 68, 78, 88, 89, 102, 158.
 Smṛticandrikā, 2, 3, 5, 6, 7, 8, 9,
 10, 67, 79, 80, 114, 118, 123,
 134, 140, 142, 143, 152, 165,
 169, 173, 174, 184, 198.
 Smṛtitattva, 8, 64, 75, 85, 86, 136,
 138, 152, 157, 174.
 Smṛtimuktāphala, 10, 73, 76, 134.
 Smṛtiratnākara, 124.
 Smṛtisāṅgraha, 132, 164.
 Smṛtyarthasāra, 3, 8, 10, 20, 44,
 56, 64, 83, 109, 159, 169, 174,
 177.

Haradatta, 60, 65, 80, 96, 97, 109, 127, 144, 149, 170, 171.	Hārīta, 50, 62, 63, 70, 77, 86, 95, 134, 144, 155, 161, 173.
Harivamśa, 47, 168.	Hiranyakeśi-gr̥hyasūtra, 29, 30.
Harisvāmin, 113.	<i>hīna-saptama-bhākṭa-haraṇa</i> , 108- 110.
Harṣacarita, 124	
Halāyudha, 133	

ENGLISH INDEX

Acts

- XXI of 1850, 184, 185, 186.
- XV of 1856, 134, 159, 190.
- X of 1865 189.
- III of 1872, 192.
- XXX (Special Marriage Act) of
1923, 189.
- Banerjee, Sir G. D., Marriage and
Stridhan, 12, 179.
- Bentinck, Lord, Life of, 108.
- Bhandarkar, Dr. Sir R. G., Report
(1894), 142.
- Bloomfield, 38.
- Buhler, West and, Hindu Law,
139, 167, 178, 182, 184, 187,
189, 194.

Cases :

- Advyaṇa v. Rudrava, 185.
- Akora v. Boreani, 191.
- Bae Rutton v. Lalla Manoo-
har, 190.
- Bae Sheo v. Ruttonjee, 190.
- Bahi v. Govinda, 190.
- Balavant v. Bayabai, 193.
- Basappa v. Rayava, 191.
- Bashetiappa v. Shivalingappa,
193.

- Bemprasad v. Hardoi, 196.
- Bhagwant v. Kallu, 186.
- Bhau Nanaji v. Sundarabai,
(Utpat case) 182.
- Bhyrochand v. Rustonjee, 194.
- Biswanath v. Sorosi, 188.
- Boolchand v. Janokee, 190.
- Brij v. Gokool, 193
- Budhasing v. Laltusing, 6.
- Chamar v. Kashi, 191.
- Chaturbhuj Sing v. Krishna, 194.
- Chemanautha v. Palakuzhu, 193.
- Chetti v. Chetti, 188
- Collector of Madura v. Mootoo
Ramlinga, 178, 189.
- Collector of Surat v. Dhirsinghi,
193.
- Collector of Tirhoot v. Haro-
persad, 192.
- Collector of Trichi v. Lekha-
mani, 193.
- Dwijapada v. Baileau, 185.
- Fakirgaudo v. Ganji, 185
- Gajadhar v. Kaunsilla, 191.
- Gatharam v. Moohita, 190.
- Gobind v. Abdul, 186.
- Gunga v. Jhalo, 191.

- Gungapoore *v.* Msst. Janee, 182.
 Harsaran *v.* Nandi, 191.
 Honamma *v.* Timmanabhat,
 184, 185.
 Hurkoonwar *v.* Rutton Bae, 190
 Hurrycharan *v.* Nimaichand,
 190.
 Inderun *v.* Ramaswami, 188.
 Jogesh *v.* Nritya, 193
 Kali *v.* Shib, 193.
 Kallychurn *v.* Dukhee, 190.
 Kanahi *v.* Biddya, 185.
 Kattama Nachiar *v.* Dorasing,
 190.
 Khuddoo *v.* Durga, 191.
 Kudomee *v.* Joturam, 178.
 Kumaran *v.* Narayanan, 193
 Kaulesra *v.* Jorai, 185.
 Lachman *v.* Mohanlall, 192.
 Lakshman *v.* Ramchandra, 194.
 Lakshman *v.* Shibu, 192.
 Mahantawa *v.* Gangawa, 188.
 Maniram *v.* Keri, 184, 185
 Matangini *v.* Ram Rutton, 192.
 Mathura *v.* Esu Naikin, 203.
 Ma Yait *v.* Maung Chit, 186, 188
 Melaram *v.* Thanooram 188
 Mula *v.* Pertab, 191.
 Murugai *v.* Viramkali, 190, 191
 Muthuswami *v.* Masilamani, 188.
 Nagindas *v.* Bachoo, 180.
 Narain Dhara *v.* Rakhal Gain,
 187.
 Narmada *v.* Gangesh, 184.
 Nilkant *v.* Mune, 194.
 Nilmadhava *v.* Bishumbhur, 193.
 Nitya *v.* Srinath, 191.
 Nursing *v.* Bhushan, 192.
 Panchappa *v.* Sanganaswa,
 191.
 Pandaya *v.* Puli Telaver, 188.
 Parekh *v.* Bai Bhakat, 191.
 Parvati *v.* Bhiku, 185.
 Puddamani *v.* Zemindar of
 Marundapuli, 193.
 Rahi *v.* Gobind, 194.
 Rajani *v.* Nitai, 194
 Rama *v.* Bhagi, 183
 Ramlal *v.* Akhoycharan, 187.
 Rammani *v.* Kulanthai, 188.
 Rani Bistopriya *v.* Basoodev,
 188.
 Ranjit *v.* Radha, 191.
 Rasul Jehan *v.* Ramsaran, 191.
 Rawut Urjun *v.* Rawut Ghana-
 siam, 178
 Sankaralingam *v.* Subban Chetti,
 190.
 Shamsing *v.* Santabai, 185.
 Sheo Buksh *v.* Heirs of Futteh
 Sing, 194
 Shibu Kaoree *v.* Jogun Singh,
 192.
 Soorendranath *v.* Msst. Heera-
 monee, 179.
 Soorjeemam *v.* Deenabundoo,
 195.
 Subbaluvammal *v.* Ammakutti,
 193.
 Sungram *v.* Debee, 182.
 Suraj *v.* Attar, 186
 Taliwar *v.* Puhlwand, 194.
 Thakur Jeebnath *v.* Court of
 Wards, 192
 Treekumjee *v.* Msst. Laroo, 190.
 Upoma Kuchain *v.* Bholaram
 Dhubi, 188
 Valu *v.* Ganga, 184.
 Vasudevan *v.* Secretary of State,
 187.