

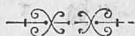
THE CONTRIBUTION OF HINDU LAW TO WORLD JURISPRUDENCE.

(Second Revised and Enlarged Edition)

BY

A. S. PANCHAPAKESA AYYAR,
M.A., I.C.S., F.R.S.L., BAR-AT-LAW. (INNER TEMPLE)

(CERTIFICATE OF HONOUR HOLDER, AND
LANGDON MEDALLIST IN HINDU AND
MUHAMMADAN LAW)



THE MADRAS LAW JOURNAL OFFICE,
MYLAPORE, MADRAS.

Copyright.

1943

Price Rs. 1-8-0.

*Dedicated
To The United Nations
In The Hope
That They Will Establish
A World jurisprudence
Based On Dharma.*

PREFACE.



Encouraged by the warm welcome accorded to the first edition by Sir Maurice Gwyer, Chief Justice of India, Dr. V. S. Sukthankar, Professor Neelakanta Sastri, Dr. Vaidyanathaswamy, Professor Suryanarayana Sastri, Dr. Handiqui, and several other friends, from India and abroad, most of whom have pressed me to write a big book on the subject, I have ventured on this second edition. The extraordinary conditions created by this World War, and especially the scarcity of paper, has compelled me to limit this book, originally intended to cover 400 pages, to 103 pages, and to omit many interesting matters of detail, as well as all foot notes, and most of the original texts. I am not, however, wholly sorry for this, as brevity and lack of texts and foot-notes have their advantages, especially for the masses whom I want to serve by enlightening them about India's notable contribution to Law and Jurisprudence. The eagerness with which the translation right of this book into the modern Indian languages has been applied for has cheered me not a little. This book is written in a spirit of humble service to Mother India and the United Nations, and to men and women of good will all over the world.

A. S. P. Ayyar.

THE CONTRIBUTION OF HINDU LAW TO WORLD JURISPRUDENCE

WIDESPREAD IGNORANCE REGARDING THE CONTRIBUTION :—Many people, even in India, are not aware that the Hindus made as great an advance in Jurisprudence and practical administration of Law as they did in religion, philosophy and other Arts and Sciences. That is, of course, because, unlike the Vedanta doctrine in Philosophy, and Vaishnavism and Saivism in worship, and Hindu grammar, architecture, painting, music and dancing, Hindu legal theories have not been free from successful attack, and even radical change, by foreign ideas. Indeed, they have been subject to them to such an extent that it may be said that the modern Hindu Law is only Anglo-Muslim-Hindu Law, having been radically altered in constitution, shape and outlook, and even essential features, by centuries of Muslim and British rule and by the rulings of Judges owing allegiance to other systems of Jurisprudence, and, in many cases, unacquainted with the basic Hindu ideals in law. It must be obvious, however, to any thinking man that the Hindus, who had contributed so richly in other realms of thought, science and arts, could not but have given equally richly in Jurisprudence and Law.

CONTRIBUTION IN OTHER DIRECTIONS:—The Hindus gave the world its earliest systematic philosophy and grammar; they gave Mathematics the numerals and zero, without which the present progress would have been impossible; to cultivation, rice, ginger, sugar, coconuts and plantains, without which any enumeration of edible crops would be incomplete; to commercial crops, cotton and jute; to games, chess and polo; to the military art, elephants, the tanks of olden days;

to the fauna of the world, cows and hens; to the realm of flowers, lotuses; to colours, indigo and lac; and to connoisseurs of precious stones, the most famous diamonds and sapphires. Let us examine, in brief, the contribution of Hindu Law to World Jurisprudence, in various directions. Of course, since all men have much the same bodily, mental and moral make-ups, what is claimed here as contributions by Hindu Law may also be found in some other systems of law, notably Roman Law, in parts or in different combinations.

HINDU THEORY OF JURISPRUDENCE:—Hindu Jurisprudence differs from all other jurisprudence in this that, while the jurisprudence of other nations concerns itself only with portions of a man's activities, it embraces all his activities from the moment he is conceived till he attains salvation. In western jurisprudence, man-made law and king-made law prevail as against immemorial custom or revelation, because it embraces but a small portion of a man's life. He who did not commit a crime or have anything to do with a contract or tort, or breach of trust or marriage or real or personal property did not have, till recently, to worry about the law much, though this World War has changed this somewhat. But, not so in India. The moment he was conceived, the law prescribed a ceremony. His advent into the world was celebrated by another ceremony, wherein gifts to fellow-men, whose society he joins, play a prominent part. (It is something like the dinner given by a person joining a Masonic society.) Then comes the tonsure ceremony, and, after that, the *upanayanam* (holy thread investiture) more important than the physical birth, as it is the admission into the world of God-knowledge, the beginning of *brahmacharya*, the path of God (Brahman). Later on, after 12 or 24 or 36 years of study, according to the choice of the individual, comes marriage, a very important ceremony which is practically compulsory for all, and not optional, as in western

countries, and wholly spiritual in its conception. Then, we get the *ritusanti*, the consummation of the marriage. After that his son's conception ceremony comes, and, so, the circle continues. When the man dies, he is to be burnt with proper ceremonies. The matter does not end even there. His eldest son, who sets fire to the corpse of his father, to denote the utter unimportance of the body once the animating life and soul have left it, has to perform not only the obsequies, but also the *sraddha* every year. These *sraddhas* are intended to speed the souls on the way to *moksha* or salvation, either directly, or through a series of births and deaths regulated by *Karma* (merit or demerit accruing from action) unless Brahma (God) intervenes and shortens the process by His grace.

FUNDAMENTAL TRUTHS OF HINDUISM:—The fundamental truths of Hinduism are *Brahma* (God), *Dharma* (righteousness, that path which is in conformity with a man's inner and true nature, and leads him on to salvation in his own unique, though also subtly universal, way) and *Karma* (act accruing merit or demerit according to the test of *Dharma*). Man has to do *Karma*, and go along the path of *Dharma* and attain *Brahma*, which attainment is called *Moksha*. Naturally, till he attains *Brahma* or *Moksha*, he is governed by the *Dharma sastras*, or laws which seek to guide him in his *Karma* so that it may accord with *Dharma* and lead him on to *Moksha* or *Brahma*. The *purusharthas*, or desiderata for man, are *Dharma*, *Artha* (wealth), *Kama* (love), and *Moksha*. What is meant is *Artha* combined with *Dharma*, and *Kama* combined with *Dharma*, leading to *Moksha*.

SOURCES OF HINDU LAW:—It follows from this that the sources of *Dharma* or Law can never be mere man-made or king-made law, but should be something eternal, revealed, unalterable and all-embracing, as far as such sources can be got by mortal man. So,

as *Brahma* is the author and regulator of *Dharma*, His words, the *Vedas*, are the supreme foundation of law, and its ultimate source. For the Hindus, as for all other thinking men, God is Truth (*Brahma Satyam*), and *Brahma*'s utterances are, therefore, the words of Truth, and, so, supreme in Law which is *satyasodhana* or testing of Truth, though, unfortunately, it has also to be *asatya-sodhana* or testing of Falsehood, as most witnesses can be classified as liars, damned liars and experts—the Prophet Muhammad himself having said that men will be liars till the end of the world. It is significant that the Muslims too have accepted the Koran, or God's words, to be the supreme source of their law. So too, Canon Law.

But God's words do not cover every *karma*. So, the next source is the words of His seers and prophets, the *smritis* or *dharma sastras*, written by *rishis*, just as the sayings of the Holy Prophet are among the Muslims. Even they leave much *karma* uncovered. So, the next source is the conduct of good men, *sadachara*, corresponding to *tradition* among the Muslims. Even they leave much *karma* out. So, the next source is a man's own conscience, most Hindus believing that a man's soul, of which his conscience is the voice, is of the self-same substance as God, though there is as much difference between the individual soul and the universal soul as between a free lion and a caged one, man's soul being caged in a body which limits its power and potentiality. Even then, much *karma* is left out. So, the next sources are *Ayurveda* (Medicine), *Dhanurveda* (science of weapons), *Gandharva-veda* (Music) and *Arthasastra* (Economics). The next source is king-made law or law made by one's caste, tribe, guild, or association. Still, some *karma* is left out. So, the last source is what a man considers to be for his own benefit, as most men are guided in most of their acts by a selfish desire for their own happiness. It is to be happy that men want riches, or power or partners, or fame, or name,

or even commit suicide, since they are unhappy now and want to be happy by determining this unhappiness by putting an end to their lives by suicide, in the hope of becoming happy thereafter. So, the Hindu lawgivers gave the sources of law as the *Vedas*, the *smritis*, *sadachara*, *Ayurveda*, *Dhanurveda*, *Gandharvaveda*, *Arthasestra*, *Swasyachapriyamamatmanaka*, *sasanas* and *sankalpajakamo*, as the sources of law, each succeeding thing being of less force than the preceding one, kings being exhorted not to break this rule.

Westerners stand flabbergasted at these numerous sources of Hindu Law; and their first reaction is an amused contempt, just as the first explorer who saw the octopus, with its eight legs, had an amused contempt for it, comparing them with his own two legs, till he was caught in its tentacles, and saw his two legs and bones crushed to pulp in no time when, of course, the contempt would have given place to awe, fear and admiration had he but been left alive. To any cheap gibes of unthinking westerners, Hindus can afford to reply "We were when you were not: we shall be when you have ceased to be."

LAW ALL-EMBRACING: Consequent on this wide scope of Hindu Law, there is no distinction in Hindu Jurisprudence between Religion and Morals, Morals and Law, Dogma and Practice. The word *Karma* includes every act of man, embracing the relations of man and man, and man and God and the Universe. *Dharma* or Law embraces everything in life. It is regarded as highly beneficial to man, and not as something imposed on him by an external authority having physical power over him, as is the usual case with law in the west. A man has to follow the law not because of the fear of the penalty or sanction but because that is for his own benefit and enables him to attain his goal of salvation easiest and soonest. Indeed, even a criminal is urged to confess his offence and

get punished, in order to purge himself of his sin and attain heaven.

The earthly ideal of *Dharma* was *Loka Sangraha* or the welfare of the universe, and *Sarva Bhootha Hitheratha*, or the welfare of every living thing. That is why Hindu Law-givers said: "He, who upholds the law (*Dharma*) will be upheld by it. He, who destroys the law (*Dharma*) will be destroyed by it." and "*Dharma* (the law) is the foundation of the universe." Of course, they were not then thinking of purely lay law.

Unlike in the western world, law was not considered to be merely a thing intended for ensuring order, peace and prosperity in this world. The chief end of law, and its declared goal was the ideal of Righteousness or *Dharma*, a word which is hard to translate into English or any other western language as the idea is peculiarly Indian, and unknown to the other races of mankind. Often, the westerner will stand aghast at the practical applications of *Dharma*.

THEORY OF DHARMA:—Thus, a wife's *Dharma* is to treat her husband as if he were her God. He may be unchaste; but she should be chaste. He may beat her; but she should not return the beating or abuse. I can already imagine foreigners exclaiming that this is injustice. It may or may not be that, but it is Hindu *Dharma*. Indeed, it is man's *Dharma*. Never by returning blow for blow, or evil for evil, will man, the elder brother of the animals, justify his other dual capacity, of being the younger brother of the gods. That is why Kannaki, a great model of a Hindu Wife in the Far South, loved her husband not a jot the less in spite of his cruel neglect of her and resorting to a dancing girl, Madavi. That is why Sita, the great model of a Hindu wife from the Far North, did not utter one word of reproach against her husband when he banished her to

the forest on the foolish remark of a drunken washerman. That is why Nalayani carried her husband on her shoulders to the house of the famous courtesan whose favours he hankered after. He was, of course, rebuked by the courtesan and made to reform.

Again, Kausika Satyavadin, the Truth-Speaker, was consigned to Hell, for some years, for speaking the truth and telling some murderous dacoits where their victim lay hidden, instead of refusing to disclose the bush where the man lay concealed, and taking the risk of death at the hands of the enraged dacoits. He was even told that a little lie, namely that he did not know where the man was, or that he was not there, would have been punished less severely than the truth he uttered, on the theory of *Apaddharma* (or lie in necessity). Sita, the incarnation of virtue and truth, told the demonesses guarding her what would, in other circumstances, be a lie, namely, that the monkey, Hanuman, had not gone there to her, as the messenger of Rama, and spoken to her. That was her *Apaddharma*, in order to save her questioners, the very demonesses, who would have been killed by Ravana had they told him of this visit of which they were unaware, owing to their being asleep while on sentry duty, and to save Hanuman, a friend of her lord, from possible death (just as Nurse Cavell protected the allied spies from death by lies, without any Englishman thinking the less of her) and to prevent Hanuman's possibly killing Ravana and taking away the credit of that deed from her husband who had incarnated on earth for that very purpose. Manu has therefore said "Speak the truth, but not the unpleasant. Speak the pleasant, but not the untruth".

Vamana, the divine dwarf, curbed the arrogance of Mahabali by trickery. Vishnu, as Mohini, killed the demon Surapadma, by a trick. Rama killed Valin, the monkey chieftain, from a hiding place, just as modern

hunters often kill tigers from hiding places. No wonder, as the Hindus say, *Dharma* is such a secret and deep thing that the human mind cannot easily grasp its full import, or its thousand ramifications and bewildering varieties. Often, it runs quite counter to accepted canons of sense and commonsense, honour and chivalry. Viswamitra is praised for upholding his *Dharma* in abandoning Menaka, who was more beautiful than Helen, and his baby daughter, Sakuntala. Rama is praised for his *Dharma* abandoning his right to the crown, instead of fighting for it, and for abandoning Sita, instead of clinging to her.

This is not peculiar to India or Hinduism. Christ asked men to return good for evil. Buddha proclaimed "Conquer evil by good, falsehood by truth." Indeed, if a person returns whatever evil he gets, it will be a far day to salvation. It may be that petty human beings want to return good for good and evil for evil, acting as a merchant does. But it is obvious that a system of jurisprudence can follow this principle only if it accepts its goal as the determination of man's petty disputes by petty standards, and not as the salvation of man by merging him in God. If Westerners realise this, all misconceptions regarding Hindu Law and Jurisprudence will disappear, like dew drops before the Sun.

RESULTS OF THE THEORY : RESIDUAL INJUSTICE:— Because God is the foundation of Law, several results, of the highest importance to jurisprudence, have ensued. The first is that there is an end to appeals at a certain stage, and that the residual injustice will remain, and is irremediable, being attributed by Hindus to *prarabdha-karma*, the effect of actions in previous births, nothing done by the man in this birth accounting for it. It is everyday experience to see some guilty fellows escaping punishment, for lack of evidence, and some innocent men getting punished, either on perjured evidence, or due

to lack of intelligence, or discrimination, or honesty in the judges. This may happen even in the highest court of the land, and, then, there is no remedy.

FROG'S KARMA :—The Hindus have the following beautiful story to illustrate it. One day, Rama went to bathe in the Ganges. He stuck his bow in the sands, and went and bathed in the waters, and came back. On picking up his bow again, he was horrified to find blood on the tip of it, and, on looking into the sand, discovered a frog whose body his bow had pierced when he stuck it there. Greatly distressed, he shed tears for the fate of the poor frog, and asked it "Why did you not cry out at this horrible act?". "Rama" said the frog "You are the Supreme Lord of the entire Universe. You are the person to rectify all injustice, by whomsoever committed. Oh Lord, when you yourself committed this injustice, to whom was I to appeal?" Rama replied "I see that it is your *karma*, oh frog, to suffer this injustice".

KING LIABLE AT LAW, LIKE HIS SUBJECTS :—A second result is that every one can be punished or dealt with for breach of *Dharma*, and that there is no place in Hindu Law for the maxim "The king can do no wrong" which did so much mischief in English Law till recently and is even now doing some. Indeed, in Hindu Law, he is dealt with even more severely than the ordinary man.

DANDA OF DIVINE ORIGIN :—Manu, Yagnavalkya and other Hindu lawgivers declared that Brahma made *Dharma* itself into *Danda*, or the sceptre of justice, which is the sanction and spirit of punishment. So, like the king, *Danda* too is of divine creation. Indeed, it is an earlier, more vital and vaster creation, according to the Hindus, as it existed even before Kings arose, and exists even in

republics and other forms of government, nay, wherever judges decide cases. The Hindu belief was that the sceptre of justice would beat a King to death in a mysterious, fashion, as it did the Pandyan King, Nedum Cheliyan, when he punished a man unjustly in a case relating to himself, and would become merely twisted and bent, from its straight position, when he punished a man unjustly in a case in which he had no personal concern. This theory of the divine origin of sanction is on a much higher plane than the Austinian theory of sanction.

ALL POWERS DELEGATED FROM GOD. CORONATION ESSENTIAL FOR KINGS:—Though the Hindu lawgivers say that the King is God manifest on earth (*raja pratyaksha devata*) they only mean by this that the King has got from God the delegated power of punishment, just as the husband has got a delegated lordship over his wife, who is directed to look on him as her god, and the Brahmin has got from Him a delegated right to honour and offerings, as particularly engaged in seeking Him, and as every employer or person in authority, like parent or teacher, has got from Him a delegated right to punish the servant, child or pupil, and as witnesses, as representing Him, the Supreme witness, have got the power to give evidence and get people punished on it. Of course, as every one of these is a delegate, the King gets his full powers only after a formal coronation when he takes the oath, on God, to preserve the ancient laws of the realm. He has no power to alter by legislation the *Vedas* or *smritis* or *sadachara*. He can only enforce the *Dharma* enjoined by these, by issuing appropriate decrees or *sasanas*. He cannot, under the Hindu law, set aside a sentence of death passed on a real criminal. He can merely grant three days' time, as Asoka did, to repent and make his peace with God. He can, of course, release prisoners not under sentence of death, on coronation days, national holidays, etc.

OATHS OF WITNESSES.—Even witnesses have to take an oath on God before they can be examined, and their evidence accepted. The origin of the oath administered to witnesses is due to this delegated power, as the theory of Hindu Law is that the sceptre of justice is of divine origin, and it is its function to see that justice is done.

SANCTIONS NOT MERELY PHYSICAL, BUT ALSO SOCIAL AND SPIRITUAL:—Another result of God's being the source of Law and punishment is that the sanctions are not merely physical ones, like death, mutilation, whipping imprisonment, fines, damages, delivery of possession etc, but also spiritual and social ones, like expiation, penance, excommunication, expulsion from caste, degradation to a lower caste, contempt and scorn by fellow-men, etc. Indeed, modern lawgivers are finding out, slowly, that spiritual and social sanctions are as necessary and effective as mere physical ones.

SPECIAL OATHS:—Still another result of God's being the ultimate source of Law is the allowing of special oaths by the parties as a method of disposing of disputes, the perjurer being left to God to be suitably punished. This form of disposal is even now not uncommon in civil suits in India, where one party challenges the other to take a special oath in a temple, or with lighted camphor in open court, and agrees to have judgment against him if he does, and the other side agrees. It is effective in many cases, parties being afraid to take false oaths of this variety. An educated man who had discharged a promissory note by payment but had not taken an endorsement of payment or discharge, and could not prove the payment by independent evidence, set up a false plea that he had not received the consideration under the promissory note, as there was no independent evidence to prove that too. He was challenged by the other side to take a special oath in

a Kali temple to that effect. He took it after much hesitation, and went home, and lay down, and died in three days, of shock at his own iniquity. The force of belief in ancient or primitive races of the Orient cannot be imagined in the Occident.

GOOD AND GOD-FEARING MEN ALONE TO ADMINISTER JUSTICE:—Another result was that all who administered justice had to be good and qualified men, in order to get a proper delegation from God to find out the truth. So, the King had to be a king who had taken the coronation oath; the judges had to be God-fearing men learned in the Vedas, *smritis* or *sastras*, and also to be men of good conduct and sound conscience well acquainted with *sadachara*: the *sabhyas*, or assessors, who aided the judges, were to be learned in the Vedas and to be men well known for their *dharma* and good conduct; even the witnesses, on whose depositions judgment was delivered, had to be men of known integrity and upright conduct, and also disinterested, before their evidence could be acted on.

PUNISHMENT OF UNJUST KINGS AND JUDGES, ASSESSORS AND WITNESSES:—A King who always deviated from justice and was guilty of tyranny or oppression could be killed by his subjects, even if *Danda* didn't kill him, as if he were a mad dog, Manu laid down that *Danda* was above the King, and that a King was bound by the Law as much as the subject. Kautalya says that a court can not only deliver judgment in a civil suit against the King or State, but that a King can also be punished, like a subject, for his misdeeds. Ram Sastri, the celebrated Chief Justice under the Peishwas, in the latter half of the eighteenth century, resigned because he could not bring Raghunath Rao (Raghoba) to trial for his suspected participation in the murder of the Peishwa, Narayana Rao. A threat of death by Raghunath Rao only brought forth

from him the famous retort "Kill me. I deserve to be killed for not fulfilling my oath, as judge, not to be affected by fear or favour, but to bring all to trial for their misdeeds". A judge used to be executed for corruption or gross partiality, acting on the principle, accepted also by Frederick The Great "He who fouls the fountains of justice is an enemy of God and Man". Assessors and witnesses who were guilty of dishonesty, corruption or perjury were speared to death in ancient Hindu law, as can be seen from the *Silappadikaram*, though, later on, imprisonment and fine took their place for such conduct in non-capital cases, the death penalty being still retained for a man (as under our Penal Code) who, by his perjured evidence, brings about the execution of an innocent man.

INDEPENDENCE ESSENTIAL IN KINGS, JUDGES, ASSESSORS AND WITNESSES:—As one of God's supreme qualities is his independence (*Paramam svarat*) his delegates too have to be perfectly independent "Kings with no independent power of judgment, and who are dependent on others, recede into deserved oblivion like a chain of mountains submerged in the ocean" says the Ramayana. Other well-known maxims in the *smritis* are these: "Even dry twigs, cocoanut shells and chaff are useful, but not a King who is not independent, or who has been deposed". "Even Brahma dare not do an unrighteous act and face the consequences". "A king who fails to attend to his duties personally and to exercise his own judgment hastens his downfall." "That king is rightly worshipped by his subjects who is independent and does not indiscriminately punish or reward them at the behest of others" "A King who mercilessly punishes his subjects and does not care for their welfare, or to see that justice is administered independently and impartially, ought to be shunned like the fire in the cremation ground. He and his subjects will soon perish".

JUDGES TO ADMINISTER THE ORDINARY LAW :—A King is to be independent, but is to entrust the ordinary administration of justice to judges and assessors, and not to administer it himself. Thus, Hindu Law had, from its very origin, this principle which was finally established in England only in the 17th century, after many a fight between Chief Justice Coke and King James I.

KING SUPREME APPELLATE JUDGE :—But the king reserved to himself the right to preside over the ultimate court of appeal, assisted by his eminent judges and select assessors. Thus, Dushyanta, acting on the precept of Vyasa that even children in the womb (*garbhe vyavasthita*) ought to be maintained by ancestral and self-acquired property, ruled that a sonless merchant's property, which would have gone to him, should go to the son in the womb of his wife, bringing the existing law in conformity with the injunctions of the *smritis*.

NONE TO INTERFERE WITH JUSTICE :—The Hindu lawgivers laid down that a King should not interfere with the independent judgment of his judges, or a judge with the independent opinions of his assessors or the independent evidence of the witnesses. "A judge who does not give *his own decision* from the judgment seat should be shunned from afar" says the *Panchatantra*. So too, assessors and witnesses were kept free from outside interference by segregating them during the trial, and punishing those who tried to interfere with them.

REVIEW OF WRONG JUDGMENTS :—From God (as Truth) being the foundation of Law, it followed that judges were exhorted to review their wrong judgments at once, and even *suo motu* the moment they had reason to suspect them to be wrong; no technicality, no rule of law or rule of court was allowed to stand in the way, as often happens with modern tribunals of the highest authority,

despite sections 151 to 153 of the Civil Procedure Code and similar provisions in criminal law. Nay, even outsiders could bring cases of injustice to the notice of the court for rectification. Thus, it is recorded in a story in the Panchatantra called "Self-Created Evils," that the barber, who was sentenced to death by the Judges on the perjured evidence of his wife, and was actually taken to the place of execution and was about to be executed, had his case tried over again on a new witness, Deva Sarma, going to the Judges and exposing the perjury, and was released, the perjuring woman's nose and ears being cut off instead, for her adultery and perjury. The *Bodhisatva*, born as a dog, made King Brahmadata cancel an unjust sentence of death, passed on innocent dogs. I wonder whether any Judges, in any democracy, would have had the freedom to do this, let alone the inclination. Nay, even if the King, wandering *incognito*, to hear the free opinions of his subjects about his rule and justice, heard about a wrong decision, and was satisfied about the error, he had to set it aside and order a retrial, as the Chola King did on hearing Maryada Rama's criticism of the decision in the case of "Joint Entrustment by Four Robbers" which will be noticed below.

NO LIMITATION FOR CRIMES:—Still another result of God being the ultimate source of Law, and of *Danda* being of divine origin, was that there was no limitation against crime, in which breach of trust was included, though various periods of limitation were prescribed for civil cases. The maxim "Time does not run against the King," applied even now in criminal law, was a very ancient rule in Hindu criminal law.

CERTAIN APPARENTLY CRUEL ACTS APPROVED:—For the same reason, some apparently cruel things enjoined in the scriptures were held to be not so cruel, or contrary to public policy as not to be enforced. Thus, *vedic* sacrifices

of animals, were held to be allowable, like the sacrifices of two pigeons, to take away Christ's birth pollution, being not condemned by western clergymen. So too, death for treason or murder, being enjoined in the scriptures, was not disapproved of, despite a growing abhorrence of taking life. So also, the castration of persons guilty of rape.

INTERFERENCE WITH UNJUST CONTRACTS:—Still another result of God's being the source of law was the drastic interference with unjust contracts and covenants. Usurious interest was drastically reduced to the rate justifiable in all the circumstances, and interest was directed not to run after interest amounting to the principal amount had been paid up, this being the famous law of *damdupat*, intended to put a curb on capitalism and money-lending.

DHARMA DIFFERS:—*Dharma*, being thus the innate principle of anything, by virtue of which it is what it is, it follows that it will differ according to persons, families, places, times, and circumstances, as laid down by the great Hindu jurists.

DIFFERENCE ACCORDING TO PERSONS:—The difference according to persons leads to *varnasrama dharma* or the *Dharma* according to one's caste. Thus, a Brahmin's *Dharma* is to seek God, and not to fight and take life. A Kshatriya's *Dharma* will be to fight in a righteous war, and to kill and be killed, and never to run away. He will be punished for cowardice, but not the Brahmin, just as, in modern English law, a soldier or policeman can be punished for cowardice, but not a mere civilian. A *Vysia* cannot flay even a dead cow, but a *chamar* can, and should.

DIFFERENCE ACCORDING TO FAMILIES: The difference according to families leads to *Kuladharmā*, or the *Dharma* of each family. Some families have got a particular custom, worship or charity, and that must be kept up by the Managers and successors, on pain of punishment,

something like the rule of certain European royal families that no King shall marry a divorced woman or shall become a Catholic.

DIFFERENCE ACCORDING TO PLACES:—The difference according to places leads to *Desadharmā*, something like the differences in national and territorial laws in the west. Thus, Hindus of South India can adopt their daughters' sons and sisters' sons, but not Hindus of North India who can only adopt sons of women whom it was possible for them to have married, which, of course, would exclude sisters' sons and daughters' sons.

DIFFERENCE ACCORDING TO THE TIMES:—The difference according to the times led to *Yugadharmā*. Thus, in this iron age (*Kaliyuga*) the remarriage of widows, the eldest son's extra share (*Jyeshthabhagam*) the slaughter of cows for food, the custom of *Niyoga* or *levirate*, and habitual begging, with a *kamandulam*, were forbidden, though allowed in earlier ages. So too, owing to growing poverty, a gift of four annas and a cocoanut or pumpkin took the place of a gift of a cow. Lengthy and arduous pilgrimages could be performed by proxy in the case of sick or busy persons in this age. Again, prayers (*sankirtanam*) will secure salvation in this age.

DIFFERENCE ACCORDING TO CIRCUMSTANCES:—The difference of *Dharma* according to circumstances leads to *Apad-dharma*, *sadharana* and *Asadharanadharmā*, *ishta dharma* and *sahaja dharma*, *pravritti-dharma* and *nivritti dharma*.

APAD-DHARMA:—Let us take *Apad-dharma* or *Dharma* modified by the rule of necessity. The very young and very old were exempted from corporal punishment, extreme expiatory rites etc, because of the danger to their lives. In cities, the rules of pollution were relaxed owing to the difficulty of enforcing them strictly, and the consequent

necessity of modifying them. So too, at marriages, funerals, and festivals, and during War. Travel across the seas, and eating of forbidden food were tolerated, and were punished less severely, if done through necessity, just as the three ship-wrecked English sailors who ate their fellow-sailor from necessity were let off leniently, (See *R. V. Dudley and Stephens*, 14 Q B. D. 281), and just as, during floods rendering a road impassable, an easement of necessity is given in English law to trespass into as much of an adjoining owner's land as is essential. *Apad-dharma* allowed a husband, in times of necessity, to utilise his wife's *stridhan* property for maintaining himself and his family and for doing obligatory rites like the funeral obsequies of members of the family.

SADHARANA AND ASADHARANA DHARMA :—*Sadharana* and *Asadharana dharma*, or ordinary and extraordinary *dharma*, can be easily understood by citing examples. It is the ordinary *dharma* of a man not to kill his fellow-man. It is the extra-ordinary *dharma* of a soldier to kill his fellow-man if he is a foe. It is the ordinary *dharma* of a man not to spy into another's house. It is the extraordinary *dharma* of a spy to spy into enemy houses. An ordinary man should be punished for the above acts, but not a man to whom the rule of extraordinary *dharma* applies. Indeed, that man may be punished if he does not do what is prohibited to the ordinary man. So, a Hindu is bound to maintain his wife. If he fails to do so, not only will his property be liable to be attached but he too is liable to be sent to jail. But if the Hindu has become a *sanyasi* (has taken holy orders) he is not only not bound to maintain his wife, but will be punished if he maintains her and lives with her.

PRAVRITTI DHARMA AND NIVRITTI DHARMA :—*Pravritti Dharma* and *Nivritti Dharma* differ according as to whether a man is seeking salvation after renouncing

the world, or is seeking worldly prosperity. The first cannot kill even cobras, scorpions or rats, or save even for the morrow, on pain of punishment; the second must kill cobras, scorpions and rats and save enough for maintaining himself and his family for at least ten days. The first need not bathe and say his prayers early in the morning, as he may be engaged in deep meditation, and may have no time or inclination for these routine things.

ISHTA DHARMA AND SAHAJA DHARMA:—Now we come to *Ishta dharma* and *Sahaja dharma*. *Ishta dharma* concerns an act which a man chooses to do, which he is not bound to do except for such choice. Thus, a man is not bound to bring up a pet dog or cat or parrot. But, if he does, he must feed it properly, and see that it does not injure the persons or properties of others, on pain of punishment. *Sahaja dharma* is an obligatory duty imposed on all by the scriptures, without their consent, like disposing of the dead bodies of their parents, and maintaining their aged parents, virtuous wives and infant children.

CASTE SYSTEM NOT AN ESSENTIAL ELEMENT OF HINDU LAW:—The caste system is not an essential element for *Dharma*, though it has assumed, as already seen, an important place in the development referred to as *varnasramadharma*. Of course, even here, the present caste and outcaste system will not receive any great support, as there it is based on certain *gunas* or virtues ascribed to the Brahman, Kshatriya, Vaisya and Sudra, and not on mere hereditary caste. Thus, a Brahman was prohibited from selling food, and was expected to give it free, just as he was receiving it free. Being a man seeking God, one of whose incarnations was *Annapoorna*, the Goddess of Food, (compare the theory of the blood and flesh of Christ becoming wine and bread), he was prohibited from selling food equally with selling knowledge ('I shall not sell knowledge' is his motto: *na ham vidya vikrayam karomi*, as Vishnusarma

exclaimed). But, today, in South India, the predominantly Hindu part of India, most of the great hotel-keepers are Brahmans ! The fact that Buddhism and Jainism accepted Hindu Law for their followers also, though these did not recognize the caste system, or the supremacy of the Brahmans, or the revealed nature of the *Vedas*, shows that the caste system was not an essential element of *Dharma*. Indeed, the Buddha said “*Dharma*, and not *varna* (caste) determines the real difference between man and man. The Brahman woman delivers her child in the self-same way as the Sudra woman. So, how can we say that the Brahman was born from the mouth of Brahma, and the Sudra from His feet?”. But even he declared “*Dharma* (Law) stands as fundamental, whether *Tathagathas* (Buddhas) have arisen or not. *Dharma* is Truth. Let Truth be your island. Let Truth be your refuge. There is no other island, no other refuge”. When we remember that, according to the orthodox Hindus, *Brahma* is Truth, it is obvious that Buddhism, while disowning Brahma as the Lord of *Dharma*, has made *Dharma* take the place of *Brahma*. Jainism has gone a step further. It has made *Karma* Truth, and made it take the place of *Brahma*. Of course, Buddhism too recognizes *Brahma* ; indeed, it is *Maha Brahma* who persuaded the Buddha when he was hesitating, to proclaim his religion by assuring him that there were men ready to listen to it. It merely refused to give him the supreme place given to it by Hinduism. So too Jainism, which made *Karma* supreme.

STATE OF NATURE, ACCORDING TO THE HINDUS :—
The Hindus, Buddhists and Jains had all a theory that men were once like *Devas*, votaries of truth and light who, later on, fell into evil ways and made kings and law-courts necessary. We have seen the Hindu theory of the golden age, silver age, bronze age and iron age. In the iron age, people wrangled and fought, like fishes, the strong swallowing the weak, and *Matsyanyaya* prevailed.

This *Matsyanyaya* is also well-known to western writers. It is simply

“ the good old rule,
the simple plan,

That they should take who have the power
And they should keep who can.”

So, Narada has said “ *Dharma* having decayed among mankind, lawsuits and cases came, and the King, with his *Danda* or Sceptre, the necessary sanction, was appointed to see to their proper decision.”

THE BUDDHA'S THEORY:—According to the Buddha, men were once shining, immaterial beings, emanating light from themselves, feeding on joy, and passing through air easily in the midst of the darkness around them. Then there was no sun or moon or stars or sex or time. Later on, the earth rose from the midst of the waters, and the sun, moon and stars came, robbing men of their brightness. Time came bringing Death in its train. Sex came bringing Lust with it. Foodstuffs came, bringing greed with them. The body of man became coarser, and he had to feed on the mosses, lichens, creepers and rice which began to grow on the earth. Sex made households spring up with bitter rivalries. Men began to store things. With that habit came wealth. With wealth, sex and greed came wrangling and civil and criminal litigation. So, men met together and chose some men of higher *Dharma* as Kshatriyas, to restrain the evil-doers by suitable punishment. They chose some others of still greater *Dharma* to restrain the evil disposition which led to the evil-doing. These were the Brahmans.

A UNIQUE BEAUTY :—It is significant that under all the systems, Hindu, Buddhist and Jain, the first great law-giver was Manu, the son of the sun, the great giver of Light and Life, who wanted to restore to man part of his

innate light which he had lost by Time. The unique beauty of Hindu Law was that the persons who developed it from time to time were Sages, Kings, and caste heads, each group with unique gifts and capacities, and not an assembly elected on a haphazard system, and giving no sure guarantee of either wisdom or deliberation or even of public weal being the sole guiding motive.

DISTORTION INEVITABLE:—It is obvious that when this transcendental conception of law was introduced into the world of men, who are subject to lust, greed, anger, avarice, envy and quarrelsomeness, it became mixed, diluted, twisted and distorted, like gold in the depths of the mines, and Hindu Law could be no more ideal than Roman Law or English Law.

REASONS FOR PRESENT CONDITION:—The reasons for its final sinking to its present stagnant, truncated and semi-dead condition are foreign conquests, internecine wars and disputes, and the slow but sure action of Time, the great Destroyer, which has destroyed even scriptures and utterances of the Lord Himself, as Sri Krishna bears testimony in the Gita, when referring to the loss of His previous teachings due to the ravages of Time (*sa kaleneha mahata yogo nashta parantapa*).

ATTEMPTED SAFEGUARDS AGAINST DECAY: THE LAWS CHANGE WITH THE TIMES:—A fundamental principle of Hindu Law is, as already noted, called *Yuga Dharma*. It was used to mitigate the above evil effects, by changing the law to suit the times and the changed habits, ideas and standards of men. It was laid down that in the *Krita* or golden age, Manu's Laws should prevail; in the *Treta*, or silver age, Gautama's; in the *Dwapara*, or bronze age, the Laws of Sankha and Likhita; and in the *Kali*, or iron age, the Laws of Parasara. That was said to be so because the throne of Dharma, on which each man was

expected to sit, had four legs in *Krita*, the age of truth; three in *Treta*, the age of seeking after truth; two in *Dwapara*, the age of vanishing truth; and only one in *Kali*, the age when truth has gone below the horizon, like the setting sun, but has, yet, left its radiant colours in the sky. No one can sit on a throne in the same position when it has four legs, three legs, two legs and one. One has to change one's place, if one is to keep one's balance. So too, every nation has to, change its laws to suit the age, if it is to keep its equilibrium.

CUSTOM AS VALID AS SCRIPTURAL LAW:—Another way of mitigating the inevitable distortion of the old law, laid down in the scriptures, and preventing people from feeling that they were breaking the law, and thus creating an atmosphere of lawlessness, was to recognise customs and customary law, and to invent the theory that they were really based on *lost scriptures or smritis*, something like the theory of *lost documents* in modern law. Hindu Law, far from treating differing peoples and their customs with contempt or intolerance, allowed the same validity for their well-established non-injurious customs of long standing as for scriptural or *sastraic* injunctions. The result of this conception of law was that each caste, *asrama*, family, guild and tract had its own approved customs, which were as valid, in law, as the King's decrees themselves. This recognition of customary law, not only for places, but also for communities, families and *asramas*, saved India from stark oppression and drab uniformity, and enabled the roses, jasmines, *champaks*, lotuses and sunflowers to grow and develop in their own ways, with their peculiar colourings and perfumes.

CLASSIFICATIONS OF JURISPRUDENCE:—Theoretical and Practical. Hindu Jurisprudence, like all other jurisprudence, can be divided into Theoretical Jurisprudence, which is concerned with ultimate and fundamental

principles and conceptions of Law, some of which we have considered briefly, and Practical Jurisprudence, or the consideration and exposition of particular branches of Law, like Contracts, Trusts, Marriage, Adoption etc, which we shall deal with, to some extent, later on.

ETHICAL, HISTORICAL AND ANALYTICAL:—It can also be divided into Ethical Jurisprudence, or the theory of Justice in relation to Law (every one knows that a court of *law* is very different from a court of *justice*, and that the best of its type only approximates to it), Historical Jurisprudence or legal history, and Analytical Jurisprudence whose purpose is to analyse the first principles of Law. We have already dealt, briefly, with ethical and historical jurisprudence. We shall deal as briefly with Analytical Jurisprudence.

ANALYTICAL JURISPRUDENCE:—This deals with the conception of Law, and with International Law, Constitutional Law, the state, the king, Law within the State (Civil, Criminal and Administrative), the Sources of Law, Sovereignty, Administration of Justice in the Courts, classes of legal rights, scientific groupings of classes of cases, and an examination of the main legal conceptions like punishment, property, debts, obligations, contracts, trusts, personality corporation, intention, motive, causation, negligence etc.

HUMAN AND DIVINE:—Finally, Hindu Jurisprudence is divided into Human and divine. Divine Jurisprudence prescribes a way for a man to escape from the effects of all human Law and jurisprudence by being a law unto himself, in the best sense of the term. This is the way prescribed by it. "Everything that depends on others leads to sorrow: everything that depends on oneself alone leads to happiness. The self is one's best friend when it keeps lust, anger and greed under control. It is his worst foe when it does not keep them in control. Be a law unto yourself, oh man,

and have internal order and harmony, instead of depending on the external law of the King, and on the forced peace it gives". Human Jurisprudence is, of course, for the *laukik* (layman) immersed in the world and resorting to the law courts. Divine Jurisprudence is for the *Vaidik* (God-aspirant) not immersed in the world.

This teaching of Divine Jurisprudence is, of course, the result of deep meditation into the powerlessness of earthly laws to steady the wandering mind, or to give it real peace. One has only to watch the percentage of really happy and contented men among the lawyers and judges to realise the force of this. The Hindus had, from the very earliest times of the Rig Veda, a keen appreciation of the vital need for unity and a deep sense of community, among all men, and were not, in the least philosophical anarchists. In the Rigveda, we find this clarion call for unity and community:—"Come together, and speak in harmony! Let your minds be in unison, and, see alike, even as the Gods take their offerings in agreement! Uniform be your deliberation, and uniform the results you achieve, uniform be your mind, and uniform your thought! A common prayer do I utter forth for you, and a common oblation do I offer up for you. Same be your intentions, same be your hearts, same be your minds, so that there may be complete unity among you!"

REASON FOR THE TEACHING OF DIVINE JURISPRUDENCE:—A grander ideal of common weal can never be imagined. But, the Hindu seers said to man, like Christ, "Naked and alone you came into the world. Naked and alone you go out of it." They saw, with their acute spiritual intuition, that the man who wants complete happiness must depend only on himself and his soul (which is God), and not even on his wife and children, let alone the soulless State, and the law administered by the law-courts, where, often, the successful party becomes

cinder, and the unsuccessful party becomes ashes, and every litigation draws a blazing trail of Falsehood, Lust, Anger and Greed after it.

HINDU LEGAL CONCEPTIONS:—Now, let us briefly notice the Hindu conceptions regarding Law, International Law, Constitutional Law, and other topics covered by Analytical Jurisprudence.

SOME SIDE-ISSUES ARISING FROM THE CONCEPTION OF LAW:—We have already seen the very high conception of Law among the Hindus. It is only necessary here to mention four important side-issues arising from it.

JUSTICE, EQUITY AND GOOD CONSCIENCE:—Law meant not merely law, in the narrow sense of the term, but also Justice, Equity and Good Conscience, as will be evident from the very nature of its sources. Yagnavalkya and Narada both emphasise that equity should prevail where two *smriti* texts are in conflict. Narada even says that valid and reasonable custom should be preferred to the sacred law on the ground of equity, since the sacred law is difficult to understand, and valid custom represents the visible path open to men. He also says that courts of law exist only to administer justice, as mud kilns exist only to manufacture fine lime, and that whenever a decree contrary to justice has been issued by a former king, his successor, even a remote one, should revoke or modify that iniquitous decree in accordance with the best principles of justice equity and good conscience. That was an exception to the *Factum Valet* rule which applied only where the settled fact was in consonance with justice, equity and good conscience. Of course, Equity never prevailed over unambiguous Law.

FACTUM VALET:—Facts in consonance with justice, equity and good conscience, and approved by valid custom,

were held to prevail over the *smritis*. "A hundred texts cannot alter a settled fact" was a well known maxim of Hindu Law. But, this would not apply to iniquitous things. Thus, only the father (or, with his consent, the mother) could give away a child in adoption, and not other relatives, so that trafficking in orphans might not be indulged in by relatives and others. Such illegal adoptions will never become valid, even if they have become "settled facts."

EXCEPTIONS RESTRICTED:—Exceptions to law were made real exceptions, and stopped when they threatened to become so general as to swamp the law. That is why the rules of readmission of abducted women and converted men back to caste, after expiatory and purificatory ceremonies were suspended some time after the Muslim invasions, when hordes of women were abducted, and thousands of men were carried away to Afghanistan, Persia and Turkestan, as slaves, and returned after years of life there as Muslims. If they had been re-admitted into caste, the exceptions would have become the rule, and Hindu customs swamped by these persons, and the incentive to resist the aggressor lessened by the hope of re-admission into caste on easy terms. By stiffening the rules, and closing the gates, despite the exhortations of Devala, and the surprised condemnation of Alberuni, the Hindus made a stiff and uncompromising resistance inevitable. Millions were lost to Hinduism thereby, but the remaining millions remained pure Hindus, and not Hindu-Muslim tribes. From the point of view of humanity it may be doubted how far this justified the harsh rules putting a stop to re-admissions to caste; but, from the purely Hindu point of view, of the need for preserving their culture and ideas intact, there may be something to be said in favour of these draconian regulations to meet the grave emergency.

MANDATORY AND RECOMMENDATORY:—The Hindu Law always recognized the distinction between imperative or mandatory directions, and merely recommendatory ones. Thus, the direction of Baudhayana. "Only the father can give the son in adoption, or, with his consent or after his death, the mother" was held to be mandatory or imperative. His rule "But let him not give or receive in adoption an only son, for he must remain to continue the line of his ancestors" was held to be merely recommendatory, since it was not a mere command, but a direction coupled with a reason, and, therefore, recommendatory. The same rule applies in modern England where courts can interfere with a committal to prison by the Speaker of the House of Commons where he gives a reason for it, which they consider to be unsound, but cannot interfere where no reason is given.

QUIBBLERS CAUGHT:—Hindu Law stopped legal subtleties. Thus, a man contended before Bharata, son of Dushyanta, the great King who gave India its name of *Bharata Varsha*, that he would not maintain his blind elder brother, whose estate he had inherited because of that disability, and was prepared to go to Hell, as prescribed in the *smritis*. But the King pointed out that the Law directed him to execute all those who were sure to go to Hell under the *smritis*, so that they might arrive at their destination speedily. Needless to say, the quibbler at once submitted to a decree for reasonable maintenance for his brother.

INTERNATIONAL LAW:—The Hindu Law was, perhaps, one of the earliest to recognise the necessity for international law, both private and public. Clear traces of it are found in the law books, epics and Artha Sastra. Even Greek observers, like Megasthenes, have testified to the scrupulous observance of these rules. Thus, foreigners were allowed to have their own private law in the

Mauryan Empire, and, even when they died, there was a department of Government to deal with their properties and preserve them for their heirs. The laws of war were much more humane than in the 20th century. It was considered a punishable offence for a soldier to attack a non-combatant like a farmer. Now, of course, non-combatants are preferred, only for attacking them first, even from the air with bombs at night, without the least risk to the attacker. The person of an ambassador was sacred, and not even the most insulting ultimatum delivered by him exposed him to the least risk of punishment. Many people are, owing to the absence of really independent Hindu monarchs for the last so many centuries, ignorant of Hindu rules regarding ambassadors, and private and public international law. These rules have been atrophied by lack of use, like the leg of a man stricken with palsy or rheumatism.

INDIA ONE AND INDIVISIBLE:—For the purpose of international law, India was treated as one State which it should be the aim of every Indian king to bring within the ambits of his Empire, as it was considered to be the *chakravartikshetra* or seat of Empire. The ideal of the Hindus was the unity of India, and non-aggression outside it. The *asvamedha*, *Rajasuya* and other sacrifices were encouraged in order that the Hindu kings might try to bring all India under one umbrella. That will explain the advice to every king to make war on the remaining kings in India and make himself the Emperor of India; even Udayana of Vatsa, a small country, was intended by his ministers to be made that by various devices, including a matrimonial alliance with the sister of the King of Magadha. That will also explain why all kings had a *Dig-Vijaya*, or Conquest of India, just as philosophers, like Sankara, Ramanuja and Madhwa, and even wrestlers and athletes had it. This fundamental unity of India, from the Himalayas to Cape Comorin, from Sind to Assam,

was often not realised by foreigners who were deluded by the existence of 56 kingdoms, 12 languages, and various sects and religions in the country, and had not heard of the phrase "*himavat setu paryantam*" (from Himalayas to Cape Comorin) or of the edict of Asoka emphasising the unity of India (*Jambudvīpa*) or of the inscription of Yasodharman, and missed the wood for the trees.

CHAKRAVARTIKSHETRAM:—Kautalya says in his *Arthasastra* "By *Desa* is meant the Earth. In it, the land, extending north to south from the Himalayas to the sea (*himavatsamudrantaram*) and measuring a thousand *yojanas* across, is the *chakravarti's* field of operations (*chakravartikshetram*.) In that land are infinite varieties of forests, villages, mountains, plateaus, plains and well-watered areas. That is the land *par excellence* for an emperor to exercise his power or to increase his prosperity". Many a foreign conqueror too has proved the truth of this.

NO AGGRESSION OUTSIDE INDIA:—Arrian says "A sense of justice prevented any Indian king from attempting conquests beyond the limits of India". Neither Asoka nor Samudragupta attempted to conquer lands beyond India even though they could have easily done so. Even the Cholas, Pandyas, and Cheras described their kings, Karikala, Nedum Cheliyan and Senguttuvan, merely as *Imayavaramban*, or he whose boundary was the Himalayas, the northernmost confines of India. The Chinese appreciated this forbearance on the part of Indians and never attempted to annex India when they invaded it, after Harsha's death, to avenge Arjuna's insult.

MEANING OF INDIAN WARS:—So, "the perpetual wars of conquest between Hindu Kings" referred to by the English historians of India were waged only with the object of restoring the unity of India, and were similar to the wars of Alfred, or to the American Civil War. The

conquest of a *chakravarti* never crushed the local kingdoms or liberties or religion or customs. The Andhras, under Asoka, were powerful rulers with a hundred thousand troops, and many prosperous cities and towns, and perfect local independence, as testified to by Megasthenes and other foreigners.

DHARMAVIJAYA, LOBHA VIJAYA AND ASURAVIJAYA:—This was because the conquest was a *Dharma-vijaya* or a conquest for the increase of *Dharma*, and for mutual benefit. The Hindus knew also about the other forms of conquest, the *lobhavijaya* and the *asuravijaya*, or brutal conquests for one's own profit, so familiar from Attila's days to today, when a land is subjugated and exploited by a conqueror for his own selfish profit, uprooting the former rulers, and making the people a subject race.

INTERNATIONAL RELATIONS:—Kautalya has several chapters in his Arthashastra about international relations. The six policies pursued by States were, according to him, War, Peace, Absolute Neutrality, Non-belligerency (what he calls preparing for war, but not declaring it just then, as the preparations are not complete), Alliances (like the Triple Alliance and Triple Entente) in anticipation of War, and War with one belligerent but peace with another (like Russia's war against Germany, and peace with Japan). He knew well about war with ultimatum, sudden invasion without ultimatum or declaration of war, occupation of a country in self-protection, and even for its own protection without its request. All forms of war, including wars with disease germs of tuberculosis, leprosy etc, and with poison gas and madness-producing drugs were known to this master politician of twenty two centuries ago. There were elaborate rules of War well known to all and observed by all except the Huns, Sakas, Murundas, Turushkas and other foreigners who broke them till

they got assimilated with the Hindus and began to observe them thereafter.

CONSTITUTIONAL LAW. KING, TRUSTEE FOR THE PEOPLE:—The King, under the Hindu constitutional law, was only a trustee for the people, a *Dharma Pravarthaka*, the supreme executive officer of the law, and was not above it, as theoretically in England, where the King can do no wrong. This was not merely a pious sentiment. It was intended to be, and was, often, carried into practice. Kautalya has written in his *Arthashastra*:—"A king should consider that which is dear to his subjects as dear to him, and should avoid what they do not like. Their happiness he should count as his happiness, and their welfare as his. He should never consider for a moment his own happiness or desires". This applied even to marriage and other purely private affairs.

REGICIDES:—"We have heard how many kings have been killed by their enraged subjects" says Kautalya. This was no fancy or invention of his. Hindu lawgivers allowed the subjects to rebel against unjust or oppressive or unrighteous kings. First non-co-operation, and, then armed rebellion, were recommended. In the latter contingency, the king could be killed like a mad dog (*Mahabharata*). The last Mauryan King, Brihadratha, and the last Sunga King, Devabhumi, were killed in this fashion. The tyrant Vena was dragged by his hair and beheaded by his enraged subjects, although he waxed eloquent about the divinity in him, and about the divine right of kings. This was centuries before the execution of Charles I. The Jatakas speak of the killing of one king by his subjects for instigating a thief, and of another for bringing about a famine in the land by his acts of commission and omission.

MEMBERS OF ROYAL FAMILIES NOT IMMUNE:—Needless to say, members of the royal family were as

liable to be punished as any the meanest commoner. Asoka had his Queen, Tishyarakshita, executed for her murderous activities against Kunala. The Chola King, *Manuneetikandacholan*, had his son crushed under chariot wheels for culpably running over a calf. Sivaji had his son, Sambhaji, imprisoned for outraging the modesty of a woman. When people talk of the autocracy of the ancient Hindu Kings, they show a deplorable ignorance of Hindu Law, custom and practice. Kalidasa and Bhavabhuti asked the Kings to act according to the wishes of their subjects. So did Vasishta and Viswamitra. Sri Rama abandoned Sita, whom he loved like his own self, in deference to a supposed desire of his subjects.

STATE COUNCIL :—No King was allowed to rule by himself, like Henry VIII or Louis XIV. Every monarch had to have a Council of Ministers, 10 or 16 or 32 or 48, or even 500, in number, according to the circumstances. Chanakya said that a single wheel could never drag a chariot, or a King rule a State by himself. Often, there were three concentric rings of ministers, the widest corresponding to Privy Councillors, the middlemost corresponding to Cabinets, and the innermost to inner Cabinets.

A KING MAKES HIS TIMES:—The king, by his good or bad rule, was held to make the times good or bad; *Raja kalasya karanam*. Thus, Rama, though he lived in *Treta yuga* (silver age) made it into *Krita yuga* (golden age) by his model rule.

THE KING, A SERVANT OF HIS PEOPLE :—The King was held to be a servant of the people. The taxes they gave were considered to be his wages. He had to work as hard as any of his subjects. Kautilya has said “The King shall never cause his petitioners to wait at the door, or make himself inaccessible. He shall personally attend to matters relating to Gods, Brahmins, cattle, sacred places, the aged, the afflicted, the helpless, and women. He shall

also attend personally to the national calamities, which are eight in number, *viz.*, famine, floods, pestilential diseases, demons, fires, rats, serpents and tigers." Even, to-day, in India, the last five have been inadequately attended to by the State. Though there are at least a thousand million rats and a hundred million serpents in this country, there has been no State action against them on an organised and concerted basis. Again, this great statesman has remarked. "The whole world revolves on the belly. *Danda Neethi*, or the science of government, with rewards for the virtuous, and punishments for the criminals, is essential to safeguard the Vedas, civilized life and salvation itself. The progress of the world depends on good government. Punishment is necessary so long as man is man. When this is allowed to go into abeyance, the law of the fish or *Matsyanyaya* will prevail, and the strong will swallow the weak." His great insight in this matter was, of course, due to the fact that he was the supreme Judge of administrative law, whereas the writers of the Dharma Sastras were lawyers dealing with religious and secular law on a theoretical basis.

LAW WITHIN THE STATE:—*Dharma* or Law was considered to be "the king of kings", as emanating from God Himself, and was intended to be so administered by the King that his only son and his worst enemy would receive exactly the same kind of treatment in his courts. Courts and Judges were asked to cater to the welfare of all created things and to keep in mind that the priests and philosophers (Brahmins), nobles and warriors (Kshatriyas), traders and landlords (Vaisyas), and peasants and workers (Sudras) were all to have their respective interests protected. These four castes, or main divisions in the population, were called the "*chaturhita*", the four whose welfare was specially to be catered to by the law. The three sources of litigation (*triyoni*) were held to be Lust, Anger and Greed. The four legs of the Law (*chatuspada*)

were held to be Law, Procedure, Evidence and Judgment. The four necessary factors for Judgment (*chatussadhana*) were rightly held to be the plaintiff or complainant, the defendant or accused, the witnesses, and the judge and assessors who, of course, went together. The four modes of disposal of suits (*chatussthanam*) were said to be compromise by amicable settlement between the parties themselves, settlement by arbitrators or panchayatdars of the locality, judgments of courts, and settlement by ordeals and special oaths allowed by the king's ordinances to decide the matter. The eight things necessary for a law court (*Ashtanga*) were held to be the King, the Judges, the Assessors, the law books, the court clerk, an astrologer (to decide the time of oaths and executions), gold (for the special oath on gold, and for the necessary expenses, as now, for court fees, batta, vakil's fees etc), and water and fire, for the ordeals whenever they were needed. The four things likely to be affected by litigation (*chatushkari*) were held to be Property, Reputation, peace of mind, and Character. This is true for all time. Wilkes made his reputation by litigation, and Parnell lost it. Many a man loses his character by succumbing to the temptation to utter a lie in suits. Countless persons lose their peace of mind by litigation. Property is gained or lost every day in cases.

TRAINED JUDGES AND FIXED AND ITINERANT COURTS:—From the earliest historic times, the Hindus had trained judges and itinerant courts in addition to the caste, guild, village and other panchayat courts, which consisted of laymen of various castes who heard the parties at the very place where the disputes arose and decided them on the spot, in a rough and ready fashion, and in a way which cannot be said to have been unsatisfactory. These panchayat courts had the great advantage that fewer lies were uttered before them, as

many of the judges knew the witnesses and their credibility better than the more distant King's Judges, and as witnesses would be chary of speaking lies nearer home, lest they should lose all credit in their own circles.

The stationary judges sat in Benches in towns, whether capital towns, or District Headquarters or frontier places. The higher judiciary was expected to go round the country *incognito*, and hear the free opinions of people about the administration of justice. Even the King, the highest judge, was expected to do this.

MIXED COURTS:—Here, we come to another great contribution of Hindu Law to world jurisprudence, namely, the combination of law and administrative law. It was felt in England, at the beginning of the 19th century, that justice was not efficient in some branches, owing to the absence of administrative courts, or *droit administratif*, as in France. And the defect was remedied by vesting various executive officers with judicial functions, and making their decisions final, a thing which a Lord Chief Justice of England has called the "New Despotism", forgetting, perhaps, the "Old Despotism" of legalists. Kautilya says that in the chief towns, districts, provinces and frontier towns, three members acquainted with the Dharma Sastras, called *Dharmasthas*, and three ministers of the King, called *Amatyas*, should sit jointly and carry on the administration of justice. It is something like the Board of Revenue sitting with the High Court, or the Collector with the District Judge, and is, certainly, a very progressive idea far in advance of the times, and eminently suited to a complex and modern civilization. A mere Judge, without executive or administrative experience, may not know about survey, landmarks, crops, manures or weapons, knowledge which his administrative brother could supply easily. On the other hand, an administrative officer may miss the wood for the trees,

and fail to grasp the essential purpose of law and justice in his attempt to solve the immediate problems; his judicial brother will be able to remedy this defect.

JUDGES :—Judges, whether judicial or administrative, were expected, under the Hindu Law, to deliver their own independent and impartial judgments. No king dared to punish a Judge who was known for his probity, however unpalatable his judgment might be. As Justice Cat observed, in the Panchatantra, "He, who, from either pride or avarice or anger or prejudice or fear, decides a case wrongly or unjustly, goes to hell." And this was no mere ideal. Ram Sastri, Maryada Rama and others show that this ideal was translated into practice.

OBITER :—Judges were encouraged to deliver weighty *obiter dicta* and to narrate stories in courts for the delectation of litigants, and to point out many a moral and to rub it in with a suitable parable. Courts were not in those days mere resorts of black-robed lawyers and warring litigants alone, but were attended by the masses for their delectation, instruction and improvement. Thus, there was a close assimilation of courts to the other national institutions, like choultries, temples, fairs, festivals and palaces, instead of making courts stand out, with jails, as houses of correction, forbidding and dreaded.

DUTY TO FIND OUT THE TRUTH BY THEIR OWN TESTS :—Hindu Law did not allow the judges to escape responsibility by stating that there was no evidence before them to come to a decision, or to accept the false evidence of witnesses examined before them on the ground that there was no evidence *contra*. They were empowered, and were indeed obliged, to apply tests of their own, like the Bodhisatva's giving an emetic to see which dog had really eaten up the carriage fittings of Brahmadatta of Benares and had merited punishment, or Maryada Rama's trapping the thief of two pearls by giving him 98 similar

pearls, telling him that they were 100, and making him give up the two pearls out of fear that he had been really given a hundred and had lost two.

BENCHES :—The Hindus seem to have been the first to think of Judges sitting in Benches, and not singly, doubtless copying the practice in the age-old Panchayat Courts. They also allowed Judges to try all cases from murders to thefts and criminal misappropriations, from disputes about inheritance and adoption to suits for damages against washermen's guilds for loss of colour and sheen caused by washing.

QUALIFICATIONS OF JUDGES : " A judge should be learned, wise, eloquent, impartial and dispassionate. He should have, above all, sterling commonsense and infinite resource (*buddhi* and *yukti*). He should pronounce judgment only after due deliberation and after a proper and thorough enquiry. He should be a guardian of the weak, a terror to the wicked. He should covet nothing, not even fame or popularity, and he should have only one pre-occupation in his mind, namely, how to find out the truth and to render justice with equity " says the *Mrichchhakatika*, giving the Hindu conception of what a judge should be.

THE CHIEF JUSTICE :—He was expected to be fully acquainted with all the eighteen branches of law and the eight thousand subdivisions thereof, and to be absolutely fearless, and as calm as a sage, according to Narada.

JUDGES TOO PUNISHED :—Judges too were punished for brow-beating witnesses, sending parties out of court without reason, abusing or insulting the parties or their witnesses in open court, failing to ask necessary court questions, asking irrelevant and insulting questions, tutoring or prompting a witness, settling wrong and misleading issues, and taking up once more, unauthorizedly, cases already disposed of. A judge inflicting an unjust sentence

of whipping, from private spite, was himself whipped. One imposing an unjust fine, from spite, was made to pay double the fine. The Chief Justice dealt with the misdeeds of judges, and the judges with those of the bench clerks.

APPOINTMENT & DISMISSAL:—The King used to appoint the Judges, but he was expected to choose only those possessing the necessary qualifications. They held office during good behaviour. The King had the power to dismiss them for proved misconduct.

PROTECTOR OF LITIGANTS:—One curious officer in ancient Hindu courts was called *Sadhyapala* or Protector of Litigants. He used to protect the complainant, the plaintiff, the defendant, the accused and the witnesses from all kinds of threats and undue influence, in order to enable them to speak the truth in the courts without fear. Even in modern India, such an officer may be of some use, as cases of terrorising or intimidating witnesses are not unknown. In ancient times, the need was far greater. Justice used to be defeated in England till the days of the Tudors and the Star Chamber for the lack of such an official.

PUNISHMENT:—The Hindu sages laid the greatest emphasis on the proper award of punishments, "Even saints and ascetics will rise in revolt if the punishments awarded are unjust, or if the guilty escape punishment, or if the innocent are punished. Unduly harsh punishments make a regime repulsive, unduly lenient punishments make it contemptible, while proper punishments make it respected" says Kautilya.

THEORY OF PUNISHMENT:—The Hindu theory of punishment was based on reformatory, preventive, deterrent and, in the last resort, vindictive principles. The general formula was *sama* (good advice, and, in the more serious

cases, admonition), *dana* (a little gift, in suitable cases, in order to wean from crime), *bheda* (non-co-operation, outcasting, segregation etc), and *danda* (punishment of a severe nature). In all the *smritis*, there is a mixture of spiritual and worldly punishments. Expiation is done in two ways, namely, by undergoing punishment at the hands of the king, as *punishment purifies*, and by performing the prescribed penances except where penances cannot be prescribed owing to the gravity of the crime. For petty thefts, Manu's rule is this:—"For the first offence, serious words of advice will do. For the second, an admonition may be administered. For the third, a fine may be imposed. For the fourth, imprisonment, whipping and other serious punishments may be inflicted". Our modern penal code has advanced only to admonitions, and that too in recent years. In England, till the 19th century reform of the Penal Code, petty thefts were punishable with death, and many a wretch was hanged for stealing property worth above twelve pence, and the saying "Better be hanged for stealing a whole sheep than for stealing a leg" came into vogue.

KINDS OF PUNISHMENTS:—The punishments in Hindu Law included death with torture, death without torture, mutilation, imprisonment, exile, expulsion from caste, whipping, branding, painful shaving with bricks, shaving for disgrace, fines and admonitions.

DEATH:—Death with torture was the usual punishment for treason, murder, incendiarism of dwelling houses, breach of irrigation sources, rapes and other grave crimes. A man caught in the act of setting fire to a dwelling house was thrown into that very fire, and burnt to death, if a judge happened to be present and could try and convict him then and there. So too, a man breaching an irrigation source full of water, if caught red-handed by a judge on his rounds, and convicted and sentenced on the

spot, was put into the very tank or lake, and drowned. A Brahman traitor was drowned to death, instead of being burnt alive, in order to punish him more severely by depriving him even of cremation ceremonies and thus, imperilling his soul's salvation. Tearing to pieces by bulls and trampling to death by elephants were punishments awarded in extreme cases like human sacrifice.

Death without torture was awarded for stealing herds of cattle, and also where a man dealt a wound to another and that other died in seven days.

MUTILATION:—Mutilation was awarded for grievous hurt, adultery, insult of King, etc. A curious case of the application of Hammurabi's law was that a man who castrated another was himself castrated on conviction.

IMPRISONMENT:—Imprisonment was awarded for a comparatively small number of offences; death, mutilation, whipping, branding etc were the punishments in most of the cases where imprisonment is ordered now.

FINES:—Fines were very common, the State taking a share, and the injured person the rest. A text about minor crimes says "The rich criminals are to be heavily fined, the poor put in chains, and the wicked whipped." By the "wicked" are meant people who outrage women's modesty, obscenely abuse respectable men, etc, and the term will, of course, include the rich and poor alike.

SHAVING WITH BRICKS:—Shaving the head with bricks was awarded for imposters who pretended to be gods or saints, and cheated people.

SHAVING FOR DISGRACE:—Shaving for disgrace was awarded to drunkards, obscene fellows, charlatans, braggarts etc., whose heads were shaved clean and a lump of cow-dung put on their heads and they seated on donkeys, their faces set towards the donkey's tail, and they were

paraded round the town amidst the jeers of the mob. Such a punishment was awarded to a musician, sent by the Bahmani king to make a demand from the Vijayaragar Treasury; this caused a war costing thousands of lives.

BRIBE-TAKERS' PUNISHMENT:—A bribe-taker was made to put his shoes on his head and go round the village where he held office, crying out "Never more will I take a bribe, ye gods and men!" A magistrate in Nepal was recently made to go round his court-house like this, and resigned his job as soon as the interesting act of expiation was over, and left Nepal for good, unable to bear the ignominy.

PUNISHMENT FOR SUICIDE:—One funny thing in our Penal Code is that the offence of attempt at suicide is punishable, but not the completed act. This is the only exception of the kind. In Hindu Law, a completed suicide was also punishable. The corpse was dragged along the streets by low-caste men, as a warning to all men, and was denied cremation and funeral ceremonies, and the soul was supposed to go to a world of eternal darkness. Readers will remember how the corpses of suicides were denied funeral ceremonies and a Christian burial by the Christian church also, and were buried at the cross-roads with a stake driven into them.

PUNISHMENT TO SUIT THE CRIMINAL :—People were punished differently for the same offence, according to their age, sex, caste etc. Minors were never punished. Pregnant women, and women who had delivered a child recently were exempted from the death sentence and torture. The same was the case with old men. The upper castes were mostly exempt from whipping as they were considered to be sensitive enough to react to lesser punishments. So too, men were punished twice as much as women for most of the offences mentioned by Kautilya

in his Artha Sastra, the reason being, of course, that women, by themselves, would not have committed those crimes in many of the cases, and that men must have been behind those crimes.

PUNISHMENTS TO SUIT THE ACTS:—Again, the same act would be viewed differently according to the circumstances. Thus, an unattended elephant goring an innocent passer-by rendered its negligent owner liable to twice the punishment which would have been awarded if his mahout was present and had tried his best to prevent the deed. A passer-by wantonly provoking an unattended elephant, and getting gored by it fatally, was expected, out of his assets, to provide a sufficient quantity of cloth for wiping the tusks of the elephant clean, and to offer drinks and refreshments to the elephant for the unnecessary exertion caused to it by him! A man committing adultery with an ordinary woman was punished by mutilation of the offending parts, or by branding on the forehead with a repugnant figure. But, a man who committed adultery with the Queen of the land would be boiled alive in a pot (*kumbhipakam*). This difference in punishment is not so unique as it seems, for, even to-day, under the English Law, adultery with the Queen is high treason, punishable with death, whereas adultery with an ordinary woman is not at all punishable. The object of this discrimination is to see that the people do not get a bastard to rule over them, and that the purity of the “sacred” blood of Kings is ensured.

COLLECTIVE PUNISHMENT:—There was also a spirit of collective responsibility for crimes and murders, making for a much more social and humane aspect of the law. Even in the Chola country, in the Far South, the rule of Hindu Law was that a village headmen or the whole village community should make good to a person the value of the articles stolen or robbed from him within the

area, and give compensation to the relatives and dependants of persons murdered or maimed within their limits. That was the law all over India, from the extreme North (see the *Arthasastra*) to the Tamil South. This collective responsibility, naturally, led to a diminution in crime. It is the general absence of this collective responsibility in modern times that is responsible for the apathy of even educated men regarding crimes committed on others. A funny instance comes from olden days, of two respectable village officers carrying, at dead of night, the corpse of a person murdered within their limits to another village, in order to save themselves and their villagers from paying the compensation amount! These worthies were detected in the very act, and the village was, according to the Hindu rule, of punishment suiting the crime, fined *four times* the usual amount. Asoka sequestered the inams of the village officers of Usagrama till the loss of grain in the Government village granary, caused by rats due to their negligence, was made good from the income thereof. Even in modern times, when crimes become rampant, punitive taxes are levied, and punitive police stationed, following this ancient principle of Hindu Law. Only, since the principle has not been followed from day to day, it appears in a particularly oppressive form in these instances, like a man, who eats things without discrimination every day, being forced to take castor oil to clear his system when it gets too rotten.

EMPHASIS ON REWARDS TOO:—One remarkable thing about the Hindu Law was that it relied on rewards for good conduct, equally with punishments for bad conduct, to maintain righteousness in the land. This of course, is not also unknown to modern law. Instances in point are money rewards and certificates given by the police to people who help them in the detection of crime, and titles awarded to deserving persons. Here, too, the Hindu Law believed in the collective principle. Thus, all the people of Lumbini-

grama (Rumrindei) had one eighth of their taxes remitted permanently by the Emperor Asoka, because the village gave to the world a Buddha.

CONVICTIONS AND ACQUITTALS :—As regards the principle regulating convictions and acquittals, the Hindu Law was not a whit behind the most modern ideas. The King would go to Hell, according to the *sastras*, if he punished an innocent man, or allowed a guilty man to escape unpunished. To prevent this catastrophe, he was directed to fast for ONE day if a guilty man escaped unpunished, and to fast for THREE days, and also to make offerings to God Varuna in expiation, if an innocent man was convicted. This is certainly a sounder idea than the old rule of Roman and British Law "Better that ten guilty escape than one innocent be convicted", which rule does not punish the King and the Government for allowing the guilty person to escape punishment.

PRIVATE DEFENCE :—Hindu Law allowed very wide powers of private defence of person and property. It permitted a man even to inflict death on a felon (*atatayin*). A felon was one who set fire to another's house, or poisoned another's food, or rushed on another, sword or dagger in hand, with intent to kill; or attempted to take by force another's wife, or land, or property. People who tried to cut open an irrigation source or to burn food crops could also be summarily dealt with. Of course, the right had to be exercised, as now, with strict reference to the needs of the situation, any excess being dealt with as a minor crime.

SOVEREIGNTY ONLY WITH GOD, BUT DELEGATED TO KING AND PEOPLE :—Sovereignty, under the Hindu Law, lay finally with God, but was delegated to the King (*Na Vishnu prithvipathi*: there is no King who is not God) and to the people (*Iti Sarvam praja*: The people are

God. Compare : 'The voice of the people is the voice of God'). The King was a servant of the people, according to the *Mahabharata*, the *Sukraniti* and the Buddhist Aryadeva, receiving a portion of the taxes as his wages (*Svabagabhritya dasayitve prajanam cha nripa kritah* ; The King was created as the servant of the people by being given a portion of the taxes as his wages : *Sukraniti*, "What conceit is this, oh King, so ill-befitting a servant of the people, receiving from them your wages?" Aryadeva). It was a settled principle of Hindu Law that the final sovereignty and ultimate sanction were with God, and that evil-doers who escaped punishment here would be indicted before Yama by Chitraputra or Chitrakupta, the dread knower and recorder of every human act, and terribly punished, and that persons unjustly punished would also be suitably compensated in Heaven. That is why criminals were exhorted to surrender themselves to justice and get punished here alone, instead of getting it with compound interest over there. That is why it was laid down that no one should be punished on mere suspicion, but only on conclusively satisfactory evidence, and that wrong judgments should be set aside even at the last moment. The King had to keep his coronation oath and punish all evil-doers, and compensate the victims of thefts etc in order to save himself from the divine sanction in the other world ; and many a King, like Rudradaman, claimed in his inscriptions that he was true to his coronation oath, so that the people, the other delegates of God, might examine the claim and challenge it, if false, and bring the defects to his notice, or bear witness, to his keeping the pledge, in the other world.

LAWYERS:—The origin of this tribe in Hindu Law was as humble as that of the rivers at their source. The *Niyogakrt* or *Agent* or *Mukhtar* was allowed to represent a woman who would not usually appear in courts, or a sick man who was unable to appear, or a lunatic who

would be unable to plead, or a King or prince who was exempted from appearing. Once a representative (*pratinidhi*) was allowed, every one who could afford it went in for a representative, and a trained and able class arose, and even those who were unable to engage them claimed that the State should provide them for them, the origin of counsel engaged by the Crown for undefended accused in murder cases.

LEGAL FICTION:—This too was not unknown to Hindu Law, though not a prominent feature of it. Thus, as already stated, a cocoanut and a coin did service for a cow by applying the *pratinidhi* doctrine, and even lawyers had their origin thus, they being wholly identified with their clients like the lawyer who was appearing for a widow, saying "I am a widow, your honour" meaning that his client was a widow! Ceremonies were reduced for women, Sudras, the very young, the very old, the sick, soldiers in camp, persons attending marriages, festivals and funerals, and those living in times of revolution (*desa viplava*), by applying the *Yuga dharma* doctrine. An adopted son was taken, by legal fiction, to be one's own son, and was bodily uprooted from his natural family and grafted on to his adopted family, though, of course, he was, often, only like a neighbour's cow eating our fodder but reserving its milk for the neighbour. Another instance of legal fiction was the justification of longstanding valid custom by the theory of *lost* or *concealed Vedic texts*. Many Hindus will be surprised at this, as the best-preserved books in the world, remembered for at least four thousand years without the loss of a single syllable, are the Vedas, and yet the lawgivers considered that portions of the Vedas might have been lost or missed *before they began to be systematically memorised and remembered!* And, how can we say that they were wrong, when we remember the *additions* (so, there must be *omissions* also) to the Rig Veda?

ALL SMRITIS OF EQUAL AUTHORITY :—All *smritis* were treated as equal in authority, no preference being given to *ancient* ones or *recent* ones, but all judged purely on their own merits. Only the Vedas, the words of God, were supreme, and, even here, the theory of lost or concealed vedic texts gave the law some elasticity making for healthy growth. This was, of course, because sages, the authors of the *smritis*, would be many, and would be springing up in every age, like the annual fruits in a mango tree. And, of course, the quality of the fruits each year would not follow any *chronological order*.

PRACTICE PREFERRED TO PREACHING :—Manu said that the sons should divide the aucestral properties equally, but with an extra share for the eldest (*jyeshtabhagam*) because he was saddled with the *sraddhas* of his parents, and an extra share for the youngest, because he had not received as much tending from his parents as his elder brothers. But, as he had only two sons, one of whom would, of course, be the eldest and the other the youngest, he divided his properties equally between them, exercising the father's right to partition the properties. Promptly, Yagnavalkya, who hated the iniquity of the extra shares, and the injustice to the middle ones, declared that property should be divided *equally between all the sons*, as Manu had actually done so, despite his writings to the contrary, and had shown his change of view by this act of *sadachara*! Of course, he did not dwell on Manu's having *only two sons*. Grabbing the opportunity of getting rid of the iniquity, and of fixing the new rule of better justice, the *Agnipurana* declared that *jyeshtabhagam* was abolished in the *Kali age* along with beef-eating, widow remarriage, *niyoga* and asking for alms. The priests at once said that all the sons, and not merely the eldest one, should perform the *sraddhas* of the parents.

TRENCHANT CRITICISM:—The most trenchant criticism was allowed even regarding *smritis*. Thus, Sabara says

with regard to the rule in *Baudhayana*, that a man should not marry before forty, and should be a celibate (*brahmachari*) till then, "This is evidently an interpolation by some impotent fellow who wanted to conceal his impotency by prescribing this rule for all, and to take a vicarious revenge on humanity for his incurable defect!". So too, regarding the prescription in a *smriti* about the merit of giving the food cooked at sacrifices to priests, and the clothes worn at sacrifices to the officiating priests, he says, "These rules were only introduced by greedy priests, and have no scriptural sanction." This is reminiscent of the atheist Charvaka's famous aphorism "The Vedas were written by fools, knaves and idiots, as many parts are of them are silly, many rascally, and many un-understandable." Of course, Sabara would have allowed Charvaka, to be torn to pieces by wild bulls (the punishment prescribed) for his deliberate impiety towards the Vedas, which were above criticism according to Hindus. But even Manu, Yagnavalkya and others recognised the heretical customs of Buddhist and Jains, who ignored the Vedas, as valid. Scurrilous attacks by them on the Vedas, however, would have been punished even by Buddhist and Jain monarchs, just as the British Government will punish them.

If some copies of *smritis* omitted a passage, that passage was held to be of no authority unless supported by the Vedas or other *smritis* or valid custom.

LEGAL RIGHTS IN HINDU LAW :—Hindu Law laid more emphasis on *Duties* than on *Rights*. A duty is an obligatory act, the opposite of which is a wrong, which is only the breach of a duty. A right is an interest recognised and protected by a rule of right. It is any interest respect for which is a duty, and disregard of which is a wrong.

BENEFIT TO MANKIND THE TEST FOR LEGAL RIGHTS AND DUTIES :—Though *Dharma* was for the

welfare of all created beings, and for the good of the Universe (*sarvabhootahiterata* and *lokasangraha*), Hindu Law too recognised that the rights and duties of the lower animals could only be secured by rights and duties imposed on men. It was man who was asked not to injure harmless animals, like squirrels and cuckoos, or to cut down fruit trees, or trees affording shade, and it was he who was saddled with the rights and duties, and not the animals and trees. So, in Hindu Law too, all that is right or wrong, just or unjust, is so by reason of its effects upon the interests of mankind. If any act is right or just, it is because it is held to promote the interests of mankind. If any act is wrong or unjust, it is because the interests of men are held to be prejudicially affected by it, whether here below, or in the next world. That is why the *Mimamsa* (Logical reasoning out of rules) says “*Dharma* is that duty which is signified by a direction, and results in a benefit to *man*.”

MORAL AND LEGAL RIGHTS:—Even though Hindu Law made many duties which are now mere *moral* duties also *legal* (like the rule not to give a Brahman food prohibited by his caste rules, or the rule asking a man to perform the *sraddhas* of his parents), even it recognises the difference between moral duties and legal duties. Thus, it is a *moral* duty to feed the hungry stranger coming to one's house and asking for food, but it was *not made a legal one*, enforceable by law. It was however, a *legal* duty to feed a virtuous wife and infant son, and this was enforced even by sending the defaulter to jail. It was *both a moral and legal duty* not to steal the property of another.

PRIMARY AND SANCTIONING RIGHTS:—In Hindu Law, too, there were primary and sanctioning rights. Thus, the right to have one's tree and fruit was a primary one, and would be enforced by specific delivery of the very things, if possible. But, where the tree is cut, or the

fruits are eaten, by the malefactor, only the sanctioning right accrues, namely, the right to a money compensation in lieu of the things which could not be restored. So too, a man has a primary right not to be abused obscenely, and not to be beaten. But, if, in spite of this, he is abused or beaten, he can only resort to the sanctioning right of getting compensation for his outraged feelings by getting his assailant punished corporally or fined, and by getting some monetary solatium for himself also sometimes.

OBJECTS OF RIGHTS AND DUTIES:—These were, needless to say, as now, one's own person, one's own reputation, one's domestic relations, one's property in the shape of material things, immaterial properties like easements, membership of clubs or guilds, etc, the right to serve and be served, and miscellaneous matters, like the right to God's light, air, fire, water and worship *free*.

KINDS OF LEGAL RIGHTS:—As usual, these comprised *rights proper*, namely, what others must do for us (like the right to have our cases heard by a judge, or our right to be maintained by those bound to do so), mere *liberties*, that is, our freedom to do for ourselves what is allowable under the law, (like worshipping God in our own way, or choosing our own friends or guests), and *powers*, that is, exercise of our legal capacities to the detriment of others, (like expelling a thief from our house, or asking a visitor not to enter our house).

MINOR CRIMES, TORTS, BREACHES OF CONTRACT, NUISANCE CASES AND MISCELLANEOUS CASES JUMBLED TOGETHER:—As might be expected, considering the antiquity of Hindu Law, minor crimes, torts, breaches of trust, breaches of contract, nuisance cases, and miscellaneous cases of failure of social, economic or moral duty were all jumbled together and dealt with by imposing fines ranging from six rupees to two thousand rupees, according to the circumstances of each. The following are among

the numerous cases dealt with by fines named in the *Artha sastra* of Kautilya :—false information deliberately given by spies ; neglect to maintain one's dependants ; killing an elephant ; passing off spurious things as precious stones ; causing loss of revenue to government ; not preparing government or public accounts ; not checking the accounts and discovering defalcations ; fabricating accounts ; lies by ministers relating to their administration ; not enforcing the King's orders ; misappropriation of revenues ; false accusation of a government servant ; neglect of duty ; miserliness in rich men ; extravagance in poor men ; carelessness in the manufacture of coins ; manufacturing counterfeit coins ; passing off counterfeit coins ; falsely recommending the acceptance of counterfeit coins ; evading the sales tax on goods ; adulteration of salt ; manufacturing salt without license ; entering the mint without permission ; neglect of work by artisans ; manufacture or sale of gold and silver articles outside the licensed premises ; deceit in sale of such articles ; using unstamped weights and measures ; selling at more than the market rates ; passing off inferior articles as superior articles of known fame ; smuggling ; evading tolls ; importing forbidden things ; purchasing things direct from gardens and farms, instead of from the town markets, by townsmen ; not doing the work paid for ; adultery ; theft in weaving factories ; manufacture of illicit liquor ; carpenters not doing work when asked ; trespassing into forests and removing forest produce ; killing or molesting harmless beasts like bulls, swans, cuckoos, squirrels etc ; using false weights ; abducting or outraging a prostitute ; wading across a river at a ferry, in order to evade the boatman's dues ; milking a cow more than twice a day ; letting bulls fight ; a groom riding a horse against his master's orders ; carelessness of veterinary doctors treating elephants and horses ; carelessness of grooms and cowherds in looking after horses and cattle ; travelling without a passport ; carelessly rearing an elephant and starving it ; not repor-

ting the arrival or departure of strangers at choultries, toddy shops, brothels etc; making a fire in forbidden places; not keeping materials in a house to extinguish a fire; causing outbreak of a fire in inhabited places by carelessness; not helping in putting out a fire in one's own street; throwing dirt in the street; committing a nuisance in the street; throwing dead bodies of animals like rats, and bandicoots in the streets; taking a corpse through a forbidden road; cremating a corpse in an unauthorised place; going armed inside the city, after dark, without lawful excuse; neglect of duty by watchman; failure by watchman to report about suspicious characters; moving in palace grounds without permit; false oaths and promises; entering into agreements in fraud of others; entering knowingly into invalid agreements; making false complaints to those in authority; disobedience of husband's orders; abuse by a prostitute of passers-by or paramours; taking another's wife to one's house without her husband's permission; a woman not helping another woman in the house at childbirth; illegal remarriage; failure to have a latrine and drain in a house; neglecting the drains; damaging a neighbour's drains; a tenant not clearing out of a rented house when requested by the owner, after the expiry of the lease: an owner expelling a tenant out of a rented house by force; obstructing a co-owner from enjoyment of common property; walking or riding over crops; grazing crops by cattle; destroying boundary marks or placing them in another position; bidding at a sale of goods knowing that the owner is not present, and has not authorised the sale; an auctioneer selling goods without permission, or selling fraudulently to one who is not the highest bidder; obstructing a road or waterway or sluice or gate used by the public; trespassing on another's field; mortgaging arable lands to non-agriculturists; allowing cattle to stray about unattended; outcasting people unjustly; a Brahman selling or mortgaging *Brahmadaya* lands to Non-Brahmans; hurting cattle; refusing to do

work agreed to; refusing to join in *kudimaramat* work of a communal nature; charging more than the authorised rate of interest; claiming more than the sum lent with correct interest; a creditor refusing to receive his debt when tendered; a debtor running away when the debt is demanded; perjury in courts; misappropriating a pledged article; not returning a pledged article fraudulently; making an Aryan a slave; defrauding a slave of his wages; outraging a slave; selling a pregnant slave without making provision for the expenses of her safe confinement; keeping a slave in chains unnecessarily; refusing to free a slave on being tendered the ransom fixed; failure to pay wages; misappropriating wages by a foreman; postponing work agreed to; not taking the proper work from a labourer one is engaged to supervise; a trade guild inducing a workman not to do his agreed work, or to take away anything from the premises to which he is not entitled; a workman deserting his guild; a merchant refusing to deliver the article sold; a tax-collector or carrier allowing things to rot by his negligent delay; giving a girl in marriage without revealing her blemishes; concealing a bridegroom's blemishes; selling diseased cattle; receiving bribes; agreeing to beat a man for hire; insulting the king; running away with stolen property innocently purchased when the theft is proclaimed later on; claiming lost property not one's own; taking a valuable thing on the road and appropriating it for oneself without telling the authorities; abuse; assault; false imprisonment; releasing persons from prison by false stories of the king's orders; causing a man to fall down in order to enjoy the fun; slander and libel; harbouring thieves and robbers; throwing a cobra or scorpion or poison or other deleterious thing into another's house or garden; beating another's beast, or even one's own, without reason; cutting a fruit tree without reason; gambling or drinking outside the licensed premises; intimidating another; cheating at gambling; failure to return hired things; paying less than the prescribed ferry charges in

a crowd, with intent to cheat ; lingering under the shade of an avenue tree more than necessary, and with intent to gaze at passers-by or into neighbouring premises ; cheating at dice ; causing an affray ; not returning a deposit ; a *Chandala* touching an Aryan lady ; not going to the rescue of one attacked in the street or highroad ; running without cause, in order to bring about panic among the people ; inviting unauthorised persons for religious ceremonies ; trial by an unauthorised person ; castration of cattle ; castration of men ; abortion ; causing by one's poison tongue or pen a husband and wife, or father and son, or brother and brother to quarrel ; stirring up communal troubles by false stories ; abandoning a helpless person given to one's care ; deserting a fellow-traveller in a forest or other dangerous place ; deceit in spinning or weaving ; washermen washing clothes on rough stones, causing them to be torn ; washermen wearing the clothes of customers, instead of their own prescribed, stamped, uniform ; washermen hiring out clothes of customers ; substituting clothes for those entrusted ; selling or mortgaging customers' clothes ; unduly delaying the washing with mischievous intent, or with callous neglect ; goldsmiths purchasing gold from suspicious persons, or for less than the market price ; abstracting gold of customers ; making jewels with gold of less purity than that agreed on ; appropriating treasure troves without informing the authorities ; physicians treating persons negligently and causing harm ; musicians singing when asked to stop ; asking workmen not to work as agreed to by them ; asking persons not to buy a particular merchant's goods, or asking a merchant not to sell to a particular customer ; adulterating ghee and other articles ; conspiracy among the merchants to raise the prices of food stuffs ; not rescuing persons carried away by floods or tigers, when it could be done without much risk ; sorcery ; extortion ; witchcraft ; poisoning cattle ; fouling tanks and reservoirs ; knowingly unjust trial and other offences by judges ; false recording by bench clerk ; using

false seals; false judgment; releasing debtors from the civil jail, out of pity, without paying their dues in full; pick-pocketing; stealing out of the jail by tipping the jailor, for stealthy visits to wife or mistress; entering a fort without permit; playing with other than standard dice; a Sudra impersonating a Brahman; passing off as the disciple of a famous teacher; abusing a man of a higher caste; stealing the property of temples; spreading false rumours, in order to cause public alarm; cremating the corpses of suicides and other forbidden persons; setting fire to pasture lands or forests; going to the women's quarters with adulterous intent; impersonating a bridegroom; substituting a bride; seducing a slave; giving forbidden food or drink to Brahmans; mounting one's own or a neighbour's roof at night; pursuing a lunatic needlessly in order to make him irritated; entering another's house despite his protest; constructing a house on frail foundations; stealing the rope of an animal; throwing stones at passing vehicles, from sheer mischief; cutting trees by the roadside; rash driving of carts and horses and oxen; unnatural offences with human beings or animals or images; false declarations to the authorities regarding the stock of food grains by merchants; and marrying a girl under false pretences.

Lack of space compels me to avoid picking out the various crimes, torts, breaches of trust, breaches of contract, nuisances, and miscellaneous heads of liabilities included in the formidable list (which is by no means complete) given above. Readers with some legal training will be easily able to pick them up. For the others, there is no need to pick them up, as modern law, under the stress of a total war, is gravitating towards much the same jumbling together, not worrying much to classify the various liabilities into crimes, torts, nuisances etc. It is significant that in Hindu Law too, as in Modern Law, the fines for cases of torts and contracts were an attempt to assess the

damages, and were not imposed by way of punishment except in seduction, adultery, obscene abuse, false imprisonment etc, where exemplary damages were given in order to satisfy the outraged feelings of the victims, and to show the grave disapproval of the courts at such acts amounting almost to crimes.

LIABILITY :—This arises from a man's doing what the law considers to be wrong. It includes all things a man must do or suffer because he has failed in doing what he ought. It is civil and criminal, penal and remedial, in Hindu Law too. Criminal Law is always penal, while civil law may be penal or remedial. 'Remedial liability' is 'setting right the wrong', like restoring a kidnapped person, or article carried away wrongly. Wrongful acts were of two kinds, namely, those which actually caused harmful consequences, which must be proved by the person complaining of them, and those which the law presumed to be so harmful that the person complaining of them need not prove the harmful consequences. Thus, murder is murder, and will be punished, and no man will be allowed to prove that the murder of the particular individual, say a bloodsucking money-lender or a hopelessly incurable invalid, has not brought about any evil consequences, and has actually brought about beneficial results to the family or neighbours. On the other hand, extravagance, or miserliness, to be punished, must result in harmful consequences, like money not remaining, or being made available, for necessary purposes.

DAMNUM SINE INJURIA :—(Damage without wrongs.) Hindu Law knew this theory well. Thus, there was a common law right for strangers to pick mangoes which fell from one's mango tree on to the road, or to sit on one's pial, or to dig a well deeper than one's neighbours' wells, and no action would lie for the undoubted damage resulting from these acts.

INJURIA SINE DAMNUM :—(Wrongs without damage.)

This too was well known to Hindu Law. If a lower caste man touched a higher caste man, on a ceremonial occasion, or intentionally watched his eating, he would be fined, even though no damage had resulted. So too, if a man cursed another, he was punished, though not the slightest harm actually resulted.

MENS REA :—(Guilty Mind). In Hindu Law too, usually a man was punished only for acts done with '*the guilty mind*'. Thus, a doctor killing a patient as a result of a hazardous and necessary operation would not be punished for homicide, even if he had done it on an unconscious man without obtaining anybody's consent. But, as in modern law, *negligence* in the operation would make him liable for a lesser offence, as negligence itself was a source of liability. In a few cases, Hindu Law made a man *absolutely liable*, doing away with the need for *mens rea* or even negligence. Thus, a man found in the palace grounds after dark, weapon in hand, was punished without proof of any guilty intent or negligence.

INTENTION, MOTIVE AND CHARACTER :—Hindu Law punished a man after taking into account not only the consequences of his act but also his intention, motive and character. Intention is, of course, the purpose or design with which an act is done, in other words, the desire to bring about the result. Motive is the ulterior object for which the act is done. Thus, he who intentionally kills another desires to kill the other. The *motive* may be faction, sexual jealousy, robbery, human sacrifice etc. *Character* needs no definition except to distinguish it from *reputation* which is a man's character among his fellows, as distinguished from his character in reality. Thus, Bottomley had a very high reputation, but a low character.

ILLUSTRATIONS :—If a man intended merely to beat another, but the blow fell by accident on a vital spot and

killed that other, death without torture was the punishment awarded, whereas death with torture would have been awarded if the act had been done with intent to kill. For a country doctor who, with the motive of curing a man of a stomach-ache by locating it and removing it (the fool thought that it was a tumour-like growth in the stomach) and opened the stomach with a knife, and bled the man to death in looking for the stomach-ache, a fine of two thousand rupees was awarded, instead of death. A man of high character falling a victim to a sudden temptation, and committing a petty theft of something which attracted him, was let off with an *admonition*, whereas a habitual thief doing it was given a heavy sentence in the State Mines, or State forests, just as old offenders are punished, even under our law, far more severely than first offenders.

PROPERTY:—This occupied a big part in Hindu Law, as it will in any system of law. All law concerns itself with three main departments, namely, the law of *property*, the law of *obligations*, and the law of *status*. Property may be, of course, corporeal and incorporeal. Hindu Law considered private property to be justifiable only when it was used for sacrifices, gifts, maintenance of the born, the unborn and those in the womb, and for developing one's personality without affecting any others injuriously. Indeed, it at first forbade the acquisition of property by those who were unfit to perform sacrifices, like the congenitally blind, the impotent, the deaf and dumb, the crippled etc., as they could not make one of the fundamental uses of property.

ANCESTRAL AND SELF-ACQUIRED PROPERTY:—Hindu Law was the first to make this very necessary distinction. A man had almost absolute powers of disposal over his own self-acquired property, but his powers over property which he himself got from his ancestor were very restricted, his son taking an interest in it *by birth*.

MAINTENANCE:—A cardinal principle of Hindu Law was that a man was bound to maintain his aged parents, virtuous wife and infant children, one of the fundamental uses of property being held to be for this very purpose.

MODES OF ACQUIRING PROPERTY:—Hindu Law knew of seven main modes, namely, Possession of unowned (ro)unoccupied lands or things; Inheritance, Survivorship and Partition; Grants and Gifts; Purchase and Exchange; Seizure including Prescription; Wages, and Interest.

POSSESSION OF UNOWNED THINGS OR LANDS:—The earliest to claim and take hold of an unowned thing, like a diamond or a forest fruit or land, became its owner. In ancient days with vast lands, mines and forests owned by none, this mode of ownership was very important, as in the grab for Australia, Africa or Antarctica by the European nations in the 19th century. Even here, cases arose for decision. Thus, a monkey, an elephant and a partridge disputed as to who was the owner of the spot under a spacious banyan tree. The elephant said "I came to this spot first; this tree was then but a bush reaching up to my belly". The monkey said "I came here first; the tree was only as tall as myself then, and I won't reach up to the elephant's belly." The partridge said "I came here first and voided the seed from which this tree has sprouted, and have been here ever since." It was adjudged the owner.

INHERITANCE, SURVIVORSHIP AND PARTITION:—This was the most important mode of ownership in Hindu Law after the society had settled down in a country or place, and there were few unowned things to appropriate. The joint Hindu Family, that curious combination of a Trust, Co-operative Society, Partnership and Corporation, dominated the whole situation. In early days of lawlessness, lack of labour and absence of quick transport and State Aid, this institution contributed greatly to safety,

law and order, cultivation and prevention of starvation. Though succession favoured agnates to cognates, and involved some injustice, it is curious to note that Hindu Law made teachers and pupils and fellow-pupils also heirs in the last resort, a very remarkable testimony to its adhering to one of the cardinal principles of Hinduism "There is no purifier here below like knowledge". It had also no primogeniture except for Kings.

Survivorship was an incident of the joint family which involved joint ownership and enjoyment.

Partition too was an incident of the joint family, and meant two different things, namely, division in status (destroying survivorship alone, but not effecting a division by metes and bounds), and a division by metes and bounds.

GRANTS AND GIFTS. GRANTS:—As in all countries, so too in India, grants by Kings, for military or religious or social service rendered, were common and formed one of the important modes of ownership. Villages were granted all over the country to Brahmans as *Brahmadayam* or *Srotriyam*; to Kshatriyas as *jaghirs*; to Vaisyas as *vastus*; and to Sudras and others as *inams*, for village officers, blacksmiths, carpenters, goldsmiths, potters, barbers, physicians, country midwives, scavengers, astrologers, musicians, tom-tom men, cremation ground guards etc., etc. Indeed, a large fraction of India is held even now on such grants.

GIFTS:—These occupy a very prominent position in Hindu Law, as gifts are considered to be exceedingly meritorious in this iron age, taking the place of *penance* in former ages. There being no true wills in Hindu Law, gifts assumed an unusually important place. The best gift was *kanyadanam* or the gift of a virgin maiden as wife to a worthy man, since it was calculated to keep the torch of life burning for several generations. The next

best was *vidyadanam*, or the gift of education, as it was calculated to keep the torch of life burning for one lifetime, education, then as now, being regarded as enabling a man to eke out his livelihood. The next category comprised *annadanam* (gift of a meal) and other gifts calculated to relieve hunger or thirst or other needs. Three hundred and sixty different kinds of gifts, stretching from the gift of a kingdom to the gift of a handful of sacred ashes or sesamum seeds, have been described, particularly meritorious gifts being those of a cow and calf, gold and land. Even at the death of a man, several gifts are to be made for his soul's welfare.

PROPERTY FOR MAKING GIFTS:—"A man earns property only in order to maintain his descendants and dependants and to have the joy of making gifts to the learned, the needy and the suppliant" says a sage. "A man having much gold but not making gifts is like a donkey carrying gold" says another. "Even a poor man should make a gift of drinking water, if of nothing else, in order to keep his soul pure" says a third.

IRREVOCABLE:—"A gift once made is made for good, and can never be revoked" says a sage. It is on this principle that even widow remarriage was sought to be prohibited, as the gift of a maiden too could be made only once. "To resume a gift is like taking back and eating food which one has vomitted out" says a sage.

FIVE CONDITIONS:—Gifts should be worthy of the giver, and the receiver, and should also be guided by the time, place and circumstances. This is obvious. Thus, a King cannot make a gift of a pie even to a beggar, as it will not be worthy of the giver, but a poor man may do so. A gift of a pie to a poor beggar may be proper, but not to a King or a learned man, as it will not be worthy of the receiver. A gift cannot be made at midnight, as it is an improper time to make a gift, owing to the suspicion of

its being stolen property etc. A gift should not be made in a latrine or other unclean place. It should not be made in improper circumstances. Thus, one cannot make a gift in celebration of his father's murder, country's defeat, his own adultery, etc.

GIFTS TO BE DISINTERESTED:—Gifts should be made preferably to strangers, and not to one's own wife and children. They should also be made without any expectation of return. An exception regarding children was that gifts could be made to a married daughter either at the time of the marriage or thereafter, and even out of ancestral lands. When lands were gifted, a little water was poured into the hands of the donee as into the hands of a bridegroom when giving the maiden in marriage to him.

NO WILLS:—Hindu Law had no true wills. The reasons were three-fold. The joint family system deprived one of the ownership on death. Secondly, Hindus hated the idea of a man intending to give anything away but delaying it till his death, as they thought that this savoured more of malice to one's heirs than of one's own spontaneous generosity. Thirdly, the development of wills requires a society where literacy is wide-spread and family affection is rather weak. Hindu Law started from times when literacy was very restricted, and flourished in a society where family affection was very strong, and the idea of preferring a stranger to one's own heirs would have seemed unthinkable to most people.

PURCHASE AND EXCHANGE:—This mode of ownership became more and more prominent as the times progressed, and riches accumulated, and trade and commerce increased. An exchange, was held to be only "Purchase by barter," purchase itself being for a money consideration. Both sale and exchange were liable to severe restrictions, family necessity or benefit being usually insisted on.

SALES OF LANDS AND HOUSES:—Hindu Law had very stringent rules regarding the sales of lands and houses. These sales had to be cried out in the presence of respectable persons of the locality, with the price offered by the vendee, and anybody in the village offering a higher price would get the lands and houses unless the original vendee agreed to make a parallel bid. This had three effects. First of all, it prevented nominal sales and low prices. Secondly, it made the sales public and notorious, and disputes about them difficult. Thirdly, it prevented the village community from having a discordant element thrown in its midst as vendees, with the inevitable crop of litigation or break-up of harmony in the village community.

SEIZURE AND PRESCRIPTION:—This was the fifth main mode of acquiring ownership. Seizure might be either open, or secret but, if secret, limitation would begin to run only when it became known to the owner. The justification given in Hindu Law for applying prescription was three-fold. Firstly, it was considered that no man, having a just grievance would sleep over his rights for the period prescribed, which was sufficiently long, and that, if he did so there must be some real and valid reason for his foregoing his rights, and that he should not trouble the law courts with his stale claims afterwards, suppressing the truth. The second was that property was primarily intended to be *used*, and that he who did not use it or miss it for so many years need not be sympathised with for losing its use altogether by the action of a man who needed it and was using it. The third reason given was that ownership should never be in abeyance, and that the public were entitled to recognise the person in long enjoyment as the owner, just as a *defacto* king was recognised.

LIMITATION:—The law of limitation of the Hindus was sensible and carefully graded. Thus, for gardens

paddy fields and houses, the period of limitation was 10 years; but, in the case of temporary pens on common grazing grounds the moment all the cattle were removed, the right was barred.

WAGES:—The Hindu Law rightly attached great importance to wages, and salaries, and gains of learning, as an important mode of acquiring property. The Government jobs ranging from the Viceroy or prime minister, drawing ten thousand rupees a month, to a peon, drawing ten rupees a month, in the Maurya, Kushan, Gupta and other Empires, must have increased the importance of this mode which is the most important in modern times, if we take into account not only government service but also private jobs including agricultural and industrial labour of all kinds.

MASTER AND SERVANT:—Hindu Law had elaborate rules regarding the duties and rights and obligations of masters and servants, teachers and pupils, superiors and inferiors etc.

WAGES:—It had a very kindly attitude to labourers prescribing that *ten times* the wages should be given to them when they were not paid in time. Many masters, and even local Boards, would have come to grief under this clause, which has unfortunately gone out of use in modern times, and has not even been revived like the law of *damdapat*, another remarkable instance of the Hindu Law's concern for the poor, the oppressed and the afflicted.

GUILDS:—It recognised trade and caste guilds which entered into all kinds of contracts. The germ of Trade Unions, and even of Syndicalism, was there.

LANDLORD AND TENANT:—Distribution of Produce.

About the crops, the Hindu Law rule was that one half of the crop should go to the tiller of the soil or other

person (like a man engaging coolies to cultivate under his supervision) who actually shared in the profit or loss resulting from the crop. The *waram* system in the Andhra country and elsewhere, under which the tenant gets one half, is a survival of this. One-sixth of the crop was to go to the King as tax, and the remaining one-third to the landlords, immediate, intermediate or ultimate. If this rule were adopted now, many members of the depressed classess, who are often the actual tillers of the soil, will become rich and respectable, instead of their share of the crops being swallowed away by innumerable middlemen and parasites.

ARBITRATION TRIBUNALS:—Hindu Law employed Arbitration Tribunals freely for settling wage disputes, disputes about workmanship, etc.

INTEREST:—This is the last mode of acquiring property known to Hindu Law which did not consider money to be barren and incapable of begetting interest, as some other systems of law did, but set its face against usurious and unconscionable rates. Not for it the *laissez-faire* doctrine of the rich, not for it the freedom of contract which found favour in western countries. Interest in money or grain or kind was allowed. But excessive interest was put down with an iron hand. Nobody was allowed to recover more than the amount of the principal as interest on cash loans, the famous law of *Damdapat* being rigorously enforced. "The principal may be doubled, after which interest ceases to run" says Gautama. But, in loans of grains, interest ceased to run only after the loan had *trebled* itself, since grain would increase ten-fold by cultivation. (*Dvigunam hiranyam, trigunam dhanyam-Vasishta*.)

OBLIGATION:—Having dealt briefly with the law regarding *property*, we now come to the department of law

concerned with *obligation*. First, we shall deal with *criminal obligation*.

CRIMES :—Among the crimes proper, dealt with under Hindu Law, were offences against the king, like high treason, sedition, rebellion, conspiracy to wage war, and intrigues with enemy kings; attempts to cause disaffection in the army; offences against public servants; offences against the public tranquillity, like affrays, riots and commotions; misbehaviour of public servants; offences against justice, like perjury, forgery, false complaint etc; harbouring offenders; offences relating to coins, like counterfeiting, sweating etc; offences against weights and measures; offences against health, decency and morals, like adulteration of food-stuffs, fouling tanks and reservoirs, obscene words or gestures etc; offences relating to religion, like blasphemy, scurrilous attacks on scriptures and prophets, desecration of places of worship, etc; murder; attempt at suicide; abortion; child destruction; child exposure; hurt; wrongful restraint; wrongful confinement; kidnapping; abduction; slavery; forced labour; rape; unnatural offences; theft; robbery; extortion; criminal breach of trust; receiving stolen property; mischief; using false trade marks; arson; breach of irrigation works; cheating; fabrication of fraudulent documents; false accounting; criminal trespass; entry into prohibited places like forts and mints; criminal breach of contract of service; bigamy in women (men being allowed to contract polygamous marriages, subject to certain conditions); adultery; defamation; criminal intimidation; and insult with intent to cause a breach of the peace.

EXEMPTIONS FROM LIABILITY.—A judge acting judicially and without malice, an executive officer (like a hangman or soldier) carrying out orders, a child below twelve, and a lunatic, were exempt from liability for acts

which might otherwise be criminal. Private Defence, consent in some cases (as for a wrestling match resulting in death), acts of necessity, an act done in good faith for the victim's benefit, (like a doctor operating on an unconscious man for saving his life), acts done under threat of instant death by invaders, dacoits or other malefactors, and acts causing so slight a harm that no reasonable man would complain, were also exempted from liability.

ABETMENT:—"He who causes a thing to be done is himself the doer" ("Ya *karayati sa karoti*") was a famous Hindu Law maxim. Nay, an abettor was often punished by it far more heavily than the principal, on the principle that the brain behind the crime deserved to be dealt with more than the hand committing it. A receiver of stolen property knowing it to be stolen was punished twice as much as the thief. In bad cases, he was even put to death! Asoka exempted merchants who bought stolen property *in open market* from the death penalty. Dandin in his *Dasakumaracharita*, calls it "the priceless Maurya boon to the merchants."

JOINT LIABILITY:—This was freely enforced, all being tried together. "All fingers which grip are gripping equally" ran the *nyaya* maxim.

CRIMINAL CONSPIRACY:—Hindu Law was the very first to treat this as an offence and to punish it. Among the criminal conspiracies punishable were those to wage war against the King, to bring in an invader, to raise prices illegally, to corner foodstuffs, to bring about illegal strikes, and to cause alarm and panic among the public.

NUISANCE LAWS:—The Hindu Law was also, like all great legal systems, very solicitous about public health and hygiene. People who did not keep dust bins and water closets in their houses were heavily fined. They were fined

double the amount, if they allowed the filth from their houses to invade other people's houses. People who obstructed gutters were fined six rupees. Persons who stood by watching a fire without holding water pots in their hands to extinguish it, were heavily fined.

Now we come to *Contractual* obligation,

CONTRACTS:—In Hindu Law, contracts had to be strictly proved, both the offer and the acceptance. Besides, they must be made by competent persons, for legal consideration, and must not be for *avyavaharika* purposes, that is, for purposes disapproved by the law, including illegal, immoral, and anti-social purposes. *Acceptance* had to be actually communicated to the offeror. The mere sending of a letter or a messenger would not do. That was of course, because the present highly efficient postal system had not come into existence.

CONSIDERATION MAY BE MORAL OR RELIGIOUS ALSO:—Consideration had to exist, but it might be even moral or religious consideration.

UNREALITY OF CONSIDERATION:—This was considered a good reason for dismissing a suit. Thus, a man had promised to bring a Himalayan herb, for a large sum of money, in order to cure a person bitten by a cobra in Madura. Before he could bring it, the victim recovered. A claim, was made for the money; the court dismissed it, saying "What is the use of going to the Himalayas for a herb for a man bitten by a cobra in Madura? He would have died, if so destined, long before it arrived." So too, a magician had agreed with a man to treat his wife for possession by the devil, stipulating for a sum of money, and had merely beaten the woman victim with his cane for several days without curing her, and had thereafter sued for the money; the court remarked "How can a

tamarind tree be cut down by laying the axe at the root of the mango tree? How can beating the woman be beating the devil possessing her?" and dismissed the suit.

CONSIDERATION NEED NOT BE ADEQUATE:—Thus, if a fool agrees to cultivate a land with plantains along with a cunning rogue, and to take the useless bulb for himself, leaving the stem and fruit for the other, it would be enforceable under the law. But, should it be proved that the fool was a congenital idiot, or that the rogue had brought about the contract by fraud or misrepresentation or undue influence, it would not be enforced, and the fool would have been decreed the stem and fruits, and the cunning rogue the useless bulb.

INFANTS, LUNATICS, AND SLAVES:—These could not enter into contracts. But a supply of *necessaries* to them, if proved to be justifiable and essential, would entitle the supplier to payment from their guardians or owners, as the case may be. *Necessaries* were defined as "food, clothing etc essential to continue the journey of life for that person."

THIRD PARTIES ALLOWED TO SUE:—Third Parties entitled to the benefit of a term in a contract were freely allowed to sue, as if they were parties to the contract, on the principle "A promise is a promise, and anybody interested in it can enforce it".

UNENFORCEABLE CONTRACTS:—Mistake, Misrepresentation, Fraud, Duress, Undue Influence, Illegality and Immorality would make a contract unenforceable. So too, Impossibility of performance, whether existing at the time of the contract, or arising subsequent to it, like the subsequent death of a particular cook, painter, elephant, monkey, or parrot contracted to be supplied.

WAGERS:—Wagers about unobjectionable things, including gambling wagers, were enforced, if otherwise

enforceable, and subject to all maintenance claims, joint family claims etc. Wagers about the power of a god, the chastity of a woman, etc were illegal. A wager about whether there would be rain on a particular day, so common among the Marwaris of Calcutta even today, was legal.

CORPORATION:—The Hindu Law was fully conversant with corporations. There were Municipal corporations at Pataliputra, Ujjaini, Takshasila, Tosali and Suvarnagiri in Asoka's days. Hindu Law mastered the truth that the corporation had a personality different from the various members constituting it. It illustrated this by saying that sherbet had several ingredients like lemon, sugar, cardamoms etc, but that it was not like any of these things, having quite a different individuality of its own. It had also the aphorism that a corporation had greater powers than all its parts put together, just as a whole grain will sprout, but not any number of bits into which it can be broken up.

PARTNERSHIP—This too was well-known to Hindu Law. Even joint family partnerships, to the benefits of which minors too were admitted, existed.

Two funny cases will illustrate the grasp of partnership law which Hindu Law had.

THE CAT CASE:—Four rich merchants who were partners, jointly owned a cat. Each was assigned one leg of it which he adorned with gold anklets, chains, strings of pearls etc. One day, the cat hurt one of its legs in a dangerous leap. The owner of that leg tied some cloth soaked in oil round it. In walking about afterwards, the cat went too close to a naked light. The bandage cloth caught fire, and the horrified cat ran round the godown in panic and started a huge fire which burnt down the godown and priceless stock completely. The unlucky

owner of the lame leg was sued by the other three for damages, as it was his bandage cloth which was the cause of the mischief. Justice Ram however dismissed the suit, remarking, "That man's leg and bandage cloth could never have got near the light without the aid of the sound legs of you three. All of you four partners were, therefore, jointly responsible for the fire".

THE ROGUES CASE:—Four rogues jointly entrusted a common treasure (got by thefts) to an old woman asking her to give it to them only when all the four went to her jointly and asked for it. One day they were playing at cards in a house near by. Seeing a woman selling fine curds, they sent one among them to fetch a pot from the old woman in order to buy curds in it. The rogue went and asked her for the treasure. The old woman asked him "Where are the other three?" "They sent me. Bawl out and ask them if you can give it to me. They are there, within hearing range" said he. The woman shouted out to the three "Shall I give it to him?" "Yes, Yes, of course" shouted back the three, thinking it was the pot she meant. Not finding their comrade come, and suspecting mischief, they went to the woman, ascertained about the fraud, found their comrade gone, and hailed the old woman before Justice Ram to make good the loss to them. "She had no business to give it till all of us four jointly went and asked for it" said they.

"Quite right" said Justice Ram "So, don't ask her for it till you bring him also, so that all the four of you may jointly ask for it"

The rogues went away baffled and down-cast.

REMEDIES:—Specific Performance and Injunction were freely ordered. Damages, of course, formed the usual remedy.

DAMAGES:—These were assessed according to the actual damage resulting from the non-performance or breach. If the parties had fixed the amount of the liquidated damages, those were accepted. If they had fixed a penalty after full consideration, that too would be enforced. All damages were included in *Fines*.

MITIGATION OF DAMAGES:—A party was bound to mitigate the damages. The example given is that, in a breach of a contract to supply honey, a man cannot claim the cost of going to a distant mountain to get it when it was available close by.

REMOTENESS OF DAMAGES:—This theory was applied freely, so that causation might not be extended too far and suits multiplied.

DEBTS. FIVE DEBTS:—The Hindu Law had a wide conception of debts. "Five debts have to be discharged by man" says Manu. "The debt to the *gods* is discharged by making sacrifices; that to the *sages* by reading the scriptures; that to the *ancestors* by begetting a son, to continue the line; that to *men* by inviting them as guests; and that to the *lower animals* by offerings of food". A grander conception of debt is difficult to imagine.

WHO IS A THIEF? He who receives anything without giving back something, at least equally valuable, in return, he, verily, is a thief" says the *Bhagavad Gita*, a far more satisfactory definition of a *thief* than the narrow, capitalistic one in the penal codes. Every millionaire who becomes rich on the sweat of the poor, every shop-keeper who does not give a fair return in goods for the money he receives, every teacher who does not impart teaching commensurate to his salary, every King who does not return service proportionate to the taxes *is a thief*. Socialism and Syndicalism can desire nothing more in this direction.

DEBTS MERCILESSLY SCALED DOWN:—The debts were mercilessly scaled down. Immoral debts were disallowed. Excessive interest was cut down. Nobody was allowed to recover more than the amount of principal as interest.

PIOUS OBLIGATION:—A man was, however, held to be liable for his just debt. If a man died without discharging his just debt, he would be born as the slave of his creditor. That is the reason for saddling the pious obligation of discharging a father's debts on a son, so that the father might be relieved from his slavery. But the pious obligation theory did not extend to illegal, immoral or disapproved (*avyavaharika*) debts, as the father, who had contracted them as the slave of lust, anger or greed, was considered to be only fit to continue as a slave.

TORTS:—In the jumbled list given already will be found many torts. Personal wrongs like assault and battery, False imprisonment, enticement of wife or servant, adultery, and seduction; wrongs to reputation like slander and libel; wrongs affecting the estate like deceit, slander of title, fraudulent competition by false imitation, and extortion; wrongs involving the abuse of process of the court like malicious prosecution; wrongs to property and possession like trespass, conversion, disturbance to easements, and infringement of patents and copyrights; miscellaneous wrongs like nuisance, and absolute liability cases like the liability for one's tame panther or cobra attacking and killing an innocent visitor or passer-by; these were all torts recognised by the Hindu Law.

DEFAMATION:—Hindu Law is remarkable for its enlightened view regarding defamation and kindred offences, which, in many primitive societies were not punished at all. Defamation of nations, castes, communi-

ties, assemblies, guilds and gods were all punished equally with defamation of individuals. It was laid down that the wound caused by an arrow would be cured, in course of time, but not the wound inflicted by an abusive and insulting expression. Calculated defamation of a wife's character was also held to be "legal cruelty" towards her. "Truth" was no justification, unless "public benefit" too was proved. Thus, a blind man could not be called blind, unless it was to show that he could not have seen something he pretends to have seen, etc.

REMEDIES :—Fines, part going to the State and part to the victim, were imposed in cases which were both torts and crimes. *Fines*, wholly going to the victims, were awarded for wrongs which were not also crimes. They were nominal, ordinary or exemplary according to the needs of the case. They represented *damages*.

TRIFLES IGNORED :—"The law will not take notice of trifles" was the rule in Hindu Law too, as is illustrated by the following case.

THE SAUCE CASE :—In this famous case, a hotel proprietor sued a man who ate his own cooked rice in the proximity of the hotel cauldron of sauce whose smell aided in the eating. Justice Ram tried to convince the hotel man that the benefit enjoyed by the stranger and the damage to himself were both too trivial and remote. The hotelman did not agree. He insisted, like Shylock, on his strict rights. Then the judge made the stranger give a rupee to the hotelman to smell and give back. "For the smell of your sauce, you have got the smell of his rupee" said he to the greedy hotelman, amidst general laughter, and sent him away.

EXEMPTIONS FROM LIABILITY :—Act of God or Inevitable Accident, Judicial Acts free from malice, executive acts necessary for public safety, acts of parents,

husbands, teachers etc. for purposes of correction, damage caused in the exercise of common rights, leave and license, works of necessity, private defence, the plaintiff's bringing it on himself by his contributory negligence, which was the effective cause for the damage, were all cases conferring immunity.

ACT OF GOD OR ACCIDENT:—Hindu Philosophy firmly held that nothing ever happened by accident, and that everything had a cause. But, Hindu Law had, of course, to cut the chain of causation at some remote link or other to put an end to frivolous litigation. Hence, it evolved the theory of "Act of God" or "Accident" illustrated by the well-known Elephant Case.

ELEPHANT CASE:—A man lent his elephant to another for a marriage procession, stipulating merely that it should be returned after the procession. The elephant died suddenly, and for no ascertainable reason, during the procession. The borrower intimated the death to the lender, and was very sorry for it. But the lender wanted his elephant back, and would not be content even with its price. He dragged the borrower to Justice Ram, and prayed for the literal fulfilment of the contract. The Judge held it to be a case of "Act of God" or "accident"; but could not convince the lender about this. So, he sent him away asking him to go over to him the next day at 11 A.M. He asked the borrower to be in his house the next day, at 11 A.M., and to put some ancestral mud pots behind the door, keeping it ajar, and not to answer the lender's call but to allow him to push open the door, and go in, breaking the pots in the process, and then demand for the pots, and pots alone, and rush to court.

The next day, the lender went to court in time. The judge said to him "The borrower has not come. Bring him". So, the lender rushed to the borrower's house, which was close by, and called him. Getting no response, he

pushed the door and was horrified to see a number of mud pots hurled down and broken to bits. The borrower cried out "Oh, you have broken my ancestral mud pots, my dear old mud pots. Give them back to me." The lender offered him three times their price, but in vain. The borrower dragged him to court and preferred a complaint. The lender said to Justice Ram "It is impossible for me to return the pots, as they are broken by accident." "It was equally impossible for him to return your elephant, as it died by accident" said the judge. "All right. Let the broken pots cancel the dead elephant" said the lender, seeing the point, and left the court.

Lastly, we come to obligations arising from Trusts.

TRUSTS AND DEPOSITS:—These were also well-known to Hindu Law. The innumerable temples and religious endowments made trusts and trustees very familiar even in the remotest villages. Besides, every Manager of a Joint Family, every widow holding an estate for life, every mahant and jaghirdar, had many of the duties and obligations of a trustee. Deposits were sealed and unsealed, and had to be accounted for strictly, acts of God alone being sufficient to exempt from liability.

RATS AND KITE CASE:—When a trustee sold away secretly a thousand tons of iron entrusted to him by a friend, and pretended that rats had eaten them during the friend's absence, the friend accepted the excuse without demur, and invited the trustee's son to his house for dinner, and then concealed him in a secret place, and told the trustee that a kite had carried the young man away. The trustee took him before the judges, and complained. He asked the friend "Can a kite ever carry away a strong young man like this?" The other replied "Normally, no. But, in a place where rats eat a thousand tons of iron, kites do carry away such young men" The judges asked for, and were told, the whole story. Then they laughed

and made the boy's father disgorge the price of the iron, and asked the other to give back the boy.

STATUS:—Now we come to the department of law dealing with *Status*.

MARRIAGE:—This was purely one of status in Hindu Law. The ideal of marriage was very high. There were eight known forms of marriage, and a grand maxim "Any kind of marriage is approvable, provided it pleases all those that are concerned in it" was laid down by Chanakya in his *Artha Sastra*. What a pleasing contrast it is to the narrow interpretation of a legal marriage by the English Law, which would hold all orthodox Hindu and Muslim marriages to be invalid, and the offspring to be illegitimate !

HUSBAND A DELEGATE OF GOD:—A husband too was, to his wife, God manifest on earth. Sri Rama says to his mother "To a woman, so long as she is alive, the husband is, indeed, her god and lord." Sita says to Rama "Neither father nor mother nor brother nor sister nor son nor daughter nor friend counts, here or hereafter, for a wife in comparison with her husband who is her god. A woman who has been given by her parents with water, according to the holy rites, to a high-souled man in this world is that man's even in the other world."

It has been the pride of the Hindu race that just as oxygen and hydrogen, two gases, when mixed, become life-giving water, and do not separate thereafter except by the machinations of men, so too, a girl, who has been in her father's family till the age of 14 or 15, is married to a stranger on whom she has not set her eyes before, and identifies her lot with his to such an extent that father, mother, brother and sister, become but mere names of an ancient past, and her husband becomes her god, her all. It is only those who have lived under this system and

derived its full benefit that can appreciate this marvellous thing. As a Hindu husband, who has shared fully in the benefits of the system, I, for one, would certainly say that, whatever the defects of the system in the abstract, the complete identification of the wife with the husband is a sublime thing, a debt which the husband can never hope to repay, like the pure benefits of nature, like air or water. Hindu Law, by preserving this ideal for the Hindus, by its rules and regulations, has done us yeoman service.

MARRIED WOMEN'S PROPERTY:—In this matter, women were comparatively generously treated under the ancient Hindu Law much more generously than in any other ancient system of law, except late Roman Law. The wife was entitled to a minimum maintenance of 2,000 *panas* (Rs. 1,000) against the reversioners of her husband, besides being entitled to all the jewels, whatever their value, and to any other *Stridhan* property she might have. Needless to say, modern Hindu Law, as interpreted by our courts, does not give her a tenth of these rights, although we boast that we treat our women more considerately than our ancestors. It is well-known that Vignaneswara wanted to make women fully equal in property rights to men, and that the scheme fell through owing to a decision of the Privy Council which followed the reactionary views of some later Hindu Commentators in days when English women, too, had not benefited by the various Married women's Property Acts.

WIFE-BEATING:—Even the beating of wives was regulated, as, of course, in mediaeval England, the only difference being that, in England, Judges recommended a rope or a cat's tail for the beating, whereas in India, a split bamboo, which did not exist in England, was recommended instead, three moderate blows being the limit of the husband's freedom, anything in excess being punished like assault on a third party.

POLYGAMY:—Polygamy was allowed only under strictly limited conditions, namely, if the first wife did not bring forth any children for eight years, or bore only still-born children for ten years, or only female children for 12 years. So, it can be practised with far more impunity under the modern Hindu Law than under the ancient Hindu Law.

RESTITUTION OF CONJUGAL RIGHTS:—Even an action for restitution of conjugal rights was known to ancient Hindu Law, and was freely exercised, the petitioners being mostly senior and discarded wives. But, the Hindu law-givers were well aware of the folly of trying to enforce such orders, either by specific performance, or by imprisonment. They fined the recalcitrant husband 96 *panas* in case of disobedience of orders, and gave the money to the disappointed wife, in addition to her rights to maintenance, jewels, etc.

WIFE'S FREEDOM OF VISIT:—Unlike in modern India, where a jealous husband can, in practice, with impunity, prevent his wife from stirring out of his house, under the ancient Hindu Law, a husband preventing his wife from going to the houses of kinsmen on occasions of death, marriage, disease, calamities and confinement of women, was liable to a fine of 12 *panas*.

GUARDIANSHIP:—Unlike many other systems of law, Hindu Law set its face against allotting children to one of the partners, husband or wife, and gave the right jointly to both the parents, if they were living, or to the sole surviving parent, stating that the sower of the seed and the owner of the field were both equally entitled to the crop.

SONS:—Thirteen different kinds of sons were recognised, the principal ones being the *aurasa* (legitimate son by wedded wife), *datta* (adopted son), *Kshetraja* (a son begot-

ten on one's wife by a saint or sage owing to one's impotency—something like the test-tube baby of modern times), *gudhaja* (child already in the womb of the woman when married but unknown to the husband), *kanina* (unmarried mother's child in relation to the woman's subsequent husband), *paunarbhava* (widow's son by her first husband in relation to her second husband), *putrikaputra* (only daughter's son of a man who has no son), *krita* (son bought from another), *kritrima* (son by fiction, in other words one who is treated like a son by a person who may not be even old enough to be his father), and *apaviddha* (a foundling brought up from pity). The catholicity of Hindu Law, and its solicitude for innocent babes (reminiscent of Bolshevik Russia) are patent in this.

HEREDITY THEORY:—It is remarkable that Hindu Law expressly said that a man was intimately connected only with his three immediate ancestors and three immediate descendants, having no vital connection with remoter ones. Modern theories of heredity, seem to support this, great talents as well as terrible diseases, like lunacy and leucoderma, rarely descending more than three degrees, but being found to perform frog leaps within those degrees.

THEORY ABOUT RELATIONSHIP:—A son was considered to be equal unto oneself, and a daughter was held to be equal to a son. At the *seemantham* ceremony, the father lays his hand on the foetus in the womb and says "Limb of my limb, born of my heart's desire, my own self born as a son, may you live a hundred autumns!"

HERITAGE FROM FATHER AND MOTHER:—The Hindus considered that a child inherited its bones, sinews and marrow from its father, and its skin, flesh and blood from its mother. An English race-horse-breeder has told me that the stamina in a race horse comes from its bones,

sinews and marrow, and that, therefore, race horses are bought only with reference to their *sires*, no heed being paid to their dams. Perhaps, the same reason led the Hindus to prefer agnates, as the father was considered to be more important for the race, and especially the race of life!

HOUSE RENTS:—Rents of houses in towns had to be reasonable, and the usual annual rent was fixed at 6% on the capital investment. If excessive rent was demanded, the judges would fix the reasonable rent.

SLAVES:—Slaves were not mere chattels in Hindu Law. They were treated so well that foreigners, like Megasthenes, accustomed to other systems, could not recognise them as slaves, and so wrote that there were no slaves in India. They had valuable property and personal rights, and also a status and a right to demand that obligations to them be discharged.

ADMINISTRATION OF JUSTICE IN THE COURTS:—‘Administration of justice’ has been defined by a modern jurist as ‘the maintenance of right within a political community by means of the physical force of the State’, in other words, of the application by the State of the sanction of force to the rule of right. It is divided by him into Criminal Justice, which deals with the punishment of wrongs, and Civil Justice which deals with the enforcement of rights. Hindu Law too knew of the division into civil and criminal, but had a third division, namely, administrative. It had also as its aim the maintenance of right among human beings not only by means of the physical power of the State but also by spiritual and social sanctions.

THREE CLASSES OF STATIONARY COURTS:—The stationary courts were divided into three main classes, Civil,

Criminal and Administrative. The Civil Courts, presided over by *Dharmasthiyas*, sat on fixed days; the Administrative Courts, or Mixed Courts, sat whenever there was need; and the Criminal Courts sat every day and heard complaints at any time. As already stated, the same judges might be sitting in the different courts, just as, even now, the same person, sitting as District Judge, hears civil matters, and, sitting as Sessions Judge, hears criminal matters, and, whenever there is need, he also deals with administrative matters like complaints against his subordinates, legal practitioners, Receivers, etc. In the *Mrichchhakatika*, when a man goes to complain about the murder of Vasantasena, and says "Vasantasena—" the Judge thinks that it is some civil matter between her and him, and says "This is not a day fixed for civil cases", but admits the complaint at once on hearing that it is a criminal complaint. Then, as now, crimes took precedence of civil matters.

CIVIL COURTS.—The *dharmasthiya*, or common and canon law courts, usually heard the following kinds of cases: Contracts, in general; contracts of service; master and servant disputes, and cases relating to their rights and duties; cases relating to the rights and duties of slaves; some torts; trusts; debts; deposits; sales including pre-emption; gifts; abuse and assault; defamation; gambling; illegal sales; ownership and possession; boundary disputes; disputes about houses, easements, nuisances etc; damages to crops, pastures, roads etc; marriage and bride-price; adoption; co-operative or guild undertakings; partition; inheritance and succession; and disputes regarding procedure and interpretation of texts or customs.

CRIMINAL COURTS:—The *Kantakasodhana* courts (literally, courts removing the thorns of the State and people) dealt with murder, rape, and other grave criminal offences, and also with adultery, fornication, incest,

sudden deaths in suspicious circumstances (something like the sudden deaths reported now-a-days to magistrates by the police and recorded by them, after going through the Inquest reports, if there is no suspicion, or reason to proceed further), arrest of suspicious characters, and suppression of crime and rowdyism, etc.

REGISTERS OF BAD CHARACTERS:—There was a regular register of suspected criminals, and of prostitutes, gamblers, drunkards and wastrels kept by every village headman, and security cases were very common.

ADMINISTRATIVE COURTS:—The administrative courts dealt with the high-handed acts of government officers of various departments, like the executive, judicial, revenue, military, accounts, endowments, etc.

ENDOWMENTS:—Temples and Endowments were regularly inspected, audits of accounts done, and delinquents punished. The administrative courts dealt with this.

PROCEDURE:—When a case, whether civil or criminal, was filed, the plaintiff or complainant filed a verified *plaint* or complaint containing his name, age, caste, date of offence or cause of action, the place of occurrence, the witnesses, and the documents relied on, and the name, age, caste etc., of the accused or Defendant. The notice went to the Defendant, if he was not already taken to the court by the plaintiff or complainant, and the Defendant or accused filed a similar verified *written statement* to which the plaintiff or complainant was allowed to file a *reply*, to which the Defendant or accused could file a *rejoinder*. Then the case was heard, and the witnesses on both sides, and any others offering themselves, were examined. Each witness and the accused was examined, and cross-examined not only by the opposing counsel but also by the court, which had a duty to put all necessary questions. The

demeanour of the parties was also closely noted, and inferences drawn. Then the judges consulted together and delivered judgment.

HEARING OF PETITIONS:—As soon as the court assembled, the usher used to ring a bell for five minutes, and announce "The King's judges are in session. Those who have grievances to represent may come forward", and petitioners would step forward and give their verified complaints or complaints. They would be posted to suitable dates, preference being given to criminal work, and, then, the work for the day would be taken up.

CHOLA King's BELL OF JUSTICE:—The Chola King, Manuneetikanda Cholan, kept a bell of justice (*araitchi-mani*) for those with grievances to pull. A cow, whose calf had been driven over wantonly by his chariot by the Crown Prince, pulled the rope, and rang the bell. The King enquired into the matter and found the complaint to be true, and had the Crown Prince, his own son, crushed under the chariot wheel, in true Hammurabi fashion!

JEHANGIR'S BELL OF JUSTICE:—The Emperor Jehangir too followed this Hindu practice, and had a bell of Justice whose tasselled silk rope a donkey, which was starved by its washerman master, pulled. The Emperor enquired into the matter and punished the callous master.

ANYBODY CAN PREVENT INJUSTICE BY REPRESENTATIONS:—That was the rule in Hindu Law, and the Mogul Emperors too followed it. The Emperor Akbar was about to behead a man of Delhi who was reputed to cause misfortune if he was seen the first thing in the morning, and on seeing whom one day the first thing in the morning, the emperor had cut his finger when cleaning his sword. "Sire" said his jester, Birbal, "don't behead him, as it will be unjust." "Why?" demanded Akbar.

"Seeing his face the first thing in the morning, your Majesty merely had a cut in your finger. Seeing your Majesty's face the first thing in the morning, if he is to lose his head, whose face is more unlucky, and what punishment does your Majesty deserve at the hands of the King of Kings?" asked Birbal. The Emperor laughed, and ordered the man to be released. Personal touch had this great advantage over democracies, and bureaucracies, that injustice was often set right on the spot, instead of miles of files having to be perused and innumerable tomes referred to before it could be done.

EXPARTE DECREES:—The Hindu Law had rules about *exparte* decrees and dismissal of suits for default from a very early period. This was because no man's consent to be tried for an offence, or to have his cause tried by the King's Judges, was deemed to be necessary, as in medieval England where heavy stones or otherweights were placed on an accused's chest, and he sometimes killed (*peine forte et dure*) in order to extort from him his plea and consent to be tried by his country, namely, a Judge and jury. A defaulting defendant was, under Hindu Law, fined three times, beginning with very small fines to appreciable ones. At the fourth hearing, if he was still absent, an *exparte* decree was passed.

DAYS OF GRACE:—Another instance of equity in Hindu Law was the giving of seven days' grace, evidently based on the *Sapta Rishi*, the seven sages for the repayment of money, fulfilment of building contracts, etc., further allowance being made for sudden deaths and calamities. Three day's grace was allowed by the Emperor Asoka for condemned prisoners to repent and prepare themselves for death. This was probably fixed with reference to Indra, Varuna, and Agni, the Vedic Trinity, or to Brahma, Vishnu and Siva, the Puranic Trinity, or to the Buddha, the Sangha and the *Dharma*, the Buddhist Trinity. Perhaps the western days of grace were fixed on those of Asoka who sent

his missionaries to Syria, Macedon, Epirus, Egypt and Cyrenaica to preach his ideas.

WITNESS BATTA:—There was a standing rule that the defeated party should pay the travelling allowance, and the scales of these allowances were far more liberal than the five annas per day vouchsafed to witnesses in criminal cases now.

LAW OF EVIDENCE:—The Hindu Law of Evidence, too, was very sensible. Judges had a right to get at the truth by adopting whatever expedient they considered necessary, like Solomon's offering to cut a baby into two,

HORSE CASE:—Thus, the famous Judge Maryada Rama held an identification parade of a disputed horse by two persons (the alleged owner and the alleged thief), and when the thief identified it far quicker than the owner, not at all an uncommon thing, he gave judgment in favour of the owner, explaining that, though the identification parade had been ostensibly held for the men to identify the horse, its real object was for the horse to identify the men, and that he had seen the horse kick its legs when the thief touched it, but remain pleased and quiet when the owner touched it.

HEN CASE:—So, too, another day, when a woman, accused of stealing a hen and eating it up, denied it, Maryada Rama casually remarked to a fellow Judge "See the impudence of this woman, who, with a feather of the stolen hen still on her hair, denies having stolen it!", and the woman at once put her hand to the head to take out the offending feather, and was forthwith questioned closely, and had to admit the offence.

STICKS TEST:—So again, when ten persons, one of whom had certainly stolen a thing, were put up before him in order to find out who the thief was, he gave them

all sticks, a cubit long, and asked them to come the next day, assuring them that the gods would make the stick of the thief one inch longer, and the real thief, in terror, cut off one inch of the stick so that it might be only a cubit long the next day, and was found out by this tell-tale act, and was questioned closely, and had to admit the offence.

JUSTICE MUST NOT ONLY BE DONE BUT MUST ALSO APPEAR TO BE DONE:—Hindu Law insisted on this principle, as will be clear from the above cases. Tests could be made but should be explained to the persons present in court who should be convinced of their validity and fairness.

EXPERIMENTS ON ACCUSED AND WITNESSES:—In addition to such tests, actual experiments on the accused and others, like the emetic given by the Bodhisatva to the suspected dog to vomit out the stolen carriage fittings, were performed. This is something like the purgative given to gold and diamond mineworkers even today in order to make them cast out the gold or diamond stolen by them.

SPIES:—Spies brought crimes and misdeeds to the notice of the authorities. Three sets of spies, unknown to one another, gave the king or minister a means of checking on their reports. Kings all over India prided themselves in calling themselves "Dharma Raja" or "King of Righteousness", and the spies were their C. I. D. Officers only they reported also about adultery, breach of trust, incest, cheating of property, failure to maintain parents, wife and children, and other civil matters too. Spies were more numerous than policemen in Hindu India.

TORTURE:—Torture, to ^{elicit} ~~elicit~~ confessions from persons *prima facie* guilty of offences, but with no evidence against them, either owing to the secrecy of the commission of the offence (like adultery, incendiarism or poisoning) or to the

intimidation of witnesses, was freely resorted to by Hindu Law, as by all ancient laws, a mythical importance being given to the accused's own statement, forgetting the horrible way in which it was procured. The large number of retracted confessions in modern India reminds us of this dark mediaeval practice which prevailed all over the world at one time. Customs, good and bad, die hard in this country.

KINDS OF TORTURE :—There were eighteen kinds of torture, ranging from beating with canes to tying up the man's legs and arms in scorpion-shape, burning the finger joints, hanging the man head downwards from a tree, and administering an enema with ice-cold water at 3 A.M.

ORDEALS :—These were used in Hindu Law, as in all other ancient systems, but only where the accused or suspected person offered to abide by it. They were allowed, even then, only in grave cases like high treason, adultery, murder etc. The well-known ordeals were the fire ordeal, water ordeal, weighing ordeal, and ordeal by poison.

FIRE ORDEAL :—In this, the suspected person got into a big fire lighted for the purpose with cartloads of firewood, and, if innocent, would be unscathed, and would walk out of it triumphantly, the innocence being established. Sita underwent this ordeal soon after her rescue from Lanka, in order to prove her chastity. Nandanar, the Harijan saint, underwent this ordeal at Chidambaram in order to prove his purity and fitness to enter the temple. Agni, the lord of fire, was supposed to preside over this ordeal.

WATER ORDEAL :—In this, the suspected person was tied up hand and foot, and thrown into a deep pond, there to remain for an hour and twenty-four minutes. If he floated and survived, he was held to be innocent, and taken out and acquitted. If guilty, he would sink and

perish. Varuna, the lord of the waters and of morality, was supposed to preside over this ordeal.

ORDEAL BY WEIGHING :—In this ordeal, a man was starved for three days, and fed on consecrated water alone. Then he was weighed. If guilty, he was found wanting, the source of the famous phrase “He was weighed and found wanting.” The origin of this ordeal is the story that Brahma separated Truth from Himself and had both weighed, and it was found that Truth weighed more. The Emperor Sibi also was subjected to the weighing test, in the famous story of the falcon and the dove. Indra, the lord of Heaven, was supposed to preside over this ordeal.

ORDEAL BY POISON :—In the ordeal by poison, the suspected person swallowed deadly poison. If innocent, it would not affect him ; but, if guilty, he would die. Yama, the lord of Death, was supposed to preside over this ordeal.

EXPERTS :—Surprisingly enough, the Hindu Law had a strong *penchant* for experts, who were called in for purposes ranging from determining the reasonable wages that had to be settled on a *quantum meruit* basis, to deciding how much colour would be lost on the washing of a Benares silk cloth by a diligent and skilled washerman. One funny instance of the use of experts is recorded in the *Artha Sastra*. When a man, about to be killed by a tiger, or elephant, or by fire or flood, is rescued by another on his promise to offer to his rescuer the whole of his property and also to surrender himself, wife and children as slaves, the court should call a committee of experts, and decide the quantum of the real remuneration due to the rescuer for such a service, ignoring the promise made by the rescued.

GRADATION OF VALUE IN EVIDENCE :—One of the principles of Hindu Law was that documents had to be

preferred to oral evidence, and oral evidence to ordeals. The reason for the preference of documentary evidence was that, from the date of the documents, they would cease to lie, if untampered with, unlike witnesses who might develop their stories from time to time, and who have, therefore, been, somewhat uncharitably, classified as liars, damned liars, and experts. It will be noted that the Hindu Law put 'ordeals' *last*, unlike the Anglo-Saxon Law which put ordeals *first*.

CUSTOMS TO BE ASCERTAINED AND RECORDED :—Every king was asked to get the customs of castes, families and localities ascertained and recorded, to prevent setting up of bogus customs.

MIMAMSA AND NYAYA AN APPENDIX TO THE HINDU LAW OF EVIDENCE :—The law of evidence had a voluminous supplement in the shape of *Mimamsa* and *Nyaya* maxims. *Mimamsa* was that branch of learning which concerned itself with interpreting, explaining and reconciling the various rules of religion, law and common-sense. It had a number of apt aphorisms on every conceivable subject. Thus, it had the theory that a subtle essence, or *apurva*, an invisible effect, attached itself to the soul by the performance of an act of *Dharma* and lasted till the benefit actually accrued to the soul in this or in a future birth. *Nyaya*, or Logic, straightened out these aphorisms, and made them conform to the laws of logic.

SOME MIMAMSA AND NYAYA MAXIMS APPLIED TO LAW :—These took the place of S 114 of the Indian Evidence Act and of "Judicial Notice". They covered a vast variety of topics, and were mostly commonsense truths of universal application. All judges, assessors and advocates of Hindu Law were expected to be well up in them as a kind of training in logic, psychology and commonsense. I shall give some of these maxims below, summarising

them in my own words, and classifying them under suitable heads.

IMPOSSIBILITY:—"A knife cannot cut itself."

"A man cannot stand on his own shoulders."

"You cannot cook half a hen and ask the other half to lay eggs."

"You cannot strike the sky with your fist".

CHANCE COINCIDENCE MISTAKEN FOR CAUSE AND EFFECT BY FOOLS:—"A crow sat on a palmyrah tree, and a ripe palmyrah fruit dropped down".

"A bald man sat under a wood apple tree, and a wood-apple dropped on his bald head."

"A blind man clapped his hands, and caught a quail."

MAXIMUM BENEFIT TO BE PROVIDED FOR IN ANY ORDER OF COURT:—"All such orders should resemble a lamp placed at the threshold which lights inside and outside alike, and not a lamp kept inside the house, much less within a cupboard."

THE ANTI-SOCIAL MAN'S ATTITUDE:—"Such a man says 'I am too weak to construct a house, but I am well able to destroy one. I cannot grow paddy, as it takes too long, but I can easily steal paddy grown laboriously by others'".

ABSURD EXPECTATION:—"A thousand blind men cannot, by pooling their resources, expect to see."

RELATIVITY:—"Most things in life are relative. A clod may be hard when compared with cotton, but is soft when compared with a stone. A man with a thousand rupees is rich in the slums, but is poor in the Guild Hall."

TECHNICALITIES:—"A weapon is to be silenced with a weapon, and a technicality by a similar technicality. Poison is to be met by poison, organic poison, preferably by mineral poison." (Arsenic, a virulent mineral poison, was used in India for countering organic poisons in the system.)

LOST IN DETAILS:—"A man forgot the cobra in contemplating its coils, and was killed by it when engaged thus."

EACH DECREE TO SUIT THE CASE:—"Let a judge pass decrees to suit each case. Thorns are food for a camel, but not for a man. Toys are required only for a man with children, and not for one without any. Laws ought to apply to all men, but decrees only to the parties."

CONSTRUCTION OF WORDS INEVITABLE:—"Words are as inseparable from thought as moon-light from the moon, and courts have to construe them."

OBVIOUS THINGS NEEDING NO PROOF:—"Only a fool wants a lamp to see darkness, or a looking glass to see a gooseberry on his palm."

SILLY ARGUMENTS:—"A silly argument cannot stand against a weighty one any more than a young fawn can stand up against a full-grown lion."

LIMITATION:—"Filing a suit after limitation is like the vigilance of the watchman after the house has been plundered by thieves, or the sowing of a worm-eaten grain, thinking that it will sprout."

REPETITION:—"Repetition is like grinding that which is already ground."

LIES AND CRIMES:—"Let people indulging in them remember this. 'The garlic is eaten, but the disease is not

cured. The lie is uttered, but the suit is not won. The crime is committed, but the object is not achieved'."

BORROWED ARGUMENTS:—"Borrowed ornaments give constant anxiety, and only momentary pleasure. Borrowed arguments give only the first."

COMPROMISE:—"People entering into a compromise think thus: "Better is a certain *karshapana* (about a shilling) than an uncertain *nishka* (about a sovereign). Better is a pigeon to-day than a peacock to-morrow."

TRESPASS:—"Advice to a trespasser:—"Don't get your tongue cut in trying to eat your neighbour's plantain."

COURT BIRDS:—"These are like rats which breed readily in the big drains of palaces and courts, as something will be there always for them. It will be impossible to get rid of them completely."

MULTIPLE RELIEFS AND PRAYERS:—"A greedy person asks for many reliefs like the old woman who said to Indra 'I want to see from my seventh floor my great-grandson eat from a golden vessel fine rice-cakes prepared in milk and ghee'."

A FOOLISH LITIGANT:—"Wishing to get great interest, the capital itself is lost. That is the way with a foolish litigant. He tries to sail the stormy seas in a paper boat."

A CANTANKEROUS LITIGANT:—"He will give at once five score, but will rather be beheaded than pay a hundred."

DECIDING DIFFICULT ISSUES ONE BY ONE:—"Catch an unruly bull first by one horn, and then by the other."

KING'S IMPARTIALITY:—"The King should look after his subjects equally, as fire cooks the grains in a pot equally."

A DOUBTFUL LITIGANT'S DELIBERATE DELAY:—"Better even a doubtful condition of things than a crushing defeat' is the principle acted on by a doubtful litigant."

LAWBOOKS FOR A FOOL:—"A Lawbook in the hands of a fool is worse than a looking glass in the hands of a blind man."

FOOLISH LAWYER:—"A foolish lawyer indulges in noisy boasting like a silly archer whose arrows always miss the mark."

COURTS ONLY DECLARE THE LAW AND NEVER CREATE IT:—"Courts simply declare what law exists, and do nothing more. It is like this. A rope is mistaken for a snake. There is no snake before the mistake is made, or after it is discovered, and, therefore, even when it is entertained."

IRRELEVANCY:—"Asked about a mango tree, a witness talks about a sago tree."

SPECULATIVE LITIGANTS:—"They waste hard-earned money, and are satisfied with sweetmeats in prospect. Proclaiming the name of a son before he is born is wisdom itself compared to their acts."

REMOTENESS OF DAMAGE:—"The gradual diminution of the speed of an arrow is illustrative of the diminution of the effects of an act. So, a man can never be held responsible for every consequence, however remote, of his act."

PERJURER PUNISHED FOR HIS LIES:—"A witness speaking lies is punished by the very word coming from his mouth, like a rogue camel being beaten with the very stick it carries."

A JUDGE ABUSING HIS POWERS:—"Let him not do this, remembering that even a crow can assume the bearing of an eagle when it comes upon a dead lizard."

ASSERTION NO PROOF:—"Repeated assertion is no proof of the matter asserted."

DECREE:—"A good decree should be like the fruit of a plantain tree. The tree dies on the fruit being reaped. So too, a suit should end with the decree."

IGNORANCE OF LAW NO EXCUSE:—"How is it the fault of the sun that the owl cannot see during the day? How is it the fault of the post that the blind man cannot see it?"

PRECEDENT:—"A decision in one case is applicable to a similar case, as a feast prepared for the son-in-law is also useful for the unexpected guest."

FRIVOLOUS CASE:—"The spending of time in hearing a frivolous case is like time spent in grinding chaff."

CAPITAL PUNISHMENT:—"One should abandon an individual for the sake of the family. We can execute a murderer for the sake of society."

POSSIBILITY:—"That which man has done man can do."

LIMITS TO ENVIRONMENT:—"A rat snake will not become a cobra by being born and brought up in a cobra's hole. Ragi will not become rice even by a thousand sowings."

SOME WRONG JUDGMENTS NO REASON FOR ABOLITION OF COURTS:—"Men do not refrain from setting up cooking pots on the fire because there are beggars. Nor do people refrain from sowing barley because there are wild beasts. Nor should people fail to file suits because there are some wrong judgments."

NOT FORGETFULNESS:—"One does not remember what another has seen."

GOOD LAW:—"A lamp is one but gives light to many persons. A good law must be like that, and must give relief to many. A law enacted for the benefit of one man is a lawless law."

COMPOUNDING OF OFFENCES:—"One who has been seized in order to be put to death will gladly agree to the amputation of a limb."

CRIME AND SOCIETY:—"Crime is to society like poison in the human body. Unless watched and treated carefully, it will kill society."

FARMER SUPREME:—"Existence depends on the plough. So, the welfare of the farmer is the supreme concern of Kings and Courts."

JUDGE DOING WILFUL INJUSTICE:—"The cobra, stupefied by its poison, bites its own body. A judge, intoxicated by his power, hurts justice represented by his body."

A JUDGE'S VANITY ABOUT HIS JUDGMENTS:—"This is like a fool's idea that he dispels the world's darkness by lighting a single wick."

BY THE KING'S POWER:—"Even very powerful nobles and generals are subject to the powers of petty

officers of courts, because of the King's power being behind these."

AN APPELLATE DECREE CONFIRMING AN UNJUST DECREE:—"It is like a boil on boil."

FILING OR NOT FILING A DOUBTFUL SUIT :—"On one side a tiger, on the other an abyss, is the position of a man in such doubt."

DISCHARGE OF DEBT :—"There is no sleep like that of a debtor who has paid off his debt."

DISCRIMINATION (YUKTI):—"A thing not seen by the blind can very well be seen by one with eyes. So, a man of discrimination will see things hidden from the common fry."

CONTRADICTION:—"In the case of contradictories, there can be no middle course; nor can you assume the two contradictories to be identical, because they are asserted to be contradictory."

SELF-INTEREST:—"Even a stupid person does not adopt a course of action without a motive. With millions, the motive is a purely selfish one."

SUSPICION NO GOOD :—"A suspicion is like slow poison. It corrodes the system of the person entertaining it and, finally, destroys it."

EVIDENCE ESSENTIAL :—"In intense darkness, even a wise man cannot distinguish trees and houses. How, then, can a judge decide a case if left in complete darkness by the parties and witnesses?"

SAME TESTS TO BOTH SIDES :—"When the same fault attaches to both sides, it cannot be urged against one alone."

GRAVE PROVOCATION:—"Showing a looking glass, unasked, to a man whose nose has been just cut off will be grave provocation."

THE WAY OF MEAN CREATURES:—"Mean, low, creatures will surely try their best to injure noble men of high intellect, as moths try to put out lights even at the risk of burning themselves to death."

AMBIGUOUS EXPRESSIONS:—"The meaning of an ambiguous expression is to be determined from the context."

FAULTY ARGUMENT:—"A faulty argument is like a well dug in sandy soil. The sides will always be falling in."

WITCHCRAFT INJURES ONLY ONESELF:—"A man who tries to burn his enemy by setting fire to his own fingers may not burn the enemy, but certainly burns his own fingers."

DHARMA:—"Dharma is subtle, and occult, and very difficult to understand. In making it logical and understandable, a part of its greatness is destroyed."

DESIRE FOR REWARDS:—"To act solely from a desire for rewards is not laudable, but no one in this world is entirely free from such desire. Even the study of the Vedas and the performance of sacred rites is motivated by a desire for heaven. Vows are kept from an idea that they will bear fruit. So, the law should take note of it. That man who obeys the law gains fame in this world, and bliss after death."

PARISHADS:—"Whenever the law on a point is unsettled, let parishads settle it. These should consist of good and learned men of upright character and known intelligence, contented with a store of grain sufficient for

ten days, and free from lust, anger, greed, hypocrisy, envy, pride, perplexity and cantankerousness, and practising what they preach. They may be ten or five or three, or even one should more be not available. For, a thousand fools cannot do it." (This is the origin of the "village ten" and of "the village five" or the panchayat. The dictum about the thousand fools is noteworthy.)

CUSTOMS :—"The time-honoured customs and institutions of each province, race, caste and family should be preserved intact. This should be done even in a conquered country. Else, the people will rise up in rebellion, and the country will be ruined." (The British have allowed Hindu Law and Muhammadan Law to remain as the private law of the Hindus and Muslims for this reason. The demand of the Jews to follow their customs peacefully in Germany, and the permission accorded to the American troops in England, Africa and India to be governed by their own laws are further instances showing the consummate wisdom of Hindu Law in this matter)

FOLLOWING CUSTOM NOT A SIN OR CRIME :—"The inhabitants of the South marry a maternal uncle's daughter, Those of the North take intoxicating drinks. Those of the East eat fish. Those of the West marry their brothers' widows. Those of the Centre become day coolies and artisans, though of high caste, and eat beef. But, as all these follow the well-established customs of their localities, they commit no crime, or even sin, and ought not to be subjected to punishment, or even penance." (This illustrates the truth that minor sins and crimes are determined by one's own Society, unlike major sins and crimes which are common for all mankind, like murder, Rape, Incendiarism and Theft.)

CUSTOMARY COURTS :—"Farmers, artisans, artists, money-lenders, merchants, actors, hermits, monks and

robbers should settle their disputes, in the first instance, in their own assemblies, according to their own rules and customs," (The reference to *robbers* is interesting. Readers must understand that the reference is to *Kallars* and other so-called criminal tribes who number millions, even now, and who had to be allowed to settle their own disputes, like other castes and tribes.)

APPEALS :—" Family Councils, caste panchayats, regional assemblies, the King's Judges, and the King himself have got the power to decide law suits and cases. Of these, each succeeding one is the superior appellate court to the one preceding."

HINDU LAW HAS INFLUENCED MORE CIVILIZED MEN THAN ANY OTHER SYSTEM :—It has affected at least a hundred million men for two thousand years (from 2000 B.C., the very latest date when the Vedas became the ultimate source of Law, to 1 A.D.), a hundred and fifty millions for fifteen hundred years (1 A.D. to 1500 A.D.), and two hundred and fifty millions for another four hundred and fifty years (1500 A.D. to day). No other system, neither Roman Law nor any other, has had such a hold on civilized men for such a long time. And it is *not dead* yet, though it is atrophied in parts, either by non-use or by natural decay due to the lapse of untold centuries of active operation in changing conditions.

HINDU CONCEPTION OF THE GOLDEN AGE :—" In the golden age, *Dharma* will be firmly observed. There will be no wrong-doing, no rejoicing in unrighteousness, no starvation, no disease, no usury, no niggardliness, no ignorance, no misery of any kind. Every one will live long, and will get that he desires, and will keep it, whereas now, in this iron age, no one gets all that he desires, or is able to keep all that he gets. Desires will be

restricted to real needs, and will not be capricious, or prompted by Lust, Anger or Greed, as now, as men will be free from these 'triple bonds'. Disease and want will disappear altogether. Fear will go. Men will freely speak the truth. Each will worship God sincerely after his heart's promptings." It is thinking of this ideal that the great dramatist Bhasa said, more than two thousand years ago, "It is false to say that only the dead can gain Heaven. Heaven is not invisible, or in any other world. It is here-on this earth-for us to make good." And, as one of the ways of making it good, he adds "If troth be dead, all men are done. As troth stands firm, so do they". The four great essentials for a "Heaven on Earth" were held to be God, Light, Freedom and Immortality.

SIMILARITY TO THE FOUR FREEDOMS:—The remarkable similarity of this conception to President Roosevelt's four freedoms (freedom from fear, freedom from want, freedom of speech, and freedom of worship) for the New World Order, the golden age (*Kritayuga*) contemplated by the Democracies, will be obvious. There is *nothing new under the sun*, in one sense. It is equally true that *everything is ever new*. Thus, the unique and the universal always meet, and give us the aroma of novelty, enabling us to understand it with the aid of the air of familiarity.

HOPES FOR THE FUTURE:—Hindus can help in bringing about this golden age if they take the *seeds* of their glorious law (the stems and fruits are now as dead as the Dodo, as ruined and hopeless of reconstruction as the Black Pagoda of Konarak or as the Gali Gopuram or Tirupati) and develop them in the new times, according to their own *Yuga-dharma* theory, with proper grafting from the four other great systems of law, the Roman Law, the Muhammadan Law, the English Law, and the French Law, all of which are, happily, functioning in India today.

THE END:—I am writing this book at a time when night is still over India. But, the sun of *Dharma* has only set. It will rise again. May the Lord of *Dharma* hasten the Dawn, and make our India once more take an honoured part in the World of the Future, as she did in the World of the Past!.

