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# HINDU KINSHIP

AN IMPORTANT CHAPTER IN HINDU SOCIAL HISTORY

BY

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## PREFACE

Ever since my college days I was actuated with the idea of studying Hindu culture as it is treasured in their sacred literature, the store-house of their traditions and practices in all their details. When at the end of my graduation Dr. Ghurye of the School of Economics and Sociology suggested to me, when I saw him in 1930 for research study under his guidance, the problem of Hindu Kinship, I readily took it up as I believed it to be a key to the proper understanding of Hindu culture. The work prepared under his guidance for the degree of Ph. D. sees the light of the day with amplifications and modifications that were found necessary during the period of its completion and publication.

(Kinship is a technical yet a fundamental aspect of early culture for the visualisation of many things that once appeared unintelligible in that culture. It is equally or even more essential aspect of Hindu culture in as much as the law of property has been more or less misunderstood or misinterpreted owing to the absence of proper integration of the law with other aspects of its culture.) The present study is an attempt at analysing the law and understanding it on the background of other related institutions. In short, it is a synthesis of the principles underlying different institutions of the Hindus to evolve a proper meaning of the kinship terminologies which are the very backbones of these institutions. It is an analysis of these important concepts in their contexts with a view to arrive at their meaning through a proper integration of the facts thus made available.

The conclusions incorporated into this study may not be final on the subject. Maybe, in spite of conscious effort on the part of the author to study the problem as comprehensively as could be done, certain aspects or points of view are ignored in this study. The author, on his part, is fully conscious that he has made the best of the time and the resources at his disposal. The author has stuck to the principle of 'keeping to the facts' and has not generalised until he felt sure of having weighed all the available evidence. He will find his labours fully rewarded



if the present study induces others to undertake a similar study of other aspects of Hindu culture, a problem which needs detailed and specialised studies at the hands of scholars.

Various studies, contributing directly or indirectly to this aspect of Hindu culture, have been made by scholars Indian as well as Western. Intellectual stimulation received from these studies is, indeed, great. One cannot, therefore, fail to acknowledge one's obligations to these pioneers in the field, though they are too indirect and indefinite for specific reference.

It is a matter of great delight to me to record here my indebtedness to my teacher, friend and colleague Dr. G. S. Ghurye of the Department of Sociology who has unsparingly offered his services to me at whatever odd hours I required, both in the School and at his place, during the period of my studentship and after. I have much benefitted by his enlightening criticism, instructive discussions, illuminating interpretation of Sanskrit texts and thought-provoking suggestions. My gratitude to him is too great to be expressed. I have also to thank Dr. E. J. Thomas, of Cambridge, who was good enough to go through my thesis and make some useful suggestions, and to Lt. Col. Dr. B. G. Vad, M.D., whose services are too great and too indirect to be specified here. I am equally thankful to Mr. G. R. Bhatkal of The Popular Book Depot for undertaking the publication of a book like this.

I am conscious that the manuscript was not properly revised in point of language. I am equally conscious that in spite of my best efforts, errors in printing are not too few to be ignored. I only trust that, in view of the difficulties I had to contest with during the period of this publication, they may kindly be overlooked, though they are not pardonable in a study like this.

The author acknowledges his indebtedness to the University of Bombay for the substantial financial help it has granted towards the cost of publication of this work.

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26-5-1947

K. M. KAPADIA

## Chronology of Sanskrit Texts and Authors

|   |                  |  |
|---|------------------|--|
| <b>I. Vedic Period</b>  | 4000-1000 B. C.* | 2000-500 B.C.; 2500-750 B. C. (Winternitz);  |
| Ṛgveda  |                  | 1200-350 B. C. (Keith);  |
| Sāmaveda and Yajurveda  |                  | 1300-800 B.C. (Macdonell)  |
| Atharvaveda, Samhitās and Brāhmaṇas   |                  | .  |
| A. B., T. B., J. B.,<br>P. B., Kau. B.,<br>S. B., Gop. B. †                               |                  | 800 B. C. (Keith)  |
| Śrautasūtras  | 800-400 B.C.     | B. Śr. S. 5th century B.C.;<br>A. Śr. S., S. Śr. S. 400 B.C.;<br>Āp. Śr. S. 300-350 B.C.<br>(Keith) B. Śr. S. 6th<br>century B.C. (Caland)   |
| M. Śr. S., B. Śr. S.;<br>A. Śr. S., S. Śr. S.;<br>Āp. Śr. S.; Sat. Śr. S.;<br>K. Śr. S. † |                  | 700-300 B. C. (Hopkins)  |
| Gr̥hyasūtras  |                  |  |
| B. G. S. Bh. G. S.,<br>Āp. G. S., H. G. S. †  |                  |  |
| Post-Vedic period   |                  |  |
| Yāskāchārya   | 800-500 B. C.    | 700 B.C. (Belvelkar, Sarup).   |
| Pāṇini  | 600-300 B. C.    | 500 B. C. (Winternitz)<br>300 B.C.-lived in north-<br>west (Keith)   |
| Jaimīni   | 500-200 B. C.    |  |
| Br̥had devatā   |                  | 4th century B. C. (Keith<br>& Macdonell)   |
| <b>II. Sūtra and Epic Period</b>  |                  |  |
| Dharmasūtras  | 600-300 B. C.    | Gautama last of the<br>Dharmasūtras (Meyer);<br>Āpastamba not older than<br>2nd century B.C. 300-100<br>B. C. Sūtra literature.<br>(Hopkins) |
| G. B. Āp. V. (Kane)   |                  |  |
| G., B., V., Āp. (Bühler)  |                  |  |

\* Dates in this column are those given by P. V. Kane.

† This is roughly their chronological order.

## VI

|                |                       |  |
|----------------|-----------------------|--|
| Śāṅkha Likhita | 360 B.C.-100 A.D.     | Vājasenīyas (Jolly)  |
| Kauṭilya       | 300 B.C.-<br>100 A.D. | 300-400 A. D. (Winternitz)   |
| Patañjali      | 150 B. C.             | 2nd century B. C. (Winternitz) 178-140 B.C.(Bühler)  |
| Manu Samhitā † | 200 B.C.-200 A.D.     |  |
| Mahābhārata    |                       | Western Indian product;<br>400 B. C.-300 or 400 A.D.<br>(Winternitz and Hopkins)300-500 A.D (Bühler)<br>First three or four centuries of our Era (S. Levi)<br>by 200 B. C. most of the Epic was completed.<br>(Keith, Hopkins) |
| Rāmāyana       |                       | 800-500 B.C. (Jacobi);<br>300 B. C.-200 A. D.-<br>Eastern Indian product<br>(Winternitz) 400 B. C.<br>(Keith)  |

### III Age of Legislators and Puranas

|               |           |   |
|---------------|-----------|---|
| 1 Yājñavalkya | 100-300   | 4th century A. D. (Hopkins,Keith) Later than 4th century A. D. (Jolly) 3rd century (Jacobi)       |
| 2 Viṣṇu       | 100-300   | Not earlier than 3rd century A .D. ( Jolly) 3rd century. (Hopkins) Later than Yājñavalkya (Meyer) |
| 3 Nārada      | 100-400   | 5th century A. D. (Hopkins, Keith) 400-500; Nepalese writer (Jolly)                               |
| 4 Vyāsa       | 100-500   |   |
| 5 Vaikhānasa  | 500 A. D. |   |

---

† Relationship between Manu and the Vedic Mānavas is not guaranteed, though not quite improbable. (Jolly)

|  |         |   |
|--|---------|---|
| 6 Bṛhaspati  | 300-500 | 6th century A.D. (Keith)<br>6th or 7th century A. D.<br>(Hopkins, Jolly)  |
| 7 Purāṇas *<br>Vāyu, Viṣṇu, Matsya,<br>Mārkaṇḍeya, Kūrma.  | 300-600 | 100-500; more probably<br>in the 3rd century A. D.;<br>Kūrma Purāṇa is much<br>later-in the first quarter<br>of the 8th century(Hazra)      |
| 8 Kātyāyana  | 400-600 | Earlier than Bṛhaspati<br>(Keith)   |
| 9 Pitāmaha,<br>Pulastya  | 300-700 |   |
| 10 Hārīta †  |         | Kashmirian; the oldest<br>Smṛti in existence (Jolly)  |
| 11 Kumārila-bhaṭṭa   | 650-750 | 700 A. D. (Winternitz)<br>8th century A. D. (Jolly)   |
| 12 Minor Smṛtis<br>and some Purāṇas<br>Yama, Aṅgiras, Dakṣa<br>Prachetas, Chaturvi-<br>mśatimata, Prajāpati,<br>Marīchi, Laugākṣi. | 600-900 | 600-1000-more probably<br>800-1000. The Purāṇas<br>are: Liṅga, Varāha, Bṛhan-<br>nāradiya, Agni, Garuda,<br>Brahma, Skanda, Bhavi-<br>śyat. |

#### IV Age of Commentators and Digest-writers

|               |         |  |
|---------------|---------|--|
| 1 Asahāya     | 600-750 | 700-750 (Dh. K) 8th<br>century A. D. (Jelly) |
| 2 Viśvarūpa } | 800-850 |  |
| 3 Bhāruchi }  |         |  |

\* During the period ranging approximately from the beginning of the 3rd to the end of the 5th century A. D. the Purāṇas dealt only with those topics on Hindu rites and customs which formed the subject matter of the early Smṛti-Saṁhitas such as those of Manu and Yājñavalkya-subjects such as varṇāśrama dharma, marriage, impurities, śrāddha, penances, etc. Hazra R. C., *Studies in the Puranic Records on Hindu Rites and Customs*, p. 188

† Viṣṇu belonged to Kāṭhaka school, Hārīta to Maitrāyaṇīya and Yājñavalkya to Vājasenīya school of Yajurveda. Pañḍita belonged to Atharva Veda school. Kātyāyana is said by Jolly to belong to the white Yajurveda school, while in tradition Gobhila Smṛti is also known as Kātyāyana smṛti.

# VIII

|                                   |             |  |
|-----------------------------------|-------------|--|
| 4 Śrīkara                         | 800-1050    | A writer from Mithila  |
| 5 Medhātithi                      | 900 A.D.    | A Kashmirian writer;<br>825-900 (Dh. K.) 9th<br>century (Jolly)        |
| 6 Durgāchārya                     |             | 1000 (Dh. K.)  |
| 7 Dhāreśvara                      | 1000-1055   |  |
| 8 Devasvāmin                      | 1000-1050   |  |
| 9 Jitendriya                      | 1000-1050   | A Bengal writer  |
| 10 Bālaka                         | Before 1050 | A Bengal writer  |
| 11 Halāyudha                      | 1000-1100   | A Mithila or Bengal<br>writer: 1100-1125 (Jolly)                       |
| 12 Vijñāneśvara                   | 1070-1100   | A southern writer : 1075-<br>1125 (Jolly)                              |
| 13 Govindarāja<br>(Com. on Manu ) | 1080-1140   | 1059-1100 (Dh. K.) 12th<br>or 13th century (Jolly)                     |
| 14 Lākṣmīdhara                    | 1100-1150   |  |
| 15 Jīmūtavāhana                   | 1100-1150   | 1090-1130 ( Dh. K. )<br>15th century A.D. (Jolly)                      |
| 16 Aparārka                       | 1125 A D.   | A southern writer; 1140-<br>1187A. D. (Jolly )                         |
| 17 Aniruddha (H.L.)               | 1150-1175   | A Bengal writer  |
| 18 Śrīdhara (Sm. A)               | 1150-1200   | A Southern writer  |
| 19 Devaṇṇabhaṭṭa                  | 1200-1225   | A Southern writer: 1150-<br>1225 (Db.K.)                               |
| 20 Haradatta                      | 1150-1300   | A southerner: older than<br>at least 1450-1500 A. D.<br>(Bühler)       |
| 21 Kullūka                        | 1250 A. D.  | Wrote his work in Bena-<br>res: 15th century (Bühler,<br>Jolly, Ghose) |
| 22 Nārāyaṇa<br>(Com. on Manu)     |             | 1100-1300 (Dh. K.) not<br>later than 14th century(J.)                  |
| 23 Hemādri                        | 1260-1270   | 1260-1309 (Jolly)  |
| 24 Chandeśvara                    | 1290-1370   | A Mithila writer   |

|                                    |           |  |
|------------------------------------|-----------|--|
| 25 Mādhavāchārya                   | 1300-1380 | 1330-1385 ( Dh. K. ).  |
| 26 Sāyanāchārya                    |           | 1330-1385 (cf. Dh. K.)   |
| 27 Viśveśvara<br>( M. Pārj. )      | 1360-1390 | Migrated to N. India after<br>writing Subodhinī: 1350-<br>1375 (Jolly) |
| 28 Śulapāni                        | 1375-1460 | A Bengal writer  |
| 29 Nṛsimhabhaṭṭa                   | 1400-1500 | 1400-1437 ( Jolly )  |
| 30 Udyogakāra                      |           | Latter half of the 15th<br>century (Jolly) belonged<br>to north-west.  |
| 31 Pratāparūdradeva<br>( Sar. V. ) | 1500-1525 | 1497-1539 (Dh. K.)<br>1497-1515 (Jolly)                                |
| 32 Vāchaspati-<br>miśra (V. Ch.)   | 1500-1550 | A Mithila writer : 1450-<br>1480 (Dh. K.) 1400-1500<br>( Jolly )       |
| 33 Rāghava (Com.<br>on Manu )      |           | Later than 1400 A. D.<br>( Dh.K. ) 1500-1650 (J.)                      |
| 34. Govindānanda<br>(Sr. K. K.)    | 1510-1545 |  |
| 35. Raghunandana                   | 1520-1575 | A Bengal writer; about<br>1500 (Jolly) 1430-1612<br>(Aufrecht)         |
| 36. Nārāyanabhaṭṭa<br>(P. Rat.)    | 1540-1570 | A native of Benares :<br>1535-1569 (Jolly)                             |
| 37. Śaṁkarabhaṭṭa                  | 1560-1620 | A southern writer: end of<br>the 16th century (Jolly)                  |
| 38. Nanda Pandit                   | 1590-1630 | 1598-1625 (Jolly)  |
| 39. Kamalākara                     | 1610-1640 | A southern writer :<br>Beginning of the 17th<br>century (Jolly)        |
| 40. Nilakanṭha<br>(V. May.)        | 1615-1645 | 1540 (cf. Dh. K.)  |
| 41. Mitramiśra                     | 1615-1645 | 1540 (Dh.K.) 1600-1635<br>(Jolly)                                      |

|                                  |              |   |
|----------------------------------|--------------|---|
| 42. Nīlakaṇṭha<br>(Com. on Mbh.) |              | 17th century (cf.Dh.K.)   |
| 43. Anantadeva                   | 1650 1680    | Contemporary of Kamalākara ( West and Bühler) 1625-1644 (Jolly)<br>A southern writer. |
| 44. Nāgojibhaṭṭa                 | 1700-1750    |   |
| 45. Bālabhaṭṭa                   | 1750-1820    | A southern writer   |
| 46. Kāśinātha                    | 1790 A.D.    | A southern writer   |
| 47. Jagannātha                   | 18th century |   |

The Vedic works arranged according to the Vedic schools :

|                                       |                    |  |
|---------------------------------------|--------------------|--|
| Rgveda                                | A.B., Kau. B.      | A. Śr. S.; S. Śr. S.;<br>A.G.S.; S.G.S., V.D.S.  |
| Śamaveda                              | P.B., J.B., S.V.B. | L.Śr.S., D.Śr.S., J.Śr.S.,<br>J.G.S., G.D.S., G.G. S.,<br>Kh.G.S.  |
| (Black) Yajurveda<br>K.S., T.S., M.S. | T.B.               | B.Śr. S., B.G.S., B.D.S.,<br>Āp. Śr. S., Āp. G. S., Āp.<br>D.S., Sat. Śr. S., H.G.S.,<br>V.Sm.S., M.Śr.S., M.G.S.,<br>K.G.S., V.G.S. |
| (White) Yajurveda                     | S.B.               | K.Śr.S., P.G.S.  |
| Atharvaveda                           | Gop. B.            | Kau. S.  |

'In later times Kaṭha-Kapisthala school was spread in Kashmir and the Punjab, the Maitrāyaṇīya in the Gujarat territory and the land north of the Narmada, the Taittirīyas were widespread in the south, whence both Āpastamba and Baudhāyana came and the Vājasenīyas covered the north-west [western U.P. ?] and east' (Keith) Original home of the Kāṭhaka school was in the Punjab and Kashmir : Vājasenīyas generally belonged to the north: the Maitrāyaṇīyas lived farther in the north, probably in the neighbourhood of the Kaṭhas who are closely related to them. (Jolly)

Gautama came from Mahārāṣṭra and Vasīṣṭha from north India (Jolly), Āpastamba from Āndhra country (S.E.) and Vasīṣṭha from countries of north-west. (Hopkins)

## ABBREVIATIONS

|            |                               |                       |
|------------|-------------------------------|-----------------------|
| A. B.      | Aitareya Brāhmaṇa (1896)      | A. S. S.              |
| A. G. S.   | Āśvalāyanagr̥hyasūtra (1923)  | A. S. S.              |
| A. Sm.     | „ Smṛti                       |                       |
| A. Śr. S.  | „ śrautasūtra (1874)          | B. I. S.              |
| A. V.      | Atharvaveda                   |                       |
| Adi. P.    | Ādi Purāṇa                    |                       |
| Ag. P.     | Agni Purāṇa (1900)            | A. S. S.              |
| Ap. D. S.  | Āpastambadharmasūtra (1932)   | Ed. Bühler            |
| Ap. G. S.  | „ gr̥hyasūtra (1928)          | Ed. A. C. Sastri      |
| Ap. Śr. S. | „ śrautasūtra (1902)          | Ed. R. Garbe          |
| B. D. S.   | Baudhāyanadharmasūtra         |                       |
| B. G. S.   | „ gr̥hyasūtra (1920)          | G. O. S.              |
| B. P.      | BṛhatParāśara                 |                       |
| B. Pm. S.  | Baudhāyanapitṛnedhasūtra      |                       |
| B. Śr. S.  | „ śrautasūtra (1913)          | Ed. W. Caland         |
| Bh. G. S.  | Bhārajadvājaḡhyasūtra (1913)  | Ed. H. J. W. Salomons |
| Bh. P.     | Bhaviṣyat Purāṇa              |                       |
| Bhag. P.   | Bhāgavata Purāṇa              |                       |
| Br. up.    | Bṛhadāranyaka Upaniṣad (1914) | A. S. S.              |
| Brh.       | Brhaspati Smṛti               |                       |
| Brh. P.    | Brahma Purāṇa (1895)          | A. S. S.              |
| Brhnd. P.  | Brahmāṇḍa Purāṇa              |                       |
| C. V. C.   | Chaturvargachintāmaṇi         | B. I. S.              |
| Ch. up.    | Chhāndogya Upaniṣad           |                       |
| D. B.      | Dāyabhāga (1829)              | B. I. S.              |
| D. N.      | Dvaitanirṇaya                 |                       |
| D. K. S.   | Dāyakramasaṃgraha             |                       |
| Dat. Ch.   | Dattakachandrikā (1899)       | Ed. Y. K. Suratkar    |
| Dat. M.    | „ mimāṃsā                     |                       |
| Dh. S.     | Dharmasindhu (1936)           | N. S.                 |
| G.D.S.     | Gautamadharmasūtra (1931)     | A.S.S.                |
| G.G.S.     | Gobhilaḡhyasūtra (1936)       | Cal. S.S.             |
| G.P.       | Garuḍa Purāṇa                 |                       |



|           |                                      |                         |
|-----------|--------------------------------------|-------------------------|
| G.Rat.    | Gṛhastharatnākara (1887)             | B. I. S.                |
| G.Sm.     | Gobhila Smṛti                        |                         |
| G.Śr.K.   | Gobhilaśrāddhakalpa                  |                         |
| Gop. Br.  | Gopatha Brāhmaṇa (1872)              | B.I.S.                  |
| H.G.S.    | Hiranyakeśigṛhyasūtra (1889)         | Ed. J. Kirste           |
| H.L.      | Hāralatā (1909)                      | B.I.S.                  |
| J.U.B.    | Jaiminiya Upaniṣadbrāhmaṇa<br>(1921) | Ed. Bhagavad<br>Datta   |
| J.G.S.    | Jaiminiyagrhyasūtra (1922)           | P.S.S.                  |
| J.Śr.S.   | Jaiminiyaśrautasūtra (1906)          | Ed.D. Gaastra           |
| K.G.S.    | Kāṭhakagrhyasūtra (1925)             | Ed. W. Caland           |
| K.P.      | Kūrma Purāṇa (1890)                  | B.I.S.                  |
| K.S.      | Kāṭhakaśāmbhitā (1910)               | Ed. L. Von<br>Schroeder |
| K.Śr.S.   | Kātyāyanaśrautasūtra                 | Ed. A. Weber            |
| Kat.      | „ Smrtisāroddhāra (1933)             | Ed. P.V.Kane            |
| Kat.Śr.K. | „ śrāddhakalpa                       |                         |
| Kau.      | Kauṭilya Arthasāstra (1924)          | T.S.S.                  |
| Kau.Br.   | Kauṣitakī Brāhmaṇa                   |                         |
| Kau.S.    | Kauṣikasūtra                         | Ed. M.<br>Bloomfield    |
| Kh.G.S.   | Khādiragrhyasūtra (1913)             | G.O.S.                  |
| L.G.S.    | Laugākṣigṛhyasūtra (1928)            | K.S.                    |
| L.P.      | Līṅga Purāṇa                         |                         |
| L.Śr.S.   | Lātyāyanaśrautasūtra (1872)          | B.I.S.                  |
| M.        | Manusāmbhitā (1886)                  | Ed. V.Mandlik           |
| M.G.S.    | Mānavagrhyasūtra (1897)              | Ed. Knauer              |
| M.P.      | Matsya Purāṇa (1907)                 | A.S.S.                  |
| M.Parj.   | Madanapārijāta                       | B. I. S.                |
| M.S.      | Maitrāyaṇīyasāmbhitā (1923)          | Ed. L. Von<br>Schroeder |
| M.Śr.K.   | Mānavaśrāddhakalpa                   |                         |
| M. Śr. S. | Mānavaśrautasūtra                    | Ed. Knauer              |
| Mbh.      | Mahābhārata                          | Cal. ed.                |
| Mk. P.    | Mārkaṇḍeya Purāṇa (1862)             | B. I. S.                |
| Mit.      | Mitākṣarā                            | N. S.                   |
| N. D. S.  | Nāradaśāstra                         |                         |
| Nir.      | Nirukta (1921)                       | A. S. S.                |

|             |                                  |                |
|-------------|----------------------------------|----------------|
| N. S.       | Nirṇayasindhu (1926)             | N. S.          |
| P. B.       | Pañchaviṃśa Brāhmaṇa (1931)      | Ed. W. Caland  |
| P. G. S.    | Pāraskaragr̥hyasūtra (1921)      | V. S. S.       |
| P. P.       | Padma Purāṇa (1894)              | A. S. S.       |
| P. Parj.    | Prayogapārijāta                  |                |
| P. Rat.     | Prayogaratnākara                 |                |
| P. S.       | Parāśaradharmaśāstramhitā (1893) | B. S. S.       |
| R.          | Rāmāyana                         |                |
| R. V.       | R̥gveda                          |                |
| S. A.       | Śāṅkhāyanāraṇyaka (1908)         |                |
| S. B.       | Śatapatha Brāhmaṇa (1940)        | V. S. P.       |
| S. C.       | Smṛtichandrikā (1921)            | G. O. S.       |
| S. G. S.    | Śāṅkhāyanagr̥hyasūtra (1942)     |                |
| S. May.     | Śrāddhamayūkha (1920)            | G. P.          |
| S. R. M.    | Samskāraratnamālā (1899)         | A. S. S.       |
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| Yaj               | Yājñavalkya Smṛti  | N. S.                           |
| A.B.O.R.I.        | Annals of the Bhandarkar Oriental Research<br>Institute    |                                 |
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| B. I. S.          | Bibliotheca Indica Series                                  |                                 |
| B. S. S.          | Bombay Sanskrit Series                                     |                                 |
| C. H. I.          | Cambridge History of India (1922)                          |                                 |
| C. S. S.          | Chowkhamba Sanskrit Series                                 |                                 |
| D. H. C.          | Draft Hidu Code  |                                 |
| E. R. E.          | Encyclopædia of Religion and Ethics                        |                                 |
| G. O. S.          | Government Oriental Library Series                         |                                 |
| G. P.             | Gujarati Press   |                                 |
| H. O. S.          | Harvard Oriental Series                                    |                                 |
| His. of Dh.       | History of Dharmaśāstra                                    |                                 |
| Ind. Ant.         | Indian Antiquary   |                                 |
| J. A. I.          | Journal of Anthropological Institute                       |                                 |
| J. A. O. S.       | Journal of American Oriental Society                       |                                 |
| J. Ant. S.        | Journal of Anthropological Society of Bombay-New<br>Series |                                 |
| J.B.B.R.—<br>A.S. | Journal of Bombay Branch of Royal Asiatic<br>Society       |                                 |
| J. I. H.          | Journal of Indian History                                  |                                 |
| J. R. A. S.       | Journal of Royal Asiatic Society                           |                                 |
| K. S.             | Kashmir Series of Texts and Studies                        |                                 |
| N. S.             | Nirnaya Sāgar Press  |                                 |
| P. S. S.          | Punjab Sanskrit Series                                     |                                 |
| S. B. E.          | Sacred Books of the East Series                            |                                 |
| T. S. S.          | Trivendum Sanskrit Series                                  |                                 |
| V. I.             | Vedic Index  |                                 |
| V. S. P.          | Venkateśvara Steam Press                                   |                                 |

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## INTRODUCTION

'Self and society are twin-born, we know one as immediately as we know the other, and the notion of a separate and independent ego is an illusion'<sup>1</sup>. Man builds society as naturally as the bee builds the honey comb. The powerful biological and psychological forces, which are designated as 'inherent sociability of man', propel him to live in society. It is through social relations that man's nature finds its complete expression. Society is an inherent condition of human fulfilment.

The term society is used in sociological literature 'for the whole tissue of human relations, whether organised or not'. It includes 'all or any dealings of man with man, whether these be direct or indirect, organised or unorganised, conscious or unconscious, co-operative or antagonistic'<sup>2</sup>. From this wide comprehensive concept of society we must distinguish a society. 'A society', writes Hobhouse, 'is a definite collection of people united by certain special relations with one another and in some way marked off by these relations from others who do not enter into them, possessing in fact a certain unity and in general a structure and what for want of a better metaphor we are accustomed to call a certain life of its own'<sup>3</sup>. Thus the conception of a society implies contact, direct or indirect, and the binding tie of relations, enduring and comprehensive. These relations act and react upon each other and the interaction and interrelation of these social activities constitute the life of a society. 'Society is not relations, but beings in their relationships'.

The enduring system of relationships established between individuals, between individuals and groups, and between groups in a society constitutes what we generally call institutions. They are, in other words, the determinate forms in accordance with which men enter into social relations. The exact nature of their close bond may be explained by a metaphor thus: 'social relations are activities, the threads of life; social institutions form the loom on which the threads are woven into a cloth'<sup>4</sup>.

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1. Cooley C. H., *Social Organisation*, p. 5. cf. Davis J. and Barnes H. E., *An Introduction to Sociology*, p. 41; Maciver R. M., *Community*, p. 69, Mackenzie J. S., *Outlines of Social Philosophy*, p. 35.

2. Ginsberg M., *Sociology*, pp. 39, 40.

3. Hobhouse L. T., *Enc. of Rel. and Ethics*, Vol. XI p. 654 (b).

4. Maciver R. M., p. 7

All social activities have as their basis interests. Institutions, being organised systems of human activities, have thus definite purpose to promote. 'It is because we seek, clearly or dimly, from prescience or instinct, some end, some fulfilment of ourselves or others, that we relate ourselves to one another in society'. The existence or suppression of an institution, its rise and fall, depends upon tenacity and worth of its ideals, the end it seeks to promote. Institutions are thus judged by their ends, but the study of these ends, or what may be called the question of values, apart from details is, as a matter of fact, the subject of social philosophy. It is admittedly true that the question of values invariably occurs to a student of culture, but that alone does not constitute the study of culture from the point of view of a sociologist.

Besides the ends which institutions seek to promote they have definite ideas attached to them. The study of these ideas or attitudes is the fundamental part of the study of culture. The question of ends is invariably involved in interpreting and explaining these ideas. Culture-study is, thus, an analysis of its components in order to seek the underlying harmony which constitutes them into a synthetic whole. 'A realization of the mutual relations of institutions is something that comes from a study of their details rather than from a general inspection of their nature: nevertheless, to get a true sense of their endless interplay, one must be looking for the interrelations as he reviews the details'.

The study of any culture further requires the precise evaluation of the role of environment and the ethnic element, especially the latter, as determinants of that culture.

The environmental school stressed the importance of environment in the determination of culture. It may be granted that physical environment is not to be discarded totally in any historic study of a civilisation, but it is too much to claim that it determines a definite type of civilisation or that it prevents a civilisation from developing. We do find diverse cultures being produced in similar or identical environments, and we have historical records of great civilisations thriving in adverse environments and crude cultures in the most favourable ones. History equally presents a large number of cases of the fall of a great civilisation with no change whatsoever in environment. Environment does

impose certain limiting conditions which provide, as Wissler puts it, the 'brick and mortar' of material civilisation. But what is important is not the material provided by environment but the adjustment by a community to the environment in order to satisfy its needs. The form is determined by the co-existing culture level. 'The size and complexity of societal organisation depends upon conditions existing in the natural and societal environments and also in the type of adjustment attained in meeting these conditions.'<sup>5</sup> The real determinant factors are, then, creativeness of the individual, the national and racial psychology, the cultural contacts and ultimately the psychological and sociological inertia.

The other determinant, namely the ethnic element, is partly touched upon in considering the first. The problem of race and its part in the progress of civilisation is a baffling question<sup>6</sup>. What is important for us is the nature and the result of the clash that occurs when peoples of varying civilisations meet. Habitation in a single environment cultivates in course of time inertia in the life of a community and engenders a sense of resignation to the existing state of things. The passivity which naturally results from such a life checks progress until an initial impulse to overcome the co-efficient of friction of inertia is aroused by contact either regulated or non-regulated through migration, war or accident. The contact of aliens at times brings about a crossing of different culture elements, thus infusing a new blood into the stale skeleton of the communal-life<sup>7</sup>. But if, on the

5 Sumner W. G. and Keller A. G., *Science of Society*, p. 425; Tozzer A. M., *Social Origins and Social Continuities*, pp. 47, 51; Dixon R. B., *Building of Cultures*, Ch. I, Goldenweiser A. A., *Early Civilisation*, pp. 295-301; Kroeber A. L., *Anthropology*, p. 182; Wissler C., *Man and Culture*, p. 325; Ginsberg M., pp. 92, 93, 96; Lippert J., *Evolution of Culture*, p. 169; Hertz F., *Race and Civilisation*, p. 304; Petrie W. M. Flinders, *Revolutions of Civilisation*, p. 125; Dorsey G. A., *Civilisation*, p. 233.

6 Ginsberg M., Ch. III; Pittard E., *Race and History*, Introduction.

7 Teggart F., *Processes of History*, pp. 117, 120; Petrie W. M. Flinders, pp. 114, 128, 129, 131., Goldenweiser A. A., p. 26; Vinogradoff P., *Historical Jurisprudence*, Vol. I pp. 169-70; Rivers W. H. R., *Psychology & Ethnology*, p. 137 'Social structure has this fundamental and deeply seated character that it is the least easily changed and only changed as the result either of actual blending of peoples or of the most profound political changes.'



other hand, the two happen to enter into competition either for their means of subsistence or for the claims of superiority, the group advanced in social attainments would invariably turn out victorious. As for the defeated party, it is either destroyed, displaced or absorbed, according as the nature of social organisation demands. The ethnic stratification which would naturally result in the last process would produce social differentiation. With all the disadvantages this social differentiation is likely to bring with it, the process of crossing of culture elements, however slow it may be, will go on modifying one or both of them. "The great advances of mankind have been due not to the mere aggregation, assemblage, or acquisition of disparate ideas, but to the emergence of a certain type of mental activity which is set up by the opposition of different idea-systems"<sup>8</sup>.

In India the question of ethnic contact is rendered more complex by various theories. Besides the question of the Aryan origin, which is not a settled point as yet, doubts are entertained as regards the invasion of India by the Aryans in a single or multifarious batches at different times and through different routes. The question of identity of the Indo-Aryans as well as of the indigenous population has so far remained a vexed one. If the people opposing the Aryans were Dravidians, the precise nature of their culture and their supposed identification with the Sumerians are questions which have not been satisfactorily answered. These and such other queries are moot points in Indian history, and I do not propose to launch into lengthy discussions they call for. 'It is only proper to recognise that we really do not know, and have no means of ascertaining, at present how far the people at the period of the R̥gveda can be styled Aryo-Dravidian rather than Indo-Aryan.' Again, India passed through a tumultuous life dominated by religious cross-currents and swayed by foreign invasions, and the cumulative influence of these must have led the Brahmins to set the stamp of orthodoxy wholesale on many religious beliefs and social relationships that were alien to their own culture. It is, hence, proper to call this book Hindu Kinship rather than Brahmanic Kinship.

'The law of every country is the outcome and result of the economic and social conditions of that country as well as the expression of its intellectual capacity for dealing with

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8. Teggart F., p. 112; Ginsberg M., pp. 91, 92; Tozzer A. M., p. 21.

these conditions. When new relations between men arise or when the old relations begin to pass into new forms, law is called in to adjust them'<sup>9</sup>. The study of law at any stage is the analysis of the conditions present which are systematised into a definite form by the intellectual level of the community. The historical development of the legal precepts and usages thus gives us an insight into the different trends of social conditions which vary in course of time under the influence of various forces. Among these forces religion has been the most potent one. Preponderance to religion in early civilisations is quite natural, and there is much truth when it is said that 'the real history of men is the history of religion.' But while other cultures achieved the gradual secularization of one field after another of human activity restricting religious concepts and motivation to the religious and ethical phases of belief and conduct, in India the religion has been co-related down to the present time to all phases of social life and no act in Hindu life is without its ceremonies or its religious significance. Religion has thus influenced the evolution and growth of all institutions and more so the family and marriage. A critical study of religion is, therefore, not only necessary but inevitable for the study of Hindu culture.

It is evident that the various threads of social life are intricately interlaced so much so 'that we cannot follow any one of them without touching a number of others and we cannot sever a single piece of the fabric without impairing our insight into the course of the individual strands.'<sup>10</sup> But the exact extent of influence one exerts over the other parts of social life cannot be *a priori* exaggerated. It demands that the threads of social life must be isolated into as many variables as are possible and a connection between them all must be properly studied and weighed.

The methods for such a study are generally two: it may be historical or analytic. When I say analytic I mean to analyse various elements of social structure, to inquire into the social functions of these elements and to discover how these functions are co-related so that they produce an orderly and consistent organization. But this does not mean that historical view point is completely ignored

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9. Bryce J., *Studies in History & Jurisprudence* (1901), Vol. II p. 746

10. Lippert J., pp. 157, 158, 183; Ginsberg M., p. 50; Goldenweiser A. A., p. 31.

here. Our modern institutions have their basis in cruder forms of the past and, hence, historical approach is inevitable. 'What is rejected here is not history but hypothetical history' the evils of which are too evident to be quoted<sup>11</sup>.

This method has further a special preference for the study of Hindu culture because the data of Brahmanical literary records is less historical than mythological or theological. The Vedas are the highest authority, but they are in no way the historical records of the antiquities as the term is understood in social sciences. Added to this is the lack of historical sense to which Dr. Winternitz referred when he said "To them the facts themselves were always more important than their chronological order...whatever seems good, true and right to the Indian, he raises to the greatest possible age; and if he wants to impart special sanctity to any doctrine or if he wishes that his work shall be as wide-spread as possible and gain respect, then he veils his name in a modest incognito, and mentions some ancient sage as the author of the book."<sup>12</sup> This explains the curious device of adding the word Brihat or Vriddha to later works with a view to relegate their authority to some ancient sages. Again, the fact that there is no unanimity among Sanskrit scholars regarding the chronology of these works is a serious impediment in placing the facts in their proper historical settings.

I will sum up this short introduction with a word of apology. A study of other Indo-European peoples—Greeks, Romans, Celts, Slavs and Iranians—would have helped much in ascertaining the element of Aryan thought in Hindu culture. But I have purposely restricted the scope of this book to Sanskrit literature only, as the restricted study provides ample opportunities for detailed analysis so fundamental for correct interpretation of cultural complexes.

11. Sociologists generally sin "to heap instances together from every quarter of the globe and assuming that because their external character is similar one cause must have produced them all" But as Malinowski rightly observed "What is more important is the analysis of existing institutions as they work at present rather than the reconstruction of a hypothetical past. We are hunting for origins before we had properly understood the nature of the organisations"

12. Winternitz M., *History of Indian Literature*, Vol. I p 25, 20.

# CHAPTER I

## CULT OF MANES

The Vedic Aryans had a hearty and healthy love of earthly life. They had unbounded relish for the pleasures and delights, the life on this earth could offer to them. This spirit of exuberent joy and unsophisticated delight powerfully influenced their view of death and life beyond it. They did not conceive death as a terminus of the life on this earth; it was an entrance upon a new life which was all the more happy and joyful. Death did not bring crisis but marked a transition from one stage to another. With this view of death life after death is not much distinguished from that before it in as much as the life after death depends upon as much performance of rites as the life before it. ("Through the samskāras after birth one conquers earth; through the samskāras after death, heaven."<sup>1</sup>) With death, whether the flames devour the body or the earth covers it, the spirit of every dying man, freed from all sins and imperfections, treading by the path which the Fathers trod, moves towards new life, a life that is all the more joyful<sup>2</sup>. Led by Pūṣan, it crosses the stream and passes by Yama's watchful dogs to the world of Fathers. There in the high heaven king Yama 'who searched out and showed the path to many' bestows upon him a place to rest with other Fathers as a divine spirit among the blessed gods<sup>3</sup>. Equal to

1. B. P. M. III 1, 4 Cf. M. III 203 "The rite in honour of the manes is more important than the rite in honour of the gods," and (Mbh, XIII 23, 72) "they who abstain from performing the rites...have to sink in hell". Cf. also Ap. D. S. II 7, 16, 12.

2. cf. A. V. VI 120,3 'Where the well-hearted, the well-doing revel, having abandoned disease of their own selves, not lame with their limbs, undamaged in heaven—there may we see (our) parents and sons'. cf. also A. V. III 28,5; IV 34,2; XVIII 2, 24; 3, 7, 9; 4,64. R. V. IX 113, 7 seq. especially 11; X 14,7,8; 15,14; 16,4,5; 17,4.

3. R. V. X 14,2,7-11, 15; 16,1,2,5; 17,3,5; 56, 1; 154,4,5. A. V. XII 2,45 XVIII 2,4,5,11,25,46; 3,71,73; 4,10,11. 'Let the Fathers acknowledge thee who art departed'; 'This (is) the former, the after down-track by which the former Fathers went away; they who are the fore-runners, the followers of it, they carry thee to the world of well-doing.' 'Let the (Fathers) gone beyond far from here be a finder of good for you.' (Acc. to Whitney and Lanman 'Let him that goeth very far away be a finder of good')

them in appearance and might he is their companion. (Those who passed of old and those who follow, 'the countless ancient Fathers' constitute a group of Pitris, the invisible, powerful, immortal, divine beings.)

But on his death the living relatives do not mourn him as one lost to the family. He is prayed to revisit with other Fathers the children whom he left on this earth. Thus supplicated, the Pitris come in thousands with gods, with whom they are in closest unity, to feast with avidity and to heart's content the offerings of men<sup>4</sup>.

(The dead, though not alive, is lively enough : and even the long dead Pitri is an active element in the living world.) The Pitris who are kind, gentle and righteous, beneficent and harmless, are requested to be the supporter of the fold left here without a livelihood, and are solicited to show their goodwill, to be gracious unto them, to bless them, to give them health and strength, to hear, intercede and protect them, and to bestow upon them opulence and treasure<sup>5</sup>. They are propitiated to avert their anger for any sin the descendants might have committed through human frailties<sup>6</sup>. Further they are invoked to turn the merits acquired by their good deeds to overthrow the foes of the living<sup>7</sup>, to give health and heroic sons. (It is thus clear that the Vedic Aryans, like their Iranian

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A. V. XVIII 4,51,52,44,48. Cf. also Macdonell A. A., *Vedic Mythology*, p. 170; Kaegi A., *Rigveda*, p. 69; Whitney W. D. *Oriental and Linguistic Studies*, p. 49 seq. The dead in his direct journey to the heavenly world is at times sought to be protected against a possible danger. 'From the north, from the midst, from the atmosphere, from each quarter, O Agni, protect him round about from what is terrible'. (A V. XVIII 4,9). It is very difficult to decide from the available data the exact nature of the possible danger hinted here. It may be merely to protect the dead from the influence of evil spirits who are said (R. V. X 16,7; A. V. XVIII 4,9) to haunt the cemetery ground. But an overwhelming bulk of evidence both in the *Rigveda* and the *Atharva Veda* points to his direct communion with the Pitris.

4. R. V. X 14,4,5; 15,1,3,4,5,8 seq.; 16,11,12; 17,8; V. S. XIX 56-58.

5. R. V. I 106,3; VI 52,4; 75,9; VII 35,12; X 14,6,10; 15,1,4,5,7,11; 16,5; A. V. II 12,4; XVIII 1,51; 2,11,30; 3,14,45,48,58; 4,40,62,67; V. S. XIX 50,55,57,58. T. S. II, 6, 12. In S. B. (XIII 8, 1, 6) the Fathers are said to keep their contract alive with this world through offspring.

6. R. V. X 15,6; A. V. XVIII 1,52; 4,82,83; V. S. XIX 62

7. Keith A. B., *Rel. and Phil. of the Vedas*, p. 426

brethren, looked upon their ancestors with affection and esteem<sup>8</sup>, the mischievous powers of the dead being not recorded to have been felt.) (Furthermore, the worship of the Pitris is not to benefit the dead but is the expression of the family affection and of the craving of heart to utilise their divine powers, their help and blessings, they in their divine state are capable of offering. The tendency of the dead being thus conceived to be a means of transforming the proximity of the dead into a helpful influence in daily activities, it is naturally a pious duty on the part of the living descendants to minister to their support, a duty which might not be neglected. In neglecting them he was indifferent to the gratitude shown unto him he sinned against them. (The living relied much upon the dead for his happiness and comforts in life; the dead received food from the living. Thus a powerful bond was established between the dead and the living which made of them a body for ever inseparable<sup>9</sup>.)

‡ A passage of the Atharva. Veda (XVIII 2, 47), (‘They that departed unmarried, having no progeny, going upto heaven have found a place (*loka*)’, shows that the dead attained to a higher world even in absence of a male issue, a view which essentially differs from the later cult wherein the meticulous performance of the rites is

8. Geiger, *The Civilisation of the Eastern Iranians in Earlier Times*, p. 112. “Next to love and reverence for them, personal interest made it desirable to be in communication with departed souls. ... In direct proximity to the Deity there were beings with whom men had once been linked by ties of blood and in whom they could also presuppose a special sympathy of their own good fortune and welfare, a particular understanding of their special wishes and needs” cf. Moulton J. II., *Early Zoroastrianism*, p. 279. Caland attributes the worship of the dead among the Vedic Aryans to the fear of ghost, but Hopkins (*Origin and Evolution of Religion*, p. 76) rightly observes that “the Vedic Aryans had only a kindly feeling for the dead” cf. Keith, pp. 425, 427.

9. The intimate relation existing between Fathers and their descendants is seen in the daily offerings which every householder is duty bound to offer to his Pitris and in the feeding of ancestors on every occasion of family rejoicings. (S. B. XI 5,6,1,2. T. A. II, 10. A. G. S. III 1, P. G. S. III 10, 54, 55. S. G. S. IV 4. Ap. D. S. I. 4,13,1. B. D. S. II. 6,11,3. V. D. S. XI 5. G. D. S. V 3,5. M. III 70-72, 80-83, 91, 254. Mbh. XIII 97,8,9; 127,7) Hopkins E. W., *Epic Mythology*, p. 34 Again, it is this intimate bond which explains the reverence felt for the ancient laws and customs of the family. cf. R. V. I 87, 5; M IV 178; Mbh. I 113 M. Muller, *What India can Teach us*, pp. 219. 220.

believed to save the dead from going to hell. Equally suggestive is another passage of the *Atharva Veda* (XIV 2, 73) given in the wedding hymn. ('Those ancestors who have come to this wedding in order to see the bride, let them bestow on this bride with her husband protection accompanied by progeny'.) It need not be supposed that the dead ancestors are invoked on marriage occasion to come and bless the bride with progeny in which they are interested. As a matter of fact, as Dr. Mrs. Iravati Karve believes<sup>10</sup>, (it points to a custom, which is as yet observed both in Gujarat and the Deccan, wherein the newly married bride, when she is brought home, is taken to the elders of the bridegroom, males as well as females, who view her and bless her. The passage contemplates a time when not only the living elders but the dead ancestors, too, were supposed to come to view the bride and bless her. It emphasises the interest the dead were supposed to take in the affairs of the living and the sense of continuity that was felt to bind the living with the dead.)

The most important aspect of the mane-cult is the persons who received the offerings. In the earliest stage the worshipper, in offering his prayers and offerings to the Pitris, did not refer to the ancestors actually remembered or at all events capable of being remembered. Pitris meant to him all the dead persons of the community without specific enumeration. Though all of them were not known to him, they were known to Agni. 'O Agni, to eat oblations, bring thou the Fathers one and all, the buried and the cast away, those burnt with fires and those exposed'<sup>11</sup>. The same communal aspect of the Pitris may be read in a passage of the *Atharva Veda*, 'Those barbarians

10. Keith (loc. cit., p. 426) holds that the manes are worshipped on marriage occasions because they are interested in the issue of such marriage. Karve I., *Kinship Terminology and Kinship Usages*, in A. B. O. R. I., Vol. XX p. 124.

11. A. V. XVIII 2, 34. cf. R. V. X 5, 2, 8, 10, 13, 14. V. S. XIX 58, 59. In A. V. V 24, 15 it is said 'May the fore-fathers of old time protect me. May the fathers of succeeding ages save me. May the fathers of our fathers save me'. In the last line the worshipper obviously refers to his dead ancestors, but in the lines preceeding he appears to refer to the Pitris who were in old times worshipped as manes. In another verse (XVIII 3, 21) the Pitris are spoken of as 'our distant fathers, the ancient ones' and elsewhere (R. V. X 15, 10). as 'countless ancient fathers'. I think these passages can be interpreted to refer to communal manes.

(dasyavah) who having entered among the Fathers, having faces of the kinsmen, go about eating what is not sacrificed, who bear *parāpura* and *nīpura*, Agni shall blast them forth from this sacrifice.<sup>12</sup>) Agni is requested here to drive away from the group of Pitris those who are not Aryans but aborigines and yet have managed to creep into the group of the Aryan Pitris by their accidental similarity of physical features. They have no share in the offering, because, as they do not follow the same religion, the offering is not meant for them. If this interpretation be accepted, the offering is meant for all those who practised the same religious rites, all the dead persons of the Vedic Aryan community.

Manu (III 195 seq.), while giving the origin of the Pitris, states that the Somasads are the manes of the Sādhyas, the Agnisvāttas, of the gods and the Barhisads, of the Daityas, Rakṣasas and others. In other words, in invoking manes by such terms as Somapās, Agnisvāttas and Barhisads, the manes of gods, Sādhyas, Daityas, Rakṣasas, Yaksas, Gāndharvas, Kinnaras, Snake-deities and Suparvas are invited. It is instructive to note here that Rūsi, according to Mārkaṇḍeya Purāṇa (XCVII 23, 24), on being advised by Brahmā, propitiated the Pitris for a wife for a new creation. In his invocation to the Pitris he prayed to the manes of Siddhas, of Guhyakas, of Asuras, of Nāgas, of Serpents, of forest-dwelling ascetics and of those dwelling in the pātāla. We do not know who were exactly the Nāgas, the Serpents, the Asuras or the Daityas, but it can be asserted that in these passages Pitris do not mean the dead persons of the family but the dead persons of various groups—they may be ethnic groups—which we find in the Brahmanic and the Puranic literature. And invocation in this manner must imply that at some stage in the development of the ritual manes of the community as a whole were worshipped.)

12. A. V., XVIII 2, 28. The words *Parāpura* and *Nīpura* in the text are not clear in meaning. Commentators have interpreted them as *sthūladehān* and *sukṣmadehān* or as *pinḍadātārāḥ* *putrāḥ* and *pautrāḥ*, but these explanations are obviously something else than the real meaning of the words. They are also translated as 'who fill our enemies' houses and our kindred's houses'. Though this cannot be taken as the meaning of the words, it is a bit satisfactory explanation, as it is in line with the interpretation we have given to the passage.



Along with these references to Pitris in general terms we find invitation to the Pitris in specific terms or to the groups of Pitris.<sup>13</sup> The first explicit reference to Fathers who had but lately departed and who were still personally remembered and respected is found in the *Atharva Veda*. ("In Vais'vānara I offer this oblation, a thousandfold, hundred-streamed fountain; it supports our father, grandfathers, great-grandfathers it supports, swelling". "The fathers of our father, his grand-fathers, those who have entered into air's wide region, those who inhabit earth or dwell in heaven, these Fathers will we worship with oblation".) Similarly in the funeral hymn the invocation runs: ("To thee, great-grandfather and those after you be this cry of hail. To thee grandfather and those after you be this cry of hail; to thee father be this cry of hail. Svadhā to Fathers on earth, in the atmosphere, in the sky"<sup>14</sup>.) (Perusal of these passages show that though the concept of the individual ancestors was not sharply demarcated from that of the communal ones, a definite connection with a group of three immediate ancestors had come to be visualised by the time of the *Atharva Veda*.)

The phrase '*ye cha tvām anu*'—and (those) who (are) after you—applied to the great-grandfather and grandfather in the invocation is somewhat intricate. Mr. Vaidya completely misunderstood the text of *As'valāyana* when he opined that the view of *Gāṇagāri* was an explanation of the phrase '*ye cha tvām anu*.' Equally erroneous seems to be his own explanation that "perhaps this refers to the ancient practice that some followers burnt themselves along with their master."<sup>15</sup> The explanation is more imaginative than reasoned. Whitney's translation of the phrase is 'for them that belong with thee', but it does not make the sense clear. In the

13. R. V. I 3, 11; X 14, 6. A. V. XVIII 3, 15. V. S. XIX 50.

14. A. V. XVIII 2, 49; 3, 46, 59; 4, 35, 75-80

15. Vaidya C, V., *History of Sanskrit Lit.*, Part III pp. 64, 65, It is true that the domestic servant enjoyed some privileges in the Hindu family, but there is no reference to his following his master in the other world in the whole range of the Vedic literature. One can find in *Hemādri* (p. 1437) an allusion to a view akin to that propounded by Vaidya. But I seriously doubt whether *Hemādri* ever thought of human attendants burning themselves after their masters.

Bharajadvāja Grihya-sūtra (II 12, 14) the phrase is 'anugaih saha' with those who follow thee. The idea is that an ancestor is invoked with his immediate descendants, i.e. the great-grandfather is invoked with his immediate descendants namely the grandfather and the grand paternal uncle. The only difficulty in this interpretation is that when the phrase is applied to the father, as is done in the mantras given in the S'rauta and later literature, the sacrificer himself is included among the persons worthy of receiving offerings. The oddity of the situation is noticed by the Brahmana writers: "With 'N. N. this for thee' he presents a cake to the sacrificer's father. Some add 'and for those who come after thee', but let him not say this since he himself is one of those to whom (it would be offered) in common"<sup>16</sup> They omit the phrase to avoid the curious situation of involving even the offerer himself in the category of recipients of his own offerings. This is indeed a good device to explain the anomaly, but a better explanation of the phrase may be given. We find that the immediate descendants of the great-grandfather are the grandfather and the grand paternal uncle. They are invoked to receive the offering by adding the phrase "*ye cha tvām anu*" to the mantra addressed to the great-grandfather. But the grand father is specifically mentioned as the recipient of the second pinda and it is superfluous to include him in the list of implied persons. The phrase, then, refers only to the grand paternal uncle. Similarly the phrase, when added to the mantra addressed to the father, refers to the sacrificer's brothers as the recipients of offerings offered to the father. The offerings are, therefore, made not only to the three immediate ascendants but to all persons related to the offerer within four generations in ascent. One can thus see in the Atharva Veda a transition from the Pitris in general without reference to their generations to the specific ancestors of an individual with whom similar others of the same generation are associated.)

In the later literature the mantra recited runs at times 'To thee N. N. Svadhā and to those who are after thee and to whom thou followest.' The phrase 'whom thou followest' is not given in the Atharva Veda, but it must have come into vogue

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16. S. B. II 4, 2, 19 with Eggeling's note "the Kaṇva text mentions and rejects two alternatives 'those who follow thee' or 'to those whom thou followest'."

in the time of the *Brāhmaṇas*. It is difficult to say why this phrase was added to the mantra later on. When applied to the father, it refers to the grandfather, whom the father naturally follows. But the grandfather is invoked with a distinct mantra and a distinct offering and there is no reason why he should be invoked again in the mantra addressed to the father. Again, when applied to the great-grandfather it refers to the fourth ascendant whom the great-grandfather follows. In the procedure of the *S'rāddha* that is given in the Vedic literature the fourth ascendant in particular is never said to have anything to do with the offerings, but the Pitris beyond the generation of the great-grandfather are remembered and even sought to be satisfied by some sort of offering in general. So this phrase may have been added to the mantra to remember all those Pitris, for whom direct offerings were not made, even at a time when offerings had come to be restricted to the specific ancestors. The fact that the three immediate ancestors, the father, the grandfather and the great-grandfather, are very often invoked in the plural may equally suggest that the old tie with the whole group of the manes of the community was faintly preserved. According to Sayanachārya (A. V. XVIII 4, 35) 'by the use of the plural he refers to all the persons of his family'. But when the transition is from the manes of the community to the specific ancestors of the family, the use of plural must, in all probability, be interpreted in favour of the manes of the community.

In the *Śrauta* ritual offerings to the dead are made in the *Piṇḍapitriyajña*, sacrifice to the Pitris with *piṇḍas*, performed at the end of the *Darsapūrṇamāsa* sacrifice and in the *Pitriyajña*, or the *Mahāpitriyajña*, which takes place, after *mahāhavi*, on the second day of the *Sākamedha*, the third of the four seasonal sacrifices. The offerings are made in the southern fire, *dakṣiṇāgni*, with sacred cord over the right shoulder, all movements proceeding from right to left.

In the *Mahāpitriyajña* the priest offers balls, composed of the remains of oblations—the cake, the fried barley and the *mantha* (milk stirred with a piece of sugarcane with half-ground barley)—to the Pitris in the north-west, south-west and south-east corners of the fire-altar with a mantra "this for thee, O father, and for thy retinue; this for thee, O grandfather, great-grandfather, and for your retinue'. After presenting cakes to them he cleanses his hand

in the north-east with the text 'here, O Fathers, regale yourselves. Like bulls come hither, each to his own share.'<sup>17</sup> The ritual in the Varāha Śrauta-sūtra (I 7, 4, 48) prescribes the offerings of three pindas, but it is not explicitly said here that they are offered to the three immediate ancestors. The Mānava Śrauta-sūtra (I 7, 6, 46, 48), which belongs to the same school as the Varāha, enjoins that "having mixed the libations he places the pindas on darbha grass, reciting 'three towards us subsequent to the great-grandfather. In the northern direction he wipes off lepa on the altar with the text 'Let the Fathers enjoy here'".

The Āpastambiyas have a unique procedure. "Having kneaded the oblations, three pindas are prepared. These pindas are placed on three darbha blades with a mantra 'this for thee and for thy retinue'. He (then) recites the names of three ancestors beyond: the sixth on the first pinda, the fifth on the second and the fourth on the third. Then having wiped off the remnants of the pindas on the hand on the darbha blade in the north-eastern corner of the altar he recites a mantra 'Let the Fathers enjoy here according to their shares.'<sup>18</sup> The uniqueness lies in the fact that it is Āpastamba alone who prescribes the recital of the names of three prior ancestors, namely the fourth, fifth and sixth ascendants, in inverse order over the three pindas that are offered to the first three ancestors. Professor Keith appears to suggest that the pindas are offered to the fourth, fifth and sixth ascendants. Mahamahopadhyaya Kane says that 'he prepares three more pindas for the three ancestors beyond the great-grandfather and invokes them on the pindas in the reverse order.'<sup>19</sup> It must be, however, emphasised here that there is no suggestion in the text

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17. T.S.I 8, 5, 1, K. S IX 6. T. B. I, 6, 9, 7. S. B. II 6, 1, 36 Sat. Sr. S. V 4, 14 'this for you, O father; thus he offers three pindas,' B. Sr. S. V 15. Similarly in the Sautrāmaṇi sacrifice the priest recites the mantra while offering the remnant of milk to the Pitris, "Hail, svadhā to fathers who are svadhā-loving; hail svahā to grandfathers who are svadhā-loving. Let the fathers rejoice unceasingly; let the fathers be satisfied; let the fathers enjoy; let the grandfathers purify me; let the great-grandfathers with holy hundred years' life' T. B II 6, 3, 2, 3, S. B. XII 8, 1, 7. Ap. Śr. S. XIX 8, 14. B. Śr. S. VIII 17; XVII 37; V. Śr. S. III. 2, 7, 46.

18. Ap. S'r. S. VIII 16, 6, 7, cf. Va S. S. IX 9.

19. Keith A. B., p. 431. Kane P. V., *History of Dharma Shastras*, Vol. II part ii p. 1103.

of offerings being made to the three beyond the great-grandfather, much less is there any suggestion for three additional piṇḍas for the three beyond the great-grandfather. There are only three piṇḍas offered to the three immediate ancestors with this peculiarity of the school that the names of the three beyond are recited in inverse order over these piṇḍas.

In the Sūtras of the Mānava and the Āpastambīya schools lepa is prescribed for the Pitṛis, who do not receive a piṇḍa. Recipients of the lepa are not specifically mentioned, and the probable inference is that it was offered to the manes of the old category.

The offerings to the manes in the Piṇḍapitriyajña are generally made on the new-moon day in the latter part of the day. Griffith, following Sāyanacharya, tries to read in so early a text as the R̥gveda (X 52,3) the idea of a monthly offering to the dead, but a clear reference to it is made for the first time in the Atharva Veda (XVIII 4, 63). 'In a month come you again to our houses to eat the oblation.' In the ritual developed in the Brāhmaṇas and the Śrauta-sūtras cakes are offered to the father, the grandfather and the great-grandfather with a mantra "N. N. for thee and for thy retinue" accompanying each offering. Āpastamba, while giving the same rule, suggests as an alternative procedure the offering of the piṇḍas in inverse order, that is the first piṇḍa is offered to the great-grand father, the second to the grandfather and the third to the father. This procedure of offering in inverse order the Mānavas follow in the Pitriyajña, but in the Piṇḍapitriyajña they enjoin the offering of piṇḍas to the three immediate ancestors in direct order with this peculiarity that the piṇḍa of the grandfather is bigger than that of the father and that of the great-grandfather is the biggest of all<sup>20</sup>.

One more peculiarity of the Āpastambīyas in connection with the Piṇḍa-pitriyajña is that they prescribe the offering of a fourth piṇḍa. This offering of the fourth piṇḍa is not obligatory as Āpastamba himself says 'it may or may not be offered'<sup>21</sup>. Satyāsādhā,

20. S. B. II 4, 2, 19; T. B. I. 3, 10, 3. B. S'r.S. III. 10. V.S'r. S. IV 5,6, A. S'r. S. II 6, 15. S. S'r.S. IV, 4, 2, 5; K.S'r.S. IV 1, 12, 13. The mantra according to some, is 'N. N. of N. gotra and those after you'. Ap, S'r.S. I 7, 13; I 8, 10; I 9, 1, 4., cf. also S'aunaka, quoted by Caland, *Altindisch Ahnencult*, p. 241. M. S'r.S. I, 1, 2, 19, 20.

21. Ap. S'r. S. I 9, 2, 3. Sat. S'r. S. II 7, 18, cf. also H. G. S. II 4, 12, 3.

who follows Āpastamba verbally in many respects, gives the same procedure. But neither of them says to whom it is to be offered. Commentators, too, do not touch the question. In view of the fact that Āpastamba prescribes the recital of the names of the fourth, fifth and sixth ancestors on the three pīṇḍas offered in the Pitṛiyajña, we may hazard the guess that the fourth pīṇḍa was, in all probability, offered to these remoter ascendants. Later writers, like Hemādri and Gopinātha Dixit uphold this view. Devala, however, says 'he should recite slowly the names of three persons beginning with the father. With thread over the right shoulder, with his thumb slightly bent, he should offer to the father, accompanied by a mantra and the svadhā 'this, O father, for thee and who are after thee.' So to the grandfather and to the great-grandfather. He should offer the fourth pīṇḍa to the rest with the words "common to all"<sup>22</sup>. A procedure of the Vaikhānasiyas, though it does not refer to this particular context, may be profitably quoted here. In the Aṣṭakā S'rāddha, described in the Gṛihya sūtras, pīṇḍas are generally offered to the father, the grandfather and the great-grandfather. In the Vaikhānasa Smārta sūtra, however, it is laid down that four pīṇḍas are offered in this S'rāddha, the fourth being offered to jñāti. As for persons comprehended by the term jñāti, the same writer observes elsewhere: 'those, who are dead in the first order, are called fathers: those dead before them are the grandfathers: those beyond them are the great-grandfathers: beyond them are those belonging to the category of jñāti'<sup>23</sup>. In these passages the fourth pīṇḍa is for all those relatives who do not receive a pīṇḍa directly, that is, for ancestors and their collaterals beyond the third ascendant without any further specification.

Besides the offering of pīṇḍas, the offerer, according to the Mānavas, wipes off lepa on the original place reciting the names of the two beyond (i.e., the fourth and fifth ascendants)<sup>24</sup>. In the literature of the post-Vedic period Manu refers to the wiping off of lepa, but, instead of restricting it explicitly to particular ascendants, he prescribes it in vague terms 'for those who partake of the

22. C. V. C. pp. 1438, 1439; S. R. M. pp. 1082, 1099, 1100; Devala quoted by Hemādri, p. 1437.

23. V. Sm. S. IV. 4; V 14, 15.

24. M. Sr'. S. I 1, 2, 20

'wipings.' So does Baudhāyana. Vasiṣṭha reserves it for "the manes of those who died without offspring and of those who died young"<sup>25</sup>. It is evident that though the early Mānava writers mean to reserve lepa for particular ascendants, the later writers enjoin it for a very wide circle of kin, probably for all the dead persons in the family who did not or could not receive a pinda. In the ritual of the Vedic age the offerer, after offering the three pīṇḍas, wiped off his hands with the text 'here, O you Fathers, regale yourselves.' Considering the fact that (even in the post-Vedic period lepa is reserved for a very wide group of ancestors, viz., all the dead persons of the family it is very probable that in the early ritual the offerer wiped off his hands in the memory of the old manes, the manes of the community.) The very fact that its recipients in the Vedic literature are addressed as 'Fathers' without any specification to their relation to the offerer individually or by a family-link corroborates this inference. So in the Kauṣika sūtras, persons sought to be satisfied by scattering the grains of rice round about, after the offering of pīṇḍas in inverse order to the three immediate ancestors and to their wives, with the words 'let this be eternal (offering) possessed of svadhā to all those, with their wives, who live upon us and of whom we are the donors, desirous and expectant, males and females, dispersed and faded away',<sup>26</sup> do not appear to be necessarily the dead persons of the family. The procedure of the Mānavas restricting lepa to the fourth and fifth ascendants is, therefore, unique.

Another important aspect of the ritual is the procedure of offering pīṇḍas when any of the three recipients is alive. Āpastamba and Kātyāyana lay down that if the father is alive, the son has no right to perform the funeral sacrifice. As an alternative course

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25. M. III 215, 216, cf. also Brh. P, CCIX 76 ; B. D. S. II 8, 15, 12 ; V. D. S. XI 24.

26. Kau S. LXXXVIII 13, 19, 22, 24. cf. V. D. S. XI 21-23 'At funeral sacrifice the fragments (of the meal) must not be swept away until the end of the day, for streams of nectar flow (from them, and the manes of) those who have received no libations of water drink (them)'. 'But let him not sweep up the fragments (of the meal) before the sun has set. Thence issue rich streams of milk for those who obtain a share with difficulty'. Manu (III 245-246) declares that both the remainder (in the vessels) and the fragments (of the meal) certainly are the portion of those members of the family who die before receiving the sacraments'.

they suggest that he may perform homa<sup>27</sup>. The commentator on Kātyāyana opines that the performance of the Pindapitriyajña extends only to the end of the Pitriyajña, the word *va* being used to set aside the former opinion. Here the opinion that it should not be begun is proper, because the offering of pinda being the principal (part of the sacrifice), it is not proper to perform in absence of it homa which is its part (only). ...Again, it is said in other schools that one should not cover over the living. So, the principal (act of) offering pindas being forbidden in case of one who has his father alive, non-performance is the right way and not the (performance upto) the end of homa."

The rule in the Vārāha S'rauta sūtra is "father being alive, pinda offering ceases. And, if the grandfather is living, a pinda is offered to the father. Lepa to the father"<sup>28</sup>. The last sūtra is obscure. The change in the grammatical construction in consecutive sentences referring to the same topic—*pituh ekah pindah Lepah pitre*—is not easily explainable. Again, *lepa* is never prescribed for the father. It is always reserved for those who do not receive a full pinda. Hence the offering of *lepa* to the father is in contravention of all ritualistic texts and traditions. Secondly, when the former sūtra prescribes a rule, the latter must give its alternative. *Lepa* can never be an alternative for a pinda. The second reading, suggested by the editors, 'dropping (of pinda) for the father' gives a good meaning as an alternative procedure. It may be noted here that the Mānavas have elsewhere given the same procedure. "When the father or the grandfather is alive, pinda offering ceases"<sup>28</sup>. So when the father is alive, no ceremony is to be performed because the living cannot be covered over. But if the grandfather is alive and the father is dead, a pinda may be offered to the father, because there is no transgression of the living, or the ceremony may not be performed. On the latter view no ceremony is to be performed if

27. Ap. S'r. S. I 9, 8; K. S'r. S. IV 1, 26. According to some, 'one should not cover over the living'. S. S'r. S. IV 4, 7 Sat. S'r. S. II 7, 18; B. S'r. S. XXIV 32. Even an alternative procedure of homa is referred to in the two latter works.

28. V, S'r. S. I 2, 3, 20, 22, 23; M. S'r. S. I. 1, 2, 21 'Pinda-offering ceases when the father is alive or when the grandfather is alive.' According to Satyāsādhā 'when the father is alive, the rite beginning with pinda ceases', i.e., the ceremony preceding the pinda offering should be performed.



either of the three be alive. According to another procedure two pīṇḍas are to be offered to the grandfather and the great-grandfather when the father is alive and only one pīṇḍa to the great-grandfather when the grandfather is alive<sup>29</sup>. So when the grandfather is alive, a pīṇḍa is said to be offered either to the father or to the great-grandfather. But of the two the latter opinion appears to have been sanctioned as a better usage. It is again more rational, because the grandfather being alive, whatever rites may be performed must be performed as his representative. But even when the rite is performed in the capacity of a representative, pīṇḍas are not to be offered to all the three to whom the grandfather would offer. Such a view is, indeed, given as one of the views by Baudhāyana and others, but Ās'valāyana has rightly rejected it on the ground that a person's right to offer does not exist with respect to those beyond (the first three).<sup>30</sup> The former view is in harmony with the principle 'no (offering should be made) to one who is covered over by the living'.<sup>31</sup>

Ās'valāyana quotes two leading authorities, Gāṇagāri and Taulvali, of whom Gāṇagāri holds that among the first three ancestors those who are dead receive a pīṇḍa while those who are alive are worshipped in person. Taulvali, on the other hand, opines that pīṇḍas should be offered to both the dead as well as the living. Ās'valāyana, then, rejects both these views and opines that the dead alone receives the pīṇḍas. As for the living homa should be performed.<sup>32</sup> While Āpastamba and Kātyāyana enjoin only homa when any of the three is alive, Ās'valāyana prescribes pīṇḍa offering for the dead and homa for those who are alive.

Ās'valāyana further quotes in the name of Gautama a view that if of the three one two or all are alive, pīṇḍas should be given to the three dead ancestors going forward (beyond the three) as far as it is necessary.<sup>33</sup> The implication is that in the lifetime of the three immediate ancestors of a person the three remoter ancestors

29. B. S'r. S. XXIV 32 and Sat. S'r. S. II 7, 18 where this is given as one of the procedures.

30. B. S'r. S. XXIV 32 ; S. S'r. S. IV 4, 9 ; A. S'r. S. II, 6, 20

31. Na jīvantamatidadyāt. A. S'r. S. II 6, 21 ; S. S'r. S. IV 4, 8.

32. A. S'r. S. II 6, 16-20, 22, 23 ; S. S'r. S. IV, 4, 2.

33. A. S'r. S. II 6, 18 A view is attributed to the Kāṭhakas by the commentator on K. S'r. S. (IV 1, 27) that a son can offer to the three ascendants of his father, if both the father and son have kindled the fire.

receive pīṇḍas. But this view is not in accord with the general procedure of the S'rāddha ritual in the Vedic literature. Again, the view attributed to Gautama here is not found in his Dharma sūtra, where he describes the Pārvaṇa S'rāddha. Nor does he discuss the possibility of such a procedure in his Pitṛimedha sūtra. Other sūtra works of the Sāmaveda school do not give us any clue as they have not touched on this point. It is really difficult to say whether Gautama ever held such a view which is not shared even by many of the eminent Smṛiti writers. However it may be, one cannot rely upon such an isolated reference for the state of things in the Vedic period.

To sum up, we find here two opinions on the subject. According to one view, the three immediate ancestors are to be worshipped either by offering pīṇḍas to them, or by offering pīṇḍas to the dead and personal worship or homa to the living, or, by homa for both the dead as well as the living. On this view it is the right of the first three immediate ancestors of a person to receive worship, in one form or another, from the living descendant. Thus while, on the one hand, it is the right of the first three to receive, on the other hand, ancestors beyond the three cannot be worshipped because the living descendant has no right with respect to them to offer his worship. According to the other view, only the first three have a right to receive the offerings, but only the dead are to be given the offerings and that, too, without covering over the living. So when the grandfather is alive a pīṇḍa may be offered either to the father or to the great-grandfather. But of the two the latter proposition was more favoured. Even in a representative capacity, then, a person's capacity to offer did not extend beyond his three immediate ancestors. Three and three alone were the persons to whom the ego was bound and to whom he could offer the funeral offerings. Four generations were thus closely bound to each other, with ties of right and duty, by funeral offerings. Connection by a full pīṇḍa with any further ancestor is explicitly denied. The procedure further emphasises the fact that the right to offer falls to the first living descendant<sup>34</sup> among these four bound together.

To conclude, then, the ancestors worshipped in the earliest stage of the ritual are the manes of the community. By the time of the

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34. cf. also V. S'r. S. I. 9. 8; V. Sm. S. IV 7; Sat. S'r. S. 11 7, 18.

Atharva Veda a transition from the manes of the community to those of the family appears to have taken place. Furthermore, persons related within four generations are regarded as recipients of pinda offerings. In the S'rauta literature the three immediate ancestors of a person are conceived to have a claim on him for offerings. Thus a person and his three ascendants form a compact unity wherein each is bound to the other by funeral offerings. In spite of the fact that a person and his three immediate ancestors alone form a close compact group, the names of the fourth, fifth and sixth ancestors are recited over the three main pindas. The recital of the names of these ancestors is also known to the Kāthakas and the Maitrāyaṇīyas, though in a different context.<sup>35</sup> But this does not help us much, because in the S'rauta and Grihya sūtras of these schools relation with six ascendants is not spoken of. It may be further noted here that the association of Pitris with the six seasons is hinted in the Vedic literature. Sāyanāchārya thus tries to interrelate the Pitris and the seasons. "There are two types of Pitris, human and divine. Divine pitris are those who are the lords of the Pitṛiloka. Human pitris are those who, being dead, attain to that world through repast (bhogāt). It is, hence, that when the divine pitris are pleased, the human pitris are (also) pleased after them. Therefore, in the beginning (are offered) three āhutis and then the three pindas. It being six by addition the seasons of the same number are obtained"<sup>36</sup>. The three pitris depending upon the repast are the immediate three ancestors. The three who are the divine pitris in the Pitṛiloka may, in all probability, be the three ancestors beyond. It is equally probable that the fourth pinda may have been meant for these ancestors to keep one's connection with them alive. The evidence, as a whole, leads to the inevitable conclusion that the Aryans in the Vedic period, even when they confined pindas to the three immediate ancestors only, were alive to the sense of continuity with three further ancestors. (3) An offering

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35. K S. XXXVI 13. "The human pitris drink after the divine pitris. (While) sacrificing for these divine pitris he places on the kusá grass. Thereby he sacrifices for the human pitris. He places thrice; we belong here to the three generations. He recites (the names) of the three beyond. Three are the father, son and grandson. He places on all the kus'a blades for continuity of race," cf. M. S. I 10, 18.

36. Sāyanāchārya on T. B. I 3, 10, 5.

of lepa over and above the three pindaś which were definitely reserved for the three immediate ascendants is recommended in the S'rauta sūtras. We cannot positively say whether originally this wiping off of hands was intended for the manes of the community.<sup>37</sup> At one place this offering is restricted to specific persons, viz., the two ascendants beyond the third ascendant. But, as has been shown, such a procedure is unique. At the same time feeling appears to satisfy all the dead persons of the family who did not directly receive the offerings. This propitiation of a very comprehensive group of relatives appears to me a transition from communal to individual manes. In the early history of the ritual the manes of the community were worshipped, but very soon this worship came to be restricted to the manes of the individual. And this group of the individual manes conceived comprehensively to include all the dead persons of the family appears not to have resulted by going up from the three immediate ancestors to a wider group of relatives, but to have come about by restricting the offerings only to the dead persons of the family in place of those of the community.

Having so far dealt with the *Haviryajñas* we may now turn to some of the *Pākayajñas* which form the subject matter of the Gṛhya-sūtras. According to Gautama (VIII 14-21) there are forty sacraments to be performed in case of each individual, and they include seven *Haviryajñas* or offerings made in the s'rauta fire and seven *Pākayajñas* or offerings in the household fire. The seven *Haviryajñas* include the Dars'apūrṇamāsa, the Chāturmāsya and the Sautrāmanī sacrifice, while the seven *Pākayajñas* include the *Aṣṭakā*, the Pārvana and the funeral oblations. In these sacrifices offerings to the manes form a part, and at times an important part, of the ritual. Worship of the manes thus becomes an obligatory duty. It is an integral part of the theory of ennoblement (by sacraments) of one's life on this earth. According to Manu (II 28) it is even more important, being a means to make this (human) body fit for (union with) Brahman.

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37. cf. Schrader O., *Enc. of Rel. and Ethics*, Vol. II p. 27 "Food and drink are shaken out on the table for the 'grandfathers' during the meal itself. That which falls under the table belongs to the dead who have no family or friends." Even among the Greeks, 'whatever falls under the table during the meal belongs to the dead in general.'

The *Astakā homa* was performed on the eighth day of the dark half of the four months from Mārgaśīrṣa to Fālguna (A. G. S. II 4, 1) or, according to others (G. D. S. XVI 38, 39), of the three months from Pausa. The ritual for the *Astakās*, the Pārvana or monthly s'rāddha, and for the ceremony celebrated in the rainy season on the Maghā day and in the dark fortnight after the full moon of Prauṣṭhapada is on the line of the Pindapitriyajñā<sup>38</sup>. The recipients of piṇḍa offerings are the three immediate ancestors of a person, and, according to some, even the wives of these ancestors<sup>39</sup> to whom the offerings are made with a mantra 'through the funeral oblations render the Fathers and these worlds propitious to us.' It is only in Hiraṇyakeśi Gṛihya-sūtra (II 4,12,3) that an optional offering of the fourth piṇḍa is mentioned. In Vaikhānasa Smārta sūtra (IV 4) besides the three ascendants and their wives a wider group of relatives under the term jñāti is said to receive the offerings at the *Astakā Śrāddha*. Such a wider group of males and females is nowhere else mentioned as recipients of these offerings, and so the procedure is unique. It may be noted here that in the Purāṇas offerings are made to the males, the females being generally conspicuous by their absence<sup>40</sup>.

Besides the three pindas the wiping off of lepa has been prescribed, but nothing is said in the early Smṛitis about the persons for whom it was meant<sup>40</sup>. It is only in some of the Purāṇas that we

38. A. G. S. II 5, 3 ; G. G. S. IV 4, 1 ; Kh. G. S. III 5, 35 ; B. G. S. III 12, 1 ; H. G. S. II 13, 3 ; 14, 10.

39. A. G. S. II 5, 5 ; P. G. S. III 3, 11 ; S. G. S. IV 1, 11 ; J. G. S. II 3 ; V. Sm. S. IV 4, 7. The pindas to the males are put in the east while those to the females are put in the west (A. G. S.). According to S'āṅkhāyana the pindas to the females are placed behind those to the males. In Agni and Brahmāṇḍa Purāṇas (S. May. p. 5) offerings to females are prescribed in the Anvatakā Ś'rāddha cf. Ag. P. CXVII 58.

40. cf. M. III 215, 216. Among the commentators on Manu Kullūka and Rāghava say that it is offered to the three beyond the great-grandfather and Medhātithi refers to this view as an opinion of some. Nārāyaṇa and Rāmachandra hold that it is offered to the pitṛis beginning with the fourth ascendant. Nandana very curiously refer to the third, fourth and fifth ascendants as receivers of lepa. In Viṣṇu (LXXXIII 22) also the recipients of lepa are not specified. Evidently in his opinion lepa was meant for all the manes, barring the first three immediate ascendants. Even in some of the Purāṇas (K. P. p. 610 ; Var P. XIV 36) the recipients are referred to as *lepabhujāḥ* without further specification.

find the three ancestors beyond the great-grandfather explicitly said to be the recipients of lepa<sup>41</sup>.

The offering of pīṇḍas even to the father, the grandfather and the great-grandfather of the mother is hinted at, though not prescribed by it, in *Vaikhānasa Smārta-sūtra* (IV 4). It is in *Yajñavalkya* among the *Smṛiti* writers that we find the first explicit reference to these three maternal ancestors as the receivers of pīṇḍas along with the paternal ancestors, and thenceforward offerings to the maternal ancestors has become an integral part of the ritual<sup>42</sup>. "Wherever the paternal ancestors are worshipped, there the maternal ones should necessarily be worshipped; otherwise the offerer would go to hell." "It is only by offering pīṇḍas to both the paternal and maternal ancestors that the offerer is relieved of his debt to the Fathers." The celebrant, who was required to perform the *S'rāddha* of his parents only, was in course of time enjoined to offer pīṇḍas to his maternal ancestors as well<sup>43</sup>. But while the maternal ancestors are introduced on the analogy of the paternal ones, their wives are not incorporated into the ritual on the analogy of paternal females. It is only in very late works that we find the wives of the maternal ancestors receiving pīṇḍa offerings<sup>44</sup>. To make the analogy complete even a fourth pīṇḍa is optionally prescribed for the maternal ancestors<sup>45</sup>.

Before leaving the topic of the *Pārvaṇa S'rāddha* various procedures laid down by the writers of the *Smṛitis* and digests for the

41. Mk. P. XXXI 4; M. P. XVIII 28, 29; P. P. V 10, 34; Brh. P. CCXX 85, 86.

42. Yaj. I 228, 243; Vi. D. S. LXXV 7; *Prajāpati* 181, 191; G. S. I 16; *Likhita* 32; *Pulastya, Vyāsa and Madālasā* (S. C. S'r. pp. 12, 13, 378); *Bṛihaspati and Dharma* (C. V. C. pp. 1428, 1689); *Dharmya* (Sam. K. p. 182); Mk. P. XXXI 38, 39, 56; Ag. P. CLXIII 3, 16; Var. P. XIV 10, 30, etc. *Brhnd.* P. III 11, 61; *Brh.* P. CCXIX 60, CCXX 61. In P. P. (V 11, 71) maternal ancestors are said to be propitiated even in *tīrtha śrāddha*. In V. P. (LXXV 24) offerings to maternal ancestors are said to be recommended by some. Kat S'r. K. (Caland, *Alt. Ahnen.*, p. 249); S. C. S'r. p. 377; *Hemādri*, p. 1426; S. R. M. pp. 1014, 1082, 1095.

43. Dh. S. p. 281.

44. S. R. M. pp. 1014, 1095; P. Rat. p. 144; Sm. A. p. 49. *Hemādri* p. 1690. D. N. (S. May. p. 18). We find it also in S'au, S'r. K. (Caland, p. 243) and in one of the *Smṛitis*-*Prajāpati* 182.

45. S. R. M. p. 1082.

offerings of pīṇḍas when any of the three immediate ancestors is alive may be reviewed. For a proper analysis and understanding of the different views<sup>46</sup> on the subject they may be tabulated as under:—

| In the event of:—                                    | Pīṇḍas are offered to:—   |
|--|---|
| 1. F. F.F. F.F.F. <sup>47</sup><br>alive dead dead   | (i) F.F. F.F.F.<br>(ii) F.F. F.F.F. F.F.F.F.<br>(iii) The S'rāddha should be performed upto the completion of <i>homa</i> .<br>(iv) Non-performance of S'rāddha |
| 2. F. F.F. F.F.F. <sup>48</sup><br>alive alive dead  | (i) F.F.F.<br>(ii) F.F.F. F.F.F.F. F.F.F.F.F.   |
| 3. F. F.F. F.F.F. <sup>49</sup><br>alive alive alive | (i) No rites to be performed<br>(ii) F.F.F.F. F.F.F.F.F. F.F.F.F.F.F.F.   |

46 A large number of references are given from the works of Aparārka, Devannabhatta and others. They give only a line or two from the Smṛiti works which are not available in printed texts. This being so, there is no opportunity to verify whether a principle, which seems to be operative in that reference, is consistently followed by the said Smṛiti writer in various possibilities worked out in the table.

47. (i) K. P. p. 614; Brh. P. CCXX 205 seq.; V. P. LXXVI 23; Brh. P. (N. S. p. 354); Bh. P. (S. C. S'r. p. 16) Yajñapārśva (Aparārka p. 538); Medhātithi, Kullūka and Rāghava on M. III 220. (ii) Ag. P. CXVII 56; Brh. P.; K. P.; Yama and Sumantu (S. C. S'r. pp. 17, 15); M. III 220; G. S. II 96; Kullūka and Rāghava (M. III 221); Mit. p. 80; "This is the opinion approved of by many" (N. S. p. 354); Yajñapārśva. (iii) Yajñapārśva; Medhātithi; Yama; (iv) K. P.; Brh. P. (M. Parj. p. 543); V. Sm. S. IV 7. G. S. II 93; Rīṣyaśṛṅga and Yama (S. C. S'r. p. 17). Yajñapārśva; Hārīta Aparārka, p. 418; Kratu and Kauṇḍinya (S. May. p. 44); V. Mit. Sams. p. 920; N. S. p. 354.

48. (i) K. P. (ii) Vi. D. S. LXV; Yama and Sumantu.

49. (i) Vi. D. S.; Dh. S. p. 317; Sumantu. (ii) Yama; G. S. II 95; Prithivichandrodaya (N. S. p. 356); Govindsvāmī on B. D. S. 1,5,11,2; Sūlapāni (N. S. p. 206).

|   |   |
|---|---|
| 4. F. F.F. F.F.F. <sup>50</sup><br>alive dead alive | (i) F.F. F.F.F.F. F.F.F.F.F.  |
| 5. F. F.F. F.F.F. <sup>51</sup><br>dead alive dead  | (i) F. F.F.F. F.F.F.F.<br>(ii) F. F.F.F.<br>F.F. to be fed in person<br>(iii) F.<br>(iv) F.F.F. F.F.F.F. F.F.F.F.F. |
| 6. F. F.F. F.F.F. <sup>52</sup><br>dead dead alive  | (i) F.F.F.F. F.F.F.F.F. F.F.F.F.F.F.<br>(ii) F. F.F.<br>(iii) F. F.F. F.F.F.F.                                      |
| 7. F. F.F. F.F.F. <sup>53</sup><br>dead alive alive | (i) F.F.F.F. F.F.F.F.F. F.F.F.F.F.F.<br>(ii) F. F.F.F.F. F.F.F.F.F.<br>(iii) F.                                     |

In the first case in the table various procedures referred to are given as alternatives by many of the authorities quoted there. An attempt is made to harmonise these different procedures by saying that the second procedure is to be followed in the *Vṛiddhi* S'rāddha and the Śrāddhas at holy places as well as Sākamedha and Tṛitiya savana offerings. But evidently this is an after thought and the early writers enjoined both the procedures as options without any such demarcation. In the first procedure some enjoin that the father, who does not receive the pinda, should be worshipped or fed in person. According to some, Hiraṇyaketu prescribed the offering

50. Vi. D. S.

51. (i) Vi. D. S.; Medhātithi and Govindarāja (M III 221); (ii) M. III, 221; Kamalākara (N. S. p. 355) says 'this is the procedure approved of by all.' Sk. P. VI. 225, 25; Brh. P.; K. P.; V. P.; A. Sm. XX 39; Satyavrata (N. S. p. 356 f n.) (iii) G. S. II 94 (attributed to Kātyāyana in N. S. p. 355); Yajñapārśva and Hārīta (N. S. p. 356); (iv) Mit. p. 80; Brh. P. (M. Parj. p. 537); Sumantu (P. Parj. p. 20) Sk. P.; A. Sm. XX 38

52. (i) N. S. p. 355 (ii) G. S. II 94 Brh. P., K. P. and V. P.; Yajñapārśva; (iii) Vi. D. S.; Ag. P. CXVII 57, Sam. K.; Dh. S.

53. (i) N. S. p. 355; Brh. P. (Aparārka p. 537); (ii) Vi. D. S. (iii) Brh. P., V. P. and K. P.



of pindas both to the dead as well as the living. The father was thus usually satisfied either by personal worship, feeding on the occasion or pinda offering, though in the Bhaviṣya Purāṇa (S. C. Śr. p. 17) worship is said to be improper and pinda-offering a heinous sin.

The different views on the procedure of pinda-offering in the Smṛitis and later works may now be summed up. The leading view is when the father is alive Śrāddha should not be performed, because, as Katyāyana says, "he whose father is alive has no right (to perform) the rites in honour of the pitris." Notwithstanding this, if at all the rites are performed they should be performed either upto the completion of homa or as a representative of the father, meaning thereby that the pindas should be offered to those whom the father would have offered. That is said to be the injunction of the Śruti and, as Kamalākara puts it, 'the opinion approved of by many.' While the Purāṇas and some of the Smṛiti writers including Manu give both the alternatives, Yama and Gobhila are strict upholders—and Vijñāneśvara is in favour of offering in a representative capacity. On the other hand, writers like Hārita, Kratu and Kaundinya among the Smṛiti writers and Kamalākara and Mitramisra among the digest writers are inclined to the view of non-performance. As against the view of Yama and Gobhila Sumantu, while representing the view of offering in a representative capacity, appears to hold that the primary concern of a man being the satisfaction of his three immediate ascendants, he is to offer as a representative so long as any one of them at least receives a pinda. But if none of them is to receive it, that is when all the three immediate ancestors are alive, he should not perform the rites even in a representative capacity.

The Purāṇas have referred to the view of offering in a representative capacity as an alternative when the father is alive. But when various possibilities discussed above are taken together, they appear to suggest the view that only the dead among the first three ancestors receive the pindas. The offerer cannot go beyond the three. In other words, a person is bound to offer only to the first three ancestors, and, therefore, he should minister to the needs of those alone who amongst them are dead. This view is shared even by some of the Smṛiti writers. Manu seems to subscribe to this view, though he has given as an alternative the procedure of offering in a

representative capacity when the father is alive. Satyavrata enjoins that two pīndas should be offered to the father and one to the great-grandfather when the grandfather is alive. Āśvalāyana, on the other hand, appears to prescribe two pīndas for the great-grandfather and one for the father.<sup>54</sup> Kātyāyana holds that a person is duty bound to offer pīndas to his three immediate ascendants, but if any one of them is alive he has to offer only to the dead in conformity with the rule 'the living should not be covered over'. So soon as he comes to a living ascendant he should stop offering. The right to offer, according to this view, accrues to the immediate descendant only. So when the grandfather is alive and the father is dead, pīnda may be offered either to the father alone or in a representative capacity to all those whom the grandfather would offer. Hārīta and Yajñapārśva share this view with the only exception that when the father is alive pīndas are offered to the grandfather and the great-grandfather. Probably they expressed this view as it was held by Manu.

Viṣṇu represents an altogether different view. According to him a person is to offer three pīndas to the three dead ancestors and not necessarily to his three immediate ascendants. On this view ascendants remoter than the great-grandfather receive pīndas when either one or two of the first three are alive. But the application of this principle is restricted to a case where all the three are alive, obviously because when all the three to whom one is bound to offer are alive the question of performing the rites does not arise at all. Anantadeva and Kāśinātha among the digest writers and commentators on Manu (III 221) appear to share this view. Among the Purāṇas it is only in Agni Purāṇa that we find this view.

To conclude, then, in Manu and the Purāṇas the view upheld is that it is the right of the three alone, and no further, to receive worship from the ego. The persons bound together mutually by

54 The verse — "Pīndau dattvā tu dvau eva pituh pītāmahasya cha । Tatastu tatpituh chekam pretasyekam vidhiyate ॥"—is very obscure and I have thus translated it for two reasons. Firstly, it gives a rational meaning and, secondly, the explanation harmonises with Āśvalāyana's view. In the verse 41, 'Pītāmabāh tathā vāpi vidyate prapītāmabāh । Tritiyasyaiva te deyastrayah pīṇḍāḥ sapīṇḍane ॥' It may be noted here in favour of this explanation that Āśvalāyana restricts the pīṇḍa-offerings to three immediate ancestors only in his S'rāuta sūtra. It is very likely that in the alternative procedure he enumerates this old rule.

pinda-offering are the person who offers and his three immediate ancestors whom he is bound to offer. Sapinda relationship or relationship based on pinda offering thus extends to four persons including the offerer. It is only in Viṣṇu that we find an extension of this principle for the first time to five ascendants. Sapinda relationship on this principle extends to six persons, the offerer and his five ascendants. Even in the view of offering in a representative capacity one's connection with ascendants does not go beyond this. It is only in Yama and Gobhila that we find one's connection with six ascendants mentioned while offering in a representative capacity. Direct connection by the offering of pinda with six ascendants is stated only by Śulapāṇi.

In the post-Vedic period the ritual of the S'rāddha appears to have developed on the following lines. (i) In the Grihya sūtras and Manu the three immediate ancestors receive the pinda-offering. It is only in Hiranyakeśi that we find an optional offering of the fourth pinda and an invocation to a large group of pitris in a mantra<sup>55</sup> recited after the vyāhṛiti oblations. In the Vaikhāṇasiya school also pindas are offered to a wider group of relatives denoted by the term jñāti. So though a person was duty bound to offer pindas to his three ascendants and though the offering of pindas is generally restricted to those immediate ancestors only, the fact remains that a wider group of ancestors was at least in some schools propitiated on certain occasions, which may be a survival of the transition from communal to family manes. (2) Even if according to the normal procedure pinda-offering was confined to the first three ancestors procedures were known wherein a person could offer to the fourth and fifth ascendants. Five ascendants were thus somehow linked up with the ego through pinda-offering. The unity of the ego with his five ascendants in the Mānava school in Vedic times is held up in the later literature and given a greater ritualistic significance in as much as the fourth and fifth ascendants share here a full pinda instead of lepa. Sapinda relationship in its extension includes a person and his collaterals within six generations in ascent. (3) In the Purāṇas where the right of the first three ascendants to receive the offerings is emphasised, three further beyond are said to receive lepa. By thus incorporating them definitely into the ritual the unity of a

person with his six ascendants through *pinḍa*—the unity that was indirectly suggested in the Vedic literature—is made more real and concrete. This is a further extension of *Śapinḍa* relationship which, in its importance, must be ranked after the unity of six, as the ancestors who receive merely *lepa* here are the sharers of *pinḍa*, occasionally it may be, in the previous concept. (4) Wives of the three paternal ancestors came to be incorporated into the ritual in the later part of the Vedic age, but curiously enough the *Purāṇas* generally speak of males and only occasionally of females. Probably, then, even though they were incorporated into the ritual, the change was not approved of on all hands. (5) Maternal ancestors find their place in the ritual from about the 3rd century A.D., though their wives do not appear to have been definitely incorporated till a very late period. The fact that the maternal ancestors were incorporated into the ritual long after the mother was accepted as a sharer of offering, and that offerings are made to the maternal ancestors after they are made to the mother<sup>56</sup>, suggests that their incorporation was due to the growing importance of the mother.

Besides the *Aṣṭakās* and the *Pārvana* considered so far there are *Śrāddhas* performed on auspicious occasions or for attainment of special wishes, *Ābhyudayaika*, and the *Śrāddha* in honour of one, *Ekoddista*. The *Śrāddha* in honour of one is performed in honour of the dead person for a period of one year after which he is amalgamated to the category of *Pitris*. It is said in the *Pārāṣkara Gṛhya sūtra* ( III 48, 50 seq. ) “ On the eleventh day he should give to an uneven number of *brahmanas* a meal....When the *pinḍas* are prepared the deceased person, if he has sons, shall be considered as the first of the ( three ) Fathers ( to whom *pinḍas* are offered )- The fourth one should be left out. Some ( make *pinḍa* offerings to a deceased person ) separately for one year. But there is a rule ‘ there can be no fourth *pinḍa* ’, for this is stated in the *Śruti*. ” The passage emphasises in the first instance that it is the right of the first three, and no further, to receive funeral oblations. So as soon as a man dies he becomes one of the first three, and naturally the third ascendant, who now becomes the fourth, is dropped out from sharing the offerings. An alternative procedure is given, but the way in which

56. *Kātyāyana, Chhāṇḍāgāyana, Satyavrata and Brh. P.* ( C. V. C. pp. 1689, 1690 ).

he refers to it suggests that it was not a very usual procedure. The fact that among the writers of the Grihya sūtras only a few give this new procedure corroborates this view.<sup>57</sup>

In the *Ekoddiṣṭa* Śrāddha rites are performed in honour of the recently dead for a period of one year with one blade of grass, one pot of argha water and one pinda. There is neither the inviting of brahmins, nor oblations into fire, nor offerings to Viśvedevāh. The mantra recited is 'May what has been given at this Śrāddha approach to (and not be imperishable for' as in the monthly Śrāddha) our father N. N. It is offered sixteen times in a year—on the eleventh day, at the end of every month, after the completion of the first three fortnights, at the end of six months and the year. At the end of the year he is to be admitted by a ceremony called *Sapindīkaraṇa* (S. G. S. IV 3) to the category of the Pitrīs so as to be entitled to receive a pinda at the monthly Śrāddha along with his two further ascendants. The *Ekoddiṣṭa* Śrāddha is performed by the son: it is only in his absence that the grandson is entitled to perform it.<sup>58</sup> The later writers allow the performance of this Śrāddha in honour of certain persons who have died childless, including at times even the wife.<sup>59</sup>

Four balls of rice are prepared, three for the three ancestors and one for the recently dead. The pinda for the recently dead is divided into three pieces and merged into the three balls for three ancestors with the mantras, "They who commonly concordantly (dwell) in Yama's realm, the fathers: for them be space, freedom, adoration sacrifice established among the gods. They who commonly harmoniously (dwell) the living among the living, mine: may their prosperity fall to my lot in this world through hundred years." Similarly the pot of water for the recently dead is poured into the three

57. S. G. S. IV 2; B. G. S. III 12, 14; B. Pm. S. II 9; Bh. G. S. III 17; J. G. S. II 5; G. S'r. K. III. It is merely referred to as one of the Śrāddhas by Ā'svalāyana (IV 7) and Manu (III 247) without giving the details of the ritual.

58. G. S. II 97, 98.

59. Yaj. I 254; Likhita 83; Laghu S'aṅkha 31; MK, P. XXXI 18 Brh. P. CCXX 7; S. R. M. p. 1009.

pots for the three ancestors. Thenceforward the fourth is dropped off.<sup>60</sup> The rite of *Sapīṇḍīkarāṇa* implies that henceforward there is no separate ceremonial for the deceased, but he shares with his two ascendants the offerings at the Pārvaṇa S'rāddha.

The dead is affiliated to the other pitrs if all the first three ancestors of the offerer are dead. If any one of them is alive, the *Sapīṇḍīkarāṇa* of the dead, covering over the living, is not allowed<sup>61</sup>. That is, when the father is dead and the grandfather, or the grandfather and the great-grandfather, are alive, the ego cannot make the *Sapīṇḍīkarāṇa* of the father with his ascendants. The grandfather, who is alive, cannot be covered over. The father may be given a pinḍa, or, according to some authorities, all the three pinḍas may be offered to the father. This constitutes his *Sapīṇḍīkarāṇa*. The offering of even a single pinḍa, i.e., offering to one ancestor only, affiliates him to the group of the Pitrs<sup>62</sup>.

The right to perform the *Sapīṇḍīkarāṇa* does not accrue to a grandson who can, in absence of a son, perform the sixteen S'rāddhas for the deceased. If the father is dead when the grandfather is alive, the ego cannot make his *Sapīṇḍīkarāṇa* with the grandfather. After the death of the grandfather, the ego, who is now the grandson, cannot perform the *Sapīṇḍīkarāṇa* of his formerly dead father with the recently dead grandfather. All rites in respect of the grandfather are performed by his son, who is the paternal uncle of the ego. It is only in his absence that the ego performs the sixteen *Ekoddiṣṭa* S'rāddhas in honour of the grandfather but not his *Sapīṇḍīkarāṇa*. Further, the son is allowed to perform the rites, even though he has not received initiation and as such not entitled to recite the Vedic mantras.<sup>63</sup> The right to perform the *Sapīṇḍīkarāṇa* is thus emphasised to accrue to the immediate descendant only<sup>64</sup>.

As for the *Sapīṇḍīkarāṇa* of the mother writers are not agreed, and we have three different views on the subject. The mother is to

60. S. G. S. IV 3 ; P. G. S. III 10,50,51 ; M. III 248 ; Yaj. I 253,254.

61. Brh. P. CCXX 209 ; Sk. P. (M. Parj. p. 622) ; G. S. II 98 ; Mit. p. 80.

62. cf. footnote 54 ; Sumantu (M. Parj. p. 622).

63. Sumantu (S. May. p. 34)

64. Dh. S. p. 282 ; S'r. K. K. p. 453.

be affiliated with the father ; 'she, though dead, is united with him by mantras, oblations and vows'<sup>65</sup>. But when the father is alive, her *Sapindikarāṇa* would present a problem. Under the circumstances she is said to be affiliated with the father's mother. Vijñāneśvara enjoins that when the mother dies childless and the father has to perform rites in her honour she should be affiliated with the father's mother. While some writers enjoin her affiliation with the father's mother under certain contingencies, there are others, Vṛddha S'ātātapa and Paiṭhīnasi, who uphold it as a regular procedure<sup>66</sup>. Sumantu gives, in the name of Śiva, her affiliation with her father, and his view is shared by Uśanas<sup>67</sup>. It is very probable that of the three views her affiliation with the father is the earliest. In a text quoted by Aparārka (p. 541) it is said, 'when the father is dead, *Sapindikarāṇa* of the mother need not be performed; the father being affiliated, her affiliation is (necessarily) brought about.' Later writers, in their attempts to seek harmony in these different views, restricted her affiliation with the father to those cases only where the widow followed her husband on the funeral pyre<sup>68</sup>. It seems originally the mother was affiliated with the father and she shared offerings with him. Then separate offerings came to be assigned to the wives of the paternal ancestors, and when they formed a group of deities the affiliation of the mother with the father's mother became quite natural. This course of development appears to be the probable one on two grounds. Firstly, the females are honoured as distinct deities only at some S'rāddhas, the *anvaṣṭakā* and the *Vṛddhi*, elsewhere they being regarded as sharers with their husbands<sup>69</sup>. Secondly, even when the affiliation of the mother with the father's mother thus became a usual practice, her affiliation with the father continued to be advocated by later writers, showing thereby that her recognition as distinct deities at the S'rāddha was not accepted on all hands. Her affiliation with her father must be a development as a result of the institution of *Putrikāputra*, whereby a man offered his three piṇḍas to his mother,

65. Gārgya (Aparārka, p. 541). The verse is attributed to Yama in Mit. p. 81.

66. Mit. p. 81 ; Aparārka, p. 541.

67. ibid.

68. S'ātātapa (Aparārka, p. 541) ; Mit. p. 81.

69. Smṛti text quoted in Mit. p. 81

his mother's father and his mother's grandfather<sup>70</sup>. Affiliation of the mother with her father, which was compulsory in this particular case, may have been propounded as a normal procedure by some. In the Hindu view of marriage a woman, as soon as she is married, leaves the gotra of her father. All rites in respect of her are thenceforward performed with the gotra name of her husband. It is only when such severance does not take place, as in case of such forms of marriage as the Āsura, Pāśācha, etc., that rites may be performed with the gotra name of her father. Her affiliation with her father is, therefore, possible and permissible only under certain contingencies and cannot be looked upon as one of the usual procedures.

The S'rāddha, called *Vṛddhi* S'rāddha, is performed on auspicious occasions. This S'rāddha is sharply distinguished from the Pārvaṇa S'rāddha not only by the deities in the S'rāddha but even in small details. The rite is performed from left to right; barley is substituted for sesamum; dūrvā replaces kus'a. The rite is performed with the sacred thread always on the left hand side. The number of brahmins invited is even and not odd as in the monthly S'rāddha. The offerings are made with the word svahā and not svadhā; the murmuring takes place with the omission of the verses belonging to the manes. The mantra, 'May what has been given to our father...be imperishable', is replaced by 'May the *Nāndī* mukha pitṛs be rejoiced.' As regards the deities of the S'rāddha, the ceremony directed to the mothers precedes that consecrated to the fathers, the *Nāndī* mukha pitṛs. The paternal ancestors are invoked in inverse order, i.e., beginning with the great-grandfather instead of the father<sup>71</sup>. In short, the *Vṛddhi* S'rāddha being an expression of joy and not an obsequial rite, its procedure is, and must be, fundamentally different from that of the Pārvaṇa S'rāddha.

The Pitṛs worshipped at the *Vṛddhi* S'rāddha are the Pitṛs in general without specific demarcation<sup>72</sup>. They are invited and pro-

70. B. D. S. II 3, 16; M. IX 140; Aparārka, p. 539, Though S'ātātapa (Aparārka, p. 542) has said that the daughter's son should give water and piṇḍa to his mother and the mother's father with the gotra name of his maternal uncle, he must have in view the *putrikāpūtra*.

71. *Vṛddhi* Vasiṣṭha and Sm. A. (P. Rat. p. 12).

72. S. G. S. IV 4, 3, 11; B. G. S. I 1, 24; Bh. G. S. III 16; J. G. S. I 6 G. S'r. K. IV 8. Yaj. I 250; V. Sm. S. II 2; K. P. p. 615; Vi. P. III 13, 6; Mk. P. XXX 5.



pitiated at this S'rāddha with a prefix *Nāndī mukha* attached to them. This designation has been interpreted to mean Fathers 'with joyful countenances,' but it is more appropriate to render it '(Fathers) who are faces of joyful occasions', in other words, who are harbingers of joy. Probably this particular designation was attached to the Pitṛs to show that even the dead were invited to come and share the joys of the living descendants on every auspicious occasion. It was held that they were invited at marriage probably because they were supposed to give progeny. But they are invited not only on marriage but on occasions of family rejoicings and festivities,—*jātakarma*, initiation, birth of a child, sacrifice, etc.,<sup>73</sup>—which suggests their propitiation as a mark of living contact that was believed to exist between the dead and the living.

In a text said to be from Mārkaṇḍeya Purāṇa by Kamalākara (N. S. p. 348) and from Brahma Purāṇa by Hemādri (C. V. C. p. 107 ; P. Parj. p. 15) those who are beyond the grandfather are said to be known as the *Nāndī mukha* Pitṛs. This text, instead of referring the term to the pitṛs in general, restricts it to specific pitṛs in as much as the first two ascendants are excluded from this category. The only anomaly in this view is if some ascendants are to be excluded from this category they ought to be the first three and not the first two, because the first three form a group of deities at the Pārvaṇa S'rāddha whereas the first two nowhere form any group as such. In a text said to be from Brahma Purāṇa by Kamalākara (N. S. p. 348) the first three ascendants are said to be *Āsrumukha* pitṛs, while those beyond them, *Nāndī mukha*. This view is obviously preferable to the former view because it does not present the anomaly to which we have referred. In the text of Brahma Purāṇa, quoted by Hemādri, the fourth, fifth and sixth ascendants are specifically referred to as *Nāndī mukha* pitṛs<sup>74</sup>. In Mānava S'rāddha Kalpa three are said to receive water (libations), three are the recipients of piṇḍa; (ascendants) beyond (these) till the name and gotra is known are said to be *Nāndī mukha*

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73. Brh. P. CCXX 13 ; P. P. V 9, 195 ; M. P. XVII 65 ; V. Sm. S. II 1 ; P. Rat. p. 11 ; Sam. K. p. 25.

74. C. V. C. p. 107 ; Hemādri comments that this view refers to the *Mahālaya* S'rāddha. In P. Rat. (p. 12) it is said to refer to another school. V. Mīt. Sams. p. 700.

(pitṛs).<sup>75</sup> In all these texts we find an attempt to reserve the designation of the *Nāṇḁimukha* pitṛs for all the pitṛs barring a few near ascendants. But this very attempt confirms the view that at one time the *Nāṇḁimukha* pitṛs meant all the pitṛs in general without specification.<sup>76</sup>

The other view is to offer pinḁas at the *Vṛddhi* S'rāddha to the same three ascendants who are the recipients of pinḁas at the Pārvaṇa S'rāddha, distinguishing them by the prefix *Nāṇḁimukha* attached to them. On this view pinḁas are offered not only to the three paternal ancestors but also to their wives and to the three maternal ancestors<sup>77</sup>. The pinḁas are offered first to the mothers, then to the paternal ancestors and last to the maternal ancestors. In a view attributed to Kātyāyana (N. S. p. 349) pinḁas are said to be offered to six pitṛs. Hemādri (p. 106), while interpreting this text, observes that six pitṛs are the three paternal and three maternal ancestors, and adds that the three paternal females are also the deities at this S'rāddha as is known from other Smṛtis. Kamalākara (N. S. p. 349) appears to hold that the six pitṛs are the three paternal ancestors, the mother, the mother's father and his father. Thus in his opinion this view of Kātyāyana refers to a case where S'rāddha in honour of the maternal grandfather is performed with the mother. In Kātyāyana S'rāddha Kalpa<sup>78</sup> the deities at the *Vṛddhi* S'rāddha are said to be the three paternal ancestors and the three maternal ones, both referred to in plural number. It is very likely, then, that Kātyāyana, while referring to six pitṛs, had these six males in view. Hemādri's interpretation, therefore, is more acceptable, but his argument for the inclusion of females has no grounds. Very probably Kātyāyana believed that females shared offerings with

75. Caland, p. 235.

76. In *S'rāddhadīpa Kalikā* (S. R. M. p. 1019) all women born in the family of the father or the mother are said to receive the S'rāddha offering.

77. *Āśvalāyana* (P. Rat. p. 12); *Vasiṣṭha* and *Vṛddha Vasiṣṭha* (Aparārka, p. 516); M. P. XVII 65, 66; K. P. p. 615; P. P. V 9, 194; *Prajāpati*, 184; *Prachetas* (P. Parj. p. 14); *Pulastya* and *S'ātātapa* (C. V. C., pp. 106, 107); *Gārgya* and *Vṛddha Manu* (N. S. p. 347). As for the mothers to be propitiated first cf. *Prajāpati*, 193; *Likhita*, 48; *Laghu S'aṅkha* 32, *Āśvalāyana* (P. Rat. p. 12).

78. Caland, p. 250.

their husbands,<sup>79</sup> and, therefore, he does not refer to them as distinct deities. In Agni Purāṇa (CXVII 42), too, invocations are addressed to three paternal and three maternal ascendants only with designation *Nāṇḁimukha* attached to them, though elsewhere<sup>80</sup> mothers are said to be honoured separately from their husbands in the *Vṛddhi S'rāddha*.

It is evident that there were two views prevalent. According to one view, the deities at this *S'rāddha* were the three paternal and three maternal ancestors. According to the other view, even the three paternal females shared along with these six male ascendants. When females are introduced as deities at this *S'rāddha* they are said to be propitiated before the male ancestors, *S'rāddha* in honour of the mothers being performed either on the previous day or in the fore-part of the day. Again, their importance at this *S'rāddha* is suggested by saying that 'if mothers are neglected, they get angry and perpetrate violence' Can it be an influence of Śakti worship getting into prominence as an aspect of Hindu religion ?

In *Mānava S'rāddha Kalpa* incorporation of even the wives of the maternal ancestors as the deities of the *S'rāddha* is referred to as an opinion of some<sup>81</sup>. In the author's view the mothers worshipped are eight, and the same view can be ascribed to *Vṛddha Vasiṣṭha*<sup>82</sup>, because, when proper brahmins are not available, eight women whose husbands and children are living are said by him to represent the mothers at this *S'rāddha*. The three paternal and three maternal females along with the father's and mother's sisters constitute the eight mothers. The sister of the mother may have been incorporated on the analogy of the father's

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79. 'Separate offerings need not be made to females except on the day of death, because they are said to be satisfied from the *piṇḁas* (given) to their husbands' *Kātyāyana* (*Aparārka*, p. 537). Elsewhere (*S. May.* p. 5), however, he is said to have opined 'In *anvaṣṭakā* *S'rāddha* rites are said to be performed with nine *piṇḁas*, first to the fathers, then to the mothers, and last to the maternal ancestors'.

80. cf. footnote 39

81. Caland, p. 234, 232. In *Prajāpati* (183) the deities at the *Vṛddhi S'rāddha* are said to be twelve. In *P. Rat.* (pp. 14, 15) though the deities are said to be nine, invocations are made to twelve. *Sm. A.* p 56 ; *D. N.* (*S. May.* p. 18).

82. *Vṛddha Vasiṣṭha* (*Aparārka*, p. 517); cf. also *Hemādri*, and *Chaturvimsatimata* (*Sam. K.* p. 24).

sister, who, in view of the leading part she takes in many ceremonies performed on various occasions which call for the *Vṛddhi S'rāddha*, may have been thought and accepted as best for incorporation as a deity in the ritual.

The worship of Mothers along with *gaṇādhīpa* is said to have been recommended as early as the time of Manu<sup>83</sup>. In the *Purāṇas* mothers are said to be worshipped first, as they otherwise perpetrate violence<sup>84</sup>. These mothers are evidently the divine Mothers who may be, according to one version, Brāhmī, Māheśvarī, Kaumārī, Vaiṣṇavī, Varāhī, Māhendrī, Chāmundā and Durgā Kṣetragāṇādhīpa, and, according to another version, Gaurī, Medhā, Sāvitrī, Vijayā, Jayā, Devasenā, Svadhā and Svahā. According to Kātyāyana, too, mothers are worshipped first, and then the six pitṛs. In *Matsya Purāṇa* (P. Parj. p. 13) svadhā in honour of three groups of pitṛs is said to be performed after worshipping the *Matṛgaṇa*. Evidently, then, worship of Mothers appears to have formed a part of the ritual of the *Vṛddhi S'rāddha* from the early centuries of the Christian era, and the paternal females may have been introduced into the ritual either on the model of the *Pārvaṇa S'rāddha* or as an influence of the prepondering position of Mothers. The remarkable fact is that the three paternal females, who are not referred to in any of the *Purāṇas* in the *Pārvaṇa S'rāddha*, find their specific enumeration as deities in the *Vṛddhi S'rāddha*. The number of females is raised to eight only in later works, the earliest authority being *Vṛddha Vasiṣṭha*. We also find in these works attempts made to speak of mothers as divine Mothers and human mothers<sup>85</sup>, divine Mothers being the mothers spoken of in early works and human mothers being the eight females referred to above. It is obvious that the number of females was raised to eight only to establish harmony with the eight divine Mothers.

Different opinions that prevail in regard to the performance of the *Vṛddhi S'rāddha* in certain contingencies may now be considered. On occasions of the performance of various *samskāras* upto

83. The verse attributed to Manu (in P. Parj. p. 13) is not traced in the extant *Smṛti* of Manu.

84. K. P. p. 616; Vi. P. (P. Parj. p. 13). In a text of *Brahma Purāṇa* (P. Parj. p. 13) the deities of the *S'rāddha* are said to be the *Nāndīmukha* pitṛs and Mothers, *māṭṛgaṇa*.

85. P. Rat. p. 12; Sam. K. p. 24.

marriage the father must perform the S'rāddha in honour of his Pitṛs. If the father is not alive, S'rāddha may be performed by a relative of the initiated, the brother of his father or of the mother and others. Some, however, hold that pindaś in such cases may be offered to the Pitṛs of the initiated <sup>86</sup>.

As for the procedure to be adopted when the first member, i.e., the father, the mother or the maternal grandfather, of the three groups to be worshipped at this S'rāddha is alive, we are told that the group whose first member is alive is to be dropped. Pindaś in such cases are offered only to those groups—one, two or all the three—whose first members are dead <sup>87</sup>. An exception is, however, made by some in case the father is alive. According to them, in such a case pindaś are offered to those whom the father would offer <sup>88</sup>. It is said in the Maitrāyaṇīya Pariśiṣṭa that even when the father is alive, the son can perform rites on such occasions as the marriage, the birth of a child, Soma sacrifice, Pitṛeṣṭi, rites in holy places, etc. The son is said here to be competent to perform the rites on some occasions calling for the performance of Vṛddhi S'rāddha. It is further said that when both the father and the grandfather are alive, rites may be performed in honour of those whom the grandfather would propitiate <sup>89</sup>. We have thus two opinions on the subject: according to one opinion, only the three ascendants are propitiated, and if the first ascendant, viz. the father, is alive no rites are to be performed in honour of these Pitṛs. According to the other opinion, on some occasions rites can be performed as a representative of the father and even of the grandfather <sup>90</sup>. A case given by Gopīnātha Dixit (S. R. M. P. 41) does

86. P. Rat. p. 13.

87. P. Rat. p. 15; Āśvalāyana is said to hold this view. S. R. M. p. 41; Dh. S. pp. 113, 119, 200; P. Parj. p. 17; Sam. K. p. 26.

88. P. Rat. p. 15. The same view appears to be held by Kātyāyana (Sam. K. p. 26)—Vṛddhau tīrthe cha sanyaste tāte cha patite satī yebhyaḥ eva pitā dadhyāt tebhyaḥ dadhyāt svayam sutah ||.

89. Sam. K. p. 27; P. Parj. p. 27.

90. These two different views refer to different occasions (Sam. K. p. 27). When he himself performs, the group with the first member alive is dropped. But when the son who is initiated performs, he performs the rites in honour of those whom the father would propitiate (P. Rat. p. 117). When a person himself performs the rites, say on the occasion of his second marriage, he propitiates those whom the father would do (S. R. M. p. 42).

not conform to any of these two opinions. When the father is dead and the grandfather is on journey, rites are said to be performed in honour of the father, the great-grandfather and his father. Similar procedure is said to be adopted in case of the maternal ancestors too.

To sum up, the deities at the *Vṛddhi S'rāddha* were originally the Pitṛs in general without specification, though it cannot be definitely ascertained whether the Pitṛs were the manes of the community or of the family. In the *Purāṇas* and the *Smṛtis* the Pitṛs are distinguished either as manes barring the first few generations or as the first three ascendants, who are deities at the *Pārvaṇa S'rāddha*, with the expression 'harbingers of joy' prefixed to them. As for the view of *Brahma Purāṇa*, viz., the *Nāndī* *mukha* pitṛs are the fourth, fifth and sixth ascendants, it can be said that it is exceptional. In all the *Purāṇas* the *Nāndī* *mukha* pitṛs are the first three ascendants, and, secondly, the *Purāṇas* maintain that it is the right of the first three ascendants only to receive the offerings. Along with this limitation of paternal ancestors worshipped at the *Vṛddhi S'rāddha* we find incorporation of the three paternal females and three maternal ancestors as deities at this *S'rāddha*. The change is evidently on the model of the *Pārvaṇa S'rāddha*. In later works even the maternal females and the sisters of the father and the mother are incorporated as deities, probably to make the number of these females correspond to that of the divine Mothers. There is evidently a strong influence of the worship of Mothers in getting the recognition of certain females as deities at the *Vṛddhi S'rāddha*. In certain contingencies rites could be performed in honour of the fourth and fifth ascendants, but no case has been given, except the text of *Brahma Purāṇa*, where the sixth ascendant is specifically referred to as a deity at the *Vṛddhi S'rāddha*. This corroborates the view advanced before that ritualistically the unity of six is more important than the unity of seven.

The history of the ritual of the *S'rāddha* has been reviewed in sufficient details to lead us to the following conclusions. (1) In the early concept of the tendence of the dead, the dead was invited to come to the family on occasions like marriage to view with the living the newly married bride. They were supplicated to look to the prosperity and welfare of the living descendants left on the earth. The living, on his part, administered to the needs of the dead. In

failing in his duty towards them he sinned against them. The continuity of the dead with the living is evident even in the later development of the cult. Propitiation of the dead on all auspicious occasions as well as on undertaking good works, *iṣṭāpūrta*, and respect paid to the family traditions<sup>91</sup> are expressions of this continuity. The benefits derived by the living from his homage paid to the dead were, in the later literature, not only material, as in the Vedic times, but also spiritual. It was conceived as a necessary means in the scheme of life in its upward progress<sup>92</sup>.

The idea that after death the dead, before its admission into the category of Pitṛs, is dependent upon the piety of its living descendants for a period of one year finds its first clear reference in the Grhya-sūtras and is elaborated in the Mahābhārata and later works. In the Mahābhārata (I 179,14) the Fathers whose very existence is said to depend upon descendants resent too much of asceticism. Jaratkāru one day saw some hunger-racked, emaciated beings, hanging head down in a pit. On being questioned as to the reason of their lying in this state, they told him that they met with that fate as their son, Jaratkāru, bent upon asceticism, did not marry and procure them a descendant. So, too, Agastya saw his Pitṛs hanging upside down in a pit because he failed to procure them descendants. In both these legends<sup>93</sup>, which are more or less similar, not only the recently dead but the whole group of Pitṛs sinks down into an unclean hell from a pure and holy world when the family comes to extinction. The continuity of family is, therefore, essential in order to keep the manes of the family in their blessed state, and so the Pitṛs are said to be anxiously inquiring 'will our son or grandson give us food<sup>94</sup>?' In Manu (IX 138) he is said to be the son who saves (his Pitṛs) from hell called put. In the early Vedic literature the dead person is

91. R. V. I 87, 5; M. IV 178; Mbh. I 113, 9; Max Muller, *What India can Teach us*, pp. 219, 220.

92. Cf. also Ap. D. S. II 16, 1,2; B. D. S. II 14, 1. In one of the Upaniṣads the sacrifices to gods and Manes are said to form a part of a general rule of conduct incumbent on all good Aryans to follow. (Hopkins E. W., *Ethics of India*, p. 72).

93. Mbh. I 13; III 96. Madanapāla, lacking children, could not stay in the pitṛloka but became a bird (I 229, 5).

94. Mbh. XIII 63, 20. cf. V. D. S. XI 39 seq. In Mbh. (XII 175, 6) the son is for sanctifying the Pitṛs—Pitṛnām pāvanārtham putrah.

always said to go to 'the wide light' as against the long endless darkness which is a place for sinners. The pious soul, 'leaving behind all that is blamable,' 'pure and sinless,' passes upward to the celestial abode, his home. On death a person rejoins the heavenly family of gods and Manes and dwells there in peace. 'The lowest darkness,' 'the black darkness,' was not for the childless, but for those who are evil, false and untrue<sup>95</sup>. Both the legends in the Mahābhārata and the derivation of the word putra by Manu are clearly later brahmanic inventions to strengthen the new idea which came to be associated with the ritual at the end of the Vedic period. (2) In its origin the cult aimed at the propitiation of the manes of the community, though by the time of the Atharva Veda the transition from the manes of the community to those of the family had come about. (3) The closest group bound by mutual ties of giving and receiving the funeral oblations included a person and his three immediate ancestors. In course of time the group was widened to include a person and his five or six ascendants, but the group of six is more prominent and ritualistically more important than the group of seven. Though we have only these three groupings worked out on the actual process of giving piṇḍas, a further grouping is indicated by some of the later writers. We saw that in Brahma Purāṇa the fourth, fifth and sixth ancestors are called the Nāṇḍimukha pītṛs. Hemādri and others observe that these are the deities in the S'rāddha that is performed on the full-moon day or in the Prauṣṭhapaḍa and not in the S'rāddha that is performed on such occasions as the birth of a child, etc.<sup>96</sup> Mitramiśra also takes the same view, but he differs from others in restricting piṇḍas to the fourth, fifth and sixth ascendants and lepa to the three beyond and thus evolving a group of ten, the largest extension of Sapiṇḍa relationship. We saw that Śūlapāṇi evolved the same group by enjoining piṇḍas for the fourth, fifth and sixth ascendants and lepa for the three beyond when the first three ancestors were alive. Though the procedures

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95. Hopkins E. W., *Ethics of India*, pp. 28, 41, 57; Bloomfield M., *Religion of the Veda*, pp. 250, 251; Belvelkar S. K. and Ranade R. D., *His. of Ind. Phil.*, p. 75; Macdonell A. A., *Vedic Mythology*, p. 170; R. V. I. 115, 2; 154, 5; X 14, 8; 15, 1; 17, 4; 154, 2-5; A. V. IV 5, 5; VI 95, 1; 120, 3; VII 104, 3.

96. C. V. C. p. 107; P. Rat. p. 12; S. May. p. 13.



are unusual in the sense that they are not given by others, they attempt to add ritualistic significance to the unity which was not quite unknown. As early as the Pārāskara Grhya-sūtra (III 10, 16) relatives within seven or ten generations were required to pour out with joined hands one libation of water to the deceased person with the words 'N. N. this water to thee.' Relatives within ten generations are explicitly said here to be sodakas, relatives bound by libations of water, though the term was equally applied to all the relatives who could be traced to belong to the family and the gotra of the deceased<sup>97</sup>. Equally instructive is the fact that though it is the right of the son, and of no one else, to perform the rites, we find other relatives spoken of as capable of performing them in absence of a son. According to Gautama rites should be performed by the bāndhavas, sapindas, sapindas of the mother and the pupil respectively in absence of a son. In the Purāṇas relatives called sodakas are added to the list after the sapindas<sup>98</sup>. In Viṣṇu Purāṇa the term putra denotes son, grandson and great-grandson. Children of the brother are specifically said to precede the sapindas. That means bāndhavas in the text of Gautama must refer to such near sapindas as the children of the brother, or, in general terms, descendants within four generations. In a text of Brhaspati (XXV 101) the performers are the son, jñāti, bandhu, friend, pupil, etc. If the terms jñāti and bandhu stand for agnatic relatives, and they appear to do so<sup>99</sup>, jñāti must stand for relatives within four generations and bandhu for further sapindas of the father. That is, persons related beyond the seventh degree were held in the Purāṇas for the first time capable of performing funeral rites, though of a limited nature. The sapindas

97. M. V 60; P. G. S. III 10, 17. According to Prachetas (Mit. p. 296) all the relatives, bāndhavas, of the dead should offer libations in order of seniority,

98. G. D. S. XV 13; Brh. P. CCXX 76; Mk P. XXX 19, 20; Vi. P. III 13, 30-32.

99. ' Brother, brother's son, sapindas, and pupil are allowed by Laghu Hārīta to perform Sapindākarana (under certain contingencies) and then perform the Vṛddhi Srāddha'. (S. May. p. 39). 'Son, grandson, great-grandson, brother, brother's descendants, and descendants of the sapindas are called performers of S'rāddha by Viṣṇu (S. May. 31). 'The son should perform the piṇḍa and water ceremonies of the father. In his absence the wife, and in her absence, the brother.' S'aṅkha and Kātyāyana (S. May. p. 31).

and those who follow perform the rites called *Ekoddiṣṭa*, performed for the first twelve days and every month. The rites performed after *Sapīṇḍīkarana*, when the dead attains to the category of the Pitr, are performed only by the son and relatives within four generations. The only exceptional additional relatives in the Purāṇas, to claim this privilege, are the daughter's son and his son. One fails to understand how the son of the daughter's son can perform the S'rāddha of his father's maternal ascendants<sup>100</sup>. The unity of ten, which is in its early stage flexible and of lesser significance in as much as it relates to the relatives bound by mere libations of water and not pinda, receives an additional support in the Purāṇas, but is made more permanent and significant only by the later writers by including relatives within this unity in the list of sapīṇḍas.

(4) Furthermore, we find relatives through the mother held competent for the performance of funeral rites both in Gautama and the Purāṇas. Wives of the three paternal ancestors came to be incorporated into the ritual in the later part of the Vedic age, but their inclusion was not approved of on all hands for the first few centuries of the Christian era. Three maternal ancestors, on the analogy of the three paternal ancestors, were introduced as the deities of the S'rāddha somewhere about the 3rd century A. D. Their wives were, however, introduced at a very late period. Though an attempt is made in very late works to define groups of the maternal ancestors on the lines of those of the paternal ones the history of the ritual reveals prominently only one group, a person and his three maternal ancestors, as the group bound by mutual duties and rights of giving and receiving the funeral oblations.

100. Vi. P. III 13, 38; Bh. P. (S. C. S'r. p. 9). It may, however, be noted that in *Mārkaṇḍeya Purāṇa* (S. May. p. 36) the daughter's son is omitted when it is said that 'the son, the brother, his son, the wife, the mother, the father and the pupil have to perform the funeral rites though they may not receive (his) wealth.'

## CHAPTER II

### MARRIAGE AND MARITAL REGULATIONS

The study of culture complexes of any society must invariably start with a study of marital union because it is the fundamental institution of human society in as much as the circumstances and condition of such unions necessarily react on all the other sides of social organisation.

Under the influence of evolutionary doctrine Morgan, when he outlined a complete scheme of the development of human marriage, marked as the first stage a condition of perfect promiscuity in which sexual lust was unrestricted by any incest-rule. Following him, attempts have been made to regard sexual communism as a condition once prevalent in the Indo-Aryan community. Unfortunately these writers seem to forget that one rigid course was not followed by mankind in the historical development of marriage law. If we are conscious of this achievement of modern researches in sociology we shall see the errors of early sociologists in piling references after references from every corner of the world and advancing strange theories on this unscientific method of work. In order that we may not similarly err references to loose sex-relations in Sanskrit literature should be studied in their proper perspective leaving aside our fond for theories which have played so prominent a part in converting partial truths into statements of fundamental value.

Incest with one's sister is referred to in connection with the Vedic gods. God Pūṣan loved his sister, and god Agni impregnated the sisters.<sup>1</sup> The twin gods Aśvins, the children of Savitr and Uṣas (themselves brother and sister), married their sister Sūryā Savitrī.<sup>2</sup> The episode of Yama and Yamī in the R̥gveda (X 10) is regarded a stock example of brother-sister love affair. The fact that the demon, in order to have easy access to a woman, is said to take the

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1. R. V. VI 55, 4 ; X 3, 3 ; X 21, 8 ; 'Pūṣan is a form of the Sun, so is Agni ; and as they follow the dawn they are called her lovers (jāra) and she their sister.' cf. also R. V. X 94, 4 where pressing stones are said to have danced with the sisters embraced by them, making the earth reecho with their ringing sound.

2. Iravati Karve, *Kinship Usages and the Family Organisation*, A. B. O. R. I. Vol. XX p. 220.

shape of a brother, husband or a lover<sup>3</sup> suggests that brother was commonly regarded to approach his sister. The gosava ceremony which is described in the ritualistic literature<sup>4</sup>, and which is said to have been performed by king S'ibi, involves intercourse with the mother, the sister and a sagotra girl. God Pūṣan is also said to be the wooer of his mother. As regards father-daughter incest we are told that father Dyauh committed incest on his daughter, the dawn, and Prajāpati's incest with his daughter is the stock theme of the whole Vedic literature<sup>5</sup>. Taittiri is said to have married his daughter and begot a son, Vala nick-named. Skanda is addressed as the '*kanyā bhartṛ*', possibly the lord of his daughter.<sup>6</sup> In the Puranic mythology Priyavrata and Uttānapāda are sons of Manu, who was begotten by Brahmā on his own daughter S'atarūpā; and Manu begat the human race on his daughter<sup>7</sup>.

These references to incest should be properly studied before one can assert that 'the practice of incestuous unions persisted in India down to historical times.' It is evident from the Vedic works that the authors of the Vedic hymns do not treat these unions in light vein. When Yamī is maddened with passion and presses her brother Yama to accept her for his mate, he is emphatic in his protest against such unions. "Shall we do now what we never did aforetime?" he questions. And in spite of all her persuasions his only answer is 'they have called it a sin that a brother should marry his sister'<sup>8</sup>. Aversion to such unions is further reflected in moral repercussions attached to the usage. 'He, who defiles a sister, must

3. R. V. X 162, 5; cf. A. V. VIII 6, 7.

4. Ap. S'r. S. XXII 13, 2; Sat. S'r. S. XVII 5, 25. For a year thereafter he should act like cattle, viz., should drink water like them, cut grass (with his teeth), and approach his mother, sister and a sagotra female.

5. R. V. III 31, 1, 2 with notes of Ludwig and Oldenberg. In R. V. X 91, 7 Agni is said to be born of a union between father and daughter. cf. R. V. I. 164, 33 with comment of Yāska (IV 21, 1); X 61, 5-7; I 71, 5 with Oldenberg's note, *Vedic Hymns*, part II p. 78; A. V. VIII 6, 7; A. B. III 33; S. B. I 7, 4, 1-4; XIV 4, 2, 1.

6. Sarkar S. C., *Some Aspects of Early Social History of India*, pp. 137, 138.

7. M. P. IV 24, 34

8. R. V. X 10, 4, 12, In Kacha's refusal of Devayānī (Mbh. I 77, 14) one finds the same sentiments.

suffer down below'<sup>9</sup>. The episode of Prajāpati, too, is regarded in Śatapatha and Aitareya Brāhmaṇas as in the highest degree scandalous. The sages do not palliate its enormity by any nuptial explanation, but condemn the act downright and make Prajāpati suffer for it, his body being pierced through with an arrow. This attitude to incestuous unions in the two well-known episodes of the Vedic literature challenges the probability of its occurrence in historical times. Again, the language of the Vedic illustrations is more often metaphorical than literal, and casual mythological allusions cannot be seriously taken for any inference regarding the probability of a practice being in vogue. As regards the Puranic legends, they are not so plain and clear in their expressions of relationships as they ought to be in social sciences. In view of this such an abnormal practice as the brother-sister incest need not be attributed to the Hindus even in the remote past.

It has been suggested that Yama's attitude represents a tone of a reformist when the practice of incest shocked the refined taste of the community. But we are told that the ancient Teutons and the Romans barred marriages between brothers and sisters<sup>10</sup>. Next of kin marriage under which father and daughter, mother and son, brother and sister, were mated together is said to be very highly spoken of by the Parsi scriptures. Some writers have opined that "the ancient Parsis not only did allow marriage between very near relations, but looked upon it as an act of the highest merit." But one should weigh such opinions against the authority of scholars like Moulton who opines that "whatever might be the view of the later Pahlavi writers with regard to the word Khvetudas, we have no single instance in the Avesta which can suggest the idea that amongst the Avesta nation there ever was a marriage contracted between brother and sister." It was possibly 'a rule peculiar to an alien tribe strongly marked with traces of barbarous origin', and this tribe was, in all probability, closely akin to the Magi. The modern Parsi writer, Darab Dastur Peston Sanjana, supports Moulton by asserting that the next of kin marriage has been misunderstood by foreign translators of the Parsi

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9. A. V. XX 128, 2.

10. Westermarck E., *History of Human Marriage*, Vol. 11 p. 101 ; Green T. W. quoted in *Hindu Exogamy* p. 4 ; Sumner W. G. and Keller A. G., p. 1580.

scriptures<sup>11</sup>. In view of the fact that the Romans, the Teutons, the Iranians and the Brahmins of India are offshoots of the same Aryan race, the attitude of the Teutons and the Iranians towards the practice of brother-sister marriage must serve as a corroborative evidence to our observations regarding the Aryans in India.

It is a question whether there ever was a stage in the history of human marriage when incest was tolerated. "Nothing in primitive society is perhaps more discountenanced than sexual impurity in the form of incest." Its prohibition forms the central and most definite feature of the moral code. Wherever they are allowed they are probably of late occurrence, due either to relaxation of morality or to the working of special ideas such as that of virtue inherent in royal blood<sup>12</sup>.

We have in the Puranic mythology references to the marriages of Aṅga with his pitṛkanyā Sunithā, of Nahusa with Virāja, of Amāvasu with Achchodā, of Śukra Uśanas with Go, of Purukutsa with Narmadā, of Himālaya with Menā, of Daśaratha with Kauśalyā and of Manu with Śraddhā. Dr. Sarkar believes that pitṛkanyā means half-sister in these references<sup>13</sup>. But the compound equally means "daughter of the Pitrs, the deified fathers." The reference to marriage with half-sister in the Purāṇas, therefore, is very vague.

We have similarly the Epico-Puranic traditions of the connection of Śāmba with his step-mother Satyabhāmā as well as that of Pradyumna with his foster-mother Māyāvātī<sup>14</sup>. Vātsyāyana, in his Kāmasūtra (V 6, 12), records that the princes of Vidarbha, in accordance with ancient custom, freely consorted with all their

11. Moulton J. H., pp. 205 f. n. 1, 207, 249, 322; Sanjana P., *Zarathustra in the Gathas*, p. 208.

12. Sumner W. G. and Keller A. G., p. 1616. 'Primitive people sometimes prescribe but with far greater unanimity proscribe the union of near kin.' cf. *ibid.*, p. 1574; Briffault R., *Mothers*, Vol. I p. 258; Hobbouse L. T., *Evolution of Moral Ideas*, p. 143 'Prohibition of marriage within the first and second degrees... is almost universal'. Rivers W. H. R., *Enc. of Rel. & Ethics*, Vol. III p. 425 Huth A. H., *Marriage of Near Kin*, p. 65; Lowie R. A., *Primitive Society*, pp. 15, 16, 58; Tozzer A. M., pp. 155, 156.

13. Sarkar S. C., section on brother-sister marriages in the Purāṇas.

14. Bhag. P. U. X 55, 10, 11.

father's wives, excepting their own mother. It may be admitted that we have some references to connection with the father's wife other than one's own mother and a very dubious evidence relating to marriage with half-sister in the non-Vedic traditions. The sister-marriage seems to be a prevalent usage in the non-brahmanic community of the Eastern India, and appropriation of the father's wives other than one's own mother is also alluded there<sup>15</sup>. Marriage with half-sister was permitted in Greece as a survival of mother right<sup>16</sup>. It is not within the scope of this book to inquire how these marriages in the Buddhist literature can be explained. But from the attitude of the Vedic sages to the incestuous unions and from the very fact that such marriages were more prevalent among the communities in India which were beyond the pale of the brahmanic civilisation, it can be reasonably inferred that incestuous unions were not usually practised by the Vedic Aryans in the remotest past, much less in the historical times<sup>17</sup>.

We may now examine some of the references to the grossest sex-commerce in the Mahābhārata. It is a common proverb with the epic-bards that 'the woman never grows old below the girdle'. King Yudhiṣṭhira approaches Bhīṣma with a request to explain to him what marriage is. In a long story which Bhīṣma relates to

15. In a Jataka story (Vol. VI p. 133) Dirghabāhu is said to have received his father Ānandama's 16000 wives in marriage. The Kāśī prince Udayabhadra became heir-apparent by his marriage with his half-sister (Vol. IV 67). A prince named Siḥabāhu is said to have married his uterine sister Siḥasivali (Karandikar S. V., 11 ; cf. also Jatakas, Vol. V p. 226). The sons of Okkako who lived in the Himalayas married their own sisters for fear of degradation of their blood. Nonetheless this custom of the Sākyas was regarded with reproach even by their contemporaries. They never escaped revilings hurled at them by the Koliyas, whenever the two clans had an occasion of quarrel. Kalipada Mitra, *Side-light on Ancient Indian Social Life*, J. A. S. B. 1933 p. 61. The marriage of Rāma with Sitā is also treated as a case of brother-sister marriage in the Jatakas (Vol. IV p. 78).

16. Rivers W. H. R., p. 94. cf. Lippert J., p. 245 ; Sumner W. G. and Keller A. G. p. 1575 ; Keith A. B., J. R. A. S. 1917 p. 174 'Nor is it all necessary to see in matriarchy the explanation of brother and sister marriage whether in Egypt or elsewhere.'

17. 'The early legends of the gods wedding their daughters and sisters seem to me, however, no proof of such custom in men.' Hopkins E. W., J. A. O. S. Vol. XIII p. 345. cf. also V. I. I pp. 397, 475.

expound the subject we hear the protecting goddess of the forest saying (*XIII 19,92-95*) to the celebate sage Aṣṭāvakra, "to woman the pleasure of love is all. Among thousands of women, nay, among hundreds of thousands, there is to be found only one that is faithful to to her husband, if, indeed, one at all. They know not father, family, mother, brother, husband or brother-in-law: given up to their pleasure, they destroy families as great rivers destroy their banks." King Pāṇḍu, while explaining the ancient law to Kuntī, says that in ancient times women used to be perfectly free and independent and sexual freedom was the recognised law. There was nothing wrong if women, from the years of maidenhood on, tricked their husbands. They belonged to their husbands during their seasons only; at other times they claimed perfect liberty. The ancient law, he argues, is still held in honour by great ṛṣis and the woman of Northern Kurus<sup>18</sup>. It is only in modern times that Śvetaketu has established a new limiting rule, which, according to another legend (*I 104, 31-32*), was first enunciated by Dīrghatamas, that henceforth a woman shall always have to adhere to one husband, whether he be alive or dead, and that a woman who goes to another man shall go to hell. Among the Madrakas the sire, the son, the mother, the mother-in-law the maternal uncle, the daughter-in-law, the brother, the grandson and other kinsmen, companions, strangers arrived at their homes, slaves, male and female, mingle together. Those women are not attached (to particular individuals) in the matter of intercourse and do as they please without owning any restriction<sup>19</sup>. And so are the women of Vāhikas, as is evident from Karna's bitter taunt to Śalya (*VIII 44,12,13*)—"Women of Vāhikas know no bridle in their pairing and in all things they follow their lust."

The evidence here may be classified into three categories. In the first place there are statements which emphasise that women have the greatest sexual appetite. In the second place we hear

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18. Mbh. I 122, 4 seq. cf. also XIII 102, 26 for free indulgence of the women of Northern Kurus. It is said that Agni blessed all women in Māhiṣmati to get their wishes satisfied without any interference. Meyer J. J., *Sexual Life in Ancient India*, p. 118.

19. Mbh. VIII 40,25; cf. also 45, 39, In Mbh. I 219 the Vṛṣṇis and Andhakas are said to have held a festival in honour of the mount Raivata where men and women gave themselves upto all kinds of frolic and mad enjoyment. Meyer J. J., pp. 73, 324.



of gross laxity in the legends of S'vetaketu and Dīrghatamas. Both these legends are incorporated into the epic to justify the practice of the brahmins serving as a proxy to a Kṣatriya woman. Not only they are later additions to the epic, but they are purposely invented to exaggerate laxity, verging to promiscuity, by the priestly class as they were meant to justify a revolting practice. In the third place we have among the Madrakas and the Vāhikas unregulated sex intercourse resembling the general saturnalia of drunkenness and debauchery prevailing in some of the festivals of the aboriginal races. But they both, stigmatised as they are as impure and contemptible,<sup>20</sup> were decidedly beyond the pale of the Brahmanic civilisation. The epic writers give a funny explanation for such laxity among them. These tribes or peoples robbed and outraged a good and chaste woman, and so she uttered a curse that for this their women would be loose and they would not be free from this dreadful evil.

Dr. Sarkar believes that the ritual of the Mahāvratā described in the Yajus Samhitā shows that 'it was the brahmanical counterpart of some popular spring festival, wherein there was much of song and dance, swinging and free intermingling of men and women, running into the extremes of promiscuity'<sup>21</sup>. He is right in his belief that it is a brahmanic ritual appended to the popular festival, but he sees much in it other than what is implied by it. The ritual involves the playing of lutes by women, use of obscene language,

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20. Pargiter F. E., *Mārkandeya Purāṇa*, p. 311. 'Vāhikas are closely connected with Madra. They were shut out by the Saraswati, Kurukshetra and other natural features from the Central Country which remained true to Brahmanism. The people of the Punjab were then collectively called Arattas or Balhikas and they and all the tribes beyond were stigmatised as impure and contemptible by the arrogant and intolerant brahmanas of Madhyadesa.'

21. Sarkar S. C., p. 94; Keith A.B., *Aitareya Āraṇyaka*, p. 28, and *Sāṅkhāyana Āraṇyaka*, p. 79. Kane P.V., *His, of Dharma Śāstras*, Vol II pp. 1244-45 'Sexual intercourse between a man and a woman (that are strangers to the sacrifice) takes place in a screened shed to the south of the mārjātīya shed. This probably is a symbol for indicating creation of the world by Prajāpati to whom the Mahāvratā specially appertains....It was some folk festival in the hoary past and was welded on to the solemn Vedic sacrifice as a relaxation after the weary days and months of sacrifice.'

conversation between a student and a courtesan, and an intercourse of creatures. But it is too much to see in this intercourse of creatures—the term *bhūta* being used in its generic sense—‘the swinging and free intermingling.’ Moreover, in the ritual given in the *Taitirīya Samhitā* (VII 5,9) there is only one pair. As a matter of fact the rite represents a spell to promote human fertility, and the playing of music and the use of obscene language serve the object of scaring away the hostile demons.

The evidence about the sexual laxity points to a general looseness of morals and not to hetærisism. There might have been few occasions when the operations of sexual instinct were not strictly restricted but found outlets in various forms of sexual licence. But are we justified to hold on this ground that promiscuity, which means properly the absence of sexual regulations and the unchecked operation of instincts, was a stage in the evolution of marriage in India. One cannot deny the great immorality and at times hetæristic abominations in Epic times, but they need not be conceived as survivals of unregulated sex relations in the past. They were more probably the expressions and reflections on the minimal regulation or relative unregulations of the people and tribes, friendly or hostile, living around them. It is equally probable that the priests in their attempt to justify and palliate the enormity of looseness in sex relations invented legends and episodes preaching sex-commerce to lend antiquity and normality to it<sup>22</sup>.

Despite the strength of the sexual instinct and its disturbing influence all human societies have tried to regulate the working of sexual cravings by various devices, exogamy being one of them. The exogamy of the Hindus has two aspects. The first aspect prohibits marriage between persons related to each other within certain generations on the father's and the mother's side, while the other aspect bars marriage between members of the same sept. The former is known as *sapinda* exogamy, the latter, *gotra* or *sept* exogamy.

The marriage hymn in the *R̥gveda* (X 85,26,32) implies marriage outside the family. Marriage was generally contracted between strangers living at a considerable distance. The idea

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22. According to Prof. Keith (*Enc. of Rel. and Ethics*, Vol. III p. 454) ‘the references to the lax morality of previous times are made for the purpose of proving that the recognition of illegitimate sons then accorded was antiquated at the time of the texts.’

of courting as well as of choosing a husband through the performance of heroic feats is also known to the early Aryans in India<sup>23</sup>. In view of these practices one can hardly think of sept exogamy in the early Vedic era. There are two other considerations to support this hypothesis. It is said in a verse quoted by Aparārka (p. 63) that a twice born should avoid marrying a sagotra girl in the Kali age. When the usages, that were once prevalent, become obnoxious to the sense of the whole community they are relegated to the by gone ages, and passages of the Vedas and Smrtis, laying down these usages, are said to have reference to the past and not to the present Kali age. The passage, hence, implies that marriage with a sagotra girl was once permitted in India. Again, sept-exogamy is unknown to practically all branches of the Aryan stock. Amongst the Romans 'originally no agnate could marry, who was within the seventh degree of relationship...These strict rules were gradually relaxed and from the time of Punic wars it seems to have been possible for first cousins to marry.' In the ancient Greek society "forbidden degrees were few, the practical working of the laws of inheritance and adoption being to encourage marriage between near relations, and even to enforce it. Marriage of cousins was common. There were, it seems, no other prohibited degrees of affinity except between individuals in the direct line of descent or ascent." The ancient Teutons do not seem to have observed any more exogamous restrictions than barring the marriage between ascendants and descendants, and between brothers and sisters. The old Irish allowed marriage even between brothers and sisters. Sept exogamy in any form was entirely unknown to the ancient Iranians<sup>24</sup>. It is, hence, reasonable to suppose that the Indo-Aryans were probably non-exogamous for some time at least after their settlement in the Punjab.

It was probably during the period of the Brāhmaṇas that the rule of sept-exogamy came to be enunciated for the first time. The

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23 R. V. I 116, 17; X 27, 12.

24. *Enc. of Rel. & Ethics*, Vol. VIII pp. 445, 463; cf. Greene T. W. in *Hindu Exogamy*, p. 48. Hearn W. E., *Aryan Household*, pp. 28, 160. Huth A. H., p. 56; In Livy's oration of Sp. Ligustinus there is the statement, "My father gave me to wife his brother's daughter" Vinogradoff P., Vol. II p. 22; Westermarck E., Vol. II p. 101; Sarkar S. C., p. 76 f. n. 1; Keith A. B., *Aitareya Brāhmaṇa*, p. 301 f. n. 10.

rule is nowhere definitely mentioned in the Brāhmaṇa works, but its practice is postulated in this period because the Gṛhya sūtras describe it in a detailed form.

Nothing is said about the gotra of either the bride or the bridegroom in the discussion on marriage in the Gṛhya sūtras of Ās'valāyana, Āpastamba, the Kāthakas, or Pārāskara<sup>25</sup>. Max Muller observed that Ās'valāyana prescribed marriage with a girl who did not recite the same pravara, but the rule is not traced in the extant text of Āsvalāyana. In the Ās'valāyana S'rauta sūtra the word samānagotra has been rendered samānārṣeya by the commentator Nārāyaṇa, and probably Max Muller may have relied upon it<sup>26</sup>. It is in the Gṛhya sūtras of Gobhila, Hiranyakes'i, and Jaimini that we find insistence on marriage with a girl who does not belong to the same gotra<sup>27</sup>. Manu (III 5), too, defines the marriageable bride to be 'a damsel, who is neither a sapinda of the mother nor belongs to the same gotra on the father's side.'

The word gotra in the text of Manu is explained as an exogamous group formed on the basis of similarity of pravaras, but the available evidence shows that Manu hardly used the word in that sense. The word gotra is used in the Ṛgveda in the sense of a cow-stall, or a herd of cows, as well as in the sense of a cloud, mountain range, or a fort<sup>28</sup>. These various meanings attached to the word gotra imply that the main idea associated with the word was that of enclosure. The word is also at times used in the sense of an assemblage. From these two ideas of enclosure and assemblage the word came to refer to persons who lived together within the same walls<sup>29</sup>. Between the Ṛgveda period and the period of Chhāndogya Upaniṣad the word assumed the meaning of a family or a family name, and it is used in the same sense by Kauṭilya

25. A. G. S. I 5; Ap. G. S. I 3, 11 seq.; K. G. S. XIV 3, 4; P. G. S. I 4, 5.

26. Karandikar S. V., *Hindu Exogamy*, p. 33

27. G. G. S. III 4, 3; H. G. S. I 19, 2; J. G. S. I 20,

28. R. V. I 51, 3; II 17, 1; 23, 3, 18; III 30, 21; 39, 4; 43, 7; IV 16, 8; VI 17, 2; 65, 5; IX 86, 23; X 48, 2; 103, 6, 7; 120, 8; V. I. I p, 235; A. V. V 2, 8; V. S. XXVII 39; T. S. IV 6, 4, 2.

29. Karandikar S. V., p. 34; Max Muller, *Selected Essays*, pp 326, 327.

and in a passage of the *Mahābhārata*<sup>30</sup>. It is very probable that *Baudhāyana* (*Pravara Mañjarī*, p. 7) also uses the word in the same sense when he says that there are thousands and millions and multi-millions of gotras. *Karandikar* has shown that the word is used in the same sense even by *Manu* when he refers to the topic of marriage<sup>31</sup>. It may be, hence, reasonably concluded that sept-exogamy in its infancy is confined to gotra meaning family or a family name, and prohibits marriage between persons whose surnames are identical<sup>32</sup>.

The *Sūtra*-writers extend the scope of sept-exogamy considerably. *Āpastamba* (II 11, 15) reiterates the rule of *Manu*, but *Vasiṣṭha* (VIII 1) does not allow marriage with a girl who belongs to the same gotra and recites the same pravara. *Baudhāyana* (II 1, 37) does not seem to be explicit with respect to his views about sept-exogamy, but *Karandikar* believes that he associated gotra with pravara<sup>33</sup>, that is, gotra stands for an exogamous group formed on the basis of pravaras that each Brahmin recited. *Gautama* (IV 2) is the only writer among the *Sūtrakāras* to define the rule of sept-exogamy exclusively in terms of pravaras. Thus the rule of sept-exogamy was associated with pravara exogamy in the early *Dharma sūtra* period. Though *Āpastamba* does not refer to it, the very fact that it finds place even in some of the *Gṛhya sūtras* (V. G. S. X) is sufficient to show that such association had taken place by the end of the Vedic period. When gotra was thus associated with pravara it lost its original meaning of surname, and it came to denote an exogamous group formed on the basis of pravara that each Brahmin recited.<sup>34</sup> Thus the exogamous restrictions were

30. G. G. S. II 10, 21; A. G. S. IV 4, 10; A. V. V 21, 3; Kau Br, XXV 15; Ch. U. IV 4; S. Sr. S. I 4, 16; Kau. sūtra IV 2, *Mahābhārata* (*Karandikar*, p. 34); K. A. LVIII p. 5; V. I, I p. 235.

31. *Karandikar S. V.*, pp. 107, It may, however, be noted here that in M. G. S. (I 7, 8) exogamy is defined exclusively in terms of pravara

32. *Ibid.*, p. 104.

33. *Ibid.*, p. 102.

34. In the *R̥gveda* period different schools of rituals were either already formed or were in the process of formation. When Vedic rituals were in full force, different gotras determined for themselves to which school of rituals they should belong. This grouping of gotras under certain heads took place after the *Yajurveda*, probably in the days of the *Brāhmaṇas*, because with the introduction of satras or communal sacrifices in place of

being widened from the later part of the Vedic age onwards and were completely widened by the time of the Dharma sūtras.

The rule of sept-exogamy does not appear to be universally accepted, but was in the process of formation in the Gṛhya sūtra period. Its observance in the Dharma sūtra period is more of a pious recommendation than an obligatory injunction. The natural inference is that the Dharma sūtra writers advocated its observance, but they could not enforce it as a rule of law. It is presumptuous to say, as Mahāmahopādhyāya Kane has done,<sup>35</sup> in face of such evidence that the rule of sept-exogamy was enforced in the Brāhmana period.

From the days of Baudhāyana onwards gotra is associated with pravaras, but the exogamy taught by the Dharma sūtra writers and the early Smṛti writers<sup>36</sup> is restricted to the father side only. Some later legislators extend its scope to the mother's side also, but they meet with little success. Vyāsa refers to this aspect of exogamy as an opinion of some. Commentators—Medhātithi, Aparārka and Vijñāneśvara—refer to it, but they do not comment upon it. It is, however, obvious that neither of them comments upon it adversely.

individual sacrifices it became both necessary and convenient for the priest-craft to group all brahmin families under certain heads. It is very probable that in the beginning there were only four groups referred to in the Mahābhārata (XII 296), and they later on developed into ten. The grouping process was not very rigid in the beginning, but admitted of rearrangement and regrouping till the time of the Sūtras when it was stereotyped and the ten groups were named after the most hallowed names. Thus pravara grouping has nothing to do with the ancestry of a person, but it points to a school of ritual or learning to which a person belonged. Thus in reciting the pravaras the sacrificer does not really mean to recite the names of his ancestors, but he recites the name of the school of ritual to which he and his ancestors adhere for the performance of religious rites. Karandikar S. V., Chs. III & IV. I agree with Karandikar rather than with Kane (His. of Dh. pp. 482, 497) in the interpretation of pravara relationship. Gotra exogamy when linked with pravara, therefore, implies spiritual kinship and not blood kinship. Samāngotra implies the sameness of even one pravara ṛsi. In some groups such as Kevala Bhṛgu group or Kevala Āṅgiras group sameness of at least three out of five, or two out of three, pravara ṛsis is necessary to constitute samānagotratva.

35. Kane P. V., *History of Dharma S'astras*, p. 481

36. Yaj. I 53 ; N. D. S. XIII 7 : Vi. D. S. XXIV 9.

This attitude suggests that even when they did not want to extend the scope of exogamy, they respected any opinion in that direction. In other words, the extension of the rule was admitted so far the theory goes, but in actual practice the rule enunciated by Baudhāyana was held up as the ideal. Devana and Mādhava oppose this extension as illogical. They argue that a Hindu girl is transferred to the gotra of her husband at the time of her marriage. She has thus no gotra apart from her husband. In the case of a child that is born of this marriage the gotra on the father's and on the mother's side is consequently the same. There is, therefore, no sense in saying that he should avoid the gotra of his father as well as of the mother. It is only when the wife is not affiliated to the gotra of her husband, as in case of the putrikā or in such unapproved forms of marriage as Āsura, etc., that the mother's gotra is avoided in marriage by her children. Thus the extension of the rule is limited to particular cases only. Vis'ves'vara (M. Parj. pp. 134-145) leaves its operation to the authority of the local custom, but Kamalākara insists on the observance of the rule.<sup>37</sup> On the whole, then, the new extension was being systematically preached by a section of the legislators, but it was not enthusiastically supported and taught by the commentators, probably because it was not accepted by an appreciable section of the community.

The next question is to determine the force and rigidity with which the rule of sept-exogamy was enforced on the populace. Manu never considered the violation of the rule a serious sin—it was hardly a sin at all. Medhātithi, a celebrated commentator on Manu (III 11), observes that Manu considered the observance of this rule a subsidiary detail of a valid marriage. Its breach was never penalised by any expiation. Similarly neither Āpastamba nor Vasiṣṭha prescribes

37. A verse attributed to Vasiṣṭha by Medhātithi (M. III 11) and by the commentator on G. G. S. (p. 610) prohibiting marriage with a girl belonging to the gotra of the mother is not traced in the extant text of Vasiṣṭha Dharma sūtra Veda Vyāsa II 2, 3; Sumantu (G. G. S. p. 606); Aparārka's text (p. 83) of Sumantu omits mātṛsagotrām, but he cites another Smṛti text prohibiting marriage in the gotra of the mother. Vijñāneśvara also quotes to the same effect a text which is attributed to S'ātātapa by Karandikar (p. 137); S. C. Sams, p. 180; N. S. p. 331; Kāś'inātha (Dh. S. pp. 143, 144) emphatically restricts the operation of the rule to the Mādhyāndīna Brahmins.

a penance or a penalty for its breach. Medhātithi observes that Vasiṣṭha prescribes an expiatory rite, but one fails to find it in the extant Dharma sūtra work of Vasiṣṭha. It is only in Gautama and Baudhāyana that we find its violation penalised. Baudhāyana is not very rigid so long as the marriage does not result in an issue; he merely forbids sexual intercourse with such a bride. It is only when the marriage fructifies that the person is asked to observe the Kṛchchra penance. On the whole, he does not look upon the person as a sinner nor upon the act as a crime of the highest magnitude.<sup>38</sup> Gautama (XXIII 12, 13), however, does not tolerate the breach liberally: he condemns it as a sin tantamount to the violation of Guru's bed. The fact that he is far ahead of his time in prescribing such a severe penalty is borne out by his own statement that other writers recommend a mild punishment for its breach. It may be recalled here that he is an extremist even in his definition of sept-exogamy.

Coming to the early legislators they prescribe penances of a very serious nature for the breach of the rule. According to Yājñavalkya (III 231) the violation is tantamount to intercourse with the Guru's wife. Nārada (XII 74, 75) could see no fitting punishment save the excision of the genital organ for such a breach. Pārāśara (X 13, 14) prescribes rather a light penance—the performance of three Prājāpatya penances and the gift of two cows to a Brahmin. But the seriousness of the sin may be gauged when we take into consideration the fact that he placed this violation on the same footing with the carnal knowledge of the father's wife, son's wife or the mother's brother's wife.

Among the commentators Medhātithi, while commenting on a verse of Manu (III 5), quotes Vasiṣṭha to the effect that "if a twice-born person marries a girl of the same gotra or reciting the same pravara, he shall renounce her and perform the lunar penance".<sup>39</sup> He does not expressly say in what light does he regard the violation

38. B. D. S. II 1, 37, 38. In his Pravara Mañjarī (p. 136) he prescribes the lunar penance for cohabitation with such a girl. Karandikar S. V., p. 101.

39. Though the verse is not traced we can say from the text of Sumantu (Aparārka, p. 80) and from Baudhāyana's Pravara Mañjarī (p. 136) that lunar penance was prescribed for marriage with a sagotra girl long before Medhātithi flourished.



of the rule, but it may be reasonably inferred from his so called quotation from Vasistha that he favoured this view. Aparārka (p. 80) handles the law with severity; lunar penance is not sufficient to check the evil. He, therefore, restricts it to those cases where the violation is unintentional; but if the breach is intentional the husband becomes an outcast and so does his son. Vijñānes'vara places a woman married to a sagotra person in the category of a chāṇḍālī and then proceeds: "If one unintentionally cohabits with a chāṇḍālī, he becomes an outcast, and he has to observe a penance of twelve years. If he intentionally lives in the company of a chāṇḍālī for a long time, he actually turns himself into a chāṇḍāla. If he cohabits with her even for a single night, he must observe three years' penance."<sup>40</sup> Similarly it is said that a person who unites with a sagotra girl violates the Guru's bed.<sup>41</sup>

In the early law of exogamy the woman was renounced only for sexual purpose, i. e., the man was not to continue his line through her. And even the legislators shared the same view. But Vijñānes'vara advocates social boycott of the person, the bride and the issue, all three of them, and each had to perform a severe penance for being admitted back into the fold of the community. Very drastic views were thus held by the writers of the 12th century, Aparārka and Vijñānes'vara, and they were upheld by the writers who followed till the end of the 17th century. Devana and Hemādri enjoin that in case of unintentional marriage with a sagotra girl the wife should be treated like a mother so far as the sexual life is concerned, and the person should expiate his sin by the performance of a lunar penance. But if he wilfully lives with her for the satisfaction of his lustful desires he is degraded from his status of a Brahmin, nay he is looked upon as a wooer of his mother. The issue born of such a union is undoubtedly a chāṇḍāla. Mādhava also considers such an issue a chāṇḍāla. But this need not lead us to believe that the violation of the rule was a crime in the highest degree. Both Hemādri and Mādhava condemn the marriage and its product in unequivocal terms: but they had a soft corner, too, for the sinner. Along with this highhanded ruling, they often talk of a mild penance and thus

40. Karandikār S. V., p. 138. In the Nirṇaya Sāgara text of Mitākṣarā this is not found.

41. Mit. p. 379

keep the way open for the sinner to get back his place in the fold.<sup>42</sup> Their attitude may be explained on the ground that they were more practical than idealistic. Their successors, especially Kamalākara, upheld the views of Aparārka and Vijñānes'vara.

This short history of sept-exogamy shows that the rule of sept exogamy first came into appearance somewhere about the 5th century B. C. The writers of this period defined it as an exogamous rule based upon the restriction of pravara, and enjoined its observance as a pious recommendation. And so it continued to be till the third century of the Christian era. Thenceforward the loose exogamous restrictions hardened into inflexible rules, and the breach of these rules came to be regarded an unthinkable sin. A few writers have been partly lenient in so far as they kept the way open for the sinner to enter the fold of his community again. But the general attitude of all the writers down from the later part of the Vedic age seems to be against the approval of a sagotra marriage. Such marriages are regarded null and void, and the poor girl leads a peculiar life neither of a widow nor of a married woman. No writer has expressly recommended her as eligible for second marriage.<sup>43</sup> It can be reasonably inferred that sagotra marriages were almost obsolete at least from the 9th century onwards, if not earlier : and even to-day the grip of sept-exogamy is not loosened, especially in Mahārāṣṭra, in spite of the facilities of the Special Marriage Amendment Act of 1923. The orthodox view is that the exogamous rules are prescribed on unseen grounds, and the cannon of the Pūrva Mimāṃsā is that if there is an unseen reason for a rule, the breach of this rule renders the principal act itself invalid and consequently nugatory.

The other aspect of exogamy among the Hindus is the sapinda exogamy.<sup>44</sup> A sapinda means one who has the same particles of the

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42. Karandikar S. V., pp. 142 seq.

43. It is only in the latter part of the 17th century that a writer, Mitra-misra, has given in positive terms the option of marrying again, Anantabhata is lenient in his attitude towards the breach of the rule and allows the woman to marry again after being purified by the performance of a particular ritual (V. Parj. pp. 707 seq.).

44. Dr. Valavalkar observes that the three terms gotra, pravara, and sapinda used in the law of exogamy have undergone so many changes, additions, and modifications in their meaning and implications through the ages since their origin, that it becomes well nigh impossible to find

body. Sapiṇḍa relationship (between two persons) arises from (their) being connected by having particles of the same body, either directly or mediately.<sup>45</sup> Thus the word sapiṇḍa has a very wide connotation, and the following pages try to analyse how the Brahmin writers limited the scope of sapiṇḍa relationship in their exogamous rules.

The Indo-Aryans in the early Vedic times, though not governed by any law of sept-exogamy, were establishing sapiṇḍa exogamy, which they, perhaps, did not practise in their Indo-Iranian home. A passage in the R̥gveda reads: 'Come, O Indra, by five paths to this sacrifice and receive your share. They have offered you fat mixed with ghee, that is your share, as the mother's brother's daughter or the father's sister's daughter is one's share in marriage'<sup>46</sup> A passage in the famous Yama Yamidialogue is interpreted by Indian writers like Devanabhata as follows: "Even in our womb god

out their original implications (Hindu Social Institutions, pp. 154 155). It is true that the word gotra has changed in its meaning and implications, and Mr. Karandikar has very ably shown how it came about. But one fails to understand what changes, alterations, and modifications in meaning and implications the word sapiṇḍa has undergone in the law of exogamy. He has failed to distinguish clearly gotra exogamy from sapiṇḍa exogamy. 'So far as the paternal side is concerned the problem is dealt with in terms of gotra; and with reference to the maternal side it is ordained that a person shall not marry a woman who is a sapiṇḍa on his mother's side upto the sixth degree in ascending line' (ibid., p. 155). Gotra exogamy is not strictly restricted to paternal side only. It was extended on the mother's side too, but this extension did not find favour with eminent writers. Similarly, sapiṇḍa exogamy is not restricted to maternal side only. On the other hand rules are so loose on the mother's side, while they are a bit rigid on the father's side. His interpretation of sapiṇḍa relationship—'Sapiṇḍa relationship ceases to exist with the seventh degree in ascending or descending line between individuals with reference to their maternal relatives'—on the authority of Manu and Vasiṣṭha (ibid., f. n. 2 p. 155) is simply misunderstood. The law in Manu and Vasiṣṭha is altogether different.

45 Mit. pp. 13, 14.

46. Aufrecht's R̥gveda Vol. II p. 672; Aparārka in his comments on Yaj. I 53 interprets this as follows: 'O Indra, come to our sacrifice together with other drinkers of soma: and partake of your portion of soma that has been left for you by them, just like the daughter of the father's sister who is most unsuitable for being one's wife'.

Tvaṣṭr, the vivifier, shaping all forms creator shall make consorts."<sup>47</sup> There is also an interesting passage in Śatapatha Brāhmaṇa: 'Thus the separation (of the eater and the eaten) is effected in one and the same act; and hence from one and the same man spring both the enjoyer (the husband) and the enjoyed (the wife): for now kinsfolk live sporting and rejoicing together, saying in the fourth (or) third man (i.e., generation) we unite. And this is so in accordance with that (separation of the spoons).<sup>48</sup> Professors Macdonell and Keith (V. I. 1 p. 236), in their interpretation of the last passage, allow marriage with the daughter of the paternal uncle. It is true, no doubt, that the passage is couched in general terms and as such does not express its meaning explicitly. But if we remember that marriage outside the family is spoken of in the Ṛgveda and that the rule of sept-exogamy was in the process of formation, we shall not be far wrong in assuming that at least some generations on the father's side were avoided. Again, the term bhrāṭṛvya is a synonym for a rival or an enemy in the Vedic literature. If he is a possible mate of one's daughter, he would not have been designated by such a term. It seems very unlikely that marriage with the paternal uncle's daughter ever took place among the Vedic Aryans. Hence, the passages in question postulate marriage with the cognates in the third generation.

We have corroborative evidence of this in the Epic and Puranic traditions. Arjuna married Subhadrā, his mother's brother's daughter, and so did his son Abhimanyu and his brother Sahadeva. Similarly Kṛṣṇa married Rukmiṇī, his mother's brother's daughter, and so did his son Pradyumna and his grandson Aniruddha.<sup>49</sup>

47. R. V. X 10, 5; S. C. Sams. p. 196. Sāyana and Western scholars translate the passage: "Tvaṣṭr made us consorts in the womb."

48. S. B. I 8.3.6; cf. also Kau. Br. III 9: "upto four (degree) are pairing, union, propagation; (they serve) for generation." The passage is ambiguous and does not make its sense clear, but 'the reference may be to the limits of human marriage'.

49. Bhag. P. Uttara 61; According to Tantravārtika (p. 129) Subhadrā, though spoken of in the Mahābhārata as the sister of Vāsudeva, need not have been the real sister of Vāsudeva. She was probably the daughter of the sister of Vāsudeva's mother or she was the daughter's daughter of the sister of the father of Kṛṣṇa's mother (step-mother), Rohiṇī.

Marriage with the mother's brother's daughter appears to be usual among the Indiān Aryans in the later part of the Vedic age. A verse from the *Brahma Purāṇa*, quoted above, refers to marriage between the sapindas as a practice once current among the Aryans in India, and probably it points to this practice of marriage with the mother's brother's daughter prevalent in the later Vedic age. Cross-cousin marriage implies marriage either with one's mother's brother's daughter or one's father's sister's daughter. In the Vedic literature cousin marriage seems to be confined to only one variety of it. The Buddhist literature, too, preserves many traditions of this one aspect of cross-cousin marriage, though a case of marriage with one's father's sister's daughter is also referred to<sup>50</sup>.

It is said in the Puranic traditions that Diti and Danu, the two sisters, married Kās'yapa. The children of these two sisters married among themselves. Manu (XI 172) condemns in very strong terms marriage with the mother's sister's daughter. The persons marrying her becomes an outcast. Coming to the later literature S'ātātapa observes that in some places marriage with the mother's sister's daughter is in vogue. Paṭhīnasi forbids marriage with the mother's sister's daughter, and Vyāsa and Sumantu prescribe the lunar penance for contracting such a marriage. Devala is downright against such a marriage. He observes that the mother's sister is nothing short of the mother, implying thereby that union with her daughter is brother-sister incest.<sup>51</sup> While some writers have been very strict against the observance of this practice, others have prescribed a mild penance for its observance. But all have showed their unwillingness for its observance. This may lead to the inference that marriage with the mother's sister's daughter may have been once prevalent among the Vedic Aryans. It is equally possible that the legislators by discussing this variety of marriage with the cognates in the third generation and by emphatically protesting against its observance indicated their compliance with only the other two possibilities.

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50. Law B. C., *Marriage in Buddhist Literature*, Ind. His. quarterly Vol. II pp. 564; Jatakas, Nos. 126 193, 262, 282; *Mahāvamsa*, p. 58. Ānanda was enamoured of the beauty of his father's sister's daughter and wanted to marry her. Hocart A. M., Ind. Ant. 1923 October.

51. S'ātātapa (N. S. p. 205); Paṭhīnasi (Sam. K. p. 176); Sumantu (V. Mīt. Sams. p. 715); Devala (C. V. C. Prāyas'chitta Kāṇḍa, p. 365) cf. Br̥hat Pārāś'ara VIII 249,

Among the Dravidians who were matrilineal marriage with the mother's brother's daughter was not only a favourite form of marriage but a man had a right over his mother's brother's daughter. As Dr. Rivers observed cross-cousin marriage must at one time have been universal in South India. This form of marriage has been explained by Richards as an adjustment of the principles of matrilineal inheritance under patrilineal forms. Though this may partly account for such marriages, their real origin probably lies, as Dr. Rivers tried to show, in the dual organisation of society, which Dr. Ghurye has shown to have one existed among the Dravidians <sup>52</sup>.

The Vedic Aryans must have received hearty co-operation from their Dravidian neighbours in encouraging marriage with the mother's brother's daughter. But it need not be supported that they copied this form of marriage from their Dravidian neighbours. If it had been so, we have to explain why they did not practise marriage with the father's sister's daughter, the other aspect of cross-cousin marriage, and why they did not condemn downright marriage with the mother's sister's daughter which would never be allowed in a matrilineal society. It must, therefore, be looked upon as a natural result of the Aryans' own emphasis on unilateral agnatic counting. This is corroborated by the fact that bilateral counting of kinship came to be clearly accepted in the later part of the Vedic age, and the scope of *sapinda* exogamy, too, was widened *pari passu*.

We find marriage in the third generation condemned for the first time in very strong terms in Manu. "He who has approached the daughter of his father's sister, or of his mother's sister, or of his mother's brother, shall perform a lunar penance. A wise man should not take as his wife any of these three: they must not be wedded because they are relatives. He who approaches them sinks

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52, Richards E. J., *Marriage of Cousins in S. India*, Man XIV. Under mother-right a man cannot transmit his property to his own children. If he wants that his children should enjoy his property he should marry his children to the children of his sister, who inherit his property. This would result in marriage with the mother's brother's daughter or the father's sister's daughter, i.e., cross-cousin marriage. It would preserve inviolate the principles of matrilineal inheritance under patrilineal forms. Rivers W. H. R., *Marriage of Cousins in India*, J. R. A. S. 1907; Ghurye G. S., *Dual Organisation among the Dravidians*, J. R. A. I. 1923.

low"<sup>53</sup>. In this passage Manu expresses two views; the first view prescribes a lunar penance for marriage with a cognate in the third generation, while the second view condemns such unions. Gautama (XXI 1, 7) includes in his list of sinners the murderer of a Brahmin, one who drinks spirituous liquor, violator of the Guru's bed and one who had connection with the female relatives of his father and of his mother, and then declares that the first three sins cannot be expiated by any penance according to Manu. On this view marriage in the third generation was not looked upon as an inexpressible sin by Manu. So it seems that of the two views Manu held the first view. We thus find a distinct and important advance made for the first time by Manu in the rule of *sapinda* exogamy. A traditional verse attributed to Manu sanctions marriage in the third or fourth generation on both sides. But we saw that Manu definitely condemned marriage in the third generation. Upholding such marriages in the name of Manu and other revered writers points to its survival in the Indo-Aryan community long after its condemnation by Manu and other writers.

Marriage in the third generation is condemned by Manu, but nothing is said about the exact number of generations to be avoided in marriage. He defines a marriageable bride as one who is neither a *sagotra* of his father nor a *sapinda* of his mother<sup>54</sup>. The exact nature of *sapinda* exogamy should, therefore, be fixed from the *Sūtra* literature. We know from *Vasiṣṭha* (IV 18) that 'it is declared in the *Veda* that for married females the *Sapinda* relationship extends to the third person.' Thus the mother, on her marriage, retains her *Sapinda* relationship with her father and grandfather and their collaterals within three degrees. If a girl is to be an *asapinda* on the mother's side, she should be beyond this circle of kin. In other words, a man can marry a girl who is related to him in the fifth generation, counting the bridegroom as the first. *Vasiṣṭha* (VIII 2) has explicitly referred to this limit in defining *sapinda* exogamy. But one cannot definitely assert from this that Manu had widened the scope of *sapinda* exogamy to the same extent, because *Baudhāyana* and *Āpastamba* do not appear to go beyond the fourth generation.

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53. M. XI 171, 172. In the *Mahābhārata* (V. Mit. Sams p. 715) marriage with the mother's brother's daughter is a curse pronounced by *Yayāti* on his disobedient sons.

54. M. III 5. cf. also G. G. S. III 4, 4; J. G. S. I 20; V. Sm. S. III 2.

Baudhāyana nowhere refers to sapinda exogamy. He declares (I 2, 1—5) marriages in the third generation as a practice peculiar to the Southerners, and adds that such peculiar practices should be confined to those regions where they are actually current. His attitude is to uphold the currency of such marriages in South India only as a local custom. This implies that marriages in the third generation were not permissible in Northern India in the days of Baudhāyana.

Āpastamba lays down that one should not give his daughter to a man belonging to the same gotra or to a man related through yoni. According to Dr. Bühler, "he shall not give his daughter to a man belonging to the same family (Gotra) nor to one related (within six degrees) on the mother's or (father's) side."<sup>55</sup> But his interpretation seems to be wrong, because no writer, ancient or modern, insists on the avoidance of six generations on the mother's side, and hence it is very unlikely that Āpastamba ever meant to define such a wide prohibition. The word yoni is used in the sense of a womb in the Vedic literature. This being its primary meaning the compound word yonisambandhāḥ must refer to persons related through womb. The compound word sayoni or svayoni is used by the Sūtra and Smṛti writers in the sense of an uterine sister<sup>56</sup>. Manu has used the word svayoni in two more passages. In the Dharmasūtras a student is enjoined to behave with his teacher's wife or son, and those who impart instructions to him at his teacher's command or the fellow students, and who excel him in learning, as towards the teacher himself<sup>57</sup>. Manu<sup>58</sup> adds to this list relatives designated by the term svayoni. Commentators on Manu—Medhātithi, Kullūka and Rāghava—interpret it as agnatic relatives such as the father's brother and others. According to Nārāyaṇa, the term refers to both the paternal and maternal relatives. In another passage from Manu (II 129) the word yoni is used to imply relatives through either of the parents, the word yoni being rendered to mean source.

55. Ap. D. S. II 11, 15, 16 (S. B. E. Series, Vol. II, p. 126)

56. M. XI 58, 170; Nandana has rendered svayoni by daughter and not sister. Yaj. III 231; G. D. S. XXIII 12. In Gautama (XXI 1) and Āpastamba the word yonisambandha is used for sister in the parallel passages.

57. Ap. D. S. I 7, 27; G. D. S. II 37; V. D. S. XIII 54.

58. M. II 206, cf. II 134 where the commentators express the same view.



A person who mixes with outcasts, or who performs acts which are prohibited for an Aryan, becomes himself an outcast. His sapinda and bāndhavas must offer on an inauspicious day water libations to him in presence of his spiritual gurus and relatives known as yonisāmbandhas<sup>59</sup>. The term yonisāmbandha is explained by Haradatta and Aparārka to mean the mother's brother and others. Vijñānes'vara, too, affirms that both the paternal and maternal kin take part in the ceremony. The corresponding term for yonisāmbandha is jñāti in Manu and Vasiṣṭha and bāndhava in Śaṅkha and Likhita. The word jñāti is used for agnatic relations, and the word bāndhava is at times used in the same sense.<sup>60</sup> In view of this one cannot definitely say who were the relatives connoted by the term yonisāmbandha in the text of Gautama.

In connection with ās'aucha Gautama (XIV 18) prescribes impurity for a period of one night with the preceding and following days in case of a relative who is not a sapinda, a person related through yoni or a fellow student. Asapinda clearly refers, as Haradatta observes, to those agnatic relatives who are beyond the degree of Sapinda relationship. When all agnatic relatives are thus referred to, the term yonisāmbandha must obviously allude to the relatives through the mother. This interpretation of the Gautama's text agrees with the rule in Manu (V 81). Dr. Bühler also holds that this is the proper interpretation of the term, though he translates it by the phrase 'relative by marriage'. Similarly in the rule of Niyoga Gautama (XI 6) mentions a person related through yoni as competent to beget a child in the absence of a sapinda, a sagotra or a samānapravara relative. Dr. Bühler, following Haradatta, explains it as a member of the Brahmin caste, but it clearly refers to a relative through the mother or a cognate.

In the ritual of the S'rāddha the selection of proper brahmins is insisted. The brahmin should be one who is not connected with him by the gotra relationship, mantra relationship or yoni relationship.<sup>61</sup> The specific mention of gotra and mantra relationship

59. M. XI 182; G. D. S. XI 2, 6; V. D. S. XV 12, 13.

60. Aparārka, p. 1205; Mit. p. 467; M. II 132, 184; V 58, 70, 72, 74; G. D. S. II 43; Yaj. I 82; N. D. S. XIII 28.

61. Ap. G. S. II 8, 21; Ap. D. S. II 17, 4; B. D. S. II 14, 6. Brhnd. P. (S. May. p. 63). In Brahmaparivarta P. (ibid.) among persons not to be fed at the S'rāddha are given the father-in-law, the wife's brother, the mother's brother and others—mātulādayaḥ.

is to avoid all agnatic relations. The relatives through yoni are, therefore, the non-agnatic relatives, though Bühler translates it by 'relatives through marriage'. We find in Manu (III 148) that in the absence of proper brahmins the cognates are invited to dine at the S'rāddha. Āpastamba's rule very probably alludes to the cognates under the designation of yonisambandha. This is borne out by another passage from Āpastamba. He lays down that "water libations should be offered in case of a paternal relative within seven generations or as far as relationship is traceable and of those related through yoni on the mother's side."<sup>62</sup> We know from Pārāskara Grhya-sūtra (III 10, 16, 17, 46) that water libations were performed for the farthest agnate and for the father-in-law, the mother's brother and the sister's son. The rule of Āpastamba, therefore, refers to such cognates as the mother's brother or the sister's son.

In various passages wherein the word is used the general sense appears to be a relative through the mother, though the sense of a cognate or a relative in general is also associated with it. Āpastamba's restrictive rule prohibiting marriage with the yonisambandhas on the mother's side preaches the avoidance of certain generations on the mother's side, but the number of generations actually avoided is neither specifically given nor can it be suggested by his terminology. Very probably Āpastamba, like Manu and Baudhāyana, was against marriage in the third generation on the mother's side, though, unlike them, he preached avoidance of six generations on the father's side.

Gautama defines his rule of sapinda exogamy thus: 'marriage may be contracted between persons who are not related within seven degrees on the father's side or on the side of the begetter, nor within five degrees on the mother's side'<sup>63</sup>. Gautama is an extremist, and he is not prepared to make concessions on the ground

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62. Ap. D. S. II 15, 2, 4. I have entirely disagreed with Dr. Bühler in translating this passage. Haradatta, Mādhava, Gopinātha, Sudarśanāchārya and Mitra-misra interpret the word as the mother's brother and others, while Aniruddha, Vijñānes'vara, Maskari read in the word the meaning of a cognate. Ap. G. S. VIII 21, 2; G. D. S. XIV 18; Parāśara, Vol. I part II p. 340; S. R. M., p. 990; V. Mit. Sams. p. 529; Hāratalā pp. 3, 75; Mit. p. 317.

63. G. D. S. IV 2, 5. Dr. Bühler's translation is incorrect unless he had a different text of Gautama with him, cf. V. G. S. X

of local custom. The practices either of the South or of the North when opposed to the tradition of the śiṣṭas should not be resorted to<sup>64</sup>. But though he preached the widest extension of sapinda exogamy, one really fails to take it as a usage of the day in view of the fact that Manu, Baudhāyana and Āpastamba did not go much farther in this respect. Again, when no Sūtra-writer prescribes any penance for the breach of the rule of sapinda exogamy, Gautama (XXI 1) declares that one marrying a sapinda relation of the father and the mother becomes an outcast. Thus Gautama seems to be far ahead of his times, and, if we remember that in defining even the sept-exogamy he was far ahead of his contemporaries, we can rightly conclude that he is an idealist and cannot be looked upon as a representative of the Sūtra period.

Summing up our evidence for sapinda exogamy in the Sūtra period, it may be said that the rule of sapinda exogamy was in the process of formation. The lower limit of avoiding three generations on the mother's side was definitely imposed as a binding rule. The upper limit of avoiding five generations was recommended, but it had no sanction for its rigid observance in the form of a penance for its breach. Similarly avoidance of six generations on the father's side was recommended, but we have no means of ascertaining the exact number of generations rigidly avoided on the father's side.

Coming to the Smṛti period we have to begin with Yājñavalkya. Mr. Karandikar, relying on the text of Panini office, cites as the view of Yājñavalkya the following rule: marriage takes place in the fifth generation on the mother's side and in the seventh on the father's<sup>65</sup>. Accepting this view, we find Yājñavalkya in complete harmony with Vasiṣṭha. But the Nirṇaya Sāgar edition of Yājñavalkya Smṛti reads: "marriage takes place in the sixth generation on the mother's side and the eighth on the father's"<sup>66</sup>. The two eminent commentators on Yājñavalkya, Aparārka and Vijñānesvara, give the latter reading of the text. Again, Mahāmahopādhyāya Kane thinks that the text of Agni Purāṇa represents probably the

64. B. D. S. I 2, 7, 8

65. Karandikar S. V., pp. 188, 191; Viśvarūpa has also the same reading.

66. The same reading is given by Dutt and Vidyānārāyaṇa in their translations of Yājñavalkya Smṛti.

original text of Yājñavalkya<sup>67</sup>. The rule in Agni Purāṇa (CLIV 8) forbids marriage in the fifth generation on the mother's side. In view of this it can be said that Yājñavalkya followed the rule of Gautama, though the reading in the text of Panini office cannot be easily rejected. Among others Viṣṇu enunciates the rule of sapinda exogamy on the lines of Gautama<sup>68</sup>.

Coming to Nārada (XII 7), Dr. Jolly translates his rule of exogamy thus: 'sagotras and samānapravaras are ineligible for marriage upto the seventh and fifth degrees of relationship respectively on the father's and mother's side.' Dr. Jolly confused both sept and sapinda exogamy in translating this verse, and, consequently his interpretation means nothing. The verse, thus interpreted, excludes only the agnatic relations of the father and the mother upto certain generations but does not prohibit marriage with the nearest cognatic relations. It is absurd to think that Nārada, a Smṛti-writer of the fifth century, could ever prescribe such a rule. The reasonable meaning of the verse seems to be this. He defines sapinda exogamy in the first line and sept exogamy in the second. Nārada thus forbids marriage in the seventh generation on the father's side and fifth on the mother's. A verse is attributed to Nārada by Aparārka wherein marriage in the seventh generation on the father's side and in the fifth on the mother's is allowed.<sup>69</sup> Thus the three eminent writers of the Smṛtis advocate the rules of exogamy preached by Vasiṣṭha and Gautama. Among the less prominent Smṛti writers, while some preach the avoidance of four and seven on the mother's and the father's sides respectively<sup>70</sup>, others advocate the rule of Gautama.<sup>71</sup>

67. Kane P. V., *His. of Dharmasāstras*, Vol. I, p. 170 seq.

68. Vi. D. S. XXIV 10; cf. the verse attributed to Viṣṇu (in N. S. p. 204).—'That intelligent man, who marries a girl in the fifth and the seventh generations is known to be a violator of the Guru's bed.' Aparārka (p. 82) attributes to Viṣṇu another verse to the effect that 'persons marrying in the fifth and seventh generations...are rendered fallen and are reduced to the state of a S'ūdra.'

69. Aparārka on Yāj. I 53; cf. S. C. Sams. p. 192.

70. Bṛhat Parāśara, VI 38; Śaṅkha IV 1; Vyāsa (S. N. p. 25). cf. Brh. P. CXIII 73; Vi. P. III 10, 23.

71. Devala and Hārīta (V. Mit. Sams. p. 703). According to Marichi (S. C. Sams p. 193), people who marry in the fifth and the seventh generations are reduced to the state of a S'ūdra, though they may be devoted to the performance of Vedic rites.

Though sapinda exogamy enunciated by Vasiṣṭha and Gautama had been advocated by a host of Smṛti and Purāṇa writers, its contraction was preached by Paiṭhīnasi and others. Paiṭhīnasi, while advocating the rule of Gautama, preached avoidance of five generations on the father's side and three on the mother's as an alternative<sup>72</sup>. Later writers, who were not satisfied with this contraction, tried to arrogate its application to particular cases<sup>73</sup>. But Śākatāyana<sup>74</sup> among the Smṛti-writers and Mādhava and Hemādri among the writers of the digests accept it as one of the recognised circles of prohibited degrees. It is evident, then, that during the Smṛti period the lowest limit of prohibited degrees was the avoidance of three degrees on the mother's side and five on the father's, while the highest was five and seven respectively. The fact that three different circles of prohibited degrees continued to be operative in the Smṛti period shows that the rule of sapinda exogamy did not obtain the rigidity of sept-exogamy. This is further corroborated by the fact that the Smṛti writers do not punish its breach though they are so strict about the violation of the rule of sept-exogamy.

Yājñavalkya (III 231-233) condemns connection with various females as tantamount to the violation of the Guru's bed, but he keeps silent as regards sapinda marriage. Nārada (XII 73-75) condemns

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72. Aparārka, p. 82.

73. Aparārka writes that the rule prevails when the bride and the bridegroom are of different castes. Kamalākara (N S p. 204) observes that the rule is to be followed when the bridegroom is an adopted son or in the case of the step-mother. The author of *Sāpindya Dīpikā* (p. 25) also refers the rule to the bridegroom who is adopted only with the initiation rite in the new family. Viś'ves'vara (M. Parj. p. 139) applies the rule to the family of the adoptive father of the mother of the bridegroom. Vijñānes'vara (Karaṇ-dīkar, p. 199) believes it to be operative in the case of an issue of anuloma marriage. Chandes'vara (G. Rat. p. 10) and Mādhava (Vol. I part II p. 61) hold the view of Aparārka.

74. Śākatāyana (N. S. p. 204) allows marriage with the fifth on the father's side. Marriage with the third or the fourth on both the sides is said in Chaturvīṃśatīmata to have been sanctioned by Manu, Parāśara, Aṅgiras and Yama. Saṅkha (Viś'varūpa, Vol. I, p. 62) propounds avoidance of five generations on both the sides. Śātātapa (S. C. Sams. p. 188) prescribes a penance for marriage in the third generation. Vyāsa condemns it as being a practice of the sinful. 'The Brahmins overcome with sin shall marry with bride price or a girl in the third generation on either side.' Does it mean that they do not mind marriage in the fourth generation?

connection with about twenty females, and says there is no other fitting punishment than the excision of the organ for this sin. But any female related within the third or the fourth generation is not included in this long list. In *Viṣṇu Smṛti* (XXXVI 4-7) also connection with a long list of women is looked upon as incestuous, but no cognate either in the third degree or in the fourth finds place therein. In *Parāśara Smṛti* (XI-12) penances are prescribed for connection with several females, but a female related in the third or fourth generation is not referred to. All these writers condemn very strongly connection with a sagotra girl, but they have nothing to say against the marriage with a sapinda girl.

When we find that the rule of sapinda exogamy admitted of much laxity so far as the prohibitive circles are concerned, and that its breach was never penalised even by a mild penance, when the violation of sept-exogamy was ruthlessly penalised by prescribing it as the most heinous crime and by prescribing the excision of the generative organ for its breach, we have to conclude that the rule of sapinda exogamy was of the nature of a pious recommendation from its very beginning and remained so till the end of the eighth century. It may be added here that while marriage with a sagotra girl was considered null and void and the wife was renounced, marriage with a sapinda girl was not only tolerated but brought no penalty on the sinner. This characteristic difference in the observance of the two aspects of exogamous rules can be clearly brought home by saying that sept-exogamy was obligatory while sapinda exogamy was recommendatory, or that when the legislators desired that a man would not marry a sapinda girl, they forced that he should not marry a sagotra girl.

The later commentators do not go much farther than their predecessors so far as the enforcement of the rule is concerned. *Viśvarūpa*<sup>75</sup>, the early commentator, gives four different circles of prohibition, and adds that each preceding view is preferable to the latter. That is, he prefers the rule of Gautama as the best rule on the subject. As for the lowest limit he allows marriage in the fourth generation, but adds the remark that this fourth circle should be operative in case of the bride only. In other words, when he considers Gautama's view as the suitable one, he would not mind

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75. *Viśvarūpa*, Vol. I, p. 62

marriage with a girl related within four degrees on the mother's side and fifth on the father's side. The remarkable point about him is that among the commentators he is the only person who is liberal enough to recognise various opinions as valid practices. Medhātithi, Aparārka and Vijñānes'vara accept Gautama's rule of exogamy. Medhātithi warns that if people were to infer that Manu allowed marriage in the fourth generation and onward, because he condemned marriage in the third generation, such an inference would be both illogical and unauthorised. Aparārka criticises marriage in the third generation on the ground that a local custom is to be followed only when it is not opposed to the Vedas. As for the Vedic text allowing marriage in the third and fourth generations he argues that it is a general text and no particular inference can be legitimately drawn from it. Vijñānes'vara quotes various texts allowing marriage within narrow circles of prohibited degrees, and then observes that Paṭhīnasi gives the minimum limits of sāpiṇḍya or his rule should refer to sons born of aenuloma marriage. Similarly fifth and seventh in these texts should be understood to prohibit, and not to allow, marriage in these degrees.<sup>76</sup> We find here that all the three commentators keep before them marriage with a girl related in the sixth generation on the mother's side and eighth on the father's as the ideal, but they are familiar with marriage practices within narrow limits. They have nothing to say against the currency of these practices, but they would desire the avoidance of three generations on the mother's side and five on the father's as a minimum<sup>77</sup>. On the whole, marriages within the prohibited degrees, although very rare, were not completely out of vogue nor were they looked upon void or sinful.

Devanabhatta and Mādhava advocate marriage with the cognates in the third generation on principle. According to the Hindu rites of marriage a woman loses on marriage her father's

76. Karandikar S. V., p. 198

77. Aparārka (p. 1048) does not interpret the word 'svayoni' as sāpiṇḍa relations of the father and the mother, and, therefore, connection with females in the third generation and upwards entails no sin. Vijñānes'vara (Mit. p. 379) opines that connection with a female in the third generation is a sin of ordinary nature, and no penance is prescribed by him for sāpiṇḍa marriage. Marriage with the mother's brother's daughter is sanctioned for the Southerners by Bṛhaspati (II 29), but Govindarāja, though a Northerner, upholds such marriages (Kane P. V., *His. of Dharmaśāstra*, Vol. I, p. 313).

gotra and joins that of her husband. Thus after marriage she is no more a sapinda relative of her father, and so marriage with the cognates in the third generation is in no way a sapinda marriage. This would imply that marriage with the mother's sister's daughter should also be practised: and Devana says that technically there is nothing wrong about it, but popular custom does not allow it and so it does not take place. But this change of gotra takes place in case of only those women who are married according to the first four forms of marriage and not otherwise. Marriage with the cognates in the third generation is, therefore, permissible only in certain cases. Mādhava, however, argues that even in other cases a man can contract such a marriage with impunity provided local custom allows it. So both these writers defend marriage with the mother's brother's daughter and the father's sister's daughter on principle in the South as well as the North of India. Hemādri does not expressly allow marriage with the father's sister's daughter or with the mother's brother's daughter. But as he prescribes penances for marrying a daughter of the mother's sister<sup>78</sup>, it is reasonable to presume that very likely he approved of marriage with the mother's brother's daughter or with the father's sister's daughter. One can see that these writers are not very logical and consistent in interpreting the old texts on which they rely to support their views. But it is certain that the writers of the thirteenth and fourteenth centuries did not object to marriage with the cognates in the third generation. Śūlapāni, a Northerner, in absence of a proper match allows the Kṣatriya in all forms of marriage, and other castes in the Āsura and other inferior forms of marriage, to marry within the prohibited degrees, provided they do not marry within the fifth degree on the father's side and the third degree on the mother's side<sup>79</sup>.

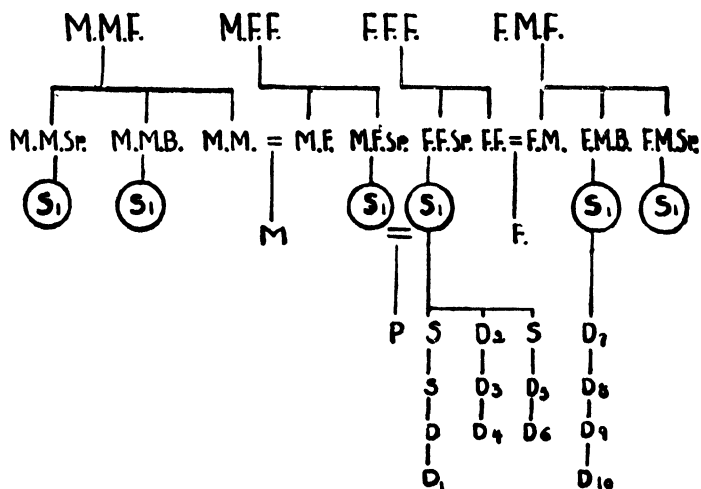
While, on the one hand, Devana encouraged marriage with the cognates in the third generation, on the other hand, he advocated Gautama's rule of exogamy. According to him, Gautama prohibited marriage within seven generations on the father's side and five on the mother's, but five and seven generations in the rule of Gautama are to be counted not from the bride and the bridegroom, but from their mother's and father's bandhus. Bandhu is more or less a technical term standing for three relatives, the mother's

78. Vol. III part II p. 365

79. Karandikar S. V., p. 205



brother's son, the mother's sister's son and the father's sister's son. Devana can be said to have thus extended the scope of sapinda exogamy considerably. He was followed in this extension of sapinda exogamy by writers like Raghunandana and Kamalākara<sup>80</sup>, writers of the sixteenth and seventeenth centuries. Raghunandana seems to be conscious of the fact that the extension is carried too far, and so he qualifies this new extension of sapinda exogamy by a rule. A girl who is removed by three gotras from the bridegroom is acceptable in marriage though related within the prohibited degrees. "The three gotras in the case of the descendants of a bandhu are always to be counted from his bandhu's own gotra. So also, in the case of the descendants of the ancestors of a bandhu, who is the father's or the mother's maternal uncle's son, they are to be counted from the bandhu's own gotra. But in the case of the descendants of the ancestors of each of the other bandhus the three gotras are to be counted from his (bandhu's) maternal grand-father's gotra".<sup>81</sup> The prohibition on the lines of this rule has been shown in the following table :—



80. Karandikar S. V., pp. 204, 205; N. S. p. 203; Haradatta on G D. S. IV 3; M. Parj. p. 139.

81. Banerjee G., *The Hindu Law of Marriage and Stridhana*, p. 66

Here D1 is seventh from the common ancestor, viz. F.F.F., and hence marriageable to P (with reference to whom the whole circle is drawn). But if the degrees are to be counted from the bandhu (S1), according to the new rule, she is unmarriageable because she is only fifth. This shows the extension of the new rule. But the new rule is narrowed down by the principle of *trigotra*. On this new principle D4 is marriageable though she is only fourth from S1. The reason is F.F.F. belongs to a gotra, say S'āṇḍilya. F.F.Sr. belongs to another gotra, say Kās'yapa, on marriage. D2 belongs to a third gotra, say Vatsa, and D3 to a fourth, say Bharadvāja. The gotra of D4 is Bharadvāja before marriage, but three gotras have intervened between her and her common ancestor, F.F.F. But D6 is not marriageable, though in the same generation with D4, because there only two gotras intervene. Her daughter is, however, marriageable. On the same ground D9 is not marriageable. Mr. Karandikar takes this rule of *trigotra* independently of this new extension. He understands that a girl is marriageable even if she be within the prohibited degrees provided three gotras intervene. According to him, F. F. Sr.'s daughter's daughter's daughter, i.e., a girl in the generation of D3, is marriageable provided there are all female lineal descendants in the line of F.F.F. He has followed Kamalākara (N. S. pp. 283-284) in interpreting this rule. Kamalākara accepts this principle, but anyhow he does not allow marriage with F. F. Sr.'s daughter's daughter's daughter. So while theoretically he defines the rule of Gautama as counted from the bandhus, he does not appear to count sapinda relationship from the bandhus, as Rao Saheb Mandalik has shown, when he renders 2121 girls unmarriageable according to the rule of sapinda exogamy.

The term bandhu was appended to the words father and mother by Gautama in defining the rule of sapinda exogamy. Among the Smṛti writers Nārada<sup>82</sup> is said to have used the same phraseology. But commentators do not consider the term bandhu as materially significant while commenting on the verse of Gautama or Nārada.

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82. The word bandhu is not found in Nārada Smṛti translated in S. B. E. Series. S'ridhara (*Sāpindya Nirṇaya*, p. 24) quotes the text of Nārada wherein also the word bandhu is not found. It is given in the text quoted by Raghunandana (Banerjee G., p. 63) - 'Girls descended from the father's or mother's bandhus are not to be taken in marriage as far as the seventh and fifth respectively, as well as those of the same gotra or of equal pravaras'

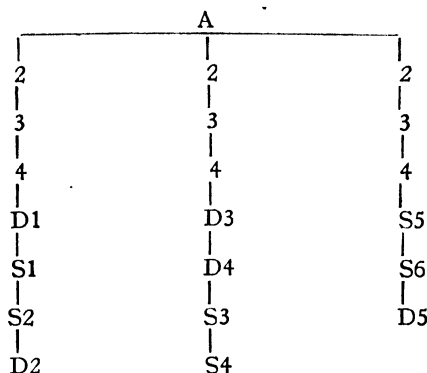
Aparārka has said that on the maternal side the maternal grandfather is to be counted as the first, but so long as he has not said anything about such counting on the father's side, and so long as he tries hard to refute only those views which allow marriage within the eighth and sixth generations respectively without any comment for further extension, we have no reason to believe that he advocated extension of the rule on this line. When the word *bandhu* is thus ignored by many eminent writers, there is no sense in emphasising its importance solely because it so appealed to some. Secondly, the rule fails to provide us with any rational meaning of exogamy when we try to understand its significance. As can be seen from the table it relates to P's marriage with a girl who is in the generation of his great-great-grandson, and such a case would hardly occur in common routine. Thirdly, Kamalākara advocates the rule theoretically, but when he tries to calculate the number of females rendered unmarriageable by the rule of exogamy, he seems to overlook this new extension. Fourthly, Raghunandana, who enunciates the rule and illustrates it, realises the difficulty of getting proper matches under the comprehensive rule of exogamy. He has, therefore, to qualify the rule. With the working of this new principle, the bridegroom is only in the fourth generation from the common ancestor counting being on the father's side. It is obvious that the extension is rendered ineffective, and consequently one can see that such extensions have no meaning in prohibiting marriage with near kin.

There are writers who extend the scope of *sapiṇḍa* exogamy in other ways. Sumantu holds that the proper bride is one who is beyond seven generations on both the sides, though avoidance of five generations on either side is accepted by some. Budha, on the other hand, allows marriage in the fifth generation on the mother's side, but on the father's side he recommends the avoidance of nine generations.<sup>83</sup> Some hold (N. S. p. 203) that even if a person be eighth on the father's side he or she is not rendered fit for marriage solely on that ground if he or she does not happen to be sixth on the mother's side *pari passu*. Mahāmahopādhyāya Kane believes that Vijnānes'vara holds the same view, namely, that regard is to be had to the father and mother of the bride and the bridegroom both<sup>84</sup>.

83. V. Mit. Sams. pp. 699, 707.

84. Kane P. V., *His. of Dharmasāstras*, Vol. II part 1 p. 455

This mode of computing sapinda relationship with the common ancestor will present four different cases. Descent from a common ancestor may be traced through the fathers of both the bride and the bridegroom, or through the mothers of both or through the mother of the bridegroom and the father of the bride or vice-versa. The result is, a bride may be 6th from the common ancestor, descent being traced through the mother, and yet she is not marriageable if the bridegroom happens to be 6th from the common ancestor, descent being traced through the father. Or again, the bridegroom may be 7th from the common ancestor and thus eligible for marriage; but the girl, though seventh, is ineligible because in her case counting is through her father and consequently they cannot marry. Thus in the following table D4 cannot be married to S6, and S3 cannot marry D5. The only marriageable pairs are S1 and D4, and D2 and S4 or S3. The eligibility of S1 and S6 differs, though of the same generation, because of counting on both the sides.



In view of the fact that marriages in the third generation could not be entirely stopped, these rules look more like idealistic sermons than obligatory injunctions.

On the whole, then, the rule of sapinda exogamy was progressively modified in its theory from the days of the Dharma Śāstras onwards. The rule of Gautama is upheld from the days of the Smṛti-writers to the middle of the seventeenth century. But this need not mislead us to suppose that marriage within eight or six

generations were totally checked. On the contrary, such marriages were normal and were supported as valid by many prominent writers. They are justified on the grounds of local customs or family traditions. The general rule for the interpretation of various contradictory Smṛti texts, according to the Hindu view, is the majority represents the view to be adopted.<sup>85</sup> Again, the ancient works are held sacred and that is why we find all the writers explaining different rules on the subject as applicable to different cases. One can conclude from this that the rule of sapinda exogamy did not attain the rigidity of the rule of sept exogamy, and the writers, in spite of their desire to preach and enforce the rule of sapinda exogamy, had to accept and sanction laxity in the rule

The narrowing down of the limits of sapinda exogamy shows that the rule of Gautama remained to the end a pious recommendation. This is supported by another piece of evidence. Vis'varūpa and Aparārka condemn marriage in the third generation but go no farther. Medhātithi recognises marriage in the third generation as a usage in other countries, but he does not condemn it downright. Vijñānes'vara is strict enough to recognise any marriage in contravention of Gautama's rule as sinful, but the sin is mild. Vis'ves'vara (M. Parj. p. 140) is the only writer who penalises the breach of exogamy by prescribing that the girl so married does not attain to the status of a wife. Absence of any sanction to enforce the rule, which is so evident in the writings of those who advocate it, shows that they could not impose it upon the people but merely recommended it as a better course.

The history of sapinda exogamy shows that the Aryans in India did not succeed in imposing with rigidity the exogamous restrictions based on sapinda relationship, possibly because the Aryans were not exogamous. It is equally probable that the endogamous restrictions imposed by caste rigidity in India must have adversely affected the rule of sapinda exogamy, but caste cannot fully explain the looseness of the rule. In Vedic times there were no endogamous restrictions of castes, and yet the Vedic Aryans permitted cross-cousin marriage and did not strictly observe exogamous restrictions based on gotra. If the Aryans were non-exogamous by nature, it is very likely that they adopted the idea of exogamy under the influence

of contact with the Dravidians. The Dravidians were strictly exogamous, and they were as rigid in their observance of exogamy as any of the primitive tribes. The Brahmin in India, to show to his new devotees, the Dravidians, that on the important social question of the selection of bride he was at least as great a puritan as his devotee, if not more rigid than he, accepted the principles of exogamy. He did not stop there, but tried to trace his descent directly from a Vedic ṛṣi to lend him moral greatness.

This may explain the origin of the institution among the Vedic Aryans. But we have to account for the two salient features of the exogamous rules developed by the Brahmins. Firstly, sept-exogamy was enunciated in terms of gotra based on pravara which stood for spiritual kinship. Moreover, the rule was merely recommendatory in the beginning, but was made absolutely rigid and its breach came to be considered a serious unthinkable sin and its issues were delegated to the state of a chāṇḍāla as time advanced. Secondly, while the Brahmins made the rule of sept-exogamy so rigid, they tolerated looseness in exogamous rules based on sapinda relationship.

When the Aryans came into India there were no castes. The Brahmins looked to the performance of the religious rites of the community, and the Kṣatriyas were more or less engaged in subduing their foes in the new land. But change from one class to another—Kṣatriya becoming a Brahmin and performing religious rites—was quite normal. At the close of the Rgveda period there is a clear-cut line drawn between the Kṣatriya and the Vaiśya on the one hand and the Brahmin on the other. The Brahmins utilised every opportunity to impress upon the mind of the Kṣatriyas that they were superior to the latter<sup>87</sup>, and religious life afforded best opportunities for the purpose. The Kṣatriyas and the Vaiśyas were accordingly made to realise that they had no pravaras and they had to borrow the pravara of their Brahmin teachers to perform the rites, because 'gods do not accept the offerings of those who have no descent from a ṛṣi'<sup>88</sup>. Thus the Brahmin utilised the pravara

87. A. B. VII. Dr. Thoothi is inclined to attribute to the Brahmins a noble and laudable motive in imposing gotra organisation upon the other varṇas. (*Vaishnavas of Gujarat*, p. 141)

88. Kau. B. III 2. If at all a Kṣatriya was raised to the rank of a Vedic ṛṣi, e. g. Viśvāmitra, he was first made a brahmin. As a Kṣatriya he could not attain to this status. The Kṣatriyas must not have easily yielded to these claims of the Brahmins, for we find an alternative given to them to recite the names of Manu, Ilā, and Purūras, the three pravara ṛṣis for the Kṣatriyas.

organisation, and consequently linked it with the gotra organisation, as a very effective weapon in his hands to establish his mastery and power over the valiant Kṣatriyas. The fact that this internal organisation appears to have taken place at a time when caste feeling between the Brahmins and the Kṣatriyas grew keener and keener lends support to it. This also explains why the Brahmins gave a peculiar shape to the organisation they borrowed and why they persistently struggled to keep its grip tighter and tighter. In its continuance lay their mastery and hold over the rest of the population.

Different explanations have been given by different writers for the origin and practice of exogamous restrictions. According to Dr. R. Fick, at least some of the Brahmanical gotras have a totemic origin. Dr. Valavalkar believes that "these exogamic taboos are designed for the restriction of free marital relationship. Their psychological origin lies in the horror of and the consequent incest taboo which aims at preventing sex-relations between parents and offsprings, and between brothers and sisters. In course of time, however, strict adherence to the requirements of these exogamic laws must have been found so difficult, for one reason or another, that some of the Dharmasastras have sought to modify these rules by making them more limited in their operation. Thus, according to these, persons related with each other beyond five degrees on the mother's side and beyond seven degrees on the father's side are allowed to marry". According to Kane, 'the prohibition was due to two causes: firstly, if near relatives marry their defects are transmitted with aggravation to their offspring, and, secondly, the fear that there may be clandestine love affairs and consequent loss of morals'<sup>89</sup>. I leave it to readers to take these explanations for what they are worth. But it should be stated that Dr. Valavalkar's contention that exogamous restrictions were limited and narrowed down in some of the Dharmasāstras arises from his failure to distinguish sapinda exogamy from sept-exogamy. Sept-exogamy was in the process of formation during the early settlement of the Aryans in India; it was recommendatory in the Sūtra period and was hardened into an inflexible rule, its breach being regarded an unthinkable sin, in the period of the Dharmaśāstras. Again, rules forbidding marriage between persons related within five degrees on the mother's side and seven on the father's indicate the widest, and not the limited, circle of sapinda exogamy'<sup>90</sup>.

89. E. R. E., Vol. VI p. 358; Valavalkar, p. 157; Kane, Vol. II, pp. 477-78.

90. Supra, pp. 56, 57, 59, 61, 70, 73; Karandikar, pp. 126, 156, 159.

## CHAPTER III

### THE HINDU HOUSEHOLD

"Man is, in the words of Aristotle, 'naturally a civic animal.' Some kind of community is necessary for him to live the fullness of his life, and therefore marriage is not an artificial regulation of civilised society, but a natural necessity in all ages of man's terrestrial history."<sup>1</sup> The implications of marriage are twofold; it regulates, in a sense, the legal association of the sexes. But its primary function is to assign to every individual 'a definite place in the society by which his or her social relations to the rest of society are determined'<sup>2</sup>. Considered from this point of view, the family organisation becomes all the more important in the cultural history of a community.

From very early times the father was the head of the family, but his powers and authority were not so extreme as to be compared with the *patria potestas* of the Roman father. We know from the *R̥gveda* that R̥jas'ravas was robbed of his eyes by his father for slaying one hundred rams for a she-wolf. King Haris'chandra proposed to sacrifice his own son Rohita to the god Varuna, but, as he did not submit, a brahmin named Ajīgarta was persuaded to sell his son S'ūnaḥ's'epa to be sacrificed in place of Rohita. Nachiketas, as the legend goes, was offered to Yama by his father who got furious with him owing to his vexing questions<sup>3</sup>. Zimmer and others postulated on such evidence the rigorous *patria potestas* of the father even amongst the Indo-Aryans. But as against such isolated and semi-mythical references to parental terror, the ancient lore of the Hindus superbly abounds in expressions of filial love.

Sons pay best regards to their father, not because of his authority, but because of the filial love with which they were bound to him. We read of a father clasping his sons, and of lads playing in their father's lap. The father was kind and easily accessible to his sons. He chastised him, no doubt, but that was for gambling. Full obedience from the son was demanded, but at the same time we find the father

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1. James E. O., *Introduction to Anthropology*, p. 128

2. Tozzer A.M., p. 127. cf. Rivers W.H.R., *Enc. of Rel & Ethics*, Vol. VIII, p. 423.

3. R. V. I 116, 16; 117, 17; A. B. VII 14; S. S'r. S. XV 17; K. U. I 4.



put to mal-treatment by his sons. "Whatever hurt we have done to the mother or father, may Agni free me; may he make me blameless in respect of all the ill I have wrought"<sup>4</sup>. As a whole, 'the father in the R̥gveda stands for all that is good and kind'.

Vasiṣṭha speaks of the father's power to give up, to sell or to abandon his sons, but Āpastamba does not allow the gift or sale of a child<sup>5</sup>. Vasiṣṭha's reference to absolute power over the son is in connection with adoption, evidently with a view to give religious sanction to the usage. Besides, sniffing the head is the greatest sign of tender love, and it is so usual in the Sūtra period<sup>6</sup> that we can hardly think of the father ruling harshly over his sons.

It is said in Manu Smṛti: "Neither a mother nor a father nor a wife nor a son shall be cast off; he who casts them off, unless guilty of a crime causing loss of caste, shall be fined by the king 600 panas".<sup>7</sup> In this passage Manu severely penalises the practices of children maltreating their parents or of fathers casting off their sons without sufficient reasons. In another passage (XI 59, 61) Manu refers to them as upapātakas. Again, Manu tries to elevate the father's position and honour by avowing moral rewards and repurgations in that behalf. Not only that but he advocates social boycott for the breach of father's honour. A son who wrangles or goes to law with his father is not invited at the dinner in honour of the

4. R. V. I 1, 9; 38, 1; 68, 5; II 29, 5; III 53, 2; IV 17, 17; V 43, 7; VII 103, 3; A. V. III 30, 2; V 14, 10; VI 120, 1; M.S. I 5, 3; 10, 3; II 8, 1; IV 14, 17; K. S. VII 8; T.S. I 5, 6, 2; 8, 5, 3; IV 3, 4, 1; S.B. IX 2, 3, 50; XII 5, 2, 8. V. I. I p. 527; Basu, *Indo-Aryan Polity*, p. 18

5. V. D. S. XV 2; B. D. S. VII 5, 3; Ap. D. S. II 13, 11 Kamalākara (N. S. p. 440) must have this rule of Vasiṣṭha in view when he observes that 'he who asserts the absence of ownership in one's son in spite of the Vedic injunction is a fool.'

6. Hopkins E. W., J. A. O. S., Vol. XXVIII, pp. 120 seq.; cf. R. VII 71, 12; Mbh. I 74, 63. V. I. I p. 528; S. A. p. 26, f.n. 3.

7. M. VIII 389. cf. Yaj. I 224; III 237; Vi D. S. LXXXII 29. The practice of selling or pledging a child without incurring punishment is ascribed to the Mlecchhas by Kautilya (LXX; Vol. II p. 80). In the Epics we hear of S'vetaketu and Asamañjas abandoned by their fathers, as they behaved improperly, and of Rāma abdicating his throne at the dictates of his father, but these cannot be looked upon as references to the father's autocratic powers.

Fathers.<sup>8</sup> It seems Manu had to resort to these devices to ensure harmony in the family life when the revolt of the son against the father's authority was disintegrating it. It is, indeed, true that, according to Manu, "a wife, a son, a slave, a pupil and a (younger) brother of the full blood, who have committed false, may be beaten with a rope or a split bamboo."<sup>9</sup> But this beating, when at fault, is quite normal in all stages of civilized life and says nothing about the father's autocracy. Furthermore, Manu seems to be familiar with repudiation of the wife, but he does not uphold the usage.<sup>10</sup> On the other hand, in a long passage (III 55 seq.) he has pictured an ideal household wherein the husband is pleased with his wife and the wife with her husband. Her smile invites prosperity and blessings of gods, her wrath, eternal damnation of the household. Again, there is no text of Manu allowing the father to castigate his son or to disinherit him at his will. When he says, 'a wife, a son, and a slave, these three are declared to have no property,' or that 'the wealth they earn is (acquired) for him to whom they belong',<sup>11</sup> he seems to deny proprietary rights of the wife and son. But Manu advocates full dominion of sons over the property acquired by them. Similarly he recognises six-fold property of the woman, and enjoins upon the righteous king to punish all those relatives who appropriate the property of females during their life-time.<sup>12</sup> General dependence of women is advocated by Manu, as is done in the Dharmasūtras,<sup>13</sup> but one can definitely say that father's dominion over his dependants,

8. M. II 225, 226, 228, 232, 234, 237; 1V 182. 'Let him never offend his father and mother', because 'the father is the image of Prajāpati'. 'Let him always do what is agreeable to (them); when they are pleased, he obtains all (those rewards which) austerities (yield)'. 'He will conquer three worlds, and, radiant in body like a god, he will enjoy bliss in heaven'. 'All duties have been fulfilled by him who honours (them); but to him, who honours them not, all rites remain fruitless.' M. III 159; cf. also Ap. D. S. I 14, 6; G. D. S. XV 19; XXI 15; Mbh. XII 108, 3 seq.; XIII 90, 8.

9. M. VIII 299; cf. IV 164.

10. M. IX 46. Manu insists that she should be obedient to her husband. The husband is an autocrat, however worthless he may be; disobedience to him entitles him to supersede her. cf. IX 77 seq.

11. M. VIII 416

12. M. IX 194; cf. VIII 29.

13. M. V 147 seq.; IX 3; B. D. S. II 3, 44 seq.; V. D. S. V 1, 2; G. D. S. XVIII 1; Mbh. XIII 46, 14.

according to Manu, was unreal. The evidence tends to show that the father's attitude and behaviour towards his sons were more sympathetic and filial, and there is nothing to show that perpetual enslavement was ever existent among the Hindus in the early Sūtra period. Whatever evidence we have of the father's absolute authority in the Vedic or post-Vedic literature is meagre and may have been a faint remnant of their legacy of the Indo-European culture.

Having so far discussed the precise nature of the father's authority in the family, let us now turn to examine the status and rights of the other members of the family. The Indo-Aryans always prayed to their gods to grant them heroic sons with long life.<sup>14</sup> 'Gifts that were made by a childless woman robbed the receiver of his life powers', and 'whatever a childless man brought about with many vows and much fasting was fruitless for him.' Charms are employed against sterility, and gods are invoked to curse the foes and fiends with sterility and infant's death. Sterility is also a ground on which marriage with another woman is justified. Abortion is an act of moral reprehension and even of social condemnation. This intense desire for an issue centres round a son. 'A wife without a son is a calamity, a destruction.' The birth of a daughter is looked upon with disfavour.<sup>15</sup> 'A woman who constantly brings forth daughters is to be repudiated.'

There are various forces that have been found operative in all societies for such inequalities amongst the children of the same parents. They may be broadly divided into two groups, secular and religious. The primary secular forces are the economic utility of sons and the perpetuation of the race through them. The importance of a son in the economic life of the community cannot be gainsaid. The

14. R. V. I 117, 23; III 54, 18; IV 1, 3; V 23, 1, 2; VI 33, 1; VII 21, 1; 96, 4; X 85, 44; 183, 1; A. V. III 23; IV 17, 6; VI 11; VII 35, 3; VIII 6, 25; XII 5, 45. Of the two words for wife, while *patni* refers to her status in the family, *jāyā* (R. V. I 124, 7; A. V. III 30, 2), one who gives birth to children, emphasises the fact that wife was prized for children. As for the later literature cf. Ap. D. S. I 21, 8; 24, 8; B. D. S. II 4, 6; IV 1, 20; G. D. S. XXI 9; XXII 13; V. D. S. XXVIII 7; M. V 90; IX 81; XI 88; Mbh. I 100, 69.

15. A. V. VI 11, 3; A. B. VII 13; T. S. II 6, 5, 5; Nir. III 4; cf. Mbh. I 159, 11; XII 243, 20; XIII 127, 13; M. IX 81. Sale of daughters is allowed in G. D. S. VII 14; XII 39; M. VIII 149.

physique of a son is comparatively better fitted to the hard struggle for existence which early man has to face against the natural and human barriers. The Indo-Aryans formed a small group of conquering warriors facing a host of dreadful aboriginal residents of India. The security of their place in the new home depended upon the strength of their arms, and it was an imperative need of the day to add to this group as many heroic warriors as they could produce. Procreation of male issues becomes an urgent call as the survival of the group rests upon the nature of response to this call. Besides, woman can hold her own by contributing to the economic pursuits of the family in the early stages of man's progress. But with advance to the civilised life, her contribution is lessened, and she is more and more confined to the narrow spheres of domestic life. With contraction of her economic activities, her subordination to the males accentuates culminating eventually in her perpetual dependence on the males. The economic utility has thus doubly worked as a potent force in segregating the females from males, the daughters from sons.

Another potent force working in this direction is the satisfaction of the human call for the preservation of the race. Man, being a creature of emotions, feels intensely satisfied with the pleasure of a living child, and longingly yearns for leaving behind him a person to continue his line and celebrate his name. The Hindus, in spite of their indulgence in philosophical disquisitions, cherished this instinctive craving for a son, on whom hanged the everlasting span of life. 'To us be born a son to continue our line for a hundred winters.'<sup>16</sup> The son, being the father reborn in his own wife, is one's own body.<sup>17</sup> He is nobody else but the personality of the father pro-

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16. R. V. I 64, 14; II 28, 5; III 1, 23; 53, 18; V 4, 10. cf. A. V. XII 5, 45 'Without house, without home, without progeny she makes him; he becomes without succession; he is destroyed.' In the *Mahābhārata* (I 104, 41) we are told that king Bali requested Dīrghatamas to beget sons on his wife to carry on his line. Brhadratha, the king of Magadha, propitiated a sage when he found that his youth passed off and no upholder of the line was born to him. cf. also I 103, 3, 10, 22; 120, 28; 122, 23; 177, 34.

17. R. V. II 33, 1; VIII 31, 9 with Sāyana's comment; A. B. VII 13; *Gop B. Pūrva* I 2; T. S. I 4, 46, 1; S. B. XII 4, 3, 1; *Brh. U.* VI 4, 9; M. G. S. I 18, 6; *Nir.* III 4; *Ap. D. S.* II 24, 1; V. D. S. XVII 1; M. IX 8; *Mbh.* I 74, 37, 63 seq.; III 12, 70; IV 21, 42; XIV 81, 21.

jected with a different name. 'From thy limbs this one came into being, from the man another man; see, in a clear like, thy second self in the son. As the sacrificial fire is fetched from the *gārhapatya*, so did this one arose out of thee and thou, that wast one, art become twofold.' It is hence that the son is called 'our stay for ever' in a passage of the *Ṛgveda* (X 39, 14). Wilson explains the idea as 'the eternal performer of rites', but in the light of another passage from the same text (X 56, 6) it can be asserted that the idea of immortality through perpetuation of the race is solemnly associated with the act of procreation as early as the *Ṛgveda*. Even some of the words for a son in the *Ṛgveda* are indicative of this idea of perpetuation through a male offspring,<sup>18</sup> and Yāska<sup>19</sup> has interpreted many of them in that light.

Besides this idea of immortality, the son stands as a helper and a continuer of worship to the gods in the *Ṛgveda* (III 4, 9)—'from whence is born a son, powerful, skilled in action, adjuster of pressing stones, lover of gods.' In the *Brāhmaṇas* the world beyond is denied to a childless man,<sup>20</sup> and the theory of three debts is enunciated to represent a son as a saviour of his ancestors. Though in the *Ṛgveda* (VI 6, 1) the son is called a 'cancellor of debts', it is very doubtful whether it is contemplated in the passage, as Sāyanāchārya supposes, that in procreating a son a man pays off the debt he owns to his progenitors, namely, the religious obligation of getting a son who shall perform the ceremony which they require. The spirit pulsating the worship of the manes in the *Ṛgveda* is to derive the greatest benefit for the people here rather than for the dead, and, hence, the idea of benefitting the dead by procreating a son does not seem to be suggested by the passage.

There is a passage in the *Atharvaveda*<sup>21</sup> which seems to contain a very vague and indirect allusion to the idea of procreation

18. The words *tan*, *tana*, *tanās*, *tanaya* and *tānva* (of which *tāna*, *tānva* and *tanaya* disappear in the *Atharvaveda*) are derivations from the root *tan* meaning to draw out a thread, to last, to live on. Other words *tuj*, *tuch* (used only in the *Ṛgveda*) and *tuja* are derived from *tuj* meaning seedling. The word *s'eṣa* is suggestive of the same meaning as *tana* or *tanaya*.

19. Nir. III 1, 2; X 7. Sarup (p. 155, f. n. 6) thus comments on *taka*: 'He is pushed as it were by his father to do a thing'. But can it not be that he is called *taka* because he pushes forward the line of the father.

20. A, B. VII 13. As for the later literature cf. V. D. S. XVII 1.

21. A. V. VI 117, 3; cf. T. B. III 7, 9, 8.

as a debt to the Pitṛs. Griffith, in explaining the implication of 'the debt-free' in this passage, refers to another passage in the Atharvaveda (III 29, 1). In the light of that passage the word unindebted in the passage under consideration means free from the tax to be paid to the assessors of Yama. If Griffith's explanation is relied on, the idea of debt to the manes seems unknown both to the Ṛgveda and to the Atharvaveda.

Consideration of a few passages from the S'atapatha Brāhmaṇa<sup>22</sup> gives us a second probable explanation of the idea of debt in the early Samhitās. "Whosoever has offspring, while he, on his part, goes to the yonder world, his offspring sacrifices in this world; hence, future worship of the gods means offspring." "For whosoever possesses offspring, though he, of his own self, be one only, yet that offering is made tenfold by his offspring; hence offspring means more abundant offering." A son is represented in these passages as a perpetuator of the family worship in honour of the gods. From very early times, the god Agni was regarded as a guide and helper in the storm of life, and a host of other divine companions had been found helpful in combating the adverse forces of Nature and irreligious fiends. With this concept of identity of interest between the gods and their human worshippers the worship of these gods came to be looked upon as something more than a mere duty. It is a debt which every human being owes to these well-disposed benefactors. As a canceller of debts the son pays off this debt. It was, perhaps, on the analogy of this debt that the debt to the manes and the ṛsis was later on conceived.

A vague hint about the debt to the manes is found in a passage of the Aitareya Brāhmaṇa (VII 9). "Should a man without a wife offer the Agnihotra? Or should he not offer it? He should offer, they say: if he were not to offer, he would be a mock man? 'What is a mock man?' they ask. 'One who (offers) neither to gods, nor to the fathers, nor to men'. Therefore, even if one has no wife, he should offer the Agnihotra. With regard to this a sacrificial verse is recited. 'Even one who has no wife and who drinks no soma should sacrifice in the Sautrāmaṇi; 'sacrifice to free thyself from debt to father and mother'. In accord with this command is this rule of scripture". A

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22. S. B. I 8, 1, 31, 34; 9. 3, 21 with footnote.

passage in the Śatapatha Brāhmaṇa (I 7, 2, 1) also speaks of the debt to the manes along with debts to the gods, sages and human beings, but the passage is clumsy and ambiguous so much so that it could also be taken in the sense that 'whosoever exists is born as (one to whom) a debt (is owed) from the gods'. The idea of three debts is, however, very clearly expressed in a passage of the Taittiriya Samhitā (VI 3, 10, 5): 'A brahmin is born with a three-fold debt of pupilship to the ṛṣis, of sacrifice to the gods, of offspring to the Pitṛs. He is freed from the debt who has a son, who is a sacrificer and who has lived a student life.' The idea of a son as a debt to the ancestors is advocated in very clear terms in Nirukta and later literature.<sup>23</sup>

Reviewing the evidence, we find a son as much needed for secular needs and ideals as for continuing the family worship. The brahmanical ideal of a son as a saviour of his dead ancestors is grafted on this original concept of sonship in the later part of the Vedic age. The idea was taken up and advocated zealously by the Hindu legislators, but it could not eradicate the secular motives lying behind the act of procreation.

Let us approach the subject from a different angle. We find in the Ṛgveda that the ancient sages prayed not for sons, but for the sons of their own blood. An alien brought into the family was not looked upon with favour. 'No son is he who springs from another'. 'Unwelcome for adoption is the stranger, one to be thought of as another's property'<sup>24</sup>. Thus, so far as the early Vedic age is concerned, the son prized was not a son, obtained anyhow from any one, but the son begotten by a man on his own legal wife or wives. In course of time, however, the practice of procuring sons from other sources or agencies came into existence. It is said in the Taittirīya Samhitā that Atri gave offspring to Aurva, who was desirous of children. He, having been empty, thought himself to be without strength, weak and worn out. He saw this Chatūrātra (the four-night rite); he made preparations for it and sacrificed with it. Then

23. Nir. II 11; III 1; V. D. S. XI 48, XVII 1; B. D. S. II 11, 33, 34; 16, 4, 5; M. IV 257; VI 35 seq., XI 66; Mbh. I 120, 15 seq.; III 229, 5, 12; XII 28, 55; 63, 20; 234, 7; XIII 125, 75 seq.; Vi. D. S. LXXVIII 52, 53; Atri 53; Prajāpati 118.

24. R. V. VII 4, 7, 8; IX 66, 18.

he had four sons born, a good hotṛ, a good udgātṛ, a good adhvaryu and a good sabhya<sup>25</sup>. The passage is evidently a priestly twaddle to eulogise a particular satra, but if we are to treat it as a historical case to serve merely as corroborative evidence, we find that Atri hands over his only son to Aurva. If religious offerings to the manes is the primary motive of sonship, one is surprised to see Atri willingly parting with his only son and thereby throwing himself to eternal damnation, even when there was nothing pressing upon him to do so. Again, it is explicitly said in the passage that in the absence of a son Atri found himself weak and worn out. This can only mean the economic importance of the son in the family. Furthermore, he gets four sons to continue his family worship. Thus, in this myth of Atri and Aurva the son stands as a helper in the family and a proper person to continue the family worship.<sup>26</sup> The adoption of Śūnaḥs'epa by Vis'vāmitra is a case of adoption not only from a different family but even from a different caste. But what is more important from our point of view is that Vis'vāmitra had one hundred living sons when he accepted Śūnaḥs'epa for his son. Acceptance of a son in this case could not have been urged by a religious motive of benefitting the Pitrs. Probably it furnishes us with an example of sentiments which find satisfaction in lavishing affection on a virtuous boy or girl, especially when helpless. In both these cases of adoption sonship for benefitting the dead is hardly admissible.

When we come to the end of the Vedic age we find Manu (IX 168) defining adoption in the following words: "That (boy) equal (by caste) whom his mother or his father affectionately gives, (confirming the gift) with (a libation of) water, in times of distress (to a man) as his son, must be considered as an adopted son." A person is required by Manu to adopt only in times of distress, a phrase very ambiguous in as much as it is not clear whether the distress is spoken of in reference to the adoptor or the natural father of the child. Again, it is difficult to define the exact implication of the word

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25. T. S. VII 1, 8, 1.

26. Another example of the transfer of sonship is found in the myth of Bhṛgu and Varuṇa. According to Aitareya Brāhmaṇa (III 34) the first part of the seed that was kindled up became yonder Āditya: the second became Bhṛgu; him Varuṇa took; therefore is Bhṛgu descended from Varuṇa. In S. B. (XI 6,1,1) and T. U. (III 1) Bhṛgu is spoken of as the son of Varuṇa.



distress. Kullūka and Nandana interpret it to mean extinction of the adoptor's family through absence of a male issue, and Rāghava admits it as an alternative interpretation. Rāghava and Nārāyaṇa, on the other hand, hold that it refers to the inability of the natural father to administer to the needs of his child through causes such as famine. It is difficult to say which of these two interpretations Manu had in view, but Vijñānes'vara (p. 213) and Aparārka (p. 736) uphold the latter explanation.

We know from the Mahābhārata (I 111, 1-3) that Kuntībhoja adopted Kuntī. Adoption of a daughter is also spoken of in other works on adoption. It is evident that a daughter cannot primarily procure the salvation of her father and his ancestors by presenting funeral cakes. Her adoption, which was not rare, must be for ends not necessarily religious.

Besides, the mantra accompanying the act of adoption runs thus: "I take thee for the fulfilment of dharma : I take thee to continue the line."<sup>27</sup> The word dharma in the mantra is generally interpreted to refer to the presentation of funeral cakes. But evidently dharma implies all religious duties which a man as a householder was bound to perform from day to day and all social obligations which, as a member of the community, were imposed upon him. The limitation of this wider sense of the word dharma is not warranted by corroborative evidence. Even in the later Vedic literature and post-Vedic literature, then, there are various motives, more often non-religious in character, which regulated adoption.

Besides adoption, the Aryans in India seem to be familiar with another practice of procuring a son, the practice of appointing a widow to a relative with a view to beget a son for the deceased. The usage varied much in course of time, and, therefore, it need proper analysis to understand it in its proper perspective.

The life history of the Epic heroes may be thus summarised for our purpose. King Śantanu once saw a fisherman's daughter, Satyawatī by name, and fell in love with her. The fisherman was prepared to marry the girl on the condition that sons born of her must defeat the right of Bhīṣma, the eldest son of Śantanu by Gaṅgā. Bhīṣma, with a view to satisfy his father's yearning for the girl, agreed to resign

all his claims to the throne, and promised never to marry in order that no trouble might arise through his sons in future. The marriage was settled. Satyavati gave birth to Vichitravīrya, who was married to the princesses of the king of Benares who were abducted by Bhīṣma for his brother. Unfortunately Vichitravīrya died without leaving any issue to succeed him. Satyavati, thereupon, requested Bhīṣma to marry his brother's widows and beget sons on them to continue the line of his father. Bhīṣma refused to do so. Vyāsa, the son of Satyavati by Parāśara, was consequently commissioned to beget sons on the widows of Vichitravīrya. The sons born were Dhṛtarāṣṭra, Pāṇḍu and Vidura. Pāṇḍu once killed a ṛṣi enjoying with his wife in the form of a deer. The ṛṣi cursed the king, and Pāṇḍu was then-  
ceforward prevented from enjoying with his wife. The king in great despair asked his wife Kuntī to procure sons for him from other agencies, and Yudhiṣṭhira, Bhīma and Arjuna were procured by her through the instrumentality of gods.

The life of the Pāṇdavas as depicted here may now be analysed. To start with, when Satyavati asked Bhīṣma to beget sons on the widows of Vichitravīrya he refused to do so. Prof. Holtzman believed that Bhīṣma actually begot sons on them. His contention is Bhīṣma is often addressed as grandfather not in a categorical sense but in its specific sense. He quotes some passages from the Mahābhārata which obviously bear out this fact. These passages are: 'You father of my father, who lifted up once again the family of S'antanu, which was buried, act following your own will in such a way that your son's sons may live with mutual affection'. Again, Arjuna says, "How shall I fight in battle with my grandsire?... When a child I used to climb unto his lap and I would say 'father dear' to the father of my father Pāṇḍu, and he would say to me 'I am not thy father, I am thy father's father.'"<sup>28</sup> "These" observed Dr. Winternitz, "are, at any rate, very solid grounds for assuming, as Prof. Holtzman does, that in the original poem Bhīṣma actually married his brother's wife (or wives) and became the father of Pāṇḍu."<sup>29</sup> But it cannot be asserted from these passages alone that Bhīṣma actually married the widows as a grandfather's brother may conceivably be called grandfather, a very normal practice in modern

28. Mbh. V 30, 9, 10; VI 108, 92 seq.; cf. VII 198, 40.

29. Winternitz M., J. R. A. S., 1897, p. 722

Hindu families. The Epic, however, tells us that when Satyavatī comes to Bhīṣma and entreats him to beget a son for the propagation of their race and asks him to take them (the widows) as wives, following the precepts of the Śāstras, he objects to such a proposal not because it was repugnant to him but because it entailed the violation of his vow of celibacy.<sup>30</sup> Satyavatī still persuades him to look upon this as an āpaddharma, the duty in adversity, but he would not flinch from his vow. The very fact that he is not horrified at the proposal made by Satyavatī shows that there was nothing unusual in the offer. And, if such a practice was a normality in those days, there is no convincing reason why he should have offended his mother and bring his family to extinction by his denial.

Let us now look at the answer which Bhīṣma gives to his mother, Satyavatī. "I shall relate to you", says he, "the righteous way by which the line of S'antanu may be without destruction in this world." Then he narrates how some of the Kṣatriya families, threatened with extinction, were saved by the services of the Brahmins, and concludes "thus Ksatriyas were born on earth (after their extermination) through the Brahmins. Hearing this, do what you like."<sup>31</sup>

Services of the Brahmins for the act of procreation are highly eulogised in the Mahābhārata. Devayānī is not perturbed at the idea that a maiden should procure a child unhesitatingly from an elderly Brahmin? The great families of the Kṣatriya kings had resorted to it, upholding the eternal law. S'āradaṇḍāyani cohabited with a brahmin and became the mother of three sons. Saudāsa Kalmāṣapāda invited Vasiṣṭha to beget sons on his wife Madayantī. Bali proposed Dīrghatamas, who had come there drifting along the ocean, to render his services in begetting sons on his wife Sudesṇā.<sup>32</sup> Still more striking is the case of Pāṇḍu. He requests his wife Kuntī to invite a virtuous brahmin in order to procure sons for him. "I command thee to obtain excellent offspring from one that is equal or superior to me." Kuntī opposes this proposal of her husband saying, "I shall

30. Mbh. I 103, 13 seq.

31. Mbh. I, 104

32. Mbh. I 83, 7; 104, 32 seq.; 120, 38; 122, 21; cf. 177, 34. It is said (I 182, 17 seq.) that king Kalmāṣapāda was cursed by a brahmaṇī that he would die while approaching his wife in her season. She had also said that, because he had killed the sons of Vasiṣṭha, Vasiṣṭha will be solicited by him to beget sons on his wife.

not think of any man save you even in my mind". "She knew," she says, "that Bhadrā, the widow of the king Vyūṣītās'va, being childless, slept with her husband's corpse and got children. She, too, shall therefore obtain sons from Pāṇḍu through austerities." Then Pāṇḍu eloquently narrates to her the old law approved of by the sages, where women were without restraint and flirted at their own will. There was no violation of dharma if they independently flirted from their very youth. That was the eternal law till S'vetaketu established the maryādā (restriction). "Even now", he continues, "women belong to their husbands only during their seasons; at other times they are independent." He ultimately prevails upon her on two grounds. As a devoted wife she should try to please him who was incapacitated for procreating. And, implicit obedience to her husband's call, whether it is righteous or otherwise, is a virtue in every devoted woman.<sup>33</sup>

This ignoble glorification of the priests as proper agencies of procreation in various legends and in the speeches of the two great figures of the Epic is a clear indication that the selection of Vyāsa for procreating children on the widows of Vichitravīrya, when Bhīṣma refused to do it, was urged by the fact that he was a great sage. His service as a sage is fairly compatible with such an eminent royal family as that of S'antanu, when other royal families had sages like Vasiṣṭha and Dīrghatamas. Dr. Winternitz subscribed to this view when he observed that "the legend which makes Vyāsa a kind of brother-in-law of Vichitravīrya's wives is clearly an after-thought."

The two dialogues, one between Satyavatī and Bhīṣma and the other between Kuntī and Pāṇḍu, show that the Brahmins were regarded as proper agencies of procreating children to a deceased or an incapacitated man in the Epic period. The stand that Kuntī takes against Pāṇḍu's proposal and the attitude with which Satyavatī approaches Bhīṣma show, however, that this part ascribed to the Brahmins was a later version.

This new practice does not appear to have been accepted by the people zealously and whole-heartedly. Arjuna is said to have raised the cry "why did the highminded Vasiṣṭha, who yet knows the highest

Whether the brother actually married the woman or not cannot be definitely asserted. In the second stage of Niyoga this task of the brother was performed by the Brahmins also.

When Bṛhaspati approaches Mamatā, the wife of his elder brother Utathya, for sexual intercourse, she entreats him to avoid it. Her denial proceeds from the plea that she is pregnant and there is no sufficient space left for the second child. In spite of her persuasions, Bṛhaspati forces himself upon her and she submits. A simile in the Mahābhārata runs: "As a woman, when her husband dies, makes the brother-in-law her husband, so the earth makes the Kṣatriyas her husband when she does not get the Brahmins."<sup>39</sup> We are told in the Rāmāyaṇa that, when Rāma hotly persuaded a demon in the form of a golden deer to satisfy Sītā's craving for his skin, the demon raised a loud cry for help. Sītā, hearing this, thought that Rāma was in danger, and asked Lakṣmaṇa to hasten quickly to his brother's help. Lakṣmaṇa hesitated, and Sītā wildly cried out, "you wish to see Rāma dead so that you may get me (for your bride)".<sup>40</sup> Elsewhere purity of heart, which did not allow him to see even once in his life the whole figure of Sītā, is ascribed to Lakṣmaṇa. We find here the younger brother freely consorting with his brother's wife and at times marrying her after his death. In a text of Brahma Purāṇa procuring a son from a brother-in-law, devr, is said to be a practice forbidden in the Kali age. 'It is improper for the Brahmins', according to Vāyu Purāṇa, 'that a widow should be appointed or that she should be married, on the death of her husband, especially to her brother-in-law'. Kauṭilya has recognised the first claim of the brother-in-law, younger as well as elder, to espouse his brother's wife or widow under certain contingencies. "The wife of one, who has long gone abroad, or who has become a recluse or who is dead should wait for seven menstrual periods and for a year if she has a child already. Thereafter she may marry the full brother of her husband. If there may be many brothers she should marry one who

existed in unrestricted form in early vedic times,' but he added a note that 'on more detailed analysis it appears that the feeling against the husband's elder brother probably existed before the vedic people came. The limiting of the function of unrestricted levirate of the immigrants would in that case arise from the interaction with the older people.'

39. Mbh. I 104, 8 seq.; XIII 8, 22; cf. also XII 72, 12.

40. R. III 45, 6, 24 seq.

is near in age (to the first husband), who is virtuous, capable of maintaining her or who is the youngest or unmarried. If no such brother exists she may marry a non-uterine brother, a sapinda or one of the family."<sup>41</sup> Here Kauṭilya allows a woman to marry again under certain contingencies even when she has a child. While contracting remarriage she should first select the brother-in-law, then a sapinda, and ultimately a member of the family. Among the brothers-in-law choice has not been restricted to the younger brothers as virtue and capacity to maintain are the guiding factors in the choice. Considering the fact that Kauṭilya is either anterior to the Mahābhārata or at least a contemporary of the great work, marriage with the brother of the husband, younger as well as elder, appears to have been a practice prevalent among the Hindus in the Epic period.

The claim of a person on his brother's wife is recognised in Taittirīya Aranyaka. Yāska looks upon the devara as a second possible mate.<sup>42</sup> In a passage of the R̥gveda the widow is asked to leave the dead body of her husband with the words "rise, come in the world of the living, O woman: he is lifeless by whose side thou liest. Wifehood with this thy husband, who took thy hand and wooed thee, has been fulfilled." It is difficult to ascertain the person

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41 Brh P. (Aparārka, p. 97); Vāyu P. (Viśvarūpa, p. 75); Kau III 4 (Vol. II, p. 29). Marriages, or at least the younger brother's intrigues in the zanana of his elder brother, are known to the Jataka literature (Vol. II, p. 255; IV, p. 50). Marriage of a widow with a younger brother of her husband is compulsory in some and usual in almost all the lower castes in Northern India. Among the higher castes, though actual leviration may not be allowed, great freedom, sometimes amounting to mild flirtation, is allowed with the younger brother. In the districts and provinces round about Bengal the younger brother of the deceased is considered to have the first right to the hand of his elder brother's widow. If the widow marries some other man, she loses all right and authority over the children, if any, by her former husband. On the other hand, the younger brother is duty bound to marry his brother's widow, if she so chooses. His refusal brings a great opprobrium. Marriage with the widow of a deceased brother is quite common in the Punjab and very often causes a man to have two wives at the same time. Bonerjee B., Ind. Ant., 1930, p. 95; Roy S. C., J. B. O. R. S., Vol. VI, p. 87; Vol. III, p. 544; Chattopadhyay, *Kinship and Levirate in India*, Man, Vol XX, p. 39; Jolly J., *Law and Custom*, p. 156.

42. T. A. VI 1, 3; Nir. III 15.

who had the privilege of uttering this verse, but, according to a passage in the Āśvalāyana Gr̥hya-sūtra (IV 2,15), "her brother-in-law, being a representative of her husband, or a pupil (of her husband) or an aged servant should cause her to rise." Oldenberg (p. 239 n. 18) reads the text differently: "Her brother-in-law, (or some other) representative of her husband, pupil or an aged servant should cause her to rise." The first interpretation seems more plausible, because other representatives of the husband, his sapin̄ḍas and sagotras, are recognised as competent to beget children on the widow in the latest stage of Niyoga. Verp probably, then, in the Ṛg-veda times the brother of the deceased asked the widow to leave the funeral pyre and live with him.<sup>43</sup> In the Ṛgveda (X 40, 2) the widow is said to invite her brother-in-law to her bed.

The younger brother appears to have access to the wife of his elder brother as a matter of right, but such a right is not conferred in explicit terms on the elder brother. It is also likely that the younger brother married the widow for the propagation of his line. But whether the younger brother necessarily and as a right claimed the widow of his elder brother as his full wife for love, lust and progeny is simply a matter of inference.<sup>44</sup> We have suggestions in the

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43. R. V X 18, 8; cf. also A. V. XVIII 3, 2 'Come to him who grasps thy hand, thy wooer (didhisu), thou hast now entered into the relation of wife to husband'. In Br̥haddevatā (VII 13) the younger brother is said to prohibit her from ascending the pyre. According to Ṛgvidhāna (III 8, 4), the brother-in-law should call back the wife of his sonless brother for procreating a son on her

44. Meyer (*Sex Life in Ancient India*, p. 168 footnote) doubts the possibility of actual marriage. Kane, Vol. II, p. 619; Keith, (*Rel. & Phil. of the Vedas*, p. 423) believes that Ṛgveda shows a stage of opinion in which the widow was given to the brother or some other relative of the dead in symbolic, if not necessarily always real, marriage. He adds that the real marriage took place only if the dead had left no son alive to perform for him the funeral ceremonies. cf. also C. H. I., Vol. I, p. 89; V. I., Vol. I, pp. 359, 379. Whitney and Lanman (*Atharvaveda*, p. 849) hold that 'the woman cannot be left free and independent; she can only be relieved of her former widowhood by taking up a new one (even if this be, as is probable enough, nominal only); he who grasps her hand to lead her down from the pile becomes, at least for the nonce, her husband. Among the Indian commentators Medhātithi (M. IX 66) and Viśvarūpa (Yaj. I 69) hold that the widow was not married to her brother-in-law; Śāyanāchārya, however, opines otherwise.

Vedic literature that a widow did marry persons other than her brother-in-law. The interpretation of the word *devr* as a second husband in Yāska is supposed to be an interpolation.<sup>45</sup> Yāska derives the word *vidhavā* as 'without a supporter', from 'trembling', from 'running about'. The helpless condition at the dark prospect of her future and her running about for help and protection presume that she was not married just after her widowhood. In view of these considerations it is not very probable that the widow was necessarily and as a matter of right married to the younger brother of the dead husband. Such marriages might have been contracted, but it was entirely on the will of the two to enter into a marital union. The derivation of the word *devr* from the root *div*, to play, properly describes the relations between the widow and her brother-in-law.

The exact nature and form of levitation in India, the nature of Niyoga and the status of a son born of Niyoga, in the literature of the post-Vedic period<sup>46</sup> may now be attempted. A woman whose husband is dead may, six months after the death of her husband, procure a son to her deceased husband through her brother-in-law, on permission of her gurus being obtained for it. By gurus Vasiṣṭha means the teachers and the officiating priests of the deceased, though other writers use the term to stand for the relatives. In the absence of a brother-in-law a sapinda relative was commissioned (M IX 59, 147) to beget a child. Gautama extends this right to a person reciting the same *pravara* and even to persons related through *yonī*. Bühler believes that such a right was extended by Gautama to one who belonged to the same caste, though the term *yonisambandha* would hardly permit such a meaning. But while, on the one hand, Gautama extends the circle of agents to beget a child on the widow, on the other, he is familiar with an opinion, perhaps of other Sūtra-writers, wherein the brother-in-law alone and nobody else is recognised as a person worthy of the task. Gautama personally shared this view because elsewhere he says, '(a son) begotten on a (widow) whose husband's brother lives, by another (relative) is excluded from inheritance'<sup>47</sup>. It seems in olden days the right to beget accrued only

45. A. V. V 17, 8; IX 5, 27, 28; T. S. III 2, 4, 4; Kane P. V., *His. of Dharm.*, Vol. II, pp 614, 615. Sarup L., *Nirukta*, p. 48, n. 5.

46. G. D. S. XVIII 4-11; V. D. S. XVII 56-63; B. D. S. II 3, 17; 4, 9-10; M. IX 59-63, 97, 144, 146, 147; N. D. S. XII 80-88.

47. B. D. S. II 4, 9; G. D. S. XVIII 7; XXVIII 21; cf. XVIII 4.



to the brother-in-law, and the extension of this right to a wider circle of kin, *sapiṇḍas*, is a later development. Again, the main idea behind the appointment was to procure an heir to the deceased, because, over and above the explicit reference to such an intent, it is insisted that a widow who is either barren, past child-bearing or very aged should not be appointed, and the person commissioned to beget need not be sickly. The marital relations between the widow and the person begetting are said to last until one or, according to some, two children are born. And they take place in a manner which strictly prohibits the agent to dally with the widow amorously or ill-treat her in any way. If the restrictions imposed are not properly observed, the son begotten does not get the share of his father in the family property<sup>48</sup>.

It seems very probable from the institution as it is presented to us in the *Dharma-sūtras* and *Manu* that in its early stage the younger brother had free access to the widow of his brother. But the early legislators found the practice unpalatable and reprehensible, and even when they could not eradicate the time-honoured usage at a single stroke, they tried to check its occurrence by devising and imposing proscriptive rules of marital behaviour and by giving the widow a free hand in the matter. The way in which *Niyoga* in general is condemned bears this out. 'It is the violation of the ancient law'. The practice first occurred during the regime of Vena 'who caused the intermixing of castes, his intellect being destroyed by lust.' Heavenly world and its bliss are promised to the childless widows if they remain chaste. "A woman who, from a desire to have offspring, violates her duty towards her (deceased) husband, brings on herself disgrace in this world and loses her place with him (in heaven)."<sup>49</sup>

In the early law the connubial relations between the widow and her brother-in-law came into existence only when the family is threatened with extinction, and that, too, if the elders allowed it and the widow desired it. And they lasted so long as the

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48. B. D. S. II 4, 10; V. D. S. XVII 58, 65; M. IX 58 143 seq.; N. D. S. XII 83, 85. In *Manu* (IX 63) any deviation from these rules is said to render the approach incest with the daughter-in-law or the guru's wife cf. N. D. S. XII 86.

49. M. IX 57, 58, 64 seq.; V 158, 160, 161. *Manu* allows approach to the brother's wife only in time of misfortune.

signs of conception were not visible. Furthermore, the intercourse was regulated by enjoining its operation only in a definite manner and for a definite period. An issue begotten in contravention of these injunctions is an outcast. Under the rigour of these restrictions there is no idea of marriage. Niyoga was also permitted in the life time of the husband and on the wife of an eunuch or of one incurably deceased. Manu allows actual marriage of the widow with her brother-in-law, if the widow be a maiden whose marriage with the deceased was merely plighted but not ceremoniously completed. And even in that case the widow had to choose whether to contract such a marriage or not. This only means that there was a time when the brother-in-law could marry the widow of his brother, but it cannot be asserted that he had a claim upon her. The new doctrine was propounded by the legislators to check the sex-licence that prevailed in the society; and as such, if it be argued, it cannot precisely determine the relations between a person and his brother's widow. We only hold that the son begotten by Niyoga is held in high esteem in spite of this new doctrine probably because it was a favourable practice in the Vedic period.<sup>50</sup> The new doctrine and the restrictions imposed on Niyoga and the remarriage of widow are all aimed at putting a check on free relations between a widow and her brother-in-law. They thus serve as an evidence for an early stage where the brother-in-law had free sex-access with a wife or widow of his brother, but they do not necessarily point to his acknowledged claim on her.

Though the writers of the post-Vedic period either forbid or restrict Niyoga, the circle of agents for the task is much widened. Baudhāyana has not told us who were the exact persons, and Vasiṣṭha, while explicitly preferring a member of the family, recognises a larger circle of kin. Gautama extends this privilege even to a person who belongs to the same pravara group as that of the deceased, though Manu speaks of those agnatic relatives only who are called sapindas.

In Gautama Dharma-sūtra persons related through the mother, yonisambandhas, are recognised as competent agents in the absence of a person belonging to the same pravara group. Dr. Bühler, in translating the text, referred to a member of the caste, instead

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50. M. IX 163 seq.

of a relative through the mother, as a competent agent.<sup>51</sup> Neither the Sūtra-writers nor the authors of the early Smṛtis recognise cognates as competent agents to beget. Besides Gautama, Kauṭilya admits the mātṛbandhus, cognates, as competent agents for Niyoga.<sup>51</sup>

The view of the later Smṛti writers is not very clear. In the opinion of Visnu (XV 3), according to Dr. Jolly, a sapinda or a member of the highest caste is competent to beget a son on the widow. But, according to Dr. Bühler's translation, "the son is begotten by a kinsman...who belongs to the highest caste." The interpretation of Dr. Bühler appears to be a forced one, and consequently is not tenable. Nārada (XII 48), according to Jolly, authorises the sapindas who belong to the same caste to beget a child. But in the text of Nārada in the Trivendum series persons of the same caste though not sapindas are recognised as competent persons. According to Yājñavalkya (I 68), the brother-in-law, a sapinda or a sagotra can beget a child. In another passage (II 128), however, he extends this right to a sagotra relative and others. Vijñānes'vara understands the word 'others' to imply the brother-in-law or a sapinda; but the word sagotra being comprehensive to include both the brother-in-law and sapindas (of course, agnatic) his reading is not very suggestive. Again, Yājñavalkya would not enumerate these persons by the use of the word 'others' after the word sagotra. As a matter of fact, their privilege should be asserted emphatically before a sagotra relative. Mitramis'ra takes the word 'others' to stand for persons who do not claim membership of the same gotra with the deceased. On this interpretation the cognates are admitted as persons being competent to beget in the absence of an agnate. That may be the view of Yājñavalkya, but it is equally probable that Yājñavalkya may have used the word 'others' for a member of the same caste or for a Brahmin. Thus in the Smṛti period agnates to the farthest degree are recognised as agents for procreation, though the right of the brother-in-law as the most competent person is clearly and emphatically asserted. In the absence of agnates persons of the same caste are said to perform this duty. The

51. Kane (p. 599) shares the same view, and he appears (p. 601) to render *sapravara* by a member of the caste. Kau. III 6 (Vol. II, p. 39); cf. also III 7 (Vol. II, p. 40); III 5 (Vol. II, p. 35) where *bāndhavas* are said to procreate on the wife of a dullard, a madman etc.

allusion to the Brahmins as agents in the text of Viṣṇu is probably an attempt to revive the privilege the priest once claimed as the agents of procreation. As against the right of a member of the same caste, the right of a cognate is advocated by some. While the Smṛti writers advocate the right of a member of the caste, the right of a cognate has been explicitly held up by Kauṭilya and very likely by Gautama too. The Hindu legislators, while discouraging the practice, extend the circle of agents for procreating children probably with a view to indicate that, whenever it was resorted to, an agnatic relative, and in his absence a cognate, should be preferred to a member of the priestly class who is so highly spoken of as an agent in the Mahābhārata.

Summing up the evidence at our disposal it appears that in the Vedic age remarriage being allowed, the widow was generally married to the brother-in-law of the husband, younger as well as elder. At the end of the Vedic age propaganda was started against the remarriage of the widow. With this change of attitude towards the widow, the younger brother-in-law was allowed to exercise marital rights over her only under certain conditions and restrictions. In the Mahābhārata the claim of the Brahmins as proper agents of procreation is put forth. But the Smṛti writers emphatically assert the claim of the brother-in-law for the task and, in his absence, any agnatic, or even cognatic, relative is preferred to a Brahmin. It is very probable that the Brahmins may have succeeded in putting forth their claims as agents because of the supremacy they came to acquire,<sup>52</sup> but such claims were not accepted by the people at large. The institution of Niyoga thus does not appear to have come into existence to procure sons to perform the funeral rights. Again, though the number of sons procured by Niyoga is restricted to one, two being hinted as an opinion of some, in the Dharma-sūtras and Manu it is known to vary from one to eleven in the Mahābhārata.<sup>53</sup> If religious offerings to the dead is the main objective of Niyoga, procreation of such a large number of children requires an explanation. And, the tendency of the early lawgivers is to stamp out the practice

52. Kane (*His. of Dhar.*, Vol. II, p. 605) believes that the proud princely families very likely thought it below their dignity to associate widowed queens with ordinary Ksatriyas', and 'they chose brahmins for appointment as the latter were deemed to be higher than even kings in the spiritual domain'.

53. Mbh. I 104, 36, 37; 121, 35; 122, 22.

and not to encourage it. How can we explain this when we know that sonship in the interest of the dead was very enthusiastically advocated by these very writers.

Jolly believed that economic motive was at the bottom of the long list of secondary sons, including the ksetraja. Kane opines that 'the practice of Niyoga was a relic from the past and probably owed its origin to several causes, which are now obscure, but one of which was the great hankering for a son evinced by all in Vedic times,' probably for the performance of funeral rites.<sup>54</sup> The probable explanation for such free intercourse seems to be the joint-household system. In an age when a widow was allowed to remarry it was necessary that she should marry a person who had identity of interest in the property owned by her husband. In the absence of such a regulation there was all probability of a clash arising between two persons who had no common interest to keep the household joint. In view of the fact that Niyoga is associated with property rights even in the Dharma-sūtra literature this explanation stands to reason.

Niyoga, even in the earliest stage, does not represent a stage of group marriage or any aspect of it in the evolution of Hindu marriage. Dr. Sarkar believes that the marriage of the widow with her brother-in-law was not for issue, but for conjugal love: the brother-in-law claimed her as full wife with no limited object but for love, progeny and property. The wife was given not to the husband but to his family. Naturally after the death of her former husband he claimed her as full wife as a matter of right. The later Niyoga was a relic of this polyandrous-marriage current in the R̥gvedic India. Even Drs. West and Buhler connect Niyoga with polyandry.<sup>55</sup> Let us examine the hypothesis of polyandrous unions in India from available evidence.

The Mahābhārata deals with polyandrous union in the life of its principal characters. King Drupada is horrified at the idea that his daughter should embrace five brothers as her husbands. And he

54. Jolly J., *Law and Custom*, p. 156; Kane P. V., Vol. II, p. 606.

55. Sarkar S. C., p. 78 "It would be more in accordance with natural development to recognise in it (i. e. Niyoga) a later special case of an earlier general practice, by which the family continuity was assured by all the brothers having an *uxor communis*". West R. and Buhler G., *Hindu Law*, p. 419.

challenges it (I 195, 28) as irreligious, being against the Vedas and popular usage. It is evident from his attitude that the practice was unusual. Vyāsa comes on the scene and gives two legends to justify it. The inconsistency so apparent in Vyāsa's narration shows that it is a later fabrication loosely tacked on to the main story of the Epic. Again, these childish inventions are meaningless as justification of polyandry.<sup>56</sup> Such supernatural explanations are not needed to explain and justify the practice which is normal.

Yudhiṣṭhira puts forth three pleas in favour of the polyandrous union. Jaṭilā dwelt with seven rsis and Vārķṣī cohabited with ten brothers, all called Prācetas. These cases, however, do not relate to regular marriages but merely serve as instances of special indulgence which the priestly hierarchy claimed on ground of their spiritual merits. Secondly, the marriage of Draupadī with five is said to be righteous as it resulted from the fulfilment of the words of the mother, the highest guru. But Kuntī's attitude, when she came to know what a grave mistake she had committed, is suggestive. She requested Yudhiṣṭhira to advise her how her utterance may not prove untrue and yet sir, adharma, may not touch Draupadī. The very fact that she is so much upset shows that she, too, found it a strange thing. Thirdly, Yudhiṣṭhira justifies it as a traditional usage in his family. "We follow the path which has been trodden by our ancestors in succession" (I 195, 29).<sup>57</sup> On the whole, then, the very fact that discussion was called forth on the

56. According to one legend, four Indras were born on earth as four Pāṇdavas and Arjuna was the son of Indra. God S'iva sent S'rī, born as Draupadī, to be the wife of these five Pāṇdavas. According to the other legend, Draupadī in her former birth asked god S'iva for a husband five times, and so she got five husbands (Mbh. I 169 and 197). The author of Tantravārtika gives equally fantastic explanation (*His. of Dharma.*, Vol. II, p. 555). These stories which are full of inconsistencies and incongruities were drawn upon the various explanations of the polyandry of the Pāṇdavas given in the Purāṇas and loosely tacked on to the Epic at a late stage. Winternitz M., J. R. A. S. 1897, pp. 735, 744 seq., especially pp. 752-754. Goldstucker T., *Literary Remains*, Vol. II, p. 132.

57. Mbh. I 191, 5; 195, 30; 196, 7, 8, 13 seq. Winternitz (p. 737) translated the passage differently. 'Let us follow the path trodden successively by men of former ages,' rendering *purves ām* as 'men of former ages' instead of 'our ancestors'. Though it is a possible rendering of the passage, the one given here is preferable in the context.

subject of legality of such a practice, Vyāsa's plea that it was per-ordained and his unconvincing supernatural explanations to support it, Kuntī's nervous attitude and her depression—all tend to show that it was an exception rather than a rule. Vyāsa himself speaks (I 196, 6) of the practice as being apparently, *vipralabdh*, opposed to usage and to the Vedas. Karna's reference to Draupadī (II 67, 35) as a harlot, she being a wife of more than one husbands, would be utterly meaningless if there had been nothing unusual about the affair. The fact seems to be that in the original *Mahābhārata* polyandry of the Pāṇḍava brothers was given as a fact without any explanation for its justification.<sup>58</sup> When the Brahmin writers found it unpalatable to the society for which the work was written, they tried to put forward explanations which did not serve the purpose for which they were invented. We have, therefore, to infer that, as Yudhisṭhira himself argues, it is a peculiar custom of the family or the tribe to which the Pāṇḍavas belonged. Or, perhaps, all the brothers were aflame with love for the same woman, and the surest way to prevent disunion amongst themselves was to make her the bride of them all. Very probably there were very serious troubles amongst the Pāṇḍava brothers.<sup>59</sup> Furthermore, Yudhisṭhira himself admits (I 191, 16) that "they would all possess her in common rather than a dissension should come about among the brothers through her." And Nārada who related the tale of Sunda and Upasunda, who perished fighting for a single woman, teaches them (I 208, 17) the most practical way: "let Pāñchālī be the legal wife of all of you so that there may be no strife amongst you." Whether the Pāṇḍavas resorted to it as a family practice<sup>60</sup> or as a necessary evil to

58. Winternitz M., pp. 752, 754; Hopkins E. W., *Cambridge History of India*, Vol I, p. 258.

59. Winternitz M., J. R. A. S. 1897, p. 737; Sidhanta N. K., *Heroic Age*, p. 123; Mbh. I 191, 12 seq.

60. It is very probable that Yudhisṭhira thus tries to lend antiquity to the practice which he has been forced to resort to for certain reasons. Vaidya (*Epic India*, p. 86) believed that polyandry prevailed at the beginning of the Epic period to a considerable extent among at least the Aryans of the second invasion, represented by the Pāṇḍavas, as they had few women with them or as they had come from cold climate. The theory of two different Aryan stocks entering India has been exploded. Moreover, the evidence adduced here would hardly corroborate the view that the practice flourished to a considerable extent even among the Pāṇḍava tribe.

check a greater evil or they borrowed it from the neighbouring non-Aryan peoples<sup>61</sup>, is immaterial. What concerns us is that the synthetic view of the whole episode suggests that it is a specific case and not a general usage prevalent among the Hindus. It may be noted here that Āpastamba (II 27, 3) refers to the bride being given to the family as an opinion known to him, and the same usage is referred to by Brhaspati (XXVII 20), according to Bühler, as found in other countries.

As for the practice of polyandry among the Vedic Aryans the evidence is not satisfactory, though its existence is zealously maintained by some. We do read in the Ṛgveda (I 19, 5) that Maruts cling to the young maid as a joint possession, and that the As'vina twins married Sūryā. It is equally noteworthy that plurality of husbands is referred to directly or indirectly in some of the Vedic passages.<sup>62</sup> The mythological allusions may be relied upon as corroborative evidence, but they cannot be taken as basic evidence for postulating the existence of a usage or practice. It is true that "mythologies do not invent for the gods special customs which are foreign to human society." But we must also remember what stories are not told of gods and holy men among the different peoples. And the Indians have often declared in the Epic, too, that "such divine figures as these are not tied down to the laws of earth and that mankind must, indeed, follow a loftier ethics than they." Vedic scholars of such eminence as Weber, Zimmer, Delbrück, Macdonell, Keith and a host of others like Jolly, Hopkins and Schrader, flatly decline to admit polyandrous unions as Vedic.<sup>63</sup> The use of plurals is variously explained as 'generic plural', 'honorific plural' or the 'majestatis causa'. Again, polyandry implies that a woman is a legal permanent wife of several

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61. Hopkins looks upon the Pāṇḍavas as non-Brahmanic people (*Epic of India*, pp. 376, 400), or a northern hill-tribe or family (C. H. I., p. 258). Meyer (p. 108) along with Oppert (*The Original Inhabitants of India*, p. 617.) regards the Pāṇḍavas as non-Aryans. and assigns the same view to Winternitz (p. 109 f, n). But Winternitz seems to hold quite a different view (J. R. A. S. 1897, pp. 756-57).

62. R. V. X 85, 37, 38; A. V. XIV 2, 27

63. V. I., Vol I, p. 479; *Cambridge History of India*, Vol. I, p. 88; J. A. O. S. XIII p. 354 seq.; Jolly J., *Law and Custom*, p. 104; Mandlik V. N., *Vyavahāra Mayukha*, p. 397.



husbands at the same time. Mutual relations said to exist between a woman and her brother-in-law in the R̥gvedic age hardly bear out this fact. In the marriage hymn (X 85, 44) the wife is enjoined to be friendly and devoted to her brother-in-law and she is asked to rule over him. She is never known to be obedient and dear to her brother-in-law as to her husband. Monogamy is held to be the ideal of marriage and polyandry is disparaged.<sup>64</sup> Similarly when we read the remarriage of a widow with persons other than the brother-in-law, we have to doubt seriously the existence of polyandry in the Vedic age. Polyandry is prevalent among the aboriginal tribes of India, and it is very likely that the Vedic Aryans were acquainted with it through their contact with these neighbours.<sup>65</sup> Whatever casual reference to this practice is traced in the Vedic literature is more probably an expression of this familiarity.<sup>66</sup>

If polyandry is not Vedic, it is spurious to associate the later Niyoga with polyandry. Equally inapplicable is the theory of Frazer, so far as the Hindus are concerned, that the origin of levirate lies in group marriage.<sup>67</sup>

Two kinds of sons have been considered so far, and we do not find religious offering to the dead as a primary motive for their recognition. The nature of other secondary sons, known to the Smṛti writers, and the attitude of the legislators towards these sons do not point to the religious offering as a primary motive of sonship.

It is said by Manu (IX 161): "Whatever result a man obtains who (tries to) cross (a sheet of) water in an unsafe boat, even that result obtains he who (tries to) pass the gloom (of the next world) with (the help of) bad (substitutes for a real) son." Manu thus degrades the sons other than those begotten by a person on his own

64. T. S. VI 1, 6, 6; A. B. III 23.

65. Mayne J. D., *Hindu Law*, p. 77; Meyer J. J., p. 125.

66. Goldstucker (Vol II, p. 132), however, observes that "polyandry was an institution in India though in pre-brahmanic time and that instances of it were still in memory of men." Mandlik V. N., p. 397 "Any such stray verses may be the remains of old traditions of loose connections, or, as is more probable, they are used in a figurative sense."

67. Frazer J. J., *Totemism and Exogamy*, Vol. I, p. 501

wife as unfit to serve the religious purpose. The Sūtra-writers take the same view though they present it differently. Baudhāyana quotes an ancient gāthā, attributed to sage Aupajandhane, "Now, O Janaka, I jealously watch my wives, (though I did) not (do it) formerly, for they have declared in Yama's court that the son belongs to the begetter. The giver of the seed carries off the son, after death, in Yama's hall. Therefore they carefully protect their wives, fearing the seed of strangers" The gāthā is given a halo of ancient tradition to make it easily acceptable. What the gāthā aims at is the wholesale condemnation of all kinds of sons except one who is begotten by the person himself on his legally married wife. The issue, begotten by other persons on his own wife or accepted by him from any other woman, does not bring any fruit to the non-begetter. Other Sūtra-writers hold the same view.<sup>68</sup> Nay, in the opinion of Āpastamba (II 27, 7), 'the reward (in the next world) resulting from observing the restrictions of the law is preferable to offspring obtained in this manner.'

If the Smṛti-writers looked upon a son as an imperative need in the interest of the dead ancestors, one fails to understand why the procuring of sons through any agency evoked such a strong protest from the Brahmanic writers. It may be further noted that sonship in case of some of the secondary sons does not arise from this religious need in as much as these sons are produced even without the knowledge, much less the willingness, of the husband. No stretch of imagination would ever fathom any motive behind such illegitimate products.

Vasiṣṭha groups the secondary sons in the following order of status, and his order is upheld by Kauṭilya and a host of Smṛti writers.<sup>69</sup>

68. B. D. S. II 3, 34. cf. Ap. D. S. II 13, 6, 7; V. D. S. XVII 9, 63, 64; G. D. S. XVIII 9, 12; Manu (IX 181) propounds the same view, though elsewhere (IX 48 seq.) the child is said to belong to the husband of the woman. Vasiṣṭha (XVII 6-9) gives both the views.

69. V. D. S. XVII 13-19; Kau. III 7 (Vol. II, pp. 40, 41); Yaj. II 128-132; Vi. D. S. XV 1-27; S'aṅkha 291; Yama, Devala (Dat. Ch. V 3, 15); N. D. S. XIII 45, 46; Hārīta (Vi. R. p. 549); Mayne J. D., p. 80.

| Authority   | Ksetraja | Putrīā | Paunarbhava | Kānina | Gūḍhaja | Sahodha | Dattaka | Kṛita | Svayamda | Apaviddh | S'audra |
|-------------|----------|--------|-------------|--------|---------|---------|---------|-------|----------|----------|---------|
| Vasiṣṭha    | 2        | 3      | 4           | 5      | 6       | 7       | 8       | 9     | 10       | 11       | 12      |
| Kauṭilya    | 3        | 2      | 8           | 6      | 4       | 7       | 9       | 12    | 10       | 5        | 11*     |
| Yājñavalkya | 3        | 2      | 6           | 5      | 4       | 11      | 7       | 8     | 10       | 12       | 9*      |
| Nārada      | 2        | 3      | 7           | 4      | 6       | 5       | 9       | 10    | 12       | 8        | 11      |
| Viṣṇu       | 2        | 3      | 4           | 5      | 6       | 7       | 8       | 9     | 10       | 11       | 12      |
| Śaṅkha      | 2        | 3      | 4           | 5      | 6       | 8       | 9       | 10    | 12       | 7        | 11      |
|             |          |        |             |        |         |         |         |       |          |          | Nisāda  |
| Yama        | 2        | 3      | 4           | 5      | 6       | 8       | 9       | 11    | 12       | 7        | 10*     |
| Devala      | 3        | 2      | 8           | 4      | 5       | 7       | 9       | 12    | 10       | 6        | 11*     |
| Hārīta      | 2        | 5      | 3           | 4      | 6       | 10      | 7       | 8     | 11       | 9        | 12      |
|             | 2        | 4      | 3           | -      | 5       | 9       | 6       | 7     | -        | 8        | -       |

\* Kṛitima

Vasiṣṭha and Viṣṇu agree in toto and Śaṅkha and Yama almost agree with them. Others are in favour of degrading the son of a remarried woman. While apaviddh is preferred by some, Yājñavalkya and Hārīta degrade sahodha. These slight variations are natural because the writers, who belong to the different schools, always try to follow the traditions of their own schools. Secondly, they come from different parts of the country and the local usages and immemorial customs influenced the old traditions. Thirdly, they flourished in different periods in history and the outlook of the people, changed as it was at different periods, moulded their views. Considering these factors working simultaneously, slight variation in the order may be ignored. Hārīta's changes are a bit striking, but the very fact that there are two different texts attributed to him minimises their importance. Furthermore, there is a text in the name of Hārīta (V Rat. p. 545) which agrees with neither of these texts. The text runs: "Kānina gets one twenty-oneth part, paunarbhava one twentieth, dvāmuṣyāyaṇa one nineteenth, kṣetraja one eighteenth, putrikāputra one seventeenth, the rest goes to the aurasa. From the shares allotted to various types of sons in this passage the putrikāputra seems to be preferred to the kṣetraja son. In view of such

contradictions in the order of sons, Hārīta can hardly be reckoned an esteemed authority on this point.

It seems that people had no troublesome sensitiveness about the chastity of women. From very early times we find one of the elements of procreation, preferably the male element, incognizable. The uncertainty of fatherhood, shrouded in the mysteries of gods and sages, indicates that connections with persons other than the legitimate husband were not quite unusual.<sup>70</sup> Allusions to adulterous connections in the ritualistic works confirm this guess. In Varunapraghāsa ceremony the sacrificer usually asks his wife, 'with how many persons have you practised connubial relations?' A domestic ritual formula and a rite in some of the Ṛg̥hya-sūtras speak of a married woman having her lover. The ritualistic mantra—If my mother, going astray and unfaithful, conceived illicit desires, may my father keep that seed from me—is recited, according to Caland, by the illegitimate son at the sacrifice to the dead in order to cut himself off from his natural father and remain the son of his legal father.<sup>71</sup> The Brhadāranyaka upaniṣad gives a spell to expiate adultery with the wife of a Brahmin. Even a son of a virgin is not unknown<sup>72</sup>. This shows that in Vedic times the standard of ordinary sexual morality was not very high.

In the Epics Indra is credited with intrigues with Ahalyā. Asvins flirted with Sukanyā, and Agni fell in love with the wives of seven rsis. To Agni is also attributed a love affair with the princess of King Nila of Māhismatī.<sup>73</sup> The Sun god deflowered the virginity of Kuntī. In his attempt to deflower the dissuading Kuntī he argues, "all women and men are without restraint, O lovely faced one. This is the real nature of mankind, any other is to speak untruly as the holy tradition teaches. After union with me thou

70. R. V. I 116, 13; 117, 24; IV 42, 8; VII 33, 10 seq.; X 39, 7, 65, 12; A. V. VI 81, 3; S. B. XIII 5, 4, 5; Ch. U. IV 4, 5

71. V. S'r. S. I 7, 2, 27; Keith, *Rel. & Phil. of the Vedas*, Vol. II, p. 477; V. I., Vol. I, p. 480; Ap. G. S. XXIII 4; S. B. II 5, 2, 20; T. B. I 6, 5, 2; K. S'r. S. V 5, 7-9; M. S. I 10, 11; Ap. Sr. S. I 9, 9; S. G. S. III 13, 5; M. IX 20; Caland W. *Altendische Ahnencult.*, p. 193 seq.; Brh. U. VI 4, 12.

72. A. V. V 5, 8; V. S. XXX 6.

73. Meyer J. J., p. 117; cf. S. B. IV 1, 5; Sāyana on R. V. VIII 80; Mbh. II 31, 27 seq.; cf. Macdonell A. A., *Vedic Mythology*, p. 65.

wilt again be a virgin." Parāśara, finding Satyavatī not yielding to his demand, argued in the same tone. "When thou hast done me this favour, thou shalt become a virgin again". Draupadī found herself virgin again at the end of each day. Mādhavī is taken to a number of sages, Haryaśva, Divodāsa and Vis'vāmītra, in succession and curiously enough she is virgin again after cohabitation with each of them.<sup>74</sup> Besides the coaxing words, the fear of the holy man's curse had greater influence in commanding submission to his wishes from the virgins. The Epics know a large number of sons born of a virgin, Karna, Ekalavya, Hanumat, the known figures in the Epics, being but a few examples. These lascivious doings of the gods and the devilish tricks played by them for such acts bring about no lessening of virtues. "Transgression of the law and violence are found amongst the ancient (sages) but they are not tainted by it on account of their extraordinary brilliance."<sup>75</sup>

In the Dharma-sūtras a paramour of a married woman is not unknown.<sup>76</sup> Woman is said to be made no more than temporarily impure by unchastity. She imparts no taint of sin during dalliance and is not to be cast off by her husband for any impurity. Impurity due to an adulterous connection is cleared of by menstruation.<sup>77</sup> But, on the other hand, we find Vasīṣṭha prescribing a penance for an adulteress to purify herself of the sin.<sup>78</sup> Manu, not satisfied with this, says : "If a wife, proud of the greatness of her relatives or (her own) excellence, violates the duty which she owes to her lord, the king shall cause her to be devoured by dogs in a place frequented by many. Let him cause the male offender to be burnt on a red-hot iron bed".<sup>79</sup> It is clear from his expressions, though he has not explicitly said, that Manu is furious at the intercourse with a man of lower gradations. Gautama and Āpastamba<sup>80</sup> prescribe such cruelties only in case of a S'ūdra adulterer. Manu, on the other hand, says that 'offering presents (to a woman), romping (with her),

74. Mbh. I, 63, 75 ; 198, 14 ; Meyer J. J., p. 33.

75. Ap. D. S. II 13, 8, 9

76. V. D. S. XIV 6 ; G. D. S. XV 17 ; Ap. D. S. I 19, 15 ; M. IV 211, 216, 217. cf. Yaj. I 162 ; Vi. D. S. LI 16.

77. V. D. S. V 3, 4 ; XXVIII 1-3, 8 ; cf. Yaj. I 72.

78. V. D. S. XXI 6, 8, 12, 13.

79. M. VIII 371, 372, 374.

80. G. D. S. XXIII 14, 15 ; Ap. D. S. II 27, 9 ; cf. V. D. S. XXI 1.

touching her ornaments and dress, sitting with her on a bed, touching her in a place (which ought) not (to be touched) or allowing (oneself to be touched in such a spot)—any of these acts constitutes adultery, and punishment for such an act is banishment after being marked by punishments which cause terror or death, if the adulterer is a non-brahmin." Manu also prescribes a penance for the parties involved even if it be mental unfaithfulness. Baudhāyana and Āpastamba are apparently mild in prescribing the penalties for adultery, but they too, like Manu, have not failed to uproot the evil with a rod of rigorous punishment, both moral and corporal. Baudhāyana prescribes Kṛchchra penance for the violation of the marriage vow, and Āpastamba goes to the length of cutting the adulterer's organ with his testicles. In addition, the parties reap the fruit of adultery in the world to come. "By violating her duty towards her husband a wife enters the womb of a jackal and is tormented by diseases." Āpastamba equates the transgression of the marriage vow with fall in hell.<sup>81</sup> The appalling nature of physical punishment, performance of a penance by an adulterer to maintain his position in the community, and the dread of ultimate degradation in the life beyond—all three, as a whole, reveal the severe high-handedness with which the early law givers deal with the practice of the day. It is not too much to infer from this that the practice must be unflinchingly stubborn.

Similarly deflowering of virginity is one of the horrors that spread under a bad king. "He, who violates an unwilling maiden, shall instantly suffer corporal punishment: but a man who enjoys a willing maiden shall not suffer corporal punishment, if (his caste be) the same. From a maiden who makes advances to a (man of) high (caste) he shall not take any fine: but let him force her who courts a (man of) low (caste) to live confined in her house."<sup>82</sup> What Manu condemns is not the practice of deflowering the virgins, but an intercourse with a

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81. M. VIII 352, 357, 358, 359; XI 177, 178; B. D. S. II 4, 1; 3, 48; Ap. D. S. I 21, 9; II 13, 4; 26, 20; cf. Mbh. XII 165, 65 seq.; M. V 164; IX 30; V, D. S. XXI 14; cf. M. XII 60, IV 134; Mbh, XIII 104, 21; Mk. P. XXXIV 62, 63; Yaj. III 212; Ap. D. S. II 27, 6.

82. Mbh. XII 90, 39; M. VIII 364-368. cf. Yaj. II 281. According to Nārada (XI 72), connection with a willing maiden is no offence. Only he should lawfully espouse her. According to Matsya Purāṇa (V. Rat p. 401), if a person defiles a maiden with her consent, he shall be fined with the first amercement.

man of low caste. So long as the intercourse takes place either with a man of the same caste or one of a higher caste, Manu has nothing to protest : nay, he would sanction it, if the girl concerned shows her will. It is only the forcible intercourse of a man of a lower caste with the unwilling maiden of a higher caste that is reprimanded and penalised by Manu. But at the same time we find Manu looking upon it as an incest, a sin tantamount to the sin of violating the guru's bed. Nay, the king is asked to fine the offender with 200 panas. Āpastamba does not tolerate the evil. He wants (II 26, 21) the offender to be banished, his property having been confiscated. Kauṭilya is equally strict. "If one violates a maiden of equal caste before puberty his hands shall be cut off or he shall be fined four hundred ; if she has attained puberty, his middle and index fingers shall be cut off, or a fine of 200 shall be imposed, and he shall pay damages to her father."<sup>83</sup>

In view of this one fails to concur with Meyer that "we are not to draw from this the conclusion of a remarkable lack of morals, not even for earlier times".<sup>84</sup> It is more in harmony with the evidence at our disposal to maintain what Drs. West and Buhler have said that "something like a Spartan indifference to mere sexual purity prevailed amongst the Hindus".<sup>85</sup> If we understand this we can understand why a large number of sons like kāmīna, sahodha and gūdhaja are affiliated by the Hindu legislators. The corrupted life of the community was ever producing illegitimate issues and they had to be given a suitable position in the family so long as the moral life of the community was responsible for their existence. Vigorous struggle was launched against lust, seduction and adultery by the early Sūtra-writers, but this did not allow them to blind themselves to the questions of their products, who presented no mean difficulties.

We saw that three of the four Sūtra-writers and Manu were strong in their condemnation of adultery and deflowering of maidens. It is evident from the table given that they degrade the products of such unions, giving preference to aliens. The derogation of these issues is fairly compatible with their attitude towards sex morals.

83. M. XI 59, 62 ; VIII 368 ; Kau. IV 12 (Vol. II, p. 172) ; cf. Yaj. III 231 ; Ag. P CLXXIII 50, 51.

84. Meyer J. J., p. 181

85. West R. and Buhler G., p 881

|                    | Aura: | Putrikā putra | Ksetraja | Dattaka | Kṛtrima | Gūdhaja | Apaviddha | Kānina | Sahoḍi | Kṛta | Pauni | Svay: | Nisād | Pārs: |
|--------------------|-------|---------------|----------|---------|---------|---------|-----------|--------|--------|------|-------|-------|-------|-------|
| Manu <sup>86</sup> | 1     | 1             | 2        | 3       | 4       | 5       | 6         | 7      | 8      | 9    | 10    | 11    |       |       |
| Baudhāyana         | 1     | 2             | 3        | 4       | 5       | 6       | 7         | 8      | 9      | 10   | 11    | 12    | 13    | 14    |
| Brahma Purāna      | 1     | 3             | 2        | 4       |         | 5       | 6         | 7      | 8      | 9    | 10    | 11    |       |       |
| Gautama            | 1     | 10            | 2        | 3       | 4       | 5       | 6         | 7      | 8      | 12   | 9     | 11    |       |       |

Though the early lawgivers tried to stamp out the practice of Niyoga by hedging it with numerous restrictions, they had to accord high status to a son born of Niyoga because the institution was welded into the social mores from very early times. As for the other issues of the wife, the early writers relegate them to a lower rank, preferring such sons as dattaka and kṛtrima. Gūdhaja is apparently a variety of ksetraja with this difference that he was begotten on a woman without the consent of her husband or his elders, while such consent was imperative in the procreation of a ksetraja son. In spite of this similarity, the idea of adultery implied in the act was repulsive to the refined taste of the community, and hence aliens were preferred to such products of adultery. Both dattaka and kṛtrima sons are generally of the same caste, essentially virtuous and received without pecuniary payment. Adoption had been a known usage from the Vedic times and had gathered a tradition round it. Furthermore, unmercenary character of the transaction had its own appeal. The claim of the apaviddha was not set so

86. M IX 134-136, 158-160; B. D. S. II 3, 14 seq; G. D. S. XXVIII 32, 33; Brh. P.; Kālikā P (Mayne J. D., p 80) agrees in toto with Manu. Also cf. Dat. ch. V 26. In the Mahābhārata (I 120, 32-34) the order given is: svayamjāta, praṇita, parikṛta, paunarbhava, kānina, svairiṇi-putra-these are bandhudāyādāḥ; datta, kṛta, kṛtrima, svayamdatta, sahoḍha, hinayoni-dhṛta-these are only jñātis. Elsewhere (XIII 49) the order is: ātman, anantaraja, niruktaja, prasūtaja, datta, kṛta, adhyūḍha, kānina. The two orders are neither in accord with one another nor with one given in the Sūtras and Smṛtis. But it is evident that the Mahābhārata is more in harmony with the order of Vasistha than that of Manu.



high because desertion by his parents either implied lack of some of the essential virtues of a son in him or afforded no opportunity to attest them.

The place assigned to the issues of a virgin, *kānīna* and *sahodha*, is quite appropriate. They are preferred to *krīta* because the latter is a commodity bought for a price and as such stands on a very low level. *Svayamdatta* is set lower than *krīta*, perhaps because one has no means of ascertaining either his parentage or his virtues. *Kānīna* and *sahodha*, who share the blood of the mother, have as such better claims as against worthless aliens. The degradation of *paunarbhava* is a result of the new attitude towards widow-remarriage.

In Vedic times the widow was allowed to contract a second marriage, very often with the brother of the deceased. *Vasiṣṭha* allows the widow to remarry, but elsewhere he restricts this privilege to those widows only whose first marriage was plighted but had not actually taken place or whose marriage had not been consummated. *Baudhāyana* allows the woman to remarry if her marriage had not been consummated, or her husband is impotent, outcast or mad. *Manu* allows a woman whose marriage was plighted but not completed to form a temporary union with her brother-in-law to procure a son. Other *Sūtra*-writers, defining the marriageable bride as one 'who did not belong to another', implied that a woman should not be remarried. *Manu* expressed the same view by saying that 'once is a maiden given in marriage,' or that 'a second husband is nowhere prescribed for virtuous women'. The husband of a remarried woman is excluded by him from the *s'rāddha* dinner<sup>87</sup>. In the *Mahābhārata* we are told that the sage *Dīrghatamas* enunciated the rule for the first time that 'a woman shall have only one husband as long as she lives. Either he be dead or alive she shall not obtain another. Having gone to another she will undoubtedly sink low'.<sup>88</sup> The

87, V. D. S. XVII 19, 20, 72, 74 ; B. D. S. IV 1, 16 ; II 3, 27 ; M IX 69-70, 176 ; G. D. S. IV 1 ; Ap. D. S. II 13, 1 seq. ; cf. Yaj I 52 ; M. IX 47, 71 ; V 162, VIII 226, III 166 ; cf. also M. V 156 seq., IX 65 ; Yaj ; I 65, 224 ; Vi. D. S. V 160, 161.

88 Mbh I 104, 31 seq. cf. the sentiments in the oath of Arjuna (VII 73, 28) avowing the death of Jayadratha 'May I go to the fate of those sinful men who marry non-virgin, *bhuktapūrvām*, women'. In the *Purāṇas* remarriage of a woman is said to be forbidden in the present Kali age. (Brh. P. in *Aparārka*, p. 97) ; Kane P. V., p. 612.

tone of the early lawgivers, thus, seems to check the practice of remarriage. It was a difficult task and, therefore, the lawgivers, in the first instance, allowed remarriage in certain cases, and, in the second instance, degraded the issues of a remarried woman. Writers like Kauṭilya, Yama and Devala, who follow Vasistha in according higher ranks to the issues of the bride, assign a very low rank to the son of a remarried woman probably because widow-remarriage was getting more and more unpopular with the advance of time.<sup>89</sup>

The history of secondary sons among the Hindus shows that a few of them had to be recognised as sons and had to be affiliated to the family merely because the sexual laxity prevailing in the community so demanded. Ksetraja and dattaka are shown to be the products of ancient institution or tradition rather than of the religious principle. With this historical background one cannot agree with Sen Gupta who looks upon secondary sons as 'an institution of later growth which grew up under the influence of other societies surrounding them.'<sup>90</sup>

Before we leave the consideration of secondary sons there remains the question of the putrikā which needs some discussion. "He who has no son", observes Manu (IX 127), "may make his daughter in the following manner an appointed daughter, (saying to her husband), 'The (male) child, born of her, shall perform my

89. A verse in later works allows the woman to remarry only in five cases of necessity, namely, if the husband has disappeared or is dead, if he has joined an order of monks, is impotent or is excommunicated. N. D. S. XII 97; Parāś'ara IV 28; Ag. P. CLIV 5-6.

90. Sen Gupta, *Man*, XXIV, p. 40; cf. Ross II. A., *Man*, XXII, p. 169. With a high concept of married life and the refined taste of the progressive community they were derogated and adoption was recognised as a less degrading method of allowing a sonless man to obtain an heir. Once this reformatory tendency gets hold of the people's mind, regulations in sex relations are hotly advocated and sternly enforced. But the force of immemorial usage is strong, and especially so in a country like India, where worship of the ancient traditions and respect for the usages of different districts are passionately ingrafted into the blood of the people. The later jurists have to let in affiliated and adopted sons without restrictions of any clearly discernible principles whatsoever.

funeral rites.''' In this statement two facts are implied: firstly, an expressed stipulation between the husband and the father of a girl that she is putrikā is essential. Secondly, the right of her father over this son is apparently for the performance of his funeral rites and for nothing more. The Sūtra-writers also emphasise the importance of an expressed stipulation, but both they as well as Manu are familiar with a practice wherein an expressed stipulation is not always necessary, the mere intention of her father being sufficient to entitle him to get the son for him.<sup>91</sup> Manu, while apparently insisting on an expressed stipulation, does not appear to be keen about it as he has said that a sonless man may demand from his son-in-law with or without any expressed stipulation his daughter's son to attend to his obsequies.

Vasistha looks upon the putrikā herself as a son. Baudhāyana and Manu have not said so expressly, but they hold that view.<sup>92</sup> According to them, 'the son of an appointed daughter should offer the first funeral cake to his mother, the second to her father and the third to her father's father'. The offering of a cake to the putrikā suggests that she was looked upon more as a male than a female issue of her father. Further, according to Manu (IX 134, 135), with the act of appointment the daughter secures interest in the property of her father, which, if she dies childless, devolves on her husband. A sonless father thus saw in his daughter a son of his own blood.

We are told in Baudhāyana S'rauta sūtra (XXIV 32) that the son of an appointed daughter offers first pinda to his maternal grandfather with the mantra, 'father to her and my father's father, (thee) and those who are after you'. The other two pindas are offered with the mantra with corresponding changes. Here the appointed daughter is not said to receive a pinda, though in his Dharma sūtra Baudhāyana refers to her as the recipient of the first

91. B. D. S. II 3, 15; G. D. S. XXVIII 18-20; V. D. S. XVII 15-17; M. III 11; IX 136; cf. also Yaj. I 53; Vi. D. S. XV 6.

92. V. D. S. XVII 15. cf. Mbh. VII 60, 5, 6. Bhagīratha took Gaṅgā on his lap. She became his daughter. She became his son (by securing salvation for his deceased ancestors). B. D. S. II 3, 16; M. IX 140. cf. also M. IX 136, 139 where Manu speaks of the son of an appointed daughter as son's son.

piṇḍa. She is looked upon as a male issue of her father in as much as her father is referred to as the father's father by her son. But why, then, is she not given a piṇḍa? We must either admit that there were two traditions current in those days and Baudhāyana refers to them in his two works, or that the view which is expressed in his S'rauta sūtra is the earlier view which was later on modified very probably under the influence of Manu.

It is said in the Mahābhārata (I 116, 11) that Gāndhārī, even when she had one hundred sons, longed for a daughter because the world that a daughter's son can secure was denied to her. The Pāṇḍavas, during their exile in the forest, once saw a poor brahmin faced with a dreadful calamity of handing over a member of his family for the satisfaction of a demon's hunger. When a daughter of the brahmin offered herself a willing prey to the demon, the brahmin burst into doleful lamentation because he would thereby lose the world that a man got through his daughter's sons. King Nahuṣa, when degraded from heaven, secured his place once more through his daughter's sons<sup>93</sup>. In these episodes in the Epic a definite place has been assigned to the daughter's son in the ritual and it is solemnised by association with heavenly world.

When proper brahmins for the S'rāddha ritual are not available, daughter's son can be fed in the place of a brahmin. Besides this occasional service rendered by him, he is to be entertained, though he be a student, at a funeral sacrifice, he being one of the three means of sanctifying the S'rāddha. Furthermore, he is to observe impurity for a day in the event of his maternal grandfather's death and to take an active part in the services just after his death<sup>94</sup>. A definite function in the rituals of the dead thus appears to have been assigned to the daughter's son by the Sūtra-writers and Manu.

The closer contact of a man with his daughter's son through these various phases of religious life is attempted at the end of the Vedic period. We also saw that though regular offerings were not made to the maternal grandfather and his ancestors at the *Pārvaṇa*

93. Mbh. I 159, 6; V 121.

94. M. III 148, 234, 235; V 81; V. D. S. XI 35; P. G. S. III 10, 40.

S'rāddha in this period, a childless man did secure the service of his daughter's son, putrikāputra, for the same.

While an attempt is made by some to trace the practice in the R̥gveda (I 124, 7) Keith remarked 'it is not found mentioned in any certain passage in the literature before Yāska, Bṛhaddevatā and Dharmasūtras.' But the fact that a definite S'rāddha procedure is enjoined for a putrikāputra in Baudhāyana S'rauta sūtra and for a dvāmuṣyāyaṇa in other S'rauta-sūtras<sup>95</sup> clearly indicates that putrikā was known and associated with religious principle at least in the later Vedic age. One does not find it easy to explain what Manu (IX 123) meant by quoting the example of Dakṣa appointing his fifty daughters to multiply his line.

The precise nature and content of the Hindu family group may now be formulated. The joint family is a unilateral group either patrilineal or matrilineal and corresponds to the German term Gross families. Family, in its narrow sense, consisting of the trinity of the father, mother and children, is often referred to, but that is not the only norm. A group larger than the natural family is spoken of as residing in the same house. Five generations, constituting a family unit, are clearly enunciated in a passage of the Atharvaveda—"Self, father, son, grandson, grandfather, wife, the mother that bore me, those who are dear, them I call upon."<sup>96</sup> On the other hand, the great-grandfather is never referred to in the Vedic literature except in a funeral hymn in the Atharvaveda, where he is invited as one of the ancestors along with the father and the grand-father. Similarly the third descendant is hardly, if ever, referred to in the Vedic literature. There are no definite words for descendants in different generations, but very often the word meaning the first male descendant is repeated to suggest possibly the descendants in the first and second generations.<sup>97</sup> In some passages the words toka and tanaya are used in pairs probably to suggest descendants in different generations. Similarly the word

95. Ap S'r. S. I 9, 7; Sat S'r. S. II 7; S. S'r. S. IV 4, 6.

96. A. V. IX 5, 30; cf. IV 5, 6; V 22, 12 'O takman along with thy brother the balasa, along with thy cousin the scab, go to yonder foreign folk.'

97. R. V. I 92, 13; Karve Iravati, p. 81; cf. the Gujarati expression *chhaiyā chhokarū* or *bachchā kachchā* (*kachchi bachchi* in Marathi).

napāt has been used for a child in all passages, where in a conventional expression different gods are called the child, napāt, of might, water, etc., and perhaps for grandchild in some passages. In two passages<sup>98</sup> where the word is used to express genealogy both the meanings, son and grandson, are possible. 'Child Upamas'ravas, son (napāt) of Mitrātithi, mark, I am the eulogiser of thy father'; 'He who is the son of S'ṛṅgavṛṣ and grandson (pranapāt) of Kuṇḍapāyya-in him I place my thoughts.' In the Brāhmaṇas and later literature the word is found used for a grandson,<sup>99</sup> and at times even for a great-grandson.<sup>100</sup> But the family unit appears to be thought of in terms of two descendants and not further. "Dwell here, be you not parted, reach the full time of human life, with sons and grandsons sport and play, rejoicing in your own abode."<sup>101</sup> Hearn believes that the Aryan household included the descendants of a common great-grandfather but went no further. Schrader, on the other hand, holds that an Aryan community consisted of agnatic blood relations only to the second or third degree.<sup>102</sup> So far as the Vedic Aryans are concerned, the normal family unit consisted of three generations.

Though a joint family of three generations appears to be the usual norm reference to the father's brother is not traced in the Ṛgveda. In the Atharvaveda he is referred to as pitṛbandhu, a relation of the father, but no definite function has been assigned to him. The term for a cousin, bhrātṛvya, in almost all references to him in the Atharvaveda, means a rival, and there are many magical

98. R. V. X. 33, 7 (Bṛhaddevatā VII 36); 17, 13; cf. also X 10, 1; VI 20, 11.

99. A. B. III 48; VI 18, 19; M. S. III 8; Bṛhaddevatā II 27, V 103; according to Nir, VIII 5, 'napāt is a descendant beyond the generation of the son because he is very much propagated downwards'. 'The general sense of descendant has given way to a specific meaning grandson, or even great-grandson, in the Brāhmaṇas.' V. I, Vol. I, p. 435.

100. A. B. VII 10; cf. J. Sr. S VII 'The son of so and so sacrifices, the grandson of so and so sacrifices, the great-grandson of so and so sacrifices. Thus upto four generations,' Ap. S'r. S X 11, 5.

101. R. V. X 85, 42; A. V. XIV 1, 22. cf. also A. V. IX 5, 30; XI, 7, 16. cf. also R. V., VI 20, 11.

102. Hearn W. E., *Aryan Household*, p 181; Schrader O., *Prehistoric Antiquities of the Aryan People*, pp. 393, 394.

performances for his destruction and expulsion.<sup>103</sup> 'Driven forth by Varuṇa my enemies (who are my) kinsmen have gone unto unlighted space. Let them go to the lowest darkness.' Jealousy between cousins may be an expression of rivalry between the children of two brothers for leadership in the family or priority for marriage time and of grudge for a share in the family property. The reasonable inference is even when the family was joint the collaterals were not on good accord. This sort of indifference, if not actual hostility, to the near collaterals shows that the tendency of disruption had already set in by the time of the Atharvaveda and the idea of joint family had no substantial hold on the Hindu mind at least in the later Vedic age.

The nature of other kin groups in the Vedic period may be precisely defined with the help of kinship terminologies. *Āpi*, *sanābhi*, *jñā*, *jñāti*, *jāmi*, *sajāta* and *bāndhava* are the Vedic words indicating kin or kinship. It is very difficult to fix their exact connotation, because very often they are used indiscriminately; yet they may yield two more groups besides the family.

'I am calling on you, listen to me, As'vins. Help me as parents help their son. Without wealth, without *api*, without *jñā*, without *sajāta* am I. Save me from the curse before it is too late.' Wishing for wealth I looked in spirit for *jñā* or for *sajātya*, *Indrāgnī*.' In both these passages<sup>104</sup> As'vina twins are requested by Ghosā to help her with money when other kinsmen failed her. The different words probably suggest kinsmen within different degrees of relationship. The nearest appears to be *sajātya*, very probably a brother. The meaning fits in the passages cited above and in the passages of the Atharvaveda<sup>105</sup>.—'Call your brothers and pay attention to our prayers'; 'Give him the highest rank among his brothers.' In all probability, then, *sajāta* meant a brother.

103. A. V. II 18, 1; IX 5, 31, 36; X 3, 9; 6, 1; 9, 1; V. I., Vol. II, p. 114. In the R̥gveda (VIII 21, 13) Indra is said to be without a cousin or a kinsman from ancient times.

104. R. V. X 39, 6; I 109, 1.

105. A. V. I 10, 4 Gods are very often called brothers, and hence *sajāta* can be translated here by brothers. cf. also VI 73, 1. A. V. I. 9, 3 'Brothers' is more appropriate here than kinsmen because we know the eldest son enjoyed certain religious and social privileges and consequently it would

In the later literature disputes among the *sajātas* are said to be notorious and gods are invoked to make them subordinate.<sup>106</sup> In a *Rājasūya* sacrifice 'at the time of giving gifts, the king's kinsmen are collected with their wealth... One-third of their wealth is distributed among the priests, one-third is given at the time of the *Daśapeya* to the worthy *brāhmanas* brought in that rite, one-third is returned to the kinsmen, villages are bestowed on them and they become *rājanyas* (king's nobles) but not worthy of coronation... The king then sits... The *brahmā* priest hands over the *sphya* to the king, from whom it passes on to several persons viz. the king's brother, *sūta*, *sthapati*, village headman, kinsman. According to *Kātyāyana* (S'r. S. XV 7, 13), the kinsmen and the *pratiprasthār* mark out a place for dice play with the *sphya*... The play is so arranged that the best throw comes to the king and the worst to his kinsman.'<sup>107</sup> In these passages *sajātas* appear to be such close relatives with whom disputes were common and consequently dominance over them was deemed necessary.<sup>108</sup>

be quite fit that the first rank among the brothers can be prayed for. cf. also II 6, 4. III 30, 2, 3 'Let there be no quarrels between brothers and brothers or sisters and sisters and sons be in accord with their parents.' In VI 5, 2 *Indra* is solicited to put the man far forward, to be the controller of his *sajātas*, near kinsmen if not brothers. cf. also XVIII 4, 37 'This funeral pile (is) piled with piling; come, ye (his) *sajātas*, look down at it; this mortal goes to immortality; make you houses for him according to his kindred (*sabandhu*). *Sāyanāchārya* explains the word *sajātāḥ* as those born together, born in the same family, *sagotras*. But the word indicates a nearer group of relatives who have definite functions to perform at the funeral.

106. T. B. III 7, 12, 2; T. S. I 1, 7; II, 1, 3, 2.

107. Kne P. V., p. 1219. Eggeling renders the word *sajāta* by tribesman. 'The *sajāta* would seem to be one of the peasant proprietors or 'sharers', constituting the village 'brotherhood' ruled over by the headman, and often actually belonging to the same family as the latter.' (S. B. E., Vol. XLI, p. 111). Commentator on K. S'r. S. (XV 7-12) translates it as brother of the village headman. cf. T. S. II 6, 9, 7 'He implores superiority over his *sajātas*, kin (equals?)'.

108. cf. A. V. I 19, 3 'Whether one of our own or whether a stranger, fellow or outsider, whose assails us, let *Rudra* with a volley pierce those my enemies'. cf. also III 3, 6. According to Keith and Macdonell (V I, Vol. II, p. 418), "the word must clearly mean a 'relative' and then more widely a man of the same position or rank. but the senses cannot be distinguished, so much do they merge into each other".



The words *nābhi* and *sanābhi* are also used for kin in the Vedic literature. "The sky is my father, my generator and *nābhi*. This great earth is my mother, my *bandhu*." The heaven and earth are very often referred to as father and mother as well as brother and sister. So the word *nābhi* may connote here the sense of a brother. The same meaning can be read in another passage where it is said in reference to fingers, "the *jāmi* sisters who are *sanābhi*, who have the common origin, brighten him and strengthen the vigorous racer." In two more passages the word *sanābhi* may be translated by brother or a member of the same family, though the latter appears to be more appropriate. In another passage of the *Atharva-veda* a *sanābhi* is referred to as playing hostility.<sup>109</sup> Quarrels between brothers or between members of the same family are very likely. On the whole, then, *sanābhi*, like *sajāta*, appears to refer to a narrow group of two generations or to a normal family group of three generations. Mrs. Iravati Karve derives the word *nābhi* from home or house suggesting thereby that *sanābhi* meant persons belonging to the same household,<sup>110</sup> and this derivation well accords with the passages discussed here. Yāska (IV 21) also appears to understand the word in the same sense when he says 'nābhi is (so called) from being fastened together. It is said children are born fastened to the umbilicus. Hence *jñātis* are called *sanābhi* having a common umbilicus or a common tie.'

*Jñā* must represent a wider circle. The word *jñāti* is used for relatives in general, but in two passages it refers to near kinsmen who were expected to help with money. The word *jñā*, instead of *jñāti*, is found sometimes used for such near relatives.<sup>111</sup> So *jñāti* meant a near circle of kin who may be looked upon as helpers with money, too, in times of necessity. In a prayer of a lover who goes to visit his beloved at a night time—"Let the father sleep, let the mother sleep, let the dog sleep, let the master of

109. R. V. I 164, 33; IX 89, 4; II 3, 9; A. V. VI 6, 3—"May *Tvaṣṭṛ* lengthen out our progeny and *nābhi* and may they reach the place which gods inhabit"; "Whoever, O Soma, shall assail us, *sanābhi* or a stranger (*nistya*), draw away his strength". I 30, 1.

110. Karve I, p. 144 f. n.

111. R. V. X 66, 14; 117, 9; I 109, 1; X 39, 6. cf. R. V. X 85, 23 and A. V. XIV 1, 26 where the *jñātis* of the bride are said to thrive.

the house sleep, let all the relatives, jñātis, sleep"<sup>112</sup>—jñāti refers to relatives who lived in the same house. In Varuṇa-praghāsa ceremony the woman who does not confess the names of her lovers is said to injure her jñātis, apparently the near kinsmen.<sup>113</sup> Thus the word jñāti is used for a group of relatives who had a sort of pecuniary liability as well as for the inmates of the house. Generally monetary obligations do not go beyond the inmates of the household. In view of the fact that in the Atharvaveda, wherein the ancestor cult is seen developing on the family line from the original communal manes, three ancestors are offered funeral prayers the term jñāti may be said to have been confined to the descendants of the common great-grandfather. Yāska's<sup>114</sup> derivation of jñāti from 'being well known' indicates the same meaning. Even in the Sūtra literature the word appears to have been used for such relatives who can legitimately share in the bride price or were duty bound to participate in performance of penance for a guilt.<sup>115</sup> The contention of Macdonell and Keith that 'the word jñāti denotes a relation who was connected by the blood on the father's side, though the passages do not necessarily require the limitation'<sup>116</sup> is evidently untenable.

While sajāta refers to the narrowest circle of family of the father, mother and child with brothers and sisters, jñāti refers to a wider circle comprising the descendants within four generations who lived together and formed a close kin-group. Āpi must, therefore, represent the widest circle. 'Indra is neither kin (āpi), nor friend nor jāmī of him who does not press the soma

112. R. V. VII 55, 5. The master of the house, vis'āmpati, is Agni who is often referred to as gr̥hapati. cf. R. V. I 127, 8; A. V. XIX 55, 4.

113. T. B. I 6, 5, 2; S. B. II 5, 2, 20; K. S'r. S. V 5, 9.

114. Nir. IV 21; cf. Hemachandra, *Anekārtha Samgraha*, III 489, p. 87.

115. B. D. S. II 1, 36 In Manu (III 31) jñātis are those relatives who are entitled to receive wealth from the bridegroom in Asura form of marriage. cf. also M. III 54; IV 179, 180; Ap. D. S. II 14, 9; B. G. S. I 1, 24. Jñāti stands for near relatives in M. II 184, Ap. D. S. I 10, 3; 28, 6 and G. D. S. II 3, though it may indicate a larger circle in M. II 132, III 264, V 77 and G. D. S. X 4.

116. V. I., Vol. I, p. 291. cf. Halāyudha, *Abhidhāna Ratnamāla*, II 354; Basu, *Indo-Aryan Polity*, p. 14.

juice.' 'I regard Agni as my father, my kin (*āpi*), brother and eternal friend.' God is often said to be the nearest *āpi*. In all these passages<sup>117</sup> *āpi* stands for kinship between the worshipper and the worshipped. But in a passage (R. V. I 26, 3)—'For here a father for his son, *āpi* for his *āpi*,' and a friend for his choice friend doth worship.'—*āpi* stands for a person who was worthy of or entitled to offer worship to the same gods. Very probably, then, *āpi* represented a clansman who shared common religious worship. The fact that the word *āpi* is found only in the *Ṛgveda* is suggestive.

The word *bandhu* means a relative, and probably it indicates the widest circle of relationship. 'This great earth is my mother, my *bandhu*.' 'She severs his paternal *bandhus* and gives defeat to his maternal *bandhus*'<sup>118</sup>. The only significant fact is that the mother is looked upon as a kin and persons through her, too, are looked upon, of course very cursorily, as relatives.

According to Mrs. Karve (p. 144 f. n.) *āpi* may be derived as one who is near, a neighbour; that *jñāti* may be derived from *jñā* to know, meaning thereby an acquaintance; and that *sajāta* may be derived as born together to mean brothers. But she cautiously adds 'such meanings can be derived from the meanings of the root, but their actual use shows that one word was often used for another and all generally mean kindred.' She is right in holding that these words are indiscriminately used for relatives, yet from a judicious juxtaposition of various passages wherein these words are used probable groupings of kin as indicated above may be fairly deduced.

The agnatic Aryan family did not emphasise relationship with females or relations through them. Yet it is very probable that sister lived in the house. In the marriage hymn in the *Ṛgveda* the married wife is said to rule over the brothers and sisters of her husband. Unmarried girls are often referred to as staying in their father's house, and consequently girls before their marriage or spinsters for life constituted a part of the normal family. In the *Atharvaveda*<sup>119</sup> fever is said to go to foreign people along with

117. R. V. IV 25, 6; X 7, 3; VII 15, 1; VIII 45, 18.

118. R. V. I 114, 33; A. V. XII 5, 43. cf. also R. V. III 54, 16; VIII 21, 4; A. V. X 3, 9.

119. A. V. V 22, 12. cf. Nir II 32, 1 where *svasṛ* (sister) is said to be one 'who sits among her own people'.

his kith and kin, sister being one of them. In a passage in the Aitareya Brāhmaṇa (III 37), where a dispute centres round the precedence of Rākā or of the wives of the gods in a certain rite, it is held by one party that the sister should be preferred to the wife, but it is contested from the opposing camp that the wife, though of a different womb, should be preferred to the sister. This along with the curse of the sister, often referred to in the Atharva-veda,<sup>120</sup> renders it probable that relations between the brother and sister were far from cordial and affectionate. There are, however, some passages in the Vedic literature which speak of very amicable and binding relations between a person and his sister's son. "Viśvarūpa, the son of Tvaṣṭr, was the domestic priest of the gods, and a sister's son of the Asuras. He promised openly the share to the gods, and secretly to the Asuras. Men promise openly the share to every one; if they promise any one secretly, his share is indeed promised. Therefore Indra was afraid. He smote off his heads with his bolt." In Brhaddevatā we are told that "Trisuras, being a son of the sister of the Asuras, became the domestic priest of the gods from a desire of (rendering) a service (to the former)."<sup>121</sup> In both these passages the sister's son is not merely favourably inclined to his mother's brother but professes obligations towards him. In another passage of Brhaddevatā (VIII 23 seq.) we read that "Panis, on learning that S'armā was a messenger of Indra, said, 'Do not depart, S'armā, be our sister here. Let us divide our wealth of cows'. 'I do not desire your sisterhood or your wealth.'" Though we do not know who exactly the Panis were, and very probably they did not belong to the groups of the Vedic Aryans, the fact that wealth could be shared between brothers and sisters is very suggestive. The references taken together indicate that the sister had a place in the family of her parents, though the wife was slowly and steadily getting her dominion in the family, and that ties of relationship through females were not completely unknown even in the Vedic period.

In the later literature Manu (IV 180 seq.) forbids quarrels with females like the daughter and sister under the threat of moral

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120. A. V. II 7, 2; 10, 1; V 30, 5. cf. T. B. II 5, 6, 3.

121. T. S. II 5, 1, 1; Brh. devatā VI 149. The word *ksayakāmyayā* may be rendered as 'from a desire of (bringing about) the destruction (of the latter).'

repercussion. The plea for an exalted status of the females, however, finds its best expression in case of the mother. She is the highest guru, and honour paid to her is superior to that paid either to the father or to any other elder.<sup>122</sup> Not only the Pāṇḍavas, who are painted as Indian patterns of virtue, but even Duryodhana, the arch-villain, listens more to his mother than to his father or any other kinsfolk. Rāma's devotion to his mother is unbounded; he never fails to pay his regards even to his step-mother Kaikeyī who was the root cause of his blighted fortune. Attendance upon the mother, even when she is an outcast, is enjoined by all the Sūtra writers. An outcast father is avoided but an outcast mother is supported. 'There is a remedy for every curse but there is none such for the imprecation of the mother.' Matricide is looked upon as a crime in the highest degree.<sup>123</sup> The use of metonymics, though capable of varied explanations, is partly a reflection of the high regards paid to the mother.

The word mātṛbandhu, mother's brother, occurs once in the Vedic literature,<sup>124</sup> but it is not till the Sūtra literature and the Epics that we hear of his prominence as compared with the father's brother. In the Epics the mother's brother is the nearest kinsman and holds his rank immediately after the members of one's own household. Rāvana is asked to engage himself in war with Rāma in order to avenge the death of the sons of his sister S'ūrpankhā. He, in his turn, seeks the aid of his mother's brother, Mārīcha, even at the cost of his life, in his attempt to abduct Sītā. S'akuni, the man behind the whole drama at the court of Duryodhana, is his mother's brother. S'alya, the mother's brother of the Pāṇḍava twins, apparently joins the hostile camp, but at a critical time discourages Karna and thus helps in bringing about his defeat at the hands of Arjuna. In war crisis it is always the mother's brother on whom, next to the father and brother, an endangered soldier calls for aid. Yudhiṣṭhira laments the fate of women

122. Ap. D. S. I 14, 6; G. D. S. II 51; XXI 15; V. D. S. XIII 48; M. II 145; Mbh. I 196, 16; XII 108, 16; XIII 105, 14, 15; 106, 64. cf. Yaj. I 35

123. Sat. S'r. S. XXVI 7, 45; Ap. D. S. I 28, 6-9; V. D. S. XIII 47; B. D. S. II 3, 42; Mbh. I 37, 4; Mk. P. CVI 28.

124. V. I., Vol. II, p. 150

deprived of husbands, sons, mother's brothers, and brothers; and in the fable of mice and cat the former chose the latter to be their mother's brother to act as their guardian against their enemies.<sup>125</sup> "When no relative is present, the mother's brother, and not the father's brother, is spoken of as the uncle par excellence." Kṛṣṇa's betrayal of his sister's son, Abhimanyu, is reconciled in the Epic on grounds of political expediency.

In the lists of persons worthy of salutation and of those entitled to the offerings of honey-mixture, the father's brother precedes the mother's brother in the Sūtra literature.<sup>126</sup> Amongst the females worthy of salutation Gautama mentions only the father's sister. But in Manu preference appears to be given to the mother's brother and relatives through the mother as against the father's brother and female relatives through the father. In the long list of persons with whom it is recommended to avoid quarrels the mother's brother is specifically mentioned though both the uncles are referred to in general terms. So, too, after return from a journey only the mother's brother is said to be honoured. In the list of female relatives who share the dignity of a teacher's wife the mother's sister and mother's brother's wife precede the father's sister, though in the next verse the father's sister precedes them both. The initiated brahmin is enjoined to beg his food as a part of the upanayana ceremony from his mother's sister and not from his father's sister.<sup>127</sup> In some of the Purāṇas the mother's brother, and not the father's brother, appears in the list of revered persons.<sup>128</sup> Viṣṇu (XXXII 3) places the father's brother before the mother's brother, but he assigns priority to the mother's sister as against the father's sister. To conclude, while the father's brother is preferred to the mother's brother in the Sūtra works prominence is being shifted in favour of the mother's brother first

125. Mbh. XIII 57, 3; cf. IX 4, 9; 9, 46.

126. A. G. S. I 24, 4; G. D. S. V 27; VI 7, 9; V. D. S. XI 2, 3; XIII 41; B. D. S. I 3, 45; Ap. D. S. I 14, 11.

127. M. IV 179, 180; III 119; II 131, 50.

128. Brh. Nār. P. IX 92; cf. Bh. P. (Aparārka, p. 60) where the mother's sister is preferred to the father's sister.

in Manu and then in the Mahābhārata and Purāṇas. Dr. Sarkar (p. 77) believes the precedence of the mother in the later Vedic texts as a survival of earlier conditions, but it is more reasonable to look upon it as a new development.

Along with the mother's brother, the mother's father, the sister's son, and the daughter's son are also grouped in a circle of dear relatives. With the recognition of these kin as near relatives we come, in the terminology of Dr. Rivers, to the concept of the household as opposed to the joint family of the early Vedic age.

The notion of relation by marriage was developed in the Vedic period solely as between the wife and her husband's kinsfolk. The terms *s'vas'ura* and *s'vas'rū* from the Ṛgveda onwards denoted the father-in-law and mother-in-law respectively of the wife. Only once in the Ṛgveda (X 34, 3) do we find a gambler complaining of his having lost the favour of his wife's mother, a misfortune brought by dice. It is at the end of the Vedic period that we find definitely high position assigned to the relatives by marriage. In Nirukta (VI 9, 1) the wife's brother, *syāla*, is said to be so called because he comes very near on account of his relationship, according to Naidanas, or because he offers *lājās* from the winnowing basket. Thus, his recognition as a near relative is affirmed, though Yāska, on his part, has stressed the part he plays in the marriage ritual. In the list of persons entitled either to honey-mixture or to salutation the father-in-law is mentioned along with the paternal and maternal uncles.<sup>129</sup> Nay, in some of the texts he is referred to even when the father's and mother's brothers are conspicuous by their absence.<sup>130</sup> He is one of the persons whose services are sometimes solicited in the *S'rāddha*; <sup>131</sup> and impurity for a day on his death is enjoined by Viṣṇu (XXII 44). Manu (IV 179, 180) recommends to avoid quarrels with relatives by marriage. Thus

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129. A. G. S. I 24, 4; Sat. S'r. S. XXVII 1, 108; Ap. D. S. I 14, 11; G. D. S. V 27; VI 9; V. D. S. XIII 41; B. D. S. I 3, 45; II 6, 36; M. II 130; III 119.

130. Ap. G. S. V 13, 19; S. G. S. II 15, 6; P. G. S. I, 3, 1; G. G. S. IV 10, 24; Ap. D. S. II 8, 7.

131. M. III 148; Yaj. I 220.

from the time of Yāska onwards, and even little earlier, we find the relatives by marriage coming into prominence. The mother's brother and the mother's father also figured prominently in the Gṛhya and Dharma sūtras, and by the time of Manu and the Mahābhārata attained distinct prominence over the father's brother.

Prominence given to the relatives by marriage and relatives through the mother as near kin in the Sūtra literature becomes suggestive when read in conjunction with a plea for the establishment of individual households as a means of increasing religious merit in the post-Vedic literature.<sup>132</sup> It is said that a brother's son or a son of a co-wife should be looked upon as one's own son. The elder brother should be respected like the father and sons should try to live under him after their father's death. Both these injunctions of Manu,<sup>133</sup> when read along with the tendencies for disharmony in the family in the Vedic literature, appear to have been devised by him to keep the family joint when it was disintegrating. The Vedic Aryans with their evident emphasis on agnatism do not appear to have completely ignored, even in the early period, kinship through females which assumed greater significance at the dawn of the Sūtra period probably as a result of disintegration of the joint family and establishment of individual household.

132. M. IX 111 ; G. D. S. XXVIII 4.

133. M. IX 105 seq., 171, 172 ; V. D. S. XVII 10, 11 ; G. D. S. XXVIII 3 ; cf. B. D. S. II 3, 13 ; Ap. D. S. II 14, 6 ; A. V. III 30, 2 seq. ; V 30, 5 ; cf. S. B. IV 1, 5, 3.



## CHAPTER III

### ADOPTION AND AFFILIATION

In the last chapter various types of sons that are recognised and affiliated to the family from very early times in India have been discussed. We may now attempt to consider their status and position in the family.

To begin with, the practice of adopting a son was shown to be current from the very early Vedic times. Though Āpastamba (II 13, 11) protested against such an usage, Baudhāyana, Gautama and Manu assigned a very high place to an adopted son, showing thereby that the practice had become more palatable to the public taste.

Adoption in the Vedic literature appears to be free from any rigour of rules and restrictions. It is during the Dharma-sūtra period that rules are formulated in the matter, but they may be, as is quite natural, flexible and not rigid. These rules are<sup>1</sup>: A man should not give or receive (in adoption) an only son. Let a woman neither give nor receive a son except with her husband's permission. A son should be adopted in the presence of kinsmen after the intention to do so has been duly announced to the king. The son to be adopted should be 'a not remote kinsmen, just the nearest among his relatives.' Burnt offerings in the middle of the house, reciting the *vyāhṛtis*, are the religious formalities preceding the act of receiving a son.

Of these rules the one which deals with the relationship of the adopter with the child to be adopted engages the interest of the Smṛti writers. The early cases of adoption or a variety of adoption are two—Aurva adopting sons of Atri and Vis'vāmitra adopting S'unah-śepa. In the former case nothing has been said about the relationship between the adopter and the adoptee; the latter case depicts the adoption of a son probably from a different caste. The authors of the Purāṇas treat the episode of S'unahś'epa, but they do not

1. V. D. S. XV 3 seq. According to S'aunaka (Dat. ch. II 5), both the *bandhus* and *jñātis* are invited on the occasion.

agree with respect to the relationship subsisting between S'unahs'epa and Vis'vāmitra. Pargiter has studied the different versions of the episode, and he concludes that "of the two genealogies, the Ajīgarta version is brahmanic and the Rchika version is kṣatriya. The latter makes Vis'vāmitra the maternal uncle of S'uneḥs'epa."<sup>2</sup> Personally he holds that 'S'unahs'epa was not Rchika's son but his grandson'. In other words, Vis'vāmitra is the brother of S'unahs'epa's father's mother. Of the two genealogies, the Ajīgarta version is evidently Vedic, while the Rchika version is kṣatriya and hence non-brahmanic. Thus in the non-brahmanic circle a sister's son was adopted without social opprobrium.

Another case of adoption, recorded in the Mahābhārata,<sup>3</sup> is of king Kuntibhoja adopting a daughter of king S'ūra, his mother's brother's son. He adopted a female, probably because the male child was not available. Manu also allows the adoption of an asagotra child, that is, a child who does not belong to one's own gotra, and the Puranic traditions supply us with a few examples of the same type.<sup>4</sup> From these available cases one can reasonably conclude that in the early law of adoption receiving a female child or a child related through females was not prohibited.

Vasistha describes a preferable adoptee in the words 'adūra-bāndhavam bandhusannikṛṣṭam.' Bühler translates, he should take as a son 'a not remote kinsman, just the nearest among his relatives'. Bühler's translation being not as lucid as it should be, we have to look to the interpretations of Indian writers. According to Vijñānes'vara, 'by the phrase adūrabāndhavam (the text contemplates) the prohibition of one who is far off in point of country and language,' and he has many followers in this

2. Pargiter F. E., J. R. A. S., 1917, p. 60. In Bhg. P. (IX 16, 30) and Brh. P. (Pargiter, p. 59) S'unahs'epa's connection with both Ajīgarta and Rchika is given. For S'unahs'epa as a sister's son of Viśvāmitra cf. R. I 61 11, 20; 62, 3; Mbh. XIII 3, 6; Brh. P. X 53-4; Vi. P. IV 7, 17; Brh̥d. P. III 66, 63-4; Devī bhāgavat VII 17.

3. Mbh. I, 111, 1, 3. For adoption of a daughter cf. Dat. M. VII 30, 32, 36, where Nanda Pandit refers to cases of adoption from Padmapurāṇa and Rāmāyaṇa (I 11). Anantadeva (Kane P. V., *His. of Dh.*, Vol. I, p. 449).

4. M. IX 141; M. P. CCII 8, 12.

interpretation.<sup>5</sup> The idea behind this prohibitory injunction seems to select a boy who is, through proximity of contact, known to be possessed of merits. The word sannikrṣtam in the text of Vasiṣṭha is read by many of them as asannikrṣtam and is interpreted to imply the adoption of a distant kinsman or a non-relative.<sup>6</sup> Considering these interpretations of the text of Vasiṣṭha one may reasonably say that adoption of a near kin was not the rule in India.

In Dattakamīmāṃsā, the phrase 'adūrabāndhavam bandhu-sannikrṣtam' is interpreted by Nanda Pandit to indicate the adoption of only a kin. "'Near relative' means a near sapinda. Proximity is two-fold, through common gotra membership and through nearness in point of degrees. Hence, a sagotra sapinda who is the nearest in degrees is the best. In his absence one who is farther off in degrees. Then a sapinda belonging to a different gotra, and ultimately the one who is not one's own sapinda but is a sapinda of one's sapinda, that is, one's sodaka relative".<sup>7</sup> Thus, relatives within seven generations on the father's side should be preferred in the first instance; then a relative within same degrees on the mother's side, and ultimately a relative beyond seven generations on the father's side. In selecting a person from these groups preference is to be given on the basis of propinquity in point of degrees. Nanda Pandit has based his views on the rule of S'aunaka—A brahmin should adopt a sapinda, and in his absence an asapinda. Persons not within the specific groups

5. Mit. p. 214; Aparārka, p. 738; M. Pārj. VIII, p. 653; V. Mit. Sams. p. 209; Sar. Vil. para 370; Bālabhattachārya p. 172. It is said in Kalpataru and V. Rat. (p. 569) that 'a son may be adopted even if his merits and demerits are not (personally) known if he (lives) in the proximity of such of our relatives as the mother's brother.'

6. Cf. Devana (Kane P. V., *Vyavahāra-mayukha*, p. 183)—asannikrṣtam means excluding such near relatives as the brother's son. According to Sar. Vil. (370), asannikrṣtam relates to the prohibition of near relatives, jñātis. Aparārka, p. 739; Kalpataru (Dharmakośa p. 1276).

7. Dat M. (Kane P. V., *V. May.*, p. 184) cf. also V. May, p. 113; V. Mit. Sams pp 209, 210, Nṛsiṃhabhaṭṭa, a predecessor of Nanda Pandit, interpreted the phrase to show that an adoptee should be, in the first instance, a near relative, bandhu; in his absence, a far off relative and ultimately a non-relative (P. Pārj. p. 162).

cannot be adopted.\* S'ākala enjoins the adoption of a sagotra in the absence of a sapinda. In the absence of a sagotra, one who belongs to another gotra, except the daughter's son, the sister's son and the mother's sister's son, should be selected.<sup>9</sup> The view of Nanda Pandit is upheld by his contemporaries and later writers.<sup>10</sup>

The nearest agnatic relative is the brother's son, and a preference of him for being adopted in the first instance is advocated on the strength of a verse of Manu and the Puranic episode of Vaitāla who looked upon the son of his brother, Bhairava, as his son too.<sup>11</sup> In discussing the grounds of priority among the sapindas and sagotras S'aunka's phrase, the boy to be adopted should bear the reflection of a son, putrachchhāyāvaham, is taken as indicative of a rule on the point. Nanda Pandit, commenting on the phrase, writes; "The resemblance (consists in) the capability of being begotten by (the adopter) himself through Niyoga and the like, as (in the case) of a son of the brother, of a sapinda, of a sagotra and the like. Nor is Niyoga impossible in the case of an unrelated (adopter), for the invitation (to a stranger to beget an issue) may take place as it is ordained 'for the sake of seed let any brahmin be invited by (giving him) wealth'. Accordingly, a brother, father's brother, mother's brother, daughter's son, sister's son and the like are excluded by reason of the absence of resemblance to a son. Intending this very meaning it is declared by the sage (S'aunaka) himself in the sequel,—'A daughter's son and a sister's son are ordained to be taken as sons by the S'ūdras; amongst the three regenerate castes, beginning with the brāhmana, a

8. Nīlakantha, V. May., p. 110. In the customary law this emphasis on agnatism does not appear to be much favoured. In the Deccan a sapinda belonging to a different gotra is preferred in the absence of a sapinda of the same gotra within three generations (West R. and Buhler G., p. 1024).

9. Dat. ch. I 11

10. V. May. p. 120; V. Mit. Sams. p. 208; Sam. K. pp. 43, 44, 45; Dh. S. p. 134.

11. Mit. p. 215; Dhāres'vara and Devasvāmī (Sar. Vil. para 392); Haradatta (Ap D. S. II 14, 2); Dat. ch. I 2), 23; Dat. M. II 28; 74; Sam. K. p. 44; S. R. M. p. 769; M. IX 182, 183; cf. V. D. S. XVII 10; Vi. D. S. XV 42; Brh. XXV 90; Kālikā P. (Jha G., *Manu Smṛti*, p. 757).

'sister's son' (and a daughter's son) are nowhere mentioned. In this text also the term sister's son indicates all those not resembling a son, for incongruous relationship is common to them all. And incongruous relationship consists in the incapability of being begotten by the adopter himself through Niyoga and so forth...Similarly a son whose relationship (before and after adoption) would be incongruous should be avoided; in other words, such a son should be adopted as with the mother of whom the adopter can possibly unite."<sup>12</sup>

The first difficulty about this interpretation of the rule of S'aunaka is the vagueness of the expression 'and the like'. It is very difficult to say what ways of begetting other than the Niyoga were in view of the writer. Pandit Bharatchandra S'iromani, a commentator on Datta'kamimāmsā, explains the expression to indicate 'the receipt of wealth' as remuneration for service,<sup>13</sup> but the suggestion does not carry us far. Secondly, the meaning given to the expression, putrachchhāyāvaham, is not supported by him by any ancient authority, legal or historical. Nay, such eminent authorities as Nīlakantha or Kamalākara, who were more or less his contemporaries,<sup>14</sup> have used this text of S'aunaka but have not indulged into such fanciful explanation. This clearly indicates that the rule evolved by Nanda Pandit is arbitrary. As for the principles laid down by Nanda Pandit, he has given, by way of illustration, the persons who should be excluded from being adopted. The daughter's son, the sister's son, the brother, the mother's brother and the father's brother are persons who could not have been begotten by the adopter. Among the females with whom intercourse is forbidden in the Smrtis on the pain of incurring the sin of violating the guru's bed we find the father's sister, mother's sister, mother's brother's

12. Dat. M. V 16-20; cf. also II 30-35. The reading adopted by Sutherland is, yato ratiyogaḥ sambhavati tādṛśaḥ kāryaḥ. Rao Saheb Mandlik (p. 481), however, notices a different reading; yanmātari niyogaḥ sambhavati tādṛśaḥ kāryaḥ. In Dat. ch. II 8 we find this interpretation given to the phrase of S'aunaka but no elaboration that we find in Nanda Pandit.

13. Sarkar G, *Hindu Law of Adoption*, p. 320

14. The literary activity of Nanda Pandit must be placed between 1595 and 1630 A.D., that of Kamalākara between 1610 and 1640 A.D. and of Nīlakantha between 1610 and 1645 A.D. Kane P. V., *His. of Dharmaśāstras*, Vol. I, part I, pp. 432, 437, 440.

wife, father's brother's wife, sister, mother's mother and mother-in-law.<sup>15</sup> So one cannot adopt, besides the persons specifically mentioned by Nanda Pandit, all the first cousins both on the father's and the mother's side, and the brother of the wife. Nanda Pandit (II 108) has referred to the exclusion of the mother's sister's son on the authority of S'ākala, but he does not speak of others expressly. If the specific reference to one of the four first cousins in the text of S'ākala indicates that the others were regarded eligible for being adopted, there is a serious discrepancy between the actual practice and the principles sought to justify it. Again, the persons competent to beget sons are the brother, sapindas, sagotras, a man of the same caste, and a brahmin. Cognates were also looked upon by some as competent for such a service, though Nanda Pandit does not appear to recognise them in his list of agents of procreation in Vaijyanti.<sup>16</sup> But so long as they were recognised as competent by at least some writers, their capacity to beget must be accepted in working out the principle. By recognising persons of a different gotra as fit for being adopted Nanda Pandit has admitted the competency of the cognates to beget, but, by giving the asagotra sapindas within seven degrees priority over the sagotra sapindas beyond seven degrees, the superior claim of the sagotras over the cognates for begetting a child in Niyoga is set aside by him. Though in the text of S'ākala quoted by Nanda Pandit cognates are deferred to all the sagotras, he has mainly relied on the text of Śaunaka for working out the order of preference, and, therefore, the rule of Niyoga, which he later on enunciated in justification of his order, has not been properly observed. Śaunaka lays down that a son should be adopted from one's own caste. This insistence on caste is not in conformity with the rule of Niyoga wherein a brahmin is said to be competent to beget on a woman of any caste. His order of preference is thus partly defective if the principles, he enunciates, are logically worked out. Or, the principles are evolved to justify the exclusion of specific persons enumerated by him.

Nanda Pandit's view that a daughter's son and a sister's son are unfit for adoption is open to serious objections. He has mainly

15. M. XI 59, 171; Yaj. III 231, 232; Vi. D. S. XXXVI 4, 5; N. D. S. XII 73-75; P. S. X 11, 12; cf. also M. II 131 seq.; Vi. D. S. XXXII 3.

16. Jolly J., *Hindu Law of Partition, Adoption and Inheritance*, p. 164

relied for such a view on the said text of Śaunaka and Śākala. But the verse does not occur in that copy of Śaunaka's *kārikās* which was available to Dr. Bühler, nor does it occur in the text of Śaunaka quoted by Nīlakaṇṭha and Anantadeva<sup>17</sup>. It is very probable, as Dr. Bühler held, that there may be two versions of this chapter of Śaunaka. The said text of Śaunaka is given elsewhere as the text of Vṛddha Gautama or of Nārada<sup>18</sup>. The text being thus of a doubtful authority, it is too much to lay down such an important rule solely on its authority<sup>19</sup>. Secondly, in the interpretation of this text Nanda Pandit has rendered *bhāgineya* to include both a sister's son and a daughter's son. Nanda Pandit rendered the word *bhāgineya* elsewhere (II 33) to include a sister's son and a brother's son. The word *bhāgineya* which clearly means a sister's son is thus given a wider meaning, unwarranted by etymology or usage, by Nanda Pandit. The text, properly translated, means: Śūdras (should adopt) a daughter's son or a sister's son. A sister's son is in some places (not adopted as) a son among the three (classes beginning) with the Brāhmaṇa'. In the version of the Śaunaka's text, where the line excluding a daughter's son or a sister's son is not given, the first line reads: "A daughter's son and a sister's son are given (in adoption) even to a Śūdra".<sup>20</sup> The rule allows by direct implication the adoption of a daughter's son or a sister's son even by a brahmin and others. Under the circumstances his interpretation is not valid. Thirdly, while forbidding the adoption of a sister's son, he does not say whether the adopter is a male or female. If the rule is general and as such applicable to both a male and female adopter, we find it

17. J. A. S. B., XXXV part I, pp. 158, 159; V. May. p. 110; Sam. K. p. 49. Anantadeva, however, elsewhere (p. 45) speaks of the exclusion of a sister's son and others from adoption on the authority of Śaunaka, cf. P. Pārj. p. 161.

18. Mandlik V. S., p. 491; Jolly J., *Law & Custom*, p. 162; Sarkar G., p. 327; V. Mit. Sams. p. 210. Dat. M. II 32; Sam. K. p. 43.

19. Śākala also appears to be a very modern authority compared to other Smṛti writers. The fact that such eminent writers as Vijñāneśvara, Aparārka, Mādhava, and Devaṇa do not refer to either of them, while dealing with adoption, is very suggestive in this connection.

20. Cf. the text of Śaunaka in V. May. p. 110. Sam. K. p. 49. The text in Dat. M. reads 'Śūdraistu kriyate' instead of 'Śūdrasyāpi cha diyate'.

contradicted by Nanda Pandit himself when he makes out the case (II 32), from a passage of Manu, that a brother can adopt a brother's son and a sister a sister's son. Thus the authority relied on by Nanda Pandit is very doubtful and relatively unimportant, his interpretation arbitrary and unwarranted, his principle unsound and untenable. As against this, we find that Kamalākara does not speak of excluding either a daughter's son or a sister's son, and Śaṅkarabhaṭṭa and Nīlakaṇṭha justify the practice of adopting a sister's son as completely authoritative<sup>21</sup>. It is allowed in Dattakakaustubha and Dattakamimāmsā of Śrīrāma in case of necessity. Yama, a writer of greater authority than either S'aunaka or Śākala, has upheld the adoption of a daughter's son, 'In the case of a daughter's son and a brother's son the rule with regard to homa and the like does not prevail. (The act of adoption) is complete by a verbal gift alone'<sup>22</sup>. In this passage the adoption of a daughter's son is not only placed with that of a brother's son, which is the best form of adoption, even according to Nanda Pandit, but is said to be completed even without the formality of a homa. Besides, the custom and usages of all Hindu castes and classes allow the adoption of a daughter's son and a sister's son. 'The Pandits of the Poona College on the authority of Saṁskārakaustubha and Nirṇayasindhu admitted the adoption of a daughter's son or a sister's son in default of boys available within the adoptive father's own gotra'. In the South Maratha country and in the Punjab adoption of a daughter's son or a sister's son is allowed with the consent of the kindred of the adopter. The usage in the Bombay Presidency allows it<sup>23</sup>. Their exclusion, therefore, is opposed to the known, recorded and prevailing usages and customs of the people.

It is very pertinent to note here that the daughter's son, referred to as a son of *Putrikā*, was accepted as the best substitute of a son

21. N. S. p. 183; V. May. pp 111, 112; Kane P. V., V. May., p. 108.

22. Yama (Mandlik, p. 483)

23. West R. and Buhler G., pp. 1027 f. n., 1030, 887, 1029, 1038. Mandlik V. S., pp. 474, 478, 487, 488, 493. Cf. Nelson J. H. (Mandlik, p. 474 f. n. 2) 'And several persons who should know, have told me that a daughter's son is commonly, and a sister's son most commonly, taken in adoption.' cf. also Sir T. Strange (Mandlik, p. 487); Mayne J. D. *Hindu Law and Usage*, pp. 109, 110.



by Manu and other eminent writers. In the Mahābhārata King Chitravāhana is said to have given his daughter Chitrāngadā to Arjuna on the understanding that a son born of them shall succeed to him. Nīlakaṇṭha, the commentator on Mahābhārata, records that such a practice still obtains in Southern Kerala<sup>24</sup>. It is very difficult to understand why Nanda Pandit, in the face of such historical background and the sanction of both the customs and opinions of the wise, pleads for the exclusion of a daughter's son and a sister's son, who are the nearest cognates, when he recognises cognates as fit for being adopted. Is it that such an adoption was out of vogue in the land he lived ?

It appears that in the early law it was not thought necessary that a boy to be adopted should be a relative. It is very doubtful whether the early writers ever insisted rigidly on the similarity of caste. The word employed by Manu (IX 168) is equal, *sadṛśa*, which can also mean one who was prized for his merits. Medhātithi has interpreted the word in the same sense showing thereby that caste had not become a rigid consideration even in his days. Though in dealing with the secondary sons, and thereby with adoption, Yājñavalkya (II 128 seq.) apparently speaks of them as belonging to the same caste, the texts attributed to Vṛddha Yājñavalkya and S'aunaka<sup>25</sup> show that adoption from a different caste was not quite unknown, though selection from one's own caste was given greater emphasis. Among later writers Vijñānes'vara quotes the rule of Vasīṣṭha, but he does not refer to the opinion of S'aunaka or S'ākala. It is evident, then, that the question of relationship with the adopter was first dealt with systematically and principles guiding adoption were evolved by Nanda Pandit. The writers on the law of adoption, who followed Nanda Pandit, excluded the persons enumerated by him from being adopted<sup>26</sup>. One really fails to

24. Mandlik V. S., p. 494

25. 'A son belonging to one's caste should be adopted. He offers pinda and inherits wealth. In his absence, a son adopted from a different caste is known to continue the family name'. 'If in some case a boy from another caste is adopted he should not be made to share the wealth ; that is the opinion of S'aunaka'. *Dat.* ch I 15.

26. Nṛsiṃhabhaṭṭa (cf. f. n. 7) referred to the question of relationship with the adopter but not so systematically as Nanda Pandit has done. *Dattakachandrikā*, *Dattakadarpaṇa*, *Dattakakaumudī* and *Dattakamañjarī* (Sarkar G., p. 327).

understand why some of the later writers so rigidly insisted on the exclusion of the sister's son from adoption, when in the early Vedic example of S'unah's'epa we have very probably a striking illustration of such a relative being adopted by a great personality of the time without any opprobrium or protest, and when the Smṛti writers, eminent commentators and digest writers have no objection to it.

When a child is allowed to be adopted from any circle irrespective of his kinship with the adopter, the solidarity of the kindred implied in the injunction that adoption must take place in the presence of relatives loses much of its significance. There are, however, other aspects of the law of adoption wherein the considerations of kinship engage attention. They may now be precisely considered.

Manu (IX 142) writes: "An adopted son shall not take the gotra and the estate of his natural father: the funeral cake follows the gotra and the estate; the funeral offerings of him who gives (his son in adoption) cease". According to Manu, complete severance of the membership of the gotra of an adoptee in his natural family takes place with the act of adoption<sup>27</sup> and is accompanied by destruction of his right to property of his natural father and of his capacity to offer him funeral offerings. Manu has spoken of extinction of the gotra membership, but he has not explicitly said that his sapinda relationship with the natural father also ceases. On the other hand, when he says (IX 181) that "those sons, who have been mentioned in connection with (the legitimate son of the body), being begotten by strangers, belong (in reality) to him from whose seed they sprang, but not the other (man who takes them)", he appears to imply that a son, even when transferred to a different family, retains his connection, more probably his sapinda relationship, with the natural family.

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27. This is corroborated by the fact that S'unah's'epa, who was *bhārgava*, became *kauśika* after adoption (Brh. P. X 64). But, according to Matsya purāṇa (CCII 8 seq.), Kratu, Paulaha and Pulastya, who had sons, adopted the sons of Agastya and they, instead of inheriting the gotra of their adoptive fathers, were known as *āgastyāhā*. This view of Matsya purāṇa is singularly unique. According to Samgrahakāra (S. Pr. p 16), "Those sons like dattaka, kṛita and others, who belong to two parents (dvyaṁuṣyāyanāhā), have to avoid both the gotras as (in the case of) S'aunga-S'aiśiris," (a son begotten by a person of S'unga gotra on the wife of another of S'aiśiri gotra). Evidently an ordinary adopted son left the membership of his original gotra.

Commentators on Manu (IX 142) have merely interpreted the verse literally and have not touched upon the question of his sapinda relationship in the natural family. Aparārka prescribes the cessation of pinda offerings and of gotra and pravara membership in the natural family. Nanda Pandit writes: "The words svadhā and piṇḍa (in the text of Manu) are suggestive of all the rites such as ās'aucha and others in respect of the (natural) father. Therefore the adopted son and his natural father do not observe the rules of impurity for one another." Nīlakaṇṭha, like Nanda Pandit, interprets the text of Manu comprehensively—"Here the words gotra, rikṭha, piṇḍa and svadhā indicate all rites arising from piṇḍa-connection with the natural father and other (relatives.)"—and then enjoins the cessation of them all. "Hence", he observes, "the cessation of connection with an uterine brother, paternal uncle and others is established"<sup>28</sup> Nīlakaṇṭha emphasises this fact of cessation of all connections with the natural father and his relatives in case of a pure-adopted son, and he clearly indicates there the cessation of sapinda relationship. It is evident that Nīlakaṇṭha has been forced to take this view because he wants to establish, with the authority of the s'āstras, that there are two varieties of adopted sons, one who is a son of two fathers and the other who is a pure-adopted son. Bālabhāṭṭa (p.177) also forbids continuation of sapinda relationship with the natural father. "In reality the word piṇḍa refers to sapinda relationship. In referring it to śrāddha there is tautology with the phrase 'svadhā from the giver.' Hence cultured men perform all rites in respect of the adoptee with the gotra of the adoptive father. The sapindas of the adoptive father alone observe impurity for ten days in the event of his (adoptee's) death. They perform his sapindikarana and other (rites) in the family of the adoptive father. Hence, from this word alone the cessation of sapinda relationship with the natural father in case of an adopted child (follows). This should be known to be the opinion of the wise." Bālabhāṭṭa, while apparently agreeing with the view of Nīlakaṇṭha, differs from him in so far as he speaks of the adopted son in general without specification while Nīlakaṇṭha specifically speaks of a pure-adopted son.

28. Aparārka (Yaj. I 53) ; Nanda Pandit (Kane P. V., V. May., p. 190) ; Nīlakaṇṭha, V. May., pp. 115, 117 seq. cf. also S. May. (Gharpure J. R., *Law of Sapinda Relationship*, p. 48) ; Dat. ch. IV I ; S. Pr. p. 13.

In the rule of Sapiṇḍa exogamy enunciated by Gautama (IV 3, 4) the marriageable bride is said to be one who is beyond the seventh degree either on the father's side or on the begetter's. Though Haradatta has restricted the application of this rule to a son begotten by Niyoga, the rule can be taken as a general rule and thus applicable even to an adopted son<sup>29</sup>. In that case it forbids marriage within seven generations in the natural family. "Datta, krīta and other sons have sapiṇḍa relationship (for) seven and five (generations on the father's and mother's sides respectively in the family) of the natural father and membership of gotra with the adopted."<sup>30</sup> Viśveśvara recommends avoidance of five generations on the father's side and three on the mother's in the natural family.<sup>31</sup> According to Dattakachandrikā, a girl who is either a sapiṇḍa or a sagotra of the natural father is not worthy of being a bride. Even Anantadeva, on the authority of his predecessors, insists on the avoidance of gotra and pravara of both the natural and adoptive fathers<sup>32</sup>. It thus appears that for marriage sapiṇḍa relationship with the natural father is said to be the same as before adoption by some of the early as well as the late authorities, though it is sought to be narrowed down by a few of them. A reference to even gotra membership with the natural family is significant. This connection with gotra is sought to be accounted for on the grounds of some sacraments performed by the natural father.

The status and position of an adopted child in his natural family thus appears to be affected by the act of adoption, but he does

29. cf. Sāpiṇḍya mimāṃsā (N. S. p. 207); V. Mit. p. 689; N. S. p. 208; S. May. (Gharpure J. R., p. 49).

30. The text is attributed to Bṛhat Manu in N. S. p. 207 and Sam. K. p. 45 and to Vṛddha Gautama in V. Mit. p. 687.

31. M. Pārj. p. 139; Aparārka (N. S. p. 207); According to Samgraha. kāra (V. Mit. p. 693), 'the adopted sons have sapiṇḍa relationship for three generations with both the natural and adoptive family.' Nāgojibhaṭṭa also appears to conceive of sapiṇḍa relationship for three generations in the natural family when he says, 'A grandson and the like of a pure-adopted son can marry a granddaughter and the like of the (natural) father of the adopted son (S. Pr. p. 16).

32. Dat. ch. IV 8, 9; Sam. K. p. 50; S. Pr. p. 16; N. S. p. 217; Dh. S. p. 137; S. R. M. p. 45.

not cease to be a member of his natural family at least for some of the vital aspects of social life.

As for his status in the adoptive family, in the early law all the writers except Vasiṣṭha place him next to a kṣetrajña son. His position being thus exalted, he is said to inherit the wealth of his adoptive father.<sup>33</sup> According to Vasiṣṭha (XVII 39, 81), however, he inherits the wealth only in the absence of other preferable substitutes. He also holds that 'the sapindas or the subsidiary sons divide the heritage of him who has no heir of the first mentioned six kinds.' Thus the adopted son does not extinguish the right of such near kin as the sapindas of his adoptive father to his property. In Manu<sup>34</sup> the adopted son is called a bandhudāyādāḥ as against the inferior substitutes who are abandhudāyādāḥ. While Baudhāyana and Gautama look upon only the first six of the secondary sons as heirs to the property, Manu (IX 165), like Vasiṣṭha, allows even the last six to inherit in the absence of the first six. The phrase bandhudāyādāḥ must, therefore, be interpreted so as to harmonise with this opinion.

Commentators on Manu, Nārāyaṇa and Kullūka, hold that the first six of the secondary sons inherit the estate not only of their new father but even of his sapinda and samānodaka relatives, bandhus, when there are no legal heirs to inherit them. The last six do not inherit the estate of these relatives, but merely perform funeral rites for them. Rāghava opines that the first six inherit gotra and estate and offer funeral offerings. Others perform the rites as if they are relatives and inherit the gotra and estate in the absence of the first six. Medhātithi maintains that the first six inherit the gotra and estate. Others do otherwise, that is, according to Kullūka, they are neither heirs nor relatives, and Nandana seems to hold the same view. The opinion of Nārāyaṇa and Kullūka was shared by eminent writers before them<sup>35</sup>. Very probably they were

33. B. D. S. II 3, 31; G. D. S. XXVIII 32. Gautama (XXVIII 34) allots only a fourth share to the last six.

34. M. IX 158 seq. The terminology bandhudāyādāḥ and abandhudāyādāḥ has been used in this context by Vasiṣṭha (XVII 25, 26, 38), Nārada, (XIII 47), Yama (Dat. ch. V 3) and Hārīta (V. Mit. p. 620).

35. D. B. (*Principles of Hindu Law*) p. 976; Mit. p. 215; Aparārka, p. 739; Haradatta (G. D. S. XXVIII 33); Viśvarūpa (Yaj. II 36); Mādhava, Vol. III, part ii, pp. 517, 518; Subodhini p. 58; Bālabhāṭṭi (Vay.) p. 58.

led to hold this view because in the Smṛtis<sup>36</sup> all the twelve sons are said to inherit the estate in order. Among the early writers Kauṭilya has very clearly said that 'while an *aurasa* son is an heir both to his father and (his) relatives, one who is born of other is an heir only to the father, *samskarṭṛ*, but not to (his) relatives'. And so has Devala: "Of those (twelve sons) the first six are heirs to the *bandhus* (of the adopter) while the other six of the (adoptive) father alone"<sup>37</sup>. The opinion of Baudhāyana and Gautama is corroborated in the Mahābhārata where the last six are only relatives, *jñātis*, while the first six are *bandhudāyādāḥ*, evidently relatives as well as heirs. It is thus evident that long before the age of commentators the term *abandhudāyāda* had come to be interpreted as a collateral heir. But both the writers, who give this meaning, put the adopted child in the second group of secondary sons. And so do the eminent Smṛti writers. So, even if we accept that Manu employed the phrase *abandhudāyāda* to indicate the adoptee's right to property as a collateral, his recognition only as a relative in the Mahābhārata, his lower rank in the list of secondary sons in the Smṛtis and his representation as an heir only to the adoptive father in the Sūtras, all point to the conclusion that in spite of Manu's favourable attitude to him, he was first recognised as a collateral heir in the age of commentators.

The text attributed to Nārada by Nīlakaṇṭha and to Devala by Nanda Pandit runs: 'Children are brought up like sons in their respective gotras for the sake of religious duties: they are merely participators in the share (of property) and in the funeral cakes'<sup>38</sup>. The specific recognition of the adoptee's claim to the property and his participation in the Śrāddha ritual in the family of the adopter and the use of the word merely clearly indicate the absence of other ties. But can we say on this ground that even affiliation to a gotra membership in the new family is sought to be denied by Nārada? The phrase *tadtadgotreṇa* is not very clear, and Nanda Pandit appears to render it the gotra of the adopter when he says 'by the

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36. Yaj. II 131; Vi. D. S. XV 28,29; N. D. S. XIII 49.

37. Kau. LXIV (Vol. II, p. 41); Devala (Lat. ch. V 15.)

38. V. May. p. 119; Kane P. V., V. May., p. 205.

word mere sapinda relationship is denied as gotra, share (in the property and offering of) pindas are enjoined.' In other texts, one attributed to Vṛddha Gautama and one to Bṛhat Manu, gotra membership in the new family is asserted and sapinda relationship is denied in explicit terms <sup>39</sup>. A passage from Kālikā-purāṇa, often cited by later writers, reads: 'That son on whom, oh king, sacraments upto tonsure are performed with the gotra of his (natural) father does not become the son of others. Adopted and others are sons only if the tonsure and initiation are performed in respect of them in one's gotra: otherwise they are said to be slaves'. Nīlakanṭha does not recognise these verses as valid as they are not found in some of the texts of Kālikāpurāṇa, and so does the author of Dattakachandrikā. The early writers like Vijñāneśvara, Aparārka and Chandeśvara do not refer to these verses even though they quote Kālikāpurāṇa for other purposes. Kamalākara (p.183) quotes the verses but does not comment on them. Anantadeva, following Kālikāpurāṇa, observes that the son in respect of whom sacraments upto the tonsure are performed by the natural father becomes, on adoption, the son of two fathers. But affiliation in the new family appears to be partial, that is, for inheritance and such other rights. According to Kāśinātha, a son adopted from another gotra, before the thread ceremony or after the performance of the initiation rite, has to recite the names of both the gotras in salutation, śrāddha and other functions. But when the adoptive father performs the tonsure and other rites he has to recite the gotra of his adoptive father <sup>40</sup>. Thus the child in respect of whom sacraments previous to the initiation are performed in the original family retains his membership in the natural family. Affiliation to a gotra membership is conceived by some writers to arise only with the performance of the tonsure or initiation in the new family, and the view that affiliation arises with the tonsure is given rationality by the fact that a person is required to keep as many

39. 'Those sons, datta, kṛita and others, who are taken from one's gotra attain, by the rites (of adoption performed), to gotra (sonship), but sapinda relationship is not enjoined (in respect of them).' 'Datta, kṛita and other sons have sapinda relationship with the natural father for five generations (on the mother's side) and for seven (on the father's) and have gotra membership with the adopter'. V. May. p. 119

40. V. May. p. 114; Sam. K. pp. 47, 48.; Dh. S. p. 137.

hairs as his tuft as there are pravara ṛsis in his gotra. Affiliation to the new gotra must, therefore, take place before the performance of the tonsure.

The complete affiliation of the adoptee to the gotra of the adoptive father, that is, his severance from the gotra of his natural father, when the tonsure and other sacraments are performed by the adopter, is spoken of only with respect to certain functions such as salutation, śrāddha, etc. For the purpose of marriage the gotra and pravara of both the families are avoided. As for the avoidance of generations on the basis of sapinda relationship various views prevail forbidding seven, five or three generations on the father's side. These different views are sought to be harmonised on the basis of performance of sacraments. 'If the sacraments upto the initiation are performed in the case of datta, krīta and others with the gotra of the (natural) father they have sapinda relationship for seven generations in that family, and for three generations, arising out of piṇḍas that are to be offered, on the father's as well as the mother's side in the adoptive family. If, on the other hand, the sacraments upto the initiation are performed with the gotra of the adoptive father, then seven generations in that family. But when only the rite of initiation is performed by the adoptive father then for five generations only' <sup>41</sup>. The rule of sapinda exogamy is generally held to be operative even in the case of children of the adopted though Nāgojibhatṭa (p. 16) does not

41. Sam. K. pp. 50, 51; Dh. S. p. 137; S. R. M. p. 453. S. N.D. p. 34 'If the initiation and other rites are performed in case of a child (given in adoption) by his natural father, then the child has blood relationship, anvayānvaya sâpindya, for seven generations on both the mother's as well as the father's side in the natural family. He has equally sapinda relationship through funeral rites, nirvâpya sâpindya, beyond three persons on both the mother's and the father's sides in the adoptive family. But, if the rites in respect of the adoptee are not performed with the gotra of the begetter but by the adopter, then he has sapinda relationship through the funeral rites for five generations on the mother's side and seven on the fathers' Recognition of sapinda relationship for seven generations on the mother's side is spoken of in this text. That is really unique. But it may be noted here that in the manuscript in the Bhand. Oriental R. Inst. relationship is recognised for five generations and Nilakaṇṭha (p. 120), in his reference to this work, also alludes to the same degree. cf. also N. S. p. 208.



approve of such extension. While an attempt is thus made by some writers to extend the circle of sapinda relationship by associating it with the performance of sacraments, sapinda relationship for three generations in the new family appears to be widely approved of <sup>42</sup>. Early smṛti texts denying sapinda relationship, or even gotra membership, in the adoptive family are disposed of as restricting the degrees of sapinda relationship <sup>43</sup>.

It is said in the Śrauta sūtras that a son of two fathers offers pinḍas to both the fathers<sup>44</sup>. In Baudhāyana dharma sūtra a son begotten on a woman by Niyoga is called a son of two fathers and is enjoined to offer pinḍas to both the fathers' Kauṭilya holds that a son begotten on a woman other than one's own wife belongs both to the begetter and the owner of the woman when the begetter has no other son. Such a son will be a son to both the fathers, will follow the gotras of both, offer funeral libations to both, and take possession of the property of both of them<sup>45</sup>. Though Baudhāyana and others consider the kṣetrajā only a son of two fathers, we have no means of ascertaining whether the term was restricted to the kṣetrajā only even in the Śrauta sūtras. If such a restriction was not implied in the Sūtras, we can say that an adopted son offered pinḍas to both the fathers, or recited the names of both over a single pinḍa. In Manu it is said that a son given in adoption does not offer pinḍas to his natural father and his ancestors. Later writers, on the authority of Manu, hold that a son given in adoption is enjoined to offer the pinḍas to his ancestors in the natural family only when

42. According to S. Pr. (p 17), such an opinion was held by Nanda Pandit, Saṅkarabhaṭṭa, Kamalākara, and Anantadeva. In N. S. (p. 208), however, Kamalākara has given as his view sapinda relationship for seven generations in the new family. In S. R. M. (p. 453) such a view is ascribed to the Easterners.

43. Nīlakantha, p 119

44. Ap. Śr. S. I 9,7; S. Sr. S. IV 4,2; Kāt. Sr. S. IV 1,10. cf. also H. G. S. II 4,10,7; V. Sm. S. IV 6.

45. B. D. S. II 2,18,19; Kau. LXIV (Vol. II p. 40); Kṣetrajā is said to be *bedvyāmusyāyaṇa* by Hārīta (Aparārka, p. 734), and Yājñavalkya (II 127) but it is not clear whether Nārada (XIII 23) restricts the term to a kṣetrajā only.

the natural father dies without an issue. The verses attributed to Kārśnājini <sup>46</sup> are instructive for showing how far an adopted child was bound to his natural father in matters of śrāddha ritual. The verses are thus explained by Kane. The sapīṇḍikarāṇa of any one dying in the family of birth should be made with other members of that family by the adopted son and the sapīṇḍikarāṇa of those dying in the family of adoption should be made by the adopted son with others that are dead in the latter family. The sons of the *dattaka* should perform the sapīṇḍikarāṇa of their father (the *dattaka*) with the natural father and the adoptive father, both of whom become their grandfathers. The grandsons of the *dattaka* should perform the sapīṇḍikarāṇa of their father (the son of the *dattaka*) with their grand father (the *dattaka*) and the natural father of the *dattaka*. The great-grandson of the *dattaka* may or may not recite the name of the adoptive father, because the sapīṇḍa relationship extends only up to three generations, i. e., the *dattaka*, his son and grandson are connected by sapīṇḍa relationship with the adoptive father: but the great-grandson of the

46. Nīlakaṇṭha, V. May., pp. 115, 116.

Yāvantah pitṛvargāḥ syuḥ tāvadbhirdattakādayah ।

Pretānām yojanam kuryuḥ svakīyaḥ pitṛbhiḥ saha ॥

Dvābhyām sahātha tatputrāḥ pautrāstvekena tatsamam ।

C'aturthe puruṣe c'hanlastasmādeṣā tripauruṣi ॥

Dattaka and others should associate the dead with so many of their own group of ancestors as are (available). Their sons, on their part, (should associate the *dattaka*) with two (fathers), and on the same line the grandsons with one. In the fourth person there is option; therefore, this pertains to three persons. The verses are very vague, and it is difficult to find their true import. It is shown how the meaning attached to them by the commentators become unintelligible on closer scrutiny. The verses may also mean that the *dattaka* associates his adoptive father with all his ancestors. But so far as his son is concerned, he associates the *dattaka* only with two ancestors in the adoptive family and his grandson with only one. In other words, sapīṇḍa relationship in case of the issues of the *dattaka* extends to three persons only who are competent to receive the full offering. In case of the fourth descendant of the *dattaka* the last person to receive a full pīṇḍa is *dattaka* himself; the adoptive father receives from him only a divided pīṇḍa. It is, therefore, at his option to seek his connection either in the natural family or the adoptive family of the *dattaka*.

*dattaka* is not so connected with the adopted <sup>47</sup>. Kane has interpreted the text following Kamalākara and Nīlakaṇṭha, but the interpretation is not clearly intelligible. The grandson of the *dattaka* performs the *sapindikarāṇa* of the son of the *dattaka* with the *dattaka* and his natural father but not with the adoptive father. Kane observes that "the authorities are not clear whether the adoptive father is to be associated with the natural. But it seems that he is to be so associated". Considering the fact that Nīlakantha and Kamalākara explicitly mention the natural father and thereby imply the omission of the adoptive father, Kane's observation seems to be his own. Furthermore, the great-grandson of the *dattaka* is said to recite the name of the adoptive father, if he so chooses. If the grandson ignores the adoptive father, there is no reason why the great-grandson who has no *sapinda* relationship with the adoptive father should be deemed to recite the name of the adoptive father. According to Kane, the three persons, the *dattaka*, his son and grandson, are the *sapindas* and so the grandson must invoke the adoptive father while the great-grandson may or may not. But when we determine *sapinda* relationship of a person in respect of any family, we must connect him with at least one member of that family. So the grandson's relationship with the adoptive father is in the fourth degree and consequently in this case *sapinda* relationship should be said to extend to four degrees and not to three as Kane argues. On the other hand, if the grandson is to associate his father and the *dattaka* with the natural father and thus to ignore the adoptive father, the presumption is that *sapinda* relationship is conceived within three generations. In other words, the *dattaka*, his son and the adoptive father are mutual *sapindas*. It may be said here that the author has said that *sapinda* relationship extends to three generations. Further, when it is said 'the grandson with one' there is nothing in the text to ascertain whether the one refers to the natural father or to the adoptive father, though in the opinion of Indian writers it refers to the natural father. But the following line, "In the fourth person (the procedure to be followed rests on his) will", appears to suggest that, according to the author, it was the choice of the grandson to perform the *sapindikarāṇa* of his father either with the natural father or with

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47. Kane P. V, V. May., pp. 194, 195. Nīlakantha. p. 117; N. S. p.

the adoptive father. If the explanation of the text is accepted, as it is consistent, it emphasises ritualistically the unity of three as the basis of sapinda relationship. The only difficulty in this explanation is that it ignores the usual procedure of sapindikarāṇa given by Indian writers. Whatever the proper meaning of the text may be, in the Sūtra literature the adopted child is said to offer piṇḍas even to his natural father, irrespective of his being a dvyāmuṣyāyaṇa, and in the text of Kārśnājini the natural father stands more prominent than the adoptive father. Hārīta has also given greater prominence to the natural father by saying 'he should first recite a pravara of the begetter', though his discussion is in respect of a kṣetrajā child<sup>48</sup>. The adopted child thus appears to be not completely severed from his natural family. Secondly, though the rule of sapinda relationship for three generations in the case of an adopted child is not intelligible on the basis of piṇḍa ritual,<sup>49</sup> Indian writers have referred to both sapinda relationship for three generations and piṇḍa ritual as the basis of this sapinda relationship overlooking the contradiction involved therein.

As for the rules of impurities, generally the adopted child is impure for three days on the death of his parents. Similarly parents are impure for three days on the death of an adopted child. The rule appears to refer to the adoptive parents, because it is observed that if the adoptive child is a sapinda then the usual rule of impurity for ten days applies. Marīchi, however, opines that impurity is to be observed by both the former and the latter (parents). When the parents are impure for three days, the sapindas are impure for a

48. M. Pārj. p 608. Viśveśvara, while discussing the procedure of offering piṇḍas in case of a putrikāputra who belongs to both his natural father and his mother's father, quotes R̥ṣyaśṛṅga: 'he should first perform the śrāddha in honour of the maternal grandfather and then in honour of the father'.

49. I have insisted on this interpretation of tripauriṣī and ignored the meaning given to it by the commentators because sapinda relationship has been said to extend to three, five or seven generations by different writers and under different conditions. Three, five or seven generations must be counted in one and the same way. It will be evident that even the counting of five generations will not be intelligible on any procedure of Śrāddha ritual. Sapinda relationship and Śrāddha need not be sought to be harmonised.

day and, according to some, the persons belonging to the same gotra become pure after a bath <sup>50</sup>. Thus a child given in adoption is said to render his parents impure on his death, though the author of *Dattakachandrikā* holds that the rules of impurity in respect of the natural family are not to be observed by a pure-adopted son <sup>51</sup>.

In this detailed analysis of some of the important aspects of social life, we see that a son given in adoption does not completely sever his bonds of kinship with the natural family. In all important social relationships his connection with the natural family is as effective and living as that with his new family. Similarly, his kinship with the members of the new family is sharply distinguished from that of an *aurasa* son. The period of impurity his death would entail, the ancestors who would be satisfied by his offerings and the transmission of this right to his descendants, the circle of prohibited degrees for selecting a proper bride—in all these he does not stand on an equal footing with an *aurasa* son. The fact that the *Smṛti* writers refuse to recognise his *sapinda* relationship in the new family, when read with his limited status in the new family, indicates that his affiliation to the new group was partial.

50. *Parāśara* (*Dat. ch. IV 3*); *Sam. K.* p. 50; *S. R. M.* p. 454; *Brh. P.* (*Aparārka*, p. 737); *Ag. P.* CLVIII 24 seq.; *M. V* 63; *Marīchi* (*S. R. M.* p. 454); *N. S.* p. 371; *Dh.S.p.* 137; *Prajāpati* (*N. S.* p. 371). *Vijñāneśvara* (p. 318) quotes this text of *Prajāpati* for the view that *sapindas* have to observe no impurities but they become pure after a bath. He has taken this view because *Yājñavalkya* (III 25) has laid down impurity for a day for the adoptive father.

51. *Dat. ch. IV I. cf. also Saṅkha and Likhita* (*N. S.* p. 371) 'On the death of sons made impurity, cessation of study (and) performance of water libations are not laid down'. *Nīlakaṇṭha* and *Nanda Pandit*, loc. cit., p. 144.

## CHAPTER V

### INHERITANCE AND SUCCESSION

Some definite relation between the nature and extent of property rights and the organisation of kin has been postulated by some sociologists, and, therefore, the history of property rights among the Hindus in respect of the different circles of kindred recognised by them may now be dealt with.

The Vedic material for a lawyer's law is vague and scanty, there being no scope for such discussions amidst prayers and invocations which were the preoccupation of the Aryan sages. And the references which supply us with incidental allusion to a rule of law are 'very obscure and are made somewhat intelligible by interpretations which seem to be arbitrary and are very unusual, although not peculiar to Sāyana, his explanations being based on those of Yāska.' The Sūtra and the Smṛti literature deals with the law, but it is in the writings of Viṣṇūśekhara and Jimūtavāhana that it has been amplified. Our inquiry must, therefore, begin with the detailed examination of these writers.

The early Sūtra-writers did not go into the details of the descent of inheritance, but specified proximity as the test of preference. "Always to that relative, who is the nearest sapinda to the deceased, the estate shall belong; afterwards a sakulya shall be the heir; then the spiritual teacher or the pupil." The words sapinda and sakulya in the text have presented much difficulty to the later writers of the digests and commentaries in their attempts to bring the text of Yājñavalkya (II 135-36) in harmony with this early law.

The word pinda connotes both the particles of the body and the ball of rice offered to the manes. Manu, while laying down the rule of inheritance, adds a preliminary note: "To three water must be offered, to three the funeral cake is given, the fourth is the giver of these, the fifth has no connection." Baudhāyana (I 11, 9, 10), on the other hand, explains the terms sapinda and sakulya differently: "The great-grandfather, the grandfather, the father, oneself, the uterine brothers, the son by a

wife of equal rank, the grandson and the great-grandson—these the sharers of undivided *dāya* they call sapindas. The sharers of divided *dāya* they call sakulyas”<sup>1</sup>. On the authority of these texts sapinda relationship has been defined in terms of participation in the balls of rice presented at the śrāddha. The person offers rice balls to his three immediate ancestors and lepa to the three immediate ancestors of his great-grandfather. Every man is thus connected with his six immediate ascendants by the offering of rice balls, full or divided. Similarly each of these six ascendants receives from his six lineal descendants the offering of a full pinḍa or lepa. Hence all these persons are connected with the propositus because all of them present in the śrāddhas performed by them at least one pinḍa, full or divided, to the person who invariably happens to be one of the ancestors worshipped in the śrāddha performed by the propositus. Similarly, a person offers three pinḍas to his three maternal ancestors. Each one of them likewise receives pinḍas from his six lineal descendants. Thus, to be precise, the ancestors to whom the ego offers a full pinḍa and all those persons who offer to any one of these ancestors as well as those who offer full pinḍas to the propositus are relatives known as sapindas to the propositus. And those who are thus connected with the propositus by a divided pinḍa are sakulyas. Such a relationship is traced with the wives on the ground that they share the offerings with their husbands. Jīmūta-vāhana is a prominent expounder of this theory of sapinda relationship, and among others of this school may be mentioned Medhātithi, Aparārka and Devaṇṇa.

Vijñāneśvara (pp. 13, 14), on the other hand, defines sapinda relationship in terms of blood particles. “Sapinda relationship arises between two persons through their being connected by particles of one body. Thus the son is connected with his father in as much as the particles of the father’s body have entered the son’s body. In the same way with his grandfather because the particles of the grandfather’s body have entered his body through the medium of the father. So with his mother through the interweaving of the particles of the mother’s body. Thus with his maternal ancestors through the medium of the mother. In the same way even with the

1. M. IX 187; B. D. S. 1 11, 11.

mother's sister, mother's brother and others through the inheritance of the particles of the same body. On the same analogy, even with his father's brother, father's brother's wife and others. The husband and the wife are sapindas because they together beget the body of the son. Brother's wives are sapindas to each other, because they produce the body of sons, severally with their husbands, who have sprung up from one body. Sapinda relationship is, therefore, connection with one body either immediate or through transmission by descent." Viśveśvara, Nilakaṇṭha, Nanda Pandit and others define sapinda relationship in terms of body particles.

Thus there are two schools of Hindu law, that of Jīmūtavāhana basing the law on the theory of spiritual benefit, and of Vijñāneśvara holding up propinquity through blood as a determining criterion. The views of these two jurists and their followers may be considered in the light of the theories they propound.

According to Vijñāneśvara, the order of heirs in the absence of sons or grandsons of the deceased is as follows:— (1) chaste widow, (2) daughter – (a) unmarried (b) married (i) poor (ii) wealthy, (3) daughter's son, (4) mother, (5) father, (6) brother – (a) full (b) half, (7) brother's son, (8) father's mother, (9) father's father, (10) father's brother, (11) father's brother's son. Then follow the great-grandmother, the great-grandfather and his two descendants: then the line of the fourth, the fifth and the sixth ascendants respectively in the same order. Then the descendants, within three generations, of the seventh and onwards till the 13th ascendant inherit in order of propinquity. Finally come the gotrajas, the agnatic relations of the deceased. On failure of the gotraja relations, the bandhus of the deceased, namely his father's sister's son, his mother's sister's son and his mother's brother's son, succeed. Next come similar bandhus of his father and last those of his mother <sup>2</sup>.

Vijñāneśvara counts propinquity on the basis of blood particles. The son and the daughter have the same propinquity in as much as the particles of the body of the propositus himself are shared by both of them alike. Only the consideration of sex will assign priority to the son as compared with the daughter. And so as against all other consanguine relations, the daughter is to have a preferable claim. But the property that devolves on the female



descendants will pass to and be enjoyed by the members of a different family. To prevent the property from passing into another family the sapinda with the same family name are distinguished from those with a different one. Thus amongst the sapinda propinquity is regulated on agnatic principle, and within that circle the amount of blood particles shared with the propositus by respective individuals decides their place in the order. Though Vijñāneśvara's definition of sapinda relationship does not aim at demarcating the agnates from the Cognates, his law of transmission of property has definitely stressed agnatism. In our attempt to understand the line of descent laid down by Vijñāneśvara the difficulty arises on account of the fact that he has not laid down a standard of nearness. It is Nilakaṇṭha who has illustrated one way of doing it and that may be employed here also, taking it to be the traditional Hindu way of looking at the problem.

According to Vijñāneśvara, the brother succeeds only in the absence of the father. One can reasonably ask how the brother can surpass the grandfather? The grandfather is removed one generation above from the father, while the brother is one generation below from the father. Propinquity being the same in both the cases, they should share equally. Dhāreśvara, a predecessor of Vijñāneśvara, refers to this point when he observes, "although on the demise of a father his father and son stand both on an equal footing in point of propinquity, and there would thus be no reason, under the text of Manu [IX 187], for giving preference to one over the other, yet on the strength of the text of the same author, ending with the phrase 'by the brother alone', the order of succession, with reference to nearness of kin, must take its course through the *descendants* only"<sup>3</sup>. It will be evident that the justification advanced by Dhāreśvara is not convincing. It may be said in favour of the brother that he shares with the deceased the particles of the mother and as such his propinquity to the deceased is greater than that of the grandfather. Although the full brother's claim may thus be rationally justified, it does not explain why Vijñāneśvara prefers a half brother to the grandfather.

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3. Dhāreśvara quoted by Sarvadhikari, *Principles of Hindu Law of Inheritance*, p. 337.

If, on the other hand, it be argued that though the propinquity of the grandfather and the brother is same with respect to the father, yet it is not so with respect to the deceased. From the point of view of the deceased the brother is a nearer relative than the grandfather, and in dealing with the law of transmission of property nearness is primarily considered with respect to the *propositus*. Hence the brother is preferred to the grandfather. But, on the same reasoning, the nearness of the father to the deceased as compared with the brother becomes questionable. The brother, like the *propositus* himself, is the reflection of his father. To that extent the brother and the father are equally near to the deceased. But the brother shares with the *propositus* the particles of his mother's blood and in that respect he supersedes even the father in propinquity. He should, therefore, precede the father in the order of heirs. It may be noted here that some of the *Smṛti* writers accept this position<sup>4</sup>. Later writers restrict the application of these texts to certain cases<sup>5</sup>, but the very fact that such eminent writers had to controvert these texts is sufficient to show that the brother's priority to the father was an approved fact at least in some circles. Thus, counting the nearness of relationship in either way, *Vijñāneśvara's* preference of the father over the brother fails to satisfy propinquity through blood as a guiding principle.

The brother's son shares the particles of both the father and the mother of the deceased, though in a lesser degree. The half brother, on the other hand, shares the particles of the father of the deceased only in the same degree as the deceased himself. On what considerations, then, is priority to be determined when they two compete. *Vijñāneśvara* prefers a half brother to a brother's son<sup>6</sup>: a greater number of father's particles counts with him. The mother's particles do

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4. *Saṅkha Likhita*, *Pañḍinasi* and *Devala* (Haradatta on G. D. S. XXVIII 25); *Brh.* XXV 60; *Nandana* (M. IX 185).

5. According to *Sūlapāṇi* (Kane P. V., *His. of Dh.*, Vol. I, pp. 393, 394), parents succeed before the brothers if the property in the hands of the deceased is acquired from his father or grandfather. Cf. also *Aparārka*, p. 743; V. Rat. (Ghose, J. C., *Principles of Hindu Law* p. 609) According to *Vijñāneśvara* (p. 220), the rule refers to a reunited brother.

6. Haradatta (G. D. S. XXVIII 19) prefers a brother's son to a half brother.

not serve as an additional ground for propinquity in his reasoning, as is evident even from the brother's case.

If nearness through blood be determined on such a principle as is enunciated by Nilakaṇṭha the half brother's son and the father's brother must share collectively. But Vijñāneśvara prefers the former to the latter. Similarly the great-grandfather must exclude the father's brother's son, but Vijñāneśvara reverses their positions. In other words, except in case of the brother, the direct line is given preference to the collateral line.

Vijñāneśvara, in spite of his apparent leaning towards the agnates, assigns to the daughter and her son the rank which raises the question why he obliterates his differentiation of cognates from the agnates in this case. Further, he employs the term *samānodaka* to refer to some of the agnatic heirs. The connotation of the term *samānodaka* has no meaning in the theory where blood particle is the sole determinant of sapinda relationship. The term *gotraja*, a person who belongs to the same gotra, is equally questionable. From the time of Baudhāyana onwards, when gotra came to be associated with pravara, gotra implied religious fraternity rather than a group of blood-kin. Inclusion of a *gotraja* to property rights is quite intelligible among the Hindus who have recognised from early times the preceptor and the pupil as heirs in the absence of sapindas, but the employment of the term to indicate agnates is at least inappropriate.

As for the cognates, *bandhus*, he specifically refers to the father's sister's son, the mother's sister's son and the mother's brother's son. It is not made clear whether this particular order is to be followed for determining nearness. If so, the mother's sister's son supersedes the claims of the mother's brother's son. Both of them are related to the deceased through the mother but one has such relation on his father's side while the other on his mother's. Generally the male sex predominates over the female sex, and so the mother's brother's son must have a priority over the mother's sister's son.

The list of *bandhus* is open to other objections. The mother's brother's son is considered an heir to the deceased but not the mother's brother himself. As a matter of fact, the mother's brother is a nearer relative and his son traces his relationship to the



It is evident from the table that the first bandhu of the father is the daughter's son of the great-grandfather. The daughter's sons of the propositus, the grandfather and the great-grandfather find some place as heirs. One does not understand why the daughter's son of the father should not come in as an heir? Again, F. F. Sr. S. is related to the propositus through F. F. F. who is his third ascendant and as such is a relative in the fourth generation. Other relatives in the same generation are the F. M. B. S., F. M. Sr. S., M. F. Sr. S., M. M. B. S. and M. M. Sr. S. If they succeed to the property of the deceased, why should not F. B. D. S., F. Sr. S. S., Sr. S. S., S. D. S., B. D. S., M. B. S. S. and M. Sr. S. S., who are equally relatives in the fourth generation, succeed? As a matter of fact, they are nearer kin to the deceased than those whose claims are expressly recognised. Secondly, when M. F. Sr. S. can be an heir, on what grounds can M. F. B. S., whose propinquity is certainly equal to, and perhaps greater than, his, be excluded? And when F. M. B. S. and others are recognised as heirs, the persons through whom they are related to the propositus must find some place in the order of heirs. But Vijñāneśvara does not appear to have taken notice of their claims.

Vijñāneśvara has taken the unity of three as the effective unity while discussing the claims of collaterals. Even in case of the lineal descendants he has stuck to this unity. Though Kane thinks that in the *Mitākṣarā* putra means son, grandson and great-grandson in matters of inheritance and succession,<sup>7</sup> Vijñāneśvara understands by the word putra sons and grandsons only. "Sons and grandsons take the wealth in their absence, the wife and others: thus it is said (by me)". "The term heritage signifies that wealth which, belonging to others, becomes one's own through the cause of his mere relationship to the owner. The heritage is two-fold: unobstructed and obstructed. The wealth of the father or the father's father becomes the property of the sons and grandsons in the right of their being sons and grandsons; this is the unobstructed heritage" He advocates equal ownership of the father and son in the acquisitions made by the grandfather, whether of land, of mixed property or of movables. In his comment on heirs to the *stridhana*, he writes, "A woman's estate, enumerated above, reverts to her *bāndhavas* when

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7. Kane P. V., V. *May.*, p. 147

she dies leaving neither a daughter, daughter's daughter, daughter's son, son or grandson."<sup>8</sup> If the great-grandson had his claim in the property of his great-grandfather, he would have equally asserted his claim in the estate of his great-grandmother. But Vijñāneśvara keeps silent about his claim even when he enumerates a long list of heirs to a woman's estate. It is evident from these passages that Vijñāneśvara definitely thinks of extension to three degrees only and no further.

Viśveśvara, who is a staunch follower of Vijñāneśvara, also emphasises the unity of three generations in the line of the propositus. It has been observed by West and Buhler that "in Subodhinī... Viśveśvara bhaṭṭa seems to recognise a representation extending to the great-grandson, if not even farther."<sup>9</sup> The text of Subodhinī runs as follows : "(As for the text of Vijñāneśvara) in the absence of a daughter, through the use of the word *cha*, (and as for the text of Viṣṇu in the *Mitākṣarā*) in the absence of continuity through sons and grandsons, (it can be said) that continuity (implies) sons, grandsons and others : their absence means the non-continuity through sons and grandsons. When it exists, that is in the absence of son, grandson and daughter, the daughter's sons, who are in place of grandsons should obtain the wealth." It is not very clear what Viśveśvara means by 'others.' However, in the line that follows, he substitutes 'daughter' in place of 'others.' Again, he says, as he proceeds, "in the absence of sons and grandsons, wife, daughter, daughter's sons, take the wealth (in accordance with the text of Yājñavalkya) wife and daughter. "Naming of son is to indicate one who is the nearest. Hence, in the absence of sons, grandsons, wife, daughter and daughter's sons, the father is the first sharer of wealth."<sup>10</sup> It is clear from both these texts that 'others' stand for the wife and daughter rather than for the great-grandson and further descendants. The passages indicate that the word *putra* is interpreted to imply descendants within three degrees and no further. To quote West and Buhler, "the case of a great-grandson is not otherwise expressly dealt with in Hindu Law book except in a rather obscure passage of *Kātyāyana* quoted in *Vīramitrodaya*". His claim to the property came to be recognised later on in the

8. Mit. pp. 224, 197, 206, 229.

9. West R. and Buhler G., p. 68, f. n. a

10. Subodhinī pp. 70, 72, 73.

ritual cannot be said to have been approved of on all hands. In 'ian Courts "on the same principle as that of the grandson, namely on the doctrine of representation."<sup>11</sup>

When the unity of three is taken as a basic unity to determine the rights of agnates and of some of the cognates, it is not easily intelligible why a new unity, namely the unity of four, must be brought in to accommodate a few more cognates. Again, the father's bandhus include some descendants of the father's mother's father. In counting the prohibited degrees for marital regulation such a wide extension of sapinda relationship has not been accepted. The law of inheritance in no way admits of a larger circle of kin-recognition than that for other social functions such as marriage or *āśauca*. Lastly, Vijñāneśvara has nowhere discussed the claim of descendants beyond the third degree. Descendants of the propositus beyond the third degree are not mentioned as heirs even when such a farthest agnate as a sagotra is specifically referred to.

The analysis of Vijñāneśvara's treatment of the law of inheritance leads to these points: (1) He recognises the effective unity of three generations. (2) He prefers agnates to the cognates, the daughter and her son being the only exceptions. (3) Property first devolves on the members of the household of the ego, that is, his descendants, male and female alike, within three degrees; in their absence, the immediate ascendant and his descendants within three generations inherit in order. In other words, in the case of agnates he traces devolution by lines. (4) His recognition of the cognates is limited to those mentioned in the three traditional verses quoted by him from an unknown source, and, hence, he excludes such an important relative as the sister's son from inheriting.

Viśveśvara and Mādhava follow Vijñāneśvara. Devaṇṇabhaṭṭa also holds the same view with this difference that he recognises the unity of four generations in the line of the propositus. Kamalākara seems to follow Devaṇṇabhaṭṭa in this because he writes: "In default of a son, the grandson takes on the authority of the text, 'debts should be paid by sons and grandsons,' which upholds the

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11. West R. and Buhler G., p. 672; Jolly J., *Outlines of an History of the Hindu Law of Partition, Inheritance, and Adoption*, p. 171. 'There is every reason to suppose that in the Law of Inheritance also, the exclusion of the great-grandson from the narrower community of heirs by Vijnaneśvara and Viśveśvara is intentional and not accidental.'

liability of the grandson to pay the grandmother's debt and of the text of Gautama, 'they who take wealth should pay the debts', because in the text, 'share the residue of their mother's property after paying the debt', the right of the payer of the debts to the estate is indicated. In default of the grandson, the great-grandson takes because of his right to offer a *piṇḍa* on the authority of the text, 'son, son's son, son's son's son, brother or brother's descendant is the offerer of a *piṇḍa*' and because of the text, 'by son, grandson and great-grandson a person attains to heaven.'<sup>12</sup>

Another great work, propounding the theory of blood propinquity, is the *Vyavahāramayūkha* of *Nilakanṭha*. To begin with, *Nilakanṭhabhaṭṭa* has not made clear his view of the connotation of the word *putra*. He quotes a text of *Kātyāyana* which lays down the unity of four generations, and adds the comment, 'this does not refer to an undivided coparcenery but to a reunited one.' While commenting on a verse of *Yājñavalkya* on the devolution of property in a state of reunion he writes: "*Vijñāneśvara*, *Madana* and others (observe) that even this (rule) refers to one who is bereft of son, grandson and great-grandson, because of the general rule that an exception has the same province as the rule to which it is an exception, and because of the fact that the preceding phrase 'of him who dies childless' is to be supplied here." But it is not so, says *Nilakanṭha*. The phrase 'of him who dies childless' is not to be supplied here, because the meaning is clear and because it is not necessary that the sameness of scope should be complete in every respect in both the rule and its exception. "If it is objected that in the absence of supplying the phrase 'of the childless', the absence of supplying the word 'of the dead' (becomes reasonable and then) the verse may not refer to a man who is deceased," then *Nilakanṭha* answers that *Manu's* text (IX 211) is sufficient to tell us that the verse refers to one who is dead. On the other hand, "if the (words be) supplied, then of the two sons, or of a son and a grandson, one of whom is reunited with the father and the other is not, the shares shall be equal in the father's property because the rule of *Yājñavalkya* is not applicable in case of a man having issues." It will be evident from this long passage that *Nilakanṭha* is vague and obscure as regards the concept



of unity. He holds that Vijñāneśvara and ( the author of ) Madana (pārijāta) uphold the unity of four generations, but the last line renders it doubtful whether Nīlakaṇṭha himself also maintains that unity. In his comment on the verse of Yājñavalkya maintaining the equal ownership of the father and son he observes: "The term pitāmaha does not extend to the grandfather only because (by so doing) there would be absence of equal ownership in the wealth acquired by the great-grandfather and other (ancestors)." Similarly, while commenting on Nārada's definition of dāya, he remarks: "By the word sons, grandsons and others and by the word 'of the father' the grandfather and others are referred to"<sup>13</sup>. In both these passages of Nīlakaṇṭha the use of the word son does not help us in precisely determining his concept of unity, though his leaning towards four is quite evident.

Having followed Vijñāneśvara in upholding the claims of the wife, daughter, daughter's son and the parents, he differs radically from him in determining the priority among other heirs. According to Nīlakaṇṭha, the order of heirs is: the full brother, the full brother's son, the sister and then the paternal grandfather along with the half-brother<sup>14</sup>. His reasoning is: the word bhrātr means primarily a full brother and only secondarily a half-brother. It is not proper to suppose that Yājñavalkya, while using the word bhrātārāḥ in the original text, had both brothers in view, because it would be inconsistent to use the word both in its primary and in its secondary meaning at one and the same time. The half-brother, on the other hand, succeeds along with the paternal grandfather because both are equally distant from the deceased owner. The half-brother is the son of the owner's father, the paternal grandfather his father. Both these persons being related in the same degree, they share the property jointly. On the same ground, the great-grandfather, the father's brother and the half brother's son share the property equally. The first is the second ascendant, while the last is the second descendant of the father. The father's brother, being the son of the father's father, is also a person related in the second

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13 V. May. pp. 101, 147, 148, 90, 94.

14. According to Jīmūtavāhana, Mādhava, Devaṇṇabhaṭṭa and Mitramiśra half-brothers follow full brothers, but Haradatta, like Nīlakaṇṭha, maintains that a son of a full brother has a claim prior to a half-brother. cf. G. D. S. XXVIII 19.

degree. Propinquity being the same, they inherit as co-heirs. The sister's claim to the deceased is justified on the ground that she is born in the family of the deceased though she does not belong to that family<sup>15</sup>. The radical change advocated by him is that he sets aside the 'line theory' followed both by Vijñāneśvara and Jīmūta-vāhana in regulating the descent of inheritance. He sticks to propinquity through blood as a sole test to determine priority. Amongst persons having the same propinquity males are generally preferred to females because, according to the Hindu trend of thinking, males have predominatly the blood particles of the father, the females those of the mother.

Nilakaṇṭha begins with the lineal male descendants of the propositus and then goes to the daughter and daughter's son. So far he is logical and consistent in theory and its application. The preference of the full-brother to the grandfather has been explained before, but it does not explain why the full brother's son should surpass the grandfather? Similarly, the full-brother and sister are relatives in the same degree. The full-brother precedes the sister because he is male, but she is excluded even by the full brother's son? Nilakaṇṭha has mentioned the daughter's son as an heir, but he has omitted the sister's son. One fails to account for this omission, unless it be granted that the case of the daughter's son is an exception. Again, if the sister is admitted as an heir because she is born in the family, gotraja, the father's sister, and the father's father's sister are also gotrajas. And if the son of one of such females, namely the daughter, can inherit immediately after the daughter, sons of other females must also be recognised as heirs. But, according to Nilakaṇṭha, the father's sister's son and the father's father's sister's son succeed as bandhus, that is, after the male relatives on the father's side upto the fourteenth degree are exhausted, and the sister's son is wholly excluded. Nilakaṇṭha has thus not worked out the theory of propinquity but has utilised it to justify the rights of some of the persons, namely the daughter's son and the sister. Nilakaṇṭha tries to obliterate the distinction between males and females born in the same family while discussing the claim of the sister, but, after discussing the proper place of the great-grandfather in the scheme of descent, he quotes Manu (V 60) to define sapinda and samānodaka

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15. V. May. pp. 142 seq.

relatives and then discusses the claim of bandhus as defined in the traditional verses. The fact is, he tries to discuss the descent of property on a principle but the old order is too strong to be set aside by him.

— One more serious flaw in *Nilakaṇṭha* is the place assigned to the paternal grandmother. She comes after the brother's son and before the sister. Besides being inconsistent with the theory, her position seems unnatural in the body of the text. *Nilakaṇṭha* assigned priority to the father in preference to the mother: there is no reason why the paternal grandfather should not precede the paternal grandmother. Is it that he made this concession to her purely out of sympathy for her or respecting some old tradition (M. IX 217) ?

*Nilakaṇṭha's* treatment of the law of inheritance suggests the following points: (1) Collaterals within three generations are recognised as claimants to the property. It is not clear whether the same rule of three generations holds good even for the lineal descendants of the *propositus* himself. (2) Actual relationship and not the position in the line settles priority. (3) Superiority of males to females wherever their relationship is 'similar. (4) Instead of following the distinction, made by *Vijñāneśvara*, that some *sapīṇḍas* belong to one's own family while others belong to a different family, he sets up a new line of demarcation, namely *sapīṇḍas* through the father and *sapīṇḍas* through the mother. But he has ignored the sister's son completely and postponed the son of the father's sister to all the *sapīṇḍas* and *samānodakas*. They inherit as *bandhus* rather than as *sapīṇḍas* through the father.

Another important writer on the subject is *Nanda Pandit* who, in his commentary on *Visṇu dharmasāstra*, tries to set right some of the inconsistencies which we noticed in *Nilakaṇṭha*. The sister's priority to the brother's son is recognised by him. The heirs in order are: the full brothers, full sisters, half-brothers uterine brothers, brother's son, sister's son, brother's son's son<sup>16</sup>. His recognition of the sister's son as an heir is singularly unique in the sense that among the advocates of blood propinquity he alone holds this view. But when he comes to the grandfather and the great-grandfather he does not speak of the females, the father's

father's sister, etc., or their sons. But even there he differs from Vijñāneśvara in two respects: firstly, he advocates the unity of four generations in place of three; and secondly, after the great-grandfather he, unlike Vijñāneśvara, brings in sapindas through the mother within four generations before the ascendants in the fifth generation and beyond. Furthermore, he places the grandmother just after the mother, a view that was known to the early writers but was not upheld by either Vijñāneśvara, Jīmūtavāhana, or any of their celebrated followers. Another important feature of Nanda Pandit's view is that he considers the claim of the widow of a pre-deceased son arising along with that of the widow of the owner, and, therefore, she is assigned a place prior to the daughter.<sup>17</sup> Unfortunately the work of Nanda Pandit is not available, and hence it has not been possible to examine his scheme in details. But it seems from what little information we get that he more or less follows Jīmūtavāhana, explaining at the same time his order on the basis of blood propinquity. He does not follow the line theory of Vijñāneśvara nor does he count propinquity on the model of Nīlakaṇṭha. He works out the logical application of the theory of blood-relationship and is not led away by old texts. He maintains the unity of four generations in the case of males and of three in the case of females.

Bālabhāṭṭa recognises males and females alike as heirs. This makes the theory of blood propinquity more logical and bereft of some of the exceptions which his predecessors had imposed. Thus he introduces as heirs the daughter's daughter, sister, brother's daughter and sister's daughter in the proper place propinquity assigns to them.<sup>18</sup> He also recognises the widow of a predeceased son as heir before the paternal grandmother.<sup>19</sup> He is very liberal to females and in all fairness he should have recognised the claim of the widow of a predeceased grandson.

Bālabhāṭṭa recognises the unity of three generations in every line. In the direct descent of the propositus, however, he speaks of the great-grandson as an heir to the property of his great-grandfather.<sup>20</sup> This special consideration of the great-grandson raises the question why Bālabhāṭṭa, when he maintains the unity of

17. Jolly J., *Institute of Vishnu*, p. 68. f. n. 10

18. Bālabhāṭṭi pp. 187, 189, 207, 209, 210.

19. Ibid. p. 211

20. Ibid. pp. 187, 201, 207, 212.

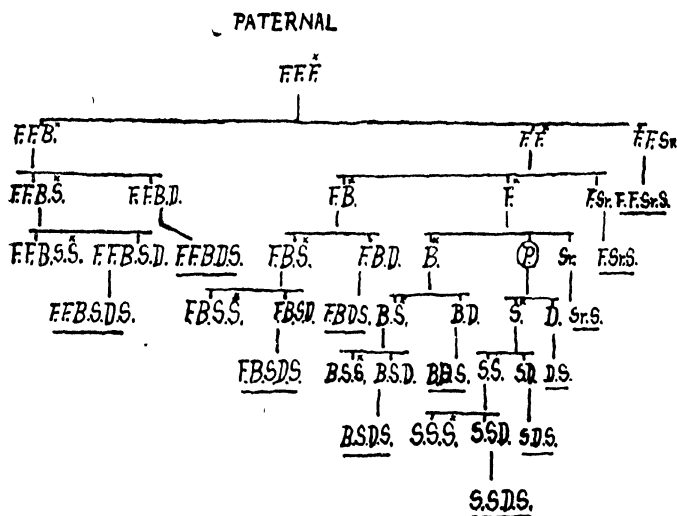
three in the line of all ascendants, should not uphold the same unity even in the line of the *propositus* himself. Again, if the great-grandson is admitted as an heir, a host of persons such as the son's daughter's daughter, son's daughter's son, etc., will have to be admitted as heirs in order to be consistent in the application of the theory of blood propinquity. On the other hand, if we stop at the grandson the only person who is dropped out is the son's daughter and this single omission might have been overlooked casually. Again, Bālabhāṭṭa often refers to sons and grandsons only in his interpretation of the word *putra* in his discussion on the transmission of property<sup>21</sup>. It is very likely that he maintained the unity of three generations in the line of the *propositus* also. On that view the claim of the great-grandson appears to be a special concession.

The law of inheritance based on the principle of religious efficacy implies that inheritance is based on the right to benefit the deceased and is regulated by the degree of capacity to benefit. A Hindu is to offer three distinct sorts of offerings to his deceased ancestors: a full *piṇḍa* which is referred to as an undivided oblation, *lepa*, the wiping off of the fragments which remain on the hands, referred to as a divided oblation, and finally the libations of water. The persons receiving undivided oblations are called *sapīṇḍas*, those receiving divided oblations *sakulyas* and those receiving only libations of water *samānodakas*, *sodakas*, or *sahodakas*. Persons receiving the full *piṇḍas* are generally the three immediate ancestors of a man. Similarly, a man receives a full *piṇḍa* from his three immediate descendants. The three ascendants and the three descendants with the *propositus* in the centre form a group of seven persons known as *sapīṇḍas* to the *propositus*, though mutually they are not so related. Thus a person is a *sapīṇḍa* of those to whom he is bound to offer a *piṇḍa* when alive, and of those who, on his death, are bound to offer a *piṇḍa* to him. Furthermore, a deceased Hindu does not derive benefit only from the offerings which are presented to him, but also shares in the benefit of the offerings made to the persons to whom he himself was bound to offer in his life time. So the group of relatives known as *sapīṇḍas* includes the person who offers the oblations, the persons who receive them, and the persons who participate in any of these oblations. In this interpretation of *sapīṇḍa* relationship distinction

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21. *Ibid.* pp. 202, 204, 206.

between agnates and cognates is obliterated, because a Hindu has to offer pinda to his three immediate ascendants both on the paternal as well as the maternal side. "Therefore, a person who is sprung from the family of the deceased though of a different gotra membership, as his own daughter's son, his father's daughter's son and the like, or who is sprung from a different family, as his mother's brother and the like, is a sapinda as he is allied by a common funeral cake which is being presented to the three ancestors of the mother's family of the deceased owner of the wealth."<sup>22</sup> In view of such wider extension of the term sapinda, persons called sapindas are:





sons, grandsons or great-grandsons, who offer to the *propositus* paternally, are decidedly preferred to the daughter's sons who offer to him maternally. Further, even among nearer kin, those who are competent to offer to both the paternal and maternal ascendants of the deceased are to be preferred to those who can offer only to his paternal ones. A full brother supersedes a half-brother or his own son because the degree of benefit to the deceased in the former case is greater than that in the latter, the full brother being competent to offer to both the paternal and the maternal ancestors of the *propositus*.

A further consideration to determine proximity of relationship to the deceased is the nature and number of cakes offered. The deceased is directly benefitted by the oblations which he receives from his immediate descendants and is indirectly benefitted by the *pinḍas* which his collateral kinsmen present to his paternal ancestors. So, the persons who offer directly to the deceased have a preferential claim as compared with those who offer to his three immediate ascendants. Thus, when a grandson or a great-grandson competes with a full brother, the latter is excluded even when he offers three cakes to the paternal ancestors and three more to the maternal ancestors of the deceased, solely on the ground that the deceased is not directly benefitted through him as through his own grandson or great-grandson. On the same grounds amongst the *sakulyas* descendants of the *propositus* beyond the great-grandson are preferred to the ascendants beyond the great-grandfather. Again, those who offer oblations to a nearer ancestor are preferred to those who offer to a remoter one. That is, a person capable of presenting oblations to the father will defeat the claim of a person offering *pinḍas* either to the grandfather, or to the great-grandfather or to both of them. The brother's son is preferred to the father's brother, even when both of them are competent to offer equal number of cakes, on this consideration.<sup>24</sup> And when the principal recipient is the same in two cases, the number of cakes offered to the ancestors of the *propositus* in each case decides proximity. Thus between a daughter's son and a son's daughter's son the former offers to the *propositus* and his two ascendants while the latter offers to the *propositus* and his father only, and therefore stands higher. On the same reasoning a half-brother excludes a full brother's son.

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24. D. B. pp. 332, 325.



With due regard to these considerations, *sapiṇḍas*, according to proximity of relationship, are :

(1) S. (2) S.S. (3) S.S.S. (4) D.S. (5) S.D.S. (6) S.S.D.S. (7) B. (full) (8) B. (half) (9) (Full) B.S. (10) (Half) B.S. (11) (Full) B.S.S. (12) (Half) B. S. S. (13) Sr. S. (14) B.D.S. (15) B.S.D.S. (16) F. (17) F. B. (18) F.B.S. (19) F.B. S.S. (20) F.Sr.S. (21) F.B.D.S. (22) F.B.S.D.S. (23) F.F. (24) F.F.B. (25) F.F.B.S. (26) F.F.B.S.S. (27) F.F.Sr.S. (28) F. F.B.D.S. (29) F.F.B.S.D.S. (30) F.F.F. (31) M.B. (32) M.B.S. (33) M.B.S.S. (34) M.Sr.S. (35) M.B.D.S. (36) M.B.S.D.S. (37) M. F. (38) M.F.B. (39) M.F.B.S. (40) M.F.B.S.S. (41) M.F.Sr.S. (42) M.F.B.D.S. (43) M.F.B.S.D.S. (44) M.F.F. (45) M.F.F.B. (46) M.F.F.B.S. (47) M.F.F.B.S.S. (48) M.F.F.Sr.S. (49) M.F.F. B.D.S. (50) M.F.F.B.S.D.S. (51) M.F.F.F.

The heirs in order, according to *Jīmūtavāhana*, are :

(1) Son (2) Grandson (3) Great-grandson (4) Widow (5) Daughter (6) Daughter's son (7) Father (8) Mother (9) Brother (full) (10) Brother (half) (11) (full) Brother's son (12) (half) Brother's son (13) (full) Brother's grandson (14) (half) Brother's grandson (15) Father's daughter's son. Succession of the grandfather's and the great-grandfather's descendants including the daughter's son must be understood in a similar manner, according to their proximity in offering the cakes. On failure of the relatives who present oblations in which the deceased participates, the succession devolves on the mother's brother and the rest, who present oblations which he was bound to offer. On failure of the *sapiṇḍas*, *sakulyas*, the lineal descendants within seven generations of the great-great-grandfather and his two ancestors and the three lineal descendants of the *propositus* beyond the great-grandson, inherit. If there be no such distant kindred, the *samānodakas*, those who receive the libations of water, inherit. Then follow the preceptor, the pupil, the *sagotras* and *samānapravaras* respectively.<sup>25</sup>

Comparing the two lists, one finds that the first three heirs are common in both the lists. *Jīmūtavāhana* would assign the fourth place to the widow. He relies upon the text of *Vyāsa* wherein the chaste widow is enjoined to offer daily water libations to her husband

and to devote herself to the worship of the god Viṣṇu and to the observance of religious fasts as a means to save herself and her husband. But the religious merit spoken of in this text is quite different from the performance of *pārvaṇa śrāddha* which is the source of benefit to the deceased. Furthermore, the widow's right to perform the *śrāddha* of her childless husband was not unanimously approved of by the Hindu legislators. Gautama does not allow her to perform it and Vasiṣṭha is not clear about the nature of the funeral offerings which he enjoins the widow to give, six months after her husband's death. Vṛddha Hārīta and Prachetas do not speak of her right to perform the *śrāddha*: and many give her the last place in the list of *śrāddha* performers.<sup>26</sup> Under the circumstances though she is placed next to the son in the list of proper persons to perform the *śrāddha*<sup>27</sup> her participation into the *śrāddha* ritual cannot be said to have been approved of on all hands. Again, the widow performed the *ekoddiṣṭa* and not the *pārvaṇa śrāddha* of her husband. The *śrāddha* implied in the theory of Jimūtavāhana is the *pārvaṇa* and not the *ekoddiṣṭa* rite. This dissimilarity in the nature of the *śrāddha* performed by the widow is significant in the sense that whereas in the offerings made by such persons as the daughter's son or the son's daughter's son the deceased and some of his ancestors participate, the offerings made by the widow satisfy only the deceased, his ancestors having no share therein. Naturally, their claims should supersede that of the widow, and so her place in the order of heirs is illogical.

The daughter's claim is still more inconsistent. A daughter has no competence to offer funeral cakes to her father<sup>28</sup> or to his

26. Medhātithi (Kane P. V., *His of Dh.*, Vol. II, p. 274, f. n. 585); G. D. S. XV 13; V. D. S. XVII 56; Mk. P. XXX 22; Vi. P. III 13, 32 Aparārka, p. 531; N. S. p. 273; S. R. M. p. 1009.

27. Saṅkha 188; Vṛddha Manu, Kārṣṇājīni, Smṛti saṁgraha, Sk. P.; Brh. P. and K. P. in N. S. pp. 271, 273; Laghu Āśvalāyana S. XX 20; Aparārka, p. 415; M. Pārj. p. 402; cf. also Dvaitanirṇaya (Śr. May. p. 33), Nīlakaṇṭha, Śr. May., p. 35.

28. Jābālī, Bharadvāja (N. S. p. 272), and Rṣyaśṛṅga (Śr. May. p. 32) recognise the daughter's competency to perform the *śrāddha* of her father. Jimūtavāhana does not quote any one of them to indicate the daughter's competency to perform the *śrāddha* of her father. cf. also Hārīta 266.

ascendants. Jīmūtavāhana justifies her claim thus: 'A daughter's right of succession to the property of her father is founded on her offering funeral oblations through her son.'<sup>29</sup> But the criterion to determine propinquity is the amount of benefit conferred by the daughter on the deceased and not her potentiality to confer it. And if the daughter can succeed on the ground of potentiality why should the sister and other females who may claim on the same ground be ignored. Again, Jīmūtavāhana prefers unmarried daughters to married daughters. Rationally speaking, the latter are capable of conferring spiritual benefit earlier than the former in ordinary course of events. Her priority may be due to the fact that unmarried daughters belong to the family of the deceased, while the married ones are transferred to the family of her husband. But such extraneous considerations<sup>30</sup> need not override respective capacities to benefit. Lastly, the daughter is a potential source of benefit and not an actual benefactor. Her son, on the other hand, is an active benefactor to the deceased. Her claim against her own son does not appear to be fully justified.

A glance at the list of heirs would show that the son's daughter and the son's son's daughter are potential mothers of issues capable of presenting oblations to the deceased himself. Such being the case, they should, like daughters, have a claim to the family property. Secondly, their male issues who should come as heirs next to the daughter's son in the line of descent are ignored by Jīmūtavāhana. Similarly, the brother's daughter's son, brother's son's daughter's son, father's brother's daughter's son, father's brother's son's daughter's son, father's uncle's daughter's son and the father's uncle's son's daughter's son are omitted in the list of heirs. Of these the brother's daughter's son, the father's brother's daughter's son and the father's uncle's daughter's son are recognised

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29. D. B. p. 275

30. Devannabhata (S. C., Vyavahāra, p. 684), while discussing the daughter's superiority to the father, observes: "Though she is remote so far as capacity to benefit spiritually is concerned, she is not remote in her connection through blood particles. Thus the daughter, who is connected in both the ways, is to be preferred against the father." This shows that the advocates of the theory did feel that the daughter's place in the order of descent could not be satisfactorily explained on the theory of spiritual benefit.

as heirs by the author of the *Dāyakramasaṃgraha*.<sup>31</sup> A few more such as the son's daughter's son, son's son's daughter's son, and brother's son's daughter's son are added by *Jagannātha*.<sup>32</sup> But even then all possible heirs are not exhausted. *Jīmūtavāhana* thus maintains the claims of some who are not proper heirs and ignores the right of some who should, on his theory, come in.

As regards the father, *Jīmūtavāhana* observes: "The father's right of succession after the daughter's son and before the mother is quite just: for the daughter's son offers a *pinda* to the deceased and to two more (ancestors) in which the deceased participates, while the father offers only two *pindas* in which the deceased participates; hence his position is inferior. The father precedes the mother because he offers two *pindas* in which the deceased participates."<sup>33</sup> The priority of the daughter's son to the father justified by *Jīmūtavāhana* is intelligible, but, on the same reasoning, the priority to the brother becomes less convincing. The father offers two *pindas* to the second and third ascendants of the deceased whereas the brother offers three to the first, second and third ascendants. In the scheme of *Jīmūtavāhana* a person offering *pindas* to a nearer ascendant is preferred to a person who offers to the remoter ones. Again, the brother presents offerings to the three maternal ancestors of the deceased. His capacity to benefit the deceased is thus greater than that of the father. The brother should, therefore, precede the father. It may be argued that the brother's right to benefit the deceased arises only after the death of the father, and, therefore, his capacity to benefit is only potential in the lifetime of the father. But it may be noted here that in the list of persons qualified to perform a *śrāddha* of a person the brother very often stands prior to the father<sup>34</sup>.

31. D. K. S. I, 10, 2, 9, 13.

32. *Sarvadhikari R.*, pp. 400g, 680 ; *Ghose J. C.*, p. 930.

33. *Ghose J. C.*, p. 987

34. *Prachetas* ( H. L. p. 175 ); *Laghu Āśvalāyana S.* XX 20, *Kāladarśa* ( N. S. p. 273 ); *Kātyāyana* ( Śr. May. p. 31 ) : *Atri S.* 363; *Vi. P.* III 13, 30; *Brh. P.*, K P. ( N. S. p. 273 ); *B P. M. S. I*; *Smṛtisamgraha*, *Dvaitanirṇaya* and *Nīlakaṇṭha* ( Śr. May. p. 36 ). It is only in *Kārsnājini* ( N. S. p. 273 ) that we find the father placed before the brother in the list of qualified persons.

Jīmūtavāhana has not discussed in details the claims of relatives through the mother. The author of *Dāyakramasaṁgraha*, however, proposes to place the mother's father before the mother's brother<sup>35</sup>. If the father can precede the brother, then the mother's father should precede the mother's brother. But, if that case appears to be objectionable, the priority of the mother's father over the mother's brother cannot be accepted.

As for the remoter heirs, *sakulyas*, persons who share divided *piṇḍa*, are the three persons downward from the great-grandson and the offspring, *santali*, of the great-great-grandfather and others. Amongst these claimants the descendants of the great-grandson inherit first because they benefit (the deceased) by *lepa*. On failure of these relatives, the descendants of the great-great-grandfather inherit in their right of offering *piṇḍas* to those whom the deceased sought to satisfy by offering *lepa*. The great-great-grandfather receives offerings paternally from his son, grandson and great grandson and maternally from his daughter's son, his son's daughter's son, and his grandson's daughter's son. Jīmūtavāhana recognises as heirs only those who present oblations to him paternally and ignores completely those who do it maternally. When such relatives are recognised and recommended in the circle of *sapīṇḍas*, there is no reason for their exclusion in the circle of *sakulyas*. One equally fails to understand the incorporation of persons belonging to the same gotra or reciting the same pravara in the list of heirs after the pupil and a fellow student. The terminology, *ekagotrāḥ* and *ekaprarāḥ*, is not in accord with *sapīṇḍa* and *sodaka*, and bears no association with the *śrāddha* ritual. Besides, they are not known to make any sort of offering, nay their competency to perform the rites under any contingency is not recognised. Their inclusion, being incompatible with the theory of spiritual benefit, must be accepted as Jīmūtavāhana's yielding to the old order of Gautama.

Rāghunandana, the author of *Dāyatattva*, appears to include all the bandhus enumerated in the *Mitākṣarā* as heirs under *sodakas*,

35. D. K. S. I 10, 14. cf. also D. T. XI 69, 70; Sarkar G., *Hindu Law*, p. 484 ; Ghose J. C., p. 929, f. n.

36. D B, pp. 332, 333.

persons connected with the libations of water, in *Dāyabhāga*<sup>37</sup>. It will be evident from the table (on p. 161) that all these persons are not competent to offer water libations and thus benefit the deceased. Their preference over persons with the same gotra and reciting the same *pravara* has no justification. Again, some of these *bandhus* inherit as near heirs, *sapiṇḍas*. Has not Raghunandana bungled up in his attempt to clarify *Jīmūtavāhana* with the help of older texts?

The incongruity in the theory and its practical application in the text of *Jīmūtavāhana* leads us to the conclusion that the principle of religious efficacy is not the guiding principle in matters of succession in the actual scheme of *Jīmūtavāhana*. *Jīmūtavāhana* has not given the bare principles of the theory of spiritual benefit, as he understood it, and left the reader to work out the order of heirs. Rather, he starts more or less with the traditional order of succession introducing here and there some changes especially with a view to incorporate a few cognates as near relatives and, therefore, as near heirs. It is in his attempt to justify the place he has assigned to these relatives that he elucidates the principles of the theory. The principles are thus brought forward to account for something that existed irrespective of them. Under the circumstances, his conclusions are more important than his reasons. The theory, then, may be aptly regarded as a pretext by which *Jīmūtavāhana* sought to fortify his argument in support of the changes made by him in the order of succession<sup>38</sup>. At best, it may be described as a feeble attempt on the part of *Jīmūtavāhana* to base the actual fact of inheritance in the Bengal of his days on an old principle recognised as *shastric*, embodying even some older principles of Aryan or Indo-European social life. And *Jīmūtavāhana* himself does not seem to be blind to his own failure, or else he would not have summed up his whole discussion by saying that although learned men may not approve of his theory, they must admit that the order of heirs as stated by him is the proper one<sup>39</sup>. It may be further pointed out here that mere

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37. D. T. XI 78. One is inclined to take this meaning because he speaks of *sakulyas* in XI 72, of the pupil in XI 77 and of *bandhu* in XI 78. *Bandhu* can evidently be correlated with *sodakas* in *Dāyābhāga*.

38. Cf. *Sarvadhikari* R., pp. 731-733, 750, 751. *Sarkar* G., ch. IX, Sec. 4; *West* R. and *Buhler* G., p. 907; *Mayne* J. D., para 514.

39. D. B. p.337

capacity to benefit the deceased has not been accepted as sufficient to admit a person in the line of heirs, for persons like the son-in-law, the father-in-law or a friend are not thought of as heirs even though their capacity to benefit the deceased is admitted. The evidence of heritable right is, therefore, blood relationship and not spiritual efficacy<sup>40</sup>. It is a wrong presumption of law that inheritance is based on the right to benefit and the order of succession is regulated by the degree of benefit.

Among the Indo-European peoples, relation between spiritual benefit and the descent of inheritance as cause and effect was sought to be established by Fustel de Coulanges, Jevons, Sir Henry Maine and Hearn. In Scandinavian language the same word *erfa* is said to be used both for taking up an inheritance and for offering funeral prayers and rites, and *erf* means both succession and funeral<sup>41</sup>. What the Hindus emphasised is, "he who inherits the wealth is the offerer of a *pinda*"<sup>42</sup>. In other words, "it is not the maxim of the law that he who performs the obsequies is heir, but that he, who succeeds to the property, must perform them". 'He who takes away the wealth of the deceased without performing his funeral rites should, with restraint, observe the vow which is prescribed for violating the order of castes'<sup>43</sup>. The punishment is more of a moral character and does not deprive the offender of the estate inherited by him. The duty to perform the funeral rites is thus made out to be obligatory, but the act of offering *pindas* and the right to property are not conceived as invariable cause and effect. On the other hand, when it is said that "that which is known as wealth is the dirt of men; the sages have prescribed the great purifying requital

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40. Even the author of *Dāyatattva* had to admit (XI 63)--"Therefore a successor to the inheritance is to be determined with reference to two considerations, namely, his relation as regards the offering of oblations and his proximity of birth". *Jīmūtavāhana* (p. 293), too, admitted propinquity as a ground for right along with spiritual benefit. cf. *Sarvadhikari* (pp. 730-731;) 'It would be a great mistake to suppose that *Jīmūtavāhana* excluded altogether the rule of consanguinity from his system of inheritance'. On the other hand, 'the right of succession was grounded on blood relationship and the principle of spiritual benefit merely regulated the order of succession'.

41. Vinogradoff P., *Historical Jurisprudence*, Vol I, p. 228

42. M. IX 142 ; Yaj. II 135 ; Vi. D. S. XV 40.

43. *Vyāghrapāda* (N. S. 274)

thus: funeral offerings and water libations should be given for him";<sup>44</sup> duty to offer the *piṇḍas* appears as a sort of purificatory rite in the interest of the inheritor, or, at best, a moral duty enjoined upon him: it is not a ground for inheritance<sup>45</sup>. This contention may be further substantiated by the fact that it is a duty incumbent on the son to perform the *śrāddha* of his father, though he may not inherit his wealth.

If we try to understand *Jīmūtavāhana* independently of any theory we shall find that he has a definite scheme which differs from *Vijñāneśvara* in certain respects. He starts with the unity of four, unlike the *Mitākṣarā* unity of three, in dealing with the claims of male descendants and, like *Mitākṣarā*, sticks to the unity of three in case of relatives though the females, such as the daughter's son, sister's son, etc. The *propositus*, his son, grandson, great-grandson and the daughter's son form a group which inherits, according to proximity, in the first instance. Preference of the persons related through the males to the persons related through the females in this group is rational and logical. When all the members of the first group, say the household of the *propositus*, are exhausted those of the second group, the father's household, inherit. Then comes the household of the grandfather which, in its turn, is followed by that of the great-grandfather. Members of these different households inherit on the analogy of the descendants of the *propositus*. The significant departure of *Jīmūtavāhana* from *Vijñāneśvara* is his working out of all groups on the analogy of the group of the *propositus*. That is, when *Vijñāneśvara* brings in the daughter's son as a near heir and postpones the claims of the father's sister's son, and the father's father's sister's son as cognates, *Jīmūtavāhana* recognises them all as near heirs and thus readjusts their places. And this being done, his scheme appears to be a logical working out of a pattern. The only exceptions in the scheme are the widow and the daughter whose inclusion must be attributed to some special set of circumstances. If one takes this view, it is possible to argue that in incorporating

44. Cf. N. S., pp. 274, 275; *Aparārka*, p. 436; S. C., *śrāddha*, p. 13.

45. Cf. West R. and Buhler G., p. 891, footnote, for an institution of a *Dharmaputra* in the South whereby a son is ceremoniously appointed to perform the exequial rites, but such a son does not take any share in the property.



these cognates, first referred to by Viṣṇuśara, as near heirs he had to work out the unity of four rather than the unity of three. It is also possible to argue that the main object of Jīmūtavāhana was to incorporate some of the cognates as near heirs. This he could have done, as he has done, under the theory of spiritual benefit because that would bring the cognates in and at the same time will not evoke much criticism from the people, which is very usual when one breaks with the long-dated tradition and that too in matters relating to property. śrāddha being at this time a very intimate thing in the life of the people. If so, he had to start with the unity of four. It is very probable, however, that the unity of four, which was an important unity among the Indo-European peoples, regulated to a certain extent rights to property even among the Hindus in early times though the Smṛti writers and Viṣṇuśara stressed the unity of three, and Jīmūtavāhana worked out his scheme of descent of property on the basis of this old unity.

The lineal descendants of a man, with whom he may be supposed to have close intimacy, are his sons, grandsons and great-grandsons. It is reasonable that the claim of these persons should be given prime consideration in the devolution of his property. The ancestors beyond the great-grandfather are a mere name to him. He had no living contact with any one of them : in all probability he did not see them. On the other hand, some of his maternal relatives are very near to him in his every day routine. In giving these cognates a preferential right as against the descendants of the great-great-grandfather, sakulyas, Jīmūtavāhana stands as a realist dealing with practical issues at hand rather than with theoretical dogma. He wanted to fortify some of the changes made by him in the traditional scheme of the descent of property and he found a plausible justification for it in the theory of spiritual benefit.

Among the other Hindu legislators propounding the theory of spiritual benefit as a guiding principle in the devolution of property, Aparārka deserves more than a passing notice. Aparārka defines sapinda relationship in terms of funeral cakes and bases his law of inheritance on the principle of religious efficacy. "He who offers water, etc., to the three paternal ancestors who happen to be the object of receiving oblations has as his nearer relative the person who, being born in the line of these descendants, offers water, etc.,

to the same persons. Such a person in this case is the full brother, who is nearest to the *propositus* because he offers water, etc., to the same persons (to whom the *propositus* himself offers). His son is a little far off (in propinquity) because he offers (to somebody else) in the *pinda* offered by him to the father. His grandson is even farther off from him because he offers to other persons in the *pindas* given to the father and the grandfather. His great-grandson is still more distant because he presents all the three *pindas* to the persons who are altogether different from persons sought to be satisfied by the *propositus*. Thus the brother, his son, his grandson—these three are the nearer *sapiṇḍas* in the line of the father, and so are the persons in the line of the grandfather and that of the great-grandfather. In the absence of these, the three descendants (beginning with the son) of the great-grandson of the three ascendants inherit the wealth through their *sapiṇḍa* relationship. In the absence of a *gotraja*, the *bandhus*, that is, the sons of the father's sister, of the mother's sister and of the mother's brother inherit".<sup>46</sup>

Aparārka has tried to show the proximity of the brother and his descendants on the basis of *pinda*-offering. But, if that is taken to be the basis of right to property, the omission of the daughter's son of each of these three ascendants by Aparārka needs some explanation. Secondly, in the absence of the three descendants of the first three ascendants property is said to revert to a little far off relatives, namely, the descendants within seven generations, who are also referred to as *sapiṇḍas* by Aparārka. But in defining this wider circle of *sapiṇḍas* Aparārka specifically refers to the descendants of the first three ascendants only, thus leaving the recognition of the relatives such as the great-great-grandson and two further descendants of the *propositus* himself and the three ascendants beyond the great-grandfather and their descendants on its analogy. If, on the other hand, he implies by his specific reference to certain relatives to include these persons in a still wider circle of *gotrajas*, persons belonging to the same *gotra*, his classification must be regarded faulty. Thirdly, such near relatives as the mother's brother's son or the mother's sister's son, who should precede the remoter *sapiṇḍas*, are postponed to such a remote agnate as a *gotraja*. Fourthly, the

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46. Aparārka, p. 745

recognition of two different unities, that of four in case of the *sapiṇḍas* and of three in case of the *bandus*, is anomalous in a scheme based on the theory of spiritual benefit. It is evident that *Aparārka* starts with *piṇḍa*-offering as the basis of right to property but he completely ignores its implications.

## II

The law of inheritance as stated in the book of *Vasiṣṭha* reads : "Let the *sapiṇḍas* or subsidiary sons divide the heritage of him who has no heir of the first mentioned six kinds. On failure of them the spiritual teacher and the pupil shall take the inheritance. On failure of these two the king inherits". *Vasiṣṭha* has not elucidated the term *sapiṇḍa* as used in this context, but elsewhere *sapiṇḍa* relationship is said by him to extend to the seventh person. *Manu* uses the term *sapiṇḍa* for the matter of inheritance for descendants within four generations and employ the term *sakulya* for relatives beyond that degree. *Baudhāyana* likewise distinguishes *sapiṇḍas* from a wider group of relatives called *sakulyas*. *Apastamba*, like *Vasiṣṭha*, employs the term *sapiṇḍa* for the whole group of persons interested in property but he differs from *Vasiṣṭha* in looking upon the daughter as entitled to inherit in the absence of a pupil. According to *Gautama*, "*sapiṇḍas*, persons who belong to the same *gotra* and those who recite the same *pravara* shall share (the estate) of a person deceased without an issue or the wife shall share it, or (the widow) may seek to raise up offspring to her dead husband by her husband's brother"<sup>47</sup>. While all the writers try to comprehend all relatives entitled to share the property under the categories of *sapiṇḍas* or *sakulyas*, persons who belong to the same *gotra* or who recite the same *pravara* are spoken of as heirs in the absence of *sapiṇḍas* by *Gautama* alone. As both the words *sagotra* and *samāna-pravara* are used, *Gautama* may be said to link up *gotra* with *pravara* and thus to employ the term *gotra* here in its spiritual or technical sense. Very often the identity of even one *pravara* is sufficient to constitute *sagotra* relationship. Non-existence of *sagotra* relationship implies, therefore, more or less the non-existence

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47. V. D. S. XVII 81 seq., IV 17; M. IX 186 seq.; B. D. S. I 11, 9 seq; Ap. D. S. II 14, 2 seq.; G. D. S. XXVIII 19 seq.

of samānapravara relationship; and, therefore, cases of devolution of property on persons reciting the same pravara in the absence of sagotras are very few. If so, it may be said that sagotras, and not the sakulyas, constitute the widest group of persons with interest in property in the school of Gautama. In the practical operation of the law, however, one would not know how to determine the order of priority between the persons who belong to the same gotra, as there are hundreds of such claimants, and as such the new extension is rendered meaningless. Yet such a wide group was not as illusory as it is here made out to be in as much as Gautama (XVIII 6) has referred to the same group in his discussion on proper agents for Niyoga. Very probably it reflects Gautama's endeavour to attach greater importance to the religious fraternity as a whole rather than to a few close personages like the teacher and the pupil of that fraternity.

A significant change made by Gautama in the rule of descent of property is the introduction of wife as an heir to her deceased husband. The text, however, is so clumsy that one cannot say easily what was the view of Gautama. If the wife is said to inherit in the absence of other heirs stated before, the sapindas, etc., the recognition of her right to property is shadowy as, there being hundreds of sagotras, she will have hardly any opportunity to inherit the estate. If, on the other hand, Gautama meant that property should either be inherited by the relatives of the deceased or devolve on his widow, her recognition as an heir next only to a son was first suggested by Gautama, the earliest sūtra-writer. And there is nothing to object to this interpretation of the text of Gautama because, if Yājñavalkya places her as the first preferable heir, why could not Gautama at least suggest such a recognition of the widow. It is also suggested that the 'wife' in this sūtra may be construed with the next sūtra so that, according to Gautama, either the property devolves on the relatives of the deceased, or his widow takes possession of it as a trustee of his future child whom she is likely to bring forth. The property thus devolves on the widow not as a widow but as a representative of her husband's issue. Such a view can be traced in Manu as well as in the prohibitory rule of Vasiṣṭha, "No appointment shall be made through a desire to obtain the estate"<sup>48</sup>. But

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48. M. IX. 145, 146, 190; V. D. S. XVII 65.

the particles *vā* after *strī* in the first *sūtra* and after *bīja* in the following *sūtra* clearly indicate that we need not construe the two *sūtras* as one.

In the *Sūtra* period the wife appears to be incapable, with some insignificant exceptions, of acquiring or enjoying any property, real or personal, independently of her husband. *Baudhāyana* (II 3,46) has explicitly denied the right of the widow to inherit on the authority of a Vedic text ( T. S. VI 5,8,2 )-‘Soma could not stand being drawn for women: making ghee the bolt ( they ) struck it: (they) took it when it became destitute of vigour: therefore women being destitute of strength take no portion and speak more weakly than even a wretched man’. The passage admittedly refers to a woman’s exclusion from a portion of Soma offerings and has nothing to do with her property rights. A passage from *Śatapatha brāhmaṇa* ( IV 4,12 ) is equally vague yet pertinent here. ‘Ghee is indeed a thunderbolt: by this thunderbolt, viz., ghee, the gods smote the wives and unmanned them: they (the wives), being smitten and unmanned, neither ruled over themselves nor did they rule over any heritage.’ It is very doubtful whether the original text admits of this translation and supposing it does, the passage contemplates that women have no authority over the heritage, probably to dispose of it in any way they like. The passage need not necessarily be construed to exclude a woman altogether from taking a share of the property. The Vedic evidence being thus of a very dubious character, nothing can be definitely said as to the property rights of women in the Vedic times. In view of this, it is not necessary to interpret *Gautama* as denying the right of the widow as is done by other *Sūtra* writers and *Manu* by asserting unequivocally the right of the *sapindas* to the estate of the deceased. Whether *Gautama* followed the old tradition or struck out a new rule in giving right to the widow for the first time in unambiguous terms cannot be said with certainty, but the fact that such a right was conferred by *Gautama* appears to be unquestionable. And considering the fact that even *Kauṭilya*<sup>49</sup> does not recognise her as an heir, *Gautama* may be said to be the only advocate of the woman’s right among the early writers.

Though woman’s right over her husband’s property is denied, she is, in the early law, given some sort of control over the property by

creating a new category of property called *strīdhana*, woman's estate. It includes gifts before the nuptial fire as well as on the bridal procession, gifts in token of love and from her parents as well as brother. This *strīdhana*, ornaments which may have been worn by her during her husband's life - time and affectionate gifts from her husband descend after her death to her own issues<sup>50</sup>. Women being thus allowed to keep with them some property as their own, Manu may be said to have devised a channel whereby a husband could donate a part of his estate as affectionate gift to his wife. Kautilya, while accepting this new mode of investing women with property, requires that she must lead a chaste life under the protection of her husband's near relatives. This amounts, to a certain extent, to her dependence on the will of her husband's relatives and leaves no free scope for her to live her own life at her own choice.

Yājñavalkya is the first legislator who has categorically placed the wife as an heir next to a male issue. Yājñavalkya also prescribes that if the father, at his will, divides his estate equally among his sons during his life-time he should allot an equal share to his wives even, provided they have not received their *strīdhana*. Similarly, when sons divide the patrimony, after the death of their father, they should assign to their mother an equal share.<sup>51</sup> It is not clear whether the share was allotted to the widow or widows only if they were deprived of their *strīdhana* or even otherwise, though both Vijñāneśvara and Aparārka are inclined to the former view. According to Vyāsa (Aparārka p. 730), only those widows who had no sons were entitled to the share. In these passages of Yājñavalkya a man looks to the interest of his wife or wives as much as he looks to the interest of his sons. This recognition of the widow's interest by Yājñavalkya was conditional on her chastity.<sup>52</sup> Ahe widow is recognised as a near heir by 'all the prominent

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50. M. IX 194, 195, 200. cf. Ap. D. S. II 14, 9.

51. Yaj. II 135, 115, 123.

52. Yaj I 70. Kātyāyana (Nīlakaṇṭha, pp. 137, 140, 141), Hārīta and Prajāpati (Nīlakaṇṭha, p. 137), Vṛddha Manu. This insistence on chastity is found in all later works too. Mit. p. 220; Aparārka, p. 742; Nīlakaṇṭha, p. 137.

Smṛti writers except Nārada.<sup>53</sup> The question is whether her right of succession, when thus admitted, was limited in any way with respect to the nature of property she inherited or her dominion over the property inherited. "(The widow) having taken all the movables and immovables, all metals, liquids and clothes should manage to perform the monthly, six monthly and yearly śrāddhas. She should honour her husband's father's brother, elders, daughter's son, sister's son, mother's brother, guests and (other) women (wives of the husband?) by *kavya*, the material set apart for the pitṛs, and *pūrta*, charitable objects."<sup>54</sup> Another text, attributed to Bṛhaspati enjoins: "When the husband is separated the widow, after his death, gets the wealth of various kinds such as pledge, etc., excepting the immovables. Even when the share is made out and even when the widow is chaste she is not entitled to the immovables."<sup>55</sup> It is difficult to harmonise two entirely different views, both being attributed to the same legislator. Later writers have attempted to seek harmony<sup>56</sup> by

53. Vi. D. S. XVII 4; Hārīta, Prajāpati, According to Vyāsa (Haradatta on G.D.S. XXVIII 19) she gets only 2000 paṇas out of her husband's estate. Woman is said to inherit in her own right in Sākuntala (Act VI); Jaimini recognises a woman's right to inherit the property of her husband. Mitter D., pp. 278, 279). N. D. S. XIII 49-51 Śaṅkha Likhita, Paiṭhīnasi, Yama, Devala do not approve of her high position as heir, and Vṛddha Hārīta does not recognise her right to inherit. Kane P. V., *His of Dh.*, p. 78; Ghose J. C., p. 978; V. Hārīta VII 258.

54. Bṛh. XXV 50. The text is attributed to Bṛhaspati by Jīmūtavāhana (p. 231) and Aparārka (p. 741) : Devanabhaṭṭa (S. C. p. 675), Mādhava (p. 524) Pratāparūdradeva (Sar. V. 508), Nīlakanṭha (p. 137) and Mitramiśra (V. Mit. p. 627) attribute it to Prajāpati. The text, as given by Devanabhaṭṭa and Mādhava omits women. Does it mean that some of the near relatives of the husband, as enumerated here, were sought to be pleased by the widow, inheriting the whole estate of her husband, by performing śrāddhas of her husband and spending a part of the property in such charitable objects as building temples, digging public wells or constructing public parks?

55. Bṛh. XXV 53,54; Nīlakantha, p. 138.

56. The widow does not take the immovables if she has no daughter (to inherit them after her) ; S. C., Vyavahāra, p. 292. This rule applies to a woman married in the āsura form of marriage; M. Parj. p. . The text forbids the sale, etc., of immovables by the widow without the consent of (other) heirs: Mādhava, Vol. III, part ii, p. 536; According to Sar. V. (510), the wife shall take the whole of what belongs to her husband, however small, movable as well as immovable, mortgaged and of every other kind. cf. 532. Elsewhere (515) it is said, the immovables being the main source of maintenance of the descendants, *santāna*, and being (as such) depending on the capacity to have issue, the woman, bereft of (issues), even when chaste, does not get immovables, even when divided. Vijñāneśvara, Halāyudha and Laxmidhara do not refer to the latter text of Bṛhaspati.

either denying the authoritative nature of the latter text or by giving explanations which are evidently arbitrary if not always fanciful. Very probably, once the widow's interest in her husband's property came to be accepted, a further step was taken to define this interest in the widest terms but interest in immovable property was not so easily conceded. Kātyāyana, a later jurist, observes: "A chaste woman, on the death of her husband, gets his share: (but) she has no right, during her life time, to dispose of it by charity, mortgage or sale. Nīlakanṭha interprets this rule of Kātyāyana to forbid the widow to make gifts, etc., to bards and others but not to prevent the widow from disposing of property in her charge for unseen purposes, i. e., for spiritual purposes.<sup>57</sup> In another verse Kātyāyana enjoins: 'When the husband dies unseparated, the widow is entitled to food and raiment or she gets (her husband's) share of property for life time.' Apparently the verse implies that the widow gets either maintenance or life interest in the share of her husband. In the earlier Smṛtis we find Nārada laying down the rule that when one of the members of a reunited coparcenary dies his share passes to the other members of the coparcenary and his widow is entitled to maintenance, provided she is chaste<sup>58</sup>. Others<sup>59</sup> before him have spoken of the share passing to the surviving coparceners without any reference to the widow. Uterine brothers and sisters, and not the widow, are said by Manu to claim the share of one, deceased without

57. V. May. p. 138 cf V. Mit pp. 626-27. cf. also Kātyāyana (Sar. V. 521) 'A childless widow, faithful to her husband's bed, devoted to vows, restrained, should enjoy (her husband's share in the joint property) as long as she is alive; afterwards the heirs get it.'

58. N. D. S. XIII 24-26. The two verses (25 and 26) have been so interpreted because, as the later commentators argue, they immediately follow the verse (24) where Nārada deals with reunited coparcenary. They may also be taken independently in view of the fact that Nārada, while discussing the descent of property, does not refer to the widow at all. These verses, therefore, lay down that the widows, being incapable of inheriting as heirs, are entitled to maintenance when chaste. The interpretation accepted here, however, seems to be more probable.

59. G. D. S. XXVIII 28; Yaj. II 138; Vi. D. S. XVII 17.



an issue, in what is very probably the joint-estate<sup>60</sup>. Thus Nārada appears to have been the only writer before Brhaspat and Kātyāyana to plead for at least a maintenance to the widow in the property which is of the nature of, though not strictly, joint property. Kātyāyana went a step further in assigning to her an interest to the extent of her husband's share in the joint property. The opinion of the later writers that Kātyāyana assigned to the widow as much of the share as is necessary for living a comfortable life and for the performance of vows and pious acts like obligatory and occasional religious observances<sup>61</sup> cannot be accepted, because the text is so clear in its expression of her claim to the entire share. The fact that her interest even in immovables is discussed in a text which has been accepted by all eminent writers to have such a validity as not to be discarded as unauthoritative or insignifi-

60. M. IX 211, 212 'If the eldest or the youngest (brother) is deprived of his share, or if either of them dies, his share is not lost. His uterine brothers having assembled together shall equally divide it, those brothers who were united with him and the uterine sisters'. These verses are little unintelligible and confounding. In the verse 210 Manu deals with brothers reuniting after partition. Commentators have consequently taken these verses to deal with reunited coparcenary. On the other hand, verse 211 tackles a probability which has no bearing with a reunited coparcenary and the verse 212 explain how 'the share is not lost.' The confusion arises from the expression 'brothers reunited' in the verse 212. Does it mean that the share of a brother, died childless, in the joint property is divided, according to Manu, by his uterine brothers, irrespective of their living undivided or divided, his brothers living together and uterine sisters? It may be noted here that Nārāyaṇa does admit that according to some these verses refer to the division of estate of one who dies before partition. In Vi. D. S. XVII 17 a uterine brother is said to take a share of his uterine brother. According to Visṇu, the property of a divided coparcener devolves on his widow, daughter, father, mother and brother respectively. This devolution of property on the uterine brother must, therefore, be in respect of some one else but a divided coparcener. Can it not be with respect to joint estate? According to Viṇṇāṇesvara (p. 226), amongst the reunited coparceners, the estate of one dying childless falls to the (reunited) uterine brothers only, the reunited non-uterine brothers having no simultaneous claim on it. When reunion is said to take place with the father, brother and father's brother, preference shown to the uterine brother is a little out of tune. But in the next verse (Yaj. II 139) a uterine brother, even when not reunited, is said to take the estate in preference to a reunited coparcener, who does not happen to be a uterine brother. Reading two verses together, reunion is not as much ground for interest in property as the fact of being a uterine brother. The uterine brother thus appears to have the first preferential claim on the property of a person down from the time of Manu.

61. S.C., Vyavahāra, p. 678; V. Mit. p. 654.

cant further proves that in the later part of the Smṛti period the widow's interest in the family property was much wider than at any other period in the history of Hindu law. As for her dominion over the property she was not allowed to dispose of it in any way she liked. She could use it for her daily needs as well as for any pious acts, but she could not transfer her interest in it to anybody else by gift or inheritance: after her death the property reverted to the other heirs of her deceased husband. It is, perhaps, with such an end in view that Kātyāyana has enjoined that the woman who is likely to destroy the property (in her charge) does not deserve the wealth (of her husband)<sup>62</sup>. These rights are, however, conceded to the widow provided she keeps faithful to her husband's bed and is devoted to the services of the elders of her husband. <sup>63</sup>

Coming to the age of commentators, the earliest commentator is Asahāya whose work was not unfortunately available to me in entirety so as to enable to know definitely his views on the widow's right to property. Yet from his comment on some of the verses of Nārada<sup>64</sup> some idea may be formed. "When a sonless widow takes the property of her husband, she has to pay (his) debt. Or when she is unfit and when the coparceners take the property, then he who takes the inheritance pays the debt". "If the widow, who has no strīdhana, takes to another man with the property left by her husband, the property is not taken by the second husband. To that paternal wealth the sons are entitled." "Acts done by the wife, daughter, daughter-in-law and the like females are invalid. If done, they should be regarded as not done, especially gift and sale of house and field." "That which is given to the wife by her husband, she can enjoy or give away as she likes, excepting house, field and other immovable property." From these passages it appears that the widow inherited

62. V. May. p. 140 'She who is bent upon doing acts of ingratitude, who is shameless, who destroys property, who is unchaste, does not deserve to get the share.'

63 Kātyāyana (V. May, p. 140) "(A widow) deserves to get the apportioned share if she is intent on serving (her husband's) elders. If she does not serve them she is to be given food and raiment,"

64. Ghose, J. C., p. 44 (4) (6) (7) (8). That the widow was recognised as an heir by Asahāya can be substantiated by another passage from him "The wealth of a childless Brāhmaṇa went to the teacher, then to the teacher's son, then to the teacher's widow, the pupil, pupil's son, pupil's widow (one after another) and then to the fellow-student." (Sar. V. 608)

the wealth of her husband, dying childless, provided she was chaste. Further, her rights over the immovables at least were restricted to enjoyment only, gift or sale being expressly denied. This limitation imposed on her power of disposal of immovables extend to the donations made to her by her husband through pleasure. Viśvarūpa allows the widow to inherit not in her own capacity but merely as a representative of a son she is likely to bring into existence. Śrīkara allows the widow to inherit when the property is small. Medhātithi does not comment on Manu's verses dealing with inheritance. Yet from Kullūka's comment on Manu (IX 187) we learn that he forbade the widow receiving a share. This opinion of Kullūka appears to be right when read with Medhātithi's comment on Manu (IX 146). His contention that the daughter inherits only if she is a putrikā (M. IX 130) also supports this reading of his views on the subject. Dhāreśvara allows the widow to inherit if she submits to Niyoga. The view of Dhāreśvara is also shared by Halāyudha, Saṃgrabakāra and the author of Pārijāta. Bālarūpa, who may be the same as Bālaka, holds that the widow succeeds to the property of her husband.<sup>65</sup> Thus, in the main, the widow's right to her husband's estate was denied by early commentators and some of the Smṛti writers of that period. Whenever it was admitted, it was circumscribed by definite limitations. That the widow's right to the estate of her husband was not generally admitted before Vijñāneśvara becomes clear from the long discussion he enters into before laying down her right to property.

Vijñāneśvara has not clearly expressed his views, but he seems to recognise a woman's absolute right over the property she inherits from her dead husband. In the elaborate discussion he enters into to contest various opinions on the subject he has nowhere spoken of any limitation in respect of the woman's right over the property. Again, while defining strīdhana, Vijñāneśvara looks upon the heritage as a variety of strīdhana. Similarly, the share which a woman gets when her husband divides the property in his life time is transmitted after her death to the heirs to her strīdhana.<sup>66</sup> On the whole, then, we are not far wrong in assuming that Vijñāneśvara recognises the widow's absolute right over the property of her husband.

65. Kane P. V., *History of Dharmasāstras*, Vol I, pp. 257, 258, 260, 275, 283, 296; J B B. R. A. S., 1925, p. 213; Mit. p. 219; S C., Vyavahāra, pp. 309, 686; Haradatta (G. D. S. XXVIII 19); Mitter D., *Position of Woman in Hindu Law*, p. 464.

66. Mit. pp. 217 seq., 228.

Jīmūtavāhana recognises the widow's right to succeed to the property of her husband, whether it is divided or not. He discusses various texts where mere maintenance is given to the widow and concludes that it is in respect of the wives other than the *patnī* who participates in the observance of religious duties that food and raiments are prescribed by the law. Evidently the *patnī* is entitled to the entire estate of her husband and such a right accrues to her with marriage. As regards the dominion of the widow over the property she is said to enjoy it only, a gift, mortgage or sale of it being denied. After her demise, daughter and other heirs to her deceased husband take the estate and not the heirs to her *strīdhana*.<sup>67</sup> In view of these two limitations her right to property implies mere enjoyment of it for her use. This enjoyment, writes Jīmūtavāhana, is the satisfaction of daily needs and the bare necessities of life. Luxury in any form is denied to her. Thus woman's right is of a very limited character in *Dāyabhāga*.

Devanṇabhaṭṭa holds that "the immovable being a source of maintenance to the members of the family in succession, *santati*, only those women who have issues are entitled to them. In the absence of progeny, even a chaste woman does not inherit the immovables, though her husband be separated." Mādhava understands that the denial of her right over the immovables in the text of Brhaspati refers to her inability to sell them off without the consent of other heirs. It is said in *Vīramitrodaya* that *Viśveśvara* does not regard the text of Brhaspati denying the woman's right over the immovables as authoritative. Even if the text is genuine, it relates, in his opinion, to a woman married according to the *āśura* and other unapproved forms of marriage. *Kamalākara* recognises the right of the widow over both the movables and immovables of her husband, if she is separated from the joint household. *Kamalākara*, *Mitramiśra* and *Nilakanṭha*, however, hold that she has power to alienate even the immovables for such purposes as may be looked upon as contributing to the spiritual merit, besides the cases of necessity.<sup>68</sup> The Easterners hold that the widow can

67. D. B. pp. 259, 260; Ghose J. C., pp. 978, 979, 982, 983.

68. S. C., *Vyavahāra*, pp. 676, 677; Mādhava, Vol. III, part ii, p. 536; Sar V. para 509, 535; *Vivādātāṇḍava* (Ghose J. C., p. 1146); cf. also Sar. V. 53; V. Mit., Vy., pp. 626, 627; V. May. p. 138.

enjoy for life the immovables, but she has no right to alienate the property without the consent of other heirs.

According to Jolly, 'when the remarriage of widows and the Niyoga were abolished, the widow's right to inherit seems to have developed by the successive stages indicated in the commentary on Gautama.'<sup>69</sup> Looking to the historical evolution of the widow's right to property and of Niyoga we find that Niyoga was not completely unknown when the widow's right to property came to be recognised, and that when Niyoga was almost out of vogue her right to property came to be challenged. West and Buhler, while speaking of the nearer propinquity of the wife as arising from 'her joint creation of the invisible benefits which spring from the fire oblation and the rest,' opined that 'their right grew out of the developed system of ancestor worship through their capacity to produce sons who could sacrifice to their father's manes. The widow's right grew out of her participation in her husband's domestic sacrifices.'<sup>70</sup> It may be pointed out here that Manu seeks to associate the claims of some of the nearer agnates with their capacity to benefit the dead, but he does not recognise the widow as an heir, though the mother is so recognised by him. Other Smṛti writers who have advocated the widow's right to property have not sought for association between inheritance and spiritual benefit. At a later stage, when ancestor worship was fully developed, widow's right came to be denied and when it was again conceded by Viṣṇuśekhara it was conceded to a chaste widow without indulging into any association between her right to inherit and her capacity to benefit the dead ancestors. Moreover, the developed system of ancestor worship explains the claim of a son of an appointed daughter but cannot satisfactorily explain the inheritance passing to a daughter and not to a daughter's son, a situation which we find in the law of the Smṛtis. Association of the widow's right with the developed system of ancestor worship is not happily borne out.

As for the early evidence in respect of the daughter's right to the family property the R̥gvedic passage ( III 31, 1, 2 ) is very obscure and only made somewhat intelligible 'by interpretations which seem to be arbitrary, and are very unusual, although not

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69. Jolly J., *Hindu Law of Inheritance and Partition*, p. 194

70. West R. and Buhler G., pp. 90, 420.

peculiar to Sāyana, his explanations being based on those of Yāska'. The passage, as translated by Wilson, runs; 'The sonless father, regulating ( the contract ), refers to his grandson, ( the son ) of his daughter, and relying on the efficiency of the rite, honours (his son-in-law) with valuable gifts; the father, trusting to the impregnation of the daughter, supports himself with a tranquil mind. ( A son ) born of the body does not transfer ( paternal ) wealth to a sister. He has made (her) the resceptacle of the embryo of the husband: if the parents procreate children ( of either sex ), one is the performer of holy acts, the other is to be enriched (with gifts)'. According to Yāskāchārya, the first verse speaks of a sonless father who stipulates with his daughter's husband to appoint her as his son for discharging the duties of offspring. The second verse enjoins that the bodily son does not leave wealth for his sister. If the mothers have engendered offspring, a son and a daughter, the son and the heir becomes the procreator of children and the other is brought up and given away ( in marriage ) to another person.<sup>71</sup> The passage is translated a bit differently by Mrs. Iravati Karve. 'The ruling Vahni, wise, respecting the laws of truth, came to a grandson through his daughter: like a father rejoicing in his daughter's pourings sped (to her) with an eager mind. The son did not leave his inheritance to his brother'.<sup>72</sup> Valenkar thus explains the passage: father Dyaus went with a passionate mind to his daughter, Uṣas, dropping his semen on her. The wise Agni, in order to set aside Uṣas' claim for an equal share from Agni in the name of the child born to her by incest, went to his sister's new child, taking it under his care. The bodily son, Agni, did not desire to give any share of the paternal property to his sister Uṣas, as a guardian of the new child, Agni's brother.<sup>73</sup> The passage, as a matter of fact, describes in a poetic way the birth of fire. It has been, however, interpreted to explain some of the social facts belived to be once existing, and in so doing some are led to read in it the father's incest with his daughter and a person's share in the family property as adjusted with his brother born

71. Nir. III 4, 6; Kane P. V., *Vedic Basis of Hindu Law*, pp. 4, 17, 21.

72. A. B. O, R. I., Vol. XX, p. 93 with f. n. 2; cf. also Ludwig (Griffith, *Hymns of the Rig Veda*, part 1, p. 348, f. n. 2) 'the bodily son (of Dyaus or of the heavenly waters) did not transmit his inheritance (that is, sacrifice) to a brother.'

73. J. U. B., Vol. III, No. 6, pp. 6, 7 with notes

of such an incest. Yāskāchārya may be equally accused of reading his own meaning in these verses, and in so doing he may have been influenced by the views of his time. But considering the fact that he flourished in an age when the Vedic traditions may have been living traditions his interpretations are to a greater extent reflective of those traditions and hence more reliable. The passage being obscure, the R̥gvedic evidence for the right of the daughter in the family property remains vague.

In Nirukta Yāskāchārya opened his discussion with a plea in favour of the daughter. The wise man honouring the process of procreative sacrifice holds that both children have the right to inheritance without distinction. This view is illustrated by two verses: 'Thou art produced from each and every limb: thou art engendered from the heart itself. Verily, thou art (my) very soul named son: may he live a hundred years.' 'In the beginning of the creation Manu, the self-existent, declared himself that, according to law, inheritance belongs to both the children without distinction.' Durgāchārya elucidating the text observes: the process of procreative sacrifice in the birth of a daughter is the same as in that of a son. The ceremony and the sacred mantras for the celebration of the garbhādhāna ceremony are the same for both the son and the daughter<sup>74</sup>. Yāskāchārya, then, gives the view which opposes the daughter's right to inheritance as she is abandoned, as soon as she is born, given away and even sold. The third view, given by him, appears to concede right to property only to a brotherless girl who is appointed by her father as his son to render the duties of offspring and to offer the funeral cakes to him. Yāskāchārya is personally inclined to this view. A son generally does not give wealth to his sister. But when there is no son, the daughter may be appointed and as such she is entitled to the family property.<sup>75</sup>

74. It may be pointed out that in the Gṛhya sūtras ceremonials are developed which recognise difference in the procreation of a son as opposed to that of a daughter. G. G. S. I 22, 24; A. G. S. I 31, 1; P. G. S. I 15, 1; 16, 18.

75. Nir. III 4-6, Cf. also Yāska's derivation of the word dubhīṭā, 'A daughter is (so called because) it is difficult (to arrange) for her welfare, or she fares well at a distance, or (the word) is derived from *duh* to milk.' The last derivation, from the root *duh*, has been controverted by modern linguists and culture students. Cf. A. B. O. R. I., Vol. XX, p. 94, f. n. 1.

As for the verse of Manu,<sup>76</sup> which is the main stand for upholding the right of the daughter to inherit, it is not traced in the extant text of Manu Smṛti. Manu's view on the subject, as can be gathered from the extant text of Manu Smṛti, is: 'A person who has no child appoints his daughter so that her son may perform his funeral rites. A son is even (as) oneself, a daughter is equal to a son. While the daughter who is one's ownself lives, how can another take his wealth? The separate property of the mother is the share of the unmarried daughter alone: the daughter's son shall take the whole estate of a person dying childless. In this world there is no difference, properly said, between a son's son and a daughter's son because their father and mother both spring from his body. But if a son is born after the appointment of a daughter, the division must be equal, for there is no right of primogeniture for a woman. If per chance the appointed daughter dies without a son, the husband of the appointed daughter takes the estate without hesitation.'<sup>77</sup> It is evident that Manu never thinks of a daughter as a co-sharer with her brother in the family estate. Only in the absence of a son, the daughter's son is said to inherit provided he has left his natural father and reverted to his maternal grandfather, as his grandson, for performing his obsequial rites. The property is invested in the daughter not as a daughter but as a source of securing such a grandson. Property once vested in her becomes her property, even if she fails to give a grandson, and descends to her husband. If this is the view of Manu, which he has elaborately propounded, the verse, attributed to him in Nirukta, loses its significance. One can, therefore, say that when the daughter's right to inheritance came to be first discussed it was upheld in respect of the daughter who was regarded as a son by the father for

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76. It is proposed that the verse may be translated otherwise: 'At the time of creation of pairs Manu said that all sons without preference shall share the property according to the precepts of the sacred law.' According to Durgāchārya (Nir. p. 219) the verse loses its importance because in a conflict between a Vedic injunction and that of a Smṛti the Vedic rule supercedes the rule of a Smṛti. I need not comment on these.

77. M. IX 127, 130, 131, 133, 134, 135. Bühler, following Kullūka, translates the verse 133 bit differently. 'Between a son's son and the son of an (appointed) daughter there is no difference, neither with respect to worldly matters nor to sacred duties: for their father and mother both sprang from the body of the same (man)'



discharging obsequial duties. Considering this limited range for the recognition of a daughter's right in the post-Vedic literature and a very doubtful recognition of her right to property in the obscure Vedic passage, it may be reasonably concluded that daughter's right to property as daughter was not categorically recognised before the time of Āpastamba. This is corroborated by the fact that Gautama, (XXVIII 17) who was very probably the older Sūtra writer, does not speak of daughter but of putrikā as an heir to a sonless father. This becomes further corroborated by the fact that when brothers divide the paternal estate, sister is not said to receive any share, but the brothers are asked, on pain of excommunication, to give severally portions out of their shares to the unmarried sisters.<sup>78</sup>

When we come to Āpastamba (II 14,2 seq.) we find in clear terms the daughter's right to the property of her father admitted, when there are neither the sapindas nor the teacher, nor a pupil to inherit it, the first two for their own use, the last to use it for religious works for the benefit of the deceased. Āpastamba has taken a great lead in recognising the claim of a daughter as daughter, but the place assigned to her makes the recognition more theoretical than of any real value.

Kaṭīya is the first and the only authority to recognise her claim along with the son. 'The property of (a person) possessed of issues (should be shared) by sons or daughters born of approved forms (dharmīṣṭha) of marriages. In their absence, the father if he be alive; then the brothers and brothers' sons.'<sup>79</sup> The fact that Kaṭīya looks upon the daughter as a co-sharer with her brother is very suggestive. This was the view held, at the end of the Vedic period, by a section, as is clear from Nirukta. Is it too much to infer from this that the daughter's right to the family property was once recognised, however old we may not say, and it came to be first

78. M. IX 118

79 Kau. III 5 (Vol. II, p.32), It is pertinent to note here that, according to Kaṭīya (III 20, Vol. II, p. 114), relation between brother and sister was as close as that between father and son, husband and wife, mother's brother and sister's son, teacher and student, for moral and material support. If any one of the two of a pair among these five abandons the other when neither of them is an apostate he should be punished with the first amercement.

refuted in clear terms by Yāskāchārya by restricting its application to a special variety of daughter called putrikā.

Nārada allows the daughter to inherit in the absence of a son, legal or secondary, and as a basis of this right he refers to the capacity of both the son and the daughter to continue the lineage of their father. In the absence of daughters property devolves on sakulyas, bāndhavas, and a member of the caste in order of preference.<sup>80</sup> Other Smṛti writers admit the daughter as heir only in the absence of the widow who is said to inherit the property of a sonless man.<sup>81</sup> 'A daughter, like a son, springs from each member of a man; how then should any other mortal inherit the father's property while she lives?' Is it not strange that Bṛhaspati (XXV 56), thus postulating a daughter's equality with a son and thereby her claim to property immediately after a son, also speaks of the widow as an heir intervening between a son and a daughter, because 'in the revealed texts, in the traditional law and in popular usage the wife is declared to be half the body (of her husband) equally sharing the outcome of good and evil acts.' It is evident that these writers are to be relied upon more for the order of heirs they advocate than for the justification they give for the order.

Commentators and writers of the Mediaeval period tried to set the clock back by refusing to recognise the daughter as heir to a sonless man. Viśvarūpa, Śrīkara, Dhāreśvara, Saṃgrahakāra, Devaśvāmī, Devarāta, interpreted duhiṭā as putrikā<sup>82</sup> and thus reverted to the state of things in the times of Manu and Dharmasūtras. Vijñāneśvara very pertinently attacked their interpretation as 'invented in the craze of their ignorance of the established doctrine of all the authoritative works, and emphatically asserted the right of the daughter

80. N. D. S., XIII 49-51

81. Yaj. II 135; Vi. D. S. XVII, 5; Kātyāyana (Sar. V. 538); Par. IX 130; Bṛh. XXV 55 seq. Before accepting Bṛhaspati's view on the subject one must remember that at other place (verses 60, 63, 66, 67) where he explicitly refers to the wife, brother, father or mother as heirs he does not mention the daughter as heir.

82. Kane P. V., *Hts. of Dharmasāstra*, Vol. I, pp. 260, 267, 277, 280; M. IX 187; Yaj. II 135; S. C., Vyavahāra, pp. 684, 686; Sar. V. 555; Asahāya's view on the subject is not known, but in the passage quoted in f. n. 64 he has spoken of a pattern wherein the widow has a place but not the daughter. Though the evidence is not conclusive one can guess that Asahāya, too, like his immediate successors, did not uphold the claim of the daughter.

to inherit. Relying on the analogy of the transmission of a woman's estate to her daughter in the early law of Gautama (XXVIII 24) Vijñāneśvara enjoined transmission of property first to the unmarried daughters and, there too, to the indigent. Vijñāneśvara has not discussed the nature of the daughter's dominion over the property inherited by her. It cannot be said that it was mere life-interest. Though we have no evidence to show whether the daughter had the right of disposal over the property she inherited, the property in her charge is said to devolve on her heir, namely, her son, after her death. Vijñāneśvara is perhaps the first eminent authority to speak of devolution on the daughter's son. In the law, as laid down in the Smṛtis,<sup>83</sup> property is said to devolve on the father, sakulyas, or brothers in the absence of a daughter, and not on the daughter's son. Though Brhaspati is said to have held that 'as her father's wealth becomes her property, though kinsmen be in existence, even her son becomes the owner of his mother's and maternal grandfather's wealth,' it is very likely, in view of the verse preceding it in which he speaks of an appointed daughter, that by a daughter's son he implied a son of an appointed daughter.<sup>84</sup> Vijñāneśvara has also quoted authorities to substantiate the claim of the daughter's son, but the authorities refer to a son of an appointed daughter. The two situations being entirely different, Vijñāneśvara may be rightly regarded as the first exponent of the heirship of the daughter's son. The very way in which he is introduced by Vijñāneśvara bears this out. The particle *cha* in the text of Yājñavalkya is said to refer to a daughter's son<sup>85</sup>. No stretch of imagination

83. Yaj, II, 135; Vi. D S. XVII 6; N. D. S. XIII 51; Kāt, 927. Minor Smṛti writers like S'āukha, Likhita, Paiṭhinasi, Yama, Devala have never referred to the daughter's son.

84. Brh. XXV 58. cf., however, verses 65, 66 'In the absence of a son the widow inherits; in her default a uterine brother. In his absence the co-heirs, dāyādāh; afterwards, the wealth goes to the daughter's son.' Here daughter is not spoken of as an heir, and the daughter's son, as a cognate, is said to inherit when there is no agnatic heir.

85. Cf. Jimūtavāhana's reasoning. As the term son in the phrase 'who departed for heaven bearing no son' includes male issues down to the great-grandson, since they are all equally the givers of a funeral offering, so the term comprehends the daughter's son because he also is the giver of a funeral offering... Otherwise the plural number in which the word daughter is used would be meaningless. (D. B. p. 283) It is interesting to note here that Bālaka who, according to Kane (pp. 284, 286, 290) was a Bengal writer preceding Vijñāneśvara by a few years, held that, respecting the text of Yājñavalkya, the daughter's son's claim to the property should be at the end of the series. (D. B. p. 282)

will convince to accept this rendering of *Vijñāneśvara* except one sees in such interpretations the practice of the ancient law givers to seek Vedic and Śāstric authority for any change they advocated in the old precepts with the change of time, provincial peculiarities or logical reasoning. P. V. Kane has opined that *Dhāreśvara*, *Bhojadeva* and *Jitendriya*, who preceded *Vijñāneśvara* by about 50 years, allowed the daughter's son's right to succession. In the absence of the original texts I have not been able to verify whether they speak of a daughter's son or a son of an appointed daughter. But from the way in which Kane, following *Dāyabhāga*, has referred to the view of *Jitendriya*<sup>86</sup>—*Jitendriya* held the daughter's son entitled to succeed after the daughter, just as *Viśvarūpa*, *Bhoja* and *Govindarāja* did'—one can see that very probably these predecessors of *Vijñāneśvara* had in view the son of an appointed daughter. If this interpretation of *Vijñāneśvara*'s view is accepted, the inference that it implied daughter's absolute right over the property is strengthened, though not absolutely established<sup>87</sup>. The inference suggested here may, however, be contended on the ground that if the property was vested in the daughter absolutely and that it devolved on the daughter's son as her heir, it cannot revert back to the father and brother of the original holder after his demise. The view of *Lakṣmīdhara*, who succeeded *Vijñāneśvara* by about fifty years and whose influence is said to be very great on the Bengal and Mithila writers, and especially the latter, is particularly significant here, as it confirms the line of argument adopted here. He writes : 'Although the estate which goes to a daughter is obstructed, it obtains the nature of unobstructed heritage at the time of its devolution on the daughter if there is a daughter's son in existence.' 'As in the case of the father's heritage his son's appropriation of the heritage is bound up, and the son is proprietor in his father's wealth

86. Kane P. V., *Ibid.*, p. 283

87. It may be noted here that in *Dāyabhāga* the daughter is said to have life-interest in the property and the daughter's son's right to the property does not arise through the daughter but through his capacity to benefit the deceased himself and as such through his standing as a near kin to the deceased. But in *Mitākṣarā* his claim cannot be established as a near relative, because he being a cognate, the father, brother and other agnates have decidedly prior claims on basis of their proximity to the deceased. It only proves that *Vijñāneśvara* intended to be liberal to the females and very probably wanted to invest them with absolute control over the estate inherited by them but he realised that he was far ahead of his times, he knew his limitations and that is, perhaps, why he gave a very sketchy treatment of such an important problem *Lakṣmīdhara* (Sar. V. paras 632, 639, 644, 646, 653-56,)

by reason of his sonship: so in the case of the daughter and the rest - if her issue in the shape of a son is in existence, his proprietorship is by his sonship.' 'Here some say—though the property goes to a daughter's son, it goes to the mother and the father, when the daughter's son is not alive, and not to his son. The ancients do not agree with this: the conclusion has been established by those knowing the practices laid down in the three Vedas that the estate of the daughter's son passes, in his absence, to his son. Therefore, when it goes to a daughter, it passes on to the daughter's son: and if he has a son in existence, his estate casts glances at him also. But there is this speciality, namely, if there is no one alive down to the daughter's son, it does not pass on to the daughter's son's son, but always reverts to the mother and the father.'<sup>87</sup> It may be added here that it is possible that the inclusion may be due to the operation of entirely different set of circumstances. While Vijñāneśvara's attitude is thus of a dubious character, Jīmūtavāhana has expressly stated that the daughter's dominion over the property is limited and is of the same nature as that of the widow.<sup>88</sup>

Among other females recognised by the Smṛti writers as heirs, the mother and the paternal grandmother are specifically mentioned. According to Manu (IX 217), the mother shall obtain the inheritance of a son (who dies) without leaving an issue, and, if the mother be dead, the paternal grandmother shall take the estate'. The view of Manu need not to be taken to hold good in respect of the order in which these females inherit, though Saṁgrahakāra, Dhāreśvara, Devaṇṇabhaṭṭa and Nanda Pandit uphold the claim of the paternal grandmother immediately after the mother<sup>89</sup>. The general consensus of all the writers on Hindu law is to postpone the claim of the mother so long as any of the heirs upto the father is capable of inheriting it,<sup>90</sup> though some of the later writers advocate the mother's preference over the father<sup>91</sup> and some try to look upon them as conjoint heirs<sup>92</sup>.

88. D. B. pp. 269, 284.

89. S. C., Vyavahāra, pp. 693, 699; Kane P. V., Ibid., pp. 258, 275; Supra, p. 169.

90. Kau. III 5 (Vol. II, p. 32). He does not speak of the mother. VI, D. S. XVII 6; Bṛh XXV 60; Kātyāyana 927; Devala (Aparārka, p. 741); D. B. p. 285.

91. Sar. V. 566, 572; Viśvarūpa, Mit.

92. Saṅkha (Aparārka, p. 741); Aparārka, p. 744; Lakṣmīdhara (Sar. V. 628).

As for other females, nothing has been said till we come to Nīla-akṇṭha who is the first to recognise the sister as an heir: a few more females are recognised by Nanda Pandit and Bālabhaṭṭi.<sup>93</sup>

### III

The father was the head of the family and as such he controlled the family property. As regards the father's control over this property Macdonell and Keith observe: "The passages all negativate the idea that the property of the family was legally family property: it is clear that it was the property of the head of the house, usually the father, and that the other members of the family only had moral claims upon it which the father could ignore, though he might be coerced by his sons if they were physically stronger."<sup>94</sup> In the Vedic literature we have two instances where the father apparently appears to ignore the claims of his sons. Viśvāmitra adopted Śunaḥśepa as his heir and successor even when his own sons were alive. When they disobeyed him in this act, he cursed them. Manu, when he partitioned his property, is said to have excluded his youngest son Nābhānediṣṭha.

The episode of Viśvāmitra does not clearly indicate whether the exclusion, referred to, is in respect of succession to office or inheritance. As the text runs, when Śunaḥśepa asked Viśvāmitra how he, being an Āṅgīrasa, can become his son, Viśvāmitra replied: "Thou wouldst be the eldest of my sons: thy offspring would hold the highest place: accept my divine inheritance: unto this I invite thee." And he asked his sons to accept his superiority. Those who disobeyed were cursed by him; others who accepted his will, saying 'we accept what our father agreeth to,' were rewarded. Thus, fifty sons of Viśvāmitra accepted the control of Devarāta who was introduced into the family by Viśvāmitra with the words 'as inheritance from me shall he obtain you and the knowledge which we know'. Proceeding further we hear that Devarāta was granted both inheritances, the overlordship of the Jahnus and the sacred lore of the Gathinas. From this long passage from Aitareya Brāhmaṇa (VII 17, 18) it appears that Śunaḥśepa or Devarāta, as the eldest son of Viśvāmitra, became the leader of his fifty sons as well as the overlord of Jahnu, and inherited his divine

93. Supra, pp. 167 seq.

94. V. I., Vol. I, p. 351

knowledge, the peculiar achievement of the family of Viśvāmitra. This special choice of a gifted person for spiritual heritage on the part of Viśvāmitra in no way points to the father's absolute control over the property with his privilege to exclude anybody he likes from sharing it. Whether as the eldest he ruled over the family and controlled its property is something that is not definitely said in the passage and, therefore, cannot be dogmatically asserted. Again, Viśvāmitra is an erratic personality in the Hindu mythology and his act may be an exception rather than a normality.

As for the episode of Manu, Roth's opinion<sup>95</sup> that there never existed either a Nābhānediṣṭha or a Manu should be discarded, because irrespective of their historical personalities the tradition in itself is significant for cultural history. The interesting fact about this tradition is that while in the version of Taittirīya saṃhītā (III 1, 9, 4) Manu is said to have excluded his son, in the version of Aitareya Brāhmaṇa (V 14) his brothers, who divided the property, did not give him his share, as he was then living the life of studentship. This makes the situation entirely different. Again, in both the versions Manu is said to have given to him some divine lore whereby he succeeded in obtaining cattle and property from the Āṅgīrasas and thus made himself prosperous. He being amply compensated by his father for his exclusion from the paternal estate, exclusion has hardly any significance.

The cases where the father is supposed to ignore the claims of a son do not really suggest such a power on the part of the father. There is also a passage in Aitareya Brāhmaṇa<sup>96</sup> which, while not directly dealing with patrimony, may be profitably utilised. While discussing the possibility of depriving the Rākṣasas from their share in the sacrifice the passage enjoins: "He who deprives a person entitled to a share of his share, him he (who is deprived) punishes. If he does not punish him then (he punishes) his son or grandson: but he does punish him." In view of the evidence collected here one would hesitate to accept the view that the other members of the family only had moral claims upon it which the father could ignore.

95. Muir J. J., *Original Sanskrit Texts*, Vol. I, p. 192

96. A. B. II 7. Kane (*Vedic Basis of Hindu Law*, p. 20) has associated this passage with the exclusion of a person from his share in the patrimony to which he is entitled.

It is very probable that on the death of the father or in his life time the eldest son,<sup>97</sup> or any other son,<sup>98</sup> became the head of the family and as such controlled the property. There are also passages which indicate that the father divided the property among his sons probably, but not always, when he grew old.<sup>99</sup> There is also an indication that brothers divided the wealth in the life-time of the father. But nothing is said about the shares, whether they were equal or disparate. Only when the gods and Asuras are said to divide the property of their father Prajāpati, they are said to divide it equally.<sup>100</sup> At the same time we find here and there cases of partiality shown to one or the other son by the father,<sup>101</sup> but we have no means of ascertaining the persons who were more often its recipients. It may be that the dearest son may be no one else but the eldest. It is clearly hinted in some of the early texts that the eldest enjoyed superiority over his younger brothers on account of his seniority.<sup>102</sup> Viśvāmitra adopted Devarāta as his eldest son and as such he was entitled to share his heritage; Uddālaka Aruṇi bestowed his spiritual heritage upon his eldest son. A younger brother cannot set up the domestic fire while his elder brother has not done it, nor can he be consecrated for Soma sacrifice before his elder brother. A Brahmin who wedded before his elder brother was married is a sinful

97. T. S. II 5, 2, 7 'Therefore (people) establish their eldest son with wealth.'

98. P. B. XVI 4, 4,

99. R. V. I 70, 10 (O Agni) men take wealth (from you) as from an aged father'. J. B. III 156 (J. A. O. S., XXVI, pp. 61-62). According to Kāṭhaka Samhitā (XXIX 5) 'if two sons fight the father himself will pacify them by allotting to each one of them his own share.' T. S. III 1, 9, 4, 5; A. B. V 14.

100. S. B. I. 7, 2, 22; III 2, 1, 8.

101. S. B. V 4, 2, 8, 9; K. S. XI 3; A. S'r. S. II 3, 13; P. B. XVI 4, 4; Keith, A. B., *Religion and Philosophy of the Vedas & Upanishads*, p. 318.

102. A. V. VI 112 with Bloomfield's comment thereon. T. S. VII 2, 7, 1; 5, 8, 3; K. S. XII 7; XXI 7, 14; XXX 3; M. T. B. VII 6, 6; A. B. IV 25; M. S. IV 1, 9; V. SI XXX 9; T. B. III, 2, 8, 11; Ch. U. B. III, 11, 5, 6; S. S'r. S. II 2, 4; L. S'r. S. II 11, 3; Kau. S. XLVI 26, 28, 29; Keith A. B., *Ibid.*, pp. 357, 364. cf. Mbh. XII. 90, 10; G. D. S. XV. 18; B. D. S. IV 6, 7; V. D. S. XX 8 seq.; M. III 154, 171, 172; XI 61; Yaj. I 223; III 235.



person and he is to be excluded from dinner in the honour of the manes. In order to secure the happiness for the whole of the year, the first born, the leader of the family, performs the twelve-day sacrifice. Names of the sons are recited at the Tṛtīyasavana in order of seniority, 'the younger does not overstep the elder'. The householder enters his new home, when complete, with his eldest son and wife. A passage in the R̥gveda (I 170,2) seems to imply that Indra had a share in the sacrifice due to him as the eldest brother, and, hence, when it was offered to the Maruts, he took offence against the offerer. The sense of the passage is far-fetched, and it cannot be definitely maintained that the eldest had his privileges as early as the R̥gveda. But by the time of the Brāhmaṇas and other Saṃhitās the eldest son had acquired some religious or socio religious privileges.

As regards his preference in the property rights, apart from these religious and socio-religious privileges, a passage in the Taittirīya saṃhitā (II 5,2,7)—By means of it (full moon rite) he (Prajāpati) established his eldest son, Indra. Therefore, they establish their eldest son with wealth—is interpreted by the Sūtra writers to give a special portion to the eldest son. In the passage of Aitareya Brāhmaṇa quoted above the right of primogeniture is recognised by Kane.<sup>103</sup> But the most interesting reference to the special privilege of the eldest is found in the fact that in Viśvajit sacrifice, where a person is allowed to part with all his possessions as fees, he is enjoined to hand over to his eldest son his share in the property before parting with his possessions.<sup>104</sup> We have thus clear evidence that preferential treatment was given preferably to the eldest son not only in the religious and socio-religious functions but even in rights to property.

The Vedic evidence being scanty, it is not possible to lay down dogmatically the early law of partition. The law, as it is found in the Dharmasūtras, should, therefore, be examined in details to interpret this Vedic evidence in such a way that we can have the law of partition in its evolution.

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103. Kane P.V., *Vedic Basis of Hindu Law*, pp.19, 20 He said to Brhaspati 'perform for me the Dvādasāha (rite). He (Brhaspati) made him (Indra) perform (the rite). Thereupon the gods acknowledged his right to primogeniture and leadership.

104. P.B. XVI 5, 23; 6, 1; Keith A.B., *Ibid.*, p.336.

In the Dharma sūtras partition of the estate is said to take place after the death of the father<sup>105</sup> and, according to Manu, after the death of both the parents.<sup>106</sup> While the father lives, the division of the estate takes place (only) with his permission. 'Those who divide against the will of the father are not to be invited to the dinner in honour of the Pitr̥s.'<sup>107</sup> Partition against the will of the father is condemned by Gautama as involving social ostracism. When the father divides the property at his will, he must do it when the mother is past child-bearing. When brothers divide it, they should delay partition till the widows who are known to be pregnant deliver.<sup>108</sup> It seems that property was generally divided by the father during his life time when he found that there was no possibility of a son being born. His will was absolute in allowing or disallowing partition in his life time and sons had no legal claim to enforce it against his will. There may be cases where sons did enforce partition against the father's will, but that tendency was reprobated by the early law givers. Such acts, if not precisely illegal, were held *contra bonos mores*.

The limitation imposed upon the father's will, namely, that he can create partition only when there is no possibility of a son being born, admits of two explanations. It was a moral obligation on the part of the father to see that he did not contravene by his act the interest of any of his sons. Or, it may be that sons had inherent right in the property which the father could not set aside by creating partition before their birth. In latter case partition before the mother is past child-bearing should be held invalid. Nothing is said in the early law on this point. Yet, if the presumption is right certain limitations on the father's power over the property must legitimately follow. They are: (i) the father cannot exclude any of his sons from receiving his

105. G.D.S. XXVIII 1; B.D.S.I, 11, 11; V.D.S. XVII 41, 81; M. IX 104; cf. also Yaj. II 117; VI, D. S. XVII 23; N. D. S. XIII 3.

106. M. IX 104. cf. Yaj. II 117; N. D. S. I 36; S'āṅkha " So long as they have the father they are not independent nor so while the mother is alive."

107. B. D. S. II 3, 8; Ap. D. S. II 14, 1; G. D. S. XXVIII 2; XV 19. cf. N.D. S. XIII 3; Br̥h. XXV 1. Disregard of the eldest brother indicated in the Mahābhārata (XIII 111 86)— 'He who disregards the eldest brother is born in the category of cranes' and in Brahma Purāṇa (CCXVIII 75, 76) may also be regarded as suggestive of this tendency of revolt against the paternal authority.

108 G. D. S. XXVIII 2; V. D. S. XVII 41.

share in the patrimony; (ii) the father cannot make unequal distribution of the patrimony; and (iii) the father cannot dispose or divest himself of the interest in the patrimony or a part of it to the detriment of his sons' interest therein. Let us see what light the Dharmasūtras throw in respect of these limitations.

It is said in the Dharma sūtras that neither a madman, an out-cast nor a eunuch inherits. Similarly, those who have entered an order different from that of a householder or those who expend money unrighteously are debarred from inheriting. So, too, those who are neglecting their duties and occupations and thus live unrighteously are not entitled to share the property.<sup>109</sup> Manu (IX 214) adds to this list idiots, those who are immersed in vice, those who are habitually committing forbidden acts or who are incurably diseased. That is, those persons who are, to all intents, not capable of preserving the property or retaining it within the family through succession, those who are neglecting their duties and occupations or habitually committing forbidden acts and thus live unrighteously, or those who are socially dead are forbidden by the express texts to inherit it. Exclusion of those persons who are likely to make ill use of property and thereby impair the interest of others is natural without indicating any sort of authority on the part of the father. On the other hand, even when these persons are debarred from inheriting, they are entitled to receive maintenance, and their sons are looked upon as competent heirs. This rule of exclusion, therefore, lays down a definite attitude or behaviour as an a priori condition for claiming a share in the patrimony. Implicit obedience to a conventional social code of behaviour being imperative for the strength and stability of the family, any act amounting to recalcitrance is rightly looked upon as a sufficient ground to disable an offender from the enjoyment of his privileges as a member of the family. But this rule of exclusion is once for all fixed for the community and leaves no power either with the father or the eldest son to exclude anybody at will. On the other hand, it is said that if a brother does not want a share, when the brothers divide the property, he should be given at least a trifle in order to extinguish his right in the patrimony.<sup>110</sup>

109. B. D. S. II 3, 38-40, Ap. D. S. II 14, 1, 15; 13, 3; V. D. S. XVII 52; G. D. S. XXVIII 40, 43. cf. also Sat. S'r. S. XXVII 3, 26; Kau. III 5 (Vol. II, p. 35)

110. M. IX 206

As regards the share of the patrimony we have reason to believe that it was distributed by the father equally among all the sons. It is said in the Sūtras that the father should divide his property equally amongst his sons after gladdening the eldest by some choice portion of his wealth. This special portion consisted of the most excellent chattel or some part of the estate, namely, one - twentieth portion and the best of all chattels or a share in excess together with a few animals.<sup>111</sup> This practice of distinguishing the eldest by some extra share in the family property is said to be ancient and, therefore, sacrosanct. The youngest and the middlemost are also said by Gautama to receive some special shares.<sup>112</sup> Though this practice of distinguishing the eldest by some share is ruled out by Āpastamba ( II 14, 10 seq. ), the way it is discussed in the Dharma-sūtra indicates that it must be a rule of the day. Whether this special share is to buy off the authority and privileges the eldest son once enjoyed as the head of the family or it is reminiscent of the father's discretionary power of disposition, now limited within specific bounds of Shastric injunctions, or it is neither of these two, cannot be definitely said. The fact remains that apart from this Shastric special portions, the father had no authority to distinguish one from the other by unequal shares.

As regards the father's power of disposition we are told that he had authority to give away in Viśvajit sacrifice all the property over which he had control.<sup>113</sup> Here, in the first instance, disposition is for spiritual purposes, the disposition which was sanctioned even by Vijnāneśvara who upheld equal ownership of the father and son, and, in the second instance, it is not clearly stated that the disposition related to the family property which the father as the head of the family controlled. Similarly, the giving of land as a fee to the priest is mentioned in Śatapatha Brāhmaṇa but it is at once added that the Earth itself said, " no mortal must give me away".<sup>114</sup> It indicates that one could not lightly part with land. The evidence about the

111. B. D. S. II 3, 4; M. IX 112; G. D. S. XXVIII 5; V. D. S. XVII, 42, 43; Ap. D. S. II, 14, 7.

112. G. D. S. XXVIII 6, 7; V. D. S. XVII 42-45.

113. In S. B. XIII 6, 2, 19 also we find giving away everything as sacrificial fees.

114. S. B. XIII 7, 1, 13, 15. cf. also A. B. VIII 21; V. I., Vol. I, p. 100.

father's power of disposition is very scanty and nothing can be definitely said in the matter on the authority of such sketchy data. But the fact that there is no positive statement in the Dharmasūtra literature about the father's power of disposition at his will lends support to the view that the father had no power to deal lightly with the property in his charge.

The evidence of the Sūtra literature shows that the father had no power of allotting unequal shares, of excluding anybody he liked from receiving his share in the patrimony, or from disposing of the property at his will. In absence of such authority on the part of the father his control over the property appears to be limited. But before we conclude we must take note of another view which is represented in the Sūtras and which does not speak of partition. It is said that, after the death of the father, the eldest alone may take the whole paternal estate and others shall live under him just as (they lived) under their father. According to Baudhāyana, it is not always the eldest but one who possesses good qualities that becomes the protector of the rest. Āpastamba seems to be in know of this practice of primogeniture, but personally he was inclined to the view that the father should, during his life-time, divide his wealth equally among his sons, after having gladdened the eldest by some choice portion of his wealth.<sup>115</sup> The rule implies that there is no partition. On the death of the father, the sole governor of the family, the eldest son or any one else who is capable of governance, occupies his chair as the family head. There is no devolution but continuance of ownership. The house father never dies. On being removed by the order of nature his place was filled by his heir. This view, which very possibly represents the older state of things, is found even in Nārada Smṛti, a work of the 6th century A. D. It is said that wives, sons, slaves and other attendants are dependent. The head of the family, to whom the property has

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115. M. IX 105, 108; G. D. S. XXVIII 3; B. D. S. II 3, 13; cf. N. D. S. XIII 5. According to Saṅkha Likhita (*Hindu Law and Custom*, p. 173) any son can be the head of the family only with the consent of the eldest brother. Ap. D. S. II 14, 6; 13, 13; 14, 1. cf. Sat. S'r, S. XXVII 3, 17. cf. Mahābhārata (XIII 105, 13) "If the eldest brother happens to be sinful and undistinguished by accomplishments of any kind, he may be disregarded by his younger brothers".

descended by right of inheritance, is independent with regard to it. A child after the 8th year is independent if his parents are dead, not otherwise even though he may have reached a mature age. The father rules in the first instance, then comes the mother, then the eldest-son. These three persons are independent and have authority in regard to coercion, relinquishment and sale. Their transactions are said to be valid provided they are not actuated by love or anger, or tormented (by illness), or oppressed by fear or misfortune, or biased by friendship or hatred. It is said in another passage that the father, as the head of the family, had control over the property and he could make unequal shares, following his own inclination, and such a distribution, either of equal or disparate shares, is said to be lawful for the father is the lord of all. The father had likewise authority to exclude from inheriting a son who was hostile to him, and, from the verse which follows, it is very doubtful whether his share descended to his son as in the case of an idiot, insane, or one who is incurably deceased.<sup>116</sup> Even Kauṭilya may be said to have preserved this older tradition when he said that the sons, whose parents were alive, have no control over the property. It is only after the death of the father that division of property takes place.<sup>117</sup>

Before summing up the evidence adduced here we must take note of a passage in Gautama (X 29): 'A (man becomes) owner by inheritance, purchase, partition, seizure or finding'. The passage being in flat contradiction of ownership by birth has been com-

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116. N. D. S. I 34-42; XIII 4, 15, 21. This view of Nārada should be accepted with some caution. The original text of Nārada was not available to me and I can not say how far the translation represents the correct view of Nārada. It is likely that the text may be: Let a father, when stricken in years, distribute, at his will, his property among his sons, allotting a large share to the eldest son. If this presumption is right, the disparate shares spoken of in another verse may have reference to the special portions of the eldest and the youngest or to the disparity on the basis of caste to which the mother belongs, both being referred to by Nārada in preceding verses. But one has to note at the same time the force of the expression 'the father is the lord of all'.

117. Kau. III 5 (Vol. II, p. 31). It is to be noted here that Kauṭilya does not speak of partition in the life-time of the father, as the Sūtra writers and Manu have done, and hence his authority for division after the death of the parents has greater significance.

mented upon by Vijñāneśvara. It is not necessary to discuss at this stage the interpretations given to it by different writers. It is necessary to emphasise here that in this passage we find a further evidence in the early literature indicating father's control over the property.

If we are right in presuming that Nārada has tried to preserve in the passages quoted above an older tradition which we find also in the Sūtras, though the Sūtras very elaborately discuss the desirability of partition and thereby the limited nature of the father's control over the property, and if we read this tradition along with the special privileges said to be enjoyed by the dearest son, who was preferably the eldest son, in the Vedic age, we must grant that at some time in Indian history the father had absolute control over the property. Whether it was in the Vedic age or in the early R̥gvedic period cannot be precisely determined in our present state of knowledge. Attempts were made, as early as the Vedic times, to restrict this authority of the father by preaching the desirability of partition in his life-time and enjoining upon him to divide his property equally among his sons. The Sūtra writers, while preserving the older tradition of the fathers' sole dominion, stressed the desirability of partition on the ground of gaining spiritual merit by living separately<sup>118</sup>, and restricted the father's control over property by defining his power of discrimination within the bounds of Shastric injunctions. That this view of the Sūtra writers does not represent the older state of things but a development of a newer trend already begun in the Vedic period is proved by two facts, firstly, the eulogy of partition as a means of increasing spiritual merit, and secondly, and this is the most important testimony, by creating a new concept of self acquired property. It is evident that in the Sūtra times the father's authority had come to be challenged. Though on the theoretical concept of property the revolt of the younger generation could not be substantiated, the lawgivers could not blind themselves to the new issue. The fact had to be recognised and to be adjusted with theories. It seems very likely that the early lawgivers, in their attempt to meet with the new needs, tried to restrict the authority of the father to the advantage of the sons, eulogised partition as

contributing to spiritual merit, and evolved a new concept of property whereby sons could get their control at least over a part of the property, if not over the whole. Hence came into existence the variety called the self-acquired property.

In the beginning such property appears to have comprised only the gains of learning. Manu (IX 206, 208, 209) added to this gifts from friends, presents received on marriage or with the honey-mixture, acquisition by labour without using the patrimony and the ancestral property which was lost and now recovered. In the Smṛtis it is said to include gains of science or valour, gifts from friends or relatives, favour conferred by father or grandfather, presents obtained on marriage or such occasions, and lastly acquisition made solely by one's own efforts without using the patrimony. This property the acquirer was not bound to share with the other members of the family, though, according to Vasiṣṭha, the acquirer was entitled only to a double share thereof.<sup>119</sup> According to later Smṛti writers, the father's authority to make unequal shares was restricted to this variety of property.

The law of partition in the Smṛtis and Commentaries does not differ much from that in the Sūtras. Partition takes place after the death of the father or at times, of both. Whenever it takes place during his life-time, his will determines the time of partition. A son is said to come to partition with his father when the mother is past child-bearing, when the father's sexual desire is extinguished and he has ceased to care for worldly interests, or when he suffers from incurable diseases or is out of his mind, or when he is incapacitated by extreme age or addiction to vice, or when he behaves in a way not approved of by the Śāstras.<sup>120</sup> The implications of

119. G.D. S. XXVIII 30; V.D.S. XVII 51; According to Kātyāyana, the gains of learning include fees received from a pupil or for the performance of a sacrifice, a reward or prize obtained for recitation of the Vedas or for superiority in a disputation or for determining a knotty point of law. Jolly J., *Law of Inheritance, Adoption and Partition*, pp. 94, 95.

120. Yaj. II 114, 115; N.D.S. XIII 3, 4, 16; Brh XXV 1; Devala (Vyavah-āramayūkha, p. 90) 'sons have no ownership so long as the father is faultless'. Mit. p. 201; M. Pārj. p. 645. Even though in theory the father's will was absolute in creating partition in the Smṛti period, as in the Sūtra period, cases of partition against his will must not be unknown. "Epigraphical evidence shows that, though the Smṛtis had disapproved partition in the life-time of the father, such partitions were not rare in practice". Altekar R S., *Rashtrakutas and their Times*, p. 340.



these restrictive conditions are three. Sons can divide the patrimony against the father's will only when there is no possibility of a son being born,<sup>121</sup> or when the father, being old or diseased, is not capable of managing the estate in his charge or, being mad or vicious squanders away the wealth in his charge to the detriment of his sons' interest, or when he behaves in contravention of the Shastric precepts. Implicit obedience to the precepts of the Śāstras being the ideal of Hindu life, indifference to or disregard of these precepts is tantamount to challenging the order governed by these sacred precepts. As such partition on this ground has nothing to do with the son's claim on the family property. It means, then, that sons could force division of the family property when there were sufficient grounds to indicate that the property in charge of the father was likely to be impaired, and thereby their interest in it suffered, by incapacity or mismanagement of the father or when there was no possibility of a co-sharer being born.<sup>122</sup>

At the same time we also find legislators enjoining the rule that 'in land acquired by the grand-father, in corrody or wealth ownership of the father and son is the same', or that 'whatever belongs to the grandfather belongs equally to the father as well as the son.' Equality of shares on the part of both the father and the son in the property of the grandfather, movable as well as immovable, is categorically admitted in these passages of the eminent Smṛti writers.<sup>123</sup> On the basis of this view of the Smṛti writers Viśvarūpa

121. This is to protect the father's own interest. It secures him against compulsory partition so long as he chooses to marry again. Sar. V. para 61.

122. In Gujarāt all the castes, almost without exception or qualification, denied the right to partition of a son against the wish of his father. Even amongst the Brāhmins the son's right does not seem to be fully admitted by any of the classes ... while amongst the lower castes the answers, without exception, were either that the son could not enforce partition at all, or else that the father could retain so much as he wished of the ancestral property. In the usage of a large minority, at least of the people of the Dekhan, the rule that in the life time of the father division of the estate takes place (only) with his permission holds good. West R. and Buhler G. pp. 659, 660 with footnotes (c) (d). cf. Sarkar G., p. 502 for the same rule in the Punjab.

123. Yaj. II 121. Nibandha, corrody, is a fixed payment every year or month to a person or temple under the orders of a king. VI. D S XVII 2; Brh. XXV 2, 3, Kātyāyana and Vyāsa (Aprārka, p. 728).

postulates that partition takes place of the property in which a son has his ownership by the very fact of his birth and the same opinion is expressed by Medhātithi in his comment on Manu (IX 209). But this right of the son in the ancestral estate came to be challenged by Dhāreśvara and the author of Smṛti-saṁgraha<sup>124</sup> who upheld that sons had no ownership in the father's property, while the father was alive, but it came into existence first by partition. They thus tried to revive the old tradition wherein the father had absolute control over the family property and by so doing to undermine the new trend which, in the first instance, sought to give control to the sons over their own acquisitions, and, in the second instance, control even in their ancestral estate. Vijñāneśvara discussed the question very elaborately and established the son's ownership by birth in the ancestral estate. He relied upon an ancient text attributed by him to Gautama: 'One should get ownership of wealth by the very fact of birth, so says the revered teacher.'<sup>125</sup> The said text is not found in the extant Dharmasūtra and, therefore, Jolly had gone to the length of saying that Vijñāneśvara fabricated the text to suit his purpose.<sup>126</sup> But in view of the fact that such ownership was clearly recognised and advocated by all the Smṛti writers except Nārada and that Viśvarūpa had given expression to it without seeking the authority of Gautama's text, which Vijñāneśvara has quoted, there is no ground for believing that such an eminent authority as Vijñāneśvara had to fabricate or rely upon such fabricated texts of his predecessors to foist a new concept of ownership. On the other hand, Vijñāneśvara said emphatically what the eminent Smṛti writers had said long back but what had come to be challenged by some of his immediate predecessors, and in so doing he quoted an ancient text to lend greater authority to his view and to silence, in the face of this ancient text, his antagonists. It may not be a quotation from Gautama, but that does not prove the utter impossibility of such a text having been in existence.

124. Nilakaṇṭha, V. May., p. 89

125. Mit p. 199

126. Jolly J., *Hindu Law of Inheritance, Adoption and Partition*, p. 110 "This is how Vijñāneśvara or his predecessors, from whom he may be supposed to have borrowed his theory, came to fabricate a text, in which the doctrine that property is by birth is attributed to the holy teachers, and to attribute this text to the sage Gautama who was looked upon as the principal authority in regard to the sources of ownership."

Jīmūtavāhana, who followed Viṣṇāneśvara, challenged the equal ownership of a son with his father in the ancestral property. According to him, 'the term heritage, *dāya*, is fixed for ownership which, being dependent on relation to the former owner, is created on the extinction of his (former owner's) ownership'. Hence, sons have no ownership in the property in the life-time of the parents but only after their death. It is in conformity with this view of ownership that it has been said to arise when a person is excommunicated or has taken to the life of a hermit, these being the causes of extinction of ownership. Jīmūtavāhana has asserted the old view of the father's absolute control over the property and there is nothing striking about it because some of his predecessors did hold to it against a contrary view. But what is striking is Jīmūtavāhana's reasoning about its validity. While commenting on the verse of Yājñavalkya, which apparently goes against this view, he writes: "It is rightly explained by the learned Udyota that when one of the two brothers, whose father is living and who have not received allotments, dies leaving a son while the other survives, and if the father dies afterwards, the text, declaring equal ownership, is intended to obviate the conclusion that the surviving son alone obtains his estate because he is next of kin. As the father has ownership in the grandfather's estate so have his sons on his death. There is not in that case any distinction found on greater or less propinquity, for both equally confer a benefit by offering funeral oblations by the *pārvaṇa* rite."<sup>127</sup> One can naturally ask, if the father is the sole owner of the property in his charge and sons have no claim upon it in his life-time, his interest will naturally devolve on his sons who are alive and cannot pass to the grandsons of a predeceased son, because it is only after the death of his sons, and thereby extinction of their ownership, that ownership of the grandsons can come into existence. The ownership of a predeceased son is said to be transferred to his son, because both the grandson and the surviving son of the deceased are said to confer equal benefits on the deceased. But so long as the son is surviving the grandson has no right to perform any ceremony in the honour of the deceased. And when that right accrues to him after the demise of the surviving son, he can offer *piṇḍas* to the deceased and

his one ascendant as against the piṇḍas offered to the deceased and his two ascendants by the surviving son. His capacity is latent in the life-time of the surviving son and decidedly lesser when it becomes operative on the demise of the latter. The interpretation given to the verse of Yājñavalkya first by Udyota and then by Jīmūtavāhana is not satisfactory. It only shows that in upholding the older view Jīmūtavāhana felt some inconvenience in harmonising that view with a view propounded by such an eminent authority as Yājñavalkya. He could not set it aside without comment : he tried to twist it to yield his own meaning, but he seems to have failed. It is significant to note here that Dhāreśvara who, too, upheld this older view submitted that in the ancestral wealth the father had no right to make unequal allotments, a privilege he enjoyed with respect to his own acquisitions.<sup>128</sup> This shows the difficulty these writers must have faced in sticking to the older view when great concessions had come to be made to sons in property rights.

Equality of shares confers, according to Vijñāneśvara, on a grandson a right to compel his father to come to partition, even during his life-time and even against his will, if so necessary, in the property belonging to the grandfather, and gives him authority to prohibit his father from giving away or selling the property of the grandfather. We are thus presented in the Smṛti literature with two distinct and apparently contradictory notions of the father's control over the family property—one which, representing the older tradition, invests the father with absolute control, restricting at the same time such control by specific rules, the other investing both the father and son with equal dominion over certain categories of property, namely, those inherited from ancestors. It appears that by the end of the Vedic period the early legislators, while accepting the absolute control of the father, respecting as they did the early traditions, evolved a rule whereby an individual was invested with authority at least over his own acquisitions which were clearly defined in the sacred texts. The legislators of the Smṛti period tried, or perhaps they were forced by existing conditions, to enlarge the son's dominion over the family property by defining the principle of equal ownership though in deference to the older traditions, they continued to preach

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128. Kane P. V., *Vyavahāra-mayūkha*, p. 122

the father's control over the family estate. This interpretation of the property law in its evolution becomes all the more significant when read with Vijñāneśvara's statement which does not appear to have received the attention it deserves. "Similarly, the grandson has also an authority to prevent when the grandfather's wealth is given away or sold off by the father living undivided. He has no right of prohibiting in respect of the acquisition of the father on account of dependence in that case. But consent should be given. That is, even though ownership is by birth in the property of the father and of the grandfather, yet, on account of the dependency in the case of the property of the father and on account of the father's superiority by the fact of his being an acquirer, the son should give consent to the father disbursing his acquired wealth. In the property of the grandfather ownership of both is equal and without distinction and so he has a right of prohibiting; that is the distinguishing feature."<sup>129</sup> The passage clearly indicates that by the time of Vijñāneśvara the son had come to achieve something like a controlling interest in the acquisitions of the father. The whole trend right from the period of the Dharma sūtras and Manu down to the time of Vijñāneśvara is gradual recognition of more and more powers on the part of the son over the family property even when older traditions of the father's control over the same are neither challenged nor suppressed. Attempts have been made to explain these apparently contradictory views about the father's control over the family property by drawing distinction between the self-acquired property and the ancestral property. But it may be asked whether this distinction between the self-acquired property and the ancestral estate is materially significant.

The rights and privileges of an individual in respect of the self-acquired property are said to be considerably wider. It belongs to one who has acquired it, and it entirely rests upon his will to share it with other coparceners or not. In case the acquirer is the father, his domain over such property is absolute and his sons have no right to demand partition thereof. He divides it among his sons in his life-time if he so chooses, and, when he does so, he reserves for himself two shares. Furthermore, he is not bound to allot an equal share to each of his sons, and sons are enjoined to be satisfied with whatever they

get at their father's whims. "Those for whom their shares have been arranged by the father, whether equal, less or greater, must be compelled to abide by such arrangement. Otherwise they shall be punished."<sup>130</sup>. The arbitrary allotments spoken of here are distinct from the unequal shares which are propounded by Manu and the Dharmasūtra writers and which are referred to even by Yājñavalkya. The Shastric deductions presuppose the father's implicit obedience to the injunctions of the Śāstras, which every Hindu should revere, while the arbitrary allotments postulate the father's power over his own estate and the influence he exercised in regulating its descent. Besides this two-fold control over his property, the father has unrestricted right of giving a part of it by way of gift to any of his sons or to his wife<sup>131</sup>. Donation to the wife is recommended even by those writers who do not recognise the wife as heir to the property of her husband and hence this disposition in favour of those who have evidently no title to the property speaks of the father's absolute ownership in his own acquisitions. Sarkar believes that 'the father is competent to make testamentary disposition of such [*i.e.*, his self-acquired property] and so deprive a son wholly or partially"<sup>132</sup>. But such a power on the part of the father is not guaranteed by the express texts of the Hindu Śāstras. Furthermore, the father's power to exclude any of his sons from receiving his share is very limited. Those sons who are either impotent or afflicted with bodily ailments, who are insane or mad, who are hostile to the father or guilty of a minor offence, or who are outcast, can be excluded by the father from inheriting the

130 G.D.S. XVIII 2,30, B.D.S. II 2,3,8; M. IX 208; Yaj II 114, 116, 123; N.D.S. XIII 4,11,12,15; Vi D.S. XVII 1; Bṛh. XXX 4,5; Kātyāyana (Aparārka, p. 723) 'sons have no ownership in the wealth earned by the father himself.' Aparārka, pp. 717,718; Viśvarūpa on Yājñavalkya II 114; D. B. (Prin. of H. Law) p. 953.

131, Viṣṇu (Mit. pp. 199); N.D.S. XIII 6; Bṛh. XXV 13; Vyāsa and Kātyāyana (Aparārka, p. 730, 723.); V.May, p. 127; V.Mit. p. 251. 'The case-law limits this donation to male members of the family or to daughters only and not to remoter ancestors.' Sarkar *G. Hindu Law*, p. 422.

132. Sarkar G., *Ibid.*, p. 369. cf. P. Sen, *Hindu Jurisprudence*, p. 130 'The son cannot oppose an alienation by the father except in case of ancestral property.' In Kāt. (566 & 642) we find mention of gifts for religious purposes or to a Brahmin.

patrimony. Exclusion in these cases postulates, as has been shown, the father's duty to safeguard the property in his charge and does not contemplate his absolute control over the property. Under these circumstances it is very dubious to entertain any idea with respect to the father's testamentary disposition of his property. But the fact remains that his control over the property is more or less absolute.

There are, however, two limitations in respect of the father's control over this property. In a text attributed to Viṣṇu it is said that even in respect of property acquired by the father, sons can demand partition<sup>133</sup>. It may be that the view propounded herein the name of Viṣṇu may not be the view of Viṣṇu or his school; but the fact that Aparārka has expressed such a view and has sought to pass it under the authority of one of the Smṛti writers is suggestive when read with the opinion of Vijñāneśvara referred to just above. It not only exposes the futility of distinction between the self-acquired property and the ancestral property but it lends a very convincing support to the interpretation we have given. Secondly, a verse attributed to Nārada by Aparārka, to Yājñavalkya by Jīmūtavāhana and referred to without any name by Vijñāneśvara reads: "The father is the lord of everything such as jewels, pearls and corals: but neither the father nor the grandfather has mastery over all (kinds of) immovables. Vijñāneśvara holds that the verse authorises the father to make a gift, out of affection, of jewels, etc., inherited from the grandfather. Nīlakaṇṭha opines that the verse delegates to the father right to decide who will wear jewels, etc., inherited from the grandfather as they are not likely to perish by mere use. But it does not give him right to make a gift thereof.<sup>134</sup> Evidently the verse intends to convey the idea that even the grandfather, much less the father, cannot part in any way he likes with land and such other immovables, whether it be ancestral or his own acquisition. The authority of the father, or of any person in general, extends only over the movables including the ornaments. This interpretation of the verse is substantiated by another verse: "Of the immovables and bipeds, even when acquired by a person himself, gift or sale should not be made without convening all the sons. They who are born, and they who are still in the womb,

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133. Viṣṇu (Aparārka, p. 718)

134. Mit. p. 199; V. May. p. 91; Aparārka, p. 730; D. B. p. 56; Kane P. V., *Vyavahāsa mayūkha*, p. 124.

require the means of support: no gift or sale should, therefore, be made." If a person hands over to his wife by way of gift some portion of his property, she is an absolute owner of that portion except the immovables which revert back to the agnatic heirs of the person. Thus a person's absolute control over his self-acquisition extends only to the movables and not to the immovables. Immovables are always held in common<sup>135</sup>, whether they are acquired by a person himself or inherited from the ancestors, and the head of the family has no power to jeopardise the interest of other persons in respect of them. A person is entitled to dispose of the immovables if such a need arise in the interest of the family, overwhelmed by a serious calamity, or for the continuance of the religious rites. Even in an undivided family the manager is entitled to gift away, hypothecate or sell the immovables in these circumstances, and he is not held liable for jeopardising the interest of even the minors.<sup>136</sup> Thus, in respect of the immovables no distinction is made whether it is a self-acquired property or an ancestral estate.

As for the ancestral movables, the father has independence to spend them for the fulfilment of religious acts and acts enjoined by the Hindu Śāstras, for the maintenance of the family or relief from distress, and for affectionate gifts. While commenting on a verse generally attributed to Nārada Vijñāneśvara writes: "This verse only authorises the father to make a gift, out of affection, of jewels, etc., inherited from the grandfather." These donations by the father of ancestral movables by way of gifts are held valid by such an eminent authority as Vijñāneśvara.

We have seen that the father's power over his self-acquired movables is more or less complete. He has some discretionary control even over the ancestral movables. But in respect of the immovable estate, whether it be his own acquisition or inheritance from the ancestors, his control is of a very limited character. Hence, the significant distinction is not between the self-acquired

135. The land is held inalienable from very early times. S. B. VII 1,1,4; XIII 7, 1, 13, 15; V. I, Vol. I, pp. 245, 336; gift or sale of the immovables without the consent of all heirs is prohibited; Being indivisible, interest of any heir therein is not lost, however remote he may be in propinquity. Kāt. 889,890; S. C., Vyavahāra, pp. 645, 646.

136. Mit. p. 200; Mād hava, Vol III, part ii, p. 485.



property and the ancestral estate but between the movables and immovables. The usual distinction made between the self-acquired property and the ancestral estate is thus not valid,<sup>137</sup> and our interpretation of social history must, therefore, stand.

#### IV

In the preceding sections I have tried to examine the law of inheritance in the *Mitākṣarā* and the *Dāyabhāga* schools, the females' right to property and the law of partition. In this section the law of inheritance may be traced from the early times.

In the *Sūtras* property is said to devolve on *sapinda*s when a person dies childless. Manu observes: "To three (ancestors) water must be offered, to three the funeral cake is given, the fourth (descendant is) the giver of these, the fifth has no connection (with them). Always to that relative who is nearest (to the deceased) from amongst the *sapinda*s the estate shall belong: afterwards a *sakulya* shall be (the heir), then the spiritual teacher or pupil". Persons entitled to the estate of a person are his relatives designated here by the term *sakulya*. From amongst these a few nearer relatives are demarcated by the term *sapinda*. From the preceding verse it appears that, according to Manu, the three ascendants and the fourth descendant who are bound to each other by the act of receiving and giving the funeral offerings, called *pinda*s, are the nearer relatives called *sapinda*s. A passage in *Baudhāyana* reads: 'The great-grandfather, the grandfather, the father, oneself, the uterine brothers, the son by a wife of equal caste, the grandson (and) the great-grandson are called *sapinda*s but not the (great-grandson's) son;—and amongst these a son and a son's son (together with their father are) sharers of an undivided *dāya*. (The sharers of divided *dāya*) they call *sakulya*'<sup>138</sup>. The law as given by *Baudhāyana* is apparently the same as given by Manu. Both refer to the relatives entitled to share the property as *sakulya*s and both distinguish a nearer group of relatives as *sapinda*s. But while Manu has defined this group in

137. It is not suggested that there is no distinction between the self-acquired property and the ancestral estate. It is evident that the father's right in respect of his self-acquired movables is considerably wider than that over ancestral ones. What is stressed here is that demarcation on the lines of movables and immovables is clear-cut and lucid as compared to that between the self-acquired and ancestral estates.

138. B. D. S. I 11, 9 seq.

terms of generations, Baudhāyana has specifically referred to one's three lineal ascendants and three lineal descendants. As for collaterals the brother alone is referred to by Baudhāyana. Secondly, while Manu has sought to associate this grouping of nearer relatives with the funeral offerings, *pindas*, Baudhāyana does not appear to conceive such association. He has used the word *dāya* and not *piṇḍa*. Though Jīmūtavāhana has tried to interpret *dāya* as *piṇḍa*, the word *dāya* means heritable right, and it is reasonable to infer that Baudhāyana tried to define here a group with common heritable right. That the meaning given to this passage by Jīmūtavāhana is arbitrary may be argued out on several grounds. Firstly, the etymological meaning of the word *dāya* does not easily lend itself to the interpretation of Jīmūtavāhana. Secondly, according to Jīmūtavāhana, *sakulyas* are the three descendants of the great-grandson and the descendants of the three ascendants beginning with the great-grandfather. But in the ritual of Śrāddha that was current in the days of Manu and Baudhāyana *pindas* were offered to the first three ascendants and *lepa* was given to a very wide group of relatives. When Manu is said to have used the word *sapiṇḍa* for a person and his three immediate ascendants, these being bound to each other by *piṇḍa*, the word *sakulya* must denote a very wide group of relatives who were sharers of *lepa* or, what Jīmūtavāhana calls, the divided *piṇḍa*. It could not have been restricted to a few persons enumerated by Jīmūtavāhana, because restriction of *lepa* offerings only to the three ascendants beyond the great-grandfather is found first in the Purāṇas. Jīmūtavāhana's rendering of Manu and Baudhāyana with the help of Puranic traditions obviously proves his interpretation arbitrary. Thirdly, as noted by Bühler, the son, the son's son and the father are persons with undivided *dāya*. If *dāya* means *piṇḍa*, then there must be four persons, and not three, for association through common offerings. On the other hand, it is very likely that in this parenthetical phrase Baudhāyana has tried to record a tradition wherein a person and his two descendants were looked upon as persons with common heritable right, though he tried to define the group of *sapiṇḍas* in terms of a person and his three ascendants and three descendants. Baudhāyana is not the only writer to use the phraseology of *avibhaktiādāya* it is said in Brahma Purāṇa that 'these are the *sapiṇḍas* whose heritable right is undivided'. It appears that from very early

times there were two schools of thought, one led by Manu which emphasised association of the grouping of the near relatives and funeral offerings, and the other led by Baudhāyana, and perhaps the earlier school, which defined the heritable right of persons related within four generations and called the persons so bound *sapindas*, Kauṭilya enjoins: 'Sons, grandsons, or (those) within four generations of the (person) died undivided shall have shares in the ancestral property: for *pinda* as far as the fourth generation is uninterrupted.' Devala has likewise said; 'The second partition among the relatives, undivided or re-united if divided, takes place upto the fourth generation. To that extent relatives are called *sapindas*; beyond this takes place a severance in *pinda*. They declare that partition of inheritable property is co-ordinate with the severance of *pinda*'<sup>139</sup>. The word *pinda* in the text of Kauṭilya need not lead us to think that he, too, associates this close coparcenary of persons related within four generations with Śrāddha. We have seen that he looks upon the daughter as a co-sharer with her brother. This could not have been possible if Kauṭilya had meant to associate descent of property with the funeral offerings. Thus, in the early law, the concept of *sapindas* is restricted to relatives within four generations and a tendency to link this concept of nearer relatives with the act of offering *pindas* is perceptible very clearly only in Manu.

Coming to the legislators, Yājñavalkya enumerates the wife, daughter, parents, brothers, their sons, gotrajas and *bandhus* as heirs. Viṣṇu enumerates the wife, daughter, father, mother, brother, brother's son, *bandhus* and *sakulyas* as heirs. According to Nārada, on failure of a son the daughter succeeds, then the *sakulyas*, and after them the *bāndhavas*. The verses attributed to Bṛhaspati run: 'Although *sakulyas*, although his father and mother, although uterine brothers be living, the wife of him who dies without leaving a male issue shall succeed to his share'. 'Should the *sapindas* or *bāndhavas* or enemies injure the property, let the king inflict on them the punishment destined for a thief'. 'In default of them (i.e., the daughter and the daughter's son) uterine brother's sons, *sakulyas*

139. Kau. III 5 (Vol. 11, p. ); Devala (V. May. p. 101). cf. Kātyāyana 855 856 'When a younger (brother) dies undivided, his son, who has not secured his share from the grandfather, should be made a sharer of inheritance. He gets his father's share from his uncle or his son...Even his son gets (that share): beyond this there is a cessation (of the right to share in property.)

and bāndhavas are entitled to the inheritance'. 'When a man dies leaving no issue, nor wife, nor brother, nor father, nor mother, all his sapindas shall divide his property in due shares'. 'When there are several relatives, sakulyas and bāndhavas, whosoever of them is the nearest shall take the wealth of him who dies leaving no issue'. 'In default of a son the widow succeeds: in her default, a uterine brother; in default of him, the co-heirs, dāyādāḥ; afterwards, the property goes to the daughter's son'.<sup>140</sup> It is evident from these quotations from Brhaspati that in the place of Manu's classification of relatives into sapindas and sakulyas he very often refers to them as sakulyas and bāndhavas, sakulya being a term for a closer group of relatives. At the same time he also refers to these relatives as sapinda or as co-heirs. Further, the term sakulya is applied to relatives other than the wife, the father, the brother and the mother who are always specifically referred to by him. Nārada has also used the same terminology, namely sakulyas and bāndhavas, though he has not referred to the father or a brother as preceding a sakulya. Viṣṇu, who preceded both of them, used the terms bandhu and sakulya, bandhu being a nearer relative than a sakulya. It is only Yājñavalkya who has dropped the terminology sakulya but has retained the terminology bandhu. According to Viṣṇu, bandhu in Yājñavalkya stands for some of the cognates enumerated by him. But in view of the fact that Viṣṇu and Yājñavalkya are almost contemporary and that Viṣṇu has used the word bandhu for a near relative, sakulya being used to denote a further agnatic relative, it is open to question whether Viṣṇu properly represents the view of Yājñavalkya. The word bāndhava, which appears to be another word for bandhu, has been used by Nārada and Brhaspati for relatives other than the sakulyas, but the fact that Brhaspati has equated these terms elsewhere with sapindas and coheirs renders it highly improbable that the term was used to designate a cognate<sup>141</sup>.

140. Brh. XXV 48, 52, 59, 60 (cf. 31), 62, 66 (cf. 70).

141. In Manu and Baudhāyana, the two groups in point of propinquity are designated as sapindas and sakulyas. In Viṣṇu they are designated as bandhu and sakulyas. Yājñavalkya has only referred to bandhus, dropping the term sakulyas. Later Smṛti writers, Nārada and Brhaspati, have placed sakulyas before bandhus or bāndhavas and have created some confusion. But it is quite clear from this that bandhu in Yājñavalkya does not stand for cognates. It may be noted here that in Amarakośa also bandhu, bāndhava and jñāti are said to be synonyms.

Kātyāyana, the latest jurist, has referred to neither the sapin̄ḍas, sakulyas nor bāndhavas and does not, therefore, help us in understanding the development of the law of inheritance.

The significant characteristics of the law in this period are two. The word sapin̄ḍa has been dropped: all the writers have used the word sakulya, bandhu or bāndhava, terms which do not reflect any connection with pin̄ḍa or funeral oblations. The association of the grouping of nearer relatives with the funeral offerings which we first find in Manu is completely discarded in the writings of other eminent legislators. Next, in place of the group of sapin̄ḍas preceding that of sakulyas in the works of Manu and Baudhāyana, the legislators specifically refer to the wife, daughter, father, mother, brother and brother's sons as nearer heirs. The group thus appears to be the male descendants within three generations of a person himself and of his father. Along with these male descendants the wife, the daughter and the mother are also reckoned as near kin. The special recognition given to the wife and the daughter in this period is not abrupt but a slow process of evolution begun as early as the Sūtra period. Very probably the joint family was in process of disintegration. We saw this tendency in the law of partition and in the growing importance of the mother and relatives through her at the end of the Vedic period. The recognition of the wife and the daughter, persons dearer to oneself, as against brothers and the father who, being the members of the joint family, should be the nearer heirs, is also indicative of greater importance that came to be attached to the individual rather than to the joint household.

Once we admit this, it follows that after the death of a person his estate must devolve on his children, sons and daughters alike. But the sons and grandsons are the earning members of the family, they carry on the family name and traditions, they bind themselves for whatever debt is incurred to keep up the family. The daughter, on the other hand, goes to another family and her relations with the parent-family are more or less formal. So, even when on the principle of consanguinity both the son and the daughter are equally related to a person, these considerations will affect the rights of a daughter and she is consequently superseded by the grandson. This particular concession in the working of the theory of blood propinquity is important, and Vijnāneśvara has stressed it by referring to the transmission to the

sons and grandsons as 'unobstructed heritage' as against that to others as 'obstructed heritage'. In the absence of the grandson property must devolve on the daughter, but in the law of the Smṛtis it is said to devolve on the widow in preference to the daughter. Though on the principle of consanguinity the wife cannot be nearer than a daughter, yet she participates with her husband in all the religious ceremonies performed by him; she is looked upon as the other half of the person himself. Again, the wife has no property of her own except her small strīdhana; she is dependent upon her husband and, out of equity, he must provide for her before the property is vested in some one else. But still more important is the fact that in an individual family the wife's status is always higher: her influence is all pervading. According to some Smṛti writers including Manu, she is said to control the property after the death of her husband, partition being denied till either of them was alive. This trend towards individual family accounts for special consideration shown to the widow.

When the persons for whom a man cherishes highest affection and for whom he regards himself duty-bound to make provision for their maintenance are not available, his property is said to devolve on those of his relatives who formed the joint family. In assigning priority among the various members of the joint family propinquity through blood-particles tends to give what may be called the 'linē' theory. Among the rival claimants, the brother or his son is preferred to the grandfather or any of his descendants as the former shares with the propositus the particles of his father and mother which are absent in the latter. Similarly, the father's brother or his son shares with the propositus the particles of the grandfather while the father's paternal uncle or his son those of the great-grandfather. And those who inherit the particles of the grandfather are nearer to the propositus than those who share those of the great-grandfather. As regards the father and the brother, the brother shares with the propositus the particles of the father and the mother and as such may be regarded as a nearer relative. It may be equally argued that, while the brother shares some of the particles of the father, the father is the aggregate of those particles. Naturally, therefore, he is a nearer relative and likewise all the ascendants precede in nearness to the collaterals through them. It is not easy to assert the father's superiority over

the brother unless we grant that the Hindu lawgivers do not give any thought to the woman, and that is, perhaps, why we find the brother preferred by some while the father preferred by others.<sup>142</sup> Again, it is generally vested in the father because the portion that was cut off from the joint estate must revert back, in the absence of any person to hold it, to the original owner, namely, the father. The property vested in the father devolves, after his death, natural or civil, on his descendants. In the absence of his descendants the property would go to his father, that is, to the grand-father of the original owner, on the same principles.

Transmission according to 'line' thus appears to be a natural outcome of blood propinquity, but in working it out the physiological fact of kinship is supplanted by social fact of kinship of recognising relatives within a definite number of generations in a 'line' as near relatives, and as such near heirs, others being regarded as distant kin and so allowed to inherit only in the absence of near heirs. As regards the limitation set on the descendants in the 'line', property is said to devolve on two successive descendants before it reverts to an ascendant in the Smṛtis and in the scheme of Viṣṇuśāstra and his followers: in the scheme of Jīmūtavāhana it devolves on three successive descendants. In the early law persons related within four generations formed a closer circle of relatives and were known as sapinḍas. It has been shown that the fact that unity of four which is predominant in the early law of property is also the unity in the Śrāddha ritual wherein the three ascendants receive pinḍas, the fourth being the offerer of these pinḍas, need not necessarily suggest that it was the

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142. The father gives the physical existence, nourishes and provides the child with all comforts and luxuries of life that are within his means. The brother, on the other hand, is a competent rival not only in his enjoyment and comforts, when within his teens, but also in his claims to the family property. Naturally, then, a son greets his father with affection and best regards, while he jealously avoids his brother. Again, the father and son are the active earning members of the household. Consequently in whatever a son obtains at the time of partition from his father there is some portion acquired with the sweat of his father. Naturally, then, when the same portion, enlarged or diminished at the hand of the acquirer, reverts back in the absence of a natural heir to enjoy it, it must, out of equity, go to the same person from whose fortune it was cut off. The father's claim to the property of his childless son may be thus supported on instinctive attitude and equity.

product of the Śrāddha ritual. Unity of four is the heritage of the Indo-European culture. At the same time it is quite probable that in those days when a man was said to live for a hundred years a family did comprise four generations living together, a family which, though not usually common, was not quite unknown, as is seen in the case of Bhīṣma and Abhimanyu. It is more probable that in the process of transition from the communal manes in the early Vedic period to the manes of the individual in the Atharva Veda only three ancestors were preferred as the unity of four was lurking predominantly in the minds of the Vedic Aryans owing to some such reasons. At the same time we have seen in the text of Baudhāyana a tradition preserved wherein the father and his two lineal descendants are said to form a group of persons with a common heritable right. The legislators and Vijñāneśvara, have relied on this tradition while limiting the transmission to three generations, that being the usual number of generations living together.

Acquisition of property is a process wherein a definite group of persons put in conjointly all that is necessary for such acquisition in the stage of culture that we are investigating. Property being thus a product of the co-operative work in unison of certain definite persons, they have the first right over it for enjoyment or disposal. When any one of these collaborating members is rendered incapable of enjoying his share by death or such process his right is not lost but descends to his descendants who have been collaborating members for its preservation and expansion. Descendants through a daughter cannot, therefore, be invested with a right to property and, hence, the exclusion of a daughter's son.

In the law as developed by Vijñāneśvara property is said to devolve on persons related through the females, sons of the daughters of the family and persons related through the mother of the propositus, when there are no relatives through the males to inherit. Vijñāneśvara has dropped such near relatives as the sister's son, the mother's brother and the mother's father; at the same time he has assigned special place to the daughter's son in as much as he inherits as a near heir of the deceased before property reverts to the other coparceners of the joint-family. It has been shown that in dealing with these relatives, cognates, Vijñāneśvara has not rigidly followed the theory of blood propinquity but has followed a traditional



order,<sup>148</sup> and, therefore, one finds these omissions. The preference shown to the daughter's son may be due to the fact that he had an important place in the ritual of Śrāddha. But it is also possible, and more probable, to look upon this as a result of bilateral counting; like a son's son in the absence of a son, the daughter's son in the absence of a daughter, is a natural heir if counting is through both the male as well as the female. This bilateral counting so far as the descendants of the propositus are concerned stands in contrast to the unilateral counting in respect of other heirs in the 'line' in the scheme of Vijñāneśvara.

It is now possible to understand the development of the law of property from very early times. In the early law that we find in the Sūtras and Manu property is said to devolve only on the males, females being almost completely ignored. The recognition of the daughter as an heir, when she is appointed, also supports this stress on agnatism because she is regarded as her father's son and her son as son's son. In the Smṛti period daughter as daughter is recognised as heir because in propinquity she is as much near to the deceased as a son, and the law of descent is seen to be modified for the first time on the basis of blood propinquity. Vijñāneśvara, by recognising for the first time the daughter's son as a near heir, went a step further. Jīmūtavāhana carried further the principle of bilateralism. Instead of restricting it to the case of the propositus alone, as is done by Vijñāneśvara, he has extended it partially to all the ascendants also who figure as heirs. Thus, it is not only the males who belonged to the family but even the sons of the daughters of the family who are recognised by him as near heirs and as such allowed to succeed according to their blood propinquity. When propinquity, instead of being stressed on the male side, is recognised on both the sides, by admitting the sons of the daughters of the family as near heirs, propinquity through the mother must also be recognised and relatives through her, too, should be looked upon as near heirs. Jīmūtavāhana does recognise these persons as near heirs and speaks of devolution of property on the maternal relatives just after the nearest agnates called sapindas by both Baudhāyana and Manu. This circle being

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143. Vijñāneśvara has relied upon three traditional verses, and we are told that one of his predecessors, Bālarūpa, dealt with those relatives on the same lines. Kane P. V., *His. of Dharmaśāstras*, Vol. I, p. 285.

a close entity with common heritable right, the members thereof has a prior claim to property. But as soon as there is no member of this compact group, *Jīmūtavāhana*, instead of choosing farther agnatic relatives, as is done by the ancient writers and even by *Vijñāneśvara*, has rightly given preference to relatives through the mother. The order laid down by *Jīmūtavāhana* is thus a step in advance of the position taken up by *Vijñāneśvara* in working out the theory of blood propinquity and the principle of bilateralism arising therefrom. Nanda Pandit, who follows *Jīmūtavāhana* in maintaining the unity of four for the working of the 'line' and in bringing in relatives through the mother immediately after the great-grandfather, amplifies the principle of bilateralism bit differently. Instead of extending it to all the three ascendants, as *Jīmūtavāhana* has done, he restricts it to the 'lines' of the propositus and of the father but admits the sister, like the daughter, as heir along with her son. Equally interesting is the fact that the widow of a pre-deceased son is said to inherit after the widow of the deceased.<sup>144</sup> *Bālabhāṭṭi* who, too, accepts her as an heir before the father's mother recognises the daughter's daughter, brother's daughter and sister's daughter as near heirs. That is, not only the male issues but even the female issues, though they are few in number, are recognised as heirs and that is carrying the bilateral principle a step further. Evidently, then, the law of descent from the *Smṛti* period onward has been progressively modified on the principle of bilateralism arising out of the theory of blood propinquity. This recognition of bilateralism is a strong factor against the corporate nature of the joint family. It may, therefore, be laid down that the law of inheritance which was in the *Sūtra* period aimed at keeping in tact the corporate character of the family was gradually modified on the line of individualisation of the family.

In the scheme of *Vijñāneśvara* the acquisitions of a person are said to devolve first on his sons and grandsons. In the absence of these persons, who are the collaborating members of the family in the process of acquisition and who are recognised as persons with

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144. One may compare here with some curious interest *Bhāruchi's* view; a fellow-student is like a brother, and hence, if a man dies leaving no fellow-student, the sons of the fellow-student, his widows and the widows of his sons succeed one after another; in the absence of all these a *śrotriya brāhmaṇa*. Note the pattern. J. B. B. R. A. S., 1925, p. 213.

common heritable right in the tradition preserved in the text of Baudhāyana, property is vested first in the widow, then in the daughter and thereafter in the daughter's son. Devolution of property on the females of the family, daughter, as against other male members such as the father or a brother is against the spirit and tradition of joint family. Vijñāneśvara does not rest there but goes further and declares even her son as a next heir in preference to the male relatives; and, as it has been shown, he is probably the first jurist to admit the daughter's son as a nearer heir. When the daughter and the daughter's son are placed so high up in the list of heirs they are not recognised as heirs in the 'lines' of ascendants. It shows that mere consideration of consanguinity must not have weighed with him in according this high position to the daughter. There must have been other considerations as well for this preference. As we have tried to show the unity even in the 'line' of the *propositus* is the unity of three, according to Vijñāneśvara, and not of four as is the case with some of his followers and as we find it in the interpretation of *Mitāksarā* by some. The recognition of the daughter and of her son in her absence immediately after those male descendants whose right to property is distinguished by Vijñāneśvara by calling it 'unobstructed heritage', indicates that he aimed at catering to the satisfaction of one's natural urge. The right of inheritance of such females as the widow and the daughter was no doubt accepted much earlier before Vijñāneśvara, but it was he who asserted such right as absolute. This recognition of absolute right gives the real status to these females in as much as truncated rights to property have no great significance. Vijñāneśvara, thus, takes a very advanced step in the devolution of property, a step which is not in harmony with the family integrity. In the absence of the daughter's son property is said to devolve on the agnates to the total exclusion of the cognates. His stress on agnatism is evident here, but we must also remember that cases of devolution in the absence of so many persons, beginning with the son and ending with the daughter's son, are likely to be the exceptional phenomena. On this interpretation of Vijñāneśvara's order of heirs one is justified in postulating that a new pattern was set by him so as to meet the growing tendency towards individualism. There is an inward feeling on the part of a man to keep his acquisition to himself and to see that it serves as a provision for the maintenance of his near ones, his wife and his children, after him. As some of

these persons, the widow and the female issues, are not regarded as proper persons to share the family property there is natural inkling to break away from the family and to establish one's own household. Again, by establishing one's own family one can perform religious rites separately and that would lead to the acquisition of religious merit. These are, then, the factors, economic, psychological and religious, that serve as good incentives for breaking away from the joint family and establishing individual household. But when the devolution of his own acquisition is so regulated that the persons nearer to him, his wife and his children and their children, are benefitted in preference to the other members of the joint family, and, at the same time, the right to break away from the family, whenever a person wants to do it,<sup>145</sup> is guaranteed, inducements are held out to him to continue as a member of the joint family instead of establishing a separate household. At the same time, Vijñāneśvara's leaning towards agnatism and his insistence that the father should seek the consent of his son in the disposal even of his own acquisition reflect his concern to preserve the property within the agnatic family. One can thus find the compromise sought to be achieved by Vijñāneśvara between the ancient agnatic structure of the family and the growing tendency towards individualism.

Jīmūtavāhana, on the other hand, maintains the old view that the father, as the head of the family, has absolute control over the property and sons cannot ask for their shares in the property in his

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145. Equal ownership of the father and the son contemplated by Yājñavalkya was accepted by the predecessors of Vijñāneśvara, but they had their own interpretation about it. Viśvarūpa (Yaj. II 124) opines that there is partition of what is already (jointly) owned : but, at the same time, he (Yaj. II 118) allows the father unrestricted freedom of distribution of ancestral property among his sons during his life-time. In his comment on Yaj. II 119 he writes : When he gives equal allotments to his sons, the widow of the predeceased sons and grandsons, like one's own wives, must be given the shares of their husbands provided they have not received their *strīdhana*. Dhāreśvara (J. B. B. R. A. S. 1925., p. 223) explains it by saying that when the father effects a partition at his will during his life-time he has no power to give a larger or smaller share to anyone as he can do with regard to the self-acquired property. It may be added here that the distinction between 'obstructed heritage' and 'unobstructed heritage' that we find in Vijñāneśvara is not made either by Viśvarūpa or Bhāruchī.

life-time. But, on the death of the father, the share of a son is not lost to him, if he was pre-deceased, but reverts to his widow. The individual was thus assured that his interest in the property was as safe when he remained joint as it would be if he were separated. In both the cases property that would be his would devolve on his widow. And this was a sufficient guarantee to keep the family joint. Again, in discussing the devolution of property in every 'line' he is not content with only male descendants but also includes the daughter's son. Similarly, instead of bestowing the property on the agnates, he brings in maternal relatives immediately after the nearest sapinda relatives, namely, first three ascendants and their 'lines'. This recognition of bilateral kinship in the devolution of property shows that he, too, wants to satisfy the natural urge of an individual and not to stifle it completely in the interest of the joint family. In contrast to Vijñāneśvara, however, he allows only limited ownership to the daughter in the property inherited by her. Secondly, he refuses to recognise a person's ownership in the property till the extinction of his father's ownership therein.<sup>146</sup> He equally advocates much wider powers for the father over the ancestral immovables. Thus, on the one hand, he appears to have created a greater incentive to keep one-self attached to the joint-family by promising some of the advantages of a separate household: on the other hand, the law has been so defined by him as to keep up, to a certain extent, the corporate character of the family.

Both Vijñāneśvara and Jīmūtavāhana try in their own way to keep up the joint family when it was disintegrating. Further, in his treatment of the law of partition, in his defining the unity for each line, in his concept of the group of sapindas and lastly in his association of the law of transmission with the theory of spiritual benefit, Jīmūtavāhana has drawn upon Manu. Vijñāneśvara, too, has an older tradition for limiting the transmission to two descendants only, and his stress on agnatism is clearly indicative of his reverence

146. This attempt on the part of Jīmūtavāhana to maintain the integrity of the family by investing the father with absolute control over the property finds its interesting counterpart in the writings of his predecessors. Dhāreśvara who held the same view in respect of the father's control discussed in details the point that there is nothing one can use just as one pleases (and therefore ownership cannot be defined as the power to dispose of the subject of ownership at one's sweet will). The author of *Smṛtisaṃgraha* also gives a verse of similar import. Kane P. V., J. B. B. R. A. S., 1925, p. 224.

for the early tradition, reflected in the early law, to keep the property within the family. Both are traditionalists: at the same time, both have properly felt the pulse of the time. In weilding the oldest tradition with the changes brought about within about 1500 years both have proved themselves great realists.

This interpretation of the law of inheritance shows that the law has changed from time to time to meet the needs of the time. It is more reasonable, therefore, to interpret it as a product of social forces rather than as a deduction of a particular principle. Secondly, the law has been progressively modified on the principle of blood-propinquity within the bounds of retaining, as far as possible, the corporate character of the family. The theory of spiritual benefit to regulate the transmission of property is not the innovation of Jīmūtavāhana. It appears that his predecessors did make use of it, if not as a theory as a whole, at least by way of explanations.<sup>147</sup> Jīmūtavāhana utilised it as it helped him to introduce some of the fundamental changes in the law of his times by giving Shastric sanction to the new innovations, the sanction which is inevitable to make them approvable by the people at large. It may be added here that separation from the joint-family implies separation in wealth and religious rites.<sup>148</sup> So long as the religious rites remain joint mere partition of the family estate does not mean complete break up of the family. Śrāddha is the only ritual which is performed by one of the brothers, especially the eldest, even when brothers are separated in wealth. It thus stands as a symbol of unity of a family even when it is divided in many small families. The association of this rite with the law of property is a pleasing association when the law, though apparently developed on the bilateral principle of propinquity, is aimed to stress and strengthen the joint family.

One feature in the scheme of Vijñāneśvara is very striking. He has excluded the sister's son from inheriting, and all his followers have done the same. Exclusion of such a near relative, which no one can regard as a casual omission through oversight, must be accounted for. It indicates a very strong antipathy between a person and his sister's son, relations between whom in the Hindu community are

147. Bhāruchi and Srikara - J.B.B.R.A.S., 1925, pp. 211; D. B. p.296.

148. Bhāruchi defined partition as separation in connection with one out of two, namely, estate and *dharma*. J. B. B. R. A. S., 1925, p. 211.

shown to be more genial than hostile.<sup>149</sup> It is very difficult to trace the possible causes of this antipathy. The sister's son happens to be the father's daughter's son, and as such he may be very favourably treated by the father because, as the daughter's son, he performed some of the Śrāddhas and thus benefitted his maternal grandfather spiritually. This favourable treatment accorded to him must have been partly responsible for the strained feelings between a person and his sister's son. Again, in a variety of cousin marriage where a person marries his mother's brother's daughter, and this form of marriage was current even in the days of Vijñāneśvara, the sister's son becomes the son-in-law, and looking to the fact that he is called the tenth planet in popular literature, relations between them are not bound to be very congenial. And, if we remember that Vijñāneśvara's treatment of the law of property is more in the spirit of strengthening the agnatic constitution of the family, aversion towards the sister's son, who is the principal heir in the matriarchal family, is not difficult to understand. A number of some such ideas must have been at the root of this antipathy.

149. Supra p, 129; Ghurye G, S., *Some Kinship Usages in Indo-Aryan Literature*, J. Ant. S. of Bom., N. series, Vol. I, pp. 28 seq.

## CHAPTER VI

### VICARIOUS LIABILITIES AND DEBTS

The striking feature that distinguishes the ancient organisation from the modern ones is that the ancient society starts from groups and subordinates the individual interests to the claims of these groups. The individual is but a part of the kindred. If he is injured, it is the kin that is injured. If he be slain, it is the blood of the kin that has been shed and the kin is entitled to avenge it. This exacting of vengeance had twofold significance. Firstly, what was demanded for the murdered, wounded or insulted man by the clan or by himself constituted his value or price and the recovery of this price by his friends and the recognition of the same by his foes constituted his 'honour'. Secondly, it was looked upon as a sacred obligation arising from the belief that the soul of the murdered man found no rest until blood vengeance had been exacted.<sup>1</sup> It is natural, then, that he who fails to fulfil this obligation is looked upon as a coward indifferent to the demands of religion and duty in the primitive society. This being the primary sentiment animating the savage people, a continued state of warfare will be the result, and these feuds constitute a stage in the evolution of justice.

'He that sheddeth man's blood, by man shall his blood be shed' reflects faithfully the simplest and earliest rule of vengeance. In some cases the idea of exact retaliation is carried out with the utmost literalness, almost a grotesque literalness.<sup>2</sup> The great drawbacks of this system of dealing out justice are mainly two. It looks upon the lives of members of other clans indifferently and this clan-partiality is a great menace to the fostering of common citizenship and universal brotherhood which are the prime features of advanced cultures. Secondly, it affords no opportunity to bring the quarrel to an end. The death of a member of a certain clan will be avenged on the clan of the slayer, and, the desire for personal vengeance being very

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1. Lippert J., p. 469; Sumner W. G. & Keller A. G., Vol. I, p. 645; E.R.E., Vol II, pp. 728, 735.

2. Hobhouse L.T., p. 74 If a man has killed another by falling on him from a tree, a relation of the deceased will solemnly climb the tree and fall upon the offender to kill him even at the risk of his own life.



strong, the social order in the community is set at naught. Thus it would not allow an organised system of justice to come into existence, unless, in horror at the constant bloodshed evoked by such feuds, attempts be made, in course of time, to check the feuds by arbitrations.<sup>3</sup> The struggle for it was, however, long and stubborn. The practice of receiving gold in compensation for blood was originally repulsive; but, once such a practice became a customary institution, we enter upon the stage of composition, a stage characteristic of weakening the clan-solidarity. The social implication of this transition is very significant. In feuds the responsibility is collective and hence vicarious. By substitution of composition collective responsibility is reduced to common pecuniary liability, and this conception of common liability for blood-money is extended to all sorts of debts with the progress of civilisation.

The main story of the Mahābhārata is the strife between first cousins, and the battle is fought between cousins and cousins, between nephews and uncles. It is also suggested that 'there were probably serious quarrels (even) between the Pāṇḍava brothers'. Karna, the uterine brother of the Pāṇḍavas, refused Kṛṣṇa's advice to betray the Kauravas; Sugrīva sought for help of Rāma against his own brother Rāvaṇa; Puṣkara deprived his brother Nala of his legitimate right to the throne by means of fraud. Sahadeva, the son of Jarāsaṇḍha, aided the Pāṇḍavas, slayers of his father. Śalya, the mother's brother of the Pāṇḍava-twins, apparently fought against the Pāṇḍavas. On slight trouble the families of the Vṛṣṇis and Andhakas were destroyed, sons killing their fathers and fathers their sons. This discord amongst kin though explained away on one ground or another indicates the weakening of the bonds of consanguinity which was the glory of the Kṛtayuga. 'He who lives in the observance of Kṣatriya practices fights with the son, mother, sire, sister's son, mother's brother, relatives and kinsman'; duty supersedes kin obligations. Even in the earlier period kinsmen are not found in accord with each other, gods being invoked to grant supremacy over rebellious kindred. Nay, Griffith has gone to the extent of asserting that rivalry and enmity between relatives by blood seem

3. Various other forces, besides arbitration, such as the state, Christianity, migration by sea, etc., operated in diminishing the scope and frequency of these blood-feuds.

to have been the rule in Vedic India'.<sup>4</sup> The Indo-Aryans present from the mid-Vedic period a state of society wherein the ties of kinship and blood had become slack.

At the same time one also finds it said that kinsmen mean wealth and provoking dissensions amongst kin is the greatest of all sins. 'It proceeds only from base persons of low lineage'; on the other hand, 'they are blessed that serve the cause of their relatives.' Besides these platitudes we have in Kirmīra an actual evidence of a survival of original blood-feuds. Even though a concrete example of this type is not traced in the Vedic literature some traces do appear in the Vedic ceremonials in the mantra recited at the animal-sacrifice, while immolating the animal, 'May thy mother approve thee, thy father, thy brother born of the same womb, thy friend in the herd.'<sup>5</sup> This practice of exacting vengeance on the slayer or on his kin reflected in these passages indicate that even when kin do not appear to be highly organised, some sort of kin organisation was not completely unknown.

The nature of kin solidarity can be properly evaluated by considering its important aspect, the nature and extent of vicarious liability. It involves two questions: (1) whether there is evidence of vicarious liability and, if so, who were the persons held liable under it? and (2) what was the amount of liability of each. The second is the most important question as it precisely defines the various kin groups in point of solidarity. But we have no evidence on the point evidently because we have no organised kin among the Hindus. As to the first, in a R̥gvedic passage (V 61, 8) Paṇi is declared to be a man only in so far as he has a wergeld. In another Vedic passage we are told that 'he who removes the fire is looked upon as a slayer of the hero among the gods. The god Varuṇa

4. Sidhanta N. K., Loc. cit., pp. 123, 125; Mbh. IX 4, 9; A. V. I, 9, 3; II 10, 1, 2; XIII 1, 31; cf. also R.V. IV 3, 13; X 39, 6; Griffith, *Hymns of Atharva Veda*, Vol. I, p. 52, f. n. 1.

5. Mbh. V 24, 8; III 11; S. B. I 2, 1, 7, 10, 11. Mk. P. CXXXVI 7 where Vapusman performs the water-giving ceremony with the blood of his father's slayer and offers piṇḍa with his flesh. Bhīma likewise drinks the blood of Aśvatthāman to avenge the death of Draupadi's sons. A. B. II 6; V S. IV 20; VI 9; K.S. II 5; III 5; XVI 21; T.S. I 2, 4.

exacts vengeance upon the slayer; the offender should make an offering on eleven potsherds to Agni and Varuṇa. To avoid any harm, the sacrificer delights him whom he slays and him who exacts the recompense with their own portion<sup>6</sup>. The gods appear to be the persons wronged in this case and the task is assigned to Varuṇa, perhaps, as their representative. Whether the role of Agni is that of a victim or of a go between is not clear. In the latter case it means justice through a third and impartial party. A passage in the *Pañchaviṃśa Brāhmaṇa* reads: "A man—slayer of the gods is he who presses out the soma; by the hundred (cows) he propitiates the hatred, the gods; by the (next following) ten—there being ten vital airs—he extricates (from them) his vital principles (his *pṛāṇas*), by the (next following) one (the 11th) himself (or, his body, his trunk), the twelfth (or last) is the sacrificial fee." Here the aggrieved party is not only said to receive compensation but the amount of compensation is also suggested. When we read this passage with the fact that an epithet *Śatadāya* is used for a man in the *Rgveda* and that *Śunaḥśepa* was bought for one hundred coins from his father *Ajigarta*<sup>7</sup>, we may lay down that the normal price of recompense for a man was one hundred amongst the Vedic Aryans. But along with this practice we also read that "Śamīyu Bārhaspatya, who uttered the *Svajā* call for gods, chose a boon from the gods for his offspring, 'Him, who reviles him, he shall fine with a hundred; him, who strikes him, he shall fine with a thousand; he, who draws blood from him, shall not behold the world of the *Pitṛs* for as many years as are the grains of dust which the blood in its fall seizes upon.'<sup>8</sup> The passage does not lay down blood for

6. T.S. I 5, 2, 5; cf. also II 5, 2, 1. In II 5, 12, 3, 4 and in R.V. IV 1, 4 Agni is solicited to avert the wrath of god Varuṇa.

7. P.B. XVI 1, 12. In the first part of the passage the offender is said to propitiate the relatives of the injured by compensation; in the latter part, however, the offender is said to gain back his body and soul by performing a sacrifice with particular mantras. Does it suggest that he was deprived of his body for offending the gods? If so, the idea of compounding the offence by payment and that of taking blood for blood in one and the same passage are really incompatible. B. S'r.S. XXV 4; R.V. II 32, 4; K.S. IX 2; M.S I 7, 5. *Durgāchārya* and *Sāyana* explain *śatadāya* as 'bahupradam', but it is more natural to interpret it, following *Macdonell* and *Keith*, as one whose *wergeld* is hundred.

8. T. S. II 6, 10, 2

blood; nor does it lay down compensation for blood in terms of money, though there is a gradation of fines for various offences. It enjoins that the offender is debarred from entering the world of the Pitrs for drawing blood, and looking to the gradation of offences, this punishment for drawing blood must have been very severe. The nature of liabilities involved was, at times, of a religious rather than secular character, and very possibly this religious character of fine must be a sort of challenge to the practice of recompensing the injured by payment of money or its equivalent.

Coming to the Sūtras, a passage in Baudhāyana Dharmasūtra reads: "For slaying a Ksatriya (the offender) shall give to the king one thousand cows and besides a bull in expiation of his sin. Āpastamba, Gautama, and Manu prescribe one thousand cows and a bull though none of them speaks of the king as the receiver of this fine.<sup>9</sup> Explaining the purpose of this fine as summed up in the phrase, *vaira niryātanārtham*, Haradatta writes: "He who is slain by anybody becomes, in dying, an enemy of his slayer (and thinks), 'O that I might slay him in another life', for the removal of this enmity." Govinda notes this and offers an alternative explanation, namely, 'in order to remove the enmity of the relatives of the murdered man'. Buhler adopts the latter explanation and lends support to the opinion of Macdonell and Keith that the cows are given to the relatives, while a bull is given to the king as an arbitration-fee<sup>10</sup>. The norm of compensation in the early Sūtra period thus appears to be one thousand cows to the relatives of a murdered man with an additional charge to be paid to the king.

It may be said, then, that public opinion was in favour of evolving a definite system of justice leaving little scope for kinsmen to decide their wrongs. The evidence of the Sūtras and the Vedic literature indicates this process of transition when the practice of settling private disputes by compensation does not appear to be uniform in as much as we find a hundred coins or a thousand cows given as the price of a man, and there may be some other ways of settling the offences which may not have been referred to in these works as the subject is merely referred to cursorily in these books.

9. B.D.S. I 19, 1; Ap. D.S. I 24, 1, 4; G.D.S. XXII 14; M. XI 128. cf also Yaj. III 266.

10. V. I., Vol. II, p. 331; S.B.E., Vol. II, p. 73, f. n.

The principle 'that the father has eaten sour grapes and the children's teeth are set on edge' is illustrated in a number of passages in the Vedic literature. The sage Vasiṣṭha solicited Varuṇa not to vindicate his vengeance on him for the sins of his fathers. In Varunapraghāsa ceremony the sacrificer asks his wife the number of her paramours, and whatever connection she confesses not, will indeed turn out injurious to her relatives.<sup>11</sup> The circle of the family, or rather the extent of kin suffering under this rule included, in all probability, persons related within three generations. A passage of the Atharvaveda, dealing with the giving of a sterile cow to a Brahmin, reads: "If a man thinks that the cow is sterile and yet roasts her at home, his children and grand-children Brhaspati causes to be importuned". That is, according to Bloomfield, 'Brhaspati undertakes to collect the debt incurred by the unrighteous owner of *Vas'ā* from his descendants by causing the priest to dun them for the debt'. Similarly, a passage in Aitareya Brāhmaṇa reads: "If a man deprive one with a portion of his portion, he revenges himself on him, then on his son or on his grandson; but he does revenge himself on him". The visiting of sin within three generations is also spoken of in the Mahābhārata and Manu Smṛti. 'O king', says Vaiśampāyana, "sinful acts do not, like the earth, bear fruit immediately, but gradually and secretly do they cut away the roots of their doer. Such fruit is seen either in one's ownself, in one's son or in one's grandson".<sup>12</sup>

An interesting example of this visiting of sin on the descendants is to be found in the judicial procedure laid down by Manu. "The witness to whom, within seven days after he has given evidence, happens (a misfortune through) sickness, fire or the death of a relative shall be made to pay the debt and a fine."<sup>13</sup> The guilt of a man is attested through divine justice, heavenly vengeance upon his relatives. The word *jñāti* is used for near relatives or for persons living in the

11. R. V. VII 86, 5; S.B. II 5,2, 20; T. B. I 6, 5, 2; Keith A.B., p. 471.

12. A. V. XII 4, 38; S. B. E., Vol. XII, p. 660; A.B. II 7; Mbh. I 80, 2,3; M. IV 172, 173; B.D.S. I 5, 11, 16; V. D. S. XVII 86.

13. M.VIII 103. In passages attributed to Viṣṇu and Pītāmaha (Aparārka, p. 715) the same rule is referred to and the same word *jñāti* stands for the kin-group.

same house in the Vedic and the Sūtra literature.<sup>14</sup> At the same time the word has been used for an agnatic relative within the degree of sapinda relationship<sup>15</sup> or, at times, for the paternal relations in general.<sup>16</sup> In a passage where Manu forbids quarrels with a teacher, mother's brother, *jñātis*, *sambandhis*, *bandhus*, father, mother, sister, brother, son, wife, daughter and servants, he refers to the nearest relatives explicitly and alludes to others by such terms as *jñāti* and *bandhu*. In a corresponding passage in Yājñavalkya the nearest relatives are referred to in explicit terms while others are denoted by the term *bāndhava*.<sup>17</sup> Obviously *jñāti* in Manu must refer to such near relatives as the members of the joint family who are not specifically referred to.

To sum up, there is no indication of blood feuds among the Hindus. The system of wergeld prevailed from very early times which indicates that murder was not avenged with murder but was compensated by pecuniary payments to those who were wronged. The fact that we have no indication as to who were the persons entitled to receive this compensation points to the looseness of kin-organisation. The problem of vicarious liability among the Hindus is discussed in terms of family rather than in terms of kin-organisation. That explains why there is no discussion in respect of the liability of each kin. The members of a joint family form a corporate group with equal rights and liabilities of each member, and hence there is no scope for discussing the liability of each kinsman.

The law of debts presents more or less the same basis, namely, the basis of family. The father being dead, the son is duty bound to pay off his debts. This liability on the part of a son is not his voluntary concern but his religious duty. As Nārada puts it; "The Fathers desire the children anyhow for their own interest: he will deliver us from spiritual and temporal debts. Hence, the son born should strive ardently, leaving aside his interest, to deliver his father from debt so that he may not go to hell." Furthermore, "he who does

14. Supra p 127. In a verse attributed to Bṛhaspati (Kane P.V., *His. of Dh.*, f.n 640) the term *jñāti* is used for very near relatives, namely, the mother, father, son, brother and wife possessed of a child and entitled to perform religious rites. Yaj. I 82; N.D.S. XIII 36.

15. M. II 132, 184; G. D. S. II 37; X 4; B. D. S. II 1, 36.

16. M. III 264; V 77.

17. M. IV 179, 180; Yaj. I 157, 158.

not give to the creditor having received debts, etc., is born as his slave, son, wife or cattle in his house."<sup>18</sup> When the debtor whose debt is not paid off is said to go to hell or to be reborn in his creditor's house as his dependent to work for him, it becomes the imperative duty of a son to relieve his father of his indebtedness, as his greatest concern in life is to secure all benefits for his father in his after life. This play upon sentiments had made the payment of debt a religious duty.

All the Smṛti writers and Commentators hold that liability to pay the debts extends to the grandson and no further. Brhaspati has expressly negatived the great-grandson's obligation to pay it. Viṣṇu enjoins: "Sons and grandsons shall discharge the debt; but no remoter descendants against their will." Whereas the great-grandson who is desirous of paying off the debts of his great-grandfather is not prevented from doing so by Viṣṇu, any such obligation on his part is expressly denied by Brhaspati and Kātyāyana<sup>19</sup>. The liability is not only restricted to sons and grandsons but even there a distinction is sought to be made by enjoining that whereas son should pay the amount with interests, the grandson should pay only the principal amount.<sup>20</sup> Similarly, it is said by Aparārka that when a person dies without leaving any property liability to discharge his debts falls on his sons in the first instance. It is only in the absence of the sons that the grandsons are burdened with the liability. But if the deceased has left property then the grandsons are held liable even when there are sons.<sup>21</sup>

Nārada also appears to restrict the obligation to the grandson. His commentator, Asahāya, however writes: "It is said that it (ceases) in the fourth. It refers to one who is fourth from those sons who are heirs through the merits of sonship. From him the liability of debts ceases, i. e., from the fifth from the original (contractor of the debts). He who is fourth from the

18. N D. S. I 5. cf. Kāt. (S. C., Vyavahāra, pp. 393, 394); Brh. (V. Rat. p. 55); Kāt. 591.

19. Kau III 11 (Vol. II, p. 66); Yaj. II 50; Vi D. S. VI 27, 28, Brh XI 48, 49; Vyāsa (Mit. p. 156); Kāt. 554, 558, 560; Vṛddha Hārta VII 250, Medhātithi (M. VIII 166); Mit. pp. 153, 154; Aparārka, p. 653; S. C. p. 398; V. Rat. p. 49; Sar. V. para 315.

20. Brh. XI 49; Kāt. 556; Mit. p. 152; V. Mit. p. 341.

21. Aparārka, p. 653.

original person is held by all sages to be the saviour of his father, grandfather and great-grandfather from the higher and lower debts." And he gets vexed with those who do not uphold his view. "Those that make the fourth person not liable for the temporal debts are of little understanding and should be disregarded: they undoubtedly become partakers of the sin of eating fish with bones."<sup>22</sup> Asahāya speaks of the great-grandson because the great-grandfather expects from him a *pinḍa* for his benefit. He quotes the authority of Nārada (I 6) to support his interpretation: "Three deceased (ancestors) must be worshipped, three must be revered before the rest. These three ancestors of a man may claim the discharge of their two-fold debts from the fourth in descent." The text attributed to Nārada is not in harmony with the verse which precedes it, nor is it found quoted by any commentator or writer of the digests though they quote him copiously on the subject. It may be, as Dr. Jolly suggests, that 'the present paragraph might have been inserted by the author of the commentary, who wanted to make the contents of the Nārada Smṛti agree with his personal views.'<sup>23</sup>

Asahāya's view is very instructive. As the son is generally called a saviour of his father from secular and temporal debts, and hence payment of debt is conceived as a religious duty, he is justified in extending the liability to the three descendants. But, when the liability is explicitly extended to the grandson and that of the great-grandson is expressly denied by the Smṛti writers, it is obvious that they do not think of the two debts, temporal and spiritual, on the same basis, as Asahāya has done, but distinguishes the temporal from the spiritual by basing it on the family unit, which from very early times, as is seen in their concept of vicarious liability, was the unit of three generations. It is also pertinent to note here that liability is not discussed anywhere in terms of generations but in terms of sons and grandsons. This stress on lineal descendants and indirect omission of collaterals is the feature of Hindu law of debts and vicarious liability.

Manu observes: "If the debtor be dead and (the money borrowed was expended for the family, it must be paid by the relatives out of their own estate, even if they are divided."<sup>24</sup> Yājñavalkya enjoins

22. N. D. S. I 4; Asahāya (Ghose J. C., p. 42).

23. S. B. E., Vol. XXXIII. p. 44, f. n.

24. M. VIII 166; Yaj. II 45. cf. N. D. S. I 13, 15.



that whatever debt is incurred for the family by (persons) living undivided should be paid, when the manager of the family dies or goes abroad, by the heirs. Neither Manu nor Yājñavalkya specifies the extent of the family. Commentators on Manu have not tried to explain the word *bādhava* used by Manu in this verse. If the joint family include the descendants of the common great-grandfather, the unity which we found upheld by Baudhāyana among the early writers and Kātyāyana among the Smṛti writers, then the fourth descendant should be held liable for the debts of the family. Bṛhaspati and Nārada opine that the debts contracted by an undivided paternal uncle, brother, mother, son or wife, slave, pupil or dependant in the interest of the family, should be paid by the members of the family<sup>25</sup>. The explicit reference to the paternal uncle as the possible debt-incurring member of the family suggests that the family is here conceived to include the descendants of the grandfather only. Commentators and the writers of the digests, though they have referred to these verses, have not tried to elucidate the family unity; at the same time none of them has referred to the old unity of four in their comment on these verses.

It may be added here that even in the case of bonded debts Yājñavalkya enjoins: "A debt in writing must be paid by three persons alone." Elucidating the connotation of 'three persons' Viṣṇuśvara writes: "Three persons include the man contracting the debt, his son and his grandson."<sup>26</sup>

In the absence of these descendants, namely, the sons and grandsons, liability for debts falls on the heir. He who inherits the wealth is bound to pay the debt of the owner of the wealth<sup>27</sup>. In course of discussing the liability of the inheritor Nārada observes: 'Among those three, the heir of the wealth, the protector of the widows and the son, he is liable for the debts who takes the wealth. The son is liable, on failure of a husband of the widow and of an heir (to the property); and the husband of the widow, on failure of an heir or of a son,'<sup>28</sup> The text is apparently contradictory, but with

25. N. D. S. I 3; Bṛh. XI 50; cf. N. D. S. I 14.

26. Mit. p. 176; Aparārka, p. 687.

27. G. D. S. XII 40; Yaj. II 51; Bṛh. XI 52. N. D. S. I 17; Kāt. 562; Vṛddha Hārīta VII 251; Medhātithi (M. VIII 166); V. Rat. p. 66; Sar. V. para 645.

28. N. D. S. I 23. cf. Yaj. II 51; Kāt. 562; Bṛh. XI 52.

the help of other Smṛti texts and commentaries a fairly satisfactory meaning can be deduced. Among the persons liable to pay the debts of a deceased person he, who takes his wealth, comes first. If the deceased leaves no estate then he who takes his widow must pay his debts because the widow is his (deceased's) wealth which is not included in the heritable estate. If there are neither estate nor the widow, the son is liable to discharge the debts. The son is held liable in the first instance to discharge his father's debt. How can we, then, account for his liability only after the heir or the second husband of the widow? This is explained by saying that the son here is the son who, being incompetent to inherit owing to some physical or mental defect, is held liable only after those who got the wealth of the deceased and as such should be burdened with his debts.<sup>29</sup> When there is neither property nor widow left by the deceased, those sons who, being free from the disqualifying defects, have capacity to inherit are liable in preference to those having no capacity. There is further reasoning as to the liability of the husband of the widow and the son. One who takes the last of the four kinds of *svairiṇīs* and the first of the three kinds of *punarbhūs*<sup>30</sup> or a widow with abundant wealth must pay the debts in preference to a son who inherits no property. Otherwise, the son, even when he does not inherit, must pay the debt. When there is neither the property to be inherited nor a son to discharge the debts of his father, one who takes the widow must pay the debts.

In holding the inheritor liable for debts of a person whose estate he inherits, the Smṛti writers have conceived of the issue in terms of rights and obligations. Those who inherit the estate in their right to do so have equally obligations to pay the debts. The son and the grandson claim by the mere fact of their birth a share in the property of the grandfather. They have, therefore, liability to pay even when they have nothing to inherit. It is to emphasise this primary liability of the sons and the grandsons that Bṛhaspati (XI-48) has said: "The father's debt must be paid first of all, and after that a man's own debt; but a debt contracted by the grand-

29. According to Bṛhaspati (XI 52), 'the liability for the debts devolves on the successor to the estate, when the son is involved in calamity.' When a man has left no property, the husband of the widow must discharge the debt in preference to a son. Kane P. V., V. *May.*, p. 342.

30. cf. Nārada XIII 45-53 for *svairiṇīs* and *punarbhūs*.

father must always be paid before these two even." Similarly, those who take wealth of a person must, out of equity, pay the debts of the owners of such wealth. It is not that those who are bound to offer the *pinḍas* to the deceased are also bound to pay his temporal debts, but 'the liability for the debts goes together with the right of succession'. *Asahāya* appears to be a solitary authority for associating the law of debts with the *Śrāddha* procedure.

The significant fact to be noted about the law of debts is that from very early times persons who have heritable right in the property of an undivided family are persons related within four generations. In the law of transmission of property the estate is said to devolve on the second descendant, and not on the third, in the *Smṛti* law and the law of *Mitākṣara* and that of its followers. Yet, the great-grandson is admitted as an heir after the grandson by many of the later commentators. The liability for debts is, however, restricted to the second descendant and is not extended to the third. It only indicates that from very early times liability for the sins of the fathers was said to fall upon his second descendant and the law of debts is based on this principle of vicarious liability.

The unity of three is the fundamental unity regulating a large number of legal relationships, besides liability discussed so far, in the Hindu community. Rules pertaining to ownership through usufruct refer to the unity of three. The mere fact of possession for three generations entitles the fourth in descent to retain the estate as his property, even without a written title. Nay, "whatever has been enjoyed by the father or a brother, even unlawfully, cannot be taken away when it falls to (the lot of) the fourth (descendant)"<sup>31</sup>. It has been held that the phrase 'extending to three generations' is not to be taken literally but should be interpreted to imply a particular period of time. It refers, according to some, to a period lying beyond memory, and one can reasonably take it to imply the lapse of a hundred years; according to others, it relates to a period of sixty years only.<sup>32</sup> I do not propose to discuss the legal implications of

31. Vi. D. S. V 187; Kāt. 327; Bṛh. IX 26, 27; Hārīta (Kane P. V., *His. of Dh.*, p. 245); N. D. S. I 91.

32 Mit. pp. 139, 140. The same view is held by Devaṇṇabhaṭṭa and Mādhava. Kāt. (*Aparārka*, p. 636); Vyāsa (*Mādhava*, Vol. III, p. 341). In Bṛh. IX 7 the period is 30 years.

the rule of possession, nor do I want to examine the merits of the views of Vijñāeśvara and others: but it must be emphasised that, whatever the commentators may say with regard to the duration of possession, the expressions such as 'the hereditary succession of three ancestors' or 'unbroken possession for three generations'<sup>33</sup> emphatically assert the idea of generations. Similarly, an *avakraya*, transfer for hire by a bailee, is said to be valid after enjoyment for three generations, and 'a compromise and an exchange, if they are unequal, can be annulled within three generations.'<sup>34</sup> So, too, the persons said to be liable for obligations incidental to their being a witness to a fraudulent transactions are the sons and the grandsons.<sup>35</sup>

Another salient feature arising out of the discussion is that liability is always in the male line. No relatives by marriage nor those related through females are called upon to share the burden of liabilities. What little trace is there regarding the liability of the bandhus is insignificant in its scope and importance.

33. N. D. S. I 89, 91. Kāt. 315, 318, 322. cf. the Anglo-Saxon law (Ghurye G. S., *Caste and Race in India*, p. 133) " Possession of a certain amount of land by a family continuously for three generations bestowed permanent nobility on the members of that family'".

34. Kāt. 701

35 Ag. P. CCLIV 10

## CHAPTER VII

### BIRTH AND DEATH IMPURITIES

There are two great events in the life of a person, the birth and death. At both these crises in human life certain relatives are supposed to be affected by impurity. The period of impurities varies with different relatives. The study of these regulations is, therefore, helpful in our understanding of kin-organisation among the Hindus.

According to the Hindu theory of *samskāras*, a person finds his position or status changed as he passes from one stage to another with the performance of a *samskāra*. We shall find in our discussion that follows that the status of a child who is dead before the performance of tonsure is different from one who has his tonsure performed before death. Likewise, 'if the dead person has received the initiation (the rites) from the election of the site (for the *smāśāna*) down to their descending into water (in order to bathe themselves) are the same as those prescribed for persons who have set up the (sacred *śrauta*) fires.' The rule implies that the rites of the uninitiated differ from those in case of the initiated. A person's relationships with his social group are thus regulated in terms of *samskāras*. These *samskāras* are performed in case of a male issue only. The females are neither initiated nor have they to undergo the actual performance of the tonsure ceremony. The only *samskāra* performed for a female is marriage, which is said to be her initiation.

The question of impurity is very often discussed on the considerations of the sex of the deceased. The rules are further elaborated on considerations of age and of some events such as the eruption of teeth in the life of the deceased.

Among the writers of the *Gṛhya sūtras* the rules of impurity are given by *Pāraskara*. The rules enjoin: in the event of death of a child who has not reached the age of two years his parents alone are impure for one night or three nights; the child is not cremated. If a child of more than two years die, all his relations follow (the corpse) to the cemetery. After burning him they should ask one who is related (to the deceased) by blood or by marriage for (his permission to perform) the water libations. Then all relations, to the seventh or to

the tenth degree, descend into water: if dwelling in the same village, (all) as far as they can trace their relationship. Coming out of the water they return to the village. Through a period of three nights they should remain chaste, sleep on the ground, do no work and charge nobody (to do it for them). The impurity caused by death lasts through three nights, and to ten according to some. The entering in the village and what follows after it is the same for persons who have touched the corpse. Their impurity lasts through one or two fortnights. The same rule is observed on the death of a teacher, the mother's father or mother or unmarried females. For those who are married the others should do it. Water-libation is optional for an officiating priest, the father-in-law, a friend, (distant) relations, the mother's brother, a sister's son and married females.<sup>1</sup>

We find here that cremation takes place only in case of those who have completed two years and only a cremated child receives water libations from its relatives. The child is thus really initiated into the wider group of family only after the completion of two years. Its relation before that period are more or less confined to its parents as they alone are said to observe impurity on its death. When water libations are given, all relatives as far as one can remember the relationship with the deceased are required to join in the ceremony. Though all these persons are duty bound a narrower group for participation in the ceremony is said to consist of members related within seven or ten generations. All the relatives who offer libations are said to live the life of restraint and to observe impurity for three days. Pāraskara also

1. P.G.S. III 10, 2-4, 8, 13, 16, 17, 25, 29, 30, 37, 42, 46, 47. The relatives from whom permission is sought for performing water libations are designated by the terms *samyutam* and *maithunam*. These are no kinship terminologies we often come across, and therefore are not very suggestive. Similarly, the term *sambandhu* in the sūtra which enumerates persons who may be given water libations is not very clear and is rendered here, following Oldenberg, by a distant relation. It may mean 'relatives by marriage', but the father-in-law is expressly referred to. Apte (*Social and Religious Life in the Grhya-sūtras*, pp. 311, 312) observes that 'all sapindaś (relation upto the seventh degree) and all co-residents of the village that retain some memory of relationship with the deceased' perform water libations. He has brought in the word *sapinda* which is not used by Pāraskara, has ignored the word *daśama* (ten), and has referred to the distant relatives in a bit confusing manner.

refers to a view that impurity lasts through ten days, but he does not refer to any view which seeks to restrict the observance of impurity only to those relatives called *sapiṇḍas*, who are generally relatives within seven generations. The fact that all the persons who can remember their connection with the family are said to observe impurity on death and that the period of impurity for all these persons is the same, namely three days, indicates the solidarity of the agnatic family. The members of the agnatic family are bound together by mutual observance of impurity and offering of water-libations on the death of any one of them. It is because of this stress on the family unity that these obligations are not laid down in case of the death of females of the family who are married into other families and thus lost to the family. A slight variation in the period of impurity in case of the unmarried females, who yet belong to the family, is probably due to their sex. Other persons who did not belong to the family and yet whose death implied obligations of the same sort, of course with slight variations in the period of impurity, are the mother's father and mother in the first instance, and the father-in-law, mother's brother, sister's son and married females in the second instance. Obligations in case of the parents of the mother are stressed by declaring those in case of others as optional.

Āśvalāyana has given three categories of relatives by defining three different periods of interruption of Vedic study and of giving alms. The three periods are ten days, three days and one day. The first category, that is persons who are to observe restriction for ten days, includes *sapiṇḍas* and the teacher. The second category includes teachers other than the guru, relatives who are not *sapiṇḍas* and unmarried females. The third category includes married females, children either still-born or died before teething, a fellow-student, and a *śrotriya* of the same village.<sup>2</sup> We thus find that instead of impos-

2. A G S. IV 4, 18 seq. The term *parijāta* which appears to have been originally *aparijāta*, as given by M. Williams, has been rendered 'a dead-born child', though Nārāyaṇa explains it as 'one who dies after teething'. Apte (p. 313) reads the text differently: 'The impurity due to death lasts for *three days*, on the death of non-*sapiṇḍa* relation, or of a child that has no teeth or a still-born child and *ten-days*, on the death of *sapiṇḍas*, a non-*sapiṇḍa* guru (and unmarried female relations according to others)'. He appears to have relied upon Oldenberg (S B E., Vol. XXIX, pp. 244, 245) in interpreting Āśvalāyana, but the text as given in Trivendrum Sanskrit Series does not yield this meaning. It may be noted here that Nārāyaṇa understands the text as I have done.

ing same obligations on all the male members of an agnatic family, a distinction is made, by enjoining different periods of restrictions, between relatives called sapinda and those who are not sapindas. It is difficult to say whether in using the general term asapinda Āśvalāyana meant only the agnatic relatives beyond the degree of sapinda relationship or even some of the cognates that we find in Pāraskara. Looking to the fact, however, that he has shown greater concern, as compared to Pāraskara, for the females of the family even when married, it is very probable that the family group is dominating in his mind and, therefore, he could not have cognates in view while using the term asapinda. This inference further gains ground from the fact that in the Dharmasūtras cognates are denoted by the term *yonisambhandhas*, the term asapinda being used for agnates beyond the seventh generation. Another significant difference between him and Pāraskara is that while impurity is laid down by Pāraskara only on the death of those who have completed two years and, therefore, cremated, Āśvalāyana has prescribed restrictions on the death all children born into the family. And it is, perhaps, to stress this idea of family solidarity that he has prescribed restrictions even on the death of a married female. He thus appears to stress the solidarity of the family group, even when he makes distinctions between those who are within seven degrees of relationship and those who are beyond it.

As for the other writers of the Gṛhya sūtras Vedic study is said to be interrupted on the death of a teacher, a fellow-student<sup>3</sup>, or the members of the family whose head he is<sup>4</sup>.

Coming to the Dharmasūtras, Gautama has enjoined impurity for ten days on the death of a sapinda relative and of two days and an intervening night in case of relatives beyond the degree of sapinda relationship, relatives through the mother and a fellow-student<sup>5</sup>. Sapinda relationship is said to cease in the fifth or seventh generation. Relatives beyond these degrees are evidently asapindas. It is rather

3. S.G.S. IV 7, 9, 13; G.G.S. III 3, 24, 26.

4. S.G.S. IV 7, 11

5. G.D.S. XIV 1, 20, 13; Ap. D.S. II 15, 2-4. Āpastamba speaks of the relatives who can trace relationship with the deceased and *yonisambandhas* but draws no line of distinction as is done by Gautama and Baudhāyana.



curious that Haradatta in his comment writes: 'by *asapiṇḍa* Gautama means relatives in the seventh generation.'

Gautama also enjoins: "A man is rendered pure at once in case of a child, and of an *asapiṇḍa* relative who died in another country or who had taken to the life of a hermit"<sup>6</sup> According to Bühler, the rule is: "If infants, (relatives) who live in a distant country, those who have renounced domestic life, and those who are not *sapiṇḍas*, (die), the purification is instantaneous." But if a man is said to be rendered pure at once on the death of an *asapiṇḍa*, the rule, given before, enjoining impurity for two days<sup>5</sup> and an intervening night on the death of such a relative shall have to be explained. Again, impurity on the death of an *asapiṇḍa* relative was prescribed by other writers, too,<sup>7</sup> and Gautama's rule is in harmony with the customs of the time. It is, therefore, necessary to interpret this rule of Gautama in the way we have done, because, besides bringing the two rules of Gautama in harmony, it gives proper stress to the bonds of relationship with a distant kin. Impurity should be observed in case of distant kin only if they were living amidst their kin: if, on the other hand, they had retired from active life and therefore from any social relationship with their kin, or if they were living in a distant country which rendered social contact with them rare, if not completely cut off, relatives were not duty bound to observe impurity on their death.

As for the considerations of age and sex of the deceased, parents are enjoined to offer water libations for one died after teething, while *sapiṇḍas* for one whose tonsure ceremony is performed. Offerings for the females are enjoined, recording at the same time the view that they were done only in case of the married females<sup>8</sup>.

6. G.D.S. XIV 44. Manu's rule (V 78) is equally ambiguous:

*Bāle deśāntarasthe cha prthakpiṇḍe cha saṁsthite |*

*Savāsā jalamāplutya sadyaḥ eva viśudhyati ||*

Bühler's translation is; 'If an infant (that has not teethed), or a (grown up relative who is) not a *sapiṇḍa*, die in a distant country, one becomes at once pure after bathing in one's clothes'.

7. B.D.S, I 11, 27; Ap. D.S, II 15 2-4.

8. G. D. S. XIV 43. Purification by a bath on the death of a child spoken of in the next sūtra must relate to a child died before teething XIV 34, 35, 36. For females cf. *Baudhāyana* I 11, 5, 6 Neither *piṇḍa* nor water is given to unmarried maidens. Some do it in case of the married ones,

Restrictions in terms of sex are discarded; and for those in terms of age Gautama gives those in terms of performance of certain saṃskāras. Tonsure was generally performed in the third year, though, following the family custom, it may be performed even earlier<sup>9</sup>. Cremation and water libations were generally performed for a child completing his second year; tonsure, too, was generally performed in the third year. Apparently, then, no significant difference appears to have been made so far as the age is concerned, yet we find here for the first time emphasis being shifted from age to the performance of saṃskāras.

In the Gṛhyasūtras restrictions are either enjoined on the death of an unmarried female only, or, at least, a longer period is prescribed in her case. But with the new theory of saṃskāras wherein girls were not looked upon as fit for any saṃskāra except marriage, a saṃskāra that was equal to that of initiation in case of a male child, the status of a married female was raised up. The fact that the girls were thought fit for only one saṃskāra as against sixteen in the life of a male, and that this one saṃskāra was equated with that which marks an important turning point in the life of a male, would easily explain the importance of this saṃskāra in the life of a female and her consequent elevated status. We should, therefore, expect a greater concern shown for the married females. But the writers of the Dharmasūtras either deny the giving of water libations to married females or enjoin them in the name of some, meaning the early writers of the Gṛhyasūtras. It only shows that considerations of saṃskāras for defining these obligations were just emerging out.

According to Vasiṣṭha, libations of water ( must be poured out ) for all ( deceased relatives ) who completed the second year. Some declare that ( the rule applies also to children ) that died after teething. Impurity caused by a death shall last ten days in case of the sapinda, relatives within seven generations. Others shall perform ( the obsequies ) of married females. Though Vasiṣṭha has spoken of water libations only for those who have completed the second year he has

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9. A. G. S. I 17, 1; S. G. S. I, 28, 1, 2 he allows in the 2nd or 3rd year; P. G. S. II 1, 1, 2 in the first year or before the lapse of the third: G. G. S. II, 9, 1; Other writers of the Gṛhyasūtras allow it in the third year. M. II 35 in the first or the third year.

elsewhere enjoined that on the death of a child of less than two years or on a miscarriage impurity of the sapindas last three nights, though he is aware of Gautama's rule laying down immediate purification.<sup>10</sup>

To sum up, in the Sūtra period impurity is enjoined for the whole group of persons, whose relationship with the family can be traced, by Pāraskara among the Grhya writers and by Āpastamba among the Dharmasūtra-writers. Others attempt to distinguish relatives within seven generations from the whole group by enjoining two different periods of impurity, a period of ten days in case of the sapindas and of three days, one day, or two days and an intervening night in case of persons beyond the degree of sapinda relationship, which is generally defined to cease in the seventh generation. Different periods laid down for asapinda relatives indicate that beyond the closer group of sapindas, persons were distinguished according to their degree of propinquity. Impurity is also enjoined on death of relatives through the mother, *yonisambandhas*, the teacher, his son and his wife, pupil or a fellow-student. The term used for the relatives of the mother being a very general term, it is difficult to say whether the relatives so referred to are only those who have been mentioned by Pāraskara or a few more are added to the list by the writers of the Dharmasūtras. But the probability is that the list was not expanded, because even Manu (V 87) has spoken of impurity on the death of the mother's brother alone. It must, however, be stressed here that relatives through the mother appear to have been given greater status in the Dharmasūtras. Further, no impurity is said to be observed on the death of a child who has not teethed or who has not completed seven months, according to Baudhāyana, and twelve, according to Āpastamba. Thus, the rule that obligations arise only on death of a person who has completed two years is stuck to; and yet it is modified by narrowing down the age limit as well as by enjoining such obligations in case of persons whose tonsure was performed.

Manu has laid down impurity for ten days, four days, three days and a day on death of a sapinda relative, a person related within seven generations. The different periods of impurity laid down by

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10. . V, D. S, IV 9, 10 16, 17, 19, 33, 34.

Manu have been differently explained. According to Medhātithi, they correspond to the status of the deceased, whether he died after tonsure or after teething or in a period intervening these two stages, and he relies upon a verse of Manu just preceding this rule for the support of his explanation. It may be noted here that in another verse ( V 67 ) Manu enjoins impurity for three days in case of those dead after tonsure and for a day in case of those dead before tonsure. According to the other explanation, 'length of the period of impurity depends on the status of the mourner. A man who knows the mantras only of one śākhā shall be impure during four days, one who knows a whole śākhā ( or two Vedas ) during three days, one who knows the Veda ( or three Vedas ) and keeps three or five sacred fires during one day.' As for the persons beyond the degree of sapinda relationship impurity to be observed on death is said to last three days.<sup>11</sup> Among the non-agnatic relatives, impurity for two days and an intervening night is observed on the death of a mother's brother or a relative through the mother.<sup>12</sup>

11. M. V 59,60,64. M V 81 reads : 'For a śrotīya who resides ( with him out of affection ) a man shall be impure for three days ; for a maternal uncle, a pupil, an officiating priest, or a maternal relative, for one night together with the preceding and following days'. Bühler has rendered the term *bāndhava* in Manu by a maternal relation. It may be that the term *bāndhava* in Manu may correspond to *yonisambandha* in Gautama. At the same time, it must be noted that the word *bāndhava* has been used by Manu in his discussion on impurities for agnatic relatives ( cf. V 58,70,101 ). On that ground, *bāndhava* may be interpreted here to refer to agnatic relatives beyond the seventh degree. Gautama has enjoined impurity for two days and an intervening night on the death of an asapinda relative and Manu's rule conforms with Gautama's rule. In that case verse 64 in Manu enjoins impurity for three days for a sodaka relative only when he has touched the corpse. The verse deals with impurity to be observed by a person who has touched the corpse, and this meaning accords satisfactorily in the context. Very probably, then, according to Manu, impurity on the death of a sodaka relative lasts two days and an intervening night and three days if a person has attended the funeral. Cf. M, V 101 'A brahmin having carried out a dead brahmin who is not a sapinda, as ( if he were ) a ( near ) relative, or a near relative of his mother, becomes pure after three days'. The only difficulty would be that Manu has enjoined impurity for three days on the birth of a sodaka relative ( V 71 ).

12. M. V 81. In view of the fact that Manu elsewhere ( V 101 ) enjoins impurity for three days, if a person carries the dead body of a near relative of the mother, this impurity for two days and an intervening night must be observed only for a near relative of the mother.

Yājñavalkya gives the rules of Pāraskara. A child died before two years is buried and his parents alone are rendered impure. A child who has completed two years is cremated and receives water libations from his agnatic relatives within seven or ten generations. Water libations are also offered to the maternal grandfather and the teacher, and optionally even to a friend, a married female, a sister's son, the father-in-law and a priest. The period of impurity is said to extend to ten days or to three days.<sup>13</sup> Vijñāneśvara interprets the verse of Yājñavalkya differently, probably to bring it in harmony with the verse of Manu wherein relatives who can trace their relationship with the family were required to offer water libations to a deceased person. According to him, 'relatives, that is, sapinda and samānodaka relatives belonging to the same gotra offer water libations either before seven days or before ten.' Aparārka has more or less followed Vijñāneśvara in interpreting this verse of Yājñavalkya. Both these eminent commentators do not connect the words *saptama* and *daśama* with *jñāti* to show generations of relatives involved, but take them independently and interpret them to refer to the number of days for which libations are to be given. Viśvarūpa, however, understands the words seven and ten to refer to generations, as we have done, and calls relatives within seven generations as sapindas, those within ten, samānodakas.<sup>14</sup> He knows that the term samānodaka is generally used for persons who can trace their relationship with the family, but he holds that explicit reference to ten in the text of Yājñavalkya is to be respected. Similarly, though Yājñavalkya has prescribed the period of impurity to last ten days or three days, as Pāraskara has done, commentators have associated these two different periods with two different groups of relatives, ten days for sapindas and three for samānodakas. But before we accept this interpretation of the commentators we have to consider a passage from the Purāṇas.

A passage from Brahma Purāṇa, which is more or less repeated in Mārkaṇḍeya Purāṇa, is not very clear, but reading the two Purāṇas together a fairly intelligible meaning can be deduced. Those who are affected by impurities to be observed on the death of a person and on the birth of a child should cease from giving alms and performing *homa* for ten days. All the agnatic relatives, *gotrika*,

13. Yaj. III 1-4, 18.

14. Mit. p. 296; Aparārka, p. 873; Viśvarūpa, Vol. II, p. 2. In N. S. (p. 204) sodaka relationship is said to extend to ten generations.

having burnt the dead outside, should offer him water on the first, fourth, seventh and ninth day. These relatives should collect the bones and ashes of the dead on the fourth day. After this they may be touched. The relatives called *sodakas* should perform the other rites (i.e., the rites after the collection of bones). The touch of *sapiṇḍas* in the case of both (i.e., the *gotrika* and *sodaka*) is detrimental to their purity.<sup>15</sup> If a child, one who lives abroad or a recluse dies, purification is instantaneous. According to others, *sapiṇḍas* are impure for three days. If a *sapiṇḍa* dies and another death takes place before the expiry of the period of impurity, rites for the latter must be performed within the period of the first impurity. The same rules are to be observed by *sapiṇḍas* on the birth of a child. The same rule of impurity is laid down for a *sodaka*. On the birth of a child the father must take bath with his garments on.<sup>16</sup>

Impurity is here said to last three days for all the members of the family, viz., the *samānodakas* of Manu. For *sapiṇḍa* relatives impurity appears to last seven days. It appears that relatives beyond the seventh degree do not give alms or perform *homa* after the expiry of three days though, they may be thenceforward touched without entailing any impurity. What is striking here is the distinction sought to be made between *gotrikas* and *sodakas*. In the *Dharmasūtras* and Manu we have only two categories, *sapiṇḍas* and *sodakas*. Here, for the first time, we find three categories, but we are not told when a person ceases to be a *sodaka* and passes into the category of a *sodaka*. According to *Agni Purāṇa*, 'samānodaka relationship ceases in the fourteenth generation, or it extends as far as name or birth can be traced. Relationship beyond this is known as *gotra*.'<sup>17</sup> It is only when *samānodaka* relationship is restricted to fourteen generations that relationship designated as *gotrika* can exist.

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15. The text is very obscure. 'Sparsa eva sapiṇḍānām mṛtāhani tathobhayaḥ.' Pargiter, in his translation, suggests the reading *mṛjāhāniḥ* for *mṛtāhani*. With the help of that suggestion the text is thus translated.

16. Brh. P. CCXXI 145, 147, 149-157; Mk. P. XXXV 39-50.

17. Ag. P. CLVIII 30, 31. In *Kūrma Purāṇa* (p. 623) and *Ādi Purāṇa* (H. L. p. 100) those beyond the seventh generation are called *samānodakas*. At the same time, it is said in *Kūrma Purāṇa* (pp. 620, 621) that impurity on the death of a *sodaka* relative lasts three days, whereas purification is instantaneous on the death of a *sagotra*.

We thus find here two views, one recognising, as is done in the Dharmasūtras and Manu, only two categories of relationship, the other defining three categories by restricting samānodaka relationship to fourteen generations. In the light of this passage we can assume that even in Mārkaṇḍeya and Brahma Purāṇas sodaka relatives are persons related within fourteen generations: those beyond that degree, *gotrika*. The passage, as a whole, is more in conformity with the views of Pāraskara and Yājñavalkya with the important modification of dividing the members of the agnatic family into three, instead of two, groups.

It is said in Parāśara saṁhitā that 'the brahmins are rendered pure after three days on the death or the birth (of a relative)'<sup>18</sup>. In the light of other passages enjoining impurity for ten days for a sapinḍa relative Mādhava interprets this rule of impurity for three days to refer to a sodaka relative. Mādhava's explanation is not proper because the very next verse shows that Parāśara has sapinḍas, and not sodakas, in view while enunciating this rule. It is very curious that Parāśara so definitely asserted the period to extend to three days though he enjoined impurity on birth to extend to ten days in case of at least a few relatives. Very probably Parāśara, like Pāraskara, prescribed impurity for three days for relatives in general irrespective of their degree of propinquity. It may be that in prescribing such a short period of impurity he stresses prohibition of touching. From the texts of Pāraskara, Yājñavalkya and Brahma Purāṇa one can opine that from very early times relatives were thought to be rendered impure only for three days, though impurity for ten days for the relatives was also advocated. It means that while in regard to touching relatives were impure only for three days they were so for ten days in regard to their undertaking auspicious work.

According to Viṣṇu, impurity on the death of a person related within seven generations lasts ten days. It lasts three days when a teacher or the mother's father dies and a day on the death of the wife, a son of his teacher, his sub-teacher, mother's brother, father-in-law, brother-in-law, fellow-student, pupil or the king of the country.<sup>19</sup> According to Bṛhaspati, "sapinḍas are rendered pure

18. P. S. III 1 ( Vol. I, Part ii, p. 204 ); Mādhava, *ibid.*, p. 209.

19. Vi. D. S. XXII 1, 5, 42, 44, 45, cf. Sāṅkha ( H. L. p. 96 ) In case of males sapinḍa relationship extends to seven persons in one's gotra. Offering of pinḍa as well as water and observance of impurity on death follow it. Ag. P. CLVIII 29.

after ten days on death as well as birth; sakulyas after three days and gotrajas after a bath. Impurity lasts three nights on the death of the mother's father, the teacher and a śrotriya."<sup>20</sup> In a Smṛti text quoted by Vijñāneśvara it is said: 'Impurity lasts ten nights in the fourth (generation), six nights in the fifth, four days in the sixth and a day in the seventh'. Vijñāneśvara has rejected this view on the plea that it is absurd to speak of impurity for a day on the death of a person related in the seventh generation when it is said to last three days for relatives beyond the seventh degree. But the same text, as given by Kamalākara and said to have been quoted by him from Mitākṣarā, runs differently: 'Impurity lasts ten nights in the fourth (generation), six nights in the fifth, four days in the sixth, three days in the seventh, a day in the eighth, two *yamakas* in the ninth and is washed off by a bath in the tenth'.<sup>21</sup> The text quoted by Kamalākara is entirely different from the one we find in Mitākṣarā and it is not easy to understand why he has given it in the name of Vijñāneśvara. In view of the fact that there appears among the Smṛti writers from Yājñavalkya onwards a distinct tendency to narrow down the group of nearer relatives for the observance of impurity this may be regarded as an opinion of one of the Smṛti writers, though the text may equally be regarded to lay down impurity on birth.

To sum up, it is a very significant fact that Viṣṇu has enjoined impurities to be observed only by a limited number of agnates namely, those related within seven generations. As for the agnates beyond that degree he has not prescribed even a shorter period of impurity. Among the early writers it is only Vasīṣṭha who has held the same view. Yājñavalkya made the offering of water libations incumbent on the agnates within seven or ten generations, and it may be that in enunciating the rule of impurity in very general terms he might have implied its observance, at the most, by these persons. In Bṛhaspati and Purāṇas relatives within fourteen generations are said to observe impurity for three days: others are rendered pure

20. Śu. K. p. 49; Aparārka, p. 913. cf. K. P. pp. 617, 620, 621. According to Jābāla (H. L. p. 81), 'samānodakas are known to be impure for three days and gotrajas for a day.'

21. Mit. p. 307; N. S. p. 370. The first part of the verse quoted by Kamalākara is Parāśara III 9 (Vol. I, part II, p. 222.) It means, then, that Vijñāneśvara has misquoted the fourth quarter of the verse. One equally does not find the authority for the second verse quoted by Kamalākara.



by a mere bath. There is thus a gradual narrowing down of the group of agnates from persons who can remember their relationship with the family to those who are related within ten or fourteen generations for the observance of impurity on the death of a person. Manu and some writers of the Dharmasūtras sought to narrow down the group by enjoining a shorter period of impurity for persons related beyond the seventh generation. Writers who followed have further narrowed down the group of nearer relatives by restricting the application of the term *sakulya* or *sodaka* to relatives within fourteen generations. From the data that has been presented here from the Sūtras, Smṛtis and Purāṇas one would hesitate to accept the view that persons related within fourteen degrees were bound to each other by mutual obligations of offering water libations, and hence, called a group of *sodakas* or *samānodakas*. Such a group, whenever it is referred to, has no functional basis in as much as the obligation of offering water libations is always imposed either on the whole group of agnatic relatives or on relatives within ten generations. The group of fourteen, therefore, appears to have been conceived only on the basis of extension of the group of seven.

'On the death of an unmarried female relatives should observe impurity for three days while nearer relatives for the usual period laid down.'<sup>22</sup> Buhler has interpreted Manu's rule in a different way. "(On the death) of females (betrothed but) not married (the bridegroom and his) relatives are purified after three days, and the paternal relatives become pure according to the same rule." We have disagreed with Buhler because in following him the kinship terminologies, *bāndhava* and *sanābhaya* are not given their proper meaning. In his discussion of impurity Manu has used the word *bāndhava* for the relatives in general who are later on classified by him into *sapinda*s and *samānodakas*. The term *sanābhaya* has been used here for the first time in this discussion along with *bāndhava* and evidently it cannot mean relatives in general<sup>23</sup>. Further,

22. M. V 72. It may be noted here that the commentators on Manu as well as other eminent commentators and writers of the digests understand the verse in the way Buhler has done. cf. Āṅgīras (S C. p 24) 'Impurity on the death of an unmarried female lasts three days.'

23. It is pertinent to add here that Manu uses the word *sanābhaya* for nearer relatives, as we have done, in one of the verses that follow. "Let him not (unnecessarily) lengthen the period of impurity, nor interrupt the rites to be performed with the sacred fires: for he who performs that (Agnihotra) rite will not be impure even though he be a nearer relative, *sanābhaya*. V. 84. In the early literature the word has the same meaning; vide, Supra, p. 126.

Bühler starts with a situation, a girl who is not married but betrothed, which is not warranted by the text. This is the situation which has not been discussed by any writer of Dharma or Gṛhya sūtras, and there is no reason why Manu should be made to discuss it by putting convenient meaning in the terminologies used by him. On the other hand, if Manu is interpreted in the way we have done, it follows that the death of a female who had not left the family rendered all the persons, who can trace relationship with her, impure though the period of impurity differed with the nearness or remoteness of relationship. Manu has not discussed impurity on the death of a married female, evidently showing that once she was lost to the family the family had no impurity to observe on her death. And this is in keeping with the rule that we find in the Gṛhya sūtras where relatives are said to live the life of restraint for three days on the death of an unmarried female. It may be added here that, according to Vasiṣṭha, sapinda relationship in case of an unmarried female extends to three generations.<sup>24</sup> If so, Manu may have employed the term sanābhaya to indicate this narrow group of sapindas. He has thus enunciated the old rule of the Gṛhyasūtras with modification on the line of a new concept of sapinda relationship emerging in the Dharmasūtras.

It is only in some of the Purāṇas that we find this situation discussed for the first time. If a girl dies after the completion of two years, but before being betrothed, sapindas are impure for a day: if she is betrothed, her own relatives, sapindas, as well as the relatives of her husband observe impurity for three days. But if she is married, only her husband's relatives are rendered impure for ten days.<sup>25</sup> A girl, on marriage, takes the gotra of her husband, and evidently her affiliation to the gotra of her father being cut off her paternal relatives are not enjoined to observe impurity on her death. One does not understand why the author of Agni Purāṇa, who speaks

24. Cf. S. C. p. 31; N. S. p. 363. In the text of Vasiṣṭha, translated by Bühler in S. B. E. series ( Vol. XIV ), sapinda relationship is said to extend to the third person in case of a married female. cf. Ādi P. (H.L. p. 98)

25. K. P. p. 620; Ag. P. CLVIII 19, 20; Ādi P. ( H. L. p. 50 ); Brh. P. ( Aparārka, p. 908 ) P. P. ( S. C. p. 31 ) cf. also Pulastya ( N. S. p. 372 ); Saṅkha Likhita ( S. C. p. 33 ); Marichi ( Aparārka, p. 908 ).

of this new affiliation on marriage, prescribes impurity for two days and an intervening night on the death of a married female. He observes: "Impurity for a day is to be observed on the death of an unmarried female and for three days on that of one given (betrothed!). Impurity for two days and an intervening night is laid down for the married (females and) sister, etc. (or, for the sisters and others who are married). An unmarried girl takes the gotra of her father while a married one that of her husband. Water-offerings are made to the father but to both on marriage, after ten days. Parents observe impurity for three days on the death of a daughter. In the case of one dying before the performance of tonsure sapinda's are rendered pure at once: for a day upto marriage; after (giving) water in the hand the brother's son is impure for three days (or) two days and an intervening night while the sapinda's (beyond that degree) are rendered pure at once." The passage is not very clear; it seems to imply that a female of the family, though she takes to the gotra of her husband, is not completely lost to the family of her father. She is looked upon as a sapinda relative and as such relatives, on the paternal side, within three generations have to observe impurity for two days and an intervening night on her death. Even though the female is thus regarded to have a living connection with her paternal family her issues are not regarded to have any binding connection, because on the death of a sister's or a daughter's son only bath is enjoined.<sup>26</sup>

The Puranic writers have not only drawn distinction between a married female and an unmarried one but even between the betrothed and the unmarried by enjoining distinct periods of impurity on their death. This distinction seems to have been drawn on the basis of samskāra which has been accepted as a guiding principle in the discussion of impurity on the death of a male child. A child dead after teething, but before the performance of tonsure, renders the sapinda's, who are devoid of merits (*nirguna*), impure for one day, while one whose tonsure is performed brings on the sapinda's impurity for three days. In the case of a child dead before the

26. Ag. P. CLVIII 19-22, 34. According to Pulastya (N. S. P. 372), on the death of a married female impurity lasts two days and an intervening night. It may be noted here that water libations may be offered to the married females according to Pāraskara and Yājñavalkya, and study and almsgiving were said to be interrupted for a day by Āśvalāyana.

eruption of teeth brothers alone observe impurity for a day Sapiṇḍas observe it if they are completely devoid of merits.<sup>27</sup>

Though Yājñavalkya enjoined the observance of impurity only in case of a child who had completed two years he added that 'impurity lasted a day in the case of one dead before tonsure, for three days for one dead before initiation and for ten days for others. Commentators on Yājñavalkya try to harmonise these two texts by saying that the relatives who are not rendered impure for touch on the death of a child who has not completed two years are yet supposed to be impure in as much as they are rendered unfit for auspicious work ( *karmaviśeṣa* ), provided the deceased child has teethed.<sup>28</sup> The fact that Viśvarūpa and Aparārka have not given this verse makes one hesitate to accept this as a view of Yājñavalkya, though one should not easily pass it off as an interpolation by Vijñāneśvara. In the verse that follows impurity on the death of a child is said to last one day. It only means, then, that impurity for a day is to be observed only if the child had teethed before death. The rule of impurity as modified on the basis of saṁskāra is given by Yājñavalkya, but it is not properly synthesised

Viṣṇu discusses the question of impurity in its association with the performance of saṁskāras. He has also stated the fact that marriage is considered the initiation of females. The obvious implication of such a statement in the context is that death of a married female renders her relatives impure for ten days, and Jolly did give this import of the sūtra in his footnote. But in the very next sūtra he has declared that the death of a married female brings no impurity unless it occurs in her paternal house. If they happen to stay at their father's house during child birth, or if they die there, impurity is for a day or three nights. In the light of a corresponding passage in Brahma Purāṇa impurity for a day appears to have been enjoined for the agnates while that for three days for her father, though in Agni Purāṇa impurity for a day is enjoined in case of

27. K. P. p. 618. Sapiṇḍas have to observe impurity for a child dying before the eruption of teeth. Ag. P. CLVIII 4; Brh. P. (N. S. p. 367).

28. Yaj. III 23; Mit. p. 307; Aparārka, p. 895.

the birth of a child and for three days on death.<sup>29</sup> Considerations of *saṃskāra* have been ignored and the fact that she is lost to the family is brought to the forefront.

To conclude, the Puranic writers followed the trend of Gautama and Manu in bringing in *saṃskāra* as a guiding principle of impurity, but the principle was applied more thoroughly in the case of females than in the case of males. It is equally evident that the period of impurity on the death of a female issue is not the same as that on the death of a male issue, suggesting thereby that distinctions in terms of sex recognised from very early times were stressed by later authors.<sup>30</sup>

Vasiṣṭha has enjoined that 'on the death of a child of less than two years the impurity of *sapīṇḍas* lasts three nights'. But he has elsewhere opined that 'libations of water (must be poured out) for all (deceased relatives) who completed the second year and (their death causes) impurity. Some declare that (this rule applies also to children) that died after teething'. Reading these two passages together it is very doubtful whether Vasiṣṭha enjoins any impurity to be observed by *sapīṇḍas* on the death of a child who had not teethed. It is only in Yama that we find expressly stated that *sapīṇḍas* are impure for a day and night on the death of a child who has not teethed. According to Aṅgiras, relatives should wash off impurity with a bath with garments on. Parents and others are said to observe impurity, arising on birth, for three nights for a still-born child or for one who dies as soon as born.<sup>31</sup> It is clear that even when the

29. Vi D. S. XXII 26-34; Brh. P. (Aparārka, p. 908); Ag. P. CLVII 9-11. It may be added here that it is said in the name of Yama that the married females should observe impurity for three days on the death of their parents. Though they are lost to the family they are to observe impurity because of their connection with their parents, their begetters.

30. cf. also *Paīṭhinasi*—'If a male child is delivered, the mother is rendered fit to undertake any work after twenty days; and after a month if the child be a female.' *Aniruddha*—'In case of a male child parents are impure for ten days; but the mother alone is rendered impure in case of a female child.' H. L. pp. 20. 16. Aṅgiras (N. S. p. 366)—Among all castes, before the performance of *saṃskāras*, impurity is washed off within three days and within a day in case of females.

31. V. D. S. IV 32, 9 10; Yama (S.C. pp. 27, 19); *Vṛddha Manu* (Aparārka, p. 909); Aparārka, p. 910. cf. also 'Impurity lasts three days on the death of a child who has not teethed'—*Kāśyapa*; 'Impurity lasts three days on the death of a child or one who has teethed'—*Vaivasvata*; 'Impurity lasts three days on the death of a child whose tonsure is not performed'—*Paīṭhinasi*. S.C. pp. 26, 27.

rules of impurity are sought to be defined on the basis of performance of saṁskāras, we have opinions of the legislators declaring the observance of impurity for every child born in the family irrespective of any saṁskāra performed over it. In the early law only parents were said to observe impurity for a child who had not completed two years and was not, therefore, cremated. When cremation came to be allowed even for a child who died before completing two years,<sup>32</sup> rules of impurity were accordingly modified.

As for the cognates, a comprehensive group is indicated under the term *yonisambandha* used by Gautama and Āpastamba. Pāraskara made explicit reference to the parents of the mother, the mother's brother and the sister's son, clearly distinguishing the former from the latter two. Yājñavalkya declared the performance of water libations obligatory on the death of the mother's father and optional on that of a sister's son. While giving the rules of impurity to be observed on death, he made explicit reference to the mother's brother only. In Viṣṇu, Bṛhaspati and Purāṇas impurity for three days was enjoined on the death of the mother's father<sup>33</sup> and for a shorter period on that of the mother's brother and other relatives through the mother.<sup>34</sup> Jābāla

32. A child who has not completed two years may be cremated, following the local practice, out of love (for the child) - Ādi Purāṇa; If a child has teethed he may be cremated even though his tonsure is not performed - Āngīras; Water libations and cremation may be performed without mantras for all whose tonsure is performed : as for others, if so desired - Laugākṣi S. C. pp. 25, 24, Water libations are not offered to a child died within ten days of birth - Viṣṇu (N. S. p. 365). According to Manu (V 68-70), a child died before completion of two years is not cremated and no water libations are offered to him. At the same time libations of water may optionally be given in case of a child who has teethed or whose saṁskāra of naming is performed. Manu thus appears to subscribe to different opinions that may have been current in his time by referring to them as alternatives. But even when he has respected these views he seems to stand for cremation only for those who have completed two years, because water libations are said to be optional for those who have not completed two years; and a person is said to be rendered pure after a bath on the death of a child (V. 78). Cremation is performed for a child who has teethed. P. S. III 14, 16; Vi. D. S. XXII 27, 28.

33. K. P. p. 620; Ag. P. CLVIII 35; CLVII 14. cf. Trīmśat śloki (N. S. p. 372). cf. also P. S. III 14, 16; Vi. D. S. XXI 27, 28

34. Bṛhad Bṛhaspati (N. S. P. 372); Ag. P. CLVIII 33; K. P. p. 620, cf. also Trīmśatśloki (N. S. p. 372). According to Prachetas (N. S. p. 374), impurity lasts three days on the death of the mother's brother. Yama (Su. K. p. 55) says: 'One is rendered impure for two days and an intervening night on the death of the mother's brother, and for a day on that of his son.,

prescribed impurity for a day on the death of a relative through the mother. Govindānanda interprets the term *mātrbandhu* to imply those persons who are called the mother's bandhus in the traditional verses. He, therefore, suggests that the same period of impurity should be observed even on the death of persons called the father's bandhus. His interpretation of the text of Jābāla is evidently based on his reading the word *bandhu* in its technical sense and therefore unacceptable. Besides, when he seems to be so particular about the father's bandhus, when the text expressly refers to the mother's bandhus only, he should have been more so for a person's own bandhus who are more nearly related to him than either the father's or the mother's bandhus. He has elsewhere spoken of impurity for two days and an intervening night on the death of a father's sister's son, a mother's sister's son or a sister's son, but one of the bandhus, the mother's brother's son, does not find place there. He has likewise prescribed impurity for a day on the death of the mother's sister, the father's sister, and their husbands.<sup>35</sup> It only means that he tried to extend the scope of the rules of impurity so as to apply them to some of the relatives through the mother whom he considered important relatives. It is significant that Vijñāneśvara, in his interpretation of the word *mātula*, mother's brother, in the text of Yājñavalkya as indicative of the three bandhus<sup>36</sup> had extended the scope of the rules of impurity : Govindānanda may have been influenced by this interpretation of Vijñāneśvara, though he has not referred to him. In a later work a person is said to observe impurity for two days and an intervening night on the death of three bandhus, their parent (i. e. the

35. Su. K. pp. 56, 58, 54, 55. Aniruddha, the author of Hāralatā, also gives the same meaning to the word *mātrbandhu* in the text of Jābāla. He also interprets *yonisambandhas* to refer to a father's sister's son, a mother's sister's son, a sister's son, etc. pp. 82, 3, 75. On the death of a mother's sister one is impure for three nights—Prachetas (N. S. p. 374). Bṛhad Bṛhaspati (N. S. p. 372) prescribes a period of two days and an intervening night. On the death of a father's sister impurity lasts two days and an intervening night—Vṛddha Manu (N. S. p. 374); cf. also Bṛhad Bṛhaspati and Trīṃśatśloki (N. S. p. 372).

36. Mit. p. 317. For impurity on the death of three bandhus cf. also Trīṃśatśloki (N. S. p. 372)

mother's sister, mother's brother, etc.) and the wives of the male parent, such as the mother's mother's brother's wife.<sup>37</sup>

Among the females and relatives through the females the sister's son is found from very early times, but the sister and other females of the family are first referred to in Agni Purāṇa which enjoins only a purificatory bath on the death of a sister's son and a daughter's son.<sup>38</sup> A verse quoted by Aparārka, without assigning it to any legislator, reads: 'On the death of a daughter's son or a sister's son impurity lasts two days and an intervening night, and three days if they are initiated. This is the proper rule fixed up.' This text is attributed to Vṛddha Manu by Kamalākara, but in another text attributed to him (Vṛddha Manu) a person is said to be rendered pure by a bath on the death of a daughter's son or a sister's son. In Trimśatslokī, impurity is said to last three days on the death of these two relatives.<sup>39</sup>

With the recognition of kin through the mother, both the mother's father and the mother's brother must be accorded the same status and a few more persons such as the mother's brother's son, the mother's sister, the mother's sister's son, etc., should find place along with these two relatives. They seem to have been listed under the term *yonisambandha*, but the explicit reference to only two relatives through the mother along with the fact of distinction made between them clearly indicates that there must be some other weighty considerations for this distinction and restriction. It is to the importance assigned here to the mother's father that we must look to for the incorporation of the three maternal ascendants as the deities of the Śrāddhas along with the paternal ancestors. The ritual of the Śrāddha does not explain the importance of the mother's father in this sphere, but his status as indicated by these rules makes for his incorporation into the ritual of the Śrāddha. In a family with a bilateral counting a son and a daughter enjoy equally important status. But, when the rights of the daughter, especially in property, are truncated by some other extraneous considerations, the daughter's son is naturally regarded with esteem and affection.<sup>40</sup> The duties of

37. Śaḍaṣṭi (N. S. p. 373)

38. Ag. P. CLVIII 19, 34. cf. Vṛddha Manu (N. S. p. 374).

39. Aparārka, p. 913; N. S. pp. 372, 374.

40. Cf. Ghurye G. S., *Some Kinship Usages in Indo-Aryan Literature*, J. Ant. S. of Bom., New Series, Vol. I



a daughter's son towards his maternal grandfather thus assume new importance. The special distinction in which the mother's father is held in these rules of impurity thus appears to be the result of bilateralism that had come to unfold itself in the post-Vedic age. The concern for the mother's brother and the sister's son, shown here, corroborates the same fact because, as we have seen, relations between them were very cordial irrespective of any participation in any ritual.

As regards impurity to be observed on the birth of a child *sapiṇḍas* are said to observe the same period of impurity as that on the death of a child<sup>41</sup>. This view is at times modified by saying that *sapiṇḍas* had to observe impurity on birth only if they desired to be absolutely pure<sup>42</sup>. Along with this view there

41. B.D.S. I 11,1; G.D.S. XIV 14; M. V 59; K. P. p. 617; Even when the *sapiṇḍas* know of the birth of a child after the expiry of the usual period of impurity they have to observe it for three days—*Jābāla* (H. L. p. 25); *Marichi* (S.C. p. 3) 'On miscarriage the mother is impure for as many days as the months of conception, the father and others for three days'. According to *Yama* (S.C. p. 4), *sapiṇḍas* are impure for a day and night on miscarriage. When *sapiṇḍas* are said to be impure on miscarriage, they may be expected to observe the same period of impurity on the birth of a child. *Vijñāneśvara* (Mit. 310) lays down the full period of impurity, that is, ten days for any child, still-born or dead after birth, after the seventh month of conception, and he interprets the text of *Hārīta*, accordingly: '*sapiṇḍas* are impure for ten days in case of a still-born child or a child dead after birth.'

42. V.D.S. IV 16. cf. IV 32 'In the event of miscarriage *sapiṇḍas* are impure for three days'. cf. *Vṛddha Vasiṣṭha* (S.C. p. 3). Miscarriage after the first six months of conception is as good as delivery for the period of observance of impurity. *Ādi Purāṇa* (*Aparārka*, p. 901); Mit. p. 309; S. C. p. 4. In the *Dharmasūtras* impurity on miscarriage is said to last as many days and nights as the months of conception or for three days, but no reference is made to the persons who were to observe impurity, G.D.S. XIV 17, 18; B.D.S. I 11,31; M. V 66. It is probable that in the opinion of *Vasiṣṭha* *sapiṇḍas* must observe impurity for three days on the birth of a child and for a full period of ten days if they desired complete purification. M.V 61. The text of *Manu* reads '*nipuṇam śuddhimichchhatā*'; but the text given in the name of *Manu* in *Hārīlatā* (p. 15) and *Suddhikaumudī* reads, '*Viprāṇām (dvijāṇām) śuddhimichchhatā*.' cf. also M.V 58. The text attributed to *Bṛhat Manu* (Mit. p. 310) reads: 'If a child dies within ten days, his *bāndhavas* must observe impurity arising on birth and not on death'. The text attributed to the same author elsewhere (S.C. p.12) reads: 'If a child is born alive but dies (immediately) only impurity on birth (is to be observed); the mother is impure for the whole period, while the father and others for three nights.'.

is also the view which requires the parents alone or even a parent, more often the mother, to observe impurity on birth<sup>43</sup>. It appears that impurity in the case of sapinda did not render them unfit for touch, but merely rendered them unfit for undertaking auspicious work<sup>44</sup>. It thus becomes intelligible why sapindas were said to observe impurity only if they desired to be absolutely pure. The Smṛti writers quoted by the later writers of the digests generally opine that impurity should be observed by the mother, the father or a sapinda relative. There is thus no conclusive evidence of impurity being observed by such distant relatives<sup>45</sup> sodakas, though Manu and Bṛhaspati enjoin it for three days. On the other hand Parāśara, enjoins: Impurity ( is to be observed ) or ten nights in the fourth generation, six nights in the fifth, 'four days in the sixth and three days in the seventh'.<sup>46</sup> In view of the fact that Parāśara has attempted to distinguish between nearer relatives and those who are farther off among the sapindas, it is very probable that the observance of impurity on birth was not as much obligatory as that on death so far as the distant relatives were concerned

The concept of sapinda relationship is unilateral in the rules of impurities to be observed on birth as well as death. This is accounted for by the fact that from very early times the observance of impurity and the offering of water libations were prescribed in terms of the agnatic family. In course of time the concept of the family comprising persons who could trace their relationship to the

43. B.D.S.I, 11, 19,23; V. D. S. IV 21, 22; G.D S.XIV 15, 16; M. V 62. Yaj. III 18, 19; Paiṭhinasi, Saṅkha Likhita, Āṅgiras (Haradatta on G.D.S. XIV 14); Bṛhaspati has enjoined impurity only for the mother, the father being purified by a bath, Ādi P. (H. L., p. 18); Saṁvarta, Sumantu (H. L, pp 18, 17); Parāśara III 4; Atri (S.C,p.9); Impurity is generally said to be observed by the mother alone, the father being purified by a bath. He is impure only if he comes in contact with the mother. The explanation of the author of Hāratalā (p. 16) that in the case of a male child parents are impure, while in that of a female only the mother does not appear to have been shared by any writer, earlier or later.

44. K. P. p. 617; Āṅgiras (S. C. p. 9); P.S. III 3 (Vol. I, part ii, p. 212) Paiṭhinasi (P. S., ibid., p. 212); Aparārka, p. 901; H. L, p. 17.

45. Manu V 59, 71; Bṛh. (Sn. K. p. 49).

46. P. S. III 8,9 (Vol. I, part ii, pp. 219,222)

family was narrowed down to the persons related within ten generations or even seven, but the basis did not change. It is because of the stress of the family that impurity on the death of a married female is said to be observed and the married female has to observe impurity for three days on the death of her parent. It is because of this stress on the family that inspite of an attempt to associate the rules of impurity with the performance of *samskāra* we do find insistence on impurity being observed on the death of a child. Impurity is also said to be observed on the death of cognates. Though cognates are listed under the general term *yonisambandha*, specific reference to the mother's parents and the mother's brother indicates that only those few who were very near relatives on the bilaterar counting were given some consideration, in the rules of impurity. It is again the family that accounts for this consideration given to the cognates. And that is why we find at times the observance of impurity laid down on the death of females of the family but not of their issues. Further, the rules of impurity so far as the male members of the family are concerned postulate the unity of four generations, except in the rule of Gautama where both the unities are referred to, but in respect of females and cognates the unity is the unity of three. This again substantiates the family basis of the rules of impurity. Ceviewing these facts, along with the consideration given to the parens and brother of the wife in these rulss, one can see transition from the joint family to the individual household.

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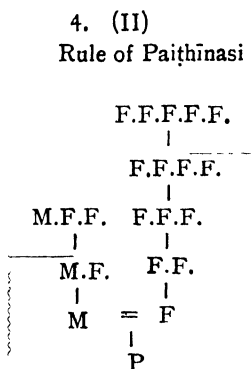
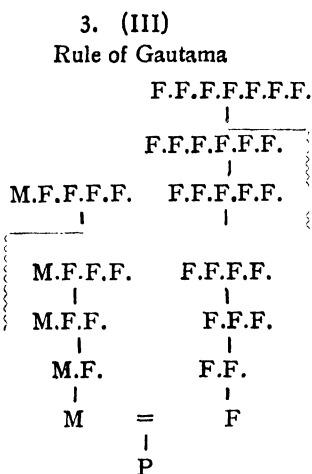
## CHAPTER VIII

### ORGANISATION OF KIN

The concept of Hindu gotra extends to generations that cannot be counted or remembered. Some of the writers extend even the concept of samānodakas to uncountable generations. The relationship in both these concepts is vague and unlimited and serves no significant purpose for any cultural history. Different degrees of relationship have been conceived as potentially operative with reference to varied functions, and distinct circles of kin may be drawn with reference to each function. "The stream of feeling of union naturally diminishes with the remoteness of the degree of kinship. The further two persons are apart from each other in generation and household, the less powerful will be the bond of union between them: and we must, therefore, expect that in all systems of relationship it will be necessary to recognise certain concentric circles within which the rights and duties of the relations are more or less intensive."

In the following tables various circles of prohibited degrees that we examined with reference to exogamous restrictions among the Hindus are given with a view to see how far they coincide with the circles of kin that we find in the ritual of Śrāddha and other social relationship. These circles are numbered according as we find the rule of sapinda exogamy in its historic development, and the Roman letters indicate the magnitude of people's acceptance of the rule so far as its practice was concerned.

| 1. (IV)<br>Rule of Manu   | 2. (I)<br>Rule of Vasiṣṭha  |  |
|---|---|--|
| $  \begin{array}{c}  \text{M. F. F.} \quad \text{F. F. F.} \\  \hline  \begin{array}{c}    \qquad   \qquad   \\  \text{M.F.} \quad \text{F.F.} \\    \qquad   \\  \text{M} = \text{F} \\    \\  \text{P}  \end{array}  \end{array}  $ | $  \begin{array}{c}  \text{F. F. F. F. F. F.} \\  \hline  \begin{array}{c}    \\  \text{F.F.F.F.F.} \\    \\  \text{F.F.F.F.} \\    \\  \text{F.F.F.} \\    \\  \text{F.F.} \\    \\  \text{F}  \end{array}  \end{array}  $ |  |
|   | $  \begin{array}{c}  \text{M. F. F. F.} \\  \hline  \begin{array}{c}    \\  \text{M.F.F.} \\    \\  \text{M.F.} \\    \\  \text{M}  \end{array}  \end{array}  $   | $  \begin{array}{c}  \text{F.F.F.F.} \\  \hline  \begin{array}{c}    \\  \text{F.F.F.} \\    \\  \text{F.F.} \\    \\  \text{F}  \end{array}  \end{array}  $ |
|   | $  \begin{array}{c}  \text{M} = \text{F} \\    \\  \text{P}  \end{array}  $   |  |



If we accept the proposition that marriage in the fourth generation was allowed according to Manu Smṛti and if the circle of prohibited degrees so drawn be compared to the circle of relatives who were entitled to piṇḍa offerings, the two circles will not coincide. While the unity, according to Manu, is the unity of four so far as the ritual of Śrāddha goes the unity indicated in the choice of a mate is the unity of three. Furthermore, paternal and maternal kin are equally valued in the rule of sapinda exogamy. The maternal kin, however, do not find a place in the Śrāddha ritual current in the days of Manu. The bilateral counting of kinship emphasised at this stage in Indian history influenced the regulations of marital unity only.

The fourth circle represents the unity of five on the paternal side and that of three on the maternal side. It is thus, on one side, a repetition of the first circle, and, on the other, its extension. The extension is on the father's side, and naturally so, because the Aryans in India stressed agnatic counting of kinship as against kinship through the females. As to the scope of extension, the grandfather and the propositus are both members of a primary kindred unit. Similarly, the grandfather and the great-great-grandfather are members of a primary kindred unit. The grandfather thus links up two primary units through his intermediacy. The propositus enjoys the

same position in respect of his two ascendants and two descendants. Naturally, then, whenever an upward extension is desired, it takes the direction it has taken, namely, to comprise a unity of five in place of three. The fourth circle is thus a partial extension of the family unity of three.

In the ritual of Śrāddha the right of the immediate three ancestors alone to receive the piṇḍas is laid down. A procedure is suggested whereby at times a person can offer piṇḍas in the life time of his father to the three ancestors to whom the father was bound to offer. This procedure which links up a man with his four ancestors is recommended by later Smṛti writers when the father retires into the fourth āśrama of Hindu scheme of life or when he becomes an outcast. Even on certain occasions calling for the performance of *vr̥ddhi* Śrāddha this procedure is said to be followed. If it be argued that the extension in the fourth circle is explicable on the basis of this procedure of piṇḍa offerings, it may be objected that it is a procedure which does not prescribe a regular rite for an individual but merely provides a remedy against certain contingencies, and, therefore, it cannot serve as a basis for any rule of behaviour. Again, it does not explain the circle on the mother's side. Thus we shall have to assign two different principles to two sides in one and the same circle.

The second circle apparently seems to have been conceived more or less on the basis of piṇḍa offerings. We have seen that the unity of six—a person and his five ascendants—was conceived on the ritualistic basis by some of the Smṛti writers and was hinted at as early as the Mānava śrauta sūtra. One can naturally connect this new extension regarding the eligibility of mates with the religious idea of piṇḍa offering. But this apparent connection between the two is erroneous.

This rule of exogamy is first advocated by Vasiṣṭha and then reiterated by Yājñavalkya, Nārada, and the Purāṇic writers. The Purāṇic writers recommend piṇḍa offerings to the immediate three and lepa to the three beyond. Thus the normal procedure in the Purāṇas connect a man with his six ancestors through the funeral offerings. Evidently the two circles, the one in respect of the piṇḍa offerings and the other in respect of marital regulations, do not coincide so far as the Purāṇas are concerned. Vasiṣṭha and Yājñavalkya have not given elaborate discussions with respect to the

different procedures of pinda offerings, and, therefore, it is not possible to compare the two circles. On the other hand, those, who advocate the unity of six in respect of the funeral offerings, do not look upon it as a proper basis for exogamous restrictions. Among the Smṛti writers Viṣṇu has very clearly harped on this extension in the procedure of pinda offerings and some of them appear to share the same opinion. But Viṣṇu letter writers does not allow marriage within seven generations on the father's side and five on the mother's. Any marriage in contravention of this rule is tantamount to the violation of the guru's bed. Thus, from the point of view of these writers, the circle of marital prohibitions is wider than that conceived for the pinda offering. Again, the circle for marriage appears to have been contracted as much as it is necessary in accordance with the local usages. The marriage circle and the Śrāddha circle are thus obviously different and determined on different principles. Even chronologically, the unity of six gains prominence in Viṣṇu dharma sūtra, a work of the third century A. D., though not completely unknown before that period, whereas it came to be recognised for marital regulations as early as the 5th century B. C. As for the maternal side, we find that the unity in respect of marriage is the unity of four whereas the unity implied in the normal Śrāddha procedure is the unity of five, the M. F. F. being the recipient of the third piṇḍa. The two unities being different, the circles do not coincide. In short, Śrāddha ritual must have influenced the extension on the paternal side, and it can influence only that side because no Śrāddha for the maternal grandfather and others was performed when this rule of exogamy came to be defined.

The paternal side of the third circle represents the unity of seven. The writers of the Purāṇas enjoin that lepa should be offered to the three beyond the great-grandfather. Writers like Yama and Asahāya recommend that, when the first three ancestors are alive, piṇḍas may be offered to the three beyond. Thus the unity of seven has been defined as based on the Śrāddha ritual, and has as such become of prime importance in the works of the Hindu writers. Even on the maternal side the circle represents the unity explicable on the principle of piṇḍa offerings. It may, therefore, be maintained that the circle of prohibited degrees is based on the ritual of Śrāddha.

Emminent writers like Vijñāneśvara, Devannabhaṭṭa, Mādhava, Kamalākara, give importance to the unity of seven in the law of inheritance while discussing the descent of property. Besides, the share of a person who is not present at the time of partitioning the family property is not lost within seven generations.<sup>1</sup> Even the rules of observance of impurities on the birth and death postulate sapinda relationship to extend to the first six ascendants. The unity of seven being so important in Hindu social life, Śrāddha must be regarded to have powerfully influenced the notion of kinship among them.

Before upholding this hypothesis, however, it may be asked whether we cannot offer any explanation for the unity of seven other than the one based on Śrāddha. The unity of seven is the double extension of the unity of four and the triple extension of the unity of three. We have to examine how far this explanation on the basis of extension is preferable to one given above, and, if it is found satisfactory, which of these two unities may be looked upon as the primary unity to serve as the basis of kinship.

This circle of prohibited degrees is hardly found to have been held up as a popular practice. It has always been held up as an ideal, and, from that point of view, it ranks lowest in the marital regulations observed among the Hindus. The unity is not so much important in exogamous restrictions as it is in the descent of inheritance. The Hindu law of inheritance, as we have seen, emphasises the 'line' theory, and the 'line' theory, in tracing, the devolution on the members of the 'line', assumes the unity of three. Vijñāneśvara, the first jurist to work out the law on the 'line theory', insists on the unity of three even in the 'line' of the propositus himself. It is again Vijñāneśvara who first attempts to interpret the gotrajas of Yājñavalkya into three categories of agnates—those related within seven generations, those beyond seventh but within fourteen generations, and those beyond the fourteenth generation. The unity of seven that we find being first brought into prominence by Vijñāneśvara in respect of transmission of property can have no bearing on the ritual of Śrāddha, as the law propounded by him must be read in the context of the unity of three which he has taken as the basis of each 'line'. Again, the law as it is developed in the Smṛtis

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1. Brh XXV 24, 25.



and which Vijnānesvara has taken as a norm for his theory does not speak of sapinḍas, persons related by mutual duties of offering pinḍas, but of sakulyas, bandhus or bāndhavas.

If we go to the history of the terms sapinḍa and sakulya, the terms which are first employed in the Dharmasūtra literature, it appears that persons who can trace their relationship however remote were called sakulyas. They were also known as samānodakas, as they were required to offer water libations on the death of any person belonging to the agnatic family. Amongst these persons a few persons, those related within seven generations, came to be distinguished by being called sapinḍas. As to the reason why only persons related within seven generations and not more were thus demarcated a probable explanation appears to be that three ascendants who received the pinḍas and the fourth who offered them were called sapinḍas by Manu. A wider group that can be conceived on the basis of this narrower group is the group of seven, because a person is connected with his three descendants by his act of receiving pinḍas from them and is equally connected with his three ascendants by his act of offering pinḍas to them. He is thus a link between the two groups of sapinḍas and, therefore, persons related within seven generations came to be all known as sapinḍas when a need for a wider circle was felt for such acts as the observance of impurities. We thus find the concept of sapinḍa first arising in Manu saṁhitā in association with the Śrāddha ritual and is restricted to relatives within four generations. The unity of seven, which we find in Manu for the observance of impurity, is the extension of this unity of four, though it has no direct association with the ritual of Śrāddha in Manu.<sup>2</sup> It is this principle of extension which explains the unity of ten, the unity which we find referred to in obsequial rites—relations to the seventh or to the tenth degree being enjoined by Pāraskara to offer water libations to the deceased. The rules of impurity thus reflect the unity of four in its extension. They equally point to the unity of three in its extension as Gautama defines sapinḍa relationship for the observance of impurities to cease in the fifth or the seventh (ascendant).

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2. In the Purāṇas three ascendants are said to receive pinḍas, the three beyond receive lepa. Seven generations are thus connected through the act of offering pinḍas. In Manu saṁhitā three ascendants are said to receive pinḍas but lepa is offered to a wider category of pitrs beyond the immediate three ascendants. Seven generations are not thus jinked up in Manu saṁhitā through the offering of pinḍas.

It is evident that the unity of seven is an extension of four as well as of three. It has equally some association with the ritual of Śrāddha, though not direct. Yet even if the unity of seven on the father's side be said to be influenced by the ritual of Śrāddha, the unity of five on the mother's side is not justifiable on the same basis so far as the early period (extending to Manu) is concerned, because offerings to the maternal ancestors are not referred to before Yājñavalkya. Gautama could not have been influenced in defining his rule of exogamy by the ritual of Śrāddha.

If, in view of this, we are to explain this unity of seven as an extension either of the unity of four or of three, we shall have to prefer the unity of three. Over and above the considerations detailed above the following facts lend further support to this preference. The first circle represents the unity of three on both the sides. The fourth circle represents it on the mother's side and its extension on the father's side. The third circle represents the unity of three in its extension on both the sides, or the unity of four on the paternal side and of three on the maternal side. In order to be consistent on both the sides in the third circle, and in order to seek harmony among the three circles conceived for marital regulations, the unity of three, rather than of four, should be recognised to have predominantly influenced the circles of prohibited degrees. Again, whereas the fourth circle represents the minimum requirements of sapinda exogamy the third circle represents its ideal. Taking the two rules in this light, the fourth circle may be said to represent the unity of three on the mother's side and the same unity in its extension on the fathers' side, and the third the unity of three in extension on the mother's side and the same unity in triple extension on the father's side. In other words, the third represents, as compared to the fourth, one further extension of the unity of three on both the sides, and quite naturally, as the ideal must be a little higher than the minimum requirements. The unity of three, thus, appears to be at the basis of the unity of seven too.

To conclude, the circles of prohibited degrees are more or less based on the unity of three and its various extensions, and the unity of four and its extension serve as a basis for a very few of them. Further, the circles of prohibited degrees have not much bearing on the ritual of the dead in as much as two of them do not coincide with the circles based on piṇḍa offerings and the one that coincides is more

satisfactorily explained otherwise. The basis of kinship among the Hindus is, therefore, family group and not religion. This can be further amplified if it can be shown that the unity of three is more predominant than the unity of four in various aspects of Hindu culture and that the unity of four is not the sole product of the ritual of the dead but is influenced by other considerations too.

## II

The basic unity of the Hindu family was of three generations. The grandfather was the primary stem of the Hindu household and his children and grandchildren the offshoots of the family tree. We often hear of sporting with sons and grandsons within the four walls of the house as a normal mode of living in the early Vedic period.<sup>3</sup> Father, sons and grandsons are referred to as forming a compact unity in a sacrificial formula.<sup>4</sup> The offering of a victim to Agni and Soma is the occasion of an interesting rite: the *adhvaryu*, the sacrificer, the wife of the sacrificer, her sons and grandsons all assist in the family ritual in a picturesque manner by each latter one touching the hand of the former one.<sup>5</sup>

The father gives his daughter in marriage with the words, "O brahmin, I have given you this girl who is born in my family, who is brought up by me for eight years, (to be) the augmentor (of your family) through sons and grandsons. The marriage ceremony ends with oblations into fire accompanied by the *abhyātāna* formulæ, "May Agni protect me, may the fathers, grandfathers, the former, the latter, the fathers and the grandfathers protect me here in this power of holiness." At the end of the ceremony the father of the bride recites the benedictory formula that the *gāṛhapatya* fire may protect her and give her bliss through sons and grandsons.<sup>6</sup>

3. R. V. I 92, 13; 100, 11; II 25, 2; VI 50, 7; VIII 23, 12; 92, 7; X 85; 42; A V. IX 5, 30; XIV I, 22; K. S. III 8; T. S. I 3, 11. Cf. the idea that god *Brahmā*, in whom the Hindus see the origin of the Universe, is often referred to as *pitāmaha* (a term for grandfather). Similarly, Agni is addressed as the grandson of sages in V. S. XXI 61.

4. T. S. VII 3, 12; K. S. XXXVI 13; M. S. I 10 18. Cf. *Ajigarta* speaking to his son, 'Don't be away from the thread (*tantu*) of your grandfather, the sage.'

5. Keith A. B., *Philosophy of the Vedas and Upaniṣads*, Vol II, p. 328

6. S. R. M. p. 552; P. G. S. I 5, 10; H. G. S. I 6, 19, 7; J. G. S. I 20; Bh. G. S. I 14.

Fathers and grandfathers, far and near, are invoked for help and protection in the holy power, in purohitship, in the invocation of gods.<sup>7</sup> A son or a grandson cannot kindle the sacred fire so long as his father or grandfather has not done it.<sup>8</sup> He whose father and grandfather have not been initiated is called a slayer of the brahmin. Intercourse, eating and intermarriage with him should be avoided. It is only after the performance of a penance that such a person becomes worthy of being taught the Vedas.<sup>9</sup> The Hindus pay the highest regard to the family traditions, and these traditions centre round the father and grandfather. "Let him walk in that path of holy men," observes Manu, "which his fathers and his grandfathers followed: while he walks in that he will not suffer harm."<sup>10</sup> When a brahmin preparing the sacrificial altar, is questioned about his lineage, he replies, "Why do you ask of the father and the mother of a brahmin. If the Vedic tradition is to be discovered in him, such is the father, such is the grandfather."<sup>11</sup> He whose ancestors and himself for three generations have not drunk soma should offer a bull which has again been let loose to Indra and Agni."<sup>12</sup> The opening cup in the twelve-day sacrifice, familiarly known as the āgrayāṇa cup, is first drawn by him whose father and grandfather are holy and who yet does not possess holiness.<sup>13</sup>

The term for the grandfather is 'big father' (mahānpitṛ) which is made into a convenient form of reference as pitāmaha. The term for an ascendant beyond the grandfather is the same term with a prefix showing boundary. Every further ascendant is

7. T. S. IV 3, 37; K. S. XXXIX 7; M. S. II, 7, 20.

8. Dh, S. p. 315; Atri 107.

9. Ap. D, S. I 1, 1, 27 seq. cf. Yama (Aparārka, p. 449, "He (in) whose family (study) of the Vedas and the (construction of) altar are stopped for three generations is, indeed, a wicked brahmin."

10. M. IV 178; R. 11 105, 30.

11. K. S. XXX 13; M. S. IV 8, 1. cf. T. S. I 4, 43 "May I win today a brahmin, a seer and sprung from seers, who has a worthy father and a worthy grandfather." V. S. VII 46.

12. T. S. II 1, 5, 5; K. S. XIII 5; M. S. II 5,5; Gop. B. I 16. cf. S.B. XII 8, 1, 6; IV 5,9; indeed, this soma drink falls to the shares of the fathers and grandfathers of whoever drinks the liquor on this occasion."

13. T. S. VII 2, 7, 3; K. S. XXX 3; S. B. IV 5, 9.

indicated by the addition of the same prefix showing further extension. Similarly, in the case of descendants, the term for the grandson, *naptr*, is used with a prefix for the great-grandson. This clearly indicates that for all practical purposes the family group comprised two ascendants or two descendants. Recognition of persons beyond this circle was more or less shadowy. Again, the word *tanaya* which is explained as offspring or descendant by Macdonell and Keith is interpreted by Yāskāchārya as grandchildren. Yāskāchārya also derives the word *tanaya* as one who spreads or extends (the family)<sup>14</sup>. Reading these two ideas together confirms our plea that the notion of the family group comprised the unity of three.

The Vedic Aryans, even when they insisted on the family unity of three, may have found in their daily routine cases where the great-grandfather lived to see his great-grandson. We read in the *Mahābhārata* that Bhīṣma had to encounter Abhimanyu, his great-grandson, on the battlefield, and we have no reason to think that such cases were rare. It implies the living unity in a family to be of four generations. In the *R̥gveda* we have testimony of a person being referred to genealogically as a grandson's son. In the *anuvākas*, recited while immolating, the sacrificer thus addresses: the son of N. N. sacrifices, the grandson of N. N. sacrifices, the great-grandson of N. N. sacrifices. Similarly, it is said in the *Mānava śrauta sūtra* that a *dīksita* must recite his name, the name of his gotra, of his father, grandfather and great-grandfather<sup>15</sup>. Four brahmins who are sent to select a bride thus recite the name of the bridegroom: N. N. is his great-grandfather, N. N. his grandfather, N. N. his father, N. N. the bridegroom.<sup>16</sup> "The father, grandfather and great-grandfather are said to be born insects in ordure if a girl is not married at a proper time." The passage contemplates a duty, incumbent on certain persons, to marry a girl at a proper time, and this duty of guardianship is generally conceived in terms of family. In a passage where "a Brahmin is said to be the father of a Kṣatriya, the grandfather of a Vaiśya and the great-grandfather of a Śūdra,"<sup>17</sup> one finds a corroborative evidence of a family unit comprising four generations. In the

14. Nir. X 7; XII 6.

15. R. V. VIII 1, 33; 17, 13; Lāt. Śr. S. I 3, 17, 19; J. Sr. S. VIII

16. Laghu Āśvalāyana S. XV 16, 17.

17. Pañhināsī (Ghose J. C., Vol. II.); V. Mīt., Sams., p. 314.

law of inheritance whereas the unity in the 'line' of any ascendant is generally the unity of three that in the line of the *propositus* is more often of four. This exception may be due to the fact that the great-grandson happened to be, at times, a living member of the joint family and the writers sought to meet such situation by recognising his interest in the family property. This unity of four, explained on the basis of *Śrāddha* ritual, fails to explain why it is that in its supersession the unity of three is so emphatically asserted in the 'line' of every ascendant.

A passage in the *Vasistha dharmasūtra* reads: "It is declared in the Veda, 'Endless are the worlds of those who have sons; there is no place for the man who is destitute of a male offspring.' There is a curse (in the Veda), 'May our enemies be destitute of offspring. There is also (the following) passage of the Veda, 'May I obtain, O Agni, immortality by offspring.' Through a son he conquers the worlds, through a grandson he obtains immortality, but through his son's grandson he gains the world of the sun." The last verse is found in *Baudhāyana dharmasūtra*, *Manu samhitā* and *Viṣṇu dharmasāstra*. *Yājñavalkya* also gives a verse of the same import: 'Through sons, grandsons and great-grandsons one attains to immortality in this world and obtains a heavenly abode.' *Vijñāeśvara*, in his comment, observes: 'Women should be enjoyed for progeny viz., sons, grandsons and great-grandsons, who keep up the family continuing in this world and should be protected for the performance of *Agnihotra* and other rites'<sup>18</sup>. Reading this passage, wherein the idea of immortality through descendants is given, along with the other passages cited above, wherein a person is referred to for identification in terms of his three ascendants, unity of four as a unity of persons living together in a family seems more plausible.

In the early law of inheritance given by *Baudhāyana* and *Manu* the closer group of relatives, known as the *sapinda*s of a person, consists of a person and his three ascendants. Even according to *Kauṭilya*, "Sons or grandsons till the fourth generation from the first parent shall have shares in that property which is acquired by means of their undivided ancestral property, for the *pinda* as far as the

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18. V.D.S. XVII 2-5; B.D.S. II 16,6; Sat. Sr. S. XXVII 4, 40; M IX 137; Vi D. S. XV 46; Yaj. I 78.

fourth generation is uninterrupted.<sup>19</sup> This unity of four is stressed for the transmission of property by Devala and Kātyāyana among the Smṛti writers and Jīmūtavāhana among the jurists. So, from the end of the Vedic period onwards, persons related within four generations are said to form a group wherein the kin feeling is intense. In the ritual of the Śrāddha, that we find developed in the Vedic period, the three immediate ancestors of a person are regarded to have the right to receive from the descendants offerings, and consequently the four—the three recipients and the offerer—formed a compact unity founded on offering at the ritual of the dead. Naturally one can interpret the law of transmission of property as shaped and regulated by the theory of piṇḍa offering. Indian writers have emphasised this correlation and the law of sapinda relationship has been more often given in terms of piṇḍa offerings. Medhātithi, Aparārka, Devanna, Mādhava Haradatta, Gopinātha, and Anant deva are the prominent writers who define sapinda relationship in terms of connection through funeral offerings.<sup>20</sup> Those who do not insist on this definition show much leaning towards it. But when Manu has defined the group of sapindas to include persons who are bound up to each other by funeral offerings Baudhāyana has referred to these same persons as those who have uninterrupted heritable right in the property. The same view is found in the texts of Brahma and Ādi Purāṇas. Thus in the early post-Vedic period there were two views regarding the unity of four, one interpreting it as a product of the ritual of the dead, the other explaining it as a group with common heritable right in property.

From the data that is presented it is permissible to conclude that very probably the unity of four was first conceived on the unity of the living members of the family, and probably it is the recognition of the living unity of four that led to the separate recognition of the three deceased ancestors as the manes par excellence out of the communal manes who used to receive the manes-worship. The heritable right in property is the natural outcome of living together

19. Kau. III 5

20. Medhātithi (M. V 60); Aparārka, p. 745; S. C., Sams. p. 180; Mādhava, Vol. 1, Part 2, p. 58; Haradatta (Ap. D. S. II 14. 2); S. R. M. p. 406; Sam. K. p. 172; M. Pārj. p. 129.

and toiling together for it and is better explained as arising from a joint family group rather than from extraneous circumstances such as the *piṇḍa* theory. *Piṇḍa*, in the text of Kauṭilya cited above, must be interpreted as implying blood relationship, and what Kauṭilya means is, among a large number of blood relatives those related within four degrees form a group with a common heritable right. Beyond that, connection (with the family) being severed, the heritable right does not extend though blood relationship exists.

We thus find the two unities, unity of three and that of four, predominantly influencing the life of the Vedic Aryans from the very early times. Both appear to be the usual norm of the family. Whether one of them, namely, the unity of four, is the heritage of the Indo-European culture or whether both of them can be traced to the different branches of the Indo-European stock is besides the scope of this work. The question that concerns us here is whether the unity of four can be more satisfactorily explained by a fact other than the *piṇḍa* theory, and it appears to us that the facts brought together in these pages do answer it positively. Let us investigate the question still further.

### III

A text attributed to Sumantu, reads: "In case of brahmins having the same *piṇḍa* and *svadhā*, the severance in dharma takes place from the tenth, of descent of inheritance from the seventh, of *piṇḍa* offerings ( *svadhā* ) from the third. He who severs ( his relationship in respect of ) *piṇḍa* and observance of impurity in any other way ( than this ) incurs the guilt of brahminicide."<sup>21</sup> The text of Sumantu is not very clear, and Indian writers have failed to give the proper meaning of the text, owing to the ambiguity of the phrase '*ekapiṇḍasvadhānām*.' Aniruddha explains this expression thus: "those brahmins who are connected either through ( actual ) offering or through capacity to offer in the same *Śrāddha* and in the same *piṇḍa* are *ekapiṇḍasvadhānām*." Mitrāmśra opines that *piṇḍa* stands here for relationship through blood and *svadhā* for relationship through *piṇḍa* offerings. And then he proceeds: '*Svadhā* ( is ) the *Nāṇḍimukha Śrāddha* in the *prauṣṭhapada* and ( which refers to ) fathers beginning with the great-great-grandfather. There the great-great-grandfather and his two ascendants receive



piṇḍas : the three beyond these, lepa : the immediate three ancestors of the propositus are the directors of this, and the ego-they all form a connected group of ten." Śūlapāṇi, too, tries to fix this group of relatives in terms of pinda offerings but in a different way. According to him, when the first three ancestors are alive, piṇḍas are offered to the three beyond. In such a case the eighth, ninth and tenth ascendants receive lepa. Thus a group of ten is related through Śrāddha.<sup>22</sup>

These interpretations are open to two objections. The procedure of offering piṇḍas to the fourth, fifth and sixth ascendants as the Nāṇḍimukha pitṛs, though not totally unknown, is not the usual concept of the Nāṇḍimukha Pitṛs. We have similarly no indication in the ritual that we have that lepa is wiped off in the honour of the seventh, eighth, and ninth ascendants. Whenever the recipients of lepa are specifically referred to in a Pārvaṇa Śrāddha, they are invariably the three ascendants beyond the great-grandfather. Thus the procedures given to explain the text of Sumantu are not in accord with the ritual as we know and, therefore, they do not correctly represent the principle on which the text is based. They may be looked upon as feeble attempts to bring the old text in harmony with their avowed leaning to a particular doctrine.

The word piṇḍa is used twice in the text. If it is interpreted to stand for the offerings in a śrāddha in the phrase *ekapiṇḍasva-dhānām* it must mean the same thing in the phrase 'a trīyāt piṇḍavichchhittiḥ.' The meaning then would be 'piṇḍa offering ceases from the third (ascendant)' The great-grandson is bound to perform a śrāddha in honour of his great-grandfather; nay, it is the right of the great-grandfather to claim the offering of a piṇḍa from his great-grandson. The meaning assigned to the word piṇḍa is obviously in conflict with the procedure and principle of the śrāddha ritual.

The unity of ten, referred to here as a compact group for the observance of dharma, is known to Pāraskara and Yājñavalkya as a group of persons with obligations to offer water libations and live a life of restraint on death and to the writers of a still

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22. H. L. p. 99; V. Mit. Sams. p. 700, Śūlapāṇi (N.S p. 206).

earlier period as a vague group. It is said in Śatapatha Bbāhamāṇa, "Let him steal forth after enumerating ten soma-drinking grandfathers: it is thus that he obtains for himself the soma draught of this (daśapeya) for it is a drink of ten." It is not clear what the author means by saying that he should recite the name of ten soma drinking grandfathers. Sāyanāchārya thus explains: 'he is to call out the name of the sacrificer's grandfather, then the grandfather of that one and so on till he recites the name of the tenth person. Sāyanāchārya's explanation does not seem to represent the correct view of the rite. There is no reason why we should presume with Sāyanāchārya that only the grandfathers drank soma. It is equally unreasonable to suppose that every grandfather drank soma. The plausible explanation seems to be that names of those ten ancestors in order who are believed to be the drinkers of soma should be recited. This interpretation is accepted in Kātyāyana śrauta sūtrā (XV 8,16), and the Brāhmaṇa work of the same Samhitā must have, in all probability, enjoined the same rule. Commentators on Kātyāyana do not follow Sāyanāchārya but hold that the passage alludes to unlimited number of agnatic relatives. In Varāha śrauta sūtra (III 3, 4, 16, 18), too, the idea is referred to but in such vague terms that it leads us nowhere in determining the precise nature of the injunction. We may believe that the rite implies the recital of names of ten drinkers from among a large number of agnatic relatives. But in normal course of events it is difficult to remember the names of so many ancestors and the difficulty is seen by the author of the Śatapatha Brāhmaṇa (V 4, 5, 4). "This is an overburdening, for people (will be able to) obtain only two or three soma drinking grandfathers. Let him, hence, steal forth after enumerating those same deities." The evidence of daśapeya, therefore, does not help us in precisely determining the kin group, except that the computation upto ten degrees was very dimly perceived as constituting a wider kin group in the latter half of the Vedic period.

There are, however, passages wherein a definite link with the first nine ascendant is acknowledged in clear terms. "He, who is a continuou drinker of soma for ten generations at the time of drinking, is the real drinker." "He should drink soma in whose house

(family) Śūdras are not traced within ten generations".<sup>23</sup> Recital of the names of nine ascendants is prescribed in the daśapeya, and some recommend it even on the maternal side."<sup>24</sup> The group of ten forming a circle of relationship is very often referred to in later literature. A person, whose ancestors to the ninth degree, both on the mother's and on the father's side, are distinctly known to have been śrotriya, sanctifies the company.<sup>25</sup> In selecting a brahmin for a śrāddha one should be careful to see that he has mastered the Vedas and has a noble lineage. On one view, the inquiry into the lineage was to be made with respect to his father and grandfather,<sup>26</sup> but the other view urged inquiry into the credentials of his nine ancestors.<sup>27</sup> Similarly, in selecting a proper bride it is recommended that a person should choose a girl coming from a renowned family śrotriya known for ten generations. Commentators explain this inquiry into ten such generations as five on the father's side and five on the mother's.<sup>28</sup> Āśvalāyana, while discussing the nature of a proper bride, had laid down as the first test inquiry into her family both on the mother's as well as the father's side,<sup>29</sup> and it seems that the interpretation of the commentators has been influenced by this text of Āśvalāyana. Though it does not appear to be the proper view of Yājñavalkya, it has its own importance. Both the commentators opine that the family is said to be renowned which is prosperous with sons, grandsons, cattle, maid servants, villages and such other things. Both Vijñāneśvara and Aparārka, with their specific reference to sons and grandsons and with their interpretation of ten generations to imply five on the father's side emphasise the family unity of three generations. Declarations such as 'the kingdom has descended to me through ten generations' indicate that relationship within ten generations was not a vague idea but was definitely visualised as a concrete reality.

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23. Sat. Śr. S. XIII 7, 13; Mahābhāṣya IV 1, 93, 5.

24. Sat. Śr. S. XIII 7, 13; B. Śr. S. XII 18, Lāt Śr. S. IX 2, 5; A. Śr. S. IX 3, 20.

25. V. D. S. III 19; cf. Vyāsa (Aparārka, p. 442)

26. Devala (Rāmachandra on M. III 130)

27. M. Śr. K. (Caland, p. 228); Medhātithi (M. III 130).

28. Yaj, I. 54 with comments of Vijñāneśvara and Aparārka; V. V. S. II 3;

29. A. G. S. I 5, 1

Though the unity of ten is not very significant for important social relationships,<sup>30</sup> it is found correlated with some social and religious ideas, and is associated with certain religious observances indicating its functional importance. The unity which is conceived as early as the Brāhmaṇa period, however dimly it may be, and which is associated with some significance in the Śrauta and Dharma sūtras, manifests to have a close bearing on the family. It is in terms of family in connection and association with a large family group, that all references to ten are made. It must be further remembered that at a period when this unity of ten is so prominent Śrāddha was performed specifically in honour of the first three ascendants only, though a wider category of Pitrs was sought to be satisfied by an offering of a piṇḍa or lepa. There was thus no definite tie existing between a person and his nine ascendants through the act of giving or receiving piṇḍas. It is, therefore, quite permissible to conclude that it represented a wider extension of the unity of four, and that this wider circle has greater association with the family group than with the ritual of Śrāddha.

Another extension of the unity of four, namely, the unity of seven, so far as it relates to the rule of descent is also associated with the family. The descent among the Vedic Aryans is although patrilineal. In the Sūtra period hypergamous unions became very usual and the question of reckoning descent was raised up by the Hindu legislators. In the early stage issues of anuloma marriage (i.e., marriage with a woman of a lower caste) were recognised as belonging to the caste of the father. "So long as the issues born of a kṣatriya, vaiśya or śūdra wife lived undivided with their father of the higher caste, they observed impurity laid down with reference to the caste of the father."<sup>31</sup> With the development of caste organisation in the Sūtra period marriage outside one's caste came to be looked upon with disfavour. Only the unions between the males of higher castes and the females of the caste next in order still continued to be regarded as perfectly regular, in as much as

30. Mitrāmśra relates that Dirghatamaś, son of Mamatā, married a girl beyond the tenth degree of relationship. He further recognises the right of these relatives to inherit the property and maintains that sapīṇḍa relationship through blood extends to ten generations. V. Mīt. Sam. pp. 701, 702, 707.

31. Vaidya C.V., *His. of Vedic Lit.*, Part III, p. 18; Lat. Sr. S. IX 2, 26; Mbh. XIII 44 Āpastamba (Aparārka, p. 906).

the issues of such unions were not disqualified in any way. But, if a brahmin male married a vaiśya female, the progeny formed a separate class.<sup>32</sup> If a girl of this caste was married to a brahmin male, and if their daughter again was married in the same way and if such unions continued for seven generations counted from the original person the issue in the seventh generation became a brahmin. Gautama opines that the period may extend to seven or five generations.<sup>33</sup> In other words, under particular circumstances a brahmin can produce on a vaiśya woman a brahmin in the seventh generation. Baudhāyana writes : "If a niṣāda (the son of a brahmin on a śūdra wife) marries a niṣādī (and this goes on continuously), then the fifth generation becomes free of the taint of Śūdra status : he can have his initiation performed and his son can have a Vedic sacrifice performed for him".<sup>34</sup> When this rule for a change in caste was not obeyed, social rights and duties of the issue were determined according to the caste of its mother. Anuloma marriage thus gave rise to a change in descent.

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32. B. D. S. I 17, 3, 5; II 3, 12; G.D.S. IV 16; Kau. III 7 (Vol. I, p. 164); Mbh XIII 48; Ghurye G. S., *Caste and Race in India*, p. 77. Though the share of a son in his patrimony is said to vary according to the caste status of his mother (B.D.S. II 3, 10; V.D.S. XVII 49-51), the rule of āśauca and the fact that the wife of a different class is not prohibited from participating in the religious ceremonies of her husband as his full and lawful wife indicate that considerations of caste had not in the Sūtra period superseded the old rule of patrilineal descent.

33. M. X 64; G. D. S. IV 22. It is likely that Gautama quotes here the opinion of respected authority. Ganganath Jha and Bühler understand the period of seven generations as Gautama's opinion and that of five as the opinion of the respected authority (Manu Smṛti, p 806; S. B. E., Vol. II, pp. 196, 197), and that seems to be a more reasonable view. Haradatta explains promotion to a higher caste through the father takes place in the seventh generation and degradation to a lower caste through the mother in the fifth generation. He also interprets the two periods as alternatives saying that where there is pre-eminence of character and learning rise is possible even in the fifth generation. Yājñavalkya (I 96) gives two periods as alternatives. Viśvarūpa, Vijñāneśvara (Yaj I 96). Rāmachandra and Nārāyaṇa (M. IX 64, 65) apply this rule even to a brahmin marrying a kṣatriya girl.

34. Kane P. V., *His. of Dh.*, Vol. II, part I, p. 65. Bühler has not translated these verses. cf. his note in S. B. E., Vol. XIV, p. 197.

Evidently this elaborate rule hardly led to any practical result, but the significance of the rule lies in the fact that whereas Āpastamba and his opinion is shared by the author of the *Mahābhārata*—enunciated the rule of change of caste in terms of individual actions other *Sūtra* writes and Manu explained this change in terms of purification of blood. The Hindus maintain that a son inherits three elements from his father and three from his mother.<sup>35</sup> A child begotten on a woman of a lower caste inherits a half of himself from his mother and to that extent the purity of blood is stained. By contracting marriage of such a girl with a man of a higher caste, the quota of the father increases and that of the mother diminishes. Within seven generations the elements inherited from the original woman of a lower caste are much reduced and, in comparison to the overwhelming quota of the father of the higher caste, are rendered almost negligible. This elaborate rule for a change in caste suggests at least this much that whether it was a mere ideal or a rule of practical application the unity of seven has at least in this sphere associations with blood and not with *Śrāddha*. Further, the change is said to take place in the seventh or the fifth generation. Seven indicates a triple extension of the unity of three and double extension of the unity of four. From the comments of *Medhātithi* and *Kullūka*<sup>36</sup> it appears that the later commentators regarded it as the triple extension of three. It is particularly interesting to note here that Gautama defined *sapinda* relationship to cease in the fifth or seventh generation.

I have so far tried to illustrate that the unity of four and its various extensions, the unity of seven and the unity of ten, have greater association with and bearing on family. In so doing I have tried to answer the first part of the question raised in the first section (p. 277), namely, the unity of seven can be more satisfactorily

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35. *Garbhopenisad* (Mit. p. 14). In *Sāpinda-dīpikā* (p. 31) a text is attributed to *Saṅkha* wherein it is said that a child has in him four elements from his mother and three from his father.

36. If a brahmin marries a *vaiśya* female and a daughter is born and she again marries a brahmin then in the fifth generation there will be promotion to a higher caste; conversely, if a son is begotten by a brahmin on a *vaiśya* wife and he marries a *vaiśya* female and this goes on, then in the fifth generation the son will be a *vaiśya*. Similarly, if a brahmin marries a *kṣatriya* woman the promotion or degradation takes place in three generations.

explained by explanations other than the Śrāddha. The second part of the question, which of these two unities, the unity of three and that of four, may be looked upon as the primary unity to serve as the basis of kinship, is partly answered in showing in the beginning of this section the importance of the unity of three in Hindu life. The importance of that unity may be further illustrated by reference to its place in a large number of social, religious and legal relationships in Hindu community.

Descent of inheritance is regulated on the basis of the unity of three in the Smṛtis and in the school of Vijñāneśvara. Though Jīmūtavāhana and his followers regulate the descent on the basis of the unity of four, property right is vested only in two, and not three, descendants. We have seen that Yājñavalkya acknowledged the right of a son and a grandson in the family property accruing from their very birth. Vijñāneśvara, on the authority of this text, evolved his concept of *apratibandha dāya*,<sup>37</sup> as distinguished from *sapratibandha dāya*. This vested interest in property is not a new concept first evolved by Yājñavalkya but a very old one as Bauddhāyana is seen to refer to it. The same concept was indicated by Bauddhāyana when he said that the share of the minors, idiots, blind, etc., should be properly protected but no protection is deemed necessary in respect of the share of an outcast or his son. Likewise Viṣṇu has enjoined that a person contracting marriage with a woman of a lower caste is deprived of his share. Such a person and his son, though debarred from their legitimate shares, should be maintained.<sup>38</sup> In both these passages there is a clear indication of the vested interest of two descendants only in the family property. And it is because of this that the liability for a debt contracted for the family is incurred by two descendants only. It is, again, because of this that Kamalākara has made it incumbent on the sons and the grandsons to maintain the indigent widows and daughters-in-law even when there is no wealth to be inherited.<sup>39</sup>

Sapinda relationship in case of an unmarried daughter is said by Vasīṣṭha to extend to three generations, though it extends to seven generations in case of a male child. Similarly, it is said by Śaṅkha:

37. Supra, p. 223; B. D. S. III 3, 36 seq; VI. D. S. XV 37, 38.

38. Mitter D., *Position of Woman in Hindu Law*, p. 178.

"If there are many (sons) born of a person on wives of different castes and if they are separated in wealth they have to observe different periods of impurity (according to the caste of their mothers) though they are sapinda. Sapinda relationship in their case extends to three generations."<sup>39</sup> It seems that sons begotten on women of different castes attained the social status accorded to the caste of the mother. Yet if they lived in the family they were accorded the status of the caste of the father, but, so far as property was concerned, their vested interest differed from other sons born on the woman of the caste of the father in as much as they formed coparcenary with relatives in the third generation and not in the fourth. In other words, even when *anuloma* marriage was recognised as a valid and palatable form of union, the issues born of such a union were kin only if they happened to be the members of the usual family group which comprised descendants within three generations. Even in the case of an adopted son sapinda relationship is shown to extend to three generations. In short, the daughter who was to go out of the family, a stranger brought into the family group by the act of adoption, an issue not born of a perfectly legitimate union—were all considered a sort of aliens having no status of a kin. Kinship with them was recognized so far as they happened to be the members of a normal family group. This recognition of kinship clearly indicates that basis of kinship was membership in a family group and not participation in the family ritual. A daughter could not perform any rites in honour of her paternal ancestors, though she did indirectly participate in the rituals through her son. In the case of an adopted son, participation in the ritual of the new family, and recognition of kinship are not in accord with each other. Śrāddha thus fails to be the source of kinship.

So far we have restricted our inquiry to those aspects wherein the functions of kin can be studied under institutions and organizations. In a community of advanced culture there are, however, numerous social relationships in which the functions of kin are made definite. These relationships and the functions of kin therein may now be taken up to see how far the circle of kin envisaged by them corresponds to the idea of the unity discussed so far.

39. Sāṅkha (H. L. p. 99). cf. Adī P. (H. L. p. 101) "Sons begotten even by a brahmin on (women of) a ksatriya, vaiśya or śūdra class, even when they are united, have sapinda relationship for three generations. If they are separated in wealth they belong undoubtedly to the caste of the mother. cf. N. S. p. 206.



A woman desirous of an offspring eats the middle piṇḍa, that is the piṇḍa reserved for the grandfather. This capacity to confer a son attributed to the grandfather is another expression of the belief that the grandfather is reborn in the family. This is further illustrated in a passage attributed to Āśvalāyana, where it is said that if the name of the grandfather is given to a child it is praiseworthy. The injunction of Patañjali, however, is that the name should be *tripuruṣānūkṣitam*, that is, one not given to ancestors within three generations. Mitrāmīśra understands by the word *tripuruṣa* the father, grandfather and great-grandfather. The Hindu counting starts with the ego as the first, and so his interpretation is not warranted.<sup>40</sup> The rule pertaining to the naming of a child thus implies the unity of three.

As for the persons competent to perform a man's śrāddha in the absence of this son many writers have specifically referred to the brother's son, that is, a collateral in the third generation, but never to a brother's son's son or any collateral in the fourth generation. Nay, even when the fourth person in the direct descent is ever looked upon as duty bound to perform the śrāddha of his great-grandfather, many writers have explicitly referred to the son's son but not to the son's grandson.<sup>41</sup> It only means that even with the development of the ritual of Śrāddha which stressed the unity of four, the family unity of three was so strongly impressed on the minds of these writers that in discussing a person's priority of right to perform such an important rite in the family, they always thought of descendants and collaterals within three generations and not four. The law of inheritance developed by the Smṛti writers and commentators is in terms of three generations. It may be that the members of the family who were entitled to share the estate of the family were regarded competent to perform the family ritual. If so, the law of inheritance was not shaped by the ritual of Śrāddha, but the ritual came to be defined in some parts in terms of family and property rights.

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40. M. III 262; G. G. S. IV 3, 27; Āśvalāyana (V. Mīt. Sams. p. 242); V. Mīt. Sams. p. 206. Gopīnātha (S. R. M. p. 855) understands the rule to imply that a child should be given a name after any of the three ancestors beginning with the grandfather.

41. B. Pm. S. I; L. A. S. XX 20; Paithīnasa and Laghu Hārīta (Aparārka, pp. 531, 539); Kāladarśa (N. S. p. 273); Raghunandana (Sarker G., *Hindu Law*, p. 630); G. P. XVII, XXVIII; Atri 363.

In one of the Smṛtis food for the Pitṛs is said to be cooked by a woman who belongs to the same gotra and who is possessed of the brother, husband and sons. The author has further specifically referred to the wives of the father's brother, of the brother, of the father and of the father's father as fit for this ceremonial duty. The other females are the wife of the teacher, mother's brother's wife, sister of the father and of the mother, sister, daughter and daughter-in-law. Among the males, the brother, father's brother, father's brother's son, sister's son, father, son, daughter's son and daughter's husband are deemed fit for cooking it.<sup>42</sup> This would include more or less the descendants within three generations, males as well as females, barring a few nearest persons. Similarly, when marriage is settled, adverse circumstances such as the death of a person in the family delay the celebration of marriage for a year or so. Though generally it is the death of a sapinda that is said to be such an adverse circumstance there are texts in which the death of only a few near relatives—the father, the mother, brother or a brother's son or, in a more comprehensive list, that of the father's father, the father's mother, the father's brother and unmarried sister is said to postpone a marriage. Medhātithi refers to them in general terms 'persons related within three generations among the gotrajas.' In a text attributed to Pitāmaha some persons are spoken of as worthy of initiating a child. They are the father, father's father, father's brother and ultimately the brother. According to Gārgya, the father, father's father, brother near relatives (jñāti) or a senior gotraja must perform this duty. Baudhāyana, in his list of persons worthy of performing rites, does not refer to the father's brother but mentions a daughter's son and a sister's son.<sup>43</sup> Baudhāyana's list is not so impressive as that of Gārgya or Pitāmaha, but all the three speak of relations within three generations and thereby indicate and emphasise the family unity of three. It is recommended that Śrāddha should be performed by those who are possessed of all *lakṣaṇas*, beauty and merits, and who are known for three generations.<sup>44</sup> In the *pūṃsavana* ceremony, that is, the ceremony performed for securing the conception of a male child, the husband, touching the wife's heart, recites a verse for preventing disturbances which could endanger the embryo. The verse

42. Prajāpati, 57 seq.

43. S. R. M. pp. 481, 482; Sam. K. p. 117; B. Pm. S. I

44. Chhāgaleya (Aparārka, p. 442)

runs: 'What is hidden, O thou whose hair is well parted, in thy heart, in Prajāpati, that I know: Such is my belief. May I not fall in distress that comes from grandsons'<sup>45</sup>. The evident stress on the unity of three in all these passages probably suggests that these were the persons who in the normal course of events lived together and hence the feeling of union about this circle was intense.

To sum up, I have tried to show first of all that there is lack of complete correspondence between the circle on the pinda basis and the exogamous unit. Again, the unity of seven which is suggested in one of the exogamous units, and which apparently appears to be the outcome of Śrāddha ritual is shown to be an extension of the unity of three. I have further shown that in legal relationship, in rituals, in ceremonials and in a number of other aspects of social life the unity of three is so predominant that it must be accepted as the primary unity of Hindu kinship. I have likewise tried to illustrate that the unity of four has in itself as well as in its extensions greater association with the family than with the Śrāddha ritual.

#### IV

The only unity which cannot be explained either on the unity of three or of four is the unity of six. We saw that it is an important unity in the circles of prohibited degrees because Vasiṣṭha's rule of exogamy has been held up by all the legislators of the first seven centuries of the Christian era. Furthermore, sapinda relationship of a man is said at least by one early authority to be limited by the sixth person.<sup>46</sup> Haradatta, while commenting on a verse of Gautama (XIV 12), observes that "sapinda relationship extends to the 6th person beginning with the propositus. It ceases in the seventh." Aniruddha (H. L. p. 98) appears to hold the same view because, while explaining the fifth in the said text of Gautama, he writes, "there is no sapinda relationship with the great-great-grandfather," implying thereby that the seventh person is not a sapinda relative.

We have seen that in the Śrāddha procedure advocated by Viṣṇu the unity of six is emphasised. The same unity has been

45. A. G. S. I 12, 7

46. V. Sm. S. VI 4

held up as resulting from the ritual of Śrāddha by many other writers who do not follow the procedure of Viṣṇu. Sapinda relationship with relatives within six generations, hence, appears to be the product of the theory of pinda offerings. It may, however, be pointed out here that even when the Mānavas prescribe the offerings of three pindas to the immediate three ancestors and of lepa to the two beyond and thus emphasise the unity of six as arising from the ritual of the dead, Manu speaks of the recipients of lepa in the plural. We do not know who exactly were the recipients of lepa according to Manu, but it is clear that he does not uphold ritualistically the unity of six. One of his commentators tries to bring Manu's views on the subject in harmony with the traditions of his school by saying that 'lepa was meant for the three beyond the grandfather'. Manu explicitly refers to the great-grandfather as a receiver of full pinda, and it is very doubtful how far this interpretation of the commentator reflects Manu's view. Manu, on the other hand, has ignored this unity of six by prescribing the unity of seven for āśau-cha, of four for descent of inheritance and very probably of three for marital regulations. In the Mānava school, then, the unity of six, even when it was enunciated in the early period as arising from the ritual of the dead peculiar to that school, was not adhered to for the ritual as well as for other social and religious functions by its later yet the most prominent writer Manu.<sup>4 6a</sup>

There is one more circle yet. A passage in the Atharva Veda (XI 1,19) reads: "Expand thyself abroad in all thy greatness, with thousand Pristithas, in the world of virtue, grandfathers, fathers, children and descendants, fifteenth am I to thee when I have dressed it". The passage does not yield its sense clearly. Whitney and Griffith suggest that the word fifteenth probably represents so many

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46a. It may be noted here that 'in Icelandic law in payment of wergilds the limit of kinship is drawn at the degree of 4th cousins.' The nearest cousins as far as the fourth degree would benefit by or atone for the slayer. (Phillipps, *Kindred and Clan*, p. 145; Vinogradoff P., p. 315). The Icelandic poor law builds up its system of assistance to destitute people on the same circle of kin. Though this circle marks only an occasional and not a necessary limit of kindred (Vinogradoff, p. 317), its possibility is characteristic from our point of view. We find this circle of kin in at least one branch of the Indo-European peoples and that, too, without any reference to the cult of manās.

generations or degrees of kindred. Kane holds that "it alludes to the counting of fifteen generations including the person, who offers the ball of rice, his seven ancestors and seven descendants."<sup>47</sup> A passage in the Bhaviṣyatmahāpurāṇa (CLXXXIV 35) refers to this mode of counting seven above and seven below with the propositus constituting a group of fifteen, and Kane may have it in view while interpreting this verse of the Atharva Veda.

But there is one difficulty in subscribing to this mode of counting. We have to admit here a circle which recognises kin within eight generations. Such a circle of kin has never been recognised by the Hindus for any social, religious or other function. For all such functions kinship is recognised within seven generations, and sometimes ten but never more. Onsequently this circle of kin is incongruous. One should admit that the passage is couched in such words as would easily lead anybody to believe that the group contemplated here includes both ascendants and descendants. But it is equally true that there is no meaning in recognising any kin-group which has no function attached to it. If, on the other hand, we admit of a group comprising a person and his fourteen ascendants as a probable group contemplated in the passage our difficulty is in no way minimised. Samānodaka relationship is said by some at least to extend to fourteen generations: but that circle of kin does not coincide with the circle of fifteen. This interpretation has, however, one advantage against the view of Kane, namely, that this wider group can be explained as an extension of the primary family unit, viz. of three generations. But it has an obvious drawback, namely, that it ignores the specific enumeration of children and grandchildren in the passage. We have, therefore, to reject both these interpretations and to look upon the passage as an enigma.

If, however, the deciphering of the passage is solicited, its plausible meaning can be given in some such terms. We know that the unity of seven is highly spoken of by the Hindu legislators. The sixth ascendant with his further six form a further unity of seven. Both this unities are linked up through the intermediacy of the sixth ascendant. In other words, the unity of thirteen is the widest extension of the primary unity of four. If this unity of thirteen is linked up with sons and grandsons of the propositus, they being the members

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47. Kane P.V., *Vedic Basis of Hindu Law*, p. 28

of the family of which he is the head, we get a circle of fifteen. This explanation is arbitrary and no corroborative evidence can be given to support it. But it is based on our knowledge of the Hindu kin circles. It is, hence, preferable to the two other explanations given above.

Whether there were different views on the subject or was there difference of opinion in regard to the actual counting which came to be misunderstood and turned into these confussing unities cannot be precisely said.

## V

Agnatism arising out of the patriarchal family is the social starting point of kinship among the Aryan peoples. Among the Greeks, the Romans and the Teutons the sword side has a natural and marked precedence over the spindle side in the principal ties of relationship.<sup>48</sup> Among the Hindus, the spindle side is apparently ignored in all principal relationships. The place of cognates in the law of inheritance is insignificant. The liability to pay the debts does not devolve upon a cognatic relative. The rule of exogamy contemplates avoidance of marital unions with cognates within certain generations, but the laxity in its enforcement nullifies the significance of the rule. Even in the law of adoption the child preferred for adoption is a near agnatic relative. Thus in all principal ties of relationship a marked emphasis is seen to be laid on agnatism.

The Aryans in India, even when they apparently appear to stress agnatism, cannot be regarded to have ignored bilateral counting of kinship. In discussing the content and extent of the Hindu household we were led to conclude that even in the early period kinship through the females was not completely ignored. This bilateral counting assumed greater significance at the dawn of the Sūtra period when the mother came to be regarded as the highest guru, superior even to the father, and the mother's brother, in preference to the father's brother, came to be greeted as an uncle par excellence.<sup>49</sup>

It is not only in some minor phases of social life that the mother and her relatives assume a very significant status but they stand out

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48. Vinogradoff P., pp. 300-302.

49. Supra, pp. 130 seq.; cf. Ghurye G. S., *Some Kinship Usages in Indo-Aryan Literature*, p. 24 seq.

more prominently even in those spheres which touch the life of the community deepest.

In the rule of exogamy we saw that marriage in the third or fourth generation was not against the popular taste in the Vedic age. When, in the Sūtra period, with the development of gotra exogamy, marriage outside the family became a rule, marriage with the mother's brother's daughter or the father's sister's daughter also came to be looked upon with disfavour and, in all probability, was completely forbidden by the time of Manu. This new development implies that the father's sister was as good a relative as the father's brother and the maternal uncle as near a kin as the paternal uncle. The emphasis is shifted from unilateral counting to the bilateral counting. Similarly, in the rules of impurities observed on the death of a person, even when the main stress is on the agnatic counting of kinship, we find as early as the Grhya sūtras the mother's father, the mother's brother and the sister's son receiving greater attention. Libations of water are given to these relatives as they are given to the agnatic relatives. Daughters of the family, even when they pass to another family on marriage, receive libations of water, according to some authorities, from their paternal relatives.

The Śrāddha ritual developed in the Vedic literature, the Śrauta sūtras and Manu saṁhitā enjoined offering of pinḍas to the three immediate ascendants of a person and of lepa to a wider category of Pitṛs. There is no offering of any kind made to the maternal ancestors. There are, however, some aspects of the ritual wherein the role of the non-agnatic relatives is very significant. Manu wrote: 'Let him eagerly entertain at a funeral sacrifice a daughter's son, though he be a student and let him place a Nepal blanket on the seat (of each guest), scattering sesamum grains on the ground. There are three means of sanctification (to be used) at a Śrāddha, daughter's son, a Nepal blanket and sesamum grains'. Vasiṣṭha enjoined: 'Three (things are held to) sanctify a funeral sacrifice, a daughter's son, the mid-day and sesamum grains: and they recommend three (other things for it, purity, freedom from anger and from precipitation'. Viṣṇu mentions a son-in-law and the daughter's son amongst others said to sanctify the company. In the text given by Jolly, the daughter's son is not given but the grandson is mentioned instead. We do not know which of the two texts is correct, but we have no reason to believe

that Aparārka may have tampered with the text of Viṣṇu. Yājñavalkya, while enunciating the proper brahmins to be invited to a Śrāddha enlists a sister's son, a son-in-law, the mother's brother, the daughter's son, relatives by marriage and a bāndhava besides many others. Aparārka explains bāndhava by the mother's father and others and Viśvarūpa by a mother's sister's son and others. Manu enjoins: 'Let him (take) pains (to) feed at a śrāddha an adherent of the Ṛgveda who has studied one entire (recension of that) Veda, or a follower of the Yajurveda who has finished one *sākhā*, or a singer of sāmans who (likewise) has completed (the study of an entire recension). This is the chief rule (to be followed) in offering sacrifices to the gods and manes; know that the virtuous always observe the following subsidiary rule. One may also entertain (on such occasions) the mother's father, the mother's brother, a sister's son, a father-in-law, the teacher, the daughter's son, a son-in-law, a bandhu, the officiating priest and a man for whom one offers sacrifices.<sup>50</sup> Gautama states that according to some pupils and sagotras (may not be invited). Āpastamba, on the other hand, ordains: "The brahmins to be invited to partake of meals at a śrāddha need not be one related either through the females, yonisambandhas, or through gotra. If strangers are deficient in the (requisite) good qualities even a full brother who possesses them may be fed"<sup>51</sup>. It appears that in the Sūtra period relatives, agnatic as well as cognatic, were avoided from partaking as proper persons the meals in honour of the manes, though they were allowed to be fed in the absence of a worthy

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50. M. III 234, 235; V. D. S. XI 35; Viṣṇu (Aparārka, p. 440); Jolly J., *Viṣṇudharmasūtra*, LXXXIII 18; Yaj. I 220; M. III 148; Vitpati is rendered here as a son-in-law following Hemādri (C. V. C., Vol III, part 1, p. 446), though Medhātithi renders it by a guest. It may be noted here that Viṣṇu does mention a son-in-law. To the list of persons given by both Manu and Yājñavalkya the wife's brother is added in the Purāṇas, cf. S. May. pp. 62, 63.

51. G. D. S. XV 20. According to S. May. (p. 62), Gautama held that some regard the pupil and sagotras as worthy of being fed at a śrāddha. B.D.S. II 14, 4 'He may feed even a sapinda relation who knows these texts', that is, the Ṛk-verses, the Yajus-formulas and the Sāmans. Ap. D. S. II 17, 4, 5 cf. Ap. G. S. VIII 21, 2 Those brahmins can make a śrāddha successful who are neither related, a sagotra nor persons related through common pravara. K. P. (S. May. p. 61).



brahmin<sup>52</sup>. Manu, on the other hand, enlists a large number of cognates as proper persons to be fed at the Śrāddha and in this he is backed by Yājñavalkya with this difference that while Manu indicated the fitness of these relatives to dine at the Śrāddha as an alternative and not as a principal choice, Yājñavalkya enlists them along with the specifically learned persons without distinction. Nay, Manu looks upon the daughter's son as one of the few sanctifying things at the Śrāddha. Vasiṣṭha, too, held the same opinion and among the early followers of Manu, Viṣṇu states it. It means that the daughter's son had come to occupy a very important and significant status in the ritual of the Śrāddha in the later part of the Sūtra period, and with the status thus accorded to one of the relatives through the females others like a sister's son or a near relative of the mother came to be accommodated in the ritual very soon. It must be further noted that, according to Manu (III 144), an unlearned friend is to be preferred to a learned enemy, for sacrificial food eaten by a foe bears no reward after death. And he prefers certain cognatic relatives for partaking meals at the Śrāddha. It implies that by the time Manu wrote some of the near cognates were regarded as well-disposed relations. The importance of the daughter's son in the ritual and the recognition of the daughter's husband as a well-disposed relative suggest an evolution of a new pattern wherein son and daughter are equally valued. The other females of the family are the sister, and the father's sister. Sister's son is expressly recognised as a well-disposed relative, and we may infer that the father's sister's son was also included in a comprehensive term *bandhu*.

Another aspect of the ritual is *tarpaṇa*, libations to the manes, which is one of the *pañchayatjña* (five daily sacrifices). With the sacrificial string over the right shoulder he offers the libations, saying "Om, I satiate the fathers *svadhā*, adoration! the grandfathers, the great-grandfathers, the mothers, the grandmothers, the great-grandmothers, the maternal grandfathers, the maternal grandmother, the mother's grand-

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52. Even in later literature this avoidance of a near relative at a śrāddha dinner is voiced by Gārgya : 'Oblation should not be given in the same gotra; oblation is like a daughter. A person of the same gotra should be fed only in the absence of a person of a different gotra. Atri, V. P., Brhnd. P. (S. May. p. 62).

mother, the mother's great-grandmother<sup>53</sup>. We must particularly note in this formula that there is an explicit reference only to the mother's father and not to his two further ascendants, though the wives of all the three maternal ancestors are remembered. Again, while reference to the wives of the paternal ancestors is made in plural, that to the wives of the maternal ancestors is in singular. Herein we see the first stage of maternal ancestors being incorporated into the Śrāddha ritual as deities. The specific reference to the mother's father alone may suggest that he had come to assume at this stage in Indian history an important status which made for his incorporation as a deity of the Śrāddha at a later stage. We had reached the same conclusion while discussing libations made to the dead in the cemetery. When we read this fact with the unique position which the daughter's son holds in the ritual of Śrāddha at this period, the situation becomes intelligible because in the new pattern son and daughter are equally valued. The mother's father is as nearly related as the father's father, and with the conception of the family unit to include three generations the relations between a person and his daughter's son become more intimate and abiding.

One more aspect of the ritual is the discussion as to the fitness of a person to perform a śrāddha. We have seen from the ritual in the Vedic age that it was the right of the first three ancestors of a person to receive offerings of piṇḍas from him. It implies that Śrāddha was performed in honour of a person by his three lineal descendants. But the writers of the period have not discussed who should perform a śrāddha of a person who has no lineal descendants. Perhaps, the question did not arise because Śrāddha in the Vedic age was never regarded as a sort of rite necessary in the interest of the dead person. It was, on the other hand, a rite performed by the living members of the family to keep their contact with the dead fresh and alive as they were regarded beneficent deities. Gautama alone has casually referred to this aspect of the ritual and he has enjoined that 'on failure of sons, sapinḍas, sapinḍas of his mother, or a pupil shall offer (him the funeral oblations)'. Recogni-

53. B.D.S.I 9,7. Later on the list was expanded by including the daughters of the family, sister's son, the mother's brother and the mother's sister. *Bṛh. P* (C. V. C, P, 926); *A. sm.* I 98, 106; *S. R. M.* pp. 1014, 1109; Kane P. V., *His. of Dh.*, p. 230; *G. Sm.* II 20.

54. *G. D. S.* XV 13; even for Niyoga relatives of the mother are said to be competent. XVIII 6.

tion of sapindas of the mother, immediately after one's own sapindas, that is relatives within five or seven generations, as persons worthy of performing the rites in honour of the Pitṛs, indicates that relatives through the mother had come to be accepted as near relatives.

A girl should be given in marriage by her father or by her brother with his father's consent. Yājñavalkya imposes this duty on the father in the first instance, thence on the grandfather and ultimately on the agnatic relatives. Nārada observes: "Let a maiden be given in marriage by her father himself, her brother with his father's authority, her grandfather, her mother's brother, sakulyas or bāndhavas." This social duty is imposed on the mother's father in Viṣṇudharma sūtra. Kātyāyana enjoins this duty on the mother's father only in respect of a girl born through Niyoga.<sup>55</sup> Similarly, when a woman is bereft of the protection of her husband, she is put under the guardianship of nearer agnatic relatives, and the mother's brother.<sup>56</sup> Viśvarūpa appears to be definitely inclined to get some relatives through the mother recognised as near kinsmen. He, therefore, reads the text of Yājñavalkya (I 64) differently so as to incorporate the mother's father in the list of guardians immediately after the father. Commenting on the alternative reading of the verse he interprets the term sakulya to mean the mother's brother and others. In another verse of Yājñavalkya he interprets the word jñāti to mean the mother's brother. The two words, sakulya and jñāti, which are suggestive of agnatic relationship, are interpreted by Viśvarūpa to show the mother's brother a near kinsman on the whole. Śrīdhara and Aparārka also hold that the mother's father should see that the girl is married at the proper time.<sup>57</sup> The rule of guardianship thus contemplates a circle comprising the member of a normal family, and in its widest extension includes all the agnatic kin. It likewise includes the father and brother of the mother besides the agnates.

The rule of guardianship in case of infants and minors casually referred to by Kauṭilya runs: "Division of estate shall be made when all the inheritors have attained their majority. If it is made before, the shares of the minors free of all debts shall be placed

55. M. V 151; Yaj. I 63; Vl. D. S. XXIV 38; N. D. S. XII 20, Kāt. (M. Pārj. p. 147).

56. Yaj. I 85, 86.

57. Viśvarūpa, Vol. I, pp., 69, 256; Sm. A. p. 12; Aparārka, p. 92.

in the safe custody of the relatives of their mothers, or of the aged gentlemen of the village till they attain their majority." The same rule applies to a member (of a joint family) that has gone abroad. Kātyāyana recommends it to be placed in charge of bandhus and friends.<sup>57</sup> When the authors of the Dharmasūtras and Manu recommend the king to look after the property of the minors, Kauṭilya is the first, and perhaps the only writer, to recommend the mother's relatives as the proper guardians of the minors.<sup>58</sup>

Another sphere where the cognates appear is the rule in respect of inadmissibility of evidence. The law of evidence rationally forbids the relatives from being witnesses. Yet in cases where the crime is committed in a secret place or where the crime is of the highest magnitude, equity requires that the evidence of even relatives should be given due consideration, if they are conversant with the facts of the event. The list of persons who are inadmissible as witnesses in ordinary cases, but whose evidence carries due weight in particular cases, is, therefore, suggestive of a kin group socially effective. Such persons are designated by the word bandhu by Manu. The corresponding words for the bandhu are jñāti and sanābhaya in Nārada Smṛti. Brhaspati adds to the list the mother's father, mother's brother and relatives by marriage. Kātyāyana enlists the mother's sister's son, the father-in-law and the sister's husband.<sup>59</sup> Thus the group in its widest extension includes mainly the household of the mother's father.

It will be evident, then, that cognates figure prominently from the very early times. Again, relatives through the mother recognised for any significant social relationship are the mother's father, his sons and grandsons as well as his daughter and daughter's sons. They and they alone figure in rules in respect of guardianship of the widow, in regulations regarding ceremonial impurities, in conventions of

57. Kau. III 5; Kāt. 844-45. Bandhu appears to stand here for agnatic relatives, cf. Kāt. 882-84.

58. It must be stressed here that it was again Kauṭilya who compared the relation between a person and his sister's son to the relation between husband and wife or between the father and son. He also regarded the sister as a co-sharer with her brother in the patrimony. The pattern that he presents is entirely different from the brahmanic pattern in the Dharmasūtras and Smṛtis.

59. M. VIII 70; N.D. S. I 180 (cf. Aparārka, p. 668); Brh. VII 29; Kāt. 362, 363.

social behaviour, in the category of elders, in some aspects of Śrāddha and in transmission of property <sup>60</sup>. In exogamous groups, too, the circle of three degrees is the real circle for exogamy in practice, though other circles are not entirely unknown. In the Śrāddha ritual circle of five degrees is recognised, yet, as a whole, relatives within three degrees are recognised as near kin on the mother's side. Thus, the history of kin organisation of the Hindus, so far as it relates to the cognates, emphasises the unity of three. It equally emphasises the idea of household.

It is not only the relatives through the mother and relatives through the daughters of the family that figure prominently in the Sūtra literature but the wife's father and the wife's brother, too, stand out as near relatives at this stage in Indian history. Favour of the wife's mother is indicated in one of the late hymns of the R̥gveda as worthy of being sought for: wife is said to supersede the position and status of a sister in the family in one of the Brāhmaṇas. The wife's brother had come to be regarded as a near relative even before Yāskāchārya. The wife's father is always greeted with salutation and offering of honey-mixture just like the father's brother or the mother's brother; nay, some of the Gr̥hya writers refer to him as worthy of this honour though they do not refer to the father's brother or the mother's brother as such. Manu speaks of the wife's father as a person worthy of being invited to a Śrāddha dinner. There is thus a gradual but distinct development of the attitude of likes and respect in regard to the relatives through marriage.

We find the mother's brother and the mother's father coming into prominence in the Gr̥hya and Dharma sūtras and overshadowing the father's brother in the Mahābhārata and Manu saṁhitā. We also find that the wife's brother and her father are recognised and respected as near kin from the later part of the Vedic age onwards, and they gain distinct prominence with the advancement of time. The daughter's son more often appears to be omitted in the Sūtra literature where reference to non-agnatic relatives is made. But his singular position among the non-agnatic relatives is attested by Manu and the Mahābhārata. In Manu saṁhitā he is said to be indispensable at the Śrāddha dinner and so he is to be invited though

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60. B.P. VI 29; Devala (Aparārka, p.65); śaṅkha Likhita (V. Mit. Sams. p. 470); Mādhava, Vol. I, pp. 186, 187; Atri (Mādhava,)

he be a student. In the Mahābhārata the daughter's son is said to secure the world for his mother's father which none else will secure for him and so he is eagerly sought for. This unique position the daughter's son could not have secured in a few years' time. It must therefore, be granted that even in the Vedic age the sons of the females of the family, namely, the daughter's son and the sister's son, were treated as good relatives, and by the Sūtra time not only the sons of the females of the family but even the relatives through the mother and through the wife came into distinct prominence as near kin. It is very likely that the term *yonisāmbandha* used at this time by Gautama and Āpastamba is very comprehensive and includes all these relatives. This may be a new development but not an unrelated one. Its germs are found in the Vedic literature. In the later literature they gain in distinction by their incorporation into the ritual, by adjusting social and semi-religious practices to a new pattern wherein they figure as near kin, and by remodelling the laws and institutions accordingly. If we follow this, we shall have to admit that at no stage the Vedic Aryans were purely agnatic in their counting of kinship. From very early times they appear to be bilateral, though the stress on bilateralism is so distinct only in the Sūtras and the literature that follows.

## VI

If we review the history of kin organization among the Hindus we find that in the early Vedic period all persons who belonged to the family, however remote, were kin in the sense that they were deemed fit to be propitiated by ritualistic offerings. By the time of Atharva Veda distinction came to be made between those related within four generations and those beyond that degree for these ritualistic offerings. In a still later period, the period of Brāhmaṇas, we find two developments. By recognizing the right of the first three ascendants to receive their offerings from the fourth descendant, the group of four was crystalised as a solid kin-group. Secondly, a group of ten, besides a wider category comprehending all the members of the family, known as well as unknown, was first conceived as another kin-group. At the end of the Vedic period, in the Dharmasūtras and Manu, we find attempts made to make these two groups more concrete and significant. As for the first group, the persons came to be designated by the term *sapinda*. They formed a group with vested interest

in property. As for the second, water libations came to be restricted to persons belonging to this group, though very often they were prescribed for the widest group, under the designation of *sakulyas*. Besides this process of concretising the Vedic kin groups the writers of this period evolved an intermediary group, a group of seven. Water libations were in the first instance meant for these relatives and only secondarily for a wider group of ten, because relatives within seven degrees were supposed to be impure for ten days, those within ten being so only for three days. Marital choice in the form of exogamy was restricted to the circle of seven. Later on this group of seven was given ritualistic significance in the *Purāṇas* by explicitly enjoining the offerings, divided and undivided, to these persons only. At a still later period the right of inheritance in the first instance was accorded by *Vijñāneśvara* to relatives within seven generations. Thus gradually the unity of seven came to assume such prominence and wider applicability in social life that it overshadowed the other two unities, the unity of four and the unity of ten.

Having so far followed the process of evolution of these unities let us see their association with the *Śrāddha* ritual. The principles and the procedure of *Śrāddha*, given in the Vedic and especially in the *Śrauta sūtras*, emphasise the unity of four. On these principles and procedure which are reiterated by later writers we cannot conceive the unity of ten, though we may have some ground for the unity of seven. The right to offer *piṇḍas* on the part of an individual is restricted to his three ascendants only. If all the three are alive he cannot think of offering *piṇḍas*. It is only when any one of them is dead that his right comes into existence, but even then it is a potential right in as much as he is not entitled to make these offerings as the direct descendant, namely the son, and in his absence the grandson, of the deceased is alive. So his potential right to offer becomes operative if he offers as a representative of one who is entitled to do it. It means, therefore, that, at the most, a person can be connected with his five ascendants. Even with the later theory of *lepa* for the three beyond he can be connected with eight ascendants. The unity of ten is thus entirely out of consideration on the *Śrāddha* procedure. Again, the unity of ten first came to be conceived at a time when offerings of *piṇḍas* were restricted to three ascendants only and wiping off of the remnant was meant to satisfy the whole category of *Pitṛs*.

If we review the history of the concept *sapiṇḍa* we find Manu defining it, in matter of property, to include one's relations on the father's side within four generations and, in respect of the observance of impurities, within seven generations. Among the Sūtra writers, the views of Vasiṣṭha and Baudhāyana accord with that of Manu, while Gautama defines it to comprehend relatives within five or seven generations, Gautama and Āpastamba have used the term *yonisambandha* to distinguish relatives through the females from the *sapiṇḍas*. Śaṅkha has defined the concept to refer to persons related within seven generations among the *gotrajas*. Offerings of *piṇḍas* and water libations and observance of impurity are restricted in terms of this circle. Thus up to the 2nd century A. D. the concept of *sapiṇḍa* was unilateral and was not finally fixed up in its application to the number of generations which varied from four to seven. Further, though circles of kin for the offering of *piṇḍas*, for the giving of water libations and for the observance of impurity varied in the earlier part of the Sūtra period, they converged into one circle, namely, the unity of seven, in the later part of this period. It may, therefore, be laid down that the concept of *sapiṇḍa* as a unilateral and inclusive of relatives within seven generations was crystalised in the beginning of the Christian era. On the other hand, the unity of four was the only unity arising from the principles and the procedure of Śrāddha. The procedure of *Vṛddhi Śrāddha* clearly indicates that the unity of four is the only unity contemplated by the ritual. The two other unities, the unity of six and the unity of seven, had not been crystalised by this time. These unities are concretised and they gain in significance only after the 2nd century A.D. Taking the evolution of the concept of *sapiṇḍa* and the evolution of the Śrāddha ritual in their historical setting, we are not warranted in postulating that the concept of *sapiṇḍa* relationship was crystalised after the ritual of Śrāddha though it remains a fact that Manu first evolved the concept in relation to Śrāddha. It may be said that the unity of seven was ritualistically concretised in the Purāṇas to bring the Śrāddha procedure in conformity with the unity which was conceived in the background but not on the actual procedure of Śrāddha. We are confirmed in this reasoning when we find that, even when the maternal ancestors are said to receive *piṇḍas*, like the paternal ones, in the Puranic Śrāddha ritual,



sapinda relationship defined therein is unilateral.<sup>61</sup> In the Dharmaśūtras the mother and relatives through her appear to have attained a distinct status evincing greater emphasis on bilateral counting of kinship. This new development was later on given a religious sanction by accepting the mother's ancestors as deities of the Śrāddha. And this incorporation was restricted to persons related within five generations only because that was the wider circle of the family unity of three. The mother's kin recognized for all social relationships are relatives within three generations only. It is quite conceivable, therefore, that in according religious sanction to the bilateral concept the Hindu thinkers could not go beyond five generations. The concept of sapinda relationship, so far as the generations are concerned, differs and ought to differ in respect of the paternal and the maternal relatives because Śrāddha is not at the basis of this concept.

The kinship terminologies of the Hindus are equally suggestive in this direction. While the word *pinda* is suggestive of both the meanings, limbs and funeral cakes, the word *sakulya* is suggestive of connection through blood only. The word *sakulya* is found first in *Manu* and *Baudhāyana* for relatives beyond the fourth generation. The term is used by both *Manu* and *Baudhāyana* for persons who share the property of an intestate who leaves no near relatives, *sapindas*, to inherit his estate. In later literature, too, the word *kulya* or *sakulya* is employed in discussion on property for a member of a joint family. In the rules of *āśaucha* *sakulya* stands for a member of the family.<sup>62</sup> The terms *kulya* means a bone or a piece of flesh. Consequently *sakulyas* are persons who have bones or flesh in common.<sup>63</sup> Even the connotation of *sagotra* relationship has no bearing on funeral offerings. The terminologies, too, corroborates the view that the Hindu idea of kinship has persistently centred round family and not religion.

61. "The father, the grandfather, as well as the great grand-father, (and) those, beginning with the fourth, who receive *lepa* (are *sapindas*) : *sapinda* relationship extends to seven persons."

62. Devala (V, May. p. 101); Brh XXV 48, 59.62, Mit. p.305 ; Bṛhad Viṣṇu (Mit. p. 310); Yaj I 63; Kāṭ, 363

63. Amarakośa II 6, 68. Sāsvata p. 45 v. 230; p. 31 v. 344; Anekārthasamgraha II 365, p. 30. Asahāya (Jolly J., *Minor Law Books*, p. 69, f.n.); Abhidhānatnamālā III 10.

## CHAPTER IX

### RECAPITULATION

Primitive society is based on kinship. Every person must have a recognised relationship, nearer or more remote, to every other member of the group or he is an alien—an enemy with no rights whatsoever. "The ties of blood are primary and hence natural as opposed to other ties which arise in process of evolution." This becomes increasingly clear when we find in the range of history and ethnography that 'even in cases where blood tie seems to be a mere assumption, or where it is evidently untrue, or where community of blood has to be established artificially, people adhere tenaciously to the doctrine of blood-kinship'. This implies and emphasises the idea that the thought of the race has persistently centred about blood.<sup>1</sup>

"Kinship is genealogical relationship recognised for social purposes and made the basis of the customary relation of social relations"<sup>2</sup> Genealogical relationships arise from the family and depend on the family, but the relations created by the family are not all identical with physiological relations. At times, as in savage society, erroneous physiological ideas modify the ideas held as to actually existing consanguine relations as we conceive them. Hindus had no such erroneous ideas nor had they promiscuous or polyandrous sex licenses to create distortion in actual counting of kinship. But they had their own peculiarity. They sanctioned some illegitimate issues as the legal progeny of the husband, and this violated the consanguine principle of kinship. There were sons born to a married woman by other persons with or without the consent or even knowledge of her husband; there were sons born or conceived before marriage. The real father of the child was not known in three cases—sahodha, gūdhaja, and kānina—while in the fourth, kṣetrajā, the husband consented to have a foreign seed in his soil. Kinship here is purely social depending, as it does, for its recognition on the customs of the community. So is the case of an adopted son. The early law givers tried to assign a very high place to an adopted son. The Smṛti writers of

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1. Sumner and Keller, *Science of Society*, Vol. I, pp. 419, 420.

2. Brown A.R., *Man*, Vol. XXIX, p. 50

mediaeval India and the later commentators and digest-writers maintained that a legal son (aurasa) and an adopted son were the only recognised sons. On the other hand, "a son begotten on a maid servant by a man of a regenerate class does not claim a share, not even half, in the family property, even when his father wills it."<sup>3</sup> Thus biological paternity, which determines consanguine relations, is modified for the purpose of social relationships. The idea of consanguinity, is likewise modified by enjoining the limit to which consanguinity is supposed to extend and by recognising kinship through either of the parents. Kinship is, hence, a social fact.

Briffault maintains that "collective clan-relationship appears to be more primitive than the family system of relationship, and the terms by which kinship between individuals is denoted in primitive society is not an extension of the meaning they bear in regard to the relation between members of a family." Rivers likewise maintains that the initial situation of kinship is not individual but communal.<sup>4</sup> In other words, the essential unit of a society consists of a wider group such as the clan, the horde, the undivided commune. Malinowski, on the other hand, maintains that "kinship, in the first place, is the personal bonds based upon procreation, socially interpreted, and, in the second place, the wider bonds derived from the primary ones by the process of gradual extensions which occur in all communities during the life history of the individual," In other words, "the original ties of kinship, which are invariably individual, later on develop, multiply and become largely communal, so that, at the end, the individual finds himself the centre of a complex system of multiple ties, a member of several groups: the family always: the extended household, in many communities: the local group, almost invariably; the clan, very often: and the tribe, without any exception."<sup>5</sup> And 'since kinship results from the family and in the family every child has both a father and a mother and is therefore connected with both the father's family and the mother's family, it would seem to be the normal thing in any human society that social recognition should be given to both paternal

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3. Mit. p. 216.

4. Briffault R, *The Mothers*, Vol. I, p. 605; *Enc. of Social Sciences*, Vol. XIV, p. 143; *Man*, Vol. XXX, p. 24.

5. Malinowski B., *Kinship*, *Enc. Britannica* (14th Ed.). cf. *Man*, Vol. XXX, 17, pp. 23, 24, 26.

and maternal kinship.' Lowie, too, looks upon bilateral family as a universal unit of human society. Unilateral system makes its first appearance in somewhat more complex cultures.<sup>6</sup>

We have tried to show in the last chapter that among the Hindus family is the basis of kinship and from the very early times onwards kinship among them was bilateral though greater stress on bilateralism came to be placed in the Sūtras and the literature that followed.

The origin of bilateralism is sought by some in culture contact. Cultures do not exist and develop in isolation but act and react upon one another. Hence, societies where kinship in both lines (bilateral) is socially important have resulted from a matrilineal society having been influenced by a patrilineal one or vice versa.<sup>7</sup> On this view, bilateral counting among the Hindus should be regarded as a product of fusion of two cultures, the patrilineal Aryans and the matrilineal people that had settled in India before them. But we have no unchallengeable evidence for the fusion of cultures in India. On the other hand, in Vedic records the Brahmins have shown themselves to be so conscientious about the purity of blood and the purity of their ritual that they avoided any contact with the conquered people, whom they styled as Śūdras or Niṣāds. And this fact is borne out by ethnological evidence too.<sup>8</sup> Again, as Rivers has said, social organisation is changed only by long contact extending over centuries and as the result either of actual blending of peoples or of the most profound political changes.<sup>9</sup> The Indo-Aryans, from very early times of which we have any knowledge of their culture, appear to have been bilateral, probably because the Indo-European culture from which they derived theirs might be bilateral. Their later emphasis on the bilateral principle seems to have been the result of social and cultural conditions that were developing in their midst in India.<sup>10</sup>

6. Brown, Man, Vol. XXIX, p. 52; Lowie R.H. *Primitive Society*, p. 75; *Enc of Social Sciences*, Vol. 14, pp. 143-145.

7. Man, Vol. XXIX, p. 52

8. Ghurye G. S., *Caste and Race India*, p. 107

9. Rivers W.H.R., *Psychology and Ethnology* p. 135 seq.

10. Cf. also Vide, pp. 316, 318. Ghurye G. S., *J. Ant. S. of Bom.* p. 52.

## ADDITIONAL NOTES AND REFERENCES

**P. 42.** In the legend of Jaratkāru the Pitṛs are said to have suffered because Jaratkāru did not give them descendants. It may be questioned, however, that so long as Jaratkāru was alive the offerings on which the Pitṛs are said to live could have been made by him irrespective of his having sons or not. That calamity would have befallen them only after his death. And strangely enough, even when he is persuaded to marry and thereby save his Pitṛs, he undertakes to fulfil these pious obligations on the condition that he would marry only if he got a maiden of his own name and if her parents or guardinas took the responsibility of keeping them both. Fortunately for the Pitṛs, Jaratkāru succeeded in securing a bride on his terms, but there again he accepted her with a proviso to leave her on sufficient provocation. The very nature of his conditional acceptance of his Pitṛs' commandment shows that he did not take it seriously. The legend thus fails in its purpose to impress that a son was an imperative necessity in securing spiritual uplift of one's ancestors. We are confirmed in this, because in the legend the son born of this union saves his mother's father's family, and even his race, from utter destruction at the hands of Janamejaya.

**P. 49.** The meaning given to the word *Pitṛkanyā* by Dr. Ghurye appears to be more reasonable. "We may explain a large number of marriages, recorded in the Purāṇas as marriages with 'Pitṛkanyās' or 'father's daughters', as nothing but marriages with girls of the same lineage who were in a sense daughters of the family. They need not necessarily be taken to indicate brother-sister marriages." J. Ant. S. of Bom., Vol. I, p. 10.

**P. 63.** Kṛṣṇa married Satyabhāmā, and we are told that they were related in the fifth generation on the paternal side. Akrura, standing to her in exactly the same relationship, wanted to marry her. In the genealogy given in Harivaṁśa Satyabhāmā happens to be the fourth, instead of fifth, in descent. Similarly, "the marriage of Sutanu, the sister of Ugrasena, with Akrura and of Devakī, who, in one account, is the sister and not the daughter of Ugrasena, with Vasudeva are marriages between persons of the same family who are related with each other in the fifth or the sixth generation through

males on the paternal side " Thus, with the tradition of marriage in the fifth or sixth generation, and probably even in the fourth generation, in the house of the Yādavas which was famous and has become respected in Indo-Aryan history, about the time of the Bhārat war, possibility of a marriage in the fourth generation, if not in the third, that is, the marriage of second cousins, in the period of Brāhmaṇas cannot be easily denied. (Ghurye G.S., *Some Kinship Usages in Indo-Aryan Literature*, pp.8,9.) In view of the evidence put forward by Dr. Ghurye from the Puranic records the verse in Brahma Purāṇa and the passage in Śatapatha Brāhmaṇa may be taken to indicate that exogamy was restricted within three generations in the Brāhmaṇa period.

**P. 65.** Dr. Ghurye thinks that cross-cousin marriage among the Indo-Aryans was one of the many adjustments: the affectionate relations between a brother and a sister, when they came to be strained by the brother's marriage, were sought to be kept in the state of warmth that they were in before the birth of the brother's children by making marriage between the children of a brother and a sister possible (J. Ant. S. of Bom. p. 30). In this new link the brother and the brother's son will be in the position of the father-in-law and a brother-in-law, from the point of view of the sister's son, and these were the persons considered as near kin. Again, in this link a person has further interests created in his sister's son as a prospective son-in-law. Naturally, therefore, the device would serve well to keep up the harmony and affectionate tie between a brother and his sister's sons.

When marriage takes place with the father's sister's daughter, the brother's wife stands in relation of a mother-in-law to the sister's daughter and of in-law, *vevai*, to the sister. 'Taking it as a more or less old custom with the Indo-Aryans to treat the household of the husband of a daughter of the family as one of superior position, (p. 32), the relations between the sister and the brother's wife, whose better position is accentuated by this marriage link, are likely to be more strained than readjusted. We do not know the exact nature of relations between a woman and her daughter-in-law, but if they were saturated with feelings and behaviour of animosity (Kalipad Mitra, J. A. S. B., 1933; Ghurye, p. 65), estrangement of the sister is bound to be accentuated. Dr. Ghurye has illustrated that whereas a woman's father's sister figures in the popular and erotic Prākṛt poetry

of about the beginning of the Christian era as a confidante regarding married love the mother's brother's wife plays the same role in both legitimate and illegitimate love affairs (pp. 44, 45, 47). The mother's brother's wife is also the mother-in-law when a woman marries the son of her mother's brother. The role which she is said to play in the popular literature is incompatible with her position as the mother-in-law. Again, a person stands to his sister's daughter in relation of her father-in-law. In the Vedic pattern a daughter-in-law keeps away from her father-in-law as people keep out of the sun. A jocular conversation between these two persons is considered an indecency a brahmin should avoid. Strict decorum of behaviour was the usual norm both in the Vedic and the Epic times. (A. B. III 2, 11; M. S. II, 4, 1, 2; Ghurye, pp. 61-64). Geniality and cordiality existing between these two persons in this pattern is not the geniality which one would expect between a brother and her sister's children.

This explanation, therefore, fits well with only one variety of cross-cousin marriage, viz., marriage with the mother's brother's daughter. In this connection we have to note that marriage with the mother's brother's daughter, and at times with the father's sister's daughter, is not very highly approved of as a brahmanic practice in the Sūtra literature though it appears to be a very usual practice among the Yādavas, Pāṇḍavas, the people of Surāṣṭra, the royal houses of the Vidarbhas, the Kośalas and the Kāśīs and of the Sākya and the people of Magadha'. The practice was thus usual in the post-Vedic period in the regions which lay outside the *madhyadeśa*, the middle region, or among the outlandic peoples. (Ghurye, pp. 40, 42). If so, the pattern which explains satisfactorily the marriage with the mother's brother's daughter is not allowed to work itself out by the exponents of the brahmanic culture, probably because stress on bilateralism proved a counteracting force. This explanation of Dr. Ghurye is very significant in as much as we find in it a good reminder to those who are accustomed to regard such customs as borrowings from the matrilineal culture of the conquered race.

**P. 90.** Āpastamba observes that 'the (rites) which are ordered in the Vedas to be performed with rice, barley, animals, clarified butter, milk, potsherds, (in conjunction) with a wife, must be performed.' And he quotes a Puranic text, 'These (sons), who live fulfilling the rites taught (in the Vedas), increase the fame and heavenly

bliss of their departed ancestors.' (Ap. D. S. II 23, 9; 24, 3) The son is thus needed to continue the family (ibid. 1, 2; cf. also Nir. XX 9 - derivation of *snuṣā*, daughter-in-law) and the family rites. Cf. also the legend of Vasiṣṭha ( Winternitz, P.403 ) where no reference is made to Śrāddha while delineating his pining for a son. Cf. again Mbh. XXII 175 and 277 ( Winternitz, p. 147 seq. ). It is the standpoint of one who does not subscribe to the brahmanic religion. Yet its insertion in the epic is significant.

**P. 96.** Vāli, after his return from the cave, took possession of all in Sugrīva's charge, including his wife Rumā. Miss Dharma (pp. 9,28) regards this as a normal tribal custom which allowed a man to appropriate all the goods (including the wife) of his dead brother. But when we find Rāma looking upon Vāli's appropriation of Rumā as sinful (IV 18,18 seq.), because she was a sort of a daughter-in-law to Vāli, and therefore as a sufficient cause for punishing him with death, it follows that the action of Vāli was something unusual and not in conformity with tribal practice. The attitude of Rāma and the pattern he speaks of are indicative of the fact that the old practice wherein a person could have approach even to the wife of his younger brother was getting unpalatable by the time of Rāmāyaṇa, the fact which conforms to the idea and ideals in the Mahābhārata.

**P. 100** In Rāmāyaṇa (II 26, 29) the wife is asked to treat the brothers-in-law like her own brothers or sons. This admonition indicates a possibility of conflict between a woman and her brother-in-law. If the brother-in-law had a claim on his brother's widow as his potential wife, there was no chance for such a conflict.

**P. 129.** In early times relations between a brother and a sister were very intimate and personal. In Aitareya Brāhmaṇa the harmony and affectionate tie between them is indicated to have been wrenched, but the words in which the discord is made manifest — 'one's sister, though *born of the same womb*, as oneself lives by following one's wife who is *born of another womb*'—clearly indicate that the new social practice, which had come to be established by the time of this Brāhmaṇa, was felt to be against the natural order. Sister's curse in the Atharvaveda may also point to this discord—sister's feelings against the new situation wherein she was deprived of her privileges in the paternal family. Dr. Ghurye has illustrated from the Mahābhārata as well as the Buddhistic and the classical literature



the affectionate relationship existing between a brother and a sister (J. Ant. S. of Bom., p. 12 seq.). Kauṭilya (II 20, Vol. I, p. 114) has given the same pattern. Gautama and Manu also suggested this pattern when they declared that a daughter of the family, 'a dweller with her own people (*svavāsini*)', should be fed even before the guests are entertained (Ghurye, pp. 16, 17). The pattern presented in the post-Vedic literature reflects the older conditions existing in the pre-Brahmanic period. This view is confirmed by Meyer's observation: "The natural abode of the woman that has no children (and no husband) is with her brother. Such things are, indeed, good Indo-European customs." *Sexual Life in Ancient India*, p. 564. It is equally confirmed by the affectionate tie existing between a person and his sister's sons in the Brāhmana period when the wife had come to displace more or less the sister from her privileged position in the family. (Cf. Ghurye, p. 25 seq. for references not listed in f.n. 121, 124, 129, 131, on pp. 129 seq.). The privileged position of the mother's brother in the Dharmasūtras, Manu and the Mahābhārata is thus not a result of contact with matrilineal people but a further development of this Vedic pattern accentuated by greater attention that two generations of male relatives through wife had come to claim in this period.

**P. 162.** It is gratifying to note that Kane (*His. of Dh.*, Vol. III, f. n. 1084) has accepted that "Mitākṣarā speaks only of the son's and grandson's right by birth in ancestral property and does not expressly mention the great-grandson. But other writers like the author of the Viramitrodaya...mention the great-grandson as having right by birth and this has been accepted by the courts." It is worth noting here that the author of Vīramitrodaya, too, accepts the unity of three in his comments on Yājñavalkya (II 127). "Even an illegitimate son inherits the whole estate of his Śūdra father in the absence of a legal son, grandson and others." (Ibid. f. n. 1138) 'Others' does not refer to a great-grandson but to a daughter's son specifically referred to by Yājñavalkya. Even Viśvarūpa (Vol. I, p. 242) recognises the right by birth of sons and grandsons only.

**P. 200.** Yājñavalkya (II 137-138) writes: "An illegitimate son of a Śūdra gets a share at the will of his father. After the death of his father, his brothers should give him half the share. If he has no brothers or (no) son of the daughters (of his father is in existence) he inherits the whole property." Yājñavalkya recognises here the claim of an illegitimate son to the property of his father, in case of a

Śūdra, in the absence of a son or a daughter's son. Daughter's son is recognised as an heir to the estate of a Śūdra under certain circumstances, but that does not prevent us from holding that Vijñāneśvara is the first exponent of the heirship of a daughter's son. Viśvarūpa, in his comment on the said verses of Yājñavalkya, observes: "From this statement relating to the absence of the daughter's son, daughter's sons are sharers of the estate, even in case of the three regenerate castes, in the absence of a son. Hence came into existence the rule of Śrāddha of the mother's father". He thus appears to accept a daughter's son as an heir, but, while discussing the actual order of heirs, he opines that 'in the absence of the wife and the daughter of said characteristics, the uterine brothers are said to inherit by that text.'

**P. 212.** A wife, a son and a slave, these three are declared to have no property: the wealth which they earn is (acquired) for him to whom they belong (M. VIII 416). Commentators on Manu explain it by saying that these persons have no capacity to dispose of their property independently, and the same explanation of the verse is given by Śabarsvāmi, Jimūtavāhana and many others. Haradatta (G.D.S. XXVIII 29) seems to understand the verse to imply that in the life time of the father what is earned by a member of the family belongs to the father, and his explanation seems more correct. (cf. Kātyāyana 851). It means, then, that in the early law all property, however acquired by any member of the family, was held to belong to the family and was as such controlled by the father.

**P. 223.** The word *dāya* is used in the Vedic literature to indicate a share, a patrimony or wealth (R. V. X. 114, 10; T. S. III 1, 9, 4; A.B. XXXIII 5; T. M. B. XVI 4, 3-5). Likewise the word *dāyāda* means one who takes portion (T. S. VI 5, 8, 2). The words are used in the same sense by Pāṇini (II 3, 39; VI 2, 5), Yāskāchārya (III 4; 6), Amara (II 6, 89) and Śāśvata (p. 5 v.45; p. 54 v. 611).

**P. 225 f. n. 141.** The word *bandhu* has been used by Yājñavalkya in a number of passages (I 82, 113, 116, II 114, 149) but nowhere it stands for a cognate. The word *bāndhava* is likewise used by him for an agnatic relative (II 280, III 11, 239, 264, 294) though in some passages (I 108, 220) this sense is not clearly warranted. Kāṭhīya (III 2, Vol. II, p. 16) has also used the words *bandhu* and *bāndhava* for agnatic relatives. Nārada, while discussing descent

of inheritance, has used the terms *sakulyas* and *bāndhavas*. While discussing heirs to the property of a person died abroad he uses the terms *bandhu* and *jñāti* (Apārarka, p. 836). This clearly indicates that the words *bandhu*, *jñāti*, *sakulya* and *bāndhava* were all indiscriminately used for agnatic relatives. Amarakośa (II 6 34), work of the same period, confirms this.

**P. 235.** The first sixteen Śrāddhas, ending with *sapiṇḍikarāna* are to be performed by the eldest son alone, even when the brothers are separated. (Laghu Hārīta, Vyāsa); the annual Śrāddha, *sūmivatsarika*, and *maghā* Śrāddha are performed separately by all the brothers, irrespective of their being divided or undivided (Śaṅkha). The other Śrāddhas may be performed, according to Govindānanda, separately if the brothers have divided their estate. (Su. K. pp. 86-89). Whatever the traditional view may be, the usual practice, so far I am aware of, is that Śrāddha is performed by one brother only, generally by one who represents the family. All the brothers, even when they are separated, do not separately perform it. The individual performance of the worship of gods and Manes, recommended on partition, refers, I believe, to the *pañcha mahāyajñas* and not to various Śrāddhas.

**P. 282** The word *napūt* is used for a grandson (Supra, p. 123 f. n. 98, 99) and the word *pranapūt* (R. V. VIII 17,13) confirms this meaning. The word is, however, used for a great-grandson in A.B. and Śrauta sūtras (Ibid. f. n. 100 L. Śr. S. I 3,18). This extension of meaning in the later part of the Vedic age serves as a further evidence for the original family unity of three.

**P. 303.** Gautama has brought the cognate, *yonisāmbandha*, into great prominence. He recognises him as a competent person to beget a child. He has been said to observe impurity for two days and an intervening night. Water ceremony is performed for an out-cast in the presence of his *yonisāmbandhas* (XX 6), though, according to other writers (V.D.S. XV 12 seq., B. D. S. II 1, 36; M.XI 182; Śaṅkha-Apararka, p. 1206; Yaj. III 294) only the agnatic relatives, *jñāti*, are present to witness this ceremony. Similarly, when other writers regard the brahmanicide, adultery with the guru's wife, drinking, spirituous liquor, etc., as *mahāpātakas* (V.D.S. I 19,21; B.D.S. I 18 18; M.XI 55; IX 235; Yaj. III 227; Vi. D. S. XXXV 1-2), Gautama (XXI 1) and Āpastamba (I 21,7-9) add to the list intercourse with the female relatives, *yonisāmbandhas*, of the father and the mother.

## APPENDIX I

### A SHORT NOTE ON DRAFT HINDU CODE

The Hindu law as it is administered in Indian courts today is entirely different from the law that we find in the writings of the Hindu jurists, as the present law is mainly a superstructure of the judicial decisions of different High Courts in India and the Privy Council. Naturally the law differs from province to province. The first assumption of the Courts was to hold that there exist two entirely different schools of Hindu law, one represented by *Vijñāneśvara* and the other by *Jīmūtavāhana*, each having its own peculiar system of transmission of property. Secondly, the different jurists were held authorities for different provinces, and thus the real or apparent peculiarity of a particular jurist became a special feature of the law of that province. Both these assumptions have ignored the important fact that there is a basic unity behind apparent diversity in an institution or a system that attempts to comprehend within itself the ideals and achievements of a people from age to age. It is the want of realization, on the part of early judiciary in India, of this urgent necessity of integrating the apparently diverse texts of Hindu jurists that has led to so many different interpretations, and thereby to varied legal maxims, with the result that a need has now been felt for sweeping away all these provincial peculiarities by codifying a uniform Hindu law for the whole of India.

The peculiarity of the Hindu law, referred to above, is also partly due to respect paid to customs or customary law and partly to legislation. Till about the end of the 17th century the Hindu law as well as institutions had not become completely rigid in as much as the eminent jurists interpreted and championed their existence and purpose in terms of contemporary ideals and opinions. When the flexibility was reduced to rigidity and customs or customary law came to reflect the respect which people have for their past traditions and ancient institutions, legislation met with the crying need of changing the old institutions with the change of time, and thus keep alive the spirit of freshness and progress. The Hindu law, as it is administered today, has been modified from time to time by legal decisions

and legislation. It is thus not an old law found in Smṛtis but the law adapted to the needs of the changing time, though the degree of adaptation is not what one would desire.

If the Hindu law is dynamic, and the present study reveals that Hindu institutions are not absolutely static but dynamic, and if it has developed in course of time a complexity which demands that it should be now simplified, the need of codifying a uniform law for the whole of India becomes easily intelligible. Any opposition to such a reform is both meaningless and contrary to the Hindu spirit of renovating and regenerating the old—yadyapi śuddham lokaviruddham nācharaṇīyam nākaraṇīyam.

But any attempt to evolve a uniform law must give proper weight to certain considerations in order that the proposed law may be acceptable to a large majority of the community. These considerations are: it must pay proper respect to traditions; it must be so adapted as to satisfy the needs and aspirations of the present generation: it must take into account what may be called the inherent nature of the institution of property.

As for the traditions of the people, we have seen that the law of transmission of property represents a gradual recognition and adaptation of the bilateral counting of kinship. The propinquity is determined on the principle of blood kinship limited by the idea of generations in every line, namely, the three generations. With regard to the needs and aspirations of the present generation, we find all around feelings of individualism dominating and superseding the old tie with and respect for a joint family. In order that an individual's connection with and attachment to the joint family may not be completely severed—a process which has far advanced by now—the law should be so modified as to make place for one's near ones and dear ones before those whose claims he is made to acknowledge and accept only as a member of a joint family or as a respecter of the ancient law. But this process of accommodation need not carry us so far as to forget that ultimately property is a product of collective efforts. The estate that one inherits from the family is the acquisition to which all the members of the family have contributed according to their mite, and therefore, in throwing off that estate to any one in preference to the members of the family justice is not done to its original contributors

or to their survivors. Viewed from this point of view, even while stressing the devolution on individualistic lines, that is, to uphold transmission to those who are one's dear ones, the corporate character of the family cannot be completely lost sight of.

Taking this to be the proper criterion of the proposed uniform aw, let us review the draft code prepared by the Hindu Law Committee, otherwise known as Rau Committee, published for general information in 1944. According to the draft code, the following relatives of an intestate are his enumerated heirs:—

Class I—*Heirs in the compact series*: (1) Widow, son, daughter, son of a pre-deceased son, and son of a predeceased son of a predeceased son (2) Daughter's son (3) Mother (4) Father (5) Brother (Father's son) (6) Brother's son (Father's son's son).

Class II—*Other descendants*: (1) Son's daughter (2) Daughter's daughter (3) Son's daughter's son (4) Son's son's daughter (5) Son's daughter's daughter (6) Daughter's son's son (7) Daughter's son's daughter (8) Daughter's daughter's son (9) Daughter's daughter's daughter.

Class III—*Other descendants of Father*: (1) Brother's son's son (2) Sister (3) Sister's son (4) Brother's daughter (5) Sister's daughter.

Class IV—*Father's mother, father's father and his descendants*: (1) Father's mother (2) Father's father (3) Father's brother's son (5) Father's brother's son's son (6) Father's sister (7) Father's sister's son.

Class V—*Father's father's mother, father's father's father and his descendants*.

Class VI—*Mother's mother, mother's father and his descendants*.<sup>1</sup>

1. In the Bill which has amplified the section 5 of Part II of the draft code the father's widow, brother's widow, brother's son's widow and brother's son's son's widow are recognised as heirs in order before the father's father. And, on the same analogy, widows are recognised as heirs before the father's father's father and the mother's mother. The operation of this clause is restricted to the province of Bombay. It is reason-

(The heirs in class V and VI are on the same pattern as given in Class IV and are, hence, not repeated here.)

It is evident that the authors of the draft code start more with the pattern of Vijñāneśvara, of course, with modifications they think necessary, than with his principle. We have tried to show that Vijñāneśvara upheld the right by birth of two descendants, the son and the grandson, and not of three as is held by some. The authors of the draft code have conceded this right to three descendants by recognizing the son of a pre-deceased son of a pre deceased son as one of the simultaneous heirs. To us this appears both against the tradition and the present tendency. It hardly happens that a person may live long enough in these days to see his great-grandson as a member of his family. There will be, therefore, hardly any thought of one's great-grandson when one is thinking of one's dear ones and near ones. Again, the father and the brother are the persons with whom an individual has ordinarily contracted close ties of attachment and affection by constant association. His feelings for these persons are bound to be more intense than for the great-grandson whom he may not even see. The priority given to the great-grandson is thus not in harmony with the growing spirit towards individualism. Further, the authors have stressed the unity of four in dealing with 'simultaneous heirs' and the unity of three while dealing with 'other descendants of Father, of Father's father and of Father's father's father, though the brother's son's son is regarded as heir in class III. This system of working out different unities in different 'lines', though not unknown to Hindu jurists, is not based on any rational

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able to appreciate the recognition of widows of a pre-deceased son or of a pre-deceased grandson in as much as the share of a son, not living at the time of partition, is not lost but descends to his representatives, that is, his son and widow. But it is difficult to understand why a brother's son's son's widow should be entitled to the estate of the deceased in preference to the father's father. The estate that is once vested in the father descends to his descendants within three or four generations before it is vested in the grandfather. But it does not imply that in the absence of these heirs their widows should be entitled to the estate to which they were entitled. The provision, even though restricted in its scope, does not justify itself on the principle of either propinquity or equity. One could have appreciated the provision if the widows of the family were made to inherit the estate before it lapsed to the persons who did not belong to the family, namely, the relatives through the mother.

principle and is not, therefore, justifiable when the law is now sought to be rationalised.

Daughter is said to inherit along with the son, though she gets only half a share. We have shown that there was a period in Indian history when the daughter was a co-sharer with her brother. This change which appears to be radical because of a long standing prejudice against the daughter's right to patrimony is not entirely an innovation because it is in harmony with our cultural heritage. daughter's son is a cognate and would have inherited with other cognates given in Class II. The preference shown in his case is not, however, unjustifiable in view of the fact that his place in our cultural traditions is quite unique as compared to all the persons in Class II. We have referred to this culture pattern in this study. To that we may add that he performs even a special *śrāddha* for his maternal grandfather on the first day of *Āśvin*. Under the circumstances an individual has good regard, if not as much as for a son's son, for his daughter's son.

In the absence of the 'heirs in the compact series' inheritance is said to pass on to the females of the family and their issues. This preference for ones' dear ones, even when they are cognates, against such agnates as the brother's son or the father's father is in keeping with the evolution of the law which, as we saw, stressed bilateral counting against the old agnatic unilateral one, and is also in accord with the present tendency which reflects the slow but sure loosening of bonds and ties of the joint family. In assigning priority among the heirs of this group - Class II - those descended from a male are preferred to those descended from a female when both belong to the same generation. While this principle is consistently worked out in assigning proper place to each, the son's daughter's son is preferred to the son's son's daughter 'on the ground that the former has the capacity to confer spiritual benefit on the intestate which the latter has not <sup>2</sup>. This means that, in case of persons standing in the same generation, of the two considerations, namely a person's capacity to benefit spiritually and a person's descent from a male or a female, the former overrules the latter.

In selecting heirs in class II the unity of four, a person and his three descendants, is assumed. At the same time, in selecting heirs in



Class III, that is, the females of the family and their issues in the 'line' of the father the unity of four is said to be operative only in respect of male lineal descendants, the females and their issues being limited on consideration of the unity of three. Going further, in the 'lines' of the grandfather and of the great-grandfather, even the unity of three is not fully worked out in as much as no person except the daughter and the daughter's son of each ascendant is recognised as heir.<sup>3</sup> It seems, then, that heirs in Class IV and Class V are only those persons who were recognised as possible heirs by Jīmūtavāhana. The authors of the code have not worked out the system of devolution on any rational principle, but they have preferred Vijñāneśvara's scheme at some stage, Jīmūtavāhana's at some stage and added a few more persons as heirs because they regarded them as dear persons. As they have admitted, they have evolved a law 'by blending the most progressive elements in the various schools of law which prevail in different parts of the country.'<sup>4</sup> If we remember that the two schools of law differ in their treatment of devolution on the basic principles, one determining it on the basis of blood propinquity and the other on the capacity of spiritually benefitting, the blending of two different systems of devolution into one with further additions cannot give a rational system of law. Instead the authors should have given some basic principles and the whole system of devolution should have been worked out in accordance with them.<sup>5</sup> If, as we have pointed out, had they accepted the unity of three generations for males as well as females in all the 'lines' including that of the propositus, they could have brought the law more in harmony with the ancient law and the current opinion.

So far we have confined ourselves to the heirs specified. When inheritance is contested by two persons not comprehended by this

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3. In the Bill this is rectified by recognising the father's brother's daughter and others as heirs in their proper places.

4. D. H. C., p. I

5. Vijñāneśvara upheld the unity of three. Jīmūtavāhana upheld the unity of four for male lineal descendants and of three for certain relatives through the females, but he had to do so because of his spiritual benefit theory. The authors have not either the theory of Jīmūtavāhana or the tradition embodied in the works of eminent Hindu jurists to back them in their stand. In the Bill where the provisions of the code are modified we find the system worked out by accepting the unity of four for the claims of male lineal descendants and of three for the females and their issues.

## VII

category, the claim is to be determined on principles given in section 9. According to these principles, one who happens to be a descendant of the *propositus*, however remote, is preferred to one who happens to be a descendant of any of his ancestors. A son's daughter's son's son is preferred to a sister's daughter's son or a father's brother's daughter.<sup>6</sup> So far as the principle is concerned there is nothing objectionable, but the mere fact of being a deceased's descendant, irrespective of his degree of relationship, is bound to operate prejudicially against the claims of such near relatives as the father's brother's daughter's son. There should be a limit set to the recognition of propinquity in one's 'line' after which devolution shall pass on to the 'line' of the father and then to that of the grandfather. In view of the fact that unity of three is the proper limit of propinquity in the first instance, that is, for heirs specifically referred to, unity of five should be accepted as a limit at which devolution passes from one 'line' to another.

According to the authors of the code, a sister's daughter's daughter or a sister's son's son's son is to be preferred to the mother's brother's son's daughter, because the former has only one degree of ascent while the latter has two such degrees. But, if there is a contest between the father's brother's daughter and the mother's brother's son's daughter, the father's brother's daughter is to be preferred because 'where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent'. The mother's father's mother is similarly preferred to the father's father's sister's son's son. The authors do not appear to stress the point that descendants within specific generations of the grandfather and of the great-grandfather are to be preferred to the relatives through the mother.<sup>7</sup> This is what one should naturally expect from the status and position of the heirs specified in section 5. Again, devolution of property must be so regulated that the greatest

6. D.H.C. p. 9, -section 9, illustrations (i) (ii). In the illustrations modified in the Bill we find the father's brother's son's daughter in place of the father's brother's daughter.

7. It is only when the number of degrees of ascent and of descent is the same or none (as in the case of F. M. F. and M. F. F.) that one who is related through a male is preferred to one related through a female. But even here the principle enunciated does not stress the distinction we have in view,

benefits are first derived by those who of their own efforts or through the efforts of their ancestors contributed to its acquisition or preservation. It is only in the absence of such persons that it should be made to pass into another family. With all stress on catering to the satisfaction of the individual this consideration inherent in the very nature of property should not be ignored. Even instinctively, in India where joint family is a norm one would cherish his property to devolve on one's father's father's sister's son's son in preference to the mother's father's mother.<sup>8</sup> It may be argued that once we accept the principle of the bilateral counting of kinship, distinctions between relatives through the father and those through the mother should be ignored when in propinquity the latter are nearer to the deceased than the former. Yet our contention will be very strongly substantiated if we compare the claims of M. F. M. and F.F.F. S. D. S. instead of M. F. M. and F. F. F. D. S. S. as the authors of the code have done. According to the principles laid down by the authors of the code, M. F. M. should be preferred to F. F. F. S. D. S. But if we remember that F. F. F. S. D. S. offers maternally a *pinda* to F. F. F., a person to whom the *propositus* was also bound to offer a *pinda*, one would easily appreciate that culturally his association with the deceased is much greater than that with M. F. M. with whom he has no ties whatsoever. Under the circumstances, mere propinquity in blood will clash with our cultural ties. And, when propinquity has not been recognised as a sole test to determine one's claim to property even among the nearer heirs, there is no reason why it should be so much stressed in respect of the remoter heirs.<sup>9</sup> The sister's daughter's son's preference over the sister's daughter's daughter who, on mere propinquity, should be a co-heir is otherwise inexplicable.

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8. It may be instructive to note here that even when on bilateral counting the father's brother and the mother's brother stand on the same level of propinquity, the father's brother is preferred as a guardian to the mother's brother. Cf. Part IV, ch. 1, Sec. 23, according to which the guardians are: (1) father (2) mother (3) father's father (4) brother (5) father's brother (6) mother's father (7) mother's brother (8) any other relatives.

9. Among the non-specified heirs, a sister's son's son is preferred to a sister's daughter's son and a father's mother's brother's son to a father's mother's sister's son. Though on propinquity they are equally related, the fact that one happens to be a descendant of a male and the other that of a female has been rightly emphasised.

When the whole system of devolution is worked out on the principle of propinquity, ignoring the old distinction between an agnate and a cognate, one is surprised to find the distinction brought forward as a principle in deciding priority between a farther's brother's daughter and a sister's daughter's son where the former is preferred on the ground of being an agnate.<sup>10</sup> Is it justifiable to look upon the father's brother's daughter as an agnate when in the Hindu law, both in the *Smṛtis* and in actual practice females are never allowed to inherit as agnatic relatives of the deceased.

One fails to understand the mother's preference over the father except on the grounds of sentiments. But the consideration of sentiments is not a valid reason for preferring the father's father's mother to the father's father's father. It would have been more proper to treat the case of the mother as an exception like the daughter's son and work out devolution in case of other ascendants assigning priority to the father over the mother.

The authors of the code have preferred the sister's daughter's son to the sister's daughter's daughter on the ground that the former is a male while the latter is a female. The distinction between a male and a female when propinquity is the same is not wrong so far as the near relatives are concerned. But is it not more desirable that both the males and the females should be made co-heirs when the relatives concerned are remoter ones?

On the reasoning that we have advanced the proper system of devolution would be:

Class I: (1) Simultaneous heirs: widow, son, daughter, son and widow of a predeceased son. (2) Daughter's son (3) Mother (4) Father (5) Brother (6) Brother's son.

Class II: (1) Son's daughter (2) Daughter's daughter (3) Son's daughter's son (4) Son's son's daughter (5) Son's daughter's daughter.

Class III: (1) Sister (2) Sister's son (3) Brother's daughter (4) Sister's daughter.

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10. In the scheme that we have suggested the father's brother's daughter succeeds as one of the specified heirs and there is no occasion for her to contest her claim against that of a sister's daughter's son.

Class IV: (1) Father's father (2) Father's mother (3) Father's brother (4) Father's brother's son (5) Father's sister (6) Father's sister's son (7) Father's brother's daughter (8) Father's sister's daughter.

Class V: (1) F.F.F. (2) F.F.M. (3) F.F.F.S. (4) F.F.F.D (5) F.F.F.S.S. (6) F.F.F.D.S. (7) F.F.F.S.D. (8) F.F.F.D.D.

Class VI: (1) M.F. (2) M.M. (3) M.F.S. (4) M.F.D. (5) M.F.S.S. (6) M.F.D.S. (7) M.F.S.D. (8) M.F.D.D.

Among other heirs not specified above

1. The descendants of the deceased within five generations should be preferred to the descendants within the same degree of his ascendants.

2. In respect of ascendants, relatives through the father and the grandfather should be preferred to relatives through the mother.

3. One having fewer degrees of ascent is preferred to one having more degrees of ascent. With equal degrees of ascent, one having a fewer degrees of descent should be preferred to one having more degrees of descent.

4. In the same generation those who have a greater capacity to benefit the dead spiritually should supersede the other. Among those who have the same capacity or nil those descended through the males should be preferred to those descended through the females.

5. Among the heirs not covered by sub-section (1) and (2) one having a fewer degrees of ascent is preferred to one having more degrees of ascent. When the ascent is the same those who have a greater capacity to benefit the dead spiritually should supersede the others. Among those who have the same capacity or nil one having a fewer degrees of descent should be preferred to one having more degrees of descent. In the same generation those descended through the males should be preferred to those descended through the females.

In the absence of these heirs those related within seven generations may contest their claims on the same principles.

Our study of the Hindu law has led us to the conclusion that both Vijñāneśvara and Jīmūtavāhana modified the Smṛti law to bring it in harmony with the current opinion and practice retaining at the same time, as best as they could, the old structure of the family namely, the joint family. The right by birth in the family property, is one of such devices to keep the family joint. The draft Hindu code has dispensed with this provision,<sup>10a</sup> and the step seems to be in the right direction under the conditions that prevail today. The joint family implied and should imply its joint character in food, worship, residence and property. But today when in the absence of joint food, worship or residence an individual is allowed to press for his joint-share in the family property, the right leads to constant cause of quarrels regarding the management and use of property, very often interferes with the discipline of the family, brings about fragmentation of joint-holding so much so that it ultimately ruins the family and always keeps the individual in a temper and mood which have been found not conducive to the best interest either of the individual or of the family. The authors of the code, even when they have dispensed with the principle of vested interest in property by birth, have attempted to maintain the corpus of the joint family by accepting the claims of all the sons, dead or alive, in the family property. If the sons are not alive, their shares are not lost but devolve on their sons, if any, or on the widows of such sons. The preference shown to the Jīmūtavāhana's scheme of descent of property and rule of ownership over that of Vijñāneśvara in the present code indicates progressive outlook of the authors.

Consciously or unconsciously the authors of the code have given some weightage to traditions by recognising the right of the daughter to the patrimony and absolute estate instead of limited interest in the property inherited by the widow and other females. They have likewise shown respect for tradition by putting the new law more or less on the pattern advocated by Jīmūtavāhana, though wisely enough they have not upheld, like Jīmūtavāhana, the principle of spiritual efficacy as the guiding principle of devolution of property. In the modifications they have brought about in this pattern by introducing some females and cognates as near heirs they

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10. (a) D. H. C., Part, III A, Division. 1

have strengthened the views of Nanda Pandit and Bālabhaṭṭa. In short, though the authors seem to have evolved the law in the light of various acts passed by the legislatures during the course of the last 50 years and of judicial interpretations and decisions, they have obviously, if unconsciously, carried the principle, which we have found operative in the evolution of law through the ages, to its natural conclusion; and it is from this point of view that we recommend it to the community. It is an irony of fate that strange demonstrations were organised, and in some places by women, to protest against the new code which is represented as ultra radical by the representatives of the *sanātana* dharma.

It is a happy sign that the authors of the code have boldly deleted the clause in the Marriage Bill as introduced in the Legislative Assembly forbidding marriage which lays down caste endogamy as one of the requisites of a sacramental marriage. Caste in any form is an unadulterated evil and any attempt to eradicate the deep-seated caste prejudice must begin, as Dr. Ghurye has shown,<sup>11</sup> with its most vital aspect, namely, endogamy. They have equally done well in scrapping off the restrictions of sept-exogamy, the restrictions having no meaning in this age when the Vedic sacrifices and various schools of sacrificial procedures have almost gone into oblivion. The superstructure of an institution merely cramps the life of society when it is made to exist and to make its existence felt in the absence of the spirit which animated it-of the purpose which justified its existence. The authors even when they have done away with caste endogamy and gotra exogamy have curiously enough retained the old endogamy restrictions of sapinda exogamy. Nay, the breach of these regulations is one of the grounds on which either party may pray to the court to declare the marriage null and void.<sup>12</sup> It has been very elaborately shown in this study that marriage in the fourth generation was not unknown in Vedic times, and even when the elaborate rules of exogamy came to be enunciated and propagated throughout the course of Indian history the restrictions do not appear to have been rigidly observed. Even in the Puranic traditions marriages in the fifth genera-

11. Ghurye G. S., *Caste and Race in India*, pp. 185, 186.

12. D.H.C., Part IV, ch. i, secs. 1 (a) (i), 7 (5); ch. iii, sec. 29 (ii). An adopted son has to observe these restrictions of sapinda exogamy in both the families of his birth and of his adoption. Part VI, ch. i., sec. 18 (b).

tion are tolerated as a popular practice. The authors would have really given a great lead in taking the Hindu society a step in advance if they had restricted the scope of exogamy to four generations, instead of seven on the father's side and five on the mother's,<sup>13</sup> if they could not completely eliminate it. Such an innovation, if innovation it can be called, is sociologically justifiable and has nothing to fear from the biologists who now hold that 'sterility or deformity or degeneracy are not inherent in inbreeding, and they are not interrelated as cause and effect.'<sup>14</sup> The Mohamedans and the Christians have not degenerated though marriage between parallel cousins and cross cousins is so common among them, and the Vedic Aryans, with no rules of exogamy, were in no way less fitted than their present descendants who can boast of exogamy being practised for the last 2500 years.

In the law of adoption the selection of a boy is unrestricted on one hand and restricted on the other<sup>15</sup>. In the old law, as we have seen, there were no restrictions in terms of caste or kinship. Adoption of a member of the same caste is said to have been just recommended by Manu. Restrictions of adopting a daughter's son or a sister's son came to be incorporated at a later stage on a very flimsy authority. The authors of the code have done well in doing away with these restrictions by giving a free scope of choice by allowing even a stranger to be adopted in preference to a near relative. But in restricting this choice within the circle of caste the authors have unconsciously lent their support to the survival of the institution<sup>16</sup>. When they could eliminate the considerations of caste in the selection of a mate, they could have equally eliminated them in the selection of an adoptee. The restrictions that the child to be adopted ought not to have gone through his upanayana ceremony before adoption is equally meaningless though not equally dangerous. In this age when gotra has ceased to have any meaning to a very large section of the Hindu

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13. It is gratifying to note that in the Bill the limits of sapinda exogamy have been brought down from seven generations on the father's side and five on the mother's to five generations on the father's side and three on the mother's.

14. Karandikar S. V., *Hindu Exogamy*, p. 285 seq.

15. D.H.C., Part VI, ch. i, secs. 14 (ii) (iii), 13 (ii) (iv).

16. In the Bill restriction of caste is deleted.



community in their daily life, their social relationships and practices ought not to be defined and regulated in terms of such obsolete concepts. Any attempt to restrict modern usages and practices within the bounds of such old concepts and institutions will be interpreted by a very vast section of the enlightened community as a deliberate device to keep alive the brahmanic hold on the community, the hold which has, in spite of its superb achievement at some stages in Indian history, cramped the life of the community.

The draft Hindu code does not discuss as a topic the status of a Hindu woman. But the very fact that the widow is now not regarded as an heir of an intestate only in the absence of his son or a grandson, the position which is at present accepted by the Hindu law, but is declared to be a simultaneous heir with her son marks a great advance in her status. The authors of the draft code have given no reasons for such an astounding change. Yet the change appears to us absolutely justified as we regard the Hindu wife as better qualified than a son to succeed to the property of her husband. That apart, there is no question that the authors have taken this position with a view to give her a better standing in the Hindu household. It is with the same aim that the authors of the code made some important changes in the law of marriage and divorce. It is one of the requisites of a sacramental marriage that neither party must have a spouse living at the time of marriage<sup>17</sup> Any marriage in contravention of this requisite is void. A woman is now entitled to sue for divorce if she is deserted by her husband, without just cause, for a period of not less than seven years or if her husband has any other woman as a concubine.<sup>18</sup> When the woman's status is thus sought to be elevated the freedom given to a husband to adopt without any reference to his wife and notwithstanding her dissent appears unjustifiable.<sup>19</sup> Similarly, a widow can take a son in adoption

17. D.H.C., Part IV, ch. i, secs. 3 (a), 7 (1), 24; ch. iii, sec. 29 (1) (v).

18. Ibid. Part IV, ch. iii, sec. 30 (e) (f) The Bill has reduced the period from seven to five years. The Bill also adds as one of the grounds of divorce cruelty on the part of the husband; to render it unsafe for the wife to live with him.

19. Ibid. Part VI, ch. i, sec. 5 (1) explanation, (2). Cf. also 12 (2), (3) (5) (c). It is really commendable that the Bill now provides that 'a Hindu who has one or more wives living shall not adopt except with the consent of his wife or of one of his wives unless the wife or all the wives, as the case may be, are incapable of consent'.

to her husband provided there has been no express or implied prohibition by him.<sup>20</sup> When, according to the new code, the widow is an heir, with absolute right in the property inherited, to her intestate husband, whether living separately or in a joint family, there is no reason why her freedom to take a son in adoption to her dead husband be restricted by imposing her husband's sanction necessary as there is no fear, under the new situation, of her doing so against the interest of the other members of the family. On the other hand, by adopting a son to her husband she will create a co-sharer in the property which becomes her own, and ordinarily she would do so only when she is persuaded that by so doing she is necessarily benefitting herself or her dead husband. In view of this, her right to adopt ought to have been as unrestricted as her husband's. The authors of the code have tried to incorporate, in respect of the authority of the widow to adopt, the law now prevalent in Bombay where, compared to other provinces, the restrictions on her authority are fewest. But that should not have been the proper consideration. In the law of descent of property, in the law of divorce and in enjoining monogamy as the proper form of marriage by declaring a bigamous marriage null and void, the authors have shown that they take a very progressive view of the woman's status, and the sections dealing with adoption ought to have been drafted in consonance with this view. It appears to us that no adoption by a husband without the consent of his wife should be held valid, and a widow should be allowed to take in adoption a son to her husband if she chose to do so.

As for the age at marriage the Child Marriage Restraint Act of 1929 makes the marriage of a male below 18 and of a female below 14 punishable as a crime. The authors of the draft code have not

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20. This clause negatively implies that the widow must have the consent of her husband for adopting a child. cf. Sec. 16 (ii) 'Where a Hindu has directed that his widow shall adopt only with the consent of a specified person or within a specified period or upon some other specified condition and not otherwise, the adoption must be made by her strictly in accordance with such direction.' It may be pointed out that, whatever the early law may be, Anantadeva allowed the wife to adopt with the consent of her husband, which was not necessary for a widow. Even, according to Bālabhaṭṭa, a widow could adopt without express authority from her husband. Kane P. V., *His. of Dh.*, Vol. I, pp. 448, 458.

laid down the age as one of the requisites of a valid marriage<sup>21</sup> but have simply enjoined that 'if the bride has not completed her 16th year, the consent of her guardian in marriage must have been obtained for the marriage'. If either party to a marriage may present a petition to the High Court that his or her marriage may be declared null and void on the ground that the consent of such party or its guardian was obtained by force or fraud the High Court shall so declare only if it is not satisfied that the petitioner has subsequently, with his or her free consent, lived with the other party to the marriage as husband and wife<sup>22</sup>. In this clause in the new code a minimum age is not laid down in respect of a sacramental marriage though for a civil marriage 'the man must have completed his 18th year and the woman her 14th'<sup>23</sup>. If we are really serious about the health of our womanhood and of our posterity we should raise the age of wife at marriage as near as possible to the age at which sex relations may not be positively harmful to the woman and her children, and under the conditions in which we live this can be achieved only by legislation. We, therefore, feel that the authors of the code should have prescribed 16 and 21 as an age-limit before which girls and boys respectively cannot be married<sup>24</sup>, and 18 as an age of consent. That is, a girl marrying after the age-limit fixed for marriage should produce the consent of her guardians till she is not 18 in order that her marriage may be regarded as a valid marriage.

21. In the Bill the age laid down in the Child Marriage Restraint Act has been put down as one of the requisites of marriage.

22. D.H.C., Part IV, ch. i, sec. 3 (e); ch. iii, sec. 29 (2).

23. Ibid. Part IV, ch. i, sec. 7 (3)

24. Cf. Ghurye G. S., *The Age at Marriage*, Marriage Hygiene, Feb 1935, for the age limit.

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*N.B.* In the first few pages ऋ has been expressed by ri, ॠ by m and : by h through oversight. Similarly, ड has been expressed by ch instead of c' throughout the book unconsciously.

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| 8    | 16     | opulance    | opulence           |
| 10   | 39     | assages     | passages           |
| 11   | 14, 17 | Rakṣas      | Rākṣas             |
| 12   | 23     | Āśvalāyana  | Āśvalāyana         |
| 13   | 9      | Brahmana    | Brāhmaṇa           |
| 18   | 38     | tha         | the                |
|      | 39     | die         | died               |
| 19   | 3      | va          | vā                 |
| 22   | 35     | sacritfices | sacrifices         |
| 30   | 4      | ncluding    | including          |
| 31   | 24     | Pārāskara*  | Pāraskara          |
|      | 26     | brahmanas   | brahmins           |
| 34   | 10     | gives       | enjoins            |
|      | 25     | elsewhere   | delete             |
|      | 26     | regarded    | regarded elsewhere |
| 51   | 14     | woman       | women              |
| 53   | 4      | Taitiriya   | Taittirīya         |
| 56   | 30     | K. A.       | Kau.               |
|      | 38     | riruals     | rituals            |
| 57   | 14     | father      | father's           |
|      | 35     | samāngotra  | samānagotra        |
| 58   | 5      | Devana†     | Devanṇa            |
| 59   | 2      | prescribes  | prescribed         |
|      | 21     | Pārāsara    | Parāsara           |
| 61   | 32     | Anantabhata | Anantabhaṭṭa       |
| 64   | 3      | form        | from               |
| 66   | 25     | the         | delete             |
| 68   | 34     | G. D. S. XI | G. D. S. XX        |
| 69   | 21     | can it be   | delete             |
| 70   | 9      | and         | or of              |

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\*Lines 3 and 6 on pages 44 and 55 respectively.

†Lines 23, 15, 28, 5, 2, 30, 36 on pages 60, 62, 74, 75, 76, 136, 140 respectively



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| 74   | 17   | aenuloma          | anuloma               |
| 79   | 29   | Dharmasastras     | Dharmasūtras          |
| 80   | 2    | snpported         | supported             |
| 85   | 12   | hasband           | husband               |
| 89   | 29   | be                | he                    |
| 92   | 13   | oakes             | cakes                 |
| 95   | 6    | where             | where by              |
|      | 33   | was               | is                    |
| 96   | 27   | chastity          | celebacy              |
| 98   | 13   | ths               | the                   |
| 100  | 10   | verp              | very                  |
| 114  | 20   | of                | off                   |
| 119  | 38   | watsoever         | whatsoever            |
| 130  | 31   | on                | delete                |
| 134  | 21   | kinsmen           | kinsman               |
|      | 38   | ultimatel         | ultimately            |
| 138  | 18   | Nilakntha         | Nilakanṭha            |
| 140  | 22   | direct            | delete                |
|      | 27   | female            | a female              |
| 147  | 29   | crearly           | clearly               |
| 149  | 24   | adopted           | adoptee               |
|      |      | no                | not                   |
| 152  | 3    | clearlay          | clearly               |
| 161  | 9    | father and mother | father's and mother's |
|      |      |                   | sisters               |
|      | 20   | those             | these                 |
| 164  | 1    | The whole line    | delete                |
| 165  | 11   | Te                | To                    |
| 169  | 1    | or                | or of                 |
| 175  | 14   | into              | in                    |
| 176  | 16   | to                | for                   |
| 177  | 35   | B. P. M. S.       | B. Pm. S.             |
| 179  | 6    | up                | delete                |
| 180  | 1    | sufficien         | sufficient            |
|      | 3    | a                 | as                    |
| 181  | 9    | from              | from that of          |

| Page | Line | For               | Read                    |
|------|------|-------------------|-------------------------|
|      | 26   | when              | whereas                 |
|      | 31   | exceptions        | exceptions              |
| 182  | 10   | If so ... four    | delete                  |
| 184  | 14   | for               | in                      |
|      | 15   | employ            | employs                 |
| 187  | 30   | Ahe               | The                     |
| 188  | 13   | maked             | marked                  |
| 189  | 5    | n                 | in                      |
| 194  | 15   | fafher's          | father's                |
|      | 25   | into              | in                      |
| 195  | 22   | Valenkar          | Velankar                |
| 196  | 9    | opened            | opens                   |
| 202  | 24   | not to            | not                     |
| 206  | 24   | propery           | property                |
| 210  | 26   | hous              | house                   |
| 211  | 19   | have              | had                     |
| 212  | 9    | the               | of the                  |
|      | 19   | upon              | delete                  |
|      | 30   | propertv          | property                |
| 213  | 21   | of both           | of both the parents     |
| 216  | 29   | grandsons         | sons                    |
|      | 35   | the               | delete                  |
| 217  | 3    | lesser            | less                    |
| 218  | 19   | is                | is towards              |
| 221  | 23   | authorities       | authorises              |
| 222  | 2    | usul              | usual                   |
| 223  | 16   | great-grandfather | great-great-grandfather |
|      | 37   | avibhaktiadāya    | avibhaktadāya           |
| 225  | 25   | further           | farther                 |
| 237  | 35   | fail              | fall                    |
| 248  | 32   | occcording        | according               |
| 254  | 15   | nterpret          | interpret               |
|      | 20   | it                | if                      |
| 260  | 30   | Viṣṇu             | Viṣṇu                   |
| 272  | 12   | bilaterar         | bilateral               |
|      | 22   | ceviewing         | Reviewing               |
|      | 23   | parenss           | parents                 |

**XXXX**

| Page | Line | For            | Read                       |
|------|------|----------------|----------------------------|
|      | 23   | rulss          | rules                      |
| 275  | 22   | conecived      | conceived                  |
|      | 31   | Purānic        | Puranic                    |
| 276  | 6    | same of them   | some of the commentators   |
|      | 7    | letter... does | and these later writers do |
| 284  | 19   | up             | delete                     |
| 285  | 5    | means          | meant                      |
|      | 27   | Inian          | Indian                     |
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