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THE H. D. BOSE

LAW OF INHERITANCE

AS IN

THE VIRAMITRODAYA

OF

MITRA MISRA.

TRANSLATED

BY

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the body of the Hindu laws. In the earlier Institutes, we find no sort of method or arrangement : all kinds of rules are mixed up together. In the Institutes of Yájnavalkya, however, which is admittedly a later work, some trace of a distinction begins to be perceived. It adopts an improved arrangement, devoting a separate chapter to what may well correspond with positive law. This code is divided into three chapters. The first is the *A'chára* or ritual, which treats of the initiatory ceremonies, the duties of the different castes, the domestic and social usages and the rites of purification and sacrifice. The second chapter is called *Vyavahára* or litigation, which embraces adjective and substantive law. The third is termed *Práyaschitta* or expiation, which treats of the religious sanctions, and the mode in which sin incurred by the violation of rules is purged off. The Institutes of Yájnavalkya have, besides, improved the Hindu law on many points, of which one may be noticed here, that the cognates who are not recognized as heirs by Manu and other sages, are for the first time introduced by Yájnavalkya in the category of heirs.

Although Manu is theoretically said to be entitled to the greatest respect, still practically speaking, Yájnavalkya appears to have been held in the highest estimation by the Hindu lawyers. The *Mitákshará* which gives a systematic exposition of the Hindu law, and is held to be of the greatest authority in almost all the schools, professes to be but a commentary on the Institutes of Yájnavalkya, though it cites texts of other sages to support the doctrines propounded in it. It appears that there were other digests compiled previously, but all of them were replaced by the *Mitákshará*. This treatise however being, as its name indicates, a very concise one, the law enunciated in it, came to be differently understood by different persons. Thus arose various other commentaries which have concurrently with the *Mitákshará*

considerable weight in the schools of law by which they have respectively been adopted. Of all the later digests, the *Dáyabhága* alone, which is recognised by the Bengal School as of the highest authority, is, on many important points, opposed in doctrine to the *Mitákshará*. But nevertheless this treatise, excepting in so far as it has been modified by the *Dáyabhága*, may still be regarded as an authority for the Bengal School as well.

Some of the doctrines of the *Mitákshará* which are laid down in clear and unmistakeable language were attacked by the *Dáyabhága* and other treatises, and the reasoning by which they were arrived at, was criticised and impugned. A vindication therefore, of the doctrines of the *Mitákshará* would naturally be undertaken by the admirers of that treatise. This appears to be one of the objects for which the *Víramitrodaya* came into existence. It examines copiously the arguments by which the doctrines of the *Mitákshará* were assailed, exposes their fallacy and, when necessary, puts forward reasons to support the principles laid down in the *Mitákshará*. It exhibits a strong feeling of antagonism to the *Dáyabhága*, and omits no opportunity of exposing its errors of reasoning. The *Víramitrodaya* has, however, on several points dissented from the *Mitákshará*, and although it serves as the ablest vindication of the doctrines laid down in that treatise, it is in itself an independent work giving a complete and accurate digest of the Hindu law.

The various commentaries or digests of the Hindu law which maintain conflicting doctrines, all profess to interpret the laws that are laid down in the Institutes of the sages. They do not however, appear to have been intended to have merely local authority, such as generally speaking, they now possess. The reason for the adoption, in different parts of India, of particular treatises as containing authoritative expositions of the law, appears to be, not that

the arguments by which their peculiar doctrines are maintained were thought very cogent, but that the doctrines themselves were suited to the feelings of those who adopted them. The process of development seems to have been that a change in a particular point of law being considered desirable, by reason of a change of feelings occasioned by altered social conditions, some learned pundit attached, it may be, to the court of a king, undertook to establish the foregone conclusion by the authority of the texts of the sages.

The Hindu law was systematized at a time when society was composed of joint families, the constitution of which, though resting on a natural basis, was to a great extent artificial. A joint family, very naturally consisted of individuals connected by blood, but at the same time it excluded the cognates, however nearly related, and included strangers by marriage and adoption. An individual, as such, was not originally recognised as a member of society, but as belonging to a certain *gotra* or family. And though the family divided and subdivided itself into smaller groups, such as *samánodakas*, *sakulyas* and *sapindas*, still all these were connected by a great many ties, above all, by the tie of a local union. It was only when the smaller groups or individuals left the original seat of the family, and migrated to distant places, that the strong family feeling or clan feeling began to abate, and the natural tie of consanguinity became stronger, and importance began to be attached to the cognates.

The gradual development of the Hindu law which was originally moulded by the institution of families may thus concisely be stated to consist in the recognition of individual rights and in the introduction of cognates as heirs, and of nearer cognates as heirs in preference to more distant agnates.