could properly be given to the very conflicting opinion of numerous pandits and they arrived at their conclusions without hesitation. And it is difficult to see how any other rule can be applied to what has been inherited from females." In the second of these appeals (Sheopartab *vs.* Allahabad Bank) their Lordships referring to the above remarks said : "The reasons given by their Lordships in the judgment just delivered for declining to draw a distinction between property inherited from a male and that inherited from a female seem to them to apply to the present case."

Sheopratab vs Allahabad Bank, I. L. R. 25 All, 476.

The law on the point in Madras.

In Madras, where the Mitakshara is approved as also other treatises (especially the Smriti Chandrika, which differs much from the text of the Mitakshara with regard to woman's property), the view has been accepted that what a woman has inherited from a woman is not *stridhana* for the purposes of inheritance (*a*).

In Western India, property inherited by a woman, whether from male or female is stridhana.

The law of Western India differs considerably from that prevalent elsewhere as to the rights of female heirs. The general rule there is that property inherited by a woman, whether from a male or female, is

(*a*) Venkatarama Krishna vs. Bhujanga, I. L. R. 19 Mad., 107 ; Virasangappa vs. Rudrappa, I. L. R. 19 Mad., 110.

stridhana. The only exception is the case of property inherited by widows. The decisions restricting female rights, so far as they have gone, all relate to inheritance by widows from male heirs. In regard to female *stridhana* succession the decisions have all been in favour of complete dominion. There are numerous rulings which assert the full dominion and absolute power of the daughter where she succeeds as heir to her father (*a*). Sisters and nieces have also been held entitled to take absolutely in the Bombay Presidency (*b*). These analogies regulate the general rule when it has to be applied to a female succeeding as heir to another female. In a recent Full Bench of the Bombay High Court the paternal grandmother inheriting from her maiden granddaughter has been held entitled to take an

Property inherited by widows is exception to the rule.

Judicial decisions.

(*a*) Pranjivandas vs. Devkuvarbai, 1 Bom, H. C. R., 130 ; Navalram vs. Nandkishore, 1 Bom., H. C. R., 209 ; Bhaskar vs Mahadev, 6 Bom.. H. C. R., 1 ; Kotarbasapa vs. Chanverova, 10 Bom. H. C. R., 408 ; Haribhat vs. Damodarbhat, 3 Bom., 171 ; Bulakhidas vs. Keshavlal, I. L. R. 6 Bom., 85 ; Jankibai vs. Sundra, I. L. R. 14 Bom, 612 ; Babaji vs. Balaji, I. L. R. 5 Bom., 660.

(*b*) Vinayek vs. Luxumeebaee, 9 M. I. A. 516 ; Rindabai vs. Anacharya, I. L. R. 15 Bom., 206 ; Tuljaram vs. Mathuradas, I. L. R. 5 Bom., 662.

absolute interest in such property, and on her death the property has been held to go to her heir and not to the heir of the granddaughter (*a*).

Divergence amongst sages and commentators regarding nature of *Sulka*.

Of the several kinds of *stridhana* specifically mentioned there is considerable divergence amongst the sages and commentators as to the exact nature of *sulka* (wife's fee).

Vyasa.

Vyasa describes it as a fee which is given to the bride to induce her to go to the house of her husband (*b*).

Mitakshara.

The author of the Mitakshara regards it as a gratuity for the receipt of which a girl is given in marriage.

Ballambhatta.

Ballambhatta says this relates to a marriage in the form termed *Asura* or the like.

Viramitrodaya

But Viramitrodaya, who does not so limit it, says that the father or the like takes it on the understanding that it is to belong to the bride, because, otherwise, in the absence of her right thereto, the application of the denomination of woman's property to it, would be unreasonable (*c*).

Dayabhaga.

The Dayabhaga, like the Viramitrodaya, says that "*sulka*" occurs indiscriminately in any form of marriage, whether that termed *Brahma* or another(*d*).

(*a*) Gandhi vs. Bai Jadab, I. L. R. 24 Bom., 192.

(*b*) Vyasa cited in the Dayabhaga, Ch. IV, Sec. III, 21.

(*c*) Mr. G. C. Sarkar's translation. Page 223.

(*d*) Ch. IV, Sec. III, 21, 22.

Katyayana.

According to Katyayana whatever is obtained by a woman as the equivalent of household utensils, of beasts of burden, of milch cattle, or ornaments is declared to be *sulka*.

Vyavahara Mayukha.

Nilkantha, in the Vyavahara Mayukha, after citing this text of Katyayana explains it thus :—"The meaning is when the household utensils and the rest are not available, what is given to the bride at the time of her being given in marriage as the price of them is *sulka*" (*a*).

Madana ratna.

The Madanaratna says that the price of household furniture, which is taken from the bridegroom or the like for giving the bride in marriage in the shape of the bride's ornaments, is the fee or *sulka* (*b*).

Vivada Chintamoni.

The Vivada Chintamoni describes *sulka* "as wealth given to a damsel on demanding her in marriage" (*c*).

The Dayabhaga, after noticing a text of Katyayana, says that one of the meanings of *sulka* is what is given to woman by artists constructing a house or executing other work, as a bribe to send her husband or other person of his family to labour on such particular work (*d*).

Smriti Chandrika.

The Smriti Chandrika cites the text of Katyayana : "Whatever is received as the price of

(*a*) Vyavahara Mayukha, Chap. IV., Sec. X, 3.

(*b*) See the quotation in the Viramitrodaya, p. 223.

(*c*) See P. K. Tagore's translation, p. 263.

(*d*) Chap. IV, Sec. III, 20.

house-hold utensils, etc.....or for works is called *sulka*" and says that it refers to price received from the bride-groom or the like as the bride's wealth and in trust for the bride.

Is the share obtained by by woman on partition her stridhana?

Another question, which is not altogether free from difficulty, is whether the share which a woman obtains on partition becomes her *Stridhana*. According to the plain reading of the text of Mitakshara, an affirmative answer must be given to this question. But there is another passage in the Mitakshara which has a material bearing on the subject we are discussing and which also shows clearly that the share which a woman gets on partition is her *stridhana*. In chapter I, section VI, 1. & 2 Vijnaneswara discusses the subject of the mode of allotment of a share to a son born subsequently to a partition of the estate. Such a son, he says, obtains after death of his parents both their portions. Then follow these important words :—"He obtains his mother's portion, however, *only if there be no daughter*; for it is declared daughters share the residue of their mother's property after payment of her debts." Here we have the author of the Mitakshara applying the special rules governing the descent of *stridhana* to the share which a woman gets on partition du-

Vijnaneswara applies the special rules of descent to property obtained by woman on partition.

ring her husband's life-time ; this conclusion is only possible on the supposition that Vijnaneswara considered a share so acquired by a wife to be her *stridhana* (*a*). There is no suggestion in any part of the Mitakshara that the share which a woman obtains on partition is in lieu of maintenance, yet this seems to have been assumed in Bengal, not only by judges but also by some of the writers on Hindu law. Mr. Justice D. N. Mitter in an early case remarked (*b*) : "There is no doubt that the share which is given to a Hindu mother at the time of partition is given to her for no other purpose than as a provision for her maintenance". The parties were governed by the Mitakshara. Similar remarks have been made in other Calcutta cases under the Benares law (*c*). The logical conclusion which follows from this view is that a share obtained by a wife or mother on partition is not her *stridhana*. But this is not the law as laid down by the Mitakshara. It seems to us that in deciding

Is share allotted to woman on partition in lieu of maintenance ?

Early decisions of the Calcutta High Court hold that it is so,

but the view is opposed to the Mitakshara.

(*a*) Apararka includes the share received by a wife or mother on partition under the head of *Stridhanam*. Dr. Jolly's Tagore Lectures, 250.

(*b*) (1868) Sheodyal vs Juddonath, 9 W. R., 61.

(*c*) Mohabeer vs Ramyad, 20 W. R, 192 ; Lalljeet vs Raj coomar, 20 W. R. 336 ; (1895) Beni Prasad vs Puran chand, I. L. R. 23 Cal., 262.

these cases the learned judges have qualified the Mitakshara by the special provisions of the Dayabhaga.

The Allahabad High Court has in a recent case followed strictly the doctrine laid down by Vijnaneswara. It has decided that the share which a mother in a joint Hindu family obtains on partition, after the death of the father, of the joint family property between the mother and the sons, becomes the mother's *stridhana* which devolves on her death upon her own heirs and not upon the heirs of her husband *(a)*. This view has been followed in other cases before the Allahabad High Court(*b*). The Judicial Committee treat it as an open question under the Benares law (*c*). Mr. Mayne, however, is afraid that these Allahabad rulings will not probably stand the test of an appeal to the Privy Council (*d*). Since this was written, the Judicial Committee had to pronounce on the question and Mr. Mayne's apprehensions have been justified. In

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(*a*) Chhidu vs. Naubat, I. L. R. 24 All 67.

(*b*) Debi Mangal vs. Mahadeo Prasad, I. L. R. 32 All, 253.

Sripal Rai vs. Surajbali, I. L. R. 24 All. p. 82.

Gambhir Sing vs. Makradhuj 4, A. L. J. 673.

(*c*) 11 M. I. A., 509.

(*d*) Mayne's Hindu law, 7th Ed. Page 838.

appeal from the case of Debi Mongal *vs* Mahadeo Prasad, just cited, the Judicial Committee have held that the share obtained by a Hindu mother upon partition of ancestral property amongst her sons, under the Mitakshara law, does not become her *stridhana* property descendible to her *stridhana* heirs. Such share stands on the same footing as property obtained by a woman by inheritance (*a*). It may be noticed, however, that these Allahabad decisions (now of no effect after the decision of the Judicial Committee just referred to) do not rest on the general Mitakshara definition of *stridhana* (which the Judicial Committee have not accepted) but upon a specific text occurring in an earlier part of the work (Chap. I, Sec. VI para 2.).

The share of mother on partition is not her *stridhana*, under the Mitakshara,

Jagannatha says that the share given to a wife, mother, *etc.* is her separate estate (*b*) and the Pandits of the Supreme Court declared that what a widow took in a partition was her *stridhana* (*c*). In recent times, no doubt the share taken by a mother in a partition has, in Bengal, been pronounced not to be *stridhana* (*d*). The

and also under the Bengal school.

(*a*) (1912) 16 C. W. N. 409. (P. C.)
(*b*) West and Buhler's Digest, 304, 307.
(*c*) Ibid, 304.
(*d*) Jugomohun vs. Sarodamoyee, I. L. R., 3 Cal. 149.

reason of these later decisions would seem to be that the share obtained by a woman on a partition among her sons is given to her simply in lieu of maintenance and not because she is a coparcener in the estate or that she has any pre-existing rights, and the share which is thus given to her reverts upon her death to those heirs of her husband out of whose portion the share is taken.

Hemangini vs *Kedarnath*, the leading case on the subject in the Bengal school.

It follows from this that such a share is not her *stridhana* (*a*). In the case of Hemangini Dasi *vs.* Kedarnath Kundu Chowdhury which is the leading case on the subject under the Bengal school, the Judicial Committee lay down that where the Hindu law provides that a share shall be allotted to a woman on a partition, she takes it in lieu of, or by way of provision for, the maintenance for which the partitioned estate is already bound (*b*).

In Southern India a widow cannot claim a share on partition if her sons divide the patrimony amongst themselves (*c*).

(*a*) Sorolah vs Bhoobun, I. L. R. 15 Cal., 292 ; see also Cossinath vs. Harrosundary affirmed by the P. C., cited in Shama Charan Sircar's Vyavastha Darpana. p. 97.

(*b*) I. L. R. 16 Cal., 758.

(*c*) Subramanian vs. Arunachelam, I. L. R. 28 Mad., 1 (8) ; Sorolah vs. Bhoobun, I. L. R. 15 Cal., 292 (304).

In Bombay the share taken by a wife, mother and daughter on partition would be regarded as *stridhana* (*a*). The Vyavahara Mayukha lays no particular restriction on the estate taken by a wife, a mother, or a sister in the shares assigned to them respectively on partition. As to the succession after their death, it directs that their respective sons and other heirs in order are to take it (*b*).

But it is regarded as *stridhana* in Bombay.

Property acquired by a Hindu wife or widow by adverse possession would be her *stridhana* even under the Bengal school, for such title would give to the holder of it an absolute control over the property independently of the husband (*c*). In the case of Brij Indar Bahadur Singh *vs.* Rani Janki Koer, the Judicial Committee (*d*) held that the estate of a deceased Hindu which had been forfeited to government and by it granted after his death to his widow with full power of alienation became her *stridhana*.

Property acquired by adverse possessions by the widow is her *stridhana*.

Property coming from a father to a daughter before her marriage, under a testamentary devise, is *stridhana* (*e*). A lease-

Property derived by a daughter under her father's will her *stridhana*.

(*a*) Bhagirthibai vs. Kahnujirav, I. L. R. 11 Bom., 285, (302-303), where the whole question is discussed.

(*b*) Vyavahara Mayukha. Chap IV. Sec X pa. 26.

(*c*) Mohim vs Kashi Kanta, 2 C. W. N., 161; Subramaniam vs. Arunachelam, I. L. R. 28 Mad., 1.

(*d*) L. R. 5 I. A., 1.

(*e*) Judoonath vs. Bussunt coomar, 19 W. R., 264.

Mourashi mokarrari lease granted by a father to his daughter after her marriage is her *Ayautuka stridhana* according to Dayabhaga.

hold property, such as a *mourashi mokarrari* lease reserving a nominal annual rent, granted by a father to his daughter after her marriage, has been regarded as property possessing the characteristics of *stridhana* according to Dayabhaya. The interest in the property so transferred to the daughter, constitutes her *Ayautuka stridhana* and falls within the class known as *Anwadheya* (*a*). In this case an objection was raised that leasehold property being unknown in the time, when the authoritative text books on Hindu law were written could not be regarded as *Stridhana* and in overruling this objection, Justice Sir Ashutosh Mookerjee made the following significant remarks: "We are not prepared to hold that rules of Hindu law are so inelastic as to be capable of application only to such descriptions of interests in property as formed the subject matter of transactions at the time when the rules were first formulated. Indeed if the rules of Hindu law were so narrowly construed and applied it would be impossible to administer them because in every case, the Courts would be called on to hold a preliminary enquiry as to when a particular rule was first laid down and also as to what kinds of interest in property were recognized at that time."

(*a*) Ram Gopal vs Narain Chandra, 3 C. L. J. 15.

Jimutavahana uses *stridhana* in the technical sense.

Jimutavahana, as we have seen already, employed the term *stridhana* in the technical sense ; the test he adopted for determining whether or not a particular acquisition came under that category was the extent of the power of disposition possessed by the female over it. If the acquisition was at her absolute disposal, the property, according to the author of the Dayabhaga, was her *stridhana*. But the right of absolute disposal did not enter into Vijnaneswara's conception of the essentials of ownership ; and accordingly he and his numerous followers use the term *stridhana* to indicate property belonging to a woman whatever the extent of her power of disposition over it.

Vijnaneswara uses the word in its widest sense.

Extent of the rights of a woman over her *Stridhana*.

The next step in the enquiry therefore is as to what is the extent of the rights of a woman over her *stridhana* using it in the widest sense of the Mitakshara, which of course includes property which technically comes within the definition of woman's property (*stridhana*). The Mitakshara does not lay down any rule as to the extent of the woman's own power over *stridhana*. Mr. Justice West suggests that the natural conclusion would seem to be that he, the author of Mitakshara, considered this already sufficiently provided for in regard to his immediate subject, inheritance, by

other lawyers and by the analogy to be drawn from his rules as to the estate of a male proprietor (*a*). Although the Mitakshara is silent on the point, the Viramitrodaya, which supplements the Mitakshara in cases left doubtful by the latter, contains a somewhat systematic exposition of the law on the subject. From the discussions of the commentators it appears that *stridhana* or woman's property can conveniently be grouped under three heads if the principle of classification adopted be the extent of her right of disposition over such property. Property over which a woman has absolute dominion, falls under the first head ; under the second are comprised such kinds of *stridhana* in respect of which her right of disposition is subject to the control of her husband, and under the third is included the estate of a woman in which she has a qualified right of ownership and which she cannot sell or mortgage *etc.* except for legal necessity or with the consent of the next heir.

The Viramitrodaya on the same.

Three clases of *stridhana*.

(*a*) Mr. Justice West here refers to the provisions in the Mitakshara, Ch. I, Sec. pp. 27, 28., where it is laid down that a man is subject to the control of his son and the rest (of those interest) in regard to immoveable estate, whether acquired by himself or inherited though he may make a gift or sale of it for the relief of family necessities or for pious purposes.

Firstly, that over which a woman has absolute dominion.

And let us now proceed to deal with the first head. Katyayana describes *a kind gift* or *Saudayika* as follows :—"That which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents is termed a kind gift" (*a*). The same sage next declares :—"The independence of women who have received a kind gift, is admitted (in respect of it) for it was given by them out of kindness for their maintenance ; with respect to a kind gift, the independence, at all times, of women is proclaimed in making sale or gift according to pleasure, even when it consists of immoveable property" (*b*). From this text and from the comments on it by the commentators of the different schools it appears clear that over *Saudayika stridhana* (gifts of affectionate kindred) Katyayana declares the absolute dominion of women. If "*Saudayika*" includes donations from the husband accord-

Saudayika.

(*a*) The reading of the text as adopted by Jimutvahana, Kalpataru and other works is "from her husband" instead of *from her brother*, Dayabhaga, Ch. IV., Sec. I. 21.

(*b*) Viramitrodaya, Ch. V. P. I., 5, p. 225. ; Smriti Chandrika, Ch, IX, S. II, 3, 5, ; Vyavahara Mayukha, Ch. IV, Sec. X, 8, Page. 93, Mandlik's edition ; Vivada Chintamoni, p. 260, P, C. Tagore's translation.

ing to the reading of Katyayana's text, the rule of absolute dominion will apply to the gift of immoveables by the husband.

Lands purchased with *Saudayika stridhana* are *stridhana.*

Lands purchased by a woman with her *Saudayika stridhana* become her *stridhana* and are subject to the same disposition which the law gives her power to make of her *Saudayika.* This would be the case even if the funds out of which lands were purchased were given to the wife by the husband. In the case of Venkata *vs.* Venkata (*a*), their Lordships of the Judicial Committee made the following observations : "It is suggested that where the funds are shown to have come wholly or in part from the husband, and to have been afterwards invested in land by his widow, the same law which governs in the devolution of immoveable estate derived from the husband is to go to that acquisition ; but their Lordships cannot find any trace of authority to support such a distinction. It is clearly the law that from the time the funds were given to the widow by the husband they became her *stridhanam,* and that she had full power of disposition over them. Years after the death of the husband she chooses to invest them in land. Can it be contended with any plausibility that that was land which was derived from the husband ?

(*a*) I. L. R. 2 Mad., 333 (P.C.).

Their Lordships can see no ground for establishing this subtle distinction, or for thus arbitrarily interfering with the power of investment and application and disposition which the general law gives to a Hindu female over her *stridhanam*."

Extent of woman's right over *Stridhana*.

We have seen already that a woman who succeeds to *stridhana* takes only a qualified estate. This is now the rule in all the Presidencies except in Bombay where the general rule is that all property inherited by a woman must be classed as *stridhana* with the exception (based on special texts) of property inherited by a widow either from her husband or as a *gotraja sapinda*. Sir Lawrence Jenkins, C. J., presiding over a recent Full Bench of the Bombay High Court stated the rule prevalent in that Presidency in these words :—"The principle of dependence, which perhaps governs the extent of power, may regulate the exceptions where widowed females inherit the males, but in all other cases the rule of absolute dominion must be allowed to prevail" *(a)*. Devala mentions some other kinds of *stridhana* over which a woman has absolute control. He says :—"Her subsistence, her ornaments, her fee or *sulka*, and her gains are the separate property of a woman.

Devala describes other kinds of Stridhana over which women have absolute control.

(a) Gandhi vs Bai Jadab, I. L. R. 24 Bom, 192. (214).

She herself exclusively has the right to enjoy it, her husband has no right to use it, except in distress. In case of consumption or disbursement without cause, he must refund it to the wife with interest." Subsistence or *Vriddhi*, means, according to the Smriti Chandrika, what is given by the father or the like relation towards her advancement. In the Madanaratna, however, this is read as *Vritti*, and is explained to mean what is given by the father or the like for subsistence. "Gains", according to the Viramitrodaya, means what is received from any person, who makes the present for the purpose of pleasing Gauri or some other goddess" (*a*). It is elsewhere explained as wealth received by a woman from a kinsman (*b*). These gains, of course, cannot include earnings by mechanical arts for there is a text of Katyayana which shows that such earnings are subject to the control of the husband.

Second head of Stridhana considered.

This brings us to the consideration of that class of woman's property which falls under the second head described above.

The text of Katyayana just referred to runs as follows :—"But whatever is acquired by mechanical arts, also what is received

(*a*) Viramitrodaya, Sarkar's translation, p. 226.

(*b*) Colebrooke's Digest, Bk. 5, Ch. 9, 477.

through affection from any other, therein the husband's ownership arises at the time ; the rest is declared *Stridhana* (woman's property in the technical sense)"(*a*). The Viramitrodaya says :—"That the text of Manu namely, 'A wife, a son, also a slave ; these are incapable of holding property ; whatever they acquire belongs to him whose they are' is to be taken to refer, in the case of the wife only to what is acquired by mechanical arts &c. by reason of the simplicity of the supposition that both the precepts are founded on the same radical revelation" (*b*). Commenting on the text of Katyayana, the author of the Dayabhaga says : "Over that which has been received by her from any other but the family of her father, mother, or husband, or has been earned by her in the practice of a mechanical art, (as spinning or weaving), her husband has dominion and full control. He has a right to take it even though no distress exists. Hence, though the goods be hers, they do not constitute woman's property ; because she has not independent power over them" (*c*). The concluding portion of this comment is quite

Viramitrodaya

(*a*) Katyayana cited in the Dayabhaga Ch. IV, sec. I, 19.

(*b*) Viramitrodaya, Sarkar's Translation, 222.

(*c*) Dayabhaya, Ch. IV, Sec. I, 20.

consistent with the notion of Jimutvahana that the power of alienation is the necessary concomitant of ownership.

Gift of moveables by husband subject to his control.

The gifts of moveable property made by the husband is subject to his control and the wife cannot use them as she pleases until her husband's death. This rule is deducible from two texts, one of Katyayana and other of Narada. "Let the woman," says Katyayana, "place her husband's donation as she pleases, when he is deceased; but, while he lives, she should carefully preserve it, or else if unable to do so commit it to the family" (*a*). Narada tells us:—"What has been given by an affectionate husband to his wife, she may consume as she pleases, *when he is dead*, or may give it away excepting immoveable property" (*b*).

Gifts by husband to wife of immoveables.

These two texts also show that with regard to immoveable property given by the husband to the wife she has only a restricted power of alienation; she cannot sell or mortgage or make a gift of it whether the husband be alive or dead. Immoveables given by the husband really fall under the last of the three heads of *stridhana* indicated before. It has been decided by the Judicial Committee in the Tanjore case that bequests

(*a*) Dayabhaga, Ch. IV, Sec, I. 8.

(*b*) See Dayabhaga, Ch. IV, Sec. I, 23.

stand on the same footing as gifts. So that bequests of immoveables made by the husband in favour of the wife are subject to the same limitations as gifts are. But where the bequest or gift of immoveable property is in terms absolute, it confers on the widow or wife as full dominion and power of alienation over that property as if the bequest had been made to a stranger. In an early Bengal case where a Hindu died, leaving a widow, two infant sons, a daughter, and having made a will in English of which the material portion is, "I, give, devise and bequeath unto my wife L. D. and her heirs and assigns for ever all my real and personal estates and effects, and do appoint my wife sole executrix of this my will," it was held that she took an absolute estate with full power of alienation (*a*). It is not necessary that the power of alienation should be conferred in express terms. It is enough if words are used which of themselves imply absolute ownership, *e. g. malik.* The cases on the point are, however, not uniform. In the case of Koonjbehari *vs* Premchand (*b*), the Calcutta High Court held that whether, in respect of a gift or a will, it is neces-

Bequests in favour of wife by husband.

(*a*) Prosunno vs Tarrucknath, 10 B. L. R., 267.; Seth Mulchand vs Bai Mancha, I. L. R. 7 Bom., 491.

(*b*) (1880) I. L. R. 5 Cal., 684.

sary for the husband to give the wife in express terms a heritable right or a power of alienation in order to entitle her to get an absolute estate. And recently in Allahabad it has been held that under the Hindu law, in the case of immoveable property given or devised by a husband to his wife, the wife has no power to alienate unless such power is conferred in express terms (*a*). The words used in this case were "that the widows will remain in possession". But a Bench of the Allahabad High Court, differently constituted, refused to follow this case and expressed the opinion that the words in question passed an absolute estate(*b*). But the former case, in which the words were used, was carried in appeal to the Privy Council with the result that the decision was reversed (*c*). Their Lordships, after quoting with approval certain observations of Mr. Justice R. C. Mitter in the case of Kollany Kooer *vs.* Luchmee Pershad (*d*) said :—"The question as to the effect of the word 'malik' came before this Board in 1897 in the case of Lolit Mohun *vs.* Chukkun

The effect of the use of the word "Malik" in wills or bequests in fovour of women.

(*a*) Surajmani vs Rabinath, I. L. R. 25 All., 351.

(*b*) Padam vs Tek, I. L. R. 29 All., 217, See also Rajnarain vs Ashutosh, I. L. R. 27 Cal., 649.

(*c*) Surajmani vs Rabinath, I. L. R. 30 All., 84.

(*d*) 24 W. R. 395.

Lall (*a*). The donee in that case was a man, but the principles of interpretation laid down were of general application." Those principles are contained in the following passage in the judgment of Lord Davey : "The words 'become owner (*malik*) of all my estates and properties' would, unless the context indicated a different meaning, be sufficient for that purpose (that is, to give an absolute interest) even without the words 'enjoy with son, grandson, and so on in succession' which latter words are frequently used in Hindu wills and have acquired the force of technical words conveying an heritable and alienable estate." The Bombay High Conrt has however recently held that the word "malik" though by itself it would be sufficient to give the widow an absolute estate has, when used in a will, to be construed with reference to the knowledge of the testator as to the incidents of a widow's estate and the ordinary notions and customs of Hindus (*b*).

Husband can take Stridhana in distress.

Whatever the nature of the *stridhana* and however absolute the power of the woman over certain descriptions of it may be, the husband has in certain circumstances power to appropriate it. Those circumstances are

(*a*) I. L.R. 24 Cal., 834.

(*b*) Moti Lall vs. Advocate general, 35 Bom., 279.

described in the following text of Yajnavalkya : "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint" (*a*). The distress referred to must be of such a character as it is impossible to get rid of except with the use of *stridhana* (*b*). But the husband is not liable to make good only where he has no means to repay the amount as in the case of poverty. This privilege of using the wife's *stridhana* in times of distress belongs exclusively to the husband.

Right personal to husband.

It has accordingly been held in Bombay that ornaments on the person of a Hindu wife, if forming part of her *stridhana* cannot be taken in execution against her husband. On certain occasions, however, the husband may take them, but the right is personal to him (*c*).

Katyayana.

Katyayana denies the right of the husband to take the *stridhana* of his wife where the circumstances of distress mentioned in the preceding paragraph do not exist. He

(*a*) Dayabhaga, Chap. IV. S. I. 24 ; Viramitrodaya, 227 ; Smriti Chandrika, Ch. IX, S. II. 21.

(*b*) Smriti Chandrika, Ch. IX., S. II., 18.

(*c*) Tukaram vs. Gunaji, 8 Bom. H. C. R. 12. (A. C. J.) See also Strange's Hindu Law, Vol. I., 26 ; Vol. II., 19 ; Grady's Hindu Law. p. 174.

says :—"Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property, to take it or to bestow it. If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person, having obtained her consent, use the property amicably he shall be required to pay the principal, when he becomes rich. But, if the husband have a second wife and do not show honour to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If food, raiment and dwelling be withheld from the woman, she may exact her due supply, and take a share of the estate with the co-heirs" (*a*).

Succession to stridhana not within the scope of the thesis.

It is not intended to deal in this thesis with the somewhat complicated subject of the succession to *stridhana*, as it really does not fall within its scope. But a few general observations may be made. The different schools of Hindu law differ vastly from one another on the subject of the mode of devolution of *stridhana* (*b*). A general pre-

(*a*) Cited in the Dayabhaga, Ch. IV., Sec. 1., 24.

(*b*) See Tagore Lectures, 1878. Dr. Banerji devotes three chapters, Ch. IX., X. XI, to the discussion of the subject of succession to *Stridhana*.

ference is however given to females over males in regard to succession to *stridhana* property, and the reason for this is to be found in the text of the Mitakshara: "The woman's property goes to her daughters, because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children" (*a*). This is indeed a fanciful reason, but the real reason is to be found in the equitable distribution of property—the property of males passing in the first instance to males, that of females in the first resort to females.

Unchastity no bar to inheriting stridhana from female relations.

Unchastity does not seem to disqualify a woman from inheriting the *stridhan* of her female relations. It has been held by a Full Bench of the Allahabad High Court that under the Mitakshara law the granddaughter is not debarred from inheriting the *stridhan* of her grandmother (*b*). The Madras High Court has recently decided that the degradation of a daughter on account of incontinence does not put an end to her right to inherit the *stridhan* property of her mother (*c*). In Bombay the leading case on

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(*a*) Mitakshara, Ch. I, Sec. III., 10.

(*b*) (Ganga *vs.* Ghasita, I. L. R. 1 All., 46).

(*c*) Angammal vs Venkata I. L. R. 26 Mad., 509.

the subject is Advyapa *vs.* Rudrava (*a*). It has been held in that case that a daughter is not by reason of her incontinence debarred from succession to the estate of her father. It follows *a fortiori* that unchastity would not disqualify her from inheriting *stridhan*. Even in the Bengal School the right of succession to *stridhan* does not rest exclusively on the theory of spiritual benefit and it would seem that the same rule will apply as has been laid down in the other High Courts (*b*).

Views of Sir Henry Sumner Maine considered.

Before we bring this chapter to a close the views of Sir Henry Sumner Maine on the origin and history of *stridhana* should be noted. "The settled property of a married woman" says the author of the Early History of Institutions, "incapable of alienation by her husband, is well known to the Hindus under the name of Stridhan. It is certainly a remarkable thing that the institution seems to have developed among the Hindus at a period relatively much earlier than among Romans. But, instead of being matured and improved, as it was in Western society, there is reason to think that in the East under various influences which may be partly traced, it has been gradually reduced to

(*a*) I. L. R. 4. Bom., 104.

(*b*) Toolsee vs Luckymoney, 4 C. W. N., 743.

dimensions and importance far inferior to those which at one time belonged to it" (*a*). The learned jurist after quoting the definition of Stridhan given in the Mitakshara tries to account for the "amplitude which the Mitakshara assigns to Stridhan" from an examination of other bodies of Aryan custom. The result of such an examination led this brilliant writer to hold that the Stridhan had a pre-historic origin in the bride-price. After tracing the origin of Stridhan, Sir Henry Maine observed as follows :—

> "If then the Stridhan had a pre-historic origin in the Bride-Price, its growth and decay become more intelligible. First of all it was property conferred on the wife by the husband 'at the nuptial fire,' as the sacerdotal Hindoo lawyers express it. Next it came to include what the Romans called the *dos*, property assigned to the wife at her marriage by her own family. The next stage may very well have been reached only in certain parts of India, and the rules relating to it may only have found their way into the doctrine of certain schools ; but still there is nothing

(*a*) Maine's Early Institutions 321.

contrary to the analogies of legal history in the extension of the Stridhan until it included all the property of a married woman. The really interesting question is how came the law to retreat after apparently advancing farther than the Middle Roman Law in the proprietary enfranchisement of women, and what are the causes of the strong hostility of the great majority of Hindoo Lawyers to the text of the Mitakshara, of which the authority could not be wholly denied ?" (*a*)

Sir Henry Maine shows a characteristic insight into the views of the majority of Hindu lawyers when he says that, putting the author of the Mitakshara aside, all the commentators who succeeded one another in the Hindu juridical schools show a visibly increasing desire to connect all property with the discharge of sacrificial duties, and with this desire the reluctance to place property in the hands of women is somehow connected. It would be interesting to compare this view with what we said in the previous pages as to the reason why the position of women deteriorated in the Smriti period. Commenting on the definition of Stridhan in

(*a*) Early Institutions 324.

Maine's comment on the definition of stridhana in the Mitakshara.

the Mitakshara, Maine says:—'All the property which a woman may have acquired by inheritance, purchase, partition, seizure, or finding,' is a comprehensive description of all the forms of property as defined by the modes of acquisition and, if all this be Stridhan, it follows that the ancient Hindoo Law secured to married women, in theory at all events, an even greater degree of proprietary independence than that given to them by the modern English Married Women's Property Act." (*a*)

Mitakshara is the strongest advocate of proprietary rights of women.

Sir Henry Maine rightly perceived that the rule of the Mitakshara with regard to *Stridhana* is the most liberal one. A careful study of the various texts of the Mitakshara, to which reference has been made in the previous pages, can leave no doubt whatever that of all the Hindu sages and commentators the author of the Mitakshara may be regarded as the strongest advocate of the proprietary rights of women (*b*).

(*a*) Early Institutions p. 322.

(*b*) In a recent article of great originality, however, Mr. Justice Sarada Charan Mitra of the Calcutta High Court maintains that the Mahanirvana Tantra assigned a higher position to women than the Mitakshara; and that the former is more favourable to women's rights than the latter (See Law Quarterly Review Vol. XXI, 380.) This view, however, has in its turn been criticised by Mr. Setlur in an able article in the same review (Vol. XXIII) p. 202.

Development of the law regarding the separate property of women in England compared with the Modern Hindu Law concerning Stridhana.

It may be interesting to compare the development of the law regarding the separate property of married women in England with the more modern development of the branch of Hindu law concerning *Stridhana*. It has been seen already that if we take Manu as the starting point we find that whatever property a married woman earned belonged to her husband and that he had full dominion over it. Gradually property which she acquired by mechanical arts was released from the operation of this general rule, and afterwards there were other kinds of property which were denominated "Stridhan" or peculium of the wife over which the husband had no control.

Property rights of married women in England governed by Common Law and Equity till 1870.

In 1800, and indeed upto 1870, the property rights of a married woman in England were mainly determined by rules contained in two bodies of judge-made law, viz, the common law and equity. Under the common law a husband on marriage became for most purposes the almost absolute master of his wife's property. The whole of her income from whatever source it came (even if it were the earnings of her own work or professional skill) belonged to her husband. In equity, in 1800 the Court of Chancery had been engaged for a series of years in the endeavour to make it possible for a married

woman to hold property independently of her husband and exert over this property the rights which could be exercised by a man or uumarried woman. A long course of judicial legislation had at last given to a woman, over property settled for her separate use, nearly all the rights, and a good deal more than the protection possessed in respect of any property, by a man or *feme sole*. The final result of the judicial legislation, carried through by the Court of Chancery was this. A married woman could possess separate property over which her husband had no control whatever. She could, if it was not subject to a restraint on anticipation, dispose of it with perfect freedom (*a*). As regards a married woman's property the two systems of common law and of equity coexisted side by side unconfused and unmingled till the reform introduced by the Married Woman's Property Acts. Under the Married Weman's Property Act of 1893, which superseded the earlier act of 1882, all the property of a married woman is her separate property ; she may, except is so far as her power is limited by restraint on anticipation deal with it as she pleases. She has (subject always to this possible

(*a*) Dicey's Law and opinion in England, page 375-77.

restraint) full contractual and full testamentary capacity (*a*). It is true that the change introduced in England by the Married Women's Property Acts (1870–1893) was no sudden revolution ; it was the tardy recognition of the justice of arrangements, which as regards the gentry of England, had existed for generations. The Hindu law concerning the proprietary rights of women was capable of indefinite expansion, if the indigenous growth of that law had not been arrested after the establishment of British rule, and had not judicial decisions run counter to the famous text of the Mitakshara which defined "*Stridhan.*" In a well-known text-book by a very distinguished Judge there occur the following significant remarks : —"The system of Hindu Law as it has reached us is not and does not profess to be exhaustive. It is a system which contains within itself elements of expansion, a system in which new customs and new propositions, not repugnant to the old law, may be engrafted upon it from time to time as change of circumstances and progress of society imperatively demands" (*b*). These observa-

Cessation of development of woman's proprietary rights.

(*a*) For a fuller exposition of the law regarding the property rights of married women in England, See Prof. Dicey's Law and Public opinion, Pages 369-393.

(*b*) Sir Ashutosh Mukherjee on Perpetuities, Page 59. (Tagore Lectures, 1889.)

tions so eminently true can no longer apply to the Hindu law regarding the property of women. For we believe, there can be no further expansion of the "property rights" of women however much public opinion in India may desire it. The Judicial Committee have, in a series of decisions, restricted those rights. Their Lordships have not accepted the definition of "*Stridhan*" as given in the Mitakshara. And although the general tendency of Hindu thought at the present day may be towards seeing women attain the same position in law, as has been assigned to them by Vijnaneswara, there is no hope of any change of legislative opinion in this respect for two reasons: first, because the Indian Legislature, in its wisdom, does rarely interfere with Hindu Law based as it is on Hindu religion; secondly, because legislative opinion is, in India as in other countries, constantly moulded or affected by the course of judicial decisions.*

Suggested reason for the same.

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* The last paragraph of this chapter is based on original research.

CHAPTER VII.

STATUS OF COURTESANS AND DANCING GIRLS.

Hindu law abounds in ordinances which inculcate chastity on women. It punishes incontinence in a wife by disinheriting her of her husband's estate after his death. It makes continuance of maintenance of the widow dependent on her faithfulness to her husband's bed. But at the same time, unlike other systems of law (*e. g.* English and Mahomedan) it does not ignore the class of degraded women known either as concubines or courtesans or dancing girls but gives them a status in law. It adopts a more charitable attitude towards these social and legal outcastes. Concubines are allowed maintenance after the death of their paramours under an express ordinance. Narada says, "Let them allow a maintenance to his *women* for life" (*a*).

Concubines tolerated by Hindu law.

*But even in the case of concubines it is laid down that they should preserve unsullied the bed of their lord, otherwise the brethren

(*a*) The word used is *Yoshit* concubine, and not *Stri* which is equivalent to lawfully wedded wife. (Narada 13, 26).

may resume the allowance. It may be interesting to state that with the ancient Romans as with the Hindus, concubinage (*concubinatus*) was a relation tolerated by law. "A concubine," says Gibbon, "in the strict sense of the civilians, was a woman of servile or plebian extraction, the sole and faithful companion of a Roman citizen, who continued in a state of celibacy. Her modest station below the honours of a wife, above the infamy of a prostitute was acknowledged and approved by the laws: from the age of Augustus to the tenth century the use of this secondary marriage prevailed both in the East and the West" (*a*). The Romans say of it (*concubinatus*) "*per leges nomen assumpsit*" *i.e.*, it has received by statute a legal significance (*b*). But under the Roman Law a man could have one concubine at a time and *concubinatus* was incompatible with marriage. There were no such limitations in Hindu Law. A married man could have as many concubines at a time as he pleased, for Narada cited above says, "Let them allow a maintenance to his *women* for life."

Position of Concubines in Roman law compared.

It is true that prostitution has always

(*a*) Decline and Fall of the Roman Empire, Vol. II, 240.

(*b*) Moyle's Justinian; "Imperatoris Justiniani Institutiones" Notes to Bk. I, Tit. 10. p. 135.

been distinguished in law and custom from concubinage which may be regarded as an inferior kind of marriage. Manu contemplates the case of men who make money by their wives' prostitution in the following text :—"This rule does not apply to the wives of actors and singers nor of those who live on the intrigues of their own wives for such men send their wives to others, or concealing themselves allow them to hold criminal intercourse" (*a*). Narada recognises the class of courtesans when he lays down :—"If a prostitute do not attend after having received her fee, she shall be fined twice she may have taken, but if her paramour refuse to receive her he shall only lose the money he has advanced" (*b*). In another place the same sage tells us :—"An unchaste married woman who is not of the Brahman class or *a professional prostitute*, a female slave who has left the family protection may be carnally known by a man of the same or higher class but not by a man of the lower class, but if such women be the kept mistresses of some persons the offence

Prostitution distinguished from Concubinage in Hindu law.

(*a*) Manu, VIII., 362.

(*b*) Narada, Chap. VI. Page 68 Dr. Jolly's translation. Similar provisions are to be found in the laws of other countries. Lord Mansfield in Robinson *vs.* Bland 2 Burr 1084 says : In many countries, a contract may be maintained by a courtesan for the price of her prostitution see story on conflict of Laws p. 341. 8th Ed.

of approaching them would be that of approaching anothe man's wife" thus indicating that harlotry although it deprived a well-born woman of her caste was an occupation of which Hindu law took cognizance (*a*). Yajnavalkya (Chap. II, 290) lays down that if a man has intercourse with another's mistress, he shall be fined 50 *panas*. In commenting on this text of Yajnavalkya, the author of the Mitakshara notices that in the Skanda Purana prostitutes are regarded as the fifth caste outside the then recognised four castes.

Prostitutes regarded as the fifth caste.

Mitakshara.

Coming to more modern times we find some of the commentaries laying down special rules for the protection of this unfortunate class of women. In Chapter xxii, V. 7 Nilkantha cites a text from Narada as authority for the proposition that the ornaments of professional prostitutes shall not be confiscated in any case. The founder of the Mithila School, while recognising the class of prostitutes, condemns irregular intercourse and imposes a penalty on those who visit these abandoned women. In doing so Vachaspati Misra exhibits a modern tendency. Thesetexts however, do not necessarily point to a lax state of morals. The whole spirit of Hindu religion on which Hindu

Nilkantha.

Vachaspati Misra.

(*a*) Narada quoted in Vyav. Mayukha Ch. XIX. (10-13) page 152 (Mandlik's Edition.)

law is based, favours a life of self-denial and it would be inconsistent with that spirit to say that Hindu Law looks with approval on practices which are prompted by desire for self-indulgence. The fact is that Hindu Law, while condemning immorality, does not deny to persons who by pursuit of immoral practices put themselves out of the pale of Hindu society the civil right of owning property and transmitting the same to their progeny.*

Dancing girls attached to temples in the South of India.

In the south of India, the ancient connection of dancing girls with temple worship survives till the present day and has been noted by many observers. Abbe Dubois, for instance, tells us :—"The courtesans or dancing girls attached to each temple take place in the second rank ; they are called *Devadasis* (servants or slaves of the Gods), but the public call them by the more vulgar name of prostitutes. And these lewd women, who make a public traffic of their charms, are consecrated in a special manner to the worship of the divinities of India ; every temple of any importance has in it a band of eight, twelve or more" (*a*). But this should not be considered peculiar to

* * Portion within asterisks based on original research.

(*a*) Abbe Dubois' Hindu Customs, manners and Geremonies, 3rd. edition (1906), 585.

India. Among the ancient Jews, harlotry appears to have been connected with religious worship and to have been not merely tolerated but encouraged. In Egypt, Phoenicia, Assyria, Chaldea, Cannan, Persia, the worship of Isis, Moloch, Baael, Astarte, Myletta and other deities consist of the most extravagant social orgies and temples were merely centres of vice. It is needless, however, to speculate about the genesis of the custom in India. It has been said that the custom has its origin in the deplorable tendency of the human mind to combine religious and sexual emotions in the worship of deities. Female artists were possibly introduced in temples more for the performance of certain specified duties, than for the purpose of pandering to the libidinous tastes of those who frequent such places of worship. In the system of education of these women, manners stand higher than morals. The dancing girl is not necessarily bad, but there is in her life much temptation to do evil and little stimulus to do right, and where one may live a blameless life, many others go wrong and drop below the margin of respectability. Thus in time, harlotry has come to be regarded as inseparably connected with the vocation of dancing girls and as an

Probable origin of the institution of dancing girls.

essential feature of temple worship. Customary rules governing devolution of property and other incidents gradually sprung up among this class of persons, who constituted a community by themselves, and although Hindu law has not cared to lay down express rules providing for succession to the property of fallen women, it has not forbidden the recognition of customary rules obtaining among them. These customary rules have on several occasions come under the consideration of Courts.

Customary rules govern succession amongst dancing girls.

In the case of Anandrav Ganpat *vs.* Bapu (*a*), Sir M. Sausse, C. J., of Bombay expressed a grave doubt "whether any recognition ought to be extended to an essentially immoral class like these Naikins." These Naikins belong to a class who, as dancers, singers and courtesans, perform in Bombay functions which recommend them highly to portions of the native community. In the year 1864 in the case of Nanee Tara Naikin *vs.* Allarakhia (*b*), where the question turned upon the will of Tara Naikin and the dispute was between one adopted daughter and the sons of another adopted daughter of the said naikin, Sir Richard Couch, C. J. observed :—"Although I fully concur with

Judicial decisions.

(*a*) Referred to in Tara Naikin's case, I. L. R. 4 Bom., 573. (*b*) I. L. R. 4 Bom., 573.

the Court in its opinion against any extension of the principle, and its regret that the Court should ever have given a legal *status* to the immoral profession of prostitution by having recognized a separate code of law for dancing girls and courtesans, I cannot but think that adoption is recognized by the law, and the right of the adopted daughter to inherit must follow from it as in other cases." In the same year, the High Court of Madras seemed to hold in the case of Chalakonda *vs.* Chalakonda (*a*) that the Hindu law legalized and recognized prostitution and that the Courts cannot decline to adjudicate upon cases relating to the property of prostitutes on account of the immoral source from which such property has been acquired : Recognition of certain rules of succession to property amongst a certain class of persons seems to be a very different thing from legalizing the occupation of such class. A different view was taken by the Madras High Court in a later case. In a suit by the dancing girls of a temple claiming to have by custom the right to veto the introduction of new dancing girls, the High Court refused to give effect to the rights set up, although such rights were borne out by the custom of the temple,

(*a*) 2 Madras H. C. R., 56.

on the ground that it "would be recognizing an immoral custom, a custom, that is, for an association of women to enjoy a monopoly of the gains of prostitution, a right which no court would countenance" (*a*). But it would seem that this decision practically recognized the right of the manager of the temple to introduce fresh recruits to the association of harlots connected with the temple, a right which is equally disapproved by the moral sense of the community. In the case of Mathura Naikin *vs* Esu Naikin(*b*), which was a suit by the adopted daughter of a naikin to recover a share of property in the hands of her adoptive mother which was alleged to be the family property, Mr. Justice West of the Bombay High Court decided that the claim could not be supported. In a very elaborate judgment he held that Judges no doubt must decide cases relating to particular institutions "on an appreciation of the legal consciousness of the community, but when that consciousness is unsettled and fluctuating, its nobler may properly be chosen in preference to its baser elements as those which are to predominate." The charter of the Bombay Supreme Court which was still in force, directed the Court "as to cases of

Mathura Naikin v.s. Esu Naikin, leading case in Bombay.

(*a*) Chinna vs Tegarai, I. L. R. 1 Mad. 168 (1876)

(*b*) I. L. R. 4 Bom., p. 545.

inheritance and succession among Gentus to be governed by the laws and usages of the Gentus". But usage, says Mr. Justice West, must be "usage received as binding and although companies of temple women may at one time have been thought not so repugnant to the essential principles of the Vedic Code, it could not be maintained in the present day that the legal convictions of the people give final efficacy to special rules of any class of harlots in.....this presidency. .....Its constitution answering to no essential permanent need of society, it lost its place as a class soon after the general disposition to admit its pretensions died out." In other words, Mr. Justice West maintains that as soon as a custom is disapproved by the moral sense of the modern community, the custom loses its binding force. He gives expression to this view in the following luminous passage: "As the mind becomes enlightened, its legal convictions will change, and this will constitute a change in its common law as that law must from time to time be recognised and recorded in the Courts. The usage of individuals or of a class cannot, in opposition to the general conviction, on which rests its own validity, rank higher than a practice without binding force." This

Mr. Justice West's view.

learned Judge is of opinion that the custom or usage which gives a legal status to prostitutes, though once recognized, is now abhorred by the moral sense of the community, "and the Courts are accordingly bound to facilitate the truth and reception of a new and perfect offspring of the general conviction." This view has also been taken by writers of acknowledged authority. Professor Sorley maintains that in civilized and developed communities, where men have learned the lessons of reflection, custom has to justify itself at the bar of reason, and conduct seems to be guided by a definite conception of its end, instead of by a vague belief that it is usual (*a*).

Justice West's view criticised by Mr. Justice Ayyar of Madras.

The judgment of Mr. Justice West has however, been subjected to a severe criticism by Mr. Justice Muttusami Ayyar of the Madras High Court. In delivering a judgment remarkable for its vigour and originality, the learned Madras Judge observed as follows (*b*) :—

"Apart from the professional prostitution referred to as tainting the custom of the caste, there are several special grounds on which the decision can be supported. Among those, it is stated, first, that, ac-

(*a*) Essay in Philosophical criticism, pages, 109, 110.

(*b*) I. L. R. 11 Madras, 393.

cording to the very custom set up, a daughter cannot call for a partition during her adoptive mother's life. It is observed further that there were natural born daughters and that they excluded the adopted daughter. The remarks then made in regard to the usage, though very instructive, were not necessary for the decision of that case. It is there observed that usage is law because it is followed from a conviction that it is law. Though reference is made to Austin's opinion that the tacit sanction of the sovereign is necessary to the binding force of custom, yet the cases decided in this Presidency wherein adoption by a dancing woman was recognised as the source of a civil right are also mentioned. In advertence to the practice of an abandoned class of women like dancing girls, it is admitted that it was recognised by Hindu law. It is also admitted that it is only according to the standards of Hindu law that a usage has coercive force among Hindus. But it is remarked that the usage which the Courts are bound to follow according to the Charter is not to be understood in the sense that it shuts out all amelioration. The learned Judge then observes that the practices of an abandoned class are no doubt a usage in the sense of a tolerably uniform series of

acts, but they do not therefore spring from a consciousness of compulsion but rather from habit, imitation, and ignorance, and that such usage is not a law, for, over it presides the higher usage of the community at large from whose approval it must have derived any conceivable original validity and in opposition to which it cannot subsist ; and as the community comes to recognise certain principles as essential to the common welfare, it will no longer lend its sanction to sectional practices at variance with the principles thus recognised. This seems to be the jural theory suggested in regard to sectional usage, and from it a power is deduced by the learned Judge for Courts of Justice to decline to recognise adoption by a dancing girl when the popular sentiment would no longer give validity to such adoption. In Abraham *vs.* Abraham (*a*), the Privy Council say that customs and usages as to dealing with property unless their continuance is enjoined by law, as they are adopted voluntarily, may be changed or lost by desuetude. Would not they, the class of dancing women, cease to exist as a distinct class when there is such a complete change in the sentiment of the general mass of the Hindu community as

(*a*) 9 M. I. A. 199.

to render the adoption of the jural theory feasible and just for the amelioration or abrogation of what was once recognised as a valid special custom? Is not therefore the cessation of the usage indicated by the Privy Council the sound basis for judiciary action especially when there is a standing Legislative Council and when only very imperfect material is available to a Judge who is bound to decide according to evidence for ascertaining whether to any and what extent there has been a substantial change in the sentiments of the large mass of the Hindu community in regard to a particular usage of a section of the Hindus? How would this theory work as the basis of judiciary action if a Judge in Malabar or South Canara were to hold that according to a very considerable body of Hindus the non-recognition of marriage as a legal institution is pernicious and that therefore he would decree tarwad or Aliyasantanam property to the sons and daughters of those who now follow the special law of the nephews? Is it not also a sound rule of legisiative policy that judiciary legislation of the earlier period should gradually retire within the narrow limits of judicial interpretation in proportion to the increased activity of direct legislation through organised bodies? I may observe

that whatever may be the change in the sentiments of the general mass of Hindus in regard to dancing women in Bombay and Poona I am unable to say that there is a considerable change in this Presidency in the opinion of the general mass of the Hindu community as contradistinguished from a comparatively small section that has come under the influence of Western culture. With all deference to the learned Judge who decided the Bombay case, I do not see my way to follow his decision or adopt the jural theory as propounded by him as the basis of judiciary action" (*a*).

This criticism is undoubtedly just. Change of opinion on any question may be a good reason for legislative reform but can be no reason for Judges to vary their interpretation of law. We may add that the opinion of Mr. Justice West is also open to the criticism that it is absolutely impossible to fix with precision the date at which a body of opinion begins to exert a perceptible influence on the community or even to become predominant. Mr. Justice Muttusami Ayyar accordingly does not approve of the jural theory which Mr. Justice West proposes to adopt as the basis of judiciary action. He seems to hold that in determining the validity of a

Further comments on Mr. Justice West's view.

(*a*) I. L. R. 11 Madras, 401.

particular usage of a section of the community, it is not the function of the Judge to ascertain whether to any and what extent there has been a substantial change in the sentiments of a large mass of the Hindu community. Mr. Justice Subramania Ayyar in a later case said practically the same thing when he observed : "And I consider that we, sitting as judges, are not at liberty to upset any decisions admitting the rights of the members of the dancing-girl caste to remedy for violation of their civil rights on the alleged ground that a change has taken place in the sentiments of the large mass of the Hindu community in regard to the propriety of recognising the usages of the said caste"(*a*). It is difficult to see why if a daughter born of the womb of the courtesan cannot be denied the right to succeed to her mother's property, a daughter received into the family by adoption which is a process of filiation, should be refused a status. The view forcibly expressed by Mr. Justice Muttusami Ayyar seizes the distinction between allowing dancing girls certain civil rights and giving sanction to the vocation pursued by them. To some extent the Bombay Court in later decisions have adopted the view of the learned Madras

(*a*) Kamalakshi *vs.* Ramasami, I. L. R. 19 Mad 127(131).

Judge. In the case of Tara Naikin *vs.* Nana Lakshman (*a*), Sir Charles Sargent C. J., although he does not express any opinion on the validity of adoption by naikins, says that "the existence of dancing girls in connexion with temples is according to the ancient established usage of the country, and the court would be taking far too much upon itself to say that it is so opposed to the "legal conciousness" of the community at the present day as to justify the court in refusing to recognize existing endowments in connexion with such an institution". The view of Mr. Justice West of testing the binding force of a custom or usage in the light of the "legal conciousness" of the community does not seem to have been accepted in its entirety.

How far S. 372 of the Indian Penal Code affects adoption by dancing women.

In the case of Mathura *vs.* Esu, Mr. Justice West further maintains that since the passing of the Indian Penal Code, adoptions by temple dancers, who notoriously carry on the trade of prostitution, would offend against the public law of the land. But, as Mr. Justice Muttusami Ayyar points out, what section 372 of the Indian Penal Code prohibits is not adoption by dancing girls but the disposition of a minor for the purposes of prostitution. The learned Judge goes on to

(*a*) I. L. R. 14 Bom., p. 90.

point out that "adoption is recognized in Hindu Law partly for continuing the family and partly for securing a person competent according to the custom of the community to perform the funeral obsequies of the adoptive parents and to take their property. It should not therefore in the case of dancing girls be confounded with prostitution, which is neither its essential condition nor necessary consequence but an incident due to social influences.....The policy of the Penal Code is not to obliterate altogether the line of distinction between the province of ethics and that of law."

When adoption by a dancing girl would be illegal.

Adoption by a dancing woman would however be illegal if the adoptive mother intends to employ the adopted girl for a life of prostitution during her minority. The Madras High Court has held that, the intention to use the minor adopted girl as a prostitute must be proved by evidence. "Though the adoptive parent may be a prostitute", says Mr. Justice Muttusami Ayyar "yet she may have civil rights. In criminal cases the presumption of innocence must be displaced by positive evidence" (*a*). Similar view was expressed by the Madras High Court in the case of Kamalakshi *vs.*

(*a*) Queen Empress vs. Ramana, I. L. R. 12 Mad, 273.

Ramasami Chetti (*a*). Mr. Justice Subramania Ayyar, extended the application of the rule laid down in the case of Younghusband *vs.* Birmingham T. S. Co. (*b*), *viz* "the general rule is that no rights can spring from or be rested upon an act in the performance of which a criminal penalty is incurred", to transactions touching personal status, and held that "if a woman who makes an adoption under circumstances which render the adoption an offence under section 373, sues to enforce rights alleged to have been created in her favour by that adoption, it would be impossible, consistently with established legal principles to allow such a suit to be maintained." Mr. Justice Best, also adopted the same view and held that "there was authority for the following positions :—(i) that the institution of dancing women cannot be ignored by the Courts and (ii) that adoption by such women is not necessarily illegal and further (iii) that if the adoption was made with the intention of training the child to a life of prostitution, the act would be criminal, and that Courts cannot recognize rights claimed as arising from a criminal act."

The status of dancing girls who may

(*a*) I. L. R. 19 Mad, p. 127.

(*b*) 36 American State Reports 248.

Rules governing status of dancing girls.

ordinarily follow immoral lives being thus to all intents and purposes recognized in Hindu Law, the question next arises what are the rules by which such status is governed. The ordinary Hindu Law does not contain any such rules. The difficulty has sometimes been obviated by laying down rules from analogy with the rules of Hindu Law. For example, so far back as 1864, the Madras High Court held in the case of Chalakonda Alsani *vs.* Chalakonda Ratnachalam (*a*), that a mother and her daughter living together and carrying on the trade of prostitution were governed by the rules of Hindu law relating to ordinary gains of science. If the science was learnt at the expense of the joint family, the gains of such science would be divisible amongst all the members of the joint family. Similarly, if the *nucleus* of the stock-in-trade of a prostitute's profession is furnished from the joint funds of the so-called undivided family, the gains of the profession would be joint property. In another case reported in the same volume (*b*), which is a case of concubinage rather than of prostitution, the relation subsisting between the offspring of a woman born of such adulterous connection came under

(*a*) 2 M. H. C. R., 56.

(*b*) Mayna Bai vs. Uttaram Ibid, p. 196.

consideration. The case had previously been carried to the Privy Council and the Judicial Committee decided that the illegitimate children of an Englishman by two Hindu women who had deserted their husband and lived in adultery with him were Hindus and were to be governed by Hindu Law and that although they lived in copartnership, it was not the copartnership of a joint Hindu family and therefore on the death of each son, his lineal heirs representing their parent would be entitled to enter into the partnership. The case was remitted by the Privy Council for determining whether the title of the plaintiff to succeed to his uterine illegitimate brother could be supported by any course of decisions or any custom. The learned Judges of the Madras High Court observe that "if from any anamalous circumstance, they (the illegitimate sons) cannot be referred to any class, it seems to us that we are bound to reason analogically and apply to them the rules observable by classes to whom they bear the greatest likeness." In Kamakhshi *vs.* Nagarathnam (*a*), daughters of dancing women were held to take the place of sons and in the absence of any positive rule, daughters were to be regarded as sons and to take estates of inheritance from

Custom if any would seem to determine such rules.

(*a*) 5 Mad. H. C. R. 161.

their mother similarly to sons under the general law of inheritance.

Mr. Justice Muttusami Ayyar in a later case (*a*) laid down that "as a matter of private law, the class of dancing women being recognized by Hindu Law as a separate class having a legal status, the usage of that class in the absence of positive legislation to the contrary regulates rights of status and of inheritance, adoption and survivorship." It would seem that the customs or usages of any class which do not require the immoral practices of the class to be proved in order to establish a claim founded thereon, afford surer materials for determining the rights of status than analogies from Hindu Law, which may not be always precise.

Custom or usage of any class regulates status of that class.

It is to be noticed, however, that the Judicial Committee of the Privy Council (*b*) in discussing the claims of an adopted daughter of a woman of the *kanchan* class, who carry on the business of brothel-keeping, as against her natural brothers and sisters, inclined to the view of Mr. Justice West in Mathura *vs.* Esu (*c*). The ratio of their Lordship's judgment seems to be that the Mahomedan Law which was the common law of the

(*a*) Muttukannu vs. Paramasami, I. L. R. 12 Mad, 214.

(*b*) Ghasiti vs. Umrao, I. L. R., 21 Cal. 156.

(*c*) I. L. R., 4 Bom. 545.

parties to the litigation prohibit connection with harlots and practices tending towards the encouragement of harlotry could not be supported according to that law. Their Lordships, however, were inclined to think that there are stronger grounds for maintaining that practices of prostitution are related to worship in temples and meet with countenance from the Hindu law. Members of no community, however, ought to be denied civil rights which the law recognizes, merely because owing to social influences and environments they lapse into immoral lives. The fact is, singing and dancing or prostitution or the three together form the occupation of the greater number of the Naikins of Bombay or the dancing girls of Madras. Prostitution is not however the necessary incident of the lives of these dancing girls, although it may be true as a fact that most of those women that dance and sing lead a loose life. This view has been so far adopted in Bombay that where the father of a Naikin borrowed certain money by pledging family property for the purpose of training the daughter to sing, the transaction of mortgage was enforced and the objection that it was void on the ground of its being immoral was disallowed *(a)*.

Prostitution not necessary incident of the lives of dancing girls.

(a) Khubchand vs. Beram, I. I. R. 13 Bom. 150.

Consequence of prostitution on the relation between prostitute and members of her original family.

What is the consequence of prostitution on the relation between the prostitute and the members of her original family? The answer, it would seem, would in a large measure depend on what is understood by the term "prostitute." Every unchaste woman is not a prostitute and the legal consequences of prostitution as regards status would not follow mere unchastity. Some ancient texts seem to point to different grades of unchastity. Parasara, for example, holds that an adulterous woman is purified by the flow of menses, and if a woman having committed adultery is not willing to repeat her offence, she may be purified by the Prajapatya rite and the flow of catamenia, but a woman who has conceived by adulterous intercourse is far more severely dealt with (*a*). Yajnavalkya also ordains the same rule (*b*). Thus the ancient sages have provided for condoning incontinence under certain circumstances (*c*). There are, how-

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(*a*) Parasara, VII. 4. X. 26. X. 20.

(*b*) Yajnavalkya, I. 70-72.

(*c*) The following observations of the learned Judges of the Allahabad High Court in a recent case however, have come as a surprise on the profession in Bengal. "There is thus no authority for the contention", says Sir George Knox, "that a widow who after her husband's death lives with another man commits an act of unchastity or vice." Dal *vs.* Dini, I. L. R. 32 All 155.

ever other texts which enumerate acts which when performed, render a woman liable to excommunication. Yajnavalkya lays down that "sexual intercourse with a low caste man causing abortion of a child in her womb and killing her husband, these are certainly additional causes of woman's degradation." *(a)*. Vasistha also adopts the same rule. It appears, therefore, that women who descend to adulterous union with men of low caste are regarded as degraded and abandoned. Prostitutes who submit themselves to the embraces of any person who is willing to pay, must necessarily come under the ban of this rule.

Cessation of ties of kinship whether necessary result of lapsing into prostitution.

But the question remains whether the texts cited above point to a cessation of ties of kinship and consequently loss of all rights arising out of such kinship. As we have said in a previous chapter, the desertion of an incontinent wife by a husband does not amount to a divorce. The deserted wife could not validly marry another, as she would do if she were only divorced *(b)*. But at the same time, there is authority for saying that abandonment of a wife for causes which would authorize desertion would entail loss of heritable right in her. Mr. Golap Chandra Sarkar quotes a text of

(a) Yajnavalkya, III. 298.

(b) See *ante* p. 372.

Manu (*a*), in support of the view that a person who becomes outcast by commission of sinful acts most heinous in character becomes also civilly dead.

The text although not dealing with civil rights, ordains certain rites, expressly stating that the rites were to be performed, as if the outcast were a dead person. Mr. Golap Chandra Sarkar therefore is of opinion that "when a woman becomes an outcaste by reason of unchastity, and is deemed dead, the tie of kindred with her undegraded relations becomes severed." The learned author, however, observes :—"That the tie of kindred can be deemed severed or not, according as the unchaste woman is outcaste or civilly dead or not, having regard to the nature and character of her unchasity", and further notices that the conflict of decision on this point has arisen in consequence of this principle of distinction not having been kept in view. Judicial decisions on this side of India have from a long time adopted the view that a woman by lapsing into prostituton becomes severed from her natural family. This view seems to have been adopted by the judges of the Sudder Dewany Adalat in a very early case. So far back as 1846, in the case

Cessation of ties of kinship with original family would depend on the nature and character of unchastity.

(*a*) See Manu, XI. 183-4, quoted by Mr. Golap Chandra Sarkar at p. 370 in his Hindu Law, 4th Edition.

Judicial decisions.

of Taramoni Dassi *vs.* Muttee Baneanee (*a*) two prostitute daughters of a prostitute were preferred to the grandsons of an undegraded daughter, the *ratio decidendi* being that the legal relation between a married and respectable daughter and her prostitute mother ceased as soon as the mother became an outcast.

The High Court again expressd the same view in a much later case (*b*). In the goods of Kaminymoney Bewah, the husband's sister's son of a deceased prostitute was held to have no interest in the estate, so as to entitle him to maintain an application for revocation. Mr. Justice Sale held that the general rule is the rule of severance of the tie of kindred between degraded and undegraded members of a Hindu family.

In the case of Sarnamoyee *vs.* The Secretary of State for India (*c*), the High Court held that a woman who has lapsed into prostitution may become an outcast, but does not cease to be a Hindu and succession to her estate, in the absence of a local custom, is governed by the Hindu Law.

The decision in Kamineymoney Bewa's

(*a*) 7 Sel. Rep.
(*b*) I. L. R. 21 Cal. 697.
(*c*) I. L. R. 25 Cal. 254.

case, however, was approved of in this case, but in this case a sister, who is no heir under the Bengal School claimed the estate of her deceased prostitute sister on the ground that ordinary Hindu Law did not apply to the case of succession to prostitute's property and that the case should be governed by those principles of natural justice, not inconsistent with Hindu law according to which a sister, a near consanguineal relation should be held in the line of heirs and secondly, the deceased prostitute should be considered as a person who is not a Hindu within the meaning of section 331 of the Indian Succession Act. Both these contentions were negatived by the High Court. Of course, it is very difficult to formulate any rule which is to be the guiding principle in the devolution of property in such cases which may be regarded as abnormal. But it is obvious that it works a great hardship upon such relations of the fallen woman who may have adopted the same vocation as herself and had possibly been with her for the best portion of their lives. It would seem to be more in consonance with natural justice that the property of a degraded woman should be left to such persons.

It is thus clear that from 1846 to 1897 the course of decision has been uniform in

holding that the effect of a woman lapsing into prostitution has been that by her degradation, the tie between her and the undegraded relations is broken. In 1906, Woodroffe J., while unwilling to upset what he found to be the settled law of the Court, was *dubitante* as to the correctness of the view adopted by the Court in the earlier cases, cited above. But this doubt did not prevail, for the learned Judge laid down the same law as was enunciated in those earlier cases (*a*). In a subsequent case (*b*), however, Mr. Justice Fletcher for the first time struck a note of dissent. His Lordship found it impossible to agree with the decision in the case of Kaminey Bewah (*c*) and held that there was a conflict between that case and the case of Sarnamoyee (*d*) which he approved of. The result was that his Lordship refused letters of administration to the sister's daughter of the deceased prostitute who was also a prostitute, on the ground that she is not an heir under the Hindu Law which was the personal law of the prostitute. But the learned Judge did

(*a*) Bhutnath Mandal vs. The Secretary of State. 10 C. W. N. 1085.

(*b*) Sundari vs. Nemyi Charan Daw, 6 C. L. J. 372.

(*c*) I. L. R. 21 Cal. 697.

(*d*) I. L. R. 25 Cal. 254.

not proceed to decide, as it was not necessary to decide, that the caveator who was a member of the deceased's husband's family could claim to be an heir. This conflict of cases in the Calcutta High Court as indicated above led to a reference to a Full Bench, of the following question :—"Whether a person who would have been entitled to inherit the property of a Hindu woman if she had not been degraded is disentitled to do so by reason of her degradation ; or, in other words, whether such property escheats to the Crown in the absence of the degraded heirs" (*a*) ; but the reference became infructuous and the point was not decided by the Full Bench as the facts upon which the reference purported to have been made had not been finally determined. The question again came up for decision in the case of Tripura Charan Banerji *vs.* Harimuty Dassi (*b*) and Mr. Justice Stephen who decided the case, upon an elaborate review of all the authorities on the point took the view of the earlier cases. Mr. Justice Stephen failed to discern any conflict between the case of Kaminey Bewah (*c*) and that of Sarnamoyee (*d*) and held that al-

(*a*) Chatoo *vs.* Rajaram, 11. C. L. J. 124.

(*b*) 15 C. W. N. 807.

(*c*) I. L. R, 21 Cal. 697.

(*d*) I. L. R. 25 Cal. 254.

though a Hindu woman does not by degradation cease to be a Hindu, her degradation causes a severance with her family. But Mr. Justice Stephen refused to extend this rule of severance beyond limits for which there was authority and held that sons and chaste daughters born *after* degradation can inherit to their mother.

Is the rule of severance a n inflexible rule?

Is the rule of severance laid down by the Judicial decisions an inflexible rule? Where members of a prostitute's family, although they may keep themselves free from the stain of degradation are yet, as a matter of fact, freely mixing with her, can it be said that the severance in law is sufficient to bar their succession to the estate of the prostitute? The question as to whether the severance is complete or not may, as stated before, depend upon the character of unchastity of which the woman is guilty—but it may also depend upon the light in which the relatives take the offence. It seems to us that in such cases there is considerable room for the application of principles of equity and natural justice, not inconsistent with Hindu Law which would meet the requirement of each particular case.

The Madras High Court was formerly inclined to the view that prostitution of a woman severed the legal relation between her

Views of the Madras and Allahabad High Courts.

and her natural family and *a fortiori*, between her and the family of her husband (*a*). These decisions lay down that where there is competition between a degraded and an undegraded heir of a degraded woman, the former has preference. In the later case of Subbaraya Pillai *vs.* Ramsami Pillai (*b*) the Madras High Court did not evidently assent to this view. It held there that loss of caste did not dissolve the matrimonial tie and that the broad proposition that degradation of a woman in consequence of her unchastity entails in the eye of law cessation of the tie of kindred between her and members of her natural family and also between her and members of her husband's family was unsustainable. Later Madras cases affirm this view (*c*). The Allahabad High Court is in complete agreement with the Madras Court (*d*). In a recent case, the former court decided that by her degradation a woman does not cease to be a Hindu unless she became a convert to some other religion. In such a case as this, the rule of succession to property would be the ordinary rule of

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(*a*) Sivasangu *vs.* Minal I. L. R. 12 Mad. 277. Narasanna *vs.* Ganguly 13 Mad. 133.

(*b*) I. L. R. 23 Mad. 171.

(*c*) Angammal vs. Venkata, I. L. R. 26 Mad. 509.

(*d*) Narain *vs.* Tilok, I. L. R. 29 All. 4.

Hindu Law. The decision of the Madras Court has elaborately dealt with the question as to how far Act XXI of 1850 has affected the Hindu Law. A question was raised as to whether the act applied only to cases of where there was loss of caste on account of renunciation of religion or it also applied to cases where loss of caste was due to other causes. It is true that Mr. Justice Dwarka Nath Mitter in an early case took the more limited view (*a*). But the preponderance of authority is in favour of the conclusion that the act relieves the forfeiture of the rights of those who are deprived of caste on other grounds as well (*b*).

Act XXI of 1850.

The act, however, is inapplicable to cases where instead of a prostitute's right being in question, we have to ascertain who is entitled to her property.

Although the status of prostitutes is for some purposes recognised by Hindu law or usage the rights and liabilities of courtesans on a contract would be regulated by the

Contracts by and with prostitutes.

(a) 19 W. R. 367 (Keri *vs.*. Moniram). *(b)* As to Calcutta, see Matangini *vs.* Joykali. 5 B. L. R. 466, (493) ; Saudamoney *vs.* Nimy Charan, 2 T & B, 300. As to N. W. P., see Bhujgun *vs.* Gya, 2 N. W. P. H. C. R. 446 ; Taj *vs.* Kousilla, 1 Agra H. C. R. 90. As to Bombay, see Parvati *vs.* Bhiku, 4 Bom. H. C. R. A. C. 25 ; Honamma *vs.* Timanabhat, I. L. R. 1 Bom. 559.

Indian Contract Act. Even before the passing of the Indian Contract Act in the case of Satov Kasbin *vs.* Hurreeram(Bellasis Rep 1), the Sadar Court of Bombay dealt with the question of essential immorality of the *kasbins'* calling as affecting their civil rights. There a courtesan mother sued for the wages of the daughter as a concubine. The Shastri, when consulted, said that the sum stipulated was recoverable, but the court said that "the subject of the contract being of so direct an immoral tendency, and being bad in itself, the court considers, notwithstanding the provisions of Hindu law to the contrary, that an action on such a contract cannot and is not to be maintained in the Civil Court."

In the case of Goureenath *vs.* Modhoomonee (*a*), it has been laid down that a landlord cannot recover rent of lodgings knowingly let to a prostitute who carries on her vocation there. In this case Sir Richard Couch, Chief Justice, refused to follow the rules of Hindu law on the subject and applied the principles of English law (*b*) to the case. Then in the year 1872 was enacted the Indian Contract Act which is

(*a*) 18 W. R. 445.

(*b*) See the case of Pearce *vs.* Brookes. L. R., I Ex 213 (1866).

justly regarded as a code of English law. Contracts of the description mentioned in Goureenath's case cited above would now fall within the mischief of section 23 of the Act which embodies the principles of English law on the subject (*a*). And it is no wonder that it should be so for the Indian Contract Act is, like any other piece of legislation in British India, the work of a body of English specialists who follow to a great extent the current of English opinion.

(*a*) (1908) Chogalal *vs.* Pyari, I. L. R. 31 All, 58.

THE END.

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