THE LAW OF DEBT IN ANCIENT INDIA

By

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Dedicated to my respected Ācārya
Dr. T. Burrow
Boden Professor of Sanskrit
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INTRODUCTION

I feel great pleasure to announce a new addition to the Sanskrit College Research Series, viz. '*The Law of Debt in Ancient India*' by Dr. Heramba Nath Chatterjee, Professor and Head of the Dept. of Pāli of our College. Of the eighteen *Vyavahārapadas* recognised in the *Dharmaśāstras*, the first one, the dispute arising out of recovery of debt (*Ṛṇādāna*) is regarded as very important. An extensive *nibandha* literature in Sanskrit has been composed on this topic. Among the modern scholars, Mm. Dr. P. V. Kane and Dr. L. Sternbach have made valuable contributions on some of the aspects of this problem. It is indeed a matter of great pleasure that Dr. Chatterjee has devoted his energy to this special field and his labours will be rewarded if the work attracts the attention of the scholars interested in India's contribution in juridical fields.

Sanskrit College,
Calcutta,
April, 1960

BISHNUPADA BHATTACHARYA
Principal.

FOREWORD

At this critical stage in Indian legal and constitutional development the more we know about the ancient indigenous law of India the better. The present book is an example of a transitional stage from the old-fashioned philological descriptive account of the Hindu law, written by orthodox Brahmins in an effort to show that the jurisprudence of the Indians was every bit as good as that of their English masters, to the writings of the future age, in which all comparative law will be constructive and deductive, and in which all systems, preliterate, literate, traditional and empirical, will be equally the scope of the juridical investigator. It is a natural and very proper transition. P.V. Kane, than whom there has been no greater name in Dharmaśāstra studies, was motivated by traditional Indian encyclopedism and by the defensive attitude to which I have alluded. At the opposite end of the spectrum we have had the works of L. Sternbach, whose explorations into the law of the Smṛtis were based upon a western legal training (in fact the Civil law), and whose efforts have been stimulated by the admitted need to know more about popular literature which, as usual with traditional societies, gives great importance to disputes, to rights and duties. The only sociologist who cared for Hindu law in any detail was G. Mazzarella, whose life's work it was to show how a pattern of all legal developments could be illustrated almost exhaustively from Dharmaśāstra sources. The unique mind of J. J. Meyer combined anthropological interests with a willingness to cope experimentally and pragmatically with Smṛti, and his studies of Dharmaśāstra, Arthaśāstra, and Purāṇa attempted to reconstruct upon historical principles the order in which the accumulated sediments to be found in that literature could be understood. A transition to the coming stage, in which surmise and prejudice, speculation and emotionally charged representations of the Indian materials will give place to objective but constructive research, was bound to come, not so much because those scholars paved the way for it, as because the times demand it.

It is obvious that India cherishes her past. She is not often very clear why she does, and some curious statements (as for example,

that the Vedas were "secular") emerge from time to time which suggests that she values it as some kind of emotional prop. Whether or not this is so, it remains a fact that every nation, especially in times of trial, relies upon what it stands for, and what it has been. And in this it is bound to pay great attention to its norms. The norms hold up a mirror to society, and it is a fact that no reformers, however innovative in intention, have the confidence to demand public support without at the same time appealing to the traditional norms "at their best".

But if India is to use her past as a means of understanding her present predicament, and as an aid to finding her path for the future, it is not sufficient to adopt a negative and hostile attitude towards those parts of it which have become inconvenient and so "outworn". Untouchability, for example, can be viewed (as no doubt it is in some quarters) as a cruel aspect of exploitation. Sociologists, however, ask what function it performed when both the clean and the unclean castes accepted it without question; and they ask what has changed, so as to deprive the institution of the value it once evidently had. As it happens, the Dharmaśāstra, which is rightly criticised as propounding and attempting to enforce principles (such as that of the perpetual dependence of females) which no longer command acceptance, and indeed get in the way of economic development and social revitalisation, was a body of norms built to weld Indian society together, an ambitious and enormous intellectual endeavour, undertaken by specially qualified people and facilitated by the admiration and the countenance of the entire society. Its roots were deep in the most generally felt needs of all sections of the people conceived hypothetically and comprehensively. And it embraced all aspects of life, both the "seen", that is to say, the rational and practical, and the "unseen", about which only authority can teach us what is truth.

Some of the factors which went to make up the "unseen" aspect of the Śāstra have ceased to be valid. Some suppositions cannot now be shown to have a factual foundation. But the "seen" aspect is, for the most part, as practical in its conception and as useful, as it was when it was cultivated right up into the second half of the nineteenth century. As Mahāmahopādhyāya Dr. Sir Gaṅgānātha Jhā saw clearly, those who went to reform or displace the tradi-

tional law must know in detail what it is they are displacing. And the fact that India appears to have accommodated herself to Anglo-Indian legislation for so long does not (as everyone knows) mean that Indians are fully confident that they have the key to justice and social harmony actually in their hands. Some fairly recent remarks of Mr. Justice P.B. Mukharji frankly show that India is in a dilemma. She does not know how to move forward and she cannot go back. The spirit of her past, investigated objectively, in a comparative and sociological sense, will surely reveal to minds aware of the contemporary need, something about the path the nation must tread. Continuity with the past must be re-established, embracing the Anglo-Indian period, and accepting sincerely the contributions made (as so often, piecemeal and by accident) by the British judges and their Indian colleagues and successors.

This is easy to say, and as long as we remain in purely in-bred, inward-looking scholastic circles we shall not progress. The public likes scholars to have their ivory towers, but it also wants to see value for money. Works like Sir S. Varadachariar's *Hindu Judicial System* were accurate and stimulating; and an interest in Dharmaśāstra was a gentlemanly hobby for many an up-to-date lawyer of that generation. But the conflict between the Hindu Sanskritist in his home and the Anglo-Indian judge on the Bench was not resolved. No one required scholars of that generation to be whole and entire people, single-minded and integrated. The arts they practised at their work did not have to make sense in terms of the culture in which they believed and in which the vast majority of their fellow countrymen were brought up. Now the day of reckoning has come. Hindus must know what they want, and what justifies them in wanting it. They must rediscover their traditional virtues and recognise their inherited aptitudes for what they are.

The social reformer, going in this spirit to the ancient sources, whether in Sanskrit or Tamil or, in modern western translations, comes at once against that barrier : the writers who knew their sources and were steeped in it, who believed in what they taught, turned their backs (or appeared to turn their backs) on everyday life where it failed to square with the norms. A kind of self-deception prevented reconciliation between experience and theory. If life did not square with the texts, it was life, not

the texts, that was wrong! It is at this point that Sanskritists, historians of India in the widest sense, must come forward with their information about what the ancient norms really were, and how their exponents expected them to work. And the proper place in which to put the emphasis at present would seem to be the "seen" portions of the law. To understand much of them one does, it is true, need to have a general acquaintance with some of the basic presuppositions of the "unseen" part of the Śāstra, but the division between the "seen" and the "unseen" is a real one and we can rely upon it.

We cannot move to the stage in which Hindu law can be fruitfully and confidently used by comparative lawyers, including any who are altogether uncommitted to its "unseen" presuppositions, unless we have the co-operation of scholars who are Śāstrīs in the orthodox sense. Unless we can have access to the material as expounded by specialists we are nowhere. The Śāstrī of an earlier generation was keen to teach, but only to those who wanted to equip themselves in the science, preferably those who were prepared to believe in it and to accept its doctrines. The traditional doctors of Hindu law regarded un-śāstric behaviour as abhorrent, and would not be able to discuss constructively their cherished norms with people committed to standards incompatible with them. In a very real sense no Brahmin teacher could learn anything in the West which would add in any way to his qualifications as a teacher in India. But, by the same token, it was doubtful if a Brahmin could accept as a pupil a western student who was not fully committed to lead an orthodox Hindu life. Sir William Jones's experience was almost unique: certainly his generation was unique. And we must remember that there were great inducements at that time which might operate on some Brahmin teachers to instruct these uniquely powerful and responsible Europeans.

Dr. H. N. Chatterjee did his duty (in 1965) by the Saṃskāras, which belong to the "unseen" portion of the Śāstra. Then he came to Britain to work in peace on that science seen as a whole and seen in a different and a comparatively-inclined environment. His study of debt, which constitutes this book, typifies our present stage, in that it is a contribution in objective terms by an orthodox Śāstrī to discussions of indebtedness which have

yet to commence, discussions which will be constructive and which will take into account the other personal laws of India and the inherited statutes of the British period. Here we have information not only given with constant regard to the original authorities, but given so that it can be utilised by practical men, and by comparative jurists. Without such work future discoveries will have been impossible. It is greatly to be hoped that he, his colleagues and pupils, will go on and tackle the other *vyavahārapadas* in the same spirit, and in the same tone.

In case anyone should fear that what is set out in this book has no relevance to modern life, it will be sufficient to comment that this exemplifies where error of this nature occurs. The subject of the Pious Obligation is part of the Hindu law enforced in the courts (though not to persons governed by Dāyabhāga law); and so is that strange survival, the liability of a son to pay his father's suretyship debts (upon which subject Dr. Chatterjee gives the necessary qualifications and limitations). The law of Damduppat is characteristically still a part of the Hindu law in large areas of India (for how long?), while it supplies the rationale behind numerous provisions of State statutes relating to the relief of agricultural debtors. At present these survivors from the pre-British age seem naked and strange. A perusal of this book will show how they arose and where they fitted into the system, and where, by inference, we may find their roots to this day.

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PREFATORY NOTE

It is convenient to commence by describing the jurisprudences of which this book is a reflection of a part, in terms which it itself accepts. The term *dharmaśāstra* is generally treated as synonymous with the *smṛti*-texts—'revelations remembered'.[1] These texts do not profess to embody the direct record of the revelations by the seers (as the *śrutis* do), but they are stated to contain the purport of the revealed texts as recollected by the sages,[2] who were their authors. The authoritativeness of these *smṛti*-texts is recognised on the consideration that the seers, the repositories of the revelation, are the same persons who are the authors of these texts, which are founded on the *śrutis*.[3] It is contended that even when the *śruti*-texts corresponding to the precepts contained in the *smṛtis* are not expressly traced, the inference should be that they did exist, but were lost owing to the frailty of human memory or some similar cause.

The number of such *dharmaśāstras* is not insignificant.[4] These texts represent a mixture of morality, religion and law. They do not confine themselves to the enunciation of juristic rules for guidance of human conduct. The ceremonial rules, moral and religious injunctions and legal precepts are noticed in juxtaposition and no demarcation between them is uniformly maintained. The ethico-religious obligations are stressed here more in comparison with the legal obligations. The authors see even secular questions with an eye to the moral as well as social consequences of the rules. The composers of the *dharmaśāstras* however did not

1. ...dharmaśāstraṃ tu vai smṛtiḥ. Manu, 11.10.
   For the other senses in which the word *smṛti* is used see, P. V. Kane, *History of Dharmaśāstra*, 1, 132.
2. Bṛhaspatismṛti, Saṃskārakāṇḍa, 13.
3. Apī vā kartṛsāmānyāt pramāṇam anumānaṃ syāt.
   Mīmāṃsādarśana, 1. 3. 2.
   'But on account of the agent being the same, inference would be the proof (of *smṛti* having its basis in the *Veda*).' The translation is by G. N. Jhā in *The Pūrvamīmāṃsāsūtra of Jaimini*, 56.
4. Vide P. V. Kane, *History of Dharmaśāstra*, 1, 131-135.

arrogate to themselves the position of law-makers, but they claimed to be exponents of the divine precepts of law and compilers of tradition handed down to them.

These *dharmaśāstras* cannot be stated to be stagnant in their ideas. In the body of the *śāstras* themselves there are suggestions that different regulations had to be adjusted in view of the changed condition of the society. Manu declares that sets of duties differ in different ages.[1] He observes that in his treatise he has stated separately about the primeval laws of the countries, of the castes, of the families, and the rules concerning the heretics (*pāṣaṇḍa*) and the companies of traders and the like.[2] Āpastamba introduces his *dharmaśāstra* by stating that his deliberations on *dharma* will relate to those based on customs as settled by the agreements (of those versed in law).[3] Bṛhaspati gives expression to the idea that the different types of substitute sons as recognised by the *śāstrakāras* cannot be accepted because people (of his time) have lost vitality[4]. Yājñavalkya expresses the view that he is against the opinion that one belonging to the twice-born caste should marry a woman belonging to the Śūdra caste. (cf. Manu. III. 12-13).[5] Even sometimes in the same text we notice earlier and later prescriptions by the same author. Thus Manu prescribes *niyoga* (a practice analogous to the levirate)[6] and subsequently condemns its use.[7] Bṛhaspati refers to this and explains the position.[8] Gautama mentions different varieties of interest.[9] Manu refers to four of them and prohibits their use.[10] Nārada while speaking of the rates of interest[11] lends recognition to the different customary rules.[12] These are some

1. Manu, 1. 85 ; 1. 86.
2. Manu, 1, 118,
3. Athātaḥ sāmayācārikān dharmān vyākhyāsyāmaḥ.
   Āpastambadharmasūtra. I. 1. 1. 1.
   Vide here the explanation by Haradatta and the notes by Bühler in the translation of the same in S. B. E., 11, 1.
4. Bṛhaspatismṛti, XXVI. 69.
5. Yājñavalkya, 1, 56.
6. Manu, IX. 59-61.
7. Manu, IX. 64-68.
8. Bṛhaspatismṛti, XXV 16.
9. Gautamadharmasūtra, XII. 31-32.
10. Manu, VIII. 153.
11. Nārada, IV. 103-104.
12. Nārada, IV. 105

illustrations to show that there was a necessity for different writers on law who could formulate newer regulations in adjustment with the changing circumstances. This process went on for a long period, but unfortunately the texts of many smṛti-writers of later ages are lost to us. Attempts have been made to reconstruct some of them on the basis of their quotations in different commentaries and digests.[1]

The productive period of the *smṛtis* was succeeded by the critical period. The criticisms and expositions in the commentaries of those *smṛti*-texts could not be of an avowedly aggressive character. The commentators did not disown the authority of the *dharmaśāstras* and their job mainly consisted in interpreting the rules and reconciling their pronouncements in the case of apparent conflicts and contradictions. Sometimes however, it may be supposed that just to meet the demand of a progressive period the commentators, not being able to introduce innovations, took to ingenious interpretations. The result in some cases was that the *smṛtis* themselves contained in them several customary laws which might have lost their original meaning and character and sometimes (let us presume) intentionally the laws were couched in vague language (e.g. Manu, VIII. 153; Bṛhaspati, X. 36; X. 42.). The commentators who were far outdistanced in time from these *smṛti*-texts often attempted to explain these situations in their own way sometimes in an unintelligible manner. They twisted the texts, often taking recourse to the secondary meaning of the words in a pedantic attempt to find out a meaning.

J. Jolly collected Hārita's *vyavahāra* materials in the *Bayerische Akademie der Wissenschaften*, 18;

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K. V. R. Aiyangar, collection of the texts of Bṛhaspati under the title of *Bṛhaspatismṛti*. (Baroda, 1941).
S. C. Banerjee, reconstruction of the Dharmasūtras, in *Dharmasūtras, a study in their origin and development*. (Calcutta, 1962), 237-344.

Commentaries mostly partake of either of the two characteristics. The normal ones attempt to present the synonyms word by word and add short comments. They generally get the appellation of *tīkā*. The others having the nomenclature of *bhyāṣya* assume voluminous shapes because of the introduction of quotations from other texts, and interpretation of the meanings of the text in a larger scale, recording the customary practices on the issue (e.g. Medhātithi on Manu, VIII. 3 ; VIII. 165),[1] mentioning rarely to actual cases (e.g. Asahāya on Nārada, IV. 6) and finally reconciling the apparent contradiction between the rival views of standard authors (e.g. Medhātithi on Manu, VIII. 143). Consequently some of the *bhāṣyas*, because of superior scholarship and sound judgment, occupy an authoritative rank. The *Mitākṣarā* of Vijñāneśvara is a remarkable instance, for though professedly a commentary on the *Yājñavalkya-smṛti* it is treated as a final authority over the whole of India—Bengal alone excepted.

The digests, otherwise designated as *nibandhas*, are not particularly affiliated to any special *smṛti*-text in the same form in which the commentaries are, but they are also explanatory glosses with the distinct purpose of reconciling apparent contradictions of the *smṛti*-texts. The commentaries more or less stick to the texts they interpret, but the *nibandhas* bring systematisation and synthesis of the *smṛti*-texts presented in an unsystematic form. With their expert knowledge these writers critically cellect and arrange the topics as discussed by different *smṛti*-writers and they even discuss the views of the commentators. The interpretations that they put upon them sometimes acquire a sort of independent authority in particular territories which specially favour them.[2]

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1. In his *bhāṣya* on the *Manusaṃhitā* (VIII. 3) Medhātithi refers to the customary rate of interest in respect of paddy. He refers also to the special form of enjoyment of the usufructuary pledge. On VIII. 165 he refers to fraudulent mortgage and fraudulent surety. On Manu VIII. 46 he refers to the practice where the debtor is made to repay the debt by selling himself.
2. Reference may be made of the *Mitākṣarā* school which because of certain modifications of its doctrines by some digest-writers has been sub-divided into sub-schools. Thus the *Vīramitrodaya* of Mitramiśra is regarded as authority in the Benares school ; the *Vivādaratnākara*, the *Vivādactntāmaṇi* and the *Vwādacandra* in the Mithila school ; the *Vyavahāramayūkha* in the Bombay school and the *Smṛticandrikā*, the *Vyavahāranirṇaya*, the *Parāśara-mādhavīya* and the *Sarasvatīvilāsa* in the Madras school.

Though the commentaries, so far as our present knowledge goes, have ceased to be written on the original *dharmaśāstras*[1], the *nibandha*-texts were composed and compiled even during the periods of British patronage in India. Reference may be made to the compilation of the *Vivādārṇavasetu* in 1773-1775 by eleven *Paṇḍitas* at the direction of Warren Hastings. (It was translated into Persian and subsequently translated from Persian into English by N. B. Halhed under the title of *A code of gentoo laws or ordinances of the Pundits* in 1776 and reprinted in 1777 and 1781. It was translated into French by Robinet and into German by Raspe.)[2] The other important work is the *Vivādabhaṅgārṇava* by Jagannātha Tarkapañcānana in *c*, 1792 A. D. and translated by H. T. Colebrooke in three volumes in 1796-7 and reprinted in 1801, under the title of *A digest of Hindu law on contracts and successions.*[3] This goes to show that the forward march of juridical ideas in India went on almost in an unending process. As recently as 1968 Mr. Justice Hegde said in the Supreme Court : "Law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient texts, the courts must give them a liberal construction to further the interests of the society. Our great commentators in the past bridged the gulf between law as enunciated in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with

1. Mitramiśra's commentary on the *Yājñavalkyasmṛti* may be regarded as the latest commentary on an original *smṛti* text.
2. It is regrettable that hardly any substantial use could be made of this intriguing work for this book. The printed edition of 1888 (one printed in Śaka 1810, Saṁvat 1945, in Bombay entitled Vivādārṇavasetu has the following description—Mahārajaśrīśrī 105 raṇajitsiṁhasabhālaṁkāracūḍāmaṇiśrīmadvidvadvaraviracitam) is very rare and was not available to me. The manuscript available to me did not agree with Halhed's 'Gentoo Code' and hence many interesting versions of *śāstric* rules, some very original, could not be checked or verified. For information it may be stated that Mrs. Rosan Rocher has taken up a critical edition of the text on the basis of several msnuscripts collected by her from India and abroad.
3. For texts on *Smṛti* compiled under the patronage of British scholars reference may be made to the informative section on '*The British as patrons of the śāstra*' in J. D. M. Derrett's *Religion, law and the state in India*, 225-273.

the prevailing conditions. To an extent, that function has now to be discharged by our superior courts."[1]

In my attempt to find out materials for the subject of my book I have depended on the informations presented in the *dharmaśāstras*, as understood in the light of the expositions in their commentaries and the digest-texts of the latest available period as far as practicable. To reconstruct historically the original meaning of the *smṛtis* is often a speculative task. The words are sometimes technical and precise, at times vague and ambiguous. In many cases, we fear, the ambiguity was deliberate. Living oral tradition was relied upon for their exposition. I have leant frequently and readily upon the commentators who were, through the ages, the best qualified expositors. But I have endeavoured to form an independent opinion of the original meaning wherever this could be derived.

Apart from what has been said above, the character of the *dharmaśāstra* as rightly explained by M. Robert Lingat[2] is not and never was purely descriptive. It offered a norm as sanctioned by righteousness and held up a mirror to the prestige-holding classes of it in order that gradually and insensibly they might adjust, develop and extend their customs so as to conform to a common standard. In reading this book the dual character of the *śāstra* (its analytical and 'missionary' qualities) must be borne in mind.

Those who are engaged in research work on *dharmśāstra* should be under deep debt of gratitude to the scholars, oriental and occidental, for the service rendered by them in different aspects of the *śāstra* in the form of critical edition of the texts or of their expositions or of learned dissertations. Some of the ramarkable contributions in the field have been pointed out in the appendix (A).

In the present dissertation I have concentrated on the discussion of the laws of debt in ancient India. The digest-writers in general follow the classfication of the title of recovery of

1. V. D. Dhanwatey v Commr, I. T. A. I. R, 1968 S. C. 683 § 31, p. 696.
2. M Robert Lingat, *Les Sources du Droit dans Systéme Traditionnel de L'Inde*, summarised by Dr, Derrett at '*A new treatise on the nature and sources of the Dharmaśāstra*' *in Purāṇa* (Benares), X-I, (1968) 77-94.

debt as presented by Nārada under seven heads, namely, the debt to be paid, the debt not to be paid, the persons by whom it should be paid, the manner in which it should be paid, the time in which it should be paid, the mode in which a loan should be issued and the mode in which it should be taken back[1]. The order is obviously not a logical one, but no doubt it was practical in ancient times for pedagogic purposes. Here in the present book the subject-matter has been distributed over six chapters. The first chapter is devoted to the concept of debt and it has been followed by the second chapter which discusses interest on a loan. In the third chapter the subject of discussion is the liability to discharge the debt. The question of suretyship as *security, I*, has been taken up in the fourth chapter. The fifth chapter is devoted to pledge as *security. II.* The sixth and the last chapter discusses the question of recovery of debt.

I have to confine myself within the prescribed limits in view of the fact that voluminous *śāstras* have been developed on different topics concerning the law of debt. Even those topics which have been discussed here connot claim to be exhaustive because in detail each of them may deserve a distinct independent dissertation. For instance, pledge itself, because of its various classifications and sub-classifications, may be treated as a subject of study by itself. The same is the case with suretyship and interest.

'Ancient India' as used in the title demands an explanation. The term ancient has been used here in a general sense in contra-distinction to the term 'modern'. The line of demarcation between ancient and modern is not chronological but cultural.[2] By the title 'Law of debt in ancient India' we understand here the laws

[1] Nārada, IV, I ; Bṛhaspatismṛti. X. 3.
Vide the interpretation of the verse of Nārada by Vijñāneśvara on Yājñavalkyasmṛti, II. 37.

[2] N. C. Sengupta in his '*Comparative view of Law in ancient India*' (in Studies in the cultural history of India, Agra, 1965, p. 62) observes : 'By ancient India, for the purpose of this article, I mean India as pictured in the literature from the days of Ṛgveda down to the latest Dharmaśāstras. It is virtually impossible to delimit this great era by dates ; for the guesses of scholars, for they are, after all, little more than that, differ not only by centuries but even by millennia.'

of debt as are presented in the *smṛti*-texts, interpreted in their commentaries and discussed in the digests. Some of these digests have of course been composed towards the end of the 18th century. In other words, I have not gone into the details of the laws of debt as modified in the legal codes of modern India, which have a common-law origin and are 'Anglo-Indian' in flavour.

As to the method pursued in the present dissertation, it may be stated that each topic of discussion has been dealt with more or less in evolutionary stages. Accordingly the views of the *smṛti*-writers in the accepted order of their dates[1] have been placed first and they have been followed by their expository texts in the form of commentaries or digests. Sometimes however the commentaries had to be utilised before other *smṛti*-texts because without their help the meaning of the *smṛti*-text concerned could not be ascertained. But as far as possible, they have been arranged in historical order. That may help us to understand the evolution of ideas and particularly the contribution made by each writer towards that evolution. The *Arthaśāstra* attributed to Kauṭilya (or Kauṭalya) as a text independent of the *smṛti*-texts has been referred to at the beginning of the topic where the text contains similar materials. I have not concerned myself with the disputed authorship (or authorships) and date (or dates) of the *Arthaśāstra*[2].

Almost in each case a conclusion has been drawn in the light of the discussions made and attempts have been made often to suggest possible explanation for the provisions of the *śāstras*.

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1. The chronological order of the *smṛti*-writers, their commentators and the digest-writers has been separately indicated in appendix B.
2. Thomas Roger Trautmann in '*The structure and composition of the Kauṭilīya Arthaśāstra*' (unpublished thesis—London, 1968) shows through examination by computer that the work is composed by several hands.
   Vide also, Hartmut Scharfe, *Untersuchungen zur Staatsrechtslehre des Kauṭalya* (Wiesbaden, 1968) ;
   T. Burrow, 'Cāṇakya and Kauṭalya,' in the Annals of the Bhandarkar Oriental Research Institute, XLVIII-XLIX (1968), 17-31.
   Of special importance are :
   Benoy Chandra Sen, *Economics in Kauṭilya*, (Calcutta, 1967).
   R. C. Hazra, Kauṭilya Studies. (in Our Heritage, Vol X-I, January-June, 1962—Vol XV-II.)
   Dieter Schingloff, Arthaśāstra studien II. in Wiener Zeitschrift für die Kunde Sud-und Ostasiens und Archiv für indische Philosophie, Band XI, 1967. (Wien).

Besides the table of contents at the beginning of the dissertation, I have presented an analytical table of contents of each chapter at the beginning. It has been followed by a separate bibliography of the contributions in that particular subject indicating concisely my own approach and contribution in the field. Each chapter has a summary of its own at the end.

A glossary of the technical terms has been added at the end of the disquisition in appendix C.

The subject-matter of my discourse cannot claim to be totally unexplored. In some of the topics, it must be admitted that significant contributions have been made by our fore-runners and they have been indicated and acknowledged properly in respective cases. But even in these cases I have endeavoured to improve on the previous discussions by way of interpretation, a critical approach and the introduction of newer materials from the commentaries and the digests. The subjectmatter totally as such has not yet received deserved attention and I have devoted myself to make a systematic study of the law of debt in ancient India in the aspects pointed out.

It may be mentioned in this connection that early European works dealing in part with 'Contract' (which was applied to the Hindus under the Charter of the Supreme Courts of Calcutta, Madras and Bombay and their successors, the original Sides of the High Courts in these cities until the introduction of the first Indian Contract Act)[1] are of value as they show what a great interest was taken in Debt (*ṛṇādāna*) by the East India Company's servants and the judges of the Supreme Courts (who were judges appointed by the Crown). The level of learning is not always profound, but the continuity of the *Dharmaśāstra* learning is preserved. Reference may be made to the following texts :

Sir F. W. Macnaghten, *Considerations on the Hindu law as it is current in Bengal.* (Serampore, 1824). In pp. 377-404, he deals with the rules of contract and confines himself to the *śāstric* texts mentioned in the digest of Jagannātha.

W. H. Macnaghten, *Principles and precedents of law*, (Calcutta, 1828) I. Here he discusses the question relating to debt under the section of contracts. (pp. 120-129).

1. Vide, G. C. Rankin, Background to Indian law.

In the second volume (Calcutta, 1829)[1] he records questions and answers on debt (pp. 277-289), they being the opinions of the Hindu law-officers attached to the several courts of judicature subordinate to the Presidency of Fort William.

Sir T. Strange, *Hindu law* (Vols. I and II, London, 1830). He discusses the rules on contracts with quotations from *śāstric* texts in the first volume of his text (pp. 269-320).

Treatise on obligations and contracts by H, T. Colebrooke (London, 1818) was intended to be used as a textbook in the Company's Courts (Sadar Diwani Adalat and its inferior Courts) as a judicious amalgam of English law, Roman law and Hindu law. (Reference may be made to pp. 24, 25, 28, 31, 58 etc. where he makes mention of *śāstric* points). It was occasionally used[2] but it never became an effective rival to English law, administered along with the basic Hindu rules under the general authority of 'justice, equity and good conscience'.

I humbly admit that I could not properly utilise the valuable contributions in the field, written in German or Italian. A reference to some of the important texts which deal with some of the aspects of my subject is made in appendix D.

In the accounts of Megasthenes it has been stated: 'The Indians neither put out money at usury nor know how to borrow. It is contrary to established usage for an Indian either to do or suffer a wrong, and therefore they neither make contracts nor require securities'[3]. (*Conf. Suid. V. Ivdoi*).

The statement appears to be contradicted by another as contained in Fragment XXVII. C. (Nicol. Damasc. 44; Stobs. Serm. 42)[4] which runs as follows: 'Among the Indians one who is unable to recover a loan or deposit has no remedy at law. All the creditor can do is to blame himself for trusting a rogue'.

In view of the contradictory nature of the two statements

1. The two volumes were published in one volume in Madras, in 1874.
2. Vide. J. D. M. Derrett, *Religion, Law and the state in India*, 252.
3. Fragm, XXVII, B., Aelian. V. L. IV, I.; vide *Ancient India as described by Megasthenes and Arrian*, by J, W. McCrindle, Revised second Edition by R. C. Majumdar, (Calcutta, 1960), 72.
4. Ibid. p. 72.

it may be presumed that there is doubt about the authenticity of the statements[1].

The developed laws in the Dharmaśāstras relating to the debt in its various aspects amply prove that the statements in the name of Megasthenes are far from fact.

Apart from the definite concept of debt, spiritual and secular, in the Vedic literature itself,[2] there are numerous references of transaction of lending in the Pāli literature specially in the *Jātakas*. Mrs. Rhys Davids while writing on the '*Economic conditions according to early Buddhist literature*'[3] presents the picture of the transaction of debt amongst other references in the following lines: 'Of substitutes for money, such as instruments of credit we read of signet rings as deposit or security (*Jātaka*. 1. 121), of wife or children pledged or sold for debt (VI. 52; *Therīgātha* 444), and of Iou's or debt-sheets (iṇapaṇṇāni), (*Jātaka*, 1. 230; cf. 227, paṇṇe āropetvā). The bankrupt who, in the *Jātaka* tale invites his creditors to bring their debt-sheets for settlement, only to drown himself before their eyes (*Jātaka*. IV, 256) appears in a *Milinda* simile anticipating the crisis by making a public statement of his liabilities and assets, the entanglement and anxieties of debt as well as corporate liability belonging to communistic life in a religious order rendered

1. Reference here may be made to the comments of Dr. R. C. Majumdar, where he appears to doubt the authenticity of some of the fragments ascribed to Megasthenes (M. II, 118). vide his—'*The Classical Accounts of India*' (Calcutta, 1960), p. 421, fn. 2.
   Vide also P. V. Kane, *History of Dharmaśāstra* III, 418.
2. Vide P. V. Kane, *History of Dharmaśāstra*. III, 414-416; *Dharmakośa*, I-II, 599-606.
   A. L. Basham, *The Wonder that was India*, (London, 1954), 221-222. Prof. Basham observes: 'The immense expense of the family ceremonials of Hinduism, periodic dearth, the dowering of daughters and many other factors, worked there as now to drive the less fortunate into debt, and then as now, the Indian creditor might be a hard man'.
3. *The Cambridge History of India*, I. (2nd Reprint, 1962), 194-5. Vide also Richard Fick, *The social organisation in North-east India in Buddha's time* (Tr. by S. K. Maitra), Calcutta-1920; B. C. Law, *India as described in early texts of Buddhism and Jainism*, (London, 1941), 191; R. S. Sharma, '*Economic life* and *organization in ancient India*', *in Studies in the cultural history of India* (Agra, 1965), 40.

it necessary to debar any candidate from admission to the *saṅgha* who was a debtor (*Vinaya*, I. 76)".[1]

Dr. Atindra Nath Bose, in his *Social and Rural economy of Northern India, cir.* 600-B.C.-200 A.D, Vol II, has a detailed and highly informative section[2] on money-lending and credit. He has quoted extensibly from the *Arthaśāstra, the Dharmaśāstras* and the Buddhist literature and rightly observes : "These rules give the lie direct to the remark of foreign memoirists—Among the Indians..."[3]

Dr. Bose by way of analysing the śāstric view on usury observes rightly : 'The strict injunctions of the śāstras against violation of legal or customary rates together with the growing elasticity of the rules show that the practice shaped the theory rather than theory the practice'[4]. It is a fact that the importance of security in lending was recognised by Kauṭilya and other writers on *Dharmaśāstras* and that was perhaps stressed for safeguarding the economic stability of the state. Penal measures have been prescribed in the *Arthaśāstra*[5] and other texts[6] for violation of the recognised rates of interest'.

Gautama tolerates money-lending[7] while Manu does not lend approval to the special forms of interest[8]. Vasiṣṭha[9] and Baudhāyana[10] condemn usury. It may be presumed that in consideration of the oppression to the debtors by the creditors, may be often by violation of the prescribed rates of interest, the Śāstrakāras later on thought in terms of condemning usury. That also might have been responsible for the statement in the fragments of Magasthenes, already referred to, that 'the Indians neither put out money at usury.....'[11].

1. vide also Ratilal N. Mehta, *Pre-Buddhist India*, (Bombay, 1939), 223-224, vide '*Notes on Early Economic conditions in Northern India*', by Mrs. C. F Rhys Davids, in J. R. A. S. (1901), 859-888.
2. pp, 337-345.
3. p. 344, fn. 2
4. Ibid, p, 342,
5. Tataḥ paraṁ kartuḥ kārayituś ca pūrvaḥ sāhasadaṇḍaḥ.....
   Arthaśāstra, III, 11, 2.
6. Yāj, II. 61.
7. II, 3. 26, 32.
8. Manu, VIII. 153,
9. II, 41.
10. I. 5-10. 24-25.
11. Vide also Bose, *Social and Rural economy of Northern India*, II, 343, fn. 1.

For a scholar entering in the realm of any topic of the *Dharmaśāstra*, Mahāmahopādhyāya P. V. Kane appears both as a problem and as profit. In his epoch-making treatises entitled *History of Dharmaśāstra* in several volumes Dr. Kane has dwelt on almost all the topics that may arise in the *Dharmaśāstras*, and the approach to each question is so much exhaustive and accurate that one may derive maximum benefit out of them. Such a treatment creates problem also, in the sense that a new field of study other than those treated therein can hardly be chalked out. So far as the subject-matter of my dissertation is concerned, it must be admitted with gratitude that I have derived great profiit from his texts, specially the third volume[1] wherein he has discussed the topics in his own inimitable and scholarly way.

The scientific and exhaustive article entitled '*The ancient Hindu law of pledges and bailments*' by Śrī Niranjan Roy[2] presents in short a picture of *pledges*, one of the essential constituents of the laws of debt. While admitting his contribution to the subject, this may be observed that Śrī Roy concentrated mainly on the *Smṛti* texts and few commentaries and digests (namely, Asahāya on the *Nārada-smṛti*, Vijñāneśvara on the *Yājñavalkya-smṛti* and the *Smṛticandrikā* of Devaṇabhaṭṭa).

Reference should be made here to an article entitled '*On sureties*' by Kharagjit Misra, wherein he has discussed modern law points as well as śāstric texts.[3]

Mr. M. V. Ramaswamy Iyer in his article '*Mortgage in Hindu Law*'[4] discusses different questions of pledge from the viewpoint of comparative law.

Dr. Luduik Sternbach in his *Juridical studies in ancient Indian Law*. I. (Delhi, 1965) has two long sections, one on *pledge* (pp-107-152) and another on *suretyship* (pp-153-198), wherein the śāstric materials have been creditably utilised to a great extent. I have made use of his two disquisitions to my benefit.

1. pp 414-454.
2. Published in the Journal of the Department of Letters, Vol XXXII (Calcutta, 1939), 1-49.
3. Vide (1923) 21 Allahabad Law Journal, Journal Section, 13-20.
4. (1918) 34 Law Quarterly Review, 261-281.

'Usury in Medieval Mithila based on Vidyāpati's Likhanavali'[1] —a short article by Mr.. Shankar Kumar Jha, may claim to be mentioned in this context for the new informations contained therein.

It is my pleasant duty to acknowledge my *debt of learning* to my respected *ācāryas* in Oxford and London under whose guidance I have followed this line of research. Besides his guidence, Prof. T. Burrow, *Boden Professor of Sanskrit, University of Oxford,* helped me in various ways for which it was possible for me to stay at Oxford. I deem it a rare privilege in being guided also by Prof. J. D. M. Derrett, *Professor of Oriental Laws in the University of London.* I am specially grateful to him for his learned foreword to this humble text of mine. He was very kind to me to send me relevant portions from the unpublished commentary of Bhāruci on the *Manusaṁhitā,* important portions from the *Vivādārṇavasetu* (which is not available in the library I worked in), an unpublished treatise on *suretyship* (by him) and a large number of reprints of his published papers in different Journals. I should also mention here that he very kindly provided me with the synopsis of the works of Josef Koler, Walter Ruben, Johan Jakob Meyer (all in German) and of Giuseppe Mazzarella (in Italian).

I offer my respectful obeisance to my teacher Prof Dr. Krishna Gopal Goswami, Sastri, M. A, P. R. S, D. phil, Smṛti-Mīmāṃsātīrtha, under whose guidance I had the first lessons on research in the field of *Dharmaśāstra.*

My teacher in my college-days, Dr. Tarasankar Bhattacharya, M. A, D. Litt, Retired Principal, Sanskrit College, Calcutta, has shown me affectionate favour in including this book in the Sanskrit College Research Series.

I am also under debt of gratitude to Sri Bishnupada Bhattacharya, M. A, P. R. S, Principal, Sanskrit College, Calcutta, and General Editor of the Series, for taking interest in the publication of the book.

I must thank Pt. Sri Nani Gopal Tarkatīrtha, Editor, of the Series for helping me much in respect of very prompt publication of the text.

1. vide Journal of the Asiatic Society (Bengal) vol. X, 1968, (Nos. 1-4,), 46-48 (Issued August, 1970).

To the authorities of the India office Library and the Library of the School of Oriental and African Studies, University of London, I am grateful for the opportunities offered to me in utilising their libraries and for the promptness with which they sent copies of books and manuscripts to Oxford. I express my thanks also to the Librarians of the Indian Institute and the Oriental Institute, Oxford for the specially prompt and kind assistance received from them.

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1. 2. 1971.

Heramba Chatterjee.

LIST OF ABBREVIATIONS USED.

A, I. R.	...	All India Reporter.
Bṛ. S.	...	Bṛhaspatismṛti.
Col. Dig	...	A Digest of Hindu Law on Contracts and Successions. (Translation into English of Jagannātha's Vivādabhaṅgārṇava by H. T. Colebrooke).
C. D. I. A. L.	...	A comparative Dictionary of the Indo-Aryan languages. (R. L. Turner).
E. V. E. P.	...	Etudes Védiques et Paninéennes (XI). (Louis Renou).
G. D. S.	...	Gautamadharmasūtra.
H. D. S	...	History of Dharmaśāstra. (P. V. Kane).
I. L. R.	...	Indian Law Reporter.
J. S. A. I. L	...	Juridical studies in ancient Indian law. (L. Sternbach).
Kāt.	...	Kātyāyanasmṛti. (Kātyāyanasmṛtisāroddhāra—P. V. Kane).
K. S. S.	...	Kashi Sanskrit Series.
K. W. A.	...	Kurzgefasstes etymologisches worterbuch des Altindischen. (Manfred Mayrhofer).
Medh.	...	Medhātithi's commentary on Manu-smṛti.
Mit.	...	Mitākṣarā. (Vijñāneśvara's commentary on Yājñavalkya-smṛti).
M. R. P.	...	Madanaratnapradīpa.
N. M. S.	...	Nāradīyamanusaṃhitā.
Parā. mā.	...	Mādhava's commentary on Parāśara-smṛti.
Sar. vil.	...	Sarasvatīvilāsa.
S. B. E.	...	The Sacred Books of the East.
Sm. C.	...	Smṛticandrikā. (Smṛticandrikā, II. refers to the Vyavahāra section. Part II. of the Government Oriental Library Series, edited by L. Srinivasacharya, Mysore, 1916).

Viv. cin.	...	Vivādacintāmaṇi.
Viv. rat.	...	Vivādaratnākara.
Vy. nir	...	Vyavahāranirṇaya.
Vy.kā	...	Vyavahārakāṇḍa. (of any book).
Vy. P. (M)	...	Vyavahāraprakāśa of Mitramiśra.
Vy. P. (P)	...	Vyavahārāprakāśa of Pṛthvīcandra.
W. Z. R.	...	Worterbuch zum Rig-Veda. (H. Grassmann).
Yāj.	...	Yājñavalkyasmṛti.
Z. V. R.	...	Zeitschrift für vergleichende Rechtswissenschaft

CHAPTER I

The concept of debt

Analytical table of the contents

1. Debt, the earliest form of contract.
2. Absence of general theory of contract in Hindu law.
3. The legal meaning of debt.
4. The *śāstric* concept of *kusīda* and *ṛṇa*.

Important contributions to the concept of debt and contract

H. S. Maine, Ancient Law, (London, 1801), 304-366.

H. T. Colebrooke, Treatise on obligations and contracts, 1, (London. 1818), 20ff.

Sir W. H. Macnaghten, Principles and precedents of Hindu law, 1, (Calcutta, 1828), 121-129.

P. N. Sen, The general principles of Hindu jurisprudence, (Calcutta, 1918), 302-304.

K. P. Jayaswal, Manu and Yājñavalkya, (Calcutta, 1930), 175-182.

Mati Lal Das, Hindu law of bailment, (Khulna, 1946), 33-54.

R. K. Ranade, in Bombay Law Reporter Journal, (April, 1950), 33-34.

N. C. Sen-Gupta, The evolution of law, (Calcutta, 1962, 3rd. edition), 105.

Klaus Mylius, in Wissenschaftlische Zeitschrift Der Karl-Marx Universität, (Leipzig, 1965), Gesellschafts und Sprachwissenschaftliche Reihe, 1, 41-43.

I have discussed in this short chapter the *śāstric* concept of debt as understood by the commentators and the digest-writers. This aspect has not received attention of the writers mentioned above.

While writing on the evolution of debt, N. C. Sen-Gupta observes: "The earliest civil action known to law appears to have been an action to recover a thing which has been wrongly taken away. The *Legis Actio Sacramento* of Rome is strictly speaking appropriate to this action only. Even in English law, the earliest actions seem to have been real actions for the recovery of things. The earliest form of contract known to law proper appears to have been debt. It appears very early in all ancient systems of law. Soon as society settles down to agriculture and business, credit becomes a necessity, barter and sale will be made on credit. So we see debts realised by the State by the most drastic penalties. The condition of *nexal debtor* in Rome was very severe because the law was supremely anxious to secure repayment of debts. The debtor in ancient India was in an equally desperate position. The creditor had absolute freedom in realisation of his debt and could avail himself of all forms of force, fraud and coercion to get back his money. Over and above this, there were the terrors of punishment in Hell for the debtor who has died with his debt unrequited".[1]

In the ancient systems of law, even the fairly developed ones, we do not find a general concept of contract. 'Even in Roman law it is doubtful how far a general theory of contract was developed before the days of the glossators, that is, before Roman law ceased to be the territorial law of Rome'.[2]

In the Hindu law one may find several heads of obligations like deposit, pledge etc. which modern jurisprudence would bring together under the common concept of contract. But Hindu law knows nothing of a general theory of contract, under which all these various transactions might be brought. The attention of the Hindu jurists was focussed not upon the question of contract in abstract but upon the several kinds of contractual obligations and the remedies for the same when they are broken.

'In the strict sense of the word, a debt exists when a certain

1. N. C. Sen-Gupta, The evolution of law, 105.
2. Ibid, 99

sum of money is owing from one person (the debtor) to another (the creditor).'[1]

R. K. Ranade brings out the nature of debt in its original and the present meaning in the following lines: "A debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation and has reference to an actually existing debt or a perfected and absolute debt. In other words, the term *'debt'* includes a sum of money due by one person to another and which is actually payable at the time, as well as a sum of money which is due, though not actually payable then. It must be a perfected and absolute debt and not merely a sum of money which may or may not become payable at some future time, or the payment of which depends upon contingencies which may or may not happen.

In its primary sense, a debt denotes a loan arising out of contract, express or implied. In its wider sense, the term *debt* embraces not only a contractual debt but also a breach of civil duty arising independent of contract, for which a suit would lie.

Under old English law, the term was used in a narrow sense as meaning a monetary obligation resulting from an express or implied contract. In old Hindu law the term *ṛṇa* or debt appears to have been used in its primary sense as implying a loan resulting out of contract and recoverable by suit, the contract being express or implied. Modern law classes as debts not only contractual debts but also other obligations arising independent of contract. In the present Hindu law of debts the term *debt* no longer retains its primary sense but has come to be used in a wider sense, as including not only a contractual debt but also other obligations arising out of a breach of civil duty and independent of contract. The larger sense in which the term *debt* is used in the present Hindu law of debt can be said to be a modern graft upon the old Hindu law where the term is used in its primitive import".[2]

It is doubtful whether the *śāstric* concept of *ṛṇādāna* was originally intended to include by inference all other kinds of obligation which were capable of being liquidated in terms of a sum of money.

1. Charles Sweet, A dictionary of English law, 246.
   Vide also, W. J. Byrne, A dictionary of English law, 281
2. R K. Ranade, Bombay Law Reporter Journal, (April, 1950), 33-34.

It is certain that in Anglo-Hindu law the word *ṛṇa* is treated in this broad sense. It is perhaps desirable to assume the typicality of the *vyavahārapada* called *ṛṇādāna* and it will not be necessary to refer to this aspect further during the present thesis.

Two words, *kusīda* and *ṛṇa* are used in the *dharmaśāstras*, and the commentators and the digest-writers understand the two as synonymous.

Nārada defines *kusīda* as the receiving of money paid in consequence of the amount advanced and the profit accrued to it.[1]

Bṛhaspati presents a pseudo-etymological definition of *kusīda* where he states that *kusīda* is what is exacted four times or eight times (of the capital invested) by persons apprehending no sins (for such act) from the debtor, who is contemptible (*kutsita*) and distressed (lit. sinking).[2]

Medhātithi speaks of *ṛṇa* as wealth that is invested for the purpose of earning profit.[3]

Caṇḍeśvara refers to the texts of Nārada and Bṛhaspati and observes that *kusīda* is equivalent to *ṛṇa*.[4]

In the *Vivādacandra* it has been stated that the word *ṛṇa* is not to be applied to any grant or loan, but it should mean a sum of money lent for the sake of profit.[5] In other words, the author intends to use the word *ṛṇa* only in the sense of profitable investment and not (for example) for a friendly accomodation. It carries

1. Sthānalābhanimittaṃ hi dānagrahaṇam iṣyate/
Tat kusīdam iti proktaṃ tena vṛttiḥ kusīdinām// Nārada. IV. 98
Bhavasvāmī in his commentary on the Nāradīyamanusaṃhitā, 1.86, explains that it stands for an investment with the purpose of having a profit without the loss of the capital :
'Mūlāvināśena vṛddhinimittam ity arthaḥ'.
2. Kutsitāt sīdataś caiva nirviśaṃkaiḥ pragṛhyate/
Caturguṇaṃ vāṣṭaguṇaṃ kusīdākhyam ataḥ smṛtam// Bṛhaspati. X.6.
Jagannātha holds that 'there is only the sin of distressing a miserable person, but there is none if his misery were merely pretended and even if he were really distressed the creditor may confer a benefit by prolonging the term or otherwise ; and such is the practice.' Col. Dig. I, II.
3. Vṛddhilābhārthaṃ prayogaviṣayaṃ dhanam ṛṇam.
Medhātithi on Manu. VIII. 48
4. Atra kusīdam ṛṇam ity eva lakṣaṇam. Tac ca nāradoktau sphuṭam eva. Vivādaratnākara, 5.
5. Ṛṇaṃ na samādheyamātraṃ dhanaṃ kiṃ tu lābhāya dattaṃ, sthānalābhanimittaṃ hi...vacanāt. Vivādacandra, 2.

at the inception of the transaction the obligation of return of the principal with an arranged or implied rate of interest. Since the word *ṛṇa* in Sanskrit (as 'debt' with us) was used in many metaphorical and applied senses, such a definition was reasonable.

Misarumiśra introduces the point that the concept of 'period' (*cirakāla*) is an important factor in a transaction of debt. Every contract of debt has an expressed or implied 'term'. The contract will be valid and binding on both the parties so long as the term is observed. If it fails to be observed, other factors will begin to operate.[1]

Vācaspatimiśra on the basis of the text of Nārada, defines *ṛṇa* as money which while the principal remains intact is invested with a view to having profit out of it and which is accepted by the debtor on the terms offered.[2] He states further that in the case where the principal remains as it was and no interest accrues to the capital the word *ṛṇa* may be applied only in the figurative sense. Such a loan will not be means of livelihood.[3] A consciousness of the difference between loans to help the distressed and commercial investments was evidently well evidenced and the jurists were in no danger of confusing these two kinds of 'debt'.

Vācaspatimiśra holds that the purpose of such secondary use of the term is to emphasise that even such a loan (where there is no interest) must be paid back (in the same way in which other loans with interest are discharged).[4]

He observes that in the case where money (or valuables) is (or are) advanced (invested) for the purpose of trade, that should not be treated as *ṛṇa* because of the fact that in the case of debt the creditor

1. Yayā vyavasthayā yad ṛṇam adhamarṇo gṛhṇāti tac cirakālaṃ vinā tayaiva dadyāt cirakālasyāpavādakasyābhāve vyavasthāyā eva niyāmakatvāt. Vivādacandra, 2.
2. Tena mūlāvasthāna eva lābhanimittaṃ dhanikena dattam adhamarṇena ca tathābhyupetya gṛhītam ṛṇam ity arthaḥ. Vivādacintāmaṇi, 2.
3. Kalāśūnye tu tulyatvād gauṇaprayogaḥ, na hi tena vṛttiḥ. Ibid, 2.
4. Guṇaś cāvaśyāpākaraṇīyatvam iti nyāyaś caturthādhyāye draṣṭavyam. Ibid., 2. He refers to the *Nyāyasūtra* of Gautama (IV. I, 59–60) where Vātsyāyana (on IV. I. 60) explains that the word *ṛṇa* used in the *Śatapatha-Brāhmaṇa* (1. 7. 2. 1) is to be understood in the secondary sense—the sense being that those 'which are described are like debts' :
'Pradhānaśabdānupapatter gauṇaśabdenāyam anuvāda ṛṇair iva ṛṇair iti '

receives the same thing that is lent or something of the same kind.[1] His point is that there is a distinction between a straight-forward loan and an investment in e.g. partnership. In the latter the profits of commerce are not directly related to the investment, and when cash or commodities are invested for sale or traffic the ultimate profit (which depends on the terms of the engagement) is not a percentage of the original investment.

In the *Vivādārṇavasetu* the concept of *ṛṇa* is the same as we find in the *Vivādacintāmaṇi*.[2]

Jagannātha defines *ṛṇa* as the property which affords a gain stipulated in consideration of its remaining for a long time with the debtor.[3]

From the discussion made above it may be stated that debt is to be regarded as one of the earliest forms of contract. In the Hindu law there is no general theory of contract. The two words, *kusīda* and *ṛṇa* were employed to convey the idea of debt. In its primary sense the word *ṛṇa* has been interpreted by the commentators and the digest-writers as an investment yielding profit or interest. In the case where the loan is given without any interest the word is understood to be used in the secondary sense.[4]

1. Yasyaiva dānaṃ tasyaiva tajjātīyasya vā grahaṇam ata eva vāṇijyārthaprayuktasyāpi na ṛṇatvam. Vivādacintāmaṇi, 2.
2. Tena mūladhanāvasthāne saty eva yo lābhas tadarthaṃ yad dānaṃ dhanikena dīyamānaṃ mūladhanam adhamarṇena ca grahaṇaṃ tathā svīkṛtya gṛhyamāṇaṃ yat tad ṛṇam ity arthaḥ paryavasyati. Ratnākarādayo'py evam. Kalāśūnye tv avaśyāpākaraṇīyatvarūpaguṇayogād gauṇaprayogaḥ. Ata eva vāṇijyārthaprayuktasya narṇatvam iti miśrāḥ.

   Vivādārṇavasetu, 2
3. Tathā ca adhamarṇapārśve sthitiniyatalābhajanakaṃ yad dhanaṃ tad eva ṛṇam. Vivādabhaṅgārṇava. Folio, 2 ; Col. Dig. I, 8. The translation here is by H. T. Colebrooke.

   Reference here may be made to an interesting paper on the evolution of the concept of *kusīda* and *kusīdin* by Klaus Mylius in Wissenschaftliche Zeitschrift Der Karl-Marx Universität (Leipzig, 1965), Gesellschafts-und Sprachwissenschaftliche Reihe, 1, 41-43.
4. This is how the commentators and the digest-writers interpret the word *ṛṇa* We may here point out that the word *ṛṇa* has its association with obligation of moral nature. Thus it may be pointed out that in the *Taittirīyasaṃhitā* (VI, 3, 10, 5) where three debts have been referred to, the word *ṛṇa* stands for obligation. As we shall see, the *śāstras* prescribe that a debt should be discharged under all circumstances. This point has not been lost sight of by the digest-writers in their interpretation of the word *ṛṇa*. This is evident from the statement of Vācaspatimiśra pointed out above. (Vide p. 10 ; f. n. 4).

CHAPTER II

Interest

Analytical table of the contents

1. General rates of interest.
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9. Interest on other objects.
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14. Loans where interest ceases.
15. Some special provisions by Kātyāyana.
16. Epigraphic records on the rate of interest.
17. Summary.

Published contributions on different aspects of interest

J. Jolly, Recht und Sitte, (Strassburg, 1896), Translation into English by B. K. Ghosh (Calcutta, 1928), 213-217. He refers to the rates of interest very concisely.

P. N. Sen, The general principles of Hindu jurisprudence, (Calcutta, 1918), 306-311. He mentions the *śāstric* rates of interest very briefly.

Balkrishna, Sir Asutosh Memorial Volume, (Patna, 1926-1928), 277-301. He discusses in detail the different rates of interest and often attempts to be critical in his analysis.

Pran Nath, A study in the economic condition of ancient India, (London, 1929), 93-94. He presents some of the epigraphic references regarding rates of interest.

K. P. Jayaswal, Manu and Yājñavalkya, (Calcutta, 1930), 182-187. He refers to the *śāstric* rates of interest very briefly.

G. N. Jha, Hindu law in its sources, I, (Allahabad, 1930), 132-152. As in other cases, Dr. Jha collects here in one place the possible *śāstric* texts on interest in the pattern in which the digest-writers arrange the topic, but he is not critical in his approach.

A. Appadorai, Economic conditions in Southern India, II, (Madras, 1936), 786-794. He has presented in a tabular form the different rates of interest in South India (10th to 15th centuries) on the basis of the records in the inscriptions.

N. C. Bandopadhyay, Economic life and progress in ancient India, (Calcutta, 1945), 288-290. Very briefly he refers to the rates of interest.

P. V. Kane, History of Dharmaśāstra, III, (Poona, 1946), 418-427. He discusses in outline different aspects of the question on interest.

U. N. Ghosal,

Age of imperial unity, (1951, Bombay), 346, 351, 358;

The classical age (Bombay, 1954), 594-595;

The age of imperial Kanauj (Bombay, 1955), 406;

A comprehensive history of India, (Bombay, Madras, Calcutta, 1957), 453-4;

A history of Indian public life, (Oxford University Press, Bombay, 1966), 104-105.

Dr. Ghosal refers to the *śāstric* rates of interest.

Asok Kumar Majumdar, Chaulukyas of Gujarat, (Bombay, 1956), 274-284.

The question of loan in general has been discussed here on the basis of the *Lekhapaddhati*. He refers also to the *śāstric* rates of interest.

J. D. M. Derrett, The Hoysalas, (Oxford, 1957), 230-231. The rates of interest for the period between 1060-1297 A. D. has been discussed here on the basis of epigraphic records.

'Law in the New Testament': the unjust steward' (Luk. XVI. 1-9) and Indian law, Z. V. R, 65/2 (1963), 172-182. Here Prof. Derrett critically analyses, perhaps for the first time, the background of different rates of interest.

S. K. Maity, Economic life of Northern India, (Calcutta, 1957), 183-185. Reference to the *śāstric* rates of interest in outline has been presented here.

Ram Gopal, India of the Vedic Kalpasūtras, (Delhi, 1959), 144-145. He refers to the different rates of interest very briefly.

Dasaratha Sharma, Early Chauhan dynasties, (Delhi, 1959), 300-301. He discusses about the rates of interest for the period between c. 800-1316 A. D.

Bhakat Prasad Majumdar, Socio-Economic history of Northern India, (Calcutta, 1960), 224-226. He refers to the *śāstric* rates very briefly.

S. C. Banerjee, Dharmasūtras, a study in their origin and development, (Calcutta, 1962), 204-205. He refers to the rates briefly.

Lallanji Gopal, The economic life of Northern India, (Delhi, 1965), 169-170. He refers to the rates concisely.

Habib Irfan, 'Usury in medieval India', Comparative studies in society and history, (Hague), VI, 1963-1964, 393-419. In p. 416 he has some scanty references relating to the Hindu rates of interest.

R. S. Sharma, 'Usury in early medieval India', Comparative studies in society and history, (Oct. 1965), VIII.-I., 55-77. Dr. Sharma critically discusses some of the aspects of the rates of interest.

L. Sternbach, Juridical studies in ancient Indian law, I, (Delhi, 1965), 510-518. He discusses the social background for the introduction of different types of interest.

R. C. Nigam, 'Usury through the ages', Indian Advocate, VII., (1967) 3-4, 46ff. The writer discusses mainly in outline the *śāstric* points but does not go deep into the detailed study of the same.

The question relating to interest in its *śāstric* background has not been discused in its evolutionary stages in the discussions referred to above. I have attempted to discuss each selected topic relating to interest in systematic order and have discussed the questions in a wider perspective, utilising materials from the commentaries and the digests hitherto unexplored properly.

1. General rates of interest

A creditor in his investment of the capital in the form of a loan may very reasonably claim interest for the use of money invested as such. The term used for interest is '*vṛddhi*'[1]—'increase'. Our *śāstrakāras* have detailed discussion on the rates of interest to be charged under different circumstances. Besides the detail we come across in the *dharmaśāstras*, which we shall study shortly, there are some rules of Pāṇini that may help us to form an idea about the rates of interest.

In the rule '*kusīdadaśaikādaśāt ṣṭhan ṣṭhacau*'[2] (the affixes *ṣṭhan* and *ṣṭhac* come respectively after the words *kusīda* and *daśaikādaśa* in the sense of giving for a mean motive), the expression *daśaikādaśa* means the lending of ten (coins) on a condition that the borrower should pay eleven. This amounts to the rate of interest as ten per cent and the use of the term *garhyam* that follows as a matter of course from the previous rule (IV. 4. 30) suggests that such a rate of interest was not favoured. Again Pāṇini mentions some suffixes to be added in the sense of interest or rent or profit or a tax or a bribe.[3] In the subsequent rules[4] there is also reference to other rate of interest. Thus the word *ārdhika* is formed in the sense of a loan yielding interest of half per cent (the word *ardha* is technically used for the sense of half of rupee or coin : *ardhaśabdo rūpakasyārdhe rūḍhaḥ*). *Bhāgika* in the illustration ('*bhāgyā*' or) '*bhāgikā viṃśatiḥ*' speaks of a loan at an interest of two per cent and a half (the word *bhāga* is also used in the sense of half of a rupee : *bhāgaśabdo' pi rūpakasyārdhe rūḍhaḥ*).

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1. Pāṇini uses the term *vṛddhi* in the rule : tad asmin vṛddhyāyalābhaśulkopadā dīyate. V. I. 47. *Kāśikā* explains : tatra yad adhamarṇena uttamarṇāya mūladhanātiriktaṃ deyaṃ tad vṛddhiḥ.
2. IV. 4. 31 Vide here the commentary, *Bālamanoramā* : Ekādaśaniṣkān adhikān grahītuṃ daśa niṣkān adhamarṇāya prayacchatīti yāvat.
3. Tad asmin vṛddhyāyalābhaśulkopadā dīyate. V. I. 47.
   Here the illustration of '*pañcaka*' has been used to show that in the transaction of debt the rate of interest is five per cent : 'pañca asmai vṛddhyādir dīyate pañcako devadattaḥ'.
4. Purāṇārdhāṭṭhan. V. I. 48.
   Bhāgād yac ca. V. I. 49.

Patañjali cites examples of usurious loans as *dvaiguṇika* (a sum by way of interest equal to the capital) and *traiguṇika.*[1] Loans were also named on the basis of the amount of interest earned on them. Thus Patañjali refers to interest as five per cent as *pañcaka*, as seven —*saptaka*, as eight—*aṣṭaka*, as nine—*navaka* and as ten—*daśaka*[2].

Kauṭilya prescribes the rate of interest in the form of one *paṇa* and a quarter per month on a hundred *paṇas* as righteous (*dharmya*). The Hindu rates of interest are normally conceived of on monthly terms as in the cases of wages. The rate presented by Kauṭilya is fifteen per cent per annum. This was perhaps to be treated in general cases. If the loan is issued for commercial purposes the rate of interest is to be five *paṇas* per hundred per month. The idea perhaps was that the debtor may utilise the money in his commercial enterprises to earn a greater amount and as such the creditor should be justified in demanding a higher rate than the normal one. Similarly, taking into consideration the risk involved in getting back the capital, the creditor has been permitted to demand ten *paṇas* per hundred per month, in the case where the debtor is to pass through forest and twenty *paṇas* per hundred per month where he is to cross an ocean (perhaps for carrying out his oversea business).[3] In other words, the rate of interest reflects, as usual, the risk to which the capital is subject. Kauṭilya seems to suggest that this rate is not final because he prescribes that the practice of the debtor and the creditor is to be taken into consideration if the king is unable to ensure protection.[4]

According to Gautama, the interest declared as righteous is the same. He prescribes that the interest should be at the rate of five *māṣas* a month for twenty (*kārṣāpaṇas*).[5] Haradatta in his commen-

1. On Pāṇini, IV. 4. 30 'me syāl lopo vā'—me syāc chabdalopo vā draṣṭavyaḥ, dviguṇaṃ me syād iti prayacchati dvaiguṇikaḥ, traiguṇikaḥ,
2. On Pāṇini. V, I. 47, tad asmin dīyate 'smā iti ca—tad asmin dīyate asmā iti ceti vaktavyam, pañca vṛddhir vā āyo vā lābho vā śulko vā upadā vā dīyate asmai pañcakaḥ, saptakaḥ aṣṭakaḥ, navakaḥ, daśakaḥ.
3. Sapādapaṇā dharmyā māsavṛddhiḥ paṇaśatasya paṇcapaṇā vyāvahārikī daśapaṇā kāntāragāṇāṃ viṃśatipaṇā sāmudrāṇām. Arthaśāstra. 3, II. 1
4. Rājany ayogakṣemāvahe tu dhanikadhāraṇikayoś caritram avekṣeta. Arthaśāstra. 3. 11. 3.
For explanation of the two terms *caritra* and *ayogakṣemāvaha* vide the notes by by R. P. Kangle, The Kauṭilīya Arthaśāstra, II. 261.
5. Kusidavṛddhir dharmyā viṃśatiḥ pañcamāṣikī māsam. G. D. S, XII. 26.

tary shows that it amounts to 1/80th part per month[1], which is equivalent to fifteen per cent per annum.

Baudhāyana declares that twentyfive *kārṣāpaṇas* (in stead of twenty mentioned by Gautama) (shall bear interest of) five *māṣas* (per month).[2]

Vasiṣṭha, like Gautama prescribes five *māṣas* as the monthly interest for twenty (*kārṣāpaṇas*)[3].

Manu refers to the rate of interest sanctioned by Vasiṣṭha and it is in the form of taking the eightieth part of a hundred.[4]

Yājñavalkya approves of this rate of interest, but a condition has been tacked to it that this will apply where the loan is secured by a pledge.[5] It is not clear whether or not the rule prescribing fifteen per cent as interest originally contemplated a security.

Nārada in almost the same language as that of Manu prescribes oneeightieth part as the monthly rate of interest.[6]

Two verses have been attributed to Bṛhaspati on the question of the rate of interest. One of them (X. 28)[7] is exactly like that of Vasiṣṭha (II. 50), while the other (X. 4)[8] is the same as that of Yājñavalkya (II. 37). That he was in favour of 1/80th part as the monthly interest may be stated without reservation,[9] but whether he was favour of prescribing this rate of interest in the case of loan with pledge or without it cannot be stated categorically. But

1. Paṇānāṃ viṃśatiś catuḥśatī māṣūṇāṃ sampadyate. catuḥśatyāḥ paṅcamāṣā vṛddhir aśīter ekaḥ. Com. on G. D. S, XII. 26.
2. Paṅcaviṃśatis tv eva paṅcamāṣakī syāt.
Baudhāyanadharmasūtra. 1, 5. 10. 23.
3. ...paṅcamāṣās tu viṃśatyā .....Vasiṣṭhadharmaśāstra. 11. 50.
Vide here the comments by P. V. Kane, History of Dharmaśāstra, 111, 420. on the difference of opinion between Baudhāyana and others regarding the exact measurement of *kārṣāpaṇas*. Vide here also the comments by Vācaspatimiśra in the Vivādacintāmaṇi, 2 and the notes by G. N. Jhā on it, (In Translation of Vivādacintāmaṇi, 3-4)
4. Vasiṣṭhavihitāṃ vṛddhiṃ sṛjed vittavivardhinīm /,
Aśītibhāgaṃ gṛhṇīyān māsād vārdhuṣikaḥ śate // Manu. VIII 140.
5. Aśītibhāgo vṛddhis syān māsi māsi sabandhake. Yāj. 11. 37.
6. Nārada. IV. 99.
7. Referred to in the Aparārka commentary on Yājñavalkya, 642.
8. Referred to in the commentary of the Vyavahāra section of the Parāśarasmṛti by Mādhava, 110.
9. In another verse be states that the interest is at the rate of 1/80th part : 'aśītibhāgo vardheta.....' Bṛhaspatismṛti. X. 22.

considering his later date it may be presumed that he should share the view held by Yājñavalkya that the said rate should be applied in the case of a loan with security.

It is in Vyāsa that we find further development, when he prescribes that when the loan is secured by a pledge the monthly rate of interest is 1/80th part, but where the loan is secured by a surety the interest should be 1/60th part.[1] Here we notice a tendency in Vyāsa to make a distinction between a pledge and a surety with respect to their value as security. It is evident that Vyāsa recognises the importance of a pledge as superior to a surety, perhaps on the consideration that from the standpoint of the creditor a pledge carries more value than a surety because a pledge is already is in his possession while a surety is to be pursued.

Vācaspatimiśra quotes a text of Hārīta that eight *paṇas* should be the interest on twentyfive *purāṇas* and at this rate in four years and two months the principal gets doubled.[2] *Purāṇa* is equivalent to sixteen *paṇas*.[3] It then comes to 1/50th part.

Caṇḍeśvara refers to another statement of Hārīta according to which there was a view that the monthly interest should be 1/16th part of the capital.[4] He explains it away by stating that it refers to a debtor belonging to the mixed caste.[5]

1. Sabandhe bhāga āśitaḥ ṣāṣṭho bhāgas salagnake /
   Nirādhāne dvikaśataṃ māsalābha udāhṛtaḥ //
   Vyāsa quoted in the Smṛticandrikā, 11, 361.
   For *ṣāṣṭha* in the verse the reading is *sāṣṭa* (with eight) in the Vivādacintāmaṇi, 3. i. e eightieth part along with the eighth part of the eightieth part so that when the loan consists of 20 *palas* of gold, the interest would be 9 *ratikās*.
   In the Vivādaratnākara the reading also is *sāṣṭabhāga* and it has been explained as ; aśītyaṣṭamabhāgasahitaḥ. tena paṇadvayonapurāṇadvayaṃ labhyate. Vivādaratnākara, 7.
   For detailed analytical study of the rule of Vyāsa and the interpretations by Caṇḍeśvara and Vācaspatimiśra, vide the Vivādabhaṅgārṇava of Jagannātha, Col- Dig. I, 36-40.
2. Purāṇapañcaviṁśatyāṃ māse aṣṭapaṇā vṛddhiḥ, evaṃ sadvimāsaiś caturbhir varṣair dviparyāgataṃ santiṣṭhate....
   Vivādaratnākara, 8. Vivādacintāmaṇi, 3.
   For general notes on the coins and their measurements, vide P. V. Kane, History of Dharmaśāstra, III, 121-122, f, n. 162.
3. Purāṇaḥ ṣoḍśapaṇāḥ. Vivādaratnākara, 8.
4. Purāṇe paṇikaṃ māsam ity eke. Ibid, 11.
5. Etat saṅkarajātyadhamarṇaviṣayam.....Ibid, 11.

These statements show that the *śāstrakāras* in general accepted the righteous rate of interest to be fifteen per cent per annum. Yājñavalkya and Vyāsa made modifications in the form of applying this rate in the case where the loan is secured by a pledge.

But that this rate of interest was subject to change perhaps in the light of demands of the society may be understood from the statement of Manu that one following the course of the righteous persons may charge two per cent (per month) and that by such act the creditor does not incur the sin of extortion.[1] Even charitable people need some inducement to lend at any rate to the strangers with whom they have no reciprocal ties. The rule in the same form appears in the text of Nārada.[2]

The commentators and the digest-writers were in an inconvenient situation to harmonise it with the earlier rates approved in general. Asahāya explains that two per cent may be charged from honest men only irrespective of their castes.[3] Medhātithi is of opinion that such a rate may be charged by the creditor when he is to maintain a big family and when he is not in a position to do so if he accepts the previous rate of interest.[4] This is evidently the case with professional money-lender. Devaṇabhaṭṭa demonstrates ingenuity in his attempt to explain that the rule is to be treated as an adjustment in regard to the option.[5] In other words, this direction of Manu may be taken to in certain cases if necessary. This explanation has been followed in the same form by Mitramiśra.[6] It may be mentioned here that in an attempt to harmonise this direction with his other direction (VIII. 142), Devaṇabhaṭṭa,[7] Caṇḍeśvra,[8] Pṛthvīcandra[9]

1. Dvikaṃ śataṃ vā gṛhṇīyāt satāṃ dharmam anusmaran /
   Dvikaṃ śataṃ hi gṛhṇāno na bhavaty arthakilbiṣī // Manu. VIII. 141,
2. Nārada, IV. 101.
3. Athavā sarvavarṇeṣv api sādhupuruṣebhyaḥ sakāśād dvikam eva śataṃ gṛhṇīyāt. Commentary on Nārada, IV. 101.
4. Pūrvayājīvato bahukuṭumbasyāyaṃ dvikaśatavidhiḥ. on Manu, VIII. 141,
5. Yat tu manunā vikalpatvenoktem dvikaṃ śatam vā gṛhṇīyād iti tad vyavasthitavikalpatvenoktam. Sm. C, II, 361.
6. Vyavahāraprakāśa, 227.
7. Smṛticandrikā. II, 361.
8. Vivādaratnākara, 7.
9. Vyavahāraprakāśa, 206.

and Vācaspatimiśra[1] restrict the scope of this direcrion to the case of the Brāhmaṇa debtors.

It may be presumed that the rate of interest as I/80th part became gradually increased to two per cent per month and it is interesting that this rate rose upto five per cent per month when the principle of caste system was applied to it. This development is not noticed in the *Arthaśāstra* of Kauṭilya and the *Dharmasūtra* of Gautama. Vasiṣṭha prescribes that one may charge two, three, four or five per cent per month from the debtors belonging to the four castes respectively.[2] The same direction in the same form appears in Manu[3] and Nārada.[4] Yājñavalkya in adjustment with his other rule (where he prescribes the 1/80th part as the interest in the case where the loan is secured by a pledge) prescribes here that these rates may be taken from the respective castes where the loan is not secured by any pledge.[5] Viṣṇu follows this principle but does not impose any condition as we find in the text of Yājñavalkya.[6] Bṛhaspati, as referred to in the commentary of Viśvarūpa, supports this theory of the rate of interest on the basis of the caste of the debtors.[7] Vyāsa, it may be mentioned here, speaks of two per cent as the monthly rate of interest in a loan without pledge but he is silent on other points relating to the caste of the debtor.[8] Medhātithi, as in previous case, prescribes that this rule should be applied in the case where the creditor cannot maintain his livelihhood if he accepts the previous rate of interest (i.e. 1/80th part). He suggests alternatively that it may refer to the creditor whose means are not proportionate to his religious commitments and

1. Vivādacintāmaṇi, 3.
2. Dvikaṃ trikaṃ catuṣkaṃ ca paĩcakaṃ vā śataṃ smṛtam /
   Māsaya vṛddhiṃ gṛhṇīyād varṇānām anupūrvaśaḥ // II, 48.
3. Manu, VIII. 142.
4. Nārada, IV. 100.
5. Varṇakramāc chataṃ dvitricatuṣpañcakam anyathā (vṛddhiḥ). Yāj, II. 37.
6. Viṣṇusmṛti. VI. 2.
7. Anyeṣāṃ tu pādavṛddhyā vṛddhikalpanam. tathā ca bṛhaspatiḥ, pādopacayāt krameṇetareṣām iti. Commentary on Yāj, II. 39 (T. S. S).
8. Nirādhāne dvikaśataṃ māsalābha udāhṛtaḥ. Vyāsa quoted in the Vivādaratnākara, 7.

where the debtors are not of specially religious dispositions[1]. In other words, he sees (correctly) the whole attempt at regulation as a device to impose principles of *dharma* on a matter governed partly by social and still more by economic considerations.

The view of Govindarāja appears to be the same as that of Medhātithi.[2] Devaṇabhaṭṭa explains that the provision refers to a loan without pledge and surety.[3] He interprets evidently the text of Yājñavalkya (II. 37) as having reference to both pledge and surety (though he uses the term *bandhaka*, conveying the meaning of a pledge). This process of harmonisation has been adopted by Kullūkabhaṭṭa[4], Pṛthvīcandra[5] and Madanasiṃha[6].

Vācaspatimiśra argues that the principle of caste distinction should be applied also in the case where the loan is secured by a pledge. He thus goes against the text of Yājñavalkya (II. 37). He explains that when the interest is charged from a *Brāhmaṇa* debtor at the rate of one, that should rise up to one and half in the case of a *Kṣatriya*, to two in the case of a *Vaiśya* and to two and half in the case of a Śūdra.[7] By way of explaining the verse of Manu (VIII. 141), he observes that in times of distress if a *Vaiśya* or a *Brāhmaṇa* and others receive interest on the basis of this text of Manu, no sin is incurred. One however, may incur sin if a rate higher than this like *kāritā* etc. (for which see sub-section 5) is charged because that causes distress to the debtor. 'In normal time if people other than the *Vaiśya* receive either of these two sets of rates (rates

1. Idam api pūrveṇājīvataḥ kalpāntaram. yasya vālpaṃ dhanaṃ mahate dharmāya grahītāraś ca nātidhārmikās tatrāyaṃ vidhiḥ.
Commentary on Manu, VIII. 142.
2. The printed text containing the commentry of Govindarāja as edited by V. S. Mandlik (Bombay, 1886) seems to be incorrect. It should be read as 'pūrvavṛddhyā cājīvan...in place of...'ca jīvan' (vide his commentary on Manu. VIII, 141).
3. Abandhakālagnakprayogaviṣayam etat. Sm. C, II, 362.
4. ...idaṃ tu vadāmaḥ, sabandhakeṣv aśītibhāgagrahaṇaṃ bandhakarahite tu dvikaśatavṛddhiparigrahaḥ. Commentary on Manu, VIII, 142.
He does it to adjust it with the privision of Yājñavalkya, II, 37.
5. Vyavahāraprakāśa, 206.
6. Madanaratnapradīpa, 139.
7. Sabandhakādāv apy evaṃ varṇakrameṇotkarṣaḥ, tena brāhmaṇe yā vṛddhiḥ sā kṣatriye sārdhā vaiśye hi dviguṇā śūdre śārdhaguṇā.
Vivādacintāmaṇi, 3.

like 2%, 3%, 4% and 5% and the rates like compound interest etc.) they incur sin."[1] (It may be noted that there is no question of the transactinn being void.)

From the interpretation of Vācaspatimiśra it is clear that he is in favour of applying the principle of caste distinction in the case of the creditors also. Vijñāneśvara distinctly refers to this in connection with the debtors.[2] Jagannātha harmonises by stating that the order of classes should be considered as relating to both the lender and the borrower.[3]

We have from Manu the direction that the maximum rate of interest that should be charged is five per cent per month. He observes that the stipulated interest beyond what has been prescribed in the *śāstra* (i. e. beginning with 1/80th part and rising up to 5%) should not have legal force because that is spoken of as usurious way (of lending). The creditor may charge up to five per cent.[4] The exact implication of the verse is not clear but it may be taken for granted that Manu regards this rate of five per cent per month as the highest limit. It may be mentioned that the special rates of interest like *Cakravṛddhi* etc. have not been recognised by Manu (VIII. 153).

Medhātithi observes that if the creditor is anxious to make as much money as possible out of the transaction under the impression that the borrower is going to carry on extensive business with the capital he is going to lend, then the creditor may charge five per cent irrespective of the caste of the borrower.[5] More or less the

1. Etanmanuvākyād uktaprakāravṛddhigrahaṇe vaiśyasya tathāpadi brāhmaṇādīnāṃ api nādharmaḥ, atiriktakāritādivṛddhigrahaṇe tu pīḍākaratvād adharmaḥ. Anāpadi tu vaiśyetareṣāṃ ubhayathāpy adharmaḥ.
Vivādacintāmaṇi, 3.
2. Vide his commentary on Yāj, II, 37.
3. Col. Dig, I. 46.
4. *Kṛtānusārād adhikā* vyatiriktā na sidhyati /
Kusīdapatham āhus taṃ pañcakaṃ śatam arhati // Manu. VIII. 152
For the different reading for the words underlined vide the commentary of Medhātithi.
5. Yasyāvaśyam adhikā kartavyā mahad dhi kāryam ayaṃ madīyena dhanena sādhayatīti buddhyā tadā varṇavibhāgam anapekṣya pañcakaṃ śataṃ grahītum arhati, lipset, tadartham idam ucyate. on Manu, VIII. 152.

same sort of explanation has been offered by Govindarāja[1] and Sarvajñanārāyaṇa.[2]

Yājñavalkya, like Kauṭilya (III. II. I.) does not regard this five per cent interest as the highest limit that may be charged. He prescribes ten per cent in the case of the debtors passing through forest and twenty per cent for those who are to cross the ocean.[3] He does not mention the commercial rate of interest as we find in the *Arthaśāstra*. In these cases we may reasonably point out that this exorbitant rate is sanctioned by this law-writer by taking into consideration the fact that in these cases there is apprehension of the loss of the capital even. This has been pointed out by Vijñāneśvara.[4] A different approach has been made by Jagannātha. According to him the traders who travel by difficult roads endangering life, necessarily obtain greater profit and those who travel by ocean are exposed to utmost danger and in this case also they can earn greater amount of profit. The creditor may therefore claim in these two cases a special rate of interest.[5] What we think is that both the views are partially correct. It is better that the text of Yājñavalkya should be explained as suggesting both the purposes as the basis on which the direction has been given. It may be suggested here that Manu himself could conceive of such a situation nowithstanding the fact that he has denounced the higher rates of interest. In one of his verses there is reference to the rate of interest to be ascertained by the persons expert in the sea-voyages. Thus he observes : 'Whatever rate men fix, who are expert in sea-voyages and able to calculate (the profit) according to the place, time and the objects (carried), that (has legal force) in such cases with respect to the payment (to be made).'[6] Here the implication of the verse may be that a rate

1. Śudraviṣaye yad uktaṃ pañcakaṃ śataṃ tad asāv uttamarṇo dvijāter ādātum arhati. Govindarāja's commentary on Manu, VIII, 152.
2. Ārtatayā tad adhikaṃ śatād yat pañcakagrahaṇaṃ śūdre uktaṃ tac caturṣu varṇeṣu grāhyam. Commentary on Manu, VIII, 152.
3. Kāntāragās tu daśakaṃ sāmudrā viṃśakaṃ śatam. Yāj, II, 38.
4. ...mūlavināśasyāpi śaṃkitatvāt. Commentary on Yāj, II, 38.
5. Col. Dig, 1.81
6. Samudrayānakuśalā deśakālārthadarśinaḥ /
   Sthāpayanti tu yāṃ vṛddhiṃ sā tatrādhigamaṃ prati // Manu, VIII. 157.

The translation made above is by Bühler, S. B. E, XXV, 282.

higher than the rate fixed by him (i. e. five per cent) may be accepted as legal if the experts on the subject so decide.

Caṇḍeśvara in his *Vivādaratnākara* holds that such a rate of interest as sanctioned by the text of Yājñavalkya, should be paid by the debtor even if such a rate was not previously accepted by the debtor himself.[1] The idea appears to be that according to Caṇḍeśvara such a high rate depends on the nature of the risk involved in the realisation of the capital. It is immaterial whether there was any stipulation to that effect or not at the time of getting the loan.

Jagannātha regards such a rate of interest to be the stipulated one, *kāritā*.[2]

Yājñavalkya takes the bold and realistic step of prescribing that irrespective of the castes, the debtors may pay a rate of interest agreed on by them and approved of by the creditor.[3] This has the support of Viṣṇu[4] and Kātyāyana,[5] Practically speaking, there is justification for such a provision. In times of crisis and immediate necessity a debtor may be compelled to agree on any rate of interest and it will not be proper on the part of the debtor to act against his promises even though the rate may be higher than that prescribed in the *śāstras*. Therefore it is quite reasonable to think that by lending recognition to to such practices, Yājñavalkya has demonstrated his rational and practical approach to the question like a modern legislator

We have from Kātyāyana the rule that when such stipulation is imposed by the creditor himself by taking advantage of the debtor's distressed state, it should not be paid by the debtor.[6] Or in other words, the *śāstrakāra* through such provision is supposed to impress that the recognition of the *kārita* type of interest (in which category it falls) should not be misused by the creditor to serve his own

1. ...te uttamarṇāya daśakaṃ śataṃ viṃśakañ ca śataṃ kṛtāyām akṛtāyām api vṛddhau dāpayitavyāḥ. Vivādaratnākara, 11.
2. Col. Dig, I. 80.
3. Dadyur vā svakṛtāṃ vṛddhiṃ sarve sarvāsu jātiṣu. Yāj, II. 38.
4. Sarve varṇā svapratipannāṃ vṛddhiṃ dadyuḥ. Viṣṇusmṛti, VI. 3.
5. Kātyāyana, 498.
6. Ṛṇikena tu yā vṛddhir adhikā samprakalpitā /
   Āpatkālakṛtā nityaṃ dātavyā kāritā tu sā //
   Anyathā kāritā vṛddhir na dātavyā kathañcana // Kātyāyana, 498. = Bṛhaspati, X. 12.

purpose.[1] He may go to the extent of receiving such a rate of interest only when it is offered by the debtor himself.

In this context the text of Nārada may be suitably cited. According to the text the rules relating to the different rates of interest mentioned by him are to be treated as of general nature.[2] The purport of of the statement appears to be that it is not possible strictly to enumerate all the detailed rates of interest because they are subjected to variation according to the circumstances under which transactions take place.

To summarise, the righteous rate of interest without any reference to any type of security was fifteen per cent per annum. It is Yājñavalkya who introduced the additional condition that such a rate should be accepted when the loan is secured by a pledge. He has been followed by Vyāsa, who makes further distinction with reference to a loan secured by a surety. The rate was raised to twentyfour per cent and that became fixed in the case of a Brāhmaṇa debtor. Through the introduction of the theory of caste distinction the rate rose higher up to 36% in the case of a Kṣatriya, 48% in the case of a Vaiśya and 60% in the case of a Śūdra. This 60% annual rate was regarded as the maximum by Manu. Kauṭilya and Yājñavalkya prescribe greater rate of interest in the cases where there is apprehension of the loss of the capital itself. Yājñavalkya proceeds a step further and directs that the stipulated type of interest (*kāritā*) may be accepted by the creditor and in that case the limit of the rate of interest cannot be stated accurately. Kātyāyana, however, restricts this scope of the *kārita* type of interest by declaring that the creditor should not be entitled to charge a stipulated interest but he may accept it when the debtor himself agrees to pay it. Nārada rightly observes that the rates of interest sanctioned in the *śāstra* should be treated as applicable in general cases only (implying thereby that there should be exception to the rates depending on the nature of the circumstances). This evolution may be stated to demonstrate how *śāstra* attempts to keep pace with the changed condition of the society.

1. Devaṇabhaṭṭa. followed by other digest-writers explains that a rate fixed by the creditor should not be paid by the debtor : 'na punar anevaṃvidhā dhanikena kāritā dātavyety arthaḥ. Sm. C. II, 360 :
Vide also Viv. rat, 10—11 ; M. R. P., 137 ; Vivādacintāmaṇi, 4.
2. Nārada, IV. 105.

2. Different Types of Interest.

Notwithstanding the fact that certain rules of general nature regulating the rates of interest were prescribed by the śāstrakāras, they had to lend recognition to certain other special rates of interest[1] which were current in the society. Evidently they had to be recognised under peculiar circumstances and this may be treated as one of the illustrations where *dharmaśāstras* had to adapt themselves to the changing conditions of society.

Gautama refers to six types of special interest in the form of *cakravṛddhi* (compound interest), *kālavṛddhi* (periodical interest), *kāritā* (stipulated interest), *kāyikā* (corporal interest), *śikhā* (daily interest) and *ādhibhoga*[2] (interest in the form of the use of a pledge).[3] Gautama does not describe the nature of these types of interest.

Manu mentions four of them omitting the *śikhāvṛddhi* and the *ādhibhoga* type of interest.[4] He also does not describe the nature of these types. Yājñavalkya appears to refer to the *kāritā* type of interest, though he does not mention it by name.[5] The same is the case with Viṣṇu.[6] Nārada makes mention of the four types referred to by Manu.[7] Bṛhaspati refers to different views according to which interest may be of four, five or six varieties.[8] The six varieties mentioned by him are like those of Gautama, the difference being that while the sixth one in the list of Gautama is termed as *ādhibhoga* it is given here the appellation of *bhogvaṛddhi*[9] or *bhogalābha*.[10] Kātyāyana

1. For discussions on the different types of interest see, P. V. Kane, History of Dharmaśāstra, III, 418-419. He simply mentions these types but does not analyse them properly. Sternbach in his Juridical studies in ancient Indian Law, 1,510-511 refers to them.
2. Haradatta refers to a view according to which the name should be *adhibhoga*. Vide his commentary on G. D. S, XII. 32.
3. Cakrakālavṛddhiḥ. G. D. S, XII. 31.
   Kāritākāyikāśikhādhibhogāś ca. G. D. S, XII. 32.
4. Manu, VIII. 153.
5. Vide Yāj. II. 38 and the notes hy Vijñāneśvara on it.
6. Vide Viṣṇusmṛti, VI. 3 and the commentary of Nanda on it.
7. Nārada, IV. 102.
8. Bṛhaspatismṛti, X. 8.
9. Ibid. X. 15.
10. Idid. X. 9.

defines *bhogalābha*,[1] *ādhibhoga*[2] and *śikhāvṛddhi*[3] and refers to the *kāritā* type.[4] These forms of interest will be discussed below.

3. *Kālikā* (periodical interest).

The periodical interest is calculated by month[5] and is collected at each month.[6] Asahāya states that the rate of interest in this case ranges between two and five per cent per month as sanctioned by the *śāstras* according to the caste of the debtor.[7] It is clear that *kālikā* is not a *rate* of interest but a mode of payment of interest with reference to time.

Medhātithi makes a different approach to the question. According to him the use of the word *māsa* (month) in the definition by Nārada and Bṛhaspati is illustrative only. The idea is that time is not allowed here and the interest is not to be accumulated and is realised either daily or by month.[8] This is obviously the point of the classification. He refers to another type of periodical interest where the creditor stipulates by prescribing a time-limit that if the payment is not made within the stipulated period then the capital will get doubled automatically.[9] Medhātithi might have referred to a particular custom of certain locality. In the *Maskaribhāṣya* on the *Gautama-dharmasūtra* (XII. 31), the *kālavṛddhi* type of interest has been explained in this light. It has been stated that in the *kālavrddhi* type of interest there is a stipulation with reference to the limit of

1. Kātyāyana, 500.
2. Ibid, 501.
3. Ibid, 499.
4. Ibid, 498.
5. Pratimāsaṃ sravantī yā vṛddhiḥ sā kālikā smṛtā. Nārada, IV. 103.
6. Māsagrāhyā tu kālikā. Bṛhaspatismṛti, X. 10.
7. Sā ca śāstroktā varṇānukrameṇa pañcakaśatam avadhibhūtā dṛṣṭā. Commentary on Nārada. IV. 103. Vide also the commentary by Bhavasvāmī on N. M. S, I, 88-89.
8. Māsagrahaṇam upalakṣaṇārtham, yā'nupacitā vṛddhir divase divase gṛhyate māsi māsi vā yasyāḥ kālo na pratīkṣyate... on Manu, VIII. 153.
9. Atha caitasmin kāle yadi na dadāsi tadā dviguṇībhavati dhanam ity ekarūpā kālavṛddhiḥ. Medhātithi on Manu. VIII. 153.
Gaṅgānāth Jhā wrongly attributes this interpretation to the Vivādaratnākara in his translation of the Vivādacintāmaṇi, 6.

time which if violated should result in the payment of an interest as thrice or four times the capital.[1]

Vijñāneśvara,[2] Devaṇabhaṭṭa[3] and Mitramiśra[4] explain it as an interest payable at each month.

4. *Sikhāvṛddhi* (Hair-interest).

The hair-interest may be treated as a variety of the periodical interest, the difference being that the interest here is collected each day. Bṛhaspati defines it as standing for an interest that is realised each day.[5] In another verse he brings out the significance of the name by stating that the interest grows daily liks a hair-tuft. Just as the hair-tuft ceases to grow only when the head is chopped off so such an interest ceases to accrue only when the principal is paid off.[6] Kātyāyana explains that in this type of interest the debtor is to pay the interest fully and it is paid each time (day).[7]

Devaṇabhaṭṭa followed by Pratāparudra and Mitramiśra explains that the words '*pratyaham gṛhyate*' (taken daily) should be indicative of the number of days etc. within which the debtor promised to pay the debt.[8] The vague interpretation of this type in the *Maskaribhāṣya* suggests that the appellation of this sort of interest on the basis of the hair-tuft was not final.[9] This may be regarded as one of the cases

1. Asmāt kālāt prāk kevalaṃ vā prakṛtavṛddhyā vā mama dātavyaṃ yadi na dadāsi tatas tasmād ūrdhvaṃ triguṇaṃ (ca) caturguṇaṃ vā dātavyam iti samayaṃ kṛtvā yasmin bahvī vṛddhir gṛhyate sā kālavṛddhiḥ.
2. Vide his commentary on Yāj. II. 37.
3. Smṛticandrikā, II, 359.
4. Vyavahāraprakāśa, 226.
5. Pratyahaṃ gṛhyate yā tu śikhāvṛddhis tu sā smṛtā. Bṛhaspati, X, II. Haradatta on G. D. S, (XII. 32) attributes this to Kātyāyana.
6. Śikheva vardhate nityaṃ śiraścedān nivartate / Mūle datte tahaivaiṣā śikhāvṛddhis tataḥ smṛtā // Bṛhaspati. X. 13. Haradatta attributes this to Kātyāyana on G. D. S, XII. 32.
7. Ekāntenaiva vṛddhiṃ tu śodhayed yatra carṇikam (ḥ) / Pratikālaṃ dadāty eva śikhāvṛddhis tu sā smṛtā // Kātyāyana, 499. Vide here the notes by P. V. Kane in the *Kātyāyanasmṛtisāroddhāra*, 215.
8. Pratyahaṃ gṛhyate iti sampratipannadinasaṃkhyāviśiṣṭavṛddhigrahaṇopalakṣaṇārtham. Sm. C. II, 360. Vide Sar. vil, 223 ; Vy, P (M), 226.
9. Śikhā dhānyasya yathā caturṇāṃ prasthānāṃ pañcama ityādi. Commentary on G. D. S, XII, 32. Vide here the commentary on the same by Haradatta.

where certain laws lost their original meaning and the commentators in their interpretations presented the points vaguely, may be intentionally.

5. *Kāritā* (stipulated interest).

This type of interest has been referred to by Gautama and Manu and we have pointed out that Yājñavalkya might have been familiar with this type as may be presumed from his direction embodied in the rule (Yāj, II. 38). Nārada defines it as an interest which has been promised by the debtor himself.[1] The same type of definition we find in the text of Bṛhaspati.[2] A direction shared by both Bṛhaspati[3] and Kātyāyana[4] goes to suggest that such a type of interest has a rate above the normal one as prescribed by the *śāstras* and it is stipulated in times of calamity by the debtor.

Asahāya explains it as the interest promised by the debtor himself at a rate more than ten per cent in times of acute distress.[5] Medhātithi, following Bhāruci[6] speaks of it as a rate settled by both the creditor and the debtor taking into consideration the requirements and benefits of both the parties.[7] He observes that this type of interest is intended for (or accepted by) distant traders.[8] In fact businessmen often are compelled under the demand of circumstances to accept a loan at a rate higher than the prescribed one. It may be that businessmen carrying out business in a distant country think it wise to get a loan at a high rate of interest in view of the fact that they may derive a greater amount of profit.

Medhātithi refers to another type of privately stipulated interest where gold is issued as a loan and cloth is received as interest.[9]

1. Vṛddhiḥ sā kāritā nāma yaṇikena svayaṃ kṛtā. Nārada, IV. 103.
2. Kāritā ṇiṇā. kṛtā. Bṛhaspati, X. 10.
3. Bṛhaspati, X. 12.
4. Kātyāyana, 498.
5. Yaḥ punaḥ ṇikenaiva apātrabhūtenaiva athavā pātrabhūtenaiva saviśeṣārtivaśāt svamukhenaiva daśaikād adhikā karavṛddhir vā kṛtā.
   Asahāya's commentary on Nārada, IV. 103.
6. ...parasparopakārāpekṣayā svayaṃ kṛtā...
   Bhāruci on Manu, VIII. 152 153
7. Parasparopakārāpekṣayottamarṇādhamarṇau kurutaḥ...
   Medhātithi on Manu, VIII, 153.
8. Eṣāpi digvaṇijām eva. Medhātithi on Manu, VIII. 153.
9. Athavā hiraṇye prayukte vāsāṃsi vṛddyā gṛhyate...sā kāritā.
   Medhātithi on Manu, VIII. 153.

This suggests that the *kāritā* type of interest was more or less of a an agreed rate of interest falling outside the range of the normal *śāstric* rates of interest. It is quite natural that the rate of interest sanctioned by the *śāstras* cannot always be treated as suitable under all the circumstances. It may be stated that the *śāstrakāras* in their enumeration of the different rates of interest have presented the norm and it has been shown before that the rates of interest have been modified (at different stages) perhaps to meet the demand of the situation. The *kāritā* type of interest shows that the *śāstrakāras*, willingly or unwillingly had to reccognise a rate of interest, which is definitely higher than that prescribed by them. It if of interest to note that this system of taking or giving a rate higher than that prescribed by the *śāstras* was already in vogue at the time of Gautama and he does not comment on it. It is Manu who expresses his abhorrence for this rate of interest.[1] The position is quite different wjth Yājñavalkya, who boldly declares that such a practice may be accepted.[2] Bṛhaspati simply mentions this type and no definite opinion is supposed to be expressed on it. Only in the *Vyavahāraprakāśa* (p. 226) of Mitramiśra, a verse similar to that of Kātyāyana (498), has been attributed to Bṛhaspati. As it has been attributed to Kātyāyana in most of the digests, it is presumed that Mitramiśra's reference to Bṛhaspati may not be right. Kātyāyana shows a different attitude by restricting its scope to the payment of this rate of interest in the case where the rate is fixed by the debtor (and not by the creditor).[3] He thus attempts to safeguard the interest of the dcbtor against any sort of oppressive rate of interest that may be demanded by the creditor. But the interpretation of this type of interest by Medhātithi and others shows that in actual practice the creditor also could dictate the terms in the same way as the debtor. Govindarāja in his interpretatien of the verse of Manu follows the explanation offered by Medhātithi. He observes that this rate is agreed on by both the parties, the creditor and the debtor.[4] The same is the view expressed by Haradatta

1. Manu, VIII. 153.
2. Yāj, II. 38.
3. Kātyāyana, 498.
4. Kāritecchākṛtā parasparāpekṣayā vaṇikprabhṛtīnām...on Manu, VIII. / 153

on the *Gautamadharmasūtra.*[1] Sarvajñanārāyaṇa holds that such an interest is acceptable even though it is more than the approved rate.[2] It is difficult to draw any conclusion from the statemenents of Devanabhaṭṭa[3] and Caṇḍeśvara[4] regarding their attitude to this question because what they say is only by way of explanation of the verse of Kātyāyana (498). But the tendency is to impress that such a rate should not be accepted when it is dictated by the creditor.

6. *Kāyikā* (corporal interest).

This variety of interest has been referred to (but not defined) by both Gautama and Manu. It is plain that the maxim containing this kind of interest by name was older than our *Smṛtis* and that our surviving *Smṛti* texts attempt to make sense of it as best as they can. Nārada defines it (somewhat ambiguously) as an interest at the rate of one *paṇa* or quarter of *paṇa* paid regularly without diminishing the principal.[5]

1. Prayoktrā grahītrā ca deśakālakāryāvasthāpekṣayā prabhūtā nyūnā vā svayam eva kalpitā vṛddhiḥ kāritā. on G. D. S, XII. /32
2. Vide his commentary on Manu, VIII, 153
3. Smṛticandrikā, II, 356-360.
4. Vivādaratnākara, 10-11.
5. Kāyāvirodhinī svasvapaṇapādādikā kramāt. Nārada, IV. 104

   The interprttation offered by Asahāya of the rule is that *kāya* stands for the capital itself. *Sva sva* are to be taken as indicating each day. In such a type the capital remains unaffected and is to be paid in full at the time of final payment though the interest is paid each day at the rate of one *paṇa* or a quarter of it :

   'Dravyapiṇḍo dravyakāyaḥ tasyāvirodhinī mūladravyakāyasyāvināśinī. .....svaḥ svo dinapratidinaṃ paṇaḥ paṇo deyaḥ, pādaḥ pādo vā deyaḥ ity anena krameṇa taṃ paṇaṃ pādaṃ vā pratidinaṃ 'gṛhṇato dhanikasya sucirakālenāpi mūladravyakāyamadhyāt kiñ cin na patati. Aparimitadravyapraveśa iti. yadā tadā sa dravyapiṇḍakāya ṛṇikenākhaṇḍita eva sampūrṇo deyaḥ.'

   Commentary on Nārada, IV. I04.

   Vide here the notes by Jolly. S. B. E., XXXIII, 66-67.

   This text of Nārada has been differntly read. In the *Nāradīyamanusaṃhitā* (I. 88) and the *Mitākṣarā* (on Yāj. II, 38), the portion underlined has been read as *śaśvat paṇapādādi kāyikā*. The interpretation by Bhavasvāmī is the same as that of Asahāya. Vijñāneśvara does not refer to the first part of the verse but interprets it as an interest which is realised each day : 'iyam

Bṛhaspati defines this type of interest as one connected with bodily labour.[1]

The meaning of the direction of Bṛhaspati is that the interest is paid by work, but not necessarily personal work—and the doubt or confusion continues.

Vyāsa as quoted in the *Smṛticandrikā* describes it[2] as interest in the form of milch cattle, beast of burden and personal service.[3] The meaning of the line is not exactly clear.

Medhātithi suggests that that this type of interest consists in the payment of the interest through physical labour.[4] His idea perhaps was that the debtor not being able to pay the interest in this case agrees to serve him (the creditor) for a certain peried for

eva vṛddhir divasagaṇanayā vibhajya pratidivasaṃ gṛhyamāṇā kātykā bhavati' (Commentary on Yāj, II. 38.).

Caṇḍeśvara (*Vivādaratnāhara*, 10), Prthvīcandra (*Vyavahāraprakāśa*, 204) and Vācaspatimiśra (*Vivādacintāmaṇi*, 4) read the line as: 'kāyāvirodhinī śaśvat paṇārdhādyā tu kāyi·ā'. In this interpretation the daily payment is a *paṇa* or half of a *paṇa* and the like. *śaśvat* has been explained as each day (pratidinam). (G. N. Jhā wrongly explains it as 'yearly'. Vide his translation of the Vivādacintāmaṇi, 5).

The interpretation by Caṇḍeśvara that such a precess of payment is agreed on by both the parties, makes it closely allied to the *kāritā* type: 'paṇatadardhādikrameṇa nityam ubhābhyāṃ vyavasthāpitā, sā nāradamate kāyikā'. *Vivādaratnākara*, 10.

Both Caṇḍeśvara and Vācaspatimiśra refer to the reading of the text as '*paṇavāhyā*' in place of '*paṇārdhādyā*' by Halāyudha and the interpretation is that 'when the capital is *paṇa*, the interest is capable of being accumlated even for hundred years.' : 'paṇe mūle sati varṣaśatam api vāhyā prāpyā iti tatrārthaḥ.' Vivādacintāmaṇi, 4. Caṇḍeśavara rejects such a reading as it is not corroborated by other texts (digests): 'tac ca sakalanibandhāntareṣu paṇārdhādyā iti pāṭhadarśanād upekṣitam.' Vivādaratnākara, 10. Vide here also the notes by Dr. Jhā in his translation of the *Vivādacintāmaṇi*, 5.

From all these discussions it may follow that whatever may be the minor variation in reading of the text, the type of interest called *Kāyikā* according to Nārada stands for an interest computed each day without loss of the capital and the rate might be one *paṇa*, a quarter of it or half of it.

1. Kāyikā karmasaṃukā Bṛhaspati, X. 10.
   For the underlined part the other reading is : *karmasaṃśodhyā*.
2. This rendering is made by G. N. Jhā in his translation of *Vivādacintāmaṇi*, 5.
3. Dohyavāhyakriyāyuktā kāyikā samudāhṛtā. Quoted in Sm. C, II, 359.
4. Kāyikā kāyakarmaṇā saṃśodhyā. Medhātithi on Manu, VIII. 153.

the discharge of the debt (it is not clear whether by this service rendered only the interest will be covered or it will go to reduce the capital also).

The interpretation of Govindarāja is vague.[1] Haradatta in his commentary on the *Gautamadharmasūtra* shares the view expressed by Medhātithi and he uses almost exactly the same language to express the idea.[2]

Devaṇabhaṭṭa by way of explanation of the verse of Vyāsa observes that the physical labour of the pledged animals like cow, horses etc. is treated here as the interest.[3] He has been followed by Pṛthvīcandra[4] and Mitramiśra.[5] In the *Madanaratnapradīpa* it has been held that the interest here is in addition to the use of the pledged animals.[6] But this meaning does not exactly come out of the direction of Vyāsa. The interpretation by Sarvajñanārāyaṇa suggests that the debtor renders physical service for the creditor in lieu of interest so long as the capital is not paid.[7]

It may strongly be suspected that this was the original concept disapproved of by the early jurists as a covert self-sale into slavery. In this connection the provision in the text of Manu deserrves to be mentioned. It has been observed that the debtor may discharge his debt through physical labour.[8] That slavery could come through the inability to disharge the debt may be traced in the texts beginning with the *Arthaśāstra*. In the section on law concerning slaves and labourers (*dāsakarmakarakalpa*) it has been stated that it is not an offence on the part of the *mlecchas* to pledge their sons (evidently for security).[9] There is reference to persons pledging themselves

1. Kāyikā kāyakarmasaṃkhyāvācyā syāt. On Manu, VIII. 153.
2. Kāyikā kāyakarmasaṃśodhyā Commentary on G. D. S, XII. 32.
3. Goghoṭakāder ādhīkṛtasya dohanavāhanādikaḥ kāyiko vyāpāra eva yatra vṛddhitvena kalpitaḥ sā kāyikā ity arthaḥ. Smṛticandrikā, II, 359.
4. Vyavahāraprakāśa, 204.
5. Vyavahāraprakāśa, 225.
6. Bhogyādhitayā sthāpitasya yo dohanavāhanādikarmarūpo bhogas tatsahitā yā vṛddhiḥ sā kāyikety arthaḥ. M. R. P, 137.
7. Kāyikā yāvan na mūlam arpyate tāvat kāyena kalārthaṃ kāryam iti. Commentary on Manu, VIII. 153.
8. Manu, VIII. 177.
9. Arthaśāstra, III. 13.3.

(*ātmādhātā*).[1] We have in the same text the references of slaves by the designation of '*āhitaka*'.[2]

Nārada refers to different types of slave of which one belongs to the category of a slave because he is placed as a pledge by his master.[3] The other is one who is made a slave consequent to his release from the liability of paying a heavy debt.[4] From these references it may not be wrong to suppose that the exact implication of the word *kāyikā* so far as it is applied in the case of interest was lost to the commentators themselves. That may explain why they were not clear in their expositions. But as there is reference to the system of slavery arising out of debt, it may be presumed that the *kāyikā* tpye of interest bears reminiscence of the practice of slavery through debt. This may be one of the reasons as to why this *kāyikā* type of interest has been denounced by Manu.[5] It may also be supposed that at a later stage the use of the physical labour of the debtor yielded place to the practice of the use of pledged animals of the usufructuary type.

The observation of R. S. Sharma here deserves notice. He observes :[6] 'The provision to make the debtors work in lieu of interest so long as the capital was not paid implies some sort of serfdom in early mediaeval times. Such rules leave clear scope for enjoying the manual labour of the debtor in return of interest and remind us of the present practice to which several generations of the same family have been reduced to the positions of hereditory ploughman in consideration of a paltry sum advanced to them. Therefore in view of the comparative absence of coin in four centuries following the fall of Gupta empire, *kāyikā* should be considered as an important and widely prevalent form of

1. Ibid. III. 13.6.
2. Ibid. III. 13. 11-12.
3. Nārada, V. 26.
4. Ibid. V. 27.
   For other references to slavery in India vide, P. V. Kane, History of Dharmaśāstra, II-I, 180-187 ; Dev Raj, L'esclavage Dans L'inde Ancienne (d'apres les textes Palis et Sanskrits) (Pondichèry, 1957) ; A. K. Chattopadhyaya, Slavery in India (Calcutta, 1959), I-5.
5. Manu, VIII. 153.
6. R. S. Sharma, 'Usury in Early Mediaeval India (A. D. 400-1200)', in Comparative Studies in Society and History, VIII-I (Hague, Oct. 1965), 68.

interest. However only the members of the caste lower than that of the creditor could be subjected to bodily labour for recovery of loans and consequently the incidence of this interest fell more heavily on the members of the lower orders."

Here it should be noted that Vācaspatimiśra is in favour of including this type of interest as described by Vyāsa, under the category of *Bhogalābha* (for which see below), and according to him that defined dy Nārada is to treated as different from it.[1] This is quite reasonable. If indeed this type of interest had once been confined to the slaves, animals etc., it is unlikely that *kāyikā* (which refers to the human body) could have been the nomenclature adopted originally.

7. *Cakravṛddhi* (compound interest).

We have noticed that the previous items are methods of payment of interest, not of calculating the rate of interest. Gautama and Manu refer to the variety of interest called *cakravṛddhi* ('wheel interest'). Nārada defines it as an interest on interest.[2] The same is the definition of Bṛhaspati.[3] Asahāya in his interpretation of the definition by Nārada presents a concept different from that held in later times. According to him capital bearing interest at the rate of five per cent per month will reach the same amount as the sum itself in twenty months. The capital thus becomes doubled. In another twenty months the capital becomes quadruple and twenty months later it becomes octuple and so on[4]. He assumes that this type implies the absence of the *dvaiguṇya* limit. (see sec. 10).

Medhātithi refers to the view of others (perhaps of Bhāruci) according to which such an interest derives its name through its

1. Atra vyāsoktā kāyikā bhogalābhāntargataiva, nāradoktā tu tadbhinneti draṣṭavyam. Vivādacintāmaṇi, 4.
2. Vṛddher api punar vṛddhiś cakravṛddhir udāhṛtā. Nārada, IV. 104.
3. Bṛhaspati, X. 10.
4. Vide his commentary on Nārada, IV. 104.
   In modern concept, by compound interest it is meant that 'the interest is added to the principal at the end of each conversion period (such as a month or year) and thereafter it itself earns interest.' The Universal Encyclopaedia of Mathematics (1955), 262-263.

similarity with the wheel.[1] The idea is that as in the case of a wheel (i. e. a cart having wheel) the interest is charged only for the period during which it is used. This is very far-fetched. If the day is wet and if he is to cross a river (which cannot be crossed by a cart) and necessarily no use is made of it, no interest should be charged. In the same way *cakravṛddhi* stands for the interest in the cases of oxen and other objects that are used as conveyances, where interest is paid in the same manner.[2]

Manu appears to accept this type of interpretation in one of his verses. Thus with reference to the *cakravṛddi* type of interest, it has been observed by Manu that when one enters into a contract of this sort with special reference to time and place and when one fails with respect to the same (time and place), one should not get the (entire) reward (in the form of interest).[3] Govindarāja also accepts the explanation of the term on the basis of the word *cakra*.[4]

It appears that this meaning of the word *cakravṛddhi* on the basis of its association with wheel was lost and we notice that in some of the commentaries[5] and most of the digest-texts it has assumed the meaning of an interest which is charged on the previous capital and interest taken together (i. e it is 'progressive' interest.).[6] It should be mentioned in this connection

1. Bhāruci on Manu, VIII. 152-153 explains : 'cakravad yānasaṃyuktā vṛddhiś cakravṛddhiḥ. Athavā cakravavad āvartate'.
   This has been kindly supplied by Prof. J. D. M. Derrett.
2. Anye tu cakravad yānaṃ gantryādi tadvṛddhiś cakravṛddhiḥ, teṣāṃ yasminn ahani cakraṃ vartate tatraiva vṛddhiḥ. Yadā tu nadīsaṃtāre durdinādinā aprayānaṃ tadā nāsti vṛddhiḥ. Evam anyeṣām api balīvardādivāhyprayoktṛṇām īdṛśī vṛddhiś cakravṛddir ucyate. Medhātithi on Manu, VIII. 153.
3. Cakravṛddhiṃ samārūḍho deśakālavyavasthitaḥ /
   Atikrāman deśakālau na tatphalam avāpnuyāt // Manu, VIII, 156.
   Medhātithi here presents two illustrations, one of hiring of a cart and another of carrying other's burden by a bull. These two cases have been explained in terms of wheel contract.
4. Vide his commentary on Manu, VIII. 153,
5. Vide Haradatta's commentary on the Gautamadharmasūtra, XII, 32.
6. Vṛddher api pratimāsaṃ. mūlabhāvena punar vṛddhiś cakravṛddhiḥ. Smṛticandrikā, II, 359. Vide also Vivādaratnākara, 10, Madanaratnapradīpa, 137 and Vyavahāraprakāśa of Mitramiśra, 226.

that the calculation of interest according to this principle may result in realisation of a sum more than the double of the original amount and thus it may go against the theory of *dvaiguṇya* and this may be one of the reasons as to why Manu does not favour this type of interest.[1]

8. *Ādhibhoga* (Interest by enjoyment).

The earliest specific reference to this sort of interest is from Gautama. Manu and Nārada are silent on it though of course the general treatment of pledge makes it evident that enjoyment of pledge in lieu of interest was perfectly well-known.[2] Bṛhaspati designates this from as *bhogaālbha* and defines it as interest in the from of use of a house or of the produce of a field.[3] From the definition it may be presumed that this *bhogalābha* is no other than the usufructuary pledge, where the pledgee earns the right to use the pledge in lieu of interest. As such the two cases, namely, the rent of a house and the produce of a field may be treated as mentioned by way of illustration only. Kātyāyana has an identical definition.[4]

Kātyāyana speaks of the type of interest called *ādhibhoga* where the interest is in the form of complete enjoyment of the pledge.[5] There is hardly any difference between the two, *bhogalābha* and *ādhibhoga*. In the latter there is the use of the word *aśeṣa* (entirely) but that perhaps has not been used here in

1. Manu, VIII. 153.
2. Vide Manu, VIII. 143-144.
3. Gṛhāt *stomaḥ* sadaḥ kṣetrād bhogalābhaḥ prakīrtitaḥ. Bṛhaspati, X. 14.
4. Kātyāyana, 500.
   'Stoma' in the verse is rent realised from the house or the use of the house with its furniture. *'Sada'* stands for the produce of the field : 'stomaḥ bhāṭakaṃ śayanādi'. Vivādacintāmaṇi, 4.
   'Stomo'tra gṛhavāsanimittakaṃ bhāṭakam...sadāḥ kṣetrabhavaṃ phalādi', Vivādaratnākara, 13.
   For *'stoma'* there is a variant, 'toṣaḥ' and Mitramiśra, following Devaṇabhaṭṭa (Sm. c. 11, 360) explains it as satisfaction arising out of living in the mortgaged house : 'bandhakīkṛtād gṛhān nivāsādijanitaḥ santoṣaḥ'. Vyavahārpra' āśa, 226.
   Vide here the notes by G. N. Jhā in his translation of Vivādacintāmaṇi,6.
5. Ādhibhogas tv *aśeṣo* yo vṛddhis tu parikalpitaḥ /
   Prayogo yatra caivaṃ syād ādhibhogaḥ sa ucyate // Kātyāyana, 501.

that *sense*. (It may be that it has been used there for the sake of metre.) The interpretation by Devaṇabhaṭṭa that '*aśeṣa*' is used here to indicate the pledge of immovable property only[1] demonstrates his ingenuity in *respect* of harmonisation[2] but the word itself in no way can be expected to convey that meaning. Vācaspatimiśra is right in his observation that the two types *mentioned* by Kātyāyana are the same.[3]

Haradatta on the *Gautamadharmasūtra* clearly explains it as the usufructuary type of pledge where the use of the pledge in the form of a field (used for illustration only) is treated as the interest of the loan.[4] In the *Maskaribhāṣya* this is read as *adhibhoga* and the interpretation is quite different. According to this text objects like butter-oil etc. are accepted each day as the interest.[5] This may mean that the interest here in the form of butter-oil etc. might have been realised each day in addition to the use of the pledge. But this is merely a conjecture and this interpretation along with the two designations of this type of interest by Kātyāyana, may go to prove that the original meaning of this type of interest was lost to the later writers on law and the commentators and the latter interpreted it too, in their own way. So far as the name of this type of interest is concerned, it may be suggested that it would have been better if the two appellations, *ādhibhoga* and *bhogalābha* could have been coalesced in the form of *ādhi-bhoga-lābha* to convey the meaning that the interest here is in the form of the enjoyment of the pledge.

While writing about the nature of the *kāyikā* type of interest R. C. Nigam observes : "It may be noted here that the *kāyikā* interest as defined by Vyāsa would include interest by enjoyment or use

1. Aśeṣaḥ sthāvaramātrasambandhīty arthaḥ. Smṛticandrikā, II, 360.
2. He attempts to harmonise it with the use of two words '*gṛha*' and '*kṣetra*', which have been interpreted rightly to convey the idea of immovable usufructuary pledge :
'Gṛhakṣetragrahaṇaṃ sthāvarātmakabhogyāder apy upalakṣaṇārtham.' Smṛticandrikā, II, 360. Vide also Vyavahāraprakāśa (M), 226.
3. Ayaṃ (bhogalābhaḥ) cādhibhoga ity ucyate. Vivādacintāmaṇi, 4.
4. Ādhibhoga āhitasya kṣetrasya bhogo' nubhavaḥ. Tatrānubhava eva vṛddhiḥ. Haradatta on G, D. S, XII. 32.
5. Adhibhogaḥ vṛddhyartham ahar ahar yasmin ghṛtādir gṛhyate sādhibhogavṛddhiḥ. Commentary on G. D. S, XIII. 32.

which has been called *bhogalābha* by Bṛhaspati."[1] There may be some sort of similarity between the two, namely, *kāyikā* and *bhogalābha* when it is considered that the interest in both the cases consists in the use of the pledge (for use), but the direct mention of the rent of the house and the produce of the field by Bṛhaspati (in his definition of *bhogalābha*) goes to suggest that *bhogalābha* was concerned more with the immovable type of pledge (for use) than with movable ones like horses, bull etc.

Vācaspatimiśra by way of summarising the nature of different types of interest as discussed above, observes that the *bhogalābha* type consists in the enjoyment of (the services of) the servants and the like.[2] In that case it will go against the direction of Bṛhaspati who specifically mentions the produce of the field and the rent of the house (pledged). It may be that by the use of the term '*dāsādi-bhoga*' Vācaspati refers to the usufructuary type of pledge in general. This may again go to suggest that there was no significant difference between *kāyikā* and *bhogalābha* and that may be one of the reasons as to why the latter has not been mentioned by Manu.

Vācaspatimiśra states that the *kāyikā* type of interest is to be realised or calculated yearly, where as the *kalikā* is realisable by each month and the *śikhāvṛddhi* is collected each day. The *kāritā* is agreed on in time of calamity.[3] On this analysis it may be observed that there is no supporting text to show that the *kāyikā* type of interest was to be realised yearly. We have refered to an interpretation from Vijñāneśvara that it is collected daily.[4] All these go to show that the greatest amount of divergence centres round the interpretation of the *kāyikā* type of interest. It is possible that these were the customary forms of interest which were accorded recognition in the *śāstras* and that they lost their original meanings long before they were accepted.

Bṛhaspati speaks of the three, namely, the hair-interest, the *kāyikā* and the *bhogalābha* and observes that the creditor may

1. R. C. Nigam, 'Usury through the ages', in Indian Advocate, VII (1967), III-IV, 47.
2. ...bhogalābho dāsādibhogaḥ. Vivādacintāmaṇi, 4.
3. Kāyikā vārṣikī kālikā māsikī cakravṛddhiḥ vṛddhivṛddhiḥ kāritā āpadi svīkṛtā śikhāvṛddhiḥ prātyahikī... Vivādacintāmaṇi, 4.
4. Vide his commentary on Yāj. II. 37.

realise these interests so long as the principal is not paid off.[1] So far as the *kāyikā* and the *bhogalābha* are concerned, the significance of the direction of Bṛhaspati may be found out in the fact that they are of the nature of the usufructuary type of pledge and the nature of the pledge is that the use of the pledge is to be treated as the interest. So it may reasonably be enjoyed so long as the capital is not realised. With respect to the *śikhāvṛddhi* type such a provision depends on the nature of the contract itself. In these cases it is evident that an amount of interest more than that of the double (capital and interest taken together) may be realised if the debt remains undischarged for a long time. This has been pointed out by Vācaspatimiśra.[2]

The four types of interest, namely, *cakravṛddhi*, *kālavṛddhi* *kāritā* anb *kāyikā*, have been prohibited by Manu.[3] Bṛhaspati also speaks of compound interest as reprehensible.[4] The reason is not very difficult to be traced. In the compound interest the interest may rise above the normal maximum fixed by the *śāstrakāras*. (i. e it may be many times more than twice the capital.) The rate of interest has not been exactly stated by the *śāstrakāras* with reference to the periodical interest. Only in the commentary of Asahāya the limit has been fixed at five per cent.[5] But if that is so there is no point in reprehending it. It may be that in the original concept there was a condition in the contract itself that if it is not paid off in proper time the interest may go on increasing at each month. (i. e if it is not realised in the first month the rate will be increased in the second month and so on, in the same way as we find in the *śikhāvṛddhi* type). In this sense the appellation *kālavṛddhi* in place of *kālikā* appears significant. As interests are calculated in the *śāstras* in terms of month there appears to be some sort of justification in calling it as *kālavṛddhi*. It may be presumed that the stress here is on

1. Śikhāvṛddhiṃ kāyikāṃ ca bhogalābhaṃ tathaiva ca /
   Dhanī tāvat samādadyād yāvan mūlaṃ na śodhitam // Bṛhaspati, X. 16.
2. Eṣu dviguṇādirūpāyāḥ paramavṛddher adhikāpi vṛddhir aticirāvasthāne grāhyety arthaḥ. Vivādacintāmaṇi, 5.
3. Manu, VIII, 153.
4. Bṛhaspati, X. 21.
5. Vide his commentary on Nārada, IV. 103.

the point of agreement in respect of time, the violation of which causes the debtor to pay an enhanced rate. The *kāritā* type has in it the possibility of realising a rate of interest much more high than the prescribed one, by taking advantage of the distressed state of the debtor. The *kāyikā* contains in it the possibility of getting the pledged animals (or the debtor himself) work more than what they are able to do. Taking all these into considerations it appears that Manu, who advocates the theory of *dvaiguṇya* does not favour these rates of interest which may directly go against the established righteous rate. Kullūkabhaṭṭa attempts to show some of these points to support the direction of Manu.[1]

9. Interest on other objects.

The rates of interest as we have discussed are applicable in the case of gold or coins, but with respect to other objects the rate of interest was decleared different. It has been prescribed in the *Arthaśāstra* that the interest on grains, on the harvesting of crops should be charged as half (of the grain lent). After that it may be increased 'being turned into capital.'[2] It has further been stated that 'the interest on capital (shall amount to) half of the profit to be paid for one year, being set apart in a store.'[3]

Yājñavalkya mentions that in case of female beasts the

1. ...kālavṛddhis tu dviguṇādhikagrahaṇena, kāyikā cātivāhadohādinā kāritā ṛṇikena anāpatkāla evottamarṇapīḍayā kṛtā...na gṛhṇīyāt.
Commentary on Manu, VIII. 153.
Note here that Medhātithi refers to the fact that some traders of inferior types take to these types of interest.
Vide his commentary on Manu, VIII. 153.
2. Dhānyavṛddhiḥ sasyanispattāv upārdhā paraṃ mūlyakṛtā vardheta. Arthaśāstra. III. II. 4. Vide here the notes by Kangle, Arthaśāstra, II. 261, where he discusses the interpretations by Meyer and Breloer. Vide also the commentary by Gaṇapati śāstrī. (Arthaśāstra, T. S. S. LXXX, 64-65).
3. Prakṣepavṛddhir udayād ardhaṃ sannidhānasannā vārṣikī deyā.
Arthaśāstra. III. II. 5. For *'prakṣepa'* vide Arthaśāstra, IV. 2. 36. The translations have been made after Kangle. See his notes, Arthaśāstra, II. 26. 1, and the commentary by Gaṇapati śāstrī (Arthaśāstra. T. S. S. LXXX, 65).

interest that may be exacted is in the form of their progeny.[1] The same direction is found in the text of Nārada.[2]

Reference here may be made to the observations of Medhātithi that interest may be realised in different forms. Sometimes when coins are advanced as loans, interest is to be paid in the form of coins. He refers to the text of Yājñavalkya, just cited. There may be interest in the form of enjoyment of pledge like land, cattle etc.[3]

Medhātithi by way of pointing out different customs seems to indicate that notwithstanding the norm laid down in the *śāstras*, the practices of certain territories went on independent of the *śāstric* ideals. He refers to the customs incongruous with the established laws relating to debt. Thus in certain countries grains are lent out during the spring and twice of the amount is realised during the autumn. Again 'when an article is pledged on the understanding that it shall be enjoyed by the pledgee, even if the total amount of debt accruing becomes double of the price of that article, and the total from the very beginning is paid in gold, yet the enjoyment of it remains unmolested'.[4]

10. Maximum limit of interest to be realised at one time.

We have discussed the different types of the rate of interest and we have also shown that the interest may rise up to an unlimited extent if the forms of interest like *cakravṛddhi* etc. are

1. Santatis tu *paśustrīṇām...* Yāj, II. 39.
   For different interpretations of the word underlined, vide the commentary by Mitramiśra and Smṛticandrikā, II, 362. Vide also the commentary by Viśvarūpa and Vijñāneśvara.
2. ...strīpaśūnāṃ tu santatiḥ. Nārada, IV. 107.
   Vide here the commentary of Asahāya on it.
3. Vṛddhiś cānekarūpā kārṣāpaṇeṣu prayukteṣu kārṣāpaṇa eva vardhate. kvacit santatiḥ...kvacid ādhibhogaḥ gobhūmyādeḥ.
   Medhātithi on Manu, VIII. 151.
4. Kvacid deśe vasante dhānyaṃ prayujyate śaradi dviguṇaṃ pratyādīyate, tathā' nujñātabhoga ādhir dviguṇo'pi tadutthadhane praviṣṭa āmūlahiraṇya-dānād bhujyata eva. Medhātithi's commentary on Manu, VIII. 3.
   The English translation is adopted from the translation of Medhātithi's commentary by Gangānātha Jhā. Manusmṛti (Tr.) Vol. IV-I, 10. Vide also reference to this practice and other allied practices as recorded in the Smṛticandrikā, Saṃskārakāṇḍa, 26-27.

resorted to. The *śāstrakāras* have attempted to put a limitation to the maximum amount of interest that may be realised in one investment.[1]

Kauṭilya does not exactly state the maximum limit of interest, but from one of his rules it may be presumed that he was in favour of regarding double of the (cash) capital as the limit. He provides that when the debtor is away for a long period or expresses obstinacy in respect of payment, he should pay double of the capital.[2]

The age of *dvaiguṇpa* ('doubling') principle is not known, but it seems to have been a primitive notion which later acted as a pattern for the other maxima in respect of commodities. It was a rule independent of, but not inconsistent with the rules about the righteous rates of interest which we have studied already.

Gautama holds that the principal invested in loan may get doubled if it remains (unpaid) for a long period.[3] Vasiṣṭha recognises this principle in the case of gold.[4] Manu distinctly directs that the interest in money-transactions taken at one time can never exceed the double (of the principal).[5] The same is the

1. This topic has been handled by P. V. Kane, History of Dharmaśāstra, III, 422-423; J. D. M. Derrett, Z. V. R, 65/2 (1963), 174-182; R. S. Sharma, 'Comparative Studies in Society and History', VIII-I (1965), 55-77. Here the question has been studied more critically and making use of greater number of texts and commentaries.
2. Cirapravāsaḥ stambhapraviṣṭo vā mūlyadviguṇaṃ dadyāt. Arthaśāstra III. II. 6. The meaning of the word *'stambha'* is open to dispute. Kangle refers to the commentary, Nītinirṇīti of Yogghama, according to which it stands for 'insolence due to false pride'—*mithyābhimānād avinayaḥ*. Vide his notes on 1. 9. 1. (Arthaśāstra, II, 19). For other interpretations of the word by different writers, vide his notes on III. II. 6. Kangle refers to the commentary Bhāśāvyākhyānam, according to which this is the maximum that may be charged if many years have elapsed. Vide his Arthaśāstra, II, 262.
3. Cirasthāne dvaiguṇyaṃ prayogasya. G. D. S, XII. 28.
Vācasptimiśra explains that even if it reaches the point of being thrice the capital, all that may be charged is double of the capital :
traiguṇyādyarhakāle 'pi dvaiguṇyam eva. Vivādacintāmaṇi, 8.
4. Dviguṇaṃ hiraṇyam. Vasiṣṭhadharmaśāstra, II. 44.
5. Kusīdavrddhir dvaiguṇyaṃ nāty eti sakṛdāhitā. Manu, VIII. 151.
Bhāruci states that even if the interest remains unpaid for a long period it can not go beyond this limit : 'kālamahattve'pi sati'... Commentary on Manu, VIII. 150-151. Medhātithi rightly observes that *dvaiguṇya* refers to the

view of Yājñavalkya,[1] with reference to gold. Viṣṇu[2] and Nārada[3] recognise this principle. Kātāyana directs that money lent at interest may be recovered up to the extent of double the sum, but at the same time he prescribes that if double of the amount cannot be realised (at the due time) he may charge further interest.[4] This offers a scope of doubt whether this verse of Kātyāyana can be properly regarded as putting the limit of interest on this point. But his viewpoint is made clear in another verse where he states with reference to certain objects like jewels pearls, corals, gold, silver etc. that the maximum rate of interest is double the principal.[5] Bṛhaspati lends recognition to this principle on different occasions.[6]

This rule under the appellation of *dyaigvṇya* in the *dharmaśāstras* is known as *Dāmdupat* in modern law.[7] Prof. Derrett brings out the significance of the rule in the following lines. He observes; "This rule is now obsolescent. The intention

double of the capital advanced : 'ataḥ prayogaviṣayasya dhanasyānena prakāreṇa dvaiguṇyam uktaṃ bhavati.' Govindarāja is more clear : 'mūldviguṇaiva bhavati na tato' dhikā.' For the significance of the expression *'sakṛdāhitā'* vide Medhātithi on Manu, VIII. 151; Vijñāneśvara and Aparārka on Yāj. II. 39 and the comments of G. N. Jhā in his translation of Vivādacintāmaṇi, 12-13.

1. Yāj, II. 39.
2. Viṣṇusmṛti, VI. II.
3. Nārada, IV. I07.
4. Grāhym syād dviguṇaṃ dravyaṃ prayuktaṃ dhanināṃ sadā /
   Labheta cen na dviguṇaṃ punar vṛddhiṃ prakalpayet// Kātyāyana, 509.
   The second line has been explained thus by Caṇḍeśvara :
   'tadabhāve paramavṛddhyā saha mūlīkṛtya punar vṛddhyādikaṃ kṛtvā dhārayitavyam ity uktam.' Vivādaratnākara, 72.
5. Maṇimuktāpravālānaṃ suvarṇarajatasya ca/
   Tiṣṭhati dviguṇā vṛddhiḥ phālakaiṭāvikasya ca// Kātyāyana, 510.
   'tiṣṭhatī' has been explained by Caṇḍeśvara thus : 'cirād api dvaiguṇyād adhikā na bhavatīty arthaḥ.' Vivādaratnākara, 17.
6. Hiraṇye dviguṇā vṛddhiḥ.....Bṛhaspati. X. 17. Vide also,X. 21 ; X. 24.
7. For discussion on Dāmdupat see P. V. Kane, History of Dharmaśāstra, III, 423-425 ; R K Ranade, 'Damdupat in Hindu Law' in The Bombay Law Reporter Journal (July, 1952), 49-57 ; J. D. M. Derrett, 'The death of Damduppat ? 'in The Bombay Law Reporter Journal (May, 1956), 65-70 ; Introduction to Modern Hindu Law (Oxford, 1963), 521-524. ; Mysore Chief Court Reports 195 (1909) 15, Vol. XV, 936-940.

is plainly to strike a comparison between the natural desire of the usurer to lend at the best profit upon the strongest security and the equally natural desire of the borrower to meet his immediate needs upon terms which will not eventually cripple him. The rule devised by the Hindu jurists which is survival of a set of rules laying down the permitted multiplication of commodities—*dāmdupat* refers to loans of money—did not hamper usury as such, but made it inevitable that loans should be on a short term, or should be at a small rate of interest."[1]

11. The attitude of the commentators and the dirgest-writers on *dvaiguṇya*.

The earliest reference to the process by which a capital may increase even when it has become doubled, is from Bhāruci, a pre-Medhātithi commentator of Manu.[2] He refers to the process called '*puruṣāntarasaṃkramaṇa*'—transference to another person by which the capital may go on increasing even after the limit (śāstric limit) is reached.[3]

Medhātithi refers to *Ṛju* (Ṛjuvimala = Bhāruci) and explains this process. Thus when the principal gets doubled with the interest and the creditor demands payment, the debtor takes him to a third party with the words—'this man will pay you within a certain number of days.' In this case during these additional days, further interest will accrue. Such a person (third party) is not a surety for payment but he is to pay it actually.[4] This is a kind of assignment visualised.

1. J. D. M. Derrett, Religion, Law and the State in India, 113.
2. For Medhātithi's use of Bhāruci, see J. D. M. Derrett 'A jurist and his sources : Medhātithi's use of Bhāruci' in The Adyar Library Bulletin (Vol. XXX. 1966), 1-22.
3. In his explanation of the word '*sakṛdāhitā*' in the verse of Manu, (VIII. 150-151) he observes : 'sakṛdāhitā puruṣāntaram asaṃkrāntā saṃkramite tu dhane prayoktrānyatra punar vardhata eva.'
   This has been kindly supplied by Prof. Derrett from his unpublished manuscript of the commentary by Bhāruci.
4. Puruṣāntarasaṃcāreṇa vā (dviguṇībhūtam api punar vardhata eva) yadi dviguṇībhūtaṃ dhanikasyopayujyate tadādhamarṇa ucyamāno'nyapuruṣaṃ

Medhātithi refers to other processes through which the interest may go beyond the doubling point. Thus when the capital gets doubled, if the creditor expresses his intention to invest it further for interest and if the debtor too desires to utilise the amount taken as loan for greater enterprises, they change the document of debt and the previous capital with interest is treated here as the new capital which since that date yields fresh interest. Thus the ultimate interest is more than twice the capital.[1] The provision for the change of document (i. e. novation) has been made by Manu[2] and Bṛhaspati.[3]

A different process has been mentioned by Medhātithi, according to which even before the principal gets doubled, the pledge is given to another person. It is proper that the pledge should be redeemed when the capital along with interest gets doubled. Here it is taken away before the capital reaches that limit and the interest accrues from that date. This transference to another person yields further interest (more than the double) when the creditor, with the approval of the debtor, transfers the pledge to a third party and receives the sum due.[4]

According to Medhātithi, transference may take place in another way. Thus it may mean a case where the debtor takes a further loan (from the creditor) and transfers the same (by means of another document) to another when he (the debtor) is to go on some business to a foreign country.[5]

dadatam arpayati 'eṣa te iyadbhir ahobhir dāsyatīti', tatra svahastaṃ dīyamānaṃ punar vardhate. na cāyaṃ dānaṃ prati pratibhūḥ kintu nikṣeptā dātaiva. Etat tu ṛjunā puruṣāntaram asaṃkraāntam iti vyakhyātam.
Medhātithi on Manu. VIII. 151.

1. Yadā dviguṇo hi vṛddhyartham uttamarṇo'dhamarṇaś ca tadtyena dhanena mahat kāryaṃ kariṣyan karaṇaparivṛttiṃ karotīti yā prāktanī vṛddhir iyaṃ vā'dya prabhṛti vardhata iti, tadā dviguṇībhūtam api punar vardhata eva. Ibid.
2. Manu, VIII. 154-155.
3. Bṛhaspati, X. 99.
4. Athavā prāg api dvaiguṇyād yadā bandham anyasmai pratyarpayati, dīnāreṣu salābheṣu dvitve tasya bandhasya mokṣa eva dharmyaḥ. bandhasya prāgvṛddhau sthitāyāṃ tasmād ahnaḥ prabhṛti punar dvaiguṇyam āpnoti. yadā tadiyaṃ bandhakaṃ tadanujñayottamarṇenānyatrādhāya svadhanaṃ gṛhyate tadā vardhata eva puruṣāntarasaṃcāraḥ. Medhātithi on Manu, VIII. 151.
5. Yadi vāsmād anyad gṛhyate grahītā deśāntaraṃ gamiṣyan kāryāntareṇa cānyatra saṃcārayati. Medhātithi on Manu, VIII, 151.

Medhātithi might have recorded the various practices of his time—the devices adopted by the money-lenders to avoid the regulations of the *śāstras*. This also shows that in actual practice the letter of law could be exploited.

Vijñāneśvara in his interpretation of the verse of Yājñavalkya (II. 39), refers to the direction of Manu regarding *dvaiguṇya*. In that context he observes that if there are separate transactions with different persons or even if the person is the same but the transactions are different on different occasions, gold and other objects may increase beyond the twofold and other limits. Again even in a single transaction when the interest is realised daily, monthly or yearly, the amount of interest becomes more than doubled.[1] It appears that the *dvaiguṇya* rule was already obsolescent, but as in modern India it is still well-known. It has been long a-dying.

Devaṇabhaṭṭa in his *Smṛticandrikā* refers to the direction of Manu and at the same time makes mention of the practice through which the interest may go beyond the doubling point.[2] We notice the same view expressed in the *Vyavahāraprakāśa*[3] of Pṛthvīcandra, *Madanaratnapradīpa*,[4] *Vivādacintāmaṇi*[5] and the *Vyavahāraprakāśa*[6] of Mitramiśra.

From these approaches to this question it is evident that though the spirit of the provision of Manu and other writers on law was that at one investment the interest and capital taken together should not be more than twice the capital, yet by way of

1. Etac ca sakṛtprayoge sakṛdāharaṇe ca veditavyam. Puruṣāntarasaṃkramaṇena prayogāntarakaraṇe tasminn eva puruṣe anekaśaḥ *rekasekābhyāṃ* prayogāntarakaraṇe suvarṇādikaṃ dvaiguṇyādy atikramya pūrvavad vardhate. sakṛtprayoge'pi pratidinaṃ pratimasaṃ pratisaṃvatsaraṃ vā vṛddhyāharaṇe' dhamarṇadeyasya dvaiguṇyāsambhavāt pūrvāhṛtavṛddhyā saha dvaiguṇyam atikramya vardhata eva.

Vijñāneśvara's comentary on Yāj, II. 39.

Bālaṃbhaṭṭī explains the two underlined words thus; 'Prayuktadravyaikadeśagrahaṇena nyūnīkaraṇaṃ rekaḥ, tatraiva prakṣepaṇādhikīkaraṇaṃ sekaḥ.' Commentary on Mitākṣarā on Yāj, II. 39.

2. Sm. C, II, 374.
3. p. 209-210.
4. p. 145.
5. p. 8.
6. p. 230.

different transactions with the same person even, it could go beyond this limit and indeed this is still the law where the Hindiu law of debt is in force.

12. Maximum limit of interest in the case of other kinds of articles.

The *dvaiguṇya* theory was restricted to the loan of money only, but with respect to the interest on articles other than money the maxima are different. The risks of default, fraud and other failures were not identical. Hence a variety of *maxima*[1] was natural. A suspicion crosses the mind that in those last instances some at least could not be envisaged as interest-bearing loans at all, *dharma* refusing to recognise the interest as lawful, but this remains an unsupported conjecture.

In the case of a loan of coin or bullion, the *śāstrakāras* have prescribed the rate of interest as well as the maximum limit of interest. But with respect to loans of other commodities a different attitude has been shown. Here we do not find any reference to the righteous rate of interest (as we notice in the case of a loan on money) but the maxima have been pointed out in these cases. It is quite likely that the *śāstrakāras* remained silent on the question in view of the fact that the commodities vary in kind and quality and as such it is not possible to introduce uniform rate of interest. But that does not mean that they were quite indifferent to the problematic situation. It will be noticed that they prescribed the maxima in these cases with great consideration and it is not quite impossible that through this direction on the limits of interest they have indirectly suggested the rates of interest also in these cases. Prof. Derrett has in a very interesting way shown that by these maxima the *smṛtikāras* were really laying down the ' righteous ' rates of interest.[2]

1. On this question see P. V. Kane, History of Dharmaśâstra, III, 422-423; J. D. M. Derrett, 'Law in the New Testament: the 'unjust steward' (Luk. XVI. 1-9) and Indian Law', in Z.V. R (1963), 65/2, 172-182.; R. S. Sharma, 'Usury in early mediaeval India (A. D. 400-1200)' in Comparative studies in Society and History (1965), VIII-I, 59-65; R. C, Nigam, 'Usury through the ages' in The Indian Advocate (July-Dec. 1967), VII-III-IV, 49-50.
2. J. D. M, Derrett, 'Law in the New Testament: the 'unjust steward' (Luk. XVI. 1-9) and Indian law.' in Z. V. R (1963), 65/2, 179

Let us consider the diffrerent maxima with respect to the commodities and then it may be possible to find out the possible grounds on which the rates of interest were based.

Gautama directs that the interest on products of animals, on wool, on the produce of a field and on the beasts of burden should not be charged more than five times (in specie).[1] Vasiṣṭha speaks of interest as threefold in the cases of grains, fluids, flowers, roots and fruits[2], while it is eightfold in the case of objects that may be weighed.[3] Manu holds the same view as that of Gautama.[4]

Devaṇabhaṭṭa attributes to Vasiṣṭha a verse in which threefold interest has been prescribed in cases of metals of lesser value like copper, iron, bell-metal, yellow-brass, tin and lead.[5] In the same text another verse of Vasiṣṭha hae been referred to where unlimited amount of interest has been prescribed in the cases of ivory, hide, bone, horn, earthen materials, flowers, roots and fruits.[6]

Yājñavalkya speaks of the maxima as eightfold in case of fluids (according to Vasiṣṭha, II. 45, it is threefold), fourfold in

1. Kusīdaṃ paśūpaja-loma-kṣetra-śada-vāhyeṣu nātipañcaguṇam.
G. D. S, XII. 33. For another interpretation of the rule vide Haradatta's commentary on the rule of Gautama and the notes by Bühler, S. B. E., II, 240.
2. Vasiṣṭhadharmaśāstra, II. 44-46.
3. Ibid. II. 47.
Vide here a verse attributed to Vasiṣṭha by Devaṇabhaṭṭa (Sm. C. II, 372), where interest has been stated to be double the object in the case of valuable objects.
4. Manu, VIII. 151,
5. Tāmrāyaḥ kāṃsyarītīnāṃ trapunaḥ sīsakasya ca /
Triguṇā tiṣṭhate vṛddhiḥ... ... // Sm. C, II, 373.
Vide also the Appendix to Vasiṣṭhadharmaśāstra, 29.
6. Dantacarmāsthiśṛṅgānāṃ mṛṇmayānāṃ tathaiva ca/
Akṣayā vṛddhir eteṣāṃ puṣpamūlaphalasya ca // Quoted in Sm. C, II, 375. Vide also the Appendix to Vasiṣṭhadharmaśāstra, 30.
Devaṇabhaṭṭa attempts to reconcile the apparent contradiction involved in the case of interest relating to the last three objects. This offers scope of doubt regarding the authenticity of these verses as belonging to Vasiṣṭha.

cloth and threefold in grains.[1] Viṣṇu agrees with Yājñavalkya in respect of grain, cloth and fluids[2] and he prescribes unrestricted interest in the case of substances from which spirituous liquor is prepared, cotton, thread, leather, weapons, bricks and charcoal.[3] In other cases he declares that the interest should be treated as double.[4] Nārada shows complete agreement with Yājñavalkya on this point.[5]

Bṛhaspati shows some inconsistency in respect of the maxima on several items. This is in view of the fact that the text as we have is not to be treated as the original one, but it has been reconstructed on the basis of quotations appearing in the commentaries and the digests.

On one occasion he fully agrees with the views expressed by Yājñavalkya and Nārada in respect of gold, cloth and paddy,[6] but the point is contradicted in another verse.[7] He prescribes fourfold as the maximum in cases of the produce of the field, beasts of burden, wool[8] and metals like copper etc.[9] It is fivefold in the case of vegetables (X. 18), and *kośa* (silk-worm while in its cocoon, X. 20). Sixfold interest is to be charged with with respect to the seeds and sugarcane (X. 18), and it may be made octuple in respect of salt, oil, spirituous liquor, sugar and honey if the loan be of long standing.[10] The same is the case with sandalwood.[11] No fixed interest, according to him, can be prescribed in respect of grass, wood (general), bricks, thread,

1. ....rasasyāṣṭaguṇā parā /
   Vastradhānyahiraṇyānāṃ catustridviguṇā parā // Yāj. 11. 39
2. Viṣṇusmṛti, VI. 12-14.
3. Ibid VI. 16. The list differs from Vasiṣṭha's list, (Appendix, 30).
4. Anuktānāṃ dviguṇā. Ibid, VI. 17.
5. Nārada, IV. 107.
6. Bṛhaspati. X. 24. Here interest is threefold on grains and fourfold on cloth.
7. Ibid. X. 17. Interest is fourfold on grains and threefold on the cloth here.
8. Ibid. X. 17.
9. Ibid. X. 24.
10. Lavaṇasvedmadyeṣu vṛddhir aṣṭaguṇā matā /
    Guḍe madhuni caivoktā prayukte cirakālike // Ibid. X. 18., also X. 19.
11. Ibid. X. 20.

substances from which spirituous liquor is prepared (*kiṇva*), leaves, bones, hides, weapons, flowers and fruits.[1]

Kātyāyana nearly agrees in principle with Vasiṣṭha[2] in respect of the doubling of interest in case of valuable objects like jewels, pearls corals, gold, silver, cotton cloth, silken cloth (*kaiṭa*) and woolens (*āvika*).[3] He shares with Bṛhaspati (X. 19) the view that the maximum may be octuple in the cases of oil, spirituous liquor, honey, butteroil, salt and sugar[4], but adds here the case of land (*bhūmi*).[5] Kātyāyana speaks of the maximum as fivefold in the case of base metals (*kupya*)[6], while to Bṛhaspati it is threefold in the case of base metals (X. 17) and fourfold in the case of copper (X. 24).

From a study of these directions of the *śāstrakāras* it may be observed that there was general agreement amongst them on the point that the maximum interest that could be charged on the cions and other assayable valuable objects like gold, silver etc. was twofold. The agreement was partial in respect of fluids, but in other respects we notice a difference of opinion as to the exact maxima.

These disagreements were taken notice of by the commentators and the digest-writers and they have attempted variously to explain them away. Sometimes, we must admit, the explanation offered are not fully convincing. Let us admit for a start that the doctrine of *ekavākyatā* by which they believed themselves bound was not historical and that there was no reason why the

1. Ibid. X. 23. Except in the cases of bones, hides, flowers and fruits the list differs from that of Vasiṣṭha (Appendix, 30). He has agreement in this respect with Viṣṇu on items like *kiṇva*, bricks and threads (Viṣṇusmṛti, VI. 16).
2. Vasiṣṭha as quoted in the Smṛticandrikā, II. 372.
3. Maṇimuktāpravālānāṃ suvarṇarajatasya ca /
   Tiṣṭhati dviguṇā vṛddhiḥ phālakiṭāvikasya ca // Kātyāyana, 512.
4. Kātyāyana, 511.
5. .....bhūmis tathaivāṣṭaguṇā matā. Kātyāyana, 512.
   Vide here the view of Pitāmaha recorded in the Dharmakośa, Vyavahāra-section, Vol. I-II, 634. It appears to be wrongly quoted from the Sarasvatīvilāsa, 230 (Ed. R. shama sastry, Mysore, 1927). It appears in the name of Vyavahārārthasamuccaya of Śarabhojī (in manuscript).
6. Kupyaṃ pañcaguṇaṃ... Kātyāyana, 512.

smṛti-writers should have agreed. Only their general principles should be taken as historically homogeneous.

Medhātithi, while making reference to the fourfold limit of interest in respect of grains, against the fivefold limit declared by Manu, attempts to harmonise the two views by stating that if the creditor happens to be impoverished and if the debtor makes a good capital out of the loan, then the interest should be charged fivefold, while in other cases it should be fourfold.[1]

Vijñāneśvara takes up the same cases of contradiction and prescribes rationally that the decision should be taken by taking into consideration the capacity of the debtor for payment and the condition of the times like famine etc.[2]

Devaṇabhaṭṭa attempts to do away with such contradiction by restricting the scope of the rule sometimes to the poverty of the debtor and at other times to his opulence.[3]

Caṇḍeśvara under identical circumstances seeks a solution by taking into consideration the merits of the debtor or the situation in terms of time and territory.[4]

Nandapaṇḍita also under the circumstances is in favour of applying the principle in the form of difference of time and place.[5]

Mitramiśra also accepts both the principles, namely, the pecuniary condition of the debtor and the practice of different localities.[6]

These attempts at harmonisation reveal one point that in all likelihood the variation in the maxima was due to the practices developed in different localities to which particular *smṛtikāras*

1, ...tatra vyavasthā ; yadi daridrabhūtaḥ prayoktā grahītā ca mahādhana-sampannas tena dhānyena mahāntam artham kṛtavāṃs tadā pañcaguṇā anyathā caturguṇā. Commentary on Manu, VIII. 151.

2. ...tatrādhamarṇayogyatāvaśena durbhikṣādikālavaśena ca vyavasthā draṣṭavyā Commentary on Yāj. II. 39.

3. ...tat...daridrādhamarṇaviṣayaṃ vā. yat tu manunoktaṃ dhānye śade... iti tat pratyarpaṇasamayasaṃṛddhādhamarṇaviṣayam. Sm. C. II, 373.

4 ...tad atrādhamarṇāpakṛṣṭaguṇatva-madhyaguṇatvotkṛṣṭaguṇatvair vyavasthā, mahārgha-samārghadhānyake kāladeśabhedena vā vyavasthā. Vivādaratnākara, 17-18.

5. ...tat deśakālādivaśena vyavasthāpyam. Commentary Viṣṇu, VI. 14.

6. Evam anyatrāpi nyūnādhikaparamavṛddhipratipādakāni vacanāni deśa-viśeṣaviṣayatayā daridrādiviṣayatatā vā vyavasthāpanīyam. Vyavahāraprakāśa, 229.

belonged.[1] Practically speaking, the variations are minor and they may be accounted for when we consider that in determination of the rate of interest several factors as the easy availability of the material, the economic condition of the socity, demand for the capital etc. exert their influence.

The question as to why the maxima differs in respect of different commodities, deserves to be considered. There is no significant suggestion form the commentators or the digest-writers on this point. It is of interest that the *Vivādarṇavasetu* (if we follow Halhed's trans, pp. 2, 6-7) explaind the maxima for commodities in this way. The value of the commodities (unlike coin) could vary within various ranges. The market price could fall low, and the debtor could choose the lowest moment to pay his debt. Therefore the maxima would be fixed so as to take account of the loss which would fall upon the lender if a commodity were returned at a time when its value was much less than it bore at the time of the loan. Whereas Prof. Derrett has suggested that we must understand the maxima to represent a proportional rate of interest, as is borne out by many Sanskrit authorities except Jagannātha,[2] and he finds the period after which the maxima would apply to be eighty months—based on the legal rate of one-eightieth per mensem, the compilers of the *Vivādārṇavasetu*, apparently accepting the same approch take as their minimum legal rate of interest on unsecured loans of coin to be 2% per mensem. Therefore they allow the maxima of interest on commodities to be exacted at the expiry of *fifty* months.

In some of the cases we may presume that the maxima that were prescribed by the *śāstrakāras* may be reasonably accounted for. In the case of a loan in the form of coin or bullion, there is no possibility of deterioration of value in normal cases, but where the loan is issued in the form of comestibles there remains several possibilities for fraud and deterioration. Sometimes seasonal demand for certain objects becomes a strong factor for the determination of the maxima. A critical study

1. Nārada recognises special rules according to the local usages of the country where the loan is transacted. Nārada, IV. 105.
2. J. D. M. Derrett, 'Law in the New Testament : the 'unjust Steward' (Luk. XVI. 1-9) and Indian Law,' in Z, V. R (1963), 65/2, 176-180.

of the list of the commodities presented by the *śāstrakāras*, will show that the maximum indicated in respect of fluids like oils, wines, butteroils etc. might have been influenced by the consideration that there reamins great possibility of adulteration. In these cases, it must be admitted that it is difficult to detect the possibility of of adulteration. Therefore the maximum rate has been raised here to eight times of the capital. The same may be told about the position of sugar if the term *guḍa* is applied to indicate that. In the case of grains it may be possible that the borrower may take to the device of returning the grain as interest, but in the form of an inferior quality. In the case of cloth it may be supposed that the borrower may return in the form of interest a piece of cloth which has deteriorated in its condition though apparently it may not be detected. Sometimes it may be stated that the *śāstrakāras* in their determination and fixation of the limit of interest, have taken into cousideration the urgency of demand in respect of certain commoditiy and the maximum has been prescribed accordingly. Mention may be made of the case of seeds. During the appropriate time for sowing the cultivators urgently need loan of seeds and the time is a great factor here for if the time passes away the whole land may remain useless for the whole year. Under this urgency the cuttivators are even prepared to offer any rate of interest and the sixfold limit in this case appears to be prescribed on considerations like this. It must also be considered that the maxima in respect of different commodities have been prescribed with an eye to the security of the capital itself which is a great factor in investment. We have noticed that Yājñavalkya prescribes higher rate of interest where the loan is not secured by a pledge. It is possible that loan of commodities is taken normally by common men, whose economic conditions often do not induce confidence. There fore the the lenders are to take a risk in the cases of loans to the common men. The risk finds its expression in the form of charging a higher rate. Suggestions like this and others have been made[1] but the exact motives of these rules remain unknown.

1. For suggestions on these points see J. D. M. Derrett, 'Law in the New Testament: the 'unjust Steward' (Luk. XVI. 1-9) and the Indian Law,' in Z. V. R. (1963), 65/2, 177-178.
The observations of R. S. Sharma may be profitably quoted here. He

13. The alleged rule that 'interest should not be charged more than one year.'

This unexpected rule must be taken seriously, anomalous as it is.

Goutama refers to the view that the interest, whatever it may be, should not be charged beyond one year.[1]

Manu prescribes that one must not pay (or receive) an interest beyond the annual one.[2]

Different commentators have interpreted this rule in different ways. In his interpretation Bhāruci says (Manu, VIII, 152 [153]): "He should not take interest beyond the yearly, if because of the size of the interest the capital is doubled within a year. But otherwise he may take double the capital (but not more) after the year has elapsed." (ref. to Gautama, XII. 31 (28) = 11. 3. 28). But he goes on; "Others believe that even a rate of interest which is accepted such as 1/80th part or 1/50 should not be allowed to run beyond the year, for it will be repugnant to *Dharma*."[3]

Medhātithi interprets that the interest that has been

states: 'It is obvious that for day to day use the common folk would be more in need of grain etc. than in need of cash. Apparently in extending loans to the common folk the lawgivers had in their mind their inability to pay in time. Another factor that led to the demand for a higher return in case of some articles was their perishable nature .....that what might explain the provision for return in certain marketable commodities such as base metals, salt, raw, sugar, liquor, ghee, oil etc. is that these were brrowed by retailers traders who were supposed to earn more profit on them.....The provision for borrowing land (Kātyāyana, 512) and giving eightfold in return on it given by Kātyāyana and corroborated by Pitāmaha, seems to be uniquex in early mediaeval India. It looks like the practice of subinfeudation, for the land so borrowed would have to be returned to the creditor. In effect it would mean adding to the number of temporary tenants. Perhaps such a law refers to a period of economic and political crisis when distressed and uprooted peasents approached the landowners for plots of land.'

R. S. Sharma, 'Usury in early mediaeval India' in Comparative studies in society and history, VIII-I (Oct. 1965), 65-66.

1. Nātisāṃvatsarīm eke. Gautamadharmasūtra, XII. 27.
2. Nātisāṃvatsarīṃ vṛddhiṃ (na cādṛṣṭāṃ) vinirharet. Manu. VIII. 153.
3. The information has been kindly supplied by Prof. Derrett.

sanctioned in connection with all the castes at the rate of five pet cent per month, may be charged for one year only and not after the lapse of an year. He suggests an alternative meaning (evidently speculatively), according to which no interest should be realised during one year and the debtor should not delay the payment beyond one year.[1]

He suggests another meaning of the verse. In this interpretation it has been stated that at the time of the transaction itself it should be ascertained whether the interest should be computed monthly or early. It would not be proper on the part of the creditor, desirous of earning interest for two years, to make the debtor accept the loan for such a long period, on the idea that if the interest lies for a longer period it will yield greater amount of wealth. In such a case the man would so arrange the advance to the debtor that the interest would be paid after two years. (That such a course would not be right is clearly indicated by such texts as)—'one shall neither pay nor cause another to pay interest in such a single instalment as may be beyond the power of the man to pay.' In the case where interest is payble monthly, the debtor is made to pay on the second day after the lapse of the month. When it is to be paid yearly, it should be paid identically on the second day after the year and not computed by any longer time.[2]

We may consequently suspect that the real meaning of this rule was that no creditor should lend money on the express term that the debt should bear interest far longer than a year (i. e. continuing after the harvest, when payment would be

1. Yeṣāṃ vṛddhir anantaraprokrāntaṃ paṅcakaṃ śataṃ sarvavarṇaviṣayā saṃvatsaraṃ yāvat grahītavyā, nātīte saṃvatsare. Athavā yāvatsaṃvatsaram. Saṃvatsaro varṣaḥ, tāvad vṛddhir na grahaṇiyā, adhamarṇenāpi saṃvatsarād ūrdhvaṃ na vilambitavyam. Medhātithi on Manu, VIII. 153.
2. Athavā māsād ārabhya saṃvatsarasya yāvad vṛddhiḥ parimāṇato nirūpitavyā, māsena yad vardhate saṃvatsareṇa vety evaṃ prayogaḥ kartavyaḥ, na tu saṃvatsaradvayasy lābhārthī kadācic cirakālaṃ grāhayati kim me katipayamāsikena lābhena, yadi dve varṣe tato'dhikaṃ vā gṛhṇāti tadgrahaṇe eṣā veyatā kālenā vṛddhis tatrārvācīnam api dadad adhamarṇe dvisāṃvatsarīṃ yathā kālakṛtāṃ tathā dāpyeta 'ekām vṛddhim anādeyāṃ na dadyān nāpi dāpayet' iti. yathā māsikī vṛddhiḥ prathame māsi dvitīye evāhni śodhayan dāpyate tathā yadaivam abhyupaiti saṃvatsareṇa yad vardhata iti tadā tathaiva dāpyate na tadadhikakālakṛtā, Ibid.

earliest). The rule must have been of great antiquity and had no place in a developed economy.

According to Govindarāja 'if the creditor does not take the money due to two or three years and the debtor pays, then the creditor shall not take more interest than for one year.'[1]

Kullūkabhaṭṭa ingeniously explains that the creditor may make certain stiplulations up to a period of one year. The condition is this: 'You should pay me at one time in lump by calculating interest by the time one month, two months or three months are passed.' Such a stipulated interest should not be realised after the lapse of one year.[2] The same interpretation is presented by Rāghavānanda.[3] Sarvajñanārāyaṇa interprets that this has reference to a mode of interest which gets doubled (i. e. the interest and the capital taken together become twice the capital) even by one year.[4]

Devaṇabhaṭṭa refers to three explanations of the direction of Manu.[5]

Caṇḍeśvara explains that if the creditor imposes a special stipulated interest on the apprehension that the loan will be paid back within a very short period, then it may be done up to a period of one year only.[6] He refers to an interpretation by Halāyudha. In his view, if the creditor, before the interest ceases to accrue intends to have his interest realised, he may have it before the lapse of one year and not after that.[7]

1. Yadi dvayor vā trayāṇāṃ varṣāṇāṃ rūpakān na gṛhṇāti tato dadāti yā tu saṃvatsaram atikrānt vṛddhis tāṃ na gṛhṇīyāt. On Manu VIII. /153.
2. Mamaikasmin māsi māsadvaye māsatraye gate tasya vṛddhiṃ vigaṇayya ekadā dātavyety evaṃvidhaniyamapūrvakavṛddhigrahaṇam uttamarṇaḥ saṃvatsaraparyantaṃ kuryāt nātikrānte saṃvatsare niyamasya vṛddhiṃ gṛhṇīyāt. Kullūka on Manu, VIII. 153.
3. Vide his commentary on Manu, VIII. 153.
4. Atisāṃvatsarīṃ saṃvatsaramātreṇāntikrāntām atiśayitam dviguṇatāṃ gatām. Commentaray on Manu, VIII. 153.
5. Smṛticandrikā, II, 367-368.
6. Yady uttamarṇaḥ svalpair eva divasair adhamarṇakṛtaṃ dhanadānam āśaṃkya vrddhiṃ niyamayet tadā saṃvatsaraparyantam eva na tu tadadhikadinavṛddhim apīty arthaḥ. Vivādaratnākara, 9.
7. Halāyudhas tu yadā' śāntalābhe ṛṇe lābhagrahaṇavāsanāvān uttamarṇaḥ syāt, tadā saṃvatsarād arvāg ava lābhaṃ gṛhṇīyāt na tu saṃvatsarād ūrdhvam ity āha. Referred to in the Vivādaratnākara, 9.

All these interpretations contribute to the conclusion that this rule, mentioned only by Gautama and Manu, has subsequently lost its proper force and the commentators and digest-writers have only suggested probable meanings that were intellectually current at their time. This is also one of the many cases where difficulty may arise if the interpretations of the commentators are accepted as such, because they exhibit ingenuity on their part rather than correct interpretation of the texts concerned.

14. *Loans where interest ceases.*

The writers on law in ancient India have prescribed certain rules relating to the cessation of interest under certain circumstances.[1] We have from Kauṭilya a provision that interest should stop in the case of one engaged in a long sacrificial session, or of one suffering from disease or of one under the pupilage of the teacher at his house (in the case of a major debtor who exceptionally, is a student). This rule will also apply in the case of the debtor being a minor or indigent.[2] It is evident that during these periods the debtor stands handicapped and it is quite reasonable that he should be allowed on humanitarian grounds the concession in the form of being free from the burden of the interest. Reference in this context may be made to provision by Kauṭilya with reference to a pledge. He directs that if the pledge is not released when pledgor turns up to have it released through payment, the pledge may remain with the pledgee without any further interest to be charged on it.[3]

1. For discussions on topic see, P. V. Kane, History of Dharmaśāstra, III, 425-427.; R. S. Sharma, 'Usury in early mediaeval India' in Comparative studies in society and history, VIII-I, (Oct. 1965), 73-74; R. C. Nigam, The Indian advocate, VII-III-IV (July-Dec. 1967), 52-54.
   In the present treatise the subject has been studied more critically with addition of more informations.
2. Dīrghasatravyādhigurukuloparuddhaṃ bālam asāraṃ vā naraṇam anuvardheta, Arthaśāstra 3. 11. 10.
   The term *'asāram'* may also mean an insolvent person or a person incapacitated. Vide the notes by Kangle, Arthaśāstra, II, 262.
3. Arthaśāstra, III. 12. 13.

Gautama has the rule that if the debtor remains under imprisonment and therefore be not in a position to pay, the interest will cease to accrue. The same rule will be followed in the case where the debtor though willing, is obstructed by the creditor to pay (evidently with the expectation of getting more interest on it).[1] Similarly no interest will be charged where the loan is secured by usufructuary pledge.[2]

Vasiṣṭha has a rule that interest will cease during the death of the king and it will again go on increasing as usual on the coronation of a new king.[3] The rule can apply we think, only to debts which will be proved in a court. Otherwise the absence of a crowned king can not interfere with commerce to so violent an extent. It may also be suggested that it was feared that in the absence of a king or in a state of anomaly exorbitant interest may be exacted because the basic condition for any normal activity is political order and stability. We may in this context refer to the text of Prajāpati, according to which interest should not be paid in a calamitous condition like famine etc.[4]

Yājñavalkya provides like Gautama that in the case of unwillingness of the creditor to accept the loan even when offered, the interest will cease to increase when the money is deposited with a third party.[5]

According to Nārada, unless there is an agreement, interest does not accrue on a loan made out of friendship. But even in the absence of an expressed stipulation interest is to be charged after the period of six months, when (presumably) a tacit agreement

1. Ditsato' varuddhasya ca. G. D. S, XII. 30.
   Vide here the commentary of Haradatta and the translation and notes by Bühler, S. B. E, II, 239.
2. Bhuktādhir na vardhate. G. D. S, XII. 29.
3. Rājā tu mṛtabhāvena dravyavṛddhiṃ vināśayet /
   Punā rājābhiṣekeṇa dravyamūlyaṃ ca vardhate // II. 49.
   The meaning of the verse is vague. Vide here the notes by Bühler, S. B. E, XIV, 15-16.
4. Durbhikṣe rāṣṭrasaṃbādhe dharmakārye tathāpadi /
   Ṛṇaṃ deyaṃ mūlam eva na vṛddhir iti niścayaḥ // Prajāpati, quoted in the Dharmakośa, Vyavahārakāṇḍa, I-II, 715.
5. Yāj, II. 44.

to pay interest is imputed to the borrower.[1] It has further been observed that without being reclaimed by the creditor, the loan made out of friendship can not yield interest. But if it is not paid when demanded (even before six months—Asahāya), the rate of interest should be five per cent.[2] Nārada with reference to certain cases directs that there are certain debts (which do not commence as loans) which will not bear interest, apart from special agreement. They include the price of commodity, wages, a deposit, a fine, what has been abandoned (by one and found by another), what has been idly promised and what has been won at play.[3]

Kātyāyana has the same rule as that of Nārada (IV. 109) regarding the loan given out of friendship.[4] He adds here that a deposit, balance of interest, objects of purchase and sale will yield interest at the rate of five per cent after failure to pay on demand.[5] He makes mention of more items in the list (as presented by Nārada. II. 36) of objects yielding no interest. They are hides, crops, wine, bride-price of women and debt through suretyship.[6] In each of

1. Na vṛddhiḥ prītidattānāṃ syād anākāritā kvacit /
   Anākāritam apy ūrdhvaṃ vatsarārdhāt pravardhate // IV. 108
   '*Prītidatta*' has been explaind as indicating also a loan where there is no time-limit for repayment: 'pratiyācanapratidānanirdeśaśūnyānām iti śeṣaḥ'. Sm. C, II, 363.
2. Prītidattaṃ tu yat kiñcin na tad vardhaty ayācitam /
   Yācyamānam adattaṃ ced vardhate pañcakaṃ śatam // Nārada, IV. 109.
3. Paṇyamūlyaṃ bhṛtir nyāso daṇḍo yac *cāvahārakam* /
   Vṛthādānam ākṣikapaṇā vardhante nāvivakṣitāḥ // Nārada, II. 36.
   Asahāya explains the underlined word as '*ucchinnakaṃ gṛhītam*'.
   The reading in the *Mitākṣarā* (on Yāj. II. 38.) is 'yaś ca prakalpitaḥ'. (i. e. the fine that has been imposed). The same reading has been accepted in the Smṛticandrikā, II., 365. In the *Vivādaratnākara* it has been read as *ābhihārikam*' and explained as obtained through fraud etc. 'Chalādinā gṛhītam'. p. 20.
   Vide here the notes by P. V. Kane, History of Dharmaśāstra, III, 426, and the notes by G. N. Jhā on Vivādacintāmaṇi, 11.
4. Kātyāyana, 505.
5. Nikṣiptaṃ vṛddhiśeṣaṃ ca krayavikrayam eva ca /
   Yācyamānam adattaṃ ced vardhate pañcakaṃ śatam // Kātyāyana, 506.
   Vide Vivādaratnākara, 15.
6. Carmasasyāsavadyūte paṇyamūlye ca sarvadā /
   Strīśulkeṣu na vṛddhiḥ syāt prātibhāvyāgateṣu ca // Kātyāyana, 508.
   For the surety-debt see below. Vide here the notes by P. V. Kane in his Kātyāyanasmṛtisāroddhāra, 216.

these cases interest was not regarded as consistent with *dharma* for different reasons.

The Smṛticandrikā records two views, one of Saṃvarta and another of Vyāsa on this point. According to the former, no interest is to be charged on wife's personal property (by the wife-depositor), on profits, on a deposit remaining as it is, in a case involving doubt and on a debt by suretyship, if it is not stipulated by the debtor himself.[1] In the view of the latter such cessation of interest is to be applied in the case of suretyship, enjoyment of pledge, and non-acceptance of the loan even when it is offered. The same will be the case with a fine and a bride-price which is promised (but not yet paid to the bride's family).[2]

The principle followed in these cases may be that where there is sufficient ground for the debtor to claim exemption from interest, the creditor should not charge the same. Thus where the creditor on some pretext does not allow the debtor to pay the debt even when he is ready with the money, he can not reasonably claim any further interest. Again when a loan is issued to a friend in a spirit of helping him in his distress, the creditor-friend should have no reason to claim interest. We have pointed out that in some cases the reason for such exemption may be that the interest is not regarded as consistent with *dharma.* In this way in most of the cases it may be shown that the *śāstrakāras* had sufficient grounds before them for prescribing exemption from interest.

15. Some special provisions by Kātyāyana.

Kātyāyana has certain rules in this connection, which deserve mention. He observes that when a person takes a loan and proceeds

1. Na vṛddhiḥ strīdhane lābhe nikṣepe ca yathāsthite /
   Saṃdigdhe prātibhāvye ca yadi na syāt svayaṃkṛtā //
   Saṃvarta quoted in the Smṛticandrikā. II, 366; Vivādaratnākara 20. For *'saṃdigdhe'* Vivādaratnākara explains: 'deyam adeyaṃ veti prathamaṃ saṃdehāspade agre deyatayā ca niścite 'pi na vṛddhiḥ'. p. 21.
2. Prātibhāvyaṃ bhuktandhaṃ agṛhītaṃ ca ditsataḥ /
   Na vardhate *prapannasya* damaś śulkaṃ pratiśrutam //
   Vyāsa quoted in Sm. C. II, 366; Viv. rat, 21; and Vivādacintāmaṇi, 7.
   Caṇḍeśvara explains the underlined word thus: prapannasya dhanika-vaśagatasya (yaś cottamasāhasādirūpo damaḥ). Vivādaratnākara, 21. Vācaspatimiśra explains *'pratiśruta'* as making reference to idle promise: 'etac ca vṛthādānaparam.' Vivādacintāmaṇi, 8.

to another territory without payment of the loan, the interest (even if not stipulated for) will accrue upon it after the lapse of one year.[1] Where the loan is taken and the debtor goes to another country without paying it even when demanded, the principal will increase by interest after three months.[2]

In the case where the debtor remains in his own country but does not care to repay the loan though demanded, (the king) is directed to make him pay interest even if there was no agreement beforehand and even if the debtor is unwilling (to pay).[3] In other words, an undertaking to pay in those circumstances is conclusively implied.

Kātyāyana takes up a case where after taking the article through purchase the purchaser leaves the country without payment of price. In such case the principal (the price) will be carrying an interest after the expiry of three *ṛtus*, (in the law relating to the self-betrothal of a maiden 'three *ṛtus*' means three lunar

1. Yo yācitakam ādāya tam adattvā diśaṃ vrajet /
Ūrdhvaṃ saṃvatsarāt tasya taddhanaṃ vṛddhim āpnuyāt // Kātyāyana, 502.
In the Vivādaratnākara the words underlined have been read as *'ṛtutrayasyoparisṛtāt'* and in that case the time-limit should be six months, Vivādaratnākara, 16. For *'yācitaka'* see below. Normally this *yācitaka* refers to a loan free of interest given to persons, who are quite familiar like friends and the loan is in the from of ornaments and the like to be utilised for festive occasions. Vide Mitākṣarā on Yāj, II. 67. Vide also Śukranītisāra, II. 325,338.
2. Kṛtoddhāram adattvā yo yācitas tu diśaṃ vrajet /
Urdhvaṃ māsatrayāt tasya taddhanaṃ vṛddhim āpnuyāt // Kātyāyana, 503.
Caṇḍeśvara explains 'uddhāra' as money that is taken as a loan without fixing any rate of interest :
'Uddhāro'tra kālām avyavasthāpya gṛhītaṃ dhanam.' Vivādaratnākara, 15.
The interest to be charged here is to be calculated since the day of demand as stated in the Madanaratnapradīpa :
'pratiyācanadinam ārabhya.' Madanaratnapradīpa, 140.
3. Svadeśe'pi sthito yas tu na dadyâd yācitaḥ kvacit /
Taṃ tato 'kāritāṃ vṛddhim anicchantaṃ ca dāpayet // Kātyāyana, 504.
Here also the interest is to be calculated since the day on which a demand has been made as explained by Devaṇabhaṭṭa in his Smṛticandrikā :
'Tataḥ pratiyācanakālād ārabhyety arthaḥ.' Vyavahārakāṇḍa, II, 365.
The Vivādaratnākara, 16 and the Sarasvatīvilāsa, 225 speak here of the rate of interest to be charged.

months) (six months),[1] when apparently the debt is conclusively presumed to have become interest-bearing.

16. Epigraphic records on the rate of interest.

So far we have discussed the questions relating to different interests as are debated in the *śāstras*. The epigraphic records may show how far they were practised in society. We present here some of the epigraphic records.

An inscription dated 845 A. D., belonging to the reign of the Rāṣṭrakuṭa Amoghavarṣa, the donor, endowing a certain sum of money (100 *drammas*) in favour of a monastery, declares that after his death the interest (*kārī*) should be fixed by competent persons.[2]

The Tiruchchendūr Inscription of Varaguna Mahārāja (II), dated sometimes in 874 A. D., refers to 1400 *Kāśu* given by the king to the temple at Tiruchchendūr, with the stipulation that the interest should be two *kalam* of paddy per year per *Kāśu*. Since it is also

1. Paṇyaṃ gṛhītvā yo mūlyam adattvalva diśaṃ vrajet /
Ṛtutrayasyopariṣṭāt taddhanaṃ vṛddhim āpnuyāt // Kātyāyana, 507.
Devaṇabhaṭṭa explains this as making reference to the case where demand for payment is not made. He prescribes the rate of interest in such case to be 1/80th part as prescribed as the righteous rate in the *śāstras*. Here he refers to the text of Viṣṇu in support :
"Apratiyācitaviṣayam etat. kim atra vṛddheḥ parimāṇam, ucyte, adhamarṇādyaṅgīkārāyattaparimāṇasyātrāsambhavād anyasya ca puruṣa buddhikalpitasya śāstrabāhasyāyuktatvāc chāstroktam eva parimāṇaṃ grāhyaṃ tac ca pūrvasmin prakaraṇe darśitam aśītibhāgam ityādinā. Ata eva viṣṇunā vṛddhiṃ dadyād akṛtām api saṃvatsrātikrame yathā' bhihitam ity uktam. Yath'bhihitaṃ dharmaśāstra iti āeṣaḥ."
Smṛticandarikā, II, 363-364.
For difference of opinion regarding the rate of interest, vide Madanaratnapradīpa, 141 ; Sarasvatīvilāsa, 225 and vyavahāraprakāśa (M), 232.
Vide Vyavahāranirṇya (p. 231), where the first line of the verse (Kāt, 507) has been mixed up with the first line of the verse (504). The second line of the same verse has been mixed up with another line making no meaning. In the Bṛhaspatismṛti (edited by the same person, K. V. R. Aiyanger, 1941) this has been mentioned as being quoted in the Vyavahāranirṇaya as from Bṛhaspati (vide Bṛhaspatismṛti, 104. f. n. 7) while in the Vyavahāranirṇaya (edited by him in 1942) this has been attributed to Kātyāyana (p. 231).

2. Indian Antiquary, XIII, (1884,), 134.
Compare Manu, VIII. 157.

stated that the purchasing power of a *Kāśu* was ten *kalam* of paddy, the annual interest of money lent amounted to as much as 20%.[1]

In one of the Inscriptions from Yewur (a village in the Sōrāpūr Tāluka of the Gulbarga District of the Nizam's territory) dated A. D. 1077, there is record that six *Gadyāṇas* have been deposited with the collective body of merchants of Śivapura by the lady Muddaladevī at the interest of twentyfive per cent.[2]

The Bhinmāl Inscription (S. 1262—A. D. 1206) records that forty *drammas* placed in the treasury of the temple of Jayasvāmī, did yield 12 *drammas* as interest per year.[3] The rate is thirty per cent per annum.

We have another stone Inscription of Bhinmāl of Udayasiṃhadeva (Vikram Saṃvat. 1306) where as in previous case 40 *drammas* were deposited to the storehouse of the same deity (here named as Jagatsvāmī) and the interest to be yielded annually (*prativarṣam*) was in terms of wheat, Mung, *choklā* (rice), ghee and articles of worship.[4] In the same inscription[5] interest has been calculated in terms of the same materials yearly out of fifteen *drammas* invested. By calculation it has been pointed out that the rate of interest was $33\frac{1}{3}$ per cent.[6]

Dr. Sharma refers to a Jalor Inscription (of V. 1323) mentioning $\frac{1}{3}$ *drammas* as the monthly interest on 50 *drammas*, the rate of interest being 12 per cent. (Jaina Inscriptions. II. No. 363).

The Ābu Inscriptfon of Bhaila of Guṇḍoch (V. 1288) shows interest as 30%. An Arāseṇa Jaina Inscription (V. 1344) presents the same rate of interest. Dr. Sharma observes that the rate of interest was somehow not far removed from 30% per annum.[7]

In his A *Study in the economic condition of ancient India*,[8] Dr. Pran Nath on the basis of inscriptioal records, states that the normal rate of interest in Tanjore from tenth to eleventh century A. D. appears to have been $12\frac{1}{2}$%.

1. Epigraphia Indica, XXI. Notes on the Inscription by K. V. S. Aiyar. p.104.
2. Epigraphia Indica, XII, 273.
3. Vide Inscription no. 7 in Bombay Gazetteer, I-I (1896), 474-475.
4. Epigraphia Indica, XI, 57 (Lines, 8-15).
5. Lines 16-22,
6. Sharma, Early Chauhan Dynasties, 301.
7. Ibid, 301.
8. p. 93.

Reference in this connection may be made to the Inscription of Rājarāja (No. 26) where there is record of two deposits of money which were made by a manager of the Rājarājeśvara temple and which were lent out to the inhabitants of a certain village. The interest of the first deposit was to be paid in paddy and to be used for procuring various articles of consumption on thirteen yearly procession days. The interest of the second deposit was to be paid in money and to be used for purchasing camphor (*karpūra*), which had to be burnt before the images of Rājarājeśvara and Dakṣiṇa-Meru-Viṭaṇkar.[1]

The treasury of the temples used to issue loans to different parties. We have epigraphic references of such transactions. Thus we learn that when Vīra-Ballāla-Deva was in the royal city of Dōrasamudra, 'to the fifty cultivators whe lived in the quarter of the god Śaṃkara's town, was given a first loan of fifty *Gadyāṇa* from the treasury of the god.'[2]

An Inscription on the south wall of the central shrine in the Vaṃśodhārkar temple at Sēraṇur in the Tirumayyam Tāluk of the Pudukhoṭṭai state (Madras), puts on record that the residents of Sikharai-nallur, in Kunruśūl-naḍu, a subdivision of Koṇāḍu alias Kaḍalaḍaiyātilangaikoṇḍaśoḷa-vaḷanāḍu, borrowed at one time 3 *poṇ* from the temple treasury of Kolōttuṇga-śoliśuvara muḍaiya-nāyaṇār of their village and made over later certain lands to the temple of their village when they were pressed by the temple authorities for repayment of the above debt which with its interest then amounted to 7½ *kaḷañju*.[3]

The Nāsik Pāṇḍu-Lena Caves Inscription (no. 12) speaks of the rate of interest varying from 9 to 12%, 'if the interpretation of the expressions '*paḍikaśata*' and '*pāyunapadikaśata*' (pādonapratikaśatam) be taken to mean one and three quarter *padika* or silver '*paṇa*' a month per hundred. The *padika* of this inscription seems to have meant a quarter of a *paṇa*. Interpreting the expression quoted above as meaning 100 and 75 *padikas* or say, 400 and 300 copper *paṇas* was the annual interest on 2000

1. South Indian Inscriptions, II-II, 126.
2. Epigrphia Carnatica, V-I, 155 (Inscription 83).
3. Chronological list of Inscriptions of the Pudukkottai State (Inscription no, 499), 81. Vide also Inscriprtion no. 379 (p. 57), no, 548 (p. 87).

and 1000 copper *paṇas* respectively, the rate of interest amounts to 20 to 30%'[1]

Of the five Bāna Inscriptions from Godimallan, Inscription 'E' registers a gift consisting of twenty *kalañju* of gold and the interest on it was calculated at the rate of four '*mañjādi*' per year for each *kalañju*.[2]

While writing on the 'Economic conditions under the Hoysalas', Candraśekhara Śāstrī makes mention of the fact that Allāḷadeva, son of Mahāvaḍḍavyavahāri sāvāsi Mādhava Bhaṭṭayya, made a grant of 200 *gadyāṇas* for the tank of Viṣṇusamudra, the interest on which at the rate of one *bēḷe* (i.e. 15%) 30 *Gadyāṇas* had to to be applied for repairing the tank and the channels.[3] After a careful study of the records of this period he arrives at the conclusion that 'in the thirteenth century in Belur and Dorasamudra, the rate of interest was between 20% and 30% on money deposited in temples and on money borrowed from temple treasury. In Kadur it was between 30% and 39%, in Bowringpet taluk 30%. [4]

Prof. J. D. M. Derret, has, on the basis of epigraphic records dating between 1060 A. D. to 1297 A. D., shown that the rates of interest during the period ranged between 6·25 p.c. per annum to 75·00 p.c. per annum.[5]

It must be borne in mind that all the many epigraphic evidences of rates of interest fall into one or other of two very different categories. (1) Individuals gave capitals to gods, guilds or other corporate bodies at very low rates of interest, so that the borrowers might pay that sum or its equivalent in perpetuity to the charitable object which the donor had in mind. A charitable subordinate example of this type of transaction would be when managers of temple lent money at generously low rates of interest to their freinds and relatives. (2) On the other hand when such sources of capital lent at commercial rates to their customers the rates would vary with the caste, occupation, securities and needs

1. (Bombay Gazetteer, XVI, 573.). Pran Nath, A study in the economic condition of ancient India, 94.
2. Epigraphia Indica, XI, 228 (It is dated śaka 827).
3. Paper in the Half-yearly Journal of the Mysore University, II-2 (July, 1928), 201.
4. Ibid. p. 233.
5. J. D. M. Derrett, The Hoysalas—A Medieval Indian Royal Family, 231.

of the borrowers and hence rates from 25% to 75% will not excite surprise.

Dr. A. Appadorai has presented in a tabular form, on the basis of epigraphic and archaeological records, the rates of interest in South India in between tenth and fifteenth century.[1] It has been observed that the rate of interest during that period ranges between 8% per year[2] to 90% per year.[3] On a further analysis it may be found that during the period 905 A. D. to 992 A. D. only one inscription[4] presents the yearly rate to be 12½%, three inscriptions state it to be 15%, one 20% and another 40%.[5] Between 1004 A. D. and 1098 A. D. we notice a single case having 8% yearly interest (already mentioned), while in the majority of cases the rate is 12½%. Only in one case it is 16⅔[6] per cent and in two cases it is 25%.[7] It rises to 35%[8] and even to 45%.[9] During the period of 1112 A. D. and 1199 A. D., barring a single case where the rate is 10%[10] the rate is noticed to be high. Thus in two cases we notice it to be 30%[11], in other two cases it is 37½%[12] and in another case it rises up to 75%.[13] From 1206 A. D. to 1287 A. D. the rate varies between 12½% and 90%, and the general rates may be stated to be 30%. We get the last-mentioned rate (30%) from 9 inscriptions out of fifteen belonging to this period. The period between 1407 A. D. and 1510 A. D. records 9%[14] as the lowest and 24% as the highest.[15]

1. A. Appadorai, Economic condtions in Southern Indian, II, Appendices, 786-794.
2. Epigraphia Carnatica, XI, Dāvaṇagere 140, dated 1060 A D.
3. Ibid. V. Arsikere, 128 dated 1229 A. D.
4. Annual Report on South Indian Epigraphy, 218 of 1921, Pt. II, para, 14.
5. South Indian Inscriptions, III, 106, dated 939 A. D.
6. Ibid., III. 55. dated 1053 A. D.
7. Epigraphia Indica, XII, 273, dated 1077 A. D.
   South Indian Inscriptions, III, 471, dated 1098 A D.
8. Ibid., III, 56, dated 1054 A. D.
9. 245 of 1915 Annual Report on South Indian Epigraphy. 1916, II. para, 12, dated 1039. A. D.
10. Epigraphia Indica, XIII, 58, dated 1112 A. D.
11. Epigraphia Carnatica, XI, Dāvaṇagere 33. dated 1172 A. D.
    Ibid, X, Mulbāgal 45, dated 1185 A. D.
12. Epigraphia Carnatica, V, Arsikere, 174 dated 1194 A. D.
13. Epigraphia Carnatica, IX, Channapaṭṇa 88b, dated 1169 A. D.
14. Travancore Archaeological Series, VI, 46. dated 1510 A. D.
15. Travancore Archaeological Series, V, 126, dated 1461 A. D.
    Epigraphia Carnatica, IV Cḥāmrājnagar, 160, dated 1492 A. D.

It may be of interest to note that the rate of interest as recorded in the documents embodied in the *Lekhapaddhati*, is two per cent per month or twentyfour per cent per annum.[1]

17. Summary

In this section on interest it has been shown that fifteen per cent per annum was the recognised righteous rate of interest in general. Only in the texts of Yājñavalkya and Vyāsa this rate has been declared to be righteous when the loan is secured by a pledge vyāsa mentions variation of rate when the loan is secured by a surety. The introduction of the theory of caste was made perhaps later and on that basis the rates become fixed at 24%, 36%, 48% and 60% respectively in the cases of the four castes beginning with the Brāhmaṇas. Only in the *Arthaśāstra* and the *Yājñavalkyasmṛti* the rates have been increased to a great extent in the cases where there is risk on the capital. Thus it has been mentioned that for the debtor passing through forest, the rate should be ten in hundred while for the debtor crossing an ocean the rate should go up to twenty in a hundred. These were maxima and not referable to yearly interest. Hence they cannot be stated in terms of per cent. Ultimately Yājñavalkya approves of an unlimited and unrestricted amount of interest where it is agreed upon by the parties themselves.

Since the days of Gautama the kinds of interest assumed different nomenclatures, depending mainly on the nature of their payments. It may be that they were given sanction of the *śāstra*, though it is observed that Manu shows a hostile attitude towards four of them (he does not mention six as we find in the list of Gautama).

On the question of the maximum amount of interest to be realised at one investment, it has been pointed out that so far as the loan is in terms of coin or bullion, the interest along with the

1. 'Vyājena māsaṃ śataṃ prati '2' (in figure) caṭati.' Lekhapaddhati, 20. This is a bit more than what is prescribed by Yājñavalkya on a loan secured by a pledga (i. e 1/80th part or 15% yearly). In another case also the same rate has been prescribed (see Lekhapaddhati, 33). Here there is no mention of pledge though there is reference to two sureties. Vide also Lekhapaddhati, pp. 34, 38, 41, 42, for the same rate of interest.

capital should not be more than twice the capital. In respect of loans in terms of commodities the maxima varied from object to object. Gautama and Manu prescribe that the interest as prescribed in the *śāstras* should not be charged for more than a period of one year. This provision does not find place in any other text of later age and the interpretation of the rule by the commentators and digest-writers shows that this rule had losts its proper meaning and significance.

The *śāstrakāras* have made provision for certain cases of loan where interest should not be charged and by such regulations they have demonstrated their sense of justice and practical outlook. Kātyāyana has considered some problematic issues relating to rate of interest.

Some epigraphic records on the rate of interest have been pointed out just to show how far the *śāstric* rates were followed in the society.

CHAPTER III

Liability to discharge the debt

Analytical table of the centents

1. Religious background for the obligation to pay debts.
2. Religious background of the ohligation of the son to pay the debt incurred by the father.
3. A son in his minority is exempted from such obligation.
4. The obligation of the son to pay the debt of the father even when he is alive.
5. Liability of the grandson to pay the debt of the grandfather.
6. Liability of the great-grandson to discharge the debt of the great-grandfather.
7. The son is not bound to pay the illegal and immoral debts of the father.
8. Obligation of the father to pay the debt of the son.
9. Some special provisions by Kātyāyana regarding liability of the son.
10. The mutual liability of the husband and wife with reference to debt.
11. Special liability of the husband in certain cases.
12. Liability of the man who enjoys the wife of the deceased husband to discharge the debt of the deceased husband.
13. Order of the person to discharge the debt of the deceased.
14. Liability of the second husband of women of special types,
15. Obligation of the relatives to discharge the debt of the debtor.
16. Summary.

Important contributions on some of the topics discussed in this sections.

R. K. Sarvadhikari, The principles of the Hindu law of inheritance, (Calcutta, 1882,). He discusses the question of spiritual benefit of the son ond others. p. 759ff.

K. K. Bhattacharya, The law relating to the joint Hindu family, (Calcutta. 1885), 544-492. The author has detailed discussion on the liability of the son for the father's debt. In pp, 555-561 he refers to the *śāstric* texts on the subjects.

J. Jolly, Outlines of an history of the Hindu Law, (Calcutta, 1885). He discusses the point of spiritual benefit in p. 173ff.

Recht und Sitte (Strassburg, 1896), translated by B. K. Ghosh into English as Hindu law aud customs, (Calcutta, 1928), 217-218. He makes reference to different types of liability on the part of different persons like son, wife, husband etc.

P. N. Sen, The general principles of Hindu jurisprudence, (Calcutta, 1918), 304-305, 319. Here he simply refers to the questions of obligations.

Ganaganath Jha, Hindu law in its sources, I, (Allahabad, 1930), 202-223. He collects in one place in the pattern of a digest-work all the available *śāstric* materials at his disposal on almost all the points discussed here.

P. V. Kane, History of Dharmaśāstra, III, (Poona, 1946), 442-454. In outline he discusses all the points raised in this section.

R. K. Ranade has contributed several articles on debt in different numbers of the Bombay Law Reporter Journal. In the April issue (1950) 33-41, he discusses the illegal and immoral debts. In Vol. LV (July, 1953), 94-102, he discusses 'antecedent debt' and in April issue (1951), 33ff, he discusses the debts by the manager of a joint Hindu family. In vol. LIV (January, 1952), 7-14 he discusses the debts of husband and wife. He refers to *śāstric* points and the present position.

John. D. Mayne, A treatise on Hindu law and usage, (Madras, 1950, 11th edition), 395 ff. While making reference to the legal implications he cites *śāstric* texts where possible.

D. F. Mulla, Principles of Hindu law (Bombay, 1959, 12th edition), 429 ff. He discusses on pious obligations, *avyāvahārika* debts etc. mostly from modern legal point of view.

J. D. M. Derrett, Introduction to modern Hindu law, (Oxford, 1963), 310 ff. He discusses pious obligations and *avyāvahārika* debts.

In his Religion, law and the state in India, (London, 1968) 113-114 he discusses the basic concept of pious obligation.

L. Sternbach, Juridical studies in ancient Indian law, I, (Delhi, 1965), In pp. 439-447 he deals with the question of 'Reciprocal responsibility of' debts contracted by married people' and in p. 271-279 he discusses the legal position of women whose husband live on their earnings.

The topic of this chapter as a whole has been discussed in outline only by P. V, Kane and G. N. Jhā, while others look at certain parts of the question discussed here. In my approach to the questions it may be claimed that more materials have been utilised and attempts have been made to analyse these materials critically in the light of the latest contributions on the subject.

1. Religious background for the obligation to pay debts.

In the concept of Hindu *śāstrakāras*, repayment of a debt is not merely a legal obligation. Non-payment of debt is treated as a sin, the consequences of which follow the debtor into the next world. The obligation[1] to discharge a debt incurred rests with the debtor primarily. This obligation it may be observed, arises in the case of a Hindu debtor out of religious considerations. In India we notice that the concept of debt was developed since the time of the *Ṛgveda*.[2] There are several places in which the term *ṛna* occurs. In the *Ṛgveda* we come across verses in which anxiety is expressed by the debtor ro be relieved of the debt. To Varuṇa a prayer has been addressed so that the worshipper may be relieved of the debts.[3] The *Atharvaveda* contains several verses relating to relief from debt. It has been suggested that consequent to the non-payment of debt the debtor comes under the fetters of Yama.[4] Here we meet with a suggestion that a debt incurred as such should be paid back while living (and should not be left for being discharged by the descendants).[5] Again it has been stated that one should be free

1. H. T. Colebrooke defines an obligation thus: 'An obligation is a moral tie, by which a person is held to suffer something. In this wide sense, it is synonymous with duty.'
   Treatise on obligations and contracts, I, 1.
   Vide also W. J. Bryne, A dictionary of English law, (1923), 624.
2. P. V. Kane discusses the the idea of debt in the Veda in History of Dharmaśāstra, III, 414-416. Vide also collection of Vedic verses on debt in the Dharmakośa, Vyavahāra-section, Vol. I-II, 599-606.
3. Ṛgveda. II. 28. 9. Sāyaṇa inteprets it in the light of debt. For other interpretation see, K. F. Geldner, Der Rigveda, I, 312.
4. Atharvaveda VI. 117. I. Sāyaṇa here explains the verse in the light of debt, but Whitney in his translation of the verses (Atharvaveda, I, 366-367) suggests the alternative sense of 'guilt' for the word '*ṛṇa*'. It may be mentioned here that Keśava ln his *Paddhati* on *Kauśikasūtra*, 46.36 directs that the three hymns beginning with 'apamityam' etc. (Atharavaveda. VI.117) should accempany the act of satisfying the the debt when the creditor is dead and the payment is made to his son or others. Vide Kauśikasūtra, 348.
5. Atharvaveda.VI. 117. 2.

from debt in this world and the world hereafter.[1] In the same text there is a suggestion that non-fulfilment of obligation is to be treated as a bond.[2]

In the *Kauśikasūtra* there is provision that in the case of the death of the creditor the debt should be paid to his son or in his absence to a *sagotra* or in his absence should be left to the crematorium or to a cross-road.[3] This shows that the debtor should make earnest attempts to be relieved of his debt.

In the *Śatapathabrāhmaṇa* the concept of debt is traced in a developed metaphorical form. It has been stated that 'whosever exists, he in being born, in born as (owing) a debt to the gods, to the *ṛṣis*, to the fathers and to the human beings.[4] 'A man, according to this text, should discharge his debt to these divine and human beings. Thus when he performs a sacrifice he does it in discharge of his debt to the deities.[5] Similarly the obligation to the *ṛṣis* is discharged through the study of the *Vedas*,[6] that to the parents, through procreation of progeny[7] and to the human beings through show of hospitality to them.[8] In consonance with this religious obligation, we notice in the *Brāhmaṇa* literature the development of five obligatory duties which appear under a new nomenclature of *Pañcamahāyajña*. They are different in matter and spirit from the *yajñas* (sacrifices) in the sense that these are motivated strictly by discharging obligations to the divine

1. Ibid VI. 117. 3.
   Whitney in his translation takes the word *anṛṇa* as conveying the sense of 'free from guilt' but suggests that *anṛṇa* means also 'free from debt.'
2. Ibid. VI. 119. 2. Vide here the translation by Whitney.
3. Kauśikasūtra. 46. 36-39.
4. Ṛṇaṃ ha vai jāyate yo'sti, sa jāyamāna eva devebhyaḥ ṛṣibhyaḥ pitṛbhyo manuṣyebhyaḥ..... Śatapathabrāhmaṇa. 1. 7. 2. 1.
   Vide here the notes by J. Eggeling, S. B. E. XII, (Oxford, 1882), 190.
   In the commentary of Sāyaṇācārya it has been stated that the birth itself brings the obligation in the form of debt: 'ṛṇatve jananam eva nimittam.'
5. Ibid. 1. 7. 2. 2.
6. Ibid. 1. 7. 2. 3.
7. Ibid. 1. 7. 2. 4.
8. Ibid. 1. 7. 2. 5.

and human beings without any specific desire of securing secular or divine prespect or prosperity. These *yājñas* are life-long debts (*ṛṇas*)[1] which a Hindu is to redeem during his whole span of life. The performer of these *yajñas* are not to ask for anything in return and these are items of daily round of absolute duties or *nityakarma*, the omission of which entails dereliction or sin, though their performance does not confer any tangible advantage upon the doer.[2]

In the context of *Brahmayajña* it has been held in the *Taittirīyāraṇyaka* that through the study of the *Vedic* texts one moves about free from debt.[3] This statement points out that these obligatory duties are to be looked up on as debts. In the same text we come across the idea that through repayment of debt the debtor may go to heaven.[4] The same idea is traced in the *Taittirīyasaṃhitā*[5] and the *Gopathabrāhmaṇa*.[6]

In the *dharmaśāstras* non-payment of debt has been declared as a religious offence of a serious nature. Thus Manu regards non-payment of debt as one of the *upapātakas*.[7] The importance of this concept in purely secular contexts will appear presently.

Yājñavalkya[8] and Viṣṇu[9] have the same direction. Nārada declares that if the borrowed sum is not returned (by the debtor) when it is demanded by the creditor, it goes on increasing till it reaches a hundred crores.[10] When it reaches a hundred crores, the debtor is born again and again as a slave in successive births in

1. Taittirīyasaṃhitā, VI, 3. 10. 5.
2. For detailed study of the five Mahāyajñas, reference may be to: K. G. Gosvami, 'The philosophy of the Pañcamahāyajñas' in Calcutta Review. LXV (Nov. 1937), 203-210 and P. V. Kane, History of Dharamaśāstra, II,-I, 696ff.
3. Ya evaṃ vidvān.....svādhyāyam adhīte.....anṛṇo'nusaṃcarati.
   Taittirīyāraṇyaka, II. 15.
4. .....dātuṃ cec chaknavān sa svarga eṣām. Ibid. II. 6. 6.
   Sāyaṇa: Te puruṣā dātuṃ śaknavān śaktavantaś cet eṣāṃ puruṣāṇāṃ svargo bhavaty eva.
5. III. 3. 8. 4.
6. II. 4. 8.
7. Manu, XI. 64-65.
8. Yāj, III. 234.
9. Viṣṇusmṛti. 37. 29.
10. Yācyamānaṃ na dīyeta ṛṇaṃ vāpi pratigraham /
    Tad dhanaṃ vardhate tāvat yāvat koṭiśataṃ bhavet // Nārada, IV. 7.

the house of the creditor in order to repay the debt (by his labour).[1] He states further that if an ascetic or an *agnihotrī* chances to die without discharging the debt, the whole merit collected by his austerities and *agnihotra* will go to the credit of the creditor.[2] Kātyāyana also expresses more or less the same idea.[3] In the *Gautamadharmapariśiṣṭa cāndrāyaṇa* has been prescribed for non-payment of debt.[4]

In the *Padmapurāṇa* there is a long description of what happens to the debtor who does not discharge his debt. In short, it has been stated that the creditor in such a case becomes born to the debtor as a son, brother father or wife and becomes a source of constant trouble for the debtor.[5] In the same text there is drescription of the ailments of incurable type which the debtor is to undergo in this world if he does not pay back out of greed the debt contracted by him.[6]

In the *Mahānirvāṇatantra* it has been stated that a person under debt may go to hell.[7]

That such a concept was accepted in society may be attested by epigraphic evidence. Thus in the Sovadi (in Jodhpur State) Copperplates of Chahamāna Ratnapāla (in Vikram saṃvat 1176), it has been stated that one not paying a debt is to go to hell.[8] The same idea can be traced in another inscription of earlier date.[9]

1. Koṭiśate tu sampūrṇe jāyate tasya veśmani /
   Ṛṇasaṃśodhanārthāya dāso janmani janmani // Ibid, IV. 8.
   This statement has no relation to the law relating to interest.
2. Tapasvī cāgnihotrī ca ṛṇavān mriyate yadi /
   Tapaś caivāgnihotraṃ ca sarvaṃ tad dhaninām dhanam // Ibid, IV. 9.
   On merit as a transferable quality or entity see the article by M. Hara in The Adyar Library Bulletin, XXXI-XXXII (1967-1968), 382-411.
3. Kātyāyana. 591.
4. Ṛṇānām anapākaraṇe.....cāndrāyaṇam. VIII. 11.
5. Padmapurāṇa. Bhūmikhaṇḍa. Chapter. XII, 1-10.
6. Ibid. XV. II. 17.
7. Yathā svakṛtapāpena nirayaṃ yānti mānavāḥ /
   Ṛṇenāpi tathā baddhaḥ svayam eva na cāparaḥ // Mahānirvāṇatantra, XII. 13.
   For Mahānirvāṇatantra Vide, J. D. M. Derrett, 'A juridical fabrication of early British India.....Z. V. R. 69/2, (1968), 138-181.
8. Epigraphia Indica. XI, 313. Lines, 59-60.
9. Talegaon (Poona) Copper-plates of Kṛṣṇarāja. I. (Śaka. 690. A. D. 768). Vide Epigraphia Indica, XIII, 281. Lines 35-36.

It is thus noticed that the concept of debt became fairly developed since very early days and the debtor would regard it his duties to discharge a debt contracted by him *independent of action by the creditor.* (One may compare the English rule that it is generally the debtor's duty to seek out and pay the creditor, not the creditor's duty to dun the debtor). One can never escape indebtedness except by payment. The concept of spiritual debt as expressed in the five *mahāyajñas*—daily duties of absolute nature, arose probably out of gratefulness to the persons from whom some sort of help has been derived. This may be stated to have contributed to a great extent to the idea of obligation to discharge the secular debt. Such a picture is given, for example by Kane. (History of Dharmaśāstra, III. 416). But we can add that such an attitude on the part of the *śāstra* is fully explained by the absence effective means of social and judicial control to enforce payment. It may be that applications for loans were numerous and unsecured loans not infrequent. In other words, sentimental and superestitious considerations reenforced secular considerations and eventually became inseparable from them in the formal developement of the *dharmaśāstra.* This idea equally explains and accounts for the craving of a *Hindu* for a son who can discharge the debts of the father if it is neccessary.

2. Religious background of the obligation of the son to pay the debt incurred by the father.

"The liability of one person to pay debts contracted by another arises from three completely different sources. These are : first, the religious duty of discharging the debtor from the sin of his debts ; secondly the moral duty of paying a debt contracted by one whose assets have passed into the possession of another ; thirdly the legal duty of paying a debt contracted by one person as the agent, express or implied, of another or as having an authority conferred by the Hindu law to act on behalf of another."[1] The first of these liabilities arises out of religious obligation which is

1. J. D. Mayne, A Treatise on Hindu law and usage (Madras, 1950. 11th edition.), 394.

generally termed as *pious obligatjtion*, to save the father from the evil consequences that follow the non-payment of debt. The second is based on the broad equity that one who enjoys the benefit must discharge the burden also. This moral obligation based on equitable principles comes into operation whether the property devolves upon the heir by an operation of law or whether it is taken by him voluntarily. 'The aforesaid moral obligation to pay the debts of the person whose estate a man has taken can be described by saying 'assets are to be pursued unto whatever hands' (as Colebrooke puts it), or by saying 'debts follow the assets into whoseover hands they come' (as Strange puts it).'[1]

So far as the religious background of the duty of the son to discharge the debt of the father is concerned, it may be pointed out in short that since the days of the *Ṛgveda* we notice eulogies for a son. It has been recorded in the *Ṛgveda* that Sarasvatī blessed Vadhryaśva with a son named Divodāsa, who could acquit the debt of his father.[2] This suggests that one of the duties demanded of a son is the discharge of debt incurred by the father. The *Śatapathabrāhmaṇa* speaks of the sons in the contexts of discharging the debts to the *manes*.[3] The *Ṛgvedic* idea that through issue one can attain immortality,[4] has been carried further in the *Aitareyabrāhmaṇa*. Here the question has been raised, 'why does a man hanker after a son[5]' and in that context it has been stated that the father after seeing the face of the living son attains immortality by leaving the burden of his debt to his son.[6] Here it is noticed that the main purpose of hank-

1. R. K. Ranade, 'Debts by the manager of a joint Hindu family,' in the Bombay Law Reporter Journal, (April, 1951), 53.
2. Ṛgveda. VI. 61.1. Sāyaṇa in his commentary explains clearly the significance of the word '*ṛṇacyutam*' as applied here as an adjective to '*Divodāsa*'.
3. I. 7. 2. 4.
4. Ṛgveda. V. 4. 10.
5. 'Kiṃ nv imaṃ putram icchati'. 33. 1.
6. Ṛṇam asmin saṃnayaty amṛtatvaṃ ca gacchati /
   Pitā putrasya jātasya paśyec cej jīvato mukham // 33. 1.
   Sāyaṇa in his interpretation observes that the debts referred to here are both secular and *Vedic*. By secular debt he means those debts which the sons are under obligation to pay By *Vedic* debt he under-

ering after a son is to leave the burden of debt to him. This idea has been carried on in the *dharmaśāstras*.

Manu mentions that a father throws his debt on his son.[1] He directs that the son helps the father to bo free from spiritual debt to the manes. According to him one must concentrate one's mind on liberation (*mokṣa*) after discharging the three sorts of debt.[2] The debt to the manes can be discharged through the procreation of a son.[3] The same idea may be traced in the Mahābhārata.[4] Viṣṇu also refers to the same idea as contained in the Vedic verse.[5] Saṁkha holds that through the procreation of a son competent to offer *piṇḍa*, a father becomes free from the debt (to his ancestors).[6] It is Nārada who in clear terms declares that fathers crave for sons thinking that they (the sons) would release them from all the debts to the superior and inferior beings.[7] Commentators and digest-writers explain that the debts referred to here are both spiritual and secular debts.[8] Kātyāyana also observes that fathers hanker after sons since after

stands the spritual debts to which he initiates his son in the form outlined in the *Vājasaneyisaṃhitā*:
'Svakiyam ṛṇaṃ laukikaṃ vaidikaṃ ca...samyag avasthāpayanti. Laukikasyāvasthāpanāt putrapautrādibhir ṛṇaṃ pratyarpaṇīyam iti smṛtikārā āhuḥ, vaidikaṃ tu tribhir ṛṇavā jāyata ityādi śrutyuktam, tasya ca putrāvasthāpanaṃ saṃprattināmakena karmaṇā sampadyate. Tac ca karma vājasaneyibhir āmnātam .....'

1. Yasmin ṛṇaṃ sannayati....., Manu, IX. 107.
2. Ṛṇāni trīṇy apākṛtya mano mokṣe niveśayet. Manu, VI. 35.
3. Manu, VI. 36.
4. Yajñaiś ca devān prīṇāti svādhyāyatapasā munīn /
   Putraiḥ śrāddhaiḥ pitṛṃś cāpi ānṛśaṃsyena mānavān //
   Mahābhārata, Ādiparva, III. 14.
5. Viṣṇusmṛti, XV, 45.
6. Tena cānṛṇatāṃ yāti pitṛṇāṃ piṇḍadena vai.
   Vide Dharmakośa, II, 1281-2.
7. Icchanti pitaraḥ putrān svārthahetor yatas tataḥ /
   Uttamarṇādhamarṇebhyo mām ayaṃ mocayiṣyati // Nārada. IV. 5.
8. Vide the commentary of Asahāya on Nārada, IV. 5; the commentry of Bhavasvāmī on Nāradīyamanusaṃhitā, I. 5.
   Devaṇabhaṭṭa in his Smṛticandrikā explains clearly:
   'Uttamam ṛṇaṃ jāyamāno vai.....ityādiśrutyuktam. Adhamam ṛṇaṃ parahastāt kusīdavidhinā gṛhītam.' Smṛticandrikā, II, 393.
   Vide also Vivādatāṇḍava, 512.

their birth they release their fathers from wretched indebtedness.[1] Bṛhaspati also speaks of two types of debt, secular and spiritual, which the sons are under obligation to discharge.[2]

This discussion of the views of the *śāstrakāras* since the *Vedic* days shows that the obligation in the case of the sons to discharge the debts of their fathers arises out of religious considerations. Other ideas of a spiritual nature have also contributed to the development of this obligation of the sons. Most important of them is the theory of *piṇḍa*.[3] Viṣṇu declares that one of the reasons for hankering after many sons is that one may go to Gayā (to offer *piṇḍa*).[4]

It is noticed in the *śāstras* that the right to inherit the ancestral property by the son becomes dependent on the condition of his offering *piṇḍa* to the ancestors. Manu gives expression to the idea that the two are correlative.[5] The same idea may be traced in the texts of Yājñavalkya[6] and Viṣṇu.[7] Though the modern Hindu law no longer respects this notion, it still plays a part in rural Hinduism.

Again the right to inherit the property of the father brings on the son the obligation to discharge his (father's) debt. Gautama

1. Pitṛṇāṃ sūnubhir jātair dānenaivādhamād ṛṇāt /
Vimokṣas tu yatas tasmād icchanti pitaras sutān // Kātyāyana, 551.
Devaṇabhaṭṭa here observes that in a figurative sense *ṛṇa* may refer to a secular debt: 'Athavā uttamarṇādhamaraṇaśabdato lakṣaṇayā kusīda-vidhinā gṛhītam evarṇam avagantavyam.' Smṛticandrikā, II. 393.
2. Uttamarṇādhamarṇebhyaḥ pitaraṃ trāyate sutaḥ /
Atas tu viparītena tena nāsti prayojanam // Bṛhaspatismṛti, XXVI. 35.
For details regarding the importance of sons, vide P. V. Kane, History of Dharmaśāstra, II-I, 560-561 ; III., 641-643.
Vide also Dharmakośa, I-II, 1355.
3. In the *dharmśāstras* '*piṇḍa*' stands for 'ball of rice' to be offered to the manes. According to Vijñāneśvara it stands for particles of body. (on Yāj. I. 52). Details regarding *piṇḍa* and its bearing on inheritance, *āśauca* and marrige may be referred to in Kane's History of Dharmaśāstra, II-I, 472 ff. ; III, 553. Vide R. K. Sarvadhikari, The Principles of the Hindu Law of inheritance, 52ff ; D. Shastri, Origin and development of the rituals of ancestor worship in India, 170ff.
4. Eṣṭavyā bahavaḥ putrā yady eko'pi gayāṃ vrajet. Viṣṇusmṛti. 85. 71.
5. .....dadyāt piṇḍaṃ hared dhanam. Manu, IX. 136.
Vide also Manu, IX. 132.
6. Piṇḍado 'ṃśaharaś caiṣām..... Yāj, II. 132.
7. Yaś cārthaharaḥ sa piṇḍadāyī. Viṣṇusmṛti, XV. 40.

prescribes that those who inherit the property of a person should discharge his debt.[1] The idea finds place in the texts of Yājñavalkya[2] and Viṣṇu.[3] Naturally, the modern Hindu law has not departed from this concept.[4]

Thus it may be stated that the three concepts—*piṇḍa*, *dāya* and *ṛṇa* are closely inter-related. It is hardly possible to determine which precedes the other.

From the discussion made in the foregoing pages it is evident that the liability of the *son* to discharge the debt of the *father* rests mainly on religious grounds and partly on secular ones in the form of inheriting the property of the father. The grandson also is under the same obligation to discharge the debt of the grand father on identical grounds. This obligation, called the *pious obligation* might have been developed out of the institution of joint-family as pointed out by Prof. J. D. M. Derrett in the following lines. He observes: "In ancient times, however a special difficulty arose with regard to the debt of the members of the joint family. If the debts were not of a character which the manager of the joint family would be obliged to clear off, the creditor could enforce payment after the debtor's death against the joint-family property upon the basis that the debtor's interest in that property had passed to his sons and that the share of the latter must be debited with the amount. The difficulty arose because in the ancient law all property, however acquired, became for most purpose joint-family property until a partition at which time, one who had made acquisitions without the aid of joint funds could, as a rule keep them as an additional share. The sons and others were held absolutely liable for the ancestor's debt not because of thier religious obligation to their progenitor to pay off his three classes of debt, but because they had no separate property of their own, as long as they remained joint, which conld be kept distinct from the property or interest which had belonged to their deceased parent or grandparent."[5]

1. Rikthabhāja ṛṇaṃ pratikuryuḥ. Gautamadharmasūtra, XII. 37.
2. Rikthagrāha ṛṇaṃ dāpyo... Yāj, II. 51.
3. Saputrasya vāpy aputrsya vā rikthagrāhī ṛṇaṃ dadyāt. Viṣṇusmṛti, VI. 29.
4. For discussions on this point, see, R. K. Ranade, 'Liability of persons taking assets,' Bombay Law Reporter Journal (LV, 1953), 8-18.
5. J. D. M. Derrett, Religion, law and the state in India, 113-114.

It may be noted that 'modern modifications have retained part of the old reasoning and have made the sons, son's sons and son's son's sons liable to the extent of their interest in the joint-family property for the debts of the ancestors, though no further.'[1]

So far as the provisions made in the *śāstras* regarding the liability of the son are concerned, we have from Kauṭilya the direction that the debt of the deceased father should be discharged by his sons.[2] About the grandsons it has been stated that the sons or grandsons or successors to property, should pay off the debt when they inherit the estate. This is with reference to the debt about which no time and place have been specifically ascertained.[3]

Yājñavalkya formulates the law that the sons and grandsons are under obligation to discharge the debt, when the father is away or dead or is immersed in distress.[4]

Viṣṇu prescribes that the obligation of the son and grandson to discharge the debt of the father and grandfather respectively arises consequent upon their death, renunciation of the world or living away from the country for a period of twenty years.[5]

Reference has already been made to the statement of Nārada (IV. 5) regarding the causes of craving for sons. In continuation of that it has been held that the son should leave aside his personal interest and should see his father redeemed from debt, so that he may not fall into hell (for non payment of debt).[6]

1. J. D. M. Derrett, Religion law and the state in India, 114. Vide also his Introduction to modern Hindu law, 310-311 ; Kane, History of Dharmaśāstra, III, 442-448 ; K. K. Bhattacharya, The law relating to the joint Hindu family, 544-592 ; R. K. Ranade, in Bombay Law Reporter Journal, (1950), 52, 1-7, 33-41 ; (1953) 55, 94-102 ; (1961) 63, 81-84 ; D. F. Mulla, Principles of Hindu law (1959. 12th edn.), 429ff.
2. Pretasya putrāḥ kusīdaṃ dadyuḥ. Arthaśāstra. 3. 11. 14.
3. Asaṃkhyātadeśakālaṃ tu putrāḥ pautrā dāyādā vā riktham haramāṇā dadyuḥ. Ibid. 3. 11 17.
4. Pitari proṣite prete vyasanābhiplute'pi vā /
   Putrapautrair ṛṇaṃ deyaṃ nihnave sākṣibhāvitam // Yāj, II. 50.
5. Dhanagrāhiṇi prete pravrajite dvidaśāḥ samāḥ pravasite vā tatputrapautrair dhanaṃ deyam. Viṣṇusmṛti, VI. 27.
6. Ataḥ putreṇa jātena svārtham utsṛjya yatnataḥ /
   Ṛṇāt pitā samuddhārya yathā na narakaṃ vrajet // N. M. S, I. 6.
   Vide also Vulg. in the Nāradasmṛti, Ed. by Jolly. p. 47.
   Cf. Bṛhaspati, X. 116.

Nārada directs that on the death of the father the sons divided in their interests should discharge the debt of the father in proporation to the share received by inheritance. In case they are not divided, it should be paid by the son who manages the family as the head (in the absence of the father).[1] He has another provision that the son is not liable to pay the debt of the father before the lapse of twenty years, when the father is away from the country.[2] The obligation of the grandson has been delineated separately by Nārada that if the debt legitimately due and inherited by the son remains undischarged by him, his son (grandson) should pay it off.[3]

Bṛhaspati says that the paternal debt properly substantiated (through documents or other modes of proof) should be discharged by the sons in the same manner in which they might have discharged their own debt (i. e. with interest). The grandsons should pay the principal amount only (and not interest).[4] Here we notice that for the first time Bṛhaspati refers to the fact that the sons should pay the debt of father with interest, while the grandsons should pay without interest. Of course this interpretation comes from the commentators and the digest-writers on the basis of the two words '*ātmīyavat*' and '*samam*' in the verse of Bṛhaspati.[5]

Kātyāyana simply states that in the absence of the sons the debt of the father should be discharged by the grandsons.[6]

It is Vijñāneśvara who in his explanation of the rule of Yājñavalkya (II. 50) clearly states that the death of the father

1. Pitary uparate putrā ṛṇaṃ dadyur yathāṃśataḥ /
Vibhaktā avibhaktā vā ye vā tām udvahed dhuram // Nārada, IV. 2.
= Bṛhaspati. X. 117.
2. Nārada. IV. 14.
3. Kramād avyāhataṃ prāptaṃ putrair yan narṇam uddhṛtam /
Dadyuḥ paitāmahaṃ pautrāḥ..... // Nārada, IV. 4.
4. Ṛṇaṃ ātmīyavat pitryaṃ putrair deyaṃ vibhāvitam /
Paitāmahaṃ samaṃ deyam..... // Bṛhaspati, X. 114.
5. Vijñāneśvara observes: 'Atra yadyapi putrapautrair ṛṇaṃ deyam iti aviśeṣeṇoktaṃ tathāpi putreṇa yathā savṛddhikaṃ dadāti tathaiva deyam. Pautreṇa tu samaṃ mūlam eva dātavyaṃ na vṛddhir iti viśeṣo' vagantavyaḥ .....bṛhaspatismaraṇāt' on Yāj. II. 50.
Vide also Sm. C. II, 396; Vivādaratnākara, 49.
6. Puttrābhāve tu dātavyam ṛṇaṃ pautreṇa yatnataḥ. Kātyāyana, 560.

should be taken in the sense of his civil death. He states further that in their status as sons and grandsons they are liable to discharge the debt of the father and grandfather respectively, irrespective of the condition whether they inherit the estate of the father or not.[1]

Aparārka also expresses the view that the sons and grandsons should pay the debt even if they do not inherit any property.[2] This undoubtedly is the ancient position and had its counterpart in the republican Roman law.

In his interpretation of the verse of Yājñavalkya (II. 50) with reference to the word '*vyasanābhipluta*', Jagannātha observes that the distressed condition of the father may be described in any of the following ways. He says; "The father being involved in distress, that is, being afflicted with a hopeless distemper, or long confined in fetters by the king in consequence of the offence of another; or fallen from his class, as a degraded person or the like, and excluded from the patrimony; or immersed in vices originating from irregular desires, (whether avarice, lust, or any impulse of the mind,) such as gaming or the like, and love of harlots; or immersed in vices originating from a wrathful temper, or governed by pride; in all these cases the son must pay the debt."[3]

There is no suggestion in the texts or commentaries on the point of the reason of making distinction between a son and a grandson regarding the payment of debt. As already pointed out, the son must pay the debt with interest. This is quite reasonable because his obligation arises out of religious considerations and as a son who is no other than the father himself in another from, he has the same type of obligation as that of the father. Accordingly he is under obligation to pay off the father's debt with interest. So far as the grandson is concerned the creditor should not expect to demand the debt of the grandfather from

1. .....Putreṇa pautreṇa vā pitṛdhanābhave 'pi putratvena pautratvena ca. Mitākṣarā. on Yāj, 11. 50.
2. Atra ca pravāsādiṣu nimitteṣu ṛṇadānavidhānāt paitṛkadhanābhāve'pi putrair ṛṇaṃ deyaṃ tadabhāve ca pautraiḥ.

Aparārka on Yāj, II. 50.

3 The translation of the passage of Jagannātha is by Colebrooke. Vide Col. Dig, I, 269.

him with interest because he is one generation more distant from the grandfather. Bṛhaspati might have thought in terms of putting a check through this provision to the usurious inclination of a creditor to pursue the debtor by generations. He shows in his direction (X. 114) that the gradual tendency is towards lessening of the obligation to pay. Thus according to him, the great-grandson is exmpted from paying anything of the great-grandfather's debt.

3. A son in his minority is exempted from such obligation.

Nārada observes that though a son becomes independent after the death of the father, yet a son who has not attained the age of discretion should not be made liable for the debt of the father.[1] This provision is quite reasonable in view of the fact that as a son, though he is to discharge the debt of the father in the status as a son, should be offered an opportunity of being in a position to discharge his obligation. If he does not reach the age of discretion he cannot be reasonably asked to discharge an obligation about which he may not be fully conscious. This point has been stressed by Kātyāyana also.[2]

In elucidation of the point Kātyāyana holds that a son may be made to pay (only when) he is capable of inheriting the estate of the father, is free from trouble and is in a position to shoulder the burden of debt.[3]

Devaṇabhaṭṭa explains the purport of the verse that the son who is born blind and the like because of the incompetence to inherit the estate of the father, or one who suffers from tubercular diseases and the like, because of his being in a distressed state, is not to discharge the debt even if the father is dead, away from the

1. Aprāptavyavahāraś cet svatantro'pi hi naṇabhāk. Nārada, IV. 31. Vide here Nārada. I. 54 where such a person has been exempted from being arrested or summoned.
   Vide Asahāya: 'Atra kila pitari mṛte putraḥ svatantraḥ syāt, sa ca ṇabhāg api sambhavati, tanniṣedhārtham āha .....
2. Kātyāyana, 552.
3. Ṛṇaṃ tu dāpayet putraṃ yadi syān nirupadravaḥ /
   Draviṇārhaś ca dhuryaś ca nānyathā dāpayet sutam // Kātyāyana, 557.

country, afflicted with disease or is disabled.[1] He makes it clear that the *competence* of a son to inherit the estate makes him liable to discharge the debt of the father even if such a son does not actually inherit the property.[2]

The spirit of those provisions by Nārada and Kātyāyana is that the *śāstrakāras* were fully conscious of the fact that the obligation of the son to discharge the debt of the father is really a burden on him. To insist on the point of discharging that obligation even in his distressed state or in a state when he is not in a position to realise the implication of the same, will be tantamount to an additional burden which the *śāstrakāras* hesitated to impose upon him.

4. The obligation of the son to pay the debt of the father even when he is alive.

In support and elucidation of the direction of Yājñavalkya (II. 50) Kātyāyana provides that the obligation of a son may arise during the life-time of the father if he is afflicted with disease or is away from the country. (Perhaps in the second case) the debt is to be discharged after (waiting for) period of twenty years.[3] In another direction Kātyāyana does not mention this limit of time. It has been stated that the sons should be made to pay the debt of their father even during his life-time in case he is diseased, attacked with madness, old or is away on a long journey.[4] This point has further been stressed in another verse.[5] (These last two directions are also attributed to Bṛhaspati).

1. Jātyandhādibhiś ca putraiḥ pitary uparate proṣite vyādhyādinā pīḍite 'samarthe' pi na deyaṃ, pitṛdravyabhāgānarhatvāt. kṣayādirogiṇām atyantopadrutatvāt. tathā ca kātyāyanaḥ.....Sm. C, II, 394.
2. Arha iti vadan pitṛdravyāgrahaṇe'pi arhatve sati putro dāpya iti darśayati. Sm. C. II, 395.
3. Vidyamāne'pi rogārte svadeśāt proṣite'pi vā /
   Viṃśāt saṃvatsarād deyam ṛṇaṃ pitṛkṛtaṃ sutaiḥ // Kātyāyana, 548.
   cf. Nārada. IV. 14.
4. Vyādhitonmattavṛddhānāṃ tathā dīrghapravāsinām /
   Ṛṇam evaṃvidhaṃ putrān jīvatām api dāpayet // Kātyāyana. 549 = Bṛhaspati. X. 109.
5. Sānnidhye'pi pituḥ putrair ṛṇaṃ deyaṃ vibhāvitam /
   Jātyandhapatitonmattakṣayaśvitrādiroginaḥ // Kāt., 550 = Bṛhaspati, X. 110.

Caṇḍeśvara here observes that if the disease is known to be of incurable type and if it is ascertained that the man will have no possibility of returning, then the son should discharge the debt immediately without waiting for a period of twenty years.[1]

The significance of these directions is to be sought in this that the obligation of the son to pay the debt of the father arises not merely on his death but also on his inability to pay even in his lifetime. This has been pointed out by Pārijāta.[2] Caṇḍeśvara formulates the principle that if the father himself happens to be devoid of his share (because of his being born-blind etc.) and if the son be not divided in his share, he (the son) should pay the father's debt, the assumption being that the undisqualified son is entitled to participate in the ancestral estate *per stirpes* in his own right and not merely through his (disqualified) father. If however the father is in possession of great wealth he should pay himself even under those circumstances (as outlined in verse 550). If the father is unable to discharge the debt under all circumstances and if the son be in a position to do so, then it should be discharged by the son.[3]

5. Liability of the grandson to pay the debt of the grandfather.

The liability of the grandson[4] to discharge the debt of the grandfather arises in the same way as that of the son (i.e. out of religious grounds). We have already referred to the views of Kauṭilya (3.II.17), Yājñavalkya (II.50), Viṣṇu (VI.27), Nārada (IV.4) Bṛhaspati (X.114) and Kātyāyana (560).

Reference here may be made to the verse of Kātyāyana where

1. Yadi tu asādhyatvenaiva rogāvadhāraṇaṃ pravāsinaś ca punar āgamanavyatirekāvadhāraṇaṃ tadā jīvato'pi vṛddhasya pituḥ putras tatkāla eva ṛṇaṃ dātum arhati viṃśativarṣāṇi yāvat pratīkṣā na kartavyā. Vivādaratnākara, 53.
2. Atra yadi pitā sarvathā dānāsamarthaḥ tadā putreṇa ṛṇaṃ dātavyam iti samudāyārtha iti pārijātasvarasaḥ. Vivādaratnākara, 54.
3. Vastutas tu yady asāv aṃśānadhikāraprayojakarūpavān pitā avibhaktadhanaś ca putras tadā putreṇaiva tad ṛṇaṃ deyam, yadā tu asādhāraṇadhanaḥ pitā tathābhūto'pi tadā tenaiva dātavyam. Yadā tu pitā sarvathaiva ṛṇadānāsamarthas tadā putreṇaiva dātavyam iti. Vivādaratnākara, 54. Vide here also the notes by G. N. Jhā in his translation of Vivādacintāmaṇi, 27.
4. P. V. Kane does not discuss this question in detail.

it has been directed that the debt that is incurred by the grandfather and which is recognised as such by his son as of faultless nature, but which has not been discharged by the son (because of his inability to do so) should be paid off by his grandson.[1] In another verse Kātyāyana holds that such a debt of the grandfather should be discharged by the grandson without interest (*samam*).[2] He makes the position clear by stating that such liability will not devolve on the grandson where a debt has been repudiated by his father and which is of immoral and illegal type.[3] We shall have occasion to observe that illegal and immoral debts of the father do not fall under the scope of pious obligation (see p. 103).

Kātyāyana makes a distinction between the son and grandson with reference to their liability in respect of the surety debt. It has been stated that the son is under obligation to pay the surety debt of his father without interest, but this obligation will not pass on to grandson.[4] The reason for such direction appears to be that the *śāstrakāras* perhaps thought it improper to pursue even the grandson of the surety in view of the fact that it is not a debt in the real sense of the term. It is sufficient therefore that the son of the surety is brought into picture and there also concession has been introduced in the form of payment of such debt by the son without interest.

Thus it may be stated that Kātyāyana makes the grandsons liable to pay the debt of the grandfather under two conditions, namely, that the debt should have been recognised as payable by the father because it is free from any taint and that it should be paid without interest.

1. Pitrā dṛṣṭam ṛṇaṃ yat tu kramāyātaṃ pitāmahāt.
   Nirdoṣaṃ noddhṛtaṃ putraiḥ deyaṃ pautrais tu tad bhṛguḥ // Kāt, 555.
   Dṛṣṭam has been explaind by Devaṇabhaṭṭa as: 'svapitṛkṛtatvena pitrā nissaṃdigdham avagatam.' Sm. C, II, 397.
2. Paitāmahaṃ tu yat putrair na dattaṃ rogibhis sthitaiḥ /
   Taṣmād evaṃvidhaṃ pautrair deyaṃ paitāmahaṃ samam // Kāt, 556.
   For *samam* compare the direction of Bṛhaspati, X. 114.
3. Sadoṣaṃ vyāhataṃ pitrā naiva deyam ṛṇaṃ kvacit. Kātyāyana, 554.
   Sadoṣam has been explained as: 'surādinimittatvena doṣayuktam' Sm. C. II, 398.
4. Prātibhāvyāgataṃ pautrair dātavyaṃ na tu tat kvacit /
   Putreṇāpi samaṃ deyam ṛṇaṃ sarvatra paitṛkam // Kātyāyana, 561.
   Ṣaṃan has been explained as: 'vṛddhirahitaṃ mūlamātram iti yāvat.' Smṛticandrikā, II, 398.

So far as the commentators and the digest-writers are concerned, reference has been made to the view of Vijñāneśvara (on Yāj. II. 50) that in their status as grandsons they become liable to discharge the debt of the grandfather even if they do not inherit the estate.

Devaṇabhaṭṭa introduces the point that if the grandson inherits the estate he comes under the obligation to discharge the debt of the grandfather with interest, but if he does not inherit the same his liability is to the extent of paying the capital only.[1] The same idea has been expressed by Mitramiśra.[2]

6. Liability of the great-grandson to discharge the debt of the great-grandfather.

We have already referred to the fact that the three concepts, namely, that of spiritual benefit, right of inheritance and the obligation to discharge the debt are inter-related. If the principle of spiritual benefit is applied in the case of the son and the grandson and consequently if it is agreed that their right to inheritance and the obligation to discharge the debt arise on that basis, the question of the obligatian of the great-grandson to discharge the debt of the great-grandfather comes in.[3] This is because of the reason that according to the *śāstrakāras* the great-grandson equally confers spiritual benefit on the great-grandfather.[4] Manu categorically declares that the fourth in descent (i. e. the great-grandson) offers water and funeral cake to the three ancestors.[5] Nārada prescribes that the three deceased ancestors should be worshipped and the ancestors should take resort to three

1. Gṛhītarikthānāṁ tu pautrāṇām adhikāro vṛddhisahitaṛṇāpākaraṇe 'deyaṃ paitāmahaṃ samam' ity asyāgṛhītarikthaviṣayatvāt. Sm. C, II, 400.
2. Putrābhāve pautreṇa rikthagrahaṇe sodayaṃ deyam agrahaṇe mūlam eva. Vyavahāraprakāśa, 264.
3. P. V. Kane discusses this question in detail. Vide also R. K.Sarvadhikari, The Principles of the Hidu law of inheritance, 103-134.
4. Vide Manu, IX. 137 ; Baudhāyanadharmasūtra, II. 9. 6. ; Vasiṣṭhadharmaśāstra, II. 5 and Viṣṇusmṛti, XV. 46.
5. Manu, IX. 186.

descendants.[1] 'These three ancestors of a man may claim the discharge of twofold debt from the fourth in descent.'[2] Thus the great-grandson, so far as the spiritual benefit is concerned, comes on a level with the father and the grand-father. But in respect of the payment of the great-grandfather's debt, the great-grandson has been exempted by the writers on law.

Yājñavalkya districtly mentions that the liability of discharging the debt of the debtor rests with the son and the grand-son.[3]

Viṣṇu has a rule which has been interpreted in the form that the great-grandson need not discharge the debt if he is unwilling to do sc.[4] This direction of Viṣṇu does not impose the burden of liability unconditionally on the great-grandson.

Nārada states that such liability stops from the fourth in descent.[5] It is not exactly clear from this verse whether the obligation of payment of the great-grandson is included or excluded.

Bṛhaspati distinctly observes that the great-grandson should not come under obligation to pay.[6]

1. Jolly translates this part of the verse (quoted below) as: 'Three must be reverenced before the rest.' S. B. E. XXXIII, 43. Vide here the commentary of Asahāya in which the rule has been illustrated by the history of an action brought before a court in Pāṭaliputra (Patna), and vide the notes by Jolly, S. B. E. XXXIII, 43-44.
2. Pūjanīyās trayo'tītā upajīvyās trayo'grataḥ /
   Etat puruṣasantānam ṛṇayos syāc caturthake // Nārada. IV. 6.
3. Yāj, II. 50. In another verse (II. 90) he presents the position more clearly; 'Ṛṇaṃ lekhyakṛtaṃ deyaṃ puruṣais tribhir eva tu.' In the Mitākṣarā and the commentary of Aparārka it has been explained that the sons and the grandsons are liable for the debt.
4. .....tatputrapautrair dhanaṃ deyam, nātaḥ param anīpsubhiḥ.
   Viṣṇusmṛti, VI. 28.
   In the Smṛticandrikā it has been interpreted that the great-grandson and others who are born after the grandson need not pay if they are unwilling: 'Ataḥ putrapautrebhyaḥ param ūrdhvaṃ ye jātās taiḥ prapautrādibhir anīpsubhir na deyam iti.' Sm. C. II, 399.
   Caṇḍeśvara observes that if the great-grandson desires to perform spiritual benefit to the great-grandfather then he may pay his debt: 'Anīpsubhir ity anena prapitāmahādīnāṃ yadi hitecchā tadā teṣām api ṛṇaṃ caturthādibhir deyam ity uktam.' Vivādaratnākara, 50.
5. .....tac caturthān nivaratate. Nārada, IV. 4.
   Vide here the notes by Jolly, S. B. E. XXXIII, 42.
6. Bṛhaspati, X. 114.

Kātyāyana holds that the fourth in descent (i. e, the great-grandson) beginning with the debtor himself need not pay and the liability ceases in this case.[1]

Asahāya in his commentary on Narāda (IV. 4) expresses the view that the great-grandson should pay the debt contracted by the great-grandfather.[2]

Vijñāneśvara observes that the great-grandson need not pay provided he does not take the property of the great-grandfather.[3] He states the point more clearly in another place of his explanation of the verse of Yājñavalkya.[4] From his interpretation it may be presumed that he applies the principle here that the right to inheritance should be followed by the obligation to discharge the debt.

Devaṇabhaṭṭa contends that unless afflicted by diseases like blindness from birth and the like, the sons and the grandsons have the competence to inherit the estate automatically but the great-grandsons do not have that right in that form. Therefore if they do not inherit the estate (in the absence of the father and the grandfather) they do not come under obligation to discharge the debt of the great-grandfather.[5] Again while making reference to the statements of Nārada (IV. 4) and Kātyāyana (560), Devaṇabhaṭṭa observes in more clear terms that the prohibition for discharging the debt of the great-grandfather by the great-grandson refers to

1. Caturthena na dātavyaṃ tasmāt tad vinivartate. Kāt. 560.
P. V. Kane in a very lengthy note on this verse of Kātyāyana refers to and refutes a statement by Jolly made in connection with the notes on Nārada. IV. 6 (S. B. E. XXXIII, 44) and in his Tagore Law Lectures, (Calcutta, 1885, p. 171). The statement relates to the view of Vijñāneśvara regarding the liability of the great-grandson. Vide also his History of Dharmaśāstra, III, 443-444.
2. Yaḥ punar mūlikacaturthaḥ saḥ pitṛpitāmahaprapitāmahānāmuttamarṇādhamarṇadātā sarvamunibhir api samarthitaḥ.
Commentary on Nārada, IV. 4.
3. .....tatsutasya praputrasyādeyam agṛhītadhanasya. On Yāj, II. 50.
4. Putrahīnasya rikthina ity etad api putrapautrahīnasya prapautrādayo yadi riktham gṛhṇanti tadā ṛṇaṃ dāpyāḥ nānyathety evam artham.
Mitākṣarā on Yāj. II. 51.
5. Putrapautrāṇām eva jātyandhavyatiriktānāṃ nirupādhikarikthārhatvaṃ nānyeṣāṃ prapautrādīnām iti. Rikthagrahaṇābhāve prapautrādibhir avaśyaṃ putrapautravan na deyam iti.
Smṛticandrikā, II, 399.

those who do not take the estate and this will not apply to those who inherit the estate.[1] What he says seems to be this—a great-grandson may not take by birth a right in the property in the hands of his great-grandfather, usually he does not, he has a right in that property in the hands of his *own* father. If in the interval between the great-grandfather's death and his conception the great-grandfather's property is lost, the great-grandson is free from the great-grandfather's debt. Thus the principles of spiritual benefit and equity are harmonised.

It is nowhere suggested that the liability of the great-grandson who received the assets of the great-grandfather was confined to the extent of those assets. Hence the equitable rule to be found in the *smṛtis* had its limitations and was not as thoroughgoing as a modern lawyer would expect.

Mitramiśra also observes that if the great-grandson does not inherit the estate, he should not pay the capital (debt) even.[2]

Here a reference should be made to the rule of Yājñavalkya and its interpretation by Vijñāneśvara and Caṇḍeśvara. While making reference to the rule of Yājñavalkya (II. 90), Vijñāneśvara observes that in the case of a debt by the great-grandfather, (where the debt is taken after placing a pledge) the great-grandson has the right to discharge the debt.[3] Caṇḍeśvara observes that in the case of debt secured by a pledge of usufructuary type, even the great-grandson has the right to discharge.[4] This is evidently a special case and has its justificaiion in the sense that in the case of a loan taken by placing a pledge of usufructuary type it is quite natural that the debtor may not feel like releasing it early because it does not yield interest. It is likely that it may not be released

1. Evaṃ ca prapitāmahādikṛtarṇāpākaraṇānadhikāraś caturhāder agṛhita-rikthasyaiva na punar gṛhītarikthasyety avagantavyam.
Smṛticandrikā, II, 399.
2. Prapautreṇa tu rikthāgrahaṇe mūlam api na deyam.
Vyavahāraprakāśa, 264.
3. .....Sabandhakarṇāpākareṇe caturthāder apy adhikāro darśitaḥ.
Vijñāneśvara on Yāj. II. 90.
4. Prapautrād ārabhya yad ṛṇasyādeyatvam uktaṃ tat kṣetrādikṣm bhogyam anikṣipya yat prapitāmahādinā ṛṇaṃ kṛtaṃ tatra mantavyam. Bhogyādhiṃ tu dattvā kṛtam ṛṇaṃ caturthādibhir api tatkulyair deyam ity arthaḥ.
Vivādaratnākara, 49.

in the course of three generations and there should be no justification if such a debt is not allowed to be discharged by the fourth in descent from the debtor. It may be suggested here that the verse speaks more of right than of duty.

From these discussions on the point of obligation of the great-grandson to pay the debt of the great-grandfather, it may be stated that Yājñavalkya, Viṣṇu, Nārada, Bṛhaspati and Kātyāyana agree in principle that they are to be exempted from such a liability. This may go to suggest that to these writers on law the element of spiritual benefit was not strictly regarded as a factor contributing to the liability of discharging the debt, notwithstanding the fact that these writers in respect of the theory of inheritance accept in general the principle that the right to inheritance arises out of the competence to offer *piṇḍa*. The commentators and the digest-writers in their attempts at harmonisation have brought liability on the great-grandsons under restricted sphere.[1]

7. The son is not bound to pay the illegal and immoral debts of the father.

We have discussed so far the liabilities of the sons, grandsons and the great-gandsons in respect of the payment of debt. With reference to the liability of the sons it has been observed that in their status as sons they are under obligation to discharge the debt of the father even if they do not inherit the estate. But it should be noted that this liability is not absolute. Our *śāstrakāras* have mentioned that certain categories of debt of the father should not be discharged by the sons.[2]

1. P. V. Kane in his History of Dharmaśāstra, III, 443-444 discusses the question in outline.
2. For discussion on this problem reference may be made to the following: K. K. Bhattachaya, The law relating to the joint Hindu family, 560ff; P. V. Kane, History of Dharmaśāstra, III, 446-468; L. J. Majrekar, Bombay Law Reporter Journal, XLIX (1947), 3-10; R. K. Ranade, Bombay Law Reporter Journal (April, 1950), 33-41; Mulla, Principles of Hiudu Law (12th Edn), 466-470; J. D. M. Derrett, Lucknow Law Journal 10 (1964). 1-13. (also Kerala Law Times Journal, 1964, 21-30); Religion,law and the state in India, 114-115.

The liability to pay the father's debt arises from the moral and religious obligation to rescue him from the penalties arising from non-payment of his debts. And this obligation equally compels the son to carry out what the ancestor has promised for religious purposes. It follows then that when the debt creates no such religious obligation the son is not bound to repay it even though he possesses assets. There can certainly be no religious obligation when the debt is of an illegal or immoral character. 'The duty cast upon the son being religious or moral, the character of the debt should be examined from the standpoint of justice and morality and if at its inception the debt is tarnished or tainted with immorality, the pious duty ceases to operate and the son is not bound to pay the debt.'[1]

The *śāstrakāras* of Ancient India have mentioned certain categories of debt incurred by the father, where such liability of the son will not arise.

According to Kauṭilya, if the sons or other heirs do not so desire, they may not pay the debts of the father arising out of suretyship, balance of fine or toll, gambling, drinking or gift of love.[2]

Gautama includes in the list debts contracted for commercial purposes, but does not mention one for idle promise.[3] Manu

1. J. D. Mayne, A treatise on Hindu law and usage (11th edition), 397.
2. Prātibhāvyaṃ daṇḍaśuilkaśeṣam ākṣikam kāmadānaṃ ca nākāmaḥ putro dāyādo vā rikthaharo dadyāt. Arthaśāstra, III. 16. 9.
3. Prātibhāvyavaṇikśulkamadyadyūtadaṇḍā na putrān adhyābhaveyuḥ. Gautamadharmasūtra. XII. 38.

   Different explanations have been suggested regarding *śulka* and *vaṇik*. It has also been suggested that they should be taken together. In that case the meaning should be merchant's toll which is payable on the spot. 'The son's liability for such a debt is intelligible as it is payable on the spot and the obligation arises as a result of an evasion for which he can be convicted and fined. Apparently the obligation is *ex delicto* and not *ex contractu*. In other words, it stands on the same footing as a fine for offence.'

   Mayne, *Treatise on Hinau law and usage (11th End)*, 400. Vide here also the notes by Bühler, S. B. E., II, 241.

   In both the commentaries of Gautama, *Maskaribhāṣya* and *Mitākṣarā* (by Haradatta), '*vaṇik*' and '*śulka*' have been taken separately. The first one stands for commercial debt and the second one is interpreted as the 'marriage-fee' in the *Āsura* form of marriage. '*Śulkaṃ* pratiśrutya vivāhaṃ kṛtvā mṛte tatputraṃ na śulkam abhyābhavati.' Haradatta's commentary on G. D. S. XII. 38.

also mentions in the list all those debts referred to by Kauṭilya.[1] The same is the case with the *Vasiṣṭhadharmaśāstra.*[2] Yājñavalkya mentions in addition the promise of gift through lust (*kāmadāna*).[3] Nārada includes in the list a debt contracted out of anger.[4] Bṛhaspati mentions all these debts.[5]

Kātyāyana defines the debts that are termed as *kāmakṛta* and *krodhakṛta.*[6] According to him a debt due to lust should be known as one which is promised whether in writing or without writing as payable by him to the wife of another. 'Where the father after having caused through anger (physical) injury to another or having destroyed the latter's wealth, promises something that pacifies him (the person wronged), that is declared to be debt incurred through (the influence of) anger.' Even a voluntary compensation is traced back to the root cause (anger) by the *smṛtikāras.* Many jurists of today would find it surprising.

Devaṇabhaṭṭa refers to the view of Uśanas (Vyāsa according to *Vivādaratnākara*) where reference is made to a debt which is *avyāvahārika.*[7] Such a debt has been explained in different ways. Thus Devaṇabhaṭṭa explains it as a debt incurred for the purpose of drinking.[8] In the *Vivādacintāmaṇi* it has been explained as a deed which is not admissible in law.[9] Aparārka expresses the same idea

1. Manu, VIII. 159.
2. Vāsiṣṭhadharmaśāstra, XVI. 31.
3. Yāj. II. 47. cf. Yāj. II. 54.
4. Nārada IV. 10.
5. Bṛhaspati, X. 118. Vide here the notes by G. N. Jhā in his trans. of Vivādacintāmaṇi, 29.
6. Likhitaṃ muktakaṃ vāpi deyaṃ yat tu pratiśrutam /
   Parapūrvastriyai yat tu vidyāt kāmakṛtam nṛṇām // Kātyāyana, 564.
   Muktaka means '*lekharahita*', while *parapūrvastrī* stands for '*parabhāryā*'. Vide Sm. C II, 396 ; Vivādaratnākara, 58.
   Yatra hiṃsāṃ samutpādya krodhād dravyaṃ vināśya vā /
   Uktaṃ tuṣṭikaraṃ yat tu vidyāt krodhakṛtaṃ tu tat // Kātyāyana, 565.
   Smṛticandrikā : Parasya hiṃsāṃ dhanavināśaṃ vā krodhāt kṛtvā tattuṣṭaye dravyaṃ dāsyāmīti pratiśrutaṃ tad ṛṇaṃ krodhajam iti. II, 397. Vide also Viv. rat, 58-59.
7. Daṇḍaṃ vā daṇḍaśeṣaṃ vā śulkaṃ taccheṣam eva vā /
   Na dātavyaṃ tu putreṇa yac ca na vyāvahārikam //
   Quoted in the Smṛticandrikā, II, 397.
8. (na) vyāvahārikaṃ saurikam ity arthaḥ. Śm. C. II, 397.
9. p. 17.

when he interprets it as improper.[1] Mitramiśra explains it in the same way as done by Devaṇabhaṭṭa.[2] In the commentary by Bālaṃbhaṭṭa it has been explained as what is not contracted in the interest of the family.[3] The correct approach to the term '*avyāvahārika*' perhaps has been made by Colebrooke in his translation of Jagannātha's *Vivādabhaṅgārṇava* (Col. Dig. I, 307) where it has been explained as a 'debt for a cause repugnant to good morals'. P. V. Kane in his History of Dharmaśāstra.[4] refers to several renderings as, 'which as a decent and respectable man the father would not have incurred,' 'not supportable as valid by legal arguments and on which no right could be established in a court of justice in the creditor's favour' etc. and mentions that 'in Hemraj v Khemchand I. L. R (1943). All 727 the Privy Council state the various renderings of *avyāvahārika* given by different authors and judges and hold that Colebrooke's rendering makes the nearest approach to the real meaning of the word as used in the *smṛtis* and that it is the character of the debt that is to be looked to and not the actions of the father.'

From a study of the list of the debts that are not to be paid by the sons it is clear that in most of the cases they are illegal and immoral at the inception and therefore they are not to be paid by the sons. So far as the position of the surety debt of the father is concerned, we shall have occasion to show that it has history of its own and that the *śāstrakāras* under certain circumstances have given recognition to certain categories of surety debt, which the sons are obliged to pay.

8. Obligation of the father to pay the debt of the son.

We have mentioned that there are grounds of liability to discharge the debt of another, in the form of agency, exprees or implied. Mere relationship, however close, creates no obligation. Parents are not bound to pay the debts of their son, nor a son the debt of his mother under normal circumstances.

1. p. 656.
2. Vyavahāraprakāśa, 265.
3. 'na kuṭumbopayogity arthaḥ'. Bālaṃbhaṭṭas' commentary on Mitākṣarā on Yāj. II, 47.
4. III, 447 (f. n. 754).

So far as the obligation of the father in respect of the debt incurred by his son is concerned, Yājñavalkya observes that the father under normal circumstances need not pay the debt incurred by his son, but when it is contracted in the interest of the family such obligation arises in him.[1] Viṣṇu has identical direction.[2] Nārada first states in general that the father should not discharge the debt incurred by his son[3], but he adds that the liability of the father will arise where it is incurred definitely by the order of the father or where it is done for the maintenance of the family or where it is contracted in a precarious situation.[4]

Bṛhaspati also brings the liability on the father where the debt incurred by the son had the sanction of the father. He observes however that the father may pay it out of affectionate consideration.[5]

Kātyāyana observes that the father will be under obligation where the debt contracted by the son was approved of by him or where he himself assured him (for payment in future).[6] The same

1. ...Na putreṇa kṛtaṃ pitā /
   Dadyād ṛte kuṭumbārthāt..... // Yāj, II, 46.
2. Na pitā putrakṛtam..... Viṣṇusmṛti, VI, 33.
3. Na putrarṇaṃ pitā dadyāt..... Nārada, IV. 10.
4. Pitur eva niyogād yaḥ kuṭumbabharaṇāya vā /
   Ṛṇaṁ vā yat kṛtaṁ kṛcchre dadyāt putrasya tat pitā // Nārada, IV, 11.
   Asahāya explains *kṛcchra* as '*prāṇāntikakṛcchra*'.
   Caṇḍeśvara interprets it as '*āpatsamaye*'. Vivādaratnākara; 56.
   Devaṇabhaṭṭa explains that when it is done by the son in distress (of the family) it should be paid by the father even if previous approval was not secured :
   'Kṛcchrakṛtaṁ tv apratipannam api deyam'. Sm. C, II, 407.
   He observes that the word *putra* should be treated as used in a figurative sense of any member of the family (*kuṭumba*) and *pitā* should be understood as the head of the family :
   Atra (pūrvatra ca) putragrahaṇaṃ kuṭumbopalakṣaṇārtham, pitṛgrahaṇaṃ ca gṛhaprabhor upalakṣaṇārtham. Sm. C, II, 408
5. Ṛṇaṃ putrakṛtaṁ pitrā sodhyaṁ yad anumoditam /
   Sutasnehena vā deyaṁ nānyathā dātum arhati // Bṛhaspati, X. 124.
   Devaṇabhaṭṭa extends the principle of payment out of affectionate consideration to the case of debt incurred by the wife :
   Bhāryākṛtarṇavisaye'pi samānaṁ sutagrahaṇasya snehamātrodāharaṇatayā kṛtatvāt. Smṛticandrikā, II, 408.
6. Ṛṇaṁ putrakṛtaṁ pitrā na deyam iti dharmataḥ /
   Deyaṁ pratiśrutaṃ yat syāt yac ca syād anumoditam // Kātyāyana, 544.

idea has been expressed by him in another verse.[1] It has been stated in this context that the parents should not be made liable for any debt contracted by the son for an improper purpose.[2] He refers to the view of Bhṛgu that the father is under obligation to pay when it is incurred even during his absence or without his permission, provided it is done in the interest of the family.[3] Evidently the reason is that the maintenance of the family is the responsibility of the father as the head of the family. This has been pointed out by Devaṇabhaṭṭa.[4]

The conclusion that may be arrived at in the light of these discussions is that the father normally does not come under obligation to discharge the debt contracted by his son, but if the son acted either with an express authority or under circumstances of such pressing necessity that authority may be implied, the obligation of the father arises.

9. Some special provisions by Kātyāyana regarding liability of the son.

Reference has been made to the liability of the son to discharge the debt of the father. It has been shown that this liability arises from religious grounds and the view of Vijñāneśvara has been pointed out that the obligation of the son to discharge the debt arises irrespective of the consideration whether he inherits the property or not Kātyāyana has certain new points to add in that context and they deserve attention here.

According to him the son is liable to pay where the father during his lifetime, whether in a state of good health or in a diseased state promised to give something for religious purpose, but which he could not give and subsequently died[5]. It may be

1. Deyaṁ putrakṛtaṁ tat syād yac ca syād anuvarṇitam /
   Kṛtāsaṁvāditaṃ yac ca śrutvā caivānucoditam // Ibid. 579.
2. Ṛṇārtham āharet tantuṃ na sukhārthaṃ kadācana /
   Ayukte kāraṇe yasmāt pitarau tu na dāpayet // Ibid. 572.
3. Proṣitasyāmatenāpi kuṭumbārtham ṛṇaṃ kṛtam /
   Dāsastrīmātṛśiṣyair vā dadyāt putreṇa vā bhṛguḥ // Ibid. 545.
4. Kuṭumbabharaṇasya svakāryatvād ity arthaḥ. Sm. C, II, 407.
5. Svasthenārtena vā deyaṃ bhāvitaṃ dharmakāraṇāt /
   Adattvā tu mṛte dāpyas tatsuto nātra saṃśayaḥ // Kātyāyana, 566.
   Reference here should be made to another verse of Kātyāyana where

observed that this is to be treated as an extension of the scope of of pious obligation. A promise by father to give something specially for a religious purpose is equivalent to a debt as ponited out by Hārīta.[1]

Kātyāyana appears to introduce the principle of obligation of the son to discharge the debt of his father, as arising from his right to inherit the estate. He directs that so long as the son (because of his disqualifications) does not inherit the estate of the father (though existing), he (the son) though well off should not be made to pay the debt contracted by his father.[2]

He quotes a view of Manu authorising the son, who is able (perhaps to bear the burden of the family) but discarded by his mother to take the personal property of the mother (when she takes to another husband) for discharging the debt of the father.[3]

a voluntary promise to a Brāhmaṇa is treated as equivalent to a debt (verse, 642). Exception to this rule may be referred to here. Gautama directs that if the person be devoid of religion, a promise to him to pay something may be ignored :

Pratiśrutyāpy adharmasaṃyukte na dadyāt. G. D. S, V. 24.

Vide here the notes on the verse of Kātyāyana by P. V. Kane in the Kātyāyanasmṛtisārodhāra, 234.

1. Vācaiva yat pratijñātaṃ karmaṇā nopapāditam /
Ṛṇavad dharmasaṃyuktam iha loke paratra ca // Hārīta quoted in the Smṛticandrikā, II, 448,
2. Yāvan na paitṛkaṃ dravyaṃ vidyamāṃ labhet sutaḥ /
Susamṛddho'pi dāpyhaḥ syāt tāvan naivādhamarṇikaḥ // Kātyāyana, 563. vide here the notes by P. V. Kane in Kātyāyanasmṛtisāroddhāra, 233. This rule of Kātyāyana does not justify the statement by Vijñāneśvara that the son in his status as a son comes under liability to discharge the debt of the father even if he does not inherit his estate (vide his commentary on Yāj. II. 50).
3. Yā svaputraṃ jahyāt stri samartham api putriṇī /
Āhṛtya strīdhanaṃ tatra pitryarṇaṃ śodhyen manuḥ // Kātyāyana, 573. Vide here the interpretation of the verse by Caṇḍeśvara in his *Vivādaratnākara*, 65 As this provision of the verse goes against the general rules relation to *strīdhana* (which has been discussed by Kātyāyana in det.il, for which see Kātyāyana,894-728), according to which the son is not authorised to make use of it (Kātyāyana, verse 911), it may be suggested that this verse stresses the necessity of payment of father's debt and should not be interpreted as laying emphasis on the use of mother's personal property.

In another verse Kātyāyana brings the son under obligation to pay off the debt incurred by the mother for the maintenance of the family.[1]

10. The mutual liability of the husband and the wife with reference to debt.

The special concept of husband-wife relationship in ancient India demands a study of the mutual obligation of the husband and wife in respect of the payment of debt.[2] We have referred to the different sources of liability to discharge the debt of another person. The third source contemplates agency and the most common case of agency is that of husband and wife.

A wife is regarded as half of a man (husband) and the two, wife and husband make a complete whole.[3] This oneness accounts for the view held by Āpastamba that there can be no division between the husband and the wife because since the day of marriage they are to perform religious rites together. They also participate together in the rewards of merit arising from religious rites as also in the wealth acquired.[4] This may explain the position mentioned by Manu that the wife, son and the slave are without property and whatever they earn belongs to him to whom they are affiliated.[5]

1. Deyaṃ bhāryākṛtan ṛṇaṃ bhartrā putreṇa mātṛkam /
   Bhartur arthe kṛtaṃ yat syād abhidhāya gate diśam // Kātyāyana, 578.
   In the Vivādaratnākara (p. 59) the words underlined have been read as 'bhaktasyārthe'. Here the responsibility of the son arises out of the consideration that in the absence of the father the charge of maintaining the family is to be shouldered by the son. If the mother is to incur any debt on that account then the son is to pay in the absence of the father.
2. For discussion on this Point vide P. V. Kane, History of Dharmaśāstra, III, 550-452; R. K. Ranade, 'Debts of husband and wife' in Bombay Law Reporter Journal, LIV. (January, 1952), 7-14.
3. Vide Śathapathabrāhmaṇa, V. 2. 1. 10; Taittirīya Saṁhitā, VI. 1. 8. 5; Bṛhaspati, XXVI, 92
4. Jāyāpatyor vidhāgo na vidyate. Pāṇigrahaṇād dhi sahatvaṃ karmasu. Tathā puṇyaphaleṣu dravyaparigraheṣu ca Āp. D.S. 11. 16. 14, 16-18
5. Bhāryā putraś ca dāsaś ca traya evādhanāḥ smṛtāḥ /
   Yat te samadhigacchanti yasya te tasya tad dhanam // Manu, VIII. 416, Commentators explain the verse in the sense of dependence in respect

It should be noted here that Kauṭilya prescribes that separation between the husband and the wife is possible through mutual hatred[1], but if they were married according to any one of the righteous (i. e. *dharmic*) forms of marriage, namely, Brāhma, Daiva, Ārṣa and Prājāpatya,[2] separation is not possible.[3] In other words, if they were married according to any of the non-righteous (i. e. *adharmic*) forms, namely Gāndharva, Āsura, Rākṣasa and Paiśāca, separation between the husband and wife could be conceived of.

Though the concept that the property of the husband and wife is common (*dampatyor madhyagaṃ dhanam*), was introduced in the society,[4] yet it must be admitted that the wife was not independent in the disposal of that property in the sense in which the husband was. It should be noted however that the *śāstrakāras* recognised a special type of property to be owned by married women, which they may make use of in any way they like, independent of the husband. This property has the appellation of *strīdhana*.[5] Only in exceptional cases the husband has been authorised to make use of it.

Kauṭilya introduces certain special rules on the use of *strīdhana* on the basis of the forms of marriage. According to him in case of marriage according to any one of the *dharmic* forms, in the first three years the husband becomes entitled to make use of the personal property of the wife.[7] The husband is under obligation to return with interest such personal property

of its proper use. Vide the commentary of Medhātithi and the commentary of Vijñāneśvara on Yāj, II. 49.

1. Parasparadveṣān mokṣaḥ Arthaśāstra. III. 3. 16.
2. According to Manu the forms of marriage are eight, Vide Manu, III. 21. For discussions on the forms of marriage in ancient India, Vide L. Sternbach, Juridical studies in ancient Indian law, 1, 347-423,
3. Amokṣo dharmavivāhānām. Arthaśāstra, III. 3. I9,
4. For discussion on this point vide, J. D. M. Derrett, 'An Indian contribution to the study of property' in B. S. O. A. S., XVIII/3, 490. (f. n. 4).
5. Vide Gautamadharmasūtra, XXIII, 25; Manu IX. 194; Arthaśāstra, III. 2.; Kātyāyana, 894-901. For detailed discussion on *strīdhana* vide P. V. Kane, History of Dharmaśāstra, III, 770-802.
6. Yāj, II. I47.
7. Trivarṣopabhuktaṃ ca dharmiṣṭheṣu vivāheṣu nānuyuñjīta.

Arthaśāstra, III, 2. 17,

of the wife in case of marriage being solemnised according to either the Gāndharva or the Āsura form.[1] In those forms the husband acquired no right in his wife's property. This shows that according to Kauṭilya, community of interest between the husband and the wife comes through the *dharmic* forms of marriage. At this stage it may be presumed that the obligation of the wife to pay the debt of the husband arises morally from the nature of relationship between them. In the case of marriage according to the Gāndharva or the Āsura form, utilisation of the wife's personal property in times of pressing need is tantamount to a debt, which should be discharged not only in original but also with interest. This may suggest that in the case of marriage according to the Gāndharva or the Āsura form the wife may be regarded as free from any obligation to discharge the debt of her husband. The question does not arise in the case of marriage according to the Rākṣasa and the Paiśāca forms, which are strictly condemned forms of marriage.[2]

The direction of Yājñavalkya[3] and Viṣṇu[4] that neither the husband nor the wife has any sort of obligation to discharge other's debt, goes to suggest that the original concept of community of interest between the husband and wife underwent a significant change and that the separate property of both was tended to be recognised. The direction of Kauṭilya[5] and Yājñavalkya[6] indirectly shows that when the husband and wife are divided in their interests the debtor-creditor relationship between the two is possible. In that position if the husband takes money from the wife he is to return it with interest as regulated by law.

The question of payment of debt of the other party by the husband or the wife therefore is dependent on the question of the

1. Gāndharvāsuropabhuktaṃ savṛddhikam ubhayaṃ dāpyeta.
Arthaśāstra, III, 2. 18.
2. Manu, III. 41-42.
3. Na yoṣit patiputrābhyāṃ na putreṇa kṛtaṃ pitā /
Dayād ṛte kuṭumbārthān na patiḥ strīkṛtaṃ tathā // Yāj. II. 46
4. Na strī patiputrakṛtam. Viṣṇusmṛti. VI. 31.
Na strīkṛtaṃ patiputrau. Ibid. VI. 32.
5. Dampatyoḥ pitāputrayoḥ.....cāvibhaktānaṃ parasparakṛtam ṛnam asādham.
Arthaśāstra. III. II. 21
6. Yāj. II. 52. Vide here the notes by Vijñāneśvara.

nature of relationship between them. The distinction that is conceived of between the husband and the wife depending on the form of marriage according to which they were married is peculiar to *Kauṭilya* only and that also is made in connection with its bearing on the use of *strīdhana* and mutual separation. In the *smṛti* texts these problems have not been taken into consideration. If under the circumstances the inseparable relationship between the husband and the wife, as advocated by Āpastamba is accepted, then it is quite natural that both of them should be mutually liable for the debt of the other. The direction of the *śāstrakāras* in this respect is different. Under normal conditions neither the husband nor the wife is liable for the debt of the other party. It may be presumed that as soon as the separate property of wife was recognised, the *śāstrakāras* had to lend recognition to the rule as a matter of normal course that the debt either of the husband or of the wife should be treated as the personal debt. Therefore there should be no obligation in either party for discharging the debt of the other.

The views of Yājñavalkya and Viṣṇu have been referred to already. Those have the support of Nārada[1] and Kātyāyana.[2]

But these are general cases. The obligation of the wife to discharge the debt of her husband may arise under certain circumstances. Yajñavalkya holds that the wife is under obligation to pay her husband's debt when she herself agreed to pay it (in his death-bed etc.) and when a debt is jointly contracted with her husband.[3] Viṣṇu states in general terms that one should pay the debt what has been admitted by oneself.[4] The same idea has been expressed by Nārada.[5] Kātyāyana also has the same direction.[6] He observes further that if the husband in his death-bed places the responsibility of paying the debt to his wife

1. Na strī patikṛtaṃ dadyād ṛṇam.....Nārada, IV. 16.
   Na ca bhāryākṛtam ṛṇaṃ patyur vāpi kathaṃ bhavet. Ibid. IV. 18.
2. Na ca bhāryākṛtam ṛṇaṃ kathañcit patyur ābhavet. Kātyāyana, 569.
3. Pratipannaṃ striyā deyaṃ patyā vā saha yat kṛtam /
   Svayaṃkṛtaṃ vā yad ṛṇaṃ nānyat strī dātum arhati // Yāj, II. 49.
4. Vākpratīpannaṃ nādeyaṃ kasyacit. Viṣṇusmṛti, VI. 38.
5. Na strī patikṛtaṃ dadyād ṛṇaṃ..... /
   Abhyupetād ṛte yad vā saha patyā kṛtaṃ bhavet // Nārada, IV. 16.
6. Bhartrā putreṇa vā sārdhaṃ kevalam ātmanā kṛtam /
   Ṛṇam evaṃvidhaṃ deyaṃ nānyathā tatkṛtaṃ striyā // Kātyāyana, 546.

then she should be made to pay if she had not given her consent to it. This is of course subject to the condition that if she has wealth (of the husband) in possession.[1] This provision by Kātyāyana is based on the general rule that the liability for the debts gets together with the right of succession as advocated by Nārada (IV. 17). Here her liability arises from the condition that as a successor to her husband's estates she has the liability to discharge his debt. Therefore the question of her previous consent is immaterial in this case.

Vijñāneśvara in his interpretation of the verse (II. 49) of Yājñavalkya observes that even if she agrees beforehand she need not pay a debt of the husband contracted for illegal and immoral purpose.[2] This is quite justifiable in view of the fact that such debts have been mentioned in the context of the liabilities of the sons and it has been decided that they should not be held liable for these debts. The same principle may be applied in this case also.

While commenting on the direction of Kātyāyana as contained in the verse (547), Devaṇabhaṭṭa rightly observes that if the wife does not take the assets of the husband and if she does not lend her consent to pay his debt in his deathbed her obligation will not arise at all.[3]

In the *Sarasvatīvilāsa* it has been suggested that even if no consent had been given beforehand by the wife and even she is devoid of wealth of her husband, she should discharge her husband's debt through service (i. e. earning money through service). But this is not supported by any *śāstric* text. He refers to the interpretation by Aparārka that her liability arises automatically where she inherits her husband's estate.[4]

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1. Martukāmena yā bhartrā proktā deyam ṛṇaṃ tvayā /
Aprapannāpi sā dāpyā dhanaṃ yady āśritaṃ striyām // Kātyāyana, 547.

For the word underlined the reading in the Sarasvatīvilāsa is *'aprasannā'*, but judged from the context in which the verse occurs it is better to accept the reading underlined.

2. Anyat surākāmādivacanopāttaṃ pratipannm apı patyā saha kṛtam api na deyam iti. Mitākṣarā on Yāj. II 49.

3. Atrārthād anāśritabhartṛdhanā strī aprapannā cen na deyam iti gamyate. Smṛticandrikā, II. 412.

4. Apratipannā cet patidhanābhāve'pi karmakarāpi sevayā dhanaṃ sampādya ṛṇāpākaraṇaṃ kartavyam, patidhanasambandhe tu yato riktham tata eva

It follows that a wife is exempted from the payment of the debt of her husband under normal conditions. The liability arises only when she agrees to pay it or when it is contracted jointly or when she receives his assets.

So far as the liability of the husband to the debt contracted by the wife is concerned, the general rule is that if it is her personal debt it should not be discharged by the husband. The views of Yājñavalkya (II. 46), Viṣṇu (VI. 32). Nārada (IV. 18) and Kātyāyana (569) have been pointed out. But this rule has its exception in the sense that the liability of the husband as the head of the family will arise if the debt contracted by wife is done in the interest of the family. This has been suggested by Manu[1] and stated directly by Yājñavalkya (II. 46), Viṣṇu[2], Nārada[3] and Kātyāyana.[4] In all these cases the position is quite different in the sense that the debt incurred by the wife is incurred under an agency of necessity or an implied agency.

Kātyāyana states that the husband should pay the debt contracted by the wife when he is away from the country after telling it to his wife and the wife is to contract the debt which ought to have been incurred by the husband had he been on the spot.[5]

11. Special liability of the husband in certain cases.

We have noticed above that the liability of the husband to discharge his wife's debt does not arise except when it is done in the interest of the family. But taking into consideration

ṛṇāpākaraṇanyāyāt autsargikaṛṇāpākaraṇe adhikāro vidhavāyā ity āhāparārkaḥ. Sarasvativilāsa, 264. The view of Aparārka could not be verified.

1. Manu, VIII. 167.
2. Viṣṇu, VI. 39.
3. Na ca bhāryākṛtam ṛṇaṃ patyur vāpi kathaṃ bhavet /
   Āpatkṛtād ṛte puṃsāṃ kuṭumbārtho hi dustaraḥ // Nāraada, IV. 18.
4. Kātyāyana, 569.
5. Deyaṃ bhāryākṛtam ṛṇaṃ bhartrā putreṇa mātṛkam /
   Bhartur arthe kṛtaṃ yat syād *abhidhāya gate diśam* // Kātyāyana, 578.

   Here the part underlined appears to carry no significance because the same consequence will follow if she does it even when the husband goes to a foreign country without stating her about it.

the social status, the means of livelihood and other allied factors of the husbands in certain cases, the *śāstrakāras* have prescribed that the obligation arises in the case of certain classes of husbands.[1]

Kauṭilya has a rule that the husband is to be seized if he goes abroad without providing for the payment of debts contracted by his wife.[2] It is not exactly clear from the rule itself whether or not this direction is to be understood in the context of the special cases, where as we shall see, the husband is under liability to discharge the debt of his wife. It may be suggested that the direction of Kauṭilya should be understood as applicable in the present context.

Yājñavalkya provides that the husband belonging to the class of herdsman, vintner, actor, washerman or hunter is under liability to discharge the debt incurred by his wife, the reason being that the husbands of this class depend on the earnings of their wife for their livelihood.[3] Viṣṇu presents tbe same list, but does not assign any reasen as Yājñavalkya has done.[4] Nārada does not mention the actors in the list and the reason shown is that the income of these persons depends on their wives and that the household expenses have also to be defrayed by their wives.[5]

Bṛhaspati mentions the barbers in the list in place of actors and it has been stated that such a debt is made in the interest of the husband.[6] The commentators have no suggestion regarding the question as to why such a debt is to be treated as done in the interest of the husband. The idea appears to be that under normal circumstaces the maintenance of the family is the

1. L. Sternbach discusses this subject in two of his articles included in his Juridicial studies in ancient Indian law, I, 278, 442-444.
2. Patis tu grāhyaḥ strīkṛtam ṛṇam aprativiḍhāya preṣita iti,
   Arthaśāstra, III. 11. 24.
3. Gopaśauṇḍikaśailūṣarajakavyādhayoṣitām /
   Ṛṇaṃ dadyāt patis teṣāṃ yasmād vṛttis tadāśrayā // Yāj. II. 48.
4. Gopaśauṇḍikaśailūṣarajakavyādhastrīṇāṃ patir dadyāt. Viṣṇusmṛti, VI. 37.
5. Anyatra rajakavyādhagopaśauṇḍikayoṣitām /
   Teṣāṃ tatpratyayā vṛttiḥ kuṭumbaṃ ca tadāśrayam // Nārada. IV. 19.
6. Śauṇḍikavyādharajakagopanāpitayoṣitām /
   Adhiṣṭhātā ṛṇaṃ dāpyas tāsāṃ bhartṛkriyāsu tat // Bṛhaspati. X. 119.

responsibility of the husband and if the wife belonging to these classes (as mentioned in the list) is to incur a debt for it, the liability of the husband will arise. This may be treated as a debt incurred under an agency of necessity.

The same direction in almost the same language appears in the text of Kātyāyana.[1] Somewhat surprisingly here we find *nāvika* in the list in place of *nāpita*.

The comentators and digest-writers observe rightly that the persons in the list are not mentioned exhaustively and that others who are to depend on the financial resources of the wife are also to be included in the list. This has been stated by Vijñāneśvara.[2]

The same approach has been made by Devaṇabhaṭṭa.[3] He states further that if the debt in these cases is made even when there is no calamity it should be paid by the husband.

Caṇḍeśvara rightly points out that stress is not on the castes or classes of the persons mentioned in the list, but on the aspect of the dependence on wife (for the maintenance of the family).[4]

From the discussion made above it is clear that the *śāstrakāras* by taking into consideration the help (financial) rendered by the wives of these classes of people (which according Asahāsya has become almost traditional. (vide his commentary on Nārada, IV. 19) in respect of maintenance of the family (because it may be easily presumed that their income is not sufficient in proportion to the needs), have reasonably thought it proper to place the liability of paying their debts on their husbands. So far as the position of the washerman and vintner is concerned it is observed even now that in professional work the wives cooperate physically by lending their labour and as such whatever the earning may be it should be common earning of the husband and the wife. Therefore in this case the

1. Kātyāyana, 568. vide also 570.
2. Yasmād vṛttis tadāśrayā iti hetuvyapadeśād anye'pi ye yoṣidadhīnajīvanās te'pi yoṣitkṛtam ṛṇaṃ dadyur iti gamyate. on Yāj, II. 48.
3. Tenānāpadi kuṭumbārthaṃ kṛtam api patibhir deyam ity abhiprāyaḥ. Rajakādigrahaṇaṃ yoṣidadhīnavṛttīnāṃ tailikaśailūṣādīnām upalakṣaṇārtham. Smṛticandrikā, II, 409.
4. Atra ca tadāśrayavṛttitvam eva prayojakaṃ na tu jātyādaraḥ. Vivādaratnākara, 60.

liability of the husband for the debt of the wife can be accounted for. With reference to the earnings of the wives of these classes of people there are suggestions in the *śāstras* that may be taken into consideration.

With reference to the wives of the actors, it has been stated by Medhātithi that they are prostitutes, but this business is carried out privately at home within the knowledge of their husbands.[1] In the text of Baudhāyana it has been stated that there will be no punishment for intercourse with the wives of bards and actors as these men carry them (wives) to other men or lying concealed, permit them to have culpable intercourse.[2] Manu refers to similar provisions in the case of *ātmopajīvins* and the term has been explained by Medhātithi as persons who tolerate the prostitution of their wives.[3] Vātsyāyana in his *Kāmasūtra* mentions about this phenomenon with respect to the actors (*kuśīlavas*)[4] and this has been explained identically in the commentary of Yaśodhara.[5] The direction of Vātsyāyana that the man of the town (*nāgaraka*) should live on good terms with the wives of vintners, herdsmen, washermen and barbers may suggest that these classes of women were also of doubtful character.[6]

The *śāstrakāras* consider the prostitutes as impure and partaking of food offered by them was prohibited.[7] In conformity with this rule it has been prescribed that food should not be taken from the

1. On Manu. VIII. 362, which refers to the bards (*cāraṇa*) : 'Sajjayanti hi te nārīr nigūḍhāś cārayanti ca', Medhātithi observes: āpanabhūmau na tiṣṭhanti, gṛhaveṣatvāt eva tāḥ prasiddhaveśyābhyo bhidyante'. Medhātithi refers to the fact that they make their wives prostitutes and enticers: 'veśyātvaṃ kuṭṭanitvaṃ ca svadārāṇāṃ kārayantīty arthaḥ.' In another place Medhātithi speaks of the actors as living on the prostitution of wives : 'śailūṣo naṭaḥ bhāryāpaṇya ity apare.' On Manu, IV. 214.
2. Na tu cāraṇadāreṣu na raṅgāvetāre vadhaḥ /
Saṃsarjayanti tā hy etān niguptāṃs cālayanty api //
Baudhāyanadharmasūtra. II. 2. 4. 3.
3. Athavā ātmajāyaiva, ardho ha vā eṣa ātmeti tāṃ ya upajīvanti upapatikṣamakāḥ. Medhātithi on Manu, VIII. 362.
4. (Ayatanasādhyāḥ) yoṣitas tv imāḥ. Kāmasūtra. V. I. 52. (K. S. S.)
5. Kuśīlavabhāryā naṭanartakādīnāṃ bhāryā veśyāprāyāḥ. Com. on V. I. 52.
6. I. 5. 37-38.
7. ...gaṇikānnaṃ.... (na bhuñjīta). Manu, IV. 209 ; Yāj. I. 161.

actors, vintners, washermen and the persons who tolerate prostitution of wives.[1]

If the two concepts are taken together it may be supposed that the husbands of these classes of women have the tacit approval of the prostitution of their wives and they live on their income.[2]

It is not clear from the texts or the commentaries whether the liability of these types of husbands arise in the cases mentioned above, in the form pointed out, but the principle to be applied in this case is that the liability here is based on the consideration that the husband is to take the help of the wife to maintain his family.

12. Liability of the man who enjoys the wife of the deceased husband to discharge the debt of the deceased husband.

Nārada discusses the position of the woman (widow), who leaves her son and takes to another husband. According to him the person to whom the widow takes shelter should take her separate property and if she be devoid of property, the son should take the property of her previous husband.[3] The text as it is does not yield a suitable meaning. The reading accepted by Devaṇabhaṭṭa[4] and Mitramiśra[5] appears to be convincing, but the interpretation is different in the two texts. Devaṇabhaṭṭa interprets the word *'anya'* as making reference to persons like maternal uncle etc. (*mātulādikam*)[6] and introduces the verse to mean that the son should pay the debt incurred by mother or the husband should pay the debt contracted by the wife if it is intended in the interest of the family.[7]

1. Manu, IV. 214-216.
2. The point here has been mentioned in brief only. Sternbach discusses the point in more detail. Vide his Juridical Studies in ancient Indian law, I, 272-274.
3. Putriṇī tu samutsṛjya putraṃ strī yānyam āśrayet /
   Tasyā dravyaṃ haret so'nyo niḥsvāyāḥ putra eva tu // Nārada, IV. 20.
4. The verse is read as :
   Putriṇī..... /
   Tasyā ṛṇaṃ haret sarvaṃ..... // Smṛticandrikā, II, 407.
5. Vyavahāraprakāśa, 275. The reading is the same as in the Smṛticandrikā.
6. Asahāya explains it as 'bhartāram', Com. on Nārada, IV. 20.
7. 'Striyā mātrā vā kṛtaṃ kuṭumbārthaṃ api kiñcid ṛṇaṃ deyam iti.. Sm. C, II, 407.

It may be stated that this interpretation hardly can be offered to the text that he cites. Caṇḍeśvara explains that if devoid of all wealth the woman takes to another husband after forsaking her son, he (the son) should pay the debt of her husband (his father).[1] Mitramiśra[2] explains that sometimes in her distressed state her debt should be discharged by her son. But this explaination does not appear very resaonable because the mother who gives up her affiliation with her (previous) husband and son, can not expect sympathy of her son. These interpretations in different texts show that the verse of Nārada has not been properly recorded and that the commentators have shown their ingenuity in interpreting the text as they had each in his own way.

In the case where such widow, while taking the property of her husband (and of her own self) takes to another person (husband) along with her son, the second husband is under obligation to pay the debt of her first husband. If he expresses his unwillingness to discharge this obligation he should leave her.[3]

The reason behind such obligation has been pointed out by Nārada in another verse where he directs that the person who has intercourse with the wife of the dead man, who has neither son nor wealth should be under obligation to discharge the debt of her first husband because the wife is considered to be his wealth (that he is enjoying).[4]

It may be stated here that the concept of wife being treated as the wealth of the husband as stated herein is very interesting. This may be adjusted with the idea expressed by Manu that a wife

1. Yadi putraṃ parityajya samastadhanaśūnyā puruṣāntaram āśrayet tat-patikṛtam ṛṇaṃ putra eva dadyād ity arthaḥ. Vivādaratnākara, 65.
2. Mātur dausthye'pi nirdhanāyās tasyāḥ ṛṇaṃ putreṇa dātavyam ity āha nāradaḥ..... Vyavahāraprakāśa, 275.
3. Yā tu sapradhanaiva strī sāpatyā cānyam āśrayet /
So'syā dadyād ṛṇaṃ bhartur utsṛjed vā tathaiva tām // Nārada, IV. 21.
Devaṇabhaṭṭa interprets the verse to mean that if the woman takes the shelter under her maternal uncle and the like, along with her wealth, he should pay off the debt of her husband (out of the wealth she carries): 'Yā strī sadhanā sabālatanayā ca rakṣaṇārthaṃ mātulādikam āśrayet sa cāśrayabhūto mātulādiḥ bhartṛkṛtarṇaṃ dāpayet.' Sm. C, II, 405-406.
4. Adhanasya hy aputrasya mṛtasyopaiti yaḥ striyam /
Sa ābhajed ṛṇaṃ voḍhuḥ saiva tasya dhanaṃ yataḥ // Nārada, IV, 22.

is devoid of wealth and whatever she earns should go to the husband.[1] Or in the context of debt it may mean that if the husband is dead and is without any son or wealth the wife may be treated as wealth in the sense that for the discharge of his debt he may look up to her. It may be noted in this connection that Vijñāneśvara in his interpretation of the verse of Yājñavalkya (II. 51) explains the word '*riktha*' in the sense of wife and in support of such an interpretation he quotes a text of unknown authority that one who takes the wife of one's person takes his wealth.[2] This shows that at least at the time of Vijñāneśvara this concept was known in the society.[3]

Devaṇabhaṭṭa in his interpretation of this verse of Nārada does not refer to this term but lays stress on the point that in the absence of a person taking his estate, and one taking his wife (*yoṣidgrāha*) perhaps through marriage, the person enjoying his wife (but not through marriage) should also be liable for the debt of the deceased husband.[4] Here Devaṇabhaṭṭa makes a distinction between a *yoṣidgrāha* and *yoṣidupabhoktā* and there is no clear statement regarding the difference between the two. It appears that in the previous case there is some sort of social recognition in the union of the two, while that may be absent in the second case.

It may be noted that since the *śāstra* does not contemplate the remarriage of widows, these texts inevitably refer to the cases in which such unions would take place by custom or *de facto*.

We have from Kātyāyana the rule that if a woman possessed of great amount of wealth, goes to another husband along with her son (by previous husband) then the person to whom she resorts should pay the debt (of her previous husband).[5] He has another rule

1. Manu, VIII. 416.
2. Rikthaśabdena yoṣid ucyate, saiva cāsya dhanaṃ smṛtam iti smaraṇāt. 'yo yasya harate dārān sa tasya harate dhanam' iti ca.
   Mitākṣarā on Yāj, II. 51.
3. Vide, R. C. Agarwala, 'Position of women in the Kharoṣṭhi Documents from Chinese Turkestan' in Indian Historical Quarterly, XXVIII (1952), 327-341. Vide also Sarasvatīvilāsa, 407, anfl Translation of the same by T. Foulkes, 100-101. cf. Epigraphia Indica, XXII, 52. f. n, I.
4. Ucyate, dhanagrāhaputrayoṣidgrāhavihīnasya yoṣidupabhoktāpi ṛṇabhāg iti pratipādanārtham idaṃ vacanam iti ..... Smṛticandrikā, II, 405.
5. Bālaputrādhikārthā ca bhartāraṃ yānyam āśritā /
   Āśritas tadṛṇaṃ dadyāt bālaputravidhiḥ smṛtaḥ // Kātyāyana, 574.

almost similar to that of Nārada (IV. 22) in which it has been stated that the enjoyer of the wife comes under the liability of discharging the debt of the husband of the wife and he restricts the scope of this provision to the classess of people like vintner etc.[1] This may suggest that provisions like these had to be made by the *śāstrakārs* by taking into consideration the customs among the classes of people where enjoyment of the widow of the deceased takes place. Caṇḍeśvara explains that the text of Nārada (IV. 22) should be restricted to the cases of vintners and the like as stated by Kātyāyana.[2]

13. Order of the persons to discharge the debt of the deceascd.

It has been observed that according to Hindu concept a debtor may be released from the charge of indebtedness only through payment of debt. It has also been shown that indebtedness follows a man even in the next world. Therefore the *śāstrakāras* had to make neccessary provisions for the payment of the debtor's debt in the case where he dies without discharging his debt. Besides the son, on whom the burden of debt of the father falls, there are persons who have been saddled with the liability of discharging the debt of the deceased. We find in the *śāstras* discussions on the point of the order of the persons to discharge the debt of the deceased.[3]

Yājñavalkya observes that the debt of a wealthy person should be discharged by the person who inherits his estate, by one who takes (marries) his wife and by the son who loses his right to inheritance through disabilities.[4] This is to be understood in the case where the deceased person is devoid of a son competent to inherit his estate.[5] Vijñāneśvara directs that the verse indicates

1. Nirdhanair anapatyais tu yat kṛtaṃ śauṇḍikādibhiḥ /
   Tatstrīṇām upabhoktā tu dadyāt tadṛṇam eva hi // Kātyāyana, 567.
2. Idam api nāradīyavacanaṃ kātyāyanoktaśauṇḍikādiviṣayaṃ netavyam.
   Vivādaratnākara, 63.
3. P. V. Kane discusses the point in bare outline in his History of Dharmaśāstra, III, 452-454.
4. Rikthagrāha ṛṇaṃ dāpyo yoṣidgrāhas tathaiva ca /
   Putro'nanyāśritadravyaḥ putrahīnasya rikthinaḥ // Yāj, II. 51.
5. 'putrohīnasya' in the verse has been explained as: 'dāyagrahaṇārhaputrahīnasya'. Vyavahāraprakāśa (M), 266-267.
   Vide also Sarasvatīvilāsa, 260.

the order in which the duty will follow.[1] The proper meaning of the verse of Yājñavalkya is that where the deceased person is devoid of a son competent to inherit the estate, first liability will come on the person who inherits the estate (even if there be son who is incompetent to inherit the estate). In his absence the taker of his wife should be liable (even if the sons incompetent to inherit are there). In the absence of these two the liability to discharge the debt of the deceased father will fall on the son who is incompetent to inherit his father's estate.[2]

1. Eteṣāṃ samavāye kramaś ca pāṭhakrama eva. Mitākṣarā on Yāj, II. 51.
2. Dāyānarhaputrasadbhāve'py asadbhāve'pi rikthagrāhī ṛṇaṃ dadyād iti. .....tathaiva paṅgvādilakṣaṇaputrasadbhāve cāsadbhāve ca rikthagrāhāhābhāve sati yoṣidgrāhaḥ ṛṇaṃ dadyāt.....Dhanastrīhāriṇor abhāve dāyānarhaḥ putro dadyād iti..... . Smṛticandrikā, II, 104.
The verse has been interpreted by Nandapaṇḍita in a quite different way. According to his interpretation the son who takes the ancestral property is to pay the father's debt. If there are married and unmarried sons the married one is to pay. In his absence a son without wife, child and wealth is to pay.
Vide his commenary on Viṣṇusmṛti. VI 29.
The meaning of the term *'ananyāśritadravya'* in the verse of Yājñavalkya is really doubtful. Viśvarūpa and Aparārka have presented two interpretations each to the term and that shows that the exact implication of the word was not clear to them. In one of the interpretations Viśvarūpa explains in consonance with the text of Kātyāyana that the son who has lost his ancestral preperty, that being usurped by another, should not pay the debt of his father : (cf. Kātyāyana, 563).
'Yāvad asau nyāyam api paitrkaṃ rikthaṃ nāpnuyāt tāvat ṛṇaṃ kim iti dadyād ity abhiprāyaḥ.' Commentary on Yāj. II. 47 (T. S. S.).
Aparārka in one of his explanatoins takes it to be a son of independent wealth (*svādhīnadhanaḥ*) and in another he takes it in the sense of a son devoid of the competence to inherit the estate (*dāyānarhaputraḥ*).
Vide his commentary on Yāj, II. 51.
Vijñāneśvara explains that the significance of the term is that if the debtor is devoid of wealth, the son who has the competence to inherit the estate should discharge the debt and not the son who is devoid of it :
Ananyāśritadravya iti bahuṣu putreṣu rikthābhāvepy aṃśagrahaṇayogyasyaiva ṛṇāpākaraṇe' dhikāro nāyogyasyāndhāder ity evam artham.
Commentary on Yāj, 11. 51.
The same idea has been expressed in the Kṛtyakalpataru.
Vide Kṛtyakalpataru, Vyavahāra section, p. 322.

In the first case the principle followed is in consonance with the directions of Gautama (XII. 35) and Viṣṇu (VI. 29) that one who inherits the assests should be under obligation to pay the debt. In the second case the same principle in another form may be followed if wife is treated as the wealth of the husband (Nārada, IV. 22). But in the last case no reasonable explanation can be offered except that the sons are liable strictly on religious ground as interpreted by Vijñāneśvara (on Yāj, II. 50).

Nārada directs that of the three, namely, the inheritor of wealth, the person protecting the wife and the son, the first one becomes liable for the debt of the deceased. The liability will arise on the son in the absence of the protector of widow and the inheritor of wealth. The protector of widow beeomes liable in the case of failure on the part of the inheritor of the estate and the son.[1]

Jagannātha refers to the reading 'putro nānyāśritadravyaḥ' in place of 'putro' nanyāśritadravyaḥ'. Col. Dig. 1., 271.

According to him' if no person has taken the widow,the incompetent son must pay the debt.' Col. Dig. 1. 272.

1. Dhanastrīhāriputrāṇām ṛnabhāk yo dhanaṃ haret /
Putro 'satoḥ strīdhaninoḥ strīhārī dhaniputrayoḥ // Nārada, IV. 23.
The scope of the verse has been explained by Asahāya in the following way. If it happens that the assets of the deceased after his death are forcibly taken away by his kinsmen and if the widow in her wealthless position takes to another person and if the son devoid of wealth and discarded by the mother be there, this verse decides the question of liability under the circumstances. The first liability should fall on the person taking the assets of the deceased. If it happens that the dead debtor left neither wealth nor wife, but only a son, then in that case he should be liable for the debt even if there be no asset. If the debtor leaves no son or wealth then the taker of the wife, who resorts to him in her wealthless state, will be liable to discharge the debt of the deceased. In the case where there is no wealth but there is the taker of wife and the son it has been stated that the taker of wife will be liable provided the wife occupies a covetable position in her new status because of her youth and beauty. If she does not hold a good status the son under the circumstantences will be held liable.

Vide the commentary of Asahāya on Nārada, IV. 23.
Vijñāneśvara on Yāj. II. 51 has interpreted it in the way in which it has been translated above.
Devaṇabhaṭṭa explains that the liability of the son who (who is

Bṛhaspati holds that if the son be in distress the person who inherits the estate is liable for the debt, but the person who takes the widow shall be liable for the debt on failure of the successors to the estate.[1] In another text of Bṛhaspati referred to in the commentary of Viśvarūpa on Yājñavalkya (II. 47) it has been stated that of the three, the taker of the wealth, the taker of the widow and the son (beset with difficulties in the form of disqualification), the liability will arise in the order of enumeration.[2] In the absence of all the three it will fall on other successors to the estate.[3] We notice that there is agreement between the two sets of order mentioned by Bṛhaspati.

Kātyāyana in one of the directions shows agreement with that of Bṛhaspati (X. 106),[4] but in another places the son before the taker of wife.[5] Devanabhaṭṭa has attempted to explain the contradiction[6], but the fact appears to be that the claim of the disqualified son should come only when all the possibilities

disqualified to inherit) will arise in the absence of the taker of the assets and the taker of the wife. 'Strīgrāhadhanagrāhayor abhāve dāyānarhaḥ putra ṛṇabhāg ity arthaḥ.' Sm. C. II, 400-401.
The interpretation of the verse by Caṇḍeśvara is not in accordance with the text itself.

Vide Vivādaratnākara, 63.

Vācaspatimiśra explains rightly that the inheritor to the estate is to be liable even if there be son deserving to inhert (normally) but now beset with difficulties (in the from of disqualifications). But such a disqualified son is to be liable if there be neither taker of widow nor of wealth. The taker of widow will be liable in the absence of taker of wealth and a son deserving the estate :
'Vyasanagraste draviṇārhe'pi putre sati dhanagrāhaka eva ṛṇaṃ dāpya ity arthaḥ.....vyasanādiyuto'pi ptro'sati strīhāriṇi dhanahāriṇi ca dadyāt. Strīhārī dhanahāriṇi yogyaputre cāsati dadyāt.' Vivādacintāmaṇi, 17.

1. Ṛṇabhāg dravyahārī ca yadi sopadravaḥ sutaḥ /
Strīhārī tu tathaiva syād abhāve dhanahāriṇaḥ // Bṛhaspati. X. 120.
2. Dhanastrīhāriputrāṇāṃ pūrvābhāve yathottaraṃ ādhamarṇyam. Ibid. X. 106.
3. Tadabhāve kramaśo'nyeṣāṃ rikthabhājām. Ibid. X. 107.
4. Rikthahartrā ṛṇaṃ deyaṃ tadabhāve ca yoṣitaḥ /
Putraiś ca tadabhāve'nyaiḥ rikthabhāgbhir yathākramam // Kāt. 562.
5. Pūrvaṃ dadyād dhanagrāhaḥ putras tasmād anantaram /
Yoṣidgrāhaḥ sutābhave putre vātyanatanirdhane // Kātyāyana, 577.
6. Yat punas tenaivoktaṃ.....tad yoṣidgrāhāpekṣayā'tyantabahudhano yaḥ putras tasya dhanagrāhānantaryārtham iti satvam aviruddham.

Smṛticandrikā, II. 403.

are absent. He is already deprived of his right to the estate of the father and if he is again made liable for the debt of the father, that should be made only when no other alternative is possible.

Kātyāyana here points out that the liability of the son to discharge the debt of the father will arise only when he is free from distress, comptent to inherit the estate (not being blind by birth etc.) and able to bear the burden of debt.[1] If he is in distress or under the age 'fit for business', he should be exempted from the liability.[2]

The conclusion that may be derived from the discussion made above is that in all the cases the person who takes the estate of the deceased has the first liability to discharge the debt. Difference of opinion arises with respect to the position of the taker of the wife and the son (disqualified). It appears that the position of the son comes last in the list and should be preceded by the taker of the wife because wife is regarded as the wealth of the deceased and because the disqualified son should be made liable only when there is no other possibility of the debt of the father being discharged.

It should be noted here that the question of the order of payment of the debt as discussed in this section is applicable in the case of the absence of the debtor, his son and his grandson. This has been pointed out by Vijñāneśvara in his introduction to the verse of Yājñavalkya (II. 51).[3] Vācaspatimiśra summarises the position in his *Vivādacintāmaṇi*.[4]

1. Ṛṇaṃ tu dāpyet putraḥ yadi syān nirupadravaḥ /
   Draviṇārhaś ca dhuryaś ca nānyathā dāpayet sutam // Kātyāyana, 557.
2. Vyasanābhiplute putre bālo vā yatra dṛśyate /
   Dravyahṛd dāpyate tatra tasyābhāve purandhrihṛt // Kātyāyana, 576.
   Vide here the notes by P. V. Kane in his Kātyāyanasmṛtisāroddhāra on the verse.
3. Ṛṇāpākaraṇe ṛṇī tatputraḥ pautra iti trayaḥ kartāro darśitāḥ.....idānīṃ karatrantarasamavāye ca kramam āha.....
4. Tad ayaṃ saṃkṣepaḥ. Dhanastrīhāriṇo'pi sattve draviṇārho dhuryaś ca putra eva, anīdṛśaputrasattve'pi dhanahārī, dhanahāryabhāve pūrvavatputrasattve'pi strīhārī, ubhayor abhāve ayogyo'pi pautra eva pitrarṇaṃ dadyāt. Vivādacintāmaṇi, 18.
   The upshot of all this is as follows—(a) Even when the person taking the property and the person taking the wife are there, the debt is

14. Liability of the second husband of women of special types.

We have discussed above that the taker of wife of the deceased becomes liable for the debt of the first husband under certain circumstances. We have also pointed out that this provision should not be treated as indicatory of widow-marriage in general.[1] Reference here should be made to the liability of the second husband of special type of women designated as *svairiṇī* and *punarbhū*,[2] to discharge the debt incurred by the first husband.

Nārada directs that the debts incurred by the first husband of the last type of *svairiṇī* and of the best type of *punarbhū* should be discharged by the second husband—the person with whom the married woman lives as husband and wife (*patitvenopabhuṅkte* as explained by Mitramiśra in his *Vyavahāraprakāśa*, 268).[3]

Asahāya in his interpretation presents a special meaning that the word '*uttamā*' as mentioned in the verse should be construed in both the cases. According to him in all the seven cases (four *svairiṇī* and three *punarbhū*) if the woman is fortunate and is possessed of good qualities (and consequently enjoys special status to her new husband), her taker (husband) should discharge the

to be paid by the son who is possessed of property and capable of bearing the burden ; (b) if there is no such son, it will be paid by the man taking the dead man's property ; (c) in the absence of the man taking his property, as before, even if the son is there, the debt will be paid by the man taking the widow ; (d) when both of these the man taking the property and the man taking the widow, are not there, the family debt shall be payble by the son even though he may be incompetent.'

This translation is by G. N. Jhā. Vide Vivādacintāmaṇi, translation by him. p. 31. Vide also his notes on it.

1. On the point of the liability of the taker of wife and its bearing on widow-remarriage vide the comments by P. V. Kane, History of Dharmśāstra, III, 453. For detailed discussion on remarrige of widows vide Kane, History of Dharmaśāstra, II-I, 608-619.
2. Vide History of Dharmaśāstra, II-I, 608-609.
3. Antimā svairiṇīnāṃ yā *uttamā* ca punarbhuvām /
   Ṛṇaṃ tayoḥ patikṛtaṃ dayād yas te samaśnute // Nārada, IV. 24.
   For the word underlined the reading in most of the commentaries and digests is '*prathamā*'. Vide Mitākṣarā on Yāj, II, 51 ; Sm. C, II, 405 ; Vivādaratnākara, 61 ; Madanartnapradīpa, 175 ; Vivādacintāmaṇi, 19, etc. In the Nāradīyamanusaṃhitā (1, 21) the reading is '*uttamā*'.

debt incurred by her previous husband. The liability of her son will not arise in such a case.[1]

Nārada presents the nature of these types of women. These women were married (or enjoyed) by other men. They are seven in number of which *punarbhū* is of three types, while *svairiṇī* has got four varieties.[2]

The first type of *punarbhū* has been defined by Nārada as a maiden who is not deflowered but who has gone through the rite of *pāṇigrahaṇa*. She has been directed to go through a fresh rite of marriage (in the case of her second marriage with another person).[3]

The second type of *punarbhū* is a woman who deserts the husband of her youth, takes to another man (as husband) and again returns to her previous husband.[4] The woman who is given over (in marriage) by her relatives (guardians) to a *sapiṇḍa* of the same caste (under the provision of *niyoga*), when there is no younger brother of the deceased husband, is classed under the third category of *punarbhū*.[5]

1. .....viśeṣārthaś cāyam. Atra uttamaśabdaḥ sarvasādhāraṇaḥ. Etāsām saptānām api madhye yaiva kācid bhāgyasaubhāgyaguṇair uttamā tasyā eva grahītā tatpatikṛtam ṛṇaṃ dadyān na putra iti viśeṣaniyamāt
Asahāya's commentary on Nārada, IV. 24.
2. Parapūrvāḥ striyas tv anyāḥ sapta protkā yathākramam /
Punarbhūs trividhā tāsāṃ svairiṇī tu caturvidhā // Nārada, XII. 45.
3. Kanyaivākṣatayonir yā pāṇigrahaṇadūṣitā /
Punarbhūḥ prathamā proktā punaḥ saṃskāram arhati // Nārada, XII. 46.
For fresh marriage rites in this case, vide Manu. IX. 176; Viṣṇusmṛti, XV. 8. Vasiṣṭha presents a different definition of *punarbhū* as: "Yā ca klībaṃ patitam unmattaṃ vā bhartārm utsṛjya patiṃ vindate mṛte vā sā punarbhūr bhavati." Vasiṣṭhadharmaśāstra, XVII. 20. Vide also Aparārka on Yāj, 1. 67: 'Tena punar vaivāhikavidhisaṃskṛtā punarbhūḥ'.
4. Kaumāraṃ patim utsṛjya yā tv anyaṃ puruṣaṃ śritā /
Punaḥ patyur gṛham iyāt sā dvitīyā prakīrtitā // Nārada, XII. 47.
Vide Vasiṣṭhadharmaśāstra, XVII. 19. Here it is to be noted that the Nāradīyamanusaṃhitā (XII. 47) defines the scond type of *punarbhū* in the same way as the fourth type of *svairiṇi* as defined in the text edited by Jolly. (XII. 52). The same is the case with Vijñāneśvara (on Yāj, II. 51); Sm. C. II, 404; Vivādaratnākara, 62 and others.
5. Asatsu devareṣu strī bāndhavair yā pradīyate /
Savarṇāya sapiṇḍāya sā tṛtīyā prakīrtitā // Nārada, XII. 48.
Vide here the notes by Jolly, S. B. E. XXXIII, 175. Vide also Kane, History of Dharmaśāstra, 11-1,608. This may have a reference to *niyoga*

In the light of these definitions of the three types of *punarbhū* it may be observed that *uttamā* in the verse of Nārada may refer to the first type of *punarbhū* as suggested in the readings of the text of Nārada in different digests and commentaries. In this way the two readings may be harmonised. The obligation of the second husband in this case arises from the consideration that he accepts the wife of the first husband by going through the rituals of marriage and such acceptance may bring the obligation on his part to discharge the debt of the husband to whom once she belonged. It may also be suggested here that such obligation may arise in the second husband of the *punarbhū* of the third category because here also he accepts the woman from the relatives. Bhavasvāmī in his commentary on the *Nāradīyamanusaṃhitā*, without assigning any substantial reasoning observes that *uttamā* in the verse should refer to the third type of *punarbhū*.[1]

While passing over to the case of wanton woman (*svairiṇī*) Nārada defines the first type among such women as one who no matter whether she has delivered children or not, during the lifetime of her husband takes to another person out of love.[2]

The second type of *svairiṇī* is one who after the death of her husband rejects the offer of the younger brothers of the dead husband and the like (apparently expressing her unwillingness to the practice of *niyoga*) and takes to a person out of passion.[3]

for which Vide Nārada, XII. 80-88 and Kane, History of Dharmaśāstra, II-I, 599-607.

Yājñavalkya (1. 67) classifies the *punarbhūs* under two heads: *akṣatā* and *kṣatā*. Baudhāyana mentions seven types of *punarbhū* and the same is the case with Kāśyapa. Vide Smṛticandrikā, Saṃskārakāṇḍa, 1, 202 and Vīramitrodaya, Saṃskāraprakāśa, 735-736.

1. Vide his commentary on the Nāradīyamanusaṃhitā, 1. 21.
2. Strī prasūtā'prasūtā vā patyāv eva tu jīvati /
   Kāmād yā saṃśrayed anyaṃ prathamā svairiṇī tu sā // Nārada, XII. 49.
   It may be mentioned here that Yājñavalkya does not make any classification of *svairiṇī*. According to him such a woman leaves her husband and takes to another of the caste out of love: 'Svairiṇī yā patiṃ hitvā savarnaṃ kāmataḥ śrayet'. Yāj, I. 67.
3. Mṛte bhartari saṃprāptān devarādīn apāsya yā /
   Upagacchet paraṃ kāmāt sā dvitīyā prakīrtitā // Nārada, XII. 50.
   Vide here the notes by Jolly, S. B. E. XXXIII, 175.
   In the Nāradīyamanusaṃhitā as also in the digests this verse has been treated as the definition of the third type of *svairiṇī*.

To the third category belongs a woman who is arrived from a foreign territory or who is purchased by money or who being pressed by hunger and thirst gives herself to a man with words—'I am yours'.[1]

The fourth type of *svairiṇī* is one who is given away (in marriage) by her guardians in accordance with the usage of the country, but who later on commits adultery with another.[2]

If the text of Nārada followed in the *Nāradīyamanusaṃhitā* and the digest-texts is relied on, then the third type of *svairiṇī* (in the edition of *Nāradasmṛti* by Jolly) becomes the fourth and the final type (*antimā*). But it may be observed that there is hardly any justification for bringing the second husband under obligation to discharge the debt of the first husband of such a woman, because he has already purchased her with price and also because in her distressed state he has offered shelter to her without any obligation. But the obligation of the second husband of the last type of *svairiṇī* as defined in the *Nāradasmṛti* (edited by Jolly) may be justified on the ground that he (the second husband) accepts her from her guardians in consonance with the practice of the country and that acceptance brings obligation to discharge her husband's debt. Such a suggestion has the support of the commentary of Bhavasvāmī, who is supposed to explain the position on the basis of the text of Nārada (as we find in the edition by Jolly).[3] In the light of the discussions this may be stated that the text of Nārada as we have it should not be accepted as final. There is vagueness in the direction itself be-

1. Prāptā deśād dhankrītā kṣutpipāsāturā ca yā /
Tavāham ity upagatā sā tṛtīyā prakīrtitā // Nārada, XII. 51.
This has been stated to be the definition of the fourth type of *svairiṇī* in the Nāradīyamanusaṃhitā and other digests.
2. Deśadharmān apekṣya strī gurubhir yā pradīyate /
Utpannasāhasānyasmai antyā sā svairiṇī smṛtā // Nārada, XII. 52.
According to the Nāradīyamanusaṃhitā (XII. 57) and other digests this is the definition of *punarbhū* of second type.
Vide here the notes by Jolly, S. B. E, XXXIII, 175-176. Vide also Kane, History of Dharmaśāstra, II-I, 609-610 for different interpretation of the verse.
3. .....caturthyām asti prasaṅgaḥ bāndhavair dattām asau gṛhṇāti. Tasmāt tatsambandhyṛṇavān bhavati svecchayā pratigṛhītatvāt.
Commentary on the Nāradīyamanusaṃhitā, 1. 21.

cause if the reading *uttamā* is accepted, there is no indication regarding the basis on which it is to be determined. It may be suggested that if the text is accepted as, '*Antimā svairiṇīnāṃ yā prathamā ca punarbhuvām*' as it appears in different digest-texts, and if the definitions presented in the Nāradasmṛti (ed. of Jolly) is accepted, then one priciple may be formulated that the obligation of the second husband will arise in the case where he accepts the wife of another through rituals of marriage (as in the case of first type of *punarbhū*) and where she is accepted from her guardians in accordance with the practice of the country. Some sort of relationship may be suggested also on the basis of the direction of Nārada himself that the (first) wife is treated as the wealth of the (previous) husband (Nārada, IV. 22) and we know that enjoyment of wealth brings the obligation to discharge the debt of the person whose wealth is enjoyed.

Devaṇabhaṭṭa appears to suggest that the obligation of the second husband in the cases referred to arises because in both the cases the second husband marries the woman and accepts her by bestowing the status of a wife. He makes distinction between one enjoying the wife of another and one who marries the wife of another. It is in the second case that the obligation arises.[1]

It has been stated before that the *śāstra* does not contemplate remarriage and that these directions should not be understood as making reference to marriage in general. Vijñāneśvara refers to the case of the taker of wife and explains the position that though it is not possible for one to take the wife of another, this being opposed to *śāstra*, yet one who transgresses the prohibition certainly becomes liable to discharge the debts incurred by the former husband.[2] It may be that by such imposition of obligation

1. Evaṃ ca yaḥ prathametarapunarbhuvam upagacchati sa niyuktamātro na yoṣidgrāhaḥ.....ādyapunarbhvās tu yaḥ pāṇiṃ gṛhṇāti sa yoṣidgrāhī bhavaty eva bhāryātvenaiva svīkārāt. Caturthyā api svairiṇyāḥ bhāryātvenaiva svīkāra iti svīkartā yoṣidgrāha eva. Tena tābhyāṃ punarbhvāḥ prathamāyāḥ patyā kṛtam ṛṇaṃ svairiṇyāś caturthyāḥ patyā kṛtaṃ ca ṛṇaṃ deyam. Smṛticandrikā, II. 404-405.
2. Yosidgrāho yady api śāstravirodhena na sambhavati tathāpy atikrāntanisedhaḥ pūrvapatikṛtarṇādhikārī bhavaty eva. Mitākṣarā on Yāj, II. 51. It may be mentioned in this context that the concept of *punarbhū*

Nārada shows his disapproval of such practice though it might have the sanction of custom.

15. Obligation of the relatives (members of the family) to discharge the debt of the debtor.

We have discussed the obligation of the son, grandson, great-grandson, wife and husband in respect of the debt of the debtor. A passing reference should be made to certain provisions in the *śāstras* by which the members of the family (relatives) of the debtor are brought under obligation to discharge the debt. These debts are family debts in reality as well as form.

Manu provides that if the borrower be dead (or away from home) and (if the debt incurred) was spent in the interest of the members of the family, it should be paid by the relatives out of their own estate even if they are separated.[1] Yājñavalkya lays down the rule that when a debt is incurred by the undivided members in the interest of the family, it should be paid by the coparceners in the absence of the head of the family.[2] Viṣṇu states in general that a debt incurred in an undivided state for the interest of the family should be paid by all.[3] The rule of Nārada (IV. 13) is the same as that of Manu (VIII. 166). He has another direction that a debt contracted by an undivided paternal uncle, brother or mother for the benefit of the family should be discharged by the heirs.[4]

These directions show that there are certain obligatory duties to be discharged by the head of the family, but at the same time

finds place in Manu, IX. 176; Vasiṣṭha, XVII. 19-20 and Viṣṇu, XV. 8-9, and Yjñavalkya, 1. 67 refers to *svairiṇī*, but in none of the texts there is any suggestion on their bearings on the rule of debt.

Grahītā yadi naṣṭaḥ syāt kuṭumbe ca kṛto vyayaḥ /
Dātavyam bāndhavais tat syāt pravibhaktair api svataḥ // Manu, VIII. 166.

Avibhaktaiḥ kuṭumbārthe yad ṛṇaṃ tu kṛtaṃ bhavet /
Dadyus tad ṛikthinaḥ prete proṣite vā kuṭumbini // Yāj, II. 45.

3. Kuṭumbārthe kṛtaṃ ca (nādeyaṃ kasyacit). Viṣṇusmṛti, VI. 39.
Vide also Viṣṇusmṛti. VI. 34.

Pitṛvyenāvibhaktena bhrātrā vā yad ṛṇaṃ kṛtam /
Mātrā vā yat kuṭumbārthe dadyus tad rikthino'khilam // Nārada, IV. 3.

the members of the joint family come under obligation to discharge any debt incurred by any member in the interest of the family,

16. Summary.

In this section on the liability to discharge the debt, it has been shown that the religious background accounts for the moral aspect of the obligation on the part of the debtor to discharge his debt himself. This also helps one to understand how the hankering after the male issue to get released from the ancestral and secular debts places the sons and the grandsons under religious obligation to discharge the debt of the father and grandfather respectively. It may be stated that in the concept of Hindu law moral obligations enjoy priority as against legal rights and the legal rights are enjoyed subject to the discharge of moral obligations. In the case of the persons who are to pay the debt of the deceased debtor because they have inherited his estate, the obligation may be stated to be more moral than religious. The obligation is legal when one person pays the debt of another as the express or implied agent or as having an authority bestowed by Hindu law to act on behalf of another.

It has been establised that the son and grandson of the debtor come under liability to discharge the debt of the father and grandfather respectively on both religious and secular grounds. Concession in the form of exemption from such obligation has been granted to the son during minority and in a condition of distress. This pious obligation should also be discharged by the son when the father in his lifetime is not in a position to pay it. His obligation is to pay the debt with interest while that of the grandson is to the extent of paying the capital only. The great-grandson comes under obligation to pay the debt of the great-grandfather when he inherits the estate. This is the view of the commentators. A son is not liable to pay the illegal and immoral debts of the father. The father is under obligation to discharge the debt incurred by the son when he acts under his agency or when it is incurred under an agency of necessity or an implied agency.

Under normal conditions neither the husband nor the wife is under obligation to discharge the debt of the other party, but the husbands of certain categories of women become liable for their debts because they (the husbands) depend on their income. The wife is also obliged to pay when such a burden is imposed on her by her husband. Order of the persons to discharge the debt of the deceased has been discussed and it has been shown that the person who takes the assests comes first and so-far as the taker of wife of the deceased and the disqualified son are concerned there is no agreement among the writers on law. Nārada brings the second husband of certain categories of women under obligation to discharge the debt of the first husband. The relatives of the deceased have an obligation to pay the debt when it was contracted in the interest of the family.

CHAPTER IV

Security I

SURETYSHIP

Analytical table of contents.

1. Suretyship—the significance of the term *pratibhū*.
2. The number of sureties.
3. Surety for appearance.
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5. Obligation of the son of the surety for appearance.
6. Surety for confidence.
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8. Surety for payment.
9. Surety for delivery of the property of the debtor.
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11. Surety in litigation.
12. Surety in oath-ordeal.
13. The responsibility of the co-sureties.
14. The desirable qualities of persons to be selected as sureties.
15. The obligation of the debtor to the surety.
16. Concessions to be offered to the sureties.
17. Records relating to suretyship.
18. Summary.

Important contributions on suretyship.

J. Jolly, Recht und Sitte (Strassburg, 1896), Translation into English by B. K. Ghosh (Calcutta, 1928), 221-223. He briefly mentions different types of sureties and their obligations.

P. N. Sen, The general principles of Hindu jurisprudence, (Calcutta, 1918), 320-324. He mentions the topic and devotes brief space for discussion.

Balkrishna, Sir Asutosh Memorial Volume, (Patna, 1926-1928) 286-287. He simply refers to the topic.

K. P. Jayaswal, Manu and Yājñavalkya, (Calcutta, 1930), 200-202. He does not discuss the topic in details.

G. N. Jhā, Hindu law in its sources, I, (Allahabad), 177-189. He collects all the *śāstric* materials in one place but does not systematise them in order and he does not discuss them critically.

P. V. Kane, History of Dharmaśāstra, III, (Poona, 1946), 435-438. Dr. Kane discusses on the major points in outline.

N. C. Sen-Gupta, The evolution of law, (Calcutta, 1962), 106-107. He simply mentions the topic.

L. Sternbach, Juridical studies in ancient Indian law, I, (Delhi, 1965), 153-198. Dr. Sternbach discusses the question of suretyship in most detailed manner.

Reference should be made to other contributions which could not be properly utilised here :

Josef Kohler, "Rechtshistorische und rechtsvergleichende Forschungen. I) Indisches Obligationen-und Pfandrecht", Zeitschrift für vergleichende Rechtswissenschaft, 3 (1882), 160-201.

Giuseppe Mazzarella, Etnologia analitica dello antico Diritto Indiano, which as a whole corresponds to the last fourteen volumes of Mazzarella's Studi di Etnologia giuridica (Catania, 1913-1938).

Uupublished paper :

J. D. M. Derrett, 'Suretyship in India : the classical law and its aftermath'.

Dr. Sternbach discusses the question relating to suretyship in most detailed manner. Herein in each case of discussion I have presented the points in more systematic way with additions of new materials from the commentaries and the digest-texts.

1. Suretyship—the significance of the term *pratibhū*,

The creditor in the investment of his capital is expected to seek its safety and security. There may be cases where the debtor deceives the creditor by taking loan from him, promising interest and later on absconding with the capital itself. To guard against such eventuality a creditor has been advised by the *śāstrakāras* to issue loan after accepting from the debtor sufficient security either in the form of surety or of pledge or both. Bṛhaspati advises the creditor to lend money after securing a pledge of adequate value (i. e. sufficient to meet the capital with interest) or a deposit (*bandha*, which also should be of sufficient value) or a reliable surety or a bond executed in writing or attested by (subscribing witnesses).[1] Trustworthiness of a surety consists in his capacity to make the debtor discharge the debt.[2] But the job of a surety normally is to pay himself. He is a collateral guarantee. Nārada stresses the importance of a surety in a transaction of debt when he declares the surety as one of the causes of creating confidence (in the creditor), the other being the pledge.[3]

To convey the idea of a surety the word that is normally used is *pratibhū*. Two other words, namely, *lagnaka* and *avastha*, are also used in that sense. Kauṭilya uses the terms *pratibhū*[4] and *avastha*[5] to convey the sense of a surety. The latter has been used on three occasions. In one case[6] the word carries the sense of a

1. Paripūrṇaṃ gṛhītvādhiṃ bandhaṃ vā sādhulagnakam /
   Lekhyārūḍhaṃ sākṣimad vā ṛṇaṃ dadyād dhanī sadā // Bṛhaspati, X 5.
   Vide here a text of Hārīta of identical import quoted in the Dharmakośa, Vyavahāra section, 608. (Vol. I-II).
2. In the Vivādaratnākara (p.5), the position has been explained thus: 'Lagnakasādhutvam ṛṇadāpayitṛtvasthairyeṇa.', Vide also Vivādārṇavasetu, Folio. 14. Line, 14.
3. Viśrambhahetū dvāv atra pratibhūr ādhir eva ca. Nārada, IV. 117. Confidence is in respect of the recovery of the loan: 'prayuktaṛṇaprāptiviśvāsaḥ.' Vivādaratnākara, 6.
4. Arthaśāstra, 3. 11. 14.
5. Ibid. 11. 8, 29 ; 111. 1. I7. ; 111. 18. 11.
6. VIII. 4. 33. Vide here the notes by Meyer, Das Altindische Buch vom Welt und Staatsleben, (Das Arthaśāstra des Kauṭilya) 239, note, 2.

guarantee. The word *avasthāpanā* as it appears in the text[1] may be used to convey the sense of 'presenting a surety'. The word *kṛtāvastha* used by Manu[2] may suggest such a meaning of *avastha* as we gather from the interpretation by Medhātithi.[3]

So far as the word *pratibhū* is concerned, it may be stated that it is older in origin because we find it used in the rule of Pāṇini.[4] Several attempts have been made by the commentators and the digest-writers to find out the etymological meaning of the term. Bhavasvāmī explains that a *pratibhū* is so called because he places himself in the position of the debtor (in respect of payment of the debt in case of his failure).[5] Vijñāneśvara states almost the same thing in his observation that his act (of payment) becomes similar to that of the debtor.[6] Nandapaṇḍita has the same sort of approach.[7] Jagannātha explains a surety as the represntative or deputy.[8] 'It probably refers to the surety's being in some non-juridical and popular sense a deputy or substitute for the original debtor'.

There is no suggestion from the commentators or digest-writers regarding the significance of the word *lagnaka*. The word is derived from *v-lag*, having the sense of 'adhering to', 'sticking to' etc. and in the present context may mean a person sticking to his principle in the form of discharging the debt of the debtor on the basis of the agreement. In actual practice the surety would keep an eye on the debtor, since he has a financial interest in the debtor's paying the debt. Prof. Derrett suggests in this connection that *lagnaka* 'seems to refer to surety's following closely after 'the original debtor', as if 'backing him up', supporting and clinging fast to him.'[9]

1. IX. 6. 23.
2. VIII. 60.
3. Medhātithi explains: .....āhūto'bhiyukto gṛhītaprabhūś ca.
   On Manu, VIII. 60.
4. 11, 3. 39.
5. Pratibhavati tasya grahītuḥ sthāne bhavatīti pratibhūḥ. On N. M. S, 1, 101.
6. Pratibhavati tatkāryaṃ tadvat bhavatīti. On Yāj, 11. 10.
7. Pratibhavati tatkārye tadvat bhavatīti pratibhūḥ.
   Commentary on Viṣṇu, VI. 41.
8. Pratibhavati tatpratinidhir bhvatīti pratibhūr lagnakaḥ.
   Vivādabhaṅgārṇava, Folio. 120. Line. 40.
9. J. D, M. Derrett, 'Suretyship in India; the Classical Law and its Aftermath.' (Unpublished paper, kindly permitted to be utilised).

Reference here should be made to the definition of suretyship offered by Viñānesvara and followed by Pṛthvīcandra and Mitramiśra. According to him, 'suretyship' stands for a contract or agreement with a person (other than the debtor) for creating confidence (in respect of the safety and security of the capital invested as loan).[1]

By way of analysing the definition of suretyship as stated by Vijñāneśvara, Prof. Derrett observes that 'the classical definition insists that the institution exists for the purpose of inducing *confidence* : and there can, therefore, be no suretyship in the eyes of the Hindu jurists though no definite or even envisaged obligation is in question at the time of the agreement. (As we shall see), the Hindu jurist was interested in the confidence aspect rather than in the debt aspect : though this is not to suggest that there was any defect in the agreement—evidently there was no suretyship without an explicit undertaking to indemnify the third party in case the confidence should turn out to be unjustified. And this would apply with equal force and equal validity whether the confidence turned out to be unjustified by chance, misfortune or fraud ; what is in view is speculation as well as normal business undertakings. The institution of suretyship existed to enable risks to be taken, and not only risks in respect of the second party's honesty and integrity.'[2]

He makes pertinent observations regarding the ascept of agreement in suretyship in the following lines : 'To the Hindu jurists —unlike the Société Jean Bodin—there was not suretyship unless there was an agreement. In other words, all suretyships arose out of agreement, or imputed agreement (since the word *samayaḥ* can, and certainly must here, include the village-compacts with regard to payment of revenue and the like which were binding upon each generation in turn, as with our Acts of Legislalive assemblies, so that a son or other successor, or a newly settled immigrant, would be bound by a subsisting village-compact).'[3]

1. Prātibhāvyaṃ nāma viśvāsārthaṃ puruṣāntareṇa saha samayaḥ.
Commentary on Yāj, 11. 53.
Vide here Vyavahāraprakāśa (P), 225 ; and Vyavahāraprakāśa (M), 247 for the same definition.
2. J. D. M. Derrett, 'Suretyship in India : The classical law and its Aftermath' (unpublished paper),
3. Ibid.

It should be noted that except in a very special case, the person who offers to act as surety does it with a spirit of generosity and sympathetic consciousness of the debtor's distress with a desire to alleviate it. Manu gives expression to this ascept when he observes that the three categories of persons, namely, witnesses, sureties and judges, suffer for the sake of others.[1] The idea is that these persons undergo sufferings for the sake of others and they have no trace of a selfish motive.[2]

2. The number of sureties.

The number and nomenclature of sureties in ancient India have their evolutions. If the course of evolution is followed it will be observed that on the basis of the nature of agreement, the number of sureties gradually went on increasing.

Kauṭilya does not mention any special type of surety by name, but one of his rules relating to suretyship goes to suggest that it is of the nature of suretyship for payment.[3] In another rule he refers to the surety for safety and he uses the term *avastha* in place of *pratibhū*. Such a surety is to undertake the responsibility of the safety of the party with whom he is in enmity.[4] This type of surety has no connection whatsoever with the laws relating to debt.

Gautama also does not mention any special kind of surety, but his rule on suretyship[5] may be interpreted as having reference to the suretyship for payment.

For the first time we find in Manu (VIII. 160) direct mention of two types of surety by name, that for appearance—*darśanapratibhū* and that for payment—*dānapratibhū*.

Yājñavalkya speaks of three sorts of them, adding the surety for confidence (*pratyayapratibhū*) in the list of the other two men-

1. Trayaḥ parātrhe kliśyanti sākṣiṇaḥ pratibhūḥ kulam. Manu, VIII. 169. For the meaning of the word *kulam* in the verse, vide the notes by Bühler, S. B. E, XXV, 284. and for discussion on it vide, K. K. Bhaṭṭācārya, The law Relation to the joint Hindu Family, 23-27.
2. .....na hy eṣāṃ svārthagandho 'py asti. Medhātithi on Manu, VIII. 169.
3. Arthaśāstra. 3. II. 14,
4. Ibid. 111. 18. 11.
5. XII. 38,

tioned by Manu.[1] He mentions further two sureties, surety in litigation and surety for safety—the latter in the pattern referred to by Kauṭilya (III. 18. 11).[2] The last two are not related to the laws of debt.

Viṣṇu[3] and Nārada[4] speak of the first three sorts, that for payment, that for appearance and that for confidence. Nārada uses the word '*upasthāna*' in place of '*darśana*'. The interpretation of the word '*upasthāna*' by Asahāya shows that it fits well with the concept of surety for appearance. Kātyāyana uses the term '*upasthāna*' (verse 530) and Devaṇabhṭṭa explains it as '*darśana*'.[5] Kātyāyana has provided for '*darśanapratibhū*' separately in another verse(531). The problem is likely to arise out of the statement of Hārīta, recorded in the *Smṛticandrikā*[6], where both the terms '*upasthāna*' and '*darśana*' appear, suggesting thereby that the two are different. Devaṇabhaṭṭa, who explains '*upasthāna*' as '*darśana*' (in the verse of Kātyāyana), here takes recourse to a different stand and explains it is making reference to the surety for delivery of the debtor's pledge. He was perhaps conscious of the inconsistency in his interpretation and therefore he adds a note for such an explanation. What he points out is that the interpretation referred to is for adjustment with the number of sureties in the verse.[7] The verse distincly mentions five sorts of sureties. He explains the meaning of the word '*upasthāna*' as '*arpaṇa*' in connection with the interpretation of the word '*gṛhītabandhopasthāna*' as it appears in the text of Vyāsa quoted by him.[8] What we think is that it is quite appropriate to accept '*upasthāna*' in the direction of Nārada, in the sense of surety for appearance.

1. Darśane pratyaye dāne prātibhāvyaṃ vidhīyate. Yaj, II. 53.
2. Ubhayoḥ pratibhūr grāhyaḥ samarthaḥ kāryanirṇaye. Yāj, II. 10.
   Tathā śaktaḥ pratibhuvaṃ dāpyaḥ kṣemāya tasya tu, Yāj, II. 209.
3. VI. 41.
4. Upasthānāya dānāya pratyayāya tathaiva ca /
   Trividhaḥ pratibhūr dṛṣṭas triṣv evārtheṣu sūribhiḥ // Nārada, IV. 118.
5. Smṛticandrikā, 11, 347.
6. II, 346.
7. Upasthānam atra bandhadravyārpaṇam abhimataṃ na darśanaṃ tasya svapadenaivopāttatvāt, pañcasv ity aghaṭanāc ca. Sm. C. 11, 346.
   The same idea has been adopted in the same form by Pṛthvīcandra and Mitramiśra. Vide Vyavahāraprakāśa (P). 226, and Vy. p. (M), 248,
8. Smṛticandrikā, 11, 347.

Bṛhaspati introduces one more number in the list of the three sorts of sureties mentioned by Viṣṇu and Nārada. The new one is the surety for delivery of the property of the debtor.[1]

To Kātyāyana the sureties are five in number. He does not mention the surety for the delivery of the property of the debtor as referred to by Bṛhaspati. According to him the sureties are for payment, for appearance (*upasthāna*), in litigation (*vāda*), for confidence and in oath. He points out that the list is not final and that there may be other types of surety depending on the nature of the circumstances concerned.[2]

Hārīta also speaks of five sorts of sureties, but they are not the same as those mentioned by Kātyāyana, who also speaks of five types of them. He has in his list the three sureties as common, namely, that for confidence, for payment and for '*upasthāna*' (which as we have seen above, has been differently interpreted in the two cases). Here we notice the mention of surety for safety (*abhaya*) as referred to by Kauṭilya and Yājñavalkya.[3]

To Vyāsa the number of the sureties comes to seven. Here the new ones are the sureties for document, sureties in ordeal and the sureties for the delivery of the pledge (*gṛhītabandhopasthāna*).[4]

1. Darśane pratyaye dāne ṛṇidravārpaṇe tathā /
   Catuṣpraḥ pratibhūḥ śāstre dṛṣṭo manīṣibhiḥ // Bṛhaspati, X, 73.
2. Dānopasthānavadeṣu viśvāsaśapathāya ca /
   Lagnakaṃ kārayed evaṃ yathāyogaṃ viparyaye // Kātyāyana, 530.
   Devaṇabhaṭṭa explains the last part of the verse as: evam anyatrāpi viparyaye kāryasya nyāyaviṣaye yathāsambhaṃ lagnakaṃ kārayed ity anvayaḥ. Sm. C, II, 347. Vide also Vyavahāraprakāśa (P), 226. Reference here should be made to the surety for the payment of land-tax, as mentioned by Kātyāyana. Such a surety has been given the appellation of *karapratibhū* (verse 704). The nature of such a surety has not been explained by him, but it is presumed that such a surety undertakes to pay the tax (for land) if the actual land-holder fails to do so.
3. Abhaye pratyaye dāne upasthāne 'rthadarśane /
   Pañcasv eṣu prakāreṣu grāhyo hi pratibhūr budhaiḥ //
   Hārīta quoted in the Sm. C, II, 346.
4. Lekhye 'kṛte ca divye vā dānapratyayadarśane /
   Gṛhītabandhopasthāne ṛṇidravyārpaṇe tathā // Quoted in Sm. C, II, 347. The surety for document has not been properly defined by Devaṇabhaṭṭa, but he refers to it as '*lekyhādarśane*', which suggests that such a surety was accepted in a case where there was no document in the transaction.

Vyāghra as quoted in the *Maskari-bhāṣya* on the *Gautama-dharma-sūtra* (XII. 38),[1] refers to the sureties of three types in a different manner. He uses the term '*pādadarśī*' to indicate perhaps the surety for appearance. For the surety for payment the word used is '*arthada*'.

Devaṇabhaṭṭa refers to *pramāṇa-pratibhū* (as distinct from *vāda-pratibhū*), who undertakes the task of proving the case in question, where other means of proof, visible (like documents etc.) and invisible (like oath and ordeal) are to take place at a later date.[2] While making reference to the surety in litigation as mentioned by Kātyāyana, Devaṇabhaṭṭa explains that when the defendant is produced in the court the members of the court should demand a surety in order to secure the payment of the amount if the claim is established.[3] But the direction of Yājñavalkya shows that such surety in litigation is to be demanded from both the plaintiff and the defendant.[4]

Devaṇabhaṭṭa refers to a special type of surety designated as *ādhipāla*, who undertakes the responsibility of compensating for any type of fraud that may be involved in the case of a pledge for custody, in the form of previous mortgage, sale or gift (of the same pledge) or of the probability of a cunning heir (co-sharer), who may claim the same property (pledge).[5] This *ādhipāla* surety

Vide Sm. C, 11, 347. Vide Vyavahāraprakāśa of Pṛthvīcandra, 226. Nandapaṇḍita appears to hint at the right point when he states that the surety in this case undertakes the responsibility of getting a document prepared by the debtor where a document has not been made, but the transaction has already taken place :

'Etāni patrādīni mayā kārayitvā deyāni iti yo' bhyupagacchati so 'pi pratibhūr grāhya iti śeṣaḥ.' His commentary on Viṣṇu, VI. 41.

1. Pādadarśī ca viśvāsyo hy arthadaś ceti kīrtitāḥ.
2. Vivādanirṇayāya dṛṣṭam adṛṣṭaṃ vā pramāṇaṃ yatra kālavyavadhāne bhaviṣyati tatrāpi pramāṇāya pratibhūr grāhya iti.

Smṛticandrikā, II., 347.

The very idea in the same language has been presented in the Sarasvatīvilāsa, 247.

3. Tatra prativādyānayanānantaraṃ sabhyair lagnakagrahaṇaṃ sādhitadhnādiprāptyarthaṃ kāryam. Smṛticandrikā, II, 347.
4. Yāj, 11. 10.
5. Tataś ca pūrvādhivikrayadāneṣu dhūrtadāyādasambhāvanāyāṃ satyāṃ gopyādhāv ādhipālākhyaḥ (pratibhūḥ). Sm. C, 11., 347.

was in all probability the person by whom the pledge was kept instead of being handed over to the creditor himself. His role was like that of a stake-holder, of a surety referred to as *gṛhītabandhopasthāna*. Hārīta has a direction which indicates the responsibility of such a surety. Thus he observes that when a pledge that is made out of confidence, is not received by the creditor, the *ādhipāla* surety should see that it should pass over to the creditor, failing which he (the surety) should pay it from his own purse.[1] Here two points are clear. One is that the pledge in this case is not actually transferred to the creditor. The other is that such surety undertakes to hand over the pledge failing which he agrees to pay off the debt of the creditor. He may thus be similar to the surety for confidence in some respect, with the obligation to pay in the case of breach of confidence by the debtor. This point is made more clear by Devaṇabhaṭṭa by way of explaining the direction of Pitāmaha. Pitāmaha observes: 'where a pledge has been placed in the charge of *ādhipāla* (who agrees to hand it over to the creditor if necessary) and which is stipulated for a fixed period, the (surety) (*ādhipāla*) undertakes to pass it over (or to pay the price) to the creditor if the debtor fails to do so.'[2] The verse as explained by Devaṇabhaṭṭa is this: 'if the debtor in a short time does not pass over the pledge encroached by others for the fault of the debtor, I shall undertake the responsibility of passing it to you', if such a stipulation is made by the surety (*ādhipāla*), he will be under the obligation to pass it over or to pay for it, if the debtor fails to do so."[3] In short, it may be stated on the basis of the statements of Pitāmaha and Hārīta that the *ādhipāla* type of surety undertakes either to deliver the pledge or to pay off the debt. In any case, such pledge at the first instance is not passed over to the creditor

1. Viśvāsārtham kṛtas tv ādhir na prāpto dhaninā yadā /
Prāpaṇīyas tadā tena deyaṃ vā dhanine dhanam //
Hārīta quoted in Sm. C, II, 350.

2. Ādhipālakṛtas tv ādhiḥ mitakālopalakṣitaḥ /
Na cet sa dhanine dattaḥ tasyādhes tais samarpaṇam //
Pitāmaha quoted in the Smṛticandrikā, II, 349.

3. Acireṇa ṛṇī svāparādhādinā'nyākrāntaṃ yadi nādhim arpayati tadāsmābhir ādhis samarpyata iti vadadbhir yaiḥ pratibhūbhir ya ādhir arpaṇīyatayāṅgīkṛtaḥ tasya ṛṇikenāsamarpitasya tais samarpaṇam kāryam ity arthaḥ. Sm, C. II, 350

and it is not certain from these statements whether it was in all cases kept with the *ādhipāla* surety or not, but it is clear that such a surety takes responsibility of such a pledge. As it is on his representation that the loan is issued, it may not be improper to include it in the category of the surety for confidence. As we have seen, Devaṇabhaṭṭa restricts the scope of this surety to a pledge for custody. In the case of a pledge for use, such a surety goes by the appellation of *bhuñjāpaka*[1] and it is presumed that such a surety undertakes responsibility for any fraud that may be perpetrated in the case of such a pledge. Here also his role is like that of a surety for confidence.

So far as the debtor is concerned, the surety under the designation of *pratyarpaka* is accepted in the case where the debtor is compelled by circumstances to pledge a very valuable pledge with the creditor. This surety guarantees the return of the pledge[2] and this shows that the *śāstrakāras* were quite conscious of the difficulties of the debtors and they were not indifferent to their interests.

With reference to the obligation of the suerty called *pratyarpaka*, we have from Hārīta the rule that if the consumer (creditor consuming the precious pledge) happens to be impoverished (and therefore is not in a position to pay) and if the surety is wealthy, he (the surety) should pay to the extent of the price (of the pledge) and not the interest.[3]

1. .....bhogyādhau bhuñjāpakākhyaḥ.....Smṛticandrikā. 11, 347.
2. .....bahumūlyādhāv api pratyarpakākhyaḥ (samgṛhītaḥ). Ibid, 347.
3. Khādako vittahīnaś cellagnako vittavān yadi /
   Mūlyaṃ tasya bhaved deyam na vṛddhiṃ dātum arhati //
   Hārīta quoted in Sm. C. 11, 350.
   Vijñāneśvara (on Yāj. 11, 54) refers to this verse and interprets it in a different way. According to him. if the surety dies in his opulence, the son of such a surety is to pay the surety-debt only but not the interest: 'khādako' dhamarṇakaḥ, lagnako yadi vittavān mṛtas tadā tasya putreṇa mūlam eva dātavyaṃ na vṛddhir iti vyākhyeyam.'
   Devaṇabhaṭṭa explains *khādaka* as 'bandhakakhādakaḥ bahumūlyādhināśakaḥ dhanika iti yāvat.' Sm. C, 11, 350.
   The M. R. P. (p. 157) and the Sarasvatīvilāsa (p. 249) follow the interpretation of Vijñāneśvara.
   Nanda reads *'avittavān'* and explains: 'ubhayor nirdhanatve mūlam eva deyam ity arthaḥ', on Viṣṇu, VI. 41.

Caṇḍeśvara refers to a text of unknown authority where different sorts of surety falling under the category of surety for cofidence have been mentioned. Thus the surety for confidence may be demanded when the debtor has the possibility of taking the side of the enemy (of the creditor), where he may be in evil company and may have a tendency to cause harm out of hatred for the creditor. Evidently the surety in such case is made to pay when these debtors misbehave themselves.[1] Caṇḍeśvara directs that a surety should be demanded in cases where there is possibility of breach of faith.[2]

Jagannātha refers to three sorts of surety in litigation. Thus one such surety in litigation pleads the case (*vivādakartā*) on behalf of the party as his representative, the other undertakes the responsibility of making him appear (before the court) and the third one promises to pay on his behalf.[3] Jagannātha viewed the pleader as not only the agent but also a surety for the litigant. This reflects knowldge of anglo-Indian pleading and procedure.

In the *Śukranītisāra*, we find mention of different sorts of sureties as may be guessed through their responsibilities. Thus in the promise that he will pay the debt (of the debtor) in case of non-payment, we notice the reference to a surety for payment. Similarly there is reference to surety for appearence, surety undertaking to make the debtor offer a pledge (*enam ādhiṃ dāpyiṣye*), surety for safety, surety for work (*akṛtaṃ ca kariṣyāmi*) and the surety for confidence.[4] He refers again to the surety in litigation

This may go to suggest that the original meaning of the text was lost to the commentators and the digest-writers.

1. Parāśrayam abhavyam vāpy asatsaṃsargam eva vā /
   Apakārakṣamo yas tu dveṣāt kartumanāḥ kvacit //
   Kārayet pratyayāyaiva tadbhayāl lagnakaṃ tathā /
   Visaṃvāde 'tha śīlasya dāpyate pratibhūs tathā // Viv. rat, 42.
2. Vastutas tu yatra yatrāviśvāsasambhavas tatra viśvāsāya rājñā pratibhūr dāpya ity evānugatam. Ibid, 43.
3. Vivādapratibhūs trividhaḥ. Tatra pratinidhībhūya vivādakartā, tadupasthāpakaḥ taddeyadravyadātā ityādikaṃ lokata eva jñeyam.
   Vivādabhaṅgārṇava, Folio, 130, lines, 41-42.
4. Dāsyāmy adattam etena darśayāmi tavāntike /
   Enam ādhiṃ dāpayiṣye hy asmāt te na bhayaṃ kvacit //
   Akṛtaṃ ca kariṣyāmi hy anenāyaṃ ca vṛttimān /
   Astīti na ca mithyaitad aṅgīkuryād atandritaḥ //
   Śukarnītisāra, IV, 5. 125-126.

in the same from as we find in Yājñavalkya.[1] In view of the very late date[2] of the Sukranītisāra it is permissible to conjecture that this addition is due to foreign influence.

From what we have discussed above with respect to the number of sureties, it may be stated that though originally suretyship was conceived of in connection with debt, its scope was extended (it is impossible to say whether subsequently or not) to other cases where there was possibility of breach of faith. The three, that for appearance, for confidence and for payment were common forms of sureties.[3] That the commentators and and the digest-writers could not exactly present the nature of other sorts of sureties, say, the surety of the nature of *grhītabandhopasthāna*, may be treated as an indication that they were but variations in some form or other of the standard forms of sureties. In fact, the suggestion of Caṇḍeśvara that there may be other sureties depending on the nature of circumstances, appears to be correct.

3. Surety for appearance.[4]

A surety for appearance appears for the first time in the text of Manu, who prescribes that such a surety undertakes the responsibility of presenting the person (debtor) physically (at the time and place agreed on) and in case of his failure to do so, he should pay the debt of the debtor out of his own property.[5]

The surety for work is a new one and the nature of the third one as referred to in the verse, cannot, by the nature of the agreement mentioned, be included in any one of the sureties mentioned by earlier writers on law.

1. Ubhayoḥ pratibhūr grāhyaḥ samarthaḥ kāryanirṇaye, Ibid, IV. 5. 127.
2. For the date of Śukranīti see, L, Gopal. 'The Śukranīti. A nineteenth-century text' in B. S. O. A. S, XXV (1962), 524-556.
3. Mitramiśra with reference to the five sorts of sureties mentioned by Kātyāyana observes that they may be included under the three types; 'darśanapratyayadāneṣu yathāyathaṃ sarveṣām antarbhāvasambhava iti paramārthaḥ'. Vyavahāraprakāśa, 248.
4. Sternbach, Juridical Studies in Ancient Indian law, I, 155-168.
5. Yo yasya pratibhūs tiṣṭhed darśanāyeha mānavaḥ /
Adarśayan sa taṃ tasya yateta svadhanād ṛṇam // Manu, VIII, 158.

Yājñavalkya also has the same direction[1] and he is followed by Viṣṇu,[2] who presents the provisions regarding this surety in the same language as that of Yājñavalkya. Nārada uses the term *upasthāna*[3] in place of *darśana* and provides that the surety should be made to pay in the case of failure on his part to produce him.[4] Bṛhaspati speaks of the terms of agreement of such a surety. He gives an undertaking like this: 'I shall show him'.[5] In exactly the same language as that of Manu (VIII. 158), Bṛhaspati prescribes that the surety must pay the debt of the debtor if he fails to produce the man.[6]

In the commentary on Yājñavalkya by Viśvarūpa a statement in prose has been attributed to Bṛhaspati, where it has been prescribed that the surety for appearance is to be made to pay if the debtor (*upasthāpya*—the person to be presented) is in distress (*vipatti*) (and is not in a position to be present).[7]

Asahāya in his commentary on Nārada, explains the situation under which such a surety is given. In his view such a case arises when the debtor on being asked to pay, denies the debt and when the creditor agrees to establish his claim in the court and, he asks the debtor to present a surety, who is accepted as such by the creditor.[8]

1. Darśane pratyaye dāne prātibhāvyaṃ vidhīyate /
Ādyau tu vitathe dāpyāv itarasya.....// Yāj. II, 54.
2. Viṣṇusmṛti, VI. 41,
3. Upasthānāya dānāya pratyayāya tathaiva ca /
Trividhaḥ pratibhūr dṛṣṭas triṣv evārtheṣu sūribhiḥ // IV. 118.
4. Pratibhūs tadṛṇaṃ dadyād anupasthāpayaṃs tathā. IV. 119,
5. Āhaiko darśayiṣyāmi.....Bṛhaspati. X. 74.
Vijñāneśvara explains : darśanāpekṣāyām enaṃ darśayiṣyāmi.
On Yāj. 11. / 53
6. Manu. VIII. 158 = Bṛhaspati. X. 77 = Kātyāyana, 535.
Vide also Bṛhaspati. X. 78 = Kātyāyana. 536.
7. Upasthāpyavipattu upasthāpyasya punaḥ pratibhūḥ dāpyaḥ.
Bṛhaspati. X. 80. Vide here the notes by L. Renou, E. V. E. P, XI, 95.
8. Atra yadā dhanikenarṇiko vidhṛta evaṃ brūte yathā mayā tava kiñcin na dātavyam. Dhanikas tu brūte yady ācāreṇa pratiṣṭhāpayāmi tato' haṃ gṛhṇāmi, nyāyakaraṇasyaivopasthānapratibhūvaṃ dehi. Evem uktvā ṛṇī dhanikasya yaṃ pratibhuvaṃ praycchati yathā amukaṃ hi mayā nyāyopasthānaṃ karaṇīyam, asminn arthe tvaṃ mayāsyopasthānapratibhūr dattaḥ. evam uktaḥ sa puruṣo yātha sthito dhanikena ca gṛhītaḥ, tadāsau upasthānapratibhūr ity ucyate. Commentary on Nārada, IV. 118.

Medhātithi, while interpreting the verse of Manu (VIII. 158) refers to the word *ṛṇa* and observes that it should be taken as standing for all the objects of dispute. Therefore, the meaning should be that in suits relating to any object, the surety should have to pay the object of dispute. In the case of defamation, adultery etc. if the surety has given an undertaking to the effect that 'if I do not produce the accused, I shall pay such and such a sum', then he shall have to pay the sum, but in the event of there being no such undertaking, he should be made to pay the fine that the king may impose upon the accused.[1] The idea has been adopted by Sarvajñanārāyaṇa.[2]

Asahāya appears to indicate that the direction in the text of Nārada (IV. 119) for the payment of the debt by the surety for appearance, has been made only by way of analogical extension.[3]

The interpretation of the part '*anupasthāpayan*' in the same verse referred to, as presented by Devaṇabhaṭṭa is open to criticism. We had occasion to observe previously that Devaṇabhaṭṭa has explained the word '*upasthāna*' differently on different occasions, with a tendency of harmonisation. Here he interprets, out of the context, that *anupasthāpayan* should mean as not presenting to the creditor the pledge, which any how passed on to the debtor.[4] The context of the statement of Nārada does not warrant this explanation. It may be that Devanabhaṭṭa has confused it with *Gṛhītabandhopasthāna* as mentioned by Vyāsa, which has been explained identically by him.[5] Nārada does not mention a surety of that type. Therefore '*anupasthāpayan*' should refer to the surety for appearance. Mitramiśra, who normally accepts the interpretation of Devaṇabhaṭṭa word by word, does not

1. Ṛṇagrahaṇam upalakṣaṇārtham, tena yāvanto 'rthaviṣayā vyavahāre anukrāmyanate ta tad vastu dadyāt darśanenānyatareṇābhiyuktaḥ. Vikpāruṣyasaṃgrahaṇadau yena paribhāṣā kartavyā yadi na darśitaṃ cet tan mayā dātavyam. Akṛtāyāṃ tu paribhāṣāyāṃ rājadaṇḍám eva dāpyaḥ.
Commentary on Manu, VIII. 158
2. Vide his commentary on Manu, VIII. 158.
3. Atrātivyāptyā ṛṇikabhayatrāsajananārtham eva muninā pratyayopasthānapratibhuvor api ṛṇadānavidhir uktaḥ. on Nārada, IV. 119.
4. Uttamarṇapārśvastham ādhiṃ kathañcid adhamarṇagataṃ punar uttamarṇasamīpastham akurvan. Sm. C, 11, 349.
5. Smṛticāndrikā, 11. 347.

follow him, but presents the right explanation.[1] His explanation as not paying to the creditor the pledge (kept with him) or sufficient money to cover the debt taken from the debtor,[2] does not suit the context in view of the fact that Nārada does not mention such a surety.

Jagannātha has very pertinent observations regarding the surety for appearance. He points out that the obligation of such surety does not end by merely showing the debtor (to the creditor). He takes up a case like that if the surety in his agreement undertakes to show the debtor at a certain time and if the place is not specifically mentioned, he (the surety) does not break his agreement if he shows the person while he is engaged in his desired worship or other act. But in fact the agreement is violated because the object of showing the debtor is that he (the debtor) should be shown at a time when the creditor may realise the loan. If the debtor is shown at that time (mentioned herein) that may not help the creditor in any way in respect of realisation of the loan. It is desirable that the debtor should be presented at a time when he is free for the purpose (i. e. when he may be easily asked to pay the debt).[3]

4. Exemption for the surety

Bṛhaspati (and Kātyāyana) prescribe that if the surety fails to produce the debtor at the appointed place and time, he is to pay

1. He explains *anupasthāpayan* as 'ṛṇinam adarśayan', Vy. p, 244.
2. Ṛṇinaḥ sakāśād ādhim ṛṇaparyāptam taddhanaṃ vottamarṇāyānarpayann iti darśanadravyārpaṇapratibhūviṣayam iti vivekaḥ. Ibid. 249.
3. Atredam avadheyam, yatra amukakāle darśanaṃ kārayiṣyāmīty eva pratijñā na tu tatra deśollekhas taddina eva iṣṭapūjādikaraṇasamaye vyāpārāntaraniyuktatvādisamaye vā yadi darśanaṃ karoti tadā pratijñābhaṅgo 'pi na bhavati ity āpātato lakṣyate. kiṃ tu tatra pratijñābhaṅga 'eva iti mādṛśām anubhavaḥ. Tathā hi avadhikāle adhamarṇadarśanaṃ dhanikena svadattadhanaprāptyartham ākāṅkṣate, sā cākāṅkṣā dhanaprāptirūpaphalajananayogyadarśanam eva viṣayīkaroti. Atas tadākāṅkṣāviṣayasiddhyarthaṃ pratibhūḥ pratijānīte. Ataḥ pratibhūpratijñayāpi darśanapadaṃ phalajananayogyadarśanaparam ity avagamyate, tatkālinadarśanaṃ ca na phalajananayogyam. Ataḥ susthasamaya eva darśanaṃ kārayed ity abhinavaḥ panthāḥ.

Vivādabhaṅgārṇava, F. 129. lines, 27-39 ; Col. Dig. 1. 243

the debt, provided that there is no interference from fate or the king.[1] This provision is quite rational in view of the fact that if there is sufficient ground on the part of the debtor to be absent at the appointed place or time, the surety should not be penalised on that account.

He (Brhaspati) shows further consideration to such surety by prescribing that the creditor should allow the surety (a considerable amount of) time for searching for the absconding debtor. This time, according to the nature of the distance and the path, may be fortnight, a month or a month and a half.[2] Here Kātyāyana refers to the final limit, namely, one month and a half and observes that the surety will be made free from his obligation if he can produce him within that specified time-limit.[3] Kātyāyana states that the same rule of payment by the surety in the case of his failure to present the debtor within the specified time, should be followed where the debtor is dead.[4]

Jagannātha refers to the interpretation of the verse of Kātyāyana (533) by Caṇḍeśvara, where it has been held that if the debtor absconds out of fear of the king consequent to an offence he has committed, or if he goes to a foreign country promising to return after a month, or if for his illness he cannot turn up within a year or so, the surety for appearance is not to be blamed if he does not produce the debtor.[5]

1. Darśanapratibhūr yatra deśe kāle na darśayet /
   Nibandham āvahet tatra daivarājakṛtād ṛte //
   Bṛhaspati. X. 75 = Kātyāyana, 531.
   Smṛticandrikā, II, 349: daivakṛtaṃ dirgharogajñātimaraṇādi, rājakṛtam āsedhbandhanādi.
2. Naṣṭasyānveṣaṇe kālaṃ dadyāt pratibhuve dhanī /
   Deśādhvarūpataḥ pakṣaṃ māsaṃ sārdham athāpi vā // Bṛ. S, X. 76.
3. Naṣṭasyānveṣaṇārthaṃ tu deyaṃ pakṣatrayaṃ param /
   Yady asau darśayet tatra moktavyaḥ pratibhūr bhavet // 532.
   Smṛticandrikā, II. 349: paraṃ paramāvadhirūpam.
4. Kātyāyana, 533. For the words *'kāle vyatīte'*, in this verse, in the Viv. rat, 42, and Viv. cin, 13, *kāla* has been explained as indicating the time of obstruction from fate or the king. Mitramiśra explains it as the time allowed for searching the absconder. Vide Vyavahāraprakāśa, 219.
5. Atra viśeṣaḥ, rājadaivakṛtād ṛte iti. Anyāparādhena rājabhayād yadi ṛṇikas tirohito bhavati kiṃ vā māsāntaram āgamiṣyāmīti kṛtvā videśaṃ gataḥ, vyādhipīḍito varṣaparyantam api nāgatavān tatra darśanākaraṇe na darśanalagnakasya doṣaḥ iti bhāvaḥ.
   This does not find place in the printed editions of Vivādaratnākara.

He observes that such an interpretation is not consistent with reason because of the fact that no favour is shown in case of death, which is the greatest hindrance caused by the act of fate, while it has been shown in the case of lesser hindrances like the act of fate or king.[1] He therefore presents an exposition of the same in consonance with the statement of Vācaspati. This is like this: 'When the time at which the surety undertook to produce the debtor, has past without any hindrance from the act of God or the king; or, in the case of hindrance by the act of God or the king, after that difficulty ceased; if the surety still procrastinate, thinking, 'I am surety for appearance, and not bound for payment, I will produce the debtor two months hence, but at present I will attend to my own business,' in such a case, if the debtor afterwards die, the surety must pay the debt.'[2]

The point raised by Manu with reference to the surety for appearance, deserves to be noted in this connection. He asks what means the creditor should seek to obtain his dues in the event of the death of the surety, other than that for payment, whose character is fully known.[3]

His decision in such case is that if the surety be one to whom money has been made over and if that money be sufficient (to

1. Asya ca yathāśrutābhiprāye nubhavavirodhaḥ, Tathā hi rājadaivopadrave yasyānugrahaḥ kṛtaḥ mahati daivopadrave maraṇe tasya nānugraha iti.
Vivādabhaṅgārṇava, F, 129, L. 10-13.

2. Tasmād vācaspatisammata evāsya viṣayo boddhavyaḥ.....sa yathā, yatra kāle' dhamarṇasya darśanaṃ kārayituṃ svīkṛtavān pratibhūs tasmin kāle rājadaivopaghātaṃ vinā atīte rājadaivopaghātasthale tu taduttaram anāsthayātīte yathāhaṃ darśanapratibhūr eva na tu dānapratibhūr ato darśanaṃ kārayiṣyāmi māsadvayottaram idānīṃ tu nijakāryaṃ karomīty ābhidhānat kālakṣepaṇaṃ karoti, atraivāntarā adhamarṇasya maraṇe darśaṇapratibhūs tadṛṇaṃ dāpyaḥ iti vākyārthaḥ.
Vivādabhaṅgārṇava, F. 129, L, 13-21.
The English translation is by Colebrooke, Digest of Hindu law, I., 170.

3. Adātari punar dātā vijñātaprakṛtāv ṛṇam /
Paścāt pratibhuvi prete parīpset kena hetunā // Manu, VIII. 161.
The implication of the question raised by Manu has been explained by Medhātithi. According to him the the maning of the verse is: 'should the creditor obtain it enterely by his own operations or should he compel the son also of the surety.'—

cover the debt of the debtor), then the person to whom such money has been paid, should pay it out of his own property.[1]

It is Kātyāyana who amongst the later writers on law has taken up this issue, which is presented in the verse of Manu in vague terms. According to him, if a person becomes a surety after taking a pledge (as personal security from the debtor), his son in the absence of the father should be made to pay the debt out of that pledge.[2]

The text of Manu does not mention the liability of the son of the surety in such a case, but the text of Kātyāyana is clear on the point. The commentators have explained the verse of Manu in the light of the provision mentioned by Kātyāyana. Medhātithi explains '*nirādiṣṭa dhana*' as a person who becomes a surety after taking money from the debtor.[3] Similarly he explains 'alaṃdhana' as one having received sufficient amount of wealth to pay the debt.[4] He observes in this context that if the amount received as such is small the surety should not pay.[5] He was fully conscious of the difficulties arising out of the wordings of the verse and accordingly he offers an explanation that though money is made over to the surety, yet it is the

'Kiṃ kevalenaivātmavyāpāreṇa uta pratibhuvaḥ putram api vyāpārayati.' He explains '*vijñātaprakṛti*' as a surety who is known to have received payment for standing as a surety: 'vijñātaprakṛtir vijñātakāraṇaḥ pratibhūtvena dhanaṃ gṛhītvā sthitaḥ'. This shows that in all cases the sureties did not stand as such with the sole intention of helping the debtor.

Vide here Vivādaratnākara, 43, for the reference to the view of Halāyudha on the interpretation of the term. See also the notes by Gaṅgānāth Jhā (Manusmṛti. Notes, II, 545 546). He wrongly translates the passage of Kṛtyakalpataru (vijñātaṃ prātibhāvye kāraṇaṃ bandhakādigrahaṇaṃ yasya sa tathā. Vy. Kāṇḍa, 306). He translates it: 'one whose solvency is well-known'. It should be like this: 'one whose nature to act as surety by taking pledge etc. is known.'

1. Nirādiṣṭadhanaś cet tu pratibhūḥ syād alaṃdhanaḥ /
Svadhanād eva tad dadyān nirādhiṣṭa iti sthitiḥ / Manu, VIII. 162.
2. Gṛhītvā bandhakaṃ yatra darśanasya sthito bhavet /
Vinā pitrā dhanaṃ tasmād dāpyaḥ syāt tadṛṇaṃ-sutaḥ // Kāt. 534.
The text underlined has different readings. Vide Sm. C, II. 353; Vivādaratnākara, 43.
3. Nisṛṣṭaṃ svadhanād arpitaṃ, bhava lagnaka idaṃ te dhanaṃ mattaḥ tvayā saṃśodhanīyaṃ yady ahaṃ na dadyām. On Manu, VIII. 162.
4. Paryāptadhanaḥ yāvad dhanaṃ uttamarṇāya dātavyaṃ tāvatparimāṇaṃ prasṛṣṭam. Ibid.
5. Svalpe tu nisṛṣṭe bahuni saṃśodhye na dāpayitavyaḥ. Ibid.

son of the surety who is made to pay out of his own property (the surety having died). This explanation suits the context because the son of the surety is the subject-matter of discourse. As for the surety himself, his obligation follows as a matter of course.[1]

Deveṇabhaṭṭa also takes the word '*nirādiṣṭadhana*' unexpectedly in the figurative sense to convey the sense of the son of the surety for appearance. He refers to the interpretation by Devasvāmī according to which if the surety who has received money (from the debtor) be in possession of sufficient money, he should pay from his own property. The signified meaning is that such a person does not get himself free from the obligation of suretyship by merely presenting the debtor as in the case of surety for appearance, but that he should pay like the surety for payment.[2]

While discussing this point of Manu, Dr. Sternbach makes certain observations, which can not be accepted as such. He observes : "Manu using the word 'pratibhū' (VIII. 162) stated more clearly than Kātyāyana that this rule was related to all kinds of sureties known to the *smṛtis*."[3] What we have to submit here is that the verse (VIII. 162) where the word *pratibhū* occurs, is to be regarded as an answer to the question raised by Manu in his previous verse (VIII. 161), where the term *adātari* appears and that has been explained as a surety other than the surety foa payment.[4] Dr. Sternbach himself has translated the verse as such.[5] Under the circumstances it does not appear appropriate to observe that this

1. Yadyapi dānapratibhūr atra nirādiṣṭas tatputro dāpyate svadhanād eva tad dadyān nirādiṣṭaputra iti draṣṭavyaṃ tasyaiva prakṛtatvāt. sākṣāt pratibhuvas tu pratibhūtvād eva pratitir asti.
Commentary on Manu, VIII. 162.
Vide Kṛtyakalpataru, Vyavahāra-kāṇḍa, 306 ; Vivādaratnākara, 43-44. See also the notes by G. N. Jhā, Manusmṛti Notes, 546.
2. Nirādiṣṭaśabdena samastena nirādiṣṭadhanasya darśanapratibhuvaḥ putro lakṣyate..... asyaiva vacanasyādhyāhāralakṣaṇāśrayaṇaṃ vihāyārthāntaram ucyate—nirādiṣṭadhanaḥ pratibhūr alaṃdhaneś cet syāt sa eva nirādiṣṭaḥ svadhanād eva dadyād iti, anirādiṣṭadhanavad adhamarṇaṃ darśayan na mucyate nirādiṣṭadhanaḥ kiṃ tu dānapratibhūvat dadyad iti tātparyārthaḥ. Etac cārthāntaraṃ devasvāminoktam. Smṛticandrikā, II, 354.
3. Sternbach, J, S. A. I. L., I., 195.
4. Adātari dānapratibhuvo'nyasmin pratibhuvi. Kṛtyakalpataru, 306.
5. Ibid., 194.

rule relates to all kinds of sureties, according to Manu. Manu does not even mention the surety for confidence.

5. Obligation of the son of the surety for appearance

The rules of Manu and Kātyāyana discussed above, are of special nature, but generally the son of the surety for appearance does not come under obligation to discharge the surety-debt of the father.

Kauṭilya has the provision that the surety-debt of the father shall not devolve on the son if he is unwilling to accept it.[1] Here mention should be made of another rule of Kauṭilya, wherein not only the sons, but the grandsons also have been placed under obligation to pay the surety-debt.[2] The rule is not quite clear and as it stands, the meaning should be that the sons or the grandsons shall bear the liability of suretyship regarding life, marriage and land, for which no time or place has been mentioned. The two rules are contradictory and obscurity surrounds the meaning of the second rule referred to regarding the nature of suretyship in connection with '*jīvita-vivāha-bhūmi*'.[3]

Gautama[4] and Vasiṣṭha[5] declare that such surety-debt shall not devolve on the son. Both of them, however do not mention

1. Prātibhāvyaṃ.....nākāmaḥ putro dāyādo vā rikthaharo dadyāt. Arthaśāstra, III, 16. 9.
2. Jīvitavivāhabhūmiprātibhāvyam asaṃkhyātadeśakālaṃ tu putrāḥ pautrā vā vaheyuḥ. Ibid, 3. 11. 18
3. The suggestion by Kangle that *Jīvitapratibhū* may stand for the guarantor for the man's life (ultimately indicating the surety for safety, mentioned by Kauṭilya—111. 18. 11), and *Vivāhapratibhū* may mean the trustee mentioned by Kauṭilya under the appellation of *Sukhāvastha* (III. 4. 9 ; 26), may appear quite convincing, (vide Kangle, Arthaśāstra, II, 263, f. n. 18). *Bhūmipratibhū* may be explained as a surety for land (i.e. a surety who undertakes the responsibility of acting as such by taking a land as security from the debtor. c. f. Manu, VIII, 162). In any case, no corroboration of these special types of sureties can be traced from the *dharmaśāstras*. Nor can the contradiction be easily accounted for. Vide here the notes by Dr. Sternbach on this rule, where he has discussed the question but without any positive solution. (J. S. A. I. L., I, 189-90)
4. Gautamadharmasūtra, XII. 38.
5. Vasiṣṭhadharmśāstra, XVI. 31.

here any specific case of surety. Manu, in almost the same language as that of Vasiṣṭha, exempts the sons from discharching the surety-debt of their father.[1] In the following verse he explains in more clear terms that the son of the surety (of the special type of) appearance is not to pay such debt of the father.[2] But as we have seen, the liability of the sons arises in the case where the father accepts suretyship after accepting money. Yājñavalkya also states that such surety-debt should not fall on the sons.[3] The same is the case with Viṣṇu.[4] Nārada remains in favour of exempting the sons from the payment of the surety-debt of their father.[5] Bṛhaspati has contradictory views on the point. In one place he states that the sons should not be made liable for the surety-debts of the father.[6] But he states again in another place that such exemption for the sons of the sureties is to be understood in the case of suretyships for appearance and for confidence, while in the case of suretyship for payment and for the delivery of the debtor's property, the liability for payment of the surety-debt of the father, remains.[7] Thus so far as the sons of the surety for appearance are concerned, Bṛhaspati shares the view held by his predecessors.

Kātyāyana shares the verse (536) with Bṛhaspati (X. 78) and it may be stated here that this provision does not fit at all with his other statement regarding the number of sureties (in the verse, 530, where the sureties are stated to be five in number). In

1. Manu, VIII. 159.
2. Manu, VIII. 162.
3. Darśanapratibhūr yatra mṛtaḥ prātyayiko'pi vā /
   Na tatputrā ṛṇam dadyur dadyur dānāya yaḥ sthitaḥ //
   Yāj, 11. 54. Vide also Yāj, 11. 53.
4. Viṣṇusmṛti, VI. 41.
5. Dadyāt putras tu paitṛkam /
   .....prātibhāvyakṛtaṃ vinā // Nārada, IV. 10.
6. Saurākṣikaṃ vṛthādānaṃ kāmakrodhapratiśrutam /
   Prātibhāvyaṃ daṇḍaśulkaśeṣaṃ putrān na dāpayet // Bṛ. S, X. 118.
7. Bṛhaspati. X. 78 = Kātyāyana. 536.
   The contradiction may be accounted for when we consider that the text of Bṛhaspati reconstructed in the light of the quotations appearing in different sources, does not claim to be the genuine Bṛhaspatismṛti in its original form. There are cases where the commentators and digest-writers ascribe wrongly verses to the author to whom they do not properly belong.

that list the first two are surety for payment and that for appearance and in these two cases, as we shall see subsequently the obligation of the sons are different. In the case of surety for payment, the sons are bound to pay, while in the case of the surety for appearance, they are exempted. Under the circumstances it is quite reasonable to ascribe the verse to Bṛhaspati only, where it fits properly in the context of the four types of sureties (X. 73). This is strengthened by the fact that in the *Smṛticandrikā*,[1] *Madanaratnapradīpa*,[2] *Sarasvatīvilāsa*[3] and *Vyavahāraprakāśā*[4] this verse has been attributed to Bṛhaspati only.

Mention here may be made of the text of Vyāsa, according to which the sons have the obligation of discharging the surety-debt of the father to the extent of the capital only (and not of the interest).[5] The text however, does not make any mention of the surety for appearance in particular.

From these discussions it is clear that except in the case where the surety for appearance accepts money from the debtor as his security (as mentioned by Manu and Kātyāyana), the sons of the surety for appearance do not come under the obligation of paying the surety-debt of the father.

On the question of the obligation of the sons to pay the surety-debt of the father, Medhātithi raises a prima facie question that the point of payment by the son does not arise since the father does not contract the debt in the real sense of the term. His reply is that when the man (here the father as surety) undertakes to pay a certain amount of money (in whichever circumstance it may be), that undertaking amounts to the same thing as a debt, because the result is the same.[6]

With reference to the provision made by Kātyāyana (534) regarding the position of the son of the surety who undertakes

1. II, 351.
2. p. 156.
3. p. 249.
4. p. 250.
5. Ṛṇaṃ paitāmahaṃ pautraḥ prātibhāvyāgataṃ sutaḥ /
   Samaṃ dadyāt tatsutau tu na dāpyāv iti niścayaḥ //
   Vyāsa quoted in Sm. C. II, 354, Mitākṣarā on Yāj. II, 54. etc.
6. Kathaṃ punaḥ prātibhāvyādiprāptis tarhi tadṛṇasya pitrā'gṛhītatvāt, naiṣa doṣaḥ. yad yena dātavyatayāṅgīkṛtaṃ tad gṛhītatulyaphalatvād gṛhītam eva.
   Medhātithi on Manu, VIII, 159.

suretyship after accepting a security (in the form of a pledge), Vijñāneśvara holds that the principle should be extended to the case of surety for confidence also.[1] It is Devaṇabhaṭṭa who points out the justification of such a rule. According to him the suretyship is accepted by thy person concerned after taking money from the debtor for his own security and that brings the liability on the son also, because consequent to the death of such a surety, that money automatically is to pass on to his son by the general principles of inheritance.[2] Devaṇabhaṭṭa also is in favour of extending the principle of this case to the cases of other sureties like *pramāṇapratibhū* etc. He points out that the underlying cause leading to the obligation of the son of the surety (in the case referred to) is his acceptance of money from the debtor (for standing as his surety). Therefore though there is specific mention of the son of the surety for appearance, yet the principle should be extended to the case of other sureties.[3]

Mitramiśra refers to a view according to which this liability comes even to other heirs to whom the pledge (taken as security by the surety) passes.[4]

Thus we notice that the commentators and the digest-writers agree fully in their interpretations that the rule that brings the sons of the special sort of surety for appearance, under liability to

1. Darśanagrahaṇaṃ pratyayasyāpy upalakṣaṇam.
Vijñāneśvara on Yāj, II. 54.
The same view is held by *Madanaratnapradīpa*, 157 ; *Sarasvatīvilāsa*, 249 ; *Vyavahāraprakāśa* (M), 251 and *Vivādabhaṅgārṇava*, Folio, 132, Lines 6-10. Here special mention should be made of the view of Nīlakaṇṭha, according to which the grandsons also are brought under obligation under the circumstances, to pay the surety-debt of the grandfather with interest: 'Dravyagrahaṇe (na) prātibhāvyāṅgīkāre tu putrapautrābhyām api savṛddhikaṃ deyam. Tathā ca kātyāyanaḥ'.....Vyavahāramayūkha, 177.
2. Svaviśrambhārtham adhamarṇād arthaṃ gṛhītvā yo darśanapratibhūtvam āpadya sthitaḥ saṃsthito mṛta iti yāvat, tasya suto vādinā dhaninā ṛṇikārthadhāraṇanibandhanaṃ prātibhāvyam iti vibhāvya yācyamānaḥ prātibhāvyāgatam ṛṇaṃ dāpya ity arthaḥ. Sm. C, II, 353.
3. Yadyapi tatsutagrahaṇād darśanapratibhūsutaviṣayo'yam apavādaḥ na pramāṇapratibhūsutaviṣaya iti pratibhāti, tathāpi pratibhūsutadāpane pramītasya pitur adhamarṇād arthagrahaṇapūrvakaṃ prātibhāvyaṃ atra vivakṣitaṃ nimittaṃ na tu darśanapratibhūsutatvam apīty asmād eva vacanād apavādo'nyatrāpi vivakṣitanimittasadbhāve smṛta eveti mantavyam. Sm. C, II, 353.
4. Yasya haste bandhakam āyāti tasya sarvasyāpi tasmād bandhakapratidānasya yuktatvād iti keciṭ. Vyavahāraprakāśa, 251,

pay the surety-debt of the father, should be reasonably extended in the case of other sureties (where the surety agrees to stand as surety after accepting money or a pledge).

6. Surety for confidence. *

In the evolntion of the concept of suretyship, it may be stated that the surety for confidence makes his appearanee at a later period. No reference to this type can be traced in the text of Kauṭilya, Gautama, Vasiṣṭha (of course these texts do not mention specifically any surety by name) and Manu. It is for the first time in the Yājñavalkyasmṛti that we come aross such a concept of surety along with that for payment and for appearance.[1] Viṣṇu[2] and Nārada[3] mention the surety for confidence. Bṛhaspati describes the nature of such a surety by declaring that he speaks of the honesty of the debtor.[4] Kātyāyana uses the term *viśvāsa* in place of *pratyaya* as used by other writers on law.[5] We find it recognised by both Hārīta[6] and Vyāsa.[7] In the *Śukranītisāra* it has been held that such a surety certifies the debtor by making mention of the livelhood, truthfulness and active nature,[8] an elaboration consistent with late period of that work.

The nature of a surety of this sort has been stated by Asahāya. According to him, the surety for confidence is demanded where the debtor on being asked to pay off the loan either denies

* Sternbach, Juridical studies in ancient Indian Law, I, 159-162.

1. Darśane pratyaye dāne prātibhāvyaṃ vidhīyate Yāj, II. 53.
2. Viṣṇusmṛti, VI. 41.
3. IV. 118.
4. In X. 73, Bṛhaspati mentions the sureties and in X. 74 he describes the surety for confidence thus : 'sādhur eṣo'paro'bravīt'.
5. Kātyāyana, 530.
6. Quoted in the Smṛticandrikā, II, 346.
7. Ibid. 347.
8. ...anenāyaṃ ca vṛttimān /
   Astīti na ca mithyaitad aṅgīkuryād atandritaḥ //
   Śukranītisāra, IV. 5. 125-126.

it or declares that such a loan has been paid off.[1] Asahāya appears to mean that such a surety is to testify to the truthfulness of the statement of the debtor.

Vijñāneśvara presents an illustration of this sort of surety. Here the surety asks the creditor to lend money to the debtor by relying on his words. He certifies that such a person is not likely to deceive him, the reason being that he comes from a respectable family and that he possesses fertile land or good village.[2] As such the surety certifies his pedigree and pecuniary position on the basis of which the creditor may feel secured about his investment.

Devaṇabhaṭṭa refers to the certificate of such surety regarding the character of the debtor as devoid of deceitfulness.[3] He points out that such a surety may be demanded in the case where servants are employed for work. Evidently such a surety testifies to the honesty of the person and by relying on it the master of the house may safely appoint him believing that he is not a thief.[4]

7. Liability of the surety for confidence

The surety for confidence is to be penalised in the form of paying the debt of the creditor in case his statement in certificate of the debtor is proved false, (i. e. if it is proved that the debtor is poor when it was certified that he was rich and so

1. Yadā dhanikenarṇiko vidhṛta evaṃ brūte, yathā mayā tava kiñ cin na dātavyam āsīt, tat tadā kāla eva sarvaṃ mayā praveśitam iti kāraṇottaraṃ prayacchati mithyottaraṃ vā dadāti. Tataś ca dhaniko vadati yady evaṃ tarhi... pratibhuvaṃ prayaccha. Evam ukta ṛṇī asminn arthe yaṃ puruṣaṃ pratyupakāraṇāya tasya prayacchati sa pratyayapratibhūr iti ucyate.
Asahāya's commentry on Nārada, IV. 118.

2. ... matpratyayenāsya dhanaṃ prayaccha nāyaṃ tvāṃ vañcayiṣyati, yato' mukasya putro'yam urvaraprāyabhūr asya grāmavaro vāstīti.
Mitākṣarā on Yāj, II. 53.

3. ... eṣa sādhur avañcakaḥ matpratyayenāsya dhanaṃ dehīti brūte.
Sm. C. II, 346.

4. Dāsādau coratvādiśaṃkāyāṃ viśvāsāya pratibhūḥ dehīti kāryaḥ.
Sm. C. II, 347. Vide also Sarasvatīvilāsa, 247.

on). This is directed by Yājñavalkya[1], Viṣṇu,[2] Nārada[3] and Bṛhaspati.[4] So far as Kātyāyana is concerned, we have pointed out before that he has the same verse (536) as that of Bṛhaspati (X. 78). and that it does not fit with his other verse (530). As the surety for confidence occupies the fourth position in his list, it cannot be stated accurately what his view is. Vyāsa has the same view as that mentioned by other writers on law.[5]

It is thus noticed that the writers on law are unanimous on the point that the surety for confidence comes under the liability of paying the debt of the debtor if his words of certificate reagrding the nature and status of the debtor are proved false.

By way of presenting the position of the surety for confidence, Dr. Sternbach attempts to find out some sort of difference between the surety for confidence and that for payment. He takes up a position like this : 'When taking the loan, the debtor was a wealthy man and later through no fault of his own lost his financial stability and was unable to repay the debt, although he had shown his readiness to do so, the surety for honesty would not be liable to discharge the debt ; on the contrary the surety for payment will be liable to discharge such a debt.' He refers to 'the text of Nārada (IV. 119) in support of the view and observes : In consequence, the obligation of the surety did not arise if the debt had not been paid because of the lack of funds on the part of the debtor, who was willing to repay the debt, but was unable to do so.'[6] What we here submit is that neither in the text itself nor in the commentary of Asahāya is there

1. Ādyau tu vitathe dāpyau..... Yāj, II. 53,
   The word *vitatha* has been explained by Vijñāneśvara as :- anyathābhāva ...viśvāsavyabhicāraḥ. On Yāj, II. 53.
   Devaṇabhaṭṭa explains : Sādhur eṣa ity evaṃvidhayoḥ pratibhūvākyayor mithyātve. Sm. C. II, 352 ; Caṇḍeśvara explains : upadarśitasādhutvabhaṅge. Vivādaratnākara, 40. Vide also M. R. P., 156 and the commentary of Nanda on Viṣṇu, VI. 41.
2. VI. 41.
3. ...pratyaye vāpi hāpite /
   Pratibhūs tadṛṇaṃ dadyāt... // Nārada, IV. 119.
4. X. 78.
5. Vipratyaye lekhyadivyadarśane cākṛte sati /
   Ṛṇaṃ dāpyāḥ pratibhuvaḥ..... // The Smṛticandrikā quotes it and explains ; vipratyaye vitathe pratyaye..... II, 352.
6. Sternbach, Juridical studies in ancient Indian Law, I, 160.

any hint of such a situation. Reference however, may be made to the observations of Jagannātha who dicusses various situations relating to the sureties for payment and for confidence. In his *Vivādabhaṅgārṇava*, Jagannātha observes that when surety for confidence (honesty) certifies the debtor to be honest and if subsequently through conflagration or depridation by thieves and robbers he is reduced to indigence, his honesty is unimpeached. As the statement of the surety for confidence in this case is not proved false (because the question of non-payment by debtor does not arise at all under the unprecedented adverse circumstances) and as there is hardly any sin in the non-payment of the debt by the debtor, the surety is not to be compelled to pay the debt.[1] He continues to state that under the circumstances, the surety for payment will be under obligation to pay on the basis of his own statement that he would discharge his debt (in case of his failure to do so).[2] The view of Jagannātha has no supporting text but it contains a rationalisation of the textual position such as might conceivably have been elicited by enquiries on the part of an English-trained lawyer. Practically speaking, the *śāstrakāras* at the time of formulating the rules did not anticipate all possible intricate cases involved in them and in certain cases we had occasion to show that the commentators and digest-writers interpreted the laws in a way not to be contradictory to the funndmenal considerations.

Jagannātha observes that if the surety certifies the debtor to be wealthy and if in that case it is proved that he is poor, then his liability will arise in respect of payment of the debt though the debt remains undischarged becuase of the inability of the debtor.[3] If however, in such case (i.e. when the surety for confidence

1. ...ato dānalagnakapratyayalagnakayor aviśeṣa eva iti cen na bahuśo viśeṣāt. Tathā hi yo lagnako'bravīt ayaṃ dhārmika iti tataś ca adhamarṇasyāgnic-auropadravādinā atidāridrye upasthite deyadravyasāmānyābhāvān na dhārmikatvabhaṅgaḥ. tena ṛṇāpariśodhanasyāniṣṭatvāt tatra ca saḥ pratyayalagnako na dāpanīyaḥ.

Vivādabhaṅgārṇava, F. 125, L 16-21 ; Col. Dig. I. 236.

2. Yadi lagnako'kathayat 'aham ṛṇaṃ śodhayiṣyāmīti' tadā tu sa dānalagnako dāpanīya eva iti viśeṣaḥ. Ibid. F. 125, L. 22-23.

3. Yadi lagnako'kathayat ayaṃ dhanavān iti tadānīm asya daridratve pramite aśaktyā ṛṇāpariśodhane'pi pratyayalagnako dāpanīyaḥ.

Ibid. F. 125, L. 24-27 ; Col. Dig. I. 236.

certifies the debtor to be wealthy) the wealthiness is proved to be correct and if it be the case that the debtor withholds payment through dishonesty and the like, the surety for confidence cannot be compelled to pay (because his statement in certificate of the wealthiness of the debtor is correct), while in such a case the surety for payment should be made to pay (because his contract was to the extent of paying the amount in case of failure of the debtor).[1]

Jagannātha goes on to state that the surety for confidence can make a statement on the basis of his past observation and experience. If on the basis of his past experience such a surety stated that the debtor was honest and that he paid up a loan within the stipulated period previously without litigation and that there was no case of dishonesty on his part, the surery will not be amenable in view of the fact that it is not possible to predict the future conduct of a person. If however, the surety speaks about the future mode of conduct of the debtor to the effect that he will not be dishonest and that is known to him and as such the loan may be issued to him on the basis of his words, and if in such a case the borrower practises knavery subsequenetly, then the foolish surety for confidence should be made to pay.[2] This looks like juridical speculation, and has its own interest. In fact Jagannātha is reacting to the English distinction between representation as to past conduct and representation in the nature of insurance. The latter was certainly not unknwn to the ancient Hindu law, as we infer from the classes of suretyships already listed above. Jagannātha takes up another case of interest. He states that when one lends money to the servant of a person on the understanding that his wages will not be paid without the knowledge of the creditor, the servant's master necessarily assumes

1. Dhanavattve ca pramite śāṭhyādinā na dadāti adhamarṇas tatrāpi dānalagnako dāpanīyaḥ na tu pratyayalagnakaḥ.

Vivādabhaṅgārṇava, F. 125, Lines, 28-29.

2. Vastutas tu yadā ayaṃ sādhur ity abravīt pratyayalagnakaḥ... anyasmād ṛṇaṃ gṛhītvā avadhikāle vivādam antareṇa śodhitavān adhamarṇaḥ na tu kadācit api śāṭhyaṃ kṛtavān, parataś caitasyaiva ṛṇaśodhane śāṭhyaṃ cakre tadā na lagnakasya doṣaḥ, bhaviṣyadviṣayasya kenāpi jñātum aśakyatvāt. Yadi tu pratyayalangnaka evaṃ abravīt ayaṃ na śāṭhyaṃ kariṣyati mayā etat samyak jñātam, madvacasā pratītaḥ niḥśaṃkaḥ asmai ṛṇaṃ dehīti, tadā tu paścād adhamarṇasya śāṭhyācaraṇe dāpanīya eva mūrkhaḥ pratyayalagnakaḥ.

Ibid. F. 125, L. 11-21 ; Col. Dig. I. 236.

the role of a surety in this case, guaranteeing, in effect, the loan, to his servant. He observes that such a surety in this case will be treated as a surety for payment according to the modern view. But in others' view he will be a surety for confidence. In the case of the surety for confidence the borrower is certified to the effect that he is honest and on his words money is given to him as loan. Similarly the creditor here lends the money on the understanding that he would get the money from the master. Therefore if he falsifies his word, the master will be compelled to pay the debt. He should however be liable to the extent of the actual wages of the servant and not the whole debt, because he became surety for the debt to be covered by his wages.[1]

While making reference to the surety for appearance and the surety for confidence, Jagannātha observes that so long as they are there, the loan secured by surety will bear interest at the rate of 'an eightieth part increased by an eighth'. If they die or go to a foreign territory with no possibility of return, the debt remains unsecured without surety. The rate of interest in such case should be at the rate of two in hundred.[2]

So far as the liability of the sons of such a surety is concerned, it may be stated in short that like the sons of the surety for appearance in general, they also are exempted from the payment of the surety-debt of their father.[3]

1. Dāsasya vetanaṃ bhavato'jñātaṃ nāsmai samarpayiṣyāmīti bhṛtyabhartrā ukto bhṛtyāya kaś cid ṛṇaṃ dadāti. Tatra bhṛtyabhartā lagnako bhavatīty uktam. Sa ca navyamate arpaṇalagnaka eva, anyamate tu pratyayalagnaka eva. Tathā hi ayaṃ sādhur iti kenacid ukte pratīto dhanikaḥ adhamarṇāya ṛṇaṃ dadāti. Tathā etadvetanaṃ bhavadajñātaṃ na samarpayiṣyāmīti ukte aham avaśyam asmād dhanaṃ prāpsyāmīti pratītaḥ adhamarṇāya dadāti, tadvākyasya mithyātve bhṛtyabhartā ṛṇaṃ dāpanīyaḥ. Tatra yāvad vetanaṃ tāvad eva dāpanīyaḥ na tu sarvam ṛṇaṃ bhṛtyabhartur vetanayogyaṛṇasyaiva lagnakatvāt.

Ibid. F. 124, L. 35-42 and F. 125, L. 1-4; Col. Dig. I. 235.

2. Atredaṃ (bodhyam) darśanapratyalagnakau yāvat vartete tāvat ṛṇaṃ salagnakam eva tatra sāṣṭāśītibhāgo vṛddhiḥ, tayor maraṇe punarāgamanasambhāvanārahitavideśagamane vā tadavadhi nirādhānam eva. Tatra dvikaśatavṛddhir iti boddhavyam.

Vivādabhaṅgārṇava, F. 126, L. 14-18; Col. Dig. I. 237.

3. Vide Yāj. II. 53, 54; Viṣṇu. VI. 41, Bṛhaspatismṛti, X, 78.

8. Surety for payment.[1]

It may be stated that the word *pratibhū*, which as we have observed, stands for one representing the debtor (tatkārye tadvat bhavati), finds its proper expression in the surety for payment. In the case of the surety for appearance, the obligation of the surety is to produce the man before the creditor or the court and the question of payment of the debt arises only consequent to his failure to do so. As to a surety for confidence, his obligation to pay arises if his statement in certificate of the character and wealth of the debtor is belied. In the other two cases, namely, suretyship for the delivery of the pledge and that for the delivery of the debtor's property, the primary obligation is in the form of delivery of the pledge and the debtor's property respectively to the creditor. In case of failure to do so, the liability for the payment of the debt arises. Same is the case with the suretyship in oath, proof, litigation etc. In all these cases the question of payment of the debt by the surety is not direct and absolute. Thus in the case of suretyship for appearance, the surety is not to pay if he can produce the debtor at the specified time and place. Similarly in the case of the suretyship for the delivery of the debtor's property, the obligation is finished if the surety can deliver the property of the debtor to the creditor. But in the case of the suretyship for payment, the obligation of the surety does not go so long as the debt is not fully discharged by the debtor. So the surety becomes the representative of the debtor in the real sense of the term, in respect of the payment of the debt.

It may be presumed that the surety for payment was the original form of surety so far as the debt is concerned and that other cases of suretyship have been conceived of gradually by process of analogical extension. So whenever there is mention in general of suretyship (prātibhāvya) it may be taken for granted that it refers to the surety for payment.

Kauṭilya refers to the sureties in general without reference to any particular type in the rule where it is prescribed that on the death of the debtor, the debt should be discharged among others by the sureties.[2] From the nature of the context it may be taken for

1. Sternbach, Juridical studies in ancient Indian Law, I, 162-164
2. Pretasya putrāḥ kusīdaṃ dadyuḥ..... pratibhuvo vā. Arthaśāstra. III, II. 4.

ti (X. 118) also in one place agrees with this view. But there are contradictory statements by the authors themselves in their texts in most of the cases. We had occasion to refer to the contradictions involved in the text of Kauṭilya. So far as Manu is concerned, we find an explanation by the author himself in the very next verse (VIII. 160), where it has been stated that the prohibition regarding the payment of the surety-debt by the sons (as prescribed in the verse, VIII. 159), should be restricted to the case of the sons of the surety for appearance (he does not mention the surety for confidence). Bṛhaspati (X. 78) brings the sons of surety for payment and the surety for the delivery of the debtor's property, under obligation to discharge the surety-debt of the father. These contradictions may be solved by suggesting that in the society there might have been a view current according to which the sureties themselves were regarded as the persons responsible for the debts. The suggestion comes from the use of the word '*udāharanti*' in the text of Vasiṣṭha. It is likely that the sons were brought into the picture at a later period and it may be suggested that first they were made answerable to certain special types of suretyship (as hinted by Kauṭilya. III. II. 8) and then to the suretyship for payment (as in Manu) and finally to that of delivery of the debtor's property (as we notice in the text of Bṛhaspati, X. 76), by process of analogical extension. The text of Manu is not uniform and contains many contradictory statements (such as about *niyoga*) and the present case may be treated as one of those examples, but the author here consciously makes adjustment with the idea current in the society and his new provision. The text of Bṛhaspati has not yet been recovered in its original form and as such, the contradiction cannot be fully avoided because the text as we have is reconstructed on the basis of different quotations ascribed to Bṛhaspati, as they appear in various digests and commentaries. The conclusion, therefore, that such obligation of the sons was introduced at a comparatively later period in the society may not appear wholly unfounded. Sternbach rightly points out that these are examples of attempts of 'harmonising law with the requirements of economic conditions (in ancient India).[1]

1. Sternbach, Juridical studies in ancient Indian Law, I, 186-187.

On the question of the obligation of the sons and other heirs of the surety for payment, Manu directs that the king may make the heirs (sons) of the deceased surety for payment, even to pay (the debt).[1]

Yājñavalkya provides that in this case, the sons of the sureties are also to be made to pay.[2] The same view is held by Viṣṇu[3] and Bṛhaspati.[4] Kātyāyana, as we have mentioned before has the verse (536) in common with Bṛhaspati, but this direction does not fit with other statement, where he mentioned five sorts of sureties and where the surety for payment is mentioned at the top of the list. (verse. 530). The part '*ādyau tu vitath dāpyau*' does not suit the spirit of the verse as it appears in the text of Bṛhaspati. It is therefore appropriate to observe that Kātyāyana does not have any provision for the son of a surety for payment.

Vyāsa (as already pointed out) specifically makes the sons of sureties in general liable for payment of the surety-debt to the extent of the capital. Nandapaṇḍita refers to a text of Vyāsa that in case of suretyship for payment and litigation, the sureties and their sons are to be made to pay.[5]

Vijñāneśvara in his interpretation of the text of Yājñavalkya (II. 53) observes that the grandson should not be made to pay the surety-debt of the grandfather.[6]

1. Dānapratibhuvi prete dāyādān api dāpayet. Manu, VIII. 160.
   The interpretation of the word '*dāyāda*' deserves attention. Medhātithi followed by Kullūka and others interpret it in the sense of a son. Govindarāja explains it as inheritors of the estate (rikthabhājaḥ) and he is followed by Sarvajñanārāyaṇa (rikhthagrāhiṇaḥ na tu putrān eva).
2. (Ādyau tu vitathe dāpyāv) itarasya sutā api. Yāj, II. 53.
   Vide also Yāj, II. 54.
3. Viṣṇusmṛti. VI. 41.
4. (Ādyau tu vitathe dāpyāu tatkālāveditaṃ dhanam /)
   Uttarau tu visaṃvāde tau vinā tatsutau tathā // Bṛhaspati, X. 78.
   Devaṇabhaṭṭa explains *visaṃvāda* as non-payment of the debt because of deceitfulness etc. by the debtor. '*tau vinā*' has been interpreted as 'in the case of going away from the country or death' : 'Visaṃbāde śāṭhyādinā dhane ṛṇikeṇāpratidatte. tau vinā uttarayoḥ pravāse maraṇe vā jāte ity arthaḥ.' Sm. C. II, 352.
   Vide also Vyavahāraprakāśa of Mitramiśra, 250.
5. Dānavādipratibhuvau dāpyau tatputrakau tathā.
   Quoted by Nanda in his commentary on Viṣṇu, VI. 41.
6. Suta iti vadatā na pautrā dāpyā iti darśitam.
   His commentary on Yāj, II. 53.

The interpretation of the word *dāyāda* in the text of Manu (VIII. 160) as explained by Govindarāja, offers the suggestion that the inheritors to the estate of the deceased surety for payment were also made liable for the debt (surety-debt) of such surety. But Devaṇabhaṭṭa in his attempt to harmonise the situations, explains that the term should refer to the sons only, otherwise it becomes contradictory to the statements of Vyāsa and Bṛhaspati.[1]

Here reference should be made to the observations of Devaṇabhaṭṭa, wherein he has attempted to formulate the principle guiding the obligation of the surety and his sons to pay the debt. In his view, the surety will be made to pay when he has undertaken to pay the debt. It is the agreement that should be the guiding factor of payment in such a case. In his absence his son should be made to pay. In the absence of such an agreement, the surety only will be liable (and not his son). Thus in the in the case of the surety for proof, the sons are not to pay the debt, as there is no agreement to that effect. In the case of the surety in litigation as there is an undertaking to the effect 'I shall pay the amount proved in the court as due or pay the fine', he is liable to pay and also the son in his absence. Devaṇabhaṭṭa observes that this principle on the basis of the terms of agreement, should be applied in all the cases of suretyship[2].

This interpretation of Devaṇabhaṭṭa, if taken up in the light of the question raised by Medhātithi, may be explained in the way that the undertaking by the surety himself to pay the

1. Yat tu manunoktaṃ: dānapratibhuvi... dāpayed iti tatra dāyādaśabdaḥ suteṣv evāvatiṣṭhate, anyathā sapiṇḍamātrābhidhāne tatsutau tu na dāpyāv iti niścayaḥ iti pūrvoktavacanavirodhāpatteḥ, prātibhāvyāgataṃ pautrair dātavyaṃ na kvacid bhaved iti bṛhaspativacanavirodhāpatteś ca.
Smṛticandrikā, II. 355.

2. Etad uktaṃ bhavati, ṛṇaṃ vānyad vā dhanādikam ahaṃ tava dāsyāmity evam pratibhuvā yatrāṅgīkṛtaṃ tatra pratibhūr dāpyaḥ, tasyābhāve tatputro vā dāpyaḥ, anyatra tu pratibhūr eveti. Evaṃ ca pramāṇapratibhuvāṃ tv evam anaṅgīkārāt pramāṇapratibhūr eva dāpyaḥ, na putrāḥ, Vivādapratibhuvā tu sādhitadhanaṃ daṇḍadhanaṃ ca dāsyāmīty aṅgīkṛtatvāt dānapratibhūvat sati sambhave sa eva dāpyo'nyathā tu tatputra ity avagantavyam . . evaṃ anyeṣām abhayagṛhītabandhopasthānapratibhuvāṃ aṅgīkārānaṅgīkāraprakāram ālocya pratyayapratibhūvad dānapratibhūvad vā dāpanavidhayaḥ ūhyāḥ. Sm. C. II, 352.

debt on behalf of the debtor, brings on him the liability to pay it himself. This undertaking, as Medhātithi explains, is equivalent to debt (incurred by him). The similarity is on the point of payment of both the types of money (the normal debt and the surety-debt) under all circumstances (*avaśyadeyatva*). Once this concept in applied to the case of the surety, the position of the son becomes quite convincing. As in the case of a normal debt, the obligation of the son arises because of his status as a son (*putratvena*, as explained by Vijñāneśvara), independent of the question whether he inherits his estate or not, similarly that liability is extended in this case also because of the special position of the father-son relationship as conceived of in the *śāstras*. In the case of the surety for payment, the question of payment of the surety-debt by the son may be explained in the situation where the father leaves behind him an estate. In such a case his obligation arises in twofold ways, both as a son and as the inheritor of the estate. Where however such a surety does not leave behind any property, the liability of the son should be explained as spiritual in the sense that because the agreement of his father is regarded as equivalent to a debt and because the inability to discharge a debt is supposed to lead a man to hell and because a father craves for the birth of a male issue for getting himself free from the possibility of falling into hell, the son has been directed to regard it his principal duty to save his father from such unholy situations. So far as the position of the son of the surety for the debtor's property is concerned, where the son also is made liable for the surety-debt of the father (as mentioned by Bṛhaspati), no suitable explanations in support can be given except that the nature of the agreement provides for giving of something (arpaṇa).

To sum up, the sons of the sureties for payment are under obligation to discharge the surety-debt of the father, the only concession being that they should not pay the interest.[1] The grandsons are exempted from such liability.[2]

1. Prātibhāvyāgataṃ pautrair dātavyaṃ na tu tat kvacit /
   Putreṇāpi samaṃ deyam ṛṇaṃ sarvatra paitṛkam // Kātyāyana. 561.
   Vide the interpretation of the verse in the Vivādaratnākara, 44 and Vivādacintāmaṇi, 13, where *samām* has been explained as 'without interest'.
2. This verse of Kātyāyana and that of Vyāsa mentioned earlier are the texts in support.

9. Surety for delivery of the property of the debtor.[1]

We have already made mention of this sort of surety in the section on the number of sureties. This sort of surety has been mentioned by Bṛhaspati[2] and Vyāsa.[3]

Bṛhaspati observes that the surety of this sort undertakes to deliver the properties (of the debtor to the creditor).[4] This sort of surety has not been mentioned by other writers on law except Vyāsa and it is likely that there was not much difference between the surety for payment and that for the delivery of the debtor's porperty. The interpretations regarding its nature are not convincing. Thus Devaṇabhaṭṭa simply says that the surety in this case states that if the debtor does not pay the debt he will pay his money.[5] Here no distinction is clearly noticed between the two types of surety. Caṇḍeśvara also does not help us to understand the nature of this

1. Sternbach, Juridical studies in ancient Indian Law, I. 164-166.
2. Bṛhaspati, X. 73.
3. Vyāsa as quoted in the Smṛticandrikā, II, 347; Vyavahāraprakāśa (P), 225. Nanda's commentary on Viṣṇu, VI. 41. Vyavahāraprakāśa of Mitramiśra, 248.
   Note here the wrong statement of Dr. Sternbach: "Other smṛtis which enumerated even five or seven sorts of sureties did not mention ṛṇidravyārpaṇa". Juridical Studies in ancient Indian Law, I, 164. In the list of Vyāsa, where he mentions seven sorts of sureties, this is the sixth one.
   Similar is the statement again made by Sternbach that "Bṛhaspati did not give any definition of Ṛṇidravyārpaṇa". Ibid. 164.
   Bṛhaspati, as in the other cases of suretyship, defines here also this type in X. 74. Vide Smṛticandrikā, II, 346: 'catuṣprakārapratibhuvām aṅgīkāraprakāro'pi tenaiva darśitaḥ'.
   Reference may again be made to his wrong statement as: 'However Kāt (536) quoted Bṛhaspati (X. 78)... Therefore we can assume that this kind of surety was known to Kātyāyana as well. *'Ibid, 164.* Kātyāyana does not refer to Bṛhaspati by name. This verse belongs to Bṛhaspati and it fits well with his proposition in verse (X. 73). In most of the digest texts this has been attributed to Bṛhaspati. Vide, Sm. C, II, 351; M. R. P., 156; Sarasvatīvilāsa, 249.
   His statement that such surety was known to Kātyāyana, cannot be accepted as such.
4. ...etaddrviṇam arpayāmīti cāparaḥ. Bṛhaspatī. X. 74.
5. Aparaḥ ṛṇidravyārpaṇapratibhūr yadāyaṃ gṛhītaṃ dhanaṃ na dadāti tadāham etadīyaṃ dhanam arpayāmīti bravīti. Sm. C, II, 346. By 'dhanam' should be meant here the property of the debtor, which Devaṇabhaṭṭa explains before as: 'ṛṇino yad dravyaṃ gṛhopakaraṇādi'.

surety.[1] Pṛthvīcandra takes up the reading as '*ṛṇe dravyārpaṇe tathā*' and explains *ṛṇe* as in the case of debt (*ṛṇadāne*). *Arpaṇa* refers, according to him, to the particular type of loan called *yācitaka*.[2] Here the surety undertakes the responsibility of presenting personally the articles (like jewelleries etc.) which were taken as loan by the debtor and which he fails to give within the stipulated period.[3] He makes out the difference stating that here the responsibility is to the extent of presenting articles, while in the case of the suretyship for payment, he is under obligation to pay out of his own property.[4] He refers also to the text as '*ṛṇidravyārpaṇe*' and explains it as delivering the objects of household of the debtor to the creditor.[5]

In the Madanaratnapradīpa, it has been explained that the surety here undertakes to deliver the properties of the debtor, in the form of household utensils etc. to the creditor.[6]

The *Vivādacintāmaṇi* refers to the view of *sampradāya* (this may be a reference to an unknown work or simply to common tradition), according to which the reading should be '*ṛṇidravyārpaṇe*' and the meaning should be delivery of the property of the debtor to the creditor.[7] Vācaspatimiśra also holds that '*arpaṇa*' should refer to the special type of debt called '*yācitaka*'. He makes out the distinction between the two types of suretyship, the surety for payment and that for the delivery of debtor's property, by explaining that in the former case the surety is to pay from his own property, while in the latter the property, belonging to the creditor (and taken as loan by the debtor) is promised to be handed over to the creditor.[8]

1. Vide Vivādaratnākara, 43.
2. For detailed notes on '*Yācitaka*' type of loan vide, J. S. A. I. L, I. 42-43.
3. Ṛṇe ṛṇādāna iti sambandhaḥ. arpaṇam atra yācitakaviṣayam, tena kenāpi kiñcid alaṃkārādikaṃ yācñayānītaṃ tatra ced anyo'bhidhatte yady ayaṃ na pratyarpayati tadāham ānīya darśayiṣyāmīti, Vy. P. (P), 225.
4. Atrārpaṇamātram ṛṇe tu dānam eveti dvayor bhedenopanyāsaḥ. Ibid, 225.
5. Kvacit tu ṛṇidravyārpaṇe ity api pāṭhaḥ. Tatra ṛṇino yad dravyaṃ gṛhopakaraṇādi tasyārpaṇe. Vyavahāraprakāśa, 225.
6. Aparaḥ ṛṇidravyārpratibhūr yady ayaṃ na dadāti tadāham etadīyaṃ gṛhopakaraṇādikam arpayiṣyāmīti kathayatīty arthaḥ. M. R. P, 155.
7. Sampradāyas tu ṛṇidravyārpaṇe iti paṭhitvā ṛṇidravyasya dhanikārpaṇe ity artham āha. Vivādacintāmaṇi, 12-13.
8. Ṛṇe dāne iti sambandhaḥ. arpaṇaṃ atra yācitakaviṣayam, tena yat kiñcit prārthya nītaṃ tatrāparo vadati yady ayaṃ nānīyārpayati tadā mayārpaṇi-

Nandapaṇḍita in his commentary on Viṣṇusmṛti (VI. 41) interprets the significance of *ṛṇidravyaārpaṇa* by stating that the surety here undertakes the responsibility of handing over the chattel or pledge given by the debtor to the creditor.[1] He brings out the difference between the two by stating that in the case of the surety for payment the property to be given by the surety belongs to the surety himself, while in the other case he simply undertakes to hand over the property or pledge given by the debtor.[2] The emphasis laid by Nanda on the part '*ṛṇinā dattaṃ dravyaṃ bandhakaṃ vā*' (the object or pledge as may be given by the debtor) may suggest here that the role of such a surety is like that of a reliable person (often a common friend), who retains with him the pledge or an article (in a case where it is not actually passed over to the possession of the creditor). This adjusts well with the concept of *bandha*, one meaning of which is that it is placed with a common friend of the debtor and the creditor. If such a position is not accepted, it cannot be explained properly how and on what authority the surety can deliver the property of the debtor to the creditor, even if he undertakes to do so. Such a surety should not be taken to be the *Ādhipāla* type of surety, for as we have already pointed out, the *Ādhipāla* surety stands as guarantee against any fraud or claim on the property pledged with the creditor (and not kept with the surety). There may however, be another possibility. This type of surety may have a reference to the *Pratyarpaka* type, mentioned by Devaṇabhaṭṭa.[3] Here the surety undertakes the responsibility of getting the valuable pledge returnd to the debtor after taking it from the creditor. This may be supported by the statement of the *Śukranītisāra*, where of the seven sorts of sureties, one has been described as one who undertakes the responsibility of making him return (give) the pledge.[4] Sternbach suggests this, mentioning it

yam iti. Tena tatrārpaṇamātraṃ na dānam ṛṇe tu dānam eva dvayor iti bhedaḥ. Vivādacintāmaṇi, 12,

1. Ṛṇinā dattaṃ dravyaṃ bandhakaṃ vā ahaṃ tvāṃ prāpayiṣyāmīti yo vadet sa caturthaḥ pratibhūr ity arthaḥ. Com. on Viṣṇu, VI. 41.
2. Dānasya svadravyaviṣayatvāt arpaṇasya ṛṇidattadravyaviṣayatvād bhedenopanyāsaḥ. Ibid.
3. Smṛticandrikā, II, 347.
4. Śukranītisāra, IV. 5. 123.

as the statement of 'some commentators'. He observes in this connection that 'it took place, in particular, in the case of Caritra-pledges .....'[1]. It may be noted in this connection that the *Caritrabandhakakṛta* type of pledge, as interpreted by Vijñāneśvara, shows that reliance is made on the good conduct of the creditor and in such a case, the question of a surety like *Pratyarpaka* hardly arises. It may thus be applied more appropriately to a case where the debtor in his distressed state is complled to take a loan against a pledge of greater value and when he does not know the conduct of the creditor and as such may rightly seek the assistance of a surety like *Pratyarpaka.*

Jagannātha has detailed discussion on the point. After making reference to the view of Caṇḍeśvara as stated in the Vivādartnākara (p. 43), he explains the position. Thus when the debtor resides in a distant part of the country and on that ground the creditor demands a person who will collect money for him (from the debtor), such a surety takes up the responsibility of collecting the debt from the debtor for delivery to the creditor.[2] He refers to the interpretation by modern authors according to whom such a surety is for the delivery of the debtor's mortgaged property. Thus when the debtor takes a loan by placing a piece of land as a pledge and when the creditor demands some one as surety for handing over to him the produce of the field, the surety for delivery undertakes the task of delivering the produce of the field in such a case. In this interpretation, '*dravya*' is to be understood in the sense the produce of the pledged piece of land.[3]

By way of explaining the position of Vācaspatimiśra, who interprets the case as making reference to the special type of loan as

1. Sternbach, Juridical studies in ancient Indian Law, I., 165.
2. Tathā ca dhaniko brūte, na mamāyam ṛṇaṃ dāsyati ayaṃ dūrasthaḥ kaś cāsmād dhanaṃ gṛhītvā mayi samarpayiṣyati, tatra ṛṇidravyārpaṇalagnakaḥ brūte ahaṃ arpayiṣyāmīti.
   Vivādabhaṅgārṇava, F. 124, L. 4-7 ; Col. Dig. I. 234.
3. Navyās tu (ṛṇidravyārpaṇe) ṛṇidravyasya bardhasya arpaṇe ity arthaḥ. yathā kṣetraṃ bandhaṃ kṛtvā ṛṇaṃ gṛhṇāti adhamarṇaḥ, uttamarṇo brūte ko'sya śasyāni mayi śamarpayiṣyati, tatra ṛṇidravyārpaṇalagnakas tv āha, ahaṃ etaddravyam arpayāmīti. Etasya adhamarṇasya dravyaṃ bandhakībhūtakṣetrabhavaśasyādi iti vyācakṣate.
   Vivādabhaṅgārṇava, F. 124, L. 10-15 ; Col. Dig. I. 234.

Yācitaka, Jagannātha observes that a man may ask for ornaments as loan to someone for use on a day of festivity. The creditor thereupon may ask as to what will happen if the debtor does not return that. In such a situation the surety for delivery undertakes to deliver the goods (of the creditor) in case of failure of the debtor. This cannot be treated as an act falling under the scope of the surety for payment, because the property as such belongs to the creditor only and this is indicated by the word '*arpaṇa*'.[1] He refers to the view according to which this surety is to be included under the category of the surety for payment.[2] He himself observes that in effect there is no difference between the two.[3]

These interpretations suggest that whatever might have been the proper significance of this sort of surety, it was lost to the commentators and the digest-writers, who presented some of the possible explanations only.

With reference to the responsiblity of the sons of such a surety, Bṛhaspati states clearly that they (the sons) come under obligation like the sons of the surety for payment.[4] We do not have any suggestion from the commentators regarding this provision. The principle laid down by Devaṇabhaṭṭa for the sons of the surety for payment may be applied here. According to him, the responsibility of the sons should arise where there is direct agreement for payment by the surety. We may here suggest that the digest-writers themselves had no clear concept of this sort of surety as distinct from the surety for payment. Therefore if there was no difference between the two, the liability of the sons of this surety may arise in the same way as that of the sons of the surety for payment. In fact, herein also there is an agreement on the part of the surety to give (hand over) something (the wealth of property or the pledge) to the creditor and that perhaps has been equated with his agreement to pay in the case of

1. Dravyārpaṇe iti yācitakaviṣyam. yācitakaṃ ca yat kiñcit kasmāt cit puruṣāt yācitvā yat prāpyate alaṃkārādikaṃ tat. Yathā eko brūte alaṃkārān dehi madgṛhe utsavadine śobhārtham, dhanī brūte, yadi tvaṃ na samarpayiṣyasi tadā kiṃ bhaviṣyati, tatrārpaṇalagnakas tv āha etad dravyam arpayāmīti. Atra tadalaṃkārasya pūrvasvāmimātradravyatvān na dānaṃ sambhavatīti arpaṇam uktam. Ibid. F. 124, L. 16-23.
2. Col. Dig, I. 238.
3. Col. Dig, I. 238.
4. Bṛhaspati, X. 78.

suretyship for payment. In short, it may be suggested that the liability of the sons in this case might have been prescribed on analogical grounds.

10. Surety for delivery of pledge.[1]

The surety under the appellation of *gṛhītabandhopasthāna* undertakes to deliver the pledge and may be similar in certain respect to the surety who delivers the property of the debtor (*ṛṇidravyārpaṇapratibhū*). We have already mentioned that the commentators and the digest-writers were not unanimous in ascertaining the true nature of the surety under the designation of *ṛṇidravyārpaṇapratibhū*, and that contributes to the difficulty of understanding the nature of this sort of surety also. The digest-writers who mention this sort of surety, hardly offer any explanation to understand the nature of this surety.[2] They refer to the statement of Vyāsa, who specifically mentions it as distinct from the surety for the delivery of the property of the debtor. Here it may be mentioned that the term *upasthāna* standing for the *upasthānapratibhū* in the text of Hārīta[3] has been explained by Devaṇabhaṭṭa as making reference to the surety for delivery of a pledge.[4] The term occurs also in the text of Kātyāyana (530) where to suit the context, it has been explained as the surety for appearance.[5] This shows that the exact implication of *upasthāna* was not clear to the digest-writers. In his explanation of the term *gṛhītabandhopasthāna*, Devaṇabhaṭṭa observes that it refers to the surety who undertakes to return to the creditor the pledge (which was already pledged with the pledgee, the creditor), which was subsequently taken back with the consent of the creditor by special appeal (*yācakatvena*—perhaps for short-time use in festivities

1. Sternbach, Juridical studies in ancient Indian Law, I, 171-172. He discusses it very briefly.
2. The statement of Vyāsa appears in the texts of Devaṇabhaṭṭa, Pṛthvīcandra, Mitramiśra and others. Vide Sm. C. II, 347 ; Vy. p. (P), 226 ; Vy. p. (M), 248.
3. Abhaye pratyaye dāne upasthāne'rtharśane. etc.
   Quoted in Sm. C. II, 346 ; Vy. P. (P), 225 ; Vy. P (M), 248.
4. Upasthānam atra bandhadravyārpaṇam abhimatam. Sm. C, II, 346.
5. Upasthānaṃ draśanam. Sm. C. II, 347.
   Vide also the translation of the verse (540) by P. V. Kane, in the Kātyāyanasmṛtisāroddhāra, 222.

and the like) or for showing it to a purchaser.[1] It may be contended that in the first case, where it is taken by appeal, such a pledge partakes of the nature of *yācitaka* (it has been shown that Vācaspatimiśra explains that *ṛṇidravyārpaṇa* type of surety undertakes to return the loan of the type of *yācitaka*) though the difference is that the pledge in this case practically belongs to the pledgor, while in the case of *yācitaka*, the property belongs to the creditor. As the explanation offered by Devaṇabhaṭṭa does not appear to be convincing, it may be suggested here that the term *bandha* should be interpreted in the sense of an object (or pledge) that is placed with the common friend of the debtor and the creditor. This has been suggested by Devaṇabhaṭṭa himself in the basis of the text attributed to Nārada. It is not unlikely that such a common friend in course of time may assume the role of any one of the three types of sureties under the designations of *Adhipāla*, *Bhuñjāpaka* and *Pratyarpaka*. Of them the last one, namely, *Pratyarpaka*, is exclusively meant for looking to the interest of the pledgor and he undertakes to return the valuable pledge placed under the custody of the creditor. The surety known as *gṛhītabandhopasthāna* may be the surety—the common friend of both the debtor and the creditor, with whom the pledge was kept for the confidence of the creditor. He undertakes evidently to deliver it to the debtor if the terms of agreement are not violated, or to the creditor if the debtor fails in his agreement. We may therefore regard that the *gṛhītabandhopasthāna* type of surety is but a variety of the *Pratyarpaka* type.[2] The text of Hārīta may be mentioned

1. Gṛhītabandhopasthānaṃ yācakatvena kretur darśnādyartham vā uttamarṇānujñayā'dhamarṇagṛhītasya bandhasya punar arpaṇam.
Smṛticandrikā, II, 347.
Dr. Sternbach, who refers to other facts from the Smṛticandrikā, does not mention this explanation by Devanabhaṭṭa.
Vide Sternbach, Juridical studies in ancient Indian Law, I, 171.

2. Sternbach refers to these types of sureties very vaguely and is not right when he observes: 'Smṛticandrikā considered these kinds of sureties as belonging to 'abhaya'.' (J. S. A. I. L., I. 171.)
The Smṛticaudrikā does not mention them so (Vide Sm. C, II, 347).
Vide here the section dealing with '*Abhaya*' type of surety by Sternbach himself in his book (p. 169-170). We should also note here that the view ascribed by Sternbach to Miśra (see p. 171) actuallo belongs to the modern writes called *navya*. Vide Vivādabhaṅgārṇava, Folio, 124, Lines, 10-15.

here in support. It has been stated there that if the pledge is kept (with a surety—the common friend) for confidence and if it is not received by the creditor (even when the terms of contract are violated), it should be delivered by him (such a surety) or he (the surety) should himself pay the money (debt).[1] Mitramiśra who quotes this text of Hārīta, explains that such a surety is *bandhakārpaṇapratibhū* and this has been mentioned in the context of *upasthāna* as it appears in the text of Nārada (IV. 119).

Regarding the liability of the sons of this sort of surety, there is no suggestion from the *śāstrakāras*. The text of Vyāsa does not even mention the responsibility of the surety himself in this respect. We may however apply the general principles of suretyship in this case and presume that the surety here is under obligation to pay the debt in the absence of his failure to deliver the pledge to the debtor. So far as the position of the sons is concerned, it may be observed that the rules of the case of the surety for the delivery of debtor's property (*ṛṇidravyārpaṇa*) may be applied here. The acceptance of the suretyship and the pledge by the surety himself, renders the surety liable for payment and in the absence of the surety the pledge is to pass on to them (in the form in which other properties pass on to the sons). This will make the sons liable for payment of the debt also in this case.

11. Surety in litigation.

A surety in litigation is designated as *Vādapratibhū*.[2] Yājñavalkya provides that a surety should be provided by both the parties, the plaintiff and the defendant and such persons should be competent to bear the consequences of the the decision of the court.[3] They may be in the form of payment of the money

1. Viśvāsārthaṃ kṛtas tv ādhir na prāpto dhaninā yadā /
   Prāpaṇīyas tadā tena deyaṃ vā dhanine dhanam //
   Mitramiśra quotes this text of Hārīta and explains :'..... 'tena bandhakārpaṇapratibhuvā'. Vyavahāraprakāśa, 249.
2. Sternbach, Juridical studies in ancient Indian Law, I, 166-168.
3. Ubhayoḥ pratibhūr grāhyaḥ samarthaḥ kāryanirṇaye. Yāj, II, 10.

proved to be due or the fine imposed or both, on behalf of the parties concerned.[1] This type of suretyship is not optional as in all other cases. Execution of court orders was done by the parties themselves, and therefore the court made prospective indebtedness the means of enforcement of its decisions.

With reference to such a surety, Kātyāyana has a rule which suggests that presentation of surety by both the parties was not essential and invariable. His directions is that the party concerned should be guarded by a guard and the wage for such a guard should be paid by the party at the end of the day.[2] The cases contemplated were obviously those in which the arrest or attachment of the defendant was itself surety enough for the ultimate performance of the court's order.

Devaṇabhaṭṭa while explaining the verse of Vyāsa regarding the number of the sureties, observes that a surety for proof should be insisted on in the case where the normal modes of proof must be resorted to at a later date for ascertaining the right point of litigation.[3] This suggests that such a surety for proof is supposed to undertake the responsibility on behalf of the party to observe the formalities of any type of proof that may be decided on by the court. The same idea in exactly the same language has been expressed in the *Sarasvatīvilāsa*.[4] It is

1. Vijñāneśvara explains: nirṇayasya kāryaṃ kāryanirṇayaḥ..... nirṇayasya kāryaṃ ca sādhitadhanadānaṃ daṇḍadānaṃ ca. on Yāj, II. 10.
   Aparāka: Nirṇīte tu kārye jitavato dhanadānaṃ rājñe ca daṇḍadānam.
   In the commentary of Bālaṃbhaṭṭa such a surety has been designated as *Māljāmin*: .....māljāmin iti bhāṣāprasiddho'yam.
   Vide his sub-commentatry on Mitākṣarā on Yāj, II. 10.
2. Atha cet pratibhūr nāsti vādayogyasya vādinaḥ /
   Sa rakṣito dinasyānte dadyād bhṛtyāya vetanam //
   Kātyāyana, 117.
   Apar rka adds that the wage should be paid by the defeated party:
   'sa parājito vādī'.....on Yāj, II, 10.
   It may be noted that Kātyāyanya here makes discrimination between a Brāhmaṇa and others when they cannot present a surety.
   Vide Kātyāyana, 118.
3. Vivādanirṇayāya dṛṣṭam adṛṣṭaṃ vā pramāṇaṃ yatra kālavyavadhānena bhaviṣyati tatrāpi pramāṇāya pratibhūr grāhya iti.
   Smṛticandrikā, II, 347.
4. Sarasvatīvilāsa, 247.

not quite clear from the observations of Devaṇabhaṭṭa and Pratāparudra whether such *pramāṇapratibhū* is to be distinguished from Vādapratibhū (surety in litigation), which also has been mentioned by Devaṇabhaṭṭa.[1] He explains such a surety in litigation by stating that after the defendant is brought to the court, the judges should demand from him a surety for the payment of such amount as may be proved in the court.

In the *Śukranītisāra* the desirable qualifications of such a surety have been mentioned. According to the text, such a person should be clever, trustworthy, independent, famous and rich.[2]

Dr. Sternbach refers to the *Śukranītisāra* and observes : "According to *Śukranītisāra* (he used the text, edited by G. Oppert) (Chap. IV. Sec. V. 122) surety in litigation was given to prevent the defendant from hiding. Śukra stated that having noticed that the defendant brought by the messenger, had other engagements the king has to take suitable security for his appearnce."[3] Dr. Sternbach appears to have adopted the translation of the verse by B. K. Sarkar.[4] The proper rendering as shown below[5] will indicate that the view is not after the text.

Jagannātha explains a *vivādalagnaka* by stating that such a surety is accepted by the king (or the court) when a case relating to non-payment of debt (and the like) is brought before the court by the creditor lest the debtor or the creditor may abscond through apprehension of losing the suit. Such a surety gives an undertaking that if the party on behalf of whom he stands as

1. Tatra prativādyānayanāntaraṃ sabhyair lagnakagrahaṇaṃ sādhitadhanādiprāptyarthaṃ kāryam. Smṛticandrikā, II, 347.
2. Pragalbho bahuviśvastānadhīno viśruto dhanī /
   Ubhayoḥ pratibhūr grāhyaḥ samarthaḥ kāryanirṇaye // IV. 5. 127.
3. Sternbach, Juridical studies in ancient Indian Law. I., 167.
4. Sacred Books of the Hindus, XIII, Allahabad, 1914. 194. (verses. 244-245). The verse is :
   Dūtenāhvānitaṃ prāptādharṣakaṃ prativādinam /
   Dṛṣṭvā rājñā tayoś cintyo yathārhapratibhūs tataḥ //
   Verse IV. 5. 122. In the text edited by Jīvānanda it is, IV. 5. 124.
5. The proper rendering should be : Having observed (the plaintiff) whose rights have been transgressed, (and) the defendant, who is summoned through a messenger, the king should think in terms of a suitable surety for both.

a surety, fails to turn up at the court, he (the surety) will produce him at the court or shall do his duty (in the form of paying the due or the penalty).[1] Jagannātha refers to a different notion according to which a surety for suit is one, who in a suit, while the party, plaintiff or defendant, himself is unable (to act), is appointed as the representative for pursuit or defence (*vādānuvādāya*). As per agreement, his victory or defeat should be treated as the victory or defeat of the party whom he represents. The king should exact from the party a letter of agreement to the effect that the victory or defeat of the representative should be treated as his victory or defeat.[2] (obviously the *vakil* represents the actual litigant).

In short, the surety in litigation is intended for ensuring against absconding of either of the parties to litigation and for payment of the amount decreed or any fine that may be imposed by the court. It is thus applicable to all types of litigation and not to that relating to recovery of loan only. Nevertheless it is a genuine instance of surety-ship and can give rise to indebtedness on the part of the surety.

So far as the position of the sons of the surety in litigation is concerned, Devaṇabhaṭṭa directly states that as the surety in such a case agrees to pay the sum due or the penalty that may be imposed by the court, his status is like that of the surety for payment. As such the sons of the surties in litigation come under obligation to discharge the surety-debt of the father in the same way as the sons of the surety for payment.[3] In support of such a conclusion

1. Atra vivādāya iti ṛṇikād dhanam aprāpya dhanikena vivāde upasthite parājayabhīroḥ ṛṇikasya dhanikasya ca palāyanaśaṃkayā rājā yaṃ lagnakaṃ cakre sa vivādalagnakaś caturthaḥ.....yaḥ vadati yady ayaṃ vivāde nopatiṣṭhate tadā mayāyaṃ darśanīya iti anena yat kartavyaṃ tat karomīti vā. Vivādabhaṅgārṇava, Folio, 127, Lines, 28-35.
2. Kecit tu vivāde upasthite aśaktena kenacid vādinā prativādinā vā vādānuvādāya yaḥ kaś cit pratinidhir dīyate sa eva vivādalagnkaḥ. pratijñāvaśāt tasya parājayena pratinidhidātuḥ parājayaḥ, jayena ca jayaḥ. Asya jayaparājayau mamiva iti pratijñālekyaṃ ca pratinidhidātur gṛhyate rājñā iti vyavahāra ity āhuḥ. Ibid. Folio 128, Lines, 10-16.
   Here Jagannātha adds that the sureties should give their undertaking in their own handwriting or in that of another by the side of the deed of debt. Ibid. F, 123, L, 16-18.
3. Vivādaptatibhuvā tu sādhitadhanaṃ daṇḍadhanaṃ ca dāsyāmīty aṅgīkṛtatvād dānapratibhūvat sati sambhave sa eva dāpvo'nyathā tu tatputra ity avagantavyam. Smṛticandrikā, II, 352.

Devaṇabhaṭṭa refers to the text of Vyāsa, where it has been categorically stated that the sureties for payment and in litigation are to be made to pay.[1]

12. Surety in the oath—ordeal.

The two terms *śapatha* and *divya* are sometimes used in the general sense of ordeal, but in their restricted senses the word *śapatha* is used for oath while for ordeal the term *divya* is used.[2]

Kauṭilya refers to suretyship in case of transgression of oath by the kings.[3] Among the writers on law Kātyāyana mentions the surety in oath (*śāpatha*)[4] and Vyāsa refers to the surety in ordeal (*divya*).[5]

The duty of such a surety has not been specifically determined by the śāstrakāras. It may have been an ancient institution which lost its practical importance. Devaṇabhaṭṭa observes that the surety in oath is to be taken when there is delay in the execution of oath.[6] His idea appears to be that such a surety takes upon himself the task of producing the debtor and making him take an oath as demanded by the court. As such he is different to a certain extent from the surety for appearance, in which the responsibility of the surety comes to an end when he can simply produce him. Here the liability goes to the extent of making him go through the procedure of oath or ordeal as the case may be. The word *akṛte* in the verse of Vyāsa,[7] which should be construed as *divye akṛte* may help to bring out the significance

1. Dānavādapratibhuvau dāpyau tatputrakau tathā. (tadā).
   Quoted in the Smṛticandrikā, II, 352.
2. For discussions on ordeals, Vide D. C. Sirkar, The successors of the Śātavāhanas, Appendix, 354-376 ; P. V. Kane, History of Dharmaśāstra, III, 361-378.
   Sternbach in his Juridical studies in ancient India Law, I, 168-169 discusses the surety for ordeal in outline.
3. Arthaśāstra. VII. 17. 8.
4. Kātyāyana, 530.
5. Vyāsa as quoted in the Smṛticandrikā, II, 347.
6. Śapathāya lagnakgrahaṇaṃ śapathavilambe kāryam.
   Smṛticandrikā, II. 347.
   Vide also Vyavahārarpaākśa of Pṛthvīcandra, 226.
7. Lekhye'kṛte divye vā dānapratyayadarśane. etc.
   Vyāsa quoted in the Smṛticandrikā, II, 347.

of such a surety. It suggests that the utility of such a surety lies in the case where the party undertakes to go through the procedure of oath or ordeal, which will take time to be actually performed. It is likely that the formalities in these cases, specially in the case of an ordeal. necessitates preparation. The surety therefore is taken on the one hand to ensure that he does not abscond by that time, and on the other to make the party take the oath or ordeal. It is quite possible that in ancient times court procedure came to an end in some cases when the defendant or plaintiff agreed to accept the opposite party's oath or ordeal and the latter found a surety to guarantee his performance of it.

Caṇḍeśvara cryptically states that such a surety is for urging one (of the parties) to undertake an oath (or ordeal).[1]

Dr. Sternbach refers to the *Śukranītisāra* (Chap. IV. Sec. V. 124, wrongly printed as Sec. IV. 24) and observes that 'the surety probably did not guarantee for standing for ordeal, but for telling the truth.' Śukra. accordingly declared that the surety bound himself by saying 'he does not swear falsely.'[2]

What we like to point out here is that the verse[3] referred to by Dr. Sternbach has no bearing on the surety in the oath or ordeal.

Jagannātha is clear on the point of describing the nature of a surety in the oath. According to him, such a surety is demanded by the king (or the court) when it is felt that the debtor or the creditor has a tendency to abscond, apprehending his falsehood in case the trial by oath is executed. Such a surety gives the guarantee that he will produce the debtor (or the creditor) so that he may pass clear out of the oath; or that he will act in a way the party would have done.[4] Thus according to Jagannātha, this sort of surety

1. Śapathapravartanāya yośa lagnakaḥ..... Vivādaratākara, 41.
2. Sternbach, Juridical studies in anciet Indian Law, I, 169.
3. ..... hy anenāyaṃ ca vṛttimān /
   Astīti na ca mithyaitad aṅgīkuryād atandritaḥ // IV. 5. 124.
   '*aṅgīkaraṇa*' does not properly mean 'swearing' as translated by Sarkar (accepted by Sternbach). It should mean 'acceptance', 'admittance' etc. The verse should refer to the surety for confidence.
4. Tataḥ vyavahāravidhau śapathasya kartavyatve svasmin mithyāprakaṭanam ālokya palāyanam icchantaṃ dhanikam ṛṇikaṃ vā ālokya lagnakaṃ yaṃ cakre rājā yājñavalkyavacanāt sa śapathalagnakaḥ pañcamaḥ. sa eva brūte yadā (thā) yam ṛṇikaḥ śapathe uttīrṇo bhavati tadānīm ṛṇikam upasthāpayāmīti tatkarma karomīti vā. Evaṃ dhanikalagnakapakṣepy avagantavyam.
   Vivādabhaṅgārṇava. Folio. 127, Lines 35-4.

partakes of two characteristics, that of the surety for appearance and that of the surety in litigation.

It may be concluded from the discussions made above that the surety in oath or ordeal is demanded by the court whenever there is possibility of delay in the execution of the oath or ordeal as decided on the nature of the case, and the responsibility of the surety consists not only in making the party appear but also in making him go through the oath, failing which he is under the liability to pay the debt.

There no direct rule in the *śāstras* regarding the obligation of the sons of the surety in oath or ordeal, but Devaṇabhaṭṭa has a suggestion in this respect. About the *pramāṇapratibhū* and his liability he observes that such a surety comes under obligation to pay the debt himself if he fails in his duty. The sons of such a surety are not to be made liable to pay, the argument being that in the agreement of the surety there is no mention directly of the payment of the debt by the surety. (We have pointed out before that according to Devaṇabhaṭṭa, a direct agreement to pay the debt by the surety makes the surety and the son liable for payment of the debt, vide *Sm. C.* II, 352). The concept of *pramāṇapratibhū* as mentioned by Devaṇabhaṭṭa, in connection with his interpretation of the verse of Vyāsa, indicates that the surety for document and the surety in ordeal belong to the category of *pramāṇapratibhū*.[1] It may thus be stated that in the opinion of Devañabhaṭṭa the sons of such a surety are not liable for the surety-debt of their father.

13. The responsibility of the co-sureties.

While writing on the desirable qualifications of a surety, Kātyāyana observes that one of the them should be the ability to pay the money in dispute to the creditor and fine (if any) to the king.[2] In elucidation of the same Vācaspatimiśra holds that 'the acceptance of the surety leads to the success of the creditor's suit, which implies that the surety has the capacity to meet the demand

1. Smṛticandrikā, II, 347.
2. Kātyāyana, 116.

if necessary,[1] (i.e the possibility of litigation was taken into account). As the creditor always looks to the safety of his investment it may be presumed shat he may demand from the debtor more than one surety specially in the case where the loan is of great value. Our *śāstrakāras* have discussed the question of the responsibility of the co-sureties.[2]

In the opinion of Yājñavalkya, if there are more than one surety, they should pay the amount proportionate to the share. When however they are bound jointly and severally they should pay as the creditor desires.[3]

The part '*dhanikasya yathāruci*' indicates that the creditor is at liberty to demand his loan from any one of the sureties. In such a case the surety from whom money is demanded, is under liability to pay the entire amount and not his own proportionate share only.[4] The interpretation of this part by Vācaspatimiśra is different. According to him such liability of the sureties will arise when at the time of transaction the creditor makes specific stipulation like that 'the dues are to be realised at my pleasure from any one of the sureties and I shall not try to bring you together (bind you jointly)'.[5] The same idea fiuds place in the text of Viṣṇu.[6] Nārada also expresses the same view.[7] He uses the ex-

1. Vivādacintāmaṇi, 14. The translation is by G. N. Jhā. Vide Vivādacintāmaṇi (Gaekwad's Oriental Series. XCIX), 24.
2. Sternbach, Juridical studies in ancient Indian Law, I., 195-197.
3. Bahavaḥ syur yadi svāṃśair dadyuḥ pratibhuve dhanam /
   Ekacchāyāśriteṣv eṣu dhanikasya yathāruci // Yāj, II. 55.
   The part *ekacchāyāśriteṣu* has been explained by Vijñāneśvara as the case where each surety is individually responsibile for the whole debt in the same manner as the debtor is .
   Ekacchāyāśriteṣu pratibhūṣu ekasyādhamarṇasya chāyā sādṛśyaṃ tām āśritā ekacchāyāśritāḥ. Adhamarṇo yathā kṛtsnadravyadānāya sthitas tathā dānapratibhuvo'pi pratyekaṃ kṛtsnadravyadānāya sthitāḥ.
   Mitākṣarā on Yāj, II. 55. For identical interpretation vide Sm. C, II. 355 ; Vivādaratnākara, 44 45, Vivādacintāmaṇi, 14.
4. Vijñāneśvara explains : Ataś ca dhaniko vittādyapekṣāyāṃ svārthaṃ yaṃ prārthayate sa eva kṛtsnaṃ dāpyaḥ nāṃśataḥ. on Yāj, II. 55
5. Dhaniko yatra vyavahārakāle vadati mayecchayā yasya kasyāpi pārśve gṛhyata iti na me melanāya yatna iti. tenaiko lagnako yathā sarvaṃ dadāti tathā tatra yaḥ kaścit. Vivādacintāmaṇi, 14.
6. VI. 42.
7. Nārada, IV. 120.

pression '*yathākṛtam*', which indicates that the sureties in this case should pay their share according to the agreement.

Vijñāneśvara explains that this principle should be applied in the case of all of the three sorts of sureties mentioned by Yājñavalkya.[5]

On the question of the liability of the sons of the surety who undertakes joint and several liability, we have from Bṛhaspati the rule that the sons should pay the whole amount of debt when such surety-father is away from the country. If however, the father be dead the sons are to pay the proportionate share of the father only and not of other co-sureties.[1] He has another verse of identical meaning.[2] These two verses in almost the same form are also mentioned by Kātyāyana.[3]

This direction that the sons should be made to pay the whole amount of debt when the father is away, and the proportionate share only when he is dead, cannot be sufficiently accounted for. There is no clear suggestion from the commentators and digest-writers on the first point. Vijñāneśvara holds that such a son may be made to pay the whole amount if the creditor so likes.[4] Devaṇabhaṭṭa has the same approach to the question.[5] The idea appears to be that such a condition was perhaps taken to be implied in the agreement itself, the nature of which has been pointed out by Vācaspatimiśra. The son in this case might have been treated as the true representative of the father and the interpretation of Devaṇabhaṭṭa shows that in the absence of a desire on the part of the creditor to demand the whole amount from such a son, his (son's) obligation is to the extent of paying the proportionate share of the father without interest.[6] He allows one concession to the sons in the form of

5. Evaṃ darśane pratyaye ca. on Yāj, II. 55.
1. Ekacchāyākṛtaṃ sarvaṃ dadyāt tu proṣite sutaḥ /
Mṛte pitari pitraṃśaṃ pararṇaṃ na kadācana // Bṛhaspati, X. 112.
2. Bṛhaspati. X. III.
3. Bṛhaspati. X. 112 = Kātyāyana, 537 ; Bṛhaspati, X. III = Kātyāyana, 538.
4. .....dhanikecchayā sa sarvaṃ dāpyaḥ. Commentary on Yāj, II. 55.
5. Etac ca dhanikecchāyāṃ proṣitasya putro mahyaṃ dadyāt ity evaṃvidhāyāṃ satyāṃ sarvadānavidhānaṃ draṣṭavyam. Sm. C, II, 356.
Vide also Vyavahāraprakāśa (M), 252.
6. Asatyāṃ tu dhanikecchāyāṃ pitraṃśam apravṛddhikaṃ proṣitaputro dadyād iti cāvagantavyam. Sm. C, II, 356.

payment of the whole amount of such surety-debt of the father without interest. This he does on the basis of the statement of Bṛhaspati that a son should pay the debt of the father without interest.[1]

The second part of the rule of Bṛhaspati may be explained by the normal rules guiding the liability of the son of a surety. As this surety is of the type of the surety for payment, the liability of the sons arises on the basis of the directions of Manu Yājñavalkya and others, Here Devaṇabhaṭṭa directs that in the case of the death of such a surety-father, the liability of the son is to the extent of the payment of the proportionate share without interest. He is not under obligation to pay the share of others even if the creditor so desires.[2] Here in the *Sarasvatīvilāsa* it has been stated, perhaps reasonably, that the son should pay the interest also.[3]

14. The desirable qualities of persons to be selected as sureties.

As a surety is one of the securities, it is desirable that before accepting a person as a surety the creditor should take into account his suitability[4] for being regarded as a surety. Principally such suitability of a surety is judged in the light of his capacity to meet the demand of the creditor if necessary. This has been stressed by Vācaspatimiśra.[5] The *śāstrakāras* mainly looked at the question from two different angles of vision. From an analysis of the list of persons who are regarded as unsuitable to become sureties, it may be stated that they were placed untwo categories. Some are regarded as unsuitable because of their special relationship with the debtor or the creditor, while other persons were excluded from the list of sureties because of their

1. Na tu sarvaṃ savṛddhikam iti vyākhyeyam, 'putreṇāpi samaṃ deyam ṛṇaṃ sarvatra paitṛkam' iti bṛhaspatismaraṇāt. Samaṃ mūlamātram ṛṇaṃ prātibhāvyāgataṃ paitṛkam. Ibid, 356.
2. ..... pitari mṛte tatsutaḥ satyām api dhanikecchāyāṃ na dātum arhati kiṃ tu pitraṃśam avṛddhikam eveti..... Ibid, 356.
3. Sarasvatīvilāsa, 250.
4. Sternbach, Juridical studies in ancient Indian Law, I, 173-179. He discusses the question in ditails. Vide. P. V. Kane, H. D. S, III. 292.
5. Vivādacintāmaṇi, 14.

possessing certain characteristics which render them undesirable for the purpose of suretyship.

The question received attenttion from Kauṭilya but one of his directions is couched in an ambiguous language. He directly states that the suretyship in the case of a minor is inchoate *(asāra)*.[1] The other rule which literally states that 'there shall be no other suretyship' is difficult to be explained.[2]

Yājñavalkya declares that so long as they remain unseparated in their interests, there can be no relationship as suretyship among the brothers, husband and wife, and a father and his son.[3] The reason evidently is that in the state of their remaining undivided in their interest, these persons share a common property over which they individually have no absolute right of disposal. Suretyship sometimes may end in payment of debt of the debtor and as such these persons are to be regarded unsuitable as sureties. This point is explained by Vijñāneśvara.[4]

Viṣṇu, as quoted in the *Sarasvatīvilāsa* gives expression to the idea that mutual transaction of suretyship may be treated as indicatory of divison.[5] In other words, it is recognised here thet among the undivided ones the relation of suretyship cannot be accepted.

Nārada refers to the question of suretyship between the brothers and observes that it may be mutually performed by the brothers

1. Asāraṃ bālaprātibhāvyam. Arthaśāstra. III. II. 16.
2. Na prātibhāvyām anyat. Ibid. III. II. 15.
   If it is read with the previous rule (III. II. 14) it may mean that other types of suretyship like that for appearance etc. (cf. Yāj. II. 53) were not given proper recognition in this rule. This is the suggestion of Kangle. (Arthaśāstra, II, 262). Sternbach suggests that the two rules, III. II. 15 and III. II. 16 may be taken together to mean that 'a minor as surety in inefficient, no suretyship is admitted for him.' J. S. A. I. L., I, 189. note, 60. Prof. Derrett suggests the meaning as ; 'suretyship operates in this way only (i.e. in the abence of debtor, his heirs or a co-obligor).' (Suretyship in India : the classical law and its aftermath'. paper unpublished. It was kindly permitted by him to be utilised).
3. Bhrātṛṇām atha dampatyoḥ pituḥ putrasya caiva hi /
   Prātibhāvyam ṛṇaṃ sākṣyam avibhakte na tu smṛtam // Yāj, II. 52.
4. Api tu pratiṣiddhaṃ sādhāraṇadhanatvāt prātibhāvyasākṣitvayoḥ pakṣe dravyāvasānatvāt ṛṇasya cāvaśyapratideyatvāt. on Yāj, II. 52.
5. Krayavikraya...prātibhāvya.....parasparakṛtaṃ vibhāgapetur iti.
   Viṣṇu as quoted in the Sarasvatīvilāsa, 440.

who are divided and not by unseparated ones.[1] By way of clarification he states that if such transaction takes place between them, the presumption is that they are separated in their affairs even if there be no written record to that effect.[2]

Bṛhaspati presents a list of persons who are absolutely unsuitable for being regarded as sureties. They are : the master, an enemy, one under arrest, one on duty, one who has been penalised, one who is of doubtful character (one whose life is in danger, as interpreted by *Vivādaratnākara*, 39), one who is sharer in the family property, one who is under perpetual pupilage, one whe is in service to the king, one who has lost attachment for wordly affairs, one who has taken a vow, one who is poor, a minor, an old man, a woman and a diseased person.[3] Devaṇabhaṭṭa rightly points out that in certian cases it is difficult on the part of the creditor to realise the loan.[4]

Kātyāyana adds in the list some persons like one who is unable to pay the amount due to the creditor and equivalent fine (if any) to the king, one whose father is living, one who is guided by his froward will and not by any consideration of the cirsumstances and one whose antecedents are not known.[5]

Sternbach in his critical analysis of the list of persons mentioned as not suitable for being considered as surety,[6] has classified them under several groups.

In short, it may be stated that the *śāstrakāras* had in their mind the concept of a surety, who is not dependent to any person (therefore can act independently), who is well-known (therefore is not expected

1. Sākṣitvaṃ prātibhāvyaṃ.....
   Vibhaktā bhrātaraḥ kuryur nāvibhaktā prarsparam // Nārada, XIII. 39.
2. Ibid. XIII. 40.
3. Svāmiripuniruddhādhikṛtadaṇḍitasaṃśayāḥ rikthimātrāntāvasāyirājavṛttavītarāgavratidaridrabālavṛddhastrīrugṇā na pratibhuvaḥ. Bṛahaspti. X. 79.
   Vide here the notes by Renou, E. V. E. P. XI. 95.
4. Svāmyādau dhanasiddher duṣkaratvāt (svāmyādivyatirikto grāhyaḥ).
   Smṛticandrikā, II, 318.
5. Nāśakto dhaniue dātuṃ daṇḍaṃ rājñe ca tatsamam /
   Jīvan vāpi pitā yasya tathaivecchāpravartakaḥ /
   Nāvijñāto grahītavyaḥ pratibhūtvakriyāṃ prati // Kātyāyana, 116.
   Vide also verses, 114-115.
   For explaination of the terms used in the verse, vide the notes by P. V. Kane in his Kātyāyanasmṛtisāroddhāra, 137-138.
   For '*icchāpravartaka*' vide Jagannātha (Col. Dig. I, 227-228).
6. J. S. A. I. L, 174-179.

to deceive the creditor), who is not connected by relationship to either of the parties andabove all who is possessed of wealth sufficient to discharge the debt, if necessary. Evidently he is expected to be a man, who because of his soundness of pecuniary position and intergrity of character may command confidence of the creditor. The condition that a person who acts according to his sweet will should be regarded as unsuitable as a surety, stresses importance on the point that the surety should have reputation for responsible conduct. It has been rightly observed that 'though the surety must be independent and thus capable of doing his duty without any one else's consent, he must not be so independent as to have no regard for God or men, so as, for exmple, to disregard his obligation to the third party or overawe the court or otherwise bring the legal system into contempt'.[1]

It may be mentioned in this connection that commentators and digest-writers have attempted to add certain points on the question relating to suretyship. Vijñāneśvara, while commenting on the rule of Yājñavalkya (II. 52) observes that suretyship may be accepted in the case of brothers etc. even in their uuseparated state if mutual consent is taken.[2] The same idea has been expressed in the *Sarasvatīvilāsa.*[3]

Caṇḍeśvara by way of summarising the implication of the direction of Kātyāyana (verses 114-116), ovserves that the person on whose death there is no certainty of realising the money should not be taken as a surety.[4] There is no doubt that the list suggests that the surety of payment is in view, yet the text of Kātyāyana shows that suretyship is not restricted to loans because the text expresses generally 'for any purpose', as suggested by Jagannātha.[5] Jagannātha comes to the conclusion that 'from the full sense of law, he should be accepted as surety for any purpose, from whose suretyship no breach of of respect, natural affection, or tender regard, need be apprehended

1. J. D. M. Derrett, 'Suretyship in India : the classical Law and its aftermath.' (unpublished paper),
2. Parasparānumatyā tv avibhaktānām api prātibhāvyādi bhavaty eva. Mitākṣarā onYāj, II, 52.
3. Sarasvatīvilāsa, 440.
   Jagannātha also has the same view. Vide Col. Dig, I, 230.
4. Yasmin mṛte dhanaprāptiviśvāso na bhavati sa pratibhūr na grāhya ity etattātparyakañ cedaṃ iti mantavyam. Vivādaratnākara, 39.
5. Col, Dig. I, 228.

and from whom, or from the debtor, the sum may be subsequently recovered.'[1]

15. The obligation of the debtor to the surety.

A surety undertakes the responsibility of performing the acts, so to say, of the debtor and in all the four principal cases of suretyship, as we have already seen, the acceptance of suretyship may result in his payment of the debt of the debtor. It is quite proper that there should be law to see that the surety may get back his money he is to pay actually on behalf of the debtor.

The question relating to the obligation of the debtor to the surety[2] is raised by Yājñavalkya. According to him if the surety is publicly made to pay (the debt of the debtor by the king), the debtor should pay double the sum to the surety.[3] The double repayment looks like a penalty. But perhaps it is repayment and compensation assessed in the same way as interest. *Dharma* sees interest as *usury* and not commercial profit. This rate of Yājñavlkya is to be understood in the case where the surety had to pay in terms of money. This point has been pointed out by Vijñāneśvara.[4] This is more clear from his other direction that female slaves and cattle delivered by a surety must be made good with their offspring, grain should be repaid thrice the quantity, cloth is declared to be quadrupled and liquids octupled.[5]

Viṣṇu introduces the point that the question of the payment of double the sum to the surety by the debtor will arise when the surety is pressed by the creditor to do so.[6] The same view in almost exactly the same language is held by Nārada.[7] The word

1. Col. Dig. I, 248. Translation is by Colebrooke.
2. Sterbach, Juridical studies in ancient Indian Law, I, 182-186. He discusses this question in outline. Vide also P. V. Kane, History of Dhrmaśāstra, III, 438.
3. Pratibhūr dāpito yat tu prakāśaṃ dhanine dharam / Dviguṇaṃ pratidātavyam ṛṇikais tas_a tad bhavet // Yāj, II, 56.
4. Etac ca hiraṇyaviṣayam. Commentary on Yāj, II, 56.
5. Saṃtatiḥ strīpaśuṣv eva dhānyaṃ triguṇam eva ca / Vastraṃ caturguṇaṃ proktaṃ rasaś cāṣṭaguṇas tathā // Yāj, II. 57.
6. Yam artham pratibhūr dadyād dhanikenopapīḍitaḥ / Ṛṇikas taṃ pratibhuve dviguṇaṃ dātum arhati // Viṣṇu. VI. 43.
7. Nārada. IV. 121—Nāradīyamanusaṃhitā. 1. 104.

'*upapīḍita*' in the text of Viṣṇu suggests that the rule prescribing payment of double the amount to the surety will not be applicable in the case where the surey is not pressed for payment (but he pays it voluntarily). This point has been explained in this light by the commentators and the digest-writes, as we shall have occasion to see.

Bṛhaspati directs that when a surety being harassed, pays a proved debt, which he has vouched for, the debtor should pay him twice as much, after the lapse of a month and a half.[1] He clearly states that the surety cannot claim a sum twice the amount paid by him when such payment is made in the absence of any demand from the creditor.[2] Bṛhaspati has a direction like this: 'Should foolish sureties in good faith pay the debt, though not rquired to do so, or on being required to pay a different debt, how and from whom can they recover that sum ?'[3] Caṇḍeśvara introduces the verse of Bṛahaspati by stating that if an arbitrator or intermediary knows of such a payment by the surety, then the surety may claim it rightly from the debtor. It is advisable therefore that such payment by the surety to the creditor should be made with the consent of the intermediary.[4] The exact meaning of the verse of Bṛhaspati is not clear, but if it is read in the context of the text of Kātyāyana (verse 540), it appears that Bṛahaspati in this verse directs that the surety may be in difficulty to realise his money, paid as such, if it is paid by him when not demanded by the creditor (or advised by the arbitrators).

Kātyāyana shares with Bṛahaspati the verse which directs payment of twice the amount by the debtor to the surety after a period

1. Prātibhāvyaṃ tu yo dadyāt pīḍitaḥ pratibhāvitaḥ /
   Tripakṣāt parataḥ so'rthaṃ dviguṇaṃ labdhum arhati // Bṛhaspati, X. 82
   Jagannātha observes that the cause of doubling the debt is the offence committed in not immediately paying it. Col. Dig, 1, 258.
2. Pratibhūvā tu yad dattam apṛṣṭam ṛṇike dhanam /
   Dviguṇaṃ na pratibhuve pradeyam ṛṇikena tu // Bṛahaspati, X, 86.
   Devaṇabhaṭṭa refers to a text os Ucathya in almost the same language. Smṛticannrikā, II, 358.
3. Sādbutvāc cen mandadhiya ṛṇaṃ dadyur abhāṣitāḥ /
   Tadanyadāpitāḥ kasmāl labherṃs te kathaṃ punaḥ // Bṛahaspati, X. 83.
   The text appearing in *Aparārka* (65) is of different reading.
   The translation is by Jolly. S. B.E, XXIII, 328.
4. Etac ca pratibhūkartṛkaṃ dhanadānaṃ madhyasahasya vacanāt kṛtam ṛṇikapārśve dhanagrahaṇāya kṣamam iti madhyasthe abhidhāya tadbhāṣaṇena kāryam. Yad āha bṛhaspatiḥ..... Vivādaratnākara, 46.

of three fortnights.[1] He states further that the surety is entitled to get an equal amount, which has been paid by the surety on behalf of the debtor, when such an amount is duly demanded (by the creditor) and which is proved by the witnesses (and the like).[2] In other words, a simle demand, if proved satisfactorily, gives rise to a simple claim agaist the debtor, but where the surety is himself put under pressure by the creditor he is entitled to claim double the amount by way of satisfaction of his claim.Whether 'double' really meant double in in practice we have asolutely no means of determining from the materials at our disposal.

Vijñāneśvara in his commentary adds certain points by way of explanation of the verse of Yājñavalkya (II. 56). He points out that the surety is not entitled to receive double the amout when he voluntarily offers to pay the debt with the expectation of getting double the amout.[3] In other words, he must not hurry to pay the creditor in order to claim the special benefit allowed by the law to the sureties who have been forced to pay due to the debor's default. He further adds that the debtor should not make any delay in the payment of this sum to the surety.[4] In his view, if the sons of the surety are made to pay the debt of the debtor (in the absence of the surety-father), then they are also entitled to receive double the amount.[5]

Vijñāneśvara raises an interesting point here with reference to the payment by the debtor to the surety in this way. His point is that the surety undertakes to act as a surety out of affection, sympathy, friendship and the like and as such any payment on this account may be regarded as a payment out of friendship (*prītidatta*). Such a *prītidatta*-amount cannot get an interest before it is demanded. As such the direction of the payment of double in this case appears

1. Kātyāyana 539—Bṛahaspati, X. 82.
2. Yasyārthe yena yad dattaṃ vidhinābhyarthitena tu /
   Sākṣibhir bhāvitenaiva pratibhūs tat samāpnuyāt // Kātyāyana, 540.
   Both Devaṇabhaṭṭa and Caṇḍeśvara interpret the word *'tat'* in the verse as the equal amount. Sm. C, II, 357 ; Viv. rat, 46.
3. .....na punar dvaiguṇyalobhena svayam upaitya dattam.....
   Commentary on Yāj, II. 56.
4. Tac ca kālavieṣam anapekṣya sadya eva dviguṇaṃ dātavyaṃ vacanārambhasāmarthyāt. Ibid.
5. Pratibhūs tatputro vā..... Ibid.

contradictory to the statement of Kātyāyana (505).[1] The reply in the form of solution in this case comes from Devaṇabhaṭṭa. According to him such a provision should be treated as a special case on the strength of the direction of the *śāstrakāras*.[2]

Caṇḍeśvara refers to the text of Kātyāyana (540) as it has been commented on by Graheśvaramiśra.* According to the view referred to, anything paid by the surety for the appeasement of the creditor, should be paid by the debtor.[3] The position has been explained by Jagannātha in his *Vivādabhaṅgārṇava.* According to him, such a provision of Kātyāyana should be applied in the case where a considerable amount of time having elapsed after the stipulated period, if the creditor intends to approch the king (for recovery of loan) and if apprehending punishment the surety appeases him by payment of money and discharge the debt. In this case he shall receive back the exact amount and not the double.[4]

The conclusion in the light of the discussion made above is that the *śāstrakāras* make provision for the payment of the sum by the debtor to the surety, who has already paid on his behalf. If the claim by the creditor is simple and the payment is made on that account, he (the surety) may get back from the debtor an equal amount of money. But if the surety is made to pay under pressure by the creditor, he may claim an amount which is twice the sum paid by him to the creditor. The limit relates to hypothetical interest

1. Vide his commentary on Yāj, II. 56.
2. Yadyapi prāyeṇa prītyaiva pratibhūr bhavati, na ca prītidatte vṛddhir asti, na ca dvaiguṇyam etāvati, kāle dharmyaṃ bhavitum arhati, tathāpi vacanbalāt sarvaṃ bhaviṣyati. Sm, C, II, 357.
3. Graheśvaramiśrais tu yaspārthe yena yad dattam ityādi pratibhuvā dhanikasamādhānāya yad anyad api dattaṃ syāt tad api tena ṛṇikapārśve grahītavyam ity arthe'vatāritam idam. Vivādaratnākara, 46.

* It may refer to Graheśvara and Miśra.
Vide here Vivādacintāmaṇi : tathānyad api vyayitam dravyam ṛṇyarthe pratibhuvā ṛṇinā deyam. p. 14.

4. Atra graheśvaramiśrāḥ : avadhikālottaraṃ bahukāle'ttīte dhaniko yadi rājasamīpaṃ gantum icchati, pratibhūs tu daṇḍabhayāt dhanavyayena paritoṣya ṛṇam śodhayati tatra pāritoṣikam api dhanaṁ pratibhūr adhamarṇāt prāpnuyāt, kiṃ tu samam eva na tu dviguṇam ityarthakam eva kātyāyanavacanam āhuḥ.
Vivādabhaṅgārṇava, Folio, 137, Lines 39-42 and Folio, 138, Lines, 1-2.
Col. Dig. I, 260.

and where the original debt was of commodities the other *śāstric* limits are to be applied.

16. Concessions to be offered to the sureties.

The *śāstrakāras* did not lose sight of the fact that the sureties may get involved in sufferings for the cause of the debtors. They did not forget to look after their iterests to a certain extent. Bṛhaspati (X. 76) and Kātyāyana (532) as we have noticed already, prescribe that the sureties should be granted sufficient amount of time to find the absconding debtor. This apparently is meant for being applicable in the case of the surety for appearance (Kātyāyana. 532-533), but this principle may reasonably be extended to other cases of suretyship also.

Bṛhaspati (true to the spirit of the *śāstra*) directs that the sureties should not be pressed very hard for payment and that they should be allowed to pay the debt by instalments. It has also been distinctly mentioned that while the debtor is willing to pay the debt the sureties should not be pressed for payment.[1] Similarly while the debtor is present, the surety for appearance should not be asked to pay the debt.

This shows the spirit of the rules that in view of the peculiar situation in which the sureties may be placed, they should be granted all the possible facilities so that the payment of the debt of the debtor may not be very hard for them.[2]

17. Records relating to suretyship.

So far as the epigraphic and other records help us to know the position of the sureties in a transaction of debt, it may be stated in general that sureties were demanded even in the cases where pledges were given as security. Thus in the Jaunpur Brick-Inscri-

1. Nātyantaṃ pīḍanīyāḥ syur ṛṇaṃ dāpyāḥ śanaiḥ śanaiḥ /
   Svasākṣye na niyojyāḥ syur vidhiḥ pratibhuvām ayam //
   Bṛahaspati, X, 84.
   The second line of the verse has been explained in the Vivādaratnākara in the following way : Svasākṣye svasamakṣe tiṣṭhati ditsati vā adhamarṇe na pratibhuve darśanāya dhanadānāya vā niyojyā ity arthaḥ p. 45.
2. Vide Sternbach, Juridical studies in ancient Indian Law, I, 180-182.

ption, dated 1217 A.D. we notice that though a cultivated land was placed as a pledge, yet there was scope for a surety (*āpta*).[1]

In the *Lekhapadhati*, a thirteenth-century book of forms and precedents, we come across cases of mortgage where sureties were also arranged. In one document we find the provision that if the *drammas* together with interest and cost are not realised from the pledged articles, then the *drammas* together with interest must be paid to the creditor by the sureties either by borrowing money from someone with interest or by selling some articles from their own house.[2]

In the same document it has been stated that 'the two sureties are fully responsible to the lender precisely as if they were themselves borrowers, for complying with the conditions (written there), securing the payment of the *drammas* together with interest and costs in accordance with the terms of the written document and supplying the pledged chattels with their maintenance according to the custom of all other borrowers'.[3]

It has been categorically stated there that there should be no distinction between the borrower and the sureties. Each surety individually must stand for the entire payment of the *drammas* according to the written document with interest and costs, exactly like the borrower, without replying to the lender that there are other sureties.[4]

The keeper of the pledges and the sureties must see to the payment of the *drammas* with cost and interest according to the

1. 'Atrāpto rāṇako śrīvāghadevaḥ.'
'Jaunpur Brick Inscription of V. S. 1273.' in the Journal of the United Provinces Historical Society, vol. XVIII. 1-2, (1945), 196.
2. Kadāpi muktādhivastubhir api patrāṅkitāḥ savyājakāḥ sopakṣayā drammā na pūryante tadanu pratibhūbhiḥ anyavyavahārakāt vyājenākarṣya athavā svagṛhād ātmīyaṃ vastu vikrīya vyavahārakasya savyājakāḥ drammā dātavyāḥ.
Lekhapaddhati, 20
3. Asyoparilikhitavidheḥ pālanāya savyājakasopakṣayadrammāṇāṃ likhitapatravidhipramāṇena dāvāpanāya ādhu muktavastūnāṃ yogakṣemanirvahaṇāya aparasamastagrāhakācāreṇa svayaṃ grahītārau iva pratibhuvau vyavahārakasamaṃ samagranirvāhaṃ kurutaḥ. Lekhapaddhati, 20.
4. Dhurapratibhuvor antaraṃ nāvagantavyam. Prāptenaikenāpareṣām uttaram akurvatāṃ vyavahārakasamaṃ likhitapatravidhidravidhidrammāṇāṃ savyājakānāṃ sopakṣayāṇāṃ dhanikavat samagranirvāho vidhātavyaḥ.
Lekapaddhati, 20.

authority of the document, abandoning all complaints and pursuing entirely the custom of the sureties.[1]

In the *Lekhapaddhati* there are also other documents where independent of any pledge there is mention of the sureties. Reference may be made to the document (recorded at page 21) where there is provision for two sureties. The same is the case with another document (see *Lekhapaddhati*. 33).[2]

In these documents the general condition that has been impressed is that the surety should place himself under the same obligation as that of the borrower. In that respect these documents agree in spirit to the *śāstric* directions regarding the sureties.

18. Summary.

In this chapter an attempt has been made to make a study of the first form of security, namely, suretyship. Different questions relating to suretyship have been placed under separate sections in the chapter. In the first section discussion centres round the meaning of the terms *pratibhū*, *avastha*, and *lagnaka*, which are employed to convey the sense of a surety. In the section that follows, the different forms of sureties have been studied in general. It has been shown that besides the common forms of sureties as those for appearance, for confidence, for payment and for delivery of the debtor's property, the *śāstrakāras* recognise the surety for delivery of pledge, surety in litigation, surety in the oath-ordeal, surety for document, surety for work, surety for proof as also the special types under the designations of *ādhipāla*, *bhuñjāpaka* and *pratyarpaka*. Some of them have their sub-varieties also. In the following sections special study in different aspects has been made of the sureties individually for the first seven sorts menioned above. The responsibility of each type of surety and the sons in the absence of the father-surety has received special consideratlon in each case.

1. Atrārthe rāvāṃ parityajya pratibhuvām ācāraṃ kevalaṃ ca vidhāya ādhipālakapratibhūbhir vyavahārakasya patramāṇena sopakṣayasavyājakadrammāṇāṃ nirgamaḥ kāryaḥ. Ibid., 21.
2. Vide in this connection also documents recorded in the Lekhapaddhati, pp. 34, 35, 36, (here the surety is provided for in the transaction of a sale), 38, 39, 42, 43, 56 (here, the son places a surety in a case where he takes money from his father).

Next comes the topic on the responsibility of the co-sureties. It has been shown that if there are many sureties they must pay proportionate to their share, but if they accept suretyship jointly and severally the creditor may demand it from any one of them in full if he so desires. The sons of the second category of surety should pay the entire amount if the surety-father is away from the place, but in the case of his death they should pay only the proportionate share of the father.

The section that follows is devoted to the surety of the desirable qualities of the persons to be selected as sureties. Stress has been laid principally on the finanical resources, independence and integrity of character commading confidence.

The question of the obligation of the debtor to the surety has been discussed in the next section. The conclusion arrived at is that in case of simple payment of the debt by the surety the debtor is to pay him the amount, but if the surety is pressed for payment, the obligation of the debtor is to the extent of paying twice the amount.

In the next section has been discussed the question of concession to be offered to the sureties. They are in the form of granting of time for tracing the absconding debtor and payment of the debt by instalments.

The concluding section deals with certain records regarding suretyship.

CHAPTER V

Security II

PLEDGE

Analytical table of contents.

1. Pledge—the significance of the two terms, *ādhi* and *bandhaka.*
2. The number of pledges and their characteristics.
3. Pledge for custody.
4. Movable and immovable pledge for custody.
5. Pledge for custody with or without time-limit.
6. Duty of the pledgor in the pledge for custody.
7. Duty of the pledgee in the pledge for custody.
8. Kuttā—a customary type of pledge.
9. Bhogyādhi.
10. Movable and immovable usufructuary pledge.
11. Special features of the pledge for use.
12. If the beneficial pledge is lost or destroyed or if it loses its value, the measures to be adopted.
13. Special type of pledge—*caritrabandhakakṛta.*
14. *Satyaṃkārakṛta* type of pledge.
15. Pledge, possession and adverse possession.
16. Pledge and ownership.
17. Sub-mortgage and remortgage of pledge.
18. Preservation of the pledge and the consequence of its enjoyment through force or fraud.
19. The redemption of the pledge.
20. The right and the procedure of the sale of the pledge by the creditor.
21. Epigraphic and other evidences on pledge.
22. Summary of the chapter.

Important contributions on pledge in published books and journals.

Thomas Strange, Hindu Law, I, (London, 1830), 288-292. He refers to the conclusions of the *śāstras* on the subject very briefly.

Rash Behary Ghosh, The law of mortgage in India, (Calcutta, 1877). Dr, Ghosh principally deals with court-cases relating to mortgage and hardly refers in original to the *śāstric* texts.

K. M. Chaterjee, The law relating to the transfer of immovable property, (Calcutta, 1890), 346-408. He refers to the rules of *dharma-śāstras* in pp. 346-347 and subsequently presents comparative study of the contract of pledge as is traced in other laws.

J. Jolly, Recht und Sitte (Strassburg, 1896), translated into English by B. K. Ghosh under the title of Hindu law and custom, (Calcutta, 1928), 219-221. Dr. Jolly refers to the *śāstric* laws on pledge in outline only.

J. H. Wigmore, 'The pledge-idea : a study in comparative legal ideas. II,' in Harvard Law Review, X, no. 7. (1897), 416-417. In his comparative study on the question of pledge, the author makes reference to some of the conclusions of the Hindu law-books.

Priya Nath Sen, The general principles of Hindu jurisprudence, (Calcutta, 1918) 176-202. The author is analytical in his approach but he does not go deep into a detailed study.

K. P. Jayaswal, Manu and Yājñavalkya, (Calcutta, 1930) 210-216. He simply refers to the general rules as traced in the *smṛtis*.

Gaṅgā Nātha Jhā, Hindu law in its sources, I, (Allahabad, 1930) 152-177. Dr. Jhā collects the *śāstric* materials on pledge in a systematic manner but does not discuss them critically.

Niranjan Ray, 'The ancient Hindu law of pledges and bailments in the Journal of the Department of Letters, Calcutta University, Vol. XXXII (1939), 1-120. His approach to the question is systematic, but is neither deep nor detailed.

Mati Lal Das, Hindu law of bailment, (Khulna, 1946) 231-259. His discusion is systematic but concise.

P. V. Kane, History of Dharmaśāstra, III (Poona, 1946), 247-435. In his treatise he presents in outline the relevant points relating to pledge.

N. C. Sen-Gupta, Evolution of ancient Indian law (Calcutta, 1953), 239. He merely mentions the subject.

J. M. Derrett, 'The development of the concept of poperty in India' in Zeitschrift fur Vergleichende Rechtswicsenschaft, 1962., 78-85. Prof. Derrett makes mention of different aspects of pledge in this highly informative paper.

Ludwik Sternbach, Juridical studies in ancient Indian law, I, (Delhi, 1965) 109-152. Dr. Sternbach discusses the questions relating to pledge in an exhaustive manner, with an eye to the legal aspect.*

Notwithstanding these valuable contributions, there is scope for a further study in the field, covering a wider range of studies, specially of the commentaries and digest-works. Some of the points which have been barely mentioned by Sternbach have been studied here in a more systematic manner. Newer topics have been introduced here in order to make the topic complete.

*Reference may also be made to the contributions by Josef Kohler and Giuseppe Mazzarella for which see Appendix D.

1. Pledge—Ādhi or Bandhaka

Reference has already been made to the observation of Bṛhaspati (X. 5) that the creditor should invest money as loan after accepting a pledge from the debtor, sufficient to cover the amount of the loan. We have also referred to the direction of Nārada (IV, 117), according to which a pledge or a surety has been declared as intended for inspiring confidence in the mind of the creditor in respect of the recovery of the loan.[1]

The act of pledge or mortgage is understood in the sense of a transaction in which the debtor, with a view to create confidence in the mind of the creditor, hands over to him an article in his possession, either for enjoyment of its usufruct or for simple possession. The idea is that such article is to be redelivered to the owner (debtor) when the purpose, for which it was delivered, is served.

To convey the sense of pledge, two terms are used in the *dharmaśāstras*—one is *ādhi*[2] and the other is *bandhaka*.[3]

Meaning of the words *ādhi* and *bandhaka*.

Several attempts have been made to find out the meaning of the word *ādhi* and it may be supposed that the use of the word *bandhaka* is of late origin. Nārada explains the meaning of the

1. The word *viśrambha* as used by Nārada in his expression *viśrambhahetu* has been interpreted by Caṇḍeśvara as 'prayuktaṛṇarprāptiviśvāsaḥ'. Viv. rat, 6,
2. The word *ādhi* finds place in the ṚgVeda (X. 109. 3) and in the Atharva-Veda (V. 17. 3). It may convey the meaning of pledge in both the cases. Vide :
   K. F. Geldner, Der Rigveda, III. p. 331.
   K. P. Geldner, Der Rigveda in Auswahl, p. 23.
   H. Grassmann, W. Z. R., p 178.
   M. Mayrhofer, K. W. A., p. 74.
   Atharva Veda, Tr. by W. D. Whitney, Vol. I., p. 248.
   R. L. Turner, C. D. I, A. L., p. 53.
3. Vide M. Mayrhofer, K. W. A., p. 407,
   M. Monier-Williams, A Sanskrit-English Dictionary, p. 721.

word *ādhi* on the basis of its derivation. According to him it is called so because in it a title is given to the creditor by the debtor.[1] His idea is that the person who had no authority over the object is given the authority to take it under his possession (to use it or to place it under custody). This is what Asahāya suggests in his interpretation.[2] Vijñāneśvara puts it more precisely to refer to an object on which the creditor is made authorised by the debtor for creating confidence in his mind in respect of the object (the sum) that is taken by way of loan.[3] In the *Vyavahāraprakāśa*[4] of Pṛthvīcandra, the *Madanaratnapradīpa*[5] and the *Vyavahāraprakāśa*[6] of Mitramiśra, stress has been given on the meaning of the root *dhā* having the sense of placing (sthāpana).

In the Smṛticandrikā it has been held on the basis of a text of Nārada[7] that *bandha* is to be understood as the object that is placed with the common friend of the debtor and the creditor (i. e. stakeholder), by the debtor, for creating confidence on the part of the creditor.[8] The same idea in almost the same language has been expressed by Mitramiśra, who almost certainly had the text of Devaṇabhaṭṭa before him.[9] The agreement of Northern and Southern writers, as these two are, is of interest.

1. Adhikriyata ity ādhiḥ..... Nārada, IV. 124.
2. Apy adhaninā sambandhādhikāram ānīyate ity ādhiḥ.
Commentary on Nārada, IV. 124.
3. Ādhir nāma gṛhītasya dravyasyopari viśvāsārtham adhamarṇenettamaiṇo' dhikriyate ādhīyate ity ādhiḥ.
Mitākṣarā on Yāj II. 58.
4. Tatrādhir nāmādhamarṇena gṛhītasya dhanasyopari pratyayārtham uttamarṇe yad vastu ādhīyate saḥ. Vy. P. (P), 214.
5. .....uttamarṇe dhīyate sthāpyate ity ādhiḥ. M. R. P, 145.
6. .....gṛhītadravyanimittaṃ yan nikaṭe sthāpyate bhūṣaṇādi sa ucyate.
Vy. P. (M), 234.
7. This text is traced neither in the Nāradasmṛti (Ed. by Jolly) nor in the N. M. S (in the T. S. S). Vide Dharmakośa. Vy. kā, 647.
8. Yady evam ādhir eva bandhaka itīhocyate kathaṃ tarhi pūrvasmin vacane bandhaṃ vā iti bhedenoktam ucyate, tatra bandhapadasya yo vivakṣitārthaḥ sa hi nāradena darśitaḥ—'nikṣepo mitrahastastho bandho viśvāsakas smṛtaḥ' iti. Uttamarṇādhamarṇayor yas sakhā tasya pārśve nikṣiptam evādhamarṇadhanam uttamarṇaviśvāsārtham adhamarṇenopadiṣṭaṃ bandha iti gīyata ity arthaḥ. Sm. C ; Vy. kā. II, 318.
Vide also Kane, H. D. S. III, 419, note 681.
9. Vyavahāraprakāśa, 224-225.

The text of Caṇḍeśvara, as it appears in the printed edition, conveys the idea that both the words, *ādhi* and *bandhaka* should refer to the pledge of usufructuary type.[1]

Pṛthvīcandra takes the word *bandha* in the sense of the pledge for custody as distinct from *ādhi*, which according to him should stand for usufructuary pledge.[2]

Vācaspatimiśra has the same view as that of Pṛthvīcandra. He expresses it more clearly by stating that the word *ādhi* should stand for pledge for use while the word *bandha* should refer to pledges (for custody) like gold etc.[3]

Nīlakaṇṭha defines *bandha* as an undertaking (nirbandha) by the debtor that so long as the debt is not paid off he (the debtor) will not utilise the house, land etc, in the form of gift, sale or mortage and the like (to another party).[4]

Jagannātha explains the significance of the word *ādhi* as it appears in the text of Nārada (IV. 124). He interprets that the pledgor authorises the pledgee, to make use of the pledge in the same way in which he (the pledgee) uses his absolute property. Possession (title—*adhikāra*) may be treated here as secondary in the sense of taking under custody or enjoying the property that does not belong to him. The pledgee keeps or enjoys the property of another (pledgor) in the same way in which he keeps or enjoys his own property.[5] The other interpretation of the word *ādhi* as presented

1. Ādhibandhaśabdau dhogyādhiparau, Vivādaratnākara, 5.
   Should the text be read as : .....bhogyābhogyādhiparau ?
   Compare : Ādhibandhau bhogyābhogyādhirūpau nātaḥ paunaruktyam.
   Vivādārṇavasetu. Folio 14, Line 14.
2. Bandhapadenātra bhogalābhād anyat suvarṇādikaṃ gopyādhipadavācyaṃ vivakṣitam iti..... Vyavahāraprakāśa, 204.
3. Ādhir bhogyaḥ bandho'tra bhogalābhād anyat suvarṇādi.....
   Viv. cin, 2. Vide the notes by Jhā, Viv. cin. (tr.), 3. Vide also Jolly, S. B. E. XXXIII., 319-320, and Hindu Law and Custom (tr), 219-220 223,
4. Yāvat tāvakam ṛṇaṃ na śodhyate tāvad etad gṛhakṣetrāder dānavikrayādhikaraṇādy ahaṃ na kariṣyāmīti nirbandho bandhaḥ Vy may, 166.
   In this concept of *bandha* we notice the idea of pledge unaccompanied by possession. Compare here the pledge of the type of Caritrabandhakakṛta in Yāj, II. 61, explained by Vijñāneśvara.
6. Adhikriyate iti svasvatvāspadībhūtavat kriyate, gauṇa evātradhikārḥ, rakṣṇopabhogena vā bhavati paradravyasya yathā adhikṛtaṃ svakīyadravyaṃ rakṣyate bhujyate vā tathā bandhasvarūpaṃ paradravyam api.
   Vivādabhaṅgārṇava, Folio 72. Lines 30-34 ; Col. Dig. I, 144.

by him does not appear appropriate (though the prefix and the root are retained here also in the same form). Here he suggests that the chattel is designated as *ādhi* because the loan is issued on its basis.[1]

Jagannātha holds that in practice the word *ādhi* has the same sense as *bandha.*[2] He takes the word *bandha* in the passive form having the sense of that which is placed as a pledge. In his view, it stands for an article which is placed under the authority of the creditor by the debtor with the stipulation that it should remain in the possession of the creditor so long as the debtor does not pay back the loan.[3]

He refers to the text of Bṛhaspati (ādhir bandhaḥ samākhyātaḥ.[4] Bṛhaspati. X. 38) and observes that according to Bṛhaspati both the words *ādhi* and *bandha* bear the same sense. In another context (paripūrṇaṃ gṛhītvādhiṃ bandhaṃ vā .....Bṛhaspati. X. 5) the two words have been placed side by side and it is indicated that there should be some sort of distinction between the two. He follows the interpretation offered by Caṇḍeśvara, Vācaspatimiśra, Bhavadeva and others and states clearly that *ādhi* should be understood as conveying the sense of usufructuary pledge in the form of land with its produce, the cow or female buffalo and the like with milk, tree with fruits, elephant, horse, bull etc. fit for caraying burden, etc.—the pledges which do not get impaired through use. *Bandha* should stand for a pledge other than the usufructuary one, such as copper caldren, lump of iron or gold—objects that deteriorate through use. It may mean also a pledge whose use is not possible.[5]

1. Athavā.....adhikṛtyā ṛṇādikaṃ kriyate sa ādhiḥ.
Vivādabhaṅgārṇava. Folio 72, Lines 35-36 ; Col Dig. I. 144.
2. Ādhiśabdārthaś ca bandha eva vyavahārāt.
Ibid. Lines 34-35 ; Col Dig. I. 144
3. Yāvat tava dhanaṃ na pariśodhayāmi tāvat tavedaṃ vaśe tiṣṭhatu ity adhamarṇapratijñayā uttamarṇavaśe tiṣṭhan padārthaḥ bandhaśabdārthaḥ.
Ibid. Folio 71 Lines 2-4 ; Col. Dig I, 101-102.
In this concept of Bandha, Jagannātha stands influenced by the views expressed by Nilakaṇṭha, as already referred to.
4. Sternbach wrongly refers to this text as of Nārada (I. 20).
Vide his Juridical studies in ancient Indian law, I. 109. F. n. I.
5. Ādhir bandhaḥ samākhyāta iti vakṣyamāṇavacanena bṛhaspatinaiva ādhibandhayor ekatvaṃ pratipāditam. Atra tu ādhibandhayor dvayor upādānāt

From a study of the interpretations as presented by different digest-writers, it appears that the exact difference between the two words might have been lost long before the period of the digest-writers. The meanings ascribed to these words to bring a line of distinction between the two may be guess-work. The line of approach made by Devaṇabhaṭṭa and Mitramiśra may offer certain clue to find out the meanings of the two words. It would not be quite out of the way to hold that *ādhi* represents a security in which the pledge was physically passed under the authority of the pledgee and he accordingly became entitled to place it under his custody (in the case of *Gopyādhi*) or to use it (in the case of *Bhogyādhi*). *Bandha* refers to somewhat different type of security where there was no real transfer of the pledge to the creditor. The pledge was to be kept with a third party—a common friend of both the debtor and the creditor, who could perhaps hand over the same to the creditor if the debtor failed to pay off the debt according to his agreement. Such a person in course of time assumed the role of a surety of the type of Ṛṇidravyārpaṇa—a surety mentioned by Bṛhaspati[1] and Vyāsa.[2]

P. N. Sen refers to the suggestion offered by Dr. R. B. Ghosh[3] that 'change from *ādhi* to *bandhaka* marks the progress from a pledge with possession to a pledge not followed by delivery or in other words to hypothecation.'[4] He himself in his own way establishes that Halāyudha (as quoted by Jagannātha), Raghunandana (Dāyatattva, 26), and Nīlakaṇṭha (Vyavahāramayūkha, 166) could conceive of a pledge without possession. In his words : ...'supports the suggestion of Dr. Ghosh that the word *bandhaka* as distinguished from

viśeṣaparatā bodhyā sa ca viśeśaḥ caṇḍeśvara-vācaspati-bhavadevādisammataḥ. Yathā ādhir bhogyādhiḥ saśayabhūmiḥ sadugdhagomahiṣādiḥ saphalavṛkṣādiḥ vahanopayuktahastyaśvabalīvardādīḥ bhogena yasya na hānir bhavatīti...bandhaḥ abhogyādhir iti yāvat tāmrakaṭāhādi lauhakāñcanapiṇḍādiś ca bhogena yasya hānir yasya vā bhogo na sambhavati.

Vivādabhaṅgārṇava, Folio 7. Lines 31-38 ; Col. Dig. I. 17.

1. X. 73.
2. Quoted in the Smṛticandrikā. Vy. Kā, II, 347.
   Vide P. N. Sen, General principles of Hindu Jurisprudence, 188-189.
3. R. B. Ghosh, Law of Mortgage in India, 42. The quotation actually is not traced therein.
4. P N. Sen, General principles of Hindu Jurisprudence, 184.

ādhi was taken hold of to introduce a new kind of mortgage which did away with the requirements of delivery of possession without which there could be no pledge under the older law.[1] Whether or not the *bandhaka* was really a later development than *ādhi*, it is difficult to state, but it is certain that both forms of real security survived in use until the end of the system.

2. The number of pledges and their characteristics.*

Pledges since very ancient times were described as different in number and nomenclature. It is very interesting to follow the apparent course of the evolution.

Kauṭilya makes mention of pledge and classifies it on the basis of whether it yields benefit (to the creditor) or not. In the first category is included the pledge described as *sapakāra* (beneficial), while *nirupakāra* has been listed under the second class.[2] He cross-classifies it on the basis of its being immovable (*sthāvara*) and this suggests also the idea of movable pledge (*jaṅgama*) as we notice in later legal treatises. *Sthāvara* further has been distinguished under two heads, namely, *prayāsabhogya* (which may be enjoyed after effort on the part of the creditor) and *plalabhogya* (which may be enjoyed by its very nature without any effort).[3]

Gautama does not mention any pledge by name, but from the two rules of his text, where the term *bhoga* appears, it may be presumed that he was conversant with the concept of pledge for use.[4] This presupposes the idea of a pledge merely to be kept under custody.

Like Kauṭilya, Manu refers to a beneficial pledge—*sopakārādhi*[5]

1. Ibid, 188.
* Vide Sternbach, J. S. A. I. L. I, 99-112.
2. Arthaśāstra. III. 12. 9 ; III. 12 10.
3. Sthāvars tu prayāsabhogyaḥ phalabhogyo vā. Ibid III. 12. 15.
4. Bhuktādhir na vardhate. G. D. S, XII. 29.
   In another rule (XII. 32) Gautama while speaking about different varieties of interest refers to *ādhibhoga* and Haradatta explains it as the interest in the form of enjoyment of the pledge like field etc. 'āhitasya kṣetrasya bhogo'nu bhavaḥ, tatrānubhava eva vṛddhiḥ'.
   Haradatta on G, D. S. XII. 32.
5. Manu, VIII. 143.

but there is no other hint in his text about his knowledge regarding any other type of pledge.

Yājñavalkya uses both the appellations, *sopakāra*[1] and *phala-bhogya*[2] for the beneficial type of pledge. He mentions the pledge for custody (II. 59)—*gopya*. There is another classification of pledge on the basis of the limit of time involved—*kālakṛta* (II. 58). We have from him two other types, which are not mentioned by others. In one of them the pledge is in the form of good character of the debtor or his religious merit—*caritrabandhakakṛta*, while in the other the pledge assumes a contractual or conditional character—*satyaṃkārakṛta*.[3]

Viṣṇu does not make any classification of pledge, but from his rule (VI. 5, which is on the pattern of the rule of Gautama—XII. 29), we may derive the idea of the pledge for use. His other rule (VI. 7) may be interpreted as having reference to the pledge with limitation of time (as we find in Yāj. 11. 58). He mentions directly an immovable pledge (*sthāvara*—VI. 8—9).

Nārada classifies the pledge first on the basis of time-limit i. e. with time-limit, *kṛtakālāpaneya* (cf. *kālakṛta* of Yāj. 11. 58) and without it *yāvaddeyodyata*.[4] He has the classification of the pledge as *gopya* and *bhogya*[5] and again as *jaṅgama* and *sthāvara*.[6]

Bṛhaspati speaks of fourfold pledges as *sthāvara*, *jaṅgama*, *gopya* and *bhogya*[7] and he classifies them again as *yādṛcchika* (without any time-limit, like *yāvaddeyodyata* of Nārada), *sāvadhi* (with time-limit, like *kālakṛta* of Yājñavalkya and *Kṛtakālāpaneya* of Nārada), *lekhyārūḍha* (recorded in the document) and *sākṣjmān* (pledged in the presence of the witnesses).[8] It is of interest how

1. Yāj. II. 59.
2. Yāj. II. 58.
3. Yāj. II. 61.
4. Nārada. IV. 124.
5. Ibid. IV. 125.
6. Ibid. IV. 139.
7. Ādhir bandhaḥ samākhyātaḥ sa ca proktaś caturvidhaḥ /
   Jaṅgamaḥ sthāvaraś caiva gopyo bhogyas tathaiva ca // Bṛ. S, X. 38.
8. Yādṛcchikaḥ sāvadhiś ca lekhyārūḍho'tha sākṣimān. Ibid. X. 39.
   Lakṣmīdhara attempts to bring them under four categories on the basis of nature (*svarūpa*), mode (*prakāra*), time (*kāla*) and proof (*pramāṇa*) :
   Caturvidhaḥ svarūpaprakārakālapramāṇaiḥ. Tatra svarūpam eva dvividham sthāvarajaṅgamabhedena, prakāraś ca dvividho gopyabhogyabhedena, kālo

far each author finds it desirable to arrange the various cross-classifications together, with the conciseness characteristic of the *sāstra.*

Kātyāyana makes mention of the pledge for use (*bhogyādhi* 516) and in that context refers to *sthāvara* and *jaṅgama* as the two varieties. He speaks of the pledge as recorded in document and as one executed in the presence of the witnesses (517). *Lekhyārūḍha* has been classified under two categories, namely, *anirdiṣṭa* (pledges which are not specified because they do not exist at the time of pledging) and *nirdiṣṭa* (where they are specifically mentioned).[1] The last two were not specified by other writers on law, though of course we cannot go so far as to assert that the distinction was unknown to them (it might have been thought unworthy of mention).

Bharadvāja refers to four types of pledge in which we notice two new varieties. Thus besides *gopya* and *bhogya* he mentions two other pledges by the appellation of *arthapratyayahetu* and *ājñādhi.*[2] From the nature of the definition it appears that *ājñādhi* refers to a pledge that is ordered by the king or the court to be presented. He directs that in the *pratyayādhi* (*arthapratyayahetu*) the pledgee is entitled to the interest stipulated previously in writing and not more than that. Anything derived more than that should be handed over to the debtor and that which falls short of the stipulated interest should be compensated by the debtor.[3]

dvividhaḥ avadhiniyamāniyamābhyām, Pramāṇaṃ dvividhaṃ lekhyasākṣibhedena, Kṛtyakalpataru. Vy. kā. p. 292.
Caṇḍeśvara refers to this view of Lakṣmīdhara.
Viv. rat, 22.

1. Kātyāyana, 519-520.
2. Ādhis caturvidhaḥ prokto bhogyo gopyas tathaiva ca /
Arthapratyayahetuś ca caturthas tv ājñayā kṛtaḥ //
Quoted in Farā. mā. Vy. kā, 174.
He defines them thus :
Arthapratyayahetur yaḥ pratyayādhiḥ sa ucyate /
Ājñādhir nāma yo rājñā saṃsadi tv ājñayā kṛtaḥ // Ibid. 174.
3. Pratyayādhau tu bhoktavyā vṛddhir yā pūrvalekhitā /
Tāvad eva tu bhoktavyam iti śāstraviniścayaḥ //
Yat tu tatrādhikaṃ vṛddhir deyaṃ tad ṛṇine punaḥ /
Hīnaṃ yāvat tu tad vṛddhes tāvat saṃpūrayed ṛṇe //
Quoted. in Sar. vil, 234.

Asahāya, while speaking on the *Kṛtakālāpaneya* type of pledge of Nārada, observes that it is of two sorts. In one case the pledge is kept under the custody of the *ādhipāla* type of surety and when the due date arrives and the money becomes paid, the surety hands over the pledge. In the second case it is accepted by the creditor for a specified period, say, five or ten years, after which it belongs to the debtor.[1]

Medhātithi speaks of the usufructuary type of pledge as having two classifications. One may be enjoyed at a certain period (and not always) and the other may be enjoyed always because its very nature permits it. He illustrates the first type as milch cow which may be utilised only during the period when she yields milk. In the second category he presents the illustration of wrought gold etc. which may always be made use of.[2]

Vijñāneśvara refers to a technical type of pledge having the nomenclature of *kṣayādhi*, designated as such because in this important type of pledge the income goes to reduce the debt.[3] This also goes by other appellations like *paribhāṣitādhi* or *saṃvidādhi*.[4] Evidently the names are given on the basis of the stipulation that is made perhaps at the time of placing the pledge that it should go to reduce the debt.

Mādhava rightly but pedantically points out[5] that the pledge is first of all divided into two categories, namely, *gopya* and *bhogya*. Each of them again is divided into two, *sthāvara* and *jaṅgama*. Each again is classified into two as *yādṛochika* and *sāvadhi*. Again each may be subdivided as *lekhyārūḍha* and *sāksimān*. Thus there

1. Tatra kṛtakālāpaneyo yaḥ dviprakāraḥ, eko dīyamāne dhane prāptakālāvadhau ādhipālaiḥ samarpaṇīyaḥ, dvitīyas tu atipuṣyamāṇe dhaninā evaṃ vicārya gṛhhyate yathā pañca varṣāṇi daśa vā iyantaṃ kālaṃ ..na mocanīyāḥ, tatparato ṛṇike. Asahāya on Nārada, IV. 124.
2. Bhogyo'pi dvividhaḥ samayād uhyamānabhogaḥ svarūpato vā. ādhir dogdhrī gauḥ pihittasuvarṇādi. Medhātithi on Manu, VIII. 143.
3. .....sarvathā savṛddhikamūlarṇāpākaraṇārthādhyupabhogaviṣayam idaṃ vacanam.....tam enaṃ kṣayādhim ācakṣate laukikāḥ. Vijñāneśvara's commentary on Yāj. II. 64.
4. Evaṃvidham ādhiṃ laukikāḥ kṣayādhim ācakṣate, kecid idaṃ eva paribhāṣitādhiṃ kecit saṃvidādhim āhuḥ. Sar, vil, 242.
   Vide also the commentary of Nandapaṇḍita on Viṣṇusmṛti VI. 7.
5. Sa dvividhaḥ gopyo bhogyaś ca, punaś caikaikaśo dvividhaḥ..... Commentary on the Vyavahāra section of Parāśara, 174,

may be *gopyasthāvara, gopya-jaṇgama, gopya-yādṛcchika-sthāvara, gopya-yādṛcchika-jaṅgama* and so on. In the case of *bhogya* also the same number of varietes will follow.

The *Sarasvatīvilāsa* speaks of the usufructuary type of pledge as being classed under two heads. One is *sapratyayabhogyādhi*, the pledge that is intended for payment of the principal with interest, and the other is *apratyayabhogyādhi*, where the pledge is given for the payment of the interest only.[1] It refers to the text of Vyāsa, where a pledge by the name of *pratyayādhi* has been mentioned. It has been described as a pledge where its enjoyment is treated as sufficient to reduce the capital along with interest. Lands and the like, that are pledged are to be released when the capital along with interest becomes doubled.[2] In this digest it has been pointed out that this *pratyayādhi* is no other than *sapratyayabhogyādhi*.[3] In the same text the text of Kātyāyana has been cited as illustration of *apratyayabhogyādhi*. Kātyāyana provides that in the usufructuary type of pledge a pledge, movable or immovable, worthy of being enjoyed, is placed with the creditor for recovering the interest of the loan taken. He may get back the pledged field (or any other type) after payment of the capital in addition (to the income enjoyed by the creditor[4]).

The *Sarasvatīvilāsa* makes pertinent observations that certain pledges assume special appellation because of the terms of the agreement. Thus in a very interesting way it points out that there may be intermixture of the characteristics of different types of pledge. It mentions the case of *gopyabhogyādhi* (a pledge both

1. Atra bhogyo dvividhaḥ sapratyayabhogyādhiḥ apratyayabhogādhiś ceti. Savṛddhikamūlyāpākaraṇārtho yaḥ saḥ sapratyayabhogyādhir ity ucyate, Vṛddhimātrāpākaraṇārtho yaḥ so'pratyayabhogyādhir ity ucyate.
Sarasvatīvilāsa, 233.
2. Kāṃ cid vṛddhiṃ samābhāṣya dravyam ādāya tattvataḥ /
Matkaṣetraṃ bhuṅkṣva vṛddhyartham adhikaṃ mūlanāśanam //
Ity ādhiḥ pratyyādhiḥ syād dvaiguṇye niṣkrayo bhavet //
3. Sar. vil. 233-234. quotes this text of Vyāsa with the comments : 'tatara sapratyayabhogyādhim āha vyāsaḥ.....'
4. Dravyayaṃ gṛhītvā vṛddhyarthaṃ bhogayogyaṃ dādāti set /
Jaṇgamaṃ sthāvaraṃ vāpi bhogyādhiḥ sa tu kathyate //
Mūlyaṃ tadādhikaṃ dattvā svakṣetrādikam āpnuyāt // Kāt. 516.
Sar. vil introduces the verse thus ; athāpratyayabhogyādhim āha kātyāyanaḥ, p. 234.

for use and for keeping under custody), where the condition accompanies the pledge in this form—'if the pledge is not redeemed when the capital gets doubled (with interest) it may be treated as the usufructuary pledge for the doubled capital.[1] Here the pledge for custody is converted into a pledge for use. Naturally this can occur if the agreement provides for it. Similarly there may be *kālakṛtabhogyādhi* where the pledge for custody is delivered with the condition that if the capital is not paid off within a certain time-limit, then it will be treated as pledge for use.[2] It refers again to the case of *bhogyakālādhi*, where the usufructuary pledge is kept with the pledgee for meeting the interest up to a certain limited period and the condition is added there that if by that time the capital is not paid off the pledge would pass into the ownership of the pledgee automatically.[3] The distinction between the two mentioned lies in the fact that in the former after the specified time the pledge (for custody) would be treated as pledge for use, while in the latter the pledge for use after the stipulated period becomes the property of the creditor. The difference evidently is on the basis of the nature of the contract.

In the same text there is reference to a *sūtra* of Gautama[4] that on the basis of the nature of the contract in the transaction the beneficial pledge may be converted into a pledge for custody.

1. Ayam ādhis tvatprayuktadhane dviguṇībhūte yadi na mocyate taddinam ārabhya dviguṇadhanasya bhogya iti gopyabhogyādhiḥ.
   Sar. vil. 244. He refers to the text of Viṣṇu in explanation of which the above-noted observation has been made : pāribhāṣiko'pi gopyādhir bhogyādhir api bhavatīti.'
2. Dīpotsavādisamaye tvatprayuktaṃ mūlyam eva dhanaṃ yadi na dīyate tadā prabhṛti prayuktadhanaṃ ārabhya vā ayam ādhir bhoghyādhir iti kālakṛtabhogyādhiḥ. Ibid. 244.
3. Ayaṃ bhogyādhiḥ svapraykutadhanavṛddhyarthaṃ dīpotsavakālaparyantam anubhujyatāṃ, tadā yadi mūlyaṃ na dāsyāmas tadā ādhis tava bhaviṣyatīti bhogyakālādhiḥ, Ibid. 244.
4. Tathā ca gautamasūtram, bhogyādhir api gopyādhir bhavatīti pāribhāṣikatvād vyavahārasyeti. Saravatīvilāsa, 244.
   This rule does not appear in the printed text of Gautama. Same is the case with the rule of Viṣṇu. There are other cases also where quotations from Gautama and Viṣṇu, mentioned in the Sarasvativilāsa do not find place in the respective printed editions. For discussion on this point vide. 'Kuttā : A class of Land-tenures in South-India', by J. D. M, Derrett, B. S. O, A. S, 1958, XXI/I, 69-71.

It illustrates the contract in the following way: 'Let the beneficial pledge be enjoyed up to a stipulated period (say, the festival called *Dīpotsava*) as the interest for the capital and if the principal is not paid by that time the pledge should not be enjoyed. If however, that capital gets doubled and remains undischarged, the pledge would be treated as the property of the pledgee.'[1] Here we notice that what was the usufructuary pledge in the first stage up to a certain period, later on on the strengh of the terms of the agreement, becomes treated as the pledge for custody.

The *Sarasvatīvilāsa* makes reference to *anvādhi*[2], but its nature has not been explained by the author. Bharadvāja speaks of its nature and at the same time prescribes punishment for transacting such a sub-pledge or sub-mortgage without the approval of the pledgor. The punishment is in the form of losing the capital even if it is done during distress.[3]

Khaṇḍādhi is mentioned by the *Saravastīvilāsa* as standing for a pledge made to secure the capital with interest (taken together) the interest being the stipulated one up to a limited period, say, one month, two months or the festival of Dīpāvalī.[4] In the same passage there is a reference to a text of Viṣṇu that sometimes this (*khaṇḍādhi*) ends in the transaction of sale.[5] It has been explained that under certain circumstances, e. g. when the doubled amount cannot be paid at the time of the festival

1. Athāyaṃ bhogyādhir dīpotsavakālaparyantaṃ prayuktadhanavṛddhyarthaṃ upabhujyatām. Tadānīṃ prayuktadhanāpradāne dīpotsavaprabhṛti na bhujyatām, tataḥ paraṃ prayuktadhane vṛddhyā dviguṇībhūte dvaiguṇyāntaraṃ taddhanaṃ yadi na dāsyāmaḥ tadādhis tava bhaviṣyatīti. Ibid. 244.
2. The term appears in three places in the Arthaśāstra and in no case does it carry the sense of sub-mortgage. Vide Arthaśāstra, III. 3. 13 ; III. 4, 9 ; III. 12. 18 ; 19 and the notes on them by R. P, Kangle.
3. Svāminā cānanujñāta ādher ādhiṃ karoti cet /
   Svadhanāt sa tu hīnas syāt karoty āpadi pūrvavat //
   Bharadvāja quoted in Sar. vil, 234-235. Reference here may be made to the direction of Prajāpati regarding sub-mortgage.
   Vide Sm. C. II. 334-335 ; Sar. Vil, 243.
4. Khaṇḍādhir api dīpotsavaparyantaṃ māsamātraṃ māsadvayaparyantaṃ vā pāribhāṣikavṛddhyā yā yāvad vṛddhaṃ dhanṃ tāvad dhanaṃ mūlīkṛtya taddhanasyādhīkaraṇaṃ khaṇḍādhir iti. Sat. vil. 244.
5. Atra viśeṣam āha viṣṇuḥ ; sa kvacit kriyānta iti. Ibid. 244.

according to the agreement, the pledge is sold to recover such doubled amount.[1]

From a study of these discussions it may be observed that the pledges varied according to the nature of the contract and this offers scope of thinking that there might be more varieties of pledge according to the nature of different agreements. It may be noted here that a pledge is mainly classified into two types—that for custody and that for use. If it is considered from the point of the object pledged, each may be divided into two categories, movable and immovable. If the time element is taken into consideration it may further be classified as fit to be released at a specific time (*kṛtakālāpaneya*) and as one without any limitation of time (*yāvaddeyodyata*). If the nature of contract is referred to, each again is divided into two classes as to whether it is transacted in writing or in the presence of the witnesses. Again taking into consideration the details of the pledge, it may be classified as *nirdiṣṭa* and *anirdiṣṭa*, the details of the pledge being fully specified in the previous case, while in the other case they being left unspecified.

Mention here may be made of the classification made by Nandadaṇḍita. He first places them under two categories, the first is intended for creating confidence (perhaps by this he means the pledge for custody—*gopya*), while the other is for diminishing the debt. The second one is again divided into three sorts—pledge that is meant only for payment of the interest, that which is intended for the payment of the capital and that which is to be taken for payment of the capital with interest.[2]

The usufructuary type of pledge may be of the following types. Thus it may be enjoyed only for a certain period (*samayād uhyamānabhaga*), or it may be made use of without any limitation of time (*svarūpataḥ*) or it may be made use of without effort (*phalabhogya*), or it may be utilised with effort (*prayāsabhogya*). It may be used for meeting the capital only, the capital with interest or the interest only.

1. Kriyāntaḥ kvacit viṣayabhedena dīpotsavādisamaye dviguṇadravy āpradāne taddiguṇadravyasyāyam ādhir vikrīta iti. Ibid, 244-245.
2. Ādhir dvividhaḥ viśvāsārthaḥ ṛṇāpākaṛṇārhthaś ca. ṛṇāpākaraṇārtho'pi trividhaḥ, vṛddhimātrāpākaraṇārthaḥ mūlamātrāpākaraṇārthaḥ savṛddhikarṇāpākaraṇārthaś ca. Com, on Viṣṇu. VI. 7.
He refers here to a verse attributed to Nārada :
'Viśvāsārtharṇaśodhyaś ca sa punar dividhaḥ smṛtaḥ.'
This does not appear in the printed edition.

Those pointed out by the *Sarasvatīvilāsa* are but the technical types of pledge named differently because of the difference of the terms of agreement. In these categories should be included the *Caritrabandhakakṛta* and the *Satyaṃkāra* types of pledges mentioned by Yājñavalkya.

Of the various types of pledge, the two, namely, that for custody (*gopya*) and that for use (*bhogya*) are important ones and others may be treated as different varieties of them. It would therefore be desirable to discuss the details regarding these two types of pledge. It may be noted here that the writers on law in ancient India often mention the pledge in general terms and it often leads to difficulty to understand the exact implication.

3. Pledge for custody—*Gopyādhi.*[1]

Name and purpose.

The term *gopya* as applied to a pledge in the sense of a pledge to be placed under custody only, appears in the legal literature at a comparatively later period. Kauṭilya does not mention it by name but the description of a pledge as *nirupakāra* (not yielding any benefit to the pledgee) suggests that the purpose that is served by such a pledge is the same as that of the pledge for custody. Kauṭilya in spirit was conversant with such a pledge. A pledge for custody does not afford any material benefit to the pledgee and is simply placed as security for creating confidence in the mind of the creditor as rightly pointed out by Nārada.[2]

Yājñavalkya, Nārada and Bṛhaspati use the term *gopyādhi.* Asahāya explains the etymological significance of the term *gopya* by stating that it should be protected by the pledgee.[3] The same idea finds place in the commentary of Vijñāneśvara.[4] Nandapaṇḍita by way of classifying the pledges into two categories, as already pointed out, makes mention of the first type, which is intended for creating confidence of the creditor.[5] This evidently refers to the *gopya* type of

1. L. Sternbach, Juridical Studies in Ancient Indian Law, I 112-117.
2. Nārada, IV. 117.
3. Gopyaḥ.....rakṣaṇīya ity arthaḥ.' Com. on Nārada, IV, 125.
4. Mitākṣarā on Yāj, II. 58.
5. Vide his commentary on Viṣṇusmṛti. VI. 7.

pledge and at the same time speaks of the purpose of such a pledge. But practically speaking both the types of pledge have the purpose of of creating confidence. Jagannātha defines the *gopya* type of pledge as one which is pledged only for the confidence of the creditor.[1]

4. Movable and immovable pledge for custody

The objects placed as pledge for custody are expected to carry value sufficient to cover the principal with interest (of course in special case as in *caritrabandhakakṛta*, it can be of less commercial value that the loan itself). These objects may be either movable ones or immovable ones. The rule of Kātyāyana (525) suggests that even human beings like maid-servants or animals like horses could be pledged for custody. But these distinctions (i.e. whether they are movable or immovable) carry no special legal significance.

5. Pledge for custody with or without time-limit.

A pledge for custody may be bound by limitation of time or may be without any limitation. In the first case it is called *kṛtakālāpaneya*[2] or *kālakṛta*[3] or *sāvadhi*.[4] In the second case the distignation is *yāvaddeyodyata*[5] or *yādṛcchika*.[6] This limitation of time brings with it the question relating to the loss of pledge and the like. Yājñavalkya declares the significanc of the *kālakṛta* type of pledge that it becomes lost to the pledgor when the stuipulated time passes away (and if it is not previously redeemed).[7] The use of the word *apaneya* (in *kṛtakalāpaneya*) by Nārada suggests that the limitation of time is an indication that the pledge should be released after the

1. Viśvāsamātrārtham arpito bandhaḥ gopyādhir iti.
Vivādabhaṅgārṇava, Folio. 203, Lines 7-8.
2. Nārada, IV. 124.
3. Yāj, II. 58.
4. Bṛ. S, X. 39.
5. Nārada, IV. 124.
6. Bṛ. S, X. 39.
7. Kāle kālakṛto naśyet.....Yāj, II, 58.
Viñāneśvara observes that in such case the loss of pledge may take place even before the capital becomes doubled with interest:
Kālakṛtaḥ.....sa tu kāle nirūpite prāpte naśyet dvaiguṇyāt prāg ūrdhvaṃ vā. Com. on. Yāj. II. 58.

specified time.[1] The two types of classification of this sort of pledge made by Asahāya (as already pointed out) may go to show that in certain case (second type as mentioned by him) the pledge could not be released within the specified time, after which it automatically would return to the debtor. Sometimes the surety known as *ādhipāla* would take upon himself the task of returning the pledge on payment of the due, after the specified period.[2] In the pledge for custody, where there is no time-limit it should be understood on the basis of the rule of Yājñavalkya (II.58) that the pledge may be lost when the interest accumulates to an amount equal to the capital.[3] Again in the absence of time-limit the pledgor derives the right of getting back his pledge at the moment he presents himself to pay off the debt with interest.[4]

6. Rights and duties of the pledgor in the pledge for custody.

With respect to the duty of the pledgor, so far as the pledge for custody is concerned it may be observed that he is expected to place a pledge of value sufficient to cover the loan with interest (Bṛhaspati. X. 5). He should make it a point to redeem it through payment of capital with interest before the time-limit.[5] Vyāsa advises that the debtor should redeem the pledge for custody after the capital gets doubled.[6] He is under obligation to replace another pledge for custody if notwithstanding proper care the pledge deteriorates in

1. The idea appears to be that even if the debtor pays the due, it may be redeemed after the stipulated period and not before that.
2. Vide the commentary of Asahāya on Nārada, IV. 124.
3. Ādhiḥ praṇaśyed dviguṇe dhane yadi na mokṣyate Yāj, II. 58.
   Vijñāneśvara restricts its sope to the pledge for custody without time-limit: .....pāriśeṣyād ādhiḥ praṇaśyed ity etad akṛtakālagopyādhiviṣayam avatiṣṭhate'. on Yāj, II. 58.
4. Dhanaṃ mūlīkṛtaṃ dattvā yadādhiṃ prārthayed ṛṇī /
   Tadaiva tasya moktavyas tv anyathā doṣabhāg dhanī // Bṛ, S, X. 66.
   Mitramiśra interprets the rule with reference to the pledge for custody also: .....tac ca bhogyādhau mūlamātraṃ gopyādhau tu savṛddhikaṃ dattvā..... Vyavahāraprakāśa, 245.
5. Manu, VIII. 145. Vide the commentary by Medhātithi: 'ādher mokṣaṇakālaḥ dviguṇībhūtaṃ dhanaṃ.....tasmād dviguṇībhūtadhane ādhimokṣaṇe prayatitavyam.'
6. Gopyādhiṃ dviguṇād ūrdhvaṃ mocayed adhamarṇikaḥ.
   Vyāsa quoted in Vy. p. (M), 245.

value, not being able to cover the value of the capital with interest.[1] This provision is quite reasonable in view of the fact that in such case of the deterioration the loan remains unsecured to a certain extent. In the case of failure to present another pledge, the direction of the *śāstrakāras* is to discharge the debt (with interest). In other words, the creditor can take preceedings to enforce immediate recovery of the debt, irrespective of the original contract (unless deterioration was foreseen in the contract itself).

7. Duty of the pledgee in the pledge for custody.

The first and foremost duty of the pledgee in the case of the pledge for custody is to protect the pledge, as stressed by Nārada,[2] Bṛhaspati[3] and Hārīta.[4] He should not use force to enjoy (i. e. arbitrarily use) the pledge and if this is done, he is to forfeit the interest and in addition should 'please the pledgor by payment of price.' (an expression which is ambiguous but probably meant that the pledgor should be compensated).[5]

Yājñavalkya speaks of enjoyment in general (and not through force or fraud) and in such a case prescribes the loss of the interest.[6] According to him the pledgee is under obligation to replace the pledge when it is lost or destroyed, unless this is caused through fate or the king.[7] Nārada prescribes that in the case of destruction of the pledge the capitail is to be forfeited.[8] He should release the pledge as soon as the debtor demands it on payment of the due.[9] Both Yājñavalkya[10]

1. Yāj. II. 60.; Nārada, IV. 130; Kātyāyana, 524.
2. IV. 125.
3. X. 40.
4. Bandhaṃ yathā sthāpitaṃ syāt tathaiva pratipālayet.
   Quoted in the Sm. C, Vy. kā, II, 323.
5. Manu, VIII. 144.
   Kullūka in his commentary on Manu, VIII. 144 and Vijñāneśvara on Yāj. II. 58 explain it as having reference to the pledge for custody.
6. Gopyādhibhoge no vṛddhiḥ. Yāj. II. 59. Compare Gautamadharmasūtra, XII. 29. Vide also Viṣṇu. VI. 5.
7. Naṣṭe deyo vinaṣṭaś ca daivarājakṛtād ṛte. Yāj, II. 59.
   Mit: Gopyādhir naṣṭaś cet pūrvavat kṛtvā deyaḥ. upabhukto'pi ced vṛddhir api hātavyā. On Yāj, II. 59.
8. Vinaṣṭe mūlanāśaḥ syād daivarājakṛtād ṛte. Nārada, IV. 126.
9. Yāj. II. 62; Bṛ. S, X. 66.
10. Yāj. II. 58.

and Bṛhaspati[1] permit forfeiture of the pledge for custody by the pledgee after the capital gets doubled.

8. Kuttā—a customary type of pledge.

Before closing the topic of pledge for custody, it would not be out of place to refer to a customary law, mentioned in the *Sarasvatī-vilāsa*. The transaction referred to here goes by the appellation of *kuttā*. Herein by a special type of contractual agreement the tenant under *kuttā* (*kauttika*) takes from the owner a house, a piece of land and the like with the stipulation that any profit or loss arising out of the same, should be borne by him (the tenant). The term of agreement here is that the tenant undertakes to perform the funeral and post-funeral (religious) rites (of the owner) and to discharge any debt contracted by him, with the (profits accrued from) the house, land or the like (taken by him). If anything remains after discharging these duties, it will be taken by him and if nothing remains the question does not arise.[2] The question has been raised as to the title of law in which such special kind of land-transaction should be included. The *prima facie* position is that as the term *kuttā* has been described by the word '*upacaya*' indicating profit, it should be included in the (general) topic of recovery of debt under the section of mortgages in the form of pledge for custody and the like. Such a mortgage because of its being indicated by the term *upacaya* (meaning profit), possesses in it the character of transference of ownership. (The idea is that the tenant in *kuttā* is expected to earn profit out of the land or the house and profit is possible in the case where the ownership is transferred. In that respect it partakes of the characteristics of mortage where also the creditor has an ownership in the object transferred (adhikriyate) at least during the period of the mortgage).[3]

1. Bṛ. S, X. 50.
2. Loke kuttākhyo vyavahāraḥ. Mūlasvāminas sakāśād gṛhakṣetrādikaṃ gṛhītvā tadupacayāpacayau kauttikasya mayaiva soḍhavyāv iti pāribhāṣikas samasti. Aparaś ca kuttākhye mūlasvāmina aurdhadaihikaṃ tatkṛtam ṛṇañ ca tadīya-gṛhakṣetrādinā nirvartya saṃśodhya avaśiṣṭam asti cet grahītavyaṃ nāsti cen māstv iti pāribhāṣikaḥ. Sarasvatīvilāsa, 281-282.
3. Sa ca kuttākhya upacayapadābhilapyas tasyopacayākhyapāribhāṣikatvenaupādhikasvatvasaṃkramopādhitayā tatprakaraṇe ṛṇādānākhye.....vivādapade gopyādhyadhikāre'ntarbhāva evāstv iti cet..... Sar. vil, 282.

The author does not concur with this view on the ground that the title of *Recovery of debt* is based on two ends, namely (debts) to be paid and to be released. Of them a debt without any pledge is to be paid. To the category of debt to be released belongs the debt secured by a pledge of the nature of pledge for custody and the like. The title of recovery of debt is of these two characteristics. But in practice the tenant entitled *kuttā*, which is synonymous with (the act of making) profit, does not have either of the characteristics, 'to be paid' or 'to be released'. Besides that, in case of dispute of debt, profit (arising out of the pledge) goes to the credit of the creditor, but in the transaction called *kuttā* it accrues to the debtor. As such the transaction of *kuttā*, which brings profit (to the debtor) cannot be included in the section on *Ṛṇādāna*.[1] In other words, it is an illustration *sui generis*.

The author again refers to the view according to which the transaction of *kuttā* should be included under the category of the pledge for custody. In a transaction of debt the question of releasing the pledge arises when the debt incurred by Devadatta (an illustration only) is discharged. But the question of release (of the field or the house if it is treated as pledge) does not arise where (in the transaction of *kuttā*) the land has been accepted as a security for performing (the religious rites like) ancestral worship as long as he (the *kuttā*-tenant) lives.[2]

The author argues that in the transaction of *kuttā* there is also the possibility of loss, which is absent in the case of normal pledge. *Kuttā* involves a certain speculation. Therefore (notwithstanding) the fact that there is the question of profit in the *kuttā*-transaction, it cannot be included under the category of *Recovery of debt*.[3]

1. .....maivaṃ, ṛṇādānākhyaṃ vivādapadaṃ śodhyamocyakoṭidvayāvalambanena pravṛttam, śodhyam abandhakam ṛṇaṃ mocyaṃ sabandhakaṃ gopyādhiprakṛtikam. Evaṃ dviprakāraṃ ṛṇādānākhyaṃ vivādapadaṃ loke upacayāparaparyāyakuttārūpasya śodhyamocyarūpaprakāradvayāsambhavāt. Kiñ ca ṛṇādāne uttamarṇagata upacayaḥ kuttātmake tu adhamarṇagata iti na tatrāntarbhāva aupacayikasyeti. Ibid. 282.
2. Apara āhuḥ, gopyāv antarhhāva vācya iti, devadattakṛtarṇāpākaraṇe jāte prakṛtavivāde mocanīyaviṣayatā'sti, kiṃ tu yāvajjīvānuṣṭheyapitṛkriyākaraṇasyādhirūpeṇa svīkārāt tanmukhena na vimocyatvam. Ibid. 282.
3. Pratyuta pākṣikāpacayabhārasahitatvāt ādhau tadabhāvāt kuttākhyasyaupacayikasya ṛṇādāne'ntarbhāvayitum aśakyatvāt. Ibid. 282.

The author finally expresses his view that the transaction of *kuttā* should be included in the section on *Non-delivery of gift.*[1]

9. Bhogyādhi—the beneficial pledge.

The beneficial pledge, for which normally the two expressions are used, namely. *bhogyādhi* and *sopakārādhi*, stands for a pledge that is to yield benefit to the creditor. Kātyāyana defines it as a pledge, movable or immovable, worthy of use, which is offered by the debtor, for the purpose of meeting the interest (of the capital).[2] Two salient features of the usufructuary pledge come out of the definition by Kātyāyana. One is that the object of the pledge should be worthy of being used (*bhogayogya*) and as such could be immovable obiects like a field, garden etc.,[3] gold,[4] or movable objects like milch cow, beasts of burden like bull, camel, horse and slaves.[5]

As Kātyāyana observes, the pledge for use is to be returned to the pledgor. This indirectly shows that such pledges should be ones that do not get destroyed through use. Jagannātha lays stress on this point when he defines the usufructuary pledge as one that does not suffer loss through enjoyment.[6]

The other point that arises out of the definition referred to is that the use of the pledge is treated as the interest of the capital and as such the debtor may get back his pledge on payment of the capital only.

Here it should be mentioned that a pledge for use may be intended for different purposes. Sometimes such a pledge is given

1. Dattāpradānike'ntarbhāvo nyāyyaḥ. Ibid. 282.
   Reference here should be made to the highly informative article entitled; 'Kuttā: A class of Land-tenures in South India,' by J. D. M. Derrett, B. S. O. A. S. (1958) XXI.I.
   Vide also, J. D. M. Derret, 'The Development of the Concept of Property in India c A. D, 800-1800.' Z. V. R. 1962 (specially 70-72).
   That *kuttā* transactions still survive seems to be proved by the facts in Kalandi Parida V Sadhu. A. I. R, 1967 Orissa 74.
2. Kātyāyana, 516.
3. Vide Medhātithi on Manu. VIII. 143; Mit. on Yāj, II. 58.
4. Medhātithi on Manu, VIII. 143,
5. Vide the commentary of Rāghavānanda on Manu, VIII. 143. There is also indirect reference in the verses of Kātyāyana, 525-526.
6. Bhogena yasya hānir na bhavati so'niṣṭāsampādakabhogado bandhaḥ bhogyaḥ. Vivādabhaṅgārṇava, Folio. 103. Lines. 20-21.

for discharging the debt with interest and it is to be released to the pledgor when the capital with interest reaches double the amount. It has the appellation of *sapratyayabhogyādhi*,[1] as distinguished from a pledge, which is meant for meeting the interest only and as such designated as *apratyayabhogyādhi*.[2] This may however be retained by the pledgee for an unlimited period till the capital is paid. Nandapaṇḍita, as we have already pointed out makes reference to another type of beneficial pledge, which goes to pay off the principal only.[3]

10. Movable and immovable usufructuary pledge.

Viṣṇu has the general direction that a pledge is to restored to the pledgor when the interest reaches its extreme limit (by being equal to the principal and when the loan is paid off).[4] The implication of the rule may be explained as having reference to the movable pledge specially when it is studied with reference to the next rule of Viṣṇu. Nanda does not state it clearly but he hints at this through the illustration of a cow or the like. With reference to an immovable pledge, Viṣṇu holds that the pledgee should not restore an immovable pledge unless there is a special stipulation.[5] The distinction appears to be that according to Viṣṇu in case of inability of the debtor to pay off the capital, the creditor may retain the pledge, but in the case of immovable objects under the same circumstances he is allowed to go on using it till the capital is paid. This is however, subject to the condition that there is no agreement

1. Vide the statement of Vyāsa quoted in the Sarasvatīvilāsa, 234.
2. Vṛddhimātrāpākaraṇārtho yaḥ so'pratyayabhogyādhir ity ucyate.
   Sarasvatīvilāsa, 234.
3. Vide the commentary of Nandapaṇḍita on Viṣṇusmṛti, VI, 7.
4. Antavṛddhau praviṣṭāyām api. Viṣṇusmṛti. VI 7.
   Nanda explains the rule as being applicable in the case of the usufructuary pledge which is meant for meeting the interest:
   tatra vṛddhimātrāpākaraṇārtham yad ādhīkṛtaṃ gavādi.....
5. Na sthāvaram ādhim ṛte vacanāt. Viṣṇusmṛti, VI. 8.
   Nanda explains: Yāvad vṛddhilābham eva tvayedam āmravaṇādi upabhoktavyam iti vacanavyaktiṃ vinā yatra vṛddhyāpākaraṇāyāmravaṇādi sthāvaram ādhīkṛtaṃ tatrāntyavṛddhipraveśe'pi na tad uttamarṇo dadyāt kiṃ tu tadantaram api bhuñjītaiva yāvan mūlalābham.

to the contrary. Viṣṇu directs further that the immovable property which is pledged for meeting the capital, must be restored when the sum borrowed is made good.[1]

Bṛhaspati has rules specially for the immovable pledges. He observes that when the pledges like land etc. (i.e. immovable objects) are enjoyed by the creditor and when more than the principle with interest is realised, the debtor may get back his pledge [2] According to him, the rule will be applied where the debtor offers the pledge with the stipulation like this : 'This is certain that the field shall be enjoyed by you when interest ceases to be accrued (i.e. when it becomes equal to the principle) and when the principle along with interest is released, you should restore it to me.'[3] He further states about the immovable pledges like house, lands etc. that when they are mortgaged for use and the time-limit (stipulated) has not expired, neither can the debtor get back his pledge, nor can the creditor recover his loan.[4] Investments, after all, depend on the lender's being certain of his return during a specified minimum period. This shows that Bṛhaspati is in favour of bringing both the debtor and the creditor under obligation to keep within the limitation of time agreed on, with special respect to the immovable property. Before the specified time neither of them is allowed to discharge the duty even if it is possible to do so. But when the stipulated period elapses both of them have the liberty to do so (the debtor may get back the pledge and the creditor may get his loan).[5] By mutual consent however, they may do so naturally even before the stipulated period.[6]

1. Gṛhītadhanapraveśārtham eva yat sthāvaram dattaṃ tat gṛhītadhanapraveśe dadyāt. Viṣṇusmṛti. VI, 9.
2. Kṣetrādikaṃ yadā bhuktam utpannam adhikaṃ tataḥ /
Mūlodayaṃ praviṣṭaṃ cet tadādhiṃ prāpnuyād ṛṇī // Bṛ. S, X. 67.
Vide here the comments made in the Smṛticandrikā, II. 342-343.
3. Paribhāṣya yadā kṣetraṃ pradadyād dhanine ṛṇī /
Tvayaitac chāntalābhe'rthe bhoktavyam iti niścitam //
Praviṣṭe sodaye dravye pradātavyaṃ tvayā mama / Bṛ. S, X. 68-69.
4. Yatrāhitaṃ gṛhakṣetraṃ bhoge na prakarṣānvitam /
Tatrarṇī nāpnuyād bandhaṃ dhanī caiva ṛṇaṃ tathā // Ibid, X. 70
Vide here Smṛticandrikā. Vy. kā. II, 344.
5. Vide Vivādaratnākara, 33.
6. Pūrṇe prakarṣe tat svāmyaṃ tūbhayoḥ parikīrtitam /
Apūrṇe'pi prakuryātāṃ parsparamatena tau //
Bṛhaspatismṛti, X, 71.

11. Special features of the pledge for use.

The foremost characteristic of the usufructuary type of pledge is that the pledgee here is allowed the right to enjoy the pledge. This enjoyment (i.e. income) in most cases is intended to be counted towards meeting the interest of the capital. (We have noticed that in some cases they were also to be used for meeting the capital or the capital with interest also).

Kauṭilya holds that where the pledge is a 'beneficial pledge' the capital does not yield interest 'except when allowed' (by the debtor).[1] The rule of Gautama (XII. 29), in whichever way it is interpreted, goes to point out that in the case of the use of the pledge by the pledgee, the interest is lost.[2] Manu distinctly declares that in the case of 'beneficial pledge' the pledgee is not entitled to receive any interest.[3] Yājñavalkya by prescribing that there should be no interest if the pledge for custody is used,[4] accepts the principle that in case of enjoyment of the pledge, enjoyment is taken to be the interest. The same may be stated about the rule of Viṣṇu having identical contents.[5] Nārada's direction is the same in language as that of Manu.[6] Kātyāyana has no direct rule in this respect, but his definition of the *bhogalābha* and the *ādhibhoga* type of interest shows that enjoyment of the pledge is treated as interest and as such further interest in these cases would not be normal.[7] The attitude of Bṛhaspati towards this question should be regarded as the same. He shares with Kātyāyana (500) the definition

1. Arthaśāstra. III. 12. 9. Vide also the notes on the rule by Kangle. Arthaśāstra, II, 267.
2. On the rule of Gautama (XII. 32), Haradatta explains *ādhibhoga* type of interest as a case where the pledge is treated as interest: 'tatrānubhava eva vṛddhiḥ.' Normally income is taken in lieu of interest, but a more accurate calculation can be insisted upon, specially where the income exceeds the the rate of interest contemplated by the parties.
3. Na tv evādhau sopakāre kausīdīṃ vṛddhim āpunyāt. Manu, VIII. 143. This might have been the basic customary rule in use amongst people unable to keep detailed accounts. Vide here the comments by Sarvajñanārāyaṇa on Manu, VIII. 143.
4. Yāj, II 59.
5. VI. 5.
6. IV. 129.
7. For Bhogalābha vide Kātyāyana. 500; for Ādhibhoga, Kāt. 501.

of *bhogakābha* (X. 14) and has the direction that if one enjoys the pledge out of greed before the interest has ceased and when the fixed limit of time has not expired, one cannot claim further interest.[1]

Another speciality of the beneficial pledge is that like the pledge for custody, it cannot be lost to the pledgor (by adverse possession). Kauṭilya is clear on this point. He states that a beneficial pledge cannot be lost.[2] Manu's direction that even if the pledge (for custody and for use) remains for a long period with the creditor, it cannot be sub-mortgaged or sold,[3] shows that the pledgor retains his right over the pledge and it will not be lost to him.[4] Yājñavalkya categorically declares that a pledge for use never lapses.[5] Nārada shares the same view as that of Manu. Viṣṇu, Bṛhaspati and Kātyāyana have no positive statement in this respect. Vijñāneśvara while explaining the derection of Yājñavalkya restricts the scope of the rule to the beneficial pledge without any limitation of time.[6] Aparārka does not make any distinction between this pledge as having the limit of time and without it. He explains that a pledge of this sort is never lost, but the creditor may enjoy it so long as he does not receive back his money.[7]

12. If the beneficial pledge deteriorates in value or is lost or destroyed.

Yājñavalkya provides that if a usufructuary pledge becomes unfit for use by the owner as a result of its enjoyment by the

1. Aśāntalābhe ca ṛṇe tathā pūrṇe'vadhau dhanī /
   Yo bhuṅkte bandhakaṃ lobhān na sa lābho bhavet punaḥ // Bṛ. S, 39-40.
   Vide here the comments of Vivādaratnākara, 23.
2. Nādhiḥ sopakāraḥ sīdet.. ... Arthaśāstra, III. 12. 9.
3. Na cādheḥ kālasaṃrodhān nisargo'sti na vikrayaḥ. Manu, VIII. 143.
   Medhātithi : ...gopyepy ādhau.....
4. Vijñāneśvara refers to this provision of Manu and explains it as having the same import as contained in Yāj, (II. 58). His point is that the debtor does not lose his right over the pledge at any cost : Bhogyasyādheś cirakālāvastthāne'py ādhīkaraṇavikrayaniṣedhena dhaninaḥ svatvaṃ nāstīti. ihāpy uktaṃ phalabhogyo na naśyatīti. Com. on Yāj, II. 58.
5. Phalabhogyo na naśyati. Yāj, II. 58,
6. Akṛtkālasya bhogyasya nāśābhāva uktaḥ phalabhogyo na naśyatīti.
   Com. on Yāj, II. 58.
7. Vide his commentary on Yāj, II. 58,

pledgee, the interest is to be forfeited.[1] If it is lost it should be replaced or restored to the pledgor in its original condition.[2] The provision of Viṣṇu is the same, but he does not make any special reference in this respect to the pledge for use. He speaks in general terms.[3] Nārada speaks of pledge in general terms and his direction is that the capital will be forfeited in the case of the destruction of the pledge (by the pledgee's fault).[4]

Vijñāneśvara, while explaining the rule of Yājñavalkya (II. 59) adds that not only the capital in such case is to be forfeited but the interest, if there be any, should be forfeited also.[5] In the case of restoration by the pledgee, he directs in addition that the pledgee would continue to get his capital with interest.[6]

13. Special type of pledge – *Caritrabandhakakṛta.**

The pledge having the appellation of *Caritrabandhakakṛta*, has been mentioned by Yājñavalkya only. *Caritra* stands for good conduct (*śobhanācarita*) and it may be applied to both the parties to the transaction of debt, the pledgor and the pledgee. In the interpretation of Vijñāneśvara, the pledgor, relying on the good character of the pledgee may place a costly pledge and take loan of proportionately less value. Here the good character is related to the creditor, who becomes, as it were, a pledgor of his own character to secure the balance. Again the debtor, because of his good character, may take a loan of greater value by pledging an article of less value. In this case the good character of the debtor is taken into consideration.[7] Vijñāneśvara enlarges on the meaning of the word *caritra* which is really implicit in it. Here

1. .....no vṛddhiḥ sopakāre'tha hāpite. Yāj, II. 59.
2. Naṣṭe deyo vinaṣṭaś ca..... Yāj, II. 59.
3. Viṣṇusmṛti, VI. 6.
4. Vinaṣṭe mūlanāśaḥ syād..... Nārada, IV. 126.
5. ...bṛddhisadbhāve vṛddhir api hātavyā. On Yāj, II. 59.
6. ...taddāne savṛddhikaṃ mūlyaṃ labhate dhanī. Mitākṣarā on Yāj, II. 59.

* L. Strenbach, J S. A. I. L. I., 133-134.

7. Dhaninaḥ svacchāśayatvena bahumūlyam api dravyam ādhīkṛtyadhāmarṇenālpam eva dravyam ātmasātkṛtam, yadi vādhamarṇasya svacchāśayatvenālpamūlyam ādhiṃ gṛhītvā bahudravyam eva dhaninā adhamarṇādhīnaṃ kṛtam iti.

Mitākṣarā on Yāj, II. 61.

he refers to the religious practices and the special merit accrued through such practices, which has the technical appellation as *apūrva*. If the debtor promises to forfeit such religious merit in case of his inability to pay the debt and if the creditor upon such pledge of merit lends money that will also be treated as *caritrabandhakakṛta*.[1] It is clear that this refers to the debtor and not to the creditor, though we have seen an instance where even the pledgee's credit (i. e. his supersensory merit) is utilised. The difference is marginal. Whereas in the first interpretation stress is laid on the good character of the debtor with the idea that such a person should not betray the creditor and as such there is no apprehension of the loss of the principal, in the second case the emphasis lies on the religious nature of the person. The idea may be that such a debtor would at least out of fear from falling into hell return the amount of the loan.

One significance of pledging the religious acts like ablution in the Ganges could be this that the debtor gives an undertaking that so long as the loan is not discharged, he will not take his bath in the Ganges.[2] Jagnnātha treats this type of pledge as pledge for custody in the secondary sense.[3] He perhaps has the right approach to the question when he interprets *caritra* as religious acts like bath in the Ganges and the like, and *cāritra* as religious merit arising out of these acts. The pledge of such merits is accompanied by an

1. Caritraśabdena gaṅgāsnānāgnihotrādijanitam apūrvam ucyate. Yatra tad evādhīkṛtya yad dravyam ātmasātkṛam.....Ibid.
Aparārka interprets *caritra* as *dharma* and Mitramiśra in his commentary refers to it as *puṇya*. In the conception of Devaṇabhaṭṭa it is *dharma* of the nature of personal piety and works for the benefit of others. He observes that in spite of such pledge the debtor cannot be released from the fault of non-payment of debt unless he pays off the debt ; 'Caritram iṣṭāpūrtādiko dharmaḥ...evaṃvidhe tv ādhau dhanam aprayacchato'dhamarṇasya nāsty ānṛṇyam ity abhiprāyaḥ. Sm. C, II, 334-335.
2. Gaṅgāsnānādeḥ puṇyakarmaṇo bandhatvaṃ tadā bhavati yadi ṛṇinā ṛṇaṃ gṛhītvā ucyate yāvat tava dhanaṃ na śodhayāmi tāvat gaṅgāsnānaṃ na kariṣyāmi iti. Vivādabhaṅgārṇava. Folio. 108. L. II-14 ; Col. Dig, I. 143.
Sternbach wrongly attributes this view to Śūlapāṇi's Dīpakalikā.
Vide his J. S. A. I. L ; I. 133.
3. Atra tu gaṅgāsnānādikam aupacārikagopyādhir eva na bhogyādhiḥ.
Ibid, F. 108. L. 15-16. Col, Dig. I, 143.

agreement by the pledgor that if he does not repay the debt, his religious merits, derived through plunging into the Ganges and the like should accrue to the pledgee.[1] This represents, therefore a case of loan where reliance is laid on the religious nature of the debtor and the use of the term *bandhaka* in such case is simply by transference of epithet, an applied use of the term.

With respect to such a pledge of good character, Yājñavalkya provides that it does not lapse even when the principal gets doubled. The king should make the debtor pay the amount with interest.[2] Indeed it is difficult to see how in a *vyavahāha* context any other outcome could be pointed.

14. *Satyaṃkāra* type of pledge.*

Yājñavalkya refers in this context to the *satyaṃkārakṛta* type of pledge and his direction is that in such a case the double of the amount is to be paid.[3] Vijñāneśvara presents the derivative meaning of the term and it indicates a solemn condition—an honest undertaking of the nature of an oath (in the commentary of Bālaṃbhaṭṭa on the *Mitākṣarā* it has been explained as such : *śapathakaraṇam iti yāvat*). He presents the meaning of the line that when at the time of pledging it is stated by the pledgor that even if the loan reaches the point of getting doubled, only the doubled amount will be given and there should be no loss of the pledge, in that case the king should make such pledgor pay double the amount.[4]

1. Caritraṃ gaṅgāsnānādi tadudbhayaṃ phalaṃ cāritram, tad eva yatra bandhaḥ. yathā tava ṛṇaṃ yadi na śodhayāmi tadā mama gaṅgāsnānajanyaṃ phalaṃ tavaiveti pratijñayā yatra ṛṇaṃ gṛhītam iti.
Vivādabhaṅgārṇava. F. 108. L. 24-27 ; Col. Dig, I. 143.
2. Caritrabandhakakṛtaṃ savṛddhyā dāpayed dhanam. Yāj, II, 61.
Vijñāneśvara explains that the pledge in this case is not lost even if the principal along with interest gets doubled. But here double of the amount is to be paid : 'Ayam āśayaḥ, evaṃ ca bandhakáṃ dviguṇībhūte'pi dravye na naśyati, kiṃ tu dravyan eva dviguṇaṃ dātavyam iti.'
On Yāj II. 61. Vide also the Com. by Aparārka.
* The Cullakaseṭṭhijātaka contains reference to a pledge as 'saccakāra'.
Jātaka, I, 121, Line, 27.
3. Satyaṃkārakṛtaṃ dravyaṃ dviguṇaṃ pratidāpayet. Yāj, II. 61.
4. Karaṇaṃ kāraḥ, satyasya kāraḥ satyaṃkāraḥ, styaṃkāreṇa kṛtaṃ satyaṃkārakṛtaṃ. Ayam abhisaṃdhiḥ, yadā bandhakārpaṇasamaye evetthaṃ paribhāsi-

Jagannātha holds that here no pledge is offered by the debtor and in fact conscience alone is the surety.[1] Here he does not appear to be right in such interpretation in view of the fact that Vijñāneśvara, author of the Madanaratnapradīpa and Mitramiśra have in distinct terms declared that pledge is offered in such case. However the concept of an unsecured loan must have existed earlier and unsecured loans are based on confidence in the borrower's probity, righteousness, reputation or personal credit, which is naturally forfeited if he defaults in payment.

15. *Pledge, possession and adverse possession.*

The question whether in a pledge there should be actual possession of the pledge by the pledgee is quite relevant one specially in view of the fact that in the second interpretation of the pledge called *Caritrabandhakakṛta*, no object is pledged in the real sense of the term. Where the borrower is a man of reputation even the real security may be left in his possession.

Vasiṣṭha recognises the importance of possession in determining the strength of a pledge. He points out that in a case where the same land has been pledged at the some time to different parties, the party who is in possession of the pledge will be treated as in a stronger position than the party who does not have it, though he may have document in support of his right over the pledge.[2] It is important after all, that the contract should be acted upon and put into effect, and until this is done it is only inchoate.

taṃ dviguṇībhūte'pi dravye mayā dviguṇam dravyam eva dātavyaṃ nādhināśa iti tadā tad dviguṇaṃ dāpayet. On Yāj. II. 61.
Vide also M. R. P., 152. Viśvarūpa, followed by Mitramiśra is of the view that the pledge may be lost in case of breach of promise : 'satyaṃkāriṇas tu visaṃvādatas taddhānir eva.'
Viśvarūpa on Yāj. II. 63 (T. S. S).

1. Yatra ṛṇinā bandh nārpitaḥ kiṃ tu ṛṇagrahaṇasamaye tenoktaṃ satyenābhibhāṣe tava ṛṇaṃ avaśyaṃ śodhayiṣyāmīti tatra phalato dharma eva pratibhūr āsid ity arthaḥ. Ibid. F. 108. L. 38-41.
2. Tulyakāle nisṛṣṭānāṃ lekhyānām ādhikarmaṇi /
Yena bhuktaṃ bhavet pūrvaṃ tasyādhir balavattaraḥ //
Vasiṣṭhadharmaśāstra. Appendix, 85. Verse. 25.

Yājñavalkya lays down the principle that the (contract of) pledge attains validity through its acceptance (possession) by the creditor.[1] This is a doctrine of extreme practicality. Viṣṇu has the same line of approach as that of Vasiṣṭha.[2] The directions of Vasiṣṭha and Viṣṇu refer to the pledge for use, while Yajñavalkya speaks of the pledge in general terms. Nārada specifically advocates that in the case of both the types of pledge, movable and immovable, the validity comes through possession or enjoyment and not otherwise.[3] By 'validity' of course, what is meant is effectiveness. The contract then only comes into effect. Bṛhaspati stresses the importance of possession when he directs that the person in possession of a pledge would be 'stronger' than the person without it in a case where the same property is pledged at the same time to two parties.[4] Evidently this may refer to a usufructuary pledge also.[5] He is more distinct in his direction[6] that the (contract of) pledge becomes invalid when the pledgee does neither enjoy the (usufructuary) pledge nor take possession of the pledge (for custody), nor point it out to others (as being in his own possession). The other direction of Bṛhaspati that through indifference (of the pledgee), pledges like house etc. become lost[7] (lose their validity—*ādhitvaṃ eva teṣām naśyatīty arthaḥ*)[8] may also support the stand taken by him in emphasising the importance of possession for the validity of a pledge.

Kātyāyana's view on this point cannot be ascertained with accuracy. He raises the issue as to what should be the decision if the same article is pledged to two parties. His direction that

1. Ādheḥ svīkaraṇāt siddhiḥ..... Yāj, II. 60.
2. .....yasya bhuktiḥ phalaṁ tasya..... Viṣṇusmṛti, V. 185.
3. Nārada, IV. 139.
4. Kṣetram ekaṃ dvayor bandhe dattaṃ yat samakālikam /
   Yena bhuktaṃ bhavet pūrvaṃ tasya siddhim avāpnuyāt //
   Bṛhaspatismṛti, X. 44.
5. Kṣetragrahaṇaṃ bhogyādher upalakṣaṇaṃ.
   Smṛticandrikā, II. 336.
   Vide also Vy. p (P). 218 ; Vy. P. (M). 240.
6. Na bhuṅkte yaḥ svam ādhānaṃ nādadyān na nivedayet /
   Pramītasākṣiṛṇikaṃ tasya lekhyam apārthakam // Ibid, X. 53.
   Caṇḍeśvara applies this to both the types of pledge. Viv. rat, 35.
7. Bṛhaspatismṛti, X. 54.
8. Vivādaratnākara, 35.

the earlier transaction of mortgage should be valid[1] does not directly state anything on the role of possession in a pledge. It would appear to lay emphasis on the contract alone. The explanation of the word 'pūrvakṛta' by Devaṇabhaṭṭa[2] and other digest-writers like Pṛthvīcandra[3] and Mitramiśra[4] may suggest that the earlier pledge validated through possession, was treated as superior to one without it. This harmonises the *Smṛtis*. The direction of Kātyāyana that in cases of pledges like field etc. validity arises when they are properly marked by boundaries and recorded in document (verse 522), may also be interpreted as favouring the idea of possession (by the pledgee) of the pledge. This provision would not have been insisted on had there been no idea of transference of possession of the pledge to the pledgee.

Vyāsa in almost the same language as that of Nārada speaks of possession as an essential condition to validate a pledge.[5]

We thus notice that Vasiṣṭha, Yājñavalkya, Viṣṇu, Nārada, Bṛhaspati and Vyāsa advocate clearly in favour of possession in the real sense of the term, for the validity of a pledge. The view of Kātyāyana on the point cannot be stated with certainty, though the commentators are probably justified in harmonising him.

When we pass on to the commentators, we observe that in most cases they have interpreted the texts in support of possession as the essential condition for the validity of a pledge. Thus Asahāya in his exposition of the text of Nārada (IV. 139) states in categorical terms that in the absence of enjoyment a pledge though recorded in document cannot attain validity.[6]

Medhātithi had occasion to refer to the direction of Yājñavalkya (II. 60) and from his mode of treatment it is apparent that in respect of the validity of a pledge, enjoyment is not an absolutely essential condition. He states that 'svīkāra' implies a

1. Kātyāyana, 517.
2. Pūrvakṛtaṃ pūrvam upadānādinā siddham.
   Smṛticandrikā, II, 337.
3. Vy. P. (P). 219.
4. Vy. P. (M). 240.
5. Quoted in the Vivādaratnākara, 34.
6. Tato bhogena vinā tayor likhitamātrādhicihnayor api siddhir api nāstīti.
   Asahāya on Nārada, IV. 139.

desire for possession (i. e. an intention to possess). He argues that some objects because of their very nature cannot be used perpetually as in the case of a cow that does not conceive. But so far as land is concerned, which is always productive, whether the object is held as a pledge will be determined by its use only[1]. He takes up a position where the pledgor even when the land (or an article) is already mortgaged to one property, pledges it to another (for the second time) and if the first pledgee either being away from the place or being engaged in other business, fails to take possession of the same, while the second pledgee could do so because of his proximity to the pledge. In such a case (which is a type of fraud) the first pledge should not be invalidated because of absence of possession.[2] When the pldgee after accepting the pledge (and before actual possession) becomes exiled by the king or is involved in serious illness and has none deputed by him to look after the property or if such a pledgee returns after a long time, he becomes entitled to get back the pledge if he can prove a clear title to it, even though the pledge is mortgaged to another who is in possession of the same.[3] In other words, possession in the eye of the laws, as distinct from possession *de facto* was fully appreciated even so early as Medhātithi. From this deliberation of Medhātithi, it may be understood that while recognising the importance of possession as a factor for the validity of a pledge, Medhātithi does not take bare possession to be the essential factor and where there is sufficient ground for not taking possession of the pledge by the pledgee, absence of possession should not in his view, invalidate the pledge. This

1. .....svīkāraś ca bhūmer bhogābhilāṣaiva ...gavāśvādāv abhujymāne'pi nāsiddhir yatas te nāvaśyaṃ bhogyāḥ. Tathā hi bhaved gaur garbhaṃ na gṛhṇāti kīdṛśo'syā ato bhoghaḥ, bhūmis tu sarvadā phaladeti bhogalābham antareṇa na bandhatvasiddhiḥ. On Manu, VIII. 148.
2. Tatrāpi kathañcid upekṣyamāṇasya tu yacchataḥ prathamabhogakāle eva yadi dvitīyenādhigrāhakena sannikarṣādinā svīkṛtaḥ syād itareṇa vādyapramāṇavatā deśaviprakarṣāt kāryavyāsaṅgād vā na svīkṛtas tadā vicāryate neyatā tad asiddhiḥ. Ibid on Manu, VIII, 148.
3. Yadā tu gṛhītādhir eva samanantaraṃ rājñā pravrājito mahāntaṃ vyādhim āsasāda na vāsyānyo'rtharakṣādyadhikṛtaḥ kaś cid asti sa cireṇāpy āgataḥ siddhāv api nirupadhipramāṇakāle labhate eva svīkṛtam apy anyena. Ibid. on Manu, VIII. 148.

is a truly juridical gloss upon the *Smṛtis*, which are too downright in their phraseology.

Vijñāneśvara in his interpretation of the text of Yājñavalkya (II. 60), states clearly in favour of possession for contributing to the validity of the pledge. He observes that such validity of the pledge does not arise either through witnesses and the document or through mere indication.[1] Aparārka also has the same view and it explains the word 'svīkāra' in the text of Yājñavalkya as enjoyment proper in the case of usufructuary pledge and taking it under custody in the case of pledge for custody.[2]

Devaṇabhaṭṭa, while commenting on the provision of Vasiṣṭha gives recognition to possession as the principal factor for the validity specially of the pledge for use.[3] The same idea has been expressed by him in his comments on the rule of Viṣṇu (VI. 185).[4] He is more clear in his interpretation of the direction of Nārada (IV. 139) specially with reference to the word 'anyathā' used therein. Here he states that even if it is offered by the debtor and even if it is merely accepted as such, it will not be valid unless there is possession in it.[5] Like Medhātithi Devaṇabhaṭṭa very reasonably asserts that where there is sufficient ground for absence for enjoyment of the pledge, as in the case where the pledgee resides in a distant territory, absence of enjoyment should not stand in the way of the validity of the pledge.[6]

Caṇḍeśvara in his exposition of the text of Yājñavalkya (II. 60) follows the same line of approach as that of Vijñāneśvara, but he appears to suggest that even in the absence of possession in the right sense of the term, a pledge may be treated as valid[7]. The

1. He explains 'svīkaraṇa' as 'upabhoga' and adds : na sākṣilekhyamātreṇa nāpy uddeśamātreṇa. Com. on Yāj, II. 60.
2. Svīkaraṇaṃ ca bhogyādhau bhogaparyantaṃ gophyādhau tu bhāṇḍāgārapraveśaparyantam. Com. on Yāj, II. 60.
3. .....bhogyādhisiddhau bhogasya pradhānakāraṇatvāt. Sm. C, II. 337.
4. Vide Smṛticandrikā. Vy. kā. II. 336.
5. Vide Smṛticandrikā. Vy. kā. II. 335.
6. Evam asmākam etadīyaṃ gṛhāpy ādhir iti ṛṇikasannidhau madhyasthajaneṣv āvedanaṃ dūrasthatvādinā bhogādyabhāve tv ādhisādhakam ity avagantavyam. Ibid. 335.
7. While making a reference to the text of Bṛahaspati (X. 53), he observes : etac ca prāyikatayā bhuktābhuktayor vibhāvanābhāve'pi bhogyagopyayor ādhitvasthairyāt. Vivādaratnākara, 35.

importance of possession in this respect has been stressed by other commentators and digest-writers, but it is doubtful how far their silence may be taken as negativing the cautionary points raised by Medhātithi, for as we see, they had similar notions before them in the text of at least one intervening jurist.

Jagannātha, while commenting on Bṛhaspati (X. 53) affirms that in the case of interrupted possession, the validity of a pledge depends on the witnesses if they are alive, but when possession is uninterrupted its validity may arise even though the witnesses are dead.[1] He refers to the view of Halāyudha (on the verse of Kātyāyana, 'ādhānaṃ vikrayo dānam' etc ; no. 518), according to which a pledge because of absence of possession should not be treated as invalid when it is supported by document, witnesses and the like.[2] Jagannātha, in spite of his late period and indebtedness to stimulus from British legal ideas, does not trouble himself with the problems of claims by pledgees who are out of possession through no fault of their own, and may never have taken possession when they advanced the loan. It may be that documentary evidence of pledge and mortgage was taken so much for granted that those problems could hardly arise as they had done a thousand years before.

Pledge and adverse possession

By adverse possession is meant possession (of the object) by one who is not the owner (in presence or to the knowledge of the owner without the latter's protest). The question of adverse possession, having its bearing on the rules of pledge has been treated by the *dharmaśāstras* of ancient India.

In the text of Vasiṣṭha we find two views recorded. In one of them it has been stated that if the pledge is enjoyed conti-

1. Tathā ca yatra sacchidrabhogaḥ sākṣiṇaś ca vidyante tatra bandhasiddhiḥ niśchidrabhoge tu sākṣiṇāṃ maraṇe'pi bandhasiddhir ity api vaktuṃ śakyate ity avagantavyam.
Vivādabhaṅgārṇava. Folio. 109. Lines. 39-42 ; Col. Dig, I. 145.
2. Halāudhas tu...etena sākṣilekhyādisattve bhogābhāvādimātreṇa ādhyasiddhir nāstīti vyākhyātam. Ibid, F. 114. L. 38-40 ; Col. Dig. I. 151.

nuously for a period of ten years (it may be lost to the owner).[1] In the other, it has been held that a pledge cannot be lost by adverse possession.[2] This could show that during the period of Vasiṣṭha the rules about adverse possession with reference to pledge were not strictly settled in the society. But a better view is that the two propositions should be harmonised, the first referring to a pledge which ceases to be subject to the contract and so is adversely possessed after that time by the pledgee, who has become a trespasser.

Manu formulates the law in general that if a person (owner) remains silent after seeing his object enjoyed in his presence by another for a period of ten years, he is not entitled to recover it.[3] But he directs immediately that a pledge is not to be lost by (adverse) enjoyment (possession) (so long as it remains a pledge).[4]

Yājñavalkya prescribes the rule of adverse possession (II. 24) and exempts the operation of the rule in the case of a pledge (and some other objects).[5] The point of Yājñavalkya has been explained by Vijñāneśvara by stating that in these cases the indifference on the part of the pledgor is justified.[6] What he stresses is that the penalty for the owner in the case of adverse possession arises out of his (owner's) indifference to his property.[7] In the case of pledge this indifference can be reasonable accounted for at least up to a short period after the term has expired and therefore the rule of adverse possession should find no scope here. Yājñavalkya prescribes punishment for usucaption of pledge on this basis.[8]

1. Paitṛkaṃ krītam ādheyam..... Vasiṣṭhadharmaśāstra, XVI. 16.
   The term 'ādheyam' may mean a pledge, the possession of which has been passed over to the creditor or it is an inchoate pledge.
   Tatra bhuktānubhuktadaśavarṣam. Ibid. XVI. 17.
2. Ādhiḥ sīmā.....na' saṃbhogena hīyate. Ibid. XVI. 18.
3. Manu, VIII. 147.
4. Ādhiḥ.....na bhogena praṇaśyati. Manu, VIII. 149.
   Kullūka is clear in his exposition : uktena daśavarṣabhogena na svāmino naśyanti na bhoktuḥ svatvaṃ bhajante.
5. Yāj, II. 25.
6. Puruśāparādhasya tathāvidhasya abhāvāt, upekṣākāraṇasya tatra tatra sambhavāt (hānir na bhavati). Com. on Yāj, II. 25.
7. Tasmāt svāmyupekṣālakṣaṇasyāparādhāt.....
   Commentary on Yāj, II. 24.
8. Yaj, II. 26.

Nārada shares with Manu the general direction about adverse possession and its exception in the case of a pledge.[1] The position held by Nārada has been explained by Asahāya. He observes that in the cases of pledge and the like, as the pledge is of a special type, they cannot be lost even if a long period lapses.[2] If possession can be traced to a contract naturally it cannot become adverse to the owner. In this context another direction of Nārada should be noted. It is stated that even a pledge and the like (which have been stated as not to be affected by adverse possession) may also run the risk of being lost by adverse possession for a period of twenty years, unless of course, they belong to a woman and a king,[3] who are privileged persons against whom time does not run according to *dharmaśāstra*. Nārada thus appears to suggest that the pledgor should not remain indifferent to the pledge with respect to its adverse possession for a period of twenty years. In that respect it may be explained as equal in spirit to the direction of Manu (VIII. 145).

It may therefore be concluded that according to these writers on law, the rules of adverse possession should not be applied in the case of pledge because there is a genuine cause for the owner to remain indifferent to his pledge while it remains with the pledgee, and so long as the relationship of pledgor and pledgee has not terminated.

16. *Pledge and ownership.*

The question to be discussed here—a typical *śāstric* question, is: whether through the act of pledge the pledgor loses his ownership over the pledge and whether the pledgee acquires the ownership over the same, or not. Ownership may be understood as the competence of dealing (with the object over which ownership exists) as one desires.[4] So far as a pledge is concerned, the ple-

1. Nārada, IV. 79 = Manu. VIII. 147; Nārada, IV. 81 = Manu. VIII. 149.
2. Eteṣu saviśeṣanyāsāc cirakālātikrame'pi na naśyantīti bhāvaḥ.
Asahāya on Nārada, IV. 81.
3. Nārada, IV. 82.
4. Na ca yatheṣṭaviniyojyatvaṁ svatvam iti vayaṃ brūmaḥ, kiṃ tarhi, yatheṣṭaviniyogayogyatvam. Madanartnapradīpa, 325.
Vide P. V. Kane, History of Dharmaśāstra, III, 555; On the question of

dgor may mortgage it if he has ownership over it. In a transaction of debt a pledge is placed with the creditor with the intention that on payment of the loan it will be recovered. Or in other words, it remains with the creditor as sucurity only for a limited period. Broadly speaking, even during the period in which the the loan is not fully discharged, the pledge remains with the pledgee either for his custody only (in the case of the pledge of *gopya* type) or for his use (in the casa of the pledge of the the type of *bhogya*). In their respective spheres these two types of pledge have their different legal bearings and with respect to this question of ownership also there is difference between them.

Kauṭilya states that a beneficial pledge is not lost to the owner[1] and as such the right of the pledgee is to the extent of enjoying it and evidently the ownership of the same remains with the pledgor. With reference to a pledge not yielding benefit, i. e. the pledge that is kept with the pledgee just to secure confidence, he observes that it may be lost.[2] From his direction it appears that loss of ownership of the pledgor over the pledge and consequently the orign of ownership of the pledgee over the same, may be effected when the terms of contract with reference to time-limit etc. are violated by the pledgor. There is.however, no clear indication to this effect from the text itself. Kauṭilya prescribes that the rules of deposit are to be applied in the case of a pledge.[3] The direction that the pledgee is to be penalised to pay four times the value of the article and a fine to the extent of 4/5th the value (to the king),[4] in cases of mortgage, the sale or denial of the pledge, suggests that in the case of pledge for use, the pledgee could have no ownership at any time and with respect to the pledge for custody, he had no ownership during the period of terms of contract. There fore, this rule may be stated to be applied in the case of the pledge

the nature of *svatva* vide, J. D. M. Derrett, 'The Development of the Concept of Property in India. c. A. D. 800-1800,' in Z. V. R. (1962), 93-130 ; 'An Indian Contribution to the study of Property' in B. S. O. A. S, XVIII,3 (1956) ; H. Smṛtitīrtha, Svatvavādapraveśaka (Calcutta, 1965).

1. Arthaśāstra, III. 12. 9.
2. Nirupakāraḥ sīdet. Arthaśāstra. III. 12.10.
3. Arthaśāstra. III. 12. 17.
4. Arthaśāstra. III. 12, 6.

for custody. On the failure of the terms of contract, we may, on the basis of the earlier rule (III. 12. 10) suppose that the pledgee may acquire ownership and consequently may enter into transaction of sale and the like.

We have no suggestion in this respect from Gautama and Vasiṣṭha.

Manu directs that there shall be neither transference nor sale of the pledge by the lapse of time.[1] The interpretation of the direction of Manu by different commentators and digest-writers, as we shall have occasion to notice, suggests that Manu does not favour the idea of the pledgor losing his ownership over the pledge, even when the contract has been broken or the term has expired. A conflict between the *dharmaśāstra* and practical needs seems patent here.

Yājñavalkya observes that a pledge should lapse if it is not redeemed when the principal amount gets doubled (with interest). The pledge conditioned with the limitation of time (will lapse) when the stipulated time-limit is over. But the usufructuary pledge will never lapse.[2] Yājñavalkya here makes a distinction between the two types of pledge—the usufructuary one (*phalabhogya*) and the other with a term of redemption fixed (*kālakṛta*).[3] Forfeiture of the pledge, according to him, is possible in the case of the pledge of the second type only. This is a very necessary qualification of what must have been a popular maxim like 'once a mortgage always a mortgage'.

Viṣṇu has no positive direction on this point. Nārada shares the same view as that of Manu.[4] Bṛhaspati also appears to be in favour of ownership of the pledgee over the pledge under certain circumstances. In his view, when the capital gets doubled and the stipulated time elapses, the pledgee becomes the owner of the pledge,

1. Na cādheḥ kālasaṃrodhān nisargo'sti na vikrayaḥ.
'nisarga' has been explained by Medhātithi as transference to another party —'anyatra vidhinārpaṇam,'
2. Ādhiḥ praṇaśyed dviguṇe dhane yadi na mokṣyate /
Kāle kālakṛto naśyet phalabhogyo na naśyati // Yāj, II. 58.
3. Vide the commentaay of Viśvarūpa on Yāj. II. 60 (T. S. S).
4. Nārada, IV. 129.

waiting however, for a period of two weeks.[1] Provision of such a grace period is a marked advancement in ideas. It has been stated by way of explanation that in between those periods (doubling of the amount and a fortnight afterwards) the pledgor may get back his pledge by payment of the amount due.[2] This shows that ownership according to Bṛhaspati may arise not merely by the act of pledge but on the failure on the part of the pledgor to get it redeemed within the specified time-limit. Bṛhaspati appears to have another verse in which the debtor has been granted grace period of ten days only during which the pledge may be redeemed.[3] His other direction that a pledge for custody (without time-limit) after it reaches the doubling point and a pledge for custody with time-limit when it reaches the point of limitation of time, may be enjoyed by the pledgee after reporting to the family of the pledgor[4] (in his absence), has been explained in different ways to avoid contradiction with his earlier statements.[5]

Kātyāyana has got no direction on this particular point. Medhātithi while explaining the verse of Manu (VIII. 143) makes it clear that in the case of both the types of pledge (*gopya* and

1. Hiraṇye dviguṇībhūte pūrṇe kāle kṛtāvadhau /
   Bandhakasya dhanī svāmī dvisaptāhaṃ pratīkṣya tu // Bṛ, S, X, 48.
   In the Smṛticandrikā this has been attributed to Vyāsa. Sm, C, II, 330.
   Vide also Vivādaratnākara, 31. Mitramiśra ascribes it to both Bṛhaspati and Vyāsa. Vyavahāraprakāśa, 242.
2. Ato'ntarā dhanaṃ dattvā ṛṇī bandham avāpnuyāt.....Bṛahaspatismṛti, X. 48.
3. Pūrṇāvadhau śāntalābhe bandhe svāmī tato bhavet /
   Anirgate daśāhe tu ṛṇī mokṣitum arhati // Ibid. X. 49.
   The contradiction may be avoided by ascribing the earlier statemant to Vyāsa as suggested in the text of Mitramiśra. The attempt of Devaṇabhaṭṭa to harmonise the texts, may demonstrate his ingenuity, but the interpretation is not convincing.
   Vide Smṛticandrikā, Vyavahāra kāṇḍā, II, 331.
4. Gopyādhir dviguṇād ūrdhvaṃ kṛtakālo yathāvidhi /
   Āvedayitvarṇikule bhoktavyas samanantaram // Bṛhaspati, X. 50.
5. Caṇdeśvara explains that the pledge for custody without time-limit may be enjoyed even if there be no ownership over it :
   'ayaṃ ca gopyādhāv akṛtakāle svatvam antareṇāpi bhogavidhiḥ.'
   Vivādaratnākara, 33.
   Devaṇabhaṭṭa explains that it refers to enjoyment only and not to his right of ownership : Vide Sm, C, II, 332. The same view has been adopted in the Vyavahāraprakāśa (M), 243.

bhogya) the pledgee does not become entitled to transfer or sell the pledges even if they remain for a long period and are not redeemed even when the capital gets doubled.[1] This raises practical difficulties for the pledgee. Creditor's remedy must always be by recourse to a court of law to obtain permission to sell as is found universal now-a-days with our more developed judicial system. Medhātithi here discusses the steps to be adopted in the absence of the right of the pledgee to transfer or to sell the pledge. His suggestion is that the usufructuary pledge should be continued to be enjoyed as long as the principal gets doubled and after that it should be released (on payment of the sum). The pledge for custody should be released after the payment of the sum (with interest). In short, when the profit ceases to accrue (after the capital gets doubled) the pledgee should wait for the pledgor to come and release it.[2] He prescribes further that if the creditor any how becomes impoverished and possesses no other wealth than what he has invested as loan, he may wait for a considerable period of time and sell the pledge after reporting to the king. Out of the sale proceeds he is entitled to take as much as the doubled amount and the balance should be handed over to a third party for being delivered to the debtor.[3] This provision of Medhātithi to sell the pledge under special circumstances should not be interpreted as recognition of the right of the pledgee over the pledge. The direction that the matter should be brought under the notice of the king goes to show that the ownership over the pledge belongs to the pledgor and it is only to give relieif to the pledgee under very special circumstances that Medhātithi has made provision for the sale of the pledge. Medhātithi refers to the text of Yājñavalkya (II. 58) and attempts to bring harmony

1. Gopyepy ādhau kālasaṃrodhāc ciram avasthānāt dviguṇībhūte'py amokṣamāṇe .....anyatra vidhinārpaṇaṃ nisargaḥ ..vikrayaḥ so'pi na kartavyaḥ.
Commentary on Manu, VIII. 143.

2. Kiṃ tarhy asyām avasthāyāṃ kartavyam, tāvad ādhiṃ bhuñjīta yāvad dviguṇaṃ dhanaṃ praviṣṭaṃ, tato mocya ādhiḥ.....abhojyas tadantataram. Bhogyas tv ādhiḥ śāntalābhas tiṣṭhaty eva yāvad ādhātā nāgataḥ.
on Manu, VIII. 143.

3. Yas tu kathañcid daridratām upagatas tāvanmātraśeṣadhanaḥ sa kañcit kālaṃ pratīkṣya rājani nivedya vikrīṇīta bandhaṃ, tato vikrayād utpannaṃ dviguṇam ātmano dhanaṃ gṛhītvā śeṣaṃ madhyasthahaste ṛṇikasāt kuryāt.
Medhātithi on Manu, VIII. 143.

between the opposite statements of Manu and Yājñavalkya. He points out that the word *'pranāśa'* in the rule of Yājñavalkya should not be understood in the sense of loss of ownership of the former owner and acquiring of ownership of the creditor. If the creditor cannot sell or transfer the pledge, the question of ownership becomes meaningless. He explains therefore, that the statement of Yājñavalkya should mean that the creditor who might have ceased to enjoy it (after doubling of the capital) is entitled hereby to use it again. He suggests that such forfeiture may refer to such articles as cloth and the like. In this view the word *pranāśa* is used in the secondary sense (of permitting to use).[1] The *śāstra* struggles hard against the popular notion that mortgage or pledge is a conditional sale, but how successfully, it is impossible to say.

Vijñāneśvara in his interpretation of the verse of Yājñavalkya (II. 58) categorically states that after the expiry of the time-limit, the property of the debtor becomes the property of the pledgee. In other words, the pledgor loses ownership over the pledge. He observes that this may happen in this type of pledge before or after the capital gets doubled.[2] He raises here a prima facie question on the direction of Yājñavalkya arguing that through the act of pledge the pledgor does not lose his ownership over the pledge in the absence of circumstances like gift, sale etc. through which his ownership might have ceased, and also in the absence of circumstances like acceptance, purchase etc. which cause ownership (to the creditor). Moreover, this goes against the direction of Manu (VIII. 143).[3] In reply he observes that the act of pledging itself is considered in secular usage as a circumstance coupled with contingent condition, contributing to the loss of ownership (of the pledgor). Similarly,

1. .....praṇaśyatvān na pūrvasvāminaḥ svāmyahāniḥ prayoktuś ca svatvāpattiḥ. yadi ca nisargavikrayau na staḥ kīdṛśam asya svāmyam ucyate tasmāt pratiṣedhasāmarthyena praṇāśavacanaṃ pratiṣiddhabhogasya bhogānujñānārthaṃ vyākhyāyate, vastrādiviṣayaṃ vā.....gauṇau cātra praṇāśanisargau.
Ibid on Manu, VIII, 143.

2. .....naśyati, adhamarṇasya dhane prayoktuḥ svaṃ bhavati...sa tu kāle nirūpite prāpte naśyet dvaiguṇyāt prāg ūrdhvaṃ vā.
Commentary on Yāj, II, 58.

3. Nanv ādhiḥ praṇaśyed ity anupapannam adhamarṇasya svatvanivṛttihetor dānavikrayāder abhāvāt, dhaninaś ca svatvahetoḥ pratigrahakrayāder abhāvāt, manuvacanvirodhāc ca.....
On Yāj, II, 58

the acceptance of the pledge is well-known (in secular usage) as a circumstance coupled with contingent condition envisaging ownership (over the pledge) on the part of the creditor.[1] He concludes therefore, that when the capital gets doubled and when the stipulated time arrives (expires) the right of payment becomes extinct. On the basis of this statement of (Yāj, II. 58), the ownership of the debtor (over the pledge) completely ceases and the ownership of the creditor (over the same) becomes absolute.[2] Here the great jurist, noted for his bold assertion of the popular nature of property even in the *dharmaśāstra*, makes an attempted reconciliation between *śāstric* idealism and practical necessity.

Lakṣmīdhara in his interpretation of the verse of Yājñavalkya also expresses the view that in the pledge the pledgee may acquire ownership.[3] The same view is held by Aparārka.[4]

Devaṇabhaṭṭa approaches the rule of Manu in the way in which Medhātithi has done. He suggests that after the capital gets doubled the pledge should remain with the pledgee so long as it is not redeemed by the pledgor.[5]

While making a reference to the statement of Vyāsa, where he states that when the amount gets doubled and the limit of the stipulated period is reached, the pledgee gets possession over the pledge after waiting for a period of the two weeks, Devaṇabhaṭṭa raises the question as to whether the pledgor has the right to get back his pledge after two weeks, through payment of the due, or not.

1. Ādhikaraṇam eva loke sopādhikasvatvanivṛttihetuḥ, ādhisvīkāraś cāsopādhikasvatvāpattihetuḥ prasiddhaḥ. Ibid.
   It may be incidentally noted that this commentator in his approach to the question about the nature of *svatva* lays stress on its secular nature: 'laukikam eva svatvaṃ laukikārthakriyāsādhanatvāt'.....
   Introductory commentary on Yāj, II. 114.
2. Tatra dhanadvaiguṇye nirupitakālaprāptau ca dravyadānasyātyantanivṛttir anena vacanenādhamarṇasyātyantikī svatvanivṛttiḥ uttamarṇasya cātyantikaṃ svatvaṃ bhavati. Com. on Yāj, II. 58.
   Vijñāneśvara in this context attempts of to remove the apparent contradiction between the statements of Manu (VIII. 143) and Yājñavalkya (II. 58).
   Vide this commentary on Yāj, II. 58.
   For similar attempts at harmonisation of the same situation, vide Kṛtyakalpataru, Vyavahārakāṇḍa, 298; Vivādaratnākara, 32.
3. .....naśyati dhanaprayoktuḥ svaṃ bhavati. Kṛtyakalpatru, 297.
4. .....naśyed adhamarṇasya svaṃ na bhavati kintu uttamarṇasyaiva bhaved ity arthaḥ. Vide his commentary on Yāj, II. 58.
5. Vide Smṛticandrikā. Vyavahārakāṇḍa, II, 332.

The prima facie position is that the pledgor by offering the object as pledge does not lose his ownership over the pledge. Loss of ownership is caused through such acts as gift, sale and the like. As such in the state where the capital is doubled and a violation of time-limit takes place, they cannot be treated as leading to the loss of ownership on the part of the pledgor.[1] On this point raised, Devaṇabhaṭṭa replies that it is a fact that doubling etc. are not well-known as leading to the loss of right, but exchange of properties is well-known as causing the loss of the same because it is observed that through exchange ownership over sesamum seed is lost. Identically here also loss of ownership over the pledge is quite appropriate in a case where there is limit of time, because here at the time of taking the loan a mutual agreement takes place between the debtor and the creditor with regard to the exchange of properties on the following term : 'if I do not pay your debt by such and such a time then the pledge itself will be treated as your property as redemption of your debt.' It is with such a purpose that Yājñavalkya in his rule (II. 58) directs that a pledge with the limit of time is lost (to the owner).[2] Though in the case of doubling there is no such stipulation in the form that the pledge would become the property of the creditor if it is not released when the capital gets doubled, yet the ownership over the pledge would be lost where such agreement is made and the statement of Yājñavalkya is to be understood in that light.[3] Thus Devaṇabhaṭṭa finally declares that even in the

1. Nanūrdhvam api caturdaśadinād dhanaṃ dattvā bandhakam ṛṇī kim iti nāpnoti svatvadhvaṃsakābhāvāt ? Dhanadvaiguṇyam avadhibhūtakālātikramaṇaṃ ca taddhvaṃsakam iti cet, na dānavikrayāder eva taddhvaṃsakatvāt. ādiśabdaparigṛhītavargāntargataṃ dvaiguṇyādikam apīti cet, na svatvadhvaṃsakatayā lokaprasiddhānām eva ādiśabdena parigrahāt. dvaiguṇyādikam api tatheti cet, na hi loke dvaiguṇyādes tathā prasiddhir asti.

Smṛticandrikā, II. 330.

2. Ucyate, satyaṃ dvaiguṇyāder nāsty eva tathā prasiddhiḥ, dravyavinimayasya tu tathā prasiddhir asty eva tilavikrayapratiṣedhāt vikrayākaraṇe'pi vinimayena tilānāṃ svatvanivṛttidarśanāt. Tataś cātrāpi kṛtakālādhau ṛṇagrahaṇakāla eva yady ahaṃ iyatā kālena na dadāmi tadādhir evāṇṇyāya tava bhaviṣyatīti dhanikarṇikayoḥ dhanavinimayasaṃpratipatter jñātatvāt avadhibhūtakāle svatvadhvaṃso yukta eva. Etad eva nāśanimittaṃ yājñavalkyena kālakṛtaḥ ity anenoktam.

Smṛticandrikā II. 330-331.

3. Dvaiguṇye tu yady api ṛṇagrahaṇakāle yady ahaṃ dvaiguṇye'py ādhiṃ na mokṣayāmi tadādhir evāṇṇyāya tava bhaviṣyatīti dhanikarṇikayor dhana-

absence of purchase, acceptance and the like, the creditor may acquire ownership over the pledge through exchange.[1] While making reference to the statement of Bṛhaspati (X. 49) in addition to that of Vyāsa, Devaṇabhaṭṭa clearly expresses his viewpoint that as the creditor acquires ownership over the pledge after a period of fourteen days, he may dispose of the pledge in any way he pleases.[2]

While making reference to the statement of Manu (VIII. 143) Caṇḍeśvara explains that the pledgee should not at all think in terms of ownership over the pledge. As such no transaction in the forms of gift, transfer and the like should be done by him.[3]

Caṇḍeśvara again with reference to the text of Bṛhaspati and Vyāsa observes that the pledgee may enjoy the pledge for custody without time-limit even if there be no ownership.[4] In this context he refers to a text (Aparārka speaks of it as of Bṛhaspati. vide p. 658) to the effect that if the debtor is missing or dead (and if it is not possible to communicate with the family of the debtor) the creditor should present the deed of debt to the court of justice and obtain a certificate specifying the limit of time.[5]

Pṛthvīcandra in his *Vyavahāraprakāśa* does not favour the idea

vinimayasaṃpratipattiniyamābhāvaḥ, tathāpi yatraiveyaṃ saṃpratipattiḥ kṛtā tatraiva dvaiguṇye svatvadhvaṃsaḥ hetusadbhāvāt, tadviṣayaṃ ca ādhiḥ praṇaśyed iti vacanam ity avagantavyam. Ibid, 331.

1. Evaṃ kryapratigrahādyabhāve'pi vinimayenādhau dhanikasya svatvāpattiḥ, Smṛticandrikā, II, 331.
2. Evaṃ ca caturdaśadinād ūrdhvam ādhau svatvāpatteḥ yatheṣṭaviniyogo hiraṇyaprayoktur aviruddhaḥ. Ibid., 331-332.
   In the case of loan in the form of cloth and the like, such ownership arises after ten days :
   Vastrādiprayoktuś tu daśadinād ūrdhvam eveti mantavyam. Ibid. 332.
3. Na ca tasya svīyatvabhramāt dānavikrayādyantaparivartāḥ karaṇīyā ity arthaḥ. Vivādaratnākara, 32.
4. Ayaṃ ca gopyādhāv akṛtakāle svatvam antareṇāpi bhogavidhiḥ. Vivādraratnākara, 33.
5. Naṣṭe mṛte vā ṛṇike dhanī patraṃ pradarśayet /
   Tatkālāvadhisaṃyuktaṃ sthānalekhyaṃ ca kārayet // Bṛshaspati, X. 85.
   Yadā tv adhamarṇaḥ palāyito mṛto vā bhavet ṛṇikule ca śravaṇam aśakyaṃ tadā rājasthāne dhanī patraṃ pradarśayet.....Ibid. 33.
   It may be mentioned here that Jagannātha holds that the certificate should be to the effect that so long as the debtor or his heir does not turn up (to redeem it), the pledge should remain with the pledgee and it should be enjoyed as such.
   Vide Vivādabhaṅgārṇava. Folio. 106 Lines 2-4 ; Col. Dig. I. 140.

of ownership of the pledge over the pledge.[1] But he raises the point of ownership of the pledge in the same way as that of Devaṇabhaṭṭa and the conclusion that is arrived at is the same.[2] As the language of the discussion is almost the same, it is likely that he had before him the text of Devaṇabhaṭṭa. The last view as expressed in the discussion appears to be his personal view, while in the previous one, he appears to interpret the significance of the direction of Manu.

In the *Manaratnapradīpa*, the text of Manu has been interpreted as indicating the absence of the right of the pledgee over the pledge.[3] The same is the view held by Misarumiśra in his *Vivādacandra*.[4]

In the *Sarasvatīvilāsa* there is a long discussion on the point of onwership of the pledge. He summarises the views of Vijñāneśvara and Devaṇabhaṭṭa by stating that according to the former, the loss of ownership (of the pledger) and the aquiring of the same (by the pledgee) are are based on the text (of Yājñavalkya), while according to the latter it is rational (being based on argument), becuse he (Devaṇabhaṭṭa) bases his conclusion on the principle of the exchange of sesamum seed, where exchange creates ownership.[5]

While criticising the approach made by Deaṇabhaṭṭa, he observes that the principle of exchange does not fit well in the case of pledge. The stipulation 'I shall surely pay the debt at the time of *Dīpāvali* festival, otherwise the pledge should pass on to you', indicates the pledge as being purchased under contingent condition. Or it may be that by the statement itself 'kālaṛto naśyet' (Yāj, II. 58), is understood the loss of the pledge. Therefore the stipulation (*paribhāṣa*) amounts to gift (transfer) based on text (statement) and as such, such transfer contributes to ownership. Thus a pledge, ending in transfer, may be a cause of ownership. It is with such a purpose that Vijñāneśvara explains (on Yāj, II. 58) that ownership arises on the basis of a text

1. .....evaṃ vikrayādhīkaraṇapratiṣedhād uttamarṇasya svatvābhāvaḥ sūcyata iti vadet. Vyavahārāprakāśa, 222.
2. Ibid. 221-222.
3. .....ity ādher dhanikasvatvābhāvapratipādakaṃ manuvacnam. M. R. P., 151.
4. .....na ca svīyatvabhramād vikretavyaḥ. Vivādacandra, 12.
5. Ayam abhisanphiḥ, vijñāneśvaramate vācaniko'tra svatvadhavaṃsaḥ parasvatvāpattiś ca candrikākāramate naiyāyikaḥ, krayapratigrahādyabhave vinimayenaivādhau dhanikasya svatvāpattiḥ vrīhyādāv iva tılavinimayakartarīti nyāyapratipādanāt. Sar. Vil. 242.

(*vacanāt svatvam*). '*Vacana*' as used by Vijñānesvara means stipulation, which again means a transference by stipulation.[1]

Nandapaṇḍita, while commenting on the rule of Viṣṇu (V. 182) which relates to the penalty for the pledgor, pledging the same object for the second time before its release from the first pledge, explains that by the act of pledging there does arise the ownership of the creditor with contigent condition and as such the ownership of the pledgor gets impeded. Under the circumstances, the repledging of the same without getting it released from the first pledgee amounts to an act without authority, the pledgor being equivalent to one devoid of of ownership.[2] It is a fact that the *svatva* of the the owner-pledgor is *pratibaddha* (obstructed), though not extinguished until the default in repayment of the loan has become final.

Mitramiśra in his Vyavahāraprakāśa rasises the same question as that of Vijñāneśvara (on Yāj. II. 58) and his conclusion is the same as that of Vijñāneśvara.[3]

From the discussions made above we may come to the conclusion that according to Kauṭilya the onwership of the pledgee over the pledge for custody could be conceived of. But in respect of the usufructuary pledge ownership over the pledge was retained by the pledgor. Accordig to Manu the pledgee was not entitled to any form of ownership on the pledge. Yājñavalkya favours the idea of loss of ownership over the pledge in the case of pledge for custody only. Nārada follows the line of approch as we find in Manu. Bṛhaspati appears to grant the right of ownership of the pledgee under certain circumstances.

Among the commentators, Medhātithi is strongly against any sort of ownership of the pledgee over the pledge and the opposite view is traced in Vijñāneśvara, according to whom ownership of the

1. Ayam āśayaḥ, ādhisthale vinimaya eva na saṃgacchate paribhāṣāvaśāt dīpotasavādisamaye etad dṛḍham ahaṃ dāsyāmi anyathā'yam ādhis tava bhaviṣyatīti tatra praibhāṣayiva dhanasya sopādhikakrayadravyatayā pratīteḥ. yad vā kāle kālakṛto naśyet ity atrāpi paribhāṣayaivādhināśaḥ pratīyate. tasmāt paribhāṣā nāma vācanikadānam iti dānam eva svatvāpādakam. Anenaivābhiprāyeṇoktaṃ vijñānayoginā vacanāt svatvam iti ; vacanaṃ paribhāṣā vācanikadānam iti yāvat. Sarasvatīvilāsa, 243.
2. Ādhikaraṇena sopādhikaparasvatvotpattyā svasvatvapratibandhanādhātuḥ asvāmitulyatayā prayogāntarānadhikārāt.....
Nanda's commentaty on Viṣṇusmṛti. V. 182.
3. Vyavahāraprkāśa, 242-243.

pledgor may cease and consequently it may be acquired by the pledgee. These are the two distinct lines of thought. The digest-writers also get themselves affiliated to the different schools of thought in this respect, We notice that Caṇḍeśvara, Misarumiśra and others in their interpretation of the text of Manu declare that the pledgee cannot acquire the ownership over the pledge. Devaṇabhaṭṭa, Pṛthvī-candra, Pratāparudra, Mitramiśra and others have strongly supported the theory of loss of ownership of the pledgor and the acquiring of the same by the pledgee. It has already been commented that the later viewpoint represents a compromise between *śāstric* idealism and practical requirements, legitimately the latter.

17. Sub-mortgage (*Anvādhi*) and remortgage of the pledge

By sub-mortgage* (or sub-pledge) is meant the act of mortgage (or pledge) that is executed by the pledgee with the same article that is mortgaged to him by the pledgor. Among the *śāstrakāras*, Prajāpati and Bharadvāja have direct references to sub-mortgage. The antiquity of these texts is doubtful. Kauṭilya, while applying ihe rules of deposit to the case of pledge, does not show his approval to the act of sub-mortgage by the pledgee and this is evident from his direction of penalty in the case of mortgage of the pledge. According to him if the pledge (like deposit) is mortgaged, sold or denied (as having received), the penalty should be four times the value of the deposit and a fine of 4/5th of the value is to be given (to the king).[1] It should be noted that Kauṭilya does not use any special term for indicating sub-mortgage, but the context shows that if the rules of deposit are to applicable to the case of a pledge[2], '*ādhāna*' as used by him, should be interpreted here as sub-mortgage.

The direction of Manu that even if the pledge is kept with the pledgee for a long time, it cannot be (transferred) gifted or sold,[3] has been interpreted by different commentators and digest-writers

* Devaṇabhaṭṭa uses the term 'anvādhi'. Sm. C, II, 334

1. Ādhānavikrayāpavyayaneṣu caturguṇapañcabandho daṇḍaḥ.
   Arthaśāstra, III. 12. 6
   Vide here the commentary by Gaṇapati Śāstrī and the notes on the rule by Kangle, Arthaśāstra. II., 266-267.
2. Śeṣam upanidhinā vyākhyātam. Arthaśāstra, III. 12. 17.
3. Manu, VIII. 143.

as having reference to sub-mortgage. It may be mentioned here that the same direction in the same form is also traced in Nārada.[1]

The question of sub-mortgage arises in connection with the interpretation of the term *'nisraga'* in the text of Manu and Nārada. It is of interest to note that the term has been interpreted by Asahāya as 'gift'.[2] Medhātithi first interprets it as transference to another according to regular procedure.[3] He finally decides that the word is to be understood in the present context of the verse as transference to another party through mortgage and this is clear from its being mentioned along with sale.[4] Medhātithi refers to a *smṛti*, where it has been declared that neither sale nor mortgage (of the pledge) should take place.[5] It may be mentioned here that Medhātithi speaks of (and perhaps permits) sub-mortgage by the pledgee with the consent of the pledgor, to realise his loan.[6]

Vijñāneśvara refers to this verse of Manu and accepts the meaning of the term *'nisarga'* as sub-mortage. He does not comment on the this act and it may be presumed that he was not in favour of sub-mortgage.[7] Govindarāja like Medhātithi takes the term in the same sense.[8] Lakṣmīdhara in his *Kṛtyakalpataru* has the same meaning attached to the word. He interprets this provision to be applied to the usufructuary pledge,[9] which is more or less an a dmission of the practical difficulty at his period of such assignments of security.

Devaṇabhaṭṭa, while making reference to the procedure to be followed when the pledgor is absent (Kātyāyana, 529), observes that sub-mortgage to another party in such case is not opposed (to practice). It is in that context that that he refers to the statement of Prajāpati that if the creditor makes a mortgage (of the pledge made to him) for the amount equal to what has been given as loan to the

1. Nārada, IV. 129.
2. He takes it in the sense of gift : ...na tasya kvacid dānam asti, Commentary on Nārada, IV. 129.
3. Anyātra vidhinārpaṇaṃ nisargaḥ. On Manu, VIII. 143.
4. Iha nisargo'nyatrādhānaṃ vikrayasāhacaryāt. Ibid.
5. (etad eva prastutya) na syātaṃ vikrayādhāne iti smṛtyantare paṭhitam. Ibid.
6. .....yathā tadīyaṃ bandhakaṃ tandanujñayottamarṇenānyatrādhāya svadhanaṃ gṛhyate..... Ibid
7. .....na nisargo'sti nānyatrādhīkaraṇam asti. Com. on Yāj, II. 58.
8. .....na ca anyatra bandhavetanatvenārtham asti. Com. on Manu, VIII. 143.
9. Nisargaḥ anyatrādhīkaraṇam. Tac ca bhoagyādhiviṣayam. Kṛtyākalpataru, Vya. Kā., 298.

debtor, he (the creditor) should make a fresh deed (of mortage) to the (new) creditor.[1] He (Devaṇabhaṭṭa) provides that the pledgee should not mortgage it for the capital with interest.[2] What is intended perhaps was that the pledgee should not pledge it to another party for the purpose of earning more than his invested sum. In other words, it was more of an assignment than a sub-mortgage. In interpretation of the word '*nisarga*' of Manu, he accepts both the meanings, namely, sub-mortgage and gift.[3]

Kullūkabhaṭṭa refers to the interpretations made by both Medhātithi and Govindarāja with reference to the word 'nisarga' in text of Manu, and mentions that sub-mortagage is allowed by customs of all the countries and as such it may be presumed that he was not against that practice.[4] He however, takes the word in the sense of gift. Halāyudha as referred to by Caṇḍeśvara, is stated to be not against this sub-mortgage.[5]

Caṇḍeśvara accepts the meaning of sub-mortgage (for the word '*nisarga*') and according to him even if the pledgee gets more than what he advanced as loan, he should not place the pledge under sub-mortgage. He differs from Lakṣmīdhara in restricting the rule of Manu to the pledge for custody.[6] Pṛthvīcandra with reference to the word mentioned, has the same approch.[7] The same is the case with Misarumiśra.[8] Mādhava in his *bhāṣya* on the *Parāśarasmṛti* appears to refer to another appellation of sub-mortgage in the from of *Vastvādhi*.[9] He holds that such *Vastvādhi* may take place when the capital with interest gets doubled. It may however be taken to

1. Anyatra tv ādhīkaraṇam asmin viṣaye na viruddham, yad āha prajāpatiḥ :
   Dhanī dhanena tenaiva param ādhiṃ nayed yadi /
   Kṛtvā tad ādhilikhitaṃ purvaṃ cāsya samarpayet //
   Smṛticandrikā, II. 333-334.
2. Kiṃ tu mūlamātram evānyatrādhīkṛtyādeyaṃ na tu savṛddhikam. Ibid., 333.
3. Vide Smṛcandrikā, II, 332.
4. Medhātithigovindrājau tu ādheś cirakālāvasthāne'pi na nisargo nānyatra bandhakenārpaṇam iti vyācakṣāte. Atra tu sarvadeśiyaśiṣṭācārvirodhaḥ bandhakībhūtabhūmyāder anyatrādhīkaraṇasamācārāt.
   Kullūka on Manu, VIII. 143.
5. Halāyudnas tu.....tanmate pratyādhiniṣedho nānena. Viv. rat. 32.
6. .....yāvati dhane gṛhītaḥ tadadhikadhane'pi asmin uttamarṇena nādhīkartavyaḥ..... Vivādaratnākara, 31-32.
7. Vyavahāraprakāśa, 222.
8. Vivādacandra, 12.
9. Vastvādhu niyamam āha prajāpatiḥ..... Com. on Parāśara, 182.

earlier by mutual consent.[1] In the *Madanaratnapradīpa* the same meaning has been ascribed to the word *'nisarga'*.[2]

It is evident that the practical difficulties of sub-mortgaging a security. the income from which depended on skill and circumstances stood in the way of admitting a general power of sub-mortgage on the mortgagee's part, but *śāstric* writers differed in their degree of willingness to permit or recognise such practices. In general, the later the author the less scope he would give to the antiquated restrictions laid down in the *smṛti*, but, as we have seen, development was not strictly chronological, not even in its results.

Jagannātha discusses the position as to what should be the right procedure in the case where the pledgee places under sub-mortgage the pledged land and takes a loan, while the pledgor turns up to redeem it. It may hppen that the pledgee be not in a position to get the pledge back from his own creditor. Jagannātha suggests that under the circumstances. if the pledge be of the nature of the pledge for custody and if the fresh loan taken (by sub-mortgaging it) be of equal value or of less value (than the debt of the debtor), he may take back the loan, release the pledge and hand it over to pledgor. But such sub-mortgage should not be made when the loan is greater in amount.[3]

If the pledge is of usufructuary type, it may be mortgaged without violation of previous agreement. Thus the creditor may place it as pledge with the condition that it may be enjoyed so long as the loan is not paid off, in the same way in which the original pledgor pledged it. The pledge should never be given with a dissi-

1. Ayaṃ vastvādhir dhanasya dvaiguṇye sati, saṃpratipattau tu dvaiguṇyād arvāg api draṣṭavyaḥ. Ibid. 182.
2. p. 151.
3. Etanmate bandhakībhūtakṣetrādikaṃ punar anyatra bandhaṃ kṛtvā ṛṇaṃ yadi gṛhṇāti uttamarṇas tadā uttamarṇasyaiva daivavaśāt ṛṇapariśodhanāsāmarthye adhamraṇe ca ādhiḥ mocayitum āgate kā vyavasthā syād ity atra viśadīkṛtya ucyate, yadi gopyādhiḥ punar ādhīkṛtaḥ, ṛṇaṃ ca pūrvaṛṇān nyūnaṃ tulyaṃ vā tadā adhamarṇaśodhitadhanenaiva śodhanaṃ kṛtvā ādhiṃ mocayitvā adhamarṇāya samarpayet. Adhikaṃ ṛṇaṃ gṛhītvā tu punar ādhir na kartavyaḥ.
Vivādabhaṅgārṇava. Folio. 99. Lines, 35-42; and Folio, 100. Lines 1-3; Col. Dig. I. 134.

milar condition like : 'enjoy it for ten years and the like'.[1] Jagannātha expresses the view that the pledgee becomes liable to be penalised if he mortgages it to a second party on a dissimilar agreement.[2] He thus is in favour of sub-mortgage under similar conditions. His observations on this point are significant. According to him sub-mortgage is not prohibited under all circumstances. He refers to practice that even in the case of usufructuary pledge, where the debtor is not in a position to pay off the debt when demanded by the creditor, he (the creditor) pledges it to another with similar conditions.[3]

From the foregoing discussion it may be observed that except Halāyudha, Kullūkabhaṭṭa and Jagannātha, all belonging to the Bengal school, commentators and digest-writers do not favour the idea of sub-mortgage. It appears from the statement of Kullūkabhaṭṭa that such practice was in vogue in Bengal.

Here incidentlly reference should be made to the views, according to which the rule of Manu should be applied to a particular type of pledge, either that for custody or that for use or for both.

According to Medhātithi, Misarumiśra and Vācaspatimiśra it refers to both the types of pledge, that for custody and that for use. Vijñāneśvara, Lakṣmīdhara, Rāmacandra (commentator of Manu) and the author of the *Madanaratnapradīpa* like it to be applied in the case of the usufructuary type of pledge. Caṇḍeśvara is in favour of applying it to the case of the pledge of custody, where there is no stipulation.

As there is no specific mention, it appears that Manu intended to apply his rule to the pledges in general.

1. Yadi tu bhogyādhiḥ tadā pratijñādvayāvirodhenaiva ādhīkartavayaḥ, yathā pūrvādhamarṇena yāvan mūladhanaṃ na śodhayāmi tāvad bandho bhujyatām ity uktam, tadā pūrvottamarṇenāpi tad evoktvā bandho dātavyaḥ, na tu varṣadaśakaṃ bhujyatām ityādi.
Ibid. F, 100, L, 3-7 ; Col. Dig. I. 134.
2. Vastutas tu svagṛhītādheḥ punar anytra visadṛśapratijñayā ādhīkaraṇe pūrvottamarṇasya daṇḍa eva bhavatīti dhyeyam.
Ibid. L. II-13 ; Col, Dig. I, 135.
3. Sarvatrāhhānaṃ na niṣiddham, yathā yāvan mūlaṃ na śodhayāmi tāvad bandho bhujyatām iti niyamena bandhaṃ dattvā ṛṇaṃ kṛtavān, punaḥ katipayavarṣāntaram adhamarṇaṃ ṛṇam ayācata uttamarṇaḥ, adhamarṇaḥ sa ṛṇaṃ śodhayitum aṣaktas tadā uttamarṇas tu tādṛśapratijñayaiva bandhaṃ dattvā anytra tāvad eva dhanaṃ ṛṇaṃ kṛtavān ityādivyavahāradarśanād iti kramaḥ.
Ibid. F. 101, L. 22-28 ; Col. Dig. I, 136.

Re-mortgage.

The question of re-mortgage is to be distinguished from that of sub-mortgage in this that the former refers to the act of the pledgor (while the latter refers to that of the pledgee). This may be described as an act in which the pledgor mortgages the same (pledge) article to a second party. Such transactions are common today, when even notice to the prior mortgage is unnecessary. Though such a position is legally suspect under *śāstra* because the pledgor does not have the right over the pledge in the strict sense of the term so long as it is not redeemed from the pledgee, yet such cases may arise through the fraudulent nature of the pledgor as a result of which he may without the knowledge of the first pledgee or taking advantage of his indifierence or negligence, pledge it to a second party. It may of course, be done with his consent, as for example, where the value of the pledge has risen and pledgee has no assets to make further advance to borrower.

The whole question of non-possessory mortgages is raised by this totpic, and it is of interest that later jurists envisage the *smṛti*-writers as having had auch moatgage in mind, inspite of their insistences on possesssion for the efficacy of a pledge.

Vasiṣṭha directs that if the mortgage is granted in writing at the same time to the difierent parties (without the knowledge of the other in each case), that mortgage which is supported by possession will be treated as stronger.[1] This rule evidently relates to the case of the pledge of usufructuary type and the interpretation of Devaṇabhaṭṭa shows that the mention of the word '*bhuktam*' in the rule of Vasiṣṭha as the deciding factor in such case of dispute, is a pointer to the fact that for the validity of the usufructuary type of pledge, possession is the principal factor.[2] We find the same direction in the text of Viṣṇu.[3] Bṛhaspati explicitly mentions the case of a field as pledge, and the decision under identical situation is the same as

1. Tulyakāle nisṛṣṭānāṃ lekhyānām ādhikarmaṇi /,
   Yena bhuktaṃ bhavet pūrvaṃ tasyādhir blavattaram //
   Vasiṣṭhadharmaśāstra. Appendix. Verse 25.
   This provision of Vasiṣṭha is indicative of the fact that in a mortgage actual delivery of the object of pledge was not absolutely necessary.
2. Bhogyādhisiddhau bhogasya pradhānakāraṇatvāt (tatprāthamyanibandhanā balavattā yuktety arthaḥ). Sm. C. II, 337. For the same idea vide Vy, p.(P) 218; Nanda on Viṣṇu, V. 185; Vy. P. (M), 240.
3. Viṣṇusmṛti. V, 185.

that of Vasiiṣṭha and Viṣṇu.[1] His direction goes to suggest, as rightly pointed out by some digest-writers,[2] that such second mortgage is not possible in the case of the usufructuary type of pledge (without possession). In the case of a pledge for custody such mortgage is not possible because the pledge remains already in the possession of the pledgee. Kātyāyana speaks of pledge in general and presents his view that the prior transaction of mortgage (under the circumstances) should be treated as valid (acceptable).[3] Here we notice clearly the difference of opinion between Vasiṣṭha, Viṣṇu and Bṛhaspati in one side (all laying stress on possession as the deciding factor) and Kātyāyana on the other (giving importance to priority). Kātyāyana here is guided by general rule laid down by Yājñavalkya that in the case of pledge, the previous transaction is to be treated as stronger than the following one.[4] The problem is viewed from difierent angles and the two rules can be harmonised. Normally pessession indicates the true pledgee, but where possession is disputed priority settles the matter.

Vasiṣṭha and Bṛhaspati prescribe that if both the parties (the first and the second pledgee) turn up to take possession of the pledge on the same day, the pledge should be enjoyed by both the parties, by dividing it equally.[5] This is a very curious suggestion imputing to

1. Kṣetram ekaṃ dvayor bandhe dattaṃ yat samakālikam /
   Yena bhuktaṃ bhavet pūrvaṃ tasya siddhim avāpnuyāt // Bṛ. S, X 44.
2. Kṣetragrahaṇaṃ bhogyādher upalakṣaṇārtham. Sm, C, II, 336.
   Vide also Vy. P. (P), 218.
3. Ādhim ekaṃ dvayor yas tu kuryāt kā pratipad bhavet /
   Tayoḥ pūrvakṛtaṃ grāhyaṃ.....// Kātyāyana, 517.
   In the Sm, C, II, 337, *'pratipat'* has been explained as the act of mortgage: ṛṇagrahaṇopakramatvād ādhikriyā pratipad ity ucyate. Mitramiśra has the same decision. Vy. P. (P). 240. Caṇḍeśvara takes it to be the course of action or decision: 'vyavasthā' Viv. rat, 35. Pṛthvīcandra takes it as decision. Vy. P. (P). 219.
4. Ādhau pratigrahe krīte pūrvaiva balavattarā. Yāj, II. 23.
5. Yady ekadivase tau tu bhoktukāmāv upāgatau /
   Vibhajyādhiḥ samas tatra bhoktavya iai niścayaḥ //
   Vasiṣṭhadharmaśistra. Appendax. Verse. 26.
   Tulyakālopasthitayor dvayor api samaṃ bhavet. Bṛ. S, X. 45.
   Both Devaṇabhaṭṭa and Pṛthvīcandra conceive of such a situation in the case of the pledge for custody also. Vide Smṛticandrikā, II, 337; and Vyavahāraprakāśa (P), 219. This suggests that even in the case of a pledge for custody, transference of the pledge sometimes could be symbolic and not real.

to the pledgor the intention to secure loans from both, and penalising both the pledgees for their negligence.

Vasiṣṭha in this context refers to the position in which the pledgor first pledges an object (and before getting it redeemed) sells it to another party. To this there could be little objection in principle, fraud apart. He decides that the previous act (of mortgage) is to be treated as stronger of ths two (i.e. the purchaser takes subject to the mortgage).[1] Both Vasiṣṭha and Bṛhaspati declare that if the same object is gifted, mortgaged or sold on the same day to three different parties (and if the claim is made by all the three) all the three transactions should be treated as valid. The purchaser and the pledgee should receive it in the ratio of their respective claims, while the donee ought to obtain a full third.[2] It is difficult to take this extermely recherche suggestion seriously. The motive was plainly to prescribe to the owner some validity in his acts, however repugnant to each other.

Devaṇabhaṭṭa in the context of the provision made by Vasiṣṭha, makes pertinent observations in the form of exposition of the direction that through mortgage the ownership of the pledgor becomes obstructed and a sale made by such an owner with obstruted ownership becomes equivalent to the sale of an object by one other than the owner himself and it is therefore weak.[3] Whether this really means that the sale is void is very doubtful.

Caṇḍeśvara refers to the view of Halāyudha, according to which, a pledge is to be treated as weaker than sale and as such the pledgee in case referred to, should not be entitled to any share.[4] In the *Saravatīvilāsa* we find the same line of argument as that of Devaṇabhaṭṭa, almost in the same language.[5]

1. Yaṃ pūrvataram ādhāya vikrīṇīta tu taṃ punaḥ /
   Kim etayor balīyas syāt prāktanaṃ balavattaram //
   Vasiṣṭha quoted in the Smṛticandrikā, II, 339. cf. Yāj. II. 23.
2. Kṛtaṃ yatraikadivase dānādhamanavikrayam /
   Trayāṇām api saṃdehe kathaṃ tatra vicintayet //
   Tryo'pi tad dhanaṃ dharmyaṃ vibhajeyur yathāṃśataḥ /
   Ubhau kriyānusāreṇa tribhāgena pratigrahī //
   Vasiṣṭha quoted in the Smṛticndrikā, II, 340.
   Vide Bṛhaspatismṛti, X. 63-64.
3. Yady apy adhīkaraṇena na svāmibhāvo nivartate tathāpi pratibadhyate, tataś ca pratibandhasvāamibhāvena kṛto vikrayaḥ pareṇa kṛta evāsiddhatvād durbalo bādhyah..... Sm, C. II, 340.
4. Ādher abalavattvenādhigrahītur na bhāgam ity āha.....Viv. rat, 621.
5. Sarasvatīvilāsa, 238.

While making reference to the penalty precribed for re-mortgage by Viṣṇu (V. 182-183), Vācaspatimiśra declares the second mortgage as invalid and at the same time observes that this view has the concurrence of *Pārijāta*, Ratnākara, *Smṛtisāra* and other texts.[1]

Jagannātha lays stress on enjoyment as the the deciding factor in the case of re-mortgage. He explains the position in the following way : when an object is mortgaged to a creditor, who remains indifferent to it (about its possession and enjoyment), the pledgor (taking advantage of such indifference) may pledge it to another, who enjoys it. If then the previous (first) pledgee expresses his desire to enjoy it he will not be entitled to get it. The pledge will go to the person enjoying it even if he be the second pledgee.[2] This is tantamount to adverse possession, as understood by śāstric authors.

The discussions in the previous pages show that though a re-mortgage may be an offence on the part of the pledgor, because his ownership over the pledge is impeded by the first pledging, yet such cases would often arise and this explains why the *śāstrakāras* had to take notice of the situation and prescribe regulatins to meet the same. Vasiṣṭha, Viṣṇu and Bṛhaspati decide the case in favour of the party in possession of the pledge, but Kātyāyana differs from them more in form than in total effect in stating that the previous transaction should be treated as stronger. In this respect he is supposed to have derived inspiration from Yājñavalkya. Vācaspatimiśra does not favour the idea of second pledge and observes that it is not valid. It is hardly likely that Indian practice ceased to develop byond this stage, whatever the *śāstra* might say. Either the first mortgagee's consent willl have been taken or it may have been imputed to him. But it is important to realise that the jurisprudence did not go beyond the limit stated above.

Penalty for re-mortgage.

As the act of pledging the same object to two different parties is presumed to be inspired by fraudulent motive on the part of the

1. .....uttarādhir na sidhyatīty arthaḥ. Pārijāta-ratnākara-smṛtisārādayo'py evam. Vivādacintāmaṇi, II.

2. Ādāv ekasya samarpito bandhaḥ, sa upekṣate, paścāt parasya samarpitaḥ, sa bhuṅkte. pūrvottamarṇo'pi bhoktuṃ punar icchati. Tatra pūrvaṃ yasya bhogaḥ tasya parottamarṇasyāpi bandho bhavatītyādikam upāyam. Vivādabhaṅgarṇava. Folio, 112, L. 20-23 ; Col. Dig, I. 150.

pledgor, it is treated as an offence and accordingly penalty has been prescribed for the same. Viṣṇu directs that the person, who mortgages a piece of land measuring more than bull's hide, to a second party without having redeemed it from the first pledgee, is to be corporally punished.[1]

Viṣṇu observes that if the land so pledged (for the second time) be less (than what has been indicated in the previous rule), the fine should be sixteen *suvarṇas*.[2]

Kātyāyana does not go into such curious details of the amount of land mortgaged for the second time, but for such pledgor he prescribes penalty befitting a thief.[3]

Penalty for sub-mortgage :

In this context of penalty, it may be mentioned that Bharadvāja prescribes penalty for sub-mortgage by stating that if it is done without the the consent of the pledgor, the pledgee is to lose his capital and the same rule is to follow even if it is done in a state of emergency (*āpadi*).[4]

18. Preservation of the pledge and the consequence of its enjoyment through force or fraud. *

As pledges are given to the creditor for creating his confidence in respect of the safety of the capital invested,[5] it is expected that they should be preserved in the same from, without detriment to the interest of the debtor. Hārīta accordingly declares that a pledge should be preserved in the same form and condition under which it is placed. The spirit of the direction is that if it is placed as a pledge for custody or for use, it should be maintained as such without viola-

1. Gocarmamātrādikaṃ bhuvam anyasyādhīkṛtaṃ tasmād anirmocyānyasya yaḥ prayacchet sa vadhyaḥ. Viṣṇusmṛti. V. 182.
   For the meaning of a land of the measurement of bull's hide, vide Viṣṇusmṛti, V. 184. Vide here the comments by Nandapaṇḍita.
2. Unāṃ cet ṣoḍaśasuvarṇān daṇḍyaḥ. Viṣṇusmṛti, V. 183.
3. .....tatkaitā cauradaṇḍabhāk. Kātyāyana, 517.
4. Svāminā cānanujñāta ādher ādhiṃ karoti cet /
   Svadhanāt sa tu hīnas syāt karoty āpadi pūrvavat //
   Bharadvāja quoted in the Sarasvatīvilāsa, 234-235.
* L. Sternbach, Juridical Studies in Ancient Indian Law, I., 143-145.
5. Nārada, IV. 117.

tion of the condition.[1] The directions of Kauṭilya, Gautama, Manu, Yājñavalkya and Viṣṇu (which will be discussed hereafter in detail) indirectly show that they all expect that the pledge should be maintained according to the agreement. Nārada states that it should be preserved precisely in the same condition (as it was presented by the pledgor).[2] Bṛhaspati is more cautious to declare that a pledge should be preserved like a deposit.[3]

Penalty for unauthorised use of a pledge.

Kauṭilya prescribes that (unauthorised) use of pledge (he applies the rules of deposit to pledge also. Arthaśāstra. III. 12. 17) should be penalised in the form of the payment of charges as time and place demand, in addition to a fine of twelve *paṇas*.[4] The penalty is to the extent of twentyfour *paṇas* if it is lost or destroyed through use or if it runs away (perhaps in the case of a living pledge) elsewhere.[5]

Gautama appears to prescribe penalty in the form of loss of interest.[6] He does not appear to have been interested in the criminal, so much as in the civil consequences of the act.

Manu directs that the pledge should not be used perforce and if it is used as such, the pledgee should give up interest. In such a case he should satisfy (the debtor) with its price, otherwise he commits a theft of the pledge.[7] Manu has a further provision that

1. Bandhaṃ yathā sthapitaṃ syāt tathaiva pratīpālayet /
   Quoted in the Smṛticandrikā, II, 323.
   Vide Smṛticandrikā, II, 323. Here the implication of tbe direction of Hārīta has been explained.
2. .....upacāras tathaivāsya.....Nārada, IV, 125.
   The word *upacāra* has been explained as dealing (vyavahāraḥ) in the Madanaratnapradīpa, 147 ; and as preservation (rakṣaṇam) in the Vyavahāraprakāśa (M), 245.
3. Nyasavat pariyālyo'sau. Bṛhaspatismṛti, X, 40.
4. Upanidhibhoktā deśakālānurūpaṃ bhogavetanam dadyāt dvādśapaṇaṃ ca daṇḍam. Arthaśāstra, III. 12. 3.
5. Upabhoganimittaṃ naṣṭaṃ vinaṣṭaṃ vābhyāvahet caturviṃśatipaṇaś ca daṇḍaḥ, anyathā vā niṣpatane. Ibid. III. 12.4.
6. Bhuktādhir na vardhate. G. D. S, XII. 29
   "A loan secured by a pledge that is used (by the creditor), bears no interest." Trans, by Bühler. S. B. E., II, 239.
7. Na bhoktavyo balād ādhir bhuñjāno vṛddhim utsṛjet /
   Mūlyena toṣayec cainam ādistheno'nyathā bhavet // Manu, VIII. 144.

the fool, who without the permission of the owner, uses a pledge, should remit half of his interest as compensation for such use.[1]

There is an apparent contradiction in the two statements of Manu. Medhātithi tries to reconcile them be stating that in the previous verse (VII. 144) what is stated is about the case of absolute appropriation of the entire pledge. When such use has been forbidden it is quite proper that by forcible use of the pledge the pledgee should lose the entire amount of interest.[2] So far as the other verse is concerned (VII. 150), Medhātithi holds that it will have to be applied in the case where pledges like gold, silver etc. are secretly utilised by the plegee as a result of which the pledge is not destroyed totally (but which gets deteriorated in colour brightness etc.). It comes to this that loss of half of interest is to be prescribed if the use of the pledge is secret.[3]

Medhātithi in this context refers to the view of Ṛju (Bhāruci), according to which the provision noted in the verse (VIII. 150) should refer to a case where the business is carried on both by the master and the servant and where the object has been placed as pledge by the servant within the knowledge of the master. It may happen that on a certain occasion the pledgee seeks permission from that servant (who pledged the object) to make use of the same, whereupon the servant gives his consent. If at a later stage the master on seeing the pledgee usuing the pledge, cancels the pledge (and takes it back), in such a case, half of the amount of interest is to be forfeited.[4]

1. Yaḥ svāmināmanujñātam ādhiṃ bhuṅkte'vicakṣaṇaḥ /
Tasyārdhavṛddhir moktavyā tasya bhogasya niṣkṛtiḥ // Ibid. VIII. 150.
2. Uktaṃ, na bhoktavyo balād ādhir bhuñjāno vṛddhim utsṛjet iti.
sarvasya grahaṇam ucyate. Tatra niṣiddhe bhoge balād ādhiṃ bhuñjāno sarvāṃ hārayaty eva vṛddhim. on Manu, VIII. 150.
3. Rahasy upabhujyamānabhoge na cādhir naśyati, tatra rūpyasuvarṇālaṃkārādau ardhavṛddhityāgo'nena ślokenocyate.
Medhātithi on Manu, VIII, 150.
4. Ṛjunā tu vyākhātam—yatra svāmī vyavaharati adhyadhīnaś ca, tatrādhyadhīnena bandho dattaḥ, svāminā ca dṛṣṭaḥ, tatra dhāraṇakena kasmiṃś cid avasare'dhyadhīnaḥ proktaḥ prayojanaṃ mama bandhenāsti, tatropanidhinyāyena tenānujñātaḥ, kālāntare bhuñjānaṃ yadi svāmī paśyaṃs tadanujñātaṃ bandhaṃ kṣapitavān satīdṛśe viṣaye'rdhavṛddhityāgaḥ.
Commentary on Manu, VIII. 150.
This is an attempt to paraphrase Bhāruci's text on Manu, VIII. 149-150.

Medhātithi refutes this point on the ground that in the case referred to, the transactions carried on by the master and the servant stand on the same footing and that means that when permission for use of the pledge has been granted by the servant, it cannot be held as illegal by the master. Ownership in this case is to be attributed to the servant for the fact that when he himself offers the object as pledge, he must have some sort of ownership (either original or through transfer).[1] A servant has normally no ownership over the property and as such he cannot offer an object as pledge. If he does so it will be treated as an act of theft (where he is not acting as agent). So when he has the power of offering his consent for use of the pledge, it proves that ownership is attributed to him.

Medhātithi again refers to another explanation of this verse. According to this interpretation, the verse in question has reference to the case where the pledge is not redeemed even after the principal along with interest has become doubled. The argument for such an explanation is that under such circumstances the offence (in the form of the use of the pledge without the permission of the pledgor) on the part of the pledgee is not so serious.[2]

There are other attempts by different writers to harmonise the two texts and it is rather difficult to find out the exact difference of scope of the two verses of Manu.

Yājñavalkya also prescribes loss of interest if the pledge for custody is used and if the beneficial pledge be damaged. According to him, the pledge should be replaced if spoiled or destroyed. This rule will not be applied when the loss is caused by an act of fate or the king.[3]

Tad ayuktam, yatas tulyo vyavahāraḥ parsparāpekṣaḥ svāmibhṛtyayoḥ. Tatra tatrānyatareṇānujñāte nāyam ananujñātaḥ prayujyate adhamarṇataḥ. svāmiśabdasyārthe svatvam Idṛśi viṣaye bhavati, anyathā bandhaṃ yo dadāti so'vaśyaṃ svāmyena yuktaḥ. Adhyadhīnas tu na svāmī. Yady evaṃ cauras tarhi, tasmāt svāmitvādhyāropaḥ. Ibid.

Anye tu dviguṇibhūte'py amokṣyamāṇe pratiṣedham icchanti, tasya hi svalpo'parādha iti vadantaḥ. Commenatry on Manu, VIII. 150.

This again is a view quoted by Bhāruci.

Gopyādhibhoge no vṛddhiḥ sopakāre'tha hāpite /
Naṣṭo deyo vinaṣṭaś ca daivarājakṛtād ṛte // Yāj. II. 59.

'hāpita' according to Vijñāneśvara is 'rendered unfit for use'; 'vyavahārākṣamatvaṃ gamite'.

Viṣṇu also observes that the interest is to be forfeited if a pledge (for custody) is enjoyed.[1] According to him the pledgor is to replace a pledge if it is lost for a cause other than divine or royal intervention.[2]

Nārada shares with Manu the two verses having direction about forcible enjoyment of the pledge and unauthorised clandestine use of the same.[3] He declares that if the pledge is not preserved in the same way as agreed on, the pledgee is to forfeit his interest.[4] If the pledge is injured due to the negligence on the part of the creditor, the same penalty will follow. He is to lose the capital if the pledge is lost, provided of course it is not caused by divine or royal intervention.[5]

Bṛhaspati lays more stress on the preservation of a pledge, when he directs that it should be preserved as a deposit. He also directs that if it is spoiled, the interest is lost.[6] The spirit of his declaration to preserve the pledge like a deposit, is to be traced in his direction in respect of deposit, where he states that it should

For the question as to how there be loss of interest in the case of beneficial pledge, vide the commentary of Aparārka on Yāj, II, 59 ;
Smṛticandrikā, II, 325.

1. Viṣṇusmṛti. VI. 5. Vide here the commentary of Nanda.
2. Ibid. VI. 6.
3. Manu, VIII. 144 = Nārada, IV. 127.
   Manu, VIII. 150 = Nārada, IV. 128.
4. Upacāras tathaivāsya lābhahānir viparyaye. Nārada, IV. 125.
   'viparyaya' as used by Nārada has been illustrated by Asahāya in the from of enjoyment of the pledge for custody and the like : 'viparītārtho viparyaya ucyate, yato gopyasya bhogaḥ kriyate.....' In the Vivādaratnākara. (p. 24) and Vyavahāraprakāśa of Mitramiśra (p. 235) it is explained as *'nāśa'*— destruction.
5. Pramādād dhaninas tadvad ādhau vikṛtim āgate /
   Vinaṣṭe mūlanāśaḥ syād daivarājakṛtād ṛte // Nārada, IV. 126.
   Pramāda has been illustrated by Asahāya as utilising a bull and the like at an unreasonable period or making it carry a burden beyond its capacity. In the case of pledge for custody it may be in the form of exposing it (to the sun and rain). He illustrates royal intervention as one in which for a slight offence (of the pledgee) the king confiscates his entire property including the pledge :
   Calādivṛṣabhādikasyākālavāhanam ativāhanaṃ cetyādi, gopyādheś ca dhanikapramādaḥ prakāśamocanam. .....rājakṛtaṃ yathā svalpāparādhe'pi rājagṛhītasarvasvena saha tanmadhyasthādher.....
6. Nyāsavat paripālyo'sau vṛddhir naśyati hāpite. Bṛhaspatismṛti, X. 40.

be guarded like a son.[1] He observes further in that context that in case a deposit is consumed or neglected, the offence on the part of the depositary is like that of a woman injuring her husband or of a man killing his son or friend.[2] These homely words illuminate the *śāstric* attitude to a purely secular transaction. According to him, if a pledge is enjoyed and thereby rendered worthless, the capital is lost and if is spoiled and is of greater value, the pledgor should be satisfied (i.e. compensated).[3]

Vyāsa has the rule that if through the fault of the pledgee a pledge of the nature of gold and the like is lost, the creditor should be made to pay its price after deducting the amount of the debt together with interest.[4]

According to Hārīta if a pledge of equal value or of double value (of the loan) is made over to the creditor and if it is lost, that would mean loss of the principal and the pledge is lost to the creditor (because he cannot claim another pledge—*dhanikasyādhināśo' trādhyantarālābhāt).*[5]

Hārita presents the solution in the case where the creditor fails to satisfy the pledgor by payment of the price, in the case of a precious pledge being lost for his fault (Manu, VIII. 144; Bṛh. S, X. 43.) He brings the surety (for return of the precious pledge) under obligation in such case to pay the price to the debtor. Thus he observes that if the pledgee (who has spoiled the pledge—*khādaka* explained by Devaṇabhaṭṭa as *bandhakhādaka, ādhināśaka*) happens to be impoverished (and therefore not in a position to discharge his obligation of paying the price of the pledge) and if the surety be wealthy, he (the surety) is under obligation to pay the price (of

1. Putravat paripālyaṃ tu. Bṛhaspatismṛti, XI. 6.
2. Bhartur drohe yathā nāryāḥ puṃsaḥ putrasuhṛdvadhe /
   Doṣo bhavet tathā nyāse bhakṣitopekṣite nṛṇām // Ibid. XI. 8.
3. Bhukte cāsāratāṃ prāpte mūlahāniḥ prajāyate /
   Bahumūlyaṃ tatra naṣṭaṃ ṛṇikaṃ tatra toṣayet // Ibid. X. 43.
4. Grahītṛdoṣān naṣṭaś ced bandho hemādiko bhavet /
   Ṛṇaṃ salābhaṃ saṃśodhya tanmūlyaṃ dāpayed dhanī // (dhanam).
   Quoted in the Sm. C, II. 328.
5. Tatsamo dviguṇo vādhir dhanikasya samarpitaḥ /
   Ādhau naṣṭe dhanaṃ naṣṭaṃ dhanikasyādhir eva ca //
   Quoted in Sm. C., II. 321.
   The idea here is that the pledgee should lose an amount equal to the value of the pledge : dhvastādhisamānadhananāśaḥ dhanikasya syād iti.
   Sm. C, II, 328.

the pledge) without interest.[1] Here Devaṇabhaṭṭa rightly argues that absence of interest in this case is on the analogy of interest-free loan (*prītidatta*), given out of affection and friendship, because the surety here gives the price of the pledge out of his friendship for the creditor.[2] We assume that friendship induced him to become a surety and he does not contract to restore the pledge with interest from the date of its loss. Hārīta warns the debtor under the circumstances that if he recovers double or treble from the surety, (presumably under any custom to that effect of the law of suretyship) that money will go to the king and the recoverers will be penalised.[3]

In this context special mention should be made of the provisions of Kātyāyana, where he states that if the pledgee makes the pledge (as in the case of maid-servant) work unwillingly and without the consent (of the pledgor), the enjoyer of such work (the pledgee) should be made to pay the price of the work done, or he may lose interest.[4] This is a variety of the rule against use without permission.

He further observes that when the pledgee harasses and rebukes the pledge (evidently this is applicable to the case of servants and the like) while working (with him) with words, punishment or movements, he (the pledgee) will be penalised with the

1. Khādako vittahīnaś cel lagnako vittavān yadi /
Mūlyaṃ tasya bhaved deyaṃ na vṛddhiṃ dātum arhati //
Quoted in Sm. C. II, 329 ; vide also p. 185.
2. Ādhīkṛtasya dhanasya prītidattadhanasyeva kāritavṛddhyasambhavād ity abhiprāyaḥ. Sm. C, II, 329.
3. Dviguṇaṃ triguṇaṃ vāpi yas sādhayati lagnakam /
Rājagāmi tu tad dravyaṃ sādhako daṇḍam arhati //
Quoted in the Sm, C., II, 329.
4. Akāmam ananujñātam ādhiṃ yaḥ karma kārayet /
Bhoktā karmaphalaṃ dāpyo vṛddhiṃ vā labhate na saḥ // Kāt, 525.
Devaṇabhaṭṭa observes here that *karmaphala*, so far as it refers to the case of female slave, should mean wages. In the case of cart, it should stand for the hire. He rightly observes that the use of the word *akāmam* in the verse indicates that the reference is to the pledges like (the female slaves etc.) who have the power of thinking ; 'Karmaphalaṃ dāsyādyādhau vetanaṃ śakaṭādyādhau bhāṭakādikaṃ.....akāmam iti dāsyādibuddhimadādhiviṣayam anyatrāsambhavāt.' Smṛticandrikā, II, 326.

first amercement.[1] This provision shows that the pledgee was expected to make use of the pledge in a sympathetic manner.

Kātyāyana adds further that when the pledgee perforce and against the will of the pledgor adds to the pledge what is not pledged he will be liable to the penalty of first amercement and the debtor will get back his pledge.[2] He also discusses the question of penalty in the case where the creditor enjoys a pledge from the debtor through forged document. Under such circumstances, the king should make the creditor pay a fine and the document should be destroyed.[3]

Commentators and digest-writers have very little to add on the topic discussed. While making reference to the direction of Manu (VIII. 144), Medhātithi explains that the question of the loss of interest will arise in the case where the pledgee makes use of the pledge even when asked not to do so by the pledgor.[4] He explains that the present direction is applicable in the case where the interest is proportionately greater than the amount of enjoyment. Here the use of the pledge will cause loss of total interest.[5] In explanation of the part *mūlyena toṣayet*, in the verse of Manu (VIII, 144), he states it to be applicable to the case where pledges like clothes etc. are destroyed through use. The pledgee should pay the price of such pledge (to the pledgor), but the creditor should in that case also get his interest.[6] He refers to the case where new clothes or precious ornaments, placed as pledges, are destroyed through use. Here the pledgee is penalised not by mere loss of interest

1. Yas tv ādhiṃ karma kurvāṇaṃ vācā daṇḍena karmabhiḥ /
   Pīḍayed bhartsayec caiva prāpnuyāt pūrvasāhasaṃ // Kāt. 526.
2. Kātyāyanasmṛti, 527.
3. Ādhiṃ duṣṭena lekhyena bhuṅkte yam ṛṇikād dhanī /
   Nṛpo damaṃ dāpaitvā ādhilekhyaṃ vināśayet / Kātyāyana, 528.
4. Yatra bhuñjāna ucyate mā me bandhaṃ vināśaya mā bhuṅkṣva katipayair ahobhir mokṣayiṣyāmi, tathāpy ucyamāno bhuṅkta eveti so'sya viṣayaḥ.
   Com. on Manu, VII. 144.
5. Yatra tu mahatī vṛddhiḥ svalpabhogaś ced balādinā bhuñjānasya sarveṇa sarvavṛddhihāniḥ. Ibid.
6. Yadi tu vastrādī bhujyamānaṃ naśyet tatra mūlyena toṣayet enam ādhātāram. Itaro'pi vṛddhiṃ labhate. Ibid.
   The first part of this interpretation has been accepted as such by Govindarāja, Rāghavānanda and Rāmacandra.
   Vide their views (in Manu. VIII. 144, and their commentaries) as recorded in the edition by V. N. Mandlik.

but the price of the object destroyed as such should be deducted from the capital. Such explanation has been stated to be coming from great scholars.[1]

Vijñāneśvara by way of explanation of the verse of Yājñavalkya (II. 59), observes that when the pledgee replaces the pledge, he is not to lose the capital with interest.[2] He explains the reason for such prescription of penalty (by Yājñavalkya. II. 59). According to him, the pledgee is penalised for the violation of the agreement, as a result of which even a minor offence on the part of the creditor entails a loss of interest of greater value.[3] This aspect of the question has also been supported by Devaṇabhaṭṭa.[4] He shows a sympathetic attitude by declaring that under the circumstances it will not be proper to penalise the pledgee by forfeiture of the total capital as that may mean a great loss on his part.[5] While commenting on the verse of Manu (VIII. 150), where there is prescription for loss of half of the interest, Devaṇabhaṭṭa declares that the word *ardha* should not be interpreted in its literal sense. It should mean an amount sufficient as compensation for the unpermitted use of the pledge. Otherwise in the case of enjoyment of large property, adequate compensation being impossible through surrender of half the interest, there would be disparity with the later part of the verse (*tasya bhogasya niṣkṛtiḥ*).[6] He takes up the case of treating a beneficial pledge as one for custody. In his view, in such a case there would be loss of interest only, the argument being that by mere violation of argument the question of loss of capital does not follow. It should not be argued that as in usufructuary pledge there is no question of interest, the proposition that there will be

1. Yat tu navaṃ mahārgham alaṃkaraṇavastrādi paridhīyamānaṃ nāśitaṃ tatra na kevalaṃ vṛddhihāniḥ, yāvaddhanaṃ naṣṭaṃ tat paripīḍya mūlataḥ praviśatīti mahattarair vyākhyātam.
Medhātithi's commentary on Manu, VIII. 150.
2. .....taddāne savṛddhikaṃ mūlyaṃ labhate. Mitākṣarā on Yāj. II, 59.
3. Alpepy upabhoge mahaty api vṛddhir hātavyā samáyātikramāt. Ibid.
It may be incidentally referred to here that Nandapaṇḍita on Viṣṇu (VI. 5) rejects this view as being opposed to the view of Manu.
4. Vide Smṛticandrikā, II, 324.
5. Sarvamūlanāśas tu nāsmin viṣaye vikalpyate atyantādhikahānitvāt.
Smṛticandrikā, II, 324.
6. Ardhagrahaṇam ananujñātabhogānusāreṇa kalpitaniṣkṛtikṣamaparimāṇopalakṣaṇārtham anyathā mahābbogasyārdhavṛddhivisarjanena niṣkṛtyasambhavāt tasya bhogasya niṣkṛtir iti vākyaśeṣavirodhaḥ syāt. Smṛticandrikā, II, 324.

loss of interest, will not follow, the reason is that enjoyment is regarded as interest (profit) in that case.[1] He places his point that there should be loss of profit only where for the fault of the pledgee and the like there is absence of use of the pledge, which has been pledged for use merely. It will not mean that thereby the stipulated interest is also paid. When however, enjoyment is not possible for the fault of the depositor and the like, the creditor should recover the profit only from the person in possession or the debtor, but not the interest.[2]

While explaining the rule of Nārada, Deveṇabhaṭṭa has expressed the view that if the deterioration be caused even without its use by the pledgee, he should return the pledge in its original condition (if possible) or there is loss of interest.[3]

The *śāstrakāras* have discussed the question as to what is to be done when the pledge is lost even without offence on the part of the pledgee.

Kauṭilya, as we have observed, applies the rules of deposit to to the case of pledge and accordingly on the basis of the rule of deposit may be stated to have exempted the pledgee from being liable for the pledge, if it is destroyed for a cause over which the pledgee has no control.[4]

Gautama, among other things, mentions a pledge, prescribing that if it is lost without fault on the part of the person (pledgee) it shall not involve any blameless person.[5]

1. Bhogyādhau tu gopyatvena pātite lābhasyaiva nāśaḥ samayātikramamātreṇa mūlanāśapakṣānavatārāt. Na ca bhogyādahu vṛddhyabhāvāt lābhanāśapakṣasyāpy anavatāra iti vācyaṃ bhogasyāpi lābhatvāt. Ibid, 325.
2. Etad uktaṃ bhavati, ādhibhogamātrārthaṃ prayuktadhanasyātmāparādhādito bhogālābhe lābhahānir eva, na punar aṅgīkṛtavṛddhisiddhir iti. Ādhātrādyaparādhād abhoge tu bhuñjānād adhamarṇād vā bhogalābha eva grāhyo na kadācid api vṛddhir iti mantavyam. Ibid, 325.
3. Bhogavyatiriktadoṣād vikṛtim āgate'py ādhau pūrvavat kṛtvārpaṇaṃ lābhahānir vā. Smṛticandrikā, II, 327.
4. Arthaśāstra, III. 12. 2.
5. (nidhyanvādhiyācitāvakrīt) ādhayo naṣṭāḥ sarvān aninditān puruṣāparādhena. G. D. S, XII. 39.
   Hardatta clearly explains the import of the rule in the line :
   'ete nidhyādayo yadi puruṣāparādhena vinā naṣṭā bhavanti caurādibhir apahṛtāḥ sarvāṃs tān aninditān āhuḥ'.
   Vide also other discussions on the point by Haradatta.
   See the notes by Bühler, S. B. E, II, 241.

Manu does not distinctly state anything to the point. His observations regarding deposits (*nikṣepa*) may be extended in this case on the basis of the statement of Kauṭilya, where he applies the rules of deposit in the case of pledge. Manu states about deposits that the depositary should not be held liable if it (such deposit) is destroyed by fate in the form of being stolen by thieves or washed away by water or consumed by fire.[1]

Yājñavalkya directly states that if the pledge is lost or destroyed due to fate or the king, the pledgee need not replace the pledge.[2] This rule is in agreement with his other rule about pledge (II. 66).

Viṣṇu also states to the extent that under such circumstances the creditor is not to replace the pledge.[3]

According to Nārada, the creditor is not to lose the capital (which he might have lost in the case of his negligence).[4]

In the opinion of Bṛhaspati, if the pledge is lost because of fate or the king, the debtor is to be made to place another pledge or in its failure, to pay the debt with interest.[5] This is a natural corollary of the previously-cited *smṛtis*.

Kātyāyana has two directions. In one he makes special reference to the loss through fate or royal oppression and suggests that the debtor should be made to pay the debt with interest.[6] In the other verse, he prescribes that the pledgor should be made to place another pledge, where the pledge without the fault of the creditor deteriorates or dies (in the case of living beings like cattle or slave). He adds that otherwise the debtor cannot be stated to be free from debt.[7] One wonders who can have supposed that the loss of his security extinguished his indebtedness.

1. Manu, VIII, 189.
2. Naṣṭo deyo vinaṣṭaś ca daivarājakṛtād ṛte. Yāj, II. 59.
3. Viṣṇusmṛti, VI. 6.
4. Vinaṣṭe mūlanāśaḥ syād daivarājakṛtād ṛte, Nāradạ. IV. 126.
5. Daivarājopāghāte ca yathādhir nāśam āpnuyāt /
   Tatrānyaṃ dāpayed bandaṃ sodayaṃ vā dhanam ṛṇī //
   Bṛhaspatismṛti, X. 41.
   (The reading here is after the Vivādaratnākara, 25).
6. Ādhīkṛtaṃ tu yat kiñcid vinaṣṭaṃ daivarājataḥ /
   Tatrarṇaṃ sodayaṃ dāpyo dhanināṃ adhamarṇikaḥ // Kāt, 523.
7. Na ced dhanikadoṣeṇa nipated vā mriyeta vā /
   Ādhim anyaṃ sa dāpyaḥ syād ṛṇān mucyeta narṇikaḥ // Kāt, 524.

Hārīta clearly states that in such case there is no fault on the part of the creditor.[1] Vyāsa is of the same opinion and he shares with Bṛhaspati the view that either the debtor should be made to pay the debt (there is no mention of interest) or in its absence another pledge should be made.[2]

Caṇḍeśvara in his *Vivādaratnākara* refers to a view that under the circumstances noted above, if the pledge in the form of the cow and the like is destroyed, the pledgor loses his pledge and the pledgee his capital. He observes that the view is supported by practice only.[3]

Vācaspatimiśra also refers to the same practice in almost identical terms.[4]

Jagannātha by way of explanation of the text of Caṇḍeśvara as stated above, observes that though in such case (i. e. where there is no fault on the part of the pledgee in the case of the destruction of the pledge) no sage has prescribed loss on the part of the creditor, yet the customary law should not be disrespected.[5]

While explaining the significance of *'bandhakitagavādau'* as used by Caṇḍeśvara, Jagannātha refers to the practice according to which if a Brāhmaṇa mortgages his own land by the bank of a river, and if it be washed away subsequently by the river, the creditor should not lose his money. It is with such a purpose that *Ratnākara* puts in record *'bandhakitagavādau'*. He refers to the usage where a pledged cow of small value, when dead, brings the charge on the creditor. The ground may be that the cow was not properly taken care of. The creditor in reply may argue that care was properly

1. Daivarājopaghāte tu na doṣo dhaninaḥ kvacit.
Quoted in the Smṛticandrikā, II, 322.
2. Daivarājopaghāte tu na doṣo dhaninaḥ kvacit /
Ṛṇaṃ dāpyas tu tannāśe bandhaṃ vānyam ṛṇī tadā //
Quoted in Sm. C, II, 322 ; Viv. rat, 26.
3. Yat tu bandhkitagavâdau daivân naṣṭe dhanikasya dhanaṃ yāti ādhātur ādhīkṛtagavādikaṃ dhanaṃ yātīti ke'pi vadanti tatrāvigītaśiṣṭācāra eva mūlam.
Vivādaratnākara, 26.
4. Gavādau bandhakāvasthāyāṃ daivân naṣṭe mūlahānir ity atrāvigītavyavahāra eva mūlam. Vivādacintāmaṇi., 11.
5. Dhanikadoṣaṃ vinā bandhanāśe dhanikasya hānir na kasyāpi muneḥ sammata iti bhāvaḥ. kiṁ tu deśācāro'pi na heyaḥ.
Vivādabhaṅgārṇava. F. 82. L. 1-3 ; Col. Dig, I. 116.

taken. The arbitrators in such case of doubt, after minute investigation determine that the loss is to be borne by both the parties.[1]

Yājñavalkya and Nārada formulate the rule in almost the same language that even if properly preserved the pledge may deteriorate and in that case either another pledge should be placed or the debtor should pay back the debt.[2] The logic behind this rule is that as the deterioration arises out of the nature of the object itself and as the creditor is not at fault, the debtor should substitute another pledge of sufficient value to cover the value of the loan and if he fails to do so, it is quite reasonable to ask him to pay off the debt, for otherwise the loan remains more or less unsecured (because the value of the pledge has disappeared or been reduced).

19. The redemption of the pledge:

A pledge is placed with the pledgee as a security and is intended to be recovered as soon as possible specially in the case where the value is greater than that of the loan. Unless there is a stipulation it may be assumed that from the side of the debtor there should not

1. Atredam avadheyam, yadi kaś cid brāhmaṇaḥ svakīyaṃ nadīsannihitaṃ kṣetraṃ bandhakīkṛtya ṛṇaṃ karoti, anantaraṃ nadyā tat kṣetraṃ bhagnaṃ, tatra dhanikasya dhanaṃ yātīti vyavahāro no dṛśyate. Ata eva bandhakitagavādāv iti ratnākaralikhitam. Tasmād etat vyavahārasya mūlam. Alpe gavi naṣṭe adhamarṇo brūte anena na samyak cikitsitam, dhaniko brūte mayā samyak cikitsitam iti saṃdehe prāyaḥ parīkṣādikaṃ vinā nirṇayo na bhavatīti madhyasthāḥ samādadhate ubhayor eva hānir āstām iti. Etanmūlaka eva vyavahāra iti lakṣyate.

Ibid, Folio. 82. L. 7-16 ; Col, Dig. I, 116.

2. .....rakṣyamāṇo'py asāratām /
Yātaś ced anya ādheyo dhanabhāg vā dhanī bhavet // Yāj, II, 60.
Raāṣyamāṇo'pi yatrādhiḥ kāleneyād asāratām /
Ādhir anyo'tha vā kāryo deyam vā dhanine dhanam // Nārada, IV. 130
Vijñāneśvara explains '*asāratā*' as the state of being not sufficient to cover the value of the loan with interest :
'Savṛddhikamūladravyāparyāptatā'. On Yāj, II. 60.
Devaṇabhaṭṭa refers to an interpretation according to which it has been explained as the state of being insufficient for the capital and interest for one year. He rejects such an interpretation :

> Kecid ekasaṃvatsarabhavavṛddhisahitamūladravyāparyāptatām asāratām āhuḥ, tac cintyam evaṃvidhaviśeṣaṇāśrayaṇe kiṃ kāraṇam iti codyāsambhavāt. Smṛticandrikā, II. 322

be any difficulty in getting the pledge back at the moment he turns up to pay back the loan with interest. The provision made by Kauṭilya for punishing the creditor who does not return the pledge when the debtor wants it (evidently after payment of the loan), indicates that according to Kauṭilya there is no limitation of time for the release of the pledge. He precribes in such a case a penalty of twelve *paṇas* for the creditor.[1] He allows the debtor to get back his pledge after depositing the redemption-price with the village-elders in the pledgee's absence.[2]

Manu has a direction[3] the exact implication of which is not clear. Several commentators have presented explanations of the verse and they are not unanimous on the meaning of the same. Medhātithi interprets it to mean that pledges and deposists should not be allowed to remain (with the party) for a long period. The reason is that if they are allowed to remain (after the right time of redemption passes away) without being recovered, they may be liable to be appropriated.[4] Govindarāja also explains it in that light.[5] Kullūkabhaṭṭa explains that even if they remain for a long period, they cannot be lost and they should be handed over to the pledgor at the time they are demanded.[6] Rāghavānanda, Rāmacandra and Nārāyaṇa have explained it in the same light. Nandana follows Medhātithi. From these interpretations it would not be wrong to presume that though Manu precribes that a pledge connot be lost through adverse possession (VIII. 149), yet he regards it desirable to redeem the same as early as possible.

1. Upasthitasyādhim aprayacchato dvādaśapaṇo daṇḍaḥ.
Arthaśāstra, III. 12. 11.
2. Prayojakāsannidhāne vā grāmavṛddheṣu sthāpayitvā niṣkrayam ādhiṃ pratipadyeta. Arthaśāstra, III. 12. 12.
3. Ādhiś copanidhiś cobhau na kālātyayam arhataḥ /
Avahāryau bhavetāṃ tau dīrghakālam avasthitau // Manu, VIII. 145.
"Neither a pledge nor a deposit can be lost by lapse of time, they are both recoverable, though they have remained long (with the bailee)." Trans. by Bühler, S. B. E ; XXV, 279. Vide also his notes. Burnell translates the last part as : .....' both of them may be taken back although kept for a long time.' The Ordinances of Manu, 201.
4. .....tau cirkālaṃ na sthāpyau, ...tau hi dīrghakālam avasthitāv apratyāhrīyamāṇau ayahāryāv iti sthitam. On Manu, VIII. 145.
5. .....sākṣādyābhāvena hārayituṃ śakyāv iti. Com. on Manu, VIII. 145.
6. ..... yadaiva svāminā prārathitau tadaiva tasyāvahāryau samarpaṇīyāv ity arthaḥ. Com. on Manu, VIII. 145.

Like Kauṭilya, Yājñavalkya fixes no special limitation of time for the redemptien of a pledge. He directs that the pledge should be released as soon as the debtor turns up to get it back through the payment of what is due. The pledgee should not detain it with the idea of having more interest. Failure to comply with this condition makes the creditor liable to be penalised with the penalties befitting a thief.[1]

Again in the same way as directed by Kauṭilya, Yājñavalkya authorises the debtor to take back his pledge in the absence of the creditor, by payment of the loan in the hands of his kismen (*kula*).[2] This shows that the debtor has the right of redemption of his pledge at any time even when the creditor happens to be absent.

He states further that if the creditor is absent and if there is no reliable kinsmen and if the debtor in the absence of the creditor intends to pay off the debt through sale of the pledge in order to avoid further interest,[3] then the debtor after assessing the value of the pledge, may allow it to remain with the creditor or his family so that no further interest may accure on it.[4] This rule of Yājñavalkya also is in agreement with the direction of Kauṭilya that the pledge with cessation of further interest and with its value determined at that time, may be kept just there (with the creditor) or in the charge of the office for prevention of loss to either party.[5]

Time of redmption

Yājñavalkya provides that if the loan secured by pledge becomes doubled (by accumulation of interest), the pledge should be released

1. UPasthithasya moktavya āddih steno'nyathā bhavet. Yāj, II 61.
   Vijñāneśvara : 'na vṛddhilobhena stāpayitavyaḥ.'
2. Prayojake'sati dhanaṃ kule nyasyādhim āpnuyāt. Yāj, II. 62.
   The term *kula* has been interpreted by Vijñāneśvara as trustworthy person (*āpta*) ; by Viśvarūpa, Aprārka and Mitramiśra as heir (dhanabhāgine). Taking it in the light of the direction of Kauṭilya, it may also be understood in the sense of village-officials.
3. Atha prayoktāpy asannihitas tadāptāś ca dhanasya grahītāro na santi yadi vā asannihite prayoktary ādhivikrayeṇa dhanaditsādhamarṇasya tatra kiṃ kartavyam ity apekṣita āha.....Mit. on Yāj, II. 63.
   This implies sale of a mortagagad property at any rate as a possibility.
4. Tatkālakṛtamūlyo vā tatra tiṣṭhed avṛddhikaḥ. Yāj, II. 63.
5. Nivṛttavṛddhiko vādhis tatkālakṛtamūlyas tatraivāvatiṣṭheta anāśavināśakaraṇādhiṣṭhito vā. Arthaśāstra, III. 12. 13.

after double the principal amount has been received (by the creditor) from the profits.[1] The interpretation of this provision by Vijñāneśvara is that if the debt has become doubled without possession (being transferred) either on account of an agreement at the beginning to the effect that 'when the pledge is delivered and the debt has been doubled, you should restore the pledge', or on account of some other reason the amount has become doubled, then, after the pledge has been made over to the creditor for enjoyment, it should be restored when the profits recovered from it make up the doubled amount. If more be enjoyed, that too should be restored. This text is intended to lay down the rule that a pledge is to be enjoyed only for paying off entirely the original loan together with interest.[2]

This provision of Yājñavalkya appears to contradict his earlier statement as contained in the verse (II. 58), where he states that a pledge may lapse. It is Aparāka who harmonises the situations by explaining that this verse (II. 64) relates to the case where there is an agreement between the debtor and the creditor. The other rule (II. 58) is to be applied to the case where the pledge is to be made (for being restained) so long as the capital is not paid back.[3]

Viṣṇu shares with Yājñavalkya (II. 64) the rule that (the pledge should) also (be restored to the pledgor) when the interest reaches its maximum amount (on being equal to the principal and it has been paid).[4] The interpretation of this rule as made by Nandapaṇḍita is that in the case where cows and the like are pledged with the purpose of meeting the interest only, and where the profit arising out of that pledge covers the entire interest, the creditor should release the

1. Yadā tu dviguṇībhūtam ṛṇam ādhau tadā khalu /
Mocya ādhis tadutpanne praviṣṭe dviguṇe dhane // Yāj, II. 64.
2. Yadi vādāv evādhau datte 'dviguṇībhūte dravye tvayādhir moktvya' iti paribhāṣayā, kāraṇāntareṇa vā bhogābhāvena yadā dvīguṇībhutam ṛṇaṃ tadā ādhau bhogārthaṃ dhanini praviṣṭe tadutpanne dravye dviguṇe saty ādhir moktavyaḥ. Adhikopabhoge tad api deyam. Sarvathā savṛddhikamūlarṇāpākāraṇārthādhyupabhogaviṣayam idaṃ vacanam.
Vijñāneśvara's commentary on Yāj, II. 64.
3. .....virodho naivāśaṃkanīyaḥ bhinnaviṣayatvāt, Tathā hi dviguṇe mūladhane praviṣṭe ādhir mocya iti uttamarṇādhamarṇaycḥ saṃpratipattiviṣayaṃ yadā tu dviguṇībhūtam ityādikaṃ vākyam. Prayuktadhanasya pratipādanāvadhi ya ādhiḥ kṛtas tadviṣayam ādhiḥ praṇaśyed dviguṇa ityādikam.
Commentary on Yāj, II. 64.
4. Antavṛddhau praviṣṭāyām api. Viṣṇusmṛti, VI. 7.

pledge after receiving the capital only.[1] Viṣṇu directs that the creditor should not restore an immovable pledge witout special agreement.[2] He formulates a rule with respect to the pledge intended for reducing the capital. In his view the immovable property that has been delivered as a pledge, restorable when the sum borrowed is made good, should be restored (by the creditor) when the sum borrowed has been made good.[3]

In one of the directions of Bṛhaspati it has been held that when the capital gets doubled (with interest) and when the stipulated period reaches its limit, the debtor may redeem his pledge within a grace-period of two weeks.[4] In another verse it has been told that such period should be ten days instead of a fortnight.[5] Like Yājñavalkya (II. 62), Bṛhaspati states that whenever the debtor demands the pledge on payment of the principal (with interest), the pledge should be restored, otherwise the creditor becomes liable to punishment. About the pledge for use of the nature of land and the like, Bṛhaspati has the provision that when a field or the like (immovable property) has been enjoyed by the pledgee and when he has realised more than the principal with interest),[7] the debtor is entitled to have his pledge recovered if the principal and interest have been actually realised out of it.[8] The

1. Tatra vṛddhimātrāpākaraṇārthaṃ yad adhīkṛtaṃ gavādi tadutpannena dravyenāntavṛaddhau, vṛddher antam antavṛddhiḥ vṛddhyantaṃ nāśa iti yāvat, tasmin praviṣṭe prāpte mūladravyaṃ gṛhītvā ādhim uttamarṇo'dhamarṇāya dadyāt. Nanda on Viṣṇu, VI. 7.
2. Na sthāvaram ādhim ṛte vacnāt (dadyāt). Viṣṇu. VI. 8.
3. Gṛhītadhanapraveśārthaṃ eva yat sthāvaraṃ dattaṃ tat gṛhītadhanapraveśe dadyāt. Ibid. VI. 9. Vide the commentary of Nanda on it.
4. Hiraṇye dviguṇībhūte pūrṇe kāle kṛtāvadhau /
Bandhakasya dhanī svāmī dvisaptāhaṃ pratīkṣya tu //
Tadantarā dhanaṃ dattvā ṛṇī bandham avāpnuyāt // Bṛhaspati, X. 48.
5. Pūrṇe vidhau śāntalābhe bandhasvāmī tato bhavet /
Anirgate daśāhe tu ṛṇī mokṣitum arhati // Ibid. X. 49.
6. Dhanaṃ mūlīkṛtaṃ dattvā yadādhim prārthayed ṛṇī /
Tadaiva tasya moktavyas tv anyathā doṣabhāg dhanī // Ibid. X. 66.
Doṣa in this verse in adjustment with the direction of Yājñavalkya may refer to the offence of stealth. Accordingly Devaṇabhaṭṭa observes : doṣas steyadoṣaḥ. Sm. C, II, 342.
7. Vide Vivādaratnākara, 29.
8. Kṣetrādikaṃ yadā bhuktam utpannam adhikaṃ tataḥ /
Mūlodayaṃ praviṣṭaṃ cet tadādhiṃ prāpnuyād ṛṇī // Ibid. X, 67.

interpretation of this verse as made by Mitramiśra perhaps brings out the proper significance. According to him when through the use of the pledge, the pledgee realises the capital with interest in addition to the amount spent towards the cost of production, he may restore the pledge without any further payment.[1]

Bṛhaspati holds that this rule about land and other immovable property will operate in the case where the pledgor at the time of pledging makes stipultion that the field kept as pledge should be enjoyed by the pledgee when interest has ceased (by becoming equal to the principal) and when the principal is recovered thereby along with interest (through use), the field is to be released to the pledgor.[2]

According to Bṛhaspati the usufructuary type of pledge cannot be restored by the pledgor if the stipulated period has not expired. The pledgee in the same manner, cannot get back (demand) his loan before the expiry of the period.[3] When however, the stipulated period is elapsed, both the parties, the debtor and the creditor are entitled to do so. Moreover, if there is a mutual agreement, such an affair may take place even before the stipulated time.[4] He states further that if the pledge is given for use against the capital with interest and if it yields more than what is necessary for the interest (*prakarṣitam—vṛddher apy adhikaphalam*), the creditor cannot claim any amount upon redemption. (the debtor may receive his pledge without the payment of the capital). (If however, that is not

1. ..... kṣetrādiphalabhogena kṣetrārthavyayasahite savṛddhike dhane praviṣṭe ṛṇī kim apy adattvā tam ādhiṃ prānuyād ity arthaḥ.
Vyavahāraprakāśa, 246.
2. Paribāṣya yadā kṣetraṃ dadyāt tu dhanine ṛṇī /
Tadā tac chāntalāble'rthe moktavyam iti niścayaḥ //
Ādhis tu sodaye dravye pradātavyaṃ tvayā mama // Bṛhaspati, X. 68-69.
3. Yatrāhitaṃ gṛhakṣetraṃ bhoge na prakaarṣānvitam /
Tatrarṇī nāpnuyād bandhaṃ dhanī caiva ṛṇaṃ tathā // Ibid. X. 70.
The interpretation of the verse by Caṇḍeśvara is as follows: 'yatra gṛhakṣetreṃ bhoge bhoganimittam āhitaṃ ādhīkṛtāṃ, na prakarṣānvitaṃ prakarṣeṇa pūrṇenāvadhinānvitaṃ na bhavati tatra ṛṇī nāpnuyād bandhaṃ dhanī caiva ṛṇaṃ nāpnoti. Vivādartnākara, 33.
4. Pūrṇe prakarṣe tat svāmyam ubhayoḥ parikīrtitam /
Apūrṇe tu prakuryātāṃ parsparamatena tu // Bṛhaspati, X. 72.
Devaṇabhaṭṭa has a special interpretation of the verse on the basis of the meaning of the word *prakarṣa*, for which see page 285.

sufficient to yield money to cover the interest) the debtor cannot get back his pledge (even by payment of the principal only—the idea is that he may have it by paying the balance of the interest). But this rule will not operate where there is an agreement to the contrary.[1] Bṛhaspati directs that unless and until the whole amount due to the pledgee is paid, the creditor should not be made to restore the pledge against his will. (The pledge should not be obtained from him) through deceit or confinement.[2]

1. Yadi prakarṣitaṃ tat syāt tadā na dhanbhāg dhanī /
Ṛṇī na labhate bandhaṃ parasparamataṃ vinā // Bṛhaspati, X. 72.
The rendering of the verse as made above has been done on the basis of the interpretation offered by Vijñāneśvara in his commentary on Yājñavalkya, (II. 64) :
Tad bandhakaṃ prakarṣitam atiśayitaṃ vṛddher apy adhikaphalaṃ yadi syāt tadā na dhanabhāg dhanī, sāmakaṃ na labheta dhanī. Mūlam adattvaiva ṛṇī bandham āpnuyāt iti yāvat. Atha tv aprakarṣitaṃ tad bandhakaṃ vṛddhaye-'paryāptaṃ tadā sāmakaṃ dattvāpi bandhaṃ na labhetādhamarṇaḥ. vṛddhiśeṣam api dattvaiva labheta ity arthaḥ. .....parasparānumatau tūtkṛṣṭam api bandhkaṃ yāvanmūladānaṃ tāvad upabhuṅkte dhanī, nikṛṣṭam api mūlamātradānenaivādhamarṇo labhata iti.
2. Bandhahastasya yad deyaṃ citreṇa caritena vā /
Adatte'rthe'khilaṃ bandhaṃ nākāmo dāpyate kvacit //
Bṛhaspati, X. 42.
In the Kṛtyakalpataru (Vyvahārakāṇḍa, 291) the two words *citra* and *carita* have been explained as document and witnesses and the like respectively. Jolly translates *citra* as deceit and *carita* as the mode of recovery called *ācarita* (Manu, VIII. 49 ; Bṛ. S ; X. 94). Vide S. B. E, XXXIII, 326 ; L. Renou (Etudes Vèdioues et Pāṇineennes, XI, 90) refers here to the *Caritrabandhaka* type of pledge. It is quite possible that *citra* should refer to deceit when *chala* is read side by side with *ācarita* in the text of Manu (VIII. 49). The better reading perhaps would have been 'citreṇācaritena' in place of 'citreṇa caritena'.
Caṇḍeśvara in his Vivādaratnākara explains the import of the verse. According to him, even if the pledged article be proportionately more valuable than the loan itself, the pledgor may redeem the pledge by payment of the entire amout of the loan only and not by part. The pledgor may argue with the creditor to take payment by part and release the precious pledge, and may offer a new pledge (of equal value) with the support of document or witness.* He states that the debtor-owner of the pledge (of great value) should not be entitled to take to any device for the recovery so long as the whole amount is not paid :
"Gṛhītabandhakasya uttamarṇasya kṛte yad ādhidhanaṃ deyaṃ tasmin samaste datta eva paraṃ bahumūlyam api bandhakam uttamarṇena moktavyam, kiyat bandhakadhanaṃ gṛhāṇa, bahumūlyam bandhakaṃ samarpaya

Kātyāyana refers to *Bhogyādhi* and directs that it can be redeemed after the payment of the principal.[1]

Vyāsa, as quoted in the commentary by Nandapaṇḍita (on Viṣṇu, VI. 7), observes that if the pledge is of beneficial type and if the time-limit is reached, the pledgor may get it back by payment of the principal only. If however, he demands it before the time arrives, he may redeem it by payment of the capital (with interest).[2] This seems strange. Vyāsa is a late *smṛti* aligned to practical use. With reference to the pledge for custody, it has been stated by Vyāsa that it should be redeemed after the capital becomes double (through the payment of the capital with interest).[3] He shares with Bṛhaspati the view that the pledgor may get back the pledge within the grace period of two weeks after the principal gets doubled and the stipulated period passes away.[4]

Vijñāneśvara, while commenting on the rule of Yājñavalkya (II. 64), observes that where it is agreed that the possession of the pledge is intended for meeting the interest, the pledge may be enjoyed by the pledgee so long as the capital is not paid, even if that

śeṣabandhakadhanadāne tava patrikāṃ dadāmi sākṣiṇaṃ vā karomīty ukte'py evaṃ citracaritādinā prakāreṇa rājñā bandhakaṃ na dāpayitavya iti. Vivādaratnākara, 27.

* Jagannātha explains the significance of the statement of Caṇḍeśvara with reference to the position referred to ;
'.....pūrvabandhakamūlyaṃ kiñcit sākṣātkṛtaṃ dadāti, aparaṃ ca bandhakaṃ dāsyati, tadviśvāsārthaṃ patraṃ sākṣiṇaṃ vā dadāti.....
Vivādabhaṅgārṇava, F. 85, Lines, 17-19 ; Col. Dig. I. 119.

1. Kātyāyana, 516.
2. Phalabhogyaṃ pūrṇakālaṃ dattvā dravyaṃ ca sāmakam /
Ato'ntarā dhanaṃ dattvā ṛṇī bandham avāpnuyāt //
Nanda explains the second line as :
yadi punar antarā madhye eva savṛddhikaṃ dhanaṃ dadāti tadā tu apūrṇe'pi kāle bandhaṃ prāpnuyād iti.'
Commentary on Viṣṇusmṛti, VI. 7.
The second line of the verse of Vyāsa is often construed independently or with another line.
Vide Smṛticandrikā, II, 341. and Sarasvātīvilāsa, 240.
3. Gopyādhiṃ dviguṇād ūrdhvaṃ mocayed adhamarṇākaḥ.
Vyāsa quoted in the Smṛticandrikā, II, 330.
4. Vide the text of Vyāsa quoted in the Smṛticandrikā, II, 330.

means the enjoyment of the pledge even when the capital surpasses the stage of getting doubled.[1]

Devaṇabhaṭṭa explains *prakarṣa* as used by Bṛhaspati, in a different way. According to him it should stand for the money that remains after meeting the necessary expenses of production out of the pledge (say, a field).[2] He takes up the two verses of Bṛhaspati (X. 70 and X. 71) together and explains it in his own way. Thus according to him, the verses of Bṛhaspati should mean that when such money not sufficient to cover the entire interest, is received by the pledgee, the pledgor, even after the expiry of the stipulated time, cannot get back his pledge by paying merely the principal. The creditor should not accept in that case the principal only (for the release of the pledge).[3] He explains the second verse of Bṛhaspati in this light. It should mean that when the money as such is sufficient to meet the total interest, the debtor may get back his pledge by paying the capital only.[4]

Jagannātha explains the scope of the verse of Bṛhaspati (X.42) by stating that this is in reply to the question whether the pledge is to be retained or not in the case, where the greater portion of the debt is discharged and the smaller part still remains to be paid.[5] He understands *citra* and *carita* as standing for the modes of recovery in general. Accordingly he observes that the creditor should not be compelled to restore (the pledge) through the customary modes of recovery of loan.[6]

1. Yadā tu vṛddhyartham evādhyupabhoga iti paribhāṣā tatra dvaiguṇyātikrame'pi yāvanmūladānaṃ tāvad upabhuñkta evādhim.
Vijñāneśvara on Yāj, II. 64.
2. Ādhyutpanno'rthaḥ utpattyarthavyayād avaśiṣṭaḥ prakarṣapadenātroktaḥ.
Smṛticandrikā, II. 344.
3. Tasmin samagravṛddhyaparyāpte dhanini praviṣṭe ṛṇī mūlamātraṃ dattvā bandhaṃ paribhāṣitakālātyaye'pi nāpnuyāt. Dhanī ca ṛṇamūlamātraṃ tadā nāpnuyāt. Sm. C, II, 344.
4. Kintu pūrṇe prakarṣe samagravṛddhiparyāpte dhanino mūlamātre ṛṇino bandha ity evam ubhayoḥ tat svāmyaṃ parikīrtitam. Tasmāt tasminn eva kāle sāmakaṃ dattvā ādhiṃ mocayed iti śeṣaḥ. Ibid, 344.
5. Atra ṛṇadhanasamudāyasya bahutarabhāge śodhite alpatarabhāganimittam ādhiḥ sthāpanīyo na vā ity āśaṃkāyām etadvacanotthāpanam.
Vivādabhaṅgārṇava, Folio 84, Lines 18-20 ; Col. Dig. I. 118.
6. Atra udgtāhaṇopāyaiś chalādibhir api na dāpayitavya ity āha citreṇa caritena vā iti. Ibid. L. 21-22 ; Col. Dig. I, 118.

By way of explaining the implication of the veiw of Caṇḍeśvara as expressed in the *Vivādaratnākara* (p.27) Jagannātha observes that the decision of the creditor should be treated as the final authority (and as such there should be no compulsion) in the case where the debtor at first pledges an article of greater value, then repents and offers to replace (exchange) it by another pledge of smaller value.[1] Jagannātha's point is that there is no fault on the part of the pledgee in the case referred to and there should not be any scope for compulsion by the king to accept the pledge (of smaller value) in exchange.

He raises an interesting point here. He takes up the position of a debt contracted by granting a mortgage of a piece of land measuring one *krośa*. If a portion of the debt is already paid off and if after that accidentlly through the current of the stream the land is carried away, the creditor may seek to claim fresh pledge of a land measuring one *krośa*. Jagannātha holds that this text may be interpreted in such case to restrain such an exacting creditor.[2]

Conclusion.

On an analysis of the question of the redemption of pledge, it may be observed that according to Kauṭilya the pledgor possesses the right of redemption of the pledge through payment of the amount due, even in the absence of the pledgee. Yājñavalkya shows the same attitude to the question. With reference to the appropriate time for redemption of the pledge, Yājñavalkya holds that if the debt secured by a pledge becomes doubled by accumulation of interest, the pledge should be released after double the principal amount has been received from the profits. This has the concurrence of Viṣṇu. Bṛhaspati allows a grace period after the doubling of the capital. He has direction that in the case of pledge in the form of field and the like, neither the pledgor nor the pledgee can go beyond the agreement

Evaṃ yatra ṛṇī bahumūlyaṃ bandhakaṃ dhanine dattvā paścāttāpayuktaḥ alpamūlyabandhakena tadvinimayāya ceṣṭate tatrāpi bandhakavinimaye uttamarṇecchaiva mūlam ity api bodhyam.

Vivādabhaṅgārṇava, F. 84, Lines, 28-30 ; Col. Dig. I. 118.

Yad vā krośamātraṃ kṣetraṃ bandhakīkṛtya ṛṇaṃ kṛtam anantaraṃ ca kiyad ṛṇaṃ śodhitaṃ daivāc ca srotasā kṣetram apahṛtam. tatra uttamarṇaṃ krośamātraṃ kṣetram bandhakatvenākāṅkṣamāṇaṃ prati niṣedhaḥ.

Ibid. F. 84, L 37-40 ; Col. Dig. I. 119.

before the expiry of the time-limit agreed on. In the case of mutual agreement however, the pledgee may claim his loan and the pledgor may demand his pledge. He prescribes that the creditor cannot be forced by any customary method to restore the pledge where the loan has been paid in part only. Kātyāyana has no significant contribution in the field and same is the case with Vyāsa. In short, unless there is an agreement to the contrary, the pledgee is under obligation to return the pledge when the capital with interest gets doubled. The debtor has the right to get back his pledge as per agreement whenever he is ready to pay the sum due.

The *śāstric* law shows little sign of development, the only details of juridical interest being procedural and Jagannāth's remarks about alluvion of the pledge while the mortgage amount is only partly paid off.

20. The right and the procedure of the sale of the pledge by the creditor.

The question of the ownership over the pledge is naturally closely connected with that of sale. In our study of the problem relating to the ownership of the pledgee over the pledge we have pointed out that Manu is categorical in his statement that the pledgee acquires no ownership over the pledge. The same is the case with Nārada. Yājñavalkya on the other hand advocates loss of ownership of the pledgor (under certain circumstances) and consequently acuiring of the same by the pledgee.

Even if the ownership over the pledge may be lost by the pledgor under certain circumstances, it is quite reasonable that he should be entitled to receive the balance (after the payment of the loan with interest) if the pledge given by him carries a value more than that. It is in that context that the question of the sale of a pledge arises.

Kauṭilya directs that the pledgee may, anticipating the loss of the pledge (for custody because the creditor has the responsiblity of preserving and protecting it as a deposit), sell the pledge in the absence of the debtor (i. e. when he does not turn up to redeem it through the payment of the amount due) with the permission of the judge, to the person offering the highest price.[1] The direction that

1. Dhāraṇikāsannidhāne vā vināśabhayād udgatārdhaṃ dharmasthānujñāto vikrīṇīta..... Arthaśāstra, III 12. 14.

such a sale should be done with the permission of the judge may go to show that a pledge is considered to be the property of the pledgor and that the sale is one of the means to realise the debt when the terms of contract are violated.

With reference to the sale of the pledge, Manu declares in clear terms that even if it remains with the creditor for a long time (i. e. even if the terms of contract with reference to the limitation of time are violated by the debtor)[1], the pledgee himself is not entiled to sell it.[2]

Yājñavalkya permits the creditor to sell the pledge in the absence of the debtor, in the presence of the witnesses.[3] He does not like Kauṭilya instruct the pledgee to seek the approval of the king to do so. The implications of the discrepancy are not quite clear, but we must bear in mind that both Manu and Yājñavalkya had *arthaśāstra* material (perhaps even Kauṭilya himself) in front of them.

Nārada has the same rule as that of Manu in this respect.[4]

We have from Bṛhaspati the rule similar to that of Yājñavalkya that when the capital gets doubled and when the debtor is missing or dead, the creditor may sell the pledge in the presence of the witnesses.[5] He further suggests as an alternative that after assessing the value (by experts in the subject : Bṛhaspati, X. 55), he should keep it for a period of ten days in an assembly of the villagers (probably a village-court), after which he should take (out of the sale proceeds) the amount equal to the debt (with interest) and relinquish the balance.[6] The mention of ten days fits well with his other statement (X. 49) where also he prescribes that ten days should be granted as the grace period for the pledgor.

The part '*anyat tu varjayet*' in the verse of Bṛhaspati is intended to show perhaps the fact that the creditor does not have any owner-

1. Na cādheḥ kālasaṃrodhān nisargo'sti na vikrayaḥ. Manu, VIII. 143.
2. Médhātithi explains : kālasaṃrodhāc ciram avasthānād dviguṇībhūte'py amokṣamāṇe. on Manu, VIII. 143.
3. Vinā dhāraṇikād vāpi vikrīṇīta sasākṣikam. Yāj, II. 63.
4. Nārada, IV. 129.
5. Hiraṇye dviguṇībhūte mṛte naṣṭe'dhamarṇake /
   Dravyaṃ tadiyaṁ saṃgṛhya vikrīṇīta sasākṣikam // Bṛahaspati. X. 51.
6. Rakṣed vā kṛtamūlyaṃ tu daśāhaṃ janasaṃsadi /
   Ṛṇānurūpaṃ parato gṛhītvānyat tu varjayet // Bṛhaspati. X. 52.

ship over the pledge. This has been pointed out by Devaṇabhaṭṭa[1] and Pṛthvīcandra.[2] There is apparent contradiction between this statement (X. 52) and another statement (X. 48), where it has been stated that the creditor may be the owner of the pledge after certain period. The contradiction cannot be properly solved in the absence of the text of Bṛhaspati in original. The one that we have is reconstructed in the light of quotations appearing in the name of Bṛhaspati in various sources.[3] The interpretation in this case both by Devaṇabhaṭṭa[4] and Pṛthvīcandra[5] that the right to sale of the pledge should not be the purpose of the verse, does not explain the situation clearly. The solution perhaps is to be sought in the explanation offered by Vijñāneśvara in the context of the provisions by Yājñavalkya (II.63) of identical nature.

The rule that for ten days the pledge should be preserved with the assembly of villagers, is intended perhaps for demonstrating the honesty of the pledgee. In this context the other rule of Bṛhaspati may be quite justifiable. He observes that the realisation of his own money (invested as a loan) through the sale of the pledge in the presence of the kinsmen of the pledgor (where he is absent), after ascertaining his right share through the help of the persons skilled in computation, does not amount to any fault on the part of the creditor.[6] This rule also suggests that the pledgee does not posses the ownership over the pledge in such case.

Kātyāyana prescribes that when the pledgor is absent (missing or dead) the creditor should report about the pledge to the king. It should be sold, when thus proclaimed. He may take out of it the capital with interest, while the balance of the sale-proceeds should

1. Anyat tu varjayet iti vadan hiraṇye dviguṇībhūte'pi dhane dhanikasyādhāv asvāmitvaṃ darśayati. Smṛticandrikā, II. 333.
2. Vide Vyavahāraprakāśa, 222.
3. Reference here is to the Bṛahaspatismṛti edited by K. V. R, Aiyangar.
4. Tataś ca vinimayahīnādhiviṣayamanuvacanavad etad api vacanaṃ mantavyam. Sm. C. II, 333.
5. Tataś ca na cādheḥ kālasaṃrodhād iti manuvacanasamānārtham idam api vacanam iti. Vyavahāraprakāśa, 222.
6. Svadhanaṃ tu sthirīkṛtya gaṇanākuśalaiḥ nṛbhiḥ /
Tadbandhujñātividitaṃ pragṛhṇann nāparādhnuyāt // Bṛhaspati, X. 55.
Vide here also the notes by L. Renou, Et. V. E. P, XI (1963) on Bṛhaspati, X, 48, 52 and 55.

be handed over to the king (perhaps for being passed over to the owner's relatives).[1]

Medhātithi permits the sale of the pledge under certain conditions. He observes that if the creditor becomes impoverished and has no other wealth left except what is invested as a loan, he may sell the pledge with the permission of the king, after waiting for a considerable period of time. Out of the sale-proceeds he may take only to the extent of double of the amount.[2]

Vijñāneśvara, while explaining the rule of Yājñavalkya (II.63) and the scope of the rule, observes that the application of the rule is to be made to the case where at the time of taking the loan it has been stipulated that even if the amount gets doubled the doubled amount may be charged but the pledge should not lapse.[3] He explains that in the absence of such a stipulation, the pledge will be lost to the pledgor on the basis of the general direction of Yājñavalkya, that the pledge lapses when the capital with interest gets doubled. (Yāj, II.58).[4] He thus harmonises the two provisions, namely, ownership of the pledgee over the pledge and the direction for the sale of the same. As we have pointed out (see p. 289), the same line of argument may be applied to the case of Bṛhaspati to remove the contradiction in his statements.

While making reference to the direction of Kātyāyana (529), Devaṇabhaṭṭa observes that the handing over of the balance to the king should be understood in the absence of the relatives of the pledgor by propinquity. If they exist it is proper that it should be passed over to them. If such relative pays the amount due, there will be no necessity of sale even. He states further that in such a

1. Ādhāta yatra na syāt tu dhanī bandhaṃ nivedayet /
Rājñas tataḥ sa vikhyāto vikreya iti dhāraṇā //
Savṛddhikaṃ gṛhītvā tu śeṣaṃ rājany athārpayet // Kātyāyana, 529.
2. .....Kathañcid dhaniko daridratvam upagatas tāvanmātraśeṣadhanas sa kañcit kālaṃ pratīkṣya rājani nivedya vikrīṇīta bandhaṃ tato vikrayād utpannaṃ dviguṇam ātmanaḥ dhanaṃ gṛhītvā..... On Manu, VIII. 143.
3. Yadā tu dviguṇībhūte'pi dhane dviguṇaṃ dhanam eva grahītavyaṃ na tv ādhināśa iti vicāritam ṛṇagrahaṇakāla eva tadā dviguṇībhūte dravye asannihite vādhamarṇe dhaninā kiṃ kartavyam ity ata āha .....
Commentary on Yāj, II. 93.
4. Yadarṇagrahaṇakāle dviguṇībhūtep'i dhane dhanam eva grahītavyaṃ na tv ādhināśa iti na vicāritaṃ tadā 'ādhiḥ.....dviguṇe' ity ādhināśaḥ. vicārite tv ayaṃ pakṣaḥ. Com. on Yāj. II. 63. Vide also Vyavahāraprakāśa (M), 245.

case, sub-mortgage is not irregular.[1] He harmonises the *smṛtis* by stating that these rules apply in a case where the pledge is very precious, because the question of paying the balance arises in that case only. If it is of the same price, it should be taken over by him through sale in the presence of the witnesses. If the price is less than the value of the amount given as loan, the balance should be taken from any person under obligation to discharge the debt of the pledgor.[2]

Jagannātha is of the view that if the debtor be living in another country (but not present), the surplus of the sale may be handed over to the heir or to the king (for being kept—*arpaṇamātram*) and if he (the debtor) be dead, it should be passed over to the legal heir (so that he may enjoy it in the same way in which he inherits other properties). The argument of Jagannātha is that so long as the debtor is living he retains ownership over the object pledged and by his death it should vest in his heir.[3]

From the discussion made above it is clear that the writers on law in general permit the sale of the pledge by the pledgee. The idea is opposed by Manu and Nārada. The difference in the views of those writers on law who support this view of the right to sell the pledge, is procedural. There is no clear indication in the *śāstras* regarding the adjustment between the two concepts, namely the ownership of the pledgee over the pledge (after a certain period) and the right to sale. Vijñāneśvara attempts to harmonise the situations. Devaṇabhaṭṭa here suggests that sub-mortgage under the circumstances may be permitted.

21. Epigraphic and other evidences of pledge

It would be of interest here to make mention of certain references to pledge as we get from epigraphic and other sources.

1. Rājany arpayed iti jñātyādipratyāsannābhāvaviṣayaṃ, tatsadbhāve tatraivārpaṇasya nyāyyatvāt. yatra śeṣārpaṇaṃ kriyate tenaiva yadi savṛddhikaṃ dhanaṃ dattvā bandho gṛhyata tadā na vikrayaḥ prayojanasya siddhatvāt. .....anyatra tv ādhīkaraṇam apy asmin viṣaye na viruddham. Smṛticandtikā, II, 333. For identical view vide Vvavahāraprakāśa (P), 222 ; Sarasvatīvilāsa, 245 ; Vyavahāraprakāśa (M), 244.
2. Evam ukto jñātyādāv arpaṇānto vidhiḥ bahumūlyādhiviṣaya eva śeṣārpaṇādes tatraiva sambhavāt. Samamūlye tu sasākṣikaṃ vikrīya svayam eva sarvaṃ gṛhṇīyāt, svalpamūlye'pi evaṃ vikrīya gṛhītvā ṛṇaśeṣam ṛṇādānādhikāriṇi kathañcid āste tato gṛhṇīyāt ityādy uktavacanata evohyam. Ibid, 334.
3. Col. Dig. 1, 202.

The Rewah Plates of the time of Trailokyamalladeva (Kalachuri) year 963, (A. D) 1212, puts on record a deed of mortgage (*vittabandha*) for the village Atirā. It was pledged by *Śaiva* teacher Śāntaśiva. The mortgagee was allowed the right of collecting taxes (Line 15). The name of the mortgagee was Rāṇaka Dhāreka. The condition perhaps was to allow the mortgagee the right to enjoy the pledge so long as the amount (there is no mention of the amount taken as loan) is not paid off.[1]

The Jaunpur Brick Inscription, dated A. D. 1217, shows that one Gaṅgadeva borrowed 2250 Drammas on the security of cultivated lands and attested his own signature on the inscribed brick.[2] We do not get here any information regarding the condition for such mortgage. It is simply stated that the mortgage is intended for creating confidence (*viśvāsārtham*).

The Bhuvaneśvar Inscription of Gaṅga Narasiṃha (dated September, 24, A. D. 1396) records that a piece of land with an area of twelve Vāṭis at Vāghamarā. was mortgaged by Taporāj-amahāmuni to Durgābhaṭṭācārya, and a loan of one hundred and fifty (gold) Māḍhas was taken (against it).[3]

In an inscription dated A. D. 1524, there is record of a loan issued to a lady named Ummakka, wife of Kalasappa of Yeḍahāḷu for the purpose of marriage expense and (as a security) a land was given in mortgage.[4]

It may be mentioned in this context that in the document numbered 473 of the Kharoṣṭhī Inscriptions in Chinese Turkestan, we come across reference to the pledge of a field. One monk named Saṃghaśira is stated to have kept under pledge a vineyard and

1. bhāga-bhoga-pravaṇikara-sarvvādāyasahitaṃ yāvaddhiraṇyasya dattam iti. Lines, 14-15. Epigraphia Indica, XXV, 5-6.
2. .....atas sakāśād dhāraṇiko nāmnā mataḥ rā Gaṅgadevo.....ṣadboddika drammasahasradvayasārdhaśatadvayaṃ gṛhṇāty uddhāranāṅke'pi 2250. amīṣāṃ drammānāṃ viśvāsārtham ca pravāpiṇī svakapaṭṭikā bandhake pradattā..... 'Jaunpur Brick Inscription of V. S. 1273,' Ed. V. S. Agarwala, Journal of the United Provinces Historical Society, XVIII (July-Dec. 1945), 196-197, originally published in the Journal of the Asiatic Society of Bengal, (1851) XIX, 454.
3. Vide Epigraphia Indica, XXXII (1957-1958), No. 29, pp. 229ff. This was published previously in the Journal and Proceedings of the Asiatic Society of Bengal, XX, 1924, 41ff.
4. Epigraphia Carnatica, VI, 159. Inscription of Mūgere Taluq. No, 62,

ploughed field.[1] There is even mention of the pledge of a woman in the document no. 492.[2]

These epigraphic references do not help us to know exactly how far the *śāstric* directions in their different varieties were actually practised in the society. Only in the Rewah Plates of the time of Trailokyamalladeva we find that the pledgee earned the right of enjoying the pledge (evidently the usufructuary type of pledge) so long as the capital was not realised. The information regarding the right of the pledgee to collect the taxes is really an interesting feature of the pledge.

The *Lekhapaddhati*, which is a mediaeval precedent book, has in it the record of a deed of pledge (*ādhipatra*) executed in *Saṃvat* 1288. The sons and grandsons of both the parties are bound by such deed. If within the stipulated period the debtor cannot pay the whole amount of loan, the creditor here retains the right to sell the pledge within the knowledge of the debtor and the sureties. If the price of the pledge falls short of the capital, the sureties here are made to pay the balance out of their own purse. The creditor reserves the right to demand money even before the stipulated period through the help of the officers and the expenses thereby are to be borne by the debtor and the surety. Here the sureties are placed under the same obligations as those of the debtor. The deed contains the signature of four *Adhipālas*, the debtor, five witnesses and the scribe.[3]

1. .....śramana saṃghaśira masuśata bhumachetra baṃdha thaviti.....
2. .....samājhā strī camavati...baṃdhava...thavida
   (Samājhā pledged a woman of theirs, Camavatī).
3. Saṃvat 1283 vaiśākhaśu o 15 gurāv adyeha śrīpattane...ādhaukṛtavastūnām upari gṛhītoddhāradrammāṇāṃ patraṃ likhyate yathā. yat ihaivavāstavyaprāgvāṭajñātīya vya 0 cāhaḍapārśvāt saṃkhārīgrāmīya paṭṭa 0 mālākena ādhaukṛtamahiṣī 8 balīvarda 16 gau 50 phika 2 etadvastūni ādhau dattvā..... 2404 caturadhikacaturviṃśatiśatāni drammā gṛhītāḥ. .....atha ced dāyakagrāhakayor madhye daivavaśataḥ eko mriyate naśyati., tatas tayoḥ putrapautrair api drammāḥ patrapramāṇena deyāḥ. Jalpitadinaiḥ yadā dhāraṇika ekamuṣṭyā savyājakān drammān vyavahārakāya na dadāti tadā.....ādhau muktauparilikhitavastūni...dhāraṇikapratibhuvāṃ viditaṃ vikrīya drammā gṛahītavyāḥ. Kadāpi muktādhivastubhir api patrāṃkitāḥ savyājakāḥ sopakṣayā drammā na pūryyante tadanu pratibhubhiḥ anyatravyavahārakāt vyājenākarṣya athavā svagṛhād ātmīyaṃ vastu vikrīya vyavahārakasya savyājakāḥ drammā dātavyāḥ...atha kadāpi vyavahārakasya utpannasvīyagṛhakāryavaśāt drammaiḥ

It may be noted here that the transaction of mortgage recorded herein agrees in principle with the *śāstric* law, but as is usual, the creditor here is noticed to be more careful to guard his interest. The right of the creditor to sell the pledge is retained here but the sureties in this transaction are brought under greater obligation, specially in the eventuality of the deterioration of the value of the pledge. The right of the creditor to demand money even before the stipulated period through the help of the officers, the expenses of which are to be paid by the debtor and the surety, cannot claim the approval of the *śāstric* law.

The deed of mortgage was also known as *Valitapatra*, as we gather from the *Lekhapaddhati*.[1] In one document under the title of *Valitapatra*, we find the mortgage of fifty mango trees. The value arising out of the price of the mangoes would be calculated towards the payment of the capital and after certain period (here six years) the mangoes are supposed to be treated as sufficient for meeting the whole debt.[2] This thus is a type of usufructuary pledge, where the use of the pledge is regarded as sufficient to discharge the whole amount of debt. This is in agreement with the type of pledge mentioned by Nandapaṇḍita in his commentary on the *Viṣṇusmṛti* (VI.7).

In the same text we have another specimen of *Valitapatra* where also it has been stated that the produce of the pledge in course of time will go to pay off the debt.[3]

We also notice here a deed under the appellation of *Vṛddhi-phalabhogapatra*, where the use of the pledge (here a house is pledged) is treated as equivalent to the interest of the capital.[4]

Sometimes such mortgage would have been called by the name of the object pledged. Thus in the case of a mortgage where the

hastaprāptaiḥ prayojanaṃ jāyate, tato vyavahārakeṇa dhāraṇikapratibhuva ākramya bhaṭṭaputrān upaveśya savyājadrammā grāhyāḥ. Ihārthe vihita-bhaṭṭaputrāṇāṃ ya upakṣayo vrajati sa samagro'pi dhāraṇikapratibhūbhiś ca sarvo'pi nirvahaṇīyaḥ. .....dhurapratibhuvor antaraṃ nāvagantavyam,

Lakhapaddhati, 20-21

1. Vide Lekhapaddhati, 34
2. Ṣaḍvarṣānantaraṃ vyavahārakasya āmraiḥ samaṃ lāgasaṃbandhaḥ ko'pi nahi, āmrā dhanikasyaiva niṣkāvalāḥ saṃjātāḥ. Ibid. 34-35.
3. ...vyahārakasya viśvāsanimittaṃ valitāyāḍāṇake muktam. For translation of this line, vide the editorial notes of Lekhapaddhati, 114.
4. Ibid, 37.

object of pledge is a house, the deed goes by the name of *Gṛhāḍḍā-ṇakapatra.*[1] A special feature of one such *Gṛhāḍḍāṇakapatra*, as recorded in the same text, is the provision for sub-mortgage, within the knowledge of the debtor.[2] It may be noted here that Kullūka-bhaṭṭa (1150-1300 A.D.) (the present deed was transacted in Saṃ. 1288) refers to the practice of sub-mortgage.

In the same document there is provision that if for a reason beyond the control of the pledgee, the pledge in the form of house suffers deterioration, the pledgor should be under obligation to get it repaired back to the original condition. If however, the debtor expresses his inability, the pledgee may get it done through the service of the labourers and the cost of such repairs should be borne by the pledgor.[3] This is also in agreement with the direction of the *śāstra* regarding the deterioration of a pledge.

In another document of the mortgage of a house, under the designation of *Gṛhaḍūlipatra*, we come across instances of pledge with limitation of time. Here it has been stated that if the debtor fails to pay off the debt within the stipulated period, the pledgor will lose the pledge.[4] This is in agreement with the direction of Yājñavalkya (II.58). It has been stated in another mortgage of land that even in the case of usufructuary pledge the pledgor would lose the right of redeeming the pledge after the stipulated period.[5] It should be noted here that the *śāstric* law does not support such a course of action as we definitely gather from the rules of Yājñavalkya (*phala-bhogyo na naśyati.* Yāj, II. 58).

In the *Lekhapaddhati* we find two documents relating to the pledge of horses (*Aśvāḍḍāṇakapatra*).[6]

1. Ibid, 37.
2. ...dhāraṇikaviditam anyavyavahārakahaste patram aḍḍāṇakaṃ dattvā drammā grāhyāḥ. Ibid. 37. Vide the editorial notes, p. 116.
3. Vide Lekhapaddhati, 37-38.
4. Yadi kathitadine drammān na dadāti tadā dviguṇadattadrammair gṛham ācandrārkaṃ ḍulati. Ibid, 38. For the exact rendering of the line vide the editorial notes. p. 116.
5. Vide Lekhapaddhati, 39 (Lines 10-12). Vide also the editorial notes. p. 117.
6. Vide Lekhapaddhati, 39-42.
   For other documents of pledge, Vide Lekhapaddhati, 42-43.

22. *Summary on the chapter.*

A pledge is to be treated as the second form of security, the first being surety. The chapter has been divided into several sub-sections in which different questions relating to a pledge have been discussed. In the first sub-section it has been shown that the two words *ādhi* and *bandhaka* have been used in the *śāstras* to convey the concept of a pledge and that later commentators have attempted to restrict the scope of these two words to two different varieties of the pledge. The discussion that follows centres round the classification and cross-classification of pledges. Basically a pledge could be either one for custody (*gopya*) or for use (*bhogya*). But they could assume different designations when looked at from different angles of vision. Thus they could be movable (*jaṅgama*) or immovable (*sthāvara*), with the limitations of time or without it and so on. A digest-text of later date (*Sarasvatīvilāsa*) points out that a pledge for custody may also intermix with one for use and it depends on the nature of the contract itself. All these in their possible detail have been dealt with. On the question of the role of possession in determining the validity of a pledge, it has been observed that according to most of the *śāstrakāras*, possession forms an essential factor for the validity of a pledge. So far as adverse possession is concerned the *śāstrakāras* direct that the rules of adverse possession should not be applied to a pledge.

The ownership of the pledgee over the pledge has not been approved by Manu and Nārada, but recognition has been accorded to it in the case of pledge for custody with time-limit. The commentators and the digest-writers in general support the theory of ownership of the pledgee.

The right of sub-mortgage of a pledge by the pledgee has been favoured by Halāyudha, Kullūkabhaṭṭa and Jagannātha, but earlier commentators like Medhātithi, and Govindarāja and digest-writers like Lakṣmīdhara, Devaṇabhaṭṭa and others in their interpretation of the direction of Manu, have shown their opposition to such an idea. The *śāstrakāras* have discussed the possibility of remortgage of a pledge by the pledgor without the knowledge of the first pledgee. In a dispute arising out of such a transaction, Vasiṣṭha, Viṣṇu and Bṛhaspati lend recognition to the right over the pledge, of the party who has possession on it. Both Viṣṇu and Kātyāyana prescribe punishment for re-mortgage.

The duty of the pledgee to preserve the pledge in its original condition has been stressed by the *śāstrakāras* in general and violation of this condition has been treated as a serious offence to be penalised in the form of loss of interest. Special provisions have been made to exempt the pledgee from such penalty if the loss of the pledge is caused due to fate or the king. In the case of deterioration of the value of the pledge, even though it is properly preserved, the general direction is that the pledgor should either place another pledge or pay off the debt.

The pledgor has the right to redeem the pledge as per agreement whenever he is ready to pay the sum due, even in the absence of the pledgee. About the usufructuary pledge it has been held that the pledge should be released when double of the capital has been realised from the profits out of the pledge.

When the pledgor does not turn up for the redemption of the pledge and when the stipulated period is over, the pledgee has been permitted by the *śāstrakāras* to sell the pledge in the presence of the witnesses.

The epigraphic records do not throw sufficient light on these various aspects of a pledge, but the records in the *Lekhapaddhati* show that the transactions of pledge were guided more or less by the spirits of the *śāstric* directions.

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Important contributions on the recovery of debt.

P. N. Sen, The general principles of Hindu jurisprudence, (Calcutta, 1918), 312-317. The author refers to the methods to be employed by the creditor to realise his loan. The discussion is very brief.

Balkrishana, Sir Asutosh Memorial volume, (Patna, 1926-1928). He merely mentions the methods without any discussion.

Ganganatha Jhā, Hindu law in its sources, I, (Allahabad, 1930), 189-201. Dr. Jhā collects detailed materials on the subject in the pattern of a digest-writer but does not discuss them critically.

P. V. Kane, History of Dharmaśāstra, III. (Poona, 1945), 438-442. He devotes himself to the study of the general points relating to the recovery of debt and that is on bare outline.

A. K. Majumder, Chaulukyas of Gujarat, (Bombay, 1956), 283-284. He simply mentions the methods.

S. K. Maity, Economic life of Northern India, (Calcutta, 1957). He also refers to the methods very briefly.

Dr. Jhā and P. V. Kane may be stated to have contributed substantially to this topic, but in my approach to the question in its different aspects I have presented in a detailed and analytical manner the background and applicability of the methods. In each case new materials from the commentaries and the digests have been explored and attempt has been made to widen the range of discussion to make it complete in all respects.

1. Recovery of debt—General observations.

The last stage in the transaction of debt is the recovery of the loan. In the case where the loan is secured by a pledge or a surety or both, such recovery is comparatively simple. Thus when there is a pledge (which is of sufficient value to cover the capital with interest) we have noticed that under certain circumstances the creditor becomes entitled to realise the amount invested as a loan by selling the pledge. When it is secured by a surety, it is expected that the surety, who is normally selected as such on the basis of his financial resources and soundness of character principally, should discharge his obligation of paying the debt on behalf of the debtor. But there may be cases where neither a pledge nor a surety has been provided though the loan has been granted. In such a situation the question of the recovery of a debt becomes complicated. The *śāstrakāras* of ancient India have prescribed various rules regarding the methods that may be resorted to by the creditors for the recovery of the loan. Broadly speaking, the methods may be classified under two heads, namely, the method of taking recourse to litigation and that of not taking recourse to it. The former method is of general nature that agrees with that of other titles of litigation. Here, in short, the creditor is to establish his claim before the court through different modes of proof[1] and seek the help of the court (or the king) to get back his money.

Manu directs that when the debtor denies (the debt) when he is asked in the court to pay it, the plaintiff (the creditor) should produce a witness or adduce other evidence.[2] He observes that on being requested by the creditor for the recovery of the loan from the debtor, the king should make the debtor pay the sum which is proved

Yājñavalkya. II. 22. For different modes of proof see, A. Thakur, Hindu law of evidence ; P. V. Kane, History of Dharmaśāstra, III, 306-378.

Apahnave' dhamarṇasya dehīty uktasya saṃsadi /
Abhiyoktā diśed *deśyaṃ* (deśaṁ) kāraṇaṃ vānyad uddiśet // Manu, VIII. 52. Medhātithi explains *deśa* as witness. Vide his commentary on Manu.

(to be due).[1] We have from Nārada the rule that when the debtor does not pay even when he is in a position to do so, the king should make him pay the same (evidently when an appeal is made to him by the creditor).[2]

Bṛhaspati also observes that the debtor denying his (liability to pay the debt) should be made to pay after the debt is proved (to be due) through document or the witnesses (and the like) in the court.[3]

The method of realising the debt otherwise than by recourse to litigation has been pointed out by different writers on law.

2. The right of the debtor to seek decision of the court.

A creditor has been warned by the *śāstrakāras* not to take law into his own hands in the case where the debtor does not admit the claim or disputes its amount or character or in any way demands a trial by court, for, in these predicaments it becomes the duty of the creditor to go to the court, obtain its decision and secure satisfaction through it. A creditor, who under the circumstances applies force to compel the debtor to pay, becomes liable to be punished and may lose the principal. Kātyāyana accordingly observes that the creditor who harasses the debtor, who claims investigation in a court of law, is to lose his claim and to incur in addition a fine equal to the principal.[4]

1. Adhamarṇārthasiddhyartham uttamarṇena coditaḥ /
   Dāpayed dhanikasyārtham adhamarṇād vibhāvitam // Manu, VIII. 47.
   Medhātithi explains *vibhāvita* as what is proved to be due and gives an alternative meaning as 'accepted by the debtor' (svayaṃ pratipannaḥ) Vide his commentary on Manu, VIII. 47.
2. Ṛṇikaḥ sadhano yas tu daurātmyān na prayacchati /
   Rājñā dāpayitavyaḥ syāt..... Nārada, IV. 132
3. ...Vyapalāpī tu saṃsadi /
   Lekhyena sākṣibhir vāpi bhāvayitvā pradāpyate // Bṛhaspati, X. 95.
4. Pīḍayet tu dhanī yatra ṛṇikaṃ nyāyavādinaṃ /
   Tasmād arthāt sa hīyeta tatsamaṃ cāpnuyād damam // Katyāyana, 589.
   Devaṇabhaṭṭa observes by way of explanation that even in case of difference of opinion resort should be made to the remedy in the form of judicial proceeding, for removing doubt ; 'Tena vipratipanne' pi vipratipattinivṛttaye vyavahārākhya evopāye pravṛttiḥ kāryety abhiprāyaḥ.
   Smṛticandrikā, II. 388.

Bṛhaspati defines a *kriyāvādī* (one claiming judicial investigation) debtor as one who declares to the effect that he is to pay only what may be proved to be justly due.[1] He defines also a doubtful case (*saṃdigdhārtha*) as one where there is difference of opinion between the two parties (the creditor and the debtor) regarding the nature of the loan or the number (of the objects taken as loan) or the amount of interest (*lābha*) or the point whether the sum is actually due (*deya*) or not (adeya).[2] For the debtor claiming judicial investigation in a doubtful case, Bṛhaspati directs that such a person should not be kept under restraint. If the creditor does so in the case of one who does not deserve it, he is to be penalised according to law.[3] These are instances of *dharma* attempting to mitigate the harsh customary law. Devaṇabhaṭṭa clearly states that in such case the only course open is to seek a remedy from the court.[4] Bṛhaspati goes on to say that in a doubtful case if the creditor takes recourse to force without seeking the verdict of the court, he should be penalised and the suit will be lost to him.[5]

It is thus noticed that the law that sanctions the use of force as a measure under certain ciacumstances, when the debtor does not dispute the claim of the creditor, also at the same time advises the creditor not to resort to it where the claim is denied by the debtor. But it discourages fruitless appeals to litigation by providing that if the debtor compels the creditor to sue by raising false pleas and claiming judicial investigation by the court knowing fully well that there is no real defence, the debtor should be ordered not only to satisfy the debt established by evidence before the court, but also to pay a penalty imposed with reference to his capacity, for unnecessarily dragging the matter into the court.

Manu directs that the man who denies a debt should be made

1. Pradātavyaṃ yad bhavati nyāyataḥ pradadāmi tat /
   Evaṃ yatraṇiko brūte kriyāvādī sa ucyate // Bṛhaspati, X. 96.
2. Rūpasaṃkhyādilābheṣu yatra bhrāntir dvayor bhavet /
   Deyānādeyayor vāpi saṃdigdho' rthas sa kīrtitaḥ // Bṛhaspati, X. 98.
3. Na roddhavyaḥ kriyāvādī saṃdigdhe' rthe kathaṃcana /
   Āsedhayaṃs tv anāsedhyaṃ daṇḍyo bhavati dharmataḥ // Bṛhaspati, X. 97.
4. Ata evāsaṃpratipanne vyavahārātiriktopāyaniṣedham āha bṛhaspatiḥ.....
   Smṛticandrikā, II, 387.
5. Anāvedya tu rājñe yaḥ saṃdigdhe' rthe pravartate /
   Prasahya sa vineyas syāt sa cāpy artho na sidhyati // Bṛhaspati, X, 101.

to pay the due debt of the creditor, proved by evidence in addition to a small fine according to his means.[1] The fine in such a case has been percribed by Manu to be ten per cent.[2] Here the view of Medhātithi may be noted. According to him the fine may be reduced to considerable amount if the debtor is not in a position to pay that amount of fine. He suggests alternatively that such lesseing of the fine should be applied in the case where the debtor genuinely forgets the transaction.[3]

We may note in passing that during the British period, this salutary rule was not observed (on the contrary court-fees were imposed on all but pauper plaintiffs) with a consequent plethora of speculative litigation.

3. Extrajudicial methods.

The earliest reference to the extrajudicial methods sanctioned by the *Śāstrakāras* for the recovery of debt is from Manu. These extrajudicial methods are to be applied in the case where the debtor admits his liability of debt. This has been stated in clear terms by Bṛhaspati. Thus while defining these methods he observes that they are to be applied in a case where the debt is admitted by the debtor.[4]

Manu observes that 'by whatever means a creditor may be able to obtain possession of his property, even by those means may he force the debtor and make him pay'[5]. These methods have been

1. Arthe 'pavyayamānaṃ tu kāraṇena vibhāvitam /
   Dāpayed dhanikasyārthaṃ daṇḍaleśaṃ ca śaktitaḥ // Manu, VIII. 51.
2. Manu, VIII. 139.
3. Yas tu tāvad dātum aśaktaḥ so' lpam api daśamād bhāgād daṇḍaṃ dāpayitavyaḥ. Athavā yaḥ pramādāt kathaṃcit vismṛtyāpajānīte tasyāyaṃ yathāśakti daśamabhāgālapato daṇḍaḥ.
   Medhātithi's commentary on Manu, VIII. 51.
4. Pratipannasya dharmo'yam..... Bṛhaspati. X. 95,
   Vide another verse from him where he makes the position more clear :
   Pratipannam ṛṇaṃ dāpyaḥ sāmādibhir upakramaiḥ. Bṛhaspati, X. 87.
   For the words underlined the reading in the Smṛticandrikā (II, 383) is : *pratipanna ṛṇī*, and it has been explained thus : pratipannaḥ ṛṇasattāyāṃ saṃpratipannaḥ dāpyaḥ pratidānonmukhaḥ kāryaḥ dhaninā.
5. The translation is by Bühler. S. B. E, XXV, 262.
   Yair yair upāyair arthaṃ svaṃ prāpnuyād uttamarṇikaḥ /
   Tais tair upāyaiḥ saṃgṛhya dāpayed adhamarṇikam // Manu, VIII. 48.

referred to by Manu. They are in the form of moral suasion (*dharma*), suit in the court of law (*vyavahāra*), artful management (*chala*), method like sitting at the debtor until he pays (*ācarita*) and force (*bala*).[1] These have been mentioned by Nārada in the same form and in the same language.[2] Bṛhaspati refers to the means as moral suasion, artful management (*upadhi*), force (balātkāra) and confinement of the debtor at his own house (*gṛhasamrodhana*).[3] He refers to the *vyavahāra* method separately.[4]

Kātyāyana does not directly mention the measure designated as *dharma* but his reference to conciliatory acts (*sāntvena karmaṇā*) may be interpreted as equivalent to *dharma*[5]. In the *Madanaratnapradīpa*[6] this has been explained in that light. *Pīḍana* as mentioned by him should refer to force (*bala* of Manu and *balātkāra* of Bṛhaspati). *Uparodha* (confinement) has been explained by Caṇḍeśvara as fasting at the debtor's residence and the like[7] and P. V. Kane takes it to be the *ācarita* method.[8] This may be taken as the same as *grhasamrodha* as mentioned by Bṛhaspati (X. 87), which is no other than his *ācarita* method.[9] Kātyāyana refers to the *ācarita* method separately along with *vyāja* (*chala* of Manu and *upadhi* of Bṛhaspati).[10] He uses the term *chala* also in another verse.[11] Thus it is noticed that all the four writers on law, namely, Manu, Nārada. Bṛhaspati and Kātyāyana, refer to the five means of recovery of debt—*dharma*, *vyavahāra*. *chala*, *ācarita* and *bala*,

1. Dharmeṇa vyavahāreṇa chalenācaritena ca /
   Prayuktaṃ sādhayed arthaṃ pañcamena balena ca // Manu, VIII. 49.
2. Nārada, IV. 122.
3. Pratipannam ṛṇaṃ dāpyaḥ sāmādibhir upakramaiḥ /
   Dharmopadhibalātkārair gṛhasaṃrodhanena ca // Bṛhaspati, X. 87.
4. Bṛhaspati, X. 95.
5. This is a very significant equation between kindness and dharma.
6. Sāntvena (karmaṇā) sāmnā dharmākhyopāyena. M. R. P., 160.
7. Uparodhena prāyopaveśanādinā. Vivādaratnākara, 68.
8. Pīḍanenoparodhena sādhayed ṛṇikaṃ dhanī /
   Karmaṇā vyavahāreṇa sāntvenādau vibhāvitaḥ // Kātyāyana, 585.
   Vide here the notes by P. V. Kane in his Kātyāyanasmṛtisāroddhāra, 238.
9. Bṛaaspati, X, 94.
10. Ādadītārtham eva tu vyājenācaritena ca. Kātyāyana, 586.
11. Kātyāyana, 587.

4. Dharma-method.

Bṛhaspati defines all the four methods except *vyavahāra*. His silence about the nature of *vyavahāra* may be accounted for. Perhaps he did not think it necessary to mention it separately because this method is similar to the general procedures that are to be followed in all the litigations and those procedures have been delineated by him in his other sections (II—IX). According to Bṛhaspati, the method is known as *dharma*, when the debtor is caused to pay the debt through instructions from friendly persons, through friendly remonstrances, through following (persistent request) and through frequent request.[1]

Medhātithi explains this method as one which consists in conciliatory steps in the form of accepting the amount of debt by instalments and of gentle convincing arguments, impressing thereby on the debtor his moral obligation to pay back the debt as he (creditor) is in need of the same.[2] Govindarāja takes it in the sense of affectionate words.[3] Sarvajñanārāyaṇa interprets it as reminding the debtor (*inter alia*) of the heavenly rewards guaranteed to those who abstain from usurping the wealth of others.[4] Nandana takes it in the sense of showing to the debtor (the bad effects of) taking others wealth.[5]

1. Suhṛtsambandhisandiṣṭaiḥ sāmoktyānugamena ca /
   Prāyeṇa dhanine dāpyo dharma eṣa udāhṛtaḥ // Bṛhaspati. X 83.
   The term *prāyeṇa* in the verse has been explained in the Smṛticandrikā, II, 383; M. R. P., 160 as frequest request: 'prārthanābāhulya'. In the Vyavahāramayūkna, 179 it has been explained as 'prārthanā'. In the Vivādacintāmaṇi, 20; and Vyavahāraprakāśa (P) it has been interpreted as fasting unto death: 'prāyopaveśana'. Jolly in his notes accepts the second interpretation (S. B. E, XXXIII, 330) but what we have to add is that the means of fasting at the residence of the debtor is referred to by Bṛhaspati in his *ācarita* method and therefore it is better to accept the interpretation according to which the word *prāya* is used in the sense of frequent request.
2. "Tatra dharmaskandhakarityā stokaṃ stokaṃ grahaṇam idam adya idaṃ paraśvaḥ, yathā kuṭumbasaṃvāho'sya evaṃ vayam api tava kuṭumbabhūtā saṃvibhāgayogyā ityādi paṭhitaprayogo dharmaḥ.
   Medhātithi on Manu, VIII. 49.
3. Dharmeṇa prītyā. Commentary on Manu, VIII. 49.
4. Dharmeṇa parasvānādānaniyamajanitaparalokaphalādikathanena.
   Commentary on Manu, VIII. 49.
5. ...adhamarṇāya adharmapradarśanena. Commentary on Manu, VIII, 49.

Rāmacandra explains it as instruction in righteousness in mild and friendly words.[1]

Jagannātha observes that 'this (direction of Bṛhaspati) is merely an instance; it comprehends the interposition of honest strangers with discourse exciting a sense of shame and so forth'.[2]

From these interpretations it may be clear that this is the method in which an attempt is made by the creditor to realise his loan through persuasive arguments and friendly expostulations. The word *dharma* may be treated as significant in the sense that in this method an attempt is made to rouse the feeling of *dharma* (moral obligation) of the debtor to pay back the loan of the creditor.

This method, according to Kātyāyana, should be applied in the case where the debtor is the king of the country, the master of the creditor or a Brāhmaṇa.[3] The reason evidently in the first two cases is that the creditor may plunge himself into trouble unless the approach is made in a very mild tone. Where one cannot apply social pressure and litigation may be impossible or undesirable, superestitious pressure is the only resort. In the last case however, the cause is the special status of a Brāhmaṇa. which demands respectful approach even when he is a debtor. It may not be wrong to suppose that this method could be applied to all the cases in general as the first step and it will be shown that Ashāya in his commentary (on Nārada. IV. 122) equates it with *sāma* method as mentioned in the *Arthaśāstra.*

5. Vyavahāra method.

Bṛhaspati does not define this method though he accepts this. In one of the verses (X. 95) it has been stated that in the case of the denial of the debt by the debtor, the debt should be proved first through document and witnesses and the king is to make the debtor

1. ...dharmaprītiyuktena vacasā dharmopadeśena.
Commentary on Manu, VIII. 49.
2. Col. Dig. 1, 339.
3. Rājānaṃ svāminaṃ vipraṃ sāntvenaiva pradāpayet. Kātyāyana, 587.
Vide also Kātyāyana, 477, where reading is :
Rājā tu svāmine vipraṃ sāntvenaiva pradāpayet.
The first reading appears better.

pay. This may refer to the method which may be called *vyavahāra*. As we have seen, Manu, Nārada and Kātyāyana refer to this method. The interpretation of this method by the commentators and the digest-writers, creates doubt about the true signiffcance of the same. Asahāya, who interprets these methods in the light of the fourfold means mentioned by Cāṇakya, appears to accept here the meaning of legal proceedings.[1]

Medhātithi in his commentary on Manu observes that the term *vyavahāra* should not be indicative of legal proceedings, as that meaning is covered by the provision of *bala* in the rule of Manu. He is of opinion that this applies in a case where the debtor is oppressed by poverty and his interpretation is very far-fetched, In such a case the debtor out of humanitarian considerations should be given an opportunity of earning something by *business* or *agriculture* and if he succeds the recovery of the debt should be made out of the profit earned by the debtor. Here Medhātithi applies a fine analogy. Just as a person tackles the situation in which water enters into his earholes, causing trouble to him, by pouring more water into the same hole, so that the total amount of water may come out, similarly the creditor may take to this method as a very honest and dignified one, by which he may help the debtor to get rehabilitated in life and at the same time may have a chance of getting back his money.[2] (In English this would be called 'priming the pump'). This does not appear impossible in view of the fact that there is no other method that may be treated as productive of any positive result in the case of an impoverished debtor. By *vyavahāra* here Medhātithi might have referred to certain usage of the country.

1. ...rājakīyasabhābhayadarśanena vyavahāreṇa.....
Asahāya's commentary on Nārada, IV. 122.

2. Yas tu niḥsvaḥ sa vyavahāreṇa dāpayitavyaḥ. Anyatra karṇodakavat dhanaṃ dattvā kṛṣivāṇijyādinā vyavahārayitavyaṃ tatrotpannaṃ dhanaṃ tasmād grahītavyam. Yas tu vyavahāro rājanivedyaḥ tasya sarvopāyaparikṣaye yujyatvāt balagrahaṇena ca gṛhītatvāt.
Medhātithi's commentary on Manu, VIII. 49.
Bühler refers to the view of Medhātithi by which is meant 'forced labour'. S. B. E., XXV, 262, F. n 49, but the explanation of Medhātithi does not yield that meaning. Vide here the comments by G. N. Jhā in Manusmṛti (Notes) II, 505. In his translation of the verse in the Vivādacintāmaṇi, he refers to 'vyavahāra' as 'tactful transaction', which appears reasonable in the light of the interpretation by Medhātithi.

Jagannātha refers to this view of Medhātithi and explains that this is to be included in the *vyavahāra* method in a special sense. His view appears to be that such interpretation by Medhātithi may be treated as acceptable where the custom of the country corroborates it[1].

Vijñāneśvara refers to this method as conveying the sense of legal proceedings[2]. Caṇḍeśvara interprets the verse of Kātyāyana (580) in the light of *vyavahāra* and his interpretation offers the impression that the term *vyavahāra* may be employed in the sense of practice of the country. The direction of Kātyāyana is that 'a debtor being arrested and freely acknowledging the debt, may be openly dragged before the public assembly and confined until he pays what is due, according to the immemorial usage of the country'[3]. This verse of Kātyāyana does not refer to *vyavahāra* method directly, but on its basis Caṇḍeśvara defines *vyavahāra* as detention of the debtor by the creditor before the public assembly so long as he does not pay[4].

Vācaspatimiśra also treats the verse of Kātyāyana as an illustration of the *vyavahāra* method[5].

So far as other commentators of Manu are concerned, it is to be noted that Sarvajñanārāyaṇa,[6] Nandana[7] and Rāmacandra[8] understand it in the sense of legal proceedings. Rāghavānanda refers to a verse where the suggestion is that by *vyavahāra* method should be meant the method by which the property of the debtor is sold (by the creditor) and the price received is regarded as payment towards the discharge of debt.[9] Here also it may be

1. Ayaṃ pūrvamate kātyāyanoktavyavahāravat ṛṇagrahaṇopāyaḥ vyavahāra evāntarbhāvanīyaḥ, kātyāyanavacanasya upalakṣaṇatvāt.
Vivādabhaṅgārṇava. Folio 174, Lines, 3-5. Col, Dig. 1, 340.
2. vyavahāreṇa sākṣilekhyādyupāyena, on Yāj. II. 40
3. Dhāryovaruddhas tv ṛṇikaḥ prakāśaṃ janasaṃsadi /
Yāvan na dadyād deyaṃ ca deśācārasthitir yathā // Kātyāyana, 580
4. Vyavahāre kātyāyanaḥ...yāvaddānaṃ janasaṃsadi ṛṇikasya dhanikena dhāraṇaṃ vyavahāra ity arthaḥ. Vivādaratnākara, 67.
5. ...vyavahāre tu kātyāyanaḥ... Vivādacintāmaṇi, 20.
6. ...rājasannidhau... Commentary on Manu, VIII, 49.
7. ...vyavahārabalapradarśanena... Commentary on Manu, VIII. 49.
8. ...sākṣyalekhyādinā..... Commentary on Manu, VIII, 49.
9. (Yathā) yato dravyaṃ vinikrīya ṛṇārthaṃ caiva gṛhyate /
Tanmūlyam uttamarṇena vyavahāra iti smṛtaḥ //
Commentary on Manu, VIII. 49.

suggested that the commentator might have referred to local usage.

While referring to the immemorial usage as noted in the text of Kātyāyana (580), Jagannātha mentions that 'in some countries creditors cause their debtors to be arrested and confined by the king's officer; in others, they themselves or their servants restrain the debtors; in others again, they confine them in fetters.'[1]

To harmonise the two views, one, which interprets the word *vyavahāra* in the sense of legal proceedings, and the other, which takes it in the sense of immemorial usage, it may be suggested that as the verse of Kātyāyana (which is treated as the basis of those who take *vyavahāra* in the sense of immemorial usage) contains in it a suggestion of trial of the debtor by the creditor in the presence of public assembly, which is a miniature form of trial in a court, the word *vyavahāra* should be understood as conveying both the senses.

If the word is to be taken in the sense of uasge of the country, then it may be stated that the applicability of the method may be in those cases where the custom of the territory sanctions it. Kātyāyana directs that traders, husbandmen and artisans should, according to the view of Bhṛgu, be made to pay in accordance with this method.[2] The reason for such provision with reference to these classes of people may be that in connection with their jobs they are to move about from one place to another and Kātyāyana might have thought it proper to regulate the rules of debt in these cases according to the conventions of the country.

6. Chala method (Legal deceit).

The third method is through the application of a trick (*chala*). Bṛhaspati defines this method as a crafty design by employing which the creditor borrows something from the debtor or withholds an *anvāhita* deposit and the like and enforces payment of the debt.[3]

1. Col. Dig., 1, 340.
2. Vaṇijaḥ karṣakāś caiva śilpinaś cābravīt bhṛguḥ /
   Deśācāreṇa dāpyāḥ syur..... // Kātyāyana, 588.
3. Chadmanā yācitaṃ cārtham ānīya ṛṇikād dhanī /
   Anvāhitādi vāhṛtya dāpyate yatra sopadhiḥ // Bṛhaspati, X. 90
   By *anvāhita* is meant a deposit intended to be given for handing over to

Medhātithi rightly explains that this applies to the case where in spite of the debtor's ability to pay, he shows a disinclination to return the loan. Under the circumstances the creditor should take recourse to certain pretexts in the form of taking some precious ornaments from the debtor as being urgently needed for certain festivity. In case he gets them they should not be returned so long as the debt is not paid off by the debtor.[1]

The word *ādi* has been treated as illustrative only.[2] *Dāpyate* has been explained as making the debtor pay.[3]

Jagannātha refers to some such cases by way of illustration* and observes that 'there is not the absolute sin of wronging one who has reposed confidence in him, provided he does not take more than his due.'[4]

We may say that this method occupies an intermediate position between mere moral persuasion and forcible extraction.

Kātyāyana holds that this method may be applied in the case of coparcener or friends.[5] It is quite appropriate in view of the fact that tricks are possible only on those persons with whom one is intimately connected and because of intimacy it is easily possible to make them believe the words even when the design is to deceive them.

another person. Vide Mitākṣarā on Yāj. II. 67; 'Yad ekasya haste nihitaṃ dravyaṃ tenāpy anu paścād anyahaste svāmine dehīti nihitaṃ tad anvāhitam', Vide also Sm. C. II. 383 ; M. R. P., 160. For discussion on *anvāhita* vide, Sternbach, Juridical studies in ancient Indian Law, 1, 43-45.

1. Yas tu sā'ṣān na dadāti vidyamānadhano'pi sa chalena.....kenacid apadeśena vivāhotsavādinā kaṭakādyābharaṇaṃ gṛhītvā na dātavyaṃ yāvad anena taddhanaṃ na dattam. Medhātithi on Manu, VIII. 49
2. Ādigrahaṇād anyad api yathākathañcid ānītaṃ saṃgṛhyate. Sm. C, II, 383.
3. Dāpyate pratidānonmukhīkriyate. Smṛticandrikā, II, 383.
4. Col. Dig, I, 342.

* 'A dishonest debtor, delivering a pledge for custody only, receives a a loan, but refuses to pay the debt at its term ; the cunning creditor mentions in various places 'his pledge, which was in my possession has been stolen by thieves', On hearing this through successive report, the debtor tenders the principal with interest, and demands the pledge and that creditor delivers the pledge and takes the sum tendered, In this case the fallacy must be considered as an artifice,'

Col. Dig, I, 342.

5. Rikthinaṃ suhṛdaṃ vāpi chalenaiva prasādhayet. Kātyāyana, 587.

7. Acarita method (lawful confinement).

The fourth mode of recovery is designated as *ācarita*. Bṛhaspati (X. 87) in his description of the methods refers to '*gṛhasaṃrodha*' which is nothing but the *ācarita* method. He defines this method as one in which the debtor is made to pay his (creditor's) money by confining his wife, son or cattle and by sitting at his (debtor's) door.[1]

This method has been explained by the commentators and digest-writers. Asahāya[2] while commenting on Nārada explains it as fasting not only by the creditor but also by his sons and servants. He observes that by such fasting the creditor is not to go through expiatory rites. Bhāruci, a pre-Medhātithi commentator of Manu, also interprets it as a customary method in the form of fasting at the

1. Dāraputrapaśūn badhvā kṛtvā dvāropaveśanam /
Yatrarṇī dāpyate' rtham svaṃ tad ācaritam ucyate // Bṛhaspati, X, 94. P. V. Kane interprets it in a different manner. According to him, 'the creditor keeps tied his own wife or son or cattle at the debtor's house or sits down at his door (fasting).'—History of Dharmaśāstra, III. 439. The other name, namely, '*gṛhasaṃrodha*' applied by Bṛhaspati, hints at the right meaning of the mode known as *ācarita*. Devaṇabhaṭṭa observes that the two are the same; 'ācaritākhyopāya eva gṛhasaṃrodhanenety anenopadiṣṭaḥ'. 'Smṛticandrikā, II, 383. The idea is that the debtor is made confined in his own house along with his members of the family including his wife and sons (which are to be taken as illustrative only) and the cattle. The creditor sits at his door with the threat of fasting (unto death) if the debt is not paid to him. It thus is a moral pressure on the debtor for the payment of the debt. The wife, son and cattle, as mentioned in the verse should therefore be interpreted as belonging to the debtor and not to the creditor. Vide here the notes by G. N. Jhā. (Manusmṛti—Notes, III, 562) In the *Vyavahāraprakāśa* of Pṛthvīcandra there is suggestion that the wife and sons, as referred to in the verse, belong to the debtor. Thus he observes that the creditor simply may go to the extent of obstructing the passage of the wives and the sons (of the debtor), but he should not enjoy them ;
'Atra dārādīnāṃ rodhanamātraṃ na tu bhogaḥ. *Vyavahāraprakāśa*, 243.

2. Yathaitad ācaritam uktaṃ tac carir gatibhakṣaṇayor ity asya dhātor bhakṣaṇārthaṃ rūpam idam. Caritaṃ bhaksitaṁ na caritam abhakṣitam abhojanam ity arthaḥ. Yaḥ punar dhanī svakīyam artham udgrāhayati tasyābhojanena prāyaścittaṃ nāsti.....dhanī svakīyabhṛtyaputreṇābhojanaṃ kārayati svayaṃ karoti vā.

Asahāya on Nārada, IV. 122.

Vide here also the notes by Jolly, S. B. E, XXIII, 72.

gate of the debtor.[1] The same idea is expressed by Medhātithi in his commentary.[2] He has been followed by Govindarāja,[3] Sarvajñanārāyaṇa[4] and Rāmcandra.[5] Vijñāneśvara accepts the same meaning.[6] Caṇdeśvara simply mentions confinment of the debtor along with wife and sons as constituting the *ācarita* method.[7] Aparārka takes it to be the customary method'.[8]

From these two types of interpretation it may be observed that the *ācarita* method developed in the country out of convention and that convention consisted in the form of confining the debtor in his house by the creditor, who would sit at his door without food so long as the debt is not discharged. That confinement in some form formed the means of recovery of loan may be guessed from the provision of Kātyāyana (580), where detention of the debtor has been prescribed on the basis of the convention of the country. It may also be stated that in the above-mentioned method of Kātyāyana there is provision for detention along with force. In the *ācarita* method that element of force has been substituted by confinement of a different nature, where the debtor is persuaded to pay both by confinement and by appeal to his moral sense. We may describe this method as one where force and moral pressure have been blended together with the sanction of the the custom. That this custom is ancient may be guessed from the text of Āpastamba. While writing about

1. 'Ācaritena vābhojanagṛhadvāropaveśanādinā lokasamācaritena.' Bhāruci's commentary on Manu, Vide, J, D. M. Derrett, 'A jurist and his sourccs : Medhātithi's use of Bhāruci' in the Adyar Library Bulletin, XXX (1966), 14,
2. Ācaritam abhojanagṛhadvāropaveśanādi, Commentary on Manu, VIII. 49.
3. Abhojanādinā...Commentary on Manu, VIII. 49.
4. Svayaṃ prāyopaveśena ..Commentary on Manu, VIII. 49.
5. Abhojanena...Commentary on Manu, VIII. 49, Vide here the notes by Bühler (S. B. E., XXV, 262). where he describes this means as 'the customary proceeding' i.*e.* 'by *killing* one's wife, children and cattle, and sitting at the debtor's door.' He refers to Bṛhaspati (X, 94)), but the reading '*hatvā*' which might have created the confusion should be replaced by '*badhvā*' which is the reading in most of the cases. (Vide Bṛhaspatismṛti. G, O. S, edition, p. 114. F. N. 5,).
6. Commentary on Yāj, II. 40.
7. Putradārarodho dvāropaveśanaṃ ṛṇodgrāhaṇopāya ācaritam ucyate ity arthaḥ. Vivādaratnākara. 68.
8. Ācaritaṃ deśācāraḥ. Commentary on Yāj, 11. 40

the persons whose food should not be partaken of Āpastamba refers to the creditors who sit at the door of the debtor to recover their loans. He uses the word *pratyupaviṣṭa*[1] and Haradatta in his commentary explains it as a creditor who sits by the side of the door after confining the debtors and others for the purpose of recovery of debt.[2]

So far as the applicability of this method is concerned, we do not have any suggestion from Kātyāyana. If *uparodha* (confinement) be taken in its general sense, then according to his provision (verse 585) it may be applied in all the cases generally, because it has been stated that the creditor may cause the debtor (in general) pay the debt through oppression and detention. If however, the method is explained after Aparārka as *deśācāra*, then the traders, husbandmen and artisans fall within the scope of this rule on the basis of the direction of Kātyāyana (Verse 588). What we think is that as in it there are both the elements of force and moral pressure, this method may be adopted by the creditors in all the cases.

8. Bala—method (force).

This method consists in bringing the debtor in the house of the creditor and compelling him to pay by beating and other means. This is the definition of the method presented by Bṛhaspati.[3] It may be mentioned in this context that in a verse of the *ṚgVeda*[4] there is a suggestion of the application of force on the debtor by the creditor.

Most of the commentators and digest-writers explain this method in the normal way of use of force. It is Medhātithi, who

1. Āpastambadharmasūtra. 1. 6, 19. I.
2. Ṛṇādinā kāraṇena adhamarṇādikaṃ nirudhya tatpārśve upaviṣṭaḥ.....
   Haradatta's commentary on Āpastambadharmasūtra, 1. 6. I9. 1. Vide in this connection identical Irish method of fasting near a debtor as described by H. S. Maine, in his Lectures on the Early Histry of Institutions, (London, 1875) 280. For other informations on the *ācarita* method vide, Sir Thomas Strange, Hindu Law, 1 308-309. Vide also, L. Rudolph and S. M. Rudolph, Modernity of tradition, 173. (he refers to 'self-suffering' which is similar to this method).
3. Yadā svagṛham ānīya tāḍanādyair upakramaiḥ /
   Ṛṇiko dāpyate yatra balātkāraḥ sa kīrtitaḥ // Bṛhaspati, X. 91.
4. ṚgVeda. 1. 169, 7. Vide here the commentary of Sāyaṇa.

presents once again an unexpected approach to the question. According to him, *bala* stands for approaching the king or the court (*rājādhikaraṇopasthāna*). It is the duty of the king to apply force to realise the money for the creditor.[1] From this interperetation it appears that Medhātithi is not in favour of the application of force by the creditor. It may reasonably be stated that if the creditor is allowed to make use of force to recover his debt then there may be possibility of the misuse of the provision by the creditor. In the verse providing use of force, force as a method has been mentioned in the last place and the purpose of the verse appears to be that this method is to be applied when other methods fail. Any how, this interpretation of the word in a different way offers scope for thinking as to how the *śāstrakāras* could sanction use of force as a method by the creditor himself. Medhātithi might have derived the inspiration for this idea from Bhāruci.[2]

Medhātithi in this context refers to an interpretation according to which these methods for the recovery of the loan have been prescribed as guidance to the king and not to the creditor. The argument in this case is that this provision occurs in the context of duties of the king. The sense of the verse is that the king should make the debtor pay by any one of these methods in the case where the debtor is defeated in the court as well as in the case where he admits the debt. The king is not to make the debtor pay all at once, but he should be considerate to both the parties, namely, the creditor and the debtor. It may be distress to the family of the debtor if the king makes him pay all the amount at a time. It has been stated accordingly that 'without absolutely ruining him, the debtor should be made to pay little by little according to his income. This is specially so in the case of a Brāhmaṇa. This is the righteous course of the king.' The debtor should be made to pay with a small

1. Balaṃ rājādhikaraṇopasthānaṃ. Tatra rājā sāmnā 'prayacchantaṃ nigṛhya ca prapīḍya dāpayatīti. Medhātithi on Manu, VIII. 49.
2. Bhāruci in the interpretatation of the word 'bala' observes :
'Balena vā svagṛhabandhanādinā mā bhūd asyārthakṣayo rājasamāveśanena.....'
The idea is not exactly clear. The suggestion in this line of Bhāruci is that the debtor in this case is forciby taken to the house of the creditor and he is reminded of the consequences that may follow if he is dragged to the court. It may be presumed here that Medhātithi could not fully understand the implication of the line of Bhāruci.

amount of interest. In case however, he possesses wealth more than what is needed for the maintenance of his family, he should be made to pay the entire amount of the claim. Medhātithi observes that according to this view, quoted above, the creditor should not take recourse to the methods of 'trick' and 'moral pressure' without previous consent of the king.[1]

This discussion by Medhātithi goes to show that there was an opinion current in the society, according to which the use of force by a creditor was not treated as commendable.

Kātyāyana rightly directs that the method of recovery of loan through force is to be applied in the case where the debtor is of wicked nature.[2]

Asahāya in his commentary on Nārada, explains that the methods of obtaining success enunciated by Kauṭilya in his *Arthaśāstra* (II. 10. 47.), namely, *sāma* (conciliation), *dāna* (presents), *bheda* (division) and *daṇḍa* (violence)[3] are the same as what are described here as the means of recovery of loan. (It is a fact that wherever 'expedients' are referred to by legal commentators, they turn to the *arthaśāstra* maxim.). Only (he suggests) the designations have been altered. The *ācarita* method is the one that is not mentioned by Kauṭilya.[4] In his interpretation he explains the second method of Nārada (i.e. *vyavahāra*) as equivalent to what is stated as *bheda*. Thus by way of explaining *vyavahāra* as a threat in the form of

1. Anye tu rājña evāyam upadeśa iti varṇayanti rājadharmaprakaraṇāt. Rājā jñāpita upāyair enaṃ dāpayet parājitaṃ svayaṃ pratipannaṃ ca. Na tu sahasā' vaṣṭabhya sarvasvaṃ dhanine pratipādanīyaḥ. yataḥ ubhayānugraho rājñā kartavyaḥ. Sarvasvādāne cādhamarṇasya kuṭumbotsādaḥ syāt so'pi na yuktaḥ. Uktaṃ hi :

   'Nāvasādya śanair dāppyaḥ kāle kāle yathodayam /
   Brāhmaṇas tu viśeṣeṇa dhārmike sati rājani // 'iti.

   Tasmāt kiṃcanavṛddhyā saṃdāpanīyaḥ, kuṭumbād adhikadhanasambhave sarvaṃ dāpanīyaḥ. .....chalācārau rājānam ajñāpayitvā na kāryau.

   Medhātithi's commentary on Manu, VIII. 49

2. .....duṣṭān saṃpīḍya dāpayet. Kātyāyana, 588.
3. For discussion an the nature of the *upāyas* vide P. V. Kane, History of Dharmaśāstra, 111, 171-177.
4. Atra cāṇakye sāmabhedopapradānadaṇḍāś catvāraḥ eva kāryasādhanopāyāḥ dṛṣṭāḥ. atrāpi ta eva catvāraḥ, kevalam anyanāmabhir dharmavyavahāracchalabalasaṃjñāniruktāḥ. Adhikam atrācaritam.

   Asahāya's commentary on Nārada. IV. 122.

of bringing the matter to the court, he mentions it as an illustration of *bheda*.[1]

On this interpretation of *bheda* it may be observed here that the term *vyavahāra* as we have seen, does not in the real sense of the term yield a meaning which may be treated as equivalent to *bheda* as understood in the *Arthaśāstra*. In the *Arthaśāstra* of Kauṭilya and in other texts the term *bheda* is understood in the sense of sowing the seed of dissension.[2]

There is however, a suggestion in the text of Bṛhaspati which may support the position pointed out by Asahāya. Bṛhaspati observes that the debt that has been accepted to be due by the debtor should be realised through the means beginning with *sāma*.[3] The observations of Vijñāneśvara may be referred to here. He states that the four *upāyas* may also be applied in the affairs of life of ordinary people.[4]

Among the commentators of Manu, Nandana finds significance in the order in which the means have been enumerated by Manu. He is of opinion that each succeeding method is to be adopted when the preceding one proves to be futile.[5] But this view does not appear to be quite acceptable because of the fact that *vyavahāra* which has been mentioned after *dharma* hardly fits well with the other methods, precisely because 'litigation' was only half way stage to recovery. The śāstric writers of early period put 'litigation' before force as we put decree before execution of it. We have already pointed out that according to Bṛhaspati, the *vyavahāra* method is to be applied in the case where the debtor denies his obligation. Under the circumstances the view of Nandana does not stand on a sound footing. It may be suggested that if the order of the methods

1. .....tenāsidhyamānaṃ bhedena rājakīyasabhābhayadraśanena vyavahāreṇa, Ibid.
2. Vide Arthaśāstra. II. 10. 47 ; XI. 1.
   For other informations on *bheda* vide P. V. Kane, History of Dharmaśāstra III, 174-175.
3. Pratipannam ṛṇaṃ dāpyaḥ sāmādibhir upakramaiḥ. Bṛhaspati, X 87.
4. Ete sāmādayo na kevalaṃ rājyavyavahāraviṣayāḥ api tu sakalalokavyavahāraviṣayāḥ. Mitākṣarā on Yāj, I. 346.
5. Eṣām upāyānāṃ pūrvapūrvābhāve uttaro grāhyaḥ pāṭhakramāt sāmarthyāc ca. Commentary on Manu, VIII. 49,

be like, *dharma, chala, ācarita* and *bala*, then the direction of Nandana may be taken to be workable.[1]

The use of the private methods for the recovery of the loan by the creditor has the sanction of law. Manu declares that the creditor who himself recovers his property from the debtor (through application of the methods mentioned in Manu (VIII. 49) should not be blamed by the king for taking what is the creditor's own.[2] The import of this direction is that even if force (*bala*) or fraud (*chala*) is perpetrated by the creditor on the debtor to recover his loan, the king should not question the propriety of that act. Normally acts done by force or fraud are voidable. Manu states elsewhere that the debtor who complains to the king that the creditor recovered (his dues) by self-help (independent of the court), shall be compelled by the king to pay the due sum to the creditor and one quarter of the sum (to the king) as fine.[3]

The same provision may be noticed in the directions of Yājñavalkya,[4] Viṣṇu[5] and Nārada.[6] In the text of Nārada there is a suggestion that the application of fraud in this case should not be treated as causing any sin of religious nature. This has been pointed out by Asahāya.[7]

All these texts go to prove that the use of force by the creditor had to be sanctioned by the *śāstrakāras* as a special measure.

9. Limitations of the use of force and special measures mentioned by Kātyāyana.

Reference has already been made to the directions of Bṛhaspati (X. 97) and Kātyāyana (589) that the use of force and other methods

1. It appears that Medhātithi realised the maladjustment of *vyavahāra* in the methods in the sense of legal proceedings and therefore attempted to explain it in a different way.
2. Yaḥ svayaṃ sādhayed artham uttamarṇo' dhamarṇikāt /
   Na sa rājñābhiyoktavyaḥ svakaṃ saṃsādhayan dhanam // Manu, VIII. 50.
3. Yaḥ sādhayantaṃ chandena vedayed dhanikaṃ nṛpe /
   Sa rājñā taccarturbhāgaṃ dāpyas tasya ca taddhanam // Manu, VIII. 176.
4. Yāj. 11. 40.
5. Viṣṇusmṛti, VI. 18-19.
6. Nārada, IV. 123.
7. In explanation of the word *āmuṣmikārthataḥ* in the verse of Nārada, Asahāya comments : 'āmuṣmikārthaṃ sādhuvartanabhaṅgapātakabhayāt'. on Nārada. IV. 123.

should not be made in the case where the debtor denies the debt and demands a trial in court. In the direction of Kātyāyana that the debtor may be held publicly before the people's court, there is a significant suggestion that forcible detention may be permissible in the case where it has the sanction of the custom.[1]

Devaṇabhaṭṭa by way of explanation of this direction of Kātyāyana observes that such detention is permissible in a case where the immemorial usage of the country allows the creditor to do so.[2] The creditor may himself do so or get it done through others.[3]

In this context Kātyāyana prescribes that when such detained debtor feels like answering the call of nature, he should be followed or may be left to go alone in fetters.[4] An alternative provision has been made that if the debtor can furnish a surety (for appearance) he may be released every day at meal times and at night, while the surety remains to such effect.[5] Kātyāyana discusses the course to be adopted when such a surety for appearance cannot be found or when the proposal of taking resort to a surety is not accepted by the debtor. Under the circumstances, his direction is that such a debtor should be confined in jail or to be placed under the vigilance of guards.[6] Here we notice that even when the

1. Dhāryo' varuddhas tv ṛṇikaḥ prakāśaṃ janasaṃsadi /
Yāvan na dadyād deyaṃ ca deśācārasthitir yathā // Kātyāyana, 580.
2. Yatra deśe dhanī svayam evāvarudhya dhārayati tatra tathaiva dhāryaḥ. Yatra punar adhamarṇasakāśād vetanārthinā nirghṛṇena puruṣāntareṇāvarudhya dhriyate tatra tathā puruṣāntaradvārā dhārya iti deśācārasthitir yathā ity asyārthaḥ. Smṛticandrikā, II, 384.
3. Vide Col. Dig, I, 340.
4. Viṇmūtraśaṅkā yasya syād dhāryamānasya dehinaḥ /
Pṛṣṭhato vānugantavyo nibaddhaṃ vā samutsṛjet // Kātyāyana, 581.
Devaṇabhaṭṭa explains that the second provision is meant for a debtor of wicked type : adhamādhamarṇaviṣayo dvitīyaḥ pakṣaḥ taditaraviṣayas tv ādyaḥ pakṣaḥ ity aucityād vyavasthāvagantavyā.
Smṛticandrikā, II, 384-385.
5. Sa kṛtapratibhūś caiva moktavyaḥ syād dine dine /
Āhārakāle rātrau ca nibandhe pratibhūḥ sthitaḥ // Ibid, 582.
6 Yo darśanapratibhuvaṃ nādhigacchen na cāśrayet /
Sa cārake nirodhavyaḥ sthāpyo vāvedya rakṣiṇaḥ // Kātyāyana, 583.
Devaṇabhaṭṭa explains that the first course is intended for those who do not avail of the services of the sureties even when avrilable, because that shows their wicked nature. The second course is for those who

śāstrakāras have sanctioned the use of force, they always showed at the same time a tendency to mitigate the use of the same under certain circumstances.

Where however the party is respectable, trustworthy and 'pure', he should not be placed in prison. Such a person should be set free without guard or should be bound by an oath.[1] This provision also shows that force was not to be treated as an absolute method under all the circumstances. In fact Asahāya and following him perhaps Devaṇabhaṭṭa, prescribe that the recognised means of recovery should not be indiscriminately employed by the creditor. They should be applied in appropriate cases.[2]

As we have already stated, this method having the sanction of immemorial usage of the country, should be applied according to Kātyāyana, to the case of traders, husbandmen and artisans (verse 588). Devaṇabhaṭṭa extends the scope of this method (deśācāra) to the Brāhmaṇas also, of course with concessions (Kātyāyana, 584). His argument is that the provisions in the rule of Kātyāyana (584) give scope of treatment to be accorded to the persons of noble character and therefore these provisions may be made applicable in the case of the Brāhmaṇas.[3] In the *Madanaratnapradīpa* it has been suggested that in certain parts of the country methods other than moral suasion may be adopted in the case of the Brāhmaṇas.[4]

10. Payment of debt through physical labour.

The application of force becomes limited in scope when it has been prescribed that if the debtor be willing he should be offered

cannot procure a surety : Ādyaḥ pakṣaḥ pratibhūlābhe' pi yo na dadāti tadviṣayaḥ tasyātidauṣṭyāt. Alabdhapratibhūviṣayo dvitīyaḥ pakṣaḥ tasyātidauṣṭyābhāvāt.' Sm C. II, 385.

1. Na cārake niroddhavyaḥ āryaḥ prātyayikaś śuciḥ. /
So'nibaddhaḥ pramoktavya nibaddhaś śapathena vā // Kātyāyana, 584.
2. Vide Asahāya's commentary on Nārada, IV. 122.
Smṛticandrikā, II, 383-384 : 'Dharmādayaś copāyā na yathākāmaṃ prayoktavyāḥ. kiṃ tu yathāyogaṃ prayojyāḥ.'
3. Yady api vaṇigādiviṣayatā deśācārākhyopāyasyoktā tathāpy āryādiyogyānugrahapakṣapratipādanād dharmākhyopāyasādhyaviprādāv api deśācārākhyopāyo yogyānugrahapakṣasahitaḥ prayoktavya iti mantavyam.
Smṛticandrikā II, 386.
4. .....tathāpi kvacid deśaviśeṣe viprādāv upāyāntaraprayogo 'stīti sūcanārtham.
Madanaratnapradīpa, 161.

an opportunity to work off his debt by labour. It may be explained that this procedure of paying off the debt through labour may be included under one of the categories of the method of moral suasion and it is to be expected that this may be resorted to before the final decision to apply force is arrived at. There is no doubt that this was a survival of slavery for debt, recognised in the sāstra in the guise of self-sale for the discharge of debt.

We have from Manu the provision that the debtor in his indigency may make good what is due as debt to the creditor through work if he be of the same caste of the creditor. This will also apply where the debtor is lower in caste than that of the creditor.[1] Naturally debtors belonging to higher class could not work for the creditors belonging to lower caste. Manu provides elsewhere that the debtors belonging to castes of Kṣatriya, Vaiśya and Śūdra in their impoverished state should get themselves free through their labour.[2]

Yājñavalkya provides that an insolvent debtor of a lower class should be made to work for his debt, while an insolvent Brāhmaṇa

1. Karmaṇāpi samaṃ kuryād dhanikāyādhamarṇikaḥ /
Samo'vakṛṣṭajātis tu dadyāc chreyāṃs tu tac chanaiḥ // Manu, VIII. 177.
Medhātithi explains that the role of a debtor will be like that of a servant and the amount of work done by him should be evaluated according to the existing rate of pay that is normally to be paid to a labourer doing identical work and that should be credited to his account. He should be free when the work done by him in value gets equal to the value of the capital with interest :
.....karma kārayitavyaḥ, preṣyatvaṃ vrajet. Yāvatā dhanena tat karma karmakaraḥ karoti tat tasya praviṣṭaṃ saṃsady api kartavyam. Karma kurvataś ca salābhadhane praviṣṭe dāsyān mokṣaḥ.
Medhātithi on Manu, VIII. 177.
For the interpretation of the word '*samam*' in the verse, Jagnnātha explains that the debtor by his labour should 'put himself on a par with his creditor. The parity consists in mutual exoneration from debt..... Before the debt was discharged there was this disparity that one was creditor, the other debtor ; but the debt being discharged by means of labour, on a computation of the hire for work perfomed, that disparity vanishes.'
Col. Dig, I, 350.

2. Kṣatraviṭśūdrayonis tu daṇḍaṃ dātum aśaknuvan /
Ānṛṇyaṃ karmaṇā gacched vipro dadyāc chanaiḥ śanaiḥ // Manu, IX. 229.
Medhātithi explains the verse as making reference to penalty, but Rāghavānanda explains it in the context of recovery of debt.
Vide their commentaries on Manu, IX. 229.

should be allowed the privilege of paying by instalments according to his gains.[1]

Nārada provides that if due to a reverse of fortune in course of time the debtor becomes disabled, he should be allowed the opportunity of discharging the debt gradually acccording to his ability on the basis of his gains.[2] He does not refer to the opportunity that may be offered to the debtor to discharge the debt through labour.

The direction of Bṛhaspati in this respect is the same as that of Manu.[3]

The writers on *dharmaśāstras* were careful to prescribe that even in exacting services from the debtor in satisfaction of the debt the creditor should take care not to impose a work altogether unsuitable to the social status of the debtor. Kātyāyana prescribes that if the debtor is regarded as unable to pay the debt he should be made to work suitable for him and that the question of placing him in prison (through force) may arise only when he is unable to render any sort of service.[4] The point has been further elaborated by him in his direction that if the creditor makes the debtor do for him a degrading work, about which no hint was given in the beginning, he (the creditor) should be punished by the first amercement and the debtor is to be absolved from the liability of paying the

1. Hīnajātiṃ parikṣīṇam ṛṇārthaṃ karma kārayet /
Brāhmaṇas tu parikṣīṇaḥ śanair dāpyo yathodayam // Yāj. II.43.
Vijñāneśvara here observes that the use of the word *'hīnajāti'* in the direction of Yājñavalkya should also be taken to include one of the same caste. Similarly the word *'brāhmaṇa'* should be taken to include a man of higher caste : Atra hīnajātigrahaṇaṃ samānajāter apy upalakṣaṇam.....brāhmaṇagrahaṇaṃ ca śreyojāter upalakṣaṇam. Mitākṣarā on Yāj, II. 43.
2. Nārada, IV. 131.
3. Bṛhaspati. X. 92 = Manu, VIII. 177.
Vide also Bṛhaspati, X. 89, 93, 105.
4. Dhanadānāsahaṃ buddhvā svādhīnaṃ karma kārayet /
Aśaktau bandhanāgāraṃ praveśyo brāhmaṇād ṛte // Kātyāyana, 479.
The word *svādhīna* should be treated as *significant. It should mean a job* befitting a man of his caste and status. Medhātiithi on Manu, IX. 229 explains : 'yad asyocitaṃ karma'. Vijñāneśvara has the same view : 'svajātyanurūpam' on Yāj. II. 43. He adds that it should be not in detriment to the interest of the members of his family :.....tatkuṭumbāvirodhena.....
on Yāj. II. 43.
Vide also Kullūkabhaṭṭa's view on Manu, VIII. 177.

debt.[1] (Here reference should be made of identical provision made by Kātyāyana regarding forcible use of a pledge like cattle, maid-servant etc. vide Kātyāyana, 525-526). This shows that even when the debtor is compelled to render service towards payment of his debt, he should be given a dignified job befitting a member of his class and the spirit of the direction is that force should not be applied to the debtor to exact from him any degrading work.

The principle of discharging a debt through service was not to be followed in the case where the debtor was a Brāhmaṇa or where he belonged to a caste higher than that of the creditor. Manu distinctly mentions about the Brāhmaṇas that they should be allowed the privilege of paying it by instalments.[2] In another place he extends this privilege to the debtors belonging to a caste higher than that of the creditor.[3] Yājñavalkya mentions the Brāhmaṇas by name and his direction is the same as that of Manu.[4] Medhātithi refers to a text of Nārada having the same direction.[5] Bṛhaspati shares the views of Manu and Yājñavalkya.[6] The attitude of Kātyāyana remains the same.[7] The position remains unchanged in the interpretations by the commentators. Medhātithi shows a

1. Yadi hy ādāv anādiṣṭam aśubhaṃ karma kārayet /
   Prāpnuyāt sāhasaṃ pūrvam ṛṇān mucyeta carṇikaḥ // Kātyāyana, 590.
   Vācaspatimiśra introduces the verse by stating that if the creditor takes recourse to force before trying other methods he should be punished: prathamata eva balātkāre daṇḍam āha kātyāyanaḥ..... Vivādacintāmaṇi. 21.
   Vide here the notes by G. N. Jhā in his translation of Vivādacintāmaṇi, 36.
2. Manu, IX. 229.
3. Manu, VIII. 177.
4. Yāj. II. 43.
5. Brāhmaṇas tu parikṣīṇo śanair dadyād yathādaśam. on Manu, VIII. 177.
6. Bṛhaspati, X. 92 = Manu, VIII. 177;
   Bṛhaspati, X. 93 = Yāj. II. 43.
   Here mention should be made to a verse of Bṛhaspati where he provides that an indigent debtor belonging to the class of vintners and the like should be made to work for him after he is taken to his own house:
   Nirdhanam ṛṇikaṃ geham ānīya karma kārayet /
   Śauṇḍikādyaṃ brāhmaṇas tu dāpanīyaḥ śanaiḥ śanaiḥ // X. 105.
   I have differed here from Jolly and Jhā in this translation. (See S. B. E., XXXIII, 59; and Manusmṛti. Notes, III, 616). The word underlined is better to be construed with *ṛṇika*. It does not fit with *karma* for it then goes against other rules relating to work.
7. verse 497.

compromising attitude by declaring that the king should see that the interest of the creditor is protected, while at the same time a Brāhmaṇa is not put into trouble.[1] On another occasion he states that even when it is taken from a Brāhmaṇa it should be taken into consideration that the members of his family should not suffer.[2] Vijñāneśvara refers to the provision of Manu (VIII. 177) and by way of harmonisation interprets that the rule of allowing the Brāhmaṇas the privilege of paying by instalments should be applied to the case where the debtor belongs to a caste higher than that of the creditor.[3] Though it is not exactly clear whether this privilege was granted to the members of other castes at a later stage or not, because the direction of Manu is not clear in this respect,[4] yet considering the special position of the Brāhmaṇas (the special case of the rate of interest may be mentioned in this context), it appears that the privileges of the Brāhmaṇas were extended to other cases subsequently.

Considering these provisions, it would not be wrong to observe that the writers on law did not side with the creditor to allow him to ill-treat the debtor by using force or by making him work in a way derogatory to his social status. The use of force was sanctioned when all other means of conciliation of recovery of debt were tried and proved useless. In this respect the mention of the use of force at the last position in the list (Manu, VIII. 49) appears significant. It has been observed rightly: 'There can be no doubt that the use of force was meant as an extreme measure to be resorted to on rare occasions and when the debtor dishonestly withheld payment without any just cause and even then it was hemmed in by a number of conditions and limitations which took away much of its apparent offensiveness.'[5] We must, in all candour, add that whether these norms were observed remains largely open to question.

1. Ato rājñā dhanikadhanasaṃśuddhyartham parikṣiṇo brāhmaṇo na piḍayitavyaḥ, uttamarṇaś ca rakṣaṇīyaḥ. Medhātithi on Manu. VIII. 177.
2. Brāhmaṇas tu kuṭumbānām avirodhena śanair dāpyaḥ. Medhātithi on Manu, IX. 229.
3. Ataś ca kṣatriyādir api parikṣīṇo vaiśyādeḥ śanaiḥ dāpyo yathodayam. *Mitākṣarā* on Yāj, II. 43.
4. Manu uses the word *'śreyān'* (in VIII. 177) and that has been explained by Medhātithi as: 'uttamajātīyo guṇādhiko vā'.
5. P. N, Sen, The general principles of Hindu jurisprudence, 316.

11. Alternative measure in the form of change of the deed of debt. (novation)

The *śāstrakāras* of ancient India attempted to take into consideration the possible circumstances relating to the payment of debt. There may happen a situation in which in spite of the willingness on the part of the debtor to pay, he cannot discharge it because of his inability to do so. Manu observes that if he debtor cannot pay the debt (at the stipulated time) and if he intends to renew the contract, he may renew the agreement after paying the interest that is due.[1] The old debt is extinguished and a new one is incurred—this is correctly observed as a form of performance of the obligation, the creditor making an accord and satisfaction (to use English terms).

Manu observes further that when the debtor due to his poverty is not in a position to pay the money (due as interest), he should renew the bond and pay as much interest as may be possible.[2]

It is surprising that such a practical solution has escaped the attention of Yājñavalkya, Viṣṇu and Nārada. Bṛhaspati, while speaking of the applicability of the methods, refers to this method of transaction of a fresh document. According to him, when the time stipulated for payment has elapsed and when the interest on capital has ceased (on becoming equal to the principal), the creditor should either recover his debt or cause a new writing (by the debtor) in the form of compound interest.[3]

1. Ṛṇaṃ dātum aśakto yaḥ kartum icchet punaḥ kriyām /
   Sa dattvā nirjitāṃ vṛddhiṃ karaṇaṃ parivartayet // Manu, VIII. 154.
2. *Adarśayitvā* tatraiva *hiraṇyaṃ* parivartayet /
   Yāvatī sambhaved vṛddhis tāvatīṃ dātum arhati // Manu, VIII. 155.
   The meaning of the words underlined is ambiguous. Medhātithi explains: 'adattvā nirdhanatvāt hiraṇyam.' Mitramiśra perhaps interprets it rightly by stating that it refers to the case where the debtor cannot pay the entire sum: 'tena dhanine sarvaṃ savṛddhikam ṛṇam adattvety arthaḥ.'
   Vyavahāraprakāśa, 260-261.
3. *Pūrṇāvadhau śāntalābham* ṛṇam udgrāhayed dhanī /
   Kārayed vā ṛṇī lekhyaṃ *cakravṛddhi*vyavasthayā // Bṛhaspati, X. 99.
   Pūrṇāvadhau refers to a loan with specified time, while *śāntalābha* concerns a debt without any limitation of time. Vide Vyavahāraprakāśa of Mitramiśra: 'sāvadhikam ṛṇam avadhiprāptau niravadhikaṃ dvaiguṇyādiparamavṛddheḥ prāptau'..... p. 260.
   It may here be mentioned incidentally that on the basis of the interpretation

By compound interest here is to be understood that the sum with (doubled) interest should be taken as the principal and fresh interest should be stipulated on it. Mitramiśra explains the position clearly.[1] Jagannātha in adjustment with this *cakravṛddhi*, referred to by Bṛhaspati, explains that the verses of Manu (VIII. 154-155) refer to *cakravṛddhi* type of interest.[2] It may be mentioned here that a text of Kātyāyana has been interpreted by Jagannātha in the light of fresh execution of document.[3]

A text of Bṛhaspati of ambiguous meaning has also been explained by Jagannātha as having a reference to the execution of a fresh deed of debt. The text as it stands is that 'as compound interest is taken on the doubled prinipal, so does the use of a pledge (become a new principal), the debt together with interest being considered as the (new) principal.'[4] This text has been referred to by Devaṇabhaṭṭa,[5] Caṇḍeśvara,[6] Mitramiśra[7] and others, but no clear idea about the verse can be derived from those discussions. Jagannātha's interpretation is elaborate. According to him 'when wheel-interest is received after the debt is doubled, as in that case

of the first line of this verse of Bṛhaspati, Jagannātha presumes that 'if a creditor, by violent methods or the like, exacts payment of a sum but for a limited time before its term has expired or of a debt for no limited time before interest ceases, he shall be punished' Col. Dig, I, 358.

1. Yad vā parmavṛddhisahitaṃ mūlaṃ kṛtvā lekhyāntaraṃ grāhyam.
Vyavahāraprakāśa, 260.
2. Vide Col. Dig. I, 359-360.
3. Grāhyaṃ syād dviguṇaṃ dravyaṃ prayuktaṃ dhanināṃ sadā /
Labhate cen na dviguṇaṃ punar vṛddhiṃ prakalpayet // Kātyāyana, 509.
Colebrooke translates it thus : 'Twice the sum lent should always be received by the creditor, if the debt be of long standing ; but if the debtor does not pay twice the principal when interest has ceased, the creditor may again exact an agreement for interest'. He explains the last part as 'making the former debt, together with interest, his present principal, he may stipulate interest afresh.' He observet hat this is the 'wheel- interest' mentioned by Bṛhaspati. Vide Col. Dig, I, 358.
4. Dviguṇasyopari yathā cakravṛddhiḥ pragṛhyate /
Bhogalābhas tathā tatra mūlaṃ syāt sodayaṃ tv ṛṇam // Bṛhaspati, X. 100.
The reading of the text as noted here is the most possible correct one. There is minor variation in reading. The transletion is by Jolly.
5. Smṛticandrikā, II, 389.
6. Vivādartnākara, 72.
7. Vyavahāraprakāśa, 260.

the original debt with interest becomes a new principal, so does the use of a pledge also become a new principal in a certain case; that is, even the use and profit of a pledge bear interest. For example; a man borrows money, pledging a cow, on the terms: 'this cow shall be milked by you so long as I do not discharge the debt' or 'this cow shall be milked by you during fifty months;' or, 'she shall be milked to make good the interest of the debt.' In this case, should the cow accidentally die notwithstanding the utmost care, or be stolen by thieves and the like; then, if the debtor does not give a fresh pledge, the value of usufruct and the principal sum must be paid at the time of discharging the debt. But if the debtor cannot do so, then, being sued before the king or before a public assembly, or attending the creditor of his own accord he executes a new writing in the form of wheel-interest. In that case he may execute a bond after paying the value of usufruct; should that exceed his means, he may add the principal sum to the value, and inserting as principal the accumulated sum, execute a new deed, in which stipulated interest and the like, or legal interest at the rate of an eightieth part and so forth, may be established by consent of both parties; and he may cancel the former note.'[1]

Jolly in his notes on the verse of Bṛhaspati brings out the significance of the comparison of the verse. He observes: 'The comparison here proposed relates to the case when a pledge for use has been accidentally destroyed and a new bond is executed, in which the interest is calculated on the principal together with the lost usufruct.'[2]

In the *Vyahāranirṇaya* a text of Prajāpati has been quoted where also we find provision for the change of document after payment in parts of the capital or the interest.[3]

This change of the deed of debt is a device of the creditor to evade the provision of law, according to which the capital and the interest together cannot be more then twice the capital (Manu. VIII.

1. Col. Dig, I, 362-363.
2. S. B. E, XXXIII, 331.
   Vide here also the notes of G. N. Jhā in his translation of the Vivādacintāmaṇi, 37.
3. Vṛddhiṃ vṛddhyaikadeśaṃ vā mūle'py aṃśam athāpi vā /
   Yathāśakti pradāyaiva karaṇaṃ parivartayet //
   Vide Vyavahāranirṇaya, 255.

151). Evidently in such a fresh transaction the creditor gets more than double the capital. This has been pointed out by Medhātithi.[1] He presents an explanation as to why there is necessity of fresh exection of a deed. Accordining to him if the capital reaches a stage where no further interest can be charged, and if the debtor does not discharge the debt by that time, there is possibility of lethargy on the part of the debtor. Moreover, forgetfulness may fall on the witnesses. He quotes a text according to which if indifference is shown in any transaction for a period of ten years, there can be no suit on its basis, specially in the case of *sāhasa* (reckless act). He further observes that this verse of Manu should be treated as a direction for the king and is intended for showing favour to the debtor (who cannot discharge the debt according to his agreement). The idea is that through this change of document the debtor is allowed time and is not forced to pay the total amount at one time.[2]

Medhātithi takes a realistic approach to the question by stating that when such a change of document is executed afresh, the new rate of interest should be lesser than the previous one, so that it may not be a heavy burden on the debtor.[3]

In order to avoid any confusion regarding the fresh transaction, it has been directed by Medhātithi that the debtor at the time of fresh execution of the deed should categorically state in the presence of the witnesses the amount that is the capital and the amount that should be treated as interest. The interest should be calculated for one year only.[4] Medātithi · here refers to the views of Yajva[5]

1. Dviguṇād adhikaṃ na grāhyam iti yad uktaṃ tasyāyam apavādaḥ.
Medhātithi on Manu, VIII. 154

2. Śāntalābhe dhane'dīyamāne ālasyādisambhāvanā, sākṣiṇaś ca dīrghe gacchati kāle vismareyuḥ, yathoktam :
Yatra kārye bhaved yena kṛtopekṣā daśābdikī /
Vivādas tatra naiva syāt sāhaseṣu viśeṣataḥ //
tathā daśavarṣopekṣetim ṛṇam asādhyam iti. .....ayaṃ ca rājña upadeśa piḍitasyānugrahaḥ. Atha sarvaṃ tadānīm avaṣṭabhya na dāpyata eṣo'nugraho nirdhanasya. Medhātithi on Manu, VIII. 154.

3. Punaḥ karaṇe vṛddhisahitamūlībhūte laghīyasī vṛddhiḥ kartavyā yāvatyā vṛddhyā nātipīḍyate, yā prāg āsīt tato nyūnety arthaḥ.
Medhātithi on Manu, VIII. 155.

4 Sākṣisamakṣam evaṃ brūyāt etāvan mūlam asmai dhārayāmi etāvatī ca vṛddhir iti, tatraivāropayet yāvatsaṃvatsarāt vṛddhir iti.....
Medhātithi on Manu, VIII. 155.

5. Bhāruci in his commentary says : 'Aśaktasya kākiṇīm api dātuṃ saha vṛddhyā punaḥ kriyā'. (Received through kindness of Prof. Derrett)

(Bhāruci ?) Asahāya and Nārada, according to which the debtor should be made to pay even a negligible sum of money, evidently as a token, at the time of fresh transaction of debt. The reason is that the witnesses may for themselves see the debtor-creditor relationship (so that if any dispute arises in future they may remember this quickly).[1] In fact, such direction is intended for avoiding any complication that may arise from the debtor's side.

Devaṇabhaṭṭa in his interpretation of the direction of Bṛhaspati (X. 100) observes that the question of execution of a new deed should arise when the interest ceases to accrue.[2]

From these discussions it may be observed that the *śāstrakāras* in consideration of the special situation in which both the creditor and the debtor may be placed had to lend recognition to this provision of the change of deed notwithstanding the fact that it goes against the general theory of *dvaiguṇya.* We may presume that this is one of the cases in which the *śāstras* attempt to adopt themselves with the circumstances. The suggestion of Medātithi that the rate of interest in this case should be less than the previous one, is quite rational in view of the hardship that may be caused to the debtor who is already in difficulty.

12. The role of the king when the matter is brought to his notice.

Ancient Indian courts did not work for nothing. Fines and court-fees were part of the royal income. Hence we are concerned to some extent with the impact of these two expenses on the use of litigation to recover debts. On the question of penalty to be imposed by the king when the matter is referred to the court, Manu prescribes that the debtor should pay five in hundred as a fine if he admits the debt as due. But it will rise up to ten in hundred if he denies it first and if it is proved to be due later on in the court.[3]

1. Yajvāsahāyanāradānāṃ mate kākiṇīmātram api śaktaḥ karaṇaparivṛttikāle dāpāyitavyaḥ, yena sākṣiṇo na śravaṇamātre sākṣitvaṃ dadāti tatsamakṣam adhamarṇaḥ. Arthasambandho'pi prātyakṣībhavati.
Medhātithi on Manu, VIII. 155.
2. Dviguṇagrahaṇāt chāntalābha eva pūrvoktalekhyāntarakaraṇapakṣo na punaḥ ..... Smṛticandrikā, II, 389.
3. Ṛṇe deya pratijñāte pañcakaṃ śatam arhati /
Apahnave *taddviguṇaṃ* tan manor anuśāsanam // Manu, VIII. 139.

The fine evidently is for dragging the creditor to the court for satisfaction of his demand.[1]

Yājñavalkya observes that ten in hundred should be the penalty for the debtor in this case, while in the case of the creditor who realises his money, it should be five in hundred as costs (*bhṛtirūpeṇa*).[2]

This is presumed to refer to the case where the debtor admits the debt. In the case of denial he has the general provision that if the claim is proved the defendant (debtor) should pay the plaintiff (creditor) his due and an equal amount to the king (as a fine for denial—*apalāpadaṇḍam*).[3] In the case of a person who files a false suit, his penalty is also double the amount claimed.[4]

These amounts are very high and probably *in terrorem*. If they are to be taken seriously it is no wonder that the texts recognise self-help as amply as they do.

Viṣṇu observes that if the creditor approaches the king for the recovery of the loan, the unsuccessful debtor is to pay ten per cent as penalty to the king.[5] The creditor on receipt of his sum is to pay five per cent to the king.[6]

Nārada directs that if a rich debtor through dishonest perverseness does not pay his debt, the king shall compel him to pay it and shall take five in hundred (from the creditor towards defraying the

1. Kim iti matsakāśam uttamarṇaḥ preṣito bahir eva kasmān na paritoṣita ity ato'na śāstravyatikrameṇa daṇḍam arhati.
Medhātithi on Manu, VIII. 139.
Medhātithi refers to an interpretation of the word underlined, according to which it should refer to double the amount due to the creditor, but he rejects it on the ground that such a penalty becomes too heavy for the debtor: 'Anye tu yāvat tasmai deyaṃ taddviguṇam.....sa ca na yuko dviguṇasyātyantabahutvāt. Ibid.
2. Rājñādhamarṇiko dāpyaḥ sādhitād daśakaṃ śatam /
Pañcakaṃ ca śataṃ dāpyaḥ prāptārtho'py uttamarṇikaḥ // Yāj, II. 42.
3. Nihnave bhāvito dadyād dhanaṃ rājñe ca tatsaman. Yāj, 2. II.
Vijñāneśvara observes that this rule relates to the recovery of debt: Etac ca ṛṇādānaviṣayam eva. on Yāj. II. II.
4. Mithyābhiyogī dviguṇam abhiyogād dhanaṃ vahet. Yāj. 2. II.
5. Uttamarṇaś ced rājānam iyāt tadbhāvito'dhamarṇo rājñe dhanadaśamabhāgasammitaṃ daṇḍaṃ dadyāt. Viṣṇusmṛti, VI. 20.
6. Prāptārthaś cottamarṇo viṃśatitamam aṃśaṃ (dadyāt), Ibid, VI. 21.

charges of judicature).[1] He states further that if the debtor acknowledges the debt the king should take ten per cent from him as fine but if the debtor becomes defeated (after denial of the debt) the fine shall be twenty per cent.[2]

Yama has the direction that if the rich debtor does not pay his debt through dishonest perverseness, the king should make him pay and take twice the sum as a fine.[3]

In the *Vivādabhaṅgārṇava* a text of Vyāsa has been referred to according to which 'if after denying the claim the party himself acknowledges the due, that is considered as a tardy acknowledgement, and the fine ordained is half of what is imposed in the case of obstinate denial.'[4]

Vijñāneśvara[5] by way of explaining the rule of Yājñavalkya (2. II), adds that the penalty that has been prescribed should also be extended to the case of *prāṅnyāya*[6] ('an appellant from a former decision') and *pratyavaskandana*[7] (special plea).

Devaṇabhaṭṭa, while explaining the provision of the Yama, explains that the word *'dviguṇa'* as applied in the verse should be taken in the sense of principal with interest.[8] In interpretation of the same rule of Yama, Jagannātha observes that 'if the debtor begins by denying the debt, though conscious of owing it, and if afterwards, being brought into court, acknowledges the debt before the writing

1. Ṛṇikas sadhano yas tu daurātmyān na prayacchati /
   Rājñā dāpayitavyaḥ syād gṛhītvā pañcakaṃ śatam // Nārada, IV. 132.
   That five per cent should be taken from the creditor is clearly explained from the commentary of Bhavasvāmī on N. M. S. I. 109, and that of Naṇḍapaṇḍita on Viṣṇusmṛti, VI. 20.
2. Svavāksaṃpratipattau tu ṛṇikaṃ daśakaṃ śatam /
   Vinayaṃ dāpayed rājā dviguṇaṃ tu parājitam // Nārada, IV. 133.
3. Ṛṇikas sadhano yas tu daurātmyān na prayacchati /
   Rājñā dāpayitavyaḥ syāt gṛhītvā dviguṇaṃ tataḥ //
   Yama quoted in the Smṛticandrikā. II, 388
4. Col. Dig, 1, 369.
5. Prāṅnyāye pratyavaskandane cedam eva yojanīyam. Mitākṣarā on Yāj. 2.11
6. For prāṅnyāya vide Kātyāyana, 171.
7. For pratyavaskandana we have the definition from Nārada thus :
   Arthinā likhito yo'rthaḥ pratyarthī yadi taṃ tathā /
   Prapadya kāraṇaṃ brūyāt pratyavaskandanaṃ smṛtam //
   Quoted in the Mitākṣarā on Yāj. II. 7.
   'If a defendant while admitting the plaintiff's written allegations sets up a plea that is called a confession and avoidance'.
8. Dviguṇam iti savṛddhikamūlyapradarśanārtham, Sm. C. II, 388.

or other evidence be produced, he shall only be fined in a sum equal to the debt, for half the fine in question is ordained when the defendant himself acknowledges the debt'.[1]

With reference to the duty of the king it has been stated in the *Śukranītisāra* that the creditors on pretext of compound interest extract money from the debtors and as such the king should protect the subjects from them.[2] This probably means that they take advantage (as at present) of the debtor's situation to charge exorbitant rates and compound interest instead of simple interest. The king has been directed to take to the methods of conciliation and punishment in the case of recovery of the creditor's debt from the debtor, who inspite of his means to do so does not pay back the loan.[3]

From the discussion made above, it is clear that the king has a role to play in respect of looking to the interest of both the debtor and the creditor. It has been pointed out before that the debtor has a right to appeal to judicature and in that case if the creditor harasses him he (the creditor) is to forfeit his claim and be liable to pay an equal fine. (Kātyāyana, 589). A false appeal to court has been discouraged through imposition of heavy penalty. The nature of penalty shows that penalty becomes lighter if the debtor admits his debt and if it is proved otherwise when he denies it, the penalty is double. The same provision will be applied in the case where the debtor notwithstanding his ability to pay does not do so out of wickedness. The amount that it is charged from the creditor when his loan is realised, is to be treated as court-fee.

13. Order in the payment of debt.

Some of the *śāstrakāras* have taken up the question of the order in which a debt should be discharged.[4] Evidently such a case will arise when a debtor has contracted debts from different creditors on

1. Col. Dig, 1, 369.
2. Dhanikāś cakravṛddhyādimiṣatas tu prajādhanam /
   Saṃharanti hy atas tebhyo rājā saṃrakṣayet prajām // IV, 5. 323.
3. Samarthaḥ san na dadāti gṛhītaṃ dhanikād dhanam /
   Rājā saṃdāpayet tasmāt sāmadaṇḍavikarṣaṇaiḥ //
   Śukranītisāra. IV. 5. 324.
4. For discussion on this topic vide P. V. Kane, History of Dharmaśāstra, III, 452-454.

different dates and when more than one turn up to claim the debt at the same time. Since the possiblity of fraudulent preference cannot be ruled out the subjectmatter may be taken seriously. It may be presumed that though the debtor is bound to pay all the debts contracted by him to different parties whenever a demand is made for payment (this is not to be applied to the case where there is a time-limit), yet the rules regarding the order of peyment have been introduced with a view to offer relief to the debtor and the creditor eqally. The relief comes to the debtor in the form that he is not to discharge all the debts at a time. The creditor in this rule may find relief in the sense that his claim for payment in the order in which it has been executed may not be overruled.

Kauṭilya directs that the debtor may follow either of the methods of payment. He may pay it in the order in which the debt was contracted or may show preference to the debt contracted from a king and a *śrotriya*.[1] It is not clear exactly what the order should be in the case where the creditors are the king and a *śrotriya*. Preference for the king in respect of payment of the debt may be reasonably accounted for. On the one hand a king by himself is a person who should be treated as an object of fear and the common tradition is that one should not rely on a king because he is not consistent in his favour and disfavour. Added to it is the condition that he is a creditor, with the authority of exercising his powers both as a king and as a creditor. On the other hand the debtor as a loyal subject should always think that the king as the head of the state may be in urgency of money in the interest of the state. So it should be the point of the debtor to see that an obligation to the head of the state is discharged in preference to others. So far as the preference for the debt of a *śrotriya* is concerned it may be stated that the rule is motivated by respect on the one hand and by consideration of his financial condition on the other.

Kauṭilya discusses the possibility of several creditors belonging to difierent classes (castes) claiming at the same time recovery of their debts. He takes a practical and at the same time a sympathetic attitude by declearing that unless the debtor has the possibility of

1. Tatrāpi gṛhītānupūrvyā rājaśrotriyadravyaṃ vā pūrvaṃ vā pūrvaṃ pratipādayet. Arthaśāstra, III. II. 20.

leaving the territory the two creditors should not sue one debtor at one time.[1]

Yājñavalkya prescribes that the king should make the debtor pay his creditors in the order in which the debts were contracted (if all the creditors belong to the same class). But if the creditors happen to belong to different castes the payment should be made in the order of the castes.[2] The verse of Yājñavalkya as it stands, does not exactly indicate which of the two principles, namely, the order of contracting the debt and the order and the castes, is to be followed. If the verse is to be studied in the background of the *Arthaśāstra* (III. II. 20) (we have noticed that in some cases there is similarity of provisions between the two texts. Special mention may be made of the rates of interest) it may be presumed that both the principles were operative and it was left to the debtor to the to decide the course to be adopted. The interpretation by Vijñāneśvara shows his attempt at harmonisation. The same vagueness is noticed in the text of Kātyāyana. The verse as it is should mean that if there be many debts to be paid, these that are contracted first should be paid first, (but if the question of caste is to be accepted then) the payment to a king (*kṣatriya*) should be made after it is done to a *śrotriya*.[3]

Kātyāyana oserves that 'if all the contracts were written in one day, the debts, payment, subsisting demand and the interest shall be equal; otherwise in order of time.'[4] The idea is that in this case the previous order of payment in respect of contracting of the loan

1. Nānarṇasamavāye tu naikaṃ dvau yugapad abhivadeyātām anyatra pratiṣṭhamānāt. Arthaśāstra. III. 11. 19.
2. Gṛhītānukramād dāpyo dhanināṃ adhamarṇikaḥ /
   Dattvā tu brāhmaṇāyaiva nṛpates tadanantaram // Yāj. II. 41.
   Vijñāneśvara explains that the order of precedence should be followed in the case where the caeditors belong to the same caste. If they belong to different castes the payment should be made according to the order of the castes ·
   Samānajātīyeṣu dhaniṣu yenaiva krameṇa dhanaṃ tenaiva krameṇādhamarṇiko rājñā dāpyaḥ. Bhinnajātīyeṣu tu brāhmaṇādikrameṇa.
   Commentary on Yāj, II. 41.
3. Nānarṇasamavāye tu yad yat pūrvakṛtaṃ bhavet /
   Tat tad evāgrato deyaṃ rājñaḥ syāc chrotriyād anu // Kātyāyana, 514
4. Ekāhe likhitaṃ yat tu tat tu kuryād ṛṇaṃ samam /
   Grahaṇaṃ rakṣaṇaṃ lābham anyathā tu yathākramam // Ibid. 513.
   The translation of the verse is by Colebrooke, Col. Dig. 1, 377-378.

or the order of castes should not be taken into consideration. The assets of the debtor should be divided among all the creditors in proportion to the amount of their respective debts. The part '*yathākramam*' in the verse has been interpreted by Devaṇabhaṭṭa to mean either the order of contracting the loan or the order of the caste.[1]

The rule of order has a further important exception in the form that the creditor who can show that assets were gained by the debtor through the money lent by him, shall get preference to others and here the previous rule should not operate.[2] The reason for such a provision appears to be that though all the creditors may rightly claim payment of the loan, yet in this case the creditor may have a preferential claim just in consideration of the fact that the debtor could utilise it to earn profit. This shows that the order of payment as prescribed in previous verses was not final and that it may be changed if there is sufficient cause for the same.

In this context reference may be made to another order of payment though of a different nature. Varadarāja in his *Vyavahāranirṇaya*[3] and Mādhavācārya in his commentary on *Parāśarasaṃhitā*[4] refer to a text of Bharadvāja (probably of late origin), according to which in the case of absence of cash the debtor may pay the debt through the sale of his property in an order of priority, consisting of grain, gold, iron, cattle, clothes, land, slaves, conveyances, garden in the absence of a field and lastly his house. In the case of the debtors belonging to the twice-born castes, time should be granted for repayment of debt if they do not possess a house.[5] It

1. .....likhitakrameṇa varṇakrameṇa vā. Sm. C. II, 391.
2. Yasya dravyeṇa yat paṇyaṃ sādhitaṃ yo vibyāvayet /
   Taddravyaṃ ṛṇikenaiva dātavyaṃ tasya nānyathā // Kātyāyana, 515.
   The explanation of the verse by Devaṇabhaṭṭa deserves to be noted here : 'yasya uttamarṇasya dhanāt paṇyam adhamarṇena vāṇijyārthaṃ gṛhītaṃ tatpaṇyavikrayāvāptaṃ dhanaṃ nānarṇasamavāye'pi ṛṇikena tasyaivottamarṇasya ṛṇāpākaraṇārthaṃ dātavyaṃ nānyathā pūrvoktaprakāreṇa dātavyam ity arthaḥ. Sm. C. II, 391-392.
3. p. 254.
4. Vyavahāra section of Mādhava's commentary, 193.
5. Ṛṇikasya dhanābhāve deyo'nyarthas tu tatkramāt /
   Dhānyaṃ hiraṇyaṃ loham vā gomahiṣyādikaṃ tathā //
   Vastraṃ bhūr dāsavargaṃ ca vāhanādi yathākramam /

may be observed here that the order in which the properties are arranged in this context should not be taken in its literal sense. Stress here is not on the aspect of the order in which they have been arranged but on that of sale. Bharadvāja (or Bhāradvāja) is cited really as an authority for court auction of defaulter's assets.[1]

Devaṇabhaṭṭa in his interpretation of the verse of Kātyāyana (514) observes that the word *śrotriya* as used in the verse should not be taken in the sense of a member of the three castes, devoted to the study of the *Vedas*, but it should be indicative of a Brāhmaṇa by birth. His argument is that here in the verse it has been used to indicate the superior caste than that of the king.[2] But this is doubtful. Normally only a *śrotriya* deserves consideration from the king in revenue contexts[3] and the like and accordingly the text should be taken in an exhaustive and not an illustrative sense.

With reference to the debt transacted with different parties at the same day as stated by Kātyāyana (512), Deveṇabhaṭṭa observes that if the debtor has sufficient money to meet all the demands of the debtors he may give it at one time but if he runs short of funds the debtors should be paid in proportion to their debt.[4] The same is the view held by Caṇḍeśvara.[5]

Jagannātha has the same opinion. He adds here that the question of interest also comes into picture. 'Hence if one has a claim for interest specially stipulated or the like, and the other for legal interest only, the interest being unequal, the payment to each shall be regulated by the interest receivable by him....In short, ascertaining and writing down the debts of all the creditors, with

Dhanikasya tu vikrīya pradeyam anupūrvaśaḥ //
Kṣetrābhāve tathārāmas tasyābhāve gṛhakrayaḥ /
Dvijātīnāṃ gṛhābhāve kālahāro vidhīyate //

1. Vide here the notes by P. V. Kane, History of Dharmaśāstra, III, 441.
2. Śrotriyo'tra brāhmaṇajātimātraśālī na tu śrutādhyayanaśālī traivarṇikaḥ, rājajātyapekṣayotkṛṣṭajātiparatvenātra śrotriyapadaprayogāt.
Smṛticandrikā, II, 391-392. Vide also Sarasvatīvilāsa, 255.
3. Vide Nārada. VI. 14. Vide discussion on this point by P. V. Kane, History of Dharmaśāstra, II., 143-145.
4. .....kiṃ tu yugapad eva pratipādanam ṛṇikasya dhanabāhulye, dhanālpatve tu tattadṛṇānusāreṇa vibhajya yugapad aṃśadāpanam.
Sm. C. II, 391.
5. Vivādaratnākara, 79.

the interest due on them, a distribution of the debtor's assets should be made.' He goes on to state further that all this should only be done when the term has elapsed. Hence if the debts be contracted with several persons in one day, and the term of one loan be of two years ; of another four years, of a third, five years : in this case, should a distribution be made at the close of the fourth year, no dividend shall be received by him who claims under a contract for the term of five years ; for his claim is weaker, since the term is unexpired.'[1]

With reference to the provision of Kātyāyana as contained in the verse (515), Jagannātha observes that 'if after borrowing a sum from one man, the debtor redeems a pledge hypothecated to another ; in that case, should the debt remain undischarged, he must deliver or sell that pledge for the payment of that creditor and no other ; he has no right to pledge the chattel to any other man. Again, a husbandman cultivates land belonging to a certain person ; and the landlord borrows money from the husbandman, or the husbandman from his landlord in either case, the debt of that creditor alone shall be discharged out of the grain produced from the land : for those assets consisting in grain, were produced from that capital, whether land, or seed and plough.'[2]

Jagannātha observes that 'should he deliver those assets to another person through mistake, or hypothecate that pledge to another creditor the act is valid ; for the assets were the property of the debtor. Nevertheless, the creditor may forbid it ; and if the debtor slight that opposition, he shall be fined. In the like manner, even though unopposed, if he does so deliberately, he shall be fined, for the reason of the law is the same. This should also be argued in the case of payment to a favoured creditor neglecting the order in which the debts were contracted, or the order of classes.'[3]

The conclusion that may be arrived at after a study of what has been discussed with reference to the order of payment, is that the two principles, that of order of contracting the debt and the order of the caste of the creditor, were introduced side by side. It may be presumed that the restriction of the order of payment in

1. Col. Dig. 1, 378-379.
2. Ibid. 381.
3. Colebrooke, A digest of Hindu law, 1. 381.

the order of the contracting of the loan, to the creditors belonging to the same caste (as interpreted by Viśvarūpa on Yāj, II. 43 and by Vijñāneśvara on Yāj, II. 41) was introduced at a later period. Similar is the case with the restriction in respect of the creditors belonging to different castes. The order of payment was not however final and where there was sufficient ground it could be avoided. It is Jagannātha who suggests penalty for deliberate payment to a favoured creditor in violation of the order.

14. Procedure of payment of debt where the creditor is dead.

We had occasion to observe that it is regarded as a religious duty on the part of the debtor to discharge the debt. This duty does not terminate when the creditor is dead. We find therefore in the *śāstras* the direction that even on the dath of the creditor the debtor should make earnest attempt to get relived of the debt of the creditor.

In the *Kauśikasūtra* there is a direction that if the creditor is dead the debt should be paid to the son of the creditor.[1] In the absence of any son of the creditor it should be handed over to his *sagotra* (one having the same gotra).[2] In the absence of any one of the same *gotra* it should be placed in a crematorium.[3] If such a place is not easy to trace it should be left to a cross-foad.[4] While commenting on the first direction as referred to in respect of its application it has been stated in the *paddhati* of Keśava that the debt (in the form of cash or any kind) should be accompanied by *mantras* beginning with 'apamityam apratīttam' (*Atharva Veda.* VI. 117-119).[5]

Nārada observes that if the debt is due to a dead Brāhmaṇa creditor whose issue i s alive, it should be paid to him. In the absence of the issue it should be paid to his kinsmen and in the absence of the

1. Uttamarṇe mṛte tadapatyāya prayacchati. Kauśikasūtra, 46. 36,
2. Sagotrāya. Ibid. 46. 37.
3. Śmaśāna nivapati. Ibid. 46. 38.
4. Catuṣpathe ca. Ibid. 46. 39.
5. Atha mṛte dhanike ṛṇakasya ṛṇadānaśāntir ucyate. Apratīttamiti tribhiḥ sūktair dravyam abhimantrya putrāya dadāti, anṛṇo bhavati.
   Vide the *Paddhati* of Keśava as contained in the Kauśikasūtra (Edn. M. Bloomfield New Haven, 1889), 348,

kinsmen it should be handed over to his (distant) relatives.[1] It has further been stated that where there are neither kinsmen nor relatives nor distant connections, it should be paid to other Brāhmaṇas and in the absence of all these the debtor should cast it into water.[2] Prajāpati, as quoted in the *Smṛticandrikā* directs that in the absence of his kinsmen the debt should be passed over to the Brāhmaṇas and in their absence may be cast either into water or into fire. It has been stated that money thus cast into water or fire becomes centributory to the next word.[3] The idea may be that by such act the debtor may not suffer the consequences of non-payment of debt.

The idea underlying such directions appears to be that a debt once incurred imposes a sort of burden upon the debtor that can only be discharged by repayment, and as such the death of the creditor without leaving any heir although it may put an end to the legal obligations, does not displace the burden altogether, for apart from the existence of any individual who can legally enforce payment, there is this imperative and absolute duty that one must not retain what is not one's own.

Bhavasvāmī in his interpretation of the rule of Nārada extends its scope to the members of other castes. Thus he observes that in the case of the debt to a Kṣatriya under indentical circumstances it should be handed over to the king in consideration of the fact that a king belongs to the caste ot a Kṣatriya.[4] He has attempted to show the justification of casting the debt into water. According to him

1. Brāhmaṇasya tu yad deyaṃ sānvayasya na cāsti saḥ /
Nikṣipet tat sakulyeṣu tadabhāve'sya bandhuṣu // Nārada, IV. 212.
Asahāya by *sakulya* understands persons like uncles, their sons etc. By *bandhu* he refers to nephews etc.: 'Kulāny asthīny ucyante, tāny ekāni samāni yeṣāṃ te sakulyāḥ pitṛpitṛvyatatsutādayaḥ.....bandhuṣu mātṛbhaginībhāgineyādiṣv iti. Commentary on Nārada, IV, 112.
2. Yadā tu na sakulyāh syur na ca sambandhibāndhavāḥ /
Tadā dadyād dvijātibhyas teṣv asatsv apsu nikṣipet // Ibid. IV. 113.
3. Bandhvabhāve tu viprebhyo deyaṃ kṣepyaṃ jale'pi vā /
Jale kṣiptaṃ tathāgnau ca dhanaṃ syāt pāralaukikam //
Vide Sm. C, II, 413.
He himself explains that by such act the debtor gets free of the indebtedness: Ānṛṇyāpādanena paralokahitaṃ jalādau prakṣiptaṃ dhanaṃ bhavatīty uttarārdhasyārthaḥ. Ibid. II, 414.
4. Kṣatriyasya yathoktābhāve rāja sajātīya iti tasmai dadyāt, vaiśyasyāpy evam.
Commentary on N. M. S, 1. 97. Vide also vivādaratnatākara, 82.

water symbolises all the gods and Brāhamaṇas also are treated as gods and as such there is similarity between the two.[1] This shows ingenuity no doubt, but it may be presumed that there was no special significance in such directions. expect that to the Hindus both water and fire are regarded as holy. The point however is that unjust retention of the debt is to be avoided in any event.

Reference in this context should be made to the special type of *homa* that the debtor is to perform when the creditor and his successors are not traced. According to the *Gobhilagṛhyasūtra* the debtor should perform a sacrifice with the branches of a *palāśa* tree along with the mantra beiginning with 'yat kusīdam'.[2] In the *Smṛticandrikā*[3] and *Sarasvatīvilāsa*[4] the view of *Saṃgrahakāra* has been metioned.[5] The mantra referred to above appears in the *Taittirīyasaṃhitā*,[6] *Taittirīyāraṇyaka*,[7] *Chāndogyabrāhmaṇa*[8] and the *Mānavaśrautasūtra*.[9] While commenting on the *mantra* as it appears in the *Taittirīyāraṇyaka* (II. 3. 8) Sāyaṇya observes that the prayer is intended for making the debtor capable of discharging his debt in his life-time.[10]

1. Āpo vai sarvā devatāḥ, brāhmaṇo vai sarvā devatāḥ iti ca śruteḥ sajātīyatvaṃ teṣām astīti. Ibid.
2. *Ṛṇe prajñāyamāne* golakāmadhyamadhyamaparṇena juhuyāt yat kusīdam iti. Gobhilagṛhyasūtra, IV. 4. 25
   In the Smṛticandrikā the reading for the underlined part is ; 'ṛṇeṣv ajñāyamāneṣu'.
   Bhaṭṭanārāyaṇa in his commentary introduces the verse with the words ; 'Yadā punar dhanikābhāvo' nyeṣāṃ ca tadrikthabhājāṃ tādā ṛṇikena kiṃ kartavyam ity ata āha.....'
3. II, 414.
4. p. 264.
5. Dravyaṃ yat tv adhamarṇastham kvacid brāhmaṇagaṃ bhavet /
   Sutādibrāhmaṇāntānāṃ rikthabhājām asambhave //
   Palāśasya palāśena juhuyān madhyamena tu /
   Yat kusīdam iti prāsyed athavāpav eva taddhanam //
   This is the same direction as that of the Gobhilagṛhyasūtra.
6. III. 3. 8. 1,
7. II. 3. 8.
8. II. 3. 20.
9. II. 5. 5. 18.
10. Anena homena tuṣṭas tvam asminn eva janmani māṃ pratyarpaṇasamartham kuru iti bhāvaḥ.

15. Procedure to be followed in the case of part-payment of the debt.

It is quite likely that a debtor may not be in a position to discharge his debt all at a time. He may feel it convenient if he is granted the privilege of discharging the debt in parts. But there is a risk in such a transaction. If the payments made on different occasions are not properly recorded there remains the possibility of forgetting intentionally or otherwise on the part of both the debtor and the creditor. The *śāstrakāras* were conscious of these situations and accordingly we find in the *śāstras* provisions for part-payment.[1]

We have from Yājñavalkya the direction that when such part-payment is made by the debtor, he (the debtor) should write on the back of his written contract the amount paid (with mention of date). Or it may be that the creditor should issue a receipt of acknowledgement signed by his own hand.[2] This evidently is prescribed to ensure that no fraud may arise from any side.

Viṣṇu adds that if the original wtitten contract is not at hand at the time of part-payment, the creditor should give a receipt signed by his own hand.[3]

We have from Nārada the provisions in the case where the creditor refuses to issue an acknowledgement even when a demand for it is made by the debtor. He takes a very strict attitude by declaring that in the case of his failure to do so, the creditor shall forfeit the remainder of the debt.[4] The forfeiture of the balance is, as it were, a fine on the creditor for that offence.

1. For discussion on this point vide P. V. Kane, History of Dharmaśāstra III, 442.
2. Lekhyasya pṛṣṭhe' bhilikhed dattvā dattvarṇiko dhanam /
   Dhanī *vopagataṃ* dadyāt svahastaparicihnitam // Yāj, II, 93.
   Upagata has been explained in the Mitākṣarā as *praveśapatra*, a receipt of acknowledgement, Aparārka is more distinct when he explains : Etāvad anena pratidattam iti likhitāntaram upagatam ity ucyate. For some specimens of *upagata* vide Lekhapaddhati, 25. Jagannātha suggests that the form should be like this ; 'So much money received this day, such sums received this day, such sums received earlier, making in all such a sum received to this date'. Col. Dig, 1, 385.
3. Asamagrapradāne lekhyāsannidhāne cottamarṇaḥ svalikhitaṃ dadyāt,
   Viṣṇusmṛti, VI. 26.
4. Gṛhītvopagataṃ dadyād ṛṇikāyodayaṃ dhanī /
   Adadad yācyāmānas tu śeṣahānim avāpnuyāt // Nārada, IV. 114.
   Caṇḍeśvara interprets that it refers to the taking of interest (from the debtor) : 'gṛhītvā udayam ity arthaḥ'. Vivādaratnākara, 80.

He proceeds a step further to declare that if though pressed by the debtor, the creditor does not give an acknwledgement in receipt for the sum paid by the debtor, then the sum (paid by the debtor but not recorded by the creditor in the document) will go on yielding interest in the same from in which the capital of the creditor yields interst.[1] This is quite reasonable because a capital (of the debtor) cannot remain idle, specially when he himself is paying an interest for the capital of the creditor.

Bṛhaspati states that if the creditor after recovering his debt through any one of the measures like moral suasion etc. does not write it on the deed of debt or does not issue a receipt, then the sum (paid as such but not recorded) should yield interest.[2]

There is great controversy over the meaning of the verse specially in its last part—*'tasya tad vṛddhim āpnuyāt'*. In the *Kalpataru* it has been interpreted that *vṛddhi* should mean here loss, *'hāni.'*[3] It may be stated that there is no specific reason to take to the figurative sense (*lakṣaṇā*) when the meaning may easily be derived through the normal sense of the word. Moreover this text of Bṛhaspati is in full agreement with the direction of Nārada (IV. 115).

The interpretation in the *Pārijāta* is quite consistent with what the verse actually presents. According to this text the meaning is that the sum paid as such by the creditor but not recorded, should yield interest.[4] The *Kāmadhenu* and Halāyudha take up the reading in the last foot (of the verse of Bṛhaspati) as : *'nāsau vṛddhim avāpnuyāt'*. But here also Halāyudha in the explanation takes up a roundabout way in an attempt to adjust it with the text of Nārada (IV. 114).[5]

1. Yadi no lekhayed dattam ṛṇinā codito'pi san /
   Ṛṇikasyāpi vardheta yathaiva dhanikasya tat // Nārada, IV. 115.
2. Dharmyādinodgrāhya dhanaṃ yas tūpari na lekhayet /
   Na caivopagataṃ dadyāt tasya tad vṛddhim āpnuyāt // Bṛhaspati, X. 130.
3. Vṛddhir hānir iti kalpataruḥ. Vivādaratnākara, 80, (This is not traced in the printed edition of Krtyakalpataru),
4. Pārijātas tu tasyādhamarṇasya taddattaṃ vṛddhim āpnuyāt. Ibid, 80.
5. Kāmadhenuhalāyudhayos tu nāsau vṛddhim avāpnuyad iti pāṭhaḥ. Halāyudhas tu vyākhyāne yas tu dhanī stokam udgrāhya upari na lekhayet, upagataṃ vā na dadāti tadāsau avaśiṣṭadhanahānyā na vṛddhiṃ na dhanopacayaṃ labhate śeṣanāneḥ pratipāditatvād ity āha. Ibid, 81.
   It may be presumed that the verse IV. 115 of Nārada was not available to them and that subscribes to the cause of these interpretations.

Caṇḍeśvara rightly points out that the refusal to issue a receipt or to give an acquittance for the sum paid by the debtor arises from the motive of the creditor to obtain payment for the second time.[1]

Taking all the directions of the *śāstrakāras* together it may be stated in brief that the writers on law through these penal measures intended to arrest the possibility of fraud on the part of the creditor in the from of denial of any payment made by the debtor. Here the observations of Jagnnātha deserves mention. He states that 'if the debtor through knavery or the like, neither accepts a receipt nor writes the payment on the back of note, then also from parity of reasoning the debtor incurs a forfeiture of the sum paid, though it has not been noticed in the texts or the commentaries.'[2]

16. Procedure to be adopted at the final payment of debt.

Payment of the entire sum, namely capital with interest, marks the closing of the transaction of debt. But a transaction of debt sometimes runs upto several generations and as such at all the stages it is desirable that records should be properly maintaine d. The document of debt that lies with the creditor may create confusion and trouble if it is not taken back by the debtor or destroyed in the presence of witnesses. The writers on law in ancient India were quite conscious of this problem and therefore we find direction that debtor should cause the document to be torn by the creditor or if the document be not at hand another document in the form of acquittance should be made by the creditor. This is the direction of Yājñavalkya.[3]

He further observes that a debt which was executed in the presence of the witnesses should be discharged before the witnesses.[4] If possible the same witnesses should also be present on the occasion

1. Atra dattasya upagatādānaṃ svayam alekhanaṃ punar udgrahaṇāśayena paryavasitaṃ boddhavyam. Vivādaratnākara, 81.
2. Col. Dig. 1, 393.
3. Datvarṇaṃ pāṭayel lekhyaṃ śuddhyai vānyat tu kārayet. Yāj, II. 94. Vijñāneśvara observes : 'Yadā tu durgamadeśāvasthitaṃ lekhyaṃ naṣṭaṃ vā tadā śuddhyai adhamarṇatvanivṛttyartham anyal lekhyaṃ kārayed uttamamarṇenādhamarṇaḥ'. Commentary on Yāj. 11. 94. Jagannātha rightly points out that the form of writing should be regulated by the established custom of the country. Col. Dig. I, 383.
4. Sākṣikamac ca bhaved yad vā tad dātavyaṃ sasākṣikam. Yāj, II. 94.

as suggested by Vijñaneśvara,[1] but it may be presumed that if the previous witnesses are not available the payment should be made in the presence of other witnesses. In fact this provision is meant for guarding against any possible fraud in the form of denial by the creditor.

The rule of Yājñavalkya has its support from Viṣṇu.[2] Nārada directs that on full payment of the debt the deed should be restored to the debtor. (If however for any reason the return of the same is not possible) the creditor should issue a letter of acquittance (*pratiśraya*)[3] and in such a manner both the debtor and the creditor may make themselves free from respective obligations.[4]

All these formalities are prescribed just to ensure that neither the debtor nor the creditor may find scope of pursuing the matter on false pleas.

17. Inscriptional and other records on the recovery of debt.

We do not come across many references to the methods employed for the recovery of debt in the inscriptions and other literary sources.

The Nāḍol Stone Inscription of Rāyapāla (Vikram saṃvat. 1198) has in it reference to *kāyavrata*, 'which doubtless has the same sense as that of the word *trāga* or *chāndī*, i.e. a kind of privation and self-immolation so commonly practised once in Rājaputanā and Gujarāṭ by Brāhmaṇas and the Bhāṭas to enforce the kings to relent and grant their wishes.'[5] P. V. Kane rightly explains this practice as equivalent to the *ācarita* method.[6]

1. Yat tu sasākṣikam ṛṇaṃ tāt pūrvasākṣisamakṣam eva dadyāt. on Yāj, II 94. Vide here Smṛticandrikā, II, 377: 'pūrvasākṣiṇāṃ kathañcid asambhave sākṣyantarasamakṣam eva dātavyam',
2. Likhitārthe praviṣṭe likhitaṃ pāṭayet. Viṣṇusmṛti, VI. 25.
   Sasākṣikam āptaṃ sasākṣikam eva dadyāt. Ibid. VI. 24.
3. Asahāya explains it as *viśuddhipatra* but both Devaṇabhaṭṭa and Caṇḍeśvara explain it (the reading is *pratiśrava*) as public acknowledgement : 'pratiśravaḥ pratidattam ity asminn arthe sākṣyasiddhyai śrotriyādiśravaṇam.
   Sm. C, II, 377.
   'Pratiśravaḥ loke dattam anena iti khyāpanam'. Vivādaratnākara, 81
4. Lekhyaṃ dadyād viśuddharṇe tadabhāve pratiśrayam /
   Dhanikarṇikayor evaṃ viśuddhiḥ syāt parasparam // Nārada, IV. 116.
5. Yaḥ ko'pi brāhmaṇo...kāyavrataṃ kṛtvā mriyate.....'
   Epigraphia Indica, XI, 40. (Lines 20-21).
   Vide the editorial notes at p. 38,
6. History of Dharmaśāstra, III, 438-439.

We learn that 'Somagauḍa, a native of Mattigatta, borrowed some money from Nāgaṇṇa pledging his *vṛtti* land and when he demanded the document of the loan on repaying the debt altogether with interest Nāgaṇṇa did not return it. Hence in the presence of the *Mahājanas* of the village the discharge of debt was inscribed. (The name of the engraver was Somanātha).'[1] This justifies the provision made by Yājñavalkya and Viṣṇu that the payment of the debt should be made in the presence of witnesses.

The Tamil Inscription of Kṛṣṇa III. (Rāṣṭrakuṭa king) makes reference to the practice of entertainment by the borrower of the person who is deputed to collect the debt by the lender. It has been stated : 'To those (temple officials) who shall call for this paddy (as interest) we, the members of the assembly of Neṇmali, shall have to supply boiled rice after having identified (their) persons.'[2]

Dr. A. Appadorai records that 'having agreed to pay fifteen per cent interest, the borrowers also promised to give two meals every day to the man that came to demand the interest thereon.'[3]

These are customary practices and have no support from the *śāstras.*

In the *Lekhapaddhati,* in one of the documents it has been stated as a condition that if the pledgee at any time feels any necessity of money given as loan against pledge, he may, with the assistance of the *bhaṭṭaputras** approach and realise the debt with interest from from the debtor or the sureties (in his absence or failure) and the expense to be incurred in this connection should be paid by the debtor or the sureties.[4]

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1. Vide Annual Report of the Mysore Archaeological Department with Government Review thereon. (1924), No. 29, p. 38.
   Note of the editor : 'It is not dated. It is an interesting record of the relation that existed between the creditor and debtor during the period of the Hoysalas to which it can be assigned.'
2. Epigraphia Indica, VII, 143.
3. Economic conditions in Southern India, 1, 440,
   He refers to other sources regarding the prevalence of this practice in Madras : 'In *A Brief Survey of Madras Livestock,* 40-41, it has been stated ; 'A survival of this ancient custom has been noted in the Madras city, where the retail milkman who borrows from the dealer has to supply him along with his relatives and friends, with meals etc. until the amount is paid.'
* They may be duns. Vide also the editorial notes. Lekhapaddhati, J10.
4. Vide Lekhapaddhati, 20.

It may be noted here that the point of the document is that the law is varied in this way by agreement.

While explaining the line of Hemacandra of his *Dvyāśraya-kāvya* (III. 40), the commentator Abhayatilaka Gaṇi explains that it was one of the practices in his days on the part of a creditor to take the debtor to the bank of a river. There the debtor would have been tied with a chain and kept exposed to the scorching rays of the sun. Thus being deprived temporarily of the use of his limbs, he could not enter the water to quench his thirst like a tortoise.[1]

The *Upamitibhavaprapañcākathā* of Siddharṣi speaks of the money-lender who had a prison for the debtors, from which it was difficult to be released.[2]

With reference to the custom of recovery of debt, we learn from Al Idrisi (11th century) the account about the Indians that 'when a man has a right to demand anything of another and he happens to meet him, he has only to draw a circular line upon the ground and to make his debtor enter it, which the latter never fails to do, and the debtor cannot leave this circle without satisfying his debtor or obtaining the remission of the debt.'[3]

Marco Polo while describing the province of Malabar observes that 'if a debtor shall have been several times asked by his creditor for payment and shall have put him off from day to day with promises, then if the creditor can once meet the debtor and succeed in drawing a circle round him, the latter must not pass out of his circle until he shall have satisfied the claim, or gives security for its discharge.' Marco Polo himself witnessed a case like this : 'It was the king, who owed a foreign merchant certain sum of money and though the claim had often been presented, he always put it off with promises. Now one day when the king was riding through the city, the merchant found his opportunity and drew a circle round

1. On *ṛṇād baddho nu kacchapaḥ*' (III, 40) the commentary is : ...utprekṣyate, ṛṇād baddho nu deyena hetunā nigaḍita iva. ṛṇiko ṛṇād uttamarṇena baddho raver uṣṇaiḥ karais tapyamāno nadyāditaṭe tiṣṭhati baddhatvān na jalamadhye praviśati.
2. .....adhamarṇānāṃ.....dhanikaiḥ sadā /
   Kriyate dharaṇakaṃ tatra durmoccam atidāruṇam //
   VII. Prastāva, p. 1020.
3. Elliot and Dowson, History of India, VI, 88.

both the king and the horse. The king on seeing this, halted and would ride no further, nor did he stir from the spot until the merchant was satisfied.'[1]

The editor in his notes comments that 'the custom undoubtedly prevailed in this part of India at a former time. It is said that it still survives amongst the poor classes in out-of-the-way parts of the country, but it is kept up by school-boys in a serio-comic spirit as vigorously as ever. Marco does not mention a very essential part of the ceremony. The person who draws a circle round another imprecates upon him the name of a particular divinity, whose curse is to fall upon him if he breaks through the circle without satisfying the claim.'[2]

The editor in his notes refers to the view of Arabo-Persian Zakariah Kaswini, who ascribes this practice to Ceylon.[3] The same practice has been recorded in the *Travels of Ludovico Di Varthema.*[4]

Badger, the editor of the book in his comments makes mention of the views of Hamilton as recorded in the text entitled *Pinkterton's voyages.*[5]

The *smṛtis* do not refer exactly to this practice, but no doubt they hint at it in the word *ācarita* or conceivably, *dharma.* The absence of reference to the circle-drawing in our *śāstric* texts has to be accounted for. Possibly it was a customary institution which was disapproved of on theoretical grounds as often to *abuse.*

1. The book of Ser Marco Polo, II, 343.
2. Ms. Note by the Rv. Dr. Caldwell, Ibid, 350-351.
3. Notes, Ibid., 350.
4. It is stated thus "...I not being willing to wait any longer, nor to give him (debtor) any indulgence, shall take a green branch in my hand, shall go softly behind the debtor and with the said branch shall draw a circle on the ground surrounding him and if I can enclose him in the circle, I shall say to him these words three times: 'Bramini raza pertha polle', that is, 'I command you by the head of the Brahmins and of the king, that you do not depart hence until you have paid me and satisfied me as much as I ought to have from thee.' And he will satisfy me, or truly he will die there without any other guard, And should he quit the said circle and not pay me, the king would put him to death." Ibid., 147-148.
5. Vol VIII, 377.

18. Summary.

From the side of the creditor recovery of the debt is the last stage in the transaction of debt. The *śāstrakāras* of ancient India have prescribed several methods that may be applied by a creditor for the recovery of debt. They may be broadly classified under two heads, judicial and extrajudicial. In the former case, the creditor seeks the assistance of the court for the satisfaction of his debt. The extrajudicial methods are to be applied when the debtor admits the debt, but where he (the debtor) argues that he will pay only the debt if that is proved in the court, the creditor has been directed to refer the matter to the court. Application of any one of the methods under such circumstances may make the creditor liable to penalty.

The first of the private extrajudicial methods is *dharma* which consists in moral suasion and has been advised to be applied in the case of a king or a Brāhmaṇa. There is controversy regarding the nature of the *vyavahāra* method. Most of the writers on law understand it in the sense of legal proceedings. *Chala* consists in the application of stratagem to realise the debt and evidently this could be applied in the case of friends and relatives. The nature of *ācarita* method is also controversial but in most of the cases the interpretation of the term is made to convey the sense of confinement of the debtor at his own residence and thereby to bring moral pressure on him to pay the debt. Here the creditor sits at the door of the house of the debtor and threatens to undertake fast unto death. The last of the methods is the application of force (*bala*). This is intended to be applied in the case where the debtor is of wicked nature. The application of force on the debtor may be taken to as an extreme measure.

If the debtor be indigent but willing to work, the creditor may take advantage of his service towards payment of his debt. This has to be applied in the case where the debtor belongs to the same caste as that of the creditor or to the caste lower than that of the creditor. In exacting service the creditor should not impose on the debtor a type of work which is unsuitable for his status.

Another alternative has been suggested in the *śāstras* and that is in the form of change of the deed of debt by the debtor. In such a case a fresh deed is executed and the previous capital with interest that is due together form the new capital on which fresh interest is to be charged.

The king has a role to play only when an appeal is made to him by either of the parties. There is provision in the *śāstras* for the king to charge a fee for defraying the cost of the judicature.

The order in which a debt is incurred has to be maintained in respect of payment of the debt. There is provision also for following the order of the castes in this case.

In the case of part-payment the direction is that the debtor should write on the document the amount paid on different occasions and there is provision for penalty if the creditor does not allow the debtor to do so.

At the time of final payment it has been prescribed that the document (in original) should be destroyed or if it is not possible the creditor should issue a letter of acquittance.

Some references from inscriptions and other sources have been pointed out to show that there were also customary practices in respect of realisation of the debt.

Concluding remarks.

The late Dr. L. Barnett presents the position of Indian culture in the following lines : "In India there is no twilight before the dawn. In the darkness the eastern sky suddenly flashes and the ruddy edge of of the morning sun swiftly leaps upon the horizon. And it is so with the history of the great people which has led the van of Indian culture. They have left no record of slow and painful struggle onwards through lessening darkness of barbarism towards the light of civilisation."[1] These observations are propely applicable in the case of the history of the *dharmaśāstras* also. At a modest calculation it may be held that the *dharmaśāstras* had been composed in India four or five centuries before the Christian era and the process continued for a long time, say several centuries after the same era. During these periods many writers on law have appeared in the field, but relatively few of them could stand the test of time. Of the majority it may be conjectured that they fell a victim to oblivion because they could not keep pace with the changing needs and conditions of the society. Society during this long period is not expected to remain stationary. Significant changes in social, religious and customary practices have taken place. Special mention may be made of the advent, flourish and dwindling of of Buddhism, causing perceptible termor in some of the long-standing

1. L. D. Barnett, Antiquities of India, 1.

religious and social usages. The *dharmaśāstra* were expected to react readily to those concussions and perhaps to tighten their grip. But a correct record of this development is not available to us in the absence of the *smṛti* texts the original total of which may have reached a hundred.

The commentators and digest-writers who appear in the field at a later period, contain in their expository remarks some hints at historical attempts at harmonisation and adjustment. Medhātithi refers to several practices like giving of an additional share to the eldest brother, *niyoga* and killing of a cow in sacrifice,* which though sanctioned in the *śāstras* were already before his time condemned by some writers.[1] It may be metioned here that even in the texts of Manu[2] and Yājñavalkya[3] there are directions that a law abominable to the community should not be followed. But the exact historical or social background of the changes or their connecting link (even from the commentators and the digest-writers) are not now available to us in a systematic manner. With these limitations one has to enter the realm of the social and religious history of India.

In the present dissertation a modest attempt has been made to look at the laws of debt in ancient India (on certain selected aspects) as presented in the *dharmaśāstras* and their expository texts. The facts have been arranged more less in their historical order and it is felt that it would have been quite interesting if the causes underlying the changes could have been properly accounted for. I am fully conscious of the limitations and my deficiencies and shall regard this venture rewarded if the study inspires others to pursue this subject. In particular I recommend them to observe how much of the textual law owes its shape and tone to humanitarian considerations. These were not regarded as a kind of charitable 'equity', but as part and parcel of the sacred law itself. We should remember that until the coming of foreign colonists and rulers India had no jurisprudence but this, and no argument in favour of a purely materialistic and opportunistic approach to debts and their realisation has been accorded the honour of record in any of our sources.

1. Commentary on Manu, IX, 112. Vide also Mitākṣarā on Yāj, II. 117.
2. Manu, IV. 176.
3. Yāj, 1, 156.

* cf, J. D. M. Derrett, 'Showing a Big Bull, A picee of hypocrisy in the Mitākṣarā ?' in Annals of the Bhandarkar Oriental Research Institute, 1968, Golden Jubilee Volume, 45-53.