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A DIGEST

OF THE

HINDU LAW

OF

INHERITANCE, PARTITION, AND ADOPTION;

EMBODYING THE REPLIES OF THE SĀSTRIS
IN THE COURTS OF THE BOMBAY PRESIDENCY,

WITH

INTRODUCTIONS AND NOTES

BY

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R

AND

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THIRD EDITION.

VOL. I
~~COLL.~~

[Registered under Act XXV. of 1867.]

Bombay:

PRINTED AT THE
EDUCATION SOCIETY'S PRESS, BYCULLA.

1884.

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PREFACE.

An apology is due to the subscribers for the delay in producing the present edition. This delay has arisen, not from any want of assiduity or interest in the work, but from the bulk of the materials to be dealt with, and from official engagements which have left but a scanty and occasional leisure for carrying this book through the press. The latter is more than double that of the preceding edition, and now affords, it is hoped, a pretty full view of the principal topics connected with the Hindû Law of Inheritance, Partition, and Adoption.

Book III., on the last named subject, is a new part of the work, in which an attempt has been made to bring together both the doctrines of the Hindû sources and the most important decisions of the Courts. The latter are numerous, and yet in all cases readily reconcilable with the opinions of the Śāstris. Discussions were thus made necessary, which have added something to the length of the book, and will induce the reader perhaps more readily to excuse the omission in this part of the work of the detailed statement given in Books I. and II. of each question put and answer returned by the Śāstri, and of the authorities quoted in support of his opinion. I some years ago made out a list of these authorities, and with some trivial exceptions they are discussed in the first part of Book III. The many references to the sources in the second and following Sections of the same Book are in part identical with those made by the Śāstris, but extend over a wider field, consistently with a desire to make Adoption better understood by showing what its history has been, and what relative place it holds in the development of the Hindû law. It is to be regretted that in this part of the work I have not had the aid of Dr. Bühler's distinguished scholarship and his intimate acquaintance with



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the Sanskrit law literature. Circumstances—chiefly the great distance between our spheres of work—have prevented this co-operation, and much no doubt has thus been lost. Such authorities as were within my own compass I have worked at not without diligence, and should the conclusions deduced be erroneous the references will supply the means of correcting them.

For the present edition Dr. Bühler has however revised his survey of the Hindû law literature, which now appears in Section II. of the Introduction to Book I. The advances made of late years in this branch of learning made such revision very necessary, and it may be accepted with some confidence as presenting the latest gains of scholarship. With the exception of a few notes, the authorship of which will be easily recognized, this part of the work is entirely due to Dr. Bühler. For the rest of the new work he is not to be held answerable.

In the parts of the Introduction to Book I. bearing on the Limitations of Property, the Testamentary Power, an Maintenance, an endeavour has been made to bring together the new and old authorities, so as to contribute to the formation on each of these subjects of a definite and consistent theory. The article on Strîdhana has been transferred from the Appendix to the Introduction with some abridgement, and with several reinforcements from Hindû sources of the views set forth in it. The decisions of the Courts have, in some instances, been opposed to these views; and the decisions will probably form the law of the future; but as they do not seem to be reducible to a single and consistent system, a statement of the doctrines of the Hindû lawyers may still be practically useful. There must be some error where there is a conflict of authorities; the way to truth lies through a comparison of them, and for this the materials are laid before the reader. Much the same may be said on the subject of a widow's maintenance by her husband's family. The decisions on the subject are not



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uniform, nor are the Hindû commentators themselves in complete accord as to the widow's right to a separate maintenance. The principle of a change of family, which rests immediately on the Śāstras, coupled with the equally recognized right of the family to subsistence at the hands and as dependants of the chief, leads directly to conclusions which have here been put forward as probably correct. The customary law of the castes is shown to agree, almost without exception, with these conclusions, and thus the subject is left for the further consideration of the Courts.

The problem of the father's capacity to alien and encumber the family estate to the injury of his sons is one that has much exercised the Courts in recent years. The decisions arrived at have, in some respects, been almost as various as the Courts that pronounced them. The powers of a manager or representative member of a Hindû family, and the capacity of a Hindû widow for transactions affecting different classes of property, have not been defined in precisely uniform terms or referred to exactly the same principles. The Hindû authorities themselves, as received in the different provinces, differ in their conception of the Hindû family, and the proper relations of its members; and hence naturally arrive at different results in the details of the system. Yet within their own sphere or with reference to the accepted foundations on which they have severally worked, the native writers of any particular school or province are, perhaps, on the whole, more consistent than some of the judgments which have borrowed at need from antagonistic sources. An attempt has been made to present the course of thought followed in the several High Courts and in the Judicial Committee, and to compare it with the doctrine of the Mitāksharâ. Some passages of the latter, hitherto untranslated, have been given in an Appendix, in order to correct misconceptions and to bring out more clearly what was the author's notion of the capacities and duties of a father and a son. His view of the necessary or typical



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family relations as to property, though widely different from that of the English law, agrees pretty closely with the ideas on the same subject of Hegel. His discussion of the relation of a head of a family to its dependent members as partaking of the nature of property without being property will remind students of a somewhat similar dissertation in Kant. The translations have been obtained from an independent hand, (that of Dr. A. Führer) as both the more competent and more free from any suspicion of finding in the original what was suited to support a preconceived opinion.

The great accumulation in recent years of published decisions on points of Hindû law has added much to the labour of the student or practitioner who desires to be abreast of the latest developments of the case law. Though the present edition in some measure reflects the ever growing reports in a great increase of the table of cases cited, it is not pretended that the list is at all exhaustive. Only those cases have in general been referred to which were thought for one purpose or another really valuable, the others have been left unnoticed. The series of judgments delivered by Sir M. R. Westropp, late Chief Justice of the High Court of Bombay, has furnished many instructive illustrations for the present work. In one or two instances leave has been taken to differ from the conclusions arrived at by that eminent judge, but this liberty has not been used without some diffidence or in forgetfulness of the obligations under which every student of the Hindû law lies to one who has contributed with such patience, learning, and acuteness to its scientific development and adaptation to the needs of a new generation.

A more prominent place is given to Customary Law in the present than in the previous editions of this work. It began as a mere collection of the responses of the Hindû law officers with so much of introduction and comment as seemed necessary to connect the answers in a system. The authority accorded to the work has made it desirable that



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within its own range it should present a tolerably full as well as accurate view of the subjects with which it deals. The usage of the people differs materially on some points from the rules laid down in books which are otherwise received as unimpeachable authorities. It may perhaps be a question whether, as a matter of policy, every fragment of custom ought to be diligently sought out and preserved. A wider and more uniform customary law may be more consistent with moral and material progress than an indefinite segmentation into slightly varying usages which causes perpetual doubt and difficulty in necessary transactions. But the usage of the country is the law of the people; and this usage amongst the Hindûs allows, at least within certain limits, the minor usages of classes and families to be their law. There is no collection pretending to completeness of the customs even of the people of Western India, but in Steele's Caste Laws are to be found a great many departures, more or less conspicuous, from the general track, and many rules of the lower castes on matters unregulated by the sacred writings. Borradaile's collection of the caste customs of Gujarât is almost equally valuable. It has long lain by in manuscript, not without some injury from time and accident, but now at last an edition is in preparation at the cost of Sir Mungaldâs Nathubhâi, under the superintendence of a competent Gujarâti scholar, whose work is revised or checked by Mr. Fulton, C. S., Registrar of the High Court of Bombay. In the mean time I have drawn pretty copiously from this collection as well as from Steele's, and I have supplemented the information thus gained by frequent personal inquiries. Native friends, who have been amused at my persistence in turning our conversation to the subject of their usages, will find the matter of our talk in many instances here set forth in print. In this way it is hoped a pretty fair view has been obtained and reproduced of the modifications of the law of the books which are established by practice and acceptance. In the case of Partition, of Adoption, and of the Rights of a Widow, the peculiarities are so important as to invite particular attention.



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The extracts from several Smritis and from the *Vīramitrodaya*, which were printed in an Appendix in the previous editions, have in this been omitted. The *Vīramitrodaya* is now accessible in a very good translation, published by Mr. G. Sarkār, of Calcutta. Translations of *Nārada* and *Vishnu*, by Professor Jolly, have been published by Messrs. Trübner & Co., whose series of the Sacred Books of the East contains the other works also above referred to. As they are thus placed within reach of the English scholar, it seemed needless to retain the translations of particular chapters which had formerly been a useful supplement to this work. It is, though in parts almost excessively condensed, sufficiently bulky even after discarding all matter that could well be dispensed with.

Exception may perhaps be taken to the large number of comparisons instituted between the Hindū law and the Roman, English, and other laws. In the case of adoption these comparisons have generally had a directly practical purpose. It is very desirable to know how far in this department the analogous Roman institution can help the student of the Hindū law, and how far it cannot. That it affords some valuable suggestions will be admitted by those familiar with the subject. In the other comparisons the purpose has been partly to show that the Hindū system stands much less isolated than is usually supposed, but more especially to awaken the interest of Native scholars if possible in the subject of comparative law. A complete investigation of the relations of their own to other systems would probably be of great value to the history of human development, and would be fruitful in suggestions of improvement and adaptation without a painful and destructive breaking with the past.

In the correction of the press the assistance has been had of Dr. A. Führer, especially for the references to the Hindū authorities. The references to the law reports have been verified by Mr. Sivarām Sitarām Vāglê, pleader of the High Court of Bombay, and now acting as Subordinate

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Judge of Sâswad. The latter gentleman has aided also in preparing the Index, by noting down the principal subjects as the work progressed. Another Index was independently prepared by myself; and with these two have been blended the appropriate entries in the Index to the previous edition. That was drawn up with the aid of Mr. J. B. T. Inâmdâr, who is now Subordinate Judge of Belgaum. Three or four years ago this gentleman was so kind as to copy and arrange my notes on Adoption and some others that have been used for this edition, and unwilling not to have a hand in bringing it out, he has now kindly drawn up the Table of Contents. The lists of cases cited, and of authorities referred to, were in great part prepared by Mr. J. M. Kharsedji, Assistant to the Commissioner of Customs: they have been completed by Mr. Kaikhasru F. Modi, B. A., who has also re-arranged the Index under my personal direction. In a work of so much labour it is a pleasure to acknowledge having found such cheerful and intelligent auxiliaries. Whatever may be the worth of the book, the aids to its perusal will, it is hoped, be found more than usually accurate and complete.

R. W.



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T

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U

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V

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