

**ON THE DEFICIENCIES IN THE  
PRESENT ADMINISTRATION OF  
HINDU LAW: BEING A PAPER  
READ AT THE MEETING OF THE  
8TH OF JUNE, 1870**

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On the Deficiencies in the Present Administration of Hindu Law: Being a Paper Read at the meeting of the 8th of June, 1870 by Th. Goldstucker

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**TH. GOLDSTUCKER**

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ON THE DEFICIENCIES  
IN THE  
PRESENT ADMINISTRATION OF HINDU LAW;

BEING  
A PAPER

READ AT THE MEETING OF THE EAST INDIA ASSOCIATION ON THE  
8TH OF JUNE, 1870,

BY

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## ON THE DEFICIENCIES

IN THE

### PRESENT ADMINISTRATION OF HINDU LAW.

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THE attention of the East India Association having lately been drawn by Mr. W. Tayler to some urgent wants in the administration of justice, in so far as Indian litigants in general are concerned, it may not be inexpedient to bring under your notice the difficulties which beset the course of justice in reference to a particular class of cases which it did not enter into the scope of Mr. Tayler's able paper to deal with, viz. of those cases which are governed by Hindu law.

This law, I need not explain, concerns two topics of litigation only—that of inheritance and that of adoption—topics intimately connected with Hindu religious belief, and therefore allowed to remain free from the touch of foreign legislation.

The Hindu law, it is likewise unnecessary for me to add, is laid down in the ancient and mediæval works of the Hindus, all of which are written in Sanskrit. It is contained in the code of Manu, in that of Yājñavalkya, in the codes of numerous legislators, which are intermediate between, or posterior to, both these great authorities, and in a number of subsequent, but very important commentaries and digests, which have developed the ancient law, and ultimately, because latest in time, have become first in authority.\* Amongst these, one of the most important in all matters relating to the law of inheritance is the *Mitāksharā* of *Vijñāneśvara*, which, as Colebrooke says, is, with the exception of Bengal, "received in all the schools of Hindu law, from Benares to the southern

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\* See 'Yājñavalkya-Dharmaśāstra,' I., 4, 5; H. T. Colebrooke's Preface to 'Two Treatises on the Hindu Law of Inheritance;' A. F. Stenzler, "Zur Literatur der Indischen Gesetzbücher," in A. Weber's 'Indische Studien,' vol. i., pp. 232 ff.; Standish Grove Grady, 'A Treatise on the Hindoo Law of Inheritance,' pp. lix.-lxxiv.

extremity of the peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent.\* The *Mitāksharā* was expanded in subsequent digests, and, in consequence, the *Vivādachintāmañi*, the *Ratnākara*, and *Vivādachandra*, became the first legal authorities, on matters of inheritance, in *Mithilā* (*Tirhut*); the *Viramitrodaya* and the works of *Kamalākara* became so at *Benares*; the *Vyavahāramayūkha* amongst the *Mahrattas*, and the *Smtitichandrikā* and *Vyavahāra-Mādhaviya* at *Madras*.

In *Bengal* the paramount authority on the law of inheritance is *Jimūtavāhana's Dāyabhāga*, which in several important respects differs from the ruling of the *Mitāksharā*; and in agreement with it are *Raghunandana's Dāyatattva*, *Śrīkriśhna-Tarkālanīkā's Dāyakramasañgraha*, besides various other works, which it is not necessary here to enumerate.†

The best authorities on the law of adoption are the *Dattakamīmāñsā*, by *Nanda Pañdita*; the *Dattakachandrikā*, by *Devanīda Bhaṭṭa*; and after them, the *Dattakanirṇaya*, *Dattakatilaka*, *Dattakadarpaṇa*, *Dattakakāumudī*, *Dattakadidhiti*, and *Dattakasiddhāntamañjari*. All these commentaries and digests derive their authority from, and profess to be based on, the codes of *Manu* and *Yājñavalkya* and the other lawgivers already alluded to. They do not admit that there is any real difference between the laws laid down in the ancient works; and wherever any such differences seem to exist, they either endeavour to reconcile them by the interpretations they put on their texts, or explain them away by the assumption of accidental omissions which they supply. And it is in consequence of such interpretations or additions that different conclusions have obtained in the *Mitāksharā*- and the *Bengal*-schools, though both profess to derive their opinions from a correct and authoritative understanding of the same ancient texts.

That all these commentaries and digests, whenever it suits their line of argument, occasionally also refer to other non-legal works of *Sanskrit* literature, such as the *vedic Gṛhyasūtras*, the *Mahābhārata*, *Rāmāyaṇa*, the *Purāṇas*, and even the grammar of *Pāṇini*, need not surprise us, for their object is to convey the impression that a harmonious spirit pervades the whole antiquity of *India*, and that their ruling, therefore, is in accordance with all that is sacred to the *Hindu* mind.

Now, from the facts I have been able to gather, it would appear that, with scarcely any exception, the *English* judges who are entrusted with the administration of the *Hindu* law of inheritance and adoption, are not

\* 'Two Treatises,' Pref., p. iv.

† Compare the works mentioned in the note of the preceding page.



acquainted with the Sanskrit language, and are unable therefore to found their decisions on a direct and immediate knowledge and examination of the original law sources just mentioned. They must resort, therefore, to second-hand information which they derive from translations, and the assistance afforded them by the pleadings of counsel and otherwise. But as I am probably not very wrong in assuming that for the most part the counsel, too, are indebted for their knowledge of the Hindu law, not to the original texts, but to translations of them, these translations are the real basis on which the administration of the Hindu law at present rests, and it will, therefore, be necessary to give a brief account of them.

Of the code of Manu there exists the well-known complete translation of Sir W. Jones, first published in 1794, then in 1796, and reprinted by Houghton in 1825. It was translated into German by Hüttner in 1797. A French translation of the original by Loiseleur Deslongchamps, mainly agreeing with that of his celebrated predecessor, appeared in 1833.\* A complete translation in German of the code of Yājñavalkya was published by Professor Stenzler in 1849; and some portions of the same code translated into English by Dr. Roer and Mr. Montrion appeared in 1859.

The *Mitāksharā* of Vijñāneśvara is a running commentary on each verse of Yājñavalkya's Institutes. The latter consist of three parts. The first treats of *dharma*, or established rules of conduct, comprising such

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\* About thirty years ago, I believe, there appeared at Calcutta a few parts of a new edition and translation of Manu, which seem to have remained almost unknown in Europe. The quarto volume in question, when opened, contains on the left side in one column the text of Manu in Devanāgarī, and in Bengali characters; and in another, a Bengali translation of the corresponding verses, a few foot-notes in Bengali being generally added to the page; on the right side it contains in one column Sir W. Jones's translation, and parallel to it, in another column, a new English translation, which may be looked upon as a running criticism on the former. For though it repeats as much as it approves of Sir W. Jones's translation, in the very words of the latter, this is apparently done in order to make its divergence from it still more prominent; and this divergence is not inconsiderable, and very often marks a decided improvement on the rendering of Sir W. Jones. Foot-notes in English, moreover, are frequently added to justify the discrepancies. Unfortunately—for there is no doubt that the author of the new translation was a very competent scholar—in the two copies of it known to me, the text breaks off at verse 40, and the translation at verse 33, of Book 3, while these two copies do not contain the name of the author or a date; and since all my endeavours to learn more about the progress of the work have been unsuccessful, I apprehend that no more of it, than the portions I have seen, has appeared in print. The name of the editor and translator, as I learn from a friend, is Tarachund Chuckerbutt.

subjects as education and marriage, funeral rites, &c. The second part treats of *vyavahāra*, or the business of life, including amongst many other topics judicature and inheritance; the third part treats of *prāyachitta*, and comprises penance, purification, transmigration, and kindred subjects. Of the *Vyavahāra* part of the *Mitāksharā* eight chapters translated by W. H. Macnaghten first appeared in 1829; and that portion of it which strictly relates to inheritance, about the fourteenth part of the whole work, exists in the well-known translation by Colebrooke, first published in 1810, and then edited in his Hindu law books by Mr. Whitley Stokes in 1865. Of the *Vyavahāramayūkha*, Harry Borradaile published a translation in 1827, which likewise reappeared in Mr. Stokes's Hindu law books in 1865.

The *Vivādachintāmañi*, translated into English by Proseonno Coomarr Tagore, was published in 1863; the *Vyavahāra-Mādhaviya*, by Mr. A. C. Burnell, in 1868, and—through the medium of Tamul sources, as I am informed—the *Smṛitichandrikā*, by Mr. T. Kristnasawmy Iyer, in 1867. Of *Jimūtavāhana's Dāyabhāga* we possess the translation of Colebrooke, first published in 1810, and in his law books by Mr. Stokes in 1865; and of the *Dāyakramasaṅgraha*—also edited in the same collection by the same distinguished scholar—the translation of Wynch, first published in 1818.

Lastly, the *Dattakamīmāṃsā* and *Dattakachandrikā* exist in a translation by Sutherland, first published in 1821, then in 1825, and also embodied in Mr. Stokes's Hindu law books.

Besides these few translations, nothing whatever worth mentioning, out of the large bulk of Hindu law literature, is accessible to the English judge, if unacquainted with Sanskrit, except a few disconnected verses of the ancient lawgivers, put together, without any reference to the context in which they stand, in the Digest of Hindu law prepared by Jagannātha under the directions of Sir W. Jones.\*

The question, then, which I have to raise is this: Do these translations—a mere fraction, I need not say, of the large mass of Hindu

\* Colebrooke's opinion of this Digest is contained in the following passage from his preface to the 'Two Treatises,' &c., p. ii. :—"In the preface to the translation of the Digest, I hinted an opinion unfavorable to the arrangement of it, as it has been executed by the native compiler. I have been confirmed in that opinion of the compilation, since its publication; and indeed the author's method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing in an intelligible manner which of them is the received doctrine of each school, but on the contrary leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered to be in force and which obsolete,

law literature—suffice both in quality and quantity for ensuring to litigants a proper and satisfactory administration of the Hindu law of inheritance and adoption?

Before giving my opinion on this point, I will place myself in the position of a judge who has no means of examining for himself the original text of a statute, and I should then have to assume that the question asked must be answered by him in the affirmative. For on what grounds could he decide that the translations enumerated above were insufficient in quantity, and how could he undertake to say that any objection mooted against their reliability was valid or not? It would be a dangerous and, I hold, an arbitrary proceeding on his part were he to overrule, for instance, the translation of a passage by Tagore or Burnell, merely because the translation of the same passage by Colebrooke did not agree with it, and because the authority of Colebrooke stands higher than that of the scholars differing from him. For however high the authority of anyone, a doubt of this kind cannot be finally settled by it; and a mere consideration of the immense progress made by Sanskrit studies since the time when the great Colebrooke wrote, of the large quantity of new materials that have since come to light, of all the advantages in short, which, in consequence of the very labours of Colebrooke, later workers in the same field must have over him, would naturally make a judge hesitate in disposing of such doubts simply on the ground of tradition and authority.

Yet instances of such conflicting translations are by no means rare; and where therefore for his final opinion the judge would have to rely on third parties, his position would at any rate not be safe.

To illustrate this uncertainty I will choose at random a few examples as they occur to me.

The *Mitāksharā* and the digests, as I have already observed, constantly support their statements by quotations from Manu, Yājñavalkya, and the other lawgivers; but as every disputed case has not been foreseen by them, these very quotations sometimes become the principal basis on which the judgment in a particular case has to rest.

In dealing with the rights of brothers, a verse of Yājñavalkya is quoted by the *Dāyabhāga* of Jīmūtavāhana, which Colebrooke translates as follows:—

“ A half-brother, being again associated, may take the succession; not

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renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in *Indian* jurisprudence; especially to the *English* reader, for whose use, through the medium of translation, the work was particularly intended.”