

PREFACE.

No branch of jurisprudence is more important than the law of successions or inheritance ; as it constitutes that part of any national system of laws, which is the most peculiar and distinct, and which is of most frequent use and extensive application.

In the law of contracts, the rules of decision, observed in the jurisprudence of different countries, are in general dictated by reason and good sense ; and rise naturally, though not always obviously, from the plain maxims of equity and right.

As to the criminal law, mankind are in general agreed in regard to the nature of crimes : and, although some diversity necessarily result from the exigencies of different states of society, leading to considerable variation in the catalogue of offences, and in the scale of relative guilt and consequent punishment ; yet the fundamental principles are unaltered, and may perhaps be equally traced in every known scheme of exemplary and retributive justice.

But the rules of succession to property, being in their nature arbitrary, are in all systems of law purely conventional. Admitting even that the succession of the offspring to the parent is so obvious as almost to present a natural and universal law ; yet this very first rule is so variously modified by the sages of different nations, that its application at least must be acknowledged to be founded on consent rather than on reasoning. In the laws of one people the rights of primogeniture are established ; in those of another the equal succession of all the male offspring prevails : while the rest allow the participation of the female with the male issue, some in equal, other in unequal proportions. Succession by right of representation, and the claim of descendants to inherit in the order of proximity, have been respectively established in various nations, according to the degree of favour, with which they have viewed those opposite pretensions. Proceeding from linear to collateral succession, the diversity of laws prevailing among different nations, is yet greater, and still more forcibly argues the arbitrariness of the rules. Nor is it indeed practicable to reduce the rules of succession as actually established in any existing body of law, to a general or leading principle, unless by the assumption of some maxim not necessarily connected with the canons of inheritance.

In proportion then, as the law of successions is arbitrary and irreducible to fixed and general principles, it is complex and intricate in its provisions; and requires, on the part of those entrusted with the administration of justice, a previous preparatory study; for its rules and maxims cannot be rightly understood, when only hastily consulted as occasions arise. Those occasions are of daily and of hourly occurrence: and, on this account that branch of law should be carefully and diligently studied.

In the *Hindu* jurisprudence in particular, it is the branch of law, which specially and almost exclusively merits the attention of those who are qualifying themselves for the line of service in which it will become their duty to administer justice to our *Hindu* subjects, according to their own laws.

A very ample compilation on this subject is included in the Digest of *Hindu* law, prepared by Jagannatha under the directions of Sir William Jones. But copious as that work is it does not supersede the necessity of further aid to the study of the *Hindu* law of inheritance. 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, 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.

Entertaining this opinion of it, I long ago undertook a new compilation of the law of successions with other collections of *Hindu* law, under the sanction of the Government of Bengal for preparing for publication a supplementary Digest of such parts of the law as I might consider to be most useful. Its final completion and publication have been hitherto delayed by important avocations; and it has been judged meantime advisable to offer to the public in a detached form, a complete translation of two works materially connected with that compilation.

They are the standard authorities of the *Hindu* law of inheritance in the schools of *Benares* and *Bengal* respectively; an

considerable advantage must be derived to the study of this branch of law, from access to those authentic works, in which the entire doctrine of each school, with the reasons and arguments by which it is supported, may be seen at one view and in a connected shape.

In a general compilation, where the authorities are greatly multiplied, and the doctrines of many different schools, and of numerous authors are contrasted and compared, the reader is at a loss to collect the doctrines of a particular school and to follow the train of reasoning by which they are maintained. He is confounded by the perpetual conflict of discordant opinions andarring deductions; and by the frequent transition from the positions of one sect to the principles of another. It may be useful then, that such a compilation should be preceded by the separate publication of the most approved works of each school. By exhibiting in an exact translation the text of the author with notes selected from the glosses of his commentators or from the works of other writers of the same school, a correct knowledge of that part of the *Hindu* law, which is expressly treated by him, will be made more easily attainable, than by trusting solely to a general compilation. The one is best adapted to preparatory study; the other may afterwards be profitably consulted, when a general, but accurate knowledge has been thus previously obtained by the separate study of a complete body of doctrine.

These considerations determined the publication of the present volume. It comprehends the celebrated treatise of Jimuta-vahana on successions, which is constantly cited by the lawyers of *Bengal* under the emphatic title of *Dayabhaga* or "inheritance;" and an extract from the still more celebrated *Mitacshara* comprising so much of this work as relates to inheritance. The range of its authority and influence is far more extensive than that of Jimuta-vahana's treatise; for it is received in all the schools of *Hindu* law, from *Benares* to the southern 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 works of other eminent writers have, concurrently with the *Mitacshara* considerable weight in the schools of law which have respectively adopted them; as the *Smriti Chandrica** in

* By DEVANANDA-BHATTA. This excellent treatise on judicature is of great and almost paramount authority, as I am informed, in the countries occupied by the *Hindu* nations of *Dravira*, *Tailanga* and *Carnata* inhabiting the greatest part of the peninsula or *Dekhin*.

the south of India; the *Chintamani*, *Ratnacara* and *Vivada-chandra** in *Mithila*; the *Viramitrodaya* and *Camalacaru*† at *Benares* and the *Mayukha*‡ among the *Marhattas*: but all agree in generally deferring to the authority of the *Mitacshara*, infrequently appealing to its text, and in rarely and at the same time modestly dissenting from its doctrines on particular questions. The *Bengal* school alone, having taken for its guide *Jimuta-vahana's* treatise, which is on almost every disputed point, opposite in doctrine to the *Mitacshara*, has no deference for its authority. On this account, independently of any other considerations, it would have been necessary to admit into the present volume either his treatise, or some one of the abridgments of his doctrine which are in use, and of which the best known and most approved is *Raghunandana's Daya-tatva*. But the preference appeared to be decidedly due to the treatise of *Jimuta-vahana* himself: as well because he was the founder of this school, being the author of the doctrine which it has adopted; as because the subjects, which he discusses, are treated by him with eminent ability and great precision; and for this further reason, that quotations from his work, or references to it, which must become necessary in a general compilation of the *Hindu* law of inheritance, can be but very imperfectly intelligible without the opportunity of consulting the whole text of his close reasoning and ample disquisitions.

Having selected, for reasons which have been here explained, the *Dayabhaga* of *Jimuta-vahana* and the *Mitacshara* on inheritance, for translation and separate publication, I was led in course to draw the chief part of the annotations necessary to the illustration of the text, from the commentaries on those works. Notes have been also taken from original treatises, of which likewise brief notices will be here given, that their authority may be appreciated.

In the selection of notes from commentaries and other sources, the choice of them has not been restricted to such as might be necessary to the elucidation of the subject as it is exhibited in the *English* version; but variations in the reading and interpretation of the original text have been regularly noticed, with the view of adapting this translation to the use of those who may be induced

* *Vivada Chintamani*, *Vyavahara Chintamani* and other treatises of law by VACHESPATI MISRA. *Vivada Ratnacara*, *Vyavahara Ratnacara* and other compilations by *panditas* employed by CHANDESIYARA; *Vivada Chandra* by MISARU MISRA or rather by his aunt LACHIMA or LACHMI DEVI.

† *Viramitrodaya*, an ample and very accurate digest by MITRA MISRA, *Vivada-tandara* and other works of CAMALACARA.

‡ *Vyavahara-Mayukha* and other treatises by NILACANTHA.

to study it with the original *Sanscrit* text. The mere *English* reader will not be detained by these annotations, which he will of course pass by.

Having verified with great care the quotations of authors, as far as means are afforded to me by my own collection of *Sanscrit* law books (which includes, I believe, nearly all that are extant;) I have added at the foot of the page notes of reference to the places in which the texts are found. They will be satisfactory to the reader as demonstrating the general correctness of the original citations. The inaccuracies, which have been remarked are also carefully noticed. They are few and not often important.

The sources, from which the annotations have been chiefly drawn, are the following.

The commentary of Srikrishna Tarcalancara on the *Dayabhaga* of Jimuta-vahana has been chiefly and preferably used. This is the most celebrated of the glosses on the text. It is the work of a very acute logician, who interprets his author and reasons on his argument, with great accuracy and precision; and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout *Bengal*; and it has almost banished from them the other expositions of the *Dayabhaga*; being ranked, in general estimation, next after the treatises of Jimuta-vahana and of Ragunandana.

An original treatise by the same author, entitled *Daya-craman-graha*, contains a good compendium of the law of inheritance according to Jimuta-vahana's text, as expounded in his commentary. It has been occasionally quoted in the notes: its authority being satisfactorily demonstrated by the use which was made of it in the compilation of the Digest translated by Mr. Halhed; the compilers of which transcribed largely from it, though without acknowledgment.

The earliest commentary on Jimuta-vahana is that of Sri-natha Acharya Chudamani. It has been constantly in Sri-krishna's view, who frequently copies it; but still oftener cites the opinions of Chudamani to correct or confute them. Notwithstanding this frequent collision of opinions, the commentary of Chudamani must be acknowledged as, in general, a very excellent exposition of the text; and it has been usefully consulted throughout the progress of the translation, as well as for the selection of explanatory notes.

Another commentary, anterior to Srikrishna's but subsequent to Chudamani's, is that of Achyuta Chacravarti, (author likewise of a commentary on the *Sradha viveka*.) It is in many

places quoted for refutation, and in more is closely followed by Sricrishna, but always without naming the author. It contains frequent citations from Chudamani, and is itself quoted with the name of the writer by Maheswara. This work is upon the whole an able interpretation of the text of Jimuta-vahana, and has afforded much assistance in the translation of it, and furnished many notes illustrating its sense.

The commentary of Maheswara is posterior to those of Chudamani and of Achyuta, both of which are cited in it; and is probably anterior to Sricrishna's or at least nearly of the same date, if my information concerning these authors be correct;* for they appear to have been almost contemporary; but Maheswara seemingly a little the elder of the two. They differ greatly in their expositions of the text, both as to the meaning and as to the manner of deducing the sense: but neither of them affords any indication of his having seen the other's work. A comparison of these different and independent interpretations has been of material aid to a right understanding and correct version of obscure and doubtful passages in Jimuta-vahana's text.

Of the remaining commentaries, of which notices had been obtained, only one other has been procured. It bears the name of Raghunandana, the author of the *Smriti-tatwa*, and the greatest authority of *Hindu* law in the province of *Bengal*. In proportion to the celebrity of the writer was the disappointment experienced on finding reason to distrust the authenticity of the work. But not being satisfied of its genuineness, and on the contrary suspecting it strongly of bearing a borrowed name, I have made a very sparing use of this commentary either in the version of the text or in the notes.

The *Daya-tatwa*, or so much of the *Smriti-tatwa* as relates to inheritance, is the undoubted composition of Raghunandana; and, in deference to the greatness of the author's name and the estimation in which his works are held among the learned *Hindus* of *Bengal*, has been throughout diligently consulted and carefully compared with Jimuta-vahana's treatise, on which it is almost exclusively founded. It is indeed an excellent compendium of the law, in which not only Jimuta-vahana's doctrines are in general strictly followed, but are commonly delivered in his own words in brief extracts from his text. On a few points, however,

* Great-grandsons of both these writers were living in 1806: and the grandson (daughter's son) of SRIKRISHNA was alive in 1790. Both consequently must have lived in the first part of the last century. They are modern writers; and SRIKRISHNA is apparently the most recent.

Raghunandana has differed from his master ; and in some instances he has supplied deficiencies. These, as far as they have appeared to be of importance, have furnished annotations ; for which his authority is of course quoted.

A commentary by Casirama on Raghunandana's *Daya-tatwa*, has also supplied a few annotations, and has been of some use in explaining Jimuta-vahana's commentators, being written in the spirit of their expositions of that author's text, particularly Sri-crishna's gloss ; and often in the very words of that commentator.

The *Daya-rahasya* or *Smriti-ratnavali* of Ramanatha Vidya-Vachaspati, having obtained a considerable degree of authority in some of the districts of *Bengal*, has been frequently consulted, and is sometimes quoted in the notes. It is a work not devoid of merit: but, as it differs in some material points from both Jimuta-vahana and Raghunandana, it tends too much to un-hinge the certainty of the law on some important questions of very frequent recurrence. The same author has written a commentary on Jimuta-vahana's *Daya-bhaga*, and makes a reference to it at the close of his own original treatise. My researches, however, and endeavours to procure a copy of it, have not been successful. I should else have considered it right to advert frequently to it in the illustrations of the text.

Other treatises on inheritance according to the doctrines received in *Bengal*, as the *Daya-nirmaya* of Sricara Bhatta-charjya and one or two more which have fallen under my inspection, are little else than epitomes of the work of Raghunandana or of Jimuta-vahana : and on this account have been scarcely at all used in preparing the present publication.

The remaining names, which occur in the notes, are of works or of their authors belonging to other schools. Those are rarely, I may say never, cited, unless for variations in the reading of original texts of legislators ; excepting only the *Viramitrodaya* of Mitra-Misra ; from whose work a few quotations may be found in the notes, contradicting passages of the text. This author, in the compilation mentioned, uniformly examines and refutes the peculiar doctrines maintained by Jimuta-vahana and Raghunandana : but it did not fall within the design of the present publication to exhibit the controversial arguments of the modern opponents of the *Bengal* school ; and quotations from his work have been therefore sparingly inserted in the notes to Jimuta-vahana's treatise.

The commentaries on the *Mitacshara* of Vijnyanésvara are less numerous. Of four, concerning which I have notices, two only have been procured. The *Subodhini* by Visweswara Bhatta ; and a commentary by a modern author, Balam Bhatta.

The *Subodhini* is a collection of notes elucidating the obscure passages of the *Mitacshara*, concisely, but perspicuously. It leaves few difficulties unexplained, and dwells on them no further than is necessary to their elucidation. The commentator is author likewise of a compilation entitled *Madanaparijata*, chiefly on religious law, but comprising a chapter on inheritance, a topic connected with that of obsequies. To this work he occasionally refers from his commentary. Both therefore have been continually consulted in the progress of the translation, and have furnished a great proportion of the annotations.

Balam Bhatta's work is in the usual form of a perpetual comment. It proceeds, sentence by sentence, expounding every phrase, and every term, in the original text. Always copious on what is obscure and often so on what is clear, it has been satisfactory aid in the translation, even where it was busy in explaining that which was evident : for it has been gratifying to find, though no doubts were entertained, that the intended interpretation had the sanction of a commentator. Balam Bhatta's gloss in general follows the *Subodhini* as far as this goes. It has supplied annotations where Visweswara's commentary was silent ; or where the explanation, couched in Visweswara's concise language, might be less intelligible to the *English* reader.

Vijnaneswara's *Mitacshara* being a commentary on the institutes of Yajnyawalkya, it has been a natural suggestion to compare his expositions of the law, and of his author's text in particular, with the commentaries of other writers on the same institutes, *viz.*, the ancient and copious gloss of Apararca of the royal house of *Silara*, and the modern and succinct annotations of Sulapani in his comment entitled *Dipacalica*. A few notes have been selected from both these works, and chiefly from that of Apararca.

For like reasons the commentators on the institutes of other ancient sages have been similarly examined ; they are those of Medhatithi and Culluca Bhatta on Manu ; Haradatta's gloss on Gautama, which is entitled *Mitacshara* ; Nanda-Pandita's commentary under the title of *Vaijayanti*, on the institutes which bear the name of the god Vishnu ; and those of the same author, and of Madhava Acharya, on Parasara.

Nanda-Pandita is author also of an excellent treatise on adoption, entitled *Dattaca-Mimamsa*, of which much use has been made, among other authorities, in the enlarged illustrations which it has been judged advisable to add to the short chapter contained in the *Mitacshara* on this important topic of *Hindu* law.

The same writer appears, from a reference in a passage of his

gloss on Vishnu to have composed a commentary on the *Mitacshara* under the title of *Pratitacshara*. Not having been able to procure that work, but concluding that the opinions, which the writer may have there delivered, correspond with those which he has expressed in his other compositions, I have made frequent references to the rest of his writings, and particularly to his commentary on Vishnu, which is a very excellent and copious work, and might serve, like the *Mitacshara*, as a body or digest of law.

All the works of greatest authority in the several schools which hold the *Mitacshara* in veneration, have been occasionally made to contribute to the requisite elucidation of the text, or have been cited when necessary for such deviations from its doctrine, as it has been judged right to notice in the annotations. It will be sufficient to particularize in this place the *Viramitrodaya* before mentioned, of which the greatest use has been made, that compilation conforming generally to the doctrines of the *Mitacshara*, the words of which it very commonly cites with occasional elucidations of the text interspersed, or with express interpretations of it subjoined, or sometimes with the substitution of a paraphrase for parts of the original text. All these have been found useful auxiliaries to the professed commentaries and glosses.

This brief account of the works from which notes have been selected or aid derived, will sufficiently make known the plan on which the text of the *Mitacshara* and that of Jimuta-vahana have been translated and elucidated, and the materials which have been employed for that purpose. It is hardly necessary to add, by way of precaution to the reader, that he will find distinguished by hyphens, whatever has been inserted from the commentaries into the text to render it more easily intelligible—a reference to the particular commentary being always made in the notes at the foot of the page.

Concerning the history and age of the authors whose works are here introduced to the attention of the *English* reader, some information will be expected. On these points, however, the notices, which have been collected, are very imperfect, as must ever be the case in regard to the biography of *Hindu* authors.

Vijnaneswara, often called Vijnana-yogi the author of the *Mitacshara*, is known to have been an ascetic, and belonged, as is affirmed, to an order of *Sannyasis*, said to have founded by Sancara Acharya. No further particulars concerning him have been preserved. A copy of his work has indeed been shown to me, in which, at its close, he is described as a contemporary of Vicramaditya. But the authority of this passage, which is wanting in other copies, is not sufficient to ground a belief of

the antiquity of the book ; especially as it cannot be well reconciled to the received opinion above noticed of the author's appertaining to a religious order founded by Sancara Acharya, whose age cannot be carried further back, at the utmost, than a thousand years. The limit of the lowest recent date which can possibly be assigned to this work, may be more certainly fixed from the ascertained age of the commentary ; the author of which composed likewise (as already observed) the *Madana-parijata*, so named in honor of a prince called Madana-Pala, apparently the same who gives title to the *Madana-vinoda*, dated in the fifteenth century of the *Sambat* era.* It may be inferred as probable, that the antiquity of the *Mitacshara* exceeds 500 and is short of 1,000 years. If indeed Dhareswara, who is frequently cited in the *Mitacshara* as an author, be the same with the celebrated Raja Bhoja, whose title may not improbably have been given to a work composed by his command, according to a practice which is by no means uncommon, the remoter limit will be reduced by more than a century. and the range of uncertainty as to the age of the *Mitacshara* will be contracted within narrower bounds.

Of Jimuta-vahana as little is known. The name belongs to a prince of the house of Silara, of whose history some hints may be gathered from the fabulous adventures recorded of him in popular tales ; and who is mentioned in an ancient and authentic inscription found at *Salsset*.† It was an obvious conjecture, that the name of this prince might have been affixed to a treatise of law composed perhaps under his patronage or by his directions. That however is not the opinion of the learned in *Bengal* ; who are more inclined to suppose, that the real author may have borne the name which is affixed to his work, and may have been a professed lawyer who performed the functions of judge and legal adviser to one of the most celebrated of the *Hindu* sovereigns of *Bengal*. No evidence, however, has been adduced in support of this opinion ; and the period when this author flourished is therefore entirely uncertain. He cites earlier writers ; but, their age being not less doubtful than his own, no aid can be at present derived from that circumstance, towards the determination of the limits between which he is to be placed. His commentators suppose him in many places to be occupied in refuting the doctrines of the *Mitacshara*. Probably they are right ; it is however possible that he may be there refuting the doctrines of earlier authors, which may have subsequently been repeated from them in the latter compilation of *Vijnaneswara*. Assuming, however, that

* 1431 *Sambat* ; answering to A. D. 1375.

† Asiatic Researches, Vol. I. p. 857.

the opinion of the commentators is correct, the age of Jimutavahana must be placed between that of Vijnyaneswara, whose doctrine he opposes, and that of Raghunandana who has followed his authority. Now Raghunandana's date is ascertained at about three hundred years from this time; for he was pupil of Vasudeva Sarvabhauma, and studied at the same time with three other disciples of the same preceptor, who likewise have acquired great celebrity; viz., Siromani, Orishnananda, and Chaitanya: the latter is the well-known founder of the religious order and sect of *Vaishnavas* so numerous in the vicinity of *Calcutta*, and so notorious for the scandalous dissoluteness of their morals; and, the date of his birth being held memorable by his followers, it is ascertained by his horoscope, said to be still preserved, as well as by the express mention of the date in his works, to have been 1411 of the *Saca* era, answering to Y. C. 1489: consequently Raghunandana, being his contemporary must have flourished at the beginning of the sixteenth century.
