LAW AND JUSTICE IN THE VISNU DHARMAŚŪTRA
It was the primary function of a king to administer justice impartially and to maintain law and order. In the administration of law and justice a king is independent and all in all. All the Dharmaśāstras are the main sources of law prevailing in the śūtra period. The term law was included in the "Dharma" which deals with social, religious and political life of the Āryans. The Viśṇu Dharma Śūtra describes two types of law - Penal Law and Civil Law.

**Penal Law**

Generally every offender should be punished by the king, as the punishment protects mankind but the king should inflict punishment on the offenders keeping in view their age, caste, etc., and according to the nature of offences,
such as theft, adultery, robbery etc. The YS states that the king should inflict punishment upon those, who deserve it after ascertaining at and taking note of the nature, time and place of the offence, and the strength, age, avocation and wealth of the culprit. The Manu Smriti divides punishment into four categories, namely Admonition, Reproof, Fine and Corporeal-punishment. Yajnavalkya also speaks of four types of punishments, viz., censure, rebuke, pecuniary punishment and corporal punishment and says that these should be used either separately or jointly according to the nature of the crime. But in this context, the VDS does not mention clearly the division of punishment. But a thorough study of the subject indicates that it also divides punishment into four categories, viz., reprimand, rebuke, pecuniary punishment and corporal punishment.

From the earliest Dharma Sutras to the VDS generally all the crimes were denoted by the word "Sāhasa" but in the later Dharmasāstras some specific offences such as robbery, murder, mischief etc. were recognised under the title of 'Sāhasa'. According to the Manu Smriti (VIII, 322), the Kaut. (III, 17), the Naradā Smriti (XVIII, I) and the YS (II, 230), the 'Sāhasa' is an offence, which is committed with violence in defiance of or in the presence of royal officers or guards or people. Therefore, the above-mentioned Dharmasāstras differentiate between 'Sāhasa' and
'Theft' or kindred offenses by saying that the theft consists in depriving a person of his wealth stealthily without force, while in 'Sāhāsa' there is use of 'force'. In other words, the offenses under the title of 'Sāhāsa' are violent and aggressive in nature, while the offenses relating to theft etc. are generally secretive in nature.

The Viṣṇu Dharma Sūtra divides 'Sāhāsa' into three categories:

1) Prathama Sāhāsa - The first amercement,
2) Madhyama Sāhāsa - The second amercement, and
3) Uttama Sāhāsa - The highest amercement.

All the Dharmaśastras prescribe different amount of fine for these three categories of Sāhāsa. According to the VDS.(IV, 14) two hundred and fifty Panas (250) is the lowest limit of fine for the lowest kind of Sāhāsa, i.e., for the first amercement, five hundred Panas (500) is the lowest fine for the intermediate Sāhāsa, i.e., for the second amercement, and one thousand Panas (1000) is the lowest fine for the Uttama kind of Sāhāsa, i.e., for the highest amercement. Manu (VIII, 138) also says the same. But Yajnavalkya and Narada prescribe different amount of fine for the same offence. For instance, the YS (I, 366) puts these amounts at 270 Panas, 540 Panas and 1080 Panas, respectively, while Narada states that the first, intermediate and highest fines are 100 Panas, 500
Panās and 1000 Panās respectively.

According to the VDS the nature of punishment inflicted on criminals varies in accordance with the position of a man's caste in society and according to the nature of the crimes. The Viṣṇu Dharma Sūtra prescribes severe penalties for the members belonging to lower castes and shows leniency to the members of higher castes for committing the same type of crime. Viṣṇu says that those, who committed heinous crimes should be put to death, but special consideration is shown by the Viṣṇu Dharma Sūtra for the life of a Brāhmaṇa, even if he commits a heinous crime. Viṣṇu lays down that the Brāhmaṇas are exempted from corporal punishment. A Brāhmaṇa can only be banished from the country with different signs on his forehead according to the nature of crimes. For instance, if a Brāhmaṇa murders another Brāhmaṇa, he shall be branded with a sign of headless trunk on his forehead and banished. If he drinks wine, a sign of flag of the seller of spirituous liquor shall be branded on his forehead. If he steals gold etc., the sign of a dog's foot shall be branded on his forehead, and if he commits incest the sign of female part shall be branded on his forehead. This Dharma Sūtra further adds that if a Brāhmaṇa murders any member of the other castes or commits any other capital crime, he shall be banished from the country after having confiscated all his property. In this respect the Gautama
Dharma Sūtra (XII. 43), the BDS (1, 10, 18, 17) and the Manu Smriti (IX, 241) lay down the same rule. Gautama says (XII, 43) that corporal punishment must not be inflicted on a Brāhmaṇa. Similarly it is stated by the BDS that a Brāhmaṇa must never be sentenced to death for any crime whatsoever. Manu mentions ten places of punishment, namely, the privy part, the belly, the tongue, the two hands and filthy the two feet, the eye, the nose, the two ears, the property and the whole body, for the members belonging to the three lower castes i.e. Ksatriya, Vaisya and Sudra, but for a Brāhmaṇa it states that he should be banished from the country unhurt. The VDS. states that persons, who forge royal edicts and documents should also be put to death. Similarly, an offender, who administers poison, an offender, who commits the crime of arson, a robber and a murderer of women, children and men shall also be put to death. Visnu further adds that if a person steals more than ten Kumbhas of grain or more than a hundred Masas of such things as are usually sold by weight, shall be put to death. A low-born person, who aspires for kingship or sovereignty, breakers of dikes and a person, who gives shelter and food to a robber shall also be sentenced to death. The VDS. prescribes death penalty for a woman who violates her duty towards her husband who, is unable to restrain her.
Defamation or Vākparusya

The VDS prescribes various fines and punishments for different types of abuses and defamation. It states that the nature of fines and punishments depends upon the caste of the abuser and the person abused and upon the nature of defamation. Viṣṇu draws distinction between the members of the highest caste and those of the lowest caste. According to this Dharma Sūtra if a person belonging to the lowest caste, proudly gives instructions to the members of the highest caste regarding his duty then the king should drop hot oil into his mouth. The VDS enjoins upon a king to thrust a red-hot ten inches long iron-rod in the mouth of man of a lower caste who, revilingly mentions the name or caste of a member of the highest caste. Viṣṇu prescribes the penalty of two hundred Kārśāpaṇas for an offender who makes a wrong declaration about his learning, country, caste and conduct. A fine of two Kārśāpaṇas is prescribed by this Dharma Sūtra for a person who calls a person one-eyed, lame, etc. If a person defames his elders, he shall be fined two hundred Kārśāpaṇas. If a person accuses another person of committing heinous crimes such as entail loss of caste, the accuser shall be fined the highest amercement, i.e., one thousand Kārśāpaṇas, and similarly if he accuses another person of committing minor crimes such as cow-slaughter etc., he should be awarded a fine of second
amercement, i.e. five hundred Kārgāpaṇas. The Viṣṇu Dharma Sūtra awards the punishment of second amercement, i.e., five hundred Kārgāpaṇas for a person who reviles an old Brāhmaṇa versed in the three Vedas, or a whole caste, or a corporation of judges, etc. Similarly, the fine of the lowest amercement, i.e., two hundred and fifty Kārgāpaṇas has been imposed by Viṣṇu on a person who reviles a village or a district. The Viṣṇu Dharma Sūtra lays down some punishments or fines for indecent abuses, i.e., the abuse of a man in such a way that it refers to the women relations of a man in a direct manner. For instance, Viṣṇu says that if a man uses insulting language such as "I shall visit your sister" or "I shall visit your mother", he shall be fined one hundred Kārgāpaṇas and if he uses bad language regarding his mother the fine highest amercement i.e., one thousand, Kārgāpaṇas shall be imposed on him.

Some fines have been provided by the Viṣṇu Dharma Sūtra for using abusive language and treating any one insultingly in general. The fine of twelve Panas has been prescribed by Viṣṇu for a person who uses abusive language against a person of his own caste and the fine of six Panas against a person of a lower caste. Similarly, Viṣṇu says that for insulting a member of the highest caste or of his own caste the fine shall be six Panas and for vice-versa, i.e., if a man returns his insult in the same way, the fine shall be
reduced to three Kārṣāpaṇas. The fine of three Kārṣāpaṇas has been ordained by the VDS for a person who calls another person with bad names.²³

Assault "Dandapārusya"

The Dharmaśāstras prescribe different punishments for different kinds of assault according to the caste of the offender. Severe punishments have been laid down by the Dharmaśāstras for the members of the lower castes if they assault any member of a higher caste. This Dharma Sūtra states that the limb, with which a low caste person insults or hurts his superior in caste, shall be imputed by the king.²⁴ If a member of a lower caste defiantly places himself on the same seat with a member of a higher caste, the offender shall be banished with a mark on his buttock. If a low-born person spits on a high-born person his both the lips shall be cut off, and if a person belonging to a lower caste breaks wind against a person belonging to a higher caste his anus shall be cut off.²⁵ Viṣṇu adds that if a person uses abusive language against a person belonging to a higher caste, the tongue of the culprit shall be cut off.²⁶

It is also laid down in the Viṣṇu Dharma Sūtra that an offender has to bear the expenses of medical treatment of a person who is assaulted by him until the wound is healed up and the person attacked is able to do work. This rule is
applicable to all the Varnas. Visnu further states that if a person raises his hand for striking another person equal in caste, the offender shall be fined ten Kārṣāpaṇas and if he raises his foot he shall be fined twenty Kārṣāpaṇas. The fine of first amercement, i.e., two hundred and fifty Panas, the second amercement, i.e., five hundred Kārṣāpaṇas and the highest amercement, i.e., one thousand Kārṣāpaṇas is ordained by the Visnu Dharma Sūtra for a person who raises a piece of wood, a stone and a weapon respectively for striking a person of his own caste. The VDS adds that if a person seizes another person by his feet, by his hair, by his garment or by his hand, he shall be fined ten Panas. It is also laid down in the Visnu Dharma Sūtra that a person has to pay the fine of thirty two Panas if he causes physical injury to another person not resulting in blood shed. But the fine of sixty-four Panas is prescribed by the VDS if the culprit causes physical injury to a person resulting in blood-shed. Visnu prescribes the fine of second amercement if a person injures a hand, a foot, a tooth or cuts off an ear or the nose of another person. The same punishment is ordained for a person, who causes such injuries to another person rendering him disabled. The punishment of the highest amercement, i.e., one thousand Kārṣāpaṇas is ordained by Visnu for injuring an eye, neck or shoulder of another person. The Visnu Dharma Sūtra enjoins upon a king to award life imprisonment for a person, who
strikes out both eyes of another person or the same culprit should be treated in the same manner, i.e., his both the eyes should be taken out. Visnu further adds that when several men assault one man, the crime becomes double and each offender gets double punishment. Similarly, double punishment is prescribed by the Visnu Dharma Sutra for those, who do not give assistance to a person calling for help, though they are standing on the spot or arrive at the scene of the crime. Visnu says that if a person injures someone by throwing any thing from his house, the offender shall be fined one hundred Kārsāpanas.

Punishments for Cruelty to Animals

Visnu lays down rules for affording protection to trees and animals. Visnu states that if a person kills an elephant, a camel or a cow, his one hand or one foot shall to lopped off. The same punishment is ordained if a meat-seller sells prohibited meat. The VDS adds that if a person kills domestic animals, he has to pay one hundred Kārsāpanas as a fine and he has to compensate the owner for the loss of the killed animal. The fine of five hundred Kārsāpanas is prescribed by the Visnu Dharma Sutra for a person who kills wild animals. The killer of birds and fish shall pay ten Kārsāpanas and the killer of insects shall pay one Kārsāpana. Visnu also prescribes the punishment of one hundred Kārsāpanas for an offender who
destroys the virility of cattle.\(^{37}\)

But Visṇu also lays down the law of self protection,
as it states that if a man kills an animal having sharp
nails and claws like tiger, lion etc., a horned animal
such as goats, buffaloes an animal having sharp teeth
such as a boar, an elephant, a horse or any other ferocious
animal for the protection of his own life he commits no
crime.\(^{38}\) Visṇu further adds that a person can slay a person
who attacks him with murderous intention, even if he may be
his spiritual teacher, a young or old man, a Brāhmaṇa or
even a Brāhmaṇa learned in all branches of sacred knowledge.
Similarly, it further adds that there is no crime if a
person kills an assassin publically or secretly, as in this
case fury recoils upon fury.\(^{39}\)

**Penalty For Felling Trees, Creepers, Etc.**

Regarding the protection of the trees Viṣṇu says that
if a person falls a tree yielding fruits he shall pay the
highest amercement, i.e., one thousand Kārṣāpanas and the
feller of flowery trees shall pay the second amercement, i.e.,
five hundred Kārṣāpanas. A person, who cuts creepers,
shrubs or climbing plants, shall be fined one hundred
Kārṣāpanas and a person, who cuts grass shall be made to
pay a fine of one Kārṣāpanas. It is also laid down in the
Viṣṇu Dharma Sūtra that all such offenders, who cut down the
the trees or plants shall compensate the owner for the loss of trees.  

Fine For Damaging Property

Visṇu lays down that if a person demolishes a house or a courtyard or a wall, he shall be fined the second amercement and shall be made to compensate the owner for the loss of property. Viṣṇu prescribes the punishment of one hundred Kārṣāpanas for a person, who breaks the house in which the seal of the king is laying down.

Theft - "Steya"

It has been pointed out in IIIrd Chapter of the VDS that it is the duty of the king to grant protection to property of his subjects and the king is entitled to charge taxes from the subjects when he provides protection to them. So the Viṣṇu DharmaSutra prescribes various types of punishments ranging from death to fine for thieves. The capital punishment is ordained by Viṣṇu for the persons, who steal more than ten Kumbhas of grain and who steal more than a hundred Māsas of such things as are sold by weight such as gold, silver etc. So for as the corporal punishment regarding the case of theft is concerned, Viṣṇu says that a person, who steals a cow, a horse, a camel, or an elephant shall be deprived of one hand and one foot, and
one hand shall be cut off of the thief, who steals a goat or a sheep. The punishment of cutting off both hands is awarded by Viṣṇu for a person, who steals gold, silver or clothes worth more than fifty Māṣas. This Sutra also prescribes various types of fines for committing theft, as it states that one, who steals all seasonal grains like wheat, rice, barley, etc., shall be fined eleven times the value of the stolen property. Viṣṇu further states that if a person steals gold, silver and clothes valued at less than fifty Māṣas he shall be fined eleven times the price of the stolen article. It is laid down in the Viṣṇu Dharma Sūtra that the person, who steals small articles like thread, cotton, cow-dung, sugar, sour-milk, milk, butter-milk, grass, salt, clay, ashes, birds, fish, clarified butter, oil, meat, honey, basket-work, canes of bamboo, earthenware, iron-pots and dressed food, shall pay the fine of three times the value of stolen article. The fine of five Kārṣāpanas shall be imposed on an offender who steals flowers, green-vegetables, shrubs, creepers or climbing plants, leaves, pot-herbs, roots and fruits. The fine of the highest amercement, i.e., one thousand Kārṣāpanas is ordained by the Viṣṇu Dharma Sūtra for a person who steals gems. At the end the Viṣṇu Dharma Sūtra states that the person who, steals any thing which is not mentioned above, shall pay a fine equal to the value of the stolen article.
It is also laid down in the VDS that the pick-pockets should be deprived of one hand. In this connection Manu prescribes punishment according to the nature of crimes, i.e., first offence, second offence, and third offence, as it is stated by the Manu Smriti that both cut-purses and pick-pockets should be deprived of the thumb and the first finger of the hand for first offence, for the second offence they should have their one hand and foot cut off, and for the third offence they should be sentenced to death.

Rape and Adultery

The VDS prescribes some punishments for rape and adultery according to the castes of men and women concerned. It states that an adulterer shall pay the highest amercement, i.e., one thousand Kārṣāpanas if he has had illicit relations with a woman of his own caste. But according to the commentator Nanda Pandita if a person commits rape with a woman of his own caste, he shall be fined the highest amercement, but for an adultery with a woman of his own caste, the fine of second amercement, i.e. five hundred Kārṣāpanas shall be imposed on him. Viṣṇu further adds that the punishment of second amercement shall be imposed if a man belonging to the higher castes commits adultery with a woman of a lower caste. The death penalty has been ordained by the Viṣṇu
Dharma Sutra if a person belonging to the highest caste commits adultery with an out-castes' woman, i.e., Chandala etc. It is also stated in the Visnu Dharma Sutra that if a Brahmana commits adultery with the wife of a Guru (teacher or elder) he shall be branded on his forehead with obscene mark and banished. The same is the punishment prescribed by the BDS (1, 10, 18, 18). Visnu Dharma Sutra does not go in details in regard to this subject whereas Manu (VIII, 353-85), Yajnavalkya (II, 286-88) and Kautilya (IV, 12) give details about the subject and prescribe severe punishments for adulterers.

CIVIL LAW

Disputes Between a Master and a Servant

The VDS. gives some details about the disputes between a master and a servant. According to the VDS, if during day time, a domestic animal is killed by wolves or by any other ferocious animal, or due to the negligence of the herdsman, the herdsman has to bear the loss and to compensate the owner for the value of the perished cattle. Therefore, during day time the responsibility for the safety of the cattle rests upon the herdsman. In the evening, the cowhered has to bring back all cattle to the owner. The same idea is contained in the Manu Smriti and the Yajnavalkya Smriti with
slight variations. According to Manu, the responsibility of the safety of cattle will lay upon the herdsman during day time, during night on the owner and on both, during, day and night, according to agreement. Manu further adds that in the case of loss and killing of animals, the herdsman must be in a position to prove that, he has protected the animals sincerely. If the animals are forcibly taken away by robbers, he shall not liable to pay any fine. His only duty is to inform the owner about the robbery in time. If an animal is killed by a beast, the herdsman has to produce before his master some parts of the body such as ears, skin, tails, bladders, tendons, etc., or some distinctive marks of the animal killed, as a proof. For the loss of an animal by death, Yājnavalkya states that if the cattle die or are taken away by robbers, due to the negligence of the herdsman, he should be ordered to pay a fine of twelve and half Paṇas to the king and the value of the perished animal to the owner. The fine of twenty-five Kārṣāpaṇas is ordained by the VDS for the herdsman, if he milks a cow without the permission of the owner.

The VDS, also deals with the conflicts arising from grazing of animals in the fields of others, and prescribes some fines against the offenders. There are three parties, who are involved in such cases (1) the Herdsman, (2) the owner of cattle and (3) the owner of the field. Viśnus says that if a female buffalo or a horse, or a camel, or
an ass causes damage to a stranger's crop, the herdsman shall be fined eight Māṣas, and if the cattle are without a watchman the owner of the cattle is bound to pay the fine. For damage caused by a cow, the fine will be four Māṣas and if the damage is done by a goat or a sheep a fine of two Māṣas shall be paid to the owner. The Viṣṇu Dharma Sūtra further adds that if these cattle are, without a herdsman, then the owner of the cattle is bound to pay the fine. The same amount of fine is ordained by the Yājnavalkya Smṛiti (II, 159). In this connection the Gaut. DS states that if the damage is caused by a cow the fine shall be five Māṣas, a fine of six Māṣas shall be paid if the damage is done by a camel or a donkey. A fine of ten Māṣas is to be imposed, when the damage is done by a horse or a buffalo and a fine of two Māṣas shall be paid if the damage is done by a sheep or a goat. Therefore, there is some difference between the VDS and the Gaut. DS in regard to the fines for the damage caused by cattle. It is also laid down in the Viṣṇu Dharma Sūtra that the fine shall be doubled if the cattle rest in another's field after eating crop in that field to their full satisfaction. This Sūtra lays down the rule that in every case the owner of the field must be paid the value of crop that has been destroyed. Viṣṇu states that there is no offence or guilt of the herdsman if the damage is caused in a field situated near a highway, near a village or near the common pasture.
ground for cattle, and if the damage is done to the crop in an unfenced field. So the owner of the field will have every right to get the value of his damaged crop if he fences his field properly. Viṣṇu further adds that no fine shall be charged if the cattle go away from the field after eating crop for a short while. The VDS lays down that there is no offence if the damage is caused by bulls that have been set at liberty or by a cow shortly after her calving.  

LAW OF CONTRACT

The topics of "Vetanādānam" and "Svāmīpālavivāda" are two such topics, which deal with rights and liabilities of the Master and Servants, when they enter into a contract. The Viṣṇu Dharma Sūtra provides some provisions of law for the disputes between the master and the servant, who has broken his agreement. According to the VDS., a workman, who is bound to complete his work under an agreement cannot leave his master without completing the work. If a herdsman does not complete his work in time for which he is employed or abandons his work before the time has expired he shall pay the whole wages received by him to the master and shall be fined a hundred Paṇas by the king. In this context, the Yājnavalkya Śmṛiti states that if a workman, who has
received his wages, does not complete the work undertaken by him he shall pay to the owner the three times of the amount received as wages. On the other hand, a workman, who has not received wages in advance, abandons the task undertaken by him, he shall pay to the owner an amount equivalent to the wages paid to him. The VDS. further states that if an employer dismisses a worker before the expiry of his employment, he shall pay the entire stipulated wages to him and a fine of one hundred Panas to the king. It is also laid down in the VDS. that if the goods are lost through negligence of the servant, he shall be compelled to make good the loss to the owner. But if the damage is caused by an accident, nothing shall be paid to the owner.

The YS also contains the same rule with the addition that if a hired servant creates an obstacle in the starting of an auspicious occasion such as marriage, etc., by refusing to perform his duties, he shall be fined double and the amount of the wages to be received by him.

Punishments for Violation of Compact

The VDS. gives a brief account of the topics dealing with violation of various types of compacts. It is laid down in the VDS. that a person, who misappropriates the property belonging to a corporation and if he violates the established rules of the corporation he shall be banished
from the kingdom. According to the VDS, a person, who fails to return to owner the money deposited to him shall be punished by the king as a thief and shall be ordered to pay to the owner the entrusted money together with interest. Similarly the same punishment shall be imposed on the person who claims for the deposit that has never been deposited by him. 71

Trade Law and Punishments

Viṣṇu lays down some rules relating to trade and prescribes some punishments for offences connected with it. The VDS prescribes the highest amercement, i.e. one thousand Kārśēpaṇas for a person, who uses false weights in trade, and also against a person who makes false allegation against the accuracy of weights in measures. The punishment of one thousand Kārśēpaṇas is also prescribed for the traders, who sell the adulterated commodities. The same punishment is ordained for those, who charges exorbitant price of goods. The punishment of ten Paṇas is to be awarded by Viṣṇu to a person, who sells such goods the sale of which is forbidden by the king. Moreover such forbidden goods shall also be confiscated. 72

Punishments for Non-delivery after Sale

Viṣṇu lays down that if a person sells some goods for a certain price and after having received the price of things
sold by him does not deliver it to the purchaser, the seller is liable to repay the price with interest and shall be fined one hundred Paṇas by the king. Narada (XI, 4-5 and Yājnavalkya (II, 254) also speak of the same rule. According to the Narada Śrītī if a man sells some property and does not hand it over to the purchaser after getting its price, he shall have to pay its produce, if it is immovable, and the profit arising from it if it is movable property. According to the Kaut. Arth. Śāstra (III, 15) the fine of twelve Paṇas shall be imposed on the vendor, who after selling a thing does not deliver it to the purchaser and also the same fine for the buyer, who after having purchased, does not take the delivery of it.

Punishments for Committing Fraud in Gambling

The VDS. prescribes the punishment of chopping of the hand of such gamblers as play with fake dice. It is further laid down in the VDS. that those gamblers who resort in fraudulent practices shall lose two fingers, i.e., the index and the thumb. In this context, Yājnavalkya (II, 202) says that the persons who, play with fake dice or the fraudulent gamblers, should be branded with a dog's or other's mark by the king and banished from the kingdom.
Punishments for Removal of Boundary Mark

It is stated in the VDS, that a person, who removes the mark between two fields shall be punished with the highest amercement, i.e., one thousand Kārṣāpānas and the boundary will again be demarcated in its original position.77

Punishments for Fraudulent Sale

According to the VDS, if a person purchases goods in the open-market through ignorance from a person, who has no authority to sell it he will not be liable to any punishment, but the owner of the goods sold in this manner will be entitled to recover his goods. Viṣṇu further adds that if a person purchases an article not in the open market but secretly and under a very low price, in this case the purchaser and the vendor both shall be punished as thieves.78

Punishments for Improper Medical Treatment

Viṣṇu lays down that a physician, who adopts improper methods of treatment for the treatment of patients shall pay fine according to the status of the man. It states that if the patient is related to the king then the fine of the highest amercement, i.e., one thousand Kārṣāpānas, shall be imposed on such a physician, and if the patient improperly treated by physician is an ordinary man then, he shall be fined the second amercement, i.e., five hundred Kārṣāpānas.
Visṇu prescribes the punishment of the lowest amercement for a physician for his improper treatment in the case of animals. In this context the same is the view of the Yājnavalkya Smṛti (II, 242). But according to the Manu Smṛti (IX, 284) if a physician adopts improper methods of care for the treatment of animals, he shall be fined the lowest amercement and in the case of human beings, he has to pay the second amercement.

Punishments for Defilement

According to the VDS, an untouchable (a person belonging to the Chandāla caste or such castes) who defiles, a member of any of the three higher castes by deliberately touching him shall be put to death. It further states that if a woman in the period of her menses defiles any person through her touch, she shall be lashed with a whip. The fine of one hundred Paṇas has been prescribed for an offender who defiles the highway or a garden or water by voiding excrements near them or by any other way, and he shall be made to remove the same.

Punishments for Disrespect

Some fines have been prescribed by the VDS, for a person who does not give proper respect to the deserving persons. It is laid down in the VDS, that if a person does not make way for the person for whom it should be made, he shall be
fined twenty five Kārṣāpanas. Similarly, the same amount of fine is ordained by the VDS. for a person, if he does not offer a seat to a guest or a person to whom it ought to be offered, or if he does not honour a person worthy of honour or if he does not invite to 'Srāddha' feast a learned Brāhmaṇa residing in his neighbourhood or if he does not offer food to an invited Brāhmaṇa. Viṣṇu further adds that if a person does not take meals after accepting an invitation for meals, shall be fined one Māṣaka of gold, and he shall pay to the host double the amount spent on meals.

The VDS. further prescribes different fines for a person who insults a person belonging to a different caste by offering him inedible food. It states that the fine of sixteen Pānas is to be imposed on a person, who insults a Brāhmaṇas by offering him uneatable food and the fine of hundred Suvarṇas is ordained if he insults him by offering such food as would cause the Brāhmaṇa to be degraded from his own caste. The half of the above-mentioned fine, i.e., eight Suvarṇas and fifty Suvarṇas, is awarded if the insulted and the degraded person belong to the Kṣatriya caste. Similarly, if a person, who is insulted and degraded by another person, belongs to Vaiśya caste, the offender shall be fined half of the punishment awarded to a Kṣatriya, i.e., four Suvarṇas and twenty-five Suvarṇas respectively. The fine of first amercement, i.e., two hundred and fifty
Kārṣāpaṇas is ordained by the VDS. for a person, who insults and degrades the person belonging to the Śūdra caste. The death sentence is prescribed for a person, who offers spirituous liquor to a Brāhmaṇa.

Punishments for Bisowning Relationship

The punishment of one hundred Kārṣāpaṇas is ordained by the VDS. for father and son, teacher and pupil, sacrificer and officiating priest, if any one of them abandons the other, in case the person abandoned is not a degraded (Patita) one.

Punishments for False Evidences

The punishment of forfeiture of all property is ordained by Viśṇu for a person who gives false evidences. It also mentions the same punishment to a person who lives on bribes and the punishment of banishment is prescribed by the VDS. for such judges as give unjust judgements. Viśṇu adds that a person, who becomes a witness in a dispute between father and son shall be fined ten Paṇas and a person who becomes a surety in such cases shall be awarded the fine of the highest amercement, i.e., one thousand Kārṣāpaṇas. For the above-mentioned two offences the fines prescribed by Yājnavalkya are three Paṇas and eight fold Paṇas, i.e., twenty-four Paṇas respectively. Viśṇu also prescribes
the penalty of one hundred kārṣāpanas for a person, who
indulges in an improper oath such as, "I shall approach
the mother if this is false," without having been asked
to do so. 89

Punishments for Enslaving a Person of the Higher Castes

It is laid down in the VDS. that an offender, who
enslaves a person belonging to any of the three higher
castes shall be fined the highest amercement, i.e., one
thousand kārṣāpanas. But Viṣṇu further states that a person
who forsakes the order of Saṁyāsa (he, who first enters in
Saṁyāsa and then abandons it) shall remain the slave of
the king for life. 90 The same idea is contained in the
Yājnavalkya Smṛiti.

Punishments for Offences Relating Women

According to the VDS., the punishment of the highest
amercement, i.e., one thousand kārṣāpaṇas shall be imposed
on a person, who gives his daughter in marriage without
disclosing her defect and the offender shall be compelled
to support her throughout her life. 91 The same idea is
contained in the Manu Smṛiti 92 and the Narada Smṛiti 93.
But the amount of fine varies from text to text. Viṣṇu
prescribes the penalty of the highest amercement for a
person, who declares a blameless girl as blameworthy. 94 The
same offence is prescribed by the Manu Smṛiti with a fine
of one hundred pānas.

Viṣṇu lays down that a person, who gives in marriage a second time a girl who has already been betrothed to some one else, shall be punished as a thief if the previous suitor is free from blemish. The same punishment is prescribed by the Viṣṇu Dharma Sūtra for a suitor, who repudiates a girl betrothed to him. The Viṣṇu Dharma Sūtra further states that a person, who forsakes his wife who is free from blemish, shall also be punished as a thief.  

THE LAW OF PLEDGES

A pledge is called an 'Adhi' deposit or 'Bandhaka' or 'Bond'. The VDS. uses the term 'Adhi' to denote it.  

Mitakṣara on Yājnavalkya defines 'Adhi' as follows: -

"Whatever is placed under the control of the creditor by the debtor for the sake of creating confidence for the amount borrowed is an 'Adhi' or 'Pledge'.

The Classification of Pledges

The classification of pledges is based on the following four principles:-

1. Nature of the property pledged - According to the nature of property, a pledge is either movable, i.e.,
'Jamgama' or immovable i.e. 'Sthāvara'.

2. **Form of the pledges** - A pledge is known either as 'Gopya', i.e., pledge for custody, or 'Bhogya', i.e., usufructuary pledge.

3. **Time Relation** - According to time relation, it is either with or without time limit, i.e., a pledge contracted for a limited time is known as 'Sāvadhi', 'Kālakṛita', Kṛitakāla etc., Time bound pledge and a pledge which is for an indefinite period called Akālakṛita etc.

4. **Nature of the evidence by which the pledge is supported** - According to the nature of evidence, it is either supported by a document or by a witness.

The Dharmaśāstras contain different views with regard to the division of pledges. For instance, Narada divides pledges into four categories, viz., 1) Time bound pledges; 2) Pledges without time limit; (3) Pledges for custody only; 4) usufructuary pledges; and Yājnavalkya divides them into the following six categories, namely, 1) Pledges fixed as to payment, ii) Time bound pledges, iii) Pledges for custody, iv) Usufructuary pledges and in addition to these four types of pledges, two other types of pledges are also mentioned in the Yājnavalkya Smṛiti, i.e., a thing pledged in good faith in irrespective of its value 'Charitra Bandhakākrit' and a thing pledged under a kind of religious oath.
The VDS does not make any specific classification of pledges, but various types of pledges are spoken of in it. For instance, Visnu makes a distinction between pledges to be kept and pledges to be used. It also differentiates between the pledges contracted for a limited period and those without a time limit. The difference between movable and imovable pledges is also mentioned in the Viṣṇu Dharma Sutra. ¹⁰⁰

Rules Governing Pledges

According to the VDS, a pledge for custody should not be used. If a pledgee uses the pledge to be kept, the interest due to him shall be forfeited. Viṣṇu further adds that if a pledge is spoiled or destroyed entirely then the pledgee must make good the loss of pledge to the owner, unless the loss is caused by natural calamity or by the king. ¹⁰¹ The same idea is found in the YS. (11, 59). In this context the Gaut. DS (XII, 32) states that a loan secured on a pledge bears no interest if the pledgee makes the use of the pledged object. ¹⁰²

The main difference between the pledges for custody and pledges to be used lay in the fact that in the case of pledges for custody, the object cannot be used, because the pledgee receives interest from the loan and in the case of pledges to be used, it can be used, because in such pledges
the loan does not bear any interest.

Visnu lays down that a pledge is to be restorable to the debtor when the interest on pledge reaches its maximum amount or equal to the principal. This rate is applicable only for movable pledges such as a cow, a buffalo etc. But in the case of immovable pledges Visnu states that a pledge could not be restored to the pledges without a specific agreement to this effect or until the principal has been paid. The commentator Nandapandita on the VDS. states that the argument concerning the restoration of the pledge is as follows:

"You should have the enjoyment of this or that mango-grove as long as interest on the principal lent to me has not ceased to accrue" (VDS. VI, 6).

The VDS. lays down that an immovable property, which is pledged, is restorable by the creditor only when the debtor returns the sum borrowed by him together with interest.

Disputes Over Pledges

The VDS. prescribes some punishments for the fraudulent pledgers. According to the VDS. if a person mortgages some land equal to 'cows-hide' (Gocharma) or more than that to one creditor and after some time without redeeming the first debt, he mortgages the same land to another creditor, he
shall be sentenced to death and if the property mortgaged is less than a cow's hide the debtor shall pay sixteen 'Suvarnas' as a fine. The definition of cow's hide is also given in the VDS. as it states that a piece of land on the produce of which, one man can sustain one's life for one year, is regarded as measuring a cow's hide or a 'Gocharma.' The VDS. further adds that if some field or other immovable property is mortgaged to two creditors separately at the same time and dispute arises between them regarding that property, the one, who is the first possess- or without force, is to be entitled to enjoy its produce.

**Laws Governing Debt**

Certain laws relating to debt have also been laid down in the VDS. Viṣṇu prescribes the following persons who are liable for the payment of debt.

**Liability for Payment of Debt**

1. According to the VDS, if a person dies or becomes an ascetic or remains abroad for more than twenty years, his sons are liable to pay the debt and in the absence of the sons, grandsons are bound to pay the debt of their grand-father. But Viṣṇu further adds that descendants beyond grand-sons such as great-grand-sons should not pay the debt of their great-grand father if they are not willing
ii. Viṣṇu lays down that the father is not bound to pay the debt incurred by his son.  

iii. Generally, the husband is not liable to pay the debt of his wife, but Viṣṇu says that if a debt is incurred by the wife of a cowherd, a distiller of spirituous liquor, a public dancer, a washerman or a hunter, then the debt shall be discharged by her husband because in this case the husband depends upon the earnings of his wife.  

iv. According to the VDS, the wife is not bound to pay the debt incurred by her husband, but if she had previously promised along with her husband to pay the debt, then she is bound to pay it.  

v. Viṣṇu lays down that neither the son is liable to pay the debt of his mother, nor the mother is bound to pay the debt of her son.  

vi. Although either of the spouse is not liable to pay the debt yet, if the debt is incurred by any member of the family for the maintenance of the family, then it has to be discharged by any member of the family who is present.  

vii. In the case of members of undivided family, if the debt is incurred by the father or by the head of the family, for the maintenance of joint family, then the liability for
the payment of the debt rests on all the members of the joint family, and any one of them, i.e., Brothers or their sons etc., can discharge the debt before partition. But in the case of separation, the debt shall be discharged according to their shares of the inheritance.\textsuperscript{114}

viii. It is laid down in the VDS. that the man, who takes the assets of a deceased person, whether he has son or not, is liable to pay the debt incurred by him and if the deceased debtor has no property, then the liability of debt will fall on a person who takes the wife of the deceased.\textsuperscript{115}

ix. The sureties of all the three kinds, i.e., surety for appearance, surety for honesty and surety for payment, are personally liable for the payment of the debt if they are unable to fulfil their agreement with the creditor. Viśṇu further adds that even the sons of the surety for payment are also responsible for the payment of the debt if their father died without repaying it, but the sons of other two kinds of sureties, i.e., surety for appearance and surety for honesty, are not bound for the same.\textsuperscript{116}

Rights and Duties of the Debtors and Creditors

According to the VDS. it is the duty of the debtor to return the principal amount to the creditor, together with yearly interest or according to agreement between them. Viśṇu says that the creditor shall not be proceeded against
by the king if he employs lawful means for recovering his amount lent to the debtor.\textsuperscript{117} The same idea is found in the Manu Smṛiti with the prescription of five lawful means of realising the debt, as Manu\textsuperscript{118} states that "The creditory may realise his debt by moral persuasion, by litigation, by some stratagem, by fasting or fifthly by force."

It is also laid down in the VDS. that if the debtor complains the king against the enforcement of the creditor for discharging the debt. The complainant shall be fined equal to the sum borrowed by him in addition to being compelled to pay the debt.\textsuperscript{119} It also states that if the whole demand has been denied by the debtor and even a substantial part of it is proved against him then, the debtor is bound to pay the whole claim.\textsuperscript{120} The commentator Nanda-pandita comments on this sutra and states that the particle "Api" used in this sutra indicates that the offender must pay to the king a fine equal to the amount in dispute.

According to the VDS, if a creditor files a suit before the king against the debtor for the recovery of the debt and proves his demand, then the debtor shall be fined by the king, tenth part of the amount decreed and the successful creditor after having received his amount shall also pay a twentieth part of the amount disputed to the king. Such payments to the king, after the decision of the case filed,
may be regarded as court fees.  

Rules and Methods of the Payment of Debt

So far as, the methods of paying off a debt is concerned, the VDS. states that the mode of recovering back the principal should generally be correspond to the mode in which the debt was contracted. The VDS. prescribes three means of proof in the case of a demand having been contested viz., a writing, witnesses and proof by ordeals. Vishnu lays down that a contract contracted in the presence of witnesses should be discharged in the presence of witnesses. It further adds that at the time of full payment of the debt or when the contract has been fulfilled, the creditor should tear off the contracted document. When a debtor is unable to pay the whole amount, the creditor should write on the back of the contracted document the amount paid by the debtor and if the contracted document is not available due to any reason at the time of partial payments, then the creditor should give a selfsigned receipt to the debtor.

INTEREST

Rules Governing Interest

The VDS. prescribes the following two type of interest:

(i) Kṛita, stipulated at the time of loan and (ii) Akṛita.
not stipulated. It further states that the rate of interest is either fixed by a special contract between the parties or according to the caste of the debtor. According to the Gaut. Dharma Sutra, there are different kinds of interest, such as, Compound interest (Chakra Vṛiddhi), periodical interest (Kāla-Vṛiddhi) Corporal interest (Kāyika-Vṛiddhi) daily interest (Śikhā-Vṛiddhi) stipulated interest (Kārita Vṛiddhi) and the interest in the form of mortgaged property (Adhibhoga-Vṛiddhi).

Visṇu prescribes various rates of interest, according to the castes of the debtors, as it states that a creditor, in the case of loan without security may charge two per cent, three per cent, four per cent and five per cent interest per month from a Brāhmaṇa, from a Kṣatriya, from a Vaisya and from a Śūdra debtor respectively.

It is laid down in the VDS. that the debtors of all the four castes are bound to pay the interest contracted by mutual agreement. When there is no mutual agreement on interest or it has not been fixed by both the parties, then the debtor has to pay the interest according to established rule mentioned above, after the expiry of one year. It means that if the debtor belongs to Brāhmaṇa caste then he has to pay two per cent interest per month and so on. The Visṇu Dharma Sutra further adds that if a person takes a loan with an agreement that he would return the principal
within a definite period but due to covetousness does not repay it, shall pay the yearly interest according to the above mentioned rule of interest prescribed for different castes. If the debtor goes to the creditor to pay his debt and the creditor refuses to accept it then it will not bear any interest from the time on-ward. The Viṣṇu Dharma Sutra further states that in the case of female slaves and cattle when loaned, their progeny should be taken as interest.

The Viṣṇu Dharma Sutra lays down a limit for maximum interest that can be charged by the creditor from the debtor at one time as it states that the interest on gold should not exceed more than double the value of the gold. In the case of grains clothes and liquids the interest should not be higher than three-fold, four-fold and eight-fold respectively to the price of the lent article. Viṣṇu states that there is no limit to the interest on substances, from which spirituous liquor is extracted such as cotton, thread, leather, weapons, bricks and charcoal. Viṣṇu provides that on such objects as have not been mentioned above the maximum recovery of interest should not be less than double the price of the lent article.

**LAWS OF SURETYSHIP**

The VDS. gives elaborate rule for sureties. According
to Narada, the guarantee to be offered to a creditor may be two-fold; a surety and a pledge. Suretyship is defined by Mitaksara on Yajn. (II, 53) as follows:-

"A contract with another person with the object of creating confidence is called Suretyship." According to Ancient Hindu Law the contract of surety should be defined in the following manner:-

"A contract of suretyship was a contract whereby a man binds himself to be personally answerable for the obligation of another as an accessory debtor, in addition to the person principally liable."

Different Kinds of Sureties

The VDS. enumerates three kinds of sureties\textsuperscript{132} namely,

1) Surety for appearance; (Darsane )
2) Surety for honesty; (Pratyaye ) and
3) Surety for payment (Dane )

1. Surety for appearance

The surety for appearance is under obligation to produce the debtor at the time and place agreed upon between the creditor and debtor. On the non-observance of the conditions the surety is bound to pay the creditor the debt incurred by the debtor.
2. Surety for honesty

According to this kind of suretyship the surety assures the creditor that the debtor would not deceive him or that the debtor is an honest, respectable and trustworthy man and would discharge the debt at the place and time agreed upon. If the debtor fails to discharge the debt incurred by him or proves false according to the declarations of the surety for honesty then, the liability of repaying the debt will fall on the same surety.

3. Surety for payment

In this kind of suretyship, the surety assures the creditor and binds himself by declaring that "If the debtor would not pay the debt then, I myself will pay it”. So at the appointed time if the debtor is unable to pay the debt according to his agreement then the surety for payment is responsible for the debt.

It is also laid down in the VDS. that out of the three kinds of sureties, i.e., surety for appearance, surety for honesty, and surety for payment, the first two are liable to pay the debt of their debtor on the non-observance of the conditions but not their sons, whereas in the case of surety for payment the surety as well as his sons are liable to pay the debt if their father dies without paying it.¹³³
Responsibility of Co-sureties

According to the VDS., in the case of more than two sureties, in one transaction, their obligation towards the creditor would be either a solidary obligation or a pro rate parte obligation, but it depends upon the text of the agreement. When there is joint liability of the sureties for the whole debt then, they would pay the amount due from the debtor in proportion, but in the case of a number of sureties equally bound severally then, any one of them is liable to pay the whole debt at the pleasure of the creditor. The same rule has been prescribed by Yājnavalkya (II, 53) and Narada (I, 120).

A sort of facility or right for all the three kinds of sureties has been prescribed by the VDS., as it states that if a surety is being harassed by the creditor for discharging the debt incurred by debtor, then he is entitled to claim from the principal debtor the amount paid by him to the creditor.

Land Laws or Land of Possession

It is laid down in the VDS. that a property, which is acquired or possessed in order or with a legitimate title such as purchase, donation and like, cannot be taken away from the possessor, but it will remain with him. It further adds that the property which is to be held in legitimate
possession by the father or grand-father cannot be contested, because it becomes the right of the son's to hold it by all means after the death of the father or grandfather. Visnu further states that if an estate is being enjoyed by the three successive generations in due course, the fourth in descent is entitled to keep it as his property, even without a written title.  

LAW OF EVIDENCE

The VDS prescribes three kinds of proof under the little of evidence viz. (i) the documents, (ii) the witness and (iii) the ordeals.

LAW OF DOCUMENTS

The VDS mentions three kinds of documents:

1. राजासाकाक्षिकम् - Those attested by the king.
2. साक्षिकम् - Those bearing the superscription of witnesses.
3. असाक्षिकम् - Those without witness.

1. राजासाकाक्षिकम् - It is a document, which is executed in the king's court by a clerk appointed by the king and bears the signature of the presiding officer of the court.
2. साक्षिकम् - A document, which is purely private one; it is written by anyone and anywhere but, it should also
be attested in signatures of the witnesses.\textsuperscript{139}

3. \textit{Asāksikāma} The unattested documents written by the parties themselves in their own hand called "Asāksikāma".\textsuperscript{140}

**Valid and Invalid Documents**

It is stated in the VDS. that a document is said to be admissible if it does not go against the usage of the country, if the contents of it clearly conform to the rules relating to pledges, sureties and the like, if it is free from the confusion relating to the arrangement of the subject matter, and if its writing is not illegible.\textsuperscript{141}

\begin{itemize}
    \item Viṣṇu prescribes various means by which the authenticity of a doubtful disputed document can be established as it states that the authenticity of a document should be ascertained by letters or signs, i.e., distinctive mark such as the word "Śri" etc., or by a document executed by the same man or by enquiring into the probabilities of the case, or by finding out such writings as are similar to the disputed document. The Viṣṇu Dharma Sūtra further adds that in the case of writers such as a debtor, a creditor, a witness or a scribe, who are dead, - the genuineness of a disputed document should be ascertained by instituting comparison between the signatures on the disputed document and other specimens of their signatures.\textsuperscript{142}
\end{itemize}
Invalid documents

Visnu lays down that a document is not admissible in evidence, if it has been secured by force or by fraudulent acts. It further adds that a document is invalid, if it is attested by a witness, who is guilty of having done evil things or if it is written by a scribe of a similar character. The VDS. lays down that the document has no value in evidence if it is executed by a woman, a child, a dependent person, by one intoxicated, a insane, a person in danger or by a person in fear of physical violence.

THE LAW ABOUT WITNESSES

According to the VDS., there are two kinds of witnesses, viz., (1) Samakṣadarsanād, i.e., eye witness and (2) Śravanaḍād, i.e., a witness, who has heard about the incidence but not seen it (What has been heared himself). The same is the view of the Manu Smṛiti (VIII, 74), the Narada Smṛiti (IV, 148) and the Baudhayana Dharma Sūtra (1, 10, 19, 7). Narada states that when there is a discrepancy between the statements of two parties, the determination of truth is made on the evidence of witnesses. So according to all the authorities on Dharma, the evidence of a witness as a rule must be direct in all cases. But a contradiction between the authors is also found in the case of second type of witness, i.e., 'Śravāṇaḍā' (What has been
heard ). The commentator Medhatithi on Manu, points out that the word "Samaksa" in Manu's text indicates that the evidence of a person, in order to be admissible, must be based on direct cognition of the facts of the case resulting from actual seeing or hearing or in other words, it must be the evidence of what the witness knows himself and not of what he has heard from others. Therefore, Medhatithi on Manu says that 'The Hearsay', i.e., when a person hears or knows something from others about the case, is not admissible as a witness due to indirect cognition of the facts. But the VDS. permits the "Hearsay" evidences under some circumstances as it states that when an appointed witness or an eye witness is dead or gone abroad, then, those, who have heard about the incident may also be accepted as witnesses. The same is the view of the Narada Smriti.

Number of Witnesses

All the Dharmasastras have different views in regard to the number of witnesses. According to the Gaut. DS (XIII, 2), Manu (VIII, 60), Yajnavalkya (II, 69) and Narada (IV, 153), the number of witnesses should be at least three. The Brihaspati says that - "There may be nine, seven, five, four or three witnesses or two even might do if they are Srotriyas or learned Brāhmaṇas, but never one". According to the VDS. generally, a single witness for either of the parties cannot be considered as
to give evidence, but it further adds that even a single person may be, allowed to depose if he is endowed with the qualities which a witness should possess and is acknowledged by both the parties as a witness. The same idea is found in the Yājnavalkya Śmṛiti (II, 72), the Narada Śmṛiti (IV, 192) and the Manu Śmṛiti (VIII, 77).

Eligibility and Ineligibility of Witnesses

Eligibility of the witnesses - The VDS. lays down a number of qualifications for a witness to be eligible to tender evidence in a court of law. The principal qualifications of a witness are as follows:

1. Persons born in noble families
2. Persons having virtuous conduct and ample wealth
3. The regular performer of sacrifices
4. Persons practice austerities
5. Persons having sons, grandsons etc.
6. Persons well versed in the Dharmaśāstras
7. Persons learned in the Vedic-lore
8. Truthful persons
9. Scholars well versed in the three Vedas

It is also laid down in the VDS. that the eligibility of a witness should not be enforced too strictly in the cases of theft, violence, abuse, assault and adultery.
Persons ineligible as witnesses

Visṇu specifies such persons as are ineligible to be witnesses, viz.,

i) the king,
ii) the Śrotiyas, i.e., those who are always engaged in Vedic study or performance of religious rites,
iii) mendicant,
iv) gambler,
v) a thief,
vi) persons under the control of others,

vii) a woman,
viii) a child,
ix) a desperado,
x) a man of extremely advanced age,
xi) one intoxicated,
xii) a insane,
xiii) notorious person (a man of bad character), or person accused of committing such crimes as the murderer of Brāhmaṇa etc.,
xiv) a degraded person,
xv) one tormented by hunger and thirst,
xvi) one addicted to vicious practices or one oppressed by a sudden calamity such as the death of his father or the like,
xvii) one wholly overwhelmed by evil passions,
xviii) an enemy,
xix) a friend,
xx) one who is interested in the subject matter of the suit,
xxi) a person doing forbidden acts,
xxii) one formally perjured,
xxiii) an accomplice.

The VDS further adds that a person, who comes to tender evidence without being summoned, is also ineligible to be a witness.

Mode of examination of witnesses

It is laid down in the VDS, that a judge should summon the witnesses at the time of sun rise and after having bound
them by different oaths according to their castes, he should ask them questions relating to the dispute. Visṇu further prescribes the different modes of oath according to the castes of the witnesses. It states that the judge should adjure a Brāhmaṇa witness by saying 'Brūhi' (means whatever you know about this dispute speak all that), a Ksatriya witness should be addressed as "Satyam Brūhi" (speak the truth), a Vaiśya witness- "Govījakanchanervais-yam" (let there be no fruit of your kine, grain and gold for you if you speak untruth) and to a Śūdra - Sarvamahā-pātakai" (i.e. you will have to atone for heavy crimes if you give false evidence).

Visṇu further prescribes the kinds of evidence which lead to success or defeat as it lays down that, that party, whose witnesses depose the truth or speak according to the fact shall be considered as successful in the case. On the other hands, the party, whose witnesses give false or contradictory statements would certainly lose the case. As regards the value of evidence tendered by different witnesses. Visṇu says that if there is a discrepencies between the statements of witnesses, the testimony of the majority of witnesses shall prevail; if the number of witnesses giving varing statements is equal the evidence tendered by a witness of superior virtues shall be regarded as more weighty. In case there is a party between the
witnesses of equal merit then the evidence of the persons belonging to higher castes shall be regarded as more worthwhile. 156 According to the VDS, if it is discovered, after the pronounce of the judgement, that a false evidence has been tendered by any witness then the king can annul the whole judgement and shall order its fresh trial. 157

Priority of witnesses (The order of examining the witnesses)

It is stated in the VDS, that if there is a dispute between two litigants and the both have their own witnesses to support the substance of the issue, then the witnesses of that party would be examined first from which the plaint has proceeded or one who was first brought the suit into the court. When the first claim has been invalidated due to some reasons such as, not agreeing with the fact or the sum claimed have been repaid by the debtor, in a dispute of this kind the witnesses of the respondent shall be examined first. 158

A Test of Credibility of Witnesses

According to the VDS, the veracity of a witness may be judged by his internal disposition and external signs, i.e., by his altered face (which is not changed due to fear but natural) by the contenuous change of colour in the countenance and by his long speeches which are not related
to the subject or to the purpose. Therefore, when a witness shows any of the above mentioned signs (whether they are mental, physical or related to speech) he should be considered as telling a lie.\textsuperscript{159}

ORDEALS

Conditions and Applications

The VDS. lays down some rules relating to the performance of different kinds of ordeals. It enumerates some cases where the application of ordeals should not be administered. For instance, in the case of criminal action directed against the king, of violence, of the denial of a deposit, or of theft and robbery. According to VDS. normally, the ordeals are to be performed by the defendants. The claimant has only to declare his willingness to pay the fine, if he is defeated.\textsuperscript{161} In this context Yājnavalkya and Narada permit that the ordeal should be performed by mutual agreement, by the plaintiff and the defendant then undertaking the payment of penalty.\textsuperscript{162} Viṣṇu states that in the charge of treason against the king or of violence, an ordeal must be performed indiscriminately and even without an agreement between the defendant and the claimant regarding the payment of penalty. On the other hand, in the cases of denial of deposit or of theft or robbery the application of the ordeals depends upon the value of the property claimed, and
the value of the object recovered is to be estimated in gold in order to decide whether an oath or an ordeal is to be applied; and it is further to decide as to which ordeal should be performed. If the value of the property claimed is less than the value fixed for ordeals then the accused has to undergo oaths. The minimum amount for oaths is different and according to the castes of the accused. For instance, the minimum amount for which a Sudra shall take oath has been fixed as less than one Krisnapala, in the case of Vaiśya, Ksatriya and Brāhmaṇa the rates are increased two-fold, three-fold, and four-fold respectively.

The Viṣṇu Dharma Sūtra lays down that if the amount of object claimed exceeds the amount which is fixed for an oath then, accused has to undergo any one of the ordeals ordained by the judge. For example, if the amount of the object claimed is less than half a Suvarṇa then, a Sudra accused must be administered by the ordeal by sacred libation but if the amount involved exceeds half a Suvarṇa then any of the other four ordeals i.e., ordeal by poison by water, by fire, or by balance, shall be imposed. Like this the VDS. differentiates between ordeals and oaths in regard to their administration.

Viṣṇu prescribes different articles which should be in the hands of the accused, when he has to undergo oath
and the different kinds of the articles are only due to the difference in the value of the object involved.

The VDS. states that when the amount is less than a Kṛśṇala, a Śūdra is to swear by a blade of Durva grass, if it is one or more than one but less than two Kṛśṇala, by a blade of Tila; if it is two or more than two but less than three Kṛśṇala, by a blade of silver; if it is three or more than three but less than four Kṛśṇala, by a blade of gold; if it is four or more than four but less than five Kṛśṇala; by a lump of earth taken from furrow and if it is less than half a suvarna than a Śūdra must undergo the ordeal by sacred libation. The things which are used by a Śūdra for taking oath shall remain the same for all the accused belonging to other castes, the only difference would be considered in the case of amount involved. 164

Different kinds of ordeals and their limitations

The VDS. declares five kinds of ordeals, namely, ordeal by balance, ordeal by fire, ordeal by water, ordeal by poison and ordeal by sacred libation. Viṣṇu lays down the general procedure for the performance of all ordeals as it states that a judge should summon, at the time of sunrise, the ordeal performer, who has observed fast on the previous day and has bathed bearing his clothes. The
judge should order him to go through the ordeal in the presence of the images of God or of the Brāhmaṇas. The same procedure for ordeals has been adopted by the Yājnavalkya Smṛiti. The only difference is that Yājnavalkya prescribes the presence of the king in case of idols.

It is also stated in the VDS. that a man, who is well-known for his good character and honest among honest and virtuous persons, should not be subjected to any ordeal, even though the matter in contest be ever so important, whereas a person, who is formerly convicted of crimes and perjury, should be tried by any of the ordeals even in a very trifling matter.

The ordeals prescribed by the Viṣṇu Dharma Sutra are as follows:

1. Ordeal by balance

The Viṣṇu Dharma Sutra lays down specific rules for the establishment and measurement of the balance, which is to be used in the ordeal. This Sutra further states that when the balance is prepared, according to prescribed rules, then defendant, who is to undergo ordeal, would be placed in one of the pan and the weight of stone, earth, bricks, etc., equal to the accused, shall be placed on the other pan of the balance. After this the position of the scale is marked and the accused descends from the balance. Then
the accused is to invoke the balance as follows:—

"Thou balance, art called by the same name as holly law (Dharma); thou, O balance, knowest what mortals do not comprehend.

'This man, being arraigned in a cause, is weighed upon thee. Therefore mayest thou deliver him lawfully from this perplexity.'"

Viṣṇu also states that the judge should adjure the person appointed, to look-after the weighing and balance. It further adds that the same punishment, which has been prescribed for the murderer of a Brāhmaṇa and for perjury, shall be imposed on a person, who acts fraudulently in the case of weighing and balance.

Viṣṇu further lays down that after the recitation of the mantras, the accused is again placed on the balance, if on this occasion, the pan, in which the accused is placed, goes up beyond the original mark, then he is found innocent and if it goes below the mark, he is guilty. Nothing is prescribed in the VDS., if the weight of the accused is again equal to the first time. But Viṣṇu requires a re-weighing if the scales break during the performance of the ordeal.¹⁶⁸ Viṣṇu enjoins that the ordeal by balance should be given to women, 'Brāhmaṇas, persons deficient in an organ of sense, a very old man and the sick persons. But it should not be administered to all the persons at the time when the wind is blowing.¹⁶⁹
2. **Ordeal by fire**

In this form of ordeal, the Viṣṇu Dharma Sūtra states that the seven leaves of holy fig-tree are to be tied on the hands of the defendant and then upon these leaves a red-hot iron ball of fifty palas in weight, is to be placed by the king who addressed the following prayer to the fire to decide the case:-

'Thou, O fire, dwellest in the interior of all creatures, like a witness. O fire, thou knowest what mortals do not comprehend.'

'This man being arraigned in a cause, desires to be cleared from guilt. Therefore mayest thou deliver him lawfully from this perplexity.'

Viṣṇu requires that before starting this ceremony the hands of the defendant should be marked to show any abrasions. After that with the ball in hand the defendant is required to walk at an even pace seven circles of 16 anguls in diameter placed round the fire and after completing the seventh circle the defendant has to put down the ball on the ground. If the hands on examination show no sign of burning, then the ordeal is a proof of innocence. But the Viṣṇu Dharma Sūtra further states that if the defendant drops the ball of iron due to fear and if there is doubt about the performance of the ordeal then, the test must be repeated.
The VDS. lays down that the ordeal by fire should not be administered to lepers, to infirm persons and to blacksmiths and it also should not be performed in the season of Autumn and Summer.  

3. Ordeal by Water

In the water ordeal, the defendant is required to plunge under water seizing the knees of another person, who is free from friendship and hatred, and dive up to navel into the water. At the same time another man will discharge an arrow, which is neither too strong nor too weak, that arrow is to be fetched quickly by a third person. If the defendant can keep himself completely immersed under water in the mean time, then he is innocent but in the contrary case, he is guilty, eventhough one limb of his body is become visible.

In the case of ordeal by water, the following prayer is to be administered to the water before the defendant enters into it.

'Thou, 0 water, dwellest in the interior of all creatures, like a witness. 0 water, thou knowest what mortals do not comprehend.  
'This man being arraigned in a cause, desires to be cleared from guilt. Therefore mayest thou deliver him lawfully from this perplexity.'
Visnu lays down that ordeal by water should not be given to persons afflicted with phlegm, illness, the timid the asthmatic and to those who gain their subsistence from water such as fisherman and the like. Similarly it should not be administered in cold seasons in winter (Hemanta and Sisra).

4. Ordeal by poison

In the case of ordeal by poison, the Visnu Dharma Sutra lays down, that only poison of Śring-tree, which grows on the Himalayas, is admissible for the performance of ordeal. This Dharma Sutra further states that the judge should give seven grains of the poison of Śring-plant mixed with clarified butter to the accused with the recitation of the following prayer to the poison.

'On account of thy venomous and dangerous nature thou art destruction to all living creatures; thou, 0 poison, knowest what mortals do not comprehend. 'This man being arraigned in a cause, desires to be cleared from guilt. Therefore mayest thou deliver him lawfully from this perplexity.'

After this the accused is kept in a shaded place for the rest of the day without food. If by that time, the defendant betrays no sign of the effect of the poison then, he is to be considered innocent. According to the VDS., the ordeal by poison should not be administered to lepers,
bilious persons or to the Brāhmaṇas and also not in the rainy season.  

5. Ordeal by Sacred Libation

According to the VDS, the ordeal by sacred libation consists in drinking three mouthfuls of water, in which the images of terrible deities such as Durgā, the Aditya or the others, have been bathed, by the defendant. The accused is required to drink the three handfuls of worshipped water in front of the deity with uttering the words - "I have not done this". If within fortnight or three weeks of the drinking of water, any serious calamity, such as illness, fire, the death of relative, the punishment by the king, etc. happens then, he is regarded as guilty, otherwise he is free from the charge. Viṣṇu further adds that a king should honour the person with presents, clothes, ornaments, etc., who has cleared himself from guilt by an ordeal.

It is also stated in the VDS, that the ordeal by sacred libation should not be administered to atheists and when the country is afflicted with disease or pestilence. This Sūtra further adds that it should not be administered to a Brāhmaṇa, except if it is to be as preliminary proof of his dealing fairly in some future transaction, and in the case of an ordeal by libation to a Brāhmaṇa, he should swear by a lump of earth taken from furrow.
The Sanskrit term "Daya" has been translated as "Inheritance" by most of the modern scholars. The Mitakṣara on Yajnavalkya explains this term as follows:

"The wealth, which becomes the property of another, simply by reason of his kinship to the owner" is called "Daya" or "Inheritance". The Mitakṣara further divides the inheritance into two categories:

1. Apratibandha or Unobstructed Inheritance

The wealth of the father or the grand-father becomes the property of his sons or grandsons and thus this is an inheritance not subject to obstruction.

2. Sapratibandha or Obstructed Inheritance

The property devolves upon parents (or uncles) brothers and the rests, but only in the absence of the male issue of the owner and thus actual existence of a son and the survival of the owner, are impediments to the succession, and on their ceasing, the property devolves upon the successor in right of his being uncle or brothers. This is an inheritance subject to obstruction.

According to the Narada Smṛti, "When there is partition by the sons of their parental property, it is the topic of law called "Partition of Inheritance."
So far as the VDS. is concerned, it does not go in details about the derivation of the word "Daya" and its discription but only lays down some rules relating to the subject. According to the VDS. the father, who is making a partition among his sons, is absolutely free to divide his self acquired property in any manner he likes, i.e., equal or unequal. So it is declared in the VDS. that the property of a father can be divided during his life time equally or unequally, but after the death of a father the sons, who are equal in caste, shall receive their equal share. Viṣṇu further adds that so far as the ancestral property is concerned, the father is not free to do what he likes, because in such properties the rights of the father and son are equal.

Like this Viṣṇu admits that the ownership of the son in the ancestral property is by birth.

The VDS. lays down a rule relating to the inheritance rights of a posthumous son, as it states that the sons among whom a property has been distributed by the father, shall give a share to the son, who was in the womb at the time of partition and was born after the partition. But Viṣṇu does not speak of anything about the extent of the share, whereas the commentator Nandapandit states that a posthumous son would get the share according to the shares of his brothers in inheritance. In other words each of the brothers shall give him a portion of his share in accordance with his income and expenditure.
In the context of partition of ancestral estate among the grandsons the VDS enjoins that where there are several sons of a father, the shares of grandsons in parental property would be determined according to the proportion of their father and each grandson shall receive that part of property which belongs to his father not to others. For instance where there are two sons of a father, one has left only son and the other three sons then, the property of their grandfather shall be divided into two parts, one part shall go to a single grand-son and the second part of the property would be divided into three parts, and the other three grandsons or the sons of the second son shall take one part respectively.

It is also stated in the VDS. that the sons begotten by Pratiloma, form of marriage, i.e., the sons belonging to an out caste such as Ayogava, Chandāla, Śūta, Vaidehaka, etc. would inherit the property of their respective father.

Viṣṇu enjoins that if brothers, after a previous division of estate, live again together as coparceners for acquiring more property and if they have to make another partition, then in this case, the property shall be divided equally among them. In such cases there should be no primogeniture. This means that the unequal division of property in the above mentioned case should not be based on
the seniority of a brother, but this inequality should be based on the greater or lesser amount contributed by a coparcener to the joint stock. Manu also speaks of the same view.

According to the VDS., whoever inherits the property of the deceased shall perform the funeral rites of the deceased, but in the case of a son, he has to present funeral oblation to the father even though he inherits no property.

**Impartible Properties**

According to the VDS., if any of the brothers acquires something by his own efforts, without drawing upon the parental property, then he is not bound to divide his property among other brothers, until he is willing to do so, because he gains the property by his own exertion. Similarly, if any of the sons, who has managed to recover a debt or an ancestral property detained, which his father could not recover during his life time, should not be divided into his brothers, if he is not interested to do so, for it is an acquisition made by himself. Viṣṇu further lays down that an apparel, Vehicles or riding horses, ornaments of ordinary value, which are usually worn according to the custom of the caste, dressed food, articles of confectionary; water in a well or pool, woman i.e. female-slaves, property destined
for pious uses or sacrifices or what is conducive to wealth and welfare, a common pasture-ground and a book, these are declared to be indivisible. 188

According to the VDS. the ornaments worn by the women during the life time of their husbands should not be divided by the coparceners, if they divide them, they become degraded. 189

Persons Excluded from Inheritance

It is laid down in the VDS. that the out-castes, eunuchs, persons suffering from an incurable disease and maimed are not entitled to inheritance. They should be supported by those, who have received the inheritance. Viṣṇu further adds that the legitimate sons of the above mentioned persons shall receive their due share. But the legitimate sons born to the out-caste and the legitimate sons born to a person after the commission of a degraded sin and similarly, the sons born to wives married in the inverse order i.e. in Pratilome form of marriage, are not entitled to share in the property. Viṣṇu further adds that the sons of the above-mentioned persons shall also be excluded from the ancestral property and shall be supported by those who have inherited their property. 190

SONSHIP

The VDS. describes the derivation of the word "Putra"
and also lays down the importance of a son for the spiritual welfare of a man. It states that the "Puta" is the name of a Hell and the son delivers his father from that Hell, therefore he has been called "Putra" (Protector from Hell) by the Svayambhu" (self existant) Himself.  

In the context of importance of sons, Viṣṇu says that as soon as the father sees the face of the living son on his birth, he is exonerated from debt to his ancestors and obtains immortality. Similarly it further adds that through the son a father conquers the world, through a grandson he obtains immortality and through a son's grandson he obtains the regions of sun.

It is also stated by Viṣṇu that there is no distinction between a son's son and daughter's son in this world. Because, even the daughter's son can also succour a man from the hell, like the son of his son. Thus, in the matter of inheritance and offering of cakes and water, the son of a daughter is declared to be equal to a son's in his absence.

Types of Sons

The VDS. recognises twelve kinds of sons. These are as follows:

1. Aurasa - (The legitimate son): The son who is begotten by the father himself on his lawfully married wife of equal caste.
2. Kṣetraja (The soil-born son):- The son begotten by a Sapinda (Kinsman) or by a man belonging to the highest caste, on an authorised woman, is the soil-born.

3. Putrika-Putra:— (The son of the appointed daughter) The Viṣṇu Dharma Sutra lays down that the putrika putra is the son of a daughter given by a father in marriage on the condition that the son born of this girl shall belong to him (the son whom she bears be mine). Viṣṇu further mentions another kind of Putrika-Putra i.e., a brotherless daughter in every case is to be considered as an appointed daughter, though she has not been appointed to the rule for making a putrika.

4. Paunarbhava: (The son born to Re-married woman) Viṣṇu states that if on the death of the husband, the woman still retains her virginity and is married again to another man the son born to her is called 'Punarbhō'. Another form of "Punarbhō" stated by Viṣṇu is that a woman who, thought not legally married more than once, lives with another person before her lawful marriage is called "Punarbhū".

5. Kāṇīna: (The son of a maiden) The son who is born to an unmarried girl and he will to be regarded as the son of that person, who marries the girl, i.e., the mother of child.

6. Gudhotpanna: (A secret born son) A son who is born secretly in the house shall belong to the husband of the woman.
7. Sahodha: (One, obtained with the bride): If a bride is already pregnant at the time of marriage the son born out of that pregnancy is called Sahodha and this son belongs to the man who marries her.

8. Dattaka: (The adopted son): The dattaka is the eighth kind of son. He belongs to the person to whom he has been given in adoption by his natural parents.

9. Krītah: (purchased son): A son who is purchased is called 'Krīta-Putra' and he belongs to the purchaser.

10. Svayamupagata (self offered son): The tenth kind of the son is self-offered and he belongs to the man whom he has offered himself as a son.

11. Apavidha (Caste-off son): A child (son) abandoned by his natural parents, belongs to the person who accepts him as his son.


The Dharmasāstras hold different views about the order and nomenclature of the sons and about their right to inheritance. But all the authorities on Dharma put the 'Aurasa' kind of son at the top of the list. The Gaut. DS. assigns the tenth place to the Putrikaputra, while Baudh. DS., Kaut, YS. put in the second place and Vasiṣṭha, Narada and Viṣṇu put him in the third place. Similarly the VDS.
and the Vāsiṣṭha Dharma Sūtra omit the "Kṛitrim Putra" and instead, mention Yatrakvachanotpaditam (procreated anywhere), and "Ṣūdra-Putra" (the son by a Śūdra wife) respectively. It is not within the scope of this work to go into the minute details of the types of the sons.

So far as the right to inheritance is concerned, the VDS lays down that among the twelve kinds of the sons enumerated above each preceding one is superior to the succeeding one, he shall alone take the inheritance and would support the others. Viśnu further adds that it is the liability of the preceding one, who inherits the property, to perform the essential sacramental rites such as marriage etc. of his succeeding brothers and sisters in accordance with his own means.196

In this context Gautamā lays down that out of twelve kinds of sons the first six, i.e., Aurasa, Kṣetraja, Dattaka Kṛitrima Gudhotpanna and Apavidha, are entitled to inherit the estate while the other six, i.e., Kanīna Sahodha, Paunarbhava, Putrikaputra, Svayamdatta and Kṛīta do not inherit any property, though they belong to the family of their father. But the Gaut. DS. does not mention clearly that the sons, who are entitled to the inheritance, would take the inheritance together or each in preference to the other.197
The VDS. recognises the following six kinds of Stridhana:

i) **Pitrimatrisuta-bhratridattam** - What has been given to a woman by her father, mother, sons and brothers.

ii) **Adhvagnyubāgatam** - What has been received by her in the presence of nuptial fires.

iii) **Ādhivedanikam** - What is received by a woman on supersession. The Katyayana defines the term "Ādhivedanikam" as follows:

> "Whatever is given to a woman through love by her father-in-law or by mother-in-law, at the time of her bowing down to their feet is called "Ādhivedanikam" or Lavanyarjitam."

iv) **Bandhudattam** - What has been given to a woman by her relatives such as maternal uncle etc.

v) **Śulkam** - Fee and marriage gifts or the presents which are obtained by the bride after marriage from her husband and father's family. The commentator Nandapandit states that the term "Śulka" denotes the price or value of a house or other valuable objects presented to the bride by her father or it means the fees paid to the bride by bridegroom.

vi) **Anvādheyakam** - Gifts after marriage - The Katyayana explains the term "Anvādheyakam" in the following manner:

> "What has been obtained by the woman after her marriage from her husband's family or from the family of her relations"
is called "Anvadheyakam".

In this context Yajnavalkya mentions the same view. Similarly, the Manu Smriti and Narada Smriti also enumerate the six kinds of Stridhana, but the names and orders prescribed by them are somewhat different from that given in the VDS. 201

In the context of partition of Stridhana, it is ordained by the VDS that the property of a woman married according to any of the first four forms of marriage, i.e., Brähma, Daiva, Ārṣa and Prajāpatya, shall go to her husband if she dies without issue, whereas if the woman is married according to the remaining four kinds of marriage, i.e., Asura, Gandharva, Rakṣasa, and Paisācha, then the property of a woman shall be inherited by her father in the same condition. 202 The same idea is found in the Yajnavalkya Smriti, Manu and Narada also speak of the same; But a slight variation in the case of different kinds of marriage prescribed by Manu is as follows. Manu 203 states that the property of a woman married according to one of the five forms of marriage namely Brähma, Daiva, Ārṣa, Gandharva and Prajāpatya shall go to her husband if she dies childless, but the property given to a woman on the Asura or other inferior forms of marriage, shall belong to the parents upon her death without issue.

Viṣṇu further adds that in the case of a woman married
Partition among sons of different castes

Some rules have been laid down by the VDS. relating to inheritance of sons begotten on the wives of different castes and the variable shares of sons in the inherited property is due to caste of mothers. It is stated in the VDS. that if there are four sons of a Brāhmaṇa born on wives of the four different castes, i.e., Brāhmaṇa, Kṣatriya, Vaiśya and Śūdra then, the entire property shall be divided into ten parts, out of which, four parts shall be taken by the son born of a Brāhmaṇi wife, three shares by the son of a Kṣatriya wife, two shares by the son of a Vaiśya wife and one share by the son of a Śūdra wife. Similarly, the sons born to a Kṣatriya, Vaiśya and Śūdra caste shall receive their share in the ratio of 3:2:1 respectively. Among the sons of Vaiśya father, born of his two wives belonging to the Vaiśya and Śūdra caste, they shall share the inherited property in the ratio of 2:1 respectively.

In the absence of a son belonging to the wives of any of the four castes, the property would be divided according to the ratio of the remaining sons and according to the castes
of their mother pointed out above. For instance, if there are three sons of a Brāhmaṇa belonging to Brāhmaṇī, Kṣatriyā and Śūdrā wives, but none from a Vaiśya wife, then the property shall be divided into eight parts and each son shall take according to his part, i.e. 4:3 and 1 respectively. The same rule shall be followed in other cases.

Viṣṇu also lays down that if a Brāhmaṇa, has two sons from his Brāhmaṇī wife and one son from Śūdrā wife, then, the property shall be divided into nine parts and the sons of the Brāhmaṇī wife shall take eight parts, i.e., four part each, whereas the son of a Śūdrā wife will take only one part. In the same manner the shares are to be adjusted in other cases also.

The Viṣṇu Dharma Sūtra further lays down that the law of inheritance in cases where there is only son of a wife married in the prescribed order i.e. the wife belonging to a caste lower than that of the husband, he shall inherit the entire property. Viṣṇu says that if a Brāhmaṇa has an only son then, he will inherit the whole property of his father provided, he was born of a Brāhmaṇī wife, Kṣatriyā wife and Vaiśyā wife. If a Kṣatriya has an only son, who is born to either of a Kṣatriyā wife or Vaiśyā wife, he would also inherit the whole property of his father. Similarly, the only son of a Vaiśya born of a Vaiśyā wife shall inherit the entire estate and also an only son of the Śūdra, being
a Śudra, shall inherit the whole property of his father.

But Viṣṇu adds that a Śudra, who is the only son of a father belonging to a twice-born caste, shall inherit one half of the property and the second half shall devolve in the same manner in which the property of a childless person devolves.

Although the VDS. enjoins that the sons, who are equal in caste would receive equal share, yet on the other hand it provides that the most excellent part of the property shall be given to the eldest son as his additional share.

Order of Succession in the Absence of A Son

According to the VDS., the property of a sonless man, i.e., the person who has neither the son, grandson and great grandson nor any one of the twelve kinds of sons, enumerated by Viṣṇu, shall go to his lawfully wedded wife, in her absence to his daughter, in her absence to his father, in his absence to his mother, in her absence to his brother and in the absence of his brother to his brother's son. Viṣṇu further names out some remote heirs after the brothers' son as it states that in the absence of brother's son the property of a person shall go to the relations called "Bandhu", in their absence to the relations called 'Sakulya', in their absence to his fellow students and in their absence it will go to the king. But Viṣṇu lays down exception in the case of
a property belonging to the Brāhmaṇa as it states that the property of a Brāhmaṇa, in the absence of his fellow students shall go to another Brāhmaṇa. The Viṣṇu Dharma Sūtra further adds that the property of a deceased hermit shall be taken by his preceptor or by his pupil.²¹¹ Yājnavalkya²¹² almost follows the VDS. in this respect. The main difference between Yājnavalkya and the VDS. is that Viṣṇu places the father first and next after him the mother, whereas Yājnavalkya uses the term "Pitarau" without any distinction between father and mother. But the commentator Vijnanesvar interprets Yājnavalkya's text as indicating that the mother takes before the father, because the term used in text is "Pitarau" which is treated as a 'Compound' word and grammatically the compound "Pitarau" is made of the words "Mātā Chū,"Pitā Chū (the mother and the father). Therefore, the mother comes before the father. A slight difference between the Yājnavalkya Smṛiti and the VDS. in respect of the order of remote heirs is as follows: The YS states that in the absence of the brother's son, the property shall go to Sagotras, in the absence of Sagotras to Bandhus, in the absence of Bandhus to disciple and in the absence of disciples to the fellow students.

It is also a notable point that though the printed text of the VDS and the YS. do not mention the 'daughter's son on the failure of the daughter in inheritance yet, the Mitaksarā on Dayā-Bhaga²¹³ quotes a verse of the VDS. that is "If a
man leaves neither sons nor, son's son the daughter's son shall take his wealth, for in regard to the right to the performance of obsequies of ancestors, the daughter's sons are considered as son's son."

Similarly the Commentators from Vijnanesvar onwards have however included the daughter's son in the list by giving an extanted meaning to the word (Daughter) (Duhitarisch) by reference to the particle "Ch^, to reconcile this text with Manu, the commentators say that the particle "Ch^, implies and includes daughter's son in list of successors. The Gaut. DS XXVIII, 19, the BDS. I, 5, 11, 9-14, the Vas. DS. XVII, 81-83 exclude the daughter from inheritance, whereas the Apas. DS. (II, 6, 14, 3-4) recognises the daughter as an heir in the absence of spiritual teacher and pupil etc. Similarly the Apas. DS., the BDS (II, 2, 3, 47) and the Vas. DS (XVII, 81) do not give inheritance to the widow whereas the Gaut. DS. (XXVIII, 19) states that wealth of a person, who dies without issue shall go to the persons connected by Sapindas, Sagotras or Sapravara and thus includes wife in the list of inheritance. The Kautilya Arthaśāstra also does not recognise the right of a dead person's widow to his property.214 Similarly the Manu Smṛiti and the Narada Smṛiti also do not clearly mention a woman's part in inheritance, but there is a long controversy among the commentators on the subject. Some of the
views are as follows:

The Manu Smriti in verse (IX, 217) gives the inheritance to mother and father's mother, while in another verse (IX, 185), it states that if a man dies sonless, his father and after him his brothers shall take his property. In this context the commentator Kulluka states that if the dead man has left none of the principal kinds of sons nor a wife nor daughter, his property shall be taken by his father and by the dead man's brother only if their mother is not living. Commenting on the IIInd verse of Manu, Kulluka says that - "As this general rule would be meaningless if it were referred to the legitimate sons and those other Sapindas alone, who have already been mentioned, it's object must therefore be (to teach) that wife and the rest, who have not been mentioned, shall interit. To that Sapinda, who is the nearest among the Sapindas be he a male or female, the estate of the deceased shall belong."

Another text attributed to Vṛddha Manu quoted by Mitaksarā 215 also declares a widow's right to the whole estate, i.e. "The widow of a childless man, keeping unsullied her husband's bed and persevering in religious observances shall herself present his funeral oblation and also obtain his entire share."

It is also stated in the VDS. that where a reunited
coparcener dies leaving a son, it is the son, who will take the share of his father, but if a reunited coparcener dies without male issue, then the share shall be taken by the other reunited coparceners. Similarly it is the uterine brother who shall deal with the share of a uterine brother in the absence of his son.216
NOTES AND REFERENCES

1. अपराधपरार्थः व दण्डः दण्डपीतः दापयेत् ॥
   VDS. III, 91.

2. ज़ात्वारार्थः देशः व कारणः कल्पनापितः ॥
   यदः कम्यः व कितल्लः व दण्डः दण्डपीतः पापयेत् ॥
   YS. I, 368.

3. Manu. VIII, 129.

   YS. II, 230.

5. पण्णात्मा के सते सार्थः प्राप्तः साहसः समृद्धः ॥
   मध्यमः सोमः विष्णु सहु वेष्ठ्व चोत्तमः ॥
   VDS. IV, 14.

6. अर्थ महापापान्तिको ब्राह्मणम्यूः सर्वे विभागः ॥
   VDS. V, 1.

7. न शारीरो ब्राह्मणस्य दण्डः ॥
   VDS. V, 2.

8. VDS. V, 3-7.

9. VDS. V, 8.

10. अनुच्छयो च ब्राह्मणस्वर्ज्याराधेङ ॥
    BDS. I, 10, 17, 18.

11. दानभानान्ति दण्डस्य मुनि: स्वाधीनविभिन्नोऽविभिन्नः
    जिष्ठे किंचि प्राणिन स्युरक्षिते ब्राह्मणी जङ्गलः ॥
    उपस्थुतार्थं जिष्ठं हस्तो पापो व घ-वमः
    वहनात्मा व कर्मः व धने देशस्थितिः व ॥
    Manu VIII, 124.
    Manu. VIII, 125)

12. VDS. V, 9-11.

13. VDS. V, 12, 13, 14, 15, 16.
14. VDS. V, 18.
15. VDS. V, 24.
16. VDS. V, 25.
17. VDS. V, 26: खुदेश सातित कर्मणामन्यथावादी कार्यविधाय दण्डः।।
18. VDS. V, 27.
19. VDS. V, 28.
20. VDS. V, 29, 30.
22. VDS. V, 33 - 34.
24. हिंदूमूर्तिकम्ब्बकसम देनादेहः, नापरार्ध कृपावृं शदास्व पार्थः।।
   VDS. V, 19.
26. आङ्कोशयता च शिश्वः।।
   VDS. V, 23.
27. VDS. V, 75.
28. VDS. V, 60 - 64.
29. VDS. V, 65.
31. VDS. V, 68 - 69.
32. VDS. V, 70.
33. VDS. V, 71 - 72.
34. VDS. V, 73 - 74.
35. VDS. V, 108 - 110.
36. VDS. V, 48 - 54.
37. VDS. V, 119.
38. निका स्मृतिः परं वै विद्वानां मातास्मिन।
हसस्य स्वामीत्वम् तथायेषां वषो हन्ता न दोष भावः।
VDS. V, 189.

39. गार्हस्थि बालवृद्धि वा ज्ञानमात्रा वा बहुकुलम्।
आलस्याविभाजना वि वैविवाहायर्याम्।
नालािपिवे दोषो हन्तः हन्तः त्रिविन्दनं कस्बन्।
प्रकाशं च प्रकाशं च मनुष्यमनुष्यहर्षितं॥
VDS. V, 190-191.

40. VDS. V, 55-59.
41. VDS. V, 117.
42. VDS. V, 12-13.
43. VDS. V, 77, 78, 81.
44. VDS. V, 80, 81.
45. VDS. V, 82.
46. VDS. V, 83-84.
47. VDS. V, 85-86.
48. रत्नान्वितेऽवृद्धि।
VDS. V, 87.
49. VDS. V, 88.
50. VDS. V, 137.
51. Manu; IX, 277: अंदुः स्नः भास्य सृष्टिः श्रेष्ठमन्नवःभृते।
ग्राहाय द्राक्ष्यायं द्राक्ष्यायं द्राक्ष्यायं महाय।
VDS. V, 40. Commentary page 94.
52. पाराजापि सवारगमनैं चुत्तस्याहस्य दण्डः।
साक्तवत्रर्था सत्यतीपुर्षप्रदा सज्जान्स्याहस्य।
इष्ट्रायमने तु सहसामेव।
53. हीन वर्णगमने मध्यप्रम्।
54. अन्त्यागमने चध्या।
55. VDS. V, 7.

56. दिवा पशुना जूलापुराणेप्राप्ते प्रति तत्वानयंति पालदेशः।
विनाशत पशुपुरः च स्वामिमेदान्व।।
VDS. V, 138-139.

57. Manu, VIII, 230.

58. Manu, VIII, 234.

59. YS. II, 165.

60. VDS. V, 140.

61. VDS. V, 141-145.

62. पू-च माभा गाव। खुल्लते। अस्वाहिष्णूदेर्देष।
अजातिक्षेत्रे हौ दौ।।
Gaut. DS. XXI, 19-22.

63. VDS. V, 146.

64. VDS. V, 147.

65. VDS. V, 148-151.

66. VDS. V, 154-155.

67. YS. II, 193.

68. VDS. V, 158, 159 - 160.

69. YDS. V, 156 - 157.

70. YS. II, 197.

71. VDS. V, 168 - 172.

72. VDS. V, 122 - 125, 130.

73. VDS. V, 127 - 128.


75. विकृत्यप्रमप्रक्षो ब्राह्मणोसेवा:।,--।
कृत्वा प्रमप्रक्षोऽभराक्षोऽसेवा:।,---।
Kaut. III, 15, 1
Kaut. III, 15, 9.

76. VDS. V, 134 - 135.

77. सिमानेस्त्यकृत्यमथालस्य दण्डियत्वं पुनः सिमाः
VDS. V., 173.

78. VDS. V, 165 - 167. कारमेव॥
79. निघुः। मध्यचर्नुल्लभे गुरुमेशु। मध्यमेशु मध्यमम्।
\[ \text{VDS. 176 - 178} \]

80. Manu, IX, 284.

81. VDS. V, 104 - 107.

82. VDS. V, 91 - 95.

83. VDS. V, 96 - 97.

84. VDS. V, 98 - 103.

85. VDS. V, 113, 114.

86. VDS. V, 180, 181.

87. VDS. V, 120, 121.

88. YS, II, 239.

89. VDS. V, 118.

90. VDS. V, 152, 153.

91. VDS. V, 45, 46.

92. Manu, VIII, 224.

93. Narada, XII, 33.

94. VDS. V, 47.

95. VDS. V, 161 - 164.

96. आध्युपभोग कृष्णमाव:।
\[ \text{VDS. VI, 5} \]

97. YS. II, 58.

98. SBE. Vol. XXXIII, pp. 72-73, Narada I, 124, 125.


100. VDS. VI, 5, 799(7, 8, 9).

101. VDS. VI, 5 - 6.

102. भूक्लापित वसी।
\[ \text{Gaut. DS. XXII, 32} \]

103. अन्तुद्वेद्य प्रक्ष्यहारपी। नस्थावरमाविशि। कवनाद।।
\[ \text{VDS. VI, 7-8} \]
"पाद्दृशिलामेव स्वयंपदामोक्षणादिदृष्टोक्तवपम्"

Commented by Nandapandita, p. 172.

104. VDS. VI, 9.
105. VDS. V, 182 - 183.
106. एकोऽनोयायाधुत्ते नरः सैव सर्वसंस फलम्
गोवर्मात्र वा कष्टी स्तोना वा पद्य वा बुधः
VDS. V, 188.
107. ययोविशेष्य आधिक्षेत विवेदतं यदा नरः
यथा पुक्तं: फले तस्य बलाशेषार बिन बुधा
VDS. V, 189.
109. VDS. VI, 33.
110. VDS VI, 37.
111. VDS VI, 38.
112. VDS. VI, 31, 32.
113. VDS. VI, 34.
114. VDS. VI, 35- 36.
115. VDS. VI, 29- 30.
116. यस्मै प्रत्येकपाने प्रातिभावमेव विधीये
आयूं तु विचले दाप्याकितरस्य तुला अधिः
VDS. VI, 41.
117. VDS.VI, 4, 18.
118. Manu, VIII, 49: धर्मस्य व्यवहारं छेनाचितस्ते च
प्रयुक्तं साध्येद्भु छेन च बलेन च
119. VDS. VI, 19.
120. VDS. VI, 22.
121. VDS. VI, 20, 21.
122. अयोत्तमर्गस्त अन्तिम विद्यादृष्टमें गृहीयाण्य ॥

123. तथय व भवनास्तिरसो भवनात सिरियो वाक्यं ॥

124. VDS. VI, 24- 26.

125. VDS. VI, 3, 2.

126. चुकालबृह्दि: । कारिता कारिका विशाख्योगारं ॥

Gaut. DS. XII, 32.

127. VDS. VI, 22: हिर्मश्लेष्टं वचुष्यं यथा व श्रध्वं कग्नवृमं प्रतिमासम् ॥

128. यो गृहीतवा यथा सर्व व्यवाहारान्ति सामक्यः

नयेनात्मोत्तरः प्रवचनः व योज्यवाणुवात् ॥

VDS. VI, 40.

129. VDS. VI, 10.

130. VDS. VI, 11- 17.

131. YS. II, 53.

132. VDS VI, 41.

133. VDS. V, 41.

134. VDS. VI, 42: चलक्षेत्र प्रतिपदः दद्ध्यभेद्यापूलम् ।

अपेश्विकोषेत् सर्वद्वारकं स्नात: ।

135. यमध्य प्रतिमूर्त्यद्विन्देनेपीविक्षितः ।

दीर्घकारं प्रतिपदः दितंगृहं दातृदातिती ॥

VDS. VI, 43.

136. VDS. V, 185 - 187.

137. अथ देहाय प्रतिपदः । राजसाधिक स्मारिकसाधिक्यं व ॥

VDS. VII, 1-2.

138. VDS. VII, 3.

139. VDS. VII, 4.
140. VDS. VII, 5.
141. VDS. VII, 11: देशाचाराविष्कार्य व्यक्तिपरिस्थितिसमुप्ते
प्रमाणे यथा॥

142. VDS. VII, 12, 13.
143. VDS. VII, 6-10.
144. VDS. VIII, 13: समकालिकानुसार साक्षी श्रवणा॥
146. Comments by Medhatithi on Manu VIII, 75.

147. जीविका साक्षीण दृढ़देशान्तर्गते व तदभिधित्तकोलारं
प्रमाणे यथा॥

VDS. VIII, 12.

148. Brih. I, 5, 1: नव सप्त व द्वन्द्व सुवचारस्त्रेय एव व।
उभो वदश्रीतियो हयातो नैव पुर्वेषक्षक्षवन।

149. VDS. VIII, 5, 9: एक्ष्यवाक्षायी दिव्यिष्टप्रकाशमन्न
उभायानुष्ठ एकोभिध ॥

150. कुलभ दृष्टिप्रकाशस्माना यज्ञानस्तपित्रवन: पुजिणो
र्था अर्थियान: सत्यवन्तस्तेत्वा वृद्धश्री यथा॥

VDS. VIII, 8.

151. स्कौप साह्सवाद्यण्डमध्येमेकालेभु साक्षीणो
न परोक्षय:॥

VDS. VIII, 6.

152. VDS. VIII, 2-4.

153. साक्षिकासाध्यायित्योष्टैरूप समान गुप्तेः॥
VDS. VIII, 19.

154. द्वीपित ब्राह्मण गुप्तेः सर्व द्वीपित राज्ये॥
गोविन्दनाध्येक्षेत्रेः॥ स्त्रियापाराक्षेत्रू यथा॥

VDS. VIII, 20-23.

155. VDS. VIII, 38.
156. बड़ुच्छ प्रतिमृण्यायां साठ्ण्यें नराधितः ।
समेत व गूढ़स्त्रीमानपुरणं पुणणेश्यं दिवोत्तमायां ॥
VDS. VIII, 40.

157. VDS. VIII, 41.

158. VDS. VIII, 10- 11.

159. विचूपौ मुख कानिनासिन्येश्यसंगमायां व कूट साठ्ण्यं विपं ॥
VDS. VIII, 18.

160. VDS. IX, 2, 3.

161. अभिमुक्तरथ त्रिविलय कुमारः ॥ अभि योक्ता कविचर्मीः ॥
VDS. IX, 21, 19.


163. VDS. IX, 2, 22, 3, 4.

164. VDS. IX, 5- 14.

165. सैल्सनामाहूर्य सूर्यदिच्छ क्वेष्टः ॥
कारिकू रजद्वानिनि देव ग्राहयन स निधो ॥
VDS. IX, 33.

166. YS. II, 97.

167. VDS. IX, 19, 18.

168. VDS. X, 1- 13 Full chapter.

169. VDS. IX, 23, 24: स्त्रीज्ञानविक्लामर्थोपेश्यां तुऽदेवः ।
साधृण्ड व न वाचि वाचे ॥


171. न कुष्ठायमार्थ लोकारणामर्थिनाय: ॥
सार्दृण्डायमवेशच ॥
VDS. IX, 25, 26.


173. न हेमन्तायध्येदस्तः भीक्ष्यं हजारकासीनामभुजलिनां वोदक्मः ॥
हेमन्तायं रोपिण्योऽस्मि ॥
VDS. IX, 29, 30.

175. VDS. IX, 27, 28: न कृतिप्रैतिक ब्राह्मणानां विषे देवम् ॥

176. VDS. XIV, 1-5. Full chapter.

177. VDS. IX, 31, 32: न नान्स्तंकोषोदयः ॥

178. VDS. IX, 15-17.

179. VDS. XVII, 1.

180. SBE. Vol. XXXIII, 189, Narada, XIII, 1.

181. "समान्यर्गः पुनः समान्यर्गः स्वमुपाभिषेकः !"

182. VDS. XVII, 2.

183. VDS. XVII, 3.

184. VDS. XVII, 23.

185. VDS. XVI, 16.

186. VDS. XVIII, 41.

187. VDS. XV, 40.
188. अनुपरणां पितृभर्म श्रवण युद्धसाधियेऽः।
स्वयमपिललवर्य तत्तं कामो वाणुवस्तिः।
पैज्ज्जः वृच्च पयाद इन्द्रकार्यवापृणः पदावनुभावः।
न तत्र पुण्येषु सार्वस्थिः: स्वयमपिललवर्यः।
वर्षो प्रतरमलकारः कृताननुभुः प्रतिरः।
योगेष्वरः प्रत्यारोच्यं विभाण्यं च पुस्तकः।

VDS.XVIII,42-44.

189. वर्षीयो जीवनलियोः स्त्रीपिललकारोऽछूऽऽ भीतः।
न ते भोजेन्द्र दामादा भास्माना: पतिन्ति ते।

VDS. XVII, 22.

190. VDS. XV, 32 - 39.

191. पुनःनामाणि बारकाभस्मात धितरं जातेष्वरुः।
तस्मात् पुत्र इति प्रेक्षतः: स्वयमेव स्वर्थभस्माः।

VDS. XV, 44.

192. VDS. XV, 45- 46.

193. पोत्रविनिवृत्यो विकल्पकारोऽप्राप्तेऽ।
वर्तमानेऽपूर्व इति प्रेक्षति विवेकवाः।

VDS. XV, 47.

194. VDS. XV, 1- 27.

195. VDS. XV, 1-27; Vas. DS.XII, 12-38; BDS, II, 2, 14-30;
पुत्र औरस्केल दस्तकृतिमुदुःक्रमान्यविवाहिनिक्षम भागः।
नालोन्नकोऽऽ पोत्रेव उत्पत्तिका पुत्र स्वर्य दस्त कीता गोरि भागः।

Gaut.DS. XXVIII, 30,31.

196. एते च तु पूर्व: पूर्वः: क्षेत्रावः।
त एव दाय दरः। सच्चान्यानां किमुपालु अद्यानां व्य वित्तानुभूः।
संस्कारं कृष्णद्रः।

VDS. XV, 28.

197. VDS. XV, 29-31.

198. गौतम धातुःपुद्गलस्त्याग्नि, अन्धनामुपागतम्, आर्थिकर्मिनः, बन्धुदत्ते, गृहेष्यैव अन्वयंसंभवस्ति: स्त्रीधनः।।

VDS.XVII, 18.

199. Katyayana - प्रीत्यादित्ते तु विचिन्तिलोक साधवायत्ववरेण्या।

प्रादन्दीमहे वैव प्रीतित्ततलः तदुपयो।।

Quoted in Mitaksara on YS. pp. 621.

200. Katyayana - विवाहातुः परसोचव लब्ध्यं भृत्यु दुलुप्तिरिनम्।।

अन्वयंसु तु ततः गुर्गव लब्ध्यं पितुलाल्पथ।।

Quoted Mitaksara on YS. pp. 620.

201. Manu- IX, 194, 195; Narada SBE.Vol.XXXIII, p. 190.,

Narada. XIII, 8.


204. सर्वधेव गृहस्तायं तद्व तु दुर्लक्षणम्।।

VDS. XVII, 21.

205. VDS. XVIII, 1- 5.

206. VDS. XVIII, 6 - 15.

207. VDS. XVIII, 16- 27.

208. VDS.XVIII, 28- 31.

209. हिजारीनाः गृहस्तायं तुः परसोचवः।।

VDS.XVIII, 32.

210. ज्ञेषणाय अत्रमुदायें द्वृः।।

VDS. XVIII, 37.

211. अयुज्य भर्त पर्याप्तिगामिन्यं। तद्भावे दुहिनु गामिन्यं। तद्भावे पिल्लुगामिन्यं। तद्भावे मल्लुगामिन्यं। तद्भावे मल्लुपुगामिन्यं। तद्भावे मल्लुगामिन्यं। तद्भावे मल्लुपुगामिन्यं। तद्भावे मल्लुगामिन्यं। तद्भावे मल्लुपुगामिन्यं। तद्भावे मल्लुगामिन्यं। तद्भावे मल्लुपुगामिन्यं। तद्भावे ग्राहणम्यं।

VDS. XVII, 4-16.
212. YS. II, 135-137. The commentary on verse II, 135 of the YS by Vijnanesvar is on pp. 603.

213. Mitaksara on Dayabhaga pp. 610:

यथाव विषय: - अनुत्र पौरुष जन्तापने दौर्गुणाध्यक्षमाप्नु:।
पूर्णां तु स्वधाकारे चौत्रा दौर्गुणाध्यक्ष मला:।


215. Mitaksara on Dayabhaga pp. 604:

वृद्धमुरुप भर्त्रया: सम्बग्नें सम्बन्ध वक्तिअगुरा स्वर्य च:।
पह्नेववदत्ततिस्तप्पं वृत्तमाध्यं लोकेः च।।

216. बंधुक्षिप्तस्व संप्रेष्ठ चोदरस्य तु चोदर:।
द्वादस्यहर्पवाशी तात्त्वस्य च मृत्तस्य च।।

VDS. XVII, 17.