CHAPTER III

Background of the title of law relating to Strīśaṁgrahaṇa

Section I
Religious Background

As all the written documents of the evolution of the laws of ancient India in a systematic form are not available, it is difficult to trace the precise origin of the criminal law. The criminal jurisprudence passing through a phase of rudimentary forms in the old Dharmaśūtra texts, however, assumed the character of a recognised importance in the text of the Manusāṁhitā. In the category of crimes Manu has recognised assault, theft, robbery, slander, adultery, rape etc. The title of law "Strīśaṁgrahaṇa" is defined in the commentary (Bhāṣya) and digest (Nibandha) as illegal sex-relation between man and woman. In ancient Hindu jurisprudence sexual offence was looked down as a grave sin.

The development of law of any country is determined by the necessities of time, and by the religious, moral and
political ideas prevalent in the society. The law of adultery as found in the Dharmásástras was the outcome and result of the social conditions of ancient India. But for a correct appreciation of this topic of litigation (vyavahārapada) we should take note of the background of it. Ancient Indian law was undoubtedly influenced by the religious and moral tenets of the Veda. But the social and sociological factors had also bearing on this law. From the study of this item of law relating to sexual offence, two broad aspects of the background i.e. religious and sociological, may be pointed out.

From the study of the Vedic works we come to know that the Aryans had a clear perspective between the right and wrong. A hymn of the Rgveda informs us that a Vedic Aryan is conscious of various sins. The Rgveda further informs us that an offence against a brother, friend, neighbour or comrade or even a stranger is a sin. Varuṇa was often approached to

4. Rv. VII.86.6 na sa svo dakṣo varuṇa dhrutiḥ sā surā menyu vihamako acitītiḥ/ asti jyāyān kāṇḍyena upāre svapnaśceno-
danr̥tasya prayotā/
5. Rv.V. 85.7 aryamam varuṇa mityaṁ vā sakhīyaṁ vā sadamid bhṛt̥r̥aṁ vā/ vedem vā nityam varuṇkaraṇam vā yat īmāgadca kṛma śiśr̥thastat/
forgive man's sin. A hymn of the Rgveda appears to express
man's sense of responsibility for seven kinds of wrongful acts.
The Nirukta enumerates seven sins, namely theft (of gold),
vioation of preceptor's bed, murder of a Brāhmaṇa, killing
of bhūṇa, drinking of liquor, continual performance of sinful
acts, telling a lie as to a sinful matter (or to deny offence).
The Taittirīya Āranyaka also enumerates almost the same.
Though the hymns of the Rgveda do not provide us with copious
information regarding sex-offence (adultery), we have reasons
to believe that such illegal sex-relation was not generally
countenanced by the law-abiding vedic Aryans. A hymn of the
Rgveda speaks of unchaste brotherless woman, and of women
who are full of sin as untrue and unfaithful. In another hymn

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6. Rv. V 85.6 .........servā tā vi śya sithireva devā dhā tā syām varuṇa priyāsah// vide also Rv. VII 86. 5-6; 88.6.

7. Rv. X 5.6 sapta maryādāḥ kavaystattakṣatāsāmēkāmidabhyaṃ
huro gat/ āyorha skambha upamasya nīle pathām visarge
dharaṇeṣu testhau// vide also Rv. V 1.6.

8. Nirukta VI. 27. 10 C. U. Edited by Amaresvar Thakur. steyam
talpārohaṇaṁ brahmaḥatyaṁ bhrūṇahatyaṁ surāpānaṁ duṣkṛtaṁya
karmaṇaḥ punah punah sevāṁ pāṭīkāṁ nṛtodyaṁ iti//

9. Tai.Ār. 10. 64. Corasyānnaṁ navāśaddham brahma guru-talpānah/
gosteyam surāpānaṁ bhrūṇahatyā ti sāntiṁ samayanta svāhā//
vide also cchānd. up. V. 10. 9 and Br. up. IV. 3. 22.

10. Rv. IV. 5. 5. abhrātaro na yoṣaṇo vyantaḥ pεstiripo na janayo
dūrevā/ pāppaṇaḥ santo anṛtā asaṭyā idaṁ padamajanatā
gabhīrṇa//
of the Rgveda a woman who bears in secret is described as a vicious woman. The Atharavaveda recognises such aberration, but looks down upon such sex-relation outside wedlock as a grave offence. Wives were urged to maintain their fidelity, otherwise they could be abandoned. A hymn of the Rgveda refers to Juhu, the wife of Brhaspati, who was abandoned by her husband on account of her infidelity; later on the gods removed her guilt by purificatory ceremony and united her with her husband. This seems to indicate that she was restored to her position as wife being purified through a sort of expiation.

In a hymn of the Rgveda sexual relation between brother and sister is looked down with disfavour. Such union is recognised as sinful act in the vedic text. The Atharavaveda

11. Rv.II.29.1 ghṛtavrata ādityā āśīrā āre matkarts rahasūrvā- gah/ śṛṇvato vō varaṇa mitra devā bhradasya vidvān avāse huve vah//
12. Av.VI 118.3 yasamā ṛṇam yaṣya jāyām upāmi yaṃ yaṃ ca amano abhaini devāḥ/ te vācaṁ vādiṣumottāram mad devapo apanāvadhitam//
14. Rv.X.10; vide also Rv.X.162.5 : yastvā bhrātā patirbhūtvā jāro bhūtvā nipadyate/ prajāḥ yaste jighāṃsatī tam ito nāsayāmasi//
15. Rv.X.10.12 na vā ute tavyā tanyām saṃpaprtyāḥ pāpam āhuryah svasaśarṇ nigacchāt....
16. Av XVIII. 1. 1-16.
also recognises such sexual union between brother and sister as incestuous. A legendary reference to sexual union between father and daughter is found in the Ṛgveda. The Satapatha Brāhmaṇa refers to Prajāpati’s passion for his own daughter, and declares that "this one, surely, commits a sin who acts thus towards his own daughter....Pierce him!"

In a later Vedic work illegal relation with other’s wife was forbidden specially for a person engaged in religious rites. It is enjoined in the Taittirīya Śaṃhitā that after the performance of Agnicayana sacrifice a man should not indulge in any act of adultery with other’s wife or a Śūdra woman. A woman was also accused of having committed a sin when she indulged in adultery. In the Satapatha

17. Rv.X. 61. 5-7 prathiṣṭha yasya Viśvakarmamipadanuśṭhitam nu naryc apauhit/ punastadā vṛhati yatkanāyā duhiturā anubhrāmanarvā/ madhyā yatkartvam abhavadvikā kāmaṃ kṛtvāne pitari yuvetyām/ manānagreto jahaturviyantā sânau niṣiktam suktasaya yonau// pitaḥ yat svam duhitarām adhiśkan kānām retaḥ sañjagmāno ni śīnēt//

18. Sat. Br.I. 7 1-4 SBE XII. Part I, pp 193-194; for other version of this reference to Prajāpati’s illicit passion for his daughter vide Sat. Br. II. 1.2.9; Ai. Br.3.33 and Tān. Br. VIII.2.10.

Brahmana it is said in unambiguous term, that "when a woman who belongs to one carries on intercourse with another, she undoubtedly commits a (sin) against Varuna ....... when confessed the sin becomes less, since it becomes truth ....... And whatever (connection) she confesses not, that indeed will turn out injurious to her relatives."\(^{21}\) Again it is said in the Maitrāyaṇī samhitā\(^{22}\) that a woman who being purchased as wife by her master, roams about with strangers, indeed commits a sin.

It is seen from the above references that immoral or lax practices in sex-relation were not approved in society, though such aberrations were not extinct altogether, and they were treated as sins or religious offences. We have already referred to "Saptā maryādā" or seven wrongful acts as mentioned in the Rgveda X.5.6. This statement proves that the seven kinds of offence were treated as grave wrongs. The terms 'āṃhurāḥ',

\(^{20}\) Sat. Br. II. 5.2.20; vide also Tai. Br I. 6.5.2: patnīṁ vācyayati/ medhyāṁ evaināṁ karoti/ atha evaināṁ upanayati/ yajjāraṇ santāṁ na prabhyāt/ priyaṁ jñātiṁ rundhyāt/ asu me jāra iti nirdīśet/

\(^{21}\) This English translation is taken from SBE Vol.XII.

\(^{22}\) Mai. S. I. 10.11. rtam vai satyam yajñorṇṭam stryorṇṭam vā aśa karoti yā patyūḥ krītā satyathānyaisūrati.
papāsah' etc. of the Rgveda (X.5.6; VIII.6.11) convey the sense of sinner. We find references to persons who are described as thief, stealer of garments, and adulterer in the vedic text. Agni is invoked to protect good men from the persons who indulge in sinful acts. But no clear reference to the punishment to be imposed on the sinner is found in the Rgveda. But it should not be rashly concluded that "there is no trace of an organised criminal justice vested either in the king or in the people." It may be, of course, partially true that "there still seems to have prevailed the system of wergold (vaira), which indicates that criminal justice remained in the hands of those who were wronged." According to this classical theory, all wrongs produced efforts at self-redress in the injured parties and were, therefore, treated as injuries to particular individuals.

23. Rv. X.4.6 tanutyajeva taskarā vanargu raśanābhir dasabhīr
24. Rv. V. 24. sa no vodhi śrachī haven urusyō no aghāyataḥ
27. Vide E.H. Sutherland and DR. Cressey - Principles of criminology, pp 9-11. Different theories as to the origin of criminal law have been discussed in this book.
But we should bear in mind that in the Rgveda the king is regarded as the protector of men. In the Satapatha Brähmana he is also described as wielder of the rod of punishment and exempted from punishment. The said Brähmana further describes him as the protector of law (dharma).

From the above discussion it may be presumed that in the vedic society the infringements of the conventional social norms or established usages were regarded as sins which varied greatly in importance. It is probable that civil cases were dealt with by the guilds which were already formed in the vedic society. The offences which were deemed to be injurious and harmful to individual and society or groups were in all probability the concern of the king. K.P. Jayaswal has shown

28. Rv. III. 43. 5 kuvimā gopām karase janasya.....
29. Sat. Br. V. 4, 4. 7. tam dandaigrhante danḍavadhám atinayanti tasmādrājādāṇḍyo yadenām danḍavadhám atinayanti
30. Ibid V. 3. 3. 9. atha varuṇāya dharmapataye/ varuṇaṁ yavamayaṁ caruṁ nirvapati tadenām varuṇa eva dharmapatir dharmasya petiṁ karoḍi paramatā vai sā yo dharmasya patirasadaye hi paramatām gacchati taṁ hi dharma upanayanti tasmād varuṇāya dharmapataye//
that 'sabhā' as referred to in the Rgveda X.71.10 acted as the national judicature.

It may be conjectured that in most cases the sinners had to undergo a sort of expiatory rite. It was probably believed that by this sort of expiation the sinner is freed from sin. We have stated earlier that in the matter of religious rite, the wife if found guilty of adultery was urged to expiate, and it may be presumed that such expiation was viewed as a sort of punishment. This expiation purged the evildoer of impurities arising out of sin. We have seen that the wife who made intimacy with a stranger was required to confess her guilt before participating in sacrifice. Unless the offender (wife) was purified by undergoing expiation, she was not allowed to perform spiritual rites.

The association of this conception of sin of the Vedic Aryans with legal norms is found in the Dharmasūtras. The religious background accounts for the association of expiation (prāyaścitte) with secular punishment (danda) in the legal texts. In the days of Dharmasūtras institution of castes as a social element had its impact on the transaction of law. Punishments were inflicted on the wrongdoers varying
on the grades of castes and status in the society. In the matter of sexual offence, the old vedic religious practice was followed by the Śāstrakāras. The female offenders belonging to higher classes became free from sin by undergoing atonement or prāyaścittā. This may be proved by the statements of the ancient sages. Gautama states that the wives who are disloyal to their husbands should undergo penance. Brhatprācetāḥ prescribes atonement for unchaste woman. Vasiṣṭha opines that wives of higher classes may be purified by penance.

Adultery is recognised as upapātaka (sin) in the Manusmṛti. In this text, penances are prescribed for sexual offence. Manu lays down that women who are found to do act of adultery with

33. G. dh. S. III. 4.35 stṛi yāticārini gupta pindam tu labheta/
35. Vas. as quoted in Hitā on Yāj. I. 72 BrāhmaṅgaṁKaśtriyaṁvīśam bhārīyāṁ śūdrena sāgaṁtah/ aprajatā visuddhyanti prāyaścitte- na netarāḥ//
36. Vide Manu XI. 55, 59.
37. Ibid. XI. 46-47. akāmataṁ kṛtaṁ pāpaṁ vedāhyāsena suddhyati/ kāmatastu kṛtaṁ mohat prāyaścittaiḥ prthivaṁdihaṁ// prāyaś- cittiyetaṁ prāpya divāt pūrvakrtaṁ vā/ nā samaśram vrajat sadbhīṁ prāyaścittā kṛte dvijah//
38. Ibid. X. 177-178.
males belonging to the caste of women, shall observe penance.

In the Dharmaśāstras sexual intercourse between brother and sister, father and daughter etc. is regarded as grave offence. Hence the Śastraṅgas warn that by the commission of such immoral acts man shall incur grave sin. In the Dharmaśāstras a strict provision is made to prohibit marriage alliance between or sex-association with near blood relations. The vedic marriage ideal exercised its impact on the law of chastity in marriage in the Dharmaśāstras. In theory the Dharmaśāstras are based on Śruti and as a matter of fact, the Smṛti writers show respect and veneration for the vedic ideals. Hence the Śastraṅgas required the king to safe-guard the sacredness of the matrimonial relations. The act of adultery was regarded by them as an offence against matrimonial relations. From the perusal of the law relating to Strīsamgrahaṇa it is found that the religious conception of the vedic marriage ideal has a great bearing on this title of law.

As early as the Rgveda marriage had assumed the sacred character of sacrament and sanction of religion had hightened the character and importance of the institution of marriage.

[39. Manu.III. 5.]
Importance of wife lay in the fact that the wife was not only husband's companion in secular life but also his partner in the performance of the regular sacrifice. It is laid down in the Taïtiriya Brâhmana that no religious performance or rite can be regarded as complete without the participation of wife. The term 'patni' indicates the wife's equal share in the religious side of husband's life. In the Rgveda perfect harmony and happiness are prayed for in the conjugal life. The wedding hymn of the Rgveda refers to the importance of conjugal fidelity in married life. In this hymn a happy and prosperous life of the bridal pair is desired. This wedding hymn of the Rgveda advises the bridal pair to live unitedly, and to dwell in the same place for the whole of life.

40. Rv. VIII. 31.5 yā. dampatī suṇūtā ca dhāvātā devaśo nityāsīrā/
41. Taï. Br. II. 2.2.6 ayaṁ vā eśaḥ/ yopatnīkah/
42. Panini IV. 1.33 "patyṛṇa yajñaśaṇyage" "The substitute n replaces the final i of pati before the feminine affix 'nip' when the word formed means 'a wife, who takes part in the sacrifices of her husband.'"
43. Rv. X. 85.
44. Ibid.
45. Ibid. X. 85.27 iha priyaṁ prajayā te samṛddyatām asmin grhe gāṛhapatyāya jāgrhi/ enā patyā tanvām sam eṛja svādha jivṛi vidathma yadāthah/
46. Ibid. X. 85.42 ihaiva stām vā vi yaśtān viśvamāyur vyaśnutaṁ/ krīḷantau putroṁ napatṝbhir modāmaṅau sve grhe/
We have shown above that according to the vedic conception transgression of sexual virtue was recognised as harmful to religious performances. The importance of this religious obligation is one of the major causes of the regulation of sexual conduct. The religious aspect of matrimonial relations in the vedic age accounts for the high position and dignity of wife. Under such condition the vedic Aryans were much aware of maintaining sexual ethics in society.

The vedic notion of marriage ideal is reflected in the Āpastamba Dharmasūtra. Following the line of vedic ideal, Menu states that it is the highest duty of the married couple to maintain their mutual fidelity till death. In the Rāhābhārata it is stated that the wife is the half of man, the best friend of husband, and the source of trivarga (dharma, artha and kāma); and a man with a good (virtuous) wife as his companion is entitled to take part in religious and social functions. Wife’s association with three ends of life (trivarga) accounts for the importance of maintaining

47. Āp. dh. S. II. 14. 17-18; II. 27. 1. pāṇigrahaṇādhi schatvam karmasv/carīte yathāpuraṇaḥ dharmadhī sambandhah//
49. Dūh. Ṛdi 74. 41-43 ardham bhāryā menuyasyaḥ bhāryā āroṣṭha- taneḥ sakhaḥ/ bhāryā mūlaḥ trivargasya bhāryā mūlaḥ teriya- tah/ bhāryāvantah kriyāvantah sabhārya gṛhandhinaḥ/ bhāryāvantah pranodante bhāryāvantah śrīyūnvitaḥ/ sakhashyaḥ prāvivikteṣu bhavantyetaḥ priyavadeḥ/........
fidelity in conjugal life.

Manu looks upon the status and relation of husband and wife as a matter of intimate spiritual bond and accordingly any infringement of the virtue of fidelity on either of the parties to marriage is looked down as an offence of adultery called 'Strīsāmpgraṇa', involving acts of the sorts of seduction or winning over women outside wedlock for sex-enjoyment. Such acts are grouped as causes of legal action as an item of law. Kautilya\(^5^0\) equally treats the law of adultery as a topic of litigation in its association with the law of marriage and family life. Nārada\(^5^1\) also deals with the rules relating to sexual offences under the title 'Strīpumya\(g\)a vyavahārapada' (matrimonial rules). Even in the modern law of marriage adultery is viewed as a good ground for judicial separation and divorce, though adultery has been assigned a scope of recognition also in penal code.

We have shown before that the great impact of the vedic religious ideal on the social life in ancient India accounts much for the religious background of ancient Hindu law.

\(^{5^0}\) Artha. III. 4.

\(^{5^1}\) Vide Nārada-Strīpumyoga.
The ancient sages adjusted the mode of life with the older religious values indicated in the Vedic texts. We come to know from the traditions that the old Vedic ideal was held in high esteem in the life of the house-holder in society.

Mārītā⁵² states that religious and sacred duties are all lost if the wife becomes unchaste in conduct and character. We should note in this connexion that Maṇu⁵³ states that addiction to illegal sex-relation with other's wife is the most harmful and detrimental to long life beyond comparison. This is not merely the word of condemnation hurled by Maṇu against such illegal gratification of carnal desire. It may be that such licentious depravity may affect health, honour and equipose of mind and cause fatal stake or loss of life. Maṇu might have hinted at such nemesis of life...

⁵² Mārītā as quoted in Mad. Rel., p 315.
⁵³ Maṇu. IV. 134. na hīḍrām anāyuṣaṃ loke kiṅcana vidyate/ yāḍrām puṣaṣasya paradāropasevanam// vide also Mār. p.34. 62-63 paradārā na gantavyāḥ puṣuṣaṇa vipasācitā/ iṣṭāpūrtāyuṣaṃ hantri paradāragatirnyaḥ// na hīḍrām anāyuṣaṃ loke kiṅcana vidyate/ yāḍrām puṣaṣasya paradārābhimāraṇām// F. Eden Pargiter translates these verses of Mār. as: "A wise man should not resort to other man's wives. Adultery destroys the religious acts and the life of man. Nothing indeed is so short-lived in the world, as a man's intercourse with another's wife here."
in society in the verse IV. 134. We should also bear in mind that whatever Manu said is medicine indeed. In the opinion of the Śastrakāras immoral and sinful acts like sexual offences affect family life which is a means to the fulfilment of dharma. So Manu states that 'adharma' or unrighteousness follows from illegal sexual relations with other's wife. The word 'śri' in 'Śrīsmṛgahana' refers to the wife of another person (parabhāryā). When a person is said to have committed the act of adultery with the wife of another person the king is required to inflict severe punishment on the offender and banish him away, as such adultery gives rise to illegitimate crop of cross breeds (varṇasamkara) which cuts adrift the base of society, spreads vice and causes total ruins.

The subsequent writers also look upon adultery as a matter of grave concern. Yājñavalkya treats illegal

54. Taiṣām. II. 2.10.2 Yad vai Manuravatad tadbheṣajan/
55. Manu VIII. 353. yena mūlahardharmāḥ sarvanāśaya kalpate/
56. Vide Parā. Mādh. III. Vyav. Kān, p. 316 paradvāra is interpreted as parabhāryā (wife of other): "parabhāryayā saha keśakeśikriṇana etc. See also Māchā on Manu VIII. 352. He interprets 'dvāra' as married wife; vivāhasamkṛtyān striyān dārasabdde vartate.
57. Manu VIII. 352-353.
58. Yāj. III. 235, 242...paradvārayam pārivittyaṃ vṛddhuyam lavanakriyā//...ekākam upapatikam//
intercourse with others' wife as an upapattaka *(sin)*. In the Śāraṇavāya he states that the husband should be solely attached to his wife. This is a positive conjugal duty. In the words of Prof. K. G. Goswami: "Marriage in the Indian tradition is integrated with abundance of interests and values which are not merely biological and conjugal, but also ethical and spiritual. The primal biological love necessarily means the relation of sex. But by a strict moral code, Manu safeguards the stability and fertility of marriage to its religious end, for it is given the status of a sacrament. The sage law-giver urges upon genuine and intense feeling of oneness, amity and of fidelity in conjugal life." Its violation involves sin. Bṛhaspati categorically says that adultery has its root in sin. Medhātithī states that marriage

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59. I. 81 svadāraṇīrotascaiva striyo rakṣyā yataḥ smṛtah/
60. K. G. Goswami - 'Manu-saṃhitā' Chapter III - A study, p 6.
62. Medhā. on Manu III.4. .....tathā hi khedāt pūrṇaḥ strīmātra-viṣayārthāṃ pravrūttau prasaktāyāṃ kanyāparādāra niṣedāt svadārṣaṃ kāmānaḥ khedanivṛttāḥ ..... Vathiva kāmāḥ puruṣārthasthātva dharmāpi puruṣārthatvā pravojakāḥ/ sarvāpi puruṣārthastiddhārthāṃ pravartate .......
is not a means to the fulfilment of secular happiness exclusively; it involves both seen and unseen purposes of human life. Accordingly adultery is a sin also from the viewpoint of the married life, constancy and fidelity and also from the standpoint of society.

Section II
Social and Sociological background.

It will not be out of gear, we believe, if we consider a few sociological facts as a background of the law of adultery. In the hoary past of the human history there might have prevailed loose practices in sex-relation; but in a recognised social system irregularities in sex-conduct are not tolerated, because they create various social problems. Accordingly the ancient sages of India prescribed a positive code of conduct in matters of sex-relation the transgression of which was deemed as an offence. The śāstrakāras looked upon sexual enjoyment by force or fraud, rape, abduction, incest etc. as aberrations involving sex-offences. From the study of the
ingredients of the law of adultery we find that according to the sex-norm of ancient Indian society irregular and unnatural sex-conduct on the part of both male and female was considered as detrimental to healthy social life. The code of sex-ethics was the outcome of various social norms and belief arising out of the disposition of the race involving the archaic impulse of man in society, the relative position and status of man and woman, the system of marriage, the family and the conjugal pattern of life, the psychological reactions of human nature, repulsion or the sense of taboo against some practices prevailing among the different tribes etc.

It is believed that in the primitive stage man often satisfied his sex-impulse by extending a kind sex-dominion over women by the might of his arms. There was probably no fixed sex-relation. Society was in a state of promiscuity so to say. But as it involved hazards affecting the biological needs of life in human society which required care and nursing for the offspring born, marriage as a system between male and female lasting at least for some time came to be introduced. And with the advancement of civilisation man was urged to regulate such relation not only to fulfil biological needs but also to assure
ethical idealities. In course of time the society imposed taboos to restrain free and unrestricted sex-relation. But even when marriage became the settled institution in its early stage, it was not always accompanied with strict constancy in conjugal life, and there were lapses, though gradually it was sought to be elevated to a status of chaste dignity. But whatever be the cherished goal, in human society, sex-offences could not be totally eradicated. This is why need was felt to check such offences by provision of a code of sex-ethics and of punishment.

The most important element which may be considered as constituting a major background of the law of adultery is the marriage system of patriarchal society. The family which was the basis of social life was probably endogamic at the primitive stage of human civilisation. It is presumed that at that stage women were the common possession of all the male members of the family, and no individual male member could exercise his exclusive right over a woman. In course of time owing to a number of concomitant causes the system of procuring women by capture was introduced. And it is probably

due to this reason, namely capture of women from another family, the right of one individual member over a woman was recognised. Sternbach observes: "Recognition of this first right by capture formed the earliest basis of individual marriage."

Westermark64 has shown that marriage by capture prevailed in various parts of the world in past. This system was prevalent among the ancient Greeks, the ancient Teutons, the ancient Tasmanians. Sternbach65 also refers to this system of marriage prevalent among the Slavs, Romans, Arabs, Japanese etc. of the ancient period. In the ancient patriarchal society the manner of procuring women by capture was regularly adopted and husband-right became an unmitigated dominion. This absolute ownership of the husband over his wife in patriarchal society had far-reaching effects on matrimonial relations. Firstly, wife came to be regarded as sort of property of the husband; secondly, the notion of the proper protection of women developed; thirdly, the fear

of falsification of descent led to the seclusion of women. Husbands urged upon female virtue and ultimately the idea of guarding and protecting wives developed. These ideas had a great impact on the law of adultery.

Westermark\textsuperscript{66} has pointed out that mythological stories narrating the origin of the notion of the dominion of husband over wife are found in ancient literature of the world. It is narrated that formerly women were free. There was no sexual offence even though women went astray. But ultimately to stop this absolutely free and unrestrained sexual relation, a system of marriage was introduced in the society. In ancient China Emperor Fou-hi, in ancient Egypt Menes, in ancient Greece Kekrops, in ancient Lapland Njavvis and Attijis, stopped the unrestrained and irregular sexual intercourse, and introduced the system of marriage in human society; and this system empowered the husband to exercise unmitigated dominion over the wives.

We find in our \textit{Mahābhārata}\textsuperscript{67} that Śvetaketu could not tolerate the unrestricted sexual relation between men and women.

\textsuperscript{66} Westermark - \textit{'The History of human marriage}, p 8.

\textsuperscript{67} \textit{Mbh. Ādi} 122. 4-17.
and he declared that wives should remain ever faithful to their husbands; they should not disobey their husbands' authority.

We should bear in mind in this connection that the vedic Aryans developed a singular and unique system redolent of the highest ideal of marriage. This vedic ideal of marriage together with other ancient customs; i.e., marriage by capture, by purchase etc. cast their influence on the law of adultery. We have stated before that the vedic marriage ideal elevated the status of wife and ensured her position as the mistress of the family. When a woman was wedded with vedic mantras, she was called 'patni'. From the wedding hymn of the Rgveda (X.85) it appears that the special privilege enjoyed by a 'patni' could not be conferred on the wife procured by other secular manners. References to other manners of procuring wife, i.e., marriage by capture or by purchase etc. are found in the Rgveda. But they were not recognised as sacred marriage, and the wife thus procured was not entitled to participate in religious rites as her husband's partner. Gāndhāyana quotes the opinion of

68. Rv.I. 109.2; 112.19; 116.1; 117.20; X.27.12; 39.7. See also Nirukta VI.9.
69. Bd. dh.5. I. 11.20 "Kṛtā drauṣṭa yam naiṁ sa na patnī
vidyate/ sa na daive na sa pitrye dāsim tāṁ Kasyapo brabīt/". 
Kaśyapa: "A wife who is purchased cannot be given the status of 'patnī' and she cannot participate in any religious rite; she is nothing more than a female slave. What we mean to say with reference to the system of marriage by capture or by payment is that the older, non-Vedic practices led to the development of the notion of the absolute dominion of the husband over the wife, and had far-reaching effects on the position of men and women even in the earliest period.

While dealing with the offences relating to sex-conduct, the Śāstrakāras did not lose sight of man's dominion over woman. So the forcible enjoyment of woman outside wedlock was declared by the ancient sages as aberration and recognised as a grave offence, and positive rules were framed to restrain such abominable acts. Sex-offences of the type of adultery (Strīsaṃgrahaṇa) as found in the Śaṅkī-texts may be broadly divided into two categories with reference to the persons involved against (1) married woman and against (2) unmarried woman. It may be of some interest to note that Manu 70 appears to include rape under sāhasa. Sāhasa is a term which conveys the notion of any offence committed.

70. Vide Manu VIII. 347. na mitra-kāraṇād rājā Vipulād vā dhanāgamāt/ samutsṛjat sāhasikān sarvabhūta-bhayā-vahān//.
forcibly\textsuperscript{71}. In course of interpreting the term 'sahasa', Medhātithi\textsuperscript{72} states that the word 'sahasa' means not only (forcible) theft but also any offence done forcibly. Under the rules relating to sexual offences Manu\textsuperscript{73} appears to classify rape in two categories i.e., rape on married woman and rape on unmarried woman. The punishments for rape were very severe. Manu\textsuperscript{74} prescribes banishment from the country for committing rape on married woman. It is significant to note that the modern law\textsuperscript{75} prescribes imprisonement for life as the maximum punishment for rape. Vājñāvalkya\textsuperscript{76} appears to state that a man who rapes a protected woman of higher order shall suffer death penalty. According to ParāśaMādhava\textsuperscript{77} this

\textsuperscript{71} Medhā on Manu VIII. 347. states that the man who does not take any heed of the demerits both seen and unseen, and who takes resort to force only in the matter of theft, violence, sexual offence (adultery) etc., is known as 'sahasika' "dṛṣṭārdṛṣṭa dośān apariganeyya balamātram āditya steyahinsā samgrahāṇādiparāpākaraṇu vartamānah prakāsam puruṣāḥ 'sahasikāḥ'//

\textsuperscript{72} Medhā on Manu VIII 332. prasabhaṁ karmaṁ karma-grāṇāḥ dṛavyāpahārāṁ anyad apyavaṇaṁ kṛtam ayuktam sahasam...

\textsuperscript{73} Vide Manu VIII. 352, 364.

\textsuperscript{74} Manu VIII. 352.

\textsuperscript{75} Sec. 376 of I.P.C.

\textsuperscript{76} Yāj II. 286 prāti-lomene vadhah pūmaḥ......

\textsuperscript{77} Parā. Medh. III Vyav.Kāṇḍ, p 317-318 Caturāṇāṁ api varṇānāṁ Valākāraṇa sajātiyaguptaparabhāryaṁ āgamane sāśīti pāpāsahaṁram dandaḥ/ prātilomēna utkṛṣṭastraṁ āgamanāḥ Kṣatriyādādevadāhāḥ//.
verse (II.286) of Yajñavalkya refers to the cases of forcible intercourse with other's wife of the same caste already kept under protection. Brhaspati recognises rape as a grave offence and he lays down that 'If a man commits rape on a woman, he is to forfeit all his property, to have his genital organ and testicles cut out and is to be paraded on the back of a donkey.' Candaesvara, the digest-writer, also refers to verse of Brhaspati to the cases of forcible sexual offence. It is laid down by Katyayana that when a man enjoys a woman by force, he shall suffer death.

The forcible ravishment of woman was recognised as an offence of such reprehensible character that Manu even provides that any man belonging to any of the three higher

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79. Viv. Rat., p 388 yah sahasā valena parastrīyam anichchantim evabhigacchati, tasya sarvasvaṃ ghṛtva līṅga-vṛṣaṇau cchitvā gardhabhena pūraparibhramanam danṣaḥ/


81. Manu. VII. 349 Strīvīprābhyupapattah ca dharmena ghnana na duṣyatī//
classes can with impunity kill such offender who commits the
offence of rape, Medhatithi also defends the position by
saying that it is not possible on the part of the king to
protect each and every citizen of the country, and as there
are rogues in society so in case of emergency any citizen may
hold in check such serious offence even by using weapons. Such
provision was made evidently for the protection of a woman
who falls a helpless victim to beastly passion of a man.
In fact rape was recognised as forcible Strisamgrahanā,
indicated in the topic of sahasa, and it has been so admitted
by a later Nibandhakara (digest-writer).

Man also indulged in carnal enjoyment by resorting to
abduction, fraud or deception. These were declared as
punishable sexual offence by the Strātrakaras. Manu clearly
states that the abductor of a woman belonging to a good family
should suffer corporal punishment. By making this stringent

82. Medha on Manu 348-349. ...... na hi prasārya hastau rājā
pratipurusam āsītam saknoti/ bhavanti kedī durātmāno ye
rājapurugān api sūratamābhīyuktān bādhante āstravavitā
bibhyatītī sārvakalikām āstradhāraṇaṁ yuktām/
83. Man. Rat., p 307 tatra valākārakṛtam Strīsamgrahanām
sahasāntarbhūtavat tathākaraṇe adhunāiva darsitām/
84. Manu. VIII. 323 Kūlīnānām nārīnām ca viśeṣataḥ .... harane
vadham aṁhāti//
provision Manu seems to point out that the abominable act by which the position and dignity of a woman belonging to a noble family is affected, should be strictly prohibited. It is significant to note that the special consideration of the status in society is recognised in ancient Indian law. Madhātithī also states that for the abduction of a woman not belonging to a noble family the offender shall have to pay a heavy penalty of fine, but shall not be awarded with death punishment. Yājñavalkya lays down that if any one kidnaps a maiden having ornaments on, he shall be punished with the highest amercement, and in case of a maiden

85. Madhā on Manu VIII. 323 okuśānām avaliṣṭānām amukhyānām ca śaṣe tvekādaśaguna ityeva.
86. Yāj. II. 287. alaṃkṛtām harākanyām uttamām hyanyathā' dhāmām/ dāṇḍam dādyāt savarṇāsu prātiṣṭoby vadhāḥ smṛtaḥ//
87. For the meaning of the first amercement, the middle amercement and the highest amercement vide Manu VIII. 138 paṇānāḥ dveṣate sārddhe prathamaḥ sāhasah smṛtaḥ/ madhyamaḥ paṇca vijñeyah sahasrantyeva cottomah//
In the Śrāti texts the Sāstrākaras use three technical terms indicating three grades of penalty of fine. These are prathama sāhasa (first amercement), madhyama sāhasa (middle amercement) and uttama sāhasa (highest amercement). The amounts of two hundred fifty, five hundred and one thousand panas constitute prathama, madhyama and uttama sāhasa respectively.
belonging to the highest order, the offender shall be awarded with corporal punishment. In the Arthaśāstra 60 a penalty of two hundred pāpas is prescribed for a man who forcibly takes away a maiden. Bhāspatī 89 lays down that when a man enjoys an unwilling woman by fraud, his punishment shall be confiscation of his entire property, and he shall be branded with a sign of female organ and banished.

Abduction or enticing away by fraud was considered as harmful to both family and individual. It affected the fate of the unmarried girl, for it was very difficult to give her in marriage according to the choice of the father. A married woman, on the other hand, being the victim of fraud or abduction, loses her repute as a faithful wife. Moreover it is dreaded that she might be get illegal offspring to cause a problem to the society.

We shall note in this connection that there are elements of force and fraud in the Pāścāca form of marriage. We have already stated in chapter II that though the Pāścāca or the Rākṣasa form has been enumerated as one of the eight forms of marriage, the Śāstrakāras have not legalised the

60. Artha. IV. 12 prasahya kanyāharanam apaharato dviśetaḥ.
89. Dr. quoted in viv. Rat, p. 388 chadmanā kāśayed yastu tasya sarvahara danah/ṇakṣayitvā bhagāśkaṇa purāṇ-nirvāscayet tatrāḥ/
manner of procuring wives by fraud or deception, and they do not make even a permissive provision for marriage by rape or fraud. Manu defines the Paisaca form of marriage as stealthily seducing a girl who is asleep, intoxicated or Mentally deranged. But Manu seems to declare this manner as condemnable in social life. The Mahābhārata categorically prohibits such acts. Accordingly the Sāstrakaras have declared force and fraud as illegal in any transaction. This will be evident from the statement of Manu who says that any act which is done by force becomes invalid. Mayne rightly observes: "The ancient Hindu law certainly did not recognise rape and seduction as marriages. No assumption could be made that a man was free to violate a maiden. For, abduction and rape were offences then as they are now."

We have stated above that the rules relating to sexual offences were necessitated not by a single factor but

90. Manu III. 34.
91. Ibid.
92. Mbh. Adi 73.12 Paisaca āsurasācaiva na kartavya pudacana.
93. Manu VIII. 168 balaḥ dotpay balaḥbhuktaḥ balaḥ yaccāpi lekhitaḥ/ sarvān balakṛtān arthān akṛtān Manurabravit.
94. Mayne's Treatise on Hindu law and usage, p 123.
by several factors. For we see that a few practices in the matter of sexual relation which were once prevalent among people came to be recognised as repulsive at a later period. We find such reference in the *Kāmasūtra* of Vātsyāyana. The *kāmasūtra* refers to the polyandrous marriage which was prevalent among the vāhlika tribes. But such practice later came to be recognised as sexual offence. Draupadī's marriage in the *Mahābhārata* may be cited as an instance of polyandrous marriage, and Yudhiṣṭhira's statement indicates that the system of polyandrous marriage was the family tradition of an earlier tribe and such old practice was admitted by Yudhiṣṭhira on the basis of its precedent. Yet, however, this was not recognised as the general legal practice of society.

As a matter of fact there was no system of polyandrous marriage in the vedic society. In the *Rgveda* we find no reference to polyandry. On the other hand we find the

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95. *Kām. S. II. 6.43* grāma-nārīvīṣaye strīrājye ca vāhlike vahavo yuvānōntah sadharmāṇah ekaikasyāḥ parigrahābhūtah//

96. *Mbh. Ādi 195.*

97. *Mbh. Ādi 195.29* pūrveśāṃ ānapūrveṇa yātam vartma anuyāmahe//
mention of co-wives in the Rgveda. The Taittiriya Samhita also clearly states that one husband may get two wives, but one wife cannot take two husbands. The same idea is found in the Aitareya Brāhmaṇa. All these go to prove that though a type of polyandrous marriage was prevalent among a group of people, it was rejected by the Aryan society. Accordingly the Aryan ideal declared the woman’s sexual connection with different strangers as wanton act, and made provision to penalise such acts. This social norm of woman’s attachment to one husband only is also declared by the Mahābhārata. It is stated there that man is allowed to have more than one wife, but it is considered as unrighteous act (adharma) when a woman violates the duty to the first husband. Thus it is seen that the infidelity of a woman was considered as sin. In fact nowhere in the Dharmasastras polyandry is mentioned as a form of marriage. A verse in the Manusmṛti
states that the wife should live with one husband only and should not disobey him; she is declared a virtuous wife who does not disobey her husband. Hence in the Dharmasastras wife's sexual relation with any person other than her husband is recognised as an adulterous act. It is laid down in the Manusmrti that the wife who disobeys her husband out of pride and makes contact with other man is punished with death.

Procurement of wives through non-religious forms of marriage seems to account for the inferior position of women, specially because the man extends here his dominion over woman by money, force or fraud. A woman purchased or forcibly captured was naturally treated as a sort of chattel. That wife was given away as a stake in the game of dice is known from the Rgveda. The idea of husband's dominion over the wife is found in the Mahabharata in the act of Yudhisthira's pledging away Draupadi as a stake in a game of dice. Whatever be the source or origin of that dominion, the idea of husband's authority or lordship is clearly recognised in the

103. Manusmrti VIII. 371.
104. Rv. X.34.
Dharmasastras. Manu\textsuperscript{106} says that pradāna (offering of the bride in marriage) is the source of the husband’s ownership over the wife. Wife’s independence was denied to her. It is laid down in the Manusmṛti\textsuperscript{107} that the husband should not allow the wife to work independently either in religious or in domestic matter. While laying down the duties of wife Śāmkha\textsuperscript{108} states that the wife should not go out of the house without taking permission of the husband. Reference to the corrective power of the husband is found in the Arthaśāstra.\textsuperscript{109} All these naturally imply that the husband was recognised as the sole master of the wife. From this it may reasonably be deduced that if any man made contact with the wife of another man without taking the permission of her husband, such person was considered as having trespassed.

\textsuperscript{106} Manu. V. 152. \ldots \textit{vivāheṣu pradānāṃ svānyakāraṇāṃ. vide also Kullūka on Manu V. 152. yat punah prathamasaṃpradānāṃ vāgdānātmakaṃ tad eva bhartuḥ svānyajaṇakaṃ.}

\textsuperscript{107} Manu IX.2. \textit{asvatantrāh striyāḥ kāryāḥ puruṣaiḥ avair divāniśam/ viṣayeṣu ca sajjantyaḥ samsthāpyaḥ atmano vasa//}

\textsuperscript{108} Śam. quoted in the Mitā on Yaj I. 87 “nānukta gṛhānir-gacchet....

\textsuperscript{109} Artha. III.3. \textit{vaṇudala-raju-hastānām anyatamena vā prasthe triṛaghataḥ.}
illegally into the husband's property. Such person was declared as offender in the eye of the law of adultery. The notion that a man who enjoys other's wife steals other's property is reflected in the law relating to sexual offence. It is stated by Manu\textsuperscript{110} that a man who makes intimacy with or converses with or approaches other's wife secretly is considered as adulterer. He\textsuperscript{111} also says that no man should even converse with other's wife when forbidden. This naturally implies that if the husband gives the man permission to converse with his wife, it will not be considered as offence.

The notion of property was also extended to the female slaves. The female slaves who lived under the custody of their master were regarded as the property of their master. A stranger who committed adulterous act with slave girls, was punished. Yājñavalkya\textsuperscript{112} says that slave girls and kept mistresses are not allowed to contact other man without taking

\textsuperscript{110} Manu VIII. 356-358.
\textsuperscript{111} Ibid. VIII. 361 na sambhāgāṁ paraśtriḥḥ pratiṣiddhah samācared/ niṣiddho bhāgamanastu suvarṇam dandaṁmarhati//
\textsuperscript{112} Yaj.II. 290 avaruddhāsu dasīṣu bhujīṣṭhāsu tathiva ca/ ganyāsvapi pumān dāpyaḥ pāṇcāṣṭpāṇikāṁ damam//
their master's permission. Narada states that "sexual intercourse with females who are kept by another, is as criminal as adultery with another man's wife; and intercourse with common prostitutes is likewise forbidden if they are in the service of another man." Westermark, the renowned sociologist of the west, has remarked that a wife is often regarded as not very different from other property, and an adulterer as a thief.

In the law of adultery the adulterer is probably treated as thief. Yajnavalkya appears to describe an adulterer as a thief. It is laid down by him that even a person who helps such a 'thief' in taking away other's wife, is punished with the highest amercement. Vijnanesvara

113. Narada - stripu - verse 79 āśeva tu bhijisyaśu doṣah syāt paradāravat/ ganyā api hi nopeya yat tāḥ parapari-grahah/

114. This English translation is taken from Jolly's "Nāradīya Dharmaśāstra."

115. Westermark - The History of human marriage, p 130.


117. Ibid. pāradārikacau̍raṇ vā mūncato daṇḍaḥ uttamaḥ/

likewise takes an adulterer in the sense of a "thief". He says that the king should inflict punishment on the persons who steal other's wife. The idea of wife's submission to her husband and the absolute dominion of the husband over his wife is stressed also by Kālidāsa 119 in his drama. So when a wife took any initiative of her own to make intimacy with a stranger, she was held punishable according to the law of adultery. Āpastamba 120 lays down that a wife who defies her husband at her own sweet will, she commits sin, and she should observe penance. Viṣṇu 121 prescribes death penalty for such transgression. Manu 122 says that a wife who after defying or disobeying her husband leaves him and indulges in improper sexual enjoyment with another, the king shall have her devoured by dogs in a public place. Such a measure of punishment is obviously to strike terror in the mind of the intending offender.

119. Abhi. Sak. Act V. tadeṣā bhavataḥ kāntā tyaja vainām gṛhaṇa va/ upapannā hi dareṣu prabhutā sarvatomukhā//
120. Āp. dh. S. I. 28.2. strīyāstum bhārtuvyatikramo kṛcchā dviḍaśarātrabhyaśaastāvantam kālam//
121. Viṣ. Sm V. 18 Strīyam asaktabhartṛkām todārikramāṇāca.
122. Manu VII. 371.
Guarding of wife was considered as an essential duty on the part of the husband and any attempt to set at naught this privilege sometimes provoked jealousy. Westernmark rightly observes: "The prevalence of jealousy in the human race is best shown by the punishments inflicted for adultery." Man could not remain indifferent when his wife treated as but property was enjoyed by others. Manu states that the husbands both weak and strong should take all endeavour to guard their wives as they know that it is the best duty of the four castes.

We have discussed before that the marriage ideal introduced the importance of wife also from the religious point of view. It is stated that women are created for giving birth to offspring, and men are created for propagating (the race) through her. In the Hindu-Sâstra procreation is regarded not merely as a biological end or a matter of secular benefit, but also as a spiritual necessity, because by the birth of a son or sons man becomes free from the debt one owes to his ancestors. Prof. Krishnagopal

123. Westernmark - The History of human marriage, p 121.
124. Manu. IX.5. ima hi sarvavârghânám pasyaunto dharmam uttamaṁ/ yatante raksitum bhâryâm bhartaro durvala api/.
125. Ibid. IX.96. prajanârtham striyâḥ srstâḥ sarâprâsrâtham ca mânâvâḥ/
Goswami\textsuperscript{126} observes: "Procreation in the wedded life of the Hindu is for having a type in the progeny for the discharge of ancestral debt." It is believed that immorality and abide in heaven are attained by the birth of son.\textsuperscript{127} Manu\textsuperscript{128} states that a son saves his father from falling into the hell called 'put'. In view of this too, a need was felt to preserve the purity of blood and accordingly adultery was strictly guarded against.

The falsification of descent was considered as a matter of grave consequence to religious and social ends. In the words of Bertrand Russel\textsuperscript{129} "The extreme strength of jealousy in patriarchal societies is due to the fear of falsification of descent." Āpastamba does not recognise

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\textsuperscript{126} "\textit{Manusamhitā - Chapter III}", p 96 Edited by K.C.Goswami under the pseudonym 'a scholar devoted to Manu'.

\textsuperscript{127} "\textit{Ait. Br. 33.1} \textit{ṛṇam asmin śaṁnayatyaṁṛtatvam ca gacchati/ pitaḥ putrasya jātasya paśyet cet jīvato mukham/...... nāputrasya lokastīti tat sarve paśavo viduh/ vide also \textit{Rv. V. 4.10} pražābhiragne āṃṛtatvam asyām/"

\textsuperscript{128} "\textit{Manu IX. 138} punnāno narakād yasmāt trāyate pitaram sutah/ tasmāt putra iti proktah.....//"

\textsuperscript{129} "\textit{Marriage and Morals}", pp 25-26.
illegitimate son and he quotes an ancient gāthā which declares that "the husband does not like to allow his wife to be approached by other men. The giver of the seed carries off the son after death in the world of Yama; therefore the wives are to be guarded, as there is the fear of the seed of the strangers. The husband is advised to watch over the protection of his children, lest strangers' seed be sown on his soil." It seems that Āpastamba is vocal against the niyoga, the system of levirate which was a permissive custom in ancient society.

In the law of adultery the transgression of female virtue on the part of both male and female, the latter offended in homosexual urge, is declared as punishable. Hence any act or endeavour which affects the chastity of woman is included in the offence typically called 'Samgrahaṇa'.

130. Āp. dh. S. II. 13. 16. "idānām evāham janakāḥ strīnām īryāmi no purā yadā yamasya sādane janayituk humtram abruvan/ retodhah putram nayati paretya yamasādane/ tasmād bhāryām rakṣantī bibhyantah pararētasaḥ/ spramattāh rakṣatāh tantum etam mā vaḥ kṣetre paravijāni vāpasuḥ/ janayitukh putro bhavati sāmparāya mogham vettā kurute tantum etam iti// The same gāthā is also quoted in 3d. dh. S. II. 2.
Manu\textsuperscript{131} enumerates them as follow: Those will be called acts of adultery when a man converses with the wife of another man in an uncommon place, or touches her body improperly, or when these are done with mutual consent. This implies that no man should pollute the virtue or chastity of other's married wife. On the other hand, wife is also prohibited to make intimacy with a stranger. It is laid down by Yama\textsuperscript{132} that when a woman comes to a man's house and excites his concupiscence, she is punished by law.

Our Śāstrakāra urged upon female virtue not only from the standpoint of sex-jealousy as pointed by western sociologists but also from the viewpoint of the fear of admixture of varṇa (castes). Great emphasis had been laid on the prevention of varṇasaṃkara (admixture of castes). Gautama\textsuperscript{133} says that the prosperity, protection, the prevention of mixture of castes and the accumulation of merit depend on the king and the learned Brāhmaṇas. It is

\textsuperscript{131} Manu VIII. 356-358.
\textsuperscript{132} Yama as quoted in vi. Rat., p 398 grham āgatya yā nārī pralobhya aparānādina/ kāmayet tatra sā dāndyā narasyārdhadāmāḥ smṛtah// This verse is ascribed to Brhaspati in the Sm.C. part II. vyav. Kāṇḍ., p 750.
\textsuperscript{133} G.dh.S. I. 8.3. prasūti rakṣanam asaṃkara dharmah.
stated in the Manusmrti that varieties of mixed classes arise by members of one varna having sexual intercourse with women of another varna, by bearing women who ought not to have been married and by the neglect of the duties peculiar to one's varna, giving up of one's own duties. Narada states that the birth of a son from union in the inverse order (pratiloma) of varnas leads to varnasankara. From the statement of Kautilya it appears that this type of admixture of castes took place in the past on account of maladministration of the king. In the Gita it is stated that the varnasankara or admixture of castes arises when women become vicious. The Sastrikara required the king to inflict punishment on the persons if they are guilty of varnasankara. Gautama prescribes heavy punishment for a Sudra who indulges in sex-act with a woman of higher varna. Manu lays down that the persons who commit

134. Manu X.24. Vyabhicāraṇa varṇāṇāṃ anedyā vodanena ca/ svakarmanāṅca tyāgena jāyanto varṇasankarabh/
135. Ārāda - stripum, verse 102. pratilohyena yat janma sa jñeyo varṇasankarabh/
137. Gita I. 40. Strīṣu duṣṭāsu varṇāya jāyate varṇasankarabh/
138. G.ś.Ś.11.3.2. Āryastra abhigamanam lingoddhōra svaharanam ca.
139. Manu VIII: 352-353.
adultery with the wives of others shall be subject to corporal punishment and shall be banished afterward. For by adultery is caused a mixture of the castes among men. To prevent the rise of varṇaśāmkara guarding of wives is enjoined by other Śāstrakaras as well. Paithinasiṁ140 expressly states:

"Therefore, guard wives lest mixed classes should spring from them."

We have just pointed out above that undue marriage of persons to women who do not deserve to be married leads to admixture of castes. By this Śāṅkū (X.24) refers to incestuous marriage. The term 'avedyāvedanena' includes the prohibition of sexual union with close relations and prohibited degrees i.e., marriage between brother and sister, marriage in one's own near group of kinship, gotra, sāpinda relationship etc.141 Gautama142 says that the person who commits sexual offence should be declared as outcastes. The same idea is repeated in the Āpastamba Dharmasūtra.143 Śāṅkū144 prescribes atonement for

141. Vide kullūka on Śāṅkū X.24.Brāhmaṇādivarṇānāṁ anyanyastri- 
gamānoḥ sagotrādyavivāhyavivāhena...vaṁśaṁkaro nāma 
jāyate/
142. G. dh.S. III.3.1. mātṛpitṛyonisambandhagah petītaḥ/
143. Āp. dh.S.I.21.7-8 atha patanīyāni/mātṛpiturūti yonisam- 
bandhe sāhāpaye strīgamanam....../
144. Śāṅkū. XI. 171-172.
the persons who commit the offence of sexual union with their own sisters etc. Corporal punishment is prescribed in the Arthasastra.145

Viṣṇu's146 observation on human nature is noteworthy in this context. He states that 'man often indulges in lust, anger and greed; on account of this man is often addicted to improper sexual intercourse with sister, daughter etc.' But generally man does not desire sexual connection with women who are closely related and with women whom they deeply respect. In the words of Westermak147: "Generally speaking, the feeling that two persons are intimately connected in some way or other may, through an association of ideals, give rise to the notion that marriage or intercourse between them is incestuous. Hence the prohibitions of marriage between relations by alliance and by adoption. Hence, too, the prohibitions on the ground of what is called 'spiritual relationship'."

From the discussion we have made so far in this chapter it is thus found how several factors and ideas bore an impact on the rules relating to sexual offence.


146. Viṣ. Sm. 33.1.3; 35.1-5.

147. Westermark - The History of human marriage, p 331.