CHAPTER IV

Evolution of the law of Adultery

The law relating to sexual offences has an evolutionary character. From the humblest beginning it developed into a fairly advanced system of law. To give a picture of the entire evolution of the law relating to Strīsāṃgrahāṇa (adultery) is a difficult task as all written records of the past history of society are not available to us except the literary sources of the Dharmasastras.

Laws of every country grew out of rudiments in the remote past. The germ of the law gathered volume as it rolled on. This is also true of ancient law of India. The notion of sex-offences as sin is met with in the vedic text. We have shown in the Chapter III of our present thesis that in the vedic works irregular sex-association outside wed-lock was treated as a sin or religious offence; and the wrong-doer was urged to expiate his sin. Though the stray references to sexual offences and their condemnation cannot be regarded as
indication of a definite body of rules relating to adultery.
the notion of sin had a great bearing on the law of adultery
in the Dharmaśāstras. But inspite of the vast influence of
vedic religious tenets on ancient law of India, the development
of the Vyāvahārapadas (topics of litigation) of the
Dharmaśāstras is not exclusively an evolution from the basic
principles of the vedic works. The law of the Dharmaśāstras
absorbs not only the practices and behaviour of the homogenous
community but also the cults of different races and tribes
not belonging to the Aryan community¹. From a study of the
rules in the vyāvahāra section of the Dharmaśāstras it is
found that they contain different strata of thought.

So far as the available written records are concerned
the rules relating to sexual offences emerged for the first
time in the works known as the Dharmaśūtras. In the
Dharmaśūtra of Gautama² this law is generally dealt with under
Rājadharma (duties of the king). The law of adultery in the
Dharmaśūtra of Gautama is very meagre. Generally the following
matters are recognised as sexual offences:

² G. Dh. S. II. 2; II. 3; II. 4.
Sexual intercourse by a Sudra with an Arya woman; the Commission of sexual offence by a servant or guard on her mistress; the adulterous act of woman; to disobey husband; sex-association with preceptor's wife, female relatives, friend's wife etc; killing an embryo; illegal sexual union with other's wife; adulterous act of a woman with a man of lower castes; unnatural sexual activities, and sexual union with a female of degraded caste (antyāvasaiyin). From the above points it is found that the Sudras who indulge in adulterous act with women of higher classes suffer corporal punishment including death. If a Kṣatriya or a...
vaisya makes adultery with dvijati woman or with woman of the lowest caste, or if he commits unnatural sexual offence, he
is to undergo 'Brahmacharya' penance\textsuperscript{14} for two years, or 'kṛcchra' vow\textsuperscript{15} for a year, or perform the rite of ghṛta-homa\textsuperscript{16} (sacrifice with butter). But if they commit heinous offences like illegal sex-relationship with guru's wife (mother or preceptor's wife), they must undergo a sort of expiation which results in death.\textsuperscript{17} A Brāhmaṇa offender is, however, exempted from corporal punishment.\textsuperscript{18} The offence of a Brāhmaṇa is announced publicly and he is branded and banished from the country\textsuperscript{19}. According to the explanation of Haradatta,\textsuperscript{20} Gautama's commentator, this punishment is inflicted on a Brāhmaṇa with reference to grave offences (mahāpātaka) viz.,

\textsuperscript{14} G.dh.S. III. 4.29. vidē Haradatta on G.Dh.S.III.4.29.
\textsuperscript{15} Ibid. III. 5.32.
\textsuperscript{16} Ibid. III. 4.36. amānūṣīśu govarjam strīkrte kṣumāṇḍaṁsin-
ghṛtahomo ghṛtahomah//
\textsuperscript{17} Ibid.III. 5. 0-12. talpe lohasayana gurutalpagon sayita//
sūrīn vā śīṣyet jvalantim// lingām vā saṃśeṣaṁ uktṛtya-
njelāvāḥḥaya daks̄ināpratīcīṁ vrajaḥ ajihamāsārīrīṇipatat//
\textsuperscript{18} Ibid.II. 3.43. na śārīro Brāhmaṇandaṁsaḥ//
\textsuperscript{19} Ibid.II. 3.44. karṇaviyogavikhyāpanaviśasanāṁ korakarparōni.
\textsuperscript{20} Haradatta on G.dh.S.II. 3.44. etanmahāpātakavāṣayam//
on violation of guru's bed, drinking of liquor, theft (of valuable articles), killing of a Brāhmaṇa. It is stated by Gautama\textsuperscript{21} that if a Brāhmaṇa indulges in sexual intercourse with a wife dvijātī (Brāhmaṇa or kṣatriya or Vaiśya), or with a woman of lowest caste, or if he commits unnatural sex-act, he is required to undergo expiation.

In chapter I of our thesis we have already pointed out the principal reason behind the special privileges and immunities afforded to the Brāhmaṇas in society. In the Dharmaśāstras\textsuperscript{22} the superiority of the Brāhmaṇas is spoken of time and again. Yet we should note here that the exemption of all the Brāhmaṇas from corporal punishment was not admitted in all cases in later times. According to vijñānesvara\textsuperscript{23} the

\begin{itemize}
\item \textsuperscript{21} G.dh.S. III. 4.29, III. 5.32; III. 4.36.
\item \textsuperscript{22} Ibid.II.2.1 rājā sarvasyaṣṭe Brāhmaṇa varjana// vide also Viṣṇu Sm 19.20-22. devāh pariṣṭhāṇāh pratyakṣa-devāh Brāhmaṇāh; Brāhmaṇairlokā dhārayante; Brāhmaṇānām prasaḍānām divi tiṣṭhantī devatāḥ, Brāhmaṇābhīhitām vākyām na mithyā jāyate kvaicit// cf Mark. I.100
\item \textsuperscript{23} Mitā on Yāj. II.4, na ca 'rājā sarvasyaṣṭe Brāhmaṇavaryam' iti Gautamavacanāt na Brāhmaṇā dandaḥ iti mantaṃvayaś tasya pradānṣārthatvāt/ yuttu sadbhih pariḥārya rājāh avadhyāṣcā bandhyāṣcā dharmāṣcā bhīṣkṣyāṣcā pariḥāryaṣcā pariḥāryaṣcā pariḥāryaṣcetī tadapi sa eṣa bahusrotu bhavati lokavedvedāṅga.... kusala-stadapeksah..... caṣṭacatvāṁśatsamskāraṁ śamapramāṇam śtriye karmeṇabhīrataḥ........ iti pratipādite bahusrotavāśayam na Brāhmaṇaṁātramāṇavāśayam//
high eulogy of Brāhmaṇas is only laudatory and the Brāhmaṇas (not learned in the Vedas, Purāṇa, Itihās etc.) who commit wrong are subject to punishment.

With reference to the offences committed by females, Gautama generally prescribes expiation for them. It is enjoined\(^{24}\) that if a wife disobeys her husband and commits adultery with other man of the twice born caste, she should go through penance. But if she makes illegal sex-relation with a male of a varna (caste) lower than her own, she should be caused to be devoured by dogs in a public place.\(^{25}\)

Haradatta,\(^{26}\) the commentator of the Dharmasūtra of Gautama, states that this severe punishment is prescribed for those women who refuse to undergo expiation. We fail to understand how the learned commentator could add such interpretation to the text. To understand the gravity of this penal provision, we should remember of this attitude of the society to intermixture of castes particularly when the male partner belongs to lower order. Anuloma marriage is looked upon as valid, but pratiloma marriage in which the husband belongs to the lower caste is reprehensible indeed, and considered

\(^{24}\) G. Dh. S. III. 4.35.

\(^{25}\) Ibid. III. 5.14.

\(^{26}\) Haradatta on G. Dh. S. III. 5.14. atra prayascittam akurvatena daṇḍamahā......
by Gautama as outside the pale of law. Accordingly he cannot but think seriously of any act of adultery of a woman with a person of the lower caste than her own. The Vedic notion of expiation, of course, persists in the rules relating to sexual offence in the Dharmasāstra. Probably on account of this, expiatory rites are prescribed for the sexual offences committed by the people of the Ārya community, and they are dealt with in the section of prayāscitta. But the sexual offences committed by the Śudras were deemed as grave offence. The Śudras who indulged in sexual offences were dealt with on a different footing, probably because they belonged to the lowest order of society and were made up of the diverse elements of the non-Aryan community, to whom prayāscitta as a cult had possibly no scope for application. The king therefore was required to interfere in the matter of sex-offences committed by the Śudras and to punish them with condign punishment.

The rules relating to sexual offences in the Dharmasutra of Gautama are nascent and creative. The crux of

27. G.Dh.S.I. 4.20 pratilomāstu dharmahināy/
28. G.Dh.S.III. 4 and III.5.
the law of later period is absent in Gautama. The subsequent Dharmasūtra-writers deal more fully with the code of rules about sexual offences. In addition to the provisions made by Gautama, the later Sūtra works laid down new provisions for the various sorts of sexual offences.

Motive behind the offence is taken into consideration for the first time by Āpastamba. It is enjoined\textsuperscript{29} that if a young man enters unintentionally the room where a married woman or a maiden sits, he shall be reprimanded; but if this offence (entering the room) is done intentionally with a bad purpose, he shall be punished. Moreover, Āpastamba makes provision for different grades of punishment according to the nature of the offence. He ordains\textsuperscript{30} that if a man commits the act of adultery with another's wife, his genetic organ shall be cut off together with testicles; and if he thus enjoys a maiden, he shall be banished and his property shall be confiscated. This feature of the infliction of rigorous punishment on the male

\textsuperscript{29} Ṛp. Dh. S II. 26. 18-19. abuddhipūrvan alamkrto yuvā paradārnam anupraviśan kumārin vā yācā bāḍhayā// buddhipūrvan tu duṣṭo bhāvo daṇḍyaḥ//

\textsuperscript{30} Ibid II. 26. 20-21. sannipāte vṛtte śiśnacchedanam savra-anasya// Kumāryām tu svānyādāya nāśyaḥ//
partner for the offence of adultery is absent in Gautama. It is to be noted that Āpastamba makes positive provision not only for the offence of adultery with twice-born women by the three higher classes and the Śūdras but also for that with Śūdra women by the three higher classes. It is enjoined\(^31\) that a man of one of the three higher classes doing an act of adultery with a Śūdra woman shall be banished. But in the earlier text of Gautama, expiation is prescribed for a dvija offender for committing such sexual offence. A Śūdra male who indulges in sexual activity with an Arya wife suffers, according to Āpastamba,\(^32\) death penalty. It seems clear that Āpastamba shows his puritanic attitude in respect of the penal provisions for adultery particularly in respect of male folk, for no serious punishment is prescribed for women who indulge in illegal sex-relation with a man of lower varṇa as we find in Gautama. It is laid down by Āpastamba\(^33\) that wives of three higher varṇas are to undergo expiatory chastisement.

\(^{31}\) Āp. Dh. S. II. 27.8. nāśya Āryāḥ Śūdrāyām//
\(^{32}\) Ibid. II. 27.9. Vadāyaḥ Śūdra Āryāyām//
\(^{33}\) Ibid. II. 27.10. dāram cāya karṣayet//
Vide also Sd. Dh. S. II. 2, 3, 49-50.
Vasiṣṭha also says that "the wives of Bṛāhmaṇas, Kṣatriyas and Vaiśyas who commit adultery with a Śūdra may be purified by penance in case no child is born (from their adulterous intercourse), not otherwise." In case of a child born of adulterous connection, the situation becomes overtly abnormal, and it is quite reasonable that in such contingency, mere expiation cannot set right the social imbalance. But the wives who commit grave offence (mahapātakas) like sexual association with her husband's pupil etc. are abandoned. It is laid down by Vasiṣṭha that ".......(these) four (wives) must be abandoned, (viz.) one who yields herself to her (husband's) pupil, or to Guru, ....... or who commits adultery with a man of degraded caste." Guru or preceptor is looked upon with veneration as due to one's father and a pupil is as it were a son. Naturally adulterous connection with such person is violation of incestuous code and accordingly a married woman's such offence is punished by desertion. Vasiṣṭha prescribes death penalty for a Kaśātriya,


35. Ibid. SBE. XIV. Part 2. XXI. 10.
Vaiśya or Śūdra who commits adultery with the wives of the higher order of caste. He says that if a man of lower varṇa (Kṣatriya, Vaiśya or Śūdra) approaches a female of the higher varṇa, he shall be thrown into fire (by the king); and the king shall cause the head of the female to be shaved; and he shall cause her to be conducted along the high road placing her in a naked state on the back of a donkey. Here too is indicated the repugnance about woman's adulterous connection with man in the inverse (pratiloma) order of castes. The spectacular aspect of conducting the guilty women in the public street in the manner suggested is to make the public aware of the ban of infamy and to strike in them the sense of abhorrence for the guilt. But some exceptions are already provided in the earlier treatise of Baudhāyana Dharmasūtra.

There no corporal punishment is prescribed for a man who commits adultery with the wives of Cāraṇas (ministrels) and with women who take part in the theatrical performance. Free mixing of men and women among the bards, dancers and stage-players was quite common. Hence the prohibitory rules

36. Vas. Dh.5. SBŚ XIV. Part 2. XXI. 1-5.
37. Bd. Dh.Ś. II. 2, 4, 3, na tu cāraṇadērēṣu na rāṅgāvatāre vadhaḥ
relating to conversation, touching and the like were not applicable to such persons. Manu too lays down that the rule relating to the prohibition of conversation with other wife does not apply to the case of the wives of dancers and singers, or of those who make a living of themselves; yet he who secretly carries on conversation with these women, shall be made to pay something. Baudhāyana's view is possibly cognisant of the fact that free mixing in all these cases often tends to transgress the strict rule of sexual chastity. Accordingly lapses were of permissive kind in the code of Baudhāyana.

Viṣṇu deals briefly with adultery (Strīsāpgrahaṇa), but important developments are noticed in his work. He states that the act of adultery with a married woman of one's own caste is a punishable offence, and the punishment is lighter in case the adultery is with a woman of the lower caste; but if it is with an antyaja woman, i.e. of the lowest ladder of the caste, it should deserve death penalty. Viṣṇu also lays

36. Manu, VIII, 362-363. naiṣa cāraṇāḍāreseu vidhīrṇātmopajīviṣu/ kiṃcida eva tu dāpyaḥ syāt tābhīrṇicaran/
37. Vis. Sm. 5. 40-44.
38. Ibid. 5.10. Strīyam asokabhartṛkāṃ tadatikramaṇīṇe//
down that women who are disloyal to their husbands and who indulge in adultery with strangers shall be put to death. Viṣṇu is here definitely strict towards women. Sexual connection with animals is treated as an offence in the Viṣṇusmrī.41

By the side of the Sūtra works there is another work called the Arthaśāstra of Kautilya which is no less important in the study of legal history. The text is perhaps anterior to the extant Manusmrītī. The Arthaśāstra deals more elaborately with the rules relating to sexual offences. It is interesting to note that many of the rules relating to rape and adultery of the Arthaśāstra42 are also found in the Śrautastrīsmṛś of Manu,43 Yājñavalkya44 and Nārada.45

The typical term 'strīsamgrahaṇa' is not found in the Dharmasūtras. Baudhayana,46 of course, uses the word 'sāṃgrahaṇa' in the sense of sexual offence. This term is

---

41. Ibid. 5.42 go gamane ca.
42. Artha. IV.
43. Manu. VIII. 365-368.
44. Yāj. II. 273-304.
45. Nārada - strīpūp and prakīrṇaka.
46. Bṛ. Dh.5. II. 2, 41. abhāmaṇasya sārīro dāṇḍah samgrahaṇa bhavet.
also found in the Arthasastra. In the Arthasastra adultery has been generally treated in the chapter concerning marriage and violation of maiden. Rules relating to incestuous relation and other irregular sexual union have been dealt with in the chapter what is called 'aticāradaṇḍa'.

From the study of the Arthasastra it is found that the law relating to sexual offence is applied only to definite overt acts or omissions capable of being distinctly proved. Kautilya, for the first time, lays down what constitutes a sexual offence (adultery), and what proof and circumstantial evidences are necessary in such trial etc.

In addition to the provisions laid down in the Dharmasutras, Kautilya's texts provide for many new rules. It is very significant to note that the question of age in sexual offence is first expressly referred to by Kautilya. He states clearly that a girl below the age of twelve years,

47. Artha. III.4. pathi vyantare......pathyanusāreṇa saṃgraha-ṇāṇaḥ vidyāt. Vide also ibid IV.12. kesākeśikan saṃgrahaṇam.
48. Ibid. III. 3-4; IV.12.
49. Ibid. IV. 13.
50. Artha. III.3. dvādaśavrṣā śṛṅ prāptavyayahāra bhavati/ śoḍaśavrṣāḥ punān/
and a boy below the age of sixteen years, are regarded as 'minor' in law. In one place Kautilya lays down that 'for one violating a maiden of the same varṇa who has not attained puberty, (the punishment shall be) the cutting off of the hand or a fine of four hundred; (and) in case she dies, death (shall be the punishment). This provision probably indicates that illegal sexual connection with a minor girl is a serious offence the punishment for which is heavier than that for the sexual offence with a maiden who attains puberty. The other states further that 'of one violating a maiden who has attained puberty, the middle and index fingers shall be cut off or a fine of two hundred (imposed); but if she is willing, (there shall be) a fine of fifty-four paṇas; half that, however, for the woman.' Violation of a maiden, who is already betrothed by the receipt of consideration, namely dowry, is also treated as a grave offence. Kautilya thus states that 'if one violates a maiden who has been reserved by the dowry of

51. Ibid. IV. 12. saavarnām aprāptaphalāṃ kanyām prakurvato hastavadhah catuh śato vā daṇḍah/ mṛtyām vadhah//

52. Ibid. prapṛptaphalāṃ prakurvato madhyasaṃ pradaśino vado dviśato vā daṇḍah/ ...... sakāsāyām catuh pāṇīcāsata paṇo-

53. Arth. IV. 12. parasulkāvaruddhāyāṃ hastasadadhav catuh śato vā daṇḍah sulkadānām ca//
another, his hand shall be cut off or he shall pay a fine of four hundred pāṇas, as well as the dowry. Here Kautilya seems to prescribe heavy penalty for the offender, because pollution of such maiden definitely affects the fate of the girl in society and also causes a wrongful loss of the bridēprice to the prospective groom. The compensation of the dowry is a matter of imperative requirement together with either physical punishment or imposition of fine. The alternative provision of physical punishment by mutation of hands and so forth seems to represent the relic of old tribal law though we are not sure whether during the time of Kautilya or Manu infliction of such mutation of the physical limb was in vogue or mere reminiscence of the old custom. In any case penalty of fine as an alternative provision mitigates the rigour of the old law. Such a detailed provision in the Arthaśāstra is, however, an index of the growing social complex in the matter of sexual offence.

Abduction of a maiden is also treated as a serious offence in the Arthaśāstra. No clear reference to kidnapping or abduction as a sexual offence is found in the earlier
Dharmasūtras. Kauṭilya lays down that for one abducting a maiden by force, the fine is two hundred paṇas; if with gold ornaments, the fine is the highest. Elsewhere it is stated that if a man kidnaps or abducts a maiden or female slave with gold ornaments, his left hand and both feet shall be cut off, or a fine of nine hundred paṇas shall be inflicted on him.

Kauṭilya also extends the rules relating to sexual offences to the cases of sodomy. The author states that "a (maiden) deflowered by a woman shall pay a fine of twelve paṇas, if a willing party and of the same varṇa, the violating woman (shall pay) double; if (the maiden was) unwilling, she shall pay a fine of one hundred and her dowry, for (the satisfaction of) her passion; a maiden deflowering herself shall become the king's slave." It is noteworthy that Kauṭilya does not prescribe corporal punishment for this sort

54. Artha. IV.12. prasaḥya kanyām apaharato dvisataḥ, suasuvraṁ uttamaḥ

55. Ibid IV.10. Kanyāṁ dāsiṁ vā sahiranyam apaharataḥ ...... vāmahastadvipādadvadho navaśato vā danḍah

56. Artha. IV.12. Strī prakṛtā sakāmā samānā dvādasapanam dadyat, prakartrā dvigunam/ akāmāyāḥ satyo danḍah ātmarāgarthanam, śūkadāna ca/ svayaḥ prakṛtā rājadāsyam gacchet/
of offence, but in the later Smrti works sodomy on the part of female was treated as a grave offence. We shall discuss them later at appropriate place.

It is the Arthasastra which for the first attempts at defining "samgrahaṇa". Kautilya states that 'adultery shall be understood as committed when there is mutual caressing of the hair, or from indications of bodily enjoyment, or from the opinion of experts, or from the woman's statement." It is stated further that if a married woman goes to a secret place midway on her way or if she accompanies on the way, with carnal intentions, a man who is suspected or forbidden, one should know that as adultery. In fact the acts which may lead to the carnal sexual union are treated as adulterous acts in the Arthasastra. The author

57. Artha. IV. 12. Keśākeśikaṁ samgrahaṇaṁ, upaliṅgaṁ vā/ śārīropabhogāṁ vā, jātebhyaḥ, stribhavō vā/
58. Ibid. III. 4. pathī vyantāre gudhādeśābhigamane maithunārthena samkitapratishthāḥāhyāṁ vā pathyanusāreṇa samgrahaṇaṁ vidyāt/
59. Ibid III.3. strīpum-sayormaithunārthe naṅgaveceṣṭāyāṁ rahoṣṭhāla sambhāṣayāṁ vā caturviṇāstipanāṁ striyā dandāḥ, pumā dvigunāḥ/ keśāeviṁdaṁ taṁkhāvalambaneṣu pūrvaiḥ/ sāhasadandāḥ, pumā dvigunāḥ/ samkitasthāne sambhāṣayāṁ ca panasthāne śipādandāḥ....../
says that "if a man and a woman with sexual intercourse in view, indulge in gestures with limbs or indecent conversation in secret, twenty four panas is the fine for the woman, double that for the man; for touching the hair, the knot of the lover's garment, teeth or nails, the lowest fine for violence (shall be imposed), double (that) for the man; and in case of conversation in a suspicious place, punishment by whipping may be substituted for the fine in panas." It will be found here in these rules that all the acts are not of the same nature; hence the scale of punishments differs according to the nature of acts.

We have said before that ancient writers on law appear to treat adultery as serious offence involving breach of discipline in matrimonial life. Hence adultery on the part of either husband or wife is visited with condign punishment and is considered as disgraceful. Kautilya^60 states that "on occasions of (the wife) enjoying herself outside (the home) out of jealousy, the penalty shall be imposed on her." Punishment is prescribed for a wife who leaves the house of

---

60. Artha. III.3. tadeva striyā bhārteri prasiddhamadoṣayāīśīyā bāhyavihāreṣu dvāroṣvātyayo yathānirdiṣṭah.
her husband. It is laid down that the fine of six panas is imposed on a wife who leaves the family of her husband. But humane consideration is not absent in Kautilya's law, for Kautilya states that it is not treated as an offence when she being ill-treated in the family leaves her husband. In normal cases adulterous acts are punished with heavy fine or mutation of limbs. The persons who help an adulterer suffer even corporal punishment, or are to give a fine of nine hundred panas.

Kautilya deals also with forcible abduction of married woman and rape on widows. He states that a man who forcibly rapes an widow who lives independently, shall pay one hundred panas as fine. He also prescribes punishment for rape on a female slave in a lock up. But the author

61. Artha.III.4. patikulāt nispatitāyāḥ striyāḥ satpanah danḍah/
62. Ibid. anyatra viprakārāt/
63. Ibid.IV.10. cauraḥ pārāśārikan va moksayataḥ......vāma-hastadvipādavadho navaśato va danḍah/
64. Ibid III.20. vidhavāḥ ochandavāsināṁ praśahya adhicaratah........satyo danḍah/
65. Artha IV.9. parighitāṁ dāśīṁ āhitikāṁ va samruddhikāṁ adhicarataḥ pūrveḥ sāhasadandaḥ/
66. Ibid.IV.11. praśabha stri......abhisārakaniigrāhakāvagehoṣakāvaskanda kopavedhakān........śulānāṣahheyyuḥ/
prescribes death punishment for the offender who abducts forcibly a married wife. It is thus seen that the forcible abduction of married wife is treated as the gravest offence, as it affects family and social life.

We have discussed in the chapter III of our present discourse that from the standpoint of both religious and social need fidelity of wife was much valued in matrimonial relations. Kautilya also appears to lay stress on this point. He\textsuperscript{67} states that if a wife leaves the house and goes alone, or goes with a stranger to another place for the purpose of sexual enjoyment, both the wife and the stranger shall be penalised according to the law of adultery; and a vicious wife shall not be allowed to participate in religious rites.\textsuperscript{68}

Kautilya, however, approves 'niyoga' (levirate) with some reservation. It is laid down in the text\textsuperscript{69} that an old or infirm king may cause the seed of a mātrābandhu or a feudatory chief to be sown on his wife for procreating son.

\textsuperscript{67} Artha III. 3-4.
\textsuperscript{68} Artha III.4. sarvadharma-lopaśca.
\textsuperscript{69} Ibid. I. 17. vṛddhaśtu vyādhito vā rājā matrābandhutulya-guṇavat saṁantānām anyatamena kṣetre bijam utpādayet.
Elsewhere Kautilya says that a wife of a Brāhmaṇa may approach a person who is proximate to her husband, or a sapinda person or a member of the family (for procreating son). A permissive provision is also made for remarriage of women; but that, too, with reservation. It is laid down that 'the wife of a (man) who has gone away on a long journey or has become a wandering monk or is dead, shall wait for seven periods, for one year if she has borne children, (and) after that she may approach (for marriage) a full brother of the husband; if there are many (brothers) she may approach one who is proximate (to the husband), one who is pious, one capable of maintaining her, or the youngest if without wife; and in the absence of these, (she may approach) even one who is not a full brother, a sapinda or a member of the family who is near." But transgression of the conditions as laid down for remarriage is treated as the offence of

---

70. Ibid. III.6. kṣetra vā jānayed asya niyuktah kṣetrajam sutam/ mātṝbandhuḥ sagoṭro vā tasmāi tat pradīśadhanam/

71. Ibid. III.4. dīrghapravāsīnaḥ pravrājitaśaṣaḥ pratasya vā bhārī vā taptatīrthānākāṃkṣeta, asaṃvatsaraṃ prajāta, tataḥ patisodarāyam gacchet/ bahuṣu pratyāsannenām dharmi-kām bharmasamartham kaniṣṭham abhāryam vā/ tad abhavedpy- asodarāyaṃ sapindaṃ kulyaṃ vā/
adultery in the Arthasastra. Kautilya\textsuperscript{72} clearly states that "in case she marries setting aside these heirs of her husband, (or) in case she has a lover, - the lover, the woman, the bestower (of the woman) and the man who marries her receive the penalty for adultery."

In the Arthasastra caste-distinctions certainly persist. It is found in the Arthasastra that a person who makes illegal connection with a woman of the same caste or with a woman of lower caste, his punishment is lesser than that prescribed for a man who indulges in sexual offence with a woman of higher varṇa. It is stated\textsuperscript{73} that 'for the man (the punishment is) the lowest fine for violence, if equal or superior (in varṇa), the middle (fine) if inferior.' Grades of punishment are determined according to caste. It is laid down\textsuperscript{74} that 'for a Kṣatriya (having relations) with a Brāhmaṇa woman, not guarded, the fine shall be the highest,

\begin{itemize}
\item \textsuperscript{72} Artha. III. 4. etān utkramya dāyādān vedane jāraKarmanāi/ jārastrīdātvyettēraḥ samprāptān samgrahātyayam//
\item \textsuperscript{73} Artha. III.4. puṣsāḥ pūrvah sāhasaDaṇḍaḥ tulyaśreyasah, pūpiyasa madhyamaḥ/
\item \textsuperscript{74} Ibid IV.13. Brāhmaṇyām aguptāyām Kṣatriyasyottamāḥ, sarvasvaṁ vaiśasya/ śūdraḥ kaṭāgniṁ dāhyeta/
\end{itemize}
for a Vaisya (confiscation of) the entire property; a Sudra shall be burnt in a fire of stray. A Brāhmaṇa who commits sexual offence is exempted from physical torture. It is clearly stated that in all offences, a Brāhmaṇa is not to be tormented; banishment is his highest punishment.

From the foregoing discussion one thing is noticeable that in most cases, alternative penalty of fine is for physical torture. Death penalty is prescribed in a few cases. It has been shown above that a Sudra who violates a Brāhmaṇa woman suffers death punishment. Death penalty is also prescribed for the offender who forcibly abducts a married woman. It is laid down further that 'the husband's kinsman or his servant should keep under guard the wife who commits sexual offence when the husband is away on a journey, ....... if the husband were to tolerate, both (the wife and the stranger) should be set free; but in case the

---

75. Artha IV. 8. sarvāparādeṣu api daniya Brāhmaṇah/Kuryāt nirviṣayam rājā vaṣayet ḫkaresu vā/

76. Artha IV. 12. prositapakāṃ apascalāṃ patibandhastu-puruṣo vā saṃgrhiniyāt/...... patiscet kṣameta viṣṛjyeta ubhāyam/ aksamāyāp karna-nāśa-cchedanam vadhau jāraśca prāṇuyāt/
husband does not tolerate, (the punishment shall be) the cutting off of the ears and nose for the woman, and the lover shall meet with death." Corporal punishment and death penalty are prescribed also for incestuous relations. Kautilya\textsuperscript{77} states that 'for one carnally approaching the sister of his mother or father, his maternal aunt, his preceptor's wife, his daughter-in-law, daughter or sister (the punishment shall be) the cutting off of the generative organ and testicles and death (thereafter)." Sex-association with such close relatives is treated as a grave offence. Kautilya who appears to be ordinarily lenient towards woman-offender, does not hesitate to prescribe corporal punishment including death for women who indulge in sexual enjoyment with close near relations. He\textsuperscript{78} expressly states that the woman, if a willing(party) to incestuous offence, shall receive the same (death penalty).

\textsuperscript{77} Ibid. IV.13. mātāpitrorbhaginīṁ mātulāṁ ācāryāṁ

\textsuperscript{78} Artha IV. 43 sakāśa tadeva labheta.
We should bear in mind that in most civilised societies there is some kind of rule regulating or limiting the choice of partners to sex-relationship. In the circle of near kith and kin having close blood-relationship or spiritual affinity by reason of the community of ancestral worship or so forth, sex-relationship is strictly prohibited. This rule universally is stressed by all the Smṛti-writers of ancient India and any violation of this prohibition is called incestuous, and, invalidates, as such, matrimonial alliance, if any, involving thereby sin and dereliction. Such being the attitude of society towards incestuous marriage, adultery in transgression of the said norm makes evidently a banned case of atrocious wrong. This explains the rigorous nature of the penalty prescribed against the offence of adulterous connection of incestuous kind.

Sexual relation with king's wife is also considered as a grave offence. Kautilya\(^79\) says that 'for having illegal sex-relations with the king's wife, (the punishment) in all

\[79.\text{Artha. IV. 13. sarvatra rājabhāryāgamane kumbhīpākah/}\]
cases (shall be) cooking in a big jar. The king as a ruler of the state was held in high esteem as was due to one's father or God. King's wife was reckoned as the mother of the subjects ruled over by the king. An illegal sex-relationship with the wife of such dignity is a grievous offence against the sanctity of the state. This possibly accounts for somewhat spectacular aspect of the severity or ruthlessness of the punishment in such instance. We should bear in mind that the penal code of the earlier society, even when its civilisation is otherwise advancing, preserves certain relics of the crude and cruel form of punishment depending on the gravity of harm or injury, whether actual, or constructive in the estimation of the society underlying its scheme of punishment. Kautilya does not treat adultery as a light offence. So we cannot agree with K. P. Jayaswal who observes that Kautilya abolished tortures in all adultery cases. We can only add that Kautilya shows marks of progressive civilisation by making room for imposition of fine in lieu of corporal punishment in certain cases, though strict pattern

80. K.P.Jayaswal - 'Manu and Vājñavalkya,' p 164.
of crude punishment of the old age is not discarded as a whole. And we have tried to explain such elements as far as possible. It is noteworthy that Arthasastra of Kautilya indicates considerable development of the law of adultery and its substantial improvement on the original rudiment.

Let us now turn to the Smriti-Samhitā of the great master mind, Manu who gives us a compendium of the legal and canonical norms of India of the times. He represents the traditions of the old as well as the trends of the new development of his age. Manu's endeavour to give a new shape to the rules for the purpose of universal application is noteworthy.

The Manusmṛti deals, for the first time, with 'Strīsamgrahaṇa' as a distinctive title of law. In the preamble of this title Manu speaks of the importance and purpose of this law. It is his considered opinion that irregular sex-association outside wedlock is a veritable menace to the legal order of the society; for that if not checked in right earnest by the ruler by oppressive punishment will let loose the admixture of blood leading to confusion of casts or illegitimate crop of children in society.
Such deplorable state of society living in chaos and disorder of deep-rooted consequence brings in its total destruction.  

The rules relating to sexual offences are arranged more systematically in the Manusmṛti under one head. In the category of sexual offences illegal sex-associations with other's wife, or with maiden, or with close relatives are dealt with in the Arthaśāstra. But Manu's treatment is more explicit in this respect. Manu specifies different kinds of forbidden association with other's wife in some details. It is enjoined that if a man who has been previously accused of the offence of adultery with other's wife, is again found or detected to hold conversation secretly with other's wife, he shall receive the penalty of the first amercement. It is for the first time that we notice in Manu a cognisance of the previous offence as a criterion for such susceptibility on the part of the offender. But it is laid down also that

81. Manu VIII. 353.
82. Manu VIII. 354. parasya patnyā puruṣāḥ sambhāśin yo jayan rahaḥ/ pūrvaṃ akṣārito doṣaiḥ pṛapnuyāt pūrvaśāhasan//
83. Ibid. VIII.355.
if (that) person not previously accused converses with other’s wife for some (good) reason, he shall not be considered as an offender. In course of interpreting Manu Medhatithi\textsuperscript{84} states that even though not previously accused, if a man holds conversation with others wife without any reason, he shall be punished with first amercement. Medhatithi’s interpretation seems to point out that a mere conversation is not an offence; but the purpose or motive behind the conversation should be taken as a decisive factor. It may be that a person being requested by the said woman’s relative or being directed by his own superiors may convey some news to her and hold conversation with her as a matter of course. Here the purpose behind the conversation is innocent; hence such person is not accused of having committed the offence of adultery.

Manu\textsuperscript{85} also lays down the elements which constitute ‘saṃgrahaṇa’ (adultery). He appears to speak of three sorts of saṃgrahaṇa. First type of saṃgrahaṇa shall be understood as committed when a stranger converses with other’s wife in

\textsuperscript{84} Manu VIII. 355. akāraṇat sambhāṣayan mārayan pūrvadaṇḍabāk.

\textsuperscript{85} Manu VIII. 356-358.
prohibitor places. *°o. watering place, which, confluence of rivers. The second type of saopreshana is that when a man not related to the woman offers help, or flirts, or touches the ornaments or clothes, or sits on the corn bale.°t The third type of saopreshana shall be understood as committed when acts like touching etc. are done by natural consent.°s

some does not treat association with the wives of dancers and singers as grave offence. We have noticed such trend of thought in the law of the Sandhyana Dhamma-drana. But still some prescribes small fine for a man who converses with such women solitary spot.°u Radhātithi explains the reason for the imposition of fine in this respect.

°o. Gauru VIII. 365 panastriyen yadhiyaddet tirtha acaryaya vandpi va/ naddinapi vapi saighbide ca sangraham caunuyat//
°t. Ibid VIII. 357. upakāraśriyākiṣṭānaḥ aparśa bhinācē sa vīrasānaḥ saha khatvāśeṣaṁ caiva saṁvega caṁśrahēna samśrte//
°s. Ibid VIII. 360. striyān aprīṇād aśese yah aprīṇo va sarṣayet taye/ parasparasyāntāte saṁvega saṁvegaṁ sarthe//
°u. Ibid VIII. 362. naiṣpa tārāpadāreṇu visnirnātmaopyāvivu//
°v. Ibid VIII. 363. vānīcid aya tu dēpyādh syāt saṁbhūṣaṁ tabhūśeṣeran/a
He states that the reason why some punishment is necessary lies in the fact that the women concerned are not entirely public women, - it is with the permission of their husbands that they admit paramours. Holding conversation with them openly however is not forbidden. Manu, of course, does not consider all sorts of conversation with women as constituting grounds of sexual offence. He states that mendicants, bards, persons initiated for rite and artisans may freely converse with other's wives.

The rules relating to the violation of maidens are more elaborate in the text of the Manusmrti. Manu's law here is varied by the nature of different circumstances in its setting. Manu prescribes corporal punishment for a

91. Medha on Manu VIII. 363. Vijane dese caraṇa nārībhīḥ sambhāṣaṃ kurvaṇaḥ...atyaḷpaḥ...jātipratiṣṭhāne apokṣya daṇḍyaḥ/yato na paripūrṇam tāṃ veśyātvaḥ/ bhartṛbhīr anujñātā hi tāḥ ptnyāyante/ tatra bhartṛvījñānārtham dūtimukhena vyavaharātvyam/ na tu sākṣāt tabhiravatantratvāt/

92. Manu. VIII. 360. bhīṣukā bandinās caiva dīkaṣṭāḥ kāra- vastathāḥ/ sambhāṣaṃ saha strībhīḥ kuryeprati- vāritāḥ/. The beggars who live on begging may converse, with housewives, if not prohibited by the husbands; or they should not be prohibited from taking to women. Vide Medha on Manu VIII. 360.
man who violates an unwilling maiden. It is laid down\textsuperscript{93} that if a man pollutes the virginity of a maiden of the same caste without her consent, he shall suffer corporal punishment; but if the man violates a willing maiden of the same caste, he shall not suffer corporal punishment. He\textsuperscript{94} states further that 'an inferior man courting a superior maiden deserves death; he who courts a maiden of equal status, shall pay the nuptial fee, if her father so desires.' From these different rules it appears that in the case of violating an unwilling maiden, all men, be they superior or inferior in the order of caste, should suffer corporal punishment, for example, amputation of generative organs, with the sole exception of the Brāhmaṇas; but in the case of violating even a willing maiden of higher varṇa, the man of lower varṇa shall suffer corporal punishment including death; and if a man pollutes the virginity of a willing maiden of equal caste, the man is to pay the nuptial fee. It is significant to note that no

\footnotesize{\textsuperscript{93} Manu VIII. 364. yōkāmām dūṣayet kauyām sa sadyo vadham arhati/ sakāmām dūṣeyan tūyo na vadhaṃ prāpnyat naraḥ/}

\footnotesize{\textsuperscript{94} Ibid. VIII. 366 uttamām sevamānastu jaghanyo vadham arhati/ sūlkaṃ dadyat sevamānāḥ samāṃ ācchēt pitaḥ yadi/}
death penalty is prescribed for the violation of a maiden in the Arthasastra; provision for death punishment is made only in the case when the maiden dies as a result of rape. In another verse Manu states that a man of equal status defiling a willing maiden should be made to pay the fine of two hundred with a view to prevent repetition. Medhātithi gives a few alternative meanings of this verse of the Manusmṛti (VIII. 368). He states that "in a case where a man does offence by stealth, secretly like a thief, the punishment shall be only the fine of two hundred, without the amputation of the fingers; or the text may refer to the following case, namely, if the maiden in love with a person loses her virginity from intercourse, the same punishment will apply to him. But such defilement in the text may not always mean actual sexual

95. Artha IV. 12.
96. Manu VIII. 368. sakāmāṃ dusaysatulya nāṅgulicchedam āpnuyat/ dviśataṁ tu damaṁ dāpyaḥ prasaṅgaviniśtaye//
97. Medhā on Manu VIII. 368. .....apraśāṇa cauryavad dviśa-tōṅgulicchedavarjitaḥ/ atha kasmin cit puruṣe anurāgavaṭi kanyā tena samyujyāmaḥ kanyātvaniśtaye sakāmā yona vikṛtā kṛyate tasyāyaṁ dandaḥ/ atha vā hastasparśa-mātramīha dusānam/ prārthaniyāyaḥ kanyāga hastaspardh - mayā sprātaṁ jñātvā nānya etāmarthayiśyate - anyasmin anurāgi-ṇimāmayamānah//
intercourse. It may mean even the touching of the hand and some such part of the body; the man's motive being - if people see him touching her hand (lovingly), others will think that she loves him and then no one else will seek for her hand, and she shall be his beloved. But Manu prescribes corporal punishment for the man who forcibly violates a maiden. It is not clear why two separate provisions are made in the Manusmṛti for the same type of offence i.e. polluting the virginity of a willing maiden of the same varṇa. Medhātithi has attempted at justifying the second provision (verse No. VIII. 368) by interpreting the verse in different senses as stated above. But by a close study of the two verses of the text of the Manusmṛti (verses VIII. 366 and 368) it appears that the degree of the offence is not of the same nature. The imposition of fine of two hundred is prescribed for the offence of sexual attachment with an unmarried willing girl. Mere love affair is not considered as sexual crime, but still as the male offender defies the authority of the maiden's guardian, he is to pay the nuptial fee to the father of the maiden, if the father so demands, and he is compelled to marry the girl. But if the man who is in love
with a maiden of the same varna displays his repulsive sexual behaviour, he is also punished with a penalty of fine. But Manu prescribes corporal punishment for the man who forcibly violates a maiden. He lays down that if any man violates a willing maiden (through sheer audacity), his two fingers shall be clipped off and a fine of six hundred shall be imposed on him. In the Manusmrti no punishment is prescribed for a maiden who approaches a man of higher varna. It is laid down that if a maiden approaches a man of higher varna, she shall not be made to pay anything as fine; if however she courts an inferior person, she shall be kept confined in the house.

Infidelity of the wife is treated as a grave offence in the law of adultery in the Manusmrti. It is enjoined that if a proud wife passes over her husband and makes intimacy with a stranger, both the wife and the stranger shall be put to death.

98. Manu VIII. 367 abhisahya tu yah kanyāṁ kuryāddarpeṇa mānaveḥ/ tasyāśu karyāṁ añgulyo daṇḍam cārhati śataśatam//
99. Ibid VIII. 365. Kanyāṁ bhajantīṁ utkrīṇam na kim cid api dāpayed/
100. Manu. VIII. 365. jaghanyāṁ savamānāṁ tu savastīṁ vāsayed grhe//
101. Ibid VIII. 371.
Kanti speaks of two classes of married women viz., guarded and unguarded. A man who makes sex-association with a guarded wife suffers heavier punishment than a man who commits the act of adultery with an unguarded wife. And when such adultery takes place with a male person of lower castes the punishment is decidedly heavier. A Vaisya having sexual intercourse with a guarded Brāhmaṇa wife shall be fined his entire property after a year's imprisonment; and a Kṣatriya (doing the same offence) is to be fined one thousand and be shaved with the urine of donkey applied to the head; but if the Vaisya and the Kṣatriya have sexual connection with an unguarded Brāhmaṇa wife, the Vaisya shall pay a fine of five hundred and the Kṣatriya shall pay one thousand. It is laid down further that if the Vaisya makes adultery with a guarded Kṣatriya wife, or the Kṣatriya with a guarded Vaisya wife.

102. Manu VIII. 375 Vaiśyaḥ sarvasvadandaḥ syāt samvantara nirodhatah/ sahasram kṣatriyo dāṇḍyo maṇḍyam mūtreṇa cārhati// Vide also Kullūka on Manu VIII. 375 Kṣatriyo gupta-Brāhmaṇīgamsane sahasram dāṇḍaniyāḥ Kharāmūtreṇa cāsyā nūpānāṁ Karṇavāyam/

103. Ibid. VIII. 376. Brāhmaṇīm yadyaguptam tu gacchatāṁ vaiśyapārthivam/ vaiśyam pañcaśaṁ kuryāt kṣatriyaṁ tu sahaśrīnāṁ/

104. Ibid. VIII. 382.
wife — both these deserve the same punishment as that in the case of an unguarded Brāhmaṇa wife. But Manu prescribes severe punishment for a Śūdra who commits such offence. He states that "A Śūdra who has intercourse with a woman of a twice-born caste, guarded or unguarded, (shall be punished in the following manner): if she was unguarded, he loses the part (offending) and all his property; if she was guarded, everything (even his life). We have just shown above that Manu prescribes heavy fine for Vaiśya and Kṣatriya who commit adultery with guarded Brāhmaṇa wife. But elsewhere he states that the Vaiśya and Kṣatriya who indulge in sex-association with a guarded Brāhmaṇa woman, shall be punished like a Śūdra offender, (burnt in a fire of dry grass). The commentators have tried to reconcile this contradiction. Kullūka states that the Kṣatriya and the Vaiśya who

Indulge in sexual act with guarded and accomplished Brahmāṇa woman shall suffer corporal punishment being fined, imprisoned and so forth. But it is probable that the text of the Manusmṛti contains the relic of the older rule together with the current rules. We have shown before that Vasiṣṭha prescribes death penalty for the Kṣatriya, Vaiśya and Śūdra who defile females of higher varṇa. This sort of rigorous punishment in the Manusmṛti is perhaps the survival of the ancient rule.

From the above discussion it appears that in the age of Manu the Judicial administration had to deal with the sexual offences also from the standpoint of caste discrimination. It may reasonably be assumed that the royal court would face difficulties to arrive at a correct decision, if there was no such guiding principle of caste discrimination. Realising this defect Manu laid down a positive provision by classifying the sexual offences in reference to the order of castes. The general principle as provided for in the text of the Manusmṛti is that the Kṣatriya and the Vaiśya committing the act of adultery with the guarded wives of higher order shall suffer heavier punishment, but when they indulge in the illegal sex-act with unguarded wives of higher varṇa shall pay the
fine only. The higher amount of fine to be imposed on the Kṣatriya in comparison with that of the Vāsiya probably indicates that the Kṣatriya as a caste is entrusted with the duty of protection and if such person himself violates the rule, he shall have to pay the heavier fine. So far as the Śūdra is concerned the principle as indicated above shows that a Śūdra who commits the act of adultery (sāŋgrahaṇa) with the married woman of the higher varṇa, guarded or unguarded, shall be inflicted with the highest punishment, namely, confiscation of property, amputation of male organs and even death. The severity of such provision has already been discussed by us.

The old tradition of the exemption of the Brāhmaṇas from corporal punishment is followed by Manu. But he prescribes other sort of punishments for the Brāhmaṇa who indulges in sexual offence. He says that the Brāhmaṇa who has intercourse by force with a guarded Brāhmaṇa wife shall be fined one thousand; he who has connection with a willing one shall be fined five hundred. In course of interpreting Manu,

108. Manu VIII. 378. sahasreṇ Brāhmaṇo daṇḍyo guptaḥ vīprām
valād vṛjan/ setañi pañca daṇḍyaśyād icchantyā saha
sangataḥ/
Medhātithi 109 states that 'if however the woman is guarded and still virtuous, then the Brāhmaṇa is to be banished and branded, in addition to the fine. Banishment is the general punishment for a Brāhmaṇa who indulges in serious offences. Manu 110 says that the king should banish him (Brāhmaṇa) from the kingdom with all his property and unhurt. People of other castes may have capital punishment. It may be noted here that as against persons of other castes, a Brāhmaṇa in no case should suffer capital punishment. Tonsure of the head is ordained 111 for the Brāhmaṇa instead of capital punishment. After laying down such general principle of punishment for the Brāhmaṇa Manu ordains the fine on the Brāhmaṇa for the acts of adultery. It is enjoined 112 that the Brāhmaṇa having illegal sex-association


110. Manu VIII.380 rāstrād enam bhīṣkuryat samagradhanam aṅśatam/ Vide also Manu VIII. 352.

111. Ibid VIII. 379. maunḍyam prāṇāntiko danda Brāhmaṇasya vidhīyate/ itareṣāṇu vaṇṇāntam dandaḥ prāṇāntiko bhavet//

112. Ibid VIII. 383 sahasrāṃ Brāhmaṇo dandaṃ dāpya gupte tu. te vṛjana/ ṣūḍrāyāṁ Kṣatriyavān sahasro vai bhaved damah//
with guarded Kṣatriya and Vaiśya wife shall be made to pay a fine of one thousand; while the fine for the Kṣatriya and Vaiśya who approach a Śūdra woman shall be one thousand.

It is laid down further that the Brāhmaṇa approaching an unguarded Vaiśya, Kṣatriya or a Śūdra woman, shall be fined five hundred; but for approaching a woman of the lowest castes (antyaja) one thousand.

We may now sum up the rules relating to the fine to be inflicted on the Brāhmaṇa, (1) A brāhmaṇa who commits adultery with a guarded wife of any of the four varṇas, shall have to pay one thousand as fine, (2) If he commits the act of adultery with the wife of a well-versed Brāhmaṇa (vedic scholar), he shall be branded and banished in addition to the fine, (3) while in other cases, there shall be banishment alone, (4) In the case of intercourse with an unguarded wife, there shall be a fine of five hundred in addition to banishment and branding, (5) A Brāhmaṇa who violates a chaste candāla wife is fined one thousand.

113. Ṣaṅga VIII. 385. agupte kṣatriyā vaiśye śūdrām vā Brāhmaṇo vrajana/ antāni paṇca dandyaḥ syāt sahasram tu antyajas- triyam//
Manu does not deal with incestuous intercourse and unnatural sexual-offences under the title 'Strīsāṃghrahaṇa'. These have been more or less included in the topic of prāyaścitta, because such offences are treated as grave sins (mahāpātakas). There the rites of expiation also are prescribed against the sins\textsuperscript{114}. It is enjoined\textsuperscript{115} that sexual relation with step mother, sister, friend's wife, daughter-in-law etc. is a grave sin. Sexual connection with three kinds of sisters is forbidden by Manu\textsuperscript{116}. The females also who indulge in incestuous sexual enjoyment are to undergo expiation. Manu\textsuperscript{117} says that the wives who indulge in (such) adulterous acts are made to undergo expiatory rites or vow.

\textsuperscript{114} Manu XI. 70 etānī enāmi sarvāni yathoktāni pṛthak pṛthak/ yairayurtraiārpahyante tāni sanyām nibodhata//

\textsuperscript{115} Vide Manu XI. 53, 57. Brahmadhvā suraṇāmaṃ eteyam gurvagnāgamaḥ/ mahānti pātakānyāhuḥ ...... //(53); retāḥ sekaḥ svayoniṣu kumārīṣu antyājāsu ca/ sakhyuh putrasya ca strīṣu gurutapasse vinidh// (57).

\textsuperscript{116} Ibid XI. 170-171. paitṛṣvaśreyśām bhagināṁ svasarīyāṁ mātreyavā ca/ mātreyā brahmārṣṭasya gatvā cāndrāyaṇaḥ caret //(170); etāstīśraštav bhāryārtha nopayacchottu buddhīnā/ jñātītenānupeyāstāḥ patati hyupayannadhaḥ// (171).

\textsuperscript{117} Ibid XI. 175. yatpumaḥ parārāṣṭu caccainām cārayed vratam//
We have discussed before that Kautilya prescribes death penalty for the offender who commits adultery with close relatives. But Manu does not feel inclined to speak of any secular punishment in this respect, probably because, to him, expiation is of greater sanctity and the rule of incest is based on invisible merit (adṛṣṭārtha) and knowable from the scripture alone. He\textsuperscript{118} prescribes severe expiation for grave sins, for example, in sex-act with preceptor's wife, guilty person should have to die on a heated iron bed or by embracing the red-hot image (of the woman), and by thus dying he becomes pure.

From the study of the rules relating to sexual offences in the text of the Manusmṛti we may reasonably conclude that Manu has developed the rules to make them somewhat systematic.

In the Mahābhārata references to the prohibition of illegal sexual relations do not go without enumeration, though we cannot expect them to be treated systematically.

\textsuperscript{118} Manu, XI. 102. \textit{gurutalpyabhibhāṣyainastalpe svapyāda-yomaye/ sūrmīn jvalantīṃ vāśīṣyet mṛtyunā sa viśuddhyati//}
in the body of a great epic like the Mahābhārata. Through stories and tales the evil effects of adultery are vividly illustrated. Somewhere prohibition is laid down explicitly, while at other times it follows by way of implication. The epic forbids a man to have sexual intercourse with other’s wife and states that there is nothing so detrimental to long life as that. It states further that a man who does not desire to have sex-association with any other woman than his married wife is rewarded with the merit of sacrifice. Expiation is prescribed for a man who indulges in sexual union with the wife of a Vedic scholar and with the wife of other. A wife who commits the act of adultery with a stranger is punished. It is declared in the Mahābhārata:

---

120. Ibid. 107. 10,50.
121. Ibid. San. 165. 60. 
122. Ṛbh. San. 165. 64-65. 
---

that if the wife leaves her husband and goes to a stranger, then shall the king have her torn asunder by dogs on a wide public place, and the man shall be burnt to death. In the Mahābhārata sexual relation with preceptor's wife is viewed as a sinful act of grave consequence. It is stated that the man who violates Guru's bed shall purify himself by clasping a glowing image of a woman, and meeting death thereby. "Or let him take his penis and testicles himself into his hand, and go straight off into the region of 'nīrūti' till he falls down (dead) or else gives up his life on behalf of a Brahmāṇa." A preceptor's wife is like one's mother. This is why violation of preceptor's bed is deemed as a grave sin involving the need of extermination of such vile sinner. It is also realised that a woman raped possibly without her intention can never be an offender; so a woman who is a victim of man's beastly passion should not be penalised. The Mahābhārata states that a raped woman

123. Ādīd 165.49. gurutālpaṁ adhiśṭhāya durītāṁ pāpacetāsaṁ—stryākāraṁ pratimaṁ ṣāṁśīrga mṛtyunā sābhīṣudhyati//
124. Śān. 165. 50-51; vide Agni Pur. 227.50.
125. Ibid. 266.38. evaṁ strī nāparādh-noti nara evāparādh-yati/ vyuocaraṇāṁca mahādoṣaṁ nara evāparādh-yati//
should not be regarded as offender; and it is the man who
should be considered as real offender and punished. This
probably indicates the progressive and humanitarian outlook
of the society.

In order of evolution Yājñavalkya may be placed next
to Manu. Compared with the Manusmṛti the text of the
Yājñavalkyaṁśṛti is more advanced and the legal rules relating
to sexual offences are dealt with in a shorter, clearer and
more systematic manner. On a few points Yājñavalkya departs
from the older rules. He first lays stress on the conduct of
ways of behaviour as marks of adultery. He\textsuperscript{126} states that
'a man should be caught in the very act of adultery, with
another's wife, or while holding each other's hairs, or by
other signs of excitement of lust, also by the admission of
both.' He\textsuperscript{127} points out further that he who touches (as if
with lustful desire) the knot of the lower garment, the
breasts, the upper garments, thighs, and the hair, and holds
conversation at an improper place and time, and also sits
together on one seat, is known as adulterer.

\textsuperscript{126} Yāj. II. 283. punān saṃgrahane grāhyah keśākeśi parastrī-
yā/ sadyo vā kamaçcāś-cīnadān pratiptattau dvayostathā/

\textsuperscript{127} Ibid. II. 284. nivīstanaprūvarānasyakthikāvamāramānām/
adesakālāsambhāsyām sahaıkasthānam eva ca/
Having spoken about the marks of the act of adultery, Yājñavalkya next lays down the rules of punishment. Both male and female are penalised when they indulge in forbidden sexual offence. It is enjoined128 that 'a woman being forbidden shall pay a hundred, while a man two hundred; when the prohibition had been to both, their punishment is the same as for as adultery.' Yājñavalkya129 states that 'in the case of one of the same class, the highest amercement (shall be inflicted); in an anuloma sexual association the middle amercement; (but) in a pratiloma sexual connection corporal punishment (ending in death) (shall be inflicted) on the man, and the ear and the like of the woman shall be lopped off.

"If a man kidnaps a maiden having ornaments on, he shall pay the highest amercement, and the lowest amercement in other cases, when the maiden belongs to the same varṇa; and in the case of a maiden of the higher varṇa, corporal punishment (ending in death) is ordained.

"In the case of (carrying away) willing maidens of inferior classes, there is no offence; but (in carrying away) —

127. Ibid. II. 286-288.
an unwilling maiden of the inferior class (there is offence), hence (there is) a punishment."

"For defiling a maiden (of lower class), (the punishment is) the lopping off the hands; and for (doing) similar acts towards a maiden of the higher class, death penalty is inflicted (on the offender)."

From the above provisions of Yājñavalkya it is found that all persons of higher class having committed sexual offence with woman of lower class are punished uniformly. Again, the persons who violate women of the same varṇa suffer the same punishment. Similarly, the uniform corporal punishment is inflicted on the persons of lower varṇa who violate the modesty of the women of higher varṇa.

This is undoubtedly an advanced step towards introducing the principles of equality in law.

Yājñavalkya is also very precise in providing the rules of punishment in respect of woman offenders. We have seen that he ordains a penalty of fine only for women who indulge in sexual intimacy with men of superior class or with those of the same varṇa; but if a woman makes adultery with a man of lower varṇa, she suffers corporal punishment.
like the lopping off of the ear and nose etc.

Though Yājñavalkya generally follows Manu, he makes a few provisions which are totally new. He deals with sexual offences committed on 'avaruddhā' and 'dāsī.' Reference to the offence like this is, of course, found to a little extent in the Arthaśāstra of Kautilya. Sexual union with a public woman is no offence, but under certain conditions this may be treated as the offence of adultery. Yājñavalkya states that if a man indulges in sexual union with a guarded or protected female slave of another or a female kept by one as his mistress, he shall be made to pay a fine of fifty pāṇas. Vījñānesvāra explains the terms 'avaruddhā' and 'bhujīṣyā' of Yājñavalkya II. 290. Avaruddhā means female slave who is prohibited by her master from enjoyment in favour of other person compelling her to stay inside home, so that her service may not be at default. Bhujīṣyā means a woman who is in constant keeping of a person for his enjoyment. Yājñavalkya extends

130. Yāj II. 290. avaruddhāsu dāsīṣu bhujīṣyāṣu tathaiva ca/ gamyāsvapi pumān dāpyah paṇḍeṣṭapanaṁ daman//

131. Hitā on Yāj. II. 290 ..... tā eva svāminā suśrūṣāhāni- vyuḍēṣṭartam graha eva sthātavyam ityevam puruṣāntaropabhogato niruddhā avaruddhāḥ/ puruṣāniyataparāgraḥah bhujīṣyāḥ//
the law to the cases of prostitutes. Sexual intercourse with prostitutes is no offence, but forcible rape on an unwilling prostitute constitutes a punishable offence. It is enjoined that "for forcible intercourse with a 'dāsī', the fine is declared to be ten panas. For several (having intercourse), if she is unwilling, twenty four (panas) will be the penalty for each separately." A prostitute is said to have committed offence if accepting her fee, she is not unwilling to offer herself for sexual enjoyment. Yājñavalkya\(^{133}\) enjoins that "a prostitute who has received her wages, shall, if unwilling, pay double."

We have from Yājñavalkya some provisions of penalty for unnatural sex behaviour. He\(^{134}\) says that 'for a man having intercourse with a woman by contact with improper part of the body, as also with a man, the fine shall be twenty four panas.' He considers illegal sexual relation with a widow also

---

132. Yāj II. 291. prasahya dāsyabhigame dando dasapana smṛteḥ/ bhūnām yadyakāmāsu caturvīmśatikāḥ prthak//

133. Ibid. II. 292. gṛhitavetanā veṣyā necchanti dvignam vahet....../

134. Ibid II. 293. ayonau gacchato yoṣām puruṣaḥ vāpi mehataḥ/ caturvīmśatiko dandaṭatha pravrajitāgam//
as an offence. It is declared that a man who wantonly consorts with a widow shall be fined a hundred pānas.\textsuperscript{135}

It is noteworthy that Yājñāvalkya makes a special provision for punishment on an offence of forcible rape on a widow under the rules relating to sāhasa. But under the rules of Strīsamgraheṇa he prescribes punishment for the persons of four castes who commit the offence of forcible sexual intercourse with guarded married women of their respective castes.\textsuperscript{136} But the author probably treats the act of rape done with wilful violence, as sāhasa, for it is the element of wilful violence which gives it a character of sāhasa. It involves the direct defiance of the guardian of the widow and does not at all come within the permissive provision of niyoga (levirate) as interpreted by Yājñāvalkya\textsuperscript{137} with a few reservations in which case sex-relation for specific purpose of raising issue on the widow by appointment is permissible.

\textsuperscript{135} Yāj II. 234. svacchandaṃ vidhavāgāmī.....satadandaḥ//
\textsuperscript{136} Ibid II. 286. sajavuttano dand anulomye tu nādhyanah/ pratilomye vadhah pumāḥ naryāḥ karnadikartanam// Vide Māta on Yaj II.286. caturnam epi varnanaṃ valatkarena sajatiya Gupta paradarabhhigamane sasitipanasaaharam dandaniyāḥ//
\textsuperscript{137} Yāj I. 68-69.
Coming to Nārada we find that he does not deal with Strīsaṃgrahaṇa as a separate title of law but as a part of the topic of litigation which is known as Strīpuṣṭaṇya. His rules relating to sexual offences are on the whole in conformity with those of Manu and Yājñavalkya. But the treatment of the rules here is more comprehensive and elaborate and some of his provisions are significant.

Nārada\textsuperscript{136} states that "sexual intercourse with other man's wife is not criminal, if the wronged husband is himself an offender, or if he has abandoned his wife, or if he is impotent or consumptive."\textsuperscript{139} He tries to analyse the circumstances where sexual lapses may take place as a matter of course, even if these lapses are not desirable. Here he seems to echo the view of Viṣṇu. It is stated in the Viṣṇusūtrī\textsuperscript{140} that one who has intercourse with a faultless abandoned wife, or with the wife of an impotent man, or with

\textsuperscript{136} Nārada - Strīpuṣṭaṇya, verse 61. adustatyakta-dārasya klīvaśya kṣayīkasya ca svecchanupeyuso dārānna doṣaḥ sāhase bhavet//

\textsuperscript{139} The English translation is taken from "Nāradīya Dharmasūtra" Edited by Jolly.

\textsuperscript{140} Viṣ. Sm. as quoted in viv. Rat; p 386. "adustatyaka-ta-dārasya klīvaśyākṣanaśeṣasya ca/ svecchanupeyuso dārān na doṣaḥ sāhase bhavet//
the wife of a man afflicted with consumption is not subjected to punishment. Nārada's law even makes a peculiar provision for wife's living with another man under certain conditions. He lays down that if a man is potent with another woman, but impotent with his own wife, the said woman may take another husband, for it has been so ordained by Prajāpati. Such provision seems to be based on conditions suffering from the lack of sex-adjustment. He states further that if a man has intercourse with a woman who herself comes to the house of the man and approaches him, he is not subjected to punishment.

From the study of the above rules it appears that Nārada makes a permissive provision for an ill-fated married woman to take resort to a suitable man whom she might regard as her protector in every respect. Sexual connection between the man and the wife of other under such circumstances is not considered as sexual offence by Nārada.

141. Nārada-striśūpaḥ, verse 18. anyasyaṁ yo manuṣyaṁ syād amanuṣyaṁ svayōṣīti labheta sānyāṁ bharāram etat kāryaṁ prājāpateḥ//

142. Nārada as quoted in viv. Rat, p 385. "Nāthavatyā paragṛhe sanyuktasya striyā saha/ duṣṭaṁ sangrāhaṁ tajjñairvā- gatāyāḥ svayaṁ gṛhe//"
In the section of adultery the author elaborates a procedure for detecting an adulterer, possibly as an improvement upon Yajñavalkya. Nārada speaks of three grades of adultery. Conversation with other's wife in improper time or place, conversation held with mutual consent, or flirting with other's wife - these are the three grades (kramaḥ) of adultery. Like Manu and Yajñavalkya, Nārada considers meeting with other's wife in an unreasonable hour or improper place and the like as adulterous acts. But he adds a new provision stating that "if a man himself declares from vanity, ignorance, or vain-glory - 'I once embrace this or that woman', it is also called an adulterous act." Sexual union with a willing unmarried woman is not treated as offence provided the man.

143. Nārada - stripum, verses 62-68.
144. Ibid - stripum, verse 62 paramrṣya sahākāladeses vā bhavata mithaḥ/ sthānasambhaṣaṇāmodastrayāḥ samgrahaṇa-kramaḥ/
145. Ibid, verses 63-68.
146. Ibid, verse 69. darpādvā yadi vā mohācchālaghaya vā svayam vadet/ mameyam bhuktaṇūveti taccā samgrahaṇanām saṁrtam/
147. This English translation is taken from 'Nārādīya Dharmaśāstra' Edited by Jolly.
marries her. He lays down that if a man has sexual relation with a willing maiden, it is no offence, but he shall deck her with ornaments, honour her, and thus bring her to his house as his bride. Nārada seems to state that pre-marital sexual connection between a man and a willing maiden on account of genuine love is not treated as the transgression of the sexual norms in the eye of law, provided it culminates in marriage. The rule indicates that the man who indulges in love with a willing maiden must marry her properly; but if he refuses to marry her even after enjoying thus under the false pretence of love, his act is treated as sexual offence. Nārada might have in his view the conception of the Gandharva rite of marriage which is a marriage out of mutual love and consent.

Nārada also divides married woman into two categories i.e. chaste and wanton (Svairini). These wanton women are again subdivided into four classes. It is laid down...

148. Nārada - Strīpura, verse 72. sakāmāyāṁ tu kanyāyāṁ sanggome nāstyaṭikramāḥ/ kīṁtvaleśkṛtya satkṛtya sa evaināṁ samudvahet//

149. Vide "Manu, chapter III" p 79. Edited by Dr. K.G. Goswami under the pseudo name 'A scholar devoted to Manu'. Manu defines Gandharva form of marriage as: icchaya'nyonya-samyogā karnayādca varasya ca/ gandharvāḥ sa tu viṁśayo maithinyāḥ kāmasambhavaḥ//

150. Nārada - Strīpura, verses 49-52.
"whether she is with child or without child, a wife who, during her husband's life, unites herself to another man from carnal desire, is the first (type) of disloyal wife; when a wife, after the death of her husband leaves the family and unites herself to a stranger through carnal desire, she is considered as the second type of svairini; and a woman who gives herself to another man, saying 'I am thine,' having come from a different country, or being purchased with money, or oppressed with hunger or thirst, is considered as the third; she who has been given in marriage by her spiritual parents, duly considering the local usages, but though love accedes to another man, is considered as the fourth type of disloyal wife (svairini)." It probably indicates that a man indulging in sex-act with such wanton women does not involve himself in any serious type of sexual offence, because such women are hardly different from prostitutes.

A change of outlook is noticeable in Nārada. We have seen that Manu treats sexual relation with guptā and aguptā women (chaste and unchaste) as offence. But Nārada does not consider sex-association with wanton wives of all castes as sexual offence. But sexual union with wanton wives of the
Brāhmaṇas only is prohibited. Nārada\textsuperscript{151} states that a man may have intercourse with any woman, not a Brāhmaṇi, who is disloyal to her husband, a prostitute, a female slave not shut up by her master, and, in general, with woman of lower order than his own, but not with woman of higher order.\textsuperscript{152}

In fact Nārada treats such disloyal wanton wives of the Kṣatriya, Vaiśya and Śūdra almost at par with prostitutes.

Incestuous relations are treated as grave sexual offence in the Nāradasamṛti for the first time in connection with adultery itself. Sex-association with twenty one types of women is forbidden in the text of Nārada. It is enjoined\textsuperscript{153} that "one who has criminal connection with any of these twenty one descriptions of women, viz., mother, mother's sister, mother-in-law, maternal uncle's wife, father's sister, paternal uncle's wife, friend's wife, pupil's wife, sister, sister's friend..."

\begin{flushright}
151. Nārada - Strīpum, verse 78. svarīṇyabrāhmaṇī veśyā dāsī nīkāsinī ca ya/ gamyaḥ syuranulomyena striyo na prātimatah/
152. This English translation is taken from "Nāradiya Dharmaśāstra" Edited by Jolly.
153. Nārada - Strīpum, verses 73-75. mātā mātrvavasā āvasārūr- mātulāni pṛtvavasā/pitrvyasakhiśīgyastri bhaginītatsakhi snuṣā// duhitācaryabhāryā ca sagatrā sarapagatā/ rājī pravrajītā dhātrī sādhih vargottamā ca ya// asāmānyas- tanām gatvā gurutalpaga ucyate/ dīgnasyotkaronāp tasya nanyo danno vidhiyate//
\end{flushright}
daughter-in-law, daughter, spiritual guide's wife, a woman of the same lineage, a woman dependent on his protection, the queen, a female ascetic, a nurse, a well-behaved woman, and a Brahmanī, is said to be as guilty as the violator of his religious preceptor's bed: for such a crime as this there is no other penalty short of the excision of the male organ."

Sexual connection with these women as laid down in the Nāradasmṛti is treated in Manu and Yājñavalkya154 as grave sin. In those texts this sin arising out of incestuous relationship is dealt with in the prayāscitta adhyāya. Nārada awards penal retribution for such offences, though he does not ignore the importance of expiation to be undergone for the removal of sin as prescribed in the Scripture. Nārada 155 accordingly states that if a man indulges in sexual intercourse with one who is forbidden, the shall inflict punishment upon him; but expiation is to be prescribed for him for atonement of sin.

155. Nārada - Strīpar, verse 77 agamyagāminascaṣṭi danda rājāḥ pracoditaḥ/ prayāścittāvidhānāṁ tu pāpāḥ syād viśodhanam/
Nārada approves niyoga, however, with some reservations. But sex-relation by transgression of the conditions of niyoga amounts to both sexual offence and sin. It is enjoined\(^{156}\) that if the husband dies without a male child, the widow may approach her brother-in-law through a desire to have a male issue being authorised in this regard by the guardians; and such brother-in-law may have sexual connection with her until a son is born to her; when a son is begotten he must refrain, otherwise it will amount to varnasamkara (mixture of castes).

Nārada appears to be more lenient towards women. No death punishment nor any physical torture is ordained against woman offender. He\(^{157}\) says that if a woman commits adultery, tonsure, a low couch, mean food, miserable habitation, and the task of removing ordures, constitute her punishment.

---

\(^{156}\) Nārada - Strīpuṇa, verse 80-81 anutpannaprajāyāṣtu patih prayāḍ yadi striyā/niyuktā guruḥhirgacched devaram putrakāmyayā// sa ca tām pratipadyeta tathīvā putrajan- mataḥ/ putre jāte nivarteta saṃkaraḥ syādatōnyathā// Vide also ibid, verses 82-88.

\(^{157}\) Nārada - Strīpuṇa, verse 91. Vyabhicāre striyā asaṃdyam adhaḥ śayanam eva ca/ kadannam vā kuvāsaśca karma cāva- skarojjhanam//
When we come to the writings of the later Smrtis, we find that they endeavour to classify the offence of adultery on a more scientific basis.

Brhaspati[^5^] classifies three types of Saṃgrahaṇa (adultery) on the basis of force, fraud and mutual consent.

He lays down that when a man has sexual intercourse with a woman in secret against her will, or with a woman who is asleep or intoxicated or unconscious, or with a woman who is crying for help, it is said to be by force; when a man conducts a woman to his house, or gives her wine or intoxicating drugs under false pretences, and his intercourse with her, it is said to be by deception; and when a man exchanges amorous glances with a woman, or sends messages through a go-between and has sexual union with her being


impelled by beauty, it is called adultery through mutual love.

Adultery is again subdivided into three types from the standpoint of degree. Brhaspati\(^{160}\) says that adultery is of three types, viz., prathama (of first degree), madhyama (of middle) and uttama (highest degree). Brhaspati\(^{161}\) states that the prathama is characterised by winking at another's wife, smiling at her, sending messengers, touching her ornaments or clothes; sending perfumes, garlands, fruit, wine, food or clothes, holding conversation with her in secret constitute adultery of the second degree; and the samgrahana of the highest degree is constituted by the acts such as sitting on the same bed, dalliance, kissing and emuracing.

\(^{160}\) Br. as quoted in Sm.Csu Vol. III. Part I, p 17 tatpunastraividham proktam prathama madhyamottamam/

\(^{161}\) Br. as quoted in Sm Csu. III. Part I, p 17. "tatpunastrividham proktam prathama madhyamottamam/ apāṅgāvekṣanam hāsyam dūtisampreṣanam tathā/ aparṣā bhūṣaṇa vaśitiṣṭām prathamāḥ samgrahāḥ sartāḥ/ presāṇam gandhāmālāyānaḥ dhūpamadvannā vāsaśām/ sambhāṣāṇam raha-si ca madhyamāḥ samgrahāḥ viduh/ ekaśayāśana kirīcumbānāliṅgaḥ tathā/"
Vyāsa also expresses the same idea. Kātyāyana gives nine-fold classification. He says that "adultery is said to be nine-fold, viz., what it is accompanied by the employment of a go-between, being together at an improper time and place, falling on a woman's neck or seizing her or the border of her cloth, seizing a woman by the ear, nose or hand; sitting or taking food with her on the same seat." But he sums up his classification stating the main criterion of the offence. He states: 'whatever act a man does with

162. Vyāsa as quoted in Sm. Cā. III, Part I, p 17. Sangrahāḥ trividho jñeyaḥ prathamo madhyanastathā uttamaśceti... Katākṣāvekṣanām āsyaṁ prāthanāḥ sangrahaḥ smṛtah/ pre-ṣaṇāṃ gandhamālyānām dhūpabhusāṇavāsāṃ/ prālobhanām cānnapānair madhyanāḥ sangrahaḥ smṛtah/ sayyāsanam vivikte tu parasparan upārayah/ kākanāksagrahāścii va jñeyā uṭtamaṃ sangrahāḥ/


164. This English translation is taken from the Kāṭ. Sm. Sār., p 292.

the intention of having intercourse with other man's wife is to be treated as adultery." These nine-fold details, according to him, are to be treated as mere illustrations.

The scales of punishment are determined according to the types of adultery committed by the offender. The subsequent writers also follow the same principle in respect of caste discriminations as we have seen earlier. But the rules as laid down later have tended to be more clear and unambiguous.

Generally severe punishment is prescribed for forcible sexual offence. Brhaspati\(^{166}\) lays down that if a man commits rape on an unwilling wife (of other man) of the same caste, his entire property will be confiscated; and the king, after having cut off his generative organs, shall have him paraded on the back of a donkey. He\(^{167}\) lays down further that if a man commits (the same offence) on a wife of lower caste, he shall have his entire property confiscated and be paraded on the back of a donkey.

---

166. Br as quoted in Viv. Rat., p 388. sahasākāmaved yastu dhanam tasyākhalag heret/ utkṛtya liṅgvrṣapau bhrāma- yed gārdhavēna tu/

167. Br as quoted in Sm. Çma. vyav. kān, part II, p 742. "ṣamo neyas sa-mānāyam tu hiṁyām ardhikastataḥ/ puṣpāḥ kāryoḍhikāyām tu gemane sampramāpanam/"
caste, half of the punishment (as prescribed for the man committing offence on a woman of the same varṇa) shall be inflicted on him; and if he has forcible sexual intercourse with a married wife of higher varṇa, he shall suffer death punishment. This is to be noted that half of the punishment as prescribed here possibly refers to the confiscation of the property of the offender by half of the corpus.

So far as the mutilation of the physical limb is concerned, the rule of fifty percent of the penalty seems incompatible and naturally the said provision does not apply to the case of physical punishment. This is how we can interpret the text keeping in view of the letter and spirit of the law. This principle of punishment as stated by Brhaspati is also applicable to the cases of fraudulent sexual offence.

It is laid down⁶ that if a man enjoys a woman of the same caste by fraud then his punishment shall be confiscation of his entire property, and he shall be branded with the sign of

---

⁶ Br as quoted in viv. Rat, p 388 cchadmanā kāmayed yastu tasya sarvahara damah/ amkayitvā bhagākena purānnirvāsayet tatah//
the female organ and banished. Kātyāyana also prescribes
death penalty for a man who commits rape on a woman. He\textsuperscript{169} says that when a man has sexual connection with a woman by
force, he shall suffer death, as the offence is a positive
transgression of the sanctity of duty (towards woman). It
is noteworthy that Kātyāyana does not mention here the
different scales of punishment according to castes. He
appears to prescribe death punishment for all except
Brāhmaṇas, though cāndeśvara\textsuperscript{170} interprets that death
penalty is to be inflicted on the man who commits rape on
a woman of highest varṇa. The Mātayapūrana\textsuperscript{171} also speaks
of the same punishment for rape. It is to be noted that the
unwilling woman who is raped by a man of the same varṇa is
not considered as an offender; but as she has been enjoyed
by a stranger, she becomes impure, and she is required to

\begin{flushleft}
\textsuperscript{169} Kāt. as quoted in Sm.Cas. Vyav. Kān. Part II, p 742
Strīṣu vṛttapabogheḥ syāt prasahya puruṣaḥ yadā/ vadhena
tatra pravarteta kāryātikramaṇaḥ hi tat//

\textsuperscript{170} Viv. Rat., p 389 strīṣu utkṛṣṭa- jātiyāsu vṛttapayoga
jātābhigamamah, prasahya āthamaḥ//

\textsuperscript{171} Rat. Pur. as quoted in Dan. Viṣ., p 163 valād sandūṣayā
gastu parabhāryaṁ naraḥ kvacīt/ vadhadaṅgo bhaveṣaẏa......//
\end{flushleft}
undergo expiation after which she is restored to her former position. This sort of provision is made by Brhaspati who says that the woman who has been enjoyed against her will by a man of same caste, shall be kept guarded in the house, with dirty clothes, lying on the ground, being given food just enough to sustain her; she shall be made to undergo the expiatory rite - the 'kṛcchra' or the 'parāka'. But in this context Brhaspati makes another provision by which abandonment of the woman or corporal punishment to be inflicted on the woman is prescribed when the woman is forcibly enjoyed by a man of lower caste. He says that if the man has been of an inferior caste, she shall be abandoned or subjected to corporal punishment. This appears to be somewhat anomalous. But from the nature of the punishment it follows that the text of Brhaspati - 'hīnavarṇopabhuktā' - refers to woman enjoyed by persons of low castes possibly with their consent or intention. The attribute 'anicchānti' in the first


provision refers to another text, and it should not be tagged to the present text 'hinavarnopabhuktā' by way of context. Devana Bhatta also expresses his doubt in this context. In fact an unwilling woman when raped should not be penalised. The Matsyapurāṇa clearly states that no offence attaches to the woman who is raped.

When a man indulges in adultery with other’s wife, his punishment is determined in accordance with the degree of adultery as stated before. Brhaspati lays down that if a man has intercourse with a woman of equal caste, his punishment shall be the first amercement (prathama); if with a woman of a superior caste, he shall suffer death.

The later writers on law are lenient toward woman offender. Kātyāyana states that in all offences the fine payable by the woman is half of the fine prescribed for the

174. Sm. Cœm. Part II, p 744. ityuktam anusandhayam/
175. Valād sanduśayed yastu parabhāryaṁ naraṁvācit/ vadhanda-ndo bhavettasya nāparādho paraśtriyā
176. Br.Sm. SBE XXXIII. Chap. XXIII.12. Also quoted in Mad. Rat., p 308. trayāṇām api caitesāṁ prathamo madhyama uttamah/
177. Kāt. quoted in Mad. Rat., p 309. sarveṣu cāparādheṣu punso yodhaām sартah/ tadardhan yosito dadyur
vādhe pumāṇaṅgakartanām/
man; in the cases where the penalty prescribed for the man is death, the woman should have her limbs cut off.

From the above study it is clear that the law relating to sexual offences gradually developed into a fairly advanced system of law. The various stages of the law show that right through the Dharmaśastras, the title of law relating to 'Strīṣmāgraṇa' registered a considerable progress from rudimentary law of simple society to a very complex structure in continuous response to the changing society. It is found that the early phase of the law was groping for unity. And the Āstārakāras of the later period made their frantic effort to bring about a jurisprudential harmony.

The Nibandhakāras (digest writers) attempted further to bring about systematisation and synthesis of the rules of the Dharmaśastras. The commentators and the digest-writers explained and interpreted the law as much with reference to the Śāstras as to the practical needs of the society. They often tried to reconcile the contradictions of the different Śruti texts in their own way. Sometimes they differed as to the circumstances in which the verses of the Śrūties applied.

Sometimes by this way of interpretation they introduced new rules.

The commentators and the Nibandhakaras have attempted at giving legal definition of the term 'Samgrahaṇa'. Vijñānesvara defines samgrahana as the (carnal) union of a man and a woman. It is defined by Devaṇa Bhatta as the (illegal) sexual relation with other's wife. In the modern law also adultery is defined as sexual intercourse amounting to the offence of rape, with the wife of another. Candesvara states that all acts which a man indulges in with the (sole) intention of making illegal intimacy with other's wife constitute adultery. Vācaspatimisra says that the (anurāga) samgrahaṇa connotes the act by which it is indicated that the heart of the man is attached with love

---

181. I.P.C. Sec. 497.
182. Viv. Ret., p 382 parastrīyam abhilaṣanāyāvantam karmakā�āpam puruṣā karoṭi, sarvāśau samgrahaṇārembheḥ/
183. G. N. Jha - English translation of Vācaspatimisra, p 150.
for the woman, e.g., conversation and other forms of
association with other's wife, which cannot be contributed
to any other cause. Vardhamāna 184 defines saṃgrahana as
(sexual) relation with other's wife.

The digest-writers probably realised that in juris-
prudence a legal definition of 'adultery' is essential.
Their attempt to arrive at a proper definition is the index
of an advanced system of law. Moreover, the digest-writers
took effort to interpret the terms of the older verses for
practical need. It is even seen that the subsequent composers
of the digests differed from the older commentators in the
matter of interpretation. Medhatithi, 185 the renowned
commentator of the Manusmṛti, defines 'abhimāra' of the
Manu VIII. 352. as sexual enjoyment consisting in embracing
and other acts. Vardhamāna 186 probably takes the term in the
sense of illegal sexual relation between man and woman. He 187
states that 'abhimāra' is of two types, viz., adultery and

184. Danā. vi., p 154. samgrahāṇaṁ nāma samīcīnaṁ grahaṇam
paścētiṣyā ātmīyotā karaṇaṁ/ 185. Medha. on Manu VIII. 352. abhimāraśaṁ saṃbhoga aśinganādiḥ/
abhigamasca.
forcible sexual intercourse. Paradēra is defined by him as any woman except one's own wife. He divides such women into married and unmarried; and subdivides married women into chaste and unchaste ones, women of higher varṇa, women of lower varṇa etc. Unmarried women are again subdivided into maiden, outcaste and prostitute.

Medhātithī probably introduces a new provision by way of interpreting a verse of Manu (VIII. 365). Manu does not make any explicit provision for the penalty to be inflicted on the guardian of the maiden. But Medhātithī appears to prescribe punishment for the guardian of a maiden who is considered as the protector of the dependent maiden. In course of interpreting Manu VIII. 365, he states that "in as much as the girl is never her own mistress, the punishment would fall upon her guardians, father and others; and it is the punishment that is precluded here."

189. Ibid. p 154. paripītā anekavidhāḥ sādhvī vandhakītī uttamā hīneti svajanāsvajaneti, guptā aguptā cetī/
190. Ibid. p 154. aparipītā trividhā kanyā, vṛātyā vesyeti/
192. This English translation is taken from G.N. Jha's translation of the commentary of Medhātithī on the Manuśmṛti.
The admission of preclusion of the punishment in one context evidently shows that the guardians of dependent maiden offender might be rewarded with punishment in other cases. The Śastrakāras prescribe severe punishment for fraudulent sexual offence; but in the opinion of Medhatithi\textsuperscript{193} when a person does the offence by stealth, secretly like a thief, the punishment shall consist of the fine of two hundred, without the amputation of the fingers.

Somewhere the commentators attempted to reconcile contradiction between the Śārtis. Vijnāneśvara reconciles the contradiction between the Manusmṛti and the Yājñavalkya-sārti. in respect of the rule relating to sexual intercourse by men of the three higher castes with women of degraded caste (antya). Manu\textsuperscript{194} prescribes fine only in such offence, while Yājñavalkya\textsuperscript{195} prescribes the punishment of branding.

\textsuperscript{193} Medhā on Manu VIII. 368. aprakaśan Caurvyavad dvisato-ṅguṭṭcheda-varjitaḥ/

\textsuperscript{194} Manu VIII. 385. .......... sahaśram tvantyasajestriyam/

\textsuperscript{195} Yāj. II. 294. antyābhigamanā tvamkṣah kubandhena pravāsayaḥ........}
and banishment. But Vijnanesvara\textsuperscript{196} explains that for having connection with an antya\textsuperscript{*} the members of the dvijati class who are not ready to perform an expiation, shall be fined a thousand pana\textsuperscript{s} (as laid down by Manu), and then shall be branded with the mark of female organ and banished from the kingdom. For one, however, who is ready for an expiation, fine alone shall be the punishment.

The rigour of punishment in the form of mutilation of limbs in respect of women is not normally found in the days of digest-writers. Devana Bhatta\textsuperscript{197} does not approve of corporal punishment for a woman who is without deep attachment.

While interpreting a verse of Vijnavalkya\textsuperscript{198} Vacaspati\textsuperscript{199} remarks that for having intercourse with a c\textsuperscript{a}nd\textsuperscript{a}li, the Sudra shall suffer death penalty. It should

\begin{itemize}
\item[196.] Mit\textsuperscript{a} on Vaj. II. 294. anty\textsuperscript{a} c\textsuperscript{a}nd\textsuperscript{a}li tadgamane traivar-nik\textsuperscript{a}n pr\textsuperscript{a}yaascitt\textsuperscript{a}nabhimukh\textsuperscript{a}n sahaaram tuntjastra-yan iti Manuvasan\textsuperscript{a}t pana\textsuperscript{s}ahasra\textsuperscript{a}m danda-yitv\textsuperscript{a} Kuban-dhena......bhag\textsuperscript{a}ka\textsuperscript{a}ra\textsuperscript{a}mgayitv\textsuperscript{a} svar\textsuperscript{a}stra\textsuperscript{a}t nir\textsuperscript{a}vasayet/pr\textsuperscript{a}yaascitt\textsuperscript{a}nabhimukha\textsuperscript{a}n pa\textsuperscript{n}ardana\textsuperscript{a}nam eva/
\item[197.] Sm.Cam. vyav.K\textsuperscript{a}n part II, p 749 atyanta\textsuperscript{s}aktirahita-vi\textsuperscript{s}aye tu na s\textsuperscript{a}r\textsuperscript{i}go danda\textsuperscript{a}/
\item[198.] Vaj. II. 294.
\item[199.] G.N. Jha - English translation of viv. cint\textsuperscript{\text{a}}, p 156.
\end{itemize}
be noted that Manu (VIII. 385) is silent in this respect; and Yājñavalkya (II. 294) states that a sudra having connection with cāndāla woman, himself becomes an 'antya' or cāndāla. But Yājñavalkya does not prescribe death penalty for the Śudra in such case.

Again in course of interpreting Manu VIII.374 Vardhānāṇa differs from the interpretation given by lakṣmīdhara on the said verse of Manu. Vardhānāṇa states that for having sexual connection with unguarded wives of the three higher classes (twice-born caste), the amputation of a limb and confiscation of the property shall be punishment for a Śudra; and for having sexual union with the guarded wives of twice-born, the Śudra shall suffer death penalty and he shall be deprived of his whole property. But Lakṣmīdhara opines that a Śudra having

---

200. Dvāpā. viii. p 171. dvijātañ varṇam dvijātistriyam āvasan abhigacchan hiyate ityāty ityāsvayah/ keśet-
yāha taśmin dvijāte varṇe agute ekāṅgēna sarvāsvena ca, gupte tu sarvenāṅgēna sarvasvena ca/ tena dvijātistriyam abhigachchātah śūdrasya tasyāguptatva- pakṣe ekāṅgacchedā svāsvāgrahaṇam daṇḍaḥ guptat- vapaṅke te svāṅgacchedāh sarvasvāgraḥam cetā phalitārthāh/ kalpataraḥ tu ...... rakṣitāntu vrajan sarvenāṅgēna hiyate ityatra iti vyākhyātām/ etam-mate rakṣitābhigantuḥ sarvasvāgraḥam nāti/
intercourse with a guarded wife of twice-born shall be deprived of the whole body only, viz., death, but not of the whole property. In fact the practical need of the time accounts for this type of difference of opinion and interpretation even among the digest-writers.

The commentators and the digest-writers do not disown the authority of the Śruti rules. Their main job is to interpret the rules of the Dharmaśastras and to reconcile their apparent conflicts and contradictions. In few cases they are found to twist the Śruti rules in order to make these rules agree with the system of their own time.

By the study of the course of evolution of the law of adultery (Śrīṣamgrahaṇa) through the writings of the sages and their commentators, and explanations found in the digests, we can say with a measure of certainty that this particular title of law engaged the attention of the ancient jurists and thinkers from the standpoint of social ethics as well. In a civilised society sex-norms occupy every important place connected as they are with a number of interests and values. Sexual aberrations or transgressions of the sex-code of behaviour are the important index of the degree of
civilisation. In view of this, the development of the law of adultery that we have traced here throws a flood of light on this aspect of our age-old civilisation. But the development of the Hindu law was arrested after the establishment of British Empire in India. With the words of D. M. Derrett: "The Dharmaśāstras as a living and responsible science in matters which might come before a court of law died when the courts assumed judicial knowledge of the system in 1864, but death-sickness commenced with Jones's Quaint act of 1786."