

CHAPTER III

THE BRAHMANIC THEORY OF THE STATUS OF THE SHUDRAS

SO much for the Brahmanic view of the origin of the Shudra. Turning to the Brahmanic view of the civil status of the Shudra, what strikes one is the long list of disabilities, accompanied by a most dire system of pains and penalties to which the Shudra is subjected by the Brahmanic law-givers.

The disabilities and penalties of the Shudra found in the *Samhitas* and the *Brahmanas* were few, as may be seen from the following extracts:

I. According to the *Kathaka Samhita* (xxxi.2) and the *Maitrayani Samhita* (iv.1.3; i.8.3)

“A shudra should not be allowed to milk the cow whose milk is used for Agnihotra.”

II. The *Satapatha Brahmana* (iii.1.1.10), the *Maitrayani Samita* (vii.1.1.6) and also the *Panchavimsa Brahmana* (vi.1.11) say:

“The Shudra must not be spoken to when performing a sacrifice and a Shudra must not be present when a sacrifice is being performed.”

III. The *Satapatha Brahmana* (xiv.1.31) and the *Kathaka Samhita* (xi.10) further provide that :

“The Shudra must not be admitted to Soma drink.”

IV. The *Aitareya Brahmana* (vii.29.4) and the *Panchavimsa Brahmana* (vi.1.11) reached the culminating point when they say:

“Shudra is a servant of another (and cannot be anything else).”

But what in the beginning was a cloud no bigger than a man's hand, seems to have developed into a storm, which has literally overwhelmed the Shudras. For, as will be seen from the extracts given from later penal legislation by the *Sutrakaras* like *Apastamba*, *Baudhayana*, etc. and the *Smritikaras* like Manu and others, the growth of the disabilities of the Shudras has been at a maddening speed and to an extent which is quite unthinkable.

The disabilities are so deadening that it would be impossible to believe them unless one sees them in cold print. They are, however, so numerous that it is impossible to present them in their fullness. To enable those, who do not know them, to have some idea of these disabilities, I have assembled below in one place illustrative statements by the different *Sutrakaras* and *Smritikaras* relating to the disabilities of the Shudras scattered in their Law Books.

II

(i)

(A) *The Apastamba Dharma Sutra* says :

“There are four castes—Brahmanas, Kshatriyas, Vaishyas and Shudras.

Amongst these, each preceding (caste) is superior by birth to the one following¹ :

For all these, excepting Shudras and those who have committed bad actions are ordained (1) the initiation (Upanayana or the wearing of the sacred thread), (2) the study of the Veda and (3) the kindling of the sacred fire (i.e., the right to perform sacrifices).²”

(B) This is what the *Vasishtha Dharma Sutra* says:

“There are four castes (Varna) Brahmanas, Kshatriyas, Vaishyas and Shudras.

Three castes, Brahmanas, Kshatriyas and Vaishyas (are called) twice-born.

Their first-birth is from the mother; the second from the investiture with the sacred girdle. In that (second birth) the Savitri is the mother, but the teacher is said to be the father.

They call the teacher father, because he gives instruction in the Veda.³

The four castes are distinguished by their origin and by particular sacraments.

There is also the following passage of the Veda: ‘ The Brahmana was his mouth, the Kshatriya formed his arms: the Vaishya his thighs; the Shudra was born from his feet.’¹

It has been declared in the following passage of the Veda that a Shudra shall not receive the sacraments. ‘He created the Brahmana with the Gayatri (metre), the Kshatriya with the Trishtubh, the Vaishya with the Jagati, the Shudra without any metre.’⁴

(C) The *Manu Smriti* propounds the following view on the subject :

1. Prasna 1, Patala 1, Khanda 1, Sutras 4-5.

2. Ibid., Sutra 6.

3. Chapter H, Verses 1-4.

4 Chapter IV, Verse 3

“For the prosperity of the worlds, he (the creator) from his mouth, arms, thighs and feet created the Brahmana, Kshatriya, Vaishya and Shudra.¹

The Brahmans, Kshatriya (and) Vaishya constitute the three twice-born castes, but the fourth, the Shudra has only one birth.”²

(ii)

(A) The *Apastamba Dharma Sutra* says:

“(A Traivarnika) shall never study (the Veda) in a burial ground nor anywhere near it within the throw of a Samya.

If a village has been built over a burial ground or its surface has been cultivated as a field, the recitation of the Veda in such a place is not prohibited.

But if that place is known to have been a burial ground, he shall not study (there).

A Shudra and an outcaste are (included by the term) burial-ground, (and the rule given, Sutra 6 applies to them).

Some declare, that (one ought to avoid only to study) in the same house (where they dwell).

But if (a student and) a Shudra woman merely look at each other, the recitation of the Veda must be interrupted.³

Food touched by a (Brahmana or other high-caste person) who is impure, becomes impure but not unfit for eating.

But what has been brought (be it touched or not) by an impure Shudra must not be eaten.

A Shudra touches him, (then he shall leave off eating).⁴

(B) The *Vishnu Smriti* says :

“He must not cause a member of a twice born caste to be carried out by a Shudra (even though he be a kinsman of the deceased). Nor a Shudra by a member of a twice-born caste.

A father and a mother shall be carried out by their sons; (who are equal in caste to their parents).

But Shudras must never carry out a member of a twice-born caste, even though he be their father.”⁵

(C) The *Vasishtha Dharma Sutra* prescribes :

“Now therefore, we will declare what may be eaten and what may not be eaten.

1 Chapter I, Verse 31.

2 Chapter X, Verse 4

3 Prasna 1, Patala 3, Khanda 9, Sutras 6-11.

4 Prasna 1, Patala 5, Khanda 16, Sutras 21-22.

5 Chapter XIX, Sutras 1-4

Food given by a physician, a hunter, a woman of bad character, a mace-bearer, a thief, an Abhisasta, and eunuch, (or) an outcaste must not be eaten.

Nor that given by a miser, one who has performed the initiatory ceremony of a Srauta-sacrifice, a prisoner, a sick person, a seller of the Soma plant, a carpenter, a washerman, a dealer in spirituous liquor, a spy, an usurer, (or) a cobbler.

Nor that given by a Shudra.¹

Some call that Shudra race a burial-ground.

Therefore the Veda must not be recited in the presence of a Shudra.”

Now they quote also the (following) verses which Yama proclaimed :

The wicked Shudra-race is manifestly a burial-ground. Therefore (the Veda) must never be recited in the presence of a Shudra.²

Some become worthy receptacles of gifts through sacred learning, and some through the practice of austerities. But that Brahmana whose stomach does not contain the food of a Shudra, is even the worthiest receptacle of all.³

If a Brahmana dies with the food of a Shudra in his stomach, he will become a village pig (in his next life) or be born in the family of that Shudra.

For though a (Brahmana) whose body is nourished by the essence of a Shudra's food may daily recite the Veda, though he may offer (an Agnihotra) or mutter (prayers, nevertheless) he will not find the path that leads upwards.

But if, after eating the food of a Shudra, he has conjugal intercourse, (even) his sons (begotten on a wife of his own caste) will belong to the giver of the food (i.e., to the Shudra) and he shall not ascend to heaven.⁴

(D) The *Manu Smriti* says :

“He (Brahmin) may not dwell in the kingdom of a Shudra nor in one full of unrighteous people, nor in one invaded by hosts of heretics nor in one possessed by low-born men.⁵

A Brahmin who performs a sacrifice for a Shudra should not be invited to dine with other Brahmins at a Shraddha ceremony. His company will destroy all merit that which may otherwise be obtained from such a dinner.⁶

One should carry out by the southern town-gate a dead Shudra, but the twice-born by the western, northern and eastern (gates) respectively.⁷

1 Chapter XIV, Verses 1-4

2 Chapter XVIII, Verses 11-15

3 Chapter VI, Verses 26.

4 Chapter VI, Verses 27-29

5 Chapter IV, Verse 61

6 Chapter III, Verse 178

7 Chapter V Verse 92.

(iii)

(A) The *Apastamba Dharma Sutra* says :

“A Brahmana shall salute stretching forward his right arm on a level with his ear, a Kshatriya holding it on a level with the breast, a Vaishya holding it on a level with the waist, a Shudra holding it low (and) stretching forward the joined hands.”¹

And when returning the salute of (a man belonging) to the first (three) castes, the last syllable of the name of the person addressed is produced to the length of three moras.²

If a Shudra comes as a guest (to a Brahmana) he shall give him some work to do. He may feed him, after (that has been performed. To feed him without asking him first to do some work is to do him honour.)

Or the slaves (of the Brahmana householder) shall fetch (rice) from the royal stores, and honour the Shudra as a guest.”³

(B) The *Vishnu Smriti* prescribes :

“The same punishment (payment of hundred Panas) is also ordained for hospitably entertaining a Shudra or religious ascetic at an oblation to the gods or to the manes.”⁴

(C) The *Manu Smriti* enjoins that :

One should consider a Brahmana ten years old and a Kshatriya a hundred years old as father and son; but of them the Brahman (is) the father.

Wealth, kindred, age, sects (and) knowledge as the fifth; those are the causes of respect, the most important (is) the last (mentioned).

In whom among the three (higher) castes the most and the best of (those) five may be he is here worthy of respect; a Shudra (is not worthy of respect on the ground of his wealth or knowledge no matter how high they are. It is only on the ground of his age and that too only if) he has attained the tenth (decade of his life that he becomes worthy of respect and not before.)⁵

1 Prasna 1, Patala 2, Khanda 5, Sutra 16.

2 *Ibid*, Sutra 17.

3 Prasna II, Patala 2, Khanda 4, Sutras 19-20

4 Chapter V. Sutra 115.

5 Chapter II, Verses 135-137.

For not by years, nor by grey hair, not by wealth, nor kindred (is superiority); the seers made the rule—Who knows the Veda completely, he is great among us.

Of Brahmins, superiority (is) by knowledge, but of Kshatriyas by valour, of Vaishyas by reason of property (and) wealth, and of Shudras by age.

One is not, therefore, aged because his head is grey; whoever, although a youth, has perused (the Vedas), him the gods consider an elder.¹

Now a Kshatriya is not called a guest in a Brahmin's house, nor a Vaishya nor a Shudra; neither is a friend, the kinsman, nor a Guru (of the householder). (That is, a Brahmin has alone the right to have the honour of being treated as a guest in a Brahmin's house).

But if a Kshatriya come as a guest to the house after the said Brahmins have eaten one should give him food (if) he wishes.

If a Vaishya (or) Shudra come to the house as guests, the Brahmin should give them food but with the servants, using kindness."²

(iv)

(A) According to the *Apastamba Dharma Sutra* :

He who has killed a Kshatriya shall give a thousand cows (to Brahmins for the expiation of the act).

He shall give, a hundred cows for the killing of a Vaishya, (only) ten for a Shudra.³

(B) According to the *Gautama Dharma Sutra* :

"A Kshatriya (shall be fined) one hundred (Karshapanas) if he abuses a Brahmana.

In case of an assault (on a Brahmana) twice as much.

A Vaishya (who abuses a Brahmana, shall pay) one and a half (times as much as a Kshatriya).

But a Brahmana (who abuses) a Kshatriya (shall pay) fifty (Karshapanas).

1 Chapter II, Verses 154-156.

2 Chapter III, Verses 110-112.

3 Prasna I, Patala 9, Khanda 24, Sutras 1-3.

One half of that amount (if he abuses) a Vaishya.

And if he abuses a Shudra nothing.”¹

(C) According to *Brihaspati's Dharma Shastra* :

“For a Brahmin abusing a Kshatriya, the fine shall be half of a hundred (fifty) Panas; for abusing a Vaisya, half of fifty (twenty-five) Panas, for abusing a Shudra twelve and a half.

This punishment has been declared for abusing a virtuous Shudra (i.e., a Shudra who accepts his low status and does willingly the duties attached to that status) who has committed no wrong; no offence is imputable to a Brahmin for abusing a Shudra devoid of virtue.

A Vaishya shall be fined a hundred (Panas) for reviling a Kshatriya; a Kshatriya reviling a Vaishya shall have to pay half of that amount as a fine.

In the case of a Kshatriya reviling a Shudra the fine shall be twenty Panas; in the case of a Vaishya, the double amount is declared to be the proper fine by persons learned in law.

A Shudra shall be compelled to pay the first fine for abusing a Vaishya; the middling fine for abusing a Kshatriya; and the highest fine for abusing a Brahmin.”²

(D) According to the *Manu Smriti*:

A Kshatriya who reviles a Brahmin ought to be fined one hundred (Panas); a Vaishya one hundred and fifty or two hundred, but a Shudra ought to receive corporal punishment.

A Brahmin should be fined fifty if he has thrown insult on a Kshatriya, but the fine shall be a half of fifty if on a Vaishya and twelve if on a Shudra.”³

In the murder of a Kshatriya, one fourth (part) of the penance for slaying a Brahman is declared to be the proper penance; an eighth part in the case of a Vaishya; and in (the case of) a Shudra (who) lives virtuously, one sixteenth part must be admitted (as the proper penance).

But if one of the highest of the twice-born (a Brahmin) slay a Kshatriya involuntarily he may, in order to cleanse himself give a thousand cows and a bull.

Or let him for three years (with senses) subdued and locks braided, follow the observances of one who has slain a Brahmin, living in a place rather far from the town, his dwelling place the foot of a tree.

1 Chapter XII, Sutras 8-13.

2 Chapter XX, Verses 7-11.

3 Chapter VIII, Verses 267-268

The highest of a twice-born (the Brahmin) should practise just this expiation for a year on having slain a Vaishya who lives virtuously and give one hundred and one (heads) of cattle.

The slayer of a Shudra should practise exactly all these observances for six months; or he may give to a priest ten white cows and a bull.^{1"}

(E) According to the *Vishnu Smriti*:

"With whatever limb an inferior insults or hurts his superior in caste, of that limb the king shall cause him to be deprived.

If he places himself on the same seat with his superior, he shall be banished with a mark on his buttocks.

If he spits on him he shall lose both lips.

If he breaks wind against him, he shall lose his hind parts.

If he uses abusive language, his tongue.

If a low-born man through pride give instruction (to a member of the highest caste) concerning his duty, let the king order hot oil to be dropped into his mouth.

If a Shudra man mentions the name or caste of a superior revilingly, an iron pin ten inches long shall be thrust into his mouth (red hot)."²

(v)

(A) According to the *Brihaspati Smriti* :

"A Shudra teaching the precepts of religion or uttering the words of the Veda, or insulting a Brahmin shall be punished by cutting out his tongue."³

(B) According to the *Gautama Dharma Sutra* :

"Now if he listens intentionally to (a recitation of) the Veda, his ears shall be filled with (molten) tin or lac.

If he recites (Vedic texts), his tongue shall be cut out. If he remembers them, his body shall be split in twain."⁴

(C) According to the *Manu Smriti*:

One who teaches for hire, also one who learns by paying hire (a Shudra) teacher and one who learns from him are unfit for being invited at the performance in honour of the Devas and Pitris.⁵

1 Chapter XI, Verses 127-131

2 Chapter V, Sutras 19-25

3 Chapter XII, Verse 12.

4 Chapter XX, Sutras 4-6.

5 Chapter III, Verse 156.

One may not give advice to a Shudra, nor (give him) the remains (of food) or of butter that has been offered.

And one may not teach him the law or enjoin upon him religious observances.

For he who tells him the law and he who enjoins upon him (religious) observances, he indeed together with that (Shudra) sinks into the darkness of the hell called Asamvrita.¹

One should never recite (the Vedas) indistinctly or in the presence of a Shudra; nor having recited the Veda at the end of the night, (though) fatigued may one sleep again.”²

(vi)

This is what the *Manu Smriti* says :

“A Brahmin may take possession of the goods of a Shudra with perfect peace of mind, for, since nothing at all belongs to this Shudra as his own, he is one whose property may be taken away by his master.”³

Indeed, an accumulation of wealth should not be made by a Shudra even if he is able to do so, for the sight of mere possession of wealth by a Shudra injures the Brahmin.”⁴

(vii)

Here is the advice of the *Manu Smriti* to the king :

“He who can claim to be a Brahmin merely on account of his birth, or he who only calls himself a Brahmin, may be, if desired, the declarer of law for the king, but a Shudra never.

If a king looks on while a Shudra gives a judicial decision, his realm sinks into misfortune, like a cow in a quagmire.

A realm which consists chiefly of Shudras and is overrun by unbelievers and destitute of twice-born men is soon totally destroyed, oppressed by famine and disease.”⁵

(viii)

(A) The *Apastamba Dharma Sutra* says:

“And those who perform austerities, being intent on fulfilling the sacred laws. And a Shudra who lives by washing the feet (of the Brahmin).

1 Chapter IV, Verses 78-81.

2 Chapter IV, Verse 99.

3 Chapter VIII, Verse 417.

4 Chapter X, Verse 129.

5 Chapter VIII, Verses 20-22.

Also blind, dumb, deaf and diseased persons (as long as their infirmities last) are exempt from taxes.¹

To serve the other three castes is ordained for the Shudra.

The higher the caste which he serves the greater is the merit.”²

(B) The *Manu Smriti* has the following:

“Now, for the sake of preserving all this creation, the most glorious (being) ordained separate duties for those who sprang from (his) mouth, arm, thigh and feet.

For Brahmins he ordered teaching, study, sacrifices and sacrificing (as priests) for others, also giving and receiving gifts.

Defence of the people, giving (alms), sacrifice, also study, and absence of attachment to objects of sense, in short for a Kshatriya.

Tending of cattle, giving (alms), sacrifice, study, trade, usury, and also agriculture for a Vaishya.

One duty the Lord assigned to a Shudra—service to those (before-mentioned) classes without grudging.”³

(ix)

(A) The *Apastamba Dharma Sutra* says :

“A man of one of the first three castes (who commits adultery) with a woman of the Shudra caste shall be banished.

A Shudra (who commits adultery) with a woman of one of the first three castes shall suffer capital punishment.”⁴

(B) The *Gautama Dharma Sutra* says :

If (the Shudra) has criminal intercourse with an Aryan woman, his organ shall be cut off and all his property be confiscated.

If (the woman had) a protector (i.e., she was under the guardian-ship of some person) he (the Shudra) shall be executed after having undergone the punishments prescribed above.⁵

(C) The *Manu Smriti* says :

If a man (of the Shudra caste) makes love to a girl of the highest caste he deserves corporal punishment.⁶

A Shudra cohabiting with a woman of twice-born castes, whether she be guarded or not guarded, is (to be) deprived of his member and of all his property if she be not guarded and of everything if she is guarded.⁷

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| 1. Prasna II, Patala 10, Khanda 26, Sutras 14-16. | 5 Chapter XII, Sutras 2-3. |
| 2. Prasna I, Patala I, Khanda I, Sutras 7-8. | 6 Chapter VIII, Verse 366. |
| 3. Chapter I, Verses 87-91. | 7 Chapter VIII, Verse 374. |
| 4. Prasna II, Patala 10, Khanda 27, Sutras 8-9. | |

For twice-born men, at first, a woman of the same caste is approved for marrying; but of those who act from lust, those of lower caste may in order (be wives).

A Shudra woman alone (is) a wife for a Shudra; both she and a woman of his own caste (are) legally (wives) of a Vaishya; they two and also a woman of his own caste (are wives) of a Kshatriya, both they and a woman of his own caste (are wives) of a Brahmin.

A Shudra wife is not indicated in any history for a Brahmin and Kshatriya, even though they be in distress.

Twice-born men marrying a (Shudra) woman out of infatuation will surely bring quickly (their) families and descendants to the condition of Shudras.¹

A Brahmin having taken a Shudra woman to his bed goes the lower course; having begotten on her a son, he is surely deprived of his Brahminhood.

Now of (a man) whose offerings towards gods, manes, and guests depend on her, the manes and gods eat not that offering nor does he go to heaven.

An expiation is not prescribed for him who has drunk the moisture on a Shudra woman's lips, who has been reached by her breath, and who has also begotten a son on her.²

(x)

(A) The *Vasishtha Dharma Sutra* says :

“One may know that bearing grudges, envy, speaking untruths, speaking evil of Brahmins, backbiting and cruelty are the characteristics of a Shudra.”³

(B) The *Vishnu Smriti* prescribes that :

(The name to be chosen should be) auspicious in the case of a Brahmin.

Indicating power in the case of a Kshatriya.

Indicating wealth in the case of a Vaishya.

And indicating contempt in the case of a Shudra.⁴

(C) The *Gautama Dharma Sutra* says :

“The Shudra belongs to the fourth caste, which has one birth (only).

1. Chapter III, Verses 12-15.

2. *Ibid*, Verses 17-19.

3. Chapter VI, Verse 24.

4. Chapter XXVII, Sutras 6-9.

And serves the higher (castes).

From them he shall seek to obtain his livelihood.

He shall use their cast-off shoes.

And eat the remnants of their food.

A Shudra who intentionally reviles twice-born men by Criminal abuse, or criminally assaults them with blows, shall be deprived of the limb with which he offends.

If he assumes a position equal to that of twice-born men in sitting, in lying down, in conversation or on the road, he shall undergo (corporal punishment)”¹

(D) The Manu Smriti follows suit and says :

“But if a Brahmin through avarice, and because he possesses the power, compel twice-born men, who have received the initiation (into the caste order), to do the work of a slave when they do not wish it, he shall be fined six hundred panas by the king.

But a Shudra, whether bought or not bought (by the Brahmin) may be compelled to practise servitude, for that Shudra was created by the self-existent merely for the service of the Brahmin.

Even if freed by his master, the Shudra is not released from servitude; for this (servitude) is innate in him; who then can take it from him.”²

Just in proportion as one pursues without complaining the mode of life (practised) by the good, so free from blame, he gains both this and the otherworld.”³

Now the supreme duty of a Shudra and that which ensures his bliss is merely obedience toward celebrated priests who understand the Veda and live as householders.

If he be pure, obedient to the higher (castes), mild in speech, without conceit, and always submissive to the Brahmin, he attains (in the next transmigration) a high birth.”⁴

Now a Shudra desiring some means of subsistence may serve a Kshatriya, so (is the rule); or the Shudra (if) anxious to support life, (may do so by) serving a wealthy Vaishya.

But he should serve the Brahmins for the sake of heaven, or for the sake of both (heaven and livelihood); for by him (for whom) the word Brahmin (is always) uttered is thus attained the state of completing all he ought to do.

1. Chapter X. Sutras 50, 56-59 and Chapter XII, Sutras 1,7.

2. Chapter VIII, Verses 412-414.

3. Chapter X, Verse 128.

4. Chapter IX, Verses 334-335.

Merely to serve the Brahmins is declared to be the most excellent occupation of a Shudra; for if he does anything other than this it profits him nothing.

His means of life should be arranged by those Brahmins out of their own household (goods) in accordance with what is fitting after examining his ability, cleverness, and (the amount) the dependents embrace.

The leaving of food should be given (to him) and the old clothes, so too the blighted part of the grain, so too the old furniture.¹

Let a Brahmin's name be auspicious, a Kshatriya's full of power, let a Vaishya's mean wealth, a Shudra's however be contemptible.

Let a Brahmin's (distinctive title) imply prosperity, a Kshatriya's safeguard, a Vaishya's wealth, a Shudra's service.²

If (a man) of one birth assault one of the twice-born castes with virulent words, he ought to have his tongue cut, for he is of the lowest origin.

If he makes mention in an insulting manner of their name and caste, a red-hot iron rod, ten fingers long, should be thrust into his mouth.

If this man through insolence gives instruction to the priests in regard to their duty, the king should cause boiling hot oil to be poured into his mouth and ear.³

If a man of the lowest birth should with any member injure one of the highest station, even that member of this man shall be cut (off); this is an ordinance of Manu.

If he lift up his hand or his staff (against him), he ought to have his hand cut off; and if he smites him with his feet in anger, he ought to have his feet cut off.

If a low-born man endeavours to sit down by the side of a high-born man, he should be banished after being branded on the hip, or (the king) may cause his backside to be cut off.

If through insolence he spit upon him, the king should cause his two lips to be cut off; and if he makes water upon him, his penis, and if he breaks wind upon him, his anus.

If he seize him by the locks, let the king without hesitation cause both his hands to be cut off, (also if he seize him) by the feet, the beard, the neck or the testicles.

1. Chapter X, Verses 121-125.

2. Chapter II, Verses 31-32.

3. Chapter VIII, Verses 270-72.

A man who tears (another's) skin and one who causes blood to be seen ought to be fined five hundred (Panas), if he tears the flesh (he should be fined) six niskas, but if he breaks a bone he should be banished.¹

(D) The *Narada Smriti* says:

Men of the Shudra caste, who prefer a false accusation against a member of a twice-born Aryan caste, shall have their tongue split by the officers of the king, and he shall cause them to be put on stakes.

A once-born man (or Shudra) who insults members of a twice-born caste with gross invectives, shall have his tongue cut off; for he is of low origin.

If he refers to their name or caste in terms indicating contempt, an iron-rod, ten angulas long, shall be thrust red-hot into his mouth.

If he is insolent enough to give lessons regarding their duty to Brahmins, the king shall order hot oil to be poured into his mouth and ears.

With whatever limb a man of low caste offends against a Brahmin, that very limb of him shall be cut off, such shall be the atonement for his crime.

A low-born man, who tries to place himself on the same seat with his superior in caste, shall be branded on his hip and banished, or (the king) shall cause his backside to be gashed.

If through arrogance he spits on a superior, the king shall cause both his lips to be cut off; if he makes water on him, the penis; if he breaks wind against him, the buttocks."²

III

Such were the laws made against the Shudras by the Brahmanic lawgivers. The gist of them may be summarized under the following heads :

- (1) That the Shudra was to take the last place in the social order.
- (2) That the Shudra was impure and therefore no sacred act should be done within his sight and within his hearing.
- (3) That the Shudra is not to be respected in the same way as the other classes.
- (4) That the life of a Shudra is of no value and anybody may kill him without having to pay compensation and if at all of small value

1. Chapter VIII, Verses 279-284.

2. Chapter XV, Verses 22-27.

as compared with that of the Brahmana, Kshatriya and Vaishya.

(5) That the Shudra must not acquire knowledge and it is a sin and a crime to give him education.

(6) That a Shudra must not acquire property. A Brahmin can take his property at his pleasure.

(7) That a Shudra cannot hold office under the State.

(8) That the duty and salvation of the Shudra lies in his serving the higher classes.

(9) That the higher Classes must not inter-marry with the Shudra. They can however keep a Shudra woman as a concubine. But if the Shudra touches a woman of the higher classes he will be liable to dire punishment.

(10) That the Shudra is born in servility and must be kept in servility for ever.

Anyone who reads this summary will be struck by two considerations. He will be struck by the consideration that Shudra alone has been selected by the Brahmanic law-givers as a victim for their law-making authority. The wonder must be all the greater when it is recalled that in the ancient Brahmanic literature the oppressed class in the ancient Indo-Aryan society was the Vaishya and not the Shudra. In this connection a reference may be made to the *Aitareya Brahmana*. The *Aitareya Brahmana* in telling the story of King Vishvantara and the Shyaparna Brahmanas refers to the sacrificial drink to which the different classes are entitled. In the course of the story, it speaks of the Vaishya in the following terms :

“Next, if (the priest brings) curds, that is the Vaishya’s draught with it thou shalt satisfy the Vaishyas. One like a Vaishya shall be born in thy line, one who is tributary to another, who is to be used (lit. eaten) by another, and who maybe oppressed at will.¹

The question is: why was the Vaishya let off and why the fury directed towards the Shudras ?

He will also be struck by the close connection of the disabilities of the Shudra with the privileges of the Brahmin. The Shudra is below the Traivarnikas and is contrasted with the Traivarnikas. That being so, one would expect all the Traivarnikas to have the same rights against the Shudras. But what are the facts? The facts are that the Kshatriyas and Vaishyas have no rights worth speaking of against the Shudras. The only Traivarnika who has special rights and privileges

1 Muir, Vol. 1, p. 436-40.

42 Chapter XII, Sutras 2-3.

is the Brahmin. For instance, if the Shudra is guilty of an offence against the Brahmin, the Brahmin has the privilege of demanding a higher punishment than what a Kshatriya or a Vaishya could. A Brahmin could take the property of the Shudra without being guilty of an offence if he needed it for the purpose of performing a sacrifice. A Shudra should not accumulate property because he thereby hurts the Brahmin. A Brahmin should not live in a country where the king is a Shudra. Why is this so? Had the Brahmin any cause to regard the Shudra as his special enemy?

There is one other consideration more important than these. It is, what does the average Brahmin think of these disabilities of the Shudras? That they are extraordinary in their conception and shameful in their nature will be admitted by all. Will the Brahmin admit it? It would not be unnatural if this catalogue of disabilities may not make any impression upon him. In the first place, by long habit and usage his moral sense has become so dulled that he has ceased to bother about the how and why of these disabilities of the Shudras. In the second place, those of them who are conscious of them feel that similar disabilities have been imposed on particular classes in other countries and there is therefore nothing extraordinary nor shameful in the disabilities of the Shudras. It is the second attitude that needs to be exposed.

This attitude is a very facile one and is cherished because it helps to save reputation and slave conscience. It is, however, no use leaving things as they are. It is absolutely essential to show that these disabilities have no parallel anywhere in the world. It is impossible to compare the Brahmanic Law with every other legal system on the point of rights and disabilities. A comparison of the Brahmanic Law with the Roman Law ought to suffice.

IV

It will be well to begin this comparison by noting the classes which under the Roman Law had rights and those which suffered from disabilities. The Roman jurists divided men into five categories: (1) Patricians and Plebians; (2) Freemen and Slaves; (3) Citizens and Foreigners; (4) Persons who were *sui juris* and persons who were *alieni juris* and (5) Christians and Pagans.

Under the Roman Law; persons who were privileged were: (1) Patricians; (2) Freemen; (3) Citizens; (4) *Sui juris* and

(5) Christians. As compared to these, persons who suffered disabilities under the Roman Law were: (1) the Plebians; (2) Slaves; (3) Foreigners; (4) Persons who were *alieni juris* and (5) Pagans.

A Freeman, who was a citizen under the Roman Law, possessed civil rights as well as political rights. The civil rights of a citizen comprised rights of *connubium* and *commercium*. In virtue of the *connubium*, the citizen could contract a valid marriage according to the *jus civile*, and acquire the rights resulting from it, and particularly the paternal power and the civil relationship called agnation, which was absolutely necessary to enable him in law to succeed to the property of persons who died intestate. In virtue of the *commercium* he could acquire and dispose of property of all kinds, according to the forms and with the peculiar privileges of the Roman Law. The political rights of the Roman citizen included *jus suffragii* and *jus honorum*, the right to vote in public elections and the right to hold office.

The slave differed from the Freeman in as much as he was owned by the master and as such had no capacity to acquire rights.

Foreigners, who were called *Peregrine*, were not citizens and had none of the political or civil rights which went with citizenship. A Foreigner could obtain no protection unless he was under the protection of a citizen.

The *alieni juris* differed from *sui juris* in as much as the former were subject to the authority of another person, while the latter were free from it. This authority was variously called (1) Potestas, (2) Manus and (3) Mancipium, though they had the same effect. Potestas under the Roman Law fell into two classes. Persons subject to Potestas were (1) slaves, (2) children, (3) wife in Manus,

(4) debtor assigned to the creditor by the Court and (5) a hired gladiator. *Potestas* gave to one in whom it was vested rights to exclusive possession of those to whom it extended and to vindicate any wrong done to them by anyone else.

The correlative disabilities which persons *alieni juris* suffered as a result of being subject to *Potestas* were: (1) they were not free, (2) they could not acquire property and (3) they could not directly vindicate any wrong or injury done to them.

The disabilities of the Pagans began with the advent of Christianity. Originally, when all the Romans followed the same Pagan worship, religion could occasion no difference in the enjoyment of civil rights. Under the Christian Emperors, heretics and

apostates as well as Pagans and Jews, were subjected to vexatious restrictions, particularly as regards their capacity to succeed to property and to act as witnesses. Only orthodox Christians who recognised the decisions of the four oecumenical councils had the full enjoyment of civil rights.

This survey of rights and disabilities of the Roman Law may well give comfort to Hindus that the Brahmanic Law was not the only law which was guilty of putting certain classes under disabilities, although the disabilities imposed by the Roman Law have nothing of the cruelty which characterizes the disabilities imposed by the Brahmanic Law. But when one compares the principles of the Roman Law with those of the Brahmanic Law underlying these disabilities, the baseness of the Brahmanic Law becomes apparent.

Let us first ask: What was the basis of rights and disabilities under the Roman Law. Even a superficial student of Roman Law knows that they were based upon (1) *Caput* and (2) *Existimatio*.

Caput meant the civil status of a person. Civil status among the Romans had reference chiefly to three things; liberty, citizenship and family. The status *libertatis* consisted of being a freeman and not a slave. If a freeman was also a Roman citizen, he enjoyed the *status civitatis*. Upon this quality depended not only the enjoyment of political rights, but the capacity of participating in the *jus civile*. Finally, the *status familie* consisted in a citizen belonging to a particular family, and being capable of enjoying certain rights in which the members of that family, in their quality of agnates, could alone take part.

If an existing status came to be lost or changed, the person suffered what was called a *capitis diminutio*, which extinguished either entirely or to some extent his former legal capacity. There were three changes of state or condition attended with different consequences, called *maxima*, *media*, and *minima*. The greatest involves the loss of liberty, citizenship, and family; and this happened when a Roman citizen was taken prisoner in war, or condemned to slavery for his crimes. But a citizen who was captured by the enemy, on returning from captivity, was restored to all his civil rights *jure postliminii*.

The next change of status, consisted of the loss of citizenship and family rights, without any forfeiture of personal liberty; and this occurred when a citizen became a member of another state. He was then forbidden the use of fire and water, so as to be forced to quit the Roman territory, or was sentenced to deportation under the empire.

Finally, when a person ceased to belong to a particular family, without losing his liberty or citizenship, he was said to suffer the least change of state, as for instance, where one *sui juris* came under the power of another by arrogation, or a son who had been under the *patria potestas* was legally emancipated by his father.

Citizenship was acquired first by birth. In a lawful marriage the child followed the condition of the father, and became a citizen, if the father was so at the time of conception. If the child was not the issue of *justoe nuptioe*, it followed the condition of the mother at the time of its birth. Secondly, by manumission, according to the formalities prescribed by law, the slave of a Roman citizen became a citizen. This rule was modified by the laws. *Elia Sentia* and *Junia Norbana*, according to which, in certain cases, the freedman acquired only the status of a foreigner, *peregrinus dedititius* or of a Latin, *Latinus Junianus*. Justinian restored the ancient principle, according to which every slave, regularly enfranchised, became in full right a Roman citizen. Thirdly, the right of citizenship was often granted as a favour, either to a whole community or to an individual, by the people or the senate during the republic, and by the reigning prince during the empire; and this was equivalent to what the moderns call naturalisation.

Citizenship was lost—Firstly, by the loss of liberty—as, for instance, when a Roman became a prisoner of war; secondly, by renouncing the character of Roman citizen, which took place when anyone was admitted a citizen of another state; thirdly, by a sentence of deportation or exile, as a punishment for crime.

The civil status of a person under the Roman Law may or may not be *civis optimo jure*. *Civis optimo jure* included not only capacity for civil rights but also capacity for political rights such as *jus suffragii et honorum*, i.e., the right to vote and the capacity to hold a public office. Capacity for political rights depended upon *existimatio*. *Existimatio* means reputation in the eye of the law. A Roman citizen may have *caput* as well as *existimatio*. On the other hand, a Roman may have *caput* but may not have *existimatio*. Whoever had *caput* as well as *existimatio* had civil rights as well as political rights. Whoever had *caput* but had no *existimatio* could claim civil rights only. He could not claim political rights.

A person's *existimatio* was lost in two ways. It was lost by loss of freedom or by conviction for an offence. If a person lost his freedom his *existimatio* was completely extinguished. Loss of *existimatio* by

conviction for offence varied according to the gravity of the offence.¹ If the offence was serious the diminution of his *existimatio* was called *infamia*. If the offence was less grave it was called *turpitude*. *Infamia* resulted in the extinguishment of *existimatio*. Under the Roman Law a defendant, in addition to ordinary damages, was subjected to *infamia*. Condemnation for theft, robbery, *injuria* or fraud, entailed infamy. So a partner, a *mandatarius*, a *depositarius*, *tutor*, a mortgagee (in *contractus fiducioe*) if condemned for wilful breach of duty, was held to be infamous.

The consequence of *infamia* was exclusion from political rights,² not merely from office (honours), but even from the right to vote in elections (*suffragium*).

From this brief survey of the basis of rights and disabilities in Roman Law, it will be clear that the basis was the same for all. They did not differ from community to community. Rights and disabilities according to Roman Law were regulated by general considerations, such as *caput* and *existimatio*. Whoever had *caput* and *existimatio* had rights. Whoever lost his *caput* and his *existimatio* suffered disabilities. What is the position under the Brahmanic Law? There again, it is quite clear that rights and disabilities were not based on general uniform considerations. They were based on communal considerations. All rights for the first three *Varnas* and all disabilities for the Shudras was the principle on which the Brahmanic Law was based.

The protagonists of Brahmanic Laws may urge that this comparison is too favourable to Roman Law and that the statement that Roman Law did not distribute rights and liabilities on communal basis is not true. This may be conceded. For so far as the relation between the Patricians and Plebians was concerned the distribution of rights and liabilities was communal. But in this connection the following facts must be noted.

1. Such as robbery, theft, perjury, fraud, appearing on the public stage as an actor or gladiator, ignominious expulsion from the army, gaining a living by aiding in prostitution and other disreputable occupations and other variety of acts involving gross moral turpitude.

2. There were other consequences of *infamia* such as exclusion from the office of attorney, disability to act on behalf of another in a law suit or giving evidence. *Infamia* was inflicted in two ways, either by the censors or by the judgement of a Court of Law. It was in the power of the censors, in superintending public morality, to deprive senators of their dignity, to remove knights from the equestrian order and even to strip a citizen of all his political rights by classing him among the *aerarii*. The censors also put a *nota censoria* opposite to a man's name in the roll of citizens; and this might be done upon their own responsibility; without special inquiry, though they generally acted in accordance with public opinion. The *nota censoria* produced no effect except during the magistracy of the censor who imposed it. In this respect it differed essentially from infamy, which was perpetual, unless the stigma was removed by the prerogative of the people or the Emperor.

In the first place, it must be noted that Plebians were not slaves. They were freemen in as much as they enjoyed *jus commercii* or the right to acquire, hold and transfer property. Their disabilities consisted in the denial of political and social rights. In the second place, it must be noted that their disabilities were not permanent. There were two social disabilities from which they suffered. One arose from the interdict on intermarriage between them and the Patricians imposed by the Twelve Tables.¹ This disability was removed in B.C. 445 by the passing of the Canulian Law which legalized intermarriage between Patricians and Plebians. The other disability was their ineligibility to hold the office of Pontiffs and Augurs in the Public Temples of Rome. This disability was removed by the Ogulnian Law passed in B.C. 300.

As to the political disabilities of the Plebians they had secured the right to vote in popular assemblies (*jus suffragii*) under the Constitution of Servius Tullius the Sixth King of Rome. The political disabilities which had remained unredressed were those which related to the holding of office. This too was removed in course of time after the Republic was established in B.C. 509. The first step taken in this direction was the appointment of Plebian Tribunes in B.C. 494; the Questorship was opened to them, formally in B.C. 421; actually in B.C. 409; the Consulship in B.C. 367; the curule-aedileship in B.C. 366; the dictatorship in B.C. 356; the Censorship in B.C. 351; and the Praetorship in B.C. 336. The Hortensian Law enacted in B.C. 287 marked a complete triumph for the Plebians. By that law the resolutions of the Assembly of the tribes were to be directly and without modification, control or delay, binding upon the whole of the Roman people.

This marks a complete political fusion of Patricians and Plebians on terms of equality.

Not only were the Plebians placed on the same footing as to political capacity and social status with the Patricians but the road to nobility was also thrown open to them. In Roman society, birth and fortune were the two great sources of rank and personal distinction. But in addition to this, the office of Curule Magistracy was also a source of ennoblement to the holder thereof. Every citizen, whether Patrician or Plebian, who won his way to a Curule Magistracy, from that Edile upwards, acquired personal distinction, which was transmitted to his descendants, who formed a class called *Nobiles*, or

1. It was older than the Twelve Tables. The Twelve Tables only recognized it.

men known, to distinguish them from the *ignobiles*, or people who were not known. As the office was thrown open to the Plebians, many Plebians¹ had become nobles and had even surpassed the Patricians in point of nobility.

It may be that the Roman Law did recognise communal distinction in distributing rights and disabilities. The point is that the disabilities of the Plebians were not regarded as permanent. Although they existed they were in course of time removed. That being so, the protagonists of Brahmanic Law cannot merely take solace in having found a parallel in the Roman Law but have to answer why the Brahmanic Law did not abolish the distinction between the Traivarnikas and the Shudras as the Roman Law did by equating the Plebians with the Patricians? One can therefore contend that the Roman Law of rights and disabilities was not communal while the Brahmanic Law was.

This is not the only difference between the Roman Law and the Brahmanic Law. There are two others. One is equality before law in criminal matters. The Roman Law may not have recognized equality in matters of civil and political rights. But in matters of criminal law it made no distinction between one citizen and another, not even between Patrician and Plebian. The same offence the same punishment, no matter who the complainant and who the accused was. Once an offence was proved, the punishment was the same. What do the *Dharma Sutras* and the *Smritis* do? They follow an entirely different principle. For the same offence the punishment varies according to the community of the accused and the community of the complainant. If the complainant is a Shudra and the accused belonged to any one of the three classes the punishment is less than what it would be if the relations were reversed. On the other hand, if the complainant was Traivarnika and the accused a Shudra, the punishment is far heavier than in the first case. This is another barbarity which distinguishes the Brahmanic Law from the Roman Law.

The next feature of the Roman Law which distinguishes it from the Brahmanic Law is most noteworthy. It relates to the extinction of disabilities. Two points need be borne in mind. First is that the disabilities under the Roman Law were only contingent. So long as certain conditions lasted, they gave rise to certain disabilities. The

1. A Plebian who first attained a Curule office and became the founder of a noble family was called by the Romans a *novus homo* or new man.

moment the conditions changed, the disabilities vanished and a step in the direction of equality before law was taken. The second point is that the Roman Law never attempted to fix the conditions for ever and thereby perpetuate the disabilities. On the other hand, it was always ready to remove the conditions to which these disabilities were attached as is evident in the case of the Plebians, the Slaves, the Foreigners and the Pagans.

If these two points about the disabilities under the Roman Law are borne in mind, one can at once see what mischief the *Dharma Sutras* and the *Smritis* have done in imposing the disabilities upon the Shudras. The imposition of disabilities would not have been so atrocious if the disabilities were dependent upon conditions and if the disabled had the freedom to outgrow those conditions. But what the Brahmanic Law does is not merely to impose disabilities but it tries to fix the conditions by making an act which amounts to a breach of those conditions to be a crime involving dire punishment. Thus, the Brahmanic Law not only seeks to impose disabilities but it endeavours to make them permanent. One illustration will suffice. A Shudra is not entitled to perform Vedic sacrifices as he is not able to repeat the Vedic *Mantras*. Nobody would quarrel with such a disability. But the *Dharma Sutras* do not stop here. They go further and say that it will be a crime for a Shudra to study the Vedas or hear it being pronounced and if he does commit such a crime his tongue should be cut or molten lead should be poured into his ear. Can anything be more barbarous than preventing a man to grow out of his disability? What is the explanation of these disabilities? Why did the Brahmanic Law-givers take such a cruel attitude towards the Shudras? The Brahmanic Law books merely state the disabilities. They say that the Shudras have no right to *Upanayana*. They say that the Shudras shall hold no office. They say that the Shudras shall not have property. But they do not say why. The whole thing is arbitrary. The disabilities of the Shudra have no relation to his personal conduct. It is not the result of infamy. The Shudra is punished just because he was a Shudra. This is a mystery which requires to be solved. As the Brahmanic Law books do not help us to solve it, it is necessary to look for explanation elsewhere.