

English barrister; and his work proves, if proof were necessary, the advantage of bringing a legal education to bear on the analysis and illustration of the intricate law of India, and the policy of the enactment of 1846 (Act I.),¹ which, opening a new Forum to the honourable exertion of the Indian bar, must eventually be of mutual advantage both to that bar and to the Company's Courts.

A very useful compilation by Mr. Marshman, entitled the *Daróghah's Manual*,² was published at Serampore in 1850. This work includes every Rule and Order which it is important for the Police-officers to know, in the Regulations and Acts, in the Circular Orders of the Superintendent of Police, and of the Nizamut Adawlut, and in the Constructions and Reports, scientifically arranged. To render the work more complete, all the rules which determine the Police responsibilities of the Zamíndárs, and of all persons connected with the landed interest, both in the Lower and in the North-Western Provinces, are fully given. It must be observed, however, that this work does not comprehend the duties of Magistrates and the Superintendent of Police, except in connexion with the Officers of Police and the Zamíndárs.

In the year 1852 Mr. Baynes published at Madras a good work on the Madras Civil Law as contained in the existing Regulations and Acts: it is accompanied by valuable Notes and Indices.

A Digest of the Civil Regulations in force in the lower Provinces, Bengal Presidency, alphabetically arranged entirely by the aid of that portion of Mr. Clarke's edition of the Bengal Regulations which refers to the Civil Courts, appeared at Calcutta in 1856. It is a useful work.

¹ By this Act every Barrister of any of Her Majesty's Courts in India is entitled, as such, to plead in any of the Sudder Courts of the East-India Company, subject, however, to all the rules in force in the said Sudder Courts applicable to pleaders.

² The *Darogah's Manual*, comprising also the duties of Landholders in connexion with the Police. By J. C. Marshman. 8vo. Serampore, 1850.

In the same year a collection of the rules of practice of the Sudder Dewanny Adawlut at Calcutta from 1793 to the end of 1855 was compiled by Mr. J. Curran, and published "by authority" at Calcutta.

In the year 1856 a Treatise on the Civil procedure of the Courts of the East-India Company in the Presidency of Fort St. George in suits and appeals, was written by Mr. Samuel Dawes, a District Moonsiff of that Presidency, and published at Madras. This treatise is expressly formed on Mr. Macpherson's procedure of the Civil Courts in Bengal, already mentioned.

The only remaining work that I have been able to procure on the present branch of the Law of India is an edition of the Acts of Government relating to the Madras Presidency from 1848 to 1855, which was edited by Mr. W. P. Williams, and published at Madras in 1856.

2. NATIVE LAWS.

The earliest trace which we find of the reservation to the natives resident in our territories in India of their own laws and customs is in the Charter of George II., granted in 1753, in which there was introduced an express exception from the jurisdiction of the Mayors' Courts of all suits and actions between the Indian natives only, such suits and actions being directed to be determined among themselves, unless both parties should submit the same to the determination of the Mayors' Courts. This, however, was merely an *exception* to the jurisdiction; nor indeed does it appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the Mayors' Court, or that any peculiar Laws were administered to them in that Court.¹

In Warren Hastings' celebrated plan for the administration of justice, proposed and adopted in 1772, when the East-India

¹ See Morley's Digest, Vol. II. p. 345.

Company first took upon themselves the entire management of their territories in India, the 23d Rule especially reserved their own laws to the natives, and provided that "Moulavies or Brahmins" should respectively attend the Courts, to expound the law, and assist in passing the decree.

Subsequently, when the Governor-General and Council were invested by Parliament with the power of making Regulations, the provisions and exact words of the 23d Rule above mentioned were introduced into the first Regulation enacted by the Bengal Government for the administration of justice. This Regulation was passed on the 17th of April 1780.

By section 27 of this Regulation it was enacted, "That in all suits regarding inheritance, marriage, and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to." This section was re-enacted in the following year, in the revised Code, with the addition of the word "succession."

In the Statute Law relating to India no such express privilege was granted until the year 1781; the 13th Geo. III. c. 63, passed in 1773, which established the Supreme Court at Fort William, and the Charter of Justice of that Court, containing no clause specially denoting the law to be administered to the natives.

In the former year, however, the declaratory Act of the 21st Geo. III. c. 70, which was passed for explaining and defining the powers and jurisdiction of the Supreme Court at Fort William in Bengal, expressly enacted, by section 17, that, in disputes between the native inhabitants of Calcutta, "their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Gentoos by the laws and usages of Gentoos; and where only one of the parties shall

¹ Beng. Jud. Reg. VI. 1781, s. 37.

be a Mahomedan or Gentô, by the laws and usages of the defendant." Section 18 of the same Statute emphatically preserved to the natives their laws and customs, enacting that, "in order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentô or Mahomedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste, respecting the members of the said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England." The next following section provided that the said Court might frame such process, and make such Rules and Orders for the execution thereof in suits Civil or Criminal against the natives of Bengal, Behar, and Orissa, as might accommodate the same to the religion and manners of such natives, so far as the same might consist with the due execution of the laws and the attainment of justice.

This reservation of the native laws to Hindûs and Muhamadans was extended to Madras and Bombay by sections 12 and 13 of the 37th Geo. III. c. 142, passed in 1797, under which Statute the Recorders' Courts at those Presidencies were established. Section 12 of this Statute re-enacted the 18th section of the 21st Geo. III. c. 70; and section 13 repeated *verbatim* the 17th section of the same Statute already quoted, with the addition, however, of "or by such laws and usages as the same would have been determined by if the suit had been brought and the action commenced in a native Court; and where one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the defendant: and in all suits so to be determined by the laws and usages of the natives, the said Courts shall make such rules and orders for the conduct of the same, and frame such process for the execution of their judgments, sentences, or decrees, as shall be most consonant to the religions and manners of the said natives, and to the said laws

and usages respectively, and the easy attainment of the ends of justice ; and such means shall be adopted for compelling the appearance of witnesses, and taking their examination, as shall be consistent with the said laws and usages, so that the suits shall be conducted with as much ease, and at as little expense, as is consistent with the attainment of substantial justice."

By the 39th and 40th Geo. III. c. 79, s. 5, and the 4th Geo. IV. c. 71, s. 9, all powers and authorities granted to the said Recorders' Courts at Madras and Bombay were transferred to the Supreme Courts at those Presidencies to be established respectively under the said Statutes. The 22d section of the Charter of Justice of the Supreme Court at Madras, and the 29th section of the Charter of Justice of the Supreme Court at Bombay, contain the 13th section of the 37th Geo. III. c. 142, nearly word for word, and without any material addition or alteration.

Such is the Statute Law relating to this subject, and applying to the Supreme Courts of Judicature, and those natives within their jurisdiction. Of the Regulations passed for the direction of the Courts of the Honourable East-India Company, the first, as taking the lead in the enactment of this wise and just measure, has been already noticed. In 1793, section 15 of Regulation IV. of the Bengal Code enacted, that "in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which the Judges are to form their decision." This section was extended to Benares and the Upper Provinces by section 3 of Regulation VIII. of 1795, and section 16 of Regulation III. of 1803 of the Bengal Code. The former of these last-mentioned Regulations by section 3, also enacted, in addition to the provisions of section 15 of Reg. IV. of 1793, that "in causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated

by the law of the religion of the latter; excepting where Europeans, or other persons, not being either Mahomedans or Hindoos, shall be defendants, in which case the law of the plaintiff is to be made the rule of decision in all complaints and actions of a civil nature."

In the year 1831 Moonsiffs generally throughout Bengal were directed to administer the Muhammadan laws with respect to Muhammadans, and the Hindú laws with regard to Hindús, in all cases of inheritance of, or succession to, landed property, and the law administered in such cases was to be the law of the defendant: where any doubts existed, they were enjoined to obtain an exposition of the law from the Law-officers of the Zillah Courts.¹

In the year 1832 a Regulation was passed for the Bengal Presidency, entitled, "A Regulation for modifying certain of the provisions of Regulation V. 1831, and for providing supplementary rules to that enactment." This Regulation² attracted but little notice at the time, partly by reason of its title, and partly because it was principally devoted to the enactment of rules for appeals, pleadings, and the practice of the Courts: a most important innovation upon the rights of the natives was, however, unobservedly introduced. The 8th section of this Regulation rescinded the portion of section 3 of Regulation VIII. of 1795 above quoted, and enacted that the rules contained in section 15 of Regulation IV. of 1793, and section 16 of Regulation III. of 1803, should be "the rule of guidance in all suits regarding succession, inheritance, marriage, and cast, and all religious usages and institutions that may arise between persons professing the Hindoo and Mahomedan persuasions respectively." The 9th section proceeded to declare "that the above rules are intended, and shall be held to apply to such persons only as shall be *bonâ fide* professors of those religions at the time of the application of the

¹ Beng. Reg. V. 1831, s. 6.

² Beng. Reg. VII. 1832.

Law to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion, or where one or more of the parties to such suit shall not be either of the Mahomedan or Hindoo persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

This innovation was confined to the Bengal Presidency, and did not excite much attention until a later period, being, as it were, smuggled into an enactment relating to the technicalities of practice, and being, moreover, very obscure in its wording.

When Courts of Judicature were first established by the East-India Company in the Madras Presidency, in the year 1802, Regulation III. of the new Code was formed on the Bengal Reg. IV. of 1793, nearly the same words being used with regard to the reservation of the Hindú and Muhammadan laws as those employed in the latter Regulation.

In the Bombay Presidency, in the year 1799, the Governor and Council also passed a Regulation to the like effect, but more explicit and extensive in its application. This Regulation, the fourth of the above year, by its fourteenth section, secured to Hindú and Muhammadan defendants the benefit of their own laws in civil suits respecting "the succession to, and inheritance of, landed and other property, mortgages, loans, bonds, securities, hire, wages, marriage, and cast, and every other claim to personal or real right and property, so

far as shall depend upon the point of law." It also provided that, in the case of Portuguese and Pársí inhabitants, the Judge was to be guided by a view to equity in his decisions, making due allowance for their respective customs, so far as he could ascertain the same. Regulation II. of 1800 re-enacted the same provisions.

In 1827, when all the Judicial Regulations previously passed by the Bombay Government were rescinded, it was enacted that "the law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity, and good conscience alone."¹ Hindú and Muhammadan law officers were appointed to the Courts, and enjoined to return answers, conformable to their respective laws, to such questions as should be put to them by the Courts.²

Early in the year 1850, an Act was passed by the Government of India, extending the principle of section 9 of Reg. VII. of 1832 of the Bengal Code throughout the territories subject to the Government of the East-India Company. By this Act it was declared, that "So much of any law or usage now in force within the territories subject to the Government of the East-India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of cast, shall cease to be enforced as law in the Courts of the East-India Company, and in the Courts established by Royal Charter within the said territories."³

¹ Bomb. Reg. IV. 1827, s. 26.

² Bomb. Reg. II. 1827, ss. 13. 29; Bomb. Reg. IV. 1827, s. 27.

³ Act XXI. 1850.

In the year 1856 an Act was passed which contained the following important rules. It was enacted that no marriage between Hindús should be invalid, or the issue illegitimate, on account of any previous marriage to another since deceased. The widow's rights in her former husband's property were to cease (except where there was an express permission to re-marry) on a second marriage, as though she had died. On the re-marriage of a Hindú widow, if no guardian had been appointed by the will or testamentary disposition of the deceased husband for his children, the highest Civil Court having original jurisdiction in the place where the deceased husband was domiciled at the time of his death, was given the power of appointing a guardian to have the care and custody of the children during their minority, in the place of the mother. This appointment by the Court, was, however, dependent upon the petition of the father or paternal grandfather, or the mother or paternal grandmother, or any male relative of the deceased husband. No childless Hindú widow was made capable of inheriting to her deceased husband's property by this Act, if she were incapable of inheriting by the previous law. With these exceptions, no widow was, by her re-marriage, to forfeit any property or right to which she would otherwise have been entitled, and every widow re-marrying was declared to have the same rights of inheritance as though her re-marriage had been her first marriage. Whatever ceremonies were necessary to constitute a valid marriage of a Hindú female who had not been previously married, before the passing of this Act, were to have the same effect on the marriage of a Hindú widow. Should the widow be a minor, and her marriage not have been consummated, she was declared to be incompetent to re-marry without the consent of her father, failing him of her paternal grandfather, failing him of her mother, failing all these of her elder brother, and failing also brothers, of her next male relative. All persons knowingly abetting marriages made contrary to these provisions, were rendered liable to imprisonment or fine, or both, and such

marriages might be declared void by a Court of Law. In any question, however, as to the validity of such marriages, the consent of relatives, as aforesaid, was to be presumed until the contrary was proved, and no such marriage could be declared void after consummation. In the case of a widow of full age, or whose marriage had been consummated, her own consent was held to be sufficient.¹

Thus far as regards the native Civil Laws. I now proceed to notice the Regulations respecting the reservation of the native Criminal Laws.

By Warren Hastings' plan in 1772, the Muhammadan Criminal Law was retained in the Criminal Courts subject to the interposition of Government, or of the subordinate English functionaries, where its provisions were manifestly unjust. In 1790, when the Governor-General accepted the Nizám of Bengal, the Criminal Courts then established were directed to pronounce sentence according to the Muhammadan law; and in cases of murder according to the doctrines of Yúsuf and Muhammad,² as has been already noticed. The Muhammadan law was further ordered to be continued in the like manner in the Criminal Courts established in 1793.³

In 1832 it was enacted in Bengal that all persons, not professing the Muhammadan faith, might claim to be exempt from trial under the provisions of the Muhammadan Criminal Code for offences cognizable under the general Regulations.⁴

At Madras, in the year 1802, provisions were made respecting the administration of the Muhammadan Criminal Law in the Courts of the East-India Company, similar to those enacted in Bengal by Regulation IX. of 1793.⁵

The Criminal law administered in the Company's Courts at Bombay previously to 1827, was ordered to be regulated by the law of the accused party: Christians and Pársís to be

¹ Act XV. 1856.

² Beng. Reg. XXVI. 1790, ss. 32, 33.

³ Beng. Reg. IX. 1793, ss. 47, 50, 74, 75.

⁴ Beng. Reg. VI. 1832, s. 5.

⁵ Mad. Reg. VII. 1802, ss. 15, 16; Mad. Reg. VIII. 1802, ss. 9, 10, 11.

judged on the principles of the English law, and Muhammadans and Hindús according to their own particular laws.¹ The Muhammadan law was to be regulated by the Fatwa of the law officers, which was directed to be given according to the doctrine of Yúsuf and Muhammad; respecting which, and the law of the Hindús, the Judges were enjoined to refer to the translation of the Hidáyah by Hamilton, and of the Hindú laws by Halhed and Sir William Jones; as likewise to a tract entitled "Observations," which then constituted part of the criminal Code for the province of Malabar and Salsette, &c.² In 1819 the Hindú Criminal Law was directed to be administered to Hindús in the special Court.³ The Native Criminal Laws were abolished in the Bombay Presidency in 1827, and a regular Code substituted in their place.

The Muhammadan Criminal Law, even when first reserved to the natives of the British territories in India, was subjected to many important restrictions in its application; and it has been so modified by the subsequent Regulations in the Presidencies of Bengal and Madras, as to present no vestiges of its sanguinary character, and but few of its original imperfections.⁴

The above are the Laws and Regulations now in force. It

¹ Bomb. Reg. V. 1799, s. 36; Bomb. Reg. III. 1800, s. 36; Bomb. Reg. VII. 1820, s. 17.

² Bomb. Reg. V. 1799, ss. 36. 39; Bomb. Reg. III. 1800, ss. 36. 39; Bomb. Reg. VII. 1820, ss. 17. 20.

³ Bomb. Reg. X. 1819.

⁴ The right existing in the Government to alter the Muhammadan law appears to have been virtually recognized by the 13th Geo. III. c. 63, s. 7, vesting in it authority for the ordering, managing, and governing, "in like manner (as the Act recites), to all intents and purposes whatever, *as the same now are, or at any time heretofore might have been, exercised* by the President and Council in Select Committee;" because it was *then* before the Legislature that the President and Council *had* interposed, and altered the Criminal Law of the Province in 1772. Such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned. See Fifth Report from the Select Committee of the House of Commons, 1812, p. 40.

will be observed that, if we except the Bombay Regulations IV. of 1799, II. of 1800, and IV. of 1827, the reservation of the Native Civil laws, both in the Statutes and Charters, and by the Regulations, was confined to *Gentûs*,¹ or Hindûs, and Muhammadans; a broad distinction of the natives of India into two classes, which most probably arose from the ignorance of our ancestors, and not from any intention of excluding other nations or sects from the benefit of their own laws. There are, however, as is well known, many other natives of India, who are neither Hindûs nor Muhammadans. These form a large class, consisting of the Portuguese and Armenian Christians; the Pársís; the Sikhs; the Jains; the Burmese, and Avaneses, who, together with the Chinese, many of whom have become naturalized in India, are Buddhists; and some few originally from Java and the Eastern Archipelago: to this class may be added the usual complement of that cosmopolitan parasite, the Jew. All these have their peculiar laws and usages, many of which are more or less connected with their religious creeds: they seem, however, to be excluded from the benefit of such laws in the Queen's Courts. In the Supreme Court at Calcutta a case appears to have been once decided according to the Sikh law,² but this was by reference to the Pandits; and thus, to use Sir Edward H. East's own words, he being Chief Justice at the time, "The difficulty was gotten over, by considering the Sikhs as a sect of Gentoos or Hindoos, of whom they were a dissenting branch."³ At any

¹ The late Sir Edward Hyde East, in his evidence before the Committee of the House of Lords in 1830, speaking of the term "*Gentûs*," used in the 21st Geo. III. c. 70, observes, "Whether that was intended to comprehend all other descriptions of Asiatics who happened to be located within the British bounds of India is perhaps very difficult to be told at this time of day."—Minutes of Evidence, p. 118. 4to. edit.

² *Doe dem. Kissenchunder Shaw v. Baidam Beebee*. Morley's Digest, Vol. II. p. 22.

³ Appendix to Sir E. H. East's Evidence before the Select Committee of the House of Lords, 1830, p. 140. 4to. edit.

rate, it has been more than once held at Calcutta, that with the exception of Hindús and Muhammadans, no suitor of the Supreme Courts is entitled to have any special law applied to his case.¹ In an old case it was decided by the Supreme Court at Bombay,² that the Portuguese laws, in all points of succession, and of all personal rights, as those of husband and wife, remained in full force as regards the Portuguese in Bombay;³ but it was also held in the same case that the law of Portugal could not, of its own force, operate at Bombay, and that the Portuguese were subject to the law of England alone, with the reservation of certain customs. Questions between Pársí litigants in the Supreme Court at Bombay appear to have been formerly adjudicated according to the provisions of the Hindú law, where there was no custom adduced to the contrary.⁴ A recent case,⁵ also decided in the Supreme Court at Bombay, has determined that the ecclesiastical jurisdiction of the Court extends to Pársís, and that for such purpose they are included in the words "British subjects," contained in the clause of the Bombay Charter conferring such jurisdiction.

Questions of Hindú law, which come within the specification of the Statutes and Charters, are adjudicated in the Supreme Courts according to the doctrines of each particular school of law entertained by the parties, or according to any particular custom clearly proved to exist among such parties. With respect to Muhammadans, however, it is stated by Baillie, in the preface to his Treatise on Inheritance, that no other than the Sunní law has ever been administered in the

¹ *Jebb v. Lefevre*, Cl. Ad. R. 1829, 56. *Musleah v. Musleah*, 1 Fulton, 420. Grant, J., however, dissented in this latter case, and thought that the Jewish law ought to be applied.

² *De Silveira v. Texeira*. Morley's Digest, Vol. II. p. 247.

³ And see Sir Ralph Rice's evidence before the Select Committee of the House of Lords, 1830, p. 168. 4to. edit.

⁴ *Ibid.* p. 168.

⁵ *Perozeboy v. Ardaseer Cursetjee*. Morley's Digest, Vol. II. p. 335.

Supreme Court at Bengal.¹ It may be true that no case may as yet have occurred in that Court, in which the parties held other than the Sunnī doctrines; but there can be little doubt that, in the event of a case arising between Muhammadans not being Sunnīs, the law administered would be according to the religious persuasion of the litigants. In a case recently decided in the Supreme Court at Bombay, where the parties held particular tenets scarcely compatible with the Muhammadan law, Sir E. Perry, C. J., in delivering judgment, remarked—"I am clearly therefore of opinion, that the effect of this clause in the Charter is, not to adopt the text of the Kurán as law, any further than it has been adopted in the laws and usages of the Muhammadans who came under our sway; and if any class of Muhammadans, Muhammadan dissenters as they may be called, are found to be in possession of any usage which is otherwise valid as a legal custom, and which does not conflict with any express law of the English Government, they are just as much entitled to the protection of this clause as the most orthodox Sunnī who can come before the Court."² This language would of course apply equally to the Imámíyah doctrine; and indeed the learned Chief Justice seems inclined to a much more liberal interpretation of the law than has prevailed in the Supreme Court at Calcutta; for he goes on to say, "How far the peculiar laws of non-Christian aliens would be recognized, it may not be very easy, nor is it necessary, to define beforehand. On each occasion it would afford matter for judicial discussion and determination when the question arose. But on very many questions, such as marriage, divorce, succession, and, possibly, adoption, there seems no reason to doubt that the proper law to be referred to for the decision of any controversy, would not be the law of the Christian community, but the law

¹ Baillie, *Muhammadan Inheritance*, Preface, p. vi.

² *Case of the Kojahs and Memon Cutchees*. Morley's Digest, Vol. II. p. 443.

and usage of the peculiar non-Christian class." And again, "The conclusion I draw is, that if a custom, otherwise valid, is found to prevail amongst a race of eastern origin, and non-Christian faith, a British Court of Justice will give effect to it, if it does not conflict with any express Act of the Legislature."¹

In the Courts of the Honourable East-India Company an extended and liberal interpretation of the wording of the Regulations has always existed ;² and we find, accordingly, numerous cases that have been decided according to the laws of the Portuguese, Armenians, Jains, and Pársís, so far as such laws could be ascertained, and the tenets of the Shí'ah sect of Muhammadans.³

In practice, as I have already mentioned, the Hindú usages and customs, and laws relating to gifts and contracts are recognized, and the Muhammadan Law has been applied to a variety of cases which may be arranged under the heads of Inheritance, Sale, Pre-emption, Gift, Wills, Marriage, Dower, Divorce, Parentage, Guardians and Minority, Slavery, Endowments, Debts and Securities, Claims and judicial matters.

It does not appear that any appeal has been presented to the Privy Council against any decision of the Courts below

¹ Morley's Digest, Vol. II. pp. 446, 447.

² The Advocate-General recommended, in a case submitted to him by the Sudder Dewanny Adawlut of Bengal, in Feb. 1799, that foreign laws and customs not Hindú or Muhammadan should be ascertained by evidence. It may be observed, that the *intention* of the Regulations does not seem to have been to confine the reservation of the native laws to Hindús and Muhammadans. For instance, we find in the original rules regulating special appeals, that such appeals were to be allowed when the judgment should appear to be inconsistent with the Regulations, or with the Hindú and Muhammadan laws, in cases which were required to be decided by those laws, *or with any other law or usage which might be applicable to the case.*

³ See the placita under the title GIFT, numbers 81, 82. HUSBAND AND WIFE, numbers 80 *et seq.* ; INHERITANCE, numbers 323 *et seq.* ; and PRACTICE, 234, *et seq.* Morley's Digest, Vol. I. pp. 272. 298. 349. 521.

founded on other native laws than those of the Hindús and Muhammadans. The Judicial Committee of the Privy Council, however, receive the Shí'ah law, and have so construed the Bengal Reg. IV. of 1793, in a case which was decided in 1841.¹ In another case, also, they decided, in general terms, that they were bound to take notice of the law of the country from which the appeal came, and to decide according to it, even although it had not been noticed in the Court below.²

Such is the present state of the Law, and the practice of the Courts, with respect to the admission of the native laws; and whatever may be the ultimate effect of the recent innovations, it cannot be denied that the preservation of such laws is in conformity with the doctrines of the ablest writers on jurisprudence, and is founded on "the wisdom of experience and the dictates of humanity."³

Warren Hastings, in pursuance of that enlightened and liberal policy which so eminently distinguished his government in India in all that regarded the conciliation and welfare of its native inhabitants,⁴ was, as we have seen, the first to recommend and adopt the preservation of their laws. In furtherance of his plan for the administration of justice, he stated, in a letter addressed to the Court of Directors, in March 1773, "That in order to render more complete the Judicial Regulations, to preclude arbitrary and partial judg-

¹ *Rajah Deedar Hossein v. Ranee Zuhooroonisa*. 2 Moore Ind. App. 441.

² *Sumboochunder Chowdry v. Naraini Dibeh*. 3 Knapp 55.

³ *Strange's Elements of Hindu Law*. Vol. I. Introd. p. x. 2d edit.

⁴ "He was the first foreign ruler," says Lord Macaulay, "who succeeded in gaining the confidence of the hereditary priests of India, and who induced them to lay open to English scholars the secrets of the old Brahminical theology and jurisprudence." This, however, is but a tardy acknowledgment, introduced nearly at the end of an essay attacking on almost every point the public and private character of the great Governor-General.—See Macaulay's *Essays*, Vol. III. 5th edit.

ments, and to guide the decisions of the several Courts, a well digested Code of Laws, compiled agreeably to the laws and tenets of the Mahometans and Gentoos, and according to the established customs and usages, in cases of the revenue, would prove of the greatest public utility ;”¹ and in a subsequent letter, with which he transmitted to England a specimen of a Hindú Code drawn up by his order, occurs the following remarkable passage :—“ From the labours of a people, however intelligent, whose studies have been confined to the narrow circle of their own religion, and the decrees founded upon its superstitions, and whose discussions in the search of truth have wanted that lively aid which it can only derive from a free exertion of the understanding, and an opposition of opinions, a perfect system of jurisprudence is not to be expected. Yet if it shall be found to contain nothing hurtful to the authority of Government, or to the interests of society, and is consonant to the ideas, manners, and inclinations of the people for whose use it is intended, I presume that, on these grounds, it will be preferable to any which even a superior wisdom could substitute in its room.”²

Nor must the opinion of Sir William Jones on this subject be omitted ; an opinion, it is true, given some time after the measure which he recommended had been adopted by the Government, in accordance with the views of Hastings, but which loses none of its authority on that account, gaining, on the contrary, additional weight, as being not merely the theoretical idea of an able man, but the well-considered result of a five years’ residence in India, devoted, with unprecedented success, to the intimate study of those very laws and institutions, the preservation of which he so warmly advocates.

¹ Proceedings of the Governor and Council at Fort William respecting the administration of justice amongst the natives in Bengal, p. 33. 4to. 1774.

² *Ib.* p. 35.

“ Nothing,” says Sir William Jones,¹ “ could be more obviously just than to determine private contests according to those laws which the parties themselves had ever considered as the rules of their conduct and engagements in civil life ; nor could any thing be wiser than, by a legislative act, to assure the Hindu and Muselman subjects of Great Britain that the private laws which they severally hold sacred, and a violation of which they would have thought the most grievous oppression, should not be superseded by a new system, of which they could have no knowledge, and which they must have considered as imposed on them by a spirit of rigour and intolerance.”

Such, then, was the opinion of these great men ; and although they wrote more than half a century ago, it is still entitled to our respect at the present day. The laws of the Hindús and Muhammadans are part and parcel of their religion, and believed by them to be of divine revelation ; little or no change has taken place in the religious opinions of the natives since the days of Hastings and Jones ; the Hindú still venerates the Institutes that have served to regulate the conduct of his forefathers for upwards of twenty centuries ; and the Muhammadan looks with undiminished respect on the precepts transmitted to him in the Kurán by one whom he deems to be the last and the chief of the prophets of God.

A host of other writers, capable from long experience of forming a just estimate, might be quoted, upholding the same views : amongst them we find Verelst, Teignmouth, Strange, Harington, and William Macnaghten ; whose names alone are sufficient in themselves to guarantee the value of their opinions on all questions connected with the welfare of the natives of India.

The Regulation VII. of 1832 of the Bengal Code, passed,

¹ Letter to the Governor-General and Council of Bengal, dated March 19, 1788.—Sir W. Jones's Works, Vol. III. p. 73*. 4to. Lond. 1799.

at the time, for reasons which I have already alluded to, without attracting any particular attention, although the object of the Regulation was, in effect, to abrogate so much of the Hindú law as provided that a convert to Muhammadanism or Christianity should forfeit all claim to his share of any heritable property: a most serious innovation upon the Hindú law, affecting the system in one of its most important branches, and interfering in a powerful degree with the most vital doctrines of the Hindú religion.

It was not until a more formal proposition was made in 1842, and again subsequently in 1845 when the *Lex loci* was taken into consideration, to alter the native laws as regards inheritance and exclusion from cast throughout, that any opposition was raised.¹ A Draft Act was prepared and submitted to the Government by the Indian Law Commissioners, in the former year, and again in 1845, containing a provision, that so much of the Hindú and Muhammadan law as inflicted forfeiture of rights or property upon any party renouncing, or excluded from, the communion of the Hindú or Muhammadan religion, should cease to be enforced as law in any of the Courts in India.² The Hindús presented memorials to the Governor-General, strongly expressive of their dissatisfaction at the proposed enactment, which they regarded as a violation of a solemn pledge, founded upon the Act of a superior and supreme legislature, confirmed by the local Government, and acted upon from the very period of British connexion with the Eastern Empire. They further intimated a fear that the security in person, property, and religion, hitherto ensured to them, thus undermined in one instance, might eventually be denied them altogether.³ The proposed enactment was not sanctioned by the Government; but the recent Act XXI. of 1850, passed by

¹ Special Reports of the Indian Law Commissioners, 1843, p. 346 *et seq.* Ibid. 1847, p. 607 *et seq.*

² Ibid. p. 371; Ibid. 1847, pp. 630. 682.

³ Ibid. 1847, p. 640 *et seq.*, and p. 649 *et seq.*

the Legislative Council of India, extending the provisions of the 8th and 9th sections of the Bengal Regulation VII. of 1832, is to nearly the same effect, and has again called forth the remonstrance and roused the jealous suspicions of the Hindús. Act XV. of 1856, legalising the re-marriage of Hindú widows, was a second positive and direct infringement of the Hindú law; it does not appear to have produced so much dissatisfaction amongst the Hindú community as was anticipated, but this and the Act last mentioned may be ranged amongst the numerous probable causes of the late rebellion.

The policy of the enactment of Act XXI. of 1850 is perhaps questionable: the beneficial results expected from its operation are at least doubtful. I allude, of course, to its anticipated effect in increasing the number of converts to Christianity. If it be true that the disinheritorship, which, by the Hindú law follows apostacy, militates against conversion to the truth,—that is, in other words, that many Hindús would become Christians were it not for the prospect of the loss they would thereby sustain,—the question arises, in the first place, whether it be desirable to receive such lukewarm believers into our Church? As well might we offer bounty-money to recruit the ranks of Christianity from the multitudes who would be willing to make a traffic of their consciences. Again, it is not reasonable to suppose that any great accession will be made to the number of converted Hindús by the operation of this new Law. The converts from the Hindú creed to Muhammadanism have of late years been very numerous; indeed, it is to be feared, far more numerous than those who have rewarded the labours of our Missionaries by embracing the Christian religion; and this, be it observed, notwithstanding the Hindú law of forfeiture which has been denounced as holding so chief a place amongst the preventives of conversion. From this it may fairly be inferred that the comparative ill success of the Missionaries arises, not from the disabilities under which apostates and outcasts labour according to the Hindú law, but rather from the fact that the Muhammadan priest, however inferior in general education, has a much

greater knowledge of the people with whom he has to deal, and consequently a stronger hold upon their minds and imaginations, than that possessed by the Christian pastor. Such being the case, why do not our Missionaries try to attain the same legitimate power of convincing the heathen? Let them endeavour to obtain a more complete insight into the manners and customs of the natives, and a thorough knowledge of their languages; let them strive to convert by persuasion, instead of calling in the strong arm of the law to break down religious institutions which their ignorance has fruitlessly assailed; let them learn before they try to teach, and all will be well. Education is advancing with rapid strides, thanks to the effectual measures that have been adopted by the Government; and by its means, and not by the ill-judged violence of over zealous innovators, we may hope to see the dark superstitions of the natives gradually but triumphantly superseded by the light of Christianity. Then, and then only, will the time have arrived for extending to the mass of our Indian fellow-subjects the benefit of laws which they now can neither understand nor appreciate, and for effacing those institutions upon which their present social happiness so largely depends. The day has gone by when conversion was enforced by a mandate of the ruling power. The Act of 1850 has been termed an Act for the promotion of religious liberty; but surely such a name can scarcely be applied with propriety to a law which not only implies a violation of the rights of property, but, in the case of a Hindú, forbids him to hope for happiness in another world, whensoever his heir shall choose to forsake the faith of his forefathers.¹

¹ It is hardly necessary to state that the Hindús believe the attainment after death of "bliss in other worlds, immortality and heaven," to depend upon the proper performance of obsequies by the next heir of the deceased, the inheritance and the performance of the obsequies being inseparable. These obsequies cannot be performed by an apostate, or by one excluded from cast, who, in either case, is considered to be virtually dead, the performance of the funeral rites, and the consequent inheritance, devolving upon the next in succession. By the law of the Kurán an infidel cannot succeed to the estate of a Muhammadan.

In considering the propriety of altering or abrogating the Hindú or Muhammadan laws, all pre-conceived notions of the relative excellence of the English and native systems of jurisprudence should be taken as secondary considerations ; nor should it be called in question whether such systems are in themselves good or bad ; for it should never be forgotten, that, in the present state of society in India, they are undoubtedly the best adapted to the wants and prejudices of the people who form the great bulk of the population of the country ; that they are an integral part of the faith of that people ; and that, though we may not be bound by absolute treaty, we have virtually pledged ourselves to preserve them by repeated proclamations and enactments.

The laws of the remaining class of natives, viz. those who are neither Hindús nor Muhammadans, are placed in a very different position. In some instances these laws are irrespective of religion ; in almost all they depend more upon local customs than on written Codes ; they never appear to have been admitted into the Queen's Courts ; and whenever they have been administered in those of the East-India Company, with the exception of the Bombay Presidency, it has been done by a liberal extension by the Judges of the wording of the Regulations : added to this, the Government has never pledged itself in any way to preserve or administer such laws. The class itself, although collectively numerous, is composed of different sects and nations, which, taken separately, are of small extent and few in numbers, and mostly either foreign to the country, or but recently established there ; and, finally, many of this class are anxious to be ranged under the protection of the British laws, instead of being subjected to the arbitrary rules of ill-ascertained usage.

The Armenians of Bengal, so long since as the year 1836, presented a petition to the Governor-General, in which, after setting forth the destitution of their legal condition, they add, " As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be

discovered, your petitioners humbly submit that the Law of England is the only one that can, upon any sound principles, be permitted to prevail; and that it is moreover the law which was promised to Armenians at the time of their settlement in the country." This alleged promise is contained in an agreement between the Honourable East-India Company and Cogee Phanoos Calendar, an eminent Armenian merchant, which agreement is dated the 22d of June 1688.¹ It is unnecessary to discuss either the validity or the meaning of the agreement, as it is the desire only, and not the rights of the Armenian people, with which we are concerned in the present instance, and this desire is explicit.

The Pársís, who, if not the most numerous, are certainly the most wealthy and most influential of this class of natives on the Bombay side of India, are anxious to have a written law framed for their sect, though they do not exactly want the English law, for instance, in respect to their widows and daughters, in regard to their share of the inheritance on a man's dying intestate.²

It would seem, therefore, that, as relates to this class of natives, the enactment of a *Lex loci* would not only be justifiable, but productive of benefit; and it would doubtless put an end to much uncertainty and many of the difficulties which at present encompass the administration of justice in the Mofussil.

I shall now proceed to give a succinct account of the different native laws administered in our Courts in India; of the distinction between the various doctrines entertained by the native lawyers; in what districts, and amongst what sects, they prevail; and of the works in which such laws are written, and on which such doctrines are founded.

¹ Special Reports of the Indian Law Commissioners 1842, p. 465.

² See the Minute of Sir George Anderson, dated 23d January 1843; and the Minute of Mr. Giberne, dated 27th January 1843. *Ib.* 1847, pp. 619. 621.

(1) HINDÚ LAW.

(a) *Of the Sources of the Law.*

The civil and religious laws of the Hindús are believed by them to be of divine origin ; one portion called *Sruti*, or “That which is heard,” and which constitutes the *Védas*, being supposed to be in the very words revealed by Brahma himself ; and another denominated *Smriti*, or “That which is remembered,” comprising the *Dharma Sástra*, and imagined to have been communicated to mankind through the medium of inspired writers.

The *Dharma Sástra* comprehends not only Law in its usual sense, but rules for religious observances, and ancient and modern rituals. It is, however, generally understood as meaning exclusively Forensic Law and Civil duties, which are considered by the Hindú lawyers under the distinct heads of Private contests and Forensic practice ; the former head comprehending Law, private and criminal, whilst the latter includes the forms of procedure, the rules of pleading, the law of evidence, adverse titles, oaths, and ordeal.¹

Both the *Sruti* and the *Smriti* are interpreted by the same rules, which are collected in the *Mímánsás*, or disquisitions on proof and authority of precepts, and considered to be a branch of philosophy. The *Mímánsás* are described by Colebrooke as “properly the logic of the law.”²

¹ Colebrooke's *Digest of Hindu Law*, Vol. I. Pref. p. xii. 8vo. Lond. 1801.

² The two *Mímánsás* (for there are two schools of metaphysics under this title) are emphatically orthodox. The prior one (*Púrva*), which has *Jaimini* for its founder, teaches the art of reasoning, with the express view of aiding the interpretation of the *Védas*. The latter (*Uttara*), commonly called *Védanta*, and attributed to *Vyása*, deduces, from the text of the Indian scriptures, a refined psychology, which goes to a denial of a material world. —Colebrooke on the *Philosophy of the Hindus*. *Essays*, Vol. I. p. 227. ; and see *Transactions of the Royal Asiatic Society*, Vol. I. p. 439.

(b) On the various Schools of Hindú Law.

In eastern India the Védas and the Mímánsás are less studied than in the south, and the lawyers of Bengal and Behar take the Nyáya,¹ or dialectic philosophy, for rules of reasoning and interpretation of the Law.² Hence arose the two principal schools, which deduced different inferences from the same maxims, and from which other schools again have diverged, each interpreting the Law according to the *dicta* of some favourite author.

Five Schools of Law may be said to exist at the present day; viz. the Gauriya (Bengal), Mithila (North Behar), Benáres, Maháráshtra (the Maratha country), and Drávida (the south of the peninsula).

It would be almost impossible to define with accuracy the limits of these several schools; nor, indeed, is there that great distinction between them which by most writers has been supposed to exist. The Bengal School, it is true, stands nearly alone, particularly with regard to the law of Inheritance, in which there is a wide difference in doctrine between the northern and the other schools, the latter receiving some treatises in common, which are totally rejected by the Gauriya lawyers. The Bengal school assimilates in some points with that of Mithila; inheritance, however, being still excepted.

Looking to the west and south of India, we find that the main distinction between the Benáres, Maháráshtra, and Drávida schools, is, in fact, rather a preference shewn by each respectively for some particular work as their authority of

¹ The Nyáya, of which Gautama is the acknowledged author, furnishes a philosophical arrangement, with strict rules of reasoning, not unaptly compared to the Dialectics of the Aristotelian school. Colebrooke on the Philosophy of the Hindus. Essays, Vol. I. p. 227.

² Colebrooke, in Strange's Hindu Law, Vol. I. p. 316. Second edition.

Law, than any real or important difference of doctrine. It is very probable that this preference for particular treatises arose originally, not so much from their actual, or even fancied, superiority over other works, as from the ignorance of the lawyers, practically, of the existence of authorities not generally current in their respective provinces, and from the fact that such law-books were, in most cases, first promulgated in the very districts in which they are now pre-eminent.

In all the western and southern schools the prevailing authority is the nearly-universal *Mitákshará*; and although the Marathas may prefer the *Mayúkha* to the *Mádhavíya*; and the contrary may be the case in the *Karnáta* country, whilst in other districts other treatises are referred to, still the Law itself, even in regard to inheritance, is essentially the same throughout southern India.

However, as there does exist this distinction between the Bengal school and those of the west and south, and this preference with respect to the books referred to, it becomes advisable to give some idea of the extent and situation of the districts where the doctrines of the several schools are current.

The Gauriya, or Bengal school of Law, prevails over the whole province of Bengal Proper, and apparently is co-extensive with the Bengálí language, or, at least, is of authority wherever the Bengálí is spoken by the inhabitants of the country.

The Mithila school is that of north Behar, or *Tirhút*, the ancient kingdom of Mithila, which, though not often mentioned in history, is famous for having been the residence of *Síta*, *Ráma's* wife.

The doctrine of the school of *Benáres* is followed in the city and province of that name, and is the prevailing school of middle India. This doctrine is also current in *Orissa*, and extends from *Midnapur* to the mouth of the *Hooghly*, and thence to *Cicacole*.

The *Maháráshtra* is the school which governs the law in the

country of the Marathas. The south limit of the Maratha country may be loosely stated as passing from Goa through Kolapur and Bidr to Chandra; the eastern line follows the Warda river to the Injádri, or Satpúra hills, south of the Nerbudda, and which forms its northern limit, as far west as Nandód; and the western boundary may be marked by a line drawn from Nandód to Damán, and thence following the sea-coast as far as Goa: in other words, the Maháráshtra school prevails wherever the Marathi language is spoken by the natives.

The Drávida school is that of the whole of the southern portion of the peninsula; but it may be subdivided into three districts, in each of which some particular law treatises have more weight than others: these districts are, Drávida, properly so called, Karnátaka, and Andra. Drávida Proper is the country where the Tamil language is spoken, and occupies the extreme south of the peninsula: its boundaries may be traced by a line drawn from Pulicat to the gháts between Pulicat and Bangalur, and then following the gháts westward and along the boundary between Malabar and Kanara to the sea, including Malabar. The Karnátaka country is bounded on the west by the sea-coast as far as Goa, thence by the western gháts up to Kolapur, to the north by a line drawn from Kolapur to Bidr, and on the east by a line from Bidr through Adóni, Anandpur, and Nandidrúg, to the gháts between Pulicat and Bangalur: this is the country where the Karnátaka language is now spoken. The third district, the Andra, where the Telinga or Telugu is now the spoken language, extends from the boundary line last mentioned, and which, prolonged to Chandra, will form its western limit; on the north it is bounded indistinctly by a line running eastwards to Sohnpur on the Mahanaddí river; and on the east by a line drawn from Sohnpur to Cicacole, and thence to Pulicat, where the Tamil country begins. Mr. Ellis imagines that there are laws existing in the southern provinces which are of higher antiquity than those introduced from the north,

although not all derived from the same source :¹ this supposition is favoured by the fact, that Professor Wilson thinks it probable that the civilization of the south of India may date as far back as ten centuries before Christ.

These are the limits of the various schools of Law, so far as they can be approximatively defined. It must, however, be borne in mind, that though some works have especial weight respectively in the several schools, it seems that most of them, if known, would be respected in all, excepting Bengal; the broad division of doctrine being between the Law of Bengal and that of Benáres, to which latter all the remaining schools more or less assimilate.

I shall now consider the law-books of the Hindús generally; and then proceed to describe them *seriatim*, specifying such as are of chief authority, or more generally referred to by the lawyers in the respective schools and districts.

(c) *On the Hindú Law-Books.*

The Dharma Sástra may be conveniently divided into three classes—

I. The Smritis, or Text-books, which are the foundation of all Hindú law, and which are attributed to various ancient Rishis, or sages, who are supposed to have been inspired. These Smritis are all, with slight variation, in form and doctrine the same with the Institutes of Manu.

II. The Vyákhyána, or Glosses and Commentaries upon these Smritis, many of which partake of the nature of Digests.

III. The Nibándhana Grantha, or Digests properly so called, either of the whole body of the Law or of particular portions thereof, collected from the text-books and their commentators.

A fourth class of works may be added as an authority of

¹ Ellis, on the Law-Books of the Hindus, in the Transactions of the Literary Society of Madras. Pt. I. p. 17.

Hindú law, viz. the works on the subject by European authors. These I shall mention separately.

I. The Smritis, Text-books, Institutes, or Collections (*Sanhitá*), attributed to various Rishis, are all divided into three *Kándas*, on sections; the first, *Áchára*, treating of religious ceremonies and daily observances; the second, *Vyavahára*, of law and the administration of justice; and the third, *Práyaschitta*, relating to penance and expiation.

The Smritis are enumerated differently by various writers: the *Padma Purána* gives the names of thirty-six Rishis; whilst *Yájnavalkya*, and *Parásara* mention only twenty. *Yájnavalkya* gives the following list:—*Manu*, *Atri*, *Vishnu*, *Háríta*, *Yájnavalkya*, *Usanas*, *Angíras*, *Yama*, *Ápastamba*, *Samvarta*, *Kátyáyana*, *Vrihaspati*, *Parásara*, *Vyása*, *Sankha* and *Likhita* (who were brothers, and wrote each a *Smriti* separately, and one jointly, the three being now considered as one work), *Daksha*, *Gautama*, *Sátátapa*, and *Vasishttha*. *Parásara*, whose name appears in the above list, enumerates also twenty select authors; but instead of *Yama*, *Vrihaspati*, and *Vyása*, he gives the names of *Kasyapa*, *Gárgya*, and *Prachéetas*.¹ The *Padma Purána*, omitting the name of *Atri* in *Yájnavalkya*'s list, completes the number of thirty-six above-mentioned by adding *Maríchi*, *Pulastya*, *Prachéetas*, *Bhrigu*, *Nárada*, *Kasyapa*, *Viswámíttra*, *Devala*, *Rishyasringa*, *Gárgya*, *Baudháya*, *Paithínasi*, *Jábáli*, *Sumantu*, *Paráskara*, *Lókákshi*, and *Kuthumi*. Of these writers four have been respectively considered as the principal authorities in each of the four ages of the world; viz. *Manu* in the *Krita Yuga*; *Gautama* in the *Treta Yuga*; *Sankha* and *Likhita* in the *Dwápara Yuga*; and *Parásara* in the *Kali Yuga*, or present age. Several Smritis are sometimes ascribed to the same author: his greater or lesser Institutes (*Vrihat* or *Laghu*), or a later work of the author when old (*Vridhdha*).²

¹ *Parásara*, I. 13; 16.

² *Colebrooke* in *Strange's Hindu Law*, Vol. I. p. 316. 2d edit.

It appears from internal evidence to be probable that treatises attributed to these Rishis are extant, which, like the Puráṇas, all of which are said to have been written by Vyása, are by different authors; and indeed, as the reputed authors are mentioned in the texts in the third person, it is likely, as explained by the commentators, that the text-books were compiled by the pupils from the oral instructions of their master.

Whatever may be the authenticity or antiquity of these books, they are all venerated by the Hindús as next in sanctity to the Védas themselves, their authority being, moreover, confirmed by a text from the same holy writings, thus translated by Sir William Jones, according to the gloss of Sankara:—"God having created the four classes, had not yet completed his work: but in addition to it, lest the royal and military class should become insupportable through their power and ferocity, he produced the transcendent body of law; since law is the king of kings, far more powerful and rigid than they. Nothing can be mightier than law, by whose aid, as by that of the highest monarch, even the weak may prevail over the strong."

It must be observed that many Smritis are quoted or referred to by legal writers which are no longer extant; and it is even said to be the opinion of the Brahmans, that, with the exception of Manu, the entire work of no one of these sages has come down to the present time.¹

The Mánava Dharma Sástra, or Institutes of Manu, the highest authority of memorial law,² is universally allowed by the Hindús not only to be the oldest work, but also the most holy after the Védas; and as, in addition to this, the other text-books are, as it were, formed on the same model, it may be fairly considered as the basis of the whole present system of Hindú jurisprudence. Besides the usual matters treated of in

¹ Ward's View of the History, Literature, and Religion of the Hindoos. Vol. I. p. 447.

² Colebrooke's Digest of Hindu Law, Vol. I. p. 454, 2d edit.

a Code of Laws, the *Mánava Dharma Sástra*, which is divided into twelve books, comprehends a system of cosmogony, the doctrines of metaphysics, precepts regulating the conduct, rules for religious and ceremonial duties, pious observances, and expiation, the laws of purification and abstinence, moral maxims, regulations concerning things political, military, and commercial, the doctrine of rewards and punishments after death, and of the transmigration of souls, together with the means of attaining eternal beatitude.

The author of the *Institutes* is supposed to be Manu, sur-named *Swáyambhuva*, *i.e.* issuing from the self-existent, and who was the first of the seven Manus who governed the world. Brahma himself is related to have revealed them to his offspring; the Rishi Bhrigu subsequently promulgating the laws thus communicated by Divine revelation.

Disregarding the fabulous statements of the Hindús, the authorship and antiquity of the *Mánava Dharma Sástra* still remain surrounded with considerable obscurity. The arguments of Sir William Jones, who endeavoured to fix the date of the actual text at about the year 1280 before Christ, are almost as inconclusive as the traditions of the Brahmans; and the various epochs fixed by different authors seem to leave the question still undetermined. Chézy¹ and Deslongchamps, the latter of whom professes to have formed his opinion from an examination of the Code itself,² conceive that it was composed in the thirteenth century previous to our æra. Schlegel gives it as his decided and well-considered opinion, "*quod multorum annorum meditatio me docuit*," that the laws of Manu were promulgated in India at least as early as the seventh century before Alexander the Great, or about a thousand years before Christ :³ he places the *Rámáyana* of Valmíki at about the same date, and doubts as to which is the older of the two. Elphin-

¹ *Journal des Savans*, 1831.

² Deslongchamps, *Lois de Manou*, Préface p. v.

³ *Zeitschrift für die Kunde des Morgenlandes*. Bd. 3, p. 379.

stone, who is inclined to attribute great antiquity to the Institutes of Manu, on the ground of the difference between the law and manners therein recorded and those of modern times, and from the proportion of the changes which took place before the invasion of Alexander, infers that a considerable period had elapsed between the promulgation of the Code and the latter epoch; and he fixes the probable date of Manu, to use his own words, "very loosely, at some time about half way between Alexander (in the fourth century before Christ) and the Védas (in the fourteenth)."¹

Professor Wilson, however, thinks that the work of Manu, as we now possess it, is not of so ancient a date as the Rámáyana, and that it was most probably composed about the end of the third or the commencement of the second century before Christ. This opinion of the highest living authority on the subject must be considered as decisive, so far as present materials can enable us to approximate the truth.²

¹ Elphinstone, History of India, Vol. I. p. 437. 2d edition.

² Shortly after writing the above, I was favoured with the following very interesting communication on the sources of the Mánava Dharma Sástra from my friend Dr. Max Müller, the learned Editor of the Rig Véda:—

“ Park Place, Oxford, July 29, 1849.

“ MY DEAR MORLEY,—I have been looking again at the Law-literature, in order to write you a note on the sources of Manu. I have treated the subject fully in my introduction to the Véda, where I have given an outline of the different periods of Vaidik literature, and analyzed the peculiarities in the style and language of each class of Vaidik works. What I consider to be the sources of the Mánava-dharma-sástra, are the *Sútras*. These are works which presuppose the development of the prose literature of the *Bráhmaṇas* (like the Aitaréya-Bráhmaṇa, Taittiríya-Bráhmaṇa, &c.). These Bráhmaṇas, again, presuppose, not only the existence, but the collection and arrangement of the old hymns of the four Sanhitás. The *Sútras* are therefore later than both these classes of Vaidik works, but they must be considered as belonging to the Vaidik period of literature, not only on account of their intimate connection with Vaidik subjects, but also because they still exhibit the irregularities of the old Vaidik language. They form, indeed, the last branch of Vaidik literature; and it will perhaps be possible

Whatever may be the exact period at which the *Mánava Dharma Sástra* was composed or collected, it is undoubtedly

to fix some of these works chronologically, as they are contemporary with the first spreading of Buddhism in India.

"Again, in the whole Vaidik literature there is no work written (like the *Mánava-dharma-sástra*) in the regular epic Sloka, and the continual employment of this metre is a characteristic mark of post-Vaidik writings.

"One of the principal classes of *Sútras* is known by the name of *Kalpa-sútras*, or rules on ceremonies. These are avowedly composed by human authors; while, according to Indian orthodox theology, both the hymns and *Bráhmaṇas* are to be considered as revelation. The *Sútras* generally bear the name of their authors, like *Āsvaláyana*, *Kátyáyana*, etc., or the name of the family to which the *Sútras* belonged. The great number of these writings is to be accounted for by the fact that there was not one body of *Kalpa-sútras* binding for all Brahmanic communities, but that different old families had each their own *Kalpa-sútras*. These works are still very frequent in our libraries, yet there is no doubt that many of them have been lost. *Sútras* are quoted which do not exist in Europe, and the loss of some is acknowledged by the Brahmins themselves. There are, however, lists of the old Brahmanic families which were in possession of their own redaction of Vaidik hymns (*Sanhitás*), of *Bráhmaṇas* and of *Sútras*. Some of these families followed the *Rig-véda*, some the *Yajur-véda*, the *Sáma-véda* and *Ātharva-véda*; and thus the whole Vaidik literature becomes divided into four great classes of *Bráhmaṇas* and *Sútras*, belonging to one or the other of the four principal *Védas*.

"Now, one of the families following the *Yajur-véda* were the *Mánavas* (cf. *Charanavyúha*). There can be no doubt that this family, too, had its own *Sútras*. Quotations from *Mánava sútras* are to be met with in Commentaries on other *Sútras*; and I have found, not long ago, a MS. which contains the text of the *Mánava-srauta-sútra*, though in a very fragmentary state. But these *Sútras*, the *Srauta-sútras*, treat only of a certain branch of ceremonies connected with the great sacrifices. Complete *Sútra* works are divided into three parts; the first (*Srauta*) treating on the great sacrifices, the second (*Grihya*) treating on the *Sanskáras*, or the purificatory sacraments; the third (*Sámayáchárika* or *Dharma-sútras*) treating on temporal duties, customs, and punishments. The two last classes of *Sútras* seem to be lost in the *Mánava-sútra*. This loss is, however, not so great with regard to tracing the sources of the *Mánava-dharma-sástra*; because, whenever we have an opportunity of comparing *Sútras* belonging to different families, but following the same *Véda*, and treating on the same subjects, the differences appear to be very slight, and only refer to less important

of very great antiquity, and is eminently worthy of the attention of the scholar, whether on account of its classic beauty, and proving, as it does, that, even at the remote epoch of its composition, the Hindús had attained to a high degree of civilization; or whether we regard it as held to be a divine revelation, and consequently the chief guide of moral and religious duties, by nearly an hundred millions of human beings whom Providence has placed under our protection.

niceties of the ceremonial. In the absence, therefore, of the *Mánava-sámayáchárika-sútras*, I have taken another collection of *Sútras*, equally belonging to the *Yajur-véda*, the *Sútras* of *Āpastamba*. In his family we have not only a *Bráhmaṇa*, but also *Āpastamba-Srauta*, *Grihya*, and *Sámayáchárika-sútras*. Now it is, of course, the third class of *Sútras* on temporal duties which are most likely to contain the sources of the later metrical Codes of Law, written in the classical *Sloka*. On a comparison of different subjects, such as the duties of a *Brahmachári*, a *Grihastha*, laws of inheritance, duties of a king, forbidden food, etc., I find that the *Sútras* contain generally almost the same words which have been brought into verse by the compiler of the *Mánava-dharma-sástra*. I consider, therefore, the *Sútras* as the principal source of the metrical *Smritis*, such as the *Mánava-dharma-sástra*, *Yājñavalkya-dharma-sástra*, etc., though there are also many other verses in these works which may again be traced to different sources. They are paraphrases of verses of the *Sanhitás*, or of passages of the *Bráhmaṇas*, often retaining the same old words and archaic constructions which were in the original. This is, indeed, acknowledged by the author of the *Mánava-dharma-sástra*, when he says (B. II. v. 6), "The roots of the Law are the whole *Véda* (*Sanhitás* and *Bráhmaṇas*), the customs and traditions of those who knew the *Véda* (as laid down in the *Sútras*), the conduct of good men, and one's own satisfaction." The *Mánava-dharma-sástra* may thus be considered as the last redaction of the laws of the *Mánavas*. Quite different is the question as to the old *Manu*, from whom the family probably derived its origin, and who is said to have been the author of some very characteristic hymns in the *Rig-véda-sanhitá*. He certainly cannot be considered as the author of the *Mánava-dharma-sástra*, nor is there even any reason to suppose the author of this work to have had the same name. It is evident that the author of the metrical Code of Law speaks of the old *Manu* as of a person different from himself, when he says (B. X. v. 63), "Not to kill, not to lie, not to steal, to keep the body clean, and to restrain the senses; this was the short law which *Manu* proclaimed amongst the four casts."

"Believe me, yours very truly,

"M. MÜLLER.

P

The Code of Manu is divided into twelve books, and comprises in all 2685 Slokas or couplets.

Various editions of the text of Manu have been published, as also translations by Sir Wiliam Jones, Sir Graves Haughton, and an anonymous writer ; and in French by M. Loiseleur Deslongchamps.¹ The version by Jones has been generally considered the masterpiece of that learned and elegant writer : those by Haughton and Deslongchamps vary from it but slightly, and nowhere importantly. All these three translations are according to the gloss of Kullúka Bhatta, which will be presently noticed when we come to treat of the Commentaries and Digests.

Atri, the second writer of a text-book according to Yájñavalkya, but who is not mentioned in the Padma Purána, composed a law treatise in verse, which is still extant. Vishnu is also said to have written an excellent treatise in verse, and Háríta one in prose : these have both come down to us in an abridged metrical form. Yájñavalkya, the grandson of Vis-

¹ मनुसंहिता तट्टीकाच मन्वर्थमुक्तावलीनाम्नी श्रीकृष्णकभट्टेन कृता ॥ 4to. Calcutta, 1813. मानवधर्मशास्त्रे ॥ Mánava Dharma Sástra, or the Institutes of Menu, in Sanscrit and English, translated by Sir W. Jones, and edited by G. C. Haughton. 2 vols. 4to. London, 1825. मानवं धर्मशास्त्रं ॥ Lois de Manou, publiées en Sanscrit, par Loiseleur Deslongchamps. 8vo. Paris, 1830. मनुसंहिता तट्टीकाच मन्वर्थमुक्तावलीनाम्नी श्रीकृष्णकभट्टेन कृता ॥ Menu Sanhita: The Institutes of Menu, with the Commentary of Kullúka Bhatta, 2 Vols. 8vo. Calcutta, 1830. Institutes of Hindú Law, or the Ordinances of Menu, according to the gloss of Cullúka, verbally translated from the original Sanscrit (by Sir W. Jones). Folio. Calcutta, 1794.—Works, Vol. 3, p. 51, 4to. London, 1799. Mánava Dharma Sástra, Lois de Manou, traduites du Sanscrit par M. Loiseleur Deslongchamps. 8vo. Paris 1833. श्रीमता भवामीचरणवम्बोपाध्यायेन शोधिता वेदश्रद्धराधराशास्त्रीयफाल्गुणस्य विंशतिवासरे कलिकातानगरे समाचारचंद्रिकायंवेण मुद्रितेयं मनुसंहिता ॥ Obl. Fol. Calcutta, 1833. Bengálí type. मनुसंहिता ॥ The Laws of Menu the son of Brahmá. The first three books in Sanscrit, in the Dévanágari and Bengálí characters, with a literal translation into Bengálí, Sir William Jones's translation, and a revised English version. 4to. Calcutta. Circa 1833.

vámitra, appears, from the Introduction to his own Institutes, to have delivered his precepts to an audience of philosophers at Benáres.

The Yájnavalkya Dharma Sástra, or Institutes of Yájnavalkya, comprises three books, containing 1023 couplets. The age of this Code cannot be fixed with any certainty ; but it is of considerable antiquity, as is proved by passages from it being found on inscriptions in every part of India, dated in the tenth and eleventh centuries. "To have been so widely diffused," says Professor Wilson, "and to have then attained a general character as an authority, a considerable time must have elapsed ; and the work must date, therefore, long prior to those inscriptions."¹ In addition to this, passages from Yájnavalkya are found in the Pancha Tantra,² which will throw the date of the composition of his work at least as far back as the fifth century, and it is probable even that it may have originated at a much more remote period. It seems, however, that it is not earlier than the second century of our æra, since Professor Wilson supposes that the name of a certain money, Nanaka, which name is found in Yájnavalkya's Institutes, originated about that time.³

The Institutes of Yájnavalkya were published in the original at Calcutta.⁴ An edition of the text, together with a German translation, has also appeared ;⁵ this edition, which we owe to Dr. Stenzler of Breslau, is enriched with marginal notes, pointing out the parallel passages in the Mánava Dharma Sástra, an addition which is extremely useful in comparing the doctrines of the two great lawgivers.

¹ Journal of the Asiatic Society of Bengal, Vol. I. p. 84.

² Panchatantram, edidit Kosegarten, pars prima, pp. 80. 188. Fol. Bonn. 1848.

³ Wilson, Ariana Antiqua, p. 364. 4to. Lond. 1841.

⁴ याज्ञवल्क्यसंहिता श्रीमद्वागीश्वरखंडोपाध्यायेन मुद्रांकिता ॥ Oblong Fol. Calcutta. Circa 1840—45,

⁵ याज्ञवल्क्यधर्मशास्त्रम् ॥ Yájnavalkya's Gesetzbuch, Sanskrit und Deutsch, herausgegeben von Dr. A. F. Stenzler. 8vo. Berlin, 1849.

The other Smritis now extant, according to Colebrooke,¹ are as follows:—The Institutes of Usanas, in verse, with an abridgement; a short treatise, containing about seventy couplets, by Angiras, who is supposed to have lived in the reign of the second Manu; a short tract of a hundred couplets by Yama, brother of the seventh Manu: a work in prose, by Āpastamba, and an abridgement of it in verse; a metrical abridgement of the Institutes of Samvarta; a clear and full treatise by Kātyāyana; an abridgement of the Institutes of Vrihaspati, if not the Code at large; a work by Parāsara, who is the highest authority for the fourth age of the world; some works connected with law, by Vyāsa, the reputed author of the Purānas; the joint work of Sankha and Likhita, which has been abridged in verse, and their separate tracts, also in verse; a treatise in verse by Daksha; an elegant treatise in prose by Gautama; an abridgement in verse of a treatise on penance and expiation by Satātapa; and the elegant work in prose, mixed with verse, by Vasishtha, the preceptor of the inferior gods, who is the last of the twenty legislators mentioned by Yājñavalkya. Besides these Smritis, Steele gives, in his list of Hindú law-books, an additional one, the Wamun Smriti, which he says was written by Wamun, a Brahman Rishi of Hindustán.²

An edition of the text of the Smritis, comprising those of Angiras, Atri, Āpastamba, Usanas, Kātyāyana, Daksha, Parāsara, Yama, Yājñavalkya, Likhita, Vishnu, Vrihaspati, Vyāsa, Sankha, Samvarta, Háríta, Gautama, Sātātapa, and Vasishtha, has been published in Calcutta.³

¹ Colebrooke's Digest of Hindu Law, Pref. p. xvi. *et seq.* 2nd edit.

² Steele's Summary of the Law and Custom of Hindoo Castes, p. 2.

³ अङ्गिरःसंहिता ॥ अत्रिसंहिता ॥ आपस्तम्बसंहिता ॥ उशनःसंहिता ॥ कात्यायनसंहिता ॥ दक्षसंहिता ॥ पराशरसंहिता ॥ यमसंहिता ॥ याज्ञवल्क्यसंहिता ॥ लिखितसंहिता ॥ विष्णुसंहिता ॥ बृहस्पतिसंहिता ॥ व्याससंहिता ॥ शंखसंहिता ॥ संवत्संसंहिता ॥ हारीतसंहिता ॥ गौतमसंहिता ॥ शातातपसंहिता ॥ वसिष्ठसंहिता ॥ श्रीभवाजीचरणवंशोपाध्यायेनमुद्रिताः ॥ Oblong fol. Calcutta, 1845, *et ann. seq.*

Before concluding this short notice of the text-books, it must be remarked that the Smritis are, for the most part, of small extent, and relate almost exclusively to daily observances and religious ceremonies, touching upon law only incidentally; and that the Smritis themselves, which are received in common by all the schools, are no longer *final* authorities, even where they do treat of law. Vrihaspati says, "A decision must not be made by having recourse to the letter of written Codes; since, if no decision were made according to the reason of the Law (or immemorial usage), there might be a failure of justice."¹ The *Mánava Dharma Sástra* itself is, indeed, now regarded "as a work to be respected, rather than, in modern times, to be implicitly followed."² For *final* authority, then, in deciding questions of law, recourse must be had to the Commentaries and Digests.

II. The Commentaries, which form the second great authority of Hindú law, are tolerably numerous. Some are merely explanatory of the text, but others are regarded as final authorities; and these latter, together with the Digests, the third class of law-books, form the immediate groundwork for the opinions of lawyers in the respective schools where the doctrines they uphold may prevail. Many of the Commentaries on the Smritis,—such, for instance, as those on Manu's Institutes, which are merely explanatory of the text,—are not considered to be final authorities, any more than the Smritis themselves; but others again, which, by the introduction of quotations from other writers, and by interpreting and enlarging on the meaning of the author, partake so far of the nature of general Digests, are referred to for the final decision of questions. The *Mitákshará* is a remarkable instance of this; since, though professedly only a Commentary on the Smriti of Yájñavalkya, it is consulted as a final authority over the whole of India, with the exception of Bengal alone.

¹ Colebrooke's Digest of Hindu Law, Vol. II. p. 128. 2nd edit.

² Strange's Hindu Law, Vol. I. Pref. p. xiii. 2nd edit.

The Mánava Dharma Sástra has, as may be imagined, been the subject of several Commentaries; indeed, independently of its celebrity and its pre-eminence over all other legal works of the Hindús in antiquity and sanctity, its extreme conciseness has rendered it peculiarly attractive to the subtle-minded Hindú lawyers, and especially adapted to those ingenious refinements of reasoning, with which their works abound.

Amongst these Commentaries the most celebrated are, the one by Médhátithi, son of Víraswámi Bhatta, which, being partially lost, has been completed by other hands; the Comment by Govinda Raja; another by Dharanídharma; and the more famous gloss by Kullúka Bhatta, entitled the Manvartha Muktváli.

These Commentaries are all in considerable repute. Sir William Jones, however, characterizes the first as prolix and unequal; the second as concise but obscure; and the third as often erroneous; reserving for the Manvartha Muktváli that unqualified praise, in which he occasionally indulged when predilection somewhat warped his judgment. The period when Kullúka Bhatta flourished is not known; but he tells us himself that he was of a good family in Bengal, and that he resided on the banks of the Ganges at Benáres. It may be remarked that some ancient commentators speak of the Mánava Dharma Sástra as only adapted to the good ages, and not applicable to the time in which they wrote; a qualification nowhere expressed in the gloss of Kullúka Bhatta, and therefore arguing the superior antiquity of the latter: at the same time it is evident, from Kullúka's work itself, that opinions had already begun to change, and therefore that it must have been composed a considerable period subsequently to the promulgation of Manu's Institutes.

In addition to these Commentaries, M. Deslongchamps mentions, that, in preparing his edition of the Institutes, he made use of one by Rághavánanda, entitled Manvarta Chandriká, which he states to be in many instances more precise

and clear than the gloss of Kullúka.¹ Bháguri is also said to have written a Commentary on the *Mánava Dharma Sástra*. Steele mentions two other glosses on *Manu* as known among the Marathas — the *Mádhava*, by *Sáyanáchárya*, which is stated to be of general authority, especially in the Carnatic; and the *Nandarajkrit*, by *Nandarája*: both of these works are spoken of as ancient; but as their authors are said to have been natives of *Anagundi* or *Vijayanagar*, the date of which is the middle of the fourteenth century, they cannot be very old.² Lastly, *Colebrooke* mentions a Commentary on *Manu*, which, however, he had never seen: it is called the *Káma-dhénu*, and is cited by *Srídharáchárya* in his *Smritisára*.

All the above mentioned Commentaries are merely explanatory of the text, and must not be considered as final authorities.

An excellent Commentary on the Institutes of *Vishnu*, entitled the *Vaijayanti*, was written by *Nanda Pandita*.

The copious gloss of *Aparárka*, of the royal house of *Selára*, is supposed to be the most ancient Commentary on the Institutes of *Yájñavalkya*, and to be, therefore, earlier than the more celebrated Comment on the same text, the *Mitákshará* of *Vijnánésvara*, who is understood for the most part to refer to the work of *Aparárka*, when citing opinions without naming the source from which he derives them.³

The *Mitákshará* of *Vijnánésvara*, a celebrated ascetic, who is supposed to have resided in the north of India,⁴ is a gloss on

¹ *Dealongchamps* supposes the author to be the same as *Raghunandana*.
मानव धर्मशास्त्र ॥ Avertissement, pp. xi. xvi.

² *Steele's Summary of the Laws and Customs of Hindoo castes*, pp. 1, 2.
The former of the two works above mentioned is probably the *Parásara Mádhavíya*, which will be presently noticed; at any rate the *Mádhava* and *Sáyana*, spoken of by *Steele*, are the learned minister of *Bukka Raya*, king of *Vijayanagar*, and his brother the Commentator on the *Védas*.

³ *Ellis on the Law-books of the Hindus*, p. 21.

⁴ The *Mitákshará* is, however, sometimes claimed as a production of the south, and, at any rate, must have been brought there at a very early period. See *Ellis*, op. cit. p. 23.

the Yājñavalkya Dharma Śāstra. It abounds, however, with apposite quotations from other legislators, and expositions of these quotations, as well as of the text it professes to illustrate: thus it combines the utility of a regular Digest with its original character; and it is referred to, and used for the same purposes as the professed Digests. Vijnánésvara, in his important work, follows the arrangement of the Yājñavalkya Dharma Śāstra, and has divided his Comment into three parts: the first treats of duties, established rules, or ordinances; the second, of the laws and customs of the people, that is, of private contests and administrative law; and the third, of purification, the orders of devotion, penance, &c.¹

The Mitákshará of Vijnánésvara is one of the greatest, and, indeed, if we take into consideration the extent of its influence, the greatest of all the Hindú law authorities; “for it is received,” as Colebrooke observes, “in all the schools of Hindu law, from Benares to the southern extremity of the peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent. The works of other eminent writers have, concurrently with the Mitákshará, considerable weight in the schools of law which have respectively adopted them; as the Smṛiti Chandricá in the south of India; the Chintámani, Retnácará, and Viváda Chandra in Mithilá; the Víramitródaya and Camalácara at Benares; and the Mayúcha among the Mah-rattas. But all agree in generally deferring to the authority of the Mitákshará, in frequently appealing to its text, and in rarely, and at the same modestly, dissenting from its doctrines

¹ Mr. Borradaile has given a translation of the Index to the Mitákshará at the end of the first volume of his Bombay Reports (p. 445), but it comprises only the first and second books; the Index to the last book being designedly omitted, as being rarely consulted.—Borradaile's Reports of Causes adjudged by the Sudur Udalut of Bombay, Vol. I. Pref. p. v. Fol. Bomb. 1825.

on particular questions.”¹ The *Mitákshará* must thus be considered *as the main authority for all the schools of Law, with the sole exception of that of Bengal.*² The actual time when Vijnánésvara composed his great work is not precisely ascertained; but, according to Colebrooke, its antiquity exceeds five hundred, and falls short of a thousand years.

The *Mitákshará* is, as has been already observed, a Comment on the text-book of Yájnavalkya; but it, in its turn, has been commented upon by various writers, and it will be most convenient to notice these Commentaries along with the work which they profess to illustrate. Colebrooke³ mentions four Commentaries on the *Mitákshará*, but describes only two; one entitled the *Subódhiní* by Visvésvara Bhatta, and another by a modern author, Bálam Bhatta. The *Subódhiní* is a collection of notes illustrating the obscure passages concisely but perspicuously: Bálam Bhatta's work is in the form of a perpetual comment, expounding the original word by word: he in general follows the *Subódhiní* so far as it extends. Nanda Pandita is mentioned by Sutherland as the author of a Commentary on the *Mitákshará*, entitled *Pratitákshara*.⁴

Various editions of the original text of the *Mitákshará* have been published.⁵ A translation into Bengali of the Second

¹ Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. iv.

² Patábhi Ráma Shastri, from whom Mr. Ellis drew largely in compiling his excellent treatise on the law-books of the Hindús, admitted that the *Mitákshará* of Vijnánésvara was the most generally prevailing authority, but stated, also, that in the Andra country the *Smriti Chandrika* and *Sarasvati Vilása* were chiefly esteemed; in the Dravida, the *Sarasvati Vilása* and *Varadarájya*; and in the Karnátaka, the *Mádhaviya* and *Sarasvati Vilása*. Ellis, on the Law-Books of the Hindus, p. 25.

³ Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. ix.

⁴ Sutherland's two Treatises on the Hindu Law of Adoption, Pref. p. ii.

⁵ श्रीपद्मनाभभट्टोपाध्यायात्मजश्रीमत्परमहंसपरिव्राजकविज्ञानेश्वरभट्टारकख-
ल्लतः ऋजुमिताचरा याज्ञवल्क्यधर्मशास्त्रविवृतिः ॥ Calcutta, 1812. विज्ञाने-
श्वराचार्यसंगृहीतः मिताचराव्यवहाराध्यायः The *Mitákshará*: A Compen-

Book, appeared at Calcutta in the year 1824,¹ and a Hindí translation of the chapter on inheritance was published at the same place in 1832.² Its most important portion, viz. the sixth Chapter which treats of inheritance, has been translated by Colebrooke;³ it is impossible to rate too highly the utility of this translation, the learned author having accompanied it by elucidatory annotations and glosses from his own pen, and drawn from those numerous sources to which his peculiar opportunities and immense erudition gave him a ready access; every page bears testimony to his diligence in collecting materials, to his judgment in their selection, and to his learning in their interpretation. M. Orianne has also translated the chapter on inheritance from the *Mitákshará*.⁴

Sir William Hay Macnaghten, whose melancholy and violent death is fresh in the memory of all as being one of the earliest of the series of disastrous events that occurred during our first campaign in Afghánistán, devoted a large portion of his time to the successful cultivation of the native laws. Amongst other valuable works on this subject, he has left a translation of the *Vyavahára Mátrika Prakrana*, treating of the administration of justice, and including the Law of Evidence and Pleading: this forms the first portion of the second book of *Vijnánésvara*'s work.⁵

dium of Hindú Law; by *Vijnánésvara* founded on the text of *Yájnavalkya*. The *Vyavahára* section, or Jurisprudence, edited by Sri Lakshmi Náráyaná Nyayalancára. 8vo. Calcutta, 1829.

¹ *मिताक्षरादर्पणं* The *Mitákshará Derpana*, translated from the Sanscrit into the Bengali Language, by Lukshmi Narayan Nyayalankar. 8vo. Calcutta, 1824.

² *दायभाजः* | The Law of Inheritance translated from the Sanscrit of the *Mitákshará* into Hindí, by Daya Sánkara. 8vo. Calcutta, 1832.

³ Two Treatises on the Hindu Law of Inheritance, translated by H. T. Colebrooke. 4to. Calcutta, 1810.

⁴ *Traité original des successions d'après le Droit Hindou, extrait du Mitacshara de Vijnanésvara*, par G. Orianne. 8vo. Paris, 1844.

⁵ Detached portions of this translation first appeared in the Considerations on the Hindú Law, by Sir Francis Macnaghten, and the whole was

In addition to the Commentaries on the Yájnavalkya Dharma Sástra by Aparárka and Vijnánésvara above noticed, there are extant Comments by Dévabódha and Visvarúpa, and one by Súlapáni, entitled the Dípakaliká, a modern and succinct gloss, which is in deserved repute with the Gauriya school.¹

The text-book in verse attributed to Yama, brother of the seventh Manu, has been illustrated by a Commentary from the pen of Kullúka Bhatta, the author of the celebrated gloss on the Mánava Dharma Sástra.

Nanda Pandita is the author of a Comment on the Parásara Smriti.

The MádHAVÍYA of Vidyáranyasvámi, named after Mád-hava Áchárya, the brother of its author, is very generally received as an authority with the southern schools, but especially in the Karnátaka country. It is formed on the basis of the Parásara Smriti, on which it is professedly a Comment: but as in this Smriti the second book, which ought to comprise the legal Institutes, is wanting, Vidyáranyasvámi has been forced to select a verse of the general import that princes are enjoined to conform to the dictates of justice, upon which to raise his superstructure, explaining what that justice is. Thus in fact, though not in name, the MádHAVÍYA becomes a digest of the law prevalent in the southern portion of the peninsula. Vidyáranyasvámi was the virtual founder of the Vidyánagara empire, and his work became the standard of its law, as well as being of some authority in the Benáres school. It is ascertained that the author of the MádHAVÍYA wrote about the middle of the fourteenth century.

The text-book of Gautama was commented upon by Haradattáchárya, who resided in Drávida, and who is famous for

afterwards presented, in a complete state and connected form, in the Principles and Precedents of Hindú Law, by his talented son: both these works will be presently described.

¹ Colebrooke's Digest of Hindu Law. Vol. I. Pref. p. xvi. 2d edit.

his other compositions: his work, in which he occasionally quotes from other Smritis, is called *Mitákshará*, and must not be confounded with the treatise of *Vijnánéswara*.

The *Varadarāja*, by *Varadarāja*, who also resided in the south of India, and was a native of the *Súbah* of *Arcot*, is in fact a general Digest; but it may be placed among the Commentaries, since it is framed principally on the *Nárada Smriti*. It is a work of great authority in the southern schools, and especially in the *Drávida* country.

There is a general and concise Commentary and Abridgement of the Smritis which is entitled the *Chatur Vinsati Smriti Vyákhyā*.

III. The *Nibandhana Grantha*, or Digests, properly so called, are the third chief authority of Hindú law. These Digests are either general or treat of particular and distinct portions of the Law, and consist of texts taken from the Smritis, with explanatory glosses, reconciling their apparent contradictions, in order to fulfil the precept of *Manu*—"When there are two sacred texts apparently inconsistent, both are held to be law, for both are pronounced by the wise to be valid and reconcileable."¹

The following account of the Digests might perhaps have included the names of other treatises; but it has been my object, whilst endeavouring to make it as complete as possible, to exclude all those works which do not relate to *Vyavahāra*, or jurisprudence: they have been arranged, where practicable, with relation to the schools of law in which they chiefly obtain; but it must be borne in mind that many of them, in common with several of the glosses and commentaries above mentioned, are of less authority than others, and that in many

¹ *Manu*, B. ii. v. 14. It should be remarked, however, that this applies only to 'sacred texts,' and proceeds from the impossibility of supposing either to be wrong. It does not apply to conflicting laws in general; on the contrary, any law incongruous with the Code of *Manu* is declared invalid.—*Mill's History of India*, by *Wilson*. Vol. I. p. 246, note.

cases their names even may not often be heard in an Indian Court of Justice.

The Dharma Ratna of Jímúta Váhana is a digest of the law according to the Gauriya school; the chapter on Inheritance, the celebrated Dáya Bhága, is extant, and is the standard authority of the law in Bengal. This treatise is on almost every disputed point opposed to the Mitákshará; and it is, indeed, in this very branch of the law, viz. Inheritance, that we find the greatest difference in doctrine in the various schools. Jímúta Váhana probably lived and wrote between the age of Vijnánésvara and that of Raghunandana, the latter of whom is known to have flourished at the beginning of the sixteenth century. The Dáya Bhága is the more especially worthy of notice, on account of its being the work of the founder of the Gauriya school.

Three editions of the text of the Dáya Bhága, together with the Commentary of Sríkrishna Tarkálankára have appeared at Calcutta, the first in the year 1813, the second in 1829,¹ and the third in 1844; this last edition I have not seen. A translation in Prakrit was published as Calcutta in 1816.²

The translation of Jímúta Váhana's chapter on Inheritance by Colebrooke, is the first of the two treatises on Inheritance published by that eminent scholar and lawyer, the Mitákshará being the second. This version of the Dáya Bhága is annotated, commented upon, and illustrated with equal ability and learning.

The earliest Commentary upon the Dáya Bhága is that of

¹ श्रीकृष्णतर्कालङ्कारकृतटीकासहितःश्रीबीमूतवाहनकृतो दायभागः ॥ 4to. Calcutta, 1813. दायभागः ॥ Dáya Bhága, or Law of Inheritance, by Jímúta Váhana, with a Commentary by Krishna Tarkálankára. 8vo. Calcutta, 1829.

² दायभागः । Dáyabhága, or Partition of Heritage, being a translation from the original Sanscrit in the Prakrit Bhasa. To which is added the Hindoo law, containing various useful information on affairs of general importance, together with the Munee Buchuns of the Sanscrit. 8vo. Calcutta, 1816. Bengálí type.

Srínátha Áchárya Chúdámani, which is characterised by Colebrooke as, in general, a very excellent exposition of the text.¹ The next in order of time is the gloss of Achyuta Chakravartí (author also of a Commentary of the *Sraddha Vivéka*): it cites frequently the gloss of Chúdámani, and is itself quoted by Mahésvara: this last is posterior in date to the Commentaries by Chúdámani and Achyuta, and probably anterior to that of Sríkrishna Tarkálankára, which will be presently noticed, though the two seem to be nearly contemporary. The Commentary of Mahésvara differs greatly from the interpretation furnished by Sríkrishna, both in meaning and in the manner of deducing the sense; but neither author seems to have been acquainted with the other's work.

The Commentary by Sríkrishna Tarkálankára is the most celebrated of all the treatises explanatory of the text of the *Dáya Bhága*. Colebrooke says: "It is the work of a very acute logician, who interprets his author and reasons on his arguments with great accuracy and precision, and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout Bengal, and it has almost banished from them the other expositions of the *Dáya Bhága*, being ranked in general estimation next after the treatises of Jímúta Váhana and of Raghunandana."² This Commentary has been chiefly and preferably used by Colebrooke in his translation. Another gloss of the text is mentioned by Colebrooke as bearing the name of Raghunandana, but he does not consider it as genuine. Rámanátha Vidyá Váchaspati is also said to have written a Commentary on the *Dáya Bhága*.

Sríkrishna Tarkálankára has written a good epitome of the Law of Inheritance entitled *Dáya Krama Sangraha*, which, though professedly an original work, agrees throughout with the learned writer's commentary on the *Dáya Bhága*.

¹ Colebrooke's two Treatises on the Hindu Law of Inheritance. Pref. p. vi.

² Ibid.

The text of the *Dāya Krama Sangraha* has been edited, with an English translation, by Mr. Wynch,¹ and was also published separately at Calcutta in the year 1828.²

The *Smṛiti Tatwa* of Raghunandana Vandyaghatīya, the greatest authority of law in the Gauriya school, is a complete Digest, in twenty-seven volumes, and is described by Goverdhen Kál as “the grandest repository of all that can be known on a subject so curious in itself, and so interesting to the British Government.”³ This great writer, who, as I have already mentioned, lived in the beginning of the sixteenth century, was a pupil of Vāsudéva Sārvabhauma: he is often cited by the name of *Smārtabhattachārya*.

The *Dāya Tatwa*, or that portion of the *Smṛiti Tatwa* of Raghunandana which relates to Inheritance, is highly spoken of by Colebrooke, who says: “It is indeed an excellent compendium of the law, in which Jímúta Váhana’s doctrines are in general strictly followed, but are commonly delivered in his own words, in brief extracts from his text. On a few points, however, Raghunandana has differed from his master, and in some instances he has supplied deficiencies.”⁴

Káshirāma has written a Commentary on the *Dāya Tatwa* of Raghunandana which is useful, and nearly agrees with the views taken by Śrīkrishna in his interpretation of the work of Jímúta Váhana.

The whole work of Raghunandana was published in the original at Serampore in the years 1834—35, and again at

¹ The *Dāya Crama Sangraha*, an original Treatise on the Hindoo Law of Inheritance, translated by P. M. Wynch. Fol. Calcutta, 1818. This edition is accompanied by the Sanscrit text printed in Bengálí type.—

² श्रीकृष्णतर्कालंकारभट्टाचार्यकृतो दाय्याधिकारक्रमसंग्रहः *Dāya Krama Sangraha*, a Compendium of the Order of Inheritance, by Krishna Tarkálankára Bhattachārya; edited by Lakshmi Nárāyan Serma. 8vo. Calcutta, 1828.

³ Asiatic Researches, Vol. I. p. 352. 5th edit.

⁴ Colebrooke’s two Treatises on the Hindu Law of Inheritance, Pref. p. vii.

Calcutta about the year 1840.¹ The text of the *Dāya Tatwa* was also published at Calcutta in the year 1828;² and the text of the *Vyavahāra Tatwa* of the same author appeared at the same place in the same year.³

The *Dāya Rahasya* or *Smṛiti Ratnāvalī*, by Rāmanātha Vidya, is of considerable authority in some districts of Bengal; but though a work of merit, it differs both from *Jīmūta Vāhana* and *Raghunandana*, and thus tends to create uncertainty.

The *Dvaita Nirṇaya* of Vāchaspati Bhaṭṭāchārya, a treatise on general law, and the *Dāyā Nirṇaya* of the same author, which treats of inheritance, the latter being little more than an abridgment of the *Dāya Bhāga* and *Dāya Tatwa*, are also Bengal authorities.

Késava Misra, a native of Mithila, is the author of the *Chhandōga Parisishta* and the *Dvaita Parisishta*: the former, together with its commentary, the *Parisishta Prakāsa*, are works of great authority, and treat of the duties of priests: the latter is a more general treatise.

The *Vivāda Ratnākara*, a general digest compiled under the superintendence of Chandéswara, Minister of Harasinhadéva, King of Mithila, and who was himself the author of other law tracts; the *Vivāda Chintāmani*, the text of which was published at Calcutta in the year 1837;⁴ the *Vyavahāra*

¹ श्रीरघुनंदनविरचितानि अष्टाविंशति तत्वानि ॥ 2 Vols. 8vo. Serampore, 1834.

महामहोपाध्याय वधवटीयस्मार्तश्रीरघुनंदनभट्टाचार्यकृतानि तत्वानि अभिवाती चरणवंशोपाध्यायेन कलिकातनागरे मुद्रांकितानि ॥ Obl. Fol. Calcutta, Circa 1840—45.

² दायतत्त्व *Dāya Tatwa*, a Treatise on the Law of Inheritance, by Raghunandana Bhaṭṭāchārya, edited by Lakshmi Nārāyan Sermā. 8vo. Calcutta, 1828.

³ व्यवहारतत्त्व *Vyavahāra Tatwa*, a Treatise on Judicial Proceedings, by Raghunandana Bhaṭṭāchārya. Edited by Lakshmi Nārāyan Serma. 8vo. Calcutta, 1828.

⁴ विवादचिंतामणिः श्रीवाचस्पतिमिश्रविरचितमंत्रः ॥ 8vo. Calcutta, 1837.

Chintámani; and the other works of Vachespatis Misra, commonly cited by the name of Misra, are all considered as great authorities in Mithila; as are likewise the Viváda Chandra, and other treatises by the learned lady Lachimádéví, who wrote under the name of her nephew, Misaru Misra. Sri Karáchárya, and his son Srínátháchárya, were also celebrated in the Mithila school of law; the former, as the author of a treatise on inheritance; the latter, of the Áchárya Chandriká, a tract on the duties of the fourth class.

The Smritisára, or Smrityarthasára, by Sridharáchárya, a treatise on religious duties, but mentioning civil matters incidentally, is according to the Mithila school: it quotes the Pradipa, Kalpadruma, and Kalpalatá, works otherwise unknown. There seems to be several Smritisáras. Sir W. Macnaghten mentions one by Harináthopadhyáya, which is of authority in Mithila;¹ and there is another by Yadavendra. The Smriti Samuchchaya, or Smriti Sára Samuchchaya, is also a Mithila authority, and is known amongst the Marathas: it is apparently a short work.

The Madana Párijáta, a treatise on civil and religious duties, by Visvésvára Bhatta, but containing a chapter on Inheritance, is likewise a Mithila work, and prevails also in the Maratha country: it quotes the Sáparárka, the Smriti Chandriká, and the Hémádri. This work was composed by order of Madana Pála, a prince of the Játh race, and is sometimes cited in his name. Sir W. Macnaghten calls the author Madanopadhyáya.

Súlapáni, a native of Mithila, who wrote a commentary on the Mitákshará, already noticed, is also the author of a treatise on penance and expiation, which is consulted as an authority both in Bengal and Mithila.

The Víramitrodaya of Mitra Misra is a treatise on Vyavahára in general according to the doctrines of the Benáres

¹ Principles and Precedents of Hindu Law, Vol. I. Pref. p. xxii.

school, and systematically examines and refutes the opinions laid down by Jímúta Váhana and Raghunandana.¹

The Sanskrit text of the *Víramitrodaya* was printed at Calcutta in 1815.²

The *Viváda Tándava* of Kamalákara, younger brother of Dinakara Bhatta, and son of Ramakrishna Bhatta, is on the same side of the argument, and defends the doctrines of Vijnánésvara in opposition to the writers of the Gauriya school.

The *Nirnaya Sindhu* is a modern work, but of considerable authority at Benáres, as well as amongst the Marathas: it treats principally of rites and ceremonies, touching incidentally only on questions of a legal nature. The author is Kamalákara.

The original text of the *Nirnaya Sindhu* was published at Calcutta in the year 1833.³

Neither Mitra Misra nor Kamalákara differ from the *Mitákshará* on any important point.

The *Vyavahára Mayúkha* of Nílakantha is the greatest authority, after the *Mitákshará*, in the *Maháráshtra* school, and is one of the twelve treatises by the same author, all bearing the same title of *Mayúkha*, and treating of religious duties, rules of conduct, penance, expiation, &c. The whole of the *Mayúkhas* are designated collectively the *Bhagavat Bháskara*. The *Vyavahára Mayúkha*, which is the sixth in the list, is devoted exclusively to law and justice, and is a general digest, or collection of texts, without much commentary, especially in

¹ Steele mentions another work bearing nearly the same title, but so disfigured by his barbarous orthography as to be uncertain. He calls it *Wyvuhar Mitrode*, and says it was composed by a Gaura Brahman of Bengal, 200 years since, and that it is of general notoriety. *Summary of the Law and Custom of Hindoo Castes*, p. 14.

² वीरमित्रोदयाख्यधर्मशास्त्रं ॥ 4to. Calcutta, 1815.

³ श्रीकमलाकरभट्टविरचितं निर्णयसिंधुनामकं धर्मशास्त्रं ॥ 4to. Calcutta, 1833.

the latter chapters. Little or nothing is known of the author, Nílakantha, beyond that he was of a family of Deshast Brahmans, and it is generally reported that his work was composed about a hundred and fifty years since.

An edition of the text of the Vyavahára Mayúkha was published at Bombay in the year 1826, by order of the Government.¹

Mr. Borradaile, late of the Bombay Civil Service, and a Judge of the Sudder Dewanny Adawlut, the author of the valuable Bombay Reports, has published a translation of the Vyavahára Mayúkha, to which he has affixed annotations referring to passages of other works on Hindú law, and rendering his version of peculiar utility to the student of the law of the Bombay side of India.²

The Smriti Kustubha, by Ananda Déva Kasikar, a Kokunust Chitpawani Brahman, was compiled by desire of Baj Bahádur, otherwise called Chandra Déva. It is one of twelve works bearing the title of Kustubha, all of which are to be met with at Benáres: it is known at Poonah, and treats of Áchára, Vyavahára, and Práyáschitta.

The Hémádri, by Hémádri Bhatta Kasikar, is a general Digest of some antiquity, containing twelve divisions, and is of authority on the Bombay side of India.

The following works are mentioned by Steele as of authority in the Maratha country.

The Dyot, by Gaga Bhatta Kasikar, a Deshast Brahman, was written about a century ago: it comprises twelve divisions, and treats of all subjects.

The Pursuram Prutap was composed by order of Sabají Pratap, Rája of the eastern Telinga country, about five hundred years ago. It is a general Digest.

¹ श्रीशंकरभट्टाचार्यभट्टनीलकण्ठकृते भगवद्गीतासूत्रे व्यवहारमयूखः । 4to. Bombay, 1826.

² The Vyuvuhara Muyookhu, translated from the original by Harry Borradaile. 4to. Surat, 1827.

The Prithí Chandród is also a general Digest treating of Áchára, Vyavahára, and Práyaschitta.

The Vyavahára Sekar, by Nagojee Bhatta, a Deshast Brahman of Benáres, is a work of general notoriety.

The Sar Sangraha is a work treating of Práyaschitta Smárta, Vyavahára, &c. ; but not fully.

The Madana Ratna, by Madana Singh, a Brahman of Hindústán, is a treatise on Áchára, Vyavahára, and Práyaschitta, of notoriety.

The Achararka, by Sunkur Bhatta Kasikar, is a work on Áchára and Vyavahára of general notoriety.

The Sarasvati Vilása, a general Digest, attributed to the King Pratáparúdra Déva, of the Kakateya family, but most likely compiled under his direction, is one of the chief authorities, after the Mitákshará, in the whole of the southern portion of India. It was the standard law-book of his dominions, which comprehended the entire Andra country, and is still a book of great authority to the northward of the Pennar, where many customs exist, particularly regarding land tenures, which are derived from it ; but it is even there, in some measure, subordinate to the authority of the Mitákshará.

The Smriti Chandriká, by Devanda Bhatta, and which has been supposed by Colebrooke, who mentions it in terms of great praise, to have been the basis upon which the Mádhavíya was formed by Vidyáranyasvámi, is a general and excellent treatise according to the doctrine of the Drávida school. This, as well as the preceding work, is of high authority in the Andra country.

A Tamil abridgment of the Smriti Chandriká was published at Madras in the year 1826.¹

The Dhárésvariya is mentioned by Ellis as a general Digest, which, though written by an author supposed to have lived

¹ An Abridgment, in the Tamil language, of the Smriti Chandriká, a treatise on the Municipal Law of the Hindús. By Madura Condaswámi Pulaver. Fol. Madras, 1826.

in the north of India, yet is received as an authority in the south.

Several writers have composed treatises especially devoted to the Law of Adoption ; of these the Dattaka Mímánsá of Nanda Pandita, the author of the Vaijayanti, and the Prati-tákshara, already noticed, is the most esteemed. Sutherland, in describing this work, says : "The Dattaka Mímánsá, as its name denotes, is an argumentative treatise, or disquisition, on the subject of adoption ; and though, from the author's extravagant affectation of logic, the work is always tedious, and his arguments often weak and superfluous ; and though the style is frequently obscure, and not unrarely inaccurate, it is on the whole, compiled with ability and minute attention to the subject, and seems not unworthy of the celebrity it has attained."¹

The Dattaka Chandriká, by Devanda Bhatta, the author of the Smriti Chandriká, is a concise treatise on Adoption of great authority, and is supposed to have been the basis of Nanda Pandita's more elaborate work.

An edition of the text of the Dattaka Mímánsá, and the Dattaka Chandriká appeared at Calcutta in 1817.² Another edition of the text of the Dattaka Mímánsá was, I believe, published at Serampore in 8vo., N. D., but I have never seen it.³

The Dattaka Mímánsá, and the Dattaka Chandriká, have been admirably translated by Sutherland ; and the Synopsis of the Law of Adoption, which he has appended to his work, though succinct, is eminently useful.⁴ A French translation of the Dattaka Chandriká, by M. Orianne, also appeared in the year 1844.⁵

¹ Sutherland's two Treatises on the Hindu Law of Adoption, Pref. p. ii.

² दत्तकमीमांसा दत्तकचंद्रिका । 8vo. Calcutta, 1817.

³ Brunet, Manuel de Libraire.

⁴ The Dattaka Mímánsá and Dattaka Chandriká, two original treatises on the Hindu Law of Adoption, translated from the Sanscrit by J. C. Sutherland. 4to. Calcutta, 1821.

⁵ Traité original des successions d'après le droit Hindou, suivi d'un autre

In addition to these treatises, Ellis mentions the *Datta Mímánsá* by Vidyáranyasvámi, the *Datta Chandriká* by Gangadéva Vazhey, the *Datta Dípaka* by Vyásáchárya, the *Datta Kustabha* by Nagóji Bhatta, and the *Datta Bháshana* by Krishna Misra, as general Digests of the Law of Adoption.¹ He however gives no description of these works, and I do not find them spoken of by other writers on the subject. Sir Francis Macnaghten also speaks of a treatise on Adoption called the *Dattaka Nirnaya*, as the compilation of a celebrated Pandit of the name of Sri Natha Bhatta.²

The Law of Adoption does not exhibit much conflict of doctrine between the several schools, although some differences of opinion may be observed amongst the individual writers. It must be remarked, however, as an important distinction, that although the *Dattaka Mímánsá* and *Dattaka Chandriká* are equally respected all over India, yet where they differ, the doctrine of the latter is adhered to in Bengal, and by the southern Jurists; while the former is held to be the infallible guide in the provinces of Mithila and Benáres.³

Heláyudha, who is supposed to have flourished more than seven hundred years since, is the author of the *Nyáyá Sarvaswa*, the *Brahmana Sarvaswa*, and the *Pandita Sarvaswa*, as well as of other tracts on the administration of justice and the duties of cast.

Lakshmídhara wrote a treatise on the administration of justice, and also a Digest entitled *Kalpataru*, which is often cited.

Narasinha, son of Ramachandra, is the author of the *G6-vindárnava* and other law tracts.

Traité sur l'Adoption, le Dattaka-Chandrica de Devandha-Bhatta. Par G. Orianne. 8vo. Paris, 1844.

¹ Ellis, on the Law Books of the Hindus, pp. 21, 22.

² Considerations on the Hindoo Law as current in Bengal, Pref. p. xiii.

³ Macnaghten, Principles and Precedents of Hindu Law, Vol. I. Pref. p. xviii.

Jítendriya is often cited in the Mitákshará, and in the Digest of Jagannátha Terkapanchánana.

Since the establishment of the British empire in India, three several Digests of the Hindú law have been composed by native authors. The first, the Vivádárnavá Sétu, was compiled by order of Warren Hastings; the second, the Viváda Sárárnava was written, at the request of Sir William Jones, by Serváru Trivédí, a Mithila lawyer; and the third and most celebrated is the Viváda Bhangárnava of Jagannátha Terkapanchánana, which has become generally known by the translation of the learned Colebrooke.

The first of these works was proposed as early as the 18th of March 1773, at the opening of the Court of Sudder Dewanny Adawlut of Bengal;¹ and in December in the same year it was reported to the President that the Digest was nearly completed in the Sanskrit language, and that a translation was being made into Persian for the purpose of being again translated into English. Early in the following year Warren Hastings transmitted a specimen of the English version² to the Court of Directors; and in the same year Mr. Halhed published the entire work in English, under the title of "A Code of Gentoo Laws."

The letter from Sir William Jones to the Supreme Council of Bengal, already quoted, at once describes and condemns this Code. "It consists," says the learned Judge, "like the Roman Digest, of authentic texts, with the names of their several authors regularly prefixed to them, and explained where an explanation is requisite, in short notes, taken from Commentaries of high authority. It is, as far as it goes, a very excellent work; but though it appears extremely diffuse on subjects rather curious than useful, and though the chapter

¹ Proceedings of the Governor and Council at Fort William respecting the Administration of Justice amongst the natives of Bengal, p. 33. 4to. 1774.

² *Ib.* p. 37 *et seq.*

on Inheritance be copious and exact, yet the other important branch of jurisprudence, the Law of Contracts, is very succinctly and superficially discussed, and bears an inconsiderable proportion to the rest of the work. But whatever may be the merit of the original, the translation of it has no authority, and is of no other use than to suggest inquiries on the many dark passages we find in it. Properly speaking, indeed, we cannot call it a translation; for though Mr. Halhed performed his part with fidelity, yet the Persian interpreter had supplied him only with a loose, injudicious epitome of the original Sanscrit, in which abstract many essential passages are omitted; though several notes of little consequence are interpolated, from a vain idea of elucidating or improving the text."¹

The letter from which the above extract is taken proposed to the Government the compilation of a new Digest, which was to be confined to the Laws of Contracts and Inheritances, and to be based upon the great work of Raghunandana. The result of this proposition, which was gladly accepted by the Governor-General and the Members of Council, was the composition of the *Viváda Sárárnava* and the *Viváda Bhangárnava*. Sir W. Jones had himself undertaken a translation of these works, together with an introductory discourse, for which he had prepared "a mass of extremely curious materials,"² when the hand of death arrested his labours.

The *Viváda Bhangárnava*, by Jagannátha Tarkapanchánana,³ was, as above stated, compiled by its author at the suggestion of Sir W. Jones, and after his death was translated by

¹ Sir W. Jones's Works, Vol. III. p. 76*. 4to. Lond. 1799.

² See his last Anniversary Discourse in the Asiatic Researches, Vol. VI. p. 168. 4th Edit.

³ Jagannátha Tarkapanchánana was living in the year 1815, at the advanced age of 108 years, and resident at Tirveni, about thirty miles from Calcutta, where, surrounded by four generations of his descendants, in number nearly an hundred, he gave daily lectures to his pupils upon the principles of law and philosophy.—Harington's Analysis of the Bengal Regulations, Vol. I. p. 197, note. 2d Edit.

Colebrooke.¹ Like the *Vivádá Sárárnava*, it treats only of the Law of Contracts and Successions, omitting altogether the Law of Evidence, the Rules of Pleading, the Rights of Landlord and Tenant, and other topics, which, to render a Digest more generally useful in those Courts where the English law does not prevail, might have been advantageously inserted.

This Digest consists, like other works of the same nature, of texts selected from writers of authority, and a running commentary by Jagannátha, generally taken from former ones, and frequently containing frivolous disquisitions. The arrangement of the work renders its use inconvenient in the extreme; and it has been not inaptly characterised as “the best book for a counsel and the worst for a judge.” Colebrooke himself almost disclaims it. In the Preface to the translation of the treatises on Inheritance he says: “And, indeed, the author’s method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing, in an intelligible manner, which of them is the received doctrine of each school, but, on the contrary, leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered in force, and which obsolete, renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in Indian jurisprudence, especially to the English reader, for whose use, through the medium of a translation, the work was particularly intended.”²

The doctrines maintained by Jagannátha are taken commonly from the Bengal school, and sometimes originate with himself; in which latter case, of course, they are not to be

¹ A Digest of Hindu Law on Contracts and Successions, with a Commentary by Jagannátha Tercapanchánana. Translated from the original Sanscrit by H. T. Colebrooke. 4 Vols. Fol. Calcutta, 1797. 2d Edit. 3 Vols. 8vo. London, 1801.

² Colebrooke’s two Treatises on the Hindu Law of Inheritance, Pref. p. ii.

considered as of paramount authority; but at the same time he ought not to be held responsible when his work is cited, as, it seems, was frequently done in former times by the southern Pandits, in opposition to the opinions maintained by the abler authors of the *Mitákshará*, the *Smṛiti Chandriká*, and the *Mádhavíya*. Colebrooke's regret, that the Pandits of the south of India had thus been furnished with means of adopting, in their answers, whatever doctrine might happen to be in accordance with the bias they might have contracted,¹ cannot be received as a condemnation of Jagannátha's work, but only of a venal practice of the law-officers of the southern Courts, which should have been discountenanced at the outset. Notwithstanding the unfavourable opinion of the *Viváda Bhaṅgáranarva* pronounced by its learned translator, and although this opinion is certainly, in a great measure, justified by the work itself, there is no doubt but that it contains an immense mass of most valuable information, more especially on the Law of Contracts, and will be found eminently useful by those who will take the trouble of familiarising themselves with the author's style and method of arrangement.

In addition to these three general Digests may be mentioned the *Vyavasthāratnamálá*² by Śrī Lakshmī Náráyana Nyáyá-lankára. It is a modern work, modelled after the European plan of a Catechism, written in the form of questions and answers, in the vernacular language of Bengal, with quotations in Sanskrit from books of established authority, adduced in support of the principles advanced. The work of Śrī Lakshmī Náráyana contains a succinct view of the law of inheritance according to the doctrines of Jímúta Váhana contrasted with those of the *Mitákshará*, together with a short treatise on Adoption. This work was published at Calcutta in 1830.³

¹ Colebrooke in *Strange's Hindu Law*, Vol. II. p. 176. 2d edit.

² See an account of this work in the *Journal of the Royal Asiatic Society*. Vol. I. p. 119.

³ श्रीलक्ष्मीनारायणन्यायालंकारविरचितव्यवहारतन्त्रमाला ॥ Svo. Calcutta, 1830.

I have now, I think, described, if not the whole of the Hindú law-books extant, all those which treat of Vyavahára, which are alone applicable to the Hindú law as administered in British India. It remains to recapitulate the names of such works as are usually referred to as final authorities in the different schools, excluding the text-books and mere explanatory comments. They are as follows :—

1. Gauriya, or Bengal school.—Dharma Ratna. Dáya Bhága, and its Commentaries by Śríkrishna Tarkálan-kára, and Śrínátha Áchárya Chúdámáni. Dáya Krama Sangraha. Smriti Tatwa. Dáya Tatwa. Vivádár-nava Sétu. Viváda Sárárnava. Viváda Bhangár-nava.
2. Mithila school.—Mitákshará. Viváda Ratnákara. Viváda Chintámáni. Vyavahára Chintámáni. Dvaita Parisishta. Viváda Chandra. Smritisára. Smriti Samuchchaya. Madana Párijáta.
3. Benáres school.—Mitákshará. Víramitrodaya. Mádha-víya. Viváda Tándava. Nirnaya Sindhu.
4. Maháráshtra school.—Mitákshará. Mayúkha. Nir-naya Sindhu. Hémádri. Smriti Kustubha. Mád-havíya.
5. Drávida school.—
 - (a) Drávida division.—Mitákshará. Mádhavíya. Sa-rasvati Vilása. Varadarájya.
 - (b) Karnátaka division.—Mitákshará. Mádhavíya. Sarasvati Vilása.
 - (c) Andra division.—Mitákshará. Mádhavíya. Smriti Chandriká. Sarasvati Vilása.

In questions of Adoption the Dattaka Mimánsá is preferred in Bengal and in the south; the Dattaka Chandriká in Mithila and Benáres.

It must not be inferred that these are all the works cited by the lawyers of the several schools, but that they are those quoted most frequently: nor, again, must it be concluded that

they are *all* constantly referred to in the Law Courts. Borradaile says, that on the Bombay side of India, three books alone were mentioned by the Sástrís as authorities in his time; viz. Manu, the Mitákshará, and the Mayúkha;¹ and Colebrooke states that in Benáres the ordinary phraseology of references for law opinions of Pandits from the native Judges of Courts established there, previous to the institution of Adawluts superintended by English Judges and Magistrates, required the Pandit, to whom the reference was addressed, “to consult the Mitákshará,” and report the exposition of the law there found applicable to the case propounded.²

Lastly, it must be distinctly remembered, that no work of the Bengal school can be considered to be concurrent or interchangeable with the writings which prevail in the other schools, or of any authority out of the limits within which the Bengálí is the language of the people, with the exception, however, already noticed, regarding the Law of Adoption; and that, although the works above enumerated, which are not according to the Bengal school, are, for the most part, only quoted in those schools under which they are arranged, there seems to be no reason why such works might not be received as authorities indiscriminately in Mithila, Benáres, and the Maratha and Drávida countries, but of course being of greater or less weight according to the custom of each country.

Before I proceed to the description of the fourth class of works on Hindú law, which I have already alluded to, viz. those by European authors, I may mention two modern native compilations which cannot with propriety be ranged under any of the preceding heads. They are collections of opinions compiled from the Dáya Bhága and other works, and seem to correspond with the books of *Fatwas*, which form so considerable a portion of the Muhammadan legal literature: the authors of

¹ Borradaile's Bombay Reports, Pref. p. iii.

² Colebrooke in Strange's Hindu Law, Vol. I. p. 317. 2d Edit.

these collections are Ramjeeyn Tarkálankúra, and Lakshmí Náráyana Nyáyálankára.¹ I have never seen these compilations, but they are mentioned in a Letter from the Bengal Government to the Court of Directors, dated the 22nd of Feb. 1827, as being among the works encouraged or patronised by the Government.² A compilation in Telugu from the Mitákshará and other works may also here be mentioned.³

It must be acknowledged that the method pursued by the Hindú writers on jurisprudence is often very obscure, and always highly uncongenial to European taste; the student will therefore turn with pleasure to the elegant work of Sir Thomas Strange, the sound, though often too severe, criticism of Sir Francis Macnaghten, and the concise and explicit Principles of Hindú Law by his son.

Sir Francis Macnaghten, who was the first writer of an original treatise on Hindú Law, was promoted to the Bench of the Supreme Court at Madras in May 1809, having previously acted as Advocate-General at Calcutta, where, it is said, he had little or no employment except in his official capacity:⁴ he was afterwards, in July 1815, removed to the Supreme Court at Bengal. In the year 1824 he published his Considerations on the Hindú Law,⁵ which he himself states he commenced and completed in that year. It is a valuable work, consisting of an enunciation of principles illustrated copiously by argu-

¹ Byabustha Sungruha: a Collection of Opinions compiled by Ramjeeyn Tarkalunkar, from the thirty-six original books of Dayabhaga, &c.; with the authorities of Munoo, &c. Byabustha Sungruhu; or, a Collection of Opinions compiled by Lukshmee Narayana Nyayalunkra, from the original books of Dayabhaga, &c.; with the authorities of Munoo, &c.

² Fourth Appendix to the Report from the Select Committee of the House of Commons in 1832, p. 64. 4to. Edit.

³ Vyavahara Durpanum. A compilation of the Vijnanaswareyem, Smritichendrika, and several other works on Hindú Law. Revised by Vuttium Vasoodeva Para Bhurmmah Saustrooloo. 8vo. Madras, 1851.

⁴ Anglo-India, Vol. I. p. 204. 3 Vols. 8vo. London, 1838.

⁵ Considerations on the Hindoo Law as it is current in Bengal. By Sir Francis Macnaghten. 4to. Serampore, 1824.

ments and decided cases, which are, in most instances, given *in extenso*: the last two chapters are translations from the *Mitákshará*, and have been already mentioned. The Preface to the *Considerations* speaks in the most disparaging terms of the Hindú Law, and yet, at the same time, advocates its preservation: it is to be regretted that the whole work is pervaded by a spirit of exaggerated self-estimation and unjust depreciation of every thing not consonant with the author's professional prejudices.

Sir Thomas Strange, who filled successively at Madras the offices of Recorder and first Chief Justice of the Supreme Court of Judicature, published the first edition of his admirable work on Hindú Law in 1825, after several years spent in the collection of materials; and a second and revised edition appeared in 1830.¹ Sir Thomas Strange seems to have possessed most of the qualities which are requisite for an Indian Judge: his disposition was mild, and his manners courteous: and although he had not attained any knowledge of the languages of India, he was imbued with a strong predilection in favour of the natives, and spared no pains, and omitted no opportunity of gaining information on the subject of their laws and institutions. The amiability of his temper is peculiarly evinced by the manner in which he speaks² of Sir Francis Macnaghten's severe remarks upon one of his judgments,³ affording a marked contrast to the caustic and arrogant style in which Sir Francis too frequently indulged. The excellent work of Sir Thomas Strange leaves little to desire, so far as regards the Hindú Law of the south of India; whilst the clearness of arrangement, the aptness of the illustrations, and the elegance of its diction, well entitle it to a place by the

¹ Hindu Law, principally with reference to such portions of it as concern the Administration of Justice in India. By Sir Thomas Strange. 2 Vols. 8vo. London, 1830.

² Strange's Hindú Law, Vol. II. Pref. p. viii. 2d edit.

³ *Considerations on the Hindoo Law*, p. 186 *et seq.*

side of the Commentaries of Blackstone. The cases which the learned author has appended to his work, under the title of "*Responsa Prudentum*," are very valuable, and they are rendered still more so by the numerous notes and illustrations which are constantly added by Colebrooke, Sutherland, and Ellis.

The *Principles and Precedents of Hindú Law*,¹ by Sir William Hay Macnaghten, merit the attentive study of all who desire to attain a knowledge of that law: the "*Principles*" are clear, concise, and lucid in their order, and the cases given under the title of "*Precedents*," are of a most important nature. The latter are entitled to great weight, as having been selected, as we are told by the learned author himself, with the utmost care and attention. The whole work was composed, as appears from the Preface, after collecting all the information that could be procured from every quarter, and after a careful examination of all the original authorities, and of all the opinions of the Pandits recorded in the Supreme Court at Calcutta for a series of years. In a late judgment delivered by the Judicial Committee of the Privy Council, Sir W. Macnaghten's work is mentioned as by far the most important authority amongst the Hindú law-books by European authors; and it is stated, on the information of Sir Edward Ryan, to be constantly referred to in the Supreme Court at Calcutta as all but decisive of any point of Hindú law contained in it; and that more respect would be paid to it by the Judges there, than to the opinions of the Pandits.²

Steele's *Summary of the Law of Cast*,³ printed by order of the Governor in Council of Bombay, is inconvenient of reference, on account of its defective arrangement; but it contains

¹ *Principles and Precedents of Hindu Law*, by W. H. Macnaghten. 2 Vols. 8vo. Calcutta, 1829.

² *Rungama v. Atchama and others*. 4 Moore's Indian Appeals. p. 101.

³ *Summary of the Law and Custom of Hindoo Castes within the Dekhun Provinces subject to the Presidency of Bombay, chiefly affecting Civil Suits*. By Arthur Steele. Fol. Bombay, 1827.

a mass of useful information, and may always be consulted with advantage. He divides his work into three parts, Law, Casts, and Existing Customs; the two latter divisions being especially useful, as containing a quantity of matter not to be met with elsewhere. The same remark applies to the two Appendices, one on the customs of particular Casts of Poona, the other on the customs of the Gosáyins. Mr. Steele has prefaced his work by what is designated a List of Sanskrit Law-books; but it is encumbered with the titles of a number of works which are foreign to the subject, and the names of all are so disfigured by an uncouth rendering of the Maratha pronunciation as to be scarcely intelligible.

A treatise on the Hindú Law of Inheritance, Gift, &c., was published a few years since at Calcutta, by Mr. Eberling;¹ but, so far as I have been able to ascertain, no copy of it has as yet reached this country.

Colebrooke's treatise on Obligations and Contracts² scarcely comes within the class of works treating of Hindú law, inasmuch as it relates to the subject of contracts generally; he has, however, illustrated the law of contract throughout by reference to the Hindú system; and the student will find much that is valuable regarding that system under those titles which Colebrooke has completed. Unfortunately the work was never finished, and the Preface, together with the preliminary and introductory matter, promised by the author in the first and only published part, never saw the light.

M. Gibelin published a work at Pondicherry, in 1846-47, which may be pointed out to the reader's notice as exhibiting a comparison between the civil law of the Hindús, the laws of Athens and Rome, and the customs of the Germans.³ M. Gibe-

¹ See the Calcutta Review, No. XIII.

² A Treatise on Obligations and Contracts. By H. T. Colebrooke. Part I. (all published), 8vo., London, 1818.

³ Études sur le droit civil des Hindous; recherches de législation comparée sur les lois de l'Inde, les lois d'Athènes et de Rome et les coutumes des Germains. Par E. Gibelin. 2 Tomes, 8vo. Paris, 1846-47.

lin's volumes, in their comparative portion, are very interesting; but there is much irrelevant speculation, and they are disfigured by a number of fantastical etymologies, which are quite as extravagant as any that are to be found in the pages of Bryant, Vallancey, or Alexander Murray.

An excellent manual of Hindú Law from the pen of Mr. T. L. Strange, son of the accomplished Sir Thomas, and a Judge of the Sudder Adawlut, was published at Madras in 1856.¹ It is expressly written with the view of presenting the results of Sir Thomas' labours in a cheap and compendious form, together with such additional materials as the working of the Courts since his time have furnished. Mr. Strange has executed his task with great ability, and the reader will find in a book of but 75 pages, a satisfactory summary of the Hindú Law, as applied in our Courts in India. The 13th Chapter contains some curious and interesting particulars relating to the Malabar Law.

The last mentioned treatise completes the list of works relating to the Hindú law by Europeans. It is to be regretted that they are so few in number; but when taken in conjunction with the translations from the original works, they are sufficient to enable the student to acquire a very considerable knowledge of the Hindú system of jurisprudence.

(2) THE MUHAMMADAN LAW.

(a) *On the Sources of the Law.*

The Muhammadan law, like that of the Hindús, is profess- edly founded upon revelation; and the Kurán, though variously interpreted, is regarded by the Musulmáns of every denomination, as the fountain-head and first authority of all law, religious, civil, and criminal.

¹ A Manual of Hindoo Law. By Thomas Lumsden Strange, Esq. 8vo. Madras, 1856.

Whenever the Kurán was not found applicable to any particular case, which soon happened as the social relations and wants of the Arabs became more extended, recourse was had to the Sunnah (precept and example), or Hadís (sayings, tradition), that is, the oral law, which was, and is at the present day, held to be only second in authority to the Kurán itself. Thus the Kurán and the Sunnah stand in the same relation to each other, as the Mikrah and Mishnah of the Jews: and it may be remarked, that the words in both the Arabic and Hebrew languages are derived from similar roots, and have the same significations.

The Sunnah or Hadís,¹ the second authority of Muhammadan law, comprises the actual precepts, actions, and sayings of the Prophet himself, preserved by tradition, and handed down by authorised persons.

It may here be remarked, that the word "tradition" must in no wise be taken in the sense in which we are accustomed to use it; the traditions being records of facts, many of them it is true merely orally preserved, but preserved with the greatest care and circumspection; and many of them having been actually written down even during the lifetime of Muhammad, and soon after his death, but the writings destroyed

¹ The word Sunnah is used generally, to signify all the traditions both of the sayings and doings of the Prophet, and the term Hadís is employed in the same comprehensive sense. M. De Slane says, "The distinction between the Hadíth (sayings), and the Sunan (doings), is not attended to by doctors of the Moslim law: both are equally authoritative." See كتاب وفيات الاعيان Ibn Khallikan's Biographical Dictionary, translated by the Baron M'Guckin de Slane, Vol. I. Introduction, p. xviii. note. 3 Vols. 4to. London, printed for the Oriental Translation Fund in 1842-45. M. De Slane's translation is a most valuable work to those who wish to gain a knowledge of the legal literature of the Muhammadans, as he has added to the text numerous learned notes, replete with curious and interesting information relating to the Muhammadan law and lawyers. It is to this translation that all the references to Ibn Khallikan, made in the notes to the following pages, must be understood to apply.

when the writers had committed their contents to memory. The learned and indefatigable Dr. Sprenger, late Principal of the Calcutta Madrasah, was the first to point out this distinction between "traditions," as we understand the word, and the "Muhammadan traditions;"¹ a distinction which is all-important, since the latter form an immense mass of contemporary record relating to the life, precepts, and actions of Muhammad, more voluminous and more authentic than is to be found in the literature of any other nation, applicable to any particular period. The precepts and traditions are divided into two classes, viz. the Kads (holy), which are supposed to have been directly communicated to Muhammad by the angel Gabriel; and the Nabawí (prophetic), or those which are from the Prophet's own mouth, and are not considered as inspired;² both these, however, have the force of law, and, with the Kurán, constituted the whole body of the law at the time of Muhammad's death. "I leave with you," said the Prophet, "two things, which, so long as you adhere thereto, will preserve you from error: these are, the Book of God, and my practice."

In addition to the Kurán and the Sunnah or Hadís, there are two other great sources of Muhammadan law, viz. the Ijmá' (concurrence), and the Kiyás (ratiocination).

The Ijmá' is composed of the decisions of the Companions of Muhammad (Sahábah), the disciples of the Companions

¹ Sprenger's *Life of Mohammad*, Vol. I. Allahábád, 8vo. 1851, p. 67 *et seq.* Sprenger, *On the origin and progress of writing down historical facts among the Musulmans*: see the *Journal of the Asiatic Society of Bengal*, Vol. XXV. p. 304. Dr. Sprenger is now engaged in preparing a revised edition of the first volume of his *Life of Muhammad*, and the continuation of his work.

² Other less important divisions and sub-divisions of the Sunnah have been made, classing them according to their respective value and authenticity, or the time in which they were first known or collected. See Harington's *Analysis*, Vol. I. p. 225, note, 2nd edit. *Journal Asiatique*, 4^{me} Série, Tome xv. p. 185, note.

(Tábi'ún), and the pupils of the disciples: these decisions are said to have been unanimous, and are next in authority to the Kurán and the Sunnah.

Both the Sunnah and the Ijmá' were originally preserved by tradition, and were transmitted through successive generations by learned men, who made the study of the Kurán and the traditions, and their memorial preservation, an especial object. These learned men were called Háfiz (preserver);¹ and in communicating their narratives to their disciples, they invariably mentioned, as a kind of preface, the series of persons through whom they had successively passed before they came into their possession: this preface is called the Isnád (support), and according to the credibility attached to the narrators whose names are enumerated as the Isnáds, depends the authenticity and authority of the tradition related; some sects absolutely rejecting traditions which are received as authoritative by others. The Isnáds were retained in the books after the Sunnah and the Ijmá' had become reduced to writing, and collected together in the works which will presently be noticed.

The Kiyás, which is the fourth source of the Muhammadan law, consists of analogical deductions derived from a comparison of the Kurán, the Sunnah, and the Ijmá', when these do not apply either collectively or individually to any particular case. This exercise of private judgment is allowed, with a greater or less extension of limit, by the different Muhammadan sects; some, however, refusing its authority altogether.

Since it appears, then, that although the sources of the law are the same throughout the Muhammadan world, there is a variety in the manner of their reception, and in the laws

¹ The appellation of Háfiz is given to any one who knows the Kurán by heart; but it is more particularly used by the Sunní writers to designate those who have committed to memory the six great collections of traditions, and who can cite the Isnáds with discrimination.

derived from them, it becomes necessary to describe shortly the principal sects, and to state the chief points of difference in their opinions as to the sources of the law.

(b) On the Principal Muhammadan Sects, and their Legal Doctrines.

The dissensions which arose on the death of the Prophet, with regard to the succession to the Khiláfat, were revived with renewed fury when, on the murder of 'Usmán, the noble and unfortunate 'Alí succeeded to the dignity of Amír al-Múminín; and they eventually caused the division of Islám into two great parties or sects, called respectively the Sunnís, and the Shí'ahs,¹ who differ materially in the interpretation of the Kurán, and in admitting or rejecting various portions of the oral law. The hatred entertained between these rival sects has been the cause of constant religious wars and persecutions scarcely to be surpassed in the history of any nation or creed, and still separates the followers of Muhammad into two classes, by a barrier more insurmountable than that which divides the Roman Catholic from the Protestant.

The Sunnís, who assume to themselves the appellation of orthodox, uphold the succession of the Khalífahs Abú Bakr, 'Umar, and 'Usmán, and deny the right of supremacy, either spiritual or temporal, to the posterity of 'Alí. They are divided into an infinity of sects; but of these it will be sufficient in this place to notice the four principal only, which agree one with another in matters of faith, but differ slightly in the form of prayer, and more especially with regard to the exercise of the Kiyás, and the legal interpretation of the Kurán where the latter relates to property.²

¹ The word Shí'ah, which signifies sectaries, or adherents in general, was used to designate the followers of 'Alí as early as the 4th century of the Hijrah. Beland, *De Relig. Mohamm.* p. 37.

² For a fuller account of the various Sunní sects, see Maracci, *Prodromus*, Pars III. p. 72 *et seq.*; Pococke, *Specimen Historiæ Arabum*,

These four principal sects, which are called after their founders, originated with certain eminent Mujtahid Imáms, named respectively Abú Hanífah, Málík Ben Anas, Muhammad ash-Sháfi'í, and Ahmad Ben Hanbal. Two other Imáms were also the founders of Sunní sects; these were Abú 'Abd Allah Sufyán as-Sauri,¹ and Abú Dáwúd Sulaimán az-Záhiri,² but they had but few followers; and a seventh sect, which had for its chief the celebrated historian At-Tabarí,³ did not long survive the death of its author.

Abú Hanífah Nu'mán Ben Sábít al-Kúfi, the founder of the first of the four chief sects of Sunnís, and the principal

pp. 17 *et seq.*, and 212 *et seq.*; and Sale, Koran, Preliminary Discourse, sect. 8. The most celebrated work which treats of this subject is the Kitáb al-Milal wa an-Nihal, by Abú al-Fath Muhammad ash-Shahrastání, who died in A.H. 548 (A.D. 1153). The original text of Ash-Shahrastání, has been edited by the Rev. Canon Cureton, and was printed for the Society for the Publication of Oriental Texts in 1842—1846. It is entitled, كتاب الملل والنحل Book of Religious and Philosophical Sects. A translation of this work has also since appeared by Dr. Haarbrücker, the title of which is, Abu-l-Fath Muhammad asch-Schahrastani's Religionspartheien und Philosophenschulen. 8vo. Halle, 1850.

¹ As-Saurí was born at Kúfah in A.H. 95 (A.D. 713), and died at Basrah, where he had concealed himself in order to avoid accepting the office of Kází, in A.H. 161 (A.D. 777).—Ibn Khall. Vol. II. p. 577; An-Nawawí, p. ٢٨٦

² Az-Záhirí was so called because he founded his system of jurisprudence on the *exterior*, or literal meaning of the Kurán and the traditions, rejecting the Kiyás. He was born at Kúfah in A.H. 202 (A.D. 817), and died at Baghdád in A.H. 270 (A.D. 883). He was a great partisan of Ash-Sháfi'í.—Ibn Khall. Vol. I. p. 501. And see تهذيب الاسماء The Biographical Dictionary of Illustrious Men, by Abu Zakariya Yahya el-Nawawi, edited by Dr. Wüstenfeld, p. ٢٣٦. 8vo. Göttingen, printed for the Society for the Publication of Oriental Texts, 1842—1847. All the references to An-Nawawí's work in the following pages apply to this edition.

³ Abú Ja'far Muhammad Ben Jarír at-Tabarí was born at Ámul in Tabaristán in A.H. 224 (A.D. 838), and died at Baghdád in A.H. 310 (A.D. 922).—Ibn Khall. Vol. II. p. 597; An Nawawí, p. ٢٠١.

of the Mujtahid Imáms who looked to the Kiyás as a main authority upon which to base decisions, was born at Kúfah in A.H. 80 (A.D. 699), at which time four, or as some authors say, six of the Companions of the Prophet, were still living. Abú Hanífah died in prison at Baghdád in A.H. 150 (A.D. 767),¹ having been placed in confinement by the Khalífah Al-Mansúr, on account of his having refused to accept of the office of Kází, from a consciousness of his own inefficiency; a refinement of modesty of which the Arabian lawyers may well be proud, since it is doubtful whether the biography of the jurisconsults of all nations and ages would present another instance of the same self-denial and suffering from similar motives. Unluckily, however, for Abú Hanífah's character, his consistency does not seem to have equalled his conscientious self-depreciation; for we find that he was originally a strong partisan of the house of 'Alí; and it is even hinted that the cause of his subsequent change of opinion was to be traced to interested motives. The doctrine of Abú Hanífah, at first, prevailed chiefly in 'Irak; but afterwards became spread over Assyria, Africa, and Máwará an-Nahar. It is at present very generally received throughout Turkey and Tátary, and, together with that of his two disciples, Abú Yúsuf and Muhammad, is the chief, and with but rare exceptions, the only authority which governs the Sunní law in India.

Abú 'Abd Allah Málík Ben Anas, the founder of the second Sunní sect, was born at Madínah in A.H. 95 (A.D. 713), and died at the same place in A.H. 179 (A.D. 795). From the circumstance of his birth and death occurring at that city, he is sometimes called the Imám Dár al-Hijrah. Málík in his youth, had the advantage of the society of Sihl Ben Sa'd, almost the sole surviving Companion of the Prophet; and it is supposed that from him he derived his extreme veneration for the traditions. He was also intimate with Abú Hanífah, but he never imbibed that doctor's excessive partiality for the

¹ An-Nawawí, p. ٦٦٨

Kiyás.¹ The tenets of Málík Ben Anas are principally respected in Algeria, Tunis, Tripoli, Senegal, and almost the whole of Africa: they are not known to prevail in any portion of India.²

Abú 'Abd Allah Muhammad Ben Idrís ash-Sháfi'í was born at 'Askalán in A.H. 150 (A.D. 767), and eventually became the founder of the third of the chief Sunní sects. Ash-Sháfi'í had the distinguished honour of belonging to the same stock as the Prophet himself, being descended from 'Abd al-Mutallib, the son of 'Abd Manáf, the ancestor of Muhammad. For this reason he is known by the surname of Al-Kuraishí al-Mutallibí. In his youth he was a pupil of Málík Ben Anas: he died at Cairo in A.H. 204 (A.D. 819).³ Ash-Sháfi'í's doctrine has a limited range amongst the Muhammadan inhabitants of the sea-coast of the peninsula of India;⁴ but the chief seats of its authority are Egypt and Arabia. It is also said to be in some repute amongst the Malays and the Musulmans of the Eastern Archipelago. His followers were at one time very numerous in Khurásán; but at present his opinions are rarely quoted, either in Persia or India.

Abú 'Abd Allah Ahmad ash-Shaibání al-Marwazí, generally known by the name of Ibn Hanbal, the founder of the fourth Sunní sect, was born at Baghdád in A.H. 164 (A.D. 780), and died in A.H. 241 (A.D. 855). This learned doctor, who was a pupil of Ash-Sháfi'í, strenuously upheld the opinion that the Kurán was uncreated, and that it had existed from all eternity. Since, however, it happened unfortunately that

¹ Ibn Khall. Vol. II. p. 545.

² Herklots, *Qanoon-e-Islam*, 8vo. London, 1832, p. 244, note.

³ Ibn Khall. Vol. II. p. 569. *An-Nawawí*, p. 67.

⁴ Colonel Vans Kennedy says, "His doctrine is also followed by the descendants of the Arabs, the Mapillas of Malabar, which renders a reference to his peculiar opinions frequently necessary at Bombay."—*Journal of the Royal Asiatic Society*, Vol. II. p. 81. Herklots says they are met with principally at Nagore, near Negapatam, on the Coromandel coast.—*Qanoon-e-Islam*, p. 244, note.

the Khalífah Al-Mu'tasim maintained the contrary doctrine, Ibn Hanbal was greatly persecuted for his persistent opposition to that monarch's favourite belief. It is related in history that no fewer than 800,000 men and 60,000 women were present at this doctor's funeral; and that 20,000 Christians, Jews, and Magians became Muhammadans on the day of his death.¹ Whatever degree of credit may be attached to this extraordinary statement, its mere existence sufficiently attests the astonishing reputation which Ibn Hanbal had acquired during his lifetime, and the veneration in which he was held after his death. Persecution, however, soon thinned the ranks of his followers; and though at one time they were very numerous, the Hanbalís are now seldom to be met with out of the confines of Arabia.

Of these four chief sects of the Sunnís, the followers of Málík and Ibn Hanbal may be considered as the most rigid; whilst those of Ash-Sháfi'í may be characterised as holding doctrines most conformable to the spirit of Islám, and the sectaries of Abú Hanífah, as maintaining the mildest and most philosophical tenets of all.²

The second great Muhammadan sect, the Shí'ahs, uphold the supremacy of 'Alí Ben Abí Tálib, the second convert to Islám, the cousin and son-in-law of Muhammad, and one of the ablest and bravest of all the Arabian chieftains. The Shí'ahs assert that 'Alí was the only lawful successor of the Prophet, and that both the Imámat and Khiláfat, that is, the supreme spiritual and temporal authority, devolved of right upon him and his posterity, notwithstanding that they were actually and unjustly ousted by the Khalífahs of the Bení Umayyah and Bení 'Abbás. The Shí'ahs are divided into five principal sects,³ which differ in points of faith and religious

¹ Ibn Khall. Vol. I. p. 44; An-Nawawí, p. ١٢٢.

² Ibn Khall. Vol. I. Introduction, p. xxvi.

³ Von Hammer only allows four principal sects.—Geschichte der Assassinen, p. 25. I follow Ash-Shahrastaní.

doctrine; and these again are subdivided into many distinct classes: the Shí'ah sects, however, with a few trifling exceptions, never held any variety of opinion in matters of law.¹

The Shí'ah doctrines were adopted by the Persians at the foundation of the Safaví dynasty in A.H. 905 (A.D. 1499), and from that period until the present time, have prevailed as the national religion and law of Persia, notwithstanding the violent efforts to substitute the Sunní creed made by the Afghán usurper Ashraf, and the great Nádir Sháh. There are, also, numerous Shí'ahs in India, though but few when compared with the Sunnís; and a small number are to be found in the eastern portion of Arabia. During the Muhammadan period of Indian history, the Shí'ahs were chiefly confined to

¹ Some account of the tenets of the Shí'ahs will be found in the following works:—كتاب الملل و النحل, p. ١٠٨ *et seq.*; Haarbrücker's Schahras-tani, p. 164 *et seq.*; Pococke, Specimen Historiæ Arabum, pp. 33 and 257; Maracci, Prodrômus, p. 80; Sale, Koran, Preliminary Discourse, sect. 8; Von Hammer, Geschichte der Assassinen, p. 25 *et seq.*; Malcolm, History of Persia, Vol. II. p. 346 *et seq.* In order, however, to obtain an accurate knowledge on the subject, the Shí'ah authorities must be consulted. Amongst these, the Hakk al-Yakín, by Muhammad Bákir Ben Muhammad Takí, who dedicated his work to Sháh Sultán Husain Safaví, is deservedly one of the most celebrated. It contains a body of the theology of the Shi'ahs, and quotes and refutes the arguments opposed to the opinions advanced, illustrating the whole with evidences of the truth of the Shí'ah doctrines, and with numerous traditions. There is also a very interesting little work by Abú al-Fatúh Rází Makkí, entitled the Risálat-i, or Kitáb-i Hasaniyah, which has a great reputation amongst the Shi'ahs, particularly in Persia. It consists of an imaginary disputation between a Shí'ah slave-girl and a learned Sunní jurisconsult, on the merits of their respective doctrines, in which, as a matter of course, the girl utterly discomfits her opponent. The argument is very ingeniously managed, and the treatise, taken altogether, furnishes a good and concise exposition of the tenets of the Shí'ahs, and the texts on which their belief is founded. The Risálat-i Hasaniyah was translated from the Arabic into Persian, by Ibráhím Astarábádí, in A.H. 958 (A.D. 1551). Both of these works have been printed in Persia, with great accuracy and elegance. fol. كتاب حسنيه. Tehran, A.H. 1239 (A.D. 1823), كتاب حقّ اليقين fol. Tehran, A.H. 1241 (A.D. 1825).

the kingdoms of Bījápúr and Golconda,¹ their sect never having been suffered to make any progress in Hindústán,² where the religion of the state was according to the tenets of the Sunnís. Since the British rule, however, those who profess the Shí'ah faith are no longer persecuted, or forced to conceal their opinions; and although the majority of the Musulmáns in India still adhere to the doctrines of Abú Hanífab, the Shí'ah is allowed to celebrate unmolested the tenth of Muharram, and to mourn the untimely fate of the virtuous Husain, and the martyrs of the plain of Karbalá.

These are the principal sects of the Muhammadans who differ in opinion with regard to legal doctrine. I have already stated that the Kurán is universal in its authority; but this must be understood with the reservation that such authority depends upon its interpretation, and that the latter differs according to the views of the principal commentators of the various sects, the Shí'ahs more especially rendering the meaning of many texts in a manner totally opposed to their acceptance by the sects of the Sunnís.

The traditions and the Ijmá' are, in like manner, looked upon by all Musulmáns as authoritative in the second degree; but, as I have mentioned above, their value varies, and depends upon their Isnáds. Many writers on the religion and laws of the Muhammadans have asserted that the Shí'ahs reject entirely the authority of tradition. Nothing, however, can be more erroneous than this assertion, since all Shí'ahs admit the legality of the Sunnah, when verified by any of the Twelve Imáms;³ and all equally venerate the precepts and examples,

¹ Chardin, Tome IX. p. 27; Bernier, Tome I. p. 285.

² Elphinstone, History of India, Vol. II. p. 201. 2nd edit.

³ 'Alí, and his immediate posterity, are called the Twelve Imáms by the Shí'ahs, and the title thus employed must not be confounded with its indiscriminate use by the Sunní sects, who applied it to a large number of eminent doctors. The Shí'ahs consider the title of Imám as a sacred appellation, and restrict it entirely to 'Alí and his descendants; holding that the

both of the Prophet and the Twelve Imáms themselves, and the traditions that have been handed down by the friends and partisans of 'Alí,¹ rejecting only such portions of the Sunnah as are derived from persons contaminated by crime or disobedience to God. In the latter class they range all the traditions recorded on the authority of the first three Khalífahs, and of such of the Companions, the Tábi'ún, and their disciples, as were not included amongst the supporters of 'Alí Ben Abí Tálib. The error with regard to the Shí'ah doctrine in matters of tradition seems to have arisen from the fact, that our knowledge of their tenets has been almost entirely taken from Sunní sources, in which the word Sunnah is used to signify exclusively the traditions of the Sunnís; and also that the Shí'ahs themselves almost invariably employ that word when speaking of the Sunní traditions, calling their own Hadís, and even referring to the Sunnís as the Ahl-i Sunnah (people of the Sunnah), in contradistinction to themselves, whom they generally call the Ahl-i Bait (people of the house of the Prophet). When, therefore, it is asserted that the Shí'ahs reject the authority of tradition, it must only be understood to mean that they pay no regard to the Sunnah recorded by the enemies of 'Alí: they of course repudiate the doctrines of the founders of the principal Sunní sects, holding their names even in abhorrence.² What has been said with regard to the traditions as received by the Shí'ahs, applies equally to the Ijmá', the

office of Imám is not a matter depending upon the choice of the people, but a fundamental article of religion. The names of the Twelve Imáms are, 'Alí Ben Abí Tálib al-Murtaza, Hasan Ben 'Alí al-Mujtaba, Husain Ben 'Alí ash-Shahíd, 'Alí Ben Husain Zain al-'Ábidín as-Sajjád, Muhammad al-Bákir, Ja'far as-Sádik, Músa al-Kásim, 'Alí ar-Rizá, Muhammad al-Jawád, 'Alí al-Hádí, Hasan al-'Askarí, and Muhammad Abú al-Kásim al-Mahdí. The last of these is supposed to be concealed, and not dead; and it is believed by the Shí'ahs that he will re-appear at the last day; whilst, in the mean time, it is unlawful and impious to give the title of Imám to any other.

¹ These are enumerated in the third and fourth books of the *Majális al-Múminín*, a work to which I shall shortly recur.

² Malcolm, *History of Persia*, Vol. 1. p. 358.

authority of which depends upon the source from whence it is derived.

The Kiyás, as I have mentioned in a former page, is variously received by the different sects. It seems pretty clear, from a tradition recorded in the *Mishkát al-Masábih*,¹ that the exercise of private judgment was acknowledged and authorised by the Prophet himself. In the first, second, and third centuries of the Hijrah, the principal juriconsults appear to have founded their practice upon that of their predecessors ; but some, venturing to rely upon analogical deduction from the first three sources of the law, were called Mujtahids, because they employed the utmost efforts of their minds to attain the right solution of such questions of law as were submitted to their judgment.²

Amongst the Sunní sects, Mujtahids are classed under three principal divisions, according to the degree of *Ijtihád* which they may have attained. The word *Ijtihád* signifies, in its most common acceptation, the striving to accomplish a thing, the making a great effort ; but in speaking of a law-doctor, it denotes the bringing into operation the whole capacity of forming a private judgment relative to a legal proposition.³

The chief degree of *Ijtihád* conferred on its possessor a total independence in legislative matters, and he became, as it were, a connecting link between the law and his own disciples, who had no right to question his exposition of the Kurán, the Sunnah, and the *Ijmá'*, even when apparently at variance with

¹ *Mishkát ul Masábih*, translated by Capt. Matthews, Vol. II. p. 222.

² For the exact meaning of the word Mujtahid see Silvestre de Sacy's *Chrestomathie Arabe*, Tome I. p. 169 *et seq.* ; the works there quoted ; and Harington's *Analysis*, Vol. I. p. 233 (2d edit.) M. De Slane gives the best and most concise definition ; viz. "The term Mujtahid is employed in Moslim divinity to denote a doctor who exerts all his capacity for the purpose of forming a right opinion upon a legal question."—Ibn Khall. Vol. I. p. 201, note.

³ This definition is quoted from the *Kitáb Taarífat*, by Silvestre De Sacy, in his *Chrestomathie Arabe*, Tome I. p. 169.

those elements or sources of jurisprudence. The Mujtahids of this first class were very frequent in the three first centuries of the Hijrah ; but in later times the doctrines of the law becoming more fixed, the exercise of private judgment, to an unlimited extent, soon ceased to be recognized. Some later doctors, At-Tabarí and As-Suyútí for instance, claimed the right, but it was refused to them by public opinion.¹ The Mujtahids of the first class, who lived in the first century of the Hijrah, are esteemed of higher authority than those who flourished in the second and third.

Those Mujtahids, who had arrived at the second degree of Ijtihád, possessed the authority of resolving questions not provided for by the authors of the chief sects, and were the immediate disciples of the acknowledged Mujtahids of the first class, who, in some instances, allowed their pupils to follow and teach opinions contrary to their own doctrines, and occasionally even adopted their views.

Those who had attained the third degree of Ijtihád were empowered to pronounce, of their own proper authority, sentences in all cases not provided for by the founders of the sects or their disciples. Their sentences were, however, to be derived from a comparison of the Kurán, the Sunnah, and the Ijmá', taken conjointly with the opinions of the Mujtahids of the first and second classes ; and they were not authorised to controvert their published doctrines, either respecting the elements of the laws, or the principles derived therefrom. Mujtahids of the third class were required to possess a perfect knowledge of all the branches of jurisprudence, according to the doctrines of all the schools ; and the class comprises a large number of doctors, of greater or less celebrity, some of whom were raised to the rank during their lifetime, but the greater portion subsequently to their decease.

¹ Ibn Khall. Vol. I. p. 201, note ; Journal Asiatique, 4^{me} Série, Tome XV. p. 183.

As a title, the term *Mujtahid* has long since fallen into disuse amongst the *Sunnis*.¹

Ibn Khaldún says, speaking of the exercise of the *Kiyás*, as allowed by the chief *Sunní* sects—"The science of jurisprudence forms two systems, that of the followers of private judgment and analogy (*Ahl ar-Ráī wa al-Kiyás*), who were natives of 'Irák, and that of the followers of tradition, who were natives of *Hijáz*. As the people of 'Irák possessed but few traditions, they had recourse to analogical deductions, and attained great proficiency therein, for which reason they were called 'the followers of private judgment': the *Imám Abú Hanífah*, who was their chief, and had acquired a perfect knowledge of this system, taught it to his disciples. The people of *Hijáz* had for *Imám*, *Málik Ben Anas*, and then *Ash-Sháfi'í*. Some time after, a portion of learned men disapproved of analogical deductions, and rejected that mode of proceeding: these were the *Záhirites* (followers of *Abú Dáwúd Sulaimán*), and they laid it down as a principle, that all points of law should be taken from the *Nusús* (text of the *Kurán* and traditions), and the *Ijmá'* (universal accord of the ancient *Imáms*)."²

The respective weight allowed to the *Kiyás* by *Málik*, *Ash-Sháfi'í*, and *Ibn Hanbal*, is not easily to be ascertained, nor is it important in the present view of the question: their disciples were, however, termed "the followers of tradition" (*Ahl as-Sunnat*), in contradistinction to those of *Abú Hanífah*; and *Abú al-Faraj* says that these three doctors seldom resorted to analogical argument, whether manifest or recondite, when they could apply either a positive rule or a tradition. He adds that *Abú Dáwúd Sulaimán* rejected the exercise of reason altogether.³

¹ Ibn Khall. Vol. I. Introduction, p. xxvi. note.

² Quoted in the Introduction to M. De Slane's *Ibn Khallkan*, Vol. I. p. xxi. note.

³ Quoted in Pococke, *Specimen Historiæ Arabum*, p. 26.

Of all the Sunnī sectarians, those who adhere to the doctrines taught by Abú Hanífah, as being the most numerous in India, claim our almost undivided attention. That juriconsult himself, according to Abú al-Faraj, was so much inclined to the exercise of reason, that he frequently preferred it, in manifest cases, to traditions of single authority;¹ and his disciples in India have constantly upheld the exercise of the Kiyás in an extended form, as is sufficiently notorious, and amply proved by certain passages relating to the guidance of Magistrates quoted in the *Fatáwa al-'Álamgírí*. The first passage alluded is from the *Muhít* of Rází ad-Dín Níshápúrí, and is as follows:—"If the concurrent opinion of the companions be not found in any case which their contemporaries may have agreed upon, the Kází must be guided by the latter. Should there be a difference of opinion between the contemporaries, let the Kází compare their arguments, and adopt the judgment he deems preferable. If, however, none of the authorities referred to be forthcoming, and the Kází be a person capable of disquisition (*Ijtihád*), he may consider in his own mind what is consonant to the principles of right and justice, and, applying the result with a pure intention to the facts and circumstances of the case, let him pass judgment accordingly." The second is taken from the *Badái'* of Abú Bakr Ben Mas'úd al-Káshání, who died in A. H. 587 (A.D. 1191):²—"When there is neither written law, nor concurrence of opinions, for the guidance of the Kází, if he be capable of legal disquisition, and have formed a decisive judgment on the case, he should carry such judgment into effect by his sentence, although other scientific lawyers may differ in opinion from him; for that which, upon deliberate investigation, appears to be right and just, is accepted as such in the sight of God." And again, a third passage is quoted from the last-

¹ Pococke, *Specimen Historiæ Arabum*, p. 26.

² Háj. Khalf. Tom. II. p. 235.

mentioned work :—" If in any case the Kází be perplexed by opposite proofs, let him reflect upon the case, and determine as he shall judge right ; or, for greater certainty, let him consult other able lawyers ; and if they differ, after weighing the arguments, let him decide as appears just. Let him not fear or hesitate to act upon the result of his judgment, after a full and deliberate examination." Passages from other law-books to the same effect are also quoted in the *Fatáwa al-'Álamgírí*, and the compilers of the latter work concur entirely in the opinions which they cite. In all such cases, however, it is pre-supposed that the Magistrate so exercising his private judgment, should possess the qualifications of a Mujtahid of the third class.

I have not been able to ascertain whether or not the Shí'ahs classed their Mujtahids according to the degree they had attained in *Ijtihád*, as with the Sunnís ; but in former times the title seems to have implied in its possessor infallibility, both in doctrine and in conduct.¹ The Shí'ahs speak frequently of the Mujtahids in their legal works, saying generally, after the statement of some proposition where there is a difference of opinion, " Some of the Mujtahids say, &c." In Persia the title of Mujtahid exists at the present day, and is assumed by the chief priests and jurisconsults, who are elected to the dignity by the suffrage of the inhabitants of the provinces in which they live, and as such they exercise a great controul over the Law Courts, and are even superior in authority to the Judges themselves.²

(c) *On the Muhammadan Law-Books.*

It was not until a considerable time after the foundation of Islám that the traditions and interpretations of the law were reduced to writing ; the Hadís for a long while remaining

¹ De Sacy, *Chrestomathie Arabe*, Tome I. p. 171.

² Malcolm's *History of Persia*. Vol. II. p. 442, *et seq.* Ibn Khall. Vol. I. Introduction, p. xxvi. note.

unwritten, or at least unpublished ; the writers, as I have said above, expunging their works when they had learned them by heart. "The articles of law," says Ibn Khaldún,¹ "or, in other terms, the commandments and prohibitions of God, were then borne (not in books), but in the hearts of men, who knew that these maxims drew their origin from the Book of God, and from the practice (Sunnah) of the Prophet himself. The people at that time consisted of Arabs, wholly ignorant of the mode by which learning is taught, of the art of composing works, and of the means by which knowledge is enregistered ; for to these points they had not hitherto directed their attention. Under the Companions of Muhammad, and their immediate successors, things continued in the same state ; and during that period, the designation of Kurrá (readers) was applied to those who, being not totally devoid of learning, knew by heart and communicated information. Such were the persons who could repeat the Kurán, relate the sayings of the Prophet, and cite the example of his conduct in different circumstances. (This was a necessary duty), inasmuch as the articles of the law could only be known from the Kurán, and from the traditions which serve to explain it." Learned doctors even presided over schools of law, delivered lectures, and actually composed works which were not committed to writing.

It is not possible to fix with exactitude when the first collections of traditions were written down, but the practice of transcribing them appears to have increased gradually, and it is certain that several of the Companions of the Prophet collected his sayings in books.² Meanwhile the traditions increased to such an extent, that it became not only advisable, but necessary, to make general collections of them, and

¹ Quoted by De Slane in his Introduction to Ibn Khallikan, Vol. II. p. v.

² Sprenger on the origin and progress of writing down historical facts, p. 15. Journ. As. Soc. of Bengal, Vol. XXV. p. 317.

to separate those which were authentic from those of doubtful authority.

The Khalífah 'Umar Ben 'Abd al-'Azíz issued a circular order for this purpose, and collections were rapidly formed, so that toward the end of the third century of the Hijrah, all the traditions that were at all to be relied upon had been collected in books: most of these it is certain had received a stereotype form previous to the beginning of the second century.¹ It is doubtful who was the first of the general collectors, but there is no question that the earliest of the general collections were compiled by Abú Bakr Ben Shiháb az-Zuhrí; 'Abd al-Malik Ben Juraij; Málik Ben Anas, and Ar-Rabí' Ben Subaih. I shall return to their works hereafter. Contemporary with these, or soon after, more particularly between the years 140 and 150 of the Hijrah, other learned men compiled and arranged collections of the traditions, and composed divers commentaries and treatises on jurisprudence, and the interpretation of the Kurán in regard to legal matters.

In process of time, works on these subjects became accumulated to an almost incredible extent; so that the bare enumeration of their titles would fill an ordinary volume;² and a reference to the biographical works of Ibn Khallikán³ and

¹ Sprenger's Mohammad. Vol. I. p. 68.

² In illustration of the numbers of such works Dr. Sprenger relates, "So extensive was Arabic literature, consisting chiefly of books containing traditions, in the beginning of the third century, that Wákídí, who died in A.H. 207 (A.D. 822) left a collection of books, which it took twelve hundred men to remove." Sprenger's Mohammad. Vol. I. p. 68.

³ M. De Slane, whose translation of Ibn Khallikan I have already mentioned, is now employed in editing the text of that author's great work: the first Volume has already appeared, and is entitled, *اجز الاول من كتاب وفیات الاعيان وانباء ابناء الزمان مما ثبت بالتقل او السماع او اثبه العيان لابن خلكان* Kitab Wafayat al-Aiyan. Vies des hommes illustres de l'Islamisme en Arabe, par Ibn Khalikan, publiées par le Baron M'Guckin De Slane. Tome I. 4to. Paris, 1842.

An-Nawawí, or the Bibliographical Dictionary of Hájí Khalfah,¹ will shew the name of a traditionist or writer on jurisprudence, or the title of a legal work, on almost every page. I shall refer more particularly to these collections of traditions hereafter.

The biographical and bibliographical dictionaries, which are very numerous, are of the greatest service in guiding the researches of the student into the legal literature of the Musulmáns. In addition to the general dictionaries of authors, and their works, there are many biographical collections especially devoted to the lives of celebrated doctors of laws,² under the title of Tabakát al-Fukahá, and there are a variety of similar compositions which are otherwise designated. The most celebrated of the Tabakát al-Fukahá was composed by Abú Ishak ash-Shírází,³ who died in A. H. 476 (A. D. 1083). A modern history of jurisprudence, or rather of jurists, has been compiled in Hindí, from the works of Ibn Khallikán and As-Suyútí, by Maulaví Subhán Bakhsh, and was published at Dihlí in the year 1848.⁴

Special biographical treatises have also been written, recording the histories of learned doctors of each particular sect. Among the Sunnis, the most remarkable works which give an account of the Hanafí lawyers are the Jawáhir al-Muzíyat fi

¹ The text of the Kashf az-Zunún of Hájí Khalfah is in the course of being edited, together with a Latin translation by Professor Fluegel. Six 4to. volumes have been published. Printed for the Oriental Translation Fund in 1835—52. It is to this edition that I have made reference in the notes.

² Háj. Khalf. Tom. IV: pp. 139 *et seq.*, and 149.

³ Ibn Khall. Vol. I. p. 9. Háj. Khalf. Tom. IV. p. 149. An-Nawawí, p. ٦٤٦

⁴ ترجمہ تاریخ الحکماء اور تذکرہ المفسرین مولفہ علامہ عبدالرحمن جلال الدین سیوطی اور تذکرہ الفقہاء خلامہ وفيات الاعیان ابن خلکان کا مولوی سبحان بخش Biographical History of Mohammadan Jurisprudence, the Theology and Philosophy compiled from Ibn Khallikan Kifti, and Soyuty's Mofassiryn by Moulvee Subhan Bukhsh. Fol. Dehli, 1848. (Lithographed).

Tabakát al-Hanafíyat,¹ by the Shaikh Muhí ad-Dín 'Abd al-Kádir Ben Abí al-Wafá al-Misrí, who died in A. H. 775 (A. D. 1373), and the **Tabakát as-Saníyat fi Tarájim al-Hanafíyat,**² by Takí ad-Dín Tamímí, who died in A. H. 1005 (A. D. 1596); in both of which works the lives are arranged in alphabetical order. The chief biographer of the Málíkí lawyers was Burhán ad-Dín Ibrahím Ben 'Alí Ben Farhún, who died in A. H. 799 (A. D. 1396): his work is entitled the **Díbáj al-Muzahhib.**³ There are numerous biographical collections treating of the lives of the principal followers of Ash-Sháfí'í, several of which are entitled **Tabakát ash-Sháfí'íyat:** the most noted is by Táj ad-Din 'Abd al-Wahháb Ben as-Subkí, who died in A. H. 771 (A. D. 1369).⁴ The **Tabakát al-Hanbalíyat** comprises the lives of the most famous doctors of the sect of Ibn Hanbal: it was commenced by the Kází Abú al-Husain Ben Abú Ya'li al-Farrá, continued by the Shaikh Zain ad-Dín 'Abd ar-Rahman Ben Ahmad, commonly called Ibn Rajab, and concluded by Yúsuf Ben Hasan al-Mukaddasí: these three writers died respectively in A. H. 526, 795, and 871 (A. D. 1131, 1392, and 1466).⁵

The followers of 'Alí were not idle in compiling bibliographical and biographical dictionaries, although their works of this nature are less numerous and less known, than those of the Sunnís.

The Shí'ahs have four celebrated works on their own bibliography. The earliest we possess, is that of the Shaikh Abú Ja'far Muhammad Ben al-Hasan Ben 'Alí at-Túsí, who was one of the chief Mujtahids of the Imámíyah sect, and died in A. H. 460 (A. D. 1067): it is entitled **Fihrist Kutb ash-Shí'ah wa Asmá al-Musannifín.** This book superseded all earlier works of the kind, such as that of Ibn Nuhaik, of Ahmad Ben al-Husain, of Ahmad Ben Muhammad, and even

¹ Háj. Khalf. Tom. II. p. 648.

² Háj. Khalf. Tom. IV. p. 139.

³ Háj. Khalf. Tom. III. p. 240.

⁴ Háj. Khalf. Tom. IV. p. 139.

⁵ Háj. Khalf. Tom. IV. p. 135.

that of the great Ibn Bábawaih. They are probably no longer extant. An edition of the text of At-Túsi's work has been edited by Dr. Sprenger, assisted by Maulaví 'Abd al-Hakk and Maulaví Ghulám Kádir, and recently published at Calcutta.¹

The second is the *Asmá ar-Rijál*, which is generally quoted as the *Kitáb-i Rijál* by Shí'ah writers: it was written by Abú al-Hunain Ahmad Ben 'Alí an-Najashí, who died in A. H. 450 (A. D. 1058). This work is of great celebrity, and Dr. Sprenger informs us that though professing to be an independent composition, it is in fact merely a new edition of the *Fihrist* of at-Túsi, though more complete and generally more correct; in fact a better book.² It is constantly quoted by the Shí'ah authors.

The third work is entitled *Ma'álim al-'Ulamá fi Fihrist Kutb*: the author Rashíd ad-Dín Muhammad Ben 'Alí Ben Shahrásúb of Sári in Mázandarán, died at an advanced age in A. H. 588 (A. D. 1192). It is a supplement to at-Túsi's *Fihrist*.³

The fourth book, and which, according to Dr. Sprenger, is much more useful than the one last named,⁴ is the *Amal al-'Amal fi 'Ulamá Jabal 'Ámil* compiled in A. H. 1097 (A. D. 1685), by Muhammad Ben Hasan 'Ámilí. The first chapter contains an account of the learned men of Mount 'Ámil, and the second chapter is devoted to learned Shí'ahs who lived after at-Túsi. I have never met with this book, which must be of extreme rarity as Dr. Sprenger says, he only found one copy of it available in India.⁵

The great biographical work of Núr Allah Ben Sharíf al-Husainí ash-Shústarí, entitled the *Majális al-Múminín*, is a mine

¹ Túsy's List of Shy'ah books, and 'Alam al-Hodá's notes on Shy'ah biography. Edited by Dr. A. Sprenger, Mawlawy 'Abd al-Haqq and Mawlawy Gholam Qadir. 8vo. Calcutta, 1855.

² Ib. Preface, pp. 1, 2.

³ Ib. Preface, p. 2.

⁴ Ib. Preface, p. 2.

⁵ Ib. Preface, p. 2.

of valuable information respecting the most notable persons who professed the Shí'ah faith. The author has given an entire book or section (the fifth Majlis) to the lives of the traditionists and lawyers, and he has specified the principal works composed by each learned doctor at the end of their respective histories. Núr Allah does not mention the period when he wrote the Majális al-Múminín, nor have I been able to ascertain when he died. The fact, however, of his not giving the life of the celebrated lawyer Bahá ad-Din al-'Ámilí, who died in A.H. 1031 (A.D. 1621), whilst the latest lawyer named in his collection is stated to have died in A.H. 996 (A.D. 1587), fixes the composition of this section in the early part of the eleventh century of the Hijrah. It is from this work and the dictionaries of At-Túsí and An-Najáshí, that I have principally derived the account of the Shí'ah law books and their authors which will be found in the following pages.

Núr Allah constantly quotes the Fihrist of At-Túsí and the work of An-Najáshí above mentioned, and makes also frequent reference to a biographical treatise by the famous Shaikh al-'Allámah Jamál ad-Dín Hasan Ben Yúsuf al-Mutahhar Hillí, commonly known as Shaikh 'Allámah Hillí, who died in A.H. 726 (A.D. 1325). This treatise is called the Khu-lásat al-Akwál. Dr. Sprenger states that Ibn al-Mutahhar Hillí, compiled under the title of Ízáh a small but valuable supplement to works on Shí'ah biography, in which the orthography of proper names is fixed, and mistakes corrected. He also mentions that 'Alam al-Hudá made in A.H. 1073 (A.D. 1662), a new edition of the Ízáh, and he has printed the text of this work, at the bottom of the pages of his edition of the Fihrist of at-Túsí.¹ Núr Allah likewise quotes Abú Yahya Ahmad Ben Dáwúd al-Fazárí al-Jurjání, who was originally a Sunní, but became a convert to the Imámiyah faith, as the author of a biographical work called Kitáb fí Ma'rifat ar-Rijal.²

¹ See notes, *supra*, p. 262.

² Majális al-Múminín.

It will be readily conceived, from the details above given, that any attempt to give even a tolerably complete list of the Muhammadan law-books would far exceed the limits of this treatise. I have endeavoured, however, in the following pages, to make such a selection from the mass as may prove useful to the student, and to enumerate and describe all such as have been printed, as well as some of the works still in MS., which are of chief authority amongst the different sects, and more especially those which are in the greatest repute, and most frequently referred to in India. I may add, that I have examined the originals of the works described, whenever they were procurable; and that, where the works themselves were not to be met with, I have invariably derived my information from the native authorities, with the exception, however, of a few instances, when other sources will be found indicated in the notes.¹

Al 'Ulúm ash-Shar'íyat, one of the great classes into which the Muhammadan encyclopædists divide the whole circle of the sciences,² comprehends all those which have relation to religion and law, which are divided into seven sections:—1. 'Ilm al-Karát, the Science of Reading the Kurán; 2. 'Ilm at-Tafsír, the Science of the Interpretation of the Kurán; 3.

¹ I take this opportunity of returning my sincerest thanks to Professor Horace Wilson, for his liberality in granting me unreserved access to the library of the Honourable East-India Company; also to Nathaniel Bland, Esq. and the Rev. George Hunt, for the loan of several valuable and interesting MS. works on Muhammadan law from their private collections.

² These classes will be found detailed by Hájí Khalfah in the Introduction to the *Kashf az-Zunún*, Tom. I. p. 24 *et seq.*, and in the *avant-propos* to Zenker's *Bibliotheca Orientalis*, p. xviii. *et seq.*, 8vo. Leipzig, 1846. The whole system of the Muhammadan encyclopædists is also admirably displayed by the late learned and venerable Baron Hammer-Purgstall, in his *Encyclopädische Uebersicht der Wissenschaften des Orients*. 8vo. Leipzig, 1804. A short Treatise, or Survey of the Sciences, entitled *Irshád al-Kásid ila Asma al-Mukásid*, by the Shaikh Shams ad-Dín Muhammad Ben Ibráhím Ben Sá'id Ansá'í Akfání Sakháwí, who died in A.H. 749 (A.D. 1348), is also worthy of notice. The text of this work was edited by Dr. Sprenger, and published at Calcutta in the year 1849.

'Ilm al-Hadís, the Science of the Traditions; 4. 'Ilm ad-Diráyat al-Hadís, the Science of Critical Discrimination in matters of Tradition; 5. 'Ilm Usúl ad-Dín, or 'Ilm al-Kalám, the Science of Scholastic Theology; 6. 'Ilm Usúl al-Fikh, the Science of the Elements or Principles of Jurisprudence; 7. 'Ilm al-Fikh, the Science of Practical Jurisprudence. These sections are again subdivided into a multitude of inferior classes.¹

It will not be necessary, in this Treatise, to enter more fully into the distinction, distribution, and definition of the 'Ilms, or sciences, connected with religion and law, under which the Muhammadan legal writings might be ranged in the order of their subjects, as I have adopted an arbitrary classification, comprising five great divisions under which the law-books of the Musulmán, so far as they apply in India, seem naturally to fall.

These are—

I. The Kurán itself, and the Tafsírs or Commentaries which serve to interpret and illustrate the difficult passages, and to expound the meaning of the sacred text.

II. The works which treat of Traditions, and the Commentaries thereon.

III. The general Treatises on the fundamental principles of law, spiritual and temporal, and practical jurisprudence, together with the Digests of general or special law, and their Commentaries.

IV. The separate Treatises on the law of inheritance, or 'Ilm al-Faráiz, a branch of the 'Ilm al-Fikh, which exist in considerable numbers, although the subject is almost always included in the general treatises.

V. The books of decisions, comprehended by the Muhammadan lawyers under the 'Ilm al-Fatáwa, or Science of Decisions, which is also a branch of the 'Ilm al-Fikh: these con-

¹ Hammer-Purgstall, op. cit. p. 568 *et seq.* Mirza Kásim Beg has given a somewhat different arrangement of the divisions of the 'Ulúm ash-Shar'iyat. See Journal Asiatique, 4^{me} Série, Tome xv. p. 159.

sist simply of the recital of the decisions of eminent lawyers in particular cases, and form a body of precedent, having various authority, and serving for the guidance of lawyers in subsequent decisions, much in the same manner as our Reports of decided cases in England.

A sixth class may be now added to the books on Muhammadan law having authority in India. I allude to the original works on the subject by European authors, which will be severally noticed after the native treatises.

It is advisable to treat separately of those works which are of authority respectively amongst the Sunnis and Shí'ahs, inasmuch as they are never interchangeable; with the exceptions, however, already noticed, that the Kurán itself is of paramount authority with both sects, and that the Shí'ahs receive such traditions of the Sunnis as are proved by their Isnáds to have been transmitted through, or verified by, the descendants, friends, or partisans of 'Alí Ben Abí Tálib.

It is not an easy matter to obtain information respecting the Shí'ah authorities of law, since that sect contributed but little to the literature of Arabia, more especially in the earlier ages of Islám, when law was regarded as the chief and most worthy of the sciences. But though the Shí'ah writers on tradition and law are few in number when compared to those of the Sunni sects, yet some of the very greatest names in Oriental literature appear in the list; and the illustrious Jámí the poet, Al-Mas'údí the historian, and Husain Wá'iz Káshifí the moralist, are numbered in the ranks of Shí'ah lawyers and divines.

I. The Kurán is believed by all orthodox Musulmáns to be uncreated and eternal, subsisting in the very essence of God,¹

¹ This is the orthodox belief, but the Mu'tazilis and some other sects deny the eternity of the Kurán. (Poc. Spec. p. 220.) Al-Ghazálí reconciles both opinions, saying that "the Kurán is read and pronounced with the tongue, written in books, and kept in memory; and is yet eternal, subsisting in God's essence, and not possible to be separated thence by any

and revealed to Muhammad by the angel Gabriel, at different times during a space of twenty-three years. Wherever its texts are applicable, and not subsequently abrogated by others, they are held to be unquestionable and decisive, as the word of God transmitted to man by the last, or, as he is emphatically called, the Seal of the Prophets, Muhammad the messenger of God.

The Kurán, as we now possess it, originated after the Prophet's death, when the revelations left by him, existing either in manuscript or preserved in the memory of his companions, were digested and put in order by his successor Abú Bakr. This Digest, when transcribed and arranged, was placed in the hands of 'Umar's daughter, Hafsah, who was one of the Prophet's widows.

In the 30th year of the Hijrah the Khalífah 'Usmán, finding great discrepancies in the copies of the Kurán, which were spread abroad in the different provinces, caused a number of transcripts to be made, under the inspection of four supervisors, from the copy in the possession of Hafsah; and these transcripts were dispersed throughout the empire, whilst all those previously extant were suppressed and destroyed.

Thus arose the present text of the Kurán, which is considered as authentic, though some few various readings still occur, proceeding, for the most part, from the omission of the vowel-points, which were not supplied in the earlier copies. The text of the Kurán has been so often printed, that to specify the editions would be supererogatory.

The first interpreters of the text of the Kurán were the Companions of the Prophet; and it may be imagined that the subtle-minded Musulmán soon flocked in numbers to undertake the sacred and delicate task of interpreting and explaining the holy text, upon which their entire rule of conduct in this

transmission into men's memories or the leaves of books." Sale's Prel. Disc. Sect. iii. . And see Poc Spec. p. 222 *et seq.*, and Ibn Khall. Vol. III. p. 359, n. 8.

world, and hope of salvation in the next, were believed to depend. The commentaries on the Kurán are accordingly almost countless, and are divided into classes according to their mode of treating the subject, but which it will not be necessary here to dwell upon. One or two Commentaries having the greatest authority may be noticed.

The historian Abú Ja'far Muhammad Ben Jarír at-Tabarí, who died in A.H. 310 (A.D. 922), wrote a Commentary, which has great reputation, and is mentioned in terms of high praise, both by As-Suyúti and An-Nawawí.¹ The most famous of all the Commentaries amongst the Sunnis are, however, the Kashsháf² and the Anwár at-Tanzíl.³ The former is by Abú al-Kásim Jár Allah Mahmúd Ben 'Umar az-Zamakhsharí, who died in A.H. 538 (A.D. 1143);⁴ and the latter by Násir ad-Dín 'Abd Allah Ben 'Umar al-Baizáwí, who died at Tabríz in A.H. 685 (A.D. 1286):⁵ he is said to have made great use of the work of Az-Zamakhsharí. Both these works are of almost universal authority amongst the Sunnis.

Extracts from these commentaries were published in the original Arabic, with a French translation by De Sacy, in the year 1829.⁶ Dr. Fleischer is at present engaged in printing the text of Al-Baizáwí's work.⁷

The Tafsír al-Ghazálí, as it is generally called, but which is entitled the Yákút at-Táwíl by its author, Abú Hámid Muhammad al-Ghazálí, who died in A.H. 504 (A.D. 1110),⁸ and

¹ Háj. Khalf. Tom. II., p. 346. An-Nawawi, p. 11.

² Háj. Khalf. Tom. IV., p. 179. Hájí Khalfah gives a long account of this celebrated Tafsír.

³ The Anwár at-Tanzíl is sometimes designated the Tafsír al-Kází.

⁴ De Sacy, Anthologie Grammaticale Arabe, p. 269. Ibn Khall. Vol. III. p. 329.

⁵ De Sacy, Anthol. Gram. Arabe, p. 37. Háj. Khalf. Tom. I., p. 469.

⁶ De Sacy, Anthol. Gram. Arabe, p. 1 *et seq.* p. 281 *et seq.*

⁷ Beidhawii Commentarius in Coranum, edidit, indicibusque illustravit H. O. Fleischer. Leipzig. 4to.

⁸ De Sacy, Chrest. Arabe, Tome II. p. 505.

the Durr al Mansúr of Jalál ad-Dín 'Abd ar-Rahman Ben Abí Bakr as-Suyútí, who died in A.H. 911 (A.D. 1505), are also commentaries on the Kurán of established reputation among the Sunnis. The latter work is founded upon the traditions.¹

The Tafsír al-Jalálain, which is a concise but good commentary on the Kurán, is the joint work of Jalál ad-Dín Muhammad Ben Ahmad al-Mahallí, who died in A.H. 864 (A.D. 1459), and the celebrated Jalál ad-Dín as-Suyútí.² It has been printed at Calcutta.³

A treatise on the science of commentating on the Kurán, entitled the Fauz al-Kabír fi Usúl at-Tafsír, by Mullá Sháh Walí Allah Muhaddis Dihlawí, was printed at Dihlí in 1842.⁴

A Persian commentary on the Kurán, entitled Tafsír Fath al-'Azíz, was printed at Calcutta, in the year 1843. It is by Sháh 'Abd al-'Azíz Dihlawí.⁵

The Tafsírát al-Ahmadíyat is a commentary on the Kurán of some extent, composed in the reign of the Emperor Aurangzéb 'Álamgír, by Mulla Jain Júnfúrí. It was published at Calcutta, in the year 1847.⁶

A commentary on the Kurán, by Isma'íl Hakkí, entitled

¹ Háj. Khalf. Tom. II. p. 192.

² Háj. Khalf. Tom. II. p. 358.

³ تفسير الجلالين 4to. Calcutta, A.H. 1256 (A.D. 1840).

⁴ فوز الكبير في اصول التفسير از تصنيفات مولانا شاه ولي الله محدث دهلوي 8vo. Dihlí, A.H. 1258 (A.D. 1842.)

⁵ تفسير فتح العزيز تصنيف شاه عبد العزيز دهلوي 4to. Calcutta, A.H. 1259 (A.D. 1843).

⁶ تفسيرات الاحمدية في بيان الآيات الشرعية مع تفريعات المسائل الفقهية 4to. Calcutta, A.H. 1263 (A.D. 1847).

Rúh al-Bayán, was published at Búlák in the year 1840.¹ I have not seen this work.

One of the earliest of the many writers of commentaries on the Kurán among the Shí'ahs is Abú Ja'far Muhammad Ben 'Alí Ben Bábawaih, surnamed As-Sadúk, who lived in the fourth century of the Hijrah, and was a contemporary of Rukn ad-Daulah Dílamí. He was one of the greatest of the collectors of Shí'ah traditions, and the most celebrated of all the Imámíyah lawyers of Kum. This writer composed a large and a small Tafsír. There is considerable uncertainty as to the exact time when he lived; Shaikh Túsí says, in the Fihrist, that Abú Ja'far died at Ray, in A.H. 331 (A.D. 942), but this appears to be erroneous. Shaikh Najáshí, who died in A.H. 450 (A.D. 1058), states that Abú Ja'far visited Baghdád, whilst yet in the prime of life, in A.H. 355 (A.D. 965), which might well have been the case, since Abú al-Hasan 'Alí Ben Bábawaih, the father of Abú Ja'far, did not die until A.H. 329 (A.D. 940).² In addition to this, and which confirms the opinion that Shaikh Túsí is in error, Núr Allah relates, on the authority of the Shaikh ad-Dúryastí (or Dúrbastí) ar-Rází,³ that Abú Ja'far lived in the time of Rukn ad-Daulah Dílamí, and had repeated interviews with that Prince, who, as is well known, reigned from A.H. 338 to A.H. 366 (A.D. 949—976).

¹ روح البیان فی تفسیر القرآن Búlák, A.H. 1256 (A.D. 1840).

² Majális al-Muminín.

³ There are three several eminent Shí'ah doctors who are so called; viz. the Khájah Ja'far Ben Muhammad, and his two sons, 'Abd Allah Ben Ja'far and Hasan Ben Ja'far, the second of whom is stated to have visited Baghdád in A.H. 566 (A.D. 1170), and to have returned to his native place, where he died about A.H. 600 (A.D. 1203). There is some doubt as to the reading of the word Dúrbastí, or Dúryastí. In the geographical portion of the Majális al-Múminín, I find that Dúrbast, or Dúryast is described as a village near Ray, which is now called Darasht. This statement is made on the authority of the Mu'jam al-Buldán.

A very extensive comment on the Kurán, in twenty volumes, also proceeded from the pen of Abú Ja'far at-Túsi, already spoken of as the writer of a dictionary of Shí'ah books and authors. This comment is generally called the Tafsír at-Túsi, but it was entitled by its author the Mujmi' al-Bayán li 'Ulúm al-Kurán.¹

Abú al-Fatúh Rázi, the author of the Kitáb-i Hasaníyah, already mentioned, devoted the same number of volumes to a similar work, and likewise composed a Persian Tafsír in four volumes.

The great poet Núr ad-Din 'Abd ar-Rahman Jámí, who died in A.H. 898 (A.D. 1492),² is also the author of a Tafsír of some note. But the most celebrated of all the Shí'ah commentaries on the Kurán is that by the famous moral writer Kamál ad-Dín Husain al-Wá'iz al-Káshifí as-Sabzawá'irí, the well-known author of the Anwár-i Suhailí and the Akhlák-i Muhsinín, who died about A.H. 910 (A.D. 1504), and who entitled his work the Mawáhib al-'Aliyat:³ it is, however, generally known as the Tafsír-i Husainí. The Tafsír-i Husainí is now in course of publication, in lithography, at Calcutta. It is accompanied by the Arabic text of the Kurán, with an interlinear Hindí translation, and another Persian comment entitled the Tafsír-i 'Abbásí: two volumes of this edition have already appeared.⁴

II. The first general collections of traditions said to have been written are, as I have already stated, those of Abú Bakr Ben Shiháb az-Zuhrí; 'Abd al-Malik Ben Jurajj; Málík Ben Anas, the founder of the second sect of Sunnís, in his work called the Muwatta; and Ar-Rabí' Ben Subaih. It is diffi-

¹ Háj. Khalf. Tom. II. p. 369.

² Háj. Khalf. Tom. II. p. 357.

³ Háj. Khalf. Tom. II. p. 360.

⁴ The Korán of Mohammad in the original Arabic, with two Persian comments, and an interlinear Hindée translation of the text, by Shah Abdool Kadir. 4to. Calcutta, 1837.

cult to ascertain which author is entitled to priority. Az-Zuhrí is considered to have been the first by As-Suyútí¹ and Al-Makrízî :² whilst others give the preference to the Muwatta,³ or to the compilations of Ibn Juraij or of Ar-Rabí'. The preponderance seems, however, to be in favour of 'Abd al-Malik Ben Juraij.

Two others of the founders of the chief Sunní sects are mentioned as the authors of some of the earliest works on the traditions: Ash-Sháfi'í being reputed to have composed two collections, namely, the Masnad and the Sunan, and Ibn Hanbal to have compiled a work called the Masnad, containing a larger number of traditions than had been previously brought together.⁴

Whichever of the first four collections above mentioned may be entitled to precedence in point of time, the chief authorities in matters of tradition among the Sunnís are now the books which are known by the name of the Six Sahíhs, or Six Books of the Sunnah; whilst the Shí'ahs have their own four books of Hadís, which, though less generally known, are by them equally venerated, and esteemed above all others on the same subject.

The Six Sahíhs, or genuine collections of traditions, are the chief authorities, after the Kurán,⁵ among the Sunnís; and as they serve to illustrate points of doctrine not clearly explained in that sacred work, they are by them considered as its indispensable supplement.

The first of these, which is the most celebrated, and held in the most general estimation by all the Sunní sects, is the Jámí' as-Sahíh, or, as it is sometimes called, the Sahíh al-Bukhárí,⁶ from the surname of its author, Abú 'Abd Allah

¹ Ibn Khall. Vol. I. Introduction, p. xviii.

² Quoted by M. Vincent in his *Études sur la loi musulmane*, p. 19.

³ De Sacy, *Chrest. Arabe*. Tome I. p. 401.

⁴ Ibn. Khall. Vol. I. p. 44.

⁵ De Sacy, *Chrest. Arabe*. Tome I. p. 407.

⁶ *Mishcát ul Masábih*. Tom. I. p. 3. De Sacy, *Chrest. Arabe*. Tome I. p. 408.

Muhammad Ben Isma'íl al-Bukhárí. It is generally considered to surpass the Sahíh of Muslim, the next in authority, although the two are reckoned to be only second in truthfulness to the Kurán itself. Al-Bukhárí, "the chief Imám in the science of traditions," was born at Bukhárá, from which city he took his surname, in A.H. 194 (A.D. 809), and died at the village of Khartank, in the district of Samarkand, in A.H. 256 (A.D. 869). He was a pupil of the Mujtahid Imám Ibn Hanbal. His compilation is stated to comprise upwards of seven thousand traditions, which he himself affirmed he had selected from a mass of six hundred thousand, after a labour of sixteen years.¹

The Jámi' as-Sahíh, called by its author the Masnad as-Sahíh, but most generally known as the Sahíh Muslim, by Abú al-Husain Muslim Ben al-Hajáj Ben Muslim al-Kushairí, surnamed An-Níshápúrí, who was a pupil of Ibn Hanbal, is considered as almost of equal authority with the Sahíh al-Bukhárí, and indeed by some, especially by the African doctors, is preferred to that work.² The two collections are constantly quoted together under the name of the Sahíhain,

¹ Háj. Khalf. Tom. II. p. 512 *et seq.* Hájí Khalfah gives a full account of this great work. And see Ibn Khall. Vol. II. p. 594; and An-Nawawí, p. 47. A most interesting notice of the Sahíh al-Bukhárí, by Dr. Ludolf Krehl, appeared in the Zeitschrift der Deutschen Morgenländischen Gesellschaft. Band. IV. p. 1 *et seq.*

² Háj. Khalf. Tom. II. p. 513. De Sacy says, quoting Ibn Khaldún, "Les docteurs Africains se sont surtout attachés en fait de *hadiths*, ou traditions au recueil ou Sahih de Moslem, et d'un commun accord ils lui ont donné la préférence sur celui de Bokhari." (Chrest. Arabe, Tome II. p. 302.) Dr. Worms, however, states the contrary, and maintains the precedence of the Sahíh al-Bukhárí, saying of that collection, that, "elle marche en première ligne après le Koran; c'est sur le livre de Boukhari qu'en Afrique les juges musulmans font porter la main aux personnes dont ils exigent le serment."—(Journal Asiatique, 3^{me} Série, Tome XIV. p. 239). This latter remark seems, however, to be restricted to the practice which obtains in Algeria, and perhaps even there may be a modern innovation.

or the two *Sahíhs*. Muslim is said to have composed his work from three hundred thousand traditions. He died at Níshápúr in A.H. 261 (A.D. 874), aged 55 years.¹

The third collection of traditions in point of authority is the *Jámi' wa al-'Ilal*, by Abú 'Ísa Muhammad Ben 'Ísa at-Tirmizí: this work is more generally known by the name of the *Jámi' at-Tirmizí*, and is also called the *Sunan at-Tirmizí*. At-Tirmizí was a pupil of Al-Bukhárí: he died in A.H. 279 (A.D. 892).²

Abú Dáwúd Sulaimán Ben al-Ash'as, surnamed As-Sajistání, wrote a *Kitáb as-Sunan* which contains four thousand eight hundred traditions selected from a collection made by him of five hundred thousand. It is considered as the fourth book of the *Sunnah*. Abú Dáwúd was born in A.H. 202 (A.D. 817), and died at Basrah in A.H. 275 (A.D. 888).³

Abú 'Abd ar-Rahman Ahmad Ben 'Alí Ben Shu'aib an-Nasá'í compiled a large work on the traditions which he entitled the *Sunan al-Kabír*; but as he himself acknowledged that many of the traditions which he had inserted, were of doubtful authority, he afterwards wrote an abridgment of his great work, omitting all those of questionable authenticity: and this abridgment, which he entitled *Al-Mujtaba*, takes its rank as one of the six books of the *Sunnah*. An-Nasá'í was born at Nasá, a city in Khurásán, in A.H. 215 (A.D. 830), and died at Makkah in A.H. 303 (A.D. 915).⁴

The *Kitáb as-Sunan* by Abú 'Abd Allah Muhammad Ben Yazíd Ben Májah al-Kazwíní, is the sixth book of the *Sunnah*, and is commonly called the *Sunan Ibn Májah*. Ibn Májah

¹ Ibn Khall. Vol. III. p. 356. Háj. Khalf. Tom. II. p. 542. An-Nawawí, p. ٤٢٨ *et seq.*

² Ibn Khall. Vol. II. p. 679. Háj. Khalf. Tom. II. p. 548.

³ Ibn Khall. Vol. I. p. 589. Háj. Khalf. Tom. III. p. 622. An-Nawawí, p. ٧٠٨.

⁴ Ibn Khall. Vol. I. p. 58. Háj. Khalf. Tom. III. p. 626.

was born in A.H. 209 (A.D. 824), and died in A.H. 273 (A.D. 886).¹

These six books are generally known by the name of *Al-Kutub as-Sittat fī al-Hadīs*,² or the six books on the traditions; but the first two, which are of by far the greatest authority, are, as we have already seen, denoted the *Sahīhain*, or the two authentic collections.³ The remaining four are commonly called *Al-Kutub al-Arba'*, or the four books. Traditions extracted from these six books are accordingly distinguished by authors who make use of them; those taken from the *Sahīhain* being called *Sahīh*, or authentic; whilst those from the four books are called *Hasan*, or delivered on respectable authority, having, however, greater weight than if they were derived from any other compilations on the *Sunnah*. Some authors arrange the six *Sahīhs* in a different order from that above given.

The style of these six great works is concise and elliptic, but they are generally considered as pure and elegant: they are not easily to be understood without the aid of commentaries; and accordingly a host of learned doctors have undertaken the task of expounding them. *Hájí Khalfah* enumerates upwards of eighty on the *Sahīh al-Bukhārī* alone.

In addition to the above-mentioned works, there are an immense number of collections of traditions, of greater or less extent, and which are of various authority, according to the reputation of their authors. Some of these are original; but

¹ Ibn Khall. Vol. II. p. 680. *Háj. Khalf. Tom. III. p. 621.*

² I have learned, from my friend Dr. Sprenger, that editions of *Al-Bukhārī*, *At-Tirmizī*, *An-Nasāī*, and *Abú Dāwūd*, have been published in India during the last few years. The first is furnished with useful glosses, and is very correct. The *Sahīh* of *At-Tirmizī* is likewise very correct; but the text of the two latter authors is not so accurate. Dr. Sprenger also says he has heard that the *Sahīh* of *Muslim* is in course of publication at Calcutta. I have not seen any of these most important publications, and I believe that few, if any, of them have as yet reached this country,

³ *Mishcāt ul-Masābih*, Vol. I. p. iii. *De Sacy Chrest. Arabe, Tome I. p. 408.*

they consist, for the most part, of selections and epitomes, or condensed abridgments of one or more of the principal works, explaining in many instances the difficult words and passages, and illustrating the traditions severally by the opinions and decisions of jurisconsults. These exist in such numbers, that Hájí Khalfah himself, in that great monument of industry and research, the *Kashf az-Zunún*, admits that it would be impossible to enumerate them; it will therefore be sufficient to mention a very few of the most important and the more recent.

The *Muwatta* of Málík Ben Anas, already mentioned, and a collection of traditions called after the name of its author, Abú Muhammad 'Abd Allah ad-Dárimí, who died in A.H. 255 (A.D. 868),¹ are by some considered to be respectively entitled to be placed among the six *Sahíhs*, in the place of the *Sunan* of Ibn Májah. At any rate the *Muwatta* is always looked upon as the next in point of authority to the six *Sahíhs*.²

The collections of Abú al-Husain 'Alí Ben 'Umar ad-Dáruktuní who died in A.H. 385 (A.D. 995),³ and of Abú Bakr Ahmad Ben al-Husain al-Baihakí, who died in A.H. 458 (A.D. 1065),⁴ are also of the highest authority.

One of the most celebrated compilations after the Six *Sahíhs*, is the *Masábíh as-Sunnat* by Abú Muhammad Husain Ben Mas'úd al-Farrá al-Baghawí,⁵ who died in A.H. 516 (A.D. 1122).⁵ This work is principally extracted from

¹ Haj. Khalf. Tom. III. p. 628.

² See the *Mishcát ul-Masábih*, p. iii. M. Vincent places the *Muwatta* amongst the six *Sahíhs*, without noticing its doubtful title to that position. *Études sur la loi musulmane*, p. 31.

³ Háj. Khalf. Tom. III. p. 628. ⁴ Háj. Khalf. Tom. III. p. 627.

⁵ Matthews calls him Al-Baghdádí, but erroneously. *Mishcát ul-Masábih*, Vol. I. p. ii. This surname is derived from Bagh or Baghashúr, the name of a town in Khurásán. Ibn Khall. Vol. I. p. 420. Háj. Khalf. Tom. V. p. 564.

⁶ Ibn Khall. Vol. I. p. 419. Haj. Khalf. Tom. V. p. 564.

the Six Sahíhs, embodying all the authentic traditions, and omitting those which are in any way doubtful: the author, however, has neglected to insert the Isnáds. Al-Baghawí also wrote a Jam' bain al-Sahíhain, or Conjunction of the Two Sahíhs. A work, bearing the same title, by Abú 'Abd Allah Muhammad al-Humaidí, who died in A.H. 488 (A.D. 1095),¹ comprehends the collections of Al-Bukhári and Muslim, and has a great reputation; as is also the case with the copious compilation of Abú al-Hasan Razín Ben Mu'awiyah al-'Abdarí, who died in A.H. 520 (A.D. 1126), which comprises the works of Al-Bukhári and Muslim, the Muwatta of Málik, the Jámi' at-Tirmizí, and the Sunans of Abú Dáwúd, and An-Nasáí.²

Next may be noticed the Jámi' al-Jawámi'³ of the celebrated doctor Jalál ad-Dín 'Abd ar-Rahman Ben Abí Bakr as-Suyútí. This author omits the Isnáds, but, by the use of abbreviations, designates those traditions which are extracted from the six books of the Sunnat. All the works of As-Suyútí are held in great estimation by the Sunnís. The Rev. Dr. Cureton long ago announced his intention of preparing for publication the text of the Jami' as-Saghír of As-Suyútí, which is an abridgment of the Jami' al-Jawámi', arranged in alphabetical order: it will be most acceptable to those Orientalists who wish to study this important and hitherto-neglected branch of Arabic literature.

A commentary on the Hadís al-Arba'in of Shaikh Isma'il Hakkí, entitled the Sharh al-Arba'in, or Hadís Arba'in Sharhí, by Mulla 'Alí al-Háfiz al-Kastamúmí, was printed and published at Constantinople in the year 1837.⁴ Another work, entitled the Karak Suwál, containing forty questions by the Mullá Furatí, with the answers of Muhammad, according to

¹ Haj. Khalf. Tom. II. p. 619.

² Haj. Khalf. Tom. III. p. 32.

³ Haj. Khalf. Tom. II. p. 614.

⁴ حديث أربعين شرحي، or شرح الأربعين 4to. Const. A.H. 1253 (A.D. 1837).

tradition, was also printed in the year 1840, at the same place.¹

The *Mishkát al-Masábih* is a new and augmented edition of the *Masábih* of Al-Farrá al-Baghawí, by the Shaikh Walí ad-Dín Abú 'Abd Allah Muhammad Ben 'Abd Allah al-Khatíb, who completed his work in A.H. 737 (A.D. 1336). It is a concise collection of traditions, principally taken from the Six Books, and arranged in chapters according to subjects. This collection has been translated by Captain Matthews,² and is, I believe, the solitary work that has been as yet published in its entirety, in any European language, on the 'Ilm al-Hadís; a fact that is to be deeply regretted, when we consider how little the Muhammadan religion and laws are understood, and how greatly they depend upon the science of tradition.

A Persian translation and Commentary on the *Mishkát al-Masábih*, entitled the *Ashi"at al-Lam'at fi Sharh al-Mishkát*, by the Shaikh 'Abd al-Hakk Dihlawí, was published at Calcutta in 1842.³

A small work on traditions, entitled the *Muntakhab-i Bulúgh al-Marám*, which appears to be an abridgment, omitting the *Isnáds*, of the *Bulúgh al-Marám* of Shiháb ad-Dín Abú al-Fazl Ahmad al-'Askalání, who died in A.H. 852 (A.D. 1448),⁴ has been printed at Calcutta, with an interlinear Urdú translation.⁵

Another small collection, entitled *Labáb al-Akhhár*, and

¹ قرق سؤال 8vo. Const. A.H. 1256 (A.D. 1840).

² *Mishcát ul-Masábih*, or a collection of the most authentic traditions regarding the actions and sayings of Muhammad. Translated from the Arabic by Captain Matthews. 2 Vols. 4to. Calcutta, 1809—1810.

³ اشعة اللمعات في شرح المشكوة تصنيف شيخ عبد الحق دهلوي 4to. Calcutta, A.H. 1258 (A.D. 1842).

⁴ Haj. Khalf. Tom. II. p. 68.

⁵ منتخب بلوغ المرام 8vo. Calcutta, N.D.

containing three hundred and ninety-five authentic traditions was published at the same place in the year 1837.¹

The commentaries on the collections of traditions are not confined to the Six Sahíhs, all the more important compilations of this nature having received illustration from the writings of subsequent lawyers. The 'Ilm Sharh al-Hadís, or Science of Commentating the Traditions, is reckoned one of the subsidiary branches of the 'Ilm al-Hadís itself.

A short tract in Persian, by Mullá Háfiz Sháh 'Abd al-'Azíz, entitled *Risálah-i Usúl-i Hadís*, may here be mentioned. It is a sort of introduction to the study of the Sunnah, and was published at Calcutta in 1838.²

The 'Ilm al-Hadís has occupied the attention of a multitude of Shí'ah writers; and a glance at any of the biographical works of that sect is alone sufficient to refute the statement already mentioned, that the followers of 'Alí give no authority to the oral law.

One of the earliest writers, both on the Hadís and law of the Imámíyah sect, was 'Abd Allah Ben 'Alí Ben Abú Shu'bah al-Halabí, whose grandfather, Abú Shu'bah, is related to have collected traditions in the time of the Imáms Hasan and Husain. 'Abd Allah wrote down these traditions, and presented his work, when completed, to the Imám Ja'far as-Sádik, by whom it is said to have been verified and corrected. Abú Muhammad Hishám Ben al-Hákim al-Kindí ash-Shaibaní, who lived in the time of the Khalífah Hárún ar-Rashíd, and died in A.H. 179³ (A.D. 795), is also famed as being one of the first compilers of Shí'ah traditions. He was one of the intimate friends of the Imám Músa al-Kásim.

Yúnas Ben 'Abd ar-Rahman al-Yuktainí was celebrated as a Shí'ah traditionist. Amongst other works, he wrote the

¹ لباب الاخبار 8vo. Calcutta, A.H. 1253 (A.D. 1837).

² رساله اصول حديث 8vo. Calcutta, A.H. 1254 (A.D. 1838).

³ An-Najáshí says he died in A.H. 199. See *At-Túsí*, p. ٣٥٥.

'Ilal al-Hadís and the Ikhtiláf al-Hadís. This author is said to have made forty-five Hajjs and fifty-four 'Umrats' to Makkah, and to have written the surprising number of one thousand volumes, controverting the opponents of the Shí'ah doctrines. He died at Madínah, in A.H. 208 (A.D. 823).

These are the earliest writers on the Shí'ah Hadís; but it is stated that the Shí'ahs in India consider four later works as the most authentic: these are called the Kutub-i Arba', and are, as it seems, held by them in the same estimation as the Six Sahíhs amongst the Sunnis.²

The first two in order of these four books are the Tahzib al-Ahkám and the Istibsár. They were composed by the Shaikh Abú Ja'far at-Túsí, already mentioned as the author of the Fihrist, and of a voluminous commentary on the Kurán.

The third in order of the Kutub-i Arba' is the Jámí' al-Káfi by Abú Ja'far Muhammad Ben Ya'kúb al-Kalíní ar-Rází, who is called the Raís al-Muhaddisín, or chief of the traditionists. This work is of the highest authority, both in India and Persia: it is of vast extent, comprising no less than thirty books: and its author is said to have employed twenty years in its composition. Al-Kalíní also wrote several other works of less note, and died at Baghdád, in A.H. 328 (A.D. 939).³

The fourth of the authentic books on Shí'ah traditions is the Man lá Yazarhu al-Fakíh, by the celebrated Abú Ja'far Muhammad Ben 'Alí Ben Bábawaih al-Kumí, already spoken of as the author of two Tafsírs on the Kurán. This collection

¹ The difference between the Hajj and the 'Umrat is, that the former implies a pilgrimage to Makkah, with the performance of all the ceremonies, and the latter merely a visit to the sacred city.

² Har. Anal. p. 224, note. 2d edit. Harington only gives the titles of these books, and states their repute as authentic, on the authority of Maulavi Siráj ad-Dín 'Alí, one of the law officers of the Sudder Dewanny Adawlut.

³ At-Túsí, p. ٣٢٦.

is of great note in Persia as well as in India. Ibn Bábawaih wrote many other works on tradition, the principal of which, according to Núr Allah, was the Kitáb al-Masábíh. The large number of one hundred and seventy-two works on Law and Hadís are mentioned, on the authority of An-Najáshí, to have been composed by this voluminous writer.

Abú al-'Abbás Ahmad Ben Muhammad, commonly called Ibn 'Ukdah, was one of the greatest masters of the science of traditions; and was renowned for his diligence in collecting them, and the long and frequent journeys which he undertook for the purpose of obtaining information on the subject. Ad-Dárakutní, the Sunní traditionist, is reported to have said that Ibn 'Ukdah knew three hundred thousand traditions of the Ahl-i Bait and the Bení Háshim. Ibn 'Ukdah died at Kúfa in A.H. 333 (A.D. 944).

'Alí Ben al-Husain al-Mas'údí al-Hudaili, the far-famed author of the Mar'ij az-Zahab, and who has been, with some justice, termed the Herodotus of the East, was also a writer on the Shí'ah traditions. He died in A.H. 346 (A.D. 957). Another name, scarcely less celebrated in the annals of Arabic literature, likewise appears amongst the writers on the same subject; viz. that of Abú al-Faraj 'Alí Ben al-Husain al-Isfahání, who is said to have devoted fifty years to the composition of the well-known Kitáb al-Aghání, and who died in A.H. 356 (A.D. 966). It is stated that Ad-Dárakutní, and others of the Sunní traditionists, drew largely for their materials from the writings of this last author.

The great Shí'ah lawyer, the Shaikh al-'Allámah al-Hillí, the author of the Khulásat al-Akwál, is also a very high authority on tradition. His chief works on the subject are the Istikhsá al-I'tibár, the Masábíh al-Anwár, and the Durar wa al-Marján.

Last amongst the writers on the Shí'ah Hadís may be placed

¹ At-Túsi, p. ٢٠٢.

Abú al-Futúh Rázi and Muhammad Bákir Ben Muhammad Takí, whose works, the *Kitáb-i Hasaníyah* and the *Hakk al-Yakín*, already described, although in the main controversial, may yet seem properly to be included in the present class, from the number of traditions they comprise. The latter of these authors also composed a work treating exclusively of *Hadís*, and entitled the *Bihár al-Anwár*.

III. Having so far described the works on the traditions, it becomes necessary to give some notices of the general Digests and special Treatises, with their Commentaries, which, together, form the third class of law-books, according to the present arrangement, and treat more especially of practical jurisprudence in all its branches. These, as may be imagined, are exceedingly numerous; and it would be impossible, in this place, to give more than the following meagre selection.

The chief works that treat generally of the doctrines of the four principal sects of the Sunnís are mentioned by Hájí Khalifah to be the *Jámi' al-Mazáhib*, the *Mujmi' al-Khiláfiyát*, the *Yanábi' al-Ahkám*, the *'Uyún*, and the *Zubdat al-Ahkám*.¹ The only one of these works of which I have been able to find a particular description is the *Zubdat al-Ahkám*, which expounds the practical statutes of the different doctrines of the four Sunní sects, and was written by Siráj ad-Dín Abú Hafs 'Umar al-Ghaznaví, a follower of Abú Hanífeh, who died in A.H. 773 (A.D. 1371).²

I shall now mention separately the more important of the works of the most celebrated lawyers of each particular sect, since though all the four Sunní sects receive in common the Six *Sahíhs*, and other collections of their traditions, with a slight preference given by some sects to particular books, it is by no means the case with the law-books of the third class, each sect holding separate doctrines, and referring to distinct authorities. In the enumeration of these works I shall dwell

¹ Háj. Khalf. Tom. IV. p. 457.

² Háj. Khalf. Tom. III. p. 533.

more especially upon those which follow the doctrine of Abú Hanífah, the prevailing Sunní sect in India.

Abú Hanífah's principal work is entitled the *Fikh al-Akbar*: it treats of the 'Ilm al-Kalám, and has been commented upon by various writers, many of whom are mentioned by Háji Khalfah.¹

The Hanafi sect, as has already been remarked, is the one which obtains most commonly, and indeed almost entirely, amongst the Muhammadans of India; but the doctrines of its great founder are sometimes qualified, in deference to the opinions of two of his most famous pupils. Sir William Jones says, "that although Abú Hanífah be the acknowledged head of the prevailing sect, and has given his name to it, yet so great veneration is shewn to Abú Yúsuf, and the lawyer Muhammed, that, when they both dissent from their master, the Musselman judge is at liberty to adopt either of the two decisions which may seem to him the more consonant to reason, and founded on better authority."²

In former times it seems that Abú Hanífah's opinion was preferred, even when both the disciples dissented from him; but this is not the case at the present day. There is also a distinction of authority to be observed; viz. that where the two disciples differ from their master and from each other, the authority of Abú Yúsuf, particularly in judicial matters, is to be preferred to that of Muhammad. In the event, however, of one disciple agreeing with Abú Hanífah, there can be no hesitation in adopting that opinion which is consonant with his doctrine.

Abú Yúsuf Ya'kúb Ben 'Ibráhím al-Kúfi was born in A.H. 113 (A.D. 731), and died at Baghdád in A.H. 182 (A.D.

¹ Háji. Khalf. Tom. IV. p. 457.

² Sir William Jones's Works, Vol. III. p. 510. 4to. Lond. 1799. And see a passage from the *Tabakát al-Hanafíyat*, quoted by Mirzá Kásim Beg. where the same fact is stated.—*Journal Asiatique*, 4^{me} Série, Tome XV. p. 203.

798). He was a pupil of Abú Hanífah, and was first appointed to the office of Kází of Baghdád by the Khalífah al-Hádi: subsequently he was raised to the dignity of Kází al-Kuzát, or Chief Civil Magistrate, by the Khalífah Hárún ar-Rashíd, being the first who held that high office. The only work known to have been written by Abú Yúsuf treats of the duties of a magistrate, and is entitled *Adab al-Kází*.¹ The reputation of this work has been eclipsed by that of another, having a similar title, by Al-Khassáf, which will presently be mentioned. Abú Yúsuf is said to have committed his notes to his pupil, the Imám Muhammad, who made great use of them in the composition of his works.

Abú 'Abd Allah Muhammad Ben Husain ash-Shaibání, was born at Wásitah in 'Irák al-'Arab, in A.H. 132 (A.D. 749), and died at Ray, the capital of Khurásán, in A.H. 187 (A.D. 802). The Imám Muhammad, as he is most generally called, was a fellow pupil of Abú Yúsuf, under Abú Hanífah, and on the death of the latter pursued his studies under the former. It is also stated, that, in his younger days, he was instructed by the Imám Málík. His chief works are six in number, of which five are considered of the highest authority, and are cited under the title of the *Záhir ar-Rawáyát*, or *Conspicuous Reports*.²

The *Jámi' al-Kabír*,³ the first of the *Záhir ar-Rawáyát*, contains a body of most important questions of jurisprudence, and has been commented upon by many learned doctors, amongst whom we find the well-known Shams al-Aimma Abú Bakr Muhammad as-Sarakhsí, who died in A.H. 490 (A.D. 1096), and Burhán ad-Dín Mahmúd Ben Ahmad, each of whom composed a work entitled *Al-Muhít*, which will be presently noticed.

The *Jámi' as-Saghír*,⁴ the second of the works of the Imám

¹ Har. Anal. p. 234, n. 2d edit. Háj. Khalf. Tom. I. p. 219.

² Har. Anal. p. 230, n. 2d edit.

³ Háj. Khalf. Tom. II. p. 564.

⁴ Háj. Khalf. Tom. II. p. 553.

Muhammad, is perhaps even more celebrated than the *Jámi' al-Kabír*; and it is in its composition that he seems to have been chiefly indebted to Abú Yúsuf. The Commentaries on the *Jámi' as-Saghír* are very numerous: the best known is by *As-Sarakhsí*, and there is also one of some note by *Burhán ad-Dín 'Alí*, the author of the *Hidáyah*.

The third work of the Imám Muhammad is the *Mabsút fi Furú' al-Hanafíyat*,¹ which is also of great celebrity, and has received numerous comments.

The *Ziyádát fi Furú' al-Hanafíyat*,² the fourth of the Conspicuous Reports, is said to have been composed under the inspection and with the approbation of Abú Yúsuf. It is a work highly esteemed, and, together with its supplement by the same author, has been commented upon by a multitude of writers, amongst whom are *As-Sarakhsí*, and *Kázi Khán Hasan Ben Mansúr al-Uzjandí*, who died in A.H. 592 (A.D. 1195).

The fifth of the *Záhir ar-Rawáyát* is called the *Siyar al-Kabír wa as-Saghír*,³ and is supposed to have been the latest work of its author. The name of Abú Yúsuf nowhere occurs in the *Siyar*.

The *Nawádir*, the sixth and last of the known compositions of the Imám Muhammad, though not so highly esteemed as the others, is still greatly respected as an authority.

The next authorities among the Hanafis of India, after the founder of their sect and his two disciples, are the Imám *Zufar Ben al-Hazl*, who was Chief Judge at Basrah, where he died in A.H. 158 (A.D. 774),⁴ and *Hasan Ben Ziyád*: these lawyers were contemporaries, friends, and scholars, of Abú Hanífah, and their works are stated to be quoted in India as

¹ Háj. Khalf. Tom. V. p. 364.

² Háj. Khalf. Tom. III. p. 552.

³ Háj. Khalf. Tom. III. p. 637.

⁴ Hamilton's *Hedaya*, Preliminary Discourse, p. xxxv.

authorities for that Imám's doctrines, more especially when the two disciples are silent.¹

In addition to the above, the following are a few of the works according to the doctrines of the Hanafi school, best known, and most frequently referred to in India, or in the works of chief authority in that country.

Abú Bakr Ahmad Ben 'Amr al-Khassáf was the author of the most celebrated of several treatises known by the name of *Adab al-Kází*. He died in A.H. 261 (A.D. 874). Háji Khalfah speaks very highly of this work, which contains one hundred and twenty chapters, and has been commented upon by many learned jurists: the most esteemed Commentary is that of 'Umar Ben 'Abd al-'Azíz Ben Mázah, commonly called Husám ash-Shahíd, who was killed in A.H. 536 (A.D. 1141).²

Abú Ja'far Ahmad Ben Muhammad at-Taháwí is one of the numerous commentators on the *Jámi' as-Saghír* of the Imám Muhammad: he also wrote an abridgment of the Hanafi doctrines, called the *Mukhtasar at-Taháwí*. Both works are often quoted as authorities in India, but they are not known to exist in that country at the present day. At-Taháwí died in A.H. 321 (A.D. 933).³

The *Mukhtasar al-Kudúrí* by Abú al-Husain Ahmad Ben Muhammad al-Kudúrí, is among the most esteemed of the works which follow the doctrines of Abú Hanífah, and is of high authority in India; indeed, it is in such general repute, that Háji Khalfah, when speaking of those several works which are emphatically designated by antonomasia, "*Al-Kitáb*" or "*the Book*," says, that if, in matters connected with jurisprudence, such expression be used, it signifies the

¹ Harington quotes the *Fatáwa al-I Hammádiyah* in proof of this statement. *Har. Anal.* p. 229. 2d edit.

² Háji. Khalf. Tom. I. p. 220.

³ Háji. Khalf. Tom. V. p. 444.

Mukhtasar al-Kudúrí.¹ It is a general treatise on law, and contains upwards of twelve thousand cases. As may be supposed with regard to a work of such celebrity, it has been commented on by numerous writers : several of the Commentaries are quoted in the *Fatáwa al-'Álamgírí*. Al-Kudúrí died in A.H. 428 (A.D. 1036).²

The section of Al-Kudúrí's work relating to the warring against infidels was published in the original, with a Latin translation by Rosenmüller, in the year 1825.³

A well-known Commentary on the Mukhtasar al-Kudúrí is entitled *Al-Jauharat an-Nayyirat*,⁴ and is sometimes called *Al-Jauharat al-Munírat*.⁵ Baillie says that this work, though of later date than the *Hidáyah*, is perhaps more valuable in other respects.⁶

Shams al-Aïmmah Abú Bakr Muhammad as-Sarakhsí, mentioned above as the author of comments upon the *Jámi' al-Kabír* and the *Jámi' as-Saghír* of the Imám Muhammad, and of other works, composed, whilst in prison at Uzjand, a law-book of great extent and authority, entitled the *Mabsút*.⁷ He was also the author of the most generally celebrated of the many works entitled *Al-Muhít*, which is derived in a great measure from the *Mabsút*, the *Ziyádát*, and the *Nawádir* of the Imám Muhammad.⁸

Burhán ad-Dín Mahmúd Ben Ahmad, already spoken of, also wrote a *Muhít*, which, though known in India, is not so greatly esteemed as the *Muhít as-Sarakhsí*. The work of Burhán ad-Dín Mahmúd is commonly known as the *Muhít al-Burhání*, and is taken principally from the *Mabsút*, the two

¹ Háj. Khalf. Tom. V. p. 30. De Sacy *Anthologie Grammaticale Arabe*, p. 381.

² Ibn Khall. Vol. I. p. 59. De Sacy *Chrest. Arabe*, Tome II. p. 100. Háj. Khalf. Tom. V. p. 451.

³ Rosenmüller, *Analecta Arabica*, Pars I. 4to. 1825.

⁴ Háj. Khalf. Tom. V. p. 452.

⁵ Háj. Khalf. Tom. II. p. 656.

⁶ Baillie's *Moochummudan Law of Inheritance*, Pref. p. vii.

⁷ Háj. Khalf. Tom. V. p. 363.

⁸ Háj. Khalf. Tom. V. p. 433.

Jámi's, the Siyar, and the Ziyádát, of the Imám Muhammad : the author also made use of the Nawádír of the same doctor in composing his work.¹

The Shaikh 'Alá ad-Dín Muhammad as-Samarkandí composed a compendium of Al-Kudúrí's Mukhtasar, which he entitled the Tuhfat al-Fukahá.² The work of 'Alá ad-Dín was commented upon by his pupil Abú Bakr Ben Mas'úd al-Káshání, who died in A.H. 587 (A.D. 1191).³ This comment is entitled Al-Badái' as-Saná'. Both the text and its comment, though not known in India, are often quoted as authorities.

The Hidáyah is the most celebrated law treatise according to the doctrines of Abú Hanífah, and his disciples Abú Yúsuf and the Imám Muhammad, which exists in India : it is a Commentary on the Badái' al-Muhtadá, and both the text and comment are from the pen of Burhán ad-Dín 'Alí Ben Abú Bakr al-Marghínání, who, after employing thirteen years in writing the Hidáyah, died in A.H. 593 (A.D. 1196).⁴ The divisions and general arrangement of the Hidáyah are taken from the Jámi' as-Saghír of the Imám Muhammad, and it consists of a Digest of approved law cases, illustrated by proofs and arguments. Háji Khalfah says, in describing the Hidáyah, "it is a practice observed by the composer of this work to state first the opinions and arguments of the two disciples (Abú Yúsuf, and the Imám Muhammad); afterwards the doctrine of the great Imám (Abú Hanífah); and then to expatiate on the proofs adduced by the latter, in such manner as to refute any opposite reasoning on the part of the disciples.

¹ Háji. Khalf. Tom. V. p. 431.

² Háji. Khalf. Tom. II. p. 235.

³ Háji. Khalf. Tom. II. p. 235.

⁴ Háji. Khalf. Tom. VI. p. 479. The text of the Hidáyah corresponds generally with Al-Kudúrí, and from this circumstance, and a similar correspondence between it and the text of the Jauharat an-Nayyirat, it may perhaps be inferred that the Mukhtasar al-Kudúrí is really the original text of the Hidáyah. See Baillie, Moohummudan Law of Sale; Preliminary Remarks, p. xv. note.

Whenever he deviates from this rule, it may be inferred that he inclines to the opinions of Abú Yúsuf and the Imám Muhammad. It is also his practice to illustrate the cases specified in the *Jámi' as-Saghír* and *Kudúrí*, intending the latter whenever he uses the expression 'he has said in the book.' In praise of the *Hidáyah*, it has been declared, like the *Kurán*, to have superseded all previous books on the law ; that all persons should remember the rules prescribed in it ; and that it should be followed as a guide through life."

The same motive which dictated the compilation of the *Hindú Code*, induced Warren Hastings to recommend that a translation should be made into English of the *Hidáyah* ; and accordingly Mr. Hamilton undertook the task ; unfortunately, however, it was suggested by the Muhammadan lawyers who were consulted on the occasion, that inasmuch as the idiom of the author was particularly close and obscure, a Persian version should be first made " under the inspection of some of their most intelligent doctors, which would answer the double purpose of clearing up the ambiguities of the text, and, by being introduced into practice, of furnishing the native judges of the Courts with a more familiar guide, and a more instructive preceptor, than books written in a language of which few of them have opportunities of attaining a competent knowledge."¹ This was accordingly done ; and from this Persian translation Mr. Hamilton executed his English version,² which is thus rendered less to be depended upon than if it had been made from the original Arabic, without adding in any degree to its intelligibility. The work of Burhán ad-Dín 'Alí as we possess it in this translation, is, however, a most useful book, although it contains much that is unimportant, and omits altogether the Law of Inheritance, which is, perhaps, the most important of all.

The text of the *Hidáyah* was published in the original

¹ Hamilton's *Hedáya*, Prelim. Disc. p. xlv.

² The *Hedáya*, or Guide ; a Commentary on the Mussulman laws, translated by Charles Hamilton. 4 Vols. 4to. Calcutta, 1791.

Arabic at Calcutta in A.H. 1234 (A.D. 1818),¹ and was again edited, together with its Commentary, the *Kifāyah*, by *Hakīm Maulavī 'Abd al-Majīd* in 1834.² The Persian version was also published at Calcutta in the year 1807.³

A work of such great celebrity and authority as the *Hidāyah* has of course been illustrated by a large number of Commentaries, the first of which is said to have been written by *Hamīd ad-Dīn 'Alī al-Bukhārī*, who died in A.H. 667 (A.D. 1268), and is a short tract entitled the *Fawā'id*. The glosses of the *Hidāyah* which are most conspicuous for their reputation in India, are the *Nihāyah*, the *'Ināyah*, the *Kifāyah*, and the *Fath al-Kadīr*.

The *Nihāyah* of *Husām ad-Dīn Husain Ben 'Alī*, who is said to have been a pupil of *Burhān ad-Dīn 'Alī*, and died in A.H. 710 (A.D. 1310),⁴ was the first composed of these; and it is important as supplying the omission of the Law of Inheritance in the *Hidāyah*, although the chapter on this law is stated not to be looked upon as of equal authority with the *Farā'iz as-Sirājīyah*, which will be hereafter described.

There are two Commentaries on the *Hidāyah* entitled *'Ināyah*;⁵ but the one more commonly known by that name was written by the *Shaikh Akmal ad-Dīn Muhammad Ben Mahmūd*, who died in A.H. 786 (A.D. 1384). The *'Ināyah* is much esteemed for its studious analysis and interpretation of the text.

The Arabic text of the *'Ināyah* was published in Calcutta in 1837, edited by *Ramdhan Sen*.⁶

¹ الهداية 2 Vols. Folio, Calcutta, A.H. 1234 (A.D. 1818).

² الهداية مع شرحها الكفاية في المسائل الفقهية ودلائلها النقلية والعقلية
The *Hidayah*, with its Commentary, called the *Kifayah*, a Treatise on questions of Mohammedan law, published by *Hukeem Moulvee Abdool Mujeed*. Vols. 4to. Calcutta, 1834.

هداية فارسي ترجمه کرده مولوي غلام يحيى خان و ديكر علما
³ 4 Vols. 8vo. Calc. A.H. 1221 (A.D. 1807).

⁴ Háj. Khalf. Tom. VI. p. 480.

⁵ Háj. Khalf. Tom. IV. p. 269.

⁶ العناية شرح الهداية في المسائل الفقهية ودلائلها النقلية والعقلية
Inayah, a Commentary on the *Hidayah*; a work on Mohammedan Law

The third Commentary, the *Kifāyah*, is by Imām ad-Dīn Amīr Kātib Ben Amīr 'Amr, who had previously written another explanatory gloss of the same work, and entitled it the *Ghāyat al-Bayān*. The *Kifāyah* was finished in A.H. 747 (A.D. 1346), and, besides the author's own observations, gives concisely the substance of other Commentaries.

The original text of the *Kifāyah*, accompanied by that of the *Hidāyah*, has been published as mentioned above.

The *Fath al-Kadīr lil-'Ajiz al-Fakīr*, by Kamāl ad-Dīn Muhammad as-Siwāsī, commonly called Ibn Hammām, who died in A.H. 861 (A.D. 1456),¹ is the most comprehensive of all the comments on the *Hidāyah*, and includes a collection of decisions which render it extremely useful.

The *Wāfi* by Abū al-Barakāt 'Abd Allah Ben Ahmad, commonly called Hāfiz ad-Dīn an-Nasafī, and its Commentary, the *Kāfi*, by the same author, are works of some authority. An-Nasafī died in A.H. 710 (A.D. 1310).

An-Nasafī is also the author of the *Kanz ad-Dakāik*,² a book of great reputation, principally derived from the *Wāfi*, and containing questions and decisions according to the doctrines of Abū Hanīfah, Abū Yūsuf, the Imām Muhammad, Zufar, Ash-Shāfi'ī, Mālik, and others. Many Commentaries have been written on this work: the most famous is the *Bahr ar-Rāik*, which may, indeed, almost be said to have superseded it in India. The *Bahr ar-Rāik* is by Zain al-'Abidīn Ben Nujaim al-Misrī, who died in A.H. 970 (A.D. 1562).³ He left his work incomplete at his death, but it was finished by his brother, Sirāj ad-Dīn 'Umar, who also wrote another and inferior Commentary on the same work, entitled the *Nahr al-Fāik*.

The *Tabyīn al-Hakāik*,⁴ which is another Commentary on the *Kanz ad-Dakāik*, was composed by Fakhr ad-Dīn Abū

compiled by Muhammad Akmulooden, Ibn Muhmood, Ibn Ahmudonil Hunufee; edited by Moonsee Ramdhun Sen. 4 Vols. 4to. Calcutta, 1837.

¹ Hāj. Khalf. Tom. VI. p. 484.

² Hāj. Khalf. Tom. V. p. 249.

³ Hāj. Khalf. Tom. V. p. 250.

⁴ Hāj. Khalf. Tom. V. p. 250.

Muhammad Ben 'Alí az-Zaila'í, who died in A.H. 743 (A.D. 1342), and is in great repute in India, on account of its upholding the doctrines of the Hanafí sect against those of the followers of Ash-Shafi'í.

Two other Commentaries on the *Kanz ad-Dakáik* deserve mention: one is called the *Ramz al-Hakáik*, and is by Badr ad-Dín Mahmúd Ben Ahmad al-'Ainí, who died in A.H. 855 (A.D. 1451);¹ the other is the *Matlab al-Fáik* by Badr ad-Dín Muhammad Ben 'Abd ar-Rahman ad-Dairí:² the latter is much esteemed in India.

The *Wikáyah ar-Rimáyah* which was written in the seventh century of the Hijrah, by Burhán ash-Sharíyat Mahmúd, as an introduction to the study of the *Hidáyah*,³ has been comparatively eclipsed by its Commentary, the *Sharh al-Wikáyah*, by 'Ubaid Allah Ben Mas'úd, who died in A.H. 750 (A.D. 1349): this author's work combines the original text with a copious gloss explanatory and illustrative. Both the *Wikáyah* and the *Sharh al-Wikáyah* are used for elementary instruction in the Muhammadan Colleges. Other Comments on the *Wikáyah* exist, but they are of no great note.

The *Sharh al-Wikáyah* has been printed and published at Calcutta.⁴

The *Nukáyah* is another elementary law book well known in India, and is by the author of the *Sharh al-Wikáyah*: it is sometimes called the *Mukhtasar al-Wikáyah*, being, in fact, an abridgment of that work.⁵

The original Arabic text of the *Mukhtasar al-Wikáyah*, was printed and published at Kasan in the year 1845.⁶

Three Comments on the *Nukáyah* are much esteemed: they

¹ Haj. Khalf. Tom. V. p. 250.

² Haj. Khalf. Tom. V. p. 252. Harington seems to confound these two Commentaries. Har. Anal. p. 238 and note. 2d. edit.

³ Haj. Khalf. Tom. VI. p. 458.

⁴ شرح الوكايه 4to. Calc. N.D.

⁵ Háj. Khalf. Tome VI. p. 373.

⁶ مختصر الوكايه Kasan, A.H. 1261 (A.D. 1845).

were written respectively by Abú al-Makárim Ben 'Abd Allah in A.H. 907 (A.D. 1501), Abú 'Alí Ben Muhammad al-Birjindí in A.H. 935 (A.D. 1528), and Shams ad-Dín Muhammad al-Khurásání in A.H. 941 (A.D. 1534).

The *Ashbah wa an-Nazáir* is also an elementary work of great reputation by Zain al-'Ábidín, the author of the *Bahr ar-Ráik* already mentioned. Háji Khalfah speaks of this work in high terms, and enumerates several Appendices to it that have been composed at different times.¹

The original text of the *Ashbah wa an-Nazáir* was published at Calcutta in the year 1826, edited by Ramdhan Sen;² and was again printed at the same place, together with a Commentary by Ahmad Ben Muhammad al-Hamawí in 1844.³

There is a law treatise entitled *Núr al-Anwár fí Sharh al-Manár*, by the Shaikh Jún Ben Abí Sayyid al-Makkí: it was published at Calcutta in the year 1819.⁴ A new edition of this work was published in lithography at Lakhnau, in 1849.⁵

A small tract on the sources of the law, entitled the *Usúl ash-Sháshi*, together with an explanatory Commentary, was printed in lithography, at Dihlí, in the year 1847.⁶

¹ Háji. Khalf. Tom. I. p. 309.

² *الاشباه والنظائر* *Al-Ashbaho wa al-Nazaír*, a Treatise on Mohammedan law, originally compiled by Zein al-Abdin Ibne Najim, edited by Munshi Ramdhan Sen. 4to. Calc. 1826.

³ *الاشباه والنظائر مع شرحه الحموي في المسائل الفقهية علي المذهب الحنفية اما المتن فهو لافضل المتأخرين مولانا زين العابدين ابراهيم المشتهر بابن نجيم المصري الحنفي واما الشرح فهو لمولانا السيد احمد بن محمد الحنفي الحموي* 4to. Calcutta, A.H. 1260 (A.D. 1844.)

⁴ *نور الانوار في شرح المنار* Fol. Calcutta, 1819.

⁵ *كتاب نور الانوار في شرح المنار* 8vo. Lakhnau, A.H. 1266 (A.D. 1849).

⁶ *هذا الكتاب المعروف باصول الشاشي* 8vo. Dehli, A.H. 1264 (A.D. 1847).

The *Asús al-Usúl*, by the Sayyid Dildár 'Alí Ben Sayyid Muhammad Mu'ín al-Hindí an-Nasrábádí is also a treatise on the sources of the law. It was published in lithography, at Lakhnau, in the same year.²

A short general treatise in Urdú, entitled *Fikh Ahmadí*, by Maulaví Kadrat Ahmad Ben Háfiz 'Ináyat Ahmad al-Farúqí, was lithographed at Dilhí, in 1847.³

At the same place, and in the same year, appeared a translation in Urdú by Muhammad Husain Ben Muhammad Bákír of a Persian treatise on the law of marriage, by Mullá Muhammad Bákír.⁴ This work is also lithographed.

These are the principal law-books of the third class that are known, and are of authority among the Sunnís of the Hanafí sect in India; but, as may be imagined, it is only a few of these that are quoted in the Courts; the *Hidáyah* and its comments, illustrated by the books of *Fatáwa*, generally sufficing to satisfy the Judges, and to offer sufficient grounds on which to base a decision.

Many works according to the doctrines of Abú Hanífah have been written, and are received as authorities in the Turkish empire. These I apprehend would be admissible if quoted in our Courts in India where the parties to a suit are of the Hanafí persuasion.

The most celebrated of these is the *Multaka al-Abhár*, by the Shaikh Ibráhím Ben Muhammad al-Halabí, who died in A.H. 956 (A.D. 1549). This work, which is an universal code of Muhammadan law, contains the opinions of the four chief Mujtahid Imáms, and illustrates them by those of the principal

¹ اساس الاصول. Svo. Lakhnau. A.H. 1264 (A.D. 1847).

² فقه احمدی. Svo. Dehli, A.H. 1264 (A.D. 1847).

³ ترجمه رساله نكاح مولفه ملا محمد باقر مجلسي بزبان فارسي كه آنرا محمد حسين بن محمد باقر بزبان اردو ترجمه نمود در بيان نكاح و غير امور حلال و حرام. Svo. Delhi, 1264 (A.D. 1847.)

jurisconsults of the school of Abú Hanífah. It is more frequently referred to as an authority throughout Turkey, than any other treatise on jurisprudence.¹

The Multaka al-Abhár was published in the original Arabic, at Constantinople, in A.H. 1251 (A.D. 1835);² and a Commentary on it, entitled the Majma' al-Anhár, by 'Abd ar-Rahman Ben Shaikh Muhammad, commonly known by the name of Shaikh Zádah, was published at the same metropolis, in A.H. 1240 (A.D. 1824).³ A Turkish translation, accompanied by a commentary by Muhammad Mavkúfátí, called after his name, Al-Mavkúfátí,⁴ appeared at Búlák, in the year 1838. The Multaka has been also translated, in a great part, into French, and constitutes the basis of D'Ohsson's magnificent work on the Ottoman Empire.

The Durar al-Hukkám, by Muhammad Ben Farámuriz, commonly called, Mullá Khusrú, who died in A.H. 885 (A.D. 1480), is a Commentary upon a law treatise by the same author, entitled the Ghurar al-Ahkám.⁵ Mullá Khusrú, who is one of the most renowned of the Turkish jurisconsults, completed his work in A.H. 882 (A.D. 1477). It is very voluminous, and, as an authority, is second only to the Multaka al-Abhár, which is preferred to it chiefly on account of its comparative brevity.⁶

The text of the Durar al-Hukkám was published at Constantinople in the year 1844.⁷ A Turkish translation of this Commentary, accompanied by the Arabic text of the Ghurar

¹ D'Ohsson, Tableau General de l'Empire Othoman. Tome I. Introd. Sect. III.

² ملتي البحار 4to. Constantinople, A.H. 1251 (A.D. 1835).

³ مجمع الانهار 4to. Constantinople, A.H. 1240 (A.D. 1824).

⁴ الموقفاتي Folio. Búlák, A.H. 1254 (1838).

⁵ Háj. Khalf. Tom. III. p. 215, and Tom. IV. p. 312.

⁶ Journal Asiatique, 4^{me} Série. Tome III. p. 216.

⁷ درر الحكم في شرح غرر الاحكام 4to. Constantinople, A.H. 1260 (A.D. 1844).

al-Ahkám, appeared previously, at the same place, in the year 1842.¹

A tract on Penal Laws, in Turkish, was published at Constantinople, in A.H. 1254 (A.D. 1838): it is entitled Kánún Námah-i Jazá.² The penal clauses in the Khatt-i Sharíf have been twice printed; once in Turkish,³ published at Constantinople in 1841; and again in Turkish, with a German translation by Petermann,⁴ published at Berlin in the following year.

It will be unnecessary to dwell at any length upon the books which have been composed according to the doctrines of the three other principal Sunní sects.

I have already mentioned, that the sect founded by Málík Ben Anas is not known to prevail in any part of India; but the student of Muhammadan law will consult with interest two treatises which have lately appeared in France on the Málíkí doctrines.

The first of these was published in 1842, by M. Vincent.⁵ It contains a short account of the origin of the Málíkí doctrine, principally derived from Al-Makrízí,⁶ a description of the most noted works treating of that doctrine,⁷ and a translation of the chapter on Criminal Law, taken from the Risálah of Abú Muhammad 'Ábd Allah Ben Abú Zaid al-Kairuwání.⁸ The preliminary matter in M. Vincent's treatise is very interesting.

¹ ترجمه درر الحکام فی شرح غرر الاحکام Folio. Constantinople, A.H. 1258 (A.D. 1842).

² قانون نامد جزا 8vo. Const. A.H. 1254 (A.D. 1839).

³ صورت خط شریف Const. A.H. 1251 (A.D. 1841).

⁴ Beiträge zu einer Geschichte der neuesten Reformen des osmanischen Reiches, enthaltend den Hattischerif von Gúlhane, den Ferman von 21 Nov. 1839 und das neueste Strafgesetzbuch, türkisch und deutsch, in Verbindung mit Ramis Effendi herausgegeben von J. H. Petermann. 8vo. Berl. 1842.

⁵ Études sur la Loi Musulmane (Rit de Malek) Législation Criminelle. Par M. B. Vincent. 8vo. Paris. 1842.

⁶ Ibid. p. 13.

⁷ Ibid. p. 31.

⁸ Ibid. p. 63.

The second is a French translation, by M. Perron, of the *Mukhtasar* of Khalíl Ibn Ishák, who flourished in the fourteenth century of our æra.¹ The *Mukhtasar* is a work professedly treating of the law according to the Málíkí doctrines, and is of conclusive authority in Algeria, Tunis, Tripoli, Morocco, Senegal, and almost all parts of Africa where the Muhammadan religion is prevalent. M. Perron's version has been undertaken by order of the French Government, for the especial use of those who are employed in the administration of justice in Algeria, and is the more valuable, as the translator has not confined himself to a bare translation of the original text, but has illustrated all the obscure passages by introducing explanations from the different commentators on the work. It is the first complete translation of a general treatise on Muhammadan jurisprudence that has appeared. The typographical excellence of the volumes, combined with their lowness of price, do honour to the liberality of the French Government.

The original text of the *Mukhtasar* of Khalíl has been edited by M. Richebé under the direction of M. Reinaud, and was published at Paris in 1855. It is printed in the Maghrabí character.²

The works of MM. Vincent and Perron, above mentioned, are peculiarly worthy of notice as being the first, and indeed the only ones, devoted to the explanation of the Sunní doctrines other than those of Abú Hanífab, that have been published in any European language.

Ash-Sháfi'í, the third of the chief Mujtahid Imáms, and the preceptor of Ibn Hanbal, besides the works on the traditions already noticed, is said to have composed a most excellent treatise on jurisprudence, entitled *Al-Fíkh al-Akbar*; but

¹ *Précis de Jurisprudence Musulmane selon le Rite Málékite.* Par Khalil Ibn Ishák. Traduit de l'arabe par M. Perron. Paris. Imp. 8vo. 6 Tomes, 1848—54.

² *Précis de Jurisprudence Musulmane suivant le rit Malékite,* par Sidi Khalil. Paris, 8vo. 1855.

it has been questioned whether he was the author.¹ Abú Ibráhím Isma'íl Ben Yahya al-Muzaní, who was a distinguished disciple of Ash-Sháfi'í, and a native of Egypt, was the most celebrated among that doctor's followers for his acquaintance with the legal system and juridical decisions of his preceptor, and for his knowledge of the traditions. Amongst other works, he wrote the *Mukhtasar*, the *Mansúr*, the *Rasáíl al-Mu'tabira*, and the *Kitáb al Wasáik*. The *Mukhtasar* is the basis of all the treatises composed on the legal doctrines of Ash-Shafi'í, who himself entitled Al-Muzaní "the champion of his doctrine." Al-Muzaní died in A.H. 264 (A.D. 877).²

The writings of the followers of Ibn Hanbal are few in number, and it will be needless to mention any of them in this place, as they are never quoted in India, where his sect is not found to prevail.

The Shí'ah works of the third class are, perhaps, not so numerous in proportion to those of the Sunnis, as are their works on the traditions, the writers of the Shí'ah sects having expended more labour upon theological controversy, and that portion of the law immediately connected with the doctrines of their faith and their religious observances, than upon those branches which treat of civil and criminal jurisprudence. The materials for a description of this class of law-books are scanty. The bibliographers give little more than their names, which, as is most frequently the case with regard to the titles of oriental works, afford scarcely any information as to their contents: in addition to this, MSS. of Shí'ah law-books are rarely to be met with in any of our libraries.

'Abd Allah Ben 'Alí al-Halabí was one of the first writers on Shí'ah jurisprudence as he was amongst the earliest compilers of the traditions of that sect. It does not appear, however, that any of his legal compositions are extant.

¹ Háj. Khalf. Tom. IV. p. 459.

² Ibn Khall. Vol. I. p. 200; Háj. Khalf. Tom. V. p. 453.

Yúnas Ben 'Abd ar-Rahman al-Yuktainí, who has been spoken of as a writer on traditions, composed a number of law treatises of the present class. The most famous is entitled the *Jámi' al-Kabír*.

Abú al-Hasan 'Alí Ben al-Husain al-Kumí, commonly called Ibn Bábawaih, who died in A.H. 329 (A.D. 940), was the author of several works of note, one of which is called the *Kitáb ash-Sharái'*. This writer is looked upon as a considerable authority, although his fame has been almost eclipsed by his more celebrated son, Abú Ja'far Muhammad, already mentioned as a traditionist. When these two writers are quoted together, they are called the two *Sadúks*. The best known of the law-books of the present class, composed by Abú Ja'far, is the *Makna' fi al-Fikh*. Abú Ja'far is said to have written in all one hundred and seventy-two works, and to have been especially skilled in *Ijtihád*.

Abú 'Abd Allah Muhammad Ben Muhammad Ben an-Nu'mán, surnamed the Shaikh Mufid and Ibn Mu'allim, was a renowned Shí'ah lawyer. Abú Ja'far at-Túsí describes him in the *Fihrist* as the greatest orator and lawyer of his time, the most eminent Mujtahid, the most subtle reasoner, and the chief of all those who delivered *Fatwas*.¹ Ibn Kasír ash-Shámí relates, that when he died—an event which took place in A.H. 413, or, as some say, in 416 (A.D. 1022—1025)—Ibn an-Nakíb, who was one of the most learned of the Sunní doctors, adorned his house, told his followers to congratulate him, and declared, that since he had lived to see the death of the Shaikh Mufid he should himself leave the world without regret. The Shaikh Mufid is stated to have written two hundred works, amongst which, one called the *Irshád* is well known. These are all enumerated in the *Majális al-Muminín*, on the authority of the Shaikh Najáshí. When the Shaikh Mufid is quoted in conjunction with Abú Ja'far at-Túsí they are spoken of as the two Shaikhs.

¹ At-Túsí, p. ۳۱۲.

Abú Ja'far Muhammad at-Túsí, who has been already noticed as a writer on biography, a commentator on the Kurán, and one of the most distinguished of the Shí'ah compilers of traditions, is also of the highest authority as an author of the present class of law-books. His chief works are the Mabsút and the Khiláf, which are held in great estimation, as are also the Niháyah and the Muhít, by the same author. The Risálat-i Ja'fariyah is likewise a legal treatise by At-Túsí which is frequently quoted.

The most generally known of all the Shí'ah lawyers is the Shaikh Najm ad-Dín Abú al-Kásim Ja'far Ben Muayyid al-Hillí, commonly called the Shaikh Muayyid. He died in A.H. 676 (A.D. 1277). His great work, the Shará' al-Islám is more universally referred to than any other Shí'ah law-book, and is the chief authority for the law of the Indian followers of 'Alí.

The original text of the Shará' al-Islám was edited in Calcutta, by Maulaví Sayyid Aulád Husain and Maulaví Zahúr 'Alí, and published in the year 1839.¹

A valuable and voluminous Commentary upon the Shará' al-Islám, entitled the Masálik al-Afhám, was written by Zain ad-Dín 'Alí as-Sá'lí, commonly called the second Shahíd.

Yahya Ben Ahmad al-Hillí, who was celebrated for his knowledge of traditions, and who died in A.H. 679 (A.D. 1280), is well known amongst the Imámíyah sect for his works on jurisprudence. The Jámí' ash-Shará' and the Mudkhal dar Usúl-i Fikh are in the greatest repute.

The Shaikh al-'Allámah Jamál ad-Dín Hasan Ben Yúsuf Ben al-Mutahhir al-Hillí is called the chief of the lawyers of Hillah. He has been already mentioned as the author of the

كتاب شرائع الاسلام في بيان مسائل الحلال و الحرام من تصانيف¹
 المولانا المحقق ابي القاسم الحلي The Sharaya ool Islám, a treatise "on
 lawful and forbidden things," by Abool Kasim of Hoolla. Edited by Moolvee
 Seyud Oulad Hosein and Moolvee Zuhoor Ulee. 4to. Calcutta, 1839.

Khulásat al-Akwál; nor is his name second to any other as a writer of the present class of Shí'ah law-books, his legal works being very numerous, and frequently referred to as authorities of undisputed merit. The most famous of these are the Talkhís al-Marám, the Gháyat al-Ahkám, and the Tahrír al-Ahkám, which last is a justly celebrated work. The Mukhtalaf ash-Shí'ah is also a well-known composition of this great lawyer; and his Irshád al Azhán is constantly quoted as an authority, under the name of the Irshád-i 'Allámah.

The Jámí-i 'Abbásí is a concise and comprehensive treatise in Persian on Shí'ah law, comprising twenty books.¹ It is generally considered as the work of Bahá ad-Dín Muhammad 'Ámilí, who died in A.H. 1031 (A.D. 1621); but that lawyer only lived to complete the first five books, dedicating his work to Sháh 'Abbás II. The remaining fifteen books, as I have ascertained from a MS. preserved in the Radcliffe Library at Oxford, and forming part of the collection procured in the East by Mr. James Fraser,² were subsequently added by Nizám Ibn Husain as-Sáwaí. This fact is not mentioned in the only other MS. of the entire work which I have met with; but in the Fraser MS., which comprises two volumes, the first containing the first five books, there is a distinct Preface to the sixth book, where it is expressly stated; and it is corroborated by the existence of a MS. in the Library of the East-India Company,³ which contains the first five books only of the Jámí' 'Abbásí, illustrated with notes, forming a perpetual commentary, taken from the principal Shí'ah law authorities, by 'Izz ad-Dín Muhammad Ben Mír Abú al-Hasan al-Husainí al-Musawí, who entitled his work the Majmu'-i Izdiyád.

¹ This work must not be confounded with another under the same title, which is an abridgment of the Fatáwa-i Muhammadí by 'Abd ar-Rahman 'Abbás, and is dedicated to Tipú Sultán. See Stewart's Catalogue of the Library of Tippoo Sultan, p. 157, No. XCIII.

² MS. I. 4—25. And see Fraser's Catalogue at the end of his History of Nádir Sháh, p. 32. 8vo. Lond. 1742.

³ MS. No. 1930.

Two modern Shí'ah works of the present class are deserving of notice : these are, the *Mufátiḥ*, by Muhammad Ben Murtaza, surnamed Muhsan, and a Commentary on that work by his nephew, who was of the same name, but surnamed Hádí.

The *Mukhtasar an-Náfi'* is a Shí'ah law treatise very frequently quoted. It is by the author of the *Shará' al-Islám*.

A general digest of the Imámíyah law in temporal matters was compiled under the superintendence of Sir William Jones, the text of which still remains in MS. The first portion of this Digest was translated by Colonel Baillie,¹ who introduced some valuable additions, particularly the ninth and tenth books, which are translated from the *Tahrír al-Ahkám* of 'Allámah al-Hillí. It is greatly to be regretted that this work was not completed, and that the Preliminary Discourse promised, and so frequently referred to by the translator in the first volume, was never published, as there can be no doubt that Colonel Baillie's extensive knowledge and means of acquiring information on the subject would have supplied the numerous and unavoidable deficiencies of the present imperfect sketch of the authorities of Shí'ah law.

IV. The works which treat separately and especially of the 'Ilm al-Faráiz, or science of dividing inheritances, are not numerous in India, the *Sirájíyah*, and its Commentary the *Sharífíyah*, being almost the only books on the subject referred to by the lawyers of the Hanafí school.

Abú Sa'd Zaid Ben Sábit, one of Muhammad's Ansárs, or allies, who died at Madínah in A.H. 54 (A.D. 673), is the earliest authority on the 'Ilm al-Faráiz, and may be called the

¹ A Digest of Mohummudan Law, according to the tenets of the twelve Imams, compiled under the superintendence of Sir William Jones, extended so as to comprise the whole of the Imameea code of jurisprudence in temporal matters, and translated from the original Arabic, by order of the Supreme Government of Bengal, by Captain John Baillie. In 4 Vols. Vol. I. (all published). 4to. Calcutta, 1805.

father of the law of inheritance. Muhammad is reported to have said to his followers, "The most learned among you in the laws of heritage is Zaid;" and the Khalífahs 'Umar and 'Usmán considered him without an equal as a judge, a jurisconsult, a calculator in the division of inheritances, and a reader of the Kurán.¹

The Imám Muwaffik ad-Dín Abí 'Abd Allah Muhammad Ben 'Alí ar-Rahabí, surnamed Ibn al-Mutakannah, wrote a short treatise, entitled the Bighyat al-Báhis, consisting of memorial verses, which are nearly unintelligible from their conciseness, and which give an epitome of the law of inheritance according to the doctrine of Zaid Ben Sábit. This doctrine, which was partly exploded by Abú Hanífah, is still looked upon with respect by all writers on Faráiz: it cannot, however, be said, so far as we know, to belong to any particular sect, unless, indeed, it be that of Ash-Sháfi'i, who, it seems, took Zaid Ben Sábit for his chief guide. For this reason I place the Bighyat al-Báhis as the first in order of these separate works on the 'Ilm al-Faráiz, although I have not been able to ascertain the period when its author flourished.

Sir William Jones published the text of the Bighyat al-Báhis, accompanied by a literal translation, which is almost as obscure as the original.² In the Preface to this work the learned translator falls into error, by stating, that as the author "was himself an Imam, his decisions on that account are considered binding by the sect of Ali, which the Indian as well as the Persian Mahomedans profess."³ Now, setting aside the fact that the Shí'ah faith has never at any time had great weight in India, where, even at Lakhnau, "the seat of

¹ De Slane in Ibn Khall. Vol. I. p. 372, note 2. An-Nawawí. p. ۲۵۹.

² بغيت الباحث The Mohammedan Law of Succession to the Property of Intestates, in Arabick; with a Verbal Translation and Explanatory Notes. By William Jones, Esq. 4to. Lond. 1782. Sir William Jones' Works, Vol. III. p. 467. 4to. Lond. 1799.

³ Sir W. Jones' Muhammadan Law of Succession, Preface.—Sir W. Jones' Works, Vol. III. p. 470. 4to. Lond. 1799.

heterodox Majesty itself," the tenets of the Sunnis are adhered to,¹ the mere circumstance of Ibn al-Mutakannah being denominated "Al-Imám," would be in itself sufficient to prove that he was *not* a Shí'ah writer, since that title, as we have seen, is considered by the Shí'ahs to be sacred, and is never applied by them to any other than 'Alí and his immediate descendants. Moreover, the 8th, 9th, and 10th pages of the Bighyat al-Báhis,² if they can be construed to mean any thing, seem to point at the doctrine of the Increase—a doctrine which is not admitted by the Shí'ah lawyers.

The highest authority on the law of inheritance amongst the Sunnis of India is the Sirájíyah, which is sometimes called the Faráiz as-Sajáwandí, and was composed by Siráj ad-Dín Muhammad Ben 'Abd ar-Rashíd as-Sajáwandí, but at what precise time is uncertain. The Sirájíyah has been commented upon by a vast number of writers, upwards of forty being enumerated in the Kashf az-Zunún.³ The most celebrated of these Commentaries, and the one most generally employed to explain the text, is the Sharífíyah by Sayyid Sharíf 'Alí Ben Muhammad al-Jurjání, who died in A.H. 814 (A.D. 1411).⁴

The original text of the Sirájíyah, together with that of the Sharífíyah was published at Calcutta in A.H. 1245 (A.D. 1829).⁵ A Persian translation of the Sirájíyah and Sharífíyah, by Maulaví Muhammad Ráshid, was made by order of Warren Hastings, in pursuance of his plan for rendering the native laws accessible to those to whom the administration of justice was intrusted; and although Sir William Jones has spoken in terms of disparagement of this translation,⁶ it bears testimony to the active interest taken by the illustrious

¹ Macnaghten, Principles and Precedents of Moohummudan Law, Preface, p. xii.

² Sir W. Jones' Works, Vol. III. p. 499 *et seq.* 4to. Lond. 1799.

³ Háj. Khalf. Tom. IV. p. 399.

⁴ Háj. Khalf. Tom. IV. p. 401.

⁵ الفرائض السجواندي 8vo. Calc. A.H. 1245 (A.D. 1829).

⁶ Sir W. Jones' Works, Vol. III. p. 508. 4to. Lond. 1799.

Governor-General in the welfare and happiness of the Musulmán portion of the population of India. The text of this Persian version was published at Calcutta in the year 1812¹ by Muhammad Ráshid. The text and translation of the Sirájíyyah, together with an abstract of the Sharífíyyah, published by Sir William Jones, are well known.² The learned Judge has executed his task with his accustomed ability; but although he blames, with apparent reason, the diffuseness of the Persian translator, it may be doubted whether he himself has not erred in the opposite extreme. Mr. Neil Baillie has well observed of Sir William Jones' translation: "The Siraj-iyyah is very brief and abstruse; and without the aid of a Commentary, or a living teacher to unfold and illustrate its meaning, can with difficulty be understood even by Arabic scholars. It is therefore not a matter of surprise that its translation by Sir William Jones should be almost unknown to English lawyers, and be perhaps never referred to in His Majesty's Supreme Courts of Judicature in India. With the assistance of the Shureefeea, it is brought within the reach of the most ordinary capacity; and if the abstract translation of that Commentary, for which we are also indebted to Sir William Jones, had been more copious, nothing further would have been requisite to give the English reader a complete view of this excellent system of inheritance."³ Mr. Baillie himself subsequently supplied this desideratum by his admirable treatise on the law of Muhammadan Inheritance, which will be noticed hereafter in speaking of the European works on the Muhammadan law. Until the appearance of this last treatise, Sir William Jones' translation of the Sirájíjjah was undoubt-

فرايض سراجيه فارسي با فوايد شريفيه ترجمه کرده مولوي محمد راشد
8vo. Calc. A.H. 1227 (A.D. 1812).

² Al-Sirájíyyah, or the Mohammedan Law of Inheritance, with a Commentary by Sir William Jones. Fol. Calcutta, 1792. (Text and Translation.) Sir W. Jones' Works, Vol. III. p. 503. 4to. Lond. 1799.

³ Baillie's Moohummudan Law of Inheritance. Introduction, p. i.

edly of considerable utility to the English Judge, as supplying in a great measure the omission in the *Hidáyah*; but it has been quite superseded by Mr. Baillie's clear and comprehensive exposition of this intricate and important branch of the Muhammadan law.

The most celebrated Commentaries on the *Sirájíyah* next after the *Sharífiyah*, although perhaps not much known in India, may be here noticed. These are, that by Shiháb ad-Dín Ahmad Ben Mahmúd as-Síwásí, who died in A.H. 803 (A.D. 1400), and which has a great and general reputation; one by Burhán ad-Dín Haidar Ben Muhammad al-Harawí, who died about A.H. 830 (A.D. 1426), which is famous for being of great excellence, though small in volume;¹ another by Shams ad-Dín Muhammad Ben Hamzah al-Fanárí, who died in A.H. 834 (A.D. 1430), and whose work is considered to be one of the best of the glosses on the *Sirájíyah*;² and lastly, a Persian Commentary entitled *Al-Faráiz at-Tájí fí Sharh Faráiz as-Sirájí*, by 'Abd al-Karím Ben Muhammad al-Hamadání.³

Burhán ad-Dín al-Marghínání, the author of the *Hidáyah*, also wrote a work on Inheritance entitled the *Faráiz al-'Usmání*, which has been illustrated by several comments.⁴

The *Faráiz-i Irtizíyah* is a concise treatise in Persian on the law of Inheritance, which appears to be the principal authority of that law in the Dakhin:⁵ its author is Irtizá 'Ali Khán Bahádúr. The *Faráiz-i Irtizíyah* was printed at Madras in 1825.⁶

¹ Háj. Khalf. Tom. IV. p. 400.

² Háj. Khalf. Tom. IV. p. 401.

³ Háj. Khalf. Tom. IV. p. 404.

⁴ Háj. Khalf. Tom. IV. p. 405.

⁵ M. Eugène Sicé mentions this work as an authority amongst the *Shí'ahs* of Pondichéry; but he has given extracts from it, quoting the opinions of the Sunní Imáms, which sufficiently prove that it cannot be considered as a guide by any of the true followers of 'Alí. — See the *Journal Asiatique*, 3^me Série. Tome XII. p. 185 *et seq.*

⁶ *فرايز ارتضيه* *Furaiz-i Irtizeeah*, a treatise on the Mohummedan law of Inheritance. By Moulavee Mohummud Irtaza Aleo Khan Bahadoor Mooftee of the Court of Sudr and Foujdaree Udalut at Fort St. George. Fol. Madras, 1825.

The following separate treatises on the law of Inheritance according to Ash-Sháfi'í's doctrine may be mentioned :—Al-Faráiz al-Fárikíyah, by Shams ad-Dín Muhammad Ben Killáyi, who died in A.H. 777 (A.D. 1375). The Faráiz al-Fazá'í, by Burhán ad-Dín Abú Ishák al-Fazá'í, commonly called Ibn Firkáh, who died in A.H. 729 (A.D. 1328). The Faráiz al-Mutawallí, by Abú Sa'id 'Abd ar-Rahman Ben Mámún al-Mutawallí, who died in A.H. 478 (A.D. 1085); and the Faráiz al-Mukaddasí, by Abú al-Fazl 'Abd al-Malik Ben Ibráhím al-Hamadání al-Mukaddasí, and Abú Mansúr 'Abd al-Káhir al-Baghdádí, who died respectively in A.H. 489 and 429 (A.D. 1095 and 1037).¹

The earliest treatises on the 'Ilm al-Faráiz by Shí'ah writers appear to have been written by 'Abd al-'Azíz Ben Ahmad al-Azadí, and Abú Muhammad al-Kindí, the latter of whom lived in the reign of Hárún ar-Rashíd. The best known and most esteemed are the Ihtijáj ash-Shí'ah, by Sa'd Ben 'Abd Allah al-Ash'arí, who died in A.H. 301 (A.D. 913); the Kitáb al-Mawáris, by Abú al-Hasan 'Alí Ben Bábawaih; and the Hamal al-Faráiz, and the Faráiz ash-Shar'íyah, by the Shaikh Mufíd.

Abú Ja'far Muhammad at-Túsí, who, in addition to his general works on the Kurán, the Hadís, and jurisprudence, wrote separate treatises on almost every branch of Shí'ah law, has left a work on Inheritance entitled Al-Íjáz fí al-Faráiz.

A very complete treatise in the Persian language on the Shí'ah law of inheritance was printed in lithography at Lakhnau in 1841.² It is an extract from a larger work, entitled the Rauzat al-Ahkám by Sayyid Husain. This treatise well deserves translation; for although it presents all the peculiar

¹ Háj. Khalf. Tom. IV. pp. 408, 410.

² رساله متعلق باحكام مواريث جزويست از مقصد رابع كتاب مستطاب
روضة الاحكام 8vo. Lakhnau, A.H. 1257 (A.D. 1841).

difficulties attendant on the mode of treatment adopted by the Muhammadan lawyers, it is very full and satisfactory.

Another treatise on Inheritance, which I have not seen, but believe to be according to the Shí'ah tenets, entitled Kitáb 'Ilm al-Faráiz, was lithographed at the same place in the year 1847.¹ It is in the Urdú language, and the author is Mullá 'Ináyat Ahmad.¹

V. Having described to this extent the comments on the Kurán, the books of traditions, and the general and particular treatises on jurisprudence and special laws of the different sects, the fifth class of works, which treat of the 'Ilm al-Fatáwa, or science of decisions, remains to be noticed. These are very numerous, amounting to several hundreds: the greater portion, however, are either unknown, or never used in India.

Almost all these collections have the title of Fatáwa, but some appear under other designations. Some give the decisions of particular lawyers, or those found in particular books; others, those which tend to illustrate the doctrines of the several sects; whilst others again are devoted to recording the opinions of learned jurists, who were natives or residents of certain places, or lived at certain times. It will be necessary here to mention only a few of these works.

The Khulásat al-Fatáwa by the Imám Iftikhár ad-Dín Táhir Ben Ahmad al-Bukhárí, who died in A.H. 542 (A.D. 1147), is a select collection of decisions of great authority.² Iftikhár ad-Dín was also the author of the Khizánat al-Wáki'át, and the Kitáb an-Nisáb, on which books the Khulásat was grounded, and to which many subsequent collections of decisions are indebted for numerous valuable cases.

The Zakhírat al-Fatáwa sometimes called the Zakhírat al-Burháníyah, by Burhán ad-Dín Ben Mázah al-Bukhárí, the author of the Muhít al-Burhání, is also a celebrated, though not a large collection of decisions, principally taken from the Muhít.³

¹ كتاب علم الفرائض 8vo. Lakhnau, A.H. 1264 (A.D. 1847).

² Háj. Khalf. Tom. III. p. 165.

³ Háj. Khalf. Tom. III. p. 327.

The *Fatáwa Kází Khán*, or collection of decisions of the *Imám Fakhr ad-Dín Hasan Ben Mansúr al-Uzjandí al-Farghání*, commonly called *Kází Khán*, who died in A.H. 592 (A.D. 1195), is a work held in the highest estimation in India, and indeed is received in the Courts as of equal authority with the *Hidáyah* of *Burhán ad-Dín 'Alí*, with whom *Kází Khán* was a contemporary; it is replete with cases of common occurrence, and is therefore of great practical utility, the more especially as many of the decisions are illustrated by the proofs and reasoning on which they are founded. *Yúsuf Ben Junaid*, generally known by the name of *Akhí Chalabí at-Túkátí*, epitomised *Kází Khán's* work, and compressed it into one volume.¹

The *Fatáwa Kází Khán* was lithographed and published in the original at Calcutta in the year 1835.²

The *Fatáwa az-Zahíriyah* was written by *Zahír ad-Dín Abú Bakr Muhammad Ben Ahmad al-Bukhárí*, who died in A.H. 619 (A.D. 1222). His decisions were collected partly from the *Khizánat al-Wáki'át*, and his work has again become one of the bases of other collections. *Badr ad-Dín Abú Muhammad Mahmúd Ben Ahmad al-'Ainí*, who died in A.H. 855 (A.D. 1451), compiled a collection selected from this and other old works of the same nature, entitled the *Masá'il al-Badríyah*.³

The *Fusúl al-Isturúshí*⁴ was written by *Muhammad Ben Mahmúd*, commonly called *Al-Isturúshí*, in A.H. 625 (A.D. 1227), and is principally restricted to decisions respecting mercantile transactions.

The *Fusúl al-'Imádiyyah*, by *Abú al-Fath Muhammad Ben*

¹ Háj. Khalf. Tom. IV. p. 365.

² فتاوی قاضیخان در فقه حنفی *Futawa Qazee Khan on the Institutes of Aboo Huneefa*. Edited by Moulvee Mohummud Mooraud, Moulvee Hafiz Ahmud Kubeer, Moulvee Mohummud Soliman, Moulvee Ghollam Issa, and Moulvee Tumeezooddeen Aizanee. 4 Vols. 8vo. Calcutta.

³ Háj. Khalf. Tom. IV. p. 362.

⁴ Háj. Khalf. Tom. IV. p. 432.

Abú Bakr al-Marghínání as-Samarkandí, was composed in A.H. 651 (A.D. 1253).¹ It comprises forty sections containing decisions respecting mercantile matters, and, being left incomplete at the author's death, was finished by Jamál ad-Dín Ben 'Imád ad-Dín.

The Fusúl al 'Imádiyyah was lithographed and published in the original at Calcutta in the year 1827.²

These two last-mentioned works were incorporated in a collection entitled the Jámí' al-Fusúlain,³ which is a work of some celebrity: it was composed by Badr ad-Dín Mahmúd, known by the name of Ibn al-Kází Simáwanah, who died in A.H. 823 (A.D. 1420).

The Kunyat al-Munyat is a collection of decisions of considerable authority by Mukhtár Ben Mahmúd Ben Muhammad az-Záhídí Abú ar-Rijú al-Ghazmíní, surnamed Najm ad-Dín, who died in A.H. 658 (A.D. 1259).⁴

The original text of the Kunyat al-Munyat was published at Calcutta in the year 1829.⁵

An-Nawawí, the author of the Biographical Dictionary the Tahzib al-Asmá, who died in A.H. 677 (A.D. 1278), made a collection of decisions of some note, which is called the Fatáwa an-Nawawí. He also composed a smaller work of the same nature, entitled 'Uyún al-Masá'il al-Muhimmat, arranged in the manner of question and answer.⁶

¹ Háj. Khalf. Tom. IV. p. 440.

² فتاوي فصول الاحكم في اصول الاحكم المعروف بفصول عمادي من مولفات علامة الدهر فهامة العصر الجعيز الاكرم الاستاد الاعظم مورد نزول 2 Vols. مزاحم الرتاني ابي الفتح بن ابي بكر بن عبد الجليل المرغيناني 8vo. Calc. A.H. 1243 (A.D. 1827).

³ Háj. Khalf. Tom. II. p. 562.

⁴ Háj. Khalf. Tom. IV. p. 572.

⁵ النسخة المسمّاة بالقنية المنية لتتيمم الغنية من تصانيف مختار بن محمود بن محمد الزاهدي ابي الرجا الغزميني الامام العلامة الملقب محمود بن 4to. Calc. A.H. 1245 (A.D. 1829).

⁶ Háj. Khalf. Tom. IV. pp. 292, 369. Wüstenfeld, Ueber das Leben und Schriften des Scheich el-Nawawi, pp. 53, 54.

The *Khizánat al-Muftiyín*, by the Imám Husain Ben Muhammad as-Sam'ání, who completed his work in A.H. 740 (A.D. 1339),¹ contains a large quantity of decisions, and is a book of some authority in India.

The *Khizánat al-Fatáwa*, by Ahmad Ben Muhammad Ben Abí Bakr al-Hanafí,² is a collection of decisions made towards the end of the eighth century of the Hijrah, and comprises questions of rare occurrence. It is known and referred to in India.

The *Fatáwa Tátárkháníyah* was originally a large collection of Fatwas in several volumes, by the Imám 'Álim Ben 'Alá al-Hanafí, taken from the *Muhít al-Burhání*, the *Zakhírat*, the *Kháníyah*, and the *Zahíriyah*. Afterwards, however, a selection was made from these decisions by the Imám Ibráhím Ben Muhammad al-Halabí, who died in A.H. 956 (A.D. 1549), and an epitome was thus formed, which is in one volume, and still retains the title of *Tátárkháníyah*.³

The *Fatáwa Ahl Samarkand* is a collection of the decisions of those learned men of the city of Samarkand who are omitted, or lightly passed over, in the *Fatáwa Tátárkháníyah* and the *Jámí' al-Fusúlain*,⁴ to both of which works it may be considered a supplement.

The *Fatáwa az-Zainíyah* contains decisions by Zain al-'Ábidín Ibráhím Ben Nujaim al-Misrí, the author of the *Bahr ar-Ráík* and the *Ashbah wa an-Nazáir*. They were collected by his son Ahmad about A.H. 970 (A.D. 1562).⁵

The *Fatáwa-i Ibráhím Sháhí*, by Shiháb ad-Dín Ahmad was composed by order of Ibráhím Sháh of Júpúr, in the ninth century of the Hijrah. It is known in India, but it is not considered to be of much authority.⁶

¹ Háj. Khalf. Tom. III. p. 136.

² Háj. Khalf. Tom. III. p. 135. Harington's Analysis, p. 230, n. 1. 2d edit.

³ Háj. Khalf. Tom. II. p. 90.

⁴ Háj. Khalf. Tom. IV. p. 354.

⁵ Háj. Khalf. Tom. IV. p. 357. He erroneously calls the author Zainad-Dín.

⁶ Harington's Analysis, p. 241. 2d edit.

The *Tanwír al-Absár*, by the Shaikh Shams ad-Dín Muhammad Ben 'Abd Allah al-Ghazzí, who composed this work in A.H. 995 (A.D. 1586), is enriched with a variety of questions and decisions, and seems to come within the present class of law-books. It is considered to be one of the most useful books according to the Hanafí doctrines, and has been frequently commented upon.¹ The most noted of these commentaries are, the *Manh al-Ghaffár*, which is a work of considerable extent, by the author of the *Tanwír al-Absár* himself;² and the *Fatáwa Durar al-Mukhtár*, which was written in A.H. 1071 (A.D. 1660), by Muhammad 'Alá ad-Dín Ben Shaikh 'Alí al-Hiskafí. Both these commentaries contain a multitude of decisions, and are well known in India.

A Persian translation of the book on *Ta'zírát*, from the *Durar al-Mukhtár*, was made, by order of Mr. Harington, by Maulavi Muhammad Khalíl ad-Dín, and printed and published at Calcutta in the year 1813;³ and a lithographed edition of the original Arabic text of the whole work appeared in the same city in the year 1827.⁴ Another edition of the *Durar al-Mukhtár* was printed at Calcutta in 1846.⁵

A note book, or *Háshíyat*, entitled the *Háshíyat at-Tahtáwí 'ila Durr al-Mukhtár*, was printed and published at Búlák, in the year 1839;⁶ but I have not seen it, and am not aware whether it be explanatory of the work of Al-Hiskafí or of some other treatise bearing a similar title.

¹ Háj. Khalf. Tom. II. p. 453.

² See the Preface to the Persian translation of the book on *Ta'zírát*, from the *Durr al-Mukhtár*.

³ نسخه ترجمه تعزیرات کتاب در المختار از مولوي محمد خليل الدين 8vo. Calc. A.H. 1228 (A.D. 1813).

⁴ فتا در المختار في شرح تنوير الابصار من مؤلفات قدوة الفضلاء الاعلام زبدة الفقهاء العظام مولانا محمد علاء الدين الحسكفي بن الشيخ علي الامام بجامع بني اميه 8vo. Calc. A.H. 1243 (A.D. 1827).

⁵ فتاوي در المختار في شرح تنوير الابصار 4to. Calcutta, A.H. 1263. (A.D. 1846).

⁶ حاشية الطحطاوي علي در المختار Búlák, A.H. 1254 (A.D. 1839).

Of the collections of decisions now known in India, none is so constantly referred to, or so highly esteemed, as the *Fatáwa al-'Álamgírí*; and although, as has been stated, the *Fatáwa Kází Khán* is reckoned to have an equal authority with the *Hidáyah*, it is neither so generally used nor so publicly diffused as the *Fatáwa al-'Álamgírí*. The latter work, from its comprehensive nature, is applicable in almost every case that arises involving points of Hanafí law, and is on that account produced and quoted as an authority, almost every day, in the Courts in India. The *Fatáwa al-'Álamgírí* was commenced in the year of the Hijrah 1067 (A.D. 1656),¹ by order of the Emperor Aurangzéb 'Álamgír, by whose name the collection is now designated. It contains a bare recital of law cases, without any arguments or proofs; an omission which renders it defective for elementary instruction. The immense number of cases, however, compensate in some measure for this want, which is, moreover, supplied by the *Hidáyah*, and other works; and the insertion of argument can the more readily be dispensed with, since the opinions of the modern compilers could not have been esteemed of equal authority with those of the older writers on jurisprudence; and the mere decisions, without comment or explanation, are equally applicable to particular cases, when illustrated and explained by reference to works of authority as text books. The *Fatáwa al-'Álamgírí* was translated into Persian by order of 'Álamgír's daughter, Zéb an-Nisá.

The original Arabic text of the *Fatáwa al-'Álamgírí* was printed and published at Calcutta in the year 1828, in six large quarto volumes.²

¹ Harington's Analysis, Vol. I. p. 241. 2d edit.

² الفتاوى العالمكبرية في الفروع الحنفية Futawa Alemgiri; a collection of Opinions and Precepts of Mohammedan Law. Compiled by Sheikh Nizam, and other learned men, by command of the Emperor Aurungzeb Alemgir. 6 Vols. 4to. Calcutta, 1828.

A translation into Persian of the books on *Jináyát* and *Hudúd*, from the *Fatáwa al-'Álamgírí*, was made, by order of the Council of the College of Fort William at Calcutta, by the *Kází al-Kuzát* Muhammad Najm ad-Dín Khán, and was published in the year 1813, together with a Persian treatise on *Ta'zírát*, by the same author, in the same volume with the translation of the book on *Ta'zírát* from the *Fatáwa Durr al-Mukhtár* already mentioned.¹

Mr. Neil Baillie, has recently published a translation of selected portions from two books of the *Fatáwa al-'Álamgírí* that comprise the whole subject of sale.² "The rule adopted in making the selections," says Mr. Baillie, "was to retain everything of the nature of a general proposition, but to reject particular cases, except when they were considered to involve or illustrate some principle or maxim of law."³ The translator has executed his task in a most able manner, and, by preserving the division and arrangement of the original into chapters and sections, has rendered reference to the Arabic text a matter of no difficulty to the Oriental scholar. He has added throughout explanatory notes, which might, perhaps, have been extended with profit to the student. This work is a most important addition to the translated treatises on Muhammadan Law; and, being printed at the public expense, affords an additional instance of the reiterated and judicious liberality of the Honourable Court of Directors in patronising works tending to benefit India.

The *Fatáwa al-Ankirawí*, a collection of the decisions of

نسخه ترجمه كتاب المجنایات فتاوی عالمگیری از جناب قاضی القضاة
محمد نجم الدین خان مع كتاب الحدود فتاوی مذکور و رساله تعزیرات
مؤلفه جناب ممدوح 8vo. Calc. A.H. 1228 (A.D. 1813).

² The Moohummudan Law of Sale, according to the Huneefee Code, from the *Futawa Alumgeeree*. Selected and translated from the Arabic, by Neil Baillie. 8vo. Lond. 1850.

³ Baillie's Moohummudan Law of Sale, Preliminary Remarks, p. xvi.

Al-Ankirawí, by the Shaikh al-Islám Muhammad Ben al-Husain, who died in A.H. 1098 (A.D. 1686), is according to the doctrine of Abú Hanífa, and is a work of great authority.¹

The Futáwa Hammadíyah was composed by Abú al-Fath Rukn ad-Dín Ben Husám an-Nágurí, and dedicated to his tutor, Hamád ad-Dín Ahmad, chief Kází of Nahr Waláh. This work is a modern compilation, though its date has not been precisely ascertained, and is of considerable authority.

The Fatáwa Hammadíyah was lithographed, and published in the original Arabic at Calcutta in 1825.²

The Fatáwa as-Sirájíyah is a collection of decisions on rare cases, which do not often occur in other books. Mr. Baillie, in his treatise on Inheritance, has constantly referred to this work as an authority. An edition of the original text was published at Calcutta in 1827.³

Típú Sultán ordered a collection of Fatwas to be compiled in Persian by a Society of the 'Ulamá of Mysore. It comprises three hundred and thirteen chapters, and is entitled the Fatáwa-i Muhammadí.⁴

The following works of the present class, published at Constantinople, and containing decisions according to the doctrine of Abú Hanífa, may be noticed.

A collection of Fatwas, in the Turkish and Arabic languages, entitled the Kitáb fí al-Fíkh al-Kadúsí, composed by Háfiz Muhammad Ben Ahmad al-Kadúsí, in A.H. 1226 (A.D. 1808).⁵ It was published in 1821.⁶

¹ Háj. Khalf. Tom. IV. p. 354.

² نسخة فتاوي حماديه در علم فقه من مؤلفات مولانا ابو الفتح ركن الدين بن حسام التاكوري 2 Vols. 8vo. A.H. 1241 (A.D. 1825).

³ كتاب الفتاوي السراجية 8vo. Calc. A.H. 1243 (A.D. 1827).

⁴ Stewart's Catalogue of the Library of Tippoo Sultan, p. 157, No. XCII.

⁵ A description of this work by M. Bianchi will be found in the fourth volume of the Journal Asiatique, p. 171 *et seq.*

⁶ كتاب في الفقه الكدوسي 4to. Const. A.H. 1237 (A.D. 1821).

The *Fatáwa-i 'Abd ar-Rahím Effendí* is a collection of judgments pronounced at various times in Turkey, and collected by the Muftí 'Abd ar-Rahím. It was printed in the year 1827.¹

Dabagzádeh Nu'mán Effendí is the author of a collection of sixteen hundred and seventy decisions, which is entitled the *Tuhfat as-Sukúk*, and was published in the year 1832.²

The *Jámi' al-Ijáratín* is a collection of decisions relating to the law of farming and the tenure of land, by Muhammad 'Árif. It was printed in the year 1836.³

A collection of *Fatwas* relating to leases was published at Constantinople, by M. D'Adelbourg, in the year 1838.⁴ Prefixed to this collection are the principles of the law of lease, according to the *Multaka*; and it is followed by an analytical table, facilitating reference to the various decisions.

There are several collections of decisions according to the doctrine of *Ash-Sháfi'í*. The one most esteemed seems to be the *Fatáwa Ibn as-Saláh*, by Abú 'Umrú 'Usmán Ben 'Abd ar-Rahman ash-Sháhrazúrí, commonly called Ibn as-Saláh, who died in A.H. 642 (A.D. 1244).⁵ Ibn Firkáh, who has been already spoken of as the author of the *Faráiz al-Fazárí*, a treatise on Inheritance, also made a collection of decisions, according to the same doctrine, which is called, after his name, the *Fatáwa Ibn Firkáh*.⁶

A few other collections of *Fatáwa* are mentioned by Harington as being known in India, but I have not met with them, nor have I been able to gain any information as to their nature, beyond what he has stated. Of three of these he merely gives

¹ فتاوي عبد الرحيم افندي 2 Vols. folio. Const. A.H. 1243 (A.D. 1827).

² تحفة الصكوك 4to. Const. A.H. 1248 (A.D. 1832).

³ جامع الاجارتين 8vo. Const. A.H. 1252 (A.D. 1836).

⁴ Recueil de Fetvas, ou decisions de la Loi Musulmane, concernant le contrat de louage. Par E. D'Adelbourg. 4to. Const. 1838.

⁵ Háj. Khalf. Tom. IV. p. 350.

⁶ Háj. Khalf. Tom. IV. p. 351.

the titles ; viz. the *Fatáwa-i Buzázíyah*, the *Fatáwa-i Nakhsh-bandíyah*, and the *Mukhtár al-Fatáwa*.¹ A fourth, the *Fatáwa-i Karákhání*, he describes as a Persian compilation, the cases included in which were collected by Mullá Sadr ad-Dín Ben Ya'kúb, and arranged some years after his death by Kará Khán, in the reign of Sultán 'Alá ad-Dín.²

Books of the fifth class according to the Shí'ah doctrines are very rare ; and although many writers are distinguished by the description of having been great masters of the 'Ilm al-Fatáwa, or as Givers of decisions, I have only discovered two works that come expressly within this class. The first is the *Mujarrad fí al-Fíkh wa al-Fatáwa*, by the Shaikh Abú Ja'far Muhammad at-Túsí, already so often mentioned ; and the second is the *Lam'ah-i Dimishkíyah*, by the Shaikh Ash-Shahíd Abú 'Abd Allah Muhammad Ben Makkí ash-Shámí, who was killed in A.H. 786 (A.D. 1384).

The origin of the latter work is stated to have been, that Sultán 'Alí Muayyid, who was the Ruler of Khurásán and a Shí'ah, sent to Syria, to request the Shaikh Abú 'Abd Allah to leave that country and proceed to Khurásán ; whereupon the Shaikh excused himself, and having collected his decisions into the volume above-mentioned, sent the book to the Prince, instead of going himself.

There is a Commentary on the *Lam'ah-i Dimishkíyah*, by Zain al-'Abidín, entitled the *Rauzat al-Bahíyat*,³ which is probably the same work as that referred to by 'Alí Hazín, in his *Memoirs*, by the name of *Sharh-i Lam'ah-i Dimishkíyah*.⁴

I may add, that Mr. Bland mentions a collection of decisions

¹ Harington's *Analysis*, Vol. I. p. 236. 2d edit.

² Harington's *Analysis*, Vol. I. p. 240 note 1. 2d edit.

³ Stewart's *Catalogue of the Library of Tippoo Sultan*, p. 151, No. XLIX.

⁴ The *Life of Sheikh Mohammed Alí Hazín*. Persian text edited by Belfour, pp. 1' and 1" 8vo. London, printed for the Oriental Translation Fund in 1831.

in his notice of the Oriental MSS. in the Library of Eton College,¹ which, from its title, *Aurád-i Imámíyah*, is most probably a Shí'ah work.

The preceding selection will, I believe, be found to comprise the greater part, if not the whole, of the Muhammadan law-books which are of any authority in India, together with a list of all the printed editions and translations. A short account of the original treatises by European authors, which are, unfortunately, very few in number, will close this enumeration of the writers on Muhammadan jurisprudence.

Sir William Hay Macnaghten's *Principles and Precedents of Muhammadan law*,² like every work of their accomplished author, are of the highest authority, and exhibit the accuracy and clearness of arrangement for which he was so eminently distinguished. The *Precedents* are of the greatest importance, and the original extracts from the *Hidáyah*, the *Shará' al-Islám*, the *Sirájíyah*, and the *Sharífíyah*, which he has subjoined as an Appendix, materially increase the value of his work.

Mr. Neil Baillie's excellent treatise on the law of Inheritance³ is, as he himself modestly remarks, little more than a condensation of the *Sirájíyah* and *Sharífíyah*; but it is a condensation executed with much ability and judgment, and renders a very intricate subject perfectly intelligible. The passages in the original Arabic from the two works above mentioned as forming the basis of his treatise, together with others which he has added, will be consulted with advantage and gratification by the Arabic scholar.

¹ Journal of the Royal Asiatic Society, Vol. VIII. p. 105.

² *Principles and Precedents of Muhammadan Law*, being a compilation of primary rules relative to the doctrine of Inheritance, Contracts, and Miscellaneous subjects; by W. H. Macnaghten, Esq. 8vo. Calcutta, 1825.

³ *The Moohummudan Law of Inheritance according to Abou Huneefah and his followers*; by Neil B. Baillie. 8vo. Calcutta, 1832.

A good abstract of Muhammadan law will be found in the *Journal of the Royal Asiatic Society* :¹ it is from the pen of Lieut. Colonel Vans Kennedy, and is well worthy the attention of the student.

Harington, in his *Analysis of the Bengal Regulations*, already so often quoted, has devoted a long chapter to the Criminal Law of the Musulmáns, as modified by the Regulations, which may be said, so far as it extends, almost to supersede reference to any other work on the subject.² This chapter on Criminal Law is introduced by a description of some of the law-books of the Muhammadans, being a reprint of the paper on the same topic inserted by Harington in the tenth volume of the *Asiatic Researches*.

Mr. Richard Clarke, in his abstract of the Bengal Regulations, forming the Sixth Appendix to the Minutes of Evidence taken before the Judicial Sub-Committee of the House of Commons in 1832,³ has also given a clear and concise exposition of the Muhammadan Criminal Law.

The principles of this law, as it is now in force in Bengal, are laid down by Mr. Beaufort, in his *Digest of the Criminal Law of the Presidency of Fort William*; and the work on the Criminal Law of Madras, which was published by Mr. Baynes, Civil and Sessions Judge of Madura, in the year 1848, leaves nothing to be desired on the subject with regard to that Presidency.⁴

The proprietary right in the soil, about which so much has been written, seems hardly to come within the compass of the present account of the Muhammadan law. I cannot, however, forbear to mention the learned works of the late General Sir Archibald Galloway and General John Briggs,

¹ *Journal of the Royal Asiatic Society*, Vol. II. p. 81.

² Harington's *Analysis*, Vol. I. p. 223 *et seq.* 2d edit.

³ IV. Judicial, p. 665. 4to. edit.

⁴ *The Criminal Law of the Madras Presidency as contained in the existing Regulations and Acts.* 8vo. Madras, 1848.

who have especially distinguished themselves by their researches on this difficult question.¹

Of the works by Europeans that have appeared on the Continent treating of Muhammadan law, the *Tableau de l'Empire Othoman*, by Mouradjea D'Ohsson, is entitled to the first place. As I have already stated, it is founded almost entirely upon the *Multaka* of the Shaikh Ibráhím al-Halabí, and embodies a translation of the greater portion of that treatise. The introduction to the Civil Code is both interesting and valuable; but the Code itself is wanting in arrangement, and sometimes, unfortunately, even in accuracy. Mouradjea D'Ohsson did not live to complete his work, but it was finished by his son. If we consider the paucity of materials, and the backward state of Oriental learning in Europe at the time when it was composed, it must be allowed to reflect the highest credit upon its authors. It will always be referred to with profit by those who may turn their attention to Indian Muhammadan law, as exhibiting a practical exposition of the doctrine of Abú Hanífah and the two disciples, which obtains throughout the Turkish Empire.

In the year 1841 M. Eugène Sicé of Pondichéry published a treatise on the Muhammadan law as current in the Dakhin.² The author states that he compiled it from the *Kanz*, by Nasr Allah Ben Ahmad;³ the *Khulásat al-Ahkám*, by Ahmad Abú al-Kásim Ben Ahmad al-Táya'tí; and the

¹ *Observations on the Law and Constitution and present Government of India*, by Lieut. Col. Galloway, Chapter II. p. 32 *et seq.* 8vo. Lond. 1832. 2d edit. The present Land-tax in India, by Lieut. Col. John Briggs. Chapter III. p. 108 *et seq.* 8vo. Lond. 1830.

² *Traité des Lois Mahométanes, ou Recueil des Lois, us et coutumes des Musulmans du Décan*, par M. Eugène Sicé, de Pondichéry. *Journal Asiatique*, 3^{me} Série. Tome XII. p. 149.

³ The *Kanz*, of which M. Sicé promises an edition and translation, is probably the *Kanz ad-Dakáik* of Abú al-Barakát 'Abd Allah Ben Ahmad an Nasafí, which I have already spoken of in the third class of law-books according to the Sunní doctrines, *supra*, p. 291.

Farāiz-i Irtizíyah.¹ M. Sicé states that the Muhammadans of Pondichéry are *Shí'ahs*; but it is quite clear that no *real* *Shí'ah* would allow many of the doctrines laid down in his treatise, based as they are on the authority of the Sunní Imáms. He, however, mentions that they pay respect to the memory of Hasan and Husain; and he also quotes as an authority, in several places, a certain Imám Ja'far, who is very likely no other than Ja'far as-Sádik himself. It is probable that these so-called *Shí'ahs* of Pondichéry may be a kind of hybrid sect (not *true* *Shí'ahs*), who venerate 'Alí and his descendants, and at the same time, through ignorance, pay respect to the opinions of the great jurisconsults of the Sunnís, and even grant them the title of Imám.

A series of important papers on the Civil Code of the Sunnís was published by M. Du Caurroy in the *Journal Asiatique*; the first appeared in July 1848.²

M. M. Solvet and Bresnier published at Algiers, in the year 1846,³ a treatise on the law of Inheritance according to the Málikí doctrine: it is an interesting little work, and the tabular statement of the shares taken by the concurrent heirs of a deceased, which it was written to illustrate, will be found of considerable practical utility.

A valuable and recondite contribution by Dr. Worms to the literary illustration of the proprietary right in the soil according to the Muhammadan law has appeared in the *Journal Asiatique*:⁴ it is full of curious and varied information on the subject, taken from different authors; and as the

¹ This work has been already noticed *supra*, p. 306.

² *Législation Musulmane Sunnite, rite Hanéfi*, par A. Du Caurroy. *Journal Asiatique*, 4^{me} Série. Tome XII. p. 5.

³ *Notice sur les successions Musulmanes* par Solvet et Bresnier, Alger, 1846, in 8vo.

⁴ *Recherches sur la constitution de la propriété territoire dans les pays Musulmans, et subsidiairement en Algérie*, par M. le Docteur Worms. *Journal Asiatique*, 3^{me} Série. Tome XIV. p. 225.

extracts are in almost every case accompanied by the original texts, a reference to a multitude of volumes, and to MSS. difficult of access, is spared to those Orientalists who may wish to investigate this most important and interesting topic.

In another volume of the same excellent periodical Mírzá Kásim Bég, Professor at the Imperial University of Saint Petersburg, has given an admirable account of the rise and progress of the jurisprudence of the Sunnis, displaying an intimate acquaintance with the subject, and great ability in its treatment.¹

An announcement was made in the Annual Report of the Asiatic Society of Paris for the year 1848,² that M. Kasimirski de Bieberstein, the librarian of the Society, was occupied in the preparation of a Shí'ah Code of Law. M. Kasimirski has himself visited Persia, and his personal experience will thus enable him to supply practical information on the subject, which could not be furnished by those who have not enjoyed the same opportunities.

A volume entitled "Droit Musulman," forming the first section of a projected collection of ancient and modern codes in general, was published at Paris in 1849.³ It is the joint production of MM. Joanny Pharaon and Théodore Dulau; but as M. Dulau informs us that the former gentleman knows but little law, and that he himself is entirely ignorant of Arabic (p. 473), it is scarcely necessary to state that the work is valueless as an authority. M. Pharaon, as it appears, is a voluminous writer on various subjects; amongst other productions, he has written a treatise on the French, Musulmán,

¹ Notice sur la marche et les progrès de la Jurisprudence parmi les sectes orthodoxes Musulmanes; par Mirza Kazem Beg. *Journal Asiatique*. 4^{me} Série, Tome XV. p. 158 *et seq.*

² *Journal Asiatique*, 4^{me} Série, Tome XII. p. 120.

³ *Études sur les législations anciennes et modernes. Première Classe. Législations Orientales. Première partie. Droit Musulman.* Par Joanny Pharaon et Théodore Dulau. 8vo. Paris, 1841.

and Jewish legislation at Algiers :¹ this last work I have not seen.

An important work on the Muhammadan law was published in Russian, at St. Petersburg, in the year 1850.² The author, M. Nicholas Tornau, has derived his work from original sources, and has embodied in it a quantity of information obtained by himself from living Muhammadan doctors : it comprehends both the Sunní and Shí'ah laws. This work has been since translated into German.³

Dr. S. Keijzer has lately published two works on the Muhammadan law which I believe complete the list of European authors on this subject up to present time.⁴

(3) LAWS OF THE PORTUGUESE, ARMENIANS, PÁRSÍS, ETC.

It is not an easy task to obtain accurate information with respect to many of the laws which come under this class. All of them depend, more or less, and in some instances entirely, upon arbitrary usage and customs, to which time has given the force of law.

The natives of India not comprised in the Hindú and Muhammadan classes, even when possessing a Code of laws of their own, rarely respect its provisions, and are generally ignorant of its application ; and it is only by a diligent inquiry into the local customs upon which they rely that justice can be administered to them in our Courts according to their so-

¹ De la législation française, mussulmane et juive à Alger. 8vo. Toulon, 1835.

² Izloshénie Natchal Musulmansnago Zakonovèdèniya. (An Exposition of the Rudiments of Musulmán Jurisprudence.) 8vo. St. Petersburg, 1850.

³ Das Moslemische Recht aus den quellen dargestellt von Nicolaus v. Tornauw. 8vo. Leipzig, 1855.

⁴ Hand boek voor het Mohammedaansch regt, uitgegeven door Mr. S. Keijzer. 8vo. 's Gravenhage, 1855. Het Mohammedaansche Strafrecht, naar Arabische, Javaansche en Maleische Bronnen, door S. Keyzer, 8vo. 's Gravenhage, 1857.

called systems of jurisprudence. Such being the case, the subject may be dismissed in a very few words, taking the different classes of natives *seriatim*.

The law of the Portuguese in India is the Roman Civil Law as current in Portugal,¹ but somewhat modified by local custom.

The Armenians of Bengal, in their petition, which I have quoted in a former page,² state that "no trace of their own law is now to be discovered:" and it appears to be an undoubted fact, that no peculiar Code of laws had been administered amongst them anywhere since they have ceased to be a nation.³

No Code whatever is alluded to in Father Chamich's History of Armenia; nor is the name or title of any author or work on law given by the learned Sukias Somal in his account of the literature of Armenia.⁴

Mr. Avdall, an Armenian gentleman well versed in the literature of his country, states, in a communication addressed to the Secretary of the Indian Law Commission,⁵ that "two Codes of Armenian law have at different times been compiled. The first is said to have been compiled under the auspices of the Armenian King, Johannes Bagratian, about the year 1046, and is known only through the medium of a translation made

¹ See Arth. Duck, *De Usu et Autoritate Juris Civilis Romanorum per dominia principum Christianorum*. Lib. II. cap. 7.

² *Supra*, p. 197.

³ Leon the Sixth, the last of the Armenian Monarchs of the Cilicio-Armenian kingdom, which perhaps was never entirely independent, was taken prisoner by the Mamlúks of Egypt in A.D. 1375. He was released in 1382, but was not permitted to return to his own country, and wandered through Europe from place to place until his death, which happened at Paris in the year 1393. Vahram's Chronicle, translated by Neumann. Preface, p. xii. 8vo. Lond. 1831. Printed for the Oriental Translation Fund.

⁴ *Quadro della Storia Letteraria di Armenia*. 8vo. Venezia, 1829.

⁵ Special Reports of the Indian Law Commissioners, 1842, p. 457 note. And see with regard to the Armenian Laws the case of *Beglar v. Dishkoon*, I. Sevestre's Cases, p. 163 note.

into Latin, in the year 1548, by order of Sigismund the First, King of Poland, into whose territories a body of Armenians had emigrated in the eleventh century. The second is the compilation of Mechithar Ghosh, a learned Armenian, who flourished in the end of the twelfth and beginning of the thirteenth centuries. According to this writer there was, in his own times, a total absence of laws and law-books among the Armenians. A copy of this book exists at Venice; but neither of this, nor of the preceding Code, does any copy exist in India."

A few years since I was favoured with a communication on the subject of the Armenian laws by the Archbishop and Abbot-general of the Mechitaristan Monastery of San Lazzaro in Venice. The learned prelate distinctly stated to me that the Code of ancient Armenian laws no longer exists. He said, also, that the Armenians who were established at Leopold in Poland in the eleventh century, carried with them the Armenian laws, which were there administered to them. He then mentioned the Latin translation made by order of King Sigismund, and the later compilation spoken of by Mr. Avdall; adding that there was a MS. of the former, and several of the latter work, in the library of the Monastery. He also referred to another Armenian work, which is a translation from the Greek, and is entitled "the Laws of Kings;" and he concluded, by stating emphatically, that the Armenians who remained in their own country lost not only their independence, but also their national laws; and that all those who emigrated have always been governed by the laws of the countries in which they have settled. The Archbishop, however, made the general reservation, that in ecclesiastical matters all Armenians are subject to the laws of the Armenian Church, as established by their ancient holy Fathers.

There is no doubt, therefore, that the Armenians at the present time have no actual laws especially applicable to them; and that decisions in cases to which they are parties can only be regulated in accordance with local usage.

The Pársís, who are now settled principally in Gujarát, and on the north coast of Bombay, are a large and influential class of natives, and are supposed to have first established themselves in India about the year 651, when the Sásánian monarchy was extinguished in Persia by the defeat and murder of Yazdajird, the last king of that race, and the fire-worship of Zartusht was supplanted by Islám.

On the establishment of the new creed, a large body of Persians emigrated from Kirmán to India, in order to practise peacefully the faith of their forefathers, and they are represented to have carried with them the ancient books of their religion and law. Such books, however, as are now extant relate almost exclusively to the doctrines and ceremonial observances of their religion; and there are no existing works which can be considered as forming a Code of laws properly so called.¹

Their present law, if it deserve the name, consists of their national customs, preserved by immemorial usage, and many others borrowed from the Hindús, which are ascertainable only by reference to the Dustúrs, or Pársí priests, or to the Múbid, or head, or a Pancháyit, of the Cast, for as such they are considered in India, and they have adopted the Hindú method of referring disputed points to a Pancháyit.

The Act of the Legislative Council of India No. IX. of 1837, may be mentioned here as fixing the law with regard to Pársís in certain cases. By this Act it was declared, that

¹ *Zend-Avesta, Ouvrage de Zoroastre, traduit en Français sur l'original Zend par Anquetil du Perron. 3 Tomes 4to. Paris, 1771.*—M. Westergaard of Copenhagen, who has been long occupied in researches on the ancient languages of Persia, is preparing for publication a complete edition of so much of the Zendavesta as has been handed down to us. Some years since he undertook the voyage to Bombay for the purpose of collecting materials; and since then he has been diligently employed in the examination of the literary treasures of all the public libraries of Europe. M. Westergaard's work will be accompanied by a translation, a grammar of the two dialects of the Zend, and a complete concordance of the Zendavesta.

all immoveable property belonged to any Pársís, and situate within the jurisdiction of the Supreme Courts, should, as far as regards its transmission in cases of death or intestacy, be of the nature of chattels real, and not freehold.

The Sikhs do not appear to have any distinct system of jurisprudence: indeed, the religion itself of the followers of Nának can hardly be called an established belief. Its original elements were deism of a mystical tendency, contemplative worship, peace and goodwill, and amalgamation of Muhammadan and Hindú.¹ These principles have, however, become sadly degenerated in practice. The great distinction between the Sikhs and the other Hindús is the abolition of Cast; but the experiment has proved a most unsuccessful one, as it has caused, to use the words of Professor Wilson, "the extinction of many of the restraints which, in the more orthodox system, supply, however imperfectly, the want of a purer code of faith and practice."² The sacred books of the Sikhs contain no systematic exposition of doctrine, and but few practical rules of conduct; being for the most part of a mystical or moral purport.³ Their laws, if they may be so termed, are adaptations of the Hindú system, and depend entirely upon usage, and not upon any written Code.

I am not aware that the Jain laws have ever been treated of by any European author, or that their legal writings have ever been consulted or examined. In some rare instances, however, when cases have arisen involving questions of Jain law, the Hindú law officers of the Courts have given their opinions, professedly founded on a reference to the Jain

¹ A Summary Account of the Civil and Religious Institutions of the Sikhs. By Professor H. H. Wilson. Journal of the Royal Asiatic Society. Vol. IX. p. 43.

² *Ib.* p. 58.

³ *Ib.* p. 45. And see, for an account of the sacred books of the Sikhs, and some translated extracts therefrom, A History of the Sikhs, by J. D. Cunningham. Append. I. II. III. and IV. p. 345 *et seq.* 8vo. Lond. 1849.

Sástras. What these Sástras are I have not been able to ascertain.

An abstract translation of the Burmese Code of laws, entitled *Damasat*, or the Golden Rule, appeared in the year 1833.¹ The *Damasat* seems to be of considerable antiquity, and presents many analogies with the Hindú law; the abstract, however, is only sufficient to give a general view of the system.

Dr. Rost has, I believe, been for some time engaged in preparing an edition of a Code of Buddhist laws in the Páli language, under the auspices and at the expense of the late Earl of Ellesmere. The existence of this Code was not known to Europeans until it was discovered by Dr. Rost among the MSS. preserved in the British Museum. It is said to have been promulgated in the fifth century of our Æra; but it is a question how far it is Buddhistical in its origin; and the name of its reputed author, Manusara, would of itself lead us to infer that it is founded on the Institutes of Manu, even if the fact were not abundantly proved by an inspection of its form and contents. This Páli Code is accompanied by a translation and commentary in the Burmese language, adapting its provisions to the wants of more recent times, and appears to be the text book of the Burmese Courts of Law, as well as those of the other Buddhist nations who inhabit the extra-Gangic peninsula.

The laws of China, also a Buddhist country, have been made known by the learned labours of Sir George Staunton, who, in his translation of the *Ta Tsing Leu Lee*,² has presented us with the fundamental laws of the Chinese, and a selection from their Penal Code. The *Leu Lee* is held in the highest veneration in the Celestial Empire, and comprises a general

¹ A description of the Burmese Empire, by Father Sangermano, p. 182. 4to. Rome, printed for the Oriental Translation Fund, in 1833. And see Symes' Embassy to Ava, p. 303 *et seq.* 4to. Lond. 1800.

² *Ta Tsing Leu Lee*; being the Fundamental Laws, and a Selection from the Supplementary Statutes of the Penal Code of China; translated from the original Chinese by Sir G. T. Staunton, Bart. 4to. Lond. 1810.

Code of laws, Civil, Fiscal, Ritual, Military, and Criminal, together with such as are relative to public works.

The Javan law is divided into two departments, that depending upon the Muhammadan law, and that which rests upon custom and tradition : the former called *Hukm Allah*, and the latter *Yúdha Nagára*. The Muhammadan law decisions are guided by the Arabic works on law, or rather by a collection of opinions extracted from them, and translated into the Javan language. The law of custom is chiefly handed down in oral tradition, but is also contained, in a great measure, in two works, one by *Júgul Múdah Páteh*, which is computed to be about six hundred years old, and another by *Rája Kápa*. The first compilation of the Javan laws, in which they were somewhat blended with the Muhammadan jurisprudence, was made by order of the first Musulmán prince of *Demák*. Another work of this description which is in high estimation is the *Súria Alam* : it will be found translated into English in Sir Stamford Raffles' *History of Java*.¹ In the latter work there is also an abstract of some of the laws said to have been in force in the earliest periods to which Javan tradition refers.² The proclamations, and the laws and regulations of the Sovereign, form another source of deviation from the Muhammadan law. Collections of these have been committed to writing.³

It is not probable that the Hebrew laws, grafted by the Rabbinical writers on the Code contained in the Old Testament, will ever be received or administered in India : those, however, who are curious in the matter, will find ample information as to the Jewish laws of succession and marriage in the works of the learned Selden.⁴

¹ Raffles' *History of Java*, Vol. II. Appendix, C. p. xxxviii. 8vo. Lond. 1830. 2d edit.

² *Ib.* Appendix, C. p. li.

³ *Ib.* Vol. I. pp. 312, 313.

⁴ *J. Seldeni Uxor Ebraica, seu de Nuptiis et Divortiis ex Jure Civili veterum Ebræorum, Libri Tres, Ejusdem De Successionibus ad Leges Ebræorum in Bona defunctorum.* Edit. nov. 4to. Francof. 1695.

In addition to the above, several races, as the Khonds and some others, might be ranged under the present head; but these have no pretension to laws of their own.

It is evident, from this rapid sketch, that the class of natives of India who are neither Hindús nor Muhammadans rely in most instances almost entirely upon custom; that they are either destitute of particular laws; that such laws are unknown or forgotten, or laid aside; or lastly, that they have adopted modifications of the Hindú and Musulmán systems of jurisprudence.

Such is the present state of things; and the uncertainty caused by it, which has called forth the express complaint of the more influential portion of this class of natives, seems to require the interference of the legislature.

CHAPTER VI.

ACCOUNT OF THE REPORTS OF DECIDED CASES.

So long ago as the year 1813 Mr. Dorin remarked on the necessity of establishing the authority of precedent in India in the following words—"I think it should be enacted by a Regulation, that from a given period, the judgments of the Court shall be considered as precedents binding upon itself and on the inferior Courts in similar cases which may arise thereafter. This will have the effect of making the superior Courts more cautious, and of introducing something like a system for the other Courts, the want of which is now very much felt." Again, he says, "Hitherto it has not been much the custom to refer to precedent; and for aught the Judges of the Court may know, the same points may have been decided over and over again, and perhaps not always the same way. It is obvious, that having something like a system established would tend to abridge the labours of the Civil Courts."¹

In no instance is the maxim "*stare decisis*" so imperative or so peculiarly adapted to the circumstance as when applied to the laws administered in India, since the practice of the Courts is unsettled, and not easily to be ascertained, and in some instances their jurisdiction is ill-defined, and encompassed with doubt and difficulty: whilst in questions of Native, and especially of Hindú law, a reference to the law officers is generally unsatisfactory. In speaking of such references, Sir William Jones observed—"I could not with any conscience concur in a decision merely on the written opinion of native lawyers, in any cause in which they could have the remotest interest in misleading the Court; nor, how vigilant soever we

¹ Selections from the Records of the East-India House, Vol. II. p. 20.

might be, would it be very difficult for them to mislead us ; for a single obscure text, explained by themselves, might be quoted as express authority, though perhaps in the very book from which it was selected it might be differently explained or introduced only for the purpose of being exploded.”¹ And again, Sir Francis Macnaghten says, alluding to the Pandits, “Native lawyers may not be deserving of the blame which is imputed to them ; but there are instances of their partiality and tergiversation, which cannot be palliated or denied. Nothing but an ascertainment of the law can prove a corrective of this evil.”² There can be no doubt but that the native law-officers, as a body, are both learned and respectable, and far above suspicion of corruption ; but a mere knowledge of texts, however extensive such knowledge may be, is most often quite insufficient for the purpose of arriving at a conclusion ; and it is perhaps too much to expect from an Indian education, that the law-officers should possess and exercise the discrimination and impartiality which belong more nearly to the province of a Judge. “The interminable and troubled sea of Hindú jurisprudence,” says an accomplished author, “is sure to present something for the support of any opinion which it may be desirous to keep afloat for the purpose of temporary convenience”³—and thus the ignorance or partiality of the law-officers may always be supported, and seemingly justified, by quotations from the commentators, which, taken separately, are perhaps diametrically opposed to the actual true state of the law, only to be ascertained by fuller investigation and a comparison of all the conflicting authorities. The last-mentioned writer gives it as his deliberate opinion that “the

¹ Letter from Sir W. Jones, dated March 19th, 1788. Sir W. Jones' Works, Vol. III. p. 74.* 4to. Lond. 1799.

² Sir Francis Macnaghten's Considerations on the Hindú Law, Pref. p. xi.

³ Sir W. Macnaghten's Principles and Precedents of Moohummudan Law, Pref. p. xx. note.

speculations of commentators have done much to unsettle the Hindu law; and the venality of the Pundits has done more." And again, "to the Pundits is chiefly attributable the perplexity of the system which it is their province to expound."¹

These inconveniences of a reference to the native law-officers can only be obviated by the publication of Reports of Decisions, which would frequently supersede, and generally controul, such a reference; since in all cases where a point of native law has been already determined by men who have made the study of that law the work of their lives, and who have brought to the task the advantages of a liberal education, such determination would at once present itself, and be sufficient to fix the vacillating mind of a doubting Judge; whilst the native law-officers would hesitate before they advanced opinions, or quoted authorities, at variance with the principles laid down by European Judges of established reputation as native lawyers. No one will for a moment dispute, that in any question of Hindú law the word of the illustrious Henry Colebrooke is worth the exposition of a thousand Pandits.

The practice of abiding by precedent is perfectly recognised both by the Hindú and the Muhammadan laws. The text of Manu—"If it be asked, how the law shall be ascertained, when particular cases are not comprised under any of the general rules, the answer is this: That which well instructed Brahmans propound shall be held incontestable law"²—is, to the Hindú divine authority for deferring to precedent; and it is perhaps solely on account of the metaphysical tendency of the Indian mind, which has always interfered with the mere practical record of mundane matters, that we do not possess collections of decisions by the more ancient lawyers, which

¹ Sir W. Macnaghten's *Principles and Precedents of Hindú Law*, Vol. I. Pref. pp. iv, v.

² *Manu*, Book xii. v. 108.

would have been in most cases as conclusive, as they would be desirable in all. With regard to the Muhammadan law, one of its chief foundations, the Sunnah and Hadis, may be looked upon as one great body of precedent, a large portion consisting of decisions passed by the Prophet on questions relating to the religion and law which he promulgated. In addition to this, the numerous collections of the Fatwas of celebrated lawyers form a mass of precedent hardly surpassed, in bulk at least, in the legal literature of any nation, and constantly referred to as authoritative in all Muhammadan Courts of Justice.

The publication of reports of cases other than those involving questions of native law, is also of the utmost importance for the guidance both of the Courts themselves, and of the legal practitioners. Mr. Macpherson, in his admirable treatise on the procedure of the Civil Courts in the Presidency of Fort William already mentioned, observes—"The practice and doctrines of the Civil Courts must be deduced, in great measure, from an examination of the decisions at large, both those which have been specially adopted and published as precedents, and those which are issued monthly as a record of the ordinary transactions of the Sudder Court ;¹ for all decisions practically tend to shew by what principles the Court is governed ; and they become law, that is to say, they guide men in their private transactions, and they regulate the decisions of the Courts. No one can make the examination to which I have referred, without perceiving that there is a large body of living doctrine, which appears to mature itself by degrees in the minds of experienced judicial officers, but which is not to be met with in any definite form. Yet by this test the judgments of the inferior Courts are necessarily tried, and no small portion of them are quashed for erroneous procedure ; frequently with great severity of comment upon the part of the highest tribunal."

¹ These monthly collections of Decisions will be presently noticed.

Under all these circumstances, I think that I cannot better conclude this treatise than by directing the attention of the reader to such collections of reports as have hitherto been completed and published, and to those which are still appearing periodically.

The published collections of reports of Indian Decisions are not very numerous, but they already exist in sufficient numbers to be of the greatest practical utility, and additions are being made to them day by day.

The decisions of Her Majesty in Council on Appeal from India, were originally inserted in their places in the reports of Knapp and Moore: they are now published separately by the latter gentleman, under the title of "Indian Cases," and appear at intervals. There is also a valuable collection of the printed cases in Indian Appeals, with the judgments annexed, prepared and arranged by Mr. Lawford, but this collection was never published.

I inserted in the Appendix to my digest of Indian Cases,¹ a work to which I shall presently recur, a valuable series of notes of cases decided in the Supreme Court at Calcutta, by the late Sir Edward Hyde East, Baronet, formerly Chief Justice of the Court. These notes were originally placed at my disposal in MS. by the late very learned Judge, and on his death his son, the present Baronet, Sir James East, M.P. kindly permitted me to print them *in extenso*. They will be found to contain many most important decisions on points of Native Law, and questions relating to the jurisdiction of the Court.

Reports of cases were inserted by way of illustration, by Sir Francis Macnaghten, formerly a Judge of the Supreme Court at Calcutta, in his Considerations on the Hindú Law as current in Bengal, published in the year 1824, a work which I have already described. These Reports, from the nature of the work from which they are extracted, are of course confined to cases involving questions of Hindú law.

¹ Morley's Digest, Vol. II. pp. 1—243.

Notes of cases will be found in Mr. Longueville Clarke's editions of the Rules and Orders of the Supreme Court at Calcutta, published in 1829; of the additional Rules and Orders which appeared in the same year; and of the Rules and Orders for 1831-32, published in 1834. These notes of cases are very valuable, many of those in the two latter collections containing the judgments in full, and relating to points of native law of the greatest interest.

Reports of cases determined in the Supreme Court at Calcutta, were published by Mr. Bignell, in 1831. A single number only of these Reports appeared. The cases are fully and ably reported.

Notes of cases were inserted by Mr. Smoult in his Collection of Orders on the Plea Side of the Supreme Court at Calcutta, from 1774 to 1813 inclusive, published in 1834. These notes are succinct, but highly useful, and comprise decisions, principally on points of practice, from the year 1774 to 1798.

A Collection of decisions of the Supreme Court at Calcutta, was published by Mr. Morton in 1841. This Collection is principally compiled from the MS. notes of Sir R. Chambers, C.J., Mr. Justice Hyde,¹ and other Judges of the Court; and the cases relate almost exclusively to questions altogether peculiar to India. It is needless to add that it is a work of the greatest utility and authority.²

¹ These MS. notes of Sir R. Chambers and Mr. Justice Hyde, which were also liberally made use of in Mr. Smoult's collection, comprise decisions of the Supreme Court at Calcutta from the year 1774 to 1798. The volumes in which they are contained were presented by Lady Chambers, the widow of Sir Robert, to the Supreme Court at Calcutta.—See Smoult and Ryan's Rules and Orders, Vol. I., Pref. p. xxvii.

² A new edition of Morton's Decisions, edited by Mr. Montrou, is in course of publication at Calcutta. It is stated in the advertisement that the original plan of the work is considerably enlarged in the new edition, by the addition of notes to each head or title; also of such decisions and alterations in the law and practice as are necessary to render the book a useful and complete epitome of the law embraced by the judgments reported, and a safe guide to the practitioner. I have not yet seen this new edition of Morton's Decisions.

Mr. Fulton published a single volume of reports in the year 1845. This volume comprises cases decided in the Supreme Court at Calcutta, between the years 1842 and 1844. Mr. Fulton has since returned to England, and I am not aware that his work was ever continued.

The example set by Mr. Morton and Mr. Fulton in publishing the decisions of the Supreme Court at Calcutta, has been worthily followed by other Barristers of the Court. Mr. Montriou, in 1850, published a volume of Reports comprising the decisions of the year 1846; in the following year Mr. Taylor continued these Reports to the end of the year 1848; and the latter gentleman, in conjunction with Mr. Bell, published the subsequent cases. Of this last collection I have not received any parts for a considerable period, but I believe that it is still in progress.

The only collection of the decisions of the Supreme Court at Madras is that published by Sir Thomas Strange, C.J. This work appeared in the year 1816, and comprises three volumes. The cases are clearly set forth, and the judgments frequently given entire; but, from the paucity of the materials placed at the disposition of the learned Judges at that period, the decisions of the Court, where they relate to questions of native law, must be taken with some reservation.

A valuable collection of the decisions of the Supreme Court at Bombay, will be found in the Appendix to my Digest of Indian Cases,¹ for these decisions I am indebted to the kindness of Sir Erskine Perry, formerly Chief Justice of that Court. They gain additional authority from the fact of the MS. having been carefully revised and corrected by the very learned Chief Justice himself.

Sir Erskine Perry has published, since his return to England, a collection of cases "illustrative of Oriental life, and the application of English law to India," decided by the Supreme Court at Bombay. This volume appeared in 1853.

¹ Morley's Digest, Vol. II. pp. 247—452.

The first printed Reports of cases decided in the Courts of the Honourable East-India Company were published by Sir William Hay Macnaghten, when Register of the Sudder Dewanny Adawlut at Calcutta, in which Court the cases were determined. A second edition of the first two volumes appeared in the year 1827, and the Reports were subsequently continued in the same form. Those contained in the first volume were chiefly prepared by Mr. Dorin, afterwards a Judge of the Court. The notes appended to the cases in this first volume are entitled to weight, as having been written or approved by the Judges by whom the cases were decided; and those explanatory of intricate points of Hindú law are most especially valuable, as coming from the pen of the learned Henry Colebrooke. The second, third, and part of the fourth volumes, were also published by Sir William Macnaghten: the later cases in the fourth volume, were selected and prepared by Mr. C. Udney, his successor in the office of Register. The cases contained in volume the fifth were reported by Mr. J. Sutherland: those given in the sixth and seventh volumes have no reporter's name affixed, but they were approved by the Court, and were, as I believe, prepared by the Registers.

Since the end of the year 1844, these Reports, which were latterly called "Select Reports," published "as approved by the Court," are "but a re-print, accompanied by notes, of such of the decisions, published monthly, as, containing constructions of law, or being illustrative of points of practice, are adapted to serve as precedents to the Lower Courts."¹ It was subsequently determined by a resolution of the Court, dated the 27th April 1849, that the publication of the Select Cases should be discontinued. The mere re-print of a selection from the monthly publications of decisions was perhaps unnecessary, as the object of pointing out the "leading cases," might have been more readily accomplished by the addition of a tabular reference and explanatory notes, sanctioned by

¹ Advertisement to S. D. A. Rep. Vol. VII. Pt. 5.

the Court, and appended to the monthly issue. This, however, has not been done, and it cannot be denied that much inconvenience has arisen from the discontinuance of the Select Reports.

Reports of summary cases determined in the Sudder Dewanny Adawlut at Calcutta from the years 1841 to 1846 were appended to the seventh volume of the above-mentioned collection. In the year 1845 a selection of Reports of summary cases was published separately, containing selected decisions from the year 1834 to 1841, the former year being the period at which the summary and miscellaneous department of the business of the Court was first intrusted to one Judge. These were continued to the end of 1848, and were published as the first volume of Reports of Summary Cases. In the resolution of the Court, dated the 27th April 1849, to which I have already referred, it is stated, with regard to the Reports of Summary Cases, that "the Court are of opinion that their publication may go on, not as 'approved by the Court,' but with the sanction only of the Judge in charge of the Miscellaneous Department, whose decisions they are, and who will note such of them as he may think useful for publication."

An Index to the whole seven volumes of the Select Reports of Regular Cases, and to the first volume of the Select Reports of Summary Cases, was published in 1849.

A reprint of the Reports of Summary Cases determined in the Sudder Dewanny Adawlut of Calcutta, comprising reports from 1834 to 1852, was prepared by Mr. Carrau, and published at Calcutta in 1853. This work is stated to be published by authority, and under the revision of the Judges.

Another edition of the summary decisions of the Sudder Dewanny Adawlut of Bengal from 1834 to 1855, alphabetically arranged, was published at Calcutta, in the latter year.

Reports of cases, chiefly in summary appeals decided in the Sudder Dewanny Adawlut at Calcutta, were published by Mr. Sevestre, one of the Pleaders of the Court. Volume the first of this collection comprises three parts, and was completed in

the year 1842. These reports, which are exceedingly useful, are still in progress.

The decisions of the Sudder Dewanny Adawlut at Calcutta, recorded in English, in conformity to Act XII. of 1843, are now published monthly. This collection was commenced in the year 1845, by order of the Right Honourable the Governor of Bengal, and is still in progress, the decisions of each year forming a separate volume.

In the volume for 1850 marginal abstracts of the decisions reported were for the first time added.

The decisions of the Sudder Courts at Agra and Madras, recorded in English under the above-mentioned Act, the publication of which commenced respectively in 1846 and 1849, appear monthly.

The former Reports of cases determined in the Sudder Courts principally relate to constructions of the written law, touching only occasionally on points of procedure and practice; so that the publication of the decisions recorded in English, including cases of every description, may be said to have opened an entirely new field for the investigation of the student.

These monthly collections are, without question, of the highest value; and, as they are published simultaneously at Calcutta, Agra, and Madras, we are enabled to form a comparison between the practice of the several Courts of last resort, which cannot fail to be of the utmost utility in furthering the attainment of uniformity of procedure throughout the Courts in India. Unfortunately, however, the decisions in these Collections are not easily referred to: the Indices which are appended are insufficient, and the mode in which the cases themselves are reported is often such as to render it difficult to seize their full bearing. It is also much to be regretted that the plan of adding marginal notes to these collections has been so long delayed, and is not even now generally followed. No one who has not examined them with attention can form an idea of the labour requisite to master the contents of a single volume. The propriety of the object of their publication, viz.

“to give all possible publicity to the decisions of the Sudder Courts,” is unquestionable; but it may be doubted whether the requisite publicity might not have been better attained by adopting a somewhat modified form. I would particularly refer to the frequent and needless repetition of similar cases and decisions. This repetition is especially conspicuous with regard to cases involving points of practice, reports constantly recurring in which precisely similar circumstances present themselves, and the erroneous decisions of the lower Courts, passed on the same points, are reversed, or the suits remanded on appeal, on identical grounds.¹

Mr. Macpherson expresses a fear that these monthly collections of decisions “are but partially known, even to the Judges and practitioners of the subordinate Courts;” and, after an attentive perusal of them, I must add, that I think his fears are but too well founded. The Judges of the Sudder Courts in the several Presidencies are, no doubt, well acquainted with the decisions both of their predecessors and contemporaries, and the practice of the Courts has become familiar to them from long experience; but this is not always the case with the subordinate judicial officers, to whom it is of the greatest moment that they should have the means of acquiring the requisite knowledge for their guidance with the least possible amount of labour and expenditure of time. Does the present system of publishing the decisions afford such means? I apprehend that no one will answer in the affirmative. The judgments themselves, it is true, shew, on the face of them, that they are the result of patient investigation and deliberate weighing of the facts, and in numberless instances they are remarkable for their lucidity and precision. It will, however,

¹ As an example of this useless repetition, the reader may refer to the case of *Nowell v. Becher*, S. D. A. Decis. Beng. 1845, p. 322. The case itself occupies three pages, whilst the record of other appeals on the petitions of the same party, containing the same statements repeated *verbatim*, and referring to the first report for the opinion of the Court, fills no less than eighty-three pages.

be obvious to every one accustomed to the use, and consequently appreciating the value, of full and explicit reports of the leading cases decided in the superior Courts of Justice, that the meagre record of judgments, however valuable in themselves, without discrimination or comment, regardless of repetition, difficult of reference, and mixing up the most trivial with those of the last importance, can afford but slight instruction to the profession at large.

I think that the simplest and most efficacious remedy for the defects attending the present system of reporting, would be to revive the publication of the Select reports, "by authority." Let *every* decision of *every* Court be published, as at present—it will be useful if only as a check to the subordinate Judges—but let Select reports be also published, for though they may be "mere reprints," the cases comprised in them will be those which are of the greatest consequence, which have the greatest weight as precedents, being selected and approved by the Court, and those to which the whole legal profession should have the readiest means of access.

The decisions of the Zillah Courts of the Lower Provinces, recorded in English, according to Act XII. of 1843, are printed monthly, in the same form as the preceding collections. The decisions of the Zillah Courts in the North-Western Provinces, are also published in a similar way and form; they were commenced in January 1848. The decisions of the Zillah, subordinate, and assistant Courts of the Madras Presidency, are also now published monthly; they begin with the cases for the year 1851. All these collections of decisions of the Zillah Courts are comparatively unimportant, since they are never referred to in the superior Courts as precedents.

The Reports of cases decided in the Courts of the East-India Company at Madras, with the exception of the monthly collections already mentioned, are few in number. A volume was published in 1843, entitled, Decrees in Appeal Suits determined in the Court of Sudder Adawlut, Vol. I., containing select decrees from 1805 to 1826 inclusive. The cases in this

collection which involve questions of Hindú law are interesting, as illustrative of the prevailing doctrines of the southern schools. These decrees are, however, obscurely reported, and, in some instances, they contain no point of law whatever, being merely decisions for want of proof.

A collection of Decrees in appeal suits determined in the Sudder Adawlut at Madras, from No. 11 of 1826 to No. 24, of 1847, was published at Madras in 1853.

The first collection of the decisions of the Sudder Dewanny Adawlut at Bombay, is the well-known series of Reports by Mr. Borradaile, formerly one of the Judges of the Court, and the author of the translation of the Mayúkha already mentioned. Mr. Borradaile's work is in two folio volumes, and was published at Bombay in the year 1825. It is replete with cases on points of law peculiar to the Bombay side of India, which are very ably reported.

A small but useful publication, appeared in 1843, entitled, Reports of Selected Cases determined in the Sudder Dewanny Adawlut at Bombay. The Reports contained in this little volume were prepared, with few exceptions, by the Deputy Registers of the Court, and are arranged according to the dates of the decisions, which are scattered over a period of twenty years, from 1820 to 1840, the later ones having been noted by the Judges who sat, as proper subjects for publication.

In 1850, Mr. Bellasis, late Deputy-Registrar to the Sudder Dewanny Adawlut at Bombay, published a small volume containing decisions of that Court from the year 1840 to 1848, and intended as a continuation of the Reports of Selected Cases. Mr. Bellasis states that "the cases reported are for the most part the decisions of a full Court of three Judges, such being considered more authoritative as precedents." A few reports in this collection were prepared by the late Mr. Babington while he held the appointment of Deputy-Registrar to the Sudder Court.

Mr. Morris, in 1855, commenced the publication of reports of cases disposed of by the Sudder Dewanny Adawlut of

Bombay ; the first volume contains the whole of the decisions for the year 1854 ; the subsequent volumes each comprise the decisions of a year.

In the branch of Criminal Judicature few Reports have been printed.

The first collection that appeared was of the sentences of the Nizamut Adawlut at Calcutta. The first two volumes were prepared by Sir William Macnaghten : the subsequent volumes have no reporter's name. This collection is I believe still in progress.

In January 1851 a monthly series of the decisions of the Nizamut Adawlut at Calcutta was commenced, and still appears in a regular series.

At Madras a similar issue of reports of criminal cases determined in the Sudder Foujdary Adawlut began in the same year : marginal abstracts are added in this series.

A valuable collection of reports of cases determined in the Sudder Foujdary Adawlut at Bombay, compiled by Mr. Belasis, and comprising decisions from 1827 to 1846, appeared in the year 1849. The cases recorded in this collection have been selected to illustrate the application of the Bombay Criminal Code, both in questions of evidence and of punishment, and also to settle doubtful points of procedure and practice. The reporter has prefixed to his work a succinct account of the various changes the constitution of the Sudder Foujdary Adawlut has undergone since its first institution.

In the year 1852 the publication of the decisions of the Nizamut Adawlut of the North-Western Provinces was begun, commencing with the decisions of the year 1851.

Mr. Morris in the year 1855 published a collection of reports of cases disposed of by the Sudder Foujdary Adawlut of Bombay, the cases commencing with those of 1854. Two volumes are published every year, each containing the decisions of six months.

The above account of the reports comprises, as I believe, all those that have been published. It remains to say a few

words respecting a work of my own which is intimately connected with the subject.

Many years ago, when I first commenced the study of the Law of India, I soon discovered that the means of referring to the main sources from which fixed principles must be derived ; viz. the decisions of competent courts, illustrating and interpreting the doctrines laid down in the text-books of the native laws and explaining the laws enacted by the Government of India, were but few and scanty : in fact a great part of the reported cases were almost inaccessible. I possessed a large, and, I believe, a perfect collection of the printed decisions of the various Courts, most of them rare, and many of them scarcely procurable, as well as a number of notes of cases and judgments in MS., which I have mentioned in the above account of the reports, and, feeling sure that I could not employ my time more usefully, I, after much labour, prepared for the press an Analytical Digest of all the reported cases that had come into my hands. In the year 1850 I published the first two volumes of my Digest accompanying the text by copious notes referring to the original authorities and explanatory of doubtful points. The favourable reception of my work, both in this country and in India, induced me to continue it ; and in the year 1852 I published the first volume of a " New Series " comprising the decisions of all the Courts to the end of 1850. I had intended to continue the issue of supplementary volumes periodically ; but the reports of the Indian Law Commissioners, appointed in 1853 by virtue of the Statute 16th and 17th Vict. c. 95, which seemed to announce the total subversal of the pre-existing Judicial system of India, at least so far as the *practice* of the Courts was concerned, put a stop to my labours for the time. I trust to be able to continue them at some future period ; or to publish a second edition of the entire Digest, continuing it to the time of publication, in the event of alterations being made in the constitution and practice of the Courts, and of the Laws generally, of so considerable a nature as to render it advisable

to remodel the whole work. Meanwhile as the Digest stands at present it comprises nearly 6000 decided points applicable to the actual state of the Law of India, and from the commendations that have been bestowed upon it, after a long trial of its merits, by those most qualified to form an opinion, I believe I may be justified in saying that it has not been found either incomplete, ill-arranged, or insufficient.

POSTSCRIPT.

IN the preceding pages I have, as I believe, recorded all the most important provisions of the enacted and published law of British India ; but a treatise on the Administration of Justice in that country would not be complete without mention being made of a system which exists independently of such enacted and published law.

During the Government of the Marquis of Hastings, from 1813 to 1823 much new territory was acquired, and such new territory was specially exempted from the Regulation Law ; several of our more recent acquisitions, of which the Punjáb is the most important, have been similarly exempted, and these are collectively called the Non-Regulation provinces. To these Non-Regulation provinces no regular enacted laws whatsoever have been applied : their existence is not even recognised by the law, and they are governed under such particular instructions as the executive government may issue to its officers, whether civil or military, to whom the administration of such provinces or districts has been committed. It is obviously impossible to give a detailed description of a system, if it deserve the name of system, in which the elements are so variable and fluctuating, and which differs in the several provinces according to existing local circumstances : a general account must therefore suffice. A principal feature of the system appears to be the union of the executive and judicial functions in one individual ; the office of Judge being added to that of Magistrate and Collector. The instruction is that the spirit, but not the letter, of the Regulations is to be followed ; and practically the general course followed is that, in criminal matters, the Regulations are pretty closely the rule. In the Civil Court, the Regulations are entirely dispensed with, and the Court is conducted on what are considered to be simple and natural principles, suited to the country ; and in revenue matters special direc-

tions are received from Government. Natives are freely employed as Pancháyits, not independent of the Civil Court, but worked under its immediate supervision and control, in some respects like an English jury,¹ although they decide many issues of law, as well as of fact. The Judge is rather superintendent of the administration of justice than required to possess a technical knowledge of the law.

The foregoing slight description of the system for the Non-Regulation provinces has been almost entirely taken from Mr. Campbell's "Modern India," to which excellent work, I must refer the reader for further details.² It appears that the system has worked well as yet, and it has been warmly advocated by many of those who have taken part in it—Mr. Campbell amongst the rest; but it is scarcely necessary to point out to the lawyer, or indeed to any unprejudiced person, that the absence of enacted laws, and of fixed definite rules of procedure,³ must, sooner or later, be productive of inextricable confusion. It does not admit of question that the formation of a Code of Laws should be approached cautiously, and not attempted until sufficient materials have been collected; and perhaps no better plan could have been devised with regard to the Non-Regulation provinces than to exempt them for the present from the Regulation law, and to direct the adminis-

¹ This is however wholly in accordance with the Regulation Law: the employment of natives as Pancháyits or jurors has not it seems been very successful in the Regulation provinces (see *infra* the Glossary, *sub voce* Pancháyit), whatever may be the case in the districts exempted from the operation of the Codes of Regulations.

² Modern India, by George Campbell, Esq. pp. 183, 233, 250, 545, *et seq.* 8vo. London, 1852.

³ I must not be understood as saying that rules of procedure have been *entirely* neglected. Mr. Campbell mentions (Modern India, p. 546) a very brief and simple Code of Procedure, entitled, "Rules for the Administration of Civil Justice in the Punjab and Cis-Sutlej Province," which has been promulgated under the authority of the Governor General. I have not been able to meet with this work.

tration of justice by instructions from the Executive Government. With respect to the Punjáb, this exemption was especially advisable, since our knowledge of the laws and customs of the Sikhs was and is so limited, that the immediate introduction of the Bengal Code in that province would have been probably oppressive. But when the time comes, when our knowledge of the newly acquired provinces shall be sufficient, laws should and will be no doubt enacted, specially adapted to them; the Acts of the Governor-General in Council *in continuation* of the Regulation law, will form an additional Code of Law and Procedure which will suffice for the requirements of the Non-Regulation provinces, and the anomaly of certain districts being excepted from the operation of the general enacted law of India will cease to exist.

THE END.

GLOSSARY.

[THIS explanation of the native terms occurring in the preceding pages, is extracted almost verbatim from Professor Horace Hayman Wilson's admirable "Glossary of judicial and revenue terms, and of useful words occurring in official documents relating to the administration of the Government of British India," compiled and published under the authority of the Honourable Court of Directors of the East-India Company, 4to. London, 1855. I regret not having been able to adopt the learned Professor's method of transcribing native words, but the various types which he employed could not be procured by the publishers of my work without considerable delay.]

'ĀMIL, (Arabic) An officer of Government in the financial department, especially a collector of revenue on the part of the Government, or of the farmer of the revenue, also himself a farmer of, or contractor for, the revenue under the native system, and invested with supreme authority, both civil and military, in the districts which he farmed, as is still the case in several native states, especially Oude and Hyderabad. In the early settlement of Benares by the Government of Bengal the 'Āmil was intrusted with the joint power of Hākim or magistrate, and Tahsildār or collector, and was responsible for the realization of a fixed amount of revenue, being precluded from levying any excess on the Government demand.

ADĀWLUT, ('Adālat—Arabic) Court of justice; justice, equity. Under the Muhammadan Government the 'Adālat, or Courts of Justice, were four :

1. Nizāmat 'Adālat, the Supreme Court of Criminal Justice, nominally presided over by the Nāzim, or Viceroy of the province. This was subdivided into the Roz-'adālat, or Court held on a Sun-

day by the Nāzim for the trial of capital offenders, and the 'Adālat ul 'Āliyat, the High Court, in which affrays, quarrels, and cases regarding personal property were tried : this was usually presided over by the Nizām's deputy, or Dāróghah.

2. Dīwání 'Adālat, The Civil Court of the Dīwán, the chief officer in charge of the revenue of the principality.

3. Faujdári 'Adālat, The Court of the Faujdár, or chief of the magistracy and police of a district; the Subordinate, or District Criminal Court.

4. 'Adālat al-Kází, The Court of the Kází, the chief judge of a town or district in civil causes and questions regarding the Muhammadan religion. Under him the Muhtasib held a Court for the adjudication of offences against morals—as drunkenness, gambling, &c.

AMEEN, (Amín—Arabic) A confidential agent, a trustee, a commissioner; applied in Upper India especially to a native officer of Government, employed either in the revenue department to take charge of an estate and collect the

- revenues on account of Government, or to investigate and report their amount; or in the judicial department, as a judge and arbitrator in civil causes.
- DARBÁR**, (Persian) A court, a royal court, an audience or levee.
- DEWAN**, (Díwán—Persian) A royal court, a council of state, a tribunal of revenue or justice. A minister, a chief officer of state. Under the Muhammadan government it was especially applied to the head financial minister, whether of the state or of a province, being charged, in the latter, with the collection of the revenue, the remittance of it to the imperial treasury, and invested with extensive judicial powers in all civil and financial causes. Under the Maratha government the Díwán was the chief minister after the Pradhán. The title also denoted the head officer of any revenue or financial department, as the Díwán of the mint, of the jewel office, and the like; in which sense it is retained under the British government, as the Díwán of the mint, of the bank, of the salt-agency, and, formerly, of a collectorate, and is even applied to the managers of Zamíndáris for native proprietors, and to native servants intrusted with the management of the financial interests of a house of business, or of any responsible individual. The title of Díwán, or office of Díwání, equivalent to the right of collecting the whole revenues of Bengal, Bahar, and Orissa, was conferred upon the East-India Company by the nominal emperor of Hindustan, Sháh 'Álam, in 1765.
- DEWANNY**, (Díwání—Persian) adj. Of or relating to a Díwán, civil, as opposed to criminal. subst. The office, jurisdiction, emoluments, &c., of a Díwán. The right to receive the collections of Bengal, Bahar, and Orissa, conferred on the East-India Company by the titular Moghul. It is used also in the early reports for the territory of which the revenue was receivable under the grant in Bengal.
- DEWANNY-ADAWLUT**, (Díwání 'Adálat—Persian) see Adawlut.
- DÍYAT**, (Arabic) The price of blood, a tax imposed for any act of offence against the person: in cases of homicide, payable to the relatives of the deceased.
- FATWA**, (Arabic) A judicial sentence, a judgment; but more usually applied to the written opinion of the Muhammadan law officer of a court.
- FIRMAN**, (Farmán—Persian) A mandate, an order, a command, a patent.
- FOUJDÁR**, (Faujdár—Persian) An officer of the Moghul government, who was invested with the charge of the police, and jurisdiction in all criminal matters. A criminal judge, a magistrate. The chief of a body of troops.
- FOUJDARY**, (Faujdári — Persian) subst. The office of a magistrate or head of police, or criminal judge. adj. Relating to the office of Faujdár; criminal, as opposed to civil; levied as a tax for the support of the police, &c.
- FOUJDARY ADAWLUT**, (Faujdári 'Adálat—Persian) see Adawlut. The chief Criminal Court in the Madras presidency. By Act VIII. of 1842, all the Courts of the highest jurisdiction were directed to be called "Sudder Courts."
- JÁGÍR**, (Persian) A tenure common under the Muhammadan government, in which the public revenues of a given tract of land were made over to a servant of the state, together with the powers requisite to enable him to collect and appropriate such revenue, and administer the general government of the district. The assignment was either conditional or unconditional; in the former case, some

public service, as the levy and maintenance of troops, or other specified duty, was engaged for: the latter was left to the entire disposal of the grantee. The assignment was either for a stated term, or, more usually, for the lifetime of the holder, lapsing, on his death, to the state, although not unusually renewed to his heir, on payment of a *Nazaránah*, or fine, and sometimes specified to be a hereditary assignment; without which specification it was held to be a life-tenure only. A *Jágir* was also liable to forfeiture on failure of performance of the conditions on which it was granted, or on the holder's incurring the displeasure of the emperor. On the other hand, in the inability of the state to vindicate its rights, a *Jágir* was sometimes converted into a perpetual and transferable estate; and the same consequence has resulted from the recognition of sundry *Jágirs* as hereditary by the British government after the extinction of the native governments by which they were originally granted; so that they have now come to be considered as family properties, of which the holders could not be rightfully dispossessed, and to which their legal heirs succeed, as a matter of course, without fine or *Nazaránah*, such having been silently dispensed with. This is particularly the case in the Maratha territories, in which, when first conquered, *Jágir* grants were found to be numerous, reducible to three classes—1. Those held by descendants of the original ministers of the *Rájás*, as the *Pratinidhi* and the *Pradháns*, prior to the usurpation of the *Peshwa*, but continued, in some instances, under his rule; 2. Those held by military chiefs, on condition of service, some of whom have held their fiefs from the time of the Muhammadan monarchies;

and 3. Those held under grants from the *Peshwas*, generally *Brahmans* or *Marathas* of low family: they were all allowed to retain their lands on the principle of securing their services on a moderate scale, preserving the sovereignty of the British government entire, and interference with the chiefs on extraordinary occasions only. With regard to the *Jágir* in general, the especial object and character of the grant was commonly specified by the designation attached to it. The term is also in use, although with some license, to designate temporary grants, allowances, or stipends, from the government to individuals.

JAMADÁR, (*Jama'dár*—Persian) The chief or leader of any number of persons; in military language, a native subaltern officer, second to the *Súbahdár*; an officer of police, customs, or excise, second to the *Daróghah*; a head domestic servant, a sort of major-domo, but unconnected with the table department: among the *Marathas*, an officer appointed to protect the crops from the depredations of an army and its followers.

KAMÁVÍSDAR, (*Kamávísár*—Marathi) The head revenue-officer of a district, entrusted also with the police. In *Kanara* the *Kamáishi-dár*, or *Kamávísi-dár* was also especially the collector, managing lands that were permanently or temporarily occupied by the state, the *Amín* of the upper provinces.

KAVILGAR, (*Kávalkár*—Tamil) A protector, a guardian, a watchman; the village watchman, who also commonly acts as a messenger and guide for travellers.

KÁZÍ, (Arabic) A Muhammadan Judge, an officer formerly appointed by the government to administer both civil and criminal law, chiefly in towns, according to the principles of the *Kurán*: under the British authorities the judicial

- functions of the Kázis in that capacity ceased, and, with the exception of their employment as the legal advisers of the courts in cases of Muhammadan law, the duties of those stationed in the cities or districts were confined to the preparation and attestation of deeds of conveyance and other legal instruments, and the general superintendence and legalization of the ceremonies of marriage, funerals, and other domestic occurrences among the Muhammadans.
- KÁZÍ AL-KUZÁT**, (Arabic) The principal Kází under the British government, the head Muhammadan legal officer of the Sadr 'Adálat, or chief Courts of appeal.
- KUTWÁL**, (Persian) The chief officer of Police for a city or town, a superintendent of the markets.
- LÁKHIRÁJ**, (Arabic) Rent-free land, applied to land exempted for some particular reason from paying any part of the produce to the state.
- MAHÁLKARÍ**, (Marathí) A revenue and police officer in charge of a district: in the former department he was usually subordinate to the Kamávisdár; in the latter he was accountable to the government direct, or to its representative in the district.
- MÁL**, (Arabic) Wealth, goods, effects, property of any description: in Muhammadan law it is sometimes used for personal as opposed to real property, or for money as distinguished from goods and chattels: in India it was used for the public revenue from any source whatever, but more especially for that derived from land, to which sense, as a fiscal term, it is now restricted, or the revenue claimed by the government from the produce of cultivated land, the wealth of the state.
- MASNAÐ**, (Arabic) A throne; a large cushion on which they recline.
- MOFUSSIL**, (Mufasssal—Arabic) Property separate, distinct, particular: in Hindústán, a subordinate or separate district; the country, the provinces, or the stations in the country, as opposed to the Sudder (Sadr), or principal station or town: any other place than the ordinary place of office or residence; as a Dáróghah, leaving a police station to go to a village in his jurisdiction, is said to have gone to the Mufasssal, and the same is said of a villager who has gone from his cottage into the fields: its most usual application in Bengal, however, is to the country in general, as distinct from Calcutta.
- MOONSIFF**, (Munsif—Arabic) Equitable, just: a decider of what is just, an arbitrator, a judge: applied under the British government, to a native civil judge of the first or lowest rank.
- MUFTÍ**, (Arabic) A Muhammadan law-officer, whose duty it was to expound the law which the Kází was to execute: the latter, in British India, usually discharges the duties of the Muftí also.
- NÁIB-I NÁZIM**, (Persian) A deputy-governor and administrator of justice: an officer nominally under the Nawáb of Bengal, but appointed by the British authority to superintend the administration of criminal justice. The office was abolished in 1790.
- NAWÁB**, (Arabic) A viceroy or governor of a province under the Moghul government, whence it became a mere title of any man of high rank, upon whom it was conferred without any office being attached to it.
- NIZAMUT** (Nizámat—Arabic) The office of the Nizám, the administration of police and criminal law: as a financial designation it was applied, under the Muhammadan government, to lands paying revenue to the Názim, not to the Díván, or financial minister of a province, termed also Nizámat Maháll.

NIZAMUT ADAWLUT, (Nizámat 'Adálat—Arabic) The chief criminal Court, or Court of the Nizán, applied at present to the chief criminal Courts of the British provinces.

PANCHÁYIT, (Pancháit — Hindustání) A native court of arbitration, consisting of five or more members chosen by the parties themselves, or appointed by the civil officers of the government, for the determination of petty disputes among the people, especially in matters affecting the usages of cast or occupation: (however prized by the natives when other means of obtaining justice were unavailable, and when Panch-parameswara, the Pancha is the supreme deity, was a proverbial phrase in the south of India at least, there are now few occasions in which this sort of assembly is spontaneously had recourse to, or in which its judgments are regarded as decisive, and this notwithstanding great pains have been taken by the British government to render it effective).

PANDIT, (Pandita—Sanskrit) A learned Brahman, one who makes some branch of Sanskrit learning his especial study, and teaches it.

PATÉL, (Hindustání, Pátél, Mar.) The head man of a village, who has the general control and management of the village affairs, is head of the police, and exercises, to a limited extent, the functions of a magistrate; he is also the principal agent in the realization of the revenue, and the chief medium of communication with the officers of government: in the Maratha countries the office is frequently held under a government grant, in many instances that of the government of Dillí, and has certain emoluments and privileges attached to it: it is hereditary and saleable with the consent of government, and the actual

occupant may admit a partner: the term is principally current in the countries inhabited by, or subject to the Marathas, and appears to be an essential Marathí word, being used as a respectful title in addressing one of that nation, or a Súdra in general.

PEON, (?) The term commonly used by Europeans for the Persian word Piyádah, a foot-man, a foot-soldier, an inferior officer of police or customs, or of courts of justice, usually wearing a badge, and armed with a lance or sword and shield: in some places the term denotes a kind of local militia holding lands on condition of police or military service: it is also commonly, though laxly, used as a synonym of Harkárah, to denote a running footman, a courier, a messenger.

PERGUNNAH, (Pargana—Persian) A district, a province, a tract of country comprising many villages, but of which several go to constitute a Chakla or Zillah (Zila'): the actual extent varies, but the distinction is permanent.

PESHKAR, (Péshkár—Persian) An agent, a deputy, a manager in general for a superior or proprietor, or one exercising in revenue or custom affairs a delegated authority: in Bengal the native officer in a Judge's or Collector's office; next in rank to the Sirishtahdár or head native officer in such office, who has the general superintendence of the establishment and charge of the public records and official documents and papers.

POLIGAR, (Páligára—Mar.) A petty chieftain: in the south of India, especially in Karnáta, the Poligar, or Polgar, of early writers, occupying chiefly tracts of hill and forest, subject to pay tribute and service to the paramount state, but seldom paying either, and more or less independent, subsist-

ing in a great measure by plunder: on the subjugation of the country most of the Poligars were dispossessed, some were pensioned, and a few were allowed to retain some of their villages at a quit-rent; these have now subsided into peaceable land-holders.

PRINCIPAL SUDDER AMEEN, see Sudder Ameen.

RAJAH, (Rájá—Sanskrit) A king, a prince, a title given by the native governments, and in later times by the British government, to Hindús of rank: it is also assumed by petty chiefs in various parts of Hindústán, and is not uncommonly borne by Zamíndárs.

SÁLISÁN, (Persian plural of the Arabic Sális, a third or one of three) Umpires, arbitrators.

SÚBAHDÁR, (Persian) The governor of a Súbah or province, a viceroy under the Moghul government: a native military officer.

SÚBAHDÁRÍ, (Persian) The office of governor or viceroy.

SUDDER AMEEN, (Sadr Amín—Arabic) A chief commissioner or arbitrator, the title of a class of native civil judges under the British government, distinguished as Sadr Amíns and Principal Sadr Amíns: these are the second and third in rank, counting from the first or lowest, viz. the Munsifs.

SUDDER ADAWLUT, (Sadr 'Adálat—Arabic) The chief court of civil justice, the Company's chief court and court of final appeal in India in the Madras presidency.

SUDDER DEWANNY ADAWLUT, (Sadr Diwání 'Adálat—Persian) The chief Court of civil judicature, the Company's chief courts, and courts of final appeal in India, in the Presidencies of Bengal and Bombay.

SUDDER FOUJDARY ADAWLUT, (Sadr Faujdárí 'Adálat—Persian) The chief criminal Courts of the Company's government in the Presidencies of Madras and Bombay.

SUDDER NIZAMAT ADAWLUT, (Sadr

Nizámat 'Adálat—Arabic) The chief criminal Court of the Company's government in the Presidency of Bengal.

TALLIAR, (Talayári—Malayálam) A head-man, a chief.

TALOOKDÁR, (Ta'allukdár—Persian) A holder of a Talook (Ta'alluk): in some places a government officer; a collector of revenue from the cultivators, either on behalf of the state or of the farmer of the revenue, whose undue exaction it is his duty to prevent.

TALOOKDÁRÍ, (Ta'allukdári—Persian) The tenure, office, or estate of a Ta'allukdár.

WATAN, (Arabic) Country, native country, place of residence, home: amongst the Marathas it has come to import any hereditary estate, office, privilege, property, or means of subsistence, a patrimony.

ZAMÍNDÁR, (Persian) An occupant of land, a land holder: the rights of the Zamíndár have been the subject of much controversy with reference to his character as hereditary owner of the land he occupies, or as the responsible collector only of the revenues on behalf of the Government. Under the Muhammadan administration the latter was the capacity in which the Zamíndár was ordinarily considered, and the chief authorities never hesitated to exercise the power, when they possessed it, of turning out a Zamíndár and placing another in the Zamíndárí, whence the one in possession was termed Sanadí or Ahkámí, the Zamíndár by patent or command. Whilst managing the lands and realizing the revenue the Zamíndár was allowed a fee or commission of ten per cent upon the total collections, and a portion of the land was exempted from the revenue assessment to the extent of five per cent. on the collections, under the

name of Nánkár, being intended for the personal support of the Zamíndár and his family: further deductions from the stipulated amount of revenue, termed Ma-thaut, were also allowed, to cover various charges borne by the Zamíndár: on the other hand, he was empowered to levy internal duties and customs on articles of trade passing through his district, and to impose petty taxes, or Ab-wábs, on the cultivators, in addition to the portion of the public revenue demandable from them individually: on his relinquishing the management of the Zamíndárl, or being removed from it without cause of grave offence, it was customary to assign him, as Málíkánah, ten per cent. on the Sadr collections, or the same rate on the nett collections when held Khás, or managed by the government officers direct. But although in these respects the Zamíndár appears to be a representative of the State, employed to realize and transfer to the public treasure nine-tenths of the revenue, and to be nominated or removed at pleasure; yet the practice of hereditary succession, and the right to mortgage and sell, partook more of the tenure of ownership, and extensive tracts came to be held by successive generations of the same family, through more or less protracted periods, in some instances apparently from a date anterior to the fiscal regulations of the Muhammadan governments; in the decline of the latter, also,

many Zamíndáris which were held originally under a special grant were converted into hereditary proprietaries, and the Zamíndárs, appropriating by fraud or force very extensive districts, assumed the state of chiefs and princes, and were sometimes powerful enough to resist the authority and withhold the revenues of the state. The question of right was, however, set at rest in Bengal, Bahar, and Orissa, in 1793, by the terms of the perpetual settlement, which recognized Zamíndárs and independent Ta'allukdárs as "actual proprietors," enjoying their estates in absolute ownership as long as they paid the government revenue, or nine-tenths of the fixed nett proceeds of the lands, and liable to dispossession in case of failure, by the sale of their lands at public auction. The same measure was subsequently adopted at Madras, and Zamíndárs were designated as proprietors of land, along with other classes with whose rights and recognition, as was afterwards explained, it was not intended to interfere.

ZAMÍNDÁRI, (Persian) The office and rights of a Zamíndár, the tenure of a Zamíndárl, the tract of land constituting the possessions of a Zamíndár.

ZILLAH, (Zila'—Arabic) Side, part, a division, a district: under the British administration, a province, a tract of country constituting the jurisdiction of a commissioner or circuit judge, and the extent of a chief collectorate.

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