UNIVERSITY OF CEYLON REVIEW

OCTOBER 1961

PUBLISHED FOR THE UNIVERSITY OF CEYLON
BY THE CEYLON UNIVERSITY PRESS
COLOMBO, CEYLON

Vol. XIX No. 2

Rs. 2-50

Editors
C. W. AMERASINGHE
P. E. E. FERNANDO
K. W. GOONEWARDENA

Manager
THE LIBRARIAN
UNIVERSITY OF CEYLON

October, 1961

CONTENTS

PAGE

Rock Inscriptions at Timbirivava and Andaragollava in the Vilpattu Sanctuary
by S. Paranavitana 95

Preemption in Tesawalamai: a Problem in Choice of Residual Law
by J. Duncan M. Derrett 105

Nasalization in the Verbal Endings in Spoken Sinhalese
by M. W. S. de Silva 117

Study of the Karttikeya-cult as reflected in the Epics and the Puranas
by K. Kailasanatha Kurukkal 131

The Functional Zones of the Colombo City
by B. L. Panditharatna 138

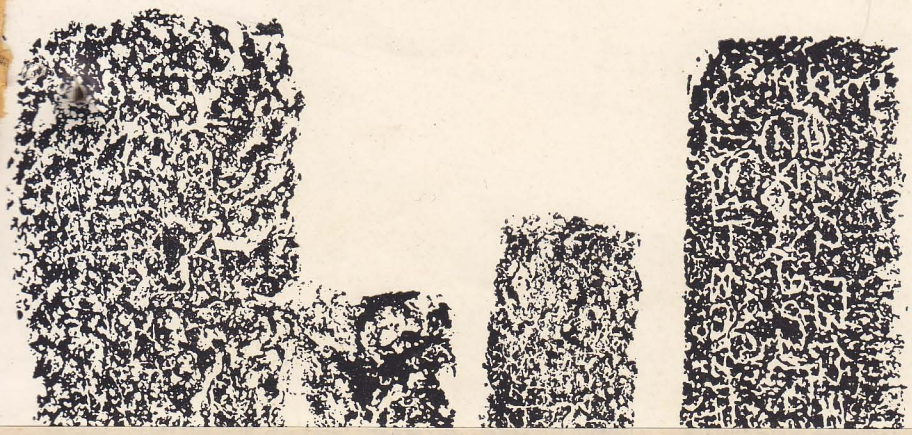
A Prolegomena to the Philosopy of Relations in Buddhism
by D. J. Kalupahana 167

Political Offences in the Law of Extradition
by C. F. Amarasinghe 195

Review 229

UNIVERSITY OF CEYLON REVIEW

The University of Ceylon was established on the 1st July, 1942, by the fusion of the Ceylon Medical College (founded 1870) and the Ceylon University College (founded 1921). It has at present the Faculties of Oriental Studies, Arts, Science, Engineering and Medicine. The University has taken over from the Government of Ceylon the publication of the *Ceylon Journal of Science*, which has been developed as its chief means of contact with scientists elsewhere and has also started the *Ceylon Journal of Medical Science*. The *University of Ceylon Review* was founded in order to make similar contact with scholars in literary subjects, to provide a medium of publication for the research in those subjects conducted in the University, and to provide a learned review for Ceylon. The Review is published twice a year, in April, and October. Exchanges are welcome. Correspondence regarding exchanges should be addressed to The Librarian, University of Ceylon, Peradeniya. The annual subscription is Rs. 5.00, and a single copy Rs. 2.50.



IV

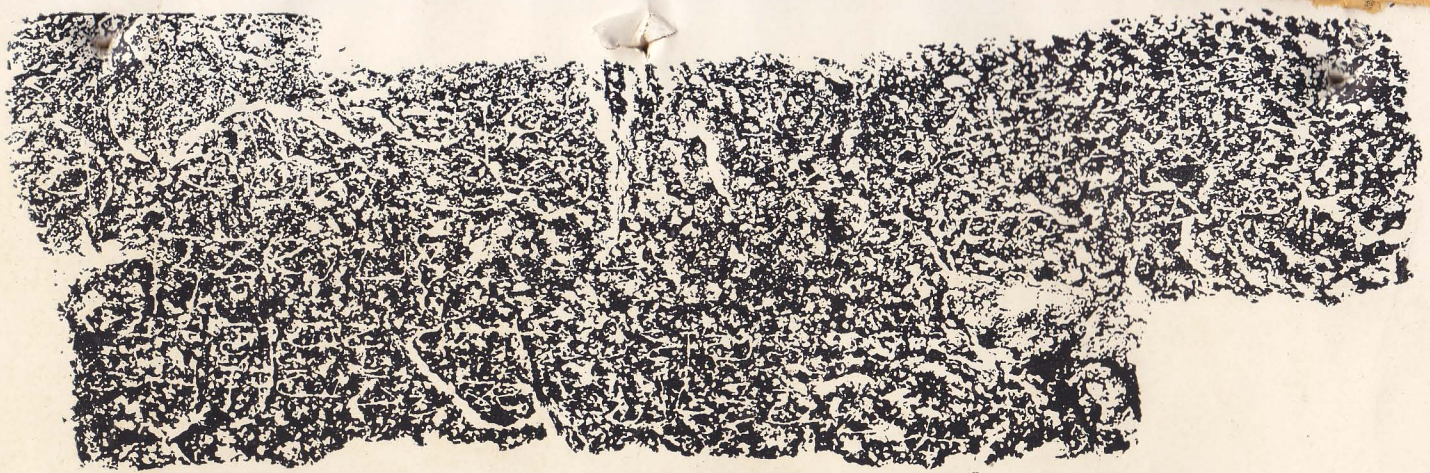
(IV)

ERRATA

Page 102, l. 3, *for* subjected *read* subjected[32]
102, l. 4, *for* Buddhahood *read* Buddhahood[33]
102, l. 5, *for* [also][33] *read* also[34] ; *for* everywhere *read* everywhere[35]
102, l.16, *for* year *read* year[36]
103, l.15, *for* epigraphs[34] *read* epigraphs[37]
103, l.19, *for* context[35] *read* context.[38]
104, l. 3, *for* āropetvā) *read* āropetvā)[39]
104, l. 5, *for* followed.[37] *read* followed.[40]
104, l. 7, *for* 'law'[38] *read* 'law'.[41]
104, l.20, *for* valid[39] *read* valid[42]
104, l.31, *for* slavery[40] *read* slavery[43]
104, *after foot-note* 40, *add the following foot-notes*
41. Sorata Mahāthera, *Sinhalese Dictionary*, *s.v.*
42. *E.Z.*, Vol. V, pp. 67-8.
43. *Vaharala Cidavi*, literally, 'caused the cessation of slavery'.

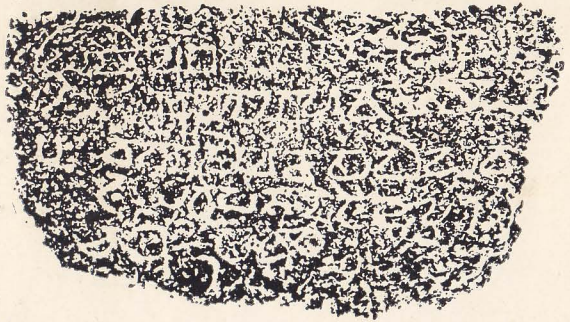
I II III

I



II

III



IV

Rock-Inscriptions at Timbirivāva (I-III) and Andaragollāva (IV)

PLATE I

University of Ceylon Review
Vol. XIX, No. 2 October 1961

Rock Inscriptions at Timbirivava and Andaragollava in the Vilpattu Sanctuary

AN ancient site in the forest about three miles south of Maradanmaḍuva, lying about half a mile off the route to Ikirigallāva, was discovered in 1953 by the officers of the Wild Life Department. The site had no name at that time, but is now referred to as Timbirivāva, after an abandoned and breached tank in the vicinity. The most conspicuous feature at the site is a ruined *stūpa*, some 20 ft. in height, on the highest point of an outcrop of granite which rises above the surrounding jungle. A flight of over 30 steps, about 4 ft. in breadth, has been cut on the eastern side of the rock leading to the *stūpa*. A pillar, 11 ft. 10 in. in height, of which the lower portion is square to a length of five feet and the rest is irregularly octagonal (the edges of the square being chamfered), and with rounded top, is lying near the *stūpa* mound. On the level ground to the east of the rock are traces of ancient structures indicated by stumps of stone pillars. An altar slab, 8 ft. in length and 5½ ft. in breadth, is noticed in this area. The ground to the north of the *stūpa* appears to have been laid out in terraces. A full brick picked up at the site measured 16 in. by 8 in. by 2 in. On the rock to the north of the *stūpa* are three inscriptions.

The discovery of the site and the inscriptions was reported to the Archaeological Department by Mr. C. W. Nicholas, the then head of the Wild Life Department. Estampages of the inscriptions were prepared by the officers of the Archaeological Department in 1954, and numbered 41, 42 and 43 in the List of Inscriptions copied in that year, which forms Appendix II of the Administration Report for 1954. The inscriptions have also been referred to at p. 29 of that report. I edit the inscriptions from these estampages and photographs of them kindly placed at my disposal by Dr. C. E. Godakumbure, the present Acting Archaeological Commissioner. I am also indebted to Dr. Godakumbure for having a fresh estampage of Inscription No. 1 prepared by Mr. T. K. Jayasundara.

I

The inscription numbered I in this paper is that numbered 43 in the Archaeological Department's List of Inscriptions copied in 1954. It consists of five lines of writing, of which the first three are about 8 ft. in length each, the fourth is about 4 ft. and the fifth probably of the same length as the

preceding. An undetermined number of letters being totally effaced at the end of the last line, its exact length cannot be ascertained. The area covered by the inscription measures approximately 8 ft. by 2 ft. The letters vary in height between 7 in. and 2½ in. About eight letters after the first two in line 1, the tenth letter of line 2, three letters after the tenth of line 3 and an uncertain number of letters, possibly three, at the end of the last line have been lost due to the peeling away of the rock. The weathering of the rock has affected some of the other letters also in places. The letters have been shallowly, but sharply, incised, and are reasonably clear on an estampage. But, in a photograph of a reduced size, they are not readily distinguishable, to an untrained eye, from adventitious lines and dots due to the weathering of the rock, which too appear on the estampage. I therefore reproduce a drawing of the letters made from the estampage, in addition to the photograph, of this record as well as of the next.

The script has a general resemblance to that of a rock inscription from Vessagiri at Anurādhapura, of which a fascsimile appears on Plate 12 (IV) of *Epigraphia Zeylanica* (*EZ*), Volume IV, and the Murutava rock inscription illustrated on Plate 2 of *EZ*, Volume V. The form of the letter *ha* of the present record differs from that in the Vessagiri inscription referred to. The right hand portion of the letter is reduced to a loop placed on and cutting through the straight horizontal line forming its base. Of the two triangles forming the letter *ma*, the lower one, as in the Nāgirikanda inscription (*EZ*, IV, plate II), is smaller in size than the upper. The letter *ja* of our record, too, is similar in form to that *akṣara* in the Nāgirikanda record. The reader interested in palaeographical development may compare the forms in the drawing with their counterparts in other records of approximately the same date as this epigraph. The straight vertical lines of the letters *a*, *ra*, *ka* and the stroke for the medial *u* and the short horizontal stoke forming the serif of some *akṣaras* in this record, when compared with the curved or hooked forms in the corresponding *akṣaras* in many inscriptions of the first to fifth centuries,[1] definitely point to a reversal in the evolution of the Sinhalese alphabet.

The Sinhalese language of this record displays phonological developments appropriate to the period to which it refers. Noteworthy forms are *paḷava* for Skt. *prātipada*, P. *paṭipada* and classical and modern Sinhalese *pāḷaviya*, and *baniya* for Skt. *bhāgineya*, P. *bhāgeneyya* and Sinhalese *bāna*. In

1 See the corresponding letters in *EZ*, Vol. I, plates 13, 27 and 30 ; Vol. III, plates 7, 8, 13, 22 and 23 ; Vol. IV, plate 22.

the form *Nikamani*, the last syllable of the earlier form, *Nikamaniya*,[2] has dropped. Vowel assimilation has taken place in *puṇu-masa* for the earlier *puṇa-masa*.[3]

The record is dated in the tenth regnal year of a king styled Kasabala Alakapaya. 'Kasabala,' as the equivalent of Pali 'Kassapa', Skt. 'Kāsyapa', is found in several graffiti at Sīgiri as well as in the stone inscriptions of the ninth and tenth centuries.[4] The transformation of the Middle Indian form of this name into *Kasaba, Kasub* or *Kasubu* follows normal phonological development. With regard to the suffix-*la* attached to the name, compare the forms 'Nakala' for 'Nāga' in a first or second century inscription at Mīnvila in the Tamankaḍu District, and 'Senala' for P. and Skt. 'Sena,' 'Mihidala' for P. 'Mahinda', Skt. 'Mahendra', and 'Kitala' for P. 'Kitti, Skt. 'Kīrtti', occuring in the Sīgiri graffiti.[5] Our record therefore is of a king who would have been called Kassapa in the *Cūḷavaṁsa*. A comparison of the script of the Gäraṅḍigala inscription[6] of Kassapa III with that of our record would make it certain that this epigraph is not of that monarch. Kassapa II had a reign of only nine years;[7] therefore he cannot be the king in whose regnal years this epigraph is dated. Thus we are left with Kassapa I, whose association with Sīgiri has made him well-known to all students of Ceylon history and art. This is the only inscription so far known dating from the reign of Kassapa I; hence its historical interest is very great.

The title of Alakapaya attached to the king's name is the same as 'Alakapati' (Lord of Alakā) in Sanskrit. The phonological processes involved in Skt. 'Alakāpati' becoming 'Alakapaya' in Old Sinhalese—the shortening of the long vowel, the dropping of the intervocalic *t*, the addition of the *y* to avoid the hiatus thus caused, and vowel-assimilation in the last syllable—are familiar to students of Old Sinhalese and need no comment.[8] *Alakā* is *Ālakamandā* in Pali texts; therefore the significance of the title is explained by the *Cūḷavaṁsa*[9] when it says that Kassapa built on the summit of Sīgiri 'a fine palace worthy to behold, like another Ālakamandā and

2 *EZ*, Vol. III, p. 179.
3 *EZ*, Vol. IV, p. 227 ; Vol. III, p. 178.
4 *Sīgiri Graffiti*, Oxford University Press, 1956, Vol. II, pp. 113, 118 and 309.
5 *Sīgiri Graffiti, op.cit.*, Vol. I, p. ccxvi et seq.
6 See *EZ*, Vol. III, plate No. 16, facing p. 198.
7 See *Cūḷavaṁsa*, Geiger's translation, part I, p. 90 ; chapter xlv, v. 10.
8 *Sīgiri Graffiti, op.cit.*, Vol. I, p. lxxx, paragraphs 275 and 276 and p. lxxxvi, paragraph 292.
9 Geiger's translation, part I, p. 42f ; chapter xxxix, v. 5.

dwelt there like (the god) Kuvera'[10] and the present writer's paper 'Sīgiri, the Abode of a God-king',[11] which is a commentary on that passage in the chronicle.

The purpose of the epigraph was to register the gift of seven hundred *kahavaṇa*[12] coins to the royal monastery of Masala by Budala Aladara, nephew of Vaḷaba Haladara. 'Masala (P.Mahāsela)' is evidently the ancient name of the monastic establishment at the modern Timbirivāva. It does not appear to be mentioned in the chronicles. The donors, too, are otherwise unknown.

Text

1 මපු[රුමු] . . . . . ය කසබල-අලකපය-මහරජ-
2 අපයහ චත ලගි ද[ස]-වනක-වසහි නිකමණි-වද
3 පුණු-මස [ෙ]පළව-දව[ස] . . බලහ වසන වළබ-
4 හලදර බනිය බුදල-අලදර සත-
5 සයක කහවණ මසල-රජ-මහ-වහර . . . .

Transcript

1 Mapu[rumu].....ya[13] Kasabala-Alakapaya-[14]maharaja-
2 Apayaha cata lagi da[sa] -vanaka-vasahi Nikamaṇi-cada
3 puṇu-masa p[e]ḷava[15]-dava[sa] . . balaha[16]vasana Vaḷaba-
4 Haladara baniya Budala-Aladara sata-
5 sayaka kahavaṇa Masala-raja-maha-vahara ....[17]

10 *Journal of the Royal Asiatic Society, Ceylon Branch, New Series*, Vol. I, pp. 129-183.

11 Skt. *kārṣāpaṇa*, P. *kahāpaṇa*, Sinh. *kahavaṇu*. For this coin, see H. W. Codrington, *Ceylon Coins and Currency*, Colombo, 1924, pp. 17ff.

12 Perhaps the missing letters, together with *ya* which is preserved, read *Sirisagaboya* (P. *Sirisaṅghabodhi*).

13 Parts of some letters forming this word are blurred; but what is preserved of them leaves no room for doubt with regard to their identity.

14 The *e*-sign is presumed to have been there as the form *peḷava* would be the prototype of the classical Sinhalese *pāḷavi*; but it is also not impossible that vowel-assimilation has been at work to give rise to the form *paḷava*.

15 The context requires a place-name in the locative singular here; the last letter therefore may stand for *hi*.

16 May be restored as *vaharaṭa dina*.

17 *Nikamaṇiya* in the Tōṇigala inscription (*EZ*, III, p. 178); *Nikimni* in classical Sinhalese and inscriptions of the ninth and tenth centuries (Sorata-mahāthera's *Sinhalese Dictionary, s.v.*); modern Sinhalese *Nikinni* or *Nikini*. The name of the Sinhalese lunar month corresponding to Skt. Śrāvaṇa (July-August). The name occurs in the *Samantapāsādikā* (P.T.S. Edition, Vol. IV, p. 867), as *Nikkhamanīya* which is most probably a rendering into Pali of the Old Sinhalese name known from the inscriptions. How the month received this name is a matter requiring investigation.

I

II

IV

Drawings of Inscriptions at Tĩmbirivāva (I & II) and Andaragollāva (IV)

Translation

On the first day of the waxing moon in the month of Nikamaṇi[18] in the tenth year of the raising of the umbrella [of dominion] by the great king..:..... Kasabala Alakapaya, the Brave,[19] Budala Aladara, nephew of Vaḷaba Haladara,[20] residing at .... bala, (gave) seven hundred *kahavaṇas* [to] the great royal monastery of Masala.[21]

II

The second inscription at Timbirivāva consists of two lines of writing, each about 11 ft. in length. About four letters at the end of the first line, and seven at the end of the second, are almost totally effaced; hence the exact length of the lines cannot be ascertained. To the left of the two lines, the auspicious word *sidam* is enclosed within a linear framing of oval shape formed by the flourish of the stroke for the medial *i* of the first letter. In addition to the letters at the ends of the lines, certain others are partly damaged, but their identity is beyond question. The missing letters at the ends of the lines, too, can be restored with reasonable certainty from the context. The area inscribed is $1\frac{1}{4}$ ft. in breadth.

The letters range in height between 6 in. and $1\frac{1}{2}$ in. They are more regularly and carefully incised than in the previous epigraph. The script generally resembles that in the preceding record, but the individual letters are less angular in form. The letter *ha* differs from that in the preceding record in that the base line curves upwards at the right, and ends by curving downwards. The stage of development exhibited by the language is also generally similar to that of the foregoing inscription. A noteworthy form

18 *Apaya* occurs in the inscriptions of this period in royal names after *maharaja*, e.g. in the Nāgirikanda inscription (*EZ*, Vol. IV, p. 123). See *EZ*, Vol. III, p. 124 and Vol. IV, p. 114, n. 10.

19 The form *Aladara* in the name of the donor is the same as *Haladara*, that of the personage of whom he was nephew (sister's son). *Haladara* is the same as Skt. *Haladhara*, 'the bearer of the plough', and can be interpreted as a name of Baladeva. the god whose symbol is the plough. *Vaḷaba* may be derived from Skt. *Vṛṣabha*, through an intermediate form* *Vaḍaba*. The substitution of *ḍ* for *ṣ* is found in Tamil, e.g. in *viḍabam* for Skt. *vṛṣabha*. *Budala* is the same as Skt. and P. *Buddha*, with the addition of the suffix-*la*. It is noteworthy that the donor in this inscription emphasises his relationship to the maternal uncle, and does not mention his paternal relationship. The normal practice in ancient Sinhalese inscriptions was to give the name of a person together with that of his father. Perhaps in the family of Aladara (Haladara) descent was matrilineal.

20 *Masala*=Skt. *Mahā-śilā* or *Mahā-śaila*, P. *Mahā-silā* or *Maha-sela*, See next page.

21 *EZ*, Vol. III, pp. 177 and 183.

is *yahaḷa*, which occurs in the Tōṇigala inscription of Sirimeghavaṇṇa as *hakaḍa*.[22] The form found in our record occurs also in literary works, and differs but little from its modern form *yāḷa*. The name of the ancient monastery at the place is called 'Maharala' in this record, whereas in the other it is 'Masala'. Most probably, the two forms are different methods of pronouncing one and the same name. *Ma* in the one stands for *maha* in the other, the syllable *ha* having dropped. *Rala* in the name as given in this record must then stand for *sala* in the other. Thus we have an instance of *s* becoming *r*, a phonetical change noticed in Sinh. *ruvan*, 'gold', for Skt. *suvaṇṇa* (*Ruvanmala*, v. 388), and sporadically met with in modern colloquial Sinhalese, e.g. *sata* (cent) being pronounced as *rata* by the average uneducated person speaking Sinhalese. The change of *l* to *ḷ* is a consequence of the *r* taking the place of *s*. Noteworthy also is the locative termination in *Piḷigamiyi*.

The record is dated in the fourth year of a king styled Kumara-sirisagaboyi (P. Kumāra-sirisaṅghabodhi). The throne name of Sirisagaboyi (Sirisaṅghabodhi) occurs here for the first time in an epigraphical document. The only Sinhalese king of this period, or of any period, in fact, who bore a name with the element *Kumāra* was he who is called Kumāra-Dhātusena in the *Cūḷavaṁsa* and Kumāradāsa (Kumaradas) in Sinhalese historical writings.[23] In the only other epigraph yet known of this king, he is called Maha-Kumaratasa (Mahā-Kumāradāsa).[24] Our record may therefore be taken without doubt as one of Kumāradāsa who reigned from 512 to 520. It is therefore twenty-nine years later than the inscription of Kassapa I at the same site. The purport of the record was to register a gift of a *yāḷa* of paddy for the maintenance of slaves in the *vihāra* named, which has already been commented on, by the wife of a person named Daḷa residing at Piḷigami. The identity of the last named place cannot be established. It was probably in the vicinity of the modern Tiṁbirivāva.

Text

1 සිදම්[|*]කුමර-සිරිසඟබොයි-මපුරුමුක චතරිවනියහි වප-වදි පුනු-මෙසි [දෙළස-ප]

2 -ක පිළිගමියි වසන දළයහ අබි මහරළ-රජ-මහ-විහරෙ වියහළක වහර [ළ-වට-කට දින]

22 *Cūḷavaṁsa*, chapter xli, v. 1; *Pūjāvalī*, chapters xxxiii and xxxiv, edited by A. V. Suravira, p. 100, *Pārakumbāsirita*, v. 23.

23 *EZ*, Vol. IV, p. 123.

24 Modern Sinhalese Vap, the month corresponding to Skt. Aśvina, September-October.

TRANSCRIPT

1 Sidam [|*] Kumara-Sirisagaboyi-mapurumuka catarivaniyahi Vapa-cadi punu-mesi [doḷasa-pa-]
2 -ka Piḷigamiyi vasana Daḷayaha abi maharaḷa-raja-maha-vahare vi-yahaḷaka vahara [la-vaṭa kaṭa dina]

TRANSLATION

Success! On (the twelfth) of the waxing moon in the month of Vapa[25] in the fourth of His Majesty Kumara Sirisagaboyi, the wife of Daḷaya, residing at Piḷigami, (gave) one *yahaḷa* of paddy for the purpose of maintaining [the services of] slaves[26] at the great royal monastery of Maharaḷa.

III

The third inscription at Timbirivāva covers an area of rock surface measuring approximately 5 ft. 6 in. at the longest, and 2 ft. 6 in. at the broadest. The letters range in height between 6 in. and 2 in. It consists of five lines of writing, of which the last two are badly preserved. The script and language conform to standards familiar in records of the fifth to sixth centuries. The record is not dated; its purpose is to register the manumission of an individual, who is named, by paying a hundred *kahavaṇas*.

TEXT

1 සිදම් [|*] අබ-ජෙට-බය අබ ඵ-
2 -කසය කහවණ දි වස
3 වහරල විදි [|*] පල සව-
4 -ට සවසතනට මය රි-
5 -ච් බු[දු]බව ව[යවය] [|*]

TRANSCRIPT

1 Sidam[|*] Aba-jeṭa-baya Aba c-
2 -ka-saya[27] kahavaṇa di vasa
3 vaharala cidi [|*] Pala sava-
4 -ṭa[28] sava-satanaṭa maya ri-
5 -ci Bu[du]- bava va[yavaya] [|*] .....

25 *Vi*:—See *EZ*, Vol. III, pp. 177 and 184. For *yahaḷa*, see note 21.

26 *Vaharala vaṭa koṭu*:— See *EZ*, Vol. IV, pp. 134 f., and below p. 103

27 The letter *sa* has been engraved over a *ka* which has obviously been erroneously engraved on the stone.

28 The normal phraseology in inscriptions of this type indicates that *savaṭa* in lines 3 and 4 occurring after *pala* is due to a clerical error. In the translation, however, it has been taken as authentic.

TRANSLATION

Success! The elder[29] brother of Aba,[30] having given a hundred *kahavaṇas*,[31] freed Aba from the slavery to which [he] was subjected. May the merit of this be for the attainment of Buddhahood,[32] desired by me [also],[33] to all beings everywhere.

IV

About three miles south-east of Maradanmaḍuva, close to the eastern boundary of the Vilpattu National Park and about three-quarters of a mile to the east of Tiṁbirivāva, there is a group of detached rocks known as Andaragollāgala. On one of these rock-boulders, rising to a height of about 30 ft., and about 50 ft. in length, there are to be seen slight vestiges of an ancient brick structure, probably a *stūpa*, and to the south of these remains, there is an inscription which was discovered in 1953 by Mr. C. W. Nicholas. Information about the discovery was supplied to the Archaeological Department, and an estampage was prepared in 1954, being numbered 46 in the List of Inscriptions copied by the department in that year. It has been read from a photograph of that estampage kindly placed at my disposal by Dr. C. E. Godakumbure.

Excluding the auspicious word *sidam*, which is written within a flourish of the *i* sign of *si*, 10½ in. by 7½ in., to the left of the main body of the writing, the record covers an area of the rock surface measuring 2 ft. 9 in. at the longest, and 9 in. at the broadest, and comprises three lines of writing. The individual letters, ranging in height between 1½ in. and 3½ in., are shallowly but sharply incised. The weathering of the rock has obscured the writing in places, but every letter of the record can be deciphered. The script generally resembles that of record No. 2 at Tiṁbirivāva, but certain letters have more developed forms; compare for example the symbols for *da* and *la*. The letter *ḷa* has two dents and the serif of certain letters, e.g. *pa*, is turned down on the left. This record furnishes us with one of the rare occurrences of the initial *o* in records of the fifth to eighth centuries. Being dated in the second year of a king named Daḷa-Opatisa (Dāṭhopatissa), the record

29 *Jeṭa* = Skt. *jyeṣṭha*, P. *jeṭṭha*, classical Sinhalese *deṭu*, 'eldest'. In actual usage, the word does not always have the superlative sense indicated by its etymology.
30 Skt. or P. *Abhaya*.
31 See note 11.
32 *Vasa* = Skt. *vaśa*, P. *vasa*. *Vaharala* being qualified by *vasa* supports the interpretation of that word as 'slavery'. The literal interpretation of *vaharala cidavi* is 'caused the cessation of slavery'.
33 *Rici Budubava vayavaya*:— See *EZ*, Vol. IV, pp. 132 and 136.

at Andaragollāgala is 174 or 158 years later than Inscription No. 1, and 145 or 129 after Inscription No. 2 at Timbirivāva. A comparison of the script of these records indicates that there was not much development in the angular variety of the Sinhalese script during the sixth and seventh centuries.

This inscription ends with the phrase *dasi-paha cidavi*, which has not been found so far in any other record of this period. It is quite obvious that *dasi* is the same as Skt. *dāsya*, P. *dāsavya*, 'the state of a slave, i.e. slavery.' *Paha* can be equated with Skt. *pāśa*, P. *pāsa*, 'noose, bond, chain or fetter.' *Cidavi* is the third person singular in the causative mood, past tense, of the verbal root corresponding to Skt. *chid;* its equivalent in classical Sinhalese would be *siňdavi*. The whole phrase may therefore be translated as 'caused to be torn asunder, or caused the cessation of, the bondage or fetters of slavery'.

The phrase *dasi-paha cidavi* of the present inscription takes the place of *vaharala cidavi* occurring in a large number of epigraphs,[34] many of them yet unpublished, belonging to the period between the fifth and eighth centuries. In publishing some of these inscriptions for the first time, I suggested that *vaharala* and its variant forms mean 'slave' or 'slavery', according to the context.[35] The occurrence of *dasi-paha* as a substitute for *vaharala* in the present inscription establishes beyond doubt the meaning that I proposed for it originally.

The occurrence of *dasi-paha* as synonymous with *vaharala* or *vaharalaya* gives us a clue with regard to the etymology of the latter word. It is reasonable to take that *laya*, its variant form *leya*, and its contracted form *la*, have the same meaning as *paha*. *Laya*, *leya* and *la*, therefore, are equivalent etymologically to Skt. *lāya*, derived from the root *lī* 'to adhere,' with the secondary meaning of 'bondage,' 'fetter,' which is found in the word *ā-lāna* formed from the same root with the addition of the prefix *ā*. *Vahara* is equated with Skt. *vyavahāra*, P. *vohāra*, in the meaning of 'law' or 'custom'. Etymologically, therefore, the word *vaharala* and its variants would mean 'legal bond' or 'one who is subjected to a legal bond'. The suggested etymology gains support from the statement in the *Samantapāsādikā* that a bought slave is

34 *Maya* = *mā* in standard Sinhalese. See *Sīgiri Graffiti*, Index—Glossary, *s.v.*

35 *Savaṭa* can mean 'to all,' but the word would be redundant before *sava-satanaṭa*. It has therefore being equated with Skt. *sarvatra*, P. *sabbattha*. It is, however, possible that the scribe first wrote *savaṭa*, but later expanded it to *savasatanaṭa*. See also note 28.

'a son bought for money from the parents, or one who is already a slave bought from the master, having brought him within the law relating to slaves (*dāsa-cārittaṁ āropetvā*).[36] In manumitting a slave also, the same authority states, the laws regarding slaves prevailing in various localities should be followed.[37] The word *cāritta* used in this connection by the *Samantapāsādikā* is equivalent to Sinhalese *sirit*, regularly used in Sinhalese documents of the ninth to fourteenth centuries for 'law'.[38] It is therefore synonymous with *vahara* (Skt. *vyavahāra*) forming the first member of the compound *vaharala*. The word *vaharala* and its modern Sinhalese forms *vahal* and *vāl*, are thus semantically equivalent to English 'bondman,' 'bondsman,' 'bondmaid,' 'bond-servant' and other similar words. This etymology would also explain the appropriateness of using a form derived from the root *chid* to express tne idea of manumission.

The inscription contains no evidence to decide whether Daḷa-Opatisa (Dāṭhopatissa), in whose regnal years it is dated, was the first or the second of that name. It may, however, be of some significance that Daḷa-Opatisa of our inscription is given the sovereign epithet of *mapurumuka*, whereas Daḷapatisa (Daṭhopatissa) of the Dakkhiṇa-vihāra record is referred to as *purumaka*. If the reasons adduced to ascribe that record to Dāṭhopatissa I be valid,[39] our record may be taken as a document of the reign of Dāṭhopatissa II.

Text

1 සිදම් [|*] දළ-ඔපතිස-මපුරුමුක-ව-
2 -ස [දෙ]වනයහි ගි[රි]වෙල-ච-
3 ද පුත දසි-පහ විදවි [|*]

Transcript

1 Sidam [|*] Daḷa-Opatisa-mapurumuka-va-
2 -sa [de]vanayahi Gi[ri]vela-Ca-
3 -da puta dasi-paha cidavi [|*]

Translation

In the second of the years of His Majesty Daḷa-Opatisa, Girivela Cada freed [his] son from slavery.[40]

36 *Annual Report of the Archaeological Survey of Ceylon* for 1954, p. 38.
37 See *EZ*, Vol. IV, Nos. 15, 16, 17 and 37 and Vol. V, Nos. 2 and 3.
38 *EZ*, Vol. IV, pp. 134 ff.
39 *Dhanakkīto nāma mātā-pitunnaṁ santikā putto sāmikānaṁ santikā dāso vā dhanaṁ datvā dāsa-cārittaṁ āropetvā kīto. Samantapāsādikā*, P.T.S. Edition, Vol. V, p. 1001. With regard to the phrase *cārittaṁ āropetvā*, compare the expression *sayam eva paṇṇaṁ āropenti*, said in the same context with reference to a person, who voluntarily sells himself to slavery by means of a document.
40 *Tattha tattha cāritta-vasena adāsam katvā, Samantapāsādikā*, op.cit., Vol. V, p. 1001.

Preemption in Tesawalamai: a Problem in Choice of Residual Law

OCCASIONALLY points which interest historians and academic lawyers come to the very front of practical legal controversy. The subject of preemption has been very much in the air during the last decade in Indian and Ceylon cases, and now we have a Privy Council decision which indicates the advantage of having well-prepared academic theories ready to cope with the rare and unexpected problem. *Mangaleswari* v. *Velupillai Selvadurai*[1] cannot be said to be an epoch-making decision, but it bears the marks of Mr. L. M. D. de Silva's customary caution, and leaves a way open to establish, if necessary, what is the residual law in preemption cases under the Tesawalamai. It must be noted at the outset that even under the Tesawalamai Preemption Ordinance (No. 59 of 1947) many problems may arise which have to be settled under the Tesawalamai itself, for the Ordinance is amending and not exhaustively codifying; and in this case the parties were agreed that reference to the Ordinance would be neither necessary nor helpful.

In *Mangaleswari's case* a father and daughter had inherited as half-sharers lands subject to preemption in 1935. The father sold his share in 1937. In 1950 the daughter, whilst still a minor, brought an action as co-sharer to preempt the share. Two things stood in her way. Firstly it was suggested that her father's (and natural guardian's) knowledge that he was going to sell was constructive notice to the minor daughter and that she had therefore had notice of the intended sale and thus no cause of action arose in her favour. Secondly the respondent relied on a decision of the Supreme Court of Ceylon, *Velupillai* v. *Pulendra*,[2] to the effect that the pre-emptor, in order to succeed, must show that *had* he received reasonable notice he *could*, as well as would, have purchased the property. This decision, and others which take a similar view, had already been criticised powerfully on practical grounds.[3] Their Lordships disposed of the first point

1. [1961] 2 W.L.R. 813 (P.C.).

2. (1951) 53 N.L.R. 472.

3. H. W. Tambiah, "The Contents of Thesawalamai," *Tamil Culture*, vol. 8, No. 2, 1959, at p. 35 of the offprint. (In the present article the spelling Tesa- is used, not merely because it is used by the Privy Council but because the other spelling is a Madrassi idiosyncracy, as in 'Santha' for the girl's name Sāntā).

very simply: notice to, or knowledge of, a natural guardian who stood in so interested a position as the father in this case could not be imputed to the minor appellant at all. The second point was more difficult.

Since the Tesawalamai itself did not lay down that the preemptor must show that at the time when his cause of action arose he must be *able*, as well as willing, to buy, this rule established in Ceylon since 1951 must rest upon a residual legal source. In the (controversial) case of *Sabapathypillai* v. *Sinnatamby*[4] it was laid down that where the Tesawalamai is silent, the Roman-Dutch law is applicable. But this case did not preclude the question's being opened, whether in preemption cases other sources of law besides the Roman-Dutch ought not to be consulted. And in fact it was well known in Ceylon that there existed a theory that preemption was derived from Islamic law (a baseless theory, as we shall see), and in fact Islamic principles had been consulted more than once. The proposition that Roman-Dutch law (which knows preemption, as do most of the pre-Napoleonic germanic customary laws) is the ultimate source was negatived by their Lordships. They say,[5]

"It appears to their Lordships that neither the Roman-Dutch law nor the Muslim can be regarded as part of the law of Tesawalamai, but that it is permissible to look at the law obtaining in those systems, to ascertain the reasoning which underlies the principle of preemption as it is to be found in them in dealing with various problems; and, where not in conflict with the principles of Tesawalamai as established in Ceylon and otherwise appropriate, to borrow such rules and concepts as seem best suited to the situation in Ceylon."

Their Lordships carefully scrutinised both the Roman-Dutch and the Islamic systems to see whether any such rule could be found as was propounded on behalf of the respondent and was authenticated by *Velupillai's case*.[6] It was evident that no such rule was to be found in either source, and the appellant won her appeal.

In this article the question which is sought to be answered is "what is the residual law in Tesawalamai preemption problems"? Since the process

4. (1948) 50 N.L.R. 367. On the subject see H. W. Tambiah, *Laws and Customs of the Tamils of Jaffna* (Colombo, 1950), pp. 43f.

5. At [1961] 2 W.L.R. 813, 818.

6. (1951) 53 N.L.R. 472.

of tracing out this matter is very complicated, an attempt will be made to go very deliberately step by step.

Naturally, if we go back beyond the earliest information on the customary law of the Tamils in Jaffna,[7] we are bound to come to a period when the Tamils of Ceylon were more or less in touch with their cousins in South India, and still conscious of their cultural and religious community with Indian Tamils. True enough, traces of this were still to be found when Sir Alexander Johnston, 150 years ago, made very extensive and fruitful enquiries into the sources and nature of customary laws in Ceylon and in the adjoining Peninsula.[8] It is clear that he was then assured that the residual law for Hindus governed by the Tesawalamai, and possibly for non-Hindus so governed, was the Hindu law as administered by Indian (not Anglo-Indian) authorities in the adjoining districts of the Coromandel Coast. He specifically mentions two well-known textbooks of Hindu law which were said to be consulted in Jaffna: the *Vijñāneśvarīyam*, i.e. the *Mitākharā* of Vijñānēśvara, and the *Parāśara-mādhavīyam*, i.e. the commentary by Vidyāraṇya-svāmī on the code of Parāśara. This is enough.[9]

It tells us that Brahmans able to read Sanskrit [9a] would tell the caste-heads in Jaffna what the Sanskrit law books said in cases where customs were unclear, or open to controversy. Naturally the purpose of the compilation of the Tesawalamai 'Code' by the Dutch was, as far as possible, to limit, or

7. See H. W. Tambiah, "The Law of Thesawalamai," *Tamil Culture*, vol. 7, No. 4, 1958, at pp. 1-8 of the offprint. At p. 9 the learned author suggests that preemption might have been brought by Malayalis from Malabar. This suggestion fits in with the author's theory of Malabar contributions to Tesawalamai, on which the debate is bound to continue.

8. H. W. Tambiah, "The Alexander Johnstone Papers," *Ceylon Historical Journal*, vol. 3, No. 1, pp. 18f.

9. The information on the subject is reproduced substantially at p. 32 of Tambiah's *Laws and Customs* . . (cited above).

9a. Brahmans who were more familiar with Tamil than with Sanskrit may have availed themselves of Tamil translations of Sanskrit works. A Tamil version of the *Varadarājīyam* has not come to hand, but F. W. Ellis, sometime Collector of Madras, was interested in and must have possessed a copy of a Tamil translation of the *Vijñānēśvarīyam*, which had in the Tamil country "always been held as of superior authority to any other lawbook whatever, not excepting even the text of Menu (Manu)" (Ellis, in *Law Magazine*, London, IX, 1833, 217-224 at pp. 220, 222). This Tamil work was both translation and gloss (we should probably call it a paraphrase), but was in verse! Ellis actually believed that it would diminish the importance of Brahmans as expositors of law: *ibid.*, 223. Sir Alexander, who visited India in 1807 and 1817, received a copy of Ellis' article from Ellis himself, and as Ellis was concerned to publicise the Tamil translation mentioned above it is far from unlikely that Johnston made its existence known on his return to Ceylon. The currency of other Tamil translations of the *Vijñānēśvarīyam* in Ceylon has not been shown, but there may well have been versions of the *Parāśara-mādhavīyam* in use there and on the continent. Other work of Ellis on the same general subject appears in the *Asiatic Journal*, Madras Literary Society, VII, 1819, 644-6, and VIII, 1819, 17-23, but does not enlighten us further on this point.

render unnecessary, recourse to such books except in matters of religion, where the Dutch had no interest or inclination either to establish or to tamper with the rules previously enforced. The position in Jaffna was therefore exactly similar to that prevailing in Madras Presidency when the Anglo-Hindu law began to develop: the Sanskrit books offered a residual source of law, notwithstanding the fact that in very many cases their actual rules were abrogated (or, more correctly, derogated from) by customary deviations. That the Tamils of South India did consult the Sanskrit books in difficult matters that came to judicial tribunals is rendered certain by the behaviour of the inhabitants of the French possessions, whose 'committee of jurisprudence' regularly (but by no means exclusively) looked into the books in such situations.[10]

Now that we know that Roman-Dutch law ought not to have been fixed upon as the residual law in Tesawalamai cases,[11] and that Hindu law was the residual law, how much further forward are we ? Is there any Hindu law of preemption ? Here we arrive at a difficulty. In India it has long been the fashion to proceed upon the hypothesis that customary law (as recorded in the *wajib ul-arz* of the Punjab, or in statutes codifying or regulating customary laws of preemption elsewhere) must be construed *per se*, and helped out, where necessary, by recourse to Islamic law on *shafa* (preemption). At one time, as Dr. H. W. Tambiah (as he then was) very properly pointed out,[12] a Full Bench of the North-West Provinces (now Uttar Pradesh) with an insight far ahead of its time had determined that preemption as a feature of customary law, existing independent of personal laws as such, derived not from the Muslims, but from ancient customary law.[13] But this sensible, and correct, understanding of the history of the subject was rejected, somewhat carelessly, by the Privy Council. In *Digambar Singh* v. *Ahmad*[14] we are given the benefit of their Lordships' theory that preemption in customary law is derived from the Islamic law, upon the basis that the Hindus learnt preemption from their Muslim governors.[14a] The position now established is that even where preemption, as amongst Hindus, derives its authority from the customs and usages of

10. See Léon Sorg, *Avis du Comité Consultatif de Jurisprudence Indienne* (Pondicherry 1897).

11. See above, n. 4.

12. "Contents. . .," at p. 32; F. B. Tyabji, *Muhammadan Law*, 3rd. edn. (Bombay, 1940), p. 666, n. 8.

13. See also Tyabji, pp. 669-70. Also K. Balasingham, *Laws of Ceylon*, I(1929), 163-7,

14. (1914) L.R. 42 I.A.10, AIR 1924 P.C. 11, 14.

14a. See n. 23a below.

the people, it is presumed to be founded on, and co-extensive with, the Muhammadan law on that subject, unless the contrary is shown. Tyabji, the authority on Islamic law in India who is usually consulted first these days, says[14b] that preemption was apparently unknown in India before the time of the Mughal rulers. Nevertheless judicial doubts have been thrown on the theory of the Islamic origin of preemption in India in very recent times. The Supreme Court of India in *Radhakishan Laxminarayan* v. *Shridhar*[15] has said that so far as Berar is concerned (a typical region where preemption exists as part of the *lex loci* by custom) the theory of the Muhammadan legal origin of preemption does not seem to be well founded. They base their doubts upon the differences which appear between *shafa* and the requirements and other provisions of the local custom, and they advance a theory of their own, based upon migrations of peoples.

Thus we arrive at the position that although in practice reference to Islamic law is useful to supply the deficiencies in customary systems of preemption, and this is regularly done in India, in fact the system itself is not of Islamic origin. This disposes of the theory advanced in *Karthigesu* v. *Parupathy*,[16] a Ceylon case which relies on an Allahabad decision,[17] that preemption in Jaffna was due to early occupation of North Ceylon by Mahomedans (of which there is no trace worthy of mention) or by Malabars (i.e. Tamils) who had themselves come under Mahomedan influence in India. These alternative explanations do not stand a moment's examination.

But does Hindu law supply information about preemption? In a recent article in the Jubilee Number of the Adyar Library Bulletin[17a] the present writer, confining his attention to India, and without reference to the problems that had arisen in Ceylon, showed that there is plenty of information on preemption to be found in Hindu law texts. Before we examine it we must clarify the question as to what is Hindu law itself in such a context as this.

The phrase "Hindu law" does not mean Hindu customary law, customary law that is part of the *lex loci* (as in the Punjab) or customary law to which Hindu legal texts refer. It means the law contained in and laid down

14b. At p. 666, sec. 523(3).
15. AIR 1960 S.C. 1368.
16. (1945) 46 N.L.R. 162, 163. Dr. Tambiah has repeatedly shown the implausibility of this approach.
17. *Gobind Dayal* v. *Inayatullah* (1885) I.L.R. 7 All. 775 FB.
17a. XXV, 1961,13-27.

by the *dharmaśāstra*. That law as administered, or distorted, or developed, by the British-Indian judiciary is called "Anglo-Hindu law". The current system, based on the Codes and the Constitution of India, is called "Modern Hindu law". We shall see presently that Modern Hindu law has had its own adventures with preemption which make a curious sequel to the very confused picture left by the Anglo-Hindu system. Hindu law itself provides for preemption in *smriti*-texts attributed to the front-rank authors Brihaspati, Kātyāyana, and the less important authors Vishṇu, Vyāsa and Bhāradvāja. The two great east-coast legal writers of the middle ages, Varadarāja in his *Vyavahāra-nirṇaya* (otherwise *Varadarājīyam*), and the author of the *Sarasvatī-vilāsa*,[18] carefully cite these authors in order to provide a picture of preemption in practice. Their citations do not exactly correspond,[19] but it is beyond question that they intended their readers to apply these texts to situations developing in actual practice. There is also a considerable section of the *Mahānirvāṇa-tantra* which deals with preemption.[20] It does not follow the *smritis*, and has a practical air about it, giving rise to a suspicion that the customary law, which it incorporates, took some of its colour from *shafa*. Because the *Mahānirvāṇa-tantra* was probably not a South Indian work, we can neglect it for the purpose of this article.

One may ask, why were these facts not known before ? The truth is that no opportunity arose for the *smriti*-texts to be considered and applied in Anglo-Hindu law, because (i) they did not appear in translated texts; (ii) they did not refer to Hindu personal law and so would not come within the scope laid down in the Presidency Towns for application of personal laws; (iii) even for Muslims, where the matter was referred to in the *mufassil* under justice, equity and good conscience, the Madras High Court refused to entertain the topic, and ruled the subject of *shafa* to be incompatible with the law which that Court should administer.[21] This most unpromising background more than adequately accounts for our ignorance. No High

18. On these digests see P. V. Kane, *History of Dharmaśāstra*, vol. 1 (index).

19. The passages appear at *Vyavahāra-nirṇaya of Varadarāja*, ed. Rangaswami Aiyangar, and Krishna Aiyangar, (Adyar, 1942), pp. 355 and following; *Sarasvativilasa of Sri Prataparudramahadeva. . . ., Vyavaharakanda*, ed R. Shama Sastry (Mysore, 1927), pp. 322 and following.

20. This passage is cited by H. W. Macnaghten, *Principles and Precedents of Moohummudan Law. . .* (Calcutta, 1825) at pp. xvii-xix. See *Mahānirvāṇatantram*, ed. Hariharānanda Bhāratī , (Madras, 1929), XII, 107-112, pp. 390-3.

21. *Ibrahim Saib* v. *Muni Mir Udin Saib* (1870) 6 Mad. H.C.R. 26. This was a case where Holloway, J., employed his extensive knowledge of Civil Law to the disadvantage of Indian litigants. See also *Bhim Rao* v. *Patilbua* (below, n. 32).

Court other than that of Madras would even think of consulting either the *Sarasvatī-vilāsa* or the *Varadarājīyam*.

One may further ask, is there reason to believe that those two digests were capable of being consulted in Ceylon ? The answer is twofold: (i) they are *prima facie* applicable as residual textbooks for Ceylon Tamils upon an exactly equal basis with the Tamils of, say, Madura District, the fact that the *Sarasvatī-vilāsa* is later than the great migrations to Jaffna, etc., not being relevant as the author relies on ancient *smritis* long antedating those migrations; (ii) the evidence that Hindus actually practised pre-emption, independently of the Hindu law itself, is overwhelming, and it is proof that the rules found in the texts actually represent a living system of practice that is essential to a claim that textbook law should be consulted in such contexts. We should perhaps look at this evidence briefly. Our best examples come from Goa, where the practice of Hindus, untouched by Muslim overlordship, was in full vigour[22] until the Portuguese tampered with it—for they, like many Indian judges, thought the institution an unwarrantable restriction on the freedom *uti vel abuti eo, quod est tuum*. Moreover, there is curious material which Professor U. C. Sarkar recognised as rules of preemption in the *Arthaśāstra* of Kauṭilya.[23] Now that work is of somewhat equivocal authority on matters of jurisprudence. Its antiquity is open to doubt, but most authorities regard it as genuinely contemporary with Aśoka. However, we cannot claim it as a source on Hindu law. Yet, as evidence of actual usage amongst Hindus at that remote epoch, it is of unquestioned value, and this particular context does not call for the caution we must use in some other places. It is true that the courts occasionally cite Kauṭilya, but that does not make him an authority on Hindu law, only *pro tanto* on Anglo-Hindu law which, as we have seen, is another matter altogether. However, no one has given any kind of authority to the passages which seem to deal with preemption, and we must take them for what they are worth as evidence of the public's determination to allow no sales of land to take place unless "near" persons (to paraphrase the position) first neglect a right to preempt. We shall return to this source later. Evidence that Kauṭilya was still read and worked over in Madras Presidency in the middle ages is forthcoming, because some commentaries on the *Arthaśāstra* are of Tamil or Andhra provenance. Moreover there is ample evidence that in

22. See J. H. de Cunha Rivara, *Brados à Favor das Communidades das Aldeas do Estado da India* (Nova Goa, 1870), p. 46.

23. See n. 28 below. U. C. Sarkar, *Epochs in Hindu Legal History* (Hoshiarpur, 1958), p. 87, 206.

Kerala formerly, as in the Malabar Districts nowadays, *ottidars* (referred to in Hindu law texts as 'creditors') had a right of preemption: see the authorities cited in *Narayana Menoki* v. *Karthiayani*.[23a]

To proceed: given that the Hindu law ought to be consulted as the residual law on preemption under the Tesawalamai, what can it teach us? Fundamental propositions do indeed emerge, which are exactly what we need. We see at a glance that the concept of *shafa* is different in many respects. The Hindu notion is, briefly, that when an owner *proposes* to sell his land he should offer it first to relations, in order of nearness, to neighbours who are co-sharers in certain rights of way or water, then to neighbours who who are not such co-sharers, then to fellow-villagers, and amongst fellow-villagers to creditors before others. Where persons claiming to preempt are amongst the favoured classes, but some can claim under two heads (e.g. as a remoter relation but a neighbour) intermediate groups of claimants in the order of priority emerge. The notion is that this offer must be made, and that no transfer of land is valid until relations, neighbours and fellow-villagers have been summoned to attend a ceremony at which seisin is taken by the proposed transferee. If the sale is carried out without the ceremony, or without the proper invitations or summons being sent out, those who are *matāḥ*, literally "to be respected", and whose rights to preempt have been overlooked, have a number of days, or weeks, or months, depending upon their distance and circumstances, in which they may upset the sale, and substitute themselves, if they insist, for the provisional transferee. If the *matāḥ* give their consent, or indicate consent by silence, or allow time to run out against them, the provisional transferee becomes an actual transferee, and not before. The concept of resiling from sales, and upsetting transactions on various grounds, is ancient in India as well as in Ceylon, and dies hard, as anyone can see who reads a volume of the Indian Law Reports.

In this particular problem of the alleged right of the preemptor to sue only when he is able as well as ready and willing to pay the price, the Hindu law is not explicit. One must derive the law from a consideration of its principles. Because a period of time is allowed within which a protest (or claim) must be made by the preemptor, it is evident that anyone who proposed to preempt, be he an adult or a minor acting through his guardian, can give notice of his objection to the transfer, raise money if necessary from a lender, and come forward in the period allowed. It is implicit in the Hindu texts that a relation, etc., who stops a sale on the ground of his

23a. [1961] Ker. L.T. 809.

right to dispute the alienation to a stranger, must satisfy the owner himself. This is a point which has led to the decay of the subject in digests other than those mentioned. Because he can satisfy him in other ways than by offering actually to purchase there and then, an absolute right to purchase from the owner upon tendering the price would not entirely accurately be insisted upon. In practice the relations might cause the owner to postpone his sale, especially where he only wanted to pay his debts, and particularly where he was not likely to live long and the estate might come to the objectors by succession. However, as the South Indian digests referred to above apparently intend, there is no substantial difference between the right to stop a sale on tender of adequate consideration and the right to stop a sale and insist upon purchasing the property in question.

The upshot of this discussion is that under the Hindu system a preemptor must, in order to stop the sale to the proposed stranger or less qualified purchaser, tender a consideration sufficient to cause the owner to desist, and that in nine cases out of ten this is equivalent to the preemptor's exercising his right to preferential purchase over the proposed transferee. Consequently it is by no means necessary that at the moment of the proposed transfer the consent of the preemptor must be dispensed with because he does not have the cash available. If he does not come forward with the cash within the period of time allowed for exercising the right of preferential purchase, his rights are at an end.

The Hindu texts have not been translated anywhere. Parties will require agreed translations from the Sanskrit, but the present writer offers the passages below as his own attempts to give the sense of the originals.

Vyāsa: "Relations, neighbours, creditors are in order 'possessed of causes of purchase'. Amongst them the nearer are *matāḥ* ('to be respected') in the sale, and foremost are the *sapiṇḍas* ('agnates within seven inclusive degrees'). Where neighbours on four sides compete, he on the East is preferred, then he on the West, the North, and in the absence of all others, the South. Those who share water come next, then those who are (merely) contiguous. Then come *bāndhavāḥ* (? remoter relations, or partners, connexions) and after them their contiguous neighbours. And this is not broken by streams, springs, paths and the like."[24]

24. After this passage, at p. 356 of the *Varadarājīyam* (cited above), occur three lines which are omitted in three manuscripts, and which are not essential for our purpose.

Bhāradvāja: "Relations, neighbours, creditors in order are 'takers of land'. Thereafter members of the same *kula* ('agnatic lineage'), and in the absence of all, members of another family (i.e. 'cognates', says Varadarāja)."

Brihaspati: "Full brothers, *sapiṇḍas*, sharers of water (i.e. *samānodakas*[25]), members of the same *gotra* ('agnatic lineage'), neighbours, creditors, fellow-villagers: these seven are *matāḥ* in a sale of land."

Vyāsa: "The period of resiling in the case of land is ten days both for purchaser and seller. It is twelve days in the case of *sapiṇḍas*. After that, the sale is absolute (*avichālyam*). Neighbours have the same period (of grace), and we learn that creditors have the same period. And *sapiṇḍas*, who have this same period, are understood to be *matāḥ* in purchase."

Pañcādhyāyī:[26] "Relations, neighbours, creditors are learnt to have the same period (of grace) when it (the intended sale) is known. For all of them have a ten-day period, etc., and so have the purchaser and seller themselves. That field will go to the relative, etc., where the price accepted by the seller is inadequate."[27]

Elsewhere: "Those that have been mentioned as 'suitable' in a purchase are prominently situated (? or shown honour) in a sale. They are not entitled to complain (or 'impugn the transaction') if they let the matter pass, on the next day." (Varadarāja comments, these relations, neighbours, etc., who are entitled to be present, must release their rights or assert them immediately after the proposal has come to their knowledge, and not on the next day: the period of ten days for resiling is reserved to the parties to the transaction).

Brihaspati: "A purchase of immovables is valid only with the consent of the relations, etc., otherwise there is no purchase at all, and the parties may even be liable to a penalty." (Varadarāja comments that this applies

25. On *samānodakas* see any work on the Hindu law of intestate succession. They are agnates removed from the common ancestor from eight to fourteen degrees inclusive.

26. This work, cited twice in the *Varadarājīyam*, is not at all well-known. The present writer has not found any reference to it in the works of P. V. Kane (than whom no living person knows more about Hindu law). Rangaswami Aiyangar himself had no light to throw on the matter. But Varadarāja *cites* the work, and that is what matters.

27. The last sentence, the meaning of which cannot be established with certainty in view of our lack of knowledge of the method of price-fixing in ancient times, is omitted from two manuscripts (Varad., p. 357).

only where relations, etc., are in the vicinity.) "Where relations, neighbours, and creditors are absent from the village at the time of the purchase, they have no right of protest when three fortnights have elapsed since the purchase." (Varadarāja adds that this applies where they are *not* in the vicinity, and likewise what follows. . .).

Kātyāyana: "In one's own village ten nights; in another village three fortnights; but in another kingdom six months; and if the languages differ even a year."[27a]

Passing over other *smriti*-texts to very similar effects, we note *Bharadvāja:* "A sale of land to creditors in another village is not valid, except in cases where the fellow-villagers have no means, or (they themselves) are indebted."

In conclusion we may sum up the discussion as follows:— whatever may be the position with some chapters of Tesawalamai law, in preemption recourse must be had to Hindu law as the residual law. If from the spirit and outlook of the institution as known to the *dharmaśāstra* no answer is forthcoming, it is permissible to have recourse to the Anglo-Hindu law on preemption, which owes something to Islamic law at second hand. If one consults the customary law it is better to look at Kauṭilya first[28] (for all his antiquity) rather than to the customary law of, for example, the Punjab:[29] but in all cases direct consultation of either the Roman-Dutch or Islamic law is deprecated.

The Privy Council note that preemption is not regarded with favour.[30] This is undoubtedly correct, not only for Islamic law but also for customary law. In India it is accepted that any course which would defeat a right to

27a. The similarity of this to the provisions of Tesawalamai is evident.

28. The text is printed in the Trivandrum edn. (pt. 2, 1924) at pp. 51-2. The section is there numbered 61. In Shama Sastry's edn. the passage is at the commencement of Bk. III, ch. ix. In his translation (which contains many errors) published from Mysore in 1929 it appears on pp. 190-1. The passage may be paraphrased as follows:— Relations, neighbours and creditors may take (or preempt) at sales, outsiders coming in only after them. At a public meeting the land, etc., is advertised for sale at a stated price; after the third proclamation, if no one objects, the proposed purchaser may purchase the property. If by competition the price is enhanced the increase above the announced price goes to the Treasury. A person lodging a protest against the sale must pay a fee. Where a protest is made to one not the owner (or is not made to the owner as it should have been) a fine of 24p. is payable. The owner in receipt of a protest may sell if the protesting party does not put in an appearance within seven nights. If property subject to preemption, and under a protest, is transferred through default of the owner, the latter must pay a fine of 200p. In other cases of transfer pending a protest the fine is 24p.

29. On which see Rattigan's Digest; also Agrawala's work on the Law of Preemption.

30. [1961] 2 W.L.R. 813, 820, citing Tyabji, p. 725.

preempt is legal and will not be hindered by the court.[31] In India many High Courts, apparently wrongly, have attempted to kill preemption altogether by appeals to Art. 15 and Art. 19 of the Constitution.[32] Nevertheless the better view is that the institution lives on, and has a useful life in front of it,[33] as the Supreme Court's frequent investigations of preemption show.[34] Under the Tesawalamai many of these objections do not apply at all. Mere proposal to transfer is enough to give rise to protest (unlike the Islamic system) and failure to give notice is itself a cause of action. A better view seems to be that now adopted in India,[35] that a right of preemption is a right in property (though not capable of transference) and that *lex vigilantibus subvenit.* As long as the preemptor takes the proper steps in the period allowed by law, the court will uphold his right notwithstanding theories about "unjustifiable fetters upon the free disposition of property". And Parliament has recently created a new right of preemption in favour of those who inherit shares in businesses and immovable property, a right which, as it happens, is bound to develop somewhat differently from the Islamic law, since the right arises when the sharer *proposes* to transfer, e.g. by gift.[36]

J. DUNCAN M. DERRETT*

31. *Radhakishan* (cited above), AIR 1960 S.C. 1368, 1372a.

32. See *Panch Gujar Gaur Brahmins* v. *Amar Singh,* AIR 1954 Rajasthan 100 FB; and other cases cited and discussed in *Bhim Rao Eknath* v. *Patilbua Ramkisan,* (1959) 62 Bom. L.R. 574. Also *Mulla Haji* v. *Pandit Laxminarayan* AIR 1961 Mad. Pr. 311.

33. See case last cited.

34. *Shri Audh Behari Singh* v. *Gajadhar* (1955) 1 S.C.R. 70; *Bishan Singh* v. *Khazan Singh,* AIR 1958 S.C. 838; *Radhakishan* (cited above) AIR 1960 S.C. 1368. Now see also *Ram Saran* v. *Mst. Domini* AIR 1961 S.C. 1747.

35. *Shri Audh Behari Singh* (cited above).

36. Hindu Succession Act, 1956, s. 22.

* Reader in Oriental Laws in the University of London.

Nasalization in the Verbal Endings in Spoken Sinhalese

THE choice of the 'Verbal Endings' presupposes the threefold abstraction made of the verb as *stem*, *junction* and *ending*, which was outlined in my 'Verbal Categories in Spoken Sinhalese.'[1] The delimitation of the material to the verbal endings is to correlate phonology and grammar by exhibiting certain phonological exponents of the grammatical abstraction set up as 'ending.' It does not, however, imply that this statement is a result of examining the segment in question only ; in making phonetic observations, I shall always fall back upon the utterance as a whole. The delimination is in grammar and consequently in phonology, but not in the phonic data.

Verbal endings are either C-initial or non-C-initial, and monosyllabic or disyllabic in structure. Altogether eight different generalized structures are stated for the endings in Colloquial Sinhalese verbal forms. (In the examples quoted, the sections in transcription corresponding to the ending structures are italicized for convenience of reference).

	C-initial		*Non-C-initial*	
Monosyllabic	—CV	ka*mu*	—V	ka*i*
	—CVQ[2]	ka*tot*	—VQ	kæ*æ*v*ot*[3]
Disyllabic	—CVə[4]	ka*nəva*	—Və	kæ*æ*v*aave*
	—CV*CC*ə[5]	kaa*palla*	—V*CC*ə	kaa*halla*[6]

All these endings are statable as nasalized and non-nasalized, using the notations n- and ñ- respectively. n- and ñ- are, then, prosodies of the ending as a whole. In this paper I propose to discuss the phonetic criteria corresponding to the stating of this two-term prosodic feature characterizing the verbal endings in Sinhalese.

1. See U.C.R., Vol. 18, Nos. 3 and 4, 1960.
2. For Q as an element of structure, See my 'Syllable Structure in Spoken Sinhalese,' U.C.R, July-October, 1959. pp. 112 ff.
3. For the treatment of [v] as a prosodic feature, see my 'Syllable Structure in Spoken Sinhalese,' pp. 109—10.
4. For ə as an element of structure, see my 'Syllable Structure in Spoken Sinhalese,' p. 106.
5. For italicization of *CC*, see my 'Verbal Categories in Spoken Sinhalese,' p.
6. For [h] as a prosodic feature, see my 'Syllable Structure in Spoken Sinhalese,' pp. 115—16.

Where n- is stated as a prosody of the ending, nasality is observable throughout or for the greater part. Where ñ- is stated as a prosody of the ending, all articulations are non-nasal. Thus, the endings in kapə*nəva*, kapa*nnan*, kapə*pan* and k æpu*not* are n- prosodic, and the endings in kapə*piyə* and k æpu*vaave*, are ñ- prosodic.

It is only for the endings which involve simple consonantal articulations, that is —CV, —VQ, —CVQ and —CVə, that the two-term prosodic system of n- and ñ- has to be stated side by side. For the endings which involve vocalic and semi-vocalic articulations only, that is —V and —Və, or for those which involve long consonantal articulations, that is —CV*CC*ə and —V*CC*ə, it is not necessary to make this two-term distinction.

The eight ending structures given above may now be stated in tabulated form with reference to the n- and ñ- prosodies.

Endings for which the ñ- ñ- distinction is stated

			n- endings	ñ- endings
Endings involving Simple consonantal articulations	Disyllabic	*a*)	—^{n}CVə	—^{ñ}CVə
	Monosyllabic		—^{n}CV	—^{ñ}CV
			—^{n}CVQ	—^{ñ}CVQ
		b)	—^{nn}CVQ	
			—^{nn}CVQ	
		c)	—^{n}VQ	—^{ñ}VQ

Endings for which the n- ñ- distinction is not stated.

Endings involving long consonantal articulations	Disyllabic	—V*CC*ə —CV*CC*ə
Endings involving vocalic and semi-vocalic articulations only	Disyllabic	—Və
	Monosyllabic	—V

In stating the phonetic criteria for making this classification, I shall first discuss the endings for which the n- ñ- distinction is stated side by side, and those for which that distinction is not stated afterwards.

Endings for which the n- ñ- distinction is stated :

In section (*a*) of the Table, the n- ñ- distinction is stated for —CVə, —CV and —CVQ all of which are C- initial. Thus

—^{n}CVə ≠ —^{ñ}CVə.
—^{n}CV ≠ —^{ñ}CV
—^{n}CVQ ≠ —^{ñ}CVQ.

Where the endings are stated as n- prosodic, that is, ^{n}CVə, ^{n}CV and ^{n}CVQ, all articulations concerned are characterized by nasality. Where the endings are stated as ñ- prosodic, that is, ^{ñ}CVə, ^{ñ}CV and ^{ñ}CVQ, all articulations concerned are characterized by absence of nasality.

These phonetic criteria will now be discussed in greater detail with reference to some kymograms made for some one-word verbal sentences. The generalized ending structures of the verbal forms chosen are CVə. These kymograms are typical of my pronunciation of the respective sentences.

The following kymograms are cited :

1. adi*nəva* —^{n}CVə
2. æd*unaave* —^{n}CVə
3. æd*əpiyə* —^{ñ}CVə
4. æd*iccaave* —^{ñ}CVə

These kymograms provide simultaneous nose (N) and mouth (M) tracings.

It will be seen that all kymograms show some disturbance in the N tracing at some place or other. But in 1 and 2 these disturbances begin to increase in amplitude at the place marked ×, and continue as prominent wave-forms till the end of the tracing. This does not happen in 3 and 4.

The prominent wave-forms to the right of × in the N tracings of 1 and 2 correlate with the stating of n- prosody for the endings in *adinəva* and *ædunaave*, and correspond to the lowering of the soft palate and regular passage of air through the nasal cavity during all articulations in the ending. The absence of prominent wave-forms in the N tracings of 3 and 4 correlates with the stating of ñ- prosody for the endings in *ædəpiyə* and *ædiccaave*, and correspond to the raising of the soft palate and absence of regular passage of air through the nasal cavity in the articulations concerned.

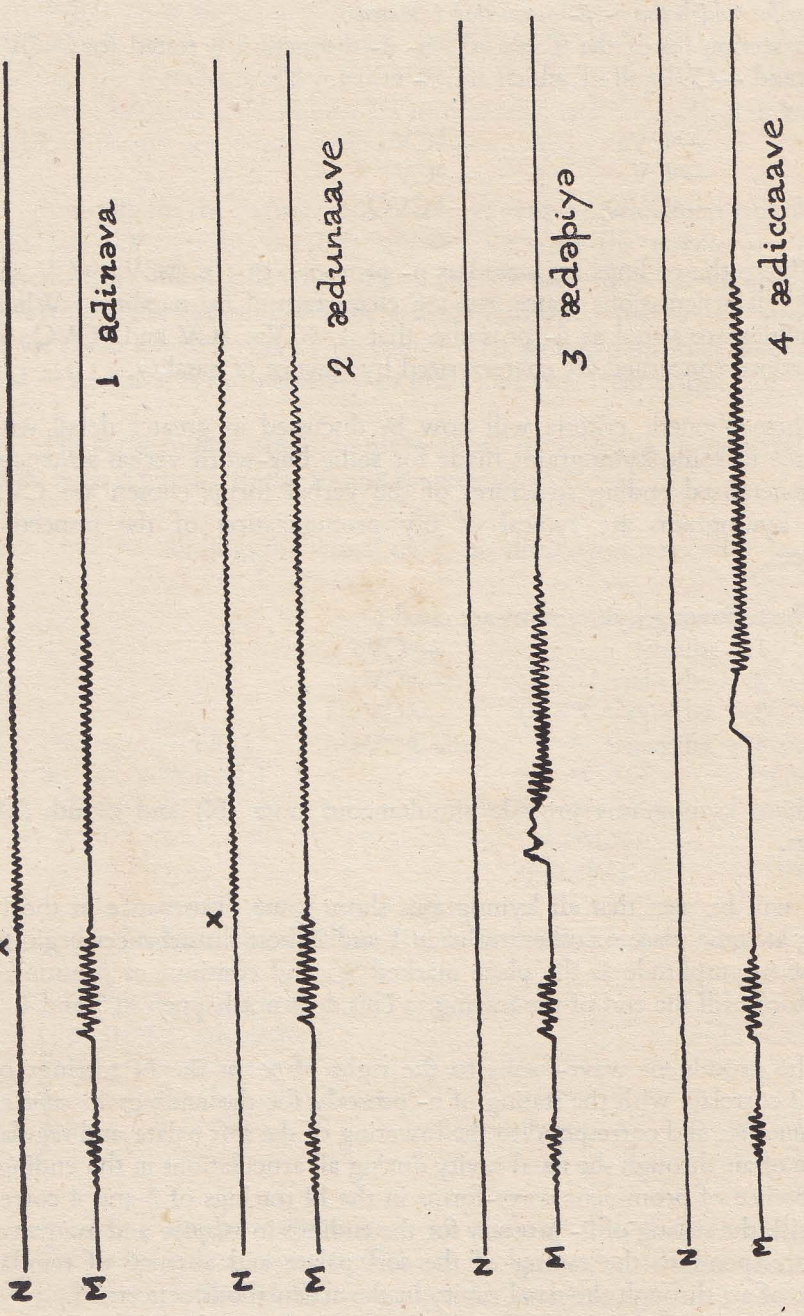


Figure 1

Going over to section (*b*) of the Table, it will be seen that the generalized structure of the two endings concerned is —CVQ. One is stated as $^{\tilde{n}n}$- and the other as $^{n\tilde{n}}$-. Both fall within n- prosody. The implication of ñn- is that the initial articulation of the ending is non-nasal, but the other articulations are nasal. The implication of nñ- is that the final articulation is non-nasal, but the other articulations are nasal. An example of a word with a -$^{\tilde{n}n}$ CVQ ending structure is *ædepaŋ*. *ædunot* is an example of a word with a— $^{n\tilde{n}}$CVQ ending structure. —$^{\tilde{n}n}$CVQ and —$^{n\tilde{n}}$CVQ endings may be contrasted with the —^{n}CVQ and —$^{\tilde{n}}$CVQ endings given in section (*a*) of the Table, and discussed above.

Altogether, then, there are three types of nasalized endings whose generized structure is —CVQ, viz.,

(i) —^{n}CVQ
(ii) —$^{\tilde{n}n}$CVQ
(iii) —$^{n\tilde{n}}$CVQ.

I propose to discuss the phonetic criteria distinguishing between these three types of n- endings with reference to some kymograms. I shall first state the criteria distinguishing —$^{\tilde{n}n}$CVQ endings from —^{n}CVQ endings, and then criteria distinguishing —$^{n\tilde{n}}$CVQ endings from —^{n}CVQ endings.

Phonetic criteria for distinguishing between —$^{\tilde{n}n}$CVQ and —^{n}CVQ endings :

The following kymograms are cited in discussing these :

1. adi*nnaŋ* —^{n}CVQ.
2. ædə*paŋ* —$^{\tilde{n}n}$CVQ.

See Figure 2.
These kymograms provide simultaneous N and M tracings.

As a convenient point of reference common to both kymograms I have chosen the first prominent wave-form of the last set of wave-forms in the M tracings. From this point a vertical line × is drawn to the N tracing. It will be seen that in both kymograms there is a period of absence of prominent wave-forms in the M tracings immediately to the left of ×. This corresponds to the last intermediate articulation involving oral closure in the pronunciation of these sentences. This last intermediate oral closure is alveolar for *adinnaŋ* (1), and bilabial for *ædəpaŋ* (2). These articulations are the initial articulations of the endings in these words.[7]

7. The long alveolar nasal in *adinnaŋ* corresponds to the prosody of gemination as a junction feature which will not be discussed in this paper.

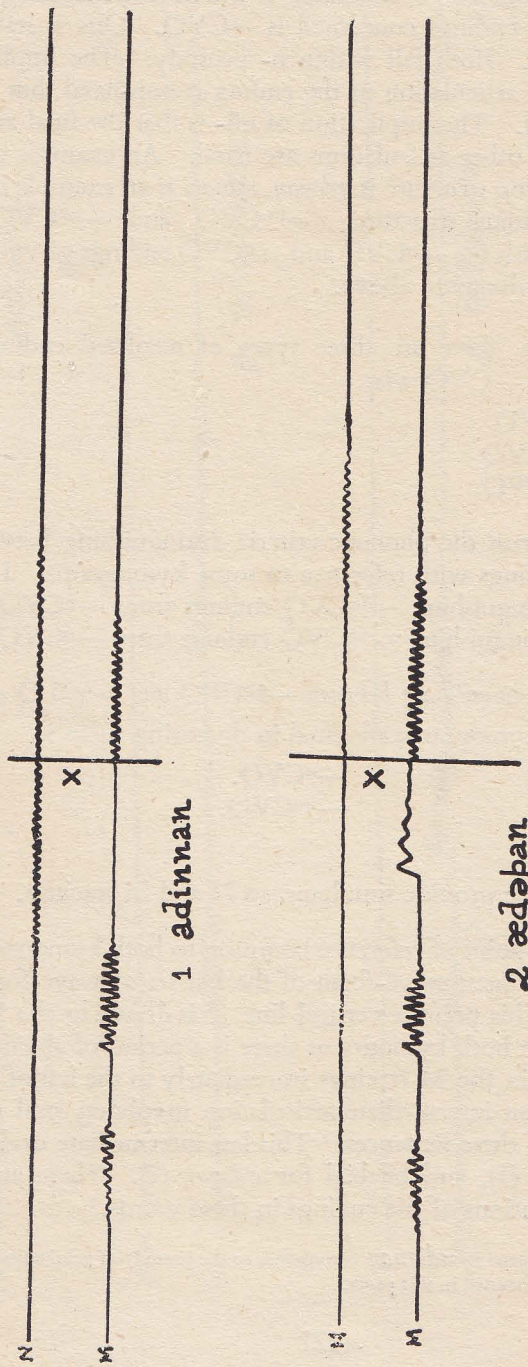


Figure 2

In kymogram 1 there are prominent wave-forms in the N tracing immediately to the left of ×, parallel with the period of absence of prominent wave-forms in the M tracing. The wave-forms in the N tracing continue till the end of the tracing. This correlates with the stating of the ending of *adinnaŋ* as —^{n}CVQ, and corresponds to nasality characterizing all articulations in the ending.

In kymogram 2 there are no prominent wave-forms in the N tracing immediately to the left of × parallel with the period of absence of prominent wave-forms in the M tracing. But there are prominent wave-forms in the N tracing to the right of × till the end of the tracing. This correlates with the stating of the ending of *ædəpaŋ* as —$^{n̄n}$CVQ, and corresponds to the beginning of nasality along with the release of the initial plosive articulation of the ending and not before.

Phonetic criteria for distinguishing between —$^{nn̄}$*CVQ and* —^{n}*CVQ endings :*

The following kymograms are cited in discussing these :

1. ad*innaŋ* —^{n}CVQ.
2. æd*unot* —$^{nn̄}$CVQ.

See Figure 3.

These kymograms provide simultaneous N and M tracings.

As a convenient point of reference common to both kymograms I have chosen the last prominent wave-form in the M tracing. From this point a vertical line × is drawn to the N tracing.

It will be seen that in kymogram 1 there are prominent wave-forms in the N tracing to the right of × as well as to the left of ×. In kymogram 2 there are prominent wave-forms in the N tracing to the left of ×, but not to the right of ×.

The prominent wave-forms both to the left and right of × in the N tracing of kymogram 1 correlate with the stating of the ending of *adinnaŋ* as —^{n}CVQ, and correspond to the presence of nasality in the articulations concerned. The presence of prominent wave-forms to the left of × in the N tracing, but not to the right of × in kymogram 2 correlates with the stating of the ending of *ædunot* as —$^{nn̄}$CVQ, and corresponds to the presence of nasality in the ending articulations preceding the final dental stop only.

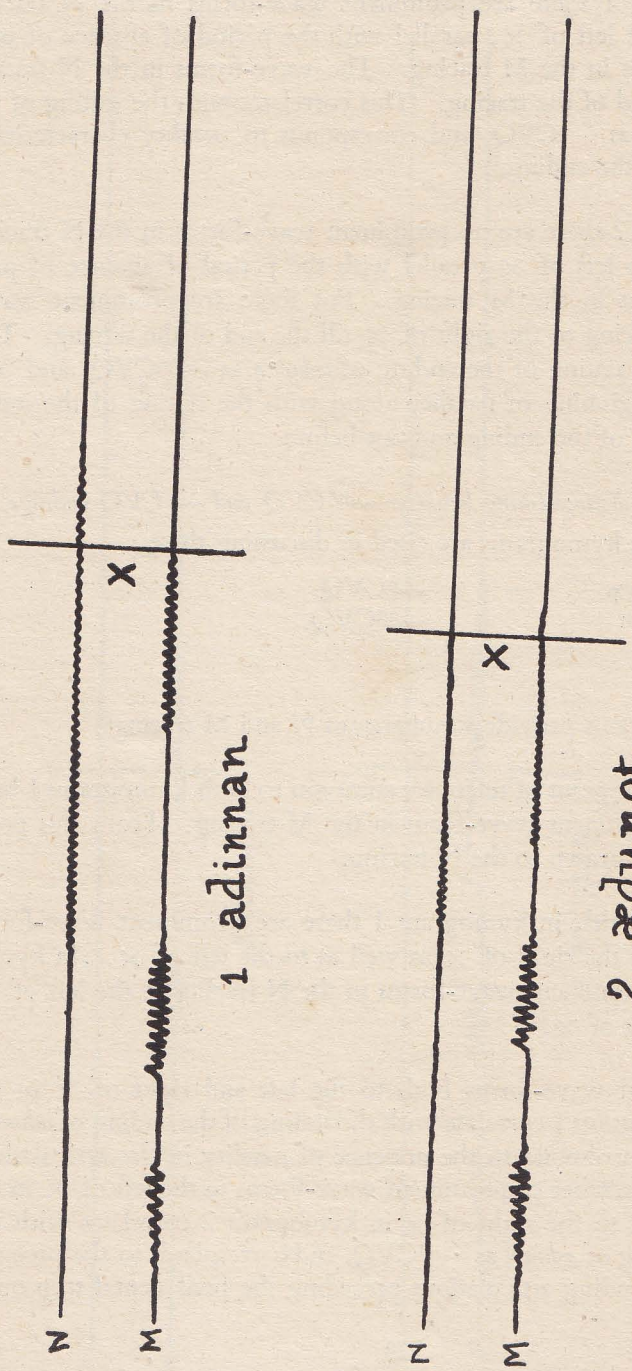


Figure 3

Going over to section (*c*) of the Table now, we are also going over to V- initial endings from the C-initial endings so far discussed.

Where the ending is stated as —^{n}VQ, both the vocalic and consonantal articulations of the ending are characterized by nasality. Where the ending is stated as —$^{\tilde{n}}$VQ, the final consonantal articulation of the ending is non-nasal, but the vocalic articulation concerned may or may not be characterized by nasality, depending upon the stem-final features : where the stem-final consonant is nasal, the vocalic articulation in question is characterized by nasality ; if not, it is non-nasal.

The following kymogram is cited to illustrate nasality characterizing both vocalic and consonantal articulations of the endings stated as —^{n}VQ :

1. ædi*yaŋ* —^{n}VQ.

See Figure 4.

This kymogram provides simultaneous N and M tracings.

As a convenient point of reference in this kymogram I have chosen the last prominent wave-form in the M tracing. From this point a vertical line × is drawn to the N tracing. There are prominent wave-forms in the N tracing both to the left and to the right of ×. The wave-forms in the N tracing to the right of × parallel with the absence of prominent wave-forms to the right of × in the M tracing correspond to nasality in the final consonantal articulation involving oral closure. The wave-forms in the N tracing correspond to nasality characterizing the vocalic articulation concerned. These characteristics in this kymogram correlate with the stating of the ending of *ædiyaŋ* as —^{n}VQ, with the implication that both the vocalic and the consonantal articulations are characterized by nasality. It is to be noted that nasality starts with the release of the voiced dental stop, [d].

The following kymograms are cited to illustrate the absence of nasality characterizing the final consonantal articulation of the endings stated as —$^{\tilde{n}}$VQ. They will also be employed to illustrate that the vocalic articulation of the ending is characterized by nasality where the stem-final —C is a nasal unit, and non-nasal everywhere else.

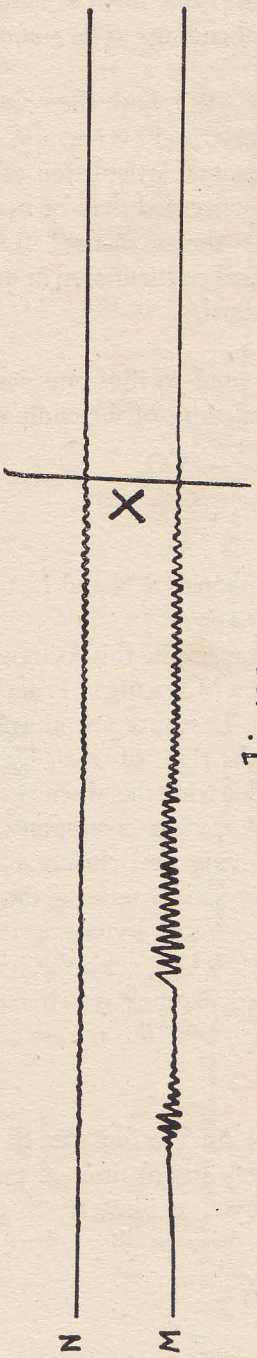


Figure 4

Sediyan

1. ebu*vot* —$^{\tilde{n}}$VQ (stem-final—C is a plosive unit).
2. æn*uvot* —$^{\tilde{n}}$VQ (stem-final—C is a nasal unit).

See Figure 5.

These kymograms provide simultaneous N and M tracings.

As a convenient point of reference common to both kymograms I have chosen the last prominent wave-form in the M tracing. From this point a vertical line × is drawn to the N tracing. In both kymograms there are no prominent wave-forms to the right of × in the N tracings.

The wave-forms to the left of × in the M tracing of these kymograms correspond to the vocalic and semi-vocalic articulations preceding the final stop articulation of the ending. The sections in these kymograms corresponding to the final stop articulations fall to the right of × which cannot be delimited any further as the stop articulation is not released providing some change in the contour. The absence of prominent wave-forms to the right of × in the N tracing corresponds to the absence of nasality during the final stop articulation.

It will be seen that in the kymogram of *ebuvot*, the stem-final —C of which word is not a nasal unit, there are no prominent wave-forms to the left of × in the N tracing. In the kymogram of *ænuvot*, however, the stem-final —C of which is a nasal unit, there are prominent wave-forms to the left of × in the N tracing. These characteristics in the kymograms correspond to the absence of nasality in the vocalic articulation of the ending in *ebuvot*, and the presence of nasality in the vocalic articulation of the ending in *ænuvot*.

These two words are good illustrations of the point that, in making phonetic observations, the whole utterance must be taken into account. The presence or absence of nasality in the vocalic articulation of the ending is dependent on the structure of the whole word.

Having stated the phonetic implications of n- and ñ- prosodies characterizing —CVə, —CV, —CVQ and —VQ endings, we may now go over to those endings for which n- and ñ- distinction is not stated. They are —V*CC*ə, —Və, and V. Where there is any nasalization in these endings they always have a nasal unit as the stem-final—C. Such nasalizations may be referred to as *sympathetic nasalization*.

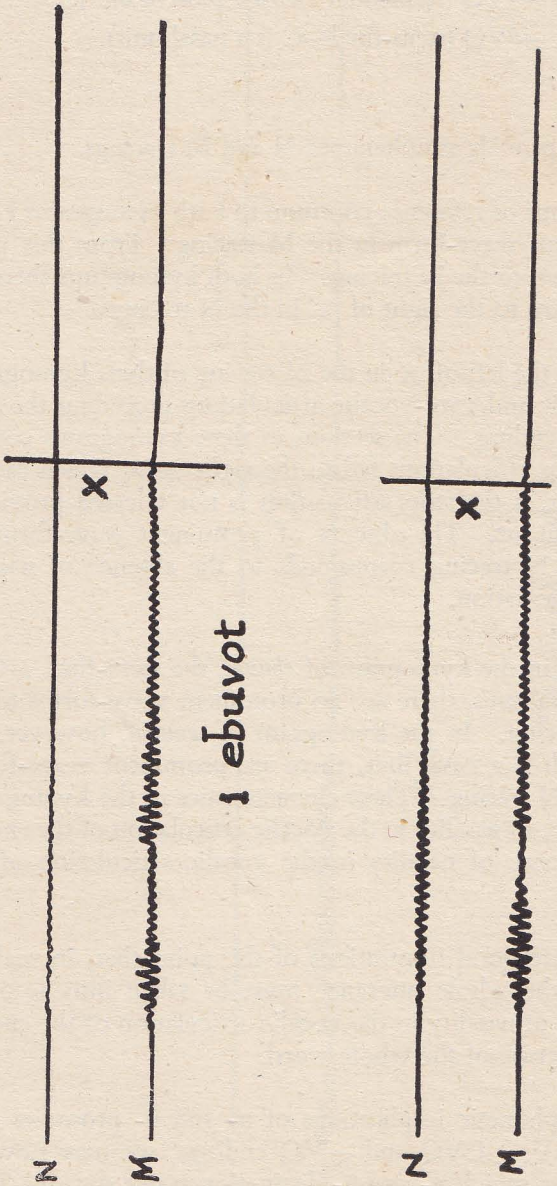


Figure 5

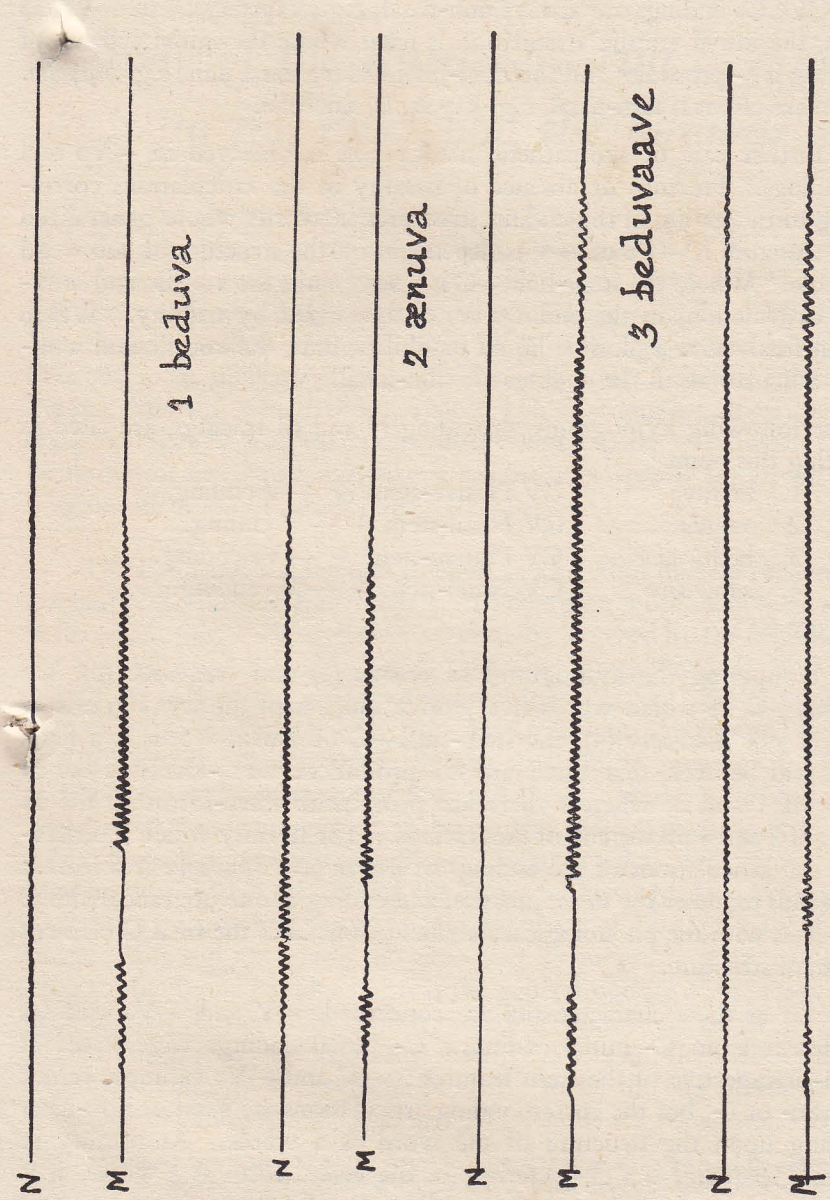


Figure 6

—CVCCə endings are always non-nasal, e.g., kapəp*alla*. In —VCCə endings, the initial vocalic articulation is nasal where the initial syllable of the ending is *h*- prosodic[8] and the stem-final—C is a nasal unit, e.g. æni*yalla*. Everywhere else it is non-nasal, e.g. kapə*halla*, ænə*halla*.

A further case of sympathetic nasalization is observed in —Və and —V endings. Presence or absence of nasality in the articulations corresponding to the stating of the ending structures in words whose generalized ending structure is —Və or —V is dependent on the structure of the word as a whole. Where the stem-final—C is a nasal unit, the vocalic and semi-vocalic articulations in the endings are characterized by nasality. Where the stem-final—C is a plosive, liquid or sibilant unit, the vocalic and semi-vocalic articulations in the endings are non-nasal.

The following kymograms, providing N and M tracings, are cited in illustrating this point :

1.	beduv*a*	CV Plosive-stem + — V ending.
2.	ænuv*a*	CV Nasal-stem + — V ending.
3.	bedu*vaave*	CV Plosive-stem + — Və ending.
4.	ænu*vaave*	CV Nasal-stem + — Və ending.

See Figure 6.

In comparing the kymograms of *beduva* (1) and *beduvaave* (3), the stem-final—C of which words is a plosive unit, with the kymograms of *ænuva* (2) and *ænuvaave* (4), the stem-final—C of which words is a nasal unit, it will be seen that there are no prominent wave-forms in the N tracings of 1 and 3, whereas there are prominent wave-forms in the N tracings of 2 and 4 till the end of the tracings. The nasality which is observable in the articulations of the endings of *ænuva* and *ænuvaave* is a feature which binds together the stem, junction and ending as one utterance whole. It correlates with the phonological statement of nasal as the final C element of the stem structure.

So far as these characteristics are concerned, —V and —Və endings are different from C- initial endings. C- initial endings were stated as n- or ñ- irrespective of the stem features ; —V and —Və endings are not stated as n- or ñ-, but the corresponding articulations are nasal or non-nasal depending upon the structure of the word as a whole. As nasality in *ænuva* and *ænuvaave* is a characteristic of the verbal form as a whole, it is not necessary to set up a two-term prosodic system for the ending to account for the observable phonetic differences.

M. W. S. de SILVA

8. See my ' Syllable Structure in Spoken Sinhalese,' pp. 107—8.

A Study of the Karttikeya-cult as reflected in the Epics and the Puranas

IT may be presumed that the cult of Kārttikeya or the Kaumāra-cult had once existed as an independent religious cult.[1] Though there is no recorded evidence about it available in the Epics and the Purāṇas, Kārttikeya is prominently mentioned in the *Rāmāyaṇa* and the *Mahābhārata*,[2] but, there, as well as in the Purāṇas, he is often represented as the son of Śiva and as an ancillary deity in the Śiva-religion. Śaivism, especially the Purāṇic Śaivism, which is best reflected in the temple-cult of the South, considers Skanda-worship as one of its integral parts.[3] However, as will be shown in the sequel, Kārttikeya has his own special importance in the religious ideology of South India.

The Epics and the Purāṇas present elaborate but diverse versions of the account of the birth of Kārttikeya. The common motif in all these accounts is, however, this: The gods were repeatedly harassed by the demons, under the leadership of Tāraka. They, therefore, complained to Brahmā and sought his help in the matter of overcoming Tāraka. Brahmā told them that it was the son to be born to Śiva and Umā, who alone would be capable of destroying the demon-chief. It was, accordingly, necessary for the gods to bring about the marriage of Śiva and Umā. Madana, the god of love, urged by the gods, undertook to bring Śiva, who was engaged in *samādhi* under the spell of love and thereby get him attracted towards Umā. Enraged at being disturbed in his *samādhi*, the great god burnt Madana to ashes. But the latter's mission was successful and the union of Śiva and Umā did materialise. The son for whom the gods were so anxiously waiting was at last born to the divine couple. This is the general outline of the legend of the birth of Kārttikeya. This episode, which frequently occurs in the Purāṇas, seems to suggest in clear terms that Kārttikeya was not born from the womb of Umā. And yet everywhere he claims to be the son of Umā. Agni, who received the *retas* of Śiva, carried it about for sometime. But soon

1. Sukumar Sen suggests (*Indo Iranica*, 4, p. 27) that Kumāra mentioned in *RV.* X. 135, is the prototype of post-Vedic Kumāra and a counterpart of Iranian Sraoṣa.

2. In this respect, he is to be contrasted with Gaṇeśa, who figures but rarely in the Epics.

3. There is hardly any Śaiva temple of importance in South India, which has not assigned, in its system of worship, a significant place to Kārttikeya. This applies to Gaṇeśa as well.

being unable to bear that lustrous burden, he deposited it in the streams of the Ganges at a spot overgrown with *śara* reeds. At last the child was born. The six Kṛttikās appeared on the scene and breast-fed the baby. They nurtured it with great care. In course of time Śiva, accompanied by Umā, came to that spot, embraced the child, and blessed it.[4] In this connection, the Purāṇas also tell us how Umā was fully engaged in severe *tapas*, how, as a result of this, she could not suckle her own child, Skanda, and how, on account of this fact, the goddess came to be known as *apītakuca*.[5]

According to another version, Kārttikeya was the son not of Śiva and Umā, but of Agni and Svāhā.[6] However, in this context, Agni is identified with Śiva, and Svāhā with Umā.[7] Yet another version tells quite a different story about the birth of Kārttikeya. It speaks of six children, born separately, having been ultimately joined into one.

A reference may be made at this stage to the account in the *Matsya-Purāṇa*, which compares the birth of Kārttikeya with the production of fire from the *araṇis*.[8] An allegorical interpretation of the birth of Kārttikeya is given in another Purāṇa. Viṣṇu who is identified with Śiva is Puruṣa. Umā, who is no other than Śrī, is Avyakta or Prakṛti. From their union was produced Ahaṁkāra, and this was Kārttikeya. A strong need was felt at the time for the birth of such a god. For, a leader had to be appointed to command the army of gods.[9] The Purāṇas also mention that Brahmā and Viṣṇu were born respectively as Heraṁba and Ṣaḍānana,[10] thereby suggesting the identity of Kārttikeya with Viṣṇu.

The Epics and the Purāṇas present Kārttikeya as having six heads and twelve arms.[11] At one place, he is described to have divided himself into six forms, with a view to satisfying the maternal instinct of the six Kṛttikās, each one of whom herself wanted to bring up the child.[12] Elsewhere the god is said to have assumed four different forms to serve four different purposes. As Kumāra, he brought great joy to Śiva. As Viśākha he was the sole delight of Umā. To Kuṭilā (Gaṅgā) and Agni, who too were, in

4. *Skanda P.* I. 2. 29.
5. *Skanda P.* I. 3. 2. 21.
6. *MBh.* III. 220.
7. Ibid. III. 217. 5.
8. *Matsya P.* 154. 52-53.
9. *Varāha P.* 25. 1-43.
10. *Skanda P.* I. 3. 2. 17.
11. *MBh.* III. 214. 1-21.
12. *Brahmāṇḍa P.* III. 10. 40-51.

their own way, responsible for his birth, he was Śākha and Naigameya respectively.[13] The picture of the god usually presented in the Purāṇas is that of the child, or sometimes of the youth. Skanda, even while he was only a child, could destroy the demon Tāraka. Based on this Purāṇic ideology, Skanda is often worshipped as a child, and also as a hero endowed with youth and exquisite beauty. For the South Indians, he is Murukan, an embodiment of beauty. It is in this sense he is often cited as a standard of comparison.[14]

The Epics and the Purāṇas have attributed to Kārttikeya the function of leading the army of the gods.[15] As has been mentioned earlier, the gods had no suitable commander to lead their army against the demons. Therefore, on the advice of Brahmā, they brought about the birth of Kārttikeya. The great pomp and pageantry which accompanied the installation of this god as the leader of the army are described in detail in the *Mahābhārata*[16] and Purāṇas. The *Mahābhārata* recounts how Indra offered to renounce his sovereignty and expressed his desire to instal Skanda in his place as the king of gods, Skanda declined the offer, but readily consented to take upon himself the leadership of the army.[17] It is interesting to note that both the sons of Śiva have been assigned more or less similar functions, as leaders—one became *gaṇapati*, the leader of the *gaṇas*[18] and the other became *deva-senāpati*, the commander of the gods' army.[19]

The various Purāṇic accounts about the god have contributed to the shaping of the present popular concept of the god, Skanda. Śakti is the special weapon of this god. It was by means of this weapon that he vanquished the demon Tāraka.[20] It was, again, by means of Śakti that he split into two the mountain Krauñca.[21] Mayūra is often mentioned as the vehicle of Skanda.[22] *Kukkuṭa* also is associated with him, sometimes as his vehicle.[23] In later mythology it was displayed as the crest on his

13. *Vāmana P.* 57. 1-59.
14. *Matsya P.* 158. 39. 41.
15. *Vāmana P.* 21. 1-22; *Ibid.* 57. 50-102; *Skanda P.* I. 2. 30.
16. *MBh.* III. 218. 25.
17. Ibid. III. 218. 21.
18. *Matsya P.* 154. 544-47; *Kūrma P.* II. 43. 42.
19. *Brahmāṇḍa P.* III. 10. 40-51.
20. *Vāyu P.* I. 54. 24; *Matsya P.* 160. 1-25.
21. *Vāmana P.* 58. 1-21.
22. *Vāyu P.* I. 54. 19.
23. *Varāha P.* 24. 1-45; as a toy *Matsya P.* 159. 4-11.

banner. The goat also is connected with the god.[24] All these are mentioned in the Purāṇas as having been presented to Skanda when the gods celebrated his birth.

The various names by which Skanda is celebrated reflect the various features of his character and personality as depicted in the Purāṇas. The *retas* of Śiva borne by Agni was deposited in a pond in which *śara* grass grew in abundance. Kārttikeya was thus born in the *śaravaṇa*, and he accordingly came to be known as Śaravanabhava or Śarajanmā.[25] He was brought up by the six Kṛttikās, and therefore, received the name of Kārttikeya. He was also called Ṣāṇmātura, because he was nurtured by the six Kṛttikās as mothers. Kṛttikāputra is another name of Kārttikeya.[26] When Agni, unable to bear the *retas* of Śiva, deposited it in the river Gaṇgā, the river retained it and the child was ultimately born out of it. This accounts for Skanda's other name, namely, Gāṅgeya.[27] Because the six babies, originally born separately, were welded together into one (*skanna*), the god received his name Skanda.[28] The god is often described as having six faces, and is therefore, known as Ṣaṇmukha,[29] or Ṣaḍānana. As a continuous source of delight to Pārvatī, he is Pārvatīnandana.[30] His names Agnibhūḥ, Pāvakeya and Pāvaki point to the part played by Agni in the matter of the birth of this god.[31] Viśākha is another name which occurs in the Purāṇa.[32] He is Śikhivāhana because he rides on a peacock.[33] As the commander of the armies of the gods he is Mahāsena and Senānī.[34] The ascetic had his own way of propitiating the god by enshrining him in his heart. Presumably on account of this fact, the god received the name *guha*, which word, in philosophical terminology means the heart.[35]

We come across two diametrically opposite pictures of Kārttikeya in the Purāṇas. One presents him as a bachelor god,[36] while the other presents him as a young hero married to two wives. Both the traditions are pre-

24. *Brahmāṇḍa P.* III. 10. 40-51.
25. *Matsya P.* 6. 27.
26. *Ibid.* 6. 27.
27. *MBh.* I. 127. 13.
28. *Brahmāṇḍa P.* III. 10. 40-51; *Rāmāyaṇa* I. 37. 24-32.
29. *Varāha P.* 25. 44-49; *Vāmana P.* 57. 46.
30. *Vāyu P.* I. 54. 20. 21.
31. *MBh.* I. 127. 13.
32. *Matsya P.* 6. 26; *Ibid* 159. 1-3; According to *Varāha P.* 25. 1-43, Śākha and Viśākha are his attendants.
33. *Vāyu P.* I. 154. 24.
34. *Varāha P.* 25. 1-17; *Vāyu P.* I. 54. 20.
35. *Vāmana P.* 58. 1-121.
36. *Brahma P.* II. 11.

valent in the country. In Mahārāṣṭra, for instance, Kārttikeya is regarded as a confirmed bachelor. Even the mere appearance of women in his temples is strictly prohibited.[37] As against this in the temples of the South, he is shown with two wives, Vallī and Devasenā. There are, however, some temples in the South where the god is also depicted as a *saṁnyāsin* The *Śiva-Purāṇa* mentions Gajavallī as the wife of Skanda.[38] The Purāṇas and also the Great Epic describe in detail Skanda's marriage with Devasenā. Devasenā obviously represents a figurative personification of the army of the gods. Indra as the leader of the gods, is said to have given her in marriage to Kārttikeya.[39] The characterisation of the god as a bachelor also has a Purāṇic background. The *Brahma-Purāṇa*, for instance, narrates the following legend: Kumāra was deeply addicted to sensual pleasures. He often enjoyed the company of divine damsels. Once, however, he suddenly discovered in these damsels a kind of resemblance of his mother. This episode fundamentally changed his attitude towards women in general.[40]

About Skanda, *Bhandarkar* has made the following observation: "Another god whose worship was extensively practised in ancient times, but is now rare, is Skanda or Kārttikeya."[41] Obviously, so far as South India is concerned, this observation is quite unwarranted. As a matter of fact, it may be pointed out among the Hindu gods, Kārttikeya perhaps claims the largest number of devotees in the South. The ancient literary works in Tamil present to us quite a wealth of information about this god. In Tamil Kārttikeya is celebrated as Murukan a name which denotes a youth with exquisite beauty. Being an embodiment of beauty, Murukan is always regarded as a standard of comparison in that respect. This appellation has its equivalent in the Sanskrit name Kumāra. The god is also known, for this reason, as Kumārasvāmin. Another name prominently ascribed to this god in the South is Velan. This is a very popular name, and implies that he is a wielder of a lance. Almost the same is the implication of the Sanskrit name Śaktidhara. He is Seyon, which means one of red complexion. He is the lord of *kuruñci* or mountainous regions. In this connection, it is significant that most of the temples exclusively assigned to this god are situated on hill tops. Curiously enough, at times, Tamil literary works speak of young girls as being possessed by Murukan. Under such

37. Such is the rule, for instance, at the Kārttikeya-temple on the Parvati hill near Poona.
38. *Śiva P. Kailāsa-saṁhitā*, 7. 40 and 64.
39. *Matsya P.* 4. 11.
40. *Brahma P.* II. 11.
41. *Bhandarkar*, Vaiṣṇavism, Śaivism and Minor Religious Systems, p. 150.

circumstances, the god was to be propitiated by magic spells. The same idea seems to be reflected in the reference to an evil spirit as *skandagraha*.

The Āgamas and the *Kumāratantra* have, in conformity with the Purāṇic portrayal of Skanda, prescribed the construction of the image of Kārttikeya in various poses, for the purpose of installation and worship, in temples. Of these the one portraying the god with six faces and twelve arms may be said to be the most significant. Provision is also made for images with six heads and two arms, another with one head and eight arms, and still another with one head and two arms.

SANMUKHA

The Ṣaṇmukha image, as the name implies, shows the god with six faces and twelve arms. The faces have two eyes each. The splendour of the moon and thirty-two auspicious marks are displayed in the image. Both the ankles are adorned with anklets. The peacock is displayed in the background. Ten out of the twelve arms are depicted as wielding respectively *śakti*, *śara*, *khaḍga*, *dhvaja*, *gadā*, *cāpa*, *kuliśa*, *kheṭaka*, *śūla*, and *paṅkaja*. The other two hands are in the *abhaya* and the *varada* poses. The Saṇmukha image is also shown as mounted on the peacock, whereby the left leg drops down, and the right one is folded up to the knee and laid on the vehicle on which he is mounted. The image portrayed on the *padmapīṭha* is in a standing pose and both the feet are placed evenly.[42] If six arms are featured, the weapons held in the four hands are respectively *nāga*, *vajra*, *śakti* and *arrow;* the other two hands are in the *abhaya* and the *varada* poses.[43] The image with six faces and two arms is depicted as wielding *vajra* and *śakti*. On the left is represented Devasenā and on the right Vallī, both of whom are featured as carrying lotuses in their left and right hands respectively. The other two hands of these two consorts of the god are shown as hanging down.[44]

A mention may be made at this stage of a peculiar portrayal of the god, which is fairly common in the South but which cannot be directly related to the Purāṇic tradition. According to it, Skanda is presented as an ascetic, unattached to worldly life. A shaven head, a rosary, a staff, and coloured robes befitting a *saṁnyāsin* are the salient features of this image. Skanda is

42. *Kāraṇa*. II. 93. 2-5.
43. *Ibid*. verse 6.
44. *Ibid*. verses 9-12.

also featured in sculpture as *gurumūrti*, where he is shown as imparting higher knowledge to his father Śiva, who as a *śiṣya*, sits at his feet with all the humility befitting a pupil.[45] Another representation peculiar to the South is based on the account which is given in the Tamil rendering of the *Skanda-Purāṇa*, but which is not traceable in the original. In this, Skanda is portrayed as chastising Brahmā, the creator, because the latter had failed to explain to him the meaning and significance of the *praṇava*. Mention should also be made in this connection of the Somāskanda—form of Śiva, already described.[46] Here Skanda is depicted as a child in the company of Śiva and Umā.

The rituals performed in the worship of Kumāra are for the most part similar to those performed in the worship of Śiva. The difference lies only in the substitution of the appropriate subordinate deities and weapons. Nandin is thus replaced by *mayūra;* similarly the *triśūla* of Śiva is substituted by *śakti* or the lance. That the worship of Skanda gained very great currency in the South—certainly greater currency than that of any other ancillary god of Śaivism—is indicated by the fact that only in connection with the worship of Skanda was an independent text required to be produced with a view to instructing the worshippers in the details of the various rituals. This work, though not classed as an Āgama, is given wide recognition as *tantra*. The work, accordingly, came to be known as *Kumāratantra*. The *Kumāratantra*, however, cannot be regarded as being comparable to the Śākta—tantras, for the absence of the elements of *vāma* form of worship is conspicuous in it. The work consists of fifty-one chapters and deals with such topics as *nityapūjāvidhi*, *naivedyavidhi*, *agnikāryavidhi*, *nityotsavavidhi*, *kuṇḍalakṣaṇa*, *dīkṣā*, *snapana*, *jīrṇodhāraṇa*, *vāstuśāntihoma*, *diśāhoma*, *mūrti-homa*, *pratimālakṣaṇa*, and *rathapratiṣṭhā*. Apart from what is laid down in this *tantra*, each temple of Skanda, in the South has evolved a tradition of its own. The temple at Palani may be cited as an instance in point. The god enshrined in that temple, is presented as an ascetic, though neither the Purāṇas nor the *tantra* lend support to this. Reference may also be made to another tradition, which prevails in certain parts of South India and Ceylon. One finds the worship of śakti prevailing in some temples. The śakti, the weapon of Skanda shaped like a lance, is made of bronze or silver or gold, and is installed in the place of the image of the god. The rituals relating to the installation and worship of śakti and the treatment which this object of veneration receives, clearly assume the complete identification of it with Skanda.

K. KAILASANATHA KURUKKAL

45. *Kantapurāṇam*, (Tamil rendering in verse), *Ayanaicciraipuripaṭalam*, pp. 500-508.
46. *Ibid.* pp. 508-522.

The Functional Zones of the Colombo City

THE Colombo City covers an area of about 8,711 acres comprising the built-up areas (5,700 acres), lake (about 213 acres) public parks (about 200 acres), marshy and open land (about 1,000 acres) towards its northern and eastern margins which are in the flood plain of the Kelani Ganga. Most of the built-up area is contained within ten and thirty feet above mean sea level and this is widespread, stretching north-south than east-west, but prominently protruding south and south-eastwards. (Fig. 1; and Table 1).

TABLE I

Surfaces and their approximate area in acres

Below	4 feet	1,000
	4-10 feet	1,775
	10-30 feet	5,350
	30-50 feet	425
above	50 feet	150

Commerce, residence, industry, transport, institutions, agriculture and open spaces all play their own role in the differentiation of functional zones in the city. The following zones (Fig. 2). were delineated and established[1] after detailed field investigations, careful inspection on the ground in conjunction with analysis of 1: 3,168 plans of the Town Survey series published by the Ordinance Survey, Ceylon.

I—Commercial Zones

1. The Port Premises.
2. The Fort-Multifunctional Core.
3. The Pettah-Wholesale and Retail Centre.
4. The Retail Shopping Centres at Junctions and the Business-Ribbons.

1. The suggestions and techniques of A. J. Hunt were applied with necessary modifications.

A. J. Hunt, The Techniques and Value of Urban Land-Use Survey. *Indian Geographical Society Silver Jubilee Souvenir*, 1952, p. 106-113.

II—Residential Zones

5. Inner-Mixed Zone.
6. Outer Residential Zone.
   A. First class houses.
   B. The cottages.
   C. Storeyed-flats.
   D. Sub-standard houses, shanties or hovels.
   E. Professional areas.
7. Sub-urban Housing Areas.

III—Industrial Zones

8. Dangerous and Offensive Trades Areas.
9. Rubber Smoking Area.
10. Coconut Storage Area.
11. Special Trades Area.
12. Industrial Enclaves.

IV—Transport Zones

13. Railway Yards and Stations.
14. Central Bus-Stand and Secondary Stands.

V—Open Spaces

15. Public Parks and Playgrounds and Semi-public Open Spaces.
16. Open Land and Marshes.
17. The Lake Surface.

I—Commercial Zones

1. *The Port Premises and the Mutwal Fishery Harbour.*

The Port Premises occupy the crescentic shape shoreline extending from Custom's House Point to Mutwal Point. From Mutwal Point, a protection mole projects north-west to the sea and another mole in the same direction affords shelter to the Trawler Harbour and fishery harbour for the local fishing boats. The harbour wall fronting Church Street, Leyden Bastion Road, Reclamation Road, Sea-Beach Road, Kochchikade Road, and Korteboam Street separate the Port Promises from the Fort-Multifunctional Core area. However, the areas under the jurisdiction of

the Colombo Port Commission includes the port area, the lake, the San Sebastian Canal, Kimbulawala marshes, the Chalmers Granaries and the Manning Market.

Three modern quays, Queen Elizabeth, Delft and Vijaya, numerous jetties, patent slip, graving dock, coaling jetties and depots, warehouses, stores, workshops, offices and Customs buildings constitute the form elements of this zone. (Fig. 3). These structures and equipment facilitate the main functions of the zone, namely the export-import trade, the passenger traffic, transshipments, ship repair and marine engineering.

Functionally, there is segregation of special areas and a general demarcation of the western sector of the harbour for imports and the eastern sector for exports. The passenger-cargo traffic is confined to the western sector, making good use of the berthing facilities along Queen Elizabeth Quay. The discharge of foodstuffs and general cargo is carried out in the Delft Quay which has mechanical equipment for direct delivery of bagged grain, flour and sugar cargoes to the granaries and the stores. This quay is also used for the regular South Indian transshipment trade. Along the eastern sector, facilities are installed for the discharge of oil, coal, and the bunkering of vessels. Oil is transmitted by pipeline to Bloemendhal storage depots and central depots at Kolonnawa. These two sites combine dual advantages of isolation, yet situated close to the port and site suitability so essential for an enterprise of this nature. Railway coal and phosphate cargoes are handled at the coal jetties and stored in the depots. For the storage of coconut oil, there is a special area in the north-east. Since this area is under the jurisdiction of the Port Commission, it is included as a port industry. Another functional change is that the modern arrangement for berthing facilitate direct discharge of food cargoes to the lorries, so that lorry congestion at Chalmers Granaries (Lotus-Norris Roads) is partly removed. Warehousing also show differentiation of functions in the port area. The new one-storeyed warehouses on Queen Elizabeth Quay are for general cargo, the Kochchikade warehouses for grain, those along Harbour Canal for timber and metals. The five export-warehouses are situated to the east of the canal. The perishable cargoes are handled in the transshipment warehouses, especially the Kochchikade group.

The shift of the Passenger Terminal and the functions connected with passenger traffic to its new location on Queen Elizabeth Quay has brought functional changes. York Street which was formerly at almost right

angles to the Old Passenger Jetty has lost some advantages as a tourist shopping area. Consequently the flow of traffic is more intense along Commissariat Road and Marine Drive than along York Street.

Though the lake (popularly known as the Beira) is classified in the category of open spaces, functionally, its role is more commercial than recreational. The Beira is a commercial annexe to the harbour, consequently its waterfront has attracted many industries connected with the port. The canalisation of the Beira and the installation of locks enabled a greater commercialisation of the Beira premises. A new surface about 200 acres in extent was reclaimed from the shallow margins of the lake and this was put under a balanced pattern of land use, namely parks, playgrounds, government offices, commercial store-houses and firms.

The influence of the Beira on the micro-climatology of the city is considerable. However, in the absence of detailed investigations in this respect, it can only be said that the quality of the atmosphere in and around the lake is considerably affected by the water surface. From the point of view of recreation, the Beira is used exclusively by the high classes for boating and other aquatic sports. The Beira certainly improves the natural setting of the city.

2. *The Fort-Multifunctional Core*

The Fort is the focus of the entire city and the metropolitan region. It is the place associated with the highest land values, (ranging from two to six million rupees per acre), tallest buildings (about sixty to one hundred feet high), high density land-use, and the greatest concentration of people during the day hours. The central area offers the convenience of both "accessibility and availability". Accessibility is the ease of movement to this area and has to be measured in terms of roads, transport, ease of movement and the time taken to travel certain distances. Due to the rhythmic movement of the people in and out of the centre, where so many urban functions are carried out, the time-distance varies with the time of the day and in terms of parking space for motorists. There is a phenomenal increase in the numbers of vehicles circulating in the Fort for an average day in 1957, when compared with an average day in 1951. The numbers have increased from about 1,000 vehicles at 8 a.m. to about 2,600 by 10 a.m., reaching a peak volume of about 2,800 vehicles between 10 and 12 noon. A secondary peak is noticed between 2 and 3.30 p.m. A sharp decrease in traffic begins about 4 p.m. and about 5.30 p.m. the core

is almost deserted.[2] It is to be expected that the recent "Origin—Destination Survey" of traffic conducted by the Public Works Department in conjunction with the United States Operations Mission may reveal its nature, intensity and the dynamic pattern of this relationship which exists between the core and the commuters' areas.

Owing to the congestion of vehicular traffic in the Fort and the scarcity of parking space there, the Fort area is declared an "one-way zone" during the busy hours of the day. This "uniflow" circulation has certainly increased the mobility of traffic and thereby reduced traffic congestion. Availability is the number and kind of services and activities found within this area. The multifunctional core serves as the centre of business and commerce, finance, insurance, banking, wholesale and retail distribution and government administration. Consequently, it is the greatest area of employment and business concentration. This has resulted owing to functional convenience and functional magnetism of the core.

The Land-Use Map of the Fort (Fig. 4) shows the following functional sub-areas:

(*a*) The areas of the government offices and public buildings.
(*b*) Multifunctional area.
(*c*) Residential enclaves.
(*d*) Open enclosures.
(*e*) Port premises.

(*a*) *The areas of government offices and public buildings.*

The Fort is the centre of government administration. More than forty per cent of the offices are located there. Although the offices are found throughout the central area, their distribution is not entirely haphazard, but owes much to tradition and inertia. The Queen's House, Prime Minister's Office, the Senate, the New Secretariat, General Post Office are along Queen Str et. Lotus Road frontage is exclusively occupied by the Parliament, Old Secretariat, Cooperative, Central Bank and Fort Police along the lower section, Central Telegraph Office and the Postal buildings along the upper section. The offices of the Surveyor-General, Public Works, Registrar-General, and Y.M.C.A. are along Chatham Street (east). Bristol and Gaffoor blocks accommodate few government offices showing

2. Data is from Department of Town and Country Planning, Colombo, 1958.

typical mixing of functions vertically. The Navy Quarters are along Flagstaff Street. It is seen that in the core, administrative and commercial functions are juxtaposed. It is possible to demarcate certain other areas in the city which are predominantly devoted to government administrative functions.

Government departments and offices have expanded and new offices opened especially after Ceylon's independence (1948). A scatter from the Fort to other areas has taken place. Three such areas are (i) Along McCallum Road occupying the reclaimed land from the Beira, are the Departments of Postal Services, Town and Country Planning, Electricity and Cooperative Wholesale Establishments. (ii) At Edinburgh Crescent, some of the offices occupy government and private storeyed residences. (iii) Torrington Square—Bullers Road sector another locus of some government offices. A recent trend has been the decentralisation of offices towards the city-fringe and the suburban areas. This is shown in the transfer of the Departments of Motor Traffic, Agriculture, Agrarian Services, Marketing and the Milk Board to a new location at Narahenpita. Satellite towns of Ratmalana and Maharagama are likely to be secondary administrative centres in the future.

(*b*) *Multifunctional area—mixed retail services.*

This area is between Queen Street (west), Lotus Road (east), Canal Row (south), and the Port premises (north). The main business and shopping is along York Street. Here is found the greatest concentration of department stores, commercial firms, banks, insurance companies, jewellery shops and hotels. The three multi-storeyed department stores, however, occupy the largest floor-space, for each block has about sixty to eighty yards road frontage, considerable depth, about eight feet wide arcade, and about ten feet wide pavement. Wholesale and retail sales for china, glassware, stationery goods, electric appliances, scientific instruments, jewellery, silverware, drugs and pharmaceuticals, luxury articles, textiles, shoes and children's goods are carried out.

The floor space-use of the buildings is different. The ground floors are usually used for retail services, the first and second for offices, the higher floors for living apartments, as in the Grand Oriental and Bristol hotels.

Retail shops of a lesser degree, especially for textiles, silk goods, cottage products are along Chatham Street (west). The small shops for grocery, tobacco goods, and miscellany goods are along York Street (south) and

Prince Street (east). The absence of such shops as butchers, green grocers, hardware stores and bulky goods clearly shows the prohibitive effects of high rents on these products in this area. There is high density of pedestrian traffic along the arcades and pavements of York Street especially at the peak shopping period. The concentration of banks, the head offices of the largest commercial firms, oil firms, insurance companies, shipping, travel agencies and the Chambers of Commerce in this small and compact area is of immense functional significance and exerts a functional pull over the entire metropolitan area. The absence of commercial banks elsewhere has made the core the only centre of all banking, financial, and credit activities, in fact for the whole of Ceylon.

(*c*) *Residential enclaves.*

The Army and Navy quarters and barracks along Queen Street, Flagstaff Street, and Galle Face Road are historic functional enclaves emphasising their original defensive function in the Fort. These institutions have maintained and safeguarded the property rights and have not shifted from these locations elsewhere despite competition for land from more profitable uses.

(*d*) *Open enclosures.*

The core has retained Gordon Gardens enclosed in the Queen's House Square and Echelon Square as its open spaces. The Galle Face Green extends southwards as an appendage.

(*e*) *Port Premises.*

This has been discussed already in section 1.

3. *The Pettah—Wholesale and Retail Centre.*

A loosely built-up tract which was formerly the areas of Lotus Pond and Racket Court, now occupied partly by the Chalmers Granaries and the Harbour Canal separate the Fort from the local business areas of the Pettah. The contrast between the Fort and the Pettah may be as great as West-End and East-End of the London townscape. However, in Colombo, these features are on a miniature scale.

The Pettah business centre extends from the Reclamation Road (north) to Norris Road (south) and Front Street (west) to Gasworks Street (east). Wholesale and retail trade is carried out in all the major and cross streets.

However, Main and Norris Streets are the two major ribbons of shopping. Main Street is flanked on each side by an almost continuous line of retail shops, the quality, the size and dominance of which decrease steadily eastwards. The shops to the west have about forty to fifty feet road frontage and considerable depth. These are mainly for textiles, ready made garments, tailoring and light manufactured goods. Those along the eastern section are small with about ten to fifteen feet road frontage and are mainly for grocery goods oilmen goods, paints and green groceries. Retail trade is entirely confined to the ground floor, the upper floors being used for storage or offices, or even as bed rooms for the shop-keepers. Though the Main Street is about fifty feet wide, it has only a twenty feet wide carriage way. It is therefore an one way traffic (west to east) during the shopping hours. In contrast, the location of retail shops along the northern side of Norris Road has been much influenced by, and in relation to the Fort Railway Station, the lorry and taxi-stands, the Manning Market all located along its southern side and the Central Bus-Stand close by. The retail pattern shows hotels, snack-bars, sweetmeat marts, cool refreshment stalls and miscellaneous stores catering to the needs of the vast transit passengers of the railway-road transport services. The retail pattern of the parallel streets and cross streets is extremely mixed. The size, shape and appearance vary from shop to shop showing unplanned building development in small land blocks. None of these shops have access from the rear, thus resulting in traffic congestion along the road fronts when loading or unloading the goods. It is interesting to note that the Second and Third Cross Streets retail more in leather goods including shoes and Dam Street s popularly known for brass, aluminium and pottery goods.

Another aspect of the Pettah retail pattern is the hawker stalls. These occupy the pavements and are adjusted to the limited open spaces. As the stalls are sometimes moved along the carriageways these interfere with both pedestrian and vehicular traffic. Besides, Pettah looks a crowded petty trading area comparable to Crawford Market of Bombay or Quiapo of Manila cities respectively. One of the important elements of the retail pattern is the public market and its satellite stores. The public markets such as the Municipal, Edinburgh, Municipal grain market are along Gasworks Street. The Tripoli, Manning and Cooperative markets are close to the Pettah market foci, situated along Norris Road. These are permanent structures with allotment of space for stalls. Around them many retail stores crowd as close as possible to take advantage of the customers attracted to them. A good number of artisans usually specialising in tin smithing, shoe repair, local tailoring and wood working are also found around these areas.

4. *The Retail Shopping Centres at Junctions and the Business-Ribbons.*

The development of retail business at favourable road junctions has brought some functional change which has altered significant place relationships giving rise to basic structural shifts in the arrangements of land-uses. The growth of these centres was consistent with and appropriate to population increase and areal expansion of the city. Traffic congestion, inadequate mass transport to the core, lack of convenient parking in the core areas have changed the shopping habits of the customers who to some degree show a preference for retail shops at the junctions.[3]

(*a*) The Central Junction at Maradana, located at the intersection of three busy traffic routes of Panchikawatta, Maradana and Darley Roads, close to another crossing at Symond's Road, is one of the busiest foci, of vehicular and pedestrian traffic. The growth of retail trade at this junction reflects the advantages of the location, since the railway station, the bus-stand bring in a continuous flow of people. The retail structure consists of, few one-storeyed-hotels, photoshops, many ground floor eating houses stalls for light refreshments, sweetmeats, local and imported fruits and miniature stalls for chew-betel. The Maradana is comparable to the Main Street (Pettah) in retail pattern. Unlike Main Street, Maradana Road has some intermediary spaces for institutional uses as schools, hospital and cinema. In the central business areas of the Fort and the Pettah, land values are more than one million rupees per acre and space for large stores for bulky and low priced goods is scanty. Besides, as the carriageways of the roads of those areas are narrow, access to large conveyances is not possible. For these reasons the stores for hardware, building materials, bricks, cement, tiles, metal, gravel, sand, timber and sanitary ware are located along the wide accessible roadways of South Skinners Road, Armour Street, Panchikawatta, extending along the Barber and Messenger Streets. Adjoining these hardware stores are repair shops, spare parts depots and a few motor garages.

(*b*) The Maradana Road, the Ward Place, the Base Line Road, the Kanatte Road and the Cotta Road all meet at the Borella Junction. The retail vegetable market is its central feature, very well situated in relation to the Borella bus-stand and the market gardening areas of the south-eastern sub-urban districts. The market is popular for vegetables supplying both the residents and the hospitals nearby. There is contrast in this

3. " Social Survey of shopping habits." *Ceylon Sessional Paper* 1, 1959.

junction area between the storeyed-hotels, the small shops, boutiques and kiosks on the one hand and the temporary wooden and cadjan stalls on the other.

(*c*) , Along the city's southern major thoroughfare (the Galle Road) there are three shopping centres at Colpetty, Bambalapitiya and Wellawatta Junctions respectively. The Colpetty centre, at the junction of Colpetty with Turret Road is closest to the Fort. Some of the retail shops are extension depots of the big shops of the Fort. This retail centre has developed because it is close to the Fort and Pettah, has adequate ground floor space for display of goods and storing, relatively low rentals than in the core areas, has the public market, the railway station, the junction bus-sub-stand and affords easy parking close to the shops. The retail structure is of the mixed type. Textiles, general goods, jewellery, stationery, bakery, photoshop, laundry, barber shop, petrol filling station and the cinema provide the necessary services for the residents of the locality.

(*d*) At the Bambalapitiya shopping centre, retail trade has grown particularly owing to easy accessibility and availability of parking space. This is a women's shopping area, for fashion goods especially sarees, silk, shoes and sandals are displayed in the shop windows providing a wide assortment within small compass, facilitating comparison and competition. The choice of a site at this junction for a super-market is a rational one, because it is the geographical centre for the residential districts of Colombo South.

(*e*) The southernmost junction is at the Wellawatta-High Street intersection. The retail pattern has developed mostly as a market for vegetables, fruits, poultry, meat and fish. Satellite growth of small eating houses and tea kiosks is found around the market square. The road front utilization is mixed and confined to the ground floor. The small shop-retail varieties of consumer goods. There are very few shops for expensive imported goods. Local furniture shops flank the main road taking advantage of low rentals for their show rooms.

Three other junctions have developed to a lesser degree than those mentioned already. The centres of Slave Island, Thimbirigasyaya and Dematagoda function as sub-service centres for these localities respectively.

II—Residential Zones

The city has a population of about 425,881 within its administrative limits. (31 wards). The numbers and density for each ward in 1953 are

given in Table 2. It is seen that in the inner-mixed zone comprising the wards of Kochchikade, St. Paul's, Grandpass, New Bazaar, Aluthkade, San Sebastian, Slave Island, Wekande and Hunupitiya, the average density is about 175 persons per acre. In contrast, in the outer-zone, it is about thirty persons per acre. These density variations show zonal differentiations closely related to, and based on house types and their related spatial characteristics. Table 3, presents a classification of the general house types, space per type expressed in the number of living rooms, per unit block (land) for each household, the rates of rent and general income per month per household, the percentages of these various types and their general distribution areas in the city (Fig. 5). This attempt to analyse the residential areas into these types and their related features show many physical, social and economic characteristics which form individual geographical patterns and which might be used as a basis for delineating residential sub-areas.

TABLE II

Area, Population, Density of Colombo, 1953.

Wards	*Area in Acres*	*Population*	*Density per acre*
City of Colombo	8,711	425,881	48.9
Modera	465	14,798	31.8
Mutwal	270	15,574	57.7
Madampitiya	574	18,866	32.9
K otahena East	153	11,380	74.4
Kotahena West	204	16,493	80.8
Kochchikade	65	12,105	186.2
St. Paul's	71	18,863	266.0
Grandpass	104	13,936	134.0
New Bazaar	115	10,592	73.0
Alutkade	88	15,534	176.5
San Sebastian	120	17,160	143.0
Pettah	145	10,592	73.0
Fort	242	4,537	18.7
Slave Island	250	11,020	44.1
Wekande	95	10,028	105.6
Hunupitiya	201	9,038	45.5
Maligawatte	305	10,274	33.7
Maradana	177	14,976	84.6
Suduwella	328	18,521	56.5
Maligakande	85	15,958	187.7
Dematagoda	180	12,460	69.2
Kuppiyawatte	178	11,572	65.0
Borella	390	17,394	44.6
Cinnamon Gardens	960	17,559	18.3
Timbirigasyaya	935	19,417	20.8
Colpetty	272	13,841	51.1
Bambalapitiya	400	12,187	30.5
Havelock Town	353	11,783	33.4
Wellawatte North	328	15,140	46.2
Wellawatte South	267	14,266	53.4
Kirillapone	391	10,112	25.9

Sources—Memo No. 2 Department of Census, 1954.

TABLE III

Residential Types and Characteristics[1]

	Type	No. *of rooms.*	*Unit block area*[2] *in square feet.*	*Percentage*[3] *in the city.*	*Average monthly rates of rent income per unit.* Rs.	*Average monthly general income per unit* Rs.	*General distribution areas in the city.*
1.	Tenement	1	300 sq.ft.	55—60	10—20	100—125	Inner-mixed zone.
		2	750 sq.ft.				St. Paul's, San Sebastian etc.
2.	Small house	3	4,080—5,440	13—15	30—40	150—250	inner-mixed zone—intermediate zones—Slave Island, Grandpass, Maradana, Kotahena.
3.	Cottage	4	5,440—8,160	12—15	100—150	300—600	outer-zone—Kotahena, Wellawatta, Modera.
		5	5,440—10,880				
4.	Spacious bungalow	6,7	10,880—27,200	5—6	300—450	800—1,500	outer-zone—Kotahena, Wellawatta, Modera.
5.	Storeyed bungalow	8,9	21,760—43,520	—	500—1,000	2,500	Cinnamon Gardens.
6.	Flats, apartment hotel	10,11	10,880—13,600	2	1,000—1,500	3,000	widespread (outer-zone)
		12,14					
7.	Multi-storeyed blocks[4]	40	43,520—87,040	1—2	x(*a*)30—50	150—250	inner-mixed zone.
					(*b*)x150—200	300—600	widespread (outer-zone).
8.	Shanties, hovels[5]	1	400—500	—	—	100—125	widespread (inner-mixed and outer-zone).

1. This Table is based on a reconnaissance survey. The percentage figures result from sample surveys of each representative type, and the figures are therefore only approximations.
2. This is the total area occupied by (*a*) the building block itself and (*b*) the area of the land lot of the respective building.
3. (Approximations only) expressed as a percentage of the total households in the city.
4. These are either of the government, or departments, or corporations.
   x(*a*) working classes.
   (*b*)x middle class.
5. These are temporary structures, and are not included in the percentage calculations.

5. *The Inner-Mixed Zone.*

Since the inner-mixed zone is crescentic in shape and lies adjacent to the core areas which attract labour for various services of the Port, the business of the Fort and Pettah, it is the closest dormitory area for most of the working class, who live in rented tenements. Most of these households (invariably may be one or two rooms) accommodate more than four persons per unit. The buildings have spread out horizontally than vertically, consequently, the zone has got congested with one-storey-tenements, cooly lines, contiguous small houses. The numbers and the households are so vast that it is really a big problem to move them out from this zone and house them elsewhere either in the city or in the region. Construction of multi-storey flats capable of accommodating more households is not a complete solution because the proletariat class may not afford to pay high rent. In the absence of alternative housing elsewhere or better houses in these areas, the working class is contented to live here in congested and unhygienic conditions because of the advantages of short distance from their homes to their places of work.

The contiguous lines of tenements face either the street or a common path or alley. These have very limited backyard space. A few have a common tenement garden. Private conveniences are lacking, but public conveniences and a water service are provided. In general, most of these tenements are dilapidated and are badly in need of repairs. This zone is rather an old, low rent, congested and poor housing area.

Retail trade in products of food, drinks, utility articles, clothing and other socio-civic institutions are ubiquitous. Retail units are interspersed with the dwellings and flank both sides of the streets. Even small and contiguous houses with shop fronts combine residential and commercial functions. Small industrial units connected with tin smelting, blacksmithing, goldsmithing, carpentry, brass works, cottage crafts, cigar, beedi rolling and snuff making, repair shops, scrap yards, timber depots and garages are part and parcel of the functional ensemble. However, the industrial premises of British Ceylon Corporation exists as an enclave. In the wards of Slave Island, Maradana, Grandpass, and Kotahena (an intermediate zone) there are a fair number of small three-room houses either contiguous or separated from each other. The front room is used either for a small shop or tea kiosk, the living rooms are to the rear. Market oriented light manufacturing industries compete for sites within the residential areas. Bakeries, laundries, aerated water plants, rattan works are

some of the industries in Slave Island. At Grandpass, residences are interspersed with stores for copra, oil mills, exporting and importing firms and general stores. It is an area of non-conforming uses. Similarly at Maradana and Kotahena, it is possible to identify multi-uses in both land lots and buildings. In general, there is such a great mixture of activities, tenement residences, retail trade, light industrial and institutional functions so mixed up and intermingled, that it is quite incapable of separation except on a map showing individual houses. In contrast, the location of the law courts along Hulftsdorp Street, the professional character of Hulftsdorp Street itself with numerous lawyers' offices and their name-boards are unique features and explain the strong ties of historical and traditional factors. The Hulftsdorp law quarter, centainly breaks the monotony of the zone because of the planned and pleasing arrangement of the law buildings and their premises.

6. *Outer-Residential Zones*

The outer-zone is associated with self-contained, compact, single family dwellings varying in size from the spacious bungalows and storeyed-residences of Colpetty, Bambalapitiya and Cinnamon Gardens, an area of 'First class' houses, in large land lots of about 10,880—43,520 square feet, to three room cottages in about 4,080—5,440 square feet lots and four and five room cottages in about 5,440—10,880 square feet lots.

A. *First class houses; the spacious bungalows and storeyed-residences of Colpetty-Cinnamon Gardens.* This was once the European residential quarter and gradually changed ownership to the Ceylonese people of high social and economic levels. The entire area is well drained, provided with large parks and open spaces, well ventilated, free from the nuisance and noise of industries and petty retail stores. The building density is low per acre. Land values and rentals are high because of the excellent disposition of the area and the social values attached to this district. Most of the bungalows have spacious front gradens and extensive backyards in land blocks of about 21,760—43,520 square feet. Lawns and flower gardens enhance the general appearance of the district. These spacious bungalows flank shady avenues which add to the natural beauty of the area.

B. *The Cottages.* The cottages are widespread in the outer-zone. The land lots vary regionally reflecting differences in house density. In the Wellawatta and Kotahena areas the cottages are small with about twenty—twenty five feet road frontage, has about forty yards depth with

small back gardens. The Bambalapitiya—Borella areas show a broader road frontage, more depth and considerable backyards. These are very well built with considerations for air drainage and direct sunlight.

C. *The residential storeyed-flats.* The residential storeyed-flats are also widespread in the outer-zone. These flats are conspicuous because these dominate the low accordant ridge shape roof surfaces. The Ministry of Housing has constructed blocks of flats at Bambalapitiya and Torrington Avenue mainly for the middle classes; at Wolvendaal—Armour Street for the working classes. The proposed twenty million rupees housing scheme at Wanathamulla is another project. The Police Department flats are at Slave Island, Parson's Road, Maradana, San Sebastian and Havelock Town. The Baurs flats (Fort), Regents (Parson's Road), Galle Face Court, Yalta (Flower Road), Bogala (Dickman's Road), are exclusive high class living apartments. The flats of Spathoda, Borella and Maradana are for mixed uses. Many one-storeyed-residential flats have been constructed recently in the outer-zone and are rented to people of high income groups.

The construction of multi-storeyed-flats may be regarded as one of the ways to relieve the acute problem of city housing. However, such a proposition needs to be considered from the financial and social aspects. High floor residences are bound to be unpopular and uneconomical too. High rent owing to site factors and high cost of building would bar the low income groups renting them. The high income groups on the other hand, may not prefer high floor residential apartments because spacious bungalows with gardens, lawns, and even tennis courts may be rented or leased out in the outer and suburban areas which are about eight to fifteen miles from the core areas.

D. *The Shanties and hovels.* The shanties and hovels are springing up like mushrooms and are widespread. These are however, numerous along the lake, river, canals and have spread over to the open spaces, unbuilt crown land and even open marshy tracts. In the city this blight is spreading fast and shanty-colonies comprising rickety little structures made out of packing case wood, discarded zinc sheets, hard board and thatched with cadjans thrive in nooks and corners. This unorderly and unauthorised spread of these sub-standard housing is detrimental to the health of the city.

E. *Professional areas.* Ward Place may be distinguished as a special residential quarter for medical specialists and consultants. They prefer to reside close to the hospitals, nursing homes, clinics located in the Regent

Street-Ward Place-Maradana triangle. Another area of government bungalows situated along Buller's Road and Stanmore Crescent is for the high government officials and diplomatic personnel.

7. *Sub-urban Housing areas.* High land values and rentals associated with high demand and special preference of particular localities of the city have caused a sprawl to the urban fringe and along the circulatory systems to the region also. Private investments, building societies, government and company loans are largely responsible for the construction of new houses in these areas. This is a clean and healthy dormitory zone close to the city centre, possessing the basic ammenities such as electricity and water services. As the dormitory area has been extending south-eastwards to Rajagiriya, Nawala, Nugegoda and even as far as Maharagama and southwards to Ratmalana, Moratuwa and Panadura, there has been difficulties in the provision of amenities especially water service and drainage. Consequently in most of the cottages, drainage and water services are entirely private concerns. This is a pleasant housing zone, the cottages are well situated in spacious, regular shaped land lots.

III—Industrial Zones

The city is the focus of industrial location because it is the only developed port-city, the node of the route system of the island having a thick concentration of people and therefore enjoying most of the factors essential for location. The industrial structure of the city may be divided into four groups:

(*a*) Industries and services involved with the working of the port.
(*b*) Manufacturing industries dealing with the processing of raw materials exported through the port.
(*c*) Light manufacturing industries characteristic of a big city.
(*d*) Dangerous and offensive trades.

The port-zone of industries comprise the following : (*a*) marine engineering works, ship repair yards, boat building and repair yards, (*b*) loading and unloading services, fuelling of vessels, oil storage and distribution, landing, stevedoring and food chandling services, (*c*) storing, warehousing and dock services.

All these industries are located along the waterfront, the fore-shore and the lake premises. Limitation of space along the eastern foreshore,

(the location of its marine industries) has undoubtedly prevented either the establishing of new industries, or the expansion of existing ones. Alternative location along the lake's waterfront is neither practicable nor feasible for ship repair.

The manufacturing industries based on agricultural raw materials are inter mixed and function jointly with the commercial firms. Their location in the city depends mostly on the advantages of transportation costs. The tea firms which carry out mixing, testing, grading, packing, storing and exporting of tea are located in an area about Slave Island—Union Place. Here, there is adequate space, easy access for lorry transport and close to the port.

General engineering industries connected with the public utilities as the railway, bus, trolley, gas, electricity, water service, sewage disposal and treatment are sited in special yards, resembling "industrial enclaves" in the city.

Industries associated with sales, service, repair, assembly, etc., of automobiles, machinery, equipment, etc., are mostly along Prince-of-Wales —Panchikawatta-Darley-Union Place and Turret Roads. These are wide and accessible, providing suitable and large spaces for display rooms, stores, repair yards, assembly plants etc.,

Industries processing food, drinks and tobacco are ubiquitous.

8. The Industrial zones delineated by Town Planning regulations are for those that have been declared dangerous and offensive (Table 4) These demand a large ground area, they frequently have nuisance features such as noise, odours, pollution, fire hazards, and have serious problems of waste disposal requiring large plant layout. Their raw materials as well as their finished products are bulky so that they require extensive and contiguous water, road, or railway transport facilities. All these conditions drag the siting of plants towards the urban fringes.

Quarrying for cabook, gravel or metal, curing and storing of graphite, digging for coral stones by opening a pit, burning or storing of lime, burning of bricks and tiles, occupy the northern and north-eastern fringes. Those industries that need exclusion and protection from the danger of fire as storage of straw, kapok, occupy the eastern fringes. Industries that give

out offensive odours, as drying and curing of fish, chank, pearl-oysters, raw hides, boiling of blood, offal, have restricted zones towards the north. The fertilizer, bricks, tile manufacturing firms are along the Kelani flood plain and have extended along the river to the sub-urban region.

TABLE IV

Dangerous and Offensive trades

A. *Industries* (*Mineral products*).

1. Quarrying for cabook, gravel or metal.
2. Curing or storing of plumbago (graphite).
3. Digging of coral stones by opening a pit.
4. Burning or storing of lime.
5. Burning, storing, curing or rendering of lime.
6. Burning of bricks and tiles.

B. *Industries* (*Danger of Fire*).

7. Manufacture of Copra.
8. Extracting oil by apparatus.
9. Storing of Copra.
10. Storing of straw.
11. Manufacture of desiccated coconut.
12. Storing of fibre.
13. Storing of cotton wool (Kapok).

C. *Industries* (*Offensive Smell*).

14. Chank fishing.
15. Pearl fishing.
16. Storing of cured or dry fish.
17. Storing of perishable articles of food.
18. Manufacture of compost or artificial manure and storing.
19. Keeping a tannery.
20. Curing of arecanuts.
21. Boiling of blood or offal.
22. Storing of raw hides.
23. Storing of bones.
24. Curing of planks.
25. Keeping of kraal for soaking coconut husks.

D. *Industries* (*Danger in Chemicals—inflammable*).

26. Manufacture of matches.
27. Manufacture of soap.
28. Manufacture of rubber sheets or crepe.
29. Soda manufacture.
30. Dyeing of fibre.
31. Keeping of kerosene oil depot.

E. *Industries* (Miscellaneous).

32. Curing and drying of tobacco.
33. Cigar manufacture.
34. Manufacture of vinegar.
35. Keeping a timber depot.

Source :— From the seventh schedule ; Outline Planning Scheme for the *Regional Development area of Colombo.*
Department of Town and Country Planning, 1955.

9. Another group of industries are also zoned. The curing, smoking, processing and storing of rubber are restricted to a special zone along the eastern waterfront of the Beira. However, industries which manufacture toys, decorative articles, mats, cushions, and tyre-retreading are widespread, intermingled with the retail business units and the residences.

10. The coconut industries, such as the manufacture and storage of copra, desiccated coconuts, coconut oil, coir fibre occupy exclusive locations towards the eastern fringe, especially along the water course of the Kelani-San Sebastian Canal system. As these products require special protection and handling as export cargoes, a "special trades area" (Tanque Salgado) along the eastern sector of the harbour is zoned.

11. Certain dangerous and offensive industries, however, occupy sites within the residential and commercial zones, as those for the manufacture of matches, soap, dyeing of fibre, manufacture of gas, and certain storage yards. These sites are enclosed by high walls to ensure safety.

A recent trend is the location and growth of new industries along Galle Road, especially in the Ratmalana area. Another industrial estate is being planned at Ja-ela to the north of Colombo. These new industrial estates undoubtedly offer attractive, accessible and cheap sites for the expanding new industries. These measures towards industrial deglomeration, undoubtedly will relieve to some extent the congestion in the city, enabling a planned and controlled growth of industries in the Colombo region.

IV—Transport Zones

12. A distinguishing feature in the morphology of the city is a west-east extending zone of land occupied by the Fort Railway Station, the railway tracks, marshalling yards, the Maradana Junction Station, passenger buildings and yards, the Dematagoda Station, Kuppiawatte yards, workshops, sidings and stores, which forms a barrier and divides the city into two parts. Road transport crosses the barrier at Maradana Junction and about Lake House at Fort by overhead bridges. The southern line almost hugs the coastline and does not interfere with road transport since the Galle Road runs parallel to it within the city. The railway lines, however, intercept road traffic at Slave Island and Base Line crossings, and often cause traffic stagnation. At these two points it is necessary to construct "fly-overs" to enable a smooth flow of both road and railway traffic.

13. The road mesh of the city certainly gives as impression as observed by Professor C. Holliday "that Colombo is over roaded".[4] Indeed on detailed scrutiny, it is found that the surface area of the its roads comprises about 700 acres or about twelve per cent of the entire city area.[5] In the Fort and the Pettah the percentage increases to about twenty to twenty two which is comparable with the ratio of the West European cities.[6]

The Central Bus-Stand having parking space for about forty buses, mostly outstation, is at Gasworks Street and at Norris Road for about fifty buses. But these are merely bus parking places, unprotected, exposing the passengers to the vagaries of tropical weather, without any facilities or terminal buildings for their convenience. This is because this site is in the chief market foci of Pettah, too crowded with retail trade and petty business. It is the responsibility of the state to provide a Central Terminal with all conveniences. Since the present site is hardly sufficient, it may be suggested that a new site, the former Municipal tram car garage situated east of the Gasworks Street, very close to the present stand and accessible through a broad road (Saunder's Place) may be converted for this purpose. The Borella sub-stand is another parking place for buses. This is an important junction linking up the bus services of the dormitory areas of south-eastern Colombo region with the town services. Since this stand serves the junction centre, market, hospitals, schools, colleges and the cemetery, it is a busy passenger transit centre and needs to be provided with more facilities.

V—Open spaces

14, 15 ; Parks and open spaces may be regarded as the 'lungs' of the city. The total acreage of public open spaces is about 215 acres, which is about two per cent of the total area. There are about 600 acres or about seven per cent semi-public open spaces. Besides, Colombo has also an appreciable acreage of minor parks, playgrounds, private open spaces within the built-up areas. These are either provided by the Municipality or are unbuilt crown land or land with disputed ownership. Another about ten per cent of space is occupied by tracts of cultivated and inundated grasslands, marshes, along the fringe. Thus considering (*a*) the acreage of public open spaces, (*b*) the extent of semi-public open spaces, (*c*) private un-built areas,

4. C. Holliday, *City of Colombo, Memorandum on Town Planning.* Colombo, 1940.

5. Computed from data obtained from the Municipal Engineers Department, Colombo Municipality, 1958.

6. R. E. Dickinson, *The West European City.* London, 1951, p. 479.

(*d*) the open grasslands and marshes, it can certainly be said that the city as a whole enjoys adequate open spaces in relation to the built-up areas. However, the geographical distribution is uneven and most of these public and semi-public open spaces are either in the outer-zone, or along the fringes. The effect of these spaces on the city is therefore marginal.

Northern Colombo areas are rather poorly served with public open spaces. There are a few semi-public grounds belonging to educational and religious institutions. A fair acreage of open grass land and marshes is found in the north-east. The use of these areas partly depend on reclamation and flood protection measures. Central Colombo is well served with public open spaces; such as the Galle Face Green (41 acres) Vihara Maha Devi Park (formerly Victoria Park—82 acres), the large semi-public space of race course (116 acres), the golf links (213 acres) and the three lakes, (217 acres), together with the extensive playing fields of the University, the schools and the clubs. These spaces are above flood level, and are therefore of recreational significance throughout the year. Southern Colombo is comparatively poorly served with Havelock Park (21 acres) and Havelock Golf links. (41 acres). As proposed by Professor C. Holliday, a useful intra-urban green belt could be planned around the built-up area giving a continuous park system by linking up these scattered public, semi-public and private open spaces. However, it looks too grandiose a project beyond the finances of the Colombo Municipality.

VI

It is necessary to examine the functional zones delineated and discussed in reference to the accepted zonation system of the Colombo Regional Plan (Fig. 6).[7]

The proposed commercial areas are along the arterial roads that radiate from the core such as the Galle Road up to Moratuwa, the High Level Road up to Homagama, the Kandy Road up to Kelaniya, Negombo Road up to Ja-ela and also along the major thoroughfares leading up to the other suburban towns. But, a close study of the Figs. 2 and 6 shows that along these arteries residential and commercial uses are intermixed. Since different functions along the roads have developed irrespective of any functional

7. P. Abercrombie and O. Weerasinghe, *The Colombo Regional Plan.* Colombo, 1947. (unpublished).

zonation system, non-conforming uses have consequently been established and these cannot be separated easily. This is obviously the result of unplanned and uncontrolled growth and expansion of the city. If, the Colombo Regional Plan Zoning system is strictly followed perhaps, then in the future residential and industrial uses may cease to flank along these arteries giving an entire monopoly of these zones to commercial uses.

The two patterns associated with industrial zoning of the Regional Plan are also identical with those in the Colombo city. For example, the heavy, obnoxious and dangerous industries are zoned along the urban fringe, whereas the light industries are intermixed in the commercial and residential areas, especially along the major thoroughfares.

As shown in Figures 2 and 6, the residential areas are mostly along the cross roads, lanes, avenues and paths. The provisional residential areas both in the city and in the region seem to be widespread. But, it should be emphasized that this wide zone to be made an effective, healthy and safe dormitory area, should necessarily be protected from the menace of floods. Considerable river control measures, reclamation, filling, drainage and poldering operations are therefore essential. Perhaps some of these areas may also come under agricultural or recreational uses. Even within the city, some of these reclaimed areas may be put under recreational uses, especially for parks, playgrounds and open spaces.[8] In the region, there is no need to plan for open spaces except in the town areas within it.

Finally, planning in the city to be effective calls for the closest degree of cooperation, and collective study between the Municipality and the Town and Country Planning Department. Planning the city in relation to its region,[9] (Colombo Regional Plan) should be the collective responsibility of the seventeen local government units of the region, the Town and Country Planning Department, Central Planning Commission and other consultants. Absence of coordination between the Municipality and the other local units, lack of integration of plans, financial difficulties and inexperience in this field are the present problems.

B. L. PANDITHARATNA

8. " Report of the Committee on Reclamation and Utilization of the Swamps in and around the City of Colombo. *Ceylon Sessional Paper*, XXI—1957.

9. " An Outline Planning Scheme " for the Regional Development Area of Colombo, (unpublished) Department of Town and Country Planning, Colombo, 1957.

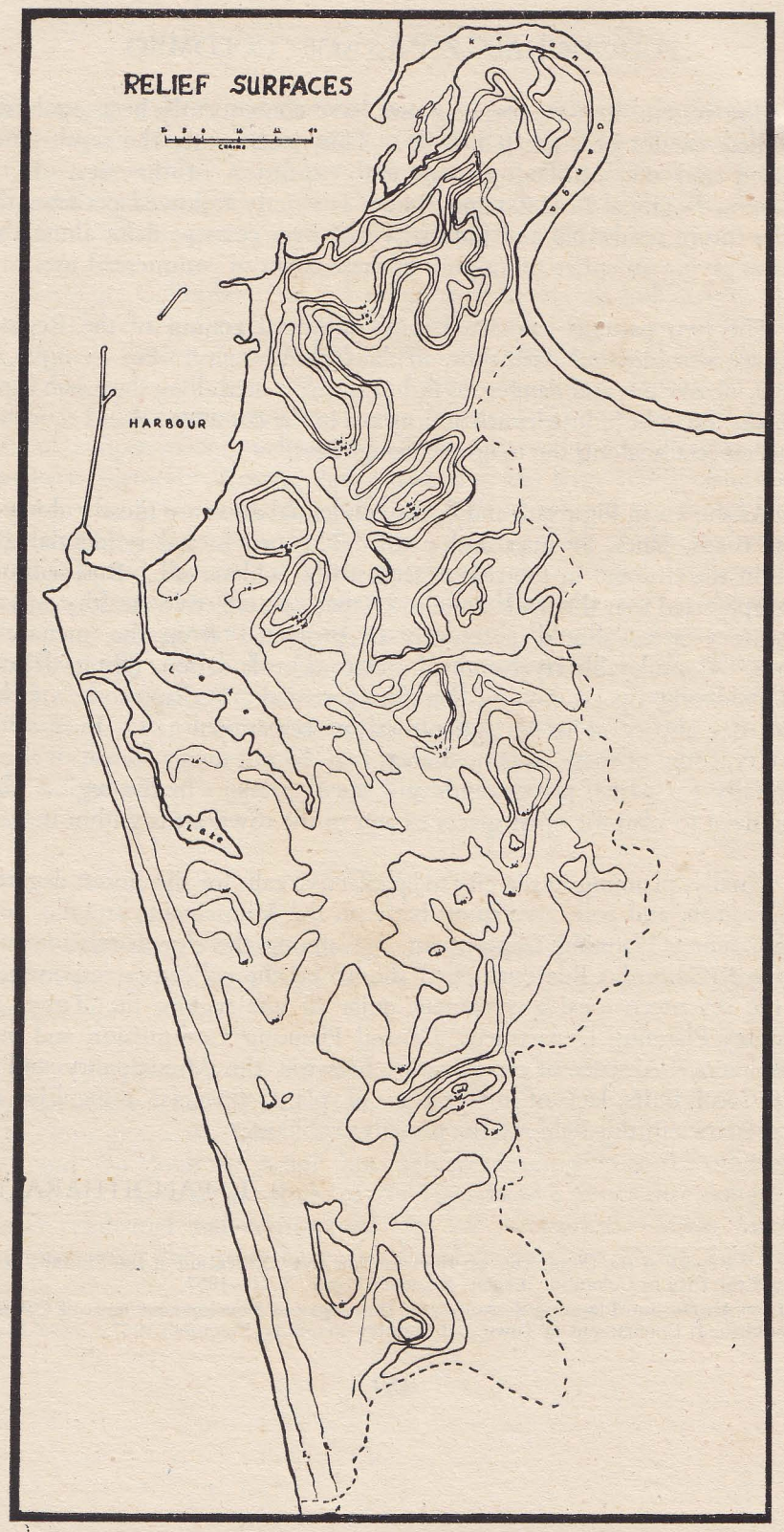


Fig. 1

FUNCTIONAL ZONES OF COLOMBO

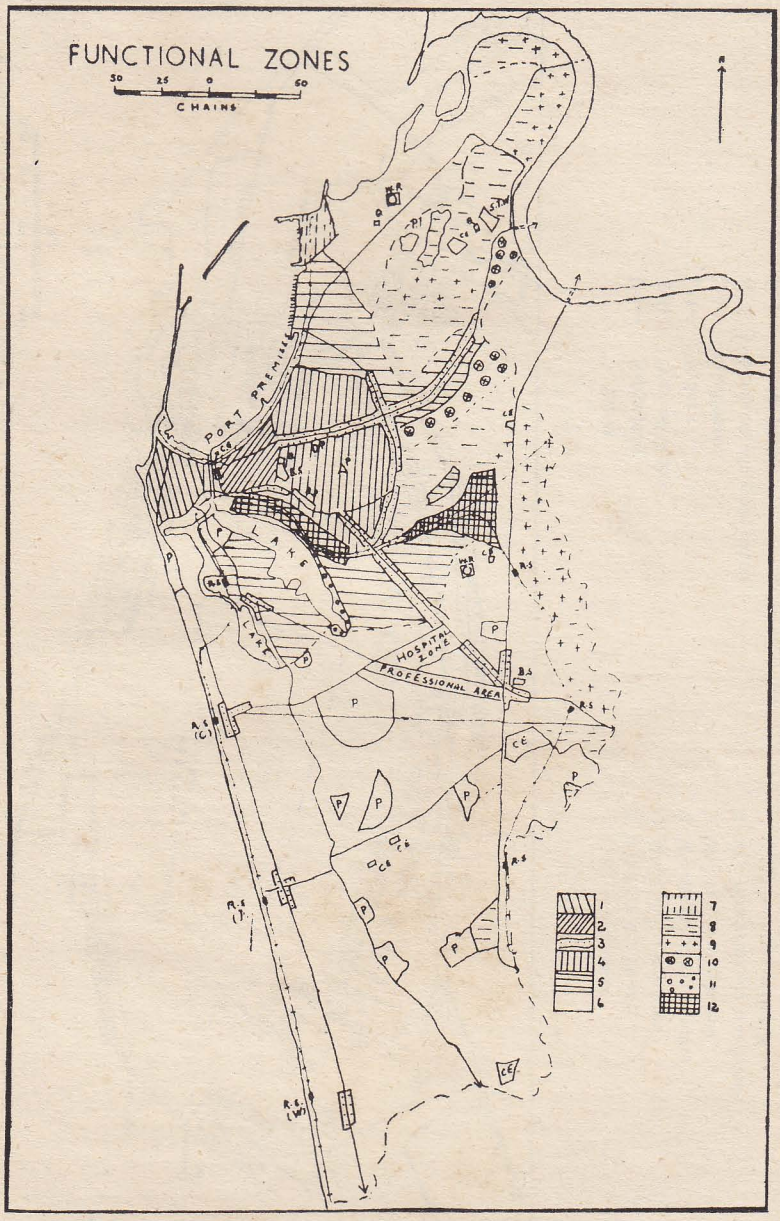


Fig. 2

1. The Fort—Multi functional centre
2. The Pettah—Wholesale and retail centre
3. The retail shopping junctions and business ribbons
4. The Inner mixed zone
5. The Intermediate mixed zone
6. The Outer residental zone
7. Special trades area (coconut oil)
8. Open grasslands and marshes
9. Dangerous and offensive trades areas
10. Coconut storage area
11. Rubber smoking area
12. Railway yards

[P—parks, playgrounds, golf links, race course
G—Gas work
B. S—Bus stand
W. R—Water reservoir
CE—Cemetery
R. S— Railway station.]

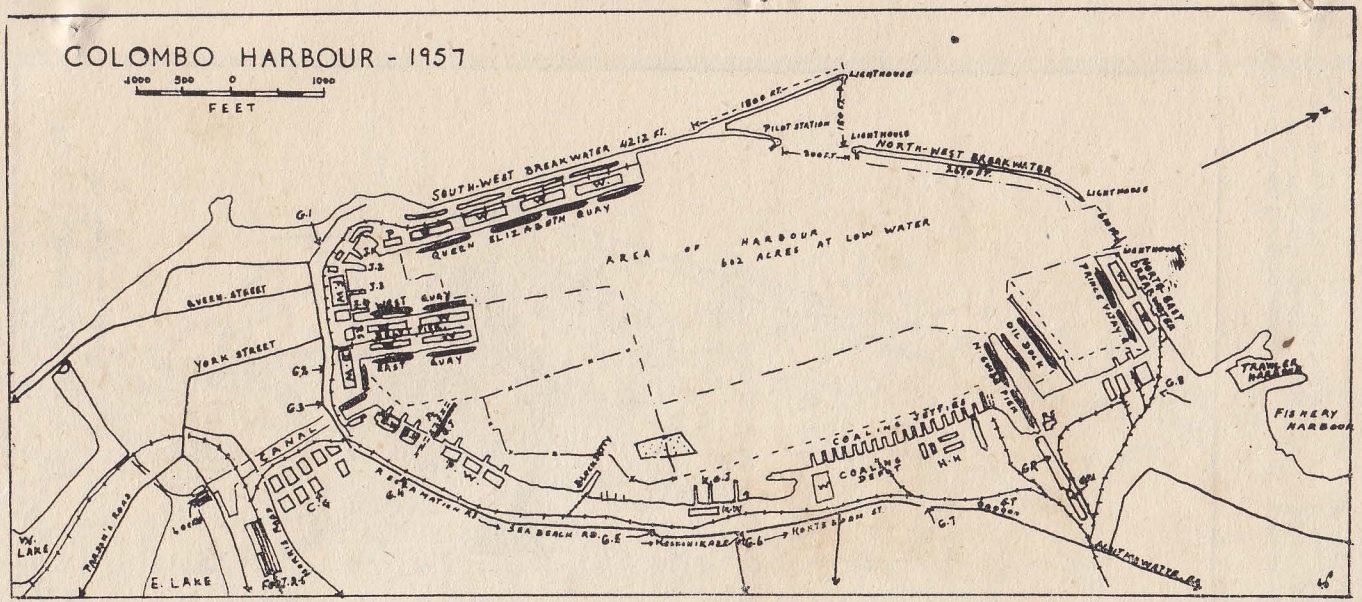


Fig. 3

Jetties

J. 1— Kings Jetty
J. 2— Price of Wales
J. 3— Sydney
J. 4— Melbourne
K. G. J—Kochchikade grain jetties
G. J— Guide jetty
G. R— Graving dock

Warehouses

F. W—Fort warehouses
D. W—Delft warehouses
B. W—Baghdad warehouses
P. W—Pettah warehouses
K. W.—Kochchikade warehouses
C. G.—Chalmers granaries
H. H—Hamilton hangers
W—New warehouses

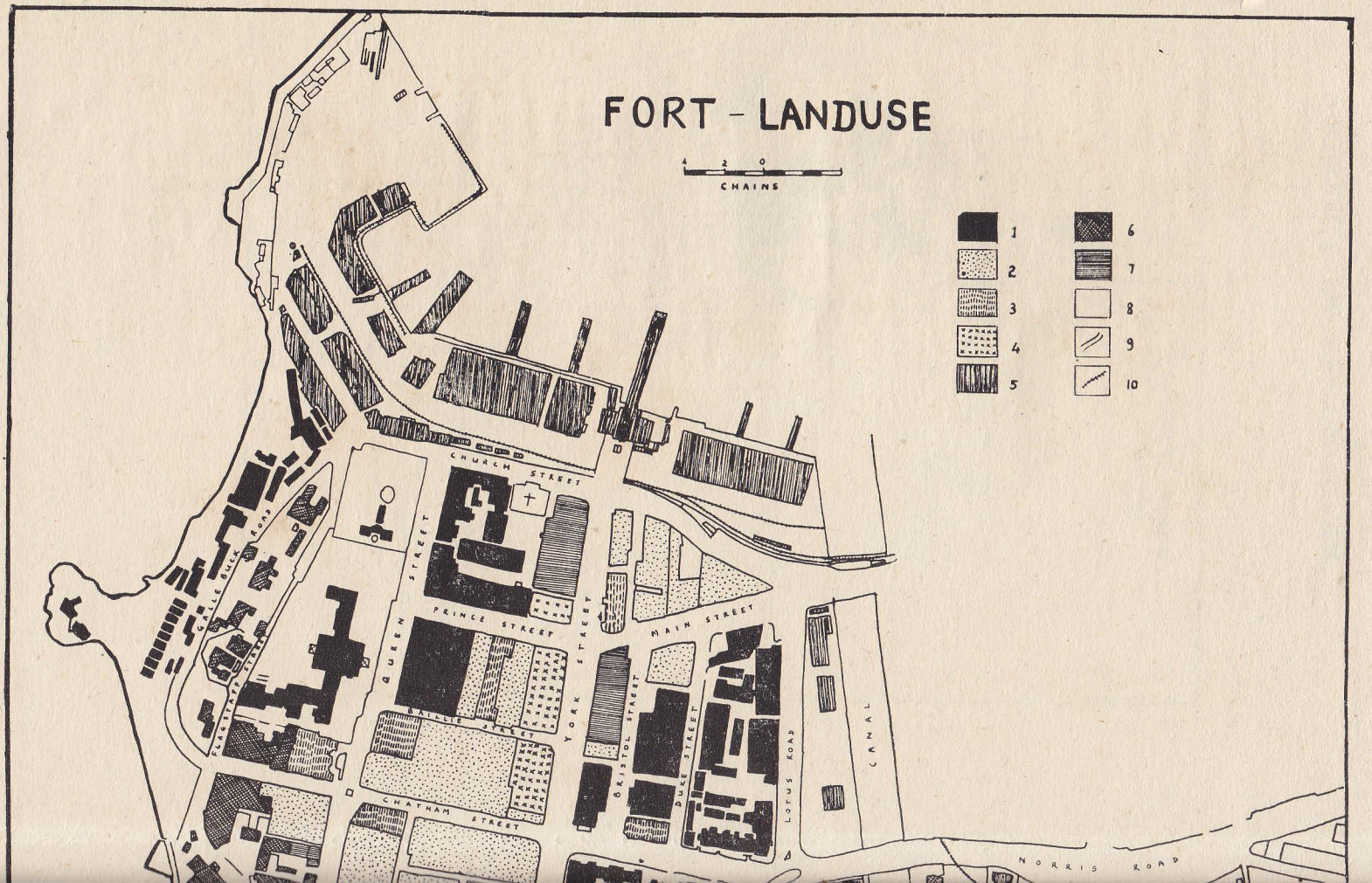

FORT - LANDUSE
4 2 0
CHAINS
1
2
3
4
5
6
7
8
9
10
CHURCH STREET
QUEEN STREET
PRINCE STREET
MAIN STREET
YORK STREET
BALLIE STREET
CHATHAM STREET
BRISTOL STREET
DUKE STREET
LOTUS ROAD
CANAL
NORRIS ROAD
GALLE BUCK ROAD
FLAGSTAFF STREET

Fig. 4

1. Government offices and public buildings
2. Mixed retail shops, commercial offices and premises
3. Banks
4. Department stores
5. Port buildings, warehouses, granaries and stores
6. Residences
7. Hotels
8. Open spaces
9. Road
10. Railway

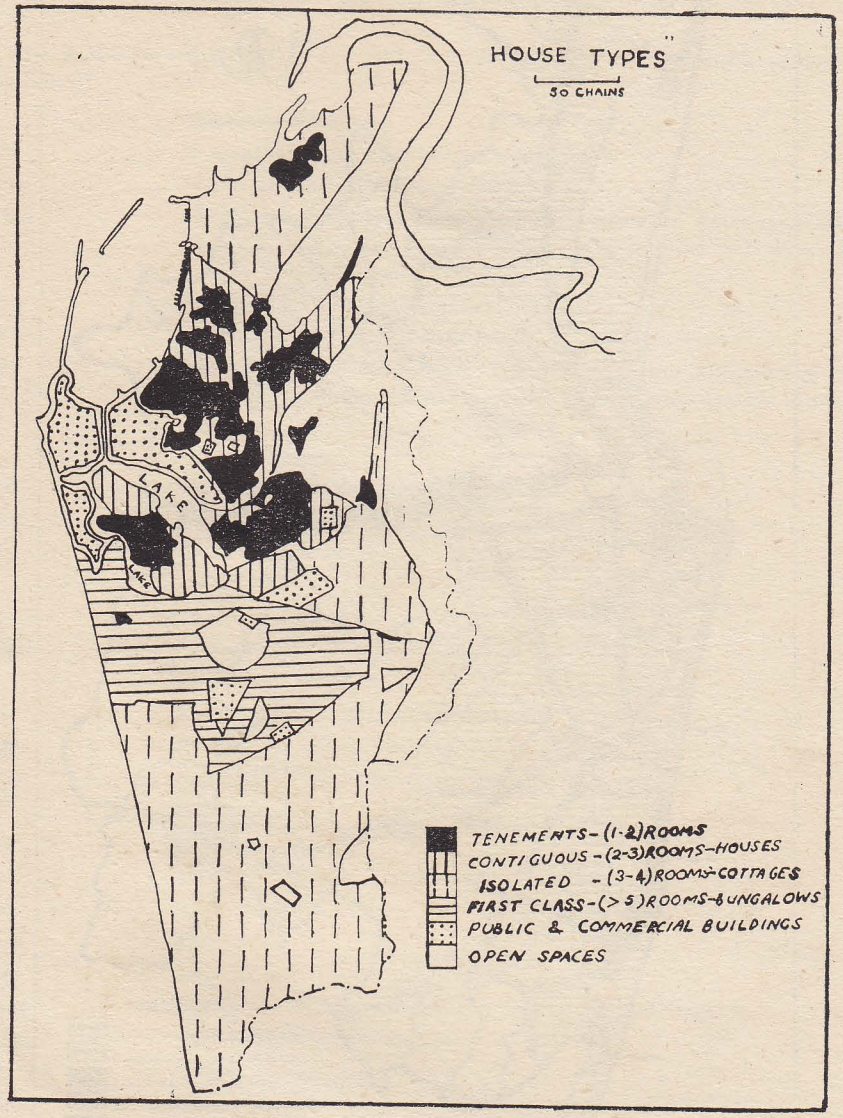

HOUSE TYPES
30 CHAINS
LAKE
TENEMENTS-(1-2)ROOMS
CONTIGUOUS-(2-3)ROOMS-HOUSES
ISOLATED -(3-4)ROOMS-COTTAGES
FIRST CLASS-(>5)ROOMS-BUNGALOWS
PUBLIC & COMMERCIAL BUILDINGS
OPEN SPACES

Fig. 5

FUNCTIONAL ZONES OF COLOMBO

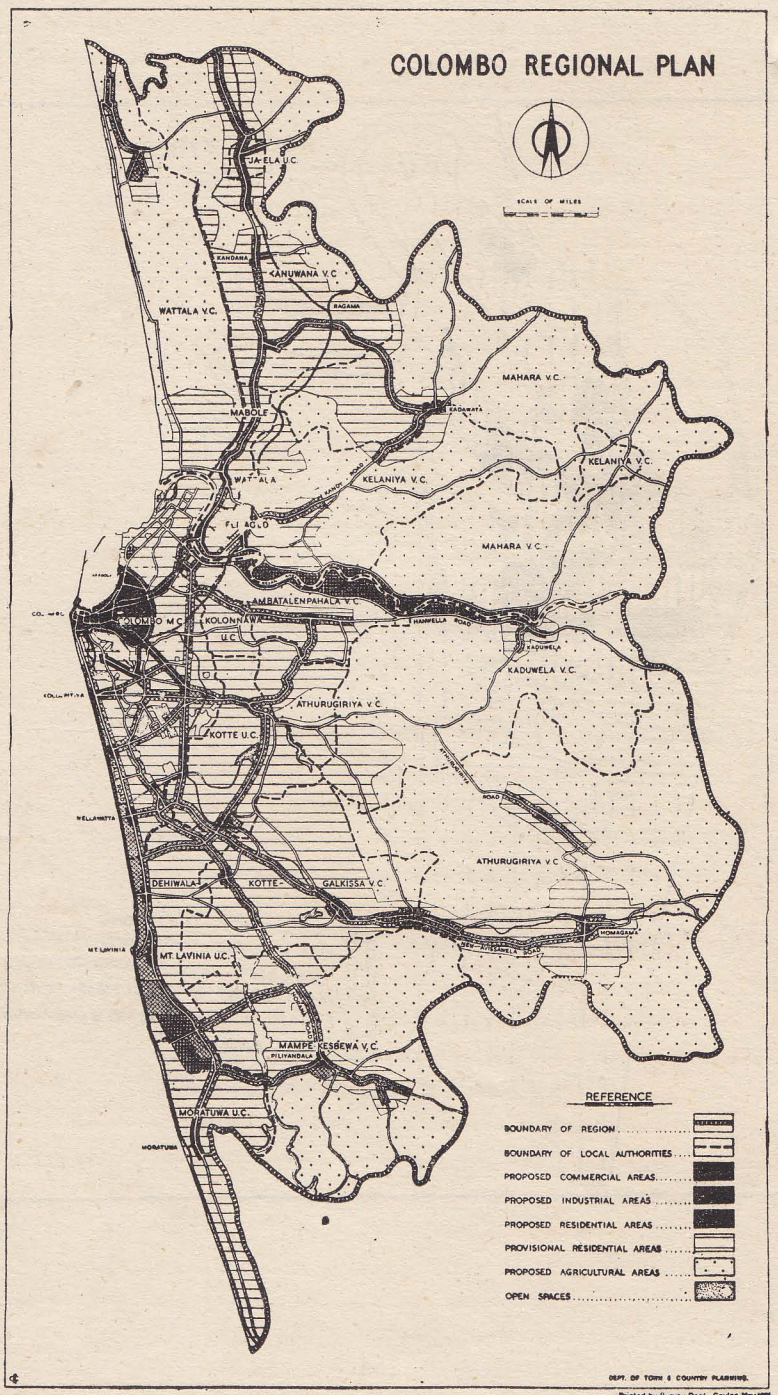


Fig. 6

LIST OF ABBREVIATIONS

(All Pali texts referred to are the editions of the Pali Text Society, unless specifically mentioned).

A	:	Aṅguttara Nikāya.
AA	:	Manorathapūraṇī, Aṅguttara-aṭṭhakathā.
Abhs	:	Abhidhammatthasaṅgaha (JPTS. 1884).
Abvn	:	Abhidhammatthavibhāvinī—commentary to the Abhidhammattha-saṅgaha—Vidyodaya Ṭīkā Publication, Vol. I. edited by D. Paññāsāra and P. Vimaladhamma (Colombo) 1933.
Aths	:	Atthasālinī, Dhammasaṅganī-aṭṭhakathā.
BPR	:	Buddhist Philosophy of Relations—Ledi Sayadaw.
CP	:	Compendium of Philosophy—Translation of the Abhidhammattha-saṅgaha, by Shwe Zan Aung, edited by Mrs. Rhys Davids (London) 1910.
D	:	Dīgha Nikāya.
DA	:	Sumaṅgalavilāsinī, Dīgha-aṭṭhakathā.
DhA	:	Dhammapada-aṭṭhakathā.
Dhs	:	Dhammasaṅganī.
It	:	Itivuttaka.
JA	:	Jātaka-aṭṭhakathā.
JPTS	:	Journal of the Pali Text Society.
M	:	Majjhima Nikāya.
MA	:	Papañcasūdanī, Majjhima-aṭṭhakathā.
Miln.	:	Milinda Pañha—ed. Trenckner.
PED	:	Pali English Dictionary (Pali Text Society's edition).
RV	:	Ṛg Veda.
S	:	Samyutta Nikāya.
SA	:	Sāratthappakāsinī, Samyutta-aṭṭhakathā.
Sn	:	Sutta Nipāta.
Thag	:	Theragāthā.
Thig	:	Therigāthā.
Tikap	:	Tikapaṭṭhāna, including the commentary of Buddhaghosa.
UCR	:	University of Ceylon Review.
Ud	:	Udāna.
Vin	:	Vinaya Piṭaka.
Vism	:	Visuddhimagga.

A Prolegomena to the Philosophy of Relations in Buddhism

Buddha's discovery in the light of the Philosophical Atmosphere in India before and during the time of the Buddha

1—*Man, The Object of Inquiry*

THE attention of the philosopher and thinker in India was centred more on the individual than on the external world unlike in the western world where the attention of the philosopher was more directed to the problems of the external world divorced from the individual. Their speculations on the reality of the external world was derivative of the speculations on the reality of man. Interest in the environment was prompted by an interest in the individual. It was the problem of religion that stimulated the philosophic spirit. There was to be noticed in India a very harmonious kinship between religion and philosophy, for the Indians never strived to divorce theory from practice. Knowledge being the prerequisite of conduct, philosophy served as a corrective to religion. Therefore in India, the philosophic attempt to determine the nature of reality started with the "thinking self" and rarely with the object of thought. "Know thyself" (*ātmānaṃ viddhi*)[1] summed up the whole endeavour of religious pursuit. This subjective approach to the realization of the deepest truth is one of the salient characteristics of Indian thought.

The Brahmajāla Sutta[2] among a host of others, testifies to the existence of innumerable theories about the nature and reality of the individual (*atta*) and the world (*loka*). As is evident from these texts, India was seething with philosophical speculations when the Buddha appeared on the scene. A congeries of conflicting theories about the internal as well as external reality was formulated by teachers and founders of separate schools of thought depending on definite epistemological standpoints. According to the Brahmajāla Sutta, these teachers, excluding the theologians who mostly depended on testimony,[3] depended on two ways of knowing, namely

1. Bṛhadāraṇyaka Upaniṣad II. 4.5; Svetāśvatara Upaniṣad I. 12.
   Etad ñeyyam nityam evâtmasamstham
   Nâtah param veditavyam hi kiñcit.
2. D. I. 1 ff.
3. M. I. 520 ff.

the intuitional and the rational, in propounding their theories. On the one hand there were the rationalists (*takkī, vimamsī*)[4] who resorting to logic and dialectics (*takkapariyāhataṃ vīmamsānucaritaṃ*) constructed their theories about the reality of the individual and the external world. The others, whom we might aptly call religious teachers, depended on intuition[5] for the realization of truth about man and universe. By a gradual process of taining the mind (*ātappaṃ anvāya padhānaṃ anvāya anuyogaṃ anvāya*) they were able to reach such rapture of mind (*tathārūpaṃ cetosamādhiṃ phusati*) that they could gain extra-sensory powers such as reminiscience of past births (*pubbenivāsānussati*) and the knowledge of appearance and disappearance of beings (*cutūpapāta ñāṇa*) by which they could verify for themselves the truth.

2.—*Development of the Two Trends*

Out of these two trends, one the rational and the other the intuitional, it appears that the former dates back to the time of the Ṛg Veda, if not earlier. If, for example, we take into consideration the problem of survival dealt with in the Ṛg Veda, later developed in the Brahmanas and some of the Upaniṣads, we see that it is a theory of speculative origin. In the Ṛg Veda we do not come across the belief in rebirth. We find only a one-life-after-death theory[6] which held that man on the dissolution of the body at death, passes on to the heaven where he revels in the company of Yama, the first of the mortals to go there.[7] Here, uniting with a glorious body, he enters upon a life of bliss which is free from imperfections and bodily frailties, in which all desires are fulfilled and which is passed among the gods. Life here was considered to be everlasting. It was taken for granted that the wicked had no place in this heaven for only those who have acquired merit by performing sacrifices etc., are born there. The sinners are said to fall into a bottomless pit of darkness.[8] When we come to the time of the Brahmaṇas it was believed that more the number of sacrifices performed, greater was one's store of merit. This resulted in the differentiation in one's status within heaven. These speculations led to a natural development. If the length and glory of one's next life depended on what is done here, if the sum total of merits is limited, then the question arose as to what happens

4. D. I. 16.
5. ibid. 13 ff.
6. RV. X. 14.
7. ibid. X. 14. 2—Yamo no gatur prathamo viveda.
8. ibid. X. 132. 4; IV. 5. 5; IX. 73. 8; X. 152. 4.

to a man when the stock of merit is exhausted (*kṣīṇye puṇye*).[9] This resulted in the formation of the conception of "second death" (*punar mṛtyuḥ*).[10] The greatest fear of the Brahmanical thinkers was the fear of this second death. Some believed that the second death resulted in the individual fading out into non-existence—a suggestion of the later doctrine of annihilation. Others suggested that after the second-death there was a possibility of rebirth on earth. In the Upaniṣads we find this theory being further elaborated and a fanciful description of the path by which man returns to earth is also given.[11] A careful examination of this theory of survival would thus reveal its speculative origin.

Along with this theory of rebirth which is the work of the rationalist (*takkī, vīmaṃsī*) there existed the findings of the Yogins (*muni*) who had developed intuition. There is plenty of justification to say that the intuitional method of verifying truth is not one that belongs to the Vedic tradition but to the non-Aryan tradition which goes back to the time of Mohenjodāro.[12] The sage (*muni*) who developed such powers was a stranger to the Vedas.[13] On the other hand if we can believe in the theory put forward by some scholars[14] that the Mohenjodāro-Harappa civilization was Dravidian, that of the non-Aryans who inhabited the Indian continent before and during the time of the advent of Aryans, then we are not hard put to it to say that the practice of Yoga, as revealed from one of the seals discovered at Mohenjodaro was current among the pre-Aryan inhabitants of India.[15] Due to the assimilative nature of the Aryan civilization we find that during the time of the Araṇyakas, the Aryans were accommodating this practice within their religious system. After that it became a part and parcel of the Vedic civilization and during the time of the Upaniṣads the development of intuition has become a predominent feature of the higher religion.

When we come to the time of Buddha we see that divergent and conflicting theories about the nature of reality, the reality of the world beyond, and the continuance of the soul after death were put forward and as the Brahmajāla Sutta goes on to state very clearly all of them were based on these two methods[16] of verification. From the same Sutta, it appears that

9. Belvalkar and Ranade—History of Indian Philosophy. II. p. 27.
10. Śatapatha Brāhmaṇa. II. 3. 3. 8; and X. 4. 3. 12; Jaiminīya—Up. Br. III. 28. 4.
11. Bṛhadāraṇyaka Upaniṣad. VI. 2. 15-16.
12. Punde. G. C.—Origins of Buddhism (1957), p. 256.
13. RV. X. 136 (Kesī Sūkta.)
14. Marshall—Mohenjodaro and Indus Civilization. I. 70.
15. Wheeler—Indus Civilization. p. 79.
16. D. I. 13.

they were not only the rationalists who engaged themselves in metaphysical speculations of this nature, but also the mystics, as mentioned above, who had a glimpse into the nature of reality by developing the higher faculties of perception, who began to speculate and thus fell into difficulty. Speculation on their findings led them to describe that reality each one according to his own whims and fancies[17] and thus came about the diversity of theories. Buddha describes how these religionists who had developed extra-sensory powers had been able to penetrate into a limited period of the past[18] and depending on that knowledge and made declarations about the nature of reality. So it was not only the rationalist philosopher, but also the Intuitionalist, who began to speculate on whatever he discovered by the development of intuition, who entered into the controversies regarding the nature of reality.

There were eternalists (*sassatavādī*)[19] who believed in the continuance and permanancy of the individual self (*atta*) as well as the world (*loka*); unqualified eternalists (*ekaccasassata-ekaccāsassatavādī*)[20] who considered the individual self and the world to be partly eternal and partly not. There were believers in fortuitous origin or chance occurrence (*adhiccasamuppannavādī*)[21] and some others believed in the creative activity of an almighty God (*issaranimmāṇavādī*).[22] Lastly, to be met with, were the materialists who very strongly held that the individual after death is completely annihilated, is cut off and destroyed (*ucchedavādī*).[23]

These wranglers went on abusing one another and demonstrating their several theories with the help of logic and reason.[24] The theory that one of them held to be true and irrefutable, the other proved to be false by equally convincing arguments.[25] Therefore the alternatives left were that either all of those theories should be correct or all were false.[26] The first alternative cannot be accepted for there cannot be several truths in the world. The Kalahavivāda Sutta[27] very clearly analyses this situation and shows

17. D. I. 14.
18. Ibid. 13-14.
19. Ibid. 13 ff.
20. Ibid.
21. Ibid. 28 ff.
22. M. II. 222 f.
23. D. I. 34 f.
24. Sn. 886.
25. Yamāhu saccaṃ tathiyam'ti eke,
Tamāhu aññe tucchaṃ musā'ti.—Sn. 883.
26. ibid. 890.
27. ibid. p. 168 ff.

the futility of all speculative theories and philosophical controversies as they do not contribute to knowledge. One philosopher calls the other a fool; and the other retorts with the same term of abuse. According to the Sutta if they were both correct, either they should both be fools, or they should both be wise men and there should be no fools at all among the religionists.[28] Unfortunately these arguments engender passion and lead to a considerable amount of heart-breaking and thus the real purpose behind their quest for knowledge was completely defeated. None of them appears to have been aware of the nature and scope of the main instrument, i.e. reason, that they were making use of.

It is, therefore, not at all surprising to hear people complaining to the Buddha, who had come with a new message of hope, about their utter dissatisfaction with regard to the teachings of these philosophers and religious teachers.[29] The statement of the Kālāmas of Kesaputta is a shining example of this dissatisfaction and remorse. Approaching the Blessed One who had paid a visit to Kesaputta, the Kālāmas are represented as saying, "Sir, Certain recluses and brahmins come to Kesaputta. As to their own view they proclaim and expound it in full but as to the views of others; they abuse it, revile it, depreciate it, and cripple it. Moreover, Sir, other recluses and brahmins, on coming to Kesaputta, do likewise. When we listen to them, Sir, we have doubt (*kaṇkhā*) and wavering (*vicikicchā*) as to which of these teachers is speaking the truth and which speaks falsehood."[30] The direct result of these endless logomachies, as would become clear from the above passage, was chaos and disintegration of values. This indecision of thought was really injurious to man's ethical interest and endeavour. "Anarchy in thought was leading to anarchy in morals."[31] Minute distinctions of metaphysical conceits and the habit of restless questioning, or the refinement of reason by the subtle disputes of sects did not lead to man's emancipation or happiness. Moral life descended to a low ebb due to the metaphysical subtleties and theological discussions absorbing the time and energy of the people. A correct evaluation of the Buddha's teaching would be possible only in the light of this background for "every system of thought embodies and reflects the tendencies of the time, and cannot be understood unless we realize the point of view from which it looked at the world and the habit of thought which made it possible".[32]

28. ibid. 890.
29. A. I. 189 f.
30. A. I. 189 f.
31. Radhakrisnan—Indian Philosophy, Vol. I. p. 353.
32. ibid. p. 352.

A correct and true estimation of the teachings of the Buddha could be made only against this background which is so clearly portrayed to us in the Pali Nikāyas.

3.—*Buddha's Discovery*

The foregoing remarks describe the philosophical atmosphere in which the Buddha was born and bred. He himself bears testimony to the fact that he had been, before he attained perfect and supreme Enlightenment (*pubbe va abhisambodhā*), a follower of many of these schools of thought.[33] The Pali texts stress the fact that the Buddha had attained Enlightenment without the help of a teacher;[34] and this is acceptable with reference to the final stages of emancipation. The Mahāyānist Scriptures have gone beyond the limits in their elaboration of the same theme.[35] Other frequent references in the Pali canon would show that he was said to be teacher-less (*na me ācariyo atthi*) only in a qualified sense; in that he had transcended or gone beyond his own teachers like Ālāra Kālāma and Uddaka Rāmaputta. From the Ariyapariyesana Sutta,[36] as well as from the Brahmajāla and Sāmaññaphala Suttas,[37] it is clearly evident that he, in his search for truth, resorted to yogic concentration, i.e. the intuitional approach to reality. A careful analysis of the contents of the Ariyapariyesana Sutta would reveal the fact that the Buddha attained perfect and supreme Enlightenment by following the same path along which he was led by Ālāra Kālāma and Uddaka Rāmaputta. Even if we are to take into consideration the gradual path, recommended in the Buddhist texts, which leads to the attainment of final emancipation (*saññāvedayita-nirodha*) we see that the immediately preceding two rungs in this ladder of spiritual development are the two states, "the sphere of nothingness" (*akiñcaññāyatana*)[38] and "the sphere of neither perception nor non-perception" (*nevasaññānāsaññāyatana*)[39] the attainment of which the Buddha is said to have learnt under Ālāra[40] and Uddaka[41] respectively.

33. M. I. 77 ff; 163 ff.
34. ibid. I. 171.
35. Lalita-vistara. See E. J. Thomas—The Life of Buddha, p. 46 f.
36. M. I. 160 ff.
37. D. I. 70 ff.
38. M. I. 160.
39. ibid.
40. ibid. 163-5.
41. ibid. 165-6.

All the references to the Buddha's attainment of supreme Enlightenment, in the Pali Nikāyas, are agreed in saying that the Buddha had developed intuition (*abhiññā*) and through that verified the truth. But the Buddha was clearly aware of the difficulties and contradictions into which his predecessors and contemporaries had fallen. It is because of this that he is made to say that the truth, the *dhamma*, discovered by him is not only profound, imperceptible, of difficult comprehension but also transcends the sphere of logical thinking (*atakkāvacara*).[42] Unlike his predecessors and immediate contemporaries he clearly saw the difficulties and dangers involved in describing in symbols like words a reality which is open only to extra-sensory perception. The reluctance on his part to teach the doctrine or to impart the truth that he had discovered to the people was prompted not only by his awareness of the proneness of humanity to sensuality given in the Ariyapariyesana,[43] but also by the intellectual difficulty arising from the attempt to explain and so convince the people of an ultimate truth which transcends all forms of conceptions and hence of logical thinking.

4.—*Buddha's Silence Regarding Ultimate Problems*

Culla Mālunkya Sutta of the Majjhima Nikāya describes only the pragmatic value of the Buddha's silence pertaining to problems of ultimate reality. "Whether there is the view that the world is eternal or whether there is the view that the world is not eternal there is birth, there is ageing, there is dying, there are grief, sorrow, suffering, lamentation and dispair, the suppression of which I lay down here and now."[44] Speculation on the problems of ultimate reality was thus, according to the Buddha, of no utilitarian value. It does not solve the immediate problem of the elimination of suffering.

But this is not the only reason which prompted the Buddha to observe silence with regard to such questions. There is another, and more important, reason given in the Aggi-Vacchagotta Sutta[45] and repeated in the Samyutta Nikāya,[46] which explains the intellectual difficulty, i.e. the difficulty arising from the attempt to describe and explain in empirical terminology something that is transcendental. Here we are told how a man called Vaccha was at a loss to understand the Buddha, how he was bewildered and confused

42. D. I. 12; M. I. 167.
43. M. I. 167.
44. ibid. 430.
45. ibid. 483 ff.
46. S. IV. 392-3; 396.

and how even the measure of satisfaction he had from former conversations with the Buddha was lost, due to the indefinite replies given by the Buddha to the questions he raised pertaining to the nature of ultimate reality.[47] Buddha's reply was that he ought to entertain doubts, he ought to be bewildered and confused, for this *dhamma*, this ultimate truth, is deep, difficult to see, difficult to comprehend, peaceful, excellent, beyond dialectic (*atakkâvacaro*), subtle and intelligible to the wise. With the help of several similes he goes on to explain how such transcendental truths cannot be denoted by terms and symbols, such as those of language, which have originated in the explanation of phenomena.[48] Concepts, which according to Kant[49] are "categories," cannot be applied in the attempt to explain them. "Critical philosophy" which Kant is said to have initiated in the Western world,[50] was initiated by the Buddha in India, centuries ago.

This same difficulty is explained in the Sutta Nipāta, according to which there is something inherently wrong in the very premises, from which such speculation starts. On a careful examination and analysis they are all seen to rest on three things i.e., things seen (*diṭṭha*), things heard (*suta*) and things cognised (*muta*).[51] These three things belong to the sphere of sense-experience, the sphere of discursive reasoning (*saññā*).[52] Hence, no doubt, the states transcending the sphere of sense experience are indescribable in terms of concepts belonging to the sphere of sense-perception.

Logical thought works with conceptions in which the totality of all possible experience undergone by the senses is preserved. The material it uses is, therefore, the world perceptible to the senses. For that very reason the forming of conceptions, and thereby all logical thought *per se*, is limited to that perceptible world. What is not accessible to perception through our senses cannot be caught and shut up into a conception and cannot therefore be made the object of logical thought. It does not lie within the realm of logical or conceptual thinking.

Out of the two reasons discussed above with regard to the Buddha's silence, one the pragmatic and the other the intellectual, the former explains why the Buddha *did not* and the latter why he *could not* explain such problems.

47. M. I. 487.
48. ibid.
49. Critique of Pure Reason—Tr. by Norman Kemp Smith, (1950), p. 308 f.
50. Höffding, H.—A Brief History of Modern Philosophy, (1922), p. 138.
51. Sn. 887.
52. ibid. 874.

Some of the modern-day Rationalists have expressed the view that the Buddha uses the expression *atakkâvacara* in *one* clearly defined case *only*, without exception, exclusively and solely, and this unique instance is when speaking of the state of a Delivered One (*nibbuta* or *parinibbuta*).[53] They are reluctant to believe that by using the term *atakkâvacara* Buddha had declared his doctine itself (*dhamma*) to be inaccessible to logical thought or reasoning, for they argue, "How utterly absurd, however any such interpretation would be, has, no doubt, become sufficiently evident from the foregoing alone. He who by concentration of the mind united with energetic logical thought and reflexion, defines the road to the Absolute, to the state of Nibbāna, to the final goal,— thereby certainly does defend himself (and in the sternest manner at all) against the insinuation that he declares his doctrine not to be within the realm of logical thought—his doctrine which, in its totality, is nothing but the road to the Absolute, the road to Nibbāna, to the final goal."[54]

By trying to place the state of the Delivered One only to be beyond the realm of logical thinking these scholars have betrayed their ignorance of some important statements in the Pali texts themselves. In the first place the logical thought and reflexion which they refer to has to be given up in the next stage of the development of the mind only after which one is able to develop the higher faculties of perception (*abhiññā*) and thereby could see the nature of reality.[55] Not only the state of the Delivered person, but even the reality of a person who passes from one existence to the other, being propelled by his own kamma, is said to be beyond the realm of logical thought for it is perceived only by the development of the higher faculties such as the knowledge of the reminiscience of past births (*pubbenivāsānussati ñāṇa*) and the knowledge of the disappearance and appearance of beings (*catûpapāta ñāṇa*), the contents of which too are described as *atakkâvacara*.[56]

From this it becomes clear that not only the state of the Perfected One, but also the reality of the unperfected individual as also the reality of the external world, were indescribable and are open only to extra-sensory perception. This appears to be the same position held by Kant, the "father

53. George Grimm—*The Doctrine of the Buddha*, The Religion of Reason and Meditation —Edited by M. Keller-Grimm and Max Hoppe, (1958).

54. ibid. p. 390.

55. D. I. 74.

56. ibid. 12. Note also the significance of the term *atikkantamānusaka* used to denote this faculty of seeing.

of critical philosophy" in the Western world. According to Kant,[57] the outer world causes only the matter of sensation, but our own mental apparatus orders this matter in space and time and supplies the concepts by means of which we understand experience. Things in themselves which are the causes of our sensations, are unknowable, ... nor can they be described by any of those general concepts which Kant calls "categories." Therefore, critical philosophy starts with the Buddha who, like Kant of our times, showed the nature and scope of logical thinking, twenty-five centuries ago.

But through compassion for the suffering humanity, the Buddha though with reluctance and hesitation, at last decided to preach the dhamma that he has discovered. He was perfectly aware of the difficult task that lay before him. Anyhow his skill in means (*upāyakauśalyatā*[58]—as the Mahāyānists would call it) came to his rescue.

He adopted the graduated method of imparting instruction (*ānupubbī kathā*).[59] Knowing fully well the limited capacity of the ordinary man to grasp and understand anything, he declared that ultimate realization would not come all of a sudden (*na ādiken'eva aññārādhanam*) and that only by a gradual training (*anupubbasikkhā anupubbakiriyā anupubbapaṭipadā*) that he could be able to realize for himself the deepest truth.[60] This led him to recognise the validity of some epistemological standpoints by means of which an individual, who had not attained realization, would be at least convinced of the truth, before he could realize it. Let us consider what these epistemological standpoints are after the analysis of the statement of the problem of truth. It should be clearly kept in mind that, since the dhamma, the truth that he had discovered was beyond the realm of logical thought, eh made an attempt to describe the salient features at least *approximately*. This description is so essential for convincing the ordinary man and thus lead him on to the correct path. The philosophy of the Buddha begins at this stage when he attempted to state the problem, i.e. to put down in language as approximately as possible the truth that could be reached only by religious experience.

57. Critique of Pure Reason, p. 134 ff.
58. Dasabhumika-sutra, pp. 95, 127, 490; Lalita-vistara, pp. 345, 474.
59. D. I. 110; II. 41. sq.; M. I. 379; JA. I. 8; Miln. 228.
60. M. I. 395; 479; II. 213; S. II. 224; JA. VI. 567.

Buddha's Statement of Causality in the Light of Pre-Buddhist Theories

5 —*Theories Rejected by the Buddha*

The Buddha's analysis of the theory of causality, it must be said, was prompted by purely ethical and practical considerations. A strictly philosophical discussion of the theory of causality is rarely met with in the Nikāya texts. It is only from the discourses in the Sutta Piṭaka where he had applied the theory of causality to explain the fact of suffering (*dukkha*) that the philosophical standpoint could be gleaned. Such a treatment of this theory of causality is to be met with in the Acela Sutta.[61] It discusses four theories all of which the Buddha rejected. Against these current views Buddha is represented as preaching his own doctrine of causality and only against this background could the value of it be assessed. The four theories are :

(1) that suffering is caused by oneself (*sayamkataṃ* or *attakataṃ*). This is the theory of self-becoming according to which all human actions and events are due solely to the individual's own agency. The whole position is analysed as:[62] " The statement that the behaviour of the individual is determined entirely by his own nature is contradicted by empirical evidence to the contrary. The whole universe constitutes an environment to the individual. It is at least physically impossible for an individual to live altogether apart from the world since it is the ground on which he lives. Not only is an individual influenced by other individuals surrounding him, but also he is influenced by the physical forces, the physical environment within which he lives. Even if he were to escape the physical environment, the influence of other individuals, yet he cannot live altogether apart from his own physical frame which is external to his mind. Hence the Buddha rejected this view as being untenable.

This theory is based on the philosophical notion of effect as not being different from the cause and is something inherent in the cause. Being potential it becomes actual. This is the theory of causality advocated by the Sāṅkhya system of Philosophy.[63] According to them things are produced from themselves and external factors are not contributory to such a production.

61. S. II. 18 ff.

62. W. S. Karunaratne—Concepts of Freedom and Responsibility in Theravāda Buddhism—UCR. Vol. XVII, Nos. 3 and 4. p. 79.

63. Murthi—Central Philosophy of Buddhism. p. 133.

(2) that suffering is caused by others (*paramkataṃ*). According to this view human behaviour is determined by factors external to the individual. Sometimes it may be determined by external individuals including God (*issara*), or some times it may be physical factors. "If it is true that behaviour is entirely determined by extraneous circumstances, then, for instance, two individuals placed in identical situations can be expected to act and react in an altogether identical manner."[64] But this never happens.

This theory can be said to be based on the philosophical theory of cause held by the Naiyāyikas[65] according to whom the effect is something completely different from the cause. It is something new and other than the cause.

(3) that of the Jains who combine the two extreme views enumerated above, insisting on the continuous as well as the emergent aspect of the effect. Because each of these views asserts something that is incomplete and inaccurate, an organic integral unity, a homogeneous whole, cannot be obtained by putting them together in this manner.

(4) that of the fortuitous originists (*adhiccasamuppannikā*) who held that events arise unrelated to the past. There is no order in the universe. Everything in this universe is due to chance-occurrence.

6.—*Buddha's Statement of Causality*

It was against this background that the Buddha preached his theory of conditionality (*paṭiccasamuppāda*). He did not advocate any of these extreme views. Nor did he try to bring about a reconciliation of these conflicting views as the Jains did. In the interest of consistent completeness he disallowed the continued existence of the two theories as two extremes and reformulated the whole thing altogether afresh by taking into consideration the facts as fully as they are found. This was the middle path (*majjhimā paṭipadā*) that he staked out.

A careful examination of the above theories, in so far as their philosophical basis is concerned, would reveal one salient feature common at least to the first three. It appears that these three schools of thought analysed the whole causal process into two water-tight compartments as cause and effect. This arbitrary compartmentalization of the causal process into

64. W. S. Karunaratne—ibid. p. 80.
65. Murthi—ibid. p. 133.

cause and effect created insuperable difficulties for the advocates of these theories and left their theories open to attack especially by the Mādhyamikas[66] at a subsequent period.

Buddha was quite aware of these conflicts that would result from such a division of the causal process into cause and effect. The Buddhist view is very clearly set forth in the words of Bhikkhuni Selā.[67] To the question posed by Māra as to how this personality had come about, Selā is represented as giving the following answer.

> Neither self-made *this body is*,[68] nor yet
> By other wrought is this ill-plighted thing
> By reason of a cause it came to be
> By rupture of cause it dies away.[69]

Not being satisfied with this much she goes on to explain the causal process, with the help of a very striking simile, a simile which brings into light all the prominent features of the Buddha's theory of causation. It runs thus—

> " Like to a certain seed sown in the field
> Which, when it lighteth on the taste of earth
> And moisture likewise, by these twain doth grow,
> So the five aggregates, the elements,
> And the six spheres of sense—even all these—
> By reason of a cause they come to be
> By rupture of a cause they die away."

The salient features that stand out very prominently out of this description are firstly,

(*a*) that Buddhism does not analyse the causal process into two watertight compartments as cause (*hetu*) and effect (*phala*) but recognises the existence of a plurality of causes. The commentators who grasped the

66. Madhyamika Kārika, I. 1.

67. S. I. 134.

68. I have replaced the phrase " the puppet " occurring in the translation with the phrase " this body".

69. The Book of the Kindred Sayings, I. 169.

real import of this description go on to say that a harmony of causes (*paccaya-sāmaggi*)[70] is necessary for the arising of the effect. Rupture of cause (*hetu-bhaṅga*) they explain as the deficiency of the necessary causes (*paccaya vekalla*).[71] The group of causes (*hetu-samūha*) producing some effect would not be able to do so were they mutually independent and deficient.[72] Therefore through mutual dependence, equally (*samaṃ*) and together (*saha*), they produce the resultant states, not a portion at a time.[73] Anything arises on account of (*paṭicca*), not regardless of (*apaccakkhāya*) the harmony of causes (*paccaya sāmaggi*).[74] The emphasis on the harmony of causes points to the fact that if the process is deficient, if any of the necessary causes is not found, then the desired result would not follow from that.

The causal process examined in the simile cannot be analysed into two as cause and effect and also it cannot be said that the seed (*bīja*) is the cause and the tree, the effect. For, the existence of the seed alone is not sufficient for the arising of the tree. In the first place it must contain within itself the potentiality to produce the tree, for, not all seeds are fertile.[75] Secondly, a seed thrown on a dry land or even on a rock would not always sprout forth. It would be destroyed for lack of other requisite conditions.[76] Therefore to say that the seed is the cause and the tree, the effect would not be correct since the cause must always produce the effect ; otherwise we cannot speak of a law of causation (*niyāma*). On the other hand, it would become clear from the simile that there must be not one but several causes. Along with the seed there also must be the essence of the earth (*paṭhavi rasa*) and moisture (*sineha*) not to mention the fertility of the soil, sunlight, etc. Therefore according to the Buddhist theory of causality there must be a harmony of causes (*paccayasāmaggi*). Any instance of mental as well as physical phenomena is thus the result of a harmony of several causes.

(*b*) Secondly, that this plurality of causes or the various causes that go to produce the effect are related to the effect in diverse ways. A knowledge of this salient feature revealed by the simile would be a clue to the proper understanding of the theory of Relations (*paccaya*) analysed in the *Paṭṭhāna*.

70. Vism. p. 521.
71. SA. I. 193.
72. Vism. p. 521.
73. ibid.
74. Vism. p. 521.
75. S. III. 54.
76. ibid.

The plurality of causes that go to produce the effect, in this case the seed, essence of the earth and moisture are related to the effect, i.e. the tree in a number of ways. There is no doubt that the seed in this case can be described as the main cause or the root cause (*mūlaṭṭhena hetu-paccayo*, according to the Abhidhammikas).[77] Moisture, essence of the earth and even sunlight serve as food (i.e. *āhāra-paccaya*) necessary for the sustenance of the tree. It would not be wrong to describe the earth as the support (i.e. *nissaya paccaya*) on which the tree stands.

For reasons adduced below, the attention of the Buddha as well as his immediate successors, was directed on to the first aspect of the theory of causation. They were not interested in finding out the ways in which things (*dhamma*) are interrelated.

With the insight he gained as he seated himself under the Bodhi-tree at Gayā on the full-moon day, the Buddha was able to penetrate into the deepest truth about the nature of phenomena (*dhamma*).[78] He saw the orderliness of things, how they arise and pass away according to set patterns causally conditioned. Phenomena, mental as well as physical, were in a state of flux (*santati*), continually changing and never static. They are not constituted of discrete momentary states succeeding one another, but are dynamic processes which could only be compared to a flowing river (*sota*).[79] This reality is not given to sensory experience, but is open only to extra-sensory perception. This orderliness, the relation that one phenomenon bears to the other is static whereas the things (*dhammā*) that come within this framework, under these relations, are always in a state of flux, but never static. Phenomena (*dhammā*) are continually changing but the orderliness according to which they change i.e., the relations obtained among these phenomena, is found at all times, in every thing and everywhere. It is the knowledge of this truth that prompted the Buddha to say that "Whether there be arising of Tathāgatas, or whether there be no such arising, this nature of things (*dhammadhātu*) remains constant (*ṭhitā'va*) this causal status (*dhammaṭṭhitatā*), this causal orderliness (*dhammaniyāmatā*), this relatedness of this to that (*idappaccayatā*),"[80] thus emphasising the constancy of the causal law. It is said that the Buddha is fully enlightened on this,

77. Tikap. I. 12.
78. Vin. I. 1 f; Ud. p. 1 f.
79. D. III. 105; S. I. 15; IV. 126.
80. S. II. 25.

has fully understood it, and then goes on to declare, teach, reveal, set forth, manifest, explain and make plain this causal orderliness.[81]

An apt simile is made use of by the Buddha to illustrate this causal process. In describing the process of consciousness (*viññāṇa*) which is one of the causal processes,[82] the Buddha has compared it to a flowing stream. Very significant is its comparison to a flowing stream (*sota*).[83] On the one hand a stream is something that cannot be analysed and shown to consist of a succession of discrete particles of water. On the other hand, it is fed by several rivulets or streamlets. Even so is this causal process, this saṃsaric existence (*bhavasota*)[84] which is fed by various factors or conditions (*paccaya*). It gathers momentum and flows fast when it is fed by the necessary conditions (*paccaya*). Buddha perceived with his Divine Eye how phenomena or processes, mental as well as physical, are continued in a certain order (*niyāma*) with relations. Relations are obtained among mental and physical phenomena, as well as among themselves separately. "Only when one comes to know the cessation of these relations (*paccaya*), then only doubts cease assailing him."[85] Once again it is said that, "That which is true (*tathatā*), not elsewise (*avitathatā*) not otherwise (*anaññathā*), this relatedness of this to that (*idappaccayatā*) is called the causal happening (*paṭiccasamuppāda*).[86]

As far as the early Buddhist texts would reveal, the Buddha's examination of causality was undertaken with a purely practical end in view. His immediate environment suggested to him the expediency of arriving at a practical solution to the problem of suffering (*dukkha*). The tone of the Culla Mālunkya Sutta[87] makes explicit this attitude of the Buddha. There was theorising and speculation around him *ad nauseam*. The very failure of these theoretical methods to arrive at and advocate a satisfactory solution to the problem would have emphasised the immediate need for a method

81. S. II. 25—Tam Tathāgato abhisambujjhati abhisameti, abhisambujjhitvā abhisametvā ācikkhati deseti paññapeti paṭṭhapeti vivarati vibhajati uttānīkaroti.
From this description too, it is evident that this truth is open only to extra-sensory perception and that the Buddha makes every attempt possible to express it in language in an intelligible form.
82. M. I. 256 ff.
83. D. III. 105.
84. S. I. 15. IV. 126.
85. Ud. p. 2—Yadā have pātubhavanti dhammā ātāpino jhāyato brāhmaṇassa,
Athassa kaṅkhā vapayanti sabbā yato khayam paccayānam avedi.
The occurrence of the term paccaya in the plural is significant here.
86. S. II. 26.
87. M. I. 426 ff.

that would, at least as far as the individual was concerned, save him from the inner unrest that was tormenting him. No sensitive individual could remain untouched by the pervading chaos and disintegration of values.

At this juncture Buddha must have thought of the futility of discoursing on the analysis of the various ways in which phenomena are related to one another. His interest lay not in the way or manner in which things are related but only in the things (*dhamma*) themselves which are so related. The need of the immediate environment was not to know the various ways in which birth (*jāti*) is related to decay (*jarā*) and death (*maraṇa*), but only to know as to what it is that is related to decay and death, what it is that is in causal relation to decay and death, so that with its discovery and elimination, suffering too could be eliminated. This would become clear when we examine the statement of causality found in the Dvayatānupassanā Sutta.[88] The main problem raised here is the origin of suffering (*dukkhassa sambhava*) and when and how this suffering could be ended (*yattha ca sabbaso dukkhaṃ asesaṃ uparujjhati*). In the attempt to explain the causality of suffering, the sutta enumerates not one but several causes. Dukkha is related to several things (*dhamma*) such as the substratum of rebirth (*upadhi*), dispositions (*saṅkhāra*), consciousness (*viññāṇa*), attachment or lust (*taṇhā*), clinging or grasping (*upādāna*), birth (*jāti*), inception of energy (*ārambha*), food (*āhāra*), vacillation (*iñjita*) etc. The enumeration of the efficient cause as against the causal antecedents led to the better understanding of the principle. Hence the enumeration of the most important and prominent cause. This was prompted purely by practical considerations. If the most important cause is known and eliminated, they knew that they could put an end to the effect. After examining the various factors that are related to an effect (*phala*) and keeping in mind only the most prominent cause (*hetu*), the Buddhists formulated the general rule of causality which is given a very prominent place in the Nikāyas. The formula runs : " When this exists that exists, on the arising of this that arises. In the absence of this that does not come into existence, on the cessation of this that ceases to be."[89] Prompted by purely practical considerations the Buddhists in their statement of the general theory of causality referred to only one factor which is the most prominent. If not they would have stated it in a different way,

88. Sn. p. 139 ff.

89. M. I. 264; S. II. 28—Imasmiṃ sati idaṃ hoti, imassa uppādā idaṃ uppajjati. Imasmiṃ asati idaṃ na hoti, imassa nirodhā idaṃ nirujjhati.

to wit, "When these exist that exists, on the arising of these that arises,"[90] *for causation is not a one to one relation but a many to one relation.*

According to the formula given above which is a universal proposition and which reigns supreme in every sphere, the pattern of events is such that whenever A happens, B happens and whenever A does not happen, B does not happen. In such a case A and B are causally related. This is the doctrine of Paṭicca-samuppāda (lit. arising on account of). This causal pattern may be in the realm of things (*utuniyāma*),[91] in biology (i.e. *bījaniyāma*),[92] in psychology (i.e. *cittaniyāma*),[93] in phenomena (*dhammaniyāma*)[94] or in the moral sphere (*kammaniyāma*).[95] The whole universe is said to have this causal character. The truth or reality, the ever-existent nature of things is the relation that exists between any of these phenomena. There may be various ways in which things are related. The relation existing between A and B may be different from the relation existing between B and C or even A and C, but anyhow there is a relation. Thus there may exist various forms of relations, the analysis of which was not the main task of the Buddha and his immediate disciples.

The doctrine of survival after death, on which the whole of the moral consciousness as well as religious endeavour were based, is one of the keystones of Buddha's philosophy. This doctrine is not one that is formulated beaten out by argument (*takkapariyāhataṃ*) or after reflective thinking (*vīmaṃsānucaritaṃ*), nor is it one that is taken for granted or accepted by the Buddha depending on the testimony of others.[96] How the renewal of existence effects itself in the moment of death is a mystery to those of us whose intellect is covered by the dust of ignorance (*rajakkhajātika*) but not to those who have unveiled the covering (*vivattacchada*) who have developed the higher forms of intuition (*paññā*) by the culture of the mind. According

90. In this case the former statement should be reconstituted in the following manner—Imesu santesu idaṃ hoti, imesaṃ uppādā idaṃ uppajjati. Imesu asantesu idaṃ na hoti, imesaṃ nirodhā idaṃ nirujjhati.

91. D. III. 84, 86.

92. S. III. 54.

93. S. IV. 87.

94. D. II. 12; M. II. 32; S. II. 25, 28; A. I. 26, 152; V. 184; Thag. vv. 676-8.

95. A. I. 28.

96. The contention of Dr. Saratchandra who says that Buddha had "taken for granted the entire background of popular belief in the continuation of the individual in a number of births and deaths" (Buddhist Psychology of Perception, 1958, p. 87) does not hold ground because in the first place it was not a popular belief but it was the finding of the yogi who had developed extra-sensory powers, (D. III. 108 ff) and Buddha too verified this truth in the same manner.

to Schopenhauer,[97] to point out the bridge between death and rebirth would certainly mean the solution of a great problem. It is considered to be a problem that from all time has been insoluble.[98] It becomes an insoluble problem so long as we exist in this state and then try to apply categories to it which it transcends.

7 —*Development of the Theory of Causation explaining the Cycle (vaṭṭa) of Existence*

The Buddha and his disciples applied the above mentioned theory of causation especially to explain the problem of survival. Explanation of sansāric existence was a need of prime importance for them.

As soon as the Buddha reached the insight that rebirth is the real form of our living on, then without further ado, the insight into the beginninglessness of the round of our rebirths and thereby into the immeasurable space of time we have already wandered through is reached too. If the birth that has conditioned the present life was not the first one, then neither was the preceding one the first and so on without cessation, back to the beginningless infinity of the past. Thus according to the Buddha the extremities of the sansaric existence are inconceivable (*anamataggo ayaṃ saṃsāro*) the beginning is imperceptible (*purimā koṭi na paññāyati*)[99] and so is the end unless we make our own effort to put an end to it.

This picture of the sansaric existence definitely prompted the Buddhists to conceive it in the form of a circle (*vaṭṭa*) because it is logically impossible to show the beginning or the starting point of a cycle. This being the reality that they had to describe, the Buddhists took the next step in placing the individual and separate factors which were given as causes of suffering (*dukkha*) in the *Dvayatānupassanāsutta*, in a certain logic order or sequence. Thus originated the theory of causality (*paṭiccasamuppāda*) where one factor is given as conditioning the other and this conditioning was conceived in the manner of a circle without a beginning. Several stages of the development of even this theory of causation are noticible in the scriptures.

The first one that we come across and which is considered to be the oldest account of the *paṭiccasamuppāda* stated in the manner of a cycle (*vaṭṭa*) is found in the Mahāpadāna Sutta of the Dīgha Nikāya[100] where ten items

97. See Grimm, George. ibid. p. 40.
98. ibid. p. 40.
99. S. II. 178 ff.
100. D. II. 55 f.

form the constituents of the cycle and are given in backward order reasoning from the appearance of suffering (*dukkha*) in this world, of age and death towards the cause of it in *viññāṇa*. The same statement is found again in the Saṁyutta Nikāya.[101] The final development shows twelve links where ignorance (*avijjā*) and dispositions (*saṅkhārā*) are added to precede consciousness (*viññāṇa*).

Personality which consists in the inter-action of the five groups of grasping (*pañca-upādānakkhandha*) was considered by the Buddhists as a machine of suffering.[102] Especially this corporeal personality, becomes worn out, grey and wrinkled, vitality disappears and the senses become dull.[103] Until at last in death entire ruin and dissolution follow. These two fundamental qualities of the substratum of personality, old age and death, give at the same time to the whole process of personality the stamp of transciency, and in doing so make life as such full of suffering. In old age and death, therefore, suffering culminates ; they are sufferings most poignant and pregnant expression. To the question raised by himself in his attempt to find out the cause of suffering : "Are old age and death dependent on something ?" the Buddha gave a positive answer and traced it back to rebirth (*jāti*).[104] Because old age and death are nothing but the gradual decay and dissolution of this corporeal organism, therefore they are inevitably bound up with its birth. It should be noted that this is only a logical answer to the question and is further proof to our contention that the theory of causality (*paṭiccasamuppāda*) with its twelve links is a logical development. Then the cause of birth was sought after and it was described as becoming (*bhava*).[105] It is the continuance of the individual. Becoming is due to grasping or clinging (*upādāna*) and this takes us back to the previous life. One grasps something due to one's attachment (*taṇhā*) for the same.[106] Attachment is the result of sensation (*vedanā*).[107] Our likes and dislikes are determined by the way in which things affect us, i.e. according to our sensations. There cannot be sensations without any contact (*phassa*)[108] and contact does not come about unless there are the individual (*nāmarūpa*) experiencing that contact and an external object (*salāyatana*)[109] with which

101. S. II. 104 ff.
102. Vin. I. 10.
103. D. I. 76.
104. D. II. 57; S. II. 104.
105. ibid.
106. D. II. 58.
107. D. II. 58.
108. S. II. 104.
109. ibid.

he comes into contact. The existence of the external spheres (*āyatana*) alone is not sufficient to bring about contact, for the individual (*nāmarūpa*) must also be present. If the Buddhists had stopped at this juncture they would have found it difficult to explain how this *nāmarūpa* came about, who created it, etc. But according to their philosophy of life this *nāmarūpa* had to be connected to the previous one, hence it was said that this *nāmarūpa* could not develop without the influence of *viññāṇa* which connects the individual with his previous life.[110]

As it appears from the Mahāpadāna Sutta, at first the Buddhists were satisfied with this explanation. But later the problem was raised as to what this *viññāṇa* is. So far one of the most important problems of the individual life-flux has not been solved. How is one to account for moral responsibility ? In the attempt to give a solution to this most fundamental problem the Buddhists had to make room for volition in the statement of causality. So at last, they added to it *sankhāras* which are explained as the result of kamma,[111] the impressions left behind by one's actions which also have the power or potentiality to mould and give individuality to *viññāṇa*.[112] Hence this connected the *viññāṇa* to the kamma of the previous life and thus moral responsibility could be explained to a certain extent satisfactorily. Not being satisfied by this because they saw that conation and feeling do not sum up what we mean by mind, that something existed between these two connecting them, they recognised the existence of knowledge, intelligence. Our feeling and conation, and hence actions, are determined by the nature of our intellection. The nature of intellection determines the nature of our actions (*kamma*) and hence of the dispositions (*sankhāra*). This close connection between intellection and conation on the one hand and conation and action on the other is amply illustrated by the Kukkuravatiya Sutta.[113] This prompted the Buddhists to include avijjā or ignorance in the causal formula which explains the conditionality of suffering.

This would reveal the manner in which the theory of causality with the twelve factors developed. In the first place it should be kept in mind that this is only an attempt to explain and illustrate the life-stream (*bhavasota*) which is perceived only by the extra-sensory faculties. Due to ethical and practical reasons the application of the universal theory of causation was restricted to the life-stream (*bhavasota*) only.

110. D. II. 62-63.
111. M. I. 387 sq.
112. S. III. 87—Viññāṇaṃ viññāṇattāya saṅkhataṃ abhisaṅkharoti.
113. M. I. 387 sq.

The question can be raised as to how this theory giving one factor as conditioning the other, could be reconciled with the theory of causation which believes in a plurality of causes as is evident from the simile discussed above. Buddhaghosa explains this problem when he says that the most important and prominent factors alone are taken into consideration leaving aside the minor factors.[114] According to him, " He (the Buddha) teaches a single cause (*hetu*) or fruit (*phala*) for the establishment of the teaching and the convenience of possible converts, owing to the meaning being sometimes established (*padhānattā*), sometimes evident (*pākaṭattā*) and sometimes specific (*asādhāraṇattā*). He has stated one cause and fruit by establishing the meaning as 'conditioned by contact, sensation comes to pass'. For, contact is the established (*padhāna*) root cause of sensation, because sensation is fixed according to contact."[115] Likewise could all the factors of the twelve-fold formula be explained.

As pointed out earlier, the Buddha discussed the problem of causation in this manner with a purely ethical end in view. The attention of the Buddhists during the period of the Nikāyas was mainly directed on to the things (*dhammā*) that are related and out of these too, to the more prominent things so that the elimination of one would mean the elimination of the other. They were not bothered about the various ways in which these things are related to one another because it is a purely speculative problem having no relevance to the immediate need of putting an end to suffering. The theory of causality with its twelve factors is only an illustration, done to the greatest approximation, of the dhamma that could not be fully stated by language. As the practical way of solving the problem of pain (*dukkha*), the Buddhists made an attempt to show the most important factors in the life-flux with a view to enable one to get rid of these and thus put an end to pain. Beyond this there was no speculation.

Development of Scholasticism and the need for the Formulation of the Theory of Relations

8.—*Early Buddhist Monastic Ideal*

Scholars, both of the East as well as the West, have made attempts to show a change in the life of the Buddhist monks. According to them the earliest community of Buddhist monks practised the eremitical ideal.

114. Vism. p. 542.
115. ibid.

Itinerancy was the essential and inalienable condition of the life of the earliest disciple of the Buddha.[116] It cannot be denied that this was the earliest ideal for it was based on the admonition of the Buddha to go forth and expound his message to the world for the good and welfare of the people.[117] But it is not this aspect only that is emphasised by these scholars. They try to couple it with another aspect which they call the unsocial or anti-social attitude of the monks.[118] Basing all their arguments on individual discourses like Khaggavisāna[119] and Muni[120] Suttas and also the references to austere (*dhutaṅga*) practices which were sometimes commended by the Buddha[121] they declare that the earliest Buddhist monk lived in the forest groves, away from human habitat and that this was the earliest and true ideal. The attempt of these scholars is directed to show a change from this anti-social ideal of life to a life in society. These two sections existed from the earliest times and we are not able to say that the one is later than the other. There was a group of monks who advocated a life in the forest groves far removed from the busy and active life in the society. And monks who held such views continued to exist until very recent times On the other hand there was another section of monks who advocated a life devoted to the weal and welfare of mankind. They were the arahants who, having freed themselves from all suffering in this world and putting an end to sansaric existence, went about preaching the way to peace and happiness to those ignorant people engrossed with worldly things. Once a person after a strenuous course of self-training and self-taming had attained to moral and spiritual perfection, he could live in a society without being smeared by the vices and viles of society.[122] His mind is such that on coming into contact with the worldly things it does not waver.[123] Such a person can continue to live in society and work for the welfare and amelioration of the ills of society without doing harm to himself. On the other hand the Buddha had not been very strict with regard to austere practices such as living in forests, feeding solely on alms, wearing cast-off rags, etc. as is evident from his refusal to make compulsory the observance of the five precepts placed before him by Devadatta.[124] While commending these

116. Dutt, S.—Buddha and five after-centuries, (1957). p. 66.
117. Vin. I. 21—caratha bhikkhave cārikaṃ bahujanahitāya bahujanasukhāya lokānukampāya atthāya hitāya sukhāya devamanussānaṃ.
118. Dutt, S. op. cit. pp. 68, 70.
119. Sn. p. 6 ff.
120. ibid. p. 35 ff.
121. A. I. 23.
122. M. I. 169.
123. Sn. 268—Phuṭṭhassa lokadhammehi cittaṃ yassa na kampati
Asokaṃ virajaṃ khemaṃ . . . . . .
124. Vin. II. 197.

five practices, the Buddha also allowed exceptions to these practices but only as extra-allowances (*atireka lābha*).[125] Yet a careful examination of these would reveal the fact that these exceptions effectively cancel the rules out.

9.—Change of Monastic Ideal

Considering these facts it becomes apparent and clear that the change is rather from the ideal of a wandering monk to a settled monastic ideal, than from the so-called "unsocial or anti-social" to the social. As is evident from the texts the climatic conditions coupled with the generally accepted beliefs of the masses, prevented them from practising the ideal of a wandering monk throughout the whole year,[126] and we see how the whole wandering community used to suspend wandering and go into residence until the skies cleared, rain-floods subsided and streams became fordable. As a result āvāsas came to be staked out and out of these colonies for rain-retreat the beginnings were made of cenobitical life among the monks. The Thera and Theri gathās of the Khuddhaka Nikāya very clearly portray the life of the monks and nuns who lived in these āvāsas. Āvāsas became places where men and women tormented by the ills of life gathered round eminent disciples of the Buddha, thirsting for spiritual guidance.[127] This life devoted to the pursuit of spiritual perfection and a search for ways and means of putting an end to immediate suffering, changed after the passing away of the Buddha.

It appears as if the final injunction of the Buddha to Ānanda, viz., "What dhamma and vinaya have been promulgated and proclaimed by me, let that be, after my death, your teacher,"[128] had led to a change or revolution not second to any other, in the history of the Sāsana. This definitely points to the fact that the authority that was vested in the Buddha during his life-time devolved now on the *dhamma* and the *vinaya* that he had preached and proclaimed, thus heralding a new epoch in the history of the Buddhist Order.

In a religious order which recognised no leadership after the passing away of the founder and in which spiritual allegiance to a person had come to an end with his death, the spirit of questioning, disputing, testing rules

125. Vin. I. 58.
126. ibid. I. 137 ff.
127. Thig. vv. 43-44, 68-70, 102-103, 119, 124-125 etc.
128. D. II. 154.

and doctrines in the light of individual reason and conscience were alert and unchecked. So it happened in the history of the Buddhist Sāsana as is evident from the incidents of Subhadda[129] and Purāṇa[130] recorded in the Cullavagga. The direct result of it was that an attempt was made to define and stabilise the *dhamma* and the *vinaya* that was preached and proclaimed by the Buddha.[131] The historicity of the First Council, the activities of which is to a great extent exaggerated by the later texts, would become more and more clear when we view it against this psychological background. Any attempt to appoint an individual to lead the order of monks was rendered useless by the injunctions of the Buddha himself.[132] Thus in the absence of a leader appointed by the founder or the community of monks and the dependence on the teaching of the founder for guidance with regard to the conducting of their lives, it is not at all surprising to see the monks who had by now settled down in āvāsas devoting their whole time to the study of the Buddha-vacana. Not only did some give up wandering for the weal and welfare of the others, but even neglected their own spiritual emancipation. The studying and systematising of the teachings of the Buddha absorbed their attention and this was further necessitated and accelerated when outside schools of thought, which Buddhism had antagonised because of the severe criticisms which it levelled against them, began once more to raise their heads.

10.—*Development of Scholasticism*

The history of Buddhism from that time onwards was thus characterised by conventionalization and assimilation. In the face of the criticisms of the other schools of thought Buddhists felt the real and imperative need for the systematisation and moulding of their own teachings. Thus came into existence scholastic activity divorced from ethical and practical life. The first century after the death of the Buddha witnessed the systematisation and the development of the doctrines contained in the Sutta piṭaka and the disciplinary measures in the Vinaya piṭaka. Next came the Abhidhamma-piṭaka. The history of human ideas has surely no more striking evolution of pure scholasticism to offer than that which is here sampled. So far as we can get at the founder of Buddhism at all, we see a man spending nearly

129. Vin. II. 184-285.

130. ibid. 289-290—Purāṇa who was informed of the rehearsal of the Dhamma and the Vinaya and was asked to accept it, replied thus, "Well chanted by the elders are the dhamma and the vinaya, but in that way that I heard it in the Lord's presence, that I received it in his presence, in that same way will I bear it in mind."

131. ibid. 285.

132. D. II. 100 f.

half a century in adapting his simple gospel of the good life to every shade of individual spiritual need that came before him. At the other extreme of this passionate patience to help the particular case we find, a few centuries later, the gigantic effort of the Paṭṭhāna to make a class or type of every possible particular case that can be imagined. The result may be imposing in its complexity and ingenuity. But we there move in a world of *dhammas* as far removed from the flesh-and-mind actuality of this man's case or that woman's as are the symbols in a book of Algebra. Years were spent on that result, without the work of the founder being advanced a step. The monks of this later stage in the history of the sāsana were not teaching their fellows how to live ; they were instead doing their best to think. This was the only difference, a colossal difference indeed. Their object of thought was human character as revealed by past human experience and reduced to a mass of abstract judgments. It was not kept alive, corrected and improved upon by intercourse with and observation of the little world without them, much less of the greater world that lay to them inaccessible. Hence their object of study was a fixed rigid world, admitting of no exceptions, yielding always uniform results. It was divorced from the ever-fluid world of the living.

11.—*Development of the Theory of Relations in the Abhidhamma*

In the earlier chapter an attempt was made to show whatever difference there is between the theory of Paṭiccasamuppāda with the twelve factors and the doctrine of Relations (*paccaya*) analysed in the Paṭṭhāna and later Abhidhamma works. It was also pointed out how the theory of Paṭiccasamuppāda with the twelve factors developed out of the general theory of causality in an attempt to explain the cause of suffering (*dukkha*). In a theory of Relations it was shown that there are two apsects, i.e., the things that are related and the ways in which these things are related. The Nekāyikas, due purely to ethical and practical reasons, were not at all interested in the latter, namely the ways in which things are related, for it is purely a speculative problem. On the other hand their attention was absorbed by the things that are related. The knowledge of the related things, rather than the ways in which they are related, is so essential for the elimination of one would mean the elimination of the other. They were therefore more interested in the causes of suffering (*dukkha*) for an understanding and clear comprehension of these causes would enable the elimination or destruction of them so that their resultant suffering (*dukkha*) could be completely destroyed.

Thus in the Nikāyas we find the analysis of mental as well as physical processes into discrete moments, undertaken with a view to facilitate proper understanding and clear comprehension. They deal with no abstraction but only with particular instances of discrete mental and physical phenomena. But with the development of pure scholasticism as described above, we see how the Abhidhammikas had made a perusal of all these phenomena (*dhamma*) that had already received full treatment in the Nikāyas. But the method adopted by the Nekāyikas was not systematic and it fell to the lot of the Abhidhammikas to enumerate these phenomena in an orderly and systematic manner. This systematic treatment of all existent phenomena is to be met with in the Dhammasaṅganī, the first book of the Abhidhamma piṭaka. The Brahmanical schools of thought were not completely crushed by the severe attacks on their substantialist position launched by the Buddha and his followers. After the attack of the Buddhists they emerged with greater force and vitality. The origin and development of texts like the Dhammasaṅganī was the direct result of the counter-attack launched by the Buddhists. The fresh treatment of things that were already discussed in the earlier texts was thus necessitated by the systematisation and crystalization of the doctrines of these outside schools of thought which believed in the reality of permanent entity (*ātman*) underlying this body and mind. Following the footsteps of the Buddha, the Abhidhammikas too are seen cherishing this anti-substantialist position carefully and conscientiously and it is because of this that they undertook to analyse and examine every instance of mental and physical phenomena and to show that such an entity as a soul could not be obtained in this psycho-physical entity called personality. As is evident from the Dhammasaṅganī there is no instance of mental or physical phenomenon that has escaped the scrutiny of the Ābhidhammikas. But if they had been satisfied with this analysis they would have naturally fallen into a position where they had to share the views of the Vaiśeṣika school of thought which believed in the existence of a plurality of discrete phenomena, thus contravening the early Buddhist philosophy of life discussed in the earlier chapter.

But the Abhidhammikas avoided falling into such inconsistencies by formulating the philosophy of Relations (*paccaya*) which explains the way in which these discrete phenomena related themselves to each other thus presenting a synthesis, a unified whole as it were. Therefore they were naturally led on to the examination of the ways in which these phenomena

are related to each other. Thus originated the whole book of Paṭṭhāna. In the Paṭṭhāna twenty-four such forms of relations obtained among phenomena are enumerated, to wit,

1. Root-condition (*hetu*),
2. Object (*ārammaṇa*),
3. Dominance (*adhipati*),
4. Contiguity (*anantara*),
5. Immediate contiguity (*samanantara*),
6. Co-existence (*sahajātā*),
7. Reciprocity (*aññamaññā*),
8. Dependence (*nissaya*),
9. Sufficing condition (*upanissaya*),
10. Pre-existence (*purejāta*),
11. Post-existence (*pacchājāta*),
12. Habitual occurrence (*āsevana*),
13. Karma (*kamma*),
14. Effect (*vipāka*),
15. Food (*āhāra*),
16. Control (*indriya*),
17. Rapture (*jhāna*),
18. Means (*magga*),
19. Association (*sampayutta*),
20. Dissociation (*vippayutta*),
21. Presence (*atthi*),
22. Absence (*natthi*),
23. Abeyance (*vigata*) and
24. Continuance (*avigata*).

D. J. KALUPAHANA

Political Offences in the Law of Extradition

THE general rule that no extradition should be granted for political offences came up for consideration before the British High Court once more in *R* v *Governor of Brixton Prison, ex. parte Schtraks.*[1] The rule, which is well known and recognized in international law,[2] was put in issue under the Extradition Act 1870.[3] The relevant section of the Extradition Act states that,

> "A fugitive criminal shall not be surrendered, if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character."[4]

This section purports to be declaratory of the prevailing international law. It provides for the non-extradition of persons accused of political crimes. The problem of defining the circumstances in which extradition will not be granted on these grounds remains, however, a difficult one. Difficulty arises, because the crime in issue would normally be an extraditable crime but owing to certain special circumstances is to be regarded as political.[5] The exact delimitation of these circumstances has given rise to differences of opinion. To illustrate the problem, the applicant may be accused of murder or arson in the state requesting extradition but the crime may have been committed to obstruct the efficient functioning of the government by the removal of a leading political figure or by the destruction of an important building such as a radio station. Under the extradition treaty between the two states concerned murder and arson may be extraditable crimes. The question arises here, however, whether the circumstances in which the crimes were committed warrants their being characterised as political offences so that extradition may be withheld.

1. [1962] 2 W.L.R. 976.

2. *Vide* Oppenheim, *International Law* (*8th ed.*), Vol. I, edited by Lauterpacht, at 704; Hyde, *International Law* (*2nd ed.*), Vol. I, Section 315; Fauchille, *Traite de Droit International Public* (8th ed.), Vol. I, Sections 464—466; *Harvard Research in International Law* (1935) *I*, 107—119.

3. The same Act is operative in Ceylon by virtue of the Extradition Ordinance 1877.

4. Extradition Act 1870 Section 3(1).

5. In an admirable analysis made as early as 1883, Sir James Stephen delineated three possible meanings of the term 'political offence'; *cf History of the Criminal Law of England, Vol. II* (1883), at 70. The first meaning comprised offences consisting of an attack upon the political order of things established

In the *Schtraks Case* the facts were as follows. In September, 1959, in Isreal, the grandfather of a boy, aged 7, refused to return the boy to his parents on the ground that he feared that the child would not be given the proper religious education of an orthodox Jew. In February, 1960 the parents brought proceedings in the High Court of Israel and got an order for his return. The order was ignored. The parents, thereupon, brought proceedings against the grandparents and the applicant for habeas corpus in the present case, Schtraks, the boy's uncle, who they alleged was making common cause with the grandparents, for contempt of court. Schtraks made a disposition in these proceedings that he had not seen the boy since January, 1960 and was not responsible for withholding him. The court, on the basis of this statement, made an order of imprisonment against the grandparents but not against Schtraks who subsequently came to live in England. On making inquiries in Israel, the Israeli police discovered that Schtraks had, in fact, been with the boy since January, 1960 and withheld him. On this evidence, Israel requested the extradition of Schtraks under the United Kingdom-Israeli Extradition Treaty of 1960 for perjury and child stealing.

Schtraks, in his defence, maintained that the charges had been brought and extradition requested in furtherance of a struggle between the various political parties in Israel arising out of the conflict between the religious and secular forces in the state. It was contended that at all material times the religious conflict had assumed a political character, so that, although the offences themselves did not have a political character, they arose from the conflict, and in charging the applicant, the State of Israel was merely trying to placate the secular parties in their struggle against the orthodox elements. The offences and request for extradition, therefore, assumed a political character and extradition for the offences would be contrary to the Extradition Act 1870 Section 3.[6]

The argument of the applicant is not entirely clear. There seems to be a coupling of the background of the offence and the purpose for which extradition was requested as bases for determining whether the situation was one in which a political offence was in issue so as to render the granting of extradition illegal. In effect, the applicant was making two points. He

Contd. from page 203

in the country where the crime is committed or against that state as such, e.g. High treason, seditious libel and conspiracies and riots for political purposes. These crimes are generally not extraditable so that they are not involved in the present discussion. The problem arises really in regard to other crimes, included in the other two meanings proposed by Sir James Stephen, which may ordinarily not be extraditable but which acquire a political character because of the surrounding circumstances.

6. *Loc. cit.* note 1 at 982.

was arguing, firstly, that, although the offences were not in themselves or would not ordinarily have been political offences, they arose from the political conflict and should be characterized as political. Secondly, an argument relied on more emphatically was that the purpose of the request for extradition was to charge the applicant for an offence with a view to promoting one of the politico-religious factions in the state so that the offence for which extradition was requested acquired a political character.

The court held that the applicant failed on both grounds. The second ground was regarded as irrelevant, while the first was insufficient for characterizing the offence as political. The case, thus, raised the issue of the exact limits of the exception of political offences in the law of extradition and the problems raised by it repay examination, although, as far as the case itself was concerned, there could have been little doubt that the exception was inapplicable.

The argument that the purpose of the extradition is to try the offenders for a different offence which is political.

The Extradition Act 1870, Section 3(1) ostensibly mentions two alternative situations in which the extradition of an offender is not available. On the face of it, the first of these is where the offence is a political offence, while the second refers to the situation where " the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character." It is the second alternative that is of relevance at this point. It creates two problems. Firstly, does it mean that a court can examine the question whether extradition is being requested in order to try him for a crime different from that for which extradition is being requested so as to establish that the real object of the request for extradition is to try him for another offence which is of a political character and not to try him for the offence for which ostensibly extradition is being requested? Secondly, does it mean that extradition will not be granted if the purpose of the trial and punishment of the offender in the state requesting extradition is to effect some political purpose such as the weakening of a political faction rival to that in power or the satisfaction of some desires of the governing party ?

With regard to the first question there seems to be a conflict of opinion in the English cases. The issue first came up in this specific form in *Re Arton* (*No.* 1)[7]. France requested the extradition of Arton on charges of

7. [1896] 1 Q.B. 108.

perfectly ordinary crimes such as falsification of accounts, fraud, obtaining by false pretences, larceny, embezzlement and offences against the bankruptcy laws. It was pleaded on behalf of the accused that the request for extradition was made with a view to try or punish him for other offences of a political character. Lord Russell in his judgement assumed that this was a valid ground for not granting extradition, if it could be proved, when he interpreted the second part of section 3(1) of the Extradition Act to have this meaning ;

> " Then, can it be said that the application for extradition has been made with a view to try or punish the prisoner for an offence of a political character ? It is clear what this suggestion means: it means that a person having committed an offence of a political character, another and wholly different charge (which does come within both the Extradition Act and treaty) is resorted to as a pretence and excuse for demanding his extradition in order that he may be tried and punished for the offence of a political character which he has already committed."[8]

On this interpretation the court may look into the question whether the real reason for the extradition is trial and punishment for a different offence of a political character. But not only does this view officially recognize that a state in requesting extradition may not be in good faith which is in reality an insult to the dignity of that state but it also is an implict denial of the principle of speciality which is operative in the law of extradition. This principle means that the person charged has to be tried only for the crime for which extradition is requested. Otherwise he must be given an opportunity of returning to the extraditing state or be returned to that state before he is tried for a different crime. Not only is this principle accepted generally[9] but it is incorporated in extradition treaties[10] and it has been specifically incorporated in the British Extradition Act 1870 as a basic requirement in any extradition proceedings.[11] To accept an interpretation of section 3(1) which implicitly denies this principle would be both inconsistant with the very provisions of the Act and bad policy. What is more, it may be argued that such a procedure which seriously questions the integrity and the *bona fides* of the state requesting extradition is contrary to international law since it rests on the assumption that the latter state does not intend to respect its international obligations. Thus, this proposition cannot be said to represent the true state of the law.

8. *Ibid.* at 113, per Lord Russell.

9. *Cf. U.S.* v *Rauscher* (1886) 119, U.S. 407, *U.S.* v *Mulligan* (1934) 74 F(2d)) 220 and (1935) 76 F(2d) 511, *R* v *Corrigan* (1933) Cr. App. Reps. 106, *Vallerini* v *Grandi* (Italy) Ann. Dig. 1935-1937, No. 176, *Fiscal* v *Samper* (Spain) Ann. Dig. 1938-1940 No. 152.

10. *Cf. Harvard Research in International Law, loc. cit.* note 1.

11. Extradition Act 1870, Section 3(2).

On a close examination of Lord Russell's judgement it would seem that there was a contradiction inherent in it, for he also expressed the view that the *bona fides* of France, the state requesting extradition could not be questioned.[12] Willes J. was also of the same opinion.[13] On the facts of the case it would appear that the novel proposition expressed by Lord Russell was unnecessary for the decision, since there was no evidence on which it could be said that France proposed to defy the principle of speciality. The issue could have been dismissed without reference to such a proposition. All in all, neither can it be said that the view represents good law, nor that it was part of the *ratio decidendi* of that case.

Unfortunately, this is not the only case in which this unacceptable principle was mentioned. Shades of it were recently resurrected by Cassels J. in *R* v *Governor of Brixton Prison, ex parte Kolczynski*,[14] when he said,

> " They committed an offence of a political character, and if they were surrendered there could be no doubt that, while they would be tried for the particular offence mentioned, they would be punished as for a political crime."[15]

This was a case in which the applicants for habeas corpus contended that, though extradition was being requested by Poland for the common crimes of assault and revolt or conspiracy to revolt on board a ship on the high seas, they would be punished for treason, since the former crimes were committed in the course of and with a view to escaping from Poland to a free western country which in the eyes of the Polish state was treason. In those circumstances it could be argued that Cassels J. was of the view that Poland would, though ostensibly trying the applicants for the extradition crimes, try them and punish them for a different offence, namely treason, and hence violate the principle of speciality. This would approximate to the view of Lord Russel in the *Arton Case* that the *bona fides* of the requesting state could be questioned. This view, as it has been shown above, is unacceptable for several reasons. Moreover, it may be argued that Cassels J. was enunciating a different principle, namely that where the circumstances of the case disclose that the offences for which extradition is being sought were committed in the course of the commission of an offence against the state as such, such as treason, the offence is to be treated as a political offence since the aggravating circumstances of the case are likely to be taken into account in the meting out of punishment to the offenders. That it may have been the intention of

12. *Loc. cit.* note 7 at 115.
13. *Ibid.*
14. [1955] 1 Q.B. 540.
15. *Id.* at 549.

the learned judge to take this view is supported by the fact that, in coming to to the conclusion to which he did come, the fact that it was an offence against the state amounting to treason, according to Polish law, to leave Poland and start life in another country weighed a great deal. The idea that the circumstances surrounding a case may aggravate a common crime in a special way, thus increasing the penalty, is probably at the base of the principle that there should be no extradition for political offences. On the above interpretation of Cassels J.'s view, his statement could be no more that an attempt to define the concept of a political offence for the purpose in hand[16] and has nothing to do with an inquiry into whether extradition was being requested for a crime different from that for which the requesting state intended to prosecute the offender. This may well be one way out of an unpleasant difficulty posed by the manner in which Cassels J. expressed himself, especially since it must be regarded as his statment of the operative principle in the case, but it must be conceded that the judgement is not very specific and has left room for ambiguity. Hence, in so far as it may lay down the principle that extradition is to be refused, if after an appropriate inquiry is made it is established that the requesting state intends to prosecute the accused for a crime different from that for which extradition is requested and of a political nature, it is not acceptable. In the same case Lord Goddard C.J. applied a different principle in reaching the same result as Cassels J. so that, if Cassels J's view is interpreted to allow a denial of the requesting state's good faith, the learned Chief Justice's view of the *ratio decidendi* of the case is to be preferred.[17]

In contradistinction to the views discussed above which either favour or appear to favour the view that the Extradition Act Section 3(1) permits a refusal of extradition on the basis that an enquiry is to be made and it has to be proved that the requesting state intends to try or punish the offender for a different offence and not for that offence for which extradition is requested, there are cases in which the opposite opinion has been expressed. In the *Kolczynski Case* Lord Goddard expressly dealt with the point when he said,

> " The second limb of the section [i.e. Section 3(1)] can not, therefore, in my opinion, mean that the court can say that if extradition is sought for crime A we believe that if surrendered he will be tried or punished for crime B."[18]

16. This aspect of the judgement is dealt with below at p. 230.

17. In so far as there are two competing *ratio decidendi* in this case each of them is of less weight. There is nothing to prevent a subsequent judge from accepting one in preferenec to the other as the binding *ratio decidendi* in an appropriate case.

18. *Loc. cit.* note 14 at 549.

Again in *Schtraks' Case* Lord Parker C.J. with whom Ashworth and Atkinson J.J. agreed took the view that the true construction of the section was far from clear[19] but adopted the construction put upon it by Lord Goddard C.J. in the *Kolczynski Case*.[20] The construction proposed by Lord Goddard C.J. is to be preferred to the opposite view, as has been explained above.

The argument that the trial is to be for a political purpose

Can the second part of section3(1) of the Extradition Act 1870 have the other meaning contended for in the *Schtraks Case*, namely that, if the extradition is being requested for an ordinary crime in order that the trial may be used to effect some political purpose such as the weakening of a political faction or the satisfaction of the desires of the governing party or has other political implications, extradition may be refused ? This issue has not been discussed by writers.

In the *Schtraks Case*, as pointed out, the argument was rejected. But there was little discussion of the point. The validity of such an argument must, therefore, be judged by the fundamental principles that underlie the rule that there should be no extradition for political offences. This conception is based on the notion that certain crimes which might otherwise be regarded as ordinary crimes which are extraditable acquire a special character from the circumstances of their commission, so much so that it would not be proper to extradite the offender because those circumstances justify the offender's being exempted from punishment by the state in which the offence was committed.[21]

These circumstances must have a " political character " which may be difficult of definition. But it is clear that it is the fact that these circumstances coincide with the commission of the crime that gives the offence this special character. It follows that the occurrence of certain conditions in connection with the trial of the offender in the state requesting extradition which takes place after the commission of the offence can not and should not influence the nature of the offence. Thus it can not be maintained that the fact that the trial of the offender for the offences for which extradition is requested is likely to be used for some political purpose by the state requesting extradition could warrant the characterization of that offence as a political offence so that the situation would fall within that part of section

19. *Loc. cit.* note 1 at 992.
20. *Id.* at 994.
21. *Cf.* works cited in note 2 *supra* for history of this exception.

3(1) of the Extradition Act which states that there should be no extradition, if the request for surrender has been made with a view to trying or punishing the offender for a political offence. The statement of the court in the *Schtraks Case* that the offence must have been of a political character at the time it was committed[22] is very relevant in this connection and lends support to the view here expressed.

In *Re Government of India and Mubarak Ali Mohamed*[23] an application for habeas corpus was made under the Fugitive Offenders Act 1881 under which the same principles apply in regard to political offences as in the case of the Extradition Act 1870. It was argued by the applicant that the proceedings in India, the state requesting his extradition, were based on political considerations only, that his family had been persecuted and that he would not be given a fair trial since he was branded as a political spy, although the crimes for which extradition was sought were the ordinary crimes of forgery and fraud. In form the argument was similar to that raised in the *Schtraks Case*. Lord Goddard, C.J. had no doubts about his answer rejecting the plea. It was said that, although no extradition would be granted for an offence that was political, it was irrelevant to this issue that the government of India regarded the applicant as a troublesome political personage; nor could the argument of the applicant that he would not receive a fair trial because of the political implications of his relations with the Indian government be a good one, for it was not open to the court to question the *bona fides* of the state requesting extradition. At the back of this decision is the principle that any subsequent political implications that might be associated with the trial of the accused were no reason for not granting the request for extradition on the basis that the accused was likely to be tried or punished for a political offence.

Mode of Proof

If then, as has been demonstrated, the meanings contended for in the cases discussed above can not be attributed to the second part of section 3(1) of the Extradition Act, the question still remains what meaning it can positively have. The explanation given by Lord Goddard in the *Kolczynski Case* is the most plausible and it rests on a view of the section in question as a whole.

22. *Loc. cit.* note 1 at 997.
23. 1 All E.R. (1952), 1060.

> "The precise meaning of this difficult section," he said, "has not yet been made the subject of judicial decision and textwriters have found it difficult of explanation, but in my opinion the meaning is this: if in proving the facts necessary to obtain extradition the evidence adduced in support shows that the offence has a political character the application must be refused, but although the evidence in support appears to disclose merely one of the scheduled offences, the prisoner may show that in fact the offence is of a political character. Let me try to illustrate this by taking a charge of murder. The evidence adduced by the requisitioning state shows that the killing was committed in the course of a rebellion. This at once shows the offence to be political; but if the evidence merely shows that the prisoner killed another person by shooting him on a certain day, evidence may be given.....to show that the shooting took place in the course of a rebellion Then if either the magistrate or the High Court on habeas corpus or the Secretary of State is satisfied. by that evidence that the offence is of a political character, surrender is to be refused. In other words the political character of the offence may emerge either from the evidence in support of the requisition or from the evidence adduced in answer."[24]

According to this view the two parts of the sub-section refer to two different ways in which the political nature of an otherwise ordinary offence may be proved. The first part refers to proof by reference to the evidence adduced by the state requesting the extradition only, while the second refers to proof by production of evidence by the accused in answer to the requisition. This interpretation of the subsection is most acceptable and provides an explanation which is eminently in keeping with the current international law on the matter. It was also accepted in the *Schtraks Case*.[25]

Definition of Political Offence—English Cases

Extradition, then, is not granted only if it is proved that the offence is a political offence in the sense that certain circumstances which surrounded the commission of the offence give it a specifically political character. A pressing problem is that of determining what exactly these circumstances are. As Sir James stephen pointed out in 1883, the term political offence cannot refer to offences which have for their object an attack on the state as such or on the political order as such.[26] Offences such as treason and seditious libel which have such an object are not extraditable offences normally so that it is not possible to interpret the rule as referring to them. Since they are not subject to extradition, it is not possible to suppose that the exception was intended to apply to them. It would seem to be natural that the exception should refer to offences that are generally extraditable, that is, to ordinary extraditable crimes which become non-extraditable for special reasons.

24. *Loc. cit.* note 14 at 549.

25. *Loc. cit.* note 1 at 994. *Cf.* also *In Re Castioni*, [1890] 1 Q.B. 149, where a similar view was expressed when it was said that the *onus probandi* was not indicated in the Act but that it was a question for the court to decide on all the evidence: *per* Denman J. at 156. Though Hawkins J. took a slightly different view when he said that the *onus probandi* was on the criminal (at 162), this does not contradict the interpretation of the section advocated above.

26. *History of the Criminal Law of England, Vol. II*, (1883) at 70.

The problem of determining what these reasons are is not a new one. As early as 1854, when France requested the extradition of two Frenchman who had attempted to cause an explosion on a railway line with the purpose of assassinating Emperor Napoleon III, the Belgian Court of Appeal held that, the offence being a political one, it fell within the exception and no extradition could be granted. This was regarded as an unsatisfactory decision by Belgium herself and led to the enactment of what has come to be known as the *attentat* clause which stipulated that murder or attempted murder of the Head of a foreign government or a member of his family should not be considered a political crime. Several European countries have followed the Belgian example in respect of such legislation. There have also been attempts to bring about some international agreement on certain crimes or acts which should not be included in the concept of a political offence.[27] And there has been some legislation in which it has been laid down that where the ordinary nature of a crime predominates what might be regarded as a political crime should be a non-political offence for which extradition should be granted.[28] But these instances do not provide a clue to a satisfactory definition of a political offence. At best, they indicate certain exceptional circumstances in which an offence is not to be characterized as a political offence and are negative in their import.

On the positive side various definitions have been suggested for political offences in connection with the law of extradition based mainly on the nature of the motive or object of the crime but these have not been fully received into practice, so much so that up to the present day all attempts to formulate a satisfactory conception of the term have failed.[29] While admitting that there are difficulties in the way of a complete definition of the notion, it is submitted that a definition is necessary and may, indeed, be satisfactorily evolved for the purpose in hand on the basis of the existing practice. Sometimes, in approaching this problem, courts have stated that they do not intend to lay down an exhaustive definition,[30] while on one occasion a court intimated that it did not want to give a wider definition than might be possible.[31] These opinions indicate the nature of the problem. It is difficult to provide a definition of an exclusive nature so as to preclude the possibility of expansion and flexibility, while at the same time

27. *Cf.* the Russian attempt of 1881 in regard to murder or attempts to murder and the Convention on Terrorism of 1937.

28. *Cf.* The Swiss Extradition Law 1892 Art. 10.

29. Oppenheim, *loc. cit.* note 2 at 707.

30. *In Re Castioni*, [1890] 1 Q.B. 149 at 155, per Denman J.

31. *The Schtraks Case, loc. cit.* note 1 at 997.

it is necessary to arrive at a definition that is not so wide as to defeat the very purposes of the extradition law. It is possible to agree upon a minimum to be included in a definition but it is also necessary that the maximum included in such a definition preserve the intersts of the state requesting extradition and those of the international community in seeing that offenders are effectively punished.

In discussing the problem, Sir James Stephen refers to two possible definitions—the first characterizing any ordinary offence committed in order to obtain any political objective as a political offence, the second being narrower and including only those offences which are incidental to and form part of poltical disturbances.[32] According to the first; all offences such as perjury, arson, forgery and theft committed under the orders of any political party, secret or otherwise, would be political offences, while the scope of the second is much more circumscribed.

The issue whether a political offence was to be regarded as a political offence for the purposes of the law of extradition first came up before an English court in *In Re Castioni*.[33] There was a movement in the Ticino, in Switzerland, against the state government on the issue of constitutional reform. In accordance with the constitution of the canton, the required number of individuals signed a petition requesting that the matter be referred to the people and submitted it to the government. The government, contrary to the constitution, refused to act on this. The consequence was that the people in favour of reform rose against the government, took up arms and invaded the council chamber and various other key buildings. Castioni, who had just returned to Switzerland from abroad, joined this revolt and in the course of it he shot and killed a member of the state government who offered opposition to the crowd as it surged forward. Evidence was given that the shooting was not necessary for the success of the rebellion. In proceedings for the extradition of Castioni for this murder, it was pleaded that the offence was a political offence for which extradition was not available. The meaning of political offence was, thus, put in issue. The court adopted fairly narrow definitions, while at the same time stating that it was not necessary to give an exhaustive definition. The definitions adopted ostensibly approximated to the latter of the two definitions mentioned by Sir James Stephen, for which he himself had expressed a preference.[34] It

32. *Loc. cit.* note 26 at 70.

33. [1890] 1 Q.B. 149. That there was no legal decision on this issue before this was stated by Denman J. at 155.

34. Sir James Stephen was on the bench that decided *In Re Castioni* and agreed with the court.

had to be proved that " the act was done in furtherance of, done with the intention of assistance, as a sort of over act in the course of acting in a political matter, a political rising or a dispute between two parties in the state as to which is to have the government in its hands."[35] In the language used by Stephen, J. and adopted by Hawkins, J. in that case, it was necessary to show that " the crimes were incidental to and formed part of a political disturbance."[36] It was held that (i) there was more that a small rising of a few people, in short, a state of war in which an armed body rushed into the municipal council chambers, demanded admission and, when refused, broke down the outer gate with a view to taking control of the government, (ii) Castioni took part in this, firing the shot at his victim for the purpose of promoting the political object for which the movement had been organized, and (iii) had no motives of spite or ill-will against the deceased. Therefore, the offence came within the definitions of political offence adopted. It was also held that the criterion was not whether the acts being impeached were wise in the sense that they were acts which the man who did them would have been wise in doing with a view to promoting the cause in which he was engaged, but whether they was really done with the object of promoting the purpose of the rising.

On the narrow definitions adopted the acts being impeached fell within the category of political offences so that even on a wider definition the result would have been the same. Even so, in this first case, the attitude of the court to the question of definition is of paramount importance.

(1) The court rejected the broadest definition of political offence which was mooted, namely that it was sufficient that the offence be committed to attain some or any political object;

(2) The court rejected the notion that it was sufficient that the offence be committed merely in the course of a political rising;

(3) Positively, the court purported to apply definitions which had certain definite requirements but on a close examination it is apparent that the statements of the definition by the two judges Denman J. and Hawkins J. have important differences. The area of disagreement is, however, confined to the first requirement of the definition.

35. *Loc. cit.* note 33 at 156.
36. *Id.* at 166.

(*a*) The first requirement according to the view of Hawkins J. was that there had to be some political disturbance. This can only have one meaning,—there had to be some rising, insurrection or, at least, riot of a political nature. What was meant by the 'political nature' of the disturbance is not explained, but we may safely assume that on this point Hawkins J. was in agreement with Denman J. who postulated a struggle for power between two political parties. Hawkins J., then, required that there be some disturbance set off by a struggle for power between two political parties.

Denman, J. thought it necessary that there be "a political matter, a political rising or a dispute between two parties in the state as to which is to have the government in its hands." On this view something less than a disturbance would apparently be sufficient. A mere disagreement or a dispute between two political parties would be covered.

However, it is submitted, that according to both views there must be a struggle for power between the two political parties. The difference between the two views can best be illustrated by an example. Suppose in state A the communist party disagrees with the policy of taxation followed by the National Democratic party which is in power and X, a member of the communist party, by a false and fraudulent declaration in his tax returns evades these taxes with a view to embarrassing the government and so promoting the cause of the communist party. The offence of fraud so committed would be covered by Denman J's definition of a political offence, but not by that of Hawkins J.'s which would require more than a dispute, namely some form of civil disturbance amounting to rioting as a result of the dispute between the parties. With this difference the other requirements in the two definitions are the same.

As to the requirement that there should be a struggle for power between the two political parties, there is no indication in either of these definitions whether one of them should be the party in power, so that it is not clear whether a stuggle between two other parties in the state struggling for power is included in the definition. Where there are more than two political parties in a state and two of them, not including the one in power, enter into a struggle to eliminate each other as a political influence so that the other cannot be a serious contender for power, could it be said that there is a struggle between two political parties for the purposes of the definition ? Would the crime of murdering a rival political leader committed during

riots between such political parties and for the promotion of the purposes of the parties in the context of such a struggle be included in the definition of a political offence ? There seems to be no logical reason for making a distinction between a struggle between two parties excluding the party in power and one between the party in power and another political party. Both situations involve the question of power to rule in a state.

The *Castioni Case*, however, involved facts falling into the latter category of situation so that it may be argued that it was only such a situation that the court had in mind in laying down a definition. On the other hand, it may be argued that if the court was purporting to lay down a general definition, it would most certainly have taken into account other situations which could be included in the definition. This is not incompatible with the statement of Denman J. that he did not intend to lay down an exhaustive definition, for it is possible that a definition be general though not exhaustive. The difficulty of understanding exactly what the court meant on this aspect of the definition remains but for the purposes of a sound definition, it is submitted that both categories of situation should be included in the definition.[37]

(*b*) It was generally agreed that the offence had to be committed in furtherance of the political struggle, however, this was delimited. It had to be proved that the crime in question was committed with a view to achieving the specific purpose of the struggle and with a view to promoting and assisting it.

(*c*) In view of this, if the offence had been committed from personal ill-will or spite or to satisfy some personal end, it would not fall wiithin the category of a political offence. Thus, for example, if the crime of grievous assault is committed with the object of paying off a private grudge and not for the purpose of promoting the political ends of the party involved in a struggle against another party for power, the offence would not be a political offence, even though it took place during a riot attributable to that struggle.

(*d*) It was not considered necessary that the offence be a reasonable means of achieving the ends of the struggle between the political parties.

37. In the *Schtraks Case* the court seemed to prefer to restrict its definition to a struggle in which the party in power was involved; *loc. cit.* note 1 at 997.

The case thus offers more than one definition, one wider and one narrower, but neither of them wide enough to cover a crime committed for any political object of from any political motive. If the difficulty adverted to above arising from the nature of the political struggle be excepted, two definitions emerge. The narrower definition includes only those offences committed in the course of an actual physical disturbance occuring betwen two political parties involved in a struggle for power in a state provided that the offence is committed with a view to furthering and promoting that struggle, while the other covers offences committed in the course of any dispute, not necessarily a disturbance, occuring between two political parties involved in a struggle for power in a state, provided the offence is committed with a view to furthering and promoting that struggle. In both definitions it is not clear, as already stated, whether the struggle must be between the party in power and another political party or between any two political parties in the state.

With this precedent before them, the judges of the court, in *Re Meurnier*,[38] had no difficulty in deciding against an applicant for habeas corpus in an extradition case. Meurnier had caused two explosions in Paris, one at the military barracks and the other at a cafe. He was an anarchist and alleged that the former offence was a political one since it was directed against government property. It was held that there was no struggle between two political parties in this instance, so that the crime of the accused did not come within the definition of a political offence. Anarchists worked primarily against the whole body of citizens and only incidentally against all governments. It is evident that the court did not regard anarchists as forming a political party vieing for power in the state. On this basis, the decision cannot be criticized.

The court did, in addition, cite a comprehensive definition of a political offence for the purpose in hand. It said that in order to constitute a political offence there must be two or more parties in the state, each seeking to impose its government on the other (*sic*) and the offence must be committed by one side or the other in pursuance of that object.[39] This definition would seem to coincide with the broader interpretation of the definition of Denman, J. in the *Castioni Case* and to be even more explicit on the point whether it is necessary that the struggle be between the governing party and another party in the state or whether it is sufficient that the

38. [1894] 2 Q.B. 415.
39. *Id.* at 419.

struggle be between any two political parties in the state vieing with each other for power. The fact that the court made specific reference to " two or more parties " indicates that the latter meaning was intended.[40]

Further, the court emphatically stated that there were not two political parties in the case, thus denying that the anarchists were a political party. This stresses the important part that political parties play in the definition. It is not a question of political objects or motives as such. But it is essential that political parties be at variance before the notion of a political offence can come into operation.

The case contributed to the development of a definition in two respects.

(*a*) The court preferred the definition of Denman J. in the *Castioni Case* to that of Hawkins J. in the same case by implication, in that it did not require the existence of a physical political disturbance.

(*b*) It implies that the struggle need not necessarily be between the governing party in a state and another political party, but that it is sufficient that there is a struggle between any two political parties in the state.

However, both these points need not have been made in order to decide the case, since there was in any event no struggle between two political parties on the court's view of the facts. Thus, to this extent that the case expands on the narrowest view of Hawkins J.'s definition which excludes struggles between political parties of which neither is the governing party and which was sufficient for the decision in the *Castioni Case* as well as for the decision in the *Meurnier Case*, it may be regarded as containing an *obiter dictum*, just as much as the view of Denman J. in the *Castioni Case* may be regarded as *dictum* in so far as it was wider than the definition of Hawkins J. as narrowly interpreted. However, there seems to be no logical reason for excluding the two additional points relating to the nature of the dispute and the nature of the political parties involved in the struggle from a definition of the concept of a political offence.

In the *Schtraks Case*, the facts of which have been outlined above,[41] the problem confronting the court in the relevant part of the case also concerned

40. In the *Schtraks Case* it was said that the *Meurnier Case* showed that " an offence must be aimed against the government of the state " in order to be a political offence: *loc. cit.* note 1 at 996. But it is submitted that this is too limited an interpretation of the view of the rule contained in that case.

41. *Cf. supra* p. 204.

an alleged conflict between political parties. The applicant pleaded that the crimes he had committed arose from the conflict between the orthodox and the governing secular religious factions in the state which was of a political character. The court examined the previous cases on the issue of political offences and attempted to provide a definition, at the same time stating that it did not purport to lay it down as a possible definition ! The definition was supposed to be wider than anything yet offered in connection with the circumstances of the kind involved in the case :

> " A crime of a political character is a crime committed as part of a political movement with the object of influencing the governing party of the state."[42]

It was pointed out that the definition required that the offence be committed as a part of the political movement or struggle and with the object of advancing it. Since there was nothing in the case to suggest that the acts of the applicant were done as a part of a movement or struggle rather than as part of a purely religious and domestic dispute within the family, albeit it occurred at a time when there was a political struggle, one of the primary requirements of the definition had not been satisfied and the offence could not be characterized as political. The decision turned on the application of a principle that had been accepted in all the definitions that emerged from the previous cases of this kind, namely that it was necessary that the offence be committed in furtherance of the political struggle. It was not necessary for the decision that the court should have elaborated on the nature of the struggle that should exist or on the nature of the dispute that should take place. Yet the court did attempt a definition and it is important to see how far it deviated from the definitions of the previous cases, if it did so. There are two points to be made in this connection.

(i) The definition here given does not insist on the presence of a political disturbance of the kind envisaged by Hawkins J. in the *Castioni Case*. The existence of a political movement or struggle is deemed to be sufficient. In this respect it comes closer to the definition adopted by Denman J. in the *Castioni Case* and that of Cave J. in the *Meurnier Case*.[43]

(ii) There is an indication that it is necessary that the struggle be between the governing party and another political party in the state. It is

42. *Loc. cit.* note 1 at 997.

43. There is also no mention of a " particular dispute or matter " as between the two parties as Denman, J. specifies in his judgement. But it is submitted that this is not really a material difference. Where there is a struggle between two parties, there is also bound to be a matter or dispute in their relations with each other.

insufficient that the struggle be between any two political parties in the state. In this respect it is different from the definition offered in the *Meurnier Case*. It also has chosen the narrower of the two views discussed in connection with the *Castioni Case* between which the judges in the latter case made no choice.

A third point may be made of the fact that the definition refers to the object of the crime as being that of " influencing the policy of the governing party". This would appear to be narrower than the object as expressed in the other definitions which refer to a broad purpose of furthering the aims of the political party concerned. However, further on in the judgement the court refers to the broader notion of the object as being one of the requirements when it says that the crime must have been done " in the context of a movement or struggle of a political nature but as part of it and with the object of advancing it".[44] It is to be understood, therefore, that the court intended to accept this notion of the object of the crime rather than the narrower one. Moreover, the narrower one would be clearly unsatisfactory, for it would exclude the case where a member or supporter of the governing party committed a crime in the course of a struggle between it and another political party for the purpose of promoting the aims of the governing party, an exclusion for which there can be no logical reason.

From this line of cases four possible definitions can be extracted, ranging from the considerably narrow to the wider.

(1) The offence to be political must be committed in the course of a physical disturbance between the governing party and another political party in the state, with which it is struggling for power, with a view to furthering the ends of either of the political parties concerned and not for any other purposes or from any other motives. This is the narrower interpretation of the definition given by Hawkins J. in the *Castioni Case*.

(2) The offence must be committed in the course of a physical disturbance between any two parties in the state struggling for power and not necessarily including the governing party, with a view to achieving the purposes of the party concerned and not for any other purposes or from any other motives. This is the broader interpretation of the definition of Hawkins J. in the *Castioni Case*.

44. *Loc. cit.* note 1 at 997.

(3) The offence must be committed in the course of any dispute, not necessarily a physical disturbance, between the governing party and another political party in the state vieing with it for power, with a view to achieving the purposes of the party concerned and not for any other purposes or from any other motives. This is the narrower interpretation of the definition adopted by Denman, J. in the *Castioni Case* and that offered by the court in the *Schtraks Case*.

(4) The offence must be committed in the course of any dispute, not necessarily amounting to a physical disturbance, between any two political parties in the state struggling for power and not necessarily including the governing party, with a view to furthering the purposes of the party concerned and not for any other purpose or from any other motive. This is the broader interpretation of Denman J.'s definition in the *Castioni Case* and the definition cited in the *Meurnier Case*.[45]

It is submitted that the last and broadest of these definitions is the most acceptable, as there is no logical reason for making the distinctions made in the other definitions as far as political offences for the purpose of the law of extradition are concerned. If extradition is refused for any of the offences that fall within the first three definitions or any of them, it should also be refused for those that fall outside them but within definition (4). All such offences would really share the same character. This is so even though it is true that the result in all the cases above considered would have been the same had the narrowest of these definitions alone and no other been applied in each of them.

Continental and Latin American Cases

There are some cases on political offences in the law of extradition decided in Switzerland, Guatemala and France. Definitions of a political offence were offered in some of them.

In *Re Ockert*[46] Germany demanded the extradition from Switzerland of a German national for homicide. He had killed someone in the course of an affray in Frankfurt between the German Social Democratic party and

45. A fifth definition arising from the initial statement of the court in the *Schtraks Case* may be formulated thus; the crime must be committed in the course of a struggle for power between the governing party of a state and another political party, not necessarily involving a physical disturbance, and it must have the object of *influencing the policy of the governing party* and nothing less. It has been submitted above, however, that the court modified this definition by accepting a broader notion of purpose or object in the same judgement, so that this definition which is narrower than either of the definitions (3) and (4) is not maintained as a competitor.

46. Annual Digest 1933—1934, No. 157.

the Socialist party, being a member of the former. Extradition was refused on the ground that he had committed a political offence. It was found by the court that the offence had been committed with a view to furthering the objectives of the German Social Democratic party. The facts would fall within any of the definitions emerging from the English cases discussed above, even the narrowest. The court, however, stated a principle in apparently broad terms. It said that a common crime became political, when *because of its motive and object*, it assumed a predominantly political complexion. This statement may be interpreted broadly to mean that any common crime becomes political, if it is committed with any political object or motive, the latter phrase being given a broad meaning to cover crimes committed irrespective of the existence of a struggle between political parties or of a political movement and without reference to the aims of the relevant political parties, so much so that offences committed by individuals not associated with any political parties purely for the purpose of embarrassing the government or out of dislike for it or in order to gain a stronger position for themselves in politics would be included as political offences. Not only would such a definition be incompatible with sound policy, as is obvious from the example given above, but it is submitted that this could not be what the court meant. The statement is to be seen in the context of the case. The facts involved a struggle between political parties and what the court was saying was limited to those circumstances. The reference to motive and object should really be seen as a reference to the requirement of the definitions discussed above that the offence should be committed with the purpose of furthering the aims of the political party involved in the struggle. This is what really converted the offence in question, which was an ordinary crime into a political offence. The reference to motive or object in this case must, therefore, it is submitted, be interpreted in a limited sense and not as a general reference to any political motive or object. From the context it appears that the notion of political crime is similar to that embodied in the definition emerging from the English decisions which was submitted to be acceptable.

That this explanation is plausible is borne out by another Swiss case. In *Re Noblot*,[47] Noblot forged a bill of exchange with a view to damaging the working of the Dawes plan in Germany. He was not associated with any political party. It was held that extradition should be granted on the ground that, in order to be a political crime, it should have been committed in an attempt to seize power in the state or as an isolated incident in a struggle

47. Annual Digest 1927—28, No. 240.

against the political regime of the state. In insisting on a struggle against the state it would seem that the court showed a preference for the narrower interpretation of Hawkins J.'s definition in the *Castioni Case* or that propounded in the *Schtraks Case*. The statement is not specific in that it does not state all the requirements of a political crime, but it must be seen in the context of the case. It was sufficient for the case that the absence of this important element be pointed out. It does not necessarily mean that the view can be attributed to the court that any crime committed in the course of a struggle against the state, irrespective of its object or motive, would be a political offence or that a struggle against the state can exist in the absence of political parties competing for power. The approach of the court was, therefore, not inconsistent with the definitions, above referred to, of Hawkins J. and the *Schtraks Case*.

In the *Pavan Case*[48] France requested the extradition of an anti-fascist journalist who shot at and killed an Italian fascist in Paris. Extradition was granted by the Swiss court. It was said that the criminal act must be immediately connected with its political object in order to be invested with a predominantly political character. The act must be in itself an effective means of attaining this object or at least it must form an integral part of acts leading to the desired end or it must be an incident in a general political struggle in which similar means are used by each side. The act in issue in the case was an isolated act of terrorism and was not connected with any political object as such so that the court must have had in mind particularly the problem of the object of the offence. In general terms, what it said about the object of the act as far as relevant to the case was sufficient for the decision since there was no hint of a political object at all in the case. However, in its statement of the other conditions of a political offence it went quite far, although this was unnecessary for the decision of the case. The notion of the political struggle or the struggle between political parties is present, but further there is a reference to the possibility of political offences even in the absence of such a struggle. On this broad interpretation of the words of the decision it cannot be gainsaid that court was approving of a very wide principle, which may not have been fully considered in view of the obvious nature of the facts of the case in relation to the issue and whose limits may not have been discussed at all. The definition includes any offences committed as an effective means to attaining a political object or as an integral part of achieving such an object. Offences committed by private individuals in order to embarrass the government

48. Annual Digest 1927—1928, No. 239.

or out of dislike for it, provided they are effective means to achieve these ends or are integral parts of achieving them, would be covered. This, it is submitted, is far too wide a definition. It approximates to the first alternative definition mentioned by Sir James Stephen[49] and rejected by the court in the *Castioni Case*, with the possible difference that the idea of the offence being an effective means towards or an integral part of the object in view is emphasized.

However, it is possible to argue that this is not necessarily the view that the court intended to express. The court specifically mentions a political struggle in its definition and, what is more, the facts before it did raise the question whether a conflict of parties could be said to exist because the accused was an anti-fascist and his victim a fascist. Hence, it is just possible that what the court said should be read in the light of the assumption that it was thinking of a conflict of political parties or a political movement. On this basis the statement would mean that the crime had to be an effective means towards or an integral part of achieving a political object arising out of the political struggle between political parties or incidental to the political struggle. Even if this interpretation is accepted, there remains the difficulty that the statement allows a wider scope for offences than that permitted by any of the definitions emerging from the English court decisions. For, it is sufficient according to the Swiss court, if the crime were committed as an incident to a political struggle. The relation between the crime and the object of the struggle is not insisted on here. It seems to be sufficient that the crime merely occurs in the course of a political struggle. This is a dangerous extension that was rejected by the English court in the *Castioni Case*.

On any interpretation of the *Pavan Case* definition, it seems that the definition offered is an extension of anything proposed in the English courts. On the broader view crimes committed to achieve any political objective, irrespective of a political struggle, or crimes committed in the course of a political struggle irrespective of their relation to the object of the struggle are political crimes. On the narrower view, only those offences committed in the course of a political struggle are political offences, whether they are in furtherance of the political objectives of the struggle or not. In so far as these definitions go further than the broadest definition mooted in the English courts, their content has been specifically rejected by the English courts and it is submitted that, as definitions, they are unsatisfactory and

49. *Cf. supra* p. 213.

should be rejected. As for the case itself, the outcome would have been the same had any of the definitions proposed in the English courts been applied.

In *Re Kaphengst*[50] the Swiss courts implicitly rejected the broader definitions of the *Pavan Case* and adopted a somewhat more restricted approach. Kaphengst, a German national, had committed certain bomb outrages in Prussia to further the ends of the 'Country People's Movement' whose aim was to change the law of taxation. It was held that these were purely terrorist acts which were not episodes in a course of action aiming at the overthrow of the state and were not political offences. The court, however, did not stop at this statment of principle but went on to say that the damage caused to individuals caused the common elements of the crimes to become predominant so as to prevail completely over the political aspects.

> "For a common delict to be classed as a predominantly political offence it is not enough that it has a political motive or object or that it is capable of realizing or furthering that object. Idealist motives must be strong enough to let the injury or threat to private rights be excusable. There must be a certain relationship between objective and means selected."[51]

While the court rejected the broad notion that any political object or motive was sufficient to convert an ordinary crime into a political offence for the purposes of the law of extradition, it does not seem to have unequivocally laid down the requirements of such an offence.

There seem to be two trends of thought. First, it was thought that some attempt to overthrow the state was necessary for the commission of a political offence. It is not necessary that for such an attempt to exist there should be a political struggle between political parties for power in the state. Thus this approach of the court can not be directly related to any of the definitions proposed in the English courts, limited as it is in its scope. What the relation of the crime to the aim of overthrowing the state should be is also indicated in the statement that there must be a certain relationship between the objective and the means selected. The exact meaning of this is not clear but presumably it means that, at least, the crime must have been committed with the purpose of or with the intention of assisting in the overthrow of the state. It could have the further meaning that the crime must be a reasonable and effective means of achieving the end as well, a principle which was rejected in the *Castioni Case* in relation to the definitions dis-

50. Annual Digest, 1929—1930, No. 188.
51. *Ibid.*

cussed there. On the other hand, there is room for saying that the court had in mind a broader definition, namely that it was sufficient that there be some political object or motive behind the crime, irrespective of an attempt to overthrow the state, provided that the relationship between the crime and the object aimed at was sufficiently close to warrant it being termed a political offence. Apart from this being a definition as wide as that rejected in the *Castioni Case* there is a great deal that is vague and unexplained in it. Is any political object sufficient ? What is the relationship referred to ? Could the bomb outrages which formed the subject-matter of the case have been regarded as political crimes, if they were effective means of getting the taxation law changed—a political object ? If the court intended to adopt such a wide definition, it is likely that the facts would have been discussed from the point of view of this last question, at least. All in all, it is probable that the court did not intend to lay down a definition in these broad terms but rather made some further statements in explanation of the narrower view discussed above. But the position is not at all clear and it is submitted that the case should be regarded as offering alternative definitions, one wider than the other, although there is much that is unexplained in both. Suffice it to say that the case decided that the crime in question did not come within the concept of a political offence whichever interpretation is the correct one, and that had the broadest English definition, namely that of the *Meurnier Case*, been applied the result would have been the same.

There are two other cases from Gautemala and France respectively in which it was held that the crimes concerned were not political offences but little was said positively about the nature of a political offence by way of definition. In *Re Echerman* (Guatemala)[52] the accused had murdered X, believing him to be a spy. The accused was a member of a secret society organized to operate in defence of his country. It was held that the mere fact that Echerman was a member of a secret society did not give his crime a political character. It was said that

> " universal law characterizes as political sedition, rebellion and other offences which tend to change the form of government or the persons who compose it; but it can not be admitted that ordering a man to be killed with treachery.... constitutes a political crime."[53]

The case supports the negative view that the presence of any or some political motive or object in the commission of a crime does not make it political. Positively, the case refers only to such offences as political as

52. Annual Digest 1929—1930, No. 189.
53. *Ibid.*

come within the category of pure political crimes which are not generally extraditable in any case. This does not help towards a definition of the notion which covers the case of common crimes turning political which concerns us here. In *In Re Giovanni Gatti* (France)[54] extradition was granted in a case where a person was accused of attempted homicide by firing at a communist. Although the defendent had some political object or motive, it was not characterized as political. The case too supports the negative view that a mere political motive or object does not make a common crime political.

The foreign cases are of such a kind that whether they were decided one way or the other the same decision in each case could have been reached by the application of the broadest definition formulated in the English courts, namely that the offence must be committed in the course of a dispute, not necessarily amounting to a physical disturbance, between any two political parties in the state struggling for power and not necessarily including the governing party, with a view to furthering the achievement of the purposes of the party concerned and not for any other purpose or from any other motive. Although other definitions were mooted in the foreign courts, some different, some broader and others narrower, the facts in the one case in which it was held that a political offence had been committed, namely *Re Ockert*, fell within this definition and the crimes in the other decisions in which they were held not to be political fell outside this definition. In short, there has been no foreign case in which a crime has been held to be a political crime because a broader definition was applied so that as far as the present decisions of this kind go, this definition would have sufficed. However, the fact remains that different definitions were given and it is important to see how different they are and how valid they are on their own merits.

It is noteworthy that all the cases examined either explicitly or by implication rejected the general definition that it was sufficient that the crime be committed with a political object or motive in its absolute form.

(1) One of the possible definitions emerging from the *Pavan Case* is that the crime should be an effective means towards any political objective, irrespective of any political struggle, or an integral part of acts leading to any desired political end, irrespective of any political struggle, or simply

54. Annual Digest, 1947, No. 70.

an incident in a political struggle. This is the broadest definition that these cases provide and, as has been pointed out, it is not only unlikely that this is what the court meant but it has unacceptable consequences.

(2) An interpretation of the definition offered in the *Kaphengst Case* requires only that the crime be an effective means towards the attainment of any political object. This is an improbable interpretation and, moreover, it is submitted that it is too broad.

(3) An interpretation of the definition given in the *Pavan Case* requires that the crime be committed in connection with a political struggle, as an effective means to or as an integral part of the political object or even merely as an *incident* in such a struggle which may or may not be a physical struggle. This is what the court probably meant, in that case, to offer by way of definition but it goes too far in its final extension and is unacceptable to that extent.

(4) The definition offered in *Re Ockert*, according to the interpretation submitted above, is the same as that of the *Meurnier Case* or of Denman J. in the *Castioni Case*, in its wider meaning.

(5) The definition applied in *Re Noblot* approximated to that of the *Schtraks Case* which is narrower than (4).

(6) The more probable interpretation of the court's definition in the *Kaphengst Case* requires that the crime be committed in an attempt to overthrow the state, provided the crime bear to the purported end some relationship which is not defined but probably involves the crime being an effective means towards achieving the end. This definition is, in general, narrower than any of the above definitions, but at the same time it covers ground that is not covered by some of them.

Definition (4) coincides with that definition of the English courts which was submitted to be acceptable. Sufficient has been said in justification of it and to warrant the exclusion of anything narrower than it. Thus definition (5) may be rejected and definition (6) to the extent that it is already covered by the acceptable definition. That is to say, definition (6) covers an area already covered by the acceptable definition, in so far as it includes those crimes which are committed in an attempt to overthrow the state which arises out of a struggle between any two political parties in the state

and are both aimed at overthrowing the state and an effective means to achieving that end. To this extent it need not be considered. It is inadequate in so far as it falls short of the acceptable definition. On the other hand, it also covers situations which are not covered by the acceptable definition. For instance, where there is no struggle between political parties but an attempt is made to overthrow the state in which certain common crimes are committed, these crimes would come within (6), if they bear the right relationship to the aim of overthrowing the state, while they would fall outside the acceptable definition. To this extent it requires consideration, since it purports to have a very limited scope unlike some of the other broader definitions. It will be seen readily that where a crime is committed in the course of an attempt to overthrow the state it is committed during the commission of another offence against the state as such, namely treason. As will be seen below, there is precedent for including such offences committed in circumstances in which a political offence in the sense of an offence against the state only and as such is also committed within the concept of political offences for the purposes of extradition.[55] To the extent, therefore, that definition (6) is in excess of the general definition submitted to be acceptable, it would come within another acceptable extension to that definition, although its requirements are such that it would be narrower than that definition too. In its total scope, therefore, definition (6) is narrower than both the general definition and its extension, taken together. Hence, definition (6) need not be considered, as it happens to be too narrow in any case.

As for the other definitions that are wider than (4), namely definitions (1) to (3), the question remains whether they offer anything worth retaining. Apart from the fact that the two broadest, (1) and (2), are unlikely interpretations of the cases concerned, all three definitions have elements which are open to serious criticism, as has already been shown. (1) and (2) contain the notion of a general political object, albeit with other limitations, even though this notion was rejected in most of the decisions under consideration in its absolute form. Yet that general notion does not in these definitions acquire sufficient limitation and definition. Hence, these definitions can lead to the most undesirable consequences. (1) and (3) contain the notion of crime merely incidental to a political struggle which is again too broad and can lead to dire consequences. It may be added that all these notions were rejected in the English cases for obvious reasons. It is submitted that

55. *Vide infra*, p. 230.

these definitions should not be retained wholly or in part in so far as they are wider than the definition submitted to be acceptable which coincides with (4).

Extensions to the general definition—The Kolczynski Case

Assuming that the general definition of the *Meurnier Case* and Denman, J. is acceptable, we are still left with the question whether there are, in fact, any circumstances outside the definition which would warrant an ordinary crime being characterized as a political offence. The question was answered in the affirmative by the court in *R* v. *Governor of Brixton Prison, ex parte Kolczynski*.[56] The facts of the case were that seven Polish seamen serving as members of the crew of a Polish trawler decided to seek asylum in England. They felt that they were being spied upon by certain police supervisors who were on board. There was evidence that there were political officers on board who were recording the conversations of the prisoners with a view to preparing a case against them on account of their political opinions. Therefore, they overpowered the captain and other members of the crew and brought the ship into an English port. Poland demanded their extradition for assault and revolt or conspiracy to revolt on board a ship on the high seas. The accused raised the defence that their offences were political offences. The court accepted the defence but the judges gave different reasons for their conclusion. Both judges concurred that the laws existing in Poland at that date warranted an extension of the notion of political offences.[57] But this was as far as their agreement went.

Cassels J. rested his decision on the principle that the offences for which extradition was requested were committed in circumstances in which, if surrendered, the accused would, although being tried for those offences, be also punished for an offence of a political character.[58] It has been submitted that in so far as this statement means that the court may refuse extradition, if it appears on investigation that the defendant is likely to be tried or punished for a different offence from that for which extradition is sought, it is unacceptable.[59] Moreover, it is very probable that the words have a different meaning in this context. What Cassels, J. said in the operative part of his judgement was,

56. [1955] 2W.L.R. 116.
57. *Id.* at 121 per Cassels J., and at 123 per Lord Goddard, C.J.
58. *Id.* at 121.
59. *Cf. supra*, p. 207.

> "It is submitted on behalf of the men that if they should be extradited they may well only be tried for the offences for which their extradition is requested, but they will be punished as for an offence of a political character, and that offence is treason in going over to the capitalistic enemies. . . . . They committed an offence of a political character, and if they were surrendered there could be no doubt that while they would be tried for the particular offence mentioned, they would be punished as for a political crime."[60]

This could very well mean here that if the facts of the case disclose that, in committing the ordinary crimes for which extradition is demanded, the accused also committed a political offence in the sense of an offence against the state only and as such, such as treason or seditious libel, which is so inextricably involved with the ordinary crimes that the ordinary crimes can not be separated from the larger offence against the state only and as such, then extradition is to be refused on the ground that the ordinary crimes acquire the character of political offences by association. In the case in hand, the offences of revolt, conspiracy to revolt and assault on a ship on the high seas were committed in the course of an escape to a capitalist foreign state, namely England, and this amounted to an offence against the Polish state as such, namely treason. Therefore, the ordinary crimes themselves became political offences for the purposes of extradition law. The requirements of the definition are quite clear ;

(*a*) There must be a crime committed against the state only and as such.

(*b*) The ordinary offences must be committed in the course of the commission of that crime.

(*c*) The latter must be so closely associated with the former that a prosecution for the latter would on the facts amount to a prosecution for the former as well.

Thus, if a citizen of state A, where it is an offence against the state as such to evade work in the factory to which one is assigned, were to murder a foreman or supervisor in breaking out of his place of work because he is dissatisfied with the way he is being treated, such a murder would be covered by the definition of Cassels, J. As will be seen the operation of the definition is dependant on the content of the law in a given system on offences against the state as such and its application to a given set of circumstances will hinge on how wide the concept of political offences in this sense, that is in the sense of offences against the state as such, is in any state. The

60. *Loc. cit.* note 56 at 121.

definition extends the concept of political offences submitted to be acceptable above[61] not by reference to any vague notion of political motives or objects but by reference to a particular restricted situation.

Lord Goddard C.J. took a different approach. Although recognizing, as Cassels, J. did, that the laws in Poland and the attitude of the communist countries towards the west warranted an extension of the notion of a political offence, his view of how the definition should be extended in the case in hand was totally dissimilar.

> " The revolt of the crew," he said, " was to prevent themselves being prosecuted for a political offence and, in my opinion, therefore, the offence had a political character."[62]

The learned Chief Justice emphasised the fact that political officers were keeping observation on the accused for the purpose of preparing a case against them on account of their political opinions in order that they might be punished for holding, or at least, expressing them which was an offence against the state as such belonging to the same category as treason. Such a prosecution would have been a political prosecution or a prosecution for a political offence in the pure sense of the term. Since the common crimes for which extradition was demanded were committed with the purpose of avoiding such a prosecution, they acquired the character of political crimes. Although the notion that a crime committed with a political object is a political offence is implicit here, it is not a broad conception of political object that is admitted but a specific and limited one. It is as specific as the notion of political object in the general definition of political offence deriving from the *Meurnier Case*, although it is not contained within that definition. As pointed out by another writer, it would be insufficient that the common crime were committed from mere dissatisfaction with the life in a totalitarian state.[63] The same would apply to dissatisfaction with life in a democratic state, for it cannot be said that it was the intention of the learned Chief Justice to limit his definition to crime committed in totalitarian states, although the facts concerned such a state in the case before him. On the other hand, defrauding a bank in order to leave the country in order to avoid a political prosecution would become a political offence as would murder or causing grievous bodily harm committed in the course of breaking jail in order to avoid a political prosecution, as defined above.

61. *Cf. supra*, p. 221.

62. *Loc. cit.* note 56 at 121.

63. J.A.C.G. in " *The Notion of Political Offences and the Law of Extradition*," 31 British Yearbook of International Law [1954] 430, at 435.

Although the learned Chief Justice did not explain the detailed requirements of this extension to the normal definition, it is reasonable and necessary, it is submitted, that there be some limitations on its application. The following are suggested ;

(i) There must be a political prosecution in the sense explained above either in progress or certainly imminent or, at least, very probable. It cannot be sufficient that there is a possibility or remote likelihood of such a prosecution or that the accused thought that there would be a prosecution for a political crime against him. This would leave room for abuse and fantastic claims to exemption from extradition on the slightest pretext. A person must not only have reasonable grounds for believing that there is such a prosecution brewing but there must be, at the time the common offence is committed, at least, some objective and high degree of probability that such a prosecution will be brought. On the other hand, it would be too strict a view to insist that either the prosecution must already have been instituted or it will certainly and definitely be brought.

(ii) The common offence in question must have been committed with a view to avoiding the prosecution and not for any other purpose or from any other motive.[64] It is not sufficient that the crime be committed merely in the course of a jail-break which is undertaken in order to avoid a political prosecution, for instance. There must be a relation of purpose between the escape from prosecution and the commission of the crime. Thus, if the accused sought out a guard whom he particularly disliked and shot him in the course of such an escape, the relation of purpose between the crime and the escape from prosecution would not be present and the crime could not be called a political crime. On the other hand, if a sole witness or a leading witness in the prosecution were murdered in order to make it impossible for the prosecution to be brought, it would seem that the required purpose would be present.

A problem may arise in circumstances involving a different kind of political offence from an offence against the state only and as such. Suppose, for instance, that X, in the course of a riot in state A in which the opposition communist party tries to break up a meeting of the governing party held to promote the imposition of a sales tax on essentials, in order to achieve the purpose of the riot, namely the obstruction and prevention of the meeting so that the sales tax may not be promoted, inflicts serious bodily injury on

64. The same idea was mooted by J.A.C.G., *ibid.* at 435.

a member of the governing party. Then, in order to evade arrest and trial for this offence of serious bodily harm, he fires at a frontier guard and kills him in a bid to cross over to state B. State A requests his extradition for this murder. It would appear that the murder in question was committed in order to avoid prosecution for the offence of causing grievous bodily harm which was however committed in furtherance of a political struggle. This latter offence is characterized as a political offence for the purpose of the law of non-extradition in general. Does this mean that it is to be characterized as a political offence for the purposes of the rule under discussion and is it to be said that since X committed the murder in order to avoid a prosecution for a political offence, extradition is to be refused ? It is submitted that, if this view of political offence were accepted for this purpose and non-extradition permitted, it would lead to a further extension of the rule permitting non-extradition. The *Kolczynski Case* itself concerned facts in which the prosecution in question was for offences against the state only and as such. Hence, the rule should be limited to cases where the crime for which extradition is requested is committed in order to avoid a prosecution for a political offence in the narrow and primary sense of an offence against the state only and as such and should not include cases where the crime is committed to avoid a prosecution for those ordinary offences which acquire a political character for the purposes of the law of extradition by reason of their connection with a political struggle of some kind.

The *Kolczynski Case* is based on two different principles propounded by the two judges and the question arises which is to be regarded as the *ratio decidendi* of the case. In the *Schtraks Case* Lord Parker C. J. preferred the approach of Lord Goddard, C.J. but it is submitted that both approaches may be regarded as valid, so much so that it may be said that the ordinary definition of political offences permitting non-extradition has been extended in two ways. A common offence becomes political for these purposes, if it falls outside the normal definition used in the *Meurnier Case* and by Denman J., if (*a*) It is committed in circumstances in which a political offence in the sense of an offence against the state only and as such is committed at the same time and is so inextricably involved with it that the two cannot be separated or (*b*) it is committed in order to avoid a prosecution for a political offence in the narrow sense of an offence against the state only and as such. These extensions are not contradictory to anything which was said in the previous cases. They are extensions by reference to specific circumstances and objects. Hence, they do not try to revive in any way

the broad definitions which were either rejected in previous cases or were submitted to be unsatisfactory, viz. the wider definitions of the Swiss courts.

Conclusion

The problems connected with common crimes which are also political offences in the law of extradition are neither insignificant nor easy to solve. In the above article, an attempt has been made to discuss and provide answers to some of them. Most important of these problems are those pertaining to the question whether the nature of the trial and its surrounding circumstances have any relevance to the issue of non-extradition and those relating to the substantive content of the definition of the concept of a political offence. Both these problems were presented to the English High Court in the *Schtraks Case* recently. The following conclusions are submitted in respect of the present state of the law on these matters.

(1) Although there is some conflict of opinion in the cases, it is the better view that the question whether the accused in an extradition suit is likely to be tried for a political offence, although extradition is requested for a different non-political offence, is not one that the court can examine, because to allow otherwise would conflict with the principle of speciality and would reflect on the good faith of the requesting state. The conflict of opinions being created by a case in which the contrary view was expressed only as a *dictum* and as an ambiguous *dictum*, at that, and by a statement in another case which probably has a different interpretation,[65] the above view may be accepted as the law.

(2) Extraneous factors, such as that the trial may be used for political purposes or that the offence has acquired a political implication subsequent to its commission are irrelevant. The question is always whether the offence was political at the time it was committed.

(3) As for the political nature of the offence, it may be proved either by reference to the facts adduced by the requesting state, or, if this is insufficient, by evidence adduced by the accused as well. This rule is contained in section 3(1) of the Extradition Act 1870.

(4) The actual content of the definition of the concept of a political offence for the purposes of non-extradition requires delimiting, although this may not be easy. There have been several definitions mooted in

65. *Re Arton (No. 1)* and Cassels J. in *Kolczynski's Case.*

English decisions and even in the decisions of other countries. However, the problem is to select a definition which is neither too broad nor too narrow. On a liberal interpretation of the Swiss decisions it may be said that some definitions expressed in terms of the general notion of the political motive or object of the offence have been suggested. But these are not only too broad to secure acceptance and to be practicable but it is uncertain whether the Swiss courts meant to go so far. Moreover, they are inconsistent, for the most part with what has been the general view of the English courts. Apart from these anomalies, the most acceptable definition among the others is the broadest expression of a general definition applied by the English courts with the addition of two qualifications to expand the definition, also made by the English courts. Others emerging from both English and other decisions are too narrow. The proposed definition is not in any way inconsistent with the decisions in any of the cases so far decided in England or elsewhere. If this definition were applied in lieu of the narrower or boarder ones which may have been resorted to in some cases, the decisions in those cases would still be the same.

The definition would run as follows :

Where a common offence is committed in the course of any dispute, not necessarily amounting to a physical disturbance, between any two political parties in the state struggling for power, not necessarily including the governing party, and it is committed with a view to furthering the achievement of the purposes of the party concerned and not for any other purposes or from any other motives,

or where a common offence is committed in circumstances in which a political offence in the sense of an offence against the state only and as such is also committed at the same time and is so inextricably involved with it that the two cannot be separated,

or where a common offence is committed in order to avoid a prosecution for a political offence in the sense of an offence against the state only and as such,

the offence is a political offence.

C. F. AMARASINGHE

Review

" Vistas in Astronomy " is a series of books designed both for the research worker and for the general scientific reader. Each volume is a collection of articles on specialised subjects written by experts in each field. However though the articles give specialised information of value to the research worker, they are written in a pleasant and readable style, so that they can be read with enjoyment and profit even by the non-specialist reader.

The fourth volume contains a pleasing variety of subjects, ranging from the History of Astronomy to Artificial Satellites. Included in this range are articles on Geophysics, Solar Physics, Astrophysics, and Celestial Mechanics. The general reader will find the article on the History of Astronomy dealing with an 8th Century Meridian Line in China specially interesting. The specialist in Solar Physics will find the article on " The Development of a Solar Centre of Activity " useful. The article on " Artifical Satellites " can be read with interest by all.

A pleasant and interesting feature of the book is that it is the result of international co-operation. It contains articles not only by writers from Cambridge, Harvard etc., but also from Moscow and Singapore. This of course is very much as it should be. In this modern age, with several satellites encircling the earth every few hours, we should begin to think of the earth as a whole and work together for the common good of all mankind. Astronomers perhaps more than anyone else, should surely realise the absurdity of national strife on the surface of a little planet in the vastness of the universe. The international co-operation evinced in this book is very much a step in the right direction.

D. V. A. S. A.

Printed at the Ceylon University Press, Colombo 3, by H. B. Perera and published by S. C. Blok, Librarian, University of Ceylon, Peradeniya.