SOCIAL LEGISLATION UNDER HINDU GOVERNMENTS

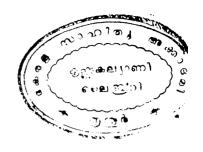
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PREFATORY NOTE

At the request of some friends I have re-printed the following from the *Commonweal*, with the permission of the Editor, in the hope that it might be useful to those interested in such subjects.

KANCHIGRAHAM,'
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SOCIAL LEGISLATION UNDER HINDU GOVERNMENTS

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The recent controversy over the Post-Puberty Marriage Bill has thrown into relief the various points of view from which a question affecting social legislation in this country is likely to be looked at. It would be interesting to add one more to the large number of such view-points though of an academical character. Human affairs keep changing so rapidly. even in most conservative matters, that the saving remains largely true that the altar-cloth of one agon becomes the door-mat of another. This is often forgotten by those who look out for precedents from past history, or even, for the matter of that, for the prevailing practice elsewhere, under other climes and other circumstances. Notwithstanding the fact that precedent and present examples are not capable of direct copying, they are capable of giving lessons which may be guides, the importance of which would depend entirely upon the particular matter, and also on the manner, in which they are sought to be applied.

The problem of marriage reform is not new, nor is it peculiar to our own age, but the special problem that calls for solution is peculiar to the age and environment in which it exhibits itself. The question of widow marriage, of early marriage (of which post-puberty marriage is but a special part), and the question of marriage dowries which has called forth such tragic exhibitions recently, all hang together. and are all of them the result of one institution the obligation that is laid upon women of the Brāhmana caste, and of other castes that follow their lead, of marriage. In one age it is one of these that shows itself in a pronounced form; at another, another. When the evil shows itself prominently, solutions are attempted, legislation is made and enforced with fearfully deterrent penalties; but the mill of human progress grinds but slowly, sometimes even very badly. The same evil shows itself after an interval and perhaps in a more aggravated form, demonstrating thereby that legislation in these matters is about as efficient a remedy as the various sumptuary laws of old. It is not at all likely that legislation will bring the millennium on earth although there is no doubt wise legislation contributes its own small quota if other efficient causes are at work.

The woes of married life are great enough to keep divorce courts active in the West, but the dismal tale of silent suffering is so great with us that death is 'release' in a large number of cases,

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and one remedy that suggests itself to those who suffer is that marriage itself should be optional to the womenfolk as to the men. Optional marriage does not appear to have made every one happy where it prevails. So that we are at last reduced to this—that all our efforts are but tentative attempts at some relief, more or less efficacious according to the nature of the evil grappled with.

The evils attending the problem of marriage had been experienced in this country, almost in the very locality we are in, about five hundred years ago, and drastic measures were adopted. The evil that was intended to be stopped became prevalent, perhaps in the course of a few generations, and has had unquestioned sway till within memory of the present generation of people. The younger generation exhibit the opposite evil a great deal more now. After all, the evil complained of was one of sufficient gravity to warrant legislation, was unshastraic in character, and came home in the most realistic fashion to those concerned. evil I have been alluding to is the evil of 'price' in marriages. This evil assumes protean forms; but two shapes that it assumes seem the most usual, namely the demanding of a heavy price either for the bridegroom or for the bride. The most visible form nowadays is the 'bridegroomprice,' although it would be hazardous to state that the 'bride-price' has gone out of existence. If any social evil is clamant for remedy at the moment

in Hindu society it is this; and the class that is most atrociously guilty is the so-called educated classes of the community. Many a parent is driven to despair and many a poor girl, who is able to watch the game from within, is driven to commit suicide in charity to her suffering parents. Things show a distinct trend towards an automatic solution, and that is, that marriage for girls will become about as obligatory as it is for boys. According to the Shastras it is obligatory to the same degree on both, as the object of marriage is addition to humanity. Will legislation help this? Yes, if the legislation is such as will command the assent of the community, or communities, concerned. If the community is capable of seeing the reasonableness of a measure of legislation, that community can certainly see the evil of the noxious custom itself. The most effective remedy, then, is the education of the community to see for themselves what others are able to see, an ideal we are a long way from attaining. Hence the effort to attain to it by the shorter cut of compulsory legislation.

There is a record of one such measure of legislation by Dēva Rāya II of Vijayanagar, who ruled from about A.D. 1422 to 1449. The evil of a heavy brideprice seems to have afflicted the Brāhmaṇa community in the division of the Empire known by the name of Marakatanagaraprānta—Marakatanagar being the head-quarters of the division—the modern Vṛnchīpuram in the North Arcot District.

Dēva Rāva issued writs summoning the Brāhmanas of the various communities in the division, the Tamil, Telugu, Karnāta, and Lāta (Gujarati) communities. Each village was asked to send at least one man of their choice so that his opinion might be binding on his constituency. The learned ones among them were invited, very probably by individual writs. This august assembly had their session in the halls and open air, adjoining the temple and tank, and examined the question first of all as to how far the practice was shastraic. They were unanimously of opinion that the practice was positively unshastraic. They must then have considered what would be the best punishment for the breach of the Shastra, and seem to have arrived at the conclusion that excommunication would be the proper punishment. The resolution was accepted, and the King added that over and above excommunication there would also be penalties of the civil law added, and issued his orders prohibiting altogether any money transaction on occasions of marriages, and enjoining free gift of girls (kanyā $d\bar{a}na$).

It would be almost impossible to conceive of more favourable circumstances to carry through a measure of legislation than these. Nor could more drastic punishments have been held up as the penalty for transgression. For although the character of the civil penalty is not indicated, we have a hint of it almost from another case. A certain

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number of Brāhmanas, for some reason, abandoned the peaceful pursuit of life to which they were accustomed and turned highway robbers. defied successfully the communal authority to which their obedience was due in the first instance. Complaint was made at head-quarters and the Maharaja detailed the general of the district to arrest the recalcitrant culprits and place them before the community to undergo their trial. One party of two brothers was arrested and the others managed to escape into the forests. They fell upon the party escorting the arrested brothers and effected their release. The King then ordered a stronger contingent for this dangerous duty, and decreed that they be punished as highway robbers, as they had ceased to be Brāmanas by taking themselves out of the community in this manner, and had, as such, forfeited the consideration to which they were otherwise entitled.

It is clear from this that when one got excommunicated from the fold of orthodoxy the punishment must have been severe indeed. It would have been interesting indeed if we had the means of knowing of what efficacy the measure of legislation was in combating the evil. We have no means of knowing that; but we do know that the same evil afflicted society generally not long ago, and does to a certain extent perhaps even now.

The questions relating to social welfare are many. and those that came for authoritative royal settlement were, comparatively speaking, few in ages when there was a complete devolution of Governmental authority on local bodies, big and small. Usually a question was taken up for Royal orders when it was felt that the gravity of the question transcended communal authority or the authority of a Provincial Governor, or happened to be of such importance as to affect a caste or class spread over more than one division. We have two remarkable instances, one relating to a caste matter and the other to the civil rights of religious sects. first concerns itself with an anuloma caste, called Rathakāras, and the point under dispute was what profession this class should follow. The question is of no importance under modern economical conditions with considerable fluidity of labour. In a state of society, however, the economic constitution of which was far different from, nay even the opposite in some respects of, our own it is of the utmost importance. The word Rathakāra is ordinarily explained as a carriage-builder, carpenter, or wheelwright. This is a profession which could have had only limited scope for its exercise in a society where freedom of movement was comparatively limited. In order to decide this important question, the

learned Bhattas (Brāhmanas) were called together. They examined carefully the shastraic texts bearing on the question, such as Yājnavalkya, Gautama, Kautilya, Bodhāyana, and others, and found that a Māhisya was defined as one born of a Kṣattriya father by a Vaisya mother; that a Karanī was the daughter of a Vaisya father by a Sudra mother; and a Rathakāra as the son of a Māhiṣya father by a Karani mother. Thus it is seen that a Rathakara was an anuloma to the second degree. The professions laid down for him were curious enough—(1) architecture, (2) building coaches and chariots, which perhaps was their general occupation, (3) erecting gopuras of temples with images on them, (4) preparation of instruments required by the Brāhmanas in their sacrificial ceremonies such as the ladle. etc., (5) building of mandapas, (6) making of jewels for kings such as diadems, bracelets, etc.

Inter alia it was also laid down that this anuloma sept of Rathakāras was superior in point of caste dignity to the prathiloma sept (those born of a Karan father by a Māhiṣya mother). These were according to one authority quoted, entitled to the wearing of the sacred thread (Upanayana), the performing of sacrifices (Ijya) and the receiving of the sacred fire (Ādhāna) According to another authority, however, these anulomas, though entitled to Upanayana, are prohibited from the perpetual keeping of the sacred fire (Agnihōtra), the worship of the fire thus kindled (Aupāsana), and the five sacred

methods of worship prescribed for Brāhmanas (Panchamahāyajāa),¹ and the chanting of the Vedas (Adhyayana). It is interesting to note that this last authority lays down that the Upanayana ceremony referred to in respect of the Rathakāras should not be conducted by quoting the mantras. This decision of the learned men of the hamlet of Uyyakondān Tirumalai at the beginning of the twelfth century is of particular interest in respect of the procedure adopted in disputes of this kind. The Rathakāras as a caste, it is interesting to note, find mention in the Vedas (in the Vājasaneya Samhita).

The question in regard to the civil rights of followers of different religious persuasions came up for Royal decision in the middle of the fourteenth century under Bukka (A.D. 1336-1376), the founder of the Vijayanagar Empire, and has relation to a dispute between the Jains and the Vaisnavas in a Vaisnava Sentre, in the State of Mysore. The question in dispute was whether the Jains were entitled to the use of the five great musical instruments and the carrying of the Holy Water pot (Kalaśa) in ceremonial processions and on ceremonial occasions. This right to their use was obviously called into question and complaints were naturally carried to

^{1 (1)} Deva Yajña—ceremonial worship of the gods. (2) Pitr Yajña—ceremonial worship of the manes. (3) Brahma Yajña—ceremonial worship of the Rsis. (4) Būta Yajūa—ceremonial worship of beings other than men. (5) Manusya Yajña—ceremonial worship of men.

headquarters. Bukka took the matter up and called for a conference of the leading Jains from the various Jain centres, such as Anegondi, Hosapaṭṭaṇa, Penugonḍa, Kallehadapaṭṭaṇa, etc., and the Vaiṣṇavas of the eighteen nāḍs from Śrīrangam, Tirupati, Kanchipuram, Tirunārāyaṇapuram, etc., concerned in the administration of the Vaiṣṇava temples. Having investigated into the matter and getting the Vaiṣṇavas to agree in writing, he issued it as his order that between Vaiṣṇava Darśana and the Jaina Darśana there was no difference whatever. He then took the hand of the Jains and, putting it into the hands of the Vaiṣṇavas in token of placing the Jains under the protection of the Vaiṣṇavas, decreed:

In this Jaina Darsana, according to former customs, the five big drums, and the Kalasa will [continue to] be used. If to the Jaina Darsana any injury on the part of the Bhaktas [Vaisnavas] should arise, it will be protected [in the same manner] as if injury to the Vaisnavas had arisen.

The Vaisnavas were ordered to set up copies of this decree in the principal Jain shrines of the kingdom and it was laid down that 'the Vaisnava Samaya will continue to protect the Jaina Darsana as long as the sun and moon endure. The Vaisnavsas cannot be allowed to look upon the Jainas as in a single respect different.'

By consent of both the Vaisnavas and the Jains, which latter agreed to contribute one panam per

Jain house for the expenses, this duty of protection of the Jains was entrusted to the particular Tātāchārya (leading Vaiṣnava) of Tirupati. He was to collect the amount as stipulated above and provide a guard of twenty for the Jain Holy Place—Śravana Belagola. Out of what might be left over, he was gradually to carry out the repairs that the various Jain shrines in the kingdom needed, and hold himself responsible for keeping them in good condition.

Any one who should break this rule was declared traitor to the king, a traitor to the assembly (Sangha), and a traitor to the congregation, the former in all probability referring to the Jain community and the latter to the Vaisnava. This trust the Tātāchārya appears to have carried out loyally as shown by the later endorsement, on the top of the said stone, that on an application to Bukka, the Tātāchārya came from Tirupati and had the particular shrine repaired and set right.

This seems to have been the usual kind of procedure followed in cases of dispute like the one referred to, and even in cases where there was no dispute, it seems to have been the practice to entrust these public charities, belonging to all religious communities, to the leading man in the locality, even though he should happen to be the head of a particular religious community other than the one to whose properties he was appointed trustee. This is amply demonstrated in the records

of a principal Saiva centre in Mysore, Balagamve, in the Shimoga District. The properties belonging to the Vaiṣṇava temples in the locality and the Jain communities were all placed under the management of a certain Vāma-Dēva, the head of the Veeraśaiva sect, a couple of centuries earlier than this record of Bukka. That this particular record of Bukka was set up in the various Jain Bastis, as directed, is proved by a couple of such copies having since been discovered by the epigraphists.

Temples and various items of temple management are matters for acute differences between the various parties concerned. The management of temple properties in general, and the conduct of temple festivities in particular, come in for judgment quite as often as other matters, perhaps more often. a grant of a village made to the temple of Siva at Āragalūr in the Āttūr Taluk of the Salem District, then included in the Magadaimandalam or Malādu, the donor carefully excluded the gifts previously made 'to temples, bhattas (Brāhmanas) and Jain shrines (Pallichandam)'. The grant refers to the gift of the village of Alambalam in the same Mandalam with all its income for instituting a service in the name of the King, and for celebrating a festivation his birthday every year. Obviously, therefore, it was a royal grant, or almost so. These grants are usually made by purchasing the village under donation from the previous owners, either individual or village communities, and the exclusion of gifts already made is quite necessary. Although these grants are made with all care in regard to the rights and responsibilities involved, there have been attempts either not to carry out the various directions or even to commit positive malfeasance. On another occasion in the reign of the same monarch, who happened to be a Pandya King, by the way, a grant of one thousand kulī of land was made, rent free, by a Chief named Śēdirāyan for the maintenance of two Brāhmaṇas for reciting the Veda in the temple. The nāṭṭār inhabiting the districts between the rivers Vēmbāru and Pennai were required by order of the King to assign certain specified taxes to the temple 'for the health of the King'. The tax was collected for two years by the community, but was not made over to the temple. The King having come to know of this, issued an order for the immediate payment of the tax to the temple, and warned the inhabitants that the negligence should not be repeated.

The same $n\bar{a}tt\bar{a}r$ figure in another transaction connected with the temple. The right of conducting the festivals seems to have belonged to the Chetti nagarattar of Āragalūr. But the oil-merchants (Vānia nagarattār) quarrelled with the Chettis, spoke disparagingly of them and offered to conduct the festivals themselves, probably because the festivals were not conducted with the splendour that would have pleased these oil-merchants. supervisors of the temple sold the right by public auction and the right passed into the hands of the oil-merchants by outbidding. In course of time the festivals came to be neglected again, and it was now the turn of the Chettis who, protesting in strong terms against the discontinuance of the festivals, made a grant of a village for conducting them as usual, in conformity to the wishes of the Māhēśvaras and the Sthānīkas of the temple. In this instance the dispute does not appear to have gone far enough to have been brought to the notice of the royal officers.

In the middle of the fifteenth century there came in for decision a dispute regarding the privilege of worship in the same temple. Three of the priests belonging to the temple of Kameśvara in the same village sold their share of the privilege of worship to a priest belonging to a temple in another village of the same division. The matter came before the Governor of the division, Tirumallināyaka by name, who framed the issues and gave the award as follows: Summing up the case and communicating his final orders to the managers of the temple at Āragalur, who were probably the complainants, Tirumallināyaka says:

(1) A has been enjoying for a long time the privilege of worshipping all the thirty days of the month in the temple, while actually only fifteen days belong to him by right, and fifteen days belong to another person named B; (2) the privilege of B thus enjoyed by A without proper authority, requires settlement; (3) in support of the latter part of the statement made in (1) there are records in the temple to prove that the fifteen days of B (now abandoned by him but enjoyed by A) have under orders been counted 'unclaimed' (irangal); (4) of this privilege of fifteen days so declared unclaimed, you have sold (on your own responsibility) seven and half days to a third person C and given him a sale-deed; (5) by so doing you have deprived the acquired right of A

enjoyed by him for the last eight or ten generations (6) at this stage the Nattar (the leaders of the community) appear to have volunteered to settle the question of enjoyment—A being found issueless (?)—and to have called the parties to present themselves before them together with A; (7) you—the managers—were also required (under my orders) to be present on the occasion, to hear the case, and to carry out the decision arrived at by the Nattar and to have in the meantime, during this period of hearing (by the Nattar), the worship of the temple performed by outsiders, on Nattar's payment; (8) A having then appealed to me while I happened to be present at Aragalur, to hear his case personally and give a just decision, I and the Nattar together advised the parties to put their case before the Mahājanas and issued an order to this effect; (9) in obedience to our order the Mahājanas of the Agraharas (Brahmin villages) of Kulattur, Alamabalm, Sadayanpattu, Mattiyākurichi, met together, heard both sides and decided that although A may have been the hereditary holder of only fifteen days of the privilege, it was not fair to sell part of the disputed portion thereof to an outsider like C while the right to purchase (in virtue of long enjoyment) primarily rested in A; (10) accordingly, therefore, to this decision of the Mahājanas we order that A must continue to enjoy the full thirty days as before, and that the sale deed you have given to C should be cancelled.

It is clear from this that the seven and half days' right of worship was sold by the Sthānikas (managers of the temple), while A had the right of prescription and the proprietary right of B lapsed by neglect. The Nāṭṭār (probably here a particular community

of the village) had jurisdiction in the first instance. The Governor of the Division puts it on his file on appeal by A. So far it is his executive order. But the case is actually tried, at his own instance and with the agreement of the Nāṭṭārs, by the Mānājanas of the four villages specified, forming probably one union, and the judgment is issued in their name by the executive officer of the Division. By the fact that the appeal was preferred before him, the Governor was competent to take the case on appeal. But the waives the right and puts it before the Mahājanas with commendable judiciousness.

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Among the various glimpses that we are able to gain in respect of the social order under which people lived under Hindu rule, not the least important is the light that is thrown upon merchant guilds by two or three records quite recently discovered. There appear to have been very powerful guilds of these merchants whose operations extended all over the country of India, and across the seas to Cevlon and Burma. These appear to have been known by the comprehensive designation of 'of various countries' (Nānādésis). The reason for this designation is perhaps quite obvious, and may be interpreted as having arisen from the fact, either that the community was formed of people from various countries or, what seems more likely, the community whose operations extended to various countries, had smaller communities—their divisions—in various parts. It is these $N\bar{a}n\bar{a}d\acute{e}sis$ that built the Vaisnava shrine at Pagan in Burma in the twelfth century. A record from Balagami in the Mysore State, in a long eulogy of these merchants, describes them as having been praised in five hundred glorifying edicts (Vira-sāsanas); that they were virtuous protectors of the Vira-Valanjika religion, that they were born of Vasudeva Kandali

and Vīrabhadra, that they were the devotees of Bhattāraki (probably the goddess Durga) and that they consisted of various divisions coming from the thousand districts of the four quarters, the eighteen towns, the thirty-two Velarpuram, and the sixtyfour ghatikāsthānam, viz., Śetties, Śettiputras (probably equal to Settypillai), Kavares, Kandalis, Bhadrakas, Gowndaswamins, Śingam, Śirupuli, Valakkai, (Valangai) Vāriyan. They are further described as brave men 'born to wander over many countries ever since the beginning of the Krta age, penetrating the regions of the six continents, by land and water routes, and dealing in various articles such as horses, elephants, precious stones, perfumes and drugs either wholesale or in retail'. This description finds justification in the colony already referred to in Burma and a far more powerful colony we shall refer to presently in Ceylon.

There is a curious decision at which this guild arrived—at a meeting they held just where we are in Mylapore, in reference to a village Kāṭṭūr. They resolved at this meeting that the village which hitherto was called Ayyapulal-Kāṭṭūr, be transformed into a Vīrapaṭṭina, thus exempting its inhabitants from all communal contributions and entitling them to receive twice what they used to get till then (in the matter of honorary privilege). This could mean no more than that they had larger rights of self-government than they had before. They resolved further that thenceforward the town

was not to be inhabited by such of the mercantile classes (1) as demanded taxes and tolls by threatening people with drawn swords or by capturing them, curiously reminiscent of the Muhammadan moneylenders who make half-yearly visitations of villages even now; and (2) as wantonly deprived people of their food or otherwise afflicted them. They laid down that a breach of these resolutions made one liable to be excommunicated from the Valanjiya community.

Another record relating to these communities coming from Basinikonda near Madanapalle, of almost about the same time (about the eleventh century), states that the community consisted of Nādu, Nagara, and Nāna-deśi, and that the special meeting called for communal purposes on that particular occasion consisted of 1,500 representatives of all religious denominations (Samayas) coming from the four and eight quarters (of the compass), and also of their followers Eri-Vīras, Munai-Vīras, Ilam, Singa-Vīras, Konga Valasa, and a host of other sects of various tenets, the Valangai-weavers, etc. The conference was called for the purpose: of declaring Siravalli a Nānādeśia-daśamaḍi-Erivīrapattana, and for conferring some privileges on the residents of that town. These appear to have been placed, however, under the supreme control of the Royal Officer in charge of the revenue collections of the part of the country in which the communities were located.

There is an interesting record, relating to these guilds and their servants in Ceylon, of the twelfth century. In the long rule of Vijaya Bāhu I, Śri Sanga Bodhi, there was a rebellion of Vēlaikāra forces in the thirtieth year of the King, when they were ordered to go to war with the Cholas.

These Vēlaikaras are taken by the translator of the Mahāvamśa, Mr. L. Wejesimha, to be "a body of mercenaries employed by the Singhalese King at this period ". This term however occurs very often in Tanjore inscriptions of the Chola kings, Raja Raja I and his son, as part of the name of various regiments composing the army of the Cholas, but a further record from Cevlon makes it clear that they were a community of working classes which included in it the Valangai, Idangai, Sirudhanam, Pillaigaldhanam, Vadugar, Malayālar, Pariyārakondam and others, and that its leaders (Mūdādaigal) were the Valanjiya and the Nagarattar. This makes it quite clear that the Vēlaikāras are no other than the communities of people already referred to as subordinate to the guilds of merchants, among whom were the Banajiga and Nagarattar communities whose trade extended all over the country. Banaiigas and Nagarattars are heard of, the former in Kanarese and Telugu countries, and the latter in Kanarese and Tamil countries. They belong, in India, to both the Vaisnava and Saiva sects, and those in Ceylon were Buddhists (Mahātantra). The Vēlaikāras, whatever their religion, included as is

made clear by this inscription, all working classes in India and were emigrants therefrom to Ceylon.

The rebellion of these Vēlaikāra forces referred terabove seems to have been put down, and perhaps as a direct result thereof the Chief. Devasena Vīrattār, under orders of Vijava Báhu constucted at Pulanari, otherwise Vijayarājapura, a shrine (Gandhakuţi) called Daļadāyaperumbaļļi, now called Daladamaligawa. This was for housing the beautiful stone image of Buddha, wherein also siwelt permanently Daladapatradhatusvamin of Uttorulmulai, the foreface of the original Abhayagirivihāra. It was on this occasion that the pious and learned royal preceptor Vyārinimula, the Mahāsthaviras of Uttorulmulai, together with the King's ministers, called for a meeting of the Mahātantra. assembled together bringing with them their leaders the Valanjiya and Nagarattar. They denominated the shrine, Munrugai-Velaikaran-Daladayaperumballi. The latter two words indicate clearly that it was a Buddha shrine intended for the worship of the Vēlaikāra community. The first word is not quite clear. It means three hands and may be interpreted as referring to the three principal divisions of the community. But another record makes this an attribute of an individual and seems there fore to refer merely to a particular community among the Vēlaikāras. These Vēlaikāras took upon themselves the responsibility of maintaining the temple and protecting it properly. As remunera.

tion for this, each individual member of the Vēlāikāra community received one Vēli of land.

They all gave the following undertaking:

ervants, property and those that sought asylume there, even though in doing this we lose ourselves or others suffer. We provide for all the requirements of the temple so long as our community continues to exist, repairing such parts of the temple as get dilapidated in course of time and we get this contract which is attested by us engraved on stone and copper so that it may ast as long as the moon and sun endure.

We are thus enabled to see clearly what a powerful community the mercantile community was and what control they were able to exercise over the working classes generally, how far their operations extended actually and what powers these were able to exercise even in foreign countries. It is no wonder that we often hear in the chronicles of Ceylon of some of these merchants usurping the throne. Elsewhere also these communities, or their heads, are found to exercise great influence and control the revenue operations of large States.

