RAJADHARMA

(Dewan Bahadur K. Krishnaswami Row Lectures, University of Madras)

BY

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THE ADYAR LIBRARY, ADYAR

1941
TO DHARMATMA PANDIT MADAN MOHAN MALAVIYAJI

IN VENERATION AND AFFECTION TO DHARMATMA PANDIT MADAN MOHAN MALAVIYAJI IN VENERATION AND AFFECTION
PREFATORY NOTE

In the scheme of work outlined for the Library is the publication of a number of unpublished *Dharmasåstra* works, whose importance and rarity justify their inclusion in the Adyar Library Series. An important Digest of Hindu Law of the so-called “South India School,” the *Vyavahāranirṇaya*, which is older than the famous *Parāśara-Madhaviya*, and probably older than the *Śrītīcandrika* of Devaṇṇa Bhaṭṭa, is ready for release as one of our Series. Another work which is on the anvil is the *Kesāva-Vaijayantī* the famous *bhāṣya* on the ancient *Viṣṇusmṛti*. Both these are being edited by Rao Bahadur, Professor K. V. Rangaswami Aiyangar, Vidyāvācaspati, Dharmyārthśāstra-ratnākara, whose pioneer works on Ancient Indian Polity and Economic Thought are well-known to students of Hindu social institutions. He has now completed for another well-known series a reconstruction of the long-lost law-book of Bṛhaspati, after many years of strenuous investigation. We are promised in the same series under his editorship, the first five volumes of Lakṣmīdhara’s *Kṛtya-Kalpataru*, the oldest extant digest of *Dharmasåstra* and they are to be followed by the remaining nine volumes of this great *dharma-nīibandha*. These undertakings are the result of studies
furnish to the reader adequate material for judging of the validity of the positions taken by the lecturer, and are embodied in a series of very condensed essays or articles, amounting to more than a hundred-and-eighty, which are modestly designated as ‘Notes.’ Even a cursory perusal of their titles in the list of contents will disclose their importance as well as their range, variety and interest. The ‘Notes’ form as important a part of the book as the text. Attention may be drawn also to the classified index, which may be useful to students. It is the work of a member of our staff, Mr. A. N. Krishna Aiyangar, M.A., L.T., Joint Editor of our Bulletin.

The scheme of publication which the Adyar Library has laid down provides for the publication of lectures like those now introduced. Our obligation to Professor Rangaswami Aiyangar, who has so freely been collaborating with us, is all the greater since he has given the Adyar Library all rights both in the lectures on Rajadharma now published and in other works which he is editing for the Library. To meet the convenience of readers of Sanskrit unfamiliar with Nagari script, he has given at considerable labour the many Sanskrit texts he has cited in the ‘Notes’ in Roman. It is hoped that this will enable a larger body of readers to examine the citations than would be possible if Nagari had been employed for their presentation.

The Adyar Library
1st July, 1941

G. Srinivasa Murti, Honorary Director
In the renaissance of Indian studies, which is a feature of our day, a branch which has not come to its own is Dharmasāstra. Even among its special students divergent views as to its character, scope, content, source, authority and affiliations are not uncommon. This is due neither to lack of material nor to lack of intensive study. Though only a small fraction of the vast literature of Dharmasāstra has been printed and a still smaller fraction is available in translations, virtually all the great commentaries and digests that have survived eight centuries of alien and frequently hostile rule, are now available in one or other of our great manuscript collections.

Dharmasāstra was a living subject down to the threshold of the nineteenth century. It was assiduously cultivated at the great centres of Hindu learning and digests were written as late as the accession of Queen Victoria. For a generation or two afterwards, proximate utility drew lawyers and judges to the intensive study of one section of it, viz. vyavahāra. A mild interest has since then been evinced by students of ritual in the other two sections, viz., acāra and prayāscitta.
Legalist enthusiasm for Dharmasāstra rapidly waned with the growth of case-law and the ever-widening rift between the traditional Hindu law and the judge-made law of the British Indian courts. If and when the proposal under consideration to codify Hindu Law (on the basis obviously of judicial decisions and reformist advocacy) becomes fait accompli, the little interest which survives among professional men will vanish completely.

The contingency need not, however, cause misgiving. Vyavahāra doctrines have suffered greatly from specious reasoning and distortion in the interest of litigants and from their pursuit in the twilight of half-knowledge. If Dharmasāstra continues to hold an attraction, it will be chiefly to students of history, who will turn to it for the light it will throw on the institutions and ideals, the life and thought of an age remote from their own. It will also count as a disciplinary study in the Universities. Its liability to distortion will not disappear altogether. To read the present into the past is a foible to which historians are liable. The political use of history consists in the past forming an arsenal from which weapons for present strife may be drawn. History is not immune from interested falsification or from erroneous conclusions due to religious or political bias. These risks will have to be faced by Dharmasāstra also. But, as in the case of history, the margin of error can be reduced by the diffusion of high ideals of truth and accuracy and, as in the physical sciences which use laboratory methods
of investigation, by the provision of safeguards or 'controls.'

An aim of the lectures now printed was to evoke and stimulate interest in a branch of study which was regarded for ages as of paramount importance for the upkeep of the social order. Other aims were to illustrate its use to the student of Indian history and sociology, to define its position among kindred studies, and to vindicate the value of the traditional method of approach to it, the neglect of which has been the fertile source of numerous dubious conclusions now in circulation. An attempt was also made to demonstrate by examples the importance of securing, as a condition precedent to its study, a correct perception of the philosophic background of Hindu life and thought. Sir Henry Maine, whose masterly studies of Roman and Celtic law, vindicated the value of the historic method, made many plausible and invalid generalisations when he dealt with Hindu jurisprudence. His errors sprang not from any defect of the historic method but from his conspicuous drift from that method in the case of Hindu Law, when he read into its authors motives and purposes as well as beliefs of his day, and showed inability to avoid bias due to a sense of racial and religious superiority. It is natural but regrettable that the authority justly attaching to his name is still securing the currency of many erratic views for which justification will be difficult to find. It is still more a matter for regret that with far less excuse than Maine, who wrote from a cursory perusal of English translations of
a few smrtis and digests and without access in the
originals to the major digests, commentaries and smrtis,
modern writers, who enjoy these advantages, repeat or
add to Maine's erroneous statements. Few modern
books on Hindu ethics, for instance, are free, whether
composed in a spirit of apology or appreciation or of
hostile criticism, from statements which wider know-
ledge of Dharmasastras and its study, not apart from
but side by side with cognate subjects, might have
prevented. In the Hindu view of life, aims, ideals and
activities were not divided up and considered as in-
dependent of one another. There was no distinction
between things secular and things religious: the dis-
tinction would have been unintelligible to the ancient
Hindu. Society was viewed as indivisible, except for
distribution of duties and obligations. On the equi-
poise of duties duly discharged, whether of indivi-
duals, classes or functionaries, was held to depend the
harmony not only of a particular state or community
but of the entire universe. Life was a continuum, not
interrupted by death, and so were deed and thought.
With such beliefs, to look into only one specialised
subject like Arthasastra or Dharmasastra, for a final
interpretation of the meaning of any rule of life or
institution, was to ask to be misled. This is why error
pursues the heels of one who would study a section of
Dharmasastra (e.g., vyavahara) to the exclusion of
the others, or study Dharmasastra and Arthasastra
apart and as if they were not cognate and inter-
dependant. Specialisation has its limitations. We
might acquire knowledge of the histology and anatomy of Hindu society, and miss all knowledge of its physiology and psychology.

In earlier studies, some of which go back to 1914, it was my endeavour to indicate some of the devices which the traditional method of education and transmission of knowledge from generation to generation in the “bookless ages,” provided for a correct comprehension of the Hindu ideals of life. The present lectures illustrate the uses of the traditional approach to the study of Dharmasāstra and Arthasastra, and the unwisdom of ignoring or rejecting, in the special conditions in which Indian learning was conserved, valuable oral tradition and its late record in books.

The designation of lectures on some aspects of Dharmasāstra as Rajadharma requires in the conditions of our day an explanation which would have been superfluous to the old Hindu. Today we, under the obsessions of political studies, regard Rajadharma as king-craft or polity. This meaning was not unknown in the past but the wider sense of the term was in general use. The distinction involves what may be regarded as a “constitutional” issue. Among personal and functional obligations those which lay upon the head of society (e.g. Rājā) hinged round his duty to maintain each person in his duty or Dharma. The king’s Dharma, Rajadharma, was thus the sum of the knowledge of all particular duties, i.e. the whole Dharma, Dharmasāstra. The new knowledge springing from the Arthasastra has been used to support views
which reverse the relations of the ancient Hindu king and his society. The wider sense of the term would have automatically corrected the tendency were it understood. The idea was so familiar to the old-time Hindu that it entered into the fabric of ordinary literature. For instance, addressing Rāma, Lakṣmaṇa is made by Bhavabhūti to say:

"Dharmaṇḍrakṣayamāṇo va gopā Dharmasya va bhavaṁ"

(Mahābhārata, V, s'1. 30)

The king is the subject as well as the protector of Dharma.

The form of a lecture precludes the inclusion of citations of authority. The lectures now printed contain on every page statements which run counter to received opinion. During oral delivery such explanations as seemed from the nature of the audience to be called for were given on the spot. When the lectures are printed and addressed to a wider circle, it has become necessary to supply the material on which readers might judge for themselves of the validity of the reasoning or conclusions advanced in the lectures, instead of accepting them without examination. The need is met by the addition of the "Notes" at the end of the lectures (pp. 66-216). I have endeavoured to keep down their number and to condense them as far as possible consistently with clearness. In several 'Notes' the argument has been developed and carried a stage further than in the text. For understanding the points of view of the lectures the 'Notes' are very necessary. It is hoped
that they will prove of interest and of some use to students of Dharmasrastra.

The lectures were composed for oral delivery early in 1938. The University of Madras had no funds for their publication. I am indebted to the authorities of the Adyar Library and particularly to its erudite Director, Vaidyaratna, Captain G. Srinivasamurti, for not only taking over the publication first through the *Bulletin* of the Library and then independently, but for the freedom given me in regard to the number and length of the ‘Notes.’ I am also indebted to the Joint Editor of the *Brahmavidiya*, Mr. A. N. Krishna Aiyangar, M.A., L. T., for seeing the book through the press and for providing an index of unusual fulness and clarity. My obligation is great to Mr. C. Subbarayudu, the Manager of the Vasanta Press, for his patience in overlooking the submission of numerous proofs, necessitated by the use, for the convenience of readers in Europe and America, of diacritically marked Roman type for passages in Sanskrit, and for the care with which the work has been done.

The printing of the book was begun in May 1939. As both Mr. Krishna Aiyangar and I became soon after engrossed in the task of organising an Oriental Institute at Tirupati and continued in the work till September 1940, a long interval between the commencement and the completion of the printing has become unav

_Vasumativilas_,
Rangachari Road,
Mylapore, 5th July, 1941
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|------|------|----------------|-----------------|
| 69   | 4    | Read contempt for contempt |
| 104  | 33   | initiated by the initiated the |
| 107  | 19   | Catussatītikā Catussatīkākā |
| 113  | 13   | Nyāyastatra Nyayāstatra |
| 152  | 16   | But Bur |
| 163  | 25   | S'loka Āpastamba S'loka Āpatamba |
| 165  | 10   | Sadyovadhūḥ Sadhyovadhūḥ |
|      | 14   | Upanayana Upananayana |
| 174  | 16   | Taittiriya Taittrīya |
| 196  | 9    | Ghosh Ghose |
| 200  | 31   | Lakṣmīdhara Lakṣmīdharma |
A FEW months ago I received an invitation from the Syndicate of the University of Madras inviting me to give the initial lectures on a foundation bearing the name of the late Dewan Bahadur K. Krishnaswami Row. The lectures were to be based on personal investigations, and to bear on ancient Indian culture. My hands were then quite full with work. The distance between Kāsī and Madras, and the difficulty of getting away from the University, in which it is now my privilege to serve, in a period full of work, tended to add to my reluctance. But it was overcome on three considerations. The desire of one's alma mater is, in the Hindu sense, añāghanīya—not to be set aside; the gentleman, whose name was borne by the lectureship was one for whom I had come to entertain affection and veneration; and the foundation seemed to be the first in the University, definitely marked for the advancement of a knowledge of ancient Indian culture, a subject which had yet to come to its own in Indian Universities. At present there is only one university in India—that at Benares—in which it is possible for a student to take a degree after a full course in this important branch. When teaching and

1 Delivered on the 4th and 5th March, 1938.
research were accepted some years ago as primary obligations by the transformed provincial universities of India, a provision was made for the study of Indian history and archaeology in a few of them. In Madras, where even the retention of the study of the history of the mother-country as one of several subjects forming an optional group, in the degree course, was secured only after long struggles, the first chair to be instituted was that of Indian History and Archaeology, now limited by a convention to South India. Valuable additions have been made by instructors and research pupils to many branches of Indian history, political and cultural. But they have been due to the wide extension given by teachers to the scope of their duties. For instance, some recent additions to the literature of Indian polity and social structure have been made in the University of Bombay in the School of Sociology. With the exception of my colleague in Benares who presides with distinction over our department of Ancient Indian History and Culture, only one other university professor in India—the Carmichael Professor in Calcutta University—derives his designation from this branch. But, in Calcutta there is no provision for the group in the ordinary and honours courses leading to the B.A. degree, though it can be offered by a candidate for the M.A. degree. In the University of Bombay a candidate can indeed offer it in the M.A. examination, but the provision is infructuous as neither the University nor the constituent Colleges offer any help to students in securing the antecedent knowledge, or provide post-graduate teaching in it. In the Benares Hindu University alone has the vision of its founders and supporters made, from its beginning, provision in all the degree courses for the teaching of ancient Indian history including the history of Indian

1 Dr. A. S. Altekar, M.A., LL.B., D.Litt.
literature, art, religion, and social and political institutions. The involuntary self-denial of so many Universities of India in this respect has not contributed to a correct perception of many present-day problems, which like most questions of the day, have their roots in the past. It is the feeling that it would not be right to refuse co-operation in any effort to revive the study of this important branch of study that has been the most powerful force impelling me to accept the invitation, in response to which it is my privilege to address today an audience in my old University. I trust that it will not be regarded as presumptuous, or as an abuse of hospitality, if I venture to express the hope that in the many admirable developments which are now taking place in a University, which can claim to be the mother of four other universities, provision will be made, hereafter at least, for the adequate and continuous study of Indian culture in every stage of the courses of study leading to the M. A. degree.

It is now some years since Mr. Krishnaswami Row passed away. His work was done in fields which do not come much into public view. His career was remarkable. Born in 1845, he turned to the study of English after a course of vernacular education, and passed the Matriculation examination in 1864 from the Presidency College. He had not the advantage of College education. But, when he had attained eminence, he was nominated a member of the University Senate and held the position for many years. He began his long official career as a clerk in the district court of an out-station. Without academic training in law, he rose to the position of a subordinate judge in Madras and of the chief judge in Travancore, and won a name as a very sound lawyer.

1 February, 1923.
and judge. After holding the highest judicial office in Travancore for over fifteen years, he was placed at the head of its administration by the Maharaja, a shrewd judge of men, devoted to the interests of his subjects. He held the office of Dewan with distinction for over the full term of five years. After his retirement in 1904, and till almost the last day of his life he took part in the chief public movements of the province. He was thorough in whatever he did. The reputation for efficiency, acuteness, balance and integrity, which he made even when he stood on the lower rungs of the official ladder, he kept throughout a long life. He was firmly rooted in a belief in the verities of his ancestral religion and dharma, and was inflexible in his adherence to them. To know him was to respect him. The commemoration of his name in a University, in which as a student he stood outside the portals, is a fitting recognition of a life devoted to culture and service. It is an honour to be brought into association with anything which bears his name.

"Indian culture," even when limited by the adjective "ancient," is a term of Atlantean extension. The wealth of themes in so wide a range is an embarrassment to one who has to make an initial choice, and perhaps to start a tradition. The selection of "Rajadharma," in the wide sense in which it is accepted in Indian tradition, is due, among other considerations to the desire to round off a series of studies, which were begun by me thirty years ago, and which have been pursued in moments of leisure snatched from daily avocation. In 1914 when I was honoured with an invitation like the present, to give the inaugural lecture on the foundation named after Dr. S. Subrahmanya Aiyar, the most venerated Indian of the day in our province, I gave the first fruits
of studies of ancient Indian polity. The attempt partook the character of a pioneer enterprise, as the *locus classicus* for all study of Indian polity, namely the *Arthasāstra* of Kauṭilya had been published only five years previously in spite of its existence having been suspected very much earlier by Weber and Aufrecht. I next turned to ancient Indian economic theory and practice and gave the results of my study of them in ordinary lectures delivered before the University, and later on under the Maṅindra Foundation in the Benares Hindu University. When my official harness was shed in 1934, an invitation from the University of Calcutta to be a Special Reader enabled me to follow up the implications of our wide literature of *Arthasastra* and *Dharmasastra* on the social and schematic side. It is my purpose today to submit some reflections on the character, scope, progress and content of the Indian literature of *Dharma* as a prolegomenon to the study of an important branch of literature, which has influenced for centuries the life of the people of India, and whose force is still not spent. Many of the opinions to which expression is now given have been formed in the course of an examination of cardinal works in this branch which I am editing. It might be useful if it is made clear at the very beginning, that the aim of the lectures is not to attempt another resume of Indian political theory. The subject is worked out and there is little that one can hope to add to the data already collected. A stray interpretation, that may be new, will not justify a mere summary of accessible information. The source literature of ancient Indian polity is not large, judged by what has survived. Kauṭilya's book towers over the rest like a Himalayan peak. The works of Kāmandaka, Somadeva, Hemacandra, Bhoja and Somesvāra, along with the dubious
works bearing famous 'epic' names like those of the opposed sages Brhaspati and S'ukra, and Vaisampāyana, virtually exhaust the number. Every inch of this small field has been subjected to the investigator's spade. He who aspires hereafter to add to our knowledge must discover another Kauṭilīya. The prospect is not hopeful.

The subject has, however, attained remarkable popularity. The feeling which the Arthasāstra created at first was a mixture of admiration and consternation. A tendency arose to view the old pun in the name 'Kauṭilya,' as fitly describing the author of unethical and tortuous policies. More thorough study of the Arthasāstra in relation to its environment changed the earlier view. Kauṭilya's memory was then not only vindicated; he had a narrow escape from political canonisation. He has been gravely cited in legislative bodies, state papers and discussions of public policy, and his authority has been invoked—not always in defence of "emergency finance" or the necessity of espionage. The Arthasāstra has been translated into several languages and is not regarded as needing to be bowdlerised before it can be prescribed for academic study. The exhumation of the old unsavoury reputation is now barred. It is res judicata. The innocuous "Kauṭalya" is now welcomed as the correct form of his name, and it has replaced the suggestive "Kauṭilya". The Arthasāstra has the merit of being self-contained, and of exhibiting the working of a master-mind, like Aristotle's. To the statesman and administrator, it holds a different attraction. Its opinions have entered into the fibre of Indian political thought and life. The statesman, like the physician, believes in inherited tolerance to certain remedies, and selects only those which the system will not reject. Institutions and ideas are more readily
accepted and assimilated when they fit in with inherited aptitude and tradition than otherwise. The doctrine of the unity and continuity of history gains from the belief that the past survives in the present, like the immortal protoplasm. It offers a fresh inducement to the study of institutional and cultural origins. Reformers, who have to contend against mass inertia or opposition, are strengthened by the discovery of an ancient ancestry for their ideas. Though the sources of ancient Indian polity have been worked threadbare, they will continue to attract men of affairs so long as there is belief in their utility.

This might please those who take a pride in national literature, but the satisfaction will not be un-alloyed. For a proper comprehension of our ancient life and thought not only Arthasāstra but the bigger literature of Dharmasāstra is needed. The former has been examined pretty thoroughly. The latter still awaits close study. The tendency has grown to view Dharmasāstra as subsidiary to Arthasāstra, and indiscriminate use has been made of citations from the former to support or to confirm the doctrines of the latter, and this has been frequently done without reference to context. The attitude reverses the traditional view of the relative position of the two. Barring the sections styled Rājaniti or Rājadharma in the Epics and Purāṇas, as well as in the Śruti, which are regarded of value on account of their political content, and the sections which deal with the principles and rules governing the law of persons and property (vyavahāra), Dharmasāstra are rejected or ignored as 'priestly twaddle.' But, politics and civil law form by no means the whole or even the major part of Dharmasāstra; nor were they regarded by old writers of acumen, possessing a
sense of proportion and reality, as the most important. Otherwise, there is no meaning in writers, who display a subtlety and robustness of mind comparable to that of the best lawyers of our age or any other (e.g., Vijñānesvara, Laksmdhara, Jīmūtavāhana, or Mādhava or Raghunandana) spending themselves on the elaboration of the parts of Dharmasāstra, which are now rejected as useless.

This selective or differential treatment is largely the result of a historical accident. The early British administrators suddenly found their desks in the counting houses turned into the chairs of judges and magistrates. They had to govern people who were governed by personal laws, set forth in treatises written in languages which Europeans did not understand. The penal law, of the country, except in small islands of Hindu government, not submerged in the Muhammadan inundation, was Muhammadan and was based on the Koran and traditions. Warren Hastings, who had no compunction in enforcing a law which made forgery a capital offence, was outraged when he heard the sentence of a Kazi of Chittagong, which was in strict accord with Muhammadan Law, on certain persons guilty of robbery and violence. The substitution of a penal law from Europe for the laws of the two great communities was the first step in British administration, and the process was hastened by the Supreme Court.¹ Another step was taken when the civil law relating to person and property (vyavahāra) was taken up for translation. Halhed translated from a Persian version the Sanskrit digest of vyavahāra made to the order of the Governor-General. A more satisfactory work was demanded by Hindu opinion, and it was supplied by Jagannatha’s nibandha on vyavahāra, still

¹ Founded in 1774.
unprinted, of which a part was translated in 1797, and is known as ‘Colebrooke’s Digest.’

Other translations of legal works, like the vyavahāra section of the Mitākṣara and the Mayūkha, the Dāyabhāga of Jīmūtavāhana, the Dāyakramasaṅgraha of Śrī Kṛṣṇa, and two well known treatises on the law of adoption followed, ‘manuals of ‘Hindu Law,’ for the guidance of judges and lawyers ignorant of Sanskrit, were also compiled by Strange, Wilson and Macnaughten. Since their time, the addition to this branch of modern legal literature has been considerable, and has been largely due to the growth of case-law. In spite of increasing dependence on judicial decisions in the interpretation of Hindu law and usage, the desire for the study of treatises on vyavahāra, either in Sanskrit or in translations, did not sensibly diminish, mainly because the Bench began to be strengthened by the appointment of judges to whom the texts and local and caste usage held an appeal. Recently there was a mild flutter when an Indian member\(^1\) of the Judicial Committee of the Privy Council made citations in Sanskrit in a judgment which he pronounced.

Apart from the question of proximate utility, the selection of the vyavahāra content of Dharmasāstra for study is also due to the assumption that it alone dealt with the “secular” as contrasted with the “religious” aspects of Hindu life and activity. Such a division of the life of the Hindu is not however correct. Hindu thought does not recognise the distinction. Secular and religious considerations are inextricably interwoven in Hindu motives and actions. This feature is reflected in Dharmasāstra. Legal capacity is held to rest on

\(^1\) The Right Honorable Sir Shadilal, P. C.
spiritual. Legal competence can be affected by ceremonial impurity, by the commission or the omission of particular religious duties, and by their performance at proper and improper moments. This is why the treatment of āsauca (impurity arising from birth or death) and kālanirṇaya (determination of the proper time for doing prescribed things) occupies so large a space in Hindu legal literature. Some of the old rules may be argued as ‘still operative. So critical a writer as Jimūtavāhana found it necessary to write, besides his two books on inheritance (Dāyabhāga) and procedure (Vyavahāra-mātykā) a much larger treatise on the “determination of suitable time” (Kālaviveka,) and Mādhavacārya also wrote a Kālanirṇaya. In old Indian criminal law, as in other archaic penal law, spiritual and secular punishments were intermixed. An offence was treated as both a sin and a crime. Much misunderstanding of the supposed one-sided and unfair discrimination in the award of punishments on a caste-basis is due to a failure to visualise that every offence had two sentences, both of which were usually operative. In a sceptical age like ours the sentence of a spiritual authority and the imposition of even an exacting penance or rite of expiation will be regarded as light in comparison with imprisonment, banishment or death, while mere refusal to admit a person even to the right of expiation, as a penalty for the gravest offences, will be viewed as virtually letting an offender off. But it is not right to interpret the beliefs and usages of one age by those of another. When life was viewed as continuous, and as extending over both ante-natal and post-mortem time, and when the idea that an unexpiated offence entailed very grave consequences in a future existence was implicitly accepted, the deterrent effect of a denial of the right of expiation must have been very powerful. Civil status and competence was
held to be affected adversely by unfulfilled penance or purification, or by some defect in an enjoined ceremony or sacrament. This is why the treatment of sacraments (samskāra), purification (suddhi) and expiatory rites (prāyascittta) occupies such an important place in Dharmasāstra. The so-called 'Brahman immunities' should be judged in relation to this attitude. Kautilya, who does not hesitate, when considering the punishment of treason against the state, to over-ride the smṛti rule that a Brahman cannot be put to death, denies even-maintenance to the apostate, with an exception in favour of the mother alone, because apostacy placed one beyond the pale of redemption by purificatory rites.

The assumption of a secular, as distinguished from a religious division in Indian legal and political literature is responsible for the magnification, in modern times, of Arthasāstra, supposed to represent the realistic and secular, as contrasted with Dharmasāstra reflecting the idealistic and religious element. The assumption of the origin of Arthasāstra, from a secular source is opposed to Indian tradition, which attributes a semi-divine, or at least an inspired source to it. It was counted in smṛtis among the sources of law, to which judicial recognition was due. Judges and assessors (sabhyāḥ) were to be expert in both. Arthasāstra was included either under Atharva-veda, or Itihāsa, described as the fifth Veda, or was counted by itself as a sixth Veda. The implication of this picturesque statement is that it had the authority, which any body of doctrine claiming to be a Veda will have, and yet, not being of the strict Vedic corpus, it was available, like the Epics and Purāṇas and the sciences and arts (vilpa, kala) placed under the fifth and sixth categories, to women and to men of the unregenerate castes (Śūdrāntyajāḥ) for
study. This feature made it very acceptable in periods in which, contrary to tradition and rule, thrones were occupied by non-Kṣatriyas and by women, and a considerable section of the population left the Brāhmaṇ fold to accept Buddhism and Jainism, which were outside the pale for denying the authority of the Veda.

The ‘secular’ character *Arthasastra* is another assumption which can be justified neither by its content nor context. *Arthasastra* shared the same beliefs as *Dharmasastra*. Its toleration of heresy was not new. Even before the days of Kauṭilya the Buddhist Sangha had become powerful. Under Asoka and his successors the heterodox position was further strengthened. Both Asoka and his successor Daśaratha patronised even the Ājīvakas, who were atheists. Manu refers to associations of heretics, whose usages must be upheld for their own members. The heretic might be a nuisance but an administrator could not ignore his existence in society, especially when he had a powerful following. This is why in *Rājanaśīti*, beginning with Kauṭilya, it is laid down that a king, in granting audience, should give preference to heretics, magicians, learned Brahmans and destitute women. Heterodoxy was often believed to possess a mystic power which was the source of its confidence. The rule is thus merely one of prudence. The recommendation of Kauṭilya that the philosophies to be included in royal studies should include Ānvikṣikī, the Sāmkhya, Yoga and Lokāyata, is coupled with the injunction that they should be learnt only from teachers of proved orthodoxy. Yājñavalkya, like Manu, recognises the customs of heretics (*pañdāḥ*), and the reference must be to the Buddhists. This is proof of the spirit of comprehension in *Dharmasastra*, of which another is the theory that it included *Arthasastra*. Manu’s impatience
with those who followed *Artha* and *Kāma*, is not a condemnation of the subjects which dealt with them, but was aimed against those addicted to the excessive pursuit of wealth and pleasure. It is not open to infer from the existence, from Mauryan times, of separate courts for the trial of criminal and civil causes that the differentiation reflected a distinction between secular and religious law, for the matters were adjudicated on in both types of tribunal. Criminal jurisprudence was also assigned a divine origin, and Daṇḍa (the Spirit of Punishment) was held to have been divinely created. Differences between rules of *Dharmasāstra* and *Arthasāstra* are neither more numerous nor wider than those within each, according to different writers. From the postulates that all knowledge is ultimately based on eternal verity (*Veda*) and that apparent differences or conflict, merely indicate options, (*vikalpa*) it follows that the differences between the two *sāstras* must be viewed as capable of explanation and reconciliation. Revealed knowledge must be self-consistent. There cannot therefore be any real conflict between *Arthasāstra* and *Dharmasāstra*. The hypothesis of divine origin invested both with the qualities of universality, consistency and permanence. It is inconsistent with belief in God’s omniscience to presume that circumstances and contingencies, which arise from age to age, or differ place to place, are not foreseen and provided for in literature which springs from Divinity. One’s inability to find a unifying principle between apparent opposites does not mean that such a principle does not exist and is not discoverable. Generalisations of this type paved the way for wide interpretation, and for the evolution of a science compounded of equity, logic, psychology, grammar, and rhetoric, to which the name *Mīmāṃsā*, came to be given. The rules of *Mīmāṃsā*, which later on underwent systematisation, are not unlike those
evolved in western law in regard to the interpretation of statute law, but they follow as corollaries from the premises of Hindu religion. First designed for Vedic exegesis, their application to *Dharmasāstra* and *Arthasāstra* compelled their further elaboration and consolidation as a coherent body of doctrine. The two subjects to which interpretation applied benefited from it, particularly *Dharmasāstra*; for it survived, superseded and absorbed *Arthasāstra*. The latter, which had enjoyed a vogue in and before the days of Kauṭilya and had been cultivated in many schools, ceased to command the old weight after the foundation of the powerful empire of the Mauryas and their successors. Its derivation from *S'ruti* made it as unacceptable to the Buddhist as the *Smṛti*. In the Brahmanical reaction under the S'ungas, Bhārasīvas and Vākāṭakas in North, and under the Sātavāhanas and Pallavas in South India, an impatience of compromise was born. In the revision of *Dharmasāstra* and of epic literature made in the epoch, the *Arthasāstra* core of *smṛtis* was strengthened so well that *Arthasāstra* ceased to have an independent existence. *Arthasāstra* works adapted themselves to the changed milieu. Kāmandaka's *Nitisāra*, which claims to be based on Kauṭilya's work, adopts, like the *smṛti*, the *sloka* as the medium of expression. It rivals *Manusmṛti* in magnifying the power and position of the king. It omits the entire field of administration and law, leaving them to works like Manu's. It elaborates the technique of foreign relations, involving the mutual relations of rulers (*Rāja-maṇḍala*) and interests, forming groups ranging in number from sixteen to three-hundred-and-sixty. It stresses only those features of its original as were acceptable to the Brahman reaction. The difference between Kauṭilya and Kāmandaka is that between one who saw a great empire rise on the foundations of a number of small states, and
of one who witnessed the daily struggles and the shifting alliances of a number of precarious principalities. Later works, like those of Somadeva and Hemacandra, reflect the steady political decline, of which we have evidence in history.

The Nītvākyāṃṛta of Somadeva is more a literary experiment than an original essay on politics. He reproduced in pithy sentences the words of Kauṭilya, but not the spirit. That was not to be expected. Temperamentally, the Mauryan kingmaker and the pacific Jain ascetic were poles apart. The subject-matter of Somadeva’s little book is more closely related to Kāmandaka’s work than to Kāmandaka’s famous original. Hemacandra’s Lagu-arhan-nīti is more an imitation of the popular summary of smṛti rules (e.g. the Smṛtisāṅgṛaha) than a contribution to Arthaśāstra. Civil law is its chief topic. It reproduces the matter in digests, but without a reference to the ultimate and paramount authority of the Veda. Somadeva’s book is taken upon with moral maxims. It could have little use to an administrator. Hemacandra’s book might have been used in a Jain kingdom, like that of Kumārapāla, but it is, at its best, a poor substitute for the works of Hemacandra’s contemporaries Vijñānesvara and Lakṣmīdhara. The aim of the Jain monk and polyhistor was to establish his claim to all-round learning and not to add sensibly to the literature of polity or law. The literature of Rājadharma, contained in the later digests more properly belongs to Dharmasāstra.

There is another reason for the imperfect comprehension of the scope of Dharmasāstra and its content. It consists in the misunderstanding of the small quantum of “worldly” matter in smṛtis, particularly in those of the earlier and later
times, and its absence in many of them. On the other hand, there are smṛtis of the middle period (fifth to eighth century A.D.), which omit everything but the "civil law". Nāradasmṛti is an example. The lost works of S'ankha-Likhita, Hārīta (prose), Kātyāyana and Brhaspati seem to have had a large "civil law" content. The works of Manu and Yājñavalkya are comprehensive, and of the two, the latter, though very closely related in doctrine and attitude to Arthasāstra (perhaps even to Kauṭilya's work) is relatively sketchy on politics. Parāśarasmṛti, which commends itself as the one pre-eminent amongst the present age, is pre-occupied with ācāra and prāyasccitta and ignores law and politics completely. Is it to be inferred that the subjects were regarded as of no value to the present age? The core of purely legal matter, in the modern sense, in the Dharmasūtras of Gautama, Āpastamba, Bodhāyana, Vasiśṭha and Viṣṇu is thin, and forms in each work but a small proportion of the total. Lost verse smṛtis like those of Yama, Vyāsa and others, seem to have dealt with both sides, but it is impossible in their present fragmentary condition to guess the relative proportions of the two sections in their original state. The usual explanation is that the different proportions reflect the secular or unsecular bias of the writers. The sūtras and later smṛtis are supposed to have been preoccupied with religion and ceremonial, a few only dealing with "law", under the influence of Arthasāstra. The later smṛtis belong roughly to the same age as Kāmanda. If, under the influence of Arthasāstra, they devoted themselves to legal questions to the exclusion of religious and half-religious-topics, it is remarkable that Kāmanda, who was deliberately modelling his book on Kauṭilya's Arthasāstra, should completely ignore civil law and administration, which form a glory of his original, though even in it, the
sections dealing with law proper form but a small part of the whole. Kāmandaka's omissions should therefore be explained, like that of Somadeva, on the ground that he assumed the prevalent civil codes like those of Nārada. The theory of bias must accordingly fail. An efficient cause may also be found in the literary form of smṛti literature of the earlier epoch, and the methods in vogue for the transmission of doctrine. The older smṛtis are not only in prose but in aphoristic prose (sūtra), devised for memorising and for economy. A sūtra was not intended to be read. The aphorisms would usually be unintelligible to the uninitiated. The purpose of aphorisms was to act as sign-posts, and keep the real exposition to the track. It was so in Buddhist as in Brahmanic literature. The sloka, which came in to vogue later on was in some respects as useful. Its rhythm enabled it to stick to the memory, and it was more intelligible than a sūtra. But it lacked brevity, on which much store was set. In the earliest epochs of Vedic study, the Kalpasūtra would be taught in the school of the branch (sākha) of a particular Veda, and the traditional explanation would be handed down in the school. It would not be reduced to writing but be available for recitation in class. The paramount value of the teachings of the Buddha and the belief that the Suttas (sūtras) of the Tripiṭaka reproduced his actual words, made the early Buddhists arrange for recitations of Suttas in the annual gatherings of the Saṅgha. No similar compelling motive was present in the case of Dharmasāstras, which did not always form part of the Kalpasūtra of any particular Vedic school. Their commentaries were handed down from teacher to pupil, and ran the risk of becoming lost, when those who possessed the traditional explanation perished. When smṛti material was reorganised as a collection (samhitā), in a comprehensive work, it incorporated much explanatory
material till then preserved by oral transmission. The Manu-
smṛti apparently incorporated much matter of the kind, as also
the Bṛhaspatismṛti, judging from the character of its fragments.
Invasions and wars must have interrupted the work of trans-
mission. To such calamities must be attributed the loss of much
smṛti material and the earliest commentaries embodying oral
tradition. Among the lost commentaries that of Yajñasvāmin
on Vasiṣṭha, Asahāya’s bhāṣyas on Manu and Gautama, and the
commentaries on Viṣṇu, Kātyāyana and Bṛhaspātī must be
counted. Again, the oldest commentaries on the Dharmasūtras
are removed by centuries from their texts. We regard Karka,
Maskarin and Haradatta as very old commentators, but between
each of them and his original, twelve to fifteen centuries must
have run. The distance in time between Manusmr̄ti and
Medhātithi, or Yājñavalkya and Viṣvarūpa is much less. It
is only from the bhāṣyas, or elaborate commentaries, which
came nearest the oral transmission of the interpretation of the
sūtra literature, that one can form an idea of the space originally
occupied by the different heads of a subject of the sūtras, and
of the relative importance attached to them. For instance,
the first four aphorisms of the Brahmasūtra are deemed
relatively the most important in about a hundred and fifty,
forming the whole, but they take up over a fourth of the whole
space in the great commentaries of Śaṅkara and Rāmānuja.
In the absence of continuous traditional interpretation, there
was always the risk of misapprehension of the views of the
original sūtra, even when shorter explanations embodying the
traditional view, known as vārttikāḥ, were supplied, as they
were in many cases. But, even these were often criticised as
not correctly conveying the meaning and drift of the sūtra,
and the declared purpose of a bhāṣya was to explain, correct and
supplement the vārttika. The Mahābhāṣya does so in regard
to the grammatical aphorisms of Panini and the vṛtti of Kātyāyana. Kumārila does so in explaining the aphorisms of Jaimini and commenting on the bhāsyā of S'abara.¹ Without vārttika and bhāsyā, a sūtra book is often not only not intelligible, but it is apt to mislead. Take the case of Kauṭilya's work. At the end of it, there is a sūka which declares that having had experience of the contradictions between originals and commentaries, Viṣṇugupta (i.e. Kauṭilya) composed both the sūtra and the bhāsyā. The text of the Arthasastra of Kauṭilya is mostly in prose, though there are many verses interspersed. They have all been usually taken as sūtra. Mahāmahopādhyāya T. Gaṇapati S'astri, to whom we owe both a good text and a valuable commentary, accepted the last sūka as authentic, and regarded the brief statements of the content in the introductory chapter (adhikarana-samudāesa), which are reproduced at the beginning of chapters, as the original aphorisms (sūtra) and the substance of each chapter as the commentary of Kauṭilya. The view merits acceptance. The aphorisms are just like chapter headings nothing more. Sūtras like Vyavahārasthāpana and Dāyabhāgaḥ are just headings. Suppose only these aphorisms or headings survived from the work of Kauṭilya. Could anything be gathered from them of his views, which are now so well-known? As verse smṛtis are often the lineal successors of sūtra works, the peculiarity may be postulated of them also. The long discussions of the great bhāsyakāras, who commented at length on Manusmṛti and Yājñavalkya-smṛti will then be viewed as carrying on the tradition of the transmission of authentic interpretation of such aphoristic literature. The 'tacking' of Mādhavācārya, in his well-known commentary on Parāśarasmṛti, of a whole book

¹ Curiously, the works of Kumārila are entitled vārttikas and tika, while S'abara's work is styled bhāsyā.
of civil law (vyavahāra) and maxims of government to a
quarter-verse of the smṛti (Rājā dharmena pālayet) will then
be recognised as not exceeding the legitimate duty of a com-
mentator, and his elaboration of the civil law, which the
original appears to ignore as not a mere tour de force.

Bhāṣyas and nibandhas (digests) continued to be
written up to the threshold of our own times. Nevertheless,
there has been an increasing neglect of Dharmas'āstra. It has
not only shared the misfortune of all technical literature in
Sanskrit through the drying up of the springs of patronage, but
it has also suffered from another cause. The contact between
European and Indian cultures in the 19th century produced,
in Hindus, in the beginning an admiration for the former and
induced an apologetic attitude for the supposed crudities of
the latter. There came, later on, a new love for and pride in
their ancient literature. But the revival helped only the study
of the Veda and its auxiliaries, classical Sanskrit literature, and
Indian philosophical systems. Dharmas'āstra had little share in
the revived interest. Its very mass repelled all but the few who
devoted their time to the Kalpasūtras, in their triple division
of śrauta, grhya and dharma. Manusmṛti was an exception.
It is illustrative of the indiscriminate trend of the movement
that when translations of even the smaller smṛtis of Nārada,
Viṣṇu and Bṛhaspati were included in Max Müller's "Sacred
Books of the East," a version of the samhitā of Yājñavalkya,
which had been so great an attraction, was not finally included
in the series. Recent interest is due to lawyers and judges, who
know Sanskrit. Indifference to Dharmas'āstra is still pretty
general, and may be traced to the feeling that 'things that
matter' like law and politics, are wanting in such "priestly"
books. Most students have neither the patience nor the
conviction, which made Colebrooke obtain a grounding in Mīmāṃsā, which is so vital to an understanding of Dharma-śāstra, before he translated the Digest of Jagannātha.

The result is regrettable in view of the excellent progress made in the study of our history, and of the application of the comparative or historical method to law and politics. Sir Henry Maine’s influence was an important factor of the change. It helped to supersede the analytical study of Indian law and politics by the historical. Institutions are now viewed as growths which suggest lines of evolution. The reciprocal influence of idea and environment is assumed and investigated. Institutions, movements and ideas are judged without bias. But, have these safeguards been applied in the study of Dharmaśāstra? Is it not a common tendency to assume ignorance, prejudice and self-interest as the ruling motives of hierarchy, and to regard them as present in Dharmaśāstra, because it apparently emanates from the priestly class? Even a cursory view of Dharmaśāstra must dispel such ideas. The critical faculty is not the monopoly of the modern age, any more than reasoned scepticism. S'abara indulges, in quite a ‘modern’ manner, in flings at priests and their selfishness when he comments on the purpose of some Vedic rites. Kauṭīlya does not spare his own teacher. S’aṅkarabhaṭṭa does not spare his father, the renowned Kamalākara. Good faith and competence alone earn respect for authority from our ‘legal’ writers.

Doctrines which sound strange to us are not necessarily unsound. Nor can we presume that in an earlier age they were not considered reasonable and well-grounded. Take the instance of the doctrine that the king and the Brahman uphold the
world-order. The acutest writers of India accepted it, though they were aware of the weaknesses of individual rulers and Brahmans. Deliberate or veiled sophistry was certain of exposure in times in which logic was well-developed. Distortions of meaning were difficult when the rules of interpretation were clearly laid down and understood by those who used them. An author who misquoted a text, or altered its wording, would be promptly exposed. The care with which the texts were preserved, especially in technical literature, is seen in the way in which bhāsyas and digests notice and discuss even petty differences in reading. An authority opposed to one's own view is never ignored or suppressed. It is met squarely. The principle was enforced by the peculiar form adopted in exposition. The opposed statements were stated, then answered and the conclusion reached last. There were other conditions favouring literary integrity. Learning was localised in places like Kāśī, Paithān and Nāsik. The wandering scholar, who carried his library in his head, roamed about as a pilgrim and made his learning pay for the tour, helped to keep ideas and books in circulation. A new book soon acquired an instantaneous influence and recognition proportioned to its merit, even in far-off places, in an age which had not the advantages of printing. The conditions made for uniform texts as well as the spread of new methods, new ideas and new doctrines in areas far removed from those in which they were first promulgated. Critical estimates of the honesty, accuracy, and reliability of writers were carefully canvassed, and spread throughout the country. New writers had need to be careful. Rivalry between scholars was keen and criticism sharp and unsparing. The conditions were such as to ensure integrity in texts, accuracy and fidelity in interpretation, logic in inference, and absence of bias in application.
The spread of priestly impositions in such an atmosphere can be safely ruled out.

But it is largely on such presumptions and on defective understanding that many views of our day about Dharmasāstra are based. J. J. Meyer, to take a distinguished example, discriminates between Indian works on magic and law, and places Dharmasāstra under the former. The view is akin to that which ascribes the birth of civil law (vyāvahāra) to the influence of political environment, and its incorporation into Dharmasāstra to an alliance between king and priest. The small content of 'law' in smṛtis, the existence of two classes of Mauryan courts, and the assumption that Indian thought differentiates between "religious" and "secular" elements are responsible for these wrong generalisations. They fail to recognise either the importance of unwritten law, preserved in the recollection of assessors and judges, who had to be trained in Dharmasāstra, or to the relative value to be attached to customary and king-made rules. Jolly's dictum that the characteristic of Dharmasāstra is high-flown religious idealism expresses a kindred view. To describe Arthasastra as 'public law' and Dharmasāstra as 'private law,' as a recent writer (B. K. Sarkar) does, is to miss the intimate relation between the Hindu state and family, and the duty of the former to correct irregularities of conduct by members of the latter.

The Indian king was believed to be responsible as much for the correct conduct (ācāra) of his subjects, and their performing the prescribed rites of expiation (prāyāscitta) as for punishing them, when they violated the right of property or committed a crime. The ācara and prāyāscitta sections of the smṛti cannot accordingly be put outside the "secular" law. The allied
distinction between *Arthasāstra* and *Dharmasāstra* on the plea that the former deals with *real-politik* and the latter with *ideals*, over-looks the fact that when judges and parties shared the same ideals, as expressed in *smṛtis*, ideals were translated into action, and that there was an "idealistic" element in *Arthasāstra* as much as in *Dharmasāstra*. Breloer's view that *Arthasāstra* is "planned economy" is correct taken by itself, but the 'plan' is part of a wider scheme of *social* organisation, laid down in *Dharmasāstra*. Dr. K. P. Jayaswal's distinction between *Arthasāstra*, *Rājanīti*, and *Dharmasāstra* as that between "municipal and secular law", "constitutional law," and "penance law" is not only based on superficial observation but on the disputable view of the origin and function of the two classes of Mauryan courts, and a failure to observe, that *Rājanīti* in the widest sense will include (as Sarkar realises), *all Dharmasāstra*. The occasional identification of *Dharmasāstra* and *vox populi* is due to the translation of 'Mahājana,' in a famous verse from the *Mahābhārata*, into 'the populace,' whereas it only means a magnanimous man learned in *Dharma*.

Illustrations can be multiplied of the prevailing misconception of *Dharmasāstra* and its supposed rivals. Its primary cause is a failure to start, as in many *nibandhas*, with a chapter dealing with definitions of terms, (*paribhāṣā*) in which the term *Dharma* is explained. The word *Dharma* is indeed difficult to define, and Āpastamba, in a famous passage, states that it is best to gather its import from practice. Indian logic (*Nyāya*) defined it as an innate quality of the soul, action enjoined (*i.e.* by the Veda). The idea is further developed in *Mīmāṃsā*. *Dharma* is that which is signified by a direction and results in a benefit. The *Nyāya*
school held that an invisible effect, called *apūrva* attached itself to the soul by the performance of an enjoined act (*Dharma*), and lasted till the benefit actually accrued to the soul. *Dharma* was thus regarded as fixed in action. A school held that its effect was instantaneous, though its manifestation had to wait till death. The idea is akin to the belief that good and bad actions are inseparable from the soul and guide its pilgrimage through existences (*Karma, samsāra*). *Dharma* is viewed as the norm, which sustains the universe, and in this sense is somewhat like the Vedic *Rtam*, and the Greek Law of Nature. For practical purposes, *Dharma* can be taken as the innate principle of anything in virtue of which it is what it is. Analysed and applied, the conception becomes ethically duty, physically essential property, spirituality in religion, and righteousness or law in popular usage. Manu equates *Dharma* with merit flowing from doing the right thing (*punya*), and in that sense it is described as the only thing which follows the soul. The belief in a moral God leads to the identification of *Dharma* with the Deity. Viewed in its working, *Dharma* is law of cause and effect, and is described as destroying when violated and protecting when obeyed. Innate quality and potentiality are related; so *Dharma* is taken to be the mean between the ideal and the possible. The many wide extensions which are given to the term by itself and in combination with qualifying words, is illustrated in the recently published *Dharmakosa*. The Buddhist adopted the concept, omitting the postulate of its being due to Vedic injunction. It becomes the root-principle of cosmic order, by finding which one can obtain liberation (*nirvāṇa*). It includes and underlies every law, physical, ethical, and human, and it is eternal. It forms therefore, along with the Buddha and the Saṅgha the *Triratna* (Three Jewels) of Buddhism,
RIGDHARMA

Strictly construed, every science will thus be Dharma-śāstra, but the term was restricted to enjoined human action. So conceived, it was divided into pravṛtti and niḥṛtti Dharma, according as its end was action or freedom from it, into ordinary and extra-ordinary, (sādhāraṇa, asādhāraṇa), into īṣṭa and pārta (viewed from the standpoint of enjoined Vedic ritual), and as relating to varṇa (caste), station (āsrāma), caste and station (varṇāsrāma), quality (guṇa) and context (nimitta). The divisions were subdivided, as general, special, equal and emergent e.g. Āsramadharma.

If differences springing from detail are put aside, Dharma is the whole duty of man. It includes not only the relations of man to man, but of man to the Universe. Whatever is enjoined by authority or the inward promptings of conscience is Dharma and comes within the scope of Dharmasāstra. In this sense its scope is encyclopaedic, and it comprehends all knowledge. This idea is implicit in the enumeration of the location of Dharma (Dharmasthāna) which brings all knowledge within it. The Purāṇas alone rival Dharmasāstra in so a wide scope. Vijñānesvara brings Arthasāstra, on this among other grounds, under Dharmasāstra. Apart from the relevance of legal medicine in any system of law, Ayurveda (Medicine) is one of the Dharmasthānas. So are Astrology, (Jyautiṣa) and Natural Science (Laksana). Two famous collections, both of Dharmasāstra, made in the 16th century illustrate this view. Mitramisra’s Viramitrodaya has these branches among its 22 books. So has Todar Mal’s less famous Dharma-saukhya. Sometimes, the relevant information from a branch may alone be brought in; as medical knowledge in the treatment of grievous hurt, questions of paternity determination, the relative position of twin children, the liabilities of
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professional soldiers, etc. But certain sections were deemed essential in a Dharmasāstra.

The best example of a complete Dharma digest (Dharma-nibandha) is the Kṛtyakalpataru of Bhaṭṭa Laksṇīdhara. It is the oldest now available, and one of the most comprehensive and authoritative. It adopts a special arrangement not found in other digests. Taking the life of man to begin (as Hindu jurisprudence held it to begin) with conception in the womb, and to end in salvation after death (Mokṣa), Laksṇīdhara expounds the traditional view of the public and private duties of man in a sequence following the progress of life and station. The first book begins with the period of dedicated study (Brahmacarya). The second is devoted to the house-holder, i.e., the ordinary citizen (Grhastha), and the third to the daily and periodical duties, and the proper time for their performance (Niyatakāla). The offering of oblations to ancestors is an essential duty, signifying the continued existence of the family. The ceremonies connected with this duty (S'rāddha) occupy the fourth book. In the Iron Age (Kaliyuga) an easy way of acquiring merit is by making gifts (Dāna) which form the subject of the fifth book. The dedication of objects of worship (Pratiṣṭhā), and the rites of worship (Pūjā) take up the next two sections. Merit (punya) accrues and demerit disappears. Pilgrimages to holy places or streams (Tirtha) are performed. But pilgrimage cannot get rid of the need for ceremonial expiation, which is prescribed for all transgressions. The rites of expiation (Prāyascitta) perhaps took up another entire book which is now lost. Ceremonial impurity is believed to arise from birth, death, action, and contact. Purification from such impurity (S'uḍḍhi) is therefore next dealt with. Thus far all the sections are common to persons
irrespective of their civil status. But, kings have not only to
enforce, as part of their regal duty, the performance by every
one of his special duty, but they have other duties springing
from the headship of society. These are brought together in a
separate section, named Rājadharmakāṇḍa. The commonest
work of the king, in a society, in which public opinion largely
enforces the performance of religious and sacramental
duties, even apart from State-compulsion, is that of seeing
that every man's person, property and status are not violated
by any other person. Disputes concerning these come
under Vyavahāra, with its eighteen conventional titles. The
two sections ordinarily viewed as politics and law, form
the twelfth and eleventh books. Among the duties of the
king was that of performing public ceremonies, believed to
be able to combat evil influences threatening society or its
head. Misfortune is heralded by alarming portents (adbhuta).
The treatment of these is taken up in the thirteenth section
on propitiation (Śānti). To every one comes death, and the
way to release (Mokṣa) if life has been properly lived. Its
treatment concludes a vast treatise in fourteen sections, typical
of the content of Dharmasāstra.

Lakṣmīdhara's great book was written to a king's order.
It has been described to show the correct view of the scope of
a smṛti or nibandha. Many digests were written subsequently,
but with the exception of Vitamitrodaya, none formally
treats of all the sections in the Kṛtyakalpataru, though more
or less the same matter is distributed in them. Sometimes,
entire sections are omitted in certain digests, e.g. Rājadharma,
in the narrower sense, in Smṛticandrikā, and Vyavahāra
and Rājadharma in Smṛtimuktāphala, to refer to two digests
with which we are familiar in South India. Their authors had
no political and forensic experience and so they refrained from dealing with what they did not know. The same reason will explain why Candesvara omits the sections dealing with consecration, purification, expiation, propitiation and salvation in his Ratnākara. He was a Thakur and not a full Brahman. Lakshmīdhara was not merely a learned Brahman, but he had held successively every major administrative office, under a powerful king, before he commenced his digest. He did not feel debarrerd either by want of administrative experience or of Srotriya status from dealing with every division or topic of Dharma.

The correct perception of the scope and content of Dharmasāstra, and of the means of ascertaining Dharma, requires, as an antecedent condition, a grasp of the major assumptions or postulates of Indian belief and their logical implications. The more important of them may be indicated. First in importance were two allied hypotheses: "Dharma has its root and finds its sanction in revelation (Veda)," and "the sole subject of revealed literature (Veda) is Dharma." The Veda is boundless, eternal, uncreated, omniscient, and consistent with itself and ultimate reality. In its branches, and in the knowledge derived from it, it is one-pointed. All of them aim at a common goal, teach the same doctrine, and their authority is equal. The purpose of life is four-fold, viz. the pursuit of welfare, of pleasure and salvation, (artha, kāma, mokṣa) along with the performance of Dharma; and the four-fold purpose corresponds to and is rendered possible of attainment by the four-fold division of the population (caturvarna) and the four-fold division of life (caturāsrana). From these premises a number of inferences of importance for the determination of valid conclusions were drawn by close reasoning. They
demanded and obtained universal acceptance. A few of
them may be mentioned illustratively. The hypotheses
in regard to the Veda led to the conclusion that any
rule in a smṛti for which a Vedic source can be found
becomes invested with the infallibility of the Veda, and
its binding authority cannot be questioned. The first duty
of a commentator is to search the Veda for the authority
for any rule. S'abara, Kumārila and later writers of
Mīmāṃsā revel in such research. Visvarūpa excels in
finding Vedic authority for the text of Yājñavalkya, and
Medhātithi for that of Manu. Since the Veda is limitless, it
might be presumed that a portion of it has still to be found.
But as human ingenuity and skill cannot be equal, in our
degenerate times, to the discovery of the Vedic source of every
smṛti rule, those rules for which such an origin cannot be
found, are not to be rejected, if they are still found in a
smṛti, as that raises the presumption that the author of it had
the Vedic source before him which eludes the commentator.
Its operation will therefore be held in suspense. The Veda is
the bed-rock of Hindu religion. As Dharma is its only relevant
content, the science which lays down Dharma (Dharmasāstra)
has the binding character of revelation. The hypothesis
that Dharma creates a benefit, which attaches itself to the
soul (ātman) leading to a happy result ultimately, made the
exact study of Dharmasāstra a paramount duty.

An infallible Veda cannot contain any internal incon-
sistency. Nor can it be really in conflict with what is manifest
to experience. Since all knowledge has an ultimate Vedic
basis, every branch of knowledge must be in accord with every
other. Veda and smṛti must agree; so should smṛti and
smṛti, smṛti and Purāṇa, and so on. The practice of good
men, i.e., men brought up in a proper tradition, should be presumed to be in accord with Vedic injunction, and be accepted as a guide to conduct. Hereditary practice must raise a similar presumption, and so also common usage or custom. When there is an apparent discord between a rule derived from one source and that from another, every endeavour should be made to reconcile them. Smṛti like the Veda is limitless in extent. Hence, even an unnamed or unidentified smṛti text, (smṛtyantara) must not be rejected, unless it is manifestly a forgery. So with a Purāṇa, or even an Upapurāṇa. There should be a close search for internal consistency. Caution is necessary in accepting guidance in so vast a field, and there should be no hesitation in rejecting unauthentic rules. An illustration may be given. The rule that a boy, who had undergone samskāras ending with investiture (upanayana) in the father's house, cannot be taken in adoption is laid down in the Kālikā Purāṇa. After showing that the text, even if genuine, should be construed differently, Nilakanṭha and Anantadeva ultimately reject it, as it was not found in several MSS. of the Purāṇa, and so was unauthentic. The license to search for sanction over so wide field did not lead to carelessness. It induced on the other hand exceptional vigilance in scrutinising every text cited as authority. The rules of interpretation were made more critical, refined and subtle, and so was also their application to the interpretation of rules of Dharma as guiding conduct.

The interpretation of Dharma and the adjudication of disputes on its basis was obviously not work for amateurs. To have the King preside over a court and hear cases might be embarrassing. He was therefore replaced by the trained judge, and the equally trained assessors who were to find the
verdict. It was open even to an expert visitor to intervene in a trial and state his view as *amicus curiae*. When there was either conflict between rules or authority, or between rule and usage, or when no rule could be found or the custom cited had to be examined for evidence of authenticity, the questions were to be decided by an *ad hoc* commission of experts, called *pariṣad*, for the constitution of which elaborate rules were laid down. These were three safeguards to ensure proper adjudication. A fourth lay in the power conferred on an expert to state the law on a disputed point, (like a jurisconsult) as a *vyavasthā*, and the medieval collections of *vyavasthās* were not unlike *responsa prudentam* in Rome. The opinion of a commentator or digest was to be honoured as *vyavasthā*. Special treatises on moot points (*dvaita-nirṇaya*) commanded the respect they deserved.

But for all decisions and their soundness the ultimate responsibility was laid on the king or the state. It was in this way that *Dharmasāstra* in its comprehensive sense became the law of the country, and as it was the king who enforced its rules, it became *Rājadharma*
The first impression created by even a superficial view of the extant literature of Dharmasāstra is its vastness. But what has survived is only a very small part of what must have been composed. Indian social and literary history testifies to tireless industry in the production of this form of literature amidst the storm and stress of the centuries. Calamities like barbarian invasion, internecine war, the impact of alien religions and cultures and political vicissitudes were powerless to stay the creative activity. In such circumstances a disproportionately large number of the intellectual and religious leaders of the community must have been eliminated, even if they were not deliberately singled out for extirpation by a ruler of an hostile religion or culture. Protracted wars have usually resulted in a cultural set-back, and the recovery takes times. That it worked so in India also cannot be doubted. But the wonderful activity in the cultivation of Dharmasāstra continued, almost without cessation, even in the middle of wars and foreign invasions, and was sometimes even helped by them. What is the cause of the paradox? What is the compelling influence which gave the subject an enduring vitality and power of recuperation? An answer to the questions throws light not only on the vitality of a subject, which was closely associated with religion and regulated modes of life, but it reveals special features of the
governments of the time and their relations to the lives of the people.

_Dharmasāstra_, like religion, dealt with the whole life, not with only a part of it. No one was outside its jurisdiction: the individual, the family, the corporations, and the king were all under it. It upheld the ideal of an indissoluble union between state and society, and king and subject. The welfare of the king was held to be rooted in the well-being of the people. Political union was sanctified by religious sanction. The King and Daṇḍa, the Spirit of Punishment (the power of sanction) were both of divine creation. Anarchy was abhorred. A condition of statelessness was conceivable only in the Golden Age. The doctrines of _karma_ and _samsāra_ linked like in this world with other existences and with the world order. A reciprocal influence, generated by _Dharma_, was believed to connect right or wrong living with cosmic influences of a supernatural character. Good government ensured the happiness of the people and it did so by bringing into operation beneficent influences which made happiness certain. Under ideal rule, like that of Rāma, unhappiness and sorrow were unknown. A good king reproduced the conditions of the Golden Age, and a bad one intensified the sufferings of the Iron Age. On the king lies a responsibility, which cannot be shifted or shirked. He is the maker of the age (_Rāja kālasya kāraṇam_). The theory of this awful responsibility of the state was enforced by telling illustrations. An Arjuna was given the name of the Hero of the Golden Age (_Kārta-vīrya_) because he was so vigilant that he corrected in his subjects even the impulse to wrong-doing. Rāma was described as having produced in an age of less perfection the ideal conditions of the Golden Age.
The union of king and subject was like that of soul and body. An evil ruler must be expelled. Taxes are the king's wages; he must earn them by good government. His freedom to do what he likes ends with his coronation (abhiṣeka). Thence forward his life is dedicated to the maintenance of Dharma.

Faith in the reciprocal influence of human righteousness and the order of the universe, which is a teaching of religion, was thus harnessed to social comity, mutual co-operation and obedience to the state. To disobey the king was not merely imprudent; it was a dereliction of Dharma. Conversely oppression was not only risky and foolish, but it was A-dharma, and will lead to prompt retribution both in this world and in others. The fire engendered in the hearts of men by tyrannical rule will burn the king and his dynasty. If God (Viṣṇu) is in the king, He is no less in the subject.

These high conceptions of duty lead to the proposition that good government requires a correct knowledge of Dharma on the part of the ruler. He should know not only his own duties but fully visualise those of every one else in the kingdom. Unhappiness is a sign of error in governing; and as it springs often from social misfits, the discovery and correction of such misfits is a primary duty of the state. As all duties are implicit in Dharma, its vast literature and sources must be explored for the discovery of remedies for injustice and evil, and for the solution of problems continuously thrown up by changing times and circumstances. The belief in the divine character of Dharma and its universality of applicability to all times and circumstances, makes the discovery of remedies to social evils, the aim of research in Dharma. Dharma adjusts
obligation to capacity. How far would the principle justify reduction of the weight of caste duties in times of stress, or in the general decline of the Iron Age? Were rules to be the same after the ravages of war, conquest, alien settlement, the penetration into society of the barbarian (mleccha), the multiplicity of economic occupation, enforced departures from functional grouping, and divorce of privilege and the merit to justify it?

In the answers to such questions will be found the re-orientation of Dharma. The adjustment of law to the needs of society has usually been made in three ways: by legal fiction, by equity and by legislation. In the evolution of Dharma by interpretation and by research, we can see the influence of the first two but not of the third. But, unlike the fictions, which were deliberately used by the civil lawyers of Europe, for reconciling the letter of the law and the needs of society, the hypotheses which served the same purpose in India were those which were believed in as part of religious dogma. The possibility of a sceptical jurist in ancient or medieval India cannot be ruled out, but the probabilities are that every change made by interpretation was made in the honest belief that it was necessary to vindicate Dharma.

Even advanced thinkers are usually the creatures of their age. A study of the variations of opinion among Indian writers on Dharmasāstra will not disclose much chronological progress in ideas, and so-called "liberal views" may be found in writers of earlier and "conservative" leaning in those of later times. The existence of schools clustering round a great teacher or writer like Kautilya might lead to progress within the school. Of this we have parallel evidence in Indian
systems of philosophy. But till a late stage, cleavages of opinion, which would have led to the formation of schools of thought, did not arise in *Dharmasāstra*, though we can trace divergence of opinion far back. Later differences have been classified as 'schools' and been treated as racial and provincial, though to those who held the views aimed at tenets, the universal acceptance.

The Mauryan empire saw Buddhism rise to the rank of an Imperial religion, but Buddhism was heresy, according to *Dharmasāstra*. The period of barbarian invasions which followed the break-down of the empire of Magadha raised new problems of adjustment. Among them, the most important were readmission to *vārṇas* of those who had gone out of them voluntarily or otherwise, the restitution of rights to abducted and outraged women, condonation (after purificatory or expiatory rites) of breaches of duty and failure to observe the sacramental rules, a new attitude towards non-kṣatriya kings, the recognition of renunciation (*samnyāsa*) by others than Brahmans, acceptance of foreigners who embraced Brahmanism, the reduction of ceremonies which were beyond the strength of the people in altered conditions, permission of divorce and remarriage of women, and realignment privilege and duty to position and responsibility.

The hypothesis that *Dharma* was good for all time and all circumstances acted as the Law of Nature did in the evolution of Roman law. The processes by which the adjustment of *Dharma* was insensibly effected were, however, natural and logically followed from the primary hypothesis. The general lines are clear. *Smṛtis* were classified into those which had a 'visible' and an 'invisible' purpose (*dṛṣṭārtha* and
adṛṣṭārtha). To the former Vedic infallibility did not apply as their aim was wealth and pleasure as contrasted with the performance of enjoined duty and salvation of the latter. The latter prevailed over the former. Secondly, the authority of a smṛti depended on its merit sui generis. In a remarkable passage, Medhātithi dismisses the enumeration of valid smṛtis as futile because there is no end to it, and even a smṛti composed in the present generation might, if its doctrine was sound, become an authority. Thirdly, the rule of logical interpretation (nyāya) which Kauṭilya advocated and Manu condemned, received wide support. Fourthly, the application of valid usage was helped by the injunction to make official records of custom. Customary law was systematised, classified and made applicable to the groups concerned. The doctrine that weakness demands reduced rigor in penance, took the form of Yuga-dharma, accepted in the sense, not that it alone is operative universally in the Yuga or age concerned, but that it gives an option for a lenient construction of duty. The recommendation of gifts (dāna) and faith (bhakti) in preference to sacrifice (Yajña) and penance (prāyascittā), the acceptance of the principle of substitution (pratinidhi) to meet cases in which the original cannot be produced (e.g. kričchra replaced by a money gift to one who does it for the donor), and the principle that certain ancient rites, which were not recommended, may be omitted in Kali-yuga (Kalivarjyas), moved in this direction. In the last category, it was the tendency to include customs which had gone out of use, like the levirate (niyoga) or rites which became impracticable (like the Āsvamedha sacrifice). Rules of pollution (in the case of town life as pointed out by Nanda Paṇḍita) were relaxed in marriages, festivals, pilgrimage, war and personal danger. The practice of referring questions
to Parīṣads gained ground, and caste-parīṣads to settle caste
rules came into vogue, in imitation of the original.

These changes, along with the appearance on the stage of
rulers who accepted the responsibility to enforce Dharma, but
had not been brought up in the old tradition, necessitated a
recasting of smṛti literature. When a political purpose was
behind the recasting, as has been suggested by the late
Dr. Jayaswal, in regard to Manusmṛti, the rules tended to go
back to the old ideals, e.g. the condemnation of Sūdra mendicancy
and celibacy, and magnification of the Brahman. The
new dynasties, which were either contemporaries of the
S’ungas or came after them, were of dubious caste. Greeks
and Scythians, who had no strong religion of their own, and no
caste system embraced Brahmanism, and showed excessive
zeal like all converts. The horse-sacrifice, which is one of the
Kalivarjyas, is performed by rulers of doubtful caste, as well
as by Brahman Kings like Puṣyamitra and the Bhārasivas.
The S’atākarpis and the early Pallava rulers performed it. So
did the Kadambas and the Gaṅgas, as well as the Vākāṭakas.
Even the Kuśān Vasīśka claims to have done one. Samudra-
gupta, who raised a principality to an empire, and gloried in
his relation to an out-caste class, performed two horse
sacrifices. Heliodorus, a Greek envoy, calls himself a devotee
of Viṣṇu (bhāgavata) and erects a column in a Viṣṇu temple.
The Huns, who were more cruel than other invaders, become
worshippers of Viṣṇu. The depressing conditions of the
age are reflected in an increasing addiction to magic. The
altered circumstances are seen in the new smṛtis and
Purāṇas. The literary Renaissance of the Gupta epoch
shows the fillip given to new forms of old ideals under the
inspiration of the Gupta dynasty. An empire has to be governed.
Civil law is more complex and requires specialists to enunciate it. The demand is met by the versified smṛtis of Yājñavalkya, Bṛhaspati, Nārada and Kātyāyana.

Cleavages of opinion between the smṛtis and their interpreters necessitate the production of adequate scholia. The new commentator cannot however rest content with brief explanations. He must attempt an exposition (Bhāṣya). Asahāya (600 A.D.), Visvarūpa (800 A.D.), Medhātithi (850 A.D.) illustrate this movement. The powerful support given to the spread of Mīmāṁsā doctrine by Kumārila and to philosophical speculation by Śaṅkara swept away the lingering remnants of Buddhism. Mīmāṁsā also furnished a potent instrument of smṛti interpretation. New dynasties came to power from the eighth century onwards, and history repeated itself. A great impetus was again given to the writing of commentaries and digests. The first experiments in 'legal' comprehension took the form of condensed verse summaries of the conclusions of the major smṛtis, which could be memorised and commented on in schools. Examples of it are Medhātithi's lost Smṛtiviveka and the anonymous Smṛtisārasaṅgraha, Caturvimsatimata and Saṭṭhāmsātanmata, but even these did not meet the new demand for full enunciation of Dharma. New motives for re-examination of the content of Dharma literature came after the Musalman invasions and settlement. There had been wholesale enslavement and forcible conversion to Islam of Hindu men and women. The attempt to rehabilitate them is reflected in Devalasmṛti, which declares with vehemence that all smṛtis opposed to it were void. The new Rājput dynasties, which came into prominence after the eleventh century, like the Gāharwārs of Kanauj, the Paramārs of Mālva, and the Yādavas of Devagiri were fervidly Hindu. Nothing but wholesale
recapitulation of Dharmasūstra will satisfy them. Large digests (Nibandhāh) become the fashion in every Court. We have lost King Bhoja’s celebrated digest, Gopālā’s Kānadhenu and several other works of the kind, born of this movement. The Mitākṣara is virtually a digest though greatly limited by its text. The ruler of a modest kingdom in Konkan, the Sīlāhara Aparārka, wins lasting fame by an extensive commentary on Yājñavalkyasmṛti. But the most exhaustive of the digests is easily the Kṛtyakalpataru produced by Lakṣmīdhara, by command of king Govindacandra. In Bengal, Bālālasena and his teacher Aniruddha produced great digests. The stupendous digest of Hemādri, which covered only part of the ground, was the contribution of the new kingdom of Devagiri.

The later digests like those of Viśvesvarabhāṭṭa, Madanasiṃha and Dalapati are useful, along with the digests of Caṇḍesvara and Vācaspati Miṣra, in showing how even under Muhammadan rule, the devotion to Hindu Dharma was sustained. The impulse to compose treatises on Dharmasūstra showed no sign of weakening, whether the head of the Musalman empire was a broad-minded ruler like Akbar or a staunch iconoclast like Aurangzib. We owe the great digest of Mitra Miṣra to the revivalist zeal of a Bunḍela prince, who ambushed Abul Fazl, and became the friend of Jahangir. The still better known Mayūkhas were composed to the order of a petty Hindu chieftain. The production of such works in an epoch in which no Hindu ruler in Hindustan enjoyed independence, or under the patronage of Musalman rulers, was due to either or both of two motives, viz., the desire to acquire merit by causing to be written, a great work which will be as a guide to more fortunate rulers in the future, and secondly, to have for their own guidance in the small
areas under their own rule, suitable codes of the full Hindu Dharma. The revivalist influence coupled with the ambition of new dynasties in commissioning great treatises is best illustrated by the first kings of Vijayanagara under whom Mādhava wrote his famous works, including the commentary on Parāśara.

Side by side with the production of digests and commentaries went on the writing of treatises on controverted points (Dvaita-Nirñaya). They are most common in the literature of Mithila in the fifteenth and sixteenth centuries.

It was impossible to compose a new nibandha for the purpose of settling a number of minor questions in dispute. The composition of a nibandha involved an amount of labour which could be done only by a large body of scholars acting under the supervision of a master. Nor could the doubtful points of Dharma be settled by convoking Parisads, as men with the needed qualifications could not be secured. A permanent commission of legal reference was also out of the question. The Pandita of the royal Court, the successor of the ancient Purodhā, had begun to replace him even in the Gupta period. S'ukranīti (12th century) makes it the duty of the Pañāita to consider laws which appear to run counter to tradition and worldly experience and advise the king on suitable action. The work of Parisads was sometimes done by the assemblies of pañāits specially convened in places like Kāsī, Paithān and Nāsik, where there was always a number of learned men.

The increase in the number of digests and commentaries did not altogether get rid of the embarrassment caused by conflict of views and doctrine. A conscientious ruler could
not easily commission a new digest. It was an expensive business, requiring the services of a large number of scholars working under the direction of the digest-maker. The Mīmāṃsā rule allowing an option (vikalpa), wherever two or more unreconciled positions had each separate authority, tended to increase confusion. If the matter was to be settled a way was open. If the king, as well as his people, ceased to believe in traditional Dharma, the ruler could proceed to frame by royal edict a new body of simple, compact and uptodate laws. But if the king or the bulk of his subjects were orthodox, and relied on Dharmasāstra, the course was open only if they felt that it was possible to supersede Dharmasāstra by royal edict (rājasāsana), giving it the precedence, which it appeared to have in Kauṭilya’s Arthasastra. But the passage was interpreted, as the similar one of Yājñavalkya, as implying only the power of a king to declare the law which was not in opposition to Dharma, in cases in which there was doubt, and not as vesting in a ruler concurrent or superior law-making authority. Consistency required that the authority for the alleged power should be considered in its context and read with the injunctions, found in both Arthasastra and Dharmasāstra, enjoining the king to adhere to Dharma. Both brought the king within the jurisdiction of law, and allowed decisions to be given against him in his own courts. Medhātithi roundly declared that a king cannot make a law over-riding Dharma. The personification of the power of punishment as a divinity was a picturesque way of expressing the view that the king is subject to law. The evidence of history does not disclose any exercise of the alleged regal power of independent legislation. Asoka, who declared Dharma in his edicts, merely enunciated doctrines which were equally acceptable to Brahman as well as to Buddhist.
He dealt with what would have been called *Sādhāraṇa*, i.e., ordinary, *Dharma*. What little evidence there is appears to run counter to the claim. The point may be illustrated. In old Indian law, theft was a capital offence. The receiver of stolen property, even if he took it in good faith, or in the ordinary way of trade, *might* become liable to punishment. It is stated by Daṇḍin that the Mauryas made a rule that in cases where such property was found in the possession of merchants, the presumption should be of their innocence, and that they should not be punished as receivers of stolen property. The interpretation is equitable. In Indian law, the value of stolen property which was not recovered by the king had to be made good by him. A rule of the kind, alleged to have been made by the Mauryas, could only add to the king's own liability. Another instance is of a small alteration which Asoka claims to have made in criminal procedure. In Ancient India, the passing of a capital sentence was followed by immediate action. There was no time between sentence and execution. Asoka claims to have granted to such an offender a respite of three days, after sentence of death had been passed, to enable him to make his arrangements for spiritual benefit. It is noteworthy that Asoka did not claim a power of reprieve. In the *Rājadharmakāṇḍa* we have recommendations to kings to release prisoners on the occasion of their coronation. But there is a universal exception to the royal power of pardon, and that is in regard to the sentence of death, which cannot be set aside by a king. Asoka who forbade the slaughter of animals, restricted the prohibition to the royal kitchen, and there is no evidence of his having interdicted the Vedic sacrifices. His prohibition of castrating and castration was merely an enforcement of the *Dharma* rule against *bhrūṇahatyā*. It is open to presume that if he felt he could change the law in the case of capital offences, the merciful
emperor might have exercised the power. His absention should be construed in support of the position of Dharmasāstra that legislation by edict can declare law, but not make law contrary to Dharma. The unnamed Maurya of Danḍin might have been the great emperor himself. It is significant that a Buddhist ruler should have been chary of making a change of traditional Dharma, and his frequent references to Dhamma, usually taken as allusions to the Buddhist Dhamma, may as legitimately be viewed as to the Brahmical Dharma. His Dharmanvijaya is conquest according to the humane rules prescribed by Dharmasāstra. His Dharma-amātya was no other than the Dharmādhikārī. Asoka’s partiality for the term might have been due to policy; even a Buddhist ruler must conform to the Dharma of his subjects. It may be noted that the Satraps of the Dakhan and the Pallavas, both reputed foreigners, styled themselves Dharmarājas. The Kadambas of Banavasi, who could not have ruled in strict accord with Dharmasāstra, took the title. The Gaṅgas of Talkād did so too. Over the seas, the Kauṇḍinya emperors of Campā (e.g. Bhadravarman, c. 400 A. D.) took the title. The Colas gloried in keeping, like Kālidāsa’s hero-king, to the rules of Manu. The drift of the evidence is one-pointed.

What was expected from the king indicates what the state was competent to do. It may be gathered from the evils which a condition of anarchy (arājata) was supposed to generate, and which the king was to ward off. Among the things which disappear in anarchy, prominent mention is made of the worship of gods, Dharma, sacrifices and freedom. The discharge of the primary state-duty of protection (paripā-lanam) ensures freedom; but the other functions imply the use of directive, regulative and coercive power of the state
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in the interests of Dharma. The list should be read with the accounts of barbarian (mleccha) rule given by the Purāṇas, as his characteristic was that he contravened Dharma. The Viṣṇu-purāṇa counts among the enormities perpetrated by the mleccha (the Indo-Bactrian and Indo-Scythian) the slaughter of Brahmins, women and children, killing of kine, greed and unjust taxation, violence, internecine war (hatvā caiva-paras-param) and omission of the rite of coronation. The mixture of offences against humanity, sound economy, sound polity and ritual should be noted. They are, in popular belief, the signs of Kali, the personification of Evil. Every king who, in medieval times, either ordered the codification of Dharma or did it himself, is described as freeing his kingdom from Kali by the service. The royal champion of Dharma stood not for mere morality but for religion. It is in this sense that the king is classed with the Brahman as the prop of world-order. The curious suggestion that this statement refers to an old rivalry between civil power and the sacerdotal, which was ended by the alliance of king and priest in their mutual interest, is based on misconceptions, among which that of the division of functions between the courts of justice in which the judges and assessors were Brahmins, who declared the law and found the verdict on the evidence, and the executive authority which implemented the judgment, stands foremost. The education of a prince, on the lines indicated in Arthasastra and Smṛti, for his future office would be possible only if the prince succeeds by hereditary right to an old established throne, in a small kingdom. A self-made ruler of a non-kṣatriya caste, who builds up a large kingdom, will neither have had the antecedent education for his office, nor the inclination and facilities to get it after the establishment of his authority and power. He would be
more dependent on his Brahman guides in regard to Dhārma
than a prince educated in the old royal curriculum. His acceptance of traditional duty will be even more complete, because it will be done with less understanding and with more desire for popular applause.

The atmosphere will be unsuitable for either the claim or the exercise of law-making by edict. Dependence for changes necessitated by altered conditions of life and time, will be exclusively on interpretation, involving the silent application of hypotheses and equity. That changes of far-reaching character did take place in the law (dhārma) relating to almost every department of personal and public relationship is undeniable and will be illustrated later. A change, even one of a radical character, will not appear as revolutionary and as against Dhārma, because of the belief in its eternal justice and its all-embracing character. Opposed positions will be viewed as instances of option (vikalpa), when properly vouched for, and will illustrate the latitude allowed by Dhārma, when properly understood.

It is easy to give illustrations of the changes which took place, and which were manifestly due to the pressure of public opinion and the inner promptings of what may be termed the 'social conscience.' The first in importance is the altered attitude towards the relative position of the 'sources'. The increasing dependence on usage (caritra), on the doctrine of equal validity of all texts, (ekavākyatva), on anonymous texts (e.g., citations like “iti smṛtiḥ”, “smṛtyantare”, “evamucyate”), on 'justice and good conscience' (saṁkalpa, ātmanastuṣṭih), insight and intuition (yukti) and 'the practice of the elect' (siśṭā-cāra), is evident, and it helped the process. Brhaspati
accepts even the usage of castes springing from condemned unions (pratiloma). There was also a tendency to emphasise the consultation of the expert, so as to bring in professional rules under valid custom. The digests illustrate the change in attitude. Mitra Misra accepts as authority the practice of the 'good S'udra' (sacchuddra), apparently as a concession to the educated and pious member of the fourth Varna, bringing the extension under 'the practice of the good' (acarascaiva sadhunam,) in the place of 'the practice of the strict Brahman' (visfacara). The animus against the learned S'udra was really due to abhorrence of Jains and Buddhists for their abjuring the Veda and for their wholesale invitation to the S'udras to desert their occupations and become monks. With the fall of Buddhism there was a marked reduction of acerbity even towards the Buddhist.

To begin with, we may note the widening of the rules regarding allowable occupation and areas of habitation for the follower of Dharma. It will amuse a modern student if a list of "excluded areas" is made. S'anka-Likhita excluded Sindh and Magadha. The Mahabhara excluded the Punjab. Paithinasi included Orissa by special mention. South India was excluded virtually by all authorities, and the Aryan area meant only the western half of the present United Provinces. The acceptance of two principles, viz. (1) that the country is 'sacred' over which the black antelope roams (krsnamrnga), barely (yava) is cultivated, and the kusa grass grows, and (2) that any area in which there is a holy place (tirtha), or through which a sacred river passes, is unobjectionable, along with the definition of Arya as he who accepts the caste-classification, and the Aryan land as that in which Varnasramadharma prevails, and the application of the rule of necessity (apaddharma)
to condone travelling to prohibited areas, brought the whole of India, and even far-off countries like Cambodia, Bali and Java within the ambit of permitted areas. Indian maritime activity and colonisation would have been impossible, without open breach of Dharma, but for the elastic provisions.

Next comes the principle of Yuga-dharma, 'the Dharma of Time-cycles,' which was interpreted so as to secure a relaxation in the interests of weaker sex or status. Under this principle, women and Sūdras can get the same merit (punya) as men and Brahmans by adopting easier rites. Certain forms of easy literature are opened to them.

Their non-investiture (upanayana) was to be viewed as an exemption and a privilege. The wife received the same power (adhikāra) as the husband, without his saṃskāras, by mere fact of marriage. The principle that a taint was acquired by mere contiguity or association was attenuated till it meant only a lapse through the closest association or actual commission of an offence. The very young and the very old were exempted from many obligatory duties or expiatory rites. The circumstances in which impurity from contact (asprṣya) will not arise are made more numerous. Religious cults like those of bhaktimārga and tantra and the spread of monistic (A-dvaita) philosophy tended to extend both the area and the circle of recognised usage to persons and places accepting their ideas or produced indifference to strict conformity to prescribed conduct. Their influence helped to make things easier for women and the unregenerate castes, and to substitute faith and intuitive knowledge for rites of expiation, and "good works" and 'self-realization' for ceremonial. But the substitution was
not effected without struggles with the adherents of smṛti (e.g., case of Vaiṣṇava and Śaiva saints).

In the history of the Indian law of person and property, there is abundant evidence of diversity of view leading to progress. An impulse to change the law was justified on the ground of conscience (ātmanastuṣṭi) and the desire to vindicate Dharma. Reform in law or usage is not barred, if the move to change is justified on these grounds. In the field of civil law the main changes which follow are in the direction of the emancipation of the individual and his gains of learning (cf. the way in which the freeing of the 'earnings of the camp,' castrense peculium, from patria potestas paved the way for individualisation of property in Roman law), the reduction in the number of forms of marriage to suit the new conscience (i.e., giving up forms like āsura, rākṣasa and gāndharva unions, which are but abduction, rape and seduction), the elaboration of the principle of adoption, and improvement in the civil status and rights of women.

The care of the dependant or destitute woman was then as great as social problem as the unemployed today. At first she was a charge on her family; next the obligation to maintain her was extended also to the clan or sept (kula) and ultimately to the state. Kauṭilya's recommendation of the provision of workhouses for women will be remembered, as well as his making male relations responsible for the maintenance of their helpless female dependants. The spirit of consideration for the weak, which is a feature of Dharma, is conspicuous in its operation on woman's rights. From mere right of maintenance to her right to inherit is a big advance, but it was already implicit in the Dharma attitude. If Apastamba could assert
that by marriage a wife gains the right to a moiety of her husband's spiritual merit (puṇya) and to none of his sins, the spirit is akin to that of Brhaspati, who pleads vehemently for the right of the childless widow to inherit her husband's estate in preference to agnates: "The wife is recognised by the Veda, the Smṛti, the world and men of integrity and virtue as half the husband's person, and his partner in spiritual benefit. The death of the husband destroys only one-half of his person; the other half survives in the widow. So long as she lives, how can any other person take the dead man's estate?" The right of the unmarried daughter to the expenses of her marriage was secured. In times of commotion, the weak require protection more than the strong. To a grown-up and fatherless woman, a husband is the natural protector. Marriage becomes an obligation to women, and is treated as a sacrament. It is invested with further attractions. The reaction against Buddhism and Jainism led to an emphasis on marriage, apart from questions of economic statemanship advocating population to make up the wastage of man-power in war, as these religions admitted women as nuns. But it is not necessary to cite Buddhist influence (as done by Dr. Jayaswal) to explain the recognition of the spiritual equality of the sexes in Hindu Dharma. It was there already. The indissolubility of the marriage tie, in later law, cancelling the older permission for separation and divorce, is perhaps due to the fear of the encroachment of Buddhism on the family, by attracting wives to nunneries. The emphatic condemnation of prolonged celibacy and the advocacy of the house-holder's status, may be due to the reaction against a glorification of renunciation (saṁyāsa) for women as well as for men. The medieval Hindu revivals, sanctifying pious works, are responsible for the attempts in digests (e.g., Smṛticandrika and Vyavahāramayūkha) to extend
the widow's powers of alienation of property in which she has only a life-interest. When divorce had been universally denied to high-cast women, it was permitted, (as Kauṭilya did it) to Non-brahmanas; it was saved for the fourth caste, by Kamalākara. The marriage of widows, is similarly limited, and then denied. Even virgin widows, to whom leniency had been formerly shown, cannot now remarry, for Devaṇṇa Bhaṭṭa and Mādhavācārya explain away Parāśara's permission as barred by the inhibitions of the Kali age (kalivarjya). The time when a 'defender of the faith' like Candragupta II married, like Henry VIII, his brother's widow, without outraging orthodox sentiment, was forgotten. The gradual reduction of the levirate (niyoga), from permission to raise many off-spring to the raising-of only one son to carry on the line, and then to positive prohibition, apparently on grounds of abuse by temptation springing from sex-impulse of the desire to retain property (definitely condemned by Vasiṣṭha), till its disappearance after the sixth century A.D., are to be noted on the debit side. But there is positive gain in two directions. Hypergamous unions (asavaryavivāha) are prohibited as Kalivarjya, and the inhibition was a discouragement of polygamy, already falling through public opinion into desuetude, except in royal families. The growth of orthodox opposition to self-immolation of the widow (sahamaranā) was a second gain. Not only did an old jurist like Viṣṭu commend Sati, but there is Greek evidence, for its practice. The citation of Vedic authority for it, as for another famous exception to the rule against suicide (ātmahatyā), is explained away by Medhātithi as analogous to that of black magic, which though found in a Veda, is still unacceptable to the good, and by Devaṇṇa Bhaṭṭa as an inferior Dharma. Bāṇa naturally denounced it. Tantric influence, which ennobled woman's body, went also against it.
It was interdicted to expectant mothers and to Brahman women. The later attempts to annul the prohibition (as by Mādhavācārya and the Bhaṭṭas) is a reaction due to the same aristocratic feeling which made it survive in Rājputana, and which led to holocausts like those of Gāṅgeyadeva (d. 1041), who was burnt with his hundred wives, or similar horrors in later Rajput and Sikh history. As an institution Sati was doomed long before it was legally prohibited in the 19th century.

In two respects there was hardening of the old rules: viz., the readmission to caste privileges of apostates who desired reconversion, and the rehabilitation of the abducted or ravished woman. As regards the latter, there had been a general safeguard against the offences in the Hindu epochs in the law prohibiting the enslavement and ravishing of even slave women by their owners, and of wet-nurses by their employers (Kātyāyana). The abduction of women of respectable families was a graver crime, and the offence was punished with death, (Vasiṣṭha). The offender was included under a special class of criminals (ātatāyinahaḥ) who could be slain by any one when caught in delicto. Unchastity in a wife did not entail the forfeiture of a right to maintenance, and there were easy penances for the offence. The case of one who had been abducted and forced into conjugal relationship or into an alien religion was ostensibly stronger. Vasiṣṭha, Atri and Parāśara allow women to be reinstated in such cases after undergoing purificatory rites. Opinion was divided on the question of the readmissibility of a woman who had conceived during abduction, but Devala declared that she should be taken back after she gave birth to the child, which was to be separated from the mother to avoid caste-mixture (varṇasamākara). Vijnānesvara, who is later than
Devala, and lived at the beginning of the period of Musalman occupation, will not admit her to full rights, but will give her only a *locus penitentiae* in her husband's house. Her treatment becomes ungenerous during the period of Musalman rule, when it should have been otherwise. The rigor was extended to ordinary unchastity in woman, which was naturally worse, being voluntary. (*Caturvīmsatimata*; *Aparārka*). This attitude shocked Al Beruni. A man who had been taken a prisoner of war and converted to a *mleccha* religion, and had even associated with *mleccha* women, might be taken back after purificatory rites, according to Devala. Cases of even persons who had willingly gone over to the *mleccha* side were to be considered with sympathy. This was in harmony with the old Vedic rule for the admission of the *vrātya* to Aryan privileges after a ceremony called *vrātya-stoma* had been performed. Who are *Vrātyas*? The conventional explanation was that persons born in the three higher castes who had neglected to undergo *upanayana*, or to perform Sāvitrī were *Vrātyas*. A recent writer has made out that the original *Vrātyas* were a powerful civilised community in Eastern India. The common tendency was to equate *Vrātyas*, *Mleccha* and *Yavana*. Vasiṣṭha, Manu and Yājñavalkya had forbidden association with them, intermarriage with them and their admission to Vedic instruction and to religious rites. But they could be purified by *Vrātyastoma* or by the performance of the *Asvamedha* (Vasiṣṭha). The performance of the horse-sacrifice by so many kings of dubious caste in the "dark-ages" of our history might probably have been due to this helpful rule. The abduction of women and men, or their being carried into slavery as prisoners of war, must have been an ordinary incident in the Muhammadan epoch. Why should the attitude be stiffened against the rehabilitation of unfortunate
men and women, when their number was so large? Two reasons may be suggested: firstly, whole-sale readmission was viewed differently from isolated cases of readmission, because of the fear of society being swamped by such large-scale reconversion; secondly, the fear of retaliation, directed both against the reconverted persons and against those who made the reconstruction. When the power of reprisal was in the hands of a distant enemy it was negligible. But when it lay in men ruling the country, and their religion made apostasy a capital offence, it was to be dreaded. It is noteworthy that Sivaji readmitted to the Hindu fold his general (Sarnobat) Netaji Palkar, who for ten years was a Muslim in Afghanistan and had even married a Musalman lady, after being carried away and forcibly converted to Islam. One of the Nimbalkars had become a Muhammadan. Sivaji had him taken back and even gave him a daughter in marriage. But when it came to his own case, Sivaji, would take no risks, and conciliated public opinion. He cheerfully underwent expiatory ceremonies as a vrtya, then had his rite of initiation, long intermitted in his family, and was crowned as a Ksatriya king only after these ceremonies had been gone through.

Enough has been said to show the wide-spread feeling in heads of society that social well-being depended on the maintenance, in its purity, of traditional rules, and that the extension of such rules to meet new situations had first to be sanctioned by interpretation made in strict conformity with the prescribed rules and methods of investigation. To a ruler the part of the science of Dharma, which was of the most concern was the general part, and not that section, labelled Rajadharma, which laid down the special duties of his station. Acara, purification, gifts, and propitiation were directly
relevant to his conception of the duties of his office as King. This is why so many treatises on branches, which are so different from what is popularly regarded as politics, were written either by kings, like Ballālasena, or at the instance of kings, like Hemādri's *Caturvargacintāmaṇi* or *Jayasimha-kalpadruma*. We may think that an Indian Rāja would have been attracted by what we feel attracted to, viz. *Rājanīti*, because it relates to polity. But, we should look at it from his standpoint. In an orthodox palace atmosphere, a prince will imbibe knowledge of the special duties of his future office (kingship) almost with his breath. He will not look for much inspiration or new knowledge of even court etiquette from books written by priests or pañḍits. He would feel differently towards *civil law*, and the different departments of activity with which the remaining sections of *Dharmasūtra* dealt. This attitude will explain two puzzling features of our *Dharma* and *Nīti* literature: viz. (1) the large non-*nīti* and non-*vyavahāra* content of *Nibandhas* written to order; and (2) the fewness, insipidity and unattractiveness of the special treatises on *Rājadharma* or *Rājanīti*, particularly when viewed in comparison with their most opulent rival. Among works on *Arthasastra*, the only one written by a first-rate statesman was the *Kauṭiliya-Arthasastra*; the others were written by pañḍits, or composed by pañḍits and fathered on kings (e.g. *Yuktikalpataru* of King Bhoja, and *Mānasollāsa* of King Somesvara of Kalyāṇa). The baffling *Sukranīti* is an exception, but its composite character, uncertain age and origin, and mixture of archaism in diction and doctrine with startling modern views, raise special problems of their own. Kāmandaka, Sūmadeva and Hemacandra were poets as well as pañḍits. They wrote literary excercises, and aimed at pleasing, and not at contributions to political science. In the same way, the
handbooks on *Rājadharma*, in the restricted sense, with two exceptions, were composed by pañcits: *e.g.* *Rājadharma-prakāsa* of Mitramisra, *Rājanītimayūkha* of Nilaśaṇṭha, and *Rājadharmakaustubha* of Anantadeva.

The two exceptions to the unattractiveness of the narrower *Rājadharma* literature are: (1) the *Rājadharma-kānda* of the *Kr̥tyakalpataru* and (2) the *Rājanītitratnākara* of Caṇḍesvāra. The latter has been printed by Dr. K. P. Jayaswal and Dr. A. Bannerji Shastri and has recently passed into a second edition. The former is being edited by me, and will soon be published. Lakṣmīdhara’s work is of importance from several standpoints. He was not only a great and austere Brahman, but he belonged to a family in which high office had descended from father to son. The highest office of his day was that of *Mahāsāndhivigrāhika*, a combination of the cabinet duties of the modern ministers of war, foreign affairs, and home affairs. Lakṣmīdhara’s father Hṛdayadhara held the office also in the Gāharwār court. Lakṣmīdhara mentions the admiration which his mastery of law and fact evoked, when he ‘summed up’ as chief judge (*prādvivāka*), and his *finesse* as a minister. Apparently, he passed through the lower appointments before attaining the high office which he held when he wrote the *Kr̥tyakalpataru* and for which he had to wait till his father vacated it. He was thus a grandee, an inference which is confirmed by his allusion to his many gifts to Brahmans and temples. He represented the flower of the Brahman official hierarchy in his age, unlike his two great contemporaries. Viśnunāyaka was not an administrator, and Aparārka was not a Brahman and had also not seen affairs with an intimacy which only a minister can obtain. Caṇḍesvāra, who came nearly two centuries after Lakṣmīdhara, is
in many respects an "under-study" to Lākṣmidhara, from whom he borrows extensively. He too was a nobleman (Thakur), a judge and a minister, as well as a scholar, and writer. But he was not a srotiyā like his model, and he served in a small kingdom, unlike Lākṣmidhara who served one of the powerful rulers of the time, Govindacandra of Kanauj (A.D. 1104-1154), who, in the length of his reign, the extent of his territory, prowess as a soldier, and distinction as an administrator, vied with his elder contemporaries in the Dakhan and South India, Vikramāditya VI and Kulottunga I. We might justly expect from these two writers a combination of learning and experience in dealing with Rājadhārma, in its narrower sense, which cannot be looked for in treatises of Mitramisra, Nilakaṇṭha and Anantadeva. Mitramisra does not also need extended consideration, since he has borrowed whole-sale from Lākṣmidhara in the most unblushing way.

To take the latter first. Nilakaṇṭha's Nītimayūkha does not cite Lākṣmidhara, and is unlike the Kalpataru, from which he does not borrow in this section of his Bhagavanta Bhāskara. It is a jejune compilation unworthy of its author's reputation, and seems to have been put together simply to round off the digest. It borrows its treatment of policy wholesale from Kāmandaka, the sections on omens and prognostications from Varāhamihira, and the section on war from both, besides using Purānic literature to some extent. There is no sense of reality behind his statements. His patron was a mere nobleman, and Nilakaṇṭha himself had no political training. The only topics on which he shows some animation are (1) the discussion whether a non-kṣatriya can be crowned in the old way, a point which he tacitly answers in the affirmative by furnishing a long account of the coronation ceremony, with extracts from
the *Aitareya Brāhmaṇa*, and, (2) the consideration of the rule that a Brahman might be killed in self-defence. Nīlākantha takes the view that *motive* is insufficient, and that the Brahman must actually attempt murder, before he can be killed. He advocates the use of *kūṭa-yuddha*, or improper war in certain circumstances, a concession to the lowered moral standard of the day.

Anantadeva’s book virtually exhausts itself in three large divisions: architecture, following the injunction that the king should have forts; a treatment of civil and criminal law in their eighteen titles, showing little depth or originality; and a long account of the coronation ceremonies, with a description of the ritual and the *mantras* to be used on the occasion. The book was probably a manual for a small court like that of his patron Bājā Bahadur Candra of Almora (d. 1678). His special individuality appears only in the following. He recognises a polygamous king, with a chief queen for ceremonial purposes, and the possibility of competition to the succession, from the existence of many sons by different mothers. He recommends primogeniture. The cabinet he envisages is a small one and consists of the Minister, the Chief Priest, the Chief Cook and (the Astrologer. He attaches importance to the ceremony of coronation and rules that the title of King should be taken only after coronation. It is noteworthy that Sīvāji, from whose dominions Anantadeva’s family came, followed this precept, and the official form of dating his reign begins after his coronation in 1674; though he had taken the title of Rājā and declared his independence ten years earlier (1664).

Mitramisra’s book is redeemed by two features: its comprehensiveness, due largely to his absorption of virtually
the greater part of the work of Lakṣmīdharā; and his great learning, which enables him to add corroboration to what is given in his original. His patron Bīrsingh was given considerable freedom by Jahangir, and used his influence with the emperor to strengthen Hinduism. He was more than a petty ruler. It is possible that Mitramiśra’s book might have been designed for the guidance of the small kingdom, but the probability is that both the scholar and patron looked for a wider audience. The elaborate description of the coronation of S’ivāji, which we find in the Citnis Bakhar is almost word for word in accord with the rules laid down by Mitramiśra, following Lakṣmīdharā, for the coronation of a king. Gāgā Bhaṭṭa (Viśvesvara Bhaṭṭa) who officiated as chief priest at the coronation, and received a lakh as his fee (dakṣinā) must have followed Mitramiśra closely. It is also possible that Sawai Jaisingh of Amber, the soldier-astronomer, who performed an asvamedha and underwent a coronation in accordance with Hindu rites, followed this work. Mitramiśra is a man of affairs, but still a man of his age. He discusses the question whether a ruler should be a kṣatriya only or a consecrated kṣatriya, and affirms the second alternative. His doctrines are strictly in accord with Dharmasāstra. He advocates primogeniture and will not allow partition of a kingdom. His vigilance for the royal fisc is shown by an interpretation of the old rule that the king should make good property lost by theft, to the effect that the liability to the state will not arise where the loss is due to the carelessness of the owner. He shows some originality in the discussion of the theory of Mandala, disagreeing with Kāmandaka in some respects, but it is all mere theory, as in the days of Akbar and Jahangir, there was no scope for foreign policy for a subject Rāja. The Brahmaṇa is permitted to fight
in certain emergencies. The duties of the conqueror vis-a-vis the conquered are in accord with tradition and high ethics, and derive some animation from the circumstance that a Hindu prince under the Mughal empire was in the position of a conquered ruler, and that the plea for generous treatment was part of the claim of the surviving Hindu Rājās, whom the Mughal administrators treated as Zamindars.

Cāṇḍesvara's Rājanītiratnākara was the work of an octogenarian. It has many points of originality. He hardly uses the work of Lakṣmīdhara, from whom he borrows wholesale in his other works; for, in spite of an acknowledgment of his obligation to the older writer, Cāṇḍesvara does not follow him either as regards his arrangement of topics, or his doctrine. He omits the treatment of various ceremonies prescribed by Lakṣmīdhara and other later writers for the propitiation of unseen powers. His work is more like the political testament of an old statesman, recording his opinion for the benefit of posterity. His own king was a Brahman and he himself was a Thakur. So, he rules that kings might be of any caste. He ignores the coronation ceremony, and attaches no special constitutional value to it. He recognises de facto sovereignty, and admits the legitimacy of the conqueror. To impress on the king his very limited scope for capricious action, he argues that the state is a society of all persons concerned, including the halt, the maimed, the helpless, and orphans, and that their interests will be sacrificed in a division of a kingdom. He thus just misses anticipating Burke's famous definition. He is by no means for royal absolutism, or for breach of Dharma by the king. No man of his age could be. He cites the famous text (anonymous) about the divine character of the people, as a set-off to the theory of the divinity of the king.
Though brief, Candesvara's book displays originality, courage, and unconventionality. It was an after-thought, as he had completed his sketch of Dharmasāstra in seven books, without the need to write specially of king-craft. He would probably not have written even this tract but for the importunity of his sovereign, Bhavesa.

It only remains to describe the Rājadharma-kalpataru, which may be taken as the locus classicus of this type of literature, regarded whether by itself or in its relation to other parts of Dharma in the wider sense. Lakṣmīdharā's work is in 14 books. His omission of vyavahāra in the treatment of Rājadharma is part of an outlook which treated all parts of Dharma as Rājadharma. Its omission in Kāmandaka or Mānasollasa will be defect, unless the works are viewed as popular supplements to Dharma, devoid of any authority. One feature in Lakṣmīdharā is note-worthy. He will not cite any authority that is not recognised as a source of Dharma. He follows in the arrangement of his quotations the order of enumeration of the sources: sruti, smṛti, itihāsa, purāṇa and caritra. He assumes a good deal of what he has said in other sections of his digest. To compile a work on polity by Lakṣmīdharā one would have to lay under contribution several sections of his digest; it cannot be written from his 'Rājadharma' alone. Lakṣmīdharā held the responsible position of chief minister to a king, whose power was daily growing, and yet who had to be educated in Hindu Dharma. It is therefore natural that, as in Kauṭilya's work, he should feel the need to deal with the problems of philosophy and religion, along with administrative organization, recruitment to the king's service, court ceremonial (important in a new dynasty, without tradition),
RIJADHARMA

as well as economic development of a large area, just recovering from war, along with traditional treatment of the rules of taxation and economy, and the beneficial relations of the ruler and the ruled. His special "advance" on the Kauṭilya is his elaboration of the magical and ceremonial rites recommended for the safety of king and kingdom. His reticence about foreign relations of the king is noteworthy, but the omission of the Mandala theory is apparently the caution of the political minister, who will not give himself away. The Gāharwar king must have been proud of his kṣatriya lineage, which was questioned. It is proof of Lakṣmīdhara's independence that the rites which he prescribes for the coronation of even a Rajput king are Pūnic and not Vedic. In this respect he is more consistent than his successors, who indiscriminately mixed up the two, for kings whose claim to be kṣatriyas was even more questionable than Govindacandra's. His magnifying the Brahman is consistent with himself and the tradition of the age. In one respect, he strikes an original note. While he will not countenance the use of deception or barbarism in war, he regards it as a game which should be short and sharp; and he accordingly recommends that the civil population of the enemy should enjoy no immunity from attack or destruction of property, as the aim of war is to put the maximum amount of pressure on the enemy and bring him to his knees quickly. He accordingly advises the laying waste of the enemy's territory, and the destruction of the enemy's buildings, water reservoirs, and bridges. But, once an enemy is overcome, the enemy subjects should receive the same considerate treatment as the subjects of the conqueror. Private looting is forbidden in war, and all booty belongs to the king. In civil government, the main principles of Lakṣmīdhara are economy, avoidance of waste, conservation of
resources and respect for the expert. Its modern-ness is what one would expect from a responsible and gifted statesman with great experience in governing a large kingdom. That the man of affairs was also a great Brahman was in conformity with a tradition, which refused to divide the functions of life, or accept any suggestion which would view mundane existence as the only one.

A result of the revived interest in legal texts and Arthasastra in recent years has been a partial redemption of the reputation of Indians for realism and progressive instincts. But there still lurks a belief that religion and Dharmasāstra strangled the free growth of legal and political institutions, made for inelasticity, and rendered society unable and unfit to readjust itself to changing conditions and needs. The claim of the old Indian norm (Dharma) to be viewed as eternal, infallible and indisputable has been represented as a confession of the want of both the desire and the capacity to move forward. Evidence of such adjustments must force itself on the notice of students of our social history and institutions. It will show that, inspite of the fossilising effect of the norm, the liberal use of fictions enabled some readjustment to be effected. The entire area of a vast literature, which was the creation of religious fervour and an overpowering sense of duty in centuries of kings and thinkers, cannot be summarily condemned as the dismal outpourings of minds in fetters to priest-craft and superstition. Explanations, so facile and so appropriate in a superficial consideration of fragments of a great literature, cannot explain the continued vitality of the culture, and the religious beliefs on which it was based, through centuries of vicissitudes, like foreign invasions, conquest, and wholesale persecution, the like of which
has extinguished civilization in other lands. That a frequently ravaged society was able to maintain its essential unity and cherished ideals and modes of life, through such calamities and through such a long stretch of time, adapting itself, within the limits of its fundamental beliefs, to the calls of altered needs, and that it ensured to its members a considerable degree of happiness and freedom, with the temper to make use of them, are claims which may be urged on behalf of the great body of tradition and literature called Dharmasāstra. That a study of its scope, aims and implications, along with that of the ways in which it renewed itself from age to age, may prove of use not only to those who accept it without question, but even to those who ardently wish for social change in the interests of wider well-being, among a vast population in which a great many persons have still the faith in it which will help them more readily to accept change if it is in consonance with tried ideals and methods, is the justification for the review which has been attempted in these lectures of what, from its vital bearing on the prosperity of the land, I have, consistently with tradition, to all Rājadharma.
NOTES

[The figures at the head of the Notes refer to the pages and lines of the text of the lectures, while the figures on the top of Notes refer to the serial numbers of the Notes, which are given for convenience of cross-reference.]

1

1, last line. STUDY OF ANCIENT INDIAN CULTURE

The first Chair on the subject was founded by the late Mahārāja Maṇḍrakandra Nandi of Cossimbazar. Recently, H. H. the Mahārāja of Baroda has given the University a perpetual grant for the foundation of a Professorship in Ancient Indian Culture and some Fellowships. At Benares candidates can study the subject in all its ramifications from the pass B.A. course to the M.A. and D. Litt. degrees.

2, l. 9

The convention which was set up when the Chair at Madras University was first filled has been maintained with the widening activities of the Department of Indian History. Research more than teaching forms the chief occupation of the staff.

3, ll. 15-16

At Bombay the School of Sociology has produced some useful doctoral theses on Indian Polity and Sociology, marked by scholarship and insight.

2

4, line 23. RĀJADHARMA

The term Rājadharma is now popularly used in the sense of Polity or Rājantī. It has been so especially since the study of
Ancient Polity was stimulated, if not actually commenced, by the publication in 1909 of Kauṭilya’s *Arthasastra* and its translation into English. Lawyers have all along been pre-occupied, since the foundation of British Courts of justice in India, with that part of *Vyavahāra* which deals with inheritance and partition of heritage (*Dāyabhāga*). There has been a belief, which is not justified by Indian tradition, that, as the Hindu king was invested with the duty of adjudicating suits of law, the *Vyavahāra* content of *Dharma-vastra*, and the special rules for the kings and courts alone constitute *Rājadharma*. The chief purpose of these lectures is to correct the impressions, to show that they are not in consonance with the traditional view of Hindu life or institutions, and to draw attention to the wider implications of the term.

3

5. **THE LECTURER’S WORKS**

*Ancient Indian Polity* was published in 1914, and a second edition appeared in 1934. *Ancient Indian Economic Thought* appeared at Benares in 1935. The Calcutta Readership lectures were named *Indian Cameralism*, from striking points of resemblance with European Cameralism and the *Arthasastra*. Though delivered in 1934, it has yet to be published.

4

6. **USE OF THE KAУΤΙЛІЯ IN MODERN POLITICS**

Half in fun and half seriously, European administrators have cited the precepts of Kauṭilya in legislative debates in support of new taxes and the Criminal Intelligence Department.

5

7, ll. 29-30. **DHARMAŚĀTRA AS PRIESTLY TWADDLE**

The Gṛhya-sūtras, which form part of the *Dharmaśāstra*, have been characterised by a hostile critic as 'not only twaddle, but priestly
twaddle.' Many of the misconceptions of the nature and content of *Dharmasāstra* may be traced to the criticisms of Sir Henry Maine, made on the basis of the translation of *Manusmṛti* by Sir William Jones, and in ignorance of Sanskrit, and almost a contempt for it.

Some illustrative passages may be cited:

"The religious oligarchies of Asia, either for their own guidance, or for the relief of their memory, or for the instruction of their disciples, seem in all cases to have ultimately embodied their legal learning in a code; but the opportunity for increasing and consolidating their influence was probably too tempting to be resisted. Their complete monopoly of legal knowledge appears to have enabled them to put off on the world, not so much of the rules actually observed as of the rules which the priestly order considered proper to be observed. The Hindoo Code, called the Laws of Manu, which is certainly a Brahman compilation, undoubtedly enshrines many genuine observances of the Hindoo race, but the opinion of the best contemporary orientalists is, that it does not, as a whole represent a set of rules actually administered in Hindustan. It is, in great part, an ideal picture of that which, in the view of the Brahmans, ought to be the law. It is consistent with human nature and with the special motives of their authors that Codes like that of Manu should pretend to the highest antiquity and claim to have emanated in their present form from the Deity. Manu, according to Hindoo mythology, is an emanation from the Supreme God; but the compilation which bears his name, though its exact date is not easily discovered, is, in point of the relative progress of Hindoo jurisprudence, a recent production." (*Ancient Law*, ed. Pollock, 1927, pp. 15-16. The work was published in 1861).

"Hindoo law, which I have placed by the side of Roman law, calls assuredly for no eulogy. It is full of monstrous iniquities, and has been perverted in all directions by priestly influence. But then a great deal of it is of prodigious antiquity, and, what is more important, we can see this ancient law in operation before our eyes. British legislation has corrected some of its excesses, but its
principles are untouched, and are still left to produce some of their results." (Early History of Institutions, 1874, p. 309).

8, u. 1-7. SMALL CONTENT OF LAW AND POLITY IN DHARMAŚĀTRA

In Manusmṛti only three books, viz. the seventh, eighth and the ninth treat of politics and law proper, and take up about 980 verses against 1580 for the rest. In Yājñavalkyaśmṛti, the last (i.e. 13th adhikaraṇa) of the first book, and the whole of the second deal with polity and law, and take up 367 verses out of the total 1009. In the reconstructed Brhaspati-smrți, I have gathered 1288 verses (including some half-slokas) on law and polity, as against 1037 on the rest of the normal content of Dharmasāstra. As Brhaspati's work concentrates on Vyavahāra, the large content of non-vyavahāra element in it is noteworthy. Parāvaraśmṛti, as is well known, has no Vyavahāra or Rājadharma content, while the extant Nāradśmṛti is equally exceptional in having virtually only a vyavahāra element, which is noticeably very small in the Dharmasūtra literature, being relatively most abundant, while still relatively smaller than the non-vyavahāra element in Viṣṇusmṛti the only smṛti in sūtra form which has relatively a large vyavahāra content.

If we turn to the nibandhakāras, we find that only two out of the fourteen books of the Kalpātaru of Lakṣmīdhara are devoted to Rājanīti and Vyavahāra. Jmūtatavāhana's Dāyabhāga was exclusively devoted to a part of vyavahāra, as his Vyavahāra-mātykā was also, but he recognised the value of the non-vyavahāra element by writing a much larger work on Kālanirṇaya, (i.e. the Kālaviveka, Bibliotheca Indica, 1905). His lost Dharmaratna, of which both the Kālaviveka and the Dāyabhāga are declared in their colophons to be parts, will if recovered furnish another illustration of the principle enunciated, (Kane, History of Dharmasāstra, p. 319). Of the twenty-eight tattvaś of Raghunandana only two (vis. on
MOTHS

and vyavahāra) bear on law proper. Every large and complete digest will furnish similar instances.

7

8, l. 28-30. HALHED’S CODE

The original of N. B. Halhed’s Gentoo Code, published in 1776, was a Persian translation of the Vivādārṇavaseta (Bridge over the Ocean of Litigation) which was composed by a committee of smārtas named in the following sloka, which appears at the end of the printed edition of the work:

Bālesvara-Kṛpārāma-Sāma-Gopāla-Kṛṣṇajivanākhyaīḥ  
Vīresvara-Kṛṣṇacandra-Sri-Gaurikāntābhidhānaih  
{
śadbhiḥ
}
Kālasaṅkara-Śyāmasundra-Kṛṣṇakesava-samgaiḥ  
Sūrāmasangaisca kṛto granthah śphurat sabhāyam  
{
II
}

There is no mention of the Maharaja Ranjit Singh of Lahore, to whose inspiration the publisher attributed this work. The Oriental Manuscripts Library at Madras has a copy of this work with the title Vivādārṇava-bhaṅjana. It should not be confused with Jagannatha’s famous digest, which H. T. Colebrooke translated in 1798. The title of the latter, which is still unpublished, is Vivāda-bhāṅgārṇava.

8

9, l. 2. COLEBROOKE’S DIGEST

This famous work, which has been extensively used by the British courts was published first in 1797 by H. T. Colebrooke. It is a translation of the sections on contract and succession of a digest specially composed by Jagannātha Tarkapācānananda of Triveṇi on the Ganges in 1796. Jagannātha is the last great nibandhakāra. He is said to have died at the great age of 111 in 1806. If it be so, he must have been a centenarian when the digest was composed, a
truly remarkable achievement. (B. Banerjee, Dawn of New India, 1927, pp. 81-91).

9

9, First Paragraph. EARLY ENGLISH TRANSLATIONS OF DHARMAŚĀTRA AND WORKS ON HINDU LAW

Sir William Jones translated Manusmṛti following Kullūka's commentary, and an edition was published in 1796, after his death. He was responsible for the suggestion to undertake a comprehensive digest, and the Vivādasārārṇava of Trivedi Sarvarūpasarman was composed accordingly in 1789. Meantime, the Vivādārṇavasetu had been compiled in 1773, and was the original of Halhed's Code of Gentoo Laws, 1776, published in 1781. Jagannatha's nibanda was partially translated as 'Digest of Hindu Law' by T. E. Colebrooke, in 1797. Colebrooke published in 1810 his translations of Jīmūtavāhana's Dāyabhāga and the Dāyabhāga section of the Mīrākṣarā. Borradaile's translation of the Vyavahāramayukha appeared in 1827. The Dāyakramasamgraha was translated by P. M. Wynch in 1818. It was by Śrī Krṣṇa Tarkalāṅkāra, and an edition of it was published in 1828. The Dattaka-mīmāṁsā of Nandapaṇḍita and the Dattaka-candrikā of Kubera was published by J. C. C. Sutherland in 1821. Sir Thomas Strange published his Hindu Law in 1825. In 1829 appeared Sir William Hay Macnaghten's 'Principles and Precedents of Hindu Law' in the same year as his father Sir Francis Macnaghten's Considerations on Hindu Law. Goldstücker wrote his Present Administration of Hindu Law, in 1871. Meantime, A. C. Burnell had published a translation of the Dāyabhāga section of Mādhava's bhūṣya on Parāśarasmṛti in 1868, which he followed up by a translation of the same section of Varadarāja's Vyavahāranirṇaya, which I am about to publish for the first time. Vācaspati Miśra's Vivādacintāmana was translated in 1865 by P. C. Tagore, and the sections on inheritance in the Smṛticandrikā were translated by T. Krishnaswami Aiyar in 1867. In 1868 Prosopno Coomar Tagore left by
will the funds for the foundation of the famous Tagore Law Professorship in the University of Calcutta, and H. Cowell gave in 1870 the first course of lectures under this foundation, and chose Hindu Law as his subject.

10

10, ll. 8-10. JIMÜTAVĀHANA’S INTEREST IN NON-VYAVAHĀRA

The colophon to the Dāyabhāga, the most famous work of Jimūtavāhana, ends thus “Dharmaratne Dāyabhāgaḥ samāptah.” The same reference to Dharmaratna occurs in the colophon to his Kālaviveka (Bibliotheca Indica, 1905). The last words in the Kālaviveka “Samāptam cedam Bhūratne Dharmaratnam” will indicate that this section was the last in the Dharmaratna. The complimentary verse at the end of the section refers to the bigger work and its occurrence at the end of Kālaviveka will also suggest that the Dharmaratna terminated with the section of Kāla:

\[
\text{Bahuvidha-vivāda-timiragram graham raveḥ}
\text{vsaśāṅkasya₁}
\text{Tad-dharmaratnadipālokāt sakalam vilokayatāⅡ}
\]

His Vyavahāramātrka, which was published by Sir Asutosh Mookerjee in 1912, does not show this reference to Dharmaratna in the colophon, which ends thus:

Iti Pāribhadra Mahāmahopādhyāya Śri Ṣī Ṣīmtavāhahakaṛta Vyavahāramātrkā samāptā. It is possible that the other sections of the Dharmaratna were never written, though planned.

11

10, ll. 10-11. MĀDHAVĀCĀRYA’S KĀLAVIVEKA OR KĀLANIRṆAYA

The reason given by Mādhavācārya for selecting Parāśara-śmṛti for comment is that Parāśara’s work was the most
resplendent among smṛti (Smṛti-suṣamā-parāvaraḥ) and it was not commented on by any previous writer:

Parāsarasmṛtih pūrvair na vyākhyātā nibandhībhīḥ  
Mayāto Mādhavāryeṇa tad-vyākhyāyām prayatyate.  

As this smṛti does not treat of kāla, just as it did not treat of vyavahāra and rājadharma, Mādhava seems to have felt the need to write a separate treatise on kāla, as he could not fasten one on a verse in the original, as he did his disquisition on law and government. His action shows how he felt that the treatment of these topics, which were omitted by Parāśara, were needed to round off the nibandha.

10, II. 14-16. MIXTURE OF SPIRITUAL AND SECULAR PUNISHMENTS IN THE HINDU CRIMINAL CODE

The connection between sin and crime is shown by the view that they are identical, every crime being an offence against God and therefore a sin, and every sin, in primitive society at least, being an offence against the order established along with the state, and therefore punishable by the state. Sir Henry Maine pointed out in 1861 (Ancient Law, ed. Pollock, p. 381) that primitive jurisprudence knows both sins and torts. “Of the Teutonic codes, it is almost unnecessary to make this assertion, because those codes in the form in which we have received them, were compiled or recast by Christian legislators. But it is also true that non-Christian bodies of archaic law entail penal consequences on certain classes of acts, and on certain classes of omissions, as being violation of divine descriptions and commands.” The sinful nature of crimes was known to Europe, and is shown by the post-mortuary punishments for some classes of crime, like violent robbery, and suicide, by refusal of Christian burial. The Church’s refusal of absolution for certain offences is noteworthy,
The relation between spiritual and worldly punishments is explained at some length by J. Jolly, *Hindu Law and Custom*, pp. 250-270. It is worth studying. *Viṣṇuśṛti*, 33-42, gives an elaborate catalogue of sins (pātaka), which the king should punish. For an offence there is expiation in two ways, by undergoing punishment at the hands of the king, as *punishment purifies* (*Manuśṛti*, VIII, 318) and by performing the prescribed penances, except in cases for which no penance can be prescribed, owing to their moral gravity. Expulsion from society (tyāga) corresponds to excommunication, *i.e.* out-casting. "In all the śṛtis an elaborate admixture of spiritual and worldly punishments is in evidence." (*ib.* p. 263) Penance as well as punishment was prescribed for almost all crimes. (*ib.* pp. 267-268.) It should be noted that the power of the king as the wielder of the 'rod of punishment' and of the community in arranging for readmission after penance, meant a capacity, by refusal of penance or punishment, to make the culpability continue in future lives, *i.e.* after death. A careful calculation of the effects of a punishment of this combined nature in the case of apparently preferentially treated persons, like Brāhmaṇas, might show that what appears, in a sceptical age as immunity or special consideration, is in reality a relatively heavy load for the class of apparently exempted offenders.

13

11, II. 5-11 Brāhmaṇa Immunities

"Kauṭilya believes in the immunities of Brahmans in several matters, frees them generally from corporal punishment, only providing that they be branded, or imprisoned in cases of *serious* crime, exempts their property from escheat and from forced contributions, and even provides for their receiving substantial largesses from the King, in cases where an innocent man has been punished. In these, he is like Manu, though he does not go to the lengths to which Manu would proceed in giving such privileges and immunities. But, Kauṭilya would apparently not except even
Brahmans from the law against suicide, while, in cases of their committing treason he would have them drowned, and he would also allow the Brahman to be killed on the battlefield or in self-defence" (Ancient Indian Polity, pp. 33-34. In II, 1 of the Arthasastra fines are prescribed to those, who, though able to do so, do not support (a-bibhrataḥ saktimato) a number of named dependants like children, wife, parents, brothers under age, and sisters who are unmarried or have been widowed, but it is expressly stated that this injunction will not apply to claims for maintenance from these if they are out-castes or apostates (anyatra patitebhyah), but an exception to the saving clause is in favor of the mother (anyatra mātuh). In the Sukraniti (IV, i, ii. 194-92) occurs a long catalogue of persons whom the king is enjoined to punish, and among them are the atheist (nāstikaḥ) and the blasphemer (Deva-duṣakah).

Mahāmahopādhyāya R. Shama S'astri has misunderstood the rule, and states that the failure of the mother and the apostate to maintain their dependants is not punishable!

11, ii. 13-21. Alleged Secular Nature of Arthasastra

See pp. 38-40, Ancient Indian Polity, where many instances are cited to show the sacerdotalism of the Arthasastra of Kautilya, the most illustrious of its class, from the standpoint of Dharmasastra.

According to the Caranaavyuha of Saunaka, Arthasastra is an Upa-Veda of Atharva-veda. The Atharva Veda is recognised as one of the four Vedas, which form the fourteen sources (sthānāni) of Dharma in Yājñavalkya, I, 3. As Aparārka points out, if the number fourteen was not specified, and the Vedas were mentioned as Trayī, the Atharva-Veda would have lost its place as a source (p. 6: Caturdasa grahaṇādṛṣṭe Atharva-veda-samgraḥo na syāt.) The enumeration of another four, to make up eighteen "sources," by Viṣṇupurāṇa is dismissed by Aparārka with the observation that it catalogues the sources of vidyā not dharma.
In the four *Arthasastra* is named last. The *Arthasastra* is also included in *Itihāsa-purāṇa*, thus bringing it into the canon of Dharma. The authors of *Dharma-pradīpa* have erred in suggesting that *Arthasastra* is of an canonical authority, and that therefore the dictum 'Rāja kālasya kāraṇam' being an *Arthasastra* dictum (!) should not be accepted, (p. 15). The sentence occurs in a famous passage in the *Mahābhārata*, to which *Dharma-pradīpa* will not deny validity.

Manu denied the right to expound or study the *Dharmasastra* to non-Brāhmaṇas (II, 16-17):

\begin{verbatim}
Niṣekādi smasāṇānto mantraiḥ yasyodito vidhiḥ ||
Tasya vāstre adhikārosmīn jñeyo nānyasya karhicit ||
Viduṣā brāhmaṇeṇa idam adhyātavyam prayatnataḥ ||
Siṣyebhyasca pravaktavyam samyak nānyena kena ca it||
\end{verbatim}

The *Chāndogya Upaniṣad* (III, iv, 1-3,) equates *Itihāsa-Purāṇa* with the Atharvā-veda, but they are open (according to Śaṅkara, *Vedānta-sūtras*, XXXIV, S.B.E., p. 229,) to all four castes.

15

12, I, 7 ff. TOLERATION OF HERESY AND HETERODOXY

Three inscriptions of Asoka in the Barābar hill show that in the thirteenth and twentieth years of his reign he bestowed the rock-cut caves to the heretical Brāhmaṇa sect of the Ājīvakas. (Smith, *Asoka*, p. 144, ed. 1901). The Vahiyakā inscription of his grandson Daśaratha states that immediately after his accession he bestowed "on the venerable Ājīvakas" the cave "to be a dwelling place for them as long as the sun and the moon endure." (ib. p. 145).

The Ājīvakas are known only from their rivals the Jains and the Buddhists. Gosāla Mankaliputta, the contemporary of Mahāvīra and at one time his follower, is said to have led the Ājīvakas at the time. They seem to have had that color (Radhakrishna, *Indian Philosophy*, I, 1940, pp. 272 ff) and also the atomic hypothesis (ibid., II, 194n).
Manusmṛti (IV, 61) refers to pāśaṇḍi gāṇa (association of heretics). Yājñavalkya, II, 192 provides for the maintenance of the regulations of their guilds:

Sreṇi-naigama-pāśaṇḍi-gaṇānāmapyaṃ vidhiḥ
Bhedam caīśāṃ nṛpa rakṣet, pūrvavṛttim ca pālayan

Nārada and Kātyāyana repeat the rule (vide my Ancient Indian Economic Thought, 1934, p. 184 where their words are cited). Medhātithi (on Manu, IV, 30), Vijñānesvarā (II, 192) and Kullūka on Manu, (IV, 30) define the pāśaṇḍa as one who rejects the Veda, and so the Buddhists and Jains were also brought into the category. It is possible that the reference in Manu is to monasteries of Buddhists and Jains. The audience to petitioners precedes the inquiry by the king into their affairs. Kautilya (p. 39) advises the king to deal personally with the affairs of gods, heretics, learned Brāhmaṇas, cattle, sacred places, minors, the aged, the afflicted, the helpless and women, in the order of enumeration.

Tasmād devatāsvrama-pāśaṇḍa-srotriya - pāru - pūnyasthā-
nānāṁ bāla vṛddha-vyādhita-vyasanānāthināṁ strīnāṁ
ca krameṇa kāryāṇi pasyet.

For the king's studies see Ancient Indian Polity, p. 39, note 63.

13, ll. 4-9. DIFFERENTIATION BETWEEN SECULAR AND RELIGIOUS LAW

The Arthasastra distinguishes the courts as Dharmaśṭhīya and Kantakasodhana, and the third and fourth books of the Kauṭilya are devoted to them. In regard to the treatment of subjects, there is little difference between Kauṭilya and the smṛtis, and it may be therefore assumed that he followed only the Dharmaśāstra. The differences between him and Yājñavalkya are for instance incon siderable. The Dharmaśṭhīya courts dealt not only with the civil matters included in the usual "eighteen titles of law," but also sūhasam (violent crime) and assault (danda-pāruṇya). Theft
had a great extension given to it by construction, so as to include abduction, on the principle that it is the theft of a human being, \textit{(Manu, VIII, 317)} cheating in trade, \textit{(Yājñavalkya, II, 257)} substitution of an article in deposit \textit{(ib. 246-247)}, and combinations of traders to raise prices (held again to be deceitful, \textit{ib. 249-250}). The \textit{Kantakasodhana} courts dealt with such civil matters as the affairs of artisans, labourers and merchants, and offences against police regulations such as those relating to postitutes. Capital punishment cases came under them, as did all police and magisterial enquiries and investigations. It is clear that roughly the difference was that between the courts of a judge and a magistrate in British India today. The differentiation was not made on the ground of secularity or religion, \textit{(vide, Jayaswal, Manu and Yājñavalkya, pp. 116-7)} and V. R. Ramachandra Dikshiter, \textit{Mauryan Polity} pp. 160-164.

Not only therefore is there no clear distinction between religious and secular law, which in the circumstances we can not expect, but the lines of demarcation between crime and civil wrong is not clear. In most crimes, the offender has not only to undergo punishment by fine etc. but he incurs the liability to pay to the injured party due compensation. The underlying idea is that they are not public offences but private injuries. Offences against the spirit of religion take the place of grave crimes against the state. This is the ground of the serious view taken of adultery and offences against women. The original punishment for adultery had been death, but Kauṭilya reduced it to imprisonment and fine \textit{(op. cit., p. 228)}. The rule in \textit{Sukraniti} making adultery and offences against women crimes in which the king prosecutes \textit{(IV, v, 83 ff.)} is the result of viewing them as grave moral offences, likely to lead to varna-samkara. It would appear superficially that, \textit{(as suggested by Mr. C. S'ankararāma S'āstri, Fictions in the Hindu Law Texts, 1926, p. 35,)} contrary to Sir Henry Maine's generalisation, criminal law in India was the creature of civil law. The correct view is to regard both as the creatures of Dharma,
17

13, II. 9-11. DIVINITY OF PUNISHMENT OR DAṆḌA

This is indicated in Manusmṛti, VII, 14 and Yājñavalkya, I, 353.

Taysārthe sarva-bhūtānāṁ goptārāṁ dharmamātmaḥ
dharmatejomayaṁ Daṇḍamasṛjat pūrvam Isvāraḥ
and Dharmo hi Daṇḍa-rūpeṇa Brahmaṇā nirmitaḥ purā

18

13, II. 13-14. VEDIC BASIS OF HINDU LAW

The assumption that not only all law and usage but all knowledge is enshrined in the Veda, leads to the conclusions that (1) there should be internal consistency in law, (2) the differences which appear are resolvable by enquiry, and (3) for every rule of law a vedic basis can be discovered. As the Veda is eternal, omniscient and infallible, and the Vedas have no limit (anantā vai vedāḥ), it should be possible to say of them what was claimed for the Mahābhārata (I, lxii, 26) viz., 'what is not here is nowhere else' (yan neḥāsti na kutracit), 'The Mīmāṁsā school held 'the Vedas entirely and exclusively concern themselves with Dharma,' Dharma being defined by Jaimini in his second aphorism as 'that which is signified by a direction and leads to a benefit' (Codanālaksṇo artho dharmak). When one is unable to find Vedic authority for a rule, he would assume that the sruti had passed out of view (utsanna, lost) or is hidden (pracchanna), and the sruti text will come to view if diligently searched for. A bhāṣyakāra's skill and learning are shown by his discovery of the texts which refer to the matters dealt with. Medhātithi and Viśvarūpa display the capacity, and particularly the latter, of whose work a modern writer has remarked that it "seems to have been written with the set purpose of establishing the Vedic origin of the Smṛtis." (Fictions in Hindu Law Texts, p. 79).

"When it is said that the Vedas are the source of Dharma, it is not meant that the Vedas lay down precepts or injunctions
(vidhi) on points of Hindu Law, as later works like Manusmṛti or Yājñavalkyasmṛti do. All that is meant is that the Vedas contain incidental references to matters that are of interest to students of Hindu Law, that they take certain facts as well-known and make use of them for various purposes. The information that is contained in the Vedas on matters of Hindu Law is in the nature of what are known as arthavādās in the Mīmāṁsā system. As arthavādās form a syntactical unity with the positive injunctions (vidhis) laid down in the Vedas, they are authoritative. They indicate with sufficient clearness what the state of things then was. If one were to collect together the scattered Vedic texts on such topics of Hindu Law as marriage, adoption, joint family, partition, inheritance, stridhana, he would find that the information is of considerable importance and is not quite so meagre as one is apt to suppose. The conclusion will irresistibly force itself upon us that the foundations of the Hindu Law are deeply laid in the Vedic age itself, that the peculiar characteristics that distinguish the Hindu Law of modern times from other systems of law had their germ in the Vedic period and that later Hindu jurists were not wrong when they relied upon the Veda as the first source of Dharma."

Mr. P. V. Kane, who has made the above observations, has collected a number of illustrations in justification of the conclusions in a valuable paper on the Vedic Basis of Hindu Law, published in 1939.

13, II. 14-15. DOCTRINE OF OPTION (Vikalpa)

The option or vikalpa can only be when there is a conflict between two vedic passages, and not when a smṛti rule runs against a sruti, because the latter over-rides the former. But it is open to argue that with due diligence a sruti-pramāṇa may be discovered for the smṛti rule in question. To assume otherwise will lead to the summary and easy rejection of many smṛti rules on the ground of their not being traced to sruti. This is the
orthodox Mīmāṃsāka standpoint, which further is that action in such a case should be suspended pending the discovery (Fictions in Hindu Law Texts, p. 116).

20

13, ii. 16-27. Conflicts of Law Not Real

Strict interpretation according to Mīmāṃsā will hold all conflict to be apparent only and not real, because of the canonical authority claimed for both Arthasastra and Dharmasastra. But such a possibility is envisaged in the smṛti texts on conflicts of laws. e.g. Yājñavalkya’s dictum (II, 21):

Arthasastra-tu balavad dharmasastram iti sthitih

The same principle is enunciated by Nāradasmṛti (I, 99):

Yatra vipratipattis-syāt dharmasastrā.rihasāstrayoh
Arthasastra-śroktamutsṛṣṭya dharmasastraśroktamācaret

The doctrine of infallibility of the common source of both śāstras might justify the conclusion that sruti cannot be opposed to equity and logic (nyāya) and the position taken by Kautilya in the following passage:

Śāstram vipratipadyeta dharma-nyāyena kenacit
Nyāyas-tatra pramāṇam syāt tatra pātho hi nasyati

See Ancient Indian Polity, pp. 164-172.

The facile assumption that Arthasastra is an inferior authority and should therefore be overlooked when it runs counter to Dharmasastra is repugnant to the orthodox tradition. Accordingly, in explaining the dictum of Yājñavalkya (II, 21) the Mitakṣarā maintains that the word “arthasastra” in the rule is not to well-known writers like Usānas (Sukra) but to the arthasastra contained in Dharmasastra works. If there is a conflict within the Dharmasastra between the two classes of rules, the Dharmā rule should
prevail. He illustrates it by two cases. (1) Manu (VIII, 350-351) enjoins the summary killing of an átatāyin (manifest assassin, and his like) even if he be a learned Brāhmaṇa. To act on the direction will be to go against a rule of Manu (XI, 89) that there is no explanation for the deliberate killing of a Brāhmaṇa. The former is an artha text, which should give way to the latter, a Dhārma rule. The reconciliation comes from taking the reference to the learned Brāhmaṇa átatāyin as a rhetorical statement emphasising the force of the injunction on the treatment of assassins, patent and constructive, and applying the dictum to cases other than those of Brāhmaṇas. (2) Yājñavalkya, I, 352 gives a rule of prudence, viz. that the making of a friend is better than the acquisition of land and wealth, but he has also the high moral rule (II, 1) that free from anger and covetousness the judge should decide in accordance with Dharmas'āstra. If a wealthy suitor is to be unjustly favored, the first rule may be observed, but it should not, being an artha precept opposed to a dharma rule.

Vijñānesvara in discussing the texts dealing with gains of science, etc. (II, 118-119), which, if acquired without detriment to ancestral property (pitr-dravyāvirodhena), belong to the acquirer and cannot be claimed by co-parceners, states that the section of the code is full of texts based on worldly experience:

Lokasiddhasya anuvādakānyeva prāyena asmin prakaraṇe vacanāni.

21

14, l. 10. SCHOOLS OF ARTHAS'ĀSTRA

There was no appreciable development of the subject after Kautilya. He cites seventeen authorities. See Ancient Indian Polity, p. 50. Among them are writers with names which became famous in sāmīti literature, like Kātyāyana, Nārada, Parāśara and Bṛhaspati. It is not improbable that the same writers could have written on both sāstras.
14, I. 11. APPLICATION OF MIMĀMSĀ TO DHARMAŚĀTRA AND ARTHAS'ĀSTRA

Bhaṭṭasvāmin’s commentary on the Kauṭilīya of which a fragment has been edited (Jayaswal and Banerji-Sastri, Patna. 1926) shows familiarity with Mīmāṃsā methods of interpretation. Saṅkarārya’s commentary on Kāmandakīya Nītisāra (ed. Gaṇapati S’āstri, 1912) shows similar training. But they are inferior to great commentators like Medhātithi, Viśvarūpa and Vijñānes’vara, and even to men like Nandapaṇḍita.

14, II. 17-18. ARTHAS'ĀSTRA CORE OF SMṛTIS

There is a good deal of Arthas'āstra in Manu, and even more of it in Yājñavalkya, with whose code Jolly made a detailed comparison of the Kauṭilīya (Z. D. M. G., 1913, pp. 43-95) collecting in an appendix parallels from the smṛtis to over 200 passages of the Arthas'āstra. Kautilya’s doctrines are not merely more like those of Yājñavalkya than those of any other smṛti, but the points of verbal identity are greater between the two. Jolly held that Kautilya was the borrower. I have shown grounds for thinking otherwise. See Ancient Indian Polity, pp. 34-37.

14, II. 14-16. BRAHMANICAL REACTION FROM THE FIRST CENTURY A.D. FAVOURS DHARMAŚĀTRA

In an epoch of Vedic revival and sacrifices, the Mīmāṃsaka finds the attraction of the smṛti and the Kalpasūtras greater than that of the Arthas'āstra. He specializes in Vedic exegesis (e.g. S’abarasvāmin, Kumārila). He states emphatically that as “the Veda is the only source of Dharma, so Dharma is the only topic dealt with by the Veda, (Sankararama S’āstri, op. cit., p. 52). Bhāṣya, Samgraha, and Nibandha forms of composition rapidly progress with means supplied by Mīmāṃsā for subtle and exact analysis and interpretation. The comparative study of smṛtis gains ground.
14, ll. 20-22. Kāmandakas' Nītisāra

Kāmandaka attempts to write his book in Kāvyā style. In fact, his commentator, Sānkaraṛya regarded it as a maha-kāvyā and made his comments on the assumption. Not only does Kāmandaka use the ordinary anusṭup metre, but he tries more ornate metres also. Though he begins with a panegyric on Viṣṇu-gupta (i.e. Kauṭilya, his book is not a summary of the Kauṭilīya, of which not over-much use is made. Kāmandaka apparently intended his work to be an artha-saṁhitā, just as the Manusmṛti is a dharma-saṁhitā. The Nītisāra is divided into sārgas or cantos like a classical poem. It begins with the praise of the king, and was apparently not familiar with other forms of Government:

Rājāśya jagato hetur vṛddher-vṛdhābhisammataḥ
Nayanānandajananaḥ sasānka iva toyadheḥ

The second line, which states that the king delights the eye as the moon gladdens the ocean, appears to contain a half-veiled reference to Candragupta II, the son and successor of Samudragupta. Sasānka is Candra, and Toyadhi is Samudra.

The Nītisāra is generally supposed to be a work of the Gupta epoch. Formichi (cited in Sarkar's Hindu Positivism, p. 385) would assign its composition to the third or fourth century A. D. He regards it as anterior to the Bhāt-saṁhitā of Varāhamihira (sixth century). Formichi's estimate will fit in with my suggestion that the Nītisāra is a work of the time of Candragupta II.

Kāmandaka's simile will recall to one's mind Kālidāsa's verse (Raghuvaṁśa, III, 41).

Nivāṭapadmaṁśitaṁ cakṣurṣa nṛpasya kāntah
piṁataḥ sutānanam
Mahodadheḥ pūrā ivendu-darṣanāt guruk prabhāsah
prabhakṣuva nātmānaṁ

See below the note to p. 56, ll. 29-30.
17, II. 8-9. SūTRA FORM OF COMPOSITION

Dr. T. W. Rhys Davids pointed out in the introduction to his translation of the Dialogues of the Buddha (I, pp. xx-xxiii) that the chief characteristic of the sūtra was that it was not intended to be read but to be memorised. See also, E. J. Rapson, Ancient India, 1914, pp. 76-77 and my Ancient Indian Polity, pp. 19-20. The use of the sūtra form was dictated by considerations of economy, oral transmission, and secrecy.

17, II. 21-25. FORMAL PUBLIC RECITATIONS OF SŪTRAS

The Buddhists having adopted the sūtra form for their sacred canon were obliged, like the Brahmanas when they devised means for the accurate preservation and transmission of the Veda, to resort to public recitations in their convocations of the suttas of the Tripiṭaka. The permutations of syllables in different forms (pāṭha) by which the Vedas were conserved, were not adopted by the Buddhists as their suttas would not lend themselves, by lack of accentuation, to such devices. A sūtra work will be often nothing more than a list of headings. The late Mahāmahopādhyāya T. Gaṇapati Śāstri suggested that in the Kauṭilyya the sūtras were all in the adhikaraṇa-samuddesa in the first chapter, and that the rest of the book was Kauṭilya’s own commentary on them, as he had declared that in order to avoid in the case of his work the errors of commentators he had himself composed both the sūtra and the commentary.

18, II. 7-10. LOST SMṚTI-BHĀṢYAS

Vide, Kane, op. cit., p. 724 (Yajñasvāmin’s bhāṣya on Vājistha- Dharmasūtra mentioned by Govindasvāmi in his commentary on
Bodhayana-Dharmasutra, II, 2, 51); p. 248 and p. 680 on Asahinya's bhastyas on Gautama and Manu; the loss of the other commentaries is inferential.

29

18, II, 10-15. DISTANCE OF TIME BETWEEN SMRTIS AND COMMENTARIES

Karka, the commentator on the sutras of Paraskara is a writer of about A.D. 1000, while his text belongs to the sutra age. Maskarin, the commentator of Gautamadharma sutra (one of the oldest) belongs probably to the same period as Karka. Haradatta who wrote commentaries on the sutras of Apastamba and the Ghyasutra of Ashalayana and the Dharmasutra of Gautama, must have been separated by over twelve centuries atleast from his originals.

30

19, II, 5-10. KAUTILYA'S OWN BHASYA ON THE ARTHASAstra

See Note 27 supra. The search for a lost bhasty of Kautilya is unnecessary in view of Dr. Ganapati Sastri's convincing explanation. The declaration of Kautilya occurs at the end of his work: (p. 429).

Drstv vipratipattim bahudha stresu bhasyakaraam t
Svayameva Visnugptascakara sutram ca bhasyam ca

Even if this verse is not Kautilya's it will have to be accepted as representing an authentic tradition.

31

20, II, 1-5. MADHAVA'S TREATMENT OF VYAVAHARA AND RAJADHARMA

This portion of his commentary stands out of the main bhasty like an appendix, which it is. It is virtually a separate nibandha. A similar South Indian nibandha on Vyavahara, not tacked on to
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like Mādhava’s, is Varadarāja’s Vyavahāranirṇaya, which I am about to publish.

32

20, ii. 6-7. RECENT BHĀSYAS AND NIBHANDHAS

Mahārāja Sarabhoji of Tanjore (A.D. 1798-1833), who had left himself no kingdom to govern, compiled a digest on civil law named Smṛtisūra-samuccaya. The second Maharāja of Kāśmir and Jammu, Ranbir Singh (A.D. 1857-1885) commissioned a nibandha of which the Prāyascitta-kāṇḍa was completed and published. It contains over 40,000 granthas. Ācārendu of Nārāyaṇa (printed by the Ānandāśītama) was written in A.D. 1838 (Kane, op. cit., p. 514).

The famous Bālambhāṭṭiya on the Mitakṣara was composed by Bālakṛṣṇa alias Bālambhāṭṭa Pāyaguṇḍe at Benares towards the end of the eighteenth century. The date of the writer is given by the late Babu Govinda Das as 1740-1830. He was known to Colebrooke. Keśavadāsa composed between 1770 and 1830 the digest Ahalyā-kāmadheu, named so after Ahalyā Bai Holkar. Warren Hastings, Sir William Jones and H. T. Colebrooke were responsible for getting written the Vivādārṇavasetu, (1773), Vivādasārṇārvada (1789) and Vivāda-bhāṅgārvada (before 1796) by a board of pandits, Sarvōraśtrman Trivedi and Jagannātha Tarkapāścāyana respectively.

33

20, ii, 26-29, NON-INCLUSION OF YĀJṆAVALKYASMṚTI IN “THE SACRED BOOKS OF THE EAST” SERIES

A translation of Yājñavalkyasmṛti was advertised in the series in 1876 (p. xlvi of Vol. I) and it is not clear why it was dropped. Max Müller’s Life and Autobiography throw no light on the cause of the omission. Perhaps it was dropped owing to the publication of V. N. Mandlik’s translation in 1880.
20, ii. 28-32. ATTITUDE OF INDIAN COURTS TO DHARMAS'ASTRA

A criticism of my observation that revived interest in the sources of Hindu law is due to Indian judges and lawyers possessed of a knowledge of Sanskrit is that Indian judges have been often more anxious to ignore the sources and change the law than European judges. There is an element of truth in the criticism. Hindu law is parting more and more from the traditional law through judicial interpretation chiefly; and such interpretations are due as often to the importation of exotic notions into Hindu jurisprudence as to the wish to bring law into conformity with the "modern conscience." Sir Henry Maine was never tired of attacking European judges in India as being more scrupulous about the religion and the religious usages of Hindus than the Hindus were. The following is a sample of his attack. "It has been said by an eminent Indian lawyer that, when the judges of the Sudder Courts were first set to administer native law, they appear to have felt as if they had got into fairyland, so strange and grotesque were the legal principles on which they were called upon to act. But after a while they were accustomed to the new region, and began to behave themselves as if all were real and substantial. As a matter of fact they acted as if they believed in it more than did the native inhabitants." (Village Communities, p. 45) J. H. Nelson, like Maine, attacked the substitution by the courts of smṛti law for customary law, which alone should be upheld for castes other Brāhmaṇa (see Nelson's View of the Hindoo Law and his Scientific Study of the Hindu Law, 1881).

21, ii. 1-3. COLEBROOKE'S STUDY OF MIMĀMAŚA

See Max Mueller, Chips from a German Workshop, pp. 377-433, containing his review (1872) of the life of Colebrooke. Colebrooke is said to have preferred to remain untroubled as
Judge at Mirzapur, owing to its nearness to Benares from which he was able to obtain both pandits to guide his studies and manuscripts for study. His study of \textit{Mīmāṃsa} probably began even earlier as he had recognised the necessity for a mastery of it for understanding the texts of Hindu law. "The disquisitions of \textit{Mīmāṃsa}", he pointed out years later in his paper on the subject (\textit{Miscellaneous Essays}, Madras reprint, Vol. I, pp. 295-324), "bear a certain resemblance to juridical questions; and, in fact, the Hindu law being blended with the religion of the people, the same modes of reasoning are applicable, and are applied to the one as to the other. The logic of \textit{Mīmāṃsa} is the logic of law; the rule of interpretation of civil and religious ordinances. Each case is examined and determined upon general principles; and from the cases decided the principles may be collected. A well-ordered arrangement of them would constitute the philosophy of law; and this is, in truth, what has been attempted in the \textit{Mīmāṃsa}." (op. cit., p. 317).

21, \textit{II.} 16-17. \textbf{Allegation of Priestly Influence on Hindu Law}

Sir Henry Maine regarded the Hindu law of \textit{stridhana} as having been tampered with by Brāhmaṇa jurists (vide, \textit{Early History of Institutions}, pp. 321-36). He concludes: "These inquiries, pushed much further, have shown that the Hindu laws, religious and civil, have for centuries been undergoing transmutation, development, and, in some points, depravation at the hands of successive Brahmanical expositors, and that no rules have been so uniformly changed—as we should say for the worse—as those which affect the legal position of women."

21, \textit{II.} 22-24. \textbf{S'abara's Modernity in Criticism}

In commenting on Baudhāyana’s famous prescription of celibacy for forty years (\textit{brahmacarya}) (II,1), S'abara suggests that
the rule was possibly introduced into Baudhāyana’s *sūtra* by an impotent person who wished to conceal his defect. He remarks that the *smṛti* text ‘the food of the sacrificer who has bought *soma* deserves to be eaten (*kṛtarājako bhojyānnaḥ*) as due to one in starvation. A *smṛti* rule declaring that the adhvaryu in entitled to the cloth used in the *Vaisarjana homa* is characterised by Śabara as due to priestly avarice. Again he rejected some *smṛtis* and accepted others, anticipating the modern method.

(See *Fictions in Hindu Law Texts*, pp. 100-101)

38

21, II. 23-24. KAUTILYA AND HIS GURU

Kautilya cites the views of his teacher, to whom he shows reverence in Hindu style by referring to him not by name but by the word *Acārya* in the honorific plural, as many as thirty-nine times, and each citation is for the purpose of dissenting from the teacher’s views. The references are collected on pp, 177-179 of Dr. Shama Sastri’s *Index Verborum to the Arthasastra*.

39

23, *Para* 1. CRITICISED VIEWS ON THE NATURE OF DHARMAŚĀSTRA

(1) J. J. Meyer (*Altindischen Rechts-schriften*, Leipzig, 1927, pp. 86-88) holds that *smṛti* literature, does not offer anything like a development of secular law, but represents the slow incorporation of secular law, which had its birth and development in a different *milieu* into Brahmancial works. He is apparently thinking of the older *sūtras* with an insignificant legal content, for which the explanation is that the law proper was preserved only in recollection and was unwritten. The procedure in judicial trials emphasises the functions of the *sahāyas*, or assessors, whose selection according to different *vedic* *sākhas*, implies the utilisation of divergent types of remembered rules. The *sahāyas* really decided the suit, the
presiding judge merely conducting the trial and the king delivering and carrying out the judgment.

Meyer also holds that smṛtis merely represent a literature of magic, and objects to their being described as law-books. But he overlooks the fact that what society enforces is law, and that there is no evidence that “secular” law developed first through Arthasāstra and then crept into smṛti.

For Benoy Kumar Sarkar’s views that Arthasāstra is “public” while Dharmasāstra is “private” law (which overlooks the close connection in India between state and family, and the duty of the state to correct and punish irregularities in family life) and that Arthasāstra is real-politik, while Dharmasāstra represents only pious wishes (an old view of Maine), see his Hindu Positivism, and particularly, pp. 203 and 251. For his conception of Dharmasāstra as a ‘hotch-patch of materials emanating from different sources and reflecting life and history’, see ib. p. 197. Even in modern polity and law there is an element of idealism. It was much more so in ancient institutions. Breloer’s view that Arthasāstra is “planned economy,” apparently suggests a human planner. In a wider sense Dharma is planned economy but the author is held to be the Supreme Being.

24, ll. 9-16. Jayaswal’s Views of the Difference between Arthasāstra, Dharmasāstra and Rājanīti

They are expressed in his Manu and Yājñavalkya. To him artha-sāstra and daṇḍanīti are identical and constitute “secular” law (pp. 5, 7, 9, 16, 25, 26, 41, 42, 50, 84, 93, 263, and 273). He thinks that artha law was known as vyavahāra in the time of Gautama (p. 16) and that it is not the same as dharma law (p. 17). The distinction rests on a hypothesis of a differentiation of secular and religious sides in Hindu life for which there is no warrant in the Kauṭītya. His statements rest on no secure authority. e.g., ‘Dharma is penance law’ (p. 13); “vyavahāra
is municipal law and secular law” (p. 13); and “rājantī is constitutional law” (p. 255).

B. K. Sarkar has a glimpse of the truth when he states: “In a sense, every student of Dharmasāstra was a student of Rājadharma, “and on the other hand every student of Rājdharma, Nitisāstra Daṇḍantī or Arthasāstra was a student of Dharma-sāstra from the earliest history.” (op. cit. p. 514).

24, ll. 16-20. THE WAY OF THE MĀHĀJANA THE PATH OF DHARMA

The famous sloka on the subject occurs in the Yakṣa-prasṇa (Mahābhārata, Vanaparva, ch. 314, sl. 119, Kumbakonam edn.).

It runs thus:

\[ \text{Tarko apratiṣṭhah srutayo vibhinnā} \\
\text{Naiko munir yasya matam pramāṇam} \\
\text{Dharmasya tatvam nihitam guhāyām} \\
\text{Mahājāno yena gataḥ sa paṁthāḥ} \]

Māhājana does not mean, as it has sometimes been interpreted in recent times, the leader of a popular assembly. It stands for sīṣṭa or sādhu, whose ācāra (usage) is one of the recognised sources of Dharma. (Manu, II, 6; Yājñavalkya, I, 7.)

24-25. CONNOTATION OF DHARMA

The discussion of what constitutes Dharma in Vīramitrodaya Parībhāṣāprakāṣa (pp. 26-32) is illustrative. The Kalpataru also begins with such a discussion.

Āpastamba (I, 20, 6) says:

\[ \text{Na dharmādharmau carata ‘Āvām sva’ iti; na deva-gan dharvā na pitarah ācakṣate ‘Ayam dharmo, ayam adharma’ iti.} \]
"Dharma and adharma do not wander about saying 'Here we are'; nor do the gods nor the Manes nor the Gandharvas declare 'this is Dharma, this is A-dharma.'

The Naiyāyika definition of Dharma is that it is a quality of the Soul (Ātmagunau dharmādharmau). It is invisible, and has to be inferred. Dharma is what is done by enjoined action, and is a quality of men. (Vihatakriyaya sādhyo dharmāḥ pemso guṇo mataḥ). The view of the Mīmāṃsā is contained in Jaimini's definition "that which is signified by a command and leads to a benefit is termed Dharma." (Codanālakṣaṇārtho dharmāḥ). According to Kumārila, both the act enjoined by and the material connected with it come within the scope of Dharma. The Naiyāyikas hold that Dharma carries with it the idea that an invisible (ardṣṭa) effect known as apūrva attaches to the soul from the performance of a religious act, and that it lasts until the benefit contemplated by the act is attained.

The ways in which the different schools elaborated the idea may be gathered from their summary in Mahāmahopādhyāya Bhimācārya Jhālkikar's Nyāyakosā, 3rd edn., 1928, pp. 386-388.

See Dr. Ganaganāth Jha's introduction to his translation of the Sloka-vārtika of Kumārila (Bibliotheca Indica, 1900-1908) pp. v-xviii.

43

26, first para. Classifications of Dharma

The classification in the text follows the Mitākṣara, on Yājñavalkya, I, 1. See my Ancient Indian Polity, p. 89.

44

26, ll. 14-16. Dharma Comprehends all Knowledge

There are two fundamental hypotheses, viz., that the Veda is the source of all knowledge and that its draws it authority from itself (svataḥ pramāṇam). They relieve the Mīmāṃsaka of the
onus of proving the doctrine and lay upon the opponent (पुर्वापक्ष) the burden of disproving it, if he could. The self-evident nature of the Veda implies that it is valid by itself. But as knowledge springs from the Veda alone, all knowledge is valid. As Dharma is the only subject of sruti, i.e., the Veda, Dharma embraces all knowledge. Vijñānesvara in commenting on Yājñavalkya, II, 21, says.

Dharmasāstrāntargatameva rājaniti-lakṣāṇam arthāsūstram iha vivakṣitam.

26, II. 19-25. THE VIDYĀSTHĀNAS OR DHARMASTHĀNAS

Yājñavalkya (I, 3) reckons them as fourteen, viz., the four Vedas, the six Vedāngas, and Purāṇa, Nyāya, Mīmāṃsā and Dharmaśāstra. The Viṣṇupurāṇa (as cited by Aparārka) adds four to the dharma-vidyāḥ, viz., Ayurveda, Dhanurveda, Gandharvaveda, and Arthasāstra. Aparārka holds that these fourteen or eighteen constitute the sources of vidyā (knowledge) and not of dharma. The distinction which he makes between the two is illogical, for, knowledge and dharma are equated. The Vīramitrodāya has sections named Cikitsā-prakāśa, Jyotiṣaprakāśa and Lakṣaṇaprakāśa (the last has been printed) and the Toḍarānanda has a Jyautiṣa-saukhya.

27. THE KṚTYA-KALPATARU


I have discovered what purport to be two of the lost books of the Kalpataru. They deal with vṛata and pūjā. A fragment which relates prāyasccitta has also been found.
28, II. 28-31. OMISSION OF Rājadharma AND Vyavahāra
IN DIGESTS

The Śmṛticandrikā, which Mr. Kane regards as the most complete of the earlier South Indian digests, (op. cit., p. 343) deals only with Samskāra, Āhnikā, Vyavahāra, Śrāddha, Āsauca, and Prāyascittā. The Smṛti-muktāphala of Vaidyanātha Dikṣita has sections on Varṇāsvrama, Āhnikā, Āsauca, Śrāddha, Suddhi Kāla, and Prāyascittā. Mr. Kane (p. 671) mentions a Vyavahāra section of it, and Mr. J. R. Gharpure of Poona has personally mentioned to me that he has seen a copy of it, but it seems unknown in South India. The date c. 1600 is suggested by Mr. Kane for Vaidyanātha Dikṣita.

29, II. 2-5. SECTIONS OMITTED IN THE RATNĀKARA
BY CAṆḌEŚVARA

They are those dealing with pratiṣṭhā, prāyascittā, śuṇti and mokṣa, for all of which he had originals in the Kalpataru, on which he has built his own nibandha.

29-30. THE HYPOTHESIS OF MĪMĀ_MSBĀ

See Sankararāma S'āstri's Fictions in Hindu Law Texts, passim, and Medhātithi's long comment on Manu Śmṛti, II, 6.

30-31. CONSIDERATION OF APPARENT CONFLICTS OF
AUTHORITIES

In resolving such apparent conflicts (the reality of such conflicts will not be accepted) a number of principles are utilised. "A Vedic basis is presumed only in those cases where an invisible
effect or an effect not accountable to any visible, tangible cause is
deemed to be produced. Some *smṛtis* are *dṛṣṭārtha*, that is, are
intended to produce a visible result; and, some are *adṛṣṭārtha*,
that is, are intended to produce an invisible result. The ultimate
objects aimed at by the former class of *smṛtis* are *Artha* and
*Kāma*, that is, wealth and pleasure; of the latter, are *Dharma* and
*Mokṣa*, that is, virtue and salvation. Even in the case of *adṛṣṭārtha
*smṛtis*, where a particular text is obviously due to interested causes
or motives like avarice, ignorance etc., it is not necessary to resume
a Vedic origin for it." (Fictions in Hindu Law Texts, p. 105).
Or, the conflict may be due to incorrect exegesis or failure to
reject a manifest interpolation into the *smṛti* from which the
controverted passage is taken.

The distinction between *dṛṣṭārtha* and *adṛṣṭārtha* is also
sometimes treated as a distinction between *nyāyamūla* and *vacana-
mūla*, and *lokasiddha* and *vedasiddha smṛtis*.

Again, in considering contradictions arising from conflicting
usage, a principle to be borne in mind is that the *acāra* of a good
man (*sādhuḥ*) is not binding if he disbelieves in the *Veda*. This
rules out Buddhist and Jaina customs unless they have indepen-
dent Vedic or *smṛti* authority. Precedents of conduct even in
*sūruti* are valid only if such conduct was clearly due to a conscious
sense of rectitude, *i.e.*, of doing a meritorious act, in the performer
(op. cit., p. 138).

The *Bhaviṣya-pūrāṇa*, cited by the *Vitramitrodaya* (Paribh.,
p. 19) classifies *smṛtis* as under:

\[
\begin{align*}
\text{Dṛṣṭārtha tu smṛtih kācit adṛṣṭārtha tathāparā} \mid \\
\text{Dṛṣṭādṛṣṭārtharūpānyā nyāyamūlā tathāparā} \sqcup \\
\text{Anuvādasmṛṭistvaanyā sīṭhair-dṛṣṭā tu pāncamī} \mid \\
\text{Sarvā etā Vadamūlā dṛṣṭārthā pariḥṭyā tu} \sqcup \\
\end{align*}
\]

The *Dṛṣṭārthasmṛti* is said to deal with the following topics,
according to the same *Pūrāṇa*:

\[
\begin{align*}
\text{Śaḍgūṇasya pṛayojyasya pṛayogāḥ kāryagauravat} \mid \\
\text{Sāmāḍhinām uḍāyūnām yogo-vyāsasamāsataḥ} \sqcup \\
\end{align*}
\]
The Arthasastra under this classification is a āryastātha śruti, and has no Vedic source (a-vedamūla). The śrutis with a Vedic basis are classifiable as (1) other-worldly, (2) worldly as well as other-worldly, (3) ratiocinative and (4) digests.

51

31, ll. 14-20. Alleged Rule of Kālikā-purāṇa on the Adoption of a Boy who Has Had Samskāras

The adoption of a boy, who has undergone his upanayana in his father’s house, is prohibited by Kamalākara, on the authority of a passage of the Kālikā-purāṇa, which is thus translated by V. N. Mandlik, (Trn. of Vyavahāramayūkha, p. 58):

“A son whose ceremonies up to tonsure have been performed with the gotra or family name of his father, does not attain the sonship of another man.”

Nilakantha (Vyavahāramayūkha, ed. Kane, p. 114) rejects the passage on the ground that in two or three copies of the Kālikā-purāṇa it is not to be seen:

Idam tu vaco na tathā visrambhaṇīyaṃ, dvi-trī-Kālikā-purāṇa-pustakesu adarsan āt.

52

31, ll. 30-31. Judges and Assessors to be Trained Lawyers

A trained Judge replaces the King in trials (Manu, VIII, 9, 11) and he judges along with three assessors (sabhyāḥ). The same procedure is laid down by Yājñavalkya (II, 3):

Apasyatā kāryavasāt vyavahārān niṣpeṇa tu  
Sabhyāḥ saha niyoktavyo brāhmaṇaḥ sarvadharmavit

Nārada indicates the manner in which the judge should proceed to discharge their duty:

Dharmasāstram puraskṛtya prādvivākamate sthitah  
Samāhitamatiḥ pasyet vyavahārān anukramat
The duties of the assessors are laid down by Manu (VIII, 10-19).

The sabhyas had to be of an odd number (three according to Kautilya and Manu and any number up to seven, so long as it was odd) for the sake of getting a decision in case of difference of opinion, as pointed out by Mitramis'ra:

Samkhya-vaisamyam tu, bhūyo alpavi-rodhe bhūyasām syāt iti (Vitramitrodaya, p. 35).

The judge must abide by the finding of the assessors, according to Brhaspati (Trn. Jolly, I, 24).

32. Pariṣads

In determining doubtful points of law, the rule to follow was the opinion of those conversant with law and usage (Dharmajña-samayāḥ pramāṇam), Manu, XII, 108, laid down that in cases in which the law was not known (anājñateṣu, accepting the text of the Kalpataru instead of 'anāmnāteṣu' in the printed editions, the law should unhesitatingly be taken to be what the cultured and holy men (s'istāḥ) lay down:

Anājñateṣu tu dharmesu kathamsyāt iti cet-bhavet ¹
Yam s'istā brāhmaṇā brūyuḥ sa dharmas-syāt aśaṅkitaḥ ²

According to Jayaswal (Manu and Yājñavalkya, p. 78) the Samiti or pariṣad was the body which settled disputed law in Vedic times. The name was kept by later ad hoc committees with reduced numbers, and they became also bodies of experts. Manu lays down that if a pariṣad cannot be constituted the opinion of even one 'excellent brāhmaṇa' will suffice.

Who are the men qualified to sit on a pariṣad? The answer is that they should be sīstās (who are described as akāmātmā), they should be sympathetic to all living beings (samāḥ sarvabhūtesu), and learned in the Vedas (bahuṣrutāḥ), they should accept the validity of both Veda and perception (sruti-pratyakṣahetavah) and they should be skilled in logical inference (uha-apoha-kusalāh),
practical-minded (desa-kala-vibhāgaṇāḥ) full of resource (yuktimantāḥ) and of blameless character (sadācarāḥ).

In constituting a pariṣad certain considerations were to be borne in mind: representation of all śākhas of the Vedas, and in cases of trial requiring special knowledge of arms etc. the inclusion of experts in such branches of knowledge. The strength of a pariṣad may be increased if it is instituted for the determination of special matters like penance (then its strength should not exceed seven), mimāmsa (when its strength should be under twenty-one) and for grave sins (when it can go up to a hundred members). The pariṣads for kṣatriyas and vāisvyaśas may be still larger in size. The Kṛtya-kalpataru (Brahmacāri-kāṇḍa, f. 69) limits the scope of caste pariṣads to the determination of anuloma, utkṛṣṭavarna-vadha, utkṛṣṭastrīgamanadī, vrata, and suddhi. This restriction of scope in pariṣads for non-Brāhmaṇas is interesting as it must reflect the practice in the eleventh century.

Sankha-Likhita, cited in Kalpataru, (ib. fol. 60) limit the scope of a Brāhmaṇa pariṣad to the determination of the correctness of Vedic texts, (Śruti-grahaṇam), smṛti rules, custom and usage (ācāra) and Dharma generally. It will be seen that a Brāhmaṇa-pariṣad's scope was much wider than that of pariṣads, for other varṇas. The difference is probably due to the fact that the former were the bodies normally convened to determine rules for judicial guidance.

After the seventh century A.D., the pariṣad apparently ceases to function, and the Paṇḍita (who bears the title of Vinaya-Sthitī-Sthāpaka in the Gupta inscriptions) comes into prominence as a Legal Remembrancer. Later on, heads of religious Maṭhas claim the right to constitute pariṣads or exercise themselves the functions of pariṣads.

54

33, line 2. VASTNESS OF DHARMASĀSTRA LITERATURE

An idea of its present size may be gained by the following data. "If all the smṛtis cited in later nibandhas be taken into
NOTES

account, the number will be found to be about a hundred.” (Kane, op. cit., p. 134). Mr. Mandlik, who made elaborate calculations of the authorities quoted by certain *nibandha* writers found for instance, that Kamalākara quotes in the *Nirṇayasindhu* alone 13 works on *srauta*, 131 *smṛtis*, 68 *purāṇas*, and 272 *bhāsyas*, *nibandhas* etc., making in all 484. See p. lxvi of the Introduction to his *Vyavahāra-mayūkha*, 1880.

55

A point to note is that the earlier *nibandha* writers like Lakṣmīdhara quote a relatively smaller number of *smṛtis* and *purāṇas* than writers like Hemādri and Kamalākara. Even if we allow for Lakṣmīdhara's claim that he made it his rule not to cite ordinarily more than one or two authorities when a point had to be established, the very large number of later *smṛtis* calls for enquiry. Mr. Kane's list of works on Dharmasāstra runs to 170 printed pages of double-columns, and his list of authors runs to 83 pages.

33. DHARMASĀSTRA ACTIVITY IN THE MIDDLE OF CIVIL TROUBLES

A reading of Mr. Kane's work or of Jolly's *Hindu Law and Custom* will show how great was the activity during the period of internecine wars which preceded the Musalman conquest and during the Muhammadan period itself.

56

34, *ll.* 7-10. IDEA OF UNION OF INTEREST BETWEEN KING AND SUBJECT

This is stated forcibly by Kauṭilya (I, 19):

\[ \text{Prajāsukhe sukham rājnaḥ prajānām ca hite hitam} \]
\[ \text{Nātmapriyam hitam rājnaḥ prajānām tu priyam hitam} \]

The whole of the *Rājadharmaparva* of the *Mahābhārata* is an elaboration of this dictum.

See *Ancient Indian Polity*, pp. 85-87.
34, II. 12. **KING AND DĀNDA DIVINELY CREATED**

The creation of the King by the Supreme Being is found in the stories of the Social Contract in the *Mahābhārata* (Sāntiparava ch. 67-68). See also, *Manuṣmṛti*, VII, 3, *Kauṭilya*, I, 13 and *Sukraniti*, I 125-140.

See *Ancient Indian Polity*, pp. 39, 80, 81.

34, II. 14-16. **HORROR OF ANARCHY**

See *Arajata*.

- See ib., pp. 49, and 82-83.

34, II. 19-24 **INFLUENCE OF GOOD GOVERNMENT ON THE SEASONS**

Vide ib. 108. Somadevasūryā puts the point pithily:

\[ Nyāyataḥ paripālaka rājī prajānām kāmadughā disvāḥ \]

34, II. 24-25 **RĀJA KĀLASYA KĀRAṆAM**

The dictum that the king is the cause of the complexion of his age is a picturesque way of saying that on the king rests the responsibility for good and bad government, through which, according to ancient Indian belief, the complexion (or, as we would say the atmosphere) of the *yuga* in which he lives will be changed for better or worse. It occurs in a long passage expounding regal responsibility in the Sāntiparva of the *Mahābhārata*, where it may be studied in its context. (ch. 69, vv. 74-105). The responsibility consists in duly enforcing the law, *i.e. Daṇḍaniti*. A careless, idle, indifferent
or unjust king will not observe the rules of the science of
government. Then he will incur the odium for not only going
himself wrong but ruining the people. The passage may be render-
ed thus:

"Dandañiti compels men to observe the duties of the castes and
orders. Duly observed, it makes people act virtuously. If the four
varṇas attend to their appointed duties, and wholesome barriers
are maintained, then peace and contentment flow from the due
enforcement of law, people are freed from fear, the dvijas attend
to their prescribed social duties, and the people are truly happy.
Whether (this result having been produced) it is the king who makes
the age, or the age it is which makes the king (i.e. do what he does)
admits of no doubt; for, it is the king who makes the age. (Rāja
kālasya kāpaṇam). The first yuga (thus) i.e. the Golden Age,
comes into being when a king governs in strict accord with Daṇḍa-
niti. Righteousness is the feature of the Kṛtayuga (the first Age);
there is no wrong-doing in it. The men of all the four orders
(cāturvarṇa) find no satisfaction in unrighteousness. Every one
gets what he desires and keeps it (in such an epoch). The Vedic
rites are productive (then) of spiritual merit (punyā). The seasons
are joyous, and free from evil . . . Diseases disappear. Men
live long. Wives are not widowed. Misers disappear. The
earth yields in abundance even without being tilled . . . Noth-
ing but virtue exists. These are the marks, Yudhiṣṭhira, of the
Kṛtayuga. When a king relies only on discharging three parts of
his duties (according to Daṇḍaniti), the epoch becomes like Tretā-
yuga. . . The earth (then) yields crops only when tilled. If a
king neglects half his duties of government, an age like the Dvā-
parayuga sets in. The tilled earth now yields but half of what
it could yield. When the king totally ignores the Daṇḍaniti and
governs oppressively, then the Kaliyuga sets in. During this
epoch vice is rampant, and virtue is disappears. Men fall away
from their appointed duties. Sūdras live by mendicancy and
Brāhmṇas by service (reversing their appointed modes of life).
People fail to get what they aim to secure, and what they obtain they are unable to keep. The intermixture of castes by marriage (varṇasamkara) becomes common. The performance of Vedic rites is ineffective. The seasons are fraught with evil. Disease thrives, and men die prematurely. The clouds do not rain, and the crops wither. The earth dries up when the king does not observe the rules of the Daṇḍaniti. The king is (thus) the maker of the Kṛtayuga (in his own life-time), of the Tretayuga and of the Dwāparayuga; he also causes the Kaliyuga, and... incurs great sin. Sinking in the sins of his subjects he becomes infamous and plunges into Hell."

It will be seen that the aim of the passage is to impress on kings the duty and the wisdom of ruling according to the sāstras. There is nothing in it to suggest that the king has special powers to act contrary to established law and usage.

Sukranitti (IV, i, 11. 90—125) paraphrases, as is its practice, the chapter of the Mahābhārata in which the dictum 'Rājā Kalasya Kāraṇam' occurs. It puts the matter pithily:

\begin{verbatim}
Yugapravartako rājā dharmādharma-prasikṣaṇāt
Yugānām na prajānām na doṣah kintu nṛpasya hi
Supuṇyo yatra nṛpatiḥ dharmiṣṭāḥ tatra hi prajāḥ
Mahāpāṭj yatra rājā tatrādharma-paro janāḥ
\end{verbatim}

Mr. B. K. Sarkar, who translated the expression yugapravartako Rājā as "the King is the maker of the Age" (possibly to bring it into line with the Mahābhārata expression), added a pointed warning: "This is the exact opposite of the dictum 'the King can do no wrong.'" To rule in strict accord with the sāstras was in India a personal responsibility of the King. He could do wrong and great wrong, by negligence or inattention to the sāstras in the act of governing.

By a curious anomaly this telling sentence, torn from its setting, has been wrongly interpreted and cited in defence of change in social usage initiated the state. The drift of the injunction is conservative, and will not justify a reformist interpretation.
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34, ll. 25-26 Rāmarājya

See the picture of the return of the Golden Age in the Rāmāyaṇa, VI, 131, sl. 97-104:

Rāghavascēpi dharmātmā prāpya rājyam anuttamam
Ije bahuvidhair yajñaiḥ sa-suta-bhrāty-bāndhavaḥ
Na paryadevayan-vidhavā na ca vyālakṛtam bhayam
Na vṛādhijam bhayam cāsit Rāme rājyam prasāsati
Nirdasyurbhavan loko nānartham kasci asprṣvat
Na ca smavṛddhā bālānām preta-kāryāṇi kurvate
Sarvam nuditamevaṁsit sarvo dharmaparō bhavat
Rānamevānuṇāsasyanto nābhyahimsan-paraśparam
Āsan varṣa-sahasrāṇi tathā putrasahasriṇāḥ
Nirāmaya visokāsca Rāme rājyam prasāsati
Nityamūlā nityapalāḥ taravaḥ tatra pūṣṭitāḥ
Kāmavarṣi ca parjanyah sukhas-spharsaṁca mārutraḥ
Svakarmasu pravartante tuṣṭāḥ svaireva karmabhiḥ
Āsan praṣā dharmaparā Rāme sāsati nāṇyāḥ
Sarve lakṣaṇa-sampannāḥ sarve dharma-paraśyānāḥ
Dasavārṣa-sahasrāṇi Rāmo rājyam akārayat

The way in which a righteous king changes his age into the Golden Age is described in Mahābhārata, Śāntiparva, Ch. 69, vv., 74-105.

34, ll. 27-30. Kārta-Vīryārjuna

Kālidaśa (Raghuvaṁśa, VI, 39) describes Kārtavīryārjuna’s miraculous power of projecting himself before an offence was about to be committed and then restraining him from committing the offence, instead of waiting to punish him after the offence:

Akāryacintā-samakālam eva prāturṛṣaya
čapadharah prastitāḥ
Kārtavīryārjuna was the king of the Haihayas, with his capital at Māhiṣmatī. By propitiating Dattātreya he obtained from him these boons: a thousand arms; the extirpation of all evil desires from his kingdom; the subjugation of the world by just government; victory over enemies; and death only from the hands of a person renowned through the universe. He took Rāvaṇa a prisoner. He was killed by Pāraśurāma. The Viṣṇupurāṇa says of him (IV, 11):

\[ Na nūnam Kārtavīryasya gatim yāsyanti pārthivāḥ \]
\[ Yajñair-dānair-tāpobhūrvā prasrayena srutena vā \]

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32, ll. 30-32. RĀMA AS THE RESTORER OF THE GOLDEN AGE IN TRETĀ-YUGA

The description Tretā-yuga-pravartita-Kārtayuga-vṛttānta is applied to Rāma by the Vaiśṇava saint Vedānta Deśīka in his Raghuvīra-gadya-stotra.

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35, l. 2. EXPULSION OR EXECUTION OF AN EVIL RULER

A coronation oath (pratijñā) had to be taken by the King on his abhiṣeka. If he failed to keep the pledge, he was stigmatized as an asatya-pratijñā and was held to have automatically forfeited the throne. The boast of the satrap Rudradāman (A.D. 128-150), who was a Śāka, that he was satya-pratijñā meant not that he was faithful to his international or treaty engagements, but that he truthfully adhered to the terms of his coronation oath. The killing of the last Maurya, Brhadratha, by Puṣyamitra, was on the ground of pratijñā-durbala (Bāṇa's Harṣacarita) (Trn., p. 193). The traditions mention the destruction of king Vena for mis-government.
The Mahābhārata (Ānus'. Parva., lxi, 32-33) specifies the kind of rulers who could be killed:

\[ A-rākṣītāram \ \text{hartāram} \ \text{viloṭāram} \ \text{ añāyakam} \ |
\]
\[ \text{Tam vai rājā-kalim} \ \text{hanyūḥ} \ \text{prajās-sannahya} \ \text{ nirghṛṇam} \ |
\]
\[ 'Aham va rākṣītā' \ \text{ityuktvā} \ \text{yo na rākṣati} \ \text{bhūmīpaḥ} \ |
\]
\[ \text{Sa samhatya} \ \text{nihanavyaḥ} \ \text{sveva} \ \text{sonmādāturaḥ} \ |
\]

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35, ii. 2-3. Taxes Are the King's Wages

This is indicated in the Mahābhārata (XII, ch. 71, s'1. 10):

\[ Balīṣaṭṭena \ \text{s'ulkena} \ \text{daṇḍena} \ \text{athāparādhinām} \ |
\]
\[ Sāstrāṇitenā \ \text{lipsethā} \ \text{vetanena} \ \text{dhanāgamam} \ |
\]

The King is made the servant of the people by being given his share, says S'ukra (I, 375):

\[ \text{Svabhāgabhrtyā} \ \text{dāsaytve} \ \text{prajānām} \ \text{ca} \ \text{nyāḥ} \ \text{kṛtāḥ} \ |
\]

The same idea is attributed to the Buddhist teacher Āryadeva, who retorted to a king, when he claimed that he was the fountain of all transactions: "What conceit is yours, King, when you are a mere servant of the gana, receiving one-sixth share as your wage?" (Cited from Catusvattkākā in Dr. U. N. Ghosal's Hindu Political Theories, p. 209).

See my Ancient Indian Economic Thought, p. 114 and p. 189.

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35, i. 4. King's Freedom ends with Coronation

The King had to take with deep faith the coronation oath, which is described thus by the Mahābhārata (S'antiparva, lvii, 115-116, Kumbakonam ed.):

\[ \text{Pratījñāmca} \ \text{abhirahsva,} \ \text{manasā,} \ \text{karmaṇā,} \ \text{girā} \ |
\]
\[ "\text{Pālayisyāmi} \ \text{aham} \ \text{bhaumam,} \ \text{Brahma,}" \ \text{ityevacāsakāt} \ |
\]
\[ \text{Yascātra} \ \text{Dharmo} \ \text{nityukto}, \ \text{daṇḍantti-vyapāsrayaḥ} \ |
\]
\[ \text{Tam av'ankah} \ \text{karisyāmi,} \ \text{sva-vaso na kadācana}" \ |
\]

35, ll. 15-16. **Viṣṇu Resides in Subject as in King**

Caṇḍēśvara (Rajanrtiratnākara p. 74,) cites this text:

"Adyārabhya na me rājyam, rājāyam rakṣatu praṇāḥ"

*Iti sarvam praṇā-viṣṇum sākṣinam srāvaye-muhuh*

The last line is added to the verse from the *Mahābhārata*, as it perhaps occurred in Caṇḍēśvara's copy of the epic.

The dictum "Nāviṣṇuḥ pṛthvi-patiḥ," *i.e.* there is no king who is not "Viṣṇu" is well-known.

35, ll. 16-18. **The King's Duty to Know Dharma**

This is laid down in the following precept for which paraphrases occur in the *smṛtis*:

*Dharmadharmau vijānan hi sāsate abhiratas-satām*  
Prajām rakṣet nṛpas-sādhuḥ hanyācca pariṇāṁthinaḥ

35, l. 20. **Unhappiness is Due to Error in Government**

The classical example is that given in the *Uttarakāṇḍa* of the *Rāmāyaṇa*, ch. 73 and 76. A Brāhmaṇa brought his dead son, who was hardly more than a boy, to the palace of Rāma and complained that the death was due to the fault of the king. Rāma admitted responsibility, convened a *pariṣad* of sages to consider the cause of the misfortune, and was informed by Nārada that it was owing to a sūdra performing austerities. Having preserved the corpse of the boy in oil, Rāma proceeded to search for the sūdra whom he found in the south. The ascetic reveals himself as a sūdra named S'ambhūka, who performed the austerities to attain the status of a god. Rāma decapitated him, and prayed for the restoration of the life of the dead child, who promptly revived. Kālidāsa (*Raghuvaṃsa*, XV, 42-57) retails the incident and adds that the S'ambhūka (so spelt here) obtained Heaven, since he had undergone punishment at the hands of the King for his transgression:

*Kṛtadānḍah svyam rājñā lebhe sūdraḥ satām gatim*
Bhavabhūti, who introduces the incident in the second act of \textit{Uttararāmācarita}, makes Rāma raise S'ambhūka to the \textit{Vairāja} heaven for his \textit{tapas}, even though it was against \textit{Dharma} for him to have performed it.

The relevant verses in the \textit{Rāmāyaṇa} are:

\begin{verbatim}
Rājadośair vipadyante praśa hyavidhipālitah |
Asad-vṛtte hi nṛpatau akāle mṛiyate janah II
Yadvā pūresvayuktiṃi janā janaṃadēsu ca I
Kurvate naca rakṣasti tadā Kālakṛtam bhayam II
Suvyaktam rājadoṣo hi bhaviṣyati na sams'ayah |
Pure jānapade cāpi tathā bālavadho hyayam II
(ch. 73, 16-19)
\end{verbatim}

\begin{verbatim}
Yo hyadharmamakāryam vā viṣaye pārthivasya tu I
Karoti cāsrimūlam tat pure vā durmatir-narah II
Kṣipram ca narakam yāti sa ca rājā na sams'ayah I
(ch. 74, 28-29)
\end{verbatim}

36, l. 1. Adjustment of \textit{Dharma} to \textit{Capacity}

This is the fundamental reason for having different \textit{dharmas} or rules for the same acts when done by women and \textit{non-dvijas}, or by the young and the very old, by the diseased, or by persons in special situations (\textit{e.g.} soldiers in camp, kings on the battle-field persons attending festivals, funerals, marriages, times of \textit{desa- viplava} or revolution) or by persons in this \textit{yuga} as compared with those in former \textit{yugas}.

36, ll. 10-12. Adjustment of \textit{Law} to Changing Society

The \textit{locus classicus} on the subject is the following passage in Sir Henry Maine's \textit{Ancient Law} (ed. Pollock, p. 29):

“A general proposition of some value may be advanced with respect to the agencies by which Law is brought into harmony with society. These instrumentalities seem to me to be three in
number, Legal Fictions, Equity and Legislation. Their historical order is that in which I have placed them. Sometimes, two of them will be seen operating together, and there are legal systems which have escaped the influence of one or other of them. But I know of no instance in which the order of their appearance has been changed or inverted."

36, ll. 12-18. Absence of the Influence of Legal Fictions in Hindu Dharma

My statement is in flat opposition to the basic idea of Mr. C. S'ankararāma S'āstri’s scholarly work, Fictions in the Development of Hindu Law Texts, 1926. He has brought to his task knowledge of modern law, and familiarity with the technique and literature of Mimāmsa. But he has succumbed to the influence of analogy, and finding that the nyāyas of Mimāmsa (which Col. G. A. Jacob would translate as ‘popular maxims’) have helped the development of interpretation, he has taken them to be fictions. The assumption conceals two errors: the error of attributing to the Hindu thinkers and smārtas, who handled the nyāyas, an attitude of tepid belief or scepticism, which we now entertain and they could not have had, and secondly, the mistake of overlooking the element of disbelief in the reality of the assumptions underlying ‘legal fictions’ which constitutes the real test of ‘fiction.’ Maine's generalisation was based on his experience of European jurisprudence. There is no need to force the sense of non-European jural ideas to bring them within his generalisation. This is the temptation to which Mr. S'ankararāma S'āstri has yielded. The value of his work, as a helpful introduction to the Mimāmsa way of approach to Hindu law, is not diminished sensibly by the wrong assumption with which he starts, and which gives the title to his book. Fictio in Roman law was a term of pleading and ‘signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; such for example as that the plaintiff was a Roman citizen, when in truth he was a
foreigner. The object of the fictions was, of course, to give jurisdiction, and they therefore strongly resembled the allegations in the writs of the English Queen's Bench and Exchequer, by which those courts used to usurp the jurisdiction of Common Pleas: the allegation that the defendant was in the custody of the King's Marshal, or that the plaintiff was the King's debtor, and could not pay his debt by reason of the defendant's default. But I now employ the term Legal Fiction to signify any assumption which conceals, or affects to conceal, the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified. . . . The fact is that the law has been changed, the fiction is that it remains what it always was.” (Ancient Law, pp. 30-31.)

Adoption is named as an example of fiction in Roman law. In Hindu law the belief in the adopted son being a real son, after adoption, is as vivid as the belief in the change which the Roman Church believes to have taken place in the Sacrament, which is visible only to the eye of faith.

The pursuit to its logical ends of the idea of the transformation of the dattaka (adoptee) into a real son in Hindu law will not have been possible if there had ever lurked, as it is bound to do in fictions, a disbelief in the effectiveness of the transformation brought about by the datta-homa. The doctrine of spiritual benefit, against which Maine has many a fling, was implicitly believed in by those who applied it, and who were affected by it. To construe it as a fiction imposed by designing Brāhamaṇas is not only injustice to them but is a misreading of history.

36, II. 24-28. CONSERVATISM NOT CHARACTERISTIC OF EARLIER, AND LIBERAL VIEWS OF LATER SMĀRTAS

A telling instance is afforded in Mīmāṃsa literature, which shows the modernism of S'abarasvāmin, the bhāṣyakāra, and another in bhāṣyas of Dharmasāstra by Medhātithi. The ‘modernism’ of
S'abara is corrected by the much later Kumārila, Pārthasārathi Miśra and Mādhava. The attitude revealed in smārta writings on such topics as women's property, niyoga, and sahāmarana, as well as melccha-prāyascitta illustrate the dictum. Conservatism and liberalism are qualities of the mind which are not necessarily responsive absolutely to environment or the time-spirit.

Unity of thought constitutes the bond uniting writers, who may be classed for convenience into "schools", particularly if they can be seen as exercising reciprocal influence. Ordinarily such groups form around a teacher of eminence, whose influence is transmitted by his disciples, and their disciples, in uninterrupted succession. The existence of such groups in Arthasāstra is well-known, as seventeen of them are alluded to in the Kauṭilya, schools of rhetoric and grammar are also known, and of course of philosophy. The hypothesis of the dependence of smṛti on sruti and the doctrine of ekavākyatvam, helped the attempts to fuse opinion and overcome discord. When in such matters as sraddha, Mitra Miśra or Kamalākara criticises the views of the Maithilas, or the Gauḍas, he merely implies that the views so classed enshrine wrong interpretations of rules. The arbitrary division of Hindu Law into schools is an achievement of modern lawyers. It has emphasised and stabilised differences of opinion, which were originally personal, by giving them a regional base, in spite of the fact that outside the field of customs, geography had nothing to do with opinion. To followers of Jimūtavāhana it is self-evident that the only views that should properly be enforced all over India are his, just as to the followers of other writers, like Vijnānesvara, the opinions of their own sages must have equally wide pre-eminence. Common ancestry, physical or spiritual, need not create homogeneity in creed. This is shown by Kauṭilya's marked opposition to the views of his own teacher, by differences in rules or sūtras belonging to a
common śākhā or Vedic branch, and by divergent views expressed by cousins like Nilakanṭha and Kamalākara, who had also a common spiritual ancestry, even on such topics of every-day applicability as the adoption of grown-up persons.

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38, ll. 10-11. KAṬILYA AND MANU ON THE AUTHORITY OF NYĀYA

Kauṭilya states thus his position in a passage on the conflict of laws. (III, 1):

Samsthayā Dharmāśāstreṇa Sāstram vā Vyavahārikam
Yasminnarthe virudhyeta dharman-ārtham vinirnayet
Sāstram vipratiṣadyeta dharman-nyāyena kenacit
Nyāyastatra pramāṇam syāt tatra pāṭho hi nasyaṃti

In a sūloka preceding those cited above, Kauṭilya declares that the king conquers the earth to the limits of the four quarters who follows Dharma, Vyavahāra, Samstha and Nyāyā:

Anusāsaddhi dharmanā vyavahāreṇa samsthayā
Nyāyena ca caturthena caturantām mahim jayet

Manu was contemptuous of those who showed disrespect towards the source of Dharma in Veda, and applied mere reason to determine it, and ordained that they should be excommunicated as atheists and revilers of the Veda (II, 10):

Yo avamanyeta te mule hetusāstrāsrayāt dvijah
Sa sādhubhir bahiskāryo nāstiko vedanindakah

Yājñavalkya, though he held that Dharmasāstra was superior to Arthasāstra, admitted the superiority of the smṛti, which was upheld by nyāya over that which was supported by vyavahāra (rule of procedure):

Smṛtyorvirodhe nyāyastu balavān vyavahārataḥ
Arthasāstrattu balavad-dharmasāstram iti sthitiḥ
Nārada (p. 17) admitted the force of nyāya in deciding on the validity of conflicting Dharma texts:

\[\text{Dharmasāstravirodhe tu yuktī-yukto vidhiḥ smṛtaḥ.}\]

Bṛhaspati went further (ed. Rangaswami, I, 111):

\[\text{Kevalam sāstramāśritya na kartavyo vicāraṇā |}
\text{Yuktihānavicāre hi dharmahāniḥ prajāyate ||}

In cases of conflict between two opposed Dharma text, Manu (II, 14) simply followed the old practice upheld by 'Gautama (I, 3-6):

\[\text{Drṣṭo dharmavyatikramaḥ | Sāhasam ca mahatām |}
\text{Na tu drṣṭārthe avaradaurbalyāt tulyabalavirodhe vikalpāḥ ||}

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38, ii. 13-14. CUSTOMARY LAW SYSTEMATISED, RECORDED AND APPLIED

The following passages of the Kautiliya will show how it was to be done:

(1) In preparing a 'Domesday-survey' the laws and customs have to be digested and recorded in a book:

\[\text{Devā-gṛama-jāti-kula-sanghātānāṁ dharma-vyavahāra-}
\text{caritra-samsthanāṁ ... nibandhapustakastham kārayet.}
\text{(p. 62)}

(2) The King should promulgate the recorded customs (p. 63):

\[\text{pracārayaritrasamsthanāṁ ca nibandhena prayaccet.}\]

(3) In a conquered country, for the purpose of pacification, he should establish its old laws and customs, (p. 408):

\[\text{Caritram akṛtam dharmyam kṛtamcānyaiḥ pravartayet |}
\text{Pravartayenna cādharmyam kṛtam cānyai-nivartayet. ||}
38, ll. 19-21. RECOMMENDATION OF FAITH IN GOD IN PREFERENCE TO SACRIFICES, ETC.

Bhakti literature is full of citations in support of this prescription. For example, there are the injunctions of the Bhagavad-gīta, which are merely illustrative:

\[
\begin{align*}
\text{Puruṣaḥ sa pāraḥ Pārtha bhaktyā labhyastvanyayā} & \text{ (VIII, 22)} \\
\text{Yasyantasthāni bhūtāni yena sarvamīdam tatam} & \text{ (VIII, 22)} \\
\text{Yānti devavrata devān piṁn yānti pitṛvratāḥ} & \text{ (IX, 24)} \\
\text{Bhūtāni yānti bhutejyā yānti madyājinoṁ mām} & \text{ (IX, 24)} \\
\text{Kṣipram bhavati dharmātmā sasvat sāntim nigacchati} & \text{ (IX, 31)} \\
\text{Kaunteya pratijānīti na me bhaktāḥ praṇasāyati} & \text{ (IX, 31)} \\
\text{Mām hi Pārtha vyāpārsātya yepi syuḥ pāpayonyah} & \text{ (IX, 32)} \\
\text{Strīyo vaisyās-tathā sūdrāsteśāḥ yānti Īḍā gatim} & \text{ (IX, 32)} \\
\end{align*}
\]

The Bhaktiprakāśa of Vīramitrodāya cites this sloka (p. 3-4):

\[
\begin{align*}
\text{Yat-karmabhūr yat-tapasyā jñāna-vairāgyatasca yat} & \text{ (IX, 32)} \\
\text{Yogena dānadharmeṇa sreyaḥbhūtarairāpi} & \text{ (IX, 32)} \\
\text{Sarve mād-bhaktiyogena mād-bhaktō labhate-niljasā} & \text{ (IX, 32)} \\
\end{align*}
\]

38, ll. 19-21. GIFTS (DĀNA) PREFERRED

Bṛhaspati (ed. Rangaswami, p. 231, sl. 4):

\[
\begin{align*}
\text{Tapo dharmāḥ kṛtyaṁ ānām tretāyaṁ śmṛtam} & \text{ (IX, 32)} \\
\text{Dvāpāre adhvarāḥ proktas-tīṣye dānam dayā damah} & \text{ (IX, 32)} \\
\end{align*}
\]

The last three prescriptions may be compared to the words with which the inscription of Heliodorus at Besnagar ends:

Sanskritised they read—

\[
\begin{align*}
\text{Trīṇi amṛtapadāni nayanti svargam : damaḥ, tyāgaḥ, apramādaḥ} & \text{ (E. J. Rapson, Ancient India, 1914, p. 157).} \\
\end{align*}
\]

See the praise of gifts (dānaprasāmsā) in Hemādri’s Dānakhaṇḍa, (ed. Benares, I, pp. 4-13).
38, II. 4-5. AUTHORITATIVENESS OF A SMṚTI DUE TO ITS OWN MERIT

See the passage from Medhātithi in the note below.

The test of merit is harmony with Vedic injunction. Even in the case of Manusmṛti to which pre-eminent authority has been given in a famous passage of Bṛhaspāti (ed. Rangaswami, p. 233, sl. 13):

\[
\text{Vedārtha-pratibaddhatvāt prāmāṇyaṃ tu Manoh smṛtam}\\
\text{Manvartha-viparlī tu yā smṛtiḥ sā na sasyate}
\]

the grounds of its superiority are stated to be its reliable reproduction of the drift of the Vedas. This point is elaborated by Medhātithi in this comment on Manusmṛti, II, 6, thus:

“Now, as regards the work of Manu, what happened was that he got together pupils who had studied several Vedic texts, as also other Vedic scholars, and having heard from them the several texts, he compiled his work; and he has therefore clearly stated that Vedic texts are the sources of what he has written, and thereby established the trustworthy character of his work. Others who came after him performed the several duties relying upon Manu’s own words, and did not try to trace his words to their source in the Vedas.” (Dr. Ganganāth Jhā’s Trn., I, p. 196).

38, II. 5-8. SMṚTIS ENDLESS: RECOGNITION OF A MODERN SMṚTI (MEDHĀTITHI)

In commenting on Manusmṛti, II, 6, Medhātithi, and interpreting the word “smṛti-sīle” in the verse, says as follows: (Dr. Ganganath Jha’s Trn., vol. I, pp. 204-205):

“There can be no reasonable ground for enumerating the names of smṛtis (recollectors) as Manu, Viṣṇu, Yama, Angiras, and so forth. For we find that many such persons as Paithinasi, Baudhāyana, Pracetas and the rest are recognised by the wise
and learned as reliable smārtas (recollectors) and yet these names are not found in any of the lists (supplied by various smṛtis).

"What thus the words 'smṛtistvā ca tadbhāvāṁ' mean is that when a person is found to be recognised and spoken of by all wise and learned persons as endowed with the said qualifications, and they also accept a certain work as really by that person,—the word of such a person (and of the work composed by him), even though proceeding from a human source, should be recognised as an authoritative source of the knowledge of Dharma. So that even at the present day, if there were a person possessed of the said qualifications, and he were to compose a work by reason of just those qualifications, then for later generations they would be accepted to be just as authoritative as the works of Manu and others. People of the present generation—who would be contemporaries of the said writer—would not derive their knowledge of Dharma from the words of such a writer, because the sources of information available to him would all be available to them also. Hence it is that until a teacher of the present day indicates the source from which he has derived a certain information, learned people do not accept his words as reliable. When, however, he has pointed out his source and his work has been accepted as authoritative, then at some future time, if the case of his work be found to be analogous to that of the smṛti rules, regarding aṣṭaka and other acts (whose basis in the Veda we of the present day can not find) it would be only right to infer its authoritative character from the fact of its being accepted by the wise and the learned (which fact could not be explained except on the basis of its being duly authoritative)."

The original passage is to be found on p. 64 of Mr. J. R. Gharepure's edition of Medhātithi and on vol. I, pp. 67-68 of Dr. Jha's edn.:}

\begin{verbatim}
Ata eva smartaya-parigyaanam Manur-Viṣnur-Yamo-Angirā iti
nirnīlā. Tathā hi Paśṭhvāna-Baudhāyana-Pracetāḥ-
prabhṛtyah śīśair-evamṛṣṣmāryante. Na ca pari-
ɡyaanayam antarbhāvītāh. Sarvathā yamaviganena sīś-
tāh smaranti vadanti vā evam vidhaiḥ guṇair-yuktam.
\end{verbatim}
The two principles of atidesa and pratinidhitvam are connected by doctrine and application.
Another familiar substitute is a fixed money payment for the baths and services, or penances (kṛcchra) prescribed for expiation.

In law, the most conspicuous example of the application of the principle is the validity of substitutes for sons of the body (aurasa-putrāḥ) in the son adopted (dattaka), bought (kṛtita) given by himself (svayam-datta) etc. A substitute when allowed is held to be identical with the original. This supposition or belief leads to the principle of identity, what is equal to the original for purposes of substitution or representation, being regarded as identical with its original. Thus came deductions of the identity of husband and wife, father and son, son and daughter, master and servant, owner and slave etc. The logical corollary to identity is common personality, and the pratinidhi principle leads to the legal concept of common personality between husband and wife and parent and son, with its implications and consequences in law.

The underlying idea in pratinidhitvam is the permissibility of the use of a substitute, in cases in which either the original cannot be secured or is rendered incompetent to officiate. The justification for the use of the substitute is resemblance, real or apparent (Tulyarūpatayā mukhyakārīyā-kārtvārthe nidhyamānatvam iti Nyāyakosā, p. 530). Thus, in a vaidīka ceremony, in the absence of a real son, an adopted son is permitted to function. Or even other representatives are allowed in similar circumstances, as ruled by the Skandaapurāṇa in the following sloka;

Putram ca vinayop-team bhagyām bhṛataram tathā
e Śāmabhāva evānyaṃ brāhmaṇam viniyojayaṃ
do

Or again, in case the article enjoined for use in a vaidīka ceremony is unavailable, a substitute may be used, as indicated in Srautasūtras, e.g. Kātyāyana-srautasūtra, I, 4. Thus the use of gold (hiranya), taṇḍula (rice) as pratinidhi (substitute) for clarified butter (ājya) in sacrifices (yajña) or dāna (gifts) is well-known. The following illustrate the pratinidhi principle in operation.
Bṛhaspati (ed. Rangaswami, p. 208, sl. 78):

Ājyam vinā yathā tailam sadbhīḥ pratirūḍhīḥ sūrtaṁ ।
Tathāikādasa ṗutrāstā putrikaurasayorvinā॥
Yadyekajātā bahavo bhṛtarastu sahoḍarāḥ ।
Ekasyāpi sute jate sarve te ṗutrināḥ smṛtaḥ॥
Bahūnāṁ ekapatiṇāṁ eṣa eva vidhiṁ smṛtaḥ
eKā cet ṗutrinti tāsāṁ sarvāsāṁ piṇḍadastu saḥ.॥

Sāta喋ha-Brāhmaṇa (Trn. Eggeling, S.B.E., XLIV, 187):
“The father is the same as the son and the son the same as the father”.

Vājasaneya-Brāhmaṇa (cited by Kullūka, IX, 45)

Ardho ha vā eṣa ātmanaḥ tasmād-yad-jāyām na
vindate naitāvat āprajāyate asravo hi tava bhavati atha
yadaiva jāyām vindate atha āprajāyate ta hi sarvo bhavati,
tathā caitad-vedavido viprā vadanti yo bhartā saiva
bhāryā smṛtā.

Manusmṛti, IX, 45—46 :

Etāvāneva īṣeṣo yajjāyātmata āprajeti ha ।
Viprāḥ ērāhuḥ tathā caitadyo bhartā sa smṛtāṅganā॥
Na niśkraya-visargābhyāṁ bhartic-bhāryā vīmutyate ।
Evam dharmaṁ vijāntīṁḥ prāk-āprajāḍati-nirmitam.॥

Medhātithi on Manu, IX, 45:

Yasya bhāryā tasyāpātyam : yasmāt bhāryāyaḥ bhartuscāi-
katvam.

The enormity of a dispute between father and son is due to the
principle of their identity (Manusmṛti, III, 159; Gautama, XV, 19.)
The principle is illustrated in the anonymous sloka cited by
the Mitākṣarā (II, 32):

Guroḥ visye pituḥ ātare dāmpatyoḥ svāmibhṛtyayoh ।
Virodhe tu mithasteṣāṁ vyavahāro na siddhyati ॥
i.e., “a suit will not lie between a preceptor and a pupil, a father
and a son, between husband and wife, and between master and
servant, even if they are on inimical terms.” But, as the strict
application of this principle will lead to injustice and leave aggrieved sons, wives and servants without legal redress, the Mitākṣarā indicates the pious character of the injunction and the obligation of the king to hear complaints from such persons, if, after they are advised to compose their differences, they insist on being heard:

'Dṛṣṭāṛṣṭayoh sreyaskaro na bhavati gurvādibhir-vyavahāra' iti prathamam sīṣyādayo nivāraṇyāh rājñā sa-sabhyaṇa iti 'guroḥ sīṣye' ityādi sīlokasya tāṃparyah. Atyanta-nirbandhe tu sīṣyādīnām aptyuktarttyā pravart-tanīyo vyavahārah.

The excepted cases are those in which a father squanders property derived from the grandfather, the husband squanders the strīdhanam, and a teacher chastises a pupil more severely than allowed by law.

The principle of representation or substitution gave rise to the recognition of actions by 'near friends' on behalf of minors, women and afflicted or disabled persons, and of agents (niyuktāh), who were heard, as if they were principals, but with the distinct understanding that, just as in religious sacrifices, the spiritual merit accrues not to the officiating priest but to the person on whose behalf he performs the ceremony, so in the case of suits, success and failure go to the principals and not to the agents. Parents, brothers and sons could plead or act in suits, even without specific authorisation, which was required only for strangers. The interposition of unauthorised persons, claiming to act as agents, is punishable except in the above cases of near kin: vide Brhaspati-sūtṛti (ed. Rangaswami), I, 137-138; Kātyāyana, (ed. Kane), v. 91, and Brhaspati, I, 171-2. The right of representation is denied in cases of serious crime, when the accused should plead in person: e.g. Kātyāyana, vv. 93-95. See Jimūtavāhana's Vyavahāramāṭṭkā, ed. Ashustosh Mookerji, pp. 287-288, and Varadarāja's Vyavahāranirṇaya, ed. Rangaswami, pp. 33-35.

The niyogakṛt is the parent of the later mukhyār and vakīl.
39, II. 9-10. CONDEMNATION OF S'UDRA MENDICANCY AND CELIBACY

See *Ancient Indian Polity*, pp. 40-41.

The rule of Kautilya imposing a severe punishment on those who become ascetics without providing for their wives and children, or who cause women to enter the ascetic order, is manifestly aimed against S'udras, who, under the influence of Buddhism, were entering the monastic order:

*Putradāramapratividhāya pravrajataḥ pūrvasāhasadaṇḍaḥ; striyam ca pravṛajayataḥ . . . Vānaprasthādanyah pravrajitabhhavah . . . nāsyā janapadām upaniveseta* (p. 48).

The ascetic was both a celibate and a mendicant.

39, II. 10. MAGNIFICATION OF THE B RĀHMAṈA

*Manusmṛti* enjoins due reverence to Brāhmaṇas in IV, 39, 52, 58, 135-136, 142, 162. The king is degraded by showing them irreverence, X, 43. Dr. Jayaswal held that the composition of the present *Manusmṛti* (according to him) in the age of Puṣyamitra is responsible for several claims put forward on behalf of the Brāhmaṇa; *e.g.*, He is Īsa in the sense of the ruler of the whole world, IX, 245; he is Īś'vara (Ruler), for the protection of Dharma, I, 99; he is lord of everything (*sarvasyādhipati*) VIII, 37; and he is entitled to all that exists (I, 100). See Jayaswal, *Manu and Yājñavalkya*, passim, and particularly, pp. 102-104.

39, II. 18-23. PERFORMANCE OF AS'VAMEDHA BY KINGS OF DUBIOUS CASTE

See *Note* below on the similar references on p. 54 of the text.

The Bhāras'iva Asvamedhas are referred to in the Dhammak and Siwani copper-plate inscriptions of Pravarasena II (Fleet, *Gupta*
Inscriptions, pp. 235-249). Rudrasena I of the Vākātaka dynasty is referred to as the daughter's son of “the illustrious Bhavanāga the Mahārāja of the Bhāraśivas . . . who were sprinkled with the pure water of the Bhāgirathi that had been obtained by their valour, and who performed ablutions after the celebration of ten Asvamedha sacrifices” (p. 241). The translation is Fleet's and has been followed by students of Indian history, and the Bhāraśiva king is credited with the performances of a record number of Asvamedha sacrifices. The exact expressions used are:

 Parākramadhipta-Bhāgirathyamalajala-mūrddhābhi-
 siktānām Daśāsvamedhā-vabhṛtasnātānām, Bhāraśivā-
nām, Mahārāja Bhavanāga dauhitrasya

They appear to me to mean only that Bhavanāga had a lustral bath, after the performance of an Asvamedha at the famous Daśāsvamedha ghat on the Ganges at Benares, whose sanctity is supposed to be derived from the performance there of Asvamedha sacrifices by Brahma himself. It also means that he had conquered by his prowess (parākrama) the banks of the Ganges, probably Benares.

39, ll. 20-23. Samudragupta's Relation to an Outcaste Clan

The mother of Samudragupta was a princess of the Licchavi clan, which, though famous in the days of the Buddha, was regarded as an outcaste clan in the Gupta epoch. Thus Manusmṛti classes them with other degraded castes of mixed origin;

 Jhallo mallasca rājanyāt vrātyal-licchivireva ca I
 Naṭasca karaṇascaiva khasa dravida eva ca II

The Manusmṛti is pre-Gupta on other evidence, and this origin ascribed to the powerful patrons of the Brahmancial revival in Magadha could not have been stated publicly during the hey-day of the Gupta empire.
39, II. 23-24. Heliodorus the Vaiṣṇava Greek

A column discovered at Besnagar near Bhilsa, in the extreme south of the Gwalior state, has the following inscription. The column must have been a flag-staff (dvajastambha) of a Viṣṇu temple and been surmounted by the figure of Garuḍa. The text of the inscription reproduced here follows the reconstruction by Prof. E. J. Rapson (Ancient India, p. 157). See also J.R.A.S., 1909, and 1910.

Devadevasa Vāsudevasa Garuḍadvaji ayam kārite ia Heliodoreṇa Bhāgavatena, Diyasa Ṥutreṇa, Takṣasilākena, Yoṇa-dūtena, āgatena Mahārājasa Antalikitasa uṃantā sakāsam rājho Kāśiputraśa Bhāgabhadrasa trātārasa vasena catudaseṃṇa rājena vadhamāṇasa trtṇi amuta-padani—su anuṭhitāni nayanati saga dama cāga aprāmāda.

Translation

This Garuḍa column of Vāsudeva, the god of gods, was erected here by Heliodorus, a worshipper of Viṣṇu, the son of Dion, and an inhabitant of Takṣasila, who came as Greek ambassador from the Great King Antialcidas to King Kāśiputra Bhāgabhadra, the Saviour, then reigning prosperously in the fourteenth year of his kingship.

Three immortal precepts . . . when practised lead to Heaven: self-restraint, charity, and conscientiousness.

39, II. 25-26. The Huns as Worshippers of Viṣṇu

On the basis of the inscriptions of Mātr viṣṇu and Dhanyaviṣṇu at Eran in Eastern Malwa, bearing the date 165 of the Gupta era, (i.e. A.D. 484-585), the late Mr. R. D. Banerji (History of India, p. 189) states that the Huns were worshippers of Viṣṇu. The
brothers dedicated a Garuda-dhvaja i.e. a flag-staff surmounted by the figure of Garuḍa, (Inscription No 19, pp. 88-90, J. F. Fleet, Gupta Inscriptions, Corpus Inscriptionum Indicarum, III). In the inscription, the reigning king is referred to as Budhagupta. In a second inscription incised on the base of a colossal stone image of Viśṇu as Bhūvarāha (ibid., No. 36, pp. 158-161), the reigning king is referred to as Toramāṇa, and the inscription is dated in the first year of his reign. The object of the inscription is to record the building of the temple in which the image stands by Dhanyaviṣṇu, the brother of Mātṛviṣṇu. Both brothers claim to have performed Vedic sacrifices, studied the scriptures, and to have been Brāhamaṇaṇaśiṣī (Svakarmābhīratasya kratu-yājinodhitasya-svādhīyasyasvādhīyasyasvādhīyasya viprāṣeḥ.) They claim to belong to the Maitrāyantya-Sākha (Maitreyāṇī vṛṣabhasya). The inscription on the flag staff ends with the pious Brahmanical benediction—svastyastu go-brāhmaṇa-purogābhya sarva prajābhya iti.

40, il. 9-10. THE EFFECTS OF THE SPREAD OF MĪMĀMSA ON BUDDHISM

The assault of Pūrva-Mīmāmsa on Buddhism was direct. Kumārila indicted Buddhism as opposed to the Veda, though he admitted (in order to take away any claim to originality of thought by the Buddhist) that the Buddhist systems owed their inspiration to the Upaniṣads. The assault on addiction to objects of sensual gratification is common to all serious thought, Upaniṣadic or Buddhist. Kumārila is definitely of the opinion that the Mīmāmsa-sūtras of Jaimini contain criticisms of the views of Buddhists. This is his personal view, and should not weigh unduly in an estimation (as it has done) of the date of the Mīmāmsa-sūtras. He was obsessed by his dislike of Buddhism, and might attribute to the founder of his school an equal dislike, overlooking the possibility of his founder being ante-Buddha. Both Dr. A. B. Keith and Mr. P. V. Kane have affirmed the absence of any explicit
reference to the Buddha or his doctrines in the sūtras. Prof. G. V. Devasthali in a recent paper (Annals of the B.O.R.I., 1940, Vol. XXII) asserts that the only mention of the word Buddha in the expression of Buddha-sāstrāt, which occurs, is not to the founder of Buddhism but is used in the sense of ‘one who knows’ (Mimāmsa-sūtra, I, 2, 33.) He concludes that Jaimini lived before the Buddha, and that his date can not be later than 500 B.C.

But, this does not take away the fact that the Mimāmsa stood for the defence of the ritualism of the Veda for which the Buddhist had dislike. It “welcomes all philosophical views so long as they do not injure its central theme, viz., the transcendent importance of Dharma interpreted in the ritualistic sense. . . . The Veda is acknowledged as authoritative and its validity is established against the Buddhists, who dispute it, and the seekers of knowledge who subordinate Karma to Jñāna. . . . The Mimamsa accepts a realistic view of the world against the Buddhists.” (Radhakrishnan, Indian Philosophy I, p. 375).

The Buddhist is definitely attacked in Kumārila’s Slokavārtika, II, 169-172:

“169. The falsity of the scriptures of the Buddha are proved by the fact of their being due to human agency. Their character (of falsity) could not belong to the Veda, because in its case there is no author (human agency).

171-2. The assertions of the Buddha etc., that were brought forward by the atheists as examples to prove the unauthenticity of the Veda, are shown here to be non-concomitant. Because it has been shown above that the effects of these (Vedic assertions) are correct.”

The identification of the Buddhist and the Atheist is old. Vasiṣṭha lumps the atheist and the man who becomes an out-caste by neglecting his duties (Karmacandāla) and the latter is manifestly the Buddhist. Manu, (IX, 224-226) aims at Buddhists when he condemns “Sūdras in the guise of Brāhmaṇas- (sūdrāmsca dvijalingināḥ), atheists (pāsanḍas) and persons who abjure duty (vikarmasthāḥ). Manu girds at Buddhists again in
XII, 95, where they are characterised (correctly) as Veda-bāhyāḥ. The Viṣṇupurāṇa lumps the village-mendicant (monk) and the Jaina ascetic (Nirgrantho) as full of sins (bahudoṣo), and the allusion is to the Buddhist. The much later Śat-trimsanmata (post-Kumārila) is even more condemnatory and rules that the contaminating touch of the Buddhist can be removed only by a bath with clothes on (p. 174):

_Buddhān pāsupatān jainān lokāyatika-kāpilān ।
Vikaṭnasthān dvijān śṛṣṭvā sacelo jalamāviset. ॥_

The restoration of the old Karma-mārga, which was the aim of Kumārila and his group, meant naturally hostility to Buddhism. The fantastic stories of a persecution of Buddhists organized under a (mythical) king by Kumārila are the creations of the putrid imagination of later hagiologists, who treated of the life of Saṅkara. See Note lower down on the animus against the learned Sūdra.

40, II. 10-11. _Saṅkara’s Influence in the Disappearance of Buddhism_

_See_ Radhakrishnan, _Indian Philosophy_, II, pp. 470-473, and 496-497. Sir S. Radhakrishnan points out that “it is said, not without truth, that Brahmānism killed Buddhism by a fraternal embrace. We have seen already how Brahmānism silently assimilated many Buddhist practices, condemned animal sacrifices, accepted Buddha as an avatar of Viṣṇu, and thus absorbed the best elements of the Buddhist faith. Though the accidents of its first immediate form disappeared, Buddhism became, partly through Saṅkara’s influence, a vital force in the life of the country. Buddhism created in the region of thought a certain atmosphere from which no mind could escape, and it undoubtedly exercised a far-reaching influence on Saṅkara’s mind. An Indian tradition opposed of Saṅkara holds that he is a Buddhist in disguise and his māyā-vāda but crypto-Buddhism. . . . Yāmunācārya, the spiritual grand-father of Rāmānuja is of the same opinion which Rāmānuja
repeats. Vijñanabhikṣu, commenting on the Sāṁkhya system, observes: "There is not a single Brahmasūtra in which our bondage is declared to be due to mere ignorance. As to the novel theory of Māyā propounded by persons calling themselves Vedāntists, it is only a species of the subjective idealism of the Buddhists. The theory is not a tenet of the Vedanta." . . . These estimates imply that Śaṅkara incorporated certain Buddhist elements such as the doctrine of māyā and monasticism into the Vedanta philosophy." In a sense it may therefore be said that Śaṅkara stole the Buddhists’ thunder. That the "borrowing" is perhaps not direct but due to both Buddhist and Advaitic thought, being directly descended from the thought of the Upaniṣāds, does not alter the effect on the displacement of Buddhist by the neo-Brahmanical, i.e. Vedantic thought. The personal orthodoxy of Śaṅkara will have given point to the change. "There are similarities between the views of Buddhism and the Advaita Vedanta."

The Buddha had meanwhile been accepted as an avatar of Viṣṇu. In some traditions he takes the place of Īśvara (i.e. Śiva) who is made to say (in the Padmapurāṇa Uttarakanda, ch. 236) that in the form of a Brāhmaṇa (?) he had himself declared in the Kaliyuga the false doctrine of Māyāvāda. The implication of the acceptance of the Buddha as an avatar of Viṣṇu is that he re-appears as the champion of Vedic Dharma. That there is no incongruity in the legend will be manifest to those who remember that the Buddha lived and died a Hindu, and that the belief that he was opposed to the Vedas is not correct.

40, ll. 27-28. Devala’s Claim to Supersede Other Smṛtis

He ends his allocution on purifactory rites for the restoration of the status of abducted women etc. with this declaration:

Prāyascittam samākyātam yathoktam Devalena tu
Itareśāṃ Rśīnāṃ ca nānyathā vākyam arhata
41, ll. 1-16. DIGESTS UNDER ROYAL AUTHORSHIP OR PATRONAGE

King Bhoja of Dhāra (Dhāres'vara Bhojadeva, first half of the eleventh century A.D.) wrote many works among which the best known to smārtas is his Bhūpāla-krtya-samuccaya, a digest on Dharmsāstra from which citations occur in later nibandhas. The Mitākṣarā, cites his views, but the Kalpataru makes no reference to him at all. His work is completely lost. See Mr. P. V. Kane’s article on Bhojadeva in J.B.B.R.A.S., 1925, pp. 223-224.

Gopāla is now established as the author of the Kāmadhenu, another lost digest, not only by the mention of it by Cañḍēś'vara (Kane, op. cit., p. 295) but by an express declaration by Lakṣmīdhara in the verses introducing the Krtya-kalpataru. He is spoken as a “friend” (vayasya) of Lakṣmīdhara and probably belonged to the same court. For Vijñānes'vara, Aparārka and Lakṣmīdhara, see my papers in the Madras Law Journal Golden Jubilee Volume (1941) on Lakṣmīdhara and the Krtyakalpataru and the Krtyakalpataru and Vijñānes'vara passim.

The patron of Hemādri was Mahādeva, the Yādava king of Devagiri.

41, ll. 14 ff. DHARMAŚĀSTRA IN THE MUSALMAN PERIOD

Kullūka, the commentator on Manusmṛti lived in Benares about A.D. 1250 (according to Mr. Kane, op. cit., p. 363), while it was in the area under the Delhi Sultanate. Cañḍēś'vara (c. A.D. 1300) was minister to a feudatory of the Sultan of Delhi, S'rīdatta, author of the Ācārādars'а, wrote in Mithila a little before Cañḍēś'vara. (Kane, p. 365). Harinātha, author of Smṛtisāra, a digest, which has not yet been printed, wrote in Mithila (?) a little after Cañḍēś'vara. Viś'ves'vara Bhaṭṭa, the author of the Subodhīnī and the real author of the digest Madanapārijāta, was probably a Telugu Brāhamaṇa, judging from his father’s name Peḍibhaṭṭa,
who wrote in the court of Madanapāla the chief of Kāśṭhā, a little
to the north of Delhi, in the days of Sultan Firuz Shah of the
Tughlakh dynasty. Madanasimha, the author of the Madanaratna,
another unprinted digest, wrote from near Delhi early in the
fifteenth century. Sūlapāṇī and Raghunandana in Bengal wrote
when it was under the Muhammadans. So did Vācaspati Miśra
(author of the famous digest, Cintāmaṇī), who wrote when the
area in which he lived was under the sphere of the influence of the
Sultans of Jaunpur. Dalapati, the author of the digest Nṛsimha-
prasāda wrote under the patronage of a Sultan of Ahmadnagar
(c. 1500). The Bhaṭṭa family of Benares (which produced many
writers on Dharmasāstra, like Nārāyaṇa Bhaṭṭa, the author of
Tristhalisetu and Prayogaratna, Kamalākara, Nilakanṭha and
Gāgābhāṭṭa) wrote at Benares in the heyday of Mughal rule. So
did the not less famous family of the Kāśī Dharmādhikārins, to
which Nandapaṇḍita belonged. Mitramiśra wrote in the reign of
Jahangir and Todarmal in that of Akbar. Anantadeva, the author
of the Smṛti-kaustubha wrote in the reign of Aurangzebe. So did
the famous Nāgoji Bhaṭṭa under the aegis of a small chieftain near
Allahabad, in the last days of Aurangzebe. In the illustrations the
names of those who wrote under independent Hindu kingdoms in
the Musalman period are not reckoned.

42, II. 7-10. DVAITA-NIRṆAYA

Dvaita-nirṇaya is a special form of composition. It came
into vogue in the fifteenth century. The aim of the writers
of this type of Smārta work was to settle, after canvassing
apparently opposed authorities, controverted topics in law or usage.
It necessitates a mastery of Dharmasāstra and Mīmāṃsa. Works
on it could be in prose or verse. The best known of these are the
Dvaitanirṇaya of Vācaspati Miśra (c. 1450), Dvaitaviveka of
Vardhamāna (c. 1500), and three Dvaitanirṇayas by three members
of the Bhaṭṭa family of Benares, S’āṅkara and his son Dāmodara,
and his grandson Bhānu (c. 1580 to 1620).
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42, II. 19-27. THE SUBSTITUTES FOR THE PARISAD IN DHARMA-VYAVASTHĀ

In the Gupta epoch the vinayā-sthāpaka took the place of the pariṣad. In the Sukraniti, the Paṇḍita is enjoined "to study the moral life obtaining in society in ancient and modern times which have been mentioned in the codes, which are now opposed and which go against the customs of the people, and to advise the king as to which of these are efficacious for this world and the next." He is a legal adviser. (Sukraniti II, vv. 200-203.)

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43, II. 26-27. MEDHĀTITHI'S REPUDIATION OF THE KING'S POWER TO MAKE A LAW IN TRANSGRESSION OF DHARMA

The opinion of Medhātithi is thus expressed in his comment on Manusmṛti, VIII, 13:

Tasmād-dharmam yamiṣṭeṣu sa vyavasyen-narādhipāḥ
Aniṣṭam cāpyaniṣṭeṣu tam dharmam na vicālayet

i. e., the dharma of the king in favour of some and against others should not be transgressed.

Medhātithi's explanation is that in the course of business and in consonance with dharma and custom the king may issue edicts which cannot be transgressed. As illustrations of such edicts or proclamations, Medhātithi gives such notifications as:

'today, the city should observe a holiday,'
'all men should attend a marriage in the minister's house,'
'no animals shall be slaughtered today by the soldiers,'
'no birds shall be caught for so many days,'
'for so many days dancing girls shall be entertained by the wealthy men' (dancing girls being state slaves).

"When such decrees are issued by the beat of the drum, they should not be disobeyed. But the king has no power over the
ordinances relating to religious practices or dharma, nor on the rules of castes and stages of life, because any change of them will be contrary to smṛti texts. Accordingly the text under interpretation (i.e., Manu, VII, 13) will apply in cases where the smṛti texts are not offended against."

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43, ll. 28-30. King’s Alleged Power to Make Laws, of His Own Authority

The topic is of great value, as the alleged existence of the power is now relied on to support social legislation. In the adjudication of cases, four kinds of rules may be relied on. These are usually taken as dharma, vyavahāra, caritra, and rājasāsanam. What is the relative force of these between themselves? They are interpreted as Smṛti law, secular law custom and edicts of the king. Secular law is sometimes identified with Arthasāstra rule. (e.g. Jayaswal, Manu and Yājñavalkya, pp. 13-16). The enumeration is identical in Kauṭilya, Yājñavalkya, and Nārada:

\[
\text{Dharmasca vyavahārasca caritram rājasāsanam} \\
\text{Vivādārthas-catuspādo. . . .}
\]

The difference comes in the last quarter (pāda); Kauṭilya has (p. 150).
Pascimaḥ pūrvabādhakāḥ (i.e. each following supersedes the preceding), while Nārada rules (I, 10):

"Uttaraḥ pūrvabādhakāḥ" (i.e. what precedes over-rides what follow)."

In a consideration of the place of the royal edict (Rājasāsanam) it would seem to be last in the list of applicable authorities, in the order of priority, according to Dharmasāstra and the first according to Arthasāstra. It would be an obvious interpretation to take the former as an extreme claim of the sacerdotalist and the latter of the regalist. But, the interpretation is barred, if one realises that Kautilya, if studied with care, is not in opposition to Dharmasāstra, and that, on the other hand, his rules conform to it. Sūkra, who is also an Arthasāstra authority, gives the king power to declare the law, but it must be in accordance with Dharma and usage. He can not make a new law. The royal edict is merely declaratory, and not innovative. This is specially indicated by Kātyāyana (v. 38):

Nyāya-sāstra-avirodhena desa-dṛṣṭes-tathaiva ca

Yad-dharmaṁ stāpayet rājā nyāyyam tat rājasāsanam

The edict has to conform to dharma, nyāya and desacāra if it is to be operative. Yājñavalkya refers to the edict as 'dharma as declared by the king' (dharma rājakṛtasya tat). That the Arthasāstra can not supersede Dharmasāstra in any circumstances is declared in smṛtis. Thus, Yājñavalkya declares that Dharmasāstra is more powerful (i.e., can over-ride) Arthasāstra (II, 21):

Arthasāstrāttu balavat dharmasāstram iti sthitih

The reference to Arthasāstrā is held by the Mitāksarā to refer only to the Artha content of Dharmasāstra. See Ancient Indian Polity, pp. 164-170. Kautilya’s rule of precedence will mean, under this interpretation, that the order of preference placing edicts, usages, vyavahāra (artha) and dharma as operative in sequence, simply implies that as every one of these should be in conformity with dharmasāstra, and the king is enjoined to deal with causes in conformity with Dharmasāstra (dharmasāstrāṇusārena, Yājñavalkya, II, 1), the order
which the courts will naturally follow proceeds from what is explicitly stated in an edict and discoverable custom to the smṛti rules, which require skilled interpretation. The explanation will reconcile the contradiction, apparent, but not real. That Kautilya was fully conversant with the rules of interpretation, which were codified probably even before his time by the followers of Mīmāṃsā will be evident to his readers. Further, lower down in the same passage and context, Kautilya lays down that Artha should be interpreted in term of Dharmasāstra (p. 150):

Samsthāya dharmasāstreṇa sāstram vā vyāvahārikam
Yasmin-narthe virudhyeta dharmeṇa artham viniscayet

He also indicates the order of action of a successful ruler in regard to the four (p. 150):

Anu-sāsad-dhi dharmena vyavahāreṇa samsthayā
Nyāyena ca caturthena caturantām mahīm jayet

That rules of logic should be applied as well of intelligent interpretation for maintaining the integrity of Dharmasāstra, and that they should not be read literally and unintelligently is laid down by Brhaspati (Vyav., II, 111):

Kevalam sāstramāṣṛitya na kartavyo hi nirṇayaḥ
Yukti-hīna-vicāre tu dharma-hāṇih prajāyate

The sāstram in the above sloka is obviously, from the context Dharmasāstra.

THE KING IS UNDER, NOT ABOVE THE LAW

This will be clear from Manusmṛti (VII, 28) which places Daṇḍa above the king:

Daṇḍo hi sumahat-tejo durdharascākṛtātmabhiḥ
Dharmāt-vicalitam hanti nṛpameva sa-bāndhavam

Kautilya, p. 226, lays down that the court can punish even the king as it would punish a subject:
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Uttamāparamadhyatvam pradeṣṭā daṇḍakarmanī।
Rājñasa ca prakṛtīnāṃ ca kalpayet-antarānvitaḥ॥

In criminal cases the king himself was deemed a party as prosecutor, and in the case of state offences judgment could be given against him.

The exaltation of Dharmasāstra as Daṇḍanīti is the purpose of chapter 69 of the Śāntiparva of the Mahābhārata, where occurs the famous expression Rājā kālasya kāraṇam, which has been incorrectly apprehended and used to support a claim for a residual power in a king, on account of his personal responsibility, to change law and usage in harmony with the time-spirit. (vide Note 61 supra).

43, ii. 29-33. Power of the King to Change Law or Usage. The Alleged Case of As'oka

The changes which As'oka is supposed to have made are the prohibition of the slaughter of animals, including the killing of animals at Vedic sacrifices, the prohibition of burning of chaff, and castration of animals, and changes in criminal law such as pardoning criminals on certain anniversaries. These are dealt with below seriatim in succeeding Notes.

A Note above (95) which cites Medhātithi’s views on the alleged power of the king to change law, shows that among the examples of permissible proclamations, which he gives, come the prohibition of the killing of animals and snaring of birds on certain days, as well as the prescription of festivities, of which examples are afforded by As'oka’s edicts.

44, ii. 4-12. Alleged Change by the Mauryas in the Law of Theft

Daṇḍin mentions in the Dasākumārascarita (II, 44) that the Mauryas granted this boon to merchants that if they were found to
be in possession of stolen property, capital punishment should be excused in their case:

"Maurya-datta esa varo vanijam, idrvesu aparadhesu nasti asubhith abhiyogah"

The manifest thief was punished with death (Manusmriti, IX, 269) but one who was merely found in possession of stolen property, should not be put to death. "He who is taken with the stolen goods, and the implements of burglary, may without hesitation may be caused to be slain."

Na hodena vinā cauram ghātayet dhārmiko nṛpaḥ
Sahodām sopakaraṇam, ghātayet avicārāyan

Thus, under the old law, which is given by Manu, one who is only found with stolen property in his possession, and is obviously not the burglar, cannot be sentenced to death or summarily killed.

The so-called vara (favour) of the Mauryas is nothing more than what Manu allows under the old law. If the Mauryas had declared it by edict, as implied by Daṇḍin, it was only a case of declaring the existing law, not changing it.

Further in dealing with cases of theft, as in other cases, the Dharmasāstra asks the circumstances to be taken into account. Thus the theft of agricultural implements, of arms, and of medicines should be dealt with only after the king has taken into account the time of the offence and the use to which the stolen object was put (Manusmṛti, IX, 293). Traders get in the course of business property which might have been stolen. It would be obviously against the spirit of the Dharmasāstra to punish such persons with the death penalty. The example only proves that the Mauryas merely enforced Dharmasāstra, and did not change it.

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44, ll. 19-23. Respite from Sentence for Three Days in the Case of Prisoners Sentenced to Death

Asoka states in Pillar Edict IV: "Forasmuch as it is desirable that uniformity should exist in administration and in
penal procedure, my orders extend so far, namely: 'To prisoners convicted and sentenced to death a respite of three days is granted by me.' During this interval the relatives of some at least of the condemned men will invite them to deep meditation, hoping to save their lives, or, if that may not be so, they will present votive offerings and undergo fasts to promote the pious meditations of those about to die.

For, my desire is that the condemned, even during their imprisonment, may gain the next world, and that among the people pious practices of various kinds may grow, along with self-restraint and generous liberality.” (Vincent Smith's trn. vide his Asoka, 1901, pp. 149-150).

Dr. D. R. Bhandarkar (Asoka, 2nd edn., 1932, p. 342) offers a somewhat different rendering, which is given below:

"For this is desirable—what?—uniformity of administration and uniformity of punishment. And even so far goes my order: to men who are bound with fetters, on whom sentence has been passed, and who have been condemned to death, have I granted three days as something rightfully and exclusively their own. (In that interval) (their) relatives will indeed propitiate some (of the Rajukas) in order to grant their life; and to propitiate Death, they (i.e. the convicts) will give alms and observe fasts pertaining to the next world. For my desire is that even when the time (for their living) has expired they may win the next world and that manifold pious practices, self-restraint and liberality may thus grow among the people."

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44, ll. 21-27. ROYAL PARDON

Manu takes away from the King the power to annul a sentence pronounced after a due enquiry in court (IX, 233):

_Tritam cānusisṭam ca yatra kvacana udbhavet_
_Kṛtam tad-dharmato vidyāt na tad bhūyo nivartayet_

Manu lays down that the guilt of the killer of a Brāhmaṇa, goes to him who eats his food, the guilt of an adulterous wife.
falls on her negligent husband, the sinning pupil's and sacrifcer's
guilt on the preceptor and teacher, and the thief's sin on the king
who pardons him.

Failure to punish the manifest thief is for the king a sin. When a thief, as laid down by the law (VIII, 314) approaches the king with streaming locks and confesses his guilt, he is free from sin whether he be sentenced or let off, "but the king, if he punishes not, takes upon himself the guilt of the thief." (VIII, 317).

Even if he wishes to do so the king can not let off an old offender. (Viṣṇusmyti, III, 93).

44, II. 29. PROHIBITION OF VEDIC SACRIFICES

As'oka is usually held to have interdicted the performance of Vedic sacrifices throughout his kingdom, and thereby made a violent change in the practice and religious obligations of the Brahmanical community in his kingdom. The relevant passages in, the edicts are these: (1) "Here no animal may be slaughtered" (Rock Edict I); (2) by reason of Asoka's proclamations, the cessation of the slaughter of living creatures is growing (Rock Edict IV); (3) "Favours have been conferred by me on quadrupeds and bipeds, birds and aquatic animals, even up to the boon of life." (Pillar Edict II); (4) prohibition of the wanton destruction of certain named animals, (the eating of which is prohibited by custom) and acts of cruelty on certain named days of the month (Pillar Edict V, 26th year of his consecration as king)! (5) "The growth of Dharma (in the kingdom) has been effected by regulation of Dharma and by exhortation, and of the two regulation is of minor account . . . such as the prohibition of the slaughter of such and such animals and other regulations of the kind." (Pillar Edict VII).

Among these, the word "here" in clause 1 above is capable of interpretation as "here in the capital" or "in the Palace" (Bhandarkar, op. cit., p. 298) "'iha' has been taken by some to mean 'here, on this earth' and by others as 'here' i.e. in Pāñjāh·putra. But it had rather be taken to denote his 'palace or royal
establishment' because all other items mentioned in this edict are connected either with either As'oka personally or his royal household.'"

The belief that As'oka created a furious opposition among his Brähmanā subjects by forbidding yajñas involving animal sacrifices is baseless. The cost of a yajña would have restricted the number of yajñas to be performed at any time. What the king probably did was to withdraw his patronage of sacrifices involving the slaughter of animals. It may be noted that there was no attempt at all at wholesale stoppage of the killing of animals, as is often assumed wrongly.

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44, ii. 31-32. BRŪNAHATYĀ

Brūnahatya or the slaying of the embryo was a heinous crime from Vedic times. (Vide Eggeling's Trn. of the Satapatha-Brāhmaṇa, Vol. XXVI, S.B.E., p. 19, XLIII, 272, and XLIV, 341n.)

The castration of animals is punishable with a fine of 100 paṇas, according to Viṣṇusmṛti quoted in Vivādaratnākara, p. 278. Kauṭilya imposes the highest fine for violence on those who "render animals impotent, or cause abortion by use of medicine to a female slave." (Arthāṣāstra, p. 198). Kauṭilya recommends a king, who has conquered a new kingdom, to conciliate the subjects by various regulations among which he specifies the prohibition of the slaughter of females and young ones among animals (yoni-bālavadham) as well as castration (ib. p. 407). This rule is suggestive, along with one just previous to it in the Arthasāstra, enjoining the conqueror to prohibit the slaughter of animals in certain periods and certain days, including the royal birthdays, as this is what As'oka says he in the Fifth Pillar Edict (Smith, op. cit., pp. 150-152).

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45, ii. 5-9. AS'OKA'S DHAMMA VIEWED AS BRAHMANICAL

Dr. J. F. Fleet (J.R.A.S., 1908, pp. 491-497) argues that the Dhamma of the Rock and Pillar edicts is not Buddhist but merely
the traditional Rājadharma. Dr. J. M. Macphail rejects the idea that As'oka's Dhamma stands for Buddhism. (Asoka, p. 48) and holds that it merely denotes piety. Dr. Vincent Smith (As'oka, p. 60) says: “The Dharma or Law of Piety which he preached and propagated unceasingly with amazing faith had few, if any, distinctive features. The doctrines were essentially common to all Indian religions, although one sect or denomination might lay stress on one factor in it rather than on another.” On an analysis of the various allocutions he addressed his subjects, Dr. Smith finds that none of them are distinctive in the sense of not being Brahmanical. “The Dhamma of As'oka is Hindu Dharma with a difference” viz. its stressing ethical features rather than formal. Dr. R. K. Mookerji accepts the view. It is noteworthy that when As'oka lays down a 'close time' in which no animals should be killed he selects just those days, viz. the full and new moon days, the fourteenth days and the eighth days after full or new moon (aṣṭāmi, caturdāst, and ārva) on which even Hindu meat-eaters abstain from eating animal food. (See Rock Edict V.) The animals which he forbids being killed for eating are generally those which the smṛtis prohibit the eating of. Over and over again he enjoins respect for Brāhmaṇas and ascetics. His plea for largesses and pious pilgrimages is only the inculcation of the Hindu Dharma to make dānas and to go to tirthas. Without going so far as to claim that these show that the king was a follower of the old Brahmanism, it might be maintained that policy as well as conviction made him unwilling to change the rules of the old Dharma.

45, ll. 9-12. DHARMAVIJAYA

That As'oka's frequent references to Dharmanvijaya are to be taken in the sense it has in the famous classification of Kautilya of conquests as Dharmanvijaya, Lobhavijaya and Asuravijaya has been argued ably by Mr. V. R. Ramachandra Dikshitar in his Mauryan Polity, (1932, pp. 128-9, and 254-257). It is appropriate to see in the edicts of Candragupta’s grandson the use of
well-known expressions popularised by Candragupta’s great Minister, Kauṭilya. The translation of Dharmavijaya as ‘conquest by piety,’ as contrasted with ‘conquest by arms’, which Dr. Hultzsch adopts (Inscriptions of Asoka, 1925, C.I.I. p. 53) is a forced interpretation, when compared with the technical sense of the word which should have been familiar to the Mauryan age. The passage in the Arthasāstra where Dharmavijaya is defined (ed. Mysore, p. 380) runs thus:

Traya abhiyoktāro dharma-lobha-asura-vijayina iti
Teṣāmabhyaavapatyaḥ dharmavijayī tuṣyatī
tam abhiṣaktāḥ dharmavijayī tuṣyatī
tam arthena abhipadhyeta
tam bhūmi-dravya-haranena lobha-vijayī tuṣyatī; tam arthena abhipadhyeta
bhūmi-dravya-putra-dāra-prāṇa-haraṇeṇa asura-vijayī
tam bhūmi-dravyabhyāṁ upagṛhyā agrāhyah pratikuruṇta

The passage may be rendered thus:

“(A weak king threatened with invasion may have to deal with invaders of three kinds.) These are the Dharma-conqueror (Dharma-vijayī), the greedy conqueror (lobha-vijayī) and the demoniac conqueror (Asura-vijayī). Of these the Dharmavijayī will be satisfied by acceptance of suzerainty through surrender. Such a conqueror should be submitted to through fear of attack by others (as he will protect his vassal against others). The greedy invader, afraid of enemies he might make, will be easily satisfied with treasure and territory; so he should be bought off by money. The demoniac invader (Asura-vijayī) will not rest content with merely taking the kingdom, treasure, sons and wives of the conquered king. Him the weak king should keep off by surrender of territory and wealth, and remain unassailed. (Against all of them, when they have begun the invasion, one should war by offers of peace and friendship, diplomacy and treacherous action.)”

In Rock Edict XIII describing the conquest of Kalinga, Asoka expresses his passionate grief at the evils which the war
entailed on innocent persons, combatants and non-combatants, including the terrible sufferings Brāhmaṇas, ascetics and householders, and his resolve to conquer thenceforth only through Dharmavijaya and the success he has had by the change of policy. “He is now able to spread his benign influence even in regions as distant as 600 yojanas, where dwell the Yavana king called Antiochus, the four kings called Ptolemy, Antigonus, Magas and Alexander, likewise down below, where are the Colas, the Pāṇḍyas, as far as the Tāmbraparṇi, likewise in the home dominions among the Yavanas, Kambhojas, Nābhākas and Nabhapantis, the hereditary Bhoja chiefs, the Āṇdhras and Paimdas—and find them all practising the Dharma which he has sought to spread, and they are filled with love to him.” “That love” he continues “has been attained by me through Dharmavijaya” by sending his envoys to distant regions.

This is a clear declaration by Asoka of his preference of the method of extending his suzerainty or sphere of influence without recourse to arms as against the policy of force and violence which succeeded in Kaliṅga, when he conquered and annexed it early in his reign.

The Dharmavijaya is what is inculcated in Rājadharma by the Dharmasāstras, where it is suggested that as far as possible recourse to arms should be avoided, and after victory in battle, if a battle becomes inevitable, no harassment of the conquered royal family or people should be permitted. The war itself should be conducted as a Dharma war (Dharma-yuddha); see Rājadharma-kalpataru, ed. Rangaswami, pp. 125 ff. The desire for suzerainty or extension of supremacy is justified even by resort to war by S'ankha-likhita (op. cit. p. 125) on the ground that a king, as a kṣatriya has the duty to perform the horse-sacrifice (asvamedha), which can be done only by the accumulation of immense resources and by the subordination of other kings. Manu's injunction (VII, 198-199) to obtain the end by negotiation or gifts, and never by recourse to war, because the fortunes of war are uncertain, is cited by Lakṣmi-dhara in his treatment of the subject in Rājadharma-kāṇḍa of the
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KALPATARU along with similar injunction. The difference between the king to whom these recommendations are made and the king in Kauṭilya is that the former is assumed to possess the strength to conquer, whereas Kauṭilya’s advice is to the weak ruler who is afraid of the designs of war-like neighbours, who might, according to their disposition be one of the three classes of conquerors.

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45, l. 11. DHARMA-AMĀTYĀ SAME AS DHARMĀDHIKARĪ

Dealing with Rāṣṭrakūṭa administration, Dr. A. S. Altekar writes as follows in his Rāṣṭrakūṭas and their Times, 1934, p. 169:

“The place of Purohita was taken in our period by an officer whose business it was to exercise general superintendence over religion and morality. Pāṇḍita, the Minister of morality and religion in Sukraniti, seems to embody the tradition of the Dhamma-mahā-amātyās of Aśoka, and the Samāṇa-mahāmātās of the Āndhras (Nāsik inscriptions in Epig. Ind. VIII, p. 91) and the Vinayasthitisthāpaka of the Guptas. The tradition was continued in the north by the Caṇḍīs, one of whose records (Kumbhi plates of Vijayasimha. J.A.S.B., xxxi, p. 116) mentions Dharma-pradhāna in addition to the Mahā-purohita. The office existed under the early Rāṣṭrakūṭa ruler Nanna-raja in A.D. 708, and the officer bore the significant title of Dharmāṅkusa.” (Ind. Ant. xviii, p. 230). Sukraniti employs the Prāṇavivāka (who is the same as Dharmādhikārī) to select from Dharmas, ancient and modern, those which should be followed and bring them to the notice of the king. (II, sl. 100).

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45, ll. 13-15. TITLE OF DHARMA MAHĀ-RĀJA IN THE PALLAVA DYNASTIES

From the Hirahaḍagalli grant (Epig. Ind., I, 5 and VI, 88) dated in the eighth year of his reign, we learn that the early Pallava king Sivaskandavarman (c. 200 A.D.) had the title of Dharma-mahārāja (R. Gopalan, History of the Pallavas of South India,
1928, p. 37). Simhavarman, II, the son of Viṣṇu-gopavarman, according to the Mangadur grant (Ind. Ant., V, p. 155) had also the title of Dharmamahārāja. (c. 450 A.D.) Mahendravarman (A.D. 600-630) styles himself Mahābhūta Sa-dharmā, which is equal to Dharma-Mahārāja in the introduction to Mattavilāsaprahasana (Travancore Sanskrit Series, iv, p. 3). The name Dharmarājarañtha by which the rock-cut temple at Mahabalipuram is known, and which Dr. E. Hultzsch regarded as made in the reign of the great Narasimhavaraman I, was probably so called because he was known as Dharma-rāja.

Dr. K. P. Jayaswal (History of India, p. 184) gives a fanciful interpretation of the title. He suggests that it was "a Hindu edition or rather a Hindu counter-title of the Kuśān Daivaputra Śāhunusāhi. Instead of being a Daivaputra, the Pallava king bases his claim on his adherence to the orthodox law and orthodox civilisation, which was quite in conformity with the law of the Hindu constitution. He was substituting Dharma for the divine Daivaputra." I see no motive in the selection of the title other than that suggested in the text.

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45, ll. 16-18. KADAMBA TITLE OF DHARMA-MAHĀRĀJA

The founder of the Kadamba dynasty, Mayūra-śarma (A.D. 345-370), came of a Brāhmaṇa family devoted to the study of the Vedas and the performance of sacrificial rites. In the Talagūṇḍa inscription (Epigraphia Carnatica, VII, Intn., p. 9) his name appears with the Brāhmaṇa suffix s varman. This is replaced by the Kṣatriya suffix varman, by which he is known in all subsequent records. As Brāhmaṇas the Kadambas could not have rightfully become kings. Mṛigesvara-varma, the seventh ruler of the dynasty, is styled in an inscription of his queen as Dharma-Mahārāja Mṛigesvara-varma.

Dr. Jayaswal suggests, without sufficient reason, that the Kadambas and the Gaṅgas assumed the title, because they were under the Pallava empire. (History of India, p. 199).
45, 11. 18-19. Gañgas as Dharma-Mahārājas

For instances see M. V. Krishna Rao, Gañgas of Talkād, 1936, pp. 120-123. Madhava Koṅgaṇi-varma (c. 430 A. D.) was known as Koṅgaṇi-varma Dharma-Mahādhirāja. "In the Uttanur plates (Madras Epigraphist's Report, 1916, p. 35) Durvīnlīta is compared to Vaivāsvata-Manu (A. D. 853-869). Nitimārga is lauded as the foremost of kings following Nitisāra. Mārasimha (A. D. 960-970) the son of Būtuga II, took the title of Dharma-avatāra: 'incarnation of Dharma' (Fleet, Dynasties of the Kanarese Districts, in the Bombay Gazetteer, I, i, p. 305)."

45, 11. 18-19. Title of Dharma-Mahārāja in Campā

The Kauṇḍinya ruler of Campā Bhadravarman (c. A. D. 400) as Dharma-Mahārāja (R. C. Majumdar, Campā, 1927, III, Ins. 2, p. 3) Dr. Jayaswal considers that the Kauṇḍinya dynasty of Campā was founded by a scion of an old and respected dynasty from North India, which had settled in the Pallava kingdom, from which the migration apparently took place to Campā (History of India, pp. 169-170). The inscription of Bhadravarman on the Cho Dink rock is in Sanskrit prose and refers to a sacrifice performed by the king before Śiva as Bhadresvara.

45, 11. 20-22. Cola Claim to Follow Manu's Lead

Rājakesari Rājamahendra, who was chosen as heir-apparent to the Cola throne in A. D. 1059, has left three records in which the opening prasāasti begins thus: Manu-niti-murai-valara, i.e., May the righteousness of Manu duly increase. The Colas claimed descent from Manu. A mythical ancestor of the Cola dynasty, named Manu Cola, is said to have sentenced his son to be killed by having a chariot driven over him, as he had killed a calf by running
over it, and the bereaved cow complained to the just king. (Nilakantha Sastri, Colas, I, 1936, p. 12). An inscription states that the king followed the laws of Manu and collected only one-sixth of the produce of land (ibid. p. II, p. 327). Rajendra II (acc. A.D. 1246) begins his inscriptions with the words—Manukulam-ėduttu neri-muḍi-sūdi-arulīya i. e. He who having assumed the righteous crown of the line of Manu.

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45, I. 21. Kālidāsa on Manu’s Ideal
vide Raghuvamsa, I, 17:

Rekhămātramaṇi kṣuṇṇād ā-Manor-vartmanah āram | i. e., He (Dilipa) did not swerve even to the extent of a line from the path of Manu.

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45, ll. 24-29. Evils of Anarchy (Arājatā)

For the evils of interregnums, owing to the demise of kings, and of king-lessness, i. e., arājatā, see Ramāyaṇa, II, 67, where the following slokas occur:

Nārājake janapade yajñaśilā dvijādayāḥ ||
Satrāṇyanvāsate dāntā brāhmaṇāḥ samsitavratāḥ || (13)
Nārājake janapade mahāyajñesu yajvānāḥ ||
Brāhmaṇāḥ vasu-sampūrṇāḥ visṛjantyāptadakṣināḥ || (14)
Nārājake janapade mālyya-modaka daksināḥ ||
Devatābhyaarcanārthāya kalpyante niyatair janaik || (27)
Nārājake janapade svakam bhavati kasyacit ||
Matsya īva janā nityam bhakṣayantah parasparam || (31)

See 66 also Mahābhārata, Sāntiparva, LIX, (LVI, Kumbakonam ed. 2, 3, 16):

Arājākeṣu rāṣṭreṣu dharma na vyavatiṣṭate ||
Parasparam ca khādanti sarvathā dhik-arājākam || (3)
Nārājakeṣu rāṣṭreṣu havyam vahati pāvakaḥ || (5)
Rājā cenna bhavelloke pṛthivyā daṇḍa-dhārakaḥ ||
Jale matsyāṇnivābhakṣyant durbalam balavattarāḥ || (16)
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See also Kāmandaka, Nītīsāra, II, 40:

Parasparamiṣatayā jagato bhinnavartmanah
Daniṭābhāve paridhvamsi mātsyo nyāyāḥ pravartate

See also Mātsyapurāṇa, ch. 225, 8-9:

Yatra svaḥmo lohitākṣo Daniḍascarati nirbhayaḥ
Prajāstatra na muhyanti netā cet sādhu paśyati
Bālavṛddhātura-yati-dhvija-stri-vidhavā yataḥ
Mātsyannayaḥena bhaksyeraḥ yadi daṇḍam na pātayet

Dr. K. P. Jayaswal, against the sense of the contexts in which these passages occur, took the term A-Rājatā to mean a kingless constitution. (Hindu Polity, 1924, pt. 1, pp. 41, 97, 98, 100, 134.)

ASPECTS OF BARBARIAN RULE IN INDIA

The Indian view of foreign rule is given in the Purāṇas, whose evidence is thus summarised by Dr. K. P. Jayaswal (History of India, A.D. 150 to 350, 1933, pp. 151-2):

"The Sākas not only disregarded the orthodox system but they imposed a system of social tyranny. The country under them was encouraged or forced to follow their manners, ethics and religious theories: Tannāṭhāste janaṇapadās tac-chilācāra-vādinaḥ. The Mleccha kings followed the general practice of their race,—exact illegal taxes:

Prājāste bhakṣayisya-yanti mlecchā rājanya-rūpiṇaḥ

They killed and massacred even women and children. They killed cows. They killed Brāhmaṇas, and they took away the wives and wealth of others:

Sṛṭ-bāla-go-dvijaghnaḥ ca para-dāra-dhanā-hṛtāḥ

They were never crowned, i.e., legal kings according to Hindu law. They indulged in constant dynastic revolutions among themselves:

Hatvā caiva parasparam; uditodita-vamsās-tu uditāstam-itāstatha
"There was thus a national cry, expressed in the Purāṇa texts, practically inviting the Gupta emperors and the Hindus of the time to eradicate this lingering canker in the North-western corner—an operation which Candragupta II was obliged to perform, and which he performed successfully."

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46, ll. 11-15. Removing the Taint of Kali (Kali-rajah)

The expression apāsta-kalibhiḥ occurs in the verse introducing the Kṛtya-Kalpataru of Lakṣmidhara the Minister of Govinda-candra of Kanauj (A.D. 1110-1154), and reflects similar expressions in the Gāhadvāla grants.

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46, ll. 25-29. Education of Princes

The curriculum of studies, which Kauṭilya and later writers prescribe for the future king, is elaborate. The ‘three Rs’ are to be learnt before upanayana. The Veda and philosophy, especially the systems of Sāmkhya, Yoga and Lokāyata, are to be studied along with the aṅgas of the Veda, viz. grammar, exegetics, phonetics, metre, and ritual. Ānvikṣiki (Logic, Ethics and Metaphysics, according to the Somadeva) was to be a special study. Apart from theoretical studies, the prince is to learn the art of administration from officers of experience as well as Economics (Vārtā) and Daṇḍaniti. He is to become proficient in the use of arms, and in secular history, traditions, Arthasastra and Dharmasāstra, after he attains his sixteenth year. This formidable list of subjects must keep a prince pretty fully engaged till he is called to the throne. (See my Ancient Indian Polity, 1935, pp. 38-39.)

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47, ll. 24-25. Increasing Dependence on Customary Law

Caritra or usage is recognized as a source of Dharma from early times. Āpastamba (II, 15, 1) refers to desa-kula-dharmāḥ
local and family custom. Gautama (XI, 13, 20-22) declares that local caste, and family usage, not opposed to Śruti, have the force of law and so have the customs of cultivators, tradesmen, herdsmen, money-lenders and artisans; and these usages have to be ascertained before a decision is arrived at. Vasiṣṭha (I, 17) cites the authority of Manu for declaring the applicability of local, caste and family customs "in the absence of revealed texts." Baudhāyana, after reciting five disputed usages of the South, (I, 2, 1-4), declares that such usages are valid in the countries where they prevail (I, 2, 5-6). Kautilya directs a survey of customs in the empire, and apparently the Mauryan empire maintained such a record as the British have attempted to do in the case of the castes of the Punjab (Griffin, Tupper) and the Southern Maratha country (Steele):

Desa-grāma-kula-sanāghātānām dharma-vyavahāra-cārita-samsthanānām

... Nibandha-pustakastham kārayet. (Arthasāstra, p. 62)

Manu recognises caste-usage for all the four varṇas (II, 18) and local, guild and family usage (VIII, 41). The king should decide cases according to both Dharma and local usage (VIII, 3). Yājñavalkya gives precedence to local custom (I, 343) in the administration of justice. The King must punish members of clans (kula), castes, (jāti), guilds (sreṇi), corporations and provinces who depart from their respective customs (I, 361). The administration of civil law should not violate smṛti rules or usage (II, 5). The usages of guilds etc., are termed samayāḥ (conventions), and the king should enforce them, when not opposed to true Dharma (II, 186). Dr. Jayaswal maintains that such samayas do not constitute real customary law but represent delgated legislation. (Manu and Yājñavalkya, p. 76).

Bṛhaspati declares emphatically the inexpediency of not maintaining the usages of localities, castes and kulas, as the people will get discontented (if they are not maintained) and the king's strength and wealth will suffer thereby. (I, 126, in my
Vijñānesvara, in discussing Yājñavalkya, II, 118-119 declares that the texts on succession and partition mostly repeat what actually prevails in the country. (Lokasiddhasya anuvāda-kānyeva prāyena asmin prakarane vakanāni). Mitramiśra (Viramitrodaya), says: "All nibandhakaras recognise that smṛtis on civil law simply embody recognised usage." (Prāyena vyavahārasmṛtinām lokasiddhārthānuvādakatvam iti sakala-nibandhābhiḥ abhidhānāt.). Nilakaṇṭha says: "the science of judicial administration is based like grammar on usage". (Ṭrṇ. Kane, 1933, p. 169).

Manu lays down the rule of following family usage (IV, 178):

Yenaśya pitaro yataḥ yena yataḥ pitāmahah
Tena yāyāt satāṃ mārgam tena gacchan na niṣyate

‘The path by which one's fathers have gone, and that by which grandfathers have gone, by following it, one moves on the path of the good, and by following it he does not sin!’

The verse may be described as a charter of conservatism.

The theoretical basis of the validity of custom, according to Mīmāṃsā, is that it derives its authority from a lost or latent smṛti or śruti text. But, as one has to make two presumptions to secure recognition to usage, as against one for a smṛti rule, usage is held to be inferior to explicit smṛti rule.

Jaimini’s aphorism (I, 111, 7) that sīṣṭācāra is valid without reference to its causes is to be limited to worldly matters (K. L. Sarkar, Mimamsa Rules of Interpretation as applied to Hindu Law Texts, 1909, p. 74 and pp. 238-239.)
Absolute unanimity and concord are held to exist between all smṛti texts on the same subject and all sūruti passages also. The presumption is warranted by the fundamental assumptions of Mimāmsa that the source of all law, and of all knowledge is the Veda, and that the Veda is eternal, infallible, universal and derives its authority from itself. It does not recognise any growth in the Veda or any possibility of evolution in Veda or smṛti. Homogeneity is a characteristic of the Veda. Self-consistency is its mark. The idea is signified as Ekavākyatva. The consequences of the presumptions are that consistency and harmony must be deemed to exist between one Veda and another, between one passage of sūruti and all others, between one smṛti and another, and between sūruti and smṛti, as well as between smṛti and ācāra (custom, usage). The Sākhāntarādhikaraṇa section of Purvamīmāṃsa maintains that all sākhās speak with one voice. Inconsistency between smṛti precepts, as in the rules of marriage of Brāhmaṇas with women of the other three castes (Manu permitting all three, Yājñavalkya permitting only marriage with kṣatriya and vaisya women and later smārtas prohibiting marriage outside his own caste to the Brāhmaṇa) or the practice of niyoga, is explained away by the doctrine of limited applicability to particular epochs, or ages. The remarriage of women in the five cases sanctioned by Parāśara (IV, 30), is rejected on the ground of Kalivarjya, and as simply repeating an old and defunct rule. (Mādhavācārya’s commentary on I, 34). Similarly, by the application of the principle of harmony involved in this nyāya, smṛti rules have to be harmonised with valid usage (samayācāra) and should be rejected if contravening them (virodhe). Many illustrations of the way in which this nyāya has been applied by commentators and smartās are quoted and explained by Mr. C. S’ankararāma S’āstri (Fictions, 142 ff.) On the application of this principle to reconcile conflicts, the doctrine that ācāra or usage, which is said, is only that of sīśthas (the elect), gives rise to apparent difficulties as many wrong acts condemned by conscience or smṛti are remembered of heroic characters of the past. Are such things void if done now? The
answer is ‘No’, because the test of valid conduct is whether it has been pursued by its author with the consciousness of doing a thing which is meritorious. Accordingly, the moral lapses of old sages, heroes and gods, are no precedents. (Fictions in Hindu Law, p. 138).

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47, ll. 26-27. ANONYMOUS TEXTS

The question of their admissibility is thus stated by Mitramisra (Vtramitrodaya, Paribhasa-prakāśa, pp. 17-18):

“In several works of authority, certain quotations occur, which are introduced merely thus; ‘to this effect is the smṛti’ ‘to this effect is the sloka’. (The authorship is indeterminate). Such quotations are authoritative in as much as they have been unequivocally accepted by great men. What is styled Śat-trimsanmatam is not so authoritative, according to the Kalpataru, because it is accepted only by some, being rejected by others. Bur Vijñānesvara, Aparārka, Śūlapāṇi and others regard its citation as authoritative. This is only proper.”


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47, l. 27. JUSTICE AND GOOD CONSCIENCE

The rule of equity and good conscience is implicit in the dicta of Manu and Yājñavalkya on the “feeling of satisfaction, which the good get” (Sādhūnām atmanastuṣṭiḥ, Manu, II, 6) and what one finds to one’s liking (svasya ca priyamātmanaḥ), (Manu, II, 12, and Yājñavalkya, I, 7). To guard against caprice being
taken as equivalent to conscience, the commentators explain that the satisfaction should be that which only those who are both learned in the Vedas and righteous feel, thereby relieving each man of the privilege of deciding what he should do according to his likes and dislikes. Medhātithi points out (ed. Jha, I, pp. 68-69) that the trustworthy character of such learned and good men is the guarantee of its not being misused. "When the learned and good feel satisfied as to the righteousness of an action, it must be taken as right, because such men will never feel satisfied with anything that is wrong."

But equity and good conscience can not over-ride clear law or revealed text. This is made clear by Vis'varūpa (Vājña., I, 7, vol. I, pp. 13-27) who points out that the satisfaction which one feels should not be in action which runs counter to Vedic injunction, or smṛti or is due merely to fidgets. Kullūka (Manu, II, 6) lays down that "self-satisfaction" is authoritative only in regard to matters in which an option is open, following the Mitākṣarā which rules that the rule of satisfaction applies only to cases in which there are several lawful alternatives open, one of which has to be chosen. This is also the view of the Smṛticandrikā (Samskārakāṇḍa, 5).

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47, i. 29. INSIGHT OR INTUITION (Yukti)

The application of reason, or the power of inference to the resolution of difficulties in evidence is suggested in the law books e.g. Yājñavalkya, II, 212. Viṣṇusmṛti recommends the application of reason (yukti) to the determination of the genuineness of documents. Vyāsa, Prajāpati and other writers advocate the use of yukti for the proper construction of documents. But the most powerful advocate of the application of yukti is Brhaspati. Over and over again he says (XXVI, 4, 49, 50 in Vyavāharakāṇḍa) that the determination should be in accordance with intelligent apprehension (yukti) as otherwise there will be disaster:

\[ \text{Yuktyā vibhajaniyam tat, anyathā anarthakam bhavet} \]
He illustrates the disastrous effect of the failure to apply *yukti* to determine whether one is a thief or not, a good man or not, by the condemnation of the sage Māṇḍavya for theft:

\[
\text{Cauro-acauro sādhvasādhuh jāyate vyavahārataḥ} \\
\text{Yuktim vinā vicāreṇa Māṇḍavyas-coratām gataḥ}
\]

\[(Vyav., I, 116)\]

He would apply it to determine the preference in cases of conflict of laws:

\[
\text{Dharmasāstra-virodhe tu yukti yukto vidhiḥ* smṛtaḥ} \\
\text{(ib. IX, 8)}
\]

He denounces vigorously in a famous verse dependence on the letter of the written law (*sāstra* i.e., *smṛti*) without an intelligent conception of the spirit through *yukti*:

\[
\text{Kevalam sāstram-āsritya na vaktavyo vinirṇayaḥ} \\
\text{Yukti-hīne vicāre tu Dharma-hāniḥ prajāyate}
\]

\[(ibid., I, 114)\]

"A decision should not be arrived at by solely depending on the *sāstra*, for, in an enquiry devoid of the application of reason (*yukti*), there is destruction of Dharma."

It is natural that with such powerful sanction as Brhaspati's, King Someśvara should enjoin the magistrate to award sentences, not by mechanically following *smṛti* precept, but by the exercise of his own reason (*yukti*):

\[
\text{Pramāṇe niscitaivāpi divyair vāpi vicārite} \\
\text{Yuktyā daṇḍam nṛpaḥ kuryāt yathā doṣānusārataḥ}
\]

\[Mānasollāsa, ed. Gaekwad's Oriental Series, v. 1286. This is a conspicuous illustration of the extended scope of the application of *yukti* by a king of the twelfth century.\]

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48, l. 2. Acceptance of the Usages of Pratiloma Castes

*Todarananda* and *Viramitrodaya*, Vyavahāraprakāśa, (ed. Jivananda, p. 120) cite the following verse from Kātyāyana:
NOTES

Pratiloma-prasūteṣu tathā durga-nivāsiṣu

Viruddham niyatam ṁrāhuh tam dharmam na vicālayet

i.e. "(The King) should not disregard the fixed rules of conduct among those who belong to the pratiloma castes and among the inhabitants of the forts (or inaccessible mountain places) even if they are opposed (to rules of smṛti.)" (Trn. Kane, Kātyāyana, 1933, p. 125.)

The rule in a slightly different form is cited by Lakṣṇidhara in Vyavahārakalpataru as from Brhaspati:

Pratilomaprasūtānam tathā durga-nivāsinām

Sāstravad yatnato rakṣyā sandigdhau sādhanam tu sā

One of pratiloma birth was deemed so degraded that to call a person a pratilomaja was an offence (Yājñavalkya, II, 207.)

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48, II. 5-6. THE USAGES OF THE GOOD SŪDRA

Manu gives the sources of Dharma in the following sloka:

Vedo akhilo dharma-mūlam Smṛti-sīle ca tad-vidām

Ācārascaiva sādhūnām ātmanastuṣṭireva ca

Buehler translates the verse thus:

"The whole Veda is the (first) source of the sacred law, next the tradition, and the virtuous conduct of those who know the Veda (further), also the customs of holy men, and (finally) self-satisfaction." (S.B.E., XXV, p. 30.)

Medhātithi construed "the practice of good men" (sādhūnām ācāraḥ) with "learned in the Veda" (tad-vidām), and correlated goodness and Vedic learning, confining valid usage, as a source of Dharma, to those who combined both, i.e. Brāhmanaś. The commentators following him distinguished between stīla (conduct) of those learned in the tradition (smṛti) and usage (ācāra) of good men (sādhūnām) and held, like Sarvajña-nārāyaṇa, that the latter was inferior to the former on account of the possibility of incorrectness of the tradition on which usage was based. That the distinction was not perhaps originally intended is evident from the
circumstance that Gautama, (I, 2) refers to sūla (conduct) only, while Baudhāyana (I, 4) and Vasiṣṭha (I, 5) refer only to usage or practice (āgama and ācāra). The original belief was that among those learned in the Veda and tradition (smṛti) there could be no difference between conviction and practice. But valid usage was held to be those of Brāhmaṇas only. Mitramisra (c. A.D. 1610) was the first to make a break by suggesting an alternative interpretation. In Vritmitrodaya, Paribhāṣā-prakāśā, p. 9. (ed Chowkhāmba, 1896), he suggested that, as an alternative explanation of the verse of Manu cited above, the word “ācāraḥ” should be connected with “Sādhūnām,” when the meaning would be that “even those not learned in the Veda are to be accepted as authorities, if they are men free from weakness and defects, and in such cases, the usage of good Śūdras (Sacchūdrāḥ) becomes authoritative. Though Mitramisra restricted the applicability of such usage to Śūdras alone, even then, the break he made was definitely important, and a concession to the altered times. The passage is important enough for full citation:


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48, l. 10. SUPERSESSION OF SĪṬĀCĀRA BY SĀDHŪNAM-ĀCĀRA

In the earlier authorities emphasis is on Sīṭa, explained in the Maskari-bhāṣya as “avagata-vedārthāḥ” (men proficient in the understanding of the meaning of the Veda) and “sva-dharmā-vaśthitāḥ” (men rooted in the discharge of their own Dharma (Gautamasmṛti, ed. Mysore, 1917, p. 453 and p. 456). Gautama (XXVIII, 49 and 51) rules that “in cases for which no rule is given, the course should be followed of which atleast ten (Brāhmaṇas), who are well-instructed (in the Veda) i.e. sīṭāḥ skilled in reasoning and uncovetous, approve. . . . But on failure of them, the decision of one srotriya, who knows the Veda, and is properly instructed
(in the duties, shall be followed) in doubtful cases.” (Buehler, in S.B.E., II, 1897, p. 310).

Baudhāyana (I, 4-6,) after laying down that the source of Dharma, after the Veda and Smṛti, was Siṣṭācāra, proceeds to describe the qualities of the siṣṭa as “freedom from envy, and pride, the possession of grain for not more than ten days’ consumption, and freedom from covetousness, hypocrisy, greed, perplexity, arrogance and anger:”

(Siṣṭākhalu vigatamatsarāh nirahamkārāh kumbhi-dhānyāh alolupāh dambha-darpa-lobha-moha-krodha-vivarjitāh)

Vasiṣṭha (I, 6) defined the siṣṭa as “one whose heart is free from desire” (siṣṭah punah akāmātmā.) Vedic learning, ascetic unwordliness and saintliness are old qualifications of the siṣṭa, whose practice or precept was to be followed where there was no clear rule. While re-affirming the position of the siṣṭa as the declarer of Dharma in doubtful cases, Manu defines the qualifications of the siṣṭa (XII, 108-9): “If it be asked how it should be with respect to (points) of Dharma which have not been clearly stated, the answer is that what Brāhmaṇas, who are also siṣṭas, propound should clearly have force. Those Brāhmaṇas are deemed siṣṭas, who, in accordance with Dharma have studied the Vedas with their appendages, and who perceive by the senses the revealed texts as reason for distinguishing right and wrong.” The appendages of the Vedas are stated by Medhatithi (ed. Jha, II, 1839, p. 487) to be the Itihāsa and Purāṇa. To these are added the Vedāṅgas by the Smṛticandrākā (ed. Mysore, Samskāra, 1914, p. 6) and the Mimāmsa, Smṛti etc. by Kullūka.

Manu’s injunction (II, 6 and 12) that the acāra (custom) of the good (sādhūnām) or sadācāraṇah should be regarded (Tantravārtika, p. 143) as one of the sources of Dharma must be read with the above injunction to refer doubts to siṣṭāh, and the “good men” he had in view treated as those fully qualified to be designated siṣṭāḥ. The equation Siṣṭah, Sādhuḥ is accepted by the commentators and digest makers, like Vijnānesvara, Kullūka and others (Mitākṣarā,
I, 7, and Manu, II, 6) but the tendency is to both limit and broaden the old concept of the authority competent to decide doubtful cases. Thus, Vis'varūpa (c. A.D. 900) (commenting on Yājnavalkya, I, 7) would limit sadācāra to religious and spiritual, as distinguished from temporal or worldly acts of the good men. On the other side, Mādhavācarya (c. 1350) gives the power of interpretation as sādhavah “to the elders of each family and tribe.” (ed. Bib. Ind., p. 100), and Mitramis’ra gives a purely ethical interpretation of sādhavah by quoting the following fanciful etymology from Viṣṇupuraṇa:

“Good men free from all defects are called sat, and their practice, ācaraṇa, is called sadācāra.” Mitramis’ra further brings the practice of the good Śūdra within sadācāra, so far the Dharma for the last varṇa is concerned.

The supersession is manifestly due to the impossibility of finding men with the qualifications laid down for viṣṭāḥ, and is an illustration of silent adaptation.

48, ll. 10-14. ANIMUS AGAINST THE LEARNED ŚŪdra

Āśvaghoṣa in his Vajracchedika claims that the Śūdra Buddhists were as learned as Brāhmaṇas. The Śūdra was excluded from Vedic but not from secular studies. Among Buddhists there was no exclusion of Śūdras from any kind of learning, and they were eligible even for the monastic life. The Buddhist monk was identified with the learned Śūdra and much of the animus against the former was transferred to the latter. Yājñavalkya (II, 235) lays down that he who feeds the Śūdra ascetic at religious and srāddha ceremonies is liable to punishment. This is obviously aimed against hospitality to the Buddhist monk. Such bitter statements as that the Śūdra who has learned even the alphabet should be kept at a distance reflect only the animus against the Buddhist. The Buddhist ascetic is described by Kauṭilya (Arthāśāstra, Mysore ed. 1909, p. 199) as viṣaṭā-pravrajita—i.e. Śūdra ascetic.
"Manu's hostility towards the Śūdra is primarily towards the learned Śūdra, the controversialist, claiming equality and freedom." (Jayaswal, Manu and Yājñavalkya, p. 92.)

Manu's references to "Śūdras who assume the marks of the twice-born" (Śūdrāmsca dvija-liṅginaḥ; IX, 224) and heretics (Pāṣaṇḍinaḥ, IX, 225) as well as those who follow prohibited pursuits (Vikarmasthāḥ, IX, 225) are to Buddhists. In XII, 95 Manu alludes to them as those outside the Vedas (Vedābhāyāḥ). The Viṣṇupurāṇa condemns the village mendicant and Jaina ascetic (Grāma-yājaka nirgrantho bahudoṣo durāsadaḥ). The Śat-trimsanmata, ed. Chowkhamba, p. 174, rules that a bath with clothes on is the prescribed purification when one touches Baudhās, Pāśupatās, Jainas, Lokāyatas, Kāpilas, and the twice-born who follow forbidden pursuits.

48, ll. 17-28. LIMITS OF ĀRYĀVARTA

Baudhāyana (I, 2, 10) lays down the limits of Aryan occupation and indicates the areas which one can visit only subject to penance:


Athātra Bhāllavino gāthām udāharanti:

Pascāt-sindhur-visaraṇī Śuryasyodayanam prurāḥ 
Yāvat Kṛṣṇo vidhāvati tāvaddhi brahmavarcasam || Iti : Avantayo-Aṅga-Magadhāḥ Surāśtrā Dakṣiṇāpathāḥ ||
Upāvṛt Sindhu-Sauvīrā ete saṅkrīṇa-yonayaḥ-||
Ārattān Kāraskarāṇ Āṅgīrāṇ Sauvīrān Vaṅgān Kaṅgān
Prāṇunān iti ca gatvā punas-stomena-yajeta-sarvaṣṭhāya vā.

Athāpyudāharanti:

Padbhyaṁ sa kurute pāpam yah Kaliṅgān prapadyate ||
Rśayō nīṣkṛtim tasya prāhur-Vaisvānaram havih. ||
(I, 2, 16.)
It will be seen that the areas which Baudhāyana excludes from Āryāvarta are the Punjab, Magadha, Aṅga, Vaṅga, Gujarāt, Sindh, the lands south of the Vindhyas, as well as Rajputāna and Mālwa north of the range.

S’ankha-Likhita lay down:

Prāk-Sindhu-Sauvīrāt, daksīṇena Himavataḥ, pascāt Kāmpīlyāt, udak Pāriyātrāt, anavadyam brahma-varacasm.

They thus exclude the lands of Sindh and Sauvīra (Kathiawar and Gujarāt).

Paithinasi lays down:

Ā-Himavataḥ, Ā-ca Kumāryāḥ Sindhur-Vaitaraṇī-nadī. Sūryasyodayanam pūrah yāvad-vā kṛṣṇa-mṛgo vicarati tatra Dharmāḥ catuspādo bhavati

The lands described as the eastern limit include Orissa. Baudhāyana (as quoted in Viramitrodaya, Paribhaṣā-prakāśa, p. 58) adds that he who visits Aṅga, Vaṅga, Kaluṅga, Magadha and Sauvīra except on a pilgrimage must undergo new samskāras (punāśsamskāram arhati).

Manusmṛti, II, 22-23, lays down that the Aryan country runs from sea to sea, east and west, and mountain to mountain, i.e. the Himālayas and the Vindhyas, north to south. He adds that where the black antelope naturally flourishes the country must be deemed fit for sacrifices, and the lands (where it does not) as those of barbarians.

Ā-samudrāttu vai pūrvāt, ā-samudrāttu pascimāt
Tayorevāntarm giryoḥ Āryāvartam vidur-budāh
Kṛṣṇasāras-tu carati mṛgo yatra svabhāvataḥ
Sa śeyo Yajñyo deso mleccha-des'astu atah-paraḥ

The definition of the limits given by the Bhāllavins, a school of the Sāmaveda, is quoted with approval by Vasiṣṭha (I, 15):

Athāpi Bhāllavino Nidāne gāthām udāharanti—
Pascāt-Sindhur-vidkāraṇī, Sūryasyodayanam pūrah
Yāvat-kṛṣṇobhidhāvati tāvad-vai brahmāvarcasam
That is to say, the western boundary of Āryā-varta is the Indus, the eastern the Sūryodayana, and as to the north and south, the habitat of the black antelope.

That the lands which are free for the antelope to roam over, for barley and the kus'a grass to grow, and which are full of holy places are those which the wise will live in is stated in the Ādi-purāṇa, as quoted by the Vīramitrodāya (op. cit. p. 57):

\[ Kṛṣṇasārair yavair darbhaiḥ cāturvarṇyāsramaiṣṭathā | \]
\[ Sāvyuddho dharma-desa-tam āsryeran vipascitaḥ || \]

It will be noted that the emphasis is also on the prevalence of the varṇāsvrama-dharma in the area. This principle is stated explicitly by Viṣṇuṣmṛti:

\[ Cātur-varṇya-vaṇavasthānam yatra dese na vidyate | \]
\[ Tam mleccha-desaṃ jāntyāt Āryāvartam-athah-param || \]

For other quotations see the Paribhāṣā-prakāśa of Vīramitrodāya, pp. 58-60. Dr. K. P. Jayaswal (Manu and Yājñavalkya, pp. 27-29) discusses the subject, and concludes that the extension or restriction of the area of Aryan usage coincided with the advance or retreat of Brahmanical rule in the land.

48, l. 32. ĀPAD-DHARMA

In times of distress occupations not normally allowed to a varṇa are permitted to its members. These are summarised in Manusmṛti, IV, 81-104, with specifications of the occupations which even in distress a Brāhmaṇa should not follow. Distress is held to know no law, and a Brāhmaṇa who accepts food even from the most degraded is no more tainted 'than the sky by mud' (ib. 104). Yājñavalkya deals with the same topic in the section on expiations (III, 35-44). He too holds that afflicted by distress and eating anywhere the Brāhmaṇa incurs no sin needing subsequent expiation.

Parāśāra is even more emphatic. "During revolutions, (desav- bhaṅga), foreign travel or exile (pravāsa), affliction (vyāsana), let
one save himself first, and then think of performing Dharma. . .
When times of distress have to be tided over, one should not think
of purity or proper conduct (saucaçcara). He should subsequently
perform expiation (when the pressure is past) and act according
to Dharma" (VII, 41 and 43). Again, he holds that "the Brāhmaṇa
who eats in the house of a Śūdra in a time of distress is purified by
his mere feeling of regret or by muttering the drupada" (XI, 21).
This exemption applies only to periods of distress as the food of the
Śūdra is held to be capable of making a Brāhmaṇa lose his caste
(XII, 32).

For other texts on Āpad-dharma see Āpastamba, 20, 10-21;
Gautama VIII, 1-26; Vasiṣṭha, II, 22-29; Baudhāyana, II, 4,
16-21, and Viṣṇu, II, 15 and LIV, 18-21, and the commentaries on
the relevant passages of Manu and Yājñavalkya. The principle
was capable of considerable extension, the only restriction being the
avoidance of those occupations which were specifically named as
inadmissible even in times of distress, i.e., when one could not
live by following his varṇa occupation.

49, ii. 1-2. Voyages and Visits to Prohibited Areas

Baudhāyana (II, I, 1-2) places sea-voyage (samudra-samyānam) at the head of a number of offences which cause loss of
caste (patantyāṇi) which are only less heinous than the inexpiable
sins (mahāpātakāḥ). But he also mentions sea-faring as one of
the special customs which are allowed to the people of the north
(I, i, 2, 4. Athottarataḥ . . . samudrayānam iti), but he rules
that if the special practices of the north or the south are put in
force anywhere else, it would lead to sin (I, i, 2, 5). Manu
(III, 158) forbids sea-voyages by implication by laying down that
those (dvijas) who do so should be avoided, (varjaniyāḥ prayat-
nataḥ, III, 166). Apparently the sea-trade for which he provides
no fixed rates for conveyance, were to be undertaken by others.

In the Brāhmarādīya-purāṇa (cited in Dharma-pradīpā,
1937, p. 50) it is implied that the re-admission into their varṇa of
those who had gone on sea-voyages was allowed before the Kali-yuga, because they are stated as disallowed \(\text{\textit{varjyah}}\) in the Kaliyuga:

\[
\begin{align*}
\text{Samudra-\textit{yātrā}-svikāraḥ kamaṇḍalu-vidhāraṇam} \quad & | \\
\text{Dvijānām asavarnāsu kānṭīṣūpaṇatam tathā} \quad & | \\
\text{Devarāccau sutotpattī u madhuкарke pasorvadhaḥ} \quad & | \\
\text{Māmsādanam yathā srāddhe vānaprastāsramastathā} \quad & | \\
\text{Dattakṣatāyāḥ kanyāyāḥ punārdānam parasya ca} \quad & | \\
\text{Dvīgha-kaḷaṃ brahmaṇaṃramānam gomedaśvaṃ vamahakau} \quad & | \\
\text{Mahāprasthanagamanam gomedaśvaṇaṇaṃ maktāḥ} \quad & | \\
\text{Imān dharmān Kaliyuge varjyānāḥ uḥ mantiṇaḥ.} & |
\end{align*}
\]

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49, \text{\textit{ll.}} 6-8. RELAXATIONS OF YUGA-DHARMA

Parāśara (I, 33) lays down:

\[
\begin{align*}
\text{Yuge-yuge tu ye dharmāḥ tatra tatra ca ye dvijāḥ} \quad & | \\
\text{Teṣām nindā na kartavyā yugarūpāhi te dvijāḥ.} & |
\end{align*}
\]

This indicates that rules are to be different for the different cycles of time \(\text{(yuga)}\). The principle is that duties will be proportioned to the capacity of men in different cycles, it being held that there is a deterioration of capacity and power from the first to the fourth \textit{yuga}, and in the fourth \textit{yuga} itself with the lapse of time. Many rites like the sacrifice of cows and the doing of many acts by ancient sages, which now perplex us, are due to the superior potency of the people of those ages. The point is brought out by the Sloka Āpatamba:

\[
\begin{align*}
\text{Teṣām tejo-viśeṣena pratyavāya na vidyate} \quad & | \\
\text{Tad-anvīkṣya pravaṇījānāḥ sidatyavarako naraḥ} & |
\end{align*}
\]

The point is brought out by Brhat-Parāśara:

\[
\begin{align*}
\text{Yuge yuge tu ye dharmāḥ teṣu dharmesu ye dvijāḥ} \quad & | \\
\text{Te dvijā nāvamantavyā yugarūpā hi te dvijāḥ} & |
\end{align*}
\]

A long catalogue of various practices, which are now condemned for the Kali-yuga, is given in the extracts collected on pp. 50-56 of the
recently published *Dharmapradipika* (Calcutta, 1937) from the *Parasara-Madhaviya*, ed. Islampurkar, I, i, pp. 128-142.

The reduction of the ancient rigor of duty to women and the men of the different castes is illustrated by Parasara’s chapters on purification. A married woman is prohibited from performing *vratas* (vows necessitating austerity) as by doing so she would diminish the longevity of her husband (IV, 17). A married woman, who has lost her husband by flight, death, or by his *sanyasa*, or impotency or becoming an out-caste, is eligible for *re-marriage* (IV, 30). The Sudra need not observe fasts (to secure purification for a sin), as by making a mere gift he can secure the result. (VI, 51, repeated in XI, 28.)

49, ll. 10-12. RELAXATION OF DUTIES FOR SUDRAS AND WOMEN

*Sri Bhagavata* rules:

 stro-studra-dvijabandhunam trayo na sruti-gocarā
dharmiprayāhṛtam

*i.e.* ‘For women, Sudras and degraded Brahmanas access to the Veda is shut and the compassionate sage has provided for them the Mahabharata instead.’ Commenting on this dictum, Mitramisra states (*Paribhasha*, p. 37) that the knowledge of *Atman* which the Veda will give can be equally furnished by the epics (Puranas). Sudras and women are entitled to knowledge of the *Atman* but not through the Vedas. He quotes another Purana to the effect that the devout Sudra acquires true knowledge through the reading of the Puranas and that according to some sages there is parity between women and Sudras:

Asti sudiṣṭrasya suṣrūṣoḥ purāṇenaiva vedanam
Vadanti kecin munayah striṇām sūḍṛā-samānatām

Like others who die at Kāshi they can obtain *mukti* by death there.
49, ll. 12-15. UPANAYANA FOR WOMEN

Dr. A. S. Altekar in his Position of Women in Hindu Civilization, 1938, shows that originally girls had upanayana performed for them like boys, and performed the daily Sandhyā rites, as Sīta is said to have done in the Sundarakāṇḍa of the Rāmāyaṇa (XIV, 48). Mitramiśra in his Samskāra-prakāśa (pp. 402-405) deals with the question of upanayana for women. Hārita is cited to show that women are of two classes, Brahmavādini and Sadhyovadhūh; the former has the sacrificial fire, study of the Veda and alms within her own house; the latter has upanayana done when marriage is nigh, and then the wedding is celebrated. Yama is quoted to show that in past ages (purā-kālpe) girls used to have the girdle of upananayana (maukhyi-bandhanam), study of Veda, and the recitation of the Sāvitri, when their fathers, uncles or elder brothers used to teach them, and arrange for their daily begging within the house itself, but the girls were to abjure the wearing of the antelope skin like the boys, and matted locks. The reduction of the duties of women, or as status, as modern observers may view it, is seen in Manu:

"The samskāras, which are done for boys with Vedic mantras should be performed for girls without Vedic recitation; the completion of the samskāras for girls is for the protection of their bodies. It should be done in proper time and form!" Manu rules that for girls marriage should be regarded as the substitute for upanayana, as a Vedic ceremony, the service of the husband as equal to living in the house of the Guru, and attention to domestic duties as tantamount to attention to the sacred fire. Her association in all karma gives the wife an equal part in them with the husband, even though her function is passive.

As late as about 150 B.C. the freedom given to women to perform Vedic rites is illustrated by the Nānāghāt inscription of Queen Nāyanikā, widow of Sātakarni I, who states that she lived the life of brahmacārya (after the death of her
husband, as the faithful Hindu widow is enjoined to live) and that she performed the Rajasūya and Asvamedha sacrifices. But, whether her claim relates to her association in these sacrifices as Paṭṭa-Mahiṣī (senior queen) with her husband, when he performed them, or by herself, as Dr. Altekar holds (op. cit. p. 243) it is hard to say, but the probability is in favor of the former view, as her description of her own life fits in with the Brahmanic ideals of the virtuous widow.

49, II. 16-19. REDUCTION OF STRINGENCY OF RULES OF TAINT

The rules of purification (suddhi) were made less stringent in the later smṛtis like Parāśara's, and the rules about the acquisition of taint (doṣa) necessitating purification were made easier, by application of the principle that with waning power and the passage of cycles of time, men required more lenient construction of offences and expiation. This is illustrated by the rules regarding untouchability (asprṣvyā) following either one's varṇa or some special act. Thus, according to a sūloka cited in Dharmaśradīpa (p. 150), contamination which arises even from conversation with a low-born person or an out-caste (patita) in Kṛṣṭa-yuga, from touch in Treta-yuga, and from eating his food in the Dvāpara-yuga, arises in the Kali-yuga only by actually doing the forbidden act. Parāśara ruled that the sin of as (association with these guilty of the five inexpiable sins (mahā-pāṭaka) can be removed by a vrata. Another dictum states that the sin of touching a Cāṇḍāla is removed by looking after the taint at the Sun, (ib. p. 152); (Cāṇḍālaspārsvane sadya ādityam avalokayet.) Similarly, in the Kṛṣṭa-yuga, one had to leave the country in which there were out-castes and sinners; in Treta-yuga, it was deemed enough if one left the village in which they were found, and in Dvāpara-yuga the particular family concerned; but in the Kali-yuga, it is enough to leave the actual perpetrator of an offence. At the same time, certain general exemptions from impurity by touch were given. Thus, artisans,
cultivators, physicians, servants, (dāsi-dāsa), kings, and learned Brāhmaṇas are always pure (p. 158.) In festivals, pilgrimages, marriages and sacrifices, there should be no consideration of purity or impurity following touch (p. 151.) The literature of suddhi, which is treated elaborately in the later smṛtis and nibandhas (digests), illustrates the principles suggested in the text.

Yājñavalkya (III, 28-29) lays down automatic purification (sadyas-saucam) in the following cases:

\[
\begin{align*}
\text{Rtvijām dikṣitānām ca yajñīyām karma kurvatām} & \| \\
\text{Satri-vratt-brahmacāri-dātṛ-brahmavidām tathā} & \| \\
\text{Dāne vivāhe yajñē ca samgrāme desaviplave} & \| \\
\text{Āpadyapīhikaśātayām sadyas-saucam vidhiyate} & \|
\end{align*}
\]

Other dicta against the occurrence of impurity in certain cases are indicated in the following rules of Paitīnasi and Aṅgiras:

1. \text{Atha deva-pratistāyām gaṇa-yātrādi-karmaṇī} \| \\
\text{Sraddhādau pitr-yajñe ca kanyā-dāne ca no bhavet} \|

2. \text{Rājya-nāsastu yena syāt vinā rājñā sva-maṅdele} \| \\
\text{Prayāṣyatasca samgrāme home prāsthānike sati} \| \\
\text{Mantrādi-tarpanair-vāpi prajānām sānti-karmaṇī} \| \\
\text{Go-maṅgalādau vaisyānam kṛṣi-kālātyayesvāpi} \| \\
\text{Āsauacam na bhavel-loke sarvatr-ānyatra vidyate} \|

49, \text{ii. 19-20. Relaxation of Rule for Age, Infirmitiy etc.}

The rule of Cyavana (cited in Dharmapradīpa, p. 158) illustrates the equitable rule lowering the amount of expiation in the case children, old persons and women:

\[
\begin{align*}
\text{Bāla-vṛddha-striṇām ardham prāyascittam ; Ā śodasāt} & \| \\
\text{bālāḥ ; saptatvyūrdhvaṃ vṛddāḥ} & \| \\
\end{align*}
\]

Similar exemptions exist in many other sections of Dharmasāstra for these three classes as well as persons who are ill.
50, II. 1-2. STRUGGLES OF BHAKTI-MÄRGA ADHERENTS WITH SMÄRTAS

The struggles of the saints of the Bhakti-märga with the strict adherants of Dharmasästra are recounted in Hindu and Saiva hagiology. To begin with, the saints were not of the first varña and accordingly had no right to teach religion, according to strict rule. Again, within the fold of devotees (bhaktah) the traditional rule of superior and inferior, and the inferiority of women for spiritual exercises, was discarded. The saints often attacked caste distinctions, e.g. Kabir (R. G. Bhandarkar, Vaiśnavism Saivism, 1913, pp. 70, 83), Caitanya's repudiation of caste in admission of disciples, and by the Ucchïṣṭa-Gaṇapati sect (p. 148). Some of them scoffed at the rites prescribed by Dharmasästra. Thus Nâmdev derided fasts and pilgrimages (ib. p. 90) and Tukârâm followed suit by condemning mere physical purification and mechanical rites (ib. p. 92) Illustrations can be easily multiplied.

50, II. 8-12. EMANCIPATION OF INDIVIDUAL EARNINGS FROM FAMILY CONTROL AND JOINT-OWNERSHIP

For the Roman Law of the growth of individual right in one's own earnings through the application of the principle of peculium castrense, under which Augustus had conceded to a filius-familis on service the right to dispose by testament of what he had acquired in the exercise of his profession, so as to give a soldier ultimately the right to dispose of all his property, including gifts, legacies etc. see J. Muirhead, Historical Introduction to Roman Law, 1899, pp. 322-323, as well Sir H. Maine's Ancient Law, ed. Pollock, p. 149.

The Hindu Gains of Learning Act (Act XXX of 1930) provides that notwithstanding any custom, or rule of interpretation of Hindu Law, no gains of learning shall be held not to be the exclusive property of the acquirer. It has set at rest the old controversies
about the application of the rules of Manu (IX, 206) and Yajñavalkya (II, 118-119) and the comments thereon, supported by citations from Nārada, (p. 190 ed. Jolly) verse 10, Vasiṣṭha (17, 51) Kātyāyana (ed. Kane, vv. 866 to 880) Vyāsa etc. The course of evolution in freeing individual earnings seems to have followed, as in Rome, the freeing of Sāurya-dhanam (the earnings of valor) and vidyā-dhanam (the gains of science or learning), so long as they were not acquired by the use of family property, from the common estate liable to partition between co-parceners, and then extended by analogy to the fees of the sacrificial priest, gifts (dāna), commercial or trade earnings etc. The discussion may be followed in Vyavahāramayūkha (ed. Kane, pp. 124-128).

50, II. REDUCTION IN THE NUMBER OF VALID MARRIAGES

The recommendation of Gāndharva unions for kṣatryyas was a recognition of realities, as kings often added women to their antah-pura, after seduction. Inclusion of the form under marriage was in the interests of the girl. Later on, the disfavor into which it fell, owing to misuse, led to the rule that even a Gāndharva union should be subsequently sanctified by a formal celebration, with religious rites. See Altekar’s Position of Women in Hindu Civilization, pp. 34-58. Poets like Kālidāsa invested the Gāndharva union with a halo of romance, but it is probable that it was not accepted except as an unpleasant necessity, since the subsequent form of marriage ceremony would be of one who was not a virgin (kanyā). Commentators were hard put to explain away the rule that the bride should be a virgin, and had to interprete kanyā, as merely a term for the bride. The old approval by Baudhāyana of the Gāndharva form, on the ground of ‘its naturally being the sequel to love’ (Snehanugatait, I, II, 13, 7) gives place to restriction of it to the military caste and to the imposition by Devala, for example, of a subsequent marriage ceremony:

Gāndharvesu vivāhesu punar vaivāhiko vidhiḥ
Kartavyasca tribhir varṇaiḥ samayenāgnisākṣikah
Devala provides for the marriage for the first three varṇas, implying that for the last varṇa the confirmatory religious ceremony was unnecessary (vide, commentary on Manu, VIII, 226).

50, l. 16-17. ADOPTION

From brief rules in the older smṛtis of a vague nature (Vasiṣṭha, 15, 1-10, Baudhāyana-pariṣṭha, S.B.E., XIV, pp. 334-336) a mass of discussion has grown on the topic. The valid sāstraic justification for adoption is the necessity for a man to have a male child to perform his obsequies, and save him from falling into the hell, Put. A man without a son is therefore in distress (āpadi). On the other hand parents in poverty may want to give away their sons to childless men who would bring them up, and perhaps give the sons property, which they can not obtain from the natural parents. This also is distress (āpād). The power to dispose of a son is a remnant of the old patria potestas, for which there is sanction in the story of Śunashvēpa, told in the Aitareya Brāhmaṇa, whom his father sold to King Harisćandra under pinch of poverty. The power to give away a son is limited, as the act is justified, by religious necessity of a son. Hence the rule that an only son cannot be given away in adoption. A device for defeating this rule may perhaps be seen in the recognition of a son belonging to "two fathers" (Dvāmusṭya-yāna). The filiation of an adopted son with the rights of reversioners has to be reconciled; and this leads to the rules of consent of such reversioners. As adoption is a creation by a magical act (dattahomā) of a new son, the principles of consanguinity and conformity to probability of parentage, if the son can have been a real son, arise. The disputed rule of the Kūlika-purāṇa as to the invalidity of adopting a boy, whose cūḍā-karma (tonsure) and initiation (upanayana) are already over, is perhaps an attempt to tide over the difficulty of adoptions by young men in articulo mortis. The whole structure has been built up by legalists.

See Ganganath Jha, Hindu Law in its Sources, II, 1933, pp. 217-219; and, Jolly, Law and Custom, ed. 1928, pp. 156-166.
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50, ll. 18-32. STATUS OF WOMEN (GENERAL)

See my Ancient Indian Economic Thought, 1934, 53-54, and Altekar's Position of Women in Hindu Civilisation, passim.

In Hindu law a woman is always unfree or dependant, and is the terminus of the family. Gautama enunciated the rule (XVIII, 1) Asvatantra dharme stri.

See Manu, V, 147-149, and IX, 2-3; Yājñavalkya, I, 183, 186; Viṣṇu, 25, 4-6.

See also Gurudoss Banerjee, Hindu Law of Marriage and Strīdhana; Jolly, History of Hindu Law, pp. 76-81, and pp. 226, 259 (history of female property); and Jayaswal, Manu and Yājñavalkya, pp. 225-235, and pp. 256-261.

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50, ll. 20-25. WORKHOUSES FOR DESTITUTE WOMEN

See Kauṭilya, II, 23, p. 114:

Yās'ca aniṣkāsinyaḥ prosita-vidhavā nyanā kanyakā vā ātmānam bibhryuh; tāḥ sva-dāśībhīh anusāryasopagrabhah karma kāravyayāḥ; svayam āgaccantinam vā sūtrasvālām āvatpurusāsī bhāṇḍa-vetanavinimayam kārayet. Sūtra-partkṣārtha-mātraṇā pradīpah.
Striṣyā mukhasandarasvanī anya-kārya-sambhāṣyām vā pūrva-sāhasa-daṇḍaḥ.

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51, ll. 1-2. WIFE SHARES IN HUSBAND'S PUṆYA

Āpastamba (II, 16-19):

"No division takes place between husband and wife (16). For, from the time of marriage, they are united in religious ceremonies, (18); likewise also as regards the rewards for works (karma) by which spiritual merit is acquired, and with respect to the acquisition of property." (Buehler, S.B.E., II, pp. 136-137).
51, II. 5-10. BRHASPATI ON THE RIGHTS OF THE WIFE

See Brhaspatismrtti (ed. Rangaswami, Vyavahara, XXVI, 92-94):

\[
\begin{align*}
\text{Amnaye smṛti-tantre ca} & \text{ pūrvacāryaisca sūribhiḥ} \\
\text{Sartrārdham smṛtā bhāryā ṣuṇyāpunyaphale samā} & \\
\text{Yasya noparatā bhāryā dehārdham tasya jtvati} & \\
\text{Jtvatyardhavartre tu katham anyaḥ svamāpnuyāt}
\end{align*}
\]

The theory of the identity of husband and wife, each being incomplete without the other, is found in a passage of the Vājasaneyi-Brahmana cited by Kullūka in commenting on Manusmṛti, IX, 45. This passage is:

\[
\text{Ardho ha eṣa ātmanah; tasmāj-jāyām na vindate, naitāvat praṭāyate, asarvo hi tāvad-bhavati. Atha, yadaiva jāyām vindate, atha praṭāyate, tarhi sarvo bhavati. Tathā ca, etad-vedavidv viṃḍā vadanti—'Yo bhartā saiva bhāryā smṛtā'}
\]

"A man is only half his self. When he takes a wife, he is incomplete, and so not fully born. When he takes a wife only is he fully born and becomes complete. So, Brāhmaṇaṇas versed in the Vedas declare: ‘Verily he who is known as the husband is also the wife’.

The verse of Manu, for supporting which the above passage was cited by Kullūka, is worth quoting:

\[
\begin{align*}
\text{Etāvāneva puṛuṣo yajjāyā ātmā prajeti ha} & \\
\text{Viṃṛāḥ prāhuḥ tathā Caitat ‘yo bhartā sā smṛtāṅganā} &
\end{align*}
\]

The connection between the Vedic passage and the dictum of Manu is self-evident.

The equality of sons and daughters, which follows from analogy, is stated by Manu (IX, 130) thus:

\[
\begin{align*}
\text{Yathāivātmā tathā putraḥ, putreṇa duhitā samā} & \\
\text{Tasyāṁ ātmani tiṣṭantyāṁ, katham anyo dhanam haret}
\end{align*}
\]
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"The son and one's self are identical. The daughter is equal to the son. So when she, as one's self remains, how can any one else take the estate?"

It is a great progress to this stage from Āpastamba (II, 14, 4) who placed the daughter in the line of inheritance after not only the sons but the teacher and his pupils. (The sūtra runs "Or, the daughter." Haradatta says that according to some writers the succession of daughters is on failure of sons, and that others hold that, the daughter comes after the pupils of the guru, who, according to an earlier sūtra, inherits on failure of sons and sapīṇḍas. Buehler holds the second to be the correct interpretation of Āpastamba's view.) (S.B.E. II, p. 132, n.).

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51, II. 11-12. Right of Unmarried Daughter to Expenses of Marriage

The brother should spend from his share of the paternal estate atleast one-fourth on the marriage of his sister. This is the rule in both Manu (IX, 118) and Yājñavalkya, (II, 124):

(a) M. Svebhyo amsebhyastu kanyābhyāḥ pradadur-bhrātaraḥ pṛthak

Svāt-svādamsāccaturbhāgam paṭitāḥ syur-aditsavaḥ

(b) Y. Asamkṛtāstu samskarāyā bhrātṛbhīh pūrvasamskṛtāḥ

Bhaginyasca nijādamsat dattvāmsam tu turīyakam

The rule of proportion laid down here was capable of different interpretations, and, as described by Dr. Altekar (loc. cit., p. 290-291), might lead to anomalies. The intention of the jurists is stated by Devala as making provision for the daughter's marriage (Śmṛticandrīkā, p. 625). Viramitrodaya (Vyavahāra, p. 582) holds that a brother should spend an amount equal to his share if the fourth reserved for his sister's marriage proves insufficient. Nārada (XIII, 34) rules that a brother should meet the expenses from his own earnings if there is no ancestral property:

Avidyamāne pītrarthe svāmsamudhytya vā punah

. Avasyakāryāḥ samskāraḥ bhrātṛbhīh pūrvasamskṛtaiḥ
That the marriage expenses of the daughter were a charge on the family was established in Kautilya's time, (p. 161):

_Sannīviṣṭa-samam asannīviṣṭebhyo naives'ānikam dadyuh:_
kanyābhyaśca ṁradānikam

i.e. “Brothers who are unmarried should be given as much as the cost of marriage of the married brothers; and unmarried daughters shall be given what is payable at their marriage.”

Kautilya logically includes dowry in marriage expenses.

51, _ll._ 17-19. _Marriage an Obligation to Woman_

Brahmanism laid stress on the value of married life for the due performance of religious rites, and the status of the householder (gṛhī) was ennobled. This is indicated in _Manusmṛti_, _II_, 77:

_Yathā vāyum samāsritya varīnte sarva-jantavāḥ_
_Tathā gṛhastham āsritya varīnte sarva āśramāḥ_

Hence, the _Taittīrya Brāhmaṇa_ (II, 2, 2, 6) declared that the wifeless person (widower or bachelor) was without _yajña_ (a-_yajña_-ko vā _eṣa _yo _aṃpatnikah_). The _Mahābhārata_ (Ādi. 114, 36) told a story to the effect that the husband-less woman was sinful. The obligatory nature of marriage to women is illustrated by a verse of _Yamasmṛti_ to the effect that a father should give a grown up maiden in marriage to a good man, if available, and if not even to a bad man:

_Dadyāt guṇavate kanyām nagnikām brāhmaṇārīne_
_Api vā guṇāḥśiṣya no parundhyāt rajasvalām_

The praise of the wedded estate is thus made by _Vasiṣṭha_:

_Gṛhastha eva pravrajet, gṛhastha stūyate yataḥ_
_Caturṇāṃ āśramāṇāṃ tu gṛhasthastu visisyate_
_Sarvēṣām api vai teṣām veda-smṛti-vidhāṇataḥ_
_Gṛhastha ucyate sreṣṭaḥ sa trin etūn bibharti hi_

The _upanayana_ of women was prohibited by _Yājñavalkya_ (I, 13); and their rites upto marriage were to be done without _Vedīc_
mantras. Marriage was the *samskāra* for women, and it was to take the place of *upanayana*, according to Manu (II, 67):

*Vaivāhiko vidhiḥ strīṇāṁ samskāro vaidikāḥ smṛtaḥ*

*Patisevā gūrūr-vāsō gṛhārtho agniparikriyā*

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51, ll. 20-24. ALLEGED BUDDHIST INFLUENCE IN SECURING SEX EQUALITY

Dr. K. P. Jayaswal, *Manu and Yājñavalkya*, pp. 234-235, argues that the mind of the Brahmin lawyer was touched by the inferiority of women as compared with men in inheritance etc., *because* the Buddhists recognised the right of women equally with men to entry into the monastic order. The assumption is incorrect. Hinduism does not make women spiritually inferior to man, even though it does not encourage spinsterhood or asceticism for women. Jainism made a distinction between the spiritual capacity of man and woman (E. W. Hopkins, *Religions of India*). That the ascetic life should not be undertaken by girls without due spiritual urge was the Hindu view. The *Mahābhārata* mentions a woman, named Sulabhā, who practised austerity and remained unmarried so as to achieve salvation (XII, 325, 103):

*Sāham tasmin kule jātā bhartaryasati madvidhe*

*Vintā mokṣadharmesu carāmyekā munivratam*

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51, ll. 24-25. INDISSOLUBILITY OF MARRIAGE

Divorce (*mokṣa*) has to be distinguished from separation (*tyāga*). Manu lays down the indissolubility of marriage in the following *sloka* (IX, 101):

*Anyonyasya avyabhicāro bhaved-āmaraṇāntikah*

*Eṣa dharmaḥ samāsena jñeyah strī-pumsayoh ṣāraḥ*

"‘Let mutual fidelity continue till death,’ this may be considered the highest law for husband and wife.”
The survival of the marriage tie even after death is one of the inducements held out to women persuaded to commit sati:

*Tisrah-koṭi-ardhakoṭi ca yāni romāṇi mānuṣe |
Tāvat-kālam vased-svargam bhartāram yānugaccati ||
Vyāla-grāḥt yathā vyālām bīlād-uddharate balāt |
Evaṃ uddhiṭya bhartāram tenaiva saha modate ||

(Parāśarasmṛti, IV, 31-32).

The rules of Yama, Śatātapa, and Kātyāyana allowing a girl married to an improper person to remarry again, are explained away by Madhavācārya (Parāśarasmṛti, vol. I, pt. 2, pp. 90-91) as relating to other yugas and as inapplicable to the present times:

So ayaṃ punar-udvaho yugāntara-visayāḥ. Tathā ca Āditya purāṇe :
Ūḍhāyāḥ punarudvāham jyeṣṭāmsvam go-vadham tathā |
Kalau pañca ha Kurvita bhṛatī-jāyām kamanḍalum ||

Kauṭilya accepted the rule that in Dharma-vivāha (the first four forms of marriage) there could be no divorce:

*Amokṣo dharma-vivāhānām. (p. 155)

But if the husband and wife hate each other and agree to release one another they can do so.

The rules allowing remarriage of widows and women whose husbands have long not been heard of etc., which were probably operative once, have been explained as interdicted for this age. Among them is the famous rule of Nārada (XII, 67):

*Nāste mṛte pravrajite kībe ca pātite patau |
Pañcasu āpatu nārinām patir-anyo vidhiyate ||

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51, l. 27. CONDEMNATION OF PROLONGED CELIBACY

Dirgha-brahmacaryam is one of the Kalivarjyas, according to Brhān-nārādiya-purāṇa (cited in Dharma-pradīpa, p. 50):
The relevant clause prohibiting prolonged study and celibacy (which are involved in *Brahmacarya*) is cited from the *Brahmapurāṇa* in Mādhavacārya's *bhāṣya* on *Parāśara-smṛti* (vol. I, pt. 1, p. 133, Islampurkar's ed.)

The authors of the *Dharma-pradīpa* explain that the interdiction of prolonged *brahmacarya* of 24 years and more prescribed in the *Gṛhyasūtras* is impracticable at present (p. 53).

*Manusmṛti* (III, 1-2) lays down that one should have studied the three Vedas, or two, or at least one before entering the order of householder (*Gṛhastrāsrama*) and that the vow of studying the Vedas, must be kept for 36, 18, or 9 years, or until the student has learnt the Veda perfectly. Manu's dictum in regard to the duration of *brahmacarya* is identical with the dicta of all *ṣmṛtas*, with the exception of Baudhāyana, (I, 2, 3, 1-5) who prescribes periods of forty-eight years, or twenty-four years, or twelve years for each Veda studied, or at least one year for each *Kāṇḍa* of the Veda studied, or till the Veda has been mastered. He cites the Vedic injunction that one should kindle the sacred fire when one's hair has not turned grey (*Jāta-putrah kṛṣṇa-kēso agnim ādadhita*) 'lest the duty of offering the Srauta Agnihotra be neglected ', for, as he himself remarks, 'life is uncertain '. This extra-ordinarily long period of *brahmacarya* is taken up by Śābarasvāmin's (I, iii, 2) discussion, as the *sruti* (cited) and the *smṛti* (Baudhāyana) are in conflict. Śābara holds that the *smṛti* rule is invalid, and he is in line with the later *smṛtis* which include *dirgha-brahmacarya* among the interdictions of the present age (Kaliyuga). Kumārila attempts a reconciliation by suggesting that the *dirgha-brahmacarya* rule is for those who are physically unsound and not quite fit for married life, but who are unable to remain celibate through lack of self-control. A text from the *Atharva-veda* is cited in support of the rule to which Baudhāyana has given his adherence, to show that Śābarasvāmin's summary rejection of it is untenable.
51, l. 28. PRAISE OF GRHASTHAS'RAMA

For the panegyric on the house-holder's life see:
Manusmṛti, III, 77-80: (Buehler's trn.)

"As all living creatures subsist by receiving support from air even so (the members) of all orders subsist by receiving support from the householder. Because men of the three (orders) are daily supported by the householder with (gifts of) sacred knowledge and food, therefore (the order) of householders is the most excellent order. (The duties of) this order, which cannot be practised by men with weak organs, must be carefully observed by him who desires imperishable (bliss in) heaven, and constant happiness in this life, the sages, the manes, the gods, the Bhūtas, and guests ask the householders (for offerings and gifts); hence he who knows (the law) must give to them (what is due to each)".

For parallel passages, see Vasiṣṭha, VIII, 14-16, and Viṣṇu, LIX, 27-29.

52, lII. 1-2. THE WIDOW'S POWER OF ALIENATION

The relevant texts of Kātyāyana have formed the basis of discussion by the digests. These are arranged as under by Mr. Kane in his reconstruction of Kātyāyana:

Āsurādisu yallaḥdham strīdhanam paitykam strīyā
Abhāve tadaḥatyānāṁ mātā-pitros-tadisyate || (920)

That Strīdhanā which was obtained by a woman from her parents in the forms of marriage beginning with the āsura is desired (held) to go to her parents on failure of her progeny.

Aputrā sva yaṇam bhartuḥ pālayanti gurau sthiyā
Bhuḥjīta āmaranat kṣāntā; dāyādā urydhvam āpnuyuh || (921)

A sonless widow, preserving the bed of her husband unsullied, and residing with her elders, and being self-controlled (or forbearing)
should enjoy her husband's property till her death. After her
death, the other heirs of the husband will succeed to it.

Svaryāte svāmini strī tu grāsācchādana-bhāgini
Avibhakte dhanāms'ām tu prāpnoti āmarāṇāntikam II (922)
Bhaktumarhati kāptāms'am guru-susrūsane ratā
Na kuryād yadi susrūsām caila-piṇḍe niyojayet II (923)

When her husband is gone to heaven, the wife is entitled only
to food and raiment, if her husband was not separated, or she may
get a share in the ancestral wealth till her death. The widow
intent on serving her elders, is entitled to enjoy the share allotted to
her; if she does not serve her elders, only food and clothes should
be given her:

Mṛte bhartari bhartṛams'am labheta kulapālikā
Yāvad-jīvam; na hi svāmyam dānādhamana-vikraye II (924)

Vratopavāsaniratā brahmacarye vyavasthitā
Damadānaratā nityam aputrāpi divam vrajet II (925)

'A wife who seeks the honor of the family gets the share of her
husband till her death; but she has no power of gift, mortgage or
sale. A widow engrossed in religious observances, fixed in celibacy,
always self-restrained, and making gifts goes to heaven, even though
she is sonless.'

These rules give the widow only a life-interest in her husband's
estate, and they form the foundation of the modern right of the
Hindu widow to her husband's estate, and after her the reversioners.
The rules are old, as Kautilya (p. 153) lays down identical in-
junction:

Aputrā patis'ayanam pālayantī guru-samīpe strīdhanam
āyuḥkṣayat bhuḥjita; āpdartham hi strīdhanam; ūrdhvaṃ
dāyādam gaccet. (III, 2)

The rules were interpreted so as to allow the widow to incur
expenditure of various kinds, e.g., gifts on the ground of the spirit-
ual benefit accruing therefrom to her and to her husband, religious
expenditure etc. The extension is made in *Vyavahāra-mayūkha* (Kane's trn, p. 152) in explaining rule 920 of Kātyāyana:

"The text refers to a prohibition of gifts and the like intended for bards (*vandi*), panegyrists (*cāraṇa*) and the like. But gifts for unseen (i.e. spiritual) purposes and mortgages and the like conducive to those purposes are valid, on account of the rule (viz. 925) of Kātyāyana".

Some of the verses of Kātyāyana cited above are ascribed to *Yama* by the *Smṛticandrika* (*Vyavahāra*, pp. 665 seq.)

Devaṇṇa Bhaṭṭa, the author of the *Smṛticandrika* also extends the power of the widow to make gifts etc., in spite of the apparent limitation of her power: (trn. Krishnaswami Aiyar, 1867, pp. 169, 170).

"The competency of the widow to make gifts for religious and charitable purposes, such as the maintenance of old and helpless persons, being sanctioned by law, the above passage must be held as contemplating the want of independence of a widow in making gifts etc. for purposes not being religious or charitable, but purely temporal, such as gifts to dances and the like. A widow thus possesses independent power to make gifts for religious objects, and therefore the same author enjoins the constant presentation of gifts by a widow for religious purposes. . . . The daily making of such gifts will be impracticable if the widow were held to possess no independent power. It is hence to be understood that the law does not deny the independent power of a widow even to make a mortgage or sale, for the purpose of providing herself with the necessary funds for the discharge of religious duties."

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52, ll. 1-5. DIVORCE OPEN TO NON-BRĀHMANAS

Cf. Dr. Altekar (*op. cit.* p. 102):

"Divorce went out of vogue only in the higher sections of Hindu society. The *Śūdra-kamalākara*, written in the 17th century, expressly permits it to Śūdras and other lower castes." Kamalākara relies on a rule of *Nārada* (not found in Jolly's edn.):
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Na Śūdrāyāḥ sūṛtaḥ kāla, na ca dharma-vyatikramaḥ  
Viseṣato aprasūtāyāḥ striyāḥ samvatsaraś-vidhiḥ

The verse ends samvatsaraṣṭhitiḥ in Nārada-yā Manu-

Kauṭilya limited divorce to the forms of marriage other than
the first four, which were in use by non-Brahmanas only (III, 4
or p. 155).

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52, II. 6-1Q. KALIVARJYA

See Note 128, ante (pp. 163-164) on the relaxations of Yuga-
dharma.

The rules interdicting certain ancient practices on the ground
of their unfitness for the weakened men of the present age are
generally cited as Kalivarjya and are to be found in the Purāṇas
and some of the later smṛtis. In the Vanaparva (clix, 11-34) of
the Mahābhārata an account of the gradual decline of power and
dharma from yuga to yuga is described. Some of the practices
of the ancients may prove repugnant to present day conscience.
But they should not be condemned on that account. Thus
Parāśarasṃti (I, 33):

Yuge yuge ca ye dharmās tatra tatra ca ye dvijāḥ  
Tešāṁ nindā na kartayā yuga-rūpā hi te dvijāḥ

Thus, we should not condemn the injunction of Manu (VIII,
371) that the wife, who proud of her virtues or birth contravenes
the directions of her husband should be thrown by the king to the
dogs to be devoured by them. It refers to a different age.

Mādhava-caitya collected a number of texts on Kalivarjya and
these have been printed in his edition of Parāśarasṃti (I, i, pp.
131-137) with valuable comments of his own by the late Mahāmaha-
pādhyāya Vāman Śāstrī Islāmpūrkar. Hemādri, Madanapārījāta
and other authorities give quotations on Kalivarjya. In the
recently published Dharma-pradīpa (pp. 50-53, and pp. 232-244) a
list of the inhibitions of the Kali-yuga is given and the
premissibility of such practices as the remarriage of widows, for
which smṛti sanction may be cited, in the present age, is discussed.
The most accessible collection of practices inhibited for the Kaliyuga is that of Mr. P. V. Kane, in a paper on Kalivarjya, which he contributed to the Eighth Oriental Conference. He has catalogued 49 practices as so forbidden, and stated in each case the older authority, enjoining or allowing the practice condemned later as Kalivarjya. He holds that the doctrine of decadence as time passes is referred to in Rgveda, X, 10, 10, where in the famous dialogue between Yama and Yami the former is reported as saying: "those later ages are yet to come when sisters will do what is not sister-like." The Nirukta implies the decadence in the contrast it makes between the intuitive knowledge of Dharma which ancient sages had and the later had not: (I, 20)

Sāksāt kṛtadharmaṇa rṣayāḥ babhūvoh te avarabhya asā-ksātkṛta-dharmasya upadesena mantrān samprāduḥ

The doctrine of decadence is expressed in Āpastamba (II, 6, 13, 7-9) and Gautama (I, 3-4). The idea is that the sages of old who committed many transgressions, which are against the sūstras, incurred no sin thereby, because of their spiritual powers, and that if one of the present age, who does not possess such spiritual greatness, commits the same offences he will surely be sinful.

Mr. Kane conjectures that in the five or six centuries preceding the Christian era the theory of the four yugas, their characteristics and of the progressive moral decline from yuga to the yugas following, was fully developed. He also holds that the theory of inhibitions of the Kali-yuga began to be current about the fourth century A.D. The yuga theory appears in its full-fledged form in the Mahābhārata (Vanaparva, ch. 149 and 183), Manu (I, 81-86) and some Purāṇas e.g. Matsya, ch. 142-143, Brāhma, ch. 122-123 and Nāradya, pt. I, ch 41. The earliest inscription mentioning the sins of kali-yuga is one of the Pallava king Simhavarma (Epig. Ind., VIII, p, 162: Kaliyugadosāvāsanna-dharma-uddharaṇa-nitya-sannaddhasya).

Āpastamba's rejection of the old rule of giving all property to the eldest son as opposed to sūstras

(sūstraiḥ vipratiṣiddham, II, 6, 14, 10)
may be based on the *kalivarjya* idea, through he does not expressly mention it. *Uddhāra-vibhāga* or giving a larger share to the eldest son on partition was known to early *smṛtis* (*Gautama*, xxviii, 5-7, *Baudhāyana*, II, 3, 9) and is sanctioned by *Manu* (I, 112 and 1170, but it is one of the *Kalivarjyas*. It is noteworthy, as indicative of the want of unanimity as regards what is or what is not properly prohibited for the *Kali-yuga*, that ‘Medhātithi, after’ mentioning the *uddhāra-vibhāga* as *kalivarjya* according to some, rejects the prohibition.

When an authority allows a practice and another condemns it two ways of reconciling them, without rejecting the claim of either to count as authority, are open: one is to see in the opposition an option to follow the one or the other, and the other is to reject the older in favour of the newer rule, on the ground that the practice allowed by the former is *Kali-varjya*.

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52, ll. 10-12. **CANDRAGUPTA’S MARRIAGE TO HIS BROTHER’S WIDOW**

The story is given in an extract from a lost drama of Visākhadatta, named *Devi-Candragupta*, which has been discovered in fragments in works on dramaturgy like *Nātya-darpaṇa*, and is confirmed by an explanatory passage in Sāṅkarārya’s commentary on Bāṇa’s *Harṣacarita*, which contains an allusion to the slaying of the libidinous Sāka king by Candragupta disguised as a woman. The story is that the Sāka ruler desired Rāmagupta, the elder brother and predecessor of Candragupta, to send to his harem the queen Dhruvadevi, that Rāmagupta pussilanimously agreed and sent the queen, whom Candragupta rescued after slaying the enemy. According to the *Mañjugrīṃḍalatantra*, Rāmagupta was killed by Candragupta, who married his sister-in-law the widowed queen Dhruvadevi. (See Jayaswal, *Imperial History of India*, 1934, p. 35, R. D. Banerji, *History of India*, 1936, pp. 168-9 and Dr. V. Raghavan’s critical summary of the discussion in the *Journal of the Benares Hindu University*, 1937).
52, ll. 14-19. GRADUAL DISAPPEARANCE OF NIYOGA

Niyoga, the custom of a brother raising off-spring for a brother on his wife, is accepted by Baudhāyana (II, 2, 17, 62,) Gautama, XVIII, 4-14, Vasiṣṭha, XVII, 14, 55-56, Viṣṇusmṛti XV, 3, Manu, IX, 56-63, 143-147, Yājñavalkya, II, 127-128, Nārada, XII, 80-88, and Hārīta, IV, 17. In the Mahābhārata, we find cases of Niyoga applied to a wife, when the husband is alive. Later in the Smṛtis it is restricted to the widow. Its use in the Epic for widows was common (XIII, 12, 23):

Nārī tu ṭatyabhāvevai devaram kurute ātīm

There was no restriction in the Epic on the number of off-spring that might be raised by niyoga on a woman. Later, it was limited to one son only. The Epic says that Kunti protested against being asked to submit to Niyoga more than once (Ādi, 132, 63-64) on the ground of contravening Dharma. Earlier, three sons were allowed to be raised (ibid. I, 126). It was tantamount, as Dr. Altekar has pointed out (op. cit. p. 172), to a virtual marriage as the birth of girls did not count for discontinuance.

Āpastamba is the earliest smāra to condemn it. He held that the spiritual benefit would go to the begetter and not the putative father (II, 6, 13, 8). Manu condemned the practice as animal, (pasūdhara, IX, 66 ff.). The restrictions proceed by limiting the duration of niyoga to the birth of two sons (Manu, IX, 61), and afterwards generally to one son. The use of the device, if there were children already, was interdicted (Baudhāyana, II, 20). The disposition to use it for satisfying the carnal appetite is condemned by Nārada (XII, 80-88). The application of it for reasons of cupidity is condemned by Vasiṣṭha (XVI, 57):

Lobhān-nāstī niyogah

The popularity of adoption as an alternative, and stricter ideas of morality, outraged by the practice, led to its being included among the Kalivarjyaḥ in the enumeration of which it usually leads. (Dharmapradipā, pp. 50-53).
52, ll. 21-22. PROHIBITION OF HYPERGAMOUS UNIONS

In Mādhāvācārya's bhāṣya on Parāśarasmṛti there is reference to the homage due from a pupil to the asavarṇa or inferior caste wives of the guru (vol. I, pt. i, 328). But such unions are rejected in the present age as kalivarṣya. Thus the Brhannāradīya (cited in Dharma-pradīpa, p. 50) says:

Sāmudra-yātrṣvikāraḥ kamandalu-vidhāraṇam I
Dvijānam asavarṇesu kanyāsūpagatam tathā II

52, ll. 30. GROWTH OF BELIEF IN MAGICAL PRACTICES

Belief in the efficacy of magic and witch-craft, which is natural in a primitive age, is reflected in the Kautiliya (IV, 3, 4 and XIII, 32 etc.) In fact there was wide-spread belief that it was owing to Kautilya's own powers as a magician that the Nandas were overthrown and Candragupta enthroned in their stead. Kāmandaka, who belongs to the Gupta epoch, alludes to this belief, in which he shared:

Jātavedā ivārciṣmān vedān vedavidāmvaraḥ I
Yo'dhitavan sucaturaḥ caturodyekavedavat II
Yasyāyācāravyāreṇa vajrajvalanatefasāḥ I
Papāṭāmūlataḥ svīmān Suṣparvā Nandaparvataḥ II
Ekākī mantrašaktyā yah s'aktyā S'aktidharopamaḥ I
Ājāhāra nṛcandrāya Candraguptāya medintm II

"Who, by his genius mastered the four Vedas as if they were only one; who, by the blazing thunder-bolt of his magic, completely overthrew the mountain-like Nanda; who, single-handed by force of his intelligence (or magical spells) and with a prowess like that of the wielder of Sakti (i.e., Kārtikeya, the general of the gods) won the earth for Candragupta, delightful like the moon to men."

It will be noted that the reference stresses Kautilya's mastery of the Atharva-veda, the Veda of spells and incantations. The
importance of the *Atharvaveda* for the royal preceptor is indicated in the description by Kalidāsa of the sage Vasiṣṭha as *ātharva-nidhi* (*Rāghuvamśa*, I, 59). The *Mahābhārata* (XIII, 105, 14-45) declares the royal *purohita*, who knows the *Atharva* spells, as worth ten *ācāryas* (E. W. Hopkins, *Great Epic of India*, 1902, p. 380). *Manusmṛti*, which discountenances wrong practices (*vāmācāra*) alludes to the efficacy of magic (III, 59) when it declares that the house in which women pronounce a curse for not being honoured will perish completely as if destroyed by magic. Manu also empowers the oppressed Brāhmaṇa to "use in incantations the sacred texts revealed by Atharvan and by Angiras" (XI, 33). Buddhist and Jaina monks were forbidden to practise it, but apparently the prohibition was ineffective as *Viśākadatta* (in the *Mudrārākṣasa*) refers to its practice by a Buddhist ascetic Jīvasiddhi. The incursions of Shamanist hordes, like those of the Śākas and the Kuśāns, should have given an impetus to the practice of witchcraft.

Bāna describes a weird midnight incantation by Bhairavācārya seated on the chest of a corpse in a cremation ground for obtaining the position of a *vidyādhara*, and the dawn of prosperity to the line of *Puṣyabhūti*, the prince of Sthānesvara (Thanesar) as the reward for protecting the wizard. The Purāṇas, especially the *Śaiva*, and the *tantras* popularised magic. The *Kādambarī* and the *Dasakumāracarita* contain allusions to magic and its efficacy. The spread of *Sakti* worship emphasised the popular belief in magic, which has always lurked on the country-side.

52, II. 24-32 and 53, II. 1-4. SATI OR SAHAMARAṆA OR ANYĀROHAṆA

Kauṭilya condemns suicide of every kind and penalises it by post-mortuary punishments, designed to act as deterrents, and by punishments for those who defend suicide. The verses of Kauṭilya on the subject are these: (IV, 7, end):

*Rajju-vastra-visair-vāpi kāma-krodha-vasena yah |
Ghātayet svayam ātmānam stri va pāpena mohitā ||*
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Rajjuna rājamārge tān caṇḍālena apakarṣayet
Na smasānavidhisteśām na sambandhikriyāstathā
Bandhus-teśām tu yāḥ kuryāt āpreta-kārya-kriyā-vidhim
Tad-gatim sa caret pascāt sva-janād-vā pramaṇcyate
Samvatsarena ṇatati ṇatitena samācaran
Yājanādhyaṇād-yaunād taisvāṇyo api samācaran

The reference in the passage to Sati is both implied and explicit (ṣṭri vā pāpena mohitā). Dr. Altekar’s statement that Kautilya* does not mention the custom (op. cit. p. 140) is not correct.

The self-immolation of Kalanos, which the Greek writers mention, though of a sage, suggests the existence of similar practices among women also.

Viṣṇusmṛti (C. 100 A.D.) merely mentions the custom as an alternative to brahmacarya (mṛte bhartari brahmacaryam tadanvārohaṇam vā, (XXV, 14) and adds that a widow by joining her husband on the pyre accompanies him (XX, 36):

Mṛtopi bāndahavaḥ sākto nānugantum ṇriyam janam
Jāyāvarjām hi sarvasya yāmyaḥ panthā viruddhyate

The Brāhmaṇical revival during the Gupta period led to its coming into prominence. Bhāsa has some characters who commit sati. Kālidāsa knows it, and so does Śūdraka as well as of course Vātsyāyana. An inscription of A.D. 510 mentions the sati of the wife of a general killed in battle (Gupta Inscriptions, ed. Fleet, p. 93). Harsa’s mother died a sumaṅgali by burning herself before her husband’s death (which is suicide, not saha-marana) and his sister Rājya-śri was just saved as she was about to ascend the pyre. In the epoch of Rājput dynasties it gains support. It is the age of the late smṛtis. Critical writers like Medhatithi discounted it as opposed to the injunction against suicide. His remark on Manusmṛti, V, 156, is worth citing:

Pumvat strinām api pratiṣiddha ātmatyāgāḥ... Satyām api pravṛttau na dharmatvam, evam iha (anumaraṇe) api na sāstrāyatvam... kim ca pratyakṣa-sṛuti-virodho
ayam-; ato astyeva ṭatim anumaraṇeṇī striyāḥ ṭrati-
śedhaḥ (Jha’s ed. I, p. 492).

Devaṇṇa Bhaṭṭa condemns it as (Vyavahāra, in Smṛti-candrikā, ed. Mysore, p. 598), as an ‘inferior dharma’ (nikṣṭa-_phala).

Bāṇa naturally condemned it as the courtier of Harṣavardhana (A.D. 606-649) in Kadambart, I, p. 308, ed. Nīrṇayasagara,) in view of the known views of his master, whose mother had become sati. The Rājaratangini refers to many cases of sati in Kāśmir (VII, 481, 490, 858, 1380, 1486; VIII, 448, 1447; V, 206).

“Tantra writers also joined the crusade. They pointed out that woman was the embodiment of the Supreme Goddess, and boldly declared that if a person burnt her with her husband he would be condemned to eternal hell” (Altekar, p. 1, op. cit. p.147).

Bṛhaspati describes the ṭativrata (chaste wife) thus:

\[
\begin{align*}
\text{Ārīṇa āṛte, mudite hṛṣṭā, } & \text{proṣite malīnā kṛṣṇā} \\
\text{Mṛte mriyeta yā ṭatyau, } & \text{sā stri jñeyā ṭativrata} \\
\end{align*}
\]

The description of the wife as dying when the husband dies may be poetic exaggeration or a reference to sati. (Sams. 483).

Aparārka marshals the authorities for Sati, and appears to defend it (see p. 111, passage beginning 'Imā nārī avidhava'). The chief Smṛti authorities in favour of the practice are Angiras, Hārīta and Vyāsa. Aparārka (p. 112) quotes four writers, who prohibit brāhmaṇa widows from offering sati, and one of them curiously is Angiras:

\[
\begin{align*}
\text{Yā stri brāhmaṇa-jātīya mṛtam īḥ } & \text{ṭatim anuvrajet} \\
\text{Sā svargam ātmagāthena nātmānam nc } & \text{ṭatim nayet} \\
\end{align*}
\]

Paithinasi corroborates the dictum of Angiras and states that saha-marāṇa is the rule for others than brāhmaṇa wives:

\[
\begin{align*}
\text{Mṛtānugamanam nāsti brāhmaṇyā Brahmasāsanāt} \\
\text{Itareśām tu varṇāṇāṃ strīdharmo ayam } & \text{ṭaraḥ smṛtaḥ} \\
\end{align*}
\]

Kamalākara Bhaṭṭa’s mother Umā committed sati (Kane, p. 432). Nilakanṭa was his cousin. The illustrious example of a sati in the family is a proof of their conviction of its śāstraic character, apart from verbal defence.
Mādhavacārya’s defence of *Sati*, as not opposed to such Vedic precepts as those contained in *Isa-upaniṣad*, 3, that those persons who commit suicide reach after death a world of intense darkness, named *Āsūrya-loka*, is contained in his comment on *Parāśara-smṛti*, II, 32 (Vol. II, pt. i, p. 55, Islampūrkar’s edn.). His defence is natural, in the Brāhmaṇa revival that synchronised with the foundation of Vijayanagar.

The holocaust following the death of Gāngeyadeva of Cedi at Prayāg in A.D. 1038 is mentioned in an inscription published in *Epigraphia Indica*, II, p. 3.


53, II. 13 to 54, 18. TREATMENT OF UNCHASTE AND ABDUCTED OR OUTRAGED WOMEN

Hindu law took a strict view of unchastity, when it was voluntary, whether in man or women. Āpastamba imposes a deterrent punishment on the unfaithful husband, by ruling that his expiation is wearing the hide of a donkey for six months, and begging from door to door in that guise, everywhere announcing his offence, (I, 9, 18):

*Dāravyatikrami kharājinam bahir-loma pañdhāya dāravyatikramine bhiksāmiti saṃtāgarāṇi caret. Sā vyttīḥ śaṃ- māsān.*
The direction to wives to treat their husbands with meekness and forbearance is not coupled with any reduction of rigor in the treatment of an unchaste husband.

In the Vedic age, unchaste women were allowed to take part even in sacrifices after mere confession (Satapatha Brahmana, II, 5, 2, 20). The leniency was continued by Vasiṣṭha (XXVIII, 2):

_Svayam vipratipannā . . . na tyājyā_ ¹

Kauṭilya (p. 230) provides a punishment for a man who defiles the daughter of his own male or female slave, and makes the adulterer responsible for the payment of a suitable nuptial fee to enable the girl to be married. He also rules that when a man has sexual relation with a woman held as slave on account of money due from her, he has not only to be fined but to provide for her clothes and maintenance. According to Yājñavalkya, II, 290, a brāhmaṇa having intercourse with a slave woman, even though she is of lower caste, is to be punished. By a rule of Kātyāyana of general applicability, which is therefore applicable to adultery also, women should pay only half the fine that men should pay for the offence, and where the penalty is death in the case of men, women should be left off with mere mutilation. (v. 487 of Kane’s edn.) The concession is on the score of the defenceless position of women, which calls for leniency.

The idea that the man is more to blame than the woman in such cases is also implicit in the Mahābhārata (XIII, 58, 5) rule that in cases of adultery or rape between persons of the same caste, the woman should not be turned adrift (tyājyā), unless she has conceived.

A wet-nurse (dhaṭrī) is placed by Nārada (XV, 73-75) in the same class as the mother, mother’s sister, mother-in-law, maternal uncle’s wife, paternal aunt, pupil, sister’s female companion, daughter, preceptor’s wife, a women of the same gotra, a suppliant woman, the queen, a female ascetic, and a chaste woman of the highest caste, as a person whose violation will constitute an inexpi-able offence for which there is no punishment lower than the
removal of the offending organ (cited by Aparārka, p. 857). The idea is that the abuse of a woman who has placed herself under protection is specially heinous. It is equated with incest.

The punishment for theft being death, and abduction of a woman being theft, it was punishable capitaly. Vṛṣṇi (cited in Vyavahāra-mayukha, p. 135) includes the theft of women in nine kinds of theft. The same smṛti rules (ib. p. 236) that the abductor of a woman (strī-hartā) should be burnt in a raging fire bound to an iron bedstead:

_strī-hartā lohasayane dagdhavyo vai kaṭāgninā |

In the Nāradaparīśṭa (28) it is ruled that the entire property of a man should be confiscated if he abducts a woman, and he should suffer death if he abducts a virgin girl:

_sarvasvam harato nārīm, kanyām tu harato vadhaḥ |

The abduction of a married woman is held by Brhaspati to be a crime of violence (sāhāsa) as well as theft, and Nārada (XVII, 6) holds it to be among the most heinous crimes.

The ātātāyin, the most culpable offender known, being usually a synonym for assassin, is classed with the committer of arson, the poisioner, the armed robber, and the violent robber of land and women. The punishment for the ātātāyin is death, according to Manu, (VIII, 350) and Vasīṣṭha (III, 17), and he who slays him when caught red-handed can not be punished by the king, even if the culprit who has been slain is a learned Brāhmaṇa. Later on this was explained away as inoperative in the Kaliyuga in the case of Brāhmaṇas, though its applicability for offenders of other castes was conceded. By a rule of Kātyāyana (v. 830 ed. Kane) rape was to be punished by the king with death:

_strīṣū kṣṭopabhogasyāt prasahya puruṣo yathā |

When tenderness for a Brāhmaṇa offender began to be shown by smartas the rule was made applicable only to non-Brāhmaṇas. (Vyavahara-mayukha, p. 224 and Vīramitrodaya, p. 504.)

Unchastity, according to Manu (XI, 60) is an upa-pātaka.
The expiation prescribed for it (ib. 118) is govrata and cāndrā-yaṇa. According to Manu (XI, 177-178) an unchaste wife should be merely confined to the house and made to undergo these penances; and by the general rule, already cited (infra p. 269 note) her penance will be half of what one of the male sex will have to perform.

A ravished woman is in result unchaste. But she must be maintained.


REHABILITATION OF ABDUCTED OR OUTRAGED WOMEN

Vasiṣṭha (XXVIII, 2-4):

"A wife, tainted by sin, whether quarrelsome or a voluntary run-away, or the victim of an outrage, or the victim of thieves, is not to be cast away (nāsti tyāgo). Let her courses be awaited for; by them she will become pure again." Atri holds that a woman who has been ravished by mlecchas and evil men (pāpakarmabhiḥ) is rendered pure again by performing the prājāpatya penance and by her courses. (This verse occurs also in Parāsarasmṛti, X, 25).

Devala, who probably wrote about the time of the Muslim invasions of Sindh, rules that a woman, who has conceived through one of another varṇa (i.e., the abductor) is rendered pure either by miscarriage of the foetus (vinisṛte tataḥ salyā, rajaso vāpi dars'ane) or by giving away the child born of the conception, so that there might be (after her restoration) no mixture of castes (varṇasam-karaḥ.) (Devalasmṛti, in Smṛitīnam-samuccayah, Ānandāśrāma ed. p. 87, vv. 47-52). This is in harmony with the principle enunciated by Yājñāvalkya (I, 72) that ‘in adultery, purification accrues from the recurrence of the courses, but not if there has been conception, and that in the latter case, the wife should be put away.’ Vijnānesvara shows the spirit of reaction against the lenient treatment of the woman, by explaining away the older rules
in her favour as referring to ‘mental adultery’ (manovyabhicāra), and that where the father of the unborn child is a Śūdra the woman must be cast away, in accordance with a rule of Manu (IX, 155). But, he shows some consideration to the unfortunate woman by laying down that by “casting away” (tyāga) all that is meant is that she should not be allowed to take part in the religious rites of the husband, as a chaste wife will be entitled to do, and that it is not intended that she should be driven out of the house, in which she may remain in confinement. (Tyagasca upa-bhoga-dharma-kāryayoh; na tu niṣkāsanam ghṛtāt tasyāḥ, ‘nirundhyāt eka vesmanī’ iti niyamāt).


The opinion of Caturvimsatimatam is thus given in Nanda-paṇḍita’s commentary on Parāśarasmṛti, X, 27:

Śūdra-garbhe bhavet-tyāgaḥ caṇḍālo jāyate yataḥ
Garbhasrāve dhātudoṣaiḥ caret-cāndrāyanatrayam

and

Catasra eva santyājyāḥ pataṇe satyāpi striyāḥ
Svāpākopahatā yā tu bhartṛghni pīṭ-putra-gā

(ed. Benares, pp. 311-2.)

54, l. 8. AL-BIRUNI ON HINDU TREATMENT OF FALLEN WOMEN AND RETURNED CONVERTS

The remarks of Al-Biruni, who is anterior to the great smārtas of the twelfth century, relate to both the treatment of adulteresses and the Hindu, who having been enslaved by the Muhammadan conqueror, comes back to his country. He says (ed. Sachau, 1910, II, pp. 162-163):

“An adulteress is driven out of the house of the husband and banished.
I have repeatedly been told that when Hindu slaves (in Muslim countries) escape and return to their country and religion, the Hindus order that they should fast by way of expiation, then they bury them in dung, stale, and milk of cows for a number of days, till they get into a state of fermentation. Then they drag them out of the dirt, and give them similar dirt to eat; and more of the like.

I have asked the Brahmins if this is true, but they deny it, and maintain that there is no expiation possible for such an individual, and that he is never allowed to return to those conditions of life in which he was before he was carried off as a prisoner. And how should that be possible? If a Brahman eats in the house of a Śūdra for sundry days, he is expelled from his caste and can never regain it."

The remarks of Al-Biruni show that the rules had hardened by his time, and that Aparārka and Viśeśvara in explaining away the old considerate rules were only justifying current usage.

54, II. 8-12. REHABILITATION OF THE CONVERTED HINDU

The locus classicus among smṛta is Devalasmṛti, which is devoted entirely to the enunciation of means of restoring by suitable penances such persons to their old place in Hindu society. It consists of about ninety verses. But the Devala who is quoted by the great commentators seems to have been another, or at least, his work seems to have been mainly in prose. (Kane, op. cit., p. 121). That his rules, if they had been known in Al-Biruni’s age were not operative in Hindu society is evident from Al-Biruni, (supra, Note 212.) In the fragment, which now passes as his, he states that the expiations prescribed by him alone are valid, and that the rules of other sages are invalid, if against him (verse 72).

The gist of his doctrine is that a person who had been carried away by mlecchas, and had contracted impurity by close association with them, in eating, living and even marriage, (which lead to loss
of caste), can be restored to his old status by a bath in the Ganges and the performance of specified expiatory rites (prāyascittā). Such restoration can take place even if the person had been away for twenty years:

\[
\text{Gṛhitto yo balat mlecchaiḥ pañca-ṣaṭ-sapta va samāḥ} \quad \text{I}
\]
\[
\text{Dasaśi vimsatim yāvat tasya suddhir vidhiyate} \quad \text{II}
\]

The Mitākṣarā has ruled that even if a person had been treated as civilly dead by the breaking of a pot, he can be taken back:

\[
\text{Caritavrata āyāte ninayerur-navam ghaṭam} \quad \text{I}
\]
\[
\text{Jugupseran na cāpyenam samvaseyusca sarvasaḥ} \quad \text{II}
\]

(Cited in Dharma-pradīpa, p. 209).

The following verses of Yāmasmṛti (V, 6-7) rule that persons who had been forced into slavery by mlecchas can be taken back after performing suitable prāyascitta:

\[
\text{Balat dāstktā yeca mleccha-cāṇḍāla-dasyubhiḥ} \quad \text{I}
\]
\[
\text{Asubham kāritāḥ karma gavādi-prāṇi-himsanam} \quad \text{I}
\]
\[
\text{Prāyaschittam ca dātavyam tāratamyena vā dvijaiḥ} \quad \text{II}
\]

54, ll. 13-26. TREATMENT OF VRĀTYA. SĪVĀJI’S EXPIATION AND CORONATION

The orthodox definition of a vrātya is given in almost identical terms by Manu (II, 39-40) and Yājñavalkya, (I, 37-38). The maximum limit for the performance of upanayana for dvijas (twice-born castes) is 16, 22 and 24 respectively for the Brāhmaṇa, Kṣatriya, and Vaiśya respectively; those who have not undergone such initiation in the Sāvitrī-mantra and their descendants are vrātyas unless they are redeemed by the performance of the rite of vrātyastoma. The expiatory rites laid down for them by later writers include the Uddālaka-vrata, and the concluding bath (avabhṛta-snāna) of the Asvamedha (horse) sacrifice (V. N. Mandlik’s Trn. of Yājñavalkyasmṛti, 1880, p. 165, note 4). Manu proscribes even clandestine relations of dvijas with vrātya women.
Neglect of sāvītrī will create new vrātyas (X, 21). Sacrificing for vrātyas is forbidden (XI, 198).

See Nāgoji Bhaṭṭa’s Vrātya-prāyascittanīrṇaya and the Amber Mahārāja Jai Singh’s Vrātya-prāyascitta-samgraha (Benares, 1927) for the attitude towards the rehabilitation of those who had become vrātyas among ruling dynasties in the Mughal period.

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Vṛātya-stoma

See Nagendranāth Ghose, Indo-Aryan Literature and Cultural Origins (1934) for a new view of the Vṛātyas as a highly cultured non-Aryan people of the North East India, responsible for early Upaniṣad thought and the origin of Buddhism. They are held to have followed an exotic cult and ‘become Aryanised, and Brahmanised’ (D. R. Bhandarkar, Some Aspects of Ancient Indian Culture, 1940, follows the line of thought developed by Mr. N. N. Ghosh). Mr. Ghosh points out that there were four kinds of Vṛātya-stoma (pp. 8-10) which may be classified as those of conversion, excommunication, and purification. The Asvamedha is regarded by Mr. Ghosh as a vrātya institution, which was superseded by the Brahmanical Rājasūya (pp. 128n, and 202n). Vasiṣṭha (XI, 76-79) lays down in regard to the reclamation of the vrātya that he might undergo one of the following: the Uddālaka penance, a kind of cāndrāyana, the Asvamedha, or the Vṛātya-stoma. Unless the ceremonies are done, the vrātyas according to Vasiṣṭha (XI, should not have upanayana, Vedic instruction or sacrifice or intermarry with those who are still in caste. The question became important when Hindu Kings who claimed kṣatriya lineage, like Śivāji, found that they were vrātyas, through omission of the upanayana, ceremony, which Śivāji underwent prior to his coronation, on the advice of Gāgābhaṭṭa (Viśvesvara Bhāṭṭa of Benares, the nephew of the famous Kamalākara Bhāṭṭa) who received a fee of a lakh of āon for officiating at Śivāji’s coronation (A.D. 1674). The official account of the coronation shows that the great Marātha ruler was made to follow
strictly all the old rules laid for a Kṣatriya king's installation, after undergoing suddhi.

The fullest account of Śivāji's coronation is that in Malhar Rāmarāo Ciṁnis, Śiva-cchatrapatice-caritra, ed. K. N. Sane, 1924, It is an almost contemporary document, and is based on reports of eye-witnesses and court officials. When Śivāji decided on being crowned, precedents for the long discontinued coronation rites were diligently sought. Jai Singh of Jaipur had been crowned and had performed a jyotiṣṭhoma in Ujjain, and also a paunḍarika yajña. He was known to Śivāji, having brought him before the emperor, on a safe conduct, which was repudiated. Under the orders of Jai Singh an extensive digest of Dharmasāstra was compiled by Ratnākara in A. D. 1713 and named Jayasimha-kalpadruma (printed, 1925; vide Kane, History, p. 548). The procedure followed by the Rājput ruler was studied. But, it was deemed necessary to get a first-rate smārta from Benares, and Gāga Bhaṭṭa whose family originally belonged to Mahārāṣṭra, was invited. As laid down in the sāstras, a saptānga was appointed under the name of aṣṭa-pradhān so as to officiate at the ceremony. Śivāji took an oath (pratijñā) at the coronation: to restore the world which had been overrun by the Muhammadans (Yavanākrānta) and re-establish the Hindu dharma and to govern in accordance with the Dharmasāstras (ib. para 274), as befits a descendant of the ancient Sesodia line (sisodivā-kulānta utpanna ho-ūna kulabhūṣāṇa hotsāta kuladharmā-sthāpanā keli). That his vow was kept is shown by his ordering the arrest of Sambhāji, for outraging a woman, contrary to Dharma (ib. para, 282)
S'ri S'atakarni, the S'atavahana king, contemporary with Puşyamitra and Kharavela, performed also the Asvamedha twice, like his enemy, the great Sunga, whom he defeated in battle. Gautamiputra S'atakarni claims to be 'the unique Brāhmaṇa' and the destroyer of the pride of the Kṣatriyas. (Banerji op. cit., p. 118.) In the year 24 of the Kuṣāṇa era a stone post of the horse-sacrifice (asvamedha) was dedicated at Mathurā. "On this stone post Vāsiska is mentioned as the reigning emperor." (R. D. Banerji, History of Ancient India, p. 129). In the Nānāghāt inscription the widowed queen Nayanikā, the consort of S'atakarni I, mentioned above, claims to have performed (participated in?) many sacrifices such as the Rājasūya and Asvamedha (Archaeological Survey of Western India, V, p. 82). In the Gupta dynasty, Samudragupta, Kumara-gupta I, and the later Gupta, Ādityasena (c. A.D. 650, V. A. Smith, Early History of India, ed. 1924, p. 332) claim to have performed the Asvamedha. The Bhāras'ivas are supposed to have performed at Benares 'ten horse sacrifices'. The Vākātaka King Pravasasena did a horse sacrifice (R.D. Banerji, Anct. Hist. of Ind., p. 1877). In the Dakhan, Pulakes'in I (c. 550) (Fleet, in Bombay Gazetteer, I, i, p. 181) performed it. Towards the end of the seventh century, Madhyamarāja Yasobhīta of the S'ailodbhava dynasty (the name is significant of the origin of the family) of Orissa claims to have done an Asvamedha and a Vājapeya.

In South India, the early Pallava king Sivaskaṇḍavarman (according to the Hārahadgallī plates, Epig. Ind. VI, p. 88) claims to have performed the Agniṣṭoma, Vājapeya and Asvamedha sacrifices. The reference in the Udayendiram plates to an Asvamedha by an unmentioned king in late Pallava times is noteworthy. (Gopalan, Pallavas, p. 125). The Kadamba king Mayūrarvarma (who, like Puṣyamitra was a Brāhmaṇa) claims to have done an Asvamedha. In the Coḷa records, there is reference to only one Asvamedha and that in Rājadhirāja's time (Nilakanṭha S'āstri's Coḷas, II, p. 220) Kṛṣṇa Yādava, the grandfarther of Mahādeva, the patron of Hemaḍri, claims to have revived Vedic sacrifices.
NOTES

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56, ll. 5-6. Nibandhas on Dharmasāstra by Kings

The great bhāṣyas are virtually nibandhas, as they collect in
the course of their comments on their originals all the relevant
authorities supporting the text, or apparently going against it.
Aparārka’s bhāṣya on Yājñavalkya and Mādhava’s commentary
on Parāśāra are practically nibandhas. Ballāla Sena (A.D. c. 1168)
composed, through or with the help of his guru Aniruddha, four
digests named sāgara, viz., Ācārāsāgara, Pratīṣṭhāsāgara,
Dānasāgara, and Adbhutasāgara. The last two have been printed.
(Kane, op. cit., pp. 340-341).

Pratāparudradeva of Orissa, who ruled at Kuṭaka (Cuttack)
from A.D. 1497-1532, is the reputed author of the digest Sarasvatī-
viḷāsa, of which the Vyavahāra part has been published
(Mysore, 1927).

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56, l. 5. Hemādri’s Caturvargacintāmaṇi

"Hemādri and Mādhava are the Castor and Pollux in the
galaxy of dākṣinātya writers on Dharmasāstra" says Mr. Kane
(op. cit., p. 354). He held the post of Karanāḍhisvarā (Keeper
of Records) of Mahādeva, the Yādava king of Devagiri (Daulatabad)
in the Dakhan. His modest title disguises, as in the case of the
famous Nāna Fādnavis, the position of virtual premier. His
Caturvargacintāmaṇi aimed at being an encyclopaedia of Dharma,
and was designed to consist of five major sections, viz. vratā, dāna,
tīrtha, mokṣā and pariṣeṣa. The sections on tīrtha and mokṣā
have yet to come to light. (Kane, p. 354). King Mahādeva under
whose command Hemādri wrote his digest, reigned from A.D.
1260 to 1270.

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56, ll. Jayasimhakalpadruma

See Note 217 on Śivāji’s coronation, ante pp. 281-285. This
extensive work is in 19 stabakas on kāla, vratā, srāddhā, etc.
Composed about A.D. 1710 (vide, Kane, p. 548).
56, ll. 17-18. SMALL CONTENT OF POLITICS AND LAW IN NIBANDHAS WRITTEN BY COMMAND

There is nothing on polity in Hemădri's digest, and it makes only occasional excursions into the domain of vyavahāra e.g., on sources of ownership (III, i, p. 525 ff.), strīdhana, (III, i, pp. 530-531). These are his only digressions into law proper. In the bigger nibandhas, vyavahāra and rājadharma were only part of the bigger scheme. Two parts only are devoted to these in Nilakanṭha's digest out of the twelve, and two out of fourteen in Lakṣmidhara's Kṛtya-kalpātaru. In Cāṇḍeśvara's Ratnākara, the treatment of Rājaniti was an after-thought, and vyavahāra and vivāda (law and procedure) were two sections in seven. In Smṛticandrika, vyavahāra was one of its six divisions, though now its best known; the others dealt with smaksāra, āhnikā, śṛāddha, asauca, and pṛāyascita. The Madanaratna-pradīpa had no section on Rājaniti and its vyavahāra section was only one of seven. Other instances can be cited.

56, ll. 19-21. THE CHARACTER OF RĀJANĪTI IN NIBANDHA LITERATURE

The only works on Rājadharma or Rājanīti now extant, which form part of a nibandha are (1) Lakṣmidhara's Rājadharma-kalpātaru, c. A.D. 1110, (2) Cāṇḍeśvara's Rājanītiratnākara, c. A.D. 1370, (3) Rājanīti-prakāśa of Mitramiśra, c. 1620, (4) Nītimayūkha of Bhāṭṭa Nilakanṭha, c. 1635 and (5) Rājadharma-kaustubha of Anantadeva, c. 1675. Among the parts on Rājadharma in old digests which are lost must be mentioned king Bhoja's Rājanīti (A.D. 1000-1050, mentioned by Kane, op. cit., p. 719) and Rājadharma-kāmadhenu of Gopāla a contemporary of Lakṣmidhara as mentioned by the latter (Kane, p. 612; cited by Cāṇḍeśvara on pp. 2 and 4 of his Rājanītiratnākara, ed. Jayaswal, 1936).
56, l. 23. **KAUTILYA’S ARTHASASTRA**

A vast literature has grown round the *Kauṭilya*. For a discussion of the authenticity, character and place of the *Kauṭilya* in political thought see my *Ancient Indian Polity*, 2nd edition, 1935, and my *Ancient Indian Economic Thought*, 1934 passim.

56, l. 25. **BHJOA’S YUKTIKALPATARU**

This has been edited by Pandit Iśvaracandra Sāstri, Calcutta, 1917. The topics it deals with are, besides polity, selection of sites for buildings and construction of buildings, furniture-making, precious stones, ornaments, weapons, draught and other animals, vehicles and the building of ships etc. Bhoja has written on *Vāstusāstra* in his *Samarāngaṇaśūtra* (ed. Gaṇapati Sāstri, G. O. S.). The miscellaneous character of the topics in the work, and the citation of Bhoja himself by name six times may justify the suspicion that it has been fathered on the famous king of Dhāra. The polity part is of poor quality.

56, l. 25. **MĀNASOLLĀSA OF SOMESVARA CĀLUKYA**

The *Mānasolūsa* is an encyclopaedic work in 100 chapters, divided into five *vimsātis*, and comprising about 8000 *slokas* in anuṣṭubh metre. It gives a condensed account of many topics. The first two *vimsātis*, which have been printed both at Mysore and Baroda, deal with politics chiefly, dealt with in a very free spirit, so as to bring in medical treatment, horses, elephants, precious stones and alchemy. There is little originality. An account of *tīrthas* (places of pilgrimage) comes early in the work, on the ground that *tīrthasaṃnāna* is imperative for a king, and the holy rivers of the Dakhan within the author’s dominions are specifically mentioned. The author is Somesvara, the son
and successor of Vikramāditya VI. His reign extended from A.D. 1127 to 1138, its shortness being due to the great age to which Vikramāditya lived. It was composed in A.D. 1131 (Mr. G. K. Shrigondekar's introduction to the Baroda edn. p. vi).

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56, ii. 29-30. Kāmandaka, Somadeva-Sūri and Hemacandra

All the three writers make a display of their learning and literary skill, literary effect being more their obvious aim than originality in idea or in presentation of political views. The Nītisāra of Kāmandaka is an obvious imitation of Kauṭilya's work but its administrative, legal and economic material is rejected, and attention is concentrated on such minor matters of king-craft as the maṇḍalas and diplomacy. The treatment betrays unfamiliarity with actual government. Somadeva-Sūri was a Jain teacher (c. A.D. 950). His work is in simple, readable prose of great elegance. It is chiefly a rehash of some portions of Kauṭilya's work, whose phrases are woven into the texture of Somadeva's own sentences. It has been printed at Bombay with a baffling commentary, which contains many forged texts.

For analysis of the contents of the Nītisāra and the Nīti-vākyāmyta, see—Benoy Kumar Sarkar's Introduction to Hindu Positivism, 1937, pp. 381 ff., and pp. 420 ff.

Hemacandra is another Jain writer, and a polyhistor. He lived between A.D. 1089 and 1173 under the patronage of his disciple Kumārapāla Cālukya, (A.D. 1143-1172) king of Anhilvād. His Laghu-arhan-nīti was printed in 1906. For an analysis of its contents see Sarkar, op. cit., p. 430.

See note 28 supra.

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57, ii. 1-4. Rājadharma Works by Court Paṇḍits.

Nilakanṭha wrote under the patronage of Bhagavanta Singh of Bhareha, near the junction of the Jumna and the Cambal (Carman-vati). Bhagavanta was a Bundela chief of the Sengara clan. The
digest was named after the patron as Bhagavanta-bhāskara. As the work was named Bhāskara 'the Sun,' each section was called a ray of the Sun (Mayūkha). The division into twelve sections was perhaps suggested by the number of Ādityas being twelve, (see P. V. Kane's ed. of the Vyavahāra-mayūkha, 1926, Introduction, p. xvii).

Mitramis'ra, the author of Vtramitrodaya, was an āsrita of the famous Bir Singh of Orccha, who ruled from 1605-1627, and was coeval with his patron Jahāngir, for whose sake he assassinated Abul Fazl, in 1602 (Vincent Smith. Akbar, 1917, p. 305). Jahāngir promoted Bir Singh when he came to the throne and showed him so much consideration that Bir Singh was promoted to a mansab of 3000 (see my ed. of F. Gladwin's History of Jahāngir, 1930, p. 23). He was also permitted to fortify Datia and Orccha, rebuild the famous temple of Kṛṣṇa at Mathura, and build many other temples. His revivalist zeal for Hinduism is responsible for the patronage of Mitramis'ra whose digest combines in its title his own name coupled as ‘friend’ with that of his patron.

Anantadeva the author of Rājadharmakaustubha wrote under the patronage of Baz Bahadur of Almora (1662-1675). See Kane's History of Dharmas'āstra, pp. 452-453.

57, ll. 11-31. LAKŚMĪDHARA AND THE KṚTYAKALPATARU

The relevant information on Lakṣmīdhara and his great digest and a consideration of its place in the history of Dharmas'āstra is collected in my articles on Lakṣmīdhara on pp. 148-168 and 199-223 of the Madras Law Journal Commemoration Volume, 1941. The question of the alleged citation of Vijñānesvara by Lakṣmīdhara, to which currency has been given by the high authority of Mr. Kane, who brought it into notice (History of Dharmas'āstra, pp. 289, 317), is examined and it is shown that the position can not be sustained. The dates of the composition of the Mitākṣarā and the Kalpataru are determined as c. 1120 and 1110 respectively, in
modification of the dates given by Mr. Kane, who places the Kalpataru long after the Mitakṣarā. Incidentally, from the Kalpataru confirmatory evidence of the author of the Kāmadhenu being Gopāla, as suggested by Mr. Kane (pp. 294-296), is given, and he is shown to have been a contemporary and friend (vayasyaḥ) of Lakṣmīdhara.

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58, ll. 1-6. Caṇḍesvara

Mr. Kane in his History (pp. 370-372) and Dr. Jayaswal in his introduction to the Rājanīttiratnākara (pp. 12-22) have given the available information about the personal and family history of Caṇḍesvara, who, while liberally “borrowing” from his predecessors, particularly Lakṣmīdhara, to whom he is inferior in ability and erudition, claims superiority over them:

Yasmin-na kīcchidapi samsati Kamadhenur-
Yaṅreṣṭhamalāpamaṁi Kalpatarurna datte l
Dhatte na gandhamapi kañcana Pārijataḥ
Tat-sarvamaṁi vivinakti nayapraṇaḥ ll

(Caṇḍesvara’s preface, sl. 25 to Kṛtyaratnākara, Bib. Ind., 1925, p. 6).

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58, ll. 16-32. Nītimayūkha

The paramount authority which his Vyavahāramayūkha has attained through judicial decisions in the Bombay Presidency has invested all the other sections of the Bhagavanta-bhāskara with a reputation, which is somewhat unmerited. This is particularly the case with his Nītimayūkha. It is a pedantic work. Its main reliance is on Varāhamihira’s Br̥hatasamhitā and the Nītisāra of Kāmandaka. Like other writers after the Musulman conquest, he recommends kṣaṭa-yuddha and the use of poisoned weapons, destruction of the civil population etc. To show his want of realism, Mr. B. K.
Sarkar has pointed out that Nilakantha's authorities are of the Gupta period (op. cit., p. 547).

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59, line 1. NON-KŚATRIYA CORonation

At the beginning of the *Nitimaýukha*, Nilakantha declares that the term Rājā is valid (sakto) only in regard to the Kśatriya (Kśatriya-mātro) and is not a result of assumption of a kingship (Rājya-yoga). He argues that as kingship (rājya) follows coronation, and it is laid down that the Rājā should be crowned (Rājānam abhiṣiñcet) which can only mean the Kśatriya. There seems here a tacit assumption that what he says in the book is applicable only to Kśatriya kings but the tenor shows that he was more of a realist than might appear from this initial argument. He describes the Vedic ceremony of coronation with vedic rites, (abhiṣeka-vidhiḥ, and abhiṣeka-prayogah) which take up nearly two-fifths of the short treatise. It is noteworthy that the more rigid Laksmidhara, who, though a courtier, unlike Nilakantha who was a mere scholar, has omitted the Vedic rites and the full mantras from the Aitareya-brāhmaṇa in Rūjadharma-Kalpataru, and given only three pages to the coronation.

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59, II. KILLING A BRAHMAN IN SELF-DEFENCE

The subject is discussed in pp. 91-100 (Gujarāthi Press ed. 1921). He quotes *Manusmṛti*, VIII, 350-351, that 'one may slay without hesitation an assassin who approaches him with murderous intent, even if he be his own teacher, a minor, an aged man, or a Brāhmaṇa versed in the Veda, and by killing an assassin the slayer incurs no guilt;' and Kātyāyana (a verse not found in Mr. Kane's reconstruction of this jurist) that 'by slaying in battle one who approaches the slayer with murderous intent and attacks him the killer incurs no guilt accruing to the slayer of a Brahmana,' Nilakantha argues that the rules refer only to one who actually
attacks and should not apply to a possible slayer who is asleep (ato jighāmsata eva viprasya maraṇam, na suptādeḥ) and that the use of the words "or" (vā) in Manu's dictum and 'even' (api) in Kātyāyana's, shows that the killing of a Brāhmaṇa in such circumstances is not acceptable. Vijñānesvara, in commenting on Yājñavalkya (II, 21,) by way of illustration discusses this injunction of Manu. The argument is that the words used do not constitute a vidhi (command) to the effect that a guru and others must be killed, but imply that if even the slaying of a guru, who is entitled to reverence and filial affection, an old man and a child, who are objects of compassion are liable to be slain, in such circumstances, how about others not possessing such claims to consideration—even if they approach as assassins (ātatāyinaḥ)? The argument of the Mitakṣara, which Nīlakanṭha accepts, is further that there would be a conflict between precepts if the meaning is that such ātatāyins (a guru etc.) should be killed: for Sumantu has ruled that though an assassin (ātatāyin) can be killed, without guilt accruing to the slayer, it is otherwise with the killing of a Brāhmaṇa or a cow. There is also the injunction of Manu (IV, 162) that the teacher who initiates one, the teacher who has explained to him the Vedas, or any other teacher, and parents should never be troubled (na himsyāt), as they are all inoffensive (tapasvi) persons. There will be also transgression of the Vedic injunction that one should not injure any living being (Na himsyāt sarvāṇi bhūtāni) which is a general interdict against all killing. The significance of the mention of the guru and others in the verses of Manu is that they alone should not be killed. It is concluded by Vijñānesvara, who is following Medhātithi here, that the rule of Manu about ātatāyins will apply only to those who are not Brāhmaṇas.

Aparārka holds that a Brāhmaṇa ātatāyin may be slain only when he is about to kill another, or is attempting to kill another; i.e., he can be slain when caught in the very act of murdering another. If he escapes, he can not be killed later. He also holds that if it is possible to prevent the murder short of killing the
murderer (ātatāyin) to kill the latter will result in the guilt of brahmahatya (Brahman-slaughter). His opinion applies to ātatāyins of all castes. Medhātithi was of opinion that a murderer could be killed even after the commission of the crime, provided he is not a Brāhmaṇa, etc. Vījñānesvara held that a Brāhmaṇa or Guru ātatāyin should be punished short of death, by suitable penances etc.

The Smṛticandrīkā (Vyavahāra) dealing with the question applies the extension given, by parity of guilt, to the term ātatāyin by the smṛtis (e.g., Vasiṣṭha, III, 16 who lays down that the following six are also ātatāyins: an incendiary, a poisoner, an armed attacker, a robber of wealth, a man who ravishes another man’s wife, and he who takes away a man’s field; or Bhṛgu, who adds to the above list the man who curses, who uses incantations, who is an informer, and one who always picks up the weak points of others.) The conclusions of the Smṛticandrīkā are threefold:

1. All ātatāyins, including a Brāhmaṇa ātatāyin may be killed when they attempt assassination.

2. With the exception of the Brāhmaṇa, constructive ātatāyins like those who rob one of his field, or ravish another’s wife, etc. may also be killed.

3. The Brāhmaṇa is not to be killed for the constructive offence of ātatāyin, as explained by Bhṛgu and Vasiṣṭha.

In his Nītimayūkha Nilakanṭha accepted all the three propositions, going thereby against the total exemption of the Brāhmaṇa by Vījñānesvara and Medhātithi. But, in his Vyavahāramayūkha, he went back on this total acceptance of the three rules laid down by Smṛticandrīkā, and argued that in no circumstances should the Brāhmaṇa be killed, as the rules in Manu etc., referred to other ages than Kaliyuga. His conclusion is that ‘in the Kaliyuga a Brāhmaṇa ātatāyin is not to be killed (even in self-defence), but in other ages this was allowed.’ (See Kane’s notes to his edn. of Vyavahāramayūkha, 1926, pp. 417-422; and his Trn. of the same work, 1933, pp. 262-263, and particularly the notes.)
59, ll. 4-9. Kūta-yuddha

Kūta-yuddha is described by Nīlakanṭha (Nītīmayūkha, p. 98) as slaying by the use of poisoned weapons and so forth. He cites the recommendation of Kāmandaka to carry on kūta-yuddha as an alternative (paryāya) or addition to open warfare. But the instances of ‘unfair’ attacks, which he gives may be unchivalrous, but are milder than those in use today among the nations of the West.

59, ll. 8-26. Anantadeva’s Doctrines

See Dr. B. Bhattacarya’s Introduction to the Rāja-dharma-Kaustubha, passim and especially, p. xiv, chief queen and her accomplishments:

p. xiv, “If the king has several queens, then the eldest son, although born of a younger queen, inherits to the exclusion of other sons by older queens.” Thus, primogeniture is laid down.

pp. xiv and xv, constitution of the ministry.

pp. xv-xviii coronation ceremony.

60-61, ll. 1-7. Mitramiśra’s Views

His view on the question of the qualification of the king is stated in Rājanyaṭīprakāśa (pp. 10-11) in the following words:

Rājasvabdaṁra ṯaṁ ṯaṁ vaṁ vicāryate. Kim ayam rājasvabdo
Yasmin kasmimscit prañā-pālaka vartate, uta kṣatriya-
jātau, kim vā abhiśikta-kṣatriya-jātau varttata iti? Tatra
avesṭyadhihikarane “Rājā Rājasūyena svārājya-kāmo
yajeta” ityatra pūrvapakṣe likhitam—

Rājyasyaṁkaraṁ rājeti sarvalokesu gṛjeta
Mahāviṣayatā caivam sūstrasyāpi bhaviṣyati
Tasmād brāhmaṇādāyo rājyam kurvāṇā rājāna iti.
Rājyam tu janaḍapada-paripālanam. Lokaprayoga eva sabdā-
ṛthāvadhāraṇe pramanām. Loke ca brāhmaṇādiṣu rājya-
kartṛṣu rājasvabdo vartate.
Yāskopi, 'Rāja rājate' iti bruvan, yaugikam rājasvabdam,
īsvarā-vacanameva abhyupāiti. Rājānothkarṣaśca praja-
paripālanā-direva.
Vedepi. "Somo asmākam brāhmaṇānām rājā, " "Yo rāja
vagṣaṇṭnām," "Somo vai rājā gandharvesu" ityādau api,
īsvarā-vacana eva pratyyate.
Kos'e api, "Rāja tu praṇatāseṣa-sāmantas-syāt"

On primogeniture his views are given in pp. 35-38. He cites
Manu in favor of the heritage going to the eldest son, and the express injunction of the Kālikāpurāṇa:

Athoparicaram rājā yauvarājye abhyaśecayet
Jyāyāmsam aurasam putram sarvarājagnānairyutam
and the address of Daśaratha to Rāma in the Rāmāyaṇa:

Ādiṣṭo hyasi me āyeṣṭāḥ prasūtāḥ sadṛṣvo guṇāih

.................................................................

Tasmāt tvam puṣyayogena yauvarājaye avāpsyasi
He lays down that a regal heritage should not be divided like a private estate: putrebhyo rājyam vibhajya na deyam (p. 39).

The State's liability to make good stolen property is limited.
After citing Yājñavalkya's injunction that stolen property should be made good by the king (II, 36), Mitramis'ra adds (p. 127) the comment that what is lost through the theft of the servants of the owner need not be made good. (Yattu dhanasvāmina eva pari-
cārkair-nttam tattu rājñā na deyam.)


The Brāhmaṇa permitted to be a soldier
The following half-verse from the Mahābhārata shows that every one is bound to fight for his country, if ordered to
do so by the king, and that the Brāhmaṇa particularly should obey the mandate:

\[ \text{Rājñām niyogāt yoddhavyam brāhmaṇena viṣeṣataḥ!} \]

**Duties of a conqueror**

The rules from the śāstras are summarised by Mitramisṭra on pp. 409-413. The main features of the rules are that the old royal family, which has been defeated, should be restored, that private looting should be forbidden, that all spoils should be brought to the king, who will reward his soldiers as he deems fit, that if the former king is killed, one of the family should be crowned, that the conquered kingdom should not be destroyed (i.e., annexed):

\[ \text{Duṣṭasyāpi narendrasya tad-ṛāṣṭram na vināśayet} \ (p. 411) \]

and that the laws and usages of the conquered country should be respected and reinforced. (p. 411). The victor should conciliate the conquered people.

Obviously, these precepts if accepted by the Mughal conquerors would be beneficial to the Hindu population.

61, II. 8-12. **Caṇḍēśvara and Lakṣmīdhara**

Caṇḍēśvara is a wholesale borrower of Lakṣmīdhara’s *Kṛtya-kalpaṭaru*, and practically every section of his *Ratnākara* series is built on the corresponding section of the *Kalpaṭaru*. I am illustrating it in my edition of the *Kalpaṭaru*. But he has not borrowed from Lakṣmīdhara in the *Rājanīti-ratnākara*. The circumstance that it was composed when he was over eighty will explain its slim size, as compared with the bulkier seven sections of the original *Ratnākara*, and also his omission to make more use of Lakṣmīdhara’s work. There are only six citations of Lakṣmīdhara by name (pp. 16, 20, 37, 70, 72, 73) in the *Rājanīti-ratnākara* besides a phrase from *Nītikalpaṭaru* i.e., *Rājadharma-kalpaṭaru*. 
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61, II. 14-17. King's Propitiation of Unseen Powers

Lakṣmiṇidhara's Rājadharma-kalpataru contains many directions of a detailed character on the need to propitiate unseen powers and the ways of doing so. As a srotriya he must have believed in their efficacy, and felt a special competence to advise his king on the subject. That the calamities of the Musalman invasions in the eleventh and the twelfth centuries of the Christian era turned the eyes of the orthodox Hindus to such magical rites is illustrated not only by the space given to them in the Kalpataru but by the still fuller use made of such spells and ritual in the works of his very much younger contemporary Ballālasena, whose Dānasāgara for instance gives the ritual and mantras in extenso. It may be noted that Ballālasena wrote a special work on portents (Adbhuta), viz. Adbhuta-sāgara, which was printed in 1905. This work was commenced in A.D. 1068 and was left incomplete by Ballālasena, and completed by Lakṣmaṇasena. All Ballālasena's works were written with the help of his guru Aniruddha, the author of Pitṛdayitā and Hāralatā.

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61, I. 19. Caste of Candesvara's Master. The Brāhmaṇa as King

The Karnāṭa dynasty of Mithila, which had been ruling there from the last quarter of the eleventh century, when it became independent under Nānyadeva, came to an end in 1324, when Harismhadeva retired to Simraongarh in Nepal after defeat by Ghiyāz-ud-din Tughlāk (Ind. Ant., 1884, p. 414). Candesvara, like his father and grandfather, had been a Minister under this king. Candesvara must have succeeded to the ministership by 1310, as in 1314 he performed a Tulāpuruṣadāna himself (Intrn. to Dānaratnākara, MS, in B.O.R. Institute, Poona). After the withdrawal of Harismhadeva to Nepal, a new dynasty founded by the Rajaguru or Spiritual Preceptor of the old dynasty established itself in Mithila under the
suzerainty of the emperor of Delhi. The founder of the new kingdom was Kāmes'a or Bhaves'a, who commissioned Caṇḍes'vara to compose the Rājanīti-ratnākara. Bhaves'a was a Brāhmaṇa, as a Rāja-guru, and Brāhmaṇas are interdicted from being kings. That Puṣyamitra the S'unga king, did so made him a degraded "Ārya" (Ānārya) to the Brahmaṇa poet Bāṇa, who condemned the act in the seventh century. (Trn. of Harṣacarita, Cowell and Thomas, p. 194).

The King's duty was to fight. A Brāhmaṇa was interdicted from bearing arms, except in very abnormal circumstances. Āpastamba laid down that a Brāhmaṇa should not touch weapons even for mere examination (Partkśārthamāpi brāhmaṇa āyudham nādadīta, 1, 10, 29, 6). Baudhāyana, against the specific prohibition of it by Gautama (to which he refers) allows a Brāhmaṇa to take up the vr̥tti of a Kṣatriya if he is not able to maintain himself by teaching, sacrificing and receipt of gifts, but limits it to cases in which society is distressed by the spoliation of Brāhmaṇas and ill-treatment of cows and castes get mixed up (varṇānāṁ api samkāre.)—(II, ii, 4, 16-18) In the same spirit the Mahābhārata (XII, 78, 12-36) allows the Brāhmaṇa to take up arms in defence of the subjects of a kingdom attacked by dasyus, on the failure of Kṣatriyas. Manu (VIII, 349-350) in the same spirit allowed the Brāhmaṇa to take up arms in defence of Brāhmaṇas, women and Dharma.

That, on a loose interpretation of the permission to the Brāhmaṇa to live by the pursuit of arms, a large number became atleast candidates for recruitment to the army in the days of Kauṭilya, is inferrable from a discussion of the merits of a Brāhmaṇa as a soldier. (Arthasaśstra, p. 343). But there is nowhere any permission to a Brāhmaṇa to become king. The passages in Manu-smṛti (I, 98-101) exalting the Brāhmaṇa in the social scale have been wrongly interpreted by Dr. Jayaswal as sanction to the Brāhmaṇa to exercise sovereignty. (Manu and Yajñavalkya, pp. 102-104). Throughout India's history in the very rare instances of a Brāhmaṇa becoming a king, he has had either to abandon his
varṇa and become a Kṣatriya, as did Mayūra, the first king of the Kadamba dynasty (J. F. Fleet, Dynasties of the Kanarese Districts, in Bombay Gazetter, I, i, p. 286) or apologise for the act. Orthodox opinion was more outraged by Brāhmaṇa kingship than by Vaiśya or Sūdra sovereignty.

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61, ll. 21-22. Recognition of the King de facto

Candesa-vara (Rājanitiratnākara, pp. 2-3) discussing the question of who is king, states that consecration is a consequence and not a cause of kingship (Prāja-svāmitve rājatve prasiddho rāja prāja-pālanavṛtti-abhiṣekādayah asya kāraṇamātram,) and accepts the same view as Kullūka that the word Rāja is not restricted to Kṣatriyas (Manusmṛti-vyākhyā, VII, 1)—"Rājasabdopī nātra kṣatriya pāraḥ." In classifying rulers from Samrāt to Tributary (Karadāḥ) he adopts the view that all are entitled to the title Rājā, and the Dharma applicable to Rājās would apply to all of them equally: "Sakala-rājebhyo yah karagrahī sa Samrāt; Samrāje karado yah sa Sakarah; svecchayā karado Akarah. Smṛṭīdau api Rājattvena prakhyātaḥ. Loke tu, Rājeti Sakarah, Cakravarti, Samrāt, Adhīsvaro, Mahārajā iti prasiddhāḥ, vivesaprati-patyuparodhāt. Parantu, trayānām api Dharmas-samameve." (Rājanitiratnākara, p. 4).

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61, ll. 22-26. The State’s Obligations to the Poor

Rājadhane dīna-anātha-ādi-sakala-prāṇinām amsītvam; bahunāyakatvāt rājya-vināśvasca iti yuktiḥ iti Gopāla-Lak.ṣīdhara-Srikarādayah. (ibid., p. 72).

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61, ll. 27-28. Burke’s Definition of Society

This occurs in the Reflections on the French Revolution. "Society is indeed a contract. Subordinate contracts for objects of mere occasional interest may be dissolved at pleasure—but the
State ought not to be considered as nothing better than a partnership in pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked on with other reverence; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership can not be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born. Each contract of each particular state is but a clause in the great primeval contract of eternal society, linking the lower with the higher natures, connecting the visible with the invisible world, according to a fixed compact sanctioned by the inviolable oath which holds all physical and all moral natures in their appointed place. This law is not subject to the will of those who by an obligation above them, and infinitely superior, are bound to submit their will to that law.” (cited in J. Mac Cunn, *Political Philosophy of Burke*, 1913, pp. 59-60.) The view of Burke very closely approximates to the Hindu view of the eternal social order, as I have pointed out in previous works of mine.

61, ll. 30-31. DIVINITY OF THE PEOPLE (PRAJĀH)

The idea of the king’s divinity is enshrined in the identification of the king with Viṣṇu. The same idea applied to the subject (Prajā) invests the latter with divinity and inviolability. Thus, in the *Mahābhārata*, Santiparva, 59, 106, it is said in the coronation oath that the people of the country (bhauma) are God (Brahma) and that in protecting the people the king is serving God:

Pratijñām ca abhirohasva manasā karmāṇā girā
Palayisyāmyaham bhaumam Brahma' styeva ca-asakṛ
The passage cited by Caṇḍesvara ends thus:

‘Adyārabhya na me rājyam; rāja ayaṁ rakṣatu pra[jāh’

I[ti sarvam Prajā-Viṣṇum sāksiṇam sravayed-muhuh]

NOTES 215

62, 1. 6. COMPOSITION OF THE RĀJANĪTIRATNAKARA BY ROYAL COMMAND

Caṇḍesvara states expressly in the second verse of the introduction to the Rājanītiratnakara that he composed it by command of King Bhavesā:

Rajñā Bhavesena ājñapto Rājanīti-nibandhakam
Tanoti Mantriṇām āryah svāmān Caṇḍesvarah kriti

Dr. K. P. Jayaswal (Rājanītiratnakara, Introduction, p. 23) shows that Bhavesā was otherwise known as Bhavasimha, and that he was the younger brother Kamesā or Kames'vara, of the family of the Rājaguru of the Karnāta dynasty of Mithila, who was set up as king in place of the old line, by the Delhi emperor, about A.D. 1370. Caṇḍesvara must then have been eighty-five. "Evidently he enjoyed a long life like his grandfather Devāditya. This record for old age and mental vigour is repeated in his family by Vidyāpati who lived under successive sovereigns of the dynasty of Bhavesā." (ib., p. 25).

188 (See Note 81)

THE PRINCIPLE OF SUBSTITUTION IN MIMĀMSA (Pratīnidhi)

The matter is argued in Jaimini-sūtras, VI, iii, 13-41. The pūrvapakṣa is stated in sūtra 13 that in the absence of the prescribed material no other should be used as a substitute. The reply of Jaimini is that the command being general does not interfere with the use of the substitute, i.e. the command is in regard to the performance of the sacrifice (Yāga) and not its material. Sometimes the Veda indicates the substitute. But there can be no substitute for the deity invoked in a sacrifice, the fire, the mantra, and the act. (sūtra 18) nor should there be a substitute for any material expressly forbidden (sūtra 20). In regard to the attainment of the truth of the
sacrifice (phala) there cannot be a substitute for the yajamīna. (sūtras, 9, 21.) Where a number of persons are engaged in a sacrifice and one of them is missing or incapacitated a substitute can be used (22). But the substitute is only a servant so far as the fruit is concerned (26). When any material is lost or unavailable, anything of the same class can be used (27). It is unreasonable not use a substitute (30). In the Veda it is laid down that if Soma is not available pūtikā (a plant resembling Soma) may be used:

Yadisomamavindeta pūtikānabhiṣunuyāt

If a substitute is lost, it should be replaced by an article resembling not itself but the original (32). If the principal (mukhya) becomes available, after the substitute is used, the former should be used, as the substitute is only to act for it, in its absence (35). This may be done even in the middle of a sacrifice (36). Sometimes the substitute may be more efficacious than the prescribed original, and in such a case can the substitute alone should be used, since the object is more important than the article to be used as prescribed? (39-40). Jaimini replies that it should not. (41).

A WOman's INDEPENDENT RIGHT TO PERFORM A SACRIFICE

(To be read with Note 130.)

In Mīmāṁsasūtra (VI, 1, 17) it is laid down that the husband and the wife possessed of wealth are entitled to perform the same sacrifice. (Svavatostu vacanādaikakāmyam syāt) depending on the Vedic injunction:

Dharme ca arthe ca kāme ca anaticaritavyāṁ
Sahadharmasācaritavyāḥ. Sahāpatyam utpādayitavyam

"She should not be discarded in religious affairs, business and desired objects; all religious acts should be performed together; children should be brought forth together." (M. L. Sandal's Trn, p. 303).
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