

RĀJADHARMA.

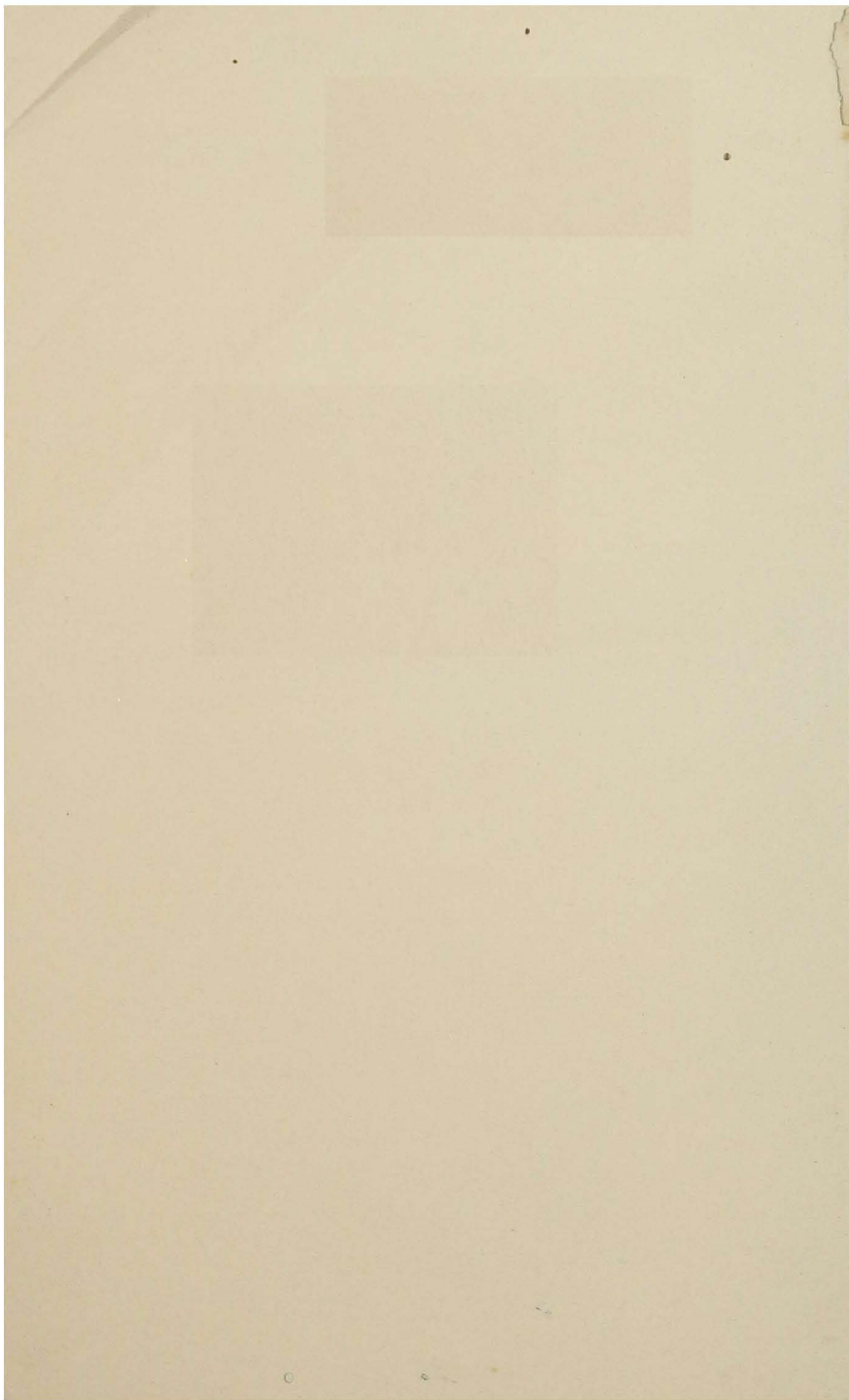
(*Dewan Bahadur K. Krishnaswami Row Lectures, 1938,
University of Madras*)

BY

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RĀJADHARMA

(DEWAN BAHADUR K. KRISHNASWAMI ROW
LECTURES)¹

I

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, *alan-ghaniya*—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 archæology 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 Archæology, 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 Benares¹ 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 atleast, 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.¹ 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 through out 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 “*Rājadharma*,” 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 Maṇīndra 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 *Arthasāstra* and *Dharmasāstra* 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 Somesvara, along with the dubious

works bearing famous 'epic' names like those of the opposed sages, Br̥haspati and Śukra, 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 *Kauṭīlīya*. 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 'Kauṭīlya,' 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. Kauṭīlya'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 "Kauṭālya" is now welcomed as the correct form of his name, and it has replaced the suggestive "Kauṭīlya". 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 *Rājānīti* or *Rājadharmā* in the Epics and Purāṇas, as well as in the Smṛtis, 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. Vijñanesvara, Lakṣmīdhara, 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 *Dāyakramasaṁgraha* of S'rī 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 member¹ 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 *Dharmāsāstra*. 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 *āsaucha* (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-matṛkā*) a much larger treatise on the "determination of suitable time" (*Kālaviveka*), and Mādhvacārya 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 (*prāyascitta*) occupies such an important place in *Dharmasāstra*. The so-called 'Brahman immunities' should be judged in relation to this attitude. Kauṭilya, 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 (*śilpa, kalā*) placed under the fifth and sixth categories, to women and to men of the unregenerate castes (*S'ūdrāntyajāḥ*) 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 Brāhman fold to accept Buddhism and Jainism, which were outside the pale for denying the authority of the Veda.

The 'secular' character of *Arthasāstra* is another assumption which can be justified neither by its content nor context. *Arthasāstra* shared the same beliefs as *Dharmasāstra*. 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 Ājivakas, 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 *Rājjanīti*, beginning with Kauṭilya, it is laid down that a king, in granting audience, should give preference to heretics, magicians, learned Brahmins 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 Ānviṣikī, the Sāṃkhya, 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 (*pāṣaṇḍāh*), and the reference must be to the Buddhists. This is proof of the spirit of comprehension in *Dharmasāstra*, of which another is the theory that it included *Arthasāstra*. 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 un (like) like 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 Śūngas, Bhārasivas and Vākāṭakas in North, and under the Śātavāhanas 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 *Nītisāra*, which claims to be based on Kauṭilya's work, adopts, like the *smṛti*, the *śloka* 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 *Nītivākyamṛta* 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 king-maker 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 *Smṛtisangraha*) than a contribution to *Arthasāstra*. 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 up 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 Vijñāneśvara 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 *Rājadharmā*, 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". *Nārada-smṛti* is an example. The lost works of S'ankha-likhita, Hārīta (prose), Kātyāyana and Bṛhaspati 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. *Parāśaras-mṛti*, which commends itself as the one pre-eminently indicated for the present age, is pre-occupied with *ācāra* and *prāyaścitta* 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, Vasiṣṭha 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 Kāmāndaka. 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 Kāmāndaka, 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 *śloka*, 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 *Kalpāsūtra* 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 *Kalpāsūtra* 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 (*saṃhita*), 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 transmission. 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 Bṛhaspati 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 *Manusmṛti* and Medhātithi, or Yājñavalkya and Visvarūpa 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 S'aṅkara 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 Pāṇini and the *vṛitti* of Kātyāyana. Kumārila does so in explaining the aphorisms of Jaimini and commenting on the *bhāṣya* of S'abara.¹ Without *vārttika* and *bhāṣya*, 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 *śloka* which declares that having had experience of the contradictions between originals and commentaries, Viṣṇugupta (*i.e.* Kauṭilya) composed both the *sūtra* and the *bhāṣya*. The text of the *Arthasāstra* of Kauṭilya is mostly in prose, though there are many verses interspersed. They have all been usually taken as *sutra*. Mahāmahopādhyaya T. Gaṇapati Śāstri, to whom we owe both a good text and a valuable commentary, accepted the last *śloka* as authentic, and regarded the brief statements of the content in the introductory chapter (*adhikaraṇa-samuddesa*), 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 *bhāṣyakāras*, 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 *bhāṣya*.

of civil law (*vyavahāra*) and maxims of government to a quarter-verse of the *smṛti* (*Rājā dharmeṇa pālayet*) will then be recognised as not exceeding the legitimate duty of a commentator, 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 *Dharmasāstra*. 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. *Dharmasāstra* 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*, *gṛhya* 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 Brhaspati were included in Max Müller's "Sacred Books of the East," a version of the *samhita* 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 *Dharmasāstra* 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 *Dharmasāstra*, 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 *Dharmasāstra*? 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 *Dharmasāstra*, because it apparently emanates from the priestly class? Even a cursory view of *Dharmasāstra* 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. Kauṭilya 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 Brahmins. 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 *bhāṣyas* 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 (*vyavahāra*) 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 *Arthasāstra* 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 (*prāyascitta*) as for punishing them, when they violated the right of property or committed a crime. The *ācara* and *prāyascitta* 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 *Ṛtam*, 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 (*puṇya*), 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 *Dharmakośa*. 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.

Strictly construed, every science will thus be *Dharma-sāstra*, but the term was restricted to enjoined *human* action. So conceived, it was divided into *pravṛtti* and *nivṛtti Dharma*, according as its end was action or freedom from it, into ordinary and extra-ordinary, (*sādharaṇa*, *asādharaṇa*), into *iṣṭa* and *pūrta* (viewed from the standpoint of enjoined Vedic ritual), and as relating to *varṇa* (caste), station (*āśrama*), caste and station (*varṇāśrama*), quality (*guṇa*) and context (*nimitta*). The divisions were subdivided, as general, special, equal and emergent *e.g.* *Āśramadharmā*.

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, (*Jyotiṣa*) and Natural Science (*Lakṣaṇa*). Two famous collections, both of *Dharmasāstra*, made in the 16th century illustrate this view. Mitramisra's *Vīramitrodaya* 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

professional soldiers, etc. But certain sections were deemed essential in a *Dharmasāstra*.

The best example of a complete *Dharma* digest (*Dharmānibandha*) is the *Kṛtyakalpataru* of Bhaṭṭa Lakṣmīdhara. 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*), Lakṣmīdhara 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 (*Gṛhastha*), 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 (*puṇya*) 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'uddhi*) 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 (*S'anti*). 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 *Vīramitrodaya*, none formally treats of all the sections in the *Kṛtyakalpātara*, though more or less the same matter is distributed in them. Sometimes, entire sections are omitted in certain digests, e.g. *Rājadharmā*, in the narrower sense, in *Smṛticandrikā*, and *Vyavahāra* and *Rājadharmā* 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 Candēśvara omits the sections dealing with consecration, purification, expiation, propitiation and salvation in his *Ratnākara*. He was a Ṭhakur and not a *full* Brahman. Lakṣmīdhara 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 debarred either by want of administrative experience or of *S'rotriya* 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 (*cāturvarṇa*) and the four-fold division of life (*caturāśrama*). 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'ābara, 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 inconsistency. 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 *Kālika Purāṇa*. After showing that the text, even if genuine, should be construed differently, Nīlakanṭha 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 prudentum* 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 *Rājadharmā*.

II

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 time. 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 life 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. Rama was described as having produced in an age of less perfection the ideal conditions of the Golden Age (*Tretā-yuga-pravartita-*

kārta-yuga-vṛttānta). 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 *varṇas* 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 (*sanyāsa*) by others than Brahmins, 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 (*prāyascitta*), the acceptance of the principle of substitution (*pratidinidhi*) to meet cases in which the original cannot be produced (e.g. *kricchra* 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 *Asvamedha* sacrifice). Rules of pollution (in the case of town life as pointed out by Nanda Pandita) were relaxed in marriages, festivals, pilgrimage, war and personal danger. The practice of referring questions

to *Pariśads* gained ground, and caste-pariśads 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 S'ūdra 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'atakarnis and the early Pallava rulers performed it. So did the Kadambas and the Gaṅgas, as well as the Vākātakas. Even the Kuṣān Vasiṣka claims to have done one. Samudragupta, 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 (*Bhāṣhya*). Asahāya (600 A.D.), Visvarūpa (800 A.D.), Medhātithi (850 A.D.) illustrate this movement. The powerful support given to the spread of *Mīmāṃsā* doctrine by Kumārila and to philosophical speculation by S'aṅkara swept away the lingering remnants of Buddhism. *Mīmāṃsā* 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 *Smṛtīviveka* and the anonymous *Smṛtisārasaṅgraha*, *Caturvimsatimata* and *Ṣaṭṭṛimsanmata*, 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 *Dharmasāstra* will satisfy them. Large digests (*Nibandhāḥ*) become the fashion in every Court. We have lost King Bhoja's celebrated digest, Gopala's *Kāmadhenu* 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 Ś'ilāhara Āparārka, 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 Bāllālāsena 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 Visvesvarabhaṭṭa, Madana-simha and Dalapati are useful, along with the digests of Candessvara and Vācaspati Misra, in showing how even under Muhammadan rule, the devotion to Hindu *Dharma* was sustained. The impulse to compose treatises on *Dharmasāstra* 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 Misra to the revivalist zeal of a Bundela 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-Nirṇaya*). 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 *Pariśads*, as men with the needed qualifications could not be secured. A permanent commission of legal reference was also out of the question. The *Paṇḍita* 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 *Paṇḍita* to consider laws which appear to run counter to tradition and worldly experience and advise the king on suitable action. The work of *Pariśads* was sometimes done by the assemblies of paṇḍits specially convened in places like Kāśī, 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 *Mimāṃsā* 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 upto-date 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 *Arthasāstra*. 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 *Arthasāstra* 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 caponing and castration was merely an enforcement of the *Dharma* rule against *brūṇahatti*. 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 Daṇḍin 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 Brahmanical *Dharma*. His *Dharmavijaya* 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 Banavāsi, who could not have ruled in strict accord with *Dharmasāstra*, took the title. The Gaṅgas of Tālkad 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 (*arājatā*) 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 (*paripālana*) ensures freedom; but the other functions imply the use of directive, regulative and coercive power of the state

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 Brahmans, women and children, killing of kine, greed and unjust taxation, violence, internecine war (*hatva eve 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 Brahmans, 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 *Arthasāstra* and *Smṛti*, for his future office would be possible only if the prince succeeds by hereditary right to an old and 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 *Dharma* 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 (*dharma*) 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 *Dharma*, 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 *Dharma*, 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' (*samkalpa*, *ātman-astuṣṭiḥ*), insight and intuition (*yukti*) and 'the' practice of the elect' (*sīṣṭā-cāra*), is evident, and it helped the process. Bṛhaspati

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'ūdra' (*sacchūdra*), apparently as a concession to the educated and pious member of the fourth *Varṇa*, bringing the extension under 'the practice of the good' (*ācaracasiva sādhanam*), in the place of 'the practice of the strict Brahman' (*siṣṭācāra*). The animus against the learned S'ūdra was really due to abhorrence of Jains and Buddhists for their abjuring the Veda and for their wholesale invitation to the S'ūdras 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'ankha-Likhita excluded Sindh and Magadha. The *Mahabhārata* excluded the Punjab. Paithīnasi 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 (*kr̥ṣṇamṛga*), barley (*yava*) is cultivated, and the *kusa* grass grows, and (2) that any area in which there is a holy place (*tīrtha*), or through which a sacred river passes, is unobjectionable, along with the definition of *Ārya* as he who accepts the caste-classification, and the Aryan land as that in which *Varṇāśramadharmā* prevails, and the application of the rule of necessity (*āpad-dharma*)

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 (*puṇya*) 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 *samskāras*, 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 (*aspr̥syā*) will *not* arise are made more numerous. Religious cults like those of *bhaktimārga* and *tantra* and the spread of monistic (*Advaita*) 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-realisation' for ceremonial. But the substitution was

not effected without struggles with the adherents of *smṛti* (e.g., case of Vaiṣṇava and S'aiva 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 a 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 work-houses 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 Āpastamba could assert

that by marriage a wife gains the right to a moiety of her husband's spiritual merit (*punya*) and to none of his sins, the spirit is akin to that of *Bṛhaspati*, 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 (*sanyāsa*) for women as well as for men. The medieval *Hindu* revivals, sanctifying pious works, are responsible for the attempts in digests (e.g., *Smṛticandrikā* 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-caste 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 or 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 (*asavarṇāvivāha*) 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 (*sahamarāṇa*) was a second gain. Not only did an old jurist like Viṣṇu 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 (*ātātāyinaḥ*) 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 (*varṇa samkara*). Vijñānesvara, 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 Musulman rule, when it should have been otherwise. The rigor was extended to ordinary unchastity in woman, which was naturally worse, being voluntary. (*Caturvimsatimata*; 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 *Aśvamedha* (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 reconversion. 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 S'ivāji readmitted to the Hindu fold his general (*Sarnobat*) Netāji Pālkar, 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 Nimbālkar had become a Muhammadan. S'ivāji had him taken back and even gave him a daughter in marriage. But when it came to his own case, S'ivāji, would take no risks, and conciliated public opinion. He cheerfully underwent expiatory ceremonies as a *vrātya*, then had his rite of initiation, long intermitted in his family, and was crowned as a *Kṣatriya* 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 *Rājadharmā*, which laid down the special duties of his station. *Ācara*, 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 *Caturvargacintāmaṇī* 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 paṇḍits. He would feel differently towards *civil law*, and the different departments of activity with which the remaining sections of *Dharmasāstra* 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 *Rājadharmā* or *Rājanīti*, particularly when viewed in comparison with their most opulent rival. Among works on *Arthasāstra*, the only one written by a first-rate statesman was the *Kauṭīliya-Arthasāstra* ; the others were written by paṇḍits, or composed by paṇḍits and fathered on kings (e.g. *Yuktikalpataru* of King Bhoja, and *Mānasollāsa* of King Somesvara of Kalyāṇa). The baffling *S'ukranīti* 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, Sōmadeva and Hemacandra were poets as well as paṇḍits. They wrote literary exercises, and aimed at pleasing, and not at contributions to political science. In the same way, the

handbooks on *Rājadharmā*, in the restricted sense, with two exceptions, were composed by paṇḍits: e.g. *Rājadharmā-ṭrakāśā* of Mitramisra, *Rājanītimayūkha* of Nīlakaṇṭha, and *Rājadharmā Kaustubha* of Anantadeva.

The two exceptions to the unattractiveness of the narrower *Rājadharmā* literature are: (1) the *Rājadharmā-kāṇḍa* of the *Kṛtyakalṭataru* and (2) the *Rājanītiratnākara* of Candesevara. 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 *Mahāsāndhivigrahika*, 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 *Kṛtyakalṭataru* 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. Vijñānesvara 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. Candesevara, who came nearly two centuries after Lakṣmīdhara, is

in many respects an "under-study" to Lakṣmīdhara, 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 *srotriya* like his model, and he served in a small kingdom, unlike Lakṣmīdhara 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 *Rājadharmā*, in its narrower sense, which cannot be looked for in treatises of Mitramisra, Nīlakaṇṭha and Anantadeva. Mitramisra does not also need extended consideration, since he has borrowed whole-sale from Lakṣmīdhara in the most unblushing way.

To take the latter first. Nīlakaṇṭha's *Nītimayūkha* does not cite Lakṣmīdhara, 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 Purāṇic literature to some extent. There is no sense of reality behind his statements. His patron was a mere nobleman, and Nīlakaṇṭha 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. Nīlakaṇṭha 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 Bāja 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 S'ivāji, 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 Lakṣmīdhara ; 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 Mitramisra'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 Mitramisra, following Lakṣmīdhara, for the coronation of a king. Gāgā Bhaṭṭa (Viśveśvara Bhaṭṭa) who officiated as chief priest at the coronation, and received a lakh as his fee (*daśaiṇā*) must have followed Mitramisra closely. It is also possible that Sawāi Jaisingh of Amber, the soldier-astronomer, who performed an *asvamedha* and underwent a coronation in accordance with Hindu rites, followed this work. Mitramisra 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 *Maṇḍala*, 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 Rājā. The Brahmana 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.

Candesvara'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, Candesvara 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 Ṭhakur. 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, Candesa'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.

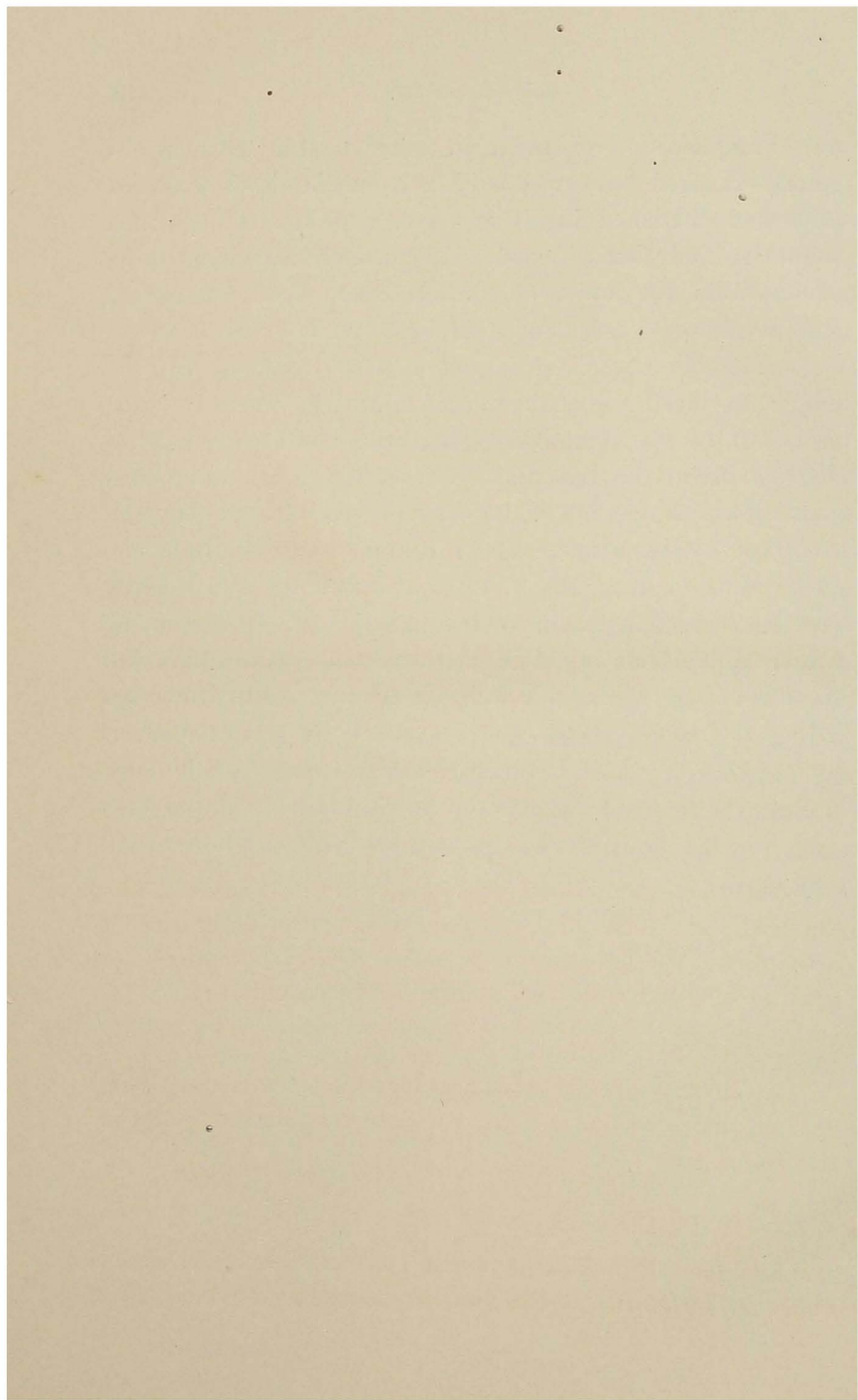
It only remains to describe the *Rājadharmakalpataru*, which may be taken as the *locus classicus* of this type of literature, regarded whether by itself or in its relation to other parts of *Dharma* in the wider sense. Lakṣmīdhara's work is in 14 books. His omission of *vyavahāra* in the treatment of *Rājadharmā* is part of an outlook which treated *all* parts of *Dharma* as *Rājadharmā*. Its omission in Kāmandaka or *Mānasollasa* will be a defect, unless the works are viewed as popular supplements to *Dharma*, devoid of any authority. One feature in Lakṣmīdhara 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 Lakṣmīdhara one would have to lay under contribution several sections of his digest; it cannot be written from his '*Rājadharmā*' alone. Lakṣmīdhara 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),

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 *Kauṭīliya* 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 *Maṇḍala* theory is apparently the caution of the political minister, who will not give himself away. The Gāharwār 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 Purāṇic 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 *Arthasāstra* 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 civilisation 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 call *Rājadharmā*.



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 Maṇindracandra 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 *Rājadharmā* is now popularly used in the sense of Polity or *Rājanīti*. 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 *Arthasāstra* 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 *Dharmaśāstra*, and the special rules for the kings and courts alone constitute *Rājadharmā*. 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 *Arthasāstra*. Though delivered in 1934, it has yet to be published.

4

6. USE OF THE KAUṬILĪYA 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. II. 29-30. DHARMAŚĀSTRA 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 Brahmins, *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).

6

8, II. 1-7. SMALL CONTENT OF LAW AND POLITY IN DHARMAŚĀSTRA

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 *Yājñavalkyasmṛti*, 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 *Bṛhaspati-smṛti*, I have gathered 1288 verses (including some half-s'lokas) on law and polity, as against 1037 on the rest of the normal content of *Dharmasāstra*. As Bṛhaspati's work concentrates on *Vyavahāra*, the large content of non-vyavahāra element in it is noteworthy. *Parāśarasmṛti*, as is well known, has no *Vyavahāra* or *Rājadharma* content, while the extant *Nāradsṛti* is equally exceptional in having virtually only a *vyavahāra* element, which is noticeably very small in the *Dharma-sūtra* 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 *Kalpataru* of Lakṣmidhara are devoted to Rājanīti and Vyavahāra. Jīmūtavāhana's *Dāyabhāga* was exclusively devoted to a part of vyavahāra, as his *Vyavahāra-mātṛkā* 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 *tattvas* of Rāgunandana only two (viz. on

dāya and *vyavāhara*) bear on law proper. Every large and complete digest will furnish similar instances.

7

8, ll. 28-30. HALHED'S CODE

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

Bālesvara-Kṛpārāma-Sāma-Gopāla-Kṛṣṇajīvanākhyaiḥ |
Vīresvara-Kṛṣṇacandra-Srī-Gaurikāntābhīdhānaiḥ
ṣadbhiḥ ||
Kālasaṅkara-Syāmasundra-Kṛṣṇakesava-saṁgaiḥ |
Sitārāmasaṅgaṁgaisca kṛto granthaḥ sphuratu sabhāyam ||

There is no mention of the Mahārāja 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-bhaṅgjana*. It should not be confused with Jagannātha's famous digest, which H. T. Colebrooke translated in 1798. The title of the latter, which is still unpublished, is *Vivādabhaṅgārṇava*.

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 Tarkapañcānana of Triveni 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
DHARMASĀSTRA 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 *Vivādasārṇava* of Trivedi Sarvoruṣarman 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 *nibandha* was partially translated as 'Digest of Hindu Law' by T. E. Colebrooke, in 1797. Colebrooke published in 1810 his translations of Jimūtavāhana's *Dāyabhāga* and the *Dāyabhāga* section of the *Mitākṣarā*. Borradaile's translation of the *Vyavahāramayūkha* appeared in 1827. The *Dāyakramasamgraha* was translated by P. M. Wynch in 1818. It was by Śrī Kṛṣṇa Tarkālaṅkāra, and an edition of it was published in 1828. The *Dattaka-mīmāṃsā* 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 Willaim 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 *bhāṣya* on *Parāśarasmiṛti* 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 *Vivāda-cintāmaṇi* 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 Prosonno 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. JĪMŪTAVĀHANA'S INTEREST IN NON-VYAVAHĀRA

The colophon to the *Dāyabhāga*, the most famous work of Jīmūtavāhana, ends thus “*Dharmaratne Dāyabhāgaḥ samāptaḥ*” The same reference to *Dharmaratna* occurs in the colophon to his *Kālaviveka* (Bibliotheca Indica, 1905). The last words in the *Kālaviveka* “*Samāptamcedam 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* :

*Bahuvīdha-vivāda-timiragrastam grahaṇam raveḥ
s'as'ānkasya |*

Tad-dharmaratnadīpālokāt sakalam vilokayata ||

His *Vyavahāramāṭṛka*, 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 Śrī Jīmūtavāhana-
kṛta Vyavahāramāṭṛkā 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
KĀLANIRŪPA

The reason given by Mādhavācārya for selecting *Parāsara-smṛti* for comment is that Parāsara's work was the most

resplendant among *smṛti* (*Smṛti-suśamā-parāś'araḥ*) and it was not commented on by any previous writer :

Parāś'arasṁṛtiḥ pūrvair na vyākhyātā nibandhṛbhiḥ |
Mayāto Mādhavāryeṇa tad-vyākhyāyām prayatyate. ||

As this *smṛti* does not treat of *kāla*, just as it did not treat of *vyavahāra* and *rājadharmā*, 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 Parāś'ara, were needed to round off the *nibandha*.

12

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 atleast, 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 violations of divine prescriptions 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 relations between spiritual and worldly punishments is explained at some length by J. Jolly, *Hindu Law and Custom*, pp. 250-270. It is worth studying. *Viṣṇusmṛti*, 33-42, gives an elaborate catalogue of sins (*pātaka*), which the king should punish (*ib.* pp. 250-252.) For an offence there is expiation in two ways, by undergoing punishment at the hands of the king, as *punishment purifies* (*Manusmṛti*, 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 *smṛtis* 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. 11. 5-11. BRĀHMAṆA IMMUNITIES

"Kauṭilya believes in the immunities of Brahmins 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, i of the *Arthasāstra* 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 patitebhyaḥ*), but an exception to the saving clause is in favor of the mother (*anyatra mātuh*). In the *Sukranīti* (IV, i, ll. 194-22) occurs a long catalogue of persons whom the king is enjoined to punish, and among them are the atheist (*nāstikaḥ*) and the blasphemer (*Devā-dūṣakaḥ*). Mahāmahopadhyāya R. Shama Śastri has misunderstood the rule, and states that the failure of the mother and the apostate to maintain their dependants is not punishable!

14

11, ll. 13-21. ALLEGED SECULAR NATURE OF ARTHASĀSTRA

See pp. 38-40, *Ancient Indian Polity*, where many instances are cited to show the sacerdotalism of the *Arthasāstra* of Kauṭilya, the most illustrious of its class. From the standpoint of *Dharma-sāstra*.

According to the *Caraṇavyūha* of Śaunaka, *Arthasāstra* 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-graṇāḍṛte Atharva-veda-samgraho 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 *Arthasāstra* is named last. The *Arthasāstra* is also included in *Itihāsa-purāṇa*, thus bringing it into the canon of Dharma. The authors of *Dharma-pradīpa* have erred in suggesting that *Arthasāstra* is of no canonical authority, and that therefore the dictum 'Rājā kālasya kārāṇam' being an *Arthasāstra* dictum (!) should not be accepted, (p.15). The sentence occurs in a famous passage in the *Māhabhārata*, to which *Dharmapradīpa* will not deny validity.

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

Niṣekādi smasānānto mantraiḥ yasyodito vidhiḥ |
Tasya sāstre adhikārosmin jñeyo nānyasya karhicit ||
Viduṣā brāhmaṇena idam adhyētavyam prayatnataḥ |
Sīṣyebhyasca pravaktavyam samyak nānyena kenacit ||

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

15

12, l. 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. Gośāla 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 held that the soul had color (Radhakrishnan, *Indian Philosophy*, I, 1940, p. 292n) and also the atomic hypothesis (*ibid.*, II, 194n).

Manusmṛti (IV, 61) refers to *pāṣaṇḍi-gaṇa* (association of heretics). Yājñavalkya, II, 192 provides for the maintenance of the regulations of their guilds :

*Sreṇi-naigama-pāṣaṇḍi-gaṇānām apyayam vidhiḥ ।
Bhedam caiśām nṛpo rakṣet, pūrvavṛttim ca pālāyan. ॥*

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), Vijñānesvara (II, 192) and Kullūka on *Manu*, (IV, 30) define the *pāṣaṇḍa* 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. Kauṭilya (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 devatāsrama-pāṣaṇḍa-srotriya - paśu - puṇyasthā
nānām bāl-vṛddha-vyādhita-vyasinyanāthānām strīṇāṃ
ca krameṇa kāryāṇi paśyet.*

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

16

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

The *Arthasāstra* distinguishes the courts as *Dharmasthīya* and *Kaṇṭakasodhana*, and the third and fourth books of the *Kauṭilyīya* 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 *Dharmasāstra*. The differences between him and Yājñavalkya are for instance inconsiderable. The *Dharmasthīya* courts dealt not only with the civil matters included in the usual "eighteen titles of law," but also *sāhasam* (violent crime) and assault (*daṇḍa-pāruṣya*). 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, (*Mānu*, VIII, 317) cheating in trade, (*Yājñavalkya*, II, 257) substitution of an article in deposit (*ib.* 246-247), and combinations of traders to raise prices (held again to be deceitful, *ib.* 249-250). The *Kaṭakasodhana* courts dealt with such civil matters as the affairs of artisans, labourers and merchants, and offences against police regulations such as those relating to prostitutes. 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. (vide, Jayaswal, *Manu and Yājñavalkya*, pp. 116-7) and V. R. Ramachandra Dikshitar, *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 (*op. cit.*, p. 228). The rule in *Sukraniti* making adultery and offences against women crimes in which the king prosecutes (IV, v, 83 ff.) is the result of viewing them as grave moral offences, likely to lead to *varṇa-saṃkara*. It would appear superficially that, (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*.

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

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

Taysārthe sarva-bhūtānām goptāram dharmamātmajam |
Brahmatejomayam Daṇḍamasṛjat pūrvam Isvaraḥ ||
 and *Dharmo hi Daṇḍa-rūpeṇa Brahmanā nirmitaḥ purā |*

13, ll. 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 nehāsti na kutrācit*). The Mīmāṃsa 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' (*Codanālakṣaṇārtho dharmah*). 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 *Manusmṛiti* or *Yājñavalkyasmṛiti* 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 *arthavādas* in the Mīmāṃsa system. As *arthavādas* 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, *strīdhana*, 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.

19

13, ll. 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 *smṛiti* rule runs against a *śruti*, because the latter over-rides the former. But it is open to argue that with due diligence a *śruti-pramāṇa* may be discovered for the *smṛiti* rule in question. To assume otherwise will lead to the summary and easy rejection of many *smṛiti* rules on the ground of their not being traced to *śruti*. This is the

orthodox Mimāṃsaka 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 *Mīmāṃsa* will hold all conflict to be apparent only and not real, because of the canonical authority claimed for both *Arthasāstra* and *Dharmasāstra*. But such a possibility is envisaged in the *smṛti* texts on conflicts of laws, e.g. Yājñavalkya's dictum (II, 21) :

Arthasāstrāt-tu balavad dharmasāstram iti sthitih ।

The same principle is enunciated by *Nārada-smṛti* (I, 99) :

Yatra vipratipattis-syāt dharmasāstrā-rthasāstrayoh ।
Arthasāstroktamutsṛjya dharmasāstroktamācāret ॥

The doctrine of infallibility of the common source of both *sāstras* might justify the conclusion that *sruti* can not be opposed to equity and logic (*nyāya*) and the position taken by Kauṭilya in the following passage :

Sāstram vipratipadyetā dharma-nyāyena kenacit ।
Nyāyas-tatra pramāṇam syāt, tatra paṭho hi nasatyati ॥

See *Ancient Indian Polity*, pp. 164-172.

The facile assumption that *Arthasāstra* is an inferior authority and should therefore be overlooked when it runs counter to *Dharmasāstra* is repugnant to the orthodox tradition. Accordingly, in explaining the dictum of Yājñavalkya (II, 21) the *Mitākṣarā* maintains that the word "*arthasāstra*" in the rule is not to well-known writers like Uśanas (S'ukra) but to the *arthasāstra* contained in *Dharmasāstra* works. If there is a conflict within the *Dharmasāstra* between the two classes of rules, the *Dharma* rule should

prevail. He illustrates it by two cases. (1) Manu (VIII, 350-351) enjoins the summary killing of an *ātatāyin* (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 expiation 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 *ātatāyin* 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 *Dharmasāstra*. 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.

Vijñāneśvara in discussing the texts dealing with gains of science, etc. (II, 118-119), which, if acquired without detriment to ancestral property (*pitṛ-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 prāyeṇa asmin prakaraṇe vacanāni.

21

14, l. 10. SCHOOLS OF ARTHASĀSTRA

There was no appreciable development of the subject after Kauṭilya. He cites seventeen authorities. See *Ancient Indian Polity*, p. 50. Among them are writers with names which became famous in *smṛti* literature, like Kātyāyana, Nārada, Parāśara and Bṛhaspati. It is not improbable that the same writers could have written on both *sāstras*.

22

14, l. 11. APPLICATION OF MĪMĀMSA TO DHARMASĀSTRA
AND ARTHASĀSTRA

Bhaṭṭasvāmin's commentary on the *Kauṭīliya* of which a fragment has been edited (Jayaswal and Banerji-Sastri, Patna, 1926) shows familiarity with Mimāmsa 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.

23

14, ll. 17-18. ARTHASĀSTRA CORE OF SMṚTIS

There is a good deal of *Arthasāstra* in Manu, and even more of it in Yājñavalkya, with whose code Jolly made a detailed comparison of the *Kauṭīliya* (Z. D. M. G., 1913, pp. 43-96) collecting in an appendix parallels from the *smṛtis* to over 200 passages of the *Arthasāstra*. Kauṭilya'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 Kauṭilya was the borrower. I have shown grounds for thinking otherwise. See *Ancient Indian Polity*, pp. 34-37.

24

14, ll. 14-16. BRAMANICAL REACTION FROM THE FIRST
CENTURY A.D. FAVORS DHARMASĀSTRA

In an epoch of Vedic revival and sacrifices, the *Mīmāṃsaka* finds the attraction of the *smṛti* and the *Kalpasūtras* greater than that of the *Arthasāstra*. He specializes in Vedic exegesis (e.g. Śābarasvāmin, 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, (Śāṅkararama S'āstri, *op. cit.*, p. 52). *Bhāṣya*, *Samgraha*, and *Nibandha* forms of composition rapidly progress with the means supplied by Mimāmsa for subtle and exact analysis and interpretation. The comparative study of *smṛtis* gains ground.

14, ll. 20-22. KĀMANDAKA'S NĪTISĀRA

Kāmandaka attempts to write his book in *Kāvya* style. In fact, his commentator, Śaṅkarārya regarded it as a *mahā-kāvya* and made his comments on the assumption. Not only does Kāmandaka use the ordinary *anuṣṭup* metre, but he tries more ornate metres also. Though he begins with a panegyric on Viṣṇugupta (i.e. Kauṭilya), his book is not a summary of the *Kauṭilya*, of which not over-much use is made. Kāmandaka apparently intended his work to be an *artha-samhitā*, just as the *Manusmṛti* is a *dharma-samhitā*. The *Nītisāra* is divided into *sargas* or cantos like a classical poem. It begins with the praise of the king, and was apparently not familiar with other forms of Government :

Rājāsya jagato hetur vṛddher-vṛddhābhisammataḥ |
Nayanāndajananaḥ śasāṅka 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. *Śasāṅka* is Candra, and *Toyadhī* 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 *Bṛhat-samhitā* 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 (*Raghuvamśa*, III, 41).

Nivātapadmastimitena cakṣuṣā nṛpasya kāntam
ṇibataḥ sutānanam |

Mahodadheḥ pūra ivendu-darsanāt guruḥ prahaṣaḥ
prababhūva nātmani ||

See below the note to p. 56, ll 29-30.

26

17, ll., 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-xxii) 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.

27

17, ll. 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 *Kauṭīlyya* 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.

28

18, ll. 7-10. LOST SMṚTI-BHĀṢYAS

Vide, Kane, *op. cit.*, p. 724 (Yajñasvāmin's bhāṣya on *Vāṣiṣṭha-Dharmasūtra* mentioned by Govindasvāmi in his commentary on

Bodhāyana-Dharmasūtra, II, 2, 51); p. 248 and p. 680 on Asahāya's *bhāṣya*s on Gāutama and Manu; the loss of the other commentaries is inferential.

29

18, ll. 10-15. DISTANCE OF TIME BETWEEN SMṚTIS AND COMMENTARIES

Karka, the commentator on the *sūtras* of Pāraskara is a writer of about A.D. 1000, while his text belongs to the *sūtra* age. Maskarin, the commentator of *Gautamadharmasūtra* (one of the oldest) belongs probably to the same period as Karka. Haradatta, who wrote commentaries on the *sūtras* of Āpastamba and the *Grhyasūtra* of Āśvalāyana and the *Dharmasūtra* of Gautama, must have been separated by over twelve centuries atleast from his originals.

30

19, ll. 5-10. KAUṬILYA'S OWN BHĀṢYA ON THE ARTHAS'ĀSTRA

See Note 27 *supra*. The search for a lost *bhāṣya* of Kauṭilya is unnecessary in view of Dr. Gaṇapati Sāstri's convincing explanation. The declaration of Kauṭilya occurs at the end of his work: (p. 429).

Drṣtvā vipratipattim bahudhā s'āstreṣu bhāṣyakārāṇām |
Svayameva Viṣnuguptas'-cakāra sūtram ca bhāṣyam ca ||

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

31

20, ll. 1-5. MĀDHAVA'S TREATMENT OF VYAVAHĀRA AND RĀJADHARMA

This portion of his commentary stands out of the main *bhāṣya* like an appendix, which it is. It is virtually a separate *nibandha*. A similar South Indian *nibandha* on *Vyavahāra*, not tacked on to

smṛti like Mādhava's, is Varadarāja's *Vyavahāranirṇaya*, which I am about to publish.

32

20, II. 6-7. RECENT BHĀṢYAS AND NIBHANDHAS

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

The famous *Bālambhaṭṭiya* on the *Mitakṣarā* was composed by Balakṛṣṇa *alias* Bālambhaṭṭa 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-kāmadhenu*, so named so after Ahalyā Bai Holkar. Warren Hastings, Sir William Jones and H. T. Colebrooke were responsible for getting written the *Vivādārṇavasetu*, (1773), *Vivādasārārṇava* (1789) and *Vivāda-bhaṅgārṇava* (before 1796) by a board of pandits, Sarvorus'arman Trivedi and Jagannātha Tarkapañcānana respectively.

33

20, II. 26-29. NON-INCLUSION OF YĀJÑAVALKYASMṚTI IN

"THE SACRED BOOKS OF THE ĒAST" 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.