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HISTORY OF DHARMASTRA

(ANCIENT AND MEDIEVAL
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passages condemning *niyoga* were put in probably earlier than the first centuries of the Christian era. Though Kauṭilya speaks of almost the same 18 titles as those in Manu (8. 4-7) almost under the same names, there is a slight difference. Manu has no such title as *Prakirṇaka*. Kauṭilya speaks of *upanidhi* and extends the same rules to *Nikṣepa*, while Manu speaks of the title as *Nikṣepa*. The ancient dharma-sūtras do not give the technical names of the eighteen titles of law, though some of them do occur therein. *Vāk-pāruṣya* and *daṇḍapāruṣya* occur in G. Dh. S. (12. 1) and Vas. (17. 61). Baud. seems to have known the term 'Sṛiṣaṅgrahaṇa' (Dh. S. II. 2.54). *Steya* occurs in all. Gautama speaks of *nidhi* (Dh. S. 12. 39). Manu positively says (9. 155) that the son of any member of the first three *varṇas* from a Śūdra woman does not inherit his father's wealth (though the preceding verses 151-154 seem to lay down different rules), while Kauṭilya allows such a son a share when there are sons born to a Brāhmaṇa from wives of higher castes or one third when he has no other sons (III. 6). Manu expressly mentions the mother and paternal grandmother as heirs (9. 217), while Kauṭilya appears to ignore them. Manu prohibits the remarriage of widows (V. 161-165), while Kauṭilya allows not only widows to remarry, but also wives whose husbands have not been heard of for a year or more according to circumstances (III. 4). Kauṭilya allows a wife to desert her husband, if the latter is of a bad character, has become a traitor to the king, endangers her life or has become an outcaste or impotent¹⁷³ (last verse of III. 2). Kauṭilya further seems to have allowed divorce which is unknown to any other known lawgiver, but he bases it only on the ground of mutual hatred and says that a marriage in the approved forms cannot be dissolved¹⁷⁴ (III. 3). Manu is very harsh upon gamblers and asks the king to suppress gambling and banish gamblers (9. 221-224), while Kauṭilya only brings gambling under the control of the king for the purpose of detecting thieves &c. (III. 20). Manu first allows a Brāhmaṇa to marry even a Śūdra woman and then condemns such a thing (III. 13-19), while Kauṭilya does not condemn such unions. These divergences and others lead us to conclude

173 नीचत्वं परदेशं वा प्रस्थितो राजकिल्बिषी । प्राणाभिहन्ता पतितस्त्याज्यः क्लीबोपि वा पतिः ॥ को०.

174 अमोक्ष्या भर्तुरकामस्य द्विषती भार्या । भार्यायाश्च भर्ता । परस्परं द्वेषान्मोक्षः । अमोक्षो धर्मविवाहानामिति । को०.

that the Kauṭilya is much older than the extant Manusmṛti, which is in many matters carried away by puritanic zeal, while its older portion is more in harmony with the spirit of the Kauṭilya. Therefore the Kauṭilya is long anterior to the time when the extant Manusmṛti took its present form. The Kauṭilya refers to the opinion of the Mānavas in five places. Two of the views ascribed to the Mānavas by Kauṭilya are the same as those which Kāmandaka (II. 3 and XI. 67) ascribes to Manu. According to the Mānavas, the *vidyas* to be studied by a prince were three, viz. trayī, vārtā and daṇḍanīti, what is called ānvīkṣikī being but a branch of trayī; and the council of ministers was to consist of twelve. The Manusmṛti (7. 43) appears to regard the *vidyas* as four and lays down (7. 54) that the Council should consist of seven or eight *sacivas*. Bühler and others on account of this difference in the views of the Mānavas and the Manusmṛti thought that Kauṭilya was referring to the Mānavadharmasūtra. In my humble opinion the evidence for the existence of a Mānavadharmasūtra is practically nil, as detailed above in section 13. From the references to Svāyambhuva Manu and Prācetasā Manu contained in the Mahābhārata, particularly in the Śānti and Anuśāsana *parvans* it appears that there were two works in verse on *dharma* and politics attributed to these two or there was one work containing both. These works were subsequently recast as the Manusmṛti. It is therefore that some difference is noticed between the views ascribed to the Mānavas and the extant Manusmṛti. Besides there is no real conflict in the matter of *vidyas*. The Manusmṛti does not positively say that the *vidyas* are four and not three; it simply says from whom trayī and the other three are to be learnt. The Manusmṛti (in 7. 60) allows more ministers than seven or eight. It is possible that in recasting several changes were made. The third opinion of the Mānavas quoted by Kauṭilya is about the fine to be imposed upon officers of the state occasioning loss of revenue (II. 7). The other two views of the Mānavas quoted are concerned with the fine to be imposed on false witnesses and for forcible seizure of jewels¹⁷⁵ &c. It must be admitted that in the extant Manusmṛti there is nothing exactly corresponding with these views. But from this fact no one conclusion alone can be drawn. There may be a mistake in quoting, or there may be inter-

175 कृत्साक्षिणो धर्मार्थममृतं वा नाशयेयुस्तद्दशगुणं दण्डं द्युरिति मानवाः । को. III. 11 ।

‘रामसारफलयुक्त्वानां साहसो मूल्यसमो दण्ड इति मानवाः । को. III. 17. .