

A DIGEST
OF THE
HINDU LAW
OF
INHERITANCE, PARTITION, AND ADOPTION;

EMBODYING THE REPLIES OF THE ŚĀSTRIS
IN THE COURTS OF THE BOMBAY PRESIDENCY,

WITH
INTRODUCTIONS AND NOTES

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In litigation between a HindŪ on the one side and a Mahomedan, a Christian or a Parsee on the other, it sometimes happens that the decision would be different according as the law governing the one or the other party as a member of a class should be applied. The Statute 21 Geo. III., c. 70, § 17, enabling the Supreme Court to hear and determine all suits against inhabitants of Calcutta provides "that their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos ; and where only one of the parties shall be a Mahomedan or Gentoos, by the laws and usages of the defendant." The Statute 4 Geo. IV., c. 71, § 7, 17, enabled the Crown to confer a jurisdiction on the Supreme Court of Bombay, similar to that enjoyed by the Supreme Court of Bengal, and the Charter founded on this Statute, after giving authority to the Supreme Court "to hear and determine all suits and actions that may be brought against the inhabitants of Bombay," continues thus—"yet, nevertheless, in the cases of Mahomedans or Gentoos, their inheritance and succession to lands, rents, and goods and all matters of contract and dealing between party and party, shall be determined, in the case of the Mahomedans, by the laws and usages of the Mahomedans, and where the parties are Gentoos, by the laws and usages of the Gentoos, or by such laws and usages as the same would have been determined by, if the suit had been brought and the action commenced in a Native Court ; and where one of the parties shall be a Mahomedan or Gentoos, by the laws and usages of the defendant."

On the construction of the Statute 21 Geo. III., c. 70, § 17, Pontifex, J., would "confine the words 'their inheritance and succession' to questions relating to inheritance and succession by the defendants." "The present," he said, "is a question of the plaintiff's succession and, therefore, not

determinable by the laws and usages of the Gentoos.”(a) It can hardly have been intended that a Gentoo should lose his law of inheritance whenever he entered the Court to enforce it. In the Bombay Charter (as in that of the Supreme Court of Madras, para. 32,) the expression is slightly varied, yet the mere words would, equally with the Statute, admit of the construction put on the latter at Calcutta. It cannot well be doubted, however, that the Statutes and the Charters alike were intended to preserve the Hindŭ and Mahomedan laws of inheritance amongst Hindŭs and Mahomedans.(b) The provision for the case of only “one of the parties” being “a Mahomedan or Gentoo” had relation primarily, if not solely, to the cases of “contract and dealing between party and party” in which the principle “In pactionibus et conventionibus unusquisque se sua lege defendere potest”—is one of general though not of universal application. On a different construction of these provisions the property of a Hindŭ transferred to a Christian might have been freed from the claim of widows and daughters to maintenance, but at the same time subjected to dower. “It could not have been intended by the Legislature that the power of a Mahomedan to convey should be measured by the Hindŭ law.”(c) But where there has been a contract between a Christian and a Hindŭ, on which the Hindŭ is sued, the right of each to his own law is equal to that of his adversary, and in such a case it is provided in favour of the defendant that he shall have the benefit of his own law, with which he is assumed to have been comparatively familiar. (d)

(a) *Sarkies v. Prosonomoyee Dossee*, I. L.R. 6 Cal. 794, 808. “Gentoo” means Hindŭ.

(b) See *In re Káhándás Nárandás*, I. L. R. 5 Bom 154, 166.

(c) *Per* Sir M. R. Westropp, C. J., in *Lakshmandás Sarupchand v. Dasrat*, I. L. R. 6 Bom. 168, 184.

(d) Compare the language of Lord Ellenborough in *R. v. Pícton*, 20 Howell’s St. Trials, 944-5, quoted by Sir G. C. Lewis, Government of Dependencies, Note (m), p. 372.

In the mofussil of the Bombay Presidency the Regulation (IV. of 1827, § 26,) says—"The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case ; in the absence of such Acts and Regulations, the usage of the country in which the suit arose ; if none such appears, the law of the defendant, and in the absence of specific law and usage, justice, equity and good conscience alone." Here the law of the defendant prevails, failing Statute law and usage of the country, but such usage there is governing inheritance, partition, adoption and the whole province of family law amongst the Hindūs. The provision in favour of the defendant is not meant to have an operation such as to enable one man to dispose of another's rights. (a) It is frequently a matter of accident which of the two parties to a suit is plaintiff and which defendant, and only where the plaintiff for instance could dispose and has disposed of rights of his own, is he deprived, failing Statute law and custom, in case of an alleged infringement of the right under another personal law, of a remedy adhering to the right under his own personal law. A son or a wife cannot be deprived of a real right under the Hindū law by a mere transfer to a Christian ; the "ownership" transferred cannot be greater than that of him who transfers it, and cannot be enlarged in the Christian's hands merely because under the English law the (Hindū's) ownership would perhaps have been unencumbered. How far then the volition of a Hindū passes property, depends on his law, as in the case of a Christian on the English law. What personal duty can be enforced against a Hindū will sometimes depend on the Hindū law, and especially the law of Inheritance. In the sphere of contract the Statute law (b) has now, for most purposes, superseded the Hindū law, and even in giving effect to the Hindū law of property and family law, equitable

(a) *Lakshmandās Sarukchand v. Dasrat*, I. L. R. 6. Bom. 183.

(b) The Indian Contract Act IX. of 1872. See also in *Molhuo March and Co. v. The Court of Wards*, the dictum Supp. I. A. at p. 100.

principles derived from the English Courts are brought to bear on its development in the exigencies to which the present age gives rise. (a) This process is consistent with the HindŪ law which seeks always to undo what has been fraudulently done, (b) and strives to enforce a conscientious fulfilment of engagements (c); but as regards a heritage or the mutual relations of the persons interested in property through family connexion or by rights derived from those so connected, it rests always on the basis of the positive law. This, therefore, is by no means superseded by the perpetual extension and the diversity of the cases brought to decision in the courts: a firm grasp of its principles and main provisions becomes all the more necessary as details and particular instances multiply in the reports, in order to prevent the confusion which must arise from the incautious admission of rules incongruous in their logical consequences with the HindŪ system.

To be correctly apprehended the HindŪ law, like other systems of law, must be studied in its history, and in its connexion with the religious and ethical notions of the people amongst whom it has come to prevail. The interpretation given to its ancient precepts by the commentators of authority, has been largely influenced by the philosophical systems. (d) The texts have in some instances been manipulated in order to bring them into accordance with notions of comparatively recent growth. Thus to reduce the law presented by the sources to precision and harmony, there is need for a strict

(a) See *In re Káhándás Nárandás*, I. L. R. 5 Bom. 154. File of Printed Judgments for 1880, p. 118, referring to 1 Morl. Dig. 106; 2 Bom. H. C. R. 52; 4 Beng. L. R. 8, A. C. As to the doctrine of notice, see I. L. R. 6 Bom. 193, 207, referring to *Rádhánáth Doss v. Gisborne*, 14, M. I. A., at p. 17.

(b) Vyav. May. Ch. IV., Sec 7, para. 24. Stokes H. L. B. 79.

(c) Vyav. May. Ch. IX., 4, 10. Stokes H. L. B. 134, 136.

(d) See *Vasishṭha*, Ch. XVI., paras. 1, 5, and Note. Transl. p. 79. Co. Di. B. I., Ch. II., T. 49. Comm. and note.

and rather widely-ranging criticism. Those sources, however, or at least the more ancient ones, are looked on as of so sacred a character; the references to them by the accepted guides of ethical and legal thought, are so frequent and so submissive; the tendency of custom, even where it has diverged from their teaching, is so strong to revert to obedience to their rational commands, (a) that a study of them, some comprehension of their character and teachings, is indispensable as a foundation for a true mastery of the practical law of to-day.

II.—SOURCES OF THE HINDŪ LAW.

I.—On the Authorities of the Hindū Law as prevailing in the Bombay Presidency.

THE authorities on the written Hindū Law in Western India are, according to Colebrooke, (b) the Mitāksharā of Vijñāneśvara and the Mayūkhas, especially the Vyavahāramayūkha of Nilakaṇṭha. Morley (c) adds the Vyavahāramādhava Nirṃayasindhu, Smṛitikaustubha, Hemādri, Dattakamṛmāṃsā, and Dattakachandrikā. The quotations of the Śāstris, appended to their Vyavasthās, which perhaps afford the most trustworthy information on the subject, show that the following works are considered by them the sources of the written law on this side of India:—

1. The Mitāksharā of Vijñāneśvara,
2. The Mayūkhas of Nilakaṇṭha, and especially the Vyavahāramayūkha,
3. The Vīramitrodaya of Mitramiśra,

(a) Compare the remarks of Innes, J., as to the submission of the non-Aryan tribes to the Hindū Law in *Multu Vaduganadha Tévar v. Dora Singha Tévar*, I. L. R. 3 Mad. at p. 309.

(b) Strange, *El. H. L.*, 4th ed., p. 318. Preface to *Treatises on Inheritance*, Stokes's H. L. B., p. 173.

(c) Digest II. CCXXII.

- 4 and 5. The Dattakamimānsā of Nandapaṇḍita and the Dattakachandrikā of [Devanḍabhaṭṭa] Kubera. (a)
6. The Nirṇayasindhu of Kamalākara,
- 7 and 8. The Dharmasindhu of Kāśinātha Upādhyāya and the Saṃskārakaustubha of Anantadeva,
- 9, and lastly, in certain cases the Dharmasāstras, or the Smṛitis and Upasmṛitis, which are considered to be Rishivākyaṇi, 'sayings of the sages,' together with their commentaries. These results have been corroborated by the concurrent testimony of those Law Officers and Paṇḍits whom we have had an opportunity of consulting.

Relative position.

2. The relative position of these works to each other may be described as follows:—In the Marāṭhā country and in Northern Kānara the doctrines of the Mitāksharā are paramount; the Vyavahāramayūkha, the Viramitrodaya and the rest are to be used as secondary authorities only. They serve to illustrate the Mitāksharā and to supplement it. But they may be followed so far only as their doctrines do not stand in opposition to the express precepts or to the general principles of the Mitāksharā. (b) Among the secondary authorities, the Vyavahāramayūkha takes precedence of the Viramitrodaya. (c) The Dattakamimānsā and the Dattaka-

(a) Rao Saheb V. N. Maṇḍlik, Vyavahāramayūkha and Yājñ. Introd., p. lxxii., is right in objecting to Mr. Sutherland's conjecture, which attributes the authorship of the Dattakachandrikā to Devanḍabhaṭṭa.

(b) See *The Collector of Madura v. Mooloo Ramalinga Sathupathy*, 12, M. I. A. 438; *Nārāyan Bābāji v. Nūnā Manohar*, 7 Bom. H. C. R. 167, 169, A. C. J.; *Krishnāji Vyankatesh v. Pāndurang*, 12 Ibid. 65; *Rāhi v. Govind valad Tejā*, In. L. R. 1 Bom. 106; *Lakshman Dādā Nāik v. Rāmchandra Dādā Nāik*, 565 S. C. in appeal to P. C. L. R. 7 I. A. at p. 191; *Ramkoonwur v. Ummer*, 1 Borr. R. 460.

(c) See Colebrooke's Introduction to Treatises on Inh., Stokes's H. L. B. 173, 176, 178; *Gridhari Lall v. The Bengal Govt.*, 12 M. I. A. 646.

chandrikā, the latter less than the former, are supplementary authorities on the law of adoption. Their opinions, however, are not considered of so great importance, but that they may be set aside on general grounds, in case they are opposed to the doctrines of the Vyavahāramayūkha or of the Dharmasindhu and Nirṇayasindhu. The two latter works and the Saṁskārakaustubha, occupy an almost equal position in regard to questions on ceremonies and penances. They are more frequently consulted by the Śāstris of the Marāṭhā country than the Mayūkhas, which refer to the same portions of the Dharma. Among these three, the Nirṇayasindhu is held in the greatest esteem.

All points of law, which may be left undecided by the works mentioned, may be settled according to passages from the Smṛitis or Dharmasāstras, or even from the Purāṇas. The latter have less authority than the former, and may be overruled by them. (a) In case of a conflict between the rules of the Smṛitis either may be followed, as reasoning on principles of equity (yuktivichāra) shall decide the solution. (b)

The law of Gujarāt in some cases, it seems, alters the order of the authorities and places the Vyavahāramayūkha before the Mitāksharā. As an instance may be quoted the case of a sister's succession to her brother's estate, immediately after the paternal grandmother, which, in accordance with the Mayūkha, is allowed in Gujarāt. How far precisely this preference of the Mayūkha goes, is a matter of some doubt, to be cleared up by judicial determination. (c)

(a) Vyāsa I. 4. "Where a conflict between the Śruti, Smṛiti and Purāṇas appears, the text of the Śruti is the norm; but in case of a conflict between the (latter) two, the Smṛiti is preferable."

(b) See Muir's Sanskrit Texts, II., 165, and III., 179, &c.

(c) See below; B. I. Introd., sect. 4, B. (7); Introductory remarks to Ch. II., sect. 14. I. A. I.; the case of *Vijayarangam v. Lakshman*, 8 Bombay H. C. R. 244 O. C. J.; *Lalubhai v. Mankuvarbai*, I. L. R.

Mitāksharā.

3. The first of these authorities, the Mitāksharā, (α) is the famous commentary of Vijñāneśvara on the Institutes of

2 Bom. 388; L. R. 7. I. A. 212; S. A. No. 158 of 1870, decided on March 27, 1871. Bom. H. C. printed Judgments File for 1871.

Rao Saheb V. N. Maṇḍlik (Introd. to Vyavahāramayūkha and Yājñavalkya, p. I.) has found fault with the above statement of the sources of the Hindū Law in Bombay, and of their relative importance. He thinks that the editors of the Digest consider the Mitāksharā, the Mayūkha and the Nirṇayasindhu the only recognised official guides for settling the Hindū law, and adds that this opinion is a grave error. The censure however rests on an entire misapprehension of the views entertained. In the first two editions of this work, the *Dharmaśāstras* and their *Commentaries* have been mentioned as the ninth division of the sources of the law (as administered in Bombay), and in the amplification of that passage, the *Purānas*, likewise, have been named. What the editors have stated and still hold, is that the eight works, enumerated by name, hold the first rank among the legal works, used in Bombay, and that their doctrines cannot be set aside lightly in favour of conflicting opinions of other authors, however much the latter may please individual taste. The editors have further pointed out that the numerous omissions in the standard works may be supplied by information, derived from the *dicta* of the authors of Smṛitis, whether these be contained in complete original treatises (Sūtras or Dharmaśāstras), or in quotations given by the medieval Nibandhakāras, and by reasoning on principles of equity. In accordance with these principles, they have in the notes on the cases, freely drawn on published and unpublished legal works, not contained in their list, in order to elucidate points left undecided or doubtful in the Mitāksharā Mayūkha, &c. But it did not enter into their plan to give a review of the medieval literature on Dharma or on Vyavahāra, and without such a review no useful purpose, they thought, could be served by printing a mere list of authors' names and of titles. The Rao Saheb has given such a list, at pp. lx. and lix. of his Introduction, but one drawn up with so little regard to system that in some instances the same works are entered under two names, and treatises on sacrifices, astrology, astronomy and philosophy, nay poetical and story-books are placed side by side with works on the civil and religious law. The list, given at pp. lxxviii. and lxxix.,

(α) The proper title of the work, which however is used in the MSS. only, is Rijumitāksherāṭikā.

Yājñavalkya. The latter work, which probably is a versification of a Dharmasūtra, *i.e.*, of a set of aphorisms on Dharma belonging to the White Yajurveda, (a) contains about a thousand verses divided into three chapters (kāṇḍas) which treat respectively of 'the rule of conduct' (āchāra), of civil and criminal law (vyavahāra), and of penances (prāyaścitta). As may be inferred from the small extent of Yājñavalkya's

which is stated to have been compiled from answers of Śāstris, contains several double and inaccurate entries, (such as Mitāksharā and Vijñāneśvara, Sarvamayūkha, = all the Mayūkhas and the separate titles of the twelve Mayūkhas, such as Mādhava, Dinakaroddyota, &c., where specifications are required. It is incomplete also, as the Rao Saheb himself suspects, and appears to have been made up exclusively by Konkanastha and Deśastha Paṇḍits. Much fuller information on the legal books, consulted by the Bombay Paṇḍits may be obtained from Dr. Bühler's Catalogues of MSS. from Gujarāth (fasc. III., p. 67 seq.) and Dr. Kielhorn's Catalogue of MSS. from the Southern Marāṭhā Country. As regards the comparative estimation in which the books, contained in the Rao Saheb's list, are held, no information is given—an omission which makes it almost valueless for the purpose which it is intended to serve. The fact that a good many other books besides those enumerated in the Digest are consulted, *i. e.*, occasionally referred to by Paṇḍits, proves nothing against the opinion advanced by the editors that the eight works, named above, are the standard authorities, nor do the Rao Saheb's remarks on the Mitāksharā (p. lxxi.) disprove its preëminence, as far as questions of the Civil Law are concerned. His *dictum* that there is nothing remarkable about the book is controverted by the view of the responsible Court Śāstris as pointed out in *Krishnāji Vyankatesh v. Pāndurang*, 12 Bom. H. C. R. 65, and in *Lallubhāi Bāpubhāi v. Mānkuverbāi*, I. L. R. 2 Bo. S., at pp. 418, 445, and of many excellent native authorities, as well as by the respectful treatment accorded to Vijñānayogin, in the best native compilations of the 16th and 17th centuries. His remark that the works of Kamalākara, Mādhava, Nārāyana and other Bhaṭṭas are more frequently consulted than the Mitāksharā is true. But the reason of this is that, under British rule, with its organized judiciary, Paṇḍits are consulted by the people not on civil law, but on vows, penances, ceremonies, and other matters of the religious law, on which subjects the books, named by him, give fuller information than the Mitāksharā.

(a) See below.

work, this author gives fragmentary rules only, which neither exhaust their subject, nor are in every case easily intelligible. Vijnāneśvara remedies the defects of his original, not only by full verbal interpretations, but also by adding long discussions on doubtful points, and by illustrating and developing Yājñavalkya's and his own doctrines by quotations from the Institutes of other Ṛishis. For he holds the opinion, which is also the generally received one among modern Hindū lawyers, that the Smṛitis or various Institutes of Law form one body, and are intended to supplement each other. (a) But this opinion occasionally misleads him, and causes him in some few cases to explain the text of Yājñavalkya in a manner inconsistent with the rules of sound interpretation. With these occasional exceptions, his expositions certainly merit the high repute in which they long have stood with the learned of the greater part of the Indian Peninsula. The

(a) Vijnāneśvara says in his commentary on Yājñavalkya I. 5, which contains an enumeration of certain authors of Smṛitis, (Mit. Āchārak, lb. 15, Bāhūrām's edition of Samvat 1869):—

“The meaning (of this verse, I. 5.) is that the Institutes of Law composed by Yājñavalkya ought to be studied. The enumeration (of authors of Smṛitis given in this verse) is not intended to be exhaustive, but merely to give examples. Therefore (this verse) does not exclude (the works of) Baudhāyana and others (who are not mentioned) from the Institutes of Law; as each of these (Smṛitis) possesses authority, the points left doubtful (by one) may be decided according to others. If one set of Institutes contradicts the other, then, there is an option.”—See Manu II., 10, 14; XII. 105, 106; Vyav. May., ch. I., pl. 12; Col. V. Dig. sect. 7, 424; Mit. in 1 Macn. H. L. 188. Muir's Sanskrit Texts II., 165; III., 179, ss., and as to the applications of the texts, *Bhyah Ram Singh v. Bhyah Ugur Singh*, 13 M. I. A. 390, and *Collector of Madura v. Mootoo Ramalinga Sāthapathy*, 12 M. I. A., at p. 438.

The Hindū commentators always endeavour, even at the cost of much straining, to extract consistent rules from texts which they regard as equally above human censure “comme d'après la méthode des légistes il faut que les textes aient raison lorsqu'ils ne présentent aucun sens.” See Goldstücker “On the Deficiencies in the Administration of the Hindu Law,” p. 2.

discussions and amplifications, added by Vijñāneśvara to his explanation of Yājñavalkya's text, make the Mitāksharā rather a new and original work, based on Yājñavalkya than a mere gloss, and one more fit to serve as a code of law than the original. But extensive as the Mitāksharā is, it does not provide for all the cases arising, and, if used alone, would often leave the lawyer without guidance for his decision.

Regarding the life and times of Vijñāneśvara little is known. Recent discoveries, however, make it possible to fix his date with greater certainty than could be done formerly. Mr. Colebrooke (a) placed Vijñāneśvara between 800—1300 A. D., because, on the one hand, he is said to have belonged to an order of ascetics founded by Śankarāchārya, who lived in the 8th century A. D., and because, on the other hand, Viśveśvara, the oldest commentator, flourished in the 14th century of the Christian era. He adds that if the Dhāreśvara, (b) 'the lord of Dhārā,' quoted in the Mitāksharā is the same as the famous Bhojarāja, king of Dhārā, the remoter limit of Vijñāneśvara's age will be contracted by more than a century. In favour of Mr. Colebrooke's latter statement, Kamalākara's testimony may be adduced, who in the Vivādatāṇḍava (succession of a widow) ascribes the same opinion to Bhojarāja, which the Mitāksharā attributes to Dhāreśvara (the lord of Dhārā).

A much better means for settling the date of Vijñāneśvara is, however, furnished by some verses, which are found at the end of the Mitāksharā in some of the oldest MSS. (c) and in the Bombay lithographed edition, and which were apparently not unknown to Mr. Colebrooke. (d)

(a) Stokes's Hindū Law Books, p. 178.

(b) See, e. g., Col. Mit. II. 1., 8 (Stokes, p. 429).

(c) The MS. of the Govt. of Bombay, dated Śaka Saṁvat 1389, Dr. Bhāṭ Dāji MS. and Ind. Off. No. 2170, dated Vikrama Saṁvat, 1835.

(d) Stokes, p. 178.

There we read verses 4 and 6 (a) :—

4. "There has not been, nor is nor will be on earth a city, comparable to Kalyānapura ; no king has been seen or heard of, who is comparable to the illustrious Vikramānka; nothing else that exists in this kalpa bears comparison with the learned Vijñāneśvara. May these three who resemble (three) kalpa-creepers, be endowed with stability."

6. "Up to the bridge of famous (Rāma), the best of the scions of Raghú's race, up to the lord of mountains, up to the western ocean, whose waves are raised by shoals of nimble fishes, and up to the eastern ocean, may the lord Vikramāditya protect this world, as long as moon and stars endure."

Vijñāneśvara lived, therefore, in a city called Kalyānapura, under a king named Vikramāditya or Vikramānka. As the learned Paṇḍit, by speaking of his opponents as 'the North-erners' shows (b) that he was an inhabitant of Southern India, it cannot be doubtful that the Kalyānapura named by him is the ancient town in the Nizām's dominions, which from the 10th to the 14th century was the seat of the restored Chālukya dynasty. (c) This identification is supported by the consideration that Kalyāna in the Dekhan is the only town of that name, where princes, called Vikramāditya, are known to have ruled. One of these, Vikramāditya-Kalivikrama-Parmādirāya, bore also, according to the testimony of his chief Paṇḍit and panegyrist, Bilhaṇa, the not

(a) See Journ. Bo. Br. Roy. As. Soc. IX., pp. 134-138, and lxxiv.—lxxvi. The recovery of the Vikramānkadevacharita makes it probable that Vikramānkopamaḥ, not Vikramārkopamaḥ, is the correct reading in verse 4. The statement made at the end of the article, that the concluding verses belong not to Vijñāneśvara, but to some copyist, is no longer safe. Recent researches show that most if not all Sanskrit authors appended to their works statements regarding their own private affairs, which frequently are not in harmony with our notions of modesty.

(b) See Journ. Bo. Br. As. Soc. IX., p. lxxv.

(c) Regarding the Chālukya dynasty, see Sir W. Elliott, Journ. Bengal Br. As. Soc. IV., p. 4.

very common appellation, Vikramānka. (a) He appears to be the prince named as Vijñāneśvara's contemporary. His reign falls according to his inscriptions between the years 1076—1127 A.D. Hence it may be inferred that Vijñāneśvara wrote in the latter half of the eleventh century, a conclusion which agrees well enough with his quoting Bhoja of Dhârâ, who flourished in the first half of the same century. (b) It may be added that Vijñāneśvara certainly was an ascetic, because he receives the title paramahaṃsapârivrâjakâchârya. By sect he was a Vaishṇava. His father's name was Padmanâbha-bhaṭṭa and belonged to the Bhâradvâja gotra. The discovery that Vijñāneśvara was an inhabitant of Kalyâna in the Dekhan, and a contemporary, if not a protégé, of the most powerful king whom the restored Châlukya dynasty produced, explains why his book was adopted as the standard work in Western and Southern India, and even in the valley of the Ganges.

The explanation of the Mitāksharâ is facilitated by two Sanskrit commentaries, the above-mentioned Subodhinî of Viśveśvarabhaṭṭa and the Lakshmiṃvyâkhyâna, commonly called Bâlambhaṭṭatikâ, the work of a lady, Lakshmidēvî, who took the *nom de plume* Bâlambhaṭṭa. (c) Viśveśvara's comment explains selected passages only, while Lakshmidēvî gives a full and continuous verbal interpretation of the Mitāksharâ accompanied by lengthy discussions. She generally advocates latitudinarian views, and gives the widest interpretation possible to every term of Yājñavalkya.

Instances of this tendency may be seen in the quotations given below. Her opinions are held in comparatively small esteem, and are hardly ever brought forward by the Śâstris, if unsupported by other authorities.

(a) See Vikramānkadevacharita of Bilhana, *passim*.

(b) See Indian Antiquary, VI., p. 50, seq.

(c) See Colebrooke Stokes's H. L., p. 177, Aufrecht, Catal. Oxf. MSS. p. 262a; F. E. Hall Contribution towards Ind. Bibl., p. 175. The correct form of Lakshmidēvî's family name is Pāyagunḍe.

Two other works, the Viramitrodaya and the Yājñavalkya-dharmasāstranibandha, a commentary on Yājñavalkya, by Aparādityadeva, or Aparārka, also give great assistance for the explanation of the Mitāksharā. About the former more will be said below. As regards Aparārka's bulky work, it must be noted that Mr. Colebrooke recognised its importance, and frequently quoted it. (a) If his example has not been followed in the first edition of this work, the sole reason was that no MSS. were then procurable in Bombay. The Nibandha is now accessible in several copies, and has been used to elucidate several important points. Aparārka or Aparādityadeva belonged to the Konkana branch of the princely house of the Śilāras, or Śilāhāras, who had their seat at Puri, and held the Konkana as well as the adjacent parts of the Dekhan as feudatories, first of the Rāthors of Mānyakheta-Mālkhet, and later of the Chālukyas of Kalyāṇa. He reigned and wrote between 1140—1186 A. D., shortly after Vijñānesvara's times. (b) His doctrines closely resemble those of his illustrious predecessor; several passages of his work look like amplifications of Vijñānesvara's dicta, and are of great value for the correct interpretation of the Mitāksharā. It is, however, difficult to say whether Aparārka in these cases actually used the Mitāksharā, or whether both drew from a common source.

Besides the native commentaries and Nibandhas, there is the excellent translation of the Mitāksharā on Inheritance, by Colebrooke, (c) which has always been made use of in translating the authorities appended to the Vyavasthās. In some places we have been compelled to dissent from Colebrooke;

(a) Stokes's Hindu Law Books, p. 177, and Translation of the Mit. on Inh., *passim*.

(b) See Journ. Bo. Br. As. Soc., Vol. XII. Report on Kāsmīr, p. 52.

(c) Two treatises on the Hindū Law of Inheritance, translated by H. T. Colebrooke, Calcutta, 1810, 4to. Reprinted in Wh. Stokes's Hindū Law Books, Madras, 1865, and by Girish Chandra Tarkalankar, Calcutta, 1870.

but we are persuaded that in nearly all these instances Colebrooke had different readings of the text before him. The first part of the Vyavahārakāṇḍa of the Mitāksharā has been translated by W. H. Macnaghten. The edition of the Sanskrit text of the Mitāksharā used for the Digest is that issued by Bâbûrâm, Saṁvat 1869.

4. The Vyavahāramayūkha is the sixth Mayūkha or 'ray' of the Bhagavanta-bhāskara, 'the sun,' composed (with the permission of, and dedicated to, king Bhagavantadeva,) by Nilakanthabhāṭṭa. The Bhāskara, which consists of twelve 'rays' or divisions, forms an encyclopedia of the sacred law and ethics of the Hindûs. It contains :—

1. The Saṁskāramayūkha, on the sacraments.
2. The Āchāramayūkha, on the rule of conduct.
3. The Samayamayūkha, on times for festivals and religious rites.
4. The Śrāddhamayūkha, on funeral oblations.
5. The Nītimayūkha, on polity.
6. The Vyavahāramayūkha, on Civil and Criminal Law.
7. The Dānamayūkha, on religious gifts.
8. The Utsargamayūkha, on the dedication of tanks, wells, &c.
9. The Pratishṭhāmayūkha, on the consecration of temples and idols.
10. The Prāyaścittamayūkha, on penances.
11. The Śuddhimayūkha, on purification.
12. The Śāntimayūkha, on averting evil omens. (a)

The Vyavahāramayūkha, which has the greatest interest

(a) See Borradaile in Stokes's H. L. B., p. 8. The correctness of the order in which the books are enumerated is proved by the introductory verses of each Mayūkha, where the immediately preceding one is always mentioned, as well as by the longer introduction to one of the MSS. of the Nītimayūkha.

for the student of Hindû law, is, like all the other divisions of the Bhâskara, a compilation based on texts from ancient Smritis, and interspersed with explanations, both original and borrowed from other writers on law. It treats of legal procedure, of evidence, and of all the eighteen titles known to Hindû law, which, however, are arranged in a peculiar manner differing from the systems of other Paṇḍits. In his doctrines Nilakanṭha follows principally the Mitâksharâ and the Madanaratna of Madanasiṃhadeva(a), sometimes preferring the latter to the former. From a comparison of the portions on inheritance of the Mayûkha and Madanaratna, it would seem that Nilakanṭha sometimes even borrowed opinions from Madana without acknowledgment. Some passages of the Mayûkha, *e.g.*, the discussion on the validity of certain adoptions, are abstracts of sections of the Dvaitanirṇaya, a work by Śankara, the father of Nilakanṭha, and are not intelligible without the latter work. (b)

Of Nilakanṭha's life and times some account has been given by Borradaile. (c) According to him, that Paṇḍit was of Deśastha-Mâhârâshtra descent and born in Benares. He lived, as one of his descendants, Harabhaṭṭa Kâśîkar, told Captain Robertson, the Collector of Puṇa, upwards of two hundred years ago, *i.e.*, about 1600, sixteen generations having passed since his time. Other Puṇa Paṇḍits gave it as their opinion that Nilakanṭha's works came into general use about the year 1700, or 125 years before Borradaile wrote. (d)

(a) This author compiled an encyclopedia, similar to that of Nilakanṭha, the twelve Uddyotas. The work, commonly called Madanaratna, bears also the title Vyavahâraddyota.

(b) Stokes's Hindû L. B., p. 58, seq.; May., chap. IV., sect. V., ss. 1-5.

(c) Stokes's H. L. B., p. 7, seq.

(d) The correctness of the information given to Borradaile is now attested by the paper of Professor Bâl Śâstri, translated in the Introd. to Rao Sahob V. N. Maṇḍlik's Vyavahâramayûkha, p. lxxv. For it appears that Nilakanṭha was the grandson of Nârâyana-bhaṭṭa, who wrote in Śaka Samvat 1459, or 1535 A. D.

Borradaile adduces also the statement made at the end of some MSS. of the Vyavahāramayūkha, that Nīlakaṇṭha lived, whilst composing the Bhāskara, under the protection of Bhagavantadeva, or Yuddhaśūra, a Rājput chief of the Sangara tribe, who ruled over the town of Bhareha, near the confluence of the Chambal and of the Jamnā. A possible doubt as to whether the passage containing these notes is genuine and its contents trustworthy, is removed by the fact that many copies of the Śrāddha, Saṁskāra and Nītimayūkhās likewise contain the statement that Nīlakaṇṭha-bhaṭṭa, son of Śankara-bhaṭṭa, and grandson of Nārāyaṇasūri, was ordered by Bhagavantadeva, a king of the Sangara dynasty, to compose the Bhāskara. Some copies of the Nītimayūkha and of the Vyavahāramayūkha enumerate also nineteen or twenty ancestors of Bhagavantadeva. (a) At the same time the author calls himself there Dākṣiṇātyāvataṁśā 'of Dekhañ descent,' and thus confirms the report of the Puṇa Brahmins. The edition of the Sanskrit text of the Vyavahāramayūkha used for the Digest is the oblong Bombay edition of 1826. The translation of the passages from the Mayūkha quoted in the Digest has been taken from Borradaile's translation. This work, though in general of great service, is frequently inaccurate. Some passages of the text have been misunderstood, and others are not clearly rendered. Where this occurs in the passages quoted, the correct translation has been added in a note. (b)

5. The Viramitrodaya is a compilation by Mitramisra, which consists of two kāṇḍas on Āchāra and on Vyavahāra. (c)

Vīramitro-
daya.

(a) See Aufrecht, Oxf. Cat., pp. 280-81. His list does not quite agree with that given in the 1st edition of the Digest. The text of the verses is so corrupt that it cannot be settled without a collation of fresh and more ancient copies.

(b) The translation of Rao Saheb V. N. Maṇḍlik, published in Bombay, 1880, is, though in some respects better than Borradaile's, not sufficiently accurate to warrant its adoption in the place of the old one.

(c) This would not be a matter of surprise if a third kāṇḍa on penances (prāyaścitta) were found. But hitherto only two have become known.

The latter is written nearly in the same manner as the *Mayūkha*. But *Mitramisra* adheres more closely to the *Mitāksharā* than any other writer on law. He frequently quotes its very words ; to which he adds further explanations and paraphrases. At the same time he enters on lengthy discussions regarding the opinions advocated by *Jimūtavāhana*, *Raghunandana*, and the *Smṛitichandrikā*. Occasionally he goes beyond or dissents from the doctrines of the *Mitāksharā*. In the *Vyavahārakāṇḍa* (a) which has been published, *Mitramisra* says that he was the son of *Paraśurāma* and grandson of *Haṁsapāṇḍita*, and that he composed his work by order of king *Vīrasiṁha*, who, according to the last stanza of the book, was the son of *Madhukarasāha*. The beginning of the unpublished *āchārakāṇḍa* gives a fuller account of the ancestors of *Mitramisra*'s patron, among whom, *Medinīmalla*, *Arjuna*, *Malakhāna*, *Pratāparudra*, and *Madhukara* are enumerated. Besides, it is stated that these kings were *Bundelās*. (b) This last remark makes it possible to identify the author's patron.

Vīrasiṁha is nobody else but the well-known *Bīrsinh Deo* of *Orchhā*, who murdered *Abul Fazl*, the minister of *Akbar*, and author of the *Ayīn-Akbarī*. (c) This chief, who was violently persecuted by *Akbar* for the assassination of his minister, was also a contemporary of *Jehangir* and *Shāh Jehān*. The *Vīramitrodaya*, therefore, must have been written in the first half of the 17th century, or a little later than we had placed it according to internal evidence in the first edition of this work. The references in the *Digest* are to the quarto edition published by *Chūḍāmani* at *Khidirapura*, 1815. A careful translation of the part of the *Vīramitrodaya* relating to inheritance has been published,

(a) *Vīramitrodaya*, śloka 2.

(b) *Vīramitrodaya*, Ind. Off. No. 930, ślokas 1—37.

(c) See *Gazetteer North-West Provinces*, I., pp. 21-23, where *Bīrsinh's* pedigree, which exactly corresponds with *Mitramisra's* genealogy of *Vīrasiṁha*, has been given.

accompanied by the text, by Mr. Golâpchandra Sarkâr Śâstrî, Calcutta, 1879.

6. The next two authorities, the Dattakamimâñsâ and Dattakachandrikâ, do not call for any remark here, as they have little importance for the law of inheritance. The discussion of them belongs to the law of adoption.

7. The Nirñayasindhu of Kamalâkara, called also Nirñayakamalâkara, consists of three parichhedas, or chapters. The first and second contain the kâlanirñaya, *i.e.* the division of time, the days and seasons for religious rites, eclipses of the sun and moon, and their influence on ceremonies, &c. The third chapter is divided into three prakarañas or sections. The first of these treats of the sacraments or initiatory ceremonies, the second of funeral oblations, and the third of impurity, of the duties of Sañnyâsis and other miscellaneous topics of the sacred law. The book is a compilation of the opinions of ancient and modern astronomers, astrologers, and authors on sacred law, from whose works it gives copious quotations. The passages quoted are frequently illustrated by Kamalâkara's own comments, and occasionally lengthy discussions are added on points upon which his predecessors seem to him to have been at fault. Kamalâkara himself tells us that in the first and second chapters he chiefly followed Mâdhava's Kâlanirñaya and the section of Hemâdri's work which treats of Times.^(a) His learning is esteemed very highly in Western India, especially among the Marâthâs, and the Nirñayasindhu is more relied upon in deciding questions about religious ceremonies and rites than any other book.

In the introductory and in the concluding ślokas of the Nirñayasindhu, Kamalâkara informs us that he was the son of Râmakrishṇa, the grandson of Bhaṭṭa Nârâyaṇasūri, and the great grandson of Râmeśvara. He also names his mother Umâ, his sister Gaṅgâ, and his elder brother

(a) Nirñayasindhu I. 7.

Dinakara, the author of the Uddyotas. (a) His literary activity was very extensive. He wrote, also, the Vivâdatâṇḍava, a compendium of the civil and criminal law, based on the Mitâksharâ, a large digest of the sacred law, called Dharma-tattva-Kamalâkara, divided into 10 sections : 1, vrata, on vows ; 2, dâna, on gifts ; 3, karmavipâka, on the results of virtue and sin in future births ; 4, śânti, on averting evil omens ; 5, pûrta, on pious works ; 6, âchâra, on the rule of conduct ; 7, vyavahâra, on legal proceedings ; 8, prâ-yaśchitta, on penances ; 9, sūdradharmâ, on the duties of Sūdras ; 10, tîrtha, on pilgrimages. The several parts are frequently found separate, and many are known by the titles sūdrakamalâkara, dânakamalâkara, &c. Kamalâkara, further, composed a large work on astronomy, the siddhântatattva, vivekasindhu and other treatises. (b) He himself gives his date at the end of the Nirṇayasindhu, where he says that the work was finished in Vikrama Saṁvat 1668 or 1611—12 A. D. The edition of the Nirṇayasindhu, used for the Digest, is that issued by Viṭṭhal Sakhârâm, Śaka 1779, at Puna.

Saṁskra-
kaustubha.

8. The Saṁskârakaustubha of Anantadeva, son of Âpadeva, or one of the numerous compilations treating of the sixteen sacraments and kindred matters. It is said to belong to the same time as the Nirṇayasindhu.

The author (c) compiled a good many other treatises on philosophical subjects, a Smritikaustubha and a Dattakaustubha on the law of adoption. (d) The edition referred to in

(a) Compare also Professor Bâl Śâstri's paper in Râo Saheb Maṇḍlik's Vyavahâramayûkha, &c. pp. lxxv.—vi.

(b) See Râjendralâl Mitra, Bikaner Catalogue, pp. 499, 504.—Hall, Index of Indian Philosophical Systems, pp. 177, 183, where the date is, however, given wrongly. The latter is expressed by words : vasu (8), řitu (6), bhû (1), mite gatêbde narapativikramato. The second figure has, as is frequently required in dates, to be read twice.

(c) The author's patron was a certain Râjâ Chaṇḍadeva Bahâdur, about whom nothing further is known.

(d) Compare F. E. Hall, l. c., p. 62, 145, 186, 190, 191, and particularly p. 185, Râjendralâl Mitra, Bikaner Catalogue, p. 466.

the Digest is the one printed at Bâpû Śadâśiv's Press, Bombay, 1862.

9. The Dharmasindhu or Dharmasindhusâra, by Kâśîñ-^{Dharma-}tha, (a) son of Anantadeva, is a very modern book of the same ^{sindhu.} description as the Nirṇayasindhu. The author, according to the Paṇḍits, was a native of Paṇḍarpur, and died about forty or fifty years ago.

10. The word Smṛiti means literally 'recollection,' and is ^{Smṛitis.} used to denote a work or the whole body of works, (b) in which the Rishis or sages of antiquity, to whose mental eyes the Vedas were revealed, set down *their recollections* regarding the performance of sacrifices, initiatory and daily rites, and the duty of man in general. The aphorisms on Vedic sacrifices (Śrautasûtras), the aphorisms on ceremonies for which the domestic fire is required (Grihyasûtras) and the works treating of the duties of men of the various castes and orders (Dharmasûtras, Dharmasâstras,) are all included by the term Smṛiti. In the common parlance of our days, however, the term has a narrower meaning, and is restricted to the last class of works. Of these there exist, according to the current tradition, thirty-six, which are divided, at least by the Śâstris of the present day, into Smṛitis and Upa-smṛitis, or supplementary Smṛitis. Neither the limitation of the number, nor the division is, however, found in the older works on law, such as the Mitâkâsharâ and those books which contain it, do not always place the same works

(a) Prof. Goldstücker 'On the Deficiencies in the present Administration of Hindu Law,' App., p. 35, is mistaken in stating that the Editors of the Bombay Digest have invented the abbreviation 'Dharmasindhu.' Paṇḍits of the Marâṭhâ Country generally use this form, and the Law Officers quote the book under this title. The form Dharmasindhusâra finds just as little favour with the learned of Western India, as the full title of Vijñânesvara's great commentary, Bijumithâksharâ, instead of which the abbreviation Mitâksharâ, alone, is current.

(b) Hence the word is sometimes used in the singular as a collective noun and sometimes in the plural.

in the same class. (a) According to Hindû views, the Smritis were mostly composed and proclaimed by the Rishis whose names they bear. But in some cases it is admitted that the final arrangement of these works is due to the pupils of the first composers. (b) The Hindûs are driven to this admission by the circumstance that some times the opening verses of the Dharmaśâstras contain conversations between the composer and other Rishis, stating the occasions on which the works were composed. In other cases the Smritis are considered to have originally proceeded from gods or divine beings, and to have descended from them to Rishis, who in their turn made them known among men. Thus the Vishnu Smṛiti is ascribed to Vishnu; and Nandapaṇḍita in his commentary suggests that it must have been heard by some Rishi who brought it into its present shape. Or, in the case of the Mânava Dharmaśâstra, it is asserted that Brahmâ taught its rules to Manu, who proclaimed them to mankind. But his work was first abridged by Nârada, and the composition of the latter was again recast, by Sumati, the son of Bhṛigu. (c) But, as even such Smritis were proclaimed by men, they partake of the *human* character, which the Mîmâṃsakas assign to this whole class of works, and the great distinction between them and the revealed texts, the Veda or Śruti remains.

Hindû tradition is here, as in most cases where it concerns literary history, almost valueless. Firstly, it is certain that more than thirty-six Smritis exist at the present time, and that formerly a still greater number existed. From the quotations and lists given in the Smritis, their commentaries,

(a) Borradaile in Stokes's Hindû Law Books, p. 4, seq.

(b) Mit. Âchâra 1a, 13. "Some pupil of Yâjñavalkya abridged the Dharmaśâstra composed by Yâjñavalkya, which is in the form of questions and answers, and promulgated it, just as Bhṛigu, that proclaimed by Manu."

(c) See preface to Nârada, translated by Sir W. Jones, Institutes of Manu, p. xvi. (ed. Haughton).

the Purāṇas and the modern compilations on Dharma, as well as from the MSS. actually preserved, it appears that, counting the various redactions of each work, upwards of one hundred works of this description must have been in existence. Their names are: 1, Agni; 2*a*, Angiras; 2*b*, Madhyama-Aṅg.; 2*c*, Bṛihat-Aṅg. (two redactions in verse exist, which seem to be different from the treatises quoted); 3, Atri (two redactions exist); 4, Ātreya; 5*a*, Āpastamba (prose, exists); 5*b*, Ditto (verse, exists); 6, Ālekhaṇa; 7, Āsmarathya; 8*a*, Āśvaśāyana (verse, exists); 8*b*, Bṛihat-Ā. (verse, exists); 9*a*, Uśanas (prose, fragment exists); 9*b*, Ditto (verse, exists); 10, Rishyaśṛiṅga; 11, Eka; 12, Audulomi; 13, Aupajandhani; 14, Kaṇva (verse, exists); 15, Kapila (verse, exists); 16, Kaśyapa (prose, exists); 17*a*, Kāṇva; 17*b*, Kāṇvāyana (prose, exists); 18 Kātya; 19*a*, Kātyāyana (verse); 19*b*, Ditto (karmapradīpa, exists); 19*c*, Vṛiddha Kāty (verse); 20, Kārshṇājini; 21*a*, Kāśyapa; 21, Upa-Kāśyapa (prose, exists) (*a*); 22, Kuṭhumi; 23, Kuṇika; 24, Kutsa; 25, Krishṇājini; 26, Kaundinya; 27, Kautsa; 28, Gārgya; 29*a*, Gautama (prose, exists); 29*b*, Ditto (verse, exists); 29*c*, Vṛiddha Gaut; 30, Chidambara; 31, Chyavana; 32, Chhāgaleya; 33, Jamadagni; 34, Jātukarṇya; 35, Jābāli; (*b*) 36, Datta; 37*a*, Daksha (verse, exists); 37*b*, Ditto (quoted); 38, Dālbya (verse, exists); 39*a*, Devala (verse, exists); 39*b*, Ditto (quoted); 40, Dhaumya; 41, Nāchiketa; 42, Nārada (verse, vyavahāra-section exists); 43*a*, Parāśara (verse, exists); 43*b*, Bṛihat Par. (verse, exists); 44, Pāraskara; 45, Pitāmaha; 46*a*, Pulastya; 46*b*, Laghu Pul; 47, Pulaha; 48, Paithinasi; 49, Paushkarasādi or Pushkarasādi; 50*a*, Prachetas; 50*b*, Laghu. Prach.; 51, Prajāpti (verse, exists); 52, Budha (prose, exists); 53*a*, Bṛihaspati (verse, part exists); 53*b*, Bṛihat Bṛihaspati; 54, Baudhāyana (prose, exists); 55, Bharadvāja (verse, exists); 56, Bhṛigu (said to exist); 57*a*,

(*a*) Burnell, Tanjor Cat., p. 124.

(*b*) Sometimes spelt Jābāla.

Manu (prose, quoted) ; 57*b*, Ditto (verse, exists) ; 57*c*, Vṛiddha M. ; 57*d*, Bṛihat M. ; 58, Marīchi ; 59, Mārkaṇḍeya ; 60, Maudgalya ; 61*a*, Yama ; 61*b*, Laghu Y. (verse, exists) ; 62*a*, Yājñavalkya (verse, exists) ; 62*b*, Vṛiddha Y. ; 62*c*, Bṛihat Y. (exists) ; 63, Likhita (verse, exists) ; 64, Lohita (verse, exists) ; 65, Laugākshi ; 66, Vatsa ; 67*a*, Vasishṭha (prose, exists) ; 67*b*, Ditto (verse, exists) ; 67*c*, Ditto (verse, exists) ; 67*d*, Vṛiddha V. ; 67*e*, Bṛihat V. ; 68, Vārshyāyaṇi ; 69, Viśvāmitra (verse, exists) ; 70*a*, Viṣṇu (prose, exists) ; 70*b*, Laghu V. (verse, exists) ; 71, Vyāghra ; 72, Vyāghrapāda (verse, exists) ; 73*a*, Vyāsa ; 73*b*, Laghu Vy. (verse, exists) ; 73*c*, Vṛiddha Vy. ; (verse, exists) ; 74*a*, Śankha (prose) ; 74*b*, Ditto (verse, exists) ; 74*c*, Bṛihat or Vṛiddha Ś. (chiefly verse, exists) ; 75, Śankha, and Likhita (verse, exists) ; 76, Śākaṭāyana ; 77, Śākalya (verse, part exists) ; 78, Śāṅkhāyana (verse, part exists) ; 79, Śātyāyana ; 80, Śāṅḍilya (verse, exists) ; 81*a*, Śātātapa (verse, exists) ; 81*b*, Vṛiddha or Bṛihat Ś. (verse, exists) ; 82*a*, Śaunaka (prose) ; 82*b*, Ditto (kārīkā or bṛihat, verse, exists) ; 82*c*, Ditto Yajñāṅga (verse, exists) ; 83*a*, Saṁvarta (verse, exists) ; 83*b*, Laghu S. ; 84, Satyavrata ; 85, Sumantu ; 86, Soma ; 87*a*, Hārīta (prose) ; 87*b*, Bṛihat H. (verse, exists) ; 87*c*, Laghu H. (verse, exists) ; 88*a*, Hiranyakeśin (prose, exists). (a)

Even this list most likely does not comprise all the ancient works on Dharma, and a more protracted search for

(a) All those Smṛitis, to which the word 'exists' has been added, have been actually procured. The remainder of the list is made up from the authorities quoted in Wh. Stokes's Hindu Law Books, p. 5, note (a) in the *Āpastamba*, *Baudhāyana*, *Vasishṭha Dharmasūtras*, in the *Mādhava Parāśara* and other modern compilations. Owing to the looseness of the Hindū Paṇḍits in quoting, it is not always certain if the redactions, called Vṛiddha (old) and Bṛihat (great) had a separate existence. In some cases the same book is certainly designated by both. Collections of Smṛitis, and extracts from them, such as the *Chaturvīṁśati*, *Shaṭṭrīṁśat*, *Kokila* and *Saptarshi Smṛitis* have been intentionally excluded from the above list.

MSS., and a more accurate investigation of the modern compilations, will, no doubt, enlarge it considerably.

As regards the value of the Hindû tradition about the origin and history of the Smṛitis, the general assertion that these works belong to the same class of writings as the Śrauta and Grihyasûtras, and that in many instances they have been composed by persons who were authors of such Sûtras, is in the main correct. But the tradition is utterly untrustworthy in the details regarding the names and times of the authors, and the immediate causes of their composition, and it neglects to distinguish between the various classes, into which the Smṛitis must be divided.

It is, of course, impossible for the critic to agree with the Hindû in considering Vishṇu or any other deity of the Brahmanic Olympus, or Manu, the father of mankind, as authors of Dharmaśâstras. But it is, in most cases, also highly improbable that the Rishis, who may be considered historical personages, composed the Smṛitis which bear their names. For, to take only one argument, it is not to be believed, that, for instance, Vasishṭha and Viśvâmitra, the great rival priests at the court of King Sudâs, or Bharadvâja or Samvarta, are the authors of the hymns preserved in the Rîgveda under their names, and of the Smṛitis called after them, as the language of the former differs from that of the latter more considerably than the English of the fifteenth century from that of the present day. Much less can it be credited that Ângiras or Atri, who, in the Rîgveda, are half mythic personages, and spoken of as the sages of long past times, proclaimed the treatises on law bearing their names, the language of which obeys the laws laid down in Pânini's grammar. Nor can we, with the Hindûs, place some of the Smṛitis in the Satyayuga, others in the Tretâ, others in the Dvâpâra, and again others in the Kali age.(a) The untrustworthiness of the Hindû tradition has also been always recognised by European scholars, and, in discussing the age and

(a) This division is found in Parâśara Dharmaśâstra I., 12.

history of the Smṛitis they have started from altogether different data. In the case of the Mānava and of the Yājñavalkya Dharmasāstras, Sir W. Jones, Lassen, and others have attempted to fix their ages by means of circumstantial, and still more, of internal evidence, and the former work has been declared to belong perhaps to the ninth century, B.C. (a) or, at all events, to the pre-Buddhistic times, whilst the latter is assigned to the period between Buddha and Vikramāditya. (b) But the bases on which their calculations and hypotheses are grounded are too slender to afford trustworthy results, and it would seem that we can hardly be justified in following the method adopted by them. The ancient history of India is enveloped in so deep a darkness, and the indications that the Smṛitis have frequently been remodelled and altered, are so numerous, that it is impossible to deduce the time of their composition from internal or even circumstantial evidence. (c)

(a) Sir W. Jones, *Manu*, p. xi.

(b) Lassen, *Ind. Alt.* II., 310.

(c) A statement of the case of the Mānava Dharmasāstra will suffice to prove this assertion. Tradition tells us that there were three redactions of Manu,—one by Manu, a second by Nārada, and a third by Sumati, the son of Bhṛigu, and it is intimated that the Dharmasāstra, proclaimed by Bhṛigu, and in our possession, is the latter redaction. Now this latter statement must be incorrect, as the Sumati's Śāstra contained 4,000 ślokas, whilst ours contains only 2,885. Sir W. Jones, therefore thought that, as we find quotations from a vṛiddha or "old" Manu, the latter might be a redaction of Bhṛigu, a conjecture for which it would be difficult to bring forward safe arguments. Besides the Vṛiddha Manu, we find a Brihat-Manu, "great Manu," quoted. Further, Manu VIII., 140, quotes Vasishṭha on a question regarding lawful interest, and this rule is actually found in the Vāsishṭha Dharmasāstra, (last verse of chapter II). But nevertheless the Vāsishṭha Dharmasāstra quotes four verses from Manu (mānavān ślokān), two of which are found in our Mānavadharmasāstra, whilst one is written in a metre which never occurs in our Saṃhitā. Besides, the Mahābhārata and Varāhamihira, who lived in the sixth century, A. D., quote verses from Manu which are only found in part in our Dharmasāstra. See Stenzler in the *Indische Studien* I., p. 245, and Kern *Brihatsaṃhitā*, preface, p. 43.

Of late, another attempt to fix the age of the Dharmasāstras, at least approximately, and to trace their origin, has been made, by Professor M. Müller. According to him, the Dharmasāstras formed originally part of those bodies of Sūtras or aphorisms in which the sacrificial rites and the whole duty of the twice-born men is taught, and which were committed to memory in the Brahminical schools. As he is of opinion that all the Sūtras were composed in the period from 600—200 B. C., he, of course, assigns Dharmasāstras in Sūtras or Dharmasūtras to the same age, though he states his belief that they belong to the latest productions of the period during which the aphoristic style prevailed in India. (a) He moreover considers the Dharmasāstras in verse to be mere modern versifications of ancient Dharmasūtras. Thus he takes the Mānava Dharmasāstra not to be the work of Manu, but a metrical redaction of the Dharmasūtra of the Mānavas, a Brahminical school studying a peculiar branch or Śākhā of the Black Yajurveda. This view of the origin of the Smṛiti literature was suggested chiefly by the recovery of one of the old Dharmasūtras, that of Āpastamba, who was the founder of a school studying the Black Yajurveda, and author, also, of a set of Śrauta and Gṛihyasūtras.

The results of our inquiries in the main agree with those of Professor Müller, and we hope that the facts which, through the collection of a large number of Smṛitis, have come to light, will still more fully confirm his discovery, which is of the highest importance, not only for the Sanskrit student, but also for the lawyer and for the Hindû of our day, who wishes to free himself from the fetters of the āchāra.

We also divide the Smṛitis into two principal classes, the Sūtras and the metrical books. In the first class we distin-

(a) See M. Müller's *Hist. of Anc. Skt. Lit.*, pp. 61, 132, 199, 206—208, and his letter printed in *Morley's Digest and Sacred Books*, vol II., p. lx. That Sūtras, especially the Gṛihyasūtras, were the sources of the Smṛitis, was also stated by Professors Stenzler and Weber in the first volume of the *Indische Studien*.

guish between those Dharmasūtras which still form part of the body of Sūtras studied by a Charaṇa or Brahminical school, those which have become isolated by the extinction of the school and the loss of its other writings, those which have been recast by a second hand, and finally those which appear to be extracts from or fragments of larger works.

The second class, the poetical Dharmasāstras, may be divided into—

1. Metrical redactions of Dharmasūtras and fragments of such redactions.
2. Secondary redactions of metrical Dharmasāstras.
3. Metrical versions of Grihyasūtras.
4. Forgeries of the Hindū sectarians.

As regards the Dharmasūtras, it will be necessary to point out some of the most important facts connected with the history of the ancient civilization of India, in order to make the position of these works in Indian literature more intelligible. The literary and intellectual life of India began, and was, for a long time, centred in the Brahminical schools or Charaṇas. It was from the earliest times the sacred duty of every young man who belonged to the twice-born classes, whether Brahman, Kshatriya, or Vaiśya, to study for a longer or shorter period under the guidance of an āchārya, the sacred texts of his Śākhā or version of the Veda. The pupil had first to learn the sacred texts by heart, and next he had to master their meaning. For this latter purpose he was instructed in the auxiliary sciences, the so called Angas of the Veda, phonetics, grammar, etymology, astronomy, and astrology, the performance of the sacrifices, and the duties of life, the Dharma.

In order to fulfil the duty of Vidyādhyayana, studying the Veda, the young Aryans gathered around teachers who were famous for their skill in reciting the sacred texts, and for their learning in explaining them; and regular schools were established, in which the sacred lore was handed down from

one generation of pupils and teachers to the other. We still possess long lists which give the names of those *âchâryas* who successively taught particular books. These schools divided and subdivided when the pupils disagreed on some point or other, until their number swelled, in the course of time, to an almost incredible extent. If we believe the *Charaṇavyûha*, which gives a list of these schools or *Charaṇas*, the Brahmins who studied the *Sâmaveda* were divided into not less than a thousand such sections.

The establishment of these schools, of course, necessitated the invention of a method of instruction and the production of manuals for the various branches of science. For this purpose the teachers composed *Sûtras*, or strings of rules, which gave the essence of their teaching. In the older times these *Sûtras* seem to have been more diffuse, and more loosely constructed than most of those works are, which we now possess. Most of the *Sûtras*, known to us, are of a highly artificial structure. Few rules only are complete in themselves; most of them consist of a few words only, and must be supplemented by others, whilst certain general rules have to be kept constantly in mind for whole chapters or topics. The *Sûtras* are, however, mostly interspersed with verses in the *Anushtubh* and *Trishtubh* metres, which partly recapitulate the essence of the rules, or are intended as authorities for the opinions advanced in the *Sûtras*.

Each of the *Charaṇas* seems to have possessed a set of such *Sûtras*. They, originally, probably, embraced all the *Ângas* of the *Veda*, and we still can prove that they certainly taught phonetics, the performance of sacrifices, and the *Dharma* or duties of life. We possess still a few *Prâtiśâkhyas*, which treat of phonetics, a not inconsiderable number of *Śrauta* and *Grihyasûtras*, and a smaller collection of *Dharmasûtras*. Three amongst the latter, the *Sûtras* of *Âpastamba*, of *Satyashâḍha Hiraṇyakeśin*, and of *Baudhâyana*, still form part of the body of *Sûtras* of their respective schools.

In the cases of the *Āpastamba-* and *Hiranyakeśi-Sūtras*, the connection of the portion on Dharma with those referring to the *Śrauta* and *Grihya* sacrifices appears most clearly. The whole of the *Sūtras* of the former school are divided into thirty *Praśnas* or sections, among which the twenty-eighth and twenty-ninth are devoted to Dharma. (a) In the case of the *Hiranyakeśi-Sūtras*, the twenty-sixth and twenty-seventh of its thirty-five *Praśnas* contain the rules on Dharma. As no complete collection of the *Sūtras* of the *Baudhāyana* school is as yet accessible, it is impossible to determine the exact position of its *Dharmasūtra*. (b) All these three books belong to schools which study the *Black Yajurveda*. The first and second agree nearly word for word with each other. Among the remaining *Dharmasūtras*, those of *Gautama* and *Vasishṭha* stand alone, being apparently unconnected with any Vedic school. But, in the case of the *Gautama Dharmasūtra* we have the assertion of *Govindasvāmin*, the commentator of *Baudhāyana*, that the work was originally studied by the *Chhandogas* or followers of the *Sāmaveda*. Moreover, its connection with that *Veda* has been fully established by internal evidence, and it is highly probable that, among the adherents of the *Sāmaveda*, one or perhaps several schools of *Gautamas* existed, which also possessed *Śrautasūtras*. The obvious inference is that our *Gautama Dharmasūtra* formed part of the *Kalpa* of one of these sections of *Sāmavedis*. (c) In the case of the *Vasishṭha Dharmasūtra* it is clear from the passage of *Govindasvāmin*, referred to above, that it originally

(a) Compare *Burnell Indian Antiquary* I., 5-6; *Sacred Books of the East*, vol. II., pp. XI.—XV.

(b) The *Baudhāyana Dharmasūtra* seems to have suffered by the disconnection of the whole body of the *Kalpas* of that school, and has been considerably enlarged by later hands. See *Sacred Books*, vol. XIV., *Introd. to Baudhāyana*.

(c) For the details of the arguments which bear on this question, see *Sacred Books of the East* II., XLI.—IX.

belonged to a school of Rigvedis.(a) Though it has not yet been possible to determine the name of the latter with certainty, it is not improbable that it may have been called after the ancient sage, Vasishṭha, who plays so important a part in the Rigveda. It is, however, hardly doubtful that a considerable portion of our Vasishṭha Dharmasūtra has been recast or restored after an accidental mutilation of the ancient MSS.(b) while Gautama has probably suffered very little. (c)

As regards another Dharmasūtra, the so-called Vishṇu-smṛiti, which formerly was considered to be a modern recension of a Vishṇusūtra, further investigations have shown that it is a somewhat modified version of the Dharmasūtra of the Kāṭha school of the Yajurveda. The first information on this point was furnished by a Puṇa Paṇḍit, Mr. Dātār, whose opinion was subsequently confirmed by the statements of several learned Śāstrīs at Benares.(d) The recovery of the Kāṭhaka Grihyasūtra in Kaśmīr, and a careful comparison of its rules with those of the Vishṇusmṛiti, as well as of the mantras or sacred formulas prescribed in the Smṛiti, with the text of the Kāṭhaka recension of the Yajurveda, and with those given by Devapāla, the commentator of the Grihyasūtra, leave no doubt as to the correctness of the tradition preserved by the Paṇḍits.(e) It is now certain that the Vishṇusmṛiti on the whole faithfully represents the teaching of the Kāṭha school on dharma, the sacred law. The portions which have been added by the later editor, who wished to enhance the authoritativeness of the work by vindicating

(a) Sacred Books, II., XLIX. The older theory that the work belonged to the Sāmaveda is, of course, erroneous.

(b) Sacred Books, XIV. Introduction to Dr. Bühler's translation of the Vasishṭha Dharmasāstra.

(c) Sacred Books, II., LIV.

(d) Journ. Bo. Br. Roy. As. Soc. XII., p. 36 (Supplement, Report on Kaśmīr).

(e) See Jolly, Das Dharmasūtra des Vishṇu und das Kāṭhaka-grihyasūtra, and Sacred Books VII., X.—XIII.

a sacred character to Vishṇu, are the first and last chapters and various isolated passages, chiefly verses, in the body of the book which enjoin bhakti or devotion to Vishṇu or amplify the prose portions. (a)

There are finally the Kāṇvāyana, Kaśyapa and Budha Dharmasāstras, small treatises in sūtras or aphorisms, which refer to portions only of the sacred law. By their style and form they undoubtedly belong to the Dharmasūtras. But it would seem that they are extracts from or fragments of larger works. In the case of the Uśanas Dharmasāstra this is certain, as we meet in the medieval compilations on law, with numerous quotations from the Uśanas Sūtras, which refer to other topics than those treated in the chapters now extant. It is, however, not clear to what Veda or school these books originally belonged.

As may be seen from the translations of the five Dharmasūtras, published in vols. II., VII., and XIV. of Professor M. Müller's Sacred Books of the East, these works treat the Dharma much in the same manner as the metrical law books, e.g., those of Manu and Yājñavalkya. But they are not, like some compilations of the latter class, divided into sections on āchāra, 'the rules of conduct,' vyavahāra, 'civil and criminal law,' and prāyaścitta, 'penances.' They divide the sacred law into varṇadharma, 'the law of castes,' āsramadharma, 'the law of orders,' varṇāsramadharma, 'the law of the orders of particular castes,' gunadharma, 'the law of persons endowed with peculiar qualities' (e. g. kings), nimittadharma, 'the law of particular occasions' (penances), and so forth, exactly in the manner described by Vijñāneśvara in the beginning of the Mitāksharā. (b)

The order in which the several topics follow each other, is, however, not always the same.

The materials out of which the Dharmasūtras have been constructed, are, besides the opinions of the individual

(a) Sacred Books VII., XXIX.—XXXI.

(b) Mitāksharā I. A. 7.

authors, passages from the Vedas quoted in confirmation of the doctrines advanced, rules given by other teachers which are also considered authoritative or are controverted, and maxims which were generally received by the Brahminical community. These maxims contain that which had been settled by *samaya*, the agreement of those learned in the law (*dharmajñā*). Hence the Dharmasūtras are also called *Sāmayaçhārika Sūtras*, i.e., aphorisms referring to the rule of conduct settled by the agreement (of the *Śiṣṭas*). The passages, containing such generally approved maxims, are frequently in verse, and introduced by the phrase *athāpyudāharanti*, 'now they quote also.' Numerous verses of this kind recur in nearly all the Dharmasūtras. All the Sūtras, with the exception of those attributed to Gautama, Budha and Kāṇvāyana, which are written throughout in prose, are, besides, interspersed with other ślokas or gāthās, as they are sometimes called, which partly are attributed to schools or individual authors, such as the Bhāllavins, Hārīta, Yama, Prajāpati, Manu and others, and partly have been inserted by the writers of the Sūtras in order to sum up the substance of the doctrines taught in the preceding prose portion. The introduction of ślokas is found not only in the Dharmasūtras, but also in the Grihya and Śrauta Sūtras, nay even in the Brāhmaṇa portions of the Veda, where several of the verses, read in the Dharmasūtras, occur. The same verses, too, recur in great numbers in the metrical Smṛitis, and they contributed, as we shall show presently, a good deal to the rise of the latter class of works.

As regards the age of the Dharmasūtras, they are mostly each as old as the school to which they belong, and consequently possess a very considerable antiquity. The existence of Dharmasūtras is expressly testified by Patanjali, the author of the famous commentary on Pāṇini, who wrote in the second century B. C. (a) As Yāska, the author of the

(a) Weber, *Indische Studien* I., 143; XIV., 458. *Mahābhāshya* (ed. Kielhorn) I. 115 and I. 5 where Sūtras on permitted and forbidden good are quoted.

Nirukta, who belongs to a much remoter age than Patanjali, quotes a number of rules on the civil law in the Sûtra style, it may be inferred that Dharmasûtras existed in his time too. (a) But, of course, this does not prove anything for the age of the particular Dharmasûtras which have come down to us. Regarding them we learn from the Brahminical tradition which in this case is confirmed by other evidence, (b) that among the three Sûtras connected with the Taittiriya Veda, Baudhâya is older than Âpastamba and Hiranyakeśin Satyâshâdha. Among the latter two Âpastamba is the older writer, as is shown by the modern tradition of the Paṇḍits, and by the fact that the Hiranyakeśi-Dharmasûtra, which agrees almost literally with Âpastamba's work, is clearly a recast of the latter. Further, the quotations from Gautama and the unacknowledged appropriation of several lengthy passages of Gautama, which occur in the Sûtras of Baudhâya and Vasishṭha, show that Gautama is older than both, and, in fact, the oldest Dharmasûtra which we possess. (c) As regards the absolute determination of the age of the existing Sûtras, the school of Âpastamba, or, Âpastambha, as the name is also spelt, is mentioned in inscriptions which may be placed in the fourth century A. D. (d) The Âpastambasûtras on sacrifices, together with a commentary, are quoted in Bhartṛihari's gloss on the Mahâbhâshya, which, as Professor Max Müller has discovered, was composed in the seventh century A. D. (e) The oldest quotations from the Âpastamba Dharmasûtra occur in the Mitâksharâ, the date of which has been shown to be the end of the eleventh century A. D. From internal evidence it would, however, appear that the Âpastamba Dharmasûtra

(a) Yâska, Nirukta I., 3.

(b) Sacred Books II., XXII.—XXIV.

(c) Sacred Books II., XLIX.—LIV.

(d) Sacred Books II., XXXIII.

(e) MS. Chambers, 553, fol. 10b. (Berlin Collection).

cannot be younger than the fifth century B. C. (a) If that is so, the works of Baudhâyana and Gautama must possess a much higher antiquity. It is of some interest for the practical lawyer to know that four of the existing Dharmasûtras, those of Gautama, Baudhâyana, Âpastamba and Hiraṇyakeśin, have been composed in the South of India, while the fifth, Vasishṭha, probably belongs to the North.

The original of the remodelled Kâthaka Dharmasûtra or Vishṇu Smṛiti was probably composed in the Panjâb, the original seat of the ancient Kâtha school, and, no doubt, dates from very remote times. (b) The existing recension, the Vishṇu Smṛiti cannot be older than the third century A. D. For in chapter 78, 1-7, the week days are enumerated, and the 'Thursday is called *Jaiva*, i. e., the day of Jiva. Jiva is the usual Sanskrit corruption of the Greek *Zeus*, or rather of its modern pronunciation *Zefs* (*Zeus*). Whatever the origin of the Indian week may be, there can be no doubt that a Sanskrit work which gives a Greek name for a week-day cannot be older than the time when these names came into use in Greece. (c)

Among those Smṛitis which are quoted, but no longer preserved entire, there were probably many Dharmasûtras. In most cases, however, especially in those where the quotations occur in the old Dharmasûtras, it is difficult to decide, if the opinions attributed to the ancient authors, are given in their own words, or, if the quotations merely summarise their views. But, in a few instances, it is possible to assert with some confidence that the works quoted really were Dharmasûtras and written in aphoristic prose, mixed with verses. This seems certain for that Mânava Dharmasâstra, which Vasishṭha repeatedly quotes, for the work of Hârîta, which Âpastamba, Baudhâyana and Vasishṭha cite, and for the Śaṅkha Smṛiti

(a) Sacred Books VII., XIV.—XV.

(b) Sacred Books VII., XIV.—XV.

(c) Sacred Books VII., XXIX., XXXII.

to which the medieval compilers frequently refer. About *Manu* more will be said below. As regards *Hārīta* there is a long passage in prose, attributed to him by *Baudhāyana* and by *Āpastamba* (a) which looks like a verbal quotation, while *Vasishtha* II., 6, quotes a verse of his. It has long been known that *Hārīta* was a teacher of one of the schools connected with the Black *Yajurveda*. A quotation from his *Dharma-sūtra*, given by the Benares commentator of *Vasishtha* (XXIV., 6), indicates that the particular school to which he belonged was that of the *Maitrāyaṇīyas*.

As regards the third work, the *Dharmaśāstra* of *Śaṅkha*, our knowledge of its character is not derived from quotations alone. We still possess a work which is partly an extract from and partly a versification of the old *Smṛiti*. Among the now current *Smṛitis*, there is *Bṛihat Śaṅkha*, or, as it is called in some MSS., a *Vṛiddha Śaṅkha*, consisting of eighteen chapters, which treat of the rule of conduct (*āchāra*) and penances (*prāyaścitta*). The whole work is written in verse, with the exception of two chapters, the twelfth and thirteenth, where prose and verse are mixed. A comparison of the passages from the *Śaṅkha Smṛiti*, quoted by *Vijñāneśvara* in the *Prāyaścittakāṇḍa* of the *Mitāksharā*, with the corresponding chapters of the existing *Bṛihat Śaṅkha*, shows that the latter contains nearly all the verses of the work which *Vijñāneśvara* had before him, while the *Sūtras* have either been left out, or in a few instances, have been changed into verses. (b) As at the same time our *Bṛihat Śaṅkha* does not contain anything on civil law which, according to the quotations in the *Mitāksharā* and other works, was treated of in the old *Śaṅkha Smṛiti*, it appears that the existing work is not even a complete extract. But, nevertheless, it possesses

(a) *Āpastamba* I., 10, 29, 13-14.

(b) The verses identified are *Vijñāneśvara* on *Yājñ.* III. 260 = B. Ś. XVII. 1b-3b; on *Yājñ.* III. 293 = B. Ś. XVII. 46b-47a, 48b-49a and 50b-51a; on *Yājñ.* III. 294 = B. Ś. XVII. 43a, 37b, 38a, 39a; on *Yājñ.* III. 309 = B. Ś. XII. 7-9.

great interest, as it clearly shows how the metrical law-books arose out of the Sūtras. In the classification of the Smritis, a place intermediate between the Dharmasūtras and the metrical Smritis must be assigned to the Brihat Śaṅkha.

In the first division of the second class of Smritis to which the metrical versions of Dharmasūtras have been assigned, we may place the works, now attributed to Manu and to Yājñavalkya, and perhaps those of Parāśara and Saṁvarta as well as the fragments of Nārada and Bṛihaspati. The first two among these works begin, like many other metrical Smritis, with an introduction in which the origin of the work is described, and its composition or rather revelation is said to have been caused by the solicitations of an assembly of Rishis. In the case of the Manu Smṛiti this exordium has been excessively lengthened by the introduction of philosophical matter, and has been so much expanded that it forms a chapter of 119 verses. Moreover, the fiction that the book is being recited, is kept up by the insertion of verses in the middle of the work, in which the conversation between the reciter and the sages is again taken up, while in the Yājñavalkya Smṛiti the Rishis in the last verses are made to praise the rules promulgated by the Yogin. This kind of introduction which the metrical Smritis have in common with the Purāṇas, Māhātmyas, the sectarian Upanishads and the forged astronomical Siddhāntas, though based on the ancient custom of reciting literary productions at the festive assemblies of the Paṇḍits, the Sabhās of our days may be considered as a sign of comparatively recent composition. For most of the works, in which it occurs, have been proved to be of modern origin, or to have been remodelled in modern times.

Another reason to show that the metrical Dharmasāstras are of modern date has been brought forward by Professor Max Müller.^(a) He contends that the use of the Indian

(a) Hist. Anc. Lit., p. 68.

heroic metre, the Anushtubh śloka, in which they are written, belongs to the age which followed the latest times of the Vedic age, the Sūtra period. Professor Goldstücker has since shown^(a) that works written throughout in ślokas, existed at a much earlier period than Professor Müller supposed; in fact long before the year 200 B. C., which Professor Müller gives as the end of the Sūtra period. Still it would seem that we may avail ourselves of Professor Müller's arguments in order to prove the late origin of the metrical Smṛitis. For, though the composition of works in ślokas and of Sūtras may have gone on at the same time, nevertheless, it appears that in almost every branch of Hindū science where we find text books, both in prose and in verse, one or several of the former class are the oldest. If we take, for instance, the case of grammar, the Saṅgraha of Vyādi, which consisted of one hundred thousand ślokas, is certainly older than the Sūtras of Vopadeva, Malayagiri and Hemachandra, authors who flourished in the twelfth century A. D. But we know that in its turn it was preceded by the works of Śākatāyana, Pāṇini and others who composed Sūtras. In like manner the numerous Kārikās on philosophy are younger than the Sūtras of the schools to which they belong, just as the Saṅgrahas, Pradīpas and Parīśiṣṭas are mostly of more recent date than the Sūtras on Śrauta and Gṛihya sacrifices, which they illustrate and supplement. For all we know, the Gṛihyasaṅgraha of Gobhilaputra, or the Karma-pradīpa of Kādyāyana may be older than the Gṛihyasūtras of Pāraskara or Āśvalāyana, but both are of later date than the Gṛihyasūtra of Gobhila which they explain, and the Pradīpa is younger than the writings of Vasishṭha, the founder of the Vasishṭha school of Sāmavedis, whose Śrādhakalpa it quotes. In short, we never find a metrical book at the head of a series of scientific works, but always a Sūtra, though, at the same time, the introduction of metrical hand-

(a) Mānavakalpasūtra, p. 78.

books did not put a stop to the composition of Sūtras. (a) If we apply these results to the Smṛitis, it would seem probable that Dharmasāstras, like those ascribed to Manu and Yājñavalkya, are younger than the Sūtras of the schools to which they belong, though, in their turn, they might be older than the Sūtra works of other schools.

The opinion that the metrical Smṛitis are versifications of older Sūtra may be supported by some other general reasons. Firstly, if we take off the above-mentioned introductions, the contents of the metrical Dharmasāstras, entirely agree with those of the Dharmasūtras, while the arrangement of the subject-matter differs only slightly, not more than the Dharmasūtras differ among themselves. Secondly, the language of the metrical Dharmasāstras and of the Sūtras is nearly the same. Both show archaic forms and in many instances the same irregularities. Thirdly, the metrical Smṛitis contain many of the ślokas or gāthās given in the Dharmasūtras, and some in a modified more modern form. Instances of the former kind are very numerous. A comparison of the gāthās from Vasishṭha, Baudhāyana and Āpastamba with the Manu Smṛiti shows that a considerable number of the former has been incorporated in the latter. As an instance of the modernisation of the form of ancient verses in the metrical Dharmasāstras, we may point out the passage in Manu II., 114–115, containing the advice given by Vidyā, the personification of sacred learning, to a Brahman regarding the choice of his pupils, which is clearly an adaptation of the Trisṭubh verses, found in Nirukta II., 4, Vasishṭha II., 8–9, and Vishṇu XXIX., 10. Another case where Manu has changed Trisṭubh verses into Anusṭubhs occurs II., 144, where the substance of Vasishṭha II., 10, has been given. Finally, the fact that several peculiarities of the Sūtra style are, also, found in the metrical Smṛitis, affords a strong presumption that the latter draw

(a) The most modern Sūtra of which I know, is a grammar of the Kāśmīrian language in Sanskrit aphorisms, which in 1875 was not quite finished.—G. B.

their origin from the former. As the great object of Sūtra writers was shortness, in order that the pupils in their schools might, by learning as few words as possible, be able to remember the more explicit teaching of the masters, they invented a peculiar and very intricate system for arranging their subjects, according to which certain fundamental rules have constantly to be kept in mind, and, certain important words given once in the main rule, have to be understood with a long string of succeeding ones. Besides, they use certain words, especially particles, in a peculiarly pregnant sense, which is unknown in the common language. All these peculiarities occur in the metrical Smṛitis also. Every body who has read Manu in Sir W. Jones's translation, will know how frequently the text is expanded by the addition of words, printed in italics, without which it would be either unintelligible or self-contradictory. Students of the Mitāksharā, moreover, will remember how considerable the additions are which Vijñāneśvara is obliged to make in order to render Yājñavalkya's rules intelligible. This cramped and crabbed style of the metrical Smṛitis finds an easy explanation if their derivation from the Sūtras is admitted. Without such a supposition it is difficult to account for the fact. As regards the peculiar meanings in which particles are used, it will be sufficient to point out that the particle cha 'and,' as well as chaiva 'likewise,' in the Yājñavalkya Smṛiti repeatedly are intended to include something that is known from other sources, but not specially mentioned in the text. Thus Yājñavalkya II., 135, the particles chaiva 'likewise' which follow in the enumeration of heirs to a separated male deceased without leaving sons, indicate, according to the very plausible explanation of the Mitāksharā, that the daughter's son must be inserted after the daughter. (a) Similar eccentricities of language occur frequently in the Sūtras where 'the saving of

(a) Stokes's Hindú Law Books, p. 441. For similar cases, see the Sanskrit text of the Mitāksharā, 16, 12; 26 a 1 and *passim*.

half a short vowel is considered as joyful an event as the birth of a son.' If they are found in the metrical Smṛitis, too, the probable reason is that they are remnants of the style of the works on which the metrical Smṛitis are based.

If we turn from these general considerations to the particular books, placed in the first class of metrical Smṛitis, we find that several facts, connected with the Dharmasāstras, attributed to Manu and Yājñavalkya, further corroborate the views expressed above. As regards Manu, Professor Max Müller (a) conjectured as long ago as 1849 that the existing Smṛiti, attributed to the son of Brahman Svayambhū, was a modern redaction of a lost Dharmasūtra, belonging to the Mānava school, a subdivision of the Maitrāyaṇīyas, (b) who study a peculiar version of the Yajurveda. One portion of this conjecture has been fully confirmed. Owing to the discovery of trustworthy MSS. of the Vasishṭha Dharmasūtra, it is now possible to assert with confidence that Vasishṭha IV., 5—8, quotes a *Mānavam*, i. e. a work proclaimed by Manu, which was written, like most of the Dharmasūtras, partly in prose and partly in verse. In the note of the translation on the above passage (c) it has been pointed out that Vasishṭha gives two Sūtras (5 and 8) and two verses (6—7) taken from a Mānava Dharmasūtra. At the end of the first Sūtra the unmistakable words *iti mānavam*, 'thus (says) the mānava' are added. The first of the following verses (6), which is marked as a quotation by the addition of the word *iti*, 'thus,' is found entire in the existing Manu Smṛiti. The second (7) has been altered so as to agree with the ahimsā doctrine which forbids the slaughter of animals under any circumstances, while the verse, quoted by Vasishṭha, declares 'the slaughter of animals at sacrifices not to be slaughter' (in the ordi-

(a) Letter to Mr. Morley, Sacred Books II., p. IX.

(b) See L. von Schroeder's edition of the Maitrāyaṇī Samhitā.

(c) Sacred Books XIV., p. 26.

nary sense of the word). This discovery furnishes a firm basis for Professor Müller's opinion that the existing *Manu Smṛiti* is based on a *Dharmasūtra*, and makes it a good deal more than an ingenious speculation. The other half of his proposition that the *Mānava Dharmasūtra* on which the metrical *Smṛiti* is based, originally belonged to the school of the *Mānavas*, can, as yet, not be proved with equal certainty. For, though the *Śrautasūtra* and the *Gṛihya-sūtra* of the *Mānavas* have been recovered, and though these works are distinctly ascribed by the tradition of the school to a human teacher, called *Manu* or *Mānava*, (a) the *Dharmasūtra* has not yet been recovered, and no clear proof has been furnished that the teaching of the *Manu Smṛiti* regarding the ritual closely agrees with that of the *Sūtras* of the *Mānava* school. Nevertheless, Professor Müller's suggestion seems very probable. On the question when the *Mānava Dharmasūtra* was turned into a metrical *Smṛiti* very little can be said. From the times of *Medhātithi*, the oldest commentator known to us, who certainly cannot have lived later than in the 9th century, A. D., the text has not undergone any great change. But the earliest quotation from a metrical *Manusmṛiti* which occurs in the *Bṛihatsamhitā* of *Varāhamihira* (died 580, A. D.) differs very considerably from the text known to us. (b) It would, however, be dangerous to infer from this fact that the existing metrical law book dated from a later time than *Varāhimira*, because, firstly, several metrical works ascribed to *Manu Svâyambhuva* or to his pupils seem to have existed, and, because inscriptions of the 4th century A. D., when speaking of the *Smṛitis*, invariably place *Manu* first, (c)

(a) Both forms occur in the commentary on the *Gṛihyasūtra*, which probably belongs, like that of the *Śrautasūtra*, to the ancient *Mīmāṃsaka*, *Kumārila*.

(b) Kern, *Bṛihatsamhitā*, p. 43.

(c) See, e.g., the description of *Mahārāja Droṇasiṃha* on the plates of *Dhruvasena I.* of *Valabhi*, dated 207 and 216; *Indian Antiquary* IV. 106, V. 205.

and thereby indicate the existence of a law book which possessed greater or more general authoritativeness than would belong to a simple school book studied and revered by the title Mānava Charana alone.

In the case of the Yājñavalkya Smṛiti, it is possible to determine with perfect exactness the Vedic school to which its original belonged. But, hitherto, no trace of the actual existence of the Dharmasūtra has been found. As regards the former point, Yājñavalkya is known to have been the founder of the school of the Vājasaneyins, who study the White Yajurveda. In the Smṛiti III., 110, it is expressly stated that its author is the same Yājñavalkya, to whom the Sun revealed the Āraṇyaka, *i. e.* the Bṛihadāraṇyaka, which forms part of the Brāhmaṇa of the Vājaneyins, the Śatapatha. On account of this assertion, and because a number of the Mantras or sacred formulas, the use of which is prescribed in the Yājñavalkya Smṛiti for various rites (a) have been taken from the Vājasaneyi-Saṁhitā of the White Yajurveda, it is highly probable that the Sūtra on which the Smṛiti is based, belonged to one of the Charaṇas in which the Vājasaneyi-Śākhā was studied. Possibly the lost Sūtra may even have been composed by the founder of the Vājasaneyi-Charaṇa himself.

As regards the Parāśara and Saṁvarta Smṛitis and the fragments of Bṛihaspati and Nārada, it is, at present, not possible to say to what Vedas or schools they or their originals belonged. But a verse of Bṛihaspati which Nandapaṇḍita quotes in elucidation of Vishṇu IV. 9, shows that the

(a) See, *e.g.*, Yājñ. I. 229 = Vaj. Saṁh. VII. 34; Yājñ. I. 231 = Vaj. Saṁh. XIX. 70; Yājñ. I. 233 = Vaj. Saṁh. XIII. 27. It is a general maxim that the Mantras, used for daily and occasional rites, must be taken from that redaction of the Veda which is hereditary in the family of the sacrificer. Hence it is only necessary to find out from which redaction the Mantras prescribed in any work or those used by any individual are taken in order to ascertain the Vedic school to which the author or the sacrificer belongs.

metrical law book ascribed to the Guru of the gods, probably was written within the last sixteen or seventeen hundred years.

In the passage quoted there, Bṛihaspati gives an accurate definition of a gold *dīnāra*. It has been pointed out long ago,^(a) that the occurrence of the word *dīnāra*, which is a corruption of the Latin *denarius*, is a test for the date of Sanskrit works, and that no book in which it occurs can belong to a remote antiquity. Golden denarii were first coined at Rome in 207 B.C., and the oldest Indian pieces corresponding in weight to the Roman gold denarius, which are known are those of the Indo-Scythian kings,^(b) who reigned in India from the middle of the first century B.C. It is, therefore, impossible to allot to Sanskrit authors, who mention golden *dīnāras*, and accurately define their value, an earlier date than the first century A.D., and, it is not improbable, that that limit is fixed rather too high than too low. If, then, the verse of Bṛihaspati, quoted by Nandapaṇḍita, is not a later interpolation, the Smṛiti called after him cannot be older than sixteen or seventeen hundred years.

The same remark applies to the lost metrical Smṛiti of Kātyāyana, from which Nandapaṇḍita quotes (*loc. cit.*), also a verse, defining the value of the *dīnāra* and to the fragment of Nārada which treats of civil and criminal law. With respect to the latter work, it must, however, be noted that the *vulgata*, which has been translated by Professor J. Jolly,^(c) does not contain the verse giving the definition of the term *dīnāra*, while another recension of the same work which is accompanied by the commentary of Asahāya, re-arranged by one Kalyāṇabhaṭṭa, has it.^(d)

(a) See, e.g., Max. Müller, *Hist. Anc. Sansk. Lit.*, p. 245.

(b) E. Thomas, *Jainism*, p. 71, *seqq.*

(c) *The Institutes of Nārada*, translated by J. Jolly. London, Trübner, 1876.

(d) *Sacred Books VII.*, p. XXV., and *Report on Sansk. MSS.* for 1874-75.

Asahâya is one of the oldest and most esteemed writers on civil law, whose name is quoted in several of the older Nibandhas and commentaries. In Bâlabhaṭṭa's commentary on Mitâksharâ I., 7, 13, where the opinion of Asahâya, Medhâtithi and others is contrasted with the view of Bhâruchi, it is stated that Asahâya, literally 'the Peerless,' is an epithet of Medhâtithi. Colebrooke, however, doubts the correctness of Bâlabhaṭṭa's statement, because he found the word Asahâya used as a proper name in the Vivâdaratnâkara. His doubts are confirmed by the circumstance that in other digests, too, (a) Asahâya is mentioned as an individual writer, and that Kalyâṇabhaṭṭa says nothing about the identity of Asahâya and Medhâtithi, but evidently takes the former for a separate individual. As in the passage of the Mitâksharâ, quoted above, Asahâya stands before Medhâtithi, and as it is the custom of Sanskrit writers in quoting the opinions of others to name the oldest and most esteemed author first, it may be inferred that Asahâya preceded Medhâtithi, who probably wrote in the 8th or 9th century A.D. Under these circumstances it must be conceded that the version of Nârada's Institutes accompanied by Asahâya's commentary has greater weight than the *vulgata* and that the definition of the term *dînâra* belongs to the original. Hence it would appear that the Nârada Smṛiti cannot lay claim to any greater antiquity than the first or second century A.D. On the other hand, the discovery that as ancient an author as Asahâya composed a commentary on the work, gives support to the view of Professor Jolly (b) that the Nârada Smṛiti is not later than the fourth or fifth century of our era. To the same conclusion points also the circumstance that the prose introduction, prefixed to the *vulgata* of the Nârada Smṛiti, (c) which gives a clearly erroneous and mythical account of the origin of the work, belongs to the commentary of

(a) e.g. in Varadarâja's Vyavahâranirṇaya, p. 38 (Burnell).

(b) Institutes of Nârada, p. XIX.

(c) *Ibidem*, pp. 1-3.

Asahâya. The tradition, given there, asserts that the Nârada Smṛiti is a recast of Śumati's abridgment of the original Manu Smṛiti. But a comparison of the doctrines of Nârada with those of Manu shows that the connection between the two authors is not very close. They differ on most essential points, such as the titles or heads of the civil and criminal law, the number and manner of the ordeals, the permissibility of the Niyoga, and the remarriage of widows, the origin of property, the kinds of slavery, and so forth.(a) Now if Asahâya's erroneous statement regarding the origin of the Nârada Smṛiti is not a deliberate fabrication, its existence can be accounted for only by the assumption that between his own times and those of the real author of the Nârada Smṛiti so long a period had elapsed that the true origin of the latter work had been forgotten. With respect to the latter point it may be mentioned that hitherto it has not been possible to determine the Vedic school to which the Nârada Smṛiti belongs.

Among the lost metrical Smṛitis, that ascribed to Laugâkshi, was possibly based on the Kâthaka Dharmasûtra. For, according to the tradition of the Kaśmîrians, Laugâkshi was the name of the author who composed the Sûtras of the Kaṭha school.

The Smṛitis which may be placed under the second head, that of secondary redactions of metrical Dharmasâstras, may be subdivided into extracts and enlarged versions. Of the first kind are the various Smṛitis which at present go under the names of Aṅgiras, Atri Daksha, Devala, Prajâpati, Yama, Likhita, Vyâghrapâda, Vyâsa, Śaṅkha, Śaṅkha-Likhita and Vṛiddha Sâtâtapa. All these works are very small and of small importance. That they are really extracts from, or modern versions of more extensive treatises, and not simply forgeries, as has been supposed, seems to follow from the fact that some of the verses quoted by the older commentators, such as Vijñâneśvara, from the works of Aṅgiras and so forth, are actually found in them. On the other hand, it is clear that they cannot be the original ancient works,

(a) *Ibidem*, pp. XIII-XVIII.

which Vijñāneśvara and other old Nibandhakāras knew, because many verses quoted from the latter are not traceable in them. In the case of the Vṛiddha Sātātapsmṛiti, the author himself states in the beginning (śl. 1) that he gives only so much of the ancient work 'as is required to understand its meaning.' To the second sub-division, that of the enlarged metrical Smṛitis, belongs the so-called Bṛihat Pârâśara. It is expressly stated that the book was composed or proclaimed by Suvrata (Suvrataproktâ Samhitâ). Though it is divided, like the original Pârâśara, into twelve chapters, it contains 3,300 ślokas against the 581 or 592 of the older book.

To the third class, that of the more recent compilations in verse which are not based on any particular old works belong, besides the Kokila, Saptarshi, Chaturvimśati and similar Smṛitis, mentioned above, the existing Lohita Smṛitis, and perhaps that ascribed to Kapila. The author of the Lohita Smṛiti states in the last verse of his book "that Lohita having extracted the quintessence from the Śâstras, has proclaimed this work for the welfare of mankind."

The fourth division, that of the versified Grihyasûtras, includes the two Âśvalâyanas, the so-called Bṛihat Śaunaka, or Śaunakîyâ Kârîkâ, and the fragments of Śâkala and Śaṅkhâyana. Both the Âśvalâyana Dharmasâstras are simply metrical paraphrases of the Âśvalâyana Grihyasûtra, and the Bṛihat Âśvalâyana is distinguished only by the peculiarity that it contains the same matter twice, "for the sake of the slow-minded," together with some verses on Râjanîti, or 'polity.' The Bṛihat Śaunaka is particularly interesting not only because it seems to be the last remnant of the Smârta writings of that famous teacher of the Rîgveda, but also because it apparently has been remodelled by a Vaishṇava of the sect of Râmânuja, and affords another instance of the activity which the Vaishṇavas displayed in turning ancient writings to their account. A detailed notice of this work will be found in a paper laid before the Asiatic Society of Bengal in September 1866. It is characteristic of the

negligence and want of critical discernment shown by Hindú writers, that Nílakanṭha in the Vyavahâra Mayúkha treats the Bṛihat Sâunaka as a genuine production of the old Âchârya.

The fifth class, or that containing the forgeries, is unfortunately of not small extent. The Vaishṇavas seem to have been most unscrupulous in using old names in order to give weight to their doctrines. They have produced the Bṛihat Hârta, two Vasishṭha Smritis, a Śâṇḍilya and the Laghu Vishṇu. These books represent various shades of the Vaishṇava creed. Some are extremely violent in their diatribes against other sects, and teach practices and doctrines which would have astonished the ancient Rishis whose names they appropriated, while others are more moderate and conform more to the Smârta practices. The most extreme are the Bṛihat Hârta and the third Vasishṭha of our list. There is only one work which may be safely called a Śaiva forgery, the second Gautama of the list. It is distinguished from the common Smârta works only by occasionally inculcating the worship and pre-eminence of Śiva. The rites prescribed are what one at the present day would call Smârta. Besides these, some other small works belong to this class, among which the second Âpastamba and the second Uśanas may be named. Their rules do not show any particular sectarian tendencies. It will, however, be proper to call them forgeries, because they bear the names of ancient teachers, though they apparently have nothing to do with the authentic writings of these persons. On the other hand, it must for the present remain undecided whether the commonplace Śâstras attributed to Viśvâmitra and Bhâradvâja are modern fabrications, or versifications of older Sûtras. In the case of Bhâradvâja there is some foundation for the latter opinion, as a great portion of the Sûtras of a Bhâradvâja school, which belongs to the Black Yajurveda, is still in existence.

In concluding this sketch of the Smṛiti literature, it ought to be remarked that the opinions advanced with respect to its origin and development are supported by the analogies of

other branches of Hindû literature. The older portions of the Upanishads, or the philosophical portions of the Vedas which inculcate the 'road of knowledge,' either still form part of the collections of texts or Śākhās studied by the various Vedic schools, or can be shown to have belonged to such collections. Thus the Aitareya and Kaushîtaki Upanishads are incorporated in the Śākhās of the Rîgveda which bear these names. The Taittiriyâ, the Vârunî and other Upanishads still form part of the Taittirîya Śākhâ, the Maitrâyaṇî of the Maitrâyaṇa Śākhâ, the Bṛihadâraṇyaka of the Mādhyandina and Kāṇva Śākhās of the White Yajurveda. Again, the names and contents of such works as the Bâshkala and Jâbâla Upanishads show that they belonged to extinct Śākhās of the Rîg and Sâmavedas. Next we have the Upanishads which have been recast by the adherents of the fourth Veda, the Âtharvaṇas, further Upanishads which, though counted as parts of the Atharvaveda, proceed apparently from adherents of the philosophical schools, and lastly, the fabrications of sectarians, Vaishṇavas, Śaivas, Gâṇapatas and so forth. While the first classes of Upanishads are written in archaic Sanskrît prose, or in prose mixed with verse, the later works show the common Sanskrît, and many of them are *in verse*. In some instances the connection between the prose and the metrical treatises can be clearly traced. In all this the analogy to the Smṛiti literature is obvious, and in the case of the Upanishads, too, the truth of our fundamental position is apparent, viz., that the fountain of intellectual life in India and of Sanskrît literature is to be found in the Brahminical schools which studied the various branches of the Vedas. Even in the case of grammar, of astrology and astronomy, the correctness of this principle might be demonstrated, though not with equal certainty, because the oldest works in those branches of science are lost, or at all events have not yet been recovered.

The bearing of our view regarding the history of the Smṛitis, on their interpretation, and on the estimation in

which they must be held, is obvious. The older still existing Smṛitis, and the originals of the rest, are not codes, but simply manuals for the instruction of the students of the Charanas or Vedic schools. Hence it is not to be expected that each of these works should treat its subjects in all its details. It was enough to give certain general principles, and those details only which appeared particularly interesting and important. It is, therefore, inappropriate to call the Smṛitis "codes of law," and unreasonable to charge their authors with a want of precision of discrimination between moral and legal maxims, &c.(a) Such strictures

(a) In the ancient societies in their earlier stages there was no such thing as systematic legislation on a utilitarian basis. The civic or national consciousness was developed under the influence mainly of religious conceptions, and all that belonged either to the State in its relation to individuals or to the mutual rights and duties of members of the community was wrought out under this sacred control. The ethical and the social laws spring forth as offshoots from the relations of mortal men to supernatural beings, to their own ancestors, and to their families united to them in close ties of religious interdependence. The ceremonial law seeking to propitiate beings, whose nature may be variously conceived, acquires the intricacy of a purely artificial system, and its interpreters are invested with a sacred character on account of their association with awful thoughts, and their exclusive command of potent formulas. The priesthood shared—and could not but share—the chief emotions of the people, but they moulded these into forms consonant to their own ruling notions, by connecting every phase of moral or legal change with some doctrine or some phrase regarded as of divine authority. As inventiveness and constructive faculty were set to work by the prompting of new needs in altered circumstances, the expression of the result, whether wholly original or partly borrowed, was grafted on to the existing system, and if it corresponded to any permanent want or form of moral energy it was preserved by frequent recitation; and as in India the people, owing perhaps to physical conditions, were much less stirred to distinctly civic activity than in Greece or Rome, the purely religious element in their body of thought has maintained its early predominance down even to modern times. The source and the sanction of the "municipal" being thus in the religious law, it was natural that a severe discrimination of the one from the other should

would only be justified if the Smṛitis were really "codes" intended from the first to settle the law between man and man. At the same time it will appear that the statement of the modern Nibandhakāras and commentators that the various Smṛitis are intended to supplement each other is, at least to a certain extent, correct. As none of the Smṛitis is complete in itself, it is, of course, natural that the lawyer should, if one fails, resort to the others which, on the whole, are written in a kindred spirit. It would, however, be unwise

not be attempted. In the Mosaic law, as in the Hindū law, we find sacrificial ceremonies, family relations, the conditions of property, criminal laws, and legal procedure all put pretty much on the same level and all in some degree intermingled because all regarded mainly from the same stand-point of their supernatural origin. Thus viewed, many parts of the law have a certain harmony with one another which, from our modern stand-point, seem incongruous, otiose, or unmeaning. Amongst the Greeks and Romans, as amongst the Hindūs, the laws being regarded as of divine origin, were committed to the memory and the care of the priestly class. This class furnished the only jurists, and when laws were reduced to writing, their proper repositories were the temples of the gods. A council of priests, as of Levites or of Brahmans, could alone pronounce on the most important questions of the civil law, or give the requisite assent to some proposed deviation from established use and wont. It seems that in the early period the Greek laws were mostly, if not wholly, rhythmical.* The same form of the Roman laws is suggested by the word "Carmina," commonly applied to them. They were special to the Greeks and to the Romans as the Brahmanic law is special to Hindūs. Rights as existing beyond the pale of the religious connexion are hardly recognized except by a faint analogy. The Smṛitis therefore and the mental evolution which they embody may be regarded as a most natural product of the human mind at a particular stage of growth. An economical, or purely political aim not having been admitted except as subordinate, the conduct of men was not prescribed by reference to it as distinguished from the religious aim. The rhythmical form of the precepts has its analogue even in the English law, many rules of which and even the statutes were in early times converted into verse, as a convenient means of committing them to memory.

* Wachsmuth Hist. Ant. of Gr., Ch. V. § 39.

to use them indiscriminately, since they contain also a great many contradictory or conflicting statements. It will be necessary to examine in each case, whether the Smṛiti from which supplementary information is to be derived, agrees in its principles on the point in question with the book which serves as the fundamental authority. For in the latter case only will it be possible to use the additional information. A considerable caution in the use of unknown texts, said to belong to Dharmasāstras, regarding which we possess no full information, is also advisable on account of the great number of forgeries and recasts of ancient works which exist at the present day. A full enquiry into the authenticity of such texts is very necessary.

The Vedas.

11. *The Vedas.*—The fountain-head of the whole law is, according to the Hindûs, the Veda, or Śruti. By the latter term they understand the four Vedas, the Rik, Yajus, Sâman and Atharvan in all their numerous Sâkhâs or recensions, all of which they believe to be eternal and inspired. Each Veda consists of two chief portions, the Mantras and the Brâhmaṇas. The former are passages in prose and verse which are recited or sung by the priests at the great sacrifices; the latter contain chiefly rules for the performance of the sacrifices and theological speculations on their symbolical meaning and their results, as well as, in the Âraṇyaka portion, discussions of philosophical problems. As may be expected, the Vedas include no continuous treatises on Dharma, but, incidentally, a good many statements of facts connected with all sections of the law are found. The authors of the Dharmasûtras frequently cite such passages as their authorities. But it is a remarkable fact that they by no means agree regarding their applicability. (b) For the practical lawyer of the present day the Veda has little importance as a source of the law. But a careful investigation of the state of the law, as it was in the Vedic age, will no doubt yield important results for the history of the Hindû law.

(b) Sacred Books II., p. XX.