

## Manu and Bṛihaspati.

By

**J. Jolly.**

The very particular importance which belongs to the mutual relations between the Manu and Bṛihaspati Smṛitis for all attempts at fixing the date of the former work has been pointed out very recently in the Introduction to Professor BÜHLER's translation of Manu. Professor BÜHLER, while adopting the conclusions to which an examination of the references to Manu in the fragments of Bṛihaspati had led me, has observed that the instances of such references to which I had adverted might be extended. This observation is quite correct, and it may not be out of place to resume the whole question and to collect as much as possible the whole evidence regarding the mutual relations between the Code of Manu and the fragments attributed to Bṛihaspati.

1. While Bṛihaspati is not among the legal authorities referred to by Manu, the latter is not seldom appealed to by the former; and what is more, these references may be distinctly traced to the now extant Code of Manu. In the chapter on Games, Bṛihaspati says

*dyûtaṃ nishiddhaṃ manunâ satyaśaucadhanâpaham |  
abhyanuñjâtam anyais tu râjabhâgasamanvitam ||*

This text proves Bṛihaspati's thorough acquaintance with the whole range of legal literature. Manu's prohibition of gambling (ix. 221 f.) is

equally well-known to him as the opposite rules of other legislators, such as Nârada (xviii. 2—8), Âpastamba (ii. 25, 12 f.) and Yâjñavalkya (ii. 200—203), who tolerate gambling when carried on under regal supervision. The fact that he does not mention the other authorities by name, although he sides with them, can only be explained by the comparatively low estimation in which they were held by him. — In speaking of weights or coins, he says

*saṃkhyâ raśmirajomûlâ manunâ samudâhritâ |*  
*kârshâpaṇântâ sâ divye niyojyâ vinaye tathâ ||*

‘Measures of quantity, beginning with the mote of dust in a sun-beam and ending with a Kârshâpaṇa, have been declared by Manu. They are applicable to ordeals and to fines.’ The texts of Manu which are referred to in this passage may be found, Manu viii. 132—137, and Bṛihaspati’s thus referring to them shows that this important section of the eighth chapter is genuine and old. — Again, in the chapter on inheritance, Bṛihaspati declares

*putrâs trayodaśa proktâ manunâ ye ’nupûrvaśaḥ |*  
*saṃtânakâraṇaṃ teshâm aurasah putrikâ tathâ ||*  
*âjyaṃ vinâ yathâ tailaṃ sadbhiḥ pratidhikḥ smṛitah |*  
*tathaikâdaśa putrâs tu putrikaurasayor vinâ ||*

‘Among the thirteen sons who have been declared in order by Manu, the son of the body and the (son of the) appointed daughter are the only ones capable of producing (real) issue. The eleven (subsidiary) sons, besides the (son of the) appointed daughter and the son of the body are held in the same estimation as oil which is recommended as a substitute for sacrificial butter by the wise.’ It is true that the number of sons enumerated and defined in the Code of Manu (ix. 166—178) amounts to twelve only, but the Putrikâputra or ‘son of an appointed daughter’ is separately mentioned in the Code and is given a very high position in the series of sons. The inferiority of sons subsidiary to a son of the body or Putrikâputra is laid much stress on by Bṛihaspati, but this also is in keeping with the teaching of Manu who declares (ix. 180) that the eleven subsidiary sons have been insti-

tuted by the sages for the mere purpose of preventing the cessation of funeral rites. The importance of these various references to the sayings of Manu is enhanced by the fact that the texts attributed to Bṛihaspati do not contain any reference to the primeval legislator of mankind which is not traceable in the Code, unless the Bhṛigu, whom he quotes repeatedly, be identified with Manu. However, Bhṛigu, although the reputed author of the *mānavam dharmasāstram bhṛiguproktam* must be considered as an independent legislator. The extent of the veneration in which Manu was held by Bṛihaspati may be gathered from the maxim put forth by the latter that no Smṛiti holds good which is opposed to the teaching of Manu.

2. In a number of other cases, the Code of Manu, though not mentioned by name, is nevertheless distinctly referred to by Bṛihaspati. Thus he says in the chapter on impartible property

*vastrādayo vibhājyā ye uktās tair na vicāritam |*

‘Those by whom clothes and the rest have been declared impartible have not decided properly.’ The text here referred to occurs both in the Code of Manu (ix. 219) and in the Vishṇu-smṛiti (xviii. 44) and appears to have been a well-known *versus memorialis*, the contents of which are elaborately discussed in the sequel by Bṛihaspati. He mentions each of the impartible objects in the same order as Manu and shows how they may be divided according to *yukti*, as e. g. a female slave being made to work for each co-heir by turns, etc. It appears highly probable that Manu is the teacher to whom Bṛihaspati is here referring in the *pluralis majestatis*, and the reason why he does not mention him by name may be sought in the fact that he does not care to openly avow his dissent from Manu on the subject under notice. — A closely analogous case occurs in the chapter on interest, where Bṛihaspati describes six different sorts of interest, after premising the remark that

*vṛiddhīs caturvidhā proktā pañcadhā nyaiḥ prakīrtitā |*  
*śaḍvidhā nyaiḥ samākhyātā . . . .*

It can hardly be doubted that Manu is meant (VIII. 153) who divides interest into four species. — When speaking of subsidiary sons, Bṛihaspati says

*eka evaurasaḥ pītrye dhane svāmī prakīrtitaḥ |  
tattulyā putrikā proktā bhartavyās tvapare sutāḥ ||*

The author by whom an appointed daughter has been declared to be 'equal to a legitimate son of the body' is Manu (IX. 145).

3. Even without referring expressly to previous writers, Bṛihaspati presupposes an acquaintance with their compositions, in the definitions which he gives of divers difficult law terms. Thus he explains as follows the technical term *asvāmin* which occurs in Manu in the title of law called *asvāmivikraya*,

*nikshepānvāhitaṃ nyāso hṛitaṃ yācitabandhakam |  
upāṃśu yena vikrītaṃ asvāmī so 'bhidhīyate ||*

'That person is called *asvāmin* by whom a deposit, mortgaged property, a Nyāsa deposit, stolen property, a loan for use, or pledge has been sold in secret' (*upāṃśu aprakāśam Vīramitrodaya*). — Of a *samsṛishṭa*, 'reunited coparcener', he says,

*vibhakto yaḥ punaḥ pitrā bhrātrā vaikatra saṃsthitaḥ |  
pītrivyeṇāthavā prītyā sa tatsamsṛishṭa ucyate ||*

'Should a person, after a previous division, amicably unite once more with a father, brother, or paternal uncle, he is said to stand to them in the relation of a reunited coparcener'. The technical term *samsṛishṭa* occurs in the Code of Manu (IX. 212) and might well seem important enough to require an explanation. Most other Smṛiti-writers say *samsṛishṭin* for *samsṛishṭa*. — In several other cases, Bṛihaspati's interpretations of legal phraseology concern such terms as he has in common with Nārada. Thus he takes great pains to define the eight or ten 'members of a lawsuit', the 'defects of a plaint', the twelve sorts of witnesses, and other technical terms or distinctions which occur

in the Nārada-smṛiti as well. It has been shown elsewhere that the Smṛitis of Nārada and Manu are cognate compositions.

4. While it is easy to see that the texts attributed to Bṛihaspati belong to a more recent period than the Code of Manu, many of the new doctrines proposed by him have been developed naturally from the comparatively simple and archaic laws of Manu. A number of instances of this, relative to the laws of debt and inheritance, have been previously collected by myself. The same tendency is observable in other departments of jurisprudence. For instance, Bṛihaspati makes a curious attempt at distinguishing between civil and criminal law (arthamūla and hipsāmūla vyavahāra); but the eighteen titles of law which he enumerates are nearly the same as Manu's, and he agrees more closely in that respect with Manu than does Nārada. Under the title of Prakīrṇaka 'Miscellaneous' he treats in an Appendix to the eighteen titles the nṛipāśraya vyavahāra, i. e. police regulations; but this also can hardly be called an innovation on the Code of Manu, in which a number of analogous rules are introduced after the eighteen titles. — 'Insult' (vākpārushya), according to Bṛihaspati, should be divided into three species, prathama, madhyama, and uttama, each of which is accurately defined by him. This is hardly more than a systematization of the divers kinds of insult mentioned by Manu (viii. 267 ff.). — Manu distinguishes between prakāśa and aprakāśa thieves. Bṛihaspati has developed this distinction as follows,

*prakāśās ca 'prakāśās ca taskarā dvividhāḥ smṛitāḥ |*  
*prajñāsāmarthyamāyābhīḥ prabhinnās te sahasradhā ||*

'There are two kinds of robbers, open and concealed ones; of these there are again a thousand ramifications, according to their intelligence, ability and cunning'. — A somewhat analogous development may be observed in Bṛihaspati's rules regarding prakāśa and aprakāśa cihna (visible and invisible boundary marks), as compared to the corresponding provisions of the Code of Manu. — Many other developments of Manu's doctrines are common to both Bṛihaspati and Nārada, and there exists a general agreement between these two writers,

though they differ on a number of minor points, such as e. g. the arrangement and subdivision of the several parts of the law of evidence, the number of ordeals, of witnesses, of kinds of interest, of pledges, of subsidiary sons, the right of inheritance of a widow, etc. Where Bṛhaspati differs from Nārada, his teaching is generally less archaic in its nature than Bṛhaspati's. The mutual relations between the Bṛhaspati and Kātyāyana Smṛitis which are very close likewise, have been discussed in my volume of *Tagore Law Lectures*.

A consideration of these facts renders it highly probable that there is a basis of fact in the legendary connection between the law-books of Manu, Bṛhaspati, and Nārada,<sup>1</sup> and that the Bṛhaspati-smṛiti must have been a sort of Vârttika<sup>2</sup> on, and considerably posterior to, the Cōde of Manu. It may not be out of place to add that the sources from which the texts of Bṛhaspati have been collected, have been stated in the volume just referred to, and that I am in hopes of publishing very soon a translation of all the law texts attributed to Bṛhaspati.

---

<sup>1</sup> *Tagore L. L.*, p. 62.

<sup>2</sup> BÜHLER, *loc. cit.*, p. cix.