

CHAPTER VI

SUCCESSION

(General principles of inheritance) ② Two systems of inheritance prevail among the Hindus ; the Mitakshara system and the dayabhaga system. Doctrine of religious efficacy is the guiding principle under Dayabhaga, whereas under Mitakshara consanguinity is sometimes regarded as the guiding principle.

(Modes of devolution of property.) (a) Mitakshara.

In Mitakshara property devolves in two modes : (a) survivorship and (b) succession. In case of joint family property the rules of survivorship apply. In cases of separate, self acquired and property held absolutely by the last coparcener, the rules of succession apply.

Illustrations.

(a) A and B are two Hindu brothers governed by the Mitakshara school. They are members of a joint and undivided family. A dies, leaving his brother B. A's Share in the joint family property will pass to his brother B, the surviving coparcener.

(b) A and B are two Hindu brothers governed by the Mitakshara school. They are members of a joint and undivided family. A dies leaving his brother B and a daughter D. Since a female cannot be a member of the coparcenary, A's share in the joint family property will pass to his brother B, the surviving coparcener and not to his daughter, D.

(c) A and B are two Hindu brothers governed by the Mitakshara school. They are separate. A dies leaving his brother B and a daughter D. A's property will pass to his daughter D as his heir. Since the question of survivorship arises only in case of joint family property, B, the surviving brother cannot claim the property in preference to D.

(b) (Dayabhaga)⁷ Under Dayabhaga school, only one mode of devolution is recognised, i.e. *succession*.

Illustration.

A and B are two Hindu brothers governed by the Dayabhaga school. They are members of a joint and undivided family. A dies leaving his brother B, and his widow, W. Since Dayabhaga recognises only one mode of devolution of property, i.e. succession, A's share in the joint family property will pass to his widow, W, as *his heir*, exactly as if A and B were separate.

When a male succeeds, he takes absolutely.

(Limited estates.)⁸ When a female succeeds, she takes a limited interest in the property.

(Last full owner.)⁹ One who held the property absolutely at the time of his death is known as the last full owner. Except in the case of *stridhanam* or similar other properties, the last full owner should always be a male. A last full owner only can become a fresh stock of descent.

(Inheritance cannot be kept in abeyance.)⁵ On the death of a Hindu his property immediately vests in the nearest heir. It cannot under any circumstances, remain in abeyance in the expectation of a birth of a preferable heir. (*Shakuntala Devi V. Kaushalya Devi* (1936) 17.Lah.356 ; 162.I.C.718).⁽¹⁾

Property, once vested cannot be divested, except either by the birth of a preferable heir, who was conceived at the time of death of the last owner, or by adoption, in certain cases, of a son to the deceased. (*Tagore V. Tagore* (1872) 9.Beng. L.R.377).⁽²⁾

Illustrations.

(a) X dies leaving an insane son and a nephew. Since the insane son cannot inherit, the property passes on to the nephew. Then the insane son marries and a son Y is subsequently born to him. Y claims the property from the nephew. The nephew cannot be divested.

1. (*Shakuntala Devi V. Kaushalya Devi* (1936) 17.Lah.356 ; 162.I.C.718).

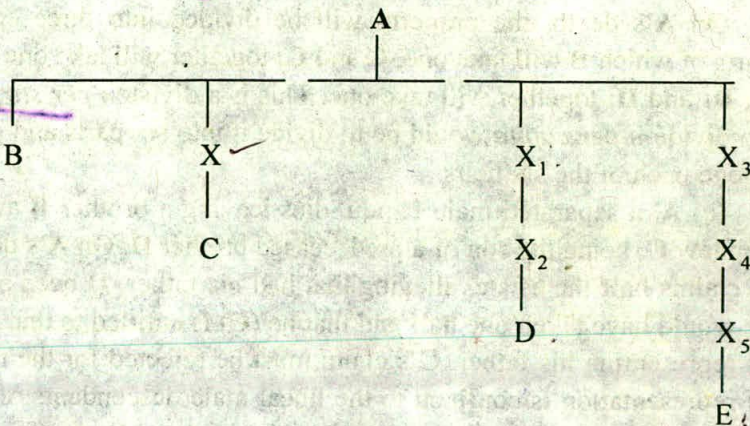
2. (*Tagore V. Tagore* (1872) 9.Beng. L.R.377).

(b) X dies leaving a pregnant widow. After his death the widow sells a house left by him for necessity. 10 days after the sale, a son is born to her. Since the widow was divested from the date on which the son was born, the sale is valid.

(Doctrine of representation) 9 If a man dies leaving a son, a grand-son by a predeceased son and a great-grand-son, whose father and grand-father are both dead, all of them succeed *simultaneously as a single heir to the separate and self acquired property of the deceased with rights of survivorship*. Except this case, the doctrine of representation does not apply to any other case. (*Marudayi V. Doraisami* (1907) 30. Mad. 348).⁽³⁾ On a partition among them they take *per stirpes* and not *per capita*. The right of representation is confined to the *lineal male descendants* of the deceased owner and it does not apply to any other case.

Illustrations.

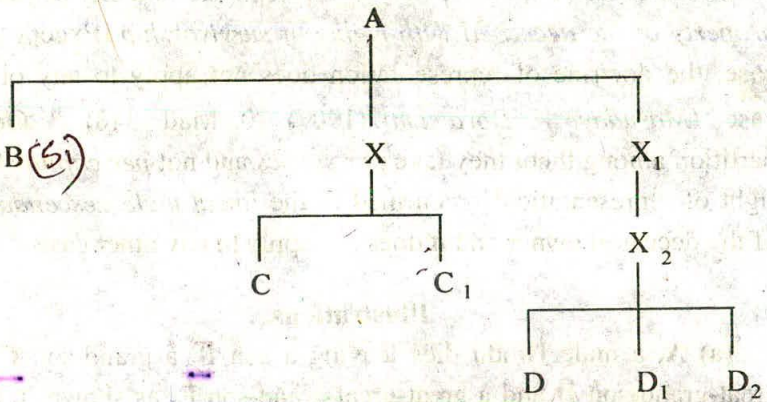
(a) A, a male Hindu dies leaving a son B, a grand-son C, a great-grand-son D, and a great-great-grand-son E, as shown in the following diagram :—



3. (*Marudayi V. Doraisami* (1907) 30. Mad. 348).

On A's death, the property will pass to B, C and D. E is not entitled to any share at all, for he is more than four degrees removed from A, and the right of representation does not extend beyond four degrees.

(b) A, a male Hindu, dies leaving a son B, two grand-sons C and C₁, and three great-grand-sons D, D₁ and D₂ as shown in the following diagram : —



On A's death, the property will be divided into three equal parts of which B will take one, C and C₁ together will take one and D, D₁ and D₂ together will take one. This is a division per stirpes. To divide it per capita would be to divide it into six parts and give one to each of the six heirs.

(c) A, a separated male Hindu, dies leaving a brother B and a nephew C, being the son of a predeceased brother D. On A's death C claims half the estate, alleging that had his father, D been alive he would have taken one half and that he (C) is entitled to that half as representing his father. C's claim must be rejected for the right of representation is confined to the lineal male descendants of the deceased owner and C is not such a descendant. B, therefore, is entitled to the whole estate as nearest heir of A.

* Adapted from Mulla's Principles of Hindu Law. (10th Ed. pages 21-22).⁽⁴⁾

(Spes succession.) [^] The right to succeed on the death of a Hindu is a mere *spes succession* or a chance of succession. Hence, it cannot be transferred and any such agreement entered into by him cannot bind persons who actually inherit when the succession opens (*Brojo V. Gouri* (1870) 15. W.R.70).⁽⁵⁾

(Co-heirs (a) Mitakshara.) [^] Except in the following cases two or more persons, *inheriting jointly*, take as *tenants in common* under Mitakshara school. (*Karuppai V. Sankaranarayana* (1904) 27. Mad. 300).⁽⁶⁾

(a) When sons, grand-sons and great-grand-sons succeed as heirs.

(b) When two or more grand-sons by a daughter, living as members of a joint family succeed as heirs to their maternal grandfather.

(c) When two or more widows succeed as heirs to their husband.

(d) When two or more daughters succeed as heirs to their father. In Bombay, in such cases, the daughters take an absolute estate in severalty.

(b) (Dayabhaga.) [^] According to Dayabhaga school two or more persons *inheriting jointly* take as *tenants in common* except only in case of (1) **widows** and (2) **daughters**, who take as *joint tenants with rights of survivorship*.

Illustrations

(a) A Hindu dies leaving two widows, X and Y. The widows succeed as *joint tenants* under both the schools. On X's death her interest in the property will pass to Y by *survivorship*.

4. * Adapted from Mulla's Principles of Hindu Law. (10th Ed. pages 21-22).

5. (*Brojo V. Gouri* (1870) 15. W.R.70).

6. (*Karuppai V. Sankaranarayana* (1904) 27. Mad. 300).

(b) A Hindu dies leaving two daughters, X and Y. The daughters succeed as *joint tenants* according to both the schools. On X's death her interest in the property will pass to Y by *survivorship*.

(Succession per stirpes' and per capita.) Persons of the same relationship to the deceased take per capita except in the following cases : —

(i) The sons, grand-sons and great-grand sons of a deceased male Hindu, on a partition among them, take *per stirpes*.

(ii) Son's son, daughter's son and daughter's daughter, succeeding to *stridhana* take *per stirpes*.

“It should be borne in mind that the division *per stirpes* applies only to the male issue in the male line ; all other heirs take *per capita* ; for instance, if the succession goes to the daughter's sons or the brother's sons then if one daughter or brother leaves one son another three sons, and a third five sons, the estate is to be divided into nine shares, one of which is to be allotted to each of the daughter's or brother's son.” (Golap Chandra Sarkar, Saatri).⁽⁷⁾

MITAKSHARA SUCCESSION.

1. “न भ्रातरौ न पितरः पुत्रा रिक्थहराः पितुः ।।

अनन्तरः सपिण्दा-यः-तस्य तस्य धनं भवेत् ।

अत उर्कं सकुल्यः स्याद्-आचार्यः शिष्यः एव वा” ।।

— मनु —

Meaning—Sons, not brothers nor fathers, take the father's property. The inheritance next belongs to the nearest *Sapinda* ; after them, to the (i) *Sakulyas*, (ii) the preceptor or the *Guru* (iii) or a pupil.

— Manu —

2. “अनपत्यस्य पुत्रस्य माता दायम् अवाप्नुयात् ।

मातर्यापि च वृत्तान्तं पितुर्माता हरेद्-धनम् ।।

— मनुः —

7. (Golap Chandra Sarkar, Saatri).

Meaning :-The mother shall take the estate of a childless son, and the mother also being dead, the father's mother shall take the property.

— Manu —

(Obstructed and unobstructed heritage.) Property in which a person acquires an interest by birth is called un-obstructed heritage or *apratibandha daya*.

If, on the other hand, right to a property depends on the death of the last owner, without leaving a male issue it is called obstructed heritage or *sapratibandha daya*.

Illustration.

X inherits the property of his father. A son, Y is afterwards born to him. From the date of birth Y becomes a coparcener with his father, X, and is entitled to a half share in the property. The property in the hands of X is *unobstructed heritage*.

Suppose X has no male issue but has a separated brother, Z. Z cannot acquire any interest in the property until X dies. The property in the hands of X is *obstructed heritage*.

The distinction between *obstructed* and *un-obstructed* heritage is peculiar to Mitakshara only. According to Dayabhaga school heritage is always *obstructed*. As per that school no living Hindu has got an heir and succession opens only after the death of the last owner.

(Survivorship & succession.) The property of a Hindu governed by Mitakshara school devolves upon his death either by *succession* or by *survivorship*. When a person acquires ownership in another's property to which he had no right before the last owner's death it is called *succession*. The term *survivorship* applies to a property to which the survivor had a right from before, and the death of the joint tenant simply removes a co-sharer.

(1) Where the deceased was, at the time of his death, a member of a joint and undivided family, his undivided interest in the coparcenary property devolves on his coparceners by *survivorship* subject to the provisions of the Hindu Women's Rights to Property Act-1937/1938.

(2) (a) The self acquired or separate property of the deceased goes to his heirs by *succession*, even if the deceased was joint at the time of his death.

(b) Where the deceased was the sole surviving member of a coparcenary, the whole of his property, will pass to his heirs by *succession*.

(c) If the deceased was re-united at the time of his death, his property will pass to his heirs by *succession*.

The Hindu Women's Rights to Property Act-1937 :

The Hindu Women's Rights to Property Act-1937/1938 has introduced important changes in the law of succession. (The Act has been given in the appendix for ready reference). The Act applies to all the schools of Hindu law.

The Act is not retrospective. Its main features are : —

1. In case of separate property :

(a) The widow along with the sons is entitled to the same share as the son.

(b) A pre-deceased son's widow inherits in like manner as the son if there is no son surviving of such pre-deceased son, and in like manner as a son's son if there is surviving a son or son's son of such pre-deceased son.

(c) The same provision shall apply *mutatis mutandis* to the widow of a pre-deceased son of a pre-deceased son.

2. In case of a Mitakshara joint family the widow shall take the place of her husband.

(Effect of the Act.) The Act put three female heirs on the same level as the male issue of the last owner along with the male issue or in default of them. The Act has also put the widow of a member of a joint family in the place of her deceased husband, and

the husband's interest in the joint family property under the Mitakshara vests immediately upon his death in the widow by *succession* and not by *survivorship* of which she can claim partition in her own right and independently of any partition taking place between the sons and which a creditor can attach in execution of a decree against the husband's assets. (*Shiveshwar Prasad V. Lala Har Narain* (1943) 23.Pat.760).⁽⁸⁾

By virtue of Section 3. Sub-section 1 of the Act, the widow will now be entitled to the same share as a son, along with or in default of the male issue. (*Nand Kumari Devi V. Bulkan Devi* (1944) 23.Pat, 508).⁽⁹⁾ Similarly the widow of a pre-deceased son and the widow of a pre-deceased son of a pre-deceased son are entitled to succeed for their respective shares. (*Chinniah Chettiar V. Sivagami Achi* (1945) Mad. 402).⁽¹⁰⁾

(Propinquity and spiritual efficacy.) "The interest thus taken by the widow in the joint family property, as well as the interest devolving on the three female heirs, is under Sub-section 3, the limited interest technically known as a Hindu Woman's Estate. Although Section 2 provides that Section 3 shall apply when a Hindu dies intestate, it is submitted that the provisions of Sec. 3 (2) are intended to apply to every Hindu joint family. *** The provision that the widow of a member of a joint family is to have the same interest in the joint property as her deceased husband, and further the provision that she is entitled to claim partition, would seem to indicate that mere devolution of the husband's interest would not otherwise affect the joint family status as such or to confer upon the widow all the rights of a male coparcener other than those necessary for enforcing the rights expressly conferred on her". (D.F. Mulla).⁽¹¹⁾

8. (*Shiveshwar Prasad V. Lala Har Narain* (1943) 23.Pat.760).

9. (*Nand Kumari Devi V. Bulkan Devi* (1944) 23.Pat, 508).

10. (*Chinniah Chettiar V. Sivagami Achi* (1945) Mad. 402).

11. (D.F. Mulla).

The Act and Amending Act of 1938 do not operate to regulate succession to agricultural land or to a mortgagee's interest or a lessee's interest in such lands but not *ultra vires* as to other lands. (*Kotayya V. Ram Adhar*, 17. Luck. 720 ; 198.I.C.443).⁽¹²⁾

The Act applies to moveable properties in foreign countries. A mango grove is agricultural land within the meaning of Sch. VII, Govt. of India Act (1935), Lists II and III.⁽¹³⁾

Under Mitakshara, the right to inherit arises from propinquity or proximity of relationship, whereas under Dayabhaga it arises from the spiritual efficacy ; that is the capacity for conferring spiritual benefits (by offering *pindas*) on the paternal and maternal ancestors. When the question of preference arises Mitakshara also follows the rule of spiritual efficacy in case of *sagotra* sapindas. But in case of *bhinna-gotra* sapindas the primary test is propinquity in blood and when the degree of blood relationship furnishes no certain guide the test is the capacity for conferring spiritual benefit.

(*Three classes of heirs.*) Mitakshara recognises three classes of heirs namely : —

(i) Sapindas.

(ii) Samanodakas.

(iii) Bandhus or *bhinna-gotra sapindas*.

Sapindas : According to Mitakshara sapindas of a person are :-

(a) his six male descendants in the male line ; that is his son, son's son, etc.

(b) his six male ascendants in the male line and their wives ; that is his father, father's father, etc. and their wives.

12. (*Kotayya V. Ram Adhar*, 17. Luck. 720 ; 198.I.C.443).

13. Govt. of India Act (1935), Lists II and III.

(c) the six male descendants in the collateral male line of each of the six male ascendants ; that is, (1) his brother, brother's son, etc. ; (2) paternal uncle, paternal uncle's son etc. ; (3) paternal grand-uncle, paternal-grand-uncle's son, etc. ; (4) paternal great-grand-uncle, paternal-great-grand-uncle's son, etc. ; (5) paternal great-great-grand-uncle, paternal-great-great-grand-uncle's son, etc. ; (6) paternal great-great-great-grand-uncle paternal great-great-great-grand-uncle's son, etc. ;

(d) his wife, daughter and daughter's son.

Thus the Mitakshara sapindas are 57 in number.

Samanodakas : *Udaka* means *water* and the term *samanodaka* means and includes those male relations to whom a Hindu offers oblations of *water* and those who offer such oblations of water to him (after his death) at the time of performing *parvana sraddha* ceremony.

The sapinda relationship extends to seven degrees inclusive of the deceased. All agnatic relations of the same *gotra* or family within fourteen degrees, excepting those included under the term *sapinda* are *samanodakas* of the deceased. In Mitakshara the meaning of the term *samanodaka* is the same as *sagotra*. According to Mitakshara *samanodakas* are 147 in number : 7 in the descending line ; 7 in the ascending line ; 42 and 91 in the collateral lines.

The sapindas and *samanodakas* as per Mitakshara have been shown in the following table.*

The thick black lines show where the sapinda relationship ends, and the *samanodaka* relationship begins.

The samanodakas are shown in thick black type ; the rest are sapindas.

W is the widow of the deceased owner, *d* is his daughter and *d's son* is his daughter's son.

*S*₁ to *S*₁₃ are the son, the son's son, the son's son's son, etc., of the deceased.

*F*₁ to *F*₁₃ are his father, father's father, father's father's father, etc.

*M*₁ to *M*₆ are his mother, father's mother, father's father's mother, etc.

*X*₁ to *X*₁₃ in the line of *F*₁ are his brother, brother's son, brother's son's son, etc.

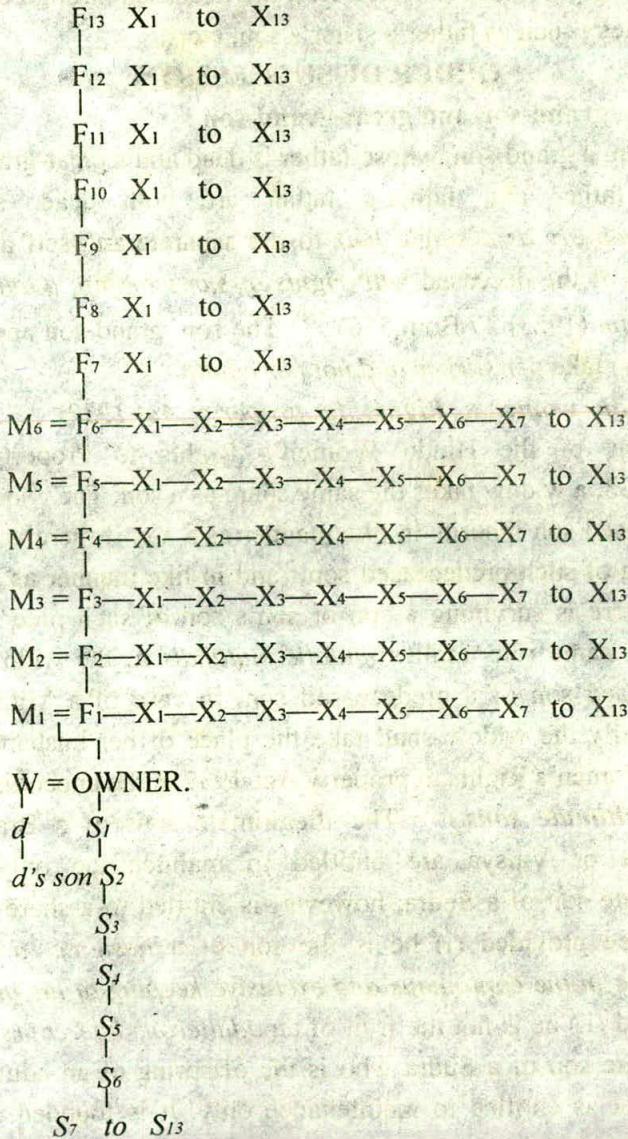
*X*₁ to *X*₁₃ in the line of *F*₂ are his paternal uncle, paternal uncle's son, paternal uncle's son's son, etc.

*X*₁ to *X*₁₃ in the line of *F*₃ are his paternal granduncle, paternal grand-uncle's son, etc., and so on in the remaining lines from *F*₄ to *F*₁₃.

The table does not include female heirs recognised in the Bombay Presidency.

*F*₁ to *F*₁₃ is the ascending line ; *S*₁ to *S*₁₃ is the descending line ; *X*₁ to *X*₁₃ are the thirteen collateral lines.

Table of sapindas and Samanodakas according to the Mitakshara Law.



* Reproduced from Mulla's Principles of Hindu Law. (10th Ed. Pages 33-4)

Bhinna-gotra sapindas are called *bandhus*. They are all cognates or persons connected with the deceased through a female or females ; such as father's sister's son, etc.

ORDER OF SUCCESSION.

1-3. Son, grand-son and great-grand-son :

A son, a grand-son, whose father is dead and a great-grand-son, whose father and father's father are both dead, succeed *simultaneously as a single heir* to the separate and self acquired property of the deceased *with rights of survivorship*. (*Gangadhar V. Ibrahim* (1923) 47.Bom.556).⁽¹⁴⁾ The son, grand-son and great-grand-son take *per stirpes and not per capita*.

(*Hindu women's Rights to property Act-1937*) As per provisions of the Hindu Women's Rights to Property Act-1937/1938, a widow takes the same share as a son. The widow of a predeceased son inherits in like manner as a son if there is no son surviving of such predeceased son ; and in like manner as a son's son if there is surviving a son or son's son of such predeceased son. The same rule applies *mutatis mutandis* to the widow of a predeceased son of a predeceased son. In case of a Mitakshara joint family the widow shall take the place of her husband. (see Hindu Women's Rights to property Act-1937 in the appendix).

(*Illegitimate sons.*) The illegitimate sons of a Brahman, Kshatriya or Vaisya are entitled to maintenance only. The illegitimate son of a Sudra, however, is entitled to a share of the inheritance provided (i) he is the son of a *dasi*, i.e. a Hindu concubine in the continuous and exclusive keeping of his putative father and (ii) he is not the fruit of an *adulterous intercourse*. The illegitimate son of a Sudra who is the offspring of an adulterous intercourse is entitled to maintenance only. It is founded on the following texts:

14. (*Gangadhar V. Ibrahim* (1923) 47.Bom.556).

১. “দাস্যম্ বা দাসদাস্যম্ বা যঃ শূদ্রস্য সুতো ভবেৎ ।
সোহু নুজ্জাতো হরেদ্ অংশম্ ইতি ধর্মো অবস্থিতঃ ।।”

— মনুঃ —

meaning—“A son, begotten by a Sudra on a female slave or on a female slave of a slave may take a share (on partition) if permitted (by the father) : that is settled law.”

— Manu —

২. “অনপত্যস্য শুশ্রুকর্ষণবান্ শূদ্রযোনিজঃ ।
লভেতাজীবনং শেষং সপিণ্ডাঃ সমবাপুয়ুঃ ।।”

— বৃহস্পতিঃ —

Meaning—“The virtuous and obedient son, borne by a Sudra woman to a man, who has no other offspring, should obtain a maintenance ; and let the Kinsmen take the residue of the estate.”

— Vrihaspati —

Reviewing the decisions of the various High Courts, the position of illegitimate sons, regarding inheritance may be summarised as follows :—

(i) The illegitimate son of a Hindu Brahman, Kshatriya, or Vaisya by a *dasi*, that is a Hindu concubine in the continuous and exclusive keeping of the putative father is entitled to maintenance only, and such maintenance extends for life. (*Nilmoney Singh V. Baneshur* (1879) 4. Cal.91).⁽¹⁵⁾ The charge of such maintenance will proceed first against the separate property of the father ; (*Roushan Singh V. Balwant Singh* (1900) 22.All.191),⁽¹⁶⁾ and in the absence of any such separate property against the joint family property of which the father was a member. (*Hiralal Laxmandas V. Meghraj Bickchand* (1938) Bom. 779).⁽¹⁷⁾

15. (*Nilmoney Singh V. Baneshur* (1879) 4. Cal.91).

16. (*Roushan Singh V. Balwant Singh* (1900) 22.All.191),

17. (*Hiralal Laxmandas V. Meghraj Bickchand* (1938) Bom. 779).

(ii) The illegitimate son of a Sudra by a *dasi* is entitled to a share in the separate property of his father. The illegitimate son of a Sudra inherits *only the property left by his father*; he has no claim against the *collaterals*. He is not entitled to any share in the property of the family in which his father was a member with his (father's) collaterals. Nor can he demand partition of such joint family property, He is entitled only to maintenance for life out of such joint property, provided his father left no separate property. (*Vellaiyappa Chetty V. Natarajan* (1932) 58.I.A. 402).⁽¹⁸⁾

(iii) The illegitimate son of a Hindu by a Hindu woman, who is not a *dasi*, is entitled to maintenance even if he be the result of casual or adulterous intercourse. (*Muthuswamy Jagavera V. Vencataswara* (1868) 12.M.I.A. 203, 220).⁽¹⁹⁾ Since the illegitimate son's right to maintenance is *personal*, it does not descend on his death to his offspring. (*Roushan Singh V. Balwant singh.* (1900) 27.I.A.51).⁽²⁰⁾

According to Mitakshara school such a right to maintenance extends upto his death, (*Hargovinda V. Dharam Singh* (1884) 6 All.329),⁽²¹⁾ but under Dayabhaga school such a right ceases on his attaining majority. (*Nilmoney Singh V. Baneshur* (1879) 4Cal.91).⁽²²⁾

(Illegitimate son by a non-Hindu woman.) Under Hindu law the illegitimate son of a Hindu by a non-Hindu woman is not entitled even to maintenance, Such a son can claim maintenance from his putative father under Sec. 488 of Cr. P.C. But this right can only be enforced during the lifetime of the father *and not against the estate of the father after his death.* (*Sitaram V. Ganpat.* (1923) 25.Bom.L.R.429).⁽²³⁾

18. (*Vellaiyappa Chetty V. Natarajan* (1932) 58.I.A. 402).

19. (*Muthuswamy Jagavera V. Vencataswara* (1868) 12.M.I.A. 203, 220).

20. (*Roushan Singh V. Balwant singh.* (1900) 27.I.A.51).

21. (*Hargovinda V. Dharam Singh* (1884) 6 All.329),

22. (*Nilmoney Singh V. Baneshur* (1879) 4Cal.91).

23. (*Sitaram V. Ganpat.* (1923) 25.Bom.L.R.429).

(Illegitimate daughter) The illegitimate daughter of a Hindu is entitled neither to a share of inheritance nor to maintenance under Hindu law. (*Parvati V. Ganpat Rao* (1894) 18.Bom. 177,183).⁽²⁴⁾ The view is based on the ground that the term *dasiputra* means an illegitimate son ; it does not include *dasikanya* or an illegitimate daughter. But such a daughter can claim maintenance from the putative father under Sec. 488 of Cr. P.C.⁽²⁵⁾

(Share of an illegitimate son of a Sudra)

As per Yajnavalkya :

“জাতোহু পি দাস্যাং শূদ্রেণ কামতোংহু শহরো ভবেৎ ।

মৃতে পিতরি কুর্যুস্তং ভ্রাতরত্বর্কভাগিনং ।

অভ্রাতৃকো হরেৎ সর্বং দুহিতৃণাং সুতাদৃতে ।।”

— যাজ্ঞবল্ক্যঃ —

meaning-“Even a son begotten by a Sudra on a female slave may get a share by the father’s choice ; but if the father be dead, the (legitimate) brother should allow him to participate *for half a share* One, who has no (legitimate) brother may take the whole, in default of (heirs down to) the son of daughters.”

— Yajnavalkya —

The above text refers to the estate of a separate householder. (*Ranoji V. Kandaji* (1885) 8.Mad.557, 561).⁽²⁶⁾

24. (*Parvati V. Ganpat Rao* (1894) 18.Bom. 177,183).

25. 488 of Cr. P.C.

26. (*Ranoji V. Kandaji* (1885) 8.Mad.557, 561).

The illegitimate son of a Sudra does not acquire by birth any interest in his father's estate. But on the death of his father he succeeds to his father's estate as a coparcener with his legitimate brothers, with a right of *survivorship*. Suppose, a sudra dies leaving a legitimate son X, an illegitimate son Y, a daughter D and a mother M. X dies without leaving any male issue. X and Y were joint at the time of X's death. Y will take X's share by *survivorship*, to the exclusion of X's daughter, mother or other heir. (*Raja Jogendra V. Nityanund.* (1891) 17.I.A.128).⁽²⁷⁾ If X dies after partition his share will pass to his own heirs and not to Y. Y can inherit to his father alone and not his father's legitimate sons, nor his father's brothers nor any other collaterals. (*Raja Fateh Singh V. Baldeo Singh.* (1928) 109.I.C.310).⁽²⁸⁾ Similarly X's separate property will pass to his own heirs and not to Y. And just as an illegitimate son is not entitled to inherit to collaterals, so a collateral is not entitled to inherit to him. (*Zipru V. Bomtya.* (1922) 64.I.C.975).⁽²⁹⁾

On the strength of the text of *Yajnavalkya*, cited above, the illegitimate son takes *one-fourth* (i.e. half of what he would have taken had he been a legitimate son) and the legitimate son takes *three-fourths*. (*Kamulammal V. Visvanathaswami* (1923) 50.I.A.32).⁽³⁰⁾ If a person dies leaving one legitimate son and six illegitimate sons ; the six together will take $\frac{3}{7}$ and the remaining $\frac{4}{7}$ will go to the legitimate son. (*Maharaja of Kolhapur V. Sundaram* (1925) 93 I.C.705).⁽³¹⁾

27. (*Raja Jogendra V. Nityanund.* (1891) 17.I.A.128).

28. (*Raja Fateh Singh V. Baldeo Singh.* (1928) 109.I.C.310).

29. (*Zipru V. Bomtya.* (1922) 64.I.C.975).

30. (*Kamulammal V. Visvanathaswami* (1923) 50.I.A.32).

31. (*Maharaja of Kolhapur V. Sundaram* (1925) 93 I.C.705).

When there is no legitimate son, but a daughter or daughter's son, the illegitimate son takes *one half* of the whole estate, and the *other half* goes to the daughter or daughter's son as the case may be. (*Shesgiri V. Girewa* (1890) 14.Bom.282).⁽³²⁾ If there be no widow, daughter or daughter's son, the illegitimate son takes the whole estate. (*Sarasvati V. Mannu* (1879) 2.All.134). An adopted son stands on the same footing as a legitimate son. (*Maharaja of kolhapur V. Sundaram* (1925) 93.I.C.705).⁽³³⁾

If any share is allotted to the widow on a partition between a legitimate and an illegitimate son ; the illegitimate son can claim, on widow's death, a share in the property allotted to her. (*Bhagwant Rao V. Punjaram* (1938) Nag.255; 174.I.C.201).⁽³⁴⁾

4. Widow :

In default of male issue, the lawfully wedded wife (*patni*) succeeds. The widow takes only a limited interest and on her death the estate goes to the next heirs of her husband. Except in certain cases, she has no power to alienate the *corpus* of the property. Two or more widows take as *joint tenants with rights of survivorship and equal beneficial enjoyment*. As per Hindu Women's Rights to Property Act-1937/1938, a widow takes the same share as a son. (see the Hindu Women's Rights to Property Act-1937 in the appendix).

(*Unchastity*) An unchaste widow does not succeed to her husband's estate. *Manu* defines *sadhvi patni* or chaste wife as follows :—

32. (*Shesgiri V. Girewa* (1890) 14.Bom.282).

33. (*Maharaja of kolhapur V. Sundaram* (1925) 93.I.C.705).

34. (*Bhagwant Rao V. Punjaram* (1938) Nag.255; 174.I.C.201).

“पतिं या नाभिचरति मनोवाग् देह-संयता ।
सा भर्तृलोकम् आप्नोति सन्धिः सांख्यीति उच्यते ॥”

— मनु ३—

which is rendered by Sir William Jones thus :—

“While she, who slights not her lord, but keeps her mind, speech and body, devoted to him, attains his heavenly mansion, and is called *sadhvi* or virtuous by good men.”

But once her husband's estate has vested in her she will not be divested for unchastity subsequent to her husband's death. (*Moniram V. Keri Kolitani* (1880) 5.Cal.776).⁽³⁵⁾

(*Re-marriage of a widow*) Re-marriage of a widow, whether legalised by the Hindu Widow's Re-marriage Act or by custom, will divest her of deceased husband's estate, whether she marries according to Hindu rites or not. (*Matungini V. Ram*. 19Cal.289).⁽³⁶⁾ Now the question is whether a widow who ceases to be a Hindu before her re-marriage, say, by conversion to Islam, forfeits her rights to her husband's property? According to Allahabad High Court she does not forfeit her rights. (*Abdul Aziz V. Nirma*. (1913) 35.All.466).⁽³⁷⁾ But according to Calcutta, Madras, Bombay, Patna and Dacca High Courts she forfeits her rights.

“The word any widow in Section 2 of the Act includes all widows, who being Hindus, become widows, and is wide enough to cover the case of a widow re marrying a Hindu or a member of other religion”. (1960) 12.D.L.R. 634.⁽³⁸⁾ Two or more widows cannot by any agreement between them, affect the rights of the ultimate reversioners.

35. (*Moniram V. Keri Kolitani* (1880) 5.Cal.776).

36. (*Matungini V. Ram*. 19Cal.289).

37. (*Abdul Aziz V. Nirma*. (1913) 35.All.466).

38. (1960) 12.D.L.R. 634.

4A. Predeceased son's widow etc : Predeceased son's widow and widow of predeceased son of predeceased son succeed simultaneously and take *per stirpes*. (See 1-3, son, grand-son etc. above)

4 Daughter : The daughters are heirs in default of the widow. Of the daughters un-married and unproved one takes in preference to those who are provided and married. A daughter takes a *widow's estate* and on her death it goes to her father's heirs.

In Bombay a daughter taking property of her father inherits it as *stridhana*.

Unchastity of daughter is no ground of exclusion from inheritance. An illegitimate daughter cannot succeed to her father's property as against a legitimate daughter. The illegitimate daughter, even of a Sudra has no right of inheritance to her father. (*Bhikya V. Babu* (1908) 32.Bom.562).⁽³⁹⁾ But she is entitled to inherit to her mother.

Two or more daughters of a class take the estate jointly with rights of *survivorship*. Any daughter may alienate her life interest in the property. Daughters may enter into any agreement regarding their respective rights in their father's estate, *provided such agreement does not prejudice the rights of reversioners*. (*Kailash V. Kashi* (1897) 24.Cal.339).⁽⁴⁰⁾

6. Daughter's son : In default of daughters, their sons succeed to the property of their *maternal-grand-father*. They take as *full owners* and take *per capita*. The daughter's son succeeds not as an heir to her *mother*, but as an heir to his own *maternal grand-father*.

7. Mother : Mother or adoptive mother comes after the daughter's son. Mother takes in preference to the father. A step-mother is not entitled to inherit to her step-son, except in Bombay. Unchastity or re-marriage does not exclude the mother from inheritance. The mother takes a *widow's estate*.

39. (*Bhikya V. Babu* (1908) 32.Bom.562).

40. (*Kailash V. Kashi* (1897) 24.Cal.339).

8. **Father** : After mother comes the father; *but they take in reverse order according to Dayabhaga school.*

9. **Brothers** : Brothers of the whole blood succeed before those of the half blood. Brothers of the half blood are sons of the same father by different mothers.

10. **Brother's son** : Brother's sons succeed in default of both full and half brothers ; of them, a full brother's son will take in preference to a half brother's son. They take *per capita*.

11. **Brother's sons' son** : The whole blood takes before the half blood and the brother's son's son take *per capita*.

According to the Privy Council, (*Buddha Singh V. Laltu Singh* (1915) 42.I.A. 208),⁽⁴¹⁾ the term *compact series of heirs* i.e. the series of heirs first entitled to succeed, ends with the brother's son's son.

12. **Father's mother** : Father's mother does not include step-grand mother.

13. **Father's father.**

13A. **Son's daughter.**

13B. **Daughter's daughter.**

13C. **Sister** : A half sister takes in default of a full sister.

13D. **Sister's son.**

13E. **Half sister's son.**

14. **Paternal uncle.**

15. **Paternal uncle's son.**

16. **Paternal uncle's son's son.**

17. **Father's father's mother.**

18. **Father's father's father.**

19. **Father's paternal uncle.**

20. **Father's paternal uncle's son.**

21. **Father's paternal uncle's son's son.**

22. **Brother's son's son's son.** (*Venilal V. Parjaram* (1896) 20Bom.173).⁽⁴²⁾

23. **Uncle's son's son's son.**

41. (*Buddha Singh V. Laltu Singh* (1915) 42.I.A. 208),

42. (*Venilal V. Parjaram* (1896) 20Bom.173):

Then comes (i) The paternal grand-parents of the 4th, 5th and 6th degrees in ascent and their two or three male descendants. (ii) The deceased's male descendants, if any, of the 4th, 5th and 6th degree in descent beginning with the great-great-grandson. (iii) The father's 3rd, 4th, 5th and 6th descendants beginning with the paternal nephew's son.

(iv) The paternal grand father's 3rd, 4th, 5th and 6th descendants beginning with the paternal uncle's son's son. (v) The 3rd, 4th, 5th and 6th descendants in the male line of the paternal great-grand-father and of his father, grand father and great-grand-father.

The descendants of the nearest ancestor come before a remoter one, and of these descendants, the nearer in degree takes in preference to one more distant. A sapinda of the whole blood is preferred to a sapinda of the half blood provided they are sapindas of the same degree.

Samanodakas : In default of all sapindas the samanodakas succeed. They are the distant agnate relations. If we exclude the sapindas from the deceased's 13 descendants, 13 ascendants, and 13 descendants of each of these 13 ascendants, all in the male line, we get his samanodakas. Samanodakas are 147 in number. The order of succession among the samanodakas : —

(i) The descendants of a nearer ancestor succeed in preference to those of a remoter ancestor.

(ii) Amongst the descendants of the same ancestor the nearer excludes the more remote.

Bandhus : Bandhus or *bhinna-gotra sapindas* are all cognates, that is persons connected with him (the deceased) through a female or females.

“ভিন্নগোত্রাণাং সপিণ্ডানাং বন্ধুশব্দেন গ্রহণাৎ”

meaning-Sapindas belonging to a different *gotra* are included by the term *bandhu*.

— Text of *Yajnavalkya* cited in *Mitakshara* —

Mitakshara divides bandhus into three classes : —

(Three classes of bandhus.)

- (i) One's own bandhus (*Atma bandhus*).
- (ii) The father's bandhus (*Pitri bandhus*).
- (iii) The mother's bandhus (*Matri bandhus*).

They are altogether nine relations.

1. Atma bandhus :

- (a) Father's sister's son.
- (b) Mother's sister's son.
- (c) Mother's brother's son.

2. Pitri bandhus :

- (a) Father's father's sister's son.
- (b) Father's mother's sister's son.
- (c) Father's mother's brother's son.

3. Matri bandhus :

- (a) Mother's father's sister's son.
- (b) Mother's mother's sister's son.
- (c) Mother's mother's brother's son.

In *Giridharilal Roy V. Bengal-Govt.* (12.M.I.A.448),⁽⁴³⁾ it has been held that the above enumeration of the *bandhu* by *Mitakshara* is not exhaustive. It is now generally agreed that any cognate within the *degree* is a *bandhu*.

(Meaning of the word bandhu.) The words *bandhu* and *bandhava* are both derived from the root *bandh* (dind) and means any relation agnate or cognate.

43. *Giridharilal Roy V. Bengal-Govt.* (12.M.I.A.448),

“উৎসবে ব্যসনে চৈব দুর্ভিক্ষে রত্নবিপ্লবে ।
রাজদ্বারে শাশানে চ্যন্তিষ্ঠতি সঃ বান্ধবঃ ।।”

meaning-“He who stands by you, on the occasions of joy and distress, at a time of famine or of political revolution and in the King's Court as well as in the cremation ground is your bandhava.”

According to G. C. Sarkar Sastri. “The word *bandhu* in Mitakshara means and includes either all cognate relations without any restriction, or at any rate, all cognates within seven degrees on both the father's as well as on the mother's side.”

(*P.C. on Sapindas and bandhus.*) The Privy Council, however, opposed the above view in the case of *Ramchandra V. Vinayak*. (1914) 41.I.A. 290. 312.⁽⁴⁴⁾ It observed, “The sapinda relationship on which the heritable right of collaterals is founded, ceases in the case of the bhinna-gotra sapinda with the fifth degree from the common ancestor.” “In case of bandhus, sapinda relationship ceases beyond the fifth from the mother and the seventh from the father.” (*Kesar Singh V. Secretary of State for India*. (1926) 95.I.C.651).⁽⁴⁵⁾

(*Order of succession among the bandhus.*) (1) *Atma bandhus* succeed before *pitri bandhus* and *pitri bandhus* succeed before *matri bandhus* and that descendants are preferred to those who are not descendants i.e. ancestors and collaterals. In *Adit Narayan V. Mahabir Prasad* (1921) 48.I.A.86, it was held that mother's father's daughter's son (*atma bandhu*) is entitled to succeed in preference to mother's father's father's daughter's son (*Matri bandhu*).

44. *Ramchandra V. Vinayak*. (1914) 41.I.A. 290. 312.

45. (*Kesar Singh V. Secretary of State for India*. (1926) 95.I.C.651).

(2) Propinquity in blood or nearness in degree gives a ground of preference and when it fails, the conferring of spiritual benefit is a ground of preference. (*Ademma V. Hanuma Reddi* (1938) Mad. 260).⁽⁴⁶⁾

(3) As between *bandhus* of same class and equal in degree, one related on the father's side is to be preferred to one related on the mother's side. The rule approved by the Judicial Committee in the case of *Jatindra Nath Roy V. Nagendra Nath Roy* (1931) 58.I.A.372,⁽⁴⁷⁾ is that *bandhus ex parte paterna* are preferred to *bandhus ex parte materna*.

The above rules may be summarised as follows :—

(a) *Atma bandhus* succeed in preference to *pitri bandhus* and *pitri bandhus* succeed in preference to *matribandhus*.

(b) Amongst *atma bandhus* the nearer line excludes more remote. This is sub-divided into :—

(i) Descendants are preferred to ancestors and collaterals ;

(ii) father's descendants take before descendants of grand-fathers.

(c) Among the *bandhus* of the same or equal lines, the nearer excludes more remote.

(d) If the propinquity fails to furnish a guide, one who confers superior spiritual benefit should be preferred.

(e) When all the above rules fail *bandhus ex parte paterna* should be preferred to *bandhus ex parte materna*.

(f) All other things being equal, a claimant who is related through the intervention of two females is to be postponed to one who is related through the intervention of only one female.

(g) The whole blood is to be preferred to half blood.

46. (*Ademma V. Hanuma Reddi* (1938) Mad. 260).

47. *Jatindra Nath Roy V. Nagendra Nath Roy* (1931) 58.I.A.372.

(Female bandhus.) Mitakshara recognises only male bandhus but in Bombay and Madras following female bandhus are recognised.

Bombay : Brother's daughter, sister's daughter, paternal uncle's daughter, paternal grand-father's sister's son's daughter.

Madras : Brother's daughter, brother's son's daughter.

(Heirs of an illegitimate son.) When an illegitimate son dies leaving his mother only and no other heirs, she is entitled to succeed. (*Jagarnath Gir V. Sher Bhadur Singh* (1935) 153.I.C.1078).⁽⁴⁸⁾ Illegitimate sons of a prostitute, though by different fathers, succeed to each other. The legitimate son of one of such sons succeed to them and also to their legitimate sons. (*Viswanath V. Doraiswami* (1925) 91.I.C.193).⁽⁴⁹⁾

(Other heirs.) When a man has no other relation the preceptor, pupil and the fellow student are in their order entitled to take his estate.

(Hermits and members of religious orders.) The heir to the property of a hermit is his spiritual brother belonging to the same hermitage (*Asrama*).

The heir to the property of a *Sanyasi* or ascetic is his virtuous pupil.

The heir to the property of a *Brahmachari* or a student in theology is his religious preceptor or Guru. These heirs succeed *in preference to the relations of the deceased*. This rule does not apply to Sudras unless sanctioned by custom or usage. (*Collector of Dacca V. Jagat Chandur* (1901) 28.Cal.608).⁽⁵⁰⁾

48. (*Jagarnath Gir V. Sher Bhadur Singh* (1935) 153.I.C.1078).

49. (*Viswanath V. Doraiswami* (1925) 91.I.C.193).

50. (*Collector of Dacca V. Jagat Chandur* (1901) 28.Cal.608).

On failure of all the heirs mentioned above, the State takes by escheat. (*Collector of Masulipatam V. Caraly Venkata* (1860) 8.M.I.A.500).⁽⁵¹⁾ Where the state claims by escheat, the onus lies on the state to show that the deceased has no other heir. (*Giridhari Lall V. Bengal Government*(1868) 12.M.I.A.448).⁽⁵²⁾

An estate taken by escheat, is subject to the trusts and charges, if any, previously affecting the estate, e.g. maintenance of widows and mortgages created by a widow for legal necessity, but not to unauthorised alienations by a widow. (*Collector of Masulipatam V. Caraly Venkata* (1860) 8.M.I.A.500,527).⁽⁵³⁾

SPECIAL RULES OF SUCCESSION IN BOMBAY AND MADRAS

(Female heirs in Bombay and Madras) The order of succession mentioned above, is according to the Benares and Mithila schools, in which female relations, as a general rule, are excluded from succession, save and except the widow, the daughter, the mother, the father's mother, and the father's father's mother.

In Bombay all the female *sapindas* are heirs, and they are shuffled in among the male *sapindas*. In Bombay the full sister is placed after the father's mother but before the father's father and is accordingly preferred to a brother's widow but not to a brother's son. (32. Bom. 300).⁽⁵⁴⁾ The half-sister, the stepmother, the widows of *Sagotra sapindas*, occupy the place of their husbands and the daughters of descendants and of collaterals. (4.Bom.82).⁽⁵⁵⁾

51. (*Collector of Masulipatam V. Caraly Venkata* (1860) 8.M.I.A.500).

52. (*Giridhari Lall V. Bengal Government*(1868) 12.M.I.A.448)

53. (*Collector of Masulipatam V. Caraly Venkata* (1860) 8.M.I.A.500,527).

54. (32. Bom. 300).

55. (4.Bom.82).

A brother's widow is a nearer heir than his paternal uncle's son. The sister's claim is superior to that of other females born in the family but transferred to other families by marriage, who ceases to be *sagotra sapindas*, such as the father's sister, and are therefore, postponed to *sagotra sapindas*; accordingly the father's father's brother's son is entitled to succeed in preference to the father's sister. (27.Bom.610).⁽⁵⁶⁾ The half-sister comes after the full sister but she comes before the father's brother. (36.Bom.120).

An illegitimate daughter cannot succeed in preference to a brother's son.

In Madras certain female relations have been recognised as *bandhus* and heirs.

FEMALE HEIRS.

(Dayabhaga school) Under dayabhaga school no female, except the following can succeed to a male :-

(i) The widow, (ii) the daughter, (iii) the mother, iv) the father's mother and (v) the father's father's mother.

(Mitakshara school) Under Mitakshara the following female heirs are recognised.

(a) Benares and Mithila school :-

(i) The widow, (ii) the daughter, (iii) the mother, iv) the father's mother and (v) the father's father's mother.

(b) Madras school :- In addition to those mentioned in (a) above, the Madras school recognises the following female heirs.

(i) the brother's daughter, (ii) the brother's son's daughter.

(c) Bombay school :- In addition to those mentioned in (a) above, the Bombay school recognises the following female heirs :-

(i) sister, (ii) father's sister, (iii) widows of predeceased gotraja sapindas, (iv) brother's daughter, (v) sister's daughter, (vi) paternal uncle's daughter, (vii) paternal grand-father's-sister's son's daughter.

56. (27.Bom.610).

Under Hindu Law of Inheritance (Amendment) Act of 1929 the son's daughter, the daughter's daughter and the sister rank as heirs in all places where Mitakshara law prevails.

RE-UNION, MITAKSHARA SCHOOL

“বিভক্তো যঃ পুনঃ পিত্রা ভ্রাতা চৈকত্র সংস্থিতঃ ।

পিতৃব্যোনাথবা প্রীত্যা স তৎসংসৃষ্ট উচ্যতে ।।”

— বৃহস্পতিঃ —

Meaning—“He who having been separated dwells together again through affection, with the father, a brother or a paternal uncle is called re-united with him.”

— Vrihaspati —

(*What is re-union?*) When two or more co-parceners agree out of affection to annul the partition and to live together and *make a junction of their property* with the stipulation that *what is mine is thine and what is thine is mine*, they are called re-united. Their status is called the re-union. *Junction of property* is the prime condition in case of a re-union. Mere living together under one roof, without *junction of property* is not re-union. (*Gopal V. Kenaram 7.W.R.35*).⁽⁵⁷⁾

The re-united members of Mitakshara family are not *tenants in common* but are *coparceners with right of survivorship inter se*.

In case of re-union the order of succession is not based on any principle such as survivorship or propinquity. The order of succession is based on some texts. From the *Mitakshara* and *Viramitrodaya* the following order of succession may be deduced :

1-3 Son, grandson and great-grand-son.

4. Re-united whole brother.

5. Re-united half-brother and separated full-brother.

They succeed jointly. In default of one the other succeeds.

57. (*Gopal V. Kenaram 7.W.R.35*).

6. Re-united mother.
7. Re-united father.
8. Any other re-united coparcener.
9. A half brother not re-united with the deceased.
10. The mother not re-united with the deceased.
11. The father not re-united with the deceased.
12. The widow.
13. Daughter.
14. Daughter's son
15. Sister.

Subject to this modification the succession goes to the Sapindas, the Samanodakas and the Bandhus and the rest, in the ordinary order of succession already explained.

DAYABHAGA SUCCESSION

Dayabhaga prevails in Bangladesh and in the province of West Bengal in India. Since Dayabhaga is not a complete Code, *Mitakshara law should be followed where Dayabhaga is silent or fails to give indications of the general principles of inheritance.*

Points of difference between Dayabhaga and Mitakshara system of inheritance :

(Difference between Dayabhaga and Mitakshar) 1. There are three classes of heirs under Dayabhaga (a) *sapindas* (b) *sakulyas* and (c) *samanodakas*. Under Mitakshara, three classes of heirs are (a) *sapindas* (b) *samanodakas* and (c) *bandhus*.

The *sapindas* of Dayabhaga school are *sapindas* of Mitakshara school within four degrees only, plus the *bandhus* (with the exception of a few) of Mitakshara school.

The *sapindas* of Mitakshara school from 5th to 7th degree are *sakulyas* of Dayabhaga school.

The *samanodakas* of Dayabhaga school are the same as those of the Mitakshara school. All agnatic relations from 8th to the 14th degree are *samanodakas*. (see table at page 66).

2. Under Mitakshara, no *bandhu* or cognate can inherit so long there is any *gotraja sapinda* or *samanodaka* in existence. Under Dayabhaga, cognates come in along with agnates and they inherit before *sakulyas* or *samanodakas*.

3. Doctrine of *spiritual efficacy* is the guiding principle of succession under Dayabhaga, whereas under Mitakshara, propinquity is the guiding principle.

4. Mitakshara recognises a larger number of cognatic heirs than Dayabhaga.

5. Sapinda as per Mitakshara means a person connected through the same *pinda* or body, whereas under Dayabhaga it means a person connected through the same *pinda* or *funeral cake* presented at the time of *parvana sraddha* ceremony. So all persons who are heirs under Mitakshara school are not heirs under Dayabhaga school. Dayabhaga excludes many cognates, recognised as heirs under Mitakshara.

6. Right to succeed by birth is not admitted under Dayabhaga, hence heritage in all cases is *obstructed* and never *unobstructed*. Under Mitakshara heritage may be *obstructed* or *unobstructed*.

7. The *survivorship* is recognised by Mitakshara and not by Dayabhaga. Two or more persons jointly inheriting property, become *joint tenants* under Mitakshara whereas under dayabhag they become tenants-in-common and a co-sharer under Dayabhaga can alienate his share without the consent of the rest. Dayabhaga recognises the right of the widow in an undivided family to succeed to her husband's shares, if he dies without issue, and to enforce a partition on her own account.

8. Under Dayabhaga, "A Hindu who has sons, can sell, give or pledge without their consent, immoveable ancestral property ; * * * and that without the consent of the sons, he can, by will, prevent, alter or affect their succession to such property." (Hindu Law-Mayne. 372). But a Mitakshara father is not entitled to do so.

The foundation of Rules of inheritance

DOCTRINE OF SPIRITUAL BENEFIT

(Foundation of the doctrine.) Under Dayabhaga school succession is mainly governed by the capacity for conferring spiritual benefit. (*Guru Govinda V. Anund Lal* (1870) 5. Beng.L.R. 15,39. [F.B]).⁽⁵⁸⁾ The foundation of the doctrine is the *parvana sraddha* ceremony. In that ceremony the performer presents three different types of offerings e.g. (a) *pinda* or an entire cake (b) *pindalepas* or remnants of the *pinda* and (c) *udakam* or libations of water to his deceased ancestors.

The *pinda* is offered to three immediate paternal and three immediate maternal ancestors.

The *pindalepas* are offered to three paternal ancestors next above those to whom the *pinda* is offered.

The libations of water are offered to the seven paternal ancestors next above those to whom *pindalepas* are offered.

He who offers a *pinda* and he, to whom a *pinda* is offered, are *sapindas* of each other.

He who offers *pindalepas* and he, to whom they are offered, are *sapindas* of each other.

He who offers libations of water and he, to whom they are offered, are the *samanodakas* of each other.

(Examination of the doctrine of spiritual benefit.) The doctrine of spiritual benefit does not always guide the principles of succession under Dayabhaga. In *Akshay Chandra V. Hari Das* (1908) 35.Cal.721, 726,⁽⁵⁹⁾ Mitra, J, observed, "Spiritual benefit, notwithstanding some authorities to the contrary, is not always the guiding principle of inheritance under the Bengal school of law. The theory of spiritual benefit cannot apply to a good many cases of inheritance under the Dayabhaga school of law. Spiritual efficacy as a principle, guiding rules of succession must fail in the cases of all female relations. *** In most cases, propinquity, spiritual efficacy and natural love and affection run in the same lines and no difficulty arises, but whenever they run in different lines, *Jimutabahana* was compelled to ignore spiritual efficacy and have recourse to other principles or express texts.

58. (*Guru Govinda V. Anund Lal* (1870) 5. Beng.L.R. 15,39. [F.B]).

59. In *Akshay Chandra V. Hari Das* (1908) 35.Cal.721, 726,

In the case of *Sambhu Chandra V. Kartick Chandra* (1927) 54. Cal.171, 174)⁽⁶⁰⁾ Mukerji, J., declined to accept this view and observed that the schemes of the Dayabhaga was radically different from and to some extent incompatible with the schemes of Mitakshara and the one could not be made supplement to the other so far as the law of inheritance was concerned, and that although the dayabhaga might be silent so far as express enumeration went, it was not silent so far as the indication of the general principle according to which heirship was determined was concerned.

But in the case of *Nalinaksha V. Rajani* (1931) 58, Cal.1392),⁽⁶¹⁾ the Court preferred the view taken by Mitra J., in *Akshay Chandra V. Hari Das*.

In most cases spiritual efficacy and propinquity run on the same lines. The result is that the same persons who are heirs under Dayabhaga are also heirs under Mitakshara. But all persons who are heirs under Mitakshara are not heirs under Dayabhaga. Dayabhaga excludes many cognates recognised as heirs under Mitakshara.

(The doctrine is not strictly followed in case of (a) Son, grand-son and great-grand-son.) A son, a grand-son by a predeceased son, and a great-grand-son, whose father and grand-father are both dead, inherit together with a son. The reason being that these three confer equal amount of spiritual benefits by performing the *parvana sraddha*. But a son offer three oblations, a grand-son two and a great-grand-son only one. This difference in the number of oblations is ignored. If they confer equal amount of spiritual benefit why do they not take *per capita*, instead of *per stirpes*?

60. *Sambhu Chandra V. Kartick Chandra* (1927) 54. Cal.171, 174)

61. *Nalinaksha V. Rajani* (1931) 58, Cal.1392,

(b) (*Daughters and some other relations.*) Again, the daughter cannot confer any spiritual benefit but her son may do so. The daughters that are sonless and not likely to have sons are excluded. The maiden daughter is preferred to others. The daughter's succession is based on express texts. Now, the point is that if the spiritual benefit derived from *sraddhas* were the only criterion, the daughter's son should have been held preferable to both maiden and married daughters. In some other cases also the doctrine is not strictly followed.

The cognates like the (i) daughter's son, (ii) sister's son, (iii) father's sister's son and (iv) grand-father's sister's son confer a greater amount of spiritual benefit than *sakulyas*. So the author of Dayabhaga has given them a position before the *sakulyas*.

The Full bench of Calcutta High Court in the case of *Guru Govinda V. Anund Lai*,⁽⁶²⁾ recognised eight daughter's sons (all second class Dayabhaga sapindas)⁽⁶³⁾ as heirs. They are : (i) Son's daughter's son (ii) Son's son's daughter's son (iii) Brother's daughter's son (iv) Brother's son's daughter's son (v) Paternal uncle's daughter's son (vi) Paternal uncle's son's daughter's son (vii) Paternal grand-uncle's daughter's son and (viii) Paternal grand-uncle's son's daughter's son. (Paternal grand-father's brother is the paternal grand-uncle).

In case of competition between these eight daughter's sons and the maternal relations, (who are within 21 third class Dayabhaga sapindas) the former are to be preferred agreeably to the exposition of the Full Bench, as they confer superior spiritual benefits by offering oblations to the paternal ancestors of the deceased.

62. *Guru Govinda V. Anund Lai*,

63. (all second class Dayabhaga sapindas)

But according to the Full Bench all the three classes of *sapindas* must come before the *sakulyas*. The eight daughter's sons mentioned above, are within second class, and 21 maternal relations like maternal uncle, maternal grand-father, etc., are third class Dayabhaga sapindas. (see Dayabhaga sapindas on pages 88-9). A careful examination reveals that the position of all the *second and third class sapindas* before the *sakulyas* would be most anomalous. As for instance, maternal great-great-grand father and his descendants are equal in degree to the paternal great-great-grand-father and his descendants. But the *former are sapindas* and the *latter sakulyas*. According to the principle enunciated by the Full Bench, the maternal great-great-grand-father and his descendants, who are cognates are to be preferred to paternal great-great-grand-father and his descendants, who are agnates. Hence we find that the manner in which the Full Bench explained the doctrine of spiritual benefit in *Guru Govinda V. Anund Lal*⁽⁶⁴⁾ is opposed not only to the very text of *Manu* but also to very system of jurisprudence, as it places some cognates before agnates of the same degree.

Golap Chandra Sarkar Sastri observed, "The capacity for spiritual benefit such as is expounded by Justice D. N. Mitter, cannot and ought not to be made the basis of a order of succession, which is opposed not only to the feelings of the people but also to the natural development of law."

It may be concluded that propinquity or proximity of birth is the principle of succession according to Mitakshara. This is admitted also by the Dayabhaga School, but the capacity for spiritual benefit is also taken into consideration along with it.

The spiritual benefit is not always the guiding principle. Where Dayabhaga is silent on a point the rule of propinquity may be applied. (1959) 9.P.L.R. (Dacca) 401.⁽⁶⁵⁾

64. *Guru Govinda V. Anund Lal*

65. (1959) 9.P.L.R. (Dacca) 401.

In *Krishna V. Govt.* (12.C.W.N.453),⁽⁶⁶⁾ Calcutta High Court has expressed the opinion, as an *obiter dictum*, that the sister's daughter's son is not an heir under Dayabhaga school because of his incapacity to confer spiritual benefit. The learned Judges, it is submitted, failed to understand that the author of Dayabhaga put forward the doctrine of spiritual benefit in support of the *mode and order of devolution of inheritance*. It may rightly be held to be a *key to the order of succession* but not to *in-heritance itself*. If that were so, no *samanodaka* could succeed as heir in Dayabhaga School.

Moreover, *Jimutavahana*, the author of the Dayabhaga, concluded by saying that if the learned were not satisfied with his *principle*, still the *order of succession*, maintained by him, should be accepted. So it is the *order* and not the *principle*, which is of higher importance, according to author himself.

CLASSES OF HEIRS

(*Three classes of heirs under Dayabhaga.*) Dayabhaga recognises three classes of heirs ; *sapindas*, *sakulyas* and *samanodakas*.

(*Divided and undivided oblations.*) 1. **Sapindas** : All those (relations) who partake of *undivided oblations* are pronounced *sapindas*. The foundation of the doctrine of spiritual benefit is the *parvana sraddha* ; but all the oblations presented at that ceremony are divided and separate. Hence it is not clear what is meant by the term *undivided oblations*. However, it is generally agreed that the *pinda* or an entire cake is known as *undivided oblation* and the remnants of the *pinda* i.e. what are attached to the hand, while mixing up the ingredients of a *pinda* are known as *pindalepas* or *divided oblations*. The *pindalepas* are scraped by the *kusha* grass and formed into an offering for the three remoter ancestors.

66. *Krishna V. Govt.* (12.C.W.N.453),

(Three classes of sapindas.) As per decision of the Full Bench of the Calcutta High Court in the case of *Guru Govinda V. Anund Lal*,⁽⁶⁷⁾ Dayabhaga sapinda includes three classes of relations.

(First class.) The first class includes the deceased's three male descendants in the male line, three male ascendants in the male line, and three male descendants in the male line of each of the three male ascendants. They are his :

- (i) Son, grand-son and great-grand-son.
- (ii) Father, grand-father and great-grand-father.
- (iii) Brother, brother's son and brother's grand-son.
- (iv) Paternal uncle, paternal uncle's son, and paternal uncle's grand-son.
- (v) Paternal grand-uncle, paternal grand-uncle's son and paternal grand-uncle's grand-son.-15 relations in all.

(The lawfully wedded wives of these relations as well as the wife of the person him self, are also sapindas as they become part of the body of their respective husband by virtue of marriage).

(Second Class.) The second class includes the grand-sons by daughters of the person himself, of his three paternal ancestors, as well as of the son and the grand-son of the person himself and his three paternal ancestors-12 relations in all.

They are his :

- (i) Daughter's son, sister's son, father's sister's son, and grand-father's sister's son.
- (ii) Son's daughter's son, son's son's daughter's son.
- (iii) Brother's daughter's son, brother's son's daughter's son.
- (iv) Paternal uncle's daughter's son, paternal uncle's son's daughter's son.
- (v) Paternal grand-uncle's daughter's son, paternal grand-uncle's son's daughter's son.

67. *Guru Govinda V. Anund Lal*,

(*Third class.*) The third class includes the maternal grand-Sires, to whom the deceased was bound to offer oblations and those relations that present oblations to them.-21 relations in all.

They are his :

(i) Maternal grandfather, maternal great-grand-father and maternal great-great-grand-father.

(ii) Maternal uncle, his son and his grand-son.

(iii) Maternal grand-uncle, his son and his grand-son.

(iv) Maternal great-grand-uncle, his son and his grand-son.

(v) Maternal aunt's-son, maternal grand-aunt's son and maternal great-grand-aunt's son.

(vi) Maternal uncle's daughter's son and maternal uncle's son's daughter's son.

(vii) Maternal grand-uncle's daughter's son and maternal grand-uncle's son's daughter's son.

(viii) Maternal great-grand-uncle's daughter's son and maternal great grand-uncle's son's daughter's son.

Thus we find that a Hindu, under Dayabhaga school is a sapinda of those :-

(a) To whom he is bound to offer a *pinda*. In this group are included his three immediate paternal ancestors : his father, grand-father and great-grand-father ; and his three immediate maternal ancestors, his maternal grand-father, maternal great-grand-father and maternal great-great-grand-father-6 relations.

(b) Who, on his death, are bound to offer a *pinda* to him. In this group are included his son, son's son, and son's son's son ; daughter's son, son's daughter's son and son's son's daughter's son.-6 relations.

(c) Who are bound to offer a *pinda* to his three immediate paternal ancestors and his three immediate maternal ancestors.

(*Guru Govinda V. Anund Lal* (1870) 5 Beng. L.R.15.39.[F.B].⁽⁶⁸⁾)

In this group are included his :

68. (*Guru Govinda V. Anund Lal* (1870) 5 Beng. L.R.15.39.[F.B].)

(1) Brother, brother's son, brother's son's son ; paternal uncle, paternal uncle's son, paternal uncle's son's son ; paternal grand-uncle, paternal grand-uncle's son, paternal grand-uncle's son's son.-9 relations.

(2) Sister's son, father's sister's son, father's father's sister's son ; brother's daughter's son, brother's son's daughter's son ; paternal uncle's daughter's son, paternal grand-uncle's daughter's son ; paternal uncle's son's daughter's son, paternal grand uncle's son's daughter's son.-9 relations.

The 9 relations mentioned in (2) above, are sapindas under Dayabhaga. It may be noted here that the paternal ancestors of the deceased are the maternal ancestors of these 9 relations. They are *bandhus ex parte paterna* of Mitakshara. Hence we find that some of the *bandhus* of Mitakshara are included in the list of *sapindas* under Dayabhaga.

(3) Maternal uncle, maternal uncle's son, maternal uncle's grand-son ; maternal grand-uncle, maternal grand-uncle's son, maternal grand-uncle's grand son ; maternal great-grand-uncle, maternal great-grand uncle's son, maternal great-grand uncle's grand-son.-9 relations.

This is a case where the maternal ancestors of the deceased are the paternal ancestors of the 9 relations mentioned above. They are *bandhus ex parte materna* of Mitakshara School. Here also we find that some of the *bandhus* of Mitakshara are *sapindas* under Dayabhaga.

(4) Maternal aunt's son, maternal grand-aunt's son and maternal great-grand-aunt's son; maternal uncle's daughter's son, maternal uncle's son's daughter's son ; maternal grand-uncle's daughter's son, maternal grand-uncle's son's daughter's son; maternal great grand uncle's daughter's son, maternal great-grand-uncle's son's daughter's son.-9 relations.

This is a case where the maternal ancestors of the deceased are also the maternal ancestors of the 9 relations. They are *bandhus ex parte maternal* of Mitakshara. Here also we find that some of the *bandhus* of Mitakshara School are *sapindas* under Dayabhaga.

(*Main point of distinction between Mitakshara and Dayabhaga succession.*) *Sapindas* succeed before *sakulyas*, and since the *sapindas* mentioned above comprise several relations called *bandhus* in Mitakshara, it is clear that *bandhus* also succeed before *sakulyas*. Under Mitakshara *bandhus* do not succeed until after *samanodakas*. This is the main point of distinction between succession according to Dayabhaga and succession according to Mitakshara. In other respects, the order of succession under both the schools are, more or less, the same.

(*Female sapindas.*) Dayabhaga School recognises 5 (five) female *sapindas*. They are the widow, the daughter, the mother, the father's mother and the father's father's mother. *They are the only female heirs recognised under Dayabhaga School.* There are no *female sakulyas* or *female samanodakas* under Dayabhaga.

(*Total number of sapindas 53.*) Thus we find that there are 48 male and 5 female, totalling 53 *sapindas* under Dayabhaga School.

2. Sakulyas : The term *sakulya* means one belonging to the same *kula* or family. Under Dayabhaga school, a Hindu is a *sakulya* of those :-

- (i) to whom he is bound to offer *pindalepas* while he is alive ;
 - (ii) who, on his death, are bound to offer *pindalepas* to him ;
 - (iii) who are bound to offer *pindalepas* to those, to whom he offers the *pindalepas* ;
- and all of them are his *sakulyas*.

(*First group of sakulyas.*) *Sakulya* includes two groups of heirs under Dayabhaga. The first group comprises the 4th, 5th, and

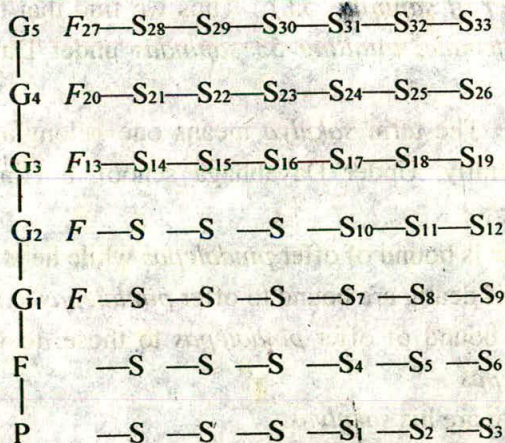
6th male descendants in the male line of that person, and of his father, grand-father and great-grand-father, and it includes the 4th, 5th, and 6th paternal male ancestors in the male line, and also six male descendants, in the male line, of each of those ancestors.-33 relations in all.

They are his :

- (i) Great-great-grand-son, his son and his son's son.-3
- (ii) Brother's great-grand-son, his son and his son's son-3.
- (iii) Paternal uncle's great-grand-son, his son and his son's son.-3
- (iv) Paternal grand-uncle's great-grand-son, his son and his son's son.-3
- (v) Paternal great-great-grand-father and his six male descendants in the male line, like his son, son's son, etc.-7.
- (vi) Paternal great-great-great-grand-father and his six male descendants in the male line, like his son, son's son, etc.-7
- (vii) Paternal great-great-great-great-grand-father and his six male descendants in the male line, like his son, son's son, etc.-7

Total. 3+3+3+3+7+7+7+=33 relations.

The first group of *Sakulyas* *



*Re-produced from Hindu Law of G.G. Sarkar Sastri.

The *Sakulyas* are all agnates ; none of them is cognate. There are no females in the class of *sakulyas*. The male *sapindas* of Mitakshara minus *first class Dayabhaga sapindas* are *sakulyas*.

According to Dr. Sarvadhikari, the following 9 cognates are also *sakulyas*.

1—3. The daughter's son of the paternal great-great-grandfather (G₃F of the above table), his son and his son's son.

4—6. The daughter's son of the paternal great-great-grandfather (G₄F of the above table), his son and his son's son.

7—9. The daughter's son of the paternal great-great-great-great-gand-father (G₅F of the above talbe),⁽⁶⁹⁾ his son and his son's son.

(*Second group of sakulyas*) Interpreting *Manu's* text, containing, "To the nearest *sapinda*, the inheritance next belongs. After him the *sakulya* is the heir, then the preceptor or a pupil," the author of the *Dayabhaga* maintains that the term *sakulya* includes the group of heirs also called *samanodakas*.

3. Samanodakas : A Hindu under *Dayabhaga* school is the *samanodaka* of those :

- (i) to whom he is bound to offer libations of water ;
 - (ii) who, on his death, are bound to offer libations of water to him;
 - (iii) who are bound of offer libations of water to those, to whom he offers the libations of water ;
- and all of them are his *samanodakas*.

They are all male agnate relations from 8th to the 14th degree and are 147 in number. *Samanodakas* under *Mitakshara* and *Dayabhaga* schools are the same and they have been shown in the table at page 66. According to some *samanodaka* comprises all such *sagotras* or agnatic relations whose common descent and names are remembered. The meaning of the term *samanodaka* is the same as *sagotra* in *Mitakshara*.

69. (G₅F of the above talbe),

PRINCIPLES OF DAYABHAGA SUCCESSION

The doctrine of *spiritual efficacy* is the guiding principle of Dayabhaga succession and the whole law in this field is based on the oblation (*pinda*) theory.

The oblation theory is founded solely on two texts, one of *Baudhayana* and the other of *Manu*. According to *Baudhayana*.

(*Baudhayana's text.*)

“এতান্ অবিভক্তদায়াদান্ সপিগান্ আচক্ষতে ।

বিভক্তদায়াদান্ সকুল্যান্ আচক্ষতে ।।”

The plain meaning of the passage would be, “All these participating in *undivided heritage* are pronounced *sapindas* ; those who participate in *divided heritage* are called *sakulyas*.” The word *daya* means heritage and the passage cannot be construed to support the theory unless the word *daya* means *pinda*.

The above text of *Baudhayana* has been interpreted as “All these partaking of *undivided oblations* are pronounced *sapindas* ; those who partake of *divided oblations* are pronounced *sakulyas*.”

According to *Manu* :

(*Manu's text.*)

“অনন্তরঃ সপিগাদ্ যস্-তস্য তস্য ধনং ভবেৎ ।

অত উর্দ্ধং সকুল্যঃ স্যাদ্-আচার্য্যঃ শিষ্য এব বা ।।”

meaning-“To the nearest *sapinda*, the inheritance next belongs ; after him *sakulya* is the heir, then the preceptor or a pupil.” Since the Dayabhaga recognises some of the females as *sapindas*, the text of *Manu* has been interpreted to mean, “To the nearest *sapinda*, male or female, the inheritance next belongs.”

Principles governing precedence.

Sapindas come before *sakulyas* and *sakalyas* come before *samanojakas*.

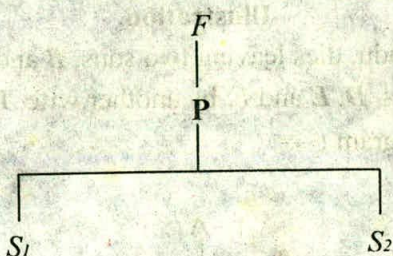
Amongst the *sapindas* :

(*Sapindas*) 1. Those who offer *pinda* to the deceased are preferred to those who accept it from him. Hence the son, grandson and great-grand-son succeed before the father, grand-father,

etc. The oblations offered by the son, grand-son and great-grand-son are of equal value, so they all inherit *as one heir*.

Illustrations.

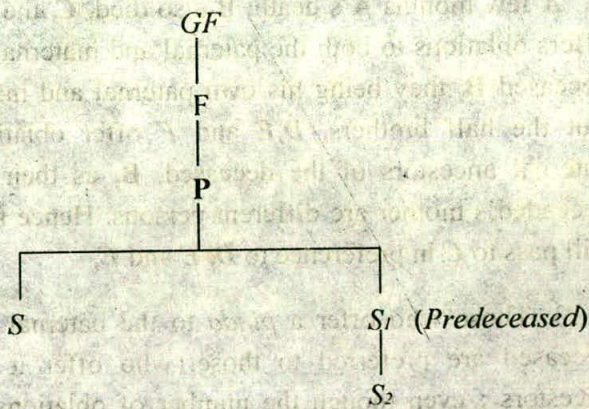
(a) P, a male Hindu, dies leaving his father, F and two sons, S₁ and S₂, as shown in the following diagram : —



The father, F accepts *pinda* from P and the sons, S₁ and S₂ offer *pinda* to P. Hence *one half* of the property of P will pass to S₁ and *the other half* to S₂ in preference to F.

(b) P, a male Hindu, dies leaving his grand-father, GF, a son, S and a grand-son, S₂ by a predeceased son,

S₁, as shown in the following diagram : —

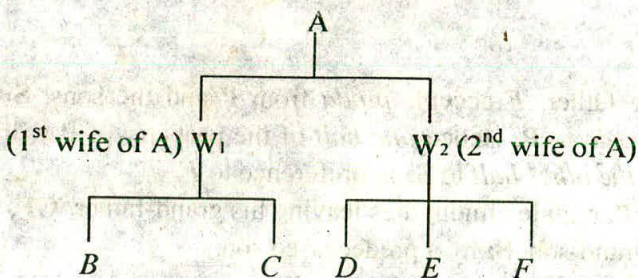


One the same principle explained in (a) above, *one half* of P's property will pass to S and *the other half* to S₂ in preference to GF.

2. Those who offer oblation to both paternal and maternal ancestors are preferred to those who offer oblations to the paternal ancestors only. Hence relations of the *whole blood* are preferred to those of the *half blood*.

Illustration.

A, a male Hindu, dies leaving two sons, *B* and *C* by one wife, *W₁* and three sons, *D*, *E* and *F*, by another wife, *W₂*, as shown in the following diagram :—

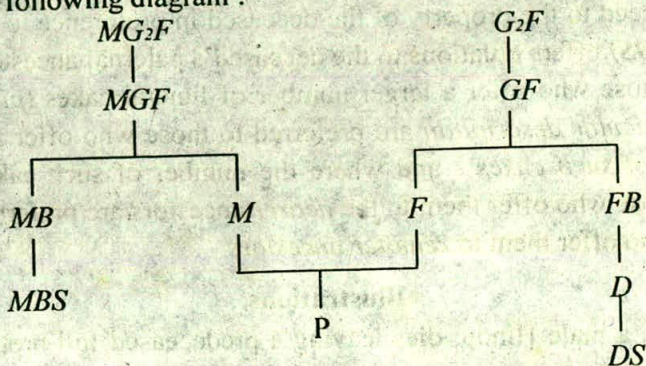


A few months A's death, *B* also died. *C*, the full brother of *B* offers oblations to both the paternal and maternal ancestors of the deceased *B*, they being his own paternal and maternal ancestors. But the half brothers, *D*, *E* and *F* offer oblations only to the paternal ancestors of the deceased, *B*, as their mother and the deceased's mother are different persons. Hence the property of *B* will pass to *C* in preference to *D*, *E* and *F*,

3. Those who offer a *pinda* to the paternal ancestors of the deceased are preferred to those, who offer it to his maternal ancestors ; even though the number of oblations is larger in the latter case.

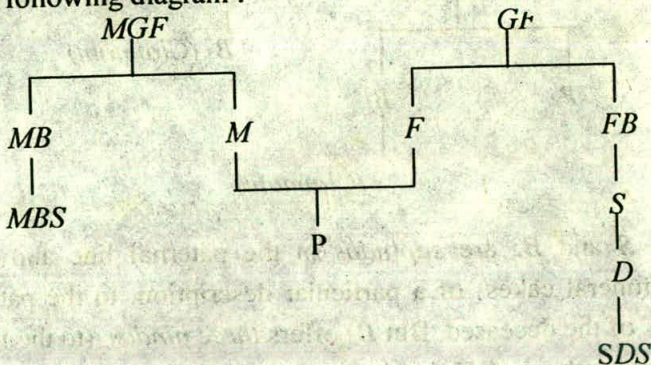
Illustrations.

(a) P, a male Hindu, dies leaving a father's brother's daughter's son, **DS** and a mother's brother's son, **MBS**, as shown in the following diagram :—



DS, a *sapinda*, offers oblations to the paternal ancestors of the deceased, which the deceased was bound to offer and in which he participates. **MBS**, also a *sapinda*, offers oblations to the maternal ancestors of the deceased, which the deceased was bound to offer, but in which he does not participate. Each of them offers two oblations and confers spiritual benefit on the deceased, but the former benefits him doubly and the latter only in one way. So the father's brother's daughter's son (**DS**) comes, in order of succession, before the mother's brother's son (**MBS**). (*Braja Lal V. Jiban* (1899) 26.Cal.285).⁽⁷⁰⁾

(b) P, a male Hindu, dies leaving a father's brother's son's daughter's son, **SDS** and a mother's brother's son, **MBS** as shown in the following diagram :-



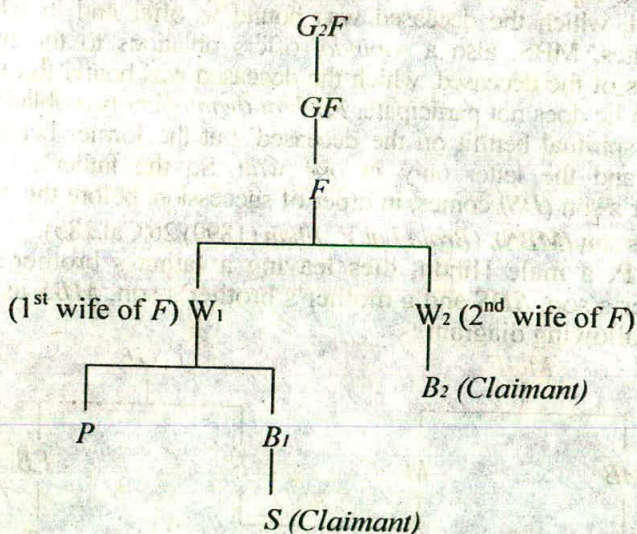
70. (*Braja Lal V. Jiban* (1899) 26.Cal.285).

While *SDS* offers *one oblation* to the paternal ancestors of the deceased, *MBS* offers *two oblations* to the maternal ancestors of the deceased. Though *MBS* offers a larger number of oblations, *SDS* will succeed to the property of the deceased in preference to *MBS* as he (*SDS*) offers oblations to the deceased's paternal ancestors.

4. Those who offer a larger number of funeral cakes (*pindas*) of a *particular description* are preferred to those who offer a *less number of such cakes* : and where the number of such cakes is *equal* those who offer them to the *nearer* ancestors are preferred to those, who offer them to *remoter* ancestors.

Illustrations.

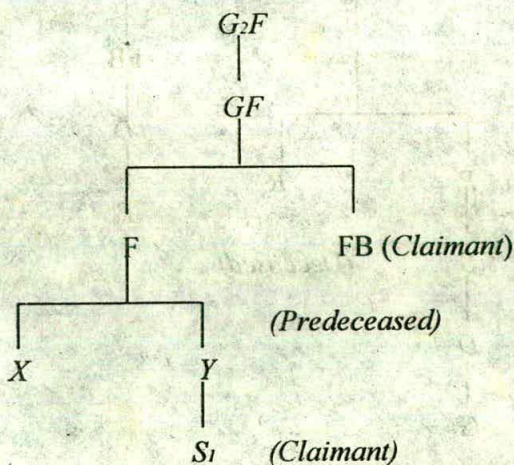
(a) P, a male Hindu, dies leaving a predeceased full brother's son, S and a half brother, B2 as shown in the following diagram :-



Both *S* and *B2* are *sapindas* in the paternal line and offer *pindas* (funeral cakes) of a particular description, to the paternal ancestors of the deceased. But *B2* offers *three pindas*, (to the father (*F*), grand-father (*GF*) and great-grandfather (*G2F*) of the

deceased) while *S* offers *two pindas* (to the father and grand-father of the deceased) only. So the property of *P* will pass to *B₂* in preference to *S*.

(b) *X*, a male Hindu, dies leaving his paternal uncle, *FB* and a nephew, *S₁* by a predeceased brother, *Y* as shown in the following diagram : —

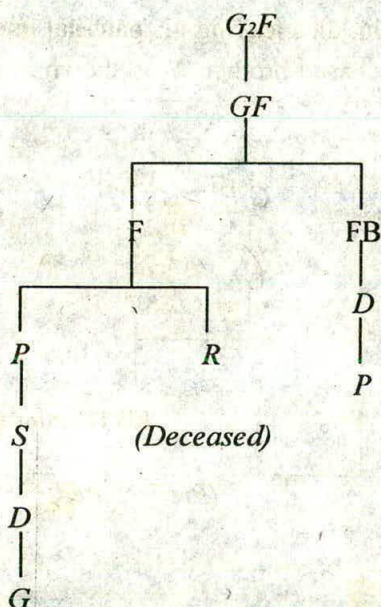


FB is a *sapinda* in the paternal line and offers *two pindas* to the paternal ancestors of the deceased. *S₁* also is a *sapinda* in the paternal line and offers *two pindas* to the paternal ancestors of the deceased. But *FB* offers *pindas* to the grand-father and great-grand-father of the deceased, whereas *S₁* offers *pindas* to the father and the grand-father of the deceased. So the property of *X* will pass to *S₁* in preference to *FB*.

But a person who offers *one oblation to the father of the deceased owner* is preferred to another, who offers *two oblations to the grand-father and great-grand-father*.

Illustration

R, a male Hindu dies leaving a brother's son's daughter's son, G and an uncle's daughter's son, P as shown in the following diagram :—



G, the brother's son's daughter's son, offers *one oblation*, and that to the father of the deceased ; P, as being his uncle's daughter's son, offers *two oblations*, and that to the grand-father and great-grand-father of the deceased. P claims the property on the ground that the oblations are of the *same kind*, being both in the paternal line of the deceased, he (P) offering *two such oblations* should be preferred to G, who offers *only one*.

Held : G, who offers oblation to the father of the deceased, stands higher in order of succession than P, who offers oblations only to the grand-father and great-grand-father. (*Pran Nath V. Surrut Chandra* (1882) 8. Cal.460).⁽⁷¹⁾

71. (*Pran Nath V. Surrut Chandra* (1882) 8. Cal.460).

(*Sakulyas and samanodakas.*) The above principles, governing succession among the *sapindas* are also applicable in case of *sakulyas* and *samanodakas*. (*Guru Govinda V. Anund Lal*).⁽⁷²⁾

ORDER OF SUCCESSION.

1. Sapindas :

1—3. Son, grand-son and great-grand-son :

They succeed in the same manner as in Mitakshara.

Under Dayabhaga, afterborn son or other heir is entitled to divest remoter heir who succeed at owner's death. (38.C.W.N.90).⁽⁷³⁾

Son, living away from father's family is not disqualified from getting a share along with other brothers living in joint mess with the father at the time of latter's death. (57.C.W.N.81).⁽⁷⁴⁾

4. Widow : The widow takes only a limited interest, technically known as *widow's estate*. She cannot alienate the *corpus* of the property except for legal necessity. Her position is the same in Dayabhaga as in Mitakshara except that the widow of a Hindu in Sylhet is entitled to succeed to agricultural lands as per provisions of Assam Hindu Women's Rights to Property Act (extension to Agricultural Land) of 1943, and as such she is necessary party in the rent suit brought by other male heirs of the Deceased. (6.D.L.R.66).⁽⁷⁵⁾

A widow is entitled to maintenance notwithstanding her right under the Act to share in the non-agricultural part of the family estate. (1943. Mad.417).⁽⁷⁶⁾

72. (*Guru Govinda V. Anund Lal*).

73. (38.C.W.N.90).

74. (57.C.W.N.81).

75. (6.D.L.R.66).

76. (1943. Mad.417).

(Priority amongst daughters) 5. **Daughter** : Amongst the daughters, the maiden comes first, in her default, betrothed, on failure of her, married : of married daughters ; she, who has a son and she, who is likely to have a son are entitled to succeed jointly. A barren daughter and a sonless widowed daughter are not entitled to succeed. (*Benode V. Purdhan* (1865) 2.W.R.C.R.176),⁽⁷⁷⁾ though their re-marriage is permitted in the caste to which they belong and though they may be of child bearing age. (*Binodini V. Susthee* (1921) 48 Cal.300).⁽⁷⁸⁾ Thus a married daughter, having a son (48.Cal.300),⁽⁷⁹⁾ and even a daughter's son (60.I.C. 777),⁽⁸⁰⁾ exclude a childless widowed daughter.

But where, during the life time of the father the son-in-law was willing and competent to adopt and has actually adopted after the father's death, the daughter is entitled to inherit. (*Uma Kanta Bhattachariya V. Bed Bati Devi* (1942) Cal.299. ('42) A.C.265).⁽⁸¹⁾

A barren married daughter can stop inheritance of her father's property by creating a son by adoption with the consent of her husband. (5.D.L.R.440).⁽⁸²⁾

Daughter is a preferential heir to a paternal cousin, but if she is a childless widow, the paternal cousin takes the estate. (4.D.L.R.237).⁽⁸³⁾

(Unchastity of daughter.) Under Dayabhaga school, an unchaster daughter is not entitled to succeed. But once the estate has vested in her, it cannot be divested by subsequent unchastity. (*Sundari V. Pitambari* (1905) 32.Cal.871).⁽⁸⁴⁾ See Mitakshara succession "Daughter" as to other matters.

77. (*Benode V. Purdhan* (1865) 2.W.R.C.R.176),

78. (*Binodini V. Susthee* (1921) 48 Cal.300).

79. (48.Cal.300),

80. (60.I.C. 777),

81. (*Uma Kanta Bhattachariya V. Bed Bati Devi* (1942) Cal.299. ('42) A.C.265).

82. (5.D.L.R.440).

83. (4.D.L.R.237).

84. (*Sundari V. Pitambari* (1905) 32.Cal.871).

6. Daughter's son : The oblation ceases with the daughter's son ; hence daughter's son's son is not an heir under Dayabhaga. (*Nepal Das V. Probhash Chandra.* (1925) 30.C.W.N. 357).⁽⁸⁵⁾

7. Father : In default of a daughter's son, the father succeeds.

8. Mother : Under Dayabhaga school, an unchaster mother is not entitled to inherit. But on e the estate has vested in her, it cannot be divested by subsequent unchastity. (*Ramnath V. Durga* (1879) 4 Cal.550).⁽⁸⁶⁾

Re-marriage also does not divest her. Mother does not include a step-mother and she does not succeed to her step-son. (37.Cal.214 ; 18.C.W.N.150).⁽⁸⁷⁾

(It may be observed that under Mitakshara a widow is the only female who is excluded from inheritance by reason of unchastity).

9. Brother : The full brother is preferred to a half brother.

10. Brother's son :— In default of brother, brother's son succeed. They succeed in the same order as the brother i.e. the whole blood is preferred to the half blood.

11. Brother's son's son : He succeeds in default of brother's son. The whole blood is preferred to the half blood.

[**Whole and half blood :** A *sapinda* of the whole blood is preferred to a *sapinda* of the half-blood. This preference, however, is confined to *sapindas of same degree* of descent from the common ancestor ; it does not apply to *sapindas of different degrees*. (*Ganga Sahai V. Kesri* (1915) 42.I.A.177).⁽⁸⁸⁾ Under Dayabhaga school this rule applies not only to brothers and brothers' sons, but to remoter *sapindas*. (*Sham Singh V. Kishun Sahai* (1907) 6.Cal.L.J.190).⁽⁸⁹⁾ Thus a paternal uncle of the whole blood is entitled to succeed in preference to a paternal uncle of the half blood. But a paternal uncle of the half blood is entitled to inherit in preference to the son of a paternal uncle of the whole blood.]

85. (*Nepal Das V. Probhash Chandra.* (1925) 30.C.W.N. 357).

86. (*Ramnath V. Durga* (1879) 4 Cal.550).

87. (37.Cal.214 ; 18.C.W.N.150).

88. (*Ganga Sahai V. Kesri* (1915) 42.I.A.177).

89. (*Sham Singh V. Kishun Sahai* (1907) 6.Cal.L.J.190).

12. **Sister's son** : The half sister's son is entitled to take together with the full sister's son-the capacity for spiritual benefit being assumed as the sole test. (*Bhola V. Rakhal* 11.Cal.69).⁽⁹⁰⁾

13. **Paternal grand-father.**

14. **Paternal grand-mother.**

15. **Paternal uncle** : Father's full brother is preferred to a half brother.

16. **Paternal uncle's son.**

17. **Paternal uncle's son's son.**

18. **Father's sister's son.**

19. **Paternal great-grand-father.**

20. **Paternal great-grand-mother.**

21. **Paternal grand-uncle.**

22. **Paternal grand-uncle's son.**

23. **Paternal grand-uncle's son's son.**

24. **Father's father's sister's son.**

After these the following cognate relations come as per decisions in (i) *Govinda Proshad V. Mohesh Chunder* (1875) 15. Beng. L. R.35⁽⁹¹⁾ (ii) *Pranath V. Surrut Chunder* (1882) 8. Cal. 460, 473-4. and⁽⁹²⁾ (iii) *Hari Das V. Bama Churn* (1888) 15. Cal. 780, 793-4.⁽⁹³⁾

25. **Son's daughter's son.**

26. **Son's son's daughter's son.**

27. **Brother's daughter's son.** (*Digamber V. Motilal* (1883) 9.Cal.653).⁽⁹⁴⁾

90. (*Bhola V. Rakhal* 11.Cal.69).

91. *Govinda Proshad V. Mohesh Chunder* (1875) 15. Beng. L. R.35

92. *Pranath V. Surrut Chunder* (1882) 8. Cal. 460, 473-4. and

93. *Hari Das V. Bama Churn* (1888) 15. Cal. 780, 793-4.

94. (*Digamber V. Motilal* (1883) 9.Cal.653).

28. **Brother's son's daughter's son.** (*Prannath V. Surrut Chandra* (1882) 8.Cal.460).
29. **Paternal uncle's daughter's son.** (*Guru Govinda V. Anund Lal* (1870) 5.Beng. L.R.15. [F.B.]).⁽⁹⁵⁾
30. **Paternal uncle's sons's daughter's son.**
31. **Paternal grand-uncle's daughter's son.**
32. **Paternal grand-uncle's sons's daughter's son.**

Dr. Sarvadhikari places son's daughter's son and son's son's daughter's son immediately after daughter's son : Brother's daughter's son and brother's son's daughter's son immediately after sister's son : Paternal uncle's daughter's son and paternal uncle's son's daughter's son immediately after father's sister's son : Paternal grand-uncle's daughter's son and paternal grand-uncle's son's daughter's son immediately after father's father's sister's son.

Next comes the maternal relations of the deceased.

33. **Maternal grand-father.**
34. **Maternal uncle.** (*Padma Kumari V. Court of Wards* (1882) 8.Cal.302).⁽⁹⁶⁾
35. **Maternal uncle's son.** (*Rani Srimati Dibya V. Koond Lata* (1847) 4.M.I.A.292).⁽⁹⁷⁾
36. **Maternal uncle's son's son.**
37. **Mother's sister's son.**
38. **Maternal great-grand-father ;**
(39) his son (40) his grand-son (41) his great-grand-son and (42) his daughter's son.

95. (*Guru Govinda V. Anund Lal* (1870) 5.Beng. L.R.15. [F.B.]).

96. (*Padma Kumari V. Court of Wards* (1882) 8.Cal.302).

97. (*Rani Srimati Dibya V. Koond Lata* (1847) 4.M.I.A.292).

43. **Maternal great-great-grand-father** : (44) his son (45) his grandson (46) his great-grandson and (47) his daughter's son. Maternal great-great-grand-father's daughter's son's son. though an heir under Mitakshara, is not an heir under Dayabhaga. (*Sambhu Chandra V. Kartick Chandra* (1927) 54.Cal.171).⁽⁹⁸⁾

48. **Son's daughter's son of the maternal grand-father.**
49. **Son's son's daughter's son of the maternal grand-father.**
50. **Son's daughter's son of the maternal great-grand-father.**
51. **Son's son's daughter's son of the maternal great-grand-father.**
52. **Son's daughter's son of the maternal great-great-grand father.**
53. **Son's son's daughter's son of the maternal great-great-grand-father.**

Dr. Sarvadhikari places son's daughter's son and son's son's daughter's son of the maternal grand-father immediately after mother's sister's son : Maternal great-grand-father's son's daughter's son and son's son's daughter's son immediately after maternal great-grand-father's daughter's son : Maternal great-great-grand-father's son's daughter's son and son's son's daughter's son immediately after maternal great-great grand-father's daughter's son.

All the relations mentioned against Nos. 12, 18, 24, 25, to 32 and 33 to 53 are *bandhus* under Mitakshara school and they are not entitled to succeed before *Samanodakas* of that school. But under Dayabhaga they are classed as *sapindas*, and succeed before the *sakulyas* and *samanodakas*.

98. (*Sambhu Chandra V. Kartick Chandra* (1927) 54.Cal.171).

2. Sakulyas and samanodakas : Failing all *sapindas*, *sakulyas* and failing all *sakulyas*, it passes to *samanodakas*. *Sakulyas* and *samanodakas* succeed according to the order to be deduced from the rules already laid down under head "Principles of Dayabhaga succession supra."

(Others heirs.) On failure of all the heirs mentioned above, the estate goes in the following order to (i) the preceptor or *guru*, (ii) pupil and (iii) fellow student. If there be none of these, the inheritance passes to the people of the same *gotra* or to the *samana-pravaras* of the same village.

(As to succession to hermits and members of a religious order, see order of succession under Mitakshara supra.)

(Escheat) On failure of all the heirs mentioned above, the King or the state takes by escheat. As per text the estate of a *Brahmana* should be taken by a *Brahmana*, endowed with good qualities, and not by the King or the state. But in *Collector of Masulipatam V. Caraly Venkata* (1860) 8.M.I.A.500⁽⁹⁹⁾ it has been decided that on failure of heirs, the estate of a *Brahmana* goes to the Crown by escheat. (As to other matters regarding escheat, see escheat' under Mitakshara succession supra).

DAYABHAGA RE-UNION AND ORDER OF SUCCESSION

[For meaning of re-union, see Mitakshara re-union.]

They only persons who can re-unite under Dayabhaga school are : —

(i) the father and son (ii) brothers (iii) the uncle and nephew.

99. *Collector of Masulipatam V. Caraly Venkata* (1860) 8.M.I.A.500)

Order of succession after re-union under Dayabhaga is the same as that to the estate of an undivided member with the following exceptions :—

(i) Where the claimants *are of equal degree* one who is re-united is to be preferred to one who is not. Hence a re-united brother or uncle is to be preferred to a separated brother or uncle.

(ii) This preference extends *to their descendants also*. Hence a son of the re-united brothers is to be preferred to the son of a separated brother. (*Akshay V. Hari* (1908) 35.Cal.721).⁽¹⁰⁰⁾

According to the Dayabhaga, if the claimants for inheritance be either two or more sons (*Marudayi V. Doraisami* 30.Mad.348, 352),⁽¹⁰¹⁾ or brothers or paternal uncles, or fraternal nephews, and one of each of these sets of heirs be re-united, then he is to be preferred to another of that set, who is not re-united. But if the deceased was re-united with any other relations than the four mentioned in *Vrihaspati's* text, then the legal incident of preference for re-union does not apply to them ; such relations, *whether re-united or not*, are entitled to succeed together.

100. (*Akshay V. Hari* (1908) 35.Cal.721).

101. (*Marudayi V. Doraisami* 30.Mad.348, 352),

CHAPTER VII EXCLUSION FROM INHERITANCE

“(अर्हति स्त्री) न दायं निरिन्द्रिया अदायाश्च
स्त्रियो मता इति श्रुतेः ।।”

— बौधायनः —

Meaning—A woman is not entitled to heritage : for, a text of the Revelation says, - “Females are devoid of prowess and incompetent to inherit.”

— Baudhayana —

२. “अनंशौ क्लीबपतितौ जात्यङ्गवधिरौ तथा ।
उन्मत्त-जडमुकाश्च ये च केचिन् निरिन्द्रियाः ।।”

— मनुः —

Meaning—“An important person, and an outcaste are excluded from a share of the heritage, and so are those deaf and blind from birth, as well as mad man-idiots-and-the dumb and others that are devoid of an organ of sense or action.

— Manu —

३. “मृते पितरि न क्लीब-कुष्ठ्यन्मत्त-जडाङ्गकाः ।

पतितः पतितापत्यं लिङ्गी दयांशभागिनः ।।

तेषां पतितवर्ज्येभ्यो भक्तवत्सलं प्रदीयते ।

तत्र सुताः पितृदायांशं लभेरन् दोषवर्जिताः ।।

— देवलः —

Meaning—“When the father is dead an important person, a leper, a mad man, an idiot, a blind man, an outcaste, the offspring of an outcaste and a person wearing the token of a religious order are not entitled to a share of the heritage : food and raiment should be given to them excepting the outcaste ; but the sons of such persons being free from similar defects shall obtain their father's share of the inheritance.

— Devala —

(Causes of exclusion) Some of the texts regarding exclusion from inheritance are cited above. The causes of exclusion as per Hindu law may be classified as follows : —

1. **Sex :** Excepting those, expressly mentioned in the texts, females are generally excluded from inheritance.
2. **Religious :**
 - (a) Irreligion or renunciation of religion.
 - (b) Sins, causing exclusion from membership of a religious community or degradation.
3. **Moral :**
 - (a) Unchastity.
 - (b) Addiction to vices.
 - (c) Enmity to father.
 - (d) Enmity to propitius.
4. **Mental :**
 - (a) Insanity.
 - (b) Idiocy.
5. **Physical :**
 - (a) Blindness.
 - (b) Deafness.
 - (c) Dumbness.
 - (d) Lameness.
 - (e) Impotency.
 - (f) Leprosy.
 - (g) Other incurable diseases.

The rules of exclusion from inheritance have undergone a great change since the passing of the (i) Caste Disabilities Removal Act, 1850 and (ii) Hindu Inheritance (Removal of Disabilities)⁽¹⁾ Act, 1928. Moreover, High Courts also differed widely regarding the causes of exclusion from inheritance.

After passing of the Caste Disabilities Removal Act (Freedom of Religion Act)⁽²⁾ 1850, change of religion or loss of caste is no ground for exclusion.

-
1. (Removal of Disabilities)
 2. (Freedom of Religion Act)

Under the Hindu Inheritance (Removal of Disabilities) Act-1928, no person other than one "who is or has been, from birth, a lunatic or idiot" is excluded from inheritance. But this Act does not apply to any person governed by the Dayabhaga school of Hindu law.

Reviewing the above Acts and the decisions of different High Courts the causes of exclusion may be summarised as follows :—

(a) Under both the schools :—

1. Sex : Excepting those expressly named in the texts, females are generally excluded from inheritance. Of course, Mitakshara recognises a larger number of female heirs than Dayabhaga.

2. Unchastity : The condition of unchastity is applicable only to the widow under Mitakshara whereas under Dayabhaga, it applies not only to the widow but also to other female heirs. (*Sundari V. Pitambari* (1905) 32.Cal.871).⁽³⁾ But once the estate has vested in any female heir it cannot be divested by her subsequent unchastity. (*Moniram V. Keri Kolutani* (1880) 5. Cal.776).⁽⁴⁾ Unchastity excludes a female from inheriting to a male, but not to a female. It is no bar to inheriting *stridhana*, even according to Dayabhaga school. (*Nagendra V. Benoy* (1903) 30.Cal.521).⁽⁵⁾

3. Change of religion and loss of caste : These have ceased to be the causes of exclusion since the passing of the Caste Disabilities Removal Act-1850. The Act only protects the actual person who changes the religion or has been excluded from the communion of any religion or has been deprived of caste.

3. (*Sundari V. Pitambari* (1905) 32.Cal.871).

4. (*Moniram V. Keri Kolutani* (1880) 5. Cal.776).

5. (*Nagendra V. Benoy* (1903) 30.Cal.521).

Where the property of a Muslim, converted from Hinduism, has passed to his descendants, Hindu collaterals cannot claim, by virtue of his Act, to succeed under Hindu law. (*Mitar Sen Singh V. Maqbul Hassan* (1930) 57.I.A.313).⁽⁶⁾

Once a person has changed his religion and his personal law, that law will govern the rights of succession of his children. (1930) 57.I.A.313.

(a) **X** and his son **Y** are the members of a joint family. **X** becomes a Muslim. The conversion effects as a separation only, in the family and one half of the property vests immediately in **X** and the other half in **Y**. (*Khunni Lal V. Govind* (1911) 33.All. 356).⁽⁷⁾

(b) **A** married Hindu becomes a convert to Islam and marries a Muslim wife and has children by her. On his death the property will go to the Muslim wife and children and not to his Hindu wife. (*Chedambaram V. Ma Nyein Me* (1928) 6.Rng.243).⁽⁸⁾

(c) Of two Hindu brothers **A** and **B**, **B** becomes a convert to Islam. A son, **C** is born to **B**. **B** dies leaving his Muslim son, **C**. **A** dies leaving his widow. After the widow's death, **C** claims the property of **A** as his brother's son. **C** is not entitled to succeed.

4. Enmity to father and enmity to propositus (Murder) :

A murderer is not only disqualified to inherit under Hindu law but also upon the principles of justice, equity and good conscience. Further, no title of the estate of the murdered man can be claimed through the murderer. (*Kenchava V. Girimalappa* (1924) 51.I.A.368).⁽⁹⁾ The result is that not only is the murderer excluded from inheritance, but also his son (*Muhammad Khan V. Sis Banu* (1906) Punj Rec. No 41), or sister (1924) 51.I.A.368),⁽¹⁰⁾ or any other person claiming through him.

6. (*Mitar Sen Singh V. Maqbul Hassan* (1930) 57.I.A.313).

7. (*Khunni Lal V. Govind* (1911) 33.All. 356).

8. (*Chedambaram V. Ma Nyein Me* (1928) 6.Rng.243).

9. (*Kenchava V. Girimalappa* (1924) 51.I.A.368).

10. (*Muhammad Khan V. Sis Banu* (1906) Punj Rec. No 41), or sister (1924) 51.I.A.368).

5. Adoption of religious order : Where a person enters a religious order renouncing all worldly affairs, he is excluded from inheritance and from a share on partition.

(b) Under Mitakshara school only :

1. Insanity and idiocy : Since 20th September, 1928 a person, who is and has been from birth a lunatic or idiot, is excluded from inheritance or from any right or share in the joint family property.

(c) Under Dayabhaga school only :

1. Bindness, deafness and dumbness : These defects exclude an heir from inheritance provided the defect is both congenital and incurable. (*Anukul Chandra V. Surendra* (1939) 1.Cal.592).¹¹

2. Lameness, impotency, want of any limb or organ :

Persons who are lame or impotent and those who have no nose or tongue are excluded from inheritance provided the defect is congenital. (*Venkata V. Purushottama* (1903) 26.Mad. 133).¹²

3. Insanity : It need not be congenital or incurable. It is enough if it exists at the time when succession opens. (*Bapuji V. Dattu* (1923) 47.Bom.707 ; *Umapershad V. Girish Chandra* (1884) 10.Cal.630).¹³

4. Idiocy : Provided it is congenital, complete and absolute. (*Ran Bijai V. Jagat Pal* (1891) 18.Cal.111.P.C.).¹⁴

5. Leprosy : Provided it is of virulent type, and incurable; it need not be congenital. (*Karali V. Ashutosh* (1923) 50.Cal.604).¹⁵

6. Other incurable diseases : It is difficult to say whether other incurable diseases disqualify a person from inheritance. In such a case strictest proof of the incurability of the disease must be given. (*Ananta V. Ramabai*. 1.B.554).¹⁶

11. (*Anukul Chandra V. Surendra* (1939) 1.Cal.592).

12. (*Venkata V. Purushottama* (1903) 26.Mad. 133).

13. (*Bapuji V. Dattu* (1923) 47.Bom.707 ; *Umapershad V. Girish Chandra* (1884) 10.Cal.630).

14. (*Ran Bijai V. Jagat Pal* (1891) 18.Cal.111.P.C.).

15. (*Karali V. Ashutosh* (1923) 50.Cal.604).

16. (*Ananta V. Ramabai*. 1.B.554).

The disabilities which exclude a male from inheritance, also exclude a female from inheritance. (*Bakubai V. Manchhabai* (1864) 2.Bom. H.C.5).⁽¹⁷⁾

(Exclusion not total.) Persons excluded from inheritance or from participation in shares on partition are nevertheless entitled to maintenance. Not only excluded persons but their wives and children also are entitled to such maintenance. A *Sudru* cannot enter the order of *Yati* or *Sanyasi* unless approved by the usage or custom prevailing in the community to which he belongs. Hence the question of exclusion, for adoption of religious order, does not apply to a *Sudra*.

(Effect of disability) The disqualified heir transmits no interest to his heir. (*Musst. Bodha Kuer V. Musst. Sohadra Kuer* (1931) 11.Pat.35).⁽¹⁸⁾ If an heir is disqualified, the next heir of the deceased succeeds, as if the disqualified person were dead. (*Bodhnarain V. Omrao* (1870) 13.M.I.A.519).⁽¹⁹⁾

(Disqualification only personal) The legitimate issues of the disqualified persons are not affected since the disability is regarded as purely personal. But the adopted sons of the disqualified persons are not entitled to succeed. (Mit. 11, 10, 11).⁽²⁰⁾

• Illustrations.

(a) A has a son, B and a grandson, C. B is insane from birth. After the death of A, C will succeed.

(b) A has a son, B, a daughter, D and a grandson (who is the adopted son of B), C, B is an idiot from birth. After the death of A his daughter, D will succeed.

17. (*Bakubai V. Manchhabai* (1864) 2.Bom. H.C.5).

18. (*Musst. Bodha Kuer V. Musst. Sohadra Kuer* (1931) 11.Pat.35).

19. (*Bodhnarain V. Omrao* (1870) 13.M.I.A.519).

20. (Mit. 11, 10, 11).

(Once vested cannot be divested.) A person, to whom property has once vested is not divested by any subsequent disability. Similarly where the disability is removed subsequent to the opening of the inheritance, the persons to whom the property has already vested, cannot be divested. If a son is born to the disqualified heir after opening of the succession the son is not entitled to inherit, so as to divest the estate already vested, in another. (*Kalidas V. Krishan* (1869) 2. Beng.L.R. [F.B.] 103).⁽²¹⁾

(Exclusion from partition.) A disability which excludes a person from inheritance also excludes him from a share of joint family property on partition. (*Ram Soondar V. Ram Sahye* (1882) 8.Cal.919).⁽²²⁾

According to the High Court of Calcutta and Allahabad a member of a joint family who was *not born a lunatic* but is a lunatic *at the time of partition* is not entitled to claim his share by partition. (*Ram Soonder V. Ra. Sahaya ; Bhagwati Saran Singh V. Parameshari Nandar Singh* (1942) All.518).⁽²³⁾

(Bairagis or vaishnavas) In Bangladesh and in West Bengal of India there are persons known as *Bairagis*. They belong to the *Vaishnava* sect and do not renounce the wordly affairs totally ; and also do not relinquish property. Such a *Bairagi* is not excluded from inheritance and his property passes, on his death, to his ordinary relations. (*Juggunath V. Bidiamundi* 10.W.R.197).⁽²⁴⁾

(Onus). The onus of proving disqualification lies on the person who seeks to exclude one who would be an heir, should no cause of exclusion be established. The presumption of Hindu law is against disqualification. (*Chunder V. Kristo*. 18.W.R.375).⁽²⁵⁾

21. (*Kalidas V. Krishan* (1869) 2. Beng.L.R. [F.B.] 103).

22. (*Ram Soondar V. Ram Sahye* (1882) 8.Cal.919).

23. (*Ram Soonder V. Ran Sahaya ; Bhagwati Saran Singh V. Parameshari Nandar Singh* (1942) All.518).

24. (*Juggunath V. Bidiamundi* 10.W.R.197).

25. (*Chunder V. Kristo*. 18.W.R.375).

CHAPTER VIII

STRIDHANAM AND FEMALE HEIRS

The texts of eight *Rishis* (sages) are referred to in defining *stridhanam*. These *Rishis* are (i) *Manu* (ii) *Narada* (iii) *Vishnu* (iv) *Katyayana* (v) *Apastamba* (vi) *Vyasa* (vii) *Devala* and (viii) *Yajnavalkya*. Some of the texts in this regard are reproduced below :-

১. “অধ্যগ্ন্যাধ্যাবাহনিকং দস্তঞ্চ প্রীতিতঃ জ্বিয়েঃ ।

ভাতৃ-মাতৃ-পিতৃ-প্রাণ্ডং ষড়্-বিধং স্ত্রীধনং স্মৃতং ।”

— মনুকাত্যায়নৌ —

Meaning-“What was given before the nuptial fire, what was presented in the bridal procession, what has been conferred on the wife through affection and what has been received by her from her brother, her mother or her father, are ordained the sixfold *stridhanam* or woman’s property.”

— Manu and Katyayana —

২. “পিতৃ-মাতৃ-পতি-ভ্রাতৃদস্তম্ অধ্যগ্ন্যুপাগতং ।

আধিবেদনিকাদ্যঞ্চ স্ত্রীধনং পরিকীর্তিতং ।”

— যাজ্ঞবল্ক্যঃ —

Meaning-“What is given by her father, mother, husband, or what is received before the nuptial fire, or what is presented to her, on her husband’s marriage to another wife, or the like, (*adya*) is denominated *stridhanam* or woman’s property.”

— Yajnavalkya —

(*Six kinds of stridhanam.*) It is clear from the above texts that originally six descriptions of properties were recognised as

stridhanam. These consisted of gift received by a woman from her (i) father, (ii) mother, (iii) brother, (iv) husband as well as (v) the gift received before the nuptial fire (*adhyagni*) and the (vi) gifts received when the bride was taken to her father-in-law's house. The word *adya* (which means and the like) in the text of *Yajnavalkya* (cited in No.2 above) was interpreted in various ways by the commentators and some more items were, subsequently, added to the list.

(Meaning of stridhanam.) Enumeration of stridhanam : Literally, the word *stridhanam* means *woman's property*. But the word is used in different senses in different schools of Hindu law. In a particular property, a woman may have a *limited* or an *absolute* interest. *Stridhana* belonging to a woman, is a property of which she is the *absolute owner* and *which she may dispose of at any time at her pleasure*. Moreover, *stridhana* of every description passes, on her death, *to her heirs* and not to the *heir of the person from whom such property was acquired*.

(Property regarded as stridhanam.) The following descriptions of property constitute the *stridhana* of a woman :—

1. Yautaka (gift) : This includes :

(a) All gifts before the nuptial fire (*adhyagni*) or at the actual ceremony of marriage.

(b) Gifts received in her father's house either before or after the actual marriage ceremony when various other rites, appurtenant to marriage are performed, as well as the gifts received by the bride when she is taken to her father-in-law's house just after the nuptial ceremony. *Adhyabhanika* or gifts in the bridal procession come under it. But the term *adhyabhanika* actually means the gifts presented to the bride at the time of *dwiragamana* or second coming to her father-in-law's house after attaining puberty. In

modern times marriage of girls in their infancy is a rarity. So the gifts presented to the bride when she is *conveyed for the first time* to her father-in-law's house, house, *just after the nuptial ceremony*, should be regarded as *yautaka*, and the gifts presented to her at the time of *dwiragamana* or second coming to her father-in-law's house (for residing there permanently) should be regarded as *adhyabahanika* or gift in the bridal procession. (*Churamon V. Gopi* 10.C.L.J.545).⁽¹⁾

According to the Calcutta High Court all gifts made during the continuance of the marriage ceremony i.e. the ceremonies beginning with *Sraddha* and ending with that of prostrating before the husband are *Yautaka*. (*Bistoo Prasad V. Radhasundar* (1871) 16.W.R.115).⁽²⁾

2. Sulka : The bride's price is known as *sulka*. It is *stridhana* according to *Vishnu* and *Devala*.

On the grounds of justice and equity the bridegroom's price also should be regarded as *stridhana*. Moreover, what is presented to the husband of a daughter is *stridhana*, according to *Dayabhaga* and it goes to her offspring. (D.B.IV, 1, 17).⁽³⁾

3. Adhyabahanika : It consists of what is given to the bride when she is conveyed from her father's to her father-in-law's house. In Bangladesh there are two occasions for such gifts : In the first occasion the bride is taken to her father-in-law's house just after the nuptial ceremony to stay there only for a few days ; in the second occasion, which is known as *dwiragamana* or second coming, the bride is conveyed to her father-in-law's house for permanently residing there. In the second occasion also the bride receives some gifts from her father, father-in-law, and other relations.

1. (*Churamon V. Gopi* 10.C.L.J.545).

2. (*Bistoo Prasad V. Radhasundar* (1871) 16.W.R.115).

3. (D.B.IV, 1, 17).

In Bihar and N.W. Provinces there is an usage according to which the bride is not taken to her father-in-law's house just after marriage but she goes there for the first time after marriage but she goes there for the first time after attaining puberty for permanently residing with her husband. This is called *gawna* or *going* ceremony ; when some property is usually given to her by her parents and relations and this is called *gift in the bridal procession*. (*Churamon V. Gopi*, 10.C.L.J.545).⁽⁴⁾

4. Anvadheyaka : It means *gift subsequent*. According to *Bhrigu*, gift received by a woman, *after* her marriage, from her husband, parents or other relations is *anadheyaka*. The term is used in contra-distinction to *yautaka* or gift made to a woman at the time of marriage. Under Dayabhaga school, the courses of descent of these two descriptions of *stridhana* are different. As per texts and judicial decisions gift received by a woman, after performance of all the ceremonies and rites appurtenant to marriage, is *anvadheyaka*. So a gift of immoveable property, seven years after the marriage, by her brother in fulfilment of a promise made at the time of marriage, is *anvadheyaka* and not *yautaka*. (*Mahendra V. Girish* 19.C.W.N. 1287).⁽⁵⁾

The gift of property to the wife, after marriage, by her husband has been held to be her *stridhana* under this class. (*Jagannath V. Narayana* 12.Bom.L.R.545 ; see also *Ram Gopal V. Narain* (1906) 33.Cal.315).⁽⁶⁾ According to Dayabhaga school gifts from relations other than the father, fall under the category of *ayautaka* and under this school, the courses of descent of *anvadheyaka* from the father and *anvadheyaka* from other relations are different. (See *Prosanno V. Kamkshya* 33.Cal.32).⁽⁷⁾

4. (*Churamon V. Gopi*, 10.C.L.J.545).

5. (*Mahendra V. Girish* 19.C.W.N. 1287).

6. (*Jagannath V. Narayana* 12.Bom.L.R.545 ; see also *Ram Gopal V. Narain* (1906) 33.Cal.315).

7. (See *Prosanno V. Kamkshya* 33.Cal.32).

5. **Adhivedanika** : It is the gift which a husband is to make to his wife on the occasion of marrying another wife.

6. **Vritti** : Property or subsistence, given in lieu of maintenance is called *vritti*. It is *stridhana* according to all the schools. (*Court of Wards V. Mohessur* (1871) 16.W.R.76).⁽⁸⁾ Immoveable property transferred to a woman by way of absolute gift in lieu of maintenance is *stridhana* under this class. (*Debi Mangal Prasad V. Mahadeo Prasad* (1912) 34.All.234).⁽⁹⁾ It does not make any difference whether the maintenance is awarded during coverture or during widowhood. (1893) 17.Bom.758.⁽¹⁰⁾

7. **Ornaments** : All ornaments, except the family jewels, which any woman of the family is allowed to wear on particular occasions, are *stridhana*. In *other* words ornaments received by a woman, as *absolute gift*, from her husband or other relations are *stridhana*.

7. Acquisitions by practice of mechanical arts :

These acquisitions during maidenhood or widowhood are *stridhana* according to all the schools. Such acquisitions during *coverture* are *stridhana* according to Bombay, Benares and Madras schools but not according to Dayabhaga and Mithila schools. But under Bayaghaga, such property becomes *stridhana* after her husband's death. (*Ram Gopal V. Narain* (1906) 33.Cal. 315).⁽¹¹⁾

8. (*Court of Wards V. Mohessur* (1871) 16.W.R.76).

9. (*Debi Mangal Prasad V. Mahadeo Prasad* (1912) 34.All.234).

10. (1893) 17.Bom.758.

11. (*Ram Gopal V. Narain* (1906) 33.Cal. 315).

8. Gift from strangers : Gift by strangers i.e. by one who is not a relation, belongs to her husband and cannot properly be called her *stridhana*. But properties given to a Hindu female by strangers during maidenhood, before nuptial fire or at the bridal procession are her *stridhana* according to all the schools. Properties given or bequeathed to a Hindu female by a stranger, during widowhood are also her *stridhana*. (*Brij Indar V. Janki koer* (1877) 5.I.A.1).⁽¹²⁾ Property given by strangers during *coverture* is *stridhana* according to Bombay Benares and Madras schools. Under Dayabhaga, such property becomes *stridhana* after husband's death.

9. Saudayika : Gifts by affectionate kindred or near relations are known as *saudayika*. These are *stridhana* according to all the schools and the husband has no right of control over these properties. (*Muthukaruppa V. Sellathammal*. (39.M.298).⁽¹³⁾

10. Husband's gifts : So far the moveable property is concerned, such gift is regarded as *stridhana* under all the schools. Immoveable property given or bequeathed to a Hindu female by her husband is *stridhana* according to all the schools except Dayabhaga. Under Dayabhaga school, immoveable property given or bequeathed by a husband to his wife is not her *stridhana*. (See *Venkata V. Venkata* (1877) 1, Mad.281).⁽¹⁴⁾ It is based on the following text of *Narada*, cited by the author of Dayabhaga. (See *Colebrooke's Digest Book IV P.477*).⁽¹⁵⁾

“ভর্তা প্ৰীতেন যদ-দত্তং ত্বিষ্মৈ তস্মিন্ মৃত্যে পিতং
সা যথাকামম্ অনীয়াদ্ বা স্বাবরাদ্ বা স্বাবরাদ্-ঋতে ।।”

— নারদঃ —

12. (*Brij Indar V. Janki koer* (1877) 5.I.A.1).

13. (*Muthukaruppa V. Sellathammal*. (39.M.298).

14. (See *Venkata V. Venkata* (1877) 1, Mad.281).

15. (See *Colebrooke's Digest Book IV P.477*).

Meaning—“What is given to the wife by the husband through affection, she may, even when he is dead, consume as she pleases or may give it away, excepting immoveable property.”

—Narada—

Insurance policy assigned to the wife by the husband is her *stridhana*. 1946 (Sind) 171.

11. Property obtained by adverse possession :

Such property obtained by a Hindu female during maidenhood, coverture or widowhood becomes her *stridhana* according to all the schools. (*Mohim Chunder V. Kashi Kanta* (1897) 2.C.W.N. 161, 162).⁽¹⁶⁾

12. Property purchased with *stridhana* and the savings of the income of the *stridhana* :

These constitute *stridhana* according to all the schools. (*Luchman V. Kally Churun* (1873) 19.W.R.292.P.C).⁽¹⁷⁾

13. Property obtained by compromise :

Whether such property is *stridhana* or not depends upon the terms of the deed and other circumstances. For example, if she takes such property by giving up all rights in relation to her *stridhana*, she takes it absolutely, and it would be regarded as *stridhana* according to all the schools. (*Soudamini Dasi V. Administrator General of Bengal* (1893) 20Cal.433).⁽¹⁸⁾

14. Property acquired by inheritance :

According to Dayabhaga, Benares, Mithila and Madras schools, such property acquired by a woman does not constitute her *stridhana*. It is immaterial whether the property was inherited from a male or from a female. She acquires only a limited interest in it.

16. (*Mohim Chunder V. Kashi Kanta* (1897) 2.C.W.N. 161, 162).

17. (*Luchman V. Kally Churun* (1873) 19.W.R.292.P.C).

18. (*Soudamini Dasi V. Administrator General of Bengal* (1893) 20Cal.433).

According to Bombay school property inherited by a woman *from a female* becomes her *stridhana* in all cases. As regards property inherited *from a male*, it becomes her *stridhana* excepting where it is inherited by the deceased's widow, mother or other female relations, who entered his *gotra* by marriage.

15. Property obtained by partition :

According to Dayabhaga school when a share is allotted to a mother or father's mother on partition of joint family property, it is given to her in lieu of *maintenance*. Hence it is not her *stridhana*. (*Sorolah V. Bhoobun* (1888) 15.Cal.292).⁽¹⁹⁾ Under Mitakshara school also such property does not constitute her *stridhana*. (*Debi Mangal Prasad V. Mahadeo Prasad* (1912) 34.All.234).⁽²⁰⁾ Hence it may be concluded that property obtained by a woman on partition is not her *stridhana* unless it is given *to her absolutely*.

16. Property acquired from other sources :

Whether property acquired by a Hindu female, from sources, other than those mentioned above, constitute her *stridhana* or not depends upon the circumstances in which it was acquired. The primary test being whether she has the *right to dispose of such property at will or not*.

17. Stridhana by custom : The widow of a separated Hindu, who dies without leaving male issue, may be custom inherit his estate as *stridhana*. (*Hukum Chand V. Sital Prasad* (1928) 50.All.232).⁽²¹⁾

(Maiden's property and property acquired during widowhood. Except property inherited by her, all property of a maiden, *however acquired*, constitute her *stridhana*. But in Bombay school even the property inherited by a maiden is her *stridhana*.

19. (*Sorolah V. Bhoobun* (1888) 15.Cal.292).

20. (*Debi Mangal Prasad V. Mahadeo Prasad* (1912) 34.All.234).

21. (*Hukum Chand V. Sital Prasad* (1928) 50.All.232).

Similarly all property acquired by a widow constitute her *stridhana* except : —

(i) According to Bombay school, property inherited by a female, who entered the deceased's *gotra* by marriage (such as widow mother, grand-mother etc.) does not constitute her *stridhana*.

(ii) According to other schools, property inherited by a female *in any capacity* and property obtained by her on partition of joint family property do not constitute her *stridhana*.

(Unchastity) Unchastity does not disqualify a woman from inheriting *stridhana* property. (*Nagendra V. Benoy* (1903) 30.Cal.521).⁽²²⁾

(Presumptions as to widow's property.) If the widow is found in the possession of the property, of the acquisition of which no account is given, then the mere fact that her husband died possessed of considerable property, raised no presumption that the property found in her possession originally belonged to her husband. (*Diwan Ram V. Indrapal* (1899) 26.Cal.871).⁽²³⁾ Where a woman has been in possession of property, there is no presumption that she had only a limited interest in it. (*Belo V. Parbati* (1940) All.371).⁽²⁴⁾

Stridhana according to different schools :

(Mitakshara) Mitakshara says, while commenting on the text of *Yajnavalkya* (text No. 2.supra),⁽²⁵⁾ that the term *stridhana* bears no *technical* meaning and that the word *adya* (or the like) includes property that a woman may acquire "by inheritance, purchase, partition, sizure or finding." Mitakshara further says that *Manu* and other sages also intended to lay down the same rule ; the enumeration by them of six-fold *stridhanam* is illustrative and not restrictive. (Mit. Chap.2.Sec.11.paras 2-4).⁽²⁶⁾

22. (*Nagendra V. Benoy* (1903) 30.Cal.521).

23. (*Diwan Ram V. Indrapal* (1899) 26.Cal.871).

24. (*Belo V. Parbati* (1940) All.371).

25. (text No. 2.supra),

26. (Mit. Chap.2.Sec.11.paras 2-4).

Here, the commentator changes the law by the fiction of interpretation and ignores the existence of any disability or incapacity in woman with respect to the ownership of property, such as may appear from a perusal of the texts of the Codes.

The result is that according to Mitakshara, *property of any description belonging to a woman is her stridhanam*.

(P.C. on Mitakshara stridhanam) The Privy Council has declined to accept the above definition of *stridhana* given by Mitakshara. It has held that property inherited by a woman from a male (*Bhugwandeem V. Myna Baee* (1867) 11.M.I.A 487)⁽²⁷⁾ or from a female (*Sheo Shankar V. Debi Sahai* (1903) 30.I.A.202)⁽²⁸⁾ or the share obtained by a widow on partition of the joint family property (*Debi Mangal Prasad V. Mahadeo Prasad* (1912) 39.I.A.121),⁽²⁹⁾ is not her *stridhana*. From the above decisions it may be concluded that the whole of the *Vijnaneswara's* expansion of *adya*, in enumerating the *stridhana* has been discarded. Hence according to Mitakshara the following descriptions of property of a woman constitute her *stridhana*.

1. Gifts from relations made *at any time* and gifts from strangers made *before the nuptial fire* and at the *bridal procession*.

2. Property acquired by a female during maidenhood or widowhood, though it be acquired by gift from strangers or by mechanical arts.

3. A gift or property made by the husband at the time of his second marriage, i.e. gratuity on account of supersession.

4. Property purchased with *stridhana* and the savings of the come of *stridhana*.

5. Property obtained by adverse possession.

27. (*Bhugwandeem V. Myna Baee* (1867) 11.M.I.A 487)

28. (*Sheo Shankar V. Debi Sahai* (1903) 30.I.A.202)

29. (*Debi Mangal Prasad V. Mahadeo Prasad* (1912) 39.I.A.121),

6. Whether property obtained by compromise or property acquired from other sources is *stridhana* or not depends on the circumstances of each case. (See enumeration of *stridhana* supra).⁽³⁰⁾

7. Property inherited by the widow of a separated male Hindu, who died without leaving any male issue, may, by custom, become her *stridhana*.

(Benares and Madras schools) The Benares and Madras schools adopt and support the definition of *stridhana* given in the Mitakshara.

(Bombay school.) Property which is *stridhana* according to Mitakshara, is also *stridhana* according to Bombay school. In addition to these. Bombay school recognises as *stridhana*, every kind of property inherited by a woman, except where the woman inheriting the property, is a widow, mother, grand-mother or any other female, who entered the *gotra* of the deceased by marriage.

(Mithila school) The Mithila school does not recognise any *nontechnical stridhana* and it confines *stridhana* within the definitions of the *Smriti* writers. Hence under this school the following eleven kinds of property of a woman constitute her *stridhana* : —

(i) Gifts before the nuptial fire (*adhyagni*) i.e. gifts at the time of marriage.

(ii) Gifts made at the bridal procession (*adhyavahanika*) i.e. gifts made at the time when the bride is conveyed from her father to her father-in-law's house for permanently residing there.

(iii) Gifts made in token of love by her father-in-law or mother-in-law, and those made at the time of her making obeisance at the feet of elders (*padavandanika*).

(iv) Gifts made by the father (*matridatta*).

(v) Gifts made by the mother (*matridatta*).

30. (See enumeration of *stridhana* supra).

(vi) Gifts made by a brother (*bhratridatta*).

(vii-ix) Gifts made on supersession (*adhivedanika*), gifts subsequent (*anvadheyaka*), and *sulka* or bride's price.

(x-xi) Ornaments and *food and vestures* or funds appropriated to a woman's support.

In other words it may be stated that, according to Mithila school, gifts from relations made at any time, gifts from strangers made before the nuptial fire, and at the bridal procession, gifts made on supersession, gifts subsequent, *sulka*, ornaments and *food and vesture* constitute the *stridhana*.

(*Dayabhaga school.*) *Jimutavahana*, the author of the *Dayabhaga*, declines to accept the definition of *stridhana* given by *Janavalkya*, and says, "That alone is *stridhana* which a woman has power to give, sell or use independently of her husband's control." Immediately after defining *stridhana* he cites the texts of *Katyayana* and *Narada* in support of his statement. The text of *Narada* has already been cited in "Enumeration of *stridhana*" (Gift from Husband, supra). The text of *Katyayana* runs thus :-

“প্রাণ্ডং শিল্পৈস্ত যদ-বিভং প্রীত্যা চৈব যদ-অন্যতঃ ।

ভৰ্ত্ত্বঃ স্বাম্যং ভবেৎ তত্র শেষস্ত দ্বীধনং স্মৃতং ।।

— কাত্যায়নঃ —

Meaning-“The wealth which is earned by mechanical arts, or which is received through affection from any other (than a relation), becomes the subject of husband's ownership : but the rest is ordained *stridhanam*.

— *Katyayana* cited in D.B.IV, 1, 19 —

From the above text of *Katyayana* it is clear that a woman can dispose of *only the gifts from relations (saudayika)* at her pleasure and without her husband's consent. She cannot dispose of any other kinds of property such as *gift from strangers, or property*

acquired by mechanical arts, without her husband's consent. *Jimutavahana* does not enumerate the *stridhana*; but in the light of the texts mentioned above, and what more he (*Jimutavahana*) says in the chapter on *stridhana*, it may be deduced that under Dayabhaga school ;

(a) All gifts received by a woman from her relations, *at any time except a gift of immoveable property made by the husband* ; and that gifts from strangers, made before the *nuptial fire (adhyagni)* and at the *bridal procession (adhyavahanika)* constitute her *stridhana* ;

(b) and that the following descriptions of property are not *stridhana* ;

(i) property inherited by a woman.

(ii) property obtained by her on partition.

(iii) gifts from strangers, except those made before the nuptial fire or at the bridal procession ; and

(iv) property acquired by her by *mechanical arts*. (*Ram Gopal V. Narain* (1906) 33.Cal.315).⁽³¹⁾

A gift by a father to his daughter even in the form of *maurasi mokrari lease* constitutes her *stridhana*. (*Ram Gopal V. Narain* (1906) 33.Cal.315).⁽³²⁾

Property of a woman, belonging to her before marriage is *stridhana*. (19.D.L.R.261).⁽³³⁾

Stridhana and widow's estate :

The word *stri* means woman and the word *dhana* means property or riches. Hence *stridhana* literally means *woman's property*. But the term *stridhana* is used in different sense in different schools of Hindu law.

31. (*Ram Gopal V. Narain* (1906) 33.Cal.315).

32. (*Ram Gopal V. Narain* (1906) 33.Cal.315).

33. (19.D.L.R.261).

(*Stridhana.*) In a particular property a woman may have a *limited* or an *absolute* interest. *Stridhana* belonging to a woman is a property of which she is the *absolute owner*. She may dispose of this property without the consent of her husband, during coverture (except in certain cases), and without the consent of any one during maidenhood or widowhood.

Stridhana of every description, passes on her death to *her heirs* and not to the *heir of the person from whom such property was acquired*.

(*Widow's estate.*) The expression widow's estate implies a *limited estate*. The widow may best be described as the owner of the widow's estate except that she cannot sell or otherwise alienate the *corpus* of the property but for *legal necessity* or for the *benefit of the estate* or with the *consent of the next reversiones*. The widow's position is like that of a legal representative. Rents Accruing from it are to be considered as part of the estate. The widow is liable to pay her husband's debts and the estate is liable to be attached in execution of simple money decree obtained against her husband. (*Phool Kunwar V. Rikhi Ram* (1935) 57.All.714).⁽³⁴⁾

Subject to the above restrictions on alienation, she holds the property absolutely and she completely represents it.

The entire estate being vested in her, she is entitled to manage the same but she must manage it *as a prudent owner would do*. She must not commit *waste* or do any act injurious to the reversion. Even if there be no reversioner, she cannot alienate the *corpus* of the property except for *legal necessity*. If she do so, then if there be no reversioners, the alienation may be set aside by the Crown or the State taking the property by escheat. (*Kundan V. Secretary of State* (1926)7. Lah. 543 ; 96.I.C.865).⁽³⁵⁾

34. (*Phool Kunwar V. Rikhi Ram* (1935) 57.All.714).

35. (*Kundan V. Secretary of State* (1926)7. Lah. 543 ; 96.I.C.865).

A widow cannot mortgage the widow's estate or make a gift of it or grant leases thereof for a long term. If she is dispossessed of any portion of the property by a third party, she can sue to recover it ; but if she allows the possession of such person to become adverse to her, the reversioners are not affected by such adverse possession and may sue for possession within 12 years from the date of her death. (*Ranchordas V. Parvatibai* (1899)23.Bom.725 ; *Aurabinda V. Manorama* (1928)55.Cal.903).⁽³⁶⁾

(Income of the property) She can sell her life interest in the property or mortgage it or make a gift of it to any one she likes. She is entitled to the *whole income* of the property. She can spend *the whole income in any way she likes*. She is not bound to pay husband's debts or maintain husband's relations *out of the income* of the property. She can throw the burden of all such charges on the *corpus* of the property and sell or mortgage the same to meet those expenses. The widow cannot by an act or declaration of her own, change the *character* of the property. (*Sham Lall V. Amarendra* (1896) 23.Cal.460, 473).⁽³⁷⁾

The incidents of the estate taken by other limited heris such as the mother, father, mother, daughter etc., (except in the Bombay school) are similar to those of the widow's estate.

Rights of a woman over her stridhana :

The rights of a woman over her *stridhana* may be summarised as follows :-

(Maidenhood) 1. During *maidenhood*, a Hindu female can dispose of her *stridhana* of every description at her pleasure. But so long as a Hindu female is a *minor* she cannot alienate her property except through her guardian, nor can she dispose of it by *will*.

36. (*Ranchordas V. Parvatibai* (1899)23.Bom.725 ; *Aurabinda V. Manorama* (1928)55.Cal.903).

37. (*Sham Lall V. Amarendra* (1896) 23.Cal.460, 473).

(*Coverture*) 2. As per texts, a Hindu female, while under protection of her husband, can dispose of only that kind of *stridhana*, which is called *saudayika*, except those made by the husband. *Saudayika* literally means a gift made through affection. It is a term applied to gifts made to a woman (i) before marriage (ii) at the time of marriage and (iii) after marriage by her parents and their relations, or by her husband and his relations: in other words it means gifts *from relations* and not gifts *from strangers*. It also includes *bequests* from relations. (*Judoo Nath V. Basanta Coomar* (1873) 11.Beng.L.R.286).⁽³⁸⁾

(*Saudayika*) It follows that as per texts a woman, during *coverture*, can dispose of *saudayika stridhana* received from relations other than the husband ; and that she cannot dispose of such *stridhana* received from her husband during *coverture*.

From the Judicial decisions it seems that the distinction between *saudayika* and *non-saudayika stridhana* is still maintained ; but the distinction between *saudayika* given by the husband and that given by other relations no longer stands. The rule now adopted by the Courts is to ascertain whether the gift passes an *absolute estate or a limited estate*. If it is an *absolute estate*, she can dispose of the property at her pleasure *whether the gift be from her husband or from other relations*. But if the gift passes a *limited estate* only, she cannot alienate the property. (*See Damodar V. Puramandas* (1883) 7.Bom.155;⁽³⁹⁾ *Judoo Nath V. Bussunt Coomar* (1873) 11.Beng. L.R.286).⁽⁴⁰⁾

38. (*Judoo Nath V. Basanta Coomar* (1873) 11.Beng.L.R.286).

39. (*See Damodar V. Puramandas* (1883) 7.Bom.155;

40. *Judoo Nath V. Bussunt Coomar* (1873) 11.Beng. L.R.286).

A woman can dispose of her *saudayika stridhana*, even during coverture, in any way she pleases, without the consent of her husband. (*Venkata V. Venkata* (1880) 2.Mad.333 [P.C.]).⁽⁴¹⁾ Her husband has no control over it, nor can he bind her by any dealings with it. (*Mahim V. Doorga* (1875) 23.W.R.184 [P.C.]).⁽⁴²⁾ But he can take it at the time of distress. This right to take is *personal* and if the husband does not choose to take it, it cannot be taken by his creditors in execution of a decree against him. (*Tukaram V. Gunaji* (1871) 8.Bom.H.C.A.C.129).⁽⁴³⁾

The word *take* means *taking and usin*; and if the husband takes his wife's property but does not actually use it or dispose of it in his lifetime, his creditors are not entitled to it, after his death. (*Nammalwar V. Thayarammal* (1927) 50.Mad.941 ; 105.I.C.793).⁽⁴⁴⁾

(Non-saudayika) A woman has got no power to dispose of *non-saudayika stridhana* i.e. gifts from strangers, property acquired by mechanical arts etc. during coverture without the consent of her husband, (*Bhou V. Raghunath* (1906) 30.Bom.229).⁽⁴⁵⁾ It is subject to her husband's dominion, and he is entitled to use it at his pleasure even if there be no distrers. (*Sarubhai Balakdas V. Narayandas Bairagi* (1943) Bom.314 ; 209.I.C.620).⁽⁴⁶⁾ But it is subject only to her husband's control and not to the control of any other person. After her husband's death, her power to dispose of it becomes *absolute* and she may dispose of it in any way she likes.

Though a woman cannot of dispose of *non-saudayika stridhana* without her husband's consent, on her death, whether she dies before (*Salema V. Lutchmana* (1898) 21. Mad.100)⁽⁴⁷⁾ or after her husband, it passes to her *stridhana heirs*.

41. (*Venkata V. Venkata* (1880) 2.Mad.333 [P.C.]).

42. (*Mahim V. Doorga* (1875) 23.W.R.184 [P.C.]).

43. (*Tukaram V. Gunaji* (1871) 8.Bom.H.C.A.C.129).

44. (*Nammalwar V. Thayarammal* (1927) 50.Mad.941 ; 105.I.C.793).

45. (*Bhou V. Raghunath* (1906) 30.Bom.229).

46. (*Sarubhai Balakdas V. Narayandas Bairagi* (1943) Bom.314; 209.I.C.620).

47. (*Salema V. Lutchmana* (1898) 21. Mad.100)

Property acquired by a Hindu female by *mechanical arts* (mechanical arts include spinning, painting etc.) or otherwise by her own exertions during coverture, is stridhana according to the Bombay, Benares and Madras (21.Mad 100)⁽⁴⁸⁾ schools but not according to Dayabhaga and Mithila schools. But if the woman survives her husband, then, it seems that according to Dayabhaga law such property becomes her *stridhana*. The phrase *by mechanical arts or otherwise by her own exertions during coverture*, probably includes the amount earned by a married woman by serving as a teacher, Public servant etc., and it may be deduced that such earnings do not become her *stridhana* under Dayabhaga *so long her husband or she is alive*. And she cannot dispose of such earnings, without her husband's consent during coverture under Bombay, Madras and Benares schools. It is doubtful whether such earnings become *stridhana* at all, under Mithila school.

(Widowhood) During widowhood, a Hindu female has got *absolute power* of disposal over every kind of *stridhana*, whether acquired before or after her husband's death. according to all the schools (*Brij Indar V. Janki* (1877) 1.Cal.L.R. 318 ; 5.I.A. 1,15),⁽⁴⁹⁾ except that under Dayabhaga school she cannot dispose of immoveables given by her husband.

SUCCESSION TO STRIDHANAM

১. “জনন্যাং সংস্থিতায়ান্ত সমং সবেবঁ সহোদরাঃ ।
 ভ্জেরন্ন মাতৃকং ঋক্খং ভগিন্যচ্চ সনাভয়ঃ ॥
 মাতৃক যৌতুকং যং স্যাৎ কুমারীভাগ এব সঃ ।
 স্ত্রিয়ান্ত যদ্ ভবেদ-বিস্তং পিত্রা দস্তং কথঞ্চন ।
 ব্রাহ্মণী তদ্-হরেৎ কন্যা তদপত্যস্য বা ভবেৎ ॥
 ব্রাহ্ম-দৈবার্ধ-গাঙ্কর্ব-প্রজাপত্যেষু যদ্ ধনং ।
 অপ্রদায়াম অতীতায়ং ভতুরেব তদ ইম্যতে ॥
 ষৎ ত্বস্যঃ স্যাদ্ ধনং দস্তং বিবাহেষবাসুরাদিষু ।
 অতীতায়াম্ অপ্রজায়ং মাতাপিত্রোস্তদিম্যতে ॥”

— মনুঃ —

48. (21.Mad 100)

49. (*Brij Indar V. Janki* (1877) 1.Cal.L.R. 318 ; 5.I.A. 1,15),

Meaning—After the death of the mother let all the the uterine brothers and sister equally divide the maternal estate. But the mother's *Yautaka* property (gift at the time of marriage) will go to her maiden daughter (s) only. The wealth of a woman, which has been, in any manner, given to her by her father will go to her *Brahmani* daughter or to her offspring. It is admitted that the property of a woman (married) in the *Brahma*, *Daiva Arsha*, *Gandharva* or *Prajapatya* form shall go to her husband, if she dies without issue. But the wealth given to a woman (married) in the forms of marriage called, *Asura* and the like (i.e. *Rakshasa* and *Paisacha*)⁽⁵⁰⁾ is ordained on her death, without issue, to become the property of her mother and father.

— Manu —

২. “স্বকথং মৃতায়ঃ কন্যায়ঃ গৃহীষ্যুঃ সোদরাঃ স্বয়ং ।

তদভাবে ভবেন্-মাতৃ-স্তদভাবে ভবেৎ পিতুঃ ॥

— বৌধায়নঃ —

Meaning—The wealth of a deceased maiden, let the uterine brothers themselves take ; on failure of them it shall belong to the mother ; in her default, it shall belong to the father.

— Baudhayana —

(General) It is evident from the above text of *Manu* that succession to a woman's *stridhana* varies according as she was married in an approved form (i.e. *Brahma*, *Daiva* etc.)⁽⁵¹⁾ or in an unapproved form (*Rakshasa*, *Paisacha* etc.) As per texts or *senior Katyayana* and *Katyayana*, it also varies according to the source from which the *stridhana* was received. The rules of descent also are different under different schools.

50. (i.e. *Rakshasa* and *Paisacha*)

51. (i.e. *Brahma*, *Daiva* etc.)

(*Maiden's property*) But all the schools follow the text of *Baudhayana* (cited in No. 2. above)⁽⁵²⁾ ; *Yajñavalkya* etc. regarding succession to the property of a maiden. A maiden's property passes, according to all the schools, in the following order.

1. Uterine brother.
2. Mother.
3. Father.

In default of them the nearest relations of the parents take according to Mitakshara school. The father's relations come first and in default of them the relations of the mother alone become heir. (43.Mad.32).⁽⁵³⁾

According to Dayabhaga school, the paternal relations must take a maiden's property in the same order in which they inherit a married woman's non-*yautaka* property, when she dies without leaving any issue of her (the married woman's)⁽⁵⁴⁾ own, and that of her brother and parents.

According to D.F. Mulla it should be in the following order.

4. Father's heirs in order of propinquity ; e.g. the full sisters of maiden's father were preferred to the half sister. (*Shakuntalabai V. The Court of Wards* (1942) Nag.629 ; 199.I.C.379).⁽⁵⁵⁾

5. Kinsmen of the deceased herself that is, her mother's heirs in order of propinquity. (*Shama Rao V. Raghunandan* (1939) Bom.228).⁽⁵⁶⁾

Property given to a damsel by an intending bridegroom before marriage must be returned to him on her death.

52. (cited in No. 2. above)

53. (43.Mad.32).

54. (the married woman's)

55. (*Shakuntalabai V. The Court of Wards* (1942) Nag.629 ; 199.I.C.379).

56. (*Shama Rao V. Raghunandan* (1939) Bom.228).

(*Sulka or bride's price*) The *sulka* passes in the following order : —

According to Mitakshara school : —

- (i) Uterine brother.
- (ii) Mother.
- (iii) Father.
- (iv) Father's heirs ; sapindas first, then samanodakas and after them bandhus.

(b) According to Dayabhaga school : —

- (i) Whole brother.
- (ii) Mother.
- (iii) Father.
- (iv) Husband.

Mitakshara succession to stridhana :

According to Mitakshara, succession to *stridhana* depends on two factors ; whether it is *sulka* or other than *sulka*.

(*Sulka.*) The order in which *sulka* devolves has already been discussed.

(*Other kinds of stridhana.*) *Stridhana* other than *sulka* passes in the following order : —

- (i) Maiden daughter.
- (ii) Married daughter. Among the married daughters those who are not provided for, are preferred to those who are provided for. (*Srimati Uma Debi V. Gokoolanund* (1878) 3. Cal.587⁽⁵⁷⁾ ; *Totawa V. Basawa* (1899) 23.Bom.229).⁽⁵⁸⁾
- (iii) Daughter's daughter. (*Matru Mal V. Meheri* (1940) All. 416).⁽⁵⁹⁾

57. (*Srimati Uma Debi V. Gokoolanund* (1878) 3. Cal.587

58. *Totawa V. Basawa* (1899) 23.Bom.229).

59. (*Matru Mal V. Meheri* (1940) All. 416).

(iv) Daughter's son. (1905.28.Mad.1).⁽⁶⁰⁾

(v) Son. (*Kuruppai V. Sankaranarayana* (1904) 27. Mad.300).⁽⁶¹⁾

(vi) Son's son. (*Ram Kali V. Gopal* (1926) 48. All.648).⁽⁶²⁾

In default of all of them i.e. if the woman dies without leaving any issue her *stridhana* goes :-

If she was married in an *approved* from (*Gurdial V. Bhagwan* (1927) 8.Lah.366 ; 101.I.C.850) ;⁽⁶³⁾

(a) to her husband (1909.33.Bom.452)⁽⁶⁴⁾ and after him to the husband's heirs (1906.30.Bom.431).⁽⁶⁵⁾ in the following order : —

1. Husband's son by another wife (3.I.C.750),⁽⁶⁶⁾ but not to his *illegitimate son* (1926.49.Mad.116) ;⁽⁶⁷⁾

2. his grand-son by another wife (1893.17.Bom.114) ;⁽⁶⁸⁾

3. his great-grand-son by another wife ;

4. his other wives (1906.30.Bom.333) ;⁽⁶⁹⁾

5. his daughter by another wife (1913.36.Mad 116) ;⁽⁷⁰⁾

6. his step-daughter's son ;

7-9 his father, his mother and his brother : a full brother takes before a half brother (1906.30.Bom.607) ;⁽⁷¹⁾

60. (1905.28.Mad.1).

61. (*Kuruppai V. Sankaranarayana* (1904) 27. Mad.300).

62. (*Ram Kali V. Gopal* (1926) 48. All.648).

63. (*Gurdial V. Bhagwan* (1927) 8.Lah.366 ; 101.I.C.850) ;

64. (1909.33.Bom.452)

65. (1906.30.Bom.431).

66. (3.I.C.750),

67. (1926.49.Mad.116) ;

68. (1893.17.Bom.114) ;

69. (1906.30.Bom.333) ;

70. (1913.36.Mad 116) ;

71. (1906.30.Bom.607) ;

10. his brother's son ;
11. his other *sapindas* ;
12. his *samanodakas* ;
13. his *bandhus*. (1906.28.All.345).⁽⁷²⁾

On failure of the husband's heirs, it goes to her blood relations (1921.45.Bom.1106)⁽⁷³⁾ in preference to the Crown or the State.

If she was married in an *unapproved* from (1908.32 Bom.409),⁽⁷⁴⁾ it goes to her mother, then to her father then to her father's heirs (1919.43.Bom.173),⁽⁷⁵⁾ i.e. to the deceased woman's brother, brother's son, step-mother (1935. 14.Pat.518),⁽⁷⁶⁾ sister, sister's son, grand-mother, paternal uncle, and her father's other *sapindas*, *samanodakas* and *bandhus* ; and then to the husband's heirs in preference to the Crown or the State (1939.Bom.97).⁽⁷⁷⁾

Benares and Madras school : Succession to the *stridhana* according to Benares school is governed by the law as expounded in the Mitakshara. As per Judicial decisions it seems that succession to *stridhana* as per Madras school is mainly governed by the law of Mitakshara school. (see 1898.21.Mad.58 ; 1906.29Mad.358).⁽⁷⁸⁾

Bombay School : In Bombay, Gujrat and Konkon *Mayukha* is of paramount authority whereas in other parts of Maharashtra Mitakshara is supreme. In places where Mitakshara is of paramount authority succession to *stridhana* is governed by the Mitakshara law.

72. (1906.28.All.345).

73. (1921.45.Bom.1106)

74. (1908.32 Bom.409),

75. (1919.43.Bom.173),

76. (1935. 14.Pat.518),

77. (1939.Bom.97).

78. (see 1898.21.Mad.58 ; 1906.29Mad.358).

According to *Mayukha*, *stridhana* devolves in the following order :—

1. Technical Stridhana : Technical *stridhana* means gifts and bequests from relations made at any time and gifts from strangers made before the nuptial fire or at the bridal procession.

(a) *Sulka* : (i) Uterine brother.

(ii) Mother.

(iii) Father.

(iv) Father's heirs i.e. his sapindas, samanodakas and bandhus.

(b) *Yautaka* : (i) Unmarried daughters. (1885.9.Bom.115).⁽⁷⁹⁾

(ii) Married daughters etc., as under the Mitakshara law.

(c) *Bhartridatta* and *anvadheyaka* :-*Bhartri* means husband and the word *bhartridatta* literally means gifts or bequests from the husband. The word *anvadheyaka* means gifts from relations subsequent to marriage.

(i) Sons and unmarried daughters succeed simultaneously and share equally. (1910.34.Bom.385).⁽⁸⁰⁾ In the absence of the unmarried daughters ;

(ii) sons and married daughters succeed simultaneously and share equally.

In the absence of sons and daughters ;

(iii) daughter's daughters and daughter's sons.

(iv) Son's sons. Failing all these, the *stridhana* (except *sulka*) devolves in the following order :-

If the marriage took place in an *approved form* :

(v) Husband (vi) Failing him to her heirs in the husband's family i.e. husband's heirs.

If the marriage took place in an *unapproved form* :

(vii) Mother (viii) Father (ix) Father's heirs.

79. (1885.9.Bom.115).

80. (1910.34.Bom.385).

(d) Other kinds of *technical stridhana* passes in the following order :-

- (i) Maiden daughters.
- (ii) Married daughters who are unprovided for.
- (iii) Married daughters who are provided for.
- (iv) Daughters' daughters and daughter's sons.
- (v) Sons. (vi) Son's son. Failing all these ; if she was married

in an *approved form* :

- (vii) Husband, (viii) Husband's heirs.

If she was married in an *unapproved form* :

- (ix) Mother (x) Father (xi) Father's heirs.

2. Non-technical stridhana : It passes in the following order :-

- (i) Sons. (ii) Sons' sons. (iii) Sons' sons' sons. (iv) Daughter.
- (v) Daughters' sons. (vi) Daughter's daughters. Failing all these ; if she was married in an *approved form* : (vii) Husband. (viii) Husband's heirs. If she was married in all *un-approved form* : (ix) Mother. (x) Father. (xi) Father's heirs.

Mithila school : The Mithila school does not recognise any *non-technical stridhana* and it divides *stridhana* into three classes

- (i) *Sulka* (ii) *Yautaka* and (iii) *Other technical stridhana*.

1. Sulka : *Sulka* passes in the same order as under other schools.

2. Yautaka : *Yautaka* passes in the following order :-

- (i) Maiden daughters.
- (ii) Married daughters.
- (iii) Daughter's daughters and then to daughters' sons as in the

Mitakshara.

3. Other technical stridhana : It passes in the following order :-

- (i) Sons and unmarried daughters succeed simultaneously and share equally. Failing all these :

- (ii) Sons and married daughters jointly.

(iii) Daughters' daughters. (iv) Daughters' sons.

If the woman dies without any issue, her *stridhana* (except *sulka*) devolves as under the Mitakshara.

Dayabhaga school : Dayabhaga divides *stridhana* into four classes :- (i) *sulka*. (ii) *Yautaka*. (iii) Gifts and bequests from the father after marriage (*anvadheyaka* from the father).⁽⁸¹⁾ (iv) *Ayautaka*.

1. **Sulka** : *Sulka* devolves in the same order as under other schools.

2. **Yautaka** : *Yautaka* devolves in the following order : —

(i) Maiden daughters (unbetothed).

(ii) Betrothed daughters.

(iii) Married daughters who have sons including a widowed daughter having a son (*Charu Chandra V. Nabo* (1891) 18.Cal.327)⁽⁸²⁾ and married daughters likely to have sons, succeed jointly.

(iv) Barren married daughters and childless widowed daughters succeed simultaneously and share equally.

(v) Sons. (vi) Daughters' sons. (vii) Son's sons. (viii) Son's son's sons. (ix) Step-sons. (x) Step-son's sons. (xi) Step-son's son's sons. Failing all these, the succession depends upon the *form of the marriage*. If she was married in an *approved form*, the *yautaka* passes in the following order : (i) Husband, (ii) Brother, (iii) Mother. (iv) Father.

If she was married in an *unapproved form* ;

(i) Mother. (ii) Father, (iii) Brother. (iv) Husband. If there be none of these, it passes in the following order :- (v) Husband's younger brother. (vi) Husband's brother's son. (vii) Sister's son. Sister's son includes a step-sister's son. (*Dasharathi V. Bipin* (1905) 32. Cal.261).⁽⁸³⁾ (viii) Husband's sister's son. (ix) Brother's son. (x) Daughter's husband. (xi) Husband's heirs i.e. his *sapindas*, *sakulyas* and *samanodakas*. (xii) Father's kinsmen.

81. (*anvadheyaka* from the father).

82. (*Charu Chandra V. Nabo* (1891) 18.Cal.327)

83. (*Dasharathi V. Bipin* (1905) 32. Cal.261).

3. Anvadhayaka from father : It passes in the same order as *yautaka* with the following exceptions : —

(i) Sons come before the married daughters.

(ii) If the woman dies without leaving any issue, her *stridhana* passes to the four immediate heirs in the following order : —

(i) Brother. (*Gopal Chandra V. Ramchandra* (1901) 28.Cal.311).⁽⁸⁴⁾

(ii) Mother. (*Ramgopal V. Narain* (1906) 33.Cal.315).⁽⁸⁵⁾

(iii) Father.

(iv) Husband.

4. Ayautaka : *Ayautaka* passes in the following order : —

(i) Sons and maiden (unbetrothed) daughters succeed simultaneously and share equally. (*Basanta V. Kamakshya*. 33.Cal.32).⁽⁸⁶⁾

(ia) Betrothed daughters. (*Sreenath V. Surbo* (1868) 10.W.R.488)⁽⁸⁷⁾

(ii) Married daughters who have or likely to have sons.

(iii) Sons' sons.

(iv) Daughters' sons ; but not step-daughters' sons. (*Krishna Behari V. Sarojinee* (1933) 60.Cal.1061).⁽⁸⁸⁾

(v) Son's son's son.*

(vi) Step-son.*

(vii) Step-son's son.*

(viii) Step-son's son's son.*

* According to *Daya-Karma-Sangraha*.

84. (*Gopal Chandra V. Ramchandra* (1901) 28.Cal.311).

85. (*Ramgopal V. Narain* (1906) 33.Cal.315).

86. (*Basanta V. Kamakshya*. 33.Cal.32).

87. (*Sreenath V. Surbo* (1868) 10.W.R.488).

88. (*Krishna Behari V. Sarojinee* (1933) 60.Cal.1061).

(ix) Barren married daughters and childless widowed daughters.

Failing all the relations mentioned above, *ayautaka* passes in the following order, *irrespective of the forms of marriage* : —

(i) Brother.

(ii) Mother.

(iii) Father.

(iv) Husband.

(v) *Devara* (husband's younger brother). See 1910 37.Cal.863.⁽⁸⁹⁾

(vi) Husband's brother's son.

(vii) Sister's son.

(viii) Husband's sister's son.

(ix) Brother's son.

(x) Daughter's husband.

(xi) Husband's heirs i.e. his *sapindas*, *sakulyas* and *samanodakas*.

(xii) Step-daughter's son. (1933.60.Cal.1061).⁽⁹⁰⁾

(xiii) Father's kinsmen.

(xiv) Decease's kinsmen. (*Kundan V. Secretary of State* (1921) 45.Bom.1106).⁽⁹¹⁾

(Escheat) On failure of all the heirs mentioned above, the Crown or the State takes the *stridhana* property by escheat.

Rules common to all the schools :

Stridhana Heirs take as *tenants-in common* without the benefit of *survivorship* even if they are members of a joint family. (*Bai Parson V. Bai Somli* (1912) 36.Bom.424).⁽⁹²⁾

89. 1910 37.Cal.863.

90. (1933.60.Cal.1061).

91. (*Kundan V. Secretary of State* (1921) 45.Bom.1106).

92. (*Bai Parson V. Bai Somli* (1912) 36.Bom.424).

(*Special features of stridhana.*) *Stridhana* heirs in the second generation (i.e. son's son, daughter's son etc) take *per stirpès* and not *per capita*. (1904.27.Mad.300 ; 1893.17.Bopm.303).⁽⁹³⁾

Illustration.

A widow dies leaving four sons by one daughter, X, and five sons by another daughter, Y. Her *stridhana* will be divided into two parts and one part will go to the four sons of X and the other part to the five sons of Y.

A male heir to *stridhana* takes the property *absolutely* ; whereas a female heir takes (except in Bombay school) only a *limited interest* and on her death it passes to the next *stridhana* heir of the female from whom she inherited it. In Bombay school, a female heir of the *stridhana* takes the property *absolutely*.

Illegitimate heirs of a Hindu woman are not excluded from inheritance of their mother's *stridhana*. (1898. 21.Mad. 40 ; 1921. 45.Bom. 557).⁽⁹⁴⁾ When there are both legitimate and illegitimate children, the legitimate children are preferred to the illegitimate ones. (1915. 38. Mad. 1144 ; 1910. 34. Bom. 553).⁽⁹⁵⁾

The illegitimate sons of a Hindu woman are entitled to succeed to each other. (1861. 8.M.I.A. 400 ; 1864. 2.Mad. H.C. 196).⁽⁹⁶⁾ But an illegitimate grand-daughter cannot succeed to her grandmother's *stridhana*. (1940. Mad. 139 ; 191.I.C. 60).⁽⁹⁷⁾

A Hindu wife is competent to contract but her liability under the contract is limited to her *stridhana*. (1876. 1.Bom. 121).⁽⁹⁸⁾

93. (1904.27.Mad.300 ; 1893.17.Bopm.303).

94. (1898. 21.Mad. 40 ; 1921. 45.Bom. 557).

95. (1915. 38. Mad. 1144 ; 1910. 34. Bom. 553).

96. (1861. 8.M.I.A. 400 ; 1864. 2.Mad. H.C. 196).

97. (1940. Mad. 139 ; 191.I.C. 60).

98. (1876. 1.Bom. 121).