CHAPTER I.

OPERATION OF THE HINDU LAW.

1. Castes.—(1) The Hindus are divided into four S.1 castes (a), namely—

(1) the Brahmans, or priestly caste;
(2) the Kshatriyas, or warrior caste;
(3) the Vaisyas, or agricultural caste; and
(4) the Sudras.

Each of these castes is divided into a number of sub-castes.

(2) The members of the first three castes are called twice-born or regenerate. The second birth or regeneration consists in the study of the Vedas or sacred literature and in the performance of *samskaras* or sacraments. All these are denied to Sudras except the *samskara* of marriage (b).

The above classification is very important. In cases of adoption the adopted son must belong to the same caste as the adoptive father. In cases of marriage, according to one view, the parties to the marriage must both belong to the same caste. As regards Sudras it may be observed that there are several rules of Hindu law which do not apply to them, especially those rules which are closely connected with rites and ceremonies, such as the performance of *datta homam* (oblation to fire) in the adoption ceremony.

Kayasthas.—It has been held by the High Court of Calcutta that Kayasthas as a general rule are Sudras (c). On the other hand, it has been held by the High Courts of Allahabad (d) and Patna (e), that they are not Sudras, but belong to one of the three regenerate classes, probably Kshatriyas.

Marathas.—There are three classes of Marathas in the Bombay Presidency, namely, (1) the five families, (2) the ninety-six families, and (3) the rest. Of these the first two classes are Kshatriyas, and the last Sudras (f).

Vaidyas.—The Vaidyas of Bengal are Sudras (g). The Tanjore branch of the Marathas descended from Shivaji belongs to the Sudra and not to the Kshatriya caste (h). The Madura Ramayana Chayadi Thousand Yadavas residing chiefly in Madura and adjoining villages are Sudras (i).

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(b) See Banerjea on Marriage and Stridhana, 5th ed., pp. 31, 37.
(d) *Tulsi Ram v. Bihari Lal* (1890) 12 All. 326, 334.
(g) (41) 1 Cal. 437 noted under n. (c) supra.
2. Application of Hindu Law.—The power of the Courts of British India to apply the Hindu law to Hindus is derived from and regulated by statutes of Parliament and by imperial and provincial legislation [sec. 5].

3. Extent of application of Hindu Law.—(1) The Hindu law as administered by the Courts of British India is applied to Hindus in some matters only.

(2) Throughout British India questions regarding succession, inheritance, marriage, and religious usages and institutions, are decided according to Hindu law, except in so far as such law has been altered by legislative enactment.

(3) Besides the matters above referred to, there are certain additional matters in which the Hindu law is applied to Hindus, in some cases by virtue of express legislation, and in others on the principle of justice, equity and good conscience. These matters are adoption, guardianship, family relations, wills, gifts and partitions. As to these matters also the Hindu law is to be applied subject to such alterations as have been made by legislative enactment.

See the note to the texts at the beginning of Chapter II.

4. Acts modifying Hindu Law.—The Hindu law has been modified and supplemented in certain respects by the following Acts:

(i) The Caste Disabilities Removal Act, 1850.—According to the Hindu law and usage, if a Hindu renounces his religion, or is excluded from the communion of that religion, or is deprived of caste, such renunciation, exclusion or deprivation entails a forfeiture of his rights and property, and deprives him of his right of inheritance. The effect of the above-mentioned Act was that these consequences ceased to be enforced as law in the Courts of British India (j). The Act is also known as the Freedom of Religion Act.

(ii) The Hindu Widows' Remarriage Act, 1856.—This Act legalizes the remarriage of Hindu widows in certain cases.

(iii) *The Indian Succession Act, 1925, ss. 57, 214, and Schedule III to the Act.*—These sections are dealt with in the chapter on Wills.

(iv) *The Native Converts’ Marriage Dissolution Act, 1866.*—This Act enables a Hindu convert to Christianity to obtain a dissolution of marriage under certain circumstances.

(iva) *The Special Marriage Act of 1872* (after amendment of 1923).

(v) *The Transfer of Property Act IV, 1882, as amended by Act XX of 1929.*—This Act supersedes the whole of the Hindu law as to transfer of property, excepting certain matters referred to in sec. 129 of the Act.

(vi) *The Indian Majority Act, 1875.*—This Act, which fixes the age of majority on completion of the eighteenth year, applies to Hindus, except in matters of marriage, divorce and adoption.

(vii) *The Guardians and Wards Act, 1890.*—This Act applies to Hindus in cases where a guardian has to be, or has been, appointed by the Court.

(viii) *The Hindu Inheritance (Removal of Disabilities) Act, 1928.*—This Act limits the disabilities which excluded a Hindu from inheritance and from a share on partition.

(ix) *The Hindu Law of Inheritance (Amendment) Act, 1929.*—This Act admits the son’s daughter, the daughter’s daughter, the sister, and the sister’s son, as heirs next after the father’s father and before the father’s brother.

(x) *The Transfer of Property (Amendment) Supplementary Act XXI of 1929.*—This Act amends the Madras Acts of 1914 and 1921, and the Hindu Disposition of Property Act, 1916, which relate to transfers and bequests in favour of unborn persons.

(xi) *The Hindu Gains of Learning Act, 1930.*—This Act makes all acquisitions by means of learning the separate property of the acquirer.

(xii) *The Hindu Women’s Rights to Property Act XVIII of 1937.*—This Act, which came into force on the 14th April 1937, gives new rights of inheritance to widows, and strikes at the root of a Mitakshara coparcenary.
The following Acts may also be noticed here:—

**The Indian Contract Act, 1872.**—The Hindu law of contracts has been superseded by the Indian Contract Act, 1872 (k). But the rule of *damdupat*, by which interest exceeding the amount of principal cannot be recovered at any one time, has not been abolished by the Indian Contract Act or any other Act. That Rule is applied in the Bombay Presidency but not in the Madras Presidency. In the Bengal Presidency, it applies only to the Presidency town of Calcutta. See Chapter XXVIII, "The Law of Damdupat."

**The Indian Evidence Act, 1872.**—This Act supersedes the rules of the Hindu law of evidence.

**The Indian Penal Code.**—This Act supersedes the whole of the Hindu Criminal Law.

## 5. Enactments referred to in section 2.

The following is a statement in a tabular form of the enactments referred to in section 2 above, the Courts to which they apply, and the extent to which the Hindu law is to be administered by those Courts:

<table>
<thead>
<tr>
<th>Courts</th>
<th>Enactments</th>
<th>Extent</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Presidency Small Cause Courts</td>
<td>The Presidency Small Cause Courts Act, 1882, s. 16.</td>
<td>[The law to be administered by the Presidency Small Cause Court in each Presidency is the same as that administered by the High Court of that Presidency in the exercise of its ordinary original civil jurisdiction.]</td>
</tr>
<tr>
<td>3. Bengal, United Provinces and Assam Provincial Civil Courts</td>
<td>The Bengal, Agra and Assam Civil Courts Act, 1887, s. 37.</td>
<td>&quot;Succession, inheritance, marriage, caste, or any religious usage or institution.&quot;</td>
</tr>
<tr>
<td>4. Bombay Provincial Civil Courts</td>
<td>Bombay Regulation IV of 1827, s. 26.</td>
<td>[This Regulation does not specify any particular extent.]</td>
</tr>
<tr>
<td>5. Madras Provincial Civil Courts</td>
<td>The Madras Civil Courts Act, 1873, s. 16.</td>
<td>&quot;Succession, inheritance, marriage, caste, or any religious usage or institution.&quot;</td>
</tr>
<tr>
<td>6. Civil Courts in the Punjab</td>
<td>The Punjab Laws Act, 1872, s. 5.</td>
<td>&quot;Succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wil’s, legacies, gifts, partitions, or any religious usage or institution.&quot;</td>
</tr>
<tr>
<td>7. Civil Courts in Oudh. The Oudhi Laws Act, 1878, s. 3.</td>
<td>Do. do. do.</td>
<td></td>
</tr>
<tr>
<td>8. Civil Courts in Ajmer. The Ajmere Court Regulations, 1877, s. 4.</td>
<td>Do. do. do.</td>
<td></td>
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</tbody>
</table>

9. Civil Courts in Central Provinces. | The Central Provinces Laws Act, 1875, s. 5. | [As in the Punjab Laws Act, except that "divorce" is not included.]
10. Civil Courts in Burma. | The Burma Laws Act, 1898, s. 13. | "Succession, inheritance, marriage, or any religious usage or institution."

Though there is no specific reference to marriage or to religious institutions in enactment No. 1, the High Courts have dealt with questions relating to marriage and religious institutions according to Hindu law (l).

A Civil Court has no jurisdiction to try caste questions, unless the suit is in respect of a right to property or to an office. See the Code of Civil Procedure, 1908, s. 9, and Bombay Regulation II of 1827, s. 21.

The only enactment which mentions the Hindu law of contracts is enactment No. 1 which relates to High Courts. See notes to sec. 4, "The Indian Contract Act, 1872."

6. Persons governed by Hindu Law.—The Hindu law applies—

(i) not only to Hindus by birth, but also to Hindus by religion, i.e., converts to Hinduism (m).

In a case before the Privy Council, a Hindu of the Kshatriya caste had an illegitimate son J.B. by a Mahomedan woman. J.B. was brought up as a Hindu, and he was throughout his life a follower of the popular idolatrous form of Hinduism. J.B. married a Hindu woman of the Kshatriya caste, and he had a son B.G. by her. One of the points raised in the case was that B.G. could not be considered a Hindu, as his father J.B. was a Hindu by religion only, and not by birth. Their Lordships, after noticing the arguments advanced on the point, said that in the view which they took of the case it was unnecessary to express any opinion on that point (n).

In a later case before the Privy Council, Lord Shaw, in delivering the judgment of the Board, said in effect that the expression "Hindu" in the Indian Succession Act included a convert to Hinduism (o).

See sec. 7 (4).

(ii) to illegitimate children where both parents are Hindus (p);

(l) In re Khandas Narandas (1881) 5 Bom. 154, 157-170.


(o) Bhaiya Sher Baburao v. Ganga Bakhsh (1913) 36 All. 101, 115-116, 41 I. A. 1, 14, 22 I. C. 293.

(p) Kamawati v. Diphji (1921) 43 All. 325, 533, 48 I. A. 381, 385, 64 I. C. 559, (22) A. P. C. 14.

See Bima Kumari, in the matter of (1891) 14 Cal. 284; Dallatram Tatya v. Matha Bala (1934) 58 Bom. 119, 149 I. C. 921, (34) A. B. 36.
to illegitimate children where the father is a Christian and the mother a Hindu, and the children are brought up as Hindus. But the Hindu law of coparcenary, which contemplates the father as the head of the family and the sons as coparceners by birth with rights of survivorship, cannot from the very nature of the case apply to such children (q);

(iv) to Jains (r), Sikhs (s), and Nambudri Brahmans (t) except so far as such law is varied by custom and to Lingayats who are considered Sudras (u);

(v) to a Hindu by birth who, having renounced Hinduism, has reverted to it after performing the religious rites of expiation and repentance (v). Or even without a formal ritual of reconversion when he was recognised as a Hindu by his community (w);

(vi) to sons of Hindu dancing girls of the Naik caste converted to Mahomedanism, where the sons are taken into the family of the Hindu grand-parents and are brought up as Hindus (x);

(vii) to Brahmans (y) and to Arya Samajists (z);

(viii) to Hindus who made a declaration that they were not Hindus for the purpose of the Special Marriage Act, 1872 (a).

Explanation.—A person who is born a Hindu and has not renounced the Hindu religion, does not cease to be a Hindu merely because he departs from the standard of

(s) Rani Bhagwan Koor v. Bose (1903) 31 Cal. 11, 30 I. A. 249; Indrak Singh v. Sadhan Singh (1944) 1 Cal. 233
(v) Kurum v. Satya (1903) 30 Cal. 999.
(y) In the goods of Gnanendranath Roy, 49 Cal. 1069.
ORTHODOXY in matters of diet and ceremonial observances (b). The acceptance of the "Granth Sahib" by the Udassis (a Schismatic sect of Sikhs who remained within the fold of Hinduism) is no way inconsistent with their continuing Hindus (c). A Hindu does not by becoming a Jati Vaishnava (a sect in Bengal not recognising the caste system) cease to be a Hindu (d).

7. Persons to whom Hindu Law does not apply.—The Hindu law does not apply—

(I) to the illegitimate children of a Hindu father by a Christian mother who are brought up as Christians (e), or to illegitimate children of a Hindu father by a Mahomedan mother (f);

These are not Hindus either by birth or by religion.

In s. 6, cls. (ii) and (iii), the mother is a Hindu, but not so here.

(2) to the Hindu who converts to Christianity. Succession to the estate of a Hindu convert to Christianity who dies a Christian and intestate is governed by the Indian Succession Act, 1865, now Indian Succession Act, 1925. A person ceasing to be a Hindu in religion cannot since the passing of the Act of 1865 elect to continue to be bound by the Hindu law in the matter of succession (g);

Native Christians.—In cases before the Indian Succession Act, 1865, it was held by the Judicial Committee of the Privy Council that a Hindu convert to Christianity may, if he thinks fit, continue to be bound by Hindu law, although he has renounced the Hindu religion (h), but these decisions are no longer good law. See the Indian Succession Act, 1925, s. 58.

It is not settled whether the Hindu rule of survivorship is applicable to the families of Native Christians who continue to be joint even after conversion. According to the Madras High Court, it is not applicable to such families (i); according to the Bombay High Court, it is (j). Two Hindu brothers A and B, constituting a joint Hindu family, become converts to Christianity and continue to be joint after their conversion. B dies leaving a widow. According to the Madras High Court, B's one-half share in the property should go to his heirs under the Indian Succession Act, 1925. According to

(c) Mahant Basant v. Hem Singh (1926) 7 Lah. 275, 94 I.C. 695, (29) A.L. 100.
(e) Lingappa v. Gundasam (1904) 27 Mad. 13 (maintenance).
(g) Kameswari v. Dipkali Singh (1921) 43 All. 523, 48 I.A. 381, 44 I.O. 568, (22) A.P. 14; Dogar v. Pariwkul (1889) 9 Bom. 783.
the Bombay High Court, B's one-half share should go to A by survivorship. The decision of the latter Court proceeds on the ground that the Indian Succession Act, 1925, deals with inheritance and does not affect rights of coparcenership as between those to whom it applies.

(3) to descendants of Hindus who have formed themselves into a distinct community or sect with a peculiar religion and usages so different from the principles of the shastras that the community cannot but be regarded as being outside Hinduism in the proper meaning of the word. The Kalais of Burma constitute such a community. They are not Hindus within the meaning either of sec. 331 of the Indian Succession Act, 1865 [now the Indian Succession Act, 1925, s. 58], or of sec. 13 of the Burma Laws Act, 1898 (k);

"It is obvious that few influences can be more potent in producing new communities of this separate kind than the combined operation of migration, intermarriage and new occupations" (l).

(4) to converts from the Hindu to the Mahomedan faith.

The succession to the estate of a convert from the Hindu to the Mahomedan faith is governed by the Mahomedan, and not by the Hindu law. Khojas and Cutchi Memons, who are converts from Hinduism to Mahomedanism, and who, in accordance with their customs have hitherto been governed by the Hindu law of inheritance and succession will hereafter be governed by the Muslim personal law except where the questions relate to agricultural lands (vide Act XXVI of 1937 and Mulla's Mahomedan Law, 11th edition, p. 3).

The Hindu law of succession does not apply to the property of any person professing the Hindu, Sikh, or Jain, religion who marries under the Special Marriage Act III of 1872 or the property of the issue of such marriage. These are governed by ss. 32 to 48 of the Indian Succession Act.

(k) *Ma Yait v. Maung Chit* (1921) 49 Cal. 310, 48 I. A. 553, 66 I. C. 600, (22) A. P.C. 197.

CHAPTER II.

SOURCES OF HINDU LAW.

Texts.—1. "The Veda, the Smriti, the approved usage, and what is agreeable to one's soul [or good conscience] the wise have declared to be the quadruple direct evidence of Dharma [law]."—*Manu*, ii, 12.

2. "The Sruti, the Smriti, the approved usage, what is agreeable to one's soul [or good conscience] and desire sprung from due deliberation, are ordained the foundation of Dharma [law]."—*Yajnavalkya*, i, 7.

3. "Whatever customs, practices and family usages prevail in a country shall be preserved intact, when it comes under subjection by (conquest)."—*Yajnavalkya*, i, 343.

4. "If any usage required by utility is established in a locality [which is contrary to the written text of law] it should be practised therein only, but not in any other district. Whatever customary law is prevalent in a district, in a city, in a town or in a village, or among the learned, the said law [though contrary to the Smritis] must not be disturbed."—*Devata*, cited in the *Parasara Madhava*.

Note.—In texts (1) and (2), we find indications of the principle of *justice, equity and good conscience*. As to texts (3) and (4), it will be seen that the Courts have not disregarded customs prevailing in the different parts of British India, except, of course, immoral customs.

8. Sources of Hindu Law.—The three main sources of Hindu *dharma* or law are (1) the Sruti, (2) the Smriti, and (3) Custom.

(1) "Sruti" means, literally, that which was *heard*. The Srutis are believed to contain the very words of the deity, and they include the four Vedas, but they contain very little of law.

(2) "Smriti" means, literally, that which was *remembered*. It is the recollection handed down by the Rishis, or sages of antiquity, of the precepts of God. The Smritis constitute the principal source of law. The term *Dharma Shastra*, literally, *teacher of law*, comprehends both Srutis and Smritis, but it is often used to designate the Smritis alone.

The three principal Smritis are—

(i) The Code or Institutes of *Manu*, compiled some time between 200 B.C. and 200 A.D.

(ii) The Code or Institutes of *Yajnavalkya*, written about the 4th century, A.D. The *Mitakshara* is the leading commentary upon this Code.
(iii) The Code or Institutes of Narada, written in the 5th or 6th century, A.D.

(3) Customs are supposed by some writers to be based on lost or forgotten Sruti, and by others, on lost or forgotten Smriti (m).

9. Commentaries as a source of law.—The Smritis do not agree with each other in all respects. The conflict between the Smritis gave rise to commentaries which are called Nibandhas. The authority of the several commentators varied in different districts, and thus arose the schools of law which are operative in different parts of India. Though the commentators professed to interpret the law laid down in the Smritis, in fact, they recited the customs and usages which they found in vogue around them (n) and on this ground their interpretations have been accepted as authoritative. It is therefore the duty of British Indian Courts to recognize the rules of law enunciated in the commentaries, even if they appear to proceed on a wrong interpretation of the Smritis, the reason being that under the Hindu system of law, "clear proof of usage will outweigh the written text of the law (o)."

The commentaries which have been accepted as authoritative in the different provinces are mentioned in sections 11 to 12 below.

In the leading case of Collector of Madura v. Mootoo Ramalinga (o), their Lordships of the Privy Council, after stating that the different commentaries had given rise to the different schools of law, said:—"The duty, therefore, of an European Judge, who is under the obligation to administer Hindu law, is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities [Smritis], as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage. For, under the Hindu system of law, clear proof of usage will outweigh the written text of the law:"

10. Judicial decisions as a source of law.—Judicial decisions on Hindu law, though sometimes loosely spoken of as a source of law, are not strictly a source of law. Almost all the important points of Hindu law are now to be found in the law reports, and to this extent it may be said that the

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(n) Kesko Rao v. Sadarivo Rao (1938) Nag, 469
decisions on Hindu law have superseded the commentaries. The decisions of the Privy Council are binding on all the Courts of British India including the High Courts; but the decisions of any one High Court are not binding on any other High Court, though they are binding on the Courts subordinate thereto (p).

The Hindu law was at first administered by the English Judges with the assistance of Hindu Pundits. The institution of Pundits, as official referees of the Courts, was abolished in the year 1868.

11. Mitakshara and Dayabhaga Schools.—(i) “The remoter sources of the Hindu law [that is, Smritis] are common to all the different schools. The process by which those schools have been developed seems to have been of this kind. Works universally or very generally received became the subject of subsequent commentaries. The commentator put his own gloss on the ancient text; and his authority having been received in one and rejected in another part of India, schools with conflicting doctrines arose” (q).

(2) Properly speaking, there are only two schools of law, namely, the Mitakshara school and the Dayabhaga school. The Dayabhaga school prevails in Bengal; the Mitakshara school prevails in other parts of British India.

(3) The Mitakshara is a running commentary on the Code of Yajnavalkya. It was written by Vijnaneswara in the latter part of the eleventh century. The Dayabhaga is not a commentary on any particular Code, but purports to be a digest of all the Codes. It was written by Jimuta Vahana who is said to have flourished somewhere between the 13th and the 15th century.

(4) The Mitakshara is of supreme authority throughout India except in Bengal. The Dayabhaga is of supreme authority in Bengal. But even in Bengal the Mitakshara is still regarded as a very high authority on all questions in respect of which there is no express conflict between it and the Dayabhaga and the other works prevalent there, namely, the

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Dayatattwa and the Dayakrama Sangraha (r). The Dayabhaga may also be referred to in a Mitakshara case on points on which the latter treatise is silent (s).

(5) It is said that the Mitakshara school is the orthodox school, and the Dayabhaga school is the reformed school, of Hindu law. The Dayabhaga school is also called the Bengal school of Hindu law.

(6) The Bengal school differs from the Mitakshara school in two main particulars, namely, the law of inheritance and the joint family system.

12. Sub-divisions of Mitakshara School.—(1) The Mitakshara school is sub-divided into four minor schools; these differ between themselves in some matters of detail relating particularly to adoption and inheritance. All these schools acknowledge the supreme authority of the Mitakshara, but they give preference to certain treatises and to commentaries which control certain passages of the Mitakshara. This accounts for the differences between those schools (t).

The sub-schools and the works which supplement the Mitakshara in each sub-school are mentioned below:

- Benares school
  - Viramitrodaya (u).
  - Nrnayasindhu.

- Mithila school
  - Vivada Chintamani (v).
  - Vivada Ratnakara (w).
  - Vyavahara Mayukha.

- Maharashtra or Bombay school
  - Viramitrodaya (z).
  - Nrnayasindhu.

- Dravida or Madras school
  - Smriti Chandrika (y).
  - Parasara Madhaviya (z).
  - Viramitrodaya (a).
  - Saraswati Vilasa (b).

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(s) Rai Bichenchand v. Asmaida Koer (1884) 6 All. 500, 11 L.A. 164, 179; Makabir Prasad v. Rai Bahadur Singh (1943) 18 Luck. 365, 203 I.C. 244, (42) A. O. 27.

(t) (1867) 11 M. I. A. 487-507, 508, supra.


(w) (1867) 11 M. I. A. 487, 508, supra.

(x) (1867) 11 M. I. A. 487, 508, supra.

(y) Raju v. Anamni (1900) 29 Mad. 358.

(z) (1867) 11 M. I. A. 487, 508, supra.


(b) (1921) 44 Mad. 753, 765, 48 I. A. 349, 64 I. C. 402, (22) A. P. 33, supra.
(2) As regards authorities in Western India the Mitakshara ranks first and paramount in the Maharashtra, Northern Kanara and the Ratnagiri District. In Gujarat, the Island of Bombay and the North Konkan, the Mayukha is considered as the overruling authority where there is a difference of opinion between it and the Mitakshara (c). The principle, however, adopted by the High Court of Bombay, and sanctioned by the Privy Council, is to construe the two works so as to harmonize them with each other wherever and so far as that is reasonably possible (d). In Poona, Ahmednagar, and Khandesh the Mayukha is considered to be of equal authority with the Mitakshara, but not capable of overruling it as in Gujarat, the Island of Bombay and the North Konkan (e).

The Mayukha was written by Nilkantha Bhatta in the beginning of the 17th century.

The Vramitrodaya was written in the 16th century. "It supplements many gaps and omissions in the earlier commentaries" (f).

13. Works on adoption.—The two special works on adoption are the Dattaka Mimansa and the Dattaka Chandrika. Generally speaking they are equally respected throughout India, but where they differ the Dattaka Mimansa is preferred in Mithila and Benares, and the Dattaka Chandrika in Bengal (g).

As to these two works their Lordships of the Privy Council said in Balan v. Balusu (h) : "Both works have had a high place in the estimation of Hindu lawyers in all parts of India, and having had the advantage of being translated into English at a comparatively early period, have increased their authority during the British rule. Their Lordships cannot concur with Mr. Knox, J., in saying that their authority is open to examination, explanation, criticism, adoption, or rejection like any scientific treatises on European jurisprudence. Such treatment would not allow for this effect, which long

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(e) Bhagirathbhai v. Khajuraho (1897) 11 Bom. 285, 294. [T.B.]


(h) (1899) 22 Mad. 398, 411-412, 29 I. A. 113, 131-132.
HINDU LAW.

acceptance of written opinions has upon social custom, and it would probably disturb recognised law and settled arrangements. But, so far as saying that caution is required in accepting their glosses where they deviate from or add to the Smritis, their Lordships are prepared to concur with the learned Judge."

As to the Dattaka Chandrika it may be said that in Bengal there is a tradition that it is a literary forgery by Raghumani Vidyabhushana who was the Pundit of Colebrooke, the celebrated English translator of numerous Sanskrit works on Hindu law. It is said that it was written to help a claim set up by an adopted son to a Raj in Bengal.

Before leaving this subject, attention may be drawn also to the Mimansa of Jaimini, a work which contains rules of interpretation of Hindu law.

14. Migration and school of law.—(1) A Hindu family residing in a particular province of India is presumed to be governed by the law of the place in which it resides (i).

(2) Where a Hindu family migrates from one province to another, the presumption is that it carries with it its personal law, that is, the laws and customs as to succession and family relations prevailing in the province from which it came. But this presumption may be rebutted by showing that the family has adopted the law and usages of the province to which it has migrated (j).

(3) It is the law existing at the time of migration which continues to govern the migrated members until it is renounced. It is the law in force in the province at the time of their leaving it which continues to govern persons who have migrated to another province. Thus they are affected by decisions of the courts of their province of origin which declare the correct law of the province up to the time of their leaving it, but not by customs incorporated in its law after they have left it (k).

Illustrations.

(a) A Hindu family migrates from the North-Western Provinces where the Mitakshara law prevails to Bengal where the Dayabhaga law prevails. The presumption is that it continues to be governed by the Mitakshara law, and this presumption may be supported by previous instances of succession in the family according to the Mitakshara law after its migration and by evidence relating to ceremonies performed in the

(i) Ram Das v. Chandra (1893) 20 Cal. 409.

(j) Srimati Parbati v. Jagadis (1905) 29 Cal. 453, 29 I. A. 82; Soorendranath v. Herra mone (1898) 22 M. I. A. 81; Govind v. Radha (1900) 31 All. 477, 9 I. C. 583; Jayannath v. Narayan (1910) 34 Bom. 558, 7 I. C. 459; Sarada Prasanna v. Uma Kantia (1923) 50 Cal. 570, 77 I. C. 450, (23) A. C. 485. See also Malati v. Subbaraya (1901) 24 Mad. 650 (migration by a Hindu widow from French India to British India);

family at marriages, births and **sradhas**, showing that the family continued to be governed by the Mitakshara law after its migration: *Parbatia v. Jagadis* (1902) 29 Cal. 433, 452, 29 I. A. 82, 97. If the migration is proved, and it is also proved that the family followed the customs of the Mitakshara school, it is not necessary to prove also that the family immigrated to Bengal after the establishment of the Dayabhaga system of law (8).

(b) A joint Hindu family, consisting of two brothers A and B, migrates from the N. W. P. to Bengal. A dies leaving a widow C. The presumption being that this family continues to be governed by the Mitakshara law, the joint property will, on A’s death, pass to his surviving brother B; C will be entitled to maintenance only. But if the family had renounced the Mitakshara law, and adopted the Dayabhaga law, A’s share would pass to his widow C: *Parbatia v. Jagadis* (1902) 29 Cal. 433, 29 I. A. 82.

A Maharashtrian family residing in Chhattisgarh, in Central Provinces, is presumed to have come as immigrant and if it retains its individuality as Maharashtrian, is governed by the Bombay interpretation of the Mitakshara: *Kesho Rao v. Sadasiv Rao* (1938) Nag. 469, (38) A. N. 163.

In *Abdurahim v. Halimabai* (m), their Lordships of the Privy Council said: “Where a Hindu family migrates from one part of India to another, *prima facie* they carry with them their personal law, and, if they are alleged to have become subject to a new local custom, this new custom must be affirmatively proved to have been adopted, but when such a family emigrate [from India] to another country [East Africa], and, being themselves Mahomedans [e.g., Memons], settle among Mahomedans, the presumption that they have accepted the law of the people whom they have joined seems to their Lordships to be one that should be much more readily made . . . The analogy is that of a change of domicile on settling in a new country rather than the analogy of a change of custom on migration within India” (n). “Of course, if nothing is known about a man except that he lived in a certain place, it will be assumed that his personal law is the law which prevails in that place. In that sense only is domicile of importance” (n).

Clause (3).—“The law must be the family law as it was when they left. A judgment declaratory of law as having always been would bind; but it would be a different thing if subsequent customs became incorporated in the law” (o).

Raghuvarshis of Nandurbar.—These migrated from Oudh and settled in Khandesh and they are governed by the Benares School of Hindu Law (p).

15. Custom as a source of law.—Custom is one of the three sources of Hindu law. Where there is a conflict between a custom and a text of the Smritis, the custom overrides the text: “Under the Hindu system of law, clear proof of usage will outweigh the written text of the law” (q).

16. Three kinds of customs.—The Hindu customs recognized by the Courts of British India are—(1) locat, (2) class, and (3) family customs.
17. Essentials of a valid custom.—(1) "A custom is a rule which in a particular family or in a particular district, has from long usage obtained the force of law. It must be ancient, certain, and reasonable, and being in derogation of the general rules of law, must be construed strictly." (r) It is further essential that it should be established to be so by clear and unambiguous evidence, for it is only by means of such evidence that the Courts can be assured of its existence and of the fact that it possesses the conditions of antiquity and certainty on which alone its legal title to recognition depends (s). It must not be opposed to morality or public policy and it must not be expressly forbidden by the legislature (t).

(2) Where the proof of a custom rests upon a limited number of instances of a comparatively recent date, the Court may hold the custom proved so as to bind the parties to the suit and those claiming through and under them; but the decision would not in that case be a satisfactory precedent if in any future suit between other parties fuller evidence with regard to the alleged custom should be forthcoming (u). A judgment relating to the existence of a custom is admissible to corroborate the evidence adduced to prove such custom in another case (v). Where, however, a custom is repeatedly brought to the notice of the Courts the Courts may hold that the custom was introduced into the law without the necessity of proof in each individual case (w).

Family Custom.—Custom binding inheritance in a particular family has long been recognized in India (x).

(t) Vannia Kona v. Vannichi Ammol, supra.
18. Discontinuance of custom.—A family usage, like a local custom, must be certain, invariable and continuous, but it may be discontinued so as to let in the ordinary law. Well established discontinuance of a family usage, whether it has arisen from accidental causes, or has been intentionally brought about by the concurrent will of the family, has the effect of destroying the custom; it is different, however, in the case of a local custom which is the lex loci binding on all persons within the local limits in which it prevails (y).

19. Burden of proof of custom.—Where members of a family admittedly governed by the Hindu law set up a custom derogatory to that law, the burden lies upon them to prove the custom (z). In the case of a tribe or family which were not originally Hindus, and have only adopted Hindu usages in part, if it is alleged by any member that a particular Hindu usage has been adopted by the tribe or family, the burden lies upon him to prove the usage (a).

The Kurni Mahas of Chota Nagpur, though aboriginals in origin, have accepted the Hindu religion and Hindu social usages. The presumption in law will, therefore, be that they are governed by the Hindu Law of Succession and the party who alleges a special custom to the contrary has to prove the same (b).

20. Invalid custom.—No custom is valid if it is opposed to morality or public policy or to any express enactment of the Legislature.

(y) Rajkishen v. Ramjot (1876) 1 Cal. 189, 190. (P.C.); Sarubhjut v. Indarjit (1905) 27 All. 209; Vannina Kone v. Vannichi Ammal, Appra.


(b) Ganesh Mahato v. Shik Charan Mahato (1932) 11 Pat. 139, 133 I. C. 105, ('31) A. P. 305.
CHAPTER III.
GENERAL PRINCIPLES OF INHERITANCE.

21. Law of inheritance.—The joint and undivided family is the normal condition of Hindu Society. An undivided Hindu family is ordinarily joint, not only in estate, but in food and worship.

The joint family system comes first in historical order. The law of inheritance is of later growth and, in general, applies only to property held in absolute severalty by the last owner, as distinguished from property held by a Mitakshara joint family. But now under Act XVIII of 1937, the interest which a Hindu, governed by any school of law other than the Dayabhaga or by customary law, has in joint family property, devolves upon his death on his widow.

22. Two systems of inheritance.—There are two systems of inheritance amongst the Hindus in British India, namely, the Mitakshara system and the Dayabhaga system. The Dayabhaga system prevails in Bengal; the Mitakshara system in other parts of British India. The difference between the two systems arises from the fact that while the doctrine of religious efficacy is the guiding principle under the Dayabhaga school (sec. 79) there is no such definite guiding principle under the Mitakshara school. Sometimes, consanguinity has been regarded as the guiding principle and at other times, religious efficacy (sec. 36 et seq.)

23. Inheritance to males and females.—(1) Succession to stridhana, that is, property held absolutely by a female, is governed by rules different from those which govern inheritance to the property of a male.

(2) Inheritance to males according to the Mitakshara school is dealt with in Chapter IV and that according to the Dayabhaga school is dealt with in Chapter VII. Succession to stridhana is dealt with in Chapter X.

24. Modes of devolution of property.—(1) The Mitakshara recognizes two modes of devolution of property, namely, survivorship and succession. The rule of survivorship applies to joint family property; the rules of succession apply to property held in absolute severalty by the last owner.

(2) The Dayabhaga recognizes only one mode of devolution, namely, succession. It does not recognize the
rule of survivorship even in the case of joint family property. The reason is that while every member of a Mitakshara joint family has only an undivided interest in the joint property, a member of a Dayabhaga joint family holds his share in quasi-severalty, so that it passes on his death to his heirs as if he was absolutely seized thereof, and not to the surviving coparceners as under the Mitakshara law.

Illustrations.

(1) A and B, two Hindu brothers, governed by the Mitakshara school of Hindu law, are members of a joint and undivided family. A dies leaving his brother B and a daughter. A’s share in the joint family property will pass to his brother, the surviving coparcener, and not to his daughter. But if A and B were separate, A’s property would on his death pass to his daughter as his heir.

(2) A and B, two Hindu brothers, governed by the Dayabhaga school, are members of a joint and undivided family. A dies leaving his brother B and a widow. A’s share in the joint family property will pass to his widow as his heir, exactly as if A and B were separate.

25. Female heirs.—According to the Bengal, Benares and Mithila schools, there are only five females who can succeed as heirs to a male, namely, (1) the widow, (2) daughter, (3) mother, (4) father’s mother, and (5) father’s father’s mother. To this list three more have been added by the Hindu Law of Inheritance (Amendment) Act, 1929, namely, the son’s daughter, daughter’s daughter, and sister. The Madras school recognizes a larger number of female heirs including the three mentioned in the Act of 1929, and the Bombay school a still larger number. Under Act XVIII of 1937, the widow of a predeceased son and the widow of a predeceased son of a predeceased son are among the heirs to a Hindu’s separate property in all the schools.

26. Limited estate of females.—(1) Males succeeding as heirs whether to a male or to a female, take absolutely.

(2) Females succeeding as heirs, whether to a male or to a female, take a limited estate in the property inherited by them, except in certain cases in the Bombay Presidency.

If a separated Hindu under the Mitakshara, or any Hindu under the Dayabhaga, dies leaving a widow and a brother, the widow succeeds to the property as his heir. But the widow, being a female, does not take the property absolutely. She is entitled only to the income of the property. She cannot make a gift of the property nor can she sell it unless there is a legal necessity either for the gift or for the sale. On her death, the property will pass not to her heirs, but to the next heir of her husband, that is, his brother.
27. 'Last full owner' and 'fresh stock of descent.'—The last 'full' owner of property is one who held the property absolutely at the time of his death. Except in the case of stridhana and in certain cases in the Bombay Presidency, the last full owner is always a male.

It is only a 'full' owner that can become a fresh stock of descent. Since a female cannot (except as aforesaid) be a full owner of property, she cannot become a fresh stock of descent.

Illustrations.

A dies leaving a widow, a mother, a brother B, and a paternal uncle C. On A's death, the widow succeeds to his property as his heir. She takes only a limited estate in the property. She is not the full owner of the property, and she cannot, therefore, become a fresh stock of descent. On her death, the property will revert to the next heir of the last full owner (A), that is, the mother. Thus mother, again, does not take absolutely. She too, therefore, cannot become a fresh stock of descent, and on her death the property will go not to her heirs, but to the next heir of the last owner (A), that is to B, A's brother. But B, being a male, takes the property absolutely. He becomes full owner of the property and he can, therefore, become a fresh stock of descent. On his death, the property will pass to his own heirs. Thus he leaves a widow, the property will pass to her, and not to C. But since she takes a limited estate only, the property will, on her death, revert to the next heir of B, the last full owner. If that heir is C, the property will pass to him. C, being a male, will take the property absolutely and on his death it will again pass to his heirs.

A male heir takes the property inherited by him absolutely; he becomes full owner thereof, and he can, therefore, become a fresh stock of descent. Except in the case of stridhana and in certain cases in the Bombay Presidency, a female takes a limited estate in the property inherited by her; she does not become the full owner thereof, and she cannot, therefore, become a fresh stock of descent. The limited estate taken by female heirs is a peculiar feature of the Hindu law. Barring, therefore, the case of stridhana and the exceptional cases in the Bombay Presidency, when a female dies leaving property inherited by her, whether from a male or from a female, the property passes not to her heirs, but to the next heirs of the last full owner from whom she inherited it.

A woman's stridhana descends to her own heirs. See Chapter X below.

28. Inheritance never in abeyance.—(1) On the death of a Hindu, the person who is then his nearest heir becomes entitled at once to the property left by him. The right of succession vests in him immediately on the death of the owner of the property. It cannot under any circumstance remain in abeyance (c) in expectation of the birth of a preferable heir, where such heir was not conceived at the time of the owner's death.

(2) Where the estate of a Hindu has vested in a person who is his nearest heir at the time of his death, it cannot be
divested except either by the birth of a preferable heir such as a son or a daughter (d), who was conceived at the time of his death, or by adoption in certain cases of a son to the deceased (e).

Illustrations.

(1) A dies leaving a son who is insane from birth, and a nephew. The son, being insane, cannot inherit according to the Hindu law. A's property will, therefore, pass to the nephew. The son marries, and a son B is subsequently born to him. B, as A's grandson, is a nearer heir of A than the nephew. B claims A's property from the nephew. He is not entitled to it, for the estate of A having vested in the nephew, it cannot be divested by the birth of B, unless B was conceived at the time of A's death.

(2) A Hindu dies leaving a widow who is pregnant at the time of his death. After his death the widow sells a house left by him for necessity. Five days after the sale a son is born to her. The sale is valid, though it was made while the son was in his mother's womb. The point of time at which the widow's estate is divested is the date of the son's birth, and not the date of his father’s death: *Hira v. Bula* (1919) 1 Lah. L.J. 36, 56 I.C. 256.

29. Doctrine of representation.—A son, a grandson whose father is dead, and a great-grandson whose father and grandfather are both dead, all succeed simultaneously as one heir to the separate and self-acquired property of their paternal ancestor. The reason is that the grandson represents the rights of his father to a share and the great-grandson represents the rights both of his father and grandfather. This is the only case to which the doctrine of representation applies: it does not apply to any other case (f), *e.g.*, the case of daughter (g). Sons, grandsons, and great-grandsons inheriting together as aforesaid succeed to the state of the deceased as coparceners [sec. 31, ill. (a)]. On a partition among them they take per stirpes and not per capita.

Illustrations.

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

```
    A
   /|
  B X X_1 X_3
 / |    |
C X_2 |
     D
   |
     E
```

(d) *Bapuji v. Parmata (1933)* 35 Bom. L. R. 118, 144 I.C. 442, (39) A.R. 120.

(g) *See Marudayi v. Doraisami (1907)* 30 Mad. 340.

On A's death, his estate will pass to B, C and D as coparceners. If they continue joint, and if any one of them dies without leaving male issue, his share will pass to the survivors (sec. 229). If they want to divide the estate, it will be divided into three equal parts, B, C and D, each taking one part. B alone is not entitled to inherit the whole property. C will take the share of his father X, and D the share of his grandfather X₁. 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 grandsons C and C₁, and three great-grandsons D, D₁ and D₂ as shown in the following diagram:

```
    A
   /|
  /  |
 B  X  X₁
 /|
C  C₁  X₂
 /|
D  D₁  D₂
```

A's property will be divided, if the heirs choose to divide it, into three equal parts of which B will take one, C and C₁ will together take one, and D, D₁ and D₂ will together take one. This is a division of the estate per stirpes. To divide it per capita would be to divide it into 6 parts, and give one part to each of the 6 heirs.

Note.—If B had a son B₁, B would take the one-third for himself and B₁, and it would become ancestral property in the hands of B, to which B₁'s right would attach by birth.

(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 as stated in the section, and C is not such a descendant. B therefore is entitled to the whole estate as the nearest heir of A.

30. Spes successionis.—The right of a person to succeed as heir on the death of a Hindu is a mere spes successionis, that is, a bare chance of succession. It is not a vested interest; he cannot, therefore, make a valid transfer of it (h). For the same reason, any agreement entered into by him in respect of the inheritance cannot bind persons who actually inherit when the succession opens (i).

Illustration.

A has a brother B and an uncle C. B has a wife D. It is true that if A died, B would succeed as his nearest heir if he was then alive, but in the lifetime of A, B does not take any interest in A's property. All that he is entitled to is a bare chance of succession. If he predeceases A, the heir on A's death will be C, and not his widow D [see ill. (c) to sec. 29]. B does not take any interest in A's property in A's lifetime.

(h) See Transfer of Property Act, 1882, s. 6.
(i) Brojo v. Gourie (1870) 15 W. R. 70. See Bahadur Singh v. Mohar Singh (1902) 24 All. 94, 29 I. A. 1.
and he cannot transmit to his heir D an interest which had not accrued to himself. For the same reason, a sale or a mortgage by B of the espe successionis is a nullity. And, further, if he makes any contract with respect to the inheritance in A's lifetime, and predeceases A, and C succeeds as A's heir, the agreement is not binding on C.

31. Co-heirs. — (i) According to the Mitakshara school two or more persons inheriting jointly take as tenants-in-common (j) except the following four classes of heirs who take as joint tenants with rights of survivorship:—

(a) Two or more sons, grandsons, and great-grandsons, succeeding as heirs to the separate or self-acquired property of their paternal ancestor (k).

(b) Two or more grandsons by a daughter, who are living as members of a joint family succeeding as heirs to their maternal grandfather (l).

(c) Two or more widows succeeding as heirs to their husband (m).

(d) Two or more daughters succeeding as heirs to their father (n) except in the Bombay Presidency where they take an absolute estate in severalty (o).

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

Illustrations.

(a) A Hindu, who is possessed of separate property, dies leaving two sons, A and B. A then dies leaving a daughter C.

According to the Bengal school, A and B inherit as tenants-in-common, and, therefore, on A's death, his share in the property goes to his heir C by succession.

According to the Mitakshara school, A and B inherit as joint owners [strictly speaking, as coparceners (sec. 29)]. Therefore if A dies without having partitioned the property, his undivided interest in the property will pass to his brother B by survivorship to the exclusion of his daughter C. But if the property was partitioned between A and B, the

(j) Karuppat v. Sankaranarayanan (1904) 27 Mad. 300.


(m) Bhagyasundar v. Myna Bate (1866) 11 M. I.A. 437.


share which came to A on partition would go to his heir C by succession. Assuming that A and B did not divide the property, and that A died leaving a son, grandson, or great-grandson, the undivided interest of A would pass to his son, grandson or great-grandson by survivorship, in preference to his undivided brother B. The reason is that the right of survivorship of male issue always prevails over that of a collateral with whom the deceased was joint.

(b) A Hindu dies leaving two widows A and B. According to both the schools, the widows succeed as joint tenants. On A's death, therefore, her interest in the property will pass to B by survivorship [sec. 43, no. 4].

(c) A Hindu dies leaving two daughters A and B. According to both the schools they succeed as joint tenants. On A's death, therefore, her undivided interest in the property will pass to B by survivorship. It is different, however, in the Bombay Presidency. In that Presidency A and B take an absolute estate in severalty, and not as joint tenants. Therefore, on A's death, her one-half share will pass to her own heirs by succession. Thus if A dies leaving a daughter, her share will go to her daughter, and not to her sister B [sec. 43, no. 5].

(d) A Hindu dies leaving two brothers. The brothers take as tenants-in-common and on the death of either of them, his one-half share will pass to his heirs by succession. The same rule applies to uncles, nephews, etc.

32. Successions per stirpes and per capita.—Except in the two cases hereinafter mentioned persons of the same relationship to the deceased take per capita, that is, the estate of the deceased is divided into as many shares as the number of heirs, each heir taking one share.

Exception I.—On a partition among them, the sons, grandsons and great-grandsons of a deceased male Hindu, take per stirpes [sec. 29].

Exception II.—Sons' sons, daughters' sons, and daughters' daughters, succeeding to stridhan take per stirpes (p)[sec. 160].

Brothers' sons, uncles' sons, etc., take per capita. Thus if a Hindu dies leaving 2 sons by one brother and 3 sons by another brother, the property will be divided into 5 equal parts, each heir taking one-fifth. This is division of the estate per capita. To divide it per stirpes would be to divide it into 2 equal parts, giving one part to the 2 sons of one brother, and the other part to the 3 sons of the other brother. The reason why they take per capita is that the brothers' sons do not inherit as representing their father but in their own right as the nephews of the deceased (see sec. 29). Similarly, if a Hindu dies leaving one son by a paternal uncle and two sons by another paternal uncle, the estate will be divided into three parts, each son taking one-third (q).

Exception I and Exception II both rest on special texts. For an illustration of Exception I, see sec. 29, ill. (b). For an illustration of Exception II, see the illustration to sec. 160.

(p) Vide authorities cited under sec. 160.

CHAPTER IV.

ORDER OF INHERITANCE TO MALES ACCORDING TO THE MITAKSHARA LAW.

"Sons (male issue) take the father's property. To the nearest sapinda the inheritance next belongs."—*Manu*, ix, 187.

33. Mitakshara law of inheritance.—The rules of inheritance laid down in the Mitakshara are followed by the Bombay, Madras, Benares and Mithila schools, all these schools being sub-divisions of the Mitakshara school. But the rules of inheritance in force in the several provinces represented by these schools are not entirely the same. They differ in certain respects, namely,

(1) The order of inheritance as laid down in the Mitakshara is not strictly followed in the island of Bombay, Gujarat and the North Konkan. The reason is, that in those places preference is given to the Vyavahara Mayukha of Nilkantha Bhatta in the few points on which it differs from the Mitakshara.

(2) As regards females, there are many who are recognized as heirs in the Bombay and Madras schools, but are not recognized as such in the Benares and Mithila schools [ss. 61-70].

34. Devolution of property according to the Mitakshara law.—In determining the mode in which the property of a Hindu male governed by the Mitakshara law devolves on his death, the following propositions are to be noted:—

(1) Where the deceased was, at the time of his death, a member of a joint and undivided family, technically called coparcenary, his undivided interest in the coparcenary property devolves on his coparceners by survivorship. (But now see Act XVIII of 1937 and sec. 35).

(2) *(i)* Even if the deceased was joint at the time of his death, he might have left self-acquired or separate property. Such property goes to his heirs by succession according to the order given in section 43, and not to his coparceners *(r)*.

*(ii)* If the deceased was at the time of his death the sole surviving member of a coparcenary, the whole of his property,
including the coparcenary property, will pass to his heirs by succession according to the order given in section 43 (s).

(iii) If the deceased was separate at the time of his death from his coparceners, the whole of his property, however acquired, will pass to his heirs by succession according to the order given in section 43 (t).

(3) If the deceased was re-united at the time of his death, his property will pass to his heirs by succession according to the rule laid down in sec. 60 below.

Illustration.

A. B. and his brother constitute a coparcenary. A. B. dies leaving a daughter. He leaves self-acquired property. He also leaves property inherited by him from his maternal uncle, which, according to law, is his separate property. The undivided interest of A. B. in the coparcenary property will pass to his brother as surviving coparcener, but his self-acquired and separate property will pass to his daughter as his heir.

35. Act XVIII of 1937.—The Hindu Women’s Rights to Property Act (XVIII of 1937 amended by XI of 1938) has introduced important changes in the law of succession. The Act is not retrospective. Its main features are:

(1) In the 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 applies mutatis mutandis to the widow of a pre-deceased son of a pre-deceased son.

(2) In the case of a Mitakshara joint family the widow takes the place of her husband (vide App. XII).

General effect of the Act.—Whilst the Act has conferred new rights of succession on certain females, it has dealt a death blow to the doctrine of survivorship—perhaps the most important part of the law of coparcenary under the Mitakshara.

Speaking generally, the effect of the Act is to put the three female heirs mentioned in sub-section 1 to section 3 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 (w), 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 (v). The rule that the widow succeeds to her deceased husband’s property only in default of his male issue, that is, son, grandson or great-grandson is abrogated by virtue of section 3, sub-section 1 of the Act, and she will now be entitled to the same share as a son (w) along with or in default of the male issue. The widow of an adopted son suing her father-in-law for partition after he has made a second adoption is entitled to a third and not to a half share (x). Similarly the widow of a predeceased son and the widow of a predeceased son of a predeceased son are entitled to succeed for their respective shares (y). For instance a predeceased son’s widow takes before a mother under the Act (z).

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 Act is silent as to what is to happen to the interest thus taken when the heir in question dies but presumably it will devolve according to the ordinary law. (See secs. 43 and 128.) The statute was

(v) Sivakumar Prasad v. Lala Hari Narain (1944) 23 Pat. 760, (42) A.P. 212.
(z) Bhagam Devi v. Jai Devi (1944) All. 401.
enacted to enlarge the rights of women, or as, it says to give better rights to them and there is no indication that, except for this limited purpose, the Legislature intended to interfere with the established law relating to succession or to a 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. However, for purposes of income-tax assessment the widow is regarded as a member of the joint family (a). It has been held in Madras that a trusteeship is not “separate property” within the meaning of the Act, and therefore devolves only on the widow and not on a son’s widow. The Act applies to moveable properties in foreign countries (b).

*Whether Act ultra vires. — The Hindu Women’s Rights to Property Act of 1937 and Amending Act of 1938 do not operate to regulate succession to agricultural land in the Governor’s Provinces, or to a mortgagee’s interest or a lessee’s interest (c) in such lands but are not ultra vires as to other lands (d).*

A mango grove is agricultural land within the meaning of Sch. VII, Govt. of India Act (1935), lists II and III (e).

36. Propinquity the governing factor. — Under the Mitakshara, the right to inherit arises from propinquity, that is, proximity of relationship (f). Under the Dayabhaga, it

(a) The Commissioner of Income-tax v. A.V.P. Mr. M. Lakshmanan Chettiar (1941) Mad. 104.
(c) Katagya v. Annapuruma (1945) Mad. 777.
(e) Sarojini Devi v. Subrahmanya (1945) Mad. 91.
arises from spiritual efficacy, that is, the capacity for conferring spiritual benefit on the manes of paternal and maternal ancestors [s. 79]. But though under the Mitakshara the right to inherit does not arise from the right to offer oblations, the test to be applied, when a question of preference arises, is, in the case of sagota sapindas, the capacity to offer oblations (g), but, in the case of bhimna-gotra sapindas, the "primary test" is "propinquity in blood" (h) and, "when the degree of blood relationship furnishes no certain guide," the test is the capacity for conferring spiritual benefit (i).

Different meanings of "sapinda" in the Mitakshara and the Dayabhaga.—In Buddha Singh v. Lallu Singh (j), their Lordships of the Privy Council said: "It is now well settled by the decisions of this Board [Lalitabai Bapooobhoy v. Cassibai (k) and Ramchandra's case (l)], that under the Mitakshara the sapinda-relationship arises 'between two people through their being connected by particles of one body,' namely, that of the common ancestor, in other words, from community of blood in contradistinction to the Dayabhaga notion of 'community in the offering of religious oblations.'"

Both the schools adopt as the starting point the text of Manu, "To the nearest sapinda, the inheritance next belongs." Vijayeshwara, the author of the Mitakshara, who flourished towards the end of the eleventh and the beginning of the twelfth century, laid down that sapinda-relationship arose from community of blood, or, to use the quaint language of Hindu writers, "community of particles of the same body." On the other hand, Jimuta Vahana, the author of the Dayabhaga, who came about five centuries later laid down that sapinda-relationship arose from "community in the offering of funeral oblations" (m). A sapinda, according to the Mitakshara, means a person connected by the same pinda or particles of the same body; according to the Dayabhaga, it means a person connected by the same pinda or funeral cake. It may happen that, in some instances, the same person is the preferential heir whichever test is applied.

The doctrine of spiritual benefit is explained in secs. 79 to 87.

37. Gotraja sapindas and bhimna-gotra sapindas.—(1) The Mitakshara divides sapindas or blood relations into two classes, namely:—

(a) gotraja sapindas, that is, sapindas belonging to the same gotra or family as the deceased; and

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(i) Vedachala v. Subramania (1921) 48 I. A. 349, 44 Mad. 753, 64 I. C. 402, (52) A.P.C. 33; Jotendra Nath Roy v. Nagendra

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(j) (1915) 42 I.A. 208, 217, 37 All. 604, 613, 30 I.C. 529, (15) A.PC. 70.

(k) (1880) 5 Bom. 110, 121, 7 I.A. 212, 234.


(m) Ibid.
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(b) bhinna-gotra sapindas, that is, sapindas belonging to a different gotra or family from the deceased.

Gotraja sapindas are all agnates, that is, persons connected with the deceased by an unbroken line of male descent, as for instance, a son’s son, a son’s son’s son, or a brother’s son. If challenged, the identity of gotra (n) and the continuity of the lineage, not broken by an adoption into another gotra (o) must be established. Bhinna-gotra sapindas are all cognates, that is, persons related to the deceased through a female such as a sister’s son, a brother’s daughter’s son, etc. Bhinna-gotra sapindas are called bandhus in the Mitakshara, and are commonly known by that name.

(2) Gotraja sapindas are sub-divided into two classes, namely, (1) sapindas technically so called, and (2) sama-nodakas.

(3) It will be seen from the above that the word “sapinda” is used in the Mitakshara in two senses. In its larger sense it means a person having the same pinda or community of particles of the same body with the deceased, that is, a blood relation. In its narrower sense, the sapindaship ceases with the fifth degree on the mother’s side and the seventh degree on the father’s side. That is, a person is said to be the sapinda of another if, when he is related through his father, he is not more than seven degrees from the common ancestor, and when related through the mother not more than five degrees from the common ancestor (p). In this sense, as there are no females in the pedigree of a gotraja sapinda, the sapindas include blood relations to the seventh degree only reckoned from and inclusive of the deceased as defined in sec. 39. In the following sections of this chapter the word “sapinda” is used in its narrower sense.

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(o) Lat Hari Har Pratap Baksh Singh v. Raja Bairang Bahadur Singh (1933) 9 Luck.
38. The three classes of heirs.—(1) There are three classes of heirs recognized by the Mitakshara, namely:

(a) Gotraja sapindas;
(b) samanodakas; and
(c) bandhus.

(2) The first class succeeds before the second, and the second succeeds before the third.

39. Gotraja Sapindas.—The gotraja sapindas of a person, according to the Mitakshara (q), are—

(i) his 6 male descendants in the male line;

that is, his son, son’s son, son’s son’s son, etc., being S₁ to S₆ in the table given on p. 34 below.

(ii) his 6 male ascendants in the male line, the wives of the first three of them, and probably also of the next three;

that is, his father, father’s father, father’s father’s father, etc., being F₁ to F₆ in the table and their wives, that is, M₁ to M₆ being the mother, father’s mother, father’s father’s mother, etc.

(iii) the 6 male descendants in the collateral male line of each of his six male ascendants;

(1) that is, x₁ to x₆ in the line of F₁, being his brother, brother’s son, brother’s son’s son, etc.;

(2) x₁ to x₆ in the line of F₂, being his paternal uncle, paternal uncle’s son, etc.;

(3) x₁ to x₆ in the line of F₃, being his paternal grand-uncle, paternal grand-uncle’s son, etc.;

(4) x₁ to x₆ in the line of F₄;

(5) x₁ to x₆ in the line of F₅; and

(6) x₁ to x₆ in the line of F₆.

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

The sapindas are 57 in number as shown below:

- $S_6$ to $S_6$ 
- $F_1$ to $F_6$ and their wives $M_1$ to $M_6$ 
- $x_1$ to $x_6$ in each of the six lines from $F_1$ to $F_6$ 
- Wife, daughter and daughter's son

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It will be seen that the sapinda relationship extends to seven degrees reckoned from and inclusive of the deceased, this being the Hindu mode of counting degrees. It is six degrees, if you exclude the deceased. The wife becomes a sapinda of the husband on marriage. The daughter's son is not a gotraja sapinda: he is a bandhu for he is related to the deceased through a female. For the purposes of succession, however, he is ranked with gotraja sapindas.

A sapinda, according to the Mitakshara, means a person connected with the same pinda or body. See sec. 36 above.

In the case of the sons of a prostitute there can be no gotraja sapinda relationship between them or their agnate male descendants as the father is unknown (r).

40. Samanodakas.—The sapinda relationship, as stated above, extends to seven degrees reckoned from and inclusive of the deceased. The samanodakas of a person include all his agnates from the 8th to the 14th degree (s).

The samanodakas are shown in the table given on p. 34 in thick black type. They are 147 in number counting up to the 14th degree only; they are:

- $S_7$ to $S_{13}$ in the descending line
- $F_7$ to $F_{13}$ in the ascending line
- $x_7$ to $x_{13}$ in each of six collateral lines from $F_1$ to $F_6$
- $x_1$ to $x_{13}$ in each of the 7 collateral lines from $F_7$ to $F_{13}$

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Samanodakas are those male relations of a Hindu to whom he offers oblations of water while performing the Sradha ceremony. See sec. 80.

41. Table of Gotraja sapindas and samanodakas.—The table given on p. 34 is a table of Gotraja sapindas and samanodakas (t).

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


(t) This table is an enlargement of the table given in Sarvadikari's "Principles of the Hindu Law of Inheritance," 2nd ed., p. 527.
MITAKSHARA SUCCESSION.

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.

S1 to S13 are the son, the son's son, the son's son's son, etc., of the deceased.

F1 to F13 are his father, father's father, father's father's father, etc.

M1 to M6 are his mother, father's mother, father's father's mother, etc.

x1 to x13 in the line of F1 are his brother, brother's son, brother's son's son, etc.

"x1 to x13 in the line of F2 are his paternal uncle, paternal uncle's son, paternal uncle's son's son, etc.

x1 to x13 in the line of F3 are his paternal grand-uncle, paternal grand-uncle's son, etc., and so on in the remaining lines from F4 to F13.

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

F1 to F13 is the ascending line; S1 to S13 is the descending line; x1 to x13 are the thirteen collateral lines.

42. Succession in the Bombay Presidency.—The rules of inheritance in force in the Bombay Presidency differ in some respects from those in force in the Benares, Mithila and Madras schools. Again in those parts of the Bombay Presidency where the Mayukha is the prevailing authority, that is, the island of Bombay, Gujarat and the North Konkan, the rules of inheritance are in some respects different from those prevailing in other parts of that Presidency. The order of succession in the Bombay Presidency is given separately in Chapter VI (secs. 71-77).
Table of Sapindas and Samanodakas according to the Mitakshara Law.

\[ F_{13} \rightarrow X_1 \text{ to } X_{13} \]
\[ F_{12} \rightarrow X_1 \text{ to } X_{13} \]
\[ F_{11} \rightarrow X_1 \text{ to } X_{13} \]
\[ F_{10} \rightarrow X_1 \text{ to } X_{13} \]
\[ F_9 \rightarrow X_1 \text{ to } X_{13} \]
\[ F_8 \rightarrow X_1 \text{ to } X_{13} \]
\[ F_7 \rightarrow X_1 \text{ to } X_{13} \]

\[ M_6 = F_6 \rightarrow x_1 \rightarrow x_2 \rightarrow x_3 \rightarrow x_4 \rightarrow x_5 \rightarrow x_6 \rightarrow X_7 \text{ to } X_{13} \]
\[ M_5 = F_5 \rightarrow x_1 \rightarrow x_2 \rightarrow x_3 \rightarrow x_4 \rightarrow x_5 \rightarrow x_6 \rightarrow X_7 \text{ to } X_{13} \]
\[ M_4 = F_4 \rightarrow x_1 \rightarrow x_2 \rightarrow x_3 \rightarrow x_4 \rightarrow x_5 \rightarrow x_6 \rightarrow X_7 \text{ to } X_{13} \]
\[ M_3 = F_3 \rightarrow x_1 \rightarrow x_2 \rightarrow x_3 \rightarrow x_4 \rightarrow x_5 \rightarrow x_6 \rightarrow X_7 \text{ to } X_{13} \]
\[ M_2 = F_2 \rightarrow x_1 \rightarrow x_2 \rightarrow x_3 \rightarrow x_4 \rightarrow x_5 \rightarrow x_6 \rightarrow X_7 \text{ to } X_{13} \]
\[ M_1 = F_1 \rightarrow x_1 \rightarrow x_2 \rightarrow x_3 \rightarrow x_4 \rightarrow x_5 \rightarrow x_6 \rightarrow X_7 \text{ to } X_{13} \]

\[ W = \text{OWNER.} \]

\[ d \rightarrow S_1 \]
\[ d's \text{ son} \rightarrow S_2 \]
\[ S_3 \]
\[ S_4 \]
\[ S_5 \]
\[ S_6 \]
\[ S_7 \text{ to } S_{13} \]

Note. — For explanation of the table, see sec. 41.
43. Order of succession among sapindas.—The sapindas succeed in the following order:

1—3. Son, grandson (son’s son), and great-grandson (son’s son’s son), and (after 14th April 1937) widow, predeceased son’s widow, and predeceased son’s predeceased son’s widow.—A son, a grandson whose father is dead, and a great-grandson whose father and grandfather are both dead, succeed simultaneously as a single heir to the separate or self-acquired property of the deceased with rights of survivorship (u). See s. 29, s. 31, ill. (a), and s. 32.

After 14th April 1937, 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.

(1) *Take per stirpes.*—The son, grandson and great-grandson take *per stirpes* and not *per capita*. See s. 29 and illustration thereto.

(2) *Son born after partition.*—Where there has been a partition between a father and his sons, and a son is subsequently born to him, such son takes not only the share of the father in the joint property obtained by him on partition, but the whole of the property acquired by the father before or after partition to the exclusion of the divided sons (u). A and his two sons, B and C, constitute together a joint family. B and C separate from A. After the division, a son D is born to A. A and D remain joint. A then dies leaving D. D is entitled not only to A’s separated share of the joint property, but to the whole of A’s self-acquired property. See s. 310.

(3) *Divided and undivided sons.*—Where there are sons by different wives, it often happens that the sons by one wife take their share of the joint property from the father and separate from him, and the father continues joint with the sons by his other wife. Suppose now that the father dies leaving self-acquired property, some acquired before and some after partition. Who is entitled to the property? According to the Allahabad, Bombay and Madras ruling (w), the undivided sons and their branches succeed as heirs to the whole of such property to the exclusion of the divided sons and their branches. According to the Oudh rulings, they all inherit together, the reason given being that partition does not destroy rights of inheritance to the self-acquired property of a separated member (x). A and his two sons B and C constitute a joint family. B separates from A, and receives his share of the joint property. A then dies leaving self-acquired property. Both B and C survive A. According to the Bombay and Madras decisions, C alone is entitled to such property. According to the Oudh decisions, B and C inherit the property in equal shares. See s. 341.


(v) *Naval Singh v. Bhagwan Singh (1882) 4 All. 427, 429.


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(4) **Illegitimate sons.**—The illegitimate sons of a Brahman, Kshatriya, or Vaisya are entitled to maintenance, and not to any share of the inheritance (g). See Mitakshara, ch. I, s. 12, v. 3.

The illegitimate son of a Sudra, however, is entitled to a share of the inheritance provided (1) he is the son (putra) of a dasi, that is, a Hindu (s) concubine in the continuous and exclusive keeping of his father and (2) he is not the fruit of an adulterous or incestuous intercourse (a). A Brahmin mistress of a Sudra does not become a Sudra herself and their son is not a Dasiputra (b). It is not necessary to constitute a woman a dasi that she should not have been a married woman (c). She may be a widow when the illicit connection begins (d), or she may even be a married woman when such connection begins, provided that in the latter case the connection has ceased to be adulterous when the son is conceived, as where the husband dies before conception (e). The condition that the connection should not be adulterous or incestuous (f) is not to be found in the texts; it seems to have been imposed on grounds of general morality (f). Nor is it necessary that a marriage could have taken place between the boy’s father and his mother (g). He is not, however, entitled to full rights of inheritance. The text of the Mitakshara bearing on the subject is as follows:

“The son begotten by a Sudra on a female slave obtains a share by the father’s choice or at his pleasure. But after [the demise of] the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share; that is, let them give him half [as much as is the amount of one brother’s] allotment.”

Mitakshara, chap. I, sec. 12, verse 2.

The above text refers to the property of a separated householder (h).

In *Kamulammal v. Viswanathawami* (i), the above text was interpreted by the Privy Council to mean that an illegitimate son takes one-half of what he would have taken if he were legitimate, that is to say, the illegitimate son takes one-fourth (1/2 x 1/2), and the legitimate son takes three-fourths. If he dies leaving one legitimate son and 6 illegitimate sons, then


(e) **Lingappa v. Eendasan** (1904) 27 Mad. 13 [a Christian woman is not a dasi]; **Sidaram v. Gampai** (1928) 25 Bom. L. R. 450, 73 I. C. 412, (23) A. B. 384 [a Mahomedan woman is not a dasi]; *Mahabir Prasad v. Raj Bakadur Singh* (1943) 18 Luck. 585 (Thakur woman).


(e) **(1878) 1 Bom. 97, supra; Subramania v. Rathnaratna** (1918) 41 Mad. 44, 47, 42 I. C. 556, (18) A. M. 1346.

(d) **(1916) 40 Bom. 309, 32 I. C. 986, (16) A. B. 283, supra.**


(h) **Ranoji v. Kandooji** (1885) 8 Mad. 457, 561.

if the 6 illegitimate sons were legitimate, they would each take 1/7; being illegitimate, each of them will take 1/2 of 1/7, that is, 1/14 and the six together will take 3/7, and the remaining 4/7 will go to the legitimate son (j).

Where 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 to the daughter's son, as the case may be (k). According to the Privy Council decision in Kamulammal’s case referred to above, the half share which an illegitimate son takes is a half of that which he would have taken had he been legitimate. Applying that test, it is clear that had the illegitimate son been legitimate, he would have taken the whole estate to the exclusion of the daughter; being illegitimate, he takes one-half of the whole, and the daughter or daughter's son, as the case may be, takes the other half. In such a case, if the daughter (who has taken a half share of the estate) dies, the half share descends solely to the daughter's son and the illegitimate son is not entitled to any portion thereof (l). If there be no widow, daughter, or daughter’s son, the illegitimate son takes the whole estate (m). An adopted son stands on the same footing as a legitimate son (n).

The share allotted to the illegitimate son under the Mitakshara is not in lieu of maintenance; it is in recognition of his status as a son (o).

The legitimate son and the illegitimate son inherit their father's property as coparceners with a right of survivorship. Thus if a Sudra dies leaving a legitimate son A, and an illegitimate son B, and A dies before partition without leaving male issue, B will take A's share by survivorship to the exclusion of A's daughter, mother or other heir (p). See sec. 312.

The right of an illegitimate son of a Sudra to inherit to his father is not merely a personal right: it passes on his death to his legitimate issue. Thus if a Sudra A has a legitimate son B and an illegitimate son C and C predeceases A, leaving a legitimate son D, then, on A’s death, D will take a moiety of the share of B, that is, B will take 3/4, and D will take 1/4; that being the share of his father C. It is an open question whether D would inherit at all to A, if he were the illegitimate son of C (q).

Where, on partition between a legitimate son and an illegitimate son, property is allotted to the widow, the illegitimate son can claim, on the widow’s death, a share in the property allotted to her, as it stands on the same footing as property inherited from her husband (r).

The illegitimate son of a Sudra inherits only to his father; he has no claim to inherit to collaterals. Thus if a Sudra dies leaving a legitimate son A and an illegitimate son B, they will both inherit their father's property as copar-
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ceners. If they divide the property, $A$ will take $3/4$ and $B$ will take $1/4$. If $A$ dies after partition, his share will pass to his own heirs, but in no case to $B$, $B$ not being amongst his heirs. $B$ can inherit to his father alone, and not to his father's legitimate sons, nor his father's brothers nor any other collaterals (a). If $A$ dies while he is joint with $B$ without leaving male issue his share would go to $B$ by survivorship. But $A$'s separate property would pass to his own heirs, and not in any case to $B$. On the same principle, if a Sudra dies leaving an illegitimate son of his father and a half-brother, the half-brother is entitled to succeed, the illegitimate son being excluded from all collateral succession (t). And just as an illegitimate son is not entitled to inherit to collaterals, so a collateral is not entitled to inherit to him. Thus if a Sudra dies leaving a legitimate son $A$ and an illegitimate son $B$, and $A$ dies leaving a legitimate son $C$, and $B$ dies without leaving any relations, $C$, who is a collateral, is not entitled to succeed to $B$'s property (w).

The son of a Zamindar born of the katur form of marriage among the Tanwars or Kanwars (Sudra) is illegitimate and is not entitled to the Zamindary in preference to the Zamindar's cousin (r). The only question raised before the Judicial Committee was as to the validity of the marriage. The other point was conceded obviously because the Zamindari was impartible and the cousin took by survivorship. (See s. 587.)

The illegitimate son is not entitled to succeed to the stridhan of his father's wife (w).

There can be no coparcenary between a Sudra father and his illegitimate sons, but it has been held by the High Court of Bombay that on the father's death they hold the property inherited by them from him as coparcenars and none of them can dispose of his interest in it by will (x).

(5) Son born of anuloma marriage.—Under the Hindu law as administered in the Bombay Presidency, the marriage of a Brahman male with a Sudra, woman is an anuloma marriage and is valid. A son born of such a marriage is legitimate, but he is entitled only to a one-tenth share in the estate of his father. As regards the estate of his uncle also, he is entitled not to the whole of it, but only to a one-tenth share in it (y).

4. Widow.

(1) Widow's estate.—The widow takes only a limited interest called the widow's estate in the estate of her husband [s. 176]. On her death the estate goes not to her heirs, but to the next heirs of her husband, technically called revisioners (z) [ss. 168, 170]. She is entitled only to the income of the property inherited by her. She has no power to dispose of the corpus of the property except in certain cases [ss. 178-180]. She may, however, alienate her life-interest in the estate.

(u) Zire v. Romiya (1922) 46 Bom. 424, 64 I. C. 975, (22) A. B. 176.
(c) Rmogopeen v. Myna Baw (1867) 11 M. I.A. 487.
(2) *Unchastity.*—An unchaste widow is not entitled to inherit to her husband. But once the husband's estate has vested in her (which can only happen if she was chaste at the time of her husband's death), it will not be divested by unchastity subsequent to her husband's death (a).

(3) Re-marriage.—The re-marriage of a widow, though now legalized by the Hindu Widow's Re-marriage Act, 1856, divests the estate inherited by her from her deceased husband. By her second marriage she forfeits the interests taken by her in her husband's estate, and it passes to the next heirs of her husband as if she were dead (s. 2 of the Act). The reason is that a widow succeeds as the surviving half of her husband, and she ceases to be so on re-marriage. But a widow does not by re-marriage lose her right to succeed to the estate of her son (b) or her daughter (c), by her first husband.

Does a Hindu widow who has ceased to be a Hindu before her re-marriage, e.g., by conversion to Mahomedanism, forfeit her rights to her husband's property? Yes, according to the Calcutta (d), Madras (e), Bombay (f), and Patna (g) decisions. No, according to the Allahabad decisions (h).

There is a conflict of opinion as to whether a widow who is entitled to re-marry by the custom of the caste to which she belongs, forfeits her interest in her husband's estate by re-marriage. It has been held by the High Court of Allahabad and the Chief Court of Oudh, that she does not; by the other High Courts, that she does. The Allahabad High Court has again considered the matter in a Full Bench and held that she does not, unless it is proved that there is also a custom of such forfeiture on such a contingency (i). See the cases cited in s. 563 below. The mere fact that there is a practice of re-marriage after 1856 would not necessarily be indicative of any ancient custom existing before the Act and such a custom has to be proved by the party relying on it (j).

(4) *Two or more widows.*—Two or more widows succeeding as co-heirs to the estate of their deceased husband take as joint tenants with rights of survivorship and equal beneficial enjoyment. Thus a Hindu dies leaving two widows A and B, they are entitled as between themselves to an equal share of the income, and on the death of either of them, the other is entitled to the whole of the income by survivorship. Though co-widows take as joint tenants no one of them has a right to enforce an absolute partition of the estate against the others so as to destroy their right of survivorship. But they are entitled to obtain a partition of separate portions of the property so that each may enjoy her equal share of the income accruing therefrom, and the Court may, at suit of any one of them pass a decree for separate possession and enjoyment. Each can deal as she pleases with her own life-interest, but she cannot alienate any part of the corpus of the estate by gift or will so as to prejudice the rights of the survivor or a future reversioner. If they act together


(d) Matangini v. Ram Hildon (1929) 19 Cal. 289

[footnote]

(e) Vittu v. Chatakundu (1918) 41 Mad. 1078, 48 I.C. 50, (19) A.M. 884 [F.B.]


(g) Manosammal Suresh v. Attar (1922) 1 Pat. 700, 67 I.C. 550, (22) A.P. 378.

(h) Abdul Ariz v. Nirma (1913) 35 All. 466, 20 I.C. 325.


they can burden the reversion with any debts contracted owing to legal necessity but one of them acting without the authority of the other, cannot prejudice the right of survivorship by burdening or alienating any part of the estate. The mere fact of partition between the two, while it gives each a right to the fruits of the separate estate assigned to her, does not imply a right to prejudice the claim of the survivor to enjoy the full fruits of the property during her lifetime (k). But the right of survivorship may be relinquished by agreement between the widow. Such an agreement may be effected orally and without a registered instrument (l). See s. 181 (C).

Where a Hindu dies leaving only one widow, she can alienate her life-interest in the property inherited by her from her husband, but she cannot alienate the corpus of the property except for legal necessity. An alienation of the corpus except for legal necessity does not bind the next heirs of her husband who succeeded to his estate after the widow's death. Thus if a Hindu dies leaving a widow and a brother, and the widow sells or mortgages the corpus of the estate without legal necessity, the sale or mortgage binds only her life-interest. On her death, her husband's brother would succeed to the estate as his heir, and he would not be bound by the sale or mortgage, the same having been made without legal necessity (ss. 181-181B, 185).

Where a Hindu dies leaving two or more widows, and they are in joint possession of the estate, any one of them may alienate her undivided interest in her husband's property. If any one of the widows is in possession of a separate portion of the property whether it be by mutual agreement between them or under a decree of the Court, she may alienate her share of the income which is derived from that portion. But in either case the alienation cannot take effect or have validity beyond her lifetime. It is good only for her life, and on her death her interest in the property goes to the co-widow by survivorship. She cannot alienate her interest so as to defeat the right of survivorship of the co-widow. That can only be done with the consent of the co-widow (m).

Two or more widows cannot by any agreement amongst themselves affect the rights of the ultimate successors (n).

4A. Predeceased son's widow, widow of predeceased son of predeceased son—
   (See S. 35. supra.)

5. Daughter.—

(1) Priority among daughters.—Daughters do not inherit until all the widows are dead. As between daughters, the inheritance goes, first, to the unmarried daughters (o), next, to daughters who are married and “unprovided for,” that


(l) Latchumnammal v. Gangammal (1911) 34 Mad. 72, 7 I.C. 858


is, indigent, and lastly, to daughters who are married and are "enriched," that is possessed of means (p). A married daughter may be a widow (q). No member of the second class can inherit while any member of the first class is in existence, and no member of the third class can inherit while any member of the first or the second class is in existence.

(2) **Survivorship.**—Two or more daughters of a class take the estate jointly as in the case of widows, with rights of survivorship (r). Any one daughter may alienate her life-interest in the property, but not so as to affect the rights of survivorship of the other daughters (s). And, like widows, 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 (t). They may divide the estate merely with a view to convenient enjoyment, retaining the right of the survivor to take the whole on the death of one of them, or they may agree that the right of survivorship should be extinguished as between themselves (u). The agreement may be effected orally and without a registered writing (v). As to Bombay Presidency, see note (4) below.

(3) **Limited estate.**—The daughter takes a limited interest in the estate of her father corresponding to the widow's estate. On her death, the estate passes not to her heirs, but to the next heirs of her father (w) [see s. 169]. The next heirs of the father are called reversioners. As to Bombay Presidency, see note (4) below.

(4) **In the Bombay Presidency.**—Rules (2) and (3) do not apply in the Bombay Presidency [see s. 72, no. 5]. A has two daughters B and C. B has a daughter D. On A's death, his estate will go to B and C. In places other than the Bombay Presidency, they each take a "woman's estate" with rights of survivorship. Therefore, on B's death, her interest in the estate will go, not to her daughter D, but to her sister C by survivorship. In the Bombay Presidency, however, it is different. There on A's death B and C will each take an absolute interest in a moiety of the estate so that on B's death, her moiety will go to her heir D, and on C's death, her moiety will go to her own heirs.

(5) **Unchastity.**—Unchastity of a daughter is no ground for exclusion from inheritance (x), except that in Bombay, where there is an unmarried daughter who is a prostitute and a married daughter who is chaste, the latter succeeds in preference to the former (y). It may here be observed that under the Mitakshara law, a widow is the only female who is excluded from inheritance by reason of unchastity (z).

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(q) Rajani v. Gomati (1928) 7 Pac. 820, 111 I.C. 673, (28) A.P. 496.


(s) Kannu v. Ammakannu (1900) 23 Mad. 504; Yehmai Chetty v. Nathuram (1945) Mad. 35.


(w) Chotay Lall v. Chumnoo Lall (1879) 4 Cal. 744, 6 I.A. 15; Mott v. Dora Singh (1881) 3 Mad. 290, 6 I.A. 99.

(x) Adaya v. Rudra (1930) 4 Bom. 104; Roniyada v. Lakshmi (1982) 5 Mad. 149, 156.


(z) Vedamset v. Vedanayaga (1908) 31 Mad. 100.
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(6) *Illegitimate daughter.—* The illegitimate daughter, even of a Sudra, has no rights of inheritance to her father (a). But she is entitled to inherit to her mother (b). See ss. 163 and 164.

(7) *Exclusion by custom.—* A daughter may be excluded from inheritance by special family or local custom (c).

6. Daughter’s son.—

(1) *When entitled to succeed.—* The daughter’s son is not entitled to succeed if there be any daughter living and capable of inheriting (d). A daughter’s son is strictly a bandhu or bhinna-gotra sapinda, being related to the deceased through a female, but he inherits with gotraja sapindas by virtue of express texts (e); see note (5). He succeeds not as an heir to his mother, but as an heir to his own maternal grandfather.

(2) *Takes as full owner.—* The daughter’s son takes the estate as full owner like any other male heir, and on his death the succession passes to his heirs and not to the heirs of his maternal grandfather (f).

(3) *Take per capita.—* Daughters’ sons take per capita, not per stirpes. A has two daughters B and C. B has two sons, and C has three. B and C die in A’s lifetime. A then dies leaving the five grandsons. The estate will be divided into five shares, each grandson taking one share.

(4) *Where daughter’s sons are joint.—* It was held by the Judicial Committee in 1902 that two or more sons by a daughter living as members of a joint family, take the estate inherited by them from their maternal grandfather as joint tenants with rights of survivorship (g). It is doubtful how far this remains good law [See S. 223 (2)]. But sons by different daughters would take as tenants-in-common, for there can be no coparcenary between sons by different daughters (h). A dies leaving two grandsons C and D by different predeceased daughters, C dies leaving a widow. C’s interest in the estate will pass to her as his heir, and not to D by survivorship.

(5) The daughter’s son occupies a peculiar position in the Hindu law. He is a bhinna-gotra sapinda or bandhu, but he comes in before parents and other more remote gotraja sapindas. The reason is that according to the old practice it was competent to a Hindu who had no son to appoint a daughter to raise up issue to him. Such a daughter, no doubt, was the lawful wife of her husband, but her son, called *putriku putra*, became the son of her father. Such a son was equal to an *aurasa* or legitimate son, and took his rank, according to several authorities, as the highest among the secondary sons. Although the practice of appointing a daughter to raise up issue for her father became obsolete, the daughter’s son continued to occupy the place that was assigned to him in the order of inheritance and even now he takes a place practically next after the male issue, the widow and the daughters being simply interposed during their respective lives (i).

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(a) Bhikya v. Babu (1908) 32 Bom. 542.
(b) Arunagiri v. Ranganayaki (1898) 21 M. 40.
(d) Bajmath v. Mahabir (1878) 1 All. 608; San Kumar v. Deo Saran (1886) 8 All. 385.
(e) Srinivasa v. Bandugudapeni (1889) 12 Mad. 411.
(g) Raja Venkayamma v. Venkatarama- 
   nayamma (1902) 25 Mad. 678, 20 A. 156.
(h) Raja Vyakshinatha v. Yegyia (1904) 27 Mad. 382, 385.
(i) In Bombay, the daughter takes not for life, but absolutely.
The difference in his position under the old law and the present law is that under the former he became by a fiction of law a member of his maternal grandfather’s family, while under the present law he is a member of his own father’s family, but is also regarded as a son’s son to his maternal grandfather for purposes of inheritance (j). “In regard to the obsequies of ancestors,” says the Mitakshara, “daughter’s sons are considered as son’s sons”.

Mit. ch. ii, sec. 2, v. 6.

(6) If a daughter is excluded from inheritance to her father by custom, her issue also cannot inherit to her father, that is, their maternal grandfather. But this does not prevent them from being the *stridhan* heirs (k). See above, “Daughter,” note No. (7).

### 7. Mother (l)

1. **Mayukha Law.**—In cases governed by the Mayukha, the father is preferred to the mother (m).

2. **Limited interest.**—The mother takes a limited interest in the estate of her son corresponding to the widow’s estate. On her death, the estate passes not to her heirs, but to her son’s heirs (n).

3. **Unchastity and remarriage.**—Unchastity of a mother is no bar to her succeeding as heir to her son, nor does remarriage constitute any such bar (o).

4. **Step-mother.**—A step-mother is not entitled to inherit to her step-son (p).

In the Bombay Presidency, however, she is an heir, for she is there regarded as a *sagota sapinda* (g). See s. 64 below.

5. **Adoptive mother.**—Mother includes adoptive mother, so that an adoptive mother, according to the Mitakshara law, succeeds before the adoptive father (r). On the death of a son adopted in *dwayamshayana* form, the adoptive mother and natural mother both inherit equally as co-heiresses (s).

### 8. Father

**Mayukha Law.**—In cases governed by the Mayukha, the father succeeds before the mother. See note (l) under the head “Mother.”

### 9. Brother

1. **Whole before half-blood.**—Brothers of the whole blood succeed before those of the half-blood (u). The half-brothers referred to here are sons of the same father by a different mother. Sons of the same mother by a different father are not entitled to succeed as “brothers” (u).
(2) *Mayukha Law.*—In cases governed by the Mayukha, brothers of the half-blood share with the father's father (v).

To the separate property of a person all his brothers succeed though some are joint with him as to other property and others are completely divided from him (w).

10. Brother's son—

(i) of the whole blood.

(ii) of the half-blood.

(1) *Takes before brother's son's son.*—The brother's son succeeds before the brother's son's son (z).

(2) *Whole blood before half-blood.*—Sons of brothers of the whole blood succeed before sons of brothers of the half-blood [see s. 44].

(3) *Take per capita.*—Brothers' sons take *per capita* [see s. 32].

*Note.*—The Mitakshara, in discussing the place of the father's mother in the order of succession, says: "No place, however, is found for her in the compact series of heirs from the father to the nephew. . . . . . . She must, therefore, of course succeed immediately after the nephew"; Mit., ch. II, s. 5, v. 2. According to this text, as literally interpreted "the compact series of heirs", that is, the series of heirs first entitled to inherit, ends with the brother's son. But it has been held by the Privy Council in *Buddha Singh v. Lalru Singh* (y), that the expression "brother's son" in the above text includes "brother's son's son," so that the compact series ends not with the brother's son, but with the brother's son's son [No. 11], and the father's mother [No. 12], takes not after the brother's son, but after the brother's son's son.

11. Brother's son's son.—

(1) See notes to No. 10 above.

(2) *Whole blood before half-blood.*—Grandsons of the whole brother take before the grandsons of the half-brother [see s. 44].

(3) Brother's sons' sons take *per capita* [see s. 32].

(4) The compact series of heirs under the Mitakshara as interpreted by the Privy Council ends with the brother's son's son. See No. 10 above note (3).

12. Father's mother.

13. Father's father.

13A. Son's daughter.—

(1) This is the place now assigned to the son's daughter by the Hindu Law of Inheritance (Amendment) Act 2 of 1929. Before that Act she was recognized as an heir only in the Bombay [s. 55 (1)] and Madras [s. 56 (1)] Presidencies, where she ranked as a bandhu. Under the Act she inherits

(r) Chap. v. s. 8, para. 20.


(x) *Sher Singh v. Basdeo Singh* (1928) 50 All. 904, 110 I.C. 712, ('28) A.A. 612.

as an heir in all places where the Mitakshara law applies, and succeeds immediately after the father's father. See note to No. 13D below, "Hindu Law of Inheritance (Amendment) Act 2 of 1929."

(2) Estate.—The son's daughter takes an absolute estate in Bombay [s. 170 (2)]. In Madras, she takes a limited estate [s. 168]. She would also take a limited estate elsewhere.

13B. Daughter's daughter.—

(1) This is the place now assigned to the daughter's daughter by the Hindu Law of Inheritance (Amendment) Act 2 of 1929. Before this Act, she was recognized as an heir only in the Bombay [s. 55 (1)] and Madras [s. 56 (1)] Presidencies, where she ranked as a bandhu. Under the Act she inherits as an heir in all places where the Mitakshara law applies, even in provinces where before the Act she was not an heir (a), and succeeds next after the son's daughter. See note to N. 13D below, "Hindu Law of Inheritance (Amendment) Act 2 of 1929."

(2) Estate.—The daughter's daughter takes an absolute estate in Bombay [s. 170 (2)]. In Madras, she takes a limited estate [s. 168]. She would also take a limited estate elsewhere.

13C. Sister.—

(1) This is the place now assigned to the sister by the Hindu Law of Inheritance (Amendment) Act 2 of 1929. Before that Act, she was recognized as an heir only in the Bombay [s. 64] and Madras Presidencies [s. 56]. But the Act is applicable even where the sister had not been previously recognized as an heir (a).

As regards the Bombay Presidency, she is expressly mentioned as an heir in the Mayukha. She is not, however, expressly mentioned as such in the Mitakshara, but her right as an heir has long since been recognized [s. 64 (1)]. Her place also in the order of succession has long since been established; she succeeds immediately after the father's mother, and before the father's father [s. 65 (1), s. 72 (12), s. 77 (12)]. Her place in the order of succession is not affected by the Act, for the Act contemplates succession after the father's father, while her place as determined by a series of decisions since 1865 is immediately after the father's mother whether under the Mitakshara or the Mayukha (b).

In the Madras Presidency, the sister ranked as a bandhu before the Act [s. 56 (1)]. Under the Act she succeeds next after the daughter's daughter.

(2) Half-sister.—The question whether a half-sister gets the benefit of the Act has given rise to difference of opinion. The Privy Council have held (thus settling the difference between the various High Courts) that the term 'sister' includes a half-sister; but a full sister and a half-sister do not take together. The latter takes only in default of the full sister (c).

(3) Estate.—The sister takes an absolute estate in Bombay [s. 170 (2)]. In Madras, she takes a limited estate [s. 168]. She would also take a limited estate elsewhere.

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(a) Bindeshwari Singh v. Rajv Koth Singh (1928) 13 Luck. 380, 168 I.C. 733, (57) A.O. 402; Mt. Rajpuk Kuswar v. Surju Rai (1936) 88 All. 1041 (F.B.), 165 I.C. 756,
(b) Shadmappa v. Niteshwar (1932) 57 Bom. 377, 144 I.C. 925, (33) A.B. 137.
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(4) It is now held by all the courts that the Act applies though the last male-owner died before the Act, if the succession in respect of which the question arose, opened after the Act (d). But the Act obviously does not apply where the succession opened before the Act (e).

13D. Sister's son.—

(1) This is the place now assigned to the sister's son by the Hindu Law of Inheritance (Amendment) Act 2 of 1929. Before that Act, he ranked as a bandhu [s. 44, No. 3]. Under the Act, he succeeds next after the sister.

(2) Hindu Law of Inheritance (Amendment) Act 2 of 1929.—This Act applies only to cases "subject to the Law of Mitakshara." The material section is section 2 which is as follows:—

"A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father [No. 13] and before a father's brother [No. 14]: Provided that a sister's son shall not include a son adopted after the sister's death."

The Act came into force on 21st February, 1929. It is not retrospective. It applies only to cases where the succession opens after that date.

The Act applies to Jains in Gujarat governed by Mayukha, the sister's son is therefore preferred to father's sister (f).

In ascertaining the heirs of a maiden's father—they being her heir in respect of her stridhana when she dies leaving neither brother, mother nor father—Act II of 1929 is applicable (g).

The Act is set out in Appendix VIII below.

13E. Half-sister's son.—

This is the place which should be given to the half-sister's son according to the Act. (See note under Half-sister, supra.)

15. Paternal uncle's son [see s. 32].

He succeeds before 20 (a).

Whole blood and half-blood.—See s. 44 and notes thereto.

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 (i).
23. Uncle's son's son's son.


(g) Shyamlu v. Raghubandan (1939) Bom. 229, (37) A. B. 194.

(h) Buddha Singh v. Lalit Singh (1915) 42 I.A. 208, 37 All. 604, 30 I. C. 529, (15) A. PC. 70.

(i) Venkat v. Purvaram (1896) 20 Bom. 173.
Following the reasoning of the Privy Council in *Buddha Singh v. Laltu Singh* (j), the Madras High Court held that the father's paternal uncle's son's son (x3 in the third line of the Table at p. 34) should be preferred to the great-great-grandson of the grandfather (x4 in the second line of that Table). (k). The decision implies that he would be also preferred to the great-great-grandson of the father (x4 in the first line of the Table at p. 34), who will also be postponed to the paternal uncle's son's son (x3, in the second line of that Table) (l).

So far as ancestors and descendants are concerned, the further continuation of the table is of no practical importance. As to collaterals beyond this stage, it is difficult to see that one claimant can be superior to another in the capacity to confer spiritual benefit. The rules of preference will then probably be:

1. He who claims through a nearer ancestor will be preferred to one claiming through a remoter ancestor.

2. In the line of any ancestor, the nearer excludes the more remote.

44. Whole blood and half-blood.—(1) A sapinda of the whole blood is preferred to a sapinda of the half-blood. This preference, however, is confined to sapindas of the same degree of descent from the common ancestor; it does not apply to sapindas of different degrees (m). In the United Provinces (n), Bengal (o) and Madras (p), this rule applies not only to brothers and brothers' sons, but to remoter sapindas. It has now been held by the Privy Council that the rule applies to all the Mitakshara Schools (q) and the Bombay cases (r) holding a different view are overruled. The Punjab case (s) holding a view similar to Bombay must also be regarded as overruled.

Thus a paternal uncle of the whole blood is entitled to succeed in preference to a paternal uncle of the half-breed, they being sapindas of the same degree of descent. 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, the former being a nearer sapinda of the deceased than the latter.

According to the Customary Law of Kumaon, applicable to the Khasas, if a man dies sonless, his brothers do not inherit as brothers but as sons of the father to whom the estate reverted on the sonless man's death. When nephews or cousins succeed, they take their father's share, i.e., per stirpes and not per capita (t). But this principle does not apply to the Manras (u).

(j) (1915) 42 I.A. 208, 37 All. 601, 30 I.C. 529, (15) A.P.C. 70.
(n) (1897) 7 All. 215 [F. B.], supra.
(o) *Sham Singh v. Kishan Sahai* (1907) 6 Cal. L.J. 190.
(p) *Nachappa v. Rangaasami* (1915) 28 Mad.
(q) *Garredda v. Lallan* (1933) 60 I. A. 189, 142 I.C. 807, (33) A.P.C. 141.
(s) *Hirannad v. Maya Das* (1894) Punj. Rec., no. 83.
Samanodakas.

45. Order of succession among Samanodakas.—Failing all sapindas, the inheritance passes to samanodakas, the nearer line excluding the more remote, and a nearer kinsman in one line excluding a remoter kinsman in the same line (v) [ss. 40, 44].

Bandhus.

46. Bandhus.—(1) On failure of sapindas and samanodakas, but not until then, the inheritance passes to bandhus (w).

(2) The gotraja sapindas and samanodakas of a Hindu are all agnates, that is, persons connected with him by an unbroken line of male descent. The bandhus or bhinna-gotra sapindas are all cognates, that is, persons connected with him through a female or females. The bandhus of a person are his blood-relations connected through females who have passed into other families or gotras (x).

(3) Every bandhu must be related to the deceased through at least one female. He may, however, be related to him through two females (y) or even more than two.

(4) The Mitakshara [ch. 2, sec. 6, para. 1] mentions three classes of bandhus, namely (1) Atma bandhus, that is, one’s own bandhus, (2) Pitrī bandhus, that is, the father’s bandhus, and (3) Matri bandhus, that is, the mother’s bandhus, and enumerates the following nine relations as bandhus:—

I. Atma bandhus:—

1. father’s sister’s son;
2. mother’s sister’s son;
3. mother’s brother’s son.

The word "son" is used in a generic sense and includes son’s son (z).

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(e) Sarvadhidkari's Hindu Law of Inheritance, 2nd ed., p. 687.
(w) Ram Baran v. Kamla Prasad (1910) 32 All. 594, 6 I. C. 698.
(z) Adit Narayan v. Mahabir Prasad (1921) 48 I. A. 86, 6 Pat. L. J. 140, 60 I. C. 251, (21) A. P.C. 53 where it was held that a mother’s sister’s son’s son is an atma bandhu.
II. *Pitrī bandhus* :

4. father’s father’s sister’s son;
5. father’s mother’s sister’s son;
6. father’s mother’s brother’s son.

III. *Matri bandhus* :

7. mother’s father’s sister’s son;
8. mother’s mother’s sister’s son;
9. mother’s mother’s brother’s son.

It was at one time thought that only the nine relations expressly mentioned in the Mitakshara were bandhus. But it is now well established that the enumeration of bandhus in the Mitakshara is, illustrative and not exhaustive. For it would be unreasonable to hold that the mother’s brother’s son is a bandhu, and his father, that is, the mother’s brother, is not a bandhu. And likewise, it would be unreasonable to hold that the mother’s brother is a bandhu and his father, that is, the maternal grandfather is not a bandhu. Thus the mother’s brother, the maternal grandfather, and several other relations have been held to be bandhus.

*Besides the* nine relations enumerated in the Mitakshara, the following relations have been held to be bandhus, namely:

[Sister’s son (b.)] Under the Hindu Law of Inheritance (Amendment) Act 2 of 1929, the sister’s son inherits with gotraja sapindas, and succeeds next after the sister. See s. 43, No. 13 D.

Half-sister’s son (c) but not a sister’s step-son (d).
Brother’s daughter’s son (e).
Daughter’s son’s son (f).
Sister’s son’s son (g).
Daughter’s daughter’s son (h).
Sister’s daughter’s son (i).
Father’s sister’s son’s son (j).
Father’s sister’s daughter’s son (k).

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(c) *Subbarayu v. Kalyan* (1902) 15 Mad. 300.
(d) *Samintha v. Angampal* (1922) 45 Mad. 257, 65 I. C. 736, (‘22) A.M. 46.
(g) *Balasundaram v. Narayana* (1897) 20 Mad. 342.

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(b) *Umaid Bahadur v. Uday Chand* (1881) 6 Cal. 119; *Sham Dev v. Bir-bhadra Prasad* (1921) 48 All. 403, 62 I. C. 462, (‘21) A.A. 178.
(c) *Irrir v. Ram Daur* (1925) 47 All. 172, 82 I. C. 1032, (‘25) A. A. 17.
47. Rules for determining heritable bandhus. Are all the blood relations of a person connected through a female, heritable bandhus or bhinn-obra sapinda?

(i) The question naturally arises whether the term 'sapinda', in this connection, is used in the general sense (s. 36) or the narrower sense (s. 37). In other words, whether all the relations connected by community of particles of the same body (whatever the degree of relationship to and from a common ancestor may be) are entitled to inherit as bandhus or only those who are connected within certain specified degrees.

This question arose for decision in Ramchandra v. Vinayak (b). In that case the relationship between the

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(l) Chinammal v. Venkatarama (1892) 15 Mad. 421.
(m) Mathuzami v. Simambadu (1900) 10 Mad. 405, 23 I.A. 83; Vedehila v. Subramanya (1921) 48 I.A. 349, 44 Mad. 753, 04 I.C. 462, (22) A.P.C. 33.
(n) Tirath Ram v. Mat. Kahan Drei (1920) 1 Lah. 283, 505-6, 60 I.C. 101, (21) A.L. 149.
(o) Ram Sia v. Bua (1925) 47 All. 10, 84 I.C. 600, (24) A.A. 790; Paranmanadas v. Parbhudas (1913) 14 Bom., L.t. 630, 16 LC 591.
(q) Krishna v. Venkatarama (1906) 29 Mad. 115.
(s) Gridhari Lali v. Bengal Government (1889) 12 M.J. A. 448.
(u) Radharabhibhuti v. Ponnappa (1882) 5 Mad. 69.
(x) Padma Coomary v. Court of Wards (1881) 8 I.A. 229, 8 Cal. 302.
(y) S. I.A. 229, 8 Cal. 302, supra.
deceased and the claimant was as appears from the following diagram:—

\[
\begin{array}{c}
S1 \text{ (propositus)} \\
S2 \text{ (claimant)} \\
\end{array}
\]

After the death of the last male owner (S1), his daughter enjoyed the property. On her death without issue the claimant (S2) claimed the property. He traced his relationship to the common ancestor through his mother. If the narrower sense of the term ‘sapinda’ is adopted, he is beyond five degrees (Vide explanation I below) and he is not entitled to inherit. It was accordingly argued on his behalf that any person related through a female is a heritable bandhu, and there is no restriction as to degrees. It was also contended that the narrower sense of ‘sapinda’ in Mitakshara chap. III is confined to prohibition in respect of marriage and has nothing to do with inheritance. The Judicial Committee did not accept the contention. It was held that “Vijnaneswara was using the term bandhu in a restricted and technical sense” and that the claimant was not a heritable bandhu.

When the claimant claims through a male, according to the restricted sense of the term “sapinda” he must be within seven degrees. The Allahabad and Bombay High Courts have held that, even when the claimant traces relationship through his father, heritable bandhuship ceases with the fifth degree (c). It is submitted that, in such a case, the rule of seven degrees would apply.

(c) Brijmohan v. Kishenlal (1938) A. I. J. 670, (38) A. A. 443; Hanmant Ramji v. | Vasant Harumant (1943) Bom. 465, 206
T.C. 152, ('43) A.I.B. 80.
The general conclusion arrived at in Ramchandra v. Vinayak that "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" (d), is applicable only to cases where the claimant claims through his mother as in that case. This is the view of Venkatasubba Rao, J., in Kesar Singh v. Secretary of State for India (e). He said "I have said in the course of this judgment that in the case of bandhus, sapinda relationship ceases beyond the fifth from the mother and the seventh from the father. This is repeatedly referred to in the judgment of the Judicial Committee in Ramchandra v. Vinayak. The question in that case was whether the plaintiffs who claimed through their mother but who were bhinna-gotra sapindas beyond the fifth degree could inherit. It was held that he could not. I referred to this point because there are some observations in the judgment which may at first sight seem to imply that the limit of sapinda relationship in the case of bandhus ceases with the fifth degree irrespective of whether the claim is traced through the father or the mother. . . . There is nothing in the judgment to suggest that their Lordships intended to do away in the case of bhinna-gotra sapindas the well recognised distinction dependent upon whether the claim is traced through the father or the mother. The view which their Lordships refused to accept is that of Golapchandra Sarkar Shastri—the view which was pressed before the Judicial Committee by Mr. De Gruyther to the effect that the word 'bandhu' 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 the mother's side. The distinction to which I have referred is recognised in all works of Hindu law whether the writer belongs to the school of Sarvadhikari or not."

Explanation I.—The five degrees, according to the Hindu mode of computation, are to be calculated from and inclusive of the deceased in the case of ascendants and descendants of the deceased, and from and inclusive of the common ancestor in the case of descendants of the common ancestor.

The father's father's son's son's daughter's daughter's son is not a heritable bandhu for he is in the sixth degree from the common ancestor; that is, the father's father (f).

(e) (1920) 49 Mad. 652, 689, 95 I. C. 651, (26)
(f) (1914) 41 I. A. 290, 42 Cal. 384, 25 T. C. 290, (14) A. P. C. 1, supra.
For the same reason the father's son's son's daughter's son is not a heritable bandhu (g); so also the great-great-grandfather's great-grandson's daughter's son is not a heritable bandhu (h). In these cases, as the claimants trace their descent through their mothers, the sapinda relationship ceases with five degrees.

Cases of claimants claiming through the fathers, being more than five degrees but not more than seven degrees have not come up for decision before the Courts. The following special cases may be noted. It is assumed that there is no difficulty as to the number of degrees on the owner's side:

(1) **Diagram 1.**

```
     A
    /|
   B C
 / |
D owner
 |
  E
 |
  d
 |
  S (claimant's father)
 /
claimant
```

In this case the claimant (tracing his relationship through his father) is not more than seven degrees from the common ancestor; and may, at first sight, be regarded as a heritable bandhu. But S (his father) who claims through his mother is more than five degrees from A, and is not a heritable bandhu. To hold that the claimant is a bandhu and S, his father is not a heritable bandhu, is an anomaly. The sapindaship of the claimant in such a case is described as a sapindaship by frog's leap (Dr. Sarvadhikari's Principles of Hindu Law, 2nd ed., p. 592). He is not a heritable bandhu.

(2) **Diagram 2.**

```
     A
    /|
   B C
 / |
D owner
 |
  d
 |
  S (claimant's father)
 /
claimant
```

In this case, the claimant (claiming through his father) is within seven degrees. His father (claiming through his mother) is not beyond five degrees. Both are heritable bandhus.

(g) *Skib Sahai v. Saraswati* (1915) 37 All. 343, 30 I. C. 903, (15) A. A. 493. The decision is correct, but the mode of computation adopted in the case is, it is submitted, incorrect. This has now been recognized in *Rew Sim v. Des* [1925] 10 All. 281, 1 A. C. 342, (1925) 1 A. A. 790.

(ii) "In order to entitle a man to succeed to the inheritance of another he must be so related to the latter that they are sapindas of each other" (i); in other words, the right of inheritance accrues to a bandhu, if the late owner and the person claiming the inheritance were related as sapindas to each other. By reason of the principle of mutuality, the diagrams in the preceding rule will hold good, if the owner and claimant are interchanged. Thus, the first diagram becomes the accompanying diagram, by the principle of mutuality.

Diagram 3

Just as the claimant in Diagram 1 is a sapinda by frog's leap and is not a heritable bandhu, the owner in the Diagram 3 is a sapinda by frog's leap and is not a heritable bandhu of the claimant. Therefore, by the rule mentioned in this paragraph, the claimant is not a heritable bandhu of the owner.

But if the interchange is made in Diagram 2, the result is that the owner is a heritable bandhu of the claimant. Therefore, the claimant is also a heritable bandhu of the owner.

(iii) Is there any other principle limiting heritable bandhus? There are two views on this matter.

(a) Dr. Sarvadhikari noticing the fact that the nine bandhus enumerated in the Mitakshara are descendants from common ancestors who are members of the following four families, namely

(1) The family of the propositus and his agnate ancestors, e.g., one's father's sister's son, one's father's father's sister's son.

---

(2) The family of the mother’s agnate ancestors, *e.g.*, one’s mother’s sister’s son, one’s mother’s brother’s son, one’s mother’s father’s sister’s son.

(3) The family of the father’s mother’s agnate ancestors, *e.g.*, one’s father’s mother’s sister’s son and one’s father’s mother’s brother’s son.

(4) The family of the mother’s mother’s agnate ancestors, *e.g.*, one’s mother’s mother’s sister son and one’s mother’s mother’s brother’s son.

and applying the principle of mutuality, infers that the prepositus must be a descendant of a common ancestor who is a member of the following families, *viz.*, (i) claimant’s agnate family, (ii) claimant’s mother’s agnate family, (iii) claimant’s father’s mother’s agnate family, (iv) claimant’s mother’s mother’s agnate family, that is to say, the claimant must be either

- (a) a member of the families 2, 3, 4
  - or (b) a daughter’s son
  - or (c) a daughter’s son’s son
  - or (d) a daughter’s daughter’s son

of an agnate member of the four families 1, 2, 3 and 4.

Accordingly the following four kinds of descendants are excluded:

(1) Daughter’s daughter’s son’s son—*Umaid Bahadur v. Udaí Chand* (1880) 6 Cal. 119. This is only an obiter dictum. The actual decision related to daughter’s daughter’s son.

(2) Daughter’s son’s son’s son—*Chinna Pichu v. Padmanabha* (1921) 44 Mad. 121, 59 I.C. 690, (‘21) A.M. 671. Only one judgment is based on Dr. Sarvadhi-kari’s reasoning. The reasons given by the other judge are different. The decision cannot be regarded as of much weight: *Loyji v. Mithabai* (1900) 2 Bom. L.R. 842. The decision assumes that the bandhus should be found only in the above-mentioned four families.
(3) Daughter’s son’s daughter’s son—Gajadhar Prasad v. Gavri Shankar (j).

(4) Daughter’s daughter’s daughter’s son—That is, there cannot be three females between a common ancestor and the claimant or the propositor.

(b) According to the second view, the Mitakshara merely enumerates the first cousins of the propositor, of his father and of his mother. It was not intended to limit heritable bandhuship to particular individuals or to descendants of particular families, or to certain kinds of descendants in these families. No ancient text supports such limitation. The definition of a bandhu as a bhinna-gotra sapinda even adopting the narrower meaning of the term ‘sapinda’ does not involve such limitation. The Judicial Committee has held (s. 46) that the enumeration of the bandhus in the Mitakshara is not exhaustive. Then why should one infer by implication that the families in which bandhus are to be found—families not mentioned as such by Vijneswara—are exhausted by the enumeration of the bandhus? Similarly, why should the enumeration be considered exhaustive as to the types of descendants in these families? Accordingly it was held in Kesar Singh v. Secretary of State (k) by the High Court of Madras that the father’s father’s daughter’s son’s daughter’s son was a heritable bandhu. The following diagram explains the relationship of the claimant with the propositor in that case:

```
     C
    /|
   D S
   /|
  S (propositus)
  /|
 S (claimant)
```

In the above diagram C represents the common ancestor. S represents the son and D the daughter. Here the claimant claims relationship through his mother and is fifth in descent from the common ancestor C. The propositor traces relationship through his father and is third in descent from the common ancestor, C, that is, within seven degrees from him. The test of degree is thus satisfied. Upon the same facts the test of mutuality is also satisfied. No other test or limitation is essential.

In the course of the judgment, it was pointed out that at the time of the decision in *Umaid Bahadur v. Uday Chand* (1880) 6 Cal. 119, Dr. Sarvadhirika was delivering his lectures and the *obiter dictum* of the learned judges in that case was probably based on his view.

According to this view, there may be three females intervening between the common ancestor and the claimant propositus, that is, in the line of ascent or line of descent. For example, in the accompanying diagram, the owner and claimant are each within five degrees and each is sapinda of the other. Here the claimant is a heritable bandhu though there are six females intervening between him and the owner.

* This point has not yet arisen before the Judicial Committee. It is submitted that the Madras view is correct.

(1) Dr. Sarvadhirika implies more than can be legitimately read in the text of the Mitakshara (l).

(2) The reasoning of the Allahabad High Court differing from the Madras view proceeds, to some extent, on the difficulty of fitting with the Madras view the groups atma bandhus, pitri bandhus, matri bandhus. That all bandhus should be divided into these three classes only is itself doubtful. (See infra s. 54A.)

A Full Bench of the Madras High Court has affirmed its former view overruling 44 Mad. 121 and dissenting from 6 Cal. 119 & 54 All. 698 (m).

48. Who are heritable bandhus.—We are now in a position to enumerate the heritable bandhus whichever view—that of Madras or Allahabad—ultimately prevails. In each particular case, it is enough to see (1) whether he is sapinda in the narrower sense, and (2) whether there is mutuality between the owner and the claimant. If the Madras view prevails, all other conditions are immaterial. If the Allahabad view is accepted, (3) he must belong to one of the four types of descendants and he must be descended from an agnate member of any of the four families (n) and must be within five degrees of the common ancestor. The last clause also represents the Bombay view (o).

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(m) *Sekam Nagamma v. Reddam Appareto* (1943) Mad. 754, 200 I.C. 80, (43) A.M.
(o) See cases cited in footnote (c) at p. 51, supra.
In the following diagram the males (s) are all bandhus of the propositus, A being a cognate ancestor of his.

In the above diagrams sapindas by frog’s leap are excluded. A’s daughter’s son’s daughter’s son shown in the Madras diagram was recognized in Kesari Singh’s case (p) but not in Gajadhar v. Gauri Shankar (q). A’s son’s son’s daughter’s son’s son shown in the Madras diagram is not now held to be an heir in Brijmohan v. Kishenlal (r).

If A is an agnate ancestor of the owner, all the son’s on the extreme left are Gotraja Sapindas. The others are bandhus.

49. Three classes of bandhus.—Three classes of bandhus have already been mentioned [s. 46 (4)].

Atma bandhus may be subdivided into—

1. owner’s cognate descendants,
2. father’s cognate descendants—of these the sister’s son has gone higher up by legislation.
3. cognate descendants of father’s father, and mother’s father and his descendants.

Pitri bandhus may be subdivided into—

1. father’s father’s father’s cognate descendants,
2. father’s mother’s father and his descendants.

Matri bandhus may be subdivided into—

1. mother’s father’s father and his descendants,
2. mother’s mother’s father and his descendants.

All the above bandhus should satisfy the limit of degrees.
50. Rules for determining order of succession among male bandhus.—First rule laid down by the Judicial Committee.—In Muthusami v. Muthukumarasami (s), the claimants were (1) mother’s half brother and (2) father’s father’s sister’s son. The Madras High Court in the course of the judgment (t) laid down four propositions. The first proposition defines bandhu. The second proposition lays down that the three classes atma bandhus, piti bandhus, and matri bandhus succeed in the order in which they are named. Accordingly the mother’s half brother who was an atma bandhu was preferred to the rival claimants who were piti bandhus. This judgment was affirmed by the Privy Council. Thus, the first rule we get relating to the order of succession among the bandhus is (1) Atma bandhus (one’s own bandhus) succeed before piti bandhus (father’s bandhus), and piti bandhus succeed before matri bandhus (mother’s bandhus).

Illustrations.

(a) The mother’s father’s daughter’s son’s son (mother’s sister’s grandson), [s. 54, no. 25 at p. 67], being an atma bandhu, is entitled to succeed in priority to the mother’s father’s daughter’s son (mother’s paternal aunt’s son) [p. 68, no. 6] who is a matri bandhu: Adit Narayan v. Mahabir Prasad (1921) 48 I.A. 86, 6 Pat. L.J. 140, 60 I.C. 251, (21) A. PC. 53.

(b) Father’s sister’s daughter’s son being an atma bandhu is entitled to succeed in priority to paternal grandfather’s sister’s son, who is a piti bandhu (w).

It is important to note, as observed by the Privy Council, that rule (1) is not dependent on individual propinquity or on the efficacy of offerings to the deceased (w).

50A. Descendants preferred to those who are not descendants. —We have seen (sec. 49) that atma bandhus may be divided into (1) descendants of the propositus, (2) those who are not descendants.

No case of rival claimants, one being a descendant and the other not, has come up before the Judicial Committee. The Bombay and Madras High Courts have held that the descendants of the propositus are entitled to preference over those who are not descendants. In Dattatraya v. Gangabai (w), the rival claimants were a son’s daughter’s son and the father’s daughter’s daughter. The claim of the latter would be disallowed in Madras on the ground that all female bandhus rank
after male bandhus and in any other province on the ground that no female bandhus are recognized. But this ground for rejecting the claim is not available in Bombay where female bandhus are recognised (s. 56 infra). The sister’s daughter’s claim was rejected on the ground that she was a collateral, her rival claimant being a descendant of the propositus. In a Madras case in which the succession opened before the passing of Act II of 1929, the rival claimants were (1) daughter’s daughter’s son and (2) sister’s son. It was held that the former was entitled to preference (x).

51. Second and third rules laid down by the Judicial Committee.—In Veduchela v. Subramania (y), the claimants were (1) a maternal uncle (appellant) and (2) a paternal aunt’s son’s son (respondent). The Madras High Court held that the latter who is a bandhu ex parte paterna was entitled to succeed in preference to the former who was a bandhu ex parte materna. On appeal the Judicial Committee reversed the judgment of the High Court. Their Lordships observed “In the absence of any express authority varying the rule, the propositions enunciated in Muttusami v. Muttukumarasami (z), which on appeal was affirmed by the Judicial Committee (a), furnish a safe guide.”

The first two propositions have been already stated (s. 50). The next two propositions are:

(3) That the examples given therein are intended to show the mode in which nearness of affinity is to be ascertained;

(4) That as between bandhus of the same class, the spiritual benefit they confer upon the propositus is, as stated in the Viramitrodaya, a ground of preference.

After stating their general approval of the propositions in the manner stated above, without quoting them, the Judicial Committee finally conclude thus:—

“...In the present case before their Lordships, the appellant and the deceased were sapindas to each other; and the appellant is undoubtedly nearer in degree to the deceased than Subramania. He also offers oblations to his father and grandfather to whom the deceased was also bound to offer pinda. The deceased thus shares the merit, resulting from the appellant’s oblations to the mants of his ancestors whereas the father’s sister’s son’s son offers no pinda to the deceased ancestors.” In this manner their Lordships explain the third and fourth rules of the Madras High Court and restate them. They are: (1) the nearer in degree is preferable to the more remote; (2) he who confers

(y) (1921) 48 I.A. 349, 364, 44 Mad. 753, 767, 64 I.C. 402, (22) A. PC. 33.
(z) (1893) 16 Mad. 23, 30.
spiritual benefit on the deceased is preferable to one who confers none. From the order in which these two rules are stated one may infer that the rules should be applied successively in the order in which they are mentioned. First, we must apply the rule based on nearness in degree. If this rule fails we must apply the rule based on superiority of spiritual benefit (b). The matter is made clearer by the next decision of the Judicial Committee.

In Jotindra Nath Roy v. Nagendra Nath Roy (c), in which the parties were governed by the Benares school of the Mitakshara, the contest was between the mother’s sister’s son and the father’s half-sister’s son, both *atma bandhus*, and the latter was preferred to the former on the ground of the superior spiritual efficacy of the pinda offered by him. In that case their Lordships of the Privy Council observed as follows:—

*No doubt, propinquity in blood is the primary test, but . . . the Viramitrodaya brings in the conferring of spiritual benefit as the measure of propinquity where the degree of blood relationship furnishes no certain guide.*

*From the above two cases we get the following rules:—*

1. Propinquity in blood or nearness in degree gives a ground of preference (d).

2. When it fails (and not until then), the conferring of spiritual benefit is a ground of preference (e).

It looks as if the phrases “nearness in degree”, “propinquity in blood”, and “degree of blood relationship” are used in the ordinary sense of the steps between the claimant and the propositus and not in the technical sense of ancient Hindu Lawyers. If so, the decision noted below is also an obvious case (f).

*Spiritual efficacy as a ground of preference among bandhus.—* In the last mentioned case, their Lordships observed (g), “Applying it to the parties in the present appeal, it is obvious that the respondents offer the full cake to the paternal grandfather and great-grandfather of the propositus, while the appellant offers it to his maternal grandfather, great-grandfather and great-great grandfather. Thus, no doubt, the appellant offers three cakes and the respondents only two. But the propositus participates only in oblations made to his three immediate paternal ancestors

(b) Chengish v. Subbaraya (1930) 58 Mad. L.J. 502, 129 I.C. 172, (30) A. M. 565, where the rival claimants are both matribandhus.


(e) *Adenwa v. Humnwa Reddi* (1938) Mad. 290, (‘37) A. M. 967.

(f) *Subodri v. Shri Thakur Behariji Mahraji* (1943) All. 155, 308 I.C. 81, (43) A. A. 87.

and not in those made to his maternal ancestors. (Dr. Sarvadhirat’s Principles of Hindu Law, 1st edition, pp. 817-8). Apart from this, it seems to be well established that cakes offered to the paternal ancestors are of superior efficacy to those offered to maternal ancestors. This was laid down by a Full Bench of the Calcutta High Court in Guru Gobind Shaha Mandal v. Anand Lal Ghose Mazumdar (6). Their Lordships must, therefore, hold that the offerings made by the respondents confer a greater spiritual benefit upon the propositus than those made by the appellant, and that, taking this as a measure of propinquity, the respondents must be held to be the preferential heirs.”

52. Fourth rule laid down by the Judicial Committee.—
Bandhus ex parte paterna and bandhus ex parte materna.—It has been held by the High Courts of Madras (i) and Bombay (j), that bandhus ex parte paterna (i.e., on the father’s side), take before bandhus ex parte materna (i.e., on the mother’s side).

In Vedachela’s case (k), the Judicial Committee disapproved of the application of the rule where a different result would follow by reason of nearness in degree or superior spiritual efficacy. In the case of such a conflict, the rule in this section ought not to be applied; where there is no such conflict, or where the other rules fail to furnish a guide, this rule may be applied. This is how the decision in Balusami v. Narayana (l) was distinguished by the Judicial Committee (m). There is nothing in the judgment of the Judicial Committee in that case to suggest that the rule of preference for bandhus ex parte paterna is not to be applied in any case. On the contrary, in a later case—Jotindra Nath Roy v. Nagendra Nath Roy (n), which was governed by the Benares School of Hindu Law, their Lordships observed that that rule was supported by a considerable volume of authority, such as Mayne (o), and Golapchandra Sarkar (p) who lay down the rule that as between bandhus of the 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, and Bhattacharya’s Commentaries which seem to take the same view (q). The contest in Jotindra Nath Roy’s case was between the father’s half-sister’s son and the mother’s sister’s son. Both were atma bandhus in equal degree of propinquity to the last owner. The father’s half-sister’s son was entitled to succeed in preference to the mother’s.

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(6) (1870) 5 B. L. R. 15, 39, 13 W. R. 49 (F.B.).
(8) Sagar v. Sadashiv (1902) 23 Bom. 710, 715.
(9) (1922) 48 I. A. 340, 44 Mad. 753, 64 I. C. 402, (22) A. P. C. 33, supra.
(p) Hindu Law, 7th edition, p. 574.
(q) 2nd Edition, 460.
sister's son, if the rule of preference of bandhus *ex parte paterna* were to be applied. He was also entitled to succeed if the test of spiritual efficacy were adopted. Their Lordships, however, thought that "the safer test" was that of spiritual efficacy, and decided on that ground in favour of the father's half-sister's son.

In *Jotindra Nath Roy's case* (r) the Judicial Committee said: "It may well be that the application of a rule of general preference in the case of bandhus of those claiming *ex parte paterna*, will, in the majority of cases, produce the same result as the test of religious efficacy of offerings, but their Lordships think that, in adopting the latter... they are on surer ground, and are following the precedent of previous rulings of this Board. There may be cases in which this rule (that is, the rule of spiritual efficacy) will leave the question still undecided, and in which the other rule (that is, the rule of preference of bandhus *ex parte paterna*) may have to be considered, but this is not so in the present case."

In the light of the two decisions of the Judicial Committee, the decision of the Madras High Court in *Sundarammal v. Rangasami* (s) must be regarded as overruled. But the decision in *Balusami v. Narayana* (t) is still good law. The actual decision was arrived at by the application of the principles (1) The nearer line excludes the more remote and (2) Bandhus *ex parte paterna* are preferred to the bandhus *ex parte materna*. Neither comparison of degrees nor of spiritual efficacy gives a different result. It is submitted that the decision is correct though different reasons might have been given.

Thus the fourth rule approved by the Judicial Committee is that bandhus *ex parte paterna* are preferred to bandhus *ex parte materna*. This rule must be applied only after the first three rules fail to furnish a guide.

53. Additional rules laid down by the High Courts.—(I) Leaving the case of descendants as settled for all practical purposes (s. 50A) on the principle that the nearer line excludes the more remote, the further question arises whether it can be applied as between collaterals of different lines. The question is of great practical importance and may frequently arise, among atma bandhus. We have already seen (s. 49) that atma bandhus who are not descendants may be divided into (1) Father's cognate descendants or father's line;

(2) Maternal grandfather and descendants of maternal and paternal grandfathers. The lines of the grandfathers, being equal in degree, may be regarded as one line.

When the rival claimants belong to these two different lines, the question arises whether the principle that the nearer line excludes the more remote applies to them. Where the

---

claimants are equally removed from the propositus, it is reasonable that the rule should apply. But, suppose the claimant in the nearer line is more remotely removed than the claimant in the remoter line as in the following diagram:

\[
\begin{align*}
&\text{M---F---d---s---s} \\
&\text{owner}
\end{align*}
\]

In such a case who is the preferable heir? Though the actual point has not arisen before the Madras High Court, the trend of the decisions is in favour of holding that the nearer line excludes the more remote (u).

A contrary decision has been arrived at in the Patna High Court, where the rival claimants are as in the following diagram:

\[
\begin{align*}
&\text{M---F---d---d---s} \\
&\text{owner}
\end{align*}
\]

It was held by a majority of three that the maternal uncle is entitled to succeed (v). The point has not arisen before the Judicial Committee or the other High Courts. The Allahabad High Court has touched upon it but left it open as it did not arise for decision (w).

(3) All other considerations being equal, the claimant who is separated by only one female link is to be preferred to one who is separated by two such links (x). Another mode of expressing it is that two steps in cognateness are inferior to only one step in cognateness and one in agnateness (y).

(z) Tirumalechariar v. Andul Ammal (1907) 30 Mad. 406.
It has thus been held that a daughter's son's son is to be preferred to a daughter's
dughter's son (a). The mother's brother's son is preferred to mother's sister's son in
Madras (a) and Allahabad (b). The Bombay High Court refused to follow the above
rule and held that both were entitled to take equally (c). The decision seems to be of
doubtful authority and, it is submitted, requires reconsideration. If it is supported on any
doctrine peculiar to Bombay, it has to be confined to Bombay. Following the same rule
it has been held by the High Court of Allahabad (d), that the father's father's daughter's
son's son [s. 54, no. 23 at p. 67] is to be preferred to the father's daughter's daughter's
son [s. 54, no. 7 at p. 66]. It is submitted that this case was erroneously decided. It
was decided before the decisions of the Judicial Committee in Vedachela v. Subramania (e)
and Jatindranath Roy v. Nagendranath Roy (f). The rule in this paragraph should not
be applied before the earlier rules have been tested. Only when they fail to furnish
a guide, should we proceed to this rule. If we apply the test of nearness in degree laid
down by the Judicial Committee, the result would be different.

53A. A summing up of the rules as to the order of suc-
cession among the male bandhus has been attempted by the
Madras High Court (g). They are to be applied in the order
in which they are stated. The rules are:—

(1) Atma bandhus succeed in preference to pitri ban-
dhus and matri bandhus.

(2) Among atma bandhus the nearer line excludes
the more remote. This is sub-divided into—

(2) descendants are preferred to ancestors and
collaterals;

(3) father's descendants take before the descendants
of grandfathers.

(4) Pitri bandhus succeed before the matri bandhus.

(5) Among the bandhus of the same or equal lines,
the nearer excludes the more remote. If Rule 5 is to be applied
before Rule 3, the decision in Uma Shankar v. Nageshwar
(1918) 3 Pat. L. J. 663, 48 I.C. 625, (18) A.P. 1 (vide S. 53)
would be correct. But if Rule 3 is to be first applied it is
incorrect.

(6) If the rule of nearness in blood fails to furnish a guide,
he who confers a superior spiritual benefit is preferable to one
who confers an inferior spiritual benefit or none.

(a) (1907) 30 Mad. 406, supra.
(b) (1895) 48 Mad. 722, 87 I.C. 609, (25) A. M.
507, supra; Appadai v. Bagu Bali
(1910) 33 Mad. 439, 5 I.C. 280, must be
regarded as overruled.
(c) Ram Charan Lal v. Jakim Bakhsh (1918) 38
(d) Sham Dey v. Birbhadra Prasad (1921) 43
(e) (1922) 49 I.A. 340, 44 Mad. 753, 64 I.C. 402,
(29) A. P. C. 30.
(f) (1931) 50 I.A. 372, 59 Cal. 576, 135 I.C. 637,
(31) A. P. C. 256.
(g) Kadimuthu v. Annamothu (1935) 58 Mad.
238, 240, 153 I.C. 107, (34) A.M. 611.
(7) When all the above rules do not work, bandhus *ex parte paterna* are preferred to bandhus *ex parte materna*.

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

53B. The last rule laid down by the Judicial Committee.—Where we come to two equal claimants after the application of the above rules, one of whom is of whole blood and the other is of half blood, the former is preferred to the latter (h).

54. Order of succession among bandhus.—The following is the order of succession among bandhus [see Table on p. 70A below], based on rules in ss. 50-53A.

I.— *Atma bandhus.*

Descendants.

1. Son’s daughter’s son.
   Preferred in Bombay to father’s daughter’s daughter, on the principle that both being equally removed from the deceased, the one in the direct line of descent should be preferred to the one in a collateral line (a. 50A).

2. Daughter’s son’s son (inferior to 1 in spiritual benefit). Preferred by the Madras High Court to no. 3 [s. 53 (2)].

3. Daughter’s daughter’s son.
   Preferred by the Madras High Court to sister’s son in a case before the Act of 1929 (i), and therefore, preferable to no. 4.

4. Lower descendants are not of practical importance.
   Father’s descendants.

5. Father’s son’s (= brother’s) daughter’s son.

6. Father’s daughter’s (= sister’s) son’s son.
   Preferred by the Madras High Court to no. 18 (j) and by the Allahabad High Court to no. 27 (k).

7. Father’s daughter’s daughter’s son.
   Preferred by the Allahabad High Court to no. 20 (l).

8. Father’s son’s son’s daughter’s son.

9. Father’s son’s daughter’s son’s son.

*10. Father’s daughter’s son’s son’s son.

11. Father’s son’s daughter’s daughter’s son.

*12. Father’s daughter’s son’s daughter’s son.

*13. Father’s daughter’s daughter’s son’s son.

*14. Father’s daughter’s daughter’s daughter’s son.

14-A. Lower descendants of father who are bandhus in Madras but not in Allahabad.

15. Mother’s father (= maternaal grandfather).
Descendants of grandfathers.

16. Mother's father's son (=maternal uncle).
   He succeeds before no. 17 (m) and before no. 19 (n).

17. Father's father's daughter's (=father's sister's or half-sister's) son.
   He succeeds before no. 18 (o) and before no. 19 (s. 51).

18. Mother's father's son's son.
   He succeeds before 19. (The decision in Bombay, holding that both take equally is either doubtful or must be limited to Bombay [s. 53 (2)])

19. Mother's father's daughter's son.
20. Father's father's son's daughter's son (p).
21. Mother's father's son's son.
22. Mother's father's daughter's son.
23. Father's father's daughter's son's son.

* It is submitted that the decision in Sham Devi v. Birbhadra Prasad (1921) 43 All. 463 is erroneous [s. 53 (2)] (q).

24. Father's father's daughter's daughter's son.
25. Mother's father's daughter's son's son.
26. Mother's father's daughter's daughter's son.
27. Father's father's son's daughter's son.
28. Mother's father's daughter's son's son.
29. Father's father's son's daughter's son's son.
*30. Father's father's daughter's son's son's son.
31. Father's father's son's daughter's son's son.
*32. Father's father's daughter's son's daughter's son.
*33. Father's father's daughter's son's daughter's son.
*34. Father's father's daughter's daughter's son.
35. Mother's father's son's son's son.
36. Mother's father's son's son's son.
*37. Mother's father's daughter's son's son's son.
38. Mother's father's son's daughter's son's son.
*39. Mother's father's daughter's son's daughter's son.
*40. Mother's father's daughter's daughter's son's son.
*41. Mother's father's daughter's daughter's son's son.
42. Father's father's son's daughter's son's son.
*43. Father's father's son's daughter's son's son.
*44. Father's father's daughter's son's son's son.
*45. Father's father's son's daughter's daughter's son's son.
*46. Father's father's daughter's son's daughter's son's son.
*47. Father's father's daughter's daughter's son's son's son.
*48. Father's father's daughter's daughter's son's son's son.

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(n) Mohandas v. Krishna Bai (1891) 5 Bom. 597.


(p) The decision in Sundarammal v. Rangasam (1895) 18 Mad. 193, must be regarded as overruled.

S. 54

*49. Mother's father's son's son's son's son.
50. Mother's father's son's son's daughter's son.
*51. 'Mother's father's son's daughter's son's son's son.
*52. Mother's father's daughter's son's son's son's son.
*53. Mother's father's son's daughter's daughter's son's son.
54. Mother's father's daughter's son's daughter's son's son.
*55. Mother's father's daughter's daughter's son's son's son.
*56. Mother's father's daughter's daughter's daughter's son's son.
*56-A. Seven descendants of father's father, a degree lower (sons of nos. 42-48).
*56-B. Eight descendants of mother's father, a degree lower (sons of nos. 49-56).

* These are held to be heirs in Madras but are held not to be heirs in Allahabad according to Gajadharprasad's case.

According to the Patna view no. 15 will come between no. 3 and no. 4 ; no. 16 between no. 5 and no. 6 ; nos. 17, 18 and 19 between no. 8 and no. 9.

No. 28 is placed above Nos. 29 to 35 on account of his spiritual efficacy. It must be admitted that the result is highly anomalous. It is futile to discuss it unless the case actually arises.

II.—Pitr bandhus.

1. Father's maternal grandfather.
2. Father's maternal grandfather's son.
3. Father's paternal grandfather's daughter's son.
4. Father's maternal grandfather's son's son.
5. Father's maternal grandfather's daughter's son.
6. Father's paternal grandfather's son's daughter's son.
7. Father's paternal grandfather's daughter's son's son.
8. Father's maternal grandfather's son's son's son.
9. Father's paternal grandfather's daughter's daughter's son.
10. Father's maternal grandfather's son's daughter's son.
11. Father's paternal grandfather's daughter's son's son.
12. Father's maternal grandfather's daughter's daughter's son.
13. Father's paternal grandfather's son's son's daughter's son.
14. Father's paternal grandfather's son's daughter's son's son.
15. Father's paternal grandfather's daughter's son's son's son.
16. Father's maternal grandfather's son's son's son's son.
17. Father's paternal grandfather's son's daughter's daughter's son.
18. Father's paternal grandfather's son's daughter's daughter's son's son.
19. Father's paternal grandfather's daughter's daughter's son's son.
20. Father's maternal grandfather's son's daughter's son.
21. Father's maternal grandfather's son's daughter's son.
22. Father's maternal grandfather's daughter's son's son's son.
23. Father's paternal grandfather's daughter's daughter's son's son.
24. Father's maternal grandfather's son's daughter's son's son.
25. Father's maternal grandfather's daughter's son's daughter's son.
26. Father's maternal grandfather's daughter's daughter's son's son.
27. Father's maternal grandfather's daughter's daughter's daughter's son.
28. Father's paternal grandfather's son's son's daughter's son's son.
29. Father's paternal grandfather's son's daughter's son's son's son.
30. Father's maternal grandfather's son's son's son's son's son.
31. Father's maternal grandfather's son's son's son's son's son.
32. Father's paternal grandfather's son's daughter's daughter's son's son.
33. Father's paternal grandfather's daughter's daughter's son's son's son.
34. Father's paternal grandfather's daughter's daughter's son's son's son.
35. Father's maternal grandfather's son's daughter's son's son's son.
36. Father's maternal grandfather's son's daughter's son's son's son.
37. Father's maternal grandfather's son's daughter's son's son's son.
38. Father's paternal grandfather's daughter's daughter's son's son's son.
39. Father's maternal grandfather's son's daughter's daughter's son's son.
40. Father's maternal grandfather's daughter's daughter's son's son's son.
41. Father's maternal grandfather's daughter's daughter's son's son's son.
42. Father's maternal grandfather's daughter's daughter's son's son's son.
43. Father's paternal grandfather's son's son's daughter's son's son.
44. Father's paternal grandfather's son's daughter's son's son's son.
45. Father's paternal grandfather's son's son's son's son's son.
46. Father's maternal grandfather's son's son's son's son's son.
47. Father's paternal grandfather's son's daughter's daughter's son's son.
48. Father's paternal grandfather's daughter's daughter's son's son's son.
49. Father's paternal grandfather's daughter's daughter's son's son's son.
50. Father's maternal grandfather's son's son's daughter's son's son.
51. Father's maternal grandfather's son's daughter's son's son's son.
52. Father's maternal grandfather's son's daughter's son's son's son.
53. Father's maternal grandfather's son's daughter's son's son's son.
54. Father's maternal grandfather's son's daughter's son's son's son.
55. Father's maternal grandfather's son's daughter's son's son's son.
56. Father's maternal grandfather's son's daughter's son's son's son.
57. Father's maternal grandfather's son's daughter's son's son's son.

III. — Matri bandhus.

1. Mother's paternal grandfather (r).
2. Mother's maternal grandfather.
3. Mother's paternal grandfather's son.
4. Mother's maternal grandfather's son.
5. Mother's paternal grandfather's son's son.
6. Mother's paternal grandfather's daughter's son (s).
7. Mother's maternal grandfather's son's son.
8. Mother's maternal grandfather's daughter's son.
9. Mother's paternal grandfather's son's son.
10. Mother's paternal grandfather's daughter's son's son.
11. Mother's paternal grandfather's daughter's son's son.

He is preferred to No. 17 (t).

12. Mother's maternal grandfather's son's son's son.
13. Mother's paternal grandfather's daughter's daughter's son.
14. Mother's maternal grandfather's son's daughter's son.
15. Mother's maternal grandfather's daughter's daughter's son.
16. Mother's maternal grandfather's daughter's daughter's son.
17. Mother's paternal grandfather's son's son's son's son.
18. Mother's paternal grandfather's son's son's daughter's son.

(r) Krishnayya v. Pichamma (1888) 11 Mad. 287.
19. Mother's paternal grandfather's son's daughter's son's son.
20. Mother's paternal grandfather's daughter's son's son's son.
21. Mother's maternal grandfather's son's son's son.
22. Mother's paternal grandfather's son's daughter's daughter's son.
23. Mother's paternal grandfather's daughter's son's daughter's son.
24. Mother's paternal grandfather's daughter's daughter's son's son.
25. Mother's maternal grandfather's son's son's daughter's son.
26. Mother's maternal grandfather's son's daughter's son's son.
27. Mother's maternal grandfather's daughter's son's son's son.
28. Mother's paternal grandfather's daughter's daughter's son's son.
29. Mother's maternal grandfather's son's daughter's daughter's son.
30. Mother's maternal grandfather's daughter's son's daughter's son.
31. Mother's maternal grandfather's daughter's daughter's son's son.
32. Mother's maternal grandfather's daughter's daughter's daughter's son.
33. Mother's paternal grandfather's son's son's son's son.
34. Mother's paternal grandfather's son's son's daughter's son.
35. Mother's paternal grandfather's son's daughter's son's son.
36. Mother's paternal grandfather's daughter's son's son's son.
37. Mother's maternal grandfather's son's son's son's son.
38. Mother's paternal grandfather's son's daughter's daughter's son's son.
39. Mother's paternal grandfather's son's daughter's daughter's son.
40. Mother's paternal grandfather's daughter's son's son's son.
41. Mother's maternal grandfather's son's son's daughter's son.
42. Mother's maternal grandfather's son's daughter's son's son.
43. Mother's maternal grandfather's daughter's son's son's son.
44. Mother's paternal grandfather's daughter's daughter's son's son.
45. Mother's maternal grandfather's son's daughter's daughter's son's son.
46. Mother's maternal grandfather's daughter's son's daughter's son's son.
47. Mother's maternal grandfather's daughter's daughter's son's son's son.
48. Mother's maternal grandfather's daughter's daughter's daughter's son's son.
49. Mother's paternal grandfather's son's son's son's son.
50. Mother's paternal grandfather's son's son's daughter's son's son.
51. Mother's paternal grandfather's son's daughter's son's son's son.
52. Mother's paternal grandfather's daughter's son's son's son's son.
53. Mother's maternal grandfather's son's son's son's son's son.
54. Mother's paternal grandfather's son's daughter's daughter's son's son.
55. Mother's paternal grandfather's daughter's daughter's son's son's son.
56. Mother's paternal grandfather's daughter's daughter's son's son's son.
57. Mother's maternal grandfather's son's daughter's son's son's son.
58. Mother's maternal grandfather's son's daughter's son's son's son.
59. Mother's maternal grandfather's son's daughter's son's son's son.
60. Mother's paternal grandfather's daughter's daughter's son's son's son.
61. Mother's maternal grandfather's son's daughter's daughter's son's son.
62. Mother's maternal grandfather's daughter's daughter's daughter's son's son.
63. Mother's maternal grandfather's daughter's daughter's daughter's son's son.
64. Mother's maternal grandfather's daughter's daughter's daughter's son's son.

The above lists are prepared on the basis of the decision and dictum in Kesari Singh's case (w). But nos. 14A and 42-56B of the Atmabandus, nos. 28-57 of the Pitrabandhus, nos. 33-64 of the Matribandhus would be excluded by Brijmohan's case (v) and a few others by Gajadhar Prasad's case (w).

55. Bandhus who are descendants of remoter ancestors.—
The bandhus for whom the order of succession is given in sec. 54, are all descendants of the great-grandfathers, the grandfathers and father of the propositus and of the propositus himself. It is necessary to consider the position in regard to the descendants of ancestors higher than the great-grandfathers, vide chart on page 70A. The first question that arises in respect of such bandhus is whether they fall under the heading Pitrī bandhus and Matri bandhus or have to be classified into other classes. The importance of such a question may be illustrated thus:—Suppose the two rival claimants are (1) a descendant of mother’s father’s father and, therefore, admittedly a matri bandhu, and (2) a cognate descendant of father’s father’s father’s father. If the latter must be regarded as a pitrī bandhu he will be preferred to the former according to the decision in Muthusami v. Muthukumarasami (x). But it will be noticed that he is descended from an ancestor higher than the ancestor through whom the first claimant traces descent and he does not appear among the pitri-bandhus mentioned in sec. 49. If he falls under a different class which has to be given a different name such as (pitrī-pitrī bandhus), he, being descended from a remoter ancestor and not being a pitrī bandhu, must yield to his rival.

The question has never arisen before the Courts and may never arise. An instance of such a person being regarded as a bandhu, but without any rival claimant is that of the father’s father’s father’s son’s son’s daughter’s son (y). Several judges in India have expressed the opinion that it is not possible to divide all bandhus into the three classes mentioned in the Mitakshara [sec. 46 (4)]. The Mitakshara itself does not say that all bandhus fall into three classes. Like the individual bandhus the classes mentioned in it may be regarded as illustrative and not as exhaustive. The opposite view is stated in the second proposition of the Madras High Court in Muttusami v. Muttukumarasami (z) which runs thus: “(2) That, as stated in the text of Vridha Satatapa or Baudhayana, they are of three classes...........”

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(x) (1896) 19 Mad. 405, 23 I.A. 83.  
(y) Manick Chand v. Jagat Setlani (1890) 17 Cal. 518.  
(z) (1890) 18 Mad. 23, 30.
It is true that the four propositions laid down in that case were generally approved in appeal and in Vedachela v. Subramania (a) by the Judicial Committee. But in none of these cases was it necessary to deal with the question and too much should not be attached to such general approval. It is submitted that bandhus descended from the higher ancestors should be classed into (1) pitri-pitri bandhus, (2) pitri-matri bandhus, (3) matri-pitri bandhus and (4) matri-matri bandhus and similarly for descendants of remoter ancestors (b). It is on the assumption that all bandhus fall into three classes that some of the reasoning of the Allahabad High Court in Gajadhar Prasad v. Gavri Shankar (c) is based.

56. Female bandhus in Bombay and Madras.—The bandhus mentioned in sec. 54 above are all males. The Mitakshara nowhere expressly mentions female bandhus. The nine instances there given are all instances of male bandhus. The Benares and Mithila schools follow the strict letter of the Mitakshara, and do not recognize females as bandhus. In Bombay and Madras, however, certain females are recognized as bandhus.

Every female other than the daughter in Madras, and other than the daughter, sister and father’s sister, in Bombay who rank above bandhus, who, if she were a male, would have been an heir, that is, who is related to the propositus by birth, within the limits of degrees for bandhus is regarded as a heritable bandhu. The following are instances:

**IN BOMBAY.**

Brother’s daughter (d).
Sister’s daughter (e).
Paternal Uncle’s daughter (f).
Paternal grandfather’s sister’s son’s daughter (g).

(c) (1933) 54 All. 686, 158 I.C. 501, (32) A.A. 417.

**IN MADRAS.**

Brother’s daughter (h).
Brother’s son’s daughter (i).

(e) Duttatreyu v. Gangubai (1922) 46 Bom. 541.
(g) Bai Vijili v. Bai Prabhalakshmi (1907) 9 Bom. L.R. 1129.
(h) Venkatasubramania v. Thayaramma (1898) 2 Mad. 283.
(i) Jagannathan v. Adilakshmi (1940) Mad. 734, (40) A.M. 545.
Under the Hindu Law of Inheritance (Amendment) Act 2 of 1929, the son's daughter, the daughter's daughter and the sister inherit with gotraja sapindas, the son's daughter succeeding immediately after the father's father, the daughter's daughter next after her, and the sister next after the daughter's daughter: see sec. 43, nos. 13A, 13B and 13C. In Bombay, the sister had a higher place even before the Act and retains it. As to half-sister, see sec. 43, 13C (2).

The female relations mentioned above are regarded as bandhus on the ground that "any relative who is also a cognate may be treated as coming within the definition of bhimsa gotra sapinda, and that the term 'sapinda,' as used in chap. ii, sec. vi, of the Mitakshara, includes females" (j).

In Madras such females come after all the male bandhus (k). For the order in Bombay see sec. 74. Amongst themselves they succeed in the order of propinquity.

56A. Heirs of an illegitimate son.—When the illegitimate son of a woman dies leaving his mother but no nearer heirs, she is entitled to succeed as heir in accordance with the general principles of Hindu Law (l). The illegitimate sons of a prostitute, though by different fathers, are entitled to succeed to each other. Similarly, the legitimate son of one of such sons is entitled to succeed to them, and also to their legitimate sons (m). So if A and B are son and daughter of a woman living in adultery and A dies leaving B but no legitimate heirs, B is entitled to succeed to A (n).

In the Madras case (o) on which the present section is based Devadoss, J., said: "It is a misnomer to call the son of a dancing woman, whose paternity is unknown, an illegitimate son. The illegitimate son is one born out of wedlock, i.e., no marriage was solemnized between the father and the mother. In the case of sons of prostitutes or dancing women the paternity is unknown and it is only an euphemism to call them illegitimate sons. In Roman law they are called Nullius Filius. Dancing women have their peculiar customs. Their status is recognized in Hindu society. Their customs have received the sanction of judicial decisions and the adoption of girls by them is recognized by law, and the daughters of dancing women inherit in preference to their sons."

The illegitimate son being an heir to his father, the father also is an heir to him provided, of course, the illegitimate son dies without leaving any issue, widow or mother (p).

(j) Rama Rama v. Pullayas (1895) 18 Mad. 168, 170.
(k) Narasimha v. Mangammal (1890) 13 Mad. 10; Rajah Venkata v. Rajah Suraneni (1908) 31 Mad. 321.
(m) Viswanatha v. Dorniswami (1925) 48 Mad. 944, 91 I.C. 103, ('26) A.M. 269.
(n) Dattatreya v. Matha Bala (1934) 58 Bom. 119, 114 I.C. 821, ('34) A. B. 36.
(o) (1925) 48 Mad. 944, 946, 91 I.C. 103, ('26) A.M. 289, supra.
(p) Subramania v. Rathan Thirth (1918) 41 Mad. 44, 42 I.C. 556, ('19) A.M. 1346 [F.B.]
57. Preceptor, disciple and fellow-student.—In default of kindred, the property of a deceased Hindu, even though he be a Sudra, passes to his preceptor; if there be no preceptor, to his disciple; and if there be no disciple, to his fellow-student. In determining who is a preceptor, a disciple or a fellow-student, the Court will only consider the imparting of purely religious instruction.

Mitakshara, ch. 2, sec. 7. In the Madras case referred to above, it was held that the disciple of an ascetic Sudra, who left no kindred, was entitled to succeed to his estate so as to prevent its escheat to Government.

58. Hermits and members of religious orders.—The heir to the property of a hermit (Vanaprastha) is his spiritual brother belonging to the same hermitage, to that of an ascetic (Sanyasi) a virtuous pupil, and to that of a student in theology (Bramachari) his religious preceptor. These heirs are entitled to succeed in preference to the kindred of the deceased. This rule applies only to members of the twice-born classes. It does not apply to Sudras unless some usage or custom to that effect is proved.

Mitakshara, ch. 2, sec. 8; see sec. 111 below. The heirs mentioned in sec. 57 are not entitled to succeed except in default of kindred. The present section deals exclusively with succession to the property of members of religious orders who belong to the twice-born classes. Sanyasis are members of the twice-born classes (s). The heirs enumerated in this section are entitled to succeed in priority to the kindred of the deceased.

59. Escheat.—(1) On failure of all the heirs mentioned above, the Crown takes by escheat (t). Where the Crown claims by escheat, the onus lies on the Crown to show that the last proprietor died without heirs.

(2) An estate taken by escheat is subject to the trusts and charges, if any, previously affecting the estate (v), e.g., maintenance of widows (w) and mortgages created by a widow.

(q) Sambusivasa v. Secretary of State for India (1921) 44 Mad. 704, 63 I.C. 659, (21) A.M. 337.
(v) (1860) 8 M.I.A. 500, 527, supra.
(w) Golab Koonwar v. Collector of Benares (1847) 4 M.I.A. 246, 255.
for legal necessity (x), but not to unauthorized alienations by widows (y).

Succession after Reunion.

60. Order of Succession among reunited members.—
In Madras, it has been held that the share of a reunited member survives to the other members of the reunited family like the share of a member of a normal joint family (z).

In Calcutta the opinion has been expressed that the principle of survivorship applies to reunited coparceners (a).

The Madras High Court has expressed the opinion that a reunited son has a preferential right of inheritance to one who remains separate (b).

The following is the order of succession according to Viramitrodaya:

(I-3) Son, grandson and great-grandson;
(4) reunited whole brother;
(5) reunited half-brother and separated full-brother (c);
(6) reunited mother;
(7) reunited father;
• (8) any other reunited coparcener;
• (9) half-brother not reunited;
(10) mother not reunited;
(11) father not reunited;
(12) widow;
(13) daughter;
(14) daughter's son;
(15) sister.

Subject to the above, the succession goes to the sapindas, samanodakas and bandhus in the order and according to the rules set forth in secs. 43, 45 and 50 (d).

As to reunion, see secs. 342-344.

The order of succession, according to the Smriti Chandrika, is as follows: (1) son, grandson, great-grandson, (2) reunited full-brother, (3) separated full-brother, (4) reunited half-brother, (5) reunited father or paternal uncle, (6) separated half-brother, (7) father, (8) mother, (9) virtuous widow, (10) sister, (11) sapindas, and (12) samanodakas.

According to the Mayukha, the reunited member has in every case preference over the unreunited. But when there are separated full-brothers and reunited half-brothers, uncles and the like, the separated full-brother, etc., takes equally with the reunited half-brother, etc. After the brother, the mother takes, then the father, then the widow, then the sister, then the daughter, and after her the nearest sapinda.


(a) Casaiy Venkata v. Collector of Masulipatam (1867) 11 M.I.A. 612.
(b) Nana v. Ramchandra (1900) 32 Mad. 377, 382, 383; 2 I.C. 519.
(c) Ramasami v. Venkatesan (1893) 16 Mad. 440.
(d) Sarkar's Hindu Law, 7th ed., p. 587.
CHAPTER V.

FEMALE HEIRS.

61. Female heirs: Bengal school.—According to the Bengal school no female could inherit to a male unless she is expressly named as an heir in the texts. The result is that the only females recognized as heirs in that school are (1) the widow, (2) the daughter, (3) the mother, (4) the father’s mother, and (5) the father’s father’s mother (e).

61A. Female heirs: Mitakshara school.—(1) Before the Hindu Law of Inheritance (Amendment) Act, 1929, the only females recognized as heirs in the Benares (f) and Mithila schools were (1) the widow, (2) the daughter, (3) the mother, (4) the father’s mother, and (5) the father’s father’s mother. The exclusion of other females was founded on a text of Baudhayana which says: “Women are devoid of the senses, and incompetent to inherit” (g). Accordingly it has been held in Lahore that a sister’s son’s daughter is not an heir (h).

Neither the Madras nor the Bombay school follow the text of Baudhayana. These schools follow the text of Manu which says: “To the nearest sapinda the inheritance next belongs”, and they interpret the word “sapinda” to include females also (i). On that interpretation the Madras school has held that the brother’s daughter, sister’s daughter, brother’s son’s daughter and father’s sister are also heirs in the Madras Presidency [sec. 56]. The Bombay school has gone much further, and it includes in the list of female heirs not only the heirs recognized in the Benares, Mithila and Madras schools, but also widows of gotraja sapindas [sec. 68]. The recognition of widows of gotraja sapindas as heirs in Bombay has been placed by the Privy Council on the ground of usage (j). But the widows of bandhus are not recognized as heirs anywhere; for instance, a sister’s son’s widow (k).

(2) Under the Hindu Law of Inheritance (Amendment) Act, 1929, which came into force on the 21st February 1929, the son’s daughter, the daughter’s daughter, and the sister (S. 43-13 A to C) rank as heirs in all parts of British India where

(g) Lalluboy v. Cassibai (1880) 5 Dom. 110, 118, 7 T.A. 212, 231.
(i) Balamma v. Pullayya (1892) 18 Mad. 168, 170.
(j) (1880) 5 Dom. 110, 7 T.A. 212, 237, supra.
the *Mitakshara law* prevails. Before the Act they ranked as heirs only in the Bombay [s. 56 (1)] and Madras [s. 55] Presidencies.

Before the Act, both the son's daughter and the daughter's daughter ranked as bandhus in Bombay and Madras. Under the Act, however, they both inherit as gotraja sapindas [s. 43, nos. 13A and 13B]. As regards the sister, she succeeded in Bombay immediately after the paternal grandmother, and in Madras she succeeded as a bandhu. As regards her place in the order of inheritance in Bombay, the Act effects no change, and she will succeed immediately after the paternal grandmother as she did before the Act [s. 65]. In Madras, however, she will, since the Act, succeed immediately after the daughter's daughter [s. 43, no. 13C].

62. Female heirs in Benares and Mithila.—The only females recognized as heirs in the Benares and Mithila schools before the Hindu Law of Inheritance (Amendment) Act of 1929 were (1) the widow, (2) the daughter, (3) the mother, (4) the father's mother, and (5) the father's father's mother. No other female was recognized as an heir (l). Under the Act, the son's daughter, the daughter's daughter, and the sister also rank as heirs [s. 43, nos. 13A, 13B and 13C].

63. Female heirs in Madras.—The Madras school recognizes not only the widow, daughter, mother, father's mother, and father's father's mother as heirs, but also the females mentioned in sec. 56 above. This includes the son's daughter, daughter's daughter and sister who are now expressly named as heirs in the Hindu Law of Inheritance (Amendment) Act 2 of 1929, see sec. 61A above. The Madras school does not admit the widows of gotraja sapindas as heirs (m).

64. Female heirs in Bombay.—The Bombay school recognizes not only the widow, daughter, mother, father's mother and father's father's mother as heirs, but also the following females:

(1) Sister, whether of the whole or half-blood. The sister is considered a sapinda by virtue of her affinity to her brother. She is also considered a gotraja sapinda as having been born in her brother's gotra or family (n) [s. 65].

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(m) *Bulamma v. Pullava* (1895) 18 Mad. 198

(n) *Kesserbai v. Vahab* (1880) 4 Bom. 488.
Half-sisters succeed as much as sisters of the whole blood [s. 66]. The sister is now expressly mentioned as an heir in the Hindu Law of Inheritance (Amendment) Act 2 of 1929 [s. 43 (13 C)].

The Mayukha expressly names the sister as an heir. The Mitakshara does not name the sister, but certain commentators of repute, such as Balambhatta and Nanda Pandita, say that in the term "brothers" whom the Mitakshara does name, sisters are included (o). She is also expressly mentioned as an heir in Nilkantha's Commentary.

The paternal uncle's daughter is not a gotraja sapinda (p), but a bandhu [s. 58].

(2) Father's sister, whether of the whole or half blood.—See s. 74.

(3) Widows of predeceased gotraja sapindas, that is, of sapindas and samanodakas (q), but not widows of bandhus or bhinna-gotraja sapindas (r). Thus the son, the father, the brother, the brother's son, the paternal uncle, the paternal uncle's son, are all gotraja sapindas of the deceased. Therefore, according to the Bombay decisions, the son's widow (s), the step-mother (father's widow) (t), the brother's widow (u), the brother's son's widow (v), the paternal uncle's widow (w), and the widow of the paternal uncle's son (x), are all sagotra sapindas of the deceased, and inherit as such. These widows, being sagotra sapindas, inherit necessarily before the bandhus. The above list is not exhaustive, but merely illustrative. See sec. 68.

The widows of gotraja sapindas are recognized as heirs in the Bombay Presidency only. They were not regarded as heirs elsewhere (y). Act XVIII. of 1937 now makes the widow of a predeceased son and the widow of predeceased son's predeceased son heirs throughout India except under the Dayabhaga School.

A gotraja sapinda is one born in the gotra or family of the deceased. The expression sagotra sapinda means the same gotra and includes females that enter the gotra of the deceased by marriage.

(4) Female bandhus mentioned in section 56 above.—These include the son's daughter and daughter's daughter, both of whom are now expressly mentioned in the Hindu Law of Inheritance (Amendment) Act 2 of 1929. But they now inherit with gotraja sapindas [s. 43, nos. 13A and 13B].

(o) Kesavadas v. Valah (1880) 4 Bom. 188, 192, 204.
(q) Lalibabu v. Cansabhi (1880) 5 Bom. 110, 7 I.A. 212; Lakshmibai v. Jayram (1880) 6 Bom. H.C. 152.
(s) Roopchand v. Poolchand (1824) 2 Bom. 670.
(t) (1880) 4 Bom. 188, 208, supra.
(u) Nahaichand v. Hemchand (1885) 9 Bom. 31.

(e) Madhavram v. Dace (1807) 21 Bom. 739.
(g) (1880) 5 Bom. 110, 7 I.A. 215, supra.
65. Sister’s place as an heir in the Bombay Presidency.—

(1) A sister is an heir in the Bombay Presidency [s. 64 (1)], and she inherits immediately after the paternal grandmother both under the Mayukha and the Mitakshara as interpreted in Bombay (z). *Her place in the order of succession is not affected by the Hindu Law of Inheritance (Amendment) Act 2 of 1929 [s. 43 (13C)]. See s. 72 (12) and s. 77 (12).

Both under the Mayukha and the Mitakshara as interpreted in Bombay, a sister does not take before a full-brother’s son (a). In cases governed by the Mayukha, she takes even before a half-brother (b), and half-brother’s son (c), but not in cases governed by the Mitakshara (d). See ss. 72 and 77 below.

* (2) Sisters take absolute estates in severalty, and not as joint tenants in Bombay (n).

66. Half-sister as an heir in the Bombay Presidency.—A half-sister is an heir in the Bombay Presidency and she inherits, in cases governed by the Mitakshara, immediately after the full-sister (o), and in cases governed by the Mayukha after the half-brother (p). Her place in the order of succession is not affected by the Hindu Law of Inheritance (Amendment) Act 2 of 1929 [s. 43 (13C)].

A half-sister takes before a step-mother (q), a paternal uncle (r), or a paternal uncle’s widow (s).

67. Father’s sister as an heir in the Bombay Presidency.—See s. 74.

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(f) (1864) 9 M.I.A. 520, in App. from 1 Bom. H.C. 117, supra.
(g) Ritu v. Khanda (1886) 4 Bom. 214.
(h) Dandu v. Gangujibai (1879) 3 Bom. 360.
(i) Vithaldas v. Jeshubai (1880) 4 Bom. 219, 221.
(k) Rudrapa v. Pratap (1904) 28 Bom. 82.
(l) (1880) 4 Bom. 188, supra.
(n) Rindabai v. Anacharya (1891) 15 Bom. 206.
(p) (1880) 4 Bom. 188, 207-209, supra.
(q) (1880) 4 Bom. 188, supra.
(r) (1912) 38 Bom. 120, 12 I.C. 359, supra.
(s) (1880) 4 Bom. 188, supra.
68. Widows of gotraja sapindas as heirs in the Bombay Presidency.—The succession of widows of gotraja sapindas [sec. 64 (3)] is governed by the following rules:—

(i) No widow of a gotraja sapinda can inherit until after "the compact series of heirs" [ending with the brother's son (t)], nor until after the sister and half-sister (u).

(ii) Subject to the above rule and provided that there is no existing male gotraja sapinda within the six degrees of the line to which her husband belonged (v), the widow of a gotraja sapinda stands in the same place as her husband, if living, would have occupied.

(iii) Where the contest lies between the widow of a gotraja sapinda representing a nearer line and a male gotraja sapinda representing a remoter line, the former inherits by preference over the latter (w).

(iv) Widows of gotraja sapindas may succeed to the estate of a male or to that of a female. In the former case, they take a widow's estate; in the latter, an absolute estate [secs. 170 (2), 171 (2)].

(v) A widow who has remarried is not entitled to inherit as a gotraja sapinda in the family of her first husband (x). But unchastity at the time when the succession opens is not a disqualification to inherit as a gotraja sapinda (y).

The series of heirs beginning with the son and ending with the brother's son is called "the compact series of heirs." No widow of a gotraja sapinda can inherit before any of these heirs (z). Nor can she inherit before the sister or half-sister (a). A son is the nearest male gotraja sapinda of the deceased owner; therefore, the first in the series of widows of gotraja sapindas is the son's widow (b). Then comes the grandson's widow, and then the great-grandson's widow.

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(1) Nabishank v. Hemchand (1885) 9 Bom. 31, 34 (note).
(2) Vishwakarma v. Jashubhai (1880) 4 Bom. 219, 221. Note that the son's widow is the first in the series of widows of gotraja sapindas.
(4) (1921) 16 Bom. 716, 718, supra; (1915) 39 Bom. 87, 27 I.C. 107, (14) A.B. 202, supra.
(7) (1885) 9 Bom. 31, 34 (note), supra.
(8) (1980) 4 Bom. 219, 221, supra.
(9) (1980) 4 Bom. 219, 221, supra.