

## CHAPTER V.

*Exclusion from Inheritance.*

1. In the next place, persons incompetent to inherit are specified, for the purpose of making known, by the exception competent heirs. On this subject APASTAMBA says, "All coheirs, who are endowed with virtue, are entitled to the property. But he, who dissipates wealth by his vices, should be debarred from participation, even though he be the first born."

2. This passage is read by BALOGA in a confused manner and contrary sense: "But, he who acquires wealth by his virtuous conduct, being the eldest son, should be made an equal sharer with the father." That reading is unauthorized.

3. So "The heritable right of one who has been expelled "from society, and his competence to offer oblations of food and libations of water, are extinct."\* One who has been expelled from society, is a person excluded from drinking water in company.

4. So VRIHASPATI says, "Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen, offering funeral oblations [to the owner, †] as are of virtuous conduct. A son redeems his father from debt to superior and inferior beings. Consequently there is no use for one who acts otherwise. What can be done with

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3. *Expelled from society.*] Deemed unworthy of intercourse. In consequence of offences, or degradation from class, water is not drunk in company with him. CHUDAMANI and SRICRISHNA.

Formally banished, with the ceremony of kicking down a jar of water, as described by YAJNYAWALKYA. ACHYUTA.

Excluded on account of wickedness, by all his kinsmen, from the oblation of food and libation of water. MAHESWARA.

4. *Destitute of devotion and knowledge.*] Some copies of JIMUTAVAHANA read generosity (*dana*) in place of knowledge (*jnyana* or *vijnana*), which is the reading of other copies, as well as of the quotations occurring in various compilations.

\* Cited in the *Vivamitrodaya* as a passage of APASTAMBA; but, in the *Vivada-Chintamani* and *Smriti-sara*, it is referred to SANKHA; and in the *Ratnacara*, *Smriti-Chandrika* &c. to SANKHA and LICHTA.

† MAHESWARA.

a cow which neither gives milk, nor bears calves? For what purpose was that son born, who is neither learned nor virtuous? A son who is devoid of science, courage and good purposes, who is destitute of devotion and knowledge, and who is wanting in conduct, is similar to urine and excrement."

5. APASTAMBA says, "A son, who diligently performs the obsequies of his father and other ancestors, is of approved excellence, even though he be uninitiated: not a son who acts otherwise, be he conversant even with the whole *Veda*."

6. "Since a son delivers his father from the hell called *put*, therefore he is named *puttra* by the self-existent himself."\* By this and similar passages, great benefits are stated, as effected by means of a son. His connection with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire? Accordingly MANU says, "All those brothers, who are addicted to "vice, lose their title to the inheritance."†

7. So [the same author:] "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf; as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb]."‡

8. The impotent person is described by CATYAYANA: "That man is called impotent, whose urine froths not, whose feces sink in water, and whose virile member is void of erection and of semen."

9. The term 'born' is connected in construction with the words 'blind' and 'deaf.' One who is incapable of articulating sounds, is dumb. An idiot is a person not susceptible of instruction.

10. YAJNYAWALOYA says, "An outcast and his issue, an impotent person, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, [as well as others similarly disqualified,] must be maintained; excluding them however from participation."§ One, who cannot walk, is lame.

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7. *Those who have lost a sense or a limb.*] Literally an organ; explained by some a sense as that of smelling, or of sight &c. but by others a limb, as the hand foot and so forth.

10. *As well as others.*] This is a part of the text as read by the *Mitabhāra Smṛitīchāndrīka* and *Ratnaoara*. But JIMUTAVAHANA and VACHASPATI MISRA read *arta* 'afflicted,' in place of *adya* 'others.'

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\* MANU, 9. 198. VIṢṆU, 15. 43. Vide *Infra*. C. II. Sect. 1. § 81.

† MANU, 9. 214. ‡ MANU, 9. 201. § YAJNYAWALOYA, 2. 141.

11. Although they be excluded from participation, they ought to be maintained, excepting however the outcast and his son. That is taught by DEVALA: "When the father is dead [as well as in his life-time\*] an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token [of religious mendicity,] are not competent to share the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons being free from similar defects, shall obtain their father's share of the inheritance." A person wearing the token of mendicity is one who has become a religious wanderer or ascetic.

12. By the term outcast, his son also is intended; for he is degraded, being procreated by an outcast. That is confirmed by BAUDHAYANA, who says, "Let the coheirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties: excepting however the outcast and his issue."

13. On this subject, NARADA says, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice [or has been expelled from society,] take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman."†

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11. *Excepting the outcast and his son.*] Meaning a son begotten after the degradation of the father. SUCRISHNA.

*Wearing the token of mendicity.*] The term *lingi* is understood by JIMUTAVAHANA as signifying a person who has entered into a religious order, of which he wears the symbol. But other compilers (as the authors of the *Ratnacara*, *Smṛiti-chaṇḍīca* &c.) explain it a hypocrite and impostor, or a sectary and heretic.

13. *One who is addicted to vice.*] So the term, as read by JIMUTAVAHANA, is explained by his commentator MAHESWARA. In the *Prasasa* it is read *upapataki* instead of *avapatica*, and is similarly explained, according to the quotation in the *Ratnacara*. But the reading, which is there preferred, as well as in the *Calpataru*, is *apapatrika*, signifying 'expelled from society for heinous crimes;' and the word is written *avapataca* in the *Smṛiti-chaṇḍīca*, but interpreted in the same sense. RAGHUNANDANA reads, as JIMUTAVAHANA, *avapatica*, and expounds it 'one stained with sins.'

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\* *Smṛiti-Chaṇḍīca*.

† NARADA, 13. 21.

14. CATYAYANA ordains, that "The son of a woman married in irregular order ; and begotten on her by a kinsman, is unworthy of the inheritance ; and so is an apostate from a religious order."

15. If a woman of superior tribe espoused after marrying one of inferior class, both marriages are contrary to regular order. The son of either of these women, being *kshetrāja*, or issue of the wife, procreated by a kinsman authorized to raise up issue to the husband, is unworthy of the inheritance. But a son begotten by the husband himself, being of the same tribe, on his wedded wife espoused in irregular order, is heir to the estate : so likewise is a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation.

16. That is declared by CATYAYANA : "But the son of a woman married in irregular order, may be heir provided he belong to the same tribe with his father : and so may the son of a man, belonging to a different [but superior\*] tribe, by a woman espoused in the regular gradation. The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment

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14. *Son of a woman married in irregular order and begotten on her by a kinsman.*] This version is conformable to JIMUTAVAHANA'S interpretation (§ 15.) which is copied in the *Viramitrodaya*. But in the *Smritichandrica*, *Ratnacara* and *Chintamani*, the members of the sentence are separated : "The son of a woman married in irregular order is unworthy of the inheritance ; and so is the son of a woman espoused by her kinsman, as well as an apostate from a religious order."

*Is unworthy of the inheritance.*] The *Ratnacara* and *Chintamani* read *na vlot'han teshu carhidhit*, "the inheritance never goes to them," instead of *na vlot'han teshu charhati*, the inheritance is not fit to go to them ; that is as observed in the *Smritichandrica*, "they are unworthy of it."

15. *Begotten on a wife dissimilar in class, but espoused in regular gradation.*] Begotten by a man of superior tribe on a woman of inferior class. SRICRISHNA.

16. *Food and raiment only.*] This is JIMUTAVAHANA'S reading, *grasach'hadanam matram*. But the *Smriti-chandrica* and *Ratnacara* read *grasach'hadanam atyanam*, "food and raiment for life."

*Not being his patrimony.*] The commentators, SRICRISHNA and ACHYUTA, state another reading in the first instance ; *svapitryam* "[their] own patrimony" instead of *apitryam* "not [his] patrimony." They notice, however, this last reading, as one which may have been intended by the author. It is that which

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\* CHUDAMANI.

are considered to be due to him by his kinsmen. But, on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them, not using his patrimony."

17. A possibility exists of an impotent man, and the rest as above enumerated (§ 7), espousing wives. "If the eunuch and the rest should at any time desire to marry, the offspring of such shall have issue, shall be capable of inheriting."\* Issue signifies offspring.

18. It must not be objected, how can they contract marriages, since the eunuch, not being male, is incapable of procreation, and the dumb man and the rest [or those born deaf or blind] are degraded for want of initiation and investiture, because they are unfit for [the preparatory] study? The eunuch may obtain issue from his wife by means of another man; and a person unfit for investiture, with the sacerdotal string is not degraded from his rank for want of that initiation, any more than a *Sudra*.

19. Therefore the sons of such persons, being either their natural offspring of issue raised up by the wife, as the case may be, are entitled, provided they be free from similar defects, to take their allotments according to the pretensions of their fathers. Their daughters must be maintained until married, and their childless wives must be supported for life. It is so declared by YAJNYAWALKYA: Their sons, whether legitimate or the offspring of the soil, are entitled to allotments if free from similar defects.

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the *Smriti-chandrica*, *Katnacara* and other compilations exhibit. SRICRISHNA and ACHYUTA deduce the same meaning in both ways of reading the text. But MAHESWARA understands the passage differently: 'The kinsmen shall not be compelled to give up to him wealth received by them being his own patrimony: they shall not be compelled to share it with him; but he must be maintained by them with food and raiment. CHUDAMANI, again, follows the other reading, but with a different interpretation: 'The kinsmen shall not be compelled to give up his father's wealth, received by them, though not their patrimony.'

19. *As the case may be.*] A dumb man or the like may have either natural offspring or issue raised up to him by his wife. But the impotent can only have issue so raised. SRICRISHNA.

*Allotments according to the pretensions of their fathers.*] Such allotment as the fathers would have had if capable of inheriting. ACHYUTA.

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\* MANU, 9. 203.

Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, may be supported : but such as are unchaste, should be expelled ; and so indeed should those who are perverse.\*

20. Thus it has been explained, who are persons incompetent inherit.

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## CHAPTER VI.

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### *Effects liable, or not liable, to Partition.*

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#### SECTION I.

1. In the next place, effects which may be divided, and such are exempted from partition, as here explained. On that subject CATYAYANA says, "What belonged to the paternal grandfather, to the father, and any thing else [appertaining to the coheirs having been] acquired by themselves ; must all be divided at a partition among heirs."

2. And any thing else.] Here the particle 'and' is connected, in the sentence, with the term 'themselves ;' viz. 'acquired by themselves ;' or, as implied by the conjunctive particle, acquired by another person : but his acquisition must have been made through the common property [or else by joint personal labour.]† Such is the meaning.

3. MANU and VISHNU declare indivisible what is gained without expenditure. "What a brother has acquired by his labour, without using the patrimony, he need not give up without his assent ; for it was gained by his own exertion."‡

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Such share as should have belonged to their respective fathers, according as these may be either sons of a *Brahmani* woman, or of a *Kshatriya*, or of a woman of another tribe. SRICRISHNA.

1. *To the paternal grandfather.*] Meaning any relation in general. SRICRISHNA and ACHYUTA.

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\* YAJNYAWALOYA. 2. 142 and 143.

† CHUDAMANI and SRICRISHNA.

‡ MANU, 9. 208. VISHNU 18. 42. Vide *infra*, § 31. The second half of the stanza is read otherwise in the *Mitakhshara*, Ch. 1. Sect. 4, § 10.