

when they return, Be the descendant third, or fifth, or even seventh, in degree, he shall receive his hereditary allotment, on proof of his birth and name."

3. "To the lineal descendants, when they appear, of that man, whom the neighbours and the old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen."

4. Under this text; the heir [of a coparcener] long absent shall take his due allotment, after making himself known to the old inhabitants settled on all sides.

5. Such is the participation of one arriving after a division.

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## CHAPTER IX.

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*On the participation of sons by women of various tribes.*

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1. Partition among sons of the same father by different women; some equal to himself by class, others married in the direct order of the tribes, is described.

2. Marriage is allowed with women in the order of the tribes, as well as with those of equal class; for MANU says, "For the first marriage of the twice-born classes, a woman of the same tribe is recommended; but for such, as are impelled by desire, those following are preferable in the order of the classes. A *Sudra* woman only must be the wife of a *Sudra*; she and a woman of his own tribe [are the only wives] of a merchant; they two and a woman of his own class, are alone eligible for a man of the royal [or military] tribe; and those [three] and a woman of his own rank [may be wives] of a priest."<sup>3\*</sup>

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### ANNOTATIONS.

The close of SRICRISHNA'S reply bears allusion to the sequel of ACHYUTA'S argument, in which it is said, 'As for the supposition, that the rights of third, fifth &c. are determined according to the greater or less distance of the place; but, since the succession is ordained to extend as far as the seventh in degree, it extends no further; and accordingly another passage of law expresses, that inheritance stops beyond the seventh in descent: That is wrong, for it would be necessary to assume another foundation of it [in scripture;] and the rule would be irrelevant, since no determination could be formed, as there is no ground for selection of particular distances.'

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\* MANU, 8. 12—13.

3. A *Sudra* woman only.] The particle "only" is connected with every member of the sentence ; for that term, expressed immediately before, is understood with the words "She," "they two," and "those three." The meaning is, that marriage in the inverse order of the tribes must by no means be contracted.

4. But for such, as are impelled by desire, these &c.] This indicates an alleviation of offence, not entire exemption from blame.

5. So SANKHA and LIKHITA declare, "Wives must be espoused. Women of like class are preferable for all persons." This is stated as the principal rule. The succedaneous one follows : "Four wives of a *Brahmana* are allowed in the direct order ; three of *Kshatriya* two of a *Vaisya* ; and one, of a *Sudra*.

6. The numbers here stated, "four" &c. are intended to refer to the tribes.

7. These women are wedded wives. So PAIT'HINASI shows : "Four wedded wives of a *Brahmana* are allowed ; and three, two, and one of the rest respectively.

8. Of the rest.] Of the *Kshatriya* &c. in their order, three, two, and one, may be allowed.

9. Though [such a marriage be] in the direct order of the classes. MANU and VISHNU have strongly censured the union of a man of a regenerate tribe with a *Sudra* woman. "Men of the twice born classes, who, through infatuation, marry a woman of the low tribe, soon degrade their families and progeny to the state of *Sudras*. According to ATRI and [GAUTAMA] the son of UTATEYA, he who marries a *Sudra* woman is degraded instantly ; according to SAUNAGA, on the birth of a son ; and, according to BHRIGU, on the birth of a son's son. A *Brahmana*, who has ascended the couch of a *Sudra* woman, sinks to a region of torment : or, if he have begot a child on her, he loses even his priestly rank."\*

10. It thus appears, that the texts are applicable to the instance of such a woman married in regular gradation. HARITA's text also, which coincides with that of MANU and the rest, relates to a woman espoused. Thus he says, "No other is so sacrilegious, as

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#### ANNOTATIONS.

6. *The numbers refer to the tribes.*] Therefore, the marriage of a *Brahmana* with five or six *Brahmanis* is not prohibited. SRIORISHNA.

The meaning is, that five or six wives, similar to the husband himself in class are not forbidden to a man of the sacerdotal or other tribe. ACHYUTA.

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\* MANU, 3. 15-17.

is the husband of a woman of the servile tribe ; for that *Brahmana* is slain by the child, which he himself begets on her." Accordingly [since marriage with a *Sudra* woman, and procreation of issue by her, are offences ;\*] SANKHA omits the *Sudra* in describing a wife eligible for a twice-born man. "A *Brahmani*, a *Kshatriya*, and a *Vaisya*, are propounded as the allowed wives of a *Brahmana* ; a *Kshatriya* and a *Vaisya*, of a *Kshatriya* ; but a *Vaisya* is ordained the only wife of a *Vaisya* ; and a *Sudra*, of a *Sudra*."

11. Hence these evils do not ensue on the procreation of offspring upon a *Sudra* woman, not married to [the *Brahmana*] himself : but a venial offence is committed, and a slight penance is requisite, as will be shown.

12. MANU propounds the distribution among sons of four classes. "Let the venerable son take three shares of the heritage ; and the son of the *Kshatriya* wife, two shares ; the son of the *Vaisya* wife, a share and a half ; and the son of the *Sudra* wife, may take a share. Or let a person, conversant with law, divide the whole collected estate into ten parts, and make a legal distribution by this [following] rule : let the venerable son receive four parts ; the son of the *Kshatriya*, three ; let the son of the *Vaisya* have two parts ; and let the son of the *Sudra* take a single part."†

13. Two modes are propounded on the supposition of some [superiority of] good qualities [in the sons belonging to regenerate tribes,‡ or in the *Sudra's* son.§]

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#### ANNOTATIONS.

11. *Not married to himself.*] That is, married to another man. It does not, therefore, contradict what is subsequently said, 'This passage (MANU, 9. 178.) supposes the *Sudra* to be unmarried.' SRICRISHNA.

13. *On the supposition of some good qualities.*] In the sons belonging to the regenerate tribes. This phrase must be here understood. ACHYUTA.

According to the good and bad qualities of the *Sudra's* son. Some say, on the supposition of some good qualities in the sons belonging to regenerate classes. SRICRISHNA.

Of the two modes, that, by which a greater portion is allotted to him, than by the other, should be selected in favour of the person, who is superior in good qualities. CHUDAMANI.

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\* SRICRISHNA.

† MANU, 9. 161—163.

‡ ACHYUTA.

§ SRICRISHNA.

14. On this subject VISHNU has delivered rules : "If there be sons of a *Brahmana* by women of the four tribes,"\* &c. down to the concluding passage, "On this principle, shares should be distributed in other cases likewise."†

15. The son of *Brahmana* by a *Kshatriya* wife, if eldest of all by birth and superior in virtue, shall be an equal sharer with the *Brahmana* son : and the son of a *Brahmana*, or of *Kshatriya*, by a *Vaisya* wife, shall, in like circumstances, be an equal participator with the *Kshatriya* son. So VRIHASPATI directs : "The son of a *Kshatriya* wife being elder by birth, and endowed with superior qualities, shall have an equal share with the venerable son of the *Brahmani* ; and in like manner, the son of a *Vaisya* wife shall share equally with the soldier." So BAUDHAYANA says, "Of the sons by a woman of equal class and by one of the next inferior tribe, if this son of the wife one degree lower [than her husband] be [the most] virtuous, he may take the allotment of an eldest son. For a virtuous brother is the supporter of the rest."

16. It is thus shown, that the *Sudra* likewise, in similar circumstances, shall have an equal share with the *Vaisya* son.

17. But land, which has been acquired by the father, through acceptance [of a pious donation,] shall belong to the son of the *Brahmani* exclusively, not to the *Kshatriya* son and the rest : and the house, and hereditary field, appertain to the sons of regenerate classes, not to the *Sudra*. So Vrihat MANU declares :

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#### ANNOTATIONS.

If the first mentioned be respectively superior in good qualities, the distribution must be made in ten parts.

It should be here understood, that he who is superior by his good qualities, shall take out of the whole estate the share allotted to a person of his tribe, according to the distribution in ten parts ; and the residue shall be taken by the rest, sharing it according to the distribution in seven and a half parts ; but the share of him, who is superior in good qualities, must be omitted [in this further partition.] However, should the *Sudra's* son be superior in virtue, the mode of allotment by seven and a half shares must be followed : since he would have a less portion, if the mode of distribution in ten parts were observed. MAHESWARA.

14. *Down to the concluding passage.*] VISHNU'S text has not been inserted by this author, through fear of prolixity. SRIGRISHNA.

It is more fully cited by ACHYUTA as well as by SRIGRISHNA : but the insertion of it in these notes is not judged necessary.

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\* VISHNU, 18. 1.

† VISHNU, 18. 40.

"The sons of the *Brahmani* shall take land which was received as a pious gift; but all the sons of the twice-born classes shall have the house, as well as the field, which has descended from ancestors."

18. All sons, belonging to regenerate tribes, have a right to hereditary acquisitions gained both by the paternal grandfather and by the paternal great-grandfather; for it is expressed without restriction, "descended from ancestors." But, in the case of land obtained by acceptance [of a donation,] since the right of the *Kshatriya's* son and the rest is denied, that of grandsons and other descendants [claiming through such sons\*] is [properly†] unacknowledged.

19. This is declared by VRIHASPATI: "Land, obtained by acceptance of donation, must not be given to the son of a *Kshatriya* or other wife of inferior tribe: even though his father give it to him, the son of the *Brahmani* may resume it, when [his father is] dead." And thus [since the text of VRIHASPATI has the same foundation,‡] land, obtained by acceptance of donation, is the same which has been termed [by MANU§] land received as a pious gift (*brahma-daya*): for the study of the *Vedas* (here signified by the term *brahma*,) and the knowledge of their meaning, have been propounded as qualifications for the receipt of gifts.

20. It is not land which has been received as a present, according to the text of MANU: ("To priests returned from the mansion of their preceptors, let the king show due respect; for that holy mode of showing respect by kings, is pronounced unperishable."||) Since this assumes the form of a token of respect.

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#### ANNOTATIONS.

18. *Grandsons &c.*] The grandsons of the *Kshatriya* or other inferior wife. SRICRISHNA.

*Is unacknowledged.*] Dissent from their right is correct. So the sentence must be supplied. For, since the near relative has no title, it follows, by reasoning a fortiori, that the relative's relative has none. SRICRISHNA.

19. *A pious gift.*] In the phrase *brahma-dayagata*, in the text of *Vrihat MANU*; which has been translated "received as a pious gift."

*As qualification for the receipt of gifts.*] For a proper object of donations is so described. (Vide C. 6. Sect. 2. § 15.)

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\* SRICRISHNA.  
† OHUDAMANI.

§ SRICRISHNA.

† Ibid.  
|| MANU, 7. 82.

21. Or else, this land is excepted by the one author, as the other is by the other.

22. But the land of a *Brahmana* is not universally a holy heritage (*brahma-daya*): for it is expressly declared, that sons of twice-born classes have a right to the hereditary field; and the *Sudra* is alone excluded. So a passage of law expresses: "The son begotten on a *Sudri* woman by any man of a twice-born class, is not entitled to a share of land; but one, begotten on her, being of equal class, shall take all the property [whether land or chattels\*]; thus is the law settled."†

23. Since land only is mentioned, it follows, that a *Sudra's* son has no right to land acquired by his father, being of a regenerate tribe, through purchase, or through favour, or through any other means.

24. A *Sudra*, being the only son of a *Brahmana*, is entitled to a third part [of the inheritance]: and [the remaining] two parts go to the *Sapindas*; or, on failure of them, to the *Saculyas*; or, if there be none, to the person, who performs the obsequies. So DEVALA ordains: "A *Nishada*, being the only son of a priest, shall have a third part [of the heritage]; and let the kinsman, near or remote, who performs the obsequies [for the deceased], take the two [remaining] shares."

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#### ANNOTATIONS.

21. *This is excepted by the one author as the other is by the other.*] This, meaning a respectful present, is excepted by one, namely by VRIHASPATI; and land received in a pious donation, by the other, namely by Vridāha MANU. Hence, both sorts descend from the father to the son of the *Brahmani* wife. CHUDAMANI.

This, which is in the form of a respectful present, is excepted by one, namely by MANU: and the other, meaning land received as a pious gift, by the other, that is, by VRIHASPATI: and thus both sorts of land belong exclusively to the *Brahmani's* son. SRICRISHNA and ACHYUTA.

22. *A Sudri woman.*] Properly *Sudri* is the wife of a *Sudra*; and *Sudra* a woman of the *Sudra* tribe. (*Vartica* 1—2. on PANINI 4. 1. 4.) But this distinction is not observed in the text here quoted.

*Being of equal class.*] A son begotten by a *Sudra* man on a *Sudra* woman. CHUDAMANI and SRICRISHNA.

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\* CHUDAMANI and SRICRISHNA.

† VRIHASPATI cited in the *Ratnacāra*.

25. The son, begotten by a *Brahmana*, on a *Sudra*, is termed a *Nishada*. The difference between the *Sapinda* and *Saculya* (the near and the remote kinsman) will be explained [under the head of succession to the estate of a man who leaves no son.\*]

26. If a *Sudra* be the only son of a *Kshatriya* or of a *Vaisya*, he takes half of his estate ; and the next heirs, according to the order of succession subsequently explained in regard to the estate of one who has no male issue,† shall take the other half. So VISHNU says, "A *Sudra*, being the only son of any twice-born man, takes half his property ; and the other half goes where the estate of a childless man would devolve."‡

27. Here the right to a third part, or the succession to half the estate, must be understood as restricted to the instance of a person endowed with science, morality and virtue. For MANU says, "Whether he have sons, or have no sons, by other wives, no more than a tenth part must be given to his son by a *Sudra* wife."§ Since more than a tenth part is by this text forbidden, although there be no son belonging to a regenerate tribe ; it appears that the preceding text relates to an excellent only son by a *Sudra* woman. As for the prohibition of his participating in the estate, as declared by MANU ; ("The son of a *Brahmana*, a *Kshatriya*, or a *Vaisya*, by a woman of the servile class, shall not share the inheritance : whatever his father may give him, let that only be his property.||") It must be explained as implying, that the property, received by him through his father's favour, amounts to a tenth part of the estate.

28. A passage of VRIHASPATI expresses, "The virtuous and obedient son, borne by a *Sudra* woman, to a man who has no other

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#### ANNOTATIONS.

26. *Only son of any twice-born man.*] Here the term twice-born relates to two classes, the *Kshatriya* and the *Vaisya* : not to the *Brahmana* : since DEVALA, (§ 24) ordaining a third part of the *Brahmana's* estate [for the *Sudra* son,] opposes that construction. SRICRISHNA and ACHYUTA.

27. *It must be explained &c.*] For it is said, 'that only, which his father may give him, 'shall be his.' SRICRISHNA.

*Through his father's favour.*] If that which has been so received, be equal to a tenth part nothing more should be given to the *Sudra's* son. SRICRISHNA.

28. *These two passages.*] The two texts last cited. SRICRISHNA.

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\* SRICRISHNA. Vide C. 11.

† C. 11.

‡ VISHNU, 18. 32—33.

§ MANU, 9. 154.

|| MANU, 9. 155.

offspring, should obtain a maintenance ; and let the kinsmen take the residue of the estate;" which signifies, that something should be given, to enable him to practice agriculture or some other profession adapted to earn a subsistence ; but to one deficient in good qualities, food and other necessaries, as means of subsistence, may be given, in consideration of his behaving with humility and obedience, like a pupil. Thus a passage of MANU declares, "A son, begotten through lust on a *Sudra* woman by a man of the priestly class, is even as a corpse though alive, and is thence called a living corpse (*parasava*)."\* These [two] passages imply, that the *Sudra* woman is unmarried. For a husband is enjoined to approach his wedded wife once in the proper season ; and conception takes place then only, not on subsequent intercourse. Thus YAJNYAWALOKYA says, "If a brother die without male issue, let another approach the widow once in the proper season : † and MANU ordains, "Having espoused her in due form, she being clad in a white robe, and pure in her moral conduct, let him approach her secretly once in each proper season, until issue be had." ‡ The first intercourse being the cause of pregnancy, the mention of "once" may be intended for a secular purpose ; else, it must be supposed to be meant for a spiritual end. Accordingly, in the

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#### ANNOTATIONS.

*That the Sudra woman is unmarried.]* Not married to any one : but kept for sensual gratification. SRIORISENA.

*For a husband is enjoined to approach his wedded wife once, in the proper season.]* Consequently, since a single intercourse in proper season, which is the cause of pregnancy, is enjoined, the procreation of a son, which is its consequence, is also enjoined : for the injunction was propounded for that very purpose. SRIORISENA.

*Ceremonies restricted to particular months, as the Punsavana and Simantonayana.]* The first of the ceremonies here named is celebrated at the close of the third month of pregnancy. It consists of the following prayer recited by the husband, addressing his pregnant wife, "Male are MITRA and VARUNA (the sun and the regent of the sea;) male are the twin sons of *Asvini*; male are fire and air: may the child in thy womb prove male." The recital of this prayer is preceded by burnt offerings of clarified butter. The other ceremony mentioned should be performed in the fourth, sixth or eighth month of the pregnancy. The husband decorates his wife's head with minium, ornaments and other articles, reciting divers prayers for a fortunate gestation.

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\* MANU, 9. 178.

† Not found in the institutes of YAJNYAWALOKYA.

‡ MANU, 9. 70.



practice of the world, months are counted from the day of the first intercourse, as well for regulating auspicious observances, as for determining the performance of ceremonies restricted to particular months, as the *Punsavana* and *Simantonmayana*. Hence the expression "A son begotten through lust on a *Sudra*," must relate to the child of an unmarried *Sudra*.

29. But the son of a *Sudra*, by a female slave or other unmarried *Sudra* woman, may share equally with other sons, by consent of the father. Thus MANU says "A son begotten by a man of the servile class on his female slave; or on the female slave of his slave, may take a share of the heritage, if permitted: thus is the law established.\*"

30. Without such consent, he shall take half a share: as YAJNYAWALOYA directs: "Even a son, begotten by *Sudra* on a female slave, may take a share by the choice of the father; but if the father be dead, the brethren should make him partake of half a share."†

31. Begotten on an unmarried woman, and having no brother, he may take the whole property; provided there be not a daughter's son. So YAJNYAWALOYA ordains: "One, who has no brothers may inherit the whole property; for want of daughter's sons."‡ But if there be a daughter's son, he shall share equally with him; for no special provision occurs: and it is fit, that the allotment should be equal; since the one, though born of an unmarried woman is son of the owner; and the other though sprung from a married woman, is only his daughter's son.

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#### ANNOTATIONS.

29. *On the female slave of his slave.*] On the wife of his male slave. CHUDAMANI.

On the unesposed concubine of his male slave. SRIORISINA.

30. *The brethren.*] The sons by a wedded wife. MAHESWARA.

31. *Having no brother.*] His father having left no son by a wife. ACHYUTA. He being born of an unmarried woman and having no brother born of a wedded wife. MAHESWARA.

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\* MANU, 9. 179. † YAJNYAWALOYA, 2. 134. ‡ YAJNYAWALOYA, 2. 135.