

DAYA-BHAGA

ANALYSIS.

[N.B.—The numbers within brackets are refernces to paragraphs of the text in the foregoing translation.]

CHAPTER I.

1. Introduction, stating the object and subject of the work (1).
2. A text of Narada, defining *Daya-bhaga*, cited (2), and explained (3.)
3. Etymology of the term *Daya* (4). *Daya* is explained to be taken in a technical sense, and to mean, property in which right of a person, depending on relationship to the owner arises on the extinction of the owner's right (5.)
4. Partition explained (6—10). The *Mitakshara* doctrine that right of each coparcener accrues to the whole estate is refuted (7.) Partition according to the author is the manifestation or making known of that fractional portion to which the right of a co-heir accrued but which was not ascertained before partition (8, 9.) ¶ 5. The question next discussed is as to when right accrues (11-13.) Death of the owner is the cause of heritable right (12.) The *Mitakshara* doctrine of right by birth stated (13) and refuted (14—20.) That the death of the owner, though it is not an exertion on the part of the heir, causes the accrual of the heir's right,—is a position supported by the *Sastras*. Similar instance in gift (21—24). Another solution, *viz.* life of the heir at the death of owner is the cause (25 et seq.)
6. Right is extinguished not only by death but also by degradation, retirement from the world, and so forth. (31-34.)
7. Partition takes place at the instance of a single co-heir (35.)
8. A text showing the exclusive right of the eldest son, cited (36) and explained to refer to a joint family managed by the eldest with the consent of all. (37.)

9. Two periods of partition, *viz.* farther's choice during his life and choice of heirs after his demise. (38) Criticism of different opinions on this point (39-43). Conclusion (44) Some texts seemingly postponing partition explained (45-49) Conclusion repeated (50.)

CHAPTER II.

1. The author proposes to deal with the time for partition of grandfather's property, (1); cites and explains several texts (1-6); and lays down that there are two periods, one after the death of the father, the other when the mother is past child-bearing and the father desires (7.)

2. There can be no partition against the farther's will, sons having no right to ancestral property during father's life (8). The texts upon which the Mitakshara doctrine of partition of ancestral property at the instance of sons, and against the farther's will—is based, are explained away as referring either to a pre-deceased brother's son representing his father, or to the want of power in the father to make unequal distribution of ancestral property. (9-19) Spiritual benefit referred to (10.)

3. The father is entitled to two shares of ancestral property on partition which may take place only by his desire and not by the choice of sons (20); a text apparently against the above position explained away, (21) his right of making unequal distribution of ancestral moveable property established, (22.)

4. The father has a right to alienate ancestral moveable property but not immoveable property (23) excepting a small part (24), nor corrody (25). Immoveable property may be alienated for legal necessity (26.)

5. A cosharer may alienate his share before partition (27). The text upon which the Mitakshara doctrine is based, is explained away (28) and so is a text prohibiting the father to dispose of his self-acquired property without the assent of sons (29.)

6. The doctrine of *factum valet*, founded upon the opinion of the author that the last mentioned two texts impose a moral obligation and cannot invalidate alienation by one having proprietary right, (30) a text in support of the author's opinion (31.)

7. The subject of partition of ancestral property is resumed (32) previous positions repeated (33, 34) father's double share supported by citing a text (35) argument in support of the same

deduced from texts laying down eldest son's double share (37—54.) The father's double share has no reference to self acquired property (55-64.)

8. Father is entitled to a double share or a moiety of son's acquisitions (65-72.)

9. Conclusion, that father entitled on partition to take as much as he chooses of his self acquired property and a double share of all other property (73.)

10. Ancestral property may be distributed by father with specific deductions of a twentieth part &c. Self-acquired property may be distributed unequally amongst sons, but not so ancestral property (74—82) ; unequal distribution is not the same thing as a distribution with specific deductions (87.)

CHAPTER III.

SECTION I.

1. Partition should not be made by uterine brothers during the mother's life, though the father is dead and they have an absolute title. (1—14.)

2. Should they continue joint the eldest or any other brother who is competent become the manager (15.)

3. Partition may take place at the instance of a single co-sharer. (16—17.)

4. A grandson whose father is predeceased and a great grandson whose father and grandfather both are predeceased are entitled to participate on the ground of spiritual benefit (18, 20)

5. Partition is to be made *per stirpes*. (21—23.)

SECTION II.

1. It is optional with brothers of the same class to divide the estate equally or with specific deductions. (24—27.)

2. A co-sharer not desirous to participate should be given a trifle (28.)

3. On partition by uterine brothers their mother, not a step-mother, is entitled to a share, if Stridhan has not been given (27—31.)

4. On partition by the father, his sonless wife is entitled to a share the amount whereof is to be determined regard being had to her tribe (32—33.)

5. Unmarried sisters are to be disposed of in marriage ; grant of a quarter share is not obligatory. (34—40.)

6. Uninitiated brothers to be initiated (41—42.)

CHAPTER IV.

SECTION I.

1. *Stridhan* described. Texts enumerating *stridhan* cited and explained. (1—15). Whatever is given ostensibly to the bridegroom becomes the bride's *Stridhan* (16—17). *Stridhan* defined by the author (18) and explained to consist of gifts from relations ; (19.)

2. Gifts from strangers, and earnings by a woman in the practice of mechanical arts, are under the husband's control (20.)

3. A woman is competent to dispose of her property. (21—22.)

4. But she cannot alienate immoveable property given by the husband (23.)

5. The husband may take the wife's property in distress but not otherwise (24—25.)

SECTION II.

1. The order of succession to woman's property discussed (1—8.) It is as follows:—*a.* Son and maiden daughter, *b.* the married daughter having or likely to have male issue (9), *c.* son's son, *d.* daughter's son, *e.* barren and widowed daughters (10—12.)

2. Texts laying down a different order explained to refer to *yautuka* (13), *yautuka* described (14), the order of succession to *yautuka* discussed (15—21) and explained to be as follows, *a.* maiden daughter *b.* betrothed daughter *c.* married daughter *d.* son. (22—26.)

3. The *Mitakshara* doctrine based upon the text of *yajna-vaalkya* in § 24, that the order of succession to all kinds of *stridhan* is different according as the marriage was in an approved or in a disapproved form,—controverted (27—29.)

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SECTION III.

1. In default of issue, yautuka property goes to the husband in the first instance, if the marriage was celebrated in an approved form (1—5) otherwise to the mother first, then to the father and after them to the husband (6.)

2. Maiden's property goes first to brother then to the mother then to the father (7—8). The brother cannot take yautuka property before parents, there being no text to that effect (9.)

3. The brother, mother, father and husband inherit in their order a childless woman's property consisting of gifts before or after marriage. (10—30.)

4. In default of husband the heirs are:—

1. husband's younger brother, 2. husband's brother's son, 3. sister's son, 4. husband's sister's son, 5. brother's son, 6. son-in-law. (31—41.)

CHAPTER V.

1. Persons excluded from inheritance are,—an outcast (1-3) the vicious (4-6), one impotent, one born blind or born deaf, a madman an idiot the dumb and whoever is destitute of an organ of sense. (7—10.)

2. They are entitled to maintenance excepting the outcast and his son (11—12.)

3. A person inimical to the father is excluded (13) and so are certain offsprings of intermarriage disapproved (14—16.)

4. An impotent person can marry (17—18.)

5. The Aurasa and Kshetraja sons of the excluded are entitled to participate, and their wives are to be maintained for life, also their daughters till marriage (19.)

CHAPTER VI.

SECTION I.

1. All things belonging to the father or to the paternal grandfather as also things acquired by a co-heir with the expenditure of joint stock are partible. (1, 2.)

2. Things acquired by a co-heir without expenditure of joint funds are not liable to partition. (3—9.) There is an exception in respect of gains of science, which may be shared in by one of equal or superior learning (6.)

3. Gifts received from father, uncle or other relations are not partible (10, 11.)

4. Gifts obtained at marriage are impartible (12, 13.)

5. The general principle is that acquisitions with the aid of joint funds are liable to partition (14—22); further argument in support of this position (23—27.)

6. The acquirer is entitled to a double share of property acquired by means of joint funds (28—29.)

7. An acquisition without detriment to joint estate belongs exclusively to the acquirer (30) arguments in support (31—43.)

8. The nourishment derived from joint estate by the acquirer cannot be taken to be an expenditure for acquisition (44—48.) when property is used for express purpose of gain then it is an expenditure for acquisition (49—52). An exception observed in practice noticed (53.)

9. Younger brothers if learned and obedient to the eldest brother are entitled to participate in eldest brother's self-acquired property (54—55.)

10. Property is not liable to partition simply because it is an acquisition by an unseparated co-heir. (56.)

SECTION II.

1. Gains of science explained (1—19.)

2. Gains of valour &c. (20—22.)

3. Certain other things that are from their nature and character impartible, are set forth (23—30.)

4. Ancestral property when recovered without expenditure of joint stock belongs to the recoverer (31—36.)

5. But the recoverer is entitled to a fourth share only of ancestral immoveable property recovered. (37—39.)

CHAPTER VII.

1. A son conceived after partition is entitled to the father's share only (1—3.)

2. But a son who had been conceived before partition, and born after it is entitled to a share by re-opening partition (4.)

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2. But a son who had been conceived before partition, and born after it is entitled to a share by re-opening partition (4.)

3. All the sons begotten after partition are entitled to the father's share only (5—9.)

4. The above rule is applicable to father's self acquired property alone. Sons born after partition, are entitled to ancestral property by re-opening partition. (10—13.)

CHAPTER VIII.

1. A co-heir residing at a different place and arriving after partition is entitled to participate if he proves to be within seven (six) degrees of descent from the common ancestor (1—4.)

CHAPTER IX.

1. The subject of partition between sons by wives of different classes, proposed.

2. Legality of intermarriage between a man of a superior class and a woman of an inferior class, in the prescribed order maintained. (2—8.)

3. But the marriage of a Sudra woman by a twice born person is not approved (9—11.)

4. Sons of a Brahmana by wives of the Brahman, Kshatriya Vaisya and Sudra classes, are respectively entitled to participate in the ratio of 3: 2: $1\frac{1}{2}$: 1 or 4: 3: 2: 1 (12) The difference is to be accounted for by possession of good qualities or not. (13—16.)

5. A Brahmana's land gained by acceptance cannot be participated in by a Khatriya or other son. (17—21.)

6. Landed property of a twice-born cannot go to a Sudra son. (22, 23.)

7. The case of a twice-born having an only son by a Sudra wife. He is not entitled to the whole estate (24—27.)

8. A son begotten by a twice born on a female slave gets no more than maintenance (28.)

9. But a son of a Sudra by a female slave may get an equal share with legitimate sons by the father's choice (29) otherwise he is entitled to a half share (30) In default of a legitimate son he is entitled to the whole if there be no daughter's son, with whom he participates equally (31)

CHAPTER X.

1. Partition by an appointed daughter and a real son born after appointment. (1-6.)

2. The heritable right of twelve descriptions of sons : they are divided into two sets of six ; of which the second set including the *Dattaka* son inherits from the father alone ; but the first set, from the *Sapindas* as well. (7-8.)

3. In default of an *aurasa* son a subsidiary son takes the whole estate ; but where there is an *aurasa* son, the latter takes a third (9) an appointed daughter holds the same position as an *aurasa* son relatively to other sons (10) Subsidiary sons of an inferior tribe get a lesser share or maintenance (11-14.)

4. A *Kshetraja* son begotten without appointment is not entitled to his mother's husband's estate but is entitled to the whole of his mother's *Stridhan* granted to her by his natural father. (15-17).

CHAPTER XI.

SECTION I.

1. There are conflicting texts regarding succession to the estate left by a sonless person (1) some place the widow first in the order of succession (2-14) while there are others seeming to be adverse to widow's right (15-18),

2. The *Mitakshara* reconciliation of the conflicting texts, namely that the texts in widow's favor refer to the estate of one separated and not re-united, while the opposite texts relate to jointness or re-union,—noticed (19). It is shown to be opposed to a text of *Vrihaspati* (20-22). There is no express text laying down preference of brothers to widow, if the deceased was joint or re-united (23 24) nor is there any valid reason in support of the reconciliation. Survivorship cannot apply, right of co-heirs extending only to a fractional portion, (25-26) neither can it exclude the wife she having a joint right to husband's estate (27) other inconsistencies (28-30). Re-union explained (30).

3. The author's conclusion is, that the widow is entitled first of all to take the estate of sonless husband. (31-33). 'Sonless' means destitute of son, grandson and great-grandson (34-43). *Sapinda* relationship explained (37-40). Adverse texts explained (45) conclusion repeated (46).

4. When the deceased had wives of different tribes, the wife of the same class with the husband is preferred. A distinction between *patni* and wife taken (47) *patni* alone is heir, and not a mere wife who is entitled to maintenance only (48, 49).

5. A text seemingly adverse to widow's right explained (50-55),

6. The widow's right in the heritage is not absolute, but a limited one, the estate after her death goes to the husband's heirs, not to her heirs (50-61).

7. Alienation may be made by the widow only for legal purposes (62-63).

8. Widow may make gifts out of the husband's estate to her relations, only with the assent of the husband's kinsmen. (64).

9. Daughters inheriting have the same restricted interest in father's estate, as widow in that of the husband. After the daughter the father's heirs take the estate (65).

10. The widow shall give the maiden daughter a fourth part for marriage (66).

SECTION II.

1. In default of the widow the daughters inherit. A daughter that is barren, or sonless widow, or mother of female children alone, as well as a daughter's daughter and a daughter's son's son, are not heirs being incompetent to conduce to spiritual benefit (1-3).

2. Of the qualified daughters, the maiden succeeds first. Texts and reasons for her preference (4-7). On failure of her a married daughter having or likely to have male issue inherits (8).

3. A daughter borne by a wife of a different class cannot inherit (9).

4. Several objections against the above positions noticed and met (10-24).

5. In default of the qualified daughters the daughter's son takes (25-29).

6. When a maiden daughter in whom her father's estate had vested dies after marriage, the estate goes to her father's heirs such as the qualified daughters. The limitations on the widow's estate apply *a fortiori* in the case of the succession of daughter and daughter's son (30).

7. Or the rule is that all female heirs will have the same estate as the widow. (30).

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SECTION III.

1. In default of the daughter's, son the father inherits (1). A text seeming to be in favor of the mother's preference explained (2). An argument derived from spiritual benefit (3).
2. The term *Pitarau* in Yajnavalkya's text is explained to suggest the father first (4-5).

SECTION IV.

1. On failure of the father, the mother inherits. (1) Reasons for her succession (2); greater degree of veneration due to her affords no reason for her preference to father (3).
2. Just as the father and mother inherit before their descendants similarly the paternal grand-parents succeed before the uncle and so forth (4-6).

SECTION V.

1. In default of the mother, the brother succeeds (1). Discussion whether nephew may succeed with brother (2-7). conclusion in the negative (8).
2. Full brother takes first, then the half brother (9). Reasons for the succession of half brother before nephew (10-12).
3. A re-united full brother is preferred to one that is not so ; and a re united half brother inherits together with a full brother not re-united (13-15). This is deduced from the author's interpretation of a text of Yajnavalkya upon which a different rule of succession is based in the *Mitakshara*.
4. Construction put upon that text by Srikara, criticised (16-31). Other texts cited supporting author's view, and explained (32-37).
5. The text of Yajnavalkya, relating to re-union is explained by the author to lay down that where there are two relations otherwise equal, the circumstance of one being re-united gives him preference (38-39).

SECTION VI.

1. In default of brother, the brother's son is heir (1). The full brother's son is preferred to a half brother's son ; there being

a text for the preference of whole blood, and the capacity for conferring greater amount of spiritual benefit (2-4). Reason for preferring the brother's son to uncle, though apparently they confer the same amount of spiritual benefit (5).

2. After the brother's son comes the brother's son's son (6). His son cannot take now (7).

3. Then comes the sister's son (8).

4. Similarly succeed the descendants of the paternal grandfather and great grandfather, including their daughter's son. (9) Reasons for the above position (10-11).

5. In default of paternal great-grandfather's descendants down to the daughter's son, the maternal uncle and the rest inherit (12) reasons for this position (13-20.)

6. In their default the Sakulyas inherit (21, 22.)

7. Then the Samanodakas. (23.)

8. After them the preceptor, the pupil and the fellow-student become heirs in their order (24.)

9. In their default persons connected by Gotra, and Pravara in their order succeed (25.)

10. On failure of them learned Brahmanas take the estate (26.)

11. In their default the king takes, excepting the property of a Brahmana. (27.)

12. The default of persons connected by Gotra and Pravara, as also of Brahmanas must be understood with reference to the village in which the deceased had his domicile. (27.)

13. Additional arguments for the author's innovation namely introduction of the cognates before agnates, wherein he differs from the Mitakshara. 28-33.)

14. The estate of a Brahmana must not be taken by the king but by Brahmanas. (34.)

15. The property of one that has entered into the third order goes to his spiritual brother; that of an ascetic, to the virtuous pupil; and that of a perpetual student, to his preceptor. On failure of them, the associate in holiness or person belonging to same order shall take. (35, 36.)

CHAPTER. XII.

I. On partition by re-united co-percener there are no specific directions (1-2).

2. It is laid down in a text of Yrihaspati, that a persc be re-united with his father, brother and paternal uncle (3).

3. The author relies upon the enumeration in the abo for holding that the preference based upon re-union do apply to any other relation that may be re-united (4-5 Ch. XI Sec. I p. 30.

CHAPTER XIII.

1. Property concealed by a co-sharer at the time of par but subsequently discovered is to be equally distributed among the co-sharers including him who concealed it. But previous tion is not to be re-opened (1-5).

2. Excess of consumption by a co-parcener during jointn not to be taken into account (7).

3. There is no criminal offence in the concealment of property by a co-cosharer (8-16).

CHAPTER XIV.

1. The fact of partition may be proved by witnesses b of partition and by separate transactions. (1).

2. Of witnesses, the best are *sapinda jnatis*, next to th relations coming under the term *bandhu* in their default persons. (2-5).

3. Deed of partition is best evidence, documentary e being preferred to oral evidence (6).

4. Where there is neither document nor witness, cir tantial evidence is admissible ; it consists of separate transo and so forth (7-11).

