

THE  
LAW OF INHERITANCE

FROM THE

MITACSHARA,

A COMMENTARY BY VIJNYANESWARA ON THE  
INSTITUTES

OF

YAJNYAWALCYA.

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CHAPTER I.

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SECTION I.

*Definition of Inheritance, and of Partition.—Disquisition on Property.*

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1. EVIDENCE, human and divine, has been thus explained with [its various] distinctions ; the partition of heritage is now propounded by the image of holiness.

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ANNOTATIONS.

1. *Evidence human and divine.*] Intending to expound with great care the chapter on Inheritance, the author shows by this verse the connexion of the first and second volumes of the book. *Subod'hini.*

*The image of holiness.*] YAJNYAWALCYA, bearing the title of contemplative saint (*Yogiswara*), and here termed the image of holiness (*Yogamurti*.) BALAM-BHATTA.

be faultless or free from defects which should bar their participation, such as impotency and the like.

11. Of these [two descriptions of offspring\*] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

12. The author delivers a special rule concerning the daughters of disqualified persons: "Their daughters must be maintained likewise, until they are provided with husbands."†

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," the expenses of their nuptials must be also defrayed.

14. The author adds a distinct maxim respecting the wives of disqualified persons: "Their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled: and so indeed should those, who are perverse."‡

15. The wives of these persons, being destitute of male issue, and being correct in their conduct, or behaving virtuously, must be supported or maintained. But, if unchaste they must be expelled; and so may those, who are perverse. These last may indeed be expelled: but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

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## SECTION XI.

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### *On the separate property of a woman.*

1. After briefly propounding the division of wealth left by the husband and wife, ("Let sons divide equally both the effects and debts, after the demise of their two parents" ||) the partition of a man's goods has been described at large. The author, now intending to explain fully the distribution of a woman's property, begins by

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\* BALAM-BHATTA. †

YAJNYAWALCYA 2. 142.

† YAJNYAWALCYA, 2. 143.

|| YAJNYAWALCYA, 2. 118. Vide supra. C. 1. Sect. 3. § 1.

setting forth the nature of it: "What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other separate acquisition, is denominated a woman's property."\*

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that, which was presented (to the bride) by the maternal uncles and rest (as paternal uncles, maternal aunts, &c. †) at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, ("To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession." § 34,) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding, ‡ are denominated by MENU and the rest 'woman's property.'

3. The term (woman's property) conforms, in its import, with its etymology, and is not technical: for, if

#### ANNOTATIONS.

1. *As also any other separate acquisition.*] In JIMUTA-VAHANA'S quotation of the text, (C. 4. Sect. 1. § 13.) the conjunctive and pleonastic particles *chaiva* (*cha-eva*) are here substituted for the suppletory term *adya*. That reading is censured by BALAM-BHATTA.

2. *Before the nuptial fire.*] Near it. *Subod'hini*.

*On account of supersession.*] Supersession is the contracting of a second marriage through the influence of passion, while a first wife lives, who was married to fulfil religious obligations. *Subod'hini*.

*Property which she may have acquired by inheritance.*] The commentator BALAM-BHATTA, defends his author against the writers of the eastern school (JIMUTA-VAHANA, &c.) on this point. Wealth, devolving on a woman by inheritance, is not classed by the authorities of that school with 'woman's property.' See JIMUTA-VAHANA, C. 4. and C. 11. Sect. 1. § 8.

3. *The term 'woman's property' is not technical.*] This is contrary to the doctrine of JIMUTA-VAHANA, C. 4.

\* YAJNYAWALCYA, 2. 144.

† BALAM-BHATTA.

‡ Vide C. 1. Sect. 1. § 8.

the literal sense be admissible, a technical acceptance is improper.

4. The enumeration of six sorts of woman's property by MENU ("What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection or respect, and what has been received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman ;"\*) is intended, not as a restriction of a greater number, but as a denial of a less.

5. Definitions of presents given before the nuptial fire and so forth have been delivered by CATYAYANA : "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire. That, again, which a woman receives while she is conducted from her father's house (to her husband's dwelling,) is instanced as the property of a woman, under the name of gift presented in the bridal procession. Whatever has been given to her through affection by her mother-in-law or by her father-in-law, or has been offered to her as a token of respect, is denominated an affectionate present. That

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#### ANNOTATIONS.

4. "*Bestowed in token of affection or respect.*" ] This passage is read differently in the *Retnacara* and by JIMUTA-VAHANA (C. 4. Sect. 1. § 4). It is here translated conformably with BALAMBHATTA'S interpretation, grounded on the subsequent text of CATYAYANA (§ 5); where two reasons of an affectionate gift are stated: one, simple affection; the other, respect shown by an obeisance at the woman's feet.

5. "*From her father's house.*" ] The *Retnacara* and *Chintamani* read "from the parental abode." See JIMUTA-VAHANA, C. 4. Sect. 1. § 6.

"*Offered to her as a token of respect.*" ] Given to her at the time of making an obeisance at her feet. *Smriti-chandrica*.

"*Denominated an affectionate present.*" ] This reading is followed in the *Smriti-chandrica*, *Viramitrodaya*, &c. But the *Retnacara*, *Chintamani*, and *Vivada-chandra* read 'denominated an acquisition through loveliness;' *lavanyarjitam* instead of *priiti-dattum*.

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\* MENU, 9. 194.

which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."

6. Besides (the author says) "That which has been given to her by her kindred; as well as her fee or gratuity, or anything bestowed after marriage."\* What is given to a damsel by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

7. It is said by CATYAYANA, "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that, which is similarly received from the family of her father." It is celebrated as woman's property: for this passage is connected with that which had gone before. (§ 5.)

8. A woman's property has been thus described. The author next propounds the distribution of it: "Her kinsmen take it, if she die without issue."†

9. If a woman die "without issue;" that is, leaving no progeny; in other words, having no daughter nor

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#### ANNOTATIONS.

"From her brother or from her parents." ] The *Culpataru* reads "from her husband." See JIMUTA-VAHANA, C. 4. Sect. 2. § 21.

"Termed a kind gift." ] So the commentary of BALAM-BHATTA explains, *saudayica*, as bearing the same sense with its etymon *sudaya*. He censures the interpretation which JIMUTA-VAHANA has given. (C. 4. Sect. 1. § 22.)

6. *The gratuity, for the receipt of which a girl is given in marriage.* ] This relates to a marriage in the form termed *Asura* or the like. BALAM-BHATTA.

7. "Similarly received from the family of her father." ] The *Retnacara* reads 'from her own family;' JIMUTA-VAHANA, 'from the family of her kindred.' See JIMUTA-VAHANA, C. 4. Sect. 1. § 2.

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\* YAJNYAWALCYA, 2, 145.

† YAJNYAWALCYA, 2, 145.

daughter's daughter nor daughter's son, nor son, nor son's son ; the woman's property, as above described, shall be taken by her kinsmen ; namely her husband and the rest, as will be (forthwith \*) explained.

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. "The property of a childless woman, married in the form denominated *Brahma*, or in any of the four (unblamed modes of marriage,) goes to her husband : but, if she leave progeny, it will go to her (daughter's) daughters : and, in other forms of marriage (as the *A'sura*, &c.) it goes to her father (and mother, on failure of her own issue." †)

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated *Brahma*, *Daiva*, *Arsha* and *Prajapatya*, the (whole ‡) property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen (*sapindas*) allied by funeral oblations. But, in the other forms of marriage called *A'sura*, *Gand'harba*, *Racshasa* and *Paisacha* ; the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained, ||) on the mother, who is virtually exhibited (first) in the elliptical *pitrigami* implying 'goes (*gach'hati*) to both parents (*pitarau* ; ) that is, to the mother and to the father.' On failure of them, their next of kin take the succession.

12. In all forms of marriage, if the woman "leave progeny;" that is, if she have issue ; her property devolves on her daughters. In this place, \*by the term

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#### ANNOTATIONS.

11. *Dying without issue as before stated.*] Without any of the five descendants abovementioned (§ 9.) BALAM-BHATTA.

12. *In all forms of marriage.*] Several variations in the reading of this passage are noticed by BALAM-BHATTA : as *sarveshu api*, or *sarveshu eva*, or *sarveshu*. There is only a shade of difference in the interpretation.

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\* BALAM-BHATTA,  
‡ BALAM-BHATTA.

† YAJNYAWALCYA, 2. 146.  
|| Sect. 3.

"daughters," grand-daughters are signified; for the immediate female descendants are expressly mentioned in a preceding passage: "the daughters share the residue of their mother's property, after payment of her debts." \*

13. Hence, if the mother be dead, daughters take her property in the first instance: and here, in the case of competition between married and maiden daughters, the unmarried take the succession; but, on failure of them, the married daughter: and here again, in the case of competition between such as are provided and those who are endowed, the unendowed take the succession first; but, on failure of them, those who are endowed. Thus GAUTAMA says "A woman's property goes to her daughters unmarried, or unprovided," † 'or provided,' as is implied by the conjunctive particle in the text. "Unprovided" are such as are destitute of wealth or without issue.

14. But this (rule, for the daughter's succession to the mother's goods, ‡) is exclusive of the fee or gratuity. For that goes to brothers of the whole blood, conformably with the text of GAUTAMA: "The sister's fee belongs to the uterine brothers: after (the death of) the mother." ||

15. On failure of all daughters, the grand-daughters in the female line take the succession under this text: "if she leave progeny, it goes to her [daughter's] daughters." ¶

16. If there be a multitude of these [grand-daughters \*\*] children of different mothers, and unequal in

#### ANNOTATIONS.

14. "After the death of the mother." This version is according to the interpretation given in the *Subod'hini*: which agrees with that of the scholiast of GAUTAMA, the *Culpataru* and other authorities. But the text is read and explained differently by JIMUTA-VAHANA (C. 4. Sect. 3. § 27).

BALAM-BHATTA understands by the term 'mother,' in this place, the woman herself, or in short the sister, after whose death her fee or nuptial gratuity goes to her brothers.

16. *Children of different mothers, and unequal in number.*] Where

\* YAJNYAWALCYA, 2. 118. Vide supra. C. 1. Sect. 3. § 8.

† GAUTAMA, 28. 22. Vide supra. C. 1. Sect. 3. § 11.

‡ BALAM-BHATTA. || GAUTAMA, 28. 23. ¶ Vide § 10. & 12.

\*\* BALAM-BHATTA.

number, shares should be allotted to them through their mothers, as directed by GAUTAMA: "Or the partition may be according to the mothers: and a particular distribution may be made in the respective sets."\*

17. But if there be daughters as well as daughter's daughters, a trifle only is to be given to the grand-daughters. So MENU declares: "Even to the daughters of those daughters, something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection." †

18. On failure also of daughters, the daughter's sons are entitled to the succession. Thus NAREDA says "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue." ‡ For the pronoun refers to the contiguous term "daughters."

19. If there be no grandsons in the female line, sons take the property: for it has been already declared "the [male] issue succeeds in their default." || MENU likewise shows the right of sons, as well as of daughters

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#### ANNOTATIONS.

the daughters were numerous, but are not living; and their female children are unequal in number, one having left a single daughter; another, two; and a third, three; how shall the maternal grandmother's property be distributed among her grand-daughters. Having put this question, the author reminds the readers of the mode of distribution of a paternal grandfather's estate among his grandsons. (C. 1. Sect. 5.) *Subod'hini*.

18. "*Their male issue.*" ] Several variations in the reading of the last term are noticed in the commentary of BALAM-BHATTA; making the term either singular or plural, and putting it in the first or in the seventh case. He deduces, however, the same meaning from these different readings.

*The pronoun refers to the contiguous term.*] JIMUTA-VAHANA, citing this passage for the succession of sons rather than of grandsons, seems to have understood the pronoun as referring to the remoter word 'mother.' See JIMUTA-VAHANA. C. 4. Sect. 2. § 13.

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\* GAUTAMA, 28. 15. † MENU, 9. 193. ‡ NAREDA. 13. 1  
|| YAJNYAWALCYA. 2. 118. Vide supra. C. 1. Sect. 3. § 12.

to their mother's effect: "When the mother is dead let all the uterine brothers and the uterine sisters equally divide the maternal estate."\*

20. 'All the uterine brothers should divide the maternal estate equally: and so should sisters by the same mothers.' Such is the construction: and the meaning is, not that 'brothers and sisters share together;' for reciprocation is not indicated, since the abridged form of the conjunctive compound has not been employed: but the conjunctive particle (*cha*) is here very properly used with reference to the person making the partition; as in the example, DEVADATTA practises agriculture, and so does YAJNYADATTA.

21. "Equally" is specified (§ 19) to forbid the allotment of deductions [to the eldest and so forth]. The whole blood is mentioned to exclude the half blood.

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior tribe. Or, on failure of the step-daughter, her issue shall succeed. So MENU declares: "The wealth of a woman, which has been in any manner given to her by her father, let the *Brahmani* damsel take; or let it belong to her offspring."†

#### ANNOTATIONS.

19. "*Let all the uterine brothers ..... equally divide.*" In the *Calpataru* the text is read "let all the sons by the same mother divide;" *sarve putrah sahodarah* instead of *saman sarve sahodarah*.

20. *Since the abridged form of the conjunctive compound has not been employed.*] Nouns coalesce and form a single word denominated *dwandwa* or conjunctive compound, when the sense of the conjunctive particle (*cha* 'and') is denoted. PANINI, 2. 2. 29. Vide supra. Sect. 3. § 2.

The import of the particle, here intended, is either *reciprocation* (*itarētara*) explained to 'be the union, in regard to a single matter, of things specifically different, but mutually related, and mixed or associated, though contrasted;' or it is *cumulation* (*samahara*) explained as the 'union of such things, in which contrast is not marked.' The other senses of the conjunctive particle are *assemblage* (*samuch-*

\* MENU, 9. 192.

† MENU, 9. 198.

23. The mention of a *Brahmani* includes any superior class. Hence the daughter of a *Cshatriya* wife takes the goods of a childless *Vaisya*: (and the daughter of a *Brahmani*, *Cshatriya* or *Vaisya* inherits the property of a *Sudra*.) \*

24. On failure of sons, grandsons inherit their paternal grandmother's wealth. For GAUTAMA says: "They, who share the inheritance, must pay the debts:" † and the grand-

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#### ANNOTATIONS.

*chaya*) or 'the gathering together of two or more things independent of each other, but assembled in idea with reference to some common action or circumstance:' and *superaddition* (*anwāchaya*) or 'the connection of a secondary and unessential object with a primary and principal one, through a separate action or circumstance consequent to it.' In the two last senses of the conjunctive particle, there is not such a connection of the terms as authorizes their coalition to form a compound term. CAIYATA, *Padamanjari*, &c.

If *reciprocation*, as above explained, were meant to be indicated in the text of MENU (§ 19), the word *bhratri* "brother" would have been used, inflected however in the dual number to denote 'brother and sister' (PANINI, 1. 2. 68.) or else 'children,' or some generic term, would have been employed in the plural (PANINI, 1. 2. 64). But the text is not so expressed. Consequently *reciprocation* is not indicated. *Subod'hini* and BALAM-BHATTA.

*The conjunctive particle is here very properly used.*] 'It is employed in one of the acceptations, as in the example which follows. 'D. practises agriculture; and so does Y.' 'Brothers share equally; so do sisters.'

*With reference to the person making the partition.*] 'Another reading of this passage is noticed in the commentary of BALAM-BHATTA "with the import of superaddition relatively to the person who makes the partition," *vibhāga-cartritwēn'ānwachayēn'āpi* instead of *vibhāga-cartritw'ānwayēn'āpi*.

23. Hence the daughter of a *Cshatriya* wife takes the goods of a childless *Vaisya*.] This inference is contested by SRICRISHNA in his commentary on the *Dayabhaga* of JIMUTA-VAHANA.

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\* *Subod'hini* and BALAM-BHATTA.

† GAUTAMA, 12. 32.

sons are bound to discharge the debts of their paternal grandmother ; for the text expresses " Debts must be paid by sons and son's sons. " \*

25. On failure of grandsons also, the husband and other relatives abovementioned † are successors to the wealth.

26. On occasion of treating of woman's property, the author adds something concerning a betrothed maiden : " For detaining a damsel, after affiancing her, the offender should be fined, and should also make good the expenditure together with interest. " ‡

27. One, who has verbally given a damsel [in marriage] but retracts the gift, must be fined by the king, in proportion to [the amount of] the property or [the magnitude of] the offence ; and according to (the rank of the parties, their qualities, || and) other circumstances. This is applicable, if there be no sufficient motive for retracting the engagement. But if there be good cause, he shall not be fined, since retractation is authorized in such a case. " The damsel, though betrothed, may be withheld, if a preferable suitor present himself. " ¶

28. Whatever has been expended, on account of the espousals, by the [intended] bridegroom, (or by his father or guardian, \*\* ) for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

29. Should a damsel, anyhow affianced, die before the completion of the marriage, what is to be done in that case ? The author replies, " If she die (after troth plighted,) let the bridegroom take back the gifts which he had presented ; paying however the charges on both sides. " ††

#### ANNOTATIONS.

24. *The grandsons are bound to discharge the debts.*] ' Since one text declares them liable for the debts ; and the other provides, that the debts shall be paid by those who share the inheritance ; it follows that they share the heritage. *Subod'hini*, &c.

29. *Anyhow affianced.*] By a religious rite, or by taking of hands, or in any other manner. BALAM-BHATTA.

\* YAJNYAWALCYA, 2. 50. † § 9—11. ‡ YAJNYAWALCYA, 2. 147.

|| BALAM-BHATTA. ¶ YAJNYAWALCYA, 1. 65.

\*\* BALAM-BHATTA, †† YAJNYAWALCYA, 2. 147.

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity which had been previously given by him (to the bride,) "paying however the charges on both sides:" that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grandfather, (or her paternal uncle,\*) or other relations; as well as the property, which may have been regularly inherited by her. For BAUD'HAYANA says: "The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father."

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her lifetime, and although she have issue: "A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."†

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or "during restraint" or confinement in prison or under corporal penalties, the husband, being destitute of other funds and therefore taking his wife's property, is not liable to restore it. But,

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#### ANNOTATIONS.

30. *Clearing or discharging.*] The common reading of the passage is *vigañya* a "accounting;" but BALAM-BHATTA rejects that reading, and substitutes *vigamyā* "removing" or 'discharging.'

*He may take the residue.*] The meaning is this: after deducting from the damsel's property, the amount which has been expended by the giver or acceptor of the maid, or by their fathers or other relations on both sides in contemplation of the marriage, let the residue be delivered to the bridegroom. *Subod'hini.*‡

32. *Is not liable to restore it.*] He is not positively required to make it good. BALAM-BHATTA.

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\* BALAM-BHATTA,

† YAJÑYAWALCYA, 2. 148.

if he seize it in any other manner (or under other circumstances,) he must make it good.

33. The property of a woman must not be taken in her lifetime by any other kinsman or heir but her husband: since punishment is denounced against such conduct. ("The kinsmen who take their goods in their lifetime, a virtuous king should chastise by inflicting the punishment of theft: "\*) and it is pronounced an offence. "Such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves: they, who do so, are degraded from their tribe."†

34. A present made on her husband's marriage to another wife has been mentioned as a woman's property (§ 1). The author describes such a present: "To a woman, whose husband marries a second wife, let him give an equal sum, (as a compensation) for the supersession, provided no separate property have been bestowed on her: but, if any have been assigned, let him allot half."‡

35. She is said to be *superseded*, over whom a marriage is contracted. To a wife so superseded, as much should be given on account of the supersession as is expended (in jewels and ornaments, or the like,||) for the second marriage: provided separate property had not been previously given to her by her husband; or by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given. Here the word 'half' (*arddha*) does not intend an exact moiety. So much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.

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#### ANNOTATIONS.

35. *Here the word half does not intend an exact moiety.*] The term, as it stands in the original text, is not neuter, that it should

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\* NAREDA, as cited by BALAM-BHATTA; but not found in his institutes.

† MENU, 9. 200, Vide supra. C. 1. Sect. 4. § 19.

‡ YAJNYAWALCYA, 2. 143.

|| BALAM-BHATTA.