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CHAP. XII.

BENGAL LAW.

352. The chief points on which the law as followed in Bengal differs from that obtaining in the Benares school and those assimilating thereto, including the Drauvida school, or that of Madras, are as follows.

Dis-similarity of Bengal law with Benares law.

353. The assent of the husband's kindred in default of the authorization of the husband does not suffice to warrant a widow in making adoption (Dattaka Mimamsa I. 18). Opposed to Vyavahara Mayookha IV. v. 17, (II. 92. C.); Duttaka Mimamsa by Sri Rama Pundita.

Authorization of widow to adopt

354. A father may alienate a small portion of the ancestral immovable property at his pleasure (Daya Bhaga II. 24). Opposed to Mitacshara I. v. 9, 10, by which none can be alienated but with consent of the sons.

Father's power over immoveable property.

355. An alienation of property prohibited by law is nevertheless left undisturbed when actually affected, on the principle that "a fact cannot be altered by a hundred texts" (Daya Bhaga II. 30), a doctrine not recognized in the Benares school (I. 23, 24; Smruti Chandrika).

Illegal alienations.

356. Sons have not ownership in their father's property, ancestral or other, until after his demise (Daya Bhaga I. 30; II. 9, 11). Opposed to Mitacshara I. i. 323, 27.

Right of sons in father's property.

357. Sons consequently cannot force partition on their fathers, even of the ancestral property. The

Son's right to force par-

- tition on father. act depends on the father's pleasure (Daya Bhaga I. 38 ; II. 20). Opposed to Mitacshara I. ii. 7 (I. 179).
- Father's share. 358. In coming to a partition of the ancestral property with his sons the father is entitled to a double share (Daya Bhaga II. 20). Opposed to Mitacshara I. v. 5 which gives like shares to father and sons.
- Portion of son born after partition. 359. A son born after partition between a father and his sons is to have his portion allotted to him out of his brother's shares (Daya Bhaga VII. 10—12). Opposed to Mitacshara I. vi. 2 which provides that the portion be taken from the father's share.
- Concealment of property by coheir. 360. The concealment by a coheir of property subject to division is not visited with forfeiture by him of his share therein (Daya Bhaga XIII. 2). Opposed to Mitacshara I. ix. 4, 5.
- Barren and sonless widowed daughters. 361. Barren and sonless widowed daughters are excluded from inheriting from the father (Daya Bhaga XI. ii. 3). Opposed to Mitacshara II. ii. which prescribes no such exclusion, and II. xi. 13.
- Right of father before mother. 362. In the ascending line the father takes before the mother, and the grandfather before the grandmother (Daya Bhaga XI. iv. 3, 4). Opposed to Mitacshara II. iii. 5 which gives the rule in the reverse.
- Brothers' grandsons. 363. Brothers' grandsons are in the line of heirs (Daya Bhaga XI. vi. 6). Opposed to Mitacshara II. v. 1 which shows them to be excluded.
- Sisters' sons. 364. Sisters' sons are also in the line of heirs (Daya Bhaga XI. vi. 8, 9). Opposed to Mitacshara which excludes them (I. 147), by not entering them as heirs.
- Widow of undivided member. 365. The property of a man dying without male issue goes to his widow whether he be divided from his coheirs or not (Daya Bhaga XI. i. 46). Opposed

to Mitacshara II. i. 30 which makes the descent to the widow depend on the husband having divided off (I. 121).

366. Woman's property is of two descriptions according as it may have been acquired. Over one sort she has exclusive right. The other sort is subject to the control of her husband. Gifts made to her by her husband or relatives before, at, or after her marriage, or by her husband on the occasion of his taking to himself another wife, are of the first sort and are denominated specially *Stridhana*, or woman's separate property. Her remaining property coming to her by gift from others than her relations, by her labour, or by inheritance, is of the second description and is not comprehended by the term *Stridhana* (Daya Bhaga IV. i. 13, 15, 18—21). **Opposed to Mitacshara II. xi. 2, 3. pursuant to which all her property, however derived, comes under the designation of *Stridhana*.**

367. Woman's separate property is again subject to distinction according as it may have been the gift of the bridegroom at the time of the marriage, or obtained otherwise. The former is termed *Yontaca*, and the latter *Ayontaca* (Daya Bhaga IV. ii. 13—15). **In the Mitacshara no such distinction prevails.**

368. Woman's separate property, if *Yontaca* goes to her daughters; first to the unaffianced; then to the betrothed; lastly to the married. Failing daughters it goes to sons (Daya Bhaga IV. ii. 13, 23, 25). Her remaining property goes to her sons and maiden (unbetrothed) daughters equally; failing one the others take; then to the married daughter who has a son, or who may have one; next to her son's son; after that to her daughter's son; then to barren and widowed.

daughters (Daya Bhaga IV. ii. 9, 11, 12). But should the property have descended to her from her husband it reverts to his heirs, and first to the daughter; and not to her heirs (Daya Bhaga XI. i. 56, 57). Opposed to Mitacshara II. xi. 9, 13, according to which there is no distinction as to descent of woman's property, and of whatsoever sort it may be it goes to daughters, (the unmarried taking before the married, and the unendowed before the endowed); daughter's daughters; daughter's sons; sons; and son's sons.

Descent on
failure of re-
latives.

369. In default of the fellow student the property goes to those of the same family name (*Gotra*); then to descendants from the same patriarch; and then to priests and Brahmins of the same village. Afterwards, (saving as to Brahmins,) it escheats (Daya Bhaga XI. vi. 25—27). Opposed to Mitacshara II. vii. 3—6, according to which after the fellow student it goes in the case of Brahmins only to fellow Brahmins, and in the case of other castes escheats.