CHAPTER IV

CIVIL LAW

Any civilized society is based on stable economic and legal relations. It is the body of civil and criminal laws which lays the foundation of the kind of society that is aspired for. The ideals of the smrti writers in India with respect to civil laws were lofty but not altogether divorced from the practicality of the times they represented. In the earliest past, it was thought that in the Golden Age, men were impersonations of righteousness (dharma) and there hardly existed any disputes. However, this is belied by the fact that no matter how far we go back in our history, personal liberty and duties have coexisted and the clash between individual rights and social obligations always existed. They gave rise not only to disputes but thereby necessitated such enunciations which could govern the men in their social, economic and legal relations in a civilized society.

Hindu jurisprudence does not recognize a clear-cut demarcation between the civil and criminal laws. There are no technical terms to describe or distinguish them as such. However, Nārada and Brhaspati seem to be aware of this distinction. Brhaspati further distinguished two types of law suits – those originating in wealth and those in violence. Nonetheless, the body of Hindu laws as deduced from the smṛtis is fairly complete on contracts, debts, deposits, pledges, sale, mortgages, immovable property etc. These constituted the mass of civil laws that supposedly were adopted and administered at various levels of providing justice. The legal history presupposes this body of laws to be evolutionary and organic having grown over a long period of time and not without adjusting itself to different milieus. In this context, one may remind oneself of the understanding of Vālmiki about human nature and social wants as reflected in the Rāmāyana. He advocated that Karma, Artha and Dharma are not eternal, absolute and immutable values – but relative to time and place. Rāma, the incarnate of dharma had to undergo several trialsome moral situations and every situation required a unique and special adaptation.

Among the inscriptions, there are some scattered references about debts or inheritance. But it is surprising that we have not come across any charters or private documents telling
about the civil laws as such. In such a situation, it may be inferred that the smṛtis themselves served as the code of regulations for governing and administering civil law in the courts.

Nonetheless, there are some references in the plays of Kalidāsa, which help us in understanding the application of these civil laws in reality.

**Debts**

Law of debt is the first topic which has been treated by the smṛtis as part of the judicial procedure. In early times, it seems that the creditor could recover debt without even taking recourse to law. It was more a moral responsibility rather than a legal liability. Manu has treated debt more as a plea to moral obligation than as a matter of law. The later smṛti writers however, are more exponential on the matter of debt. But it is interesting to note as to who could be and who could not be made responsible for the debts contracted, how they could be recovered or those debts which debts were irrecoverable.

According to Manu, 'when a creditor sues (before the King) for the recovery of money from a debtor, let him make the debtor pay the sum which the creditor proves (to be due).² This shows that law suits pertaining to debts could be brought to the king’s notice, though not necessarily. It was necessary for the creditor to prove the sum in order to sue the debtor. Manu recognizes five modes of recovery of debt - “By moral suasion, by suit of law, by artful management or by the customary proceeding, a creditor may recover property lent: and fifthly by force.”³ This implied that besides litigation, persuasion, fraudulent means and customary proceedings, even force could be resorted to recover property. The sanction to use force shows that in order to recover debts, private means could be resorted to rather than relying only on litigation. Manu permits force even in possession, (In V.168, he says) – “What is given by force, what is enjoyed by force, what has been caused to be written by force and all other transactions done by force, Manu has declared void”.

However, about the validity of contracts, he says “that agreement which has been made contrary to the law or to the settled usages (of the virtuous), can have no legal force, though it be established by force.”⁴ “Hence, it appears that, in order to be valid, a contract was needed to be in consonance with the settled
usages that is practice adopted by the wise. It did not matter if it was contracted by force.

Kauṭilya, earlier to Manu has spelled the law of debts more explicitly. He says, debts mutually contracted between the following are not recoverable in law:

- a husband and a wife
- a father and a son
- brothers in a joint family

A wife shall not be sued for a debt incurred by her husband if she had not agreed to the borrowing (this rule does not apply to the herdsman families or farmers leasing land jointly). However, a husband shall be responsible for the debts incurred by his wife, if he has gone away without providing for her.

The Arthasastra further tells – in case a debtor dies, the responsibility for repayment, with accrued interest shall devolve upon - sons, heirs, inheriting the property of the deceased, co-signatories, sureties (3 11, 14, 17 and 18).

The topic of recovery of debts, according to Yājñavalkya has seven points – the kind of debt which should be paid by what person should be paid, at what particular time to be paid and in what way to be paid – in all, five points for the debtor, and for the creditor, two, viz- the mode of advancing a loan as also the mode of recovering it. Similarly, Nārada has made clear about which debt must be paid and which may not be paid and the rules of advancing and recovering of (loans) are said to make up the (title) of recovery of debts.

In Yājñavalkya’s enunciation, we get a glimpse of the varna distinction, when (in V.43), he says – ‘An insolvent debtor of a lower class should be made to work for his debt, a Brahmaṇa insolvent, however, should be made to pay by installments according to his ability – second, we get the principle of shared responsibility of the joint family and of the wife, where the contract was done by her consent (verse 49) Yājñavalkya tells – “A debt agreed to by her, or which was contracted by her jointly with the husband or by herself (alone) should be paid by a woman. A woman is not bound to pay any other debt. “This implied that in any contract that took place
without her consent, a woman was not to be held responsible to pay the debt. Here Viṣṇu enunciates that a woman (shall) not (be compelled to pay) the debt of her husband or son (V.31).

(2) Nor the husband or son (to pay) the debt of a woman (who is his wife or mother) (V.32).

(3) Nor a father to pay the debt of the son (V.33).

(4) A debt contracted by partners shall be paid by any one of them who is present (V. 34 ).

(5) And so shall the debt of the father (be paid) by any one of them who is present (V. 35 ).

(6) After partition, they shall severally pay according to their shares of the inheritance (V. 36).

(7) Where husband is supported by wife, Viṣṇu tells—A debt contracted by the wife of a herdsman, distiller of spirits, public dancer, washer, a hunter shall be discharged by her husband (for she supports him) (V. 37).

(8) A debt of which payment has been (previously) promised must be paid by the householder.

Hence, Viṣṇu tells that neither a woman is responsible (compulsorily) for a debt by husband, nor a husband or son for a debt by wife or mother. Even the father is not responsible for a debt by son, only he who is present is responsible for his father's debt. What is interesting is where woman is independent earner or supporting the husband; the husband is liable for a debt incurred by her.

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Yājñavalkya states (V. 117(1) – The sons should divide equally both the assets and the debts of the parents after them (in equal shares only).

He provides that if the father has gone abroad, is dead or immersed in difficulties, his debt should be paid by sons and grandsons, when established by witness in case of dispute. For
the same situation when father is dead, Nārada (Ch. I, 2) propounds that the sons should pay the debt each according to his share, when they are divided or if undivided by one who holds the lead (in the family). 

Bṛhaspati however is explicit in transferring the responsibility of father’s debt on the sons. He says – “the debt of the father which has been proved, should be paid by the sons as if it were their own (debt), the grandfather’s debt should be paid in an even amount his (i.e. grandsons) son, however is not liable to pay any debt”. Bṛhaspati hence, relieves the fourth generation from incurring any liability to pay debts of his ancestors. 

Bṛhaspati states a practical maxim that a creditor should not give loan without securing a pledge of adequate value or a trustworthy surety. Likewise, unless the debtor executes a bond duly attested by subscribing witness, loan should not be advanced. 

Kātyāyana states that – “One should prove a debt by means of these in order, viz, urging (dunning) the debtor (to pay) on each occasion, putting forward some argument and third being oaths. If the debtor being repeatedly urged does not refute, it amounts to the acceptance of creditor’s plea and then he must pay the debt. If the creditor tries to remind the debtor of the details, time, place, amount and so on and the latter denies, Kātyāyana permits the application of ordeals such as fire, water, righteousness etc. commensurate with the amount of debt and capacity of the defendant.

Bṛhaspati is most juristical in stating the rules of procedure regarding debt. He states that when time fixed for repayment lapses, the amount of debt becomes due. In such a case, the creditor has two options – either to recover the loan or execute a fresh bond for the debt as well as interest. If the debtor denies the liability, law suit could be filed with the support of documents and witnesses.

**Interest**

The smṛtis provide detailed rules on the rate of interest, kind of interest, cessation of interest, exemption from interest and so on. There is a distinction between lawful interest and one that is not lawfully permissible.
According to Manu, ‘a money lender may stipulate as an increase of his capital, for the interest allowed by Vasistha, and take monthly the eightieth part of a hundred’, \(^{13}\) or remembering the duty of Goodman, he may take two in a hundred (by the month) for he who takes two in the hundred becomes not a sinner for gain’. \(^{14}\) But, if a beneficial pledge (i.e. one from which profit accrues has been given), he shall receive no interest on the loan, nor can he, after keeping such a pledge for a long time, give or sell it. \(^{15}\) Also, “in money transaction, interest paid at one time (not in installment) shall never exceed the double (of the principal), on grain, fruit, wool or hair (and) beasts of burden, it must not be more than five times (the original amount). \(^{16}\)

Yajñavalkya allowed the rate of interest to vary to two, three, four or five hundred per hundred according to the order of the caste of the debtor. \(^{17}\)

It was generally acceptable among the smṛti writers that interest should not exceed the principal at any time. Nārada allows the rules to vary according to the usage of the country (V. 105, p.76). Brhaspati is more specific and lays down that on gold, the interest may be double its value, treble on clothes and base metals and fourfold on grain and edible plants, beasts of burden and wool, on potherb, it can be quintuple, on salt, oil and intoxicating drinks, octuple, so also on honey is the loan long standing. \(^{18}\) Kātyāyana, too more or less takes the line of Brhaspati.

The smṛti writers have dealt with the topic of interest in details. About the kinds of interest, they generally stipulate four types of interests –

(a) Kālika or periodical interest,
(b) Karitā or stipulated interest
© Cakravrddhi or compound interest and
(d) Kayika or bodily interest. \(^{19}\)

Kātyāyana and Brhaspati added two more types to the list – Sikhavrddhi or hair interest and bhogavrddhi or interest as enjoyment. The first type of interest is so called, because it is recovered from time (kāl) to time (kāl), hence it is periodical (Kālika). When the interest has been agreed or stipulated to be paid at a certain rate, it is called stipulated interest (Karitā), Kayika interest which implies bodily labour includes in its fold the labour of cattle and the products pledged from it, where interest
is recovered upon interest monthly it implies compound interest. Sikhavyuddhi is so named as it is an interest that grows like hair and would cease only on chopping the head, i.e. on repayment of debt. Bhogavyuddhi – is interest in the form of enjoyment gained on the pledged property of the debtor.

These interests, especially hair, bodily or enjoyment interest could be accepted by the creditor so long as the principal was unpaid. Brhaspati, especially enunciates that the use of pledge, post the realization of double the principal amount, compound interest and the recovery of the principal and the interest as principal amounts to usury and therefore is condemned.20

The smrti writers have demarcated certain cases when interest on debt should be let gone and not be recovered. Nārada provides that “the price of a commodity, wages, a deposit, a fine that was fixed, a gift without consideration and a stake at dice do not bear any interest. Likewise Katyāyana would exempt interest on hides, crops, distilled liquor, gambling, debts, price of commodities and on a woman’s sulka”. Also, any debt under surety, liability is exempted from the range of interest. Katyāyana provides for articles borrowed and not returned within a certain period. An interesting verse of Katyāyana tells that “on a loan taken from a friend, interest, should not be recovered as long as it is not demanded, but when demanded and not paid, the interest rate would be five percent.22

The charter of Visṇuṣena, in Acāra 23, talks of debts nnadana). It says –

\[
\begin{align*}
\text{Rin} & - \text{ādān} - \text{ābhiśēkhitā} - \text{vyavahāre} a - \text{kāśtha} - \\
\text{Lōha} & - \text{baddhēna kriyā} - \text{pratibhuvēna} (\text{bhuvā}) \text{ guptir} - \text{upāsya} \\
\end{align*}
\]

It implies that in case of written complaint about the realization of borrowed money, the debtor when he was not under wooden or metal handcuffs, because of security having been furnished for him by somebody, should enjoy the protection of the court. It would infer probably, that in the case of a debtor, for whom security had been furnished, neither handcuffs nor guards at court were necessary.23 When no pratibhū (surety) was furnished, the court had to arrange for the person’s security and the cost was to be borne by the parties. If similar provision
has been stated by Katyāyana (quoted in Yājñavalkyasmrī, p.126, N. Sagar Press Edition)) which says –

\[
\text{atha chēt pratibhūr = n = āsti kārya =yōgyas = tu vādinah / sa rakshitō dinasya = antē dadyād = bhiritāya vētānam}^24
\]

Pledge (Nīksepa or Upanidhi)

Manu and nearly all the smṛti writers have talked about pledge. It is called ‘adhi by Nārada and bandhaka by Brhaspati and is distinguished from deposits which form a separate title of law. Manu declared that neither a pledge nor a deposit can be lost by lapse of time, they are both recoverable though they have remained long (with the bailee).\(^25\) According to Nārada, a pledge is something that is mortgaged to the creditor as a security against loan received, whereas a deposit means a man’s ānāśānta of his property with another person in confidence and without suspicion.\(^26\)

A pledge brings in its fold a title for the creditor over the thing pledged but in a deposit, there is no legal title that accompanies. Pledge has been treated as a sub topic by the smṛti writers treating debt a topic.

Nārada has divided pledges into two main types (a) One which is to be redeemed within a period and (b) which is to be retained till the debt is cleared. These two are further divided into gopya (to be kept) and bhogya (to be enjoyed) categories (V. 124-125). Bṛhaspati, who names pledge as bandhaka distinguishes its four types – (a) movable or immovable (b) to be kept or used, (c) to be released at any time or limited as to time, (4) stated in writing or orally in the presence of witnesses\(^27\) Katyāyana tells of pledges effected by documents and through witnesses and consider those in writing as superior to those affected in the presence of witnesses.\(^28\)

Manu talks about the creditor’s liability and says – a fool who uses a pledge without the permission of the owner, shall remit half of his interest as a compensation for (such) use.\(^29\) Likewise, he opines, a pledge (to be kept only) must not be used by force, (the creditor), so using it, shall give up his (whole) interest, or (if has been spoilt by use) he shall satisfy the (owner) by (paying its) original price, else he commits a theft of the pledge. Nārada, too talks of these safeguards against misuse by
the creditors. He tells that in case of loss of the pledge by the creditor, the principal is forfeited unless the loss was due to an act of God or king. Brhaspati opines that in case of lost pledge due to some calamity, the debtor should either provide another pledge or pay the debt (along with interest, adds Katyayana).

On the other hand, it is also the duty of the debtor to ensure that the article pledged is in good condition and capable of being returned. If during the stipulated period, the value of the pledge declines despite adequate care by creditor, the debtor should either replace it or pay the debts off.

Simultaneous mortgages, which is a person pledging the same property to two or more creditors was decried and punishable (as a theft). The smṛti writers accepted that if two or more persons possess the mortgaged property for an equal period of time, it is to be held in common and to be shared proportionately. But Katyayana states that if one was effected by document and other in the presence of witness, one effected by means of document was superior.

Rules regarding the redemption of pledge have been dealt by the Hindu jurists. The general rule seems to be that on the payment of the debts, i.e. principal along with interest thereon, the creditor should restore the pledge to the debtor or else invite punishment. Brhaspati states that in case of field or other immovable property, the debtor could redeem the pledge after the creditor had enjoyed it or received more than double the principal and conditions were expressly stated. A pledge could not be redeemed by the debtor by force or deceit (whereas Manu permits force for obtaining the debt).

When however, on expiry of the period of pledge, the debtor is required to redeem it by satisfying the creditor’s debt and he is unable to do so, the creditor can become the owner of the pledge. Brhaspati permits a period of ten days to the debtor to enable him to redeem the pledge. Brhaspati also states that in case of gold, when interest on it doubles the principal and where a pledge is deposited for a certain fixed period, the creditor becomes the owner of the pledge after having waited for a fortnight, if the debtor does not redeem the pledge within the period of grace.
Surety

The law of debt entails that when a person borrows money from another, he has to nominate someone who could assure the creditor that the amount advanced by him to the debtor would be safely returned, in case the debtor fails to do so. The smṛti writers have dwelled on kinds of sureties, their liability and their competence.

Hindu law givers recognized two to five kinds of sureties. Manu has mentioned two kinds of sureties (1) Surety for appearance (before the court) and (2) surety for payment of debt. Nārada has added one for honesty.

A surety of appearance used to be given by the plaintiff and the defendant, assuring the court that he would produce before the court the person concerned whenever required and that the court decree would be carried out. If none of the parties supply surety for appearance, the party unable to offer a surety is to be kept in the custody of a court official called sādhyapāla. A surety for payment called the dānapratibaḥ could get the repayment of debt in case the debtor failed to pay it. Likewise, a surety for honesty vouched for the reliability of the debtor. Viṣṇu spoke of the three kinds mentioned above. Kātyāyana mentions surety for oaths and ordeals, too making it of five kinds.

Surety generally implies that, if the debtor failed to repay the debt, it was to be paid by the surety. However, surety of appearance was responsible for the presence of the party at the appointed time and place. Certain time period was also granted (three fort nights) to produce the debtor or the liability was of the surety. The smṛti writers allowed the surety to recover from the debtor whatever was paid by it to the creditor. He should not be harassed by the creditor and if he is, then he could recover twice the amount paid by him from the creditor.

Nārada prohibited the coparceners from acting as sureties. Kātyāyana entails a longer list of those who could not be accepted as sureties, such as a master, an enemy, one representing the master, one under restraints, a convict, one who is of suspicions character, an heir, a friend, a resident student, one on king’s mission, an ascetic are incapable of paying debt or fine to the king, one whose father is living and one whose attendants are not known (V.114-116).
Deposits

To the Hindu jurists a deposit (Upanidhi) was not just a legal responsibility but a moral obligation, too. Brhaspati extols the religions merit of a person who preserves a deposit as equal to the merit of one who gives gold, base metals or clothes and the sin of one who consumes or spoils the articles deposited as great as that of a mahapatak.

Manu talks about the sensibility of making deposits. His verse (179) tells – a sensible man should make a deposit with a person of (good) family, of good conduct, well acquainted with the law, veracious, having many relatives wealthy and honorable (arya). The deposit was to be returned in the same manner as it was received. Manu prescribes that “He who restores not his deposit to the depositor at his request may be tried by the judge in the depositor’s absence.” He further details the rules regarding open or sealed deposits and goes on to enunciate the punishments for not restoring deposit.

Manusmrti says – “(a deposit) which has been stolen by thieves or washed away by water or burned by fire, (the bailey) shall not make it good unless he took part of it (for himself). Those who appropriate a deposit or those who falsely ask for it without having made a deposit are liable to be brought to Court and should be punished like thieves. For a man who possesses himself of another’s property, Manusmrti prescribes punishment by various (modes of) corporal (or capital) chastisement, together with the accomplices.”

Yajnavalkya defines a deposit as an article enclosed in a box or like made with another without telling him of the contents of the box. According to Narada, when a person entrusts a property of his own with another in confidence and without suspicion, it is called Upanidhi or deposit. Brhaspati speaks of mudrānkita or sealed deposit and nyása deposit, the latter implying that when a thing deposited in the house of another person, though fear of the king, robberies or other dangers or for the purpose of deceiving the heirs. A nikṣepa according to Katyayana (V.592) implies a deposit entrusted to a man in his presence after counting before him coins.

Different kinds of deposits have been spoken about by the Smṛti writers – like an article that is sold a deposit made when
one goes on a journey, a pledge, a bailment to one for delivery to another at an appropriate time \textit{(anvā hita)} a loan of ornaments or clothes etc. or a thing for sale. 43 Kātyāyana, too says like Manu and others that a deposit should be preserved and if it is lost due to his fault (not the fault of fate or king), then he should be made to pay the thing along with interest. 44 Also, he who having taken the loan of an article does not deliver it on demand, should be restrained and forcibly be made to return and fined if he does not return. 45

Kātyāyana has spoken of especially a deposit made with an artisan or craftsman \textit{(silpinyāsa)}. He says, if an article was retained by an artisan beyond the stipulated days in which it was agreed to be worked up, he should be made to pay the price even if lost by fate. 46 However, the artisan shall not be responsible for loss of an article due to defects in it. If the article is lost after working little on it, then the artisan loses wages on it, but when an artisan delivers a good after it is finished, the loss belongs to the owner.

\textbf{Sale without ownership} \textit{(asvāmivikraya)}

Sale without ownership was considered by the Hindu jurists a serious offence comparable to theft. Selling an article without being its owner gave rise to litigation between the owner of the article and the purchaser. The term has not been defined as such but nearly all the smṛti writers have expounded on it. Manusmṛti opines – “If anybody sells the property of another man, without being the owner and without the assent of the owner, the (judge) shall not admit him who is a thief, though he may not consider himself a thief as a witness. 47 That is Manu forbids such a person from being a witness in any case. He says “If the (offender is a kinsman of the owner), he shall be fined 600 panas, if he is not kinsman, nor has any excuse, he shall be guilty of theft.48 Any such gift or sale is to be considered null and void. Title is considered a greater proof of ownership as Manu says – “where possession is evident, but no title is perceived, there the title (shall be) a proof (of ownership), not possession such is the settled case. 49

Nārada mentions that, when a thing deposited or the property of a stranger lost and found by another person or stolen property is sold in secret, it is considered a sale by one who is not the owner. 50 Kātyāyana, too candidly declares that a sale,
gift or pledge made without ownership should be rescinded.\textsuperscript{51} He further states that (the purchase should establish his purchase to be overt by (the testimony of) his own kinsman who are respectable. In this case, no other means of proof, whether human or divine were proper.\textsuperscript{52} He too considers a man who fails to prove his ownership be punished like a thief. But once, the party (the purchaser) proves his property as overt and legal, with the help of kinsman, he should not be blamed by the king.

Kātyāyana forbids being careless about preservation of one's good or purchasing from a man whose habitation was unknown. He considers both these reasons as the cause to loss of property.

\textit{Partnership}

Talking on laws concerning the partners, Manu gives two rules with regard to the contract of marriage. First "if, after one damsel has been shown, another be given to the bridegroom, he may marry them both for the same price, that Manu ordained.\textsuperscript{53} Secondly he who gives (a damsel in marriage) having first openly declared her blemishes, whether, she be insane or afflicted with leprosy, or have lost her virginity, is not liable to punishment. The first case is one of cheating, hence the permission to take two brides for a single bride price. while in the latter since the blemish is first confessed, no punishment was called for such a person. The next few verses in Manu talk about partnership applicable to performance of rites where several priests jointly officiate. The rule for shares in such partnership was enunciated by Manu thus - The (four) chief priests among all (the sixteen), who are entitled to one half, shall receives a moiety (of the fee) the next (four) one half of that, the set entitled to a third share, one third and those entitled to a fourth, a quarter. Hence allotment of share was according to these rules.

Nārada, however, defines partnership as the conduct of business by traders or others jointly. Kātyāyana expanded the term to include business of the artisans and of unseparated brothers. Kauṭilya's Arthaśāstra systematically treats reference to (a) contract between traders or cultivators and (b) the shares of priests officiating a sacrifice.

The Arthaśāstra tells that those who engage in work, like traders and cultivators shall apportion among themselves the profits, after the performance of work in hand and before entering
a fresh one. The work if performed by a substitute does not
abate the share of profit due to a partner. Any losses sustained in
transmission had to be borne by the partners equally. It tells,
abandoning the partnership half way shall be punishable offence.
If he is in good health and abandons work, he shall be fined 12
panas. Further, a partner who was suspected of embezzlement
shall be caught (made to confess) by promising him forgiveness
and a continuing share in Partnership. If it is the first occasion he
should be pardoned, if it is the second occasion, he shall be
thrown out of partnership. And if he commits a serious offence,
he shall be treated as traitor and ostracized. As for the
concelebrating priests, the text tells that a priest abandoning a
ritual or its principal organizer half-way is punishable.

Bṛhaspati and Kātyāyana have applied the laws of
partnership to artisans when a pillaging party brings booty from
an enemy king, at the command of the king, the artisans share
profit in the proportion of one, two, three or four shares according
to their grades. Likewise, he spells the shares for a dancing
party as well.

It was quite understood that the partners had shares in
profit as well as loss according to their contribution. If a partner
causes some loss due to negligence or without authorization, he
was individually responsible for the loss so caused. But if any
one partner was responsible for rescuing the property, he was
entitled to a tenth part of the property rescued as reward. That is
to say that the liability in case of loss was high. On death, the
partner’s share went to his heirs and in the absence of heirs, it
reverted back to the surviving partners.

Rules on partnership over all are meager in the smrti texts.
This may imply that business by mode of partnership was not
much in vogue. It contains a few provisions regarding tolls.
Tolls, that is the duty that a trader was supposed to pay to the
king was not to be evaded. Taxes were imposed on goods and
merchandise and not on articles of home use. If however, the
evasion occurred, the trader had to pay eight times the amount of
toll due as punishment.

Resumption of Gifts (Dattāpradānika)

Gifts which are taken back after having been made come
under this topic of law. The topic includes what may be given or
not given valid and invalid gifts and so on. Manu discusses it as lawful subtraction of gifts. The text tells should money be given (or promised) for a pious purpose by one man to another who asks for it, the gift shall be void, if the (money is) afterward not (used) in the manner (stated). But, in case the recipient out of pride or greed tries to enforce (the fulfillment of the promise) he shall be compelled by the king to pay one suvarna as an explanation for his theft. Narada mentions seven kinds of gifts as valid – price paid for merchandise, wages, something offered for amusement, a gift from gratitude a nuptial price and a gift for favor. Bṛhaspati too mentions eight kinds of gifts, more or less on the lines of Narada. Kātyāyana defines wages (bhṛti) and a gift obtained through gratitude (pratyupakāra)

Nārada forbids the following eight categories, anvāhita deposit, a yācītaka, a pledge, joint property, a deposit, a son or wife, the whole property of one who has offsprings and what was promised to another person. These gifts are not alienable in times of distress. Kātyāyana differs from Nārada to enunciate that in times of adversity, one may sell or gift one’s wives and sons, but he should not do this otherwise. Whatever belongs to oneself over and above what is required for maintaining one’s family may be subject of gift except one’s house or entire wealth. Here too, the varna distinction makes headway when Kātyāyana mentions that he, who having voluntarily promised a gift to a Brāhmaṇa does not deliver it, should be made to pay it as a debt and should be awarded lowest amercement. In fact, he adds a metaphysical punishment by telling that one who does not honor what is promised or takes back what is donated is born for hundreds of ‘kalpas’ in the form of lower animals.

Likewise, Bṛhaspati tells that property received in marriage and ancestral property cannot be given except with the consent of wife, co-heirs, kinsman and others. Likewise, he tells, a single co-parcener has no power of disposal by gift, sale or mortgage over the whole of the property.

Sixteen invalid gifts have been declared by the smṛti writers. Kātyāyana mentions what is promised through lust or wrath or by those who are dependent (like servants or slaves), by those distressed, by those who are cowards (or are frightened), by lunatics and by those who are infatuated, or through misapprehension or joke may be taken back.
Kātyāyana has devoted six verses on the topic of gift offered as bribe. It has been ridiculed as the worst kind of offer. What is promised as a bribe to somebody for accomplishing a certain object need never be given, though that object is accomplished. But if the bribe was already paid, it should be returned and a fine of eleven times as much the bribe should be levied. He defines ‘Utkoca’ or bribe as that which is obtained by giving information about a thief, about a fellow, about one who breaks rules of decent conduct, about an adulterer by pointing out those who are of bad character or by spreading false reports about a person. In such cases, the person offering the bribe is not to be punished or fined, but the intermediary deserves blame. Likewise, Kātyāyana tells that if a man is appointed to do certain duties by the king and he obtains a bribe he should be made to return the whole of the money (or bribe) and pay a fine, eleven times of it to the king. But, however, if a person who is unappointed receives a gratification in the nature of return for a deed, he incurs no blame.

These two verses of Kātyāyana have been referred in Shri Sitaram Vs Shri Harihar (I L.R., 35.169, at p.180) wherein it was held that if an adoption was induced by a bribe given to a widow, the bribe was an illegal payment and cannot support a sale or gift.

Gifts which were prohibited hence fall into two types according to the śāstras (1) those which cannot be made (adatia), (ii) invalid gifts (adeya). Kātyāyana tells that a voidable gift could be a gift which is promised in distress and could be revoked later. Besides, if anybody, had surplus wealth, he could make gifts for charitable and religious acts and this was irrevocable. If donor died before honoring a promise of gift, his son was to fulfill the wishes.

B.S. Upadhyaya has pointed to a reference in Kālidāsa, where there is allusion to bribe. The Nāgarikā of Śakuntalā was supposedly a petty officer above the guards. These constables were stern in treating the fishermen, the supposed criminal, before the verdict of court had been passed against him. They were even threatening him with capital punishment. But they did not accept bribe to the detriment to the aims of justice. However, when the fisherman was acquitted of charges with rewards, he offered half the reward to them which the Nāgarikā accepted. This money accepted from the fisherman could not be named
as bribe as it was from the reward money, received only when the accused was acquitted. It was not accepted during the hearing of the case for the sake of an end but after it. Hence, it was not really bribe but a sort of gratitude expressed out of the reward received by the accused.

Non-payment of Wages

According to Manusmṛti, a servant or workman, who without being ill, out of pride fails to perform his work according to the agreement, was to be fined eight Kṛṣṇa-nālas and no wages ought to be paid to him. But if he was genuinely ill and after recovery performs the deed according to original agreement, he shall receive wages, even after a long time. But, if the work is not performed, whether sick or well, wages shall not be given even if it is little incomplete. That is to say, wages would be in proportion to the work.

Kātyāyana tells that when no wages are settled, the trader, the cowherd and husbandmen should get a tenth part of the profit, of the milk and of the crops. He strictly advocates imposing fine by the king on one who does not accomplish the said work. Likewise, he tells a palanquin bearer who obstructs the start of a work should be made to pay double the wages. But a servant should not be made to pay if a thing was plundered, burnt or carried away by flood. Kātyāyana imposes a first amercement fine on a master who would abandon a servant, tired or diseased on the road. When the goods were carried by road the servant was to be given wages in proportion to the distance traversed.

Transgression of Compact (Samayasyāna pākarma)

Compact means an agreement and transgression implies a break or breach of the agreement. Compact in ancient India could imply a local caste usage, convention or an association or corporation formed by group of people for different purposes certain rules and established usage among specified groups such as naigamas, guilds of merchants or corporation etc. It was deemed the responsibility of the king to ensure the continuance of these usages among these groups and to honor them like customs, if they were not at variance with the established custom or public interest.
Manu states the law of transgression in some of these verses. "If a man, belonging to a corporation inhabiting a village or a district, after swearing to an agreement breaks it through avarice (the king) shall banish him from the realm." Fines on such an offender was six niśkas, four suvarnas and one satamana of silver. This was to be applied in villages and castes for all transgressors of any compact.

Yājñavalkya advises that there should be a committee of advisors on affairs of an association. Brhaspati prescribes two, three or five such members. Nārada stated that transgression of these rules formed a separate title of law.

Brhaspati has dealt with these laws in detail. According to him, an association or compact could be formed with a valid purpose such as relief for poor, construction of houses, gardens, temples and such other objects. An association should be formed in writing and for their proper conduct, there should be heads and advisors. If any member fails to maintain the agreement, his property should be confiscated and he should be either banished from the town or fined. Kātyāyana too, imposes a fine on one who opposes what is reasonable. The king should act as intermediary in between the heads of association and their members. Kātyāyana provides that he who is guilty of sāhasa (heinous crime) who causes a split (in the group) or who destroys the wealth belonging to that group – all these should be proclaimed to the king and destroyed (by the group). Further, he tells that whatever is obtained by the advisers of the group or saved or whatever debts are incurred by them should be shared equally by them.

He then names the different types of ‘vargas’ or groups.

(a) naigama - A group of several inhabitants of the same city.
(b) vrata - A troupe of persons bearing various kinds of weapons.
(c) pūga - A group of merchants
(d) pasandas - Or heretics who have forsaken rules of ascetics.
(e) gana - Or the corporation of Brahmanas
(f) craftsman - those who subsist by some craft.
(g) sangha - Followers of Jainism and Buddhism and
(h) *gulma* - the companies of *candalas* and *svapas* (those who eat dog flesh).

Yājñavalkya (II.189-190) tells that when the principal men of group wait on the king, the latter should listen to them and send them away with honors and gifts and whatever they obtain from king should be handed over as property of the group. This is 'rājaprasādalabha).

**Repentance after sale and purchase or non-delivery after selling**

(Krayavikrayanusaya)

This rescission of purchase and sale has been regarded as a title of law by Nārada. 78 Manu has treated it under a single topic while Nārada has put it under two heads (i) *Kritanusaya*, i.e. repentance of purchase and (ii) *vikrayasampradāna*, i.e. non-delivery of the thing sold.

Manu states that if anyone repents after buying or selling anything, he may return or take (back) the chattel within ten days. But after the stipulated ten days, neither giving nor taken back is permitted, both these acts, shall be fined by the king and the fine was six hundred (panas).

In the contract of marriage, Manu entails that in case of one who gives a blemished damsel to a suitor without informing him (of the blemish,) the king shall himself impose a fine of ninety-six panas. Also, if somebody simply out of malice, calls that a maiden is not a maiden, or accuses her of not being a virgin shall be fined one hundred (panas). 79 Also, Manu declares emphatically that with the seventh step (of bride around sacred fire,) the marriage ceremony was complete and nobody could resolve it after that.

Nārada has dealt with the topic in detail on various aspects such as buyer’s rights and liabilities, seller’s rights and responsibilities, preemption, adequate or inadequate price etc. Some of the interesting provisions may be studied. Nārada tells that if a buyer purchases an article with full knowledge of its defects, he loses the right of returning it back. 80 The buyer should take the delivery immediately after it is sold to him. 81 If he fails to do so, the vendor may sell the article to another buyer. Katyāyana provides that if any seller shows an article free of defects and delivers one full of defects, he should be made to
pay double the price to the buyer and an equal fine as punishment (to the king). And if an article having sold is undelivered due to being burnt or stolen, the loss falls on the seller only.

Kātyāyana also provides that if any article is purchased from a disqualified person such as a lunatic, or for an inadequate price, the sale is lawful and the article belongs to the seller. Bṛhaspati gives a list of persons disqualified as purchasers – such as a śūdra, degraded persons, candalas, and desperate persons.

Kātyāyana follows Manu (VIII. 222) and states that if a seller repents after sale, he could rescind the sale but return the price of the article to the buyer. If the buyer has already paid any earnest money and the lender fails to give affect to sale, then according to Yājñavalkya (II.61), he has to pay double the amount of earnest money to the buyer.

With regards to sale of land, Kātyāyana states that there can be no lawful sale of purchase of land without securing the approval of the kinsmen (of the seller and buyer) who are neighbor i.e. owners of the neighboring lands) and who are respectable men. Also the sale could be vetoed by the kinsmen within a time period – if in the same village, a period of ten nights, in another country, six months and if the language of the kinsmen vetoing is different, a period of one year should be given. A similar verse in Yājñavalkya (Mitaksara on Yajñavalkya, II.114) implies the consent of the villagers, kinsmen and coheirs was taken simply for the purpose of giving notice to them of the intended sale and of neighbors for avoiding disputes about boundaries in future.

**Boundary Disputes**

Manuṣmṛti deems that it was the duty of the king to settle the disputes regarding boundaries. This should be ideally undertaken in the month of ‘Gyaistha’, which (Medatithī explains), means May-June, when the grass has been dried up by heat, when the landmarks are most distinctly visible. The boundaries, the text tells should be marked by trees such as vyagrodhas, asvatthas, cotton-trees, palmyra and tress with milky juice, by clustering shrubs, bamboos of different kinds, samis, creepers, reeds, thickets etc. and should not be forgotten. Tanks, wells,
cisterns, temples and fountains should be built where the boundaries meet. However, Manu also tells that if there be slightest doubt on inspection of marks, the dispute should be settled with the help of witnesses. If the witnesses determine it unjustly, they shall be compelled to pay a fine of two hundred (panas). Further, the text lays down that if anybody takes possession, by intimidation, of a house, a tank, a garden, or a field, he shall be fined five hundred (panas), (if he trespassed) through ignorance, the fine (shall be) two hundred (panas). And finally, if the evidence available does not help in ascertaining the boundary, the righteous king can himself assign the land to each.

Nārada talks of this title of law as ‘disputes concerning land’ (Ksatrājyavivada) for which, he devotes forty three verses. Brhaspati has used the term bhuvāda for this while Manu, Yājñavalkya, Kautiṣya and Kātyāyana have all used the term Simāvivāda or disputes relating to boundaries. Nārada’s Ksatrājyavivāda, is however more comprehensive as it includes not only boundary disputes but disputes pertaining to land, fields, embankments, wasteland etc, too. Nārada mentions that in disputes regarding landed properties or boundaries, the decision shall rest with the neighbors, the inhabitants of the same communicate the elders of the village and those living on the outskirts or by tillage of fields such as herdsman, bird catchers, hunters and other inhabitants of the woods. Like Manu, Brhaspati too puts emphasis on visible and invisible signs as boundary marks. These boundary marks should be shown by one generation to author to avoid any confusion or dispute.

Nārada has described five kinds of boundaries (a) Dhvajini, or that shown by trees like a flag, (b) Mātsyini or a river flowing by the side of the village and containing fish, tortoise etc. (c) Naidhini implying boundary indicated by signs concealed in the ground such as treasure or other articles, or (d) Bhayavarjita, implying free from danger, settled by agreement and (e) Rājasasananita i.e. fixed by royal command.

Inheritance & Partition

The Hindu Law of inheritance does not presume the property rights of sons or daughter s till the parents are alive. Manu speaks that it is “after the death of the father and of the mother, the brothers, being assembled may divide among
themselves in equal shares for the paternal (and the maternal) estate, for they have no power (over it) while the parents live. The text of Manusmṛti advocates the law of primogeniture by which the eldest son succeeds to the property. The text puts it thus, “The eldest alone may take the whole paternal estate, the others shall live under him just as they (lived) under their father”. The eldest son should shoulder the responsibility and support the younger brothers and the brothers should regard the eldest brother as sons behave towards father. They could either live together or separately. By living separately, the text tells their merit increases and hence ‘separation is meritorious’. The additional shares (deducted) for the eldest shall be 1/20th (of the estate) and the best of all chattels, for the middle most half of that, but for the youngest one-fourth. The eldest is supposed to get the best articles, chattel and best of ten (animals).

If additional shares are deducted, one must allot equal shares (one of the residue to each) but if no deduction is made, the allotment of shares among them shall be that the eldest son take one share in excess i.e. two shares, the brother born next to him one share and a half and the younger ones one share each.

The rule with respect to sisters, as stated in the Manusmṛti is that – to the maiden (sisters), the brothers shall severally give (portions) out of their shares, each of out of his share one-fourth part, those who refuse to give (it) will be outcastes Yājñāvalkya too, propounds a similar rule (II,124). According to the commentators, it may imply that if a man leaves children by wives of different castes, the brothers should provide for the dowry of unmarried sisters of the same caste, i.e. a Brāhmaṇa’s sons by a Brāhmaṇa wife for the daughters of the latter, the sons of a Kṣatriya wife for the daughters of the latter. This duty, Kulluka adds far from day for sisters devolved first on brothers of full blood and in default on half-brothers.

Another verse in Manusmṛti tells that “if a younger brother begets a son on the wife of the elder, the division must be made equally, thus the law is settled. Also, if there is a doubt as to how the division shall ensue in case of a younger son born of the elder wife and the elder son of the younger wife that is, if the seniority be according to the mothers or according to actual birth. Most often than not, seniority of the mother was regarded as important for the law of inheritance Medatithi however, denied
any legal force in these verses and classed it as 'arthavada.' In verse 125, however, Manu mentions that – ‘Between sons born of wives equal (in caste) and without (any other) distinction no seniority in right of the mother exists, seniority is declared (to be) according to birth. In case of twins, the seniority is declared (to depend) on (actual) birth.

Manu tells that the rule of inheritance applies to ancestral property and not to self-acquired property. Manu says that if a father recovers lost ancestral property, he shall not divide it, unless by his own will with his sons (for it is) self-acquired property. Kautilya, too more or less speaks a similar rule. The Arthashastra enjoins that partition of inherited property shall be made in accordance with the customs prevalent in the region, caste, guild or village (of the family). Sons whose fathers are alive cannot be (independent) masters of the (ancestral) property. A father may however, divide his ancestral property among his sons during his lifetime. In the case of such a partition, the father shall neither show a special favor to anyone nor exclude any rightful heir from the inheritance without good reason. The Arthashastra clearly mentions that the laws of inheritance do not apply to self-acquired property (swayamarjitham) but only to ancestral property and that part of the property earned by using ancestral property. If there had been no division of ancestral property in the lifetime of father, a partition could be made after the death of the father.

Yajñavalkya (V 118-119) tells that whatever is “acquired by a man himself without detriment to the paternal estate, as a present from a friend, as also as a nuptial present shall not belong to the co-heirs.” He says, there is no need to give to co-parceiners, that which is recovered as hereditary property taken away, or that gained by learning (119). Further, the wealth which had been given by the parents to one belongs to him and of the heirs, dividing after (the death of) the father, let the mother also take equal share. Yajñavalkya too advocates giving the sisters a fourth part of one (each brother’s) share.

In the case of one who has no son, the Manusmṛti advocates that he may make his daughter, an appointed daughter (putrikā) by making her say that “the (male) child born of her, shall perform my funeral rites.” Manu tells about the legend of Dakṣa (in the Mahābhārata and the Pūrāṇas), who himself, lord of created beings made all his female offsprings,
appointed daughters in order to multiply the race. Manu holds this appointed daughter as rightful heir in case of no sons. He tells “A son is even (as) oneself (such) a daughter is equal to a son, how can another (heir) take the estate, while such (an appointed daughter who is even) oneself, lives?” Three important enunciations follow this in the Manusmṛti.

First “between a son’s son and the son of a (appointed) daughter there is no difference, neither with respect to worldly mattes nor to sacred duties, for their father and mother both sprang from the body of the same (man).” Second, if a daughter is appointed and a son is born (to her father) the division (of the inheritance) must in that (case) be equal, for there is no right of primogeniture for women. “And third if the appointed daughter dies without (leaving) a son, the husband of the appointed daughter may, without hesitation take the estate.

In the whole issue on inheritance, the son seems to be pivotal. Verse 138 says – “Because a son delivers (trayate) his father from the hell called put, he was therefore called put-tra (a deliverer from put) by the self existent (Svayambhu) himself. “Also, through a son he conquers the worlds, through a son’s son he obtains immortality, but through his son’s grandson he gains the world of sun. These verses clearly seem to be the product of a patriarchal mindset and a society that regarded women as second by gender, right from the birth. There seems to be no legal logic in it but merely an indoctrination to the the theory of salvation which envisaged the son as the salvator. What is more interesting to note is that Manusmṛti regards the son of a son and son of a daughter as equal in this world and in getting salvation. Probably, the idea must have been to ensure that the estate did not pass on to outside heirs, in the presence of female issues.

Kauṭilya has talked about the order of inheritance. The Arthaśāstra tells that in the first four types of marriages, the order is as follows:

- Sons, if they are leaving sons,
- Daughters, if there are no sons
- The father, if alive, of the deceased,
- If father has died, then equally between brothers and nephews while in the second four types of marriages the order is –
- Sons, if they are living sons,
- Brothers, or persons who had been living with deceased
- Daughters

For a son born of Niyoga, the Arthasastra allows him to get his share of the property (3.5.33). As far as entitlement is concerned, the text explicitly tells that (among children from the same wife), daughters do not have a share in the father's property. They can only inherit bronze household utensils and their mother's jewellery.

Regarding wives of different castes, Manu speaks, 'Let the son of the Brāhmaṇa (wife) take three shares of the (remainder) of the estate, the son of the Kshatriya two, the son of a Vaisya a share and a half and the son of a Sudra may take one share'. Quite naturally, caste hierarchy was applied to the issue of inheritance. The text further specifies the list of legitimate and illegitimate heirs. Verse 159 tells – "The legitimate son of the body the son begotten on a wife, the son adopted, the son made, the son secretly born and the son cast off, (are) the six heirs and kinsmen". The next verse specifies the kinsmen "The son of an unmarried damsel, the son received with the wife, the son bought, the son begotten on a re-married woman, the son self-given and the son of a sudra female, (are) the six (who are) not heirs but kinsmen". Legitimacy of heirs hence, was based on begetting the son lawfully within the permitted rules. Those outside this ring were prohibited from being heirs. They were declared to be kinsmen alone. The first six inherit the family estate and offer funeral oblations while the last six do not inherit, but offer libations and are regarded as remoter kinsmen.

The caste rules were harsh on the Sudra wives. The text (V.155) tells, the son of a Brāhmaṇa, a Kṣatriya and a Vaisya by a Sudra (wife) received no share of the inheritance; whatever his father may give to kin, that shall be the property, while inheritance was enjoyed equally by sons born of the wives of same caste. It says (V.156) – all the sons of twice born men, born of wives of the same castes, shall equally divide the estate, after the others have given to the eldest an additional share. (The Arthasastra permits one third of property to a son of a Brāhmaṇa born of a Sudra's wife).

The Manusmṛti talks of eleven categories of sons. The legitimate son and the son of the wife sṅare the father’s estate,
while the other ten inherit according to their order. This orders is thus,

(1) Aurāsa or the son begotten on his own wedded wife, (V. 166)
(2) Kshētra - or a son begotten according to peculiar law of niyoga on the appointed wife of a dead man, of a eunuch or of one diseased (v. 167).
(3) Datrimā - or the son received from one equal of caste, whom his father or mother affectionately give with (a libation) of water, in times of distress as adopted son (V.168).
(4) Kritrimā - or a son made owing to being equal in caste, acquainted with distinctions between right and wrong and endowed with filial virtues (V.169).
(5) Gudhotpanna - or a son born secretly, whose father be not known. He belongs to him of whose wife he was born (V. 170).
(6) Apaviddha - or a son cast off or deserted by one or both parents (V.171).
(7) Kanina or son of an unmarried damsel. The son would belong to him who weds her afterwards (V. 172).
(8) Sahodha - The child born of an already pregnant (bride) or a son received with the bride (V. 173).
(9) Kritakā - or a son purchased, whether equal or inequal (in qualities) from his parents (V.174) and
(10) Son of a Punarbhava - or son born of a woman abandoned by her husband, or a widow or one who contracts a second marriage. Punarbhava implies a remarried woman.

Further, where a son gives himself having lost his parents or being abandoned is called Svayamdautta while a son begotten by a Brahmana through lust on a Sudra female called parāśava (a living corpse). However, the text permits the son begotten by a sudra on a female slave to take a share in inheritance if the father permits. In a verse (V.184) which talks on merit of sons, the text tells that - "on failure of each better (son) each next inferior (one) is worthy of the inheritance but if there be many (of equal rank), they shall all share the estate. However, it is the son's and not the brothers who take the paternal estate as said in the text. Also, Manu tells that if a son leaves no male issue, the father and brothers take the inheritance. For the adopted son, the Manusmrti tells that (the Datrimā) one possessing all good
qualities, shall take the inheritance (V.141). He never takes the family and estate of his natural father. Likewise, Nārada too tells that “It has been declared that an adopted son receives a share like the chief son, when he is eminently virtuous”.

On the share of women as wife, daughter and mother, the Manusmṛti devotes a good number of verses. In verse 131, it says “whatever may be the separate property of the mother that is the share of unmarried daughter alone, and the son of an (appointed) daughter shall take the whole estate of (his maternal grand father) who leaves no son. Manu hence recognizes a separate property of women, that is the strīdhana and that was for the unmarried daughters alone. “If the widow of a man, says the text who leaves no issue dies and a son is raised by her widow from a member of the family, she shall deliver the whole property to that son (of the deceased). But if two sons contend for the property (in the hands of) their mothers, each shall take to the exclusion of others what belonged to his father. Moreover, when the mother died, all the uterine brothers and uterine sisters shall equally divide the mother’s estate. Even the grand daughters ought to receive something out of grandmother’s estate.

Manu has defined strīdhana as what (was given) before the (nuptial) fire, what (was given) on the bridal procession, what was given in token of love and what was received from her brother, mother or father as the sixfold property of a woman (V.194). Such property and what was given affectionately by her husband shall go to her offspring if she died, in the lifetime of her husband.

The Manusmṛti, further, tells that in the case of four approved forms of marriage, the Brahman, the Daiva, the Arsa, the Prajapatyā and including Gandharva (one of the unapproved forms), her property would belong to her husband if she be issueless. Whereas in Asura or other blamable marriages the property shall go to her mother and father in the absence of any issues.

Manu, sounding like a patriarchal protagonist asserts (V.199) that – “Women, should never make a hoard from the property of their families which is common to many nor from their own (husband’s particular) property without permission”. Firstly, the women are discouraged to hoard from the common
property and if she does so, she is expected to take permission, obviously from her male masters in the form of husband or father.

The ornaments, which women wear during her husband's lifetime, the Manusmṛti (V-200) tells should not by divided by the heirs. Those who do so become outcasts. Some other assertions regarding inheritance, in Manusmṛti are as follows. V.201, tell that eunuchs and outcastes, persons born blind or deaf, the insane, idiots and the dumb and those deficient in any organ receive no share. They are however, entitled to maintenance. And if any of these marries, the offspring of such union is worthy of a share (V.203). Debts and assets are to be duly distributed equally (V.218), while a dress, a vehicle, ornaments, cooked food, male and female (slaves) property destined for prior use or sacrifices and a pasture ground, are declared to be indivisible.

On partition, the Manusmṛti tells that "If brother (once) divided and living (again) together as (coparceners) make a second partition, the division shall in that case be equal, in such a case there is no right of primogeniture." If the eldest or youngest brother is deprived of his share or if either of them dies, his share is not lost (to his immediate heirs). If the eldest brother tried to defraud, his additional share was done away with and he was punishable by the king. What a brother acquires by his labor without using the patrimony, he shall not share unless by his own will.

On the issue whether a property without heir could go to the king, the Manusmṛti tells that the "property of a Brāhmaṇa must never be taken by a king that is settled rule, but (the property of men) of other castes the king may take on the failure of the (heirs)". The Arthaśāstra too forbids the king to take the property of a Brāhmaṇa without heirs, while it allows in the rest of the cases to go to the king except allowing a basic maintenance for the widow and the funeral rites (3.5.38.29). The text also prescribes a fine of 100 panas for misappropriating family wealth (3.20, 16).

In the charter of Viṣṇuśena, the text of Ācāra 1 tells –

Aputrakam na grāhyam
Aputraka means the property belonging to a person who died without leaving a son. This seems to say that such property should not be confiscated by royal officials disregarding the claim of any legal heir other than the son.  

Similarly, of the comparatively scanty reference to civil law in the writings of Kālidāsa, there is one positive reference to such a property of a childless. In Śakuntalā Act VI where the king orders his Minister for Justice to look into the case filed to him by the citizen and then to submit a report on it, the Minister reports thus –

"a leading merchant named Dhanamitra, carrying on business by sea, died in a shipwreck. And childless, they say is the poor man, his store of wealth goes to the king".

However, after the reading the documents, the king orders the Minister to enquire if any of his wives was pregnant; on enquiry it came to light that one of Dhanamitra's wives had her punmsāvana ceremony performed only recently. The king orders the Minister to restore the property of Dhanamitra to his family with the remark that 'surely the fetus deserves the paternal property. This case incidentally also shows that a regular record of tried cases was kept.

Hence, it appears that by law, the property of a deceased person in the absence of the male heir did lapse to the treasury of the crown. It appears that the widow probably had no right to inherit the property of her deceased husband.

However, in theory, Brhaspati among later jurists declares – "the wife is pronounced successor to the wealth of her husband, and in her default "the daughter" Kātyāyana, puts a rider that if the widow be chaste, she could take the wealth of her husband (and in her default, the unmarried daughter). But a wife who is full of evil deeds, immodest, wastes her property or given to adultery, does not (deserve) to inherit the wealth of her husband.  

Kātyāyana, representing the advanced Hindu legal thought has propounded rules on partition of heritage. He devotes 94 verses to this topic including about 23 verses on stridhana alone.
Kātyāyana declares that a lawful division of property is where the fathers and brothers divide the whole property in equal shares (V. 838). Both father and sons have equal ownership in the property of the grandfathers while the son is not entitled to ownership over what is acquired by the father. This verse embodies the central conception of the Mitāksara School as to the equal ownership of father and son in the ancestral property. The grandfather's property, the father's property and whatever was acquired by joint efforts – all are divided when there is a partition among co-heirs (or coparceners) (V.840) and partition is ordained among those who attain an understanding of affairs, at the age of sixteen (V.844). The father should not deprive any son of his share, if the partition taken place in his presence (V.843). The debts must be equally shared as tells Manu, too. After paying of the debts only, the rest of the property should be divided (V.849-50). The father says Kātyāyana gets two shares or half from the wealth acquired by the son, when the father is dead, the mother also gets a share equal to the son (V.851). A single coparcener has no right to make a partition. He can only enjoy it and not even make a gift mortgage or sale of it (V.853). If any brother dies, his son gets a share in inheritance (like Manu tells). Even the son's son gets this right but beyond that, there is a cessation of inheritance.

Like Manu, Kātyāyana too, ordains one-fourth share for the daughters unmarried (Manu IX. 118 and Yājñavalkya 11.124 both prescribe a fourth share) (V.858) The Mitāksara explains that this one fourth share is not of the whole estate, but one fourth of what the unmarried daughter would have got if she had been a son of the same class as herself. Kane tells that vide Bhagavati Shukul V. Ram Jatan, I.L.R. 45, All 297 where it was held that the quarter share in the Sanskrit texts means as much money as will suffice for marriage expenses, that the provisions of a dowry for a daughter was a legal necessity and that where the daughter was a cripple and blind and all the property was worth Rs.500, an alienation of the whole of it by the widowed mother for raising a dowry for the daughter was justifiable.

Kātyāyana has listed the property that does not come within the fold of permissible partition that wealth which was taken away by force and recovered by father, that gained by learning (Vidyadhana), what is acquired from pupil, by performing as priest, by exhibiting one's knowledge and deep learning,
whatever is earned by an artisan over and above the price of an article, wealth due to value received as reward from the king, wealth of the wife (Kanyāgata, coming with the maiden, vaivāhika (nuptial wealth), whatever meant for the bridegroom, whatever wealth was set apart for religious purpose, pasture for religious purposes and dhvajahate, or that received from a battle are impartible (V 866-884).

Kātyāyana suggests fresh partition to conceal heritage. Joint fields and all could be partitioned even after long time. When, however, for ten years the brothers reside (separately) and have separate transactions, they should be regarded as separate as far as ancestral property is concerned.

Kātyāyana’s treatment of ‘Strīdhana” is however, the most remarkable. Kane remarks that he attained a classical rank in the treatment of strīdhana. He reiterates Manu’s verse (IX-94) on what constitutes the strīdhana (V.894). He too, enumerates six kinds of strīdhana. Here it is worth mentioning Kane’s reference to Taittreya Samhita VI.1.2.1.1 which reads ‘for the wife is master of the household gear’ This is the germ of the law of strīdhana. Kātyāyana lists the following types of strīdhana.

(1) adhyāgni – that which a woman receives at the (V.895) time of marriage before the (nuptial) fire.

(2) adhyāvāhānīka – that which she receives when (V 896) being taken (in a procession) from her father’s house (at the time of vidai or dvīrāgmana).

(3) pritidattā – whatever is received by a woman (V.897) through affection from father-in-law or mother-in-law or by saluting the feet of elders.

(4) sulka - that, which is obtained as the price of (V.898) household utensils, of beasts of burden, of milch cattle, ornaments and slaves.

(5) anvādhaya – whatever is obtained by a woman (V.900) from the family of her husband and family of (father’s kinsmen).

(6) saudāyikā (V.901) – that obtained by a married woman or by a maiden in her husband’s or father’s house from her brother or from her parents. Saudāyikā, says Kane is a technical word, used in a peculiar sense by Kātyāyana. Over saudāyikā, a woman has absolute power of disposal even during her husband’s lifetime. It signifies the wealth
received from her brother or parents and not from her husband or his relations.

Kātyāyana mentions that the father, mother, brother and kinsmen should give stridhana to women according to their means up to 2000 panas except immovable property. The commentaries however clarify that the limit of 2000 panas was fixed with reference to annual payment. If it was going to be once in a lifetime, they may give more than 2000 panas. Kane has cited that the ŚṃṛtiCandrīkā quotes a similar verse from Vyāsa, Kauṭilya (111.2) that says that ‘Vṛtti’ and jewellery constitute strīdhana. The limit of vṛtti was fixed upto 2000 panas and there is no limit for jewellery. Kātyāyana further tells that if a father, brother or husband in fraud of his coparceners gives some family property to daughter or wife that cannot be termed strīdhana (V.903). If any property is acquired by her labor, Kātyāyana recognizes the wife’s ownership of the property but her right of alienation is restricted and made subject to husband’s wishes.

About the gifts a women may receive from her husband Kātyāyana propounds that she could dispose of the affectionate gifts of her husband only with his consent (excluding the immoveables) After his death, she could dispose of it as she pleases, except the immovable property (V.907)

If the husband has two wives and does not honor or reside with one of them, he should be forced to return (by the king the strīdhana of the ill-treated wife (V.908). Where basic maintenance is denied, she may extract her strīdhana and also the share (that would have been her husband’s on partition) from the coparceners And when she receives (her wealth) she should reside in her husband’s house (except when afflicted with deadly disease) (V.910) This again echoes the grand old Hindu sentiment that a wife must never abandon her husband’s house, even if the husband does not honor her

None of the male members had any right by law over the women’s strīdhana. If anybody forcibly consumes strīdhana, he should be forced to return it with interest and should be fined as well Kane has cited that the Śṃṛti Candrīkā III, p.6.56) points out, that by marriage a wife gets a sort of dominion over her husband’s property, though she is subordinate to him, but the husband has not even that dominion over his wife’s strīdhana Another verse (V.916) makes it binding for sons to pay the
strīdhana promised to a woman by her husband as seriously as a debt.

As to the heirs to the strīdhana, Hindu jurists depict a great divergence of views. The Mitakṣarā on Yājñavalkya II, 145 speaks of two lines of devolution one for sulka and other for all kinds while the later commentaries speak of five different lines of devolution. Kātyāyana’s verses imply that unmarried daughters got preference over the married ones and sons in succeeding to strīdhana. In the absence of daughter, it goes to sons and in the absence of (of even) sons, this wealth goes to such relatives (who gave this wealth) or in their absence to the husband. 134

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84. Brhaspati as quoted in History of Dharmasastra, 3.496.
89. Ibid, v.253, p.299.
90. Nāradasmṛti, vv. 2-4, p.165
96 Buhler, Laws of Manu, notes, p.349.
97. Ibid, v.120, p.348.
102. Ibid, (3.5.1)
103. Ibid , (3.5.16,17)
104. Ibid,(3.5.3)
105. Buhler, Laws of Manu 127, p.351
106 Ibid v 130, p 352
107 Ibid v 133, p 353
111. Buhler, Laws of Manu, Ch. IX, v.151.
112. Visnu has listed 12 kinds of sons. The Arthasastra adds one or more to Manu’s text, too i.e. putrikaputra or son of a nominated daughter equal as Aurasa.
113. In all, Manu enumerated twelve kinds of sons including the Saudia or Parāsava and excluding Svayamātta. Yājñavalkya mentioned putrikāputra, too (like the Arthaśāstra)
114. Buhler, LOM, v.191, p.369
115. Ibid, v.192, p.370
116. Ibid, v.193, p.370
117. Ibid, v 196-197, p.371
118. Ibid, v.210, p 376
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125. B.S. Upadhyaya, India in Kālidāsa, p.147.
126. B.S. Upadhyaya, India in Kālidāsa, p.148 cites Sākuntala, p. 129
129. Compare Yājñavalkya II, 121, Viṣṇu, 17.2, Brhaspati, p.370, v.3. The Mitakṣarā on Yājñavalkya II 121, explains that verses like Yājñavalkya II,114, Nārada,p.191, V.,12, which allows the father to make an unequal distribution among his sons) refer to the father’s self acquired property.
130. Kane, Kātyāyanasāṃśṛti, Notes, p. 303.
131. Kane, Kātyāyanasāṃśṛti, notes, p.316.
133 Ibid, Notes, p 318.
134 cf Kauṭilya, III 2 p.153-