CHAPTER III

LAWS ON SUCCESSION

A person is the sole protector and preserver of the property he possesses during his lifetime. It is the laws on succession which determine the member or members who will succeed the property of the person after his death.

The dictionary meaning of “succession” is “the transmission of the rights, obligation and the charges of a deceased person to his heir or being.” The Sanskrit synonym of the term wealth which is to be divided among some heirs is दाया. The word दाया has its origin in the oldest period of Vedic literature. In the Taittirīya Saṁhitā the word दाया is used in the sense of paternal wealth or simply wealth. In the story of Nābhānedīṣṭa, it is stated that Manu divided दाया among his sons. The Nighantu defines दाया as the paternal wealth which is fit to be divided. According to the Mitāksarā, the commentary on the Yajñavalkyasmrī, दाया implies the wealth

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1. Bakshi, P.M. Judicial Dictionary, Butterworths India, New Delhi, 2001, p.136
2. ‘राकामाहं .... ददातु विरामं सतादायामुक्त्यम्’ Rgveda, II.32. 4
3. ‘मनुः पुत्रेभ्यां दायाः व्याभाजत्’, Taittirīya Saṁhitā, III.1.9.4
which becomes the property of a person because of his relationship with the owner. The *Vyavahāra-māyūkha* defines *daīya* as the wealth which is to be divided and which is not the wealth of reunited members. The *Smṛtisāṅgraha* states that wealth which comes through the father and also that which comes through the mother are described by the word *daīya*.

The division of property among heirs is called *dāyabhāga*. In the *Nārada-mṛtī, dāyabhāga* is defined as the division of wealth of a person which is distributed among his sons after his death.

The modern laws on succession are classified into two. They are testamentary and intestate successions. In testamentary succession a person is free to lay down the scheme of distribution of his property after his death by making a will. The law of testamentary succession is concerned with the wishes of the testator how much the effect can be given to him. The testator enjoys full freedom to bequeath the property. So, a will is a legal declaration of a man’s intention which he wills to be performed after his death. The wills

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5. ‘*tatra daīya śabdena yaddhanaṁ svāmisambandhādeva nimittādanyasya svāṁ bhavati taducyate*’, *Mitākṣarā* on *Yājñavalkya-mṛtī*, II.114.
7. Ibid.
9. *Nārada-mṛtī*, IV.13.1
or testaments were wholly unknown to the ancient Hindu Law. There might be a gift in contemplation of death. But, a will, as it is understood in the English law, was wholly unknown to the ancient Hindu system. Such gift could only be held valid under the same circumstances as those under which an ordinary gift would be considered valid.\textsuperscript{11}

If a person dies without leaving a will it is the responsibility of the law of inheritance to determine the person who will take his property. This is called law of intestate succession. The law of intestate succession is known as the law of inheritance. The law of inheritance deals with the mode of devolution of the property of the deceased upon the heirs solely on the basis of their relationship to the deceased.\textsuperscript{12}

At present, the laws on inheritance are governed by the Hindu Succession Act, 1956.

\textbf{SUCCESSION TO A HINDU MALE}

The father is the absolute owner of his ancestral as well as self-acquired property when he is alive. But after his death, the general rule in the ancient days as well as in modern times is that his property is divided among his heirs. In the days of Smṛtis the division of a person’s property after his death took place among the sons. Manu has declared that after the death of the

\begin{center}
\textsuperscript{11} Principles of Hindu Law, p.3
\textsuperscript{12} Supra, Note 10
\end{center}
father and the mother, sons divide the estate. Yājñavalkya is of the opinion that the sons divide both the properties and the debts of their parents. In the Brhaspatismṛti, the writer is of the same view as Manu. He declares that after the death of both parents division of property among brothers takes place. The Gautamadharmaśūtra and the Nāradasmṛti declares that after the father's death, the sons succeed to his wealth in order.

From the above opinions of the Smṛti writers it can be observed that some allowed to divide the property after the death of the father while others allowed only after the death of both parents. But it is not intended that the death of both parents should be taken place before partition. The mother, in the absence of her lord that is the father of the family, had no independent ownership. So, the partition of the paternal wealth might take place even when the mother was alive.

It is significant that it was the son that only had got preference in succeeding property of the deceased person in ancient India. It is because a male offspring was very much desired in early societies. Male issue was

13. 'urdhvaṁ pitoścā maṭuścā sametya bhrātarah samam bhajeraṁ paitrikāṁ riktham...:' Manusmṛti, IX.104
14. Yājñavalkyasmṛti, II.117
15. Supra, Note 4, p.87
16. 'urdhvaṁ pituh putrā rikthāṁ bhajeraṁ:' Gautamadharmaśūtra, III.10.1
17. 'pitaryūrdhaṅgate putrā vibhajeraṁdhanaṁ kramāṁ:'
Nāradasmṛti, IV.13.2
18. Supra, Note 15.
necessary for continuance of the family as well as for the performance of funeral rites and ceremonies. The *Veda* also declares that the worlds of those who have sons are endless and there is no place for the man who is destitute of male offspring.

The desire for a male issue has found extravagant expression in the latter works also. The Vedic injunction regarding the necessity of a son has been emphasised by Manu. According to him, through a son one conquers worlds, through a son's son one attains endlessness and through a son's son of a son, a person gains the world of the Sun. The son is called *putra* as he delivers his father from the hell called *putradyamana*.

Yājñavalkya is of the opinion that through son, son’s son and son’s grandson a person acquires an unending family in this world and attains the heaven after his death.

Thus, the son had got much importance and could inherit the whole property of his father after his death. All the ancient lawgivers were of the same view to offer the property of a person after his death to his son. Though

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21. 'putreṇa lokānāṃ jayati paumānāntyamānaṃ putreṇa. aha putrasya putreṇa hradhnasyāpnoti viṣṭapam: 'Manusmṛti,IX.137
22. 'punnamno narakādyasmāttrāyate pitaraṃ sutāḥ. Tasmātputra iti proktaḥ....: 'Manusmṛti,IX.138
23. Yājñavalkyasmytī, I.78
the other nearest relations of the person like his wife, daughter and mother also remained alive, they were not entitled to inherit in presence of the sons.

In the works of some Smṛti writers, it is seen that the wives also took equal shares with the sons. The Yājñavalkyasṃṛti states that if a partition is made after the demise of the father, the mother takes an equal share with the sons. Brhaspati is of the same view when he says that the mother should be made an equal sharer. \[24(ii)\]

However, Vijnānesvara in his commentary on Yājñavalkyasṃṛti declares that the mother who does not have her strīdhana, she only is entitled to an equal portion. \[25(i)\] Baudhāyana is of the opinion that a woman and one devoid of any sense organ cannot inherit. \[25(ii)\] In the Mitākṣara, the commentary on Gautamadharmaśūtra, it is stated that it is not the intention of the lawgivers to give the equal portion of property to her as the sons. Actually the son takes the

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\begin{align*}
24(i) & \text{ 'piturūrdham vibhajatāṁ mātā'pyāṁsaiṁ samaiṁ haret.' } \\
& \text{ Yājñavalkyasṃṛti, II.123} \\
24(ii) & \text{ Colebrooke, H.T. and P.M.Wyne, Hindu Law of Inheritance, } \\
& \text{ 1867, p.63} \\
25(i) & \text{ '...' mātāpi svaputrāṁśasamamaṁśāṁ haret- yadi strīdhamāṁ na } \\
& \text{ dattam;...:' } \\
& \text{ Mitākṣara on Yājñavalkyasṃṛti, II.123} \\
25(ii) & \text{ 'nirindriyā hyādayāyāśe. : striyā mātā iti śrutih.' } \\
& \text{ Baudhāyanadharmaśūtra II.2.3.47}
\end{align*}
\]
whole share and the mother is to be maintained.\textsuperscript{25(iii)} So, from these remarks, it can be said that actually in the normal circumstances the lawgivers did not entitle the wife to get share equal to the son.

The unmarried daughters were entitled by the Smṛtiwriters to have some nominal portions of the shares of their brothers. According to Manu, the brothers should individually bestow one-fourth part each from their own shares.\textsuperscript{25(iv)} Viśṇu states that unmarried daughters shall receive shares proportionate to the son’s share.\textsuperscript{26} Yājñavalkya, in this respect, opines that the brothers should give the sisters one-fourth part of their shares.\textsuperscript{27}

In the normal circumstances the son was the sole inheritor of the property in spite of the presence of other nearest relatives in the family. Though the wife and daughters were entitled to some property, it was only because they could not maintain themselves. So, it was the sons who were actually the heirs of the whole property of their father.

In the absence of the body born son it was the daughter who provided

\textsuperscript{25(iii)} ‘\textit{putrā eva sarvam dhanādikam gṛhītvā mātaram yathāvadrakṣeyuh iti manyate.}’ Mitākṣarā on Gautamadharmaśūra, III.10.1

\textsuperscript{25(iv)} ‘\textit{svebhyaṁ mūṣebhyastu kanyābhyaḥ pradadyur bhṛtarah prāhak. Svāt svādvāmśāc caturbhāgaṁ .....}’ Manusmṛti, IX.118

\textsuperscript{26} \textit{Viśnuśmṛti, XV.31} cited in Jolly, Julius, \textit{Hindu Law and Custom}, Bharatiya Publishing House, 1975, p.181

\textsuperscript{27} ‘\textit{bhaginyaśca niṣṭāṇāṁśād datvāṁśāṁ tu tuṇyakam.’} Yājñavalkyasmṛti, II.124
a son for the person and that son was regarded as if he was the body born son or son’s son of the person. According to Manu, the offspring of the daughter shall be the giver of the offerings to the manes.\(^{28}\) Again, no difference is made between the son of a son and the son of a daughter as the son of a daughter also can save him.\(^{29}\) Gautama is of the view that a father who has no male issue may appoint his daughter, offering oblation to Agni and Prajāpati and addressing to the bridegroom the words ‘for me be the male offspring’.\(^{30}\) Viṣṇu opines in this regard that the appointed daughter is given away by her father with the words- the son whom she bears shall be mine.\(^{31}\) According to Brhaspati both a son’s son and the son of an appointed daughter lead a man to heaven. Both are equal in respect of their right of inheritance and the duty of offering pīṇḍa.\(^{32}\) In Yājñavalkya’s opinion, the son of the appointed daughter is like the body born son.\(^{33}\)

\(^{28}\) ‘yadapatyaṁ bhavedasyaṁ tanmama syāt svadhākarām:’
Manusmṛti, IX.127

\(^{29}\) ‘dauhitro ’pi hyamutraināṁ sanitarayati pautravit:’ Manusmṛti, IX.139

\(^{30}\) ‘pitotṣṛjetputrikāmanapatyo ’gnin prajāpatiṁ cestvā ’smadarthamapatyamiti saṁvādyā:’
Gautamadharmsūtra ,III.10.16

\(^{31}\) Jha, Ganganath, Manusmṛti Notes, PartIII, Comparative, University of Calcutta, 1929, p.733

\(^{32}\) ‘pautro ’tha putrikāputraṁ svargasyeptikarāvubhau. rikthe ca pīṇḍadāne ca samau tau parikārtitaũ:’
Brhaspatismṛti, XXVI.82

\(^{33}\) ‘auraso dharmapatnijastatsamaṁ putrikāsutaũ:’ Yājñavalkyasṃṛti, II.128
Thus, the son of the appointed daughter was regarded as quite equal to the body born son. In absence of the body born son, the son of the appointed daughter enjoyed that right.

**Succession in absence of a son**

From the above it has been seen that sons got precedence over the other members to inherit the property of the deceased. But in default of the son, some other members of the family got the chance to inherit.

The ancient Smriti writers were not unanimous regarding the widow as next inheritor of a sonless person. According to Baudhāyana, women are incapable of inheriting.34 Apastamba also has not mentioned about widow. Gautama mentions about widow with other heirs. But Haradatta, the commentator on Gautamadharmanasūtra, states that the inclusion of the widow among the heirs means that those heirs should look after the women.35 Though Manu has not specifically mentioned about the wife’s right to inheritance, from the commentator Kullūka it is clear that the wife is the next inheritor of her husband who does not have a son.36 According to some Smrtikāras, widow’s succession was subject

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34. Supra, Note 25(ii).

35. ‘tatra sarvameva dhanam sapindā ddyā grhītvā, shriyīvāvajīvam rakṣeyurti mukhyah kalpaḥ.’

Mitākṣarā on Gautamadharmanasūtra, III.10.19.

36. ‘avidyamānānukhyaputrasya patnīdhuhiḥrahitasya...

Kullūka on Manusmṛti, IX.185
to certain conditions,\textsuperscript{37} in this regard Kātyāyana declares that if the wife is faithful to her husband, then only she is entitled to take the wealth.\textsuperscript{38} However, the Smṛtikāras like Viśnū\textsuperscript{39} Brhaspati\textsuperscript{40(i)} and Yājñavalkya\textsuperscript{40(ii)} have fully recognised widow’s right to inheritance.

In default of a widow, the daughter took the estate. Kullūka while explaining the term aputra of the text of \textit{Manuṣmṛti} states that it implies the absence not only of the sons but the wife and the daughter also.\textsuperscript{41} Kātyāyana is also of the opinion that in default of a wife, the daughter takes the estate if she is unmarried.\textsuperscript{42} Viśnū is of the opinion that wealth of the sonless goes to daughter in default of widow.\textsuperscript{43} Yājñavalkya states the same in this regard.\textsuperscript{44}

\begin{itemize}
  \item \textsuperscript{37} Jolly Julius, \textit{Hindu law and Custom}, Bharatiya Publishing House, New Delhi, 1975, p.186
  \item \textsuperscript{38} ‘patni bharturdhanahartīyā syādavyabhicārini’, Kātyāyanasmṛti cited in \textit{Dayaviḥbāgakāṇḍam} of \textit{Vyaṅgārarirṇaya}
  \item \textsuperscript{39} ‘anapatyasya pramītasya dhanam patnyabhīgāmi’, Viśnusmṛti cited in \textit{Dayaviḥbāgakāṇḍam} of \textit{Vyaṅgārarirṇaya}, \textit{XXVI}, 126
  \item \textsuperscript{40(i)} ‘bharturdhanahartīpatri...’ Brhaspatismṛti, \textit{II},135
  \item \textsuperscript{40(ii)} Yājñavalkyasmṛti, \textit{II},135
  \item \textsuperscript{41} Supra, Note 36.
  \item \textsuperscript{42} ‘tadabhāve tu duhtī yadyanudhā bhavettadā’, Kātyāyanasmṛti, cited in \textit{Dayaviḥbāgakāṇḍam} of \textit{Vyaṅgārarirṇaya}
  \item \textsuperscript{43} ‘tadabhāve duhitṛgāmi.’ Viśnusmṛti cited in \textit{Dayaviḥbāgakāṇḍam} of \textit{Vyaṅgārarirṇaya}
  \item \textsuperscript{44} ‘patni-duhitaraścātva...’ ‘esam abhāve pūrvasya dhanabhāgaḥguttarottaraḥ.’ Yājñavalkyasmṛti,\textit{II},135,136
\end{itemize}
Brhaspati declares that in default of a wife, the daughter succeeds.\textsuperscript{45} If there was a competition between a married and an unmarried daughter, the unmarried one was entitled to succeed. If the competition was between an unprovided and an enriched daughter, the unprovided one inherited. On failure of them the enriched one succeeded.\textsuperscript{46} In default of daughter, daughter’s son was entitled to inherit. Viṣṇu says that if a man leaves neither son, nor son’s son nor wife nor female issue, the daughter’s son shall take his wealth.\textsuperscript{47}

In default of daughter’s son, regarding next successor, it is not clear in the \textit{Smṛtis}, whether it was the father or the mother. \textit{Manusmṛti} has given two contradictory statements in this regard. Though in one place the father is mentioned to inherit the property of a childless son, the mother is mentioned to inherit the property of the same in another place.\textsuperscript{48} According to Kullūka both the parents are here intended to take share.\textsuperscript{49} Yājñavalkya is of the

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\textsuperscript{45} ‘bharturdhanaharī patnī tāṁ vinā duhitā smṛtā.’
\textit{Brhaspatismṛti}, XXVI.126.
\textsuperscript{46} Supra, Note, 24(ii), pp.341-342
\textsuperscript{47} Ibid
\textsuperscript{48} ‘pita haredaputraś c riṣhtham...’
‘anapatyāśya putrasyā mātā dāyamānapnuyāt.’ \textit{Manusmṛti}, IX.185, 217
\textsuperscript{49} ‘mālāpitarau vibhajya grññīyātām,’ Kullūka on \textit{Manusmṛti}, IX.217
\end{flushleft}
opinion that parents are the heirs in absence of the widow and daughter. He uses the word pitara in this regard. Vijñāneshvara in his commentary states that mother takes the estate in the first instance. On failure of her the father inherits. On the basis of the following explanation Vijñāneshvara said that mother is preferred. According to him as a substitution of the term pitara the word matāpitara also comes. In that term matā is placed earlier. Moreover, in the vigrahavākya of the compounded word pitara, matā is placed earlier (matā ca pitā ca = pitarau). According to Katyāyana the position of the mother is after the father in regard to inheritance. Vishnu also states that only in absence of father, the mother can inherit. Manu also declares himself that in comparison between a male and a female the male is to be preferred. So, from this it can be

50. ‘patnī duhitarasācaiva pitara...
Yājñavalkyasṛti, II.135
51. ‘... prathāmaṁ mātā dhanabhāk, tadabhāve piteti gamyate.’
Mitākṣara on Yājñavalkyasṛti, II.135
52. ‘... vigrahavākye mātraśabdasya pūrvanipātādeśābhavapakṣe ca mātāpitārāviti mātraśabdasya pūrvaśravanāḥ.....
Mitākṣara on Yājñavalkyasṛti, II.135
53. ‘apurasyātha kulajā patnī duhitaro ‘pi vā.
tadabhāve pitā mātā ............. ‘Kātyāyanasṛti, cited in Dāyavibhāgakāndam of Vyavahāranirṇaya.
54. ‘tadabhāve pitṛgāmi. Tadabhāve mātṛgāmi.’
Viṣṇusṛti cited in Dāyavibhāgakāndam of Vyavahāranirṇaya
55. ‘bhājasya caiva yoniyāca bijamukṛṣṭamucyate.’
Manusṛti, IX.35
that the mother could inherit only in absence of the father.

If the mother was dead then the property devolved upon the brother.\textsuperscript{56} Though Manu has mentioned the brother along with the father as inheritor; according to Kullūka the brothers can inherit only in absence of father and mother.\textsuperscript{57} In absence of the brother, brother's son inherited.\textsuperscript{58}

In absence of the above heirs the inheritance next belonged to the \textit{sapinda} or nearest kinsman. They were the sharers of undivided oblations.\textsuperscript{59}

For purposes of succession Manu limits the \textit{sapinda} relationship to three degrees.\textsuperscript{60} On failure of \textit{sapinda}, the \textit{sakulya} or distant kinsman became the heirs.\textsuperscript{61} Such relatives were denominated as \textit{samānodakas}.\textsuperscript{62}

\begin{itemize}
  \item \textsuperscript{56} \textit{Yājñavalkyasmrty}, II.135
  \item and \textit{Visnusmrty} cited in \textit{Dāyavibhāga}kāṇḍam of \textit{Vyavahāranirṇaya} and also
    \textit{Kātyāyanasmrty} cited in \textit{Dāyavibhāga}kāṇḍam of \textit{Vyavahāranirṇaya}
  \item \textsuperscript{57} ‘......tesāṁ mātusēcbhāye bhrātaro dhanam grhytāḥ...’
    Kullūka on \textit{Manusmrty}, IX.185
  \item \textsuperscript{58} ‘......bhrātarastathā. tat suā......’ \textit{Yājñavalkyasmrty}, II.135
  \item \textsuperscript{59} ‘.........avibhaktadāyaṁ sapinḍānācaksate.’
    \textit{Baudhāyanadharmsūtra}, I.11.7
  \item \textsuperscript{60} ‘trayānāmudakāṁ kāryaṁ triśu pīndāḥ pravartate.
    caturthāḥ sampradātaiśāṁ pāñcamo nopapadayate:’ \textit{Manusmrty},IX.186
  \item \textsuperscript{61} ‘anantarāḥ sapinḍādyastasya tasya dhanāṁ bhavet.
    ātm ārtham sakulyaḥ.............’ \textit{Manusmrty}, IX.187
  \item \textsuperscript{62} Supra, Note 24(ii), p.217
\end{itemize}
sharers of divided oblations were called as sakulya. On failure of them the bandhus or cognates were the heirs. The cognate kindred of the deceased himself, were his heirs in the first instance. On failure of them his father’s cognate kindred and mother’s cognate kindred inherited in order. Yājñavalkya uses the term gotraja to denote the sapinda and sakulya both. Nārada refers agnates by the term sakulyas. Brhaspati uses dāyudas or jnatis or sapiṇḍas to denote first six degrees of sagotra and uses sakulyas to denote samānodakas.

In absence of these heirs the preceptor, the pupil, the fellow student etc. became the heirs. In absence of all these the brāhmaṇa or the king inherited. But the king never took the property of a brāhmaṇa.

63. 'vibhaktadāyānapī sakulyānācakṣate:' Baudhāyana-dharmaśāstra, 1.5.11.8
64. '…prathamamātimahandhavo dhanabhūjastadabhāve piitrbandhavastadabhāve matrbandhava iti…' Mitakṣarā on Yājñavalkya-sūtra, II.136
65. Supra, Note 20, p.763
66(i). Manusmṛti, IX.187; Yājñavalkya-sūtra, II.135
66(ii). 'na tveva kadācitsvayām rājā brāhmaṇasvamādādīna:'

and also Manusmṛti, IX.188,189
The list of order of heirs shown by some of the Smrti writers is found in the following manner.

**Gautama**: *Sapindas, sagotrás*, those connected by the same *ṛṣi* and the widow.\(^{67}\)

**Āpastamba**: The nearest *sapiṇḍa*, teacher, pupil, daughter or the king.\(^{68}\)

**Baudhāyana**: *Sapiṇḍa*, *sakulya*, people like the father or the son, teacher, pupil or priest, king.\(^{69}\)

**Visnu**: Widow, daughter, daughter’s son, father, mother, brother, brother’s son, *sakulya*, *bandhu*, fellow students, *brāhmaṇa* or the king.\(^{70}\)

**Manu**: wife, daughter- not ordained, father, mother, own brother, his son and the mother of the father and after these any *sapiṇḍa*, *sakulya*, teacher

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67. ‘*pindagotrarsisambandhā riktham bhajeranstrī vā napatyasya*:’

Gautamadharmaśūtra, III.10.19.

68. Supra, Note 20, p.759

69. ‘*sapiṇḍābhāve sakulyāḥ: tadabhāve piṁā’caryo nteśasyātytvāvaharet: tadabhāve rājā......., ’ Baudhāyanadharmaśūtra, I.5.11.10-12


Visnusmṛti quoted in Dayavibhāgakāndam of Vyavahāranirnaya.
or a pupil, brahma or the king.\textsuperscript{71}

Yajñavalkya: wife, daughter, parents, brother, their sons, gotraja, bandhu, disciple or a fellow student.\textsuperscript{72}

Narada: Daughters, sakulyas, bandhavas, castemen, the king.\textsuperscript{73}

Brhaspati: wife, daughter, daughter's son, father, mother, brother, brother's sons, dayāda or jñānis, sakulyas, bandhavas, pupils or learned brahmanas.\textsuperscript{74}

Katyāyana: Widow, daughter, father, mother, brother, brother's

\textsuperscript{71} 'avidyāmānamukhyaputrasya patnīduḥśīrḥaitasya...'

Kullūka on Manusmṛti, IX.185

\textsuperscript{72} 'pita haredaputrasya rikham......' Manusmṛti, IX.185

\textsuperscript{73} 'anapatyasya putrasya mātā dāyamavāpnyāt:' Manusmṛti, IX.217

\textsuperscript{74} 'pita haredaputrasya rikhaṁ bhṛtara eva ca.' Manusmṛti, IX.185

Kullūka on Manusmṛti, IX.185,217

'anantarah sapindādyastasya tasya dhanam bhavet.

\textsuperscript{74} Supra, Note 20, p.760
Though most of the Smrti writers have discussed the topic of inheritance, there remains some vagueness and many things are not clearly found in the texts. The uniformity of members in default of sons is also absent.

The Hindu Succession Act was passed in 1956. In this Act, Section 30 deals with testamentary succession. All the other Sections of this Act deal with intestate succession. By this Act, the heirs of a male are divided into different categories. These are heirs in class I of the schedule, heirs in class II of the schedule, Agnates, Cognates and Government.

Class I Heirs:

The class I heirs are called preferential heirs. The presence of any of them excludes heirs in all other categories. They are also called simultaneous heirs. It is because the heirs in class I inherit simultaneously and one does not exclude the other.

The members in Class I heirs are mother, widow, daughter, son; widow, son and daughter of a predeceased son; widow, son and daughter of a predeceased son of a predeceased son; daughter and son of a predeceased daughter. Property devolves in equal shares among son, daughter, widow and

75(i) 'aputraasyātha kulajā patnī duhitaro pi va.

    tadabhāve pita mātā bhaṭā putrāśca kṛttīhāḥ: 'Kāvyānasmrṭī quoted in Dāyavibhāgakāndam of Vyavāhārāṇirṇaya.

75(ii). Supra Note 10, p.378
mother of the deceased. Eight other heirs come into the scheme of simultaneous succession by virtue of the doctrine of representation as applied to the case of predeceased son and predeceased daughter.

The sons who had got exclusive right to inheritance in the days of Smrtis have not been given any special preference under modern law. The position of the female members of the family is made higher. The mother who did not get her actual dignity in the days of Smrtis is a member of Class I heir under the Act of 1956. In those days, widows did not have right to inheritance in presence of son. The widow was entitled to inherit only when there was no male issue. However, some smrtikaras did not recognise this also. At present, after the death of a person, the widow can inherit and is placed among the Class I heirs. Modern law is completely free from the discrimination of son and daughter which was found in ancient Smrtis. The ancient law did not consider the daughters and sons on equal footing. With the passing of time, the outlook of the people towards daughters has changed and at present the daughters are equally treated with the sons. This equality has been maintained in the Act and both are included in Class I.

Class II heirs:

The Class II heirs are divided into nine categories.75(iii)

75(iii). (I) father (II) son’s daughter’s son, son’s, daughter’s daughter, brother, sister (III) daughter’s son’s son, daughter’s son’s daughter, daughter’s daughter’s son, daughter’s daughter’s daughter. (IV) Brother’s son, Brother’s daughter, sister’s son, sister’s daughter (V) father’s father, father’s mother (VI) father’s widow, brother’s widow, (VII) father’s brother, father’s sister (VIII) mother’s father, mother’s mother (IX) mother’s brother, mother’s sister
The rule is that an heir in earlier category excludes all heirs in later categories. All heirs in one category take simultaneously among them and take per capita.

Father is the only nearest heir who has not got a place in Class I.\textsuperscript{76(i)} On the basis of propinquity, he should have figured in Class I along with the mother. But under the Mitaksar\textipa{ā} law mother was considered to have greater propinquity than the father. Thus, it can be said that in this respect Hindu Succession Act, 1956, gives effect to the Mitaksar\textipa{ā} rule of propinquity. Father is the sole heir in category I of class II heirs and in absence of Class I heirs he takes the entire property.

Under the modern law, the position of the father has been degraded much more than it was in the days of Smritis. Some other persons are regarded to be more needy than the father who is supposed to have acquired some property. Those needy persons have the chance to get more portions by the non-inclusion of the father among the Class I heirs.

The brothers who had been placed after mother by the Smṛtiwriters have been kept in Category II of the class II heirs. Along with the brothers, son’s sons and daughters and sisters are also present in this category as his co-sharers. The members of other categories are also shown specifically.

\textbf{Agnates and Cognates:}

In absence of the Class II heirs, the agnates and then the cognates can inherit. When a person traces his relationship to the

\begin{itemize}
\item \textsuperscript{76(i). The Hindu Succession Act, 1956, Section 8}
\end{itemize}
propositus wholly through males he is an agnate. His sex or the sex of the
propositus is immaterial. A person is said to be a cognate of another if the two
are related by blood or adoption but not wholly through males.76(ii) The
agnates are preferred over cognates. Howsoever remote an agnate may be, he
will be preferred over cognate.

In the days of Smṛtis also it is found that in absence of the nearest
relations, the agnates and cognates were entitled as heirs in order. In absence
of these heirs ancient law made certain strangers as heirs which are
completely avoided by the modern law.

Government:

If a Hindu male has no heir under all the preceding four heads, the
government takes the property as an heir. When the government takes the
property of the deceased as the heir it takes it subject to all the obligations and
liabilities of propositus. This is known as escheat.77

Thus, the government is the ultimate inheritor of the property of a
person who does not have any heir to inherit. The Smṛtis also provide that, in
absence of any heir the property went to the king.

Though, though the modern law has modified the law of the Smṛtis a
lot, yet it must be granted that the basic classifications of heirs found in
ancient law is unchanged. The modern law has changed the position of some
members for the demand of the changing society and reduced the number of
heirs and also has systematised the law.

76(ii). The Hindu Succession Act, 1956, Sections 3(a), 3(c)
77. The Hindu Succession Act, 1956, Section 29
The right of a woman to hold separate property of her own was recognised in the Hindu law long before it was admitted in European countries. Proprietary rights of women were nowhere recognised so early as in India.

The origin of the topic of stridhana can be traced in the Vedic literature. The wedding hymn of the Rgveda indicates that gifts were sent to the bridegroom’s house with the bride. They were the bridal gifts of Sūrya that Savitṛ sent off. The subject of stridhana occupies a large portion in the Smṛtis.

The term stridhana literally means woman’s property. But in the ancient Smṛti works, the word was restricted to certain special kinds of property given to a woman on certain occasions or at different stages of life. Gradually such kinds of property went on increasing in extent and value. The oldest extent definition of stridhana in Dharmasāstra works is that of Manu. According to him, that which is given in nuptial fire, what is given in bridal procession, what is given as token of love, what is received from her brother, mother or father are called six fold women’s property.

80. Rgveda, X.85.13, 38
81. ‘adhyāgnyāvāhanikāṁ dattāṁ ca pṛtikarmanī. bhṛātmāṁ pitāprāptāṁ saṃvidhāṁ stridhanāṁ smṛtam.’ *Manusmṛti*,IX.194
However, one more kind namely *anvādheya* which is received posterior to marriage, is mentioned subsequently.\(^8\) The *Mitāksara* on Yājñavalkya\(^3\) explains that the number six is intended to exclude a smaller number of the kind of *strīdhana* and does not exclude a larger number.

Yājñavalkya enumerates several kinds of *strīdhana* as follows: the thing which is given to a woman by the father, mother, husband or brother, the thing received by a woman before the nuptial fire, or the thing presented to a woman when her husband marries another wife said as *ādhivedanika*; that is given by the cognate relations; the *sulka* or taking which a bride is given and gifts given subsequent to marriage.\(^4\) In *Nāradasmrīti*,\(^5\) the same six kinds as Manu have been enumerated. Viśṇu includes in *strīdhana*, the presents given by the son, and those given by other relatives after marriage.

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82. ‘*anvādheyaṃ ca yaddattam patyā prītena caīva yat.*’ *Manusmrīti*,IX.195
83. ‘*stridhanasya sadvidhatvam tannyunasamkhyaavyavacchedartham.*
   *nadḥikasamkhyaavyacchedadayā.*’ *Mitakaksara* on Yājñavalkya *smṛti*,II.143
84. ‘*pitṛmātrpitibhrāṃrdattamadhyagṛngyupāgatam.*
   *ādhivedanikaṃ caīva strīdhanaṃ parikṛtitam.*
   *bandhudattam tathā sulkamanvādheyaṃ kameva ca.*
   *āttīyāmaprajasi bandhavāstādaṃvāpnyyyuh.*’ *Yājñavalkya *smṛti*,II.143,144
85. ‘*madhyagṛngyadhyāvahanikāṃ bharturdāyastathaīva ca.*
   *bhrātrimātrpitṛprāptam sadvidham strīdhanaṃ smṛtam.*’

*Naśradmrīti*,IV.13.8
and the maintenance paid to her. Among Śrīvīra writers Katyāyana gives the most elaborate treatment of śrīdhana. According to him that is called adhyagni which is given to women at the time of marriage near the nuptial fire. That which a woman receives from the parent’s house is enumerated as adhyāvahanikam. That is called prītidatta or affectionate present whatever is given through affection by her mother-in-law or her father-in-law and the wealth termed as pādavandanaṅka i.e. received at the time of bowing at the feet of elders. What has been received by a woman from the family of her husband at the time posterior to her marriage and also that which is received from the family of her kindred is called anvādheyam. That is called šukka which is received as the price of household furniture, conveyance, milch cattle and ornaments.

86. Viṣṇusmṛti cited in Colebrooke, H.T. and P.M. Wynch, Hindu Law of Inheritance, 1867, p.68
87. ‘vivahakāle yaḥ śrībhyaḥ diyaḥ hyagnisannidhau
tadhyagnikṛtam sadbhīḥ śrīdhanaṁ parikṛtitam:
yatpunaṁ labhate nārī niyamāṇā piturgeḥḥāt.
adhyāvahanikam nāma śrīdhanaṁ samudāḥṛtam:
prītya pradattāṁ yatkiṁcit śvasrūḍā vā śvasureṇa vā.
pādavandanaṅkaṁ yattat lāvanyārjitaṁcuyate:
vivāhaṁ parato yattu la. śdham bharīṛkulaṅ triyā.
anvādhyeyam taduktaṁ tu labdhāṁ bandhukulātaṁba;
grhopaskaravāhyānaṁ dohyābharāṅaṅkarminām.
mūlyāṁ labdhaṁ tu yatkiṁcit tačchulkaṁ parikṛtitam.’

Katyāyanasmṛti cited in Dāyavibhāgakāṇḍam of Vyavahārānirnaya
Thus, the kinds of *strīdhana* enumerated in the *Smṛtis* are-

(1) That which is given before the nuptial fire called *adhyāgni*

(2) That which a woman receives while she is conducted from her father’s house to her husband’s dwelling i.e. *adhyāvahanika*

(3) That which is bestowed in token of love i.e. *prītidatta*.

(4) Gifts made by father, mother or brother.

(5) That which is received from her husband’s family or her father’s family subsequent to marriage called *anvādheyaka*.

(6) Present made to a woman on her husband’s marriage to another wife is the gift of supersession called *ādhivedanika*.

(7) *Bandhudatta* is that which is given to the bride by the relations of her mother or of her father.

(8) The *śulka*

Thus, various sorts of separate property of a woman have been propounded without any restriction of number.

But certain things of a woman did not come under the denomination of *strīdhana*. Katyāyana expresses that the wealth which is earned by mechanical arts like spinning, weaving or which is received through affection from any other but the family of her father, mother or husband is always subject to her husband’s dominion. He has the right to take it even when no distress exists. Hence, though the goods were hers, they did not constitute woman’s property, as she had no independent power over them.  

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88. Supra, note 24(ii), p.75
Summarising the Smrii texts it may be said that strīdhana included only gifts obtained by a woman from her relations and her ornaments and apparel and also the gift from strangers before the nuptial fire and those made at the bridal procession. But the gifts obtained from the strangers at any other time or her acquisitions by labour and skill never constituted her strīdhana.89(i)

Before 1956, the property of a woman was divided into two heads:

a) strīdhana and (b) woman's estate. The characteristic feature of woman's estate was that the female took it as a limited owner. Section 14 of Hindu Succession Act, 1956 has abolished woman's estate. Section 14(1) of the Act states that any property possessed by a female Hindu whether acquired before or after the commencement of the Act shall be held by her as full owner thereof and not as a limited owner. Here, the term property includes both movable and immovable properties acquired by a female Hindu by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage or by her own skill or exertion or by purchase or by prescription or in any other manner and also any such property held by her as strīdhana immediately before the commencement of this Act.

So, it is found that in the days of Smritis all property acquired by a

89(i). Supra, note 12, p.158
woman could not be regarded as *strīdhana*. Certain restrictions were there in this regard. But, the modern law has broadened the scope of the definition and at present it includes any property possessed by a female Hindu.

**Property over which a woman has absolute control**

The right of a woman to have her absolute control over certain properties have been recognised both by the ancient as well as modern lawgivers. Such property can be enjoyed by her according to her own will. Any other person, even the husband does not have authority over such property.

The absolute dominion of a woman over her *saudāyika* property was admitted from the earliest time.\(^{89(ii)}\) When a married woman or a maiden obtains anything in the house of her husband or of her father, from her brother, from her husband or from her parents then that is called *saudāyika* property.\(^{90}\) Katyāyana declares that the independence of women who have received the *saudāyika* wealth is desirable as it is given for their maintenance out of affection by their kindred. The power of women over *saudāyika* at all

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89(ii). Supra, note 20, p.882

90. ‘udhayā kanyāyā vai ’pi patyuh pitṛgṛhe ’pi vai.

‘bhrātusākāśātipitrorvā labdhām saudāyikam smṛtam:’

*Katyāyanasmrṭī* quoted in *Vyavahārakāṇḍa* of

Smṛticandrika
times is celebrated both in respect of gift and sale according to their pleasure. It is applicable in case of immovables also. But in the case of immovables bestowed on her by her husband a woman has no power of alienation in his lifetime.\textsuperscript{91} Narada restricts a woman’s absolute control over immovable property given by her husband. He declares that what is given to her through love by her husband that can be enjoyed by her as she chooses even after his death. However, it is with the exception of immovable property.\textsuperscript{92}

Under certain circumstances the husband is allowed to use the property of the woman. In that case Yājñavalkya is of the opinion that if the husband has no means of subsistence, without using his wife’s separate property in a famine or other distress, he may take it in such circumstances.\textsuperscript{93} Devala, while saying about a woman’s power of disposal, independent of her husband’s

\begin{verbatim}
91. ‘saudāyikam dhanam yattu stūnām svātantryamisyate.
    tasmātadāmsāmsyārtham tairdattamupajīvanam:
    saudāyike sadā stūnām svātantryam parikīrtitam.
    vikraye caiva dāne ca yatheṣṭaṁ sthāvareṣvapi.
    bhartrādāyam mrte patyau vinyasyet stri yatheṣṭhataḥ:’

    Kṛtyāyanasmṛti quoted in Vyavahārakāṇḍa of Smṛticandrika.

92. ‘bhartrā prīlena yaddattam striyai tasminmrte’pi tat.
    sa yathākānamsniyāddadyē dvā sthāvaradṛte.’

    Nāradasmṛti, IV.1.28

93. ‘durbhikṣe dharmakārye vyadhau sampratirodhake.
    grhitam stūhanam bhartrā na striyai dātumarhati:’

    Yājñavalkyasṛti, II.147
\end{verbatim}
control over her property declares that except in distress, her husband has no right to use it.  

The Hindu Succession Act of 1956 provides that any property possessed by a female Hindu whether acquired before or after the commencement of the Act shall be held by her as full owner there of and not as a limited owner.

So, in the days of Smṛtis, with certain restrictions the Smṛti writers entitled a woman the right of absolute control over strīdhana. The modern law has modified the rule and has given the right of absolute control of all kinds of property acquired by a woman. However, till 1956 her right on the woman’s estate was limited.

**Succession of strīdhana**

The devolution of strīdhana on death of the woman is called partition of strīdhana. Among the important texts of the Smṛtis on succession to strīdhana the oldest extent text is that of Gautama. It provides that strīdhana devolves first on daughters. Among daughters also he prefers unmarried ones. Among the married daughters, according to him, strīdhana devolves upon

94. Supra, note 4, p. 181

95. The Hindu Succession Act, 1956, Section 14(1)
those who are not well provided for.⁹⁶ According to Manu, *yautaka* goes to the unmarried daughters alone and not to the sons.⁹⁷ However, in a different place, Manu provides that when the mother dies all the full brothers and full sisters equally divide the mother’s estate.⁹⁸ It is variously explained by the commentators. They hold that full brothers and unmarried sisters succeed together and married sisters get a trifle which Kullūka states as one fourth of each brother.⁹⁹ The statements regarding devolution of property of a woman as made by Kātyāyana are not clear and they are conflicting also. So, P.V. Kane suggests to read it along with the text of Gautama stated earlier and construes the following propositions to be laid down by Kātyāyana.

(i). Unmarried daughters are preferred. (ii). If there is no unmarried daughters, married daughters whose husbands are living, share along with their brothers. (iii) Widowed daughters take only if there are no daughters whose husbands are living or if there are no sons.⁹⁹(ii)

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⁹⁶. ‘*strīdhanam duhitṛna mapratīṇam apratīṣṭhitānāṁ ca.*’  
*Gautamadharmasūtra*, III.10.22

⁹⁷. ‘*mātustu yautakaṁ yatsyat kumāribhāga eva saḥ.*’ *Manusmrīti*, IX.131

⁹⁸. ‘*jananyāṁ saṁsthūyāṁ tu samāṁ sarve sahodarāḥ. bhajerānmaṭrkaṁ rikhaṁ bhaginyasca saṁabhayaḥ.*’  
*Manusmrīti*. IX.192

⁹⁹(i). ‘*udhānāṁ matṛdhane bhrātrā svādaṁśaccturthābhāgo deyāḥ.*’ Kullūka on *Manusmrīti*, IX.192

⁹⁹(ii). Supra, Note 79, pp.791-792
Yājñavalkya provides that daughters take the *strīdhana* estate of their mother. On failure of them, the male issue becomes the successor of the same.100 According to Vaśiṣṭha the girls shall divide the property of the mother.101 Bṛhaspati declares that *strīdhana* goes to her progeny. The unmarried daughter is preferred and the married one gets only some trifle as a token of regard.102 Parasara holds that the unmarried daughters take all the *strīdhana*.103

Thus, the children of a deceased woman were entitled to get the property of their mother. Among them the daughters and of them also the unmarried ones got preference.

Section 15(1) of the Hindu Succession Act, 1956, states that the property of a Hindu female will devolve upon son, daughter, husband, son and daughter of a predeceased son, and son and daughter of a predeceased son, and daughter of a predeceased son, and son and daughter of a predeceased son.

100. ‘māturduhitaraḥ sesamṛṇāḥ labhya rte 'nvayah.' Yājñavalkyasmiti, II.117
101. ‘mātuh pārināhyam striyo vibhajeran.’

*Vasiṣṭhasmiti* cited in Dayavibhāga-kāṇḍam of *Vyavahāranirṇaya*.

102. ‘strīhanam tadapatyānāṁ duhitā ca tadamśini aprattā cet samūḍhā tu labhate mānamātrakam.’

*Bṛhaspatismiti*, cited in *Dāyavibhāga-kāṇḍam* of *Vyavahāranirṇaya*.

103. ‘aprattayāstustu duhituh strīhanam parikṛtitaṃ.’

*Parāśarasmiti* cited in *Dāyavibhāga-kāṇḍam* of *Vyavahāranirṇaya*. 
daughter. These heirs are simultaneous heirs. They inherit the property of propositus simultaneously.\footnote{Supra, Note 11, p.404}

Under Section 15(2)(a), the property that a female inherits from her father or mother is included. The property which she gets from her mother or father at the time of marriage is not included.\footnote{Meyappa vs. Kannappa, 1976 Mad 154} Such property is governed by section 15(1). The heirs of a female Hindu when she inherits the property from father or mother are son, daughter, son and daughter of a predeceased son and son and daughter of a predeceased daughter.

Section 15(2)(b) provides that when the property of a female Hindu is inherited from her husband or father-in-law then son, daughter, son and daughter of a predeceased son and son and daughter of a predeceased daughter become her heir.

Thus, in the normal circumstances the children and the husband are the heirs of the property of a woman. But, husband is not included among the heirs of a woman’s property inherited from her parents. The same heirs are entitled for the property of a woman when she inherits it from husband or father-in-law.

\footnote{i. Supra, Note 11, p.404} 
\footnote{ii. Meyappa vs. Kannappa, 1976 Mad 154}
Thus, like the Smṛtis, the modern law also has preferred the children to inherit the property of their mother. However, there was no classification of the properties for the purpose of inheritance during the days of Smṛtis. Again, the daughters got more importance than the sons. It was because of the non-inclusion of daughters in inheriting father's property in the presence of a son. Among the daughters also the unmarried ones got more chance than the married ones. However, the Act of 1956 has not made any difference between married and unmarried daughters in respect of inheriting mother's property.

Succession to separate property of a childless woman

The Smṛti writers have not left their works undiscussed on the succession to separate property of a childless woman. The property of a woman first went to her children. But if a woman was issueless then there would have been difficulty if the lawgivers kept the topic untouched. In this matter Yājñavalkya is of the view that the separate property of a childless woman married in the four unblamed forms of marriage, denominated brāhma, daivā, ārṣa and prājāpatya, goes to her husband. Manu states that whatever valuables a woman receives at the marriages called brāhma,

105. 'brāhmaś śvē brāhmadāivāś ārṣaprājāpateṣu caturṣu vivāheṣu,'
   Mitākṣara on Yājñavalkyaśmi, II. 145
106. 'aprajastrādhanam bhurturbrāhmādiśucaturṣvapi.'
   Yājñavalkyaśmi, II. 145
daiva, ārṣa, gāndharva and prajāpatya belong to her husband alone if she dies sonless. But a woman’s property, received at a marriage in the form called āsura and the like, her parents may take on her demise, though her husband is living. This is found in the texts of both Manu and Yājñavalkya.

When a woman died without issue then it is found that succession of her property depended upon the form in which her marriage was performed. As some marriages were approved and some were unapproved, so according to the importance of the marriage the successor was also selected whether he was a member of the family before her marriage or after her marriage. It is found that the members of the family of her husband got importance when it was an approved form of marriage. In other cases, i.e., if the marriage was performed in an unapproved form then the property went to her own family to which she belonged before her marriage. The reason of this was that originally in the case of approved forms, a bride passed into her husband’s gotra and in unapproved marriages she did not.

107. ‘brāhmadaivārṣagāndharvaprājāpatyesu yadvasu. aprajāyāmatītāyāṁ bhartureva tādisyate: ’Manusmṛti, IX.196
108. ‘yat tasyāḥ syāddhanāḥ dattaḥ vivāhesvāsurādiṣu. aprajāyāmatītāyāṁ mātāpitrostādisyate: ’Manusmṛti, IX.197
109. ‘duhitrāṁ prasūtā cet śeṣeṣu pitṛgāmi tat.’ Yājñavalkyasmrī, II. 145
110. Supra, Note 20, p.109
Under modern law when a woman obtains property otherwise than inheriting from parents or husband or father-in-law then in absence of children, according to Section 15(1) the property devolves upon the husband, heirs of husband, mother and father, heirs of the father and heirs of the mother in order.

If the property is inherited from father or mother, then that property in absence of sons and daughters devolves upon the heirs of the father. Property inherited from husband or father-in-law devolves upon the heirs of husband in absence of children. These provisions are found under section 15(2)(a) and 15(2)(b) respectively.

Earlier, there were different forms of marriage. The ancient lawgivers took it into account in respect of the enumeration of the heirs of a childless woman's property. Earlier, the husband got more preference to others in the approved forms of marriage. This power of the husband is still found in the modern Act over the properties of a woman except those inherited from her parents, husband or father in law.

EXCLUSION FROM INHERITANCE

Certain disabilities of a person exclude him from enjoying the right of inheritance. Apart from being an heir one should be the possessor of some other qualities also which the lawgivers count in regard to inheritance since ancient days. The modern law also excludes certain persons from inheritance.

There are varieties of grounds that the Hindu lawgivers excluded persons from inheritance. One main reason as shown by Kātyāyana for
disqualification was their incompetence for the performance of sacrifice and other religious ceremonies. According to him wealth was made for sacrifices and it should be, therefore, appropriated to fit and virtuous persons and not to women and ignorant or irreligious men.\textsuperscript{111} Apart from disqualification originally imposed upon women by reason of their sex by some ancient Śruti writers, serious mental physical, moral or religious defects were considered to disqualify even males from inheritance.\textsuperscript{112}

The persons who were excluded from inheritance, as shown by Manu are— an impotent man, one degraded, those born blind or deaf, those who are crazy, idiotic or dumb and all who are without manly strength.\textsuperscript{113} According to him even a vicious son is not entitled to a share of the inheritance.\textsuperscript{114} By means of a son a father is benefited a lot. Therefore, his connection with the property is the reward of his beneficial acts. If he neglects them he should not have his hire. Yājñavalkya mentions that an impotent person, a \textit{patita} or outcast for some grave sins and one born of him, a lame man, a mad man, an idiot, a blind man and one afflicted with an incurable disease are to be maintained only.\textsuperscript{115} Kātyāyana is of the view that the son of a woman married

\textsuperscript{111} Supra, Note 78, p.52

\textsuperscript{112} Ibid

\textsuperscript{113} \textit{anamśau klībapattītau jatyandhabadhirau tathā.}

\textit{unmattajaḍamūkāśca ye ca kecinnirindriyah:} 'Manusmṛti, IX.201.

\textsuperscript{114} \textit{sarva eva vikarmasthaṁ nārhanti bhrātaro dhanam.} 'Manusmṛti, IX.214

\textsuperscript{115} \textit{klībōʾtha patitastajjaḥ pāṃgurunmattako jaḍaḥ.}

\textit{andhoʾcikitsyarogādyā bhartavyā syurnirāṁsakāḥ:}'

\textit{Yājñavalkyasmṛti, II.140}
in the wrong order and one who is born of a man of the same gotra as the man's wife; and one who is an apostate from the order of ascetics never obtain the inheritance.\textsuperscript{116} 

Bṛhaspati is of the opinion in the matter of exclusion from inheritance that though born of a woman equal in class to her husband a son destitute of good qualities does not deserve the paternal wealth. It is ordained that it belongs to those sons who are learned in the Vedas and who offer pindas to the deceased.\textsuperscript{117} 

Nārada says in this regard that an enemy to his father, an outcast, an impotent person and one who is addicted to vice or has been expelled from society take no shares of the inheritance even though they are legitimate.\textsuperscript{118}

Thus, according to different Smṛti writers certain physical deformities like deafness, blindness and dumbness were regarded as grounds for which a person was deprived of inheritance. At the same time it is found that some mental disorder like lunacy, idiocy etc. were also some other causes which deprived one of his right to inheritance. Apart from these it is found that persons of evil qualities, the outcast, one addicted in vicious acts also could not inherit.

\textsuperscript{116} Supra, Note 5, p.194

\textsuperscript{117} Supra, Note 5, p.195

\textsuperscript{118} 'pitrdvit patitah sandho yasca syādaupapātikah. 
aurasā api naite 'mskalabheran.....................'

\emph{Nāradasmrī}, IV.13.21
The persons who were excluded from inheritance might have their sons. But the lawgivers made certain rules regarding the right of inheritance to be enjoyed by those offsprings. In this regard Manu is of the opinion that if the eunuch etc. who do not have the right to inheritance, desire to marry, the offspring of such shall be capable of inheriting.\textsuperscript{119} Yājñavalkya also views that the legitimate and kṣetraja sons of these, if free from blame are entitled to a share.\textsuperscript{120} Viṣṇu is of the opinion that the aurasa sons of these alone are entitled to take a share, but the sons of the patita, born after the commission of the sinful act which causes the bar of exclusion do not take a share.\textsuperscript{121} Yājñavalkya states a special rule concerning the daughters and wives of these excluded persons. According to him the daughters of these excluded persons should be maintained till they are married and their sonless wives leading a virtuous life should also be maintained but the unchaste ones should be expelled and so also those who are hostile.\textsuperscript{122}

The Hindu Succession Act, 1956 deals with the question of

\textsuperscript{119}‘yadyarthisā tu dāraṁś syātklīdānāṁ kathamānca.
tēṣāmutpānanāṁ tītanāṁ apatītāṁ dāyamārhati. ’Manusmṛti,IX.203
\textsuperscript{120}‘aurasaḥ kṣetrajāstraṇāṁ nirdosāḥ bhūghākaratiḥ.’ Yajñavalkyasmṛti.II.141
\textsuperscript{121}Supra, Note 5, p.196
\textsuperscript{122}‘sutaścāśāṁ prabhātāvayo yāvadvai bhātṛśātkṛtāḥ.’
‘aputraṁ yośitaścāśāṁ bhātāvayoḥ śādhu vṛttayaḥ.
nirvāsyāṁ vyabhicārīnyāḥ prakulāstathāvai ca:’
Yajñavalkyasmṛti.II.141,142
disqualification of heirs vividly. Section 24 declares about certain widows who have remarried on the date when succession opens. Remarriage is not a disqualification in case of every female relative of the intestate. It is confined to the case of three female heirs. They are widow of a predeceased son, widow of a predeceased son of a predeceased son, the widow of a brother. No other widow can be disqualified though remarried. Where a widowed mother remarried prior to the death of the intestate son it was held that she was entitled to inherit along with widow if the deceased.\textsuperscript{123}

This section places restriction on the three widows, only when they claim through their husbands; if they are otherwise entitled to inherit by blood relationship this section does not apply.

The remarriage of a widow was not recognized at the time of \textit{Smyrtis}. So this provision was irrelevant for those days. For the prevalence of widow remarriage such a provision has taken place in the modern law.

Section 25 states that a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered or any other property in furtherance of the succession to

\textsuperscript{123}Kasturi Devi vs. Deputy Div. Commr. A.I.R. 1976 S.C. 2595
which he or she committed or abetted the commission of the murder. Earlier, in the days of Smrītis also those who were vicious were not entitled to inheritance. A sinful person was completely prohibited from inheriting the property. In the modern law also a murderer is disqualified from inheritance. However, the commission of the murder should be in furtherance of inheritance. In other cases a murderer also cannot be deprived of his right to inheritance. The moral conduct of a person got much more importance in ancient law than it is in the modern law.

Section 26 declares about the convert's descendants who are disqualified from inheritance. It states that where before or after the commencement of the Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives unless such children or descendants are Hindus at the time when succession opens.

The question of changing the religion did not arise in the days of Smrītis. However, the person who had taken another order or āśrama was excluded from inheriting the property. It is found in the Smrītis that the blameless sons of the excluded persons could not be deprived from their right to inheritance except the son of the patīta. However, the idea of conversion was completely absent in the ancient days. So, to disqualify the convert's descendants from the right to inheritance is a new provision found in the modern law.
Section 28 of the Act declares disease, defect etc. as no ground of disqualification. It states that no person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity etc.

In the text of the Dharmasastras it is seen that certain defects, deformities and diseases were the major grounds of exclusion from inheritance. For the changing set up of mind this was substantially amended by Hindu Inheritance (Removal of Disabilities) Act, 1928. It stated ‘no person other than a person who is and has been from birth a lunatic or an idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity or physical or mental defect.’ For their deformities they themselves are not responsible and that should not be the ground of exclusion from inheritance. Therefore, this provision is totally changed in modern law and such persons are entitled to inheritance.

The extensive discussion on Succession in ancient Smrtis has influenced the modern laws on Succession a lot. However, the modern law has tried to maintain the equality of male and female with a view to providing females the rights they deserve.