

Gutama 28

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GUATAMA CHAPTER XXVIII.

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1. After the father's death let the sons divide his estate,
[XXVIII. 1. Colebrooke, Yagnavalkya II, 4; Mitakshara I, 2, 7; V, Digest 20; Mayukha IV, 4, 3. Haradatta remarks that, according to Gautama, the sons alone shall divide the estate, and that the mother is not to receive a share, as other teachers, e.g. Yagnavalkya II, 123, prescribe. Apastamba II, 6, 13, 2 Manu IX, 104; Yagnavalkya II, 117.]
 2. Or, during his lifetime, when the mother is past child-bearing, if he desires it,
 3. Or the whole (estate may go) to the first-born; (and) he shall support (the rest) as a father.
 4. But in partition there is an increase of spiritual merit.
 5. (The additional share) of the eldest (son consists of) a twentieth part (of the estate), a male and a female (of animals with one row of front teeth, such as cows), a carriage yoked with animals that have two rows of front teeth, (and) a bull.
 6. (The additional share) of the middlemost (consists of) the one-eyed, old, hornless, and tailless animals, if there are several.
[2. Colebrooke and Mayukha loc. cit. Or the sons may divide the estate even during the lifetime of the father; when he desires it, i.e. by his permission. The time for such a (division is) when the mother is past child-bearing.'--Haradatta. The correctness of this interpretation of our Sutra is corroborated by the exclusion of sons who have divided the family estate against the father's will (XV, 19) from the Sraddha dinner. Apastamba II, 6, 14, 1.
3. Colebrooke, Dayabhaga III, 1, 15; Manu IX, 105.
 4. Colebrooke, Dayabhaga III, 1, 14; V, Digest 47. After division each brother has to perform the Vaisvadeva and the other domestic ceremonies separately, while in a united family they are performed by the eldest brother. Thus a division of the family estate causes an increase of spiritual merit; see also Manu XI, III.
 5. Colebrooke, Dayabhaga II, 37; V, Digest 47; Manu IX, 112.
 6. Colebrooke II. cit. 'And that (additional share is given), if of the one-eyed and the rest there are several, i.e. if the others also get (some).']
 7. (The additional share) of the youngest (consists of) the sheep, grain, the iron (utensils), a house, a cart yoked (with oxen), and one of each kind of (other) animals.
 8. All the remaining (property shall be divided) equally.
 9. Or let the eldest have two shares,
 10. And the rest one each.
 11. Or let them each take one kind of property, (selecting), according to

seniority, what they desire,

12. Ten head of cattle.

13. (But) no (one brother shall) take (ten) one-hoofed beasts or (ten) slaves.

14. (If a man has several wives) the additional

[7. Colebrooke II. cit. 'Avih (a sheep), i.e. an animal having a fleece. The singular number (is used to denote) the species, (and the explanation is), "As many sheep as there are." For (the possession of) one would follow already from the phrase, "And one of each kind of animals." Another (commentator says), "Though the father may possess one sheep only, still it belongs to the youngest, and the phrase 'one of each kind of animals' refers to the case when there are many." . . . This (additional share is that) belonging to the youngest. (If there are more than three sons) the others obtain the share of the middle most.'--Haradatta.

8. Colebrooke II. cit.

9. Colebrooke, Dayabhaga II, 3 7; V, Digest 51. My best copy P. leaves out this Sutra and the next. The others read *dvyamsi va purvagah* (not *purvagasya*, as Professor Stenzler reads), and explain the former word as follows, '*dvavamsau dvyamsam tadasyastiti dvyamsi.*' Manu II, 117.

10. Colebrooke II. cit.

11. Colebrooke V, Digest 68.

12. Colebrooke loc. cit. The meaning, appears to be that no brother is to select more than ten head of cattle.

13. Colebrooke V, Digest 69. But, as has been declared above (Sutra 11), one of each kind only. In the case of the v. 1. *dvipadanam*, the word *pada* (step) is used in the sense of the word *pada* (foot).--Haradatta.

14. Colebrooke V, Digest 58; Manu IX, 123.]

share of the eldest son is one bull (in case he be born of a later-married wife);

15. (But the eldest son) being born of the first-married wife (shall have) fifteen cows and one bull;

16. Or (let the eldest son) who is born of a later-married wife (share the estate) equally with his younger (brethren born of the first-married wife).

17. Or let the special shares (be adjusted) in each class (of sons) according to their mothers.

18. A father who has no (male) issue may appoint his daughter (to raise up a son for him), presenting burnt offerings, to Agni (fire) and to Pragapati (the lord of creatures), and addressing (the bridegroom with these words), 'For me be (thy male) offspring.'

19. Some declare, that (a daughter becomes) an appointed daughter solely by the intention (of the father).

20. Through fear of that (a man) should not marry a girl who has no brothers.

21. Sapindas (blood relations within six degrees), Sagotras (relations bearing a common family name), (or) those connected by descent from the same Rishi [15. Colebrooke loc. cit.; Manu IX, 124.

16. Colebrooke loc. cit.

17. Colebrooke V, Digest 59. 'After having divided the estate into as many portions as there are wives who possess sons, and having united as many shares

as there are sons (of each mother), let the eldest in each class (of uterine brothers) receive the additional share of one-twentieth and so forth.'--Haradatta.

18-19. Colebrooke V, Digest 225; Manu IX, 130-140.

20. Manu III, 11; Yagnavalkya I, 53.

21. Colebrooke, Dayabhaga XI, 6, 25; Mitakshara II, 1, 18; V, Digest 440. My copies as well as Gimutavahana and Vignanesvara read in the text *stri va*, 'or the wife,' instead of *stri ka*, 'and the wife.' Still the latter seems to be the reading recognised by Haradatta, as he says, 'But the wife is joined together (*samukkiyate*) with all the Sagotras and the rest. When the Sagotras and the rest inherit, then the wife shall inherit one share with them,' &c. Apastamba II, 6, 14, 2; Manu IX, 187; Yagnavalkya II, 135-136.]

(*vaidika gotra*), and the wife shall share (the estate) of a person deceased without (male) issue (or an appointed daughter).

22. Or (the widow) may seek to raise up offspring (to her deceased husband).

23. (A son) begotten on a (widow) whose husband's brother lives, by another (relative), is excluded from inheritance.

24. A woman's separate property (goes) to her unmarried daughters, and (on failure of such) to poor (married daughters).

25. The sister's fee belongs to her uterine brothers, if her mother be dead.

26. Some (declare, that it belongs to them) even while the mother lives.

27. The heritage of not reunited (brothers) deceased

[22. Colebrooke, Mitakshara II, 1, 8, where this Sutra has, however, been combined with the preceding. See also above, XVIII, 4-8; Manu IX, 145-146, 190.

23. Colebrooke V, Digest 341; Manu IX, 144.

24. Colebrooke, Dayabhaga IV, 2, 13; Mitakshara I, 3, 11; II, 2, 4; V, Digest 490; Mayukha IV, 8, 12. See also Manu IX, 192; Yagnavalkya II, 145.

25. Colebrooke, Dayabhaga IV, 3, 27; V, Digest 511; Mayukha IV, 10, 32. 'The fee, i.e. the money which at an Asura, or an Arsha wedding, the father has taken for giving the sister away. That goes after his (the father's) death to the uterine brothers of that sister; and that (happens) after the mother's death. But if the mother is alive (it goes) to her.'--Haradatta.

26. Colebrooke V, Digest 511.

27. Colebrooke V, Digest 424. 'The word "eldest" is used to give an example. (The property) goes to the brothers, not to the widow, nor to the parents. That is the opinion of the venerable teacher.'--Haradatta. Yagnavalkya II. 34.] (without male issue goes) to the eldest (brother).

28. If a reunited coparcener dies (without male issue) his reunited coparcener takes the heritage.

29. A son born after partition takes exclusively (the wealth) of his father.

30. What a learned (coparcener) has acquired by his own efforts, he may (at his pleasure) withhold from his unlearned (coparceners).

31. Unlearned (coparceners) shall divide (their acquisitions) equally.

32. A legitimate son, a son begotten on the wife (by a kinsman), an adopted son, a son made, a son born secretly, and a son abandoned (by his natural parents) inherit the estate (of their fathers).

The son of an unmarried damsel, the son of a pregnant bride, the son of a

twice-married woman, the son of an appointed daughter, a son self-given, and a son bought belong to the family (of their fathers).

34. On failure of a legitimate son or (of the)

[28. Mayukha IV, 9, 15; Manu IX, 212, Yagnavalkya. II, 138.

29. Colebrooke, Dayabhaga VII, 3; Manu IX. 216.

30. Colebrooke, Dayabhaga VI, 1, 17; V, Digest 355; Mayukha IV. 7, 10; Mayukha, 206; Yagnavalkya II, 119.

31. Colebrooke V, Digest 137; Manu IX. 208.

32-33. Colebrooke V, Digest 184 Mayukha IX, 166-178; Yagnavalkya II, 128-132.

My best copy P. inserts another Sutra between this and the following one, etc tu gotrabhagah. 'but these (latter six) belong to the family (only, and do not inherit).'

34. Colebrooke V, Digest 184. The residue of the estate, goes to the Sapindas.

If it is here stated that the son of an appointed daughter receives, even on

failure of a legitimate son, a fourth part of the estate only, that refers to

the son of an appointed daughter of lower caste, i.e. to a son who is born,

when somebody makes the daughter of a wife of lower caste his appointed

daughter, and does that by intent only.'--Haradatta.]

other (five heirs) they receive a fourth (of the estate).

35. The son of a Brahmana by a Kshatriya wife, being the eldest and endowed with good qualities, shares equally (with a younger brother, born of a Brahmani);

36. (But he shall) not (obtain) the additional share of an eldest son.

37. If there are sons begotten (by a Brahmana) on wives of the Kshatriya and Vaisya castes (the division of the estate between them takes place according to the same rules) as (between) the (son by a Kshatriya wife) and the son by a Brahmani.

38. And (the sons by a Kshatriya wife and by

[35. Colebrooke V, Digest 158; Manu IX, 149-153; Yagnavalkya II, 12 5. If the son of a Brahmana by a Kshatriya wife is endowed with good qualities and the eldest, then he shares equally with a younger son by a Brahmani. For the one possesses seniority by age and the other by caste.'--Haradatta.

36. Colebrooke loc. cit. 'What is exclusive of the additional share of the eldest, which has been declared above, Sutra 5, (that) other (part) he shall obtain. The verb must be understood from the context. Regarding a son by a Kshatriya wife who is the eldest, but destitute of good qualities, the Manava Dharma-sastra declares (IX, 152-153), "Or (if no deduction be made)," &c.'--Haradatta. The sense in which the Sutra has been taken above, agrees with the explanation of the Ratnakara adduced in the Digest loc. cit., though the reading of the text followed there seems to be different.

37-38. Colebrooke V, Digest 159. In the Digest V, 160, an additional Sutra regarding the partition between the sons of a Vaisya by Vaisya and Sudra wives is quoted, which, however, is not recognised by Haradatta.]

a Vaisya wife share in the same manner) if (they have been begotten) by a Kshatriya (father).

39. The son by a Sudra wife even, if he be obedient like a pupil, receives a provision for maintenance (out of the estate) of a (Brahmana) deceased without

(other) male issue.

40. According to some, the son of a woman of equal caste even does not inherit, if he be living unrighteously.

41. Srotriyas shall divide the estate of a childless Brahmana.

42. The king (shall take the property of men) of other (castes).

43. An idiot and a eunuch must be supported.

44. The (male) offspring of an idiot receives (his father's) share.

45. (Sons begotten) on women of higher castes (by men of lower castes shall be treated) like sons (begotten by a Brahmana) on a Sudra wife.

[39. Colebrooke V, Digest 169; Mayukha IV, 4. 30. '(The word) of a Brahmana must be understood (from Sutra 35).'-Haradatta.

40. Colebrooke V. Digest 316; Apastamba II, 6, 14, 15.

41. Colebrooke, Mitakshara II, 7, 3; Mayukha IV, 8, 25. 'The expression "of a childless (Brahmana)" includes by implication (the absence) of Sapindas and other (heirs).'-Haradatta. Srotriyas, i.e. Brahmanas learned in the Vedas. See also Manu IX, 188.

42. Apastamba II, 6. 14, 5.

43. Colebrooke V, Digest 335; Manu IX, 201-202; Yagnavalkya II, 140.

44. Colebrooke loc. cit.: Manu IX. 203; Yagnavalkya II. 141.

45. Colebrooke V, Digest 171, 335.]

46. Water, (property destined for) pious uses or sacrifices, and prepared food shall not be divided;

47. Nor (shall a partition be made) of women connected (with members of the family).

48. In cases for which no rule has been given, (that course) must be followed of which at least ten (Brahmanas), who are well instructed, skilled in reasoning, and free from covetousness, approve.

49. They declare, that an assembly (parishad, shall consist) at least (of the ten following (members, viz.) four men who have completely studied the four Vedas, three men belonging to the (three) orders enumerated first, (and) three men who know (three) different (institutes of) law.

50. But on failure of them the decision of one Srotriya, who knows the Veda and is properly instructed (in the duties, shall be followed) in doubtful cases.

51. For such a man is incapable of (unjustly) injuring or (unjustly) favouring created beings.

52. He who knows the sacred law obtains heavenly bliss, more than (other) righteous men, on account of his knowledge of, and his adherence to it.

53. Thus the sacred law (has been explained).

[46. Manu IX, 219. For a fuller explanation of the terms, yoga and kshema, (property destined for) pious men and sacrifices, see Colebrooke, Mitakshara I, 4, 23.

47. Colebrooke, Mitakshara I, 4, 22; V, Digest 367; Mayukha IV, 7, 19.

49-51. Apastamba II, 11, 29, 13-14; Manu XII, 108-113. Three men belonging to the (three) orders enumerated first, i.e. a student, a householder, and an ascetic, see above, III, 2.]