SECTION VI.

ADOPTION.

WHO MAY ADOPT.

Question 1.—Is it necessary that the adopter should be destitute of a son, a son's son, and a son's grandson? Is a daughter's son a bar to the right of adoption?

Answer 1.—If a man have a son, or a son's son, or a son's son's son, he cannot adopt. A daughter's son is no bar to the right of adoption. (All Hindú tribes and Ráins.)

Note.—No Musalmán tribe except the Ráins has any well-defined custom of adoption, and indeed there is hardly any instance of it. What adoptions have taken place have had no clear legal effect.

Question 2.—May a man adopt who has male issue, if such issue be disqualified by any legal impediment (such as loss of caste) from performing the exequial rites?

Answer 2.—A man who has male issue may adopt if such issue be outcaste, or a leper, an idiot, an ascetic, or not heard of for a long time. (All Hindú tribes and Ráins.)

Note.—Little regard is paid to the idea of having some one to perform the exequial rites. A son is adopted to help the father or mother in old age (*tail kare, khidmat kare, kár kare*), to pay the adopter's debts, and continue his name. An adopted son does perform among Hindús the exequial rites (*kiryá karm*) and carry the ashes to the Ganges, but this is not the first thing considered.

Question 3.—Can a man who had already adopted a son adopt another during the lifetime of the first?

Answer 3.—A man who has already adopted a son cannot adopt another during the lifetime of the first. (All Hindú tribes and Ráins.)

Question 4.—Can the following persons adopt:—

(1) a bachelor;
(2) a man blind, impotent, or lame;
(3) a widower;
(4) an ascetic who has renounced the world?

Answer 4.—(1) A bachelor, (2) a man blind, impotent, or lame, (3) a widower, can adopt. (All Hindú tribes and Ráins.)

Question 5.—Can a woman adopt? State whether it is necessary to the validity of an adoption by a widow that she should adopt with the permission, written or verbal, of her deceased husband, or with the consent of his kindred.

Answer 5 (a).—A woman cannot adopt in her husband's lifetime. A widow can, without the permission, written or verbal, of her deceased husband, adopt a son with the consent of her husband's agnates, who will succeed to her deceased husband's estate. (Ráins.)

(*b*) A woman cannot adopt in her husband's lifetime. A widow can, without the permission, written or verbal, of her deceased husband, adopt any one she pleases of her husband's near agnates. She cannot adopt any one else without the consent of her husband's agnates. (All Hindú tribes, except Banya, Rora, Bráhman.)

The same, except that either the permission, written or verbal, of her deceased husband, or the consent of his agnates, seems necessary. (Banya, Rora, Bráhman.)

Note.—This custom practically gives the sonless widow the power of gifting the whole of her deceased husband's estate to one agnate nephew, to the exclusion of all the other nephews.

Question 6.—In the event of the death of a son adopted by a widow with the sanction of her husband, may the widow adopt another person without permission of her husband to that effect?

Answer 6.—If a widow adopt a son and he die, she can, with the consent of her husband's agnates, adopt another. (Ráin, Banya, Rora, Bráhman.)

A widow can, without permission of her husband, adopt a second son, if the son first adopted have died. (Bágrí and Sikh Jats.)

WHO MAY BE ADOPTED.

Question 7.—May a man give in adoption—

(i) his only son;
(ii) his eldest son;
(iii) his brother?

Answer 7.—A man may give in adoption (1) his only son, (2) his eldest son, or (3) his brother. But his only son he can give only to his brother or brother's widow or some near

agnate, and in that case the son generally succeeds to the property of both. A brother cannot give his brother in adoption without the consent of the mother and agnates. (All Hindú tribes and Ráins.)

Question 8.—Must the person adopted be of less than any specific age? If so, up to what age may a person be adopted? Can a person be adopted after tonsure or investiture with the sacred cord in his own family?

Answer 8.—There is no limit of age beyond which a person may not be adopted. A man may be adopted even after he has married. (All Hindú tribes and Ráins.)

Question 9.—Is there any rule by which it is required that the person adopted should be related to the person adopting? If so, what relatives may be adopted? Is any preference required to be shown to particular relatives? If so, enumerate them in order of preference. Is it necessary that the adopted son and his adoptive father should be (1) of the same caste or tribe, (2) of the some *got?*

Answer 9.—(*a*) The person adopted should be of the same family as the adopter or the adopting widow's husband. The brother's sons have the first claim, but the adopter may choose any of them he or she pleases. Failing brother's sons, the agnates have the right to be chosen in order of relationship, the near agnates having the right to forbid the adoption of the more remote. The adopted person must be of a lower generation than the adopter (whether one or two generations lower). The person adopted must be of the same tribe, and (except in the case of adoption of a daughter's son or sister's son) of the same *got* as the adopter or the adopting widow's husband. (All Hindú tribes except Banyas.)

The same, except that when there are no near agnates, a person of another *got* is sometimes adopted. (Banyas.)

(*b*) The person adopted must be a Ráin by tribe and a relative of the adopter. If there be a fit brother's son, he generally has the preference. But there is no rule prohibiting the adoption of a daughter's son or sister's son or wife's nephew, especially if there is no near agnate. (Ráins.)

Note.—When a widow adopts, she is supposed to be adopting a son to her husband, and it is the relationship to him that is considered. The adopted person is called the son of the widow's husband, and succeeds to his property. It is most usual to adopt the husband's brother's son.

Question 10.—Is there any rule prohibiting the adoption of the son of a woman whom the adopter could not have married, such as his sister's son or his daughter's son?

Answer 10.—(*a*) There is no rule prohibiting the adoption of the son of a woman whom the adopter could not have married. A man may, with the consent of his agnates, adopt his sister's son or daughter's son. A widow may, with the consent of her husband's agnates, adopt for her husband his sister's son or daughter's son. (All Hindú tribes.)

There is no rule prohibiting the adoption of a sister's son or daughter's son. (Ráíns.)

Note.—The Ráíns, being a strictly endogamous section of a tribe, allow a sister's son or daughter's son to be adopted more readily than do the other tribes. The Hindú tribes generally have a very strong feeling against allowing land to pass into another *got*, and it is seldom that the agnates allow the adoption of a sister's son or daughter's son who necessarily belongs to another *got*. They have the right to forbid the adoption of a non-agnate.

WITH WHAT FORMALITIES.

Question 11.—Are any formalities necessary to constitute a valid adoption? If so, describe them. State expressly whether the omission of any customary ceremonies will vitiate the adoption.

Answer 11.—The only important ceremony in adoption is the handing over of the adopted son by his father or guardian to the adopter before the assembled kindred, with some words implying that henceforth the adopter and adopted are to consider each other as father (or mother) and son. The kindred are generally feasted, sugar being distributed among them. If the son is a small child, he is placed in the lap (*god*) of the adopter. (All Hindú tribes.)

The same, except that sometimes the kindred are not gathered together, and no feast is given. The best proof of adoption is that the boy lives in the house of the adopter, who arranges for his betrothal and marriage. (Ráíns.)

To adopt-Godlena (to take into the lap).

Question 12.—Do you distinguish between the *dattaka* and *krittima* forms of adoption? If so, what is the difference between them; and what are the formalities appropriate to each?

Answer 12.—The *dattaka* and *kritrima* forms of adoption are not known. (All tribes.)

THE EFFECTS OF ADOPTION.

Question 13.—Does an adopted son retain his right to inherit from his natural father?

Can he inherit from his natural father, if the natural father die without other sons?

Answer 13.—If the natural father die without other sons, the adopted son inherits from his natural father; but if the natural father have other sons, the adopted son does not inherit from his natural father (Ráins, and all Hindú tribes except Khátís.)

The same, except that even if the natural father die without other sons, the adopted son does not succeed to his property, except as the son of his adoptive father. (Khátí.)

Question 14.—Describe the rights of an adopted son to inherit from his adoptive father. What is the effect of the subsequent birth of natural legitimate sons to the adoptive father? Will the adopted son take equal shares with them? If natural legitimate sons be born subsequently to the adoption where the *chúndawand* system of inheritance prevails, how will the share of the adopted son, if any, be computed? Can an adopted son whose tribe differs from that of his adoptive father inherit from him?

Answer 14.—An adopted son inherits from his adoptive father exactly as if he were a natural son, and shares as a son with natural legitimate sons subsequently born to the adoptive father.

GHAR-JAMÁÍ.

Question 15.—When a son-in-law leaving his own family takes up his residence permanently with his father-in-law as *ghar-jamáí*, what will be the effect on the rights of such son-in-law to inherit (1) from his father, (2) from his father-in-law?

Answer 15.—A son-in-law, by living with his father-in-law, neither loses any right to inherit from his own father, nor gains any right to inherit from his father-in-law. (All tribes.)

Note.—Attempts are often made, when there is no son, to give something to a *ghar-jamáí*, but he has no right to inherit, being of another *got*, and the agnates generally oppose such attempts. Sometimes he is given, not a share of the estate, but a field to cultivate. The general reply is that a *ghar-jamáí* may remain in the house so long as the parents live, and they may give him some moveables, but not land; he does not succeed, by right of inheritance, even to moveables. The Lohárs say that if the *ghar-jamáí* be also an agnate nephew, he is sometimes allowed to succeed. (See Section V, answers 16 to 20, and 26, 27.)

SECTION VII.

BASTARDY.

Question 1.—Where a marriage has taken place between parties whose marriage, either by reason of relationship, or previous marriage, or difference of caste, or on any other ground, was not permissible, will the offspring of such marriage be considered legitimate or illegitimate?

Answer 1—

Relationship.—Where a marriage has taken place between two persons so related to each other that their marriage was not permitted by Muhammadan Law, the marriage is void and the offspring illegitimate. If the marriage was permitted by Muhammadan Law, it holds good, and the offspring are legitimate. (All Musalmán tribes.)

Note.—No instance can be given, either among Hindú or Musalmán tribes, in which a marriage took place between two persons too closely related to each other. Usually so much care is taken in comparing the *gots* of the parties that a mistake can hardly be made; but some of the tribes are not very particular about the distant *gots*. (See Section III, answer 1.)

Previous marriage.—Previous marriage of the woman with another man still alive does not necessarily make the offspring illegitimate. (See Section III, answer 18.) (Bágrí Játs.)

Difference of caste.—Where a marriage has taken place between two persons whose marriage by reason of difference of caste was not permissible, the marriage is void and the offspring illegitimate. (All Hindú tribes.)

Note.—See Section III, answer 3. When a Hindú of any tribe takes into his house a woman of a low caste, such as a Chamár or Chúhra, or is deceived into marrying such a woman by her being put forward as a woman of his own caste, he is, on the fact being discovered, made to turn her out, and her children do not inherit.

Among the Ráíns there are few instances in which the offspring of a woman not of pure Ráín blood, though legitimate according to Muhammadan Law, did not inherit a full share of the father's estate. (Ráíns.)

Among the Musalmáns generally, though the offspring of two persons lawfully married by *nikáh* cannot be considered illegitimate, it is doubtful whether difference of tribe does not in certain cases deprive such offspring of the right to succeed the father. (Musalmán tribes.)

See Section III, answer 3.

Question 2.—State generally what are the rights of illegitimate children to inherit the property of their natural father.

Answer 2.—Illegitimate children have in no case any right to inherit the property of their natural father. (All tribes.)

Question 3.—Are illegitimate children, who do not inherit, entitled to maintenance as against the heirs of their deceased father?

Answer 3.—All tribes say they have no instances of illegitimate children, but that an illegitimate child would not be entitled to maintenance as against the heirs of his deceased father. Some say he would ordinarily be maintained until he grew up.

Question 4.—Are sons, the offspring of a marriage by the *karewa*, *karáo*, or *chadar-dálna* form, entitled to inherit equally with sons the offspring of a regular marriage?

Answer 4.—Sons the offspring of a *karewa* marriage are entitled to inherit equally with sons the offspring of a regular marriage (*byáh*). (All tribes allowing the remarriage of widows.)

See Section III, answer 18.

SECTION VIII.

WILLS AND LEGACIES.

There is no custom by which a father makes by word of mouth or in writing a disposition of his property to take effect after his death. (All tribes.)

Note.—Except among the Ráíns and Musalmán Rájputs, there is not a single instance of anything like a will or legacy. Among the Ráíns there are a very few instances of a father's having in his lifetime, by word of mouth or in writing, made a disposition of his property, to take effect after his death; but in all these cases a reasonable disposition was made for good cause, and the agnatic heirs agreed to it. There is no instance of a father's having made an unreasonable disposition of his property, or of such a disposition having prevailed against the objections of the agnatic heirs. Among the Musalmán Rájputs there is only one instance of a genuine will, and that was not followed exactly by the sons in their division of the property, though accepted by them as a guide. No other tribe had any instance of a will. Sometimes the father, before his death, says how he wishes his property to be distributed and his daughters to be married, but this is done informally, and the sons consider the expression of his wishes as advice only, not as a command to be obeyed. With very few exceptions, all the tribesmen assembled for attestation of their custom said that, whatever change a father wishes to make in the devolution of his property prescribed by the ordinary rules of inheritance, he must carry out in his own lifetime, and that an expression of his wishes as to the disposition of his property, if not carried out in his lifetime, has no force after his death.

As regards the whole agricultural population of Sirsa, and, I may add, of Gurgaon, nothing can be further from their ideas and practice than the institution of the Will. The introduction of this new institution would be likely to upset the whole family and village system. If it is to be introduced, it should be done by positive enactment. Nothing is more contrary to the truth than to say that it is supported by tribal custom.

SECTION IX.

SPECIAL PROPERTY OF FEMALES.

Except perhaps among the Ráins, there is in no tribe any custom by which certain property is considered as the special and peculiar property of a woman, subject in a peculiar way to her control, and following special rules of inheritance. All property given to a woman, even property gifted to her by her father's family, is considered as given to her husband, and is merged in his property and comes under his control. Even clothes and jewels presented to the wife are under the husband's control, but he ought not to part with such articles except in case of necessity. All such property is subject to no special rules of inheritance, but devolves on the sons or near agnates of the husband, with the rest of the husband's property. When land, by gift from the father or consent of the agnates, devolves on the daughter, it goes on her death to her sons or husband, and, failing them, probably returns to her father's agnates. (See Section V, answers 16 to 19, and 27.)

The peculiar case of a widow's remaining after re-marriage in possession of her deceased husband's estate has been discussed in Section V, answer 15.

As the Ráins give more importance and authority to their women than do any other tribe, I give below their answers to the different questions.

Question 1.—Describe *stridhan*; and specify the different descriptions of property that come under that designation. If only such property as is acquired by gift is subject to the special rules relating to *stridhan*, state whether the gift must be made by particular persons or at particular times; and if so, by what persons, and at what times.

Answer 1.—A woman has special control of property given her by her parents or brothers at marriage or before or after it, and of property specially given her by her husband. (Ráins.)

Question 2.—Define the extent of the power of the husband over the *stridhan* of his wife. Can he consume or alienate it by sale, gift, or mortgage? If so, under what circumstances?

Answer 2.—The wife herself disposes of the property

over which she has special control, and the husband cannot without the wife's consent alienate such property by sale, gift, or mortgage. (Ráíns.)

Question 3.—Can a married woman alienate her *stridhan* by sale, gift, or mortgage? Is there any distinction as to land given to her by her husband?

Is there any distinction if there be or be not sons, or if the property be acquired by herself?

Answer 3.—A married woman cannot, without her husband's consent, alienate by sale, gift, or mortgage the property under her special control. (Ráíns.)

Question 4.—Can a widow alienate her *stridhan* by sale, gift, or mortgage?

Answer 4.—A widow can alienate by sale, gift, or mortgage property given her by her parents or brothers. (Ráíns.)

Note.—It is not quite clear that she can alienate land so given.

Question 5.—Upon whom does the *stridhan* of an unmarried woman successively devolve?

Answer 5.—If an unmarried woman have any special property, it on her death goes to her father; failing him, to her mother; failing her, to her brothers. (Ráíns.)

Note.—There can very seldom be any case of this nature.

Question 6.—Upon whom does the *stridhan* of a married woman successively devolve—

(1) If it were given at the time of her nuptials?

(2) If it were given by the father, but not at time of nuptials?

(3) In all other cases?

Answer 6.—The special property of a married woman, so far as it consists of moveables, devolves successively on her husband, then her sons, then her daughters and their descendants. If it consists of land gifted by her father or brothers, it goes to her sons, and failing sons, it returns to her father's agnates. (Ráíns.)

See Section V, answers 19 and 27.

Question 7.—When property has once devolved, in accordance with the rules of devolution, if any, peculiar to *stridhan*, does it continue so to devolve; or is it then subject to the ordinary rules of inheritance?

Answer 7.—When property has once devolved as the special property of a woman, it becomes subject to the ordinary rules of inheritance. (Ráíns.)

SECTION X.

GIFTS.

GIFTS DESCRIBED.

Question 1.—State the facts necessary to constitute a valid gift. Can a gift be conditional or implied? Is delivery of possession essential? Must the gift be made in writing?

Answer 1.—(*a*) A gift need not be made in writing. As a rule, delivery of possession is essential, and a gift must not be conditional or implied. (Bágrí and Sikh Jats, all Musalmán tribes.)

(*b*) A gift of immoveable property must be made in writing, but no written deed is required for a gift of moveable property. Delivery of possession is essential, and a gift must not be conditional. (Banya, Rora, Bráhman.)

Question 2.—Is entire relinquishment by the donor essential to the completion of a gift of property of any description (1) by a wife to a husband, (2) by a father to his minor child?

Answer 2.—Ordinarily there is no distinction between the property of a wife and that of her husband, or between the property of a father and that of his minor child; and there is no custom of gifts made by a wife to a husband or by a father to his minor child. (All tribes.)

DEATH-BED GIFTS.

Question 3.—Are there any special rules relating to death-bed gifts? Can a man who is suffering from a death-disease make a gift to his relations, male or female, or in charity? If so, can such gift affect the whole or a part only of his property? If a part only, how much? If some heirs consent and some dissent, is the gift good? If so, to what extent?

Answer 3.—There are no special rules relating to death-bed gifts. It is common for a man when dying to give money, grain, or other moveables to Bráhmans or to the poor, but not so much as to cause injury to the heirs. (All tribes.)

GIFTS OF JOINT PROPERTY.

Question 4.—Do you observe the rules of the Muhammadan Law with regard to *mushaa?* Is the gift of an undivided part of a thing valid, if such thing admits of partition consistently with the preservation of all the uses which might be made of it before partition?

Answer 4.—The rules of the Muhammadan Law with regard to *mushaa* are not known. A gift of an undivided share in common property is valid. (All tribes.)

Note.—It is common in this district for a man who has separately acquired a share in a village to gift undivided shares to his agnates. This is generally done by applying to the Revenue Court for mutation of names in their favour. Sometimes the agnates are actually in possession, but the entry of proprietary right had been made in the name of one of the family only, and the member whose name was recorded applies for the entry of the names of his relations. But generally in such cases the person in possession gifts to the agnates shares which they could not claim by law, and which are partly founded on relationship, partly determined by circumstances or by agreement. Such gifts were very numerous at the Regular Settlement, and several of this nature have been made during the present settlement operations.

Question 5.—Can a co-sharer in joint-property make a gift of his share without the consent of the other co-sharers?

Answer 5.—(*a*) A co-sharer in joint-property cannot make a gift of his share without the consent of the other co-sharers, unless it be a gift to his near agnates who are equitably entitled to it as against the co-sharers. (All tribes except Ráins.)

(*b*) A co-sharer in joint-property cannot make a gift of his share without the consent of the other co-sharers. If they make objections he should obtain partition and then make the gift. (Ráins.)

Joint-property = Sir = jáedád shámilát.

Question 6.—If a gift, whether of divided or of undivided village land, be made to a person who is not a member of the village community where the land is situate, will such gift carry with it the right to share proportionately (1) in the *shámilát*, (2) in the miscellaneous village income?

Answer 6.—If a gift, whether of divided or undivided village land, be made to a person who is not a member of

the village community where the land is situate, such gift, in the absence of express conditions, will carry with it the right to share proportionately (1) in the *shámilát* and (2) in the miscellaneous village income, if it be made as a gift of the whole land of the giver, or of a definite share of it, but not if it be made as a gift of a certain defined area of land, as is usually the case in a gift of land for charitable or religious purposes. (All tribes.)

Note.—For instance, if a man gifts half his land to his brother, the gift carries with it a share in the village common land and common income; but not if he gifts ten bighas to a Bráhman.

Gifts to Relatives.

Question 7.—Can a father make a gift to his daughter by way of dowry (*jahez*) out of his property, moveable or immoveable, ancestral or acquired, whether or no there be (1) sons, or (2) near kindred; and whether or no the sons or near kindred, as the case may be, consent?

Answer 7.—A father cannot, without the consent of the sons or near agnates, make a gift by way of dowry (*dát* or *dájá*, or if a horse or camel, *múrí*) to his daughter out of his immoveable property, ancestral or acquired; but he can, without the consent of the sons or near kindred, make such a gift out of his moveable property, ancestral or acquired. It is common to give in dowry to a daughter, cattle, horses, camels, utensils, furniture, jewels, or clothes, but not land. The power of the father to give away moveables is almost unrestricted, but he should not give away an unreasonably large proportion of the family estate. (All tribes.)

Question 8.—If the custom of making dowries to daughters obtains, state upon whom the right of inheritance to the property subject of a gift of this nature successively devolves.

Answer 8.—There is no special rule of inheritance for property given in dowry to a daughter. It belongs to the husband's family and is inherited by them along with the rest of their property. (All tribes except Ráins.)

Note.—Whatever is given as dowry with the girl at marriage is merged in the joint property of the husband's family; and ordinarily whatever is given after the marriage by the girl's father is considered to belong to her husband individually.

For the custom of the Ráins, see Section IX.

Question 9.—Define also the power of the daughter or of her husband over such property as regards (1) control, (2) alienation.

Answer 9.—Property given at marriage as dowry becomes merged in the joint estate of the husband's family and under their control. (All tribes except Ráins.)

For the custom of the Ráins, see Section IX.

Question 10.—Will the power of a father to make the gifts described in question 7 be affected by the custom of *ghar-jamáí;* that is, if his son-in-law and daughter live with him? If so, explain in what way. Can any relative prohibit a gift of property of any description to a son-in-law resident with his father, to a married daughter resident with her father, or to the children of such persons? Will the rights of the son-in-law as against the estate of his natural father affect his capacity to receive a gift from his father-in-law?

Answer 10.—The power of the father to make such a gift is not affected by his having his son-in-law and daughter living with him. The rights of the son-in-law as against the estate of his natural father do not affect his capacity to receive a gift from his father-in-law. (All tribes.)

See Section VI, answer 15.

Question 11.—Can a father make a gift of the whole or any specific share of his property, moveable or immoveable, ancestral or acquired, to his daughter, otherwise than as her dowry, to his daughter's son, to his sister or her sons, or to his son-in law? Is his power in this respect altered if he have (1) sons, (2) near kindred and no sons? If the consent of the near kindred is essential to such gifts, state the degree of kindred towards him in which the persons must stand by whom such gifts can be prohibited.

Answer 11.—(*a*) A father cannot, without the consent of his sons or near agnates, make a gift of any part of his immoveable property, ancestral or acquired, to his daughter, daughter's son, sister, sister's son, or son-in-law. He can, without the consent of the sons or near agnates, make a gift to any of those relatives out of his moveable property, ancestral or acquired. The power of the father to give away moveables is almost unrestricted, but he should not give away an unreasonably large proportion of the family estate. (All tribes except Ráins.)

(*b*) A father can, without restriction, and without the consent of the sons or agnatic heirs, make a gift out of his

moveable property to his daughter or sister, or their children; and with the consent of the agnatic heirs, the father sometimes makes a gift of land to persons so related to him. (Ráins.)

Note.—The Ráins wish to assign great power to the father in the disposition of his property, even against the wish of the agnates, and say that the agnatic heirs cannot object to a gift even of land made to such non-agnate relatives for reasonable cause. Most of the tribes say that the father has full power to gift away the moveable property as he likes, and that not even the sons have any right to object, but he cannot gift away land or houses. There are very few instances in the district of a father's having given land to a daughter or other non-agnate relative, and there is nothing to show clearly within what limits the agnates are entitled to object to such a gift of land. Many such gifts are gifts, not of proprietary right in land, but of occupancy right in a field only. The Musalmán Jats and Rájputs at first said that a father might gift the occupancy right in some of his land to a daughter or son-in-law, but not land in proprietary right. Then, after consultation, they said that if the father had a large estate, he might gift not more than a hundred bighas in proprietary right to his daughter, but he must not gift her a share in his whole estate. They were evidently affected by the knowledge that under Muhammadan Law a daughter is entitled to a share. Among the Sikh Jats, it is doubtful whether a father can gift land even to a son or brother without the consent of the other heirs whose rights are thus infringed. As a rule, each gets, after the death of the father, the share of land to which he is entitled by the ordinary rules of inheritance. The instances in which the father has attempted to interfere with this disposition are rare, except where the donee was merely put in possession of the share to which he was equitably entitled.

Gifts to Non-relatives.

Question 12.—Give the rules regarding the power of a proprietor to make gifts of his property, moveable or immoveable, ancestral or acquired, to persons who are not related to him, or in charity. Is the consent of the sons, if such there be, or of the near relatives, necessary? If of the near relatives, who are considered such? How does (1) the absence of sons, (2) the circumstance that the property is divided, affect the power of the proprietor to make such gifts?

Answer 12.—A proprietor can, without the consent of his sons or near agnates, make a gift to persons who are not related to him, in charity or otherwise, of any part of his moveable property, ancestral or acquired, whether or no there be sons alive, and whether the property be divided or not. (All tribes.)

(*a*) A proprietor cannot, without the consent of his sons or near agnates, make a gift to persons who are not related to him of any part of his immoveable property, ancestral or acquired, whether it be divided or not, except a small area of land of reasonable amount gifted for religious purposes. (All Hindú tribes.)

(*b*) A proprietor can for good reason make a gift of a small piece of land or of occupancy rights in land to a non-relative, without consulting the sons or near agnates, but the gift must not be unreasonable in amount. (Musalmán Jats and Rájputs.)

(*c*) A proprietor does not gift land to strangers or in charity. (Bodlas, Chishtís, Wattus, Ráins.)

Note.—Among Hiudú tribes it is common to gift a few bighas to a Bráhman for religious purposes (*punarth*). Such a gift is called a *dohlí* or *punkhátá*, and is generally given rent- and revenue-free, the giver paying the revenue. In the ceremony of gift (*sankalp*) the donor hands over some rice, bájra, or barley with a copper coin (*paisá*) to the donee saying, "As an offering to the divine Krishn (*Srí krishnárpan*) I have given you so many bighas of land." Such gifts are common among the Bágrí Játs and less common among the Sikhs, who say that a son could forbid the gift of a *punkhátá* made without good reason.

Among the Musalmán Jats and Rájputs a similar custom prevails of gifting a small piece of land in proprietary or occupancy right to a Maulvi, Saiyad, Náí, &c. Usually the whole village, or the whole *patti*, consult together and make the gift out of the common land. If given for religious purposes, it is given *Khudá ke wáste*, by way of *bakhshish*. The sons or agnates can forbid the gift of an unreasonably large amount of land to a non-relative.

There is no prescribed degree of relationship which entitles a near agnate to object to such a gift.

SECTION XI.

PARTITION.

WHERE THE ANCESTOR SURVIVES.

Question 1.—Whose consent is requisite to the partition of a joint holding? Define the conditions under which such a partition can take place. Is it necessary that the wife or wives of the proprietor should be past child-bearing? If so, to what description of property does this restriction apply?

Answer 1.—A proprietor can during his lifetime, whether his wife be past child-bearing or not, distribute the joint holding as he pleases, but the distribution, if unequal, will not necessarily hold after his death. Where the partition made by the father was intended to be equal and final, it will generally hold after his death, more especially as regards the moveable property. (All tribes.)

Note.—Among all tribes the chief classification of property is into moveable and immoveable. Moveable property is called *dhan* or *mutthí ká mál* (what can be given with the hand) or *jáedád manqúla*, or sometimes *mál*, but *mál* is ordinarily applied, especially among the Musalmáns, to the cattle, horses, and camels, *i.e.*, the animal property. Immoveable property is *jáedád ghairmanqúla*, or more commonly simply *zamín* and *ghar*, or among the Ráins, who have often good brick houses, *havelí*. Among the Bráhmans there is a peculiar form of property known as the *birt*, the right of ministering to certain clients (*jajmán*) among the other tribes, which is inherited like other property, and in customs of inheritance, gift, and partition, is treated much as immoveable property; the father has no power to alienate it, and each son is on partition entitled to his full share of it, the clients of the family being divided equally among the sons. Among the Banyas and Roras the good-will of a business handed down from father to son is an important part of the family property, and the powers of the father regarding its disposal are restricted in a manner similar to the restrictions imposed among agriculturists on the transfer of ancestral land. These commercial classes divide property into ancestral (*jaddí* or *dáda Iláhí*) and self-acquired (*paidá*

karda or *maksúba*), and while the father may at partition distribute his self-acquired property, moveable or immoveable, among his sons as he pleases, he is bound to give them equal shares of the ancestral property, moveable and immoveable. Among the agriculturist tribes, on the other hand, the division of property into ancestral and self-acquired is hardly known, and greater restrictions are imposed on the alienation of self-acquired immoveable property than of ancestral moveable property.

Among the Bágrí Játs and Sikh Jats, it is not very common for the father to make a partition of the estate during his lifetime and to separate his sons from the joint family. Usually they all live in common until the father's death, and even where one son does separate off, he gets a separate share of the household furniture, &c., only, and continues to cultivate the joint holding in common with the rest of the family. In any case the land is divided equally on the father's death. Among the Kumhárs, Khátís, Lohárs, Chamárs, Chúhras, Báwariyas, and Herís the custom is similar, but as the sons grow up and marry, they ordinarily separate off from the joint family and get a separate undefined share of the moveables; on the death of the father and mother they divide all equally. According to the Chamárs and Chúhras, on the father's death each son can claim his full share of the common property; indeed, some say that if the father, making a partition in his lifetime, give one son less than his share, the son can require the father to give him his full share. According to the Báwariyas and Herís, the parents usually retain for themselves at partition a share equal to that of a son, and keep one son, generally the youngest, joint with them. On the death of the last surviving parent, the parent's share is divided equally among all the sons, except when the joint son has not yet been married, in which case he gets a larger share in order to pay the expenses of his marriage.

Among the Banyas and Roras, the sons ordinarily remain joint with the father so long as he lives, and the whole property is held in common. When a son separates off, the father gives him as much as he pleases of the moveable property, and the immoveable property is generally still held common. The father may, whether his wife be past child-bearing or not, divide the common property among his sons, but cannot distribute the ancestral property, moveable or immoveable, unequally. The self-acquired property, moveable or

immoveable, he may distribute unequally among his sons. He may keep any share he pleases for himself, and remain joint with any of the sons. If at partition it be intended that all the sons should partake of the father's share on his death, then all the sons share in paying the funeral expenses of the father; but if the partition was final, the son with whom the father remained associated pays all his funeral expenses and keeps the father's share.

Among the Bráhmans, when a father divides the family property among the sons during his life-time, he may not divide it unequally; all the sons are entitled to share equally all the property, moveable and immoveable, ancestral or acquired. But the father may retain any share for himself, and live jointly with one son; on the death of the father, however, all the sons join in paying his funeral expenses and share equally the father's portion of the estate, the son who lived associated with the father taking only an equal share with his brothers. If a son is born after partition, he takes the father's share if that represents a son's share of the whole estate, otherwise he is entitled to have a share of the whole equal to those of his brothers.

Among the Ráíns, the general custom is that, when the sons grow up and marry in the father's lifetime, he gives them a separate house and a separate undefined share of the moveable property, and keeps the youngest son living jointly with himself. On the father's death, his house and remaining moveables go to the son who was living jointly with him, and the other sons make no claim to them. If the father at partition kept a share of the land to himself, generally the sons divide equally that share of the land. But sometimes the father, for some special reason, gives the younger son a larger share of the land; for instance, if the younger son paid more attention to the father than did the other sons, or if his mother and sisters live with him, or if he alone undertakes to pay the father's debts. In such a case the father generally gives some particular cultivated field to the favoured son, and all the rest of the land is divided equally among the sons. When the father had some good reason for such an unequal division, the sons generally acquiesce in it and maintain it even after the father's death, more especially if the father had it recorded in writing. If there was no special reason for an unequal division, the land is, on the father's death, divided equally among the sons. It is not necessarily the youngest son who thus remains joint with the father and gets a larger

share. It does not depend upon age, but upon the living associated with the father, only, as the elder sons are generally first married and separated off, it is most commonly the youngest son who is left joint with the father. The father cannot altogether exclude a son from the inheritance, and must give him approximately his full share of the family land, but short of that he has great power in distributing the family property among the sons.

Among the Musalmán Rájputs and Jats, the custom is much the same as that of the Ráins. Some say that a father may divide his property as he pleases among the sons, but he must do so in his lifetime, and ordinarily should have the division recorded in the Government records. Others, who seem to represent the feeling of the majority, say that while the father may do as he pleases in his lifetime, all the sons are entitled on his death to share his land equally; and, no doubt, this is always done. There are a few instances in which the father has, for special reasons, given one son a larger share than the others, but it is explained that in those cases the property had been acquired by the father himself, and that the family recognised the special reasons as sufficient.

Among the Wattus, when the father divides his property in his lifetime, he generally keeps the land still entered in his own name, and allows his sons simply to take their share of the produce, or to cultivate their share of the family holding separately. He divides all the cattle and out-of-door moveables, and often the furniture, clothes, utensils, &c., except clothes and jewels given to one son's wife specially. The separated son has a house of his own and enjoys the profits of his own labour.

Such partitions in the father's lifetime are common among all tribes, and seem a sort of compromise between the archaic joint-family system and modern individualism.

Question 2.—Are the sons entitled to claim partition as a matter of right?

Answer 2.—During the father's lifetime, the sons cannot, as a matter of right, claim partition, whether of ancestral or acquired property. (All tribes.)

Question 3.—Can the father exclude one or more sons from their shares, or otherwise make an unequal distribution? If so, is there any distinction as regards the moveable or immoveable, ancestral or acquired, property of the father?

Answer 3.—A father can in his lifetime make any distribution he pleases of his property, moveable or immoveable, ancestral or acquired, and even exclude one or more sons from their shares; but on his death all the sons become entitled to share the immoveable property according to the rules of inheritance. If the father have, intentionally and for some good reason, made an unequal distribution, it is sometimes allowed to stand; and more regard is paid to the equality of shares in the land than in the moveable property. Ordinarily, when the father distributes the immoveable property in his lifetime, he makes the division equally and fairly. (All tribes.)

(See *answer 1, and Section V, answer 3.*)

Question 4.—Are the wives, whether childless or otherwise, entitled to share at partition?

Answer 4.—A wife, whether childless or otherwise, is not entitled at partition during her husband's lifetime to a separate share. (All tribes.)

Note.—She ordinarily remains with her husband, and is maintained out of the share he has reserved for himself.

Question 5.—How many shares may a father reserve to himself at partition?

Answer 5.—A father may at partition reserve to himself as many shares as he pleases. Usually he reserves for himself and his wife a share equal to that of a son. (All tribes.)

Question 6.—What is the effect of the birth of a son after partition? Does such birth entitle the father to cancel the partition? If the father have reserved one or more shares for himself, will such shares devolve exclusively on the son born after partition?

Answer 6.—If a son be born after partition, the father may give him his share out of the partition he has reserved for himself, or if he has reserved no share, may cancel the former partition in favour of the new-born son. In any case the son born after partition is entitled to as much of the whole estate as if he had been born before, and to no more. If the father have reserved to himself more than a son's share, the son born after partition does not inherit the whole of the father's portion, to the exclusion of the sons born before partition. (All tribes.)

Among the Heirs after succession.

Question 7.—Can any one of the persons upon whom the estate devolves, irrespective of the sex of such person or of the relationship in

which such person stood to the deceased, claim partition as a matter of right? State particularly whether the widow or sister or unmarried daughters can claim partition. Does the right of the widow to claim partition depend upon her being childless or otherwise?

Answer 7.—Any one of the persons upon whom the estate devolves, irrespectively of the sex of such person, or of the relationship in which such person stood to the deceased, can claim partition as a matter of right. A widow, whether childless or not, a sister or unmarried daughter, can claim partition of her share, if any. (All Hindú tribes and Ráins.)

The same, except that a widow should not, unless unjustly treated, claim separate possession of her share, but should be content with her share of the income of the common property. (Bodlas, Chishtís, Wattus, and Musalmán Jats and Rájputs.)

Question 8.—If partition be made, can the widow claim a share? If so, what share; and on whom will it devolve after her death?

Answer 8.—(*a*) If a partition be made, the widow of a sonless sharer can claim her husband's share to be held by her for her lifetime; on her death, it reverts to her husband's agnates. See Section V, answers 10 to 15. (All tribes.)

(*b* If the deceased have left a sonless widow besides sons by another wife, the sonless widow takes for her lifetime a share equal to a son's share, and on her death it goes to the sons. (Bodla, Chishtí, Wattu, Chamár, Chúhra, Báwariya, Herí).

If the deceased have left a sonless widow besides sons by another wife, the sonless widow sometimes takes for her lifetime half the whole estate of the deceased, especially if she have daughters to bring up and marry, sometimes only a share equal to a son's share. In either case her share reverts to the sons on her death. (Ráin, Musalmán Jat and Rájput, Kumhár.)

If the deceased have left a sonless widow besides sons by another wife, the sonless widow sometimes gets a share of the land equal to the share of a son for her life, but more often gets only enough land for her maintenance, or simply enough of the produce of the common holding to maintain her comfortably. In either case her share goes to the sons on her death. (Sikh Jat.)

If the deceased have left a sonless widow besides sons by nother wife, the sonless widow does not get any separate

share of the property, but gets maintenance from the sons. (Bágrí Játs, Suthár, Banya, Rora, Bráhman.)

(*c*) If the deceased have left sons and their widowed mother, the mother inherits no share, and although entitled to be maintained, can claim no share in case of partition. Sometimes, however, a separate share of the moveables equal to that of a son is given her for her lifetime. (Bodlas, Chishtís, Lohárs.)

Generally, when partition takes place after the death of the father, no share is set apart for the mother. She usually lives in the father's house with the youngest son, and all the sons set apart for her maintenance some land or some portion of the produce of the family holding, generally equal to a son's share, and this is on her death divided among all the sons. This is, however, a private arrangement, and no land is recorded in the mother's name. (Ráíns, Wattus.)

Usually, when the property is divided after the death of the father, a share equal to that of a son is kept separate for the mother, who resides with one of the sons. He on her death pays her funeral expenses and takes her share of the moveables. If she does not live with one son in particular, all her sons on her death share her funeral expenses and her moveables equally. A separate share of the land is not entered in the mother's name, but a share of the produce of the land equal to that of a son is generally given her. (Musalmán Jats and Rájputs, Kumhárs.)

When the property is divided by the sons after the death of the father, they commonly set apart a portion of the family holding for the support of their mother until her death, when the sons inherit it equally. This is sometimes an arbitrary area of land, sometimes a share equal to a son's. The mother can at partition claim a separate portion of this description. (Sikh Jat.)

The mother is entitled only to maintenance from the sons, not to a share of the land. At partition the son with whom the mother lives sometimes gets rather more than the others, but no defined share is set apart for the mother. (Khátís and Suthárs.)

Question 9.—Must property of the following descriptions be brought into partition:—

moveable;
immoveable;
ancestral;
acquired;

recovered;
nuptial presents;
inherited from the maternal grandfather;
inherited from the father-in-law?

If acquired or recovered property is brought into partition, does the person who made the acquisition or recovery get any compensation? If so, in what way?

Answer 9.—When an estate has been held jointly by a father and his sons, and is distributed amongst them upon his decease, all the sons share in all the joint estate, moveable or immoveable, ancestral or acquired, except jewels and clothes acquired by one of the sons from his mother's or wife's relatives. (Bodlas, Bágrí Játs, Wattus, Banyas, Roras, Bráhmans.)

The same, except that all moveable property, including horses, cattle, &c., received by one son from his mother's relatives, or, after his marriage, from his wife's relatives, is exempt from distribution. (Chishtí, Bishnoi Ját.)

Note.—The Bodlas say that until about 15 years ago they too exempted from distribution cattle, horses, &c., received from the relatives of the wife or mother of one son, but that now the custom is to divide all such cattle, &c., but not jewels or clothes. The reason for the exemption of such property is that the relatives of the wife or mother are more ready to give presents when they know that they will not be swallowed up in the joint estate, but remain with the individual for whom they are meant.

If the sons had separated off in the father's lifetime,—*i.e.*, had separate houses and fireplaces, and separate possession of a share of the land or its produce, though the proprietary right may still have remained vested in the father,—then each son keeps whatever he may separately acquire, even on a division of the common land on the father's death. If the sons all lived jointly with the father, and on his death the common property be divided, then each son keeps whatever he may have received from his mother's relatives, or, after marriage, from his wife's relatives, whether land or moveables; and all the rest of the common property, whether it be ancestral or acquired by the use of the common property, is brought into division. (Ráins, Musalman Jats and Rájputs.

Among the Musalmán Jats and Rájputs great regard is paid to the *nyondara*, which is the duty of subscribing towards the expenses of friends' weddings. When a man is about to have a wedding in his family, he sends round a

servant (*kammi*) to inform his friends of the fact. Each of them brings a subscription proportioned partly to his means and partly to the amount of the subscription given at the last wedding in his family by the family now calling for subscriptions,—*e. g.*, if he received Rs. 20, he may repay Rs. 15 or Rs. 30, according to circumstances. The *nyondara* is not at all confined within the limits of the tribe; the connection is kept up with all friends and acquaintances,—Játs, Banyas, &c. It is incumbent on a man to subscribe to the wedding expenses of those families who have subscribed to those of his family; and the attesting headmen all wished it declared that this duty may be enforced by the civil court, and that limitation should begin to run, not from the date of the subscription last paid, but from the date of the first neglect to pay a subscription at the time it became due by custom. It is a sort of loan without interest, and somewhat resembles the European custom of interchange of marriage presents. The body of friends with whom these subscriptions are interchanged is called the *nyondarí* or *mel*, and varies as new friendships are formed or old acquaintances drop off. The names of those subscribing to any marriage and the amount of their subscriptions are noted at the time, and the record is kept by the family which is bound to reciprocate by subscribing similar sums at suitable opportunities. The subscriptions sometimes amount to Rs. 1,000 or more; the burden of repaying them is therefore considerable, and is taken specially into account at the partition of the family property.

Ordinarily, at the division of the common property, each son keeps all jewels, clothes, and vessels which have at any time come from the house of his wife's father. But all other property, such as cattle, which came from the wife's father of one of the sons at his betrothal or marriage, is considered the common property of the whole family and is divided; while all property of the kind which came from the family of one son's wife *after* his marriage (*e. g.*, at the *mukláwa*) belongs to him alone and is not divided.

Among the Sukhera Musalmáns it is common for the father in his lifetime to separate off the elder brothers, giving them a house and a fair but undefined share of the moveable property, and to keep the youngest son living joint with him. If on the father's death the youngest son agrees to accept the burden of his father's debts and of repaying his elder brothers' *nyondara* subscriptions, he is allowed to

retain possession of his father's house and moveable property; but if he requires all the brothers to share the burden of the father's debts and the family *nyondara*, then they are entitled to share the father's house and moveable property with him.

Among the Joiyas and Bháneke Musalmáns, each son, when he separates from his father, gets the list of subscriptions paid at his marriage which he is bound to repay. On the father's death, the sons all share the land equally, but are entitled to share in the father's moveables only if the joint son requires them to share the father's debts and funeral expenses. If the associated son pays all those debts and expenses, he retains the whole of the father's moveables. (Musalmán Jats and Rájputs.)

When an estate has been held jointly by a father and his sons, and is distributed amongst the sons on the father's decease, all the sons share in all the joint estate, moveable or immoveable, ancestral or acquired, except jewels and clothes acquired by one of the sons from his mother's relatives or from his wife's relatives at any time after the marriage ceremony (*byáh*). The jewels, &c., received with the bride at the marriage ceremony go into the joint estate and are divided. The presents which come with the bride at the *mukláwa*, or are given her afterwards by her parents, are considered to belong to her and her husband alone. (Sikh Jat, Kumhár, Khátí.)

The same, except that property given at the marriage of one son by his wife's family is not brought into partition, but remains with that son. (Lohár.)

Note.—The father's liabilities must be divided as well as his assets, and sometimes a son who assumes more than his share of the father's debts or funeral expenses is allowed to take more than his share of the moveable property or (much more rarely) of the land.

When a father in his lifetime distributes the joint estate among his sons, he generally follows the principles stated in this answer.

EFFECT OF PARTITION BY THE FATHER ON INHERITANCE.

Question 10.—Has a son, who remains associated with his father after partition to the remaining sons, the right to exclude them from inheriting the share or shares reserved by the father?

Answer 10.—A son who remains associated with his father after partition to the remaining sons generally retains

the moveables he held joint with his father, but cannot exclude the remaining sons from inheriting the share or shares of the immoveable property reserved by the father. If the separated sons share the father's debts, they are entitled to share his moveables; and if the joint son accepts the whole burden of the father's debts, he keeps all the father's moveables. Usually all the sons, separated and associated, join in paying the funeral expenses of the father. (All tribes.)

Note.—For further particulars, see previous answers in this section. The Banyas say that if a father after partition remain joint with one son, that son succeeds to the father's share on his death, to the exclusion of the separate sons; but this seems doubtful.

Question 11.—Will acquisitions made by a father after partition devolve equally on all the sons, whether or no one or more sons have remained associated with him; and whether or no such acquisitions have been made with the share or shares of the associated son or sons?

Answer 11.—Acquisitions made by the father after partition devolve on all the sons, whether or no one or more sons have remained associated with him, a share being first deducted for the associated son in proportion to his share employed in the acquisition. (All tribes except Banyas.)

When the father remains joint with one son, property acquired by them after partition is considered as owned by them in common, and father and son have equal shares in it. If the father separates off from the son, he takes his own original share and half the acquired property, and may, if he chooses, join another son. On the father's death, the son with whom he is living associated is entitled to the property acquired by the father after partition, and held by him as his share. If the father at his death was living apart from all the sons, all the sons share equally in the father's original share, and in the property he may have acquired after partition. (Banyas.)

Question 12.—If a son remain associated with his father after partition to the remaining sons, and if such son die childless, can the remaining sons claim his estate in the father's lifetime, to the exclusion of the father?

Answer 12.— If an associated son die childless, the remaining sons cannot claim his estate in the father's lifetime. The father has full power over it. (All tribes.)

SIMLA,
21st October 1882.

J. WILSON,
Settlement Officer.

33118—R.D.—H.G.P., Chd.