SECTION IV.

GUARDIANSHIP AND MINORITY.

GUARDIANS AND THEIR APPOINTMENT.

Question 1.—Is a father at liberty to appoint, by testament or otherwise, whomsoever he will to be after his decease the guardian of his minor children?

Answer 1.—(*a*) There is no instance of a father's having in his lifetime appointed any one to be after his decease the guardian of his minor children. He could appoint only one of the near agnates. (All Hindú tribes, Bodlas and Wattus.)

(*b*) A father can appoint any of his agnate relatives to be the guardian of his minor children after his decease. When he does make such an appointment, it is always done orally in an informal way. (Jat and Rájput Musalmán.)

(*c*) A father can appoint any one he pleases of his own or the mother's family to be after his decease the guardian of his minor children. No written testament is necessary. (Ráín.)

Note.—Instances of the appointment of a guardian by the father are very rare, and still more rare is it for him to appoint any but a near agnate of his own.

Question 2.—State upon whom the guardianship of the person and property of a minor successively devolves, if no appointment be made by the father? Is any distinction made as to the property of the minor where the guardian is a female?

Does the right of guardianship of a female minor always carry with it the right of disposing of her in marriage?

Answer 2.—On the death of the father, the minor children remain under the care of the mother, who arranges for their food and clothing and other domestic matters, but has not full power to make out-of-door arrangements,—*e. g.*, regarding their land or betrothal or marriage. These matters are arranged by the elder brother, if of age; failing him, by the father's father or brother, or their descendants;—in short, by the nearest fit agnate.

The nearest fit agnate of a female minor has the right of

disposing of her in marriage with the mother's consent. (All Hindú tribes, Ráins, Wattus, and Musalmán Jats and Rájputs.)

Note.—The mother, so long as she remains a widow in her husband's house, has the right to the custody of her minor children, and can arrange the household affairs as she pleases. She has the right to be consulted on all matters concerning the interests of the children by the nearest agnate of the husband, who ordinarily, with her consent, conducts external negotiations for them, and she can prevent him from ignoring their interests. Among the Sikh Jats and Ráins the mother herself generally arranges for the cultivation of the children's land, and sometimes even appears in court. When there is no near agnate fit to be guardian, sometimes a maternal relative acts as guardian. A guardian is known as *kármukhtyár*, *mukhtyárkár*, *sarbaráh* or *sargiroh*. A minor is *bálak*, *nadán* (for *nádán*) or *másúm* (for *ma'súm*.) Adult is *jawán* or *gabhrú*.

The same, except that, as Bodla and Chishtí women are *pardahnashín*, the mother does not appear in public and is herself under the guardianship of the nearest agnate of her husband, and that the father's father acts as guardian in preference to the elder brother. (Bodla and Chishtí.)

Question 3.—Define the different descriptions of guardians, if any.

Answer 3.—There are no different descriptions of guardians known. (All tribes.)

POWERS OF GUARDIANS.

Question 4.—To what extent, under what conditions, and for what purposes can guardians alienate the property, moveable or immoveable, of their wards by sale, gift, or mortgage?

May a guardian lease the property of his ward? If so, for what period?

Answer 4.—(*a*) The guardian can, in ordinary transactions, alienate the moveable property of his ward by sale and arrange for his ordinary income and expenditure, but before, in special circumstances, alienating by sale or mortgage the moveable property of his ward, he must consult the ward's mother and the nearest agnates. There is no instance of a guardian's having sold or mortgaged or leased by written agreement the immoveable property of his ward. Ordinarily the guardian and his ward own the property jointly, and the guardian simply manages the joint property for both. (Bodlas.)

(*b*) A guardian can, in case of necessity, alienate by sale or mortgage the moveable property of his ward, and can

lease his immoveable property for a year; but he cannot alienate by sale, mortgage, or gift the immoveable property of his ward. He should pay any necessary expenses out of his own pocket and recover the amount from the estate. (Wattus, Musalmán Jats and Rájputs.)

(*c*) A guardian has full power to make ordinary arrangements regarding the moveable property of his ward, and can for this purpose and in case of necessity, such as for the expenses of a marriage or funeral ceremony, or to pay the just debts of the ward's father, alienate by sale, gift, or mortgage the moveable property of his ward. He may lease the moveable or immoveable property of his ward for a reasonable period, to which no limit is fixed by custom, except that it should not be beyond the period of the ward's minority. A guardian may not alienate by sale or gift the immoveable property of his ward, but he may, with the mother's consent, in case of urgent necessity, such as to pay the Government revenue, mortgage his ward's immoveable property. (Bágrí and Sikh Jats.)

The same, except that in case of extreme necessity, such as to pay the father's just debts, a guardian may, with the mother's consent, even sell some part of the ward's immoveable property. (Ráín, Banya, Rora, Bráhman.)

Question 5.—As regards the moveable property of the minor, state to what extent the contracts of the guardian are considered binding.

Are they binding whether or no they be beneficial to the minor; or whether or no they be made under manifest necessity?

Answer 5.—The contracts of a guardian affecting the moveable property of his ward are binding whether or no they turn out beneficial to the minor, and whether or no they be made under manifest necessity, provided they be made in good faith. (All tribes.)

Question 6.—Who is entitled to the custody of a married female infant whose father and husband are alive?

Answer 6.—A married female infant, after the marriage ceremony, stays a few days in her husband's house, and then returns to her father's house, where she remains until the *múkláwa* takes place. After the *múkláwa* she lives in her husband's house. The *múkláwa* is the ceremony in which, on the girl's reaching puberty, the husband comes for her with a procession and takes her home with him. The husband is entitled to claim possession of his wife at any time after marriage, but ordinarily she is not made over to him until she reaches puberty. (All tribes.)

Note.—Among the Ráins, at the time of the marriage ceremony, the girl goes in the marriage procession to her husband's house, but remains there only a day and a night and then returns to her father's house. If she be grown up, she remains six months or a year with her father before her husband comes for her. If a minor, she lives in her father's house until puberty, going sometimes on occasions of joy or sorrow (*shádí ghamí*) to her husband's house. At the *laḍ-ḍuán ká pherá*, which is the name given by the Ráins to the *mukláwa*, he comes with the family barber, bringing with him cloves and sweetmeats (*laḍḍú*), and after staying fifteen days or a month at the girl's house, he finally takes his bride home. All other tribes have a similar custom.

Among the Bágrí Játs, Kumhárs, Tarkháns, Chamárs, Banyas, Roras, and Bráhmans, the *mukláwa* always takes place an odd number of years after the marriage, such as one, or three, or five years—not two or four. The other tribes do not seem to be particular on this point. Among most tribes the *mukláwa* generally takes place between the ages of 12 and 15, but among the Sikh Jats the bride commonly goes finally to her husband's house between the ages of 18 and 20.

The betrothal is a contract to transfer the ownership of the girl from her family to the boy's family. The marriage ceremony finally transfers the ownership of the girl, but actual possession is not given until the *mukláwa*. If a girl's husband dies after the marriage, but before *mukláwa*, she is nevertheless considered a widow, and her husband's family can claim possession of her.

Question 7.—If a widow, being the guardian of her minor child, remarry, will the widow's right of guardianship cease? On her again becoming a widow, will it revive?

Answer 7.—If a widow, being the guardian of her minor child, remarry, her right of guardianship ceases, unless she marry her deceased husband's brother or near agnate. On her again becoming a widow, the right of guardianship of her former husband's child does not revive. (All tribes which allow the remarriage of widows.)

Powers of Minors.

Question 8.—May a minor acquire property independently of parents or guardians?

Answer 8.—A minor ordinarily cannot acquire property independently of his parents or guardians. There is no clear

custom on the point. A minor sometimes works for wages and brings them to his parents, but in no tribe is there any custom by which a minor can have independent control of any property. (All tribes.)

Question 9.—To what extent are the contracts of minors, made independently of parents or guardians, binding?

Answer 9.—A minor cannot enter into a contract independently of his parents or guardians. (All tribes.)

MISCELLANEOUS.

Question 10.—Is a minor, whose father is dead, and who has inherited the father's estate, liable for his father's debts?

If such debts are not payable till the minor come of age, can the property inherited be alienated in the interval?

Answer 10.—A minor who has inherited his father's estate is liable for his father's debts. Previous to his coming of age, the guardian may arrange for their payment; and if the debts be such as cannot well be paid while he is a minor, the property inherited from the father cannot be alienated in the meantime. (All tribes.)

Note.—The debts to which the heirs of an agriculturist succeed are often of great importance, and are made the subject of special arrangement at partition, one heir sometimes getting more than his share of the property on condition of paying the whole or a large share of the family debt. The Ráins say that a son who has separated from the father in his lifetime is not bound to pay debts incurred by the father after his separation.

Question 11.—Are females, whether minors or adults, always under guardianship? Upon whom does the guardianship of (1) an unmarried, (2) a married female, successively devolve?

Answer 11.—An unmarried female (not a widow), whether minor or adult, is always under the guardianship of some one. If her father be alive, he is her guardian; if he be dead, her mother or her agnate relatives have full control over her. A married female lives until puberty in her father's house and under the guardianship of her father or agnates; after puberty she lives in her husband's house under his guardianship. (All tribes.)

A widow is to some extent under the guardianship of her husband's brothers or near agnates. She cannot marry again or betroth her children or alienate her immoveable property without consulting her husband's agnates, but she can make

all ordinary arrangements about her moveable property, and can do much in her own name for herself and her children. (All Hindú tribes, Wattus and Musalmán Jats and Rájputs.)

The same, except that the widow has even greater power in ordinary matters where her action is not likely to injure the husband's agnates; and if she gives up all her further claim on the husband's family and estate, they cannot exercise any control over her. (Ráins.)

Widows, being *pardahnashín*, are always under the guardianship of the husband's agnates, who have full control over them in all out-of-door affairs. (Bodlas and Chishtís.)

Note.—It is curious to note that all tribes attach to the word *bewa* a meaning of unchastity. Their term for widow is *randin* or *randí*, and the latter word also they do not like to be applied to a respectable widow.

Question 12.—Who have the preferential claim to the guardianship of illegitimate children,—the mother and her relatives, or the father and his relatives?

Answer 12.—No instance is given of an illegitimate child. (All tribes.)

Note.—An illegitimate child would ordinarily be left with its mother.

Question 13.—As regards capacity to act in marriage, dower, divorce, and adoption, up to what age or event does minority continue in the case of (1) male, (2) female children?

Answer 13.—There is no fixed age at which minority terminates. When a boy or girl reaches puberty, minority is considered to have terminated. (All tribes.)

Note.—A boy ordinarily reaches puberty before 18, and a girl before 16. The Banyas put the age of puberty for a boy at 16 and for a girl at 14, the Jats say 18 for a boy and 16 for a girl. The lowest age given as that of puberty is 12

SECTION V.

SUCCESSION.

Where there are Male lineal Descendants.

Question 1.—If a man die leaving a widow or widows, a son or sons, a daughter or daughters, brothers and other relatives, upon whom will the inheritance devolve?

Answer 1.—If there be a son or sons, or their male lineal descendants through males, they inherit on the death of the father. If a son have died leaving a sonless widow, she, if she remains a widow in her husband's house, takes by inheritance the share he would have taken. (All tribes.)

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. (Bodla, Chishtí, Wattu, 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. (Ráín, 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. (Sikh Jat.)

If the deceased have left a sonless widow, besides sons by another wife, the sonless widow does not get any separate share of the property, but gets maintenance from the sons. (Bágrí Ját, Suthár, Banya, Rora, Bráhman.)

Note.—A mother of sons is not entitled to any share by inheritance, and no share in the land is ever recorded in her name. But sometimes, when the sons divide the estate after the father's death, they make some special allowance for the mother. (See Section XI, Answer 8.)

Question 2.—If there be more sons than one, will they take equal shares? If the sons do not take equal shares, state upon what principle the shares are regulated.

(i) Is any regard had to uterine descent? Are the shares in the inheritance distributed according to the number of mothers?

Pagvand or chúndavand.

(ii) Is any regard had to the caste or tribe of the mother, so that the sons by a wife of a high caste, or of the same caste or tribe with the father, take larger shares than the sons by the wife of a low caste, or of a different caste or tribe?

(iii) Is any regard had to the age of the sons, so that (1) the eldest son, (2) the youngest son, would take a greater or less share than his brethren?

Answer 2.—Where the sons inherit and there are more sons than one—

(1) *Age.*—In no tribe is any regard paid to the age of the sons, nor is there any custom by which the eldest or youngest son takes more or less than his brothers. So far as age is concerned, all the sons inherit equally. (All tribes.)

Note.—The only case of inheritance in which regard is paid to the age of the sons, is in the devolution of the office of headman. This goes strictly in the eldest branch; so much so, that if the eldest son of the deceased headman be dead or unfit, it will go to his eldest son, though a minor, in preference to a younger son of the deceased.

(2) *Caste.*—In no tribe is any regard paid to the caste or tribe of the mother, provided that she was of a tribe with which marriage is by custom permissible. So far as the caste of the mother is concerned, all the sons share equally. (All tribes.)

Note.—For an account of the custom as regards intermarriage between different castes or tribes, see under Section III, Answer 3. There are among all tribes very few instances in which a man has married a woman of a caste or tribe with which marriage is not allowed by custom. Among the Musalmán Jats and Rájputs there is some doubt as to whether the sons of such a marriage should inherit or not—an instance of the conflict between custom and Muhammadan Law. Some said that the sons of a woman not of a distinctly low caste should succeed if she was married by *nikáh*; but the general feeling is that if a man entices away and clandestinely marries by *nikáh* a woman of a tribe with which he would not ordinarily intermarry, the children should not succeed. But if he marries by regular *shádí* (which requires the presence and assistance of the agnates) a woman of a

caste or tribe approximately equal to his own, the offspring should inherit a full share, even though the tribe be one with which he would not intermarry by ordinary custom. In the case of the children of a woman of a tribe not approximately equal, the headmen said they might be given, not a share of the proprietary right owned by their father, but some land in occupancy right. The instances of such marriages are very few, but so far as they go, to some extent corroborate this statement of the custom. The Wattus admitted that in their tribe the offspring of a woman of whatever caste, provided she has been married by regular *nikáh*, are entitled to inherit their father's property without regard to the tribe of the mother; and it seems that this is the case also with the Bodlas and Chishtís, though in their exclusiveness they denied it. The Ráins of the Ghaggar have hitherto been unusually strict in preventing intermarriage with any other tribe or even with any other branch of their own tribe. There have as yet been, it seems, only two instances in which a Ghaggar Ráin married a woman of another branch of the Ráin tribe (*ghair kuf ki*): in both cases the sons of the stranger wife succeeded to a smaller share than those of the Ráin wife, but there is no clear custom determining how the shares should differ.

The Hindú tribes are still more particular than the Musalmán in preventing intermarriage with women of another tribe, and all tribes, even the lowest, maintain that such a marriage is illegal, and that the children of a woman of another tribe would not inherit the property of their father. Only one case came to light in the course of attestation in which the sons of a Hindú father (a Ját) by a woman of another tribe were allowed to succeed to their father's land.

(3) *Uterine descent*—

(*a*) No regard is paid to uterine descent. All the legitimate sons, whether descended from the same or different mothers, take equal shares.

(All tribes except the Ráins and Chamárs.)

(*b*) The sons share the property of the father according to the number of mothers: the sons, however few, of one mother taking as much as the sons, however many, of another. (Chamárs.)

(*c*) There are instances both of division according to the number of mothers and of division by sons without regard to uterine descent. It is not clear whether the sons should

take equally without regard to uterine descent, or should take according to the number of mothers. (Ráins.)

Note.—Among several other tribes besides the Báins and Chamárs, there are instances of the sons having divided the property according to the number of mothers, or having made an unequal division on some other principle. In such cases, the unequal division has usually been made in deference to the wishes of the father, or for some special reason, as, for instance, because the sons have made an unequal division of the father's debts or of the expenses of his funeral, which among the Bágrí Játs and other Hindú tribes are often very heavy. Some of the Sikh Tarkháns and Hindú Khátis say that the property should be divided according to the number of mothers; and some of the Musalmán Kumhárs say that so long as the mothers live, they and their sons take each half the property, and on the death of the mothers, the sons share the whole equally. But the majority of these tribes, as well as all the other tribes, except the Ráins and Chamárs, say that each son has an equal right to share in his father's estate, whether the sons are all of one wife or of several. The Sikh Jats and the Wattus say that formerly the rule of division according to number of mothers was more commonly followed than it is now, and that it is gradually becoming less and less common. This seems an interesting case of gradual but sure change of custom. The strong general feeling against a division according to mothers is strengthened among Musalmáns by the knowledge that such a division is not in accordance with Muhammadan Law.

Division according to number of mothers is called in Panjábí *chúndávand*, or division by braids of hair (*chúndá*), or *máwán hissa* or *máonvand*, in Hindí *máonbat* or *máonbánt*. Division among the sons equally, without regard to the number of mothers, is in Panjábí *pagvand*, in Hindí *bháiyonbat* or *págbánt*,—*i. e.*, division according to the number of *pagris* or males.

Laik beta.

Question 3.—Can a father in his lifetime nominate a particular son as the fit person to take a larger share than his brethren after the father's decease?

Answer 3.—A father cannot in his lifetime nominate a particular son as the fit person to take a larger share than his brothers after the father's decease. (All tribes.)

Note.—When a father wishes to favour one son, he does so by making a partition of the family estate in his lifetime. Regarding his power to do this, see Section XI.

Acquisitions of sons.

Question 4.—When an estate has been held jointly by a father and his sons, and is distributed amongst them upon his decease, are acquisitions made by the sons exempt from distribution; or will all the sons share in all the joint estate, moveable or immoveable, ancestral or acquired, whether or no any part of such estate have been acquired by any one or more of the sons, by gift or succession from a maternal grandfather or father-in-law, or other relative through a female?

Answer 4.—For the answer to this question, see Section XI, Answer 9—Partition.

RIGHT OF REPRESENTATION.

Amongst male lineal descendants.

Question 5.—Where there are male descendants who do not all stand in the same degree of kindred to the deceased, and the persons through whom the more remote are descended from him are dead, will the nearer descendants exclude the more remote; or are the more remote descendants entitled to succeed simultaneously with the nearer descendants?

Answer 5.—Where there are male descendants who do not all stand in the same degree of kindred to the deceased, and the persons through whom the more remote are descended from him are dead, the nearer descendants do not exclude the more remote; the more remote are entitled to succeed simultaneously with the nearer descendants.

(All tribes.)

Note.—Thus, to take the simplest case, the son of a deceased son is not excluded by his uncle from inheriting his father's share of his grandfather's estate. In every case the share of a deceased heir goes to his sons or sonless widow.

Per capita or per stirpes.

Question 6.—If in the case stated in question 5 the more remote descendants succeed simultaneously with the nearer descendants, how is the estate to be divided?

Is it to be divided in equal shares amongst all the heirs; or is it to be divided into such a number of equal shares as may correspond with the number of the male lineal descendants of the deceased, who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving male lineal descendants who survived him?

Answer 6.—In the case above stated, the estate is divided into as many equal shares as correspond with the number of sons alive, or who, though dead, have left male lineal descendants or sonless widows. The share of each deceased son so calculated is then similarly divided among his male lineal descendants or goes to his sonless widow. (All tribes.)

Note.—This is, of course, modified by the custom of *mâonbat* where that prevails. Where the sons are of different

mothers, and the mode of division is *máonbat*, the shares of the sons are not necessarily equal; but in any case, whatever the share of the son would have been had he been alive, goes to his male lineal descendants who represent him. The division is in the fullest sense *per stirpes* and not *per capita*.

Question 7.—Where there is no son, but where the male lineal descendants are all grandsons or all great-grandsons, will the estate be divided equally amongst all such grandsons or great grandsons, as the case may be; or will the shares be allotted to the grandsons proportionately to the shares which the sons would have taken had they been living, or to the great-grandsons proportionately to the shares which the grandsons would have taken had they survived the deceased?

Answer 7.—Although there be no son surviving, and the surviving male lineal descendants are all grandsons or all great-grandsons, still the shares are not divided equally among the grandsons or great-grandsons, as the case may be, but are allotted proportionately to the number of sons whose male lineal descendants survive, and each son's share is similarly allotted among his male lineal descendants or their sonless widows. (All tribes.)

Note.—The distribution is in the fullest sense *per stirpes* and not *per capita*.

Question 8.—Do the principles stated in the replies to questions 5 and 6 apply to every case of the distribution of an inheritance; or is there any distinction when collaterals inherit,—that is to say, does a son or grandson always take the share his father or grandfather would have taken, if such father or grandfather had survived the deceased, whether or no the share descend lineally or through a collateral relative?

Answer 8.—The principle of representation as above stated applies to every case of a distribution of an inheritance, whether the shares descend lineally or through a collateral relative. (All tribes.)

Note.—Thus, when a man dies childless and his property goes to his collateral relatives, a surviving brother does not exclude a deceased brother's son. In every case the inheritance goes *per stirpes* and not *per capita*—the right of representation prevails to the fullest extent—the sons or sonless widow of a deceased sharer taking what would have been his share had he been alive.

Cessation in direct line.

Question 9.—Does the inheritance successively devolve upon all male lineal descendants how low soever; or is there any degree fixed in the descending line within which, if there be no male lineal descendants, the inheritance will devolve on other relatives?

If so, state what that degree is.

Answer 9.—The inheritance devolves successively upon all male lineal descendants through males how low soever. There is no limit fixed beyond which it does not go in the descending line. (All tribes.)

Where there are no Male lineal Descendants within three generations.

THE WIDOW.

Question 10.—If a man die leaving a widow or widows, and either a daughter or daughters, or brother or their descendants, or uncles or their descendants, or great-uncles or their descendants, but no male lineal descendants within three generations, upon whom will the inheritance devolve?

Right of widow.

Answer 10.—If there be no male lineal descendants through males, the widow inherits in preference to all others. (All tribes, both Hindú and Musalmán.)

Question 11.—If the estate devolve upon the widow, define her interest therein. What rights has the widow to alienate by sale, gift, mortgage, or bequest?

(i) Are there any special circumstances or expenses under or on account of which alienation is permissible? If so, what are these?

Nature of widow's interest.

(ii) Is there any distinction in respect of moveable or immoveable, ancestral or acquired property, or in respect of alienation to the kindred of the deceased husband?

(iii) Supposing alienation to be permissible, whose consent is necessary to make it valid?

Answer 11.—If the estate devolve upon the widow, she is sole owner of the whole estate for the time being, but her interest is a life-interest only, and on her death the whole estate reverts to the husband's agnates. She can alienate as she pleases by sale, mortgage, or gift any of the moveable property which has devolved on her from her husband, whether it be ancestral or acquired. But she cannot, without the consent of the husband's agnates, alienate by sale, mortgage, or gift any of the immoveable property, ancestral or acquired, such as land or houses. It is, however, incumbent on the husband's agnates to make proper arrangements for necessary expenses, such as maintenance, marriage of daughters, payment of the Government revenue, funeral expenses, or gifts on the birth or marriage of a daughter's son or daughter, or to allow the widow to arrange for them by alienating (where necessary) the immoveable property,

which has devolved on her from her husband. (All Hindú tribes and Ráins.)

The widow takes a life-interest in the whole of her husband's estate, and is owner of it for the time being; on her death, the whole estate reverts to the husband's agnates. She cannot, without the consent of the husband's agnates, sell, mortgage, or give away any of the immoveable property. She can deal with the moveable property as she likes in ordinary transactions, but cannot, until after consulting the husband's agnates, alienate it in any special transaction, and they can prevent her from wilfully alienating it so as to cause them injury. No distinction is made between ancestral and acquired property. (Bodlas, Chishtís, Wattus, and other Musalmán Jats and Rájputs.)

Note.—A Bodla or Chishtí widow is *pardahnashín*, and under the guardianship of the husband's agnates, and thus cannot enter into any extraordinary transaction without their knowledge and consent. The agnates are bound to allow her to benefit to the full from her husband's estate so long as she does not permanently injure it so as to defeat their reversionary interest. Among the Musalmán Jat and Rájput tribes, women are not *pardahnashín*, and have more power to deal with the moveable property than Bodla women have. In all ordinary transactions, such as arranging for clothes, food, and other necessaries, and sometimes even for the payment of the land revenue and for marriage expenses, a Musalmán Jat or Rájput widow can do pretty much as she likes with the moveable property without consulting the husband's agnates, though no doubt they could interfere to prevent her from wantonly alienating it so as to injure them. Indeed, practically among Musalmán Jat and Rájput tribes a widow has nearly as much power as among Hindú tribes.

There are very few instances in any tribe of a widow's having alienated land inherited from her husband, the most common being alienations by the widow in favour of her daughter, or daughter's son, or daughter's husband. In these cases either the consent of the husband's agnates was given, or, according to the headmen, their objections were wrongly set aside.

Funeral expenses=*marná* or *kárj* or *káj*.

Gifts to a daughter on the birth or marriage of a child are called *chhúchhak nánakchhak*, and *bhát*.

Question 12.—As regards the right of a Muhammadan widow to alienate, is any distinction taken in respect of her legal share?

Answer 12.—As regards the right of a Muhammadan widow to alienate, no distinction is taken in respect of her legal share. (All Musalmán tribes.)

Note.—In no tribe does a Muhammadan widow take only the share to which she is entitled by the Muhammadan Law.

Shares of widows.

Question 13.—If there be several widows, do they take in equal shares? Is any distinction made in respect of the rights of widows who are not of the same family with their deceased husband?

Answer 13.—If there be more than one sonless widow, they all take in equal shares, without regard to the tribe or family of the widow. All with whom marriage is permissible, and who have been properly married by *byáh, karáo* or *nikáh*, inherit equally a life-interest. (All tribes.)

Note.—The Ráins say that if one widow was not a pure Ráín, she would get a less share than a pure Ráín, but there has as yet been no instance of this.

Exclusion of widow.

Question 14.—Is there any distinction in the rights of widows based upon the circumstance whether the husband were or were not associated with his brethren?

Answer 14.—It makes no difference in the rights of a widow whether her husband was associated with his brothers or not. She takes by representation her husband's share. (All tribes.)

Note.—In all cases of inheritance, the widow of a person who would, if alive, have shared, and who has died without sons or sons' sons, takes a life-interest in what would have been her husband's share.

Unchastity of widows. Remarriage.

Question 15.—What is the effect of unchastity upon the right of a widow in respect of the estate of her deceased husband? In the case of widows who are not Hindús, what is the effect of their remarriage?

Answer 15—

(*a*) If a sonless widow have succeeded to her husband's estate, and be proved unchaste, or leave her husband's house to reside permanently with her parents or elsewhere, or marry by *nikáh* or *karewa* any one except a near agnate of her husband, she loses all right to her husband's estate. (All tribes.)

Note.—If a widow bear an illegitimate child, or cohabit with any but an agnate of her husband, or elope from her home with any stranger, this is sufficient evidence of unchas-

tity. All agree in saying that in such a case, or in the case of a widow's marrying any but an agnate of her husband, she must give up land, house, and moveables of all kinds, even clothes and ornaments, and take away with her only the garments necessary for decent covering.

(*b*) If a sonless widow in possession of her deceased husband's estate marry his brother, she continues in possession of her former husband's property, and his land remains recorded in her name. If she bears any sons to the second husband, they succeed to the estate of the first husband (their uncle and stepfather), to the exclusion of the other agnates; if she bears no son, then on her death her first husband's estate reverts to his agnatic heirs. (Ráins, some Sikh Jats, Chamár, Chúhra, Báwariya, Herí.)

Whenever a widow re-marries, even if she marry the brother of her deceased husband, she loses her right to her deceased husband's estate, which reverts at once to his agnates. (Most Sikh Jats, Kumhár, Khátí, Lohár, Bodla, Chishtí, Wattu.)

If a sonless widow in possession of her husband's estate marries his brother, she is often allowed to remain in possession of her deceased husband's estate for her lifetime. On her death it reverts to the agnatic heirs of the deceased husband. (Bágrí Játs, Musalmán Jats, and Rájputs.)

Note.—In most tribes the custom is not very clear as to what happens when the sonless widow in possession of the deceased husband's estate marries his brother, as very often she does. The Bágrí Játs at first said that if the re-married widow bear any sons to the brother of her first husband, they will succeed to the estate of her first husband to the exclusion of his other agnates, and that if she bears no son, the estate of her first husband will revert on her death to all his agnatic heirs. Then they said this was wrong, and that, properly speaking, whenever a widow marries even her deceased husband's brother, she should at once lose possession of her deceased husband's estate, which should at once go to all his agnatic heirs. The instances given in this tribe were not sufficient to establish a clear custom either way, but it is certain that often a Bágrí Ját widow who marries her deceased husband's brother is allowed to remain for her lifetime in possession of her deceased husband's estate. A few of the Sikh Jats say that if a widow marry her deceased husband's brother, her deceased husband's estate remains with her, and if she bear sons to the brother, the estate of the deceased hus-

band goes to those sons to the exclusion of the other agnates, but if she bear him no son, the deceased husband's estate, on her death, goes to all the deceased husband's agnates. But the great majority of the Sikh Jats say that whenever the widow marries the brother of her deceased husband, she loses her right to her deceased husband's estate, which reverts at once to his agnates. There are numerous instances in which a sonless widow married her deceased husband's brother, and still kept her deceased husband's estate; and from the number of instances given it is evidently not uncommon among the Sikh Jats for the sons of the widow by her deceased husband's brother to succeed to the deceased husband's estate to the exclusion of the other agnates; and the general feeling against this custom is part of the feeling against allowing land to go through a woman (*biswa tímín de magar na jáwe*). Some Kumhárs and Khátís say that if a sonless widow marries her husband's brother, she keeps the moveables of her deceased husband, which go to that brother whom she marries; but most say that she loses all right to the moveables also, which go at once to the agnates; and all scout the idea of a man's "raising up seed" to his brother, and say a son born of the widow by her husband's brother would succeed his own father, not his uncle. Among Musalmán Jats and Rájputs a number of instances were given, in which a sonless widow who had married her husband's brother was allowed to remain in possession for her lifetime of her former husband's estate. The Ráins, Chamárs, Chúhras, Báwariyas, and Heris say she always does remain in possession, and that the sons of the widow by the brother succeed to the deceased husband's estate. Indeed, among the Ráins, when a sonless widow in possession of her husband's estate marries one of his brothers, sometimes that brother himself takes permanently, in consideration of the marriage, a larger share in his deceased brother's estate than do the other brothers.

The custom of allowing a brother to raise up seed to the deceased has some resemblance to the general custom of allowing a sonless widow to select by adoption one of her husband's nephews who succeed to the whole estate of the deceased to the exclusion of the other agnates.

The similar custom among the Hebrews is stated in Deuteronomy, xxv. 5, 6, as follows: "If brethren dwell together and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger; her husband's brother shall go in unto her, and take her to him to

wife, and perform the duty of an husband's brother unto her, and it shall be, that the first-born which she beareth shall succeed in the name of his brother, which is dead, that his name be not put out of Israel." It is interesting to note that among the Sikh Jats great stress seems to be laid on the widow's not leaving her deceased husband's house. The brother "goes in unto her."

Rights of Daughters and their Issue.

Succession of daughters.

Question 16.—Under what circumstances are daughters entitled to inherit? Are they excluded by the sons or by the widow, or by the near male kindred of the deceased? If they are excluded by the near male kindred, is there any fixed limit of relationship within which such near kindred must stand towards the deceased in order to exclude his daughters? If so, how is the limit ascertained? If it depends on descent from a common ancestor, state within how many generations relatively to the deceased such common ancestor must come.

Answer 16.—A daughter is in no case entitled to inherit. She is excluded by the widow, or by the sons, or by the male agnatic kindred of the deceased. (All tribes except the Ráins.)

If there be a son, or son's son, or widow or near agnate, the daughter has no right to inherit. But often a daughter who is unmarried, or a widow living in her father's house, is allowed by the agnatic heirs to inherit some land or a share in the estate for her maintenance. The agnatic heirs are at liberty to give her what share they please, or to refuse her a share. (Ráins.)

Note.—In no tribe is the Muhammadan Law followed. There is no defined number of generations within which the agnatic kindred must be related to the deceased to exclude the daughter. The Bágrí Játs said that if there is any agnate within ten generations, he would exclude the daughter; if not, the daughter would take. Some Sikh Jats wished it to be recorded that in default of agnates within the fifth generation, the daughter or daughter's son should succeed; others said that any agnate, however remote, excludes the daughter and daughter's son from inheritance. A good deal of feeling was shown in the dispute, and at last they agreed that the daughter and daughter's son should not succeed to the land or be allowed in any case to take the land, but that the parents may give to the daughter and daughter's son as much of the moveables as they please. There are very

few instances, except among the Ráins, in which a daughter has been allowed to succeed by inheritance to her father's property or any share of it, especially of the land or houses. Among the Musalmán Lohárs, sometimes when there is no son, a daughter who has married an agnate nephew is allowed to succeed. The general feeling is that a daughter is entitled to be suitably maintained and suitably married, and that she should get the customary presents from her father's family on occasions of her visiting them, or on the birth or marriage of a child, but that she has no title to succeed to any of her father's property by inheritance. It is common for parents to make large presents out of the moveables to their daughters, and no restriction is ordinarily placed on their power in this respect. But great objection is made to the alienation of land to a daughter or daughter's son or daughter's husband. Among most tribes, the daughter must marry into another *got*, to which thereafter she and her children belong; and as one of the strongest feelings is that the land must not leave the *got*, she and her children have no right to inherit her father's property; their rights to inherit are confined to the property of the husband's family to which they belong.

Question 17.—Is there any distinction as to the rights of daughters to inherit (1) the immoveable or ancestral, (2) the moveable or acquired, property of their father?

Answer 17—

(*a*) As regards the right of the daughter to inherit, no distinction is made between the moveable and immoveable, or ancestral and acquired, property of the father. (All tribes except Ráins.)

Note.—A father can in his lifetime give moveable property more readily to his daughter than immoveable; but she has no more right to *inherit* the one than the other. The Wattus say that if there were no near male agnate, the unmarried daughter would take the moveable property, but can give no instance of this.

(*b*) Although sometimes, with the consent of the agnatic heirs, the daughter is allowed to succeed to a share in the father's estate, she has no *right* to inherit. She is entitled, however, to live in her father's house until her marriage, and, under the guardianship of her father's agnates, retain possession of his moveable property. No distinction is made between ancestral and acquired property. (Ráins.)

Question 18.—(1) Under what circumstances are daughters entitled to be maintained out of the estate of their deceased father ?

Maintenance.

(2) What is the effect of (a) marriage, (b) residence in a strange village, upon the right of the daughter to inherit or to be maintained ?

(3) If a married daughter with her husband live with the father up to his decease, can the daughter inherit ?

Marriage.

(4) Can daughters who are married and barren, or widowed and without male issue, or mothers of daughters only, inherit the father's estate ?

Answer 18.—An unmarried daughter is entitled to be maintained out of the estate of her deceased father until she is suitably married, and until the *mukláwa* (Section IV, 6). After the *mukláwa*, she has a right to be maintained by her husband's family, and has no further claim against her father's family. It makes no difference in the right of the daughter to inherit, whether she be married or reside in a strange village, or be married and barren, or widowed and without male issue, or mother of daughters only, or whether she and her husband reside with the father up to his decease. In no case is she entitled to inherit. (All tribes except Ráins).

Note.—Some of the Sikh Jats and Wattus say that sometimes an unmarried orphan daughter without brothers may be left in possession of her father's estate until she is suitably married, but ordinarily the agnates succeed and arrange suitably for her marriage, as they are bound to do. Unmarried daughters are entitled to be maintained out of the estate of their deceased father until they are suitably married; and after marriage, the daughter is entitled to receive from her father's family the customary gifts on occasion of the birth or marriage of a child, and other domestic events. When a daughter after marriage goes to reside in another house, she loses her right to be maintained from her father's estate. If, however, she becomes a widow and returns to live in her father's house, she is sometimes allowed to inherit with the consent of the agnatic heirs. It makes no difference whether the daughter has sons or daughters, or is barren. (Ráins.)

Note.—In such cases it is not the son-in-law, but the daughter, who is allowed to succeed to the estate, and it seems that she gets it only if the agnates consent; but there is some dispute about this. The Ráins are more liberal in their customs as regards women than most other tribes, probably because they are more strictly endogamous. The circle

of fellow-tribesmen within which a Ghaggar Ráin may marry is very small, and whatever goes to a daughter and through her to her son or husband, only goes to a distant agnate.

Nature of daughter's interest.

Questions 19.—What is the nature of the interest taken by a daughter in the property she inherits? Define her rights of alienation, if any, by sale, gift, mortgage, or bequest.

Answer 19.—A daughter does not inherit. (All tribes except Ráins.)

When a daughter is allowed to succeed to her father's estate, it is not quite clear what her interest is, whether she has full control or only a life-interest like the widow. It seems, however, that her interest is similar to that of the widow, and that failing sons, the estate returns to her father's agnates. If the daughter leave sons, they inherit the estate; it does not go to her husband. (Ráins.)

Daughter's issue.

Question 20.—After daughters do daughters' sons succeed? If so, is the property equally divided amongst all the sons of several daughters; or are the shares proportioned to the number of daughters who leave sons?

Answer 20.—A daughter's son does not inherit. (All tribes except Ráins.)

When the daughter has been allowed to succeed, her sons inherit from her; but there is no instance of a daughter's son having inherited directly from his mother's father. (Ráins.)

Note.—There are very few cases in any tribe of a daughter's son having come into possession of land through his mother, and such cases seem to be rather instances of gift or adoption than inheritance.

OTHER RELATIVES.

PARENTS.

Mother and father.

Question 21.—When a man dies leaving no male lineal descendants, no widow, and no daughters or daughter's sons upon whom will the inheritance successively devolve?

Answer 21.—Failing male lineal descendants through males and widow, the inheritance devolves successively on the following relatives: (1) the father, (2) the brothers and their male lineal descendants through males and their sonless widows, (3) the mother, (4) the father's father, (5) the father's brothers and their male lineal descendants through males and

their sonless widows; and so on to the male agnates and their widows only. (All tribes.)

Notes.—In all cases the sonless widow of an agnate who would, if alive, have shared, takes a life-interest in what her husband's share would have been. The Sikh Jats say that the mother succeeds before the half-brothers, but there are no clear instances of this. It is, however, consistent with the custom noted under answer 1. The Banyas, Roras, and Bráhmans are recorded as saying that the mother takes after the brothers, but before the nephews; but I think they must have been misunderstood. When the mother takes in the absence of other sons, she takes as she would have taken as her husband's sonless widow, had her son died before his father.

Mother's interest.

Question 22.—When the estate devolves upon the mother of the deceased, what is the nature of the interest she acquires?

Define her powers of alienation. On the death of the mother, will the property devolve on the heirs of the son, or on her heirs?

Answer 22.—When the estate devolves on the mother of the deceased, she takes only a life-interest, and has the same powers that the widow has. After the mother's death, the estate devolves on the heirs of the son, not on her heirs. (All tribes.)

Note.—She may be considered to take the estate, not as the mother of her son, but as the sonless widow of her husband.

BROTHERS AND THEIR ISSUE.

Effects of association.

Question 23.—When the property devolves on brethren, what, if any, regard is paid (1) to uterine descent, (2) to association? Do uterine associated brethren exclude all others? In what order succeed—

(i) unassociated brethren of the whole blood;
(ii) associated brethren of the half blood;
(iii) unassociated brethren of the half blood.

If a man die leaving a uterine brother separated and a half-brother associated, how will these two inherit?

Answer 23—

(*a*) When the property devolves on the brothers, no regard is paid either to uterine descent or to association. All the brothers, whether of the same father and mother, or of the same father only, whether associated or unassociated, take equal shares. (Bodla, Chishtí, Wattu, Kumhár, Khátí, Lohár, Chamár, Chúhra, Báwariya, Herí.)

(*b*) When a man dies without son or widow, leaving one brother who was living joint with him, and another brother who was living separate, the house and moveable property go to the associated brother, and the separate brother has no claim to them. But both brothers, without regard to association or non-association, divide the land equally. If the property have devolved from the father without regard to uterine descent, the brother should succeed without regard to uterine descent; and if the property was originally divided according to the number of mothers, only those brothers who are the sons of the same mother should succeed. (Bágrí and Sikh Jats, Ráins, Musalmán Jat and Rájput, and village Bráhmans.)

(*c*) When a man dies without son or widow, leaving one brother who was living joint with him, and another brother who was living separate, all his property, moveable and immoveable, ancestral and acquired, goes to the brother who was living joint with him, and the separate brother has no right to any share. No regard is paid to uterine descent. (Banyas, Roras, town Bráhmans.)

Note.—Among the Sikh Jats there is a tendency to allow full brothers to exclude half brothers, even where the estate descended from the father without regard to the number of mothers. The sonless widow of a brother takes what would have been her husband's share.

Question 24.—When a man dies leaving associated brethren and unassociated brethren, and the property devolves on his brethren, have the associated brethren any preferential claim to acquired property, moveable or immoveable, or to ancestral moveable property?

Answer 24—

(*a*) The associated brothers have no preferential claim to any part of the property, whether moveable or immoveable, ancestral or acquired. All the brothers, whether associated or not, share all the property equally. (Bodla, Chishtí, Wattu, Kumhár, Khátí, Lohár, Chamár, Chúhra, Báwariya, Herí.)

(*b*) When the inheritance devolves on brothers, and one brother was living joint with the deceased and another separate from him, the house and moveable property and the self-acquired immoveable property of the deceased go to the associated brother, to the exclusion of the unassociated brother. (Bágrí and Sikh Jats, Ráins, Musalmán Jat and Rájput, and village Bráhmans.)

(*c*) The associated brother takes all the property of the deceased, moveable and immoveable, ancestral and acquired. (Banyas, Roras, town Bráhmans.)

Question 25.—In default of brethren, does the property devolve upon their sons?

Brother's issue.

Answer 25.—In default of brothers, the inheritance devolves on their sons or male lineal descendants through males, the sons of a deceased brother taking by representation along with the surviving brothers. (All tribes.)

SISTERS AND THEIR ISSUE.

Question 26.—Does the property ever devolve upon sisters, or upon sisters' sons? If upon sisters' sons, how are their shares computed?

Answer 26.—Sisters and their sons are in no case entitled to inherit. (All tribes except Ráins.)

The custom regarding inheritance by sisters and their sons is the same as that regarding daughters and their sons (see answers 16-20),—that is, there are instances in which sisters and their sons were allowed to succeed, but as a general rule they are excluded from the inheritance, and where they did succeed it seems to have been with consent of the agnates. (Ráins.)

THE HUSBAND.

Question 27.—Where a wife dies holding property in her own right, is the husband entitled to succeed to such property, or any part of it?

Answer 27—

(*a*) If a woman have inherited land or acquired it by gift from her father or brothers, her sons will succeed to it. If she have no son, her husband succeeds. If a woman be given moveable property or become possessed of it in any way, it is under the control of her husband, and on her death remains with him. If her husband have died, it goes to her sons. (All Hindú tribes except Sikh Jat.)

(*b*) If a woman acquire property,—for instance, from her father or brothers,—it remains in the control of her husband, and on her death remains with him, or, failing him, with her sons. (Sikh Jat and all Musalmán tribes except Ráins.)

Note.—It is common for a woman to acquire moveable property from her father's family by gift, and such property is merged in the husband's. For the case of land acquired from a former husband, see answers 10 to 15. The cases in which a woman acquires land in full right from her father's

family are too few to establish any custom, but the Sikh Jats say that too goes to the husband on her death. Probably, however, her sons have a better claim.

(*c*) If a sonless widow in possession of her husband's share marry his brother, retaining the estate of her first husband, her sons born of the second husband succeed to the estate of the first husband (their uncle and stepfather). If she bear no sons, then on her death her first husband's estate goes to all the agnatic heirs of the first husband, and not only to that brother whom his widow married.

If a woman have inherited land or acquired it by gift from her father or brothers, her sons will succeed to it. If she have no son, her daughters may succeed with the consent of the mother's agnates. If she have no children, the land does not go to her husband, but reverts to the woman's own agnates from whom it came.

If a woman be given moveable property or become possessed of it in any way, it is under the control of the husband, and on her death remains with him. If her husband have died, it goes to her sons and daughters. (Ráins.)

See also answers 15, 17, 19, 26.

Note.—The husband takes either all or none at all. He never takes a share only as prescribed in the Muhammadan Law.

THE STEPSON.

Inheritance.

Question 28.—Can the son, by a former marriage of a woman who contracts a second marriage, inherit from (1) his natural father, (2) his stepfather? If from his stepfather, is his share equal to or less than that of his stepfather's own sons?

Answer 28.—The son by a former marriage of a woman who contracts a second marriage is entitled to inherit from his natural father. He has no right to inherit from his stepfather. (All tribes.)

Question 29.—Is any distinction taken as regards the stepson (*i*) if he be not born till after the second marriage of his mother; (*ii*) if the stepfather in his lifetime assign him a share by deed?

Answer 29.—There is no instance of a stepson's having been born after the second marriage of his mother, or of the stepfather's having in his lifetime assigned the stepson a share by deed. (All tribes.)

Question 30.—Are stepsons entitled to be maintained by their stepfather? If so, till what age?

Maintenance.

Answer 30.—A stepson may remain with his mother in his stepfather's house, and be maintained by the stepfather until he grows up. (All tribes.)

Note.—A stepson is called *gailar* or *pichhlag*.

Where there are no relations.

Question 31.—Enumerate, in the order of their succession, the persons entitled to the estate of a man who dies intestate leaving no relations.

Order of succession.

Answer 31.—There is no instance of a man's having died leaving no relation. (All tribes.)

Note.—When an occupancy tenant dies leaving no near relation, his land reverts to the proprietor. In the scarcely conceivable case of a proprietor's dying and leaving no known agnates, the sub-division of the village (*thula* or *patti*) to which he belonged would take his land.

Ascetics.

Question 32.—If a person voluntarily retires from the world, and becomes a member of a religious order, what is the effect upon (*i*) his right to retain his property, (*ii*) his right to acquire property by inheritance? Upon whom will devolve property which he would have inherited if he had not retired from the world?

Civil death of ascetics.

Answer 32.—(*a*) No instance of a man's having voluntarily retired from the world and become an ascetic. (Bodla, Chishtí, Ráín).

Note.—Although the Bodlas and Chishtís claim a descent from holy men, they have by no means given up the things of this world, and finding they can enjoy a reputation for sanctity along with worldly pleasures, they show no inclination to give them up. Ráíns are too industrious to become *faqírs;* sometimes they go to Hindustán to study, but this is not retiring from the world, and on their return they take up their land again.

(*b*) If a person voluntarily retires from the world and becomes a member of a religious order, the effect upon the rights to retain property and to acquire it by inheritance in his natural family is exactly as if he had died. He cannot retain his property, which goes to his heirs, as if he had died.

He cannot acquire property by inheritance in his natural family; it goes to the person to whom it would have gone if he had died. His wife is considered a widow, and may marry again.

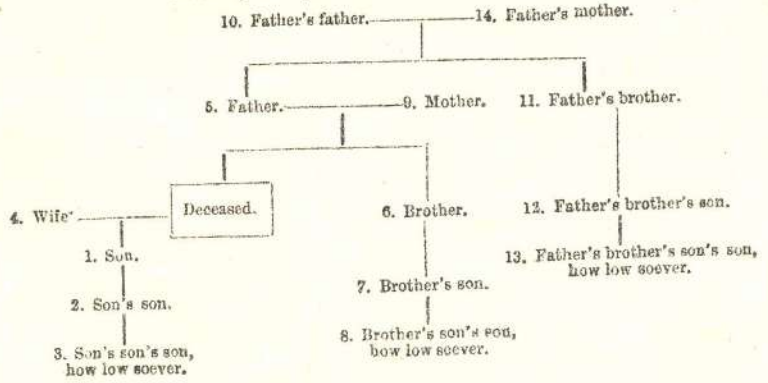
An ascetic may inherit property from his preceptor (*garu* or *guru*), whose pupil or *chelá* he is. (Bágrí and Sikh Jat.)

The same, except that the wife is not necessarily considered a widow. (Musalmán Jats and Rájputs.)

(*c*) If a man adopt the dress and life of a mendicant (*faqír*), but continue to practise his family customs, he is not considered an ascetic who has renounced the world. But if a man becomes the disciple (*chelá*) of some religious teacher (*guru*), his property goes to his heirs as if he had died, and he cannot acquire property by inheritance in his natural family; it goes to the person to whom it would have gone if he had died. The wife sometimes also becomes an ascetic and accompanies her husband. If she remains in his house, she retains the dress and habits of a married woman (*sohágin*) until she hears of his death. Such an ascetic succeeds to the property of his *guru* according to the custom of his order. (Banyas, Roras, Bráhmans.)

CHART

Showing the general order of Inheritance.



Note.—Where there are two of a class, they share equally, and the right of representation prevails to the fullest extent. No heir excludes the agnatic descendant, or the sonless widow of another heir of the same class. Only agnates and the sonless widows of agnates inherit. The sonless widow takes a life-interest only, and excludes for her lifetime the collateral or ascending heirs of her husband.

This applies to all tribes, except that in a few families, where the custom is *chúndávand* or *náonbat*, the full brother and his descendants exclude the half brother and his descendants; and among Ráins, sometimes, with the consent of the agnates, the daughter is allowed to take the whole or part of the estate before the brother, and the sister before the father's brother.