# PAPER PRESENTATION ON SUCCESSION UNDER INDIAN SUCCESSION ACT, 1925 IN RESPECT OF CHRISTIANS.

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## Introduction.

Christianity is a religion based on the teachings of Jesus Christ, who is believed to be the son of God. A Christian is one who professes the religion of Jesus Christ. Indian Christians include native converts to Christianity and their Christian descendants. The Christian Law of Succession is governed by the provisions of Indian Succession Act, 1925.

Prior to Indian Succession Act, 1925, Indian Succession Act, 1865, was originally introduced as Indian Civil Code by the British India. The Indian Succession Act, 1865 was originally intended to apply to all classes of intestate and testamentary succession. But, actually it contained so many exceptions that it was not applicable to the natives of India. It was applicable to Europeans by birth or descendant domiciled in India or died possessed of immovable properties in India. It applied also to persons of mixed European and native blood and to Jews. Indian Christians, though united in the essence of their faith, are diverse in their practices with different denominations. With domicile was made criterion for application of Laws it caused Chaos. With regard to the application of Laws for determining rights of converts from one religion to another religion, the privy counsel, Madras High Court, Bombey High Court and Calcutta High Court gave divergent views. In Abraham Vs. Abraham 1863 (9) MIA 195 and in Sri. Gajapathi Radhika Vs. Sri. Gajapathi Nalamani 1870 (14) WRPC 33, cases the Privey Counsel held that upon the conversion of a Hindu to Christianity the Hindu

Law ceases to have any continuing obligatory force upon the convert. Further the privy counsel held that he may renounce the old law by which he was bound, as he has renounced his religion, or if he thinks fit, he may abide by old law regardless of his conversion to Christianity. But, divergent views given in Ponnusani Sami Madhan Vs. Dorasami Ayyan, ILR (2) MAD (209) 1880 and in Tellis Vs. Saldanha, ILR (10) MAD 69 (1886) cases. In the said cases it is held that the members of native Christian families can not adhere to Hindu Law of Succession though such converts who were governed by the Hindu Law of Succession can not be deprived of their rights acquired by them under Hindu Law prior to their conversion to Christianity. But Bombey High Court in Francis Ghosal Vs. Gabri Ghosal ILR (31) Bombey 25 (1904), case held still divergently that Act 1865 does not effect the right of coparcenery as between those to whom it applies and that coparceneryship can be part of law governing the rights of Christian family converted into Christian religion. The issue of conversion has become still Chaotic with the decision of the Calcutta High Court in Kulada Prasad Pandey Vs. Haripadha Chatterjee ILR (40) CAL 407 (1912) case. In the said case it was held that if one of the member of the joint family converts into the Christianity it would result in complete dissolution of entire family and from the time the members of Hindu family can not be treated as members of Hindu Joint Family. However, held the Calcutta High Court that it would not effect the right of coparcerneryship as they can still adhere to old Law regardless of conversion. In this way, the Judicial decision went on giving rise to much Chaos. In the wake of the divergent views of the various Courts which caused Chaos, the British Parliament felt it necessary for consolidation of Law of Succession, therefore, Indian Succession Act, 1925 was enacted making it to applicable to the Indian Christians to intestate and testamentary succession. It came into force from 30.09.1925.

While consolidating the Laws, the Act has repealed the following Acts.

(1) The Succession (property protection Act) of 1841

(2) The Indian Succession Act, 1865

(3) The Parsi Intestate Succession Act of 1865

(4) The Hindu Wills Act of 1870

(5) The Marriage women's Property Act of 1874 Section 2

(6) The Probate and Administration Act of 1881

(7) The Probate and Administration Act of 1889

(8) The Probate and Administration Act of 1890

(9) The Probate and Administration Act of 1903

(10) The District Delegates Act of 1881

(11) The Succession Certificate Act of 1889

(12) The Indian Christians Administration of Estate Act of 1901

The purpose of consolidating statue is to present whole body of statutory Laws of a subject in a complete form repealing the former statues.

**Object and Scope**

The object and intention of Indian Succession Act is to cover the whole field relating to intestate and testamentary succession and to consolidate the said for the territory of India except Jammu and Kashmir. Lalhuzauva Vs. Ngurkhumi AIR 2013 GAU 14.

**Territories where Indian Succession Act Extends**

Unlike other statues, the Indian Succession Act, 1925 does not contain any provision for the extent of the Act. It is a pre constitutional Act. The Act was not applicable in different erstwhile provinces of India.

**Section 29 (2) and the Travencore Christian Succession Act**

As regards whether Indian Succession Act, 1925 applies to the State of Travencore and existing customs there was much ambiguity which led to intervention of courts and Indian Parliament.

**Historical Backdrop of the Travencore State and Travencore Christian Succession Act.**

Travencore State was princely state. In or about 1949 the former state of Travencore merged with the former state of Cochin to form Part-B state of Travencore-Cochin. While the Indian Succession Act, 1865 was in force in India, the Travencore Regulation-II of 1092, corresponding to 1916, was passed. The regulation was intended to consolidate and to amend rules of law applicable to intestate succession among Indian Christians in Travencore. The regulation was passed on 21.12.1916. On the date when the Indian Succession Act came into force, the Travencore regulation was in force in Travencore state. Law in force in the territories that states in regard to intestate succession to the property of members of Indian Christian community the Travencore Christian Regulation Act, 1092. However, with a view to bring about the uniformity of Legislation in the whole of India including Part-B states, parliament enacted Part-B state (Laws) Act, 1951 providing for extension to Part-B states of in certain parliamentary statues prevailing in rest of Indian. The provisions of the Indian Succession Act, 1925 were extended to all Part-B states including the state of Travencore with effect from 01st April, 1951. According to Section 6 of Part-B states (Laws) Act, 1951, Laws of Part-B states corresponding to extended laws were repealed. Therefore, the Indian Succession Act, 1925 was made applicable to Part-B states of Travencore-Cochin by virtue of Section 3 of Part-B states (Laws) Act, 1951. However, the Madras High Court in D. Challaiah and another Vs. G. Lalitha Bai and another, AIR 1978 Mad 62 case held that on the date when the Indian Succession Act came into force, the Travencore Regulation was in force in Travencore state. Further it is observed that the Indian Succession Act even after merger of the state will not be applicable to Christians in the Indian States. Thus, Section 29 (2) stands as much as Section 29 (1) thereby including the application of the enactment to Hindus, Muhammadan and Buddhists, sicks or Jains and also persons who are covered by any other law for the time being in force. Section 29 (2) was interpreted by the Madras High Court to mean that it excludes the application of Part-V of Indian Succession Act, 1925. Further it is observed that when the Indian Succession Act itself does not provide

for succession of the property of the Indian Christians in Travencore it can not be take place of the Travencore regulation. Therefore, as long as the Indian Christian Act, 1925 stands with section 29 (1) and (2) intact the Travencore regulation can not be said to have been repealed because of the provisions of the Section 6 of the Part-B state (Laws) Act. The Travencore-Cochin High Court in Kurrian Augusthy Vs. Devassy Aley upheld the existence and applicability of Travencore regulation. Till January, 1956 the Christians in the stae of Kerala were governed by two different Acts. The Travencore Christians were governed by the provisions of the Travencore Christians Act, 1916 and the Cochin Christians Succession Act, 1921. But in a recent decision of the Hon'ble Supreme Court, it has been held that Travencore Christian Succession Act, 1902 stood wholly repealed and the coming into force of Part-B states (Laws) Act, 1951 and not saved by Section 29 (2) of Succession Act and accordingly, in matters of intestate succession to property Indian Christians of former state of Travencore chapter-II of Part-V of Indian Succession Act would apply- Mary Roy Vs. State of Kerala, AIR 1986 SC 1011. Recently, the Hon'ble Supreme Court has followed the law laid down in Mary Roy Vs. State of Kerala in Taluk Law Board Vs. Cyria Thomas, AIR 2002 SC 3161. It is desirable that for the convenience of all concerned the legislators should make a specific provision in the Act declaring the territories where it extends or where it does not. Ordinarily a Central legislation, if nothing is provided as regards its application to some specified territories, extends to the whole of India (except the state of Jammu and Kashmir). The difficulty arises as this pre-Constitutional Act was not applicable to the entire British-India. An important legislation like the Indian Succession Act must not suffer from such a lacuna.

**Who is Christian**

The Christian is one who professes the religion of Jesus Christ. The Indian Succession include native converts to Christianity and their Christian descendants. Section 2 (d) of the Indian Succession Act defines “Indian Christian” as a native of India who is, or in good faith claims to be, of unmixed Asiatic descendant and professes any form of the Christian Religion.

Chapter II of Part V of the Indian Succession Act deals with the Law of Succession with regard to the Christians.

**Succession to a male intestate**

The scheme of succession to the property of a male intestate is explained below:

**(I) Widow:-** If the deceased has left a widow but no lineal descendants or collaterals she takes the entire estate. If he has left no lineal descendants but there are ascendants or collaterals she takes one half. If there are lineal descendants she takes one third of the property. A widow may be excluded from inheritance by a valid contract made before her marriage.

**(II) Lineal Descendants:-** In the presence of the widow, the lineal descendants (i.e., children and descendants of children) take 2/3$^{rd}$ of the estate. Otherwise they take the whole of the estate. If they are of equal degree they share equally. The division is per capita. In reckoning degrees, children are of the first degree, and every generation descending constitutes a degree. So the grand children are two degrees removed from the deceased. If the lineal descendants are of different degrees of kindred, the division is per stripes. That is, there are as many sharers as there are branches of descendents who are nearest in degree and the share of a branch is allotted to the representatives of that branch. So if there are two children and three grand children by a predeceased child, there will be 3 shares, each child taking one share and three grand children taking the share of their deceased parent.

**(III) Father:-**When there are no lineal descendants, after deducting the share of the widow (½ share) the remaining ½ share goes to the father.

**(IV) Mother:-** If the father is dead, the mother takes the whole of the property (after deducting widow's half share) when there are no brothers and sisters or their children.

**(V) Brothers, sisters and their children:-** If the mother also is dead, brothers, sisters, and their children take the property. Each living brother and sister takes a share and the children of pre-deceased brothers and sisters take the shares, which would have been allotted to their parents if they had been alive. Even if the mother is alive, she cannot exclude brothers, sisters and their children wholly. She is allotted one share and the distribution is effected among the brothers, sisters and their children as already mentioned.

**(VI) Nearest of Kin:-** In the absence of lineal descendants, parents, brothers and sisters, the relatives who are in the nearest degree of kindred share equally after deducting the widow's share (if there is a widow).

**Succession to female intestate**

The husband of the descendant has the same rights, which the widow has in respect of the husband's property if he dies intestate. The widower thus takes the widow's place in the scheme of succession. With this difference, the scheme of succession is the same.

**Special Provision in the case of Christians other than Indian Christians**

In the case of Christians other than Indian Christians, when there are no lineal descendants, the widow (or widower) is entitled to the first, 5000 rupees out of the estate of the deceased. If the estate is worth more than Rs. 5,000/- the excess devolves according to the rules mentioned above.

**CONSANGUINITY (BLOOD RELATIONSHIP)**

**(I) Lineal and Collateral Consanguinity**

Consanguinity means blood relationship. Such a relationship exists between two persons when they are descended one from the other. Thus A and his son or daughters are related by consanguinity because one of them (son or daughter) is directly descended from the father (A). this kind of

consanguinity, which subsists between two persons by virtue of their being in a direct line of ascent or descent, one from the other is known as lineal consanguinity. Thus A is connected with his son by one degree of ascent and with his grand son by two degree of ascent. Conversely, the son is connected with A by one degree of descent and the grand son by two degrees of descent.

In collateral consanguinity two persons who are not in direct line of ascent or descent, have a common ancestor. Thus two brothers are related by collateral consanguinity. The degree of kindred is ascertained by first counting the number of degrees upward towards the common ancestor and then downwards to the collateral relatives concerned. Thus if A and B are brothers A is related to B by one degree of ascent and one degree of descent i.e., they are removed by two degrees. Each generation, whether ascending or descending, constitute one degree.

**(II) Cousin-German**

One's father's brother's son is called cousin German or first cousin. He is four degrees removed for there are two degrees in the line of ascent (father and grand father) and two degrees in the line of descent from the common ancestor (grand father).

**Kindred:** Kindred is only a synonym for consanguinity.

**Rules of devolution of property when a Christian intestate has left a widow but no lineal descendant**

If there is no lineal descendants, there may still be ascendants and collaterals. In such a case the widow takes one-half. The other kindred will take the residue, the moiety, i.e., half share. The distribution of this residue will be governed by the provisions of the Indian Succession Act.

When the intestate is a Christian, but not an Indian Christian there is a special provision (Section 33-A which allots to the widow exclusively up to Rs.5000/- of the net assets and only the residue is distributed between the widow and the kindred).

In the absence of descendants as well as of ascendants and collaterals, the widow takes the whole of the property.

**DOMICILE**

**(I) Nature of Domicile**

Domicile denotes the relation between a person and a State for determining his personal status and the law applicable to him in matters such as majority, rules as to marriage and divorce and principles relating to succession. The Indian Succession Act deals with succession and so deals with domicile for the purpose of succession or inheritance. Movable property is governed in regard to succession by the law of the place where a person is domiciled at the time of his death. Succession to immoveable property, however, is governed by the law of the place where the property is situate wherever the deceased might have had his domicile (section 5).

A person can have only one domicile (section 6). Nor can he be without a domicile. Domicile is fixed in that country where he had his residence with the intention or remaining there forever. There are thus two elements in domicile.

**(I) Factum of residence:-** This should be an indefinite habitation though not a continuous one.

**(ii) Animus:-** This is a present intention to reside forever.

**ACQUISITION OF DOMICILE**

Domicile is acquired by taking up a fixed habitation in a country, which is not that of his domicile or origin. This kind of domicile is also called a domicile of choice. Its acquisition is animo et facto. The factum is residence and the animus is the intention of making it fixed, i.e., permanent.

It may be observed that if a person having the domicile of origin in another State comes to Indian and resides there, if he does so only because he is in the civil, military, navel or air force service of government or in the exercise of a profession or calling, he should not be deemed to have acquired an Indian domicile (section-II). Similarly, a person who is appointed as ambassador or consul in a foreign country resides in the foreign country but he does not merely because of such residence acquire a foreign domicile. Members of his family or his servants also do not by such residence acquire the foreign domicile.

**Domicile of Origin and Domicile of Choice**

The law attributes a domicile to a person at the time of his birth. It is called the domicile or origin (section 7). The domicile of origin of a legitimate child is that of its father and that of an illegitimate child is that of its mother (section 8). This domicile continues until a new domicile of choice is acquired (section 9).

**Part V of the Act applicable to Christian Priest:-**

Unless there is some other statue, enacting a different law of inheritance, applicable to Christian priests only Part V of the Succession Act has to be applied to find out who is the heir to the deceased. Then, as per Part V of the Succession Act, the superior priest is admittedly not an heir to the deceased priest. Therefore, on the death a Christian priest, the

Succession Certificate could not be granted to the superior priest. **In re: Rt. Rev. Casmir Ghandickam, Archbishop of Madras, Mylapore, AIR 1990 MAD 183 at Page 183.**

**Nun, if acceptable to Succession**

According to the decision of the Karnataka HighCourt in GK. Kepegowda Vs. Lacinda, AIR 1985 Kant 231, there is no statutory bar for a nun to claim legitimate share out of the estate left by her father.

**Grant of Succession Certificate**

Where the deceased was a Christian Priest, only Part-V of the Succession Act has to be applied to find out who is an heir of the said deceased and the superior priest was not an heir to the deceased priest. In re. Rt. Rec. Casmier Gnamadickan, AIR 1990 Mad 183.

**Rights of Christian Daughters:-**

There is no law which disqualifies a daughter to inherit her parents on the ground that she was paid stredhanam. Under law no person has any estate or interest contingent or otherwise in the property of a living person to which he hopes to succeed as heir. Therefore, daughter is not competent to surrender any interest in the expected share in exchange to stredhanam. E.V. George V. Annie Thomas and another, AIR 1991 KER 402 at page 404.

**Adoption by Christian:-**

Though Christian law does not statutorily provided for adoption it has been held by Kerala High Court in Philips Alfred Malvin V. Y.J. Gonsalvis, AIR 1999 KER 187, that Christian Law recognizes adoption and the adoptive child will have the same rights as that of natural born son. The same view was followed in Vasanthi Vs. Pharaz John, AIR 2007 Kant 122.

**Whether Indian Christian in Punjab can make a valid adoption?**

Section 2 of the Indian Succession Act, 1865 made an exception in the case of local law, and so far as the Punjab was concerned, Section 5, Punjab Laws Act, did provide an exception. It is, therefore, open to a party to prove that according to the custom applicable to the parties, an Indian Christian in the Punjab is entitled to make a valid adoption, so as to change the rule of succession laid down in the Indian Succession Act. **Sohan Lal V. A.Z. Makuin and another, AIR 1929 Lahore 280 at Page 280.**

**Adopted child of Christian in Territories governed by Bengal, Assam and Agra Civil Courts Act:**

Any custom pertaining to succession, inheritance, adoption, etc., prevailing amongst the Indian Christians in territories governed by the Bengal, Agra and Assam Civil Courts Act can not be regarded as a law for the time being in force as contemplated by Section 29 (2) of the Indian Succession Act and despite any such custom prevailing in any section of the Christian community in the State, the intestate succession in respect of their properties is to be governed by the provisions contained in the Indian Succession Act and for that purpose any custom or rule of justice, equity and good conscience would be irrelevant. Mrs. Ethel Walter v. Ajit Dutt and others, 1986 (1) Civil LJ 387 at p.387 (Alld).

**Hindu Embracing Christianity and vice versa:**

If a Christian renounces his religion and embraces Hinduism by formal conversion and also marries a Hindu women according to Hindu rites and customs, he ceases to be a Christian and becomes a Hindu to be exempted from the operation of this Part – Ratansi v Administrator General AIR 1928 Mad 1279.

A Hindu when embraces Christianity ceases to a Hindu and if he dies as a Christian, the law applicable to his estate is that laid down in Indian Succession Act – Napen Bala v Satis Kanta 15 CWN 158. If a member of Hindu coparcenary (but not all) becomes a Christian, then he no longer remains a member of the coparcenary. His share in the undivided coparcenary property shall be what he was entitled on the day when became a Christian. If a Hindu after embracing Christianity again becomes a Hindu by change of religion, he becomes a Hindu having the same statue as before, that is, his cast again will be what he was before conversion.

**Effect of Section 26 of the Hindu Succession Act**

The Andra Pradesh High Court, Madras High Court, Culcutta High Court in Shabana Khan v. D.B. Sulochana, in 2008 (2) ALD 818, E. Ramesh v. P. Rajini, in (2002) 1 MLJ 216, Ashoke Naidu v. Rayamond S. Mulu, in AIR 1976 Cal 272, have considered Section 26 of Hindu Succession Act and held that the Hindu Succession Act is not applicable to the children of the convert. However, a convert himself or herself is not excluded from the application of the Act by virtue of this section.

In Balchand Jairamdas Lalwani v. Nazneen Khalid Qureshi the Bombey High Court observed that a Hindu converted into another religion is not disqualified to claim the property under section 26 of the Hindu Succession Act, 1956.

The right to inheritance is not a choice but it is by birth and in some case by marriage, it is acquired. Therefore, renouncing a particular religion and to get converted is a matter of choice and cannot cease relationship which are established and exist by birth. Therefore, a Hindu convert is entitled to his/her father's property, if father died intestate, but the children of the convert cease to claim right as descendant of grand parent.

**PROBLEMS**

**(I) A Christian dies leaving a widow, two sons and two daughters. Distribute his estate.**

In the presence of lineal descendants the widow takes 1/3rd. The remaining 2/3 is distributed amongst the lineal descendants according to the provisions of the Indian Succession Act. when there are only children, there is equal distribution amongst them. So each of the four children takes ¼ of 2/3 = 1/6 of the property.

**(II) A dies intestate leaving property of the net value of Rs.9000/-. He is survived by his widow and son. Distribute the property.**

If the intestate is an Indian Christian:- One-third of the property is taken by the widow when there is a lineal descendant. So the widow takes Rs.3000/-. The balance of Rs.6000/- goes to the son.

If the intestate is a Christian not being an Indian Christian:- Rs. 5000/- is first set apart for the widow. The balance of Rs.4000/- is distributed between the widow and the son. The widow takes 1/3rd and the remaining 2/3rd goes to the son. So the widow gets in all Rs. 5000/- plus, Rs.1333/- and 33 pies while the son gets Rs. 2666/- and 67 pies.

**(III) A dies leaving property of the net value of Rs. 3000/-. He is survived by his widow and son. Distribute the property.**

**If the intestate is an Indian Christian:-** The widow takes Rs. 1000/- and the son takes Rs.2000/-.

**If the intestate is a Christian but not an Indian Christian:-** The widow takes the entire amount. This is because under section 33-A when the net value of the estate of the intestate is less than Rs. 5000/- the widow retains the whole of the property.

**(IV) A has two children, John and Mary, John dies before his father leaving his wife pregnant. Then A dies leaving Mary surviving him and in due time a child of John is born. Who is entitled to A's property?**

At the time of A's death John's wife is pregnant. The child in utero is regarded as in existence for purpose of succession. So we have to reckon with the claims of A's daughter Mary and the grand son of the predeceased son John. Both are lineal descendants. The grand son who is remoter is descendant from A's son who is of the same decree of relationship as Mary, the daughter. So the property is to be divided into two shares. The daughter takes one share. The grand son takes the other share, which his father John would have taken had he survived the intestate. This is by virtue of section 40 of the Indian Succession Act.

**(V) A, a Christian leaves 8 grandchildren and two children of a deceased grand child. How is the estate to be divided?**

The estate is to be divided into 9 parts (number of grand children including the deceased grand child). Each of the grand children takes $1/9^{th}$ share. The two children of the deceased grand child together take $1/9^{th}$ i.e., each great-grandchild takes $1/8^{th.}$

**(VI) An Indian Christian dies leaving two sons and two daughters. Distribute the property of the deceased.**

Here there are only children of the deceased. So the property is to be divided equally among them. Each child gets one-fourth of property.

**(VII) A has three sons B, C and D. The three sons predecease A. B leaves three children, C two and D one surviving A. what are the rights of each of the grand-children in A's property?**

All the survivors are grandchildren. Since there are six grandchildren, each grandchild takes 1/6$^{th}$ share.

**(VIII) A, a widow has a daughter B by her first husband. A married again and by her second husband she has two sons, C and D. B died intestate and unmarried. Who are entitled to B's property?**

The claimants to the property of B are:

(1) Mother A,

(2) Step-brothers C and D (sons of her mother but not of her father). For purposes of succession under the Indian Succession Act, no distribution is made between those related through father and those related to mother (sec. 27). So C and D can also inherit under section 43. The mother and the two brothers will each take 1/3 of B's property.

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