## I – WORKSHOP – 2018-19

### KRISHNA DISTRICT

### IDENTIFIED OFFICERS

<table>
<thead>
<tr>
<th>S.No</th>
<th>Name of the Officer</th>
<th>Topic</th>
<th>Page Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Smt. Indira Priyadarshini, Rent Controller cum- IV Addl. Junior Civil Judge, Vijayawada</td>
<td>Succession under Indian Succession Act, 1925 in respect of Christians.</td>
<td>9-17</td>
</tr>
<tr>
<td>3.</td>
<td>Sri Shaik Ibrahim Sharief, I Additional Junior Civil Judge, Machilipatnam</td>
<td>Muslim Law of Inheritance</td>
<td>18-38</td>
</tr>
</tbody>
</table>
TOPIC – I

LATEST TRENDS IN SUCCESSION AMONG HINDUS

Paper submitted by

Smt. G. Prathibha Devi,
Mahila Sessions Judge – cum –
V Additional District Judge,
Vijayawada.

HINDU JOINT FAMILY (MITAKSHARA):
A Mitakshara Hindu Joint Family consisting of Common Ancestor, all his male lineal descendants, their wives, unmarried daughters and dependants of the family.

Basic Characteristics of Hindu Joint Family.

- Unity of Ownership & worship
- Unity to protect Community interest.
- Prevention of Fragmentation of Agricultural Lands.
- Common caring and sharing of responsibilities.
- Right to Maintenance to the members of the family.
- Right to devolution of property by Rule of Survivorship.

WHAT IS COPARCENARY?
Coparcenary is a small body with in the joint family consisting of Common ancestor and all his three male lineal descendants.

- A coparcener has right to property.
- A coparcener has right to partition.

THE HINDU SUCCESSION (AMENDMENT) ACT 2005:
- Daughter of a coparcener shall by birth becomes a coparcener in her own right the same manner as the son, subject to liabilities in the respective property.
- The Act came into force w.e.f. 9.9.2005.
- The Amended Act is not applicable to the properties disposed or partition by 20.12.2004.
- Any property which a Hindu female entitled as coparcener shall be regarded as her own property with all rights of alienation.
- If a Hindu dies after the commencement of this Act, his interest in the joint family shall devolve by testamentary or interstate succession but not by rule of survivorship.
There is a demand partition of coparcener property as on the day of death of a coparcener.

The share of a pre-deceased son or pre-deceased daughter goes to their surviving children.

The son's pious obligation has been removed for the debts incurred by his father on or after 09.09.2005.

The consent of dwelling house has been abolished.

**WHAT IS JOINT FAMILY PROPERTY?**

- Ancestral property i.e. from F, FF, FFF
- Members jointly acquired for the purpose of joint family
- Separate property of a member blended into joint stock
- Property acquired by a member with the help of joint family funds

**WHAT IS SELF ACQUIRED PROPERTY.**

- Property acquired with his own skill and labour
- Property inherited from any person other than F, FF, FFF.
- Property gifted to him by any person for his exclusive use.
- Property obtained in partition, provided that he has no child.
- Property gifted by the father with love and affection.
- Property acquired by the grants of government.
- Property under Gains of Learnings Act, 1930.

**HOW PARTITION TAKES PLACE?**

- By the death of any coparcener
- By the agreement of members
- By referring the matter to an arbitration
- By filing Partition sits in civil court.

**WHAT PROPERTIES ARE LIABLE FOR PARTITION?**

All movable, immovable, tangible and intangible properties of the joint family, which includes agricultural land, buildings, ponds, staircases, passage, easement rights, family idols, places of worship & family ornaments.

**CLASS-II HEIRS OF A HINDU:**

I. Father.

II. (1) Son’s daughter’s son, (2) Son’s daughter’s daughter, (3) Brother, (4) Sister.

III. (1) Daughter’s son’s son, (2) Daughter’s son’s daughter, (3) Daughter’s daughter’s son, (4) Daughter’s daughter’s daughter.
IV. 1) Brother’s son, (2) Sister’s son, (3) Brother’s daughter, (4) Sister’s daughter

V. Father’s father, father’s mother

VI. Father’s widow, brother’s widow

VII. Father’s brother, father’s sister

VIII. Mother’s father, mother’s mother

IX. Mother’s brother, mother’s sister.

AGNATE:

A person is said to be an ‘agnate’ of another if the two are related by blood or adoption wholly through males

Descending Agnates .. (1) S, SS, SSS, SSSS
    (2) S, SS, SSD

Ascending Agnates .. (1) F, FF, FFF, FFFFF
    (2) F, FF, FFM

Collateral Agnates .. Brother, brother’s son, brother’s son’s son.

COGNATES:

A person is said to be a ‘cognate’ of another if the two are related by blood or adoption but not wholly through males.

Descending Cognates:- Sister’s son, Sister’s son’s son.

Ascending Cognates:- Mother’s mother, Mother’s mother’s mother.

Collateral Cognates:- Mother’s brother’s son.

SUCCESSION TO THE PROPERTY OF A HINDU FEMALE:

Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner (Sec.14).

SOURCES OF PROPERTY:

1. Property of her own, Self-acquired, Gifts, Stridhan, Grants & Arrears of Maintenance etc.

2. Property acquired from her father or mother.

3. Property acquired from her husband or father-in-law.

LAW OF SUCCESSION AND INHERITANCE LATEST TRENDS

The Hindu Succession Act, 1956 marks a new era in the history of social legislation in India. A vigorous attempt has been made to bring some reforms of far reaching consequences in the system of inheritance and succession.

The Hindu Succession Act, 1956 has been passed to meet the needs of a progressive society. The Act has been passed to codify and amend the Hindu Law regarding succession.
The scheme of the Act is as under:-

In the matter of succession to the property a Hindu dying intestate (after coming into force of the Act, is to lay down a set of general rules of succession to the property of a male Hindu in Section 8 to 13 to ascertain the shares and portions of various heirs, enumerated in the schedule. It is part of this scheme to enact in section 15 and 16. Separate general rules affecting succession to the property of female intestate. Section 17 provides for modifications and changes in the general scheme of succession to the property of male and female Hindu in relation to persons governing by Murumakantyam and Aliyasanta Law. Section 18 to 28 of the Act are given the title of “general provisions relating to the succession” and lay down rules which are supplementary to the provisions in Section 5 and 17 of the Act.

The Law governing property rights of woman in India underwent a significant change in 2005 vide Hindu Succession (Amendment) Act, 2005. Prior to the amendment woman as daughters, wives of widows had no claim in the ancestral property of their family. Coparcenary property was earlier confined to the male members of the family only. The Amendment Act primarily reflects the recommendations of the Law commission of India in its 174th report.

Post Amendment Act of 2005 the dynamics of share in coparcenary property has conferred equal rights to women and daughters in the Hindu Mitakshare coparcenary property. The Hindu Succession (Amendment) Act, 2005, amended, Section 6 of Hindu Succession Act, 1956, allowing daughters of the deceased equal rights with sons. In the case of coparcenary property or a case in which two people inherit property equally between them, the daughter and son are subject to the same liabilities and disabilities. The amendment essentially furthers equal rights between males and females in the legal system.

Position of women after enactment of Hindu Succession Act, 1956.

After the advent of the Constitution, the first law made at the central level pertaining to property and inheritance concerning Hindus was the Hindu Succession Act, 1956. This Act dealing with intestate succession among Hindus came into force on 17th June 1956. It brought about changes in the law of succession and gave rights, inf relation to a
woman’s property. The section 6 of Hindu Succession Act, 1956 was amended in 2005.

Out of many significant benefits brought in for women, one of the significant benefit has been to make women coparcenary (right by birth) in Mitakshare joint family property. Earlier the female heir only had a deceased man’s notional portion. With this amendment, both male and female will get equal rights. This amendment has made the daughter a member of the coparcenary and is a significant advancement towards gender equality. The significant change making all daughters coparceners in joint family property has been of great importance for women, both economically and symbolically.

The amended provision of Section 6 of Hindu Succession Act, has condition that it will have no application in case where any disposition or alienation including any partition or testamentary disposition of property had taken place before 20-12-2004. Thus to get the benefit as pert he Amended Act, the following conditions need to be satisfied.

a) she should have been born into the family
b) the undivided coparcenary property must exist on 20-12-2004.
c) Partition of the property ought not to have taken place prior to 20-12-2004.

If any of the above three conditions are not satisfied then the benefit under the Amendment Act will not be available.

Some important judicial pronouncements:-

Danamma @ Suman Surpur and another vs. Aman and others 2018 (2) ALT 22 (SC).

In this recent case taken u by two judge bench of the Hon’ble Supreme Court of India categorically expressed its view on two legal propositions governing rights of daughters of coparcenary property. Firstly, the court held that the Amendment Act of 2005 is applicable to living daughters of living coparceners on the date on which the Act came into force. Secondly, in the case the course has stated that daughter become coparencery by birth in the same manner as son.

Two intrinsic issues raised in the case were...

- Whether, the daughters of a coparcener could be denied their share on the ground that they were born prior to the enactment of the Act and, Therefore, cannot be treated as coparceners...
Whether, With passing of Hindu Succession (Amendment) Act, 2005, the daughters would become coparceners “by birth” in their “own right in the same manner as the son” and are, therefore, entitled to seek share as that of a son?

**Whether the right would be conferred only upon the daughters who where born after September 9, 2005 i.e., when Amendment Act came into force:**

The said issue was settled by the Hon’ble Supreme Court of India in the case of Prakash and Others Vs. Phulavati & Ors. (2016) 2 SCC 36, wherein it was held that the rights under the amendment are applicable to living daughters of living coparceners as on 09-09-2005 irrespective of when such daughters are born. Disposition or alienation including partition which may have taken place before 20-12-2004 as per law applicable prior to the said date will remain unaffected.

**Other noteworthy observations made by the Supreme Court of India are as under:**

- ...That the law relating to a joint Hindu family governed by the Mitakshara law has undergone unprecedented changes. The said changes have been brought forward to address the growing need to merit equal treatment to the nearest female relatives, namely daughters of a coparcener.
- ...That the Amendment act stipulates that a daughter would be a coparcener from her birth, and would have the same rights and liabilities as that of a son. The daughter would hold property to which she is entitled as a coparcenary property, which would be construed as property being capable of being disposed of by her either by a will or any other testamentary disposition.
- ...That these changes have been sought to be made on the touchstone of equality, thus seeking to remove the perceived disability and prejudice to which a daughter was subjected.
- ...That the fundamental changes brought forward about in the Hindu Succession Act, 1956 by amending it in 2005, are perhaps a realization of the immortal words of Roscoe Pound that “the law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and the need of change.”
• ...That Section 6, as amended, stipulates that on and from the commencement of the amended Act, 2005, the daughter of a coparcener shall by birth become a coparcenor in her own right in the same manner as the son. It is apparent that the status conferred upon sons under the old section and the old Hindu Law was a treat them as coparceners since birth. The amended provision now statutorily recognized the rights of coparceners of daughters as well since birth.

• ...That both the sons and the daughters of a coparcener have been conferred the right of becoming coparceners by birth. It is the very factum of birth in a coparcenary that creates the coparceneray, therefore the sons and daughters of a coparcener become coparceners by virtue of birth.

• ...That the right to partition has not been abrogated. The right is inherent and can be availed of by any coparcener, now even a daughter who is a coparcener.

Prakash & Ors. V. Phulavati & Ors. (2016) 2 SCC 36

In this case, the Supreme Court held that the text of the amendment itself clearly provides that the right conferred on a “daughter of a coparcener” is “on and from the commencement of the Hindu Succession (Amendment) Act, 2005”. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 09-09-2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20-12-2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.

Ganduri Koteswaramma & Anr. v. Chakiri yanadi & Anr. (2011) 9 SCC 788

In this case, the Supreme court held that the rights of daughters in coparcenary property as per the amended Section 6 of Hindu Succession Act are not lost merely because a preliminary decree has been passed in partition suit. So far as partition suits are concerned, the partition becomes final only on the passing of a final decree. Where such situation
arises, the preliminary decree would have to be amended taking into account the change in the law by the amendment of 2005.

The division bench of Hon’ble High Court of Hyderabad in B. Chandra Kumar Vs. A.Anuradha and another 2015 (5) ALT 3834 (DB) held that coparcenary rights do not exist in self acquired property which is not thrown into common hotchpotch of the joint family (doctrine of blending). That the concept of birth right (survivorship) at which a person acquires rights of his birth even if the ancestry is still alive under fundamental to an understanding of the coparcener.

In Moture Umadevi and Others vs. Bandaru Himmat Kumar and Others 2017 (3) ALT 574 the Hon’ble High court of Hyderabad held that the succession is governed by the provisions of Section 6 of Hindu Succession Act, 1956 and not by survivorship.

**Conclusion:**

The law regarding coparcenary in the joint Hindu family has evolved over time. Before independent various legislatives were passed regarding coparcenry. The main change that has been brought after the independence was in 2005 when the Hindu Succession (Amendment)Act, 2005 was enacted. This act changed the face of Hindu Succession act by giving equal rights to women as that of the men. The women too can now be the coparceners.
TOPIC – II

SUCCESSION UNDER INDIAN SUCCESSION ACT, 1925 IN RESPECT OF CHRISTIANS

Paper Submitted by

Smt. Indira Priyadarshini,
Rent Controller cum- IV Addl. Junior Civil Judge,
Vijayawada.

The law succession defines the rule of distribution of property in case a person dies without making any Will. Before going to Christian law of succession it would be relevant to know how the property of the deceased person devolves upon the heirs. The property may be ancestral or self acquired property may devolves in two ways i.e.,

1. By testamentary succession i.e., the deceased died by executing will equeathing his properties to specific heirs.
2. By intestate succession when the deceased died intestate without executing Will or any deeds.

The religion of the deceased determines the succession to his estate. For example succession among in Hindus governed by the Hindu succession Act 1956. There is no specific succession Act relating to Christians succession. Succession only applies when the person died intestate without executing any Will.

I) The brief history of introducing Christian Law of Succession:

In our country the Christians constitute third major population in our country and they are more than 2 crores and 2.3 % of total population of our country. The British Indian Government enacted the Indian Succession Act, 1865 which has applied in the case of Christians. In our country in Kerala the Christians were governed by two Acts i.e. i) Cochin Christians – by the Cochin CSA, 1921 and ii) Travancore Christians – by the Travancore CSA, 1916. Now the CCSA and the TCSA are repealed and the Christians in those areas are governed by the ISA, 1925. In other areas, the Christians are Protestant and Tamil Christians living in certain taluks – governed by their customary laws and in Goa, Daman and Diu – by the Portugese Civil Code, 1867. In Pondicherry, the Christians are governed by the French Civil Code, 1804, customary Hindu law or the ISA. Despite those variances, the overall law for Indian Christians is the ISA, 1925.
II) Historical aspects of the Indian Succession Act, 1865:

Prior to 1865, considerable uncertainty was there in matters of succession. For Presidency towns, English law was applied and for Mofussil areas, law of the country of the parties or customs observed by the parties was applied. Therefore, there was a need to have consolidated Indian law relating to succession. In the said circumstances, the Third Law Commission led to the enactment of the Indian Succession Act, 1865 based on English Law. The intention of the legislature was to apply the law to different communities who did not have their own law in matters of succession and the object of the Act was to consolidate large number of laws which were in existence. The ISA, 1865 was later replaced by the ISA, 1925. Then onwards the rules for succession among the Christians have been codified under the Indian Succession Act, 1925. Certain customary practices also influence the principles of inheritance in case of the Christians and have also been considered by the Courts in India.

With respect to Indian Christians, the diversity in inheritance laws is intensified by making domicile a criterion for determining the application of laws. The laws of inheritance applicable to Christians are same for both genders.

III) Main features of the ISA, 1925:-
1) No discrimination based on sex among the heirs.
2) No discrimination between persons related by full blood and those related by half blood.
3) Relations by adoption are not recognized.
4) Both movable and immovable could be inherited by kindred.
5) Uniform rule for devolution of property for both male and female dying intestate.

IV) Estate:

a) It includes all things real and personal.
b) All property owned by an individual, irrespective of the mode of acquisition.
c) In case the property is not disposed of by will by an individual, the same shall devolve upon his/her successors and heirs upon his death.
d) Properties or money given by the intestate to a child for his/her advancement in the life would not be considered at the time of distribution of the intestate’s property.
V) **Rules for devolution of the estate:**

i) Chapter II of the ISA, 1925 provides for the order and the rules for the devolution of the estate and the share to be allotted to the heirs.

ii) The ISA provides that a widow is not entitled to the property if by a valid contract made before the marriage she is explicitly excluded from the distributive share of the husband's estate.

VI) **Concept of Succession:**

Succession deals with how the property of a deceased person devolves on his heirs. The property may be: ancestral or self-acquired. The property may devolve in two ways: by testamentary succession and by intestate succession.

VII) **INDIAN SUCCESION ACT – Types of heirs**

i) **Spouse**

ii) **Lineal descendants**

- includes children or children's children and only those born out of a lawful marriage.

- excludes children or children's illegitimate children.

iii) **Kindred**

- contemplates only relation by blood through 'wife', 'husband' or 'lineal descendants'. Through lawful wedlock. Legitimate relationship only.

VIII) **The Indian Christian:**

Section 2(d) of the Indian Succession Act, 1925 defines the Indian Christian as follows:

Indian Christian means “native of India who is or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion.

The said meaning of a Christian is further clarified in *(1968)* 9 **M.I.A. 195** in between *Abraham v. Abraham* it was held that “even converted Christians also including in this definition.” It was also held that a Hindu who has converted to Christianity shall not be governed by Hindu law (customary or otherwise) anymore, and continuing obligatory force that the Hindu law may have exercised upon him stands renounced. However, he was given the option to permit the old law to continue to have an effect on him, despite having converted out of the old religion into new one.

IX) **Whether under the ISA, 1925, the convert could elect to be governed by the old law?**

a) In Kamawati v. Digbijoy the Privy Council held that the old law ceases to be applicable with regard to inheritance.
b) In 2001, the Allahabad High Court reiterated that Hindu converts to Christianity will be bound solely by the succession governing Christians, inclusive of the ISA, 1925 and it will not be possible for them to elect to be governed by the old law.

X) **Will the incidents of the joint family (in case of converts out of Hindu religion) continue to apply?**  
   a) No uniform conclusion by the Courts.  
   b) In Francis v. Gabri, the Bombay HC held that if a family were to convert out of Hinduism into Christianity, the coparcenary rights of that family would remain untouched.  
   c) But the Madras High Court in Francis v. Tellis that the effect of conversion out of Hinduism would be to render all coparcenary rights thenceforth individual rights. In this case, out of two brothers, one of them converted to Christianity. It was held that upon his death, it would not be possible for the other brother to succeed to the entire estate by way of the doctrine of survivorship.

XI) **Intestate succession among Indian Christians:**  
   Section 30 of the Indian Succession Act defines the intestate succession as a person is deemed to die intestate in respect of all property of which he has not made a testamentary dispossesion which is capable of taking effect. There is no specific law of succession about the Christian dies without any will. Christians have varied laws on succession and familiar relations. The rules of succession among the Christian has been codified under the Indian succession Act of 1925. Any property which is not bequeathed or allocated as per legal process, will, upon the death of the owner, in so far as he is an Indian Christian, devolve as per the rules contained in Chapter II of the ISA, 1925. Part-V of the Indian succession Act dealing intestate succession covering Sec.29 to 49. According to Sec.29 (1) this part shall not apply to any intestacy occurring before the 1st day of January 1866 or the property of any Hindu, Mohammedan, Buddhist, Sikhs or Jain. According to Sec.29 (2) this part shall constitute the law of India in all cases of intestate. There is no reference about the Christians in Sec.29. Thus, Part-V of the Indian succession 1925 is applicable to the Christians succession Act.

   A person is deemed to be died intestate in respect of all property of which he has not made a testamentary dispossesion which is capable of making effect. Chapter-II of Part-V dealing with the rules in case of intestate other than Parsis. According to Sec.32 the property of an
intestate devolves upon the wife or husband or a upon those who are of
the kindred of the deceased in the order according to rules. Thus,
according to sec.30 to 49 dealing with the properties of deceased died
intestate excluding the Hindu, Mohammedans, Buddhist, Sikh or Jain.

XII) **Intestacy – Whether total or partial?**

i) Total intestacy – Where the deceased does not effectively dispose of
any beneficial interest in any of his property by will.

ii) Partial intestacy – Where the deceased effectively disposes of some,
but not all, of the beneficial interest in his property by will.

XIII) **Domicile**

**Domicile of the deceased plays an integral role in determining the method of devolution of his property.**

a) Halsbury’s definition: A person’s domicile is that country in which he either has or is deemed by law to have his permanent home.

b) Section 5: Succession to the movable property of the deceased will be governed by the lex loci as per where he had his domicile at the time of his death; whereas succession to his immovable property will be governed by the law of India, no matter where he was domiciled at the time of his death.

c) Section 6 further clarifies the said provision by stating that a person can have only one domicile for the purpose of succession to his movable property.

d) ‘Domicile’ and ‘Nationality’ differ from each other.

e) ‘Domicile’ deals with immediate residence. ‘Nationality’ implies the original allegiance borne by the person.

f) Section 15 lays down that upon and during subsistence of marriage, the wife acquires the domicile of her husband automatically.

XIV) **Kindred or Consangunity**

a) Section 24 makes reference to the said concept. It defines it as the connection or relation of persons descended from the same stock or common ancestor.

b) Section 25 qualifies ‘lineal consanguinity’ with regard to descent in a direct line. Under this head fall those relations who are descendants from one another or both from the same common ancestor.
XV) **RIGHTS OF WIDOW**

Sections 33, 33A and 34 govern succession to widow.

According to Sec.33 of Indian Succession Act 1925 where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

- If he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;
- Save as provided by section 33 (A) if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained,
- If he has left non who are of kindred to him, the whole of his property shall belong to his widow. Sec.33 (a) specific provision with regard to deceased left widow and no lineal descendants. This section gave the protection of the widow for the property worth of Rs.5,000/-.

According to Sec.34 where the deceased died intestate and no widows the property shall go to his lineal descendants or kindred to him.

XVI) **RIGHTS OF WIDOWER**

Section 35 lays down the said rights. It simply says that the widower shall have the same rights in respect of her/intestate property as she would in the event that he predeceased her/intestate. In other words, according to Section 35, a husband surviving his wife as the same rights in respect of her property.

XVII) **Distribution of the property of the deceased died intestate where there are lineal descendants:-**

On considering the sections 36 to 40 it shows children, grandchildren and their children will be treated as lineal descendants. Rest of the persons will be treated as kindred covered under the rules sec.42 to 48. If a person died intestate the property shall be devolved upon children. If no children the property shall devolved upon his grandsons and great-grandsons. If the person died intestate 1/3rd of the property shall be devolved upon to her wife (widow). If the deceased sons and daughters are living grand-sons or grand-daughters are not entitled any share in the property of the deceased. The children of pre-deceased son/daughter are entitled the equal share. The parents and brothers of
the deceased will be treated as legal-heirs, but not relatives. If the deceased has no parents and brothers or sisters then the properties goes to the kindred.

**XVIII) RIGHTS OF CHILDREN AND OTHER LINEAL DESCENDANTS**

a) If the widow is alive, the lineal descendants will take 2/3rd of the estate; if not, they will take it in whole.

b) Per capita (equal division of shares) applies if they stand in the same degree of relationship to the deceased. [Sections 36 to 40]

c) Case law has determined that the heirs to a Christian shall take his property as tenants-in-common and not as joint tenants.

d) The religion of the heirs will not act as estoppel with regard to succession. Even the Hindu father of a son who had converted to Christianity was held entitled to inherit from him after his death.

**Section 48:**

i) Where the intestate has left neither lineal descendant, nor parent, nor sibling, his property shall be divided equally among those of his relatives who are in the nearest degree or kin to him.

ii) In cases where the intestate has no children but only has grandchildren and no other remote descendant, the property shall go equally to all the grandchildren.

iii) A husband is not entitled to inherit the property of the divorced wife. In case of judicial separation, the property of the wife would devolve upon her legal heirs as if the husband is divorced.

iv) A daughter-in-law has no right of succession to the estate of her intestate father-in-law.

v) In case of a Christian daughter, there exist no pre-existing right in the family property and her right generally arises when her parents die intestate.

vi) With regard to legitimate descendants and legitimate and illegitimate children, the Kerala High Court in Jane Antony, wife of Antony v. V.M.Siyath, Vellooparambi, opined that all illegitimate children, though born out of the wedlock, are children born out to the man and woman who cohabited for some time and are in substance husband and wife for all purposes.

vii) The Court showed no hesitation in declaring the children as legitimate and entitled to succeed to the deceased’s estate.
viii) The heirs' religion is immaterial. The only fact required is that the deceased should have belonged to the Christian religion on the date of death.
ix) The rights granted to the biological child are not recognized for the adopted child.

**XIX. CATHOLIC PRIESTS AND INHERITANCE**
a) The Courts held that right to inherit a distributive share is not extinguished either by usage or existing personal laws.
b) The Madras High Court held that the provisions of the ISA are also applicable in case of inheritance of property of a priest and is allowed only to the natural heirs of the deceased.

**XX. CATHOLIC NUNS AND INHERITANCE**
a) Different views were taken by the Karanataka High Court and the Kerala High Court.
b) The Karnataka High Court opined that a Nun is entitled to a distributive share in the property of her natural family in case of intestate succession.
c) The Kerala High Court held that where a nun ceases to have any connection with her natural family after entering the Church, the legal effect is that she is not considered to have a father, a mother or a family and is thus not entitled to a share in the estate of her natural family.

**XXI.ESCHEAT:**
i) The principle of escheat is applicable to the Christian laws of inheritance.
ii) In the absence of any lineal descendants and kindred to the deceased, the property shall devolve upon the Government.

**XXII. TESTAMENTARY SUCCESSION AMONG INDIAN CHRISTIANS:**
a) It is dealt with under Part VI of the ISA, 1925.
b) Section 59: Every person of sound mind, not being a minor, may dispose of his property, by will.
c) A will is the expression by a person of wishes which he intends to take effect only at his death.
d) In order to make a will, a testator must have a testamentary intention i.e., he must intend the wishes to which he gives deliberate expression to take effect only at his death.
e) Explanations to Section 59 further expand the ambit of testamentary disposition of estate by categorically stating that married women as also deaf/dumb/blind persons who are not thereby
incapacitated to make a will are all entitled to dispose of their property by will.

f) Soundness of mind and freedom from intoxication or any illness that render a person incapable of knowing what he is doing are also laid down as prerequisites to the process.

g) Sections 57 to 191 (134 sections) of Part VI of the ISA, 1925 deal with all issues connected with wills and codicils, and the making and enforcing of the same, including capacity to make a will, formalities needed for wills, bequests which can be validly made.
TOPIC – III

MUSLIM LAW OF INHERITENCE

Paper submitted by
Sri Shaik Ibrahim Sharief,
I Additional Junior Civil Judge,
Machilipatnam.

The foundation for the Muslim Law of Inheritance is the Verses of the Holy Quran. After revelation of the Quran verses a great reform took place in law of inheritance completely amending the pre-islamic customary law. But, the sharers of pre-islamic customary law were not completely ignored. Many of them became residuary.

According to the pre-islamic customary law:-
1. The nearest male agnate or agnates succeeded to the entire estate of the deceased.
2. Females and cognates were excluded.
3. Descendants were preferred to ascendants and ascendants to collaterals.
4. When the agnates were equally distant to the deceased, the estate was divided per capita.

Thus, the following persons would inherit the property of a deceased Mohammedan.

The ascendants (Parents and certain other ascendants) were allowed to inherit along with the descendants. (For example, if a deceased left a son and a father, both would inherit.)

Females and cognates were also recognized as heirs. (For example, sisters, daughters, son’s daughters, daughter’s sons were also recognized as heirs)

Relations by affinity were entitled to inherit. (For example, the husband and wife can inherit to each other’s property)

The newly created heirs (known as Sharers) such as females, cognates, relations by affinity inherited specified shares along with those heirs who were recognized under pre-islamic customary law of inheritance. After giving specified shares to the statutory sharers, the residue was given to those customary heirs known as residuary. (For example, if a Mohammedan died leaving behind a widow and four sons, the specified share of widow (being a statutory sharer) is ⅛ and she would get ⅛ and the remaining 7/8th share would be divided among the
four sons equally, and each son as customary heir (Residuary) would get 7/32).

To understand the pre-Islamic customary law and post-Islamic law of inheritance, it would be desirable to know definitions of certain concepts like agnates, cognates, descendants, ascendants, collaterals, per capita, per stripes.

**Agnate:**
An Agnate is a relation, who is related to the deceased wholly through the males.

**Cognate:**
A Cognate is a relation, who is related to the deceased through one or more females.

**Descendants:**
Descendants are the off-sprin of the deceased up to any degree, descent (downwards)

**Ascendants:**
Ascendants are the ascent (upwards) means ancestrars of the parents are also included.

**Collaterals:**
Collaterals are the descendants in parallel lines from a common ancester or ancesters.

**Per capita:**
When a number of individuals takes the property in equal shares, they are said to take per capita.

**Per Stripes:**
When the property is distributed according to stocks or branches and not according to the number of individuals, they are said to take per stripes.

**Certain Principles of Mohammedan Law of Inheritance:**
Among the four schools of Sunni sect the foremost and famous is Hanafi school (Hanafi Law). Sir Mulla depended on Siragiyyah to write his book principles of Mohammedan Law and it still holds the field. The following principles have been taken from said book.

**Principle No.61:** Classes of heirs: There are three classes of heirs, namely,(1) Sharers, (2) Residuaries, and (3) Distant Kindred:
(1) “Sharers” are those who are entitled to a prescribed share of the inheritance;
(2) “Residuaries” are those who take no prescribed share, but succeed to the residue after the claims of the sharers are satisfied;
(3) “Distant Kindred” are all those relations by blood who are neither Sharers nor Residuaries.

**Principle No.63:**

Sharers: After payment of funeral expenses, debts, and legacies, the first step in the distribution of the estate of a deceased Mahomedan is to ascertain which of the surviving relations belong to the class of Sharers, and which again of these are entitled to a share of the inheritance, and, after this is done, to proceed to assign the respective shares to each of the Sharers as are, under the circumstances of the case, entitled to succeed to a share.

Vide table 66A – List of Sharers and their prescribed shares:
- Father (he gets 1/6 when there is a child or child of a son how low soever of the deceased; when there is no child or child of a son how low soever of the deceased, he inherits as a Residuary);
- True Grandfather (he gets 1/6 when there is a child or child of a son how low soever and no father or nearer true grandfather left by the deceased; when there is no child, child of a son how low soever and no father or nearer true grandfather left by the deceased, he inherits as a Residuary.);
- Husband (he gets ¼ when there is a child or child of a son how low soever; he gets ⅔ when no child or child of a son how low soever); 
- Wife (she gets 1/8 when there is a child or child of a son how low soever; she gets ¼ when there is no child or child of a son how low soever; if the deceased has more than one wife, maximum four wives at a time, they altogether get 1/8 or ¼ as the case may be);
- Mother (she gets 1/6 when there is a child or child of a son how low soever, or when there are two or more brothers or sisters or even one brother and one sister, whether full, consanguine or uterine; she gets 1/3 when no child or child of a son how low soever, and not more than one brother or sister, if any, but if there is also a wife or husband and the father, then only 1/3 of what remains after deducting the wife’s or husband’s share);
- True Grandmother (maternal true grandmother will get 1/6 when no mother, and no nearer true grandmother either paternal or maternal, paternal true grandmother will get 1/6 when no mother, no father, no
nearer true grand mother either paternal or maternal, and no
intermediate true grandfather; if there be more than one true
grandmother, they together get only 1/6);
Daughter (if single she gets ½, if more than one they get 2/3 when no
son; when there is a son she or they inherit as Residuaries and the son
gets twice their share);
Son’s Daughters how low soever (if single she gets ½, if more than one
they get 2/3 when there is no son, daughter, higher son’s son, higher
son’s daughter or equal son’s son; when there is
only one daughter or higher son’s daughter but no son, higher son’s son
or equal son’s son, the daughter or higher son’s daughter will get ½ and
the Son’s Daughter how low soever, whether one or more, will take 1/6,
but with equal son’s son she becomes a residuary); Son’s Daughter (if
single she gets ½, if more than one, they get 2/3 when there is no son,
daughter of son’s son; when there is only one daughter and there is no
son or son’s son, Son’s Daughter, whether one or more, will take 1/6, but
with the son’s son she becomes residuary);
Son’s Son’s Daughter (if single she gets ½, if more than one they get
2/3 when there is no son, daughter, son’s son, son’s daughter or son’s
son’s son; when there is only one daughter orson’s daughter and there is
no son, son’s son, son’s son’s son, the Son’s Son’s Daughter, whether one
or more, will take 1/6, but with son’s son’s son she becomes residuary);
Uterine Brother of Uterine Sister (if single he or she gets 1/6, if more
than one they get 1/3 when there is no child, child of a son how low
soever, father, true grandfather);
Full Sister (if single she gets ½, if more than one they get 2/3 when
there is no child, child of a son how low soever, father, true grandfather,
or full brother; but with the full brother she becomes a residuary); Consanguine Sister (if single she gets ½, if more than one they get 2/3
when there is no child, child of a son how low soever, father, true
grandfather, full brother, full sister or consanguine brother; but if there is
only one full sister and she succeeds as sharer, the Consanguine Sister,
whether one or more, will take 1/6, provided she is not otherwise
excluded from inheritance; also with the consanguine brother
she becomes residuary.)

Principle No.65: Residuaries: If there are no Sharers, or if there are
sharers, but there is a residue left after satisfying their claims, the whole
inheritance or the residue, as the case may be, devolves upon Residuaries in the order set forth in the annexed table 74A. That is to say,

I. Descendants: 1) son, 2) son's son;
II. II. Ascendants: father, true grandfather,
III. Descendants of Father: full brother, fullsister, consanguine brothers, consanguine sister, full brother's son, consanguine brother's son, full brother's son's son, consanguine brother's son's son; IV. Descendants of True Grandfather how high so ever: full paternal uncle, consanguine paternal uncle, full paternal uncle's son, consanguine paternal uncle's son, full paternal uncle's son's son, consanguine paternal uncle's son's son, male descendants of more remote true grandfathers.

**Principle No.67:**- Distant Kindred:

(1) If there be no Sharers or Residuaries, the inheritance is divided amongst Distant Kindred.

(2) If the only Sharer be a husband or wife, and there be no relation belonging to the class of Residuaries, the husband or wife will take his or her full share, and the remainder of the estate will be divided among Distant Kindred.

**Principle No.68:**- Four Classes (of Distant Kindred): (1) Distant Kindred are divided into four classes, namely,

(1) descendants of the deceased other than sharers and residuaries,
(2) ascendants of the deceased other than sharers and residuaries,
(3) descendants of parents other than sharers and residuaries, and
(4) descendants of ascendants how high so ever other than residuaries.

The descendants of the deceased succeed in priority to the ascendants, the ascendants of the deceased in priority to the descendants of the parents, and the descendants of the parents in preference to the descendants of ascendants.

(2) The following is a list of Distant Kindred comprised in each of the four classes:-

I. Descendants of the deceased:- 1. Daughter's children and their descendants.
2. Children of son's daughters how low so ever and their descendants.

II. Ascendants of the deceased:-
1. False grandfathers how high soever.
2. False grandmothers how high soever.

III. Descendants of parents:-
1. Full brothers’ daughters and their descendants.
2. Consanguine brothers’ daughters and their descendants.
3. Uterine brothers’ children and their descendants.
4. Daughters of full brothers’ sons how low soever and their descendants.
5. Daughters of consanguine brothers’ sons how low soever and their descendants.
6. Sisters’ (full, consanguine, or uterine) children and their descendants.

IV. Descendants of immediate grandparents(true or false):-
1. Full paternal uncles’ daughters and their descendants.
2. Consanguine paternal uncles’ daughters and their descendants.
3. Uterine paternal uncles and their children and their descendants.
4. Daughters of full paternal uncles’ son how low soever and their descendants.
5. Daughters of consanguine paternal uncles’ son how low soever and their descendants.
6. Paternal aunts (full, consanguine, or uterine) and their children and their descendants.
7. Maternal uncles and aunts and their children and their descendants.
8. Descendants of remoter ancestors how high soever(true or false).

Class I of Distant Kindred:

**Principle No.69:-** Rules of Exclusion: The first class of distant kindred comprises such of the descendants of the deceased as are neither Sharers nor Residuaries. The order of succession in this class is to be determined by applying the following rules in order.

Rule (1): The nearer in degree excludes the more remote.
Rule (2): Among claimants in the same degree of relationship, the children of Sharers and Residuaries are preferred to those of distant kindred.

**Principle No.70:-** Order of Succession: The rules set forth in principle 69 lead to the following order of section among distant kindred of the first class.

(1) Daughter’s children’s
(2) Son’s Daughter’s children’s
(3) Daughter’s grandchildren
(4) Son’s Son’s Daughter’s children’s
(5) Daughter’s great grandchildren and son’s daughter’s grandchildren
(6) Other descendants of the deceased in like order of the above groups, each in turn must be exhausted before any member of the next group can succeed.

**Principle No.71:** Allotment of Shares: After ascertaining which of the descendants of the deceased are entitled to succeed, the next step is to distribute the estate among them. The distribution in this class is governed by the following rules.

Rule (1) If the intermediate ancestors do not differ in their sexes, the estate is to be divided among the claimants per capita according to the rule of double share of the male.

Rule (2) If the intermediate ancestors differ in their sexes, the estate is to be distributed according to the following rules:

(a) The simplest case is where there are only two claimants, the one claiming through one line of ancestors, and the other claiming another line. In such a case, the rule is to stop at the first line of descent in which the sexes of the intermediate ancestors differ, and to assign the male ancestor a portion double that of the female ancestor. The share of a male ancestor will descend to claimant who claims through him, and the share of the female ancestor will descend to the claimant who claims through her, irrespective of the sexes of the claimants.

(b) The next case is, where there are three or more claimants, each claiming through a different line of ancestors. Here again, the rule is to stop at the first line in which the sexes of the intermediate ancestors differ, and to assign to each male ancestor a portion double that of each female ancestor. But in this case the individual share of each ancestor does not descend to his or her descendants as in the preceding case, but all the collective share of all the male ancestors is to be divided among all the descendants claiming through them, and the collective share of all the female ancestors is to be divided among their descendants, according to the rule, as between claimants in the same group, of a double portion to the male.

Class II of Distant Kindred:

**Principle No.72:** Order of Succession:

(1) If there be no distant kindred of the first class, the whole estate will devolve upon the mother’s father as being the nearest relation among distant kindred of the second class(see rule 1 below).
(2) If there be no mother's father, the estate will devolve upon such of the false ancestors in the third degree as are connected with the deceased through sharers, namely, the father's mother's father and the mother's mother's father, and these two, the former, as belonging to the paternal side will take 2/3, and the latter as belonging to the maternal side will take 1/3 (see rules 2 and 3 below).

(3) If there be none of these, the estate will devolve upon the remaining false ancestors in the third degree, namely, the mother's father's father and mother's father's mother. And as these two belong to the same (maternal) side, and as the sexes also of the intermediate ancestors are the same, the former, being a male, will take 2/3 and the latter being a female, will take 1/3 according to the principle No.71, Rule 1.

Rule 1. The nearest in degree excludes the more remote.

Rule 2. Among the claimants in the same degree, those connected with the deceased through Sharers are preferred to those connected through Distant Kindred.

Rule 3. If there are claimants on the paternal side as well as claimants on the maternal side, assign 2/3 to the paternal side and 1/3 to the maternal side. Then divide the portion assigned to the paternal side among the ancestors of the father, and the portion assigned to the maternal side among the ancestors of the mother, in each case according to the rules contained in principle No.71.

Class III of Distant Kindred:

**Principle No.73:** Rules of Exclusion: If there be no distant kindred of the first or second class, the estate devolves upon the distant kindred of the third class. This class comprises such of the descendants of the brothers and sisters as are neither Sharers nor Residuaries. The order of succession in this class is to be determined by applying the following three rules in order.

Rule 1. The nearer in degree excludes the more remote.

Rule 2. Among claimants in the same degree of relationship, the children of the residuaries are preferred to those of distant kindred.

Rule 3. Among claimants in the same degree of relationship, and not excluded by reason of rule 2 above, the descendants of full brothers exclude those of consanguine brothers and sisters. But the descendants of full sisters do not exclude the descendant consanguine brothers or sisters, and the latter take the residue, if there be any, after allotting
shares to the descendants of the full sisters and of uterine brothers and sisters. The descendants of uterine brothers and sisters are not excluded by descendants either of full or consanguine brothers or sisters, but they inherit with them.

**Principle No.74:** Order of Succession:
The above rules lead to the following order of succession among distant kindred of the third class.

1. Full brother’s daughter, full sister’s children and children of uterine brothers and sisters
2. Full sister’s children, children of uterine brothers and sisters, consanguine brother’s daughters, and consanguine sister’s children, the consanguine group taking the residue (if any)
3. Consanguine brother’s daughter, consanguine sister’s children, and children of uterine brothers and sisters
4. Full brothers’ sons’ daughters (children of Residuaries)
5. Consanguine brothers’ sons’ daughters (children of Residuaries)
6. Full brothers’ daughters’ children, full sisters’ grandchildren, and grandchildren of uterine brothers and sisters.
7. Full sisters’ grandchildren, grandchildren of uterine brothers and sisters, consanguine brothers’ daughters’ children and consanguine sisters’ grandchildren, the consanguine group taking the residue (if any)
8. Consanguine brothers’ daughters’ children, consanguine sisters’ grandchildren, the grandchildren of uterine brothers and sisters.
9. Remoter descendants of brothers and sister in like order

Of the above group, each in turn must be exhausted before any member of the next group can succeed.

**Principle No.75:** Allotment of shares:
After ascertaining which of the descendants of brothers and sisters are entitled to succeed, the next step is to distribute the estate among them, and this is to be done by applying the following rules in order:

Rule (1) – First, divide the estate among the roots, that is to say, among the brothers and sisters (as if they were living) and in so doing treat each brother who has two or more claimants descended from him as so many brothers, and each sister who has two or more claimants descended from her as so many sisters. If there is a residue left after assigning their shares to the roots but there are no Residuaries among the roots (i.e.,
neither a full nor consanguine brother), apply the doctrine of return as described in principle No.66. The hypothetical claimants being brothers and sisters, no case of increase is possible at all (Principle No.64). Rule (2) – After determining the hypothetical shares of the roots, the next step is to assign shares to the uterine groups. If there be only one claimant in that group, assign 1/6 to him, that being the hypothetical share of his parents. But if there be two or more claimants in that group, whether descended from a single uterine brother, or a single uterine sister, or two or more uterine brothers or sisters, assign 1/3 to them, that being the hypothetical share of their parent or parents, and divide it equally among them without distinction of sex. Rule (3) – Lastly, divide the hypothetical shares of the full and consanguine brothers and sisters among their respective descendants as among distant kindred of the first class (see principle No.71).

Class IV of Distant Kindred:

**Principle No.76:** Order of Succession:

(1) If there are no distant kindred of the first, second, or third class, the estate will devolve upon distant kindred of the fourth class in the order given below.

(a) paternal and maternal uncles and aunts of the deceased, other than his full and consanguine paternal uncles who are Residuaries.

(b) the descendants how low so ever of all the paternal and maternal uncles and aunts of the deceased, other than sons how low so ever of his full and consanguine paternal uncles (they being Residuaries), the nearer excluding the more remote.

(c) paternal and maternal uncles and aunts of the parents, other than the full and consanguine paternal uncles of the father who are Residuaries.

(d) the descendants how low so ever of all the paternal and maternal uncles and aunts of the parents, other than sons how low so ever of the full and consanguine paternal uncles of the father (they being Residuaries), the near excluding the more remote.

(e) paternal and maternal uncles and aunts of the grandparents, other than the full and consanguine paternal uncles of father's father who are Residuaries.

(f) The descendants how low so ever of all the paternal and maternal uncles and aunts of the grandparents, other than sons how low so ever of
the full and consanguine paternal uncles of the father’s father (they being Residuaries), the nearer excluding the more remote.

(g) Remoter uncles and aunts and their descendants in like manner and order.

(2) Of the groups each in turn must be exhausted before any member of the next group can succeed.

**Principle No.77:** Uncles and Aunts:

To distribute the estate among the uncles and aunts of the deceased, proceed as follows: (1) First, assign 2/3 to the paternal side, i.e., to paternal uncles and aunts, even if there be only one such, and 1/3 to the maternal side, i.e., to maternal uncles and aunts, even if there be only one such.

(2) Next, divide the portion assigned to the paternal side, i.e., 2/3 of the estate
among (a) full paternal aunts in equal shares; failing them, among (b) consanguine paternal aunts in equal shares; and failing them, among (c) uterine paternal uncles and aunts, according to the rule of double share to the male.

(3) Lastly, divide the portion assigned to the maternal side, i.e., 1/3 of the estate among (a) full maternal uncles and aunts; failing them among (b) consanguine maternal uncles and aunts; and failing them, among (c) uterine maternal uncles and aunts; according to the rule, in each case, of the double share to the male.

(4) If there be no uncle or aunt on the paternal side, the maternal side will take the whole. Similarly, if there be no uncle or aunt on the maternal side, the paternal side will take the whole.

**Principle No.78:** Descendants of Uncles and Aunts:

If there are no uncles or aunts of the deceased, the estate will devolve upon the descendants of uncles and aunts, other than sons how low soever of full paternal uncles and consanguine paternal uncles who are Residuaries. To distribute the estate among these relations, proceed as follows:

(1) First, assign 2/3 to the paternal side, i.e., to descendants of paternal uncles and aunts, even if there be only one such, and 1/3 to the maternal side, i.e., to descendants of maternal uncles and aunts, even if there be only one such.
(2) Next, divide the portion assigned to the paternal side, i.e., 2/3 of the estate, among --- (a) full paternal uncles’ daughters; failing them, among (b) full paternal aunts’ children, failing them, among (c) consanguine paternal uncles’ daughters; failing them, among (d) consanguine paternal aunts’ children; and failing them, among (e) children of uterine paternal uncles and jaunts, the division among the members of each of the five groups above to be made as among distant kindred of the first class (see principle No.71).

(3) Lastly, divide the portions assigned to the maternal side, i.e., 1/3 of the estate, among --- (a) children of full maternal uncles and aunts; failing them, among (b) children of consanguine maternal uncles and aunts; failing them, among (c) children of uterine maternal uncles and aunts, the division among the members of each of the three groups above to be made as among Distant Kindred of the first class (see principle No.71)

(4) If there be no children of paternal uncles and aunts, the children of maternal uncles and aunts will take the whole. Similarly, if there be no children of maternal uncles and aunts, the children of paternal uncles and aunts will take the whole.

(5) If there be no children either of paternal uncles or aunts or of maternal uncles or aunts, the estate will be divided among their grandchildren on the same principle, failing grandchildren, it will be divided among remoter descendants, the nearer in degree excluding the more remote.

**Principle No.79:** Other Distant Kindred of the IV Class:
If there are no descendants of uncles and aunts, the estate will devolve upon other distant kindred of the fourth class in the order of succession given in principle No.76 above, the distribution among higher uncles and aunts being governed by the rules stated in 77, and that among their descendants by those stated in principle No.78. Successors Unrelated in Blood:-

**Principle No.80:** Successor by contract: In default of Sharers, Residuaries and Distant Kindred, the inheritance devolves upon the successor by contract i.e., a person who derives a right of succession under a contract with the deceased in consideration of an undertaking given by him to pay any fine or ransom to which the deceased may become liable. (This right was taken away by Slavery Act, 1843).
Principle No.81: Acknowledged Kinsman:
Next in succession is the acknowledged kinsman, that is, a person of unknown descent in whose favour the deceased has made an acknowledgement of kinship, not through himself, but through another. (For example, the kinship of a person must be acknowledged to the deceased by his father or his grandfather stating that such person is the brother of the deceased.)

Principle No.82: Universal Legatee:
The next successor is the universal legatee, that is, a person to whom the deceased has left the whole of his property by Will.

Principle No.83: Escheat:
On failure of the all the heirs and successors above specified, the property of a deceased Sunni Mohammedan escheats to the Government.

Miscellaneous:
Principle No.84: Step Children:
Step Children do not inherit from their step parents, nor do the step parents inherit from their step children.

Principle No.85: Bastard:
An illegitimate child is considered to be the child of mother only, and as such it inherits from its mother and its relations, and they inherit from such child. But it has been held that an illegitimate son cannot inherit from the legitimate son of the same mother.

Principle 86: Missing Persons:
When the question is whether a Mohammedan is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on the person who affirms it. (Originally under Hanafi Law, a missing person is to be regarded as alive till the lapse of ninety years from the date of his birth. But the Full Bench of Allahabad High Court in Mazhar Ali Vs Budh Singh (1884) 7 All. 297 held that it is only a rule of evidence and not one of succession and it must therefore be taken as superseded by the provisions of the Indian Evidence Act.

Principles 87 to 114 of Mulla on Principles of Mohammedan Law relates to Shia Law of Inheritance. There are certain differences between Sunni Law of Inheritance and Shia Law of Inheritance namely there are only two kinds of successors to the estate of deceased Shia Mohammedan i.e., sharers and residuaries. But, there is no kind of
distant kindred. A widow without children would not get any share in the lands of her husband, but she gets her 1/4th share in the value of trees and buildings standing thereon, and the movable properties including debts. Shias follow per-strips but not per capita in succession the doctrine of increase is unknown to them and illegitimate child does not inherit from anybody including the mother nor does anybody inherited from that child. In India, majority of Muslims are Sunni.

**General Principles of Inheritance:**

**Principle No.51: Heritable Property:**

There is no distinction in Mohammadan Law of Inheritance between movable and immovable property and between ancestral and self acquired property.

In Abdul Rashid Vs. Sirajuddin, reported in (1933) 145 Indian Cases 461 = AIR 1933 ALL. 206, 209, It was held that there is no such thing as a joint Mohammedan family, nor does not law recognize a tenancy in common in a Mohammedan family.

In Shahul Hamid Vs. Sulthan reported in AIR 1947 Mad. 287 and Maimoona Bivi Vs D.A. Khaja Mohinuddin, reported in AIR 1970 Mad. 200, it was held that the Mohammedan Law does not recognize a joint family as a legal entity. In fact, according to the rules of Mohammedan Law of Succession, Heirship does not necessarily go with membership of the family. On the other hand, there are several heirs like, for example, married daughters of a deceased male owner would take an interest in the estate but are not part of the family.

**Principle No.52: Birth right not recognized:**

The right of an heir apparent or presumptive comes into existence for the first time on the death of the ancestor and he is not entitled until then to any interest in the property to which

The right of an heir apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor. (This principle emanated from the cases Hameeda Vs Budum, reported in (1872) 17 Weekly Reports 525, Abdool Vs Goolam, reported in (1905) 30 Indian Law Reports, Bombay series 304)

**Principle No.53: Principle of representation:**

According to the Sunni Law expectant right of an heir apparent cannot pass by succession to his heir, nor can it pass by bequest to a legatee
under his Will. According to Shia Law it does pass by succession in the cases specified in Principle No.93.

**Principle No.54:- Transfer of spes succession:**
The chance of a Mohammedan heir apparent succeeding to an estate cannot be the subject of a valid transfer or release.

Note:- Principles 52, 53 and 54 relate to the chance of succession of an heir to the property of a Mohammedan. It is otherwise called as spes succession( hope to succeed). Rule of spes succession is unknown to Mohammedan law.

**Illustrations:-**

1. A, who has a son B makes a gift of is property to C. B, alleging that the gift was procured by undue influence, sues C in A's life time on the strength of his right to succeed to A's property on A's death. The suit must be dismissed for B has no cause of action against C. B has no cause of action for he is not entitled to any interest in A 's property during A’s life time. But the gift would be liable to be set aside if the suit was brought after A’s death, provided it was brought within the period of limitation. Such a right as claimed by B is mere spes succession, that is, an expectation or hope of succeeding to A’s property if B survived A. 24

2. A, a Sunni Mohammedan, has two sons, B and C. B dies in he life time of A, leaving a son D. A then dies leaving C, his son, and D, his randson. The whole of A's property will pass to C to the entire exclusion of D. It s not open to D to contend that he is entitled to B’s share as representative of B. In this case, if B bequeathed any portion of his expectant share in A's property to X, the latter would take nothing under Will, because mere possibility such as expectant right of an heirapparent is not regarded as present and vested interest and as such cannot passby succession, bequest or transfer so long as the right has not actually come intoexistence by the death of the present owner.

3. A has a son B and a daughter C. A pays Rs.1000/- to C, and obtains from her a writing whereby in such consideration from A, she renounces her right to inherit A's property. A then dies, and C sues B for her share (one-third) of the property left by A. B sets up in defence the release passed by C to her father. The release is no defence and C is entitled to her share of inheritance as the transfer by her was a transfer merely of a spes succession and as such inoperative. But C is bound to bring into account the amount received by her from her father. The High Courts of
Allahabad and Travancore-Cochin held that Mohammedan heir may be estopped by his conduct from claiming the inheritance which he agreed to relinquish if the release/ relinquishment is part of a compromise or family settlement and if he has benefited from such transaction. But the High Courts of Madras and Kerala dissented from the said view and held that the view taken by the Allahabad and Travancore-Cochin High Courts is not justified in Mohammedan Law and is also contrary to the provisions of Section 6(a) of Transfer Property Act and Section 23 of the Indian Contract Act. Finally, the Supreme Court in Gulam Abbas Vs. Haji Kayyam Ali, reported in AIR 1973 S.C 554 confirmed the view taken by the Allahabad High Court.

**Principle No.56:-** Vested inheritance: A “vested inheritance” is the share which vests in an heir at the moment of the ancestor's death. If the heir dies before distribution, his share will pass to such persons as are his heirs at the time of his death. The shares, therefore, are to be determined at each death.

**Illustration:**

A dies leaving a son B, and a daughter C. B dies leaving a son D before the estate of A is distributed. In this case, on the death of A, two-thirds of the inheritance vests in B and one-third vests in C. On distribution of A's estate, after B's death, the two-thirds which vested in B must be allotted to his son D.

This illustration and the illustration No.(2) given under principles 52, 53, and 54 above must not be confused with each other. In the present illustration, son B survived his father A and died later and just the distribution was postponed. In the illustration No.(2) given under principles 52, 53, and 54 above, son B pre-deceased his father A and therefore D, son of B was excluded by C, another son of A. The purport of the Principles 51, 52, 53, 54 and 56 is:- There is no distinction between movable and immovable property, ancestral property and self acquired property; the succession opens the moment the owner of the property dies; and the concepts of joint family and spes succession are unknown to Mohammedan Law. **Principle No.55:-** Life-estate and vested remainder:

**Sunni Law:-**

The creation of a life estate does not seem to be consistent with Mohammedan usage and there ought to be very clear proof so unusual a
transaction (Humeeda Vs Buldun, (1872) 17 Weekly Reports, 525. For example, if a gift is made with a condition restraint on alienation, such condition is invalid but the gift is valid. Exception to this rule is a condition of reservation of income to the donor or a gift of usufruct to another donee. But in Nawazish Alikhan Vs. Ali Raza Khan, reported in AIR 1948 P.C 134, which was a case of Shia Mohammadens, the Privy Council held that a life estate and vested remainder are recognized. The High Courts of Calcutta, Bombay, Nagpur and Travancore held that a gift for a life interest is valid. The Chief Court of Oudh held that a bequest (Will) of a life interest is valid. Although Nawazish Ali Khan Vs. Ali Raza Khan was a Shia case, the Privy Council has made observations which are sufficiently ample to cover Sunni cases.

In Jainabai Vs. Sethna, reported in (1901) 34 Indian Law Reports, Bombay series 604, Beaman, J., held that an estate for life and vested remainder were known to Shia Law as much as to the Sunni Law. Shia Law: As per the case Banoo Begum Vs Mir Abed Ali, reported in (1908) 32 Indian Law Reports, Bombay series 172 Shia Law allowed the creation of a life estate and a vested remainder. Wakf: Both under Sunni Law and Shia Law life estates may be created by wakf (see Principle No.197).

**Principle No.57: Joint Family and Joint Family Business:**

There is no concept of joint family in Mohammedan law. If the family continues as joint, and the properties are acquired in the name of managing member of the family, and it is proved that they are possessed by all the members jointly, the presumption is that they are the properties of the family, and not the separate properties of the member in whose name the properties stand. If the sons of a deceased Mohammedan retain his assets in business, they will be deemed to stand in a fiduciary relation to the other heirs of the deceased, and are liable to account for the profits made by them in the business. A minor may be entitled to a benefit in the business, but this will not make him liable on a mortgage executed by him along with his adult brothers in the course of the business carried by him adult brothers. The managers of such a business in a Mohammedan family have no right to impose any liability on the minor members of the family.

(See D. Raja Ahmed Vs. Pacha Bai, reported in 1969(1) An. W.R 255)
**Principle No.58:** Homicide: (1) Under the Sunni Law, a person who has caused the death of another, whether intentionally, or by mistake, negligence or accident, is debarred from succeeding to the estate of that other.

(2) Homicide under the Shia Law is not a bar to succession unless the death was caused intentionally.

**Impediments to inheritance:** The Sirajiyya sets out four grounds of disqualification to succeed to the inheritance, namely, (1) Homicide, (2) Slavery, (3) difference of religion, and (4) difference of allegiance(to the King/Caliph/Imam). Homicide is still a bar to inheritance. Second impediment, Slavery, was removed by the enactment of Act V of 1843 abolishing slavery. Third impediment, difference of religion, was abolished by the provisions of Act XXI of 1850 which abolished so much of law or usage which affects any right of inheritance of a person by reason of his renouncing his religion. The fourth impediment, difference of allegiance, disappeared with the disappearance of the supremacy of Mohammadens.

**Illustration of Homicide:** A dies leaving a son B, a grandson C through B, and a brother D, and if B has caused the death of A, B is totally excluded from inheritance, but he does not exclude his son C. The inheritance will devolve as if B were dead (not existing), and, therefore, C, the grandson of A (through the killer B), will succeed to the whole estate excluding D, the brother of A, being a remote heir. But in Khan Gul Khan Vs. Karam Nishan, reported in AIR 1940 Lahore 172, a single Judge of the Lahore High Court expressed the view that the rule of public policy would exclude the murderer and his descendants from succession.

**How to distribute the inheritance:** The first step in the distribution of the estate of a deceased Mohammedan (after payment of his funeral expenses, debts, and legacies) is to allot their respective shares to such of the relations as belong to the class of Sharers and are entitled to a share. The next step is to divide the residue, if any available, among such of the Residuaries as are entitled to the residue.

If there be neither Sharers nor Residuaries, the inheritance will be divided among such of the Distant Kindred as are entitled to succeed thereto. The Distant Kindred are not entitled to succeed so long as there is any heir belonging to the class of Sharers or Residuaries.
Exception:- But there is one case in which the Distant Kindred will inherit with a Sharer, and that is, where the Sharer is the wife or husband of the deceased. Thus, if a Mohammedan male dies leaving a wife and Distant Kindred, the wife as Sharer will take her $\frac{1}{4}$ and the remaining $\frac{3}{4}$ will go to the Distant Kindred. And if a Mohammedan female dies leaving a husband and Distant Kindred, the husband as Sharer will take his $\frac{1}{2}$ share, and the other half will go to the Distant Kindred. For example, A dies leaving a mother, a son and daughter’s son, the mother as Sharer will take her $\frac{1}{6}$ share and the son as a Residuary will take the residue $\frac{5}{6}$, but the daughter’s son, being one of the class of Distant Kindred, is not entitled to any share. (This exception is embodied in the principle No.66 “Return or Rudd”)

Rule of Exclusion:- Nearer relation excludes the more remote relation.

Examples:-
(1) If the father and father’s father of a deceased are there, the father alone will succeed to the whole inheritance to the entire exclusion of the father’s father, though both of them belong to the class of Sharers.
(2) If a son and a son’s son of a deceased are there, the son alone will inherit the estate, and the son’s son will not be entitled to any share of the inheritance, though both belong to the class of Residuaries.
(3) If a daughter’s son and daughter’s son’s son of a deceased are there, only daughter’s son will succeed to the whole inheritance, though both belong to the class of Distant Kindred.

When Sharers become Residuaries:-
(1) Daughter – Daughter is a Sharer, when there is no son. But when there is a son, daughter becomes a Residuary.
Note:- The son is always a residuary, who is entitled to the residue left after satisfying the claims of the Sharers. A son is always entitled to some share of the inheritance. To enable the son to participate in the inheritance in every case, it is necessary that some residue must always be left when the son is one of the surviving heir, and this, in fact, is always so, for the shares are so arranged and the rules of succession are so framed that when the son is one of the heirs, some residue invariably remains.
(2) Father – When there is a child or child of a son how low so ever, the Father is a Sharer. But when there is no child or child of a son how low so ever, he becomes a Residuary. Among the Residuaries, he is the first
ascendant of the deceased. In some cases he inherits both as Sharer and Residuary. For example, if a deceased left a daughter and a father, the daughter, being single, takes ½ share, and the father, being the Sharer takes 1/6, and also being a Residuary takes 1/3 as there is no other Residuary.

(3) Son’s daughter:— When the deceased left no son, daughter or son’s son, she becomes a Sharer. But with the son’s son she becomes Residuary. The same condition applies to son’s daughter how low so ever, and son’s son’s daughter with some variations.

(4) Full Sister:— When the deceased left no child, child of a son how low so ever, father, true grandfather or full brother, she becomes Sharer. But with full brother she becomes a Residuary.

(5) Consanguine Sister:— When the deceased left no child, child of a son how low so ever, father, true grandfather, full brother, full sister, or consanguine brother, she becomes a Sharer. But with consanguine brother she becomes a Residuary.

(See Newaness Vs Shaik Mohamad, reported in AIR 1996 S.C 702 regarding share of father and sister and brothers.)

**Will (Wasiya):** **Principle No.116:** Like a gift, a Will may be made verbally or in writing.

**Principle No.118:** A Mohammedan cannot by Will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of legal third cannot take effect unless the heirs consent thereto after the death of the testator.

**Principle No.117:** A bequest to an heir is not valid unless the other heirs also consent to the bequest after the death of the testator. Any single heir may consent so as to bind his own share.

**Principle No.120:** Bequest to unborn person: A bequest to a person not yet in existence at the testator’s death is void, but a bequest may be made to a child in the womb, provided it is born within six months from the date of the Will.

**Gift (Hiba):**

**Principle No.135:** Gift made during maraz-ul-maut: A Mohammedan cannot make a gift of maraz-ul-maut (death bed gift) beyond a third of his estate unless the heirs give their consent after the death of the donor. Nor can such donor make a gift in favour of an heir unless the other
heirs consent to such gift in favour of an heir unless the other heirs consent to such gift after the death of the donor.

**Principle No.142:** A gift as distinguished from a Will (and also from gift during death bed) may be made of the whole of the donor’s property, and it may be made even to an heir.

**Principle No.147:** Writing is not necessary to the validity of a gift either of movable or of immovable property.
INTRODUCTION:

The Hindu Succession Act, 1956 is an act of the Parliament of India enacted to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains and Sikhs. The act lays down a uniform and comprehensive system of inheritance and succession into one act. The Act consists of 11 parts, 391 sections and 7 schedules and this Act is applicable to intestate and testamentary succession.

What is Succession Certificate:

A succession certificate is issued by a civil court to the legal heirs of a deceased person. If a person dies without leaving a will, a succession certificate can be granted by the court to realise the debts and securities of the deceased. It establishes the authenticity of the heirs and gives them the authority to have securities and other assets transferred in their names as well as inherit debts. It is issued as per the applicable laws of inheritance on an application made by a beneficiary to a court of competent jurisdiction. A succession certificate is necessary, but not always sufficient, to release the assets of the deceased. For these, a death certificate, letter of administration and no-objection certificates will be needed.

Section 372 of The Indian Succession Act, 1925

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the
Judge to whom the application is made, then the property of the deceased within those limits;
(c) the family or other near relatives of the deceased and their respective residences;
(d) the right in which the petitioner claims; (e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

Sec. 370. **Restriction on grant of certificates under this Part** —
(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate: Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act. (2) For the purposes of this Part, “security” means— (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government; (b) any bond, debenture, or annuity charged by Act of Parliament 1 of the United Kingdom] on the revenues of India; (c) any stock or debenture of, or share in, a company or other incorporated institution; (d) any debenture or other security for money issued by, or on behalf of, a local authority; (e) any other security which the 2[State Government] may, by notification in the Official Gazette, declare to be a security for the purposes of this Part.
**How to obtain a Succession Certificate:**

1) The beneficiary/ legal heir is required to approach a competent court and file a petition for a succession certificate.

2) The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant the succession certificate.

3) The petition should mention important details such as the name of petitioner, relationship with the deceased, names of all heirs of the deceased, time, date and place of death. Along with the petition, death certificate and any other document that the court may require should also be attached.

4) The court, after examining the petition, issues a notice to all concerned parties and also issues a notice in a newspaper and specifies a time frame (usually one and a half months) within which anyone who has objections may raise them. If no one contests the notice and the court is satisfied, it passes an order to issue a succession certificate to the petitioner.

   If there is more than one petitioner, then the court may jointly grant them a certificate but it will not grant more than one certificate for a single asset.

   When the District Judge grants a succession certificate, he shall specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted
   (i) to receive interest or dividends on the securities; or
   (ii) to negotiate or transfer the securities; or
   (iii) both to receive interest or dividends or negotiate or transfer the securities.

   With respect to costs involved, the Court typically levies a fixed percentage of the value of the estate as its fees (which is more particularly prescribed under the Court-fees Act, 1870, (7 of 1870)). This fee is to be paid in the form of judicial stamp papers of the said amount. In addition to Court fees, the applicant will also be required to pay requisite fees to its lawyer.

   Once the application for succession certificate is filed the Court will issue notice to all the legal heirs and close relatives, so that anyone
having any objection in grant of Succession Certificate in favour of Applicant can raise objection. Similarly, Publication of the notice in newspaper to inform public at large about the application for issuance of succession certificate can raise objection. After newspaper publication court waits for 45 to 60 days before granting the Certificate. If no one contests the application on the expiry of this period, the court passes an order for issuance of succession certificate and if any objection is raised, the Court will first decide the objections and then proceed further.

The person to whom the Court proposes to grant the Certificate shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

Succession Certificate vis-a-vis Wills:

In the event a person dies leaving a Will, a succession certificate is not required for inheriting the assets of the deceased since the entire estate of the deceased shall vest on the executor of the Will for distribution as per the instructions set forth in the Will. Although Section 370 of the Indian Succession Act, 1925, specifically provides that a succession certificate shall not be granted with respect to any debt or security in cases where a right to such property is required to be established by obtaining letters of administration or a probate, in certain states, a probate and a succession certificate are compulsory to transfer the title of an immovable property. It is to be further noted that in the absence of a Will, banks and financial institutions typically rely on the succession certificate and/or a legal heirship certificate.

Benefits of obtaining Succession certificate:

i) The succession certificate is valid throughout India.
ii) Has a claim over the property and assets of the deceased person.
iii) Has the authority to represent the deceased in collecting debts and securities due to the deceased or payable in his name.
iv) Inherits the debts and other liabilities of the deceased person.

Revocation of certificate:

A certificate granted under this Act may be revoked for any of the following causes, namely :

(a) that the proceedings to obtain the certificate were defective in substance;
(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
(d) that the certificate has become useless and inoperative through circumstances;
(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate or under the probate or letters of administration.

When a certificate under this Act has been superseded or is invalid for any of the causes mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that court, and if he willfully and without reasonable cause omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

Appeal:
(1) Subject to the other provisions of this Act, an appeal shall lie to the High Court from an order of a District Court granting, refusing or revoking a certificate under this Act. and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Court, on application being made therefore, to grant it accordingly, in super-session of the certificate, if any, already granted.
(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.

(3) Subject to the provisions of sub-section (1) and of Orders 46 and 47 and sections 113 to 115 of the Code of Civil Procedure as applied by section 141 of that Code, an order of a District Court under this Act shall be final.

Jurisdiction:
(1) The Government may, by notification in the Government Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court:

(1) Provided that an appeal from any such order of an inferior court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Court.

(2) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Orders XLVI and XLVII and sections 113 to 115 of the Code of Civil Procedure as applied by section 141 of that Code, be final.

(3) The District Court may withdraw any proceedings under this Act from an inferior Court, and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(4) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(5) Any Civil Court which for any of the purposes of any enactment is subordinate to, subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court.
While concluding the presentation, I put forth few of the legal decisions on Succession Certificates.

1) **Suresh vs. Assistant Commissioner**, WP No.85238 of 2013, dated 16-03-2008 (Karnataka High Court).

While deciding whether Succession Certificate is necessary in order to seek disbursement of compensation in terms of Sec.214 of the Indian Succession Act, it was held that, given the plain language of Sec.214, the fact that it is neither a debt or a security and therefore for recovery of compensation by the legal representatives, a succession certificate is not necessary as laid down by Supreme Court and applying the said *dictum*, the Writ Petition was allowed.

2) **Monika Bibi Sood vs. Mrs. Kamal Seth and others**, AIR 2004 PH 366.

In the said Judgment the question whether Sec.10 of the CPC is applicable to the proceedings initiated under Sec.372 of the Indian Succession Act, for obtaining succession certificate was dealt, and it was held that, the proceedings in a regular suit and the proceeding which are summary in nature contemplated by Sec.372 of the Act, are entirely different and the later proceedings would not be covered by Sec.10 of the Act. The object of issuance of a certificate and its effect is entirely different which would not result into deciding the issue finally between the parties.

3) **Ramanatha Reddy vs. K.V. Kuppuswamy Mudaliar**, AIR 1971 Madras 419, it was held -

“it is only when the legal representative files a fresh application for execution, Sec.214 will stand attracted and not when he seeks to continue the execution petition initiated by the deceased decree holder”

With the said nut shell presentation on the topic Succession Certificate, I take leave thanking the Hon’ble Principal District Judge for the opportunity.