1. The Succession is a process by which a person is became entitled in the property of deceased. The person so becoming entitled, was called as “successor” and the person from whom he derives his title or interest was called predecessor. The branch of Law which deals with the rules and principles governing the claims and distribution of property among different members of the family interested in succession is called a “the Law of inheritance” or “Law of succession”. The law of succession in Hindus may be testamentary or intestate.

(I) Testamentary Succession:

2. The testamentary succession among Hindus is governed by Part.VI, consisting Sections 57 to 191 of Indian Succession Act, 1925 and section 30 of Hindu Succession Act, 1956. Section 63 of Indian Succession Act deals with procedure and rules for execution of unprivileged Wills. It mandates that Will must be attested by two or more witnesses, whereas u/s.68 of Indian Evidence act, that a Will can be proved by examining one of the attesting witnesses.

(II) Intestate Succession among Hindus:

3. Intestate Succession among Hindus shall be governed by Hindu Succession Act, 1956. Section 6 of the Act deals with the devolution of interest in coparcenary property. Section 8 of the Act deals with general rules of succession in case of males. i.e. for devolution of the separate property of intestate. Sections 14 to 16 deals with the property own by a Hindu female and general rule of succession order of succession and manner of distribution among heirs of a female Hindu.
(i) Intestate Succession for the separate property of the Hindu male:

4. Section 8 of Hindu Succession Act deals general rules of succession in the case of males. The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-
   (a) firstly, upon the heirs specified in class I of the Schedule;
   (b) secondly, if there is no heir of class I, then upon the heirs specified in class II of the Schedule;
   (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
   (d) lastly, if there is no agnate, then upon the cognates of the deceased.

5. Section 9 of the Act deals with the order of succession among the heirs in the schedule. Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

6. Section 10 deals with the distribution of the property among the heirs in the class-1 of the schedule in accordance with the rules. Under Rule.1, the Intestate’s widow or widows, shall take one share, under Rule.2 the surviving sons and daughters and the mother of the intestate shall each take one share, under Rule.3 the heirs in the branch of each predeceased son or each predeceased daughter shall take between them one share, under Rule.4 the branch of predeceased son or daughter shall get equal portion.

7. Section 11 of the Act deals with the distribution of property among the heirs in class-2 of the schedule. The property of an intestate shall be divided between the heirs specified in any one entry in class-II of the schedule and that they share equally. Section 12 deals with order of succession among agnates and cognates shall be determined in accordance with the rule of preference laid down under Rules 1 to 3.
(ii) Intestate Succession of separate property of Hindu female:

8. Sections 14 to 16 of Hindu Succession Act deal with the succession of property among the heirs of Hindu female.

Under Section 14 of the Act, 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.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument of the decree, order or award prescribe a restricted estate in such property.


(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 -

(a) firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(iii) Intestate Succession of Hindu female acquired from her parents

(2) Notwithstanding anything contained in sub-section (1) -

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
(iv) Intestate Succession of Hindu female acquired from her husband

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

10. As per Section 16 of the Act, the order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestates property among those heirs shall take place according to the following rules 1 to 3

(v) Intestate Succession among Hindus for coparcenary property:

11. Section 6 of the Act deals with the devolution of interest in coparcenary property. Section 6 has been substituted by Act 39 of 2005 w.e.f. 9-9-2005, basing on the 174th Report of the Law Commission of India on Property Rights of Women and Proposed Reform under the Hindu Law. This amending Act of 2005 is an attempt to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have.

According to the amending Act of 2005, in a Joint Hindu Family governed by the Mitakshara Law

- the daughter of a coparcener shall, also by birth become a coparcener in her own right in the same manner as the son heir.
- she shall have the same rights in the coparcenary property as she would have had if she had been a son.
- she shall be subject to the same liabilities and disabilities in respect of the said coparcenary property as that of a son.
and any reference to a Hindu Mitakshara coparcenary shall be deemed to include a reference to a daughter.

This provision shall not affect or invalidate any disposition or alienation including partition or testamentary disposition of property which had taken place before 20th December, 2004.

Further any property to which female Hindu becomes entitled by virtue of sub-section (1) provision shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by will and other testamentary disposition.

The provision was also made that where a Hindu dies after the commencement of The Hindu Succession (Amendment) Act of 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place.

Further the daughter is allotted the same share as is allotted to a son.

The provision was also made that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased daughter.

Further the share of the predeceased son or a predeceased daughter as such child would have got, had he or she been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or a predeceased daughter.
(III) Salient features of the Hindu Succession (Amendment) Act, 2005 - Object of the Amending Act 39 of 2005

12. It is proposed to remove the discrimination as contained in section 6 of the Hindu succession act, 1956 by giving equal rights to daughter in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heirs to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section. Likewise special provisions relating to rights of dwelling house and the disentitlement rights of widow’s remarrying, respectively omitted from the Act. The amending Act also in the schedule of the Hindu Succession (Amendment) Act of 2005 added new heirs viz, son of a predeceased daughter, son of a pre deceased daughter, daughter of a pre deceased son.

(i) Introduction of daughters as coparceners:

13. One of the major changes brought in by the amendment is that in a Hindu joint family, the exclusive prerogative of males to be coparceners has been changed altogether and the right by birth in the coparcenary property has been conferred in favour of a daughter as well. Section 6 (2) makes it very clear that a female Hindu would be entitled to hold property with the incidents of coparcenary ownership and shall be regarded as property capable of being disposed of by her testamentary disposition.

(ii) Retention of the concept of notional partition :-

14. The amendment retains the concept of notional partition but modified its application. Prior to this amendment, notional partition was effected only if the undivided male coparcener had died leaving behind any of the eight class I female heirs or the son of a
predeceased daughter and did not apply generally in every case of death of a male coparcener. The present amendment makes application of notional partition in all cases of intestacies. Section 6 (3) states:

15. From the language of the section, two things are clear. First, the doctrine of survivorship stands abolished in case of male coparceners, and secondly, in all cases where a Hindu male dies, his interest in the Mitakshara coparcenary would be ascertained with the help of a deemed partition or a notional partition.

(iii) Calculation of shares while affecting a notional partition :-

16. The present Act provides in detail the calculation of shares while affecting a notional partition. Section 6 (3) provides.

(a) The daughter is allotted the same share as is allotted to the son.

(b) The share of the predeceased son or predeceased daughter, as they would have got had they been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter and

(c) The share of the predeceased child of a predeceased son or of a predeceased daughter as such child would have got had he or she been alive at the time of the partition shall be allotted to him as if a partition has taken place immediately before this death, irrespective of whether he was entitled to claim partition or not.

17. At present if a minor child dies, irrespective of the sex, his or her share would be calculated after effecting notional partition and such share would go by intestate or testamentary succession, as the case may be.

(iv) Devolution of coparcenary interest held by a female :-

18. According to the amending Act, a female coparcener would hold the property with incidents of coparcenary ownership, but does not specify how the property would devolve if she dies.
19. Coparcenary interest is acquired by a daughter by birth and thought it comes from the family of her father, it is not an interest that she has inherited from her parents. In such a case, it will obviously be covered by the third category, i.e., any other property or general property. In such a situation her heirs would be her husband, her children and children of predeceased children. It would also mean, that if she dies issueless after seeking partition, her husband would succeed to her total property including interest that she had in the coparcenary property. Similarly, if she dies without seeking partition, then her share would be ascertained by affecting a notional partition, and the share so calculated would be taken by her husband as her primary heir.

20. The substance of section 6 (3) (b) and (c), however, lends support to the argument that secton 15 of the Act does not apply to the interest of a female coparcener and her interest goes only to her children. It clearly provides, that where a partition takes place and one of the child is already dead, but has left behind a child or child of a predeceased child, the share of the predeceased son or a predeceased daughter as they would have got had they been alive at the time of the partition shall be allotted to the surviving child of such predeceased son or predeceased daughter. So, if a female coparcener dies without seeking partition then partition would take place, her share will be allotted to her surviving children, and the husband even if alive, will not get any share. This is in contrast to section 15, where the spouse succeeds along with the children of a female. A contradiction has been introduced between the first part of section 6 (3) and sub clause (b) and (c).

(v) Separation of son during the lifetime of father :-

21. Under the old law, if a son sought partition during the lifetime of father, and separated from the family after taking his share, the remaining family continuing and maintaining the joint status, on the death of the father neither such separated son nor any of his heirs, were eligible to take any claim out of the share of the father.
(vi) Abolition of pious obligation of son to pay the debts of father:

22. Under Section 6 (4) – After the commencement of the Hindu succession Act 2005, no court shall recognize any right to proceed against a son, grandson or great grandson for the recovery of any debt due from his father, grandfather or great grandfather solely on the ground of the pious obligations under the Hindu law of such son, grandson or great grandson to discharge any such debt:

Provided that in case of any debt contracted before the commencement of the Hindu Succession Act 2005, nothing contained in this sub section shall affect

(a) The right of any creditor to proceed against the son, grandson or great grandson as the case may be or

(b) Any alienation made in respect of or in satisfaction of any such debts and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession Act, 2005 had not been enacted.

Explanation – for the purposes of clause (a), the expression son, grandson or great grandson, shall be deemed to refer to the son grandson or great grandson as the case may be who was born or adopted prior to the commencement of the Hindu Succession Act, 2005.

23. At present the repayment of debts contracted by any Hindu would be his personal responsibility and the male descendants would not be liable to the creditor.

(vii) Applicability of Amending Act to partitions affected before 20 December 2004:

24. The Amending Act is prospective in application and therefore, its provisions would not apply to any partition that was affected before 20 December 2004. Section 6 (5) states:
Under Section 6 (5) - Nothing Contained in this section shall apply to a partition, which has been effected before the 20th day of December 2004.

(viii) **Recognition of oral partition** :-

25. The amending Act clearly says that the term partition used in this whole section means a partition that is in writing and duly registered or the one that is affected by a decree of court in essence, proving which would be easy. The present Act makes it clear that the terms partition refers to only those partitions that are either executed in writing and registered as per the Registration Act 1908, or have been undertaken in pursuance to the decree of a court. The Act provides:

Explanation - For the purposes of this section partition means any partition made by execution of a deed of partition duly registered under the Registered Act 1908 or partition affected by a decree of a court.

(IV) **Abolition of special rules relating to dwelling house** :-

26. One of the major gender discriminatory provisions under Hindu Succession Act, 1956 was section 23, which specified special rules relating to devolution of a dwelling house.

27. Under Section 23 – Where a Hindu intestate has left surviving him or her both male and female heirs specified in class 1 of the schedule and his or her property includes a dwelling house wholly occupied by members of his or her family then notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling house shall not arise female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

28. Under this section, the right of female class I heirs was limited to a right of residence in the dwelling house. Their ownership did not vest in them a right to have the house partitioned and specifying of their shares, till the male heirs chose to destruct their joint status
themselves. In case the female heir was a married daughter, her ownership was without even a right of residence unless she was unmarried widow or was deserted by or separated from her husband. In other words, her marital status and her relations with her husband had a direct reflection on her need to have a residence in her own property.

29. The purpose envisaged by the legislature for enacting this provision was to defer the actual partition of the dwelling house that was actually and wholly in occupation of the male heirs until they themselves chose to destroy their joint status.

(V) Deletion of section 24 : -

30. Under the old law, the general rules of succession in section 24 clarified the position of the three specific widows, who were eligible to inherit the property of the intestate. These three widows were widow of predeceased son, widow of a predeceased son of a predeceased son and brother’s widow. The first two were class I heirs, while the third was a class II heir Sec 24 as it stood before the deletion provided as follows :

31. Certain widows remarrying may not inherit as widows - Any heir who is related to an intestate as the widow of a pre deceased son of a pre deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens she has re-married.

32. These widows could inherit as such only when they had not remarried on the date the succession opened. If they had remarried, they would have ceased to be widows of the respective relatives of the intestate and would not have been eligible to inherit the property of the intestate.

(xi) Eligibility of female coparceners to make a testamentary disposition :

33. The introduction of daughters as coparceners and creation of rights in their favour that is same as that of the son has been
recognized in section 30 of the amending Act as well. A female coparcener is empowered to dispose of by him or her in place of disposed by him. The Hindu Succession Act, 1956, for the first time provided competency to an undivided coparcener to make a valid bequest of his share in Mitakshara coparcenary and the present Act extends this competency to a female coparcener as well.

(xii) **Introduction of four new heirs in Class I category:**

34. The schedule of the principal Act has been amended and four new heirs have been added to the class I category. This change has been brought into only in case of a male intestate while the category of heirs to a female intestate has not been touched at all. These four heirs were previously class II heirs and were excluded both in presence of the class I heirs and the father of the intestate. Presently, as their placement has been changed, they inherit along with class I heirs and would exclude the father in their presence.

35. Thus the amendment of Hindu Succession (Amendment) Act of 2005 is a total commitment for the women empowerment and protection of women’s right to property. This amending Act in a partrilineal system, like Mitakshara school of Hindu’s law opened the door for the women, to have the birth right of control and ownership of property beyond their right to sustenance.

Prl. Senior Civil Judge,  
Ananthapuramu
SUCCESSION UNDER INDIAN SUCCESSION ACT, 1925
IN RESPECT OF CHRISTIANS

Submitted by
S. Ramanaih,
Senior Civil Judge, Kadiri.

INTRODUCTION

The Christian Law of Succession is governed by the provisions in the Indian Succession Act, 1925. The Indian Christians Succession Act recognizes three types of heirs for Christians: the spouse, the lineal descendants, and the kindred. As per Section 2(d) of the Act, “Indian Christian” means a 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.

Concept of Succession in brief, deals with how the property of a deceased person devolves on his heirs. The property may be ancestral or self-acquired, and may devolve in two ways (1) by Testamentary Succession, i.e. when the deceased has left a will bequeathing his property to specific heirs; (2) By Intestate Succession i.e. when the deceased has not left a will whereby the law governing the deceased (according to his religion) steps in, and determines how his estate will devolve.

Intestate Succession among Indian Christians :

Section 30 of the Indian Succession Act, 1925 defines i.e. the person who is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking
Thus any property which has not already been bequeathed or allocated as per legal process, will, upon the death of the owner, devolve as per the rules contained in Chapter II of the Act. Intestacy is either total or partial. There is a total intestacy where the deceased does not effectively dispose of any beneficial interest in any of his property by will. There is a partial intestacy where the deceased effectively disposes of some, but not all, of the beneficial interest in his property by will.

**Domicile**

The Domicile of the deceased plays an integral role in determining the method of devolution of his property. Halsbury defined ‘domicile’ thus: “A person's domicile is that country in which he either has or is deemed by law to have his permanent home” Section 5 of the Act categorically states that 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 Indian (lex loci rei sital), no matter where he was domiciled at the time of his death. Section 6 of Act qualifies this provision by stating that a person can have only one domicile for the purpose of succession to his movable property. It must be noted that domicile and nationality differ from each other - domicile deals with immediate residence, whereas nationality implies the original allegiance borne by the person. Section 15 lays down that upon and during subsistence of marriage, the wife acquires the domicile of her husband automatically.
Kindred or Consanguinity

Section 24 of the Act makes reference to the concept of kindred and consanguinity defining it as “the connection or relation of persons descended from the same stock or common ancestor.” 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. So succession can be either 'per capita' (one share to each heir, when they are all of the same degree of relationship) or 'per stirpes' (division according to branches when degrees of relationship are discrete). For Christians if one were to claim through a relative who was of the same degree as the nearest kindred to the deceased, one would be deemed to stand in the shoes of such relative and claim 'per stirpes'.

Section 26 says about collateral consanguinity as occurring when persons are descended from the same stock or common ancestor, but not in a direct line. The law for Christians does not make any distinction between relations through the father or the mother. The relations from the paternal and maternal sides are equally related to the intestate, they are all entitled to succeed and will take equal share among themselves. Further no distinction is made between full-blood/half blood/uterine relations; and a posthumous child is treated as a child who was present when the intestate died, so long as the child has been born alive was in the womb when the intestate died.

Christian law does not recognize children born out of wedlock it only deals with legitimate marriages. Further it does not recognize polygamous marriages either.
Section 32 says that the property of an intestate devolves upon the wife or husband or upon those who are of the kindred of the deceased, in the order and according to the rules containing in Chapter-II of the Act.

**Rights of the Widow and Widower**

Sections 33, 33-A, 34 of the Act govern succession to the widow. If the deceased has left behind both a widow and lineal descendants, she will get one-third share in his estate while the remaining two-thirds will go to the latter. If no lineal descendants have been left but other kindred are alive, half share of the estate passes to the widow and rest to the kindred. If no kindred are left either, the whole of the estate shall belong to his widow.

Section 35 lays down the rights of the widower of the deceased. It says that husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate. It simply says widower shall have same rights in respect of her property as she would in the event that he predeceased her.

**Rights of Children and Other Lineal Descendants**

If the widow is still alive, the lineal descendants will take two-thirds of the estate otherwise they will take whole of estate of the deceased. Equal division of shares applies if they stand in the same degree of relationship to the deceased as per Sections 36 to 40 of the Act.

Section 48 says, where the intestate has left neither lineal descendant, nor parent, nor brother nor sister, his property shall be divided equally among those of his relatives who are in the nearest
degree of kin to him. If there are no heirs whatsoever to the intestate, the doctrine of escheat can be invoked by the Government, whereupon the estate of the deceased will revert to the State.

**Testamentary Succession among Indian Christians**

Testamentary succession dealt with under Part VI of the Indian Succession Act, 1925. As per Section 59 of the Act, every person of sound mind, not being a minor, may dispose of his property by will.

**Explanation 1** – A married woman may dispose by will of any property which she could alienate by her own act during her life.

**Explanation 2** – Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

**Explanation 3** – A person who is ordinarily insane may make a will during an interval in which he is of sound mind.

**Explanation 4** – No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

Sections 57 to 191 of the Act comprehensively 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 etc.

**CONCLUSION**

The Indian Succession Act, 1925 is “archaic in nature and fosters an approach that solidifies distinctions based on gender and thus prejudicial and unfair to status of women and Christian mother of
deceased intestate”, the law panel said, recommending repeal of these provisions.

“A plain reading of provisions built in Sections 42 to 46 of the Indian Succession Act, 1925 reveals how the scheme envisioned therein incorporates a preferential approach towards men and is unfair and unjust towards Christian women,” Law Commission Chairman Hon’ble Justice A.P. Shah said.

According to Section 42, where the deceased’s father is living and there are no lineal descendants, father succeeds to property and mother gets no share. Further, even in case where the deceased’s father does not survive, provisions of Section 43 require the mother to equally share with brothers or sisters of the deceased, rather being entitled to what her husband was entitled to.

“Unfairness runs through provisions of Sections 44 and 45 as well, and it is only when neither father, brother, sister or the children of the deceased intestate are living that the property goes to the mother under Section 46. Thus, “the commission strongly recommending repeal of all such provisions and giving mother first and equal rights as father.

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Sd/- S. Ramanaiah
SENIOR CIVIL JUDGE,
KADIRI.
The four sources of Islamic Law are

1. The Holy Quran
2. The Sunna - that is, the practice of the Prophet
3. The Ijma - that is, the consensus of the learned men of the community on what should be the decision on a particular point
4. The Qiya - that is, an analogical deduction of what is right and just in accordance with the good principles laid down by God.

Islamic law or Muslim law of succession flows from the above four sources. Muslim law recognizes two types of heirs, Sharers and Residuaries. Sharers are the ones who are entitled to a certain share in the deceased’s property and Residuaries would take up the share in the property that is left over after the sharers have taken theirs.

1. GENERAL PRINCIPLES

In cases of Non testamentary succession, the Muslim Personal Law (Shariat) Application Act, 1937 gets applied. On the other hand, in case of a person who dies testate i.e. one who has created his will before death, the inheritance is governed under the relevant Muslim Shariat Law as applicable to the Shias and the Sunnis. In cases where the subject matter of property is an immovable property which is situated in the state of West Bengal or comes within the jurisdiction of Madras or Bombay High Court, the Muslims shall be bound by the Indian Succession Act, 1925. This exception is only for the purposes of testamentary succession.

Nature of the Heritable Property:

Islamic concept of property is different from English concept of property. It does not recognise limited estates as held by the Privy council in Navazish Khan v Ali Raza Khan [AIR 1948 PC 134]

1 https://blog.ipleaders.in/rules-governing-inheritance-property-muslim-law/
“[19] The Chief Court in appeal took the view that under the wills of Nasir Ali Khan the estate vested after his death in the three successive tenants for life; that on the exercise of the power of appointment it would pass immediately to the appointee; that there was no period during which the estate would be in abeyance; and that the rights of the heirs of the testator were not affected or prejudiced. In their Lordship opinion this view of the matter introduces into Muslim law legal terms and conceptions of ownership familiar enough in English law, but wholly alien to Muslim law. In general, Muslim law draws no distinction between real and personal property, and their Lordships know of no authoritative work on Muslim law, whether the Hedaya or Baillie or more modern works, and no decision of this Board which affirms that Muslim law recognises the splitting up of ownership of land into estates, distinguished in point of quality like legal and equitable estates, or in point of duration like estates in fee simple, in tail, for life, or in remainder. What Muslim law does recognise and insist upon, is the distinction between the corpus of the property itself (ayn) and the usufruct in the property (manafi). Over the corpus of property the law recognises only absolute dominion, heritable and unrestricted in point of time; and where a gift of the corpus seeks to impose a condition inconsistent with such absolute dominion the condition is rejected as repugnant; but interests limited in point of time can be created in the usufruct of the property and the dominion over the corpus takes effect subject to any such limited interests.

"If a person bequeath the service of his slave, or the use of his house, either for a definite or an indefinite period, such bequest is valid; because as an endowment with usufruct, either gratuitous or for an equivalent, is valid during life, it is consequently so after death; and also, because men have occasion to make bequests of this nature as well as bequests of actual property. So likewise, if a person bequeath the wages of his slave, or the rent of his house, for a definite or indefinite term, it is valid, for the same reason. In both cases, moreover, it is necessary to consign over the house or the slave, to the legatee, provided they do not exceed the third of the property in order that he may enjoy the wages or service of the slave, or the rent or use of the house daring the term prescribed, and afterwards restore it to the heirs." (Hedaya, Vol. 4, p. 527, chap. 5, entitled "Of Usufructuary Will.")

This distinction runs all through the Muslim law of gifts—gifts of the corpus (hiba), gifts of the usufruct (ariyat) and usufructuary
bequests. No doubt where the use of a house is given to a man for his life he may, not inaptly, be termed a tenant for life, and the owner of the house, waiting to enjoy it until the termination of the limited interest, may be said, not inaccurately, to possess a vested remainder. But though the same terms may be used in English and Muslim law, to describe much the same things, the two systems of law are based on quite different conceptions of ownerships. English law recognises ownership of land limited in duration; Muslim law admits only ownership unlimited in duration, but recognises interests of limited duration in the use of property”.

Heritable property is that property which is available to the legal heirs for inheritance. After the death of a Muslim, his properties are utilised for the payment of funeral expenses, debts and the legacies i.e. wills, if any. After these payments, the remaining property is called heritable property. Under Muslim law, every kind of property may be a heritable property.²

For purposes of inheritance, Muslim law does not make any distinction between corpus and usufruct or, between movable and immovable, or, corporeal and incorporeal property. Under English law, there is some difference in the inheritance of movable and immovable property. Unlike Hindu law, there is no provision of distinction between individual i.e. self acquired or ancestral property. Each and every property that remains within the ownership of an individual can be inherited by his successors. Whenever a Muslim dies, all his property whether acquired by him during his lifetime or inherited from his ancestors can be inherited by his legal heirs. Subsequently, on the death of every such legal heir, his inherited property plus the property acquired by him during his lifetime shall be transferred to his heirs.³

But, under Muslim law there is no such distinction; any property, which was in the ownership of the deceased at the moment of his death, may be the subject-matter of inheritance.

Shia Law:

Under the Shia law, a childless widow is entitled to get her share (1/4) in the inheritance only from the movable property left by her deceased husband and she is not entitled to inherit land.

The concept of a joint family or of coparcenaries property (as is recognised under Hindu law) is not known to Muslims. Whenever a

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³ https://blog.ipleaders.in/rules-governing-inheritance-property-muslim-law/
Muslim dies, his properties devolve on his heirs in definite share of which each heir becomes an absolute owner. Subsequently, upon the death of such heir, his properties are again inherited by his legal heirs, and this process continues.

Thus, unlike Hindu law, there is no provision for any ancestral or joint-family property. Accordingly, under Muslim law of inheritance, no distinction has been made between self-acquired and ancestral property. All properties, whether acquired by a Muslim himself or inherited by his ancestors, are regarded as an individual property and, may be inherited by his legal heirs.4

No Birth-Right:

Inheritance of property in Muslim law comes only after the death of a person, any child born into a Muslim family does not get his right to property on his birth. If an heir lives even after the death of the ancestor, he becomes a legal heir and is therefore entitled to a share in the property. However, if the apparent heir does not survive his ancestor, then no such right of inheritance or share in the property shall exist.

Inheritance opens only after the death of a Muslim. No person may be an heir of a living person (Nemoest haeres viventis). Therefore, unless a person dies, his heirs have no interest in his properties. Unlike Hindu law, the Muslim law of inheritance does not recognise the concept of ‘right by birth’ (Janmaswatvavad).

Under Muslim law, an heir does not possess any right at all before the death of an ancestor. It is only the death of a Muslim which gives the right of inheritance to his legal heirs.

As a matter of fact, unless a person dies, his relatives are not his legal heirs; they are simply his heir-apparent and have merely a ‘chance of succession, (spes successions). If such an heir-apparent survives a Muslim, he becomes his legal heir and the right of inheritance accrues to him. If the heir-apparent does not survive a Muslim, he cannot be regarded an heir and has no right to inherit the property.

Doctrine of Representation:5

Doctrine of representation is a well known principle recognised by the Roman, English and Hindu laws of inheritance. Under the principle

of representation, as is recognised by these systems of laws, the son of a predeceased son represents his father for purposes of inheritance. But, Muslim law does not recognise the doctrine of representation. Under Muslim law, the nearer heir totally excludes a remoter heir from inheritance. That is to say, if there are two heirs who claim inheritance from a common ancestor, the heir who is nearer (in degree) to the deceased, would exclude the heir who is remoter. The Muslim jurists justify the reason for denying the right of representation on the ground that a person has not even an inchoate right to the property of his ancestor until the death of that ancestor.⁶

2. RULES OF SUCCESSION

Sharers:
The Sharers are 12 in number and are as follows: (1) Husband, (2) Wife, (3) Daughter, (4) Daughter of a son (or son’s son or son’s son and so on), (5) Father, (6) Paternal Grandfather, (7) Mother, (8) Grandmother on the male line, (9) Full sister (10) Consanguine sister (11) Uterine sister, and (12) Uterine brother.

The share taken by each sharer will vary in certain conditions. For instance, a wife takes 1/4th of share in a case where the couple is without lineal descendants, and a one-eighth share otherwise. A husband (in the case of succession to the wife’s estate) takes a half share in a case where the couple is without lineal descendants, and a one-fourth share otherwise. A sole daughter takes a half share.

Where the deceased has left behind more than one daughter, all daughters jointly take two-thirds.

If the deceased had left behind son(s) and daughter(s), then, the daughters cease to be sharers and become residuaries instead, with the residue being so distributed as to ensure that each son gets double of what each daughter gets.

Distribution of the Property:
Under the Muslim law, distribution of property can be made in two ways – per capita or per strip distribution.

The per capita distribution method is majorly used in the Sunni law.

According to this method, the estate left over by the ancestors gets equally distributed among the heirs. Therefore, the share of each person depends on the number of heirs.

The per strip distribution method is recognised in the Shia law. According to this method of property inheritance, the property gets distributed among the heirs according to the strip they belong to. Hence the quantum of their inheritance also depends upon the branch and the number of persons that belong to the branch.

**Per-Capita and Per-Strip Distribution:**

Succession among the heirs of the same class but belonging to different branches may either be per-capita or per-strips. In a per-capita distribution, the succession is according to the ‘number of heirs’ (i.e. heads). Among them the estate is equally divided; therefore, each heir gets equal quantity of property from the heritable assets of the deceased.

On the other hand, in a per strip distribution, the several heirs who belong to different branches, get their share only from that property which is available to the branch to which they belong. In other words, in the per stripe succession, the quantum of property available to each heir depends on the property available to his branch rather than the number of all the heirs.

Under Sunni law, the distribution of the assets is per-capita. That is to say an heir does not in any respect represent the branch from which he inherits. The per-capita distribution may be illustrated by the following diagram.\(^7\)

\[
\begin{align*}
&\quad M \\
&\quad \downarrow \quad \downarrow \\
&\quad A \quad \quad B \\
&\quad \quad \downarrow \quad \downarrow \\
&\quad S^1 \quad S^2 \quad S^3 \\
&\quad \quad \quad \downarrow \quad \quad \downarrow \\
&\quad S^4 \quad S^5
\end{align*}
\]

M has got two sons A and B. A has three sons, $S^1$, $S^2$ and $S^3$. B has two sons $S^4$ and $S^5$. When M dies there are two branches of succession, one of A and the other of B. Suppose, A and B both die before the death of M so that the sole surviving heirs of M are his five grandsons.

Now, under the per-capita scheme of distribution (as recognised under

Suni law) the total number of claimants (heirs) is five and the heritable property would be equally divided among all of them irrespective of the branch to which an heir belongs.

Therefore, each of them would get 1/5 of the total assets of M. It may be noted that under Sunni law the principle of representation is recognised neither in the matter of determining the claim of an heir, nor in determining the quantum of share of each heir.

Shia Law:

Under the Shia law, if there are several heirs of the same class but they descend from different branches, the distribution among them is per strip. That is to say, the quantum of property inherited by each of them depends upon the property available to that particular branch to which they belong. In the above-mentioned illustration, A and B constitute two branches, each having 1/2 of M’s property. Both, A and B pre-decease M.

But, the quantum of property available to each of their branch would remain the same. Therefore, the surviving heirs of A namely, S1, S2, S3 would get equal shares out of 1/2 which is quantum of property available to the branch of A. Thus S1, S2 and S3 would get 1/6 each. Similarly, the quantum of property available to the branch of B is also 1/2 but the descendants from this branch are only two. Accordingly, the 1/2 property of B would be equally shared by S4 and S5.

Therefore, S4 and S5 would get 1/4 each. It is significant to note that for a limited purpose of calculating the share of each heir, the Shia law accepts the principle of representation. Moreover, under the Shia law this rule is applicable for determining the quantum of share also of the descendants of a pre-deceased daughter, pre-deceased brother, pre-deceased sister or that of a pre-deceased aunt.

Rights of females:

Muslim does not create any distinction between the rights of men and women. On the death of their ancestor, nothing can prevent both girl and boy child to become the legal heirs of inheritable property. However, it is generally found that the quantum of the share of a female heir is half of that of the male heirs. The reason behind this is that under the Muslim law a female shall upon marriage receive mehr and maintenance from her husband whereas males will have only
the property of the ancestors for inheritance. Also, males have the duty of maintaining their wife and children.

Female’s Right of Inheritance:
Males and females have equal rights of inheritance. Upon the death of a Muslim, if his heirs include also the females then, male and female heirs inherit the properties simultaneously. Males have no preferential right of inheritance over the females, but normally the share of a male is double the share of a female.

In other words, although there is no difference between male and female heir in so far as their respective rights of inheritance is concerned but generally the quantum of property inherited by a female heir is half of the property given to a male of equal status (degree).

The principle that normally the share of a male is double the share of a female has some justification. Under Muslim law, while a female heir gets (or hopes to get in future) an additional money or property as her Mehr and maintenance from her husband, her male counterpart gets none of the two benefits. Moreover, the male heir is primarily liable for the maintenance of his children whereas, the female heir may have this liability only in an extraordinary case.

Widow’s right to succession:
Under Muslim law, no widow is excluded from the succession. A childless Muslim widow is entitled to one-fourth of the property of the deceased husband, after meeting his funeral and legal expenses and debts. However, a widow who has children or grandchildren is entitled to one-eighth of the deceased husband’s property. If a Muslim man marries during an illness and subsequently dies of that medical condition without brief recovery or consummating the marriage, his widow has no right of inheritance. But if her ailing husband divorces her and afterwards, he dies from that illness, the widow’s right to a share of inheritance continues until she remarries.

A Child in the Womb:
A child in the womb of its mother is competent to inherit provided it is born alive. A child in the embryo is regarded as a living person and, as such, the property vests immediately in that child. But, if such a child in the womb is not born alive, the share already vested in it is divested and, it is presumed as if there was no such heir
(in the womb) at all.

**Primogeniture:**

Primogeniture is a principle of inheritance under which the eldest son of the deceased enjoys certain special privileges. Muslim law does not recognise the rule of primogeniture and all sons are treated equally.

However, under the Shia law, the eldest son has an exclusive right to inherit his father’s garments, sword, ring and the copy of Quran, provided that such eldest son is of sound mind and the father has left certain other properties besides these articles.

**Step-Children:**

The step-children are not entitled to inherit the properties of their step-parents. Similarly, the step-parents too do not inherit from step-children. For example, where a Muslim H marries a widow W having a son from her previous husband, the son is a stepson of H, who is step-father of this son.

The step-father and step-son (or daughter) cannot inherit each other’s properties. That step-child is competent to inherit from its natural father or natural mother. Similarly, the natural father and natural mother can inherit from their natural sons or daughters.

However, the step-brothers (or sisters) can inherit each other’s properties. Thus, in the illustration given above, if a son (or daughter) is born out of the marriage of H and W, the newly born child would be a step-brother (or sister) of the son from wife’s previous husband.

These sons or daughters are competent to inherit each other’s property. The step-brothers or sisters may either be, uterine or consanguine. Muslim law provides for mutual rights of inheritance between uterine and consanguine brothers or sisters.

**Simultaneous Death of two Heirs:**

When two or more persons die in such a circumstance that it is not ascertainable as to who died first (i.e. who survived whom) then, both of them cease to be an heir for each other. In other words, where two or more heirs die simultaneously and, it is not possible to establish as to who died first then under Muslim law, all the heirs are presumed to have died just at one moment. The result is that such heirs are regarded as if they did not exist at all; the inheritance
Missing Persons:

According to the texts of Hanafi law, a missing person was supposed to have been dead only after ninety years from the date of his birth; till then the inheritance of his properties did not open. But, now this rule has been superseded by Sec. 108 of the Indian Evidence Act, 1872.8

Rules of Exclusion of Heir to Entitled a Property under Muslim Law9

Every heir is entitled to inherit a property unless he (or she) is debarred from inheriting under any rule of exclusion. Under Muslim law, if an heir is disqualified on any of the following grounds, he (or she) is excluded from inheriting the property.

However, insanity, want of chastity or any physical deformity is not regarded as any disqualification for inheritance. Adulterous women, insane or infirm persons are equally competent to inherit a property.

(a) Homicide:

A person, who causes the death of another, is disqualified for inheriting the properties of the said deceased. It is a rule of common prudence that law cannot allow a person to derive benefits out of his own wrongs.10

Under Hanafi law, an heir who causes the death either intentionally or negligently, is a disqualified heir or cannot inherit properties of the deceased. Thus, even if the death is caused due to negligent or accidental act of an heir, the heir is debarred from inheritance.

Shia Law:

Under the Ithna Asharia law, an heir is excluded from inheritance only where the death is caused intentionally. If the death is caused accidentally or negligently, the Ithna Asharia heir is not debarred from inheritance.11

(b) Illegitimacy:

Under Sunni law, an illegitimate person is not entitled to inherit the properties of his (or her) father. But an illegitimate person is competent to inherit the properties of mother. It is to be noted that under Sunni law, an illegitimate child is entitled to inherit not

10 Ibid. see also B.R.Verma “Islamic Law” 6th edition
11 Ibid
only the mother’s properties but, through her also the properties of mother’s other relations. In Bafatun v. Bilaiti Khanum, a Sunni female died leaving her husband and an illegitimate son of her sister as her sole surviving heirs.

The husband took 1/2 of her assets and the remaining 1/2 was inherited by her sister’s illegitimate son who was the only distant relative of the deceased. It was held by the court that under Sunni law, an illegitimate son was competent to inherit his mother and through his mother could inherit also the properties of his mother’s sister. However, an illegitimate child is not entitled to inherit mothers those relations who became relatives by any subsequent remarriage of the said mother.

(c) Difference of Religion:

Under the Islamic texts, a non-Muslim is excluded from inheriting the properties of a Muslim. But under the Muslim law as administered in India, difference of religion is not any disqualification for inheritance.

A legal heir of the deceased Muslim cannot be debarred from inheritance on the ground that such heir was not a Muslim at the time of death of the deceased. Under the Caste Disabilities Removal Act, 1850, renunciation of religion by any heir does not affect his (or her) rights of inheritance under the personal law to which that heir belonged before conversion.

Accordingly, a converted heir will continue to be governed by the Muslim law of inheritance. Following illustration will clarify this rule. A Muslim has a son and a daughter. The son renounces Islam and converts to Christianity.

At the time of father’s death i.e. when the inheritance opens, the daughter continues to be a Muslim but the son is a Christian. The non-Muslim son is not excluded from inheritance and is competent to inherit the properties of his father together with his Muslim sister. However, it may be noted that religion of the propositus i.e. deceased, is an important factor because the properties devolve under the personal law to which the propositus belonged just before his death. For example, if a Hindu becomes a Muslim through conversion and then dies as a Muslim, his properties would be inherited by heirs under Muslim law; the heirs under Hindu law cannot claim inheritance.

In K.P. Chandrashekhar v. Govt. of Mysore a Hindu woman converted to
Islam died as a Muslim. She had no heir under Muslim law. Her Hindu brother claimed inheritance. It was held by the court that her Hindu brother could not inherit because he was not an heir under Muslim law.

(d) Exclusion of Daughters under Custom or Statute:

At certain places daughters are sometimes excluded from inheritance under any local custom or under some specific enactment. For example, among the Gujars and Backkerwals of Kashmir, there is a custom that daughters cannot inherit in the presence of any male descendant of the grandfather. Similarly, under the Watan Act, 1886, enforced in Bombay, a daughter is excluded from inheritance in the presence of a paternal uncle.12

Alienations of the Property of a Deceased Muslim by the Legal Heir13

1. Alienation by an heir of his share before the payment of debt:

Since the estate of Muslim vests in the heirs immediately on his demise, an heir has the power of alienating his share and pass a good title to a bona fide alienee for value, even if no distribution of assets of the deceased has taken place, and notwithstanding the outstanding debts of the deceased.

Under Muslim law, a sale of his share by an heir in execution of a decree of his creditor amounts to a transfer and passes a good title to the transferee.

If an alienation is made by an heir during the pendency of a suit of a creditor of the deceased in which a charge is created on the estate, then the transferee will take the property subject to the charge.

Relinquishment or alienation of share by expectant heir not valid

The Mohammedan Law enjoins in clear and unequivocal terms that a chance of a Mohammedan heir-apparent succeeding to an estate cannot be the subject of a valid transfer or release. Section 6(a) of the Transfer of Property Act was enacted in deference to the customary law and law of inheritance prevailing among Mohammedans. the same can be avoided either by the execution of a family settlement or by accepting consideration for a future share.14

14 Gulam Abbas Vs. Haji Kayyum Ali & Ors. [AIR 1973 SC 554] and Shehammal vs Hasan Khani Rawther & Ors [(2011) 9 SCC 223]
Doctrine of “Increase” (Aul)\textsuperscript{15}

According to Muhammadan law, the shares of various sharers are fixed. Where several sharers co-exist, it sometimes happens that the total of their respective shares exceeds unity (one)\textsuperscript{16}. Thus, suppose the deceased leaves behind a husband and two full sisters.

Ordinarily, the husband will take 1/2, as there is no child or child of a son howsoever, and the two sisters together will take 2/3, as there is no son. 1/2 + 2/3 = 7/6 which exceeds unity, and the property falls short in distribution\textsuperscript{17}. This situation is resolved by proportionately reducing the shares of each sharer. The method adopted to effect this is to first (i) reduce the shares to a common denominator; (ii) increase the denominator so as to make it equal to the sum of the numerators allowing the numerators to stand as they are.\textsuperscript{18}

Illustrations:\textsuperscript{19}

<table>
<thead>
<tr>
<th>Shares</th>
<th>Shares</th>
<th>Common denominator</th>
<th>Reduced shares</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Rule 1</td>
<td>Rule 2</td>
</tr>
<tr>
<td>(a)</td>
<td>Husband</td>
<td>1/4</td>
<td>3/12</td>
</tr>
<tr>
<td></td>
<td>2 daughters</td>
<td>2/3</td>
<td>8/12</td>
</tr>
<tr>
<td></td>
<td>Father</td>
<td>1/6</td>
<td>2/12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>13/12</td>
</tr>
<tr>
<td>(b)</td>
<td>Widow</td>
<td>1/4</td>
<td>3/12</td>
</tr>
<tr>
<td></td>
<td>Mother</td>
<td>1/3</td>
<td>4/12</td>
</tr>
<tr>
<td></td>
<td>Full sister</td>
<td>1/2</td>
<td>6/12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>13/12</td>
</tr>
<tr>
<td>(c)</td>
<td>Widow</td>
<td>1/4</td>
<td>3/12</td>
</tr>
<tr>
<td></td>
<td>2 Full sister</td>
<td>2/3</td>
<td>8/12</td>
</tr>
<tr>
<td></td>
<td>Tr. grand father</td>
<td>1/6</td>
<td>2/12</td>
</tr>
<tr>
<td></td>
<td>Tr. grand mother</td>
<td>1/6</td>
<td>2/12</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>15/12</td>
</tr>
</tbody>
</table>

\textbf{Note:} The total of the numerators is 13 (3+8+2). The denominator is, therefore increased to 13 but numerators are not disturbed

\textsuperscript{15} http://www.shareyouressays.com/knowledge/what-is-doctrine-of-increase-aulmuslim-property-law-in-india/117394
\textsuperscript{16} B.R.Verma, “Islamic Law” 6th edition, pg.no.449
\textsuperscript{17} http://www.shareyouressays.com/knowledge/what-is-doctrine-of-increase-aulmuslim-property-law-in-india/117394
\textsuperscript{18} B.R.Verma, “Islamic Law” 6th edition, pg.no.449
\textsuperscript{19} Supra Note 9 at Pg.no.450
It may be noted that this doctrine is called “increase”, not because the shares are increased, which is quite the opposite, the very object of the doctrine being to diminish the shares, but because the unity is reached by increasing the denominator of the fractional shares²⁰.

In other words, if it is found, on assigning their respective shares to the sharers, that the sum total of the shares exceeds unity, the share of each sharer is proportionately diminished, by reducing the fractional shares to a common denominator and increasing the denominator, so as to make it equal to the sum of the numerator²¹.

Difference between Shia and Sunni Law of ‘Increase’:
According to the Sunni law, the doctrine implies proportionate reduction of all the shares. According to the Shia law, on the other hand, it implies the reduction of the shares of the daughter or the daughter and full or consanguine sister or sisters only. Other heirs do not suffer²².

Rule of ‘Return’ (Radd) under the Muslim Law of Inheritance
If, on assigning their shares to the sharers, it is found that the total of the shares does not exhaust the whole, the residue will go to the residuaries²³. But if there are no residuaries, the residue will not go to distant kindred, but would be distributed among the sharers in proportion to their shares. This right of reversioner is called radd (“return”).

The applicable principles are that if there is only one sharer the property will go to such sharer. If there are more sharers than one to all of them proportionately to their shares. The exception to this rule is that the Husband or wife is not entitled to “radd” so long as there is another heir (whether among the sharers or the distant kindred), but in the absence of all other heirs, the husband or wife

<table>
<thead>
<tr>
<th></th>
<th>Husband</th>
<th>1/2</th>
<th>3/6</th>
<th>3/8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother</td>
<td>1/3</td>
<td>2/6</td>
<td>2/8</td>
<td></td>
</tr>
<tr>
<td>Full sister</td>
<td>1/2</td>
<td>3/6</td>
<td>1/8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>8/6</td>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

will get by "radd"\textsuperscript{24}.

The method of calculating the rateable increase in shares is as follows:

(1) where there is no husband or wife-

(I) reduce all shares to a common denominator;

(II) reduce the denominator so as to make it equal to the sum of the numerators, allowing the numerators to stand as before;

(2) where there is a husband or wife, then if there is only one heir allot residue to him or her, but if there are more heirs than one, then (I) apply rule (1) above to the shares of sharers other than the husband or wife,(II) multiply the residue (left after allotting the share of the husband or the wife) by the new fractions resulting from the application of rule (1) above.

Illustrations\textsuperscript{25}:

<table>
<thead>
<tr>
<th>Shares</th>
<th>Shares</th>
<th>Common denominator rule</th>
<th>Increased share rule</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(a) (i)</td>
<td>(a) (ii)</td>
</tr>
<tr>
<td>(a) Mother</td>
<td>1/6</td>
<td>1/6</td>
<td>1/5</td>
</tr>
<tr>
<td>Full sister</td>
<td>1/2</td>
<td>3/6</td>
<td>3/5</td>
</tr>
<tr>
<td>Ut.brother</td>
<td>1/6</td>
<td>1/6</td>
<td>1/5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5/6</td>
<td>1</td>
</tr>
</tbody>
</table>

\textbf{NOTE}: The sum of the numerators is 5(1+3+1). The denominator is therefore, reduced to 5 but the numerators are allowed to stand.

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) Tr. Grand mother</td>
<td>1/6</td>
<td>1/6</td>
<td>1/5</td>
</tr>
<tr>
<td>Full sister</td>
<td>1/2</td>
<td>3/6</td>
<td>3/5</td>
</tr>
<tr>
<td>Cons.sister</td>
<td>1/6</td>
<td>1/6</td>
<td>1/5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5/6</td>
<td>1</td>
</tr>
</tbody>
</table>

| (c) Husband      | 1/2    | 3/6          | (Excluded from Return) |
| Mother          | 1/2    | 3/6          | (2/6 as sharer and 1/6 by Return) |
| (d) Wife         | 1/4    | (Excluded from Return) |

\textsuperscript{24} Ibid Pg.no.450
\textsuperscript{25} B.R.Verma, “Islamic Law” 6\textsuperscript{th} edition, pg.no.452-453
Cons. sister 3/4 (2/4 as sharer and 1/4 by Return)

(e) Husband 1/2 (Excluded from Return)

Daughter’s daughter 1/2 (As an heir of the distant kindred class)

**NOTE:** Daughter’s daughter although of the distant kindred class succeeds because the husband is excluded from return

(f) Full sister Whole 1/2 as sharer and 1/2 by Return

Daughter’s daughter (Excluded by full sister)

<table>
<thead>
<tr>
<th>Shares</th>
<th>Shares in Common denominator rule (a) (i)</th>
<th>Increased shares rule (a) (ii)</th>
<th>New fractions multiplied rule (b) (ii)</th>
<th>Final shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>(g) Wife</td>
<td>1/8 (Residue 7/8)</td>
<td></td>
<td></td>
<td>4/32</td>
</tr>
<tr>
<td>Mother</td>
<td>1/6</td>
<td>1/4</td>
<td>1/4 X 7/8</td>
<td>7/32</td>
</tr>
<tr>
<td>Daughter</td>
<td>3/6</td>
<td>3/4</td>
<td>3/4 X 7/8</td>
<td>21/32</td>
</tr>
</tbody>
</table>

1

**NOTE:** the shares of the mother and daughter alone are increased (1/6 and 3/6 to ¼ and ¾ respectively). The increased fractions are then multiplied with the residue 7/8.

(h) Wife ¼ (residue ¾) 4/16

Full Sister 3/6 3/4 3/4 X 3/4 9/16

Cons.sister 1/6 1/4 1/4 X 3/4 3/16

1

These will be the shares of the two sharers. Thus, the Return (Radd) is the apportionment of surplus among the sharers, when the shares do not exhaust the property, and there are no residuaries.

There is one exception to the right to reverter of the sharers. According to the original rule of Muslim law the husband or wife of the deceased is not entitled to share in the return in any situation.26 The consequence was that if the only sharer left was the husband or the wife, he or she would get her fixed share and the residue instead of reverting to the husband or the wife by return.

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26 Ibid pg.no.451
went to the distant kindred.\textsuperscript{27} If there were no distant kindred it went to bait-ul-mal.\textsuperscript{28} The rigour of this rule was relaxed in modern times and although distant kindred are preferred, the property does not escheat to the government when there are no distant kindred. In such case the property will be allowed to go to the husband or wife by return.\textsuperscript{29}

Shia Law:

Under the Shia law, if there is a surplus after satisfying the shares, it is not necessary that there should be no residuaries in order to apply the doctrine of return. If there is a surplus left after the allotment of shares of the sharers, but there are no residuaries in the class to which the shares belong, the surplus reverts to the sharers in the proportion of their respective shares.\textsuperscript{30}

\textbf{Difference between ‘Increase’ and ‘Return’:}

The doctrine of “return” is the converse of the doctrine of “increase”. In “increase”, the shares exceed unity, and suffer a proportionate reduction. In “return”, the shares fall short of unity, and are proportionately increased. In return, the husband and wife do not benefit if there is any other sharer or a distant kindred, but they are not saved from the operation of the doctrine of increase.

Thus, the important points of difference between the two are as under:

1. In ‘Increase’, the total of the shares adds up to more than unity; whereas in ‘return’ the total falls short of unity.


3. In ‘Increase’, the share of the husband or wife suffers a proportionate reduction along with other sharers. In ‘Return’, the husband or wife is not entitled to the ‘Return’ so long as there is any other heir, whether sharer or distant kindred.\textsuperscript{31}

\textbf{Development of Muslim Identity in India and the role of law}

The Controller Of Estate Duty, ... vs Haji Abdul Sattar Sait & Ors [AIR 1972 SC 2229]

\textsuperscript{27} Ibid pg.no.451
\textsuperscript{28} ibid
\textsuperscript{29} Mir Isab v. Isab, (1920) 20 Bom. L.R. 942
\textsuperscript{30} http://www.shareyouressays.com/knowledge/what-is-doctrine-of-increase-aulmuslim-property-law-in-india/117394
\textsuperscript{31} http://www.shareyouressays.com/knowledge/what-is-doctrine-of-increase-aulmuslim-property-law-in-india/117394
(1) According to Mohamedan Law a person converting to Islam changes not only his religion but also his personal law. This rule, however, applied only to cases of individual conversions and not to wholesale conversions such as Khojas and Cutchi Memons. In such cases of wholesale conversion of a caste or community the converts might retain a part of their original personal law according to the hitherto held habits, traditions and the surroundings.

(2) The view finally settled in Bombay is that the application of Hindu Law to Cutchi Memons is now restricted to cases of succession and inheritance as it would apply in the case of an intestate, and separate, Hindu, possessed of self-acquired property.


(3) But the Madras view, supported by the records of several cases in the Madras High Court, is that Cutchi Memons, who had settled down in Madras, had regulated their affairs, since they had settled down amidst Hindus, according to Hindu Law not only in matters of succession and inheritance, but also in matters of their property including the Hindu concepts of coparcenary and survivorship.


(4) The question as to which customary law is applicable turns really on the consideration as to which law a community decides to have for regulating succession to the properties of its members depending upon amongst whom they had settled down and the surroundings and traditions they found in that place. That being the position, there is no question of preferring one view to another in the present case as between the Madras and Bombay views, because the Madras view applies to the respondents.


Moreover, if such preference is expressed by the Court now, it may have the result of upsetting a number of titles settled on the basis of the decisions of each of the two High Courts and perhaps elsewhere.

The Cutchi Memons Act (46 of 1920) does not apply to the respondents, because, the declaration under s. 2 of the Act to get its benefit and be governed by Mahomedan Law had not been made by any one concerned. [247E]

The option of being governed by the Mahomedan Law contained in the 1920-Act was replaced by a uniform and mandatory provision, in the Cutchi Memons Act (10, of 19,38), which provided that all Cutchi Memons shall, in matters of succession and inheritance, be governed by the Mahomedan Law. But the 1938-Act was not extended to the Civil Station area in Bangalore where the deceased and the members of his family had settled down and carried on business. In 1948, when that area was retroceded to Mysore, the Mysore Legislature passed the Retroceded (Application of Laws) Act, 1948 extending to that area certain laws and enactments in force in the Princely State of Mysore, one of which was the Mysore Cutchi Memons Act, 1943, which was 'identical with 1938 Central Act. But s. 3 of the 1943-Act provided that 'nothing in this Act shall affect any right acquired before its commencement etc.' The respondents having been born before 1948 (when the Act was made applicable to them) had already acquired a right by birth in the property held by their father which right was expressly saved by s. 3 of the 1943-Act. There was, therefore, no question of the passing of the properties to the respondents on the death of their father as envisaged by s. 3 of the Estate Duty Act. [247H-248F]
1. **OBJECT :-**

The object of the Indian Succession Act, 1925 is expressed in its preamble: “Whereas it is expedient to consolidate the law applicable to intestate and testamentary succession...” The object of issuing a Succession Certificate fulfills the said object. The Certificate facilitates the collection of debts on succession, gives protection to the concerned parties, and avoids unnecessary litigated questions of disputed title.

2. **WHEN A SUCCESSION CERTIFICATE CAN BE GRANTED?**

Section 370 of the Act defines when a Succession Certificate be granted. A Succession Certificate may be granted in any of the following circumstances:

a) When the grant of probate or letters of administration is not compulsory under Sections 212 & 213 of the Indian Succession Act, 1925;

b) When the deceased is a Muslim or an Indian Christian;
c) When the deceased is Hindu, and he has left a Will, but the grant of a Probate is not compulsory under Section 57 of the Act;

d) When the deceased is a member of a joint family, and a member of that joint Hindu family, having right of survivorship and not as heir can apply for Succession Certificate in respect of shares of joint stock companies standing in the name of the deceased co-parcener. However, a Succession Certificate is not necessary to recover dues payable to a joint Hindu family.

e) A Succession Certificate establishes who are the legal heirs of the deceased and gives them the authority to inherent debts, securities and any other assets.

f) A reading of Sections 370 and 372 of the Act, particularly, Clause (f) of Sub-section (1) of Section 372 of the Act, will show that a succession certificate can be applied for only in respect of debt and securities.

3. **EFFECT OF SUCCESSION CERTIFICATE**:

By virtue of Section 380 of the Act, a Succession certificate granted under Part X of the Act shall have effect throughout India. The effect of issuing a Succession Certificate is that it will afford full indemnity to all persons owing the debts or liable on the securities
specified in the certificate as regards all payments made or dealings had in good faith in respect of such debts or securities or with the grantee of the Succession Certificate. (Vide Section 387).

4. **JURISDICTION:**

Section 371 of the Act gives an indication regarding the Court having a jurisdiction to grant Succession Certificate. In exercise of the said power the state of Andhra Pradesh has issued the following G.O dated 08.02.2012.

**GOVERNMENT OF ANDHRA PRADESH**

**ABSTRACT**

Courts – Indian Succession Act – Issuance of Succession Certificates in succession Ops – Conferment of powers on Senior Civil Judge Courts to entertain Original Petitions filed under the Indian Succession Act, 1925 – Notification - Orders – Issued.

**LAW (LA&J-HOME-COURTS-C2) DEPARTMENT**

G.O.Ms.No. 11 Dated: 08-02-2012.


**ORDER:**

The Registrar General, High Court of Andhra Pradesh, Hyderabad, in his letter read above, has forwarded the Draft Notification with regard to the Conferment of powers on Senior Civil Judge Courts to entertain Original Petitions filed under the Indian Succession Act, 1925.
2. The Government after careful examination of the matter have decided to approve the Draft Notification with regard to the Conferment of powers on Senior Civil Judge Courts to entertain Original Petitions filed under the Indian Succession Act, 1925.

3. Accordingly, the following Notification will Extraordinary issue of the Andhra Pradesh Gazette be published in an

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 388 of the Indian Succession Act, 1925 (Central Act 39 of 1925) and of all other powers here unto enabling the Governor of Andhra Pradesh hereby confers powers on all the Principal Senior Civil Judges, where there are more than one Senior Civil Judge’s Court and Senior Civil Judge’s Court where only one Court is functioning at such station to entertain original petitions filed under the Indian Succession Act, 1925 and shall exercise the functions of District Judge under Part-X of the said Act within their respective jurisdictions.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH.

Sd/-A.SHANKAR NARAYANA,
SECRETARY TO GOVERNMENT,
LEGISLATIVE AFFAIRS & JUSTICE.

5. PROCEDURE TO OBTAIN A SUCCESSION CERTIFICATE

To obtain such a certificate, a petition to the District Judge (Now Senior Civil Judge) within whose jurisdiction the deceased person ordinarily resided at the time of his/her death or, if at the time he/she
has no fixed place of residence, the District Judge (Now Senior Civil Judge) within whose jurisdiction any part of the property of the deceased is situated.

6. **PETITION FOR CERTIFICATE**

   A petition for Succession Certificate must contain the following particulars:

   ➔ Time of death of deceased;
   ➔ Residence or details of properties of the deceased at the time of death within the jurisdiction it falls under;
   ➔ Details of family or other near relatives;
   ➔ Right of the petitioner;
   ➔ Absence of any impediment to the grant of the certificates.

7. **GRANT OF CERTIFICATE**

   On making the petition, if the District Judge (Now Senior Civil Judge) is satisfied with the grounds of the petition, he/she can grant an opportunity of hearing to the person who, in his/her opinion, should be heard. After hearing the case from all parties, the Judge can decide the right of the Petitioner to be granted the Succession Certificate. The Judge would then pass an order for grant of certificate specifying the debts and securities set forth in the
application empowering the person to receive the interest or divided or to negotiate or transfer or do both.

8. **REVOCATION**:

According to Section 383, a Succession Certificate may be revoked in any following circumstances:

a) That the proceeding 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 fraudulently, concealment of 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.
SECTION 384 APPEAL :-

Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, 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 judge, on application being made therefor, to grant it accordingly, in supersession 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, 1908 (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

By virtue of G.O. of A.P. Government, passed in concurrence with Hon’ble High Court of Judicature at Hyderabad, as referred in Page No.4 of this paper, appeal from the order passed by Senior Civil Judge in a succession O.P. shall lie before District Court, concerned; but, not before Hon’ble High Court.

Recent Decision on this aspect is:

2017 (2) ALT 523 (D.B)
Pasumarthi Srinivasa  
Vs.  
(Their Lordship Suresh Kumar Kait and U. Durga Prasad Rao, J.J).

In the said decision it was clarified as follows:

“In view of the specific provision creating forum for appeal, which is the District Court in the instant case, the submission of Counsel that the appeal shall lie before the High Court cannot be accepted.

Section 384 is subject to the other provisions of Part X, which means the said section is subject to Section 388 as per which, against the order passed by an inferior Court, an appeal shall lie before the District Judge and not before the High Court.”

10. **IMPORTANT DECISIONS:**

1. AIR 1963 A.P. 135 Rama Swami Vs. Venkamma  
   Succession Certificate is to be where it is a “Debt”. It does not apply to a mortgage debt as it is not a suit for a debt. A suit on a mortgage is one to realize an interest in immovable property, while section 214 contemplates a simple debt.

2. AIR 1993 A.P.337 = 1993 (2) ALT 274. Branch Manager, SBH Vs. Gadiraju Rama Bhaskara Viswanadha Raju
A bank cannot insist upon the production of a succession certificate for delivery of the jewellery of deceased pledged with it.

3. 1990 (2) ALT. 117 Venugopal Loya Vs. Vijaya Lakshmi Bung

No succession certificate is required to open a bank locker of the deceased.

**LEGAL HEIR CERTIFICATE AND SUCCESSION CERTIFICATE**

Legal heir certificate and succession certificate are totally different from each other. If the head of the family or any member of the family passes away, then the next legal heir who is directly related to the deceased such as, his or her husband, wife, son, daughter, mother has eligibility to apply for succession certificate. If the deceased person is a Government employee then legal heir certificate is issued for the sake of family pension or for any kind of appointments on the necessary grounds. Legal heir certificates are issued by the Tahsildar to recognize the actual deceased person living heirs and the succession certificates are issued by the Court to deceased person legal heirs.

**SECTION 214 OF THE ACT**

Proof of representative title a condition precedent to recover through the Courts of debts from debtors of deceased person. No court shall pass a decree against a debtor of a deceased person for payment of his debt to a person calming on succession unless a succession certificate or any other certificate as contemplated under
section 214 of the Act is produced. No court can execute a decree against the judgment debtor for payment of a debt due to a deceased decree holder, which a person claims on succession, except on production of a succession certificate (Section 214(1)(b)).

In S. Rajyalakshmi Vs. S. Seetha Mahalakshmi (AIR 1976 AP 361) it was held that “no succession certificates is necessary to be obtained under section 214(1)(b) of the Act. To execute the decree for costs”.

In K. Lakshmianrayamna Vs. V. Gopala Swamy (AIR 1963 AP 438) it was observed that “the mandatory nature of the provision under section 214 of the Act, makes it necessary for the party to obtain a succession certificate, and certainly it cannot be waived with impunity. It is not correct to say that section 214 does not apply where the suit was originally instituted by the creditor himself but only applies where it is instituted by the legal representative.”

In Akula Rangappa (Died by L.Rs) Vs. Narayana Swamy (AIR 1988 AP 314)

(1) Where a decree-holder himself files an execution application and he dies before executing the decree and recording the full satisfaction the legal representatives are entitled to come on record without obtaining a succession certificate as required under section 214(1) (b) of the Act.
(2) Where the legal representatives themselves are seeking to execute the decree obtained by the deceased decree-holder, then it is mandatory under section 214(1)(b) of the Act to obtain a succession certificate and then to have the decree executed.

In T.Rama Seshagiri Rao and another Vs. N. Kamala Kumari (AIR 1982 AP 107) it was held that “when a person files a petition for execution of a maintenance decree with a charge, he is applying for enforcement of the charge by sale of the property in possession of the judgment debtor. It is not an application for recovery of any debt but the enforcement of the liability, as against the person, who had not paid the maintenance allowance, which liability he was bound to discharge. If so, there is no need for the legal representative of the deceased decree holder to obtain a succession certificate.”

In A. Sreekantha Reddy and others Vs. Varanasi Rajeena Venugopal Reddy (2004 (5) ALD 200) their Lordship categorically held that “gold ornaments pledged are not debts and therefore, there is no scope for obtaining a succession certificate in respect of the same. It is legally baseless demand on the part of the Banks insisting to obtain a succession certificate to enable the respondent to receive the gold ornaments pledged with them by the deceased.”

At the outset, in the absence of a will, a succession certificate will be the primary document through which the heirs can realize the debts and securities of the deceased relative. A succession
certificate is a document that gives authority to the person who obtains it, to represent the deceased for the purpose of collecting debts and securities due to him or payable in his name. Grant of Succession Certificate is a Summary Procedure. It is not a final verdict on the question of title.