

Succession under Indian Succession Act 1925 in respect of Christians

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Introduction

Christianity is the third most populous religion in India. Indian Christians, though united in the essence of their faith, are diverse in their practices with different denominations.¹ Synergetic influences have led to cultural variations that have gained legal recognition either statutorily or judicially. This has led to multiplicity in application of laws whereas ambiguity most noticeable is in the laws of succession for Christians. It is this multiplicity and ambiguity that led to enactment of the Indian Succession Act, 1865² and finally the Indian Succession Act, 1925.

Succession, in brief, deals with how the property of a deceased person devolves on his heirs. This 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.

Effect of conversion

At this juncture in the year **1863** the effect of conversion from one religion to another on the law applicable to the convert was considered by the Privy Council in **Abraham v. Abraham**.³ M. Abraham's ancestors were Hindus who were converted into Christianity. On the death of M. Abraham his widow brought the suit for recovery of his property. This suit was resisted by his brother F. Abraham who contended that his ancestors continued to be governed by the Hindu Law in spite of conversion. He accordingly claimed that he was entitled to the entire property according to the Hindu Law of survivorship applicable to a joint Hindu family.

¹ LAW COMMISSION OF INDIA Report No. 247 Sections 41 to 48 of the Indian Succession Act, 1925 – Proposed Reforms September, 2014.

²Herein after referred as The Act 1865

³Abraham v. Abraham, 1863 (9) MIA 195.

The Privy Council in *Abraham v. Abraham*⁴ held that upon the conversion of a Hindu to Christianity the Hindu Law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which he was bound, as he has renounced his religion, or if he thinks fit, he may abide by the old law notwithstanding he has renounced the old religion.

The Privy Council held: —

(1) The effect of conversion of a Hindu to Christianity is to sever his connection with the Hindu family.

(2) Such a person may renounce the Hindu Law but is not bound to do so. He may elect 'to abide by the old law, notwithstanding that he has renounced the old religion'.

(3) The course of conduct of the convert after his conversion would show by what law he had elected to be governed.

Under the third principle it was found that M. Abraham had married a Christian woman who was born to an English father and a Portuguese mother, that he adopted English dress and manner. It was clear, therefore, that he had elected against the Hindu Law and so the defendant's contention based upon the Hindu Law of survivorship was rejected.⁵

The principle in *Abraham v. Abraham*⁶ was also found favour in *Sri Gajapathi Radhika v. Sri Gajapathi Nilamani*⁷ The Privy Council reiterating Abraham principle held that on own volition a converted Christian can either renounce Hindu Law or impliedly continue to be governed by Hindu Law. In *Sri Gajapathi Radhika v. Sri Gajapathi Nilamani*⁸ it was said by their Lordships that the case of *Abraham v. Abraham* shows that a family ceasing to be Hindus in religion may still enjoy their property under Hindu Law.

At this juncture the Indian Succession Act, 1865 for the first time enacted to govern mainly the principles of succession for the British Christians including Indian Hindu converts and exempted Hindus and Muslims from its scope, but the utility of the Act lay in the codification of law of succession as regards other persons. In *Ponnusami Nadan v. Dorasami Ayyan*⁹ it was held after Act 1865, the members of native Christian families, cannot adhere to Hindu Law of succession, though such converts who were governed by Hindu Law of succession cannot be deprived of their rights acquired by them under Hindu Law prior to their conversion to Christianity. To the same effect is another decision of Madras High Court in *Tellis v. Saldanha*.¹⁰ Bombay High Court in *Francis Ghosal .v. Gabri Gosa*,¹¹ did not agree with

⁴Abraham v. Abraham, 1863 (9) MIA 195.

⁵ The Court agreed with the Civil Judge in rejecting the evidence of East Indians, but considered that the change of dress and manners could not alter the law of inheritance, or any local law or usage.

⁶Abraham v. Abraham, 1863 (9) MIA 195.

⁷Sri Gajapathi Radhika v. Sri Gajapathi Nilamani (1870) 14 W.R. P.C. 33).

⁸Sri Gajapathi Radhika v. Sri Gajapathi Nilamani (1870) 14 W.R. P.C. 33).

⁹Ponnusami Nadan v. Dorasami Ayyan ILR (2) Mad. 209 (1880).

¹⁰ v. Saldanha ILR (10) Mad. 69 (1886).

¹¹ Francis Ghosal .v. Gabri Gosal ILR (31) Bom. 25 (1906).

the view of Madras High Court in *Tellis v. Saldanha*. It was held that Act 1865 does not affect the right of coparcenary as between those to whom it applies and that coparcenarship can be part of law governing the rights of the Christian family converted into Christian religion. Calcutta High Court in *Kulada Prasad Pandey .v. Haripada Chatterjee*,¹² while holding that if one member of joint family converts to Christianity, it would result in complete dissolution of entire family and from that time, the members of Hindu family cannot be treated as members of Joint Hindu Family. It was also held that if all the members of family become Christians, it would not affect the right of coparcenarship as they can still adhere to old law notwithstanding conversion.

The Indian Succession Act, 1925

In view of vast scatteredness, the British Parliament felt the need for consolidation of law of succession. Responding to this need that the British legislatures enacted Indian Succession Act, 1925.¹³ Succession among Hindus is governed by the Hindu Succession Act, 1956. As such, Christians in general are governed by the Act 1925 for succession purposes. Act 1925 is primarily a consolidating Act. This Act 1925 was enacted by Parliament with a view to consolidate the law applicable to intestate and testamentary succession. This Act being a consolidating act replaced many enactments¹⁴ which were in force at that time dealing with intestate and testamentary succession including the Indian succession Act, 1865. The Act consists of 11 parts, 391 sections and 7 schedules. This Act is applicable to intestate and testamentary succession.

Consanguinity : Part IV of the Act 1925 deals with Consanguinity. This part does not apply to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jain or Parsi. Consanguinity is the connection or relation of persons descended from the same stock or common ancestor. For the purpose of succession, there is no distinction—

- (a) between those who are related to a person deceased through his father, and those who are related to him through his mother; or
- (b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or
- (c) between those who were actually born in the lifetime of a person deceased, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Intestate Succession : Part V of the Indian Succession Act deals with Intestate Succession. This part will not apply to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jain. Under the Indian Succession Act, a man's widow and children, male and female, inherit equally. However, a man may, by Will can bequeath his or her property to anyone, totally disinheriting his own children and widow.

12 *Kulada Prasad Pandey .v. Haripada Chatterjee*, ILR (40) Cal. 407 (1912).

13 Hererin after referred as Act 1925.

14 For example The Travancore Christian Succession Act 1092was also repealed.

Part V of the Act relates to intestate succession and it consists of a fasciculus of sections beginning with Section 29 and going upto Section 56. The rules relating to testate succession are to be found in Part VI of the Act which comprised 23 Chapters commencing from Section 57 and ending with Section 191.¹⁵ So far as Indian Christians are concerned, Chapter II of Part V contains rules relating to intestate succession.¹⁶

It will thus be seen that so far as Indian Christians are concerned, Chapter II of Part V contains rules relating to intestate succession and a fortiori on the extension of the [Act 1925](#) to Part State of Travancore Cochin, the rules relating to intestate succession enacted in Chapter II of Part V would be applicable equally to Indian Christians in the territories of the former State of Travancore.

...to whom the Indian succession act 1925 applies

- (1) Europeans by birth or descent domiciled in India¹⁷.
- (2) Persons of mixed European and Native blood and East Indians.
- (3) Indian Christians: For the purposes of the Indian Succession Act, a Christian is a person who professes any form of the Christian religion.¹⁸ Section 33 A of the Act is not made applicable to them.
- (4) Jews: After the Indian Succession Act 1865 was passed it was held that the Jews were governed by that Act and the personal laws of the Jews were not recognized as regards testamentary and intestate jurisdiction.¹⁹
- (5) Parsis: All Sections of Part VI of the Act, relating to testamentary succession, apply to Parsees
- (6) Hindus: The word “Hindu” is used in the Act in a theological sense as distinguished from a national or racial sense. The word Hindu includes Arya Samajis²⁰ and Brahmos.²¹
- (7) Jains: Although Jains are governed by Hindu Law ordinarily,²² yet they possess the privilege of being governed by their own peculiarities and customs.²³ Nonetheless, the term Hindu includes Jains too.²⁴

¹⁵ Mrs. Mary Roy Etc. Etc .v. State of Kerala, 1986 AIR 1011, 1986 SCR (1) 371.

¹⁶ Chapter II of Part V lays down the rules governing intestate succession in case of persons other than Parsis and that is made clear by sec. 31 which declares that nothing in Chapter II shall apply to Parsis. Chapter III enacts special rules for Parsi intestates and lays down what shall be the principles relating to intestate succession among them.

¹⁷ As regards other Europeans and English subjects if they die possessed of immovable properties in India, then under Section 5¹⁷ succession to such properties shall be regulated by the law of India, i.e., if such person died intestate, his heirs would be ascertained according to the rules of intestate succession in Part V of this Act, and if he left a will, the will must be executed according to rules laid down in Chapter III of Part VI Sec. 63-64, and probate of such wills will be necessary.

¹⁸ Ma Khun v. Ma Ahma, 12 Rang. 184.

¹⁹ Gabriel v. Mordakai, 1 Cal. 148.

²⁰ Mst. Suraj v. Attar, 1 Pat. 706 and Shyama Sundari Deo, 1960 A. Mys.27.

²¹ In the goods of Gnanendra Nath, 49 Cal. 1069.

²² Getappa v. Eramma, 50 Mad. 228.

²³ Shee Singh v. Mussumant Dakho, 5 I.A. 87; Kalgavda v. Sanappa, 33 Bom. 69.

²⁴ Bachebai v. Mukhanlal, 3 All. 55; Chotay Lai v. Chunno Lai, 4 Cal. 744.

(8) Sikhs: the terms Hindu, it was held that, includes Sikhs too.²⁵ But Sikh converts to Christianity are governed by this Act and not by laws and customs of the community to which they belong.²⁶

(9) Buddhists: It was held that Burmese known as Kalias who married Burmese women were governed by this Act.²⁷

Mrs. Mary Roy .v. State of Kerala²⁸

The Travancore Christians were governed by the provisions of the Travancore Christian Succession Act, 1916 and the Cochin Christians were governed by the provisions of the Cochin Christian Succession Act, 1921. Christians in other parts of India were governed by the provisions of the Indian Succession Act, 1925 with such exceptions as provided in the Act. The Travancore-Cochin High Court in *Kurian Augusthy v. Devassy Aley*²⁹ and Madras High Court in *D. Chelliah v. G. Lalitha Bai*,³⁰ affirmed and reaffirmed that the Travancore Act still remained in force, in spite of the Part B States (Laws) Act, 1951.

It was in this settled 'state of affairs' that the Supreme Court rendered the decision in ***Mrs. Mary Roy .v. State of Kerala***³¹. Intestate succession among Travancore-Cochin Christians has been a subject of public debate ever since the decision of the Supreme Court in ***Mrs. Mary Roy .v. State of Kerala***.³² This decision has created considerable confusion among the members of the Christian community in Kerala.

The following two questions were arose before the Hon'ble Supreme Court, for consideration;

1. Whether the provisions of the Travancore Christian Succession Act were ultra vires the Constitution.
2. The impact of the Part B States (Laws) Act, 1951, on the Travancore Act.

It was held that the law applicable to intestate succession among Christians of Travancore area of the State of Kerala is the Indian Succession Act, 1925, from April 1, 1951. Following this decision, the High Court of Kerala ruled that the Cochin Christian Succession Act, 1921 also stood repealed by Part B States (Laws) Act, 1951.

The consequence of this decision is that under the Travancore-Cochin Acts probating of wills was not mandatorily applicable to the Travancore-Cochin Christians. But under Section 213 of the Indian Succession Act it is mandatory for the Christians to get their wills probated. Therefore, as a consequence of the decision family settlement deeds based

²⁵ Bhagwan Kaur v. Jogendra Chandra Bose, 301.A. 249; 31 Cal, 11 (P.C.).

²⁶ Ramber Karam v. J.C. Bhattaachaiji, (1940) All 100.

²⁷ Ma Lait v. Maung Chit, 48 T.A. 553; 49 Cal. 310.

²⁸ Mrs. Mary Roy .v. State of Kerala, 1986 AIR 1011, 1986 SCR (1) 371.

²⁹ *Kurian Augusthy v. Devassy Aley*, AIR 1957 TC 1: 1956 Ker LT 559.

³⁰ *D. Chelliah v. G. Lalitha Bai*, AIR 1978 Mad 6.

³¹ Mrs. Mary Roy Etc. Etc .v. State of Kerala, 1986 AIR 1011, 1986 SCR (1) 371.

³² Mrs. Mary Roy Etc. Etc .v. State of Kerala, AIR 1986 SC 1011, 1986 SCR (1) 371.

on wills that were not probated have suddenly become invalid in view of the application of Section 213 with effect from April 1, 1951³³

In the case of intestate succession, partitions or family settlements made in accordance with the provisions of the Travancore Act also became defective. Such documents, now, cannot be used as securities for financial transactions, and further, daughters (sisters) who were excluded from the share (under the provisions of the Travancore or Cochin Acts) can now reopen the matter both for genuine and mala fide reasons. In short, many a title deed in the hands of Christians remain defective and this would adversely affect the stability and progress of the community as all the settled property relations may have to be unsettled and resettled.

In an illustrated case, a brother who excluded his sister from the sharing of property, pledged the document relating to his property as security for a loan. On default of payment, the bank instituted a suit and the property was sold in execution. When delivery of the property was to be effected, the sister, apparently at the instance of her brother, filed a suit claiming her right in the property and moved for stay of delivery of the property.³⁴ In short, there are difficulties arising out of the decision in *Mary Roy*,¹ as limitation cannot be effectively established in many cases.

Intestate Succession among Indian Christians

S. 30 of the Indian Succession Act, 1925 defines intestate succession thus: A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect. Thus any property which has not already been bequeathed or allocated as per legal process, will, upon the death of the owner, insofar as he is an Indian Christian, devolve as per the rules contained in Chapter II of the Act. It would be worthwhile to note at this point that 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

³³ Section 213. Right as executor or legatee when established.-(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in [India] has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans, and shall only apply-- (i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962, (16 of 1962.) where such wills are made within the local limits of the 1*[ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.

³⁴ Judgment, dated October 28, 1993 in C.M.A. No. 169 of 1993, of the High Court of Kerala.

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." S.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 India (*lex loci rei sitae*), no matter where he was domiciled at the time of his death. Also, S. 6 further 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. S. 15 lays down that upon and during subsistence of marriage, the wife acquires the domicile of her husband automatically.

Kindred or Consanguinity

S. 24 of the Act makes an initial 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." S. 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. Now, 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.'

S. 26 qualifies 'collateral consanguinity' as occurring when persons are descended from the same stock or common ancestor, but not in a direct line (for example, two brothers). It is interesting to note that the law for Christians does not make any distinction between relations through the father or the mother. If 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. Also, 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 and was in the womb when the intestate died.

Christian law does not recognise children born out of wedlock; it only deals with legitimate marriages. Furthermore it does not recognise polygamous marriages either. However, a decision has been made to the effect that it does recognise adoption and an adopted child is deemed to have all the rights of a child natural-born, although the law does not expressly say so.

The law of intestate succession under S. 32 states 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 hereinafter contained in this Chapter. However, as aforementioned, the Act recognises three types of heirs for Christians: the spouse, the lineal descendants, and the kindred. These shall be dealt with now.

Rights of the Widow and Widower

S. 33, S. 33-A, S. 34 of the Act govern succession to the widow. Together they lay down that 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, one-half of the estate passes to the widow and the rest to the kindred. And if no kindred are left either, the whole of the estate shall belong to his widow. Where, however, the intestate has left a widow but no lineal descendants, and the net value of his property does not exceed five thousand rupees, the whole of the property will go to the widow - but this provision does not apply to Indian Christians.

S. 35 lays down the rights of the widower of the deceased. It says quite simply that he shall have the same rights in respect of her property as she would in the event that he predeceased her (intestate).

Rights of Children and Other Lineal Descendants

If the widow is still alive, the lineal descendants will take two-thirds of the estate; if not, they will take it in whole. Per capita (equal division of shares) applies if they stand in the same degree of relationship to the deceased. This is as per Sections 36-40 of the Act. Importantly, case law has determined that the heirs to a Christian shall take his property as tenants-in-common and not as joint tenants.

Also, 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.

As per S. 48, 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 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

A will is the expression by a person of wishes which he intends to take effect only at his death. In order to make a valid 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.

Testamentary Succession is dealt with under Part VI of the Indian Succession Act, 1925. According to S. 59, every person of sound mind, not being a minor, may dispose of his property by will. The explanations to this Section 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 disposing their property by will. 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.

Part VI of the Act encompasses 134 Sections from S. 57 to S. 191, that 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.

Effect of section 26 of the Hindu Succession Act:

Section 26 of Hindu Succession Act, which reads thus:

26. Convert's descendants disqualified.--Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

Section 26 is a specific section on the point of disqualification due to conversion wherein the legislature could have mentioned the "convert" along with the "converts descendants", however, the convert himself is not included under the ambit of Section 26 and hence not disqualified. It is logically also very consistent as discussed earlier. The Personal Law is applicable to a person who is converted into Islam, Christian or any other religion for the purpose of marriage, guardianship etc., however, while deciding the inheritance, the fact of the religion of the person at the time of birth has to be taken into account to eliminate legal anomaly. Therefore, under Section 26 the children of converts are not Hindu by birth due to conversion of their parents and so they are not covered under the Hindu Succession Act. However, their parents, who are Hindu by birth, cannot be disqualified for inheritance of their father who is Hindu because their father's property and inheritance governed under the Hindu Succession Act.

The Andhra Pradesh High Court, Madras High Court, Calcutta High Court in ***Shabana Khan .v. D.B. Sulochana***³⁵, ***E. Ramesh .v. P. Rajini***³⁶, ***Asoke Naidu .v. Raymond S. Mulu***³⁷ have considered Section 26 of Hindu Succession Act and held that the Hindu Succession Act is not applicable to the children of the convert. However, a

35 *Shabana Khan .v. D.B. Sulochana*, 2008 (2) ALD 818.

36 *E. Ramesh .v. P. Rajini*, (2002) 1 MLJ 216.

37 *Asoke Naidu .v. Raymond S. Mulu*, AIR 1976 Cal 272.

convert himself or herself is not excluded from the application of the Act by virtue of this Section.

Answering an appeal in *Balchand Jairamdas Lalwani .v. Nazneen Khalid Qureshi*³⁸ the Bombay High Court which questioned the claim over property of a Hindu converted to another religion, Islam in this case, the Court observed that a Hindu converted into another religion is not disqualified to claim the property under Section 26 of the Hindu Succession Act, 1956.

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

End Notes

- Champapilly, Sebastian, “Christian Law of Succession and Mary Roy's Case,” (1994) 4 SCC (Jour) 9
- Champapilly, Sebastian, “Reforms in Christian law of succession in India,” (1999) 4 SCC (Jour) 7

³⁸ Balchand Jairamdas Lalwani vs Nazneen Khalid Qureshi on 6 March, 2018, <https://indiankanoon.org/doc/113394767/>.