MUSLIM LAW OF INHERITANCE

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Who is a Mahomedan:

A person who professes the Mahomedan religion, that is, acknowledges (1) that there is but one God, and (2) that, Mahomed is his Prophet, is a Mahomedan. Such a person may be a Mahomedan by birth or he may be a Mahomedan by conversion. It is not necessary that he should observe any particular rites or ceremonies, or be an orthodox believer in that religion. Court can test or gauge the sincerity of religious belief. It is sufficient if he professes the Mahomedan religion in the sense that he accepts the unity of God and the prophetic character of Mahomed.

Conversion to Mahomedanism and right of inheritance:

In the absence of a custom to the contrary, succession to the estate of a convert to Mahomedanism is governed by the Mahomedan law. According to the Mahomedan law, a Hindu cannot succeed to the estate of a Mahomedan. Therefore, if a Hindu, who has a Hindu wife and children, embraces Mahomedanism, and marries a Mahomedan wife and has children by her, his property will pass on his death to his Mahomedan wife and children, and not to his Hindu wife or children.

Sunnis and shias:

The Mahomedans are divided into two sects, namely, the Sunnis and the Shias.

Sunni sub-sects:

The Sunnis are divided into four sub-sects, namely, (i) the Hanafis, (ii) the Malikis, (iii) the Shafeis and (iv) the Hanbalis. The Sunni Mahomedans of India belong to principally to the Hanafi school.

Presumption of Sunnism:

The great majority of Mahomedans of this country being Sunnis, the presumption will be that the parties to a suit or proceeding are Sunnis, unless it is shown that the parties belong to the Shia sect. The Shia law is not a foreign law. It is part of the law of the land, and so no expert evidence can be led to prove it as in the case of foreign law.

Shia sub-sects:

The Shias are divided into three main sub-sects, namely, (i) the Athna-Asharias, (ii) the Ismailyas and (iii) the Zaidyas. As most Shias are Athna-

Asharias, the presumption is that a Shia is governed by the Athna-Asharia exposition of the law.

Sources of Islamic law:

Muslim law of succession constitutes four sources of Islamic law. They 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.

Non-Testamentary and Testamentary succession under Muslim law:

In 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, situated in the state of West Bengal, Chennai and Bombay, the Muslims shall be bound by the Indian Succession Act, 1925. This exception is only for the purposes of testamentary succession.

Administration of the estate of a deceased Mahomedan:-

The estate of a deceased Mahomedan is to be applied successively in payment of (1) his funeral expenses and death-bed charges; (2) expenses of obtaining probate, letters of administration, or succession certificate; (3) wages due for service rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant; (4) other debts of the deceased according to their respective priorities (if any); and (5) legacies not exceeding one-third of what remains after all the above payments have been made. The residue is to be distributed among the heirs of the deceased according to the law of the sect to which he belonged at the time of his death, and the heir has a right of contribution against his co-heirs, if by the action of the judgment creditor under a decree under sec.52 of the Civil Procedure Code against all the heirs, he was left with less than his proper share of the net estate of the deceased. Under Mahomedan law, the payment of the debts of the deceased takes precedence over the legacies.

Thus, with regard to item No.5, it is to be noted that a Mahomedan cannot by Will dispose of more than one-third of what remains of his property after

payment of his funeral expenses and debts, unless the heirs consent thereto. If the inheritance includes both partible and impartible estate, and the debts of the deceased have been paid out of the partible estate, there is no right of contribution against the heir who has succeeded to the impartible estate.

Devolution of inheritance:

The whole estate of a deceased Mahomedan if he has died intestate, or so much of it as has not been disposed of by Will, if he has left a Will, devolves on his heirs at the moment of his death, and the devolution is not suspended by reason merely of debts being due from the deceased. The heirs succeed to the estate as tenants-in-common in specific shares.

Unlike Hindu Law, estate of a deceased Mahomedan, if he has died instestate, devolves on his heirs at the moment of his death. Under the Mahomedan Law, birth right is not recognised. The right of an heir apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor. There is no joint tenancy in Mahomedan law and the heirs are only tenants-in-common. Therefore, an heir can claim partition in respect of one of the properties held in common without seeking partition of all the properties.

In ***Abdul Raheem vs. Land Acquisition Officer***, AIR 1989 AP 318, it was held that the joint system family or joint property is unknown to Muslim law and therefore the right, title and interest in the land held by the person stands extinguished and stands vested in other persons

Heritable property:

As per Sec.51 of Mulla Law about Inheritance, there is no distinction in the Mahomedan Law of inheritance between movable or immovable properties or between ancestral and self-acquired property.

There is no such thing as a Joint Mahomedan family nor does the law recognize a tenancy in common in a Mahomedan family. In a Mahomedan family there is a presumption that the cash and household furniture belong to the husband. The Mahomedan law does not recognise a joint family as a legal entity. In fact according to the rules of Mahomedan law of Succession, heirship does not necessarily go with membership of the family. There are several males and females who have no interest in the heritage but may be members of the family. On the other hand there are several heirs like, for example, married daughters of a deceased male owner who take an interest in the estate but are no part of the family.

Birth right not recognized:

As per Sec.52, birth-right is not recognised. The right of an heir-apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor.

Transfer of spes succession is renunciation of chance of succession.—

The chance of a Mahomedan heir-apparent succeeding to an estate cannot be the subject of a valid transfer or release.

Life-estate and vested remainder:-

(1) *Sunni Law:-* The Judicial Committee in *J-lumeeda v. Bud/un (1872) 17 W.R.525* observed that "the creation of a life estate does not seem to be consistent with Mahomedan usage and there ought to be very clear proof of so unusual a transaction"; and in *Abdul Gafurv. Nizarnuddin (1892) 19 I.A. 170* referred to " life-rents" as a kind of estate which does not appear to be known to Mahomedan law". The difficulty arises out of the Mahomedan law of gift and does not appear to extend beyond cases of pure *hiba* whether *inter vivos* or by will. As explained in Chapter XI, if a Gift be made subject to a condition which derogates from the grant, the condition is void, e.g., a partial restraint on alienation; but a condition which does not affect the corpus of the thing given is not within the rule, e.g. when there is a reservation of income to the donor or a gift of usufruct to another donee.

(2) *Family settlement:- A* life-estate may be created by an agreement in the nature of a family settlement, whether such agreement is preceded by litigation or not, but "the creation of such a life-estate does not seem to be consistent with Mahomedan usage, and there ought to be very clear proof of so unusual a transaction" *[Humeeda v. Bud/un (1872) 17 W.R. 525J.* Such an agreement is from its very nature a transaction for a consideration, and it must be distinguished from a pure *hiba* or gift mentioned in sub-sec. (1) above.

Exclusion of daughters from inheritance by custom or by statute:-

Where daughters are excluded from inheritance ether by custom or by statute, they should be treated as non-existent, and the shares of the other heirs should be calculated as they would be in default of daughters.

There is no custom that daughter can inherit her father's property only as Khananishia daughter or not at all—Such custom has to be pleaded and proved by cogent evidence. AIR 1963 J *&* K *4,* Foll.) *Ghulam Hassan v. Msz. Saja,* A.I.R. 1984 Jammu *&* Kashmir.

Classes of heirs:

In Muslim Law. three Classes of Heirs are recognized. They are

Sharers : Who are entitled to a prescribed share of the inheritance.

Residuaries : Who take no prescribed share, but succeed to the —residue‖ after the claims of the shaers are satisfied.

Distant Kindred :- Those relations by blood who are neither sharers nor Residuaries.

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.

Under Shia Law of inheritance, the heirs are divided into two groups, namely,

(i) Heirs by consanguinity i.e. blood relations and (ii) Heirs by marriage i.e. husband and wife.

Heirs by consanguinity are divided into three classes and each class is sub-divided into two sections. These classes are

(I). (i) Parents, (ii) Children and other lineal descendants how lowsoever.
(II). (i) Grandparents how high so ever (True as well as False), (ii) Bothers and sisters and their descendants how low so ever.
(III). (i) Paternal and (ii) Maternal, uncles and aunts of the deceased and of his parents and grandparents how high so ever and their descendants how low so ever.

Of these three classes of heirs, the first excludes the second from inheritance, and the second excludes the third. But the heirs of the two sections of each class succeed together, the nearer degree in each section excluding the more remote in that section.

Residuaries:-

If there are no Sharers, or if there are Sharers, but there is a residue left after satisfying their claims, the whole inheritance or the residue as the case may be, devolves upon Residuaries in the order set forth.

I Descendants:

i. Son
ii. Son's son

II Ascendants:

i. Father.
ii. True Grand father

III Descendants of father:

i. Full brother.
ii. Full sister.
iii. Consanguine brothers.
iv. Consanguine sister.
v. Full brothers son
vi. Consanguine brother's son
vii. Full brother's sons's son
viii. Consanguine brother's son's son

IV Descendants of true Grandfather

i. Full paternal uncle
ii. Consanguine Paternal Uncle
iii. Full paternal uncle's son
iv. Consanguine Paternal uncle's son
v. Full paternal uncle's son's son
vi. Consanguine paternal uncle's son's son
vii. Full paternal uncle's son's son
viii. Consanguine paternal uncle's son's son
ix. Consanguine paternal uncle's son's son
x. Male descendants or more remote true grandfathers

Distant Kindred:-

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

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

Distant Kindred are divided into four classes, namely,

(1) Descendants of the deceased, other than sharers and residuaries;

(2) Ascendants of the deceased, other than sharers and residuaries;

(3) Descendants of parents, other than sharers and residuaries;

(4) Descendants of ascendants how highsoever other than residuaries.

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

The following is a list of Distant Kindred comprised in each of the four classes:—

I. Descendants of the deceased:—

I. Daughter's children and their descendants.

2. Children of son's daughters h.l.s. and their descendants.

II. Ascendants of the deceased:-

1. False grandfathers h.h.s.

2. False grandmothers h.h.s.

IlL Descendants of parents:-

1. Full brothers' daughters and their descendants.

2. Can. brothers' daughters and their descendants.

3. Uterine brothers' children and their descendants,

4 Daughters of full brothers' sons hJ.s. and their descendants.

5. Daughters of con. brothers tons his, and their descendants.

6. Sisters' (f, c., or **Ut.)** children and their descendants.

IV. Descendants of *immediate* grandparents (true or false):—.

J. Full pat, uncles' daughters and their descendants.

1 Con. pat. uncles' daughters and their descendants.

3. Uterine pat. uncles and their children and their descendants.

4. Daughters of full pat. uncles' son h.l.s and their descendants.

S. Daughters of con. pat. uncles' son hi.s and their descendants.

6. Pat. aunts (f., c., or **Ut.)** and their children and their descendants.

7. Mat. uncles and aunts and their children and their descendants.

and descendants of *remoter ancestors* h.h.s. (true or false).

Per-Capita and Per-Strip Distribution (Rule of Distribution):

Succession among the heirs of the same class but belonging to different branches may either be per-capita or per-strips.

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.

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. 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.

Doctrine of Representation:

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. Both, under Shia as well as under Sunni law, E has no right to inherit the properties of P. The result is that E cannot take the plea that he represents his pre-deceased father (B) and should be substituted in his place.

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. Thus, between A and E, A will totally exclude E because A is nearer to P in degree whereas, E belongs to the second degree of generation. 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.

Accordingly, they argue that there can be no claim through a deceased person in whom no right could have been vested by any possibility. But, it may be submitted that non-recognition of principles of representation under the Muslim law of inheritance, seems to be unreasonable and harsh. It is cruel that a son, whose father is dead, is unable to inherit the properties of his grandfather together with his uncle.

Female's Right of Inheritance:

Under Muslim Law, 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. Notably the rule of double share for male‘ also recognized by the Parsi Law contained in Indian Succession Act, 1925 (Chapter 3) and has not been changed even by the 1991 Amendment of the Act.

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.

GROUNDS OF DISQUALIFICATIONS:

Disqualifications which debar the heirs to succeed the property of the intestate are—

MURDERER

Under the Sunni Law, a person who has caused the death of another, whether intentionally, or by mistake, negligence, or accident, is debarred from succeeding to the estate of that other.

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

ILLEGITIMATE CHILDREN:

Under the Hanafi School, an illegitimate child is not entitled to inherit. Such a child cannot inherit from his/her father but can inherit from his/her mother and all relatives of the mother. The mother can also inherit the property of her illegitimate children.

If a woman has two children, one legitimate and the other illegitimate, they do not inherit from one another.(**Rehmat Ullah Vs. Maqsood AIR 1952 All 640**).

Insanity, bodily deceases, infirmity, and unchastity, do not disqualify any heir from inheriting property.

DIFFERENCE OF RELIGION

A non-Muslim could not inherit from a Muslim but the Caste Disabilities Removal Act of 1850 does away in India with the exclusion of a non-Muslim from the inheritance of the property.

If a non-Muslim accepts Islam, and then dies, the Act of 1850 cannot warrant the application of his conversion law of succession to his property; the Muslim Law will apply in such a case. [Mitarsen Vs Maqbool (1930) 57 IA 313; KP Chandra Sekhar Vs. State of Mysore AIR 1955 Mys 26].

Where a convert to Islam died leaving behind an only daughter, as against the claim of his non-Muslim relatives she was given all his property – ½ share as her fixed share as Quranic heir and the reminder by way of return. (Rukhmini Bai Vs. Bismillah Bai AIR 1993 MP 44).

Step-Children:

The step-children are not entitled to inherit the properties of their stepparents. Similarly, the step-parents too do not inherit from step-children. 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.

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 opens omitting these heirs.

ESCHEAT

Where a deceased Muslim has no legal heir under Muslim law, his properties are inherited by Government through the process of escheat.

Marriage under the Special Marriage Act, 1954:

Where a Muslim contracts his marriage under the Special Marriage Act, 1954, he ceases to be a Muslim for purposes of inheritance. Accordingly, after the death of such a Muslim his (or her) properties do not devolve under Muslim law of inheritance. The inheritance of the properties of such Muslims is governed by the provisions of the Indian Succession Act, 1925 and Muslim law of inheritance is not applicable.

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