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GENERAL PRINCIPLES OF SUCCESSION UNDER CHRISTIAN LAW

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Abstract

Succession implies devolution of a person's property to his heirs. It can be done in two ways i.e., through testamentary succession or intestate succession. The paper looks at the principles informing succession under Christian Law, more particularly the Indian Succession Act of 1925. Due to their unique position, the British enacted the Indian Succession Act 1865 to govern Christians. In recognition of numerous other laws that were enacted later and to ensure consistency, the Indian Succession Act of 1925 was passed. The first part gives a brief background of the Indian Succession Act. The second part looks at a couple of features of Christian succession: domicile and consanguinity. The third part covers intestate succession under Christian Law with particular reference to right of women. The last part deals with testamentary succession.

INTRODUCTION

Succession implies devolution of a person's property to his heirs. It can be done in two ways i.e. through testamentary succession or intestate succession. Testamentary succession is the succession of property though a written will by his property devolves to specific heirs. Intestate succession refers to succession through a law (based on religion) when a person dies without making a will.

The law of succession relating to Christians is contained in Indian Succession Act, 1925. However, the existence of many customary laws and specific legislations have ensured that the Christian succession laws are not uniform. Before the landmark judgment in the case of *Mary Roy v. State of Kerala*[1], Christians in India were governed by multiple acts which has been discussed in the latter part of the project.

[1] Mary Roy v State of Kerala (1986) 2 SCC 209

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Indian Succession Act of 1925 is a consolidating act as it seeks to bring together all the laws, at least of testamentary succession, applicable in India.[2] The British were faced with the task of ascertaining the succession laws applicable to different communities in India. With respect to Hindus and Muslims, the respective sacred books served as yardstick to formulate their succession laws. However, many other communities including Christians did not have a concrete law and it would not have been appropriate to subject them to another religion's law. Due to these factors, the British felt the need to legislate a new law especially for communities having no concrete law. This led to the formulation of Indian Succession Act of 1865 based on English law. Many of the general principles relating to testamentary succession were applicable to Hindus and Muslims as well. Many other statutory legislations making it difficult to ascertain the law applicable to particular community which led to the passing of the consolidated Indian Succession Act of 1925.[3]

Section 2(d) defines 'Indian Christian' as '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'.[4] Domicile, under Christian law of succession, plays a very important role as it determines the law which would apply in case of movable property of the deceased.[5] The act recognizes three types of heirs in case of Christians i.e. spouse, lineal descendants and kindred.

Even after the coming into force of the Indian Succession Act,1925 there are multiple laws governing Christians in various places as mentioned above which make uniformity a distant dream. There is also no room for illegitimate children in case of intestate succession.

1. INDIAN SUCCESSION ACT - BACKGROUND

After the British came to India, they initially adopted a policy of non-interference and were reluctant to change the laws. However, as they settled down, it got increasingly difficult to ascertain the laws applicable to their subjects owing to the heterogeneity and diversity not seen in England. As far as the two major communities were concerned i.e. Hindus and Muslims, the situation was much simpler as they had their ancient texts which formed the basis of their laws. But there were many other religious communities who could not relate to either of the above

[2] Indian Succession Act 1925, Objects and Reasons
[3] Sanjiva Row, *Indian Succession Act 1925* (7th edn, Butterworths 2000) 2
[4] Succession (n2) s2(d)
[5] Succession (n2) s5

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mentioned religions. It would have been inappropriate to place them under Hindu or Muslim law as they held no allegiance to them. These minor communities included Christians, Parsis, etc.[6]

Owing to the legal vacuum with respect to the communities such as Christians and the concomitant process of codification taking place it India, it was thought that an enactment was required to fill this lacuna. Thus, the British passed the Indian Succession Act in the year 1865 which was based mainly on the English principles of succession with appropriate modifications. Various other supplementary legislations like Married Woman's Property Act 1874, Succession Certificate Act 1889, Probate and Administration Act 1903 came into force in the subsequent years. This created a horde of legislations which made it difficult to ascertain the law applicable to a particular community. Thus, there was a need to consolidate all the laws to ensure consistency and better justice delivery. This purpose was fulfilled by the Indian Succession Act of 1925.

The Indian Succession Act, 1925 aims to consolidate the intestate and testamentary succession laws in India. There were numerous acts governing succession of various communities in India which lead to confusion and lack of coherence. Some of the acts were Indian Succession Act 1865, The Hindu Wills Act 1870, Probate and Administration Act 1889, Native Christian Administration of Estate Act 1901, Succession Certificate Act 1889, etc. Since the preamble of the act explicitly claims that the Indian Succession Act is consolidating act, same effect should be given to the provisions as they stood before the coming of the Indian Succession Act of 1925.[7] Succession under Indian Succession Act can broadly be divided into testamentary and intestate succession. The various sections in the statute revolve around the devolution of immovable and movable properties on the owner's death either by will or inheritance. While the succession laws relating to intestate succession are made applicable to communities excluding Hindus and Muslims owing to their personal laws, the provisions relating to testamentary succession are applicable to all the communities barring minor exceptions.

The enactment of Indian Succession Act was in line with the codification of laws in India in the latter half of 19th century. Although the legislation did make the law relating to non-Hindus and non- Muslims more concrete, it also had a huge contribution in steamrolling the existing customs and usages. The case of *Abraham v. Abraham*[8] sums up the entire change in the approach of the

[6] Sanjiva Row, *Indian Succession Act 1925* (7th edn, Butterworths 2000) 2
[7] ibid
[8] [1863] 9 MIA 199

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colonial rulers with respect to customs.

This paper will be analysing the testamentary and intestate succession provisions applicable to Christians in the subsequent chapters. An *'Indian Christian'* has been defined under Section 2(d) of the Indian Succession Act, 1925: "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. [9] In *Kamawati v. Digbijai Singh*, the court conclusively held that a person who has converted from Hinduism to Christianity would not be governed by Hindu law but by Indian Succession Act, 1925. [10] Although religion is a matter of faith and belief but in determining the law that is applicable, one should look at the outward conduct of the person and the formal manifestations of his belief. [11]

2. IMPORTANCE OF DOMICILE

Unlike other personal laws, domicile plays a key role in devolution of property of a deceased Christian. Section 5 of the Indian Succession Act, 1925 lays down that succession to immovable property in India shall be governed by the law of India irrespective of the domicile of the deceased. However, as regard to the movable property domicile of the deceased determines the law applicable to the devolution of the property. The country where the person had his domicile when he died would determine the devolution of immovable property belonging to him. e.g. G, an Indian having his domicile in England died in India. The Indian law i.e. Indian Succession Act of 1925 would apply to his immovable property while the law applicable to his movable property would be of England since had his domicile in England when he died.

Domicile and nationality are not synonymous. Domicile is the place where you have permanent residence which can be different from your nationality. A person can change the domicile without changing his nationality and vice versa. Hence, domicile which has been mentioned in the section cannot be construed as to mean nationality or citizenship. Section 6 explicitly prohibits a person from having multiple domiciles.[12]

Domicile as mentioned in Section 5 of the Indian Succession Act becomes relevant only at the

[9] Indian Succession Act 1925, s2(d)
[10] *Kamawati v Digbijai Singh* AIR 1922 PC 14
[11] Sanjiva (n1)
[12] Succession (n6) s6

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time of death of a person. It is immaterial where the deceased was residing before his death. Domicile only at the time of the deceased's death is relevant. Every person come into being with a domicile of origin that is super-imposed on him depending upon his birth in the family. Generally, a legitimate child attains the domicile of his father while an illegitimate child gets the domicile of his mother. Domicile of origin which has been attained by person from his father or mother, remains with till he has relinquished it and obtained a new domicile. A person acquires a new domicile and gives up his domicile of origin by residing in a place different from the domicile of origin with the intention of permanently staying there.

The domicile of the minor is determined by the domicile of the parent from which he obtained his domicile of origin. A change in parent's domicile would affect the same change in the domicile of the minor. However, after gaining majority a person can have a domicile of choice i.e. he can choose to change his domicile by changing his place of residence with the intention of permanently staying there. Section 10 of Indian Succession Act, 1925 provides when a person moves to a place for fixed habitation, he acquires a new domicile and gives up the former one.[13] A woman acquires the domicile of her husband when she enters into a marital bond. However, this rule does not apply when they have been separated or the husband is undergoing a sentence of transportation. [14]

Thus, we can see how important role domicile plays while devolution of property has to be done. This is in stark contrast to other personal laws of Hindus and Muslims where domicile plays an insignificant role. Domicile of a person, in Christian succession, determines the law applicable to the succession of the movable property of the deceased. Hence, the domicile needs to be given due emphasis when devolution of property under Indian Succession Act is in question.

Section 20 makes it clear that on marriage no party shall acquire any vested interest in the property of another.

"Interests and powers not acquired not lost by marriage. -(1) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried."[15]

[13] Ibid s10
[14] Ibid s16
[15] Ibid s20

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This is in stark contrast to the Hindu Succession Act in which the share of a co-parcenary keeps fluctuating whenever there is a birth, addition or death of a member. This rule has been created for Christians because the rights of succession emerge not upon marriage but when there is a death in the family. Secondly, giving rights to spouse on marriage would be in contradiction with other sections which regulate and recognize rights of succession as between husband and wife. [16]

CONSANGUINITY

Section 25 defines that kindred or consanguinity is the relationship of the people that have descended from a common ancestor i.e. people from the same stock. This section lays down the foundation for who can succeed to deceased's property. In Christian law, there are 3 heirs that are recognized in Indian Succession Act, 1925. There are two types of consanguinity defined under the Indian Succession Act as per Sections 25 and 26. Section 25 defines lineal consanguinity as the relationship between two persons, one of whom has descended in a direct line from the other, such as the relation between a father and a child. Collateral consanguinity, as defined under Section 26 covers relation between two persons who are descended from the same stock or ancestor but neither of whom is descended in a direct line from the other. Degrees can be ascertained by first going to the common ancestor then to the person entitled to receive the property. There is no difference between half blood and full blood in terms of succession of the property of the deceased. There are three types of heirs recognized in Christian law of succession i.e. lineal descendants, collaterals and spouse.[17]

3. INTESTATE SUCCESSION

Section 30 of Indian Succession Act determines as to when a person is qualified to die as intestate. '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 any effect.'[18] Thus if a person has not made a will as regards to the devolution of his property, he is deemed to have died intestate. However, even in cases where a person has made a will, he can be considered to have died intestate if the will is invalid, incomplete, illegal or revoked by a court of law. [19]In the case of *Fooks v. Cuffe*, there was a complete lapse of all the beneficial interests and the executor had pre-deceased the

[16] *Hill v Administrator- General of Bengal* ILR 23 Cal 506
[17] 'Christian Law of Succession' < https://www.lawteacher.net/free-law-essays/property-trusts/christian-law-of-succession.php> accessed 11 March 2018
[18] Succession (n6) s30
[19] Sanjiva (n1) 86

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testator. The court held that, since the testator died without naming another person as testator, he was deemed to have died intestate. [20]

The Indian Succession Act lays down that a person who has died intestate, his property would devolve upon his spouse or his kindred. It's explanation also provides that a widow can be excluded from getting a share in husband's property by a valid contract made before the marriage. If a person has died intestate and left behind widow and lineal descendants, then 1/3rd property would go to the widow and 2/3rd to the lineal descendants. If he has left behind no lineal descendants but kindred, then the widow will get 1/2 property and rest would go to collaterals. If there are no kindred, then widow will get the entire property. Lineal descendants do not cover off-springs that are conceived outside the marital bond of husband and wife.[21] The same rule is applicable to a widower.[22]

If the deceased has left no widow, then the property would devolve upon his lineal descendants or to his kindred according to rules mentioned under Section 36.[23] If a person has left no kindred, then the state would be entitled to get all the property as *ultimus haeres* i.e. the state's prerogative to get the property of a person having no hier. This is also known as the policy of escheat.

Child, as construed in the section, does not include an illegitimate child. Section 38 lays down that property shall equally divide among grandchildren if there are no surviving children of the deceased and if there is a surviving grandchild then all property shall go to him. When there are lineal descendants of varying degrees, then the property shall be divided in such a number of equal shares as may correspond with the number of lineal descendants who stood in the nearest degree of kindred to him or having the same degree predeceased him. The devolution is similar to the principles of Hindu Succession Act where nearest degree gets the share *per stripes* and their subsequent heirs, *per capita.* Doctrine of representation has also been implicitly given place in Section 40(2) when it states the more remote lineal descendants would take shares of their parents had they survived the intestate.

When there are no lineal descendants and the widow has taken her half share, the intestate's father

[20] *Fooks v Cuffe* (1908) 2 Ch 500
[21] *Sophia Blin v Maria David* AIR 1919 UB 3
[22] Succession (n6) s35
[23] Ibid s34

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shall succeed to the property. [24]If his father his dead, then the mother and brothers/sisters shall be given equal shares.[25]In the case where the intestate has left no lineal descendant, brother or sister then the property would devolve to the nearest degree relative present at the time of the death of the intestate. These sections were specifically pointed out by the law commission as violating right to equality under the Indian Constitution.[26]

RIGHTS OF CHRISTIAN WOMEN

This divergence in the personal laws relating a particular community made it easy to bypass the concrete provisions enshrined in the Indian Succession Act, 1925 especially those related to women's rights. For example, Section 28 of the Travancore Succession Act, 1916 laid down that the sons would succeed to father's property subject to the claim of daughter's streedhana. The section fixed streedhana at 5000 Rs. or 1/4th of the share of son, whichever was less. This patriarchal section ensures that the women were devoid of the majority of family property. It not only made the Indian Succession Act kaput, but it also ensured that the Right to equality guaranteed under the Constitution remained merely on paper.

The multiplicity of laws was a concern and it was partially cured in the case of *Mary Roy v. State of Kerala*, when the Supreme Court held that the Indian Succession Act would apply to the states of Cochin and Travancore and would thereby, bypass them. Therefore, the Cochin and Travancore Christian Succession laws were repealed.[27]

However, even after the passing of the *Mary Roy* verdict, there are many territories which are not governed by the Indian Succession Act, 1925 but by their special or customary laws. Further, there have been various incidents that the females are deprived of the family property by keeping them in the dark and making them sign release deeds, which legally disentitles them from claiming any share in the property. Many times, father-in-law keeps the streedhana thereby further worsening the state of women in relation of holding property. Since the Christians are in minority, their voices are seldom heard by the government and the state of Christian women

[24] Succession (n6) s42
[25] ibid s43
[26] Law Commission of India, *Section 41-48 of the Indian Succession Act, 1925 – Proposed Reforms* (Law Commission of India, 247th report, September 2014) < http://lawcommissionofindia.nic.in/reports/Report247.pdf> accessed 16 April 2017
[27] Omana George, 'Inheritance law after Mary Roy' (Live Law 2014) < http://www.livelaw.in/inheritance-rights-christian-women-since-mary-roy/> accessed 11 March 2018

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remains pitiable due to the lack of government intervention and social awareness of the existing rights of the Christian women.[28]

4. TESTAMENTARY SUCCESSION

In context of testamentary succession, will is defined under Section 2(h) as 'legal declaration of intention of the testator with respect to his property which he desires to be carried into effect after his death.' Executor is the person who is appointed by the testator to execute his will. [29]In absence of an executor, a competent authority appoints an administrator to administer the estate of the deceased.[30] Codicil is an instrument made in relation to a will to alter, add or explain any disposition mentioned in the will.[31]

Part VI of the Indian Succession Act deals with the testamentary succession of property. It is one of the most important parts of the legislation. Under testamentary succession, a person may divide his property according to his wishes. The Supreme Court in *Venkatachala v. Thimmajamma*, the court highlighted the importance of a will by stating that a will, unlike other documents, becomes effective only on the death of the testator .[32]

Chapter II of the said part deals with making of wills and codicils. Section 59 lays down the qualification for making a will. 'Every person of sound mind not being a minor may dispose of his property by will.'[33]Thus, the making of will is not just a physical act but also a mental act as it involves a mentally sound mind capable of understanding the consequences of one's act. Therefore, a will affected under coercion, fraud or importunity is void.

Wills are divided into two categories under Indian Succession Act i.e. privileged and unprivileged wills. Privileged wills are those wills made by a soldier employed in warfare or a military expedition. Unprivileged wills include all the wills other than privileged ones.

Will can be securely sealed and stored in possession. Upon the demise of the testator, either the executor of the Will or an heir of the deceased testator may petition the court to authenticate the

[28] ibid
[29] Succession (n6) s2(c)
[30] ibid s2(a)
[31] ibid s2(b)
[32] AIR 1959 SC 443
[33] Succession (n6) s59

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will. The court will assume that the will is valid if there are no challenges from the heirs. If a testator wishes to make specific modifications to their Will without altering the entire document, they can achieve this by creating a codicil to the Will. The codicil must be implemented in a manner that is comparable to the execution of the Will. A Will or Codicil can be modified or invalidated at any given moment. If any objections are raised by any of the heirs, a citation must be served, summoning them to provide their approval. This must be prominently exhibited in the court. If there are no objections, the probate will be approved. Upon completing these stages, a will is considered to be legally enforceable.[34]

The testator has the authority to modify his Will at any given time, in manner he or she deems appropriate. Any individual who is mentally competent and not underage has the ability to create a will. If an individual lacks mental capacity at the moment of creating a Will, the Will is deemed unenforceable. A Will that is acquired through force, compulsion, or undue influence is considered null and void, as it deprives the individual of their free will. A Will created while under the influence of alcohol or in a state of body or mind that impairs the testator's ability to make independent decisions is considered invalid.

An individual has the ability to create a Will at any point during their lifetime. There are no limitations on the frequency with which a testator can create a Will. Nevertheless, solely the final Will executed prior to his demise is legally binding. The testator must execute a Will by either signing it or affixing their thumb impression. The Will must be corroborated by at least two witnesses, each of whom must have witnessed the testator's signature.[35]

Assets that are obtained by oneself can be transferred through a legal document called a Will. Assets obtained by inheritance, gifts, or similar means, and held solely by an individual, can also be included in a last will and testament. A member of a Hindu Undivided Family (HUF) can transfer their part in the HUF's holdings through a Will. [36]

While making an unprivileged will, one has to sign or affix it with the intention of giving effect to a will. It also has to attested by two independent witnesses who have seen the testator sign the will or received a personal acknowledgement from the testator regarding the signature on the

[34] ibid
[35] ibid
[36] ibid

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will.[37] A soldier, while making a privileged will is exempted from going through such formalities as it would be unreasonable to expect a soldier on national duty to comply with such stipulations. In case the will is challenged on the grounds of vitiation by undue influence, fraud or coercion, then the burden lies on the person who alleges such impeachment to substantiate his claims.

A legatee, who is beneficiary under the will, can attest the will but the will would be void as far as his share his concerned. [38]

Section 70 lays down the law regarding the revocation of an unprivileged will. A will is deemed to be revoked on marriage of its maker. It can also be revoked by making another will or a codicil. Other ways of revoking it include burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

The revocation, if any, has to be in the same manner as the will was created. In absence of the *animus revocandi* i.e. the intention to revoke on the part of testator, the revocation cannot be deemed to be fit by law. In such a case, the original will take effect. When the will is burnt by mistake or torn by the testator when he was in a state of delirium, revocation cannot be said to place for the want to the intention to revoke i.e. *animus revocandi.*

Under the Indian Succession Act, a will is not required to be registered or stamped. Its registration is optional under the Indian Registration Act. In the case of *Ishwar Narain Singh v. Kamala Devi,*[39] the Supreme Court categorically held that a will is void just because it has not been registered. No adverse inference can be drawn against genuineness of a will due to its non-registration. Hon'ble Justice S.R. Das in course of his judgment laid down that there is nothing in law that warrants its registration.

CONCLUSION

The succession laws with respect to the minorities, except Muslims, were not coherent and for the want of consistency and uniformity, there was need to formulate succession law covering

[37] ibid s63
[38] ibid s67
[39] AIR 1954 SC 280

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Christians, Parsis and other religions. This led the British to formulate the Indian Succession Act 1865. However, this enactment was supplemented by various other legislations which propped out due to the codification waged by the Britishers in the late 19th century. This required the legislature to consolidate the existing laws to offer a concrete and holistic understanding of the succession laws of the communities except Hindus and Muslims which culminated in the formulation of the Indian Succession Act, 1925.

The Indian Succession Act, 1925 covers the devolution of property by testamentary and intestate succession. Testamentary succession covers the property related matters when a valid will is made by the testator making it clear who will get his property. Intestate succession applies in cases where there is no will or an invalid will and property devolves through the rules mentioned in the Indian Succession Act.

Despite consolidation of various enactments through the Indian Succession Act in 1925, various territories are still governed by special laws or the laws crystallized by the prevalent customs and usages of that particular community. This defeats the purpose of the consolidating legislation and leaves scope for inconsistency. This also retains the patriarchal notions of the historical times when a woman's existence was considered to be a part of male after marriage. In lieu of this understanding, the women were devoid of the property owing to the secondary stature provided to them by the anachronistic mind set. This was exposed in the case of *Mary Roy,* in which the court duly interpreted the purpose of the Indian Succession Act as a consolidating act and repealed the Cochin and Travancore.[40]

Even after the *Mary Roy* verdict, there are many Christian women who are deprived of their property owing to various regional laws not congruous with the Indian Succession Act. Due to the fact that these women form part of a minority community, the government has turned a deaf ear towards their grievances.

There is also no scope for illegitimate child under the Indian Succession Act which makes his position under the succession law, very vulnerable.

[40] Omana George, 'Inheritance law after Mary Roy' (Live Law 2014) < http://www.livelaw.in/inheritance-rights-christian-women-since-mary-roy/> accessed 11 March 2018

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Many provisions in the Indian Succession Act, 1925 ranging from Section 42 to 48 are discriminatory to women and do not honour the spirit of the Right to equality enshrined in the Indian Constitution. 247th report by the Law Commission of India chaired by Justice Ajit Shah brings out these very issues.[41] Section 42 states that when there are no lineal descendants, the all the property would devolve to the father irrespective of the fact whether mother is alive. This is clearly differential to the mother who stands at an equal pedestal to father.

The Law Commission in its earlier report (110th) - "Indian Succession Act, 1925" reflecting on these provisions have thus noted: "This is not in conformity with the current thinking as to status of women. The law is in need of 12 reform on this point"." With this background in view the Commission believes that the need to reform is not only timely but becomes more glaring when one looks around and finds that in many other jurisdictions the law on the point is more sensitive and egalitarian."[42]

Thus, there is a need to make the Indian Succession Act, 1925 more comprehensive and up to date with the society free of patriarchal notions.

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