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Christian law of succession in india.

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Christian Law of Succession in India

Christians in India have had different **laws on succession**. The British Indian Government enacted the Indian Succession Act of 1865 on the recommendations of the 3rd Law Commission. This Act was intended to be applied to different communities in British India who did not have a law of their own in matters of succession. It was specifically provided that it would not apply in the case of Hindus, Muslims, Buddhists, Sikhs or Jainas. But its provisions were to apply in the case of Christians.

An authoritative exposition and critical analysis of Christian law of succession in India is given in the book "Christian Law of Succession in India"

Indian Succession Act

The Indian Succession Act of 1865 was comprehensively amended and consolidated by the Indian Succession Act of 1925. Neither the Indian Succession Act of 1865, nor the Act of 1925 was to apply to Christians in the whole of India. Section 332 of the Act of 1865 contained a provision which empowered the State Governments to exempt any race, sect or tribe or any part of such race, sect or tribe from the

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operation of the Act, by way of a notification. A similar provision was enacted under Section 3 of the Indian Succession Act, 1925. In exercise of this power, the Native Christians in the province of Coorg (Mysore State) were exempted from the application of the provisions of the Indian Succession Act. The Khasis and Jyentengs in the Khasi Hills and Jaintia Hills in North East India were also exempted. The Mundas and Oraons in the province of Bihar and Orissa are also exempted from the application of the provisions of the Indian Succession Act. By virtue of the provisions of the Goa, Daman and Diu (Administration) Act, 1962, it is the Portuguese Civil Code and not the Indian Succession Act that applies in Goa. In Pondicherry, the French Civil Code still survives as per the provisions of the Treaty of Cession. And the Garos of Meghalaya are also not subject to the provisions of the Indian Succession Act and they follow their customary matrilineal system of inheritance. This protection is granted by the Constitution of India and also by Section 29(2) of the Indian Succession Act, 1925.

Travancore and Cochin Acts

The Christians in the former Princely State of Travancore were governed by the provisions of the Travancore Christian Succession Act of 1916 in matters of intestate succession. The Christians in the former Princely State of Cochin were governed by the provisions of the Cochin Christian Succession Act of 1921 in matters of intestate succession.

While so the Supreme Court of India in 1986 declared that with the coming into force of the Part B States (Laws) Act 1951, the Travancore Christian Succession Act of 1916 stood repealed with effect from 1 April 1951 and held that Christians in the Travancore area were and are governed by the Indian Succession Act, 1925. Following this decision, the High Court of Kerala declared that the Cochin Christian Succession Act of 1921 also stands repealed with effect from 1 April 1951. As the law declared by the Supreme Court and the High Court are binding, the Indian Succession Act of 1925 is the law relating to succession applicable to the great majority of Christians in India except the categories mentioned herein above.

Intestate succession

The intestate's property

If a person has not made a testamentary disposition of his property which is capable of taking effect, he is deemed to have died intestate in respect of his entire estate.

Rules of distribution

The Succession Act contemplates only those relationships that arise from a lawful marriage. Where an intestate has left a widow and if he has left lineal descendants, that is, children and children's children, 1/3 of his property shall belong to the widow, and the remaining 2/3 shall go to the lineal descendants. If the intestate has no lineal descendants, but has left persons who are of kindred to him, ½ of his property shall belong to the widow and the other ½ shall go to those who are of kindred to him. If the intestate has left none who are of kindred to him, the whole of the property shall belong to the widow.

The phrase "lineal descendant" means a descendant born out of a lawful marriage. Thus a daughter's illegitimate son or a son's illegitimate daughter or other illegitimate issue cannot be said to be a lineal descendant. An illegitimate child is not a child within the meaning of the Act. Therefore such a child has no share in the property of the parents. But in Jane Antony v Siyath 2008 (4) KLT 1002 Kerala High Court recognised the right of illegitimate child under Indian Succession Act upholding the lower court verdict.

The term "kindred" means relations by blood through a lawful marriage. Therefore, relations by illegitimate birth are not recognised as kindred under the Act. Kindred does not include relation by affinity such as mother-in-law or step mother or stepfather. Thus, a stepfather or stepmother has no legal right of succession to the property of his or her stepchildren. The position is the same in the case of a father-in-law as well.

A husband has no right to inherit the property of a divorced wife. In case of a judicial separation under the Indian Divorce Act, 1869, the property of the wife would devolve upon her legal heirs as if her husband were dead.

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

Where the intestate has left a widow, and where there are no lineal descendants, the widow's share is one half of the estate of the intestate, as is provided under section 33(b).

Where an intestate has left no child, but only a grandchild or grandchildren and no other remote descendant, the property shall belong to the grandchild if only one grandchild is left by the intestate and if there are grandchildren, the property shall belong to the surviving grandchildren in equal shares. It means that in a situation contemplated under this section, the distribution is per capita and not stirpital.

The father of an intestate succeeds to the property to the exclusion of the mother. This is based on the English Common Law principle that he would have taken her share if arising jure mariti. When a Hindu convert to Christianity dies intestate, it is the father, in the given situation, who succeeds to the property. The religious faith of the father is immaterial for the purposes of succession. What is material is that the deceased should have belonged to the Christian religion on the date of his death. The religion of the heirs is immaterial. But the English view that a man is not the father of the illegitimate children applies also under the Indian Succession Act.

As there is no statutory recognition for adoption by Christians in India, an adopted child cannot claim the right to succession unless a custom of adoption can be proved. It has been held that a party can prove that there is custom of adoption among Christians in Punjab so as to change the rule of succession as laid down in this Act. Some Christians in Mysore and Travancore areas also claim the right of adoption. But they are yet to be judicially recognised.

Any money or other property given by an intestate to a child, for his/her advancement in life, would not be taken into consideration at the time of distribution of the property of the intestate. Therefore, the practice of Christian daughters executing release deeds at the time of marriage so as to get them excluded from succession may not achieve the desired result, because only if there is a pre-existing right it can be conveyed. In the case of a Christian daughter, she has no pre-existing right in the family property and her rights arise when her parents die intestate. Therefore a release deed executed after the date of intestacy alone would be valid.

Apart from immovable property, the properties of the intestate that are to be distributed among the legal heirs include the

following-

Fixed Deposits in a Bank

When a person dies intestate after making a fixed deposit in a bank, the nomination made in favour of one will not dis-entitle the legal heirs to claim a distributive share.

Joint account in a bank

Unless a contrary intention is proved, when an amount is deposited in a joint account on the terms that it was to be payable to either of the survivor, it must be included in the partible property among the legal heirs, for the purposes of intestate succession.

Service benefits

Succession to the service benefits of a Government servant who dies intestate, cannot be affected by nomination. A nominee is only a trustee for legal heirs and the right of the legal heirs cannot be taken away by nomination.

Insurance claims

A nominee's interest in the amount received under a policy of insurance, when the assured dies intestate, is subject to the claims of legal heirs of the assured, under the law of succession.

Escheat

In the absence of lineal descendants and kindred to the deceased, the property shall go to the Government. The Collector has power to issue notification directing claimants to such properties to prefer and establish their claims under Regulation No. VII of 1817, clauses 6 to 9 read with clause 5 of standing Order No.197. But when a claim of escheat is put forward by the Government the onus lies heavily on the appellant to prove the absence of any heir of the respondent anywhere in the world. Before the plea of escheat can be entertained there must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. When the state takes the property it does so subject to the liabilities of the deceased.

Apart from all these situations, there are instances of complications in matters of succession involving priests and nuns. In such cases, the first and foremost hurdle is that though Succession Act has not contemplated or incorporated

the principle of civil death, yet the courts have tried to bring in that principle through the interpretative process.

The concept of civil death

In a decision rendered prior to the enactment of the Hindu Succession Act, 1956, the Supreme Court, in the context of Hindu Law, held that entrance of one person into a religious order operates as civil death. Even in England such a concept had acceptance. A distinguished author had opined as under: "A monk or nun cannot acquire or have any proprietary rights. When a man becomes ‘professed in religion', his heir at once inherits from him any land he has, and if he has made a Will, it takes effect at once as though he were naturally dead. If after this a kinsman of his dies, leaving land which according to the ordinary rules of inheritance would descend to him, he is overlooked as though he were no longer in the land of the living; the inheritance misses him and passes to some more distant relatives. The rule is not that what descends to him belongs to the house of which he is an inmate, nothing descends to him, for he is already dead……" .However, courts in India have taken divergent views on the subject as is evident from the following discussion.

Catholic priests and succession

One of the earlier decisions in this matter was rendered by the Travancore High Court in 1079 M.E. In this case, it was contended that a monk may be linked to a Hindu ascetic. A Hindu ascetic under Hindu Law loses his civil rights by entering into the 4th order, i.e., Sanyasam. But no such law was shown to exist among Roman Catholics. It was opined by the Court that the origin of the concept of loss of civil rights in a monk must be attributed to custom, and no such custom was also proved. The court, therefore, held that among Roman Catholics, the rights in the family property of a person taking holy orders as a monk were not by law or usage extinguished. Thus a Roman Catholic Priest was allowed a distributive share in the property of his natural family.

The Madras High Court also took the same view from an affidavit angle, In a dispute as regards the right of inheritance when a Roman Catholic priest died intestate, the court held that the law of intestate succession applicable to Catholic priests is Part V of the Indian Succession Act, 1925, and that inheritance is allowed only to the natural heirs of the

deceased priest and not to the superior of the priest. However, in the case of a nun the position is still different.

Nun and succession

The view taken by the Karnataka High Court is that a nun is entitled to a distributive share in the property of her natural family in the event of opening of succession due to intestacy. Whereas the High Court of Kerala opined that with the taking of perpetual vow by a nun the person concerned ceased to have any connection with the members of her natural family. So far as the natural family was concerned the woman was taken as dead and therefore, the parents and other members were not to be taken as blood relations thereafter. It was held that legal effect of a person becoming a nun is that she cannot thereafter be considered as having a father or mother or relatives. And therefore, the Court allowed the Mother Superior to receive the service benefits of the deceased nun in preference to her natural heirs.

In yet another case, the Kerala High Court held that the Mother Superior of a Holy Order of Catholic Nuns is the legal representative of a deceased nun of that congregation. The Mother Superior being the head of the convent, is entitled to claim compensation on account of the death of the nun. The Court further opined that the deceased suffered a civil death by becoming a member of the Holy Order and that the natural heirs mentioned in Sections 41 to 48 of the Indian Succession Act would not be her legal heirs. If she had made a Will it was to take effect at once as though she were naturally dead. So also if one of her kinsman dies leaving properties which according to ordinary rules of inheritance would descend to her, she would be overlooked as though she were no longer alive.

Now therefore, it can be seen that the views taken by the Karnataka High Court and the Kerala High Court are diametrically opposed as regards the status of a nun under the Indian Succession Act. So also, the approach of the Court is at variance vis-à-vis a priest and a nun.

Heirship and Succession Certificate

Public authorities like Banks and other Financial Institutions and third party purchasers would require of the legal heirs of an intestate to establish their legal right to the property of the intestate by submission of Heirship Certificate or Succession

Certificates. The Heirship Certificates are issued by Revenue Authorities and Succession Certificates are issued by the Administrator General or the District Court or the High Court. Both the District Courts and the High Courts have concurrent jurisdiction in the matter.

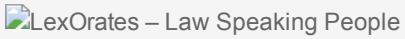
Testamentary Succession

The rules relating to intestate succession among Christians would come into operation only if the deceased had not executed a will or any document of gift or a settlement deed. In the absence of the aforesaid documents the rules regulating succession enumerated under sections 29 to 49 in Part V of the Indian Succession Act, 1925 would come into play. But, if there is a Will executed by the deceased, the general law as contained in sections 57 to 391 would apply.

Where a Will was executed by a deceased, succession to his property is regulated by the provisions of the Will. If an executor is named in the Will, he has to get the Will probated as it is mandatory under section 213 of the Indian Succession Act. After obtaining probate, it is the duty of the executor to carry out the distribution of the property in accordance with the provisions of the Will. It may be noted that probate can be granted only to the executor appointed under a Will as is provided under section 222. If no executor is appointed by the Will, anyone of the persons claiming a right under the Will can file a petition for obtaining letters of administration as is provided under section 219. [But if the deceased has died intestate, wife or husband, as the case may be, has got preferential right to get letters of administration as is provided under section 219 (a) and (e).] In the case of Christians, those persons who are connected either by marriage or consanguinity are entitled to obtain letters of administration. On receipt of letters of administration, the intention of the testator as embodied in the Will has to be carried out by the person who obtained letters of administration as is provided under section 216. As section 212 exempts Christians also from the operation of that section, it is not mandatory for Christians to obtain letters of administration for establishing right to the property of an intestate. Therefore, in the absence of a Will a suit can be filed for establishing the rights which can be followed up by partition. Against a preliminary decree in a suit for partition an appeal will lie and Final Decree will be drawn up only after the decision in the appeal. To give effect to the Final Decree, in case of difference of opinion

among the parties, execution proceedings will have to be instituted. For and on behalf of the deceased, the grantee of probate or letters of administration alone shall have power to sue or prosecute any suit or otherwise act as representative of the deceased as is provided under section 216.

* It is downloaded but I don't know from which site it is downloaded"



Reply

6 years ago

Sir, very interesting & useful information for the general public as well a juniors.

I was reading in the article that the adoption is not valid in christian but needs to be proved to the satisfaction of the court to decide. Further in succession & heirship, it mentions Both the District Courts and the High Courts have concurrent jurisdiction in the matter.

I am interested to know, A adopted child who is orally adopted and adopted parent are not alive, if needs to obtain succession certificate from court, does his education certificate, ration card & other governemental documents mentioning his parent names are sufficient to prove adoption to the court along with the NOC from other members of the

Srinivas

owner

Points: 90

family OR does he need any additional special document in karnataka.

Thanks in advance for knowledge sharing.

Reply

3 years ago

Leslie Pinto

Points: 22

"Section 332 of the Act of 1865 contained a provision which empowered the State Governments to exempt any race, sect or tribe or any part of such race, sect or tribe from the operation of the Act, by way of a notification. A similar provision was enacted under Section 3 of the Indian Succession Act, 1925. In exercise of this power, the Native Christians in the province of Coorg (Mysore State) were exempted from the application of the provisions of the Indian Succession Act"

Section 3 in The Indian Succession Act, 1925
3. Power of State Government to exempt any race, sect or tribe in the State from operation of Act.—
(1) The State Government may, by notification in the Official Gazette, either retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any of the following provisions of this Act, namely, sections 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe in the State, or of any part of such race, sect or tribe to whom the State Government considers it impossible or

inexpedient to apply such provisions or any of them mentioned in the order.
(2) The State Government may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect.
(3) Persons exempted under this section or exempted from the operation of any of the provisions of the Indian Succession Act, 18651 (10 of 1865), under section 332 of that Act are in this Act referred to as “exempted persons”.
When the above exemption is revocked, what law do the Native Christians of Coorg come under?

1) Indian Succession Act

or

2) The old Hindu law which they are presently governed by (Alicia Alias Alice vs. Percival felix Pinto and others.

Thanks and regards,

Leslie Pinto.

Reply

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