LAW OF INTESTATE & TESTAMENTARY SUCCESSION (2006). By Paras Diwan, Shailendra Jain and Peeyushi Diwan. Universal Law Publishing Co. Pvt. Ltd., Delhi. Pp cv+1075. Price Rs.850/-.

THE LAW of succession is one of the very important branches of personal laws. Succession is a mode of devolution of property from a man to his immediate heirs after his death and how the property is devolved or distributed depends on the owner of the property. Our society has been patriarchal and women have remained excluded from every walk of life, be it political, social or economic. The initial reforms were aimed at ensuring women's economic independence, however, economic independence cannot be ensured unless she is given the power and access to means of production and power to organize her property relations. The laws dealing with intestate and testamentary succession in India are diverse and distinct and their application depends upon considerations like the religion of the parties, domicile, community, type of marriage etc. There is further divergence in such laws based on considerations like schools and sub-schools *viz.* Mitakshara and Dayabhaga schools of Hindu Law and Hanafi and Shia schools of Muslim law. Following these considerations, a multiplication of succession laws is operating and applicable in India.

The title of the book indicates that proposed study is an analysis of the law relating to intestate and testamentary succession among Indians. However, the book is primarily a section-wise commentary on the Hindu Succession Act, 1956 and the Indian Succession Act, 1925 with other enactments and provisions as mere supplements. The book has been divided into two parts.

Part one, deals with intestate succession. The first section deals with intestate succession among Hindus under the Hindu Succession Act, 1956. In brief they provide section-wise case comments on the Hindu Succession Act, 1956. A straightforward approach has been followed by the author by giving descriptive analysis on each section of the Hindu Succession Act, 1956 along with illustrations and case comments. The author highlights the separate modes of succession provided for male and female intestate and paramount importance given to the constitution of the joint hindu family, *i.e.* full ownership in the property for Hindu females, general principles of inheritance, special rules relating to dwelling house, etc. There has been significant progress in the development of Hindu law relating to property. Till 1985, a coparcenary did not admit daughters as its members. Only four states which introduced unmarried daughters as coparceners like the sons

were Andhra Pradesh (1985), Tamil Nadu (1989), Mahararshtra and Karnataka (1994). The latest development in the laws, *i.e*., the Hindu Succession (Amendment) Act, 2005 is an out come of the 174th Report of the Law Commission of India, which has now made daughter a coparcener irrespective whether she is married or not. A full-fledged right to daughter in the ancestral property has been bestowed by making daughter a coparcener on the same footing as of a son in a Mitakshara coparcenary. The cumulative effect of the Amendment Act of 2005 brought changes in sections 6, and 30. The erstwhile section 6 has been completely modified and new section has been incorporated. This section has also done away with pious obligation of son, grandson and great-grandson to pay the debt of the ancestor. Consequently section 30 dealing with testamentary succession has been modified. Further sections 23 and 24 have also been deleted. The former dealt with bar on female heir from asking partition of dwelling house, in which she acquired a right, if it was wholly occupied by the members of family. The latter section dealt with disallowing certain widows from inheriting in case they remarried. The Amendment Act of 2005 is a step forward in the march of laws in obliterating social provisions of laws that were gender discriminatory and achieving the constitutional goal of equality enshrined in articles 14, 15, and 16 of the Constitution, but the author feels that it would add to confusion..

The authors further deal with the intestate succession among Muslims where they discuss general principles of inheritance and disqualifications from inheritance under Hanafi and Shia Schools of Muslim Law. Of all the duties that are to be performed as rites to a deceased Muslim, perhaps the most important is the distribution of his estate amongst the heirs according to Shariat. Thus, the task is to first, determine which of the relatives of the deceased are entitled to inherit and secondly, to determine the quantum of share entitlement of each of the heirs concerned. The Muslim law of inheritance is fundamentally different from all other parallel systems of law of inheritance in India in the sense that the doctrine of joint family system – the crux of the Mitakshara Hindu law, is non-existent in Islamic laws of inheritance. Also the concept of coparcenary property is non-existent as well for whatever a man or a woman inherits from his ancestors becomes his or her absolute property. The study focuses on the two main broader versions of Muslim law and focuses on one of the versions *i.e.* the version pertaining to the Hanafi law and then delves into the position of the *Quaranic* heirs or holders of obligatory shares as defined in the Holy *Quran* and then focuses on the differential treatment meted out to agnates and cognates.

It also deals with the laws of inheritance governing the Shia Muslims in India. The authors have looked at the distinction between the terms

'inheritance' and 'succession', the origin of Mohammedan laws of inheritance (a superstructure built on the Pre-Islamic customary laws of succession in Arabia), reforms introduced by the *Quran* in order to bring the pre-Islamic laws in conformity with Islamic philosophy, divergence of opinion among Shias and Sunnis resulting in two different rules of inheritance. They also discussed in detail the general principles of Shia law relating to inheritance, classification of heirs, doctrines of return-*radd* and increase-*aul*, disqualifications. The three classes of heirs in modern India have been mentioned and also the division made for the purposes of distribution of assets into sharers and residuaries unlike Sunni law, where a third category 'distant kindreds' exists. The shares of various kinds of heirs as laid down in the *Quran* have been enumerated. In Shia law, all relations who are not sharers take as residuaries.

Intestate succession among Christians/Parsis/Jews under the Indian Succession Act, 1925 is discussed in a separate section. The law of succession applicable to Christians in India is the Indian Succession Act, 1925. There are diverse Indian Christian sects and thus, there is diversity of their laws in matters concerning familial relations. Earlier, Christians in the State of Kerala were governed by two different Acts; the Cochin Christian Succession Act, 1921, and the Travancore Christian Succession Act, 1916. These two now stand repealed and the Christians now are governed by the general scheme of inheritance under the Indian Succession Act, 1925 after the landmark judgment given in the case of *Mary Roy* v. *State of Kerela*[1] by the Supreme Court**.** Where a Christian dies without leaving a will, then the property would devolve according to the law contained in the Indian Succession Act, 1925. In case the deceased has left a widow or widower and lineal descendants, then the widow or widower as the case may be would take one-third share and the other two-third of the property would be divided amongst the lineal descendants. In case the person has left a widow or widower and kindred, the widow or widower as the case may be would take half the share and the other half would be divided amongst the kindred. If the person has left only a widow, then it will go to the widow and in the absence of any heirs, it will go to the Government. In case of a female intestate, the widower thus takes the widow's place in the scheme of succession.

In case of a male Parsi dies intestate (*i.e.* without a will), the property would be divided according to the following rules (as contained in the Indian Succession Act, 1925). Where he dies leaving behind a widow and children, the property would be divided in such a way that the share of each son and widow is double than that of a daughter. Where he dies without

1. (1986) 2 SCC 209.

leaving behind a widow, but only children, the property would be so divided that each son would get double the share of the daughter. In case of a female Parsi dying intestate, where the person dies leaving behind a widower and children, the property would be divided in such a way that the widower and children get equal shares, where the person dies leaving behind only children, the property would be divided equally between the children. Under the provisions of chapter-III of part V, privileges to claim the property of a deceased person without obtaining representation to the estate and to make legal recovery of debts due to the estate without obtaining a succession certificate were not available to Parsis, though available to other communities.

Part two of the book is devoted to testamentary succession and the authors deal with testamentary succession among Hindus/Christians and Parsis under the Indian Succession Act, 1925. According to section 59, every person of sound mind, not being a minor, may dispose off his property by will. The explanations to this section further expand the ambit of testamentary disposition of estate by categorically stating that married woman 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 pre-requisites to the process.

Also, in order to constitute a sound testamentary disposition, the testator must retain a degree of understanding of what he is doing; he should have a volition or power of choice that what he does is really his doing and not the doing of anybody else.[2] A will rational on the face of it and shown to been signed and attested in the manner prescribed by law would be presumed to have been made by a person of competent understanding in the absence of any evidence to prove the contrary. In deciding the testamentary capacity of a person, the question to be considered is whether the testator had capacity to make the will and not the general capacity of making a will. The nature of the instrument executed, its simplicity or complexity is one ingredient of testamentary capacity.[3]

Where execution of the will is proved by reliable and cogent evidence, the presumption would be that the testator was the same and had sound testamentary capacity.[4] Section 61 expressly provides that a will or any part of a will, the making of which has been caused by fraud or coercion or by such importunity capable of taking away the free agency of the testator is void. The influence exercised to vitiate an act must amount to force and

2. *Swinfen* v. *Swinfen,* (1859) 175 ER 862.
3. *Saradendu* v. *Sudhir,* AIR 1923 Cal 116.
4. *Man Kaur* v. *Gurnam*, AIR 1984 P&H 51

coercion destroying free agency in making of will or any part thereof.[5]

A major development in the sphere of Christian law of succession occurred when a Christian priest, along with an associate pleaded against the provisions of section 118 of the Indian Succession Act, 1925, which prevents Christians from bequeathing property for religious and charitable purposes and thus was discriminatory against the Christians[6] The court struck down the section declaring it to be unconstitutional and being violative of article 14 of the Constitution and suggested that the Parliament should frame a uniform civil code. This judgment has stirred up a hornet's nest. Many feel that if it is implemented in the present circumstance, it may divide the nation on communal lines. However, the authors feel this should not stop the Parliament from enacting the uniform civil code as the social welfare and benefits resulting from the implementation of uniform civil code are far greater.

The authors have devoted a section to testamentary succession among Muslims, where they discussed administration of estate, *wassiyyat-wills* and *Marz-ul-maut* (death-illness) gifts. The authors have analysed the Muslim law of inheritance in detail and also discussed the Mohammedan jurisprudence on property. The Mohammedan jurisprudence recognised the concept of private property from the very beginning of their system, and consequently had a very well developed law of succession, which do not confer full testamentary power on a Muslim. Muslim law allows a limited testamentary power of disposing of his property. 'Will' under Muslim law is considered to be a divine institution, since the power to make a will is regulated by the *Quran*. It seems, the Prophet, took the view that in a given case it may happen that law of succession result in inequities or injustices and will is thus devised as an instrument of correcting these inequities and injustices. With that object, a Muslim is allowed to dispose one-third of his property by will to those relations who are excluded from a share under the scheme of intestate succession or those non-relations who have served him in his lifetime and whom he wants to reward at his last moments.

The book is voluminous and useful for practitioners, students and teachers of law as it is a storehouse of academic and judicial opinions. It has incorporated the latest cases up to 2006, which have been highlighted in the table of cases given in the beginning itself for a quick glance on the latest legal point. There are some discrepancies noted in the contents page and the main body between chapters and sub-parts, which requires to be corrected. But it seems to be one of the best books on the subject and on the whole the authors deserve rich compliments for his outstanding

5. *Williams* v. *George,* (1828) 1 Hag Ecc 577.
6. *John Vallamattom* v. *Union of India,* AIR 2003 SC 2902.

contribution to family law in the form of this book. The reviewer appreciates the authors and the publishers for bringing out this book at a very reasonable and affordable price.

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