UNIT – IV

Muslim Law of Inheritance & Indian Succession Act, 1925

Shia & Sunni Rules • Domicile • Succession Certificate • Probate

OVERVIEW

Unit Structure

01

Muslim Law of Inheritance

General principles, Sharers, Residuaries, Distant kindred – Sunni & Shia differences

02

Indian Succession Act – Domicile

Kinds of domicile, modes of acquisition

03

Intestate Succession (Christians & Parsis)

Rules under the Indian Succession Act, 1925

04

Probate, Letters of Administration & Succession Certificate

Powers and duties of Executor / Administrator

Muslim Law of Inheritance – General Principles

Key features of Muslim inheritance:

• No distinction between ancestral and self-acquired property
• Birth-right is not recognised – the right arises only on the death of the propositus
• A Muslim can dispose of only one-third of his net estate by will; the remaining two-thirds must go to the heirs by inheritance
• There are three classes of heirs under Sunni (Hanafi) law: Sharers, Residuaries and Distant Kindred
• Spes successionis is not recognised – an heir apparent has no transferable interest

The rules are detailed and mathematical; the Quranic shares are fixed for certain relations.

Classes of Heirs under Sunni (Hanafi) Law

Sharers (Quranic Heirs)

Those entitled to a prescribed share – husband, wife, father, mother, daughter, full sister, etc. Their shares are fixed in the Quran.

Residuaries (Asaba)

Those who take the residue after sharers – mainly male agnates (son, son's son, full brother, etc.).

Distant Kindred (Zav-ul-Arham)

Other relations who are neither sharers nor residuaries – they inherit only if there is no sharer or residuary.

Inheritance under Shia Law – Key Differences

Major points of difference from Sunni law:

• No classification into residuaries and distant kindred in the same way; heirs are divided into three classes and nearer class excludes the remoter.
• The daughter (or daughters) can take the entire estate in the absence of a son; she is not reduced to a half-share with residue going to distant male collaterals.
• The husband or wife is never excluded and takes a share along with any class of heirs.
• Certain relations (e.g., father's father) have different entitlements.
• Doctrine of return (radd) and increase (awl) operate differently.

These differences can lead to substantially different distribution of the same estate under Sunni and Shia law.

Domicile under the Indian Succession Act, 1925

Domicile is the connecting factor that determines which system of law governs succession to movable property and many personal matters.

Kinds of domicile:

- Domicile of origin – acquired at birth
- Domicile of choice – acquired by a person of full age by residence + intention to reside permanently
- Domicile by operation of law – e.g., of a minor or married woman (older rules)

A person can have only one domicile at a time. The Indian Succession Act contains detailed rules on how domicile is acquired and lost (Ss. 6–19).

Intestate Succession – Christians and Parsis

Christians (ISA)

Governed by the Indian Succession Act, 1925.

Rules provide for the widow/widower, lineal descendants, parents, and collaterals in a detailed scheme of distribution. There is no distinction between male and female heirs in the same degree.

Parsis (ISA)

Special rules for Parsis under the Indian Succession Act (Ss. 50–56).

The property of a male or female Parsi dying intestate is divided among the widow/widower, children and parents according to prescribed shares. Remoter relations take only if nearer ones are absent.

Probate, Letters of Administration & Succession Certificate

• Probate – The copy of a will certified under the seal of a court of competent jurisdiction. It establishes the authentic character of the will and the authority of the executor.

• Letters of Administration – Granted when a person dies intestate or when the executor is unable or unwilling to act. The administrator is the legal representative of the deceased.

• Succession Certificate – Issued for the purpose of providing the recovery of debts and securities of the deceased. It is a more limited form of representation.

The Indian Succession Act and the relevant court rules prescribe the procedure, caveats, and the duties of executors and administrators (inventory, accounts, distribution).

Powers and Duties of Executor / Administrator

Main duties:
- To collect and realise the assets of the deceased
- To pay the debts and funeral expenses in due order of priority
- To distribute the residue according to the will or the rules of intestacy
- To keep accounts and inventory
- To act with due diligence and good faith

Powers include the power to sell, mortgage or lease property for the purposes of administration (subject to the Act and the will), to compromise claims, and to represent the estate in legal proceedings.

An executor derives title from the will; an administrator derives title from the grant of letters of administration.

Important Principles & Case Law Notes

- A Muslim cannot by will dispose of more than one-third of his net estate unless the heirs consent after his death.
- The doctrine of representation (per stirpes) is limited under Muslim law compared with Hindu or English law.
- Domicile of origin is never completely lost; it revives if a domicile of choice is abandoned without acquiring a new one.
- Probate is conclusive proof of the will as to the representative character of the executor, but does not conclusively prove the validity of every disposition against all persons.
- Succession certificate is sufficient for the collection of debts and securities but does not give full title to the estate.

Key Takeaways – Unit IV

- Muslim inheritance is governed by fixed Quranic shares and the residue goes to residuaries; Shia and Sunni rules differ significantly.
- A Muslim can bequeath only one-third of the net estate by will without the consent of heirs.
- Domicile determines the law applicable to succession of movables.
- The Indian Succession Act provides separate schemes for Christians and Parsis.
- Probate, letters of administration and succession certificates are the main forms of representation of a deceased person’s estate.
- Executors and administrators have extensive powers coupled with strict duties of inventory, accounting and due administration.

End of Unit – IV

Muslim Inheritance • Domicile • Succession Certificate • Probate

Proceed to Unit-V: Wills, Legacies, Family Courts & Uniform Civil Code