

# FOA

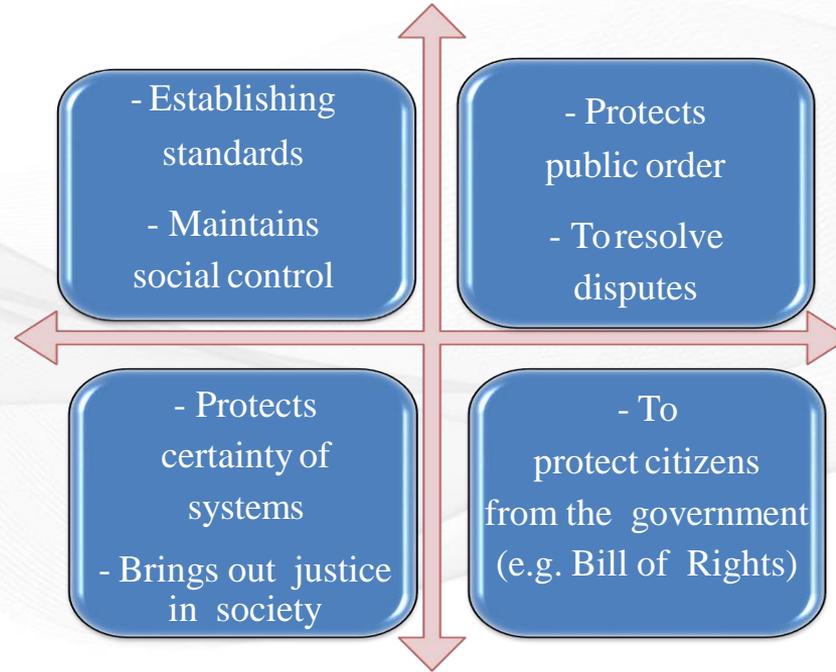
CERTIFICATE IN  
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## **EVOLUTION AND CURRENT SUCCESSION LAW IN INDIA**



# TYPES OF LAW

# PURPOSE AND FUNCTION OF LAW



# PUBLIC LAW

**Public law** deals with issues that affect the general public or state - society as a whole.  
Some of the laws that its wide scope covers are:

**Administrative law** - laws that govern government agencies, like the Department of Education and the Equal Employment Opportunity Commission

**Constitutional laws** are laws that protect citizens' rights as afforded in the Constitution

**Criminal laws** are laws that relate to crime

**Municipal laws** are ordinances, regulations and by-laws that govern a city or town

**International laws** are laws that oversee relations between nations

# PRIVATE LAW

Private Law affects the rights and obligations of individuals, families and small groups. Its scope is more specific than public law and covers:

Contract Law- governs the rights and obligations of those entering into contracts.

Tort Law – rights, obligations and remedies provided to someone who has been wronged by another individual.

Property Law – governs forms of property ownership, transfer and tenant issues.

Succession Law- governs transfer of estate between the parties

Family Law- governs family related issues.



# CIVIL LAW

- Civil Law is used to describe legal systems which are based on old Roman Law (from the Roman Empire in what is now Italy) eg: France, Germany.
- Continental European countries and their erstwhile colonies usually follow a civil law system based on Roman Law.
- Consists of a legal code of general principles which is the source of law.
- Civil law is inquisitorial in nature.

# MUSLIM LAW OF INHERITANCE

- **Muslim law of succession constitutes four sources of Islamic law –**
  - The Holy Quran
  - The Sunna - that is, the practice of the Prophet
  - The Ijma - that is, the consensus of the learned men of the community on what should be the decision on a particular point
  - The Qiya - that is, an analogical deduction of what is right and just in accordance with the good principles laid down by God.

# FORCED HEIRSHIP

Form of testate partible inheritance whereby the estate of deceased is divided into two parts:

(i) in defeasible portion, the forced estate

(ii) a discretionary portion.

Forced heirship law are most prevalent among:

- In civil jurisdiction like France, Italy, Spain and Japan
- In Islamic countries like Saudi Arabia.

# ENGLISH COMMON LAW

Primogeniture: exclusive right of inheritance

an unwritten law : formulated mainly by judges. It is case-centered and judge-centered. (scope for discretionary)

Main aim is to find and provide pragmatic solution to particular specific trial/problems--  
--**not** to seek a general rule of conduct or general principles law for the future

It is more concrete and less abstract. It is adversarial in nature.

English Law is majorly derived from community law hence called English  
Common Law

# ENGLISH COMMON LAW

Magna Carta – Magna Carta stands for freedom, that the people have certain rights cannot be taken away by anyone, and it stands for the only real true rule of law; that not even king, is above the law

It is an English document created by the barons during King John's rule in 1215.

Until this time , English King had been able to rule without the limitations, as they claimed to been given absolute power by God.

It is a compendium that includes 37 old English laws.

Two main points of Magna Carta which are still relevant today : Everyone is equal under the law and no person can gain unlimited power in our society

# SUMMARY OF LAW SYSTEMS

Common Law	Civil Law	Customary Law
Large Fields	Commonly divided into categories	Unofficial law
Civil Law and Criminal Law	Private Law and Public Law	Laws of Nation. Comes from customary exchanges between nations
Body of law derived from judicial decisions of courts and similar tribunals	Contractual rights, Property rights, Torts (civil wrongs)	Derived from long established customs
	Law that governs the relationship between individuals.	Customary Laws like Sharia Law also forms part of the Legal system.
Adversarial	Inquisitorial	

# THE HAGUE CONVENTION AND ITS EFFECT ON SUCCESSION

- Concluded on August 01, 1989
- Establishes common provisions concerning the law applicable to succession to the estates of deceased persons.
- The Convention applies even if the applicable law is that of a non-Contracting State.
- Succession is governed by the law of the State in which the deceased at the time of his death was habitually resident, if he was then a national of that State.
- Succession is also governed by the law of the State in which the deceased at the time of his death was habitually resident if he had been resident there for a period of no less than five years immediately preceding his death.
- A person may designate the law of one or more States to govern the succession to particular assets in his estate.

# THE HAGUE CONVENTION AND ITS EFFECT ON SUCCESSION

- An agreement as to succession is created in writing or resulting from mutual wills which, creates, varies or terminates rights in the future estate or estates of one or more persons parties to such agreement.
- The law of a particular State may be designated to govern the succession for which such person has to be a national of that State or had his residence.
- Where two or more persons whose successions are governed by different laws die in circumstances in which it is uncertain in what order their deaths occurred, and where those laws provide differently for this situation or make no provision at all, none of the deceased persons shall have any succession rights to the other or others.

# THE HAGUE CONVENTION DOES NOT APPLY TO

The form of dispositions of the property upon death

The capacity to dispose of property upon death

Issues pertaining to matrimonial property

Property rights, interest or assets created or transferred otherwise than by succession



# **SOME COMMON TOOLS FOR ESTATE PLANNING**

# NOMINATION AND JOINT ACCOUNTS

- Nomination – A facility by which an account holder appoints a nominee who receives his funds and distributes among legal heirs.
- Joint Accounts
  - Either or Survivor-Only two individuals can operate the account i.e., primary account holder and secondary account holder. Both can access the account and transfer the funds.
  - Anyone or Survivor-This is similar to “either or survivor” option. The only difference is, more than two individuals can operate the account.
- Important laws in respect of Nomination are:
  - ❖ Banking Regulation Act, 1949 – Section 45ZA and 45ZC
  - ❖ Companies Act, 2013 – Section 72
  - ❖ Bye law 9.11 of NSDL
  - ❖ Insurance Act, 1938 – Section 39

# NOMINATION – CASE LAW

- ***Harsha Nitin Kokate v. The Saraswat Cooperative Bank Ltd*** - 2010(4) ALLMR 51, wherein, after interpreting the provisions of sections 109A and 109B of the Companies Act, 1956, a single judge of the Bombay High Court ruled that the nominee of shares becomes a beneficial owner thereof after the death of the original owner, and that nomination effectively overrides succession. This decision was challenged and is currently sub-judice.
- ***Jayanand Jayant Salgaonkar vs Jayashree Jayant Salgaonkar***, - AIR 2015 Bom 296 wherein it was held that the view taken in the Kokate Case is *per incuriam*.
- ***Indrani Wahi v. Registrar of Co-op. Societies and Other*** - (2016) 6 SCC 440 – Supreme Court directed the co-operative society to transfer the shares of the deceased member in the name of the nominee.

# EITHER OR SURVIVOR– CASE LAWS

- **Guran Ditta v. Ram Ditta**, ILR 55 Cal 944: AIR 1928 PC 172 - Court held that there was no presumption in the deposit note of an intended advancement in favour of the wife and that the sum and interest were the property of Teku Ram and remained at his disposal at the date of his death.
- **Pandit Shambhu Nath Shivpuri v. Pandit Pushkar Nath** - 71 Ind App 197 : AIR 1945 PC 10- Court held that all the joint holdings were for the advancement of those whose names were joined with the deceased..
- **Padmanabhan Bhavani-vs.-Govindan Bhargavi** - AIR 1975 Ker 83 Partition case , disputed building constructed by amounts drawn from deposit account which belong to deceased - it is part of his assets and is partible - no evidence in support of appellant and is dismissed.
- **Anumati Vs. Punjab National Bank** - (2004) 8 Supreme Court Cases 498 - The joint fixed deposit was not a debt due by the bank to Mam Chand alone which could be set off by the bank against any claim that the bank may have had. Supposing Mam Chand had died before the fixed deposit matured, the only person entitled to get the money would be the appellant. This right of the appellant could not have been taken away without her consent.

# HINDU LAW

# ANCESTRAL PROPERTY - HINDUS

Any property acquired by great grand father, which then passes undivided down the next 3 generations exhibiting the following:

Should not have been divided in the joint Hindu family - any division causes the post-division property to become self acquired property

Rights in ancestral property are determined per stripes and not per capita.

Property inherited by will and gift are not ancestral properties.

Under Mitakshara & Dayabhaga, properties inherited from mother, grandmother, uncle and even brother is not ancestral property

Under Mitakshara, right to a share in ancestral or coparcenary property accrues by birth itself.

Self acquired property can be thrown into the pool of ancestral properties and enjoyed in common

Inter vivo gift by father to son doesn't impress it with ancestral character

# CLASSES OF HEIRS AS PER HSA, 1956

Class I Heirs
Son
Daughter
Widow
Mother
Son of a predeceased son
Daughter of predeceased son
Widow of predeceased son
Son of a predeceased daughter
Daughter of predeceased daughter
Son of predeceased son of predeceased son
Daughter of predeceased son of a predeceased son
Widow of predeceased son of a predeceased son

# CLASSES OF HEIRS AS PER HSA, 1956

## Class II Heirs

(i) Father

(ii) (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister

(iii) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

(iv) (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter

(v) Father's father; father's mother.

(vi) Father's widow; brother's widow.

(vii) Father's brother; father's sister

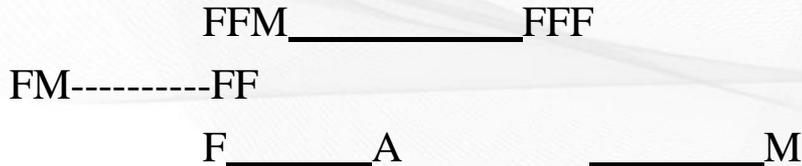
(viii) Mother's father; mother's mother

(ix) Mother's brother; mother's sister.

# COGNATES AND AGNATES

## Meaning of Agnates and Cognates under the Hindu Succession Act, 1956:

- Agnates means a person related to wholly through males either by blood or by adoption.
- The agnatic relations may be a male or a female.
- Cognates means a person related not wholly through males. Where a person is related to the deceased through one or more females, he or she is called cognate.



In the above illustration, F, FF, FM, FFF and FFM are the agnates of A in ascending line. MF is not agnate. F stands for father and M for Mother.

# HINDU UNDIVIDED FAMILY (HUF)

- It is specific form of business organisation found only in India.
- HUF is a separate and distinct tax entity i.e. the income of a HUF can be assessed in the hands of HUF only and not in the hands of any of its family members.
- HUF do business under the control of the head of family is known as “Karta”. The members of the family is also known as “coparceners” of Hindu undivided estate.
- HUF is an ancient form of commerce, business works around a tradition routed in hierarchy. The male (and now even female) members of biological family run a business together and hand it down from generation to generation.

# HINDU UNDIVIDED FAMILY (HUF)

- HUF cannot be formed or created by any contract or agreement because this organisation came into existence because of operation of Hindu Succession Act, 1956.
- It requires minimum of two people (at least one male member).
- Karta is the eldest male member of the family, who controls and manages the business.
- Co-parceners: Other family members who by birth acquires an interest in the joint property of the family, whether inherited or acquires by the family. There is no limit for membership because membership is by birth.
- The liability of the Karta is unlimited because he is the only deciding authority, Whereas the liability of Co-parceners is limited upto their share in the capital of the family.

# HUF : PROS AND CONS

PROS	CONS
Ease of formation	Confined to Joint Hindu Families
Continuity of operations	Relatively limited capital
Effective control	Limited managerial talents
Increased loyalty and cooperation	Unlimited Liability of the Karta

# IMPORTANT CASE LAWS

1. **CIT vs. Sandhya Rani Dutta** [2001]248ITR201(SC) - It was held by SC that under Dayabhaga school, females can be a part of the HUF, however, they can not constitute one on their own.
2. **CIT Vs. Ar. Veerappa Chettiar** [1970 ]76ITR 467 (SC ) – It was held that so long as the property which was originally of a joint Hindu family remained in the hands of the widows of the members of the family and was not divided among them, the joint family continued.
3. **Commissioner of Wealth-Tax vs. Gauri Shankar Bhar** (84 I.T.R. 699) It was held that it cannot be said that an individual who inherits some property from someone becomes a HUF merely because he is a member of the HUF.
4. **Pushpa Devi vs. Commissioner of Income-tax** (109 I.T.R. 70)- It was held that income of self acquired property with a character of joint family property was not assessable in the hands of the Hindu undivided family on the basis that the appellant had blended it with the joint family property.

# CONCEPT OF STRIDHAN

- Section 14 of the Hindu Succession Act, 1956 has abolished Hindu women's right to property act 1937 by converting it into Stridhan and has converted existing woman's estates into full estates.
- The objects of this section are:
  - (i) To remove all disability of Hindu woman to acquire and deal with property, that is, all the property that she acquires will be her absolute property.
  - (ii) To convert existing woman's estate into full estate.

Stridhan means woman's property. Kinds of Woman's property:

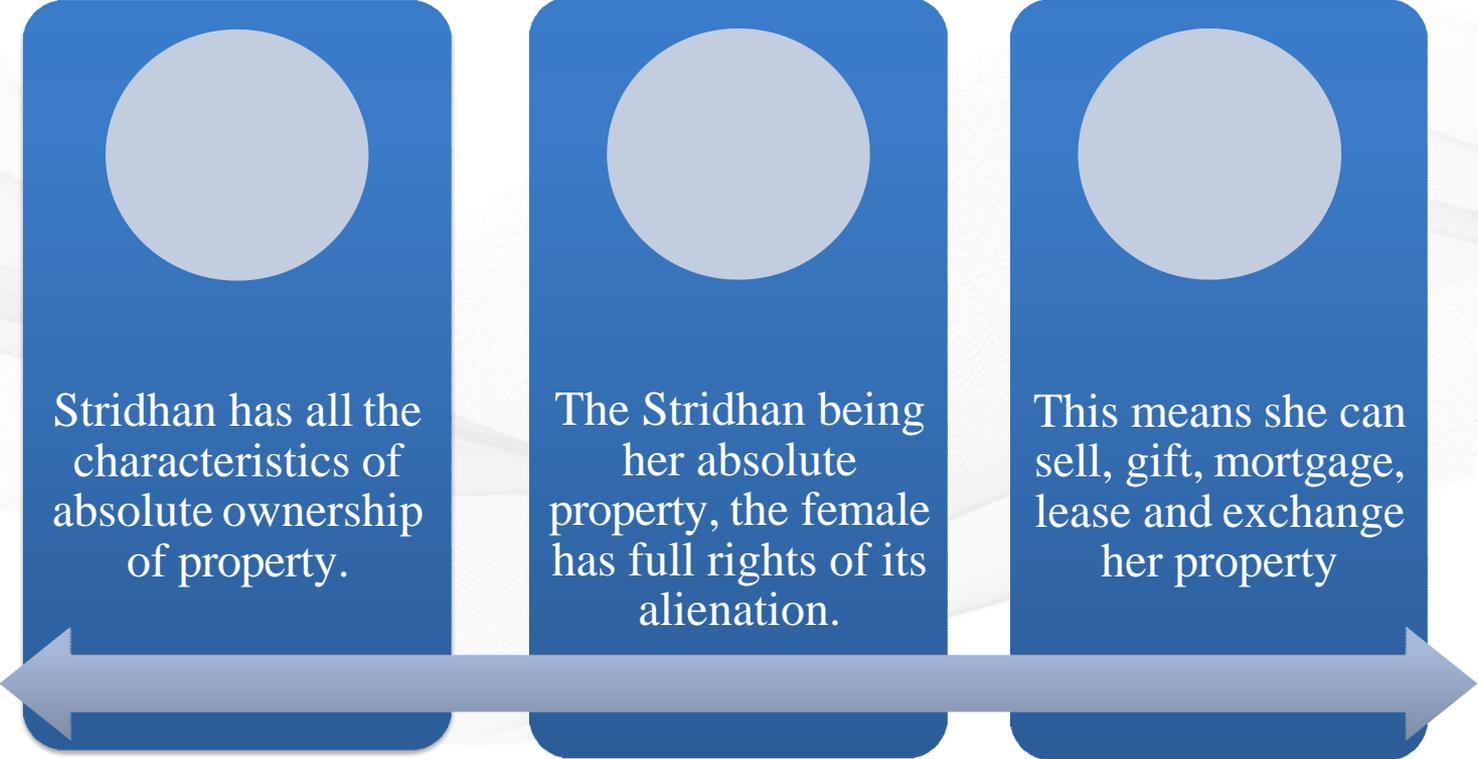
- (a) Gifts and bequests from anyone
- (b) Property acquired by self-exertion, science and arts
- (c) Property purchased with the income of Stridhan
- (d) Property purchased under a compromise
- (e) Property obtained by adverse possession
- (f) Property obtained in lieu of maintenance/alimony

# CONCEPT OF STRIDHAN

For a married woman stridhan falls under the two heads:

- (a) **The saudayika** (gifts of love and affection) – gifts received by a woman from relations on both sides (parents and in-laws).
- (b) **The non- saudayika**– all other types of Stridhan such as gifts from stranger, property acquired by self-exertion or the mechanical arts.

# CONCEPT OF STRIDHAN



Stridhan has all the characteristics of absolute ownership of property.

The Stridhan being her absolute property, the female has full rights of its alienation.

This means she can sell, gift, mortgage, lease and exchange her property

# SCHOOLS OF HINDU LAW

- The schools of Hindu law has emerged from the commentaries and digests . There are four main schools namely:
  1. Mitakshara School
  2. Dayabhaga School
  3. Marumakkattayam
  4. Aliyasantana System
- Mitakshara and Dayabhaga are two important schools of Hindu Law which has given us the required information about the present legislated laws.
- Vignaneshwara Commentray on Yagnavalkya Smriti is called Mitakshara, which means “measured in words”.
- Dayabhaga school got its name from a leading Smrirti named Dayabhaga written by Jimutavahana.
- Mitakshara is written on later part of 11<sup>th</sup> century – comprehensive commentary dealing with all titles of Hindu Law.

# MARUMAKKATTAYAM LAW

- Marumakkattayam law prevailed in Kerala wherein the families were joint families, a household consisted of the mother and her children with joint rights in property.
- Marumakkattayam is a matrilineal system of inheritance that is unique to Nair Tharavadus or Nair communities in Kerala state.
- It is exceptional in the sense that it was one of the few traditional systems that gave women liberty, and right to property.
- It is applicable to a considerable section of people in Travancore-Cochin and districts of Malabar and South Kanara.
- The joint family under matrilineal system is known as Tarawad
- This customary law of inheritance was codified by the Madras Marumakkathayam Act 1932.

# MARUMAKKATTAYAM LAW

- This system of inheritance is now abolished by The Joint Family System (Abolition) Act, 1975 by the Kerala State Legislature.
- However, still some Muslim families in Malabar and people of Lakshadweep are governed by this customary law system of inheritance as the Abolition Act applies only to Hindus.
- Muslims in Malabar happened to follow this system as they were originally Hindu converts and Lakshadweep people are believed to be persons migrated from Malabar.
- This system is now used primarily for joint family property only.

# ALIYASANTANA LAW

- This system is applicable in South Kanara.
- The Bunts, the Billawas and the non-Priestly class among the Jainas in Kanara are governed by this system.
- The Aliyasantana system is the system of inheritance through female line which gives property rights to the lady and all rights are centralized on her.
- In the Aliyasantana system more importance is given to the mother's side of the family. More respect is given to maternal uncles than to the paternal uncles.
- In this system the eldest member is known as ejaman and the eldest female member is known as ejamanthi.
- The senior-most member whether male or female, is entitled to carry on the family managements.
- No member of the tarwad had a right to claim partition or separate possession of his share without the concurrence of other members.
- But the law was changed by the Marumakkattayam Act and Aliyasantana Act.
- A member was given a right to separate himself or herself from the joint family and claim partition.

# ALIYASANTANA LAW

- The Marumakkattayam and Aliyasantana laws are therefore essentially customary laws and there are no sacred writing binding on the followers of these systems.
- Even prior to the passing of Hindu Succession Act, the customary law of Marumakkattayam and Aliyasantana had been modified by statute.
- The main enactments modifying the law are: Malabar Marriage Act, 1896, Malabar Wills Act, 1896, Madras Marumakkattayam Act, 1932, Mappilla Marumakkattayam Act, 1939, Madras Aliyasantana Act, 1949, Regulation of the State of Travancore-Cochin

# MARUMAKKATTAYAM LAW VS. ALIYASANTANA LAW

Marumakkattayam law	Aliyasantana Law
<p>1. senior most male member (karnavan) has the right and power to carry on the family management &amp; in the absence of male adult members the senior most female member (karnavathi) has the power to carry on family management.</p>	<p>1. the senior most member whether male (ejaman) or female (ejamanthi) is entitled to carry on the family management</p>
<p>2. the self acquired property of a female member in this system goes to her Tavazhi, otherwise to her mother and her descendents. In case of male member, if the property has not been disposed during his lifetime, lapses to the tarwad (joint family) and forms part and parcel of its property.</p>	<p>2. Same way for the devolution of property of a male or female member. The self acquired property of a member goes to the nearest branch, in case of more branches than one standing in the same degree of relationship, they inherit jointly.</p>

# MITAKSHARA SCHOOL OF HINDU LAW

- Recognizes the birth right of a child in the ancestral property.
- Ancestral property is unobstructed heritage.
- Coparcenary exists or it comes into existence on the birth of a son and it can consist of son, father, father's father and father's father's father.
- Recognizes joint ownership of the coparceners.
- Shares of coparceners are not defined till partition.
- No coparcener can alienate the property except Karta for the legal necessity.
- Father cannot dispose of ancestral property only for the legal necessity .

# DAYABHAGA SCHOOL OF HINDU LAW

- Dayabhaga prevails in West Bengal and Assam only.
- Does not recognize the right in the ancestral property so far the father is alive.
- Ancestral property is obstructed heritage.
- There cannot be any coparcenary between father and sons. Coparcenary come into existence between sons on the death of the father.
- Recognizes individual ownership in coparcener of share in joint family property.
- Share of each coparcener is definite.
- Coparcener are entitled to alienate their share.
- Father cannot dispose of ancestral property only for the legal necessity .

# MITAKSHARA VS. DAYABHAGA

Mitakshara	Dayabhaga
Prevails in all over India except the State of Bengal and Assam.	Prevails in West Bengal and Assam only
Ancestral property is unobstructed heritage.	Ancestral property is obstructed heritage.
Recognizes the birth right of a child in the ancestral property.	Does not recognize the right in the ancestral property till the father is alive
Coparcenary exists or it comes into existence on the birth of a child and it can consist of son, daughter, father, father's father and father's father's father	There cannot be any coparcenary between father and sons. Coparcenary come into existence between sons on the death of the father.
Recognizes joint ownership of the coparceners	Recognizes individual ownership in coparcener of share in joint family property.

# MITAKSHARA VS. DAYABHAGA

Mitakshara	Dayabhaga
No coparcener can alienate the property except Karta for the legal necessity.	Coparcener are entitled to alienate their share.
Father cannot dispose of ancestral property only for the legal necessity .	Father cannot dispose of ancestral property only for the legal necessity .

# SUMMARY OF HINDU LAW

- Under the Hindu Succession Act, 1956, as amended from time to time the differences between the schools are no longer tenable except for Joint family property.
- Under the Hindu Succession Act, 1956 we have one uniform law of succession for all Hindus, whichever school they may belong to.
- After the commencement of Hindu Succession (Amendment) Act, 2005, the rights of daughter in Joint family property are of same manner and order as a son.
- The interest of a member of the joint family would, on his death passed to the other members by survivorship. Section 6(3) of the Hindu Succession Act, as substituted by the Hindu Succession (Amendment) Act, 2005 provides for devolution by testamentary or intestate succession.

# IMPORTANT CASE LAWS

1. **Danamma @ Suman Surpur & Anr. v. Amar & ors.** - Amendment Act of 2005 is applicable to living daughters of living coparceners on the date on which the Act came into force. Secondly, in the case the Court has stated that daughter become coparcener by birth in the same manner as son.
2. **Prakash & Ors. v. Phulavati & Ors.** (2016) 2 SCC 36 - The rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born.
3. **Ganduri Koteswaramma & Anr. v. Chakiri Yanadi & Anr.** (2011) 9 SCC 788- The SC held that the rights of daughters in coparcenary property as per the amended Sec 6 of HSA are not lost merely because a preliminary decree has been passed in a partition suit.
4. **Gurupad Khandappa Magdum v. Hirabhai Khandappa Magdum** [(1978) 3 SCC 383] in cases of succession which are covered under the Proviso to Sec 6 of the HSA, it is necessary to carry out a fictional partition just before the deceased's death, to determine the deceased's share in the joint family property.
5. **Uttam v. Saubhag Singh & Ors.** [AIR 2016 SC 1169]- Upon the death of the appellant's grandfather in 1973, the ancestral joint family property devolved by succession under Section 8 of HAS and thus ceased to be joint family property on the date of death of the grandfather and his widow held the property as tenants in common and not as joint tenants.

# MUSLIM LAW

## MUSLIM LAW OF INHERITANCE

- For Non-testamentary succession the Muslim Personal Law (Shariat) Application Act, 1937 is applicable.
- Where a Muslim has died intestate, 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 issue is governed under Indian Succession Act, 1925.

# CONCEPT OF ZAKAT

## 5 pillars of Islam

Shahada

Salah

Zakat

Fasting

Hajj

# SHIA SCHOOL

- **The Ismailiyas:** After the death of Jafar, minority of Shias followed his elder son, Ismail, and hence, they came to be known as “Ismailiyas”. Originally, the Ismaili School prevailed in Egypt. In India, Ismailis are divided into two groups namely
  - (a) **The Khojas:** They are a Nizari-Isma'ili Shia community of people originating in India. The word *Khoja* derives from *Khwāja* (New Persian *Khājé*), a Persian honorific title of pious individuals used in Turco-Persian influenced areas of the Muslim world.
  - (b) **The Bohras:** They are a sect within the Ismā'īlī branch of Shia Islam. They follow an embodiment of Shiism propagated by the Fatimid Imamate in medieval Egypt.
- **Athna Asharias or Immamia:** After the death of Jafar, the sixth Imam, majority of the Shia followed Musa Kazim. This sect came to be known as Ithna Ashari School. Almost half of the Muslim population of Iraq belongs to this sect.
- **The Zaidyas:** After the death of the fourth Imam Zaynul Abidin, one fraction of Shias accepted his son Zayd as their Imam and hence came into existence, the first school of Shias, the Zaidyas.

# SUNNI

- Movement can be identified in differences with the Shia.
- Dominating continuously since 661CE.
- Sunni Islam claims to be continuation of revelations passed to Muhammad.
- Believe Caliphs did not have to be from the Prophet's family.
- Believe Prophet did not designate a successor.
- Believe that any good Muslim can be a leader.
- Leaders come from agreements of consensus and do not recognize special sacred wisdom in their leaders.
- Believe that 'Ali is not a "divine light" from the Prophet.
- Importance of Sunna (meaning "customs" included in Hadiths).
- Sharia: Islamic law was established

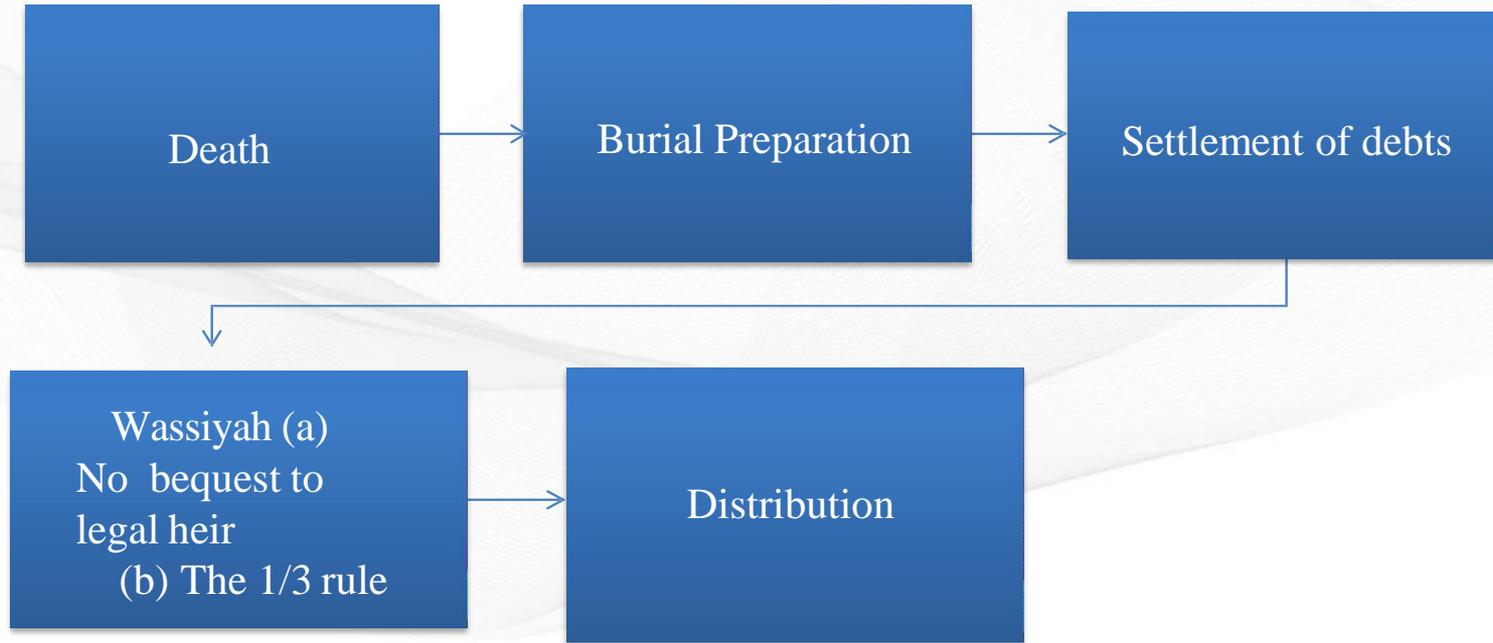


# SUNNI SCHOOL

There are three Sunni schools :

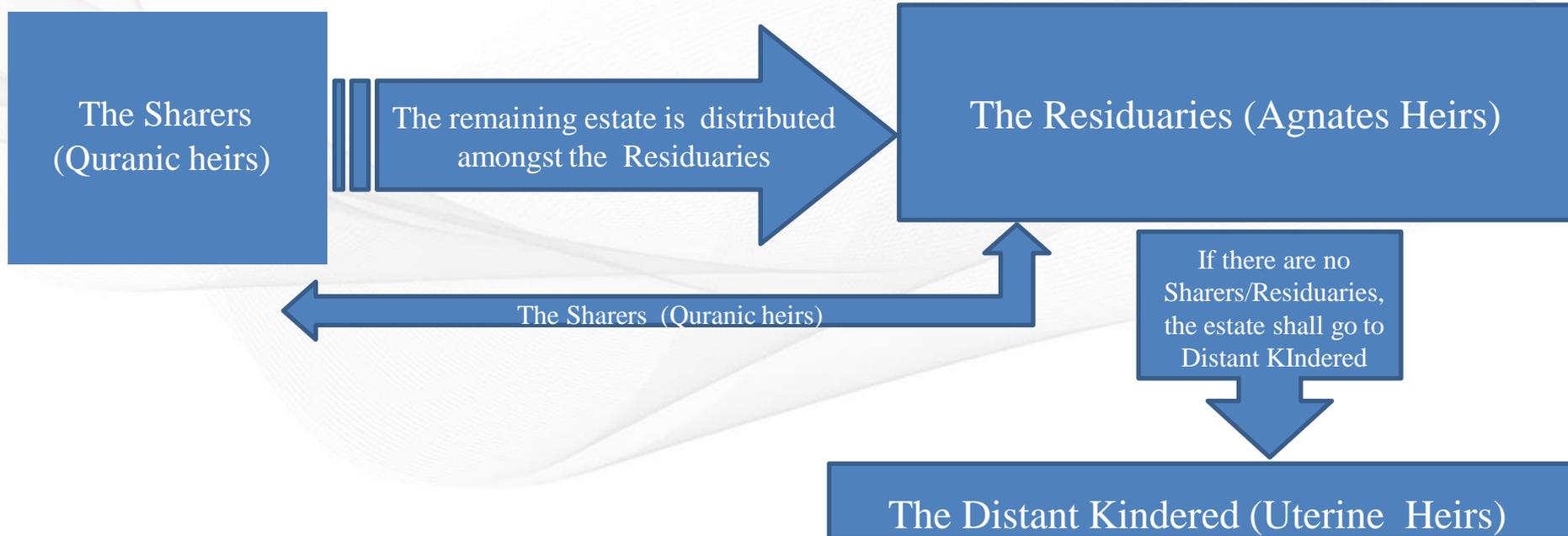
- (a) the Hanafi school representing reason,
- (b) the Zāhirīte school representing tradition, and
- (c) a broader, middle school encompassing the Shafi'ite, Malikite and Hanbalite schools

# SUCCESSION IN MUSLIMS – STAGE I



# SUCCESSION IN MUSLIMS – STAGE II

- The remaining estate is divided amongst the heirs



# SUCCESSION IN MUSLIMS – STAGE III

If there are no Legal heirs

Goes to the State by  
Escheat

# CONCEPT OF WAKF AND SALIENT FEATURES OF WAKF ACT, 2013

- “Wakf” is the detention of a thing in the implied ownership of almighty God in such a manner that the profit may revert to or be applied to the benefit of his creatures.
- In the matter of Moti Shah vs. Abdul Gaffar Khan it has been held that:
  - the wakf means detention of property in the ownership of God in such a manner that its profits may be applied for the benefits of his Servants. The object of dedication must be religious or charitable.
- As per this law wakf has been defined in such a way that it shall be a wakf regardless of the endower being a muslim or non-muslim and that it would be a wakf for all legal purpose.
- Under section 32, the power of the board to sell, exchange or mortgage or to gift has been done away with.
- The tenure for the lease of the properties has been fixed to 30 years now so that the wakf property be developed.

# MODE OF CREATION OF WAKF

By an act of  
inter vivos

By Will

During the  
death illness

By  
immemorial  
user.

# REVOCAION OF WAKF

- If a valid wakf has been created, it can not be revoked by the wakif for it is in the power of divest God of his ownership of the property.
- Thus, a testamentary may be revoked by the author of the wakf before his death.
- A wakf during death illness without the consent of heirs is valid only to the extent 1/3<sup>rd</sup> of the property and invalid beyond this limit.
- A wakf created by ‘inter vivos’ is irrevocable. If the wakif reserves the power of revocation.

## Essentials of Wakf:

- A permanent dedication of any property.
- By a person professing Mussalman faith.
- For any purpose recognized by the Muslim law.

# IMPORTANT CASE LAWS

1. **Shamim Ara v. State of U.P.** (MANU/SC/0850/2002) – It was held that husband shall be liable to pay maintenance for the two sons they have borne from the marriage and therefore ordered the husband to pay maintenance so that the wife who is in custody of the children can maintain her children.
2. **Noor Sabha Khatoon v Md. Quasim** AIR 1997 SC 3280 - The court upheld that the child shall be entitled to demand maintenance under 125 of the Code of Criminal procedure and also from the Muslim woman (protection of rights on divorce) Act. The father shall be liable to pay maintenance to the son until he attains the age of majority and stabilise himself and provide for himself. Further, the father shall be liable to maintain his daughter till the time she is married.
3. **Mohammed Ahmed v Shah Bano and Anr.** 1985 SCR (3) 844 - SC gave a judgment favouring maintenance given to an aggrieved divorced Muslim woman.

# CHRISTIAN LAW

## CANON LAW

Canon Law is the body of Laws and regulations made by or adopted by an ecclesiastical authority, for the government of the Christian (catholic church) and its members.

“Canon” comes from the greek work Kanon, which means a rule or practical direction.

The code of Canon is Law is a collection of the laws and regulations of the universal Roman Catholic Church for those Latin rite

# HISTORY OF CANON LAW

- A dynamic system of rules and regulations evolving in response to particular questions and adopted from other communities or legal systems.
- Although usually promulgated by a Church ‘authority’, it is shaped by
  - the internal needs of the Church,
  - its interactions with the other Churches and cultures, and
  - changes in the circumstances of its members.
- Different areas like marriage, divorce, adoption, guardianship, custody of children, maintenance, restitution of conjugal rights, judicial separation, alimony, succession, sacramental effect of marriage are covered.

# CANON LAW IN INDIA

- **THE INDIAN CHRISTIAN MARRIAGE ACT OF 1872**

1. Enacted by the British Indian administration
2. applicable throughout India except J & K, Manipur and parts of Kerala and Tamil Nadu which fell within the territorial boundaries of the former princely States of Travancore and Cochin.

- **THE DIVORCE ACT OF 1869**

1. Enacted on the same foundation of the English Matrimonial Causes Act of 1857.
2. Intended to confer jurisdiction on certain courts to grant matrimonial reliefs such as dissolution of marriage, nullity of marriage, judicial separation, protection of property of wife, restitution of conjugal rights, alimony and custody of children.

# SUCCESSION IN CHRISTIANS

- The rules for Succession among the Christians have been codified under the Indian Succession Act, 1925.
- Testamentary Succession is dealt with under Part VI of Indian Succession Act, 1925. Part VI of the Act has Sections 57 to 191, that comprehensively deal with all issues connected with wills and codicils and the making and enforcing of the same, capacity and formalities to make a will.
- Laws of Succession applicable to Christians for the intestate, the governing law is the Indian Succession Act, 1925 specifically under Section 31 to 49 of the Act.

# SUCCESSION IN CHRISTIANS

This Act recognizes three types of heirs for Christians:-

1. Spouse

2. Lineal Descendants: 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 Anthony Vs. Siyath 2008 (4) KLT 1002** recognized the right of illegitimate child under Indian Succession Act.

3. Kindred “Kindred” means, relations by blood through a lawful marriage. Therefore, relations by illegitimate birth are not recognized as Kindred under the Act.

# SUCCESSION IN CHRISTIANS

Rules of  
Distribution in  
Intestate  
Succession :

The Succession  
Act  
contemplates only  
those relations  
that arise from a  
lawful marriage.

Where an intestate has left a widow and if he has left lineal descendants, i.e., Children and Children's Children, 1/3rd of his property shall belong to the widow, and the remaining two third shall go to the lineal descendants.

If the intestate has no lineal descendants, but has left persons who are of kindred to him, half of his property shall belong to the widow and the other half shall go to those who are of kindred to him.

# IMPORTANT CASE LAWS

1. **Mrs. Mary Roy etc. Vs. State of Kerala and others** - 1986 SCR (1) 371- The court held that no personal law can be prioritized or held above the Constitution of India and hence if any act in an area invalidates the significance and importance of the provisions of the constitution then such a provision shall be held void and therefore must not be applicable.
2. **Mathew Varghese Vs. Rosamma Varghese** – AIR 2003 Kerala 312. It was held that a father has a corresponding obligation to maintain the children and there is a corresponding right that the child has a right to be maintained. In such circumstances, it cannot, any longer, be contended that merely because one professes Christian religion, he does not have any liability to maintain his children.
3. **Jane Antony v. V.M. Siyath** - 2008 (4) KLT 1002 - The Kerala High Court said that all the children both legitimate and illegitimate are entitled to the maintenance under Section 125 of the Code of Criminal Procedure, there is no reason or logic in denying them their right of inheritance to succeed to the properties of their parents in cases of intestacy.

**Thank You**