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Succession Laws amongst Parsi in India

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ABSTRACT

A small community of Parsi Zoroastrians in India, whose religion interest as well as their identity as a citizen has to be preserved in order to protect their interests as citizen of India and they are resembling a particular community as per the Indian Constitution. After the Legislature has started stirring up the matter of Uniform Civil Code in India, it has brought to a concern for these Parsi Zoroastrians which will affect their succession rights. In this due course it has brought to an utmost importance to look upon their evolution in India and how Succession law trends have been set for them.

This research paper is an attempt to ponder who is a Parsi under the Indian Succession Act, 1925 and whether the illegitimate child can be counted as a successor. This paper would largely concentrate on the development of the Parsi succession which has evolved in years due to legislation and judicial precedents. This paper would also critically analyse the sections of the current Succession legislation to derive how the small community can protect its customary laws along with providing the women of the community their rights which they have been demanding lately.

Further the research paper aims to critically analyse the evolution of the succession laws of Parsi's and how the transfer of the property is to be made for children born out of a Parsi marriage and a non- Parsi marriage. It is interesting to point that there are less of literature reviews over the succession of the Parsi's are written and the illegitimate child or an adopted child getting the property has not been suggested at many places and have simply decoded the judgement precedent or literature reviews.

I. INTRODUCTION

Parsi or Zoroastrians, is a small religious community in India whose population is diminishing day after day. To secure their rights and customary laws, the Indian legislature has worked well enough to provide the small religious community with their rights in many ways. The Parsi community emerged when their ancestors came to India due to the religious prosecutions in Persia (Iran) by the Arab conquerors. While they came and first settled in a small village Sanjan around 716 A.D., it is still not cleared by the historical texts, whether the Parsi's brought any

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laws with them in India. As after their settlement in India their customary laws were largely influenced by the Hindu and Muslim laws and then underwent series of modification under enactments like Parsi Chattels Real Act 1837; The Parsi Marriage and Divorce Act 1865; The Parsi Intestate Succession Act 1865 and The Indian Succession Act 1925. Before 1837, the laws applicable to Parsi's and their property was dealt by the English common law subject to some exceptions regarding marriage and bigamy.

To secure the succession rights of the Parsi Community, The Indian Succession Act, 1925 has provided testamentary rights and has widely covered the instate succession of the Parsi from Section 50 – 56 of the Act. It is interesting to notice from the Act that, how the Parsi's succession has been distributed in the blood relation itself and has yet not recognised the illegitimate child's right. The word Parsi is not defined under the act rather it is being defined under The Parsi Marriage and Divorce Act, 1936. It has been observed that the Christian succession and Parsi succession have some common principles.

Lately, the Parsi women who solemnizes outside the community have questioned the succession Act as they are being discriminated from a Parsi man who marries outside the community, but their children are to be a 'Parsi'. The sad fact is, as the laws related to different religions have evolved their scopes in terms of Succession laws, but Parsi succession laws are not brought much into the light yet. They are the smallest religion community in India are need to be safeguarded and it has to be seen that the small community is not deprived off their rights.

II. EVOLUTION OF SUCCESSION LAWS AMONGST PARSI

The Parsi traditional laws are largely inspired by Hindu and Muslim laws. Communities, after several revisions, numerous modifications, enactments, such as Chattels Real Act 1837; The Parsi Marriage and Divorce Act 1865; The Parsi Intestate Succession Act 1865. The British Indian Legislature passed the Indian Succession Act 1925 for Parsis. While substantially, the present succession laws changed and vitally separate it from the original customary rules, the new succession law still reveals the profound effect of Hindu and Muslim rules on the Parsi inheritance system.

The rule applied to the Parsis and their land before 1837 was subject to such exceptions as to marriage and bigamy in English common law. A Parsi who died intestate in 1835 leaving substantial immovable property in Bombay and his eldest son filed a lawsuit before the Supreme Court of Bombay for a declaration that, by virtue of the statute of primogeniture which existed in England, he was entitled to the entire immovable property of his father.

Alarmed by this assertion, the Parsis of the Bombay Presidency appealed to the legislature and

the result of that appeal was the Parsee Chattels Real Act 9 of 1837, by which it was proclaimed that, as of 1 June 1837, all immovable property within the jurisdiction of each of the courts created by the Charter of His Majesty shall, as far as the transfer of that property on death is concerned. The Act's consequence (9 of 183(7) was that it relieved Bombay's Parsis of the activity of the English primogeniture law as regards immovable goods but rendered them subject to the English distribution statute in all cases of intestacy, as regards any definition of goods, of which a third went to the widow and the residue was distributed evenly between the children and their descendants.²

However, nothing happened before 1855. On August 20th in 1855, Bombay's Parsis conference was held to consider and adopt in order to prepare a draught Code of Laws adapted to the Parsi nation and to invite the Legislative Council of India to adopt it, a committee was formed at this meeting to prepare a draught Code of Laws adapted to the Parsi nation.

The Privy Council decided in 1856 in the case of *Ardeseer Cursetjee v. Peerozebai*,³ a lawsuit brought on the ecclesiastical side of the Bombay Supreme Court seeking the restitution of conjugal rights. In this case, the defendant had lodged a protest about the court's authority to entertain the suit. The Chief Justice held that the court was competent, the judge held that it was not, and the Chief Justice's decision prevailed. The Privy Council held that the Supreme Court was incompetent to take cognizance of the English ecclesiastical law, which was created solely for all parties who were Christians, or to administer to the parties, and therefore a petition for the restoration of conjugal privileges, purely an ecclesiastical practise, could not be extended to parties who professed the religion of Parsee.⁴ On 17 July'1856, the judgement was delivered, and the assistance of the legislature was again considered necessary.

On December 5, 1859, a body of rules entitled 'A Draft Code of Descent, Succession and other matters' was decided by the Managing Committee of the Parsi Law Association and adopted, and this Draft Code was submitted to the Legislative Council on 31 March 1860, followed by a petition. The matter was submitted to a special committee and the legislative council ordered the formation of such inquiries by the Bombay government on 19 May 1860. The government of Bombay prompted these investigations to be instituted on 13 June 1860. On 10 August 1861, the select committee of the legislative council submitted its report proposing that the government of Bombay be asked to name a commission to carry out a preliminary inquiry into

² Gender Justice in Succession laws in India, Sarkar and Santosh Kumar, Chapter4, University of North Bengal Publication, (September10, 2020), https://sg.inflibnet.ac.in/bitstream/10603/137137/9/09_chapter_04.pdf.

³ 6 MIA 348.

⁴ Supra at 1.

the uses recognised by the Parsi community⁵ of India as laws and the need for special legislation in connexion with them.⁶

The mofussil Parsis objected in complete, to the rights of women to inherit on the death of male Parsees dying intestate as regards inheritance, succession and property as between husband and wife and also objected to the right of married women during covertures to hold or dispose of their separate property. However, the mofussil Parsis concluded with the Bombay Parsis that the English Inheritance and Succession Law and the English Property Law as between husband and wife were completely unsuited to the Parsi community 's requirements.⁷

The Commission rejected the argument that there should be one rule of the I inheritance and succession for the mofussil Parsis in the town of Bombay and another for the mofussil Parsis, and on 13 October 1862 they made their report. The result was the adoption of two bills in India's legislative council, namely: (i) the Parsi Marriage and Divorce Bill; and (ii) the Parsis Succession and Inheritance Bill, passed on 17 February 1865 and referred on 24 February 1865 to the select committee. On 31 March 1865, the report of the select committee on the succession bill was introduced and considered on 7 April 1865. The Bill was signed into an Act with the title 'The Parsee Intestate Succession Act 1865.' The material amendments made by this Act were that the widow and the daughters of a Parsi dying intestate in the mofussil who were only entitled to maintenance for the first time obtained a share.⁸ In the year 1881, a s for the legislation regulating Parsis, two major decisions were made. The concern presented was whether the law in Shelley 's case extended to Parsis in *Mithibai v. Limji N Banaji*.⁹ It was held that even considering that the English law extended to Parsis could not be included in the rule in the case of Shelley, which is the law of land or tenancy founded on feudal considerations and inadequate for the circumstances in India, and that, in the absence of proof of any relevant law or usage applicable to a particular case , the law applicable to Parsi was not applicable to the circumstances in India.¹⁰

It was held in *Payne & Co v. Pirosojha Patel*¹¹ that England's common law extended to Parsis on the Island of Bombay, under which the wife was entitled to pledge the credit of her husband and protect herself at his expense in any litigation against her for the breakdown of her

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Law Commission of India 110th Report, February 1985.

⁹ 5 Born 506 (In appeal 6 Born 151).

¹⁰ Ibid.

¹¹ 3 Born LR 920.

marriage. It was not necessary for the wife in the suit to be successful.¹²

In *Hirabai v. Dinsha*,¹³ the question was whether special harm had to be seen in a suit for defamation against women and it was held that the Parsis in the city against Bombay was regulated by the common law of England and special harm had to be seen. Even as early as 1941, the question was asked in *Kuberdas v. Jerkish Navroji*¹⁴ as to what law regulated the Parsis in the mofussil, and it was held that the Parsees in the mofussil were, in the absence of any constitutional clause, regulated first by the use and second by the laws of equity and good faith, that is, by the general principles of English law applicable to a similar collection of circumstances.¹⁵

The Parsi Intestate Succession Act was inserted verbatim in Chapter III of the Act when the Indian Succession Act 39 of 1925 was passed. Act which was completely repealed by the Act's Schedule IX. In the case of *Ratanshaw v. Bamanji*,¹⁶ an interesting query appeared in the year 1936. One Dorabji, who was a native of the State of Baroda, died in this situation, leaving immovable property in Bombay. He had divorced his wife Hirabai before his death through a joint fargat, which was a legal divorce in Baroda State according to the tradition prevailing. He married Maneckbai after his divorce and, following her death, he married a third wife, Khurshedbai, who had a daughter by her former husband, Baimai. Dorabji left Khurshedbai, her daughter Baimai, Cooverbai's daughter Hirabai, his divorced wife, his widow, his brother Dhunjisha's four daughters, and Avabai's sister via Khurshedbai, the plaintiff demanded a share. The query was whether the divorce of Heerabai by fargat could be considered a legal divorce for the purpose of deciding the succession in British India to immovable property. It was held that the law of British India could not be recognised under section 5 of the Indian Succession Act of 1925, that the divorce by fargat. Heerabai's, and divorce was not legitimate if succession to immovable property in British India was to be controlled and she continued to be Dorabji's wife. His eventual marriage to Khurshedqai was not a valid marriage and bestowed no right on her, and the case lost because the complainants argued it was by Khurshedbai.¹⁷

III. THE INDIAN SUCCESSION ACT, 1925 FROM THE PARSIS' PERSPECTIVES

In the matter of succession, the Indian Succession Act, 1925 now regulates the Parsi community in India. There is no retrospection of the Act. This applies when a Parsi dies

¹² Ibid,

¹³ 28 Bom LR 391.

¹⁴ 43 Bom LR 981.

¹⁵ Ibid.

¹⁶ 40 Bom LR 141.

¹⁷ Supra at 9.

intestate, i.e. without leaving a will, and to all intestines that occur under a testamentary or non-testamentary document, even if such document is executed prior to the passing of this Act, provided that after the passing of this Act, the intestines under such document occur. It does not apply to agricultural land, since the federal legislature had no power to legislate in relation to the 'transfer, alienation and transfer of agricultural land' listed in Item No 21 of Schedule II to the Seventh Schedule of the Government of India Act 1935 (vide section 100 of the said Act); and in the case of an agricultural land succession of an instate Parsi, it will be then dealt under, in the Act of 1865 of 1925 before its amendment.¹⁸ The Bombay High Court has ruled that not only the Parsi Zoroastrians of India but also the Zoroastrians of Iran are included in the term "Parsi" as included in the Succession Act.¹⁹

(A) Instate Succession

Parsi are regulated by the Parsi intestate laws laid down in the Act under Chapter III of Part V. In compliance with sections 51-56 of the Statute, the property of a Parsi Intestate is divided to his descendants. Rules relating to the inheritance of intestates are-

- No share to be given to the lineal descendant of an instate who dies before the instate:
If he has been predeceased by a child or a distant question of a Parsi intestates, the proportion of such child shall not be taken into account, given that such predeceased child has left none;
 - (i) a widow or widower;
 - (ii) a child or a children or a remote issue; or
 - (iii) a widow of every linear descendant of a predeceased child of that kind.

If one of the above relatives leaves behind the survival of a predeceased child of a Parsi intestate, that child's share shall be counted in making the division as given in section 53. If a wife or widower and a child or children are left by a predeceased child or a distant linear descendant of a Parsi intestate, then if that predeceased child is a son, his widow and children will take the share of that predeceased son. If such a predeceased son leaves a linear descendant widow or widow, but no linear descendant, then the proportion of such predeceased son shall be allocated as u / s. given. 53(a) proviso.²⁰

¹⁸ Phiroze K. Irani, 'Personal Law of Parsis in India', Family Laws in Asia and Africa, (ed.JND Anderson), 1972, p.274.

¹⁹ Marlou Bilawala, ' Succession for Mohammedans, Parsis and Christians' 315(2018)50BCAJ,(September11,2020),<https://www.bcasonline.org/BCAJ%20Golden%20Content%20201819/Articles/Dec%202018/19%20%2024%20Succecion%20Marylou%20Bilawala.pdf>.

²⁰ Supra at 12.

In addition, if the deceased child is a woman, her widower is not entitled to anything under 53(b), but to anything under 53(b). The share of that daughter shall be divided evenly among her children and if she dies without leaving a linear successor, her share shall not be counted at all. A widow or widower of any relative of an intestate who has married again during the lifetime of the intestate is not given any share. The mother and paternal grandmother of the intestate will, however, be the exception to this law and they would earn a share even though they had remarried in the lifetime of the intestate.²¹

A Parsi Zoroastrian man who married outside the community, the child born out of that wedlock may become a Parsi but if a Parsi woman marries outside her community then the child won't be considered under Parsi. Some women have questioned this in the community and have taken the matter to the courts. RD Tata who married French women who embraced the religion of Parsi and had a ceremony of Navjote. He pleaded that she could enter an Agyari and be regarded after her death as a Tower of Silence. There was an uproar from the Orthodox Parsis, however, and the High Court registered in their favour. Parsi is one of the most progressive communities in India and is used to such conflicts between liberal and orthodox viewpoints. The enforcement of the uniform Civil Code will not be easy, especially in a secular country like India. Some women have questioned this in the community and have taken the matter to the courts. RD Tata who married French women who embraced the religion of Parsi and had a ceremony of *Navjote*. He pleaded that she could enter an *Agyari* and be regarded after her death as a Tower of Silence. There was an uproar from the Orthodox Parsis, however, and the High Court registered in their favour. Parsi is one of the most progressive communities in India and is used to such conflicts between liberal and orthodox viewpoints. The enforcement of the uniform Civil Code will not be easy, especially in a secular country like India.²²

In the case of *Raj Kumar Sharma v. Rajinder Nath Diwan*,²³ it was held by the court that the children born out of wedlock are not to be recognised as legitimate children and deal only with children born out of legitimate marriages. Hence, the relationship under the Succession Act relating to the Parsi Succession flows from the lawful wedlock.²⁴

IV. COMMON PRINCIPLES OF SUCCESSION BETWEEN CHRISTIAN'S AND PARSI UNDER THE INDIAN SUCCESSION ACT, 1925

For Parsis and Indian Christians, the Succession Act applies to testate and intestate inheritance

²¹ Ibid.

²² Jamsheed Kanga & Another v. Parsi Panchayat Funds and Properties & Others LNIND 2011 BOM 139.

²³ AIR 1987 Del 323.

²⁴ Ibid.

with both.²⁵The same laws apply both to Parsi and to Indian Christians in the case of testate succession. Though, in case of the instate succession laws vary from each other. The legislation makes no difference between relationships between the father or the mother for Christians and Parsis²⁶. In situations where the parental and maternal parties are similarly linked to the intestine, all such partnerships shall be entitled to a good result and shall be equal to each other. Moreover, when it comes to full-blood / half-blood / uterine marriages, there is little difference; and a posthumous infant is regarded as a child that was present when the intestine died, as long as the child was born alive and when the intestine died was in the womb.²⁷

One of the applicable wide principle which is common between Christians and Parsis are the testamentary Succession Laws. Which deals with:

1. Capable of making wills²⁸
2. Testamentary Guardian
3. Revocation of will by the testator's marriage
4. Privileged and Unprivileged Wills
5. Probate : In the case of a Parsi dying after the beginning of the Act, a probate is expected to be made in the will in question or the property left under the will is situated under Calcutta, Madras and Bombay's 'ordinary original civil authority' and where those wills are made beyond those limits in so far as they apply to immovable property situated within those limits.²⁹

In terms of succession, the Parsi community in India is ruled by the Indian Succession Act , 1925. The separation of property of the male and female intestines is provided for in Sections 50 to 56 of that Act. In the property of the female intestate's, daughter and son get identical shares, while in the property of the male intestate, son gets twice the daughter's share. In its One Hundred and Tenth Survey, the Law Commission of India reviewed these laws and recommended that distinction between sons and daughters in the case of male intestate property be abolished. The Parsi group has suggested changes to the legislation to eradicate inequality between sons and daughters by ensuring that all share equally in the land of the male intestate. These reforms are also rendered in line with the government's policy of giving paternal property rights to women. In order to eliminate uncertainties, supply shortcomings, implement as much

²⁵ Supra at 18.

²⁶ Section 27 of The Indian Succession Act,1925.

²⁷ Ibid.

²⁸ Section 59 of The Indian Succession Act,1925.

²⁹ Section 213 (2), Supra at 1.

as possible the judicial rulings that the society had then embraced, sections 50 to 56 were replaced by Act 17 of 1939. The reforms adopted by Act 51 of 1991 push the issue further, considering the fundamental rights of gender equality.³⁰

V. CONCLUSION

Prior to 1837, the common English law extended to Parsi and its proper relations, subject to certain marriage expectations, and there are special laws for Parsi instate provided for in Sections 52-56 of the 1925 Indian Succession Act. Special courts are formed in each of the presidential terms of Calcutta, Madras and Bombay, and are also regulated by the Parsi marriage and divorce act of 1936, Parsi chief marriage courts. Special delegates who are normally esteemed members of the tiny group of Parsi Zoroastrians have been granted preferential care in foreign countries and especially in India, are named in disputed matters.³¹

It is realised that if the Uniform Civil Code is being enforced, the old privy council decisions will not hold any good for all the protection he provided to a tiny society like Parsis will be abolished. There is no legitimate adoption between Parsis and thus if a Parsi couple wishes to adopt a child they cannot have compulsory inheritance rights who would be a member of a specific religious domination or who would have the freedom to insist on becoming a member, the right to use religious institutions is decided by the personal rule of that denomination, which in turn is based on the principle of religious institutions.

Article 25(1) of the Indian Constitution provides that all individuals are equally entitled to freedom of conscientiousness and the right to freely profess, exercise and spread religion is subject to the morality and health of public order and is also subject to Article 26(b) which provides that any denomination of religious dot has the right to administer its own affairs in matters of religion.³²

There is still lot to improve and include in the Succession Laws from the viewpoint of Parsi laws in order to include illegitimate children to inherit the property. Also, specific adoption child laws are also to be formed keeping in view point the fading population of the Parsi community. With less population, the community has less literature which makes it difficult to codify their inheritance or views to adopt or give the inheritance to illegitimate child.

³⁰ Supra at 1.

³¹ .Homair Nariman Vakil, 'Why Parsis need their distinct family laws', *The Times of India*, September 20, 2017, (September 10, 2017), <https://timesofindia.indiatimes.com/india/why-parsis-need-their-distinct-family-laws/articleshow/60759119.cms>.

³² Constitution of India, 1950.

VI. REFERENCES

Statute

1. Constitution of India, 1950.

Acts

1. The Indian Succession Act, 1925.
2. The Parsi Marriage and Divorce Act, 1936.
3. The Parsi Instate Succession Act, 1865.

Case Laws

1. Raj Kumar Sharma v. Rajinder Nath Diwan AIR 1987 Del 323.
2. Sir Dinshaw Manockji Petit v. Sir Jamsetji Jeejeebhoy LNIND 1908 BOM 119.
3. Jamsheed Kanga & Another v. Parsi Panchayat Funds and Properties & Others LNIND 2011 BOM 139.
4. Ardeseer Cursetjee v. Peerozebai 6 MIA 348.
5. Mithibai v. Limji N Banaji 5 Bom 506 (In Appeal 6 Bom 151).
6. Payne & Co v. Piroosijha Patel 3 Bom LR 920.
7. Hirabai v. Dinsha 28 Bom LR 391.
8. Kuberdas v. Jerkish Navroji 43 Bom LR 981.
9. Ratanshaw v. Bamanji, 40 Bom LR 141.

Articles

1. Homair Nariman Vakil, 'Why Parsis need their distinct family laws', The Times of India, September 20, 2017, (September 10, 2017), <https://timesofindia.indiatimes.com/india/why-parsis-need-their-distinct-family-laws/articleshow/60759119.cms>.
2. Phiroze K. Irani, 'Personal Law of Parsis in India', Family Laws in Asia and Africa, (ed. J. Anderson), 1972, p.274.
3. 'A time to Honor', Parsiana Blog, December 2, 2017, (September 11, 2020), <https://www.parsiana.com/current-issue/articles.aspx?id=UPXciO1GrwA=>.
4. Framjee A Rana, Parsi law, containing the law applicable to Parsis as regards succession and inheritance, marriage and divorce, &c., 1902.m.
5. Marlou Bilawala, 'Succession for Mohammedans, Parsis and Christians' 315 (2018) 50 BCAJ, (September 11, 2020), <https://www.bcasonline.org/BCAJ%20Golden%20Content%202018-19/Articles/Dec%202018/19%20-%2024%20Sucsesion%20Marylou%20Bilawala.pdf>

6. Gender Justice in Succession laws in India, Sarkar and Santosh Kumar, Chapter 4, (September 10, 2020), https://sg.inflibnet.ac.in/bitstream/10603/137137/9/09_chapter_04.pdf
