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# AN INTRODUCTION TO THE MUSLIM LAW OF INHERITANCE

## A Introduction

1. Muslim Law of Inheritance (in short “Muslim Law”) is not codified and is based upon the customs and Quran.
  2. Whatever is left after the death of a Muslim is the heritable property, which is both movable or immovable property and after deduction of the following:
    - a. Funeral expenses, expenses for obtaining Probates/ Letters of Administration, unpaid wages/ debts and legacies, dower to widow,
  3. The Muslim Law does not recognize any distinction between succession to the property of a male and female, contrary as done under Hindu Law of Inheritance.
  4. Muslims are broadly governed by either of the two schools of the Muslim personal law – the Sunni or the Shia Law. We shall deal with the Muslim Law of Inheritance from the Sunni school. However, it is pertinent to mention here that both the schools of Muslim law differ only with respect to the preference and quantification of the shares of the heirs. The general principles of Muslim Law are applicable to both Shia and Sunni Muslims.
- ## B Evolution of Property under Muslim Law of inheritance
1. Under Muslim law, there is no 'joint family property' or 'separate property' or 'Muslim joint family'. [Abdul Raheem v. Land Acquisition Officer-cum-Revenue Divisional Officer, Mahaboob nagar; AIR 1989 AP 318]
  2. All Property is one, meaning there is no distinction between ancestral and self-acquired property/ separate Property.
  3. The institution of joint family like Hindu Undivided Family is a foreign concept in Muslim law.
  4. However, a Muslim adult male can hold assets and carry on business on behalf of other members of the family.
  5. The same shall be in fiduciary position and provisions of the Trust Act, 1882 applied to the same as held by Hon'ble High Court of Madras in Soudagar Mohd Abdul Rahim Beg Saheb vs. Soudagar Mohd. Abdul Hakim Beg Saheb [AIR 1931 Mad 553].
  6. In case of a joint business, the rules of partnership will apply and the partnership would terminate on death of one of the partners unless contrary is established.
  7. Heir-ship does not necessarily go with membership of the family. [Abdul Majeeth Khan Sahib v. C. Krishnamachariar; AIR 1918 Mad 1049]
  8. A 'member' of the family may not be an heir, and vice versa.
  9. Owner has exclusive ownership of all properties with full powers of alienation.
  10. Joint family property not being recognized, the principle of survivorship is also not known to Muslim law.
  11. When a Muslim die, his properties devolve on his heirs in definite share, of which each heir becomes absolute owner. On subsequent death of such heirs the property passes on to the further subsequent heirs and the process continues. [Mohd. Amirullah Khan v. Mohd. Hakumulah Khan; (1999) 3 SCC 733]
    - a. Heirs are entitled to hold the property as tenant-in-common, i.e. meaning group of individuals living and messing together with each having definite share and title to the Property. [Syed Shah Ghulam Ghouse Mohiuddin & Ors. v. Syed Shah Ahmed Mohiuddin Kamisul Quadri (died) by l.rs. & Ors.; (1971) 1 SCC 597]
    - b. Unless partition of property of deceased Muslim, according to metes and bounds according to pre-defined shares
    - c. No right by birth to any heir and comes into existence for the first time on death of the ancestor
    - d. Estate devolves at the moment of death itself
    - e. No doctrine of representation, i.e. if A's son X dies during the lifetime of A, the son of X, i.e. grandson cannot claim his father's share.



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f Rule of vested Inheritance – If the heir dies before distribution, the share will pass to such persons, as are his heirs at the time of his death. For e.g., if A dies leaving a son B, and a daughter C and B dies before the estate of A is distributed. Then the share of B in A's estate shall be allotted and passed on to B's heirs.

g No distinction between succession to male and female heir.

h Disqualification from inheritance is as follows:

- Murderer
- Illegitimate Child- Can inherit only from the mother and not father
- Child in womb- If only born alive
- When a Muslim marries under Special marriage Act, 1954, likely with a non- Muslim, he ceases to be Muslim for law of inheritance
- Insanity, want of chastity is not a disqualification

<sup>12</sup> If the Muslim marries a non-Muslim and/ or under the Special Marriage Act, 1954, the Muslim Personal law of Inheritance shall not apply and instead Indian Succession Act, 1925 shall apply.

#### C Alienation through Wills and Gifts

<sup>1</sup> A Muslim is entitled to dispose of his properties either inherited or not by way of will and/ or gifts unlike the restrictions imposed under the Hindu Law of Succession.

<sup>2</sup> Under the Will, a Muslim can dispose of by will only 1/3 or full share to heir apparent only on the consent of other heirs.

<sup>3</sup> However, the giving of property up to 1/3 share to a stranger does not require the consent of the heirs but more than 1/3 share to stranger shall require consent.

<sup>4</sup> Muslim have the unrestricted right to dispose of the whole and/ or any part of the property by way of gift.

<sup>5</sup> No consent from heirs is required for disposing of property by way of gift.

#### D Conclusion: Difficult Road

<sup>1</sup> In absence of any proof, the legal basis for establishment of the title by inheritance is cumbersome and difficult process.

<sup>2</sup> The heirs are to ascertain that the property has been alienated by the ancestor either through gifts or wills.

<sup>3</sup> The process of Partition by metes and bound is practically impossible on account of division of the property in definite shares to different heirs in pre-determined shares, more so when the Property is one and same Joint Property, like the dwelling house.

<sup>4</sup> The concrete establishment of flow of title from the father can at times be difficult when the actual source of the title of the father being further from his ancestors could not be ascertained.

<sup>5</sup> Thus, the establishment and claiming of title and possession by the Muslim heirs has been near to impossible on account of tremendous difficulties faced to proof and establish the flow of title, the lineage and proportionate division of shares, non-alienation of the property by gifts/ wills, etc.