

SUCCESSION IN PARSI COMMUNITY

The Parsi community in India initially had no law of their own. The Parsi immigrants came to settle in India to escape religious persecution by the Arab conquerors of Persia¹ and brought with them Zoroastrianism and at the same time they adopted the customs of the place where they had first taken shelter in India². The laws of the Medes and the Persians, which governed ancient Persia, have acquired legendary fame. Thousands of years before the birth of Christ, the hills of Persia (now Iran) reverberated with the sound of *manashni, gavashni, kunashni*, (good thoughts, good words, good deeds) heralding a monotheistic and non-idolatrous religion. The Prophet Zarathushtra propagated Zoroastrianism (or Zarathustrianism) in Circa 7th-6th century B.C. according to one view, while the other view dates somewhere between 1800 and 1500 years before the Christian era. Zoroastrianism is often described as “Evergreen Religion”. According to the Prophet Zarathushtra, two forces operate in the universe: the one which is good (*Spenta*) emanating from the very being of goodness (*Ahura Mazda*) and the other antithetical force (*Angra*) which when manifested in the material world, corrupts and destroys that which is good. It is because of this cosmic battle between the forces of good and evil, that every Zoroastrian is purposefully committed to use the God-given tools of good thoughts, good words and good actions

¹ Phiroze K. Irani, ‘Personal Law of Parsis in India’, Family Laws in Asia and Africa, (ed. JND Anderson), 1972, p.274.

² The first permanent settlement in India was at a village called Sanjan (still in existence) in Gujrat around the year 716 AD. The place was then ruled by the Hindu Chief Jadi Rana, who gave the Parsis permission to settle there and reside on four conditions that were: (a) that the Parsis would adopt the language of the Country; (b) that they would not bear arms; (c) that their women would dress in Hindu fashion; and (d) that they would perform their marriage ceremonies after sunset in accordance with Hindu customs.

The Parsis scrupulously observed these conditions.

(*humata, hukhta, huvarashta*) to vigorously participate in annihilation of evil and establish the ultimate renovation of the world (*Frashokereti*) as per divine will.

Mythology of Zoroastrianism

Ever since the creation of mankind, a struggle ensued between *Ahura Mazda* (The Lord of Light) and *Ahiriman* (The Prince of Darkness). When *Ahiriman* was destroying the peaceful lives, the men of earth entreated *Gosurvan* (The soul of the sacred Bull) to intercede with God to save them. And when he did, God told *Gosurvan*, "I will produce him who will bring salvation to the creatures on earth". Thus Zoroaster was born. He was the vision at the mount of *Sabalan*. He had beheld *Ahura Mazda* face to face, and seen all his seven faces representing (i) Eternal Light, (ii) Omniscient Wisdom, (iii) Righteousness, (iv) Power, (v) Piety, (vi) Benevolence, and (vii) Eternal Life.

Ahiriman tried in vain to tempt Zoroaster, who struggled to break the seal the demons had imposed against truth. Initially he succeeded only in converting one person, his cousin *Metyoma*.

Ahura Mazda taught Zoroaster the distinction between the truth and the life. Wandering together, Zoroaster and *Metyoma* wove out the pattern of *Avesta*, the Gospel of Truth.

Ahura Mazda is the sum total of all the natural forces that make for harmony. When God created *Mashya* and *Mashyoi* (comparable to Adam and Eve), He told them, "You are created to worship justice. Perform devoutly the duty of law, think good thoughts, speak good words, do good deeds". The children of the new human race, however, fell into temptations offered by *Ahiriman*. They perished under the flood of melting snow and the faithful few who survived, carried the Torch of Truth.

In King Vitaspa's Court, Zoroaster performed the miracle by changing the hundred hearts into a gentle one. However, he was slain by an invading army. As he was dying, a rainbow burst over the sky of the temple in which

he was praying. Ahura Mazda had described the rainbow as the smile of the souls in Heaven giving courage to the sorrowing souls on Earth.

4.1.DEVELOPMENT OF PARSI LAWS IN INDIA

It is not clear whether Parsis brought any of the laws with them to India. While preserving their separate identity they had adopted the customs of residents of the area where they had first taken shelter. The first permanent settlement in India was at a village called Sanjan around the year 716 AD. The place was then ruled by the Hindu Chief Jadi Rana, who gave the Parsis permission to settle there and reside on four conditions that were: (a) that the Parsis would adopt the language of the Country; (b) that they would not bear arms; (c) that their women would dress in Hindu fashion; and (d) that they would perform their marriage ceremonies after sunset in accordance with Hindu customs.

Their customary laws mainly influenced by the Hindu and Muslim communities, underwent various modifications following a series of enactments like Parsi Chattels Real Act 1837; The Parsi Marriage and Divorce Act 1865; The Parsi Intestate Succession Act 1865; The Indian Succession Act 1925 passed for Parsis by the British Indian Legislature. The present succession law, though considerably modified and vitally different from the initial customary laws, still indicate the deep influence of Hindu and Muslim laws on the Parsi system of inheritance.

Prior to 1837 the law applicable to the Parsis and their property was the English common law subject to certain exceptions as to marriage and bigamy. In 1835 a Parsi died intestate leaving considerable immovable property in Bombay and his eldest son filed a suit in the Supreme Court of Bombay for a declaration that he was entitled to the whole of the immovable property of his father by virtue of the law of primogeniture that prevailed in England. Alarmed at this claim 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, whereby it was declared that as from 1 June 1837 all immovable

property situate within the jurisdiction of any of the courts established by His Majesty's Charter, shall, as far as regards the transmission of such property on the death and intestacy of any Parsi having a beneficial interest in the same, or by virtue of the last will of any such Parsi be taken to be and to have been of the nature of chattels real and not of freehold. The result of the Act (9 of 1837) was that it relieved the Parsis of Bombay from the operation of the English law of primogeniture as regards immovable property but made them subject in all cases of intestacy, as regards every description of property to the English statute of distribution by which a third went to the widow and the residue was divided equally amongst the children and their descendants.

In November 1838 the Parsis forwarded to the legislative council a petition embodying the answers which they had in the meantime prepared to Mr Borrodaile's queries and praying that a regulation might be framed on the basis of those answers 'as embracing the rights of inheritance and succession that are acknowledged by the Parsi nation'. The Parsis then wanted to be protected: (i) from the English statute of distribution in case of intestacy; and (ii) from the English common law relating to husband and wife by virtue of which the wife could exercise no independent disposing control during the life of her husband over any property whatever, not even over that which came to her or was given to her from or by her own family.³

However, nothing appears to have been done until 1855. On 20 August 1855, a meeting of the Parsis of Bombay was held 'to consider and adopt measures for procuring the enactment of laws adapted to the Parsees', and a committee was appointed at this meeting 'to prepare a draft Code of Laws adapted to the Parsi nation and to petition the Legislative council of India for the enactment thereof.'

In 1856, the Privy Council decided the case of *Ardeseer Cursetjee vs. Peerozebai*⁴, a case for the restitution of conjugal rights filed on the ecclesiastical side of the Supreme Court of Bombay. The defendant in this

³ Sorabji Bangalee, *Parsee Acts*, pp 156-57.

⁴ 6 MIA 348.

case had filed a protest against the competency of the court to entertain the suit. The Chief Justice held that the court had jurisdiction, the puisne judge held that it had not, and the judgment of the Chief Justice prevailed. The Privy Council held that the Supreme Court was incompetent to take cognizance of or to administer to the parties the English ecclesiastical law which was founded exclusively for all parties who were Christians and that for that reason a suit for restitution of conjugal rights, strictly an ecclesiastical proceeding, could not be applied to parties who professed the Parsee religion. The judgment was delivered on 17 July 1856 and once again the aid of the legislature was deemed essential.

On 5 December 1859, the Managing Committee of the Parsi Law Association settled and adopted a body of rules entitled 'a Draft Code of Inheritance, Succession and other matters', and on 31 March 1860 this Draft Code, accompanied by petition was presented to the legislative council. The matter was referred to a select committee and on the 19 May 1860 the legislative council directed the institution of certain inquiries by the government of Bombay. On 13 June 1860, the government of Bombay caused these inquiries to be instituted. On the 10 August 1861 the select committee of the legislative council presented their report recommending that the government of Bombay be requested to appoint a commission to make a preliminary inquiry into the usages recognized as laws by the Parsi community of India and the necessity of special legislation in connection with them. On 26 December 1861 the government of Bombay appointed the commission who took evidence written and oral. As regards inheritance, succession and property as between husband and wife the mofussil Parsis objected in toto to the rights of females to inherit on the death of male Parsees dying intestate and they also objected to the right of married women during covertures to hold or dispose of their separate property. The mofussil Parsis, however, agreed with the Bombay Parsis that the English Law of Inheritance and Succession and the English Law of Property as between husband and wife was absolutely unsuited to the requirements of the Parsi community. The

commission negated the contention that there should be one law of inheritance and succession for the Parsis in the town of Bombay and another for the Parsis of the mofussil, and made their report on 13 October 1862.

The result was the introduction of two bills in the legislative council of India viz: (i) Parsi Marriage and Divorce Bill; and (ii) Succession and Inheritance (Parsis) Bill, introduced on 17 February 1865, and referred to the select committee on 24 February 1865.

The report of the select committee on the succession bill was presented on 31 March 1865 and considered on 7 April 1865. The Hon'ble Mr Anderson when moving the report for consideration stated that the president of the Parsi Law Association had urged on him that the Parsis should be exempted from the operation of section 105 of the Indian Succession Act of 1865 (section 118 of the Indian Succession Act 1925)—the section that may be called the Mortmain section. He said,

“I would remark that the section alluded to imports into India, the 9 Geo II ch 36, commonly called the Statute of Mortmain. Now opinion may differ as to the propriety of that law, but it will be generally concluded that if such a law is made applicable to any portion of the community subject to the Succession Act it must be made applicable to all who are so subject. I freely admit the Parsis are not priest-ridden but there is a principle which underlies all laws of Mortmain and which addresses itself to a sentiment of deeper growth than priestly influence; that sentiment is the desire which many men of all creeds and races feel on their death-beds to make terms, as it were, with the mysterious future by a liberality exercised at the expense of their heirs...On consideration of this kind the laws of Mortmain have been founded and to such consideration the Parsis are as subject as their fellowmen. I was unable, therefore, to recommend the amendment proposed by my friend to the select committee for adoption. And I may add that Parsees make such munificent use of the wealth during their lives that the legislature is bound to guard, in some measure, their heirs from any testamentary profusion in favour of public objects which the fear of death may possibly suggest.”

The Bill was then passed into an Act with the title ‘The Parsee Intestate Succession Act 1865.’ The material changes 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 got a share in the property.

In 1867 again, an important decision as to the law governing Parsis in the town of Bombay was given in *Naoroji Beramji vs. Rogers*⁵. This was a suit for the specific performance of an agreement by Naoroji to lease a property situate within the Fort of Bombay. Naoroji submitted that as the property was of the freehold tenure and conveyed to him and his wife and as the Parsis were governed by English law the concurrence of the wife to the granting of the lease was essential. Hore J, held that all immovable properties in the island of Bombay were of the nature of chattels real or personal property and as according to English law, marriage operated as a gift to the husband of all wife's chattels real, Naoroji was entitled to let it without the concurrence of his wife. Naoroji appealed. In dismissing the appeal, Westropp J, observed: ' Until recent legislation of the Year 1865 the law universally applied to Parsis and their property in the island of Bombay by the Supreme Court and since it was closed by the High Court at its original jurisdiction side had been as correctly stated in the clear and able report to the Parsis Law Commission (of which Sir Joseph Arnold and Mr Newton J, were members) the English law, except so far as it is varied by Act 19 of 1837 and also since the decision of the Privy Council in 1865 in *Ardeseer Cursetjee vs. Peerozebai*⁶ except as to matrimonial suits at the Ecclesiastical side of the court, and perhaps I shall add, except as to bigamy. Accordingly, under that law, the premises were chattel real or real estate. If it was chattel real, Naoroji and his wife were seized by entireties ie *per tout*. If real estate Naoroji was seized of the whole estate in his own right or *jure uxoris* of the whole estate during the covertures and the demise by Naoroji was good.' The learned judge, therefore, observed that 'it was unnecessary and extra-judicial on the part of Mr Hore J to decide whether all the immovable property in Bombay was of that nature'.

⁵ 4 BHCR 1.

⁶ 6 MIA 348.

The Repealing Act 8 of 1868 repealed the Parsee Chattels Real Act 9 of 1837. In the year 1868 the High Court of Bombay in *Manchersha vs. Kamirunissa Begum*⁷ held that the law applicable to Parsis in the Mofussil was Reg. IV of 1827 and in the absence of specific law, the rules of justice, equity and good conscience.

In the year 1881, two important decisions were given as to the law governing the Parsis. In *Mithibai vs. Limji N Banaji*⁸, the question raised was whether the rule in *Shelley's case* applied to Parsis. It was held that even assuming that the English law applied to Parsis the English law so to be applied could not be included in the rule in *Shelley's case*, which is the law of property or tenure based on feudal considerations and unsuited to the circumstances in India, and that in the absence of evidence of any specific law or usage applicable to a particular case, the law applicable to the Parsis in the mofussil of the Presidency of Bombay is that of justice, equity and good conscience alone. In *Maneckbai vs. Meherbai*⁹, the plaintiff sued the defendant alleging that her husband had shortly before his death conveyed to the defendant's husband who was the friend of the plaintiff's husband an immovable property on trust (which was oral) communicated to the defendant's husband that he should sell the property and hold the sale-proceeds in trust for the benefit of the family of the plaintiff. It was held that English law governed the Parsis and the statute of frauds applied and as the trust was oral and as the statute required writing the plaintiff's suit failed. In *Payne & Co vs. Piroshija Patel*¹⁰, it was held that the common law of England applied to Parsis in the Island of Bombay under which the wife was entitled to pledge her husband's credit and defend herself at his costs in any action he may file against her for the dissolution of his marriage with her. It was not necessary that the wife should be successful in the suit. In *Hirabai vs.*

⁷ 5 BHCR (ACJ) 100.

⁸ 5 Bom 506 (In appeal 6 Bom 151).

⁹ 6 Bom 363.

¹⁰ 13 Bom LR 920.

*Dinsha*¹¹ the question was whether in an action for slander of woman special damage must be shown and it was held that the Parsis in the city of Bombay were governed by the common law of England and special damage must be shown.

Even as late as 1941 in *Kuberdas vs. Jerkish Navroji*¹², the question as to by what law the Parsis in the mofussil were governed was raised and it was held that the Parsees in the mofussil were in the absence of any statutory provision governed in the first place by usage and secondly by rules of equity and good conscience, ie by the general principles of English law applicable to a similar set of circumstances.

4.2. CASE STUDY UNDER THE INTESTATE SUCCESSION ACT 1865

The Parsi Intestate Succession Act remained in force up to 1925. While the Act remained in force, the following important decisions were given on its construction. In *Mancherji vs. Mithibai*¹³ it was held on a construction of section 5 that when a child of a Parsi intestate died in his or her lifetime and left only a widow but no issue, such widow was entitled to a share, eg, if the intestate Parsee died leaving a widow, sons, daughters, children of a predeceased son, and widow of another predeceased son who has died without issue, and a posthumous daughter was afterwards born to the intestate, it was held that the widow of the predeceased son was entitled to one moiety of the share in the intestate's property which her husband would have taken had he survived the intestate, and that it was not a condition precedent to the application of section 5 that the predeceased son should have left both a widow and children. The other moiety of the share of the predeceased son devolved on the surviving issue of the intestate including the posthumous daughter and the children of his other predeceased son.

¹¹ 28 Bom LR 391.

¹² 43 Bom LR 981.

¹³ 1 Bom 349.

In *Erasha vs. Jerbai*¹⁴, the question raised was whether Jerbai the daughter of the intestate Parsi was entitled to grant on letters of administration to the estate of her father Ardeshir, who left a will in which he completely disinherited Jerbai and bequeathed all his property to his brother Ratansha; but Ratansha having predeceased Ardeshir, the bequest to him lapsed and there was intestacy. It was contended that Jerbai having been expressly excluded by Ardeshir by his will from taking any share in his property, she was not entitled. But it was held that Ardeshir having died intestate the estate must go according to law notwithstanding the exclusion of her under the will and Jerbai was entitled to the grant and the property should be distributed between the widow and children of Ardeshir.

In *Jhangir vs. Pirozbai*¹⁵, the question was as to the meaning and construction of the word 'widower'. Dhunjibai, a Parsi of Surat, died intestate, leaving a widow and two daughters. A third daughter Jaiji had predeceased her father leaving her husband (plaintiff) and a daughter. The husband of Jaiji had married again before the death of the intestate and was married at the date of the suit. His claim to a share of Jaiji's share under section 5 was opposed on the ground that he was not a 'widower', he having remarried. A widower is defined, in Johnson's Dictionary as 'one who has lost his wife', and in Webster's Dictionary as 'a man who has lost his wife by death and has not married again'; Held that the word 'widower used in section 5 meant a widower relating to the deceased wife only and without consideration of the fact or possibility of the widower remarrying' and the plaintiff was entitled to a share. Under the present Act this is no longer the Law under section 53.

In *Shapoorji vs. Rustamji*¹⁶ the question was whether the English law of freehold property in remainder applied to Parsis. In that case, one Ratanbai died leaving a husband, two sons and two daughters. Under the will of her

¹⁴ 4 Bom 537.

¹⁵ 11 Bom 1.

¹⁶ 5 Bom LR 252.

deceased father, Ratanbai had a vested remainder after the death of the life tenant her mother Villerbai, Ratanbai predeceased Villerbai and the vested remainder consisted of an immovable property in Bombay. The husband of Ratanbai claimed the whole share of the vested remainder, on the ground of English law as a tenant by courtesy in remainder. It was held that the Parsi law of intestate succession, that there was no distinction in that Act between an estate in possession and an estate in remainder governed the case. Ratanbai having died intestate in respect of her remainder, her share would go to the husband and her children according to the proportions laid down in section 2 of the Act. Each of the children took one-sixth ie two sons and two daughters took two-third and the husband took one-third.

In *Shapoorji vs. Dossabhoy*¹⁷, one Aimai died in 1881 leaving a will whereby she bequeathed her immovable properties in Poona to her daughter Goolbai who died intestate in 1900 leaving her husband (plaintiff) and certain nephews. The husband claimed the whole property contending that as Goolbai was married to him before the Parsis Intestate Act came into operation, the English law applied and by virtue of the English law of personality applicable to a married woman, her separate use was extinguished on her death, and the plaintiff became the beneficial owner. This contention was not upheld and it was held that the Act applied and according to section 6 the husband was entitled to a half share and the other half went to the nephews.

In *Hirijibhoy vs. Barjorji*¹⁸, the question involved was the construction of section 2 of the 2nd Schedule and the distribution of the property of a Parsee dying intestate whose nearest relations were the lineal descendants in different degrees of predeceased brothers and sisters. Article 2 read with section 7 gives the estate to 'brothers and sisters and the lineal descendants of such of them as shall have predeceased the intestate'. In this case the intestate female Parsi had left no brothers or sisters but she left lineal descendants in different degrees of two predeceased brothers and one predeceased sister. The question

¹⁷ 1 Bom LR 988.

¹⁸ 22 Bom 909.

raised was whether the estate was to be divided per capita among all the persons within the description of the lineal descendants of a brother or sister in equal shares subject to the rule that each male is to take double the share of each female standing in the same degree of propinquity of whether the estate was to be divided per stripes and if so what stripes should be taken as the basis of division and it was held that the property should be divided according to the rule in *Gobson vs. Fisher*¹⁹ that the first division should be into three shares, two shares to each of the two brothers who left lineal descendants, and one share to the sister who left lineal descendants, and the shares should be sub-divided among their respective lineal descendants, no descendant being entitled to share concurrently with his or her ancestor, and on each division and sub-division each male taking double the share of each female standing in the same degree of propinquity.

When the Indian Succession Act 39 of 1925 was enacted, the Parsi Intestate Succession Act was verbatim incorporated in Chapter III of the said Act and was wholly repealed by Schedule IX of that Act.

In the year 1936, a curious question arose in the case of *Ratanshaw vs. Bamanji*²⁰. In that case, one Dorabji who was a resident of State of Baroda died intestate leaving immovable property in Bombay. Prior to his death he had divorced his wife Hirabai by a mutual *fargat*, which was a valid divorce according to the custom prevailing in State of Baroda. After his divorce, he married Maneckbai and on her death he married a third wife Khurshedbai, who had a daughter Baimai by her former husband. Dorabji left Khurshedbai, her daughter Baimai, Cooverbai has daughter by his divorced wife Hirabai, widow and four children of his brother Dhunjisha and a sister Avabai. The plaintiff claimed a share through Khurshedbai. The question was whether the divorce of Heerabai by *fargat* could be deemed to be a legal divorce for determining succession to immovable property in British India. It was held that under section 5 of the Indian Succession Act of 1925 the law of British

¹⁹ LR 5 Eq 51.

²⁰ 40 Bom LR 141.

India, that the divorce by fargat could not be recognized and Heerabai's divorce was not valid should regulate succession to immovable property in British India and that she continued to be the wife of Dorabji. His subsequent marriage with Khurshedbai was not a legal marriage and conferred no right on her and as the plaintiff's claim was through Khurshedbai, the suit failed.

In the year 1938, in the matter of the petition for probate of the will of Sorabji B Kapadia, deceased a question arose as to the payment of probate duty on the shares of certain joint stock companies which stood in the joint names of the deceased and his wife. Somjee J, held that the Parsis were governed by the common law of England; the share belonged absolutely to the widow and therefore no duty was payable. The judgment is not reported but it was delivered on 28 January 1938.²¹

4.3. RELEVANT PROVISIONS UNDER THE INDIAN SUCCESSION ACT, 1925

The Indian Succession Act, 1925 now governs the Parsi community in India, in the matter of succession. The Act is not retrospective. It applies when a Parsi dies intestate, ie without leaving a will, and to all intestates occurring under a testamentary or non-testamentary document even where such document is executed before the passing of this Act, provided the intestacies under such document occur after the passing of this Act. It does not apply to agricultural lands, since the federal legislature had no power to legislate with respect to 'transfer, alienation and devolution of agricultural land' enumerated under item No 21, in the List II in the Seventh Schedule to the Government of India Act 1935 (vide section 100 of the said Act); and the law governing the succession to agricultural land in the case of an intestate Parsi will be the Act of 1865 ie Act of 1925 before its amendment.

The word 'land' in List II, item No. 21 of the Government of India Act 1935, comprised both corporeal and incorporeal rights and interests and as

²¹ Paruck, *The Indian Succession Act, 1925* (eds SS Subramani and K Kannan), 8th edition, Lexis Nexis Butterworths, pp 114-115.

regards succession to agricultural land the words used were 'transfer alienation and devolution of agricultural land'. Hence the succession to agricultural land could only be affected by provincial legislature. But in List II (State List) of the Seventh Schedule of the Constitution of India in Entry No 18 the word 'devolution' is dropped and the expression used is 'transfer and alienation of agricultural land'. Thus under the Constitution of India, succession to agricultural land is placed on the same footing as succession to any other property²². Until therefore, an Act by the Union legislature is passed similar to Act 17 of 1939 it seems that the devolution of agricultural property of a Parsee intestate will be as under the Act of 1925 before its amendment i.e. the son's share will be four times that of the daughter, the widow's share will be double that of the daughter and father and mother will not get any share.

Sections 50 to 56 of the Indian Succession Act regulate intestate Succession among Parsis.

Section 50 provides that—

- (a) there is no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive;
- (b) a lineal descendant of an intestate who had died in the lifetime of the intestate without leaving a widow or a widower or any lineal descendant or a widow or widower of any lineal descendant shall not be taken into account in determining the manner in which the property of which the intestate has died intestate shall be divided; and
- (c) where a widow or widower of any relative of an intestate has married again in the lifetime of the intestate, such widow or widower shall not be entitled to receive any share of the property of which the intestate has died

²² *Laxmi Debi vs. Surendra Kumar*, AIR 1957 Ori 1.

intestate and such widow or widower shall be deemed not to be existing at the intestate's death.

The word 'Parsi' has not been defined in the Act but according to the Parsi Marriage and Divorce Act 1936 a Parsi means a Parsi Zoroastrian. So the children of a Parsi father even by an alien mother would be Parsis provided they are admitted into the religion of theirs and profess the Zoroastrian religion. As a corollary, children born of a Parsi mother by an alien father are not Parsis.

The word 'widower' introduced by the 1990 amendment in this section would signify a widower relatively to the deceased wife only, and without consideration of the fact or possibility of the widower remarrying.

Old sections 51 and 52 of the Act have been recast as section 51 by the Indian Succession (Amendment) Act 1991, w.e.f. 9.12.1991.²³ Section 51 runs as—

Division of intestate's property among widow, widower, children and parents—(1) Subject to the provisions of sub-section (2), the property of which a Parsi dies intestate shall be divided—

- (a) where such Parsi dies leaving a widow or widower and children, among the widow or widower, and children so that the widow or widower and each child receive equal shares;

²³ The old portion read as—

"51. Division of a male intestate's property among his widow, children and parents—(1) Subject to the provisions of sub-section (2), the property of which a male Parsi dies intestate shall be divided—

- (a) where he dies leaving a widow and children, among the widow and children, so that the share of each son and of the widow shall be double the share of each daughter, or
 (b) where he dies leaving children but no widow, among the children, so that the share of each son shall be double the share of each daughter.

(2) where a male Parsi dies leaving one or both parents in addition to children or a widow and children, the property of which he dies intestate shall be divided so that the father shall receive a share equal to half the share of a son and the mother shall receive a share equal to half the share of a daughter".

(b) where such Parsi dies leaving children, but no widow or widower, among the children in equal shares.

(2) where a Parsi dies leaving one or both parents in addition to children or widow or widower and children, the property of which such Parsi dies intestate shall be so divided that the parents or each of the parents shall receive a share equal to half the share of each child.

Section 51 of the Indian Succession Act makes it abundantly clear that under clause 1 (a) if a Parsi dies leaving behind a widow or widower and children, the property is to be divided equally between the widow/ widower and the children. Under section 51 (1) (b) where a Parsi dies leaving children, but no widow or widower, then the property is to be divided equally among the children. Sub-section (2) deals with a situation where a Parsi dies leaving one or both parents in addition to children or widow or widower and children. This section provides that the property of such Parsi shall be so divided that the parents or each of the parents shall receive a share equal to half the share of each child.

The sub-section (1)(a) corresponds to section 1 of the Parsi Succession Act, which was reproduced in section 52 of the Indian Succession Act of 1925 before its amendment. In other words the amending Act of 1939 made the following changes, viz, widow's share which was half the share of the son is made equal to the share of the son and the daughter's share which was one-fourth of the share of the son is made half the share of the son and the word 'male' added in sub-section (1) because of sub-section (2).

Example

(a) Widow and children

Son	Widow	Daughter
2	2	1

(b) C, a Parsi died intestate leaving behind his widow G, three sons, T, B and D and two daughters D1 and D2. The division of property amongst the successors of C will be as follows: G....1/5 share; T son of C....1/5 share; B

son of C....1/5 share; D son of C....1/5 share; D1 daughter of C....1/10 share; D2 daughter of C....1/10 share. Mere fact that the daughters took no step to get their names mutated or made any demand from other heirs to separate their shares can have no effect on their title. The two daughters would get a share equal to that of their mother or brother, i.e. each of the daughters would inherit 1/10 share in the property left behind by C.²⁴

Sub-section (1)(b) corresponds to section 1 of the Parsi Intestate Succession Act, which was reproduced in section 52 of the Act of 1925 before its amendment. The amending Act of 1939 made the following change, viz, the share of the daughter, which was one-fourth that of the son is made half the share of the son, eg

No widow	Son	Daughter
--	2	1

Sub-section (2) is new. In the case of a male Parsi dying intestate leaving a widow and children or leaving children only, and also his parents, father and mother are given a share for the first time by the amending Act of 1939. If both the parents survive, then the father's share is equal to half that of the son and the mother's share is equal to half that of the daughter. If one of the parents survives he or she gets the same share.

It may be noted that the parents get a share under this section in the case of the son dying intestate only and not in case of the daughter dying intestate. The word 'parents' include father and mother but not a stepfather or a stepmother.²⁵

Section 52 repealed vide Act 51 of 1991.

Section 53 runs as:

Division of share of pre-deceased child of intestate leaving lineal descendants—In all cases where a Parsi dies leaving any lineal descendants, if any child of such intestate has died in the life-time of the intestate, the division of the share of the property of which the intestate has died intestate

²⁴ *Dhanbai vs. State* AIR 1979 MP 17.

²⁵ *Rutland vs. Rutland* 1 P Wms 216.

which such child would have taken if living at the intestate's death shall be in accordance with the following rules, namely:

- (a) If such deceased child was a son, his widow and children shall take shares in accordance with the provisions of this chapter as if he had died immediately after the intestate's death:
- Provided that where such deceased son has left a widow or a widow of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made shall be divided in accordance with the provisions of this chapter as property of which the intestate has died intestate, and in making the division of such residue the said deceased son of the intestate shall not be taken into account.
- (b) If such deceased child was a daughter, her share shall be divided equally among her children.
- (c) If any child of such deceased child has also died during the life-time of the intestate, the share which he or she would have taken if living at the intestate's death, shall be divided in the like manner in accordance with clause (a) or clause (b), as the case may be.
- (d) Where a remoter lineal descendant of the intestate has died during the life-time of the intestate, the provisions of clause (c) shall apply *mutatis mutandis* to the division of any share to which he or she would have been entitled if living at the intestate's death by reason of the pre-decease of all the intestate's lineal descendants directly between him or her and the intestate.

In the present sub-section (a) of section 53 the following changes are made. In the Acts of 1925 and 1865 there was no distinction whether the predeceased child was a son or a daughter. The word used was 'child'. In the present section the distinction is made between the predeceased child being a son and sub-section (a) deals with the share of such predeceased son and the division under this sub-section will be as follows:

Examples

predeceased child had left no issue, the widow of such predeceased child was not entitled to any share, but it was held that it was not a condition precedent to the application of section 5 of the Parsi Intestate Succession Act that the predeceased son of an intestate Parsi should have left a widow and issue and the widow of the predeceased son who had left no issue was entitled to a moiety of the share coming to the predeceased son.

(1) Examples under Proviso of sub-section (a) when the predeceased son leaves no issue but only leaves a widow--

$$A=\text{widow}=2/7 + 2/35 = 12/35$$

Daughter	Son	Predeceased Son=Widow=1/7
$1/7 + 1/35 = 6/35$	$2/7 + 2/35 = 12/35$	$2/7$

In this case the first division will be into 7 parts: 1/7 to the daughter; 2/7 to the son; 2/7 to the widow and 2/7 to the predeceased son. The second division of the 2/7 of the predeceased son will be into two parts under section 54(a) and 1/7 will go to his widow. The remaining 1/7 which is the 'residue' will be going to A and will be divided into five parts only as the predeceased son 'shall not be taken into account' and 1/5 or 1/7 will go to the daughter of A; 2/5 or 1/7 to the son of A and 2/5 of 1/7 to the widow of A and the total shares will be as above.

(2) Example under proviso to sub-section (a) when the predeceased son leaves no issue but a widow and a widow of a lineal descendant—

$$A = \text{widow} = 2/7 + 4/105 = 34/105$$

Daughter	Son	Predeceased
Son=Widow=2/21		
1/7+2/105=17/105	2/7+4/105=34/105	2/7
		Son's Widow
		1/3 X 2/7 = 2/21

In this case the first division will be into 7 parts: daughter will take 1/7, son 2/7, widow 2/7, and predeceased son 2/7.

The 2/7 of the deceased son will be divided as he has not left lineal descendants and 1/3 of 2/7 = 2/21 will go to his widow and 2/21 to the widow of the son of such predeceased son. The remaining 2/21 (viz, the 'residue of his share') will belong to the intestate A and will be divided into five parts (as the predeceased son shall not be taken into account) in the proportion of 1 share to daughter, 2 shares to son and 2 shares to widow and the shares will be as above.

In the sub-section (b) to section 53, the word 'daughter' is used, the son being mentioned in sub-section (a). The sub-section provides that if the predeceased child is a daughter and she leaves children and a widower, the widower is excluded from sharing in the share of his predeceased wife, but her children alone will share. This is a departure from section 51 of the Act of 1925 where the widower was given a share.

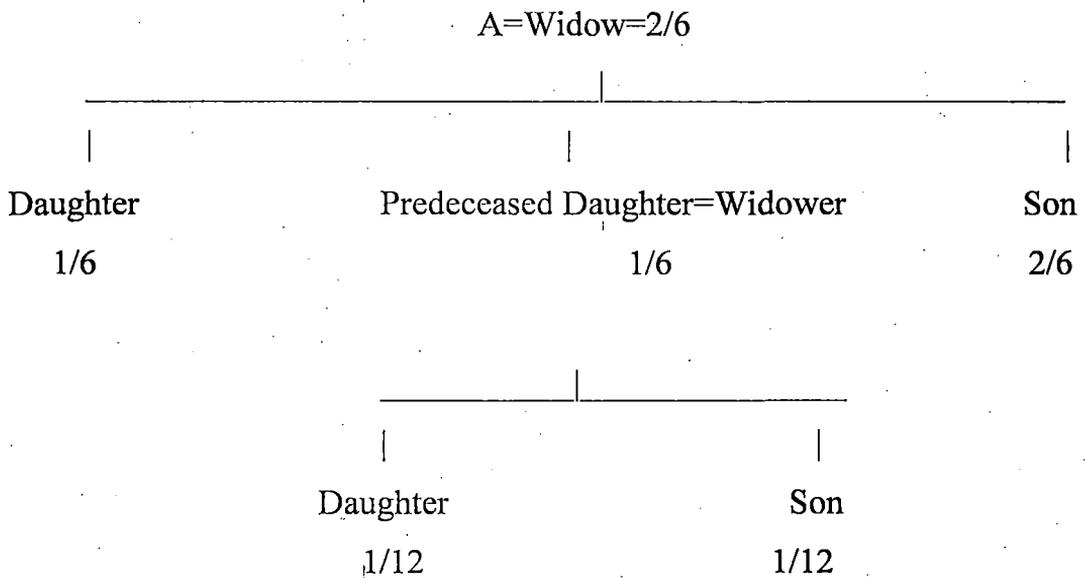
In *Jehangir vs. Pirozbai*²⁷ a Parsi had died intestate leaving a widow, two daughters and the heirs of one predeceased daughter, viz, her husband and one daughter. The husband of the predeceased daughter had married

²⁷ 11 Bom 1.

again. It was contended that such a person was not a widower within the meaning of the section. In Webster's Dictionary a widower is defined as 'a man who has lost his wife by death and has not married again.' But it was held that by the word 'widower' in the section was meant a widower relatively to the deceased wife only and without consideration of the fact or possibility of the widower remarrying and he was entitled to a share. This decision was against the sentiment of the Parsi community and under the present Act it is no longer law as the word 'widower' is expressly omitted and the division is among the children of the predeceased daughter. The widower of any female lineal descendant is also excluded under section 53(c) as the division is according to sub-section (a) or (b) as the case may be. The fact that such widower has or has not remarried is also immaterial.

Example

Example under sub-section (b)—share of predeceased daughter when she leaves a widower and children.



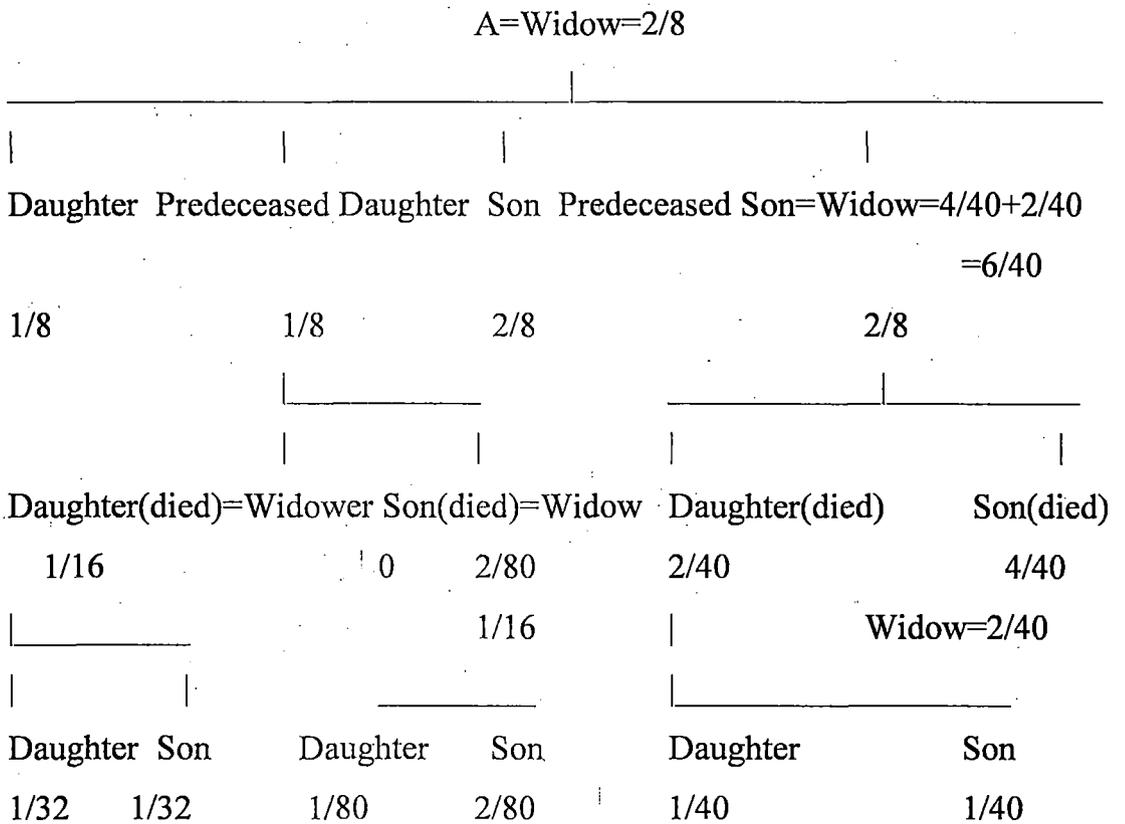
The first division will be into six parts, 1 part to daughter, 1 part to predeceased daughter, 2 parts to son and 2 parts to the widow.

The second division of the 1/6th share of predeceased daughter will be equally between her daughter and son, the widower taking no share.

The sub-section (c) to section 53 is new. This sub-section goes down a step further in the distribution of the estate if any child of such predeceased child also dies in the lifetime of the intestate leaving a widow and/ or child or children him or her surviving.

There was also no express provision regarding distribution in the event of all the children of the Parsi intestate predeceasing him leaving lineal descendants who survived the intestate, ie if the Parsi intestate only leaves behind him grandchildren or great-grandchildren.

Example under sub-section (c).



In this illustration A has died leaving: (1) a widow, (2) a daughter, (3) the relations of a predeceased daughter, namely: (a) her daughter's widower, (b) her son's widow, (c) her grandchildren; (4) a son; and (5) relations of a predeceased son, namely: (a) his widow, (b) grandchildren of his predeceased daughter, (c) the widow of his predeceased son.

First division will be into eight parts under section 51.

Second division of $1/8$ of predeceased daughter will be equally divided between her daughter and son under section 53(b) each taking $1/16$. Third division will be $1/16$ of granddaughter to be divided equally between the great-granddaughter and the great-grandson to the exclusion of the widower again under section 53(b).

Fourth division will be of the $1/16^{\text{th}}$ share of the son of the predeceased daughter between his widow and daughter and son under section 53(a) into 5 parts.

The next division will be of the $2/8$ share of the predeceased son. It will first be divided into five parts—daughter 1, son 2 and widow 2.

The $2/40^{\text{th}}$ share of the granddaughter will be equally divided between her daughter and son.

The $4/40^{\text{th}}$ share of the grandson will be divided under section 54(a) and half will go to his widow and the other half to his mother, ie the widow of the predeceased son under Schedule II, Part I, under section 54(d).

Sub-section (d) to section 53 provides for the case of a further descent in the case of lineal descendant. There was no corresponding section under the Act of 1865. If a remoter lineal descendant of the intestate has died in the lifetime of the intestate his or her widow and/ or children will take the share of their predeceased parent.

Section 54 runs as:

Division of property where intestate leaves no lineal descendant but leaves a widow or a widower or a widow or widower of any lineal descendant—Where a Parsi dies without leaving any lineal descendant but leaving a widow or widower or a widow or widower of a lineal descendant, the property of which the intestate dies intestate shall be divided in accordance with the following rules, namely:

- (a) if the intestate leaves a widow or widower but no widow or widower of a lineal descendant, the widow or widower shall take half the said property;

- (b) if the intestate leaves a widow or widower and also a widow or widower of any lineal descendant, his widow or her widower shall receive one-third of the said property and the widow or widower of any lineal descendant shall receive another one-third, or if there is more than one such widow or widower of lineal descendants, the last mentioned one-third shall be divided equally among them;
- (c) if the intestate leaves no widow or widower but one widow or widower of a lineal descendant, such widow or widower of the lineal descendant shall receive one-third of the said property or, if the intestate leaves no widow or widower but more than one widow or widower of lineal descendants, two-thirds of the said property shall be divided among such widows or widowers of the lineal descendants in equal shares;
- (d) the residue after the division specified in clause (a) or clause (b) or clause (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II; and the next-of-kin standing first in Part I of that Schedule shall be preferred to those, standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares;
- (e) if there are no relatives entitled to the residue under clause (d), the whole of the residue shall be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.

Distribution of Property

This section corresponds to section 55 of the old Act with considerable changes owing to the introduction of a new sharer, viz the widow of a lineal descendant. The distribution according to this section is as follows:

Sub-section (a)

- (a) Widow or widower but no children and no lineal descendant nor widow of any male lineal descendant.

Widow or widower

1/2

Relatives in Schedule II Part I

1/2

Sub-section (b)(b) Widow or
widower

1/3

Widow or lineal
descendant

1/3

Relatives in
Schedule II Part I

1/3

Sub-section (c)

(c) No widow or widower but one widow of a lineal descendant then the division is as under:

(i) One widow of lineal descendant

1/3

Relatives in Schedule II Part I

2/3

(ii) More than one widow of lineal descendants

2/3

Relatives in Schedule II Part I

1/3

Sub-section (d)

(d) The residue amongst relatives in Part I of Schedule II

Father

and

Mother

2

1

Brothers

and

Sisters

2

1

SCHEDULE II, PART I

(1) Father and Mother:

Share of Father:

- (a) If a male Parsi intestate dies leaving a widow and children and father and mother the father gets a share equal to half that of the son as seen in section 51(2).

- (b) If a female Parsi intestate dies leaving a widower and children, father gets nothing (section 52).
- (c) If a male or female Parsi intestate dies without leaving any lineal descendant but leaving a widow or widower or a widow of a lineal descendant, then the father gets the residue in the proportion of 2-1 if there is mother after payment of the share of the widow or widower and the share of the widow of lineal descendant. If there is no mother he gets the whole residue.
- (d) If a male or a female Parsi dies intestate leaving neither lineal descendant nor a widow or widower nor a widow of any lineal descendant the father gets the whole property with the mother in the proportion of two to one under section 55, Schedule II, Part II and if there is no mother he gets the whole.

Mother's share:

- (a) If a male Parsi intestate dies leaving a widow and children, she gets a share equal to half that of the daughter as seen in section 51(2).
- (b) In all other cases her share is as mentioned in (b), (c) and (d) of father's share specified above.

(2) 'Brothers and Sisters (other than Uterine Brothers and Sisters) and Lineal Descendants of such of them as shall have Predeceased the Intestate'

Under the Act of 1925 before its amendment, in Schedule II, Part I the words 'other than uterine brothers and sisters' did not occur and the words 'and the children or lineal descendants' occurred. The words 'and the children' are omitted as being redundant.

The words 'brothers' and 'sisters' in clause (2) of this part refer to brothers and sisters on the father's side without reference to who the mother is. All brothers and sisters by the same father, whether by the same mother or by different mothers come and share under this clause. The words 'brothers' and 'sisters' refer to brothers and sisters of the full blood as also brothers and sisters of the half blood. But a uterine brother i.e. brothers by the same mother but of different fathers will not share.

If brothers and sisters are alive, they exclude other relatives and the division between a brother and a sister will be in the proportions of 2 to 1. The expression 'brothers and sisters and the lineal descendants of such of them as shall have predeceased the intestate' has given rise to some doubt whether the word 'and' is to be taken cumulatively or whether the lineal descendants of brothers and sisters will take in preference to other relatives. When there are no brothers and sisters, but there are lineal descendants in different degrees of predeceased brothers and sisters, and also a paternal grandfather or grandmother, the children of the deceased brother or sister will take in preference to the paternal grandfather or grandmother by virtue of the provisions contained in section 55 read with Schedule II, Part II.

If there are brothers and sisters and the lineal descendants of such of them as shall have predeceased the intestate, the primary division is per stirpes, ie each surviving brother will take an equal share with the lineal descendants of the deceased brother collectively. In any given degree each male will take double the share of a female eg brother takes double the share of a sister, a nephew double the share of a niece. But the different degrees the rule of each male taking double the share of each female does not apply, eg a grandnephew does not take double the share of a niece nor a great-grandnephew double the share of grandniece. The words 'lineal descendants' are substitutional. If all the brothers and sisters are dead and there are lineal descendants in different degrees, the division is again per stirpes and not per capita.²⁸

(3) Paternal Grandfather and Paternal Grandmother

If both the paternal grandfather and paternal grandmother are alive the division will be in the proportion of 2 to 1 and if only one of them survives he or she takes the whole.

²⁸ *Hirjibhai vs. Barjorji*, 22 Bom 909 (920)

(4) Children of the Paternal Grandfather and the Lineal Descendants of such of them as have Predeceased the Intestate

After paternal grandfather and paternal grandmother come the paternal uncle and aunt (who are their children) of the intestate and their lineal descendants. They will only come in if neither paternal grandfather nor paternal grandmother is alive. If either of them is alive, he or she will exclude them. The lineal descendants of paternal uncles and aunts will only share if a paternal uncle or aunt is alive.

(5) Paternal Grandfather's Father and Mother

(6) Paternal Grandfather's Father's Children and the Lineal Descendants of such of them as have Predeceased the Intestate

Section 55 runs as:

Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow of any lineal descendant—When a Parsi dies leaving neither lineal descendants nor a widow or widower nor a widow or widower of any lineal descendant (a widow of any lineal descendant), his or her next of kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property of which he or she dies intestate. The next of kin standing first in Part II of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares ²⁹(each male shall take double the share of each female standing in the same degree of propinquity).

In the above-mentioned situation as per Section 55 of the Indian Succession Act, 1925, his or her next of kin shall be entitled to succeed in the order given in Part II of the Schedule, which is as follows—

(i) Father and mother,

²⁹ Subs. By Act (51 of 1991), for the words "each male shall take double the share of each female standing in the same degree of propinquity".

- (ii) Brothers and sisters (other than uterine brothers and sisters) and lineal descendants of such of them as shall have predeceased the intestate,
- (iii) Paternal grandfather and paternal grandmother,
- (iv) Children of the paternal grandfather and the lineal descendants of such of them as have predeceased the intestate,
- (v) Paternal grandfather's father and mother,
- (vi) Paternal grandfather's father's children and the lineal descendants of such of them as have predeceased the intestate,
- (vii) Uterine brothers and sisters and the lineal descendants of such of them as have predeceased the intestate,
- (viii) Maternal grandfather and maternal grandmother,
- (ix) Children of the maternal grandfather and the lineal descendants of such of them as have predeceased the intestate,
- (x) Widows of brothers or half brothers,
- (xi) Paternal grandfather's son's widow,
- (xii) Maternal grandfather's son's widow,
- (xiii) Widowers of deceased lineal descendants of the intestate who have not married again before the death of the intestate,
- (xiv) Maternal grandfather's father and mother,
- (xv) Children of the maternal grandfather's father and lineal descendants of such of them as have predeceased the intestate,
- (xvi) Children of the paternal grandmother and the lineal descendants of such of them as have predeceased the intestate,
- (xvii) Paternal grandmother's father and mother,
- (xviii) Children of the paternal grandmother's father and the lineal descendants of such of them as have predeceased the intestate.

The order of succession in this part of the schedule is such that the next of kin standing first shall be preferred to those standing second and so on.

The distinction between sections 54 and 55 is that under section 54 the division is to be made when there is a widow or widower but no lineal descendants, whereas this section comes into operation only when there is

neither lineal descendant nor a widow or widower nor a widow of a lineal descendant.³⁰ The scheme of distribution in Part II of Schedule II is first the paternal relatives are to be exhausted up to paternal great-grandfather and paternal great-grandmother and their lineal descendants; then the relatives from the mother's side are to be exhausted up to maternal grandfather and maternal grandmother and their children and lineal descendants; then the outsiders are allowed to get in, viz, first, widows of the brothers if they have not remarried.

Section 56 runs as:

Division of property where there is no relative entitled to succeed under the other provisions of this Chapter—Where there is no relative entitled to succeed under the other provisions of this Chapter to the property of which a Parsi has died intestate, the said property shall be divided equally among those of the intestate's relatives who are in the nearest degree of kindred to him.

This is the residuary section of Chapter III and it provides for rule of succession and mode of division of property left by a Parsi who died intestate without any heir or other relatives who could succeed under the other provisions of this Chapter. In such an eventuality property goes to the kindreds of nearest degree in equal shares.

4.4. RESUME

The Parsi community in India is governed by the Indian succession Act, 1925 in matter of succession. Sections 50 to 56 of that Act provide for the division of property of male and female intestates. In the female intestate's property, daughter and son get equal shares, whereas in the male intestate's property, son gets double the share of the daughter. The Law Commission of India in its One Hundred and Tenth Report have reviewed these provisions

³⁰ *Erasha vs. Jerbai* 4 Bom 537.

and recommended that the discrimination made between sons and daughters in the case of a male intestate's property should be removed. The Parsi community has come forward for making amendments in the law so as to do away with the discrimination between sons and daughters by providing that both will share equally in the male intestate's property also. These amendments are also made in keeping with the policy of the Government to confer rights for women in the parental property.

Sections 50 to 56 were earlier substituted by Act 17 of 1939 in order to remove doubts, supply deficiencies, incorporate so far as possible the judicial decisions which the community had then accepted. The amendments introduced by Act 51 of 1991 take the matter further keeping in view the constitutional rights of equality among men and women.