

Susamma Mathai vs Sherly Mathai on 8 October, 2026

Author: [Sathish Ninan](#)

Bench: [Sathish Ninan](#)

CNR : KLHC011045542025

2026:KER:77525

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 8TH DAY OF OCTOBER 2026 / 16TH ASWINA, 1948

CR NO. 1 OF 2025

AGAINST THE ORDER DATED 12.02.2025 IN IA 216/2017 IN OS NO.26

OF 2016 OF CIVIL COURT (SENIOR DIVISION) PUNALUR, KOLLAM

APPELLANT

SUO MOTU CIVIL REFERENCE TO EXAMINE THE VALIDITY OF SECTION 69 OF INDIAN SUCCESSION ACT, 1925 ARISING FROM ORDER DATED 12.02.2025 IN IA 216/2017 IN OS 26/2016 OF SUB COURT, PUNALUR.

BY PARTY-IN-PERSON SUO MOTU PROCEEDINGS INITIATED BY THE HIGH COURT

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF LAW &
JUSTICE, 4TH FLOOR, A-WING, SHASTRI BHAWAN,
NEW DELHI, PIN - 110001.
- 2 STATE OF KERALA,
REPRESENTED BY THE LAW SECRETARY, LAW DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001.
- 3 SHERLY MATHAI,
AGED 38 YEARS,
D/O LATE P.C.MATHAI, CHIRAYIL PARUVAKKAL CHEKAM,
KIZHAKKE MURI, PIRAVANTHOOR VILLAGE,
PATHANAPURAM TALUK, KOLLAM, PIN - 689696.

CNR : KLHC011045542025

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4 SHEENA MATHAI,
AGED 36 YEARS,
D/O LATE P.C.MATHAI, CHIRAYIL PARUVAKKAL CHEKAM,
KIZHAKKE MURI, PIRAVANTHOOR VILLAGE, PATHANAPURAM
TALUK, KOLLAM, PIN - 689696.

5 SUSAMMA MATHAI,
AGED 57 YEARS,
W/O LATE P.C.MATHAI, CHIRAYIL PARUVAKKAL CHEKAM,
KIZHAKKE MURI, PIRAVANTHOOR VILLAGE, PATHANAPURAM
TALUK, KOLLAM, PIN - 689696.

BY ADVS.
SRI.K.S.BHARATHAN
SMT.NIVEDHITHA PREM.V
SRI.K.SHAJ
SHRI.THAREEQ ANVER
SMT.MEENA.A.
SRI.VINOD RAVINDRANATH
SMT.M.R.MINI
SMT.AMEERA JOJO
SMT.MARIYA JOSEPH
SRI.ANANTHAKRISHNAN A. KARTHA
SHRI.ANISH ANTONY ANATHAZHATH
SRI.T.KRISHNANUNNI (SR.)
SHRI.STEPHEN V THOMAS
SMT.BEENA N.KARTHA
SRI.ARUN CHAND
SHRI.BHARAT VIJAY P.
SHRI.KEVIN JAMES
SHRI.AKASH JOSHI
SMT.MINU V.A.
SMT.GOPIKA GOPAL
SMT.ARCHANA P.P.
SHRI.REN SHIBU
SMT.SHEHROON PATEL A.K.
SHRI.ISSAC MELVIN B.O.
SHRI.ALVIN JOSEPH
SMT.RESMI G. NAIR, SPL.G.P TO A.G

THIS CIVIL REFERENCE HAVING COME UP FOR HEARING ON
30.09.2026, ALONG WITH OP(C).903/2026, WP(C) NO.27213/2017, THE
COURT ON 08.10.2026, DELIVERED THE FOLLOWING:

CNR : KLHC011045542025

2026:KER:77525

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 8TH DAY OF OCTOBER 2026 / 16TH ASWINA, 1948

OP(C) NO. 903 OF 2026

AGAINST THE ORDER DATED 12.02.2025 IN IA 216/2017 IN OS NO.26
OF 2016 OF CIVIL COURT (SENIOR DIVISION) PUNALUR, KOLLAM

PETITIONERS/COUNTER-PETITIONER IN IA No.216/2017 AND PLAINTIFF IN
OS No.26/2016:

SUSAMMA MATHAI,
AGED 66 YEARS,
W/O LATE P. C. MATHAI, CHIRAYIL PARUVAKKAL CHEKAM,
PIRAVANTHOOR VILLAGE, PATHANAPURAM TALUK, KOLLAM
DISTRICT, PIN - 691001.

BY ADVS.
SRI.K.SHAJ
SMT.BEENA N.KARTHA
SRI.ARUN CHAND
SHRI.BHARAT VIJAY P.
SHRI.KEVIN JAMES
SHRI.AKASH JOSHI
SMT.GOPIKA GOPAL
SHRI.REN SHIBU
SMT.SHEHROON PATEL A.K.
SHRI.ISSAC MELVIN B.O.
SMT.RIYA PHILO JOHNSON
SHRI.ALVIN JOSEPH
SMT.GISHMA P. S.
SHRI.SAJIE SHANKAR
SMT.MARY HELEN A. G.

CNR : KLHC011045542025

2026:KER:77525

OP(C) NO. 903 OF 2026

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RESPONDENTS/PETITIONERS IN IA No.216/2017 AND DEFENDANTS IN OS
NO.26/2016 :-

1 SHERLY MATHAI,
AGED 47 YEARS,
D/O LATE P.C.MATHAI, CHIRAYIL PARUVAKKAL CHEKAM,
KIZHAKKE MURI, PIRAVANTHOOR VILLAGE, PATHANAPURAM
TALUK, KOLLAM DISTRICT, REPRESENTED BY POWER OF
ATTORNEY HOLDER, ANNAMMA THOMAS, AGED 86 YEARS,
W/O G.THOMAS, GREEN LAND, KADAICKADU MURI,
CHERIYANADU VILLAGE, KOLLAKADAVU P.O., CHENGANNUR
TALUK, ALAPPUZHA DISTRICT., PIN - 690509.

2 SHEENA MATHAI
AGED 45 YEARS
D/O LATE P.C.MATHAI, CHIRAYIL PARUVAKKAL CHEKAM,

KIZHAKKE MURI, PIRAVANTHOOR VILLAGE, PATHANAPURAM
TALUK, KOLLAM DISTRICT, REPRESENTED BY POWER OF
ATTORNEY HOLDER, ANNAMMA THOMAS, AGED 86 YEARS,
W/O G.THOMAS, GREEN LAND, KADAIKKADU MURI, CHERIYANADU
VILLAGE, KOLLAKADAVU P.O., CHENGANNUR TALUK,
ALAPPUZHA DISTRICT, PIN – 690509.

THIS OP (CIVIL) HAVING COME UP FOR HEARING ON 30.09.2026,
ALONG WITH CR.1/2025 AND CONNECTED CASES, THE COURT ON 08.10.2026,
DELIVERED THE FOLLOWING:

CNR : KLHC011045542025

2026:KER:77525

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE SATHISH NINAN
&
THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR
THURSDAY, THE 8TH DAY OF OCTOBER 2026 / 16TH ASWINA, 1948
WP(C) NO. 27213 OF 2017

PETITIONER:

ROY PHILIP
AGED 47 YEARS
S/O.LATE P.PHILIPOSE, PUTHENITTIYIL HOUSE, VENMONEY
P.O., VENMONEY VILLAGE, CHENGANNUR TALUK, ALAPPUZHA
DISTRICT, KERALA STATE, PIN-689509.

BY ADVS.
SHRI.VARGHESE C.KURIAKOSE
SRI.P.J.JOSE
SMT.SEENU SADIQUE

RESPONDENTS:

- 1 UNION OF INDIA
REP. BY SECRETARY, DEPARTMENT OF LAW & JUSTICE, CENTRAL
SECRETARIAT, NEW DELHI-110001.
- 2 STATE OF KERALA
REP. BY CHIEF SECRETARY, SECRETARIAT,
TRIVANDRUM-695001.

BY ADVS.
SRI.GIRISH KUMAR.V., CGC
SRI.K.SHAJ
SHRI.SAJJU.S
SRI.RENJIT GEORGE
SMT.BEENA N.KARTHA
SRI.ARUN CHAND
SMT.VARSHA K.A.
SMT.GOPIKA GOPAL
SHRI.REN SHIBU
SHRI.NIKHIL KRISHNA A.S.

CNR : KLHC011045542025

WP(C) NO. 27213 OF 2017

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SMT.SHEHROON PATEL A.K.
SHRI.ISSAC MELVIN B.O.
SMT.RIYA PHILO JOHNSON
SHRI.ALVIN JOSEPH
SHRI.JOEL KENNETH JOHNSON
SHRI.SAJIE SHANKAR
SMT.FEBIN FATHIMA
SMT.ISHMA T. B.
SHRI.MONSU JOSEPH GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON
30.09.2026, ALONG WITH CR.1/2025 AND CONNECTED CASES, THE COURT ON
08.10.2026, DELIVERED THE FOLLOWING:

CNR : KLHC011045542025

2026:KER:77525

SATHISH NINAN &
P. KRISHNA KUMAR, JJ.
= = = = =
CR No.1 of 2025,
W.P (C) No.27213 of 2017 &
OP(C) No.903 of 2026
= = = = =
Dated this the 8th day of October, 2026

C. R.

J U D G M E N T

Sathish Ninan, J.

"(i) Is [Section 69](#) of the Indian Succession Act, 1925, being restrictive in its operation to Christians, Parsis and Jews, violative of Part III of the Constitution of India?

(ii) Is [Section 69](#) of the Indian Succession Act, 1925 in direct conflict with [Section 20](#) thereof ?"

The questions posed are before us on a reference.

2. We have had the advantage of hearing the learned Senior Counsel Sri.T.Krishnanunni, the learned counsel Sri.Varghese C. Kuriakose, Dr.Kuruvila Mathew and Sri.K.Shaj, the learned Central Government Counsel Sri.K.S.Bharathan and Sri.Girish Kumar V., and also Smt.Resmi Nair, the learned Senior Government Pleader. We also had the benefit of the voluminous materials supplied by the learned counsel to assist the court.

3. [The Indian Succession Act, 1925](#) is a consolidating Act. It consolidated the following Acts:-

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- (1) [The Succession \(Property Protection\) Act, 19](#) of 1841.
 - (2) The Indian Succession Act, 10 of 1865.
 - (3) The Parsi Intestate Succession Act, 21 of 1865.
 - (4) The Hindu Wills Act, 21 of 1870.
 - (5) The Married Women's Property Act, 3 of 1874, [Section 2](#).
 - (6) [Probate and Administration Act, 5](#) of 1881; Act 6 of 1889; Act 2 of 1890 and Act 8 of 1903.
 - (7) The District Delegates Act, 6 of 1881.
 - (8) [The Succession Certificate Act, 7](#) of 1889.
 - (9) The Native Christian Administration of Estates Act 7 of 1901.
4. The preamble of the Act states that it is,

"[An Act](#) to Consolidate the law applicable to intestate and testamentary succession".

With regard to Hindus, intestate succession is governed by the [Hindu Succession Act, 1956](#). With regard to Muslims, they have their personal law. [Section 30](#) of the Hindu Succession Act, 1956 states that, with regard to Wills, the provisions of the [Indian Succession Act, 1925](#) applies.

5. [Part VI of the Indian Succession Act, 1925](#) deals with testamentary succession. [Section 57](#), which is the first Section in the Part, states that, of the various provisions in that Part, only those provisions which are mentioned in [Schedule III to the Act](#) shall apply to Wills made by Hindu, Buddhist, Sikh or Jaina;

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and that too, only subject to the restrictions and modifications specified in that schedule. [Section 69](#), with which we are presently concerned, falls under Part VI. The Section reads thus:

"[S.69](#). Revocation of will by testator's marriage Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy. Explanation: Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property."

The Section provides for the automatic revocation of an existing Will upon marriage of the testator. The Section is not made mention of in Schedule III, and hence in the light of [Section 57](#) above, [Section 69](#) does not apply to Hindu, Buddhists, Sikh or Jaina. Even though from [Section 57](#) it is explicit that the Section is not applicable to Hindus, [Section 57](#) contains a proviso reinforcing that marriage does not revoke the Will of a Hindu. The proviso, referring to Will by a Hindu states:-

"Provided that marriage shall not revoke any such Will or codicil".

6. [Section 70](#) of the Indian Succession Act, 1925 reads thus:-

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"70. Revocation of unprivileged Will or codicil.--No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same."

It again refers to revocation of a Will by marriage. Schedule III makes [Section 70](#) applicable to Hindus, but with the modification of omitting the words relating to, revocation by marriage.

7. From the above, the intention of the legislature is candid, that the provision in the [Indian Succession Act, 1925](#), relating to revocation of a pre-existing Will upon marriage, shall not apply to Hindus. There has been a conscious exclusion of Hindus from the applicability of the said provision.

8. Then the question is, why such consequence is provided for the Wills executed by Christians alone; does it fail Part III of the Constitution of India, especially [Article 14](#) and [15](#).

9. Firstly, we proceed to consider briefly as to how this provision, with varying applicability to Christians and Hindus, came to be incorporated in the [Indian Succession Act, 1925](#) and the reason thereof.

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-: 5 :-

10. We have already noted that the Indian Succession is a consolidating statute. [The Act](#) was preceded by the Indian Succession Act, 1865. The said Act did not apply to Hindus (which included Jains and Sikhs), Muhammadans and Budhists. [Section 56](#) of the 1865 Act, as in the case of the 1925 Act, provided for automatic revocation of Will consequent on the marriage of the testator. The provision in both the Acts are verbatim. It is noticed that the said provision is adapted from the English Wills Act, 1837 which was brought in to the Indian Wills Act, 1838. [Section 18](#) of the English Wills Act read thus:

"XVIII. Will to be revoked by Marriage.

And be it further enacted, That every Will made by a Man or Woman shall be revoked by his or her Marriage (except a Will made in exercise of a Power of Appointment, when the Real or Personal Estate thereby appointed would not in default of such Appointment pass to his or her Heir, Customary Heir, Executor, or Administrator, or the Person entitled as his or her next of Kin, under the Statute of Distributions)."

11. Whitley Stokes in his commentaries on the Indian Succession Act, 1865, explained the underlying objective and the purpose behind the Rule thus:-

"The principle upon which a Will is revoked by marriage is, that marriage creates such a change in the testator's condition such a new obligations and CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 6 :- duties, that they raise an inference that a testator would not adhere to a Will made previous to their existence. (See 1 Hagg. 711, 712)."

Evidently, the framers of the provision perceived the fact that, in the life of an individual, marriage creates a fundamental change in his life, circumstances and approach. New duties and obligations spring up. A fundamental change in the familial set up happens; priorities change. There is an ordinary presumption that he would not adhere to the Will if any, he had previously executed. Therefore, there was a wholesome purpose underlying such provision.

12. A couple of years later, the legislature introduced the Bill preceding the [Hindu Wills Act](#). The Bill was published in the Gazette of India dated 02.10.1869. This was followed by the promulgation of the [Hindu Wills Act, 1870](#). [Section 2](#) of the Act made certain provisions in the Indian Succession Act, 1865, relating to testamentary succession, applicable to Hindus. Noticeably, the Act was made applicable only to the territories subject to the Lieutenant-Governor of Bengal and to the towns of Madras and Bombay; the reason whereof, will be adverted to shortly.

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13. Quite contrary to Section 56 of the Indian Succession Act, 1865 which provided for automatic revocation of Will on the marriage of the testator, [Section 3](#) of the Hindu Wills Act, 1870 expressly provided that marriage would not revoke a Hindu will or codicil. The provision reads:

"Provided that marriage shall not revoke any such will or codicil."

The Statement of Objects and Reasons of the Bill is explicit as to the circumstances in which the [Hindu Wills Act](#) was brought in and why all the provisions of the Indian Succession Act, 1865 were not made applicable. Many authors have in their literature banked upon the Statement of Objects and Reasons, which was published in the Gazette of India dated 02.10.1869, to explain the explicitly contradictory provision in the Acts with regard to revocation of Will on marriage and also for the limited adoption of provisions in the Succession Act, 1865 to the [Hindu Wills Act](#).

14. In the Statement of Objects and Reasons to the Hindu Wills Act, the legislature noticed that the concept of Will was practically foreign to Hindu law. Further, they had due regard to the societal set up and practices which were then prevalent. They were very cautious in interfering with the then existing custom CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 8 :- and sentiments of the people. A reader would be curious as to why such a provision, [Section 56](#), which apparently has a benevolent object/purpose viz. the protection of a newly formed family, was not made applicable to Hindus. While excluding the operation of [Section 56](#) to Hindus, the legislature had due consideration of the fact that, polygamy was prevalent in the community and hence a marriage may not create such a change in the testator's mindset that he would not choose to adhere to a Will previously executed by him. The relevant portion of the statement of objects and reasons reads thus:-

"[Sections 48, 49, 50, 51, 54, 55, 57](#) to [60](#) relate (inter alia) to the execution, revocation, and revival of wills and codicils. It will be seen that the Bill expressly provides that marriage shall not operate as a

revocation. It is the opinion of competent authorities that in the case of polygamist, marriage does not create such a change in the testator's condition as to raise a presumption that he would not adhere to a will made previously. The principle, therefore, on which marriage revokes a will in England, does not apply."

The Gazette is dated 02.10.1869. It is with great difficulty that we could secure a copy of the gazette and is being appended to this judgment. Thus, the reason why certain provisions including CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 9 :- Section 56 of the Indian Succession Act, 1865 was not made applicable to Hindus, stand well demonstrated.

15. In the commentaries on [Hindu Wills Act](#) by Mahendra Chandra Majumdar, he referred to a circular issued from the Home Department to the local governments with regard to the extension of the testamentary clauses of the Indian Succession Act, 1865, and seeking for their opinion upon the same. The relevant portion of the opinions received in reply reads thus:-

"Some months after the passing of Act X, a circular dated 22 nd August, 1865, was issued from the Home Department to the several Local Governments and competent European and Indian gentlemen, respecting the extension to the Indians of its testamentary clauses, pointing out the desirability of such extension, and requesting their opinion as to the expediency and advisability of the same. The general result of the opinions received in reply to this circular, may be expressed as follows :-

Ist.-- "The practice of making nuncupative Wills (2) should be abolished, and the provisions of the [Indian Succession Act](#), as to the execution of Wills and codicils (3) should be adopted in the case not only of Hindus but Mahomedans."

2nd--"Marriage should not, in the case of a Native testator, revoke his will (4). In other respects the provisions of the [Succession Act](#) as to revocation should be followed."

3rd--"It is inexpedient to impose, in the case of Natives, any restrictions on the exercise of the testamentary power in favour of religious or charitable uses, or for the creation of perpetuities (5)."

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4th--"The provisions of the [Succession Act](#) as to the interpretation of wills should, with some few exceptions, be adopted."

5th--"Probate should be made compulsory (6), and the provisions of the [Succession Act](#) as to administration with will annexed and as to the powers and duties of an executor, should be extended with some slight modifications" (7).

What followed, is Act XXI of 1870, "[The Hindu Wills Act](#)." Mahomedans were excluded from the operation of this Act. The reason is,--"Muhammadans have an elaborate system of testamentary law, which, like the rest of their code, they regard as of divine origin. To impose on Muhammadans a body of rules which would have the effect of superseding any part of their existing law, might create alarm and discontent, and would therefore be impolitic" (1). But as regards Hindus, the case stood on a different footing. Hindu law ignores testamentary succession, and the natives of this country are mostly Hindus, or men governed by Hindu law. The law of testamentary succession is a foreign system. Naturally, therefore, the Legislature had to proceed with great caution. Thus it was thought expedient, first, to allow the practice of making wills among the Hindus grow and

develope spontaneously; and then, after it had been sufficiently established, to introduce rules for regulating that practice. So that, when the Hindus should have themselves adopted the practice of making wills, the Legislature might deem it justifiable to subject them "to all expedient restrictions."

16. As was noticed earlier, the applicability of the [Hindu Wills Act](#) was confined to the three presidency towns. Majumdar in his Book refers to the reason for such confinement. It is pointed out that the Privy Council had in *Sreemutty Soorjeemoney Dossee v. Denobundoo Mullick*, (1862) 9 Moore's Indian Appeals 123: 19 E.R. 688, declared CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 11 :- that the testamentary power of Hindus in Bengal was well established as early as in the year 1862. Similar was the case in Madras in 1863 [*Vallinayagam Pillai v. Pachche* (1 M.H.C.R. 326)] . With regard to Bombay in *Narottam Jagjivan v. Narsandas Harikisandas* (1866) 3 Bom. H.C.R. (A.C.J.) 6, it was noticed that the exercise of testamentary power was evident at least from the year 1866. It is therefore, that the operation of the Act was made applicable to those places. The author also referred to the fact that Mahomedans have an elaborate system of testamentary law, which, like the rest of their Code, is regarded as of divine origin, and that it would be impolitic to supersede them.

17. As was noticed earlier [Section 3](#) of the Hindu Wills Act specifically provided that marriage shall not revoke any such Will or codicil, in contra distinction to Section 56 of the Indian Succession Act, 1865. We have already referred to the reason for such difference. The provision in the 1865 Act (section

56) was imported into the [Indian Succession Act, 1925](#).

18. The Law Commission of India, in its 110 th report on the [Indian Succession Act](#), submitted in February, 1985, had noticed CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 12 :- that the object underlying [Section 69](#) of the Indian Succession Act is, protection of the interest of the new family. To quote:

"The object of the Rule providing for revocation is to protect the interests of the new family of the testator, against accidental survival of the old Will".

It is important to notice that, while monogamy was the rule among Christians, the polygamy was prevalent among Hindus, though it was not well appreciated (Mulla on Principles of Hindu Law 14 th Edition Page 510, Tagore Law Lecturers 1878 on the Hindu Law of Marriage and Stridhan, The Evolution of Hindu Marriage by Chatterjee, Krishnnath 1964, Parayankandiyal Eravath Kanapraavan Kalliani Amma (Smt) And Others v. K. Devi And Others (1996 (4) SCC 76), Martha Samadhanam David Complainant- v. Sudha Accused (AIR 1950 Karnataka 26). It was with the promulgation of the [Hindu Marriage Act, 1955](#) that polygamy was prohibited and monogamy was made the rule. The Parliamentary discussions on the Hindu Code and the speeches of Dr.Ambedkar therein are explicit with regard to the enforcement of monogamy as the rule therefrom.

19. Having traced the circumstances under which the contradictory provisions with regard to revocation of Will on marriage came to be incorporated in the [Indian Succession Act, 1925](#) with regard to Christians and Hindus, we proceed to consider CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 13 :- whether [Section 69](#) violates Part-III of the Constitution of India.

20. Being a pre-constitutional law, the presumption of constitutionality may not ipso facto apply. As it is well established, the provision has to pass the muster of the twin tests namely (i) that the classification is based on an intelligible differentia and, (ii) the rational nexus to the object sought to be achieved [[K. Thimmappa v. Chairman, Central Board of Directors, SBI](#) (AIR 2001 SC 467)]. The twin tests of reasonable classification and rational nexus to object was reiterated by the Apex Court in [D.S.Nakara & Ors v. Union of India](#) [(1983) 1 SCC 305]:-

"14 Thus the fundamental principle is that [Art.14](#) forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have rational nexus to the object sought to be achieved by the statute in question"

21. In [State of Bombay and Another v. F. N. Balsara](#) (AIR 1951 SC 318), the Apex Court after referring to its earlier judgment in [Chiranjit Lal v. The Union of India](#) (1950 SCR 869) summarised the meaning, principle and scope of [Article 14](#) thus:-

- "1. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 14 :- appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.
2. The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no Classification at all and no difference peculiar to any individual or Class and not applicable to any other individual or Class, and yet the law hits only a particular individual or Class.
3. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different Classes of persons often require separate treatment.
4. The principle does not take away from the State the power of Classifying persons for legitimate purposes.
5. Every Classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.
6. If a law deals equally with members of a well defined Class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.
7. While reasonable Classification is permissible, such Classification must be based upon some real and substantial distinction bearing a reasonable and must relation to the object sought to be attained, and the Classification cannot be made arbitrarily and without any substantial basis."

It is of significance to note that, the Apex Court held that every law need not have universal application and that varying needs of different classes of persons requires separate treatment CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 15 :- based on the circumstances and, a reasonable classification to achieve the same is permissible.

22. The twin tests of reasonableness in classification and the nexus with the object sought to be achieved was again considered by the Apex Court in [Ram Krishna Dalmia v. Justice S.R.Tendolkar](#) (AIR 1958 SC 538). Therein at paragraph 11 referring to its earlier judgment in [Budhan Choudhry v. The State of Bihar](#) (1955 (1) SCR 1045), it was held, thus:-

"11. The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on [Article 14](#) of the Constitution. In [Budhan Choudhry v. State of Bihar](#) a Constitution Bench of seven Judges of this Court at p. 1048-49 explained the meaning and scope of [Article 14](#) as follows;

"The provisions of [Article 14](#) of the Constitution have come up for decision before this Court in a number of cases, namely [Chiranjit Lal Choudhuri v. Union of India](#), 1950 SCR 869 : (AIR 1951 SC 41) (B), [State of Bombay v. F.N.Balsara](#), 1951 SCR 682 : (AIR 1951 SC 318) (C), [State of West Bengal v. Anwar Ali Sarkar](#), 1952 SCR 284 : (AIR 1952 SC 75) (D), [Kathi Raning Rawat v. State of Saurashtra](#), 1952 SCR 435 : (AIR 1952 SC 123) (E), [Lachmandas Kewalram v. State of Bombay](#), 1952 SCR 710 : (AIR 1952 SC 235) (F) [Qasim Razvi v. State of Hyderabad](#), 1953 SCR 589 : (AIR 1953 SC 156) (G) and [Habeeb Mohammad v. State of Hyderabad](#), 1953, SCR 661 : AIR 1953 SC 287) (H). It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while [article 14](#) forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order,

however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 16 :- classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and

(ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that [Article 14](#) condemns discrimination not only by a substantive law but by a law of procedure."

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish-

- (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
- (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
- (c) That it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
- (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
- (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 17 :-
- (f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the Court when it is called upon, to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

23. In Special Courts Bill, 1978, In re (1979) 1 SCC 380, the principles underlying the equality class under [Article 14](#) of the Constitution were restated. The same were referred to in [Amarendra Kumar Mohapatra v. State of Orissa and Ors](#) (2014) 4 SCC 583. It reads thus:-

"53. A comprehensive review of the law is, in our opinion, unnecessary at this stage in view of the Constitution Bench decision of this Court in Special Courts Bill, 1978, In re (1979) 1 SCC 380 wherein this Court undertook that exercise and noticed as many as thirteen propositions that bear relevance to any forensic determination of the validity of a law by reference to the equality clause enshrined in [Article 14](#) of the Constitution. Some of those principles were stated by this Court in the following words:

"(1) *** (2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular

ends in giving effect to its policies, and it CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 18 :- must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of [Article 14](#) is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 19 :- even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while [Article 14](#) forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

*** (11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality."

24. In [Pannalal Bansilal v. State of A.P.](#) (1996 AIR SCW 507) it was held:

"12. The first question is whether it is necessary that the legislature should make law uniformly applicable to all religious or charitable or public institution CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 20 :- and endowments established or maintained by people professing all religions. In a pluralist society like India in which people have faith in their respective religions beliefs or tenets propounded by different religions or their off shoots, the founding fathers, while making the Constitution were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes sex or sub-section in the society speaking different languages and dialects in different regions and provided secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualise diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter productive to unity and integrity of the nation. In a democracy governed by rule of law gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would therefore be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages."

Pannalal Bansilal was referred to by the Apex Court in its recent judgment in [Arjun Dass v. State of A.P.](#) (2026 SCC OnLine SC 992).

25. The Apex Court has ruled that the varying needs of different classes of persons often require separate/differential treatment [[Chiranjit Lal Chowdhuri v. Union Of India And Others](#) (AIR 1951 SC 41), [State of Bombay and another vs. F.N Balsara](#) (AIR 1951 SC 328), [Kedar Nath Bajoria v. State Of W.B](#) (AIR 1953 SC 404)]. In [Ram Krishna Dalmia v. Justice S.R. Tendolkar](#) (AIR 1958 CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 21 :- SC 538), the Apex Court held that even a single individual can form a class on account of special circumstances or reasons. In [Kedar Nath Bajoria v. State Of W.B](#) (AIR 1953 SC 404) the Apex Court held that the classification need not be logically complete. However, reasonableness is an essential element of equality and non- arbitrariness. Arbitrariness and equality are sworn enemies ([Maneka Gandhi v. Union Of India And Another](#) (AIR 1978 SC 597), [E.P Royappa v. State Of Tamil Nadu And Another](#) (AIR 1974 SC 555), [Ramana Dayaram Shetty v. International Airport Authority Of India And Others](#) (AIR 1979 SC 1628). In [Madhu Kishwar v. State of Bihar](#) (1996 AIR SCW 2178), the Apex Court held:-

"Rules of succession are, indeed susceptible of providing differential treatment, not necessarily equal. Non-uniformities would not in all events violate [Article 14.](#)"

The Apex Court, referring to the customs, traditions and usages of various communities, observed that non-uniformities especially in Rules of Succession providing differential treatment need not necessarily violate [Article 14](#), and that cautious approach need to be adopted.

26. In [Kathi Raning Rawat v. State of Saurashtra](#) [(1952) 1 SCC 215] , the "doctrine of classification" is explained thus:

"20. I think that a distinction should be drawn between "discrimination without reason"

and "discrimination with reason". The whole doctrine of classification is based on this distinction and on the well-known fact that the circumstances which govern one set of CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 22 :- persons or objects may not necessarily be the same as those governing another set of persons or objects, so that the questions of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances."

27. Having noticed the reason for the differential treatment of Hindus and Christians with regard to Wills, there is no difficulty in finding that the classification is based on an intelligible differentia, and that there is a rationale nexus to the object sought to be achieved. Therefore, at the time when the Constitution of India came into force, the provision in question did satisfy the twin tests and was not in conflict with Part III thereof.

28. With the promulgation of the [Hindu Marriage Act, 1955](#), the substratum for the classification seem to have vanished. [Section 5\(i\)](#) of the Act made monogamy the Rule. With regard to familial relationship, the distinction that was drawn earlier, ceased to exist. In the light thereof, does [Section 69](#) of the Indian Succession Act fail Part III of the Constitution, needs to be analysed.

29. We find that, as being demonstrated hereunder, the intelligible differentia to sustain [Section 69](#) still exists. The Pristine Hindu Law zealously guarded the rights of a married CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 23 :- woman. Upon marriage, she was entitled to the right of maintenance from the husband and his assets. The right fastened on marriage. Section 18(1) of the Hindu Adoption and Maintenance Act statutorily recognised the said right. The Section reads thus:-

"18. Maintenance of wife. --

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time."

30. In [Raghubar Singh and Ors v. Gulab Singh and Ors](#) (1998 (6) SCC 314) the Apex Court, referring to the celebrated judgment in [V. Tulasamma and others v. Sesha Reddy \(Dead\) by L.Rs.](#), (1977 (3) SCC 99), held, "19.Dealing with the provisions of the [Hindu Succession Act, 1956](#), this Court in [V. Tulasamma and others v. Sesha Reddy \(Dead\) by L.Rs.](#), (supra) observed:

"[The Act](#) is a codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. [The Act](#) confers upon Hindu females full rights of inheritance, and sweeps away the traditional limitations on her powers of dispositions which were regarded under the Hindu law as inherent in her estate....."

20. Fazal Ali, J. in his exhaustive judgment, dealing with the question of the pre-existing right of a Hindu widow laid down:

"20. Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidents and characteristics of a Hindu woman's right to maintenance:

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 24 :- the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e. it is a jus ad rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co- ownership is of a subordinate nature; and (6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her

maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance."

A Full Bench of this Court in *Sulochana v Anitha* [2026 LiveLaw (Ker) 29] has affirmed the right of a Hindu woman for maintenance, upon marriage.

31. Noticeably, a woman on marriage, is treated as, as the Apex Court has stated, "a sort of co-owner", in respect of her husband's property. Here it is significant to note that, in total contrast, [Section 20](#) of the Indian Succession Act provides that marriage shall not create interest in the property of the spouse.

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The Section is not extracted here since it is being dealt with later, in a different context. Hindus are specifically exempted from the application of the Section. [The Divorce Act](#) enables a claim for maintenance only upon a proceeding in relation to the marriage. As was noticed earlier, the object underlying [Section 69](#) is to protect the new family. The Hindu Adoption and Maintenance Act sufficiently takes care of the same. This further fortifies our view regarding intelligible differentia and reasonableness of classification. Conspicuously there is no similar personal law for Christians imposing such obligation. Therefore, we find reasonableness in the classification and nexus with the object to be achieved, to over-rule the challenge against the provision as violative of [Article 14](#) of the Constitution.

32. There is yet another approach to the issue. As was noticed, the object underlying [Section 69](#) is wholesome, to protect the new spouse and family. In the book, " Law of Wills", by Advocate T.P. Gopalakrishnan, published by the Law Book Company, Allahabad, in the year 1963, at page 18, the learned author commented:

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"Whatever justification there was in the past, strict monogamy is now enforced by the [Hindu Marriage Act, 1955](#). The proviso to [Section 57](#) of the Indian Succession Act must therefore, be delayed". We had noted initially that the proviso to [Section 57](#) affirms that regarding Hindus, marriage shall not revoke Will. The author suggests that the proviso be deleted, indicating that the provision for revocation of Will on marriage be made applicable to Hindus also, monogamy having been made the law. The mere fact that the statutory provision containing a laudable object as noted, was not extended to Hindus, by itself, shall not be a ground to hold it as violative of [Article 14](#) of the Constitution.

33. In [The State of Gujarat and Another v. Shri Ambica Mills Ltd., Ahmedabad](#) [(1974) 4 SCC 656], the Apex Court held that a challenge against a statute based on "under-inclusion" is not readily accepted by the courts. This principle was followed in, [The Superintendent and Remembrancer of Legal Affairs, West Bengal v. Girish Kumar Navalakha and Others](#) [(1975) 4 SCC 754] and [Ajoy Kumar Banerjee v. Union of India](#) [(1984) 3 SCC 127] . The

said judgments were referred to and relied on in a later judgment of the Apex Court in [Amarendra Kumar Mohapatra v. State of Orissa](#) [(2014) 4 SCC 583]. Therein it was stated as under:

"57. Coming then to the question of "under-inclusion" we need to keep in mind that a challenge based on "under-inclusion" is not readily accepted by the CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 27 :- courts. The Constitution Bench's decision of this Court in [State of Gujarat v. Shri Ambica Mills Ltd.](#) (1974) 4 SCC 656, dealt with the question of a classification which was under inclusive and declared that having regard to the real difficulties under which legislatures operate, the Courts have refused to strike down legislations on the ground that they are under-inclusive. The Court observed:

"55. A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification."

56. The first question, therefore is, whether the exclusion of establishments carrying on business or trade and employing less than 50 persons makes the classification under-inclusive, when it is seen that all factories employing 10 or 20 persons, as the case may be, have been included and that the purpose of the law is to get in unpaid accumulations for the welfare of the labour. Since the classification does not include all who are similarly situated with respect to the purpose of the law, the classification might appear, at first blush, to be unreasonable. But the Court has CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 28 :- recognised the very real difficulties under which legislatures operate--difficulties arising out of both the nature of the legislative process and of the society which legislation attempts perennially to reshape--and it has refused to strike down indiscriminately all legislation embodying classificatory inequality hereunder consideration. Mr Justice Holmes, in urging tolerance of underinclusive classifications, stated that such legislation should not be disturbed by the Court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched. 194 US 267 (1904)"

(emphasis supplied)

58. The above was followed by this Court in Supt. and [Remembrancer of Legal Affairs v. Girish Kumar Navalakha](#) (1975) 4 SCC 754 wherein this Court held that some sacrifice of absolute equality may be required in order that legal system may preserve the flexibility to evolve new solutions to social and economic problems. This Court said:

"8. Oftentimes the courts hold that under-inclusion does not deny the equal protection of laws under [Article 14](#). In strict theory, this involves an abandonment of the principle that classification must include all who are similarly situated with respect to the purpose. This under-inclusion is often explained by saying that the legislature is free to remedy parts of a mischief or to recognise degrees of evil and strike at the harm where it thinks it most acute.

10. There are two main considerations to justify an under- inclusive classification. First, administrative necessity. Second, the legislature might not be fully convinced that the particular policy which it adopts will be fully successful or wise. Thus to CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 29 :- demand application of the policy to all whom it might logically encompass would restrict the opportunity of a State to make experiment. These techniques would show that some sacrifice of

absolute equality may be required in order that the legal system may preserve the flexibility to evolve new solutions to social and economic problems. The gradual and piecemeal change is often regarded as desirable and legitimate though in principle it is achieved at the cost of some equality. It would seem that in fiscal and regulatory matters the court not only entertains a greater presumption of constitutionality but also places the burden on the party challenging its validity to show that it has no reasonable basis for making the classification."

59. The above decisions were followed in [Ajoy Kumar Banerjee v. Union of India](#) (1984) 3 SCC 127 wherein this Court observed:1 "54. ... [Article 14](#) does not prevent legislature from introducing a reform i.e by applying the legislation to some institutions or objects or areas only according to the exigency of the situation and further classification of selection can be sustained on historical reasons or reasons of administrative exigency or piecemeal method of introducing reforms. The law need not apply to all the persons in the sense of having a universal application to all persons. A law can be sustained if it deals equally with the people of well-defined class-employees of insurance companies as such and such a law is not open to the charge of denial of equal protection on the ground that it had no application to other persons."

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34. The principle of under-inclusiveness was again referred to by the Apex Court in In Re : [Section 6A](#) of the Citizenship Act, 1955 [(2024) 16 SCC 105]. In [The Superintendent and Remembrancer of Legal Affairs, West Bengal v. Girish Kumar Navalakha and Others](#) (supra) , the Apex Court, referring to the principle of under-inclusion held that, it is within the wisdom of legislature to decide upon the extension of a legislation, depending on the social issues. It was held:-

"8. Oftentimes the courts hold that under-inclusion does not deny the equal protection of laws under [Article 14](#). In strict theory, this involves an abandonment of the principle that classification must include all who are similarly situated with respect to the purpose. This under-inclusion is often explained by saying that the legislature is free to remedy parts of a mischief or to recognize degrees of evil and strike at the harm where it thinks it most acute.

9. The courts have recognised the very real difficulties under which legislatures operate -- difficulties arising out of both the nature of the legislative process and of the society which legislation attempts perennially to re-shape -- and they have refused to strike down indiscriminately all legislation embodying classificatory inequality here under consideration. Mr Justice Holmes, in urging tolerance of under-inclusive classifications, stated that such legislation should not be disturbed by the court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched. See *Missouri K. and T. Rly. v. May* (1903) 194 US 267. What, then, are the fair reasons for non-extension? What should a court do when it is faced with a law making an under-inclusive classification in areas relating to economic and tax matters?

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10. There are two main considerations to justify an under-inclusive classification. First, administrative necessity. Second, the legislature might not be fully convinced that the particular policy which it adopts will be fully successful or wise. Thus to demand application of the policy to all whom it might logically encompass would restrict the opportunity of a State to make experiment. These techniques would show that some sacrifice of absolute equality may be required in order that the legal system may preserve the flexibility to evolve new solutions to social and economic problems. The gradual and piecemeal change is often regarded as desirable and legitimate though in principle it is achieved at the cost of some equality."

35. The following statements in [State of Gujarat v. Shri Ambica Mills, Ahmedabad](#) (AIR 1974 SC 1300) are also of significance:-

"Mr. Justice Holmes, in urging tolerance of under inclusive classification, stated that such legislation should not be disturbed by the Court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched. See *Missouri K. and T Rly. v. May*, 1903 (194) US 267 at p. 269. What, then, are the fair reasons for non extension? What should a court do when it is faced with a law making an under inclusive classification in areas relating to economic and tax matters? Should it, by its judgment, force the legislature to choose between inaction or perfection?"

57. The legislature cannot be required to impose upon administrative agencies tasks which cannot be carried out or which must be carried out on a large scale at a single stroke.

"If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. There is no doctrinaire requirement that the legislation should be CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 32 :- couched in all embracing terms." (See *West Coast Hotel Company v. Parrish*), 1936 (300) US 379 at p. 400.)"

36. In *In re The Special Courts Bill*, 1978 (AIR 1979 SC 478), it was held "A legislative authority acting within its field is not bound to extend its regulation to all cases which it might possibly reach. The legislature is free to recognise degrees of harm and it may confine the restrictions to those classes of case where the need seemed to be clearest (see *Mutual Loan Co. v. Martell*) 1911 (56) L Ed. 175 at p. 180. In short, the problem of legislative classification is a perennial one, admitting of no doctrinaire definition."

"Once an objective is decided to be within legislative competence, however, the working out of classification has been only infrequently impeded by judicial negatives."

"All or nothing" may lead to unworkable rigidity. Principled compromises are permissible in law not tampered with. The Bill in question, viewed in this light, passes the constitutional test."

The principle of under-inclusion was relied on by a Division Bench of this Court in [M. Vijayakumar v. State of Kerala](#) (2022 SCC OnLine Ker. 5949).

37. Our attention was drawn to the fact that the provisions of the [Indian Succession Act](#) had received attention of the parliament and various provisions were specifically made applicable by reference, in the [Special Marriage Act, 1954](#), [Hindu Succession Act, 1956](#), The Prohibition of Benami Property CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 33 :- Transaction Act, 1988, and The Bharatiya Sakshya Adhiniyam, 2023. Hence, the presumption of constitutionality applies, it is argued. Though by virtue of [Article 372](#) of the Constitution, the pre-constitutional law survive and such laws continue to apply, it does not mean that its constitutionality has been tested. It still continues to be pre-constitutional law and the presumption attached to post-constitutional laws cannot be extended to it.

38. To challenge [Section 69](#) as violative of Part-III, heavy reliance is placed on the judgment in [John Vallamattom v. Union of India](#) [(2003) 6 SCC 611]. Therein, the Apex Court struck down [Section 118](#) of the Succession Act as violative of Part-III. It is contended that on the very same reasonings therein, [Section 69](#) is also liable to be struck down. [Section 118](#) reads thus:-

"118. Bequest to religious or charitable uses.--No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons."

The said provision was also applicable only to Christians. Therein the Apex Court noted that, a testator would be entitled to bequeath his property for religious and charitable purposes if he has a wife but, is precluded from doing so if he has a nephew CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 34 :- or niece or a near relative. It was also noticed that gifts for charitable and religious purposes are objects considered beneficial to mankind and has been acknowledged in religious text books and [Section 18](#) of the Transfer of property Act. The provision for a 12 month period therein was noted to have no relation for the purpose of the Will. The Apex Court held the stipulations as above to be unreasonable and arbitrary, and that there is no rationale behind the same. It was accordingly that [Section 118](#) was held to be unreasonable, arbitrary and discriminatory and therefore, violative of [Article 14](#) of the Constitution.

39. It is relevant to note that in [Preman v. Union of India](#) [1998 (2) KLT 1004], this Court had also, on similar reasonings, held [Section 118](#) to be unconstitutional.

40. As could be noticed, [Section 118](#) totally curtailed the right of a testator to bequeath the property. However, that is not the case with [Section 69](#). The testator is free to execute bequest in respect of his property anytime. Therefore, there is no curtailment of his rights.

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41. In [John Vallamattom](#)'s case (supra) two out of the three learned judges turned down the contention that the section violates [Article 15](#) of the Constitution holding thus:-

"39. So far as the second argument of the learned counsel for the petitioner is concerned, it is suffice to say that [Article 15](#) of the Constitution of India may not have any application in the instant case as the discrimination forbidden thereby is only such discrimination as is based, inter alia, on the ground that a person belongs to a particular religion. The said right conferred by clause (1) of [Article 15](#) being only on a "citizen", the same is an individual right by way of a guarantee which may not be subjected to discrimination in the matter of rights, privileges and immunities pertaining to him as a citizen. In other words, the right conferred by [Article 15](#) is personal. A statute, which restricts a right of a class of citizens in the matter of testamentary disposition who may belong to a particular religion, would, therefore, not attract the wrath of clause (1) of [Article 15](#) of the Constitution of India."

The very same view was earlier expressed by the Apex Court in *Nain Sukh Das & ors. v. State of Uttar Pradesh & ors.* [(1953) 2 SCC 137]. Therein the Apex Court held, "It is plain that the fundamental right conferred by [Article 15\(1\)](#) is conferred on a citizen as an individual and is a guarantee against his being subjected to discrimination in the matter of the rights, privileges and immunities pertaining to him as a citizen generally."

42. [Article 15](#) prohibits discrimination solely on any of the grounds mentioned therein, one among them being, religion.

"Discrimination" means an unfair or unfavourable or prejudicial CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 36 :- treatment. In [Kathi Raning Rawat v. State of Saurashtra](#) [(1952) 1 SCC 215] , the Apex Court held:

"All legislative differentiation is not necessarily discriminatory. In fact, the word "discrimination" does not occur in [Article 14](#). The expression "discriminate against" is used in [Article 15\(1\)](#) and [Article 16\(2\)](#), and it means, according to Oxford Dictionary, "to make an adverse distinction with regard to; to distinguish unfavourably from others". Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context."

We have already held that [Section 69](#) has a laudable object and is in no way unfair, unfavourable or prejudicial. Therefore, for the afore reason also, there is no violation of [Article 15](#).

43. Placing reliance on the judgments of the Apex Court in [Khalsa University v. State of Punjab](#) (2024 KHC OnLine 6539) and Anurag Krishna Sinha v. State of Bihar (2026 KHC OnLine 616 8) it is argued that [Section 69](#) is liable to be struck down for manifest arbitrariness, which is also a facet of [Article 14](#). We have already noted that no element of arbitrariness could be alleged against the provision. Its object, purpose, reason, applicability, rationality and classification have been dealt with by us supra. For the very same reason, the challenge to the provision as a suspect legislation, on the ground that it draws a division among citizens, founded on the decision of the Apex Court in Nair Service CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 37 :- Society v. State of Kerala (2007 (4) SCC 1), is also liable to fail. In [State of Andhra Pradesh v. Dr. Rao V.B. J. Chelikani](#) (2024 KHC 6653) it was held that Court should not demand delusive exactness or apply doctrinaire tests and the classification is justified as long as it is not palpably arbitrary. It was also held that this power of classification enables the State to recognise and deal with the needs and exigencies of the society as suggested by experience which includes recognition of given degree of evil.

44. Referring to the constitutional rights of freedom of liberty and expression, to deal with the property, and also to the International Covenant in Civil and Political rights it is argued that [Section 69](#) infringes such rights since it interferes with the right of disposition of ones assets. We find that the argument is unfounded. This is for the reason that [Section 69](#) does not in any manner impinge the testamentary capacity of a person.

45. It was also argued that India is a signatory to International covenants such as Universal Declaration of Human Rights and International Covenants on Civil and Political Rights, which guarantee equal protection of law for every one and that CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 38 :- [Section 69](#) is in conflict with the same. We have already discussed the principle elaborately while dealing with [Article 14](#) of the Constitution of India and have negated the same. They are not being repeated.

46. Referring to the U.K. Law Commission Report 2025, it was argued that in United Kingdom from where the principle of revocation of Will on marriage evolved, the Law Commission has recommended abolition of the said provision. Our attention was drawn to the report dated 15.05.2025, particularly the portions dealing with "Revocation By Marriage Or Civil Partnership". Special attention was drawn to paragraphs 13.123 and 13.141, which read as follows:-

13.123 "In our view, a compelling case has been made for abolition of the rule that a marriage or civil partnership revokes a will. We consider that automatic revocation of a person's will is contrary to the principle of testamentary freedom. Moreover, we think that the revocation rule is unlikely to reflect what many people would intend or expect. Crucially, we think that it is difficult to justify a rule which is at odds with the law's decision-specific approach to capacity. Furthermore, we believe that abolishing the rule will add a layer of protection for vulnerable people at risk of an insidious form of financial abuse".

13.141 13.141 states that "We continue to think that allowing testators to state in their will that the will should not be revoked by any future marriage or civil partnership would not help to prevent predatory marriages. We do not think that people are likely to CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 39 :- anticipate being the victim of financial abuse. We also do not think that it would be justifiable to protect someone from financial abuse only where they have anticipated it. Moreover, for this exception to have an impact on predatory marriage, virtually all testators would have to state in their will that it should not be revoked on a subsequent marriage or civil partnership. Rather than relying on each individual testator to disapply the rule in relation to themselves, it seems to us more straightforward and fairer simply to abolish the rule."

The learned counsel further argued that, even the very concept of family has undergone a change as could be seen from the United Kingdom Family Reforms Act, the Civil Partnership Act etc.

47. Relatedly, we do also notice that the Law Commission of India, though in the 110 th Report (referred to us supra) had suggested for providing for saving of Wills made in contemplation of marriage as an exception to automatic revocation under [Section 69](#), the Parliament is yet to take a positive step in the said regard.

48. Presently, we are concerned with the constitutionality of [Section 69](#) and we do not think that the considerations as above are reasons to strike down the Section as violative of Part-III of the Constitution.

49. On the discussions as above, we negative the challenge against [Section 69](#) of the Indian Succession Act alleging it to be violative of Part III of the Constitution of India.

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50. Now we proceed to consider the contention that [Section 69](#) of Indian Succession Act is in direct conflict with [Section 20\(1\)](#) thereof. [Section 20\(1\)](#) reads thus:

"Interests and powers not acquired nor lost by marriage.

(1) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried."

The argument is that, while [Section 20\(1\)](#) prescribes that no interest in property would be created by marriage and that marriage does not disable a person from dealing with his property, [section 69](#) provides for automatic revocation of a Will executed by him, which is interference with the right. The provisions are in explicit conflict is the contention.

51. We are unable to agree with the contention. We find that the provisions are in no way conflicting, contradictory or operating against each other. [Section 69](#) does not provide for creating any interest in the property consequent on the marriage nor does it restrict the power of disposal of the spouse. The effect of [Section 69](#) is only that any disposition prior to CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 41 :- marriage will stand revoked and, if not otherwise dealt with, his assets would devolve on the new family on his demise. It is only a spes successionis for the new family, who would be his legal heirs. Thus, the challenge against [Section 69](#) on the said ground also fails.

52. The questions referred for consideration are answered accordingly.

53. OP 903/2026 is filed by the plaintiff in OS 26/2016 challenging the order of reference made by the Sub Court, Punalur under [Section 113](#) of the Code of Civil Procedure(CPC). CR 1/25 has been numbered upon such reference. The challenge in the original petition is against the correctness of the order of reference by the trial court. The contention is that, the prescriptions under [Section 113](#) CPC read with order 46 remained unsatisfied and that the order of reference by the trial court is bad in law. The challenge against [Section 69](#) having been already CR No.1 of 2025, CNR : KLHC011045542025 W.P (C) No.27213 of 2017 & OP(C) No.903 of 2026 2026:KER:77525 -: 42 :- been answered by us in writ petition, a decision on the question urged in the Original Petition is only academic, and we do not propose to go into the same herein.

The WP(C) No.27213 of 2017, OP(C) No.903 of 2026 and CR No.1 of 2025 will stand ordered as above.

Sd/-

SATHISH NINAN JUDGE Sd/-

P. KRISHNA KUMAR JUDGE kns/-

//True Copy// P.S. To Judge APPENDIX OF CR NO. 1 OF 2025 PETITIONER ANNEXURES Annexure A HIGH COURT JUDGMENT DATED 20.05.2024 IN OP(C) 2266/2017 Annexure B ORDER DATED 12.02.2025 OF SUB COURT, PUNALUR IN A 216/2017 IN OS 26/2016 Annexure C LETTER DATED 20.03.2025 FROM THE DISTRICT JUDGE, KOLLAM FURNISHING REFERENCE

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APPENDIX OF OP(C) NO. 903 OF 2026 PETITIONER EXHIBITS Exhibit P1 THE TRUE COPY OF THE PLAINT ORIGINALLY FILED BY THE PETITIONER AS O.S. NO.7/2010 BEFORE THE SUB COURT, PUNALUR Exhibit P2 THE TRUE COPY OF ORDER DATED 05/04/2017 IN IA NO. 216/2017 IN O.S. NO. 26/2016 OF SUB COURT, PUNALUR Exhibit P3 THE TRUE COPY OF JUDGMENT DATED 20/05/2024 IN O.P.(C). NO. 2266/2017 OF HON'BLE HIGH COURT OF KERALA Exhibit P4 THE TRUE COPY OF ORDER DATED 12/02/2025 IN I.A. NO. 216/2017 OF THE SUB COURT, PUNALUR Exhibit P5 THE TRUE COPY OF CR NO. 1/2025 FILED BEFORE THE HON'BLE HIGH COURT OF KERALA

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APPENDIX OF WP(C) NO. 27213 OF 2017 PETITIONER EXHIBITS EXHIBIT P1 TRUE PHOTOSTAT COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT OF MARTHOMA EVANGELISTIC ASSOCIATION, RT.REV.DR.EUYAKIM MAR COORILLOS EPISCOPA.

EXHIBIT P2 TRUE PHOTOSTAT COPY OF THE ELECTION ID CARD ISSUED BY ELECTION COMMISSION OF INDIA, NEW DELHI.

The Gazette of India Published by Authority

===== SIMLA, SATURDAY,
OCTOBER 2, 1869.

===== Separate paging is
given to this Part in order that it may be filed as a separate compilation.

===== PART V Bills
introduced into the Council of the Governor General for making Laws and Regulations

The following Bill and Statement of Objects and Reasons are published for general information, by order of His Excellency the Governor General, under the 19th of the Rules for the Conduct of Business at Meetings of the Council of the Governor General of India for the purpose of making Laws and Regulations:-

No. 15 of 1869.

A Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns. Whereas it is expedient to provide rules for the execution, attestation, revocation, revival, Preamble. interpretation and probate of the wills of Hindús and Buddhists in the Presidency Towns; It is hereby enacted as follows:-

Short title. 1. [This Act](#) may be called "The Hindú Wills Act, 1869."

2. [Sections 46, 48, 49, 50, 51, 54, 55](#), and [57 to 77](#) (both inclusive), [sections 82, 83, 85](#), Certain sections of 88 to 98 (both inclusive), [sections 106 to 177](#) (both inclusive), sections [Succession Act](#) 179 to 189 (both inclusive), [sections 191 to 199](#) (both inclusive), so extended to wills of much of Parts XXX and XXXI as relates to grants of probate and Hindus and Buddhists letters of administration with the will annexed, Parts XXXIII to XL (both inclusive), so far as they relate to an executor and an administrator with the will annexed, and section 329 of the Indian Succession Act, 1805, shall apply-

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(a) to all wills and codicils made by any Hindú or Buddhist on or after the first day of Extent of Act. January 1870, within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay; and

(b) to all such wills and codicils, wherever made, relating to immoveable property situate within those limits:

Provided that marriage shall not revoke any such will or codicil:

And that nothing herein contained shall authorise a testator to bequeath property which he could not have alienated inter vivos, or to deprive any persons of any right of maintenance which they would have possessed if he had died intestate: And that nothing herein contained shall vest in the executor or administrator.

Saving of right of 3. Nothing contained in this Act shall affect the rights, duties and Administrator General privileges of the Administrators General of Bengal, Madras and Bombay, respectively.

4. In this Act and in the said sections all words defined in section three of the said Interpretation clause [Succession Act](#), shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section three has attached to such words respectively.

And in applying [sections 62, 63, 92, 96, 98](#) and [182](#) of the said [Succession Act](#), to wills and codicils made under this Act, the words "son," "child" and "children" shall be deemed to include an adopted child; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression "daughter- in-law" shall be deemed to include the wife of an adopted son.

And in making grants under this Act of letters of administration with the will annexed, or with a copy of the will annexed, [section 195](#) of the said [Succession Act](#) shall be construed as if the words "and in case the Hindú Wills Act had not been passed" were added thereto; and [section 198](#) of the said [Succession Act](#) shall be construed as if,

after the word "intestate," the words "and the [Hindu Wills Act](#) had not been passed" were inserted; and [sections 230](#) and [231](#) of the said [Succession Act](#) shall be construed as if the words "if the [Hindu Wills Act](#) had not been passed" were added thereto respectively.

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STATEMENT OF OBJECTS AND REASONS.

When the Indian Succession Act, 1865, was under the consideration of the Legislature, it was proposed to extend to Natives the testamentary portion of that measure; but it was felt that, in three respects, sufficient information was not before the Council to justify an immediate extension in this direction. Doubts were entertained as to how far it would be politic to interfere with the power to make oral wills which Muhammadans have always possessed, and evidence was wanting as to the propriety of restricting Natives in creating perpetuities and in making bequests to religious and charitable uses. A clause was accordingly introduced, as a temporary provision, excluding the Hindús, Muhammadans and Buddhists from the operation of any part of the Act.

Some months after the passing of the Act, a circular was issued from the Home Department Dated 22nd August, 1865 to the several Local Governments respecting the extension to Natives of its testamentary clauses. Attention was called to the fact that, although liberty of testation was established throughout British India, and although the testamentary power of Hindús was derived from the English law, there were no securities for the due exercise of that power by Natives, such as the requirement of writing, signature and attestation, which were found indispensable in Europe.

It was also pointed out that, although in England nuncupative wills have long been placed under considerable restrictions as to the persons by whom they can be made, as to the witnesses required to be present, and as to the time within which testimony is admissible to prove the speaking, in India, our Courts were compelled to recognize such wills when made by Hindús of any age or calling and under any circumstances whatever. It was observed that the favourite fraud of bringing forward false wills was encouraged by the non-requirement of writing; that the evidence setting up a false nuncupative will might revoke a true written one, and that, even in the case of a genuine testamentary disposition, the certainty of writing was replaced by the frailty of memory. Further remarks, which will now be merely referred to, were made as to the absence, in the case of Native testators, of any restraints on the creation of perpetuities and on devises to religious or charitable uses, as to the non-requirement of probate of their wills, whether written or oral, and as to the difficulty of ascertaining the character and powers of a Native executor. -4-

The circular concluded by pointing out the provisions of the [Indian Succession Act](#) on the subjects thus treated of, and by requesting an opinion as to the advisability of extending those provisions to Natives.

To this circular replies were received from all the local authorities, accompanied, in almost every instance, by papers written by such European and Native gentlemen as were deemed best capable of advising on the matter. The general result of the opinions thus obtained may, so far as they relate to the Presidencies of Bengal, Madras and Bombay, to Oudh, and to the Central Provinces, be compendiously expressed as follows:-

1st.- The practice of making nuncupative wills should be abolished, and the provisions of the [Indian Succession Act](#) as to execution of wills and codicils should be adopted in the case not only of Hindús but Muhammadans.

2nd.- Marriage should not, in the case of a Native testator, revoke his will. In other respects the provisions of the [Succession Act](#) as to revocation should be followed. 3rd.- It is inexpedient to impose, in the case of Natives, any restrictions on the exercise of the testamentary power in favour of religious or charitable uses, or for the creation of perpetuities.

4th.- The provisions of the [Succession Act](#) as to the interpretation of wills should, with some few exceptions, be adopted.

5th.- Probate should be made compulsory, and the provisions of the [Succession Act](#) as to administration with will annexed and as to the powers and duties of an executor, should be extended with some slight modifications.

The primary object of the present Bill is to preclude the fraud and perjury which are notoriously encouraged by the absence of restriction on the making of nuncupative testaments. Its secondary objects are to prevent the evils arising from the non-requirement of probate of Native wills, and from the prevailing uncertainty as to the character and powers of Native executors.

As a Native's written will need not now be proved, it need not, of course, be deposited for safe custody. The resulting opportunities for forgery and fraudulent alteration are obvious, and have, it is believed, been often taken advantage of. Moreover, in England the granting of probate is conclusive as to the testamentary character of the instrument as regards all claimants of the personalty. The result of this rule is most satisfactory, in precluding litigation. But in India, a far more litigious country, even when a Native's will is proved, or when letters of administration are -5- granted cum testamento annexo, the probate or grant is binding only as against those who obtain or who oppose it. As against persons who have no means of appearing, or right to dispute the probate or grant, it has no greater effect than the ordinary decree in a civil suit.

Then the Native executor takes nothing from any grant of the Court. His title is founded solely on the will considered as an instrument of gift. His acts between the testator's death and the grant of probate are not (as in England) rendered valid by the grant. It seems doubtful whether, as against creditors who have not appeared or been cited, he can retain any part of his own debt. In the interest of the honest executor, therefore, legislation seems needed in this direction. Moreover, a Native executor has, according to the High Court at Fort William, no greater power over immoveable property than a manager. His powers are, therefore, at least in the Lower Provinces of Bengal, limited and qualified, and if he makes a mortgage or sale, the lender or purchaser, as the case may be, is bound to enquire into the necessity of the transaction. What the law on the subject is in Madras and Bombay does not appear to have hitherto been decided. It is hard to conceive a state of things more calculated to interfere with that free circulation of property so desirable in a country like India.

A Native executor, moreover, cannot be compelled, except by a law-suit, to exhibit an inventory or account of his testator's estate. In many cases, therefore, there is no adequate check upon him; and at any distance of time it is difficult to fix him with the possession of property comprised in the will.

The Bill only applies to Hindús and Buddhists. Muhammadans have an elaborate system of testamentary law, which, like the rest of their code, they regard as of divine origin. To impose on Muhammadans a body of rules which would have the effect of superseding any part of their existing law, might create alarm and discontent, and would therefore be impolitic. The case of Hindus is clearly distinguishable. Hindú wills being unknown to Hindú law, being in fact the creature of English Courts, the legislature is entitled to subject them to all expedient restrictions. Similar remarks apply to the wills of Buddhists.

The Bill, too, is confined in its operation to the Presidency Towns. Hereafter it may be desirable to extend its provisions to Hindús and Buddhists in the Mofussil and Burma. But as yet the practice of testation does not prevail amongst Natives to any great extent outside those towns; and for the present, therefore, it seems advisable to limit the incidence of the proposed legislation.

The power of alienation inter vivos which a Hindú possesses is everywhere subject to restrictions, and varies from the nearly absolute freedom enjoyed, even as to ancestral property, by a Native of Bengal, to the comparatively limited authority of a Native of Madras or other territory subject to the law of the

Mitakshara. The High Courts at Calcutta and Madras have held that a Hindu's testamentary power is only co-extensive with his independent power of alienation during life. The Bill adopts this ruling, and provides that nothing therein contained shall authorize a testator to bequeath property which he could not have alienated inter vivos. Connected with this provision is a clause expressly negating the power of a Native testator to deprive his relatives of any right of maintenance which they would have possessed if he had died intestate.

The rest of the Bill extends to the wills of Hindus and Buddhists certain sections of the [Succession Act](#).

Of these, [section 46](#) declares the testamentary power, and will be read in connection with the limitation above-mentioned.

[Sections 48, 49, 50, 51, 54, 55, 57](#) to [60](#) relate (inter alia) to the execution, revocation, and revival of wills and codicils. It will be seen that the Bill expressly provides that marriage shall not operate as a revocation. It is the opinion of competent authorities that in the case of a polygamist, marriage does not create such a change in the testator's condition as to raise a presumption that he would not adhere to a will made previously. The principle, therefore, on which marriage revokes a will in England, does not apply.

[Part XI of the Succession Act](#) contains rules as to the construction of wills. Of these the Bill proposes to extend [sections 61](#) to [77](#), and [sections 82, 83, 85](#), and [88](#) to [98](#) (both inclusive). It omits [sections 80](#) and [81](#), which provide rules for the cases of bequests to 'heirs,' 'next-of-kin,' 'nearest relation', &c., or the 'representatives' of a particular person. These rules have been framed with reference to the English law of succession ab intestato, and are therefore inapplicable to Natives.

By [section 84](#), a bequest to A. and his children gives the whole interest to A. But the intentions of a Hindú testator, to whom the idea of a father and his sons being in a state of natural coparcenary is familiar, would probably be frustrated by the application of such a rule, which, therefore, has been omitted.

[Section 86](#) ties down the construction of terms of relationship. Natives are generally so vague and inaccurate in using these terms that the section cannot safely be applied to their wills.

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The general rule [laid down by section 87](#), that words expressing relationship shall denote only legitimate relations, has also been omitted as being scarcely applicable to the wills of Hindús and Buddhists, whose notions as to legitimacy and illegitimacy are so different from those of Europeans.

[Sections 179](#) to [264](#) relate to grants of probate and letters of administration. The Bill extends so much of them as relates to probate and grants cum testamento annexo, subject, however, to two modifications. [Section 179](#) declares that all the property of the deceased person vests in the executor as such. This might give rise to a misconception, and the Bill expressly provides that nothing in the proposed Act shall vest in the executor or administrator with will annexed any property which the deceased could not have alienated during his life. And the Bill modifies [sections 195, 198, 230](#) and [231](#) of the Succession Act so as to make it clear that the rules [laid down in](#) the 201st and the following sections, as to the order in which surviving relatives are entitled to administration in case of intestacy, do not apply to grants to Natives of letters of administration with will annexed. In such cases the practice will continue to be as at present, viz., to let the grant follow the interest.

As adoption is practised not only by Hindús, but by Buddhists, it has been necessary to provide that the words 'son', 'child', 'children', when they occur in the sections extended, shall include an adopted son.

It may, in conclusion, be remarked that the testamentary clauses of the [Succession Act](#) apply to the Parsis: that most of these clauses were extended to the Oudh Taluqdars by Act I of 1869, and that the similar provisions

contained in the Indian Wills Act (XXV of 1838,) have for the last twenty years applied to all classes in the Straits Settlement-Muhammadans, Hindús, and Chinese as well as Englishmen.

SIMLA, The 20th September 1600. } II. S. MAINE.

WHITLEY STOKES, Secy, to the Council of the Govr. Genl. for making Laws and Regulations.