A Ratiocinative Exploration of the Goa Succession, Special Notaries and Inventory Proceedings Act 2012

A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

IN THE MANOHAR PARRIKAR SCHOOL OF LAW, GOVERNANCE & PUBLIC POLICY

GOA UNIVERSITY

By

Gouresh Gurudas Bugde

V.M. Salgaocar College of Law

Miramar Panaji Goa

Goa University

NOVEMBER 2023

DECLARATION

I, Gouresh Gurudas Bugde hereby declare that this thesis represents work which has been carried out by me and that it has not been submitted, either in part or full, to any other University or Institution for the award of any research degree.

Place: Taleigao Plateau.

Date : 25th November 2023 Gouresh Gurudas Bugde

CERTIFICATE

I hereby certify that the above Declaration of the candidate, Gouresh Gurudas Bugde is true and the work was carried out under my supervision.

Dr. Nagesh S. Colvalkar

Research Guide,

V.M. Salgaocar College of Law, Miramar Panaji Goa

Acknowledgment

It is my pleasant responsibility to express my gratitude to all those people who have assisted me in this joyful journey of Research work. Hence I take this opportunity to thank all those people who have contributed to the completion of this Thesis.

I owe deepest gratitude to my Research Guide, Dr. Nagesh Colvalkar, Associate Professor (Retd.) at V.M. Salgaocar College of Law, for his able guidance and active support without which the present work would not have been crystallized. His esteemed inputs and motivation has been precious and has encouraged me to do in-depth research on the subject.

I am very thankful to, Dr. G. Shaber Ali, Principal, and Co-ordinator for PG and Research Centre of V.M.Salgaocar College of Law, for his cherished suggestions and backing throughout the journey of my research work.

I acknowledge my gratitude for the sage advice given during the course of research by the members of the Departmental Research Committee, Prof. Dr. M.R.K. Prasad, Professor of Law at V.M. Salgaocar College of Law and Prof. Dr V. Sudesh, Professor of Law at University Law College, Bangalore University.

My Parent's blessings have remained a great source of strength for me. I am indebted to my parents Mr. Gurudas Vithoba Bugde and Mrs. Vinanti Gurudas Bugde for being ever responsive and supportive and for inspiring me to complete my research. I shall always remain obliged for their patience and enduring indulgence.

My profound gratitude to all the Judges, Officers, Advocates and all staff of District Courts and Civil Courts in North Goa as well as South Goa for extending their whole hearted cooperation and for providing me the data in proceeding with my research work. I would also like to thank all the Officers and Officials of the entire Registration Department of Government of Goa for providing the valuable information and data for the work of research on the subject.

I also acknowledge my gratitude to the Library staff of Goa University, staff of Goa State Central Library and the Library staff of V.M. Salgaocar College of Law, Research Centre for helping me in my quest for various sources for the purpose of research.

Thanks to various authors, editors and publishers whose works have been referred in the process of researching.

I thank Almighty God for giving me an opportunity to learn.

Last but not the least, I express my indebtedness to all those who have extended their support directly or indirectly in successful completion of my research work.

Gouresh Gurudas Bugde

"Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building Good Governance"

- Kofi Annan

Contents

List of Tables

List of Figures

Abbreviations

1. AIR:All India Reporter
2. SC – Supreme Court
3. SCC – Supreme Court Cases
4. SCR – Supreme Court Reporter
5. Vol. – Volume
6. W.P – Writ Petition
7. A.O.- Appeal from Order
8. CRA - Civil Revision Application
9. CRIR – Criminal Revision Application
10. W.P. (c)- Writ Petition (Civil Side)
11. Pg.- Page
12. Ors. - Others
13. No. - Number
14. Para - Paragraph
15. GLT – Goa Law Times
16. Mh.LJ – Maharashtra Law Journal
17. PCC – Portuguese Civil Code
18. CRC – Codigo do Registo Civil
19. Anr. - Another
20. GLR: Goa Law Reporter
21. BOM LR: Bombay Law Reporter
22. HC: High court
23. Sec: Section
24. Art: Article
25. UOI: Union Of India
26. Ed.: Edition
27. Supl.: Supplementary

List of Cases

24)	Carolina Santos v. Dominic Pinto AIR 1916 Bombay 167
25)	Cavery Vancata v. Collector of Masulipatan, (1863) 11 MIA 61
26)	Celia Fernandes v. Felicidade Vaz, Second Appeal No.12 of 2012 in the High Court of Bombay at Goa
27)	Chatro v Sahayak Chakbandi Meerut, Civil Appeal No. 669 of 1980 before the Supreme Court of India
28)	Claudio Francisco v. Eulalia Fernandes, 2005 (2) All MR 247
29)	Common Cause v. Union of India, W.P. (Civil) No. 215 of 2005 before the Hon'ble Supreme Court of India
30)	Conceicao Fernandes v. Milagres Fernandes, 26 (1) ALL MR 598
31)	Conceicao Quadros v. Salvador Quadros, 2012 (4) All MR 650
32)	Connie Miranda v. Antonio Gracias, 2010 (6) All MR 226
33)	Cruz Fernandes v. Smt. Gregorina Fernandes,1991 (4) Bom C.R. 400
34)	Daisy Senso v. Ivorine Noronha,2011 (2) Goa L.R. 114 (Bom(PB))
35)	Damodar Alve v. Janakibai Alve, 2008 (2) Goa LR 422
36)	Denis Mazarello v. Iriton Mazarello, 2008 (3) Mh. L.J. 319
37)	Dhanistha Kalita v Ramakanfa Kalita, AIR (2003) Gau.92
38)	Dnyaneshwar Salgaokar v. Prakash Salgaokar, 1998 (1) Goa LT 181
39)	Domingos Rodrigues v. Joao Rodrigues, 1995 (1) Goa LT 370
40)	Dr. Noorjehan Safia Niaz v. State of Maharashtra, 2016 SCC Online Bom 5394
41)	Dr. Rajendra Tamba v. Mrs. Rita alias Anjali Vijay Talaulikar, A.O. No. 45 of 2019 in the High Court of Bombay at Goa
42)	Elmas Fernandes v. State of Goa, Writ Petition No.351 of 2017
43)	Emma Agnes Smithy v. Thomas Massey, ILR 30 Bom 500
44)	Fabrica da Igreja de N.S. De Milagres vs. Union of India, 1995 (1) Bom.C.R. 588
45)	Fernando Colaco v. State of Goa, 1991 (2) Goa LT 11
46)	Fidelis Costa v. Piedade Costa, 2014 (6) All MR 1551
47)	Franciso Savio Gaspar Noel Da Lima Leito v. Eric Jose De Lima Leitao, A.O. No. 5 of 2019 in the High Court of Bombay at Goa

74)	Lachman Singh v Kripa Singh, AIR (1987) SC 1616
75)	Laximan Meng Gaunkar v. Shri Jaganath Sukto Goundolkar, Second Appeal No.28 of 2007 in the High Court of Bombay at Goa
76)	Laxmi Dhond v. Sushila Amonkar, 2007 (1) AIR Bom R 338
77)	Laxmibai Narayan Prabhu v. Medha Prabhu, 2018 (1) Goa LR 488
78)	Lisa Rodrigues v. Eugenio Rodrigues, 2015 (2) Goa L.R. 721
79)	Lizette Barbosa v. Hubert Braganza 2007 (1) Bom CR 589
80)	M. Gurudas & ors vs Rasaranjan & ors, 2006 SC 3275
81)	M.A Khin v M.A Ahma, 1934 Rang. 72
82)	M/s. Cadar Constructions v. M/s. Tara Tiles AIR 1984 Bom 258
83)	Madakini Salkar v. Chandrasen Raikar 2002 (2)GLT 556
84)	Madhavi Dattatrai Thaly v. The Secretary (Law), Govt. of Goa, W.P. No. 597 of 2019 in the High Court of Bombay at Goa
85)	Maharshi Avadhesh VS Union Of India (1994) Supp 1 SCC 713
86)	Mallapa v Shivappa AIR 1962 Mys 140
87)	Maneka Gandhi v. Union of India A.I.R. 1978 S.C.597
88)	Manguesh Kuwelkar v. Yeshwant Kuwelkar, 2008 (6) Mh. L.J. 224
89)	Manual Colaco v. Antonio Colaco, 2009 (1) Mh. LJ 931
90)	Marcus Nunes v. Filomena Fernandes, 2000 (2) Goa LT 539
91)	Mariana Carmelina Fernandes v. Antonio Gomes, 2006 (3) AIR Bom R 227
92)	Mario Aleixo Guadalupe da Costa v. Jose Aleixo Guilherme da Costa, Appeal from Order No. 64 of 2019 in the High Court of Bombay at Goa
93)	Mario Cardozo v. Luciano Fernandes Writ Petition No. 960 of 2017 in the High Court of Bombay at Goa
94)	Mario Mascarenhas v. Fernando Mascarenhas, 2001 (1) Goa LT 296
95)	Mary Roy v. State of Kerala 1986 SCR (1) 371
96)	Maxmillian Victor Alvaro Rodrigues v. Byron Charles Kevin Rodrigues, Writ Petition No. 590 of 2018 in the High Court of Bombay at Goa
97)	Md. Arshed v. Sajida Bannoo (1878)3 Cal 703, Mir Isub v. Isub (1920) 44 Bom 947
98)	Michael Rodrigues v. State of Bombay 1956 Bom 729

99)	Milagrina Gomes v. Joaquim Costa, 1989 (2) Goa LT 366
100)	Miller v Administrative General (1876) ILR 1 Cal 412
101)	Minerva Mills v. Union of India AIR 1980 SC 1789
102)	Mohammed Ahmed Khan v. Shah Bano Begum , 1985 SCR (3) 844
103)	Monica Variato v. Thomas Variato, 2000 (2) Goa L.T. 149
104)	Motibai Cano v. Maria Mota, 1994 (2) Bom CR (F) 628
105)	Mr. Joao Cardoso v. Mrs. Ethelvina Cardoso Rodrigues, 2009 (2) Goa LR 388
106)	Ms. Jordan Diengdeh vs S.S. Chopra 1985 SCR Supl. (1) 704
107)	Narantakath v Prakkal (1922) ILR 45 Mad 986
108)	Narayan Kubal v. Ankush Halarnkar, 2009 (4) Bom CR 142
109)	Narhari Shivram Shet Narvekar v. Pannalal Umediram [1976) 3 S.C.R.
110)	Neeraja Saraph v. Jayant Saraph , 1994 SCC (6) 461
111)	Nirmala Dessai v. Tulsi Dessai, 2015 (4) Mh.L.J. 731
112)	Norberto Fernandes v. Gabriel Fernandes, Second Appeal No. 3 of 2006 before the Bombay High Court at Goa
113)	Odette da Silva v. Maria V.C.S. de Vieria Velho e Celina Almeida, A.O. No. 40 of 2019 in the High Court of Bombay at Goa
114)	Olavo Fernandes v. Maria Afonso, 2016 (2) All MR 191
115)	P.P. Kuriakose v. Shubhalaxmi Gaitonde, A.O. No. .47 of 2018
116)	Palmira Cota e Dias v. Odette Rodrigues, 2011 (1) Mh. LJ 592
117)	Pedro Vaz v. Martha Vaz, 1996 (2) Goa LT 263
118)	Pio Gomes v. Antonio Gomes, 1997 (1) Goa L.R. 207
119)	Prakash v Bela Sihare, AIR (1996) Delhi 336
120)	Praveena Doshi v. Ganpat Parab, 2014 (2) Goa L.R. 360 (Bom)(PB)
121)	Premavati Naik v. Suresh Naik, 2012 (2) Goa LR 282
122)	Primella Sanitary Products Pvt. Ltd. v. Gurudas Gaitonde, 2010 (5) All MR 567
123)	Puran Jethanand Jattani v. Malti Parmanand Chatpar, Testamentary Petition No. 1967 of 2018

124)	Purushottam Mahadev Dabolkar v. Sadu Kashiram Mhamal, Writ Petition No.929 of 2019
125)	Raj Kali Kuer vs Ram Rattan Pandey, 1955 SCR (2) 186
126)	Rajendra Purushottam Halarnkar v. State of Goa, W.P. No. 303 of 2017 in the High Court of Bombay at Goa
127)	Ram Deu Gaudo @ Gaude v. Anta Deu Gaudo, Second Appeal No. 6 of 2017 before the Hon'ble High Court of Bombay at Goa
128)	Ramchandra Anant Sinai Rataboli v. Manica Sinai Rataboli alias Manik Venkatesh Nayak, Appeal from Order No. 23 of 2018 in the High Court of Bombay at Goa
129)	Ranjit Satardekar v. Clotildes Fernandes, 2006 (4) All MR 223
130)	Ratilal Panachand Gandhi v. State of Bombay AIR 1954 SC 388.
131)	Ravindra Parulekar v. Damodar Parulekar A.O. No. 52 of 2019
132)	Reshma Vete v. Kamal Khalap, 2015 (1) Goa LR 100
133)	Revanasiddappa v. Mallikarjun, 2011 (86) ALR 450
134)	Robert Coutinho v. Maria Botelho, 2002 (1) Goa LT 109
135)	Roldao Vaz v. Bebiana Souza, 1989 (1) GLR 226
136)	Ronaldo Vaz v. Aduzinda Gonsalves, CRA No. 208/80
137)	Rosada Josefa D'silva e Barretto v. Joao Xavier De Silva Alias John De Silva Second Appeal No.114 of 2012
138)	Rosario Fernandes v. Regina Saldanha, 2013 (1) G.L.R. 53
139)	Roxann Sharma v. Arun Sharma, Civil Appeal No. 1966 of 2015
140)	Rupo Bhomkar v. Sazu Gawade, 2015 (2) Goa LR 580
141)	S.R. Bommai v. Union of India, 1994 SCC (3) 1
142)	Sabina Lopes v. Aleixo Rafael Fernandes Writ Petition No. 658 of 2019 in the High Court of Bombay at Goa
143)	Samiro Mascarenhas v. Valente D'Costa, 2016 (2) Goa L.R. 577
144)	Sarla Mudgal v. Union of India , 1995 AIR 1531
145)	Satish Bhatkuly v. Vinayak Bhatkuly, 2009 (1) Mh LJ 946
146)	Savitribai Parkar v. Devendra Parkar, 1999 (1) Goa LT 454
147)	Secretary of State v Girdharilal, ILR 54 All 226

148)	Seema v. Ashwani Kumar, AIR 2006 S.C 1158
149)	Shabbar Khan v. Musarat Begum, 2017 (1) Goa LR 171 (Bom)
150)	Shabu Shet v. Gopal Varik, 2012 (2) Goa LR 454
151)	Shanta Devi v. State of Bihar, AIR 1977 Pat 268
152)	Shanti Gulab Hegde v. Ratnabai Hegde First Appeal No. 100 of 2019 in the High Court of Bombay at Goa
153)	Shayara Bano vs Union of India and ors ((2017) 9 SCC 1)
154)	Sheela Rodrigues v. Lourencinha Ana D'Cruz Rodrigues AIR 2000 Bombay 97
155)	Sheikh Abdul Rehman v. Shaikh Wali Mohamed, (1922) 2 Pat 75
156)	Shivaji Narayan Gaonkar vs. Mr. Claudio Francisco Remedios, (Second Appeal Nos.21 and 24 of 2011
157)	Shivakumar v. Sharanabasppa, Civil Appeal No. 6076 of 2009 in the Supreme Court of India
158)	Shrihari Upadhye v. Prashant Upadhye, 2015 (5) All MR 160
159)	Silvestre Vaz v. Francisco Vaz, Appeal from Order No. 7 of 2018 in the High Court of Bombay at Goa
160)	Sir Dinshaw Mulla Petil v Jamsetji Jijabai, 11 Bom. L.R. 85 at 113
161)	Skoda Afonso v. Motor Accident Claims Tribunal Panaji Goa, 1999 (2) ALL MR 549
162)	Smita Mahendra Halarnkar v. Mahendra Tukaram Halarnkar, Criminal Revision Application No. 5 of 2021 in the High Court of Bombay at Goa
163)	Smt. Seema v. Ashwani Kumar, [2006] 2 S.C.R.
164)	Sonubai v. Bala AIR1983 Bom156.
165)	Srinivasa Aiyar v. Saraswathi Ammal, (1952) Madras 193
166)	State of Madras v. Champakam Dorrairajan , A.I.R. 1951 S.C.226
167)	Subash Bhandari v. Vassant Rabolo, Second Appeal No.156 of 2012, High Court of Bombay at Goa
168)	Sunita Shirodkar v. Sri Madhukar Lotlikar, 1998 (2) Goa LT 350
169)	Sunitabai Naique v. Shreepad Naique, 2002 (2) ALL MR 73
170)	Surajmani Stella Kujur v. Durga Charan Hansdah, AIR 2001 SC 938

171)	Suresh Lawanis v. Arun Lavanis, 2009 (1) Goa LR 25
172)	Syscon Consultants Private Limited vs. Primella Sanitary Products Private Limited (2016) 10 SCC 353
173)	Tarzan Costa v. Mario Souza, 2017 (1) Goa LR 500
174)	Tertuliano Renato da Silva v. Franciso Lourenco Da Silva, Writ Petition No. 808 of 2010 in the High Court of Bombay at Goa
175)	Tomas Souza v. Nelly D'Souza, 2016 (1) Goa LR 269
176)	Uma Mahesh Bandekar v. Vivek Sadanand Marathe [2019] 5 S.C.R. 357
177)	Usmanbhai Hasanbhai v. State AIR 1981 Guj. 40
178)	Vasantrao Sadashiv v. Rama Lotlikar, 2014 (1) Goa L.R. 596
179)	Venkatesh Karekar v. Rosemary Fernandes, 2016 (1) Goa L.R. 495
180)	Victorino Gomes v. Francisco Gomes, 2002 (2) All MR 472
181)	Vilas Bandodkar v. Atmaram Bandodkar, 2010 (1) Goa LR 175
182)	Vineeta Sharma v. Rakesh Sharma, (2020) AIR 3717 (SC)
183)	Vinisha Jitesh Tolani @ Manmeet Laghmani V/s. Jitesh Kishore Tolani, MANU/SC/0308/2010, AIR 2010 SC 1915
184)	Vishwanath Yadav v. Kashinath Yadav, 2017 (1) Goa L.R. 538 (Bom)(PB)
185)	Vito Ticlo v. Nuno Ticlo, 2016 (4) All MR 879
186)	Wencelau Soares v. Camilo D'Souza, 1998 (1) Goa LT 196
187)	Yessonda Delfina Dalton v. Xavier Centre for Historical Research, A.O. No. 2 of 2018 in the High Court of Bombay at Goa
188)	Yoginder Parkash Duggal v Om Prakash Duggal, 2000 AIHC 2905 (Del.)
189)	Zacarias Durate Domingos Pereira v. Camilo Inacio Evaristo Pereira AIR 1984 Bom. 295
190)	Zelia M. Xavier Fernandes E. Gonsalves v. Joana Rodgrigues and ors. [2012] 2 S.C.R. 258

Chapter - I

Introduction

1.1 Introduction

The Indian Constitution places a duty on State to make efforts for securing for the citizens a Uniform Civil Code applicable throughout the territory of India.[1] Taking into consideration the aforesaid Directive Principle of State Policy, the Law applicable to the State of Goa relating to the marriages, inheritance, etc. stands out as a most thought out legislations of modern era. The subjects governed by the Civil Code applicable to Goa are not distinguished based on gender, religion, caste, etc. and enjoy the same privileges across the entire community. The Family Laws of Goa has been one of the most appreciated legislation even at the national level in our Country. Many eminent personalities have put forth their positive views about the Civil Code applicable to State of Goa. The year 2016 has been significant one since the law governing succession and inheritance has been substituted with the coming into force of the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012.

India is a secular country incorporating different cultures and religions which includes the Hindus, Muslims, Buddhists, Jains, Christians, Parsi and Sikhs etc. All these people form our nation as a symbol of secularism and unity for the world. Their religions exist as distinct identities yet are considered as one when it comes to nationalism. This is the power of India in global world. All the above religions profess their separate cultures when it comes to inheritance, marriage, adoption, divorce, etc. All the customs followed by each of the community differs and have their own importance in their religion. These personal laws follow the individuals across India and all the citizens are free to profess their religion in India though subject to morality.[2]

In India, the State does not identify itself with any particular religion. This is seen from the Preamble of our Constitution whereby the use of the word secular clearly demonstrates the same. There is no favoritism towards any religion by State and all religions are treated equally. There being no special treatment to any specific individual or any particular religion in India. Similarly no person in India can be punished for following any particular religion. People in India are free to profess their religion in

[1] Art. 44 of the Constitution of India - The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

[2] J Duncan, M.Derrett, "*Religion, Law and the State in the India*", New York: The Free Press, (1968), pg. 439.

India and the Government does not have power to order about professing or not professing any religion by its people.[3]

In many landmark judgments, the Apex Court has held that all the practices which are done under the religion including the various customs that are mentioned in the Holy text also form part of concept of religion. However it is important to note here that several judgments are based on the question as regards whether a particular custom is an important ingredient of that religion or not. Similarly the Courts are sometimes also required to decide about the reasonability of any Government decision putting restrictions on following of any of the customs, rituals under any of the religions. The basic principle is to ensure that the restrictions are not put arbitrarily and should be put based on what the situation demands and on the basis of maintaining law and order, decency, morality and general public wellness. If it is found that the customs followed under any religion are opposite to the above rules then the Court has the power to call for abolishing the same. Classic example is the landmark judgment delivered by the Hon'ble Apex Court pertaining to the expulsion of school student for not singing National Anthem. In this particular case, children of a particular community were not singing the National Anthem due to the restrictions put on them by their religious beliefs. The school however expelled the students. The Supreme Court has held that the right to speech, expression also includes right to remain silent and since singing the National Anthem was not permitted as per religious faith of the students hence the rustication of the students was held to be invalid.[4]

There are also some situations where the court held some of the customs mentioned in the religious texts being against the Constitution of India and held to be invalid. The Gujarat Government had prohibited slaughtering of some of animals in the State like Bullocks, Cows. Some members of the Muslim community were of the opinion that this law is invalid since it is permitted under their religious customs and beliefs and prohibiting the same would hamper their right to exercise religion freely. However the Gujarat High Court did not agree with the submission of the Muslim group and held that slaughtering of animals does not come under the purview of Muslim Customs, beliefs and religion.[5]

---

[3] Larson James Gerald, "*Religion and Personal Law in a Secular India - A Call to judgement*", Social Science Press, Delhi, 2001, pg. 24

[4] Bijoe Emmanuel v.State of Kerala AIR 1987 SC 748.

[5] Usmanbhai Hasanbhai v. State AIR 1981 Guj. 40

In Goa, such questions based on different religions cannot arise, since the law is uniform for all and religion has nothing to do with the rights enjoyed by parties under the marriage, divorce, inheritance laws. Irrespective of religious beliefs, same set of laws are enforced upon all individuals. In the present thesis, Succession under Family Laws of Goa will be studied in detail having due regard to the core concept of uniformity.

1.2 Background for the Research

The Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 has its basis in the erstwhile Civil Code which was applicable to the State of Goa which had its origin in the 19th Century, as early as 1867. It was enacted in the era when Goa was under the rule of the Portuguese. This excellent piece of legislation had been in force since then until the relevant provisions were repealed and replaced by the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012. It is pertinent to note that the Civil Code is not repealed entirely by the new Act. Only the relevant provisions have been substituted by the New Act. However those provisions which are not expressly repealed are still in force. Hence it is very clear that the Civil Code of 1867 still governs Goans till date alongwith the new Goa Succession, Special Notaries & Inventory Proceedings Act 2012. When Goa attained liberation from the Portuguese rule, the Civil Code was continued for its application for the State, which has since then become one of the most appreciable legislation of the modern era. In Goa, it prevailed as the law of the land in matters of Family Laws.

The Directive Principles are unlike rest of the Articles of Indian Constitution in the sense that they are non-justifiable because they do not bear a legal force to enforce them. Hence, if the Government acts in a way different to the Directives laid down in Part IV of our Constitution, the said action cannot be disputed in Court.[6] The direction to enact a Uniform Civil Code is contained in the Directive Principles and hence the said provision not being a Fundamental Right has still not seen the actual implementation by way of a Statute in the Rest of India.

However Goa is the only State in India that has Uniform Civil Code regardless of religion, gender, caste. Goa has a common family law and thus Goa is the only Indian State that has a Uniform Civil Code. In Goa, all people are bound with the same law

[6] V. D. Mahajan, *Constitutional Law of India*, 6th Edition, Eastern Book Company, Lucknow, pp. 298-309

related to marriage, divorce, succession. When the Goa became the part of Union Territory in 1961 by the virtue of the Goa Daman and Diu Administration Act 1962, the Parliament authorized the Portuguese Civil Code of 1867 to Goa and to be continued until amended and repealed by the competent legislature.

Thus the territories of Goa, Daman and Diu became part of India with effect from 19th December, 1961 by virtue of certain amendments of the Constitution of India after the said territories were liberated from Portuguese Rule. Under Article 239 of the Constitution of India, the Goa Daman and Diu (Administration) Act of 1962 provided for continuance of all those laws in force in these territories immediately before liberation until the time they are amended or repealed by a competent Legislature or other competent authority.

In *John Vallamattom v. Union of India*[7] Supreme Court in July 2003 reminded to the Central Government about its obligation to enact Uniform Civil Code, when a priest knocked the doors of the Supreme Court and challenged the validity of section 118 of the Indian Succession Act, 1925. The priest from Kerala, John Vallamatton filed a Writ Petition in the Apex Court in 1997 on ground that section 118 made discrimination against Christians by imposing unreasonable restriction on donation of estate for religious use. The bench of Justice V. N. Khare, Justice S.B. Sinha and A.R. Lakshamanan held section 118 to be unconstitutional, invalid and hence was quashed. Chief Justice Khare stated that the Article 44 provides standardization by securing a Uniform Civil Code throughout the territory of India. He said that it is regretful that Article 44 has not seen enforcement. The Parliament is still working on the concept of common civil code. The Apex Court came to a conclusion that Uniform Civil Court should be enacted in India but there cannot be directions in this regard from the Judiciary as per Constitutional mandate. The Supreme Court asserted that a common civil code will assist in national integration by removing unequal loyalties of laws which came in the results of contradictory ideologies, but the Parliament has thought otherwise as regards enacting a Uniform Civil Code in India. There is one State which brings all the religious community under a common set of laws that is uniform for all, i.e. Goa.[8]

---

[7] (2003) 6 SCC 611

[8] Virendra Kumar, "*Uniform Civil Code Revisited: A Juridical Analysis of John Vallamattom*", Journal of Indian Law Institute, 2003, pg. 315

In the case of *Mohd. Ahmed Khan v. Shah Bano Begum*[9], the Supreme Court through Chief Justice Y.V. Chandrachud stated that a common Civil Code will help the cause of national integration by removing injustice done in certain personal laws on the basis of gender. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a Uniform Civil Code for the citizens of the country and, unquestionably, it has the legislative competence to do so.

Under the Civil Code, Goa follows the concept of uniformity across the entire society whereby all persons are governed by a uniform set of rules in the matters of succession without distinction of religion, gender, etc. A detail and specific procedure in the matter of devolution of heirship is prescribed in the Family Laws applicable to the State of Goa. The line of inheritance can be proved by two methods i.e. either by way of drawing a Declaration Deed of Heirship before the Special Notary or by way of Court Proceedings. In the latter case it is known as Inventory Proceedings. The fundamental right of equality of status and opportunity guaranteed in the Constitution of India would be incomplete and would not be said to have been achieved with respect to women in the country if a common Civil law pertaining to family matters is not implemented to eliminate discrimination as regards succession and property rights conferred on women in the country.

In *Ms. Jordan Deigndeh v. S.S. Chopra*[10], D. Chinnappa Reddy, J. speaking for the Court referred to the observations of Chandrachud, C.J., in Shah Bano Begum's case and observed that the present case is yet another illustration which focuses on the immediate and compulsive need for a Uniform Civil Code. The totally unsatisfactory state of affairs consequent on the lack of a Uniform Civil Code is exposed by the present case.

Looking at the situation in rest of India, the Civil Code in Goa is a progressive piece of legislation which focuses on equality and justice to every section of society. There is no distinction between genders under the Family Law of Goa. In *Mr. Joao Cardoso v. Mrs. Ethelvina Cardoso Rodrigues*[11], it was held that the daughters did not lose their right to claim inheritance by accepting gifts on account of her future paternal and maternal

[9] AIR 1985 SC 945
[10] 1985 SCR Supl. (1) 704
[11] 2009 (2) Goa LR 388

legitime but only had to adjust the gift from their value of estate being determined with reference to date of death of estate leaver.

In *John Vallamattom v. Union of India*[12], it is observed that the premise behind Article 44 is that there is no necessary connection between religion and personal law in a civilized society. In *Maharishi Avadhesh v. Union of India*[13], the Supreme Court dismissed a petition seeking a writ of mandamus against the Government of India to introduce a common civil code. The court took the view that it was a matter for the legislature and the court cannot legislate in these matters.

The erstwhile Goan Civil Code contained two importance legislations i.e. Codigo Civil of 1867 and Codigo do Processo Civil of 1939. The former being a set of substantive rules while the latter determines the procedure to be followed in the inheritance proceedings. A combination of both forms the basis for the effective execution of inheritance proceedings in Goa. The recently passed 'Goa Succession, Special Notaries & Inventory Proceedings Act, 2012' though has its basis in the Civil Code, it seeks to eliminate some of the shortcomings of the Civil Code and further codifies the set of rules into a comprehensive and well thought out piece of legislation which corresponds to the modern era.

1.3 Need for a Common Family Law in India

India is known for Unity in diversity. There are numerous religions, customs that the people of India follow. However, despite of the distinct cultures, religious practices followed by different sections of the society, India as a nation stand as One. The State does not make any distinction among its citizens based on caste, religion, creed, language, etc. The concept of Uniform Civil Code has its source from the Constitution of India which is the supreme law of the country. Article 44 of the Constitution talks about the duty of the State to enact a Uniform Civil Code. By Uniform Civil Code, it means that there will be one law that governs the entire country with regard to the matters of succession, marriage, inheritance, heirship, divorce, maintenance, separation etc. At present, the people of India are governed by different rules and regulations in matters of their personal law which is not uniform. The Uniform Civil Code seeks to address this very issue of bringing about uniformity.

[12] AIR 2003 SC 2902

[13] (1994) Supp 1 SCC 713

From British rule till now, India has seen various situations like the Divide-Rule policy of British, the Partition in 1947, and thus at the time of framing Indian Constitution, the framers thought it right to defer the implementation of the Uniform Civil Code until the apt time arrives for its implementation. Hence, the Common Civil Code was included as Directive Principle for the State which would be not enforceable through Courts but the State will have to keep in mind these principles at the time of enactment of any Law for the people. Hence there was bifurcation of Fundamental Rights and the Uniform Civil Code, former being seen as an immediate necessity than the latter. Constitution of India does not mention the name of any particular religion under Article 25. The State has the power to put restrictions on the various financial or political or secular activities which are related to the religious beliefs which imply that the State can put some restrictions on the economic or financial activities which come under the domain of civil law which necessarily does not form part of religious beliefs. However this law has to be uniform for all and cannot be discriminating towards any religion. This will necessarily help in gradually implementing Article 44 of the Constitution of India.[14]

India has adopted a Federal structure with strong Centre. The Article 37 of the Constitution embodies that the State would be required to apply the Directive Principles for the purpose of law making. The founding fathers embodied Article 44 in the Constitution with the intention that the same is capable of bringing about national integration in the country. It is seen that Religion has played a crucial role in the society. Religion is seen as an indispensable part of life of people. However, religion does play a role in effective implementation of Article 44 of the Constitution since the matter pertains to the personal laws of the citizens. This topic was widely debated in the Constituent Assembly and also at the time of framing of the Hindu Code Bill after attaining Independence. It is noteworthy to state that India has been a neutral state when it comes to religion. The State has no religion and hence there is a freedom to every citizen to practice his religion. India is a secular country. However, there is also a balance between religion and secularism.

The Hindu laws have been codified and unified after independence. The Uniform Civil Code seek to free the society from irrational practices and thus bringing about uniformity. The Civil Law, Law of Evidence, Criminal Law has been uniform from the British era. However, the British had restricted themselves from bringing about radical

[14] Basu's "*Commentary on the Constitution*" (7th Ed.), Vol. (E) S.C.Sarkar and Sons, Calcutta, 1981, pg.139.

changes in matters of personal laws. Though some legislations were passed by the British like the Indian Divorce Act, 1869 , the Indian Christian Marriage Act, 1872 , the Parsi Marriage and Divorce Act, 1936 , Mussalman Wakf (Validating) Act, 1913, Muslim Personal Law (Shariat) Application Act, 1937, Dissolution of Muslim Marriage Act, 1939, Caste Disabilities Removal Act, 1850, India Penal Code, 1860, Indian Evidence Act, 1872, Indian Contract Act, 1872, Transfer of Property Act, 1882, Child Marriage Restraint Act, 1929, Indian Succession Act, 1925, Special Marriage Act, 1872, being some of the illustrations.

There were distinct and contrasting views pertaining to implementation of Uniform Civil Code during the Constituent Assemble Debates. Uniform Civil Code is seen as a tool to attain gender justice and also a tool to attain the objectives of the Preamble. The amendments made to the Hindu Law pertaining to Succession giving equal right to daughters is a shining example.

1.4 Global initiatives towards Equality

For there to be good governance, inclusive democracy must incorporate distributive justice. Inculcating a spirit of participatory democracy among the population and giving them the ability to look back and get rid of limited preconceptions in order to create a fraternal, democratic, and pluralistic society are two ways that dharma, understood in its broadest sense, benefits society.[15] The idea of "Recognition of Human Rights" has its origins in both Indian history and the world's oldest philosophical systems. But following World War II, significant adjustments were made at both the national and international levels by a number of nations. Because numerous international conferences, conventions, and declarations were held after 1945 and specified various forms of rights for "human beings" as well as "diverse groups of people". Some of the notable global initiatives towards equality which are discussed in detail in succeeding chapters as follows:

1.4.1 Universal Declaration of Human Rights, 1948

This is one of the important international treaty on the subject of Human Rights in the modern world. It states that all people are free, and they have the same rights and respect. They should behave towards one another in a spirit of brotherhood because they

[15] M. Rama Jois, *Ancient Indian Law Eternal Values in Manu Smriti XX*, 6th Ed., Universal Law Publishing Co., New Delhi, 2012).

are endowed with reason and conscience without difference of any type based on race, colour, gender, language, religion, etc. Everyone is entitled to all the rights and freedoms equally. Furthermore, no distinction should be made between nations on the basis of its political, juridical, or international status. Everybody has the right to freedom of mind, conscience, and religion, which includes the freedom to change one's religion or believe and the freedom to publicly and privately practise, teach, and observe one's religion or belief. Everyone has the right to social security as a member of society. They also have the right to the realisation of their economic, social, and cultural goals which are necessary for their dignity and the unrestricted exercise of their individuality through national and international cooperation, taking into account their State's organisational structure and available resources.

1.4.2 International Covenant on Civil and Political Rights, 1966

Every nation that has ratified the current covenant promises to uphold the rights guaranteed by it for everyone residing on its soil and falling under its jurisdiction, without regard to their race, gender, language, religion, political opinions, nationality, or place of birth. Each country has agreed to take the necessary actions, in accordance with its constitutional procedures and the provisions of the present covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present treaty, if not already provided for by existing legislative or other measures. States that are parties to the current convention promise to uphold women's and men's equal rights to all civil and political rights. Everyone has a right to equal protection under the law without exception because they are all equal before the law. In this regard, the law must forbid all forms of discrimination and ensure that everyone has access to fair and effective protection from discrimination based on any factor. The right to enjoy one's own culture, to profess and practise one's own religion, or to speak one's own language in community with other members of one's group must not be denied to persons belonging to ethnic, religious, or linguistic minorities in those territories where such minority exist.

1.4.3 International Covenant on Economic, Social and Cultural Rights, 1966

The States that have ratified the present Covenant have promised to ensure that the social, economic and cultural rights of natives of member nations will be exercised without hindrance from any kind of discrimination based on race, colour, sex, language,

religion. The signatories to the current covenant promise to uphold women's and men's equal rights to enjoy all of the economic, social, and cultural freedoms outlined in the current convention. All member countries are required to take all necessary steps, including enacting legislation, to ensure the full economic, social and cultural development and advancement of mankind and inorder to ensure equal rights among them.

1.4.4 Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1979

Various nations have agreed under this Convention to adopt a policy of eliminating discrimination against women through all appropriate channels and to undertake to ensure that the equality of men and women is effectively realised via law and other appropriate ways, and to include the principle of gender equality into their national Constitutions or other applicable laws. Similarly, enacting necessary legislations and other measures, including suitable penalties, to get rid of all forms of discrimination against women. The member nations has also undertaken to establish legal protection for women's rights on an equal footing with those of males, and ensuring that women are effectively protected from acts of discrimination through competent national tribunals and other public institutions.

1.4.5 Declaration on the Right to Development, 1986

All the nations have the responsibility and right to create effective national development policies that work to improve everyone's well-being on a continuous basis. This is based on everyone's active, meaningful engagement in development and the equitable distribution of its benefits in order to advance, encourage, and develop universal respect and observance of all fundamental freedoms and rights for all people. The realisation, development, and defence of civil, political, economic, social, and cultural rights require equal attention and urgent concern development, including ensuring that everyone has an equal chance to obtain basic resources, education, health care, food, housing, employment, and a just distribution of income because all human rights and fundamental freedoms are interrelated and indivisible.

1.4.6 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, 1981

All nations must take concrete steps to prevent and end religious or philosophical discrimination so that those rights are recognised, exercised, and enjoyed in all spheres of civil, economic, political, social, and cultural life. In order to prevent any such discrimination, all countries must work diligently to pass required legislations and ensure its effective implementation in true letter and spirit. Additionally, they must take all necessary steps to counter acts of intolerance based on religion or other views. There should be stringent action taken on anti social elements that spread violence based on religious discrimination.

1.5 Personal Laws in Ancient India

The "Vedas," or revealed books, which are thought to have been inspired by the divine, provide the fundamental rules of Hindu law. According to tradition, the Vedic writings were proclaimed by God Brahma, the creator and the first person in the Hindu Trinity. The early Hindus viewed them as infallible and supreme. Additionally, sacred writings like the Puranas and the two major epics may be found in ancient India. The Bhagvata Gita, the Ramayana, and the Mahabharata provided the ethical framework for the development of Hindu law, which is still in force today. The Vedas, also known as Shruti, include revealed writing that was heard. The Vedas include numerous titles of positive law, just like any other revealed books. They held that it had been heard and passed down to future generations by the Rishis or sages of ancient time. Another category of text is referred to as Smriti, which is Sanskrit for "tradition" or "what is remembered." Smritis are distinct from Shrutis in that they are an indirect perception built on memory rather than a direct perception of the divine precepts. These two texts are regarded as the foundational texts of Hindu law. Hindu sages served as the community's leaders in ancient times and were admired for their sanctity and deep knowledge.[16] It's possible to include "Manu Smriti" in the same group. Manu is regarded as the first person to establish or apply the law. Twelve chapters make up the Manu Code, eight of which contain legal regulations on numerous civil and criminal law topics. Other chapters cover religious rites and offer ethical guidelines. Other treatises that are subsequent to the Manu Smriti and entirely focused on discussing civil

[16] D.K. Srivastava, *Religious Freedom in India,* Deep and Deep Publications, Delhi, 1982, pg. 213

law, such as the Narad Smirti and Brihaspati Smriti, come into the third category.[17] The King did not had much power to impose his own rules on the general public under the system of ancient Indian law. In actuality, the law's sanction did not come from any temporal authority; it existed independently. The sages' developed and declared law and applied equally to both the King and his subjects. He made laws, but rarely, if ever, did he formulate them. The rule of law reigned supreme. The law was unalterable by the King. In fact, the Monarch was obligated to swear before his coronation that he would strictly follow all laws and traditions.[18] However, it is suggested that claiming that the Hindus saw the law as an essential component of their religion would be oversimplification. Religion does play a significant role in influencing and directing people's behaviour, but regional customs and accepted practises have also come to have legal standing.[19]

1.6 Personal Laws in Medieval India

When the Qazis enforced "Muslim Scriptural" law to Muslims under Muslim control in India, it has been said that there was no compromise so far litigation law touching Hindus was concerned. It is also asserted that Warren Hastings established norms for the administration of justice for the native population without distinction between Hindus and Mahomedans in 1772, marking the beginning of the application of Hindu religious law to Hindus. However, the majority of Indian legal historians have demonstrated that this is not the accurate and authentic historical fact. According to tradition, the Koran is a transcription of a tablet preserved in heaven on which everything that has occurred and will occur is inscribed. The distinction between Public law (Huqullah) and Private law (Huququl Ebad) in Islamic law was clear from the start. Marriage, family relationships, successions, etc. were considered private law whereas criminal law and public administration were placed in the first category. When Muslims have held power historically in areas with mixed populations, they have applied Islamic public law to all of their subjects, but Islamic private law has only ever been applied, if at all, to Muslims as a whole. There was no pressure placed on non-Muslims to adhere to their religious rules and practises in matters pertaining to private law; they were all

[17] U.C. Sarkar, *Epoch in Hindu Legal History*, Visheshvaran and Vedic Research Institute, 1958, pg. 23

[18] A.S. Alteker, *State and Government in Ancient India*, 7th Reprint Ed., Motilal Banarsidass Publisher, 2016, pg.100

[19] Salim Akhtar and Ahmad Naseem, *Personal Laws and Uniform Civil Code*, Aligarh Muslim University, Aligarh, 1998, Pg. 3

free to do so constantly and everywhere. This regulation was followed as a matter of state policy from the beginning (Siyasa Shariyah). In many regions, Muslim rulers did not actually uphold Islamic private law, not even for Muslims, let alone non-Muslims. This explains why many regional traditions continue to be practised in Muslim-majority countries like Morocco and Indonesia. Most likely for this reason, the British in India found many Muslim groups that had converted from Hinduism and chose against making any changes to these practices.[20] Due to the existence of village panchayats and the fact that Hindus had their own elders or Brahmins to determine civil cases, there were few lawsuits brought before the Kazis. The Mughal Government appears to have followed a policy of giving Hindus the freedom to resolve their own situations in the best way possible.[21]

1.7 Personal Laws in British India

With the exception of the use of oaths and ordeals, the only law that was substantially shared by Muslims and Hindus throughout the Muslim administration was the criminal code. The collapse of the Mughal Empire marked the end of Muslim dominance. By the time the Empire nearly ended, it had already eroded to the point where the Governors of the several provinces had essentially seized absolute power and established themselves as independent agents. The British arrived in India at this point as innocent traders, but they ultimately turned out to be mercenaries and established British authority in India. The establishment of the British empire in India stands out as a singular moment in world history. In contrast to many other empires, the British Raj in India initially commenced in India by a firm that was established in England to advance British commercial interests abroad.[22] It was politically convenient for the British not to tamper with existing personal law in India during the British Raj as long as it referred to family and inheritance rights only. Because the East India Company's principal goals were trade, commerce, and the exploitation of the nation's natural riches, their main motivation was to influence trade and commerce-related laws. The Muslim model of judicial administration was largely carried on by the British when they established their dominion over India (1757). But over time, as they solidified their authority, they

[20] Tahir Mahmood, *Uniform Civil Code, Fictions and Facts*, India and Islam Research Council, 1995, pg. 43

[21] M.P. Jain, *Outlines of Indian Legal History*, N.M. Tripathi Pvt. Ltd., Bombay, 5th Ed., 1990, pg. 39

[22] *Ibid*, pg. 5

entirely altered the criminal code and implemented their own system to handle numerous civil law issues.[23] Certain elements of Hindu and Muslim law that were specifically named and which, in their opinion, were intricately entangled with religion were given legislative protection. The British Government in India at the time had a policy of not interfering with their citizens' religious sensibilities. They believed that nothing could be wiser than to ensure through legislative act that the Hindus and Muslims private laws, which they inversely hold sacred and a violation of which they would have believed to be the most severe oppression, would not be replaced by a new system of which they must have considered as being imposed on them with a spirit of exuberance and prejudice.[24] Hindu and Muslim religious concerns were left alone by the British Government from the beginning. The Charter Act of 1753 exempted Indians from the Mayor's courts' jurisdiction and stipulated that any conflicts should be settled by the Indians themselves, unless both parties consented to the court's jurisdiction. Muslims and Hindus were exempted by Warren Hastings in 1772, and it was ordered that issues pertaining to them would be decided in accordance with the Koran and Shastra. Later, when His Majesty's Court of Judicature, i.e. the Supreme Court of Judicature at Calcutta, Madras, and Bombay were founded in 1773, the norm that requires the application of Hindu laws to Hindus and the application of Muslim laws to Muslims was extended to these Courts as well. Warren Hastings' list was expanded upon in 1781 by the Act of Settlement, which added succession. The Warren Hastings rule of 1774 was rephrased by Lord Carnwallis in 1793. In this way, the British in general backed Hasting's stance of upholding Hindu and Muslim law. The Government of India Act of 1915 and an Act from 1797 both passed similar provisions. The Madras and Bombay courts were governed by the 1797 provision, while the Calcutta, Madras, and Bombay high courts were governed by the 1915 laws. Although the British had no direct effect over the personal laws of Hindus and Muslims, their legal system had a significant impact on the development of these laws. The 1772 plan gave English judges control over the administration of justice. Although this alteration was not offensive, it had a tendency to alter conventional ideas. The Judge was a foreigner with a foreign background, despite the fact that English Judges used to consult Pandits and Maulvis in situations involving the personal laws of Hindus and Muslims. He could only force his decisions to follow what he believed to be the law; finding a legal remedy was his main

[23] M.P. Jain, *Outlines of Indian Legal History*, N.M. Tripathi Pvt. Ltd., Bombay, 5th Ed., 1990
[24] W.H. Morley, *Administration of Justice in British India*, R.C. Lepage & Co., Calcutta, 1858, pg. 193

concern. It goes without saying that judges' primary responsibility in the pre-British system was to resolve any disputes that were brought before them, but when British officials took control of the administration of justice, the idea of precedent or stare decisis was adopted.[25]

1.8 Codification of Laws in British India

The personal laws were not attempted to be codified throughout the British rule, with the exception of the latter years. The British were reluctant to alter the traditions and legal and religious norms that applied to Muslims and Hindus. Despite the fact that the first Law Commission had stated a desire to create a code for personal laws, it later became a widely accepted principle of British policy not to interfere with these systems, to leave them largely alone, and to only modify them to the extent that there was a strong public demand for doing so. This policy was criticized by the Second Law Commission, and the same was done by the Fourth Law Commission, on October 14, 1837, before Macaulay left for India, the necessary proposal was written and submitted to the Government. In the meantime, the British had reached Muffassils, where the lack of Lex Loci created a number of problems. Except for Hindus and Muslims, there was no Lex Loci or territorial law in the Muffassils. While a Lex Loci prevailed inside the presidency towns in the absence of personal or other special law. Numerous legislative actions, including the Indian Divorce Act of 1869 and the Native Converts Marriage Dissolution Act of 1866, were materialized as a result of the commission's various recommendations that were submitted from 1866 to 1869. Other laws that were passed during the third Law Commission's tenure include the Child Marriage Restraint (Amendment) Act of 1978, the Special Marriage Act of 1872, the Hindu Wills Act of 1870, the Indian Evidence Act of 1872, and the Christian Marriage Act of 1872. Study of the legislative actions from 1862 to 1872 reveals that the Third Law Commission was working hard to contribute to the codification of Indian law. Sir James F. Stephen and Sir H.S. Maine both played important roles in the development of the codification of laws in diverse fields while serving as law members of the Government. The Married Women's Property Act of 1874, the Indian Majority Act of 1875, and the Bengal Mahammedan Marriages and Divorces Registration Act of 1876 were a few of the more significant laws passed at this period. The Avadh Laws Act of 1876 was the first piece

[25] M.C.J. Kagzi, "*Advisability of Legislating a Uniform Family Law Code*", Jaipur L.J (1965), p. 193

of legislation in British India pertaining to any substantive Muslim Personal Law provision. This was a regional law affecting the ten Uttar Pradesh districts that made up the former Oudh state.[26] Sir Syed Ahmad Khan suggested that the Government should create a legislation giving it the authority to appoint Kazis in any area if a sizable number of local Muslims wanted it.[27] As a result, the Kazis Act of 1881 was passed. The Guardians and Wards Act of 1890, the Transfer of Property Act of 1882, and the Bengal Protection of Mohammadan's Pilgrim Act of 1896 are further significant pieces of legislation that should be highlighted in this context. Although the new rules were equally applicable to everyone, regardless of their religious connections, several of the provisions had the effect of limiting the applicability of Hindu and Muslim laws and introducing English common law.[28]

1.9 Secularism under Indian Constitution

The implication of the word 'secularism' in Indian Constitution specifically implies that there is no Government favored faith in India. Religious followings of people in India and State are distinct from each other and State does not interfere in religious following of its citizens. No religion is treated as superior or inferior in India. Constitution's language has both secular as well as religious aspects, and it is this mixing that establishes the parameters of secularism to be upheld by the State and extent of religious freedom to be exercised by people and communities in contemporary India. The Constitution nowhere defines the word "secular". In the opinion of H.M. Seervai, Secular may be opposed to religious in the sense that a secular Government can be an anti-religious State.[29] We are a secular nation, but there exists no "wall of separation" between religion and the Government in this country, either in law or in practice. Instead, the two can interact and interfere in one another's affairs as long as they do so within the bounds that have been legally established and upheld by the courts. Indian secularism doesn't call for the complete exclusion of religion from public life or even from State matters. According to Indian Constitution, the Government is required to treat all adherents of all faiths, creeds equally. This is primary need of secularism. India

[26] Anam Abrol, "*Codification of the Personal Laws during British Rule in India - An Appreciable Attempt*", Supreme Court Journal, Vol. 1, 1991, pg. 6

[27] Tahir Mahmood, *An Indian Civil Code and Islamic Law*, N.M. Tripathi Publisher, 1976, pg. 63

[28] D.K. Srivastava, *Religious Freedom in India,* Deep and Deep Publications, Delhi (1982) pg. 213

[29] Seervai H.M., *Constitutional Law of India*, Universal Law Publishing Co. Pvt. Ltd., 4th Edition, Vol. 1, pg. 277

being nation of religions and a pluralistic society, is populated by followers of several religions. The scheme of secularism, or official neutrality in religion, was thus included by the Constitution's creators. Additionally, it was sought to grant various religious organizations religious freedom. In India, both before and after independence, the topic of religion/faith has been extremely contentious. Therefore, the Constitutions object is to guarantee state neutrality. Secularism must include religious tolerance and respect towards all faith groups.

In India, secularism is not atheism. Respect for all faiths and religions is what it signifies. The State does not associate itself with any specific religion. India being secular country, there can be no such thing as State religion or favored religion and all religions are equally protected by our Constitution without favoritism or prejudice. The Indian Constitution's Articles 25 to 28 provide specific rights relating to religious freedom to all citizens, all religions are treated equally and given equal constitutional protection without any preference or prejudice. However, there is difference between State's authority to govern socio-economic problems and its non-interference with citizen's religious or secular rights. The provisions found in Article 25 to Article 30 and Part IVA added to Constitution containing Article 51A regulating fundamental duties of citizens, mirror the word "Secularism" mentioned in the Preamble. It is to be interpreted in light of the Constitution's more than 72-year history of operation. Therefore, "secularism" can have a positive connotation that fosters tolerance with respect towards all religions. Non-discrimination against individuals by Government based on their choice of faith is the cornerstone of secularism. "Secularism" can be implemented by either taking a wholly neutral stance toward religions or by taking a constructive stance by encouraging one group of religious people to appreciate and understand the religion and beliefs of another group of people. Mutual mistrust and intolerance can be gradually erased with such understanding and respecting one another's religious beliefs. Thus, the study of religions in schools cannot be viewed as a confrontation to Constitution's secular philosophy.

Indian Constitution takes India's secular nature into consideration in numerous places. Articles 25 through 28, 29, 30, 14, 15, 16, and 17, alongwith Articles 44 and 51A support secularism and implicitly forbid the setting up of a theocratic Government. The Government must respect all religions, religious groups, and religious denominations

equally. In Sarla Mudgal v. Union of India[30], Supreme Court bench consisting of Kuldip Singh and R.M. Sahai, JJ strongly advocated the introduction of a Uniform Civil Code in India. It was suggested that the personal laws of the minorities should be rationalized to develop religious and cultural amity preferably by entrusting the responsibility to the Law Commission and Minorities Commission.

This friction between professing religion and related constitutional rights has been long existent in India. Article 25 of our Constitution talks about right to profess religion, which includes every persons right to choose or change his religion after attaining majority. Any person can choose religion based on his self conscience. Our Constitution also provides for right to propagate any religion. Propagation of religion includes publicizing the religious beliefs so that any person who wants to adopt that particular religion can do so based on his free will and wish. However to specifically mention that forceful conversion is not allowed in India. If any person wants to adopt any religion, he has to do so according to his self thoughts and beliefs.[31]

Though the word 'Secular' was not included in the Constitutions Preamble initially in 1950, Indian Constitutional framework has been on the principle of Secularism. Secularism as a basic structure of our constitutional setup was adopted based on our rich cultural and plural society and political heritage of our country. The Drafting Committee of Constitution was appointed by the Constituent Assembly with a duty to prepare Constitution as per the decisions taken in Constituent Assembly. Several legislations like Government of India Act, 1935 and also the Constitutions prevalent in the countries like America, Europe, French, English were referred while enacting the Constitution of India. For example Part Three of our Constitution was largely based on the American constitution. Since the country had recently seen partition, the members of the Constituent Assembly did not agree to add the word secular, neither secularism in the Preamble for the text of the Original Constitution. The then Prime Minister of India Mr. Nehru put forth the resolution pertaining to the objectives before the Constituent Assembly. The objective resolution was to help the Constituent Assembly to draft an ideal Constitution complying with principles and requirements of the people of India. Some of the most important objectives laid down by the resolution were:

- India was to be proclaimed as an independent sovereign Republic and the Constitution was for future Governance of the country.

[30] AIR 1995 SC 1531

[31] Seervai H.M., *Constitutional Law of India*, Universal Law Publishing Co. Pvt. Ltd., 4th Edition, Vol. 1

- The State power is derived directly from people of India.
- Equality of Status and opportunity, justice of social economic and political along with freedom of speech and expression subject to public morality were to be guaranteed to Indians.
- There would be protection to minorities and backward classes
- The integrity of the Republic of India including that of its land, sea and air would be maintained
- The Republic of India would work for the promotion of world peace and welfare of humanity.

It is believed in the society that faith and religion are important spheres in the moral upbringing of any individual.[32] It is to be noted that the word secularism, secular, secular state did not form part of the objective resolution even though it was totally secular in character and substance. It is further pertinent to note that neither Mr. Nehru nor Dr. Ambedkar referred to the word secularism in their respective speeches. Since there was large disagreement between the members of the Constituent Assembly for addition of the word Secular, the same was dropped from the Original Constitution.

1.9.1 The express inclusion of word 'Secular' in the Constitution

India is proclaimed by the Constitution as a Sovereign Republic. The social, economic and political justice is guaranteed by our Constitution including Equality before law as well as Equality of Status and Opportunity. The Indian Constitution also guarantees freedom of expression, religious freedom though putting reasonable restrictions. The Indian Constitution provides for certain safeguards for the minority community and for purpose of upliftment of the tribal communities. The general perception in Constituent Assembly Debates was to see our country as being a secular republic. However, the word secular was not initially incorporated in the Indian Constitution at the time of its inception.

The general reading of Constitutional provisions as well as Preamble makes it amply clear that India is undoubtly a Secular State. But to avoid probable religious conflicts the word Secularism was not mentioned in the Preamble originally. The word Secularism was included in the Constitution by way of Forty Second Constitutional Amendment Act in 1976 and came into operation from 03rd January of the year 1977.

[32] Ratilal Panachand Gandhi v. State of Bombay AIR 1954 SC 388.

The Indira Gandhi Government added the word Secular in Preamble. The significance of this word is that the State does not have and does not profess any specific religion and people are free to practice their own religion without any interference from the Government and the State. Articles 25 to 28 of the Constitution also emphasis on the freedom of religion. This has ensured that there is no favoured religion in India and further Government does not regulate the people's religious beliefs.

Secularism is seen in India as a positive phenomenon and that all religions are guaranteed equal treatment. It is also pertinent to note that the 42nd amendment of the Constitution was most controversial amendment. The object of the amendment said to expressly state the tall ideals of Secularism and also Socialism in India.[33] So also there was debate in the Parliament as regards whether the Parliament was authorized under the amending powers of Constitution to amend its Preamble. Inspite of these discussions, there wasn't any disagreement to include the word Secular in our Constitution. Mr. Mavalankar was of the opinion that Preamble cannot be amended.[34] He further expressed his fear that this can become bad precedent since even the word democracy may be removed from the Preamble.

The then Prime Minister speaking in favor of amendment said that intent of the founding fathers of the Constitution were to make India a socialist and secular democratic country. The various Laws made in the country were also based on this principle. The basic objective of the amendment was to expressly include the words socialist and secular in Preamble. This would remove any ambiguity and the words will further guiding principle for the Government, Judiciary, legislature, the general public and the international community.

1.10 Importance of the Research

The three distinct legal systems that have shaped modern Indian society are Hindu, Muslim, and British. Hindu and Muslim personal law derives from and is governed by ancient religious writings. Since ancient times, religion has governed practically every element of public and private life. All laws, including those pertaining to individuals as well as to crime, evidence, procedural, contracts, trade, and business, were influenced

[33] D.Paras, *Indian Constitutional Amendments from First to Forty-Fourth*, Oxford & IBH Publishing Co., New Delhi, 1980, pg.219

[34] R.L. Chaudhry, *The Concept of Secularism in Indian Constitution,* Concept Publishing House, New Delhi, 1987, pg.112

by religion. Only certain areas of life like marriage, divorce, maintenance, guardianship, adoption, succession, and inheritance remained within the boundaries of the laws' current scope of applicability. They were thought to be unchangeable and outside the purview of the legislative branch. From a historical standpoint, despite centuries of political upheavals and socioeconomic changes, many aspects of Hindu law and Islamic law have remained unaltered. The Indian constitution's protection of religious freedom has given rise to questions about whether or not personal laws are protected. [35]

However, there are several provisions under different personal laws which can be considered as discrimatory and gender biased.[36]

1) Hence the Research would help to study the Goa Succession, Special Notaries & Inventory Proceedings Act 2012 on the lines with the Uniform Civil Code as directed by Article 44 of Constitution.
2) The Research study would focus on the merits of Gender Justice for women in the field of succession in Goa and thereby exploring the possibility of applying similar provisions in the Family Laws in rest of India.
3) The Research study is society oriented in nature as matters of succession is applicable to every citizen who is born and also applicable after the death of the person. The Research study would aim at giving solutions to the practical problems faced in Succession procedures.
4) The Research study would help in bringing to light the importance of an effective family law in overall progress of individuals, community and the entire Nation at large.
5) The study would help to analyze, study and examine the intricacies involved in the actual ground level implementation of the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 and would further help to bring to light any practical difficulties faced by the public functionaries.
6) The Research thesis would help to come to a conclusion as regards possible methods and ways that can be incorporated to overcome the difficulties faced in the field of succession law in Goa and thereby proposing a further effective and smooth mechanism for devolution of heirship in Goa.

[35] D.K. Srivastava, *Religious Freedom in India,* Deep and Deep Publications, Delhi, 1982, pg. 213

[36] *The law and Indian women: A Study by the YMCA of India,* Printed by Madhulika pg.34.

1.11 Scope of the Research

1. The Research aims to focus on the concept of succession law in Goa focusing on the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 and would cover, the law involved, the procedure followed, the merits and the demerits along with the critical analysis of the process involved under the aforesaid legislation.
2. The area of Research would cover the entire state of Goa.
3. The Research work would deal with the law and procedure that is to be followed under the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 along with analysis of the same. It would also highlight the succession law that is followed in other parts of India and that followed in Goa.
4. The Research Thesis aims to analyse the establishment of various functionaries under the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 alongwith their role and procedure followed.
5. The Research Thesis also incorporates data compilation and analysis and the conclusions drawn therefrom to test the Research Hypothesis.

1.12 Objectives of the Research

The main object of the Research is to scrutinize the efficacy of the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 for the purpose of devolution of heirship along with the merits and shortcomings that are faced in the system. Further the research aims to analyse and examine the following aspects:

1) To study the law, procedure and impact of the Goa Succession, Special Notaries & Inventory Proceedings Act 2012 on the devolution of heirship in Goa.
2) To bring to light the salient features of the Goa Succession, Special Notaries & Inventory Proceedings Act 2012.
3) To study the importance and role played by different functionaries under the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012.
4) To study the procedure that is prescribed under the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 for various judicial and quasi judicial acts.
5) To suggest remedies for overcoming the shortcomings and difficulties faced in the succession procedures under the prevailing law in Goa.

1.13 Research Hypothesis

For the purpose of the Research Thesis, the following hypothesis can be drawn:

1. The spirit of Article 44 of the Constitution is successfully adopted by the Goa Succession, Special Notaries and Inventory Proceedings Act 2012
2. The mandatory provision which directs all Special Notaries to be law graduates is not implemented strictly.
3. The role played by Lok Adalats in settling Inventory matters is very limited.
4. Though the Succession law in Goa prescribes summary trial, the devolution of Heirship takes longer time due to non-existence of specialized Courts.

The above hypothesis can be used as a basis to study the topic of Succession Law in Goa and to test the above hypothesis.

1.14 Methodology for the Research

The Thesis consists of theoretical as well as empirical study. Use of various data collection techniques are used for the purpose of gathering data. Similarly statistical tools are used to analyze and study the data collected. The method of data collection is categorized as follows:

A. Primary Data:

1) Interviews with various Judicial and Quasi Judicial authorities in the field of Research study.
2) Interviews with Public Functionaries in the field of Research study.
3) Interviews with prominent personalities who are related to the field of Research study.
4) Questionnaires to
   i. General Public,
   ii. Litigants,
   iii. Advocates,
   iv. Public Functionaries
5) Observation Method for studying the actual procedure followed

B. Secondary Data:

1) The Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 along with Codigo Civil, 1867, Codigo do Processo Civil 1939, Notarial

Decree No. 8373, other relevant Statutes, Rules, Ordinances, etc. in the field of Research.

2) Various available Books on the subject would be referred to while conducting the Research Thesis.
3) Articles published in various Journals, Law Magazines, etc. relating to the field of Research would also be referred to get an idea on the subject.
4) Internet would be also used to get a comprehensive idea on the subject under consideration for the Research study.
5) Some of the commentaries available on the subject would also be referred to get a detail explanation on some of the subjects in the area of research.
6) Case files would also be referred, to study the inventory cases, procedure that is followed subsequently upon institution of the suits, and the various procedures involved till the disposal of Inventory Proceedings.
7) Information would also be sought from court offices to get statistical data for the past several years.
8) Judgments delivered by the courts would also be referred, to study the issues framed, arguments advanced by both parties, reasoning given by the court, period that is required to dispose such cases after following detail procedure, and actual execution of the judgment.
9) Opinion of prominent persons involved in the field of study published in newspapers, magazines, audio-video sources pertaining to the subject will also be referred.

1.15 Limitation and Area of Research:

1. The Research primarily deals with the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 applicable to Goa
2. The area of research would be done with reference to the entire State of Goa.
3. Though the study would mainly concentrate on the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 prevailing in Goa, the Succession law followed in Rest of India would also be highlighted for the purpose of comparative analysis.

1.16 Scheme of Chapterisation:

Chapter One: Introduction

It gives an introduction to the research study by mentioning the objectives, importance, limitations, hypothesis drawn, methodology adopted and the scheme of chapterisation. Further this Chapter deals with the scope of study for the present Research. This chapter gives an idea on the area of Research and the manner in which the Research is channelized and studied in the subsequent Chapters to achieve the objectives of the Research.

It further gives an introduction on the topic and concept of Inheritance and Heirship which is the starting point of this Research. It tries to give a brief outline on the subject matter under consideration on the topic of Inheritance. This chapter also touches upon the key concepts relating to succession in India. It also mentions about the steps taken at international stage as regards equality. It gives a theoretical basis for the Research Study by making familiar the basic ideas/ concepts involved in the area of Research.

Chapter Two: Family Laws in Rest of India and the Idea of Uniform Civil Code

It studies the succession laws followed in Rest of India which is primarily based on the personal laws of the citizens and which is different as compared Goan Family law. It gives an understanding on the various succession laws that governs the various sections of society in India. It also studies the various positives and negatives that are present in the various succession laws followed in the Rest of India. This Chapter also focuses on the concept of Uniform Civil Code as mandated under the Directive Principles. This chapter would serve as a basis for a detail and subject wise elaboration in the succeeding chapters. It studies the succession laws followed in rest of India which is primarily based on the personal laws of the citizens and which is different as compared to Goan Family law.

An overview of succession that is followed under different systems throughout the globe is also discussed in this chapter. The various International instruments pertaining to gender equality are discussed under this chapter focusing on the concept of gender equality that is followed in various distinct legal systems across the globe. The views of eminent personalities like Rosco Pound on the concept of codification of laws are also discussed in this chapter. We would also see about the conceptions and misconceptions surrounding the concept of the Uniform Civil Code

and freedom of religion as specified under our Constitution. We have also discussed in this chapter about the various Landmark judgments pertaining to the Uniform/Common Civil Code and personal law.

This Chapter also gives a comparative analysis of succession laws followed under different religions in India.

Chapter Three: Law of Succession in Goa – A Detail Study of Inheritance, Legal Succession, Testamentary Succession in Goa

It would cover an analysis of law pertaining to opening of inheritance, acceptance and renunciation of inheritance, testamentary and legal succession, Wills, partition, etc. that will be covered under this Chapter. This Chapter would cover the substantive law governing law of succession in Goa. It further gives a broad outline and features of the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 applicable in Goa which governs the law of succession in Goa. This Chapter incorporates a comparative analysis of Family Laws in Goa and Rest of India.Chapter 3 has focused on the Goa Succession Special Notary and Inventory Proceeding Act 2012 and the core provisions which regulate the conduct of Succession proceedings in Goa. In this chapter, the concept of succession that is applicable in Goa is dealt with. The study focuses on Goa Succession, Special Notary and Inventory Proceeding Act 2012 that came into force from 21 December 2016. This law replaced the Portuguese Civil Code that was in force from the year 1867 onwards. In this chapter the concept of succession in Goa and the transmission of heirship from the deceased to his heirs is discussed in detail so as to give a base for practical study in further chapters. We have also discussed about the various types of succession and kinds of successors under the Civil Code applicable in Goa. We have discussed in detail about the concept of testamentary succession and the legal succession in this chapter. There are various kinds of Wills under the Goa succession law that can be drawn by the Special Notary. All this types of Wills are discussed is chapter. The power of the testator to appoint his executor for the Will and the provisions relating thereto is also discussed here.

Chapter Four: Role, Functions and Procedure before Judicial & Quasi Judicial Authorities

This chapter focuses on the socio legal aspect of Deed of Declaration of Heirship as well as Inventory Proceedings that are carried out through Courts in Goa. Further it studies in detail the law applicable to the Inventory Proceedings and the actual procedure that is followed in Courts while handling such cases. It mentions about the importance and advantages of instituting Inventory Proceedings. This Chapter studies the sociological aspect alongwith the law of the land. Hence the social conditions that affect the Inventory Proceedings are also dealt with in this Chapter as the ultimate aim of any legislation is its successful application to the community at large.

This chapter deals with the establishment of various functionaries under the Act along with their powers, functions, duties, role provided under the Goa Succession, Special Notaries & Inventory Proceedings Act, 2012. Further, this chapter would cover the procedure that is adhered to by various functionaries under the said Act. This chapter focuses on the socio legal aspect of Inventory Proceedings that are carried out through Judicial and Quasi Judicial functionaries in Goa. Further it studies in detail the law applicable to the Inventory Proceedings and the actual procedure that is followed in Courts while handling such cases. It mentions about the importance and advantages of instituting Declaration of Heirship and Inventory Proceedings. Chapter Four primary deals with the judicial and quasi judicial authorities, their role functions and the procedure involved in various acts performed by them under the Act. In this chapter we have studied the functions and the jurisdiction under which various authorities function. We have discussed in detail about the various types of documents that are drawn by the Special Notary under the Act and the mode and method of preservation of the records for perpetuity.

Chapter Five: Statistical and Data Analysis - An Empirical Appraisal of Goan Succession Law

This chapter is based on collection and analysis of statistical and empirical data that is collected from primary and secondary sources. It gives the data in figures which is analysed in depth by way charts and diagrams, thus enabling to draw observations from the same. This Chapter will help to prove, disprove the hypothesis based on facts through the data collected. The data is collected from Government offices,

Gazette notifications and from Courts, Questionnaires, Interviews also since the study is pertaining to functioning of the Special Notaries, Lok Adalats and the Inventory Proceeding filed before the Courts. The data collected from the study is tabulated and presented in the form of chart along with the analysis of the data. The focus of Data Collection has been entire State of Goa as the data collection and analysis of the data helps to know the actual implementation of the Act and also to know whether the same is implemented in its true letter and spirit.

Chapter Six: Conclusion, Findings and Suggestions

This chapter deals with the conclusions drawn on the topic by giving a summary about the problem at hand and the solutions that can be applied to the same. An analysis of Hypothesis is also made in this chapter. It contains the testing of the Hypothesis that were drawn in the Chapter I. All the Hypothesis are tested based on the study conducted from Chapter II to V inorder to come to conclusion as regards whether Hypothesis are proved or disproved. All the findings pertaining to the Thesis is discussed in detail under this Chapter. Further, the prominent changes introduced by the present Succession Act over the old Portuguese Civil Code is also discussed in this Chapter. It concludes by giving a detail set of recommendations that can be implemented to overcome the problems faced in matters pertaining to the succession in Goa. It further tries to suggest possible ways to make the devolution of heirship more smooth and society friendly.

Chapter - II

Family Laws in Rest of India and the Idea of Uniform Civil Code

2.1 An Overview:

In India, personal laws are governed by the religious beliefs of individual. The religion to which he belongs will determine the law applicable to him for determination of his heirs after he passes away. There are no uniform set of rules in India to govern succession matters. Article 44 of Indian Constitution puts an obligation on the Government to enact a Uniform Civil Code for its citizens. However it is a direction which is not enforceable through Courts of law. In other words, the Courts cannot direct the State to enact the Uniform/Common Civil Code. Nonetheless State is duty bound to enact the same.[37] But there cannot be set a time limit on the legislature to frame the same. Neither the Constitution has set a time frame to enact a Common Civil Code. By the term Civil law we understand that the laws are codified and finds its source from the Statutes and unlike the Common law system wherein the laws are derived from Case laws pronounced by Judges. Civil Laws provide predetermined set of rules and regulations which govern its subjects. The concept of Common Civil Code governs all its subjects without any distinction on the basis of religion, regions, caste, creed race etc.

In general, one's personal faith and national law apply to matters pertaining to succession. Holy scriptures of some religions tackle the subject of inheritance laws. The Hindu Succession Act, 1956 regulates succession for Hindus in the event of a Hindu's death. One of the principal statute governing succession law in India is the Indian Succession Act, 1925. If a person passes away without leaving a Will, their respective personal laws govern the succession. Hindus, Jains, Sikhs, Buddhists, and everyone who is not a Muslim, Christian, Parsi, or Jew are all covered by the Hindu Succession Act of 1956. It also applies to a Hindu who has converted to Hinduism. The Indian Succession Act of 1925 will be applicable where there exists a Will of Estate Leaver. Christians, Parsis are governed under Indian Succession Act. But for Muslims, there is the Shariat Laws (Application) Act.[38]

Even though several religious groups coexist as citizens of the same nation, India's family laws vary and depend on religion. The reason for this is because the traditions, social customs, and religious interpretations of these communities as they practice them

[37] Article 44 of the Constitution of India reads as follows: '*The State shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India*"

[38] https://www.onmanorama.com/news/kerala/2023/06/24/uniform-civil-code-muslims-secular-indian-succession-law-women-nisa-property-inheritance.html visited on 09-07-2023 at 19.00.

in their private lives greatly depend on the religions they followed as children and as adults in the society. While Muslim traditions and beliefs are related to either the Sunni or Hanafi Sect, Hindu traditions and beliefs are heavily impacted by the Dharmashastras. It is interesting to mention that before the time of the Council of Trent, there was no religious ritual associated with a Christian marriage. Marriage was declared to be a sacrament by the Council of Trent in 1563, binding all Roman Catholics in the nations where this legislation was in force.

The Indian Constitution grants Hindus, Muslims, and Christians the freedom to follow their respective religious practices in areas relating to marriage, adoption, and succession because they have always had their own customary laws dating back to the beginning of time. The law respects the varying layers that shape marriage-related decisions in various religious communities. There are numerous distinct succession laws, each of which claims to reflect the various and distinctive ambitions, practices, and traditions of the society to which the statute in question applies. India's succession laws fall under the purview of personal law. Because of this, we have a wide variety of succession laws that regulate matters pertaining to marriage, adoption, succession, and other personal laws.[39]

Each religion in India has its own set of strict laws, making the Indian family difficult. Marriage and divorce registration are optional in certain States. Hindus, Muslims, Christians, Sikhs and adherents of other religions are governed by separate laws. The State of Goa, which has the Portuguese Civil Code in effect and where all religions share a common law governing marriage, divorce, succession, and adoption, is an exception to this norm. We have the Hindu Succession Act, Muslim Personal Law, the Indian Succession Act, and even the Jaina Succession Act (which is no longer in use because the Hindu Succession Act now also applies to Buddhists, Jains, and Sikhs). The Shia law of succession and the Hanafi law of succession are the two main streams that comprise the law of succession among Muslims. Both of these succession laws are recognised as having legal effect under the Shariat Laws (Application) Act and are a part of Indian common law.

The Hindu Succession Act is a notable shift from the ancient Hindu law that Manu had codified. It offers a highly fair and just set of guidelines that address the succession concerns for a Hindu male or Hindu female who has passed away without leaving

[39] *Towards Equality: Report of the Committee on the Status of Women in India*, Govt. of India, Ministry of Education and Social Welfare, New Delhi (December 1974), pg. 140.

behind a Will. Of course, there are some areas where the pre-existing Hindu law has been codified without being repealed. The British law that was popular at the time is primarily reflected in the Indian Succession Act.

The Sharia is the source of Muslim succession law. The Holy Quran serves as the main foundation for Muslim succession law. In addition to the topics that are specifically covered in the Holy Book, there are also the Ijma, Sunna, and Qiyas, all of which contain succession-related regulations. Hindus are subject to the fundamental succession laws outlined in the Hindu Succession Act (and this includes Buddhists, Jains and Sikhs as well). It also includes related sub-sects like Arya Samaj and Ramakrishna Mission. The Act deals separately with succession to a Hindu male and succession to a Hindu female.[40] Indian Succession Act also governs the laws of succession in cases of interfaith marriages that are solemnized under the Special Marriage Act.[41]

2.2 Historical analysis:

When we look at the concept of Uniform Civil Code, we need to look at the policy used by the British. The British though carried out reforms in laws pertaining to mainly criminal matters. The British did not meddle excessively into the personal laws of Indians since they used the Divide and Rule policy. Nevertheless, they brought about legislations to prohibit practice of 'Sati'. They also prohibited the practice of child marriages. Majority of the reforms were brought about pertaining to unifying Criminal laws such as Indian Penal Code, Criminal Procedure Code, alongwith the Evidence law etc. The reforms brought about by the British sowed the seeds of unification of laws and thus ultimately helped to have a crucial debate on the Uniform Civil Code during the meetings of the Constituent Assembly. Ultimately Uniform Civil Code found its place under the Directive Principles. Dr. Ambedkar was of the opinion that Liberty is of no use if it is not used to reform the society at large by way of legislations etc. He was of the view that there is immense inequality that surround our society and in turn directly affect our fundamental rights.

There were intensive debates in the Constituent Assembly pertaining to having Uniform Civil Code as a Fundamental Right for the citizens. Some of the notable members of the Constituent Assembly like Mohammad Ismail Sahib suggested proviso to the Article

[40] Anjani Kant, *Women and the Law*, A.P.H. Publishing Corporation, New Delhi (1997)

[41] http://www.lexorates.com/articles/inheritance-and-succession-rights-of-women-and-daughters-under-personal-laws/ visited on 09-07-2023 at 18.30.

dealing with Uniform Civil Code by stating that the people shall not be bound to part ways with their personal laws and the same would still be applicable to them even incase the Uniform Civil Code is framed. He even gave instances of Yugoslavia, Serbia, Croatia etc. which guarantee the rights pertaining to personal laws to the minority communities. In his opinion unification of personal laws was not a pre-requisite for bringing unity and harmony.[42] Another member of the Constituent Assembly Shri Mohammad Ismail was of the opinion that the mandate of the community should be taken before effecting changes to their personal laws. Shri Naziruddin Ahmad was of the opinion that civil laws connected with the religious practices should be kept out of the purview of Uniform Civil Code. However his suggestion to give the community option to choose as regards the application of the Uniform Civil Code could not be accepted by the members of the Constituent Assembly.[43]

As per the opinion of Shri Mahboob Ali Baig Bahadur, the concept of Civil Code do not directly relate to personal laws. He was of the opinion that Civil Code would rather deal with law relating to property, including transfer of property, contract law, evidentiary law and so on. The rules of law followed by religious sections do not come under the concept of Civil Code. On the other hand, another member of the Constituent Assembly committee Shri Pocker Sahib Bahadur also opined on similar lines. He stated that there would be no objection for unifying procedural laws. However, he strongly opposed unification of laws. So both the members seem to favor uniformity of some of the category of laws.[44]

2.3 Role of Domicile in Inheritance:

A domicile is a location where a person resides permanently and plans to do so by returning there in the future. The legislation governing succession is determined by the persons residence and whether the property is movable or immovable. The law of the nation where the deceased had his abode at the time of death governs movable assets. Regardless of the deceased's domicile at the time of death, the law of India governs immovable property situated in India. We can readily separate the non-testamentary or intestate succession and inheritance laws that apply to Hindus, Sikhs, Jains, and Buddhists from those that apply to Parsis, Christians, and Jews from those that apply to

[42] Constituent Assembly Debates, Vol III, pg.548.
[43] Constitutional Assembly Debates,Vol III, pg.548.
[44] Constitutional Assembly Debates, Vol VII, Pg. 540, 547-548

Muslims and to people who marry outside their own religion. Laws controlling succession that apply to Hindus, Sikhs, Jains, and Buddhists is the Hindu Succession Act, 1956, which governs non-testamentary or intestate inheritance. The Indian Succession Act of 1925, specifically sections 50 to 56 of it, is the controlling law that applies to Parsis in terms of intestate succession.

In some communities in India, there was Patrilineal succession, in which only the male child might inherit from his forefathers. The male child born first in a patrilineal succession is the fortunate child, compared to those born later. There were customs such as primogeniture, under which all inherited property goes solely and only to the eldest child, specifically and frequently the eldest son. There have been cultures that followed ultimogeniture, in which the property devolved upon the youngest child in the family, who may be a son or a daughter. There were also relatively few societies that practiced or supported matrilineal succession, which is the passing of property down the female line so that only the deceased's daughters could inherit it.

The majority of modern societies use and practice succession or inheritance of property that is distributive in nature, which means that every child whether a son or a daughter, married or unmarried inherits the ancestral property from the forefathers. There have also been many instances of ancient cultures, societies, and many of the modern States.

2.4 Inheritance under various Systems across the Globe:

In accordance with Muslim or Islamic jurisprudence, sons are entitled to twice as much inheritance as daughters. Islam's comprehensive laws governing succession and inheritance are incredibly complex and frequently take into account various kinship relationships, but generally speaking, males inherit twice as much as females, though there are exceptions. Despite being Muslims, certain Indonesians, primarily from Western Sumatra, only use matrilineal succession or inheritance, in which the ownership of ancestors' property and land is passed down from mother to daughter. However, this is not the norm. The inheritance process is mostly patrilineal among the ancient Israelites. That is what comes from the father, who solely leaves inheritance to his male descendants and forbids daughters from receiving any. The eldest son is still given twice as much as the other boys, according to the tradition.[45]

[45] S. M. A. Qadri Ahmad Siddique's, *Succession and Religion*, Eastern Book Company, Lucknow.

The inheritance system in Spain was standard; both sons and girls received an equal share of the inherited property, but only one son received both the house and a third of the total inheritance. This son was called the mellorado, which literally means "improved one". In some villages in Spain the mellorado son received two thirds of all the inheritance. All of the family's lands would be divided into these two thirds, with the remaining children receiving their portion in cash. Sons inherited twice as much as daughters did, in the Eastern Swedish Culture from the thirteenth to the eighteenth centuries. The Regent Birger Jarl first instituted this law, and it was seen as a development in the time it was implemented because the daughters had previously been left without an inheritance.

The English intestacy legislation is contained in the U.K.'s Administration of Estate Act 1925. The total freedom of testamentary disposal is a characteristic aspect of English succession law. A person is allowed to distribute their estate to whoever they choose. The Indian Succession Act of 1925 also includes the same clause. However, the Inheritance (providing for family and dependants) Act 1975 (UK) significantly curtailed the absolute testamentary power under the Administration of Estate Act 1925 (UK).[46] The key aspect of this Act is that it grants some claimants the ability to pursue a part of the inheritance. They include the surviving spouse, children, and anyone else who was being supported by the deceased at the time of death. In comparison to other claimants, the spouse is entitled to a large portion. The Act also gives Courts the authority to review prior transactions that were completed within six years of the estate leavers death. Additionally, there are protections in place to stop share transfers upon death. Therefore, it is completely prohibited to transfer shares outside of the family.[47] The establishment of trust safeguards the children's share of the estate under the Will. The trustees cover upkeep expenses till the kids are adults. In order to provide family members with legal protection, suitable safeguards have been adopted to limit the absolute testamentary freedom. It should be emphasized that all national laws in the European Union guarantee family members the right to inherit a deceased persons estate in order to provide for their financial security. In the European Union, family members are entitled to legal protection as human beings.[48]

[46] Section 10 of the Inheritance Act 1975 provides strict time limit for claiming the share.

[47] Under the Civil Law, Europe adopted a technique to keep a reserved share for dependants.

[48] https://www.ringroselaw.co.uk/2016/08/02/18055/ visited on 09-07-2023 at 18.00

China honored its commitment made in 1995 on the platform of the UN Fourth World Conference by amending its thirteen-year-old statute to advance gender equality in the nation. To ensure that men and women are treated equally in the nation, they turned it into a nationwide program. Gender discrimination is now illegal under the new law, and gender equality is now a part of national policy. Earlier, Women did not have their rights to succeed. They thought that moral women should not fight for their rights in the house. In addition, the property would be inherited by a distant successor in accordance with the customary law of succession in the absence of male descendants. The deceased person was unable to identify his wife or daughters. However, Article 144 of the Chinese Civil Code recognizes a spouse's right to inherit the other spouse's property.[49]
Each State has its own inheritance laws in the United States. In the colonial era, they adhered to British inheritance law. Before the Married Women's Property Act of 1848, women's properties in the early period were managed by their husbands. She had no other independent legal status than that of her husband, in accordance with the common law principle of covertures. She is thus unable to possess, sell, or buy property. In order to correct the feudal system that had been introduced from England, a number of laws were first passed in the State of Mississippi in 1839. Texas and other States subsequently followed. The Married Women's Property Act was subsequently passed by all States to exempt women from the common law notion of Covertures.[50]

2.5 A look at crucial International Treaties:

Matter of Equality and abolition of all forms of discrimination has been at the core of discussions at the International level as well. There are no two opinions about the fact that all Human beings deserve to be treated at par on equal footing. There cannot be categorization on basis of race, gender, religion, caste, etc. when it comes to equality and basic human rights. We take a look at some of the notable international instruments which were aimed to bring about equality and abolition of discrimination around the globe.

2.5.1 Universal Declaration of Human Rights, 1948

This declaration has its background in the World War II and its aftermath. There were intolerable atrocities committed on mankind during the World War II which propelled

[49] Tao Shing Chang, *'Inheritance in China, Modern China'*, Vol-21, No.3, (July 1995), pg. 269-309
[50] https://www.britannica.com/event/Married-Womens-Property-Acts-United-States-1839

the various countries to form the United Nations and subsequently draft a Charter for protection of basis Human Rights. The United Nations General Assembly adopted this resolution pertaining to human rights on 10 December 1948 at Paris. This declaration primarily focuses on basic and fundamental rights and freedom of individuals. This declaration treats every human being as being equal in dignity as well as their rights without any distinction of nationality, residence, gender, race, religion, etc.[51] This is a very crucial document in world history which has helped in the overall advancement of human rights across various countries in the world. This declaration is largely based on Code Napoleon. French Jurist R. Cassin also worked on the drafting of this Declaration alongwith legal Scholar from Canada J.P. Humphrey. This declaration talks about the core concepts of dignity, liberty, equality including right to life and prohibition of bonded labour[52]. It also talks about providing remedies in case of violation of basic human rights. This declaration also includes freedom of movement from one place to another and also freedom of choosing ones residence and domicile and nationality. This declaration guarantees freedom of thoughts as a constitutional and basic right. It deals with Healthcare facilities to human beings and appropriate standard of living. This declaration identifies certain civil and political rights of individuals.

2.5.2 International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil And Political Rights, 1966 is part and parcel of the International Bill of Human Rights, International Covenant on Economic, Social and Cultural Rights, Universal Declaration of Human Rights (UDHR). It is primarily based on the same process which relates to the enactment of the Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights is another instrument in International Law that calls upon nations to recognise Civil and political rights of humans. The rights include right to live, right to freedom of religion, freedom of speech. This International instrument was adopted on 16 December 1966. This International instrument aims to give people their right to choose their political status towards achieving their economic, social and cultural goals. This article talks about ensuring that the means of livelihood are not deprived for individuals. This declaration prohibited distinction and discrimination on the basis of gender, race, language, religion, nationality, property and also ensuring equality to women. This treaty

[51] Preamble of the UDHR(1948) visited on 09-07-2023 at 17.45
[52] Article 1 of the Universal Declaration of Human Rights 1948

recognizes Right to Life, freedom from slavery as a basic right. This declaration also lays stress on individual Liberty and freedom of movement. It stresses on the concept of fair trial and presumption of innocence. It prohibits hostility, hatred, violence, war propaganda and emphasizes and encourages political participation by providing Right to vote. It further recognizes minority rights and equality for them. This declaration also prescribes setting up of Human Rights committee.

2.5.3 Declaration on Rights of national or ethnic, religious and linguistic minorities, 1992

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted by United Nations General Assembly on 18 December 1992 under Resolution 47/135. The key objective was to recognize the rights of the minorities and for promoting their advancement in society at par with rest of the society. They should be entitled to freely profess their religion and traditions without any fear and any disturbance and discrimination. This Declaration lays down that it is the duty of States to protect and safeguard subsistence of minorities. The State is duty bound to safeguard and encourage rights of minorities including their identity. Minorities should be made to have pride in displaying their cultures and they should be entitled to participate fully in the society without any discrimination. Minorities should be entitled to participate in the democracy and political sphere inorder to put forth their opinion pertaining to social issues. Minorities should also be entitled to establish associations pertaining to their religious and cultural identity. They should be entitled to have free sharing of views among their religious members without any distinction of national borders. The minorities should also be entitled to defend and protect themselves and they should be given equal protection under law at par with rest of the society. Promoting of minority cultures should be one of the State duties and State should take steps to achieve the same. Minorities are also entitled to all human rights. This Treaty also lays down that the Minorities should be entitled to education which includes their language, cultures, traditions inorder to achieve their overall progress and advancement.

2.5.4 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979:

This treaty was adopted by the UN General Assembly in the year 1979. This treaty dealt primarily with the protection and rights of women. This international treaty deals with women rights in society including political representation. It also focuses on the economic, social rights of women including education, employment, health and the protection of women in the society.[53] This treaty focuses on the women's rights in family life including marriage and their equal protection. The treaty also establishes Committee for Elimination of Discrimination against women.[54] This treaty lays down gender justice and gender equality in respect of its signatory nations. It also focuses on the establishment of tribunals to ensure that women are not treated with discrimination and further for taking steps to eliminate such discrimination.

This treaty embodies upon State to safeguard equal human rights to women in the political, cultural, economical and social life. The equality should not be only on paper or theoretical but should also be actually applied at ground level. There should not be any gender based discrimination in society. The idea behind this treaty is that No one gender is superior or inferior. There is common responsibility of both parents for the upbringing of their children. There should be total ban on any sort of trafficking of women and their exploitation. Women should be having equal rights at par with men to acquire, change and also to retain their nationality. Women should also have equal opportunity as regards their education without any distinction.

There should be equal opportunity in participation in curricular and co-curricular and extra-curricular activities to women. Women have right to work and earn livelihood alongwith equal pay for equal work. There should not be any discrimination as regards remuneration based on gender. The healthcare facilities should be open to women without any disparity. There should be equality in social and economic life to women in the society. Women must have right to participate in development programs in society. Women should be having right to movement freely along with right to choose domicile.

---

[53] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an International Bill of Rights for women. Consisting of a preamble and thirty articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

[54] The Commission on the status of Women is a functional Commission of the UN Economic and Social Council

This treaty specifically prohibits discrimination to women in marital and family life.[55] This treaty treats men and women equal in matters of choosing life partner and including in matters of divorce. There is right to decide about choosing number and spacing of children. Women should be given equal status in public sphere including political life including equal opportunity to represent and participate in the international organizations.[56] There should be equal rights to women in matters of acquisition, holding and disposition of property.

2.5.5 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981

This Resolution was passed by the United Nations on November 25 1981. This Resolution talks about freedom of thought, conscience, and religion. The concept of freedom of thought, conscience and religion had first come up under the Universal Declaration on Human Rights. This Resolution further emphasizes Human Rights pertaining to practicing religion. The key aspect of this Resolution is that it is a universal right for any human being to practice and choose his religion including his thoughts and conscience process. Every human being is supposed to be protected from any sort of inequality in respect of practicing one's religion. There should not be any differentiation based on one's religion. There should not be religious intolerance in law making and also in civil, political, economic life of human beings. Every child has right to education as per the desire of their parents or guardians. Every individual human being has the freedom to worship as per his own free wish without any discrimination. This declaration also called upon States to enact legislations in their respective jurisdictions so that there is no unequal treatment based on religions to any human being.

2.6 Roscoe Pound views on codification:

The social engineering theory is propounded by the great jurist Roscoe Pound. He has propounded this theory by stating that man is a social animal and society is an indispensable part of his life. Society help human beings to develop their personality and hence society and mankind are two sides of the same coin. Concept and theory of social engineering propounded by Roscoe Pound emphasizes on the concept of

[55] Article 14 guarantees Equality before law and Equal protection of laws.
[56] Caroline Lamber, "*CEDAW :Women's tool for change*", Issue 2, Common Concern,(2008), pg. 137

satisfaction of human wants with least friction among the members of the society and Process of balancing of contrasting interest in the society. Roscoe Pound treats modern law as a part of social engineering. The theory stated that law is an integration of knowledge and experience carrying out social engineering by applying professional thought and rules. According to Pound interest form the basic Core of law. The calculation of interest is also important and study of the same lead to achieving satisfaction of human desires in society. Roscoe pound Theory of social engineering is basically surrounded on the concept of legal interest and jural postulates.

Society is necessary for human beings for overall development. Society and mankind are correlated. There are various desires pertaining to human beings. There is effort for fulfillment of majority of the desires by way of least friction or conflicts and least wastage of resources. Hence it is study of conflicting interests. According to Roscoe Pound legislature, executive and judicial wing should take into consideration sociological factors. Roscoe Pound compared and linked modern law to social engineering which means alignment of conflicting society interests. The theory looks at making the laws effective to present society. Laws cannot be in isolation but must relate to social problems. Roscoe Pound is characterized interest into three types which are Individual Interest, Public Interest and Social Interest. Individual interests are those that are directly related to personal life. This type of interests revolves around individual person and form a part of private life. The second type of interests are Public Interests. These interests are involved in a politically organized society and thus the political society has a legal status. Though this interests might overlap with the private interest as well. The third type of interest are the Social interests which were originally included by Pound as a separate and important set of interests under which they were described as desires involved in social life in a civilized society and were regularly associated with the concept of security. Thus, an important part of protection is for society to enjoy an organized legal system within a political framework, which may also overlap with public interest because a political organization requires the existence of some legal control that can be only provided by the legal system.

There are certain drawbacks also pertaining to the theory. It is known fact that Law is social concept and not an engineering to equate with scientific formulas. Law is applied to society which is a changing phenomenon and does not remain static. There is constant evolution and changes that happen on day to day basis and hence law also needs to change according to the needs of the society. Hence law cannot be seen as a

scientific formula which remains static and cannot be applied in isolation. Change is basically the essence when it comes to application of law to the society and law to be effective should change as per the needs of the society.

2.7 An analysis of Fundamental rights in relation to Directive Principles

The Constitution's Parts III and IV collectively have been referred to as the "Conscience of the Constitution.[57] The Drafting Committee opposed the idea of giving Directive Principles precedence over Fundamental Rights and implied that legislative implementation of Directive Principles should take place having regard to the limits fixed thereto by Part III of the Constitution. Constituent Assembly was on the opinion that though being not enforceable, the Government will have to take concrete efforts to put the Directive Principles into legislations in future considering its importance.[58]

However, principle query was as regards the conflict between the two and which will be superior in such situation. Since the Apex Court and Parliament have been at odds on this matter for a long time, both have issued several significant legal rulings and major constitutional amendments as a result. The national legislature, state legislatures, and all other governmental institutions in India have been given following guidelines under the Indian Constitution:

a. Not to restrict or abridge fundamental rights
b. To take efforts to put the Directive Principles into actual implementation.

It's interesting to take into account that despite both the above concepts being listed separately in the Constitution, no such distinction was made between them at the time when the Constitution was in its initial stages of drafting. They were both treated equally and elevated to the same status, collectively referred to as "Fundamental Rights."[59] Fundamental Rights are essentially considered as personal in nature and serve primarily to safeguard people from arbitrary Government acts. Its aim is to avoid the emergence of authoritarian Government and promote the notion of democracy. Majority of the Fundamental Rights are typically available to upper middle class and the elite section of society. For the homeless and those who are hungry, it cannot be said to be of significant use when that is compared to the Directive Principles. The Constitution

[57] Austin Granville, *The Indian Constitution, Cornerstone of a Nation*, Oxford University Press, 1999, pg.50
[58] Constitutional Assembly Debates, Vol VII, pg. 41
[59] Minerva Mills v. Union of India AIR 1980 SC 1789

framers understood that securing the people's political, economic, and social freedoms was important for successful implementation of the prime legislation of the Country. But merely adhering to typical theoretical principles was insufficient. So the Indian Constitution included express written Directive Principles in the Constitution.

From the time the Constitution has come into force, there has been debate over the importance and precedence of Directive Principles and Fundamental Rights over each other. The discussion was intense due to the fact that the Fundamental rights could have been enforced through Courts incase of their violation. However same was not the case with Directive Principles. At first instance, the Apex Court misread the relation that Part III and Part IV of the Constitution had between them. The misinterpretation was more so because the interpretation was based on its dictionary meaning rather that going into the intent of the framers of the Constitution. Due to the understanding that the Fundamental Rights are superior to the Directive Principles, the implementation of Directive Principles by the Government received major setback.[60] Several judgments and academic papers on Directive Principles gave the impression that it is a remote spirit which preached theoretical principles without any regard to ground reality. Although Directive Principles are essential to the nation's governance and the State is required to use them when enacting different legislations and rules, still the Government could disregard them with absolute impunity and the Courts could not interfere since it was not in its domain.

There was too much stress on the characteristic feature of non-justifiability of Directive Principles rather than looking at its importance alongwith the Government obligation to implement them positively. Directive Principles was seen as a supplementary provision to the Fundamental Rights and having inferior importance. The prime reason for such differentiation was due to the fact of its enforcement before Courts. There were constant questions as regards the superiority of both over each other, its importance in the day to day functioning of the Government.

Our Constitution is not a gratuitous gift from the Colonial rule. It is the result of extensive study and consideration by a group of distinguished, devoted people's representatives. They created it by searching through every known Constitution in existence and choosing the finest among them while keeping in mind the objectives and goals of liberation fighters. The major demand at the time our freedom struggle

[60] Gajendragadkar P.B., *The Constitution of India: Its Philosophy and Basic Postulates*, Oxford University Press, 1970, pg. 14

revolved around obtaining the basic Human Rights. It was aimed to cover all type of rights in the Constitution including political, socio-cultural, as well as civil and economic rights. In the end, the fundamental rights were separated into two Political-Civil Rights and second into Social-Economic Rights. The Political & Civil Rights came to be known as Fundamental Rights. Similarly the Social & Economic Rights were put into the category of Directive Principles.

The Irish Constitution served as the model for this split. There are several similarities between Fundamental Rights and Directive Principle with the Universal Declaration of Human Rights. Our Constitution came into force after the adoption of Universal Declaration of Human Rights. Accordingly, many of the principles governing basic Human Rights found a place in the Constitution.

The Government is required to keep in mind Directive Principles at the time of framing laws. The Government cannot take away or violate the Fundamental Rights guaranteed to the citizens by the top-most legislation of the country. The Fundamental Rights can be enforced by approaching the judiciary. The Constitution has put the duty on the Government itself for implementation of Directive Principles without setting any time limit nor any regulatory mechanism for its implementation.[61] Granville Austin has stated that, "Both forms of rights had arisen as a shared demand, products of the national and social revolutions, of their virtually inseparable braiding, and of the character of Indian Politics itself."

Hence both are to be treated equally and elevated to the same status, collectively referred to as "Fundamental Rights." "Human rights serve as the primary foundation for the Directive Principle and the Fundamental Rights." Both are aimed to achieve the targets set out in the Preamble of our Constitution. Its aim is to formulate an unbiased society with all necessary safeguards for its protection and good governance. It should be ensured that each and every citizen of the nation is treated with utmost dignity.

In a landmark case of *State of Madras v. Champakam Dorrairajan*[62] , the Supreme Court had the opportunity to clarify as regards importance of Fundamental Rights and Directive Principles. The Court held that Directive Principles cannot be enforced by approaching the judiciary. The duty is on the Government to ensure that the Directive Principles are implemented. The Fundamental Rights have precedence over the Directive Principles and hence the latter cannot come in the way of implementation of

[61] Erabbi B., *Constitutional Bottlenecks in the Realization of Social Justice*, J.B.C.I. , 1981, pp. 408-417
[62] A.I.R. 1951 S.C.226

the former. The Fundamental Rights being core ingredient of human existence, cannot be taken away by the State arbitrarily. The Fundamental Rights were held to be supreme over Directive Principles.

According to Justice Bhagwati, "Fundamental Rights reflect civil and political rights whereas Directive Principles include social and economic rights; yet, it is not possible to fit Fundamental Rights and Directive Principles in two independent and clearly defined categories. Both blatantly fall within the umbrella of basic Human rights drawn from intrinsic self-respect of human being and covering within its ambit all facets of human existence and not limited to minimum elite kinds of rights claimed against the Sovereign. They have huge importance since they constitute a small section of the Constitution though being of utmost significance."[63]

Restructuring socio-cultural as well as economic rights can be the only way to give Fundamental Rights significance to the vast majority of poor, oppressed, and financially backward people. The International Human Rights Conference, convened by UN General Assembly in the year 1968 had also proclaimed that the full realization of civil as well as political rights cannot be a reality without there being guarantee of basic economic and socio-cultural rights in the society.

When combined, Fundamental Rights and Directive Principles can be safely referred to as the Constitution's guiding principles. Its aim is to improve living standards of citizens of the country while maintaining democratic principles. The personal freedom together with social development is the ultimate aim of both. There should be equality in allocation of resources throughout the territory without any favour thereby maintaining brotherhood and peace in society. Instead of debating importance of both, there should be fusion between it to achieve a developed society.[64]

Directive Principles aims to build a modern day India with sustainable development.[65] Through judicial activism, the Apex Court has increased the ambit of Directive Principles and has thus contributed to the advancement society.

---

[63] Gajendragadkar P.B., *The Constitution of India: Its Philosophy and Basic Postulate,* 1970, pg. 14

[64] Agrawala S.K., *Fundamental Rights and Social Justice*, J.B.C.I., 1981, pg. 385-398

[65] H.M. Seervai., *Constitutional Law Of India*, 2nd Ed., Universal Law Publishing Co., 1967, pg. 1033

2.8 An analysis of Directive Principles in relation to Article 21

The meaning of Right to Life[66], the cornerstone of all Fundamental Rights, has occasionally been broadened by the judiciary based on Directive Principles prescribed by the Constitution. There were efforts from judiciary initially to push for recognition of Directive Principles considering its deep relevance in enforcing of Fundamental Rights. Efforts were made to broaden the justification, scope of Fundamental Rights rather than to emphasize its meaning and content through judicial construction. According to Mathew J., "Fundamental Rights do not by themselves include any predetermined information; instead, the majority of them are empty canvases into which each generation must add information based on its experiences." Directive Principles which are "instruments of instructions" and essential fundamentals in nation's governance cannot be disregarded when establishing the extent and ambit of Fundamental Rights. Fundamental Rights and Directive Principles are regarded as the Conscience of the Constitution.[67] The goal is to promote equality in society, release all citizens from social pressure or limitations, and ensure that everyone has access to freedom.

By enacting a social revolution, Directive Principles aim to define certain social as well as economic goals for rapid achievement. The welfare of people as envisioned by our Constitution cannot be accomplished without proper implementation of Directive Principles specified in the Constitution.

From the time of coming into force of Constitution, the relation as regards fundamental rights and Directive principles has been a major source of concern for the court. The Apex Court adopted an active approach after the initial resistance and began interpreting Article 21 liberally having due regard to the Directive Principles.

The idea is that "Right to life" is the collective term for all the legal requirements that must be upheld since they are necessary for a person to enjoy life in a respectable manner. It encompasses the entire spectrum of actions that a person is free to take. If the term life is to be understood, Directive Principles must be taken into consideration. The Apex Court advanced the "emanation" argument and disregarded the conventional wisdom that Constitution contains a comprehensive list of basic fundamental rights required for dignified human existence. The notion essentially states that a Right may still be regarded as Fundamental Right even when not directly specified in the

[66] Articles 21 read as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law".

[67] Austin Granville; The Indian Constitution, Cornerstone of a Nation, pg.50

Constitution. It can be viewed as an intrinsic element of Fundamental Rights of any person, which means that it "emanates" from another fundamental right or that its presence is "necessary" for the other fundamental right in question to be meaningfully and effectively exercised.

Article 21 which acts as a shield against deprivation of life or personal liberty do not define the term life or personal liberty. The term life and personal liberty were given expanded meaning by Apex Court by interpreting broadly Article 21 in various cases from time to time. Right to life specified under Article 21 means something more than survival of animal existence.[68] Court included Right to live with human dignity, Right to social security and protection of family, Right to social as well as economic justice and empowerment, Right of women to be treated with decency and dignity, Right against inhuman treatment, Right to the decent environment including pollution-free water and air and protection within the ambit of Article 21 of Indian Constitution.

2.9 Relation of 'Right to Equality' to 'Freedom of Religion':

The thought of equality is a great and distinctive social value that exists in our contemporary society. The psychological relevance of this idea of equality stems from fact that vast majority of people wanted to be treated equally, which is why it has such a strong psychological impact. Thomman, J., remarked that equality is one of great cornerstones of Indian democracy. The Apex Court has also specified it as corollary of maintaining law and order in society that is upheld by Indian Constitution. As the Welfare State has become more concerned with delivering equal justice and administering law evenly in the society, for which equality is a key component, there has definitely been a rise in knowledge of rights all over the world in the past and present centuries. Several democratic Constitutions have given citizens legal guarantees for their overall development, which ensures a quality of living compatible with human dignity, to attain this goal, i.e. equal justice. Thus, equality has become the most active concept in present era.

Articles 14 and 15 guarantee an individual the right to equality in all matters including access to public places. Articles 25 and 26 ensure freedom of religion to everyone in India. Article 26 gives the freedom to manage religious affairs, guaranteeing individual and collective freedom of religion. The only restrictions to right to religious freedom are

[68] Maneka Gandhi v. Union of India A.I.R. 1978 S.C.597

public order, morality, and health. It is not specified that this right being subject to other fundamental rights. Conventionally, the Apex Court has guaranteed protection to distinct religious practices in sync with the "Secular" declaration of Constitutions Preamble.

In a judgment passed in 1955 [69], the Apex Court though recognized that women have hereditary rights to succeed to the priestly office of a pujari in a Hindu place of worship. But that judgment fell short of recognizing her equal right to perform sacred rituals as a pujari.

Many years later, in another famous case of *Goolrukh Gupta v. B. Pardiwala*[70], a Parsi woman who married outside the community, the Gujarat High Court in a majority judgment, upheld the Parsi Trust's assertion that a Parsi woman loses her Parsi status if she marries a non-Parsi man. This judgment was criticized for ignoring the Right to Equality as the Parsi Trust does not issue a similar prescription for a Parsi man.

However, in recent times, the Courts have given right to equality more weight. In 2016, a Bombay High Court bench opened the sacred sanctorum area of the Haji Ali Dargah to women**,** prohibited until then on basis of religious freedom under Article 26. The court reiterated that rights under Articles 14 and 15 were superior.[71]

In 2017, the Apex Court declared instant Triple Talaq as unconstitutional. The argument that Muslim personal law enjoyed immunity from interference being contained in right to religious freedom did not hold well against principles of gender equality guaranteed by the Constitution.[72]

In 2018, the Apex Court opened the doors of Sabarimala Temple in Kerala to all women including those in menstruating phase of life. Earlier, temple entry rules in Kerala prohibited women aged 10-50 from entering the Sabarimala Temple based on the veil of religious freedom as claimed by the Shrine Board.[73]

---

[69] Raj Kali Kuer vs Ram Rattan Pandey, 1955 SCR (2) 186

[70] SCA 449/2010 before the High Court of Gujarat

[71] Dr. Noorjehan Safia Niaz v. State of Maharashtra, 2016 SCC Online Bom 5394

[72] Shayara Bano vs Union Of India And ors ((2017) 9 SCC 1)

[73] Indian Young Lawyers Association vs The State of Kerala, 2018 (8) SCJ 609

2.9.1 Meaning of Equality and its Different Dimensions

While defining inequality is simple since all that is required is to float along with the current, according to R.H. Tawney, defining equality is challenging because it requires swimming against the current. Equality is described as "The quality or state of being equal, as a sameness of equivalency in number, quantity, or measure, similarity or sameness in quality, power, status, and degree" in the third New International Dictionary by Webster.

According to Oxford English Dictionary, the word Equality means:

(1) The condition of having equal dignity, rank or privileges with others;

(2) The condition of being in power, ability, achievement or excellence;

(3) Fairness, impartiality, equity, due proportion, proportionateness.

Irwin Kristol has criticised what equality means. According to him, according to the definition at No. 3 of the Oxford English Dictionary it will result in a violation of the definition, for instance if men are unequal in power, aptitude, achievement, or greatness.[74] Since equality cannot be defined, inequality must be contrasted with equality for realizing and comprehend equality. In reality, achieving total equality in any type of social structure appears unrealistic. However, the idea that inequality is a prerequisite for all of our social structures offends modern sensibilities. Equality can only be accomplished when our social structure is based on identity of interests, functions, and sources of power in all spheres of human existence. There are numerous facets to equality. Galantar states, “Backwardness is not a single trait, it exists in kinds and degrees. By whatever standards employed, some are more backward than other. Without special protection to unprivileged classes, competition could, in effect, “give the least benefit to those with greatest need.”[75]

2.9.2 Equality and its application in Personal Laws:

India has a system of personal laws governing family issues, such as Hindu law for Hindus, Muslim law for Muslims, and so forth. The Apex Court has observed that Personal laws fall outside the scope of the Fundamental Rights.[76] Statutory amendments have been made to some of these laws, but not to others, such as Muslim law.

---

[74] Irwin Kristol, *'Equality as an Ideal'*, International Encyclopedia of the Social Sciences (1968), pg. 110

[75] Marc Galantar, “*Equality and Protective Discrimination in India*” XVI Rutgers Law Review, (1961) pg. 51, 52

[76] Krishan Singh v. Mathura Ahir AIR1980 SC707.

Challenges to these statutes based on discrimination, based on religion or based on a difference between men and women have not been accepted. A legislation that don't forbid Muslims from taking more than one wife while mandating monogamy for Hindus was upheld in the face of accusations of discrimination based only on religion.[77]

The court emphasized that Muslims were subject to their own personal law as determined by the Madras High Court in the case of *Srinivasa Aiyar v. Saraswathi Ammal*[78], while Hindus have long enjoyed their own indigenous system based on Hindu scriptures. According to the Apex Court's position, personal laws are exempt from constitutional challenges under fundamental rights clauses that do not apply to them. According to the Apex Court's ruling in the case of *Krishna Singh v. Mathura Ahir*[79], personal laws do not fall under the purview of the Fundamental Rights. The courts don't want to adjudicate on sections of these legal systems that wouldn't pass the test of Fundamental Rights, thus this seems to be a policy decision rather than a logical one. The court believes that Parliament should approach these issues logically.

Gender bias does not render Section 15(2)(b) of the Hindu Succession Act unlawful. The true principle, according to the Bombay High Court, is that the community governed by the given personal law constitutes a recognized class and that itself is a reasonable class of people for testing the given legislation. The legislation must be examined against the backdrop of the principles by which such a class is governed by the tenets of its personal law. The objection is unlikely maintainable if those principles are otherwise fair in light of the history of the specific system of personal law. In light of recent legislation passed to amend personal laws, as found by the Bombay High Court in *Sonubai's case*[80], the court has made this declaration.

2.10 Gender Justice during Ancient period

Gender equality has been a core subject affecting the community from ancient period onwards. During the ancient period, Dharma and Kuran was the guiding principle for Hindu and Islamic community. During the ancient period, law took its form from scriptures which were regarded to come from divine origin. Still the role of women in society was a relevant subject during the ancient times also.

[77] Srinivasa Aiyar v. Saraswathi AIR1952 Mad 193
[78] (1952) Madras 193
[79] (1981) 3 SCC 689
[80] Sonubai v. Bala AIR1983 Bom156.

Here we look at the status of females under Hindu law and that under Muslim law during the ancient times.

2.10.1 Hindu Women:

Regarding the treatment and position of women, the Vedic period can be viewed as a golden one. Additionally, women's status in society was favourable. Both boys and girls received equal education. In the Vedic era, women were given a "status" equivalent to men that allowed them to partake in sacrifice rituals, go through investiture ceremonies, and be just as responsible for upholding "dharma" as men. She was capable of participating in festivals, battles, and philosophical debates.[81] The women also studied the Vedas including the sacred mantras, and carried out the various rituals as per religious beliefs. Hence as regards the education aspect of girls, they were treated at par with boys. It is pertinent to note that daughters were not entitled to hold, acquire or sell the property. However, if the daughter lived in her paternal house in her life then she was entitled to share. But the said rule was not applicable in case share was claimed with brothers. Even married daughters could inherit from her father property in case there were no brothers. Hence, a general rule was that if there were brothers then the sisters were not entitled to inherit from father property.[82]

Smritis are collections of rules that ancient Sages and Rishis passed down. These establish the laws, rights and obligations. The status of women also underwent a significant transformation during the Smriti era. Manu's social norms and punishments left a lasting impression on the future status of women, particularly Hindu women. [83] Numerous texts in the Smritis established the rule that in the event of a person's death without having children, his widow is entitled to succeed in preference to all other legal heirs. [84]

Some noted Smriti writers like Manu, Yajnavalkya, Brispati, Narad recognized females for the purpose of succession and inheritance. Manu recognized widows, mother and daughter in line of succession. Brispati stressed on daughters right of succession. Similarly Narada recognized daughter rights as an heir. Vishnu also recognized wife along with daughter, mother as successors. Devla recognised mother, daughter as

---

[81] R.C. Mazumdar, *The History and Culture of the Indian People*, Vol. I, (1965) pg. 394

[82] Kulwant Gill, *Hindu Women's Right to property in India*, Deep and Publications Pvt. Ltd., New Delhi, 1986, pg.12

[83] S.R. Shastri, *Women in the Vedic Age,* Bharatiya Vidya Bhavan, Bombay (1954), pg.20.

[84] S.A Desai, "*Mulla's Principles of Hindu Law*", 19th Ed., Buttersworth India, New Delhi pg.13-14

successors of inheritance. Aapa Stambh recognised daughter as an heir but with minimum utility since it was after a long list of distant heirs. According to the Bombay, Banaras, Dravida schools, Stridhana was personal property of woman and she was entitled to succeed to same. According to Mitakshara, it first devolved to unmarried daughter. The unmarried daughter was followed by married daughter who was not provided for and then the married daughter who was provided for. Then it devolved to daughter's daughter and then to daughters son. The son could only inherit if there was absence of heirs in female line. In certain decisions, Privy Council also held that there should be certain limitations and restrictions applicable in matter of inheritance pertaining to estate of the deceased husband. However exceptions were present to this rule in Bombay Presidency wherein daughter could inherit from parents without any restriction.[85]

The idea of equality, which is a component of Human Rights principles, transcends time and location in Indian culture and civilization. Rig Veda, stated, "No one is superior or inferior, all are brothers. All should progress collectively".[86]

Equality and brotherhood are values as old as humans, greatly praised in the Vedas and Smritis. Although not present in India's historical past, the modern idea of Fundamental Rights was devised and incorporated into the Constitution. However, India has been home to human rights values for almost 5,000 years. In the Vedic Culture, there was a strong foundation for the value of Dharma (Law) in both private and public life, which is enshrined in Manu Smriti (1500 to 600 BC). Dharma was thought to be for the highest good and general welfare. Dharma supports the idea that everyone should live in harmony by providing a single arena for dialogue and balancing many individual and social interests. Hence, No one is better or inferior; everyone is a brother, according to the Rig Veda and collectively, everyone should advance. Dharma was considered for highest good and welfare for all. Dharma provide a unified forum for interaction and balancing of several individual and social interests, it supports the concept that all should live together in harmony.[87] In Mahabharata, it is stated, "The king should look after the welfare of the helpless, the aged, the blind, the lunatic, widows, orphans, those

[85] Dr. S.R. Myneni, *Women and Law*, 2nd Ed., Asia Law House, Hyderabad,2008)

[86] Rigveda Mandala 5 Sukt 60 Mantra 5

[87] M.Rama Jois, *Legal and Constitutional History of India*,Vol-1, Universal Lexis Nexis, 1984

suffering from diseases and calamities, pregnant women, by giving them food, lodging, clothing and medicine according to their needs".[88]

2.10.2 Muslim Women

The law of inheritance in pre-Islamic Arabia was based on the concept of comradeship-in-arms, or more specifically, on the idea of agnatic primacy and the exclusion of females. The fundamental tenets of pre-Islamic succession law were as follows:

(1) To the absolute exclusion of distant agnates, the nearest male agnate or agnates were entitled to succeed to the inheritance (2) Both females and cognates were not entitled to inheritance (3) Descendants were chosen over ascendants and collaterals over ascendants. (4) In cases where there were multiple agnates of the same degree, the property was inherited by all of them and distributed per capita equally.

Blood ties replaced the fundamental idea of comradeship in arms with the revelation of the Holy Quran. The guiding idea, "There is no bond stronger than the bond of blood," was adopted, and succession rights were granted to all blood relatives of the intestate, regardless of gender or the gender of the line of relatives they were related to the deceased through. As a result, previously excluded blood relations (mainly females and cognates) were given the name *Quaranic Sharers* and, in competition with the previously established agnates, received half of the latter's share.

Islam thus brought forth the following major changes: (1) The spouse or wife was made an heir. (2) Females and related people were given the ability to inherit. (3) Even when there were male descendants, parents and ascendants were given the right to inherit. (4) A female was typically allocated half of a male's portion as a general rule. As a result, Islam granted women a right that was previously denied to them in pre-Islamic Arabia. The pre-Islamic Arabs opposed giving women inheritances because they believed that women lacked the strength to execute heroic and defending actions. The property was passed down to the family's distant males.[89]

The Mughal era saw the subjugation of women. Their involvement in public life was minimal. Muslim women continued to live in Purdah. Female infanticide was widespread, divorce was simple, and polygamy was practiced by everybody. Women were not treated equally to males and did not have any legal rights. The status of Indian women in society during that time continued to decline. Social inequality was

[88] Mahabharta Shanti Parva 86, pg. 24, 25.

[89] Alka Singh, *Women in Muslim Personnel Law*, Rawat Publications, Jaipur (1992), pg. 116

widespread. India's social life included child weddings and the prohibition on widow remarriage. Purdah practice entered Indian civilization as a result of Muslim conquest of the Indian subcontinent. Women's freedom of movement outside the home was restricted by the purdah, and they were denied education, thereby increasing their dependence on men. The Scriptures also propagated the idea that women were unfit for freedom and deserved no independence. They should be kept under the authority of men in all stages of life. The centuries old principles of Islam are still applicable on matters concerning marriage, divorce and polygamy.[90]

The arrival of Islam in India brought additional difficulties. Hindu community was further pushed on the defensive and forced to look within as a result of political oppression. But because there was bound to be interaction between Muslim and Hindu communities, each had an impact on the other. As a result, the Hindus altered their garb and copied that of the Muslims, but the Hindu woman in her home maintained her pious and dedicated lifestyle as prescribed by the Hindu "Dharma Shastra."[91]

Rights of Muslim female has always been a debating topic ever since the pre Independence and post independence period. Sharia is thought of as more of male dominant. Quran talks about improvement and reforms pertaining to the status of women. It is thought that the conservative interpretation of Sharia has lead to the oppression of Muslim women. It is also true that status of women considerably improved during the period of Prophet Muhammad. Quran is looked at as a complete code. India is a diverse country with many religions and cultures and citizens are entitled for development irrespective of any distinction based on caste, religion, gender or race.

The overwhelming majority of Muslims in India adhere to the Hanafi school of Sunni law, and unless evidence to the contrary is presented, the courts will assume that Muslims are subject to Hanafi law. The next group in the list of numbers is Shias. Despite their differences, Sunni and Shia laws share a lot of characteristics.[92]

The Islamic inheritance law is seen by many modern authors as a useful and formally excellent law. Many Muslim jurist also has talked about positively and favorably of Islamic law. Muslims hold two fundamental beliefs: the existence and unity of God and

---

[90] Dr. A.K. Srivastava, *Muslim Personal Law and Rights of Muslim Women*, A Sociolegal Study Vol.3. SCJ 18 (2007)

[91] P.N.Chopra, B.N.Puri and M.N. Das, *A Social Cultural and Economic History of India*, Vol. II., Laxmi Publications Pvt. Ltd., 2022

[92] Akbarally v. Mahomedally, A.I.R. 1932 Bom. 356 to 359

the veracity of the Prophet Mohammed's message.[93] It is pertinent to know that there is no concept of apparent heir in the Islamic law. There is concept of making legacies and for the appointment of an executor. The inheritance law talks about fixed shares to the successors. There is no concept of a Universal succession but the cost of funeral and other debts are paid first after the death of the estate Leaver. However the successor is treated as absolute owner of his share on the death of the estate leaver. The competing interests of the nearest relatives are taken care of by the Muslim law. Hence it is also seen as a complete code. The Islamic law is seen as a divine law which is different from laws passed by the legislatures of any country. The basic touchstone of inheritance under the Muslim law is the Quran and the teachings Of the Prophet Muhammad. It is pertinent to note that one of the principles of pre Islamic law of succession among the Arabian tribes was the non inclusion of cognates and females for the purpose of succession. The Muslim law is considered as a divine law and hence cannot be amended or modified nor can any other reform be undertaken in the Islamic law by human beings.

2.11 Study of Succession under various Personal Laws

The succession laws of India are based on the religious followings of its people. There is no uniform set of rules. Heirs differs as per different religions. Similarly the shares of the heirs are also not uniform. Various religions have their own set of logic and beliefs based on which the succession rights devolve to the heirs. Some religions recognize heirs apparent before the death of the person i.e. when the heir is born. While other religions do not recognize right of heir unless the death happens of the person whose succession is being opened. Similarly, some religions recognize right of representation of heirs of pre-deceased child whereas some religions do not recognize it. All these provisions are discussed hereunder.

2.11.1 Hindu law

In early Hindu society, the term "Sapindas," which refers to a man's heirs, served as the focal point of the entire Hindu Law of Inheritance. The two main schools of Hindu law, Mitakshara and Dayabhaga, which established various succession rules, existed before 1956. The rights of Hindus belonging to various schools to inherit the property of a

[93] Narantakath v Prakkal (1922) ILR 45 Mad 986

Hindu who passed away intestate, that is, without leaving a Will behind him, were not standard. Women had no legal status back then. Due to the Hindu Law of Inheritance, which denied women any property rights except for their stridhan, their financial security was entirely dependent on the whims of men, including their husbands, fathers, brothers, and sons. The 1956 Hindu Succession Act established a new rule. The Mitakshara and the Dayabhaga were the two legal systems that controlled the Hindus. According to Mitakshara, a Hindu's property belonged to a group known as a Coparcenary, which was made up of his father, son, grandson, and great-grandson. When a member of this Coparcenary died, the property was distributed by survivorship among the surviving members and did not go to the deceased member's spouse or children. The Dayabhaga method was adopted by the Act, according to which the wife and children were to hold the property as personal property with the sole authority to dispose of it. This basic modification in addition to attempting to bring in four other modifications were made by new law. One was that the daughter was awarded a share in her father's property that was full and equal to that of the son, and that the widow, daughter, and widow of the predeceased son all received the same status as the son in matters of inheritance. The number of female heirs recognised was higher than that required by either Mitakshara or Dayabhaga, which was the second modification the Act made regarding the female heirs. The Old law made it such that female heirs were treated differently depending on their socio-economic status and whether they had children or not. This was the third adjustment made by the Act. This Act has eliminated all of these discriminatory issues. The most recent modification concerned the Dayabhaga's inheritance rules. The mother now comes before the father under the current Act, contrary to the Dayabhaga system when the father succeeded the son in preference to the mother.

The Hindu Succession Act of 1956 aims to create a somewhat standard intestate succession system of law for all Hindus. It eliminates disparities in property rights between men and women and creates a list of heirs who are eligible to inherit upon death based on natural love, affection instead of religious considerations. As a result, the primary object can be listed as follows: Firstly to create a reasonably uniform system of law for all Hindus regarding Intestate Succession, and in matters of property for which the deceased did not leave a Will. Secondly to grant daughters an inheritance right that was previously unavailable under any system of Hindu law. Thirdly to develop a list of inheritors qualified to inherit by intestacy based on genuine love and affection rather

than the efficacy of religion. Fourthly, the law should be applied exactly as it is written in the statutes, and customs shouldn't interfere and change the law.

The Mitakshara principle of propinquity, or the preference of heirs based on proximity of relationship, serves as the foundation for present law of succession. The Mitakshara system used the twin norms of excluding women and agnatic preference to reduce the impact of the general rule. While the rule of agnatic preference has been significantly altered inasmuch as it pertains to the closer ties, the rule of exclusion of females has been abolished. It has been decided to abandon the Dayabhaga concept of religious efficacy. The modern Hindu rule of succession is primarily secular because it makes no mention of religion or spirituality.

A person is free to manage his assets during his lifetime as per his wishes. He is free to draw up a Will and specify how his property will be distributed after his demise.

The fundamental changes brought 1956 Act are that all schools are governed by uniform rules of succession. Heirs are divided into four groups and the preference is based on blood relationship and other rational conditions. The female's share was made equal with her counterpart male member. The limited property rights of widows is converted into absolute ownership. The bifurcation of property such as Women Estate and Stridhana are abolished thus whatever kind of property woman possessed or inherited is her unconditional property. All cognates and agnates are made entitle to inherit. Section 14 and 26 have been given retrospective effect. In certain situation, the common interest of coparcener may devolve by succession not by survivorship. A common interest of a coparcenary in a Mitakshara family assets is made heritable and capable of being disposed through testamentary documents. A new scheme of heirs is listed based on propinquity and affection. The section 8 prescribes heirs in four classes. The heirs specified in Class I of schedule. Heirs specified in class II of the schedule. The agnates of the deceased and the cognates of the deceased. The order of the succession will be that the property devolves on Class I heirs at first instance and incase Class I heirs are not existing then the property will devolve to Class II heirs, if no class II heirs then the agnates and in failure of that, to cognates. The Apex Court has described who is Hindu by including within its meaning Virashaiva, Lingayat, Brahmo, Prarthana Samajist, Arya Samajist.[94]

[94] Surajmani Stella Kujur v. Durga Charan Hansdah, AIR 2001 SC 938

The modern Hindu succession law is much simpler law than the old Hindu law. Devolution of property after the death of a Hindu without a Will is called as Intestate Succession.[95] The Hindu Succession Act, 1956 lays down uniform law of succession for all Hindus. The Hindu Succession Act preserves the dual mode of devolution of property under the Mitakshara school. The joint family property still devolve by survivorship with this important exception that if a Mitakshara coparcener dies leaving behind mother, widow, daughter, daughter's daughter, sons daughter, son's son's daughter, son's widow, son's son's widow or daughter's son, his interest in undivided family property will devolve by succession.

2.11.1.1 Succession to Estate of Deceased Hindu Male

The present Hindu law specifies the mode of succession to the estate of the Hindu Male who has died intestate. This includes the separate assets of such person, the separate and coparcenary assets of Dayabhaga male, as well as the joint family interest in assets of coparcener in Mitakshara system, who has died leaving behind a widow, mother, daughter, daughter's-daughter, son's-daughter, son's-widow, grandson's-daughter, grandson's-widow, or daughter's-son.

The heirs fall under Class I heirs, Class II heirs, Agnates, Cognates, Government. Class I heirs as well as Class II heirs are sometimes also called enumerated heirs, since the Act spells out them. Class I heirs are also called preferential heirs, as their presence excludes heirs in subsequent categories. They are also called simultaneous heirs, as they inherit simultaneously. It must be mentioned here that position of females has been improved substantially, and some cognates of equal propinquity have been brought at par with agnates. Some new heirs were added by amendment in 2005. This includes son of predeceased-daughter of predeceased-daughter. Secondly it includes the daughter of predeceased-daughter of predeceased-daughter and also the amendment brought into picture daughter of predeceased-son of a predeceased-daughter alongwith daughter of predeceased-daughter of predeceased-son as successor to the inheritance.

A) Class I Heirs

Class I heirs are sixteen in number which includes the heirs added by the amendment in the year 2005. The Class I heirs includes the Mother, Widow of the deceased, the

[95] Dr. Diwan P., *Family Law*, Allahabad Law Agency,Haryana,9th Ed. Reprinted 2012, pg. 465

daughter as well as son of the deceased. Then there is Widow of predeceased-son, Son of predeceased-son, Daughter of predeceased-son. Also there is Widow of predeceased son of predeceased son, Daughter of predeceased son of predeceased son, Son of predeceased son of predeceased son. The Class I heirs further includes Daughter of predeceased-daughter, Son of predeceased-daughter, Son of predeceased-daughter of predeceased-daughter, Daughter of predeceased-daughter of predeceased-daughter, as well as Daughter of predeceased-son of a predeceased-daughter, Daughter of predeceased-daughter of predeceased-son in the list of Class I heirs.[96]

The estate distribution rules among class I heirs are that Sons, daughters and Estate Leavers' mother will take one share each. Widow will take one share. The second marriage under Hindu law is void. Hence second widow would not come within the purview of widow and will not be entitled to any share in inheritance.[97] Among successors of branches of predeceased son, son of predeceased son of predeceased son, and predeceased daughter, the doctrine of representation applies. Son means legitimate son of Estate-Leaver. A legitimate son may be natural born son or adopted son. The adopted son takes an equal share with the natural son. An illegitimate child is not entitled to inherit. There should be actual giving and taking ceremony and the same has to be on record to effect a valid adoption of the child.[98]

B) Class II Heirs:

The class II heirs are divided into nine sub-categories. The principle is that an heir in an earlier category excludes heirs in later categories. All heirs in one category take simultaneously and between them take per capita.[99]

Category (I)

Father

Father is not included in Class I heirs' list even when he is a direct relation with the deceased. However, he is included as first person in Class II heirs list. This means that he will be entitled to the whole estate incase there are no heirs in Class I. however,

[96] Four new entries were added by the Hindu Succession (Amendment) Act, 2005

[97] Shanta Devi v. State of Bihar, AIR 1977 Pat 268

[98] M. Gurudas & ors v. Rasaranjan & ors, 2006 SC 3275

[99] Dr. Diwan P., *Modern Hindu Law*, Allahabad Law Agency, Haryana, 22nd Ed. Reprinted 2013, pg. 414

when there exists heirs under the Class I, then father will not be entitled to inheritance to the property of the deceased son.

Category (II)

This category includes the Sons-Daughters-Son, followed by Sons-Daughters-Daughter, followed by Brother and then by Sister. Both Full blood brothers and sisters are included in this category for the purpose of succession. The rule is that if there is a full blood sibling, the half blood sibling is not included. When there is no full-blood brother or sister, the half-blood sibling will be entitled to inheritance rights of the deceased male. The siblings related by uterine blood are not included. If the Estate-Leaver's brother, sisters, and he himself are all the mother's illegitimate children, then those brothers and sisters are his successors. This group of heirs receive an equal share of the estate.

Category (III)

This category includes the Daughters-Son-Sons, followed by Daughter-Sons-Daughters, followed by Daughter -Daughters-Sons and then by Daughter- Daughters -Daughters. The estate is to be allocated in such a manner that all heirs in one category will be entitled simultaneously per capita. Hence there is equal rights enjoyed by all the said heirs.

Category (IV)

This category includes the Brothers-Sons followed by Brothers-Daughters, followed by Sisters-Son and then by Sisters-Daughter. The sons and daughters of a brother or sister who fall under this category may be related to them in full blood or in a half-blood relationship. However, uterine blood siblings' children are not included. Children of such siblings will be eligible to inherit if the deceased and his siblings are all their mother's illegitimate children. Children of full blood sisters and brothers are chosen over those of half blood sisters and brothers. Every inheritor in this group receives per capita.

Category (V)

This category includes Fathers-father and also Fathers-mother.

Paternal step-grandfather and paternal step-grandmother are not included in the definitions of father's father and father's mother. They will be incorporated if they are the father's adoptive parents. They will each receive a per capita share if they are both successors.

Category (VI)

This category consists of Fathers-widow and also Brothers-widow.

Widow of the father is stepmother. She is the sole step relative by marriage who finds a place in the enumerated list of the heirs. She will inherit even if she was married again at the point when inheritance opened. She and the widow of the brother both succeed. If a brother's widow had been remarried as on the day succession opened, she would be ineligible to succeed. The Apex Court in *Neeraja Saraph v. Jayant Saraph*[100] has observed that a marriage between a NRI and an Indian woman that has taken place in India cannot be annulled by a foreign court. In situation where there exists two brothers widows, then they will be entitled per capita. If a sibling has multiple widows, each of them will receive an inheritance individually. Similar to that, they will take per capita if there are multiple stepmothers. If there are more widows than one, they must all take one part, according to the law.

Category (VII)

This category includes Fathers-brother and Fathers Sister.

They can be full blood or half blood. However full blood excludes half blood. The half blood will inherit only after full blood. Fathers-brother and fathers-sister through uterine blood does not fall under this category, however fathers-sister and fathers-brother through adoption comes within the scope of this category.

Category (VIII)

This category consists of Mothers-Father and Mothers-Mother. This category includes maternal relations. It is seen that Paternal relations have preference over maternal relations since paternal relations comes in earlier category. Both the heirs in this category will be entitled per capita.

.

[100] 1994 SCC (6) 461

Category (IX)

This category consists of Mothers-Brother and Mothers-Sister. This category also contains maternal relations. The maternal relations mentioned here are inclusive of natural and adoptive relations. Similarly Full and Half blood comes with the scope of inheritance though preference is Full blood over Half blood.

C) Agnates and Cognates

Agnates are those heirs who are related to the deceased only through male relations. If there are any female relations which intercept between the deceased and the heir, then he will be a Cognate provided he is not listed in Class I and Class II heirs. No full identification is possible because agnates and cognates are not listed as heirs. The criteria used to identify agnates and cognates, as well as the guidelines governing how property should be divided between them, are the same. But no matter how far distant they are, agnates are typically chosen over cognates. Those relations who fall outside the class I and class II heir categories are considered agnates and cognates.[101]

i) Classification of agnates.

When a person is related to the Deceased only though males without intervention of any female then he is called an Agnate. The gender of the Agnate and the Deceased is not to be considered in this calculation. There can be Descendant, Ascendants and Collateral Agnates who can qualify as heirs. The Agnates who are descendants can qualify as heirs even in case of distant remoteness. The only qualification is that there should not be any female in between. The line is descending hence called as Descendant Agnates. Similar to Descendants Agnates, there is no disqualification on basis of remoteness in case of Ascendant Agnates as well. He may be remotest person related to the deceased but still will be entitled to inheritance. Then there are Collateral Agnates. Such agnates fall in parallel line which can be either ascending and descending. The line can be paternal as well as maternal. However it should be noted that the line will pass through one common ancestor which is necessary at the time of finding out the agnates on collateral line. There are no limit on the total collateral that can exist simultaneously.

[101] Dr. Diwan P., *Modern Hindu Law,* Allahabad Law Agency, Haryana, 22nd Ed. Reprinted 2013, pg. 423

ii) Classification of Cognates.

The Heirs are called Cognates when they are not listed in Class I and Class II list of hers and when they are related to the deceased not fully through male relations. Hence when a female intervenes in the relation line, then the heir will become a cognate. There can be Descendant Cognates, Ascendant as well as Collateral Cognates in the scheme of succession law pertaining to Hindus in our Country. The uterine siblings are closest collateral cognates. That heir will have preference where the degrees counted are minimum. The degrees of ascent will be counted first and incase there is tie or there exists no ascent degrees then the descent degrees will be counted to determine the cognate. The heir with minimum degree is preferred. Incase there is still a tie in degrees then the estate is distributed equally.

D) Government by Escheat:

In case of absence of heirs in Class I and II heirs and incase there are no Agnates, neither there are Cognates, then the property of the deceased will devolve on the Government by Escheat. Government is the ultimate heir. Government takes the property alongwith the liabilities attached to the estate as well. The concept of Government becoming the heir is called as Escheat.

2.11.1.2 Succession to Deceased Hindu Females Estate:

Even though Hindu women no longer have a restricted estate and are free to dispose of all of their property through Wills as long as they are living, the source of the estate is still important for intestate succession. Hindu women's property is divided into the following three categories for succession purposes:

A.) Assets inherited from any of woman's parents;

B.) Assets inherited from a woman's husband or father-in-law.

C.) Assets she acquired from any other source, whether through inheritance or otherwise.

The distinction between the sources from which the Hindu woman obtained property will be irrelevant when she passes away leaving behind her children.

A) Assets Inherited from any of her Parents

If the deceased woman had obtained assets by inheritance from any of her Parents, then her heirs are specified into two categories:

Category I

It will consists of the Sons, daughters, also sons and daughters of predeceased son alongwith the sons and daughters of predeceased daughter. Spouse of the deceased woman is not included over here. The heirs mentioned above are entitled to inherit together without any sequence.

Category II

It will come into picture incase there is absence of heirs in Category I. This category consists of successors of father. Here it is considered that the property belonged to father and inheritance is devolved accordingly. When the assets was acquired by inheritance from the mother of the deceased female and when she does have children, the estate passes to her sister. The brother of predeceased husband will not be entitled to succeed.[102] Only the property acquired by inheritance is included here and hence the assets gifted to her by parents do not come within the aforesaid property being her stridhan.

B) Property Inherited from Husband or Father-in-law

In case the woman Estate-Leaver had inherited properties from her husband or the father-in-law, then in such a case the heirs are categorized as follows:

Category I

In category I there are Sons as well as daughters, then the sons/daughters of predeceased sons, and sons/daughters of predeceased daughters as well. All these heirs will inherit incase the property was acquired by the Hindu Female through her husband or father in law.

Category II

In case there are no persons in aforesaid Category then the assets are to be distributed to the successors of husband of deceased female. Here the property will be inherited by the legal successors of the husband.

[102] Saharay H.K., *Family Law in India*, Eastern Law House, Kolkata, 2011

C) Property of Hindu Female received from other sources:

When the deceased Hindu female had received the property from other sources than from parents, husband, husbands father, then in such a case the heirs of the Hindu Female is sub divided into five entries. The presence of heirs in first entry will result in excluding other entries from inheritance. The property included here can be through inheritance or by any other modes as well.

Entry (a): Here, there includes sons/ daughters of the deceased Hindu Female, husband of the deceased female, son/daughter of predeceased son as well as son/daughter of predeceased daughter. The sons/daughters mentioned here can be natural sons/daughters as well as adopted children. [103] They may be legitimate or illegitimate children. [104] Children who are legitimate can be from different husbands. Even incase of a void marriages or voidable marriages, the children from such marriages are entitled. The step-children are excluded. It can be recollected that step children can inherit as heirs of the husband of deceased female. When the father is present, the step children cannot succeed.

The question about the stepson is very controversial and raised from time to time. Apex Court in *Lachman Singh v Kripa Singh*[105] has focused on the distinction between 'son' and 'step son' as per Collins English Dictionary to say that a 'son' is - a male offspring and 'step son' is - a son of one's husband or wife by former marriage. Accordingly, the Delhi High Court held that daughter will be preferred above stepson.[106] The children of predeceased son can be legitimate children and includes children by adoption, though the stepchildren are not coming within its definition. Children from void or voidable marriage of predeceased son does not come in this category. Such voidable marriages need to be cancelled by following procedure. The husband mentioned here will be the one that was so at the time when the female died. Ex-husband is excluded. All the successors mentioned in this entry take their share together. Incase of predeceased sons or daughters, there will be application of rule of representation.

[103] Bhagwania Jagat Mali v. Gili Kushali Mali (1977) M.P.L.J. 99
[104] Gurbachan Singh v. Khichar Singh, AIR (1971) Punj. 240
[105] AIR (1987) SC 1616
[106] Prakash v Bela Sihare, AIR (1996) Delhi 336

Entry (b):

The heirs mentioned here would come into picture only when there are no eligible heirs is entry (a) above. Here the estate of deceased female will pass on to the successors of the husband i.e. the estate will be considered as if it belonged to the husband of the deceased female.[107] The definition of husband mentioned in this entry will not include Ex-husbands. In *Chatro v Sahayak Chakbandi Meerut*,[108] the Apex Court decided on crucial question as regards the right to inherit the landed property of widow dying without executing any Will and had one daughter. The land was self acquired when husband was alive who was a tenant as well. The contention of husbands brother was that the wife of deceased had only tenancy rights and hence daughter cannot inherit. However, the court has held that since the deceased female does not have a son, the daughter would be the eligible successor. The heirs of deceased females spouse as per section 15 includes heirs that were eligible to succeed if the husband died after the wife.[109]

Entry (c):

There are only the deceased females parents listed as heirs in this entry. Mother can refer to either a biological or an adoptive mother. Mother will inherit even if the deceased female was an illegitimate daughter. Stepmothers are not considered to be mothers. A prospective father or step-father is not considered within definition of father. Father may be biological or adopted.[110] When the deceased female is survived by both parents then both receive an equal share of the estate per capita.

Entry (d):

The estate of deceased Hindu female will go to the successors of her father incase there are no heirs in entries (a) to (c) above. The property of the female will pass to the heirs of her father hypothetically considering that the property pertains to the father himself. The succession rules followed would be thus pertaining to Hindu males in this case or situation.

---

[107] Keshri Parmai Lodhi vs Harprasad AIR 1971 MP 129

[108] Civil Appeal No. 669 of 1980 before the Hon'ble Supreme Court of India

[109] Bajaya vs Gopikabai, AIR 1978 SC 793

[110] Anhia Mandalanin vs Baijnath Mandal, AIR (1974) Pat. 177

Entry (e):

In this entry there comes the successors of the mother of the deceased female. This will be applicable incase there are no successors in entries (a) to (d) above. It will be presumed that the estate belongs to the mother of the deceased female. Incase of simultaneous heirs they will take equally between them.[111] When a spinster Hindu female had died without descendants but having one brother and another brothers widow, the Court held that both of them will have same right to the estate. The brother had disputed that he is the sole successor since he was the ultimate heir of his father. However the court rejected this claim.[112]

D) Government: Escheat

If a Hindu woman passes away without any surviving family members, much like a Hindu man, the State inherits the property she owns subject to all the debts and liabilities pertaining to the estate. Under Section 15, it is imperative that female Hindus should not bear any descendants. The goal of the law is to prohibit someone who is not related to the owner of the property in question from inheriting it. In the absence of children, children of deceased children, a spouse, or father/mother, it is ensured that a Hindu female's inheritance always passes to the successors of the actual proprietor from whom it was inherited.[113] The estate cannot be allowed to go to wrong hands who is not related to the inheritance or to the source of the assets and this is the very object of having a inheritance law.[114]

2.11.1.3 Disqualification from Inheritance:

Before the present law, there was an array of recognized elimination grounds that precluded the heir from inheriting estate. The ineligible heir was not only ineligible to inherit anything, but also did not transfer any stake. Illness, defects, and immorality are no more grounds for exclusion. The marriage of sons widow, a son's son widow, and brothers widow prior to the beginning of the succession bars them from inheriting. However, the widowed mother and widowed stepmother are still eligible to receive an

[111] Mallapa v Shivappa AIR 1962 Mys 140
[112] Yoginder Parkash Duggal v Om Prakash Duggal, 2000 AIHC 2905 (Del.)
[113] Bagat Ram v Teja Singh, 1999 (2) SCR 358
[114] Dhanistha Kalita v Ramakanfa Kalita, AIR (2003) Gau.92

inheritance even after remarriage at the time of commencement of succession. Inheritance is not prevented by an heir's conversion. Offspring of a Hindu who changes to another religion, however, are not eligible to inherit. If an heir personally committed murder or helped commit murder to advance the inheritance of the deceased, or if an heir helped to commit murder to further the inheritance of someone other than the Estate-Leaver, then that person is ineligible to inherit.

2.11.2 Muslim Law

In pre Islamic Arabia, the law of inheritance was based on concept of comradeship in arms on which basis the wife and children were excluded from succession rights. The nearest male agnates succeeded to the entire inheritance excluding the remote agnates. Females and cognates were excluded from inheritance. Descendants were given preference over ascendants. Ascendants were preferred over collaterals. If there were more than one male agnate of equal degree, all of them inherited property and shared it equally per capita. The prophet interposed the following new principles on the aforesaid principles of customary law of succession. Holy Quran laid down that nothing could furnish so strong a claim to inheritance as blood relation. This provision generally strengthens the family ties.[115] The Quran says: "From what is left by parents and those nearest related, there is a share ·for men and a share for women, whether the property be small or large - a determinate share".[116] First, the husband and wife being treated equally were entitled to inherit each other. Some near females and cognates are recognized as heirs. Parents and certain other ascendants are recognized as heirs even in presence of descendants. The newly created heirs were given specific shares and inherited it alongwith the customary heirs. After allotting specified share to the newly created heirs called Sharers, whatever was left went to the Residuaries.

The Holy Quran did not create a new structure for succession. It only modified the existing one to bring it at par with Islamic philosophy. Those persons who were not heirs under pre Islamic era, were given specific shares and called as Sharers or koranic heirs. This led to divergence of opinion among the Shias and Sunnis resulting in propagation of two different rules of succession between them. The Hanafis accept the general structure or tenets of pre-Islamic practices. They create new regulations or

[115] Faiz Hassan Badruddin Tyabji, *Muslim Law: The Personal Law of Muslims*, N.M. Tripathi Publisher, 1940

[116] Holy Quran, Surah IV, Verse 7

change existing ones in ways that are specified in the Quran and by the Prophet. The Hanafis understand Islamic law and customary law in a way that harmonizes their interpretations of both systems of law. Customary heirs do not lose their succession rights in the deceased persons estate; rather, just a portion of the wealth has been taken away and distributed to the successors listed in the Quran. This indicates that the agnatic inclination rule, which is the fundamental structure of the traditional succession, is still in place. By acknowledging the rights of female agnates, the koranic succession extends the agnatic notion. When there exists a female agnate, as defined under the Quran, who is closer to the male agnate, as defined in traditional law, she is permitted to acquire a piece of the estate due to the proximity of her claim. The male agnate, nonetheless retains the ability of succession, so he gets the remainder. The male successor receives double the portion of the female heir when the female and male agnates are equally close to the dead. The rule is applicable to male agnates, or those heirs who are recognized as such by the Quran. The presence of a koranic heir has an impact on the rights of male agnates.

If the Quranic heir is closer to the customary heir, the property is initially divided into a certain amount for the Koranic heir, with the remainder going to the customary heir. In the event that there are many Koranic heirs, every person receives his allotted parts, and the remainder of the assets passes to the customary heirs. In a different scenario, the deceased's customary and Koranic successors could both be close in degree to deceased. The customary heir is awarded a two-fold part in this situation. The Koranic heir in this case is a woman who is equally close to the customary heir, yet she wasn't eligible under customary rules due to her gender. As regards to the remaining portion of the inheritance, after the Koranic heirs' earlier claim has been fulfilled, she now ranks on a par with the customary heirs. If the heirs in the same class are not of same gender, the rule that a man inherits twice as much as a female is not applicable, and thus all successors have equal advantages.

With few notable exceptions, when some cognates, such as uterine brother and uterine sister, are incorporated as well, the alterations created by Quran as understood by the Hanafis are limited to agnates only. The modifications do not go to any collateral remoter than sisters. Further, these modifications in their application to relations other than descendants are hedged with exceptions. The customary heirs' right of succession is not impacted by the Hanafis' interpretation of Koranic laws, but a portion of property has been given aside for Koranic successors. The Koranic successors and customary

successors are occasionally forced to split the remaining estate equally, leaving the customary heirs with nothing. According to Hanafi law, per capita rather than per stirpes is the main basis for property allocation. No component of the theory of representation is acknowledged by Hanafi law.

Shias derive specific concepts that they believe underpin the Quran's revisions,they combine these principles with the principles underlying preexisting traditional law, and as a result, produce a totally novel collection of laws and regulations. The fundamental distinctions among Ithana Ashari law and Hanafi law stem from the fact that the second one strictly interprets the Koranic regulations and maintains that they are little more than an adaptation of specific rules on the conventional system of succession, whereas the former interprets the Koranic rules so broadly that it appears as though they establish a standalone school of inheritance. As a result, neither the precedence of agnates over cognates nor the superiority of men over women is acknowledged in the Ithana Ashari reading of the Koranic laws. The Shia law stipulates that biological relatives inherit the departed's inheritance at par with each other, with an exemption of the privileges of the husband and wife, albeit within each grade, the females are only given half of the amount given to the men. Additionally, as a consequence of this, collaterals, ascendants, and descendants all succeed simultaneously. In some circumstances, the Shia law acknowledged the theory of representation in calculating their share size.

2.11.2.1. Hanafi Law of Inheritance

Two issues emerge under every intestate inheritance law. These are who the dead person's successors and what portion of the property they have the right to. In defining the types of people who are eligible to succeed and the corresponding portions that each group of heirs is entitled to, Muslim law makers have went into great depth. We've seen that certain biological relatives who are either similarly close to the deceased or closer than the customary heirs are placed by Muslim law on the traditional framework. There are some females, ascendants, and collaterals among these new heirs. As a related through closeness, the surviving spouse of the dead is eligible to receive a portion of the estate. The other heirs specified in Quran are at par with the customary heirs.

Thus, son, or son's son (hls)[117], is eligible to inherit under traditional law.

[117] How low so ever

The Quran superimposed daughter, also sons-daughter, and son's son's daughter how low soever, and gave her specified shares. Daughters-daughter, being cognate, and therefore remoter than the son or son's son, is not included. Since children were included, it was logical to include mother and father. Similarly sons son and sons daughter were included hence it was logical to include true grandfather/ grandmother and further also certain collaterals such as sisters whether full/consanguine. The brothers both full/consanguine were heirs under customary law hence brothers/sisters who are uterine were also included.

The Quran prescribes specific share to these newly created heirs and are commonly called "Sharers". The fractional shares that are specified are only six, namely 1/2, 1/4, 1/8, 2/3, 1/3 and 1/5 and they are allotted their specified shares. Then the residue is divided among the customary heirs who are called "Residuaries". This term came into vogue on the assumption that Sharers are satisfied, whatever is left is for these heirs. In the scheme of heirs, certain Sharers become Residuaries on account of the existence of certain other near relations. Thus, when the deceased has no child or child of a son (hls)[118], the father as well as true grandfather become Residuaries. Similarly if there exists son, then daughter becomes residuary, and the full sister becomes residuary when there is full brother. This also applies to consanguine sister, when there exists consanguine brother. The Hanafi law lays down that when there are no Sharers as well as Residuaries, then inheritance is passed to other relations who are called "Distant Kindred". The Distant Kindred are those relations of the deceased who are neither Sharers nor Residuaries. On the failure of Distant Kindred, in modern India, the inheritance devolves to Government. Thus the successors fall under Sharers, Residuaries, Distant Kindreds and lastly Government.

A) The Sharers

Sharers are given specific shares by Quran. There are certain situations where the Sharers succeed as Residuaries whereas in some situations their shares differ. Shares can increase in some situations whereas the shares can also decrease depending on situations mentioned in the Quran.

[118] How low soever

1. Wife : The share allotted to the wife is 1/8. Even when there are more than one wife the share remains same. However the share of wife increases to One-Fourth when she does not have child or child of son.
2. Husband: The share of Husband is 1/8. He is never excluded from inheritance as Sharer similar to Wife. The Share of husband increases to 1/2 incase there is no child or child of son.
3. Daughter: The share of daughter is 1/2. The share of daughter changes to 2/3 if there is more than one daughter. She is never excluded from inheritance as Sharer. The Daughters becomes residuary when there exists son of the estate leaver.
4. Sons-Daughter: The share of sons-daughter is 1/2. However the share changes to 2/3 when there is more than one sons-daughter. The share changes to 1/4 when there is single daughter. The share is further reduced to 1/8 when there exists one higher sons-daughter. The Sons-Daughter is excluded from inheritance as sharer when there exists son, more than one daughter, higher sons-son, more than one higher sons-daughter. Further she is considered as residuary when exists equal sons-son or when exists male agnate in lower degree.
5. Full Sister: The share of Full-Sister is 1/2 when there is only one Full-Sister. Where there is more than one Full Sister, the share is 2/3. She is excluded as Sharer when there exists son, sons son or father or there exists true grandfather. She will be considered as Residuary when exists Full-Brother.
6. Consanguine-Sister: Her share is 1/2 when she is only one. When there is more than one such sister, then the share changes to 2/3. She is excluded as Sharer when there exists son, sons-son, father, true grandfather, more than one full-sister or incase there is full brother. Her share becomes 1/6 when there exists full brother. Further she is considered as residuary when exists consanguine brother.
7. Uterine Sister: Her share is 1/6 when there is only one Uterine Sister. Incase of more than one, the share changes to 1/3. She is excluded from inheritance if there exists child, child of son or father or true grandfather.
8. Uterine Brother: Her share is 1/6 when there is only one Uterine Brother. Incase of more than one, the share changes to 1/3. She is excluded from inheritance if there exists child, child of son or father or true grandfather.
9. Mother: Her share is specified by the Muslim law as $1/6^{th}$. She is never excluded from inheritance. He share gets affected to 1/3 where there exists no children or when there does not exist child of son. Her Share changes to 1/3 where there exists

one brother or where there exists sister. Where there exists husband/wife alongwith father, she is entitled to 1/3rd residue.

10. Grandmother: She is True grandmother and can be on maternal or paternal side. She is entitled to 1/6 share. Where there exists mother, more nearer grandmother on maternal or paternal side, or father, or grandfather nearer than her, then she can be excluded from inheritance.
11. Father: He is also entitled to 1/6 share. He is never excluded from inheritance. He will be considered as a residuary where there does not exist child or sons child.
12. Grandfather: Grandfather is true grandfather. He is entitled to 1/6 share in inheritance. He will be considered a residuary where there does not exist child or sons child. He is excluded from inheritance where there exists father or there exists more nearer true grandfather.

Koranic Residuaries

Certain Sharers will not be entitled to specified shares if residuary of equal rank exists. Such Sharers then becomes Residuaries and are referred as Koranic Residuaries/Residuaries with another. Hence where exists Son of the deceased, the Daughter of the deceased becomes a residuary. Similarly where exists Sons Sons Son or where exists agnatic heir being a male and who is in inferior degree, the Sons Sons Daughter becomes a residuary. When there exists a Sons Son or agnatic heir being a male and who is in inferior degree, the Sons Daughter becomes a residuary. Where exists a Full Brother then in such a case the Full Sister becomes a residuary. Similarly, if there exists Consanguine Brother, then Consanguine Sister would be residuary.

B) Residuaries

When Sharers are given their entitlement, balance portion of the inheritance will devolve to so called Residuaries. Incase there exists no Sharers then the entire inheritance will devolve on Residuaries. Residuaries can be: (a) descendants, (b) ascendants, (c) collaterals. The collateral residuaries can either be descendants of estate leavers father, or descendants of estate leavers grandfather.

This is demonstrated by below mentioned table:

Table 1: Depicting various heirs and theirs shares

Heirs	Entitlement
Son	If daughter exists, son is entitled to twice the share If daughter does not exist, son is entitled to full share
Sons son	When there exists more than one sons's sons then they succeed evenly and Son's daughter alongwith son's son develop into Residuary. However son's son will be entitled to twice allocations as compared to Son's daughter. The closer proximity son's son excludes distant one.
Daughter	Daughter will be residuary incase of presence of son of estate leaver.
Sons-daughter	Sons-daughter will be residuary incase of presence of sons son on condition that she is not Sharer.
Father	Takes entire estate
True grandfather	Takes entire estate Close proximity true grandfather will keep out remote one.
Full brother	Entitled to twice share when there exists full sister Takes entire residue when there does not exists a sister
Full sister	When there are no residuaries mentioned above, full sister becomes Residuary on the condition that there exists daughter, or when there exists son's daughter or alone daughter and sons-daughter
Consanguine brother	Entitled to twice share when there exists consanguine sister
Consanguine sister	When there are no residuaries mentioned above consanguine sister becomes Residuary on the condition that there exists daughter, or when there exists son's daughter or alone daughter and sons-daughter
Full brothers son	Takes entire estate provided no residuary exist in above list
Consanguine brothers son	Takes entire estate provided no residuary exist in above list
Full brothers son son	Takes entire estate provided no residuary exist in above list

Consanguine brothers sons son	Takes entire estate provided no residuary exist in above list
Full paternal uncle	Takes entire estate provided no residuary exist in above list
Consanguine paternal uncle	Takes entire estate provided no residuary exist in above list
Full paternal uncles son	Takes entire estate provided no residuary exist in above list
Consanguine paternal uncles son	Takes entire estate provided no residuary exist in above list
Full paternal uncles sons son	Takes entire estate provided no residuary exist in above list
Consanguine paternal uncles sons son	Takes entire estate provided no residuary exist in above list

Allocation of Estate between Sharers and Residuaries:

The Sharers will get their entitlement among the heirs first, and the Residuaries will receive the remainder. The Residuaries inherit the full inheritance if the Sharers are not present. The property passes to Distant Kindreds when neither the Sharers nor the Residuaries are present. The property passes to the Government in the non existence of any of the heirs. The uniqueness of the Islamic law of inheritance is that even though Sharers and Residuaries are Class I and Class II heirs respectively, they jointly inherit the assets. The assets flows to the Residuaries once Sharers are distributed their entitlement.

A Distant Kindred will succeed with a Sharer in one circumstance only, in the event where the sharer is husband/wife and no sharer or residuary exists apart from them. In this scenario, Distant Kindred will receive an inheritance together with husband/wife.

As regards Residuaries, descendants have preference over ascendants and collaterals descendants of nearer ancestor. Similarly ascendants have preference over collaterals.

Residuaries are linked to estate leaver through males. It ought to be mentioned that six Sharers may occasionally succeed as Residuaries. This includes father, true grandfather, Daughter, also Sons-Daughter, alongwith Full Sister, and Consanguine Sister. In some cases, the father and the true grandfather succeed as Sharers and Residuaries both. No

other heir can get double inheritance. The remaining four, all females, succeed as Residuaries or Sharers. When females exist together alongside nearby male successors, they are entitled to succeed as Residuaries.

Doctrines of Aul (increases) and Radd (return)

Two abnormal scenarios are bound to occur in a legal system that distributes predetermined shares to successors. Either total number of shares given to different successors in accordance with their entitlements will be greater than or can be less than unity. The solution to the first scenario is to use the concept of aul/increase, while the solution to the second is to use the concept of radd/return.

If total of shares distributed to successors as per legal entitlement is more than total union, then in such a situation the doctrine of increase is applicable. This doctrine specifies that the entitlement of every successor is to be brought down proportionately. The reduction is made by bringing down fractional allotments to common denominator. Since the denominator is increased, hence this rule of application is called doctrine of increase. However in actual practice, the effect is that the entitlements of successors is reduced.

There might be second situation whereby there is left-over shares of inheritance after satisfying the Sharers and there are no Residuaries to accept the same. In such a case Rule of return is applicable. This Rule specifies that the excess will be allocated to the Sharers only. The allocation will be done having regard to their original share entitlement ratio. If some other Sharer or even Distant Kindred is existing then the husband and wife will not receive the surplus. However, in India, incase of non existence of Sharer or Distant Kindred, the excess will go to the husband/wife.[119] Hence, only when there is absence of any Sharer or Distant Kindred, in such a case the husband/wife will be eligible to receive the return.

C) Distant Kindred

The property passes to the Distant Kindred in the event of the non existence of Sharers as well as Residuaries. If either spouse is the sole living Sharer and there aren't any Residuaries, then each spouse takes his or her entitlement and the remaining portion of the inheritance is distributed to Distant Kindred. This is the sole situation whereby

[119] Md. Arshed v. Sajida Bannoo (1878) 3 Cal 703, Mir Isub v. Isub (1920) 44 Bom 947

Distant Kindred acquires alongside a Sharer. Any biological relatives of the deceased who haven't located a position among the Sharers or Residuaries fall under the category of Distant Kindred. There can be female agnates and male and female cognates.
The Distant Kindred is made up of both of these kinds of relationships. The preferable division of Distant Kindred is to divide them into descendants, ascendants, and collaterals for the sake of allocating property between all.

Distribution of Assets among the Distant Kindred

The Distant Kindred inherit to the person who passed away only in the event of lack of the Sharers and Residuaries, with single exception when husband and wife are the sole heirs. In such case, they receive the remainder. The guidelines for allocation of assets and omission among distant kindred can be summarized in the following manner: When claimants include descendent, ascendant & collateral distant kindred, descendant distant kin is favored above ascendant distant kin as well as collateral distant kin. Ascendants are chosen when there are Distant Kindreds comprising both collaterals as well as ascendants. In case all are descendants, then those bearing less degrees are entitled. In case of same degrees, then the offsprings of Sharers and Residuaries will have better right over those of Distant Kindred. The descendants are enlisted as per their order which is as follows:
Daughters-children, sons-daughters-children, daughters-childs-children, sons-sons-daughters-child, daughters-great grandchildren as well as sons grandchildren and finally other descendants of the estate leaver in same manner.
When degree is ascending with same gender-ancestors then all such people will acquire per capita. However the males will receive twice share.

D) State as an Heir by Escheat

In today's era in India, it is settled law that whenever a Muslim does not have any of the heirs prescribed by law, then the properties of such a person passes on to the Government.[120] This is subject to and includes with it all the liabilities attached to the inheritance as well. The Government is the ultimate successor of any heirless individual. This rule of taking over of the property alongwith the liabilities, charges, encumbrances

[120] Sheikh Abdul Rehman v. Shaikh Wali Mohamed, (1922) 2 Pat 75

is called as Escheat.[121] For the Government to take over the property, the essential pre-condition is that there should not be Sharers, Residuaries as well Distant Kindred. Only when there is absence of all of them then only the Government will come into picture pertaining the rights and liabilities of a deceased Muslim who has left no heir.

2.11.2.2. The Shia Law of Inheritance

The Shias base the right of succession to the property on two principles Nasab, and Sabab. The Nasab is divided into Koranic Heirs/Sharers and Blood Relations. The Sabab is sub-divided into two viz status of a spouse and special legal relationship. Under special legal relationship includes right of emancipation, obligation for delicts committed by deceased and also wala of Immamate. However, these concepts of emancipation, obligations for delicts have become obsolete whereas wala of immamate is substituted for law of Escheat.

Classification of Heirs

In modern India, successors of Shia Muslim is classified into successors by marriage or by consanguinity. The successors under consanguinity are further sub divided as per lineage such as ascendants, descendants, collaterals alongwith their children. The general rule is that the successors in previous category will result in excluding the subsequent category. However successors in same group will be entitled to succeed together.

A) Heirs by marriage

Heirs by marriage necessarily means husband and wife of the estate leaver as the case may be. Husband is entitled to 1/4 share when there exists lineal descendants. In case of absence of lineal descendants, husband is entitled to 1/2 share. As regards wife, she is entitled to 1/8 share in inheritance incase when lineal descendants are present. She will be entitled to 1/4 share incase of absence of lineal descendants.

B) Heirs by consanguinity

These consists of the blood relations of the estate leaver. This category has different sub- categories comprising various degrees.

[121] Cavery Vancata v. Collector of Masulipatan, (1863) 11 MIA 61

Class I

(a) Parents: Parents include father and mother. They come in the ascending line. Father is entitled to 1/6 share when there exists lineal descendant. In absence of lineal descendant, father becomes residuary. Mother is entitled to 1/6 share incase of existence of lineal descendants or in case of existence of more than one brothers which includes full as well as consanguine or in case when there are one such type of brother or two such type of sisters. Mother is entitled to aforesaid share even when there are four such type of sisters besides the father. Incase of absence of these relatives, the mother is entitled to 1/3 share.

(a) Children and other lineal descendants: They come in the descending line. They will include grand children in case of predeceased children. Incase of daughter if there does not exists a son and if there is one daughter then she is entitled to 1/2. Incase of more than one daughters then they are entitled to 2/3 share in inheritance. Incase there exists son, then daughters becomes residuaries alongwith son. Son in all cases becomes residuary under Shia law.

Class II

(a) Grandparents only: Grandparents will include true grandparents as well as false grandparents. They will come into picture incase in case of non existence of Class I heirs. When there are grandparents only without siblings and their descendants then paternal grandparents are entitled to 2/3 share whereas maternal grandparents are entitled to 1/3 share. On paternal side, double portion is given to males. On maternal side it gets divided equally.

(b) Siblings with their descendants only: when there does not exist grandparents, and there are only brothers and sisters then full blood will exclude half blood whereas uterine siblings are to be considered. Incase of one uterine sibling, he/she is entitled to 1/6 share whereas when there are more than one sibling they are entitled to 1/3 share. When there are no full brothers, full sister becomes sharer and she is entitled to 1/2 incase of one such sister and she is entitled to 2/3 when there exists more than one such sisters. If there exists full brother, then she becomes residuary. When there is no consanguine brother then one consanguine sister is entitled as sharer to 1/2 share and if more than one consanguine sister then she is entitled to 2/3 share. Similarly when there exists consanguine brother, then she becomes residuary.

(c) Grandparents alongwith Siblings: In the situation where there exists grandparents as well as siblings or their descendants, then after satisfying husband and wife, maternal grandfather is equal to one uterine brother whereas maternal grandmother equals one uterine sister. A paternal grandfather equals full/consanguine brother whereas paternal grandmother equals a full/consanguine sister.

Class III

This class consists of paternal as well as maternal uncles/aunts of the estate leaver followed by their descendants. Then comes paternal as well as maternal uncles/aunts of the parents of the estate leaver followed by their descendants in order of their proximity. Then comes in line is the paternal as well as maternal uncles/aunts of grandparents followed by their descendants in order of their proximity. The list further includes remote uncles as well as aunts alongwith their descendants also. It is to be noted here that when the persons claiming to be heirs are full paternal uncles son then he will exclude consanguine paternal uncle. Earlier category if existent will exclude subsequent categories.

C) State by escheat:

As seen under Hanafi Law, the Government is the ultimate heir of any person without an heir. The inheritance goes to the Government by Escheat alongwith all obligations and liabilities. As regards allocation of property, the Shia law categorized successors as Sharers which includes its descendants and the Residuaries alongwith its descendants. Distant Kindreds does find a place as a distinct entity of heirs. Hence all biological relatives who do not fall under Sharers will fall in the category of Residuaries. Hence all descendants of Sharers as well as Residuaries are covered. In absence of all these relatives, the Government will take over the inheritance under the Shia Law. The assets will include within its manifold even the liabilities and charges attached to the inheritance.

Doctrines of Radd

Both in Shia law and under Sunni law, exceptional circumstances involving the allocation of property among those who inherit are likely to occur. Although there could be variations amongst both groups in terms of how the principle is actually applied,

Shias and Sunnis both use the Doctrine of Radd to address the issue of surplus. With the subsequent three exemptions, the remaining assets will be divided among the sharers corresponding to their respective shares if there exists any residue after the allocation of assets among the Sharers however when there are no Residuaries to accept it.

(i) The husband/wife as the case may be will not be considered when there exists other successors.

(ii) Mother will not be considered when the deceased has mother, father, one daughter alongwith more than one brothers (which includes full and consanguine) or one brother and two or four sisters.

Siblings are not included in succession however when they exist, it debars the mother from receiving share under the doctrine.

(iii) When deceased has siblings being uterine and full sisters then uterine siblings are not considered for return. This will not be applicable when there exists consanguine siblings alongwith uterine siblings. Hence they share proportionately.

Doctrine of Increase:

This doctrine is not prevalent under Shia Law. The problem of excess is solved by reducing from shares of one or more daughters and from shares of full/consanguine one or more sisters. It is to clarify that sisters do not include those by uterine blood.

2.11.2.3. Disqualifications

According to Muslim law, some people are not eligible to inherit anything because of their disqualifications. A non-Muslim was not permitted by Islamic law to succeed property of Muslim. The above is not true in India. A Muslim who no longer practices Islam or who has otherwise ceased to be a Muslim is still eligible for inheriting the assets of expired Muslim relative whose successor he is. According to Hanafi law, an heir who knowingly, unintentionally, accidentally, mistakenly, or negligently caused the death of the decedent is disqualified from inheriting. According to Shia law, an inheritor is only ineligible if the death was brought on purpose. Muslim law states that, if a kid is born alive, it is eligible for succession from the mother. A stillborn kid is considered to have been born living if its mother experienced abuse as a result of which she delivered the baby.

A child who is illegitimate is unable to succeed from its father according to Hanafi law, but it is permitted to receive from its mother. The mother is also entitled to succeed the

assets of her unborn children. The assets of all other relatives to whom it is related via the mother is also inherited by the illegitimate kid in addition to that of its mother.

According to the Ithana Ashari system, an illegitimate child is considered not related to anybody and is not entitled to any of its parents' or anybody else's inheritance.

In general, daughters are eligible for succession. However, there are situations when laws or custom prohibit them from inheriting. In this scenario, the shares of the other heirs are determined as though the daughter never existed. Under Islamic law, insanity and unchastity are not grounds for exclusion. A childless widow is not entitled to a share of her husband's land within Ithana Ashari law.

She has a right to a portion of the value of any trees plus structures standing on the property, as well as a portion of her husband's movable goods. By utilizing the doctrine of return, a childless widow has the right to inherit not only her portion of the estate but also the remaining assets, including her husband's land, in cases of non existence of any heirs. The assets of stepchildren cannot be inherited by stepparents because they are unrelated to their stepchildren. When assets are distributed, if a successor is not present, his share must be set aside for him until presumed dead.

2.11.3 Christians Law

Despite the fact that it is argued that the British had modest involvement in family-related matters and that various personal laws had ruled these matters, numerous changes were made pertaining to Indians' family issues as a result of the setting up of British governmental authority throughout India. Several family laws, like the Parsi Marriage and Divorce Act of 1865, The Indian Succession Act of 1865, The Indian Divorce Act of 1869, The Hindu Wills Act of 1870, and The Christian Marriage Act of 1872, were passed by the English Rulers. The Indian Succession Act of 1865 and the Parsi Succession Act of 1865 marked the beginning of British control in India on the level of family related legislation making. These were founded on English law and were proclaimed to be effective to all categories of intestate and testamentary succession, except with a few restrictions. Due to their extreme sentimentality toward their own faiths, these exclusions were so broad that they essentially excluded all native Indians, including Hindus, Muslims, Sikhs, Jains, and others. Primarily Europeans, Indian Christians, Jews, Parsis, and other groups are bound to this regulation.

Every inheritance law outlines the procedures for distributing assets in the event that a person passes away without leaving a Will. The Indian Succession Act, 1925 contains

regulations that govern the Christian Law of Succession. However, by using residence as the requirement for assessing the application of legislation with regard to Indian Christians, the variation in laws regarding succession is significantly increased. Christians in the jurisdiction of Kerala were subjected to the Cochin Christian Succession Act, 1921, while Christians in Travancore were regulated by the Travancore Christian Succession Act, 1916. These two Acts had been in effect till January 1986. The inheritance rules as per Indian Succession Act, 1925 now apply to Christians who previously were subject to the aforementioned two Acts, which were subsequently abolished. The spouse, lineal descendants, and kindred are the three categories of successors that this Act recognizes for Christians. The definition of Indian Christian has been provided in the Act.[122] The definition is derived from Native Christian Administration of Estates Act, 1901. However, word native was substituted by Indian. However, this definition does not have within its manifold Anglo Indians. This fact was reiterated by Court in *Abraham v. Abraham*[123] whereby the scope of Indian Christian was specified. It was held that the converted person will be regulated by Christian law and not by earlier religious law though he was given option to choose the applicable law. However in another subsequent judgment, Allahabad High Court has clearly stated that there is no scope for providing an option to select the law to the converted person. The converted person will be regulated by Christian law.[124] The Apex court has also held that women enjoy equal rights as compared to sons in the property of the father under the Christian laws of succession.[125] Two separate rules are applicable to manner of succession to movable and immovable property of any Christian who has died intestate. Inheritance to immovable property is regulated by the territorial law. The succession to movable property will be as per the domicile of the intestate person. The domicile that he held at time of death will affect how his movable assets are inherited.

[122] As per section 2 (d) of Indian Succession Act 1925, "Indian Christian" means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion

[123] (1863) 9 More's Indian Appeals 199

[124] Jujjavarapu Yesurao vs Nadakuduru Kamala Kumar, 2007 (5) ALD 140

[125] Mary Roy v. State of Kerala 1986 SCR (1) 371

2.11.3.1 Importance of Domicile in Succession

The Indian Succession Act of 1925 doesn't contain a definition for the term "domicile." The definition of "domicile" in Halsbury's laws of England[126] is "A person is domiciled in that country in which he either has or is deemed by law to have his permanent home." An individual is often assumed to be resident in the nation where he is deemed to have his long-term residence, as enumerated by Dicey and Morris. The Act specifies clearly about the domicile status of any individual. If an individual has a number of residences, the location in which he or she resides permanently will be used to determine the inheritance. The address of the birth takes precedence until a fresh permanent residence is obtained. An individual whose place of origin is England travels to India and establishes himself as a trader with the goal of staying in the country for the remainder of his or her lifespan then India is going to be his main residence. However, as regards diplomatic agents deployed in foreign country, though they have a family and live abroad for long-term, they are still regarded as having the domicile of the nation that appointed them.

The domicile of the expired person is a key factor in deciding how his assets will be distributed. Whereas inheritance to the deceased's movable belongings will be managed by the regulations of the jurisdiction in which he had his domicile at the point of dying, succession to the deceased's property that is immovable will be regulated by Indian law, regardless of place where he held his domicile at the moment of death. For the purposes of transmitting ownership by inheritance of movable assets, a person can hold only single domicile. It should be pointed out that domicile and nationality are distinct concepts. While nationality refers to a person's initial allegiance, domicile refers to their permanent place of living. After and throughout the couple's wedlock, the wife immediately takes on her spouse's residence.

2.11.3.2 Role of Marriage

The wife upon marriage takes on her spouse's domicile. If a woman from India who owns movable asset weds someone whose domicile is in England, her spouse will be entitled to take over all of her movable assets upon her demise under English law, excluding the children. This is because during the course of a marriage, a wife's

[126] 4th Ed. Vol. VIII, para 421

domicile implies that of her spouse.[127] However, if they have been divorced or marriage is cancelled by court order or when the husband is serving a transportation punishment, the wife's residence no more resembles that of spouse. The Act has completely removed the English idea of conjugal assets. On conjugation, according to English law, the possessions of women was combined with the assets of her husband, and she was not allowed to use it however she pleased, albeit she was allowed to dispose it with permission of her spouse. However, if either of the couples was a practicing Hindu, Muslim, Buddhist, or Jain at the moment of conjugation, this rule would not be applicable. If the spouses have separate domiciles, neither person may get through marriage any privileges to the other spouse's assets that are not included in a pre-marital agreement.[128]

2.11.3.3 Intestate Succession

A person is assumed to have died intestate when he has not specified by valid testament regarding the manner in which his assets would be distributed upon his death. If the deceased Indian Christian does not leave a will or other testamentary instrument directing how to divide his assets, inheritance of the assets shall be governed by the Indian Succession Act, 1925. So, insofar as an Indian Christian, any property that hasn't already been transferred or divided according to legal procedure shall devolve at demise in accordance with the Indian Succession Act.[129] A whole or limited intestacy can occur incase of a deceased person. When a deceased person leaves no Will or other effective disposition of any beneficial interest in entire assets, there is a total intestacy. When the deceased leaves some of the beneficial interest in his assets by Will, rather than all of it, it will be partial intestacy.

Consanguinity is used to select a successor under the Indian Succession Act of 1925. Consanguinity, which comes with two varieties—lineal consanguinity and collateral consanguinity—determines the nature of the connection between them. Lineal consanguinity is the relationship of two people who happen to be ascendants or descendants along a single line. Collateral consanguinity fails to adhere to a straight line, yet the individuals are descended from the same source or progenitor. Despite the fact that the husband and wife are not related, they are their respective successors. It is

[127] Miller v Administrative General (1876) ILR 1 Cal 412

[128] V. Prasad, *Indian Succession Act*, 3rd Ed., Allahabad Law Agency, Haryana, 1999, pg. 30

[129] V. Prasad, *Indian Succession Act*, 3rd Ed., Allahabad Law Agency, Haryana, 1999, pg. 28

an exception to the general consanguinity-based succession norm. The differentiating lines between cognate and agnate, half and full blood, and posthumously and normal children are no longer drawn. Everyone has a chance to inherit. When a person dies intestate their possessions passes to their spouse, children, or relatives in the prescribed order of succession. However, as indicated earlier, the Act identifies three categories of heirs for Christians: the spouse, lineal descendants, and kindred, all of whom are included in the following paragraphs

2.11.3.3.1. Widow and Widower

If a person dies and leaves a widow and lineal decendant, the widow will receive one-third of the property, with the balance of two-thirds going to the lineal descendants. If there are no living lineal descendants but there are living relatives, half of the estate goes to the widow and the other half goes to the kindred. And if no relatives are left, his widow will inherit the entire assets. The whole inheritance will go to the widow, where the intestate has left a widow but no lineal descendants and the net worth of his property does not exceed Rupees Five Thousand. However, this Rule has not been made applicable to Indian Christians.[130]

In terms of his property, the widower has exactly the same privileges as he might have had if he predeceased the spouse intestate. If the intestate leaves a widow in addition to lineal heirs, the widow will receive one-third of the estate, with the remaining two-thirds being divided equally among the lineal descendants. If the intestate hasn't left any lineal descendants but has left his widow, then half of the inheritance will go to the widow, and the other half will be split among the kindred. The entire estate will pass to the widow/widower if the intestate leaves no lineal descendants and no kindred.

2.11.3.3.2. Lineal Descendants

Children, grandchildren, great-grandchildren, and further-distant lineal descendants make up the lineal descendants. Three categories of lineal descendants exist: lineal descendants of the first degree, lineal descendants of the second degree, and distant lineal descendants of the third degree.

[130] V. Prasad, *Indian Succession Act*, 3rd Ed., Allahabad Law Agency, Haryana, 1999, pg. 29

Lineal Descendants of First Degree: They are the dead person's children. They split evenly, with no distinction based on gender. The adopted as well as illegitimate children are not included in the term "child." [131] The assets will belong to the deceased person's surviving children if there is no surviving partner and he or she only left a child or children and no further distant lineal descendants via a deceased child. If there are multiple, each shall succeed evenly regardless of gender.

Lineal Descendants of Second Degree: The deceased's grandchildren are regarded as lineal descendants at the second degree. If the expired person did not leave behind a surviving spouse or children, but did leave behind grandchildren without its descendants, then the entire estate is divided equally. Property is divided in accordance with stirpes rather than per capita under English law.

Remoter Lineal Descendants of Third Degree: They will share evenly when there exists only great grandchildren and other distant descendants of equivalent degree. [132]
If a deceased person left a large number of lineal descendants that are not all of identical degree, the assets is divided according to stirpes. The part of their parents that each of them was entitled to in the event their parents had survived the intestate, will passed down to them all in accordance with the doctrine of representation.

Rights of Children and other Lineal Descendants

When it comes to children, the domicile of a legal child is determined by the father's abode at the moment of child's birth, and that of an illegitimate child is determined by the place of residence of the mother.[133] When a child is born posthumously, the nation where the father lived up until death will be taken into account as the child's abode.
Lineal descendants are entitled to two-thirds of the estate if the widow is living; otherwise, they will receive the entire inheritance. If they share a similar degree of relationship with the deceased, the per capita principle applies. A Christian's successors must inherit his assets as tenants-in-common rather than joint tenants. Additionally, the heirs' religious affiliation will not preclude them from inheriting. Even the Hindu father of a kid who had become a Christian was considered to be able to acquire after him.

[131] M.A Khin v M.A Ahma, 1934 Rang. 72
[132] Section 39 of the Indian Succession Act 1925
[133] Section 7 and 8 of the Indian Succession Act 1925

When an intestate leaves no lineal descendants, parents, or siblings, the property is distributed equally among those of his kin who are closest in degree to him. The assets of the person who passed away will become the property of the Government if there are no successors of the intestate, in which case the Government is the ultimate heir on the concept of Escheat.

2.11.3.3.3 Kindred or Consanguinity

Kindred and consanguinity are both described as relationship or link between individuals descended from the same line or mutual progenitor. Lineal consanguinity implies a direct line of inheritance downwards. Those relationships that descended from one another or both from a same common ancestor belong under this heading. Now, succession can either be "per stirpes" (splitting according to stems if degrees of relationship are discrete) or "per capita" (one share for every successor, if they all fall within of the same degree of relationship). Christians would be considered to take the place of that relative and make a claim "per stirpes" if they made a claim via a member of their family that was of equal rank as the deceased person's closest kin.

When two siblings, for instance, are collaterally consanguineous, it means that they share a common progenitor or lineage but are not directly related.

If the intestate's father is still alive, the widow and father will be given a half share. Regardless of whether there are other relatives, the Father will receive the entire share if there isn't a Widow. If the testator's father has passed away but his mother, siblings, and sisters continue to be alive, the widow gets half of the estate, with the remaining half going to these relatives equally.

When the father of the estate leaver has expired and the intestates' mother, siblings, and any children of any deceased siblings are still alive, the widow will receive half of an inheritance, with the balance being divided equally between the mother, the siblings, and the children of any deceased siblings. If an deceased person leaves no lineal descendants, parents, or mother, the widow will receive half of the inheritance, with the balance half being divided evenly per stirpes among intestate's siblings and their offspring. When an intestate leaves no parents, lineal descendants, siblings, or other close blood relations, the widow will get half of the estate, with the other half distributed evenly between the closest degree of biological relations.[134]

[134] Emma Agnes Smithy v. Thomas Massey, ILR 30 Bom 500

It's important to realize that there isn't any difference among relationships formed through either of parents under Christian law. They all have a right to inherit and will divide the inheritance equally across themselves if the relatives on the masculine and feminine lines are similarly linked to the intestate. A posthumous child is regarded as a child who existed when an intestate expired if it is born alive and had been in the womb during the time of the intestate's death. Additionally, there is no difference among full-blood, half-blood, or uterine relatives. Christian law acknowledges solely valid nuptials and doesn't acknowledge children conceived outside of matrimony. Additionally, it doesn't recognize polygamous wedlock. Despite the fact that the legislation fails to explicitly state it, it has been decided that adoption is recognized and that an adopted child enjoys the same entitlements as a child who was born naturally. If there is no widow, no lineal descendants, no ascendants, and no remote kindred, then the entire estate will be transferred to the State.[135]

2.11.4 Parsi Law

Another oldest and most significant and well-known pre-Islamic faiths is Parsi Law. It was given the name Zorathushtra (Zoroaster) after its originator. Zorastrianism's origins could be traced to an agricultural community and tribal region in eastern Iran. Around 1000 BCE, the faith first emerged, and it continued to grow during the Persian Empire. In Zoroastrian philosophy, the issues of cruelty and misery were fundamental, and the immediate need to address them was balanced with a profound trust in the worth and freedom of every individual by way of the commonly referred to myth of choice. The "Syrian Law Books" and "The Zorastrian Madigni - Hazar Dadastan" are two well-known codes of this religion.[136] The term "Parsi" comes originally from the Persian region of "pars" or "fars" from where the first Persian immigrants to the Indian subcontinent emerged. There isn't any religious meaning to the word "Parsi." It has a stronger regional overtone. [137] At first, the Parsi community within India lacked its own set of laws. [138] Zoroastrianism is the faith of all Parsis, albeit not all Zoroastrians are

[135] Secretary of State v Girdharilal, ILR 54 All 226

[136] Encyclopedia of Religion Vol. XV

[137] Sir Dinshaw Mulla Petil v Jamsetji Jijabai, 11 Bom. L.R. 85 at 113

[138] The first permanent settlement in India was at a village called Sanjan (still in existence) in Gujarat 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

Parsis. Iranians who have been identified as foreigners, lack a place of residence in India, and practise Zoroastrianism are not Parsis in the sense of the law and are not liable to the control of the Parsi Matrimonial Court. [139]

2.11.4.1 Development of Parsi inheritance law

The Indian Succession Act, 1925, now controls Parsi's succession. Due to Parsi's assertion of the English doctrine of primogeniture, the Indian Parsis were subject to the common law of England in inheritance matters prior to the passage of Act of 1925. [140] The Parsee Chattels Real Act of 1837 was enacted, largely excluding Parsis from the application of English law. However, the intestate inheritance was governed by the English Laws of Distribution. The Parsis weren't happy with it, so they demanded their own succession statutes because they were unwilling to be taken advantage of by English law, which gave a female spouse no control over the assets she owned.

The Parsis Intestate Succession Act, 1865, established widow and daughter as successors and granted them the right to succeed the estate of the deceased. They had previously been eligible for maintenance. Mother and sister, however, were not officially designated as successors and were therefore unable to succeed. In addition to all of the aforementioned Acts that benefited Parsis up until 1925, the laws regulating Parsis under the Act of 1925 depend entirely on the original legislation of 1865. Through numerous changes and legal rulings, the current clauses of present Act dealing with inheritance of Parsis came into existence. [141] Significant revisions were implemented in 1939, including the addition of the widow of a predeceased lineal descendant as a successor and the exclusion of widower from roster of successors.

Up until the enactment of laws under British rule in 1865, Parsis observed a variety of customary norms in succession-related affairs. These traditions gave Parsi Panchayats (also known as Parsi Anjuman) the power to pass judgments on issues relating to inheritance, property issues, marital conflicts, and family conflicts. These Panchayats were made up of prominent members of the Parsi community. The Indian Succession Act of 1925 does not define the term "Parsi". For Parsi, a different plan for

---

fashion; and (d) that they would perform their marriage ceremonies after sunset in accordance with Hindu customs.

[139] Phiroze K. Irani, *'Personal Law of Parsis in India'*, (edited by J.N.D. Anderson), Routledge Publishers, London, 1968, pg.274

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

[141] Singh Jaspal, *Law of Marriage and Divorce in India,* Pioneer Publications, Delhi, 1983, pg. 481

inheritance exists. The rules for determination of heirship is governed by the Indian Succession Act, 1925, in cases of testamentary succession for Parsis i.e. when the person who passed away has left a testament.

2.11.4.2 General rules of Parsi Inheritance

The amending legislation of 1991 brought forth significant modifications to the laws regarding Parsi intestacy. Insofar that the child is born alive and had been in the mother's womb while the intestate passed away, a posthumous children is recognised by the Parsi Law as a legitimate heir, just like those who were born during the intestate's existence. When the distribution of the intestate's property is made after his death, a lineal descendant that passed away in the intestate's lifetime without having a widow or children will be totally disregarded. The widow of any lineal descendant of the intestate will have no right to any share of the intestate's property after his demise and will be regarded as not present when she marries while the intestate is still alive. The 1991 amendment introduced the term "widower." This principle was formerly restricted to widows only. Even after getting remarried, the widower of a deceased female child was considered to be entitled to inheritance.[142]

2.11.4.3 Transmission of Inheritance to Parents, Children, and Widows/Widower

All children and widow/widower receives the equivalent share whenever a Parsi passes away leaving behind a widow or widower as well as children but without parents. When a Parsi passes away having only children, without a widow, widower, or parents, the children will receive equal parts of the estate. When a Parsi passes away leaving behind children, a widow, or both parents, they are entitled to a portion that is equivalent to fifty percent of the proportion for every child.

In the event an estate leaver passes away sans any surviving lineal descendants but does leaves a widow or widower, the widow or widower is entitled to receive fifty percent of the intestate's assets.

The widow or widower of the estate leaver, the widow or widower of the lineal descendant, and the kindred will be entitled to one third inheritance each in the even the estate leaver dies without leaving any lineal descendants but leaves a widow or widower as well as a widow or widower of those lineal descendants.

[142] Jehangir v. Pirojbai 11 Bom. 1

If the estate leaver left no widows or widowers except one widow or widower of lineal descendants, the widow or widower of the lineal descendant shall be able to receive a third of the property, with the remaining two-thirds going to the kindred. If the estate leaver dies without leaving his widow/widower and without lineal descendants but there exists multiple widow or widower of lineal descendants then the widows or widowers of the lineal descendants will each be qualified to a two-third share equitably, with the balance one-third estate going to the kindred.

After subtracting the entitlement of any widow or widower, the remaining estate will be divided between the kindred though observing the rule that remote will be debarred by the nearer relatives. Without regard to the gender, the share is going to be same among those in the identical proximity. The entire residue will be divided between them in accordance with the stipulated share when there aren't any kindred. Similar to Islamic law, Parsi law applies the principle of return.

2.11.4.4 Transmission of Inheritance when there is absence of Lineal Descendants as well as Widow/Widower/Widow of any Lineal Descendant:

If a Parsi passes away without having a lineal descendant, nor a widow, a widower, as well as a widow or widower of another lineal descendant, then that person's next kin will be entitled to succeed the assets. The closest blood relationship to the intestate will serve as the governing factor in this case.[143] If there is neither an agnate nor a cognate, then the widow or widower of siblings will be eligible once the agnates and cognates are not present.

The kin onto whom the inheritance flows in these circumstances are listed in the schedule. The parents are included in the list first. Then comes the siblings of the estate leaver. The siblings will not include those by half blood. The rule of representation will apply if any of the siblings have predeceased the estate leaver. Then follows the grandparents which includes the paternal as well as maternal line. Then the estate devolves to the children of grandparents (both on paternal and maternal sides) with the respective right to representation. Then the right to succeed passes on to the great grandparents on both paternal and maternal sides followed by their children which includes right to representation. Subsequent in the line are the siblings by half blood with their respective right to representation. Then are the widow/widowers of siblings

[143] V. Prasad, *Indian Succession Act*, 3rd Edition, Allahabad Law Agency, Haryana, 1999, pg. 35

by full and half blood. Then the property devolves to the widows/widowers of children of grandparents in both lines. Lastly the property devolves on the widows as well as widowers (as the case may be) of the lineal descendants of estate leaver provided they are not remarried on date of opening of succession.

2.11.4.5 Transmission of inheritance rights of predeceased Child of Estate Leaver having lineal Descendants:

Children of a deceased persons' Son will receive their legitimate shares under the doctrine of representation as though their father had passed away shortly following the estate leavers demise if the intestate passed away leaving a deceased son and a widow. As a result, if the expired child was a son and had a widow and children, they would all receive an equal portion of the estate. If the predeceased child did not leave a widow or widower as his lineal descendant, they will be allocated a third of the estate. In the event the deceased child was a female, the estate would be split evenly between her children, and the widower would not receive anything. If either of the deceased child's siblings have passed away, their shares will be split according to the same guidelines as used for the predeceased children.

The entire Parsi intestacy system have underwent radical modifications. By establishing common law inheritance laws, the Parsis were heavily oppressed throughout the British era. The legislation of 1865 was ultimately enacted after much wrangling. Additionally, that showed excessive discrimination towards women. Even if some significant changes were implemented in 1939, it can be claimed that the 1991 modification made it more obvious that Parsi women had a reasonable amount of rights.

The closer excludes the farther under Parsi law, which recognizes the principle of representation. It recognized the principle of Return just as Islamic Law. Even though the parents only receive fifty percent of the child's portion, there is no prejudice in this situation since the parents do not have an obligation to the children. Finally, it may be concluded from the foregoing discussion that the 1991 amendment to the Indian Succession Act of 1925's laws regulating the Parsi intestacy process does not discriminate against women.

2.11.5 Comparative Analysis of Succession under different laws

The below table shows a comparative analysis of key features of succession laws followed under different personal laws in Rest of India:

Table 2: Showing comparative analysis of succession rules under different personal laws in India:

Islamic Law	Hindu Law	Christian Law	Parsi Law
Quran is chief foundation of Muslim law. In addition, customs are also followed provided they are not in conflict with Quran.	The Hindu Succession Act of 1956 regulates inheritance pertaining to people following Hindu religion. In matters where there is no law specified then the customs followed under the Mitakshara and Dayabhaga Systems are followed.	The Indian Succession Act of 1925 regulates inheritance pertaining to people following Christian religion.	The Indian Succession Act of 1925 regulates inheritance pertaining to people following Parsi religion.
The nearer degree heir has preference over remote degree	The nearer degree heir has preference over remote degree except when there is coparcenary	The nearer degree heir has preference over remote degree	The nearer degree heir has preference over remote degree
Rule of representation is present under Shia law but in case of Sunni law it is not available.	Rule of representation is present	Rule of representation is present	Rule of representation is present

Joint family system is not existent.	Joint family system is primary characteristic of Hindu law.	Joint family system is not existent.	Joint family system is not existent.
There doesn't exist concept of heir apparent under Muslim Law. The right accrues only after the death of the estate leaver.	Under Dayabhaga school, demise of estate leaver gives right to inheritance to the heir. However, under Mitakshara School, there should be birth of the coparcener to make him heir.	Inheritance rights to property of estate leaver accrues only after his death.	Inheritance rights to property of estate leaver accrues only after his death.
Rule of primogeniture has never existed.	Though practiced earlier, the rule of primogeniture does not currently find place under Hindu Law.	Rule of primogeniture is not present in Christian law.	Rule of primogeniture is not present in Parsi law.
The rule of survivorship is not present.	Though present, the concept of survivorship stands diluted to great extent.	Survivorship doctrine is not present.	Survivorship doctrine is not present.
Under Sunni Law, an illegitimate child cannot inherit father's estate. However, can inherit mother's property. The father	An illegitimate child is related to the mother only and entitled to inherit each other. However in latest judgment of the	Illegitimate children are not recognized for the purpose of inheritance.	Illegitimate children are not recognized for the purpose of inheritance.

of illegitimate child cannot inherit from his children, but mother is entitled to do so.	Apex Court, it has been held that illegitimate children will be entitled to inheritance rights of parents since the children are not at fault.[144]		
Under Muslim law a non Muslim cannot become heir of a Muslim intestate	Conversion cannot be said to be total bar to succession. Children who are Hindus at the time of opening of succession, are entitled to succeed to his predeceased converted father.	Christian law does not contain specific provision as regards conversion.	Parsi law does not contain specific provision as regards conversion.
The murderer is disentitled for succession	Murderer or abettor to murder is disentitled for succession	Christian law does not contain specific provision as regards murderers.	Parsi law does not contain specific provision as regards murderers.
A child born after the death of the estate leaver can succeed only if it is alive at the time of birth.	Child in womb is recognized under the law of succession applicable to Hindus.	There doesn't exist any difference between posthumous children or children born in lifetime of father.	There doesn't exist any difference between posthumous children or children born in lifetime of father.

[144] Revanasiddappa v. Mallikarjun, 2011 (86) ALR 450

In cases of simultaneous deaths, it is considered that both the deceased are non existent for the purpose of succession.	In cases of simultaneous deaths, it is considered that the younger deceased person had died after the older person.	Christian law is silent as regards simultaneous deaths	Parsi law law is silent as regards simultaneous deaths.
The property immediately devolves among the surviving heirs and even if widow has remarried, it cannot affect the inheritance	The son's widow, son's son's widow and brother's widow were disentitled from inheritance incase of remarriage before opening of inheritance. However the said provision stands abolished.	Christian law does not have specific provision as regards same.	In cases where Widow or widower remarries during lifetime of intestate, then in such cases he or she cannot inherit.
There is no difference as regards self-acquired or as regards ancestral property, neither as regards immovable and movable property.	Specific provisions exist governing self acquired as well as ancestral property. But difference between movable and immovable is not there.	The succession as regards movable property is determined by the domicile of person. Succession as regards immovable property in India is governed by Indian law.	There is no difference as regards self-acquired or as regards ancestral property.
The rules of inheritance relating to male and female intestate are same	Distinct provisions exist in respect of succession governing Male	Rules of succession for male and female intestate are same	Rules of succession for male and female intestate are same

though their shares might differ.	Estate Leaver and Female Estate Leaver.		

2.12 Analysis of Status of Women in India in relation to inheritance rights

The condition of women in society has gone through variety of facets. On the one hand, females have traditionally had a place of honour in the community, but conversely, they also endure discrimination due to their gender and have a poor legal standing as regards inheritance rights. As a result, there are countless variations in the position of females depending on various socio-economic factors. The duties, social standing of females has evolved over time, moving away from position of significant servitude. Following independence, the system of democracy, several fundamental clauses in our Constitution, a number of statutory laws, the awakening of some groups of females, and the impact of feminist organisations in the Western world, all contributed to the beginning of women's empowerment campaigns in India.

However, notwithstanding the legal safeguards of equal treatment the position of women has not changed or improved significantly when we look at reality in society. [145] The lives of typical women continue to be regulated by norms, habits, biases, and a silence code for their behavior. All conceptual markers of equal treatment and elevated status in society, such as official declarations, constitutional assurances, and punitive safeguards, exist exclusively on theory. The result is that the circumstances of females are unstable and unpleasant due to the interaction of legal complications and contemporary society.

"Even though women constitute nearby half of the population, they have all the characteristics of a minority viz. inequality of class (economic situation), status (social position) and political authority."[146] The Second Sex, an important book by Simone de Beauvoir that was released in 1949, serves as the basis for popular women social study. The focus of this study was on multiple viewpoints on gender equality and its importance. The treatment of females as "other" (gender) was the topic of the piece of literature. De Beauvoir uses the term "other" to refer to the idea that human civilization,

[145] Chawla M., *Gender Justice: Women and law in India*, Deep and Deep Publications, New Delhi, 2006

[146] *Towards Equality*: Report of the Committee on the Status of Women in India: Government of India, Ministry of Education and Social Welfare, New Delhi (December 1974), pg. 301

faith, and household are all based on the supposition that the universe is dominated by men. Men are in charge of defining society's purpose; they set the bar towards which everything else is measured. But on the contrary, females are the 'other' and are not included in these frameworks. Beauvoir mentions in her book the condition of women in society as "She is defined and differentiated with reference to man and not he with reference to her: she is the incidental, the inessential as opposed to the essential. He is the subject, he is the absolute – she is considered as Other".[147] The author says that every society has a dual aspect of essential and non essential elements. She says that females are considered less important than males in society and this practice starts from infanthood itself. Females are considered as weak and subject to male dominance. Justice Yatindra Singh has put light on the concept of gender justice in relation to Courts. He mentions the fact that the interpretation of definition of the word 'person' has taken as long as seventy five years to reach a logical conclusion. Previously person was not considered as having included within its fold female population. In earlier times, the courts also tend to deny to include female in the definition of person.[148] For instance, *in Re Regina Guha*[149], the Court had denied females to enroll as Advocates. Similar view of taken by the High Court at Patna *in Re Sudhansu Bala Hazara*[150]. Both courts denied to include females under the scope of word person under the Legal Practitioners Act. Subsequently, Allahabad High Court held otherwise. The Court stated that females are included with the meaning of 'person'. Smt. Cornella Sorabji was thus permitted enrolment as Legal Practitioner on August 27, 1921.

In *Ankush Narayan Shingate v. Janabai* [151], the court held that widow can adopt a child for herself thereby becoming the adoptive mother. Further adoptive son is considered son of her late husband. Such adopted child is deemed child of adoptive parents from the adoption date thereby severing ties that it held with biological parents' family. The adoptive parents and the child will have all their respective rights and obligations as per adoption law.

[147] S. de Beauvior, *The Second Sex*, (1949), H.Parshley (Ed. and Trans.), London: Picador, (1989)
[148] Yatindra Singh, *Women's Empowerment: Some Suggestion*, A.I.R., February, (2005) pg. 53
[149] A.I.R., 1917, Cal. 161
[150] A.I.R., 1922, Pat. 269
[151] AIR 1966 Bom 174, (1965) 67 Bom LR 864

2.12.1 Pre-Independence Period:

Historical analysis reveals that status of women, which is referenced primarily in the Smritis and the Vedas, is to some extent responsible for the low level of female-standing that existed in society. The Smritis were a compilation of ethical guidelines and descriptive concepts derived from the Vedas that are believed to be around 3,000 years old. The Vedas were religious prayers. These Smritis, particularly the Manu Samriti, granted women the limited privileges that educated females of 20th century might have needed. Manu's aphorisms signified that a Hindu woman had no legal right to claim succession or possess assets, and that woman was unable to divorce her spouse in any scenario. Woman was only eligible for maintenance if she and her spouse resided together. The status of females is appalling due to these precepts, the Hindu males' unlimited freedom to polygamous relationships, and the rejection of the wife's ability to end their marriages. In addition, she would forfeit her maintenance claims and forfeit her succession claims over her own assets, which comprised her Stridhan, or the money her family had bestowed upon her at marriage, if she left her husband's home. She would have limited freedom due to these prevalent factors, whether social, economic, or otherwise. Because of this, the most of Hindu religious writings regarded females as inferior to men requiring constant protection during their lifetime and were unable to exercise autonomous power. The women's revolution in India is indirectly aided by the notion that Manusmriti had on females. The prevalent societal customs of young marriage, the prohibition against widow remarriage, and the coldhearted behavior towards widows motivated a few powerful, educated Indians in the 19th century to focus their efforts towards woman empowerment. However, there were lack of public backing for their ideas. However, their work created positive outlook that was required for the Indian women's movement to grow.[152] The revolution tried to elevate women to high dignity, expressed dedication to women's advancement, and expanded scope of religious activity to encompass change and social service initiatives. However, since these societal practices had been ingrained in people's customs and routines, there was strong resistance while attempting to alter these deeply ingrained social practices.[153] Not every Hindu in the nation is governed by same set of laws. Although there is prohibition

[152] Charles Heimsath, *Indian Nationalism and Hindu Social Reform*, Princeton University Press (1964), pp. 161-175

[153] Jana Matson Everett, *Women and Social Change in India*, St. Martin's Press, New York, (1979), pg. 39

for marriages between close relatives, such unions are prevalent in the south. It is pertinent to note here that the female child got their entitlement to coparcenary only in 2005 after about fifty years from passing of the Succession law.[154]

Social customs had deep effects as regards women, depending on their social status and religion. Muslim women's subjugation was exacerbated by the purdah regime, polygamy and Muslim men's unfettered right to divorce. High Caste Hindus limited the liberties of females to marriage, assets, making them financially dependent. Though, this did not impact lower section of society, allowing them to be monetarily independent. However, because of their strict caste system and low economic standing, they were uneducated and had little opportunities to associate with Hindu women of higher castes and advocate for reforms. Our society has been predominantly patriarchal and views women's role in society through patriarchal lenses. Under Hindu law, female members did not enjoy succession rights but were entitled to maintenance only. The joint family system ensured that the ancestral property is not bifurcated outside male lineage. These characteristics meant that women were dependent on males. Because of these pervasive patriarchal structures, women have remained to occupy secondary roles. During the colonial rule, western ideas and methods were introduced for enforcing the law. This led to unification of laws as regards Civil, trade, criminal laws, but British Government made it a point not to meddle with personal laws of society. Subsequently, the British governance made a profound impact on Indian society. Hindu literature was recognized as the sole source to govern Hindus. Courts were specifically instructed to dispose the cases in accordance with Quran for Muslims and the Shastras for Hindus. This forced the Dharmashastra upon Hindus of lower castes who had not previously been subject to it. The idea of stare decisis also took its root in India, when courts began resolving individual personal matters based on existing texts together with case laws, rather than consulting Hindu sages on such matters. Prior to this, Hindu law adjudication did not recognize precedents. However, through enacting several laws and regulations, British officials purposely changed certain spheres of personal laws. Hindu reformers advocated for changes that benefit women as well, such as the ban on infanticide, elimination of sati, and permitting of widow remarriage. These changes were supported by British rulers.

[154] https://www.thehindu.com/opinion/op-ed/legal-pluralism-in-personal-law/article29825335.ece, visited on 29.02.2020 at 21.10

Legislative assembly eventually evolved into a new forum for social changes. A tiny group of liberals, like Shri H.S. Gour, Shri H.B. Sarda, Dr. G.V. Deshmukh succeeded in raising questions regarding females rights and empowerment. Shri H.S. Gour tabled a Bill in 1928 that entitled Hindu women to apply for dissolution of marriage. After strong protest, he withdrew it, but during 1931 to 1933, he introduced it again repeatedly. H.B. Sarda proposed a contentious bill in 1932 that entitled Hindu women whose husband had expired to seek a portion of their husbands' assets. This was also rejected. The Government's backing was required in order for the bills to make it through the legislative process. G.V. Deshmukh was able to secure the assistance in 1937 for passing the Hindu Women's Right to Property Act, which granted Hindu widows certain amount of separate and joint estate under Mitakshara law. This Act made it easier for widows to inherit alongside their sons and receive an equal portion of their estates. However they were not made a coparcener. It did not cover daughters as regards succession rights. Therefore, even though these enactments gave women additional privileges to succession, the law of inheritance continued to be inconsistent, flawed in many ways, prejudiced against women.

2.12.2 Post Independence period:

Following freedom from British, the Indian Constitution's founders recognized the disadvantageous and discriminating situation of women in the community and made specific efforts to guarantee that the Government would take action to grant women equal standing. Our Constitution is rightfully regarded as a key benchmark for measuring the extent of the civil rights of women in this regard. Ensuring equality of position and opportunity for all Indian citizens, together with social, economic, and political justice, is mentioned in the Preamble of Constitution itself. The Constitution contains a number of clauses that were specifically passed to defend and glorify females. For example, every Indian citizen is obligated by the Indian Constitution to renounce practices detrimental to the respect of females. Additionally, it provides specific rights for women welfare and safety. Government cannot debar anyone equal safeguards as well as impartiality. A Citizen cannot be subjected to gender discrimination by Government. All members of public have unhindered entry to public places as well as to use the facility to public water without any discrimination. Government is also empowered to make female beneficial legislation for their upliftment.

There is equality followed in matters of public employment. Both genders are treated equally and thus have eligibility to apply for public employment. The Government should specifically focus its policy on ensuring that both genders receive a comparable wage for equivalent work. The Government is required to make necessary legislations for maternity leave as well as fair and humane conditions for employment. The aforementioned clauses make it abundantly evident that women are granted both additional safeguards and absolute equality according to the Constitution. Both the Central and State Governments additionally passed a number of laws to carry out the ambitious objectives of these provisions. Women employed in a variety of jobs are assisted by laws such as the Maternity Relief Act of 1961, the Factories Act of 1948, etc which has specific provisions to deal with conditions of work for females in industrial and other establishments. In order to put the Fundamental Rights as well as the Directive Principles inscribed in the Constitution into practice, the Equal Remuneration Act, 1976 was passed which guaranteed equitable compensation for male and female employees and prohibits prejudice against women in the workplace on the basis of gender, as well as in ancillary areas. Both spouses enjoy equal status to file for divorce upon similar reasons under the Hindu Marriage Act of 1955. The Dowry Prohibition Act, 1961 was enacted to outlaw dowries and make their exchanging illegal. However, there is no unified succession law in India. Succession to deceased is determined by the distinct family laws applicable to the different communities. Muslims are subject to jurisprudence derived from the writings of the Holy Quran; Hindus are controlled by Hindu Succession Act of 1956, Christians are covered by Indian Succession Act of 1925. Therefore, even after several laws have been developed to protect female rights, there is actually a large difference in ground reality. Only when society accepts law in its purest form it can have any real significance. Therefore, a shift in mindset is needed for effectiveness of various female oriented laws that have been implemented alongwith the humane treatment of women. The court has even regretted in the Shah Bano case by reiterating about Article 44 being only a "dead letter".[155]

[155] https://www.thehindu.com/news/national/what-is-debate-on-uniform-civil-code-all-about/article24903560.ece -visited on 04.12.19 at 7.36 am

2.12.3 Status under Hindu Law

Hindu females place in society has significantly transformed as regards their property rights as a consequence of sustained efforts made through various State machinery. The role of females has advanced to that of a decision-maker and it is considered as a significant accomplishment for the Legislature, Courts, and numerous other organizations. Government had appointed the Hindu Law Committee headed by Mr. B.N. Rau, Judge at Calcutta High Court. The Committee had three other members also. This Committee recommended to devise single Hindu Code consisting of fusion of positive ideas and notions from different Schools governing Hindu law.[156]

Hindu women's lives have undergone significant transformations, and they are now, at least in some way, no longer dependent on men. The fight has proven to be an extended one, during which time they have received both support and criticism. Though the females enjoy considerably a better position now, there is lot of scope for improvement. Many provisions which are beneficial to women have remained on paper due to lack of support from the society at large. Prejudice against women can happen for self-acquired property, which consists of property that has been purchased, acquired, or received by way of share of ancestor's property, since the owner has the authority to determine to whom the assets may be transferred or passed on. [157]

To eliminate gender inequalities, the amendment in 2005 has introduced daughters as coparceners and brought them on par with sons. Earlier, a daughter used to cease from membership relating to her paternal family after her marriage. Hence amendment changed the position for daughters to be a coparcener irrespective of her marital status. In *Vineeta Sharma v. Rakesh Sharma*[158], the Hon'ble Apex Court has held that female children have been conferred with status of being a coparcener to the estate having the rights and liabilities equal to that of sons. The daughters may have been born prior or subsequent to the said amendment. It is also held by the Apex Court that the rights can be demanded by the daughters who have born before 09.09.2005 subject to the conditions provided in Section 6 (1) as regards disposition, partition or testamentary disposition if any that may have taken place before 20/12/2004.

---

[156] Rishindra Nath Sarkar, *Hindu Women's Right to Property Act*, S.C. Sarkar and Sons, Calcutta, 1938, pg. 3

[157] Dr. Paras Diwan, *Modern Hindu law: Succession*, 23rd Ed., Allahabad law Agency, New Delhi, 2016, pp. 405-59

[158] (2020) AIR 3717 (SC)

The amendments carried out to the inheritance law in 2005 have led to considerable dilution of coparcenery. The modifications to the inheritance law is aimed at bringing about a reformative change and bringing equal status to women in matters of heirship.
The codified Hindu succession law applies to both the Mitakshara as well as Dayabhanga school alongwith certain parts of South India. Section 14 has done away with women's limited estate and conferred them full ownership.
Thus, the pre-existing limited estate granted to women was converted to absolute one.
Rights of female successors except widows were recognized whereas the widow's position was strengthened. Under Mitakshara governed Coparcenary, the concept of survivorship continues to apply. However, if there exists a female in line, rules of testamentary succession is applied for preventing her exclusion. Unchastity, Remarriage and conversion are no longer held as valid grounds for disinheritance.
Even the unborn child is qualified for inheritance if she/he was conceived at the stage of death of intestate, but born subsequently.

2.12.4 Status under Muslim law

Quran provides substantial rights to women as compared to pre-Islamic rules, though there might be some inequality in terms of shares that they will receive in the inheritance. Muslim law is based on the five principles of faith, prayer, fasting, pilgrimage and charity. The rules governing it are same for both genders. However, in matters of succession, there has been a difference between genders such as mother and father, son and daughter whereby females are in some cases entitled to only fifty percent of the inheritance as compared to male counterpart.[159] Though women have unequal rights, the situation is way better as compared to pre-islamic Arabia when the females did not enjoy any rights to inheritance. Hence Quran has provided inheritance rights to females, which were never existent in pre-islamic period. However, we cannot say that the share given to females in respect of inheritance are on same footing as compared to male members of society. Their shares are affected by only reason of their gender.[160]
According to Hanafi inheritance laws, the widow received an eighth of inheritance if the person who died left behind a child or descendent of a male child. But if he had no children or son's descendants, widow would be given a quarter of the inheritance. A male Muslim is also allowed to have four wives, in which instance the widows split the

[159] Mulla, *Principles of Mahomedan Law*, 14th Ed., LexisNexis, 1955, pp. 69-70
[160] Asghar Ali Enginner, *The Shah Bano Controversy*, Orient Longman, Hyderabad, 1987, pg. 132

inheritance. When viewed in this way, the role of a widow in Islamic succession law is antiquated. The amount of share that is provided to certain female members, particularly widows, is substantially less. In order to ensure that distant heirs won't benefit at the widow's disadvantage in the case of a deceased person's death with no issue, the process of succession should be versatile.

Due to the pronounced patriarchal values that were prevalent in Arab society, the mother has a position of substantial subordination as compared to father under Muslim law of succession. She does not have a residual status. Despite the fact that it is commonly said that she constitutes a sharer rather than a residuary, it may be more appropriate to argue that her status in the Hanafi hierarchy of successors is unique. In real actuality, she and the father share as a Koranic residuary.[161]

The female child holds a prominent place among a deceased person's female descendants, despite the fact it is beneath that of a male child. The Koranic laws were quite advanced at the point when the verses were revealed, and they recognized a daughter's ability to succeed to her father's property. A female child is considered a residuary alongside a male child under Hanafi law, which means that she will receive half of his share of the remainder. However, in the absence of a boy, she is in the category of a sharer, with a single daughter receiving fifty percent of the inheritance and in case of two or more daughters are entitled to two thirds of the estate collectively. If there are male or female heirs of a degree that is equal, for example a son and a daughter, full brother and full sister, the share of the female is lowered to fifty percent that of the male, according to one fundamental tenet of Muslim law that drastically discriminates against females. Parallel to this, a widow's share is worth 1/8th between Sunnis in the presence of the child or son's descendants. If the deceased did not have children, then her stake would be one-fourth of the estate. The issueless widow of a Shia receives only an a quarter portion of the value of any plants, structures, or moveable property but she is not eligible to inherit any portion of her husband's immovable assets. The mother of the person who passed away also has a relatively low status amongst Sunnis in Islamic law. If an individual passes away sans any children and left his parents, and spouse, the spouse receives their defined share and the mother receives only one-third of the remainder of the assets. The mother is entitled to one third when there exists two or more siblings living. The status of these women is not

[161] F.B. Tyabji, *Muhammadan Law*, 3rd Edition, N.M. Tripathi Publishers, Bombay, 1940, pg. 853

treated differently under Hindu law since a Hindu man's daughter, widow, and mother constitute class I heirs and receive an equal portion of his estate along with male child.

2.12.5 Status under Christian Law:

Before the implementation of current Act, inheritance relating to majority of Christians were governed by customary laws. These laws were highly biased in character and thus had disproportionate effects on women. The Travancore Succession Act, 1916 as well as the Cochin Christian Succession Act, 1921 were the prevalent statutes in Travancore and Cochin respectively. These laws were deeply entrenched with patriarchal values. For instance, a widow could only have a life-time interest relating to succession of immovable property. Furthermore, daughters were either given only a third portion the son's share or Rs. 5000, whichever was of lesser value. Hence as per these provisions, only sons inherited the bulk of property. When there was no son, it was offered to the nearest male kin. Thus, it was impossible for a woman to inherit or acquire assets for themselves. Therefore, succession laws governed gendered notions and were discriminatory, unequal and unjust in nature.

One of the landmark cases that uplifted the position of Christian women was *Mary Roy v State of Kerala*[162] in 1986 which addressed gender based discrimination. Roy was forced to move out of her residential place and was excluded from getting rights to her ancestral property by her family. Following the provisions of Travancore Act of 1916, her brothers claimed that their ancestral property solely belong to them and her stay in their home is illegal. She filed a petition in the Apex Court and challenged two provisions of the prevailing law claiming that these are constitutionally not valid.

The Court held that the provisions under the Travancore Succession Act are violation of principle of Gender equality guaranteed by Article 14 of Indian constitution. Subsequently the law replaced by prevailing Indian Succession Act of 1925 with Chapter 2, Part V becoming the prevailing law to govern intestate succession. This judgement was to implement retrospectively and ended the discrimination between sons and daughters. However, the Christian lobby were vehemently against it and tried hard to strike down the verdict. They argued that court's interference would violate their personal laws which ultimately will lead to the disintegration of Christian society. It was ironical that the church which claimed to preach justice, peace and harmony, opposed a

[162] 1986 AIR 1011

judgement which has ensured equal privileges for men and women.[163] In view of non existent uniform sets of laws across communities, majority inheritance related decisions vary from case to case. For protecting women's inheritance rights, the prevailing Act was enacted to ensure better protection of women's inheritance rights, and which stipulated that widows were made eligible to inherit one-third of the ancestral property. Children irrespective of gender would get equal share of remaining part.

Now, the son and daughters get an equal share in inheritance. However, the widow only receives one third of the share. When there are no lineal descendants, she merely takes static half share. In addition, this widow is qualified to get five thousand rupees from the intestate's entire inheritance. In terms of mother's status, she becomes completely marginalized when the father and lineal descendants are alive. Under Christian law, the mother is eligible to entire inheritance only incase of non existence of father, siblings, children of pre-deceased siblings of estate leaver. Thus, the widow and the mother have a higher status under Hindu law than Christian law.[164]

A Christian female owns all money that she earns. She can't forfeit it to anyone. She is free to convey her own money, jewellery, and other belongings to whoever she pleases. A Christian woman is still eligible to a portion of the assets regardless of whether her father gives her expensive presents throughout her marriage.

2.12.6 Status under Parsi Law

Prior to 1991, daughters in Parsi law had a far lower status since when a male intestate died and was survived by a wife and children, each son and widow received double portion of each daughter. In the event that an intestate left behind sons and daughters, each son's share was twice that of each girl. When a woman passes away intestate, her daughter's situation was considered good because she received a part equivalent to a male child. At present, under Parsi law, daughters share an equal share of inheritance with widows and sons. In terms of her status as a widow under Parsi law, she constitutes as one of the principal successors and receives a part equivalent to that of male child. If the intestate expires without leaving any direct descendants, the widow or widower will inherit fifty percent of the inheritance. If the intestate passes away and left a widow or widower, as well as the widow or widower from any lineal descendants, this portion

[163] Mookerjee, S., *Gender-Neutral Inheritance Laws, Family Structure, and Women's Status in India*, The World Bank Economic Review, Vol. 33(2), 2019, pp. 498-515

[164] Anjani Kant, *Woman and the Law*, APH Publishing Corporation, New Delhi, 2008

decreases to one-third. According to Parsi law, the mother is likewise not entitled to a share that is equivalent to the lineal descendants. If Parsi passes away without having any direct descendants, the widow receives the half share while the father and mother jointly entitled to other half share. Hence, in contrast to Parsi law, women enjoy a far more satisfactory proprietary status under Hindu law. The female child is entitled to an equal portion of the property together with male child when there is no widow or widower.[165]

A Parsi female is expected to raise her children in accordance with her spouse's preferences and adhere to his religion when she married a non-Parsi person. Due to the fact that they are not regarded as Parsi by Parsi law, children of Parsi women who marry non-Parsis possess no legal rights. A sufficient rationale for this kind of gender discrimination does not exist. The widow receives only one third of inheritance incase of no lineal descendants but when there exists widow of lineal descendants. The widow of predeceased descendant has to share the one-third portion allotted to them. If the intestate's parents are alive, they will receive share equal to fifty percent of that received by children. Hence the position of widow, parents and widow of predeceased descendant is required to be improved under the Parsi law.

2.13 A pitch for enacting Uniform Civil Code

India is known as a nation with numerous religions. The criminal law in India is uniform across all regions and communities. However, personal law pertaining to marriages, dissolution of marriages, maintenance, inheritance, adoption, guardianship, etc. is based on the respective religion of the individuals. The Hindu law covers the Hindus alongwith the Jains, Sikhs, Buddhists. The Muslims follow their Holy Text Quran whereas Christians follow their own personal laws. Uniform Civil Code being constitutional obligation, as one of the Directive Principles of State Policy, aims to bring in a set of common and secular rules, which will govern all the citizens, without distinction based on religion, caste and tribe.[166] The requirement of having Uniform Civil Code has acquired communal overtones which have overshadowed the inherent merits of the proposal.[167] The main reason underlying the opposition being that the

[165] S.C Tripathi and Vibha Arora, *Law relating to women and children,* 6th Edition, Central Law Publications, Allahabad, 2015

[166] https://www.thehansindia.com/hans/opinion/news-analysis/ucc-implementation-can-be-a-tricky-affair-608044 - visited on 29.02.2020 at 20.29

[167] Sarla Mudgal, "*What's a Uniform Civil Code?*", The Economic Times, July 28, 2003

family laws are regarded by the orthodox people necessary ingredient of religion of respective community. Therefore they argue that any changes in family legislations means direct interference of Government in their religion.[168]

2.13.1 Historical Background

During the ancient period, the Ruler was supposed to encourage holiness and high caliber in the society. He was also supposed to support and help religious bodies. There was substantial impartiality in the treatment of its subjects. There was generally equality to all religions. There was close relation between the Brahman clergy and the King in the administration. The Brahmin would give the King valuable advice in the matters of pronouncing justice to the subjects. The Purohit obtained significant position in the court of the King. The Purohit also played the role of spiritual path giving to the King. In medieval India with the advent of the Mughal Empire, Court System was established. Judgments had their foundation on Holy Quran. In India, religion attains a significant spot in community. There was no problem as regards enjoying freedom of religion in India. In some of the States where Hindu rulers were in control, justice was imparted based on Hindu law. Hence there was no uniformity among the rules that governed diverse population during the medieval period. In the medieval times, the Mughal Empire emerged and thus spread the Muslim law all over the country they were the first to introduce proper court system in their empire though the judgments were founded on Holy Quran.[169]

The concept of Uniform Civil Code with its application has been discussed right from British era. The Lex Loci Report of the year 1840 recommended single legislation pertaining to contract, crimes, evidence. Also during the British period partnership, civil procedure, criminal procedure law was common for all members of community. There was uniform application of the same. However the Lex Loci Report suggested that the family related legislations should be outside the purview of unification. Even though the British did not venture too much into family lives of people pertaining to religious matter, the British did bring some reforms like the Caste Disability Removal Act, Hindu Widow Remarriage Act, Hindu Inheritance Act, Hindu Women Right to Property Act, and so on. During 1941 the Hindu law committee was established to explore the idea of

[168] Shalina A. Chibber, *Charting a New Path towards Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code*, Vol. 83, Issue 2 (Indiana Law Journal, 2008), pp. 4-25

[169] John L. Esposito, *Islam: The Straight Path*, (Oxford University Press, 1988), pp. 37-67

making a comprehensive legislation embodying all Hindu laws. Committee was asked to look into a comprehensive legislation covering all Hindu laws. This committee ceased to function after sometime due to World War. It was revived in 1944 under the chairmanship of Sir B.N. Rau[170]. In Hindu law there was the Dayabhaga School and Mitakshara School. Effect of this committee was seen in 1955 and in the year 1956 when notable legislations were passed by the Parliament pertaining to Hindu laws like Hindu Marriage Act as well as Hindu Succession Act and further enactment of Hindu Minority and Guardianship Act alongwith the Hindu Adoption and Maintenance Act. These laws were initially to be formed as one legislative code but was subsequently passed as four separate laws.[171]

As regards Islam there were two main sections i.e Shias and Sunnis. Many legislations pertaining to Muslim law were passed to overcome judicial decisions given by the Court and thereby making Sharia law prevail over the court decision. For example the Wakf Validation Act was enacted during British rule for overcoming the decision given by the Privy Council. The British did not venture too much into the Muslim Law because they did not want any kind of resistance from the community. The Indian Succession Act which was passed in the year 1925 also specifically exempted Muslims in its application and hence the Muslims followed Holy Quran for its inheritance laws. Special Marriage Act also exempted the Muslim community even though the law was a secular in character. Nonetheless the British did try to codify limited Muslim laws pertaining to Sharia by enacting the Shariat Act of 1937. In India, most family laws are affected by religion of the parties concerned. Hindus, including Sikhs, Jains as well as Buddhists come under Hindu law, whereas Muslims and Christians have their own laws. Muslim law is based on the Sharia.[172] Also the Muslim dissolution of Marriage Act 1939 was passed which gave women the right to obtain a divorce. As regards Christian population, there is Indian Christian Marriage Act which was passed by the British.

---

[170] Sir Benegal Narsing Rau (1887-1953) was an Indian civil servant, jurist, diplomat and statesman known for his key role in drafting the Constitution of India. He was also India's representative to the United Nations Security Council from 1950 to 1952. One of the foremost Indian jurists of his time, Rau helped in drafting the Constitution of Burma in 1947 and India in 1950

[171] Donald Smith, *Legal History of India*, Princeton University Press, 2011, pg. 23

[172] The Muslim Personal Law (Shariat) Application Act, 1937: As per section 2 of the Act, Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of personal law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and Wakfs , the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)

However it cannot be said to be complete code. Similarly the law pertaining to Parsi community was partly codified and there was complications to obtain matrimonial relief including divorce.

The Idea and purpose to enact a Uniform Civil Code is unification between the various diversified laws that are presently prevailing in the country. This will ultimately bring about unity of the nation. The policy of the British was to divide and rule and hence application of personal laws and non codification and non unification of them was a matter of policy rather than a matter of religion for the British. Nonetheless they enacted certain laws which prohibited anti human practices like the Sati prohibition Act, Restraint of Child Marriage Act, Indian Succession Act, Indian Divorce Act, Special Marriage Act, Dissolution of Muslim Marriage Act , Criminal Procedure Code, Civil Procedure Code, etc. British followed principle of non intervention in religious family related matters except when incase of social malpractices. The British specified that Holy Quran would prevail as regards inheritance, marriages in case of Muslims and only Shastra text would prevail in case of Hindus. Apex Court was of the view that in case of ambiguity in application of Shastric text, then equity, justice and good conscience would naturally prevail. When India ratified Convention on Elimination of all forms of Discrimination against Women in 1993, the Indian government also brought about substantial amendments as regards laws that were prevalent from the colonial period. The Apex Court recently expressed dismay that governments had made no attempts to make Uniform Civil Code though it had encouraged such a move. The Court noted that Goa is a "shining example of an Indian state which has a uniform civil code applicable to all, regardless of religion except while protecting certain restricted rights".[173]

2.13.2 Emergence of concept of Uniform Civil Code

The initial concept of Uniform Civil Code was brought in national politics in India in 1940. Congress had appointed National Planning Committee which suggested enacting the Uniform Civil Code.

In August 1940, the subcommittee on "Women's Role in a Planning Economy," tasked with studying the role that women would play in an independent India, submitted its findings to the National Planning Committee. The paper argued in favour of passing a

[173] https://www.indialegallive.com/constitutional-law-news/supreme-court-news/uniform-civil-code-a-shining-example-72467 -- visited on 29.02.2020 at 20.30

Uniform Civil Code. The proposed Uniform Civil Code was envisioned as first being an optional code that may eventually replace the various personal laws followed by various religious communities. The National Planning Committee agreed with this plan, despite one Muslim member being against notion of Uniform Civil Code. However, previous resolutions of National Planning Committee and the sub-committee showed that this committee's members did not believe that Uniform Civil Code can be practically implemented. Uniform Civil Code was being sought after by a few All India Women's Conference leaders by 1940. However, the All India Women's Conference did not include it in their Charter of Women's Rights, which highlighted reforms for women's rights under personal laws.[174]

There was no clause in either the Government of India Act of 1915 or the Government of India Act of 1935 that prevented the Government from amending or harmonizing family laws of individuals of different religions. In fact, it became apparent from these statutes that none of laws relating to family matters were excluded from their purview which means that family laws were always subject to change. Uniform Civil Code and personal laws are intertwined. All areas of law, including civil, criminal, and commercial, were based on religion and custom in the ancient and mediaeval periods. This law was confusing and backwards, based on religion and custom. Indian law was supposed to be organized and progressive under British control. The secular criminal and procedural laws were eventually codified and introduced by British monarchs. In terms of personal/matrimonial laws, they held off on creating a thorough and secular Civil Code.

A review of legal developments prior to the Government of India Act, 1915, revealed that British India's government had no restrictions on drafting laws in areas that were customarily governed by personal laws. All personal laws were brought under its purview by the Act of 1915. Nearly all of the topics previously covered by personal laws were mentioned in legislative entries of the then prevalent Government of India Act, 1935. A thorough codification of personal laws was not generally favoured by the British rulers because they did not want to upset the religious emotions of Indian society, according to the Constitutional History of India. Social improvements weren't as important to them as keeping their political power. As a result, there was no attempt made to create a secular Civil Code in British India, and the legislative power was

[174] Ajai Kumar, *Uniform Civil Code - Challenges and Constraints,* Satyam Law International, New Delhi, 2012

instead employed to enact incremental reform in response to the loud demands of progressive parts various communities of India.

The Directives regarding Uniform Civil Code is corresponding to secular character of our country. As Basu mentions that the object is for setting up a uniform law governing family matters with aim of national consolidation. It proceeds on precondition of there being no necessary connection between religion and family laws within civilized society.[175]

In *Mohammed Ahmed Khan v. Shah Bano Begum* [176], Chief Justice, Y.C Chandrachud, while delivering the judgment said that section 125 of CrPC applies to all people uniformly without any distinction on grounds of faith. Further, it overrides personal laws in case of conflict. The husband was duty bound to provide maintenance to the wife beyond the iddat period when the wife does not have sufficient means of maintenance. Even when Mehar is paid by the husband, still that does not dissolve the duty of male spouse to provide maintenance. The court also held that husband will have to provide maintenance till the time the wife has sufficient resources for maintaining herself.

2.13.3 Objectives of Uniform Civil Code

The Indian freedom movement was based on some principles. At the time of drafting of the Constitution it was thought that these principles should be incorporated to form a base for the subsequent advancement of society in India. Hence the concept of Fundamental Rights and Directive Principles came into focus. The core principles were mentioned in Fundamental Rights whereas those principles that were affecting the socio-economic and political life of individuals were incorporated in Directive Principles. The objective of formulating Uniform Civil Code was to achieve Unity among the citizens in the nation. The nation had seen the ill effects of partition. Uniform Civil Code aimed at achieving equality among the citizens and also to achieve gender equality. Uniform Civil Code aimed to achieve inclusive secularism in India. Since the people followed different norms in matters concerning family which were according to their religion, there was no clarity as regards application of principles for succession, maintenance, divorce, marriage, etc. Hence it was thought that Uniform Civil Code will bring in clarity and uniformity among different communities in India.

[175] D. D. Basu, *Commentary on the Constitution of India*, Vol.2, LexisNexis Publisher, 2008, pg. 135
[176] 1985 SCR (3) 844

In *Seema v. Ashwani Kumar*[177] even the Hon'ble Apex Court had directed the State Governments and the Central Government to make registration of marriages of all persons belonging to various religious communities mandatory. The Court held that the marriages should be compulsorily registered in the respective States where the marriages are solemnized.

2.13.4 Constituent Assembly debates

Even though the highest law of our country provided for Uniform Civil Code, hard opposition exists for its actual implementation. The opposition is from the various religious sections of the society. The doubt of various communities is that a Common Civil Code would interfere and override their ancient old traditions and customs. This doubt has resulted in non implementation of the Directive Principles provided under our Constitution. A misconception exists that any interference concerning family matters means a direct interference in the matters of religion which is guaranteed as a Fundamental Right under the Constitution. The opponents opine that Government has no religion and hence being a secular State, it should not venture into family subjects since it is an indispensable part of one's faith and primarily a way of life.

The Drafting Committee of the Constituent Assembly of India, February 1948[178].

[177] AIR 2006 S.C 1158

[178] Photo credit: *The Hindu* archives

Sitting from Left – N. Madhava Rau, Saiyid Muhammad Saadulla, Dr. B.R. Ambedkar (Chairman), Alladi Krishnaswami Ayyar, Sir B.N. Rau (Constitutional Advisor to the Constituent Assembly)
Standing from Left – S.N. Mukerjee (Chief Draughtsman), Jugal Kishore Khanna, Keval Krishan (Research Team Member)

During the process of drafting our Constitution, there were extensive debates regarding these personal laws. For some, they were too divisive. They argued by saying that Uniform Civil Code would help in constructing a citizens national identity and eradicate identification based on caste and religion. But the proposal was also resisted on the grounds that it would destroy the cultural identity of minorities. Subsequently, a compromise was reached. The concept of Uniform Civil Code being placed under the Directive principles, regarding which Government will make efforts to achieve but which is non-binding.[179] Mohammad Ismail Sahib of Madras stated that it is not proper for secular Government to meddle with family matters of the people which formed part of their faith, culture and way of life. He claimed that the Europeans countries including Yugoslavia protected the Musalmans in the matter regards personal law and status.[180]
Meenu Masani had a great role in framing Article 44 of the Constitution. He was part of sub-committee on Fundamental Rights who opined that Government is responsible to frame Uniform Civil Code with objective to unify all communities. However, majority of sub-committee voted against including Uniform Civil Code under Fundamental Rights. Accordingly Uniform Civil Code was brought under Directive Principles instead of Fundamental Rights. The country had seen partition and hence the sub-committee thought that including Uniform Civil Code under Fundamental Rights was not correct.
Debates held in the Constituent Assembly forms a crucial part in the study of Uniform Civil Code. Sub-committee comprising members like Rajkumar Amrit and Hansa Mehta gave their opinion to say that time limit should be laid down for the enactment of a Common Civil Code. Some of the Constituent Assembly members strongly opposed Uniform Civil Code. For instance, Mohammed Ismail Sahib stated that right to profess religion is core and essential right of every person which forms part of their culture. He further went on to say that for achieving harmony and unity, people must be permitted

[179] https://thelogicalindian.com/exclusive/everything-you-need-to-know-about-uniform-civil-code - visited on 29.02.2020 at 21.07
[180] Constituent Assembly Debate-Vol.II, 23rd November 1948

to freely profess their religion. Another member Nazimuddin Ahmed submitted that Uniform Civil Code would conflict as regards provisions of another Article of same Constitution under Article 19. Mahboob Ali Baig Sahib Bahadur another member stated that under personal laws, communities depend on their sacred religious text and hence they should be allowed to freely profess their religion without any interference. Another member by name Hussain Imam stated that India is a huge country with multi faceted diversity making it difficult for actual practice of following a Common Code. However there was also support from limited sections of Constituent Assembly for enactment of Uniform Civil Code. People like K. M. Munshi clearly stated that Uniform Civil Code does not interfere or contradict Article 19. Shri Munshi also emphasized that laws governing family matters does not do justice to female population as regards marriage, inheritance, succession etc. thereby causing injustice to them. Dr. B.R. Ambedkar also supported enacting Uniform Civil Code, though Dr Ambedkar was also concerned about fear psychosis especially among Muslim population. Hence Dr. Ambedkar had stated in his speech as regards the fact pertaining to drafting of Constitution which talks about framing Uniform Civil Code and not about enforcing the Uniform Civil Code on its citizens. The Code can apply to those people who desire to get themselves under it. Ultimately Article 35 found its place under the Constitution and renumbered as Article 44. In *Roxann Sharma v. Arun Sharma*[181] the Hon'ble Apex Court strongly commented that children are not at par with chattel when it comes to their custody. When the child has not completed five years of age, the child needs to be in the custody of the mother. The court held a view based on equity and good conscience rather than going by religious beliefs.

2.13.5 Uniform Civil Code in modern Indian Scenario

When we talk about application of Civil Code in Indian society, we need to look at its positive and negative impact on society at large. It must be ensured that there are no possible misuses of Uniform Civil Code in society. All faiths followed by people share common threads of tolerance and harmonious social life.[182] The social welfare should be prime objective and the legislation should be beneficial to all members of the society. So also it must be ensured that suitable atmosphere exist for effective application of the

[181] Civil Appeal No. 1966 of 2015

[182] P. Ishwara Bhat, *Law and Social Transformation ln India*, Eastern Book Co., Lucknow, 1st Ed., 2009, pg. 229

Uniform Civil Code. For application of Uniform Civil Code in Indian context there should be dialogue among all religious communities for bringing about consensus and avoiding confusions and misconceptions. Dr. Ambedkar maintained his stand that for achieving Unity among all the religious members, it is necessary for enacting a codified law. Goa is shining example of effective implementation of uniform law for all the religious communities without any distinction between them. When we talk about implementing a uniform law which is common to all it should be ensured that the same is also beneficial to all which has to be a positive legislation accepted with open heart by all community. They should not think like it is being implemented for their inconvenience.

Former CJI Y.V. Chandrachud also mentioned that uniform set of laws followed in Goa might sow the seed for putting into effect directives of our Constitution. It has been more than 73 years since our Constitution has come into force. However, Directive Principle pertaining to implementation of a Uniform Civil Code has remained in cold storage. It is required that the concept should see the light of the day and should be taken to logical conclusion by involving all religious sections of society. The Civil Code should rely on doctrine of fairness and equality and should carry along all the positive aspects from the prevailing laws while discontinuing any of the illogical and biased rules existing in the prevailing personal laws. The Constitution's founding fathers had "hoped and expected" that Government will act on Directive Principle pertaining to Uniform Civil Code but till date no action has been taken in this regard, as observed by an Apex court bench. Though Hindu laws were codified, "there has been no attempt to frame a Uniform Civil Code applicable to all"[183]

In yet another landmark case[184], the act of changing ones religion only to remarry even when the first spouse was alive and not divorced was held to be an offence and punishable under the Penal Code.

The principal issues in the case were:

1. Whether Uniform Civil Code should be enacted.
2. Whether a Hindu can have second wife by merely converting to Islam
3. Whether such marriage performed during the subsistence of earlier marriage is valid

[183] https://indianexpress.com/article/opinion/columns/uniform-civil-code-supreme-court-article-44-6004340/ - visited on 29.02.2020 at 20.42

[184] Sarla Mudgal v. Union of India , 1995 AIR 1531

4. Whether the husband would guilty under Section 494 of the Indian Penal Code

The Hon'ble Apex Court held the husband to be guilty of Section 494 of IPC. The Court held the subsequent marriage to be void and held that there cannot be second marriage without valid divorce in the first marriage. The Court did not direct for enacting Uniform Civil Code but nevertheless advised the Government machinery to have active consideration towards the directive principle in this regard contained in Constitution.

2.13.6 Relation of Uniform Civil Code and Freedom of Religion

The prime base for dissatisfaction among various religious communities for implementation of Uniform Civil Code is that if enacted it will encroach on liberty pertaining to practicing religion which is guaranteed under the Constitution. Some religious communities are of the opinion that the very concept of secularism is compromised if the Government tries to monitor their personal religion practices. Since there is no concept of State religion, various religious sections which oppose Uniform Civil Code are of the opinion that Government cannot meddle in their religious practices which in their opinion is not within the ambits of State control. However, to this point in *S.R. Bommai v. Union of India*[185], Court has held that religion and secularism are distinct and cannot be mixed. Government is competent to enact legislations to monitor and control the aspect of secularism. In Indian context, its Government function to govern its subjects and any hurdles in its smooth enforcement needs to be removed by Government itself. The Constitution of India gives freedom to its citizens to profess religion of their choice. However, the said freedom is subject to public order, morality. The same has to be ensured by the State.

It is general perception that Uniform Civil Code will interfere with religious freedom which itself becomes the biggest hurdle in its implementation. However this perception is not true. The concept of common law in matters of marriage, inheritance, maintenance, divorce, etc. does not in any way affect the right to practice religion which is guaranteed by the Constitution of India. There isn't any direct connection between personal laws and religion. For governing matters pertaining to marriages, divorce, maintenance, inheritance it is not necessary to interfere in the religious practices of the society. Archana Parashar in her brilliant study 'Women & Family Law Reform in India' rightly observes that as long as religion maintains as a relevant political factor, a

[185] 1994 SCC (3) 1

democratic Government will tend to be susceptible to demands under the garb of religion. Therefore, even though equality in family matters can be incorporated either by reforming individual family laws or by enacting Uniform Civil Code, it is need of the hour to enact a secular common law and thus sever the connection between religion and Civil rights.[186]

In *Ahmedabad Women Action Group v. Union of India*[187], Ahmedabad Womens' Action Group filed three Public Interest Litigations in the Apex Court. In the said petitions, various reliefs were sought which included declaring Sharia Law to be void. There was also prayer for repealing some provisions concerning Hindu Succession Act 1956, Hindu Minority & Guardianship Act, Hindu Marriage Act 1955, Guardians & Wards Act. Further the petitioner also sought to declare some provisions of Indian Divorce Act and Indian Succession Act as void. The court recollected that similar attempts were made on earlier occasions in case of *Maharishi Avadhesh v. Union of India*[188] wherein it was opined that the remedy lies not before the Courts. The court acknowledged the historic fact that Hinduism as well as Islam in India have their respective holy texts which embody their distinctive evolution and characterized by distinctive backgrounds. Article 44 recognizes such personal laws but lays down that uniformity should be achieved within a reasonable time in India. Eventually, the Court considering earlier decisions, dismissed the present petitions.

2.13.7 Analytical comments on Uniform Civil Code in India

The fact nevertheless remains that the concluding terminology as regards Article 44 which states "throughout the territory of India" have remained wholly ineffective and meaningless. It is difficult to reconcile the aforesaid phrase regarding a nation-wide uniformity in civil laws with the placement of matters pertaining to family laws in Concurrent List under Schedule VII, as also with those other general and special provisions that essentially lead to non uniformity.[189] The fundamental principle of Indian jurisprudence and particularly our Constitution has its foundation on concept of equality before law and equal protection of law. Secularism and equality are the core ingredients of Constitutional Law of India. Common Civil Law never aimed at changing

[186] Archana Parashar, "*Women and Family Law Reform in India*", Sage Publications, New Delhi, 1992
[187] (1997) 3 SCC 573
[188] 1994 SCC, Supl. (1) 713
[189] Tahir Mahmood, *Personal Laws in Crisis*, Metropolitan Book Co. (P.) Ltd., 1986, pg. 43

religion nor hurting any religious sentiments of any community. Civil Code only aims at bringing a common law that is beneficial and acceptable to all communities.

The irrational and evil practices must be discontinued from society. The objective is to bring uniformity and end conflicts. It must be kept in mind that religion is an integral part of Indians. Hence it must be kept in mind that there should not be a social unrest while enacting Uniform Civil Code. Common Civil Law should act as a tool for social reforms and should never be seen as a burden that is forced on community against their religious beliefs. Sole objective should be unification. Certain laws like Prohibition of Civil Marriage Act 2006, Section 125 under CrPC are shining examples of secular laws which targets uniformity and uniform application of laws without any distinction of religion. In order to achieve smooth implementation of DPSP, there is a need and necessity for internal reforms within the community which can be achieved by educating people about benefits of common civil law. There should be an objective study focusing on the good and bad aspects of each personal law. The good should be continued, bad should be discarded. It is very disheartening that Family Law Board on lines of Company Law Board does not exist in India. Such board can help a great way by solving matter pertaining to conflict of personal laws. It must also be noted that Uniform Civil Code is revolutionary process and not a fast forward process.

Present Institutions should be empowered and further modernised to understand the present scenario in the society. Distributive justice must be a part of inclusive democracy for humane governance. Dharma defined in its widest connotations inculcates the spirit of participatory democracy and provides the hindsight to rid of narrow prejudices and attain a socio-economic developed society.[190] The communal organisations should be taken into confidence. Profound study needs to be made on the social necessity surrounding common civil law. Emphasis should also be laid on protection of basic Fundamental Rights and needs to have special focus on ensuring that there is no bias between males and females which would further help in advancement of our nation. The Law Commission, the Human Rights Commission, National Commission for Women, along with religious organisations, former and retired judges, solicitors should be involved in the process. The loopholes found in present legislations should be addressed.

[190] M. Rama Jois, *Ancient Indian Law - Eternal Values in Manu Smriti*, 6th Ed., Universal Law Publishing Co., New Delhi, 2012

Chapter - III

Law of Succession in Goa

-

A Detail Study of

Inheritance,

Legal Succession,

Testamentary Succession

in

Goa

3.1 Introduction

Goa was under the Portuguese rule until the time of attaining liberation on 19th December 1989. The first Civil Law which was referred as Code was extended to Goa by the Portuguese. The Code was drafted by António Luiz de Seabra, a judge at the Oporto Court of Appeal, appointed by the Queen of Portugal in 1850 for carrying out the work of formulating the Code which was later also known as 'Code of Seabra'.[191] His draft Code, originally submitted in 1858 and subsequently revised by a committee of experts, was approved by Law dated 1st July 1867, and entered into force on 23 March 1868. By a Decree of 18 November 1869, the said law was extended, as of 1 July 1870, to the Overseas Provinces of Portugal. Thus, the Civil law became applicable to Goa also since it was governed by the Portuguese.[192] At present, the inheritance in Goa is carried out under Goa Succession, Special Notaries & Inventory Proceedings Act, 2012 which received the assent of the Hon'ble Governor of Goa on 19-09-2016 and made applicable with effect from the 90th day from its publication in the Goa Official Gazette. The publication was made on 22 September 2016 and the Act became applicable from 21st December 2016. The corresponding provisions under the Civil Code 1867 and the Civil Procedure Code 1939 thus stands repealed and the succession in Goa is now carried out under new law in force.

The Family Laws have evolved in Goa from the Civil Law Codes of Portugal, which were enacted for all the nationals of that country, first under the constitutional monarchic dispensation, and then under the republican regime. Unlike some other colonial powers, like Britain, which preferred to subject the colonized populations to laws different from those intended for themselves, the Portuguese chose to extend their own laws to the populations in the colonies, at least in the later part of their rule. That is how Goans came under the purview of the Portuguese Civil Law, in the combined capacity of Goans and citizens of Portugal, even though colonized. The law has undergone several changes in Portugal itself till today and so it can be said to be a

[191] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 28

[192] *Family Law in Goa after the Act of 2012: Key Concepts in the Portuguese Civil Code of 1867 and the Code of Gentile Hindu Usages and Customs of 1880*, by Dr. Dário Moura Vicente, Professor of Law, University of Lisbon

positive aspect that issues of succession as well of family laws are revisited keeping development in mind.[193]

The Administration Act that was passed after liberation of Goa stipulates that all Portuguese laws that were in effect in Goa, Daman, and Diu prior to its liberation will continue to have its application until they are changed or abolished by the Parliament or the State legislature. The Goa, Daman, and Diu family laws governing marriage, divorce, children, and succession are still in effect. Though translation exists, the original law was in Portuguese language making it difficult for judges and advocates to administer justice.

The Codigo Civil of 1867 and the Codigo de Processo Civil of 1939 principally include the laws governing families. It can be said to be a self-contained Code that includes both the substantive legislation and related procedural requirements for the civil side. The Indian Republic's civil as well as penal laws, like Civil Procedure Code of 1908 and the Criminal Procedure Code of 1973, presently regulate civil law as well as criminal law respectively in Goa. Be that as it may, the Code's provisions on Family Law, notably those on marriage, contained in its Articles 1056 to 1239, remain in force till date.[194] Some of the related provisions has been repealed with the extension of various Central Acts, like Contract Act, Transfer of Property Act, and Easement Act. Nonetheless, the full Civil Code would be extremely helpful in understanding the specific scope of the corresponding and subsequent repeal as well as how to interpret and apply the law that is currently in effect.

3.2 Meaning of Succession

Succession is the transmission of the estate of a deceased person in favour of his heirs. Heir is a person who is called to succeed to the juridical relations of demised person and upon whom the assets and liabilities devolve.[195] In general terms, Succession can be said to be a process of stepping into the shoes of the estate leaver by his legal heirs. The legal heirs of the estate leaver takes up all the legal rights and liabilities of the estate leaver. The process of Succession includes transfer of the estate of the deceased person

[193] https://www.thehindu.com/news/national/other-states/Goa-passes-bill-to-replace-Portugese-succession-law/article14556836.ece - visited on 08/12/2019 at 16.29

[194] Lecture delivered by Dr. Dário Moura Vicente Professor of Law, University of Lisbon in the Goa High Court on 6 February 2020 at the session organized by the Goa State Legal Services Authority in association with the Goa High Court Bar Association.

[195] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 2

to his successors and hence Successors takes the place of the deceased person pertaining to all his assets and liabilities. The Successors becomes unconditional owner of estate of the deceased. Succession can be of two types. It can be either Intestate Succession or Testamentary Succession. A testamentary heir is an heir originating from the Will of the deceased person. Testamentary succession is the succession that follows from a Will that was left by the deceased person. Contractual succession is not permitted in Goa. If there is no valid Testamentary instrument executed by the Testator during his lifetime, the succession happens by default as specified by statutory provisions and is called as Intestate Succession. Either optional or forced succession can occur in an intestate succession. Forced succession is the type of succession where the law reserves right to inheritance for legal heirs and establishes limitations on the estate leaver's freedom to dispose of his estate.[196]

In *Ram Deu Gaudo @ Gaude v. Anta Deu Gaudo*[197] the basic argument of appellants was that there is nothing on record to show how the property developed from the grandfather in favour of his two sons namely Rama Deu Gaudo and Anta Deu Gaudo who are admittedly the parents of the appellants and the respondents respectively. The Court held that upon the demise of estate leaver, the ownership of the assets of expired person stands transmitted to legal heirs under statutory law. When one or more persons are successors in such inheritance, the right of such person is in joint ownership and possession until the partition has been made. In such circumstances, upon grandfather demise (there being no partition proceedings) the ownership of assets including its possession will be considered in joint ownership and possession of successors.

In *Skoda Afonso v. Motor Accident Claims Tribunal Panaji Goa*[198], it is held that when there is loss caused by way of accident to the estate, the claim of the heirs will still subsist as regards the inheritance against the person causing the accident when the estate holder dies. Inheritance covers all the rights, as well as the obligations, liabilities of the deceased person and the same gets transferred to his heirs.[199]

[196] Section 3 to 5 of present Act correlates to Articles 1735 to 1736 of the erstwhile Codigo Civil 1867
[197] Second Appeal No. 6 of 2017 before the Hon'ble High Court of Bombay at Goa
[198] 1999 (2) ALL MR 549
[199] Praveena Doshi v. Ganpat Parab 2014 (2) Goa L.R. 360 (Bom)(PB)

3.3 Need and Importance of Family Laws of Goa:

Civil Code enacted by the then Portuguese regime was based on French Civil Code, also known as the Code Napoleon, being however also strongly influenced by the teachings of the contemporaneous French, German and Italian jurists. It constitutes the basic substantive Civil Law and it regulated, inter alia, matters relating to family, contracts, succession and property.[200] Succession always occurs after death and, in its strictest definition, refers to the transfer of a person's rights, properties, duties, and liabilities as a result of his or her Will or by operation of law. The heir of one person replaces the deceased. The estate is transferred as a result of the deceased person's death and is done so in favour of the person who replaces them, i.e., the successor or heir. Even if they are from various marriages to the same deceased person, all of the deceased person's children, regardless of their gender or age, are entitled to inherit their parent's property in the event of succession.

Documentation is very important in the matter of devolution of property to avoid prolonged litigation. If the deceased did not leave a Will, his property is divided equally among his children. It should be mentioned that a deceased person's mandatory heirs are his offspring, other descendants, and ascendants. Spouse is the moiety holder in inheritance.[201] The meaning of forced or mandatory heirs is that they are legally entitled to receive a share of the deceased person's estate and cannot be denied their share. Due to this, if a person has descendants or ascendants, all of their assets must be divided into two parts viz a legitime or non-disposable portion, and a disposable portion. Such provision ensures that parents, grandparents are not treated harshly and are not required to be at the mercy of their children when they are old. When a child is born into a certain family, that child inherits the parents' titles.

According to the Civil Code, the legitime or non-disposable quota normally equates to one-half of all the assets that the deceased had left behind, including those that he had given away during his lifetime. So, each child of the deceased will be entitled to an equal share of the non-disposable portion of the deceased's assets when they are all still alive. If any of those children pass away, all of his other offspring will take their position as the deceased person's sons or daughters by right of representation. Inheritance is significant since the legal relationships continue even after the death of

---

[200] M.S. Usgaocar, *Family Laws of Goa, Daman And Diu*, Volume II, 1st Ed.,Vela Associates, Goa, 2010, pg.7

[201] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 33

the estate leaver. The jural interactions cannot come to an end by the death of one of its subjects. Even though the deceased who passes away is replaced by another person or persons, the legal relations must continue. In general, these successors carry on the legacy of the predecessors. The noteworthy feature of Succession in Goa is that the rights directly transfers to the heir upon death. Upon adherence to the necessary formalities, the successors have the right to claim ownership of the deceased persons inheritance. Death of the person is starting point for succession as regards the estate of expired person, which needs support, the heir takes the position of the deceased and provides this support.

Succession is an universal concept and follows the person wherever he is present. Even properties purchased outside Goa by a person who is governed by Goan Succession law are required to be included in his inheritance. At the time of calculation of the legitime, such properties situated outside Goa will be taken into consideration. The Supreme Court has read Article 24 of the Portuguese Civil Code in such a manner so as to bring certainty as regards Goan Family law.[202]

The then Governor of Goa has also applauded the Civil Code of Goa. He has said that Goa is known for its peaceful coexistence of various religious communities. There is a rich tradition of harmony and has maintained it throughout these years. Goa is the only State in India that has a Uniform Civil Code. Regardless of religion, gender, caste, Goa has common family law. Goa is truly blessed to have peace and unity in diversity.[203] Goa is one of the fastest growing States in the country, with well developed social, health, industrial, tourism and sports infrastructure as well as virtual connectivity. Men and women have equal rights to succession in Goa. The Common Civil Code reflects the principles of equality in our Constitution and presents a good example to the country.

It is interesting to note here that even the Supreme Court have expressed regret for making no attempts to design a Uniform Civil Code for citizens of the nation, although the Court has encouraged the move.[204] Similarly in *Seema A v. Ashwani Kumar* [205] it was directed by the Supreme Court in its judgment dated 14.2.2006 that all marriages

[202] https://timesofindia.indiatimes.com/city/goa/apex-court-order-ensures-certainty-of-succession-of-goan-owned-properties/articleshow/71175053.cms - visited on 08.12.2019 at 16.38

[203] https://www.thehindu.com/news/cities/mumbai/president-hails-goas-uniform-civil-code/article24362492.ece - visited on 29.02.2020 at 20.20

[204] https://www.heraldgoa.in/Review/Goa-A-shining-example-of-Uniform-Civil-Code/151472 - visited on 29.02.2020 at 20.51

[205] [2007] 11 S.C.R

should be compulsorily registered. From the compliance reports filed by the States and Union Territories, it proved that States of Andhra Pradesh, Bihar, Chattisgarh, Goa, Himachal Pradesh, Karnataka, Meghalaya, Mizoram, Rajasthan, Sikkim, Tamil Nadu, Tripura have complied with the direction for compulsory registration of marriages.

3.4 'Goan person' under the Succession laws of Goa:

Important question is as regard who can be considered as a Goan for the purpose of applicability of Goan Succession Law. Till the time of liberation of Goa, the applicability of Portuguese Civil Code was based on citizenship acquired through the Code and did not had any resemblance to domicile of the person. In other words, even if a person is residing in Goa still he need not be a Goan under the Civil Code as well as the present Act.[206] Lot of factors are to be taken into consideration for ascertaining whether the Goan civil law is applicable to any person or not. In several judgments, the Court has held that Portuguese Civil Code is an Indian law and the Portuguese citizens mentioned therein are to be considered as Goan citizens.

A conflict as regards applicability of Goan law or the Indian law has always been prevalent in matters pertaining to succession laws of Goa. This has been much so due to lack of a Uniform Civil Code and the fact that family law is governed by the religious following of persons in rest of India. The Goa Daman Diu Citizenship Order of 1962 has granted Indian citizenship to all Goans that were holding Portuguese nationality at the time of liberation.

A person under the Civil Code is also eligible to marry outside Goa before the diplomatic agents or consulate authority and still the marriage will be considered to have been governed under the Civil Code after its transcription in the books of records of the Civil Registrar. A person who is a Goan under the Civil Code who is married outside Goa can still continue to be a Goan for the purpose of applicability of the Act. However if a person is married under the personal laws applicable in rest of India and further resides in Goa then he cannot be held to be a Goan for the purpose of the applicability of Goa Succession Law.

For the purpose of proving any fact as regards valid nuptial, there should be a marriage certificate since in Goa, registration of marriages is compulsory.

---

[206] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 5

In an interesting case before the Hon'ble High Court of Bombay, wherein a person of Goan origin was born in Goa of Goan parents but carried on business in Bombay as a Tailor for several decades. He was permanently resident of Bombay with his name registered as a Voter of Municipal Corporation of Bombay. In this case, the Court held at the person would be governed by Indian law and not by Goan Civil Code.[207]

In another case, a person was born in Goa but carried on business in Mumbai and settled over there for several years. In his lifetime he had visited Goa for around 4 to 5 times. In this case also, the Court held that he was governed by the Indian Succession Law and not by the Codigo Civil 1867.[208]

The erstwhile Civil Code of 1867 did not specifically state as regards to whom the Code will be applicable. It only specified as regards how the Portuguese nationality is acquired and who are considered as Portuguese nationals. However the present Act specifies the persons to whom the Act will be applicable. It include those persons who were governed by the Civil Code prior to liberation and up to the date of coming into force of the present Act. A person born to Goan parents is covered under the Act. A person who is born to parents governed by family laws applicable in rest of the country can also come under the scope of the Act if he declares so before the Special Notary by way of executing a declaration deed on attaining majority. A person who is born in Goa but his parents are unknown then also he will be covered under this Act for its applicability. Similarly if any person is adopted by Goan parents then also he will come within the scope of the Goan Succession Law.

In *Monica Variato v. Thomas Variato*[209], it is held that if a person was Portuguese national at the time of liberation then by virtue of the Citizenship Order 1962, such person is considered a Goan. The Court has held that the Citizenship Order 1962 is not in violation of the Citzenship Act 1955 and hence a person is considered Goan with Indian Nationality who was holding a Portuguese nationality at the time of liberation or at the time of passing of the Citizenship Order.[210]

In *Asabi Khan v. Pravin Khan*[211], the parents of the Petitioner and Respondent were following Muslim religion. Both parents were working and living in Goa from Pre-liberation period. In this case, Court has ruled that the parents and children would be

[207] Michael Rodrigues v. State of Bombay 1956 Bom 729
[208] Carolina Santos v. Dominic Pinto AIR 1916 Bombay 167
[209] 2000 (2) Goa L.T. 149
[210] G.Y.Bhandare v. Erasmo Sequeira, AIR 1972 GDD 11
[211] 2007 (4) ALL MR 604

governed by the Civil Code and not by the personal law applicable to Muslims. The Court further clarified that in Goa a common civil law is applicable concerning inheritance rights and Indian Succession Act has not been made applicable to Goa.

In *Daisy Senso v. Ivorine Noronha*[212], the parties were married in Mumbai. They had executed a Joint Will in Bombay. Since the Parties where born in Goa, it was held that they are governed by Goan family law even though they were married outside Goa.

Hence, all Portuguese nationals at the time of Liberation of Goa are to be considered as Goan persons having Indian nationality.[213] Since all Portuguese nationals at the time of liberation are considered as Goan persons, hence all the Portuguese national mentioned in the Civil code applicable to Goa are to be understood in the context of Goan persons having Indian nationality.[214]

3.5 Commencement of Inheritance

A deceased person's inheritance or succession includes all of the things, obligations, and rights he or she leaves behind after passing away. Personal rights which by their nature or by operation of law expire upon the death of the title holder are not included in the inheritance. If the estate leaver and those who follow him, whether by virtue of a Will or by operation of law, pass simultaneously in the same accident or on the same day, it will be presumed that everyone died at the same time and there will be no inheritance or legacy passed between them. When the estate leaver passes away, succession begins. The jurisdiction for opening of succession is determined by the permanent place of residence that the deceased person possessed at the time of death or by the location of his properties. If the deceased had a permanent residence in Goa, the succession opens at the location of his permanent residence. If the deceased did not have a permanent residence in the State of Goa, the succession opens at the location of his immovable properties in the State of Goa. If his properties are dispersed throughout the State of Goa, the succession begins where the majority of these assets are located. Such a majority portion is determined based on the value of the properties. If the deceased's movable property is located partly in Goa and partly elsewhere in India, the succession begins in Goa regardless of the value of the property. The place where the majority of the movable assets are located is where the succession of a person opens incase that

[212] 2011 (2) Goa L.R. 114 (Bom(PB))

[213] Kamlakant Chibde v. Sushila Chibde, 1990 (2) GLT 185

[214] Madakini Salkar v. Chandrasen Raikar 2002 (2)GLT 556

person died outside Goa and neither had permanent abode in Goa, nor possess any immovable properties in Goa. The succession begins at the location where the person died in Goa when neither an immovable property nor a permanent habitation exists. The succession is universal, and subject to the statutory restrictions mentioned in the Act, it may be divided in Goa, wherever the moveable or immovable properties are located, for a deceased person.[215]

Jose Paulo Coutinho v. Maria Luiza Valentina Pereira[216] is a landmark case decided by the Hon'ble Supreme Court of India. The Court has held that a person who is native of Goa, but starts living in Bombay or in any other part of India, cannot be said to be Portuguese and he cannot be said to be living in a foreign country. This person is only a Goan living outside Goa in India, which is his country. Portuguese Civil Code being a special Act, applicable only to the domiciles of Goa, will be applicable to the Goan domiciles in respect to all the properties wherever they may be situated in India whether within Goa or outside Goa and the Indian Succession Act would not be applicable to such Goan domiciles.

In *A.P. Fernandes v. Annette Finch*[217], it was held that the properties situated outside Goa also needs to be included in the list of assets since it affects the Legitime of the inheritance.

In *Conceicao Fernandes v. Milagres Fernandes*[218], the Court has differentiated the terms domicile and Temporary residence. The court has held that a place of temporary residence at the place of the wife cannot be termed as the domicile of the husband. It should be a place where the person happens to stay permanently.

The heirs are not entitled to inheritance rights till the time both the parents are alive.[219]

It is held that property of the deceased cannot be said to be in adverse possession of any one of the heirs in cases where other heirs live separately. All heirs are considered as being in joint possession.[220] The rights of the heirs of the deceased start from the date of death and not from the date of culmination of the inventory proceeding.[221] The ownership and possession of the inheritance pass to the heirs at the time of death regardless of whether a person leaves an estate intestate or through a Will.

---

[215] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 141
[216] [2019] 12 S.C.R. 390
[217] 2015 (1) Goa L.R. 568 (Bom)(PB)
[218] 26 (1) ALL MR 598
[219] Anastasio Gomes v. Bernardo Gomes 2012 (1) Goa L.R. 11 (Bom)
[220] Conceicao Quadros v. Salvador Quadros 2012 (4) ALL MR 650
[221] Vishwanath Yadav v. Kashinath Yadav, 2017 (1) Goa L.R. 538 (Bom)(PB)

The matter that came up before the Court was as regards whether Order passed by the Bombay High Court is a foreign degree within the meaning of section 2 sub section 6 of Civil Procedure Code and whether the Bombay High Court is a foreign Court especially when the parties subjected themselves to the jurisdiction of that Court by prosecuting their case of upto a certain stage. The Court held that the decree passed by the Bombay High Court was clearly executable in Goa.[222]

3.6 Partition of Estate

Succession can happen by compulsory inventory or by way of an optional inventory. If all the legal heirs are major in age, they can draw a deed of partition and get it registered under the Registration act 1908 for effecting partition of estate between themselves.[223] The Deed of partition should be done only after drawing of Deed of Qualification of Heirship. Inheritance is joint until a division is implemented. If more than one person is competing for an inheritance, their ownership and possession rights must remain joint until the partition is completed. Without effecting partition, heir cannot sell specific properties of the estate to a stranger or third party. A transfer of this kind would be worthless and invalid. [224] When a co-heir transfers his entire claim to the inheritance to a stranger, the right of pre-emption will take effect. The Bombay High Court has held that it is well settled proposition of law that the right to alienate property is an essential component of the right to property. And that right cannot be denied by implication. Neither Article 2177 of the old Act or Section 17 of the new Act contains any such prohibition in express terms not even by implication. In *P.P. Kuriakose v. Shubhalaxmi Gaitonde*[225], the respondents had not sold the property, but only agreed to sell. They had agreed to sell their interest in the property, rather than the property by any physical demarcation. It was short of sale or delivery of property as a matter of part performance under a contract. Thus the court held that the owner cannot be denied his right to enjoy the property through a blanket order.

However, any of the successor can reclaim the full estate or a portion of it that is in the ownership of a third party, or an injunction against that party in accordance with the Specific Relief Act of 1963. It is forbidden for the third person to claim that the estate,

[222] Zacarius Pereira v. Camilo Pereira, AIR 1984 Bom 295
[223] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 304
[224] Section 14 of present Act correlates to Articles 2011 to 2016 of the erstwhile Codigo Civil 1867
[225] A.O. No. 47 of 2018

or a portion of it, does not exclusively belong to that co-heir. The right to ask for a partition of the inheritance belongs to the moiety holder or any co-heir. There cannot be waiver of the right to ask for partition by a co-heir or moiety holder. However, the parties may agree to keep the inheritance un-partitioned for a predetermined period of up to five years. When distributing assets among joint family members, the same guidelines that apply to co-heirs must be observed.

In the absence of any pre-nuptial agreement, marriages in Goa are governed by communion of assets and each spouse is entitled to half share of income of the other spouse.[226] The Bombay High Court has held that under Section 412 of the Goa Succession, Special Notaries and Inventory Proceeding Act 2012 , properties which are other than the residential houses, can be subject matter of partition by metes and bounds.[227]

There can be no partition among heirs before drawing of a valid succession deed or before the finalization of Inventory Proceedings.[228] Execution proceedings relating to Inventory proceedings is required to be carried out through the Portuguese Civil Code itself and not under the Civil Procedure Code 1908.[229]

In *Marcus Nunes v. Filomena Fernandes*[230], the Court has observed that the delay in Inventory Proceedings can be avoided when there exists a succession deed executed between the parties. In case of presence of Succession Deed, the Inventory Proceedings are not required to be filed and the parties can opt for executing partition deed.

In *Vasantrao Sadashiv v. Rama Lotlikar*[231], one of the heirs filed a case for permanent injunction against the other co-heirs on the ground of sole possession of house of the deceased. The Court held that in the absence of Inventory proceedings, there cannot be expulsion of any of the members of the family from the ancestral house.

In *Anant Kavlekar v. Milan Dantie*[232], the Court has held that a civil suit for partition is maintainable when the heirs had got a right by way of a succession deed and not by way of Deed of sale and their names were recorded in the revenue records.

---

[226] Zelia M. Xavier Fernandes E. Gonsalves v. Joana Rodgrigues and ors. [2012] 2 S.C..R. 258

[227] Sabina Lopes v. Aleixo Rafael Fernandes, Writ Petition No. 658 of 2019 in the High Court of Bombay at Goa

[228] Cruz Fernandes v. Smt. Gregorina Fernandes, 1991 (4) Bom C.R. 400

[229] Zacarius Pereira v. Camilo Pereira, AIR 1984 Bom 295

[230] 2000 (2) Goa LT 539

[231] 2014 (1) Goa L.R. 596

[232] 2014 (1) Goa L.R. 551

In *Anisia Coutinho v. Santana Coutinho*[233], it is held that spouse of the deceased person can be an heir but cannot be appointed as Head of the family. When there is divorce proceeding between the spouses then their rights to properties are to be decided in the said proceedings itself.

3.7 Renunciation by Heirs

The acceptance of inheritance must be unqualified.[234] The individual who refuses the inheritance that is owed to him under one title is not precluded from receiving the inheritance that is owed to him under a different title. The decision to accept or reject an inheritance is entirely up to the heir. It's against the law to accept or reject an inheritance partially, under certain conditions, or for a particular period only. The bequest is legally open for acceptance or rejection to heir who is legally able to handle the assets. Hence a lunatic heir cannot relinquish his rights. A married person cannot accept or reject an inheritance without the express written consent of the other spouse. The consent can be validated by obtaining a court order. The inheritance left to a child or someone with a disability can be accepted on behalf of minors/disabled by their lawfully appointed representatives/guardians. Deaf and dumb people with the ability to write who are not under control of guardian may accept or refuse the inheritance either personally or through a specified attorney. The heirs can accept inheritance, expressly or impliedly. Express acceptance occurs when the heir explicitly agrees to be identified as the heir in any document. The acceptance is implied when the heir makes a particular action from which the intention to accept must obviously be inferred or when the action is of a nature such that the successor could not have taken it in any other capacity other than that of an heir. But, taking measures solely to safeguard, control, or temporarily hold onto the inheritance's assets does not constitute acceptance.[235]

When an inheritance or share of an inheritance is freely transferred by one of the heir in the interests of all co-heirs to whom it would otherwise go, it is seen as renunciation of the inheritance. If someone has been declared to be an heir by a court order or decree that has become final or if a decision has been made specifically against them in that capacity, they will be considered an heir both in relation to the creditors or the legatees

[233] 2013 (1) Goa L.R. 610

[234] The provisions relating to Renunciation under present Act correlates to Articles 2021 of the erstwhile Codigo Civil 1867

[235] Section 30 of present Act correlates to Article 2029 of the erstwhile Codigo Civil 1867

who had been parties to the case and also third parties. If the heirs do not agree on the decision to give up the inheritance, some may accept it while others may reject it. If the heir dies without exercising either option, the choice to accept or reject the bequest goes to his/her heirs. The estate leaver's unaccepted inheritance (at the time of his death) may be renounced by the heir who has already accepted the estate leaver's bequest. Renunciation of the estate leaver's inheritance entails renunciation of all inheritances that would have otherwise passed to that person including liabilities.

The Bombay High Court has held that Article 2022 of the Portuguese Civil Code provides that it shall not be lawful for anyone to accept or renounce the inheritance in part, on terms or conditionally. However, in the absence of any evidence about acceptance or partial acceptance, the provisions of aforesaid Article would not apply. [236]

In *Pio Gomes v. Antonio Gomes*[237], the Court has held that when there are conditions mentioned in the Relinquishment deed and subject to which it is made, then the entire relinquishment procedure is void ab initio.

In *Wencelau Soares v. Camilo D'Souza*[238], the Court has held that relinquishment cannot be done partly and refers to the entire estate of the deceased person. Relinquishment of rights pertaining to moiety holder only is not possible under the Civil Code applicable to Goa. Similarly relinquishment to specific properties only is not allowed.

In *Shabbar Khan v. Musarat Begum*[239], a Deed of partition was executed between the heirs based on a power of attorney in which there was no power to execute such deed. The court held that the partition of estate among the Legal heirs is liable to be set aside due to absence of consent from all heirs.

3.7.1 Procedure and Consequences of renunciation

Renunciation of an inheritance must be made before competent Special Notary or the Court that has jurisdiction over the location where the succession opens. When it is made before the Court, it must be written in respective Book with pages that have been officially numbered and initialed by the Court. When it is made by the Special Notary, it must be written in his appropriate Book by the Special Notary.[240] The renunciation deed

[236] Rosada Josefa D'silva e Barretto v. Joao Xavier De Silva alias John De Silva, Second Appeal No.114 of 2012

[237] 1997 (1) Goa L.R. 207

[238] 1998 (1) Goa LT 196

[239] 2017 (1) Goa LR 171 (Bom)

[240] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 375

or record must be prepared in legible, unambiguous handwriting using indelible black ink. The Book must be inspected by the court once a year, and a certificate of inspection must be recorded on the page that follows the last page used. The register must be kept in chronological order and retained as a part of the court's permanent records. The power of attorney must also be kept in a separate file kept for this purpose when an heir renounces his or her inheritance through an attorney, and the page where the power of attorney is filed must be noted at the bottom of the deed. An index of the powers of attorney must be maintained. The original power of attorney with the specific ability to renounce must be kept in the court or Special Notary's office, in cases where the renunciation is made through an attorney.

When the successor is entitled to succeed but chooses not to accept the inheritance, he is presumed to have never been an heir. In this instance, there is no applicability of Rule of Representation. But, giving up an inheritance does not revoke that person's eligibility to receive any potential bequests that might have been made to him. The person designated as the next of kin who is entitled to an inheritance both intestate and under a Will and renounces it under the Will is assumed to have likewise renounced the intestate inheritance. He may receive the inheritance under the Will, despite the prior renunciation, if he renounces the inheritance as an intestate heir without being aware of the Will. Unless specifically stated, giving up the disposable share does not automatically mean giving up of legitime i.e. mandatory share.

After accepting the inheritance, heir cannot deny it unless there was coercion or he was duped into accepting it or in case more than half of the inheritance was left by Will and the successor was unaware of the Will at the time of acceptance. In view of the peculiar position of law in Goa that the succession Law being governed by Portuguese Civil Code, age of majority is held to be as 21 years for the purpose of maintenance, marriage.[241] When an heir renounces their inheritance to the detriment of their creditors, the creditors may ask the court to give them permission to accept the inheritance in place of and on behalf of the debtor-heir. However, once the creditors have been paid, the remaining inheritance will go to the other succeeding heirs rather than the renunciating heir.

No one is allowed to give up their right to inherit in the future, whether through an ante-nuptial contract or otherwise, or to assign their inheritance rights or put a lien on them.

[241] Smita Halarnkar v. Mahendra Halarnkar, CRIR 5 of 2021 before the High Court of Bombay at Goa

Accepting or rejecting the inheritance has retroactive effect beginning on the day it was opened. When an inheritance is neither accepted nor declared vacant, it is said to be in abeyance. Even if he has not yet accepted or renounced the inheritance, the person who is qualified to succeed is not prohibited from managing the assets when delay may result in loss. Any of the candidates who are asked to succeed may legally carry out management duties but, if any co-heir objects, the majority vote will take precedence.

The Bombay High Court in *Jaganath Vinayak Shet Manerkar v. Vallabh Saanand Bondre*[242] has held that the provisions of the Goa Succession law does not prohibit the transfer of an undivided share or a right in the inheritance. However gift cannot be in respect of a future asset. On request from an interested party, the Court with jurisdiction over the heir's place of permanent residence can send notice on any of the heir directing to notify his stand on acceptance or renunciation. The court will give reasonable time to the concerned heir. However the said period cannot exceed sixty days in total. In case the said person fails to notify his stand, then it is considered as deemed acceptance of inheritance. If the said heir renounces the inheritance, then the same procedure is followed for subsequent heir until the time there is acceptance from any of the heirs.

Incase there are creditors of the apparent heir who has renounced the inheritance, and if there is reasonable apprehension that their dues will be affected, then such creditors can accept the inheritance within a period of six months from knowing about the renunciation.

When the creditors accept the inheritance, the court must let the debtor know about the same. All creditors will benefit from a single creditor's acceptance. The rest will pass to the next immediate heirs, not to the debtor, when the creditors of the heir who has renounced the inheritance have been settled.

3.8 Types of successors

Succession is a vast and subjective concept. There can be numerous situations in each case that lead to persons acquiring different type of status as regards their inheritance rights. Under the Goan Family Law, every person born or conceived at the start of the succession is eligible to succeed. Incase of Testamentary Succession, the children who have been conceived and will be born are eligible to inherit.[243] The children of a specific

[242] Writ Petition No. 502 of 2018

[243] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach,* Alameda da Universidade, Lisboa, *2008*, pg. 389

person who is alive at the time of the opening of succession are eligible to inherit through Will. Even bodies with juridical identity are eligible to inherit under testamentary succession.[244] The Goa Succession law provides for different types of Successors. There can be Heirs, Legatees, Forced/Mandatory Heirs, Testamentary Heirs. All these are discussed hereinafter.

3.8.1 Heirs

Heirs and legatees are the two separate type of successors. A person is an heir if he succeeds to the entire estate of the estate leaver or an unspecified portion of it, without mentioning the specific assets that make up the estate. An heir is someone who inherits the remaining assets of the estate after all other beneficiaries have been paid. All of the possessions, rights, and liabilities that a deceased person leaves behind following his death are included in his inheritance or succession. Personal rights that extinguish when its title holder dies are not treated as part of inheritance.[245]

In *Indira Sawant v. Vijayendra Shetye*[246], the Court has held that the concept of legal representatives is different from that of legal heir. The former includes a wider connotation of persons which can include Heir, legatees, nominees, etc. Hence a person who is a nominee in a bank account is not an Heir under the Civil Code applicable in Goa.

In Isha Dessai v. Fondo Dessai[247], it is held that the wife of legal heir gets the right in parents in laws estate through her husband based on their marriage. The husband is legal heir and the wife of legal heir has a right by marriage but is not a direct heir of parents in law when husband is alive.

In Samiro Mascarenhas v. Valente D'Costa[248], the Court has held that when there is no valid adoption, there cannot be transmission of inheritance right in absence of valid documentary proof.

---

[244] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 10

[245] The provisions relating to Heirs and Legatees were contained in Articles 1791 to 1857 of the erstwhile Codigo Civil 1867

[246] 2007 (1) ALL MR 181

[247] 2018 (1) Goa L.R. 469

[248] 2016 (2) Goa L.R. 577

3.8.2 Legatees

A legatee is a beneficiary who only inherits specified, predetermined assets and does not have the right to the entire inheritance but to only that particular, predetermined item or items. Even if usufructuary has a right to usufruct of entire estate, he is still a legatee. The Testator or the intestate cannot change the type of successors and in situation where he mentions so in his Will, the same is considered to be not existing at all. Hence a legatee is totally different from the Heir under succession law in Goa.

Under the provisions of the erstwhile Portuguese Civil Code and/or under the provisions of the present Act of 2012, there is no further classification between a daughter (married or unmarried) and son. Therefore, considering the scheme and the provisions of the erstwhile Portuguese Civil Code and as per the provisions of the present Act, the married daughter would have a right of succession even in the leased premises.[249]

In Caridade Rodrigues v. Domingos Fernandes[250], the Testator had made a Will and duly executed before the Special Notary as per the procedures prescribed for drawing the Will. The BombayHigh Court has held that the validity of the Will is to be decided by the Inventory Court as regards whether the Testator was having ownership and right as regards the properties mentioned in the Will. The property can be gifted or sold by the heirs only after it is exclusively allotted by way of partition to them. The partition can be though inter-vivos document or through Inventory proceedings. However, to sell specific property, partition is a pre-condition.

In *Sunita Shirodkar v. Sri Madhukar Lotlikar*[251], it is held that legal representative pertaining to a Bank deposit cannot be termed as an Heir, neither as an Legatee in Succession.

In *Indira Sawant v. Vijayendra Shetye* [252], it is held that the scope of legal representatives is very wide and not limited to Legatees only. The term Legal Representative also includes Heirs, Legatees, Executers, Administrators in possession of the assets of the deceased.

[249] Uma Mahesh Bandekar v. Vivek Sadanand Marathe [2019] 5 S.C.R. 357
[250] 2014 (2) Goa LR 530
[251] 1998 (2) Goa LT 350
[252] 2007 (1) ALL MR 181

3.8.3 Forced Heirs

Forced Heirs are the mandatory Heirs. The Testator is ineligible to dispose the entire estate according to his wishes. He is required to reserve the legitime to mandatory successors. The non-disposable portion goes to the legal heirs and such heirs who cannot be denied of their inheritance rights are called as Forced/Mandatory Heirs.[253] The Testator is statutorily bound to provide them share in inheritance which they get under the concept of non-disposable quota.

In Joao Cardoso v. Ethelvina Rodrigues[254], it is held that the Legitime cannot be gifted by way of gratuitous transfer by the parents. However, the children cannot debar the parents from selling the properties even when it comes within the non-disposable quota or Legitime.

The Portuguese Government had modified the law relating to order of succession pertaining to moiety holder. Vide Decree dated 31/10/1910, spouse was brought up in the list of heirs after descendants and ascendants provided the spouses were not divorced or validly separated. However vide Decree no. 19216 dated 16/12/1930, the previous line of heirs was made applicable putting the moiety holder after brothers and their descendants in the line of heirs.

In Laxmibai Narayan Prabhu v. Medha Prabhu[255], Court has held that the widow of pre-deceased son is not heir of her parents in law at the time of opening of inheritance pertaining to her husband and has no direct interest in the properties that exclusively owned by the parents in law.

3.8.4 Testamentary Heirs

When Will of the deceased person is the foundation of Succession, it is called as Testamentary succession. The Heir so appointed under such Will is called as a testamentary heir.[256] There exists difference between a Legatee in comparison to Testamentary Heir. The Testamentary Heir will inherit either to entire estate or to unspecified portion of the estate. Incase the said person inherits to specific assets then he cannot be termed as a Testamentary Heir. Hence there is minute difference between a Legatee as compared to Testamentary Heir. The Court has the power to decide nature of

---

[253] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach,* Alameda da Universidade, Lisboa, 2008, pg. 242

[254] 2009 (2) Goa LR 388

[255] 2018 (1) Goa LR 488

[256] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 386

Successors incase of dispute. The Testamentary Heir may however inherit towards the disposable quota of deceased person and it is not mandatory that he should inherit entire estate. It can be partial testamentary heir. But the only condition is that there cannot be specific assets allotted inorder to define a person as Testamentary Heir.

In Premavati Naik v. Suresh Naik[257], it is held that the parents cannot sell or mortgage the properties to any one of the children without obtaining the consent of rest of the heirs. Such transaction becomes void and is liable to be set aside. Similarly the moiety holder cannot unilaterally sell the properties to third party without making the children as a party to the Sale deed.

In Conceicao Quadros v. Salvador Quadros[258], it is held that no heir can claim exclusive possession or hostile possession thereby creating a title by prescription in the properties of the deceased parents. All children are considered as in joint possession of the inheritance till the partition is effected.

In *Primella Sanitary Products Pvt. Ltd. v. Gurudas Gaitonde*[259], it is held that the of sale of share in inheritance by a co-heir, the other co-heirs has a valid right to pre-emption. This provision ensures that there is no involvement of third party in the family property without the consent of all the legal heirs.

3.9 Privileges & Functions of Successors

All rights and obligations, with the exception of those that terminate upon death, shall be retained by the heir in relation to the inheritance up to stage of partition. The heir's portion is to be reduced by the sum of money he owes to the inheritance. When a decision regarding the heir's rights and obligations must be made and the said heir is the Head of the family then an administrator is required to be appointed to oversee the inheritance. The presumptive heir is released from his liabilities to the actual heir in the event that a Will is held to be invalid or is nullified after the satisfaction of the legacies made in good faith by giving the actual heir the remaining inheritance, without affecting the latter's rights against the legatees.[260] The expenses towards all funeral costs, expenses associated with executorships and management, debts owed by the deceased in order to satisfy legacies must be paid first in order to satisfy liabilities of inheritance.

[257] 2012 (2) Goa LR 282
[258] 2012 (4) ALL MR 650
[259] 2010 (5) All MR 567
[260] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 88

The legatees and the creditors of the inheritance are given precedence over the heir's personal creditors, and the creditors of the inheritance are given precedence over the legatees.

The Bombay High Court at Goa has held that the applicant claiming to be the legatee has to file an independent application before the inventory court which shall decide the issues on the basis of an inquiry being conducted as provided for, in section 395 of the Act. Hence the issue as regards whether a person is legatee or not has to be decided by the inventory court on the basis of an specific inquiry.[261]

In *Jayshree N. Rajebhosale @ Bimabai Rauji Rane v. Dildar Murarrao Nimbalkar*[262], the High Court of Bombay at Goa has held that the Inventory Court is required to decide all the pending applications for impleadment as party to Inventory proceedings first and then decide the applications for appointment as Cabeca de Casal/administrator.

The usufructuary of the entire estate of the deceased person or a portion thereof may advance the funds necessary to pay the liabilities of the inheritance in proportion to the assets he owns. But he retains the right to recoup the funds at the end of the usufruct from the heirs. If the usufructuary fails to provide the necessary funds, the heirs may demand that any assets owned by the usufructuary may be sold. Alternatively, the heirs may choose to pay the debt themselves, in which case they will be entitled to interest at the rate of Eight percent per year from the usufructuary. The beneficiary of the deceased persons entire estate is required to fully meet any remaining obligations for maintenance, a lifelong pension annuity, or a monthly allowance. If the usufruct relates to a portion out of inheritance, then beneficiary of usufruct will only be required to pay its portion as regards maintenance, or annuity, or monthly allowance having regard to his entitlement. If there is no explicit obligation on usufructuary to pay the aforesaid obligations then he is dissolved from the said liability.

3.9.1 Right to Representation

Right to representation is a privilege given to the heirs of a pre-deceased heir whereby such heirs can take the place of the pre-deceased heir of estate leaver. Under the Goan Family law Right of the heirs of the predeceased son or daughter has been recognized.

[261] Shanti Hegde v. Ratnabai Hegde, First Appeal No. 100 of 2019

[262] Appeal from Order No.18 of 2020

The old Civil Code also contained this right.[263] The Right to representation is always pertaining to the descendants. The ascendants of the deceased cannot claim right to representation. Such right will come into existence when there is a person who was entitled to succeed to the estate leaver, however, such person passes away before the estate leaver. Then in such case, whatever share that the pre-deceased child was entitled to will be shared equally among his heirs. Hence it is presumed that that said pre-deceased child is alive at the time of opening of the succession of the estate leaver. The right to represent pertaining to collateral siblings will be applicable when any of such siblings passes away. Then in such case the heirs of the siblings will take their place. The share will be equal to that what the concerned person would have been entitled to if living. If there are multiple representatives for the same person, they must divide any property that would otherwise belong to the person being represented equally.

3.10 Kinds of Succession in Goa

Inheritance is an universal subject as it is applicable to all persons. All persons come under the purview of inheritance laws some time sooner or later, in their lifetime. It is a very important concept since all persons are affected by the same. All rights and obligations of the deceased person are required to be transferred upon his death and accordingly his successors take up his position as regards his properties as well as obligations. This process of transferring of the estate and stepping into the shoes of expired person is termed as the process of Inheritance. In Goa, succession is governed by two regimes[264], which are Testamentary Succession and Intestate Succession.

3.10.1 Testamentary Succession

If an individual passes away and leaves a Will then testamentary succession takes into effect.[265] Although their inheritance will be distributed as stated in their Will, all legal obligations must still be met. Incase of absence of such Will or if testamentary disposition is termed as invalid by any Court, then the concept of Intestate Succession comes in to force. Hence Testamentary succession results from Will which is pre-

[263] The provisions relating to Right to Representation was contained in Articles 1980 to 1984 of the erstwhile Codigo Civil 1867

[264] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 387

[265] The provisions relating to Testamentary Succession were contained in Articles 1739 to 1967 of the erstwhile Codigo Civil 1867

condition for such type of succession as well as for existence of Testamentary Successor. In the present law, Contractual succession does not exist and also same is illegal. However, Legatees for specific assets can be present. In Goa, Succession can be Mandatory as well as Optional. Compulsory succession opens when there exists minors, disabled or interdict, absent heirs in the inheritance. In such cases, the successors cannot execute Deed of Succession for determination of heirs and has to compulsorily file for carrying out inventory proceedings. Hence it is referred as Compulsory Succession. As per succession laws prevailing in Goa, a person has disposable and non disposable quota as regards his assets. This quota is known as legitime which is set aside for Mandatory successors of the deceased person. Hence a person in Goa cannot dispose off his entire properties as per his wish. The power to execute Will has certain conditions to be fulfilled so that it becomes legally valid after the death of the Testator. The Question that came up before the Bombay High court was whether the transaction entered into by the Respondent nos. 4 and 5 with the Respondent no.2 as regards their undivided interest in specific property could be held to be valid when the Respondent nos. 4 and 5 were co-owners alongwith the Appellants relating to property sold along with few other properties which were jointly inherited by them from their ancestors, especially in the absence of any partition/inventory. The court has held that Article 2177 of the Portuguese Civil Code does not prohibit the transfer of undivided rights in the common property, even in favour of strangers. This is no doubt subject to the rights of pre-emption which the Code give to the co-owners. The purchasers have merely stepped into the shoes of the vendors and will now have the same co-ownership rights as the vendors.[266]

Even if the Testator has given to any person entitlement by way of Gift or Will in a certain proportion, any person or persons may be appointed as heirs. Each heir is responsible for paying the obligations and fulfilling the bequests in proportion to his entitlement only. Similarly the legatee is not responsible for the liabilities of inheritance outside his allocation. If the Testator did not specifically mentioned in the testament made by him, the debts and liabilities will be divided proportionately between all the legatees as per their entitlement that they have received by way of the Will. Except in matters pertaining to remuneratory legacies, which are regarded as obligations of estate

[266] Celia Fernandes v. Felicidade Vaz, Second Appeal No.12 of 2012 in the High Court of Bombay at Goa

of the deceased, all legacies will have to be satisfied pro rata when the inheritance's assets are insufficient to cover them.

When the deceased person has specified in his Will and left only a specific amount of money, a specific item, or a specific portion of his estate, the Testament will be regarded as a legacy. If the deceased person has mentioned some heirs collectively and others individually, then both are treated as having been named heirs separately. The High Court of Bombay at Goa has held that upon conjoint construction of Articles 1457 and 1759 of the Portuguese Civil Code, it is apparent that Article 1457 will apply only to Gifts which are to produce their effect upon the donor's death where such Gifts are in the nature of the disposition of the last wishes of the donor. Therefore, at least the title of Article 1457 refers to "Gifts' Mortis Causa". If the donor makes Gifts in contemplation of death or as expressing his last wishes in contemplation of death, then such Gifts will have to be construed in the light of the provisions of Article 1759 and other provisions of the Code concerning testamentary dispositions. Article 1759 provides that testamentary disposition shall lapse and have no effect if such testamentary heir or legatees predeceases Testator.[267]

If the deceased person had specified in his Will all of his siblings as successors while having other siblings by full blood or even by uterine blood or as consanguineous then in such cases the inheritance will be considered as being intestate.[268] If Testator's Will specifies a particular individual and his offspring as successors, it is presumed that they were selected simultaneously as opposed to consecutively. The legatees are obligated to compensate a successor who managed the estate's distribution via legacies for the expenses he paid for handling the legacies. There might be situations when a person makes disposition of his wish in his Will as regards particular property but the said property is acquired by him subsequently after making the Will then in such cases, the Will is applicable from the date of execution and not from date of acquiring the particular property. In cases when the Testator has instructed any of the successor or even in case of legatees to transfer any of their property to a third person then the concerned heir or legatee will have to either transfer the concerned property to the third person named in the Will or they will have to compensate the third party by way of the monetary value. If the successor or the legatee does not do so then they cannot inherit by way of the concerned Will. However, this will not debar them from acquiring the

[267] Subash Bhandari v. Vassant Rabolo, Second Appeal No.156 of 2012, High Court of Bombay at Goa

[268] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 27

mandatory share in the inheritance. When the person who is making a Will is only a part owner of the same then the Will can be effective only to the extent of his ownership. In cases where the Testator has put some conditions in his Will which are illegal such as prohibition to marry or prohibition to carry out certain business, then it will be presumed that such conditions have never been written in the Will. However the person who has made the Will can put certain conditions restraining remarriage on his or her spouse when they have children. The same is also applicable to ascendants or descendants of the Testator.

Supreme Court in matter pertaining to *Syscon Consultants Private Limited vs. Primella Sanitary Products Private Limited*[269] has held that transfer of an undivided share is not prohibited. There cannot be a blanket order restraining a person from selling any of his assets. However, the law of succession prescribes that there cannot be sale of specific assets before partition.

The disposition made with the understanding that the successor or legatee would also make a disposition in his Will in the Testator's favour or in favour of another person would be void. The provision in Will that temporarily halts the execution of the disposition for definite duration, will not prevent the successor from acquiring his entitlement to estate of the deceased person neither the privilege of his descendants will be affected.

In Joao Cardoso v. Ethelvina Rodrigues[270], it is held that the Legitime cannot be gifted by way of gratuitous transfer by the parents. However, the children cannot debar the parents from selling the properties even when it comes within the non-disposable quota or legitime.

In Rosario Fernandes v. Regina Saldanha[271], it is held that a Will cannot be made of assets which constitutes the Legitime of forced heirs. Legitime is the right of the forced heirs and hence they cannot be disinherited therefrom. Whatever comes in the domain of Legitime needs to be reduced and given to the legal heirs.

In Norberto Fernandes v. Gabriel Fernandes[272]*, it is held that* Restriction on spouses for selling properties to children without obtaining consent of other children is held to

[269] (2016) 10 SCC 353
[270] 2009 (2) Goa LR 388
[271] 2013 (1) G.L.R. 53
[272] Second Appeal No. 3 of 2006 before the High Court of Bombay at Goa

be a special provision and it is held that such provision still holds good even after applicability of the Transfer of Property Act.

In Venkatesh Karekar v. Rosemary Fernandes[273], it is held that transfer made in favour of spouse of properties which does not constitute the communion of assets, or which are partitioned and allotted exclusively to any of the spouses is valid. Similarly when there is consent of all the heirs then also it is held to be valid transfer.

The court has held that any gift made by the moiety holder without making the children as parties to the said deed will render the same as void ab initio.[274] The unmarried persons/ bachelors, though entitled to transfer his entire rights fully without subject to ceiling of fifty percent as in case of married person, still he can transfer only that right which he actually is the owner. In other words, he should have acquired the rights to transfer the same.[275]

3.10.1.1 Legacies in Testamentary Succession

Legacies are particular part of inheritance bequeathed by the estate leaver. The said bequeathment is done from the disposable quota without affecting the legitime. The person in whose favour the gift is made is called as Legatee.[276]

In Maria Furtado v. Maria Barreto[277], a fixed deposit was held in the name of deceased and another third party. There was nothing on record to show that the deceased intended to gift the amount to the third party. The third party had no interest in the Fixed Deposit. Accordingly the Court held that the third party cannot be said to be a Legatee. Accordingly the amount was included in the list of assets of the deceased.

Legacies are valid till the time they are in existence. If the property provided in Will is subsequently sold by the Testator, then the said legacy cannot be executed after the death of the Testator. Similarly when the property that was provided in the Will by the Testator to any person is completely changed in its form and identification or when the said property is destroyed then in such situations the legacy cannot be valid after the death of the Testator. However when only a part of the property is destroyed then whatever is available is required to be allotted to the legatee. Similar to rules applicable to heirs, a legatee cannot accept or reject a legacy in parts. He does not have the option

[273] 2016 (1) Goa L.R. 495
[274] Mariana Carmelina Fernandes v. Antonio Gomes, 2006 (3) AIR Bom R 227
[275] Rupo Bhomkar v. Sazu Gawade, 2015 (2) Goa LR 580
[276] Mario Bruto da Costa, Law of Succession, Mangala Offset, Vasco, 2000, pg. 92
[277] 2000 (1) Goa LT 22

to choose items from the legacy but is entitled to reject the legacy in entirety. Legacy is not effected by heirs subsequently born. When the Testator has children born subsequent to making the legacy, the legatee will still be entitled to his right to receive the property provided it does not affect the legitime. When the said bequeathment affects the non-disposable quota then the legacy is valid upto the disposable quota only. However, the Testator is fully entitled to make separate Will to revoke the legacy made.

In *Fabrica da Igreja de N.S. De Milagres vs. Union of India* [278], the Court has held that it is a settled position that a matriz document is neither an instrument of title nor a source of possession and that the organisation of the "matriz predial" is a mere administrative exercise aimed at collecting tax revenues from the land. As such no legal evidentiary value can be attributed to the said registration for the purpose of establishing ownership title or presuming possession on the land. The Hon'ble Supreme court in *State of Goa vs. Narayan V. Gaonkar* [279] specifically endorsed the above-referred position from *Fabrica da Igreja de N.S. De Milagres*. The Hon'ble Supreme Court held that a matriz document claimed to be the basis of rights is not a document of title.

The legacy can be given for the purpose of settlement of any debt existing on the Testator. When the Testator settles the debt before his death then the property bequeathed for settlement of debt will not delivered to the legatee. However there must be specific mention of the fact of existence of debt.

The Testator can grant the legatee specific right to choose any of the property from a lot which are similar in nature. However by default, the concerned heir is required to decide which of the property to be handed over to the legatee in cases of similar properties.

Legacy can be given for the purpose of maintenance also and if period is not specified pertaining to the usufruct then it is deemed to be for lifetime of legatee. Similarly legacy can be provided to minors or for charitable purposes. The minor can demand legacy after attaining majority. Heirs are under legal obligation to deliver the property given by way of legacy. If there are no heirs on account of relinquishment by all, then the legatee can approach the Court to appoint a curator so that he is given possession of the particular property.

In situation where there are no heirs and the entire inheritance is gifted by way of legacies, then the person who has benefitted the most will act as Executor. However, in case there are multiple legatees with disagreement as regards appointment of Executor

[278] 1995 (1) Bom.C.R. 588

[279] (2020) 15 SCC 233

then the Court will have to decide about the same. The legacy is strictly limited to the items mentioned in the Will and cannot extend to whatever is acquired subsequently.

In *Rupo Bhomkar v. Sazu Gawade*[280], it is held that bachelors, though entitled to transfer his entire rights fully without subject to ceiling of fifty percent as in case of married person, still he can transfer only that right which he actually is the owner. In other words, he should have acquired the rights to transfer the same.

In *Abdul Rahim Khan v. Abhubakar Yusuf Khand*[281], the High Court of Bombay at Goa reiterated the benefit of a common civil code and observed that Goa has continued to have the personal laws under the Portuguese Civil Code. Under this Code, by marriage both spouses will have equal property rights, as do their children. A shining example of gender justice, subject to certain exceptions.

In *Ravindra Parulekar v. Damodar Parulekar*[282] the High Court of Bombay at Goa has held that when Will has not specified which part of the property has been bequeathed, it is for the Inventory Court to appreciate the evidence being led by the parties as to the good and bad qualities of the property and eventually decide which part of the property, amounting to 50%, should fall to the appellant, the legatee.

3.10.2 Intestate Succession

If an individual passes away without leaving a Will, their estate is distributed under the prevailing laws of intestacy, which are defined by the Succession law in effect in the particular jurisdiction. This is known as intestate succession.[283] There are twin regimes of testate and intestate inheritance. There might be situations when persons with substantial wealth will typically plan carefully for how and to whom it will pass, whereas those with modest wealth will typically allow it to pass to their spouse and children generally without specific preference. In the latter scenario, the intestate succession laws govern the distribution of assets.

Legal succession occurs in absence of any testament and by default under the prevailing statutory laws in force, whereas testamentary succession emerges via a Testament of the deceased which is called as a Will. The Hon'ble High Court of Bombay in *Shivaji*

[280] 2015 (2) Goa LR 580

[281] Writ Petition No.995 of 2019

[282] A.O. No. 52 of 2019

[283] The provisions relating to Testamentary Succession were contained in Articles 1968 to 2008 of the erstwhile Codigo Civil 1867

Narayan Gaonkar vs. Mr. Claudio Francisco Remedios[284], after considering Articles 1119, 1191 along with Article 1117 and 1121 of the erstwhile Codigo Civil has held that title as well as enjoyment by way of possession of common properties vests in both spouses during the subsistence of the marriage. The Court has held that the legislature has imposed a 'sterner regime' vide Article 1119 and 1191 which makes the consent and common agreement mandatory, for the alienation of immovable properties. Hence legal inheritance is necessarily carried out and governed by the law by default. The estate leaver passes away sans any Will. The law itself is the foundation for entitlement. Mandatory Inheritance is a distinct sub-category of intestate succession. Mandatory succession limits right of the deceased as regards transferring his assets by creating Mandatory or forced successors. The person making the Will cannot totally disregard the successors prescribed by statute even when he desires otherwise.

The heir apparent is free to either accept or reject the share that he is entitled to receive under legal succession. This has no effect on the benefits he might receive through any other testamentary instrument. The Will executed by the Testator should not affect the mandatory succession and its heirs. Hence the Testator is not completely free to decide how to dispose his properties. The mandatory succession is for the protection and benefit of the legal heirs. Legitime cannot be affected by Will executed by the Testator because the law reserves it for the heirs, who might be either lineal ascendants or descendants. Because they inherit compulsorily without having regard to the wish of the Testator, these heirs are referred to as Forced heirs.[285] The Testator cannot deny these heirs their share which is guaranteed to them by legislation. The term "Mandatory succession" and "legal succession" refers to the heirs prescribed by statute and if any of them are minors, under disability or unknown then the parties have to compulsorily file Inventory proceedings for partition of estate.

3.10.2.1 Heirs under Legal Succession

A person's mandatory successors will be entitled proportionately to entire inheritance of deceased person in the event of absence of any Will or in cases where the Will was made but it has been revoked, reduced, or has lapsed, or if they have written a Will but it has been invalidated. Every generation makes a degree and a combination of such

[284] Second Appeal Nos.21 and 24 of 2011

[285] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 527

degrees makes a line of kinship. The line of kinship is of two kinds being direct or collateral.[286] The direct line comprises of a series of degrees between persons descended one from another whereas the collateral line is comprised of degrees between persons who descend from a common ancestor but are not descended from one another.

When line of inheritance starts from deceased and goes to the ancestors then it relates to succession of ascendants. When the line of inheritance starts from the deceased and goes to the children then it relates to succession of the descendants. The persons which fall in the said line excluding the deceased person whose succession is opened forms each degree. Similarly the collaterals are related to the deceased through a common ancestor. Hence collaterals includes ascending as well as descending degrees of relations. If a person is not qualified to acquire by testamentary disposition then he also becomes ineligible to inherit by way of intestate succession. however, the right of representation of heirs of pre-deceased child is not affected even when the predeceased child was ineligible to acquire the inheritance of the deceased person. Once the pre-deceased child expires, his heirs are not disqualified to inherit.

In *Indira Sawant v. Vijayendra Shetye*[287], the High Court of Bombay at Goa has held that a nominee mentioned in any of the bank account of the deceased person cannot be termed as Legal successors of the deceased person.

In Laxmibai Narayan Prabhu v. Medha Prabhu[288], Court has held that the widow of pre-deceased son is not heir of her parents in law at the time of opening of inheritance pertaining to her husband and has no direct interest in the properties that exclusively owned by the parents in law.

Article 1969 was amended in the year 1910 whereby moiety holder was place after descendants and ascendants in the line of succession. However, in the year 1930, the old position was restored thereby putting the moiety holder in the fourth position after descendants, ascendants and brothers of the deceased.[289]

[286] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 322
[287] 2007 (1) ALL MR 181
[288] 2018 (1) Goa LR 488
[289] Shabu Shet v. Gopal Varik, 2012 (2) Goa LR 454

The manner in which the legal succession devolves is as follows:

i) Descendants

Descendants consists of sons, daughters, as well as their spouses if married. The Descendants is a direct line downwards.[290] It will include grand-children, their spouses incase of predeceased child of deceased person whose succession is opened. Incase all the sons and daughters are alive then their children will not come into picture as regards the succession opened. The Descendants are the first category of heirs. They have preference over even the spouse. Distinction between sons and daughters has never existed in Goan succession law right from the time of Portuguese rule. Gender is irrelevant in the succession procedure in Goa.

(ii) Moiety holder

When any one of the spouses dies then the husband or wife who is left behind is called as Moiety-holder. The husband or wife who is left behind is also referred as half-sharer since under the Goan Succession law, husband and wife enjoy equal privileges. The status of moiety holder was uplifted to second position after Descendants through amendment to the Goa Succession law in the year 2022.[291] Previously Moiety holder was in the fourth position. At present moiety holder is considered in close proximity to deceased person as compared to the parents of the deceased. Hence it can be said that the moiety holder enjoys a better position now. Further any agricultural produce/fruits from the estate is deemed to be the asset of Moiety holder and he or she can enjoy it freely without any encumbrance. However, the marriage should be subsisting at the time of the death of the other spouse.

In *Elmas Fernandes v. State of Goa*[292] the Bombay High Court has held Article 19 of Decree No. 35461 as unconstitutional, illegal, being violative of Articles 14 and 21 of our Constitution and was accordingly struck down. Hence the Orders of divorce granted by the Patriarchal Tribunal was held invalid. The bench held that High Court cannot be used as a post office to transmit decrees received from these two tribunals, namely Patriarchal Tribunal of the Archdiocese of Goa and Daman, and the Metropolitan

[290] The provisions relating to inheritance rights of descendants were contained in Articles 1985 to 1992 of the erstwhile Codigo Civil 1867

[291] The law governing succession rights of spouse of deceased were contained in Articles 1985 to 1992 of the erstwhile Codigo Civil 1867. However, in the erstwhile Civil Code, spouse was mentioned after brothers of the deceased.

[292] Writ Petition No.351 of 2017 in the High Court of Bombay & Goa at Panaji

Tribunal of Archdiocese of Mumbai, to the Registrar of Marriages, without supervision or extraordinary jurisdiction of review under Articles 226 and 227 of Constitution.

(iii) Ascendants,

Ascendants consists of parents, grandparents, great grandparents and so on. Every generation makes one degree. They will come in the line of succession incase where there are no children of the deceased person and also when the deceased does not have moiety holder.[293] However it must be noted that if any of the parents have married again then they will not be entitled to succeed to the child if there were siblings of the child by full blood or when the said siblings died having their descending heirs. Nevertheless the parents will have right of usufructuary in their lifetime. If parents are not living, then the estate of the deceased passes to his grandparents and in their absence to the great grandparents without there being any regard to the kinds of lines whether being maternal line or paternal line. The degree of proximity is of utmost importance for the purpose of succession. The estate has to be divided proportionately in same quantity when there exists more than one ascendants of identical degree.

(iv) Siblings

The siblings of the deceased person comes are at the fourth position in the preference to succeed to the deceased person under Goan law of succession. They consitute collateral line and hence there must be a common ancestor and the line first goes to the ancestor and in his or her absence the siblings of the deceased are entitled to the estate of the deceased person. Sisters were included vide an amendment in the year 2022.[294] Previously only the brothers were entitled to inheritance which was a gender bias. The successors of concerned siblings are also included in the line of succession by virtue of right of representation if siblings are not alive. Siblings are considered to be in less proximity to the deceased as compared to the parents of the deceased and hence parents enjoy a better position in Goan Succession law.

It is to be noted that the siblings of the deceased can inherit to the estate only when there are assets present with the said deceased at the time of death. Collaterals do not have

[293] The law governing succession rights of ascendants of deceased were regulated by Articles 1993 to 2002 of the erstwhile Codigo Civil 1867

[294] The provisions relating to inheritance rights of brothers and their descendants were contained in Articles 2000 to 2002 of the erstwhile Codigo Civil 1867. However in the erstwhile Civil Code, the sisters did not enjoy any inheritance rights pertaining to her deceased brother.

legitime and hence there cannot be certainty as regards their share. In matters when the deceased person has gifted or disposed the ownership of any or all the assets during his lifetime, then the siblings cannot claim any share in the properties disposed.

(v) Collaterals (excluding brothers, sisters, their descendants up to the sixth degree)

Here comes the collaterals other than brothers, sisters, their descendants.[295] Here the collaterals will go upto the sixth degree only and not any further. The collaterals other than siblings will come in the line of inheritance only when there are no descendants, moiety holder, ascendants, siblings of the deceased person. In this list, the collaterals upto sixth degree succeeds to the inheritance but in reality it is seen that the heirs in this list will inherit rarely and only when there are no close relatives of the deceased person. Further they will be entitled to inherit only when the assets are with the deceased and when he has not disposed them. There is no legitime guaranteed by law to collaterals and hence there cannot be certainty as regards their share.

(vi) Government

The Government is the ultimate successor of person with no heir. The only condition is that if there is absence of heir of emphyteusis or beneficial owner, then the estate reverts back to original title-holder.[296] In case there are no such persons then the State will inherit being ultimate and final heir. Government will inherit only when there are no existing descendants, moiety holder, ascendants, collaterals of the deceased person. Government as an heir will bear similar role with regard to the inheritance as any other heir. it is prohibited for the Government to take possession of any assets of the deceased person without obtaining a valid court order certifying the right of the Government to take over the estate.

The relative in close proximity under each of the categories excludes remoter relatives, except in cases of right of representation.[297] Incase of pre-deceased persons, relatives situated in equal degree inherit pro rata or per capita. The inheritance passes to subsequent level of degree of relatives when the closest relatives renounces it or are

[295] The provisions relating to inheritance rights of collaterals other than brothers, sisters including their descendants were contained in Articles 2004 to 2005 of the erstwhile Codigo Civil 1867

[296] The provisions relating to succession by Escheat were contained in Articles 2006 to 2009 of the erstwhile Codigo Civil 1867

[297] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 43

unable to inherit it. However, if there are many co-heirs and out of them some relinquishes their rights then the relinquished share will not pass to the next level of successors but will be summed up in the entitlement of the other remaining successors that have not relinquished their right within the same degree itself.

Article 1452 of the Code defines a contract of gift and says that a gift is a contract whereby any person transfers to another gratuitously part or the totality of his "present assets". It can thus clearly be seen that the only prohibition which can be gathered from Article 1453 is that a gift cannot be made in respect of "a future asset".[298]

The children cannot be discriminated based on their gender as regards their rights to succeed. If the fact as regards whether a person is child of the deceased or not is disputed without documentary proof, then the concerned applicant will have approach the court to file a lawsuit for declaration. An inventory proceeding which is in process cannot be halted for the fact that such suit for declaration is filed. If the party is held to be the child of the deceased by the Court in the concerned civil suit for declaration, then he must, upon application, be added in ongoing Inventory proceedings. The said person will have to continue from where the ongoing Inventory proceeding has reached and the process prior to that cannot be restarted. Alternatively, if the order is passed in the inventory proceedings to divide the inheritance among the heirs, then the concerned party will have to seek monetary share in the inheritance from the other heirs. When there are only children of the deceased then the entire inheritance will be divided between them equally. The number of shares will be equal to the number of heirs.

In case of multiple heirs and each having right based on representation towards predeceased heir, then estate will be divided and subdivided among the branches that have formed, and the heirs will succeed per stirpes pertaining to branches. The partition at branches and further sub-partition based on representative capacity must abide by the equality rule. In case of *Jose Paulo Coutinho v. Maria Luizavalentina Pereira* [299] pertaining to person governed by Civil Code who has made a registered Will at Bombay, the Apex Court has laid down that Probate Court can only decide about the genuineness of the concerned Will. Even when the Will is held to be authentic still it may be invalid as regards the Legitime. In other words, when the Will affects the mandatory heirs or when the Will is contravening the provisions mentioned in the statute, then even authentic Will can become of limited applicability. The Will cannot

[298] Writ Petition No. 502 of 2018, High Court of Bombay at Goa

[299] [2019] 12 S.C.R. 390

overrule statute and affect the non disposable quota of mandatory heirs. The Court has also pointed out that Probate proceedings cannot substitute for Deed of Consent given before Special Notary. Similarly, the probate does not empower the spouses to dispose the legitime. The Probate obtained by the parties does not in any manner diminish the entitlement of the legal heirs that is guaranteed by the statute itself.

In cases when filiation is acknowledged by the parents during the child's lifetime but subsequently the said child dies without any descendants and without moiety holder then in such case, parents will be entitled to succeed. If there exists moiety holder then she will succeed to the inheritance.

The moiety holder is also entitled to the usufructuary of the entire estate even when their marriage was governed by separation of assets. However, they should be under valid marriage at the time of the death of the estate leaver.

3.10.2.2 Legitime

The part of inheritance that the Testator can freely dispose according his free wish is known as the disposable quota while the non disposable quota is called as Legitime and generally consists fifty percent of that estate. Of course there are exceptions when this Legitime increases or decreases. The ceiling of fifty percent is applicable when the Testator has descendants. If the Testator does not have any descendants and has his or her spouse living, then the legitime will consist of entire inheritance. Similarly, when the Testator does not have descendants nor have spouse living and has parents alive then the Legitime pertains to the entire inheritance. It is not necessary that both parents should be alive. Even in case where either mother or father is alive then also the Legitime will be pertaining to the entire estate.[300] In another situation when the deceased person had other ascendants excluding parents, then the legitime is one third of estate.[301] When the deceased person did not have any descendants but has spouse living then the legitime is full estate.

In case of family auction between the legal heirs, the owelty money should be paid in time bound manner. Delay in deposit of owelty money cannot be condoned by consent of all parties nor by the court in absence of valid ground. The law is to be followed in true letter and spirit to avoid delay in disposal of cases.[302] Parents or grandparents

[300] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 60

[301] Section 83 of present Act correlates to Articles 1784 to 1787 of the erstwhile Codigo Civil 1867

[302] Damodar Alve v. Janakibai Alve, 2008 (2) Goa LR 422

cannot dispose or even mortgage their property to their children or grandchildren sans any express permission of their remaining children or grandchildren and their respective spouses. The mandatory successors can allow Testator's Will to take effect or they may simply grant the legatee the disposable share if the Testator has granted a defined usufruct or lifetime payout which is valued in excess of his disposable share. If the Testator makes a disposition that surpasses the disposable limits, referred to as a "inofficious disposition" since it affects the forced heirs' legal entitlement to their mandatory share, then the mandatory heirs may request for lowering of any bequests or gifts delivered by the Testator that exceed their portion of the available estate. Nobody can give up the ability of having a gift or bequest diminished while the estate leaver is still alive. Till partition is effected the title as well as possession of assets is considered as jointly held by the heirs.[303]

The calculation of legitime is to be carried out in the manner specified by law. The monetary value of all properties of deceased person will be considered and summed up. The value will be considered as on date of death. To this the total monetary value of the gifted properties will be added and further any debts of the inheritance will be reduced from the aforesaid total value. The legitme will be based on the final value derived from above calculation. Incase a property that was gifted to any person does not exist anymore without there being any mistake of the concerned donee and not done intentionally, then the said gift is not taken into consideration for the purpose of aforesaid calculation.

3.11 Collation of Estate

Collation of Estate is the process whereby the Donee is required to add the surplus to inheritance of deceased person in order to recreate the mandatory share and equalize the partition where the gift of assets given by deceased person reduces the Legitime of other forced heirs. Hence Collation is the term given for such a Return.[304] If the donor expressly indicates in the Will or Gift made or when the donee renounces the inheritance, mandatory heirs are immune from collation. But, if the gift affects the legitime then other co-heirs can demand reduction. The assumption is that the donor intended that the gift is from the disposable quota in cases where the mandatory heir is

[303] Ram Deu Gaudo v. Anta Deu Gaudo, Second Appeal No. 6 of 2017

[304] Collation of Inheritance was contained in Articles 2098 to 2114 of the erstwhile Codigo Civil 1867

exempt from collation.[305] If a donor makes a bequeath to his mandatory heirs without specifying that it should form part of disposable portion, the gift will be considered an advancement of the future legitime wholly or partly. Even though the grandchildren have not inherited from the parents, they are required to compile whatever their parents would have to compile when they succeed the grandparents as representatives of their parents. However, parents and children are not required to collate what was given to them during the lifetime of their parents, when they succeed to them in representative capacity with reference to succession of their ascendants.

The gifts made by parents to their child's spouse are not subject to collation, but when they are made jointly to both spouses, the son or daughter, depending on the situation, is responsible for adding his or her respective share of the gift's value to the inheritance. All the expenditures that the deceased made on behalf of his children must be compiled. However, routine expenses that the parents are required to pay are not taken for the purpose of computation of these costs, and the parents may forgo collation as long as expenses don't cross the limit of disposable share. The sums to be tallied must be reduced by the amount of money that the children have given to their parents as gifts or spent on their behalf. When a co-heir has made improvements to the assets with express permission of other co-heirs and in cases when deceased has incurred expenses for his children's upbringing or for paying their debts then that must be accounted. The quantum of expenses or improvements must be evaluated based on inflation as well as cost of living. Maintenance, compensation for services provided, and gifts given to make up for any assets that their parents have embezzled cannot be subjected to collation. To collate, income from gifts must be calculated as on date of death of estate leaver. The Goan Succession law allows the Estate Manager to claim compensation. There is distinction between an heir and a legatee. If the party claims to be an heir having maintained the property, he will be eligible for compensation over the property that is allotted to other co-heirs.[306]

In Mariana Carmelina Fernandes v. Antonio Gomes[307], it is held that consent of all heirs is mandatory when making a gift out of the Legitime to any one of the heirs and hence any gift made by the moiety holder without making the children as parties to the said Deed will render the same as void ab initio.

---

[305] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 81

[306] Ravindra Parulekar v. Damodar Parulekar, A.O. NO. 52 of 2019 in the High Court of Bombay at Goa

[307] 2006 (3) AIR Bom R 227

In Mario Mascarenhas v. Fernando Mascarenhas[308], the Bombay High Court has held that the testamentary heir can be exempted from collation only in presence of valid documentary proof which shows that the Testator had exempted the asset from collation. Further the said deed should have all interested parties, with the share of the asset and its value being definite.

In Milagrina Gomes v. Joaquim Costa[309], it is held that when the property that was gifted is not in possession of the Donee, then the said person is required to refund the value of the asset to the inheritance when the said gift becomes inofficious.

3.11.1 Collation Procedure

Unless the parties concur for doing Collation itemwise, it is required to be done in monetary terms based on worth of estate as on the date when the inheritance is opened. The quantum of improvement work done by respective donee to the properties received as gifts must be calculated having regard to opening date of succession and subtracted from the worth of gifted properties. When the donee or his agents are liable for the degradation and diminution of gifts due to an act they performed or because of their negligence, the same will be immaterial for the purpose of calculation of value of same. When collating livestock, consumables or items subject to wear and tear, their condition at the time the possession was transferred to the donee must be taken into account. When returning properties that aren't in the donee's possession, the value they had as on date of alienation must be taken into consideration.[310]

If gifts exceeds the donee's entitlement, then the excess must be paid back in kind. The donee is eligible to select from among the gifts required to satisfy his share alongwith obligations on the gift. The donee must restore the possessions to the other co-heirs and is not permitted to participate in the licitation of them. If a gift includes a tangible indivisible asset that does not fit into the donees entitlement then that asset will be included in list of assets for licitation, and the donee is eligible to participate in the licitation. The official index of inflation must be used as a guide when updating payments done by donees, payments of the donor's debts, or payments of liabilities to third parties, including payments made to any co-heirs due to their share of the value of the gifts. The clause applies to cash donations and gifts that have been made.

---

[308] 2001 (1) Goa LT 296

[309] 1989 (2) Goa LT 366

[310] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 333

A married couple may give their assets or a portion of them, with or without reserving usufruct, to multiple forced heirs, with express sanction from all such heirs. As long as the donees pay or promise to compensate the presumed forced heirs for their future mandatory share, the gift is valid and will not be regarded as a contractual succession. In these situations, it doesn't matter if the assets' value has changed since the inheritance was opened. If the owelty money is not paid right away, interest at the rate of 8% per year will be charged.

When community assets are gifted by both spouses, only respective half must be presented for collation after one of them dies, and the other half must be brought for collation after other spouse dies. If the gifts contain separate property of either spouse, then only that property must be brought for collation upon the passing of concerned spouse. Once the communion assets that have not been gifted have been valued, the second partition will also be valued using the official inflation. The communion assets shall be evaluated only once in reference to their value during commencement of succession of the donor who has passed away. If necessary, this value will be adjusted to account for the official index of inflation.[311]

As much as practicable, identical properties as those given to the donee must be used to fill entitlement of co-heirs. If not feasible to fill up the entitlement of other co-heirs in the aforementioned way and the bestowed assets are immovable properties, the co-heirs will be reimbursed financially. Any number of assets may be sold at public auction in order to raise the necessary amounts incase of absence of money within inheritance. The co-heirs shall be compensated with additional movables, having regard to its fair value, in the event the assets are moveable.

When assets gifted exceeds the donee's legal capacity, the excess must be calculated into the donor's available funds. The donee will be obligated for compensating surplus into the estate if, despite this calculation, the legitime and disposable share are exceeded. The continuity of Inventory petition is not hampered due to disagreement between the co-heirs regarding requirement to collate or due to matters regarding collation that cannot be resolved in the Inventory proceedings, and the person bound to collate shall provide security in respect of the gifts made to him until the disagreement is resolved by a competent court.

[311] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 342

Every successor to assets that do not pass through partition and devolve in a preferred manner is required to collate any changes that have raised the assets' value. The price of the acquisition or their value, at the discretion of the successor, shall be tallied in cases where the assets that are not subject to partition and that are to devolve in a preferential way having been acquired for a valuable consideration.

In Bernardine de Souza v. Emerciana D'souza[312], Court has held that in case of gifts that are in excess of entitlement of the Donee, then in such cases the Donee will be required to return the excess gifts to the inheritance. However he will be entitled to opt for those gifts that will compose his entitlement. *In Lisa Rodrigues v. Eugenio Rodrigues*[313], it is held that the gift made to spouse of son will not be subject to collation since spouse of son is not considered as a direct heir of inheritance of parents in law.

3.12 Reduction of Inheritance

The bequeathed assets can be lowered for inofficiousness to the degree required to restore the forced heirs' Legitime where it affects their ability to inherit.[314] The disposable quota needs to be ascertained inorder to assess whether there is inofficiousness.[315] Gifts mortis causa or legacies must be decreased initially in cases of inofficious gifts, and gifts inter vivos must only be lowered when legacies are insufficient to cover the mandatory heirs' legitime. The Will can contain clauses to exempt any person from reduction of his allotment or can even specify the sequence of reduction. If the Will is silent then all the legacies will be reduced simultaneously and in equal proportions till the legitime is restored. When gifts given during lifetime is required to be reduced, the last gift must be done so first, either entirely or in part. If the last gift is insufficient to cover the legitime, the next immediate gift must be lowered, and so on. The gifts are lowered pro rata incase of multiple gifts being present in single gift deed. Their worth will be determined for reduction purposes as on the reduction date, and neither augmentation in value brought on by improvements made by the donee

[312] 1998 (2) Goa LT 18

[313] 2015 (2) Goa L.R. 721

[314] Reduction of Gifts made by deceased in his lifetime was regulated by Articles 1482 to 1505 of the erstwhile Codigo Civil 1867

[315] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 12

nor a diminution in value brought on by same donee will be taken into account.[316] When it is not possible to split the immovable assets, the donee must either receive the balance entitlement in cash or repay the amount of the reduction when the reduction does not exceed total worth of immovable property. If the donee is also a co-heir, he can withhold bestowed property as long as its worth does not exceed that of the co-heirs legitime. If not, the donee must return the gift and he will be compensated for the reduced gift and legitime as per general norms of partition.

If the possession of immovable property is not with the concerned donee at the stage of reduction, he will be liable for its value on opening of inheritance. If the donee has alienated the gifted assets, he must make up the difference in cash. If property has been mortgaged, the concerned assignee heir can redeem the mortgage and sue the donee for the full amount of the redemption, including any related costs. If the gift consists of movables properties and the donee is bankrupt, then concerned interested parties can seek worth of the movable properties at the moment of acquisition from the immediate transferees if the transfer was made gratuitously and the right is not barred by prescription. The standard rule is that the Gift Deeds must be executed personally by concerned donors or through their duly constituted power of attorneys. If it is done through such attorney then the Power of Attorney should be executed before competent authority in writing and cannot be simple oral authorization.[317]

In Venkatesh Karekar v. Rosemary Fernandes[318], it is held that disposal made in favour of spouse of properties which does not constitute the communion of assets, or which are partitioned and allotted exclusively to any of the spouses is valid. Similarly when there is consent of all the heirs then also it is held to be valid transfer.

In Joao Cardoso v. Ethelvina Rodrigues[319], the court has held that Legitime and Disposable quota together constitutes the whole inheritance of the estate leaver. The Legitime cannot be gifted by way of gratuitous transfer by the parents. However, the children cannot debar the parents from selling the properties even when it comes within the non-disposable quota or legitime.

---

[316] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 370

[317] Subash Fotu Bhandari v. Vassant Data Quenim Robolo, Second Appeal No.156 of 2012 in the High Court of Bombay at Goa

[318] 2016 (1) Goa L.R. 495

[319] 2009 (2) Goa LR 388

In Manguesh Kuwelkar v. Yeshwant Kuwelkar[320], it is held that the testatrix had right to specific property. She had made a Will of more than her disposable quota. Hence the court held that the entire Will cannot be held as null and void but the aggrieved party can apply for reduction during the Inventory Proceedings. However, the court has ruled that the Will cannot pertain to the legitime of the legal heirs.

In Domingos Rodrigues v. Joao Rodrigues[321], Court has observed that Collation is different from Reduction in the sense that that collation arises in all gifts made by the donor. Reduction pertaining to inofficious gifts which affects the legitime. Both can occur in presence of forced heirs. Collation is duty of all the heirs who has received gifts intervivos. However the estate leaver may have exempted the person from collation in which cases it is exempted. The Court has further held that the Administrator or Head of Family is required to be formally appointed before he starts to perform his duties.

3.13 Accretion of Inheritance

In the event that an co-heir expires prior to the Testator or gives up succession rights, or otherwise turns incapable to accept it, his share of the inheritance will be summed up to the rights of the remaining co-heirs. However, the Testator can provide specific instructions in such cases also which will override the statutory provisions. The successors are eligible for the privilege of accretion in the event that the legatees are incapable or unwilling to take on the legacy. There is going to be no interse accretion to the legatees. The co-legatees will be offered two options if the bequeathed commodity is inseparable or is incapable of being split without resulting in damage. Either they can retain the whole thing and give the heirs the monetary worth of the surplus or they can take what is rightfully theirs and give the gifted item to the remaining successors.

Unless the Testator has specified to the contrary, the legatee is entitled to profits of legacy when the encumbrance on the legacy becomes ineffective.[322] The successor who receives a portion of the succession as a result of accretion will be the beneficiary of every privilege and duty of the successor who weren't interested in or was unable to take in the disposition, had he chosen it. If specific burdens formed by the person executing the Will attach to the privilege of accretion, the heirs who inherit it may relinquish it;

[320] 2008 (6) Mh. L.J. 224

[321] 1995 (1) Goa LT 376

[322] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 356

however, in such case, the proportion thus renounced will go back to the individual or parties in whose favor the debts were originally made. The legatee possesses the power to retrieve an item from a third party, regardless it is moveable or immovable, when it is defined and definite.

In Samiro Mascarenhas v. Valente D'Costa[323], the Court has held that when there is no valid adoption, there cannot be transmission of inheritance right in absence of valid documentary proof.

3.14 Substitutions in Inheritance

Substitutions can occur in situations when any of heir or legatee cannot receive the share in estate or in cases when he relinquishes it, then in such cases the Testator can appoint any other person to take the place of the said heir or legatee.[324] If the successor accepts the inheritance then this substitution does not apply anymore. The Testator is empowered to substitute his minor sons as well as minor daughters with another heir or another legatee as per his wish and the substitution will be applicable in situations when the said children of the Testator dies before attaining majority. When the person being substituted attains majority or passes away and leaves behind his heirs entitled to inherit, the substitution made by the Testator will no longer be valid. Substitutions are method of ensuring that the estate of the Testator does not become heir-less by virtue of death of any of legal heirs. It is a method of protection of estate and ensuring that the inheritance passes to the next generation of heirs. The substitute must not be disqualified from acquiring the concerned inheritance for effecting a valid substitution.

The rights and obligations pertaining to the properties pertaining to which substitution is being done will be the same as compared to the substituted successor. The Testator can put conditions on the substitute such as mandating payment to a Charitable Trust, religious institution etc.

3.14.1 Types of Substitutions

Substitutions that may be required to be made as regards succession are of different kinds depending on situations in every case. The law categorizes substitutions into

[323] 2016 (2) Goa L.R. 577

[324] Law governing Substitutions in inheritance of the deceased person was governed by Articles 1858 to 1874 of Codigo Civil 1867

different types and also specifies in which circumstances such substitutions are possible. The various kinds of Substitutions are discussed as follows:

i. Direct Common Substitution:

Direct substitution means replacement of an heir by another both being major of age having sound mental faculties. Under this type of substitution, the original heir is unable to succeed to the inheritance or is unwilling to accept the inheritance that has been provided to him by the Testator. The original heir get substituted by another person hence this type of substitution is also referred as common substitution. The person who is substituted should not be disqualified from holding the inheritance. If the original heir accepts the inheritance from the Testator subsequently then the substitution that was provided by the Testator cannot be enforced.

ii. Pupillary Substitution:

Pupillary Substitution is applicable incase of minor children or even other legal heirs in the descending line without distinction on basis of gender. Incase of presence of children being minor in age and hence legally not capable of managing the inheritance, the Testator is authorized to provide for substitute heirs in case of situations when the aforesaid children or heirs in the descending line dies in the lifetime of the Testator. However, the substitution will be applicable only when the children dies as minors.[325]

iii. *Quasi pupillary substitution*:

Substitution done with respect to lunatic heirs comes in the category of Quasi pupillary substitution. The Testator can provide for substitution for persons who are not mentally competent to inherit. However, to effect Quasi Pupillary substitution, appropriate court order is required to be obtained. Such substitutions have their applicability only till the time the mental illness is subsistent. Once the unsoundness is cured, the substitution made lapses and cannot be in force.[326]

iv. Reciprocal substitution:

Reciprocal Substitution means process of replacing several heirs and legatees at the same time simultaneously with substituted heirs which may be in same number or may be more than the substituted successors. Reciprocal Substitution can happen in cases of

[325] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 132

[326] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 27

multiple heirs and legatees having their entitlement to rights in the inheritance which gets transferred to the substituted successors. When there are equal number of substituted heirs as compared to original heirs, the shares are substituted in equal shares. If there are multiple substitute heirs which are more than the original Heirs then in such situations the substitution is deemed to be in equal proportion as regards all substituted heirs. However, the Testator is eligible to make specific provision in his Will to determine how the substitution shall take effect.

v. *Fide-commissary substitution*:

Fide-commissary substitution pertains to substitution whereby the substituted heir is only a caretaker of the inheritance. He has to look after the assets till the time it is taken over by the beneficial heir. The beneficial heir cannot be distant relative and should be within one degree only. It is an arrangement between the Testator and the substituted heir for the benefit of ultimate heir. The substituted heir is required to manage the estate till his lifetime and after his death the estate passes on to the beneficiary specified by the Testator. The beneficiary is referred as Fidei-Commissarius. If the beneficiary dies then the fiduciary becomes the owner. Similarly if the beneficiary declines to accept the bequeathment, then in such situations also, the fiduciary becomes the owner. If such substitution is provided in the Will, and the same is held to be invalid then the Will is not affected by the ineffectiveness of the substitution. Such substitutions are different from the right of usufructuary since ownership is key ingredient in such substitutions. The Testator can put condition restraining sale, gift during lifetime of beneficiary for such substitutions. The conditions are applicable till one degree only. The person empowered to look after the properties cannot sell the same except when he doesn't own any assets and the beneficiary provides express permission for sale.

The conditions put by the Testator on heir to donate the assets to charitable institutions are valid.

3.15 Disinheritance from Succession

The Testator is entitled to deprive the mandatory heirs of their legitimate inheritance or declare them to be disqualified to inherit only in specific circumstances. As a general rule the Testator cannot disinherit any of his legal heirs.[327] The Testator can specifically

[327] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 359

state while executing the Will about disentitling any of his legal heirs by specifying his reasons in the process. Disinheritance without reasons is invalid. Disinheritance can occur in situations when the heir is convicted for an offence punishable by period exceeding six months for offence committed intentionally against the Testator or his/her spouse or the siblings of the Testator. Similarly in cases when the successor is found guilty of filing a false complaint or giving false evidence against the Testator, or his/her spouse or siblings then also he can be disqualified from receiving the inheritance. The heir apparent can be disentitled from the inheritance when he has arbitrarily without any justification refused to look after the Testator including the spouse of the Testator. [328]
The ascendant who was disinherited is not allowed to enjoy the usufruct of the legitime received by his descendants. Even though when the disqualification attributes to the heir apparent still the descendants of the said heir are not disqualified from acquiring inheritance from the Testator. [329]
The person who gains from the disinheritance of any of the other heir is required to prove disinheritance in case of any objection from the disinherited heir. In situations when the disinherited heir has become insolvent then the duty of providing him with basic necessities will be on the person who has received his share of inheritance. The person who is disqualified from inheriting is eligible to file or challenge act of the testator by way of civil suit. The period of limitation for filing such suit is 3 years failing which the right gets forfeited.[330] A person can be disinherited from inheritance in situations when he forces the Testator to make a Will against his wishes or in situations where the person manipulates the Will of the Testator. The offence pertaining to which disinheritance is attributed should have been committed in the lifetime of the Testator and it is not relevant that the person is held guilty after the death of the Testator.
The possession of any of the properties of the estate of the Testator by the disinherited person is illegal. The disinheritance does not affect right of representation.
The Testator has the option to reinstate disentitled heir to the succession rights and for doing so the testator has to execute a specific document to convey is intention about restoring the rights of the disinherited heir. The disinheritance does not affect a person

[328] Law governing Disinhertance from Estate left by the deceased person was governed by Articles 1875 to 1884 of Codigo Civil 1867
[329] Section 189 to 195 of present Act correlates to Articles 1875 to 1884 of the erstwhile Codigo Civil 1867
[330] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 475

who has received by way of a Will when the Testator knew that there was disqualification for the said person.

In *Purushottam Mahadev Dabolkar v. Sadu Kashiram Mhamal*[331], the petitioner before the trial court had placed on record certain documents in support of his claim that his wife was the daughter of one Kashiram Sadu Mhamal and Gopiki(Chimnen) Kashiram Mhamal and hence an interested party. The Inventory court was expected to conduct an inquiry as contemplated under Section 395 of the aforesaid Act. However, the Inventory Court dismissed the application. The High Court of Bombay at Goa held that that the documents and evidence submitted by the concerned parties should be considered before passing of any Order and if this step is absent from the proceedings then it affects basis principle of natural justice and hence the Order cannot be valid.

In *Lizette Barbosa v. Hubert Braganza*[332], the Court has held that the Cabeca de Casal is under statutory duty to file list of assets under oath. Hence incase of false declaration he is liable and can be disqualified from inheritance. Other co-heirs not duty bound to file the list of assets and hence cannot be disentitled.

3.16 Wills under Goan Family Law

The basic purpose of a Will is to provide an option to the Testator to have his say about the manner and matters pertaining to the disposal of his estate after his death, the Will being operative only after his death. This gives a sense of satisfaction to the executor of the Will about the manner of allotment of his estate among his descendents or to any person/ persons of his choice that are named in the Will.

If the donor makes Gifts in contemplation of death or as expressing his last wishes in contemplation of death, then such Gifts will have to be construed in the context of the rules applicable to testamentary disposition, that is, Wills.[333] The concept of will takes care of the wish of the Testator pertaining to the devolution of his estate after his death since in the absence of such disposition the heirship devolves as per the law pertaining to intestate succession. Hence, wills are a very important concept in the sphere of Law of Succession.[334]

---

[331] Writ Petition No. 929 of 2019

[332] 2007 (1) Bom CR 589

[333] Subash Fotu Bhandari v. Vassant Data Quenim Robolo, Second Appeal No.156 of 2012 in the High Court of Bombay at Goa

[334] General provisions relating to Wills was contained in Articles 1739 to 1762 of Codigo Civil 1867

Likewise, Wills are also seen as a very important instrument in the Family laws of Goa. The Wills in Goa are governed by the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 which has replaced the erstwhile Portuguese Civil Code of 1867. The Will is recorded during the lifetime of the Testator and further it can be enforced only after the death of the Testator i.e. the maker of the will. In Goa, Will should be made before competent Special Notary only who is appointed by the Government and no other wills are recognized under the Goa Succession, Special Notaries and Inventory Proceedings Act 2012. The beneficiary of the Will has legal right only after the death of the Testator and the Testator is free to change his Will during his lifetime by making a subsequent Will.

It is noteworthy to mention here that the original Portuguese Civil Code of 1867 was in Portuguese language and after about 57 years from attaining liberation, the Code was finally translated into English.[335] The credit for this goes to the Bombay High Court at Goa which took cognizance of the problem and vide Order passed on 24 March 2017 directing the Goa Government to provide an official translation of the Code.[336]

In *Daisy Senso v. Ivorine Noronha*[337], the Bombay High Court has clearly held that Joint Will is void ab initio under the Goan Succession law. Hence a Will registered by the Testator and Testatrix in a single Deed is not executable in Goa.

In Rosario Fernandes v. Regina Saldanha[338], it is held that a Will cannot be made of assets which constitutes the Legitime of forced heirs. Legitime is the right of the forced heirs and hence they cannot be disinherited therefrom. Whatever comes in the domain of Legitime needs to be reduced and given to the legal heirs.

Will is an instrument whereby a person deposes his wish concerning his estate after his death, before a competent Special Notary who is duty bound to record the Will of the person in his book kept for the purpose. The Will is required to be recorded by the Special Notary who is a Gazetted Officer and appointed by the Government. In Goa, currently, the Sub Registrars under the Registration Act 1908 function in an ex officio capacity as the Special Notaries under the Goa Succession, Special Notaries and Inventory Proceedings Act 2012. The Office of the Special Notaries are situated in each taluka with defined jurisdiction as per law. They function in an Ex-officio capacity.

[335] https://www.heraldgoa.in/Goa/Finally-English-translation-of-Portuguese-Civil-Code-notified/137903
[336] Public Interest Litigation (Suo Moto) No. 1 of 2017
[337] 2011 (2) Goa L.R. 114 (Bom(PB))
[338] 2013 (1) G.L.R. 53

While making a Will before the Special Notary, it is not mandatory to specify the assets in the Will by the Testator. However, the required formalities are required to be followed inorder to make the Will a valid instrument in the eyes of law. A Will is always a unilateral instrument and cannot be done jointly. The person who wish to make a Will cannot delegate his act to any other person under any circumstances whatsoever.[339] Under Goan Succession law, there cannot be a Will based on Power of Attorney and the Testator has to be personally present for the Will. The law governing Wills is fully codified in Goa. There is one system of law applicable to entire territory of the State of Goa. The procedure to be followed in drawing of Wills is also laid down systematically in the statute. The translation of the erstwhile Portuguese Civil Code of 1867 undertaken and published in the Official Gazette by the Government of Goa has also helped to educate the masses. So also the new enactment governing Succession that came to force at the end of the year 2016 also put a break on the ambiguity that was present due to non availability of the Civil Code in English language.[340]

It is noteworthy to mention that unlike in rest of the country, Goa is the only State where there is no need for a probate to make Will a valid instrument. So also the Wills in Goa is a Public Document and is enforceable from the date of death of the Testator i.e. the maker of the will. The Special Notary is the competent authority to record the Will and the safe custody and preservation of all the Wills drawn by him or deposited by the Testator. The Special Notary has to make sure that he complies with all the legal formalities and also has to record this fact in the Will recorded by him. The certified copy issued by the Special Notary is admissible under the Indian Evidence Act 1872 as a proof of the act done by him and the facts that have occurred in his presence. Even though every individual competent to make a will enjoys his right to make a Will, there are also certain restrictions that guarantees that the Testator does not do injustice on any of his legal heirs and hence the Will cannot be made of all the assets and also Will cannot be made by a Spouse pertaining to specific assets without obtaining the consent of the other spouse incases where they are governed by the general communion of assets. Only the disposable share can be given by way of gift and the indisposable quota is guaranteed by law for the legal heirs of the Testator. The law governing Wills in Goa does not discriminate between individuals on the basis of gender. So also the heirs

[339] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 2

[340] Section 196 to 216 of present Act correlates to Articles 1739 to 1761 of the erstwhile Codigo Civil 1867

cannot be wholly deprived of the estate since their mandatory share is guaranteed by law. The court has held that under the Civil Code, specific properties can be disposed only when all the co-owners agree to the transfer.[341]

In Manguesh Kuwelkar v. Yeshwant Kuwelkar[342], the testatrix had right to specific property. She had made a Will of more than her disposable quota. Hence the court held that the entire Will cannot be held as null and void but the aggrieved party can apply for reduction during the Inventory Proceedings. However, the court has ruled that the Will cannot pertain to the legitime of the legal heirs.

In Robert Coutinho v. Maria Botelho[343], the High Court has held that under the Civil Code, the co-heirs cannot dispose specific part of the property without obtaining consent of all the other heirs. The Court has held this provision valid even in presence of Transfer of Property Act though saving his right of the co-heir to transfer this undivided right to the property.

In Claudio Francisco v. Eulalia Fernandes[344], it is held that the right of co-heirs is common to the entire estate and not to specific properties only. In other words, all heirs have proportionate right all the properties and hence there cannot be transfer of any specific property by any single co-heir. Such transfer is subject to the right of pre-emption of the co-heirs.

3.16.1 Salient features of Wills under Goan Law

There are certain characteristics that the Wills possesses and the same are discussed as follows:

1. Personal Act: Will is always a personal act of the Testator whereby he clearly states his last wish concerning disposal of his estate after his death before the Special Notary. The Testator should be free from any coercion and the Will should be according to his free wish without any pressure from anybody. The Testator cannot delegate his right to make a Will to any other person.

   In Caridade Rodrigues v. Domingos Fernandes[345], it is held that though the Testator has made the Will and duly executed before the Special Notary as per the procedures prescribed for drawing the Will, still the validity of the Will is to

[341] Joana Errie v. Albano Vaz, 2015 (1) Goa LR 293
[342] 2008 (6) Mh. L.J. 224
[343] 2002 (1) Goa LT 109
[344] 2005 (2) All MR 247
[345] 2014 (2) Goa LR 530

be decided by the Inventory Court as regards whether the Testator was having ownership and right as regards the properties mentioned in the Will. The property can be gifted or sold by the heirs only after it is exclusively allotted by way of partition to them. The partition can be though inter-vivos document or through inventory proceedings. However, to sell specific property, partition is a pre-condition.

2. Unilateral act: The law in Goa does not permit joint wills. Incase where the Wills are done by both the spouses, the Deed of Consent is to be done jointly but their Wills are to be done by both spouses separately. Hence, the instrument of Will recorded by Special Notaries are always pertaining to a single individual. No third person can interfere in the recording of Will except the witnesses and interpreter, if applicable. [346]

3. Legitime: The Testator who wish to make a Will is prohibited from disposing the mandatory share which is reserved for the legal heirs. This mandatory share is known as legitime and the Testator cannot dispose this share even by way of a Will. The mandatory share is the indisposble quota which cannot be disposed by the Testator. Hence the Law guarantees minimum legal share to the heirs and the Testator cannot do the Will thereby totally disowning his legal heirs from the inheritance.

   In Jose Miranda v. Joao Miranda[347], it is held that any gifts made by way of Will which are beyond the disposable quota are necessarily required to be reduced. Gift of any of the properties of the legitime is not possible. Similarly the heirs cannot dispose properties before they are allotted to them.

   In Joao Cardoso v. Ethelvina Rodrigues[348], it is held that the children cannot debar the parents from selling the properties even when it forms the legitime since the monetary consideration is then available to the Legal Heirs of the sale proceeds.

[346] Mario Bruto da Costa, *Law of Succession*, Mangala Offset, Vasco, 2000, pg. 13
[347] 1999 (1) Goa LT 77
[348] 2009 (2) Goa LR 388

4. Probate: It is a very unique feature of Wills in Goa that there is no requirement of any Probate to make the Wills in Goa a valid instrument. The Wills are directly executable after the death of the Testator. For instance, the Bombay High Court rejected a plea that requested to grant probate for a Will executed in Goa. The Court held that the Probate can be granted for Will executed in Mumbai only and not pertaining to Will that was executed in Goa. The Court clearly held that Probate is not applicable for Wills executed as per the law followed in Goa and hence it does not have jurisdiction to grant such a plea.[349]

   In the landmark case *of Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*[350]*,* the Supreme Court has decided on whether the property of an Goan situated outside Goa would be covered by the Portuguese Civil Code 1867 or the Indian Succession Act, 1925. The Supreme Court has held that if a Goan has property outside Goa then the same has to be dealt with under the Civil Code applicable to Goa and not under the Indian Succession Act, 1925. Hence it is a settled law that inorder to compute the total estate of the deceased person, all such properties whether situated in or out of Goa would have to be brought on record.

5. Forbidden Clauses: The Testator is totally free to depose his wish before the Special Notary and the Special Notary is bound to record the Wish of the Testator. However, if the wish of the Testator is contrary to the law prevailing in the territory then such clause in the Will are deemed to be non-existent.

   In Norberto Fernandes v. Gabriel Fernandes[351]*, it is held that* Restriction on spouses for selling properties to children without obtaining consent of other children is held to be a special provision and it is held that such provision still holds good even after applicability of the Transfer of Property Act. The need of obtaining consent from other children is mandatory for selling any of the properties of the inheritance. This is specially aimed to protect the legitime and to ensure that no injustice is done on any of the legal heirs.[352]

---

[349] https://timesofindia.indiatimes.com/city/mumbai/hc-rejects-probate-plea-for-will-in-goa/articleshowprint/20039053.cms

350 [2019] 12 S.C.R. 390

[351] Second Appeal No. 3 of 2006 before the Bombay High Court at Goa

[352] Ronaldo Vaz v. Aduzinda Gonsalves, CRA No. 208/80

6. Formalities: It is very important that all legal formalities are compulsorily followed by the Special Notary at the time of executing the Wills. The law lays down the exact procedure for recording of Wills and the Special Notary is required to follow the same in true letter and spirit. Any dereliction on the part of the Special Notary will entail him to major departmental action. Further its not compulsory for the Testator to specify the assets in the Will. Any Testament is still valid instrument even when there is no mention of the assets.

7. Not a Contract: Wills cannot be seen as a Contract and hence the beneficiary of the Will has the option to accept or can refuse to accept the estate that has been bequeathed upon him by the Testator. The Wills are applicable only after the death of the Testator after which the testamentary heir can choose to accept or deny to be a testamentary heir.

   In Nirmala Dessai v. Tulsi Dessai[353], it is held that the Inventory Court is competent to decide about the validity of Will. However, incase there is detail investigation then the parties are required to be directed to file separate Civil Suit.

8. Executors: Goan succession law[354] specifically prohibits the delegation of power to make Wills. However the Testator is empowered to appoint a person to carry out his Will. Such person is referred as the Executor. He is empowered to take steps as specified in the Will which can also include power to take steps to effect partition of estate and distribution of the inheritance or legacy among the heirs appointed by the Testator in the Will.[355]

Through unilateral act of Will, a person designates how all or a portion of his inheritance will be distributed after his death. Regardless of whether they contain a disposition as regards the assets of the Testator, all dispositions that are legally permissible in a Will are lawful if executed with all the applicable formalities. Execution of a Will is an act of personal deposition of ones wishes before the Special Notary. Execution of a Will vide an attorney is prohibited, as it is letting someone else

[353] 2015 (4) Mh.L.J. 731

[354] The Goa Succession Special Notaries and Inventory Proceedings Act 2012

[355] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 2

decide who the testamentary heirs or legatees will be, what will be left to them, what will be the composition of their inheritance, or how the Testament will be carried out.

Nonetheless, if the Testator names a group of people as heirs or legatees, he or she may assign the work of division of inheritance to one of them as Executor. Dispositions that rely on instructions surreptitiously conveyed to another person, making reference to non-authentic or non-written and non-signed papers, Wills executed in favour of ambiguous individuals who are impossible to identify in any way, will not be effective. Dispositions made in favour of Testator's or another person's relative without specifically naming the recipient will be assumed to be in favour of beneficiary's nearest relatives' as per legal succession order.

The Testator may either dispose of his estate unconditionally or subject to conditions, provided that those conditions are not opposing with morality, prevailing law, or public policy or are not utterly or proximately impractical to fulfill. Even when the Testator has made specific statements contrary to law or condition that is impractical to fulfill then it will be presumed that these wordings is not existent and shall not have a negative impact on the heirs or legatees. The condition is deemed to have been met when someone who has an interest in the condition's non-performance prevents it from happening.

The disposition shall be void and unenforceable if the Testator's reason or motive for making the Will is illegal, regardless of whether it is genuine or not. A declaration that specifies a time period from which the institution of the heirs shall begin or end is deemed not written. A Will that was obtained through fraud, deceit, or compulsion is void. If an heir prevents a person from executing his Will by deception, undue influence, or coercion, he will be liable to forfeit his claim to the inheritance, and it will pass to the other heirs.

A statutory authority that learns about someone stopping another from making a Will is required to visit the said person as soon as possible, accompanied by the Special Notary of the area alongwith two witnesses. The concerned person should be allowed to make his say about his wishes before the Special Notary who is then required to draw his Will. Further, the report pertaining to the incident is required to be forwarded to the Public Prosecutor for taking penal action in the matter.

A Will is void when the Testator doesn’t explain his wishes fully and explicitly before the Special Notary and simply uses signs in response to questioning. When a Will is

invalid, the heirs can contest its validity before Court. Similarly Wills cannot be executed by parties jointly.

The jurisdiction of a probate court is limited to decide whether the Will is genuine or not. The Will may be genuine but the grant of probate does not mean that the Will is valid even if it violates the laws of inheritance.[356]

3.16.2 Qualifications /Competency to make Wills

Any person is eligible to execute his Will as per his free wishes unless when doing so is specifically prohibited by law. A person who has not attained majority or a person who is lunatic is disqualified from executing his Will. Gender is immaterial in case of qualifications to execute a Will. However, a blind person or a person who is illiterate being unable to read is ineligible to execute his Closed Will.

The qualifications to execute Will is determined as on date of execution of the same before the Special Notary. A person married under the regime of general communion of assets is ineligible to dispose his specific properties till the time they are not allotted to him/her in valid partition or till the time express written consent is obtained from his/her spouse by executing a Deed of Consent before the Special Notary. The said restriction is not applicable when the parties are governed by regime of separation of assets or when made in favour of other spouse.[357]

Dispositions made in violation of necessary qualifications are unlawful and unenforceable. A sick person's Will that names a doctor, nurse, or priest as beneficiaries does not come into effect if he passes away from same disease for which he was treated by them. However, if the doctor or nurse was not paid their remuneration, then the sick person is allowed to provide for it by way of his Will.[358]

A Testament in favour of Testator's spouse, descendants, ascendants, collaterals up to the third degree is valid. The Testator can also provide for compensation for services performed to him in sickness provided no fees were paid earlier. A sick person having ascendants, descendants, collaterals up to the fourth degree, or a spouse can make disposition in favour of his domestic help, provided the same does not exceed one-third of the inheritance.

---

[356] https://www.scconline.com/blog/post/2019/09/16/portuguese-civil-code-applicable-to-succession-of-all-the-properties-whether-within-goa-or-outside-goa/ - visited on 08.12.2019 at 16.32

[357] Mario Bruto da Costa, *Law of Succession*, 2000, Mangala Offset, Vasco, pg. 34

[358] *Ibid* at page 40

If a person who is under disability makes a will in favour of his manager or guardian of estate then such Will cannot take effect and as such it is totally void and unenforceable. If adultery is proved in any of the Civil/Criminal Case during the lifetime of the Testator and if he/she make a Will in favour of his partner in adultery then such will is null and void and cannot take effect. The Testator shall not be eligible to dispose any property in favour of the Special Notary who records his Will including the staff of the Special Notary or the witnesses/translators in the Will.[359]

At the time of judging the validity of the Will, the Court is required to strike down that portion of the testamentary disposition that is affected by the disqualification and all efforts will be made to save the valid part of the Will. The Will cannot affect the Legitime and will have to be reduced to the extent affecting the same. An unborn child of the Testator which is born within 300 days from date of his death is eligible to inherit.

However, if the disposition is in favour of unborn children who are first-degree descendants of specific person alive at the time of the Testator's death, the disposition is valid even if the future heir or legatee is born more than 300 days after the Testator's death. The time of the Testator's death is most important to determine the validity of the Will. When a valid condition is specified in the Will, the fulfillment of the same will also be a relevant factor.

A person cannot acquire inheritance by testamentary succession if he is ineligible for same through legal succession. Any bequests made in favour of Executors are invalid if the said person declines to carry out his functions or when he is dismissed due to poor management. Business companies, associations, trusts, and other types of legal entities are qualified to inherit by way of a Will.[360]

A Testamentary disposition in favour of an disqualified person through an intermediary with the knowledge to benefit the said person is void.[361]

In Venkatesh Karekar v. Rosemary Fernandes[362], it is held that disposal is valid when made in favour of spouse pertaining to properties which does not constitute the communion of assets, or which are partitioned and allotted exclusively to any of the

[359] Da Costa, Mario Bruto, *Law of succession*, (Publisher- Mario Bruto da Costa, Panjim Goa), pg. 42

[360] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 365

[361] Qualifications to execute Wills were contained in Articles 1763 to 1783 of the erstwhile Codigo Civil 1867

[362] 2016 (1) Goa L.R. 495

spouses. Similarly when there is consent of all the heirs then also it is held to be valid transfer.

In contemporary scenario, the Hon'ble Supreme Court has laid down some landmark judgments pertaining to Wills. The Constitution Bench of the Supreme Court has even recognized the concept of living Will of a person. The Court has held that every person is entitled to live or die with dignity and as such he is also entitled to refuse the treatment for his illness.[363] Hence the Supreme Court has added an important sphere in the definition of Right to life. The Court held that a person has fundamental right to die with dignity and not undergo suffering and accordingly a person can give advance directions to refuse treatment. Thus the concept of a Living Will has come to existence by way of this case because generally the Will is executable only after death of the person. However, while delivering this landmark judgment the Apex Court has also made sure that the case is not misused and has held that the person who wish to decide about his treatment need to be in perfect mental faculties so as to enable him to make a prudent decision . So also the ill patient cannot be a minor. If these conditions are satisfied then the patient can give advance directions to the doctors concerning the rejection to receive treatment for the illness. However it is pertinent to note that active euthanasia is not permissible in India till date.[364]

In *Rupo Bhomkar v. Sazu Gawade*[365], it is held that bachelors, though entitled to transfer his entire rights fully without subject to ceiling of fifty percent as in case of married person, still he can transfer only that right which he actually is the owner. In other words, he should have acquired the rights to transfer the same.

3.16.3 Kinds of Wills in Goa

The Law of Wills in Goa recognizes four type of Wills viz Public Will, Printed Open Will, Closed or Sealed Will, Wills made outside Goa/External Wills.[366] The Special

[363] Common Cause v. Union of India, W.P. (Civil) No. 215 of 2005 before the Hon'ble Supreme Court of India

[364] https://www.thehindubusinessline.com/news/supreme-court-recognises-living-will-by-terminally-ill-patients-for-passive-euthanasia/article22991955.ece#:~:text= In%20a%20landmark%20 judg ement %2C%20the, living%20will%20are%20%E2%80%9Cpermissible%E2%80%9D.

[365] 2015 (2) Goa LR 580

[366] There were two more type of Wills in the erstwhile Civil Code 1867 relating to Maritime Wills and Military Wills. Such wills are not continued in the present law in force since times have changed with facility of air travel as compared to travel by water vessels for several months in the pre liberation era. Hence today there is no need felt for such type of specific Wills and all situations that formed part of such Wills are now regulated under the type of Wills made outside Goa.

Notary is required to title the Testament accordingly and follow the applicable formalities pertaining to the respective Will type. The basic ingredient of free wish remains constant in all type of Wills executed by the parties. There are procedural differences in each type of Wills which are discussed hereinafter. It is pertinent to note that the Wills executed in Goa are before the Special Notary and hence the Wills executed under the Registration Act 1908 does not fall under the categories mentioned above. Even Printed Open Wills are filed based on specific provisions under the Goan Succession law and hence the Wills that are registered by the Sub Registrar are not recognized by the Goan Succession law. Such Wills are however recognized for parties who are governed by the Indian Succession law.

3.16.3.1 Public Open Will

Public Wills are instruments that contain the wish of the Testator pertaining to matters relating to his estate after his death. This declaration of wish (in other words the Will) of the person has to be made before a Special Notary having jurisdiction and before two suitable witnesses. This Will is recorded in the special book kept for the purpose by the Special Notary. In case the Testator cannot read or write then the same has to be recorded in the Book by the Special Notary and an Interpreter is appointed to translate the contents of the Will to the Testator and record the wish of the Testator on the Will Book maintained by the Special Notary. Even though it is mentioned and defined as a Public Open Will, such Wills are regarded as personal act of the Testator till his lifetime and the same is a Public document only after the death of the Testator.[367]

3.16.3.1.1 Special provisions relating to drawing of Public Open Will

All the witnesses as well as the Special Notary are duty bound to satisfy and confirm that the persons appearing before them are the proper person. The Identity can be proved by way of personal knowledge or by way of any of the government issued identity cards. So also the Special Notary is duty bound to ascertain whether the person appearing before him for the purpose of drawing a Will is in his full perfect senses and he is not under pressure from any person whatsoever. The date of recording of the Will should be clearly mentioned on the same.[368] So also the time, year as well as the month

[367] In the erstwhile Civil Code 1867, Public Wills were regulated by Articles 1911 to 1919.

[368] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 493

as well as the day of the recording of the instrument should be mentioned on it. At the time of reading of the Will these contents should also be read aloud. The reading is done by the Special Notary as well as the Testator or any person of his/her choice. The reading should be witnessed by the two persons appearing as witnesses to the act. The law also permits the Testator to submit a copy of the plan if we wishes. Details of registration pertaining to the Will should be mentioned on the filed plan also. All the parties to the Will should sign on the plan also. In the event if the Testator cannot sign / cannot write then this fact should be mentioned on the Will by the Special Notary. In case of Will by a deaf person the law requires him to read his Will. And if he cannot read it then he has to bring a person to read it on his behalf. The said person who has read Will should also sign it. The reading has to be done before two competent witnesses. When the process of Will is being recorded the said process has to go on continuously without any sort of interruption whatsoever. This fact should also be noted on the Will recorded by the Special Notary in the presence of the witnesses.[369]

In the landmark case of *Puran Jethanand Jattani v. Malti Parmanand Chatpar*[370] the Bombay High Court has held that mere technical flaws in the Wills cannot be a ground to defeat the deposition of the Testator in the Will. In this case, the Bombay High Court was hearing a petition for directions to the Testamentary Registrar for grant of probate. The Testamentary Registrar had raised an objection for grant of probate since the attesting witnesses had not signed on the Will. The Will was executed and registered on the same day in the office of the Joint Sub-Registrar, Mumbai City Division-1. The photographs, thumb impressions and signatures were present on the registration page of the Will. Both the witnesses filed their affidavits confirming the fact that they were present with the Testator during the execution and registration of the Will. The Court held that the Will cannot be held to be void since the ground of objection raised by the Testamentary Registrar was technical in nature, and further the execution of Will was proved and there was no ground to prove that the Will was not executed by the Testator therein. Hence the Court dismissed the objection raised by the Testamentary Registrar.

---

[369] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 40, Also see Section 332

[370] Testamentary Petition No. 1967 of 2018

3.16.3.2 Printed Open Will:

A Printed Open Will is an instrument containing the wishes of the Testator on a computer generated printout. This is a modern way of recording of Wills. The law provides an option to the public to submit Printed Open Will to the competent Special Notary having jurisdiction over the area. The Testator should declare before the Special Notary that the print out which has been presented before the Special Notary mentions his will/ final wish. This declaration has to be in the presence of the aforesaid two fit witnesses. However, the typing and printing of the Printed Open Will is to be done by the Testator without any intervention of the Special Notary. The eligibility criteria for making a Printed Open Will is that the Testator who is making the Will should know to read. If he cannot read or is unable to read then he is not eligible to make a Printed Open Will.[371] The size of the paper is also prescribed by law. The word Printed Open Will should be clearly mentioned on it. The print out can be of the operative part only and no formalities are required to be printed on the same. The formalities are completed by the Special Notary after the printout is presented before him. Two fit witnesses should accompany the Testator at the time of presenting of the Will to the Special Notary. The Special Notary should be cautious in verifying from the person who is making the Will as regards whether the instrument presented by him actually mentions his final wish and whether he has made it without any pressure from any person whatsoever. So also the Special Notary is duty bound to verify as regards whether the Testator is having sound thinking capacity to decide freely about his decisions. This has to be done before the witnesses in attendance for the presentation of the Will.

It is pertinent to note that Special Notary can reject a Printed Open Will if the said Printed Open Will is not in a language that is used by the Courts or which is generally used in the district or when the Printed Open Will is in a language that Special Notary is not bound to know. However in such cases the Testator can make a Public Will. [372]

3.16.3.2.1 Special provisions relating to filing of Printed Open Will

The Printed Open Will should be made on a standard quality paper of 29.7 cm x 21 cm. The Testator should ensure that the printed copy has a double spacing between the lines and also the printed copy should be single-sided. It should be ensured that a margin is

[371] There was no concept of Printed Open Wills under the Civil Code 1867. The facility to execute Printed Wills was introduced in the present Act from the end of year 2016 onwards.

[372] See Section 333 of Goa Succession, Special Notaries & Inventory Proceedings Act 2012

kept on all the sides of the paper. The proper margins are 5 cm and 1 cm on left and right sides respectively. Top as well as the bottom side of the paper should have a margin of 3 cm. It should also be ensured that there are no blank spaces between the lines and the printout should be in a continuous manner. So also the numbers should be written in words so that there is no ambiguity. The title of the instrument should be clearly mentioned at the top followed by the name of the Testator in whole. The profession, marital status of the Testator should be stated on the instrument. So also it should be ensured that the Testator has stated his parents name and the place of domicile of the Testator. The age of the Testator should be mentioned clearly on the instrument inorder to avoid ambiguity in identification.

The Testator should sign at the starting para of every page and also after the last para of every page. This is done to ensure that there is no possibility of adding any subsequent statements in the Will.[373] After ensuring that requirements are complied, Record of Printed Open Wills is required to be opened. The said Record is handwritten in the presence of the Testator as well as the witnesses. The said Record should contain facts as regards whether the Testator was personally present before the officer for the purpose of submitting the Printed Open Will and also as regards whether all the formalities were done in the presence of all the necessary parties. The total number of folios pertaining to the Will needs to be mentioned in the Record opened. The Record should also contain information as regards whether there are any sort of corrections found on the Will presented by the Testator. The method of identification of the party should be mentioned i.e. whether the testator was identified by way of photo identity documents or on the basis of guarantee of the witnesses. The record should also contain statement as regards whether the Testator was having sound mental facilities with his full perfect senses for the purpose of submitting the Printed Open Will. Similarly the page number that Will contains in respect of the provisional file should also be mentioned in the Record opened. The Record that is written by the officer needs to be read loudly so as to enable the parties to understand the same. The Testator is then required to convey his assent or dissent as regards the Record written and whether the same is as per the factual position. After ensuring that the Record is as per the wishes of the Testator, all parties need to sign the record of Printed Open Will and affix a photograph of the Testator to the said Will. Thereafter the certified copy of the said

[373] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 361

Will needs to be issued to the concerned Testator for his record. After the provisional file reaches 200 folios it should be bound in a volume duly attested at the end by the District Special Notary.

In *Jaganath Vinayak Shet Manerkar v. Vallabh Saanand Bondre*[374] the Court has held that the gift can only be made of asset and that too, a present asset. It is held that the gift of future asset by way of a Will is prohibited under Article 1453 of the Code.

3.16.3.3 Closed Will:

The formalities pertaining to Closed or Sealed Will is different than the Open Public Wills. So also persons who cannot read or are unable to read cannot make Closed or Sealed Wills.[375] Unlike the Open Wills, the Special Notary does not read the Closed Wills that are presented before him in the presence of two suitable witnesses. However the Special Notary draws a Record of approval pertaining to the Closed Will. A Closed or Sealed Will can be written and signed by the Testator himself or it can be written by a person at the request of the Testator but should be signed by the Testator himself. The Testator should also initial all the pages of such Will. The only exception to the signature of the Testator is that when he cannot sign but such fact should be mentioned on the Closed Will by the Special Notary. In case when the Closed Will is not presented within the time limit then there is provision for penalty. But when a person is found guilty of deceit then in addition to the penalty the person will also be liable for criminal prosecution and will also be liable for forfeiture of his right to the inheritance. If a person fraudulently removes the Closed Will from the custody of the Testator or from the custody of a person with whom it is deposited, the defaulter is liable to pay compensation and is liable for criminal prosecution alongwith losing all his right to the inheritance. Further, if a Closed Will is found open with any party or with the Testator himself but the said Closed Will is not having any other defects then the Will is not annulled. But this Will should be deposited with the Special Notary who should draw Record of approval of Closed Will.[376]

---

[374] Writ Petition No. 502 of 2018 in the High Court of Bombay at Goa

[375] Present Law relating to Closed Wills corresponds to Articles 1920 to 1943 of the erstwhile Civil Code 1867.

[376] Usgaocar M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 41

3.16.3.3.1 Special provisions relating to drawing of Closed Will

Closed Will is executed by the Testator himself and is presented before competent Special Notary by the Testator. Two witnesses are required to be present in person before the officer at the time of presenting the Closed Will by the Testator. In case of Closed Wills, the major difference is that the Record of Approval that is required to be opened by the officer should be done by following the formalities but without reading the Will of the Testator. The Record of approval should contain details as regards whether the Will was personally written by the Testator and duly signed by him. The total number of folios that the Closed Will contains should be mentioned on the Record of approval. If there are any corrections or alterations seen on the Closed Will then those details should also be mentioned clearly on the said Record. The fact as regards whether the Testator is personally present for the deposit of Closed Will and whether identification of the parties was done based on photo identity document or based on the guarantee of the witnesses should also be specified on the Record of approval of Closed Will. The details as regards whether the Testator was having full mental faculties and senses to draw the Closed Will should be certified by the officer on the Record of approval. The officer should refuse to draw the approval of Closed Will in situations where it is found that the Testator is under pressure from anybody. The Record of approval of Closed Will should be read in presence of all the parties concerned including the witnesses and should be signed by all of them. After completing all the formalities, the Closed Will should be sealed in an envelope titled with the name of the Testator. The Record of Approval of Closed Will should contain the details as regards the place, date, time of drawing of the approval as well as delivery of the Closed Will to the Testator or to any person of his choice. All formalities are to be compulsorily followed including mentioning the total folios and corrections found on the Will. If the formalities are not complied by the officer then the Will cannot take effect and the concerned officer will be held liable for the same.

The Testator during his lifetime can request for withdrawing the Closed Will executed by him. The formalities pertaining to withdrawal of Closed Will remains the same as that for depositing it.[377]

[377] The provisions relating to registration and deposit of Wills were contained in Articles 98 to 108 of the Decree No. 8373 which provided the procedures to be followed by the Notary Ex-Officio in such matters

At the time of opening of the Closed Will, the officer should obtain proof to confirm the death of the testator. The Closed Will should be presented before the officer in presence of two witnesses when the Closed Will was in the custody of the Testator or any other person as found recorded on the Record of Approval of Closed Will maintained by the Special Notary. At the time of opening of the Closed Will, the prime duty of the officer is to compare the condition of the Will that is presented with that found written at the time of recording of approval of Closed Will. The officer has to record the opening of the Closed Will in a Register maintained for the said purpose. When the Closed Will is in the custody of the Testator or any other person then the Closed Will can be opened only after an application is made to the Special Notary. The Register maintained for opening of Closed Will should be signed by the Special Notary after which the Closed Will should be again deposited in the office records. The Register of opening of Closed Will needs to be signed by the District Special Notary on the last page. After opening of the Closed Will, the same needs to be registered in records of the Special Notary by copying the Will in full. The same is recorded in a separate Book maintained for the purpose. The opening note that is recorded by the Special Notary should contain facts as regards whether there were any doubts as regards the authenticity of the Closed Will at the time of its opening. The Closed Will should be signed by the interested party along with the witnesses and Special Notary on all of its pages before depositing same in the office records. [378]

In *Madhavi Dattatrai Thaly v. The Secretary (Law), Govt. of Goa*[379], the grievance of the petitioner was that the office of the Special Notary was not provided with the requisite Register for opening of Closed Will. The learned Advocate General made a statement process for complying with the provisions of Section 308 of the said Act is currently underway and the same will be expedited. In context of the Register of opening of closed wills, as contemplated by Section 309 (1)(vii) of the Act, the learned Advocate General made a statement that the process will be completed within a period of two months and the requisite book/register will be provided to the Special Notary (Ex-Officio). The High Court of Bombay at Goa directed the Government to provide the Special Notary (Ex-Officio), the Register for opening of closed wills, as expeditiously as possible and, in any case, within a period of two months.

---

[378] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 496

[379] Writ Petition No.597 of 2019 in the High Court of Bombay at Goa

In *Zelia M. Xavier Fernandes e Gonsalves v. Joana Rodrigues*[380] the spouses were governed by the provisions of the Portuguese Civil Code, 1867 and had not executed any Pre-nuptial agreement before their marriage. It was held that by virtue of Article 1098 and Article 1108 thereof, in the absence of any contract, the marriage is regulated by system 'Communiao Dos Bens' i.e. community of property. Accordingly, on marriage, the property of concerned spouses gets merged into one. Each spouse, by operation of law, becomes 50% stakeholder in all their properties, present as well as future and each spouse is entitled to a one-half income of properties of other spouse.

There isn't any prohibition for disposition of an undivided share by executing a Will to the extent of the disposable quota. What is prohibited is disposition of specific assets of the marital estate without allotment of same in partition. Even under the new Act, what is prohibited is the disposition of "specific and determined properties" by spouse governed under the general communion of assets. Hence there is no prohibition for executing a Will, when not relating to any specific assets.[381]

3.16.3.4 Wills made outside Goa

The concept of Wills made outside Goa is a saving provision whereby the Will made in a foreign country as per the law prevailing in that country cannot be declared null and void on the basis of the form that is used in it.[382] Hence, the law prevailing in the country where the Will is made needs to be followed and the same is of prime importance as regards the validity of the External Wills. The erstwhile Portuguese Civil Code also provided that the Portuguese Consulate was competent to act as Notaries in matters pertaining to Wills in foreign countries. Further, the Consulate was required to send a copy of the Will to the Ministry of External affairs inorder to enable them to take further necessary steps that are laid down in respect of Maritime Wills.[383]

In a very interesting case of *Laximibai Narayan Prabu v. Medha Nagesh Prabhu*[384] that came up before the Goa Bench of the Bombay High Court wherein the deceased spouses had gifted some of the immovable property to their two sons when they were toddlers. The couple did not provide for the elder daughter. Subsequently the couple had

---

[380] [2012] 3 S.C.R., Civil Appeal No. 1544 of 2012

[381] A.O. No. 45 of 2019 in the High Court of Bombay at Goa

[382] Wills made outside Goa were known as External Wills in the erstwhile law and were regulated by Articles 1961 to 1965 of the Civil Code 1867

383 Article 1963 of the Portuguese Civil Code 1867

384 Writ Petiton No. LD-VC-CW-41-2020

six more children thereby totaling the number of children to nine. There was reversion clause in the Gift Deed. The Court has held that reversion may happen on the date mentioned in the Deed or on the happening of an event specified in Deed or may also happen on death of the heir holding the property 'fide commissium'. The Court upheld the judgment passed by the lower court which stated that reversion of Gifted property happened after the death of the Donor in favour of all the heirs of the Donor. The Portuguese Civil Code, 1867 as applicable in the State of Goa, shall govern the rights of succession and inheritance even in respect of properties of a Goan domicile situated outside Goa, anywhere in India.[385]

3.16.4 Revocation of Will

The Testator is free to revoke his Will at any point of time. There are two modes of revocation of Will. The Testator can execute a subsequent Will to revoke his earlier one. Also he can execute a separate Deed of Revocation of Will. It is not necessary that the Will should be revoked entirely and any particular part of the Will can be revoked by the Testator. This right of revocation cannot be waived even when it is mentioned in the Will by the Testator. Similarly when the Testator during his lifetime sells or gifts the asset that was mentioned in the Will then in such circumstances also the Will shall have no effect because the property will not be held by the Testator at the time of his death.[386] If the Testator has executed two Wills on the same day without mentioning the fact as regards which one will prevail over the other and both these Wills have contradictory provisions then it will be presumed that the contradictory provisions made in the Wills are not existent. The revocation of Will made by the Testator is valid even if his subsequent Will is held to be void. If the Testator wants to revive his earlier Will, then he can do so by executing a Deed mentioning the same. The Will made by the Testator will have no effect if the Testamentary Heir mentioned in the Will dies during the lifetime of the Testator and the Will is deemed to have been revoked. If the Testamentary Heir is legally incompetent to acquire the inheritance then the Will is deemed to be of no effect. If the Testator has mentioned some conditions on the Will, and the Testamentary Heir is unable to fulfill those conditions then the Will is deemed to be revoked. If the Testator has descendants which he was not aware at the

[385] Jose Paulo Coutinho v. Maria Luiza Valentina Pereira, [2019] 12 S.C.R. 390

[386] The Article 69 of earlier Notarial Decree No. 8373 provided that Will can be changed or modified only by way of making a separate Will or by revocation of earlier Will.

time of executing the Will, and subsequently the Testator learns about his descendants then in such circumstances, the Will is valid only to the extent of the disposable share of the Testator. Similarly, in situations where the Testator has descendants born after execution of the Will, then in such circumstances, the Will is valid only to the extent of the disposable share and is deemed to have been revoked to the extent it affects the Legitime. If the Testator has mentioned the clauses which are illegal or contrary to any of the prevailing statutes, then such clauses are invalid and deemed revoked. Hence the intention of the Testator is very important to know the validity of the Will.

3.16.5 Executor of Wills

Executors are the individuals appointed by the Testator at the time of drawing of Will to carry it out into effect after his death. The Testator is competent to designate multiple people to execute his Will either wholly or partially. Only those who are legally capable of entering into valid agreements, being of legally sound mind and major in age can be chosen as Executors. Under the Portuguese Civil Code, age of majority for marriage, maintenance is held to be as 21 years.[387] However, for the purpose of Executorship, majority would mean 18 years of age. In cases where the heirs don't agree on an Executor, then Court has the power to decide as regards who will act as Executor.[388] The Goa Succession, law allows the Estate Manager to claim compensation for the expenses incurred by him.[389] Any interested person may petition the court for the appointment of an Executor in cases where there are children, interdicted, or absent heirs. The applicant must identify any additional parties who may be interested and may then suggest the person who, in his opinion, is best suited to serve as an Executor.[390]

The chosen Executors have the option of rejecting the appointment. In this scenario, the Executor will not be eligible to collect any legacy as payment for performing the Executor's duties. The nominated Executor refusing to act as such, must notify his decision to concerned Special Notary by registered mail. The same should also be informed to all the interested parties therein. The communication should be done

[387] Smita Mahendra Halarnkar v. Mahendra Tukaram Halarnkar, CRIR 5 of 2021 in the High Court of Bombay at Goa

[388] The provisions pertaining to Executors were specified in Article 1523 to Article 1530 of the Civil Procedure Code of 1939

[389] Ravindra Parulekar v. Damodar Parulekar, Appeal from Order No. 52 of 2019 in the High Court of Bombay at Goa

[390] The law pertaining to Executors was earlier contained under Articles 1885 to 1909 of Codigo Civil 1867

without any delay and in any case within thirty days after learning of the appointment. The nominated Executor is accountable to pay the damages if he fails to alert the aforementioned authorities and parties. Executor mentioned in the Will can inform about his intention to discontinue his duties owing to inability due to medical conditions, or any other just cause. For this purpose, the Executor should make an application to the concerned Court which has the power to allow or disallow the discontinuance of the Executor. If the Testator abandons the office before obtaining Court order then he is responsible to compensate for the losses. The parties will be heard before such an order is given. If compensation is not specified at the time of executing of Will, the Executor is required to do his duties without any payment.

If the Executor appointed by the Testator of the Will is unable to function as such due to some disability then the onus of carrying out the functions of the Executor is on the head of the inheritance. The heir will be responsible to carry the Will even in situation where the Executor has been discharged from his duties. Firstly, the execution will be carried out by the heir who is having the largest interest in the inheritance. If the interest of all the heir is equal or in situations where there are minors or disabled persons in the line of Heirship and in cases of disagreement between the heirs, the court will appoint a suitable person to act as an Executor. The powers of the Executor is laid down by the Testator in his will itself. The Executor is required to function and carry out his duties till the time Inventory Proceedings is initiated and an head of the family is appointed. However he can keep an eye on the proceedings to ensure that the contents of the Will are being complied during inventory Proceeding. The Executor cannot delegate his work to others. Similarly if the Executor expires then his legal heirs do not have any role and function and Executorship lapses. The Executor can be removed from the post by the Court on the basis of evidence showing manipulation of accounts, mishandling of inheritance. The Executor is eligible to claim all the expenses that he has incurred during his functioning. In case of trivial expenses his declaration is sufficient to entitle him to reclaim the expenses made by him. In case of major expenses he has to produce documentary evidence to prove that he has actually incurred the said expenses. In case of multiple Executors, the fees that is fixed by the Testator will be paid equally to all. In case some of the Executors have not taken part in the carrying out their duties, then their share will be added to the payment made to other eligible Executors.

In Denis Mazarello v. Iriton Mazarello[391], it is held that once a property has been described in inventory proceedings along with the proof that same belongs to the deceased person, then the said property cannot be deleted from list of assets without valid reason thereof.

3.16.5.1 Functions of Executor

The Executor has to perform his functions as per the Will. When it is not specified in the Will, he will have the task of carrying out the arrangement of last rites of the Testator. All expenses that are required to be made for the last rites are to be undertaken by the Executor. He will be reimbursed the said expenses at further stages of Executorship. The last rites are to be carried out as per the final wishes of the Testator. However, in case of absence of any specific instruction from the Testator, the last rites will have to be performed as the religious tradition of the deceased person. If the Testator had authorized the Executor with custody of his Closed Will, then he will have to take the steps to effect its registration within a span of 30 days. The period will be counted from the date when the Executor knows that the Testator has expired. He has the general duty to protect the interest of the Will as regards the intention of the Testator. He have to take active steps to ensure that the Will is carried out in true letter and spirit. If the Closed Will is in the custody of the Executor, then the interested parties are authorized to inspect the same since it is after the death of the Testator. However, the opening of same by any of the parties is prohibited before carrying out the formalities by the Special Notary. It is the duty of the Executor to apply to Court by way of petition to initiate the Inventory Proceedings when there are minors or lunatic heirs. If the Testator had specified to use part of inheritance for charitable work, then the Executor has to apply to Court to initiate and sell portion of estate by auction. However, this is only applicable when the charitable entity is unregistered. If the same is registered organization, then the Executor is not required to file for Inventory Proceedings.

In Sunitabai Naique v. Shreepad Naique[392], *the Court has held* that the properties in inventory proceedings can be partitioned by metes and bounds only when all the parties are agreeing to it. Inventory proceedings conclusively determine the rights of the heirs

[391] 2008 (3) Mh. L.J. 319
[392] 2002 (2) ALL MR 73

to the inheritance but the court cannot force the parties to physically divide the properties by metes and bound.

When the testator has not specified any time limit for the execution of his Will then in such circumstances, the Executor will have a period of one year from the date of taking charge of his office to carry out his obligations. If the Will has been challenged then the period will start from the date of order received from the Court. In the meantime, the Executor is required to take all the necessary steps for protection of the estate of the Testator. Failure on the part of the Executor to carry out his duty will result in forfeiture of his right to claim remuneration for his appointment. In case of joint Executors appointed by the Testator, all are liable for the duty carried out by them. In case of disagreement between the joint Executors, all of them will be disallowed to continue as Executor. The Executors are required to submit to the heirs all the records pertaining to the accounting transactions as regards Executorship. Executors are civilly liable for any mischief played by them in the performance of their duties.

3.17 Usufruct

Usufruct is the legal term for the unrestricted use pertaining to property for predetermined amount of time without altering its nature or essence. A Will may create a usufruct to benefit multiple people concurrently or consecutively, provided they are still alive when the first usufructuary's right takes effect. Unless otherwise specified, the usufruct created through Will favouring multiple parties expires upon the passing of the final usufructuary.[393] Usufruct can be valid till the lifetime of the Usufructuary only and cannot go beyond. Incase of artificial entities the maximum period will be for 30 years only. Usufructuary is required to use the asset with due caution and diligence. The annual revenue must be multiplied by ten to estimate total worth of item of usufruct. This value depends on type of asset and period of usufruct and hence can decrease or escalate also. Emphyteusis is identical to a sale of right to enjoy the asset in consideration to periodic annual emphyteutic fee. Upon such a conveyance, the transferee will become the beneficial owner and the property's owner will only hold ownership of the direct domain. Emphyteusis is hereditary. The right to enjoy, gift, mortgage, transfer, and exchange the property belongs to the beneficial owner. The emphyteutic fee will be paid to the owner of the direct domain by the new beneficial

[393] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 391

owner. Emphyteusis property cannot be divided into plots without the owner's permission. In Inventory Proceedings, the Emphyteusis will be given to one of the heirs in accordance with their agreement after an evaluation of its value is made among the heirs. If no agreement is reached, the Emphyteusis will be subject to licitation.

The property must be sold and the revenues split among the heirs if none of the beneficiaries are ready to accept the distribution of the Emphyteusis. If the direct domain owner agrees to the division into plots, each plot shall be treated as a separate emphyteusis, and the direct domain owner may demand the appropriate emphyteutic charge from each of the beneficial owners in accordance with the allotment completed. The direct domain owner must consent in a registered document to consider the division and allocation as lawful. Given the difficulty in collecting the divided emphyteutic fee on behalf of the owner of the direct domain, each heir can be made liable to pay a higher emphyteutic fee in this scenario. Each plot is liable for the complete emphyteutic fee if the emphyteusis is divided without express agreement with the owner of the direct domain. Every action that violates legal provision is void. However, if the law that was violated does not pertain to public order or public policy, such nullity can be resolved with the express consent of all interested parties.

3.17.1 Safeguards for Moiety Holder

The surviving spouse of an estate leaver is entitled to exclusive occupancy of the family residence and the use of all furnishings and other items or utensils meant for the comfort, use, and enjoyment of the residence. When the claim is made by moiety holder, the value of the right to habitation and use is assessed. If the value of the right to habitation and use is greater than the value of the surviving spouse's moiety share, the surviving spouse has to pay owelty money to the heirs. The moiety holder has the right to occupancy and but he/she has to use the property with the same care and caution as a prudent man. The right expires if the surviving spouse does not live in the home for a period of one year.[394] The possession that is pertaining to moiety holder should be lawful possession.[395]

The owner of the house can petition the court to obtain security deposit from the moiety holder. However, the court has to decide about the application as regards whether it is required or not in the circumstances of each case.

[394] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 334
[395] Khairunissa Bi v. Sayad Mohammed, 1989 (1) Goa LT 203

As per Alvaro Noronha Ferreira, a senior lawyer and expert on the Portuguese Civil Code, there were signs of trouble fomenting some years ago when there was a call for the Shariat law to be made applicable to Muslims in Goa, but that attempt fizzled out as local Muslims expressed their satisfaction with the Portuguese civil code which protected their daughters, wife from injustice as regards succession rights .[396] As Goa permits only monogamy, problems such as triple talaq and polygamy which is a major problem of other personal laws are solved automatically.[397]

During the erstwhile Civil Code, On 7th May, 1940, Concordat (Treaty) was entered into by the Portuguese Republic and the Holy See Vatican City introducing changes in relation to Catholics in Portugal and its territories. In pursuance of the new Decree No. 35461 passed on 22nd January, 1946, the Christian marriages could be performed before the Church authorities upon the production of a no objection certificate from the Registration Officer, appointed under the Code of Civil Registration and such a marriage would have civil effects after transcription by competent Civil Registrar. After coming into force of the said Decree No. 35461, the spouses had no right to seek divorce from civil courts in relation to such marriage. Only the Patriarchal Tribunal of the Archdiocese of Goa and Daman had the jurisdiction to grant the divorce. The High Court of Bombay at Goa in *Elmas Fernandes v. State of Goa*[398], declared Article 19 of Decree No. 35461 as unconstitutional, illegal, null and void and ultra vires Articles 14 and 21 of the Constitution of India.

In Palmira Cota e Dias v. Odette Rodrigues[399], the Court has held that even when there is pre-nuptial agreement between the parties still the moiety holder enjoys the right of usufructuary to the inheritance left by her deceased spouse. This is a protective provision and cannot be overruled even by way of pre-nuptial agreement to the marriage.

In Ranjit Satardekar v. Clotildes Fernandes[400], it is held that the Chart of Partition drawn by the Court is a Order passed by the Court and hence its registration is optional under the Registration Act. The party may register the Order. However stamp duty is

[396] https://www.telegraphindia.com/opinion/the-goa-way/cid/1436605#.V4KEprh97IU - visited on 29.02.2020 at 21.04

[397] https://blog.ipleaders.in/goa-civil-code/ - visited on 29.02.2020 at 20.58

[398] Writ Petition No. 351 of 2017

[399] 2011 (1) Mh. LJ 592

[400] 2006 (4) All MR 223

applicable in case of registration. Even when the chart is not registered before Sub Registrar, still the same is valid and executable.

3.18 Comparative study of Goan Succession law compared to Succession law followed in Rest of India

The below table shows a comparative analysis of key features of succession law in Goa and succession laws followed in Rest of India:

Table 3: Showing a comparative analysis of succession under Goan Succession Law as compared to Succession law followed in Rest of India

Goan Succession Law	Succession Laws followed in Rest of India
1) All the relevant matters relating to succession are governed by one uniform law.	1) The rules applicable to determine the line of succession changes as per the personal law applicable to the deceased person since there is no one uniform set of rules to determine the heirs.
2) The Will becomes a public document after Testator/Testatrix dies and after his/her death certificate is placed on record of the Special Notary Office. Will becomes effective on death and no separate Probate is required for executing it.	2) The Will is a private document and its registration not being compulsory, it depends upon the Testator to get it registered or keep it unregistered.
3) Will requires compulsory registration in Goa to be done before the Special Notary. A private unregistered Will is not legally valid in Goa.	3) Probate is required to be obtained for executing the Will. Unless the Will is held valid by competent Court by granting the Probate, the Will is inoperative.
4) There is Special Government Officer appointed for drawing, recording and doing all the formalities pertaining to the Will of the Testator.	4) There is no specialized Officer appointed by law to do the formalities pertaining to the Wills of the Testator. Competent Court grants the Probate.

5) The Will is executed before the Special Notary and recorded in blank ink in his Special book kept for the purpose. Even in the case of closed Will intervention of the Special Notary is required to authenticate the instrument.	5) Will is not compulsorily registered. However, if the Testator desires to get the Will registered, then he has the option to approach Sub Registrar under Registration Act, 1908. However, Sub Registrar will be only a registering authority and will not certify the validity of the Will.
6) The main purpose of Will by the Testator is appointment of an heir or legatee.	6) The principal object of executing a Will is to dispose and distribute the properties of the Testator.
7) Where undivided share is bequeathed by the Will without specifying the property allotted, the transferee will be termed as a Testamentary Heir. So besides legal heirs in case of intestate succession there is possibility of Testamentary Heirs, in case of Testamentary succession.	7) If some share or properties of inheritance is bequeathed by way of Will, the Transferee will still be a legatee.
8) If specific property is bequeathed by Will, the transferee will be termed as a legatee.	8) If specific property is bequeathed by executing a Will, it will be a case of specific legacy.
9) Incase where the Testator has ascendants or descendants, he cannot dispose his entire estate by Will. He is entitled to dispose in favour of stranger only half of the estate, called the disposable share. The remaining half share is called the indisposable portion or Legitime, reserved to the legal heirs as a matter of right. The restriction	9) The Testator can dispose whole of the estate even when he has ascendants/descendants. Only Muslim personal law debars disposal of more than one third of property by Will not by gift intervivos.

applies also to intervivos dispositions by way of gifts also. The heirs to whom the indisposable share passes are called Forced Heirs.	
10) The spouse has an independent right to property, before the death of other spouse, whenever the marriage is not celebrated under regime of communion of property.	10) The spouse does not get any independent right as a result of marriage prior to the death of other spouse. The right of succession devolves on the other spouse as per the respective personal laws depending on religion which differs.
11) The Legitime/Reserved share and the disposable quota are calculated as on the date of estate leavers death. In calculating the same, all dispositions made intervivos by way of gift are added to the dispositions made by Will.	11) There is no concept of Legitime. Hence addition/deletion of property given by Gifts does not arise.
12) Upon the death of estate leaver, Inventory through Court can be instituted to have legal partition. A person is appointed as Cabeca de Casal who is appointed based on qualifications prescribed by law.	12) In case of testamentary succession, Executor appointed by Testator can do dispositions of assets. otherwise Letter of Administration is required to be obtained.
13) If any of the heirs are under disability, the Inventory is under orphan's jurisdiction.	13) There is no specific provision as regards heirs under disability.
14) There is specific provision for constitution of Family Council and convening of its meeting.	14) There is no specific provision as regards constitution of Family Council. However, Guardians can be appointed by Court.
15) Inventory Proceedings are required to be compulsorily filed in case of	15) There is no bifurcation of procedures incase of regular succession and pertaining

Orphans Jurisdiction. Special Notary has no powers when there are Heirs under disability.	to succession incase of persons under disability.
16) Where the heirs are unknown or under disability, Curator can be appointed by Court.	16) No special provision is present for appointment of Curator.
17) There is specific provision to accept or renounce the inheritance before the Court or before Special Notary.	17) There is no provision to approach quasi judicial authority for renunciation of inheritance.
18) Incase any party is not under disability, the parties can opt for drawing Deed of Declaration of Heirship before the Special Notary.	18) The Succession certificate can be obtained from Judicial authority only.
19) In Inventory Proceedings, there is option for Licitation in addition to partition or distribution of assets. In Licitation, the other co heirs can be paid owelty money by the highest bidder.	19) In case of distribution of assets, there is no concept of Licitation/Bidding. The distribution is done by the Executor or Administrator and will be binding.
20) The right of the heir is tentative and requires acceptance either express or implied, as a formality for coming into full effect. Once accepted, the person is deemed as an heir from inception.	20) There is no concept of acceptance or renunciation. The Heir gets a right in inheritance upon the death of Estate Leaver.
21) The heir cannot renounce the inheritance during the life time of the Estate Leaver.	21) There is no such restriction in rest of the Country.
22) In Goa, there is no concept of executing Codicils. The Testator can make new Will to cancel previous Will	22) The Testator can make modifications to earlier Will by way of Codicil. He need not revoke it completely.

or can simply draw Deed of cancellation of Will.	
23) Under Goan Family Law, co-heirs have right of pre-emption. The Co-heirs cannot dispose the specific assets of inheritance to third parties autonomously before partition.	23) The remedy is to approach Civil Court within limitation period in case of sale without consent of co-heirs.
24) In the Inventory Proceedings, appointment of Cabeca de Casal is compulsory, incase of testamentary succession as well as intestate succession.	24) In case of Intestate Succession, an Administrator is appointed whereas Executor performs the functions incase of Testamentary Succession..
25) The law prescribes qualifications for appointment of Cabeca de Casal.	25) No special qualifications are prescribed for the appointment of Administrator.
26) In case of Testamentary Succession, Donees of specific properties may be appointed as Administrator pertaining to properties allotted to them.	26) There is no specific provision for appointment of Donees as Special Administrators.
27) The co-heirs being possession of the specific estate at the time of the death of the estate-leaver can be deemed Administrators during the subsistence of Inventory Proceedings.	27) There is no specific provision for appointment of Deemed Administrators.

Chapter - IV

Role, Functions and Procedure before Judicial & Quasi Judicial Authorities

4.1 Introduction

In the present Chapter, we will look at the procedural and substantial law pertaining to drawing of Deeds of Qualification of Heirs in Goa and also relating to the process of conducting Inventory Proceedings in Goa. The present law has its basis in the erstwhile Portuguese Civil Code which relies on the principle of Uniform Civil Code which finds a place under Article 44 of the Constitution of India. We look at the legal provision contained in the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 which has considerably replaced the Portuguese Civil code of 1867. Portuguese law which may have had foreign origin has become part of the Indian laws on account of the Goa, Daman and Diu (Administration) Ordinance, 1962 and the Goa, Daman and Diu (Administration) Act, 1962.[401] It is an Indian law and no longer a foreign law. After liberation, Goa became a territory of India and all domiciles of Goa are citizens of India.[402] In an important decision passed by the Bombay High Court, it was held that though the Civil Procedure Code was not applicable to Goa prior to 1961, still a decree passed by High Court outside Goa is clearly executable in Goa and cannot be called a foreign judgment.[403]

It is important to study the procedure followed by Sub Registrars in Goa for drawing Deed of Qualification of Heirs. The Sub Registrars in Goa have been conferred with Ex-officio powers to function as Special Notaries in Goa under the prevailing law. The Deed of Qualification of Heirs is an alternative to Court cases filed for determination of Heirship in Goa. The only difference being that there cannot be partition of estate in Deed of Declaration of Heirship but the Heirs are determined conclusively. There are certain situations in which Deed of Qualification of Heirs cannot be drawn and for which only judicial process by filing Inventory Proceedings must be compulsorily followed. The law prescribes mandatory documents for the purpose of carrying out the procedures before the Special Notaries. It is also important to understand the documents required, the steps involved in the determination of Heirship without going through the judicial process of filing Inventory cases.

The Special Notaries function as Quasi judicial authority in Goa. The Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 empowers State Government for appointment of Special Notaries, District Special Notaries and also Joint Special

[401] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 143
[402] Jose Paulo Coutinho v. Maria Luiza Valentina Pereira [2019] 12 S.C.R. 390
[403] Narhari Shivram Shet Narvekar v. Pannalal Umediram [1976) 3 S.C.R.

Notaries. The State Government is also empowered to form Districts, Sub Districts for the purpose of the aforesaid Act. The jurisdictional limits can also be altered by the State Government.

4.2 Functionaries under the Act

The Goa Government is empowered under the Act to appoint a State Special Notary, a District Special Notary for each District and one or more Special Notaries or Joint Special Notaries for each sub district. There is a definite hierarchy that has been established under the Act. The three functionaries established by the Act have to work for the betterment of the people at large. Accordingly, the Special Notaries and Joint Special Notaries are subordinate to the District Special Notaries. The two District Special Notaries are subordinate to the State Special Notary. The State Special Notary, the District Special Notaries and all the Special Notaries are required to be graduates in the field of law. All these functionaries are considered as having the knowledge of law. However, presently the functions of Special Notary are performed by the Sub Registrars' in Goa. The functions of the State Special Notaries are performed by the State Registrar in the Registration Department. The functions of the District Special Notaries are performed by the District Registrar or in other words the Inspector general of Societies. Even though the powers of the State Special Notary is exercised in a Ex-officio capacity by the State Registrar at present, the Goa Government has the power to appoint a person for exclusively exercising the powers of State Special Notary.[404]

All the instruments drawn by the Special Notary has to be during usual normal working hours. The instruments like Will can be drawn beyond working hours only when there is a case of emergency. The notified overtime fees has to be paid by the party who requires services beyond working hours from the Special Notary. So also Government has to provide security for the Special Notary when such overtime facilities are required by the public. All the functionaries under the Act are having protection against action as regards the functions performed or refused by them under the Act provided the performance refusal was done by them in a bonafide manner in good faith. In other words, the act of performance or refusal by the Special Notary should not contain any malafide intention. So also the acts performed by the Special Notaries, District Special Notaries, State Special Notary cannot be termed as void on the sole ground that their

[404] The provisions relating to Establishments of Notary Ex-officio were earlier governed by Articles 1 to 7 of erstwhile Notarial Decree No. 8373.

appointments was not proper. In certain situations there might be cases where the stamp duty paid on the deed executed before the Special Notary is not proper. In such cases also, the instrument drawn by the Special Notary cannot be termed as void merely because of deficiency of stamp duty.

4.2.1 Jurisdictional limits

The Goa Government is vested with the power to form districts as well as sub districts for the purpose of territorial jurisdiction. The Special Notaries are required to intervene in instruments pertaining to his jurisdiction only. It is very important to know the jurisdiction since there should not be two Special Notaries exercising powers on one particular area. Similarly, there should be certainty as regards record keeping. The copies of documents should be available to the public at a unified place. There should not be duplication of records at several places. The State Government has formed the following Districts and Sub Districts under Section 296 of the Act[405]:

Table 4: Depicting the jurisdictional limits of Special Notaries and District Special Notaries in Goa

Districts	**Limits of the districts**	**Sub-districts**	**Limits of sub-districts**
North Goa	Whole area of District of North Goa	Tiswadi Taluka	Whole area of Tiswadi Taluka
		Bicholim Taluka	Whole area of Bicholim Taluka
		Satari Taluka	Whole area of Satari Taluka
		Bardez Taluka	Whole area of Bardez Taluka.
		Pernem Taluka	Whole area of Pernem Taluka.
South Goa	Whole area of District of South Goa	Salcete Taluka	Whole area of Salcete Taluka
		Canacona Taluka	Whole area of Canacona Taluka

[405] Notification No. 8/37/2016-LD (Estt)/879 dated 05th July, 2017 issued by the Law Department

		Sanguem Taluka	Whole area of Sanguem Taluka.
		Dharbandora Taluka	Whole area of Dharbandora Taluka
		Mormugao Taluka	Whole area of Mormugao Taluka.
		Ponda Taluka	Whole area of Ponda Taluka.
		Quepem Taluka	Whole area of Quepem Taluka.

Notarial decree no. 8373 regulated Notarial law in Goa before the enactment of the Goa Succession, Special Notaries and Inventory Proceedings Act 2012.[406] Perhaps the most valuable living legacy left in Goa by the Portuguese is a codified system of Law which primarily includes the Portuguese Civil Code of 1867 and the Code of Civil Procedure of 1939, which encompass the majority spectrum of Civil Law of Goa, even making registration of births and deaths as mandatory.[407] The grievance of the petitioners in *Rajendra Purushottam Halarnkar v. State of Goa*[408] was that the Sub Registrars in the State of Goa were not exercising powers as Special Notaries as there was no specific Notification to that effect in terms of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012. Advocate General placed on record an Office Memorandum issued by the State Government dated 14.03.2017. The Bombay High Court held that sub section (1) of Section 365, clearly provides that all Sub-Registrars of the State under the Registration Act, 1908 are appointed as Special Notaries to perform the functions and hence the jurisdiction of the Sub Registrar rest on the statute itself and based on which an Office Memorandum was issued by the Government.

There can be one State Special Notary who can control the District Special Notaries and the Special Notaries in Goa. It is noteworthy to mention that the Special Notaries are independent authorities performing statutory functions under the Act. The power of superintendence vested in the State Special Notary includes giving general directions

[406] The earlier Notarial decree No. 8373 did not contain any specific notification determining taluka-wise jurisdiction. However, the present Act has specified the limits under which the Special Notary will have powers to act.

[407] http://mmascGoa.tripod.com/id12.html - visited on 29.02.2020 at 21.09

[408] W.P. No. 303 of 2017 in the High Court of Bombay at Goa

for smooth implementation of the Act. However, even the State Special Notary cannot direct the Special Notaries to perform an act in particular manner. The Special Notaries being Quasi judicial authorities have to function independently as per law. The primary qualification for the post of State Special Notary, District Special Notary and Special Notaries is having law degree. Similarly Government has the power to prescribe the minimum experience for becoming Special Notary.[409]

Further, the Goa Government is also empowered to appoint one District Special Notary for each district and further it is also empowered to appoint one or more Special Notaries for such Sub-Districts and as per the requirements of public interest in large. The law also provides the option of appointing Joint Special Notaries by the State Government.[410] In case of absence of any District Special Notary or Special Notary, the State Special Notary is empowered to make alternate arrangements in their respective places whereby he can direct any other District Special Notary to act in place of the absentee or may direct any other Special Notary to act in place of the absentee District Notary. Such a provision is also provided when a Special Notary is absent whereby the State Special Notary can make arrangement in his place by directing any other Special Notary to act in his place. However, the substitute District Notary is barred from hearing appeals from his own Orders which he may have passed when exercising functions as a Special Notary.

The Special Notaries in the State of Goa functions under the overall supervision of the District Special Notary who is responsible to ensure the compliance of the applicable laws in force. Each of the districts in Goa has a District Special Notary. All the Special Notaries in that particular district are subordinate to the said District Special Notary. The District Special Notary can issue directions to the Special Notaries that are subordinate to him in case where there is any act of commission or omission on the part of the Special Notary. There is no requirement that Orders needs to be given only when there is any receipt of grievance from the public. The District Special Notary can take suo-moto cognizance of any act done or omitted by any of his subordinate Special Notaries. Similarly the State Special Notary also has powers on the lines of the District Special Notary to issue any direction under the Act to any of the District Special Notaries and the Special Notaries in Goa. Hence the hierarchy followed in Goa is

[409] The present Special Notaries were called as Notary Ex-Officio under the erstwhile Decree No. 8373

[410] Under the erstwhile Decree No. 8373, there was no statutory authority as District Special Notary nor State Special Notary

definite with respect to the functioning of the authorities under the Goa Succession Law.[411]

In *Smt. Seema v. Ashwani Kumar*[412], the Apex Court has pointed at the importance of registration and record keeping. It has held that due to non existence of law relating to compulsory registration of marriages across the nation, there happens to be dispute and delays while deciding questions as regards existence of marriage. Such ambiguity can be avoided if the records are kept properly. The proper record keeping of marriages will help in matters of Heirship and rights of children of the couple.

Similarly in *Conceicao Fernandes v. Milagres Fernandes* [413] , the Court has differentiated the terms domicile and Temporary residence. The Court has held that a place of temporary residence at the place of the wife cannot be termed as the domicile of the husband.

4.2.2 Functions of the Special Notary and the Evidentiary value of Instruments drawn by him:

The Special Notaries are appointed for the primary purpose of having certified reliability pertaining to the instruments relating to the law of succession in Goa. In other words, the Special Notaries in Goa intervene in the instruments drawn under the Act so that the genuineness cannot be doubted in future. The Special Notaries are appointed by the State and he is a public servant. He is duty bound to record the deeds presented to him by the public if the same comply with all the legal requirements. Once the documents are recorded in the books of the Special Notary and certified by the said Special Notary, the genuineness of the said document cannot be doubted by legal Heirs of the party. The only exception is that when it is found that the document is not genuine. In Goa, in order to prove Heirship, a person needs to provide documentary evidence of deed recorded before the Special Notary only. Private written notes, scribes are not allowed as testamentary documents and are not admissible as evidence in Goa. Similarly, there is no distinction between son and daughter as regards their qualifications to execute any documents before the Special Notaries.[414] In Goa only

[411] Under the erstwhile Decree No. 8373 the Appeal from Order of Notary Ex-Officio would lie directly to the Civil Court and there were no Quasi Judicial functionary to exercise the powers of Appellate authority

[412] [2006] 2 S.C.R.

[413] 26 (1) ALL MR 598

[414] Uma Mahesh Bandekar v. Vivek Sadanand Marathe [2019] 5 S.C.R. 357

Special Notaries are empowered to draw and record certain instruments and no other type of proof is taken as valid for certifying the concerned acts of the parties. The documents drawn by the Special Notaries include Wills, Deed of Consent, Deed of Declaration of Heirship, Deed of Adoption, Deed of Pre-Nuptial Agreement, Deed of Relinquishment as well as Rehabilitation of unqualified heirs. The Special Notaries are also empowered to draw the Deed pertaining to exercising option by any of its citizens relating to choosing applicability of Goan Civil Law or Personal law followed in Rest of India on attaining majority. The Power of Attorneys that are required for the purpose of carrying out various acts is also required to be drawn by the Special Notary. The Special Notary has to ensure that the documents drawn by him are having the required consent from the spouses since in Goa, in case of any pre nuptial agreement, the marriages are governed by the system 'Communiao Dos Bens' i.e. community of property under which, each spouse is entitled to one-half income of the other spouse.[415]

4.3 Maintenance of Records:

The Act puts a duty on the Government of Goa to provide all the required Books to the functionaries under the Act. The Books provided by the State Government are required to be in the Prescribed Forms that are specified in the Rules framed under the Act.[416] All the pages need to be numbered one after another in print. The District Special Notary of the concerned district is duty bound to certify on the title page, the total number of pages that each book contains. The State Government is also required to provide the fire proof boxes to each and every Special Notary office. The Special Stamps and Seals that are mandated in the Act are required to be provided by the State Government to the Special Notaries and also the District Special Notaries and State Special Notary.

In case of *Madhavi Dattatrai Thaly v. The Secretary (Law), Govt. of Goa*[417], the Petitioner sought a writ of mandamus to the State Government to provide State Special Notary as well as the Office of Special Notary (Ex-Officio), Tiswadi the requisite books for recording of the opening of the Closed Wills, as mandated by Goa Succession law. The fact of the case are that the closed relatives of petitioner namely Shrihari Janardhan Thaly and Smt. Madhuri S. Thaly had executed two Closed Wills, along with a Deed of

[415] Zelia M. Xavier Fernandes e. Gonsalves v. Joana Rodrigues [2012] 2 S.C.R. 258

[416] The various Books that were required to be maintained by the Notary Ex-officio were specified in Article 38 of Notarial Decree No. 8373

[417] W.P. No. 597 of 2019 in the High Court of Bombay at Goa

Consent, all dated 17th April, 2006 before the Notario Ex-Officio of Tiswadi, Panaji, who, in terms of the law as then applicable, had placed the same into two sealed envelopes. The said Notary Ex-officio, after recording the act of approval in his book, as contemplated by Article 1922 of the erstwhile Codigo Civil, had handed over the two sealed envelopes to the said parties. The Petitioner, thereafter, vide application dated 28/03/2019, presented the Closed Wills to the Special Notary (Ex-Officio), Tiswadi to commence the process of opening of the Closed Wills. However, the Special Notary (Ex-Officio), Tiswadi informed the Petitioner that the process of opening of the Closed Wills cannot be carried out, since the Special Notary (Ex-Officio), has not yet been provided the requisite books by the State Government for recording opening of Closed Wills. Therefore, the Petitioner sought a Writ of mandamus to the State Government to provide the Special Notary (Ex-Officio) with the requisite books as contemplated under the said Act, so that the Special Notary is in a position to record the opening of the Closed Wills. The Court held that the case made out by the Petitioner is well founded and the relief applied for by the Petitioner deserves to be granted. Such a relief, will facilitate not only opening of the Closed Wills in which the Petitioner is personally interested, but will also facilitate the opening of Closed Wills in several similar cases which are simply pending for want of requite books to record opening of the Closed Wills. Hence the Court directed the Government to provide the Special Notary (Ex-Officio), the register for opening of Closed Wills, within a period of two months.

4.3.1 A look at the various Book/Registers at the office of the Functionaries

It is the responsibility of the Government to provide Books to the Special Notary as may be necessary for the purposes of the said Act. The law prescribes a list of compulsory Registers/Books/Indexes that should be maintained by the Special Notary and District Special Notary.[418] The Notarial Books maintained under the Act are required to be opened and closed with the signature of the District Special Notary of the concerned District. The Notarial books that are used by the Special Notaries should bear an opening certificate and closing certificate. The District Special Notary needs to sign on the said opening and closing certificate. Further the District Special Notary is also bound to keep record of all the Orders that he has passed in appeals before him.

The Special Notaries have to maintain the following books/registers:

[418] Madhavi Dattatrai Thaly v. The Secretary (Law), Writ Petition No.597 of 2019 in the High Court of Bombay at Goa

1) Daily Instruments: This Register is used for the purpose of recording the daily deeds that are recorded by the Special Notary.[419] It is like a consolidated index of all type of daily documents that are drawn by the Special Notary.
2) Wills Index: This Register pertains to the index pertaining to Wills that are recorded by the office of the Special Notary. This Index is pertaining to all type of Wills only. It mentions the name of Testator, date of recording of Will, etc.
3) Public Wills: This Book pertains to the Public Open Wills that are required to be drawn by the Special Notary. All the Public Open Wills are manually written by the Special Notary in this Book.
4) Printed Open Will: This Register pertains to the Printed Open Wills are accepted by the Special Notaries. All the Printed Open Wills that are submitted by the parties are filed in this Book after they attain 200 folios.
5) Closed Will approval: This register pertains to the approval of Closed Wills done by the Special Notaries. When a party submits his Closed Will, the Special Notary is required to manually record its approval in this Book.
6) Closed Will Deposit: This Register pertains to the list of Deposits of Closed Wills made by the concerned Special Notaries. It is like a special Index pertaining to list of Closed Wills that are submitted by the parties for deposit with the Special Notary Office.
7) Closed Will Return Register: This Register is used for the purpose of recording the Returns of Closed Wills that have been deposited with the Special Notaries. When any party wish to revoke his Closed Will, he has to make an application for getting back his Closed Will deposited with the Special Notary.
8) Rehabilitation Register: This Register pertains to the Acts of Rehabilitations recorded pertaining to persons who were unworthy to succeed. The Testator can reinstate his disinherited heir by executing specific deed recorded by Special Notary in this Register.
9) Refusal Orders: The Special Notaries are also required to maintain a Register for recording Refusals made by him relating to instruments that have been presented to him. The same is maintained with yearwise Serial Numbers of Orders.

[419] In the erstwhile Decree No. 8373, specific provision was made for maintaining of Record of Signatures as well as List of Inventory of Notarial office. However, under the present Act there is no provision made to maintain such records.

10) Acquiescence: This Register pertains to the Deeds of Consents given by spouses for executing Wills of specific properties that are held by them in communion of assets. This is hand written Register whereby all the parties including Witnesses are required to sign alongwith the Special Notary.
11) Relinquishment, Adoption, Ante-Nuptial Contract, Will Revocation, Declaration of Heirship, Order for Refusal Registers: A separate Deed Book is maintained for drawing of all Declaration of Heirship, Relinquishment Deeds, Adoption Deeds etc. It is also a hand written Book in the prescribed format duly paginated.
12) Special Power of Attorney: There must also be a Register pertaining to Special Power of Attorneys that are drawn by the Special Notaries. The Special Notary is empowered to draw Power of Attorneys solely for the purpose of carrying out acts under the Goan Succession law.
13) Option Declaration: The Special Notary also needs to maintain a Register pertaining to Instruments by which a person has declared his option in terms with Section 1 of the Act. This is applicable to those persons who have the option to choose either the Goan Succession law or the Personal law in Rest of India. This option is exercised on attaining majority.
14) Plans: A Specific Register also need to be maintained pertaining to the Plans annexed to the Instruments drawn by the Special Notaries. All the Plans that are submitted by the parties at the time of execution of Wills are required to be filed in this Register.
15) Miscellaneous: The Special Notaries also need to maintain a Miscellaneous Register in which he has to file all the documents for which no specific register is prescribed.
16) Index: The Special Notary is also required to maintain an Index pertaining to the Instruments recorded by him. This is a consolidated index pertaining to all the instruments recorded by the Special Notary. This is a continuous yearly Register that is maintained by the Special Notary.
17) Accounts: The Special Notary also needs to maintain the Books of Accounts for recording all the fees collected by him pertaining to the Instruments drawn by him for the purpose of depositing the same in the Government Treasury at the earliest.

All such books that are required to be maintained are preserved and available in the offices of the respective taluka Sub Registrar since they are appointed in Ex-officio capacity to act as Special Notaries.[420]

4.3.2 Indexes maintained by the Special Notaries

The Special Notary preserves the books, registers, documents including the indexes in his office. Incase of bonafide/genuine needs to draw a deed outside his office on special grounds, these books are taken outside the office of the Special Notary. All the premises and storage requirements are to be ensured by the Government so that the records are maintained by the Special Notaries in a proper manner. After a span of 30 years, the records maintained by the Special Notary should to be handed over to the Directorate of Archives for preserving the same based on up-to-date scientifically viable methods. There might be situations where the books maintained by the Special Notary are required in criminal investigation. Even in these cases the books maintained by the Special Notary cannot be taken out of the office of the Special Notary and the police have to visit the office of the Special Notary and can click photographs of the records maintained by the Special Notary. There might be situations where the records maintained by the Special Notary are required in Court proceedings. In such situations the registers, books, records of the Special Notaries is to be immediately returned to the Special Notary office after their examination. The Court cannot keep the books of the Special Notary with it.[421] The Special Notaries are required to maintain an Index of all Wills and other documents drawn by him. The copy of the aforesaid indexes are also required to be forwarded to the State Special Notary who is duty bound to maintain a consolidated index of all offices.

4.3.3 Right to Inspection and Certified Copies

The Special Notary is required to keep a list of instruments drawn by him. This list is called index which is maintained in the prescribed form. This list of index is open for inspection to any member of the public after paying the inspection fees. Further any member of the public can apply for certified copy of the instruments drawn by the

[420] Rajendra Purushottam Halarnkar v. State of Goa, Writ Petition No. 303 of 2017 in the High Court of Bombay at Goa

[421] Article 38 of erstwhile Notarial Decree No. 8373 contained provisions pertaining to record keeping by Notary Ex-Officio

Special Notary. However there is a rider to this rule. There are certain instruments which are considered as private such as Will, revocation of Will which can be given to the concerned party only and not to any member of the public. Except in such cases of Will, all other documents drawn by the Special Notary are open documents of which certified copy are available to the public. The certified copy issued by the Special Notary under his signature and seal and with the registration number and date of the instrument are considered as full proof of the contents mentioned therein and can be admitted before any Court or authority and has evidentiary value.

The documents drawn by the Special Notary are public documents and are open to public in the form of certified copies thereof. All the Wills are considered as private documents of the Testator during his lifetime and it is only after his death that the certified copies can be issued to any third party. Before issuing the certified copy of Will to any third party, the death certificate of the testator has to be filed in office record and a marginal endorsement needs to be put on the office records pertaining to the Will. It is pertinent to note that this rule pertaining to Wills also applies to instruments pertaining to Revocation of Wills, and similarly to Records pertaining to Deposit of Closed Wills and also the approvals pertaining to Closed Wills. During the lifetime of the Testator such certified copies can be issued to the Testator himself or he can constitute an attorney to receive the copy on his behalf. After the death of the Testator and when the death certificate is produced for the first time, the endorsement is done on the office records pertaining to the Will and subsequently the certified copies can be issued directly. There is prescribed time limit for issuing certified copies to the applicants. There is also provision for urgent certified copies. In case of general certified copies, the same has to be issued within a period of ten days and incase of urgent certified copies, it needs to be issued within a span of two days. [422] However, for urgent certified copies additional fees have been prescribed which is discussed further in this Chapter. The certified copies issued to the public also includes the documents such as maps, plans provided such documents are on record to form part of the said instrument. The certified copies are issued after comparing the same with the original. There is provision for appointment of expert when the certified copies include certified copy of any plan or sketch which forms part of the instrument. Certified copies are very

[422] In the erstwhile Decree No. 8373, there was provision for issue of urgent certified copies but the applicant was required to prove the urgency. In the present Act, the applicant has statutory right to apply for urgent certified copy on payment of higher fees.

important aspect of record keeping since Inventory Proceedings can be filed even after period of thirty years.[423] The fees of expert should be paid by the applicant. The Certified copies should not contain any blanks and all pages must be paginated in a serial order. The date of issue and place of issue of the certified copy should be clearly mentioned. In case there are any corrections present on the certified copy then an appropriate footnote should be mentioned on the certified copy to that effect**.**

4.4 Role of Special Notaries in drawing of Notarial Instruments

Special Notaries plays crucial role in execution of Notarial documents. The Testamentary instruments and also other documents under the Goan Succession law are valid only after the intervention and certification of the Special Notary. The role and functions of the Special Notary has been specifically outlined under the Act. The Special Notaries are empowered to draw all the instruments under the Succession law including Public, Printed and Closed Wills, Declaration of Heirship, Relinquishment Deeds, Deed of Adoptions, Deed of Consent from spouses, Pre-nuptial Agreements etc. Further, the Special Notary plays pivotal role in the Approval, Opening and Registration of Closed Wills in Goa. The role played by Special Notary in drawing of Notarial instruments becomes more important due to the fact that in Goa, Probate is not obtained and the certified copy issued by the Special Notary is full proof of the veracity of the acts performed by him.

In *Victorino Gomes v. Francisco Gomes*[424], it is held that when all parties are not under incapcity or minors or unknown then they entitled to determine between themselves as regards how to distribute the property between themselves and Court intervention is not necessary. For this purpose parties are free to opt for Deed of Qualification of Heirs drawn by Special Notary for the purpose of succession.

4.4.1 Powers and Functions of the Special Notaries

The Special Notary is empowered to administer oath to a person connected with the act performed by him. Hence, if any person makes an incorrect declaration before the Special Notary then the person is criminally liable for the same. Special Notary should refrain from acting in instruments where his spouse is involved. Similarly, he should not

[423] Maxmillian Victor Alvaro Rodrigues v. Byron Charles Kevin Rodrigues, Writ Petition No. 590 of 2018 in the High Court of Bombay at Goa

[424] 2002 (2) All MR 472

draw documents in which he has any personal interest or even when his relatives are involved in the Deed drawn by him.[425] Every application for determination of Heirship should disclose the probable value of inheritance.[426]

It is the duty of the Special Notaries to preserve the office records. The books cannot be taken out of office except during private attendance. The Government provides all the facilities for storage of the records. All the records at the offices of the Special Notaries is required to be handed over to the Archives Department after thirty years for preservation. The Archives Department uses latest scientific techniques to preserve the records for eternity. In matters of investigation by police, the records cannot be taken out of office. The police or the Expert has to take photograph of the record. When the record is required for Court proceedings, the same has to be immediately returned after examination and cannot be kept in Court records.[427]

In *Ghanshyam vs Yogendra Rathi*[428] it has been held that General Power of Attorney and the Will executed by parties cannot be recognized as documents of title or documents conferring right in any immovable property. Will is executable only after the death of the Testator and hence is not an inter-vivos transfer. Any such practice or tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and its registration so as to confer right and title in an immovable property worth above Rupees One Hundred in value.

The Officer drawing any Notarial instrument can quote the exact section of the Act on the request of the parties. The parties can also submit a written draft of the proposed instrument to the Officer and if the same is in compliance with mandatory requirements then the Officer will have to record the instrument as per the said draft. After the instrument is duly executed there are two options to the interested parties. They can either receive back the draft or can ask the Officer to take it on record. In the former case, the Officer is required to attest the said draft while in the latter case all the interested parties should attest the draft for filing the same in office record.[429]

---

[425] The powers of Notary Ex-Officio were specified under Articles 27 to 29 of erstwhile Notarial Decree No. 8373

[426] Sheela Rodrigues v. Lourencinha Ana D'Cruz Rodrigues AIR 2000 Bombay 97

[427] There was no such provision under the erstwhile Notarial Decree No. 8373 which was hampering the functioning of the Notary Ex-Officios.

[428] Civil Appeal Nos.7527-7528 of 2012 in the Supreme Court of India

[429] The erstwhile Notarial Decree No. 8373 did not contain provision for submission of draft. This provision is incorporated to facilitate the computerization of Special Notary Offices since parties can submit online drafts for approval and observation under this provision.

Any of the Heirs apparent can apply for drawing instruments under the Goan Succession law, since all are considered in common ownership as well as joint de jure possession of the estate of the deceased person.[430]

4.4.2 Responsibility and Accountability of Special Notaries

Special Notaries are highly responsible officials. They need to perform their duty with utmost devotion and sincerity. The documents drawn by them have universal ramifications in matters of property and estate of the deceased person. Hence the Special Notaries are held liable for their acts.

If he is found guilty of losing or obliterating statutory books maintained by him under the Act then he has to face departmental action. He will be liable if he does that by himself or through any other person. Even when he allows any other person to take the custody or lose or mutilate the book in office records then also he will be held liable. He is also held liable for not carrying out his duty faithfully thereby delaying or by rejecting any instrument without a valid reason or when it is found that any document executed is false with the Officer playing a role in the falsification. The concerned Officer is also liable for issuing incorrect or fabricated certified copies which are not as per records. If he draws the instrument beyond his competence and jurisdiction then also he will be held liable. In case he knowingly admits any incompetent person to stand as Witness or Interpreter or Declarant, which is subsequently declared invalid by the Court then also the concerned Officer is held liable.

In case when mandatory formal requirements are not followed and when Court has declared any instrument as void on such ground then also the Officer will be held liable.

When the concerned Officer has knowingly made a person who was under undue influence or pressure to execute any document then he will be held liable for the same.

In case where the instrument is held to be void on the ground that the Officer willfully allowed a person to commit a mistake due to his false statements or action. Similarly when the concerned Officer is charged under criminal law for instrument drawn by him then also the concerned Officer will have to face departmental action.

[430] Ram Deu Gaudo @ Gaude v. Shri. Anta Deu Gaudo, Second Appeal No. 6 of 2017 in the High Court of Bombay at Goa

All the Officers and officials dealing with recording of instruments and also photocopying or making translation are liable for criminal sanction if they have done their duty in a malicious way to harm any of the concerned party. Intention is of prime consideration here. The concerned official should have mens-rea that his act would prejudice any other person. In case of conviction the person liable can face imprisonment of term which can extend to a period of 7 years alongwith penalty. When any mischief is played with office records, the culprit would face severe consequences thereof and is liable for imprisonment of term upto 7 years alongwith fine.[431] There are specific situations under which there is criminal sanction on the concerned party also. When any of the parties make deliberate incorrect statement before the Special Notary whether on oath or otherwise and whether written or oral then the concerned person is criminally liable. Similarly when any person impersonates any other person then it is considered as a serious offence and the person found guilty has to face severe criminal consequences. The accomplice of the culprit is also considered guilty for the crime.

4.4.3 Orders passed by the Special Notaries

All Special Notaries including Joint Special Notaries are Quasi-judicial authorities. If any party applies for drawing any instrument which is illegal or against public policy then such documents can be refused to be drawn by passing a Speaking Order.[432] Similarly if the Special Notary is of the opinion that the party appearing before him is not of sound mind then also the Special Notary can refuse to draw the instrument. However there is a rider to this which says that in such situations a doctor can be a witness who will certify that the party is of sound mind. In the above cases whereby the Special Notary refuses to draw the instrument then the Special Notaries has to pass a speaking order to that effect. The speaking order has to be recorded in the prescribed Book No. IX. In *Madhavi Dattatrai Thaly v. The Secretary (Law)*[433] the learned Advocate General has made a statement that the process for complying with the provisions of Section 308 of the said Act is currently on and the same will be expedited. Further, when the draft document is submitted then the Officer incharge has to endorse the words “refused to draw” on the draft document. Further when the concerned

[431] The accountability and liability of the Notary Ex-officio pertaining to acts done by him was specified in Articles 43 to 49 of Notarial Decree No. 8373

[432] The provisions governing Refusal Orders passed by the Notary Ex officio were contained in Article 28 of erstwhile Notarial Decree No. 8373.

[433] Writ Petition No.597 of 2019 in the High Court of Bombay at Goa

applicant request for obtaining the copy of reasons for rejecting his proposed deed, then he has to be supplied certified copy of refusal order free of cost. The said certified copy has to be issued without any delay since the party should have option to challenge the Order. Hence the aggrieved party is then required to make application for reconsideration to the same Officer who had rejected to draw his proposed instrument. The concerned Officer has to reconsider his Order and if he is firm on his earlier Order then he has to forward the reconsideration application of the applicant alongwith his report to his higher authority at the concerned District level i.e. the District Special Notary.

The report should contain the reasons for not drawing the instrument. After receiving the report, the respective District Notary has thirty days time period to decide the Appeal after hearing the concerned parties to the dispute.[434]

In *Jaganath Vinayak Shet Manerkar v. Vallabh Saanand Bondre*[435] the Court has held that the prohibition is only against a co heir transferring a specific asset/item out of the inheritance or a specified demarcated share by co-heirs to third parties. However, no provisions of Goan Succession law specifically prohibit the transfer of an undivided share or a right in the inheritance though it will be subject to right of pre-emption.

4.5 Powers and Functions of District Special Notary

When the District Special Notary passes an order reversing the decision of any Special Notary thereby directing to draw the concerned instrument then the Order has to be complied. The said Order is valid for 30 days. The interested party has to remain present within that time frame to draw the instrument in question. If the District Special Notary decides to dismiss the Appeal, then the District Special Notary is bound to record his reasons for the Order passed by him i.e. pass a speaking order. When the interested party applies for certified copy of the same, then it is to be supplied free of cost without any unnecessary delay. The remedy to the interested party is then to file a Civil Suit before the District Court. The Court to which the Appeal will lie will be same which has jurisdiction on the concerned District Special Notary. The Court has full

[434] Under the erstwhile Notarial Decree No. 8373, the Appeals had to be filed directly before the Judicial Court

[435] Writ Petition No. 502 of 2018 in the High Court of Bombay at Goa

powers to confirm or quash the Order of the functionaries under Act and also to give directions to draw the document.[436]

4.6 Void Notarial Deeds

There might be certain situations wherein the acts, deeds are termed as not existent being void-ab-initio. These situations can occur due to wrong place of drawing the instruments, absence of specific day, date, year being written on the instrument. However if it is possible to establish the above details then the instrument cannot be termed as void. The instrument can also be termed as void when the parties have failed to sign the document even when they know to sign. The instrument is void when there is absence of mandatory number of witnesses. There must be proper identification details mentioned on the Deed and in its absence the instrument can be termed as void. When the Deed is drawn based on Special Power of Attorney but the same has not been specified on the document drawn then in such cases also the Deed becomes void. The Officer drawing the instrument is duty bound to record all corrections, alterations, additions, cancellations or marks present on the Deed drawn by him. If it is not recorded then the instrument can be termed as void. However if the corrections made on the instrument does not affect the essential facts of the deed then it will not affect the validity of the Deed. If there is failure on part of the Officer drawing the Deed to sign it then the Deed cannot be admitted as valid and will be termed as void. In cases where the Wills are executed in favour of parties to the Will who have taken part in the execution formalities of the Will then the Will cannot be said to be valid. If the Officer who has drawn the Deed and has interest in the instrument that has been drawn by him, then such instruments are not valid. Similarly if the Officer is beneficiary in the instrument drawn by him then also the said Deed is void.

In the case of Judgment of the Portuguese Supreme Court dated 16/1/1945[437], it has been observed that upon dissolution of the marriage by the demise of one of the spouses, the communion of assets which prevailed between them ends (Article 1121 of the Civil Code) but continues between the surviving spouse and the children who represent the deceased and have the right to acquire his portion.

---

[436] Section 322 containing powers of Civil Court correlates to Article 29 of the erstwhile Notarial Decree No. 8373

[437] Boletim Oficial do Ministerio da Justica (Official Gazette of the Law Ministry, year 5, No.27, Lisbon, March 1945)

In Manguesh Kuwelkar v. Yeshwant Kuwelkar[438], the testatrix had right to specific property. She had made a Will of more than her disposable quota. Hence the Court held that the entire Will cannot be held as null and void but the aggrieved party can apply for reduction during the Inventory Proceedings. However, the Court has ruled that the Will cannot pertain to the Legitime of the legal heirs.

In Daisy Senso v. Ivorine Noronha[439], the parties were married in Mumbai. They had executed a Joint Will in Bombay. Since the Parties were born in Goa, it was held that they are governed by Goan family law even though they were married outside Goa and hence the Joint Will executed by them was held to be invalid as per Goan law.

In Caridade Rodrigues v. Domingos Fernandes[440], the Court has held that though the testator has made the Will and duly executed before the Special Notary as per the procedures prescribed for drawing the Will, still the validity of the Will is to be decided by the Inventory Court as regards whether the Testator was having ownership and right as regards the properties mentioned in the Will. The property can be gifted or sold by the heirs only after it is exclusively allotted by way of partition to them. The partition can be though inter-vivos document or through Inventory Proceedings. However, to sell specific property, partition is a pre-condition.

Any gifts made beyond the disposable quota are necessarily required to be reduced. Gift of any of the properties of the Legitime is not possible. Similarly the heirs cannot dispose properties before they are allotted to them.[441] It is held that the Inventory Court is competent to decide about the validity of Will. However, incase there is detail investigation then the parties are required to be directed to file separate Civil Suit.[442]

4.6.1 Validation of Notarial deeds

There are certain situations where the deeds which are termed as void can be made good by obtaining an order of competent Court of law.[443] When parties to the deed knew to sign but did not sign the deed then the defect can be made good by order of Court if it is

[438] 2008 (6) Mh. L.J. 224

[439] 2011 (2) Goa L.R. 114 (Bom(PB))

[440] 2014 (2) Goa LR 530

[441] Jose Miranda v. Joao Miranda,1999 (1) Goa LT 77

[442] Nirmala Dessai v. Tulsi Dessai, 2015 (4) Mh.L.J. 731

[443] The various acts which make the documents void were contained in Article 85 of Notarial Decree No. 8373. However there was no specific provision mentioned as regards their validation. This defect is cured in the present Act.

proved that individual mentioned on the deed were present for the drawing of the instrument. When the Witnesses have failed to sign the Deed then this defect can be made good by the Court after the party proves that the identity of executing parties was established. When there is no noting recorded on the deed pertaining to corrections or interlineations present on the deed then this defect can be cured by proving the fact that the concerned Officer had recorded the Deed and by placing on record its certified copy. When there is absence of specific noting on the deed pertaining to compliance of the formalities then this deed defect can be cured by proving that all the formalities were duly complied when the instrument was drawn. Any order pertaining to curing of the defects needs to be endorsed on the records of Special Notary either suo moto or on application of interested party.

In Dr. *Rajendra Tamba v. Mrs. Rita alias Anjali Vijay Talaulikar*[444] the Court has held that under section 219 of the Act, what is prohibited is the disposition of "specific and determined properties" by a person whose nuptial is governed by general communion of assets. Hence the Will containing disposition pertaining to undivided share in the inheritance cannot be termed as Void instrument. As regards Wills which do not contain clauses pertaining to completion of mandatory formalities, the defect can be cured by filing Civil Suit and proving that all such formal requirements were duly complied at the time of recording the instrument. In this case also the order of the Court by which the deed is made good should be endorsed on the Notarial instrument. The Special Notary is liable for compensating the damages and will also face Disciplinary proceedings for the fault on his part. The Court has held that under the Civil Code, specific properties can be disposed only when all the co-owners agree to the transfer.[445]

4.7 A look at the Fee Structure pertaining to Notarial acts

The Government of Goa is empowered to prescribe the fees that would be levied during the drawing of instruments, issuing of certified copies and various acts carried out by the Special Notaries. The fees applicable are prescribed by the Government by way of Notification in the Official Gazette.[446] A fee receipt is issued by the Special Notary for the fees paid by the applicants and the same is duly recorded in the Accounts Ledger

[444] Appeal from Order No. 45 of 2019 in the High Court of Bombay at Goa

[445] Joana Errie v. Albano Vaz, 2015 (1) Goa LR 293

[446] Notification No. 8/36/2016-LD(Estt)/2022 dated 24/10/2019 issued by the Law Department, Government of Goa

maintained by the Special Notary. When the applicant want to inspect the Indexes, he is required to make an application alongwith fee of Rupees One Hundred for first hour of inspection followed by Rupees Fifty for every subsequent hour. For drawing of Deed of Succession, a fixed Fee of Rupees One Thousand is required to be paid by the interested party. The said fee is pertaining to every death that has happened in the line of succession. For instance, if both the spouses have died, then the Fee applicable will be Rupees Two Thousand. As regards application for certified copy of documents, fee charged is Rupees Ten per page. The Certified copy is issued within a period of Ten days. The fee increases to Rupees Fifty per page incase the applicant wish to obtain urgent certified copy which is issued within two days. For drawing Public Wills, a fixed fee of Rupees One Thousand is levied and further the book expenses is levied at the rate of Rupees One Hundred for each page used to write the Will. For Printed Open Wills, the fixed fee of Rupees One Thousand is levied as in case of Public Open Wills. However, the book expenses is Rupees Ten for every page filed. For Opening and Approval of Closed Wills, a fixed Fee of Rupees One Thousand each is levied. For Deed of Consent (which is given before executing separate Wills by the Spouses to each other), a fixed fee of Rupees One Thousand and further Rupees Five Hundred for each page used to write the Deed of Consent is to be paid by the executing parties. For the execution of Pre-Nuptial Deeds, Adoption Deeds, Deed executed to revoke previous Will, Rehabilitation Deeds, a fixed fee of Rupees One Thousand is levied for every such deed. Similarly for execution of Deed of Renunciation of Heirship, the fee charged is Rupees One Thousand and if there are multiple renunciations in same deed then Rupees Five hundred is charged for every subsequent renunciation. For executing Special Power of Attorneys, Declarations relating to exercising Options the fee charged is Rupees Five Hundred.

4.8 Essential Qualifications for witnesses:

There are certain requirements that must be satisfied to stand as a qualified witness in respect of the Deeds or Wills drawn.[447] The person appearing as a witness should be above 18 years in age as on the date of drawing of the Deed or Will. This is a core

[447] The qualifications for witnesses were specified in Article 77 of the Notarial Decree No. 8373 and also under Article 1966 of Codigo Civil 1867. The Notarial Decree No. 8373 specified that three witnesses were required for execution of Will. But as per the present law, only two witnesses are sufficient.

condition and hence minors are disallowed to be witnesses.[448] The person should have proper hearing, vision and speech capacity. A person incapable of hearing what has been spoken before him and also person who is blind, dumb cannot be a Witness. The person should be in his full and perfect senses for him to act as a Witness in the recording of Deeds and Wills. He should have sound mental faculties and capable of witnessing and identifying parties to the act drawn before him. The relatives of the Officer drawing the Deed or Will cannot be a Witness.[449] The witness cannot be a beneficiary from the Instrument drawn before him. So also the witness cannot be a relative of any of the interested parties in the Deed or Will. The spouses of the Witness cannot stand as another witness to the same instrument being drawn. The Witness should hold a valid Government issued identity proof or should be personally known to the Officer drawing the Deed. Government issued identity cards like Voter ID, Adhar Card, Driving Licence, Passport, Pan Card can be used for the purpose identifying the witnesses. Similarly any person who has any interest in the document being drawn cannot be a Witness to that particular deed to avoid conflict of interest. The Will comes into effect only after the death of the Testator and not before it. It has no force during the lifetime of the Testator.[450]

4.9 Key features of authentic documents

There are certain compulsory points that should be embodied in the Deeds or Wills drawn. The law mandates that these points should be included in the Deeds so as to bring in certainty and to avoid any sort of ambiguity or misinterpretation whatsoever in the Deed drawn.[451] The time, date along with the relevant month and calendar year of the recording of the instrument should be stated on the deed by the Special Notary. In case the deed is drawn at private attendance then there should be a mention of the fact that the private attendance was requested by the concerned interested party. It should also be mentioned in the deed the exact details of the office of Special Notary which should include his name and the detail address of Special Notaries office. The official designation of the Special Notary should be mentioned on the deed. The recorded

[448] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 51

[449] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 508

[450] Ghanshyam v. Yogendra Rathi, Civil Appeal Nos.7527-7528 of 2012 in the Supreme Court of India

[451] The various authentic documents and their essential contents were specified in Articles 63 and Article 75 of Notarial Decree No. 8373

instrument should compulsorily mention the full details of the interested parties that take part in the drawing of the deed. This includes Declarants, Witnesses, Testator or Testatrix as the case may be and also translator details. Hence the full details of the parties will include their respective full names, residence address, present occupation, along with their present age and marital details.[452]

It is noteworthy to mention that if any person is intervening in the Act by virtue of any Power of Attorney, then the details of the same should be mentioned on the deed. The full details of the Power of Attorney should be mentioned on the deed including its registration number and the authority before which it is executed. If the Power of Attorney has been executed outside India then the same has to be attested by the Indian Embassy and further it should be adjudicated for stamp duty by the Collector having jurisdiction in respective District of Goa. It is the duty of the Special Notary to mention whether the parties to the Deed were identified by him based on the photo identity documents or by way of warranty of the witnesses present for the act. If the translators are involved in the Act then it is the duty of the Special Notary to mention whether they have taken oath as regards correctly translating the deed in the language known to the respective party. The reason why the translator was required to be involved in the deed should also be mentioned. The act done by the translator in ascertaining the wishes of the respective party should be mentioned on the deed. The translator is required to do the translation in the side column provided on the book of the Special Notary. The page is divided into half for doing the translation. The translator is required to explain the instrument being drawn to the interested party.

In Jas*want Kaur v. Amrit Kaur*[453] *,* the Court has made very important observation by stating that in cases where the Will is shrouded in suspicion, the true question that arises for consideration is whether the evidence led by the propounder of the Will is such as to satisfy the conscience of the Court that the Will was duly executed by the testator.

The interested party is entitled to read the instrument drawn by the Special Notary by himself or by any person of his or her choice. If any other person is involved in reading of the deed and explaining it to the interested party then the details of the said person should also be mentioned on the deed. There might be certain situations where the interested party is either illiterate or the interested party is unable to put his signature on

[452] The earlier Notarial Decree No. 8373 mandated maintaining of Record of Signature (*Sinal Aberto*) which is not included in the present Act

[453] 1977 AIR 74, 1977 SCR (1) 925

the instrument. In such cases note of the same should be mentioned on the instrument by the Special Notary. Similarly if the party puts his or her thumb impression on the deed then also the statement to that effect should be included in the deed.

The Special Notary is required to loudly and audibly read the entire document in front of all the intervening parties that are present for the drawing of the instrument. This fact should be recorded on the instrument by the Special Notary. The fact that the whole instrument has been read by the translator should also be recorded on the instrument. If any other person has read the deed at the request of the interested party then that fact should also be recorded on the instrument. There might be also situations where any corrections are present on the instrument drawn by the Special Notary. In such situations at the end of the instrument and before obtaining the signatures of all the parties to the instrument a note should be put listing all rectifications, additions, superfluous words. This is a most important point in the instrument at the time of interpretation of the instrument. At the end of the deed all the parties that are mentioned on the deed should sign on the deed after which the Special Notary has to put his signature on the instrument. The translator should make a declaration that he has done the translation correctly and also the value of the applicable stamps for the deed should be stated on the instrument. The notary stamps should be affixed at the end of the deed after the signature of all the parties and the Special Notary. The Special Notary cancels the notary stamps by signing on it. The deed or instrument that is drawn by the Special Notary should be in a continuous manner. There should not be kept any blanks on the instrument. All the power of attorney that are used for the drawing of the deed should be submitted in original and compulsorily filed by the Special Notary in his records without fail.

In another judgment of *Shivakumar v. Sharanabasppa*[454], the Court has held that if a person challenging the Will alleges fabrication or fraud, undue influence, coercion etc. in regard to the execution of the Will, such pleas have to be proved by him. But even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to doubt or as to whether the Will had been executed by the Testator and/or as to whether the Testator was acting of his own free Will and in such cases the Court is required to carefully examine the matter as regards deciding the validity of the instrument.

[454] Civil Appeal No. 6076 of 2009 in the Supreme Court of India

4.10 Procedure for Recording of Notarial acts

All the instruments that are drawn by the Special Notary should be done in black colour writing pen only. The Special Notary cannot use short forms and has to write words in entirety so as to avoid ambiguity. If there are any numbers then the same should be written in words also. There is a statutory requirement of two witnesses for every deed drawn by the Special Notary. The fact that the witnesses were present in the drawing of the instrument is proved by way of their signatures on the deed. There is also a statutory requirement that the Special Notary should identify the witnesses and mention this fact on the instrument drawn. There are two methods that can be used for the purpose of identification of the parties to the deed. The Special Notary can either personally identify the witnesses based on his personal knowledge or the Special Notary can identify the parties based on any of their Government issued identity cards.

After the deed is recorded by following the mandatory formalities, the Parties need to affix their signature and left hand thumb impression at the end.

However there might be situation where there is absence of a thumb on the left hand of the parties. In case of such situations, right hand thumb can be used. However in case of absence of both thumbs, the statutory requirement of affixing the finger impression cannot be left non-complied and hence any other finger of the party can be used for the purpose of affixing it on the instrument drawn by the Special Notary provided the description of the same is recorded on the instrument drawn by the Special Notary. In case of absence of thumbs as well as fingers of both the hands then in such situations, Special Notary is bound to record the same on the instrument and the instrument will still have legal validity without the finger or thumb impression of the party. If the party is not able to read the deed which is recorded in English language then the translator is appointed by the Special Notary for the sole purpose of translation and making the party understand the deed written. The expenses pertaining to appointment of translator has to be borne by the party.[455] There are special provisions for those who are Dumb or may be both dumb as well as deaf. If the person who is either deaf or both dumb and deaf then after reading the contents of the instrument drawn by the Special Notary the said person has to state that in writing that he has read it as well as understood it. This

[455] Under the earlier Notarial Decree No. 8373, there was provision to appoint Translator or Interpreter who were required to take oath that they will perform their duties faithfully. The said provision has been continued in the present Act also.

provision is applicable if the deaf and deaf and dumb persons are able to write. This procedure has to be completed before all the parties signed the instrument. If the deaf or deaf and dumb person is unable to write then he can show his intent by way of signalling to the witnesses and interpreter who should be able to understand the said signs. All this procedure as to be duly noted down in the instrument. There are also special provision if the person is unable to see. In such cases the instrument drawn is read twice. at the first instance the instrument is read by the Special Notary then the instrument is read by the translator or any other person appointed by the party. This fact has also to be noted in the deed. The intervener has to sign the deed also and also affirm that he has done his duty properly. The intervention of the interpreter increases the fees are by fifty percent. [456]

In another landmark judgment *Kavita Kanwar vs Mrs. Pamela Mehta*[457], the Hon'ble Supreme Court has dealt with the concept, characteristics and put light on the most used ground for invalidating a Will based on "suspicious circumstances" which effectively means the Will cannot be believed to be true. In this case the Petitioner was appointed as Executor and was prime beneficiary of the Will. The lower Courts had refused to grant probate on the ground of suspicious circumstances pertaining to the Will. The Supreme Court also held that there are thick clouds that surround the Will and as such it cannot be believed that the Will elaborates the true intention of the Testator. The Hon'ble Supreme Court also laid down several criteria's which must be looked upon while deciding as regards validity of the Will. The Supreme Court has laid down very important principle in this case by stating that the judgment in probate proceedings is in the nature of rem and as such even if no objections are filed by the interested parties, it is the duty of the Court to examine the matter surrounding the Will and thereafter if satisfied decide about granting of the Probate. In the present case, the Court held that the appellant tried to mislead the Court by trying to show that she did not take active part in the execution of the Will which was eventually held not to be true. The Court also held that the Will does not fit into the concept of holographic Will since the Will was in print form excluding the first and concluding para where it was observed that the same was not the dictation of the Testatrix since it contained legal jargons which a

[456] Section 325 of the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 corresponds to Article 78 of the Notarial Decree No. 8373

[457] Civil Appeal No. 3688 of 2017

layman would normally not know. Hence the Court held that it cannot be believed that the Testatrix has executed the 'so called Will' after understanding the same. The Court also held that while deciding validity of Will, the Court should use the 'Arm CHeir Rule' whereby the circumstances in which the Will was made by the Testator should be looked upon.

In *Venkatesh Karekar v. Rosemary Fernandes*[458], the Court has held that Will made in favour of spouse of properties which does not constitute the communion of assets, or which are partitioned and allotted exclusively to any of the spouses is valid. Similarly when there is consent of all the heirs then also it is held to be valid Will.

The Inventory Court has got full powers to verify the genuineness of Will and the manner in which it was executed before the Special Notary.[459] Hence, though the testator has made the Will and duly executed before the Special Notary as per the procedures prescribed for drawing the Will, still the validity of the Will is to be decided by the Inventory Court as regards whether the Testator was having ownership and right as regards the properties mentioned in the Will.[460]

In *Jose Miranda v. Joao Miranda*[461], it has been held that any gifts through Will made beyond the disposable quota are necessarily required to be reduced. Execution of Will of any of the properties of the Legitime is not possible. Similarly the heirs cannot dispose properties before they are allotted to them.

4.11 Deed of Declaration of Heirship[462]

In Goa, Heirship can be proved by way of deed of succession which is also known as declaration of Heirship. The Deed of Declaration of Heirship which is also known as Succession Deed[463] in common parlance is an instrument drawn by the Special Notary having jurisdiction over the subject. The Deed of Declaration of Heirship is a very important instrument by which the heirs of a deceased person are declared for the purpose of succession in Goa. It can be said to be an effective alternative to filing of Inventory Proceedings before Courts in many ways. However, there are certain pre-

[458] 2016 (1) Goa L.R. 495

[459] Nirmala Dessai v. Tulsi Dessai, 2015 (4) Mh.L.J. 731

[460] Caridade Rodrigues v. Domingos Fernandes, 2014 (2) Goa LR 530

[461] 1999 (1) Goa LT 77

[462] See Section 346

[463] The law relating to drawing of Deed of Declaration of Heirship was contained under Decree No. 32033 dated 22/05/1942 and also under Order No. 14157 dated 12/02/1953 passed by the Portuguese Government

requisites provided by law that are required to be fulfilled before the Interested party can go for drawing of Deed of Declaration of Heirship before the Special Notaries. Not all cases are covered under the Deed of Declaration of Heirship. For instance, when there are minors, interdicts, unknown heirs who have a claim to the inheritance, then the Deed of Declaration of Heirship cannot be drawn. In these cases, Inventory Proceedings is the only alternative to the parties. In *Smt. Premavati Basu Naik and Others v. Shri Suresh Basu Naik and another*[464] the Court has held that Article 1565 of the Civil Code provided for safeguarding the interest of the successor and provides that the estate leaver is debarred from denying the legitimate share to the heirs. The heirs have a compulsory share in the inheritance which cannot be denied to them. However the disposable share can be bequeathed by the estate leaver to any person of his choice as per his or her wishes. Any sale made of legitimate share without the consent of the heirs is void and can be set aside by Court. So also when the parties require partitioned holdings from inheritance by metes and bounds then the party can go for Inventory Proceedings instead of Declaration of Heirship because the properties are neither mentioned nor partitioned by the Drawing of Deed of Declaration of Heirship. It is only the determination of heirs and not direct partition of properties inherited. For partition, the parties can very well execute a separate Deed of Family Partition after drawing Deed of Declaration of Heirship. Further, for drawing of deed of Declaration of Heirship, the succession should not be subject to Orphans jurisdiction and hence none of the Heirs should be minor, interdict, unknown. If the heirs are known, major of age and of sound mind then the Heirship of any deceased person can be proved by way of deed of Declaration of Heirship drawn by a competent Special Notary.[465] A deed of Declaration of Heirship is conclusive proof for mutation, share transfer, withdrawal of money from financial institution upto Rs. Fifty Thousand. However, there is no monetary ceiling if there is a single heir.[466]

4.11.1 Drawing of Deed of Declaration of Heirship:

The primary requirement for Deed of Declaration of Heirship is three Declarants who have to declare on oath before respective Special Notary that the parties declared by them are the only legal heirs of the deceased and there are no other persons other than

[464] Second Appeal No. 24 of 2012, High Court of Bombay at Goa
[465] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 138
[466] Mario Bruto da Costa, *Matrimonial Regimes & Inventory*, Mangala Offset, Vasco, 2000, pg. 199

them who are entitled to succeed to the estate of the deceased or who have a better claim as the successors to the deceased as per the provisions of the Goa Succession, Special Notaries and Inventory Proceedings Act 2012. Further, there should be two witnesses and atleast one interested party who should also intervene in the above act to witness and confirm the statement made by the Declarants. If the deceased was married then the Declarants also needs to declare the name of the spouse and also state whether the spouse is dead or alive. The name of the spouse of the heirs, if any, also needs to be declared by the Declarants. Further, the Declarants also needs to state whether the value of the inheritance exceeds Rupees Ten Lakhs or not. The Declarants has to submit the Death Certificate of the deceased. If the succession is founded on Will or gift deed made by the estate leaver then the Declarants also needs to submit the copy of the same.

In Uma Mahesh Bandekar And Another v. Vivek Sadanand Marathe And Others[467] the Apex Court has held that even when the daughter is married, she has a right to inheritance to the leased premises of the estate leaver. The same has to be included in the list of assets as it forms the part of inheritance of the estate leaver.

The Declarants are also required to submit the documents which can prove the relationship of the heirs to the deceased. These include the birth certificate of the heirs, the marriage certificate of the spouse. If the death, marriage or birth certificate is not available for production before the Special Notary, the party can submit order of Court certifying the said birth, death or marriage as the case may be. It is also provided that if none of the interested parties are able to be present before the Special Notary for reason that they are abroad, then a constituted Special Attorney may make a declaration on behalf of the interested party. Although the Deeds recorded under the Act cannot be delegated to other persons generally, this can be said to be an exception to the general rule. However, it is noteworthy to mention here that this phenomenon does not apply to making of Wills. The qualification for becoming a Declarants is same as for a witness. However, a person who is an heir of the estate leaver, or his relative cannot be a Declarant as he has an interest in the drawing of the deed of Declaration of Heirship. All the heirs and moiety holder should be stated on the Deed of Succession and nothing should be concealed by the Declarants. In case of false statements on the deed by the Declarants, they are civil as well as criminally liable for their false statements. It is very important to note that if the declarations given by the Declarants are found to be false

[467] Civil Appeal No. 2961 of 2019 before the Hon'ble Supreme Court of India

then the Declarants are liable to be criminally prosecuted under section 191 and 199 of the Indian Penal Code 1860.

The fee applicable for drawing deed of Declaration of Heirship is Rupees One Thousand on each inheritance opened irrespective of the total heirs involved in the Instrument drawn. Further, no deed can be invalid even if the same is unduly or insufficiently stamped.

It is also noteworthy to state here that even if a person has been brought on record as legal representative in Court proceedings (excluding Inventory Proceedings), the person cannot be considered as an Heir. The Supreme Court has observed that the Portuguese Civil Code is indeed a special law and thereby would prevail over any local law.[468]

The Code of Civil Registration was enacted by the decree dated 4th November, 1912 and was enforced from 1st January 1914 to entire Goan territory. By virtue of the said Code of Registration which is still prevalent in Goa even after the enactment of new Succession law, all the marriages are compulsorily registered in Goa.[469]

In *G. Rama Rao v. Joseph de Souza*[470], it has been held that succession is transmission of rights of the deceased person. It does not come within the purview of transfer. Hence, even when there is deficit stamp duty paid on the Succession Deed it is still a valid instrument.

Similarly in *Anastasio Gomes v. Bernardo Gomes*[471], the Court has laid down that the right to succession devolves on death of the estate leaver and hence when the parents are alive, the children cannot claim their inheritance rights over the properties of their parents. It is held that property of the deceased cannot be said to be in adverse possession of any one of the heirs in cases where other heirs live separately. All heirs are considered as being in joint possession.[472]

In Vito Ticlo v. Nuno Ticlo[473], it has been held that till the time there is no partition effected between the parties, of the estate left by the deceased person, all persons will have equal rights in the inheritance. Hence, any one of the heirs is equally entitled to be an interested party in the drawing Deed of Succession or Declaration of Heirship.

---

[468] Jose Paulo Coutinho v. Maria Luiza Valentina Pereira, Civil Appeal No. 7378 of 2010 before the Hon'ble Supreme Court of India

[469] Elmas Fernandes v. State of Goa, Writ Petition No. 351 of 2017

[470] 2002 (2) All MR 14

[471] 2012 (1) Goa LR 11

[472] Conceicao Quadros v. Salvador Quadros, 2012 (4) All MR 650

[473] 2016 (4) All MR 879

In Vishwanath Yadav v. Kashinath Yadav[474], it is held that the rights of the heirs accrues after the death of the estate leaver. Hence the parties can apply for drawing deed of Declaration of Heirship from the date of death of estate leaver. There is no time limit for drawing Deed of Succession.

4.11.2 Publication of extract of Deed of Declaration of Heirship

The Special Notary should publish the extract of the declaration in the official gazette. The value of the inheritance needs to be clearly mentioned on the deed of succession. Further, when the value of estate left by the deceased is more than Rupees Ten Lakhs, a copy of the extract is required to be compulsorily put for publication in newspaper which is in wide circulation in the concerned area pertaining to the drawing of the Deed of Heirship. This is in addition to the Official Gazette Publication. Publication of the extract of the deed is to invite objections from the members of the public who has a right in the inheritance but has been left out. All the expenses that are to be incurred in carrying out the publications mentioned above are to be borne by the interested parties mentioned in the deed. The extract of the deed has to be published in the official gazette within a period of 15 days from the date of recording of the deed of succession.[475] The notice should disclose the name and permanent residence of the deceased and the names of the interested parties and other identification particulars. Such persons can file their objection within a period of one month from the date of publication of the extract in the Official Gazette and newspaper.

The person who has been left out can also file a civil suit in the competent Court and a notice can be served on the Special Notary whereby he will stay the matter pertaining to Declaration of Heirship drawn by him.

4.11.3 Calling for Objections to the deed drawn by Special Notary

As stated above, the law mandates for compulsory publication of the extract in the Official Gazette and if the value of estate is more than Rupees Ten Lakhs, then the publication also needs to be done in a local newspaper. Thereafter, any person who believes himself to be an heir to the inheritance but has not been named in the Deed of Declaration of Heirship has an option to file a suit for claiming his or her right. If such suit is filed the Court has to give notice of such suit to the Special Notary who has

[474] 2017 (1) Goa L.R. 538 (Bom)(PB)

[475] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 140

drawn the concerned Deed of Declaration of Heirship. The plaintiff also has an option to give a copy of the plaint to the Special Notary. The Special Notary then cannot proceed any further with regards the Deed drawn and cannot issue certified copy but has to take note of the objection and wait for the directions of the Judicial Court.

In Jose Paulo Coutinho v. Maria Luiza Valentina Pereira & another[476] The Hon'ble Apex Court has held that a person who is governed by the Goan Succession Law and having properties situated outside Goa anywhere in India then the Goan Succesion Law would apply to the said properties. All these properties situated outside Goa will be added to the estate for the purpose of calculation of Legitime of the deceased.

4.11.4 Finalization of Deed

When the Special Notary does not receive any such notice from the Court or the plaintiff within thirty days from the date of publication of the extract of the deed, then the Special Notary has to record an endorsement to that effect after which the Deed of Declaration of Heirship becomes final. The certified copy of the deed drawn by the Special Notary can only be issued after recording the endorsement and not prior to that since the formalities are concluded only after the recording of the endorsement on the Deed. However, it is also to be noted that even if the endorsement is made by the Special Notary, the person who is excluded from Heirship can file a suit within the period of limitation. In situations where the Deed has been finalized and the objection is received after the endorsement done by the Special Notary, then the party has the right to file a civil suit in competent Court of law. The Heir to the inheritance does not lose his right to the estate.[477]

4.12 Partition based on Deed of Succession

All the Heirs of the deceased person can partition the estate by way of Deed of Partition when the law does not mandate for compulsory filing of Inventory Proceedings. Such out of Court settlement is allowed if there is a valid Deed of Succession drawn before the Special Notary prior to execution of the said Deed of Partition. The Partition Deed executed by all Heirs cannot be denied by any of them subsequently except when the said party was under bonafide mistake of fact or under coercion. All Heirs must be major in age and should not be under any disability for the partition to be valid. The

[476] Civil Appeal No. 7378 of 2010 before the Hon'ble Supreme Court of India

[477] Mario Bruto da Costa, *Matrimonial Regimes & Inventory*, Mangala Offset, Vasco, 2000, pg. 199

Partition Deed can be annulled by Court if the same is contrary to the Law of Contracts. In an undivided inheritance all the co-heirs have the same right to every fraction of entire estate. Every co-owner is a joint possessor by the presumption of law. Possession can be immediate or mediate. The co-owner in actual possession is in immediate possession whereas the co-owner not in possession is in mediate or constructive possession of the estate. Hence transfer of specific properties before allotment in partition is prohibited under the Goan Succession Law as being a violation of Articles 2177 and 1766 of the old Civil Code and which corresponds to Section 17 of the present Act.[478] Hence, Deed of Family Partition becomes an important mode of distribution of estate between Heirs.

In case any person is deprived of his lawful possession of the estate, then the person who has been dispossessed can claim his right to pre-emption alongwith monetary damages.

A Partition of the estate during the Inventory Proceedings makes the parties absolute owners of the properties allotted to them. Same is the case incase of Partition Deed executed and duly registered before the Sub Registrar. The properties which are other than the residential houses can be subject matter of partition by metes and bounds.[479]

When an Heir wants to sell his undivided right in the inheritance, then the right of pre-emption is with the moiety holder and the other heirs of the inheritance. The heir who wants to sell his undivided right in the inheritance can give a notice to other Heirs when there is no prior Partition Deed between them. Any sale of specific properties made prior to Partition of inheritance are void and does not have any legal consequence. However, when there is valid Partition Deed, there is no such requirement to give prior notice to other co-heirs. In Inventory Proceedings, a detailed description of assets, liabilities and debts of the estate inherited is required to be filed before any Order as regards any partition of estate. However, the Partition Deed executed before the Sub Registrar does not involve complex technical formalities. The parties can divide the properties between themselves. The process carried out for partitioning is very crucial in

[478] Dr. Rajendra Tamba v. Rita alias Anjali Vijay Talaulikar, A.O. No. 45 of 2019 in the High Court of Bombay at Goa

[479] Sabina Lopes v. Aleixo Rafael Fernandes, Writ Petition No. 658 OF 2019 in the High Court of Bombay at Goa

inheritance since this decides whether there will be swift devolution of estate or prolonged litigation, as per M.S. Usgaocar, senior Supreme Court lawyer in Goa.[480]

In the Inventory Proceedings, when a property is divided and there is a requirement to create a right of way, then said right of way can be created in the same Inventory Proceedings by the Court. On the same lines, the Heirs can create such easement by way of Partition deed also. When an inheritance is partitioned by way of a deed by the co heirs but without providing for the right of way then party can also file a civil suit for claiming the easementary right. [481]

In *Anant Kavlekar v. Milan Dantie*[482], it is held that the interested parties can also opt for partition deed if all the co-heirs agree to the same and further based on such partition deed they are eligible to file Civil Suit for partition even in absence of Inventory Proceedings. However, there can be no partition among heirs before drawing of a valid succession deed or before the finalization of Inventory Proceedings.[483] Such right to apply to the Special Notary for drawing the Deed of Succession accrues after the death of the estate leaver and does not have any limitation period.[484]

4.13 Inventory Proceedings

The Inventory Proceedings are summary civil suits filed by way of Petitions before the competent Court having jurisdiction. The Petition is to be filed by the interested parties either by himself or through an attorney duly authorized by him. The petition should be accompanied by the death certificate of the deceased. In case death certificate is not available owing to non registration, then other evidence is admissible. Hence the Moiety Holder, Heirs, Legatees and even the Executors of the Wills can file the Inventory Proceedings before the Courts.[485] The Bombay High Court at Goa has held in *Zacarias Durate Domingos Pereira v. Camilo Inacio Evaristo Pereira*[486] that Order 21 of Civil Procedure Code does not entirely apply to Inventory Proceedings. Even if it were to apply, it is, at best, only an interim measure to enable the respondent in the execution

[480] https://www.telegraphindia.com/opinion/the-Goa-way/cid/1436605#.V4KEprh97IU - visited on 29.02.2020 at 21.04

[481] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 390

[482] 2014 (1) Goa L.R. 551

[483] Cruz Fernandes v. Smt. Gregorina Fernandes,1991 (4) Bom C.R. 400

[484] Vishwanath Yadav v. Kashinath Yadav, 2017 (1) Goa L.R. 538 (Bom)(PB)

[485] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 97

[486] AIR 1984 Bom. 295

proceedings to approach the Appellate Court and secure interim protection pending the appeal.

The petition should include the name of the applicant, address, his locus standi, and also the name of the deceased, detail jurisdiction of the Court before whom the petition is to be filed. The value of the inheritance is also to be declared in the Petition, alongwith the details of Cabeca de Casal and also as regards the details of whether there exits any minors, interdicts, unknown or absent heirs. The Court is authorized to inquire as regards on whom the office of Head of the Family would devolve and thereafter appoint a person as the Head of the Family. The Head of the Family should take oath to act diligently and to faithfully discharge his functions. The Head of the Family should declare the name, status, date of death, place of death of the estate leaver. The Head of the Family should also declare the name, status, age of the heirs and whether they are testamentary or legal heirs including those who are known to be conceived. The Cabeca de Casal is also duty bound to produce the certified copy of the Gift Deed or Will incase there is any such document pertaining to the inheritance of the estate leaver. The Head of the Family should also declare as regards the marital status of the deceased estate leaver including details pertaining to ante-nuptial contract if any.

In M*/s. Cadar Constructions v. M/s. Tara Tiles*[487] the Supreme Court has held that the special provisions which specify the period of limitation being local law will prevail over the general law. They are also held to be special laws dealing with specific situations under the Code. If any cause of action arises under Civil Code, then the period of limitation for it will be as mentioned in the Civil Code itself.

The Cabeca de Casal/Head of the Family/Administrator should suggest the names to form the family council in case when the inventory is subject to orphans jurisdiction. The Court will decide whether to accept or reject the names. The Administrator should also state whether there are any assets that are required to be collated and also have to provide Conferee details. He shouldnprovide the details of creditors of inheritance including the Legatees. He should list out all properties relating to the inheritance and also produce any relinquishment deed, if present. He should give detail particulars of the documents cited by him in the petition. He can make the declaration vide an affidavit by giving a copy of the same to the interested parties. Court can change the Head of the Family/Administrator at any stage of the Inventory Proceedings. All of his

[487] AIR 1984 Bom 258

statements made before the Court are presumed that they are correct until the contrary is established. The said presumed statements should not be pertaining to the personal interest of the Head of the Family. Similarly when the law states that the particular fact is to be established by procedure prescribed by Act itself then in such a case the Act will prevail over the statements of the Cabeca de Casal. In normal circumstances, the role of Administrator is not given to attorneys. In peculiar circumstances like in the event no interested parties are available in the country or when all the heirs agree then an attorney can act as Administrator with the Courts permission. Incase when an attorney performs the functions of Administrator then the principal will be fully liable for the statements of Attorney and also for the legal consequences thereof. So long as the partition has not taken place, the co-owners right "shall be indivisible in respect of both possession and ownership". Hence the question of prescription and limitation for filing Inventory Proceedings does not arise.[488] The Inventory Court is required to decide about the validity of Will during Inventory Proceedings. The process is conducted through summary inquiry. However, when detail investigation is required, then the parties are required to file separate Civil Suit.[489]

In *Connie Miranda v. Antonio Gracias*[490], the Court has held that the Inventory Court has full powers to take steps to safeguard the estate of the deceased during the pendency of the Inventory Proceedings. The Inventory Court can also direct the Head of the Family to take steps necessary for protecting the estate.

In *Joseph Lourenco v. Fr. Rosarinho Lourenco*[491], the eldest brother was appointed as Cabeca de Casal. Co-heir challenged the appointment but could not produce any supporting evidence. The Court held that the burden of proof lies on the applicant who is challenging the appointment and if he is unable to substantiate the claim then it cannot be entertained.

[488] Ramchandra Anant Sinai Rataboli v. Manica Sinai Rataboli alias Manik Venkatesh Nayak, Appeal from Order No. 23 of 2018 in the High Court of Bombay at Goa

[489] Nirmala Dessai v. Tulsi Dessai, 2015 (4) Mh.L.J. 731

[490] 2010 (6) All MR 226

[491] 1997 (1) Bom CR 176

4.13.1 Types of Inventory Proceedings

There are two types of Inventory Proceedings.

One is Mandatory Inventory Proceedings and the other one is Optional Inventory Proceedings. When a deceased person leaves behind a surviving spouse or any of the Heir who are unknown, absent, interdict or minor then it is compulsory to file Inventory Proceedings only and the succession cannot be proved by way of a deed of Declaration of Heirship.[492] In case there are no minors, unknown, absent, interdict heirs in the inheritance then the succession can be proved by way of deed of Declaration of Heirship and there is no need for filing of Inventory Proceedings before the Court. However if the parties file Inventory Proceedings before the Court in such cases then it is called as an Optional Inventory Proceedings.

So also at the time of divorce or annulment of marriage if the spouses want to partition their estate then they can file for Inventory Proceedings which shall be a part of the divorce or annulment proceedings as Miscellaneous proceedings. There is nothing in Article 2017 of the Code of 1867 to say that Inventory Proceedings cannot be filed, beyond the period of thirty years.[493] If an interested party dies after the partition of inheritance and if the said deceased person has no other estate than the allotted property, then his succession is to be partitioned in the same Inventory Proceedings. When the surviving spouse dies, his or her Inventory Proceedings is to be continued in the same Inventory Proceedings of the predeceased husband or wife. The additional assets are to be added in the former list of assets. The assets which were valued need not be valued again unless there is concrete reason to believe that their value has increased or decreased. However the description of the assets would be maintained in the second Inventory Proceedings. If some of the assets were not included in the former Inventory Proceedings then it would not annul the former Inventory Proceedings but the said assets can be partitioned either by deed of partition by the interested heirs or can be partitioned in the subsequent Inventory Proceedings. Assets not included in the preceding Inventory Proceedings can be added in the subsequent Inventory Proceedings which is instituted after the death of the surviving spouse. In cases of dissolution of joint family, Inventory Proceedings can be filed for partitioning the estate. The Family

[492] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 397

[493] Maxmillian Victor Alvaro Rodrigues v. Byron Charles Kevin Rodrigues, Writ Petition No. 590 of 2018 in the High Court of Bombay at Goa

member managing the assets would become Cabeca de Casal. The rules of partition followed in Inventory Proceedings shall also be applicable in such case.

4.13.2 Jurisdiction to file Inventory Proceedings

The Inventory Proceedings can be filed in the Civil Court in which jurisdiction the succession has opened. The place of permanent residence of the deceased and the place where his major properties are situated are crucial in the matter of determination of jurisdiction of Court. The Inventory Proceedings are filed for the purpose of declaration of person as Heir or for the purpose of partition of the estate. If the deceased was a permanent resident in Goa, then in such a case, the Court having jurisdiction over the place of his residence would be competent to entertain the Petition. If the deceased did not had a permanent residence in Goa, then that Court will have jurisdiction which also has jurisdiction on the place where his immovable properties are situated and such Court will be competent to entertain the Petition. In cases where the deceased had immovable properties situated in various locations in Goa, then the monetary worth of the landed properties will be considered and the place where the maximum value of such assets are situated would be having jurisdiction to entertain petition. Even when the assets of the deceased are situated outside Goa but when the person is subject to Goan succession law then the succession would still open in Goa. When deceased was not permanently residing in Goa and also died outside Goa without having any landed assets within Goa but having movable assets within Goa then the Court having jurisdiction over the area where his movable properties are situated would be competent to entertain the proceedings.

In landmark case of *Ramchandra Anant Sinai Rataboli v. Manica Sinai Rataboli alias Manik Venkatesh Nayak*[494], before the Bombay High Court it was held that Petitions filed to carry out Inheritance process of deceased person do not have limitation and are maintainable even when they were filed beyond 30 years. The proceeding filed by the Applicant was objected on the premise that it was beyond the prescriptive period under the Portuguese Civil Code. However, the Court has held that the prescription would not operate since the inheritance is held in common possession by the heirs.

If a person died in Goa without having any immovable properties in Goa nor being permanent resident of Goa, then the succession will open at the place where he died and

[494] Appeal from Order No. 23 of 2018

accordingly the Court having jurisdiction over the place of his death would be competent to entertain the Inventory Proceedings. In cases of general communion of assets, the Court where the Inventory Proceedings of the predeceased spouse is instituted, will have jurisdiction to entertain the Inventory Proceedings in respect of the surviving spouse who has died subsequently.

There is provision for clubbing of inheritances when the persons are same and when the inheritance pertains to both the spouses. In *India Maria Matildes De Souza v. Agnelo Gustavo De Souza*, the Court has held that there cannot be any dispute that the prayer for condonation of delay has to be considered liberally. However, at the same time, the existence and the establishment of a sufficient cause is sine qua non for an order granting condonation of delay.[495]

In G. Rama Rao v. Joseph de Souza[496], it is held that succession is transmission of rights of the deceased person. It does not come within the purview of transfer. Hence, even when there is deficit stamp duty paid on the Succession Deed it is still valid instrument and hence can be used during the course of Inventory Proceedings.

In *Anastasio Gomes v. Bernardo Gomes*[497], it is held that under Goan Succession law, the right to succession devolves on death of the estate leaver and hence when the parents are alive, the children cannot file Inventory Proceedings to claim the right which has not accrued.

In Anisia Coutinho v. Santana Coutinho, [498]*it has been held that when there is a divorce proceeding between the spouses, then their rights to properties can be decided in the said proceedings itself rather than opting for separate Inventory Proceedings.*

4.14 Cabeca de Casal/Head of the Family

Cabeca de Casal is the Head of the Family/Administrator appointed by the Court to carry out the Inventory Proceedings of the deceased person that are filed by any of the interested party. He is responsible for the filing of list of assets and liabilities of the deceased person as well as submitting list of heirs of the deceased person. He is the principal person who carries out all the formalities pertaining to the Inventory Proceedings. Cabeca de Casal is necessarily a member of the family of the deceased

[495] Second Appeal No.125 of 2017, in the High Court of Bombay at Goa
[496] 2002 (2) All MR 14
[497] 2012 (1) Goa LR 11
[498] 2013 (1) Goa L.R. 610

person and the qualification/eligibility for his appointment is clearly spelt out in the Goan Succession Law. The person who was in close proximity to the deceased person is given preference in the matter of appointment of Cabeca de Casal. He is fully accountable for his declarations/statements made before the Court in the course of Inventory Proceedings.

In *Hanumant Poi v. Shantabai Poi*[499]*, the Court has held that t*he onus is on the co-heir to prove that the property was in his possession during the lifetime of deceased and at the time of his death. If he proves such possession, then there is possibility of more than one Administrator appointed for different properties. Hence there can be multiple Administrators in Inventory Proceedings when properties are more.

In *Amelia Diniz v Vittol Bhawant*[500], the sister of the deceased was appointed as Cabeca de Casal. On her death, her son was appointed and continued as Cabeca de Casal. Some of the other heirs objected to the appointment of son of sister as Cabeca de Casal since he was not an heir of the deceased. The Court held that only the heirs can be appointed as Head of the Family and the proper order mentioned in the Statute needs to be followed while appointing Cabeca de Casal. It is not mere formality to appoint a Head of Family but requires proper enquiry to be conducted before appointment.

4.14.1 Qualifications of Cabeca de Casal

The Head of the Family in other words known as Cabeca de Casal is generally the surviving spouse except when the surviving spouse does not have any entitlement in the estate and when she does not have minor descendents.[501] The next in line who are qualified for the appointment as Head of the Family are the children of the estate leaver. If there are no children then other descendents can be appointed as the Cabeca de Casal. However it must be noted that none of the children should be under any disability. In case of absence of spouse and children then the other heirs are entitled to be appointed as Head of the Family subject to absence of disability. It is also important to note that the children or the descendants who were living with the estate leaver will be given preference in the process of appointment of Cabeca de Casal. In case there are more than one person who used to live with the estate leaver, then the eldest would be

[499] 1991 (1) Goa LT 168

[500] 2018 (1) Goa LR 164

[501] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 74

preferred and appointed as the Head of the Family. The children or the descendants should have been a permanent resident with the estate leaver.[502]

There is also provision for appointment of Guardian as the Head of the Family. When there is no surviving spouse nor children who are qualified to be appointed as the Administrator then the Court has the power to appoint guardian as the Administrator. In case multiple Guardians being qualified to be appointed as the Administrator then the Court has the power and can select which person to be appointed as the Head of the Family. For the period when no Guardian has been appointed, the Court has the power to appoint a receiver who is chosen from the nearest relatives to act provisionally for the heirs under disability. So also there are special provisions when proceeding is filed in the Court for divorce, separation, annulment. In such cases the Administrator is the eldest spouse when the marriage was governed by communion of assets. If the marriage was governed by Regime relating to separation of assets, in such case the owner-spouse of properties is to be appointed as Head of the Family.

In *Jayshree N. Rajebhosale @ Bimabai Rauji Rane v. Dildar Murarrao Nimbalkar*[503], the Bombay High Court has held that the trial Court should decide all the pending applications for impleadment as party to Inventory Proceedings before deciding the applications for appointment of Administrator. When certain co-heirs are in physical possession of certain assets and also where the Heirs are required to bring back the assets to the inheritance that were initially gifted to them, then in such cases these co-heirs shall be presumed as Administrators relating to assets that are in their possession. It is the duty of the Administrator apparent to file Inventory Proceedings before the Court when he has knowledge that an Heir exists which is a minor or is under disability. After all assets of inheritance are listed in the petition then the Heirs has simultaneous right to apply to the Court for distribution of half of the income from the properties to all the heirs. For this purpose, the Court has to ascertain and take into consideration the value of the properties.

Directions from the Court is required to be complied by the Head of the Family failing which the Court has the power to remove the Head of the Family from his office and also direct Head of the Family to pay compensation to other co-heirs. The Head of the Family is regarded as the manager of the inheritance who has to take all steps to

[502] The law pertaining to appointment of Cabeca de Casal was earlier contained under Articles 2068 to 2085 of the Codigo Civil 1867

[503] Appeal from Order No.18 of 2020

safeguard the estate.[504] He is duty bound to keep a record and accounts of the profit of the properties derived during the period of management of the inheritance. Also he has to meet the day to day expenses and keep updated accounts of the same. Under no circumstances the Head of the Family is authorised to sell the properties of the inheritance.[505] However, he can sell the fruits which cannot be preserved and are in danger of deterioration. In case when the inheritance is partitioned only by way of legacies, the eldest person shall have priority in appointment of Head of family. The Court has the power to appoint a new Head of the Family in case of removal of the original Head of the Family. This can be done suo moto by the Court or by way of an application by the interested parties. If any of the interested parties including the Head of the Family conceals or hides any of the properties then his right gets forfeited pertaining to the concealed properties. The Court has the power to direct the interested parties who has concealed the assets to hand over the asset to the concerned Head of the Family. In the event of any false claim based on false documents being made by the Head of the Family, then he is liable to pay damages and is also criminally liable for the same. The Head of the Family cannot conceal any of the title documents relating to the inheritance and if he does so then he is liable for the losses caused. In *Ranjit Satardekar Vs. Smt. Clotildes Fernandes*[506] the High Court of Bombay at Goa has held that when the children are alive, their spouses will not be covered under the definition of descendants for the purpose of appointment as Cabeca de Casal. On a correct interpretation of Article 1412 of the Portuguese Civil Code, it is only the heirs (not their spouses) and the moiety holder spouse of the estate lever who are entitled to participate in the Licitation. The spouse of the deceased can be an heir in certain conditions but cannot be appointed as Head of the Family. [507]

In Hanumant Poi v. Shantabai Poi[508], it is held that the onus is on the co-heir to prove that the property was in his possession during the lifetime of deceased and at the time of his death. There can be more than one Administrator appointed for different properties. Hence there can be multiple administrators in Inventory Proceedings when properties

[504] Mario Bruto da Costa, *Matrimonial Regimes & Inventory*, Mangala Offset, Vasco, 2000, pg. 232
[505] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 596
[506] Appeal from Order No.18 of 2006
[507] Anisia Coutinho v. Santana Coutinho, 2013 (1) Goa L.R. 610
[508] 1991 (1) Goa LT 168

are more. The possession that is pertaining to moiety holder or co-heirs should be lawful possession.[509]

In Dnyaneshwar Salgaokar v. Prakash Salgaokar[510], the parties claimed that they did not receive any notice pertaining to the Inventory Proceedings and thus were unaware of the same. The High Court Bombay has held that the Inventory Court is bound to enquire as regards objections for appointment of administrator. Principle of natural justice should be followed and all parties must be heard before passing of order of appointment.

In *Joseph Lourenco v. Fr. Rosarinho Lourenco*[511], the eldest brother was appointed as Cabeca de Casal. Co-heir challenged the appointment but could not produce any supporting evidence. The Court held that the burden of proof lies on the applicant who challenges the appointment and if he is unable to substantiate the claim then it cannot be entertained.

4.14.2 Functions of Cabeca de Casal:

The Head of the Family is the manager of the inheritance for the time being till the disposal of the Inventory Proceedings.[512] He is entitled to receive all the income and profits pertaining to the inheritance and helps to meet the daily expenses and keep an account of the same. The Cabeca de Casal needs to maintain an up-to-date record of all the expenses incurred and balance remaining amount has to be credited in Bank which should necessarily be a Nationalized Bank only. Any sum given to the Heirs will be treated as an expense. It is the duty of the Cabeca de Casal to safeguard and properly manage of the estate.[513] The Cabeca de Casal cannot sell the properties of the inheritance except in case of perishable fruits or other perishable items. It is the duty of the Head of the Family to recover any debts which are due to the inheritance before they become time barred. If title of any property is not in question, the Head of the Family can be sued by the creditors of the inheritance. In case when the title of any property in the inheritance is in question then all the heirs of the inheritance are required to be made a party to the suit. If the Head of the Family incurs any expense for the benefit of the

[509] Khairumissa Bi v. Sayad Mohammed, 1989 (1) Goa LT 203

[510] 1998 (1) Goa LT 181

[511] 1997 (1) Bom CR 176

[512] The provisions relating to Head of the Family were earlier contained in Articles 1369 to 1376 of the Civil Procedure Code of 1939

[513] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 412

inheritance then he is entitled to be reimbursed for the same. The Cabeca de Casal is duty bound not to hide any part of estate properties and if he does so then he will lose his right over the assets that he has concealed. The Head of the Family is entitled to manage the estate till the order of homologation becomes final. The Head of the Family can list those properties only which are owned or held by the deceased. There should be documentary evidence to link the assets to the deceased.[514] The preventive measures as regards properties of the estate can be granted when there is sufficient proof to say that the estate is under danger. Without sufficient cause, the Cabeca de Casal cannot apply for preventive orders[515].

In *Yessonda Delfina Dalton v. Xavier Centre for Historical Research*[516] the Court has held that when there is a denial of the existence of any assets or dispute that they do not belong to the inheritance and if the same cannot be decided by a summary enquiry, the parties, "shall be directed to file a suit." The proper remedy for such situation is a Civil Suit and such matters which require detail enquiry cannot be decided in summary manner in Inventory Cases.

In *Domingos Rodrigues v. Joao Rodrigues*[517], the High Court has held that the Administrator or Head of Family is required to be formally appointed before he starts to perform his duties. There cannot be automatic appointment. The Inventory Court will have to apply its mind for appointment of same.

In John Fernandes v. Jt. Mamlatdar Salcete[518], the Court has held that the Cabeca de Casal is only a trustee of the inheritance. He cannot take long term decisions. He is not entitled to sell the properties. Similarly he cannot create charges on the inheritance like the mortgages etc.

4.14.3 Ouster of Cabeca de Casal

The Court has full powers to change or remove the Head of the Family from his office. In case when there is any delay in the filing of the list of assets or liabilities, the Court can remove the Head of the Family. So also when the Head of the Family does not inform the appraisers about the assets to be valued or when he frequently fails to appear before the Court at the time of hearings or when he does not produce the documents

[514] Tomas Souza v. Nelly D'Souza, 2016 (1) Goa LR 269
[515] Tarzan Costa v. Mario Souza, 2017 (1) Goa LR 500
[516] Appeal from Order No.2 of 2018 in the High Court of Bombay at Goa
[517] 1995 (1) Goa LT 370
[518] 1995 (1) Goa LT 87

required for the proceedings, the Head of the Family can be removed from office. If the Cabeca de Casal fails to file the mandatory declarations before the Court or when he is not interested in managing the assets with prudent mind, he can be ousted from his office. Any party to the Inventory Proceedings can apply to the Court for removal of the Head of the Family on any of the valid grounds. Hence in such cases when he fails to perform his duties faithfully the Head of the Family can be changed by the Court. The Head of the Family is also liable for punishment for not complying the orders issued by the Court.[519]

The Head of the Family also has a right to apply to the Court to get him discharged from the office of the Head of the Family. He is entitled to apply to Court for his discharge in case when he is 70 years or above or when he suffers from ill health and is not able to perform the duties properly. So also when he resides outside the jurisdiction of the Court then he can apply to the Court for his discharge as a Head of the Family. If there is any conflict of interest then also he can apply to the Court for his discharge as a Head of the Family.

In *Andre Antonio Rosario Da Costa v. Angela Patricia Da Costa*[520] the appellants had moved an application for removal of Cabeca de Casal mainly on the grounds that the Cabeca de Casal failed to disclose in her statement on oath dated 16.8.2014 the fact of execution of a Public Will dated 13.9.2007 by the deceased Inventariado during his lifetime despite having knowledge about the same. Secondly, Cabeca de Casal failed to comply with Article 2072 read with Article 2073 of the Civil Code and also failed to make correct disclosure of the assets of the deceased. She failed to make correct valuation of the listed immovable properties only for the reason that she deceitfully wanted to delay the Inventory Proceedings. Further, because of her ill-health the Cabeca de Casal was unable to perform her duties in that capacity properly. In the impugned order, the learned Civil Judge rejected the application mainly on the grounds that the interested parties had made similar prayer of the ill-health of the Cabeca de Casal as well as nondisclosure of the Public Will in their earlier application which came to be rejected by his predecessor vide order dated 6.7.2015. The learned Trial Judge was of the opinion that on that count alone the application was to be dismissed. He further observed that only because the Cabeca de Casal was suffering from uncontrolled

[519] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 723

[520] Appeal from Order No.27 of 2017 in the High Court of Bombay at Goa

hypertension, said illness is not sufficient to remove her as a Cabeca de Casal. It is also observed in the impugned order that filing of incomplete list of assets, delay in filing description, non-mentioning of Will are the matters for which remedy is provided under the Code for the Interested Party who can raise the objections at the appropriate stage of the proceedings. The High Court held that the question as to whether the Cabeca de Casal had performed her function in view of the Article 2072 and 2073 of the Civil Code is a matter to be inquired into by giving an opportunity to the parties and by deciding the objections, if any, raised by the appellants for removal of the Head of the Family. There was no proper opportunity given to the appellants to prove the objections for the purpose of removal of the Head of the Family. As contemplated in Article 2073 of the Civil Code, it is incumbent upon the Administrator to present the description of the list of properties faithfully and therefore, it is necessary to have an inquiry conducted into the said aspect before his removal from office.

In Narayan Kubal v. Ankush Halarnkar[521], the Head of the Family appointed by the Court failed to carry out his duties. He did not file the list of assets and did not bother about the protection and safeguarding of the inheritance. Accordingly on these grounds, the Court removed him from the post of Cabeca de Casal.

In Dnyaneshwar Salgaokar v. Prakash Salgaokar[522], the parties claimed that they did not receive any notice pertaining to the Inventory Proceedings and thus were unaware of the same. The High Court Bombay has held that the Inventory Court is bound to enquire as regards objections for appointment of administrator. Principle of natural justice should be followed and all parties must be heard before passing of order of appointment of Head of Family.

In Suresh Lawanis v. Arun Lavanis[523], the Court has held that the declarations of the Head of the Family under oath are presumed to be true. The burden to prove is on the party who is claiming that the Cabeca de Casal has made false declaration.

4.15 Role of Family Council in Inventory Proceedings

Family Council is constituted in cases when there are minors, persons under disability in the inheritance. Such persons are unable to take decisions on their own. Hence, to protect their interest in the conduct of Inventory Proceedings, there is provision

[521] 2009 (4) Bom CR 142
[522] 1998 (1) Goa LT 181
[523] 2009 (1) Goa LR 25

whereby Family Council is constituted by the Court. The Family Council is empowered to safeguard the interest of such persons in the inheritance. The Family Council in Inventory Cases consists of three members. One from the maternal side, one from the paternal side and third from either side. The members of the Family Council are chosen from the family and relatives of the person under disability. The Court takes into consideration the proximity of relations, age, residence, before appointment as a member of the Family Council. The Court has the power for reappointment of Family Council members. This does not affect the decisions taken prior to the reappointment of the member of the Family Council. In case of any conflict between the interest of the natural guardian, ascendants, descendants then the Court has the power for appointment of a Guardian ad litem.[524]

In Vinisha Jitesh Tolani @ Manmeet Laghmani V/s. Jitesh Kishore Tolani[525]*, a* contention was advanced that the annulment proceeding cannot be heard outside the State of Goa, in view of the existing laws which made the Civil Code and the law relating to marriage applicable to the persons residing within the State of Goa only. The Hon'ble Supreme Court observed that even if it were to be held that it is the customary law of the land which would prevail over the personal law of the parties, the same could not be a bar to transfer of the matter outside the State of Goa to any other State. What would be of relevance is that they would be governed by their personal laws notwithstanding the fact that their proceedings are conducted outside the State of Goa. Therefore merely because the proceedings are conducted at Family Court, Mumbai, it will not affect the applicability of the personal laws or the Special Civil Laws, which are applicable to the parties and under which they are governed. Family Council can be constituted even when the proceedings are held outside Goa.

Family Council is required to protect the interest of the minors, persons under disability. They are required to assist the Court to take decisions in the best possible interest of the said persons. The Family Council is required to represent the minors, persons under disability in various stages of Inventory Proceedings such as Licitation, Partition, drawing of lots, etc.

[524] Mario Bruto da Costa, *Matrimonial Regimes & Inventory*, Mangala Offset, Vasco, 2000, pg. 260
[525] MANU/SC/0308/2010, AIR 2010 SC 1915

4.16 Special situations in Inventory Proceedings

All proceedings before the Courts go through various stages. There are numerous situations that arise during the course of Inventory Proceedings. Such situations affect the longevity of the proceedings. Hence proper procedure is required to be put in place to ensure that the Inventory Proceedings proceed without any interruption till its completion. The most common events that affect the Inventory Proceedings are death of surviving spouse or any of the heirs during the subsisting proceedings and challenge by the interested parties. Both these situations affect the Inventory Proceedings to determine the period of pendency of Inventory Proceedings. Such situations are discussed hereinafter.

4.16.1 Death

Death of any of the parties to the Inventory Proceedings is a crucial situation which affects the Inventory Proceedings. The death of the surviving spouse during the continuation of the Inventory Proceedings in itself does not lead to dropping or cancelling of Inventory Proceedings but the Head of the Family has to make an application for inclusion of the Heirs on record. The said Heirs will be made parties to the Inventory Proceedings and the proceedings will continue after serving of summons to the parties. Similarly incase if any creditor, Legatee dies during the Inventory Proceedings then his heirs can be made a party to the Inventory Proceedings.

In *Maxmillian Victor Alvaro Rodrigues v. Byron Charles Kevin Rodrigues*[526], the petitioners had filed an objection on the ground that in view of Article 2017 of the Portuguese Civil Code, 1867 read with Article 1371 of the Portuguese Civil Procedure Code, 1939, the Inventory Proceedings filed beyond the period of thirty years, from the death of Inventario, is not maintainable. The Court has held that there is nothing in Article 2017 of the Civil Code to say that Inventory Proceedings cannot be filed, beyond the period of thirty years from the death of the party. Insofar as Article 1371 of the Code is concerned, it postulates closure of the Inventory Proceedings, in view of the declaration by the Head of the Family. The Head of the Family had not filed any such declaration and therefore the Inventory Proceeding is maintainable and can continue.

[526] Writ Petition No. 590 of 2018 in the High Court of Bombay at Goa

4.16.2 Challenge

Challenge refers to the objections filed by various interested parties in the Inventory Proceedings at different stages of the proceedings. The parties to the Inventory Proceedings has an option to file objection within thirty days from the receipt of summons either to challenge the maintainability of the Inventory petition or to bring to the notice of the Court that any party is under any sort of disability. The interested party can challenge the office of the Head of the Family and also the inclusion of assets which are already legally partitioned. A person can apply to the Court to implead him as an interested party, Legatee, creditor, vendee of share in undivided inheritance and the Court has the power to decide the application as regards whether to implead the said party in the Inventory Proceedings. The applicant has to produce the list of witnesses and the evidence that he wish to rely upon. The age of majority for the purpose of maintenance, marriage, is held to be as 21 years under the Civil Code.[527]

In *Ranjit Satardekar v. Clotildes Fernandes*[528], the Court has held that if any of the Legal Representative wish to put forth any new point of argument, then he either needs to implead himself in continuing proceedings or can file separate civil suit.

In *Nirmala Dessai v. Tulsi Dessai*[529], it is held that the Inventory Court is competent to decide about the objection raised as regards the validity of Will. However, incase there is detail investigation then the parties are required to be directed to file separate Civil Suit.

In Dnyaneshwar Salgaokar v. Prakash Salgaokar [530] the parties challenged the Inventory Proceedings on the ground that they did not receive any notice pertaining to the Inventory Proceedings and thus were unaware of the same. This was taken as a valid ground of objection based on principle of natural justice.

4.17 Crucial Stages in Inventory Cases

A detail list of steps is involved in the process of Inventory Proceedings. Each step is required to be followed scrupulously and meticulously by the parties to the Inventory Proceedings. Similarly it is the duty of the Court to ensure that there is compliance of statutory provisions and also to keep a check on the actions of the interested parties so

[527] Smita Mahendra Halarnkar v. Mahendra Tukaram Halarnkar, Criminal Revision Application No. 5 of 2021 in the High Court of Bombay at Goa

[528] 2006 (4) All MR 223

[529] 2015 (4) Mh.L.J. 731

[530] 1998 (1) Goa LT 181

that they do not take advantage of any technicalities to delay the Inventory Proceedings. Each step carries utmost significance since the proceedings are designed in such a manner so as to have a summary disposal of cases. A lot depends on these very steps in Inventory Proceedings to effect a speedy disposal of Inventory Proceedings. Some of the crucial steps in Inventory Proceedings are discussed hereinafter.

4.17.1 List of Assets

The Head of the Family is duty bound to list out all the assets starting from outstanding debts, securities, actionable claims or money, items of precious metals followed by movables, livestock and then followed by immovable properties including mortgages, leases, easements and.[531] About five centimetre spacing is required to be kept between the list of items. Distinct lists are required to be prepared for items which would be valued by different persons and by using different techniques. All pages are to be initialled by Head of the Family. After initialling all the pages, the Cabeca de Casal has to put his signature on the last page. Incase the Cabeca de Casal does not know to sign then he can affix his thumb impression on each of the pages. The identification details of the list of items should be complete in all respect. The Head of the Family is also required to declare the estimated value of the list of the assets.

Under the old Article 2177, a co-owner could not dispose of "a specific part" of the property held in inheritance until it was allotted to him in the partition. But the transfer of his right to the share stood restricted "in accordance with the law." In Section 17 of the Goa, Succession, Special Notaries and Inventory Proceedings Act, 2012, this restriction has been made explicit. It provides for the "consequences of transfer of specific assets of inheritance." A co-heir cannot dispose of "any specific asset of the inheritance or part of such asset" to a stranger "until and unless the asset or part thereof" is allotted to him in the partition. It declares that "any such transfer shall be inoperative and void." But there is also an exception. It allows the co-heir to "transfer his undivided right to the inheritance to a stranger." That transfer, however, must be subject to the other co-heirs' right of pre-emption.[532] Hence even when an Heir has sold an undivided

[531] The provisions pertaining to filing of list of assets were earlier contained in Articles 1377 to Article 1390 of the Civil Procedure Code of 1939

[532] P.P. Kuriakose v. Shubhalaxmi Gaitonde, Appeal from Order No.47 of 2018 in the High Court of Bombay at Goa

share in inheritance, all the assets of the inheritance will be listed irrespective of such conveyance.

The interested parties can file their objections within thirty days from the date of filing of list of assets by the Head of the Family. The objections can be as regards any assets which the party feels that has not been listed or as regards the denial of existence of assets in possession of head of family or donees or can also be as regards denial of duty to collation by Head of family or donee etc. The objections as regards non inclusion of assets in the list can even be made after aforesaid period of thirty days with the permission of the Court and if the Court is satisfied that the party has acquired the information pertaining to existence of properties within thirty days preceding filing of the objection. Law mandates that the Notice of objection should be given to the Cabeca de Casal and also to the donees if any. In case the donee or the Head of the Family denies the existence of the properties then the Court has to hold a summary inquiry to decide whether to include the disputed assets in the list of the assets. If the summary inquiry is not sufficient to decide whether to include the assets or not, then the Court can direct the party to file a civil suit in respect to the disputed assets and the Court can proceed with the Inventory Proceedings pertaining to the rest of the assets and liabilities. If case of failure to file the reply by the Head of the Family or the donee then the Court can presume that the objection is admitted and proceed accordingly. If the Head of the Family cannot give particulars pertaining to the some of the assets which are in possession of the some of the other co-heirs then the Court can direct such co-heirs to list out these assets. If any person disputes the inclusion of any asset in the list of assets then the Court has to decide the matter and pass an order after giving a fair hearing to the disputing parties and recording of the evidence thereof. If a person conceals any asset then the Court can direct him to handover the same to the Head of the Family.

.*In Tomas Souza v. Nelly D'Souza*[533], It is held that the value of the properties that has to be taken into consideration is the assessable income and not as per prevailing market value of the properties. Assessable income is calculated taking into consideration the income that can be generated from the property concerned and the lifespan of the concerned asset.

[533] 2016 (1) Goa LR 269

In *Skoda Afonso v. Motor Accident Claims Tribunal Panaji Goa*[534], it is held that when there is loss caused by way of accident to the estate, the claim of the heirs will still form part of assets and liabilities in the Inventory Proceedings even when the original claimant has expired. The rights of the heirs will subsist against the person causing the accident when the estate holder dies. Inheritance covers all the rights, as well as the obligations, liabilities of the deceased person and the same gets transferred to his heirs.[535]

In Pedro Vaz v. Martha Vaz[536], objection was filed to the list of assets without providing any proof supporting the objection. The Court held that the objection is not maintainable without valid documentary evidence. In order to delete any of the assets specified by the Cabeca de Casal, there should be specific evidence to prove that the asset did not belong to the deceased person.

4.17.2 Sale pre-emption

The co-heirs to the inheritance have the right of pre-emption over the sale of the undivided share in the inheritance. The inheritance cannot be sold to the third party directly.[537] Party has to make an application to the Court informing all conditions and also the price at which the sale is proposed to be finalized. The Court has to appoint a Head of the Family in such cases and also if required the Family Council has to be constituted along with appointment of Guardian or curators, if applicable. Thereafter the Court has to call for a conference of the interested parties in order to determine and exercise right of pre-emption by the interested parties. If the sale takes place without providing the right of pre-emption to the coheirs, then the co-heirs has the right to exercise the right to pre-emption in the time span of Sixty days.

In *Syscon Consultants Private Limited v. Primella Sanitary Products Private Ltd*[538], the the appellant argued that Article 2177 of the Portuguese Civil Code, 1867, absolutely bars transfer of any portion of a joint property. In answer, the Supreme Court has held

[534] 1999 (2) ALL MR 549

[535] Praveena Doshi v. Ganpat Parab, 2014 (2) Goa L.R. 360 (Bom)(PB)

[536] 1996 (2) Goa LT 263

[537] The provisions pertaining to pre-emptive rights of co-heirs were specified in Article 1511 to Article 1518 of the Civil Procedure Code of 1939

[538] (2016) 10 SCC 353

that "Article 2177 does not prohibit alienation of undivided interest, which is in tune with the principle underlying Section 44 of the Transfer of Property Act.[539]

The right to pre-emption is exercised by all the co heirs followed by moiety holder and then the individual heirs. In case if the vendee makes the application then the heir or the Head of the Family can apply to the Court requesting to convene a conference of all the interested parties to the Inventory Proceedings in order to decide whether all heirs wish to exercise pre-emption right jointly.[540] If the right is not exercised by co heirs and the moiety holder, then the heirs can exercise their pre-emption rights individually. If more than one heir desires to exercise his pre-emption right then the preference is given to the largest shareholder. Interested party loses his right if he fails to deposit the price within fifteen days after exercising his pre-emption right. In such event, the opportunity passes to next pre-emptor having largest share. He is also duty bound to deposit the amount due in time limit of fifteen days which is counted from the date when the notice is received. In case the shares are equal then the parties are called for Licitation in the Court. The Court draws the minutes of Licitation and the highest bid is recorded. The highest bidder has to deposit the price within fifteen days failing which the opportunity goes to the next highest bidder who is also required to deposit the amount within a span of fifteen days which is counted immediately from receipt of notice.

In Primella Sanitary Products Pvt. Ltd. v. Gurudas Gaitonde[541], the Court has held that all the heirs are entitled to right of pre-emption incase of sale of share by any of the co-heirs in the inheritance. This provision is made to ensure that there is no third party involved in the inheritance when some co-heirs are ready to take over the assets.

Similarly in *Mariana Carmelina Fernandes v. Antonio Gomes*[542], the court has held that any gift made by the moiety holder without making the children as parties to the said deed will render the same as void ab initio.

4.17.3 Liabilities of estate

The payment of debts of the deceased are required to be settled from his inheritance. But after the partition is done, all the heirs would be liable for the payment of the debts according to the proportion of their respective allotment. So also, all funeral expenses of

[539] Laximan Meng Gaunkar v. Shri Jaganath Sukto Goundolkar, Second Appeal No. 28 of 2007 in the High Court of Bombay at Goa

[540] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 425

[541] 2010 (5) All MR 567

[542] 2006 (3) AIR Bom R 227

the deceased are also to be borne from his inheritance irrespective of the fact as regards existence or non existence of the Forced Heirs. Incase of mortgage of immovable properties of the deceased, the heirs can ask for settlement of the said liabilities before effecting partition. However there should be funds present in the inheritance for making such demand.[543]

If the immovable properties are taken up for partition including the liabilities then the assets are to be valued first followed by deducting the encumbrances and subsequent to that the allottee of the asset is liable to pay the liability. Creditors of the inheritance has the right to apply to the Court for the payment of his debts which are not listed by the Head of the Family in his submission before the Court. He can make this application any time before passing of order as regards the mode of effecting the partition of the inheritance unless he is made party to the proceedings. If the creditor is served with notice for making him party to the proceedings then he can apply to the Court for including his debt due till the time of holding the conference in the Inventory Proceedings pertaining to determination of debts. The creditor nevertheless has an option to file suit before Civil Court.

In *Tertuliano Renato da Silva v. Franciso Lourenco Da Silva*[544] items listed were broadly of three categories. Item No. 16, 17 and 18 were in respect of the improvements made and maintenance of the old portion of the house, Item No.19 to 45 except item Nos. 25 and 26 related to the repayment of the debts of the Estate leaver. Item No.25 was about expenses of Rs.2000/- on the medical treatment of the mother of the petitioner and the respondent while item No.26 of Rs.3000/- was towards funeral expenses of the deceased. There were objections filed by the parties relating to aforesaid expenses except funeral expenses. The Court held that funeral expenses can be retained inasmuch as under section 405 of the Act and hence the funeral expenses of the Estate leaver shall be paid by the inheritance. However, the rest of the above items were ordered to be deleted after conducting summary inquiry. The Court further held that if any debt which is considered payable to the inheritance by Head of the Family is denied by the so called party then the Court has the power to decide the matter as regards whether the debt is maintainable or not. In case it is retained then it becomes valid debt and if the same is removed then the aggrieved party can file a case before the Civil Courts.

---

[543] Mario Bruto da Costa, *Matrimonial Regimes & Inventory*, Mangala Offset, Vasco, 2000, pg. 306

[544] Writ Petition No. 808 of 2010 in the High Court of Bombay at Goa

In case there are no objections for the list of assets filed by the Head of the Family then the Court will pass an order to value the list of assets effectively from date of opening of inheritance. For the purpose of valuation, the Court appoints a Valuer by fixing the time limit and also determines his fees. If situation warrants, the Court can appoint more than one valuer for different assets. The list of assets is handed over to the valuer. The valuer is then required to record his valuation in the margin provided in the list of assets. Incase there are no much technicalities in the determination of the value of the assets then the Court can appoint one of its officers for the purpose of determination of the value of the assets. The time limit for the valuation would be within a period of fifteen days by the officer of the Court. The period can be extended by the leave of the Court.

In *Mario Aleixo Guadalupe da Costa v. Jose Aleixo Guilherme da Costa*[545] the High Court has held that it was necessary for the Inventory Court to hold a summary inquiry in the first instance before deciding whether the assets or liabilities should be listed or not. However, no such inquiry was ever held by the said Court. The law require the holding of a summary inquiry when the assets or liabilities are listed and where objections are raised. Hence the matter was remanded to the Inventory Court directing to hold a summary inquiry as contemplated by Section 400(5) of the said Act and only thereafter proceed in the matter.

In *Olavo Fernandes v. Maria Afonso*[546], objection was filed on the list of liabilities filed by the Head of the Family. The list included medical expenses relating to the deceased person. The trial Court rejected the objection without giving an opportunity of being heard. The Hon'ble High Court held that the Court is duty bound to conduct an inquiry into the objections by hearing the parties and the Chart of partition can be confirmed only after deciding all such objections.

4.17.4 Final list, Family Conference and Payment of debts

After the Valuer or the Court Officer, as the case may be, determines the valuation of the list of assets, the Court directs for filing final list of assets and liabilities. This list contains the values of the assets and liabilities. So far as movables are concerned which does not have high valuation, lots are made up each having valuation of not less than Rupees Five Hundred.

[545] Appeal from Order No. 64 of 2019 in the High Court of Bombay at Goa
[546] 2016 (2) All MR 191

If the estate of the deceased includes divisible immovable properties excluding houses then the interested parties has a right to apply for division of immovable properties by way of metes and bounds as per the share allocation. There can be joint allocation of any sub divided plot among the interested parties. There is also provision for drawing of lots if the plot area is uniform. If any of the interested parties apply for division then the Court appoints a Commissioner for the purpose of ascertaining as regards whether the properties can be divided as per law prevalent relating to sub division of holdings. If the properties cannot be divided then the same is put up before the interested parties for carrying out Licitation. After the drawing of final list of assets the moiety holder or the heirs has a right to apply and submit their say as regards whether there is overvaluation of assets and also as regards whether they want any of the assets to be put up for Licitation. The heirs or moiety holder can also request for calling of conference by the Court.[547]

In *Odette da Silva v. Maria V.C.S. de Vieria Velho e Celina Almeida*[548] the widow of the Estate Leaver had filed the Inventory Proceedings. One Mrs. Maria Aura Velho was appointed as a Cabeca de Casal and she had filed the list of assets. After her death, her son came to be appointed as Cabeca de Casal and after the death of her son, the first respondent, who is the daughter of the Estate Leaver has been appointed as the Cabeca de Casal. She filed a second list of assets containing about 283 items in addition to the first list, which was objected to by the appellant, on the ground that Mrs. Maria Aura Velho had already filed the list of assets. The appellant filed a separate application for discarding the second list of assets. The objection raised by the appellant to the second list of assets has been rejected and the Inventory Court has directed inquiry. The High Court held that the Inventory Court had ordered is an inquiry into to the second list of assets. Hence the Inventory Court is right in doing so since it is obvious that the Inventory Court would be required to hold an inquiry in respect of both the lists of assets, the first list as well as the second list of assets, in order to finalise total assets of the deceased person.

The Family Council convened by the Court has to decide about Licitation as regards persons under disability. The minutes of the Family Council conference is also required to be recorded. The Court calls for conference of the interested parties for the purpose of

[547] The provisions pertaining to conference of parties were specified in Article 1391 to Article 1404 of the Codigo do Processo Civil of 1939

[548] Appeal from Order No. 40 of 2019 in the High Court of Bombay at Goa

deciding the debts and their mode of payment, Emphyteusis, overvaluation and partition related objections from the parties. Family Council members also are notified for the Conference. If any of the parties do not appear for the conference inspite of due service of notice then the resolution of the Conference is binding on them too. Any recognized debts are required to be paid and Order in this regard would be included in the confirmation of partition.[549] If any debt is required to be proved by documentary evidence then the debt is to be approved after such evidence is adduced by the Family Council or by the representatives of the disabled parties. The Court has the power to decide as regards admissibility of debts on the basis of evidence produced by the contesting parties. If there is disagreement by some of the interested parties then the contested debts can be claimed by the creditor by filing a case before the Civil Court. The approved debts are required to be paid if the creditor requests for the same. If there is shortage of funds then the assets are to be publicly auctioned. In case of disagreement between the interested parties as regards the assets to be publicly auctioned then the Court has the power to decide the same. The creditor can also settle his debt by taking over the assets on the price fixed by the Court. So also there is provision for making private sale of the assets if the parties agree. If there is Mandatory Inventory then the Court decides where to hold private sale of assets. The appointment of person to sell the asset in private sale is done by the Court. So also the Court decides the minimum selling price. The appointed person for sale is required to submit his report to the Court after carrying out the sale. If there are any movable items for sale, the same is auctioned at a nearby place or at a place where they are situated but without incurring extraordinary expenses for their transit. The Auction so conducted can be annulled if the same is found to be done fraudulently or if any irregularity is committed as regards the same. If the public auction held is declared invalid due to irregularity, then the Court takes up the auction in its premises or directs for a private sale. The creditors can demand for the payment of his debt from the consenting interested parties who have acknowledged his debt. The said payment can be as per their proportionate liability. If there are no funds available then the payment is required to be done from the assets allotted to said interested parties. Even if the creditors do not demand for the payment of their debts, then also the parties may decide the mode of payment. The parties can also provide for payment of approved debts which are yet to fall due. In case of Legatees, the decision as

[549] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 453

regards mode of payment of liabilities can be done only after distribution of inheritance by legacies.

In *Antonieta B. Fernandes v. Ana Paula do Rego e Mendes*[550] the petitioner had raised objections to the final chart of partition on the premise that the Trial Court should not have approved the auction as the property in question which could have easily fetched Rupees 3 Crores in the open market was auctioned at a paltry sum of Rupees 47 Lakhs. The Inventory Court still went ahead with the proceedings and on the basis of the final chart of partition, confirmed the same ordering the assets to be allotted to the respondent and the petitioner and without assigning any reasons despite the record in the Roznama that the learned Advocate for the petitioner / interested parties was not present and that the interested parties alone were present in person. The record in the Roznama was contrary to the history of the case which showed that the matter was listed before the Senior Civil Judge for arguments and not for orders as passed by it on the said date. The learned Trial Judge had finalised the chart of partition by the impugned order without even allowing the petitioner to file her objections and disposed of the Inventory Proceedings. The High Court held the Order of Inventory Court patently illegal and in exercise of its powers under Article 227 of the Constitution of India, the impugned order was quashed and set aside

If the Emphyteusis is a part of estate, then it is decided as regards to whom the same is allotted. If none of the interested parties wish to take it then it is sold and the sale amount is distributed. If there is disagreement as regards the allocation of the Emphyteusis, then it is put up for Licitation. If any of the interested parties contend overvaluation of assets then he has to state the fair valuation according to his knowledge and then the Family Conference decides as regards the value of the asset.

In a peculiar case of *Satish Bhatkuly v. Vinayak Bhatkuly*[551], objection to the List of assets was filed without delay on subsequent date of hearing. The time limit prescribed for filing of objection was 48 hours. However, the next date of hearing was given after two months. Accordingly the party filed the Objection on said hearing date. The opposite party filed objection that 48 hours have elapsed. The Court held that since the objection was filed on immediate next hearing date it will be considered to have been filed within the prescribed time limit since mere technicality cannot be a ground to deny justice to any of the parties.

[550] Writ Petition No.566 of 2017 in the High Court of Bombay at Goa

[551] 2009 (1) Mh LJ 946

4.17.5 Licitation of assets

Licitation is a process of auction within the family of the deceased whose succession is opened. The spouse of the deceased and his heirs can take part in this process. Third parties are not allowed for Licitation. In certain cases, Donee or Legatee can be allowed to take part in the auction. The properties which are not compulsorily to be allotted to any of the heirs can be put into the process of Licitation.[552] A power of attorney holder of a person who is not otherwise debarred can take part in the Licitation. The only condition is that specific clause should be present in the Power of attorney to that effect and the certified copy of the Power of attorney or the Power of attorney in original has to be submitted to the Court.[553] The individual item in the final list of assets will be put to Licitation. If all the parties to Licitation desire then lots can be made. Also lots can be formed if any of the properties cannot be easily separated. Separate parties can bid jointly for one item and in such case they will be jointly as well as individually liable to pay the auction amount pertaining to the particular item.

Once parties win the bid they cannot back track from the same. The possession is to be handed over to the successful bidder after taking into consideration homologation of the partition and appeals pertaining to the same. The process of Licitation cannot be said to be a sale of asset. It is a partition of the estate and hence the successful bidder becomes the full owner of the asset allotted to him.

In *Apolinario Agnelo Joao Eliador Teles v. Pedro Francisco Xavier Teles*[554] it was the contention of the appellant that in one of the asset, the area of the land was 1332 sq. mts on which there was old and new extension of house, with covered an area of 450 sq. metres. According to the appellant, new extension was done by him and, therefore, it is not an asset of the Estate Leaver. He further submitted that in view of the Will executed by the Estate Leaver in his favour from disposable share, the same needs to be deleted from list of assets. Thus, the appellant has raised objection for Licitation. The Court held that the period to file objections for non inclusion of assets was thirty days. The appellant/interested party filed the objection after about two years. Hence the same is time barred and hence cannot be admitted since the time limit needs to be adhered by the parties.

---

[552] The provisions pertaining to Licitation were specified in Article 1405 to Article 1413 of the Codigo do Processo Civil of 1939

[553] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 90

[554] Appeal from Order No. 4 of 2017 in the High Court of Bombay at Goa.

If there are any objections to Licitation by any Co-heir having major share in the inheritance not by way of marriage, succession, then the process of Licitation cannot take place.[555] In this case, the Court will order for Second Valuation of the assets. In case such person who has a major share applies to Court on the ground of overvaluation of the particular asset/s, then also Court can order for Second Valuation.

The Cabeca de Casal has the option to raise the possibility of non divisibility of any of the assets. If he does so then the valuer appointed by the Court will have to give his opinion at the Valuation stage. If the issue comes up at a later stage and where there is no conciliation on this point between the parties, the valuer will be heard by the Court before passing the Order. In case where the asset does not go for valuation, then the Court has the power to decide on the divisibility of the asset if there is disagreement between the parties. The Court will decide the matter after Court-appointed expert inspects the estate and submits his report.

In *Antonieta B. Fernandes v. Ana Paula do Rego e Mendes*[556] before the High Court of Bombay at Goa it was seen that the auction itself was vitiated which was conducted by the Nazir of the Court and not the Judge. The Nazir had conducted the auction as per the dictates of the Advocate for the respondent. The chart of partition had to be drawn by the Court but actually it was drawn by the Advocate for the respondent. The Minutes of the auction opened with the expression "as per order", but there was no such order passed by the Court to authorize Nazir to conduct the auction. A record was also made in the minutes that the Court had declared the outcome of auction even when the action was conducted fully by the Nazir of the Court. In view of above, the High Court held that the Minutes of Auction so drawn were totally contrary to law since the auction was required to be presided over by the Court. The Presiding Officer had not conducted the auction but merely signed the Minutes of Auction drawn in her absence. The Chart of partition was drawn by the respondent and not by the Court and objections to the chart were not permitted to be filed. Hence the said Licitation and Chart were set aside being grossly illegal. It is held that the Inventory Proceedings is a summary proceedings and matters pertaining detail inquiry needs to be filed before appropriate Civil Courts. Licitation is aimed at avoiding possibility of fragmentation of land thereby reducing its productivity. In Licitation, the highest bidder takes the property by depositing the

[555] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 629

[556] Writ Petition No.566 of 2017

owelty money. It is calculated by deducting the share of the bidder and then distributed among the other co-heirs.[557] The authority of Cabeca de Casal is less as compared to receiver in civil suits though the functions are of similar nature. Cabeca de Casal cannot take long term decisions such as giving property in lease. Cabeca de Casal cannot by any stretch of imagination create burdens on the estate. He is only the trustee of the estate.[558]

In *Damodar Alve v. Janakibai Alve*[559], the Court has held that as regards Licitation, the owelty money should be paid in time bound manner. Delay in deposit of owelty money cannot be condoned neither by consent of all parties nor by the court in absence of valid ground. The law is to be followed in true letter and spirit to avoid delay in disposal of cases. The property taken in auction is chargeable to stamp duty under Article 45 of the Stamp Act. The stamp duty is to be calculated on the owelty money paid by the said party.[560]

In *Savitribai Parkar v. Devendra Parkar*[561], Licitation was held without the presence of Head of Family. It was seen that the Advocate did not have valid authority to represent the Head of Family in the Licitation process. Hence the process has held to be invalid and to be conducted afresh.

In Vilas Bandodkar v. Atmaram Bandodkar[562], the highest depositor failed to deposit the owelty money within the prescribed time limit. Hence the Court held that the property should be put to re-auction and the entire process of Licitation will be repeated with the exclusion of the earlier highest bidder.

In *Shrihari Upadhye v. Prashant Upadhye*[563], the list of assets was duly informed to the interested parties. However, the parties did not apply for Licitation. Hence it was held that their right has been waived and hence the share will be partitioned as per their entitlement. When the law has provided specific time frame, the objections cannot filed as per the wishes of the parties.

If any of the parties applies to the Court for putting to bid the property gifted by the estate leaver and if the donee of such gifted property objects to Licitation, then Second Valuation of such gifted properties is compulsory. Donee can file his objections within

[557] Manual Colaco v. Antonio Colaco, 2009 (1) Mh. LJ 931
[558] Motibai Cano v. Maria Mota, 1994 (2) Bom CR (F) 628
[559] 2008 (2) Goa LR 422
[560] Fernando Colaco v. State of Goa, 1991 (2) Goa LT 11
[561] 1999 (1) Goa LT 454
[562] 2010 (1) Goa LR 175
[563] 2015 (5) All MR 160

thirty days. After the process of second valuation and bidding of other properties, if it is noticed that the donee is not required to return the gifted property, then the application becomes redundant.

If the gifted property is excessive, and if the property can be divided then the excessive part of the property would be put to bid without allowing the donee to participate. If gifted property cannot be safely divided then Licitation can be held allowing the done to take part. In absence of both cases, the donee is allowed to choose the properties that can satisfy his share and then he is bound to return the excessive properties. Such returned properties are put to bid and donee is not allowed to participate in it. The donee however has a right to apply for second valuation of his gifted assets within a period of thirty days from the notice of first valuation in case the gift is inofficious.[564]

In case if any of the party to the Inventory Proceedings apply for putting to bid estate that is bequeathed by the deceased , then the Legatee has a period of three days to file his reply. If he objects to the process of bidding, then Licitation cannot be held. However the right of the heirs to apply for second valuation of the estate is saved in cases where the undervaluation will affect their position negatively. They can apply within thirty days from the date of filing objection. If the Legatee to such bequeathed property does not object for the carrying out of Licitation, then the process of bidding is held and the right of the Legatee to his due share is protected. Licitation should be held within a period of thirty days from holding conference. The Licitation is to be carried out by the Court appointed officer. Such officer shall not disclose the highest bidder without obtaining permission from Court. It is allowed to take back the Licitation request before the item is put for Licitation. Any other party can also apply for Licitation of the same item.

The rights of the persons under disability is required to be taken care of by his lawful representative. If such interest is not protected, then Court can annul the Licitation. Such order is required to be passed only after hearing the parties within two weeks from Licitation. The Court has held that the question as regards whether a person is Legatee or not has to be decided by the Inventory Court on the basis of a specific inquiry.[565]

---

[564] Mario Bruto da Costa, *Matrimonial Regimes & Inventory*, Mangala Offset, Vasco, 2000, pg. 366

[565] Shanti Gulab Hegde v. Ratnabai Hegde, First Appeal No. 100 of 2019 in the High Court of Bombay at Goa

In *Antonio Mario De Conceicao Barbosa Barreto v. Anita Barbosa Barreto E Lima Fernandes*[566] the High Court has come down heavily on the Inventory Court for failing to exercise its jurisdiction pertaining to objections filed on the Valuers Report. The objections filed by the Interested party were rejected without going into the merits and without application of mind to the evidence sought to be produced by the Interested Party. The High Court has held that the Inventory Court is required to conduct the necessary enquiry before accepting or rejecting the Valuation Report submitted to it.

4.17.6 Second Valuation

If during the First valuation it is evident that the legacy is excessive, then the Legatee can apply for second valuation within thirty days from notice of first valuation. The second valuation can be of the bequeathed properties and also of the other estate which has not gone for Second valuation. Further, the Legatee has the right to apply for second valuation of the rest of the estate if the legacy has to be restricted as inofficious. The auctioned assets are also included incase their value in second valuation is greater than the largest bid in Licitation. The assets put to auction are then allotted based on second valuation instead of Licitation held. If the inheritance bequeathed by way of Gift or Will is beyond entitlement, the surplus needs to be returned to the estate. When the excess is put to auction, the person who has returned the share cannot participate. There are special provisions when the returned asset is indivisible. In such cases the return is made in monetary terms if the excess part returned is lesser than remaining part. Any of the parties has the right to demand second valuation in such case. The redeposit of inofficious gift should be in terms of specie incases where the bequeathed gift is more than the remaining estate. Same will apply incase where the bequeathed gift is equal to remaining estate.

In *Fidelis Costa v. Piedade Costa*[567], there was a genuine doubt as regards Valuers report. It was argued that the Valuer had never visited the premises for the purpose of valuation but carried out the valuation sitting in his office based on hypothetical values. Since there was no provision in the Civil Code for cross examining the Valuer, the report was rejected by the Court.

The procedure to be adopted for second valuation is simple. All the parties are given choice to appoint the valuers (three in total) by way on consensus. If there is no

[566] Appeal from Order No. 9 of 2020 in the High Court of Bombay at Goa
[567] 2014 (6) All MR 1551

consensus then the either side is given the right to appoint one each and the third is appointed by the Court. Here the heirs, donees and also the Legatees form one set of parties whereas the minors interdicts forms the other party. The parents, guardians has to safeguard the interest of minors. Here the parties having similar stake of interest are considered on one side. In disposing of application as regards objection to valuers report, the Inventory Court should also take into account the aspect of the date/year to which the appropriate valuation must refer and also other matters like payment of valuer fees, etc.[568]

After Valuation and Licitation is completed, the interested parties viz. the heirs and Head of Family and moiety holder is required to submit a Scheme of partition to the Court. This has to be submitted within a period of thirty days for the Court to pass appropriate order on the same. This is an important step inorder to draw the Chart of Partition. All the issues are required to be decided by the Court at this stage. The party cannot appeal against the Mode of Partition ordered by Court. However, they can raise their contention at the time of filing Appeal challenging Chart of Partition.

Unless an alternative manner of payment is agreed upon, debts owed by inheritance that have been authorised by all parties will be assigned proportionally.

In *Silvestre Vaz v. Francisco Vaz*[569] appeal was filed by the interested parties, challenging the order dated 21.03.2017, by which, objection raised by the appellant to the listing of certain properties (which according to the appellant were gifted to him), has been dismissed. After the aforesaid Order, the Inventory Proceedings were disposed by drawing the Final Chart of the partition. The High Court held that the said Order is appealable under Section 435(3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 and the appellant can very well challenge the Order in such appeal filed against the Final Chart of partition.

The re-valuation and second valuation of the properties can be done on serious grounds only where there exists sufficient proof that the property has been undervalued. The properties cannot be valued again and again based on hypothetical presumptions.[570] At the time of second valuation, the property need not be physically brought back into the

[568] Antonio Mario de Conceicao Barbosa Barreto v. Anita Barbosa Barreto e Lima Fernandes, Appeal from Order No.9 of 2020 in the High Court of Bombay at Goa

[569] Appeal from Order No. 7 of 2018 in the High Court of Bombay at Goa

[570] Roldao Vaz v. Bebiana Souza, 1989 (1) GLR 226

estate. Valuation can be done by notionally bringing back the assets to the inheritance for the purpose of calculation of share of the respective heirs.[571]

4.17.7 Chart of partition

After completing the formalities pertaining to passing of Order pertaining to the method of doing the partition, it is the duty of the clerical staff of the Court to prepare a detailed chart of partition within a span of ten days.[572] This chart has to be in conformity with the Order passed by the Court. There are certain safeguards that have to be taken into consideration while preparing the said Chart of partition. The total value of the assets is determined by adding of the value ascertained at the time of Licitation and valuation stage by the Court. This value will be deducted by the debts which are required to be paid from the estate. Similarly the dues are to be deducted from the total amount of assets. Taking this into consideration, the allocation to the respective parties is determined and also their allotment is shown in the chart.[573] The shares are determined by taking into consideration the total list of assets and liabilities. The sorted lots are identified alphabetically and valuation is also shown. However in the final list of Assets and liabilities, the numbers are shown in words as well as in figures in order to avoid any ambiguity. Also when the allocation is done partially then also it has to be shown in the chart. In each of such cases, a detailed list of assets that are included in the lots are required to be specifically mentioned. After the work of the clerical staff of the Court is completed, the chart of partition is put up before the respective Court for signature. Incase there any corrections in the data appearing on the chart of partition, then the same has to be acknowledged on the chart of partition by the Court. The Court has to sign or initial each and every page of the chart of partition.

4.17.7.1 Preliminary chart of partition

There are certain situations where the clerical staff of the Court may find out that the part of the estate which has been donated or cancelled at Licitation stage, either exceeds the share of the concerned heir or it falls in the mandatory portion of the estate that is for the mandatory heirs of the deceased. In such cases, the surplus share is determined

[571] Domingos Rodrigues v. Joao Rodrigues, 1995 (1) Goa LT 376

[572] The provisions pertaining to Partition were specified in Article 1414 to Article 1424 of the Codigo do Processo Civil of 1939

[573] F.E. Noronha, *Portuguese Civil Code, 1867*, 2nd Ed., published by F.E. Noronha, Panaji, 2020, pg. 470

by the clerical staff of Court by preparing a Preliminary chart. This Preliminary chart is put up before the Court. The Court has to decide some important points on the issue. When the excessive portion that has been donated to any of the heir cannot be divided then in such cases, the property should be treated as a part of whole inheritance. If the excessive donated property can be separated from the rest then the holder of such property is given an option to choose the properties to fill his share. The option should be exercised within a span of ten days. If the person does not exercise his right within the stipulated period then it is up to the Court to decide as to which property should be left to the said Donee and which properties are to be brought back to the inheritance. Similarly the gifts that are in excess, given to strangers, are also to be reduced by the Court. It is the duty of the Court to inform all the Heirs who did not take part in family auction and those who were not able to succeed in the auction as regards their right to claim the Owelty money from the persons who had succeeded in the family auction. The payment has to be done within a period of ten days. If such parties do not demand Owelty money then they are entitled to claim an interest on the same. Similar kind of safety is given to the creditors as well wherein they are entitled to hold lien over the property that has been given to the Debtor. If the Parties demand for the Owelty money then the successful bidders are given a period of fifteen days to pay the money. If the successful bidder does not pay the said money within a span of fifteen days then his successful bid is termed as cancelled and a fresh family auction is held for the said purpose. Defaulting party cannot take part in the family auction that has been fixed by the Court afresh. In the new family auction, similar provisions is also applicable whereby in case of defaulting party not able to pay the money pertaining to the said family auction, then the said family auction is also cancelled and the defaulting party cannot take part in the third family auction. If there are joint bidders then both are liable jointly and severally and hence they cannot take part in the third family auction. In *Franciso Savio Gaspar Noel Da Lima Leito v. Eric Jose De Lima Leitao*[574] the High Court has held that the application for deletion of assets mentioned in the Preliminary Chart of partition is maintainable since the stage of preparation of Final List of Assets is yet to arrive. However, the Inventory Court has to go through the evidence in support of

[574] Appeal from Order No. 5 of 2019 in the High Court of Bombay at Goa

such an application. When the property gifted exceeds the Legitime, the Donee of such a gift is bound to return the excess to the inheritance which impacts the legitime.[575]

4.17.7.2 Rectification

The parties have a period of ten days to object to the preliminaries chart of partition that has been drawn by the Court. They can apply for the correction of the partition on the basis of unequal distribution of assets in the Partition chart.[576] The Court has to decide on the objections within a stipulated period of ten days. The meeting of the family can be convened by the Court for dispute resolution if unequal lots are drawn. If the objections are found correct then the Court can either order for rectification of the chart or can direct for a fresh chart of partition. In *Franciso Savio Gaspar Noel Da Lima Leito v. Eric Jose De Lima Leitao*[577] the High Court has held that it was necessary for a proper exercise of power by the Inventory Court in respect of application for rectification and an opportunity ought to have been granted to the appellants to produce documentary and other evidence to support his case. The application should have been decided only after recording of evidence. The power as regards deletion of assets in initial list of assets are distinct from the power exercised by the Court for rectification of chart of partition.

4.17.7.3 Sortition

After the Court decides on the objections filed by the parties on preliminary chart of partition, the procedure for drawing of lots can be carried out by the Court. The lots are made and put in a box. Every lot is identified by a single alphabet letter. First chance to pick the lot is given to the surviving spouse. In case of the other heirs of the deceased, they will draw the lot in the order of their first names. In case any of the party is absent then the Judge will draw the lot for him. The result of the lots drawn is to be recorded on the record of the Court file. The parties to this procedure have the option to exchange the lot that have come their way. Such exchange pertaining to the lots that have gone to the disabled heirs cannot take place unless the Court agrees for it. Similarly the consent of Prodigal is required if his property drawn in the lot is to be exchanged. In *Ravindra*

[575] A.P. Fernandes v. Annette Finch, 2015 (1) Goa L.R. 568 (Bom)(PB)

[576] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 701

[577] Appeal from Order No. 5 of 2019 in the High Court of Bombay at Goa

Parulekar v. Damodar Parulekar[578] the property comprised structures, such as a house and a clinic. But the Will has not specified which part of the property has been bequeathed. The High Court has held that it is for the Inventory Court to appraise the evidence led by the parties to determine the good and bad qualities of the properties and eventually decide which part of the property, amounting to 50%, should fall to the Legatee.

4.17.7.4 Second chart of partition

When the surviving spouse is a party to the Inventory proceeding, the chart of partition has two parts. Second chart is drawn to partition the estate among the heirs of the deceased estate leaver. The Goan Succession law allows the Estate Manager to claim compensation. There is distinction between an heir and a Legatee. An heir having maintained the property is entitled to compensation over the property that falls to the share of others. The compensation, if any, should be confined to the share that may fall to the other heirs, rather than to the Estate Manager. Here, the appellants are entitled to 50% as Legatees. From the residuary 50%, they are entitled again to a half share as the heirs. Thus, the appellants will get three fourth and the respondents one fourth. The compensation if at all to be paid, it is a matter of evidence. That is, whether the appellants have expended any money and if money has been spent, then whether has the Estate Manager has spent it out of the proceeds generated by the very property or from his own pocket.[579]

In *Denis Mazarello v. Iriton Mazarello*[580], it is held that once a property has been described in inventory proceedings along with the proof that same belongs to the deceased person, then the said property cannot be deleted from list of assets without valid reason and proof thereof.

In Laxmi Dhond v. Sushila Amonkar[581], the time limit to file objections on the list of assets was 48 hours. The objection was filed by the party after eight months and there was no justification for the delay neither there was any supporting documents. Hence the Court held that time limit has to be followed and such objections cannot be accepted.

---

[578] Appeal from Order No. 52 of 2019 in the High Court of Bombay at Goa

[579] Ravindra Parulekar v. Damodar Parulekar, Appeal from Order No. 52 of 2019 in the High Court of Bombay at Goa

[580] 2008 (3) Mh. L.J. 319

[581] 2007 (1) AIR Bom R 338

4.17.7.5 Third chart of partition

Third chart of partition is required in an Inventory Proceedings incase where there is inequality in the distribution of shares. Such inequality is caused due to the Right of Representation that is available to the parties. The third chart of partition is pertaining to distribution of shares and partition between representatives. If any of the heirs gains a major portion of the estate, then lots can be formed in order to bring in equality. The lots are preferably formed so that the drawal between rest of the heirs is equally done.[582]

In *Ranjit Satardekar v. Clotildes Fernandes*[583], the Court has held that if any of the Legal Representative wish to put forth any new point of argument, then he either needs to implead himself in continuing proceedings or can file separate civil suit.

In *Pedro Vaz v. Martha Vaz*[584], the Court has held that inorder to delete any of the assets specified by the Cabeca de Casal, there should be specific evidence to prove that the asset did not belong to the deceased person. The value of the properties that has to be taken into consideration is the assessable income and not as per prevailing market value of the properties.[585]

4.17.7.6 Confirmation of Partition

The Court has to pass judgment for attaining finality as regards the Heirs of the deceased person. The interested party has to provide documentary proof to show that the applicable Government duties have been paid. After such proof has been produced by the parties, the Court has to proceed with the drawing lots, keeping in mind Chart of partition. This type of Order passed by the Court in Inventory Proceedings have the same effect of judgment and are fully enforceable in the eyes of law. These orders have similar descriptions like name of the deceased and his Moiety holder, Heirs, Legatees if any, the identification of the properties of the deceased, any liabilities relating to the estate, etc. The orders passed by the Inventory Court can be registered in the records of the Sub Registrar under the Registration Act 1908 on payment of registration fees.[586]

All the expenses pertaining to the proceedings relating to the carrying out of Inventory case have to be borne by the Heirs, Moiety holder. The expenses are borne by the

---

[582] Duarte Pinheiro, *Family and Succession Law in the Portuguese Civil Code of 1867- A 21st Century Approach*, Alameda da Universidade, Lisboa, 2008, pg. 702

[583] 2006 (4) All MR 223

[584] 1996 (2) Goa LT 263

[585] Tomas Souza v. Nelly D'Souza, 2016 (1) Goa LR 269

[586] Mario Bruto da Costa, *Matrimonial Regimes & Inventory*, Mangala Offset, Vasco, 2000, pg. 408

parties as per their respective share entitlement from the estate of the deceased. There might be certain situations where the beneficiary Heir uses his share even before passing of the Order of homologation. In such cases the beneficiary heir has to give guarantee to that effect. Similar guarantee is also required when there are suits pending like challenging the validity of a Will being a subject matter of the inheritance. The Court has to note down note on the instruments thereby prohibiting such instruments without the consent of the Court. There might also a certain situations where by the decision made by the Inventory Proceedings Court overturned by the Appellate Court. In such circumstances, the Head of the Family should take over the possession of the concerned assets. The Court is duty bound to correct its original order to the extent that will enable it to comply with the Appellate Courts Order. The valuation of the assets remain the same even when there is change of the Heirs.

In *Antonieta B. Fernandes v. Ana Paula do Rego e Mendes*[587] the Minutes of Auction by themselves showed that it was conducted by the Nazir and the Bailiff of the Court and to which the learned Senior Civil Judge was not a party and had only affixed her signature to the proceedings which were admittedly not conducted in her presence. The impugned order was held patently illegal by the High Court. It was held that the duty of Judge cannot be delegated to the clerical staff of the Court. Hence the Final Chart drawn was set aside.

In *Olavo Fernandes v. Maria Afonso*[588], objection was filed on the list of liabilities filed by the Head of the Family. The list included medical expenses relating to the deceased person. The trial Court rejected the objection without giving an opportunity of being heard. The Hon'ble High Court held that the Court is duty bound to conduct an inquiry into the objections by hearing the parties and the Chart of partition can be confirmed only after deciding all such objections.

4.17.8 Amendment and Rescission of Partition

There is provision in the Act which enables the Court to correct its genuine clerical mistakes without having the parties to apply for it. In case there are certain material mistakes in any of list of assets, and the parties applies for its correction, then the Court has the power to pass the Order for correcting any genuine material mistakes in the Partition Order. There is a condition to this power. The material mistakes can be

[587] Writ Petition No.566 of 2017 in the High Court of Bombay at Goa
[588] 2016 (2) All MR 191

corrected only if there is consent between all the parties to the Inventory Proceedings. In case, there is no consent between the parties to the Inventory Proceedings then the party has to apply to the Court for amending the Partition Order. There is also a provision for recession of the partition made by the Court.

If the partition order is passed by the Court, and the said order has become final then the only option for the aggrieved party is to file a case for the rescission of the said partition order. Applications for rescission of partition can be considered by the Court in case there was malafide involved in the getting the partition order by any of the heir. Also when there was absence of any of the heir being made party to the Inventory Proceedings leading to the partition order. Such type of recession application can be filed before the Court by way of review petition. In situations where it is observed that the order of partition was obtained by way of fraud then also Court can entertain petition for review the partition order. So also there might be situations where the declarations by any of the parties to the partition order were false there are also the Court can entertain petition for recession of the partition order. [589]

In Reshma Vete v. Kamal Khalap[590], the High Court has specifically held that the remedy to challenge the Final Chart is by way of Revision or by way of Appeal after the Final Order is passed. When the remedy is present in the Act, remedy under Article 226 of the Constitution is not to be invoked.

In Antonio Gomindes v. Milagres Gomindes [591], the Inventory Proceedings were challenged on ground that it was not having jurisdiction. The Challenger had participated in the Inventory Proceedings from inception. Several orders were passed. Cabeca de Casal was also appointed and assets were also listed. The Court held that it is not open for the challenger to question the jurisdiction when he himself did not object to it for continuous period of time from inception stage.

4.18 A look at the General Court procedure in Inventory Cases

The proceedings pertaining to the inventory cases are held in open Court. All the proceedings are recorded in the Roznama by the Court. The Court is duty bound to prepare the chart of partition or any preliminary chart of partition in a time bound

[589] Mario Cardozo v. Luciano Fernandes, Writ Petition No. 960 of 2017 in the High Court of Bombay at Goa

[590] 2015 (1) Goa LR 100

[591] 2010(2) ALL MR 757

manner and also to supply a copy of the same to the interested parties or their advocates/ party on the forthcoming hearing date of the Inventory Proceedings. All the copies of the petitions, application filed by the parties are to be given to all the interested parties. In case when the Court feels that there is no reason for proceeding with the Inventory Proceedings, the judge can order to close the case after recording the statement of the Head of the Family.

The following are the procedural steps involved in Inventory Proceedings:

1) To start the process, a petition is presented with death certificate of the estate leaver seeking distribution of his estate. Incase death is not registered then secondary evidence needs to be submitted alongwith the petition.
2) The file is then allotted to the concerned Judge by the Court office. The Court is required to decide on maintainability of the petition and all actions are to be recorded in the Roznama.
3) If the petition is maintainable, then the Court appoints Head of the Family after considering all the relevant facts and conducting a summary inquiry.
4) Further, it is ascertained whether there are any minors or disabled for unknown person in the succession line. If there are such persons, then guardians or curators as the case may be are appointed. [592]
5) Subsequently, notices are issued to all the interested parties. This is crucial step and failure to comply this step renders all the proceedings void.[593]
6) The Head of the Family is required to take oath of office and further file initial list of assets alongwith their valuation.
7) The heirs and interested parties can file their objections to the list of assets within a period of thirty days.[594]
8) After deciding on objections, the Court appoints valuers for the inheritance. There can be more than one valuer in an inventory proceeding. Incases where the value of the properties can be worked out by the Court Office, the Officer of Court is given 15 days to complete the same.[595] Further, the final list of assets is

[592] Usgaocar, M.S., *Family Laws of Goa, Daman and Diu* – Vol. II, Vela Associates Goa, 2010, pg. 107

[593] The erstwhile Codigo do Processo Civil 1939 provided a period of ten days for filing their objections as regards maintainability of the Inventory Proceedings.

[594] In the erstwhile Code, there was opportunity given to the interested parties for inspection of Court file. The parties were given forty eight hours to lodge their objections pertaining to the list of assets filed.

[595] Earlier code provided only five days to the Court office to value the properties.

prepared by the Court after considering the report of the valuer/officer of the Court.[596]

9) The Court then has to decide whether the immovable properties can be partitioned as per the planning rules applicable in the State. If partition is not possible then the assets are put for Licitation.
10) The interested parties are entitled to apply for Licitation, file objection as regards overvaluation, or ask for convening family conference within a period of fifteen days.[597] Conference of the parties is held to sort out the differences. The Licitation is required to be held within a period of thirty days from the date of conference of interested parties.
11) In the process, the creditors of the inheritance can apply for settling their debts. The debts can be settled before partitioning the estate or after share is allotted to the interested parties.
12) If any of the parties object that the properties are overvalued then the Court can order second valuation which will consist of three valuers. However, the party who objects to the valuation needs to submit documentary evidence.
13) The interested parties are required to submit a scheme of partition to the Court. The Court will pass order on same and accordingly the Court office is required to prepare the Chart of Partition within ten days.[598] When it is observed that the share of any person exceeds his entitlement then a Preliminary Chart of Partition can be prepared by the Court.[599]
14) The persons who are allotted the properties are required to deposit the owelty money in the Court.
15) A period of ten days is given to the parties to apply for rectification of the chart of partition. The Court is required to decide the application for rectification in the next ten days.[600]
16) The process of drawing of lots called Sortition is held by the Court. The interested parties who are not specifically debarred are entitled to participate in the Sortition.

[596] In the Codigo do Processo Civil 1939, after valuation report is received, Court was required to finalize the list of assets within a period of eight days.
[597] The earlier Code did not specify a time frame for filing of objections to mode of partition.
[598] The earlier Code prescribed a period of eight days for the Court office to prepare the chart of partition.
[599] There was no such provision for preparing a preliminary chart of partition in the earlier Code.
[600] The earlier Code did not specify time limit to apply for rectification. However a period of eight days was specified for the Court to decide the applications filed.

17) In cases of presence of Moiety holder or pre-deceased children of heirs, Second and Third Chart of Partition needs to be drawn respectively.
18) The Court then passes the Final Order confirming the partition of the inheritance between the heirs which is the last step in Inventory Proceedings.

The Special Notaries and Inventory Courts play a crucial role in the determination and carrying out the process of succession in Goa. Deed of Qualification of Heirs and Inventory Cases are very important instruments for determination of successors of the deceased person who is governed by the Goan Family Law. The process followed for drawing the Deed is very simple and straightforward. The Special Notary appointed by the Government is duty bound to either draw the succession or pass a reasoned order in case of refusal to draw any act. The interest party then has a legal remedy to approach the appellate authority which is the District Special Notary. The District Special Notary thus has the power to decide on the order passed by the Special Notary and further give appropriate directions to the Special Notary. Thus it is very evident that the law has clearly laid down the steps and methods in drawing the Deed of Declaration of Heirship. Now it is up to the Executive wing of the Government to implement the provisions in the most convenient way possible for the betterment of the people to whom the law applies. This will help in reducing the Inventory Cases filed before the Courts. There is also a need to create awareness among the citizens so that they are well educated about their rights that they are entitled by law. If this exercise is carried out to the optimum extent then Goan Succession law can be said to be a very efficient legislation for determining Heirship.

Chapter - V

Statistical and Data Analysis – An Empirical Appraisal of Goan Succession Law

5.1 Introduction

Data analysis is very important to study the actual implementation of any law in society. It helps in knowing the shortcomings and allows to come up with new ideas and improvements in the prevailing statutes. The data collected from various sources is analysed by way of using statistical techniques and use of diagrams and charts to study the data in a more efficient manner. The data is used to test the hypothesis. The collection and analysis of data is a method of cross checking the theoretical aspects of any research work. Hence the data is collected from various sources and methods so as to get a better understanding of the concept of succession laws that are prevalent in Goa. The data has been collected from judicial authorities, quasi-judicial authorities and also the litigants, Advocates and general public who all are involved in the day to day aspects of Inventory proceedings, drawing of succession deeds, relinquishment deeds, Wills, adoption, etc. The data that is collected is used for making a comparative analysis of both the Districts in Goa viz North Goa district and the South District pertaining to total number of Inventory cases filed, disposed and the quantum of cases pending before the said Courts.

5.2 Scope of Data Analysis:

In the present chapter, we have covered entire State of Goa divided into North Goa district and South Goa district. All the Courts situated in both the Districts are included for the purpose of study. The data is collected from Courts as well as from the offices of Special Notaries situated in Goa. Similarly data is collected from litigants, advocates and general public. The data that is collected from the Judicial and Quasi Judicial Authorities relates to total eleven years from 2010 to 2020. There has been a systematic Court-wise bifurcation of data as regards those situated in both the districts for proper and detailed data analysis of Inventory cases. The Alternate Dispute Resolution System comprised of Lok Adalats pertaining to Inventory Proceedings is also studied in the present chapter which is a tool for fast disposal of Inventory cases. Accordingly the data has been collected of various cases referred to Lok Adalat along with the disposal that has taken place for the period from 2010 to 2020. The data that is collected from litigants, advocates and general public consists of the actual functioning of judicial and quasi judicial authorities comprising of Courts and Special Notary Offices. The questionnaire designed and prepared for the purpose of study included questions as the regards delay in disposal of cases, reasons thereof and also as regards computerisation

of the Special Notary offices and matter pertaining to gender equality followed in Goan Succession laws. In the data analysis we have looked at the Notaries appointed by the Central Government under the Notaries Act of 1956 and their qualification wise study as compared to the Special Notaries appointed under the Goa Succession Law. In the course of data analysis, data is also collected from the Appellate Courts to ascertain as regards the quantum of Appeals filed from the Orders of the Civil Court for effecting partition of estate among the successors. In the study, data is also collected year-wise to know the pendency and disposal rate of the Courts situated in Goa.

5.3 Study of total work strength of Special Notaries in Goa

The below mentioned Table and Chart studies the total work strength of the Registration Department in Goa.[601]

Table 5: Depicting total work strength of Special Notaries in Goa

	Number of Special Notaries in Goa
Special Notaries available	17
Vacant posts of Special Notaries	6
Sanctioned strength of Special Notaries	23

Source: Data collected from Registration Department, Government of Goa

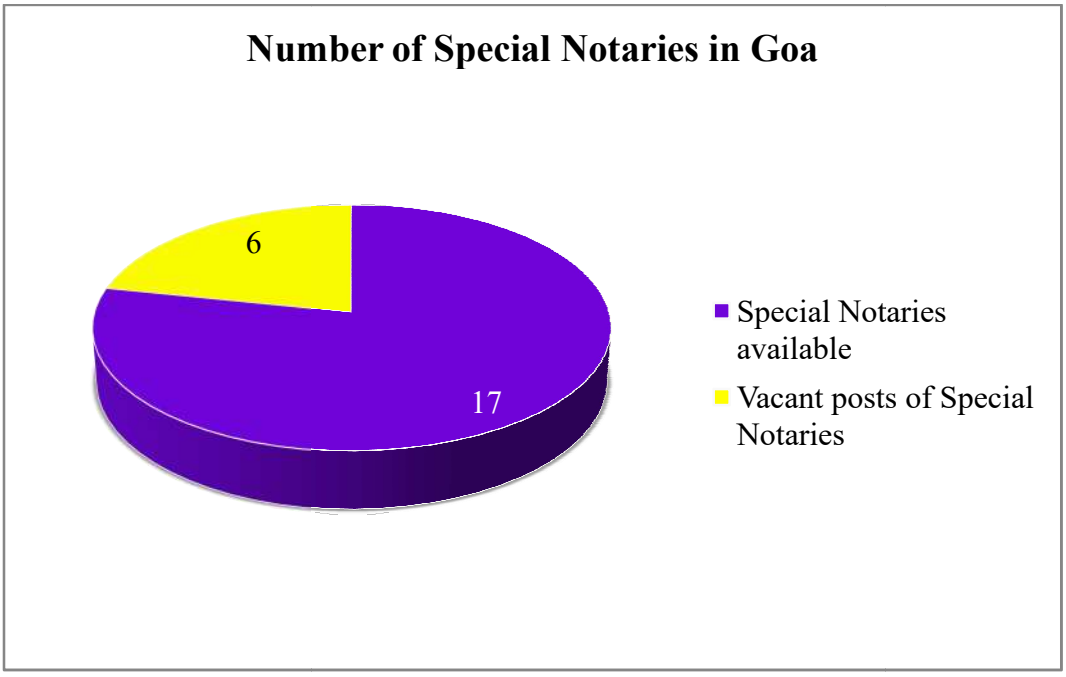

Figure 1: Analysis of total work strength of Special Notaries in Goa

[601] This Chart and Figure will help to test the Hypothesis No. 2 mentioned at Sub Chapter 1.13 of Chapter One

The above Table No. 5 and Figure No. 1 depicts the number of Special Notaries appointed in Goa. The powers of Special Notaries is exercised in an Ex Officio capacity by the Sub Registers under the Registration Act 1908. From the chart above, we can see that the total number of Special Notaries that can be appointed are 23. However the total number of Special Notaries present in Goa are only 17. Hence 6 posts of Special Notaries are still vacant and awaiting to be filled/appointed. Hence it is seen that there is 26.07% vacancy pertaining to Special Notaries in the Registration Department.

5.4 Qualification-wise Study of Special Notaries in Goa

The below mentioned Table and Chart studies the educational qualifications of Special Notaries in Goa on the lines with qualification prescribed under Goa Succession law.[602]

Table 6: Depicting Qualification wise break-up of Special Notaries in Goa

	Total number of Special Notaries in Goa
Law Graduates	7
Non Law Graduates	10
Non Graduates	10

Source: Data collected from Registration Department, Government of Goa

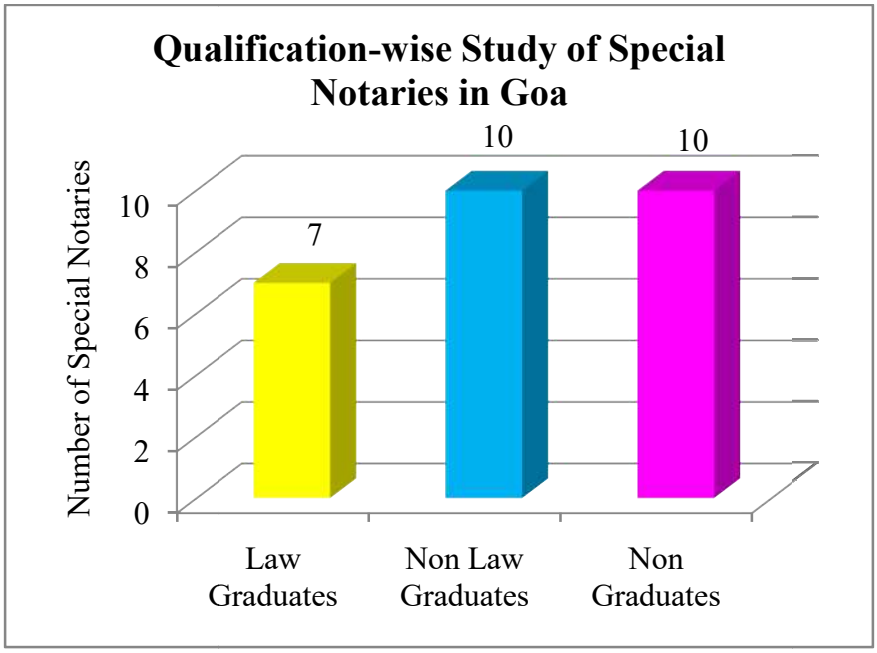

Figure 2: Analysis of Qualification wise break-up of Special Notaries appointed in Goa

[602] This Chart and Figure is aimed to test the Hypothesis No. 2 mentioned at Sub Chapter 1.13 of Chapter One

The above Table No. 6 and Figure No. 2 shows the qualification wise breakup of Special Notary in Goa. As per the Goa Succession, Special Notaries and Inventory Proceedings Act 2012, the Special Notaries are required to be Law Graduates. However since the powers are conferred in ex officio capacity on the Sub Registrars under the Registration Act 1908, some of the Special Notaries in Goa are Non Law Graduates. It can be seen that the number of law graduates Special Notaries are 7 and the Special Notaries which are non law graduates are 10. Hence only 41.18 % Special Notaries are Law Graduates whereas 58.82% Special Notaries does not possess the essential Degree in Law which is mandated by the Goan Succession law.

5.5 Appointment-wise Study of Special Notaries in Goa

The below mentioned Table and Chart studies the method of recruitment of Special Notaries in Goa since there is difference in the Recruitment Rules of Direct Recruits and that of Promotees.[603]

Table 7: Depicting type of appointments of Special Notaries

Type of Appointment	No. of Special Notaries
Direct recruits	7
Not direct recruits	10
Total	17

Source: Data collected from Registration Department, Government of Goa

[603] This Table and Chart is used to study the causes for non compliance of mandatory provision of qualifications for Special Notaries

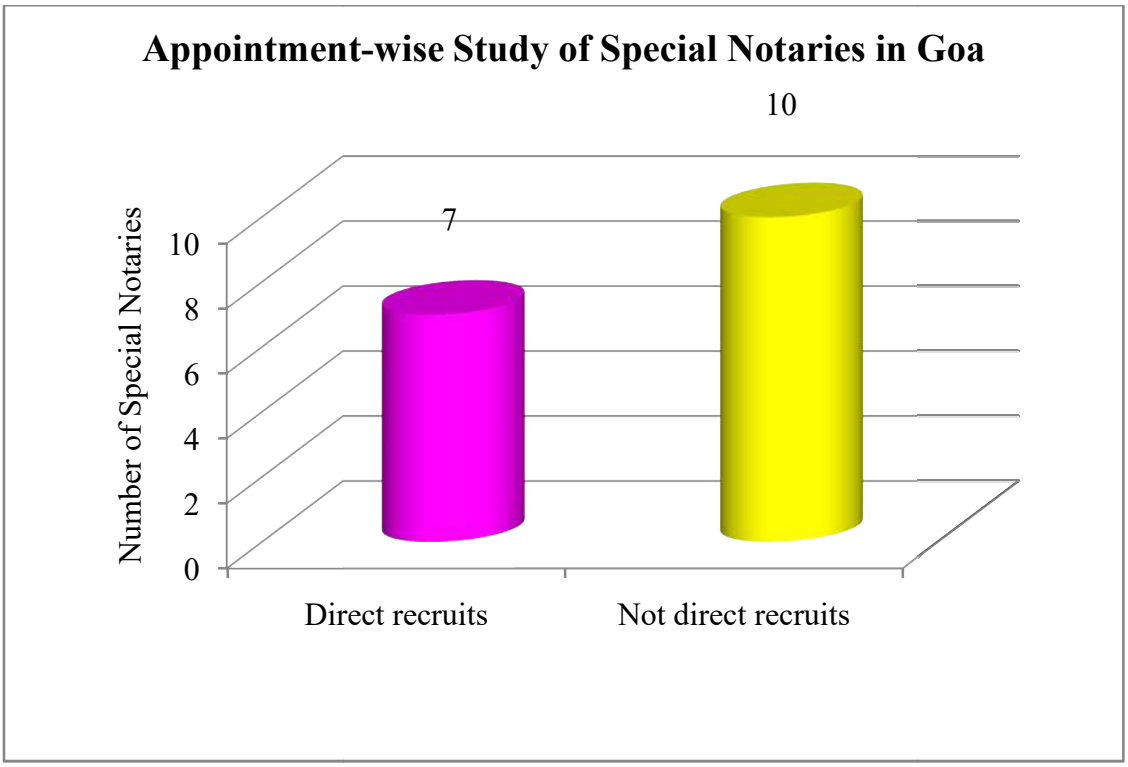

Figure 3: Types of appointments of Special Notaries

The about Table No. 7 and Figure No. 3 shows the appointment wise breakup of Special Notaries in Goa. The breakup is studied as per direct recruitment and promotion recruitments. The total number of direct recruits are 7 while the total number of Special Notaries who are appointed on promotion basis are 10. The essential qualification for direct recruits is law graduation whereas there is no such requirement for promoted Special Notaries. Only 41.18 % Special Notaries are recruited by Direct Mode from the year 2010 to 2020 whereas 58.82% Special Notaries are Promotees.

5.6 Yearwise Study of number of Special Notaries recruited by Direct Recruitment vis a vis Number of Special Notaries that Retired

The below mentioned Table and Chart studies the yearwise breakup of the total Special Notaries recruited with those retired over the years. This will help to know whether the number of Special Notaries remained constant or not over the period of study.[604]

[604] This Table and Chart is used to study the availability of Special Notaries in Goa for the service of the public

Table 8: Number of Special Notaries appointed by Direct Recruitment compared to those retired

	Years										
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	To-tal
Direct Recruits Yearwise	1			4		1					6
Retired Yearwise		1	5	2	2	1	1	1		2	15

Source: Data collected from Registration Department, Government of Goa

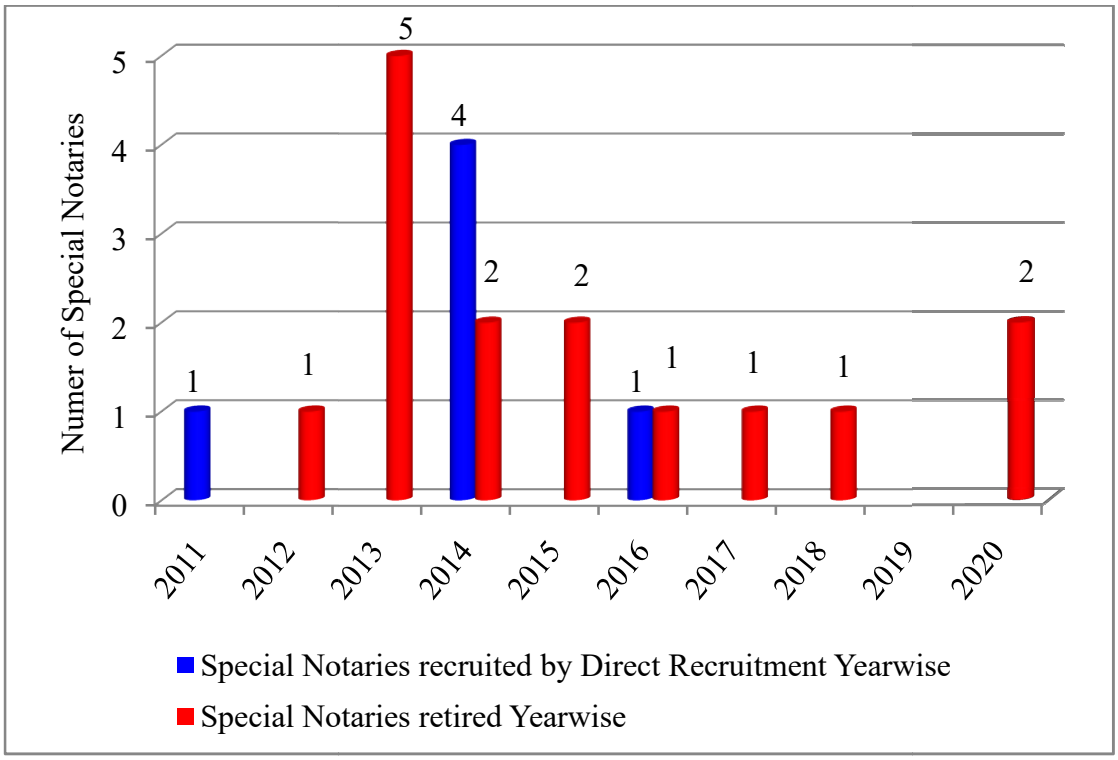

Figure 4: Number of Special Notaries appointed by Direct Recruitment compared to those retired

The above Table No. 8 and Figure No. 4 studies for number of Special Notaries who have been appointed by direct recruitment and the number of Special Notaries that have retired from service during each year. The analysis will help to know total strength of the department to handle the workload. It can be seen from the chart that total number of recruitments done through direct mode is only six where is the total number of retirements is 15. The direct recruitment has been done only in the year 2011, 2014, and

2016 whereas the retirement have been consistent and present in all years except 2011 and 2019. Hence there is shortage of Sub Registrars in Goa leading to shortage of Special Notaries. Only 40% vacancies created due to retirement were filled during the years 2010 to 2020.

5.7 Study of Notaries practicing in Goa under the Notaries Act 1952

The below mentioned Table and Chart makes a qualification wise study of Notaries appointed under the Notaries Act 1952 which is a Central Government legislation.[605]

Table 9: Qualifications of Notaries appointed under the Notaries Act 1952

	Total Notaries
With Law Degree	301
Without Law Degree	0
Total Notaries (at the start of year 2021)	301

Source: Information gathered from data published by the Law Department, Government of Goa

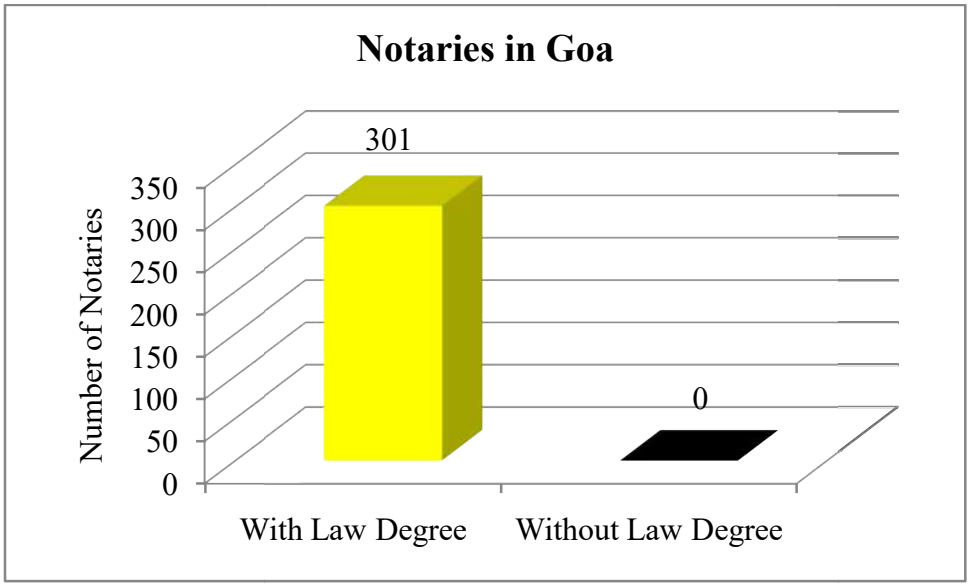

Figure 5: *Qualifications of Notaries appointed under the Notaries Act 1952*

[605] This Table and Chart is used to draw comparative analysis of qualifications of Notaries under Central Act and Special Notaries under State Act

The above Table No. 9 and Figure No. 5 depicts the total notaries that are practicing under the notaries Act 1952 in Goa. There is distinction between Special Notaries under the Succession Law and Notaries appointed under the Notaries Act 1952. It can be seen from the chart that there are a total 301 Notaries practicing in Goa. All the said Notaries are Law Graduates. Hence all the Notaries are eligible to become Special Notaries as well if there is suitable amendment made in the statute. Hence 100% Notaries are Law graduates under the Notaries Act 1952.

5.8 Study of Total Number of Inventory Proceeding Cases filed Yearwise in North Goa

The below mentioned Table and Chart studies the total Inventory Cases that were filed from 2010 to 2020 in various Courts in North Goa. The data is collected Court-wise to know the exact break up of cases filed in each and every Court situated in North Goa.[606]

Table 10: Total Number of Inventory Proceeding Cases filed Yearwise in North Goa

Name of Civil Courts	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Panaji	93	100	125	135	144	121	173	150	192	209	142
Mapusa	399	451	625	574	607	647	634	603	646	573	408
Bicholim	106	126	173	160	191	209	234	167	214	214	171
Ponda	69	74	84	96	102	74	78	66	101	90	75
Pernem	72	122	79	75	7	100	122	106	131	100	86
Valpoi	36	29	45	63	40	30	48	41	43	36	37

Source: Data collected from Courts situated in North Goa

[606] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

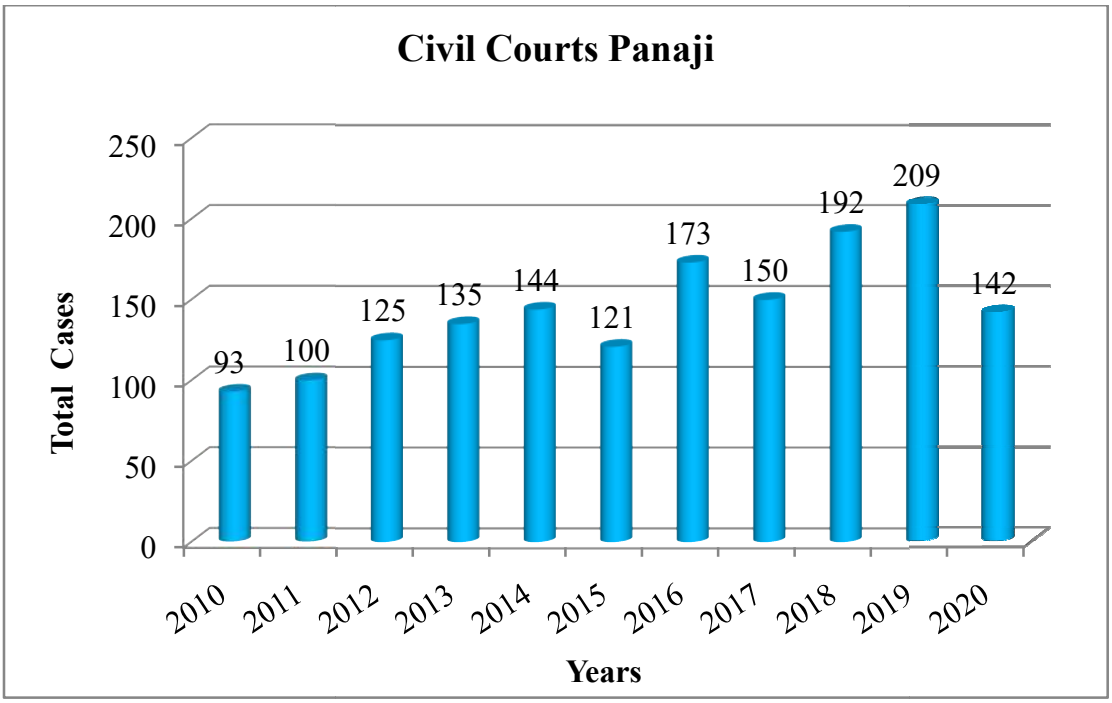

Figure 6: *Total Number of Inventory Proceeding Cases filed at Civil Courts Panaji*

The above Table No. 10 and Figure No. 6 shows the total number of cases pertaining to inventory proceedings that are filed before Civil Courts in Panjim. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 93 whereas the same was 100 and 125 in the year 2011 and 2012 respectively. The said cases were 135 and 144 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed 121 whereas in the year 2016 it was 173. The total cases filed in the year 2017 and 2018 were 150 and 192 respectively. Similarly the total cases filed in the year 2019 was 209 whereas in the year 2020 it was 142.

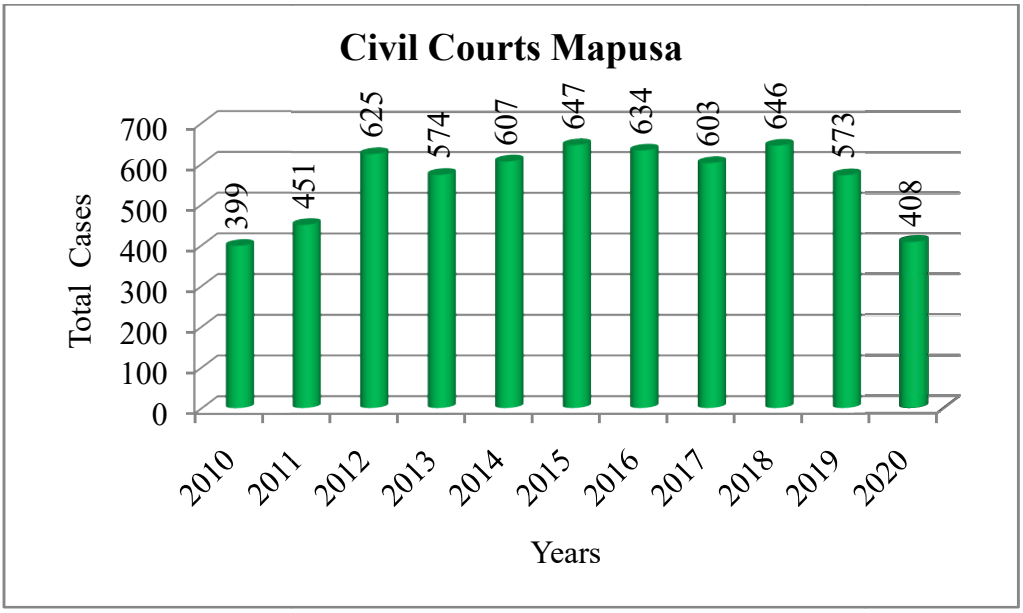

Figure 7: *Total Number of Inventory Proceeding Cases filed at Civil Courts Mapusa*

The above Table No. 10 and Figure No. 7 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Mapusa. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 399 whereas the same was 451 and 625 in the year 2011 and 2012 respectively. The said cases were 574 and 607 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed 647 whereas in the year 2016 it was 634. The total cases filed in the year 2017 and 2018 were 603 and 646 respectively. Similarly the total cases filed in the year 2019 was 573 whereas in the year 2020 it was 408.

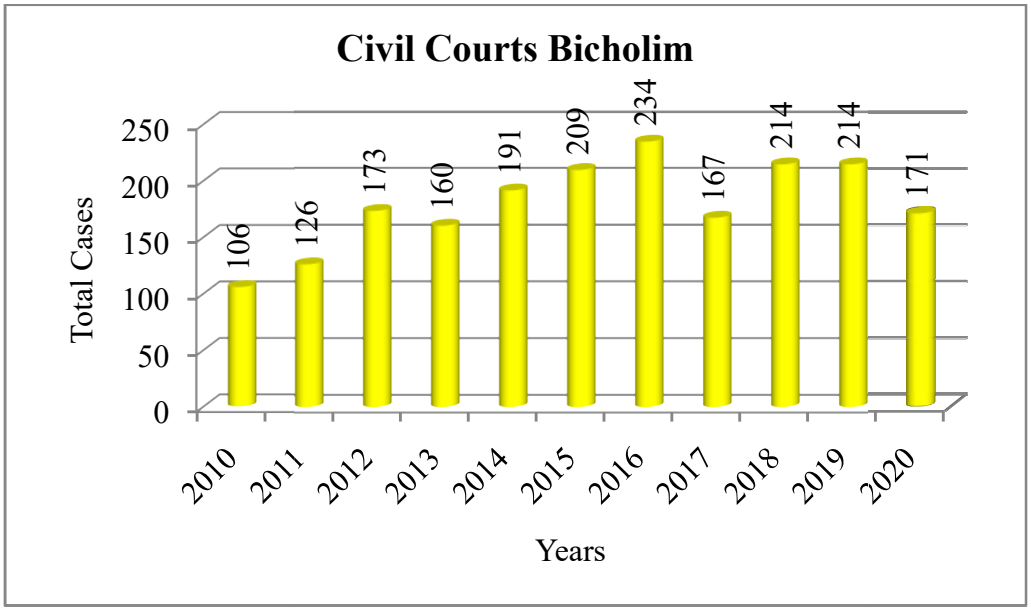

Figure 8: *Total Number of Inventory Proceeding Cases filed at Civil Courts Bicholim*

The above Table No. 10 and Figure No. 8 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Bicholim. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 106 whereas the same was 126 and 173 in the year 2011 and 2012 respectively. The said cases were 160 and 191 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed 209 whereas in the year 2016 it was 234. The total cases filed in the year 2017 and 2018 were 167 and 214 respectively. Similarly the total cases filed in the year 2019 were 214 whereas in the year 2020 it was 171.

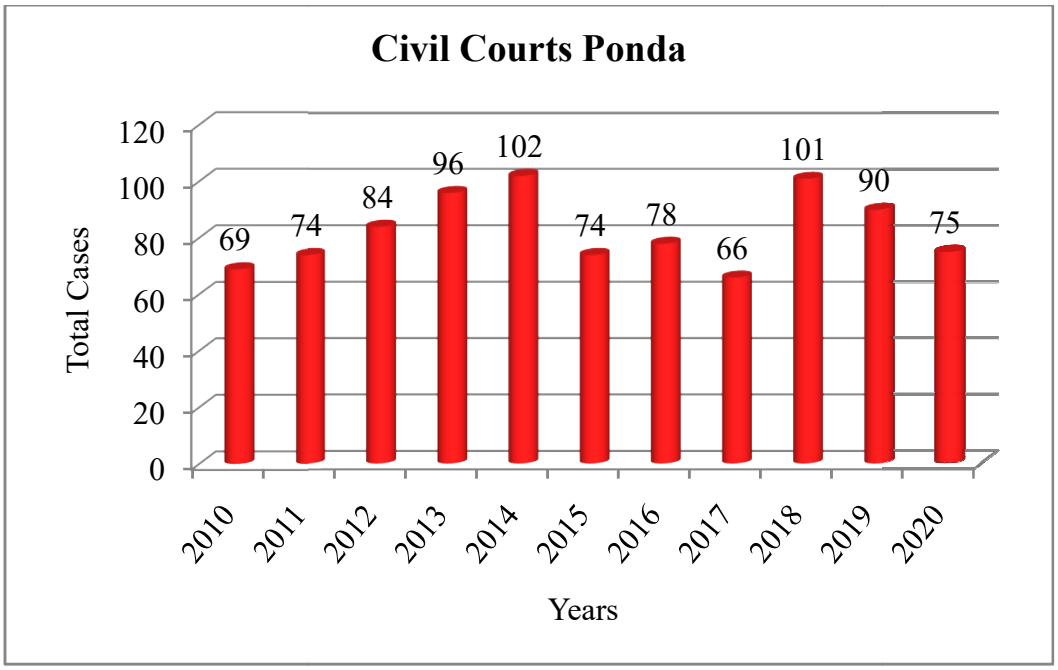

Figure 9: *Total Number of Inventory Proceeding Cases filed at Civil Courts Ponda*

The above Table No. 10 and Figure No. 9 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Ponda. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 69 whereas the same was 74 and 84 in the year 2011 and 2012 respectively. The said cases were 96 and 102 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed 74 whereas in the year 2016 it was 78. The total cases filed in the year 2017 and 2018 were 66 and 101 respectively. Similarly the total cases filed in the year 2019 was 90 and the total number of cases filed in the year 2020 was 75.

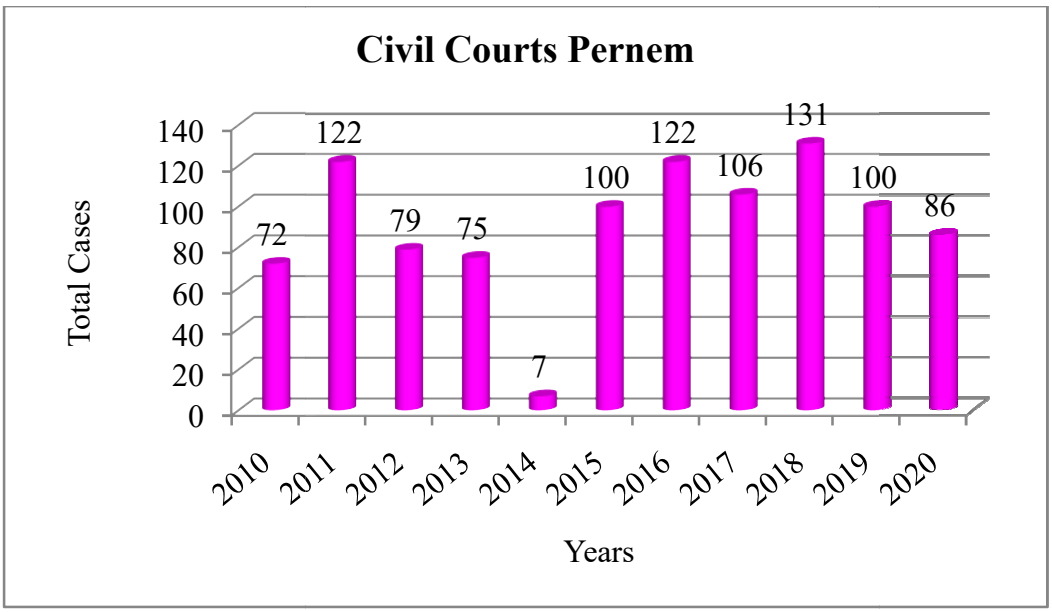

Figure 10: *Total Number of Inventory Proceeding Cases filed at Civil Courts Pernem*

The above Table No. 10 and Figure No. 10 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Pernem. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 72 whereas the same was 122 and 79 in the year 2011 and 2012 respectively. The said cases were 75 and 07 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed 100 whereas in the year 2016 it was 122. The total cases filed in the year 2017 and 2018 were 106 and 131 respectively. Similarly the total cases filed in the year 2019 was 100 whereas in the year 2020 it was 86.

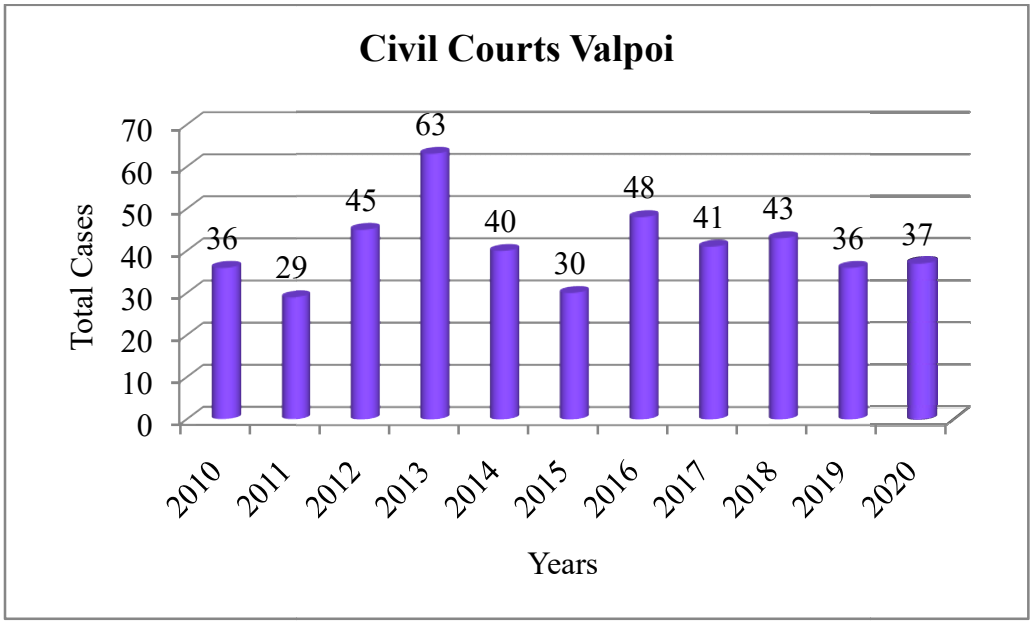

Figure 11: *Total Number of Inventory Proceeding Cases filed at Civil Courts Valpoi*

The above Table No. 10 and Figure No. 11 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Valpoi. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 36 whereas the same was 29 and 45 in the year 2011 and 2012 respectively. The said cases were 63 and 40 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed 30 whereas in the year 2016 it was 48. The total cases filed in the year 2017 and 2018 were 41 and 43 respectively. Similarly the total cases filed in the year 2019 was 36 whereas in the year 2020 it was 37.

5.9 Study of Total Number of Inventory Proceeding Cases disposed Yearwise in North Goa

The below mentioned Table and Chart studies the total Inventory Cases that were disposed from 2010 to 2020 in various Courts in North Goa. The data is collected Court-wise to know the exact break up of cases disposed in each and every Court situated in North Goa.[607]

Table 11: Total Inventory Proceeding Cases disposed Yearwise in North Goa

Name of Civil Courts	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Panaji	100	75	111	101	82	96	146	136	148	146	107
Mapusa	533	422	548	454	811	570	484	599	624	500	299
Bicholim	126	132	153	164	158	175	227	159	236	247	92
Ponda	92	78	67	91	91	68	62	94	92	76	43
Pernem	49	63	70	104	8	84	150	104	118	43	37
Valpoi	29	32	39	55	38	17	42	46	38	43	16

Source: Data collected from Courts situated in North Goa

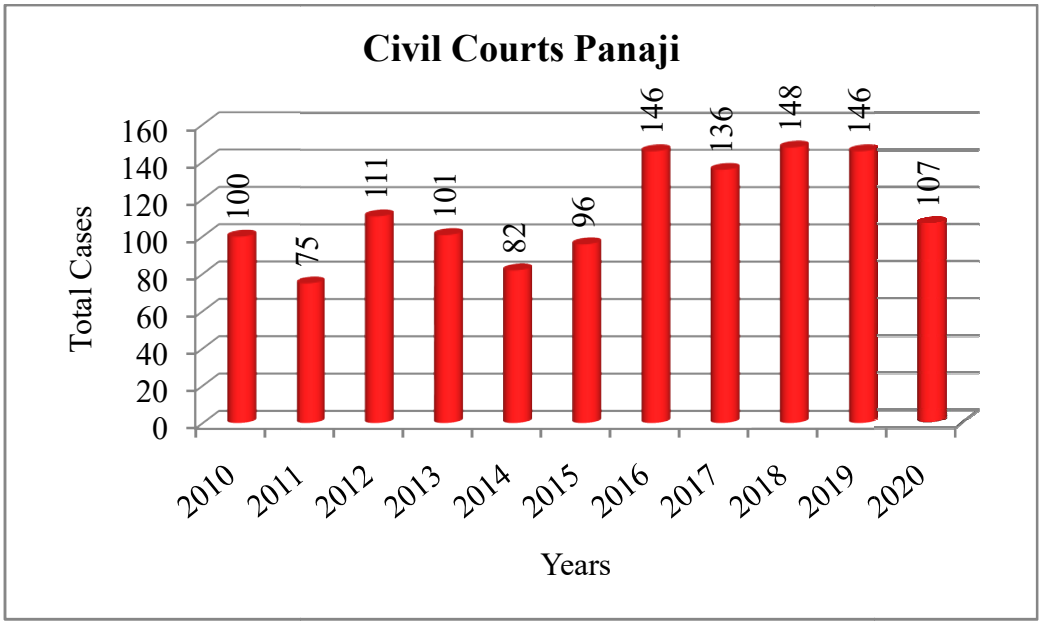

Figure 12: Total Inventory Proceeding Cases disposed at Civil Courts Panaji

[607] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

The above Table No. 11 and Figure No. 12 shows the total number of cases pertaining to inventory proceedings that are disposed Yearwise before civil courts in Panjim. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 100 whereas the same was 75 and 111 in the year 2011 and 2012 respectively. The said cases were 101 and 82 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed 96 whereas is in the year 2016 it was 146. The total cases disposed in the year 2017 and 2018 were 136 and 148 respectively. Similarly the total cases disposed in the year 2019 was 146 whereas in the year 2020 it was 107.

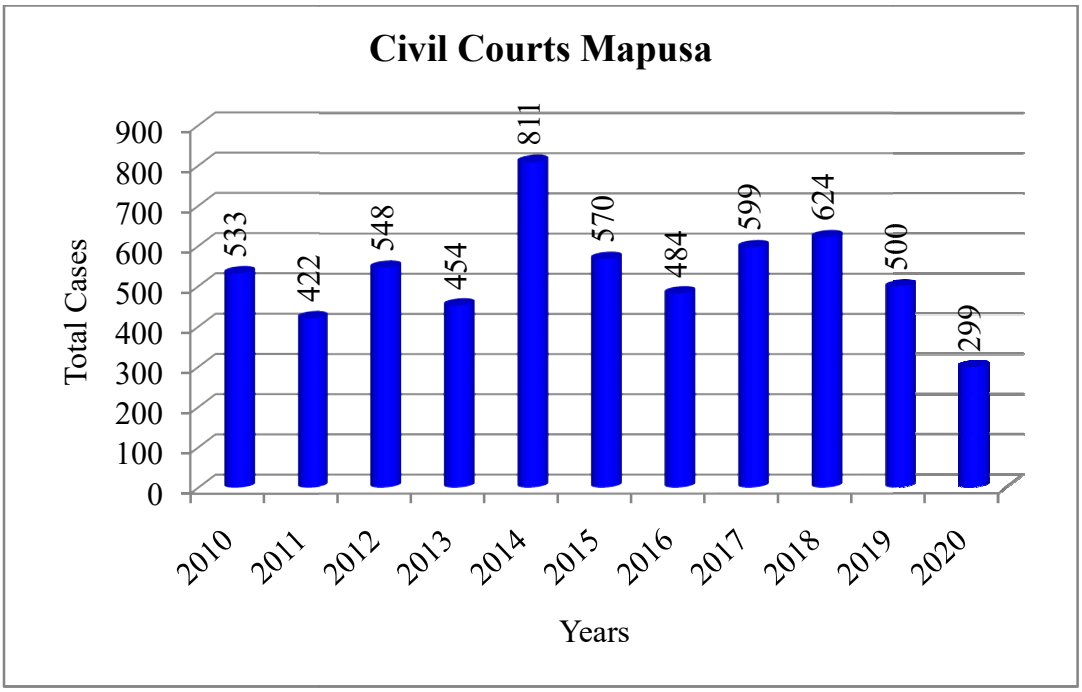

Figure 13: *Total Inventory Proceeding Cases disposed at Civil Courts Mapusa*

The above Table No. 11 and Figure No. 13 shows the total number of cases pertaining to inventory proceedings that are disposed yearwise before civil courts in Mapusa. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 533 whereas the same was 422 and 548 in the year 2011 and 2012 respectively. The said cases were 454 and 811 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed were 570 whereas in the year 2016 it was 484. The total cases disposed in the year 2017 and 2018 were 599 and 624 respectively. Similarly the total cases disposed in the year 2019 was 500 whereas in the year 2020 it was 299.

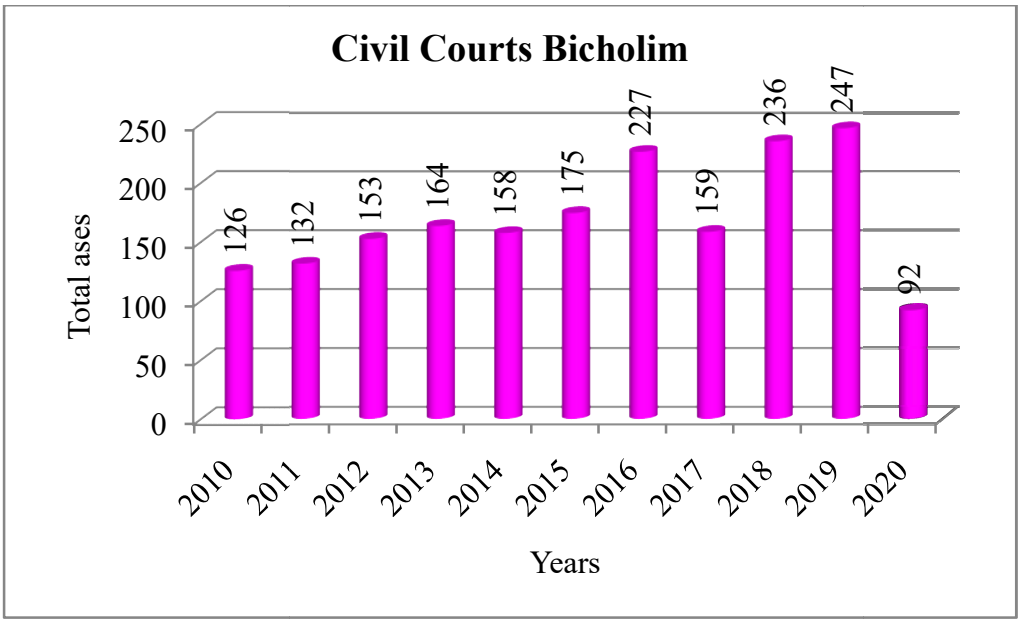

Figure 14: *Total Inventory Proceeding Cases disposed at Civil Courts Bicholim*

The above Table No. 11 and Figure No. 14 shows the total number of cases pertaining to inventory proceedings that are disposed before civil courts in Bicholim. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 126 whereas the same was 132 and 153 in the year 2011 and 2012 respectively. The said cases were 164 and 158 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed 175 wheress in the year 2016 it was 227. The total cases disposed in the year 2017 and 2018 were 159 and 236 respectively. Similarly the total cases disposed in the year 2019 was 247 whereas in the year 2020 it was 92.

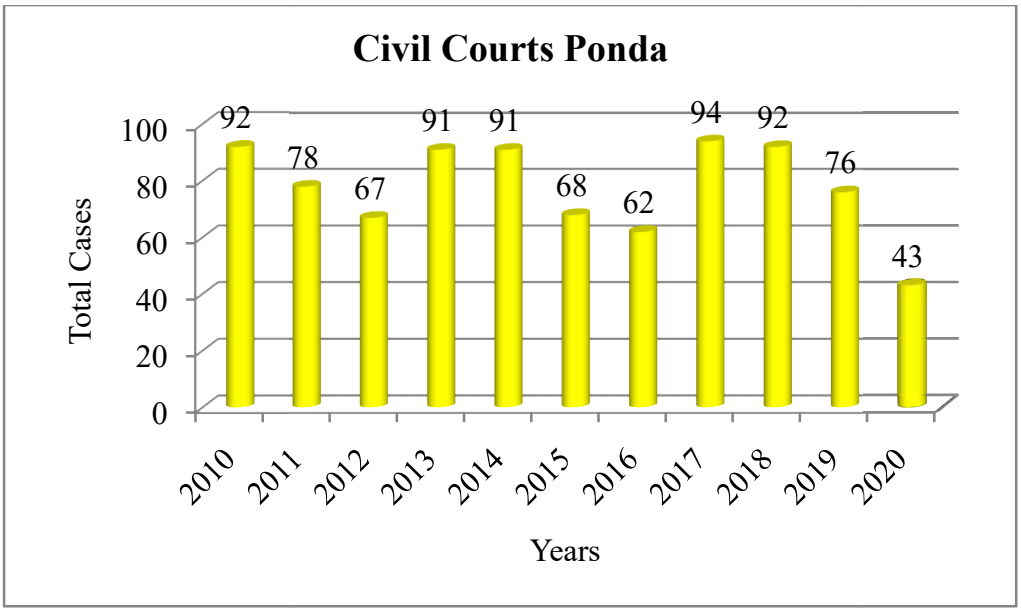

Figure 15: *Total Inventory Proceeding Cases disposed at Civil Courts Ponda*

The above Table No. 11 and Figure No. 15 shows the total number of cases pertaining to inventory proceedings that are disposed before civil courts in Ponda. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 92 whereas the same was 78 and 67 in the year 2011 and 2012 respectively. The said cases were 91 each in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed 68 whereas in the year 2016 it was 62. The total cases disposed in the year 2017 and 2018 were 94 and 92 respectively. Similarly the total cases disposed in the year 2019 was 76 whereas in the year 2020 it was 43.

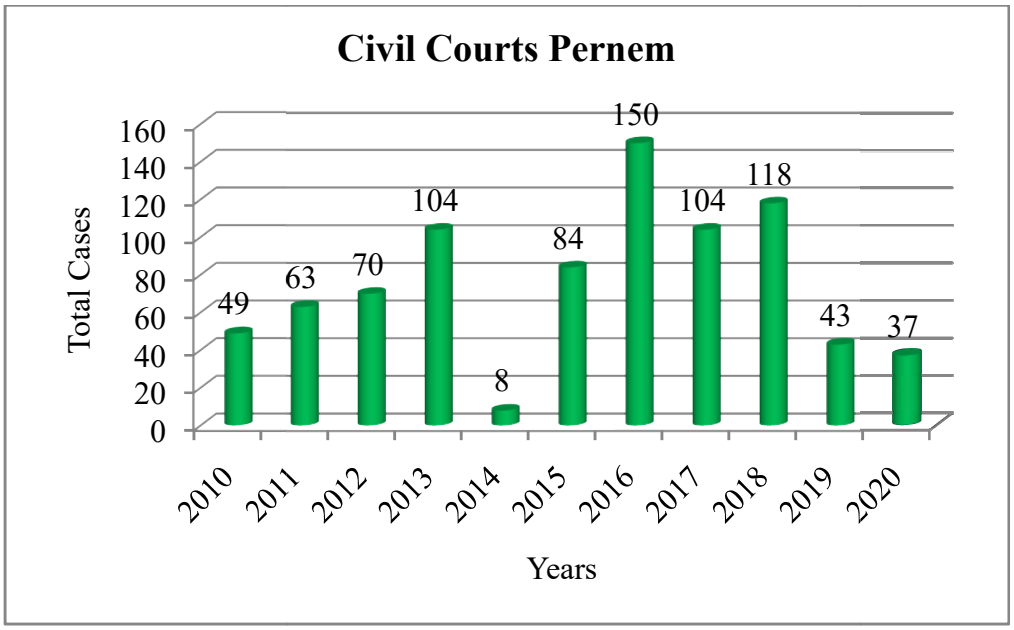

Figure 16: *Total Inventory Proceeding Cases disposed at Civil Courts Pernem*

The above Table No. 11 and Figure No. 16 shows the total number of cases pertaining to inventory proceedings that are disposed before civil courts in Pernem. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 49 whereas the same was 63 and 70 in the year 2011 and 2012 respectively. The said cases were 104 and 8 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed 84 whereas in the year 2016 it was 150. The total cases disposed in the year 2017 and 2018 were 104 and 118 respectively. Similarly the total cases disposed in the year 2019 was 43 whereas in the year 2020 it was 37.

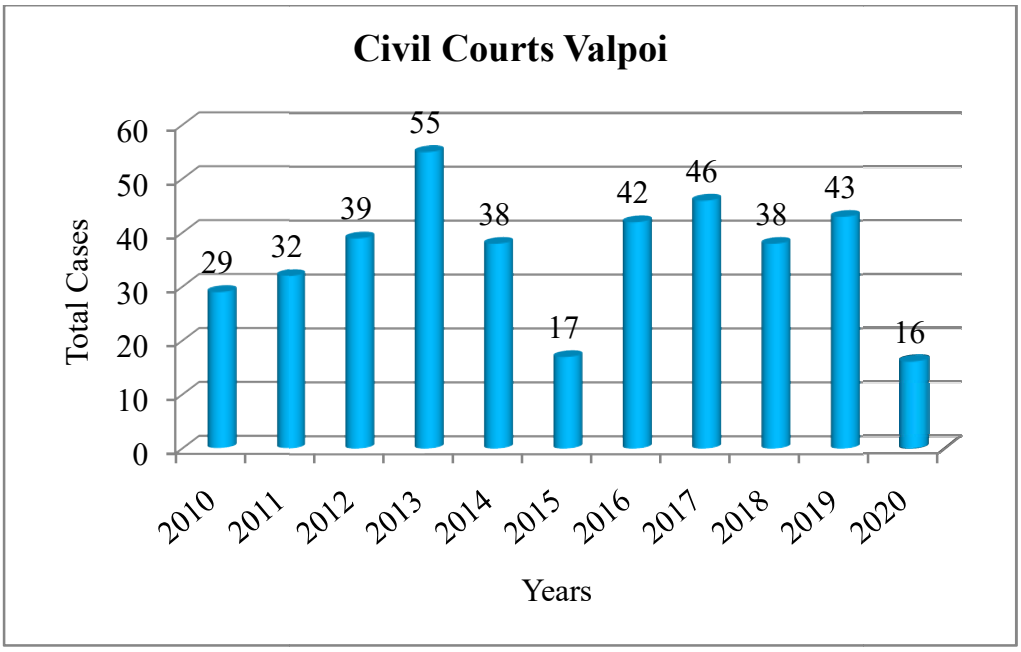

Figure 17: Total Inventory Proceeding Cases disposed at Civil Courts Valpoi

The above Table No. 11 and Figure No. 17 shows the total number of cases pertaining to inventory proceedings that are disposed before civil courts in Valpoi. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 29 whereas the same was 32 and 39 in the year 2011 and 2012 respectively. The said cases were 55 and 38 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed 17 whereas in the year 2016 it was 42. The total cases disposed in the year 2017 and 2018 were 46 and 38 respectively. Similarly the total cases disposed in the year 2019 was 43 whereas in the year 2020 it was 16.

5.10 Study of Inventory Proceedings cases pending at the end of Calendar years in North Goa

The below mentioned Table and Chart studies the total Inventory Cases that were pending at the end of Calendar years various Courts in North Goa. The data is collected year-wise as well as Court-wise to know the exact break up of cases that were pending at the end of each calendar year pertaining to each and every Court situated in North Goa.[608]

[608] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

Table 12: Inventory Proceedings cases pending at end of Calendar years in North Goa

Name of Courts	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Panaji	238	256	259	272	319	327	323	321	336	361	321
Mapusa	783	812	890	1009	952	1029	1172	1140	1035	1013	1167
Bicholim	202	160	247	256	292	339	251	259	237	204	283
Ponda	97	93	110	110	121	127	143	115	122	136	168
Pernem	85	144	153	124	123	170	128	129	138	183	230
Valpoi	25	22	28	36	38	51	57	52	57	50	69

Source: Data collected from Courts situated in North Goa

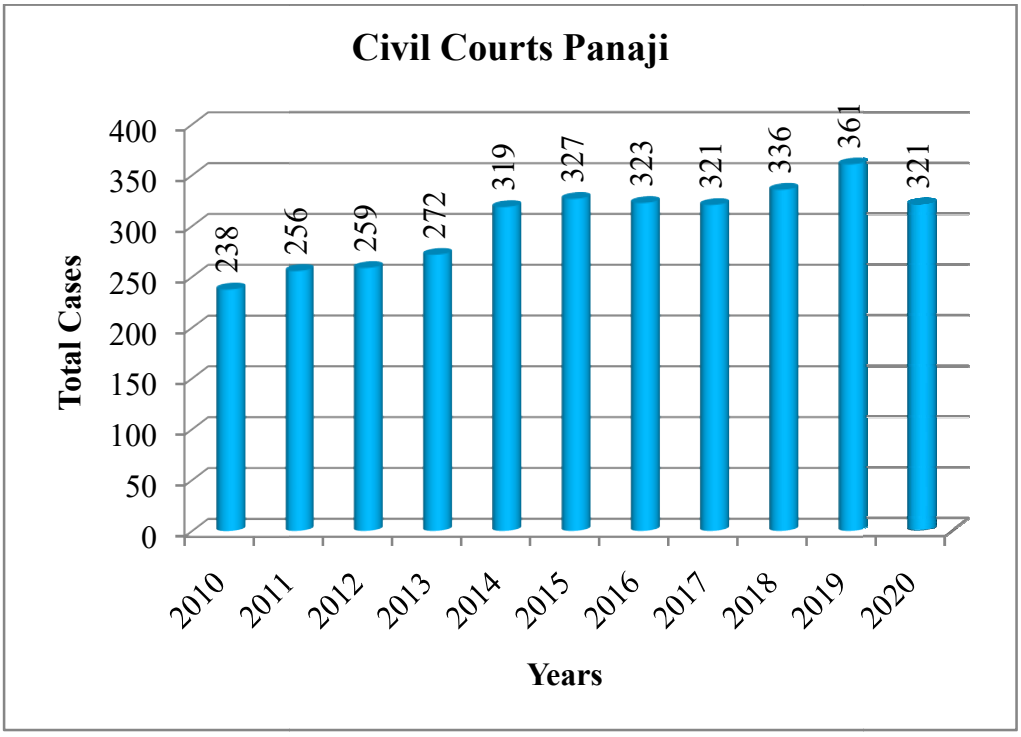

Figure 18: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Panaji

The above Table No. 12 and Figure No. 18 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Panjim. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 238 whereas the same was 256 and 259 in the year 2011 and 2012 respectively. The said cases were 272 and 319 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 327 whereas in the year 2016 it was 323.

The total cases that were pending at the end of calendar year 2017 and 2018 were 321 and 336 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 361 whereas in the year 2020 it was 321.

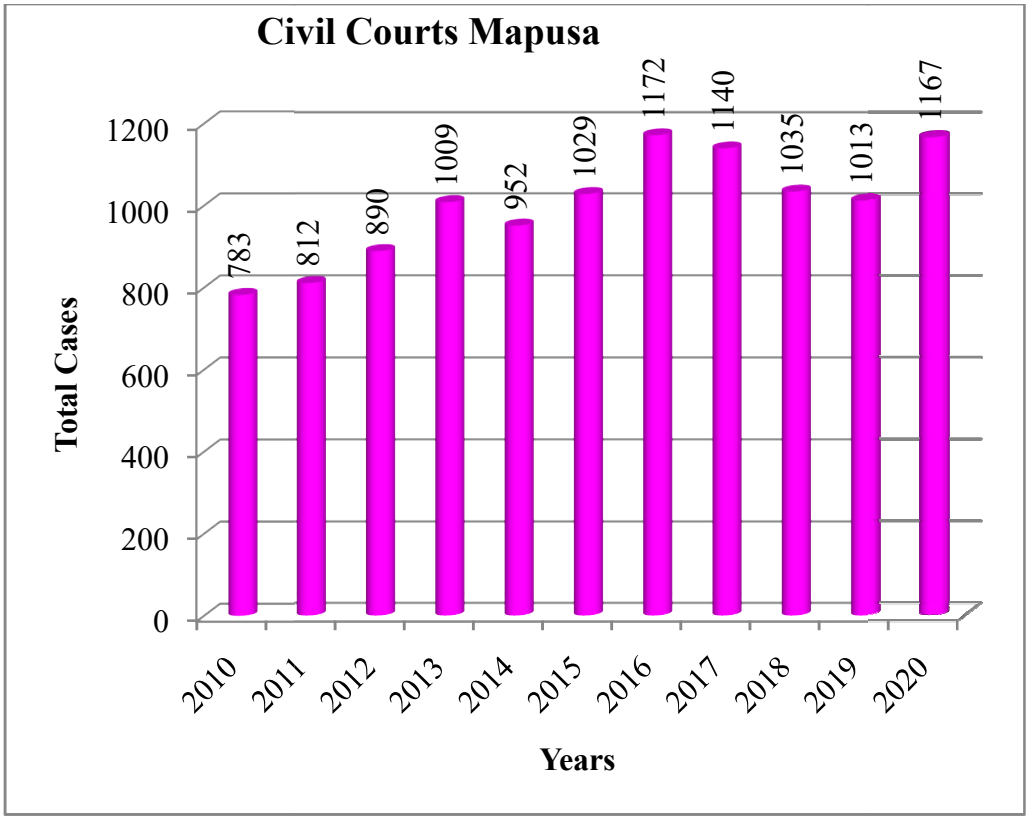

Figure 19: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Mapusa

The above Table No. 12 and Figure No. 19 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Mapusa. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 783 whereas the same was 812 and 890 in the year 2011 and 2012 respectively. The said cases were 1009 and 952 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 1029 whereas in the year 2016 it was 1172. The total cases that were pending at the end of calendar year 2017 and 2018 were 1140 and 1035 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 1013 whereas in the year 2020 it was 1167.

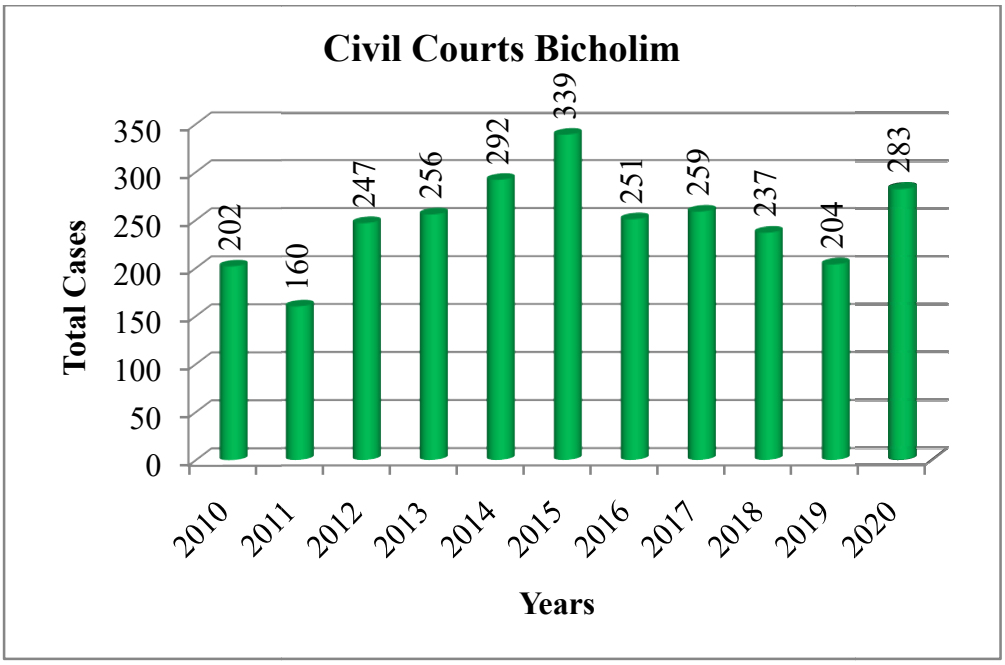

Figure 20: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Bicholim

The above Table No. 12 and Figure No. 20 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Bicholim. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 202 whereas the same was 160 and 247 in the year 2011 and 2012 respectively. The said cases were 256 and 292 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 339 whereas in the year 2016 it was 251. The total cases that were pending at the end of calendar year 2017 and 2018 were 259 and 237 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 204 whereas in the year 2020 it was 283.

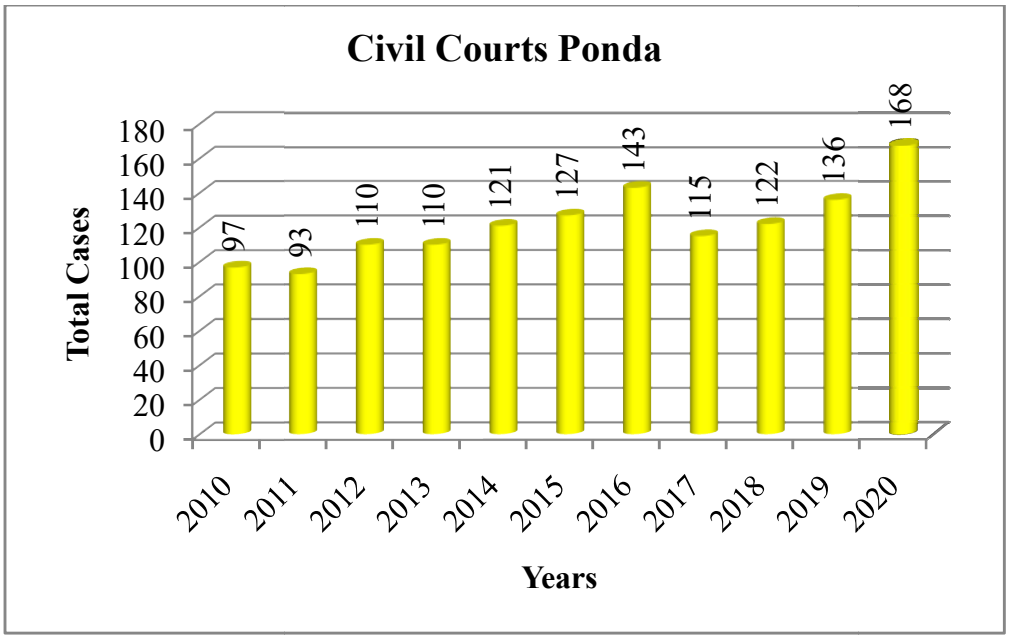

Figure 21: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Ponda

The above Table No. 12 and Figure No. 21 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Ponda. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 97 whereas the same was 93 and 110 in the year 2011 and 2012 respectively. The said cases were 110 and 121 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 127 whereas in the year 2016 it was 143. The total cases that were pending at the end of calendar year 2017 and 2018 were 115 and 122 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 136 whereas in the year 2020 it was 168.

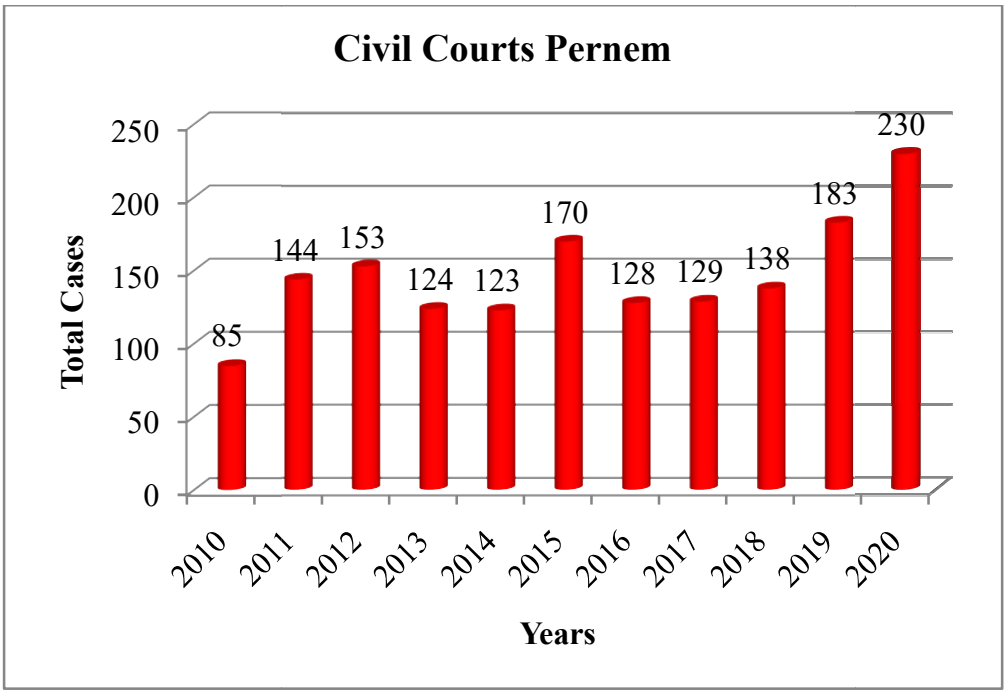

Figure 22: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Pernem

The above Table No. 12 and Figure No. 22 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Pernem. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 85 whereas the same was 144 and 153 in the year 2011 and 2012 respectively. The said cases were 124 and 123 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 170 whereas in the year 2016 it was 128. The total cases that were pending at the end of calendar year 2017 and 2018 were 129 and 138 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 183 whereas in the year 2020 it was 230.

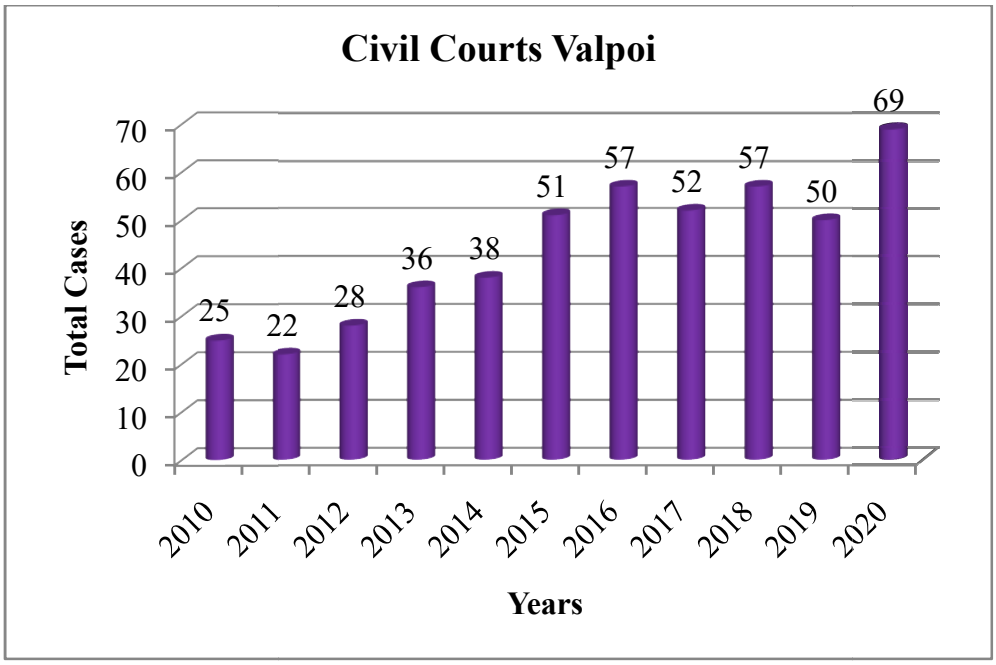

Figure 23: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Valpoi

The above Table No. 12 and Figure No. 23 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Valpoi. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 25 whereas the same was 22 and 28 in the year 2011 and 2012 respectively. The said cases were 36 and 38 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 51 whereas in the year 2016 it was 57. The total cases that were pending at the end of calendar year 2017 and 2018 were 52 and 57 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 50 whereas in the year 2020 it was 69.

5.11 Study of Number of Appeals filed pertaining to Inventory Proceedings in North Goa

The below mentioned Table and Chart studies the total Appeals filed in North Goa from 2010 to 2020. The data is collected year-wise to know the exact break up of Appeals filed in North Goa.[609]

[609] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

Table 13: Appeals filed pertaining to Inventory Proceedings in North Goa

Name of Court	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
District Court North Goa	0	0	0	0	0	1	0	1	3	2	2

Source: Data collected from Courts situated in North Goa

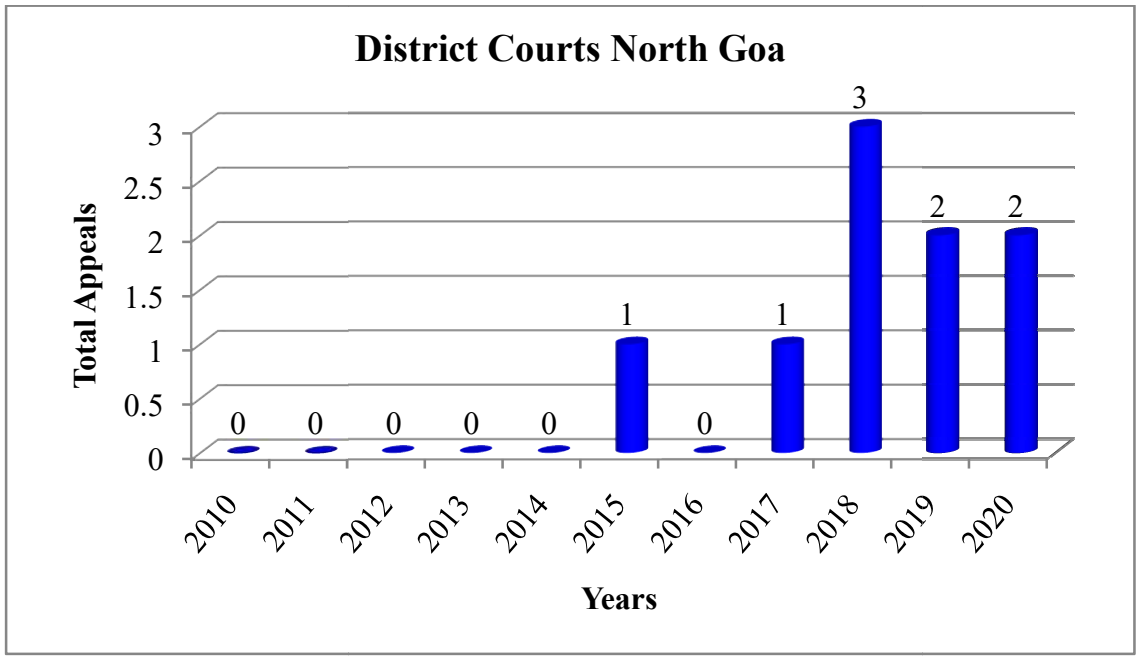

Figure 24: Appeals filed pertaining to Inventory Proceedings in North Goa

The above Table No. 13 and Figure No. 24 shows the total number of Appeals filed pertaining to inventory proceedings before the North Goa District Court. It can be seen that in the year 2010 to 2014, the total number of Appeals pertaining to Inventory proceedings were Nil whereas the Appeals pertaining to Inventory Proceedings in the year 2015 was 1. Again the Appeals pertaining to Inventory Proceedings were Nil in the year 2016 whereas the same was 1 and 3 in the years 2017 and 2018 respectively. Similarly the total number of Appeals filed pertaining to Inventory Proceedings in the year 2019 was 2 whereas in the year 2020 it was also 2.

5.12 Study of Number of Cases referred to Lok Adalat in North Goa

The below mentioned Table and Chart studies the total Inventory Cases that were referred to Lok Adalat in North Goa from 2010 to 2020.[610]

Table 14: Number of Cases referred to Lok Adalat in North Goa

Name of Court	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
District & Civil Courts, North	0	0	0	0	0	0	0	0	0	0	0

Source: Data collected from Courts situated in North Goa

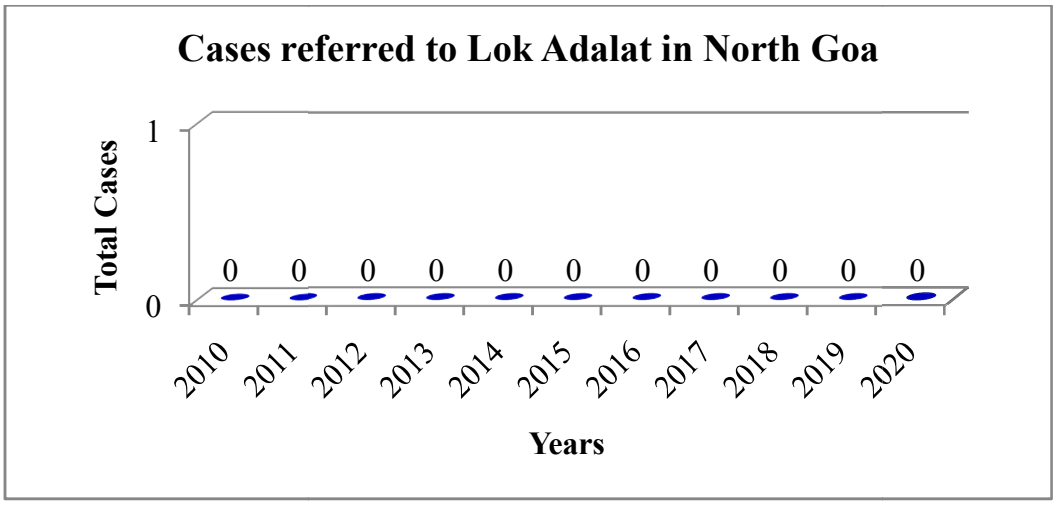

Figure 25: Number of Cases referred to Lok Adalat in North Goa

The above Table No. 14 and Figure No. 25 depicts the study of number of cases referred to Lok Adalats in North Goa. It can be seen that the total cases referred to Lok Adalat in the entire District of North Goa is Zero. The study is pertaining to period from 2010 to 2020 and all the Civil Courts as well as District Courts are covered in this period. Hence it can be seen that the alternative dispute redressal system does not play a major role and no cases have been referred to Lok Adalts over period of around ten years.

[610] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 3 mentioned at Sub Chapter 1.13 of Chapter One

5.13 Study of Pendency Period of Inventory Proceeding Cases in North Goa

The below mentioned Tables and Charts studies the duration of pendency of Inventory cases before various Civil Courts in North Goa. Data is collected for each and every Court in North Goa. The pendency period is sub divided into five sub categories follows.[611]

Table 15: Pendency Period of Inventory Proceeding Cases at Civil Courts Panaji

Study of Pendency Period of Inventory Proceeding Cases					
Name of Court	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Courts Panaji	107	125	86	43	45

Source: Data collected from Courts situated in North Goa

[611] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

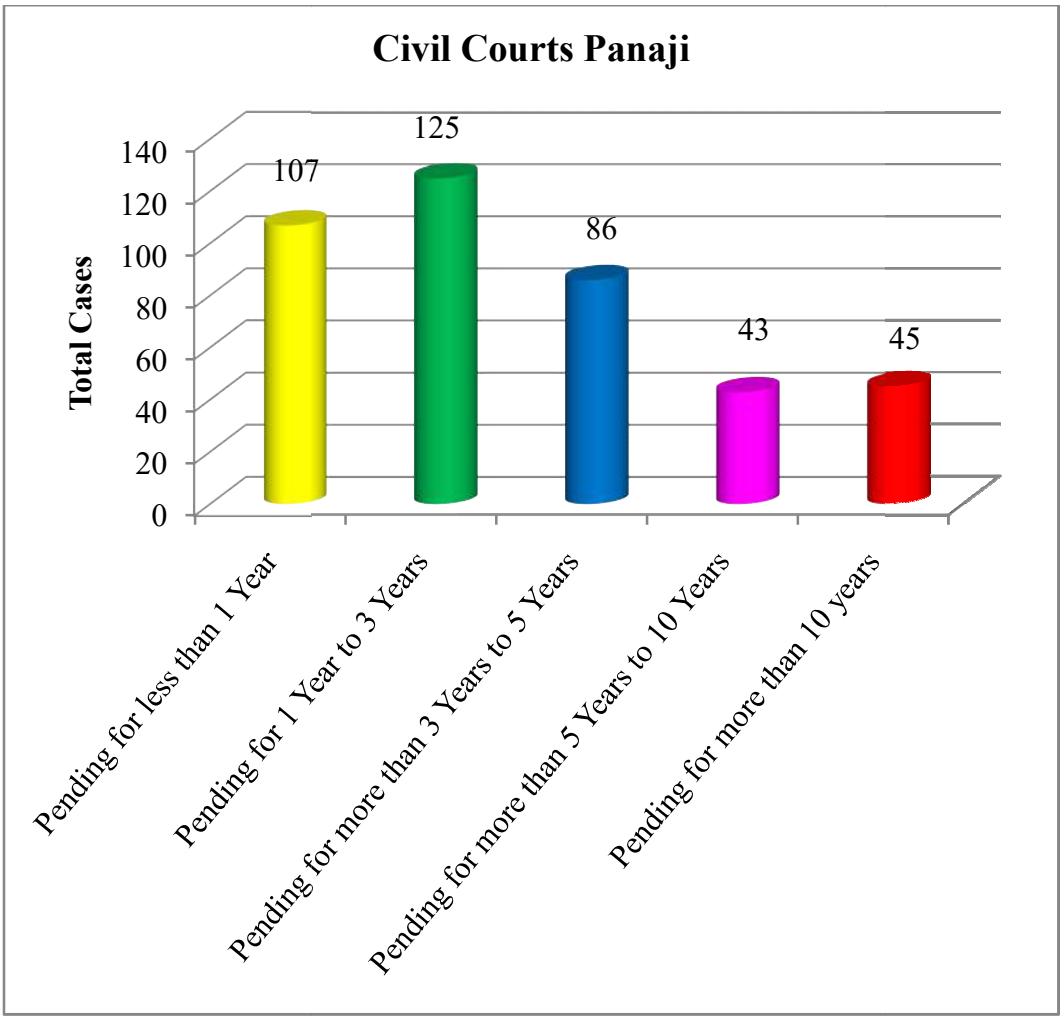

Figure 26: Pendency Period of Inventory Proceeding Cases at Civil Courts Panaji

The above Table No. 15 and Figure No. 26 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Panaji. The pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. It can be seen that the total number of cases that are pending for less than one year before civil courts in Panaji are 107. The total number of cases that are pending for more than 1 year upto 3 years are 125. The total number of cases that are pending for more than 3 years upto 5 years are 86. Further, the total number of cases that are pending for more than five years up to ten years are 43. The total number of cases that are pending for more than 10 years are 45 before the Civil courts in Panaji.

Table 16: Pendency Period of Inventory Proceeding Cases at Civil Courts Mapusa

Study of Pendency Period of Inventory Proceeding Cases					
Name of Court	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Courts Mapusa	659	552	441	490	106

Source: Data collected from Courts situated in North Goa

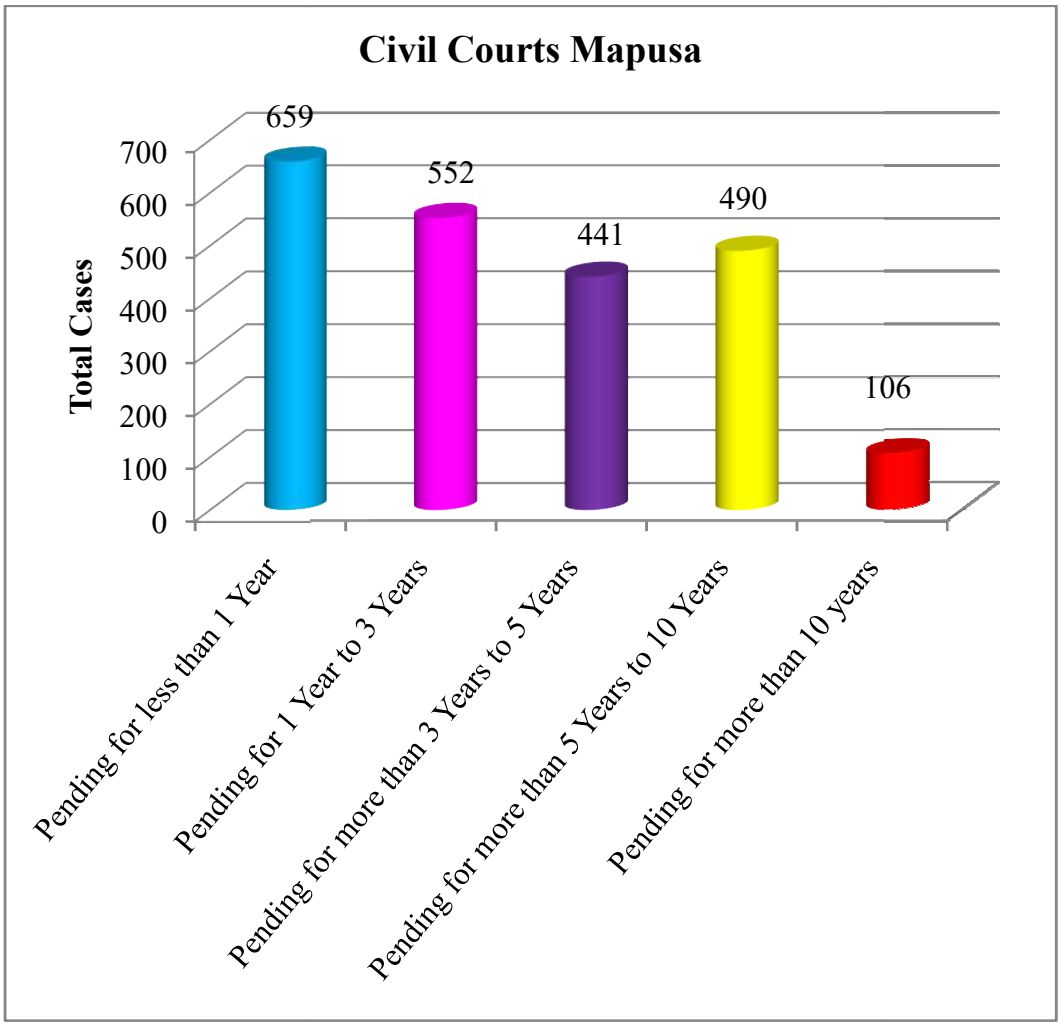

Figure 27: Pendency Period of Inventory Proceeding Cases at Civil Courts Mapusa

The above Table No. 16 and Figure No. 27 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Mapusa. The pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for

more than 10 years. It can be seen that the total number of cases that are pending for less than one year before civil courts in Mapusa are 659. The total number of cases that are pending for more than 1 year upto 3 years are 552. The total number of cases that are pending for more than 3 years upto 5 years are 441. Further, the total number of cases that are pending for more than five years up to ten years are 490. The total number of cases that are pending for more than 10 years are 106 before the Civil courts in Mapusa.

Table 17: Pendency Period of Inventory Proceeding Cases at Civil Courts Bicholim

Study of Pendency Period of Inventory Proceeding Cases					
Name of Court	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Courts Bicholim	141	91	21	22	8

Source: Data collected from Courts situated in North Goa

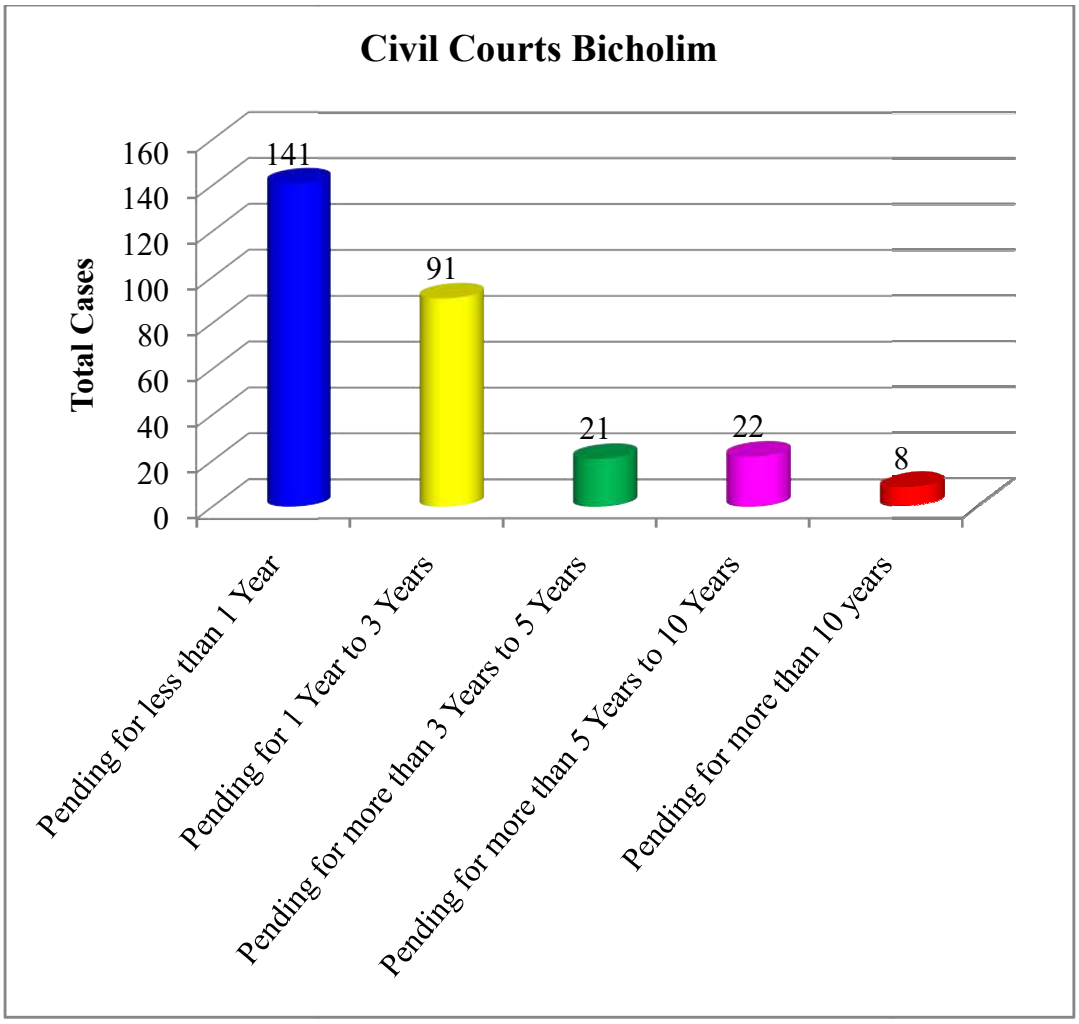

Figure 28: Pendency Period of Inventory Proceeding Cases at Civil Courts Bicholim

The above Table No. 17 and Figure No. 28 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Bicholim. the pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. It can be seen that the total number of cases that are pending for less than one year before civil courts in Bicholim are 141. The total number of cases that are pending for more than 1 year upto 3 years are 91. The total number of cases that are pending for more than 3 years upto 5 years are 21. Further, the total number of cases that are pending for more than five years up to ten years are 22. The total number of cases that are pending for more than 10 years are 8 before the Civil courts in Bicholim.

Table 18: Pendency Period of Inventory Proceeding Cases at Civil Courts Valpoi

Study of Pendency Period of Inventory Proceeding Cases					
Name of Court	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Court Valpoi	26	27	4	8	-

Source: Data collected from Courts situated in North Goa

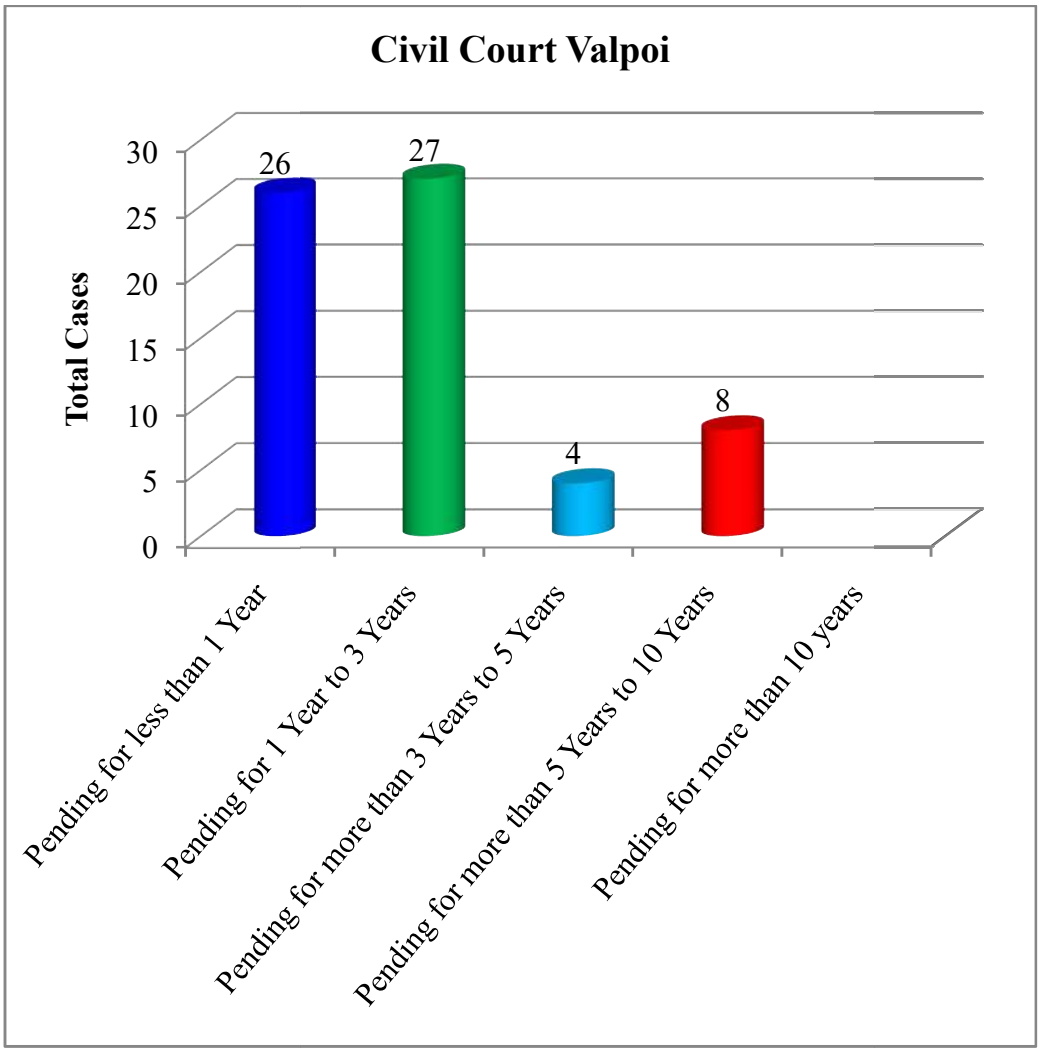

Figure 29: Pendency Period of Inventory Proceeding Cases at Civil Courts Valpoi

The above Table No. 18 and Figure No. 29 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Valpoi. The pendency period is divided into five categories which are less than 1 year, from one year to three years,

from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. It can be seen that the total number of cases that are pending for less than one year before civil courts in Valpoi are 26. The total number of cases that are pending for more than 1 year upto 3 years are 27. The total number of cases that are pending for more than 3 years upto 5 years are 4. Further, the total number of cases that are pending for more than five years up to ten years are 8. The total number of cases that are pending for more than 10 years are Nil before the Civil courts in Valpoi.

Table 19: Pendency Period of Inventory Proceeding Cases at Civil Courts Ponda

Study of Pendency Period of Inventory Proceeding Cases					
Name of Court	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Courts Ponda	69	62	21	24	10

Source: Data collected from Courts situated in North Goa

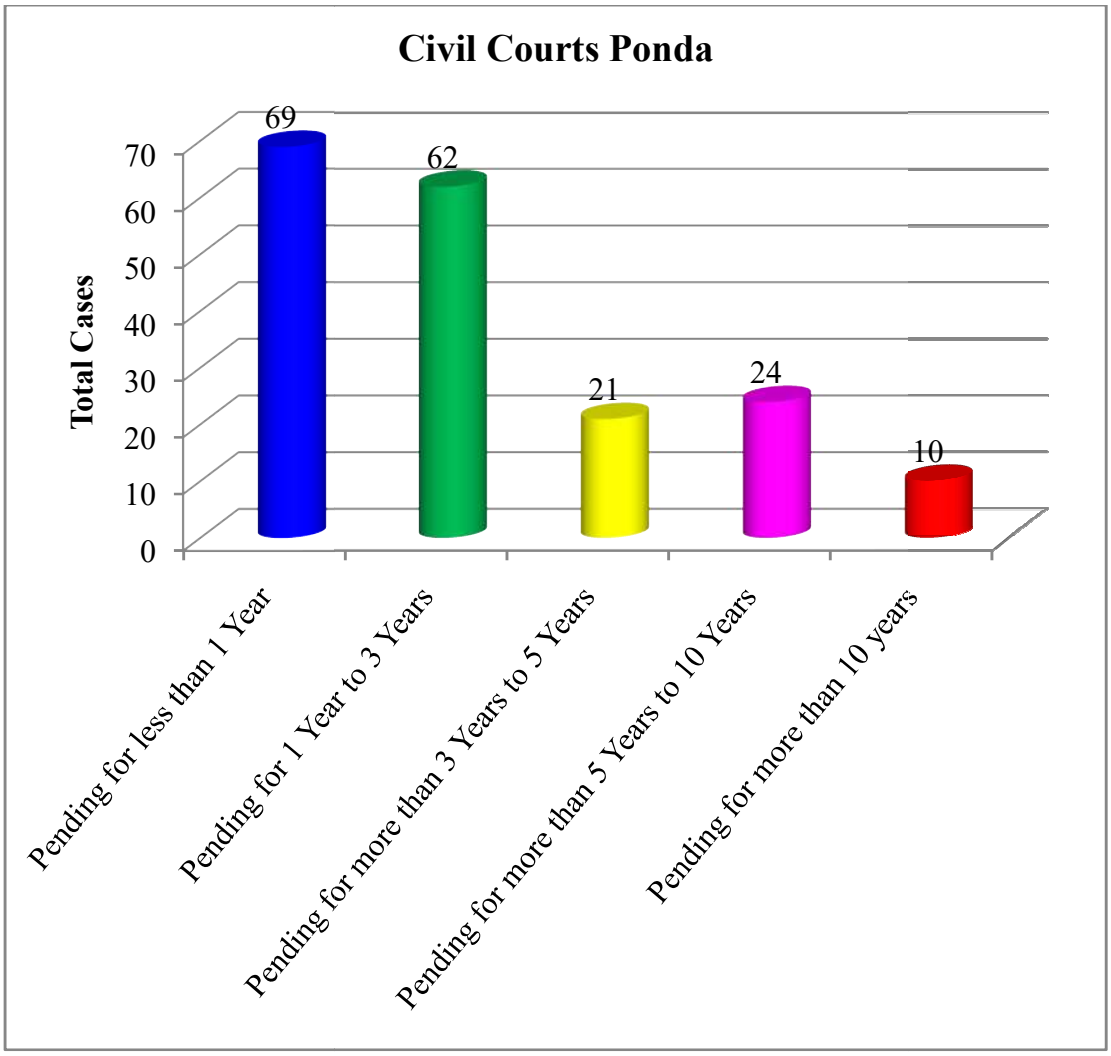

Figure 30: Pendency Period of Inventory Proceeding Cases at Civil Courts Ponda

The above Table No. 19 and Figure No. 30 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Ponda. the pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. It can be seen that the total number of cases that are pending for less than one year before civil courts in Ponda are 69. the total number of cases that are pending for more than 1 year upto 3 years are 62. The total number of cases that are pending for more than 3 years upto 5 years are 21. further, the total number of cases that are pending for more than five years up to ten years are 24. The total number of cases that are pending for more than 10 years are 10 before the Civil courts in Ponda.

Table 20: Pendency Period of Inventory Proceeding Cases at Civil Courts Pernem

Study of Pendency Period of Inventory Proceeding Cases					
Name of Court	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Court Pernem	83	5	137	3	-

Source: Data collected from Courts situated in North Goa

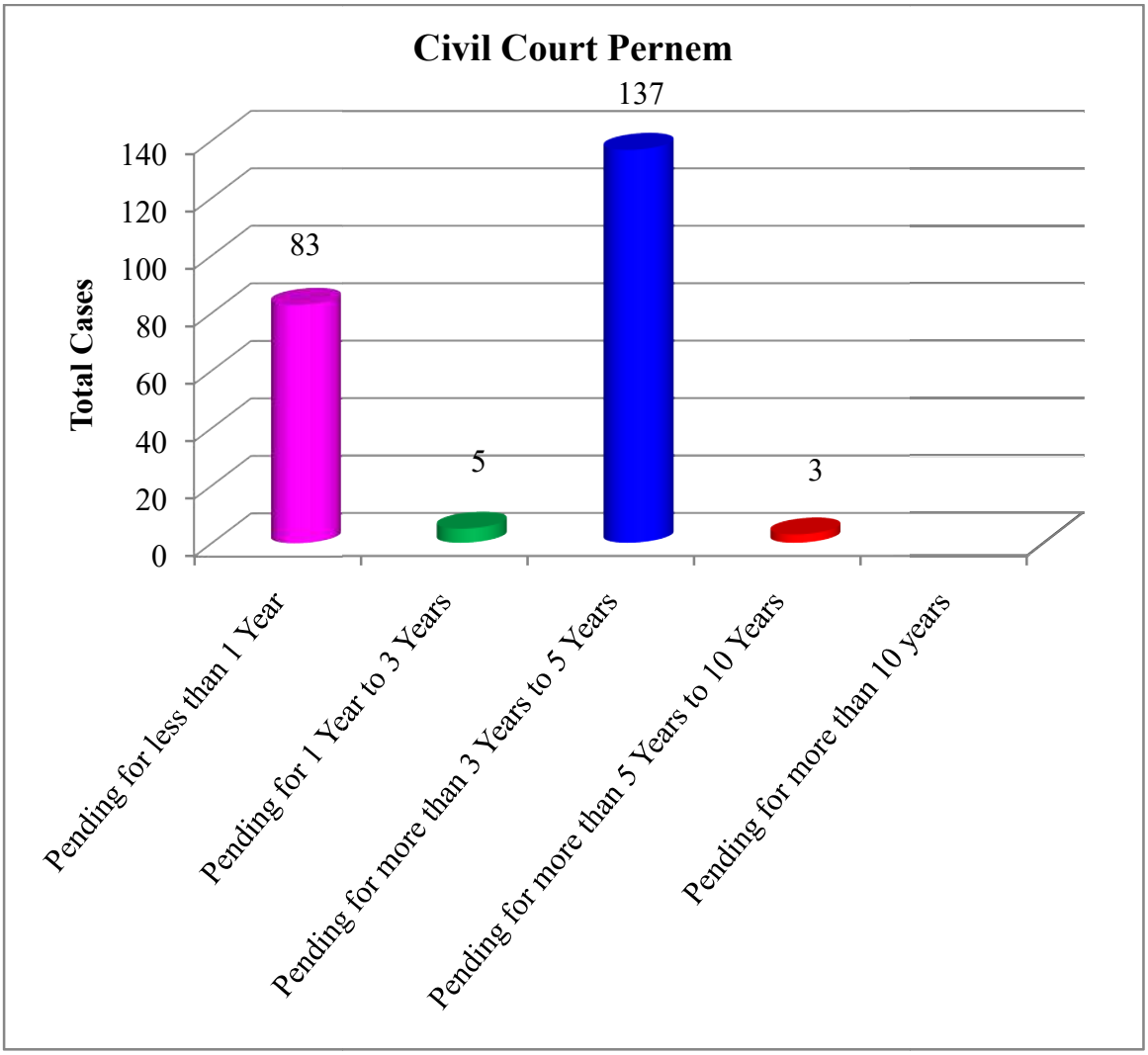

Figure 31: Pendency Period of Inventory Proceeding Cases at Civil Courts Pernem

The above Table No. 20 and Figure No. 31 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Pernem. The pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. It can be seen that the total number of cases that are pending for less than one year before civil courts in Pernem are 83. The total number of cases that are pending for more than 1 year upto 3 years are 5. The total number of cases that are pending for more than 3 years upto 5 years are 137. Further, the total number of cases that are pending for more than five years up to ten years are 3. The total number of cases that are pending for more than 10 years are Nil before the Civil courts in Pernem.

5.14 Study of Total Number of Inventory Proceeding Cases filed Yearwise in South Goa

The below mentioned Table and Chart studies the total Inventory Cases that were filed from 2010 to 2020 in various Courts in South Goa. The data is collected Court-wise to know the exact break up of cases filed in each and every Court situated in South Goa.[612]

Table 21: Number of Inventory Proceeding Cases filed Yearwise in South Goa

Name of Courts	Total Number of Inventory Proceeding Cases filed Yearwise										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Margao	219	246	227	270	303	315	325	215	243	336	312
Vasco	37	39	43	37	50	83	49	49	42	38	16
Quepem	1	3	10	11	17	12	22	23	15	27	38
Sanguem	33	10	6	24	19	12	19	5	34	37	36
Canacona	30	21	17	14	21	19	22	22	23	12	15

Source: Data collected from Courts situated in South Goa

[612] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

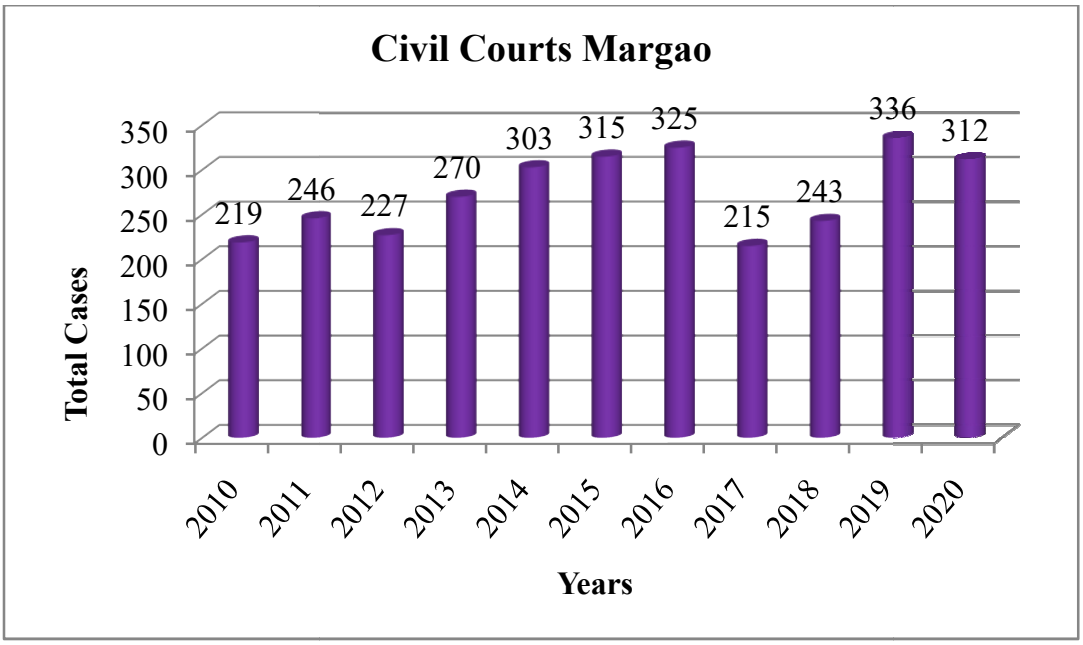

Figure 32: Number of Inventory Proceeding Cases filed at Civil Courts Margao

The above Table No. 21 and Figure No. 32 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Margao. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 219 whereas the same was 246 and 227 in the year 2011 and 2012 respectively. The said cases were 270 and 303 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed were 315 whereas in the year 2016 it was 325. The total cases filed in the year 2017 and 2018 were 215 and 243 respectively. Similarly the total cases filed in the year 2019 was 336 whereas in the year 2020 it was 312.

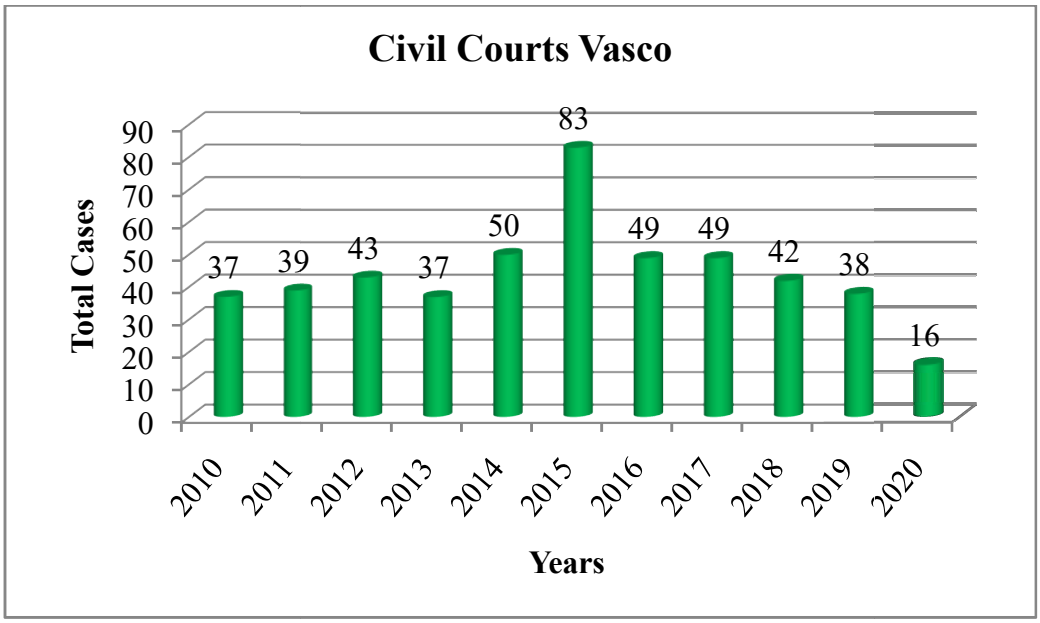

Figure 33: Number of Inventory Proceeding Cases filed at Civil Courts Vasco

The above Table No. 21 and Figure No. 33 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Vasco. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 37 whereas the same was 39 and 43 in the year 2011 and 2012 respectively. The said cases were 37 and 50 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed were 83 whereas in the year 2016 it was 49. The total cases filed in the year 2017 and 2018 were 49 and 42 respectively. Similarly the total cases filed in the year 2019 was 38 whereas in the year 2020 it was 16.

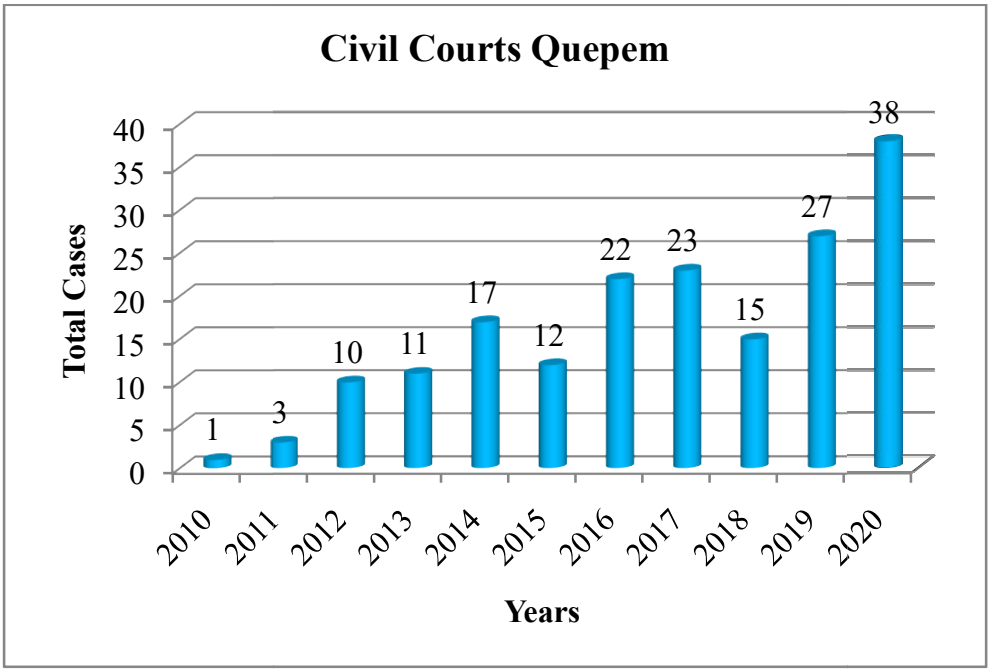

Figure 34: Number of Inventory Proceeding Cases filed at Civil Courts Quepem

The above Table No. 21 and Figure No. 34 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Quepem. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 1 whereas the same was 3 and 10 in the year 2011 and 2012 respectively. The said cases were 11 and 17 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed were 12 whereas in the year 2016 it was 22. The total cases filed in the year 2017 and 2018 were 23 and 15 respectively. Similarly the total cases filed in the year 2019 was 27 whereas in the year 2020 it was 38.

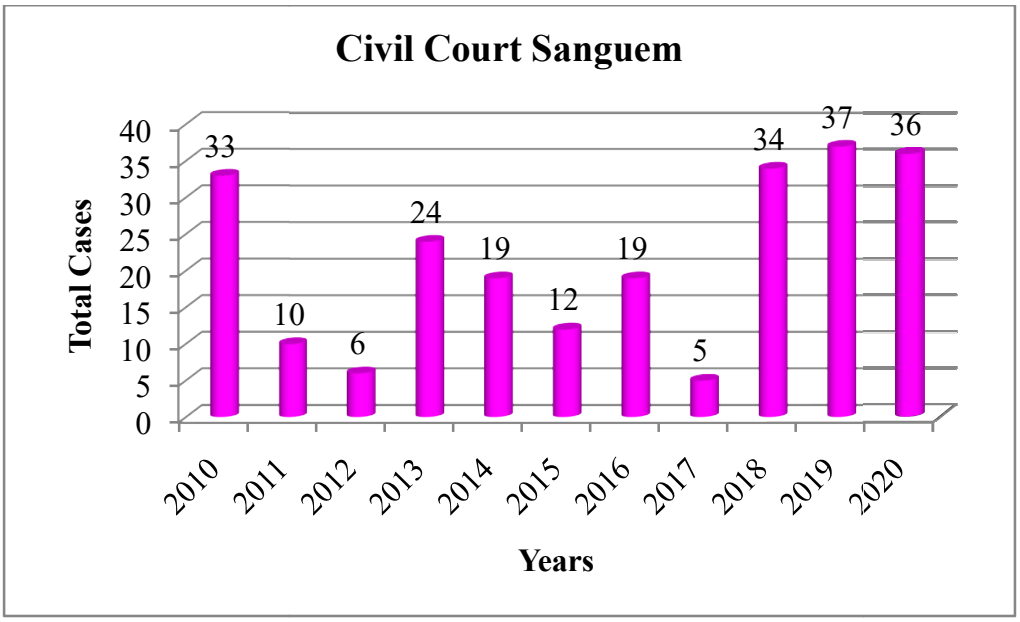

Figure 35: Number of Inventory Proceeding Cases filed at Civil Courts Sanguem

The above Table No. 21 and Figure No. 35 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Sanguem. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 33 whereas the same was 10 and 6 in the year 2011 and 2012 respectively. The said cases were 24 and 19 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed were 12 whereas in the year 2016 it was 19. The total cases filed in the year 2017 and 2018 were 05 and 34 respectively. Similarly the total cases filed in the year 2019 was 37 whereas in the year 2020 it was 36.

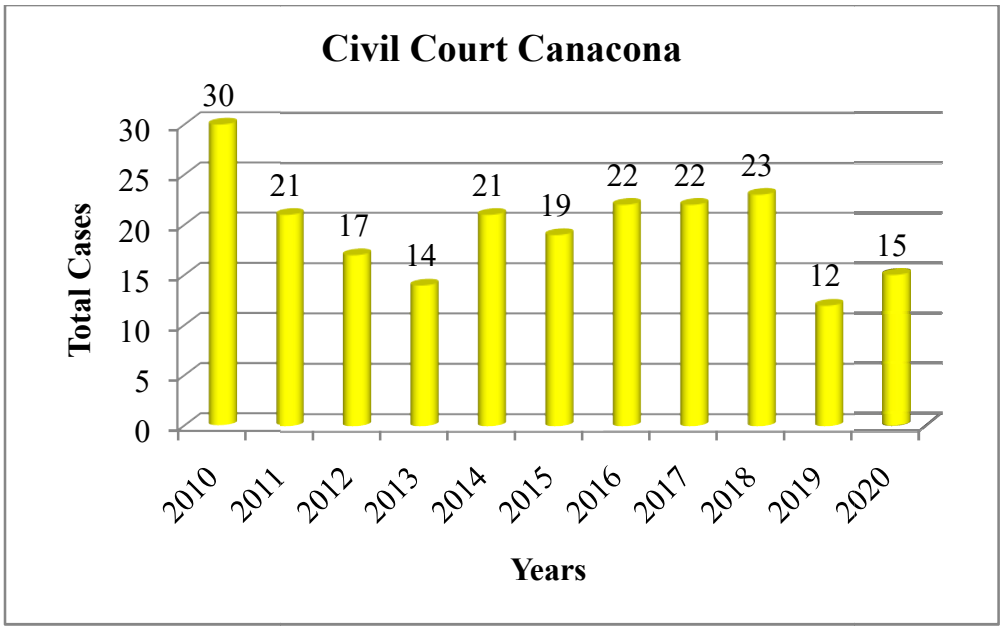

Figure 36: Number of Inventory Proceeding Cases filed at Civil Courts Canacona

The above Table No. 21 and Figure No. 36 shows the total number of cases pertaining to inventory proceedings that are filed before civil courts in Canacona. It can be seen that in the year 2010 total number of inventory proceeding cases filed were 30 whereas the same was 21 and 17 in the year 2011 and 2012 respectively. The said cases were 14 and 21 in the year 2013 and 2014 respectively. In the year 2015 the total cases filed were 19 whereas in the year 2016 it was 22. The total cases filed in the year 2017 and 2018 were 22 and 23 respectively. Similarly the total cases filed in the year 2019 was 12 whereas in the year 2020 it was 15.

5.15 Study of Total Number of Inventory Proceeding Cases disposed Yearwise in South Goa

The below mentioned Table and Chart studies the total Inventory Cases that were disposed from 2010 to 2020 in various Courts in South Goa. The data is collected Court-wise to know the exact break up of cases disposed in each and every Court situated in South Goa.[613]

Table 22: Inventory Proceeding Cases disposed in South Goa

Name of Courts	Total Number of Inventory Proceeding Cases disposed Yearwise										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Margao	263	149	248	252	250	268	227	322	257	320	121
Vasco	30	51	41	37	76	65	43	47	40	40	7
Quepem	33	18	19	23	25	14	55	34	41	40	15
Sanguem	14	8	7	31	23	12	16	14	12	51	19
Canacona	29	19	17	13	20	17	17	16	15	6	6

Source: Data collected from Courts situated in South Goa

[613] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

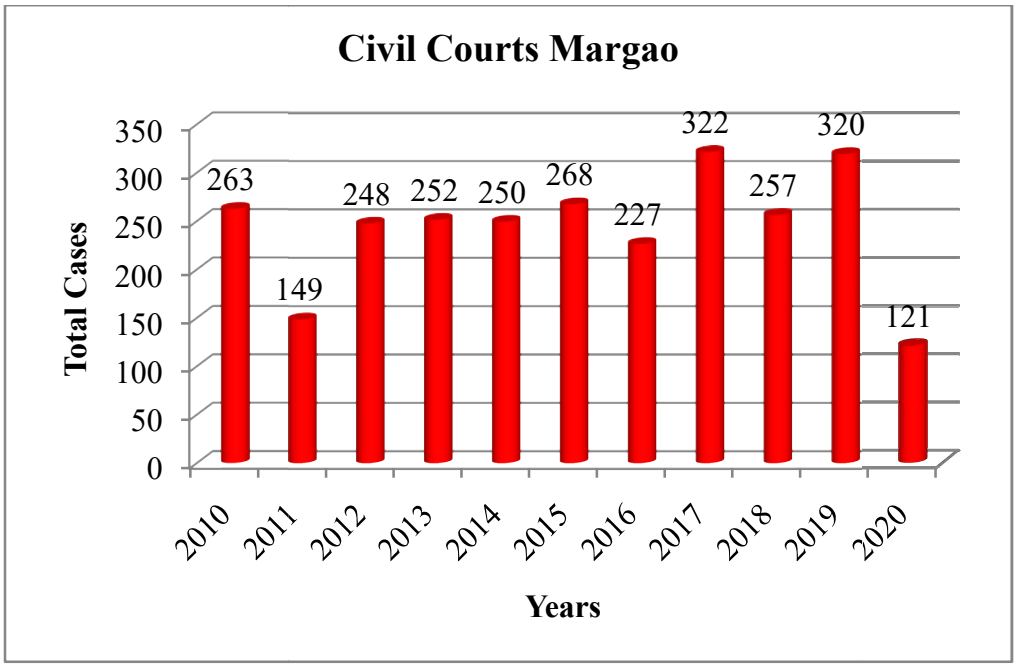

Figure 37: Inventory Proceeding Cases disposed at Civil Courts Margao

The above Table No. 22 and Figure No. 37 shows the total number of cases pertaining to inventory proceedings that are disposed yearwise before civil courts in Margao. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 263 whereas the same was 149 and 248 in the year 2011 and 2012 respectively. The said cases were 252 and 250 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed were 268 whereas in the year 2016 it was 227. The total cases disposed in the year 2017 and 2018 were 322 and 257 respectively. Similarly the total cases disposed in the year 2019 was 320 whereas in the year 2020 it was 121.

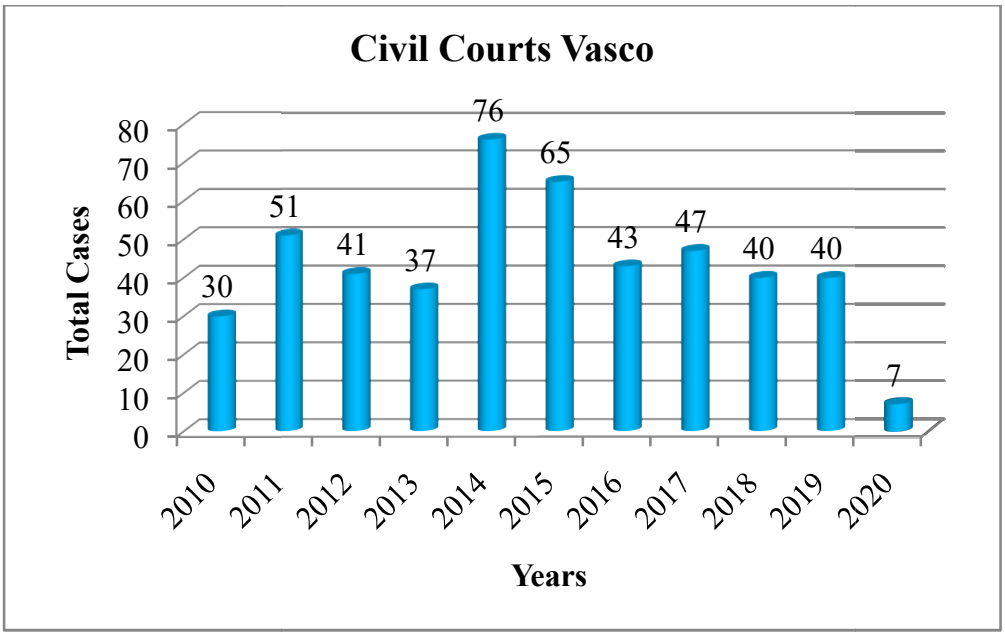

Figure 38: Inventory Proceeding Cases disposed at Civil Courts Vasco

The above Table No. 22 and Figure No. 38 shows the total number of cases pertaining to inventory proceedings that are disposed yearwise before civil courts in Vasco. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 30 whereas the same was 51 and 41 in the year 2011 and 2012 respectively. The said cases were 37 and 76 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed were 65 whereas in the year 2016 it was 43. The total cases disposed in the year 2017 and 2018 were 47 and 40 respectively. Similarly the total cases disposed in the year 2019 was 40 whereas in the year 2020 it was 07.

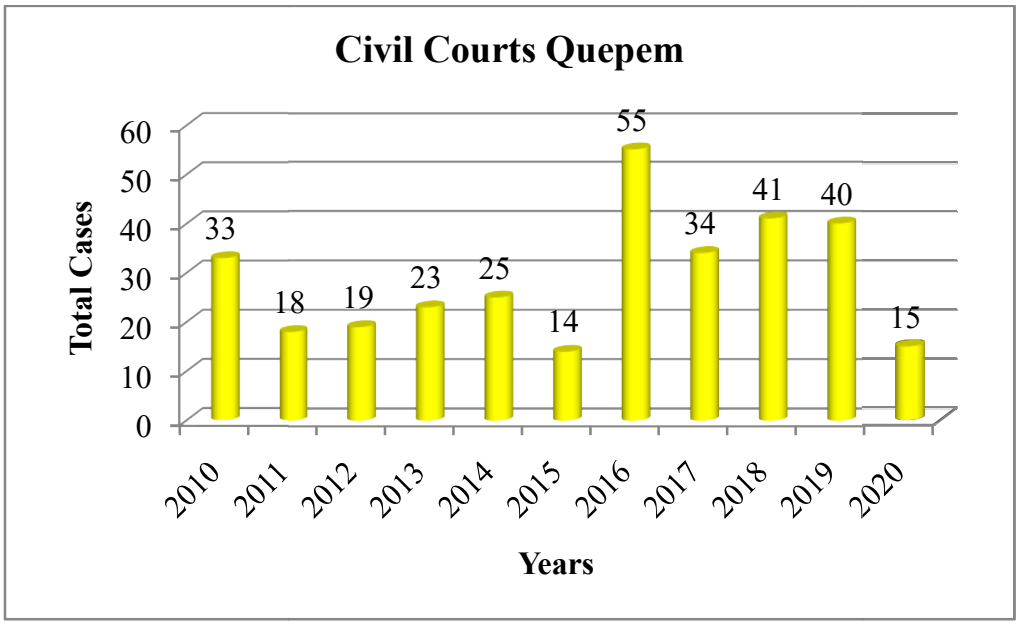

Figure 39: Inventory Proceeding Cases disposed at Civil Courts Quepem

The above Table No. 22 and Figure No. 39 shows the total number of cases pertaining to inventory proceedings that are disposed yearwise before civil courts in Quepem. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 33 whereas the same was 18 and 19 in the year 2011 and 2012 respectively. The said cases were 23 and 25 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed were 14 whereas in the year 2016 it was 55. The total cases disposed in the year 2017 and 2018 were 34 and 41 respectively. Similarly the total cases disposed in the year 2019 was 40 whereas in the year 2020 it was 15.

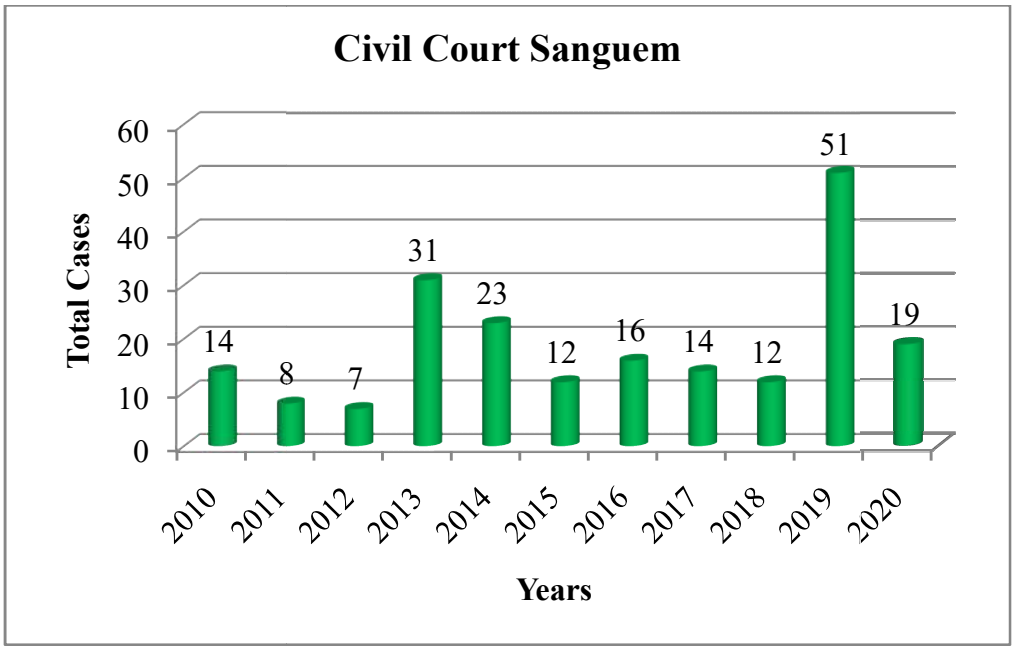

Figure 40: Inventory Proceeding Cases disposed at Civil Courts Sanguem

The above Table No. 22 and Figure No. 40 shows the total number of cases pertaining to inventory proceedings that are disposed Yearwise before civil courts in Sanguem. It can be seen that in the year 2010 total number of Inventory Proceeding cases disposed were 14 whereas the same was 8 and 7 in the year 2011 and 2012 respectively. The said cases were 31 and 23 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed were 12 whereas in the year 2016 it was 16. The total cases disposed in the year 2017 and 2018 were 14 and 12 respectively. Similarly the total cases disposed in the year 2019 was 51 whereas in the year 2020 it was 19.

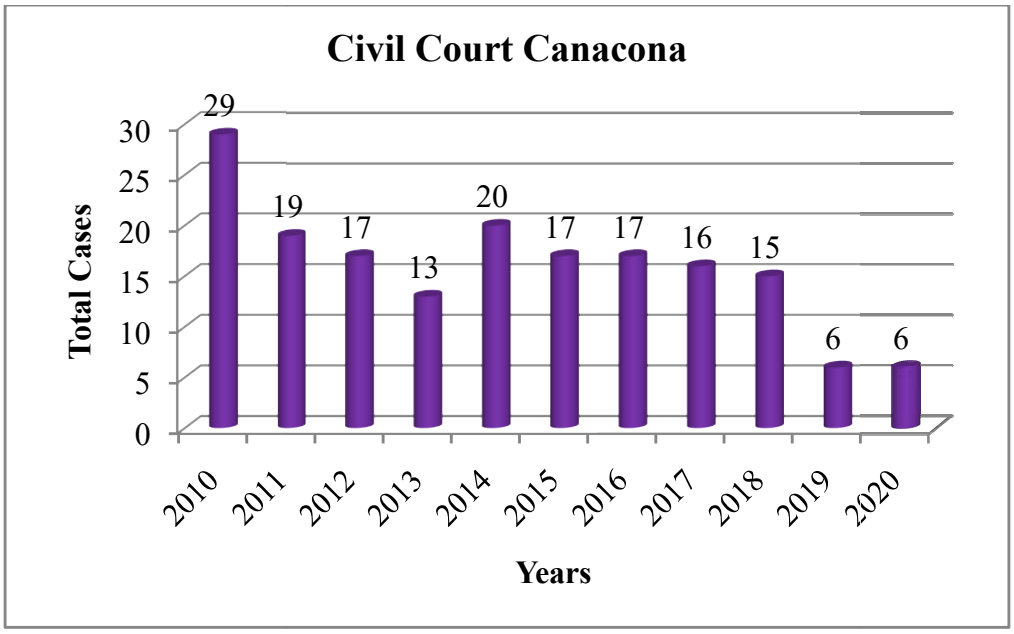

Figure 41: Inventory Proceeding Cases disposed at Civil Courts Canacona

The above Table No. 22 and Figure No. 41 shows the total number of cases pertaining to inventory proceedings that are disposed yearwise before civil courts in Canacona. It can be seen that in the year 2010 total number of inventory proceeding cases disposed were 29 whereas the same was 19 and 17 in the year 2011 and 2012 respectively. The said cases were 13 and 20 in the year 2013 and 2014 respectively. In the year 2015 the total cases disposed were 17 whereas in the year 2016 it was 17. The total cases disposed in the year 2017 and 2018 were 16 and 15 respectively. Similarly the total cases disposed in the year 2019 was 06 whereas in the year 2020 it was 06.

5.16 Study of Inventory Proceedings cases pending at the end of Calendar years in South Goa

The below mentioned Table and Chart studies the total Inventory Cases that were pending at the end of Calendar years various Courts in South Goa. The data is collected year-wise as well as Court-wise to know the exact break up of cases that were pending at the end of each calendar year pertaining to each and every Court situated in South Goa.[614]

[614] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

Table 23: Inventory Proceedings cases pending at end of Calendar years in South Goa

Name of Courts	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Margao	533	732	568	579	633	671	759	626	622	664	960
Vasco	39	43	46	54	50	62	61	49	44	50	52
Quepem	10	32	32	35	36	41	47	51	38	42	46
Sanguem	35	37	23	26	22	22	25	16	38	24	41
Canacona	1	2	0	1	1	2	5	6	8	6	9

Source: Data collected from Courts situated in South Goa

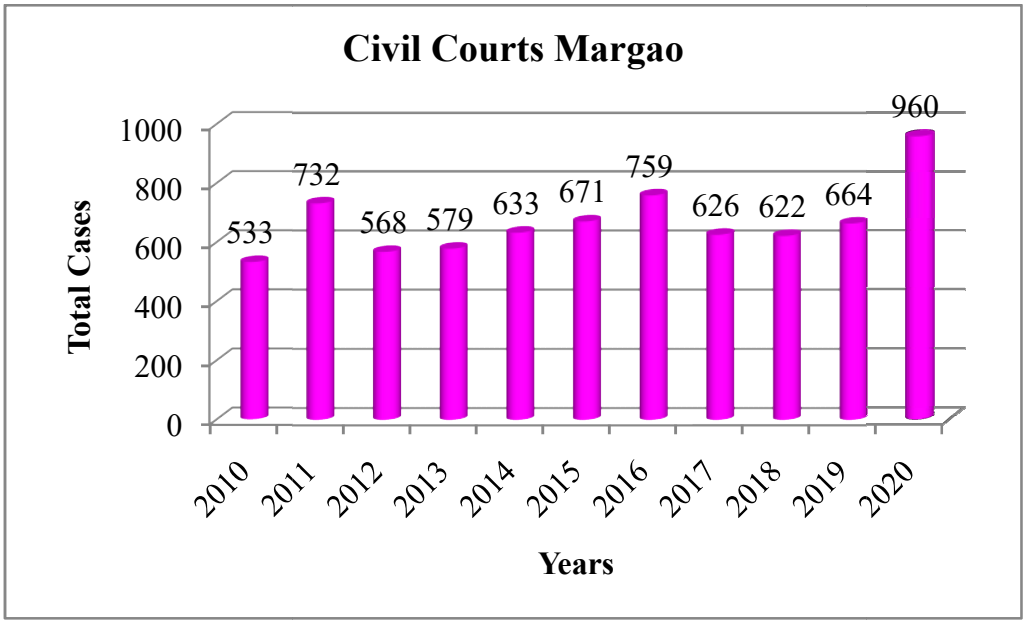

Figure 42: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Margao

The above Table No. 23 and Figure No. 42 shows the total number of cases pertaining to Inventory proceedings that were pending at the end of calendar year before civil courts in Margao. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 533 whereas the same was 732 and 568 in the year 2011 and 2012 respectively. The said cases were 579 and 633 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 671 whereas in the year 2016 it was 759. The total cases that were pending at the end of calendar year 2017 and 2018 were 626 and 622 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 664 whereas in the year 2020 it was 960.

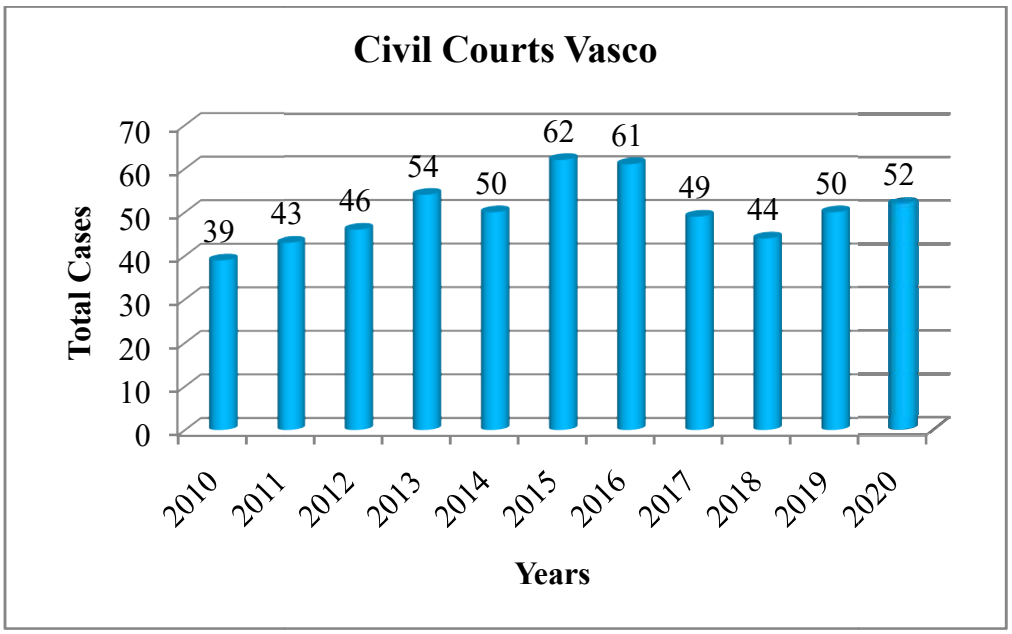

Figure 43: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Vasco

The above Table No. 23 and Figure No. 43 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Vasco. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 39 whereas the same was 43 and 46 in the year 2011 and 2012 respectively. The said cases were 54 and 50 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 62 whereas in the year 2016 it was 61. The total cases that were pending at the end of calendar year 2017 and 2018 were 49 and 44 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 50 whereas in the year 2020 it was 52.

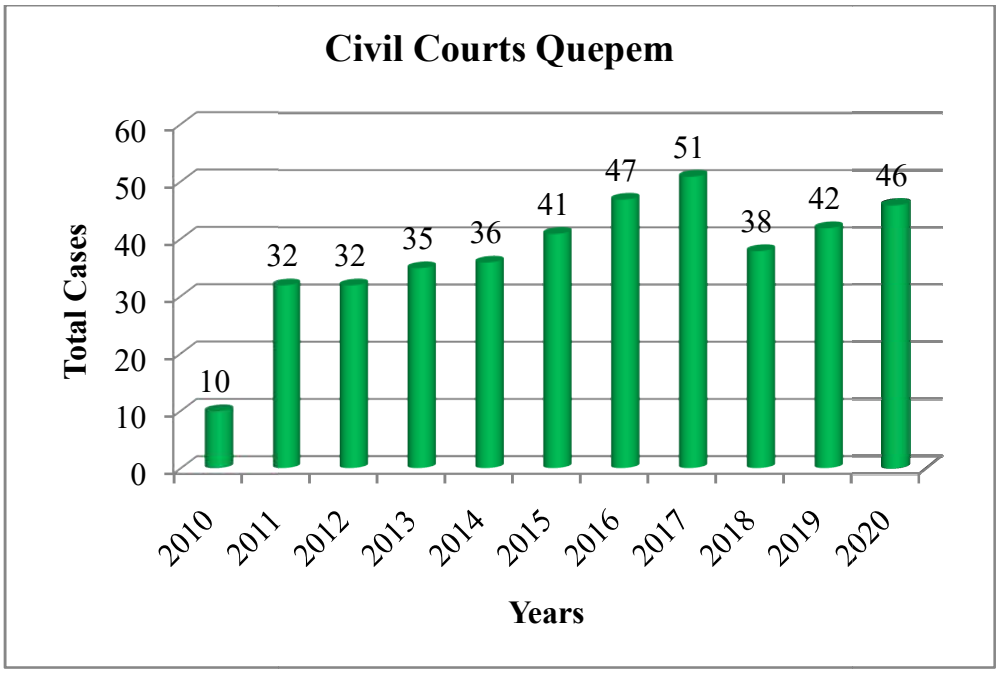

Figure 44: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Quepem

The above Table No. 23 and Figure No. 44 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Quepem. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 10 whereas the same was 32 and 32 in the year 2011 and 2012 respectively. The said cases were 35 and 36 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 41 whereas in the year 2016 it was 47. The total cases that were pending at the end of calendar year 2017 and 2018 were 51 and 38 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 42 whereas in the year 2020 it was 46.

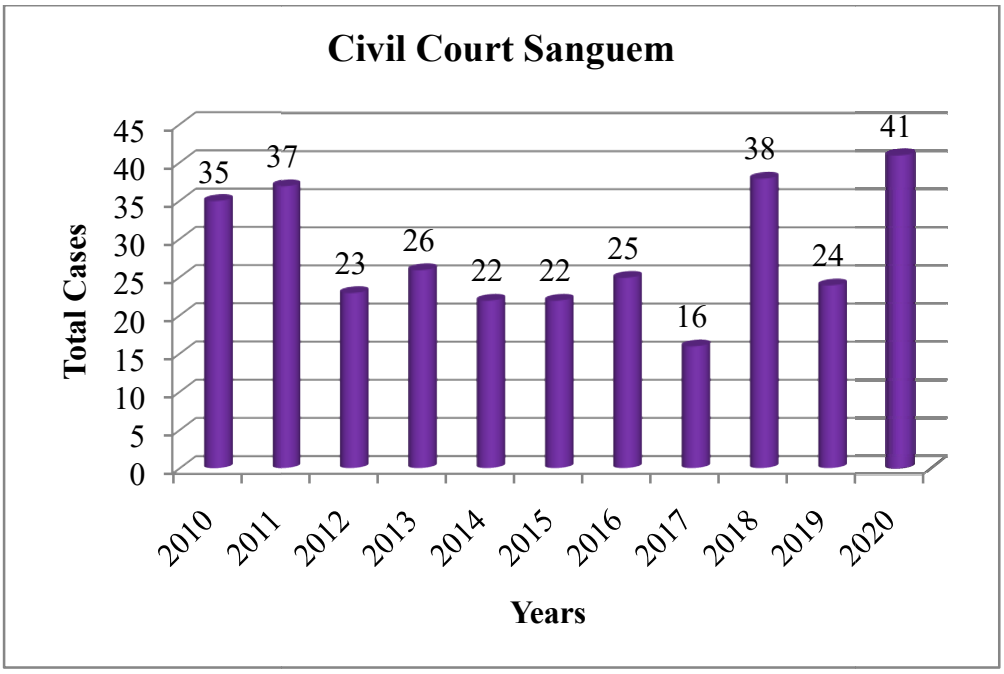

Figure 45: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Sanguem

The above Table No. 23 and Figure No. 45 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Sanguem. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 35 whereas the same was 37 and 23 in the year 2011 and 2012 respectively. The said cases were 26 and 22 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 22 whereas in the year 2016 it was 25. The total cases that were pending at the end of calendar year 2017 and 2018 were 16 and 38 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 24 whereas in the year 2020 it was 41.

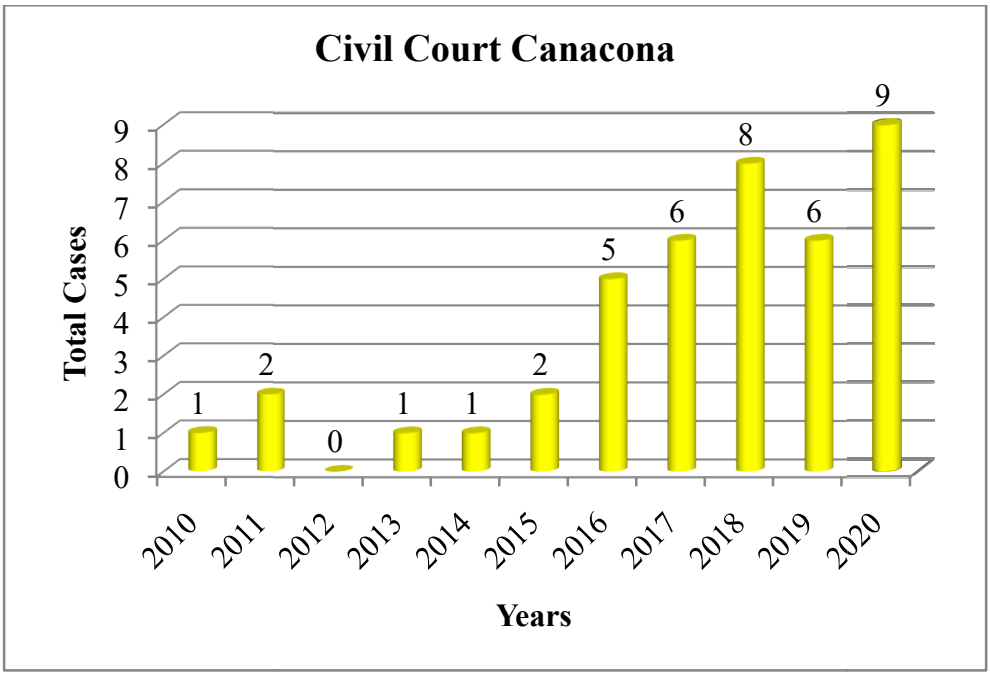

Figure 46: Inventory Proceedings cases pending at end of Calendar years at Civil Courts Canacona

The above Table No. 23 and Figure No. 46 shows the total number of cases pertaining to inventory proceedings that were pending at the end of calendar year before civil courts in Canacona. It can be seen that in the year 2010 total number of inventory proceeding cases that were pending at the end of calendar year was 01 whereas the same was 02 and Nil in the year 2011 and 2012 respectively. The said cases were 01 and 01 in the year 2013 and 2014 respectively. In the year 2015 the total cases that were pending at the end of calendar year were 02 whereas in the year 2016 it was 05. The total cases that were pending at the end of calendar year 2017 and 2018 were 06 and 08 respectively. Similarly the total cases that were pending at the end of calendar year 2019 was 06 whereas in the year 2020 it was 09.

5.17 Study of Yearwise Number of Inventory Proceeding Cases referred to Lok Adalat in South Goa

The below mentioned Table and Chart studies the total Inventory Cases that were referred to Lok Adalat in South Goa from 2010 to 2020.[615]

Table 24: Inventory Proceeding Cases referred to Lok Adalat in South Goa

Name of Courts	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Margao	0	0	6	10	7	0	0	0	1	0	0
Vasco											
Quepem						4	20	6	1	2	0
Sanguem			1	6	11	8	4		2	8	
Canacona											

Source: Data collected from Courts situated in South Goa

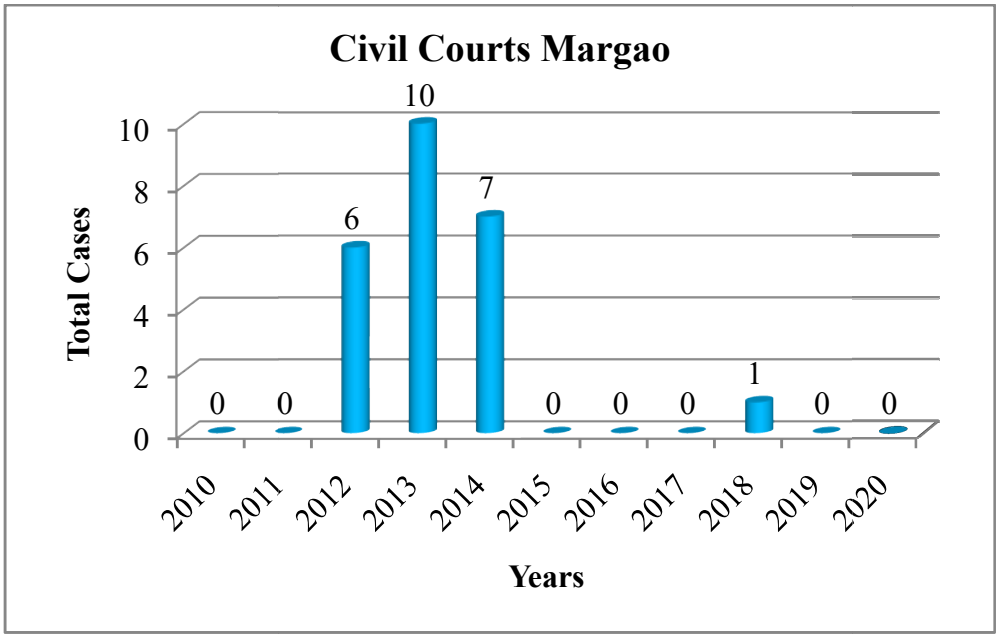

Figure 47: Inventory Proceeding Cases referred to Lok Adalat at Civil Courts Margao

The above Table No. 24 and Figure No. 47 shows the total number of Inventory Proceeding cases referred to Lok Adalat. The above chart pertains to Civil courts at Margao. The total number of cases that were referred to Lok Adalat in the year 2010 and 2011 were Nil whereas in the year 2012 the same were 06. The total number of cases that were referred to Lok Adalat in the year 2013 and 2014 word 10 and 07

[615] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 3 mentioned at Sub Chapter 1.13 of Chapter One

respectively. The total cases referred to Lok Adalat were Nil in the years 2015, 2016, 2017, 2019 and 2020 whereas in the year 2018 it was only 01.

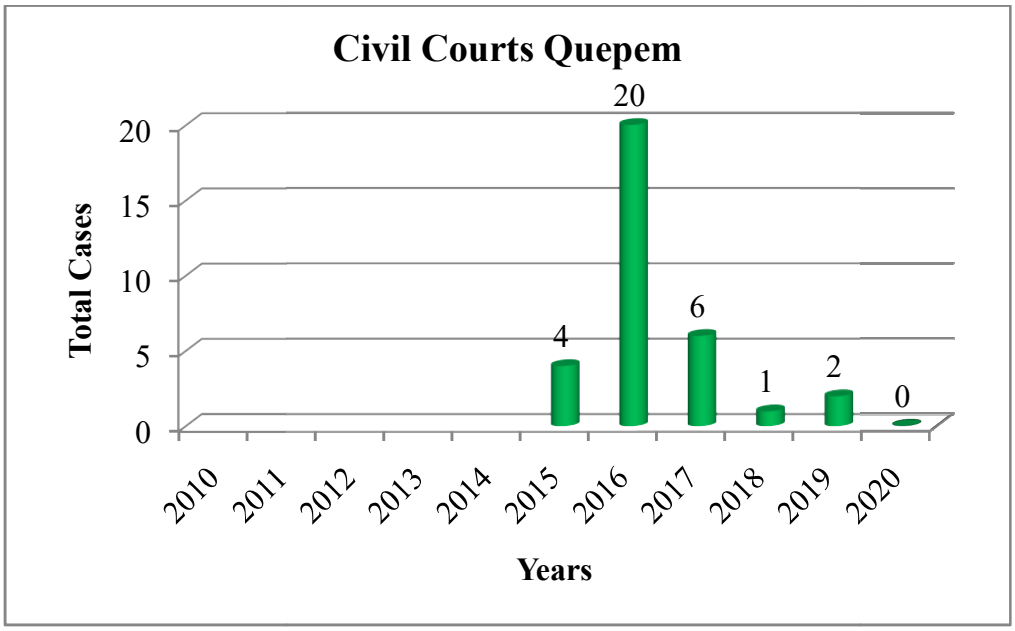

Figure 48: Inventory Proceeding Cases referred to Lok Adalat at Civil Courts Quepem

The above Table No. 24 and Figure No. 48 shows the total number of Inventory Proceeding cases referred to Lok Adalat. The above chart pertains to Civil courts at Quepem. The total number of cases that were referred to Lok Adalat in the year 2010, 2011, 2012, 2013 and 2014 were Nil whereas in the year 2015 the same were 04. The total number of cases that were referred to Lok Adalat in the year 2016 were 20 whereas in the year 2017 it was 06. The total cases refered to Lok Adalat in the year 2018 and 2019 were 01 and 02 respectively whereas in the year 2020 it was Nil.

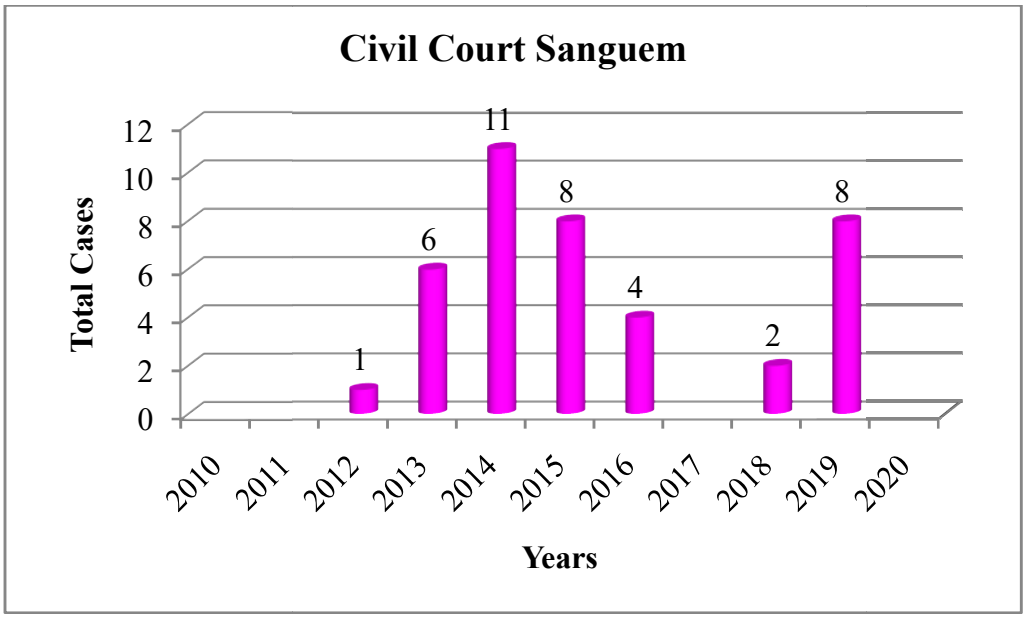

Figure 49: Inventory Proceeding Cases referred to Lok Adalat at Civil Courts Sanguem

The above Table No. 24 and Figure No. 49 shows the total number of Inventory Proceeding cases referred to Lok Adalat. The above chart pertains to Civil courts at Sanguem. The total number of cases that were referred to Lok Adalat in the year 2010, 2011 were Nil whereas in the year 2012 the same were 01. The total number of cases that were referred to Lok Adalat in the year 2013 and 2014 were 06 and 11 respectively whereas in the year 2015 it was 08. The total cases referred to Lok Adalat in the year 2016, 2018 and 2019 were 04, 02 and 08 respectively whereas in the year 2017 and 2020 it was Nil.

5.18 Yearwise Number of Inventory Proceeding Cases disposed by Lok Adalat in South Goa

The below mentioned Table and Chart studies the total Inventory Cases that were disposed by Lok Adalat in South Goa from 2010 to 2020.[616]

Table 25: Inventory Proceeding Cases disposed by Lok Adalat in South Goa

Name of Courts	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Margao											
Vasco											
Quepem											
Sanguem					2	1	1	2		1	
Canacona											

Source: Data collected from Courts situated in South Goa

[616] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 3 mentioned at Sub Chapter 1.13 of Chapter One

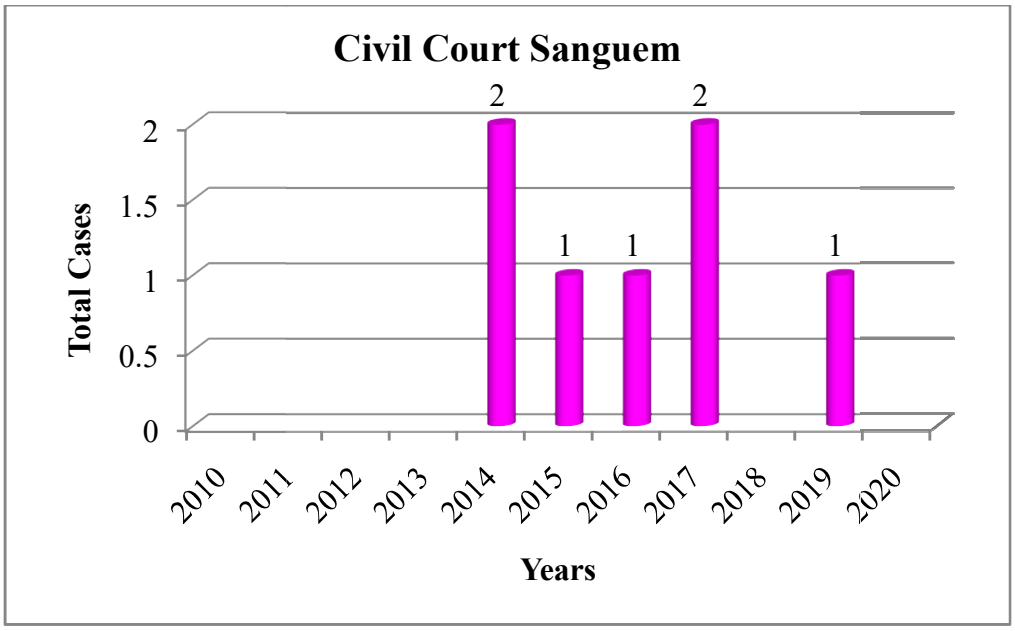

Figure 50: Inventory Proceeding Cases disposed by Lok Adalat at Civil Courts Sanguem

The above Table No. 25 and Figure No. 50 shows the total number of cases that were disposed by Lok Adalat. The above chart pertains to Civil courts at Sanguem. The total number of cases that were disposed by Lok Adalat in the year 2010, 2011, 2012, 2013 were Nil. The total number of cases that were disposed by Lok Adalat in the year 2014 and 2015 were 02 and 01 respectively whereas in the year 2016 and 2017 it was 01 and 02 respectively. In the year 2019 the total number of cases hat were disposed by Lok Adalat were only 01 whereas in the years 2018 and 2020, the total cases disposed by Lok Adalat were Nil.

5.19 Yearwise Disposal of cases by Lok Adalat (All Types) in South Goa

The below mentioned Table and Chart studies the total Cases (all types) that were referred to Lok Adalat in South Goa from 2010 to 2020.[617]

Table 26: Total Cases disposed by Lok Adalat in South Goa (All Types)

Name of Courts	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Margao	0	0	2	0	68	7	167	4	21	51	9
Vasco											
Quepem						63	142	114	139	142	14
Sanguem			1	6	66	78	38	33	12	20	1
Canacona	6	6	0	3	14	30	127	33	138	68	0

Source: Data collected from Courts situated in South Goa

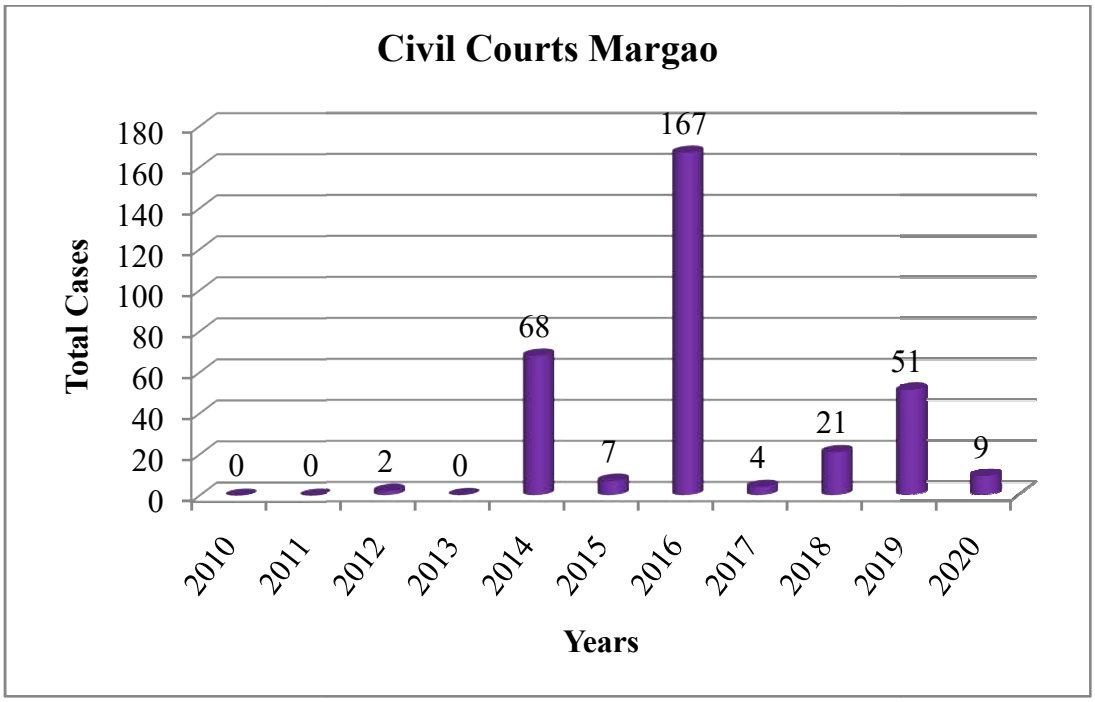

Figure 51: Total Cases disposed by Lok Adalat (All Types) at Civil Courts Margao

[617] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 3 mentioned at Sub Chapter 1.13 of Chapter One

The above Table No. 26 and Figure No. 51 shows the total number of cases that were disposed by Lok Adalat (all types). The above chart pertains to Civil courts at Margao. the total number of cases that were disposed by Lok Adalat in the year 2010, 2011, 2013 were nil whereas in the year 2012 the same were 02. The total number of cases that were disposed by Lok Adalat in the year 2014 and 2015 were 68 and 07 respectively where is in the year 2016 it was 167. In the year 2017 the total cases disposed by Lok Adalat were 04 whereas in the year 2018 it was 21. In the years 2019 and 2020 the total cases disposed by Lok Adalat were 51 and 09 respectively.

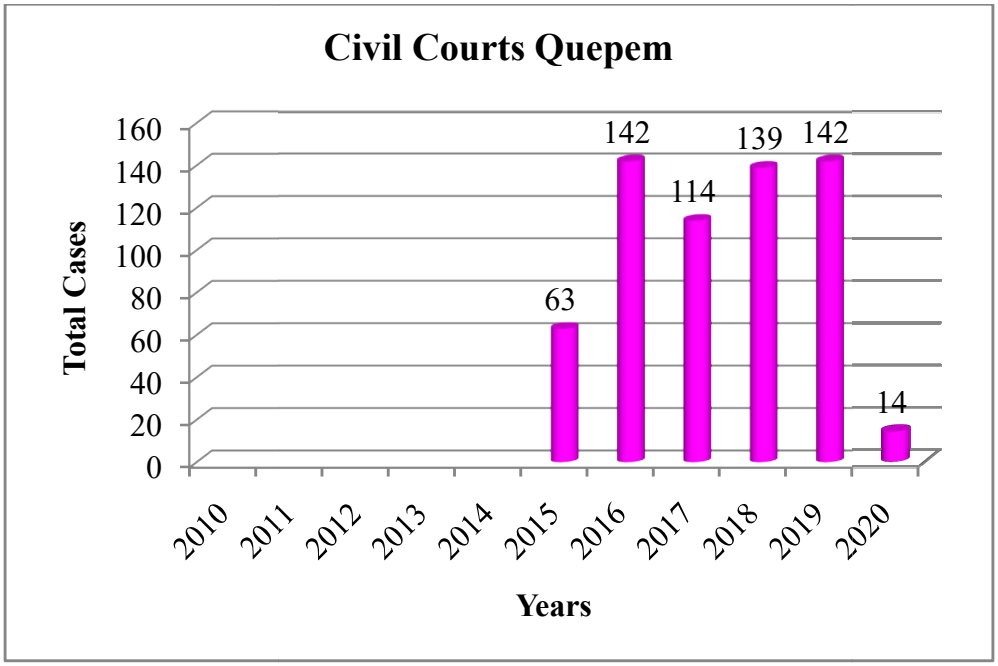

Figure 52: Total Cases disposed by Lok Adalat (All Types) at Civil Courts Quepem

The above Table No. 26 and Figure No. 52 shows the total number of cases that were disposed by Lok Adalat (all types). The above chart pertains to Civil courts at Quepem. the total number of cases that were disposed by Lok Adalat in the year 2010, 2011, 2012, 2013 and 2014 were nil whereas in the year 2015 the same were 63. The total number of cases that were disposed by Lok Adalat in the year 2016 and 2017 were 142 and 114 respectively whereas in the year 2018 it was 139. In the year 2019 the total cases disposed by Lok Adalat were 142 whereas in the year 2020 the total cases disposed by Lok Adalat was 14.

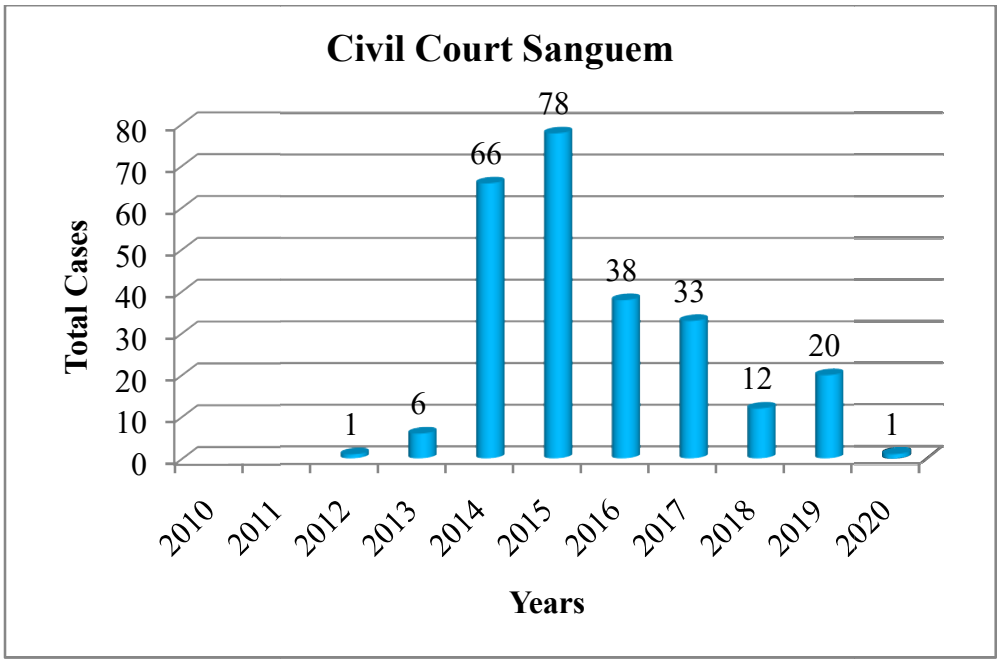

Figure 53: Total Cases disposed by Lok Adalat (All Types) at Civil Courts Sanguem

The above Table No. 26 and Figure No. 53 shows the total number of cases that were disposed by Lok Adalat (all types). The above chart pertains to Civil courts at Sanguem. The total number of cases that were disposed by Lok Adalat in the year 2010, 2011 were nil whereas in the year 2012 and 2013 the same were 01 and 06 respectively. The total number of cases that were disposed by Lok Adalat in the year 2014 and 2015 were 66 and 78 respectively whereas in the year 2016 it was 38. In the year 2017 the total cases disposed by Lok Adalat were 33 whereas in the year 2018 the total cases disposed by Lok Adalat was 12. The total cases disposed by Lok Adalat in the year 2019 were 20 whereas in the year 2020 the same were only 01.

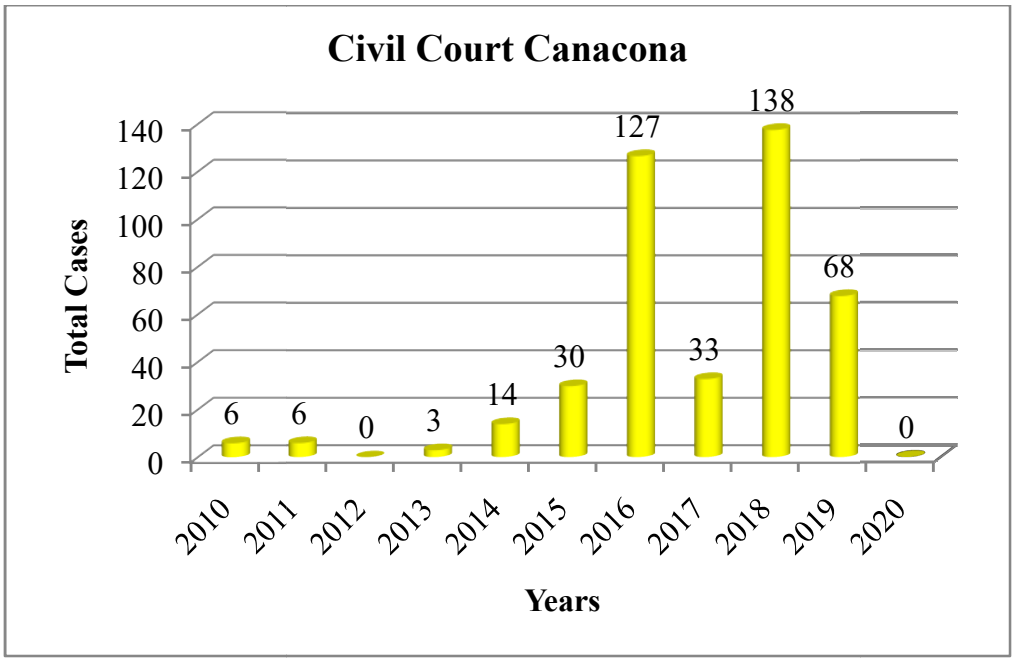

Figure 54: Total Cases disposed by Lok Adalat (All Types) at Civil Courts Canacona

The above Table No. 26 and Figure No. 54 shows the total number of cases that were disposed by Lok Adalat (all types). The above chart pertains to Civil courts at Canacona. The total number of cases that were disposed by Lok Adalat in the year 2010, 2011 were 6 each whereas in the year 2012 and 2013 the same were Nil and 03 respectively. The total number of cases that were disposed by Lok Adalat in the year 2014 and 2015 were 14 and 30 respectively whereas in the year 2016 it was 127. In the year 2017 the total cases disposed by Lok Adalat were 33 whereas in the year 2018 the total cases disposed by Lok Adalat was 138. The total cases disposed by Lok Adalat in the year 2019 were 68 whereas in the year 2020 the same was Nil.

5.20 Yearwise Number of Inventory Proceeding Appeals filed in South Goa

The below mentioned Table and Chart studies the total Appeals filed in South Goa from 2010 to 2020. The data is collected year-wise to know the exact break up of Appeals filed in South Goa.[618]

Table 27: Inventory Proceeding Appeals filed in South Goa

Name of Court	Years										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
District Courts South Goa	9	21	13	9	6	6	9	17	8	19	10

Source: Data collected from Courts situated in South Goa

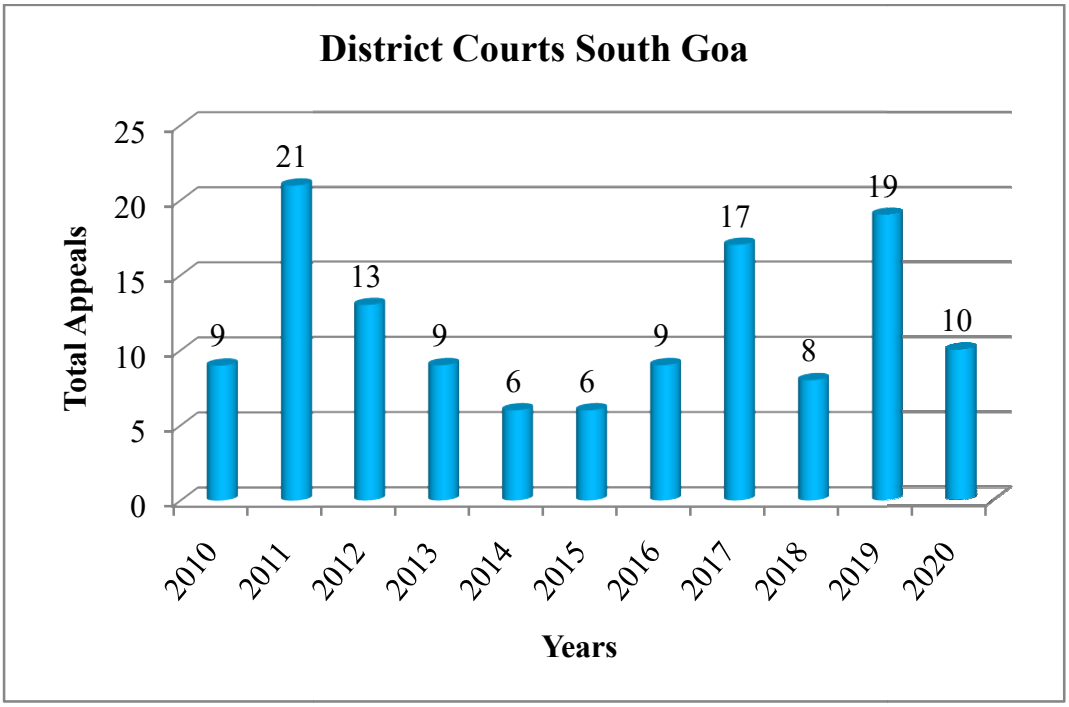

Figure 55: Inventory Proceeding Appeals filed in South Goa

[618] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

The above Table No. 27 and Figure No. 55 shows the total number of appeals filed before the District Court in South Goa. the total number of appeals filed before the district courts South Goa in the year 2010 were 09 where is in the year 2011 it was 21. Total number of appeals filed in the year 2012 were 13 whereas in the year 2013 it was 09 and further in the year 2014 and 2015 it was 6 and 6 respectively. In the year 2016 and 2017 it was 09 and 17 respectively. In the year 2018 it was 8, whereas in the year 2019 and 2020 it was 19 and 10 respectively.

5.21 Study of Pendency Period of Inventory Proceeding Cases in South Goa

The below mentioned Tables and Charts studies the duration of pendency of Inventory cases before various Civil Courts in South Goa. Data is collected for each and every Court in South Goa. The pendency period is sub divided into five sub categories follows.[619]

Table 28: Pendency Period of Inventory Proceeding Cases at Civil Courts Margao

Name of Court	Period				
	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Courts Margao	255	298	222	150	97

Source: Data collected from Courts situated in South Goa

[619] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

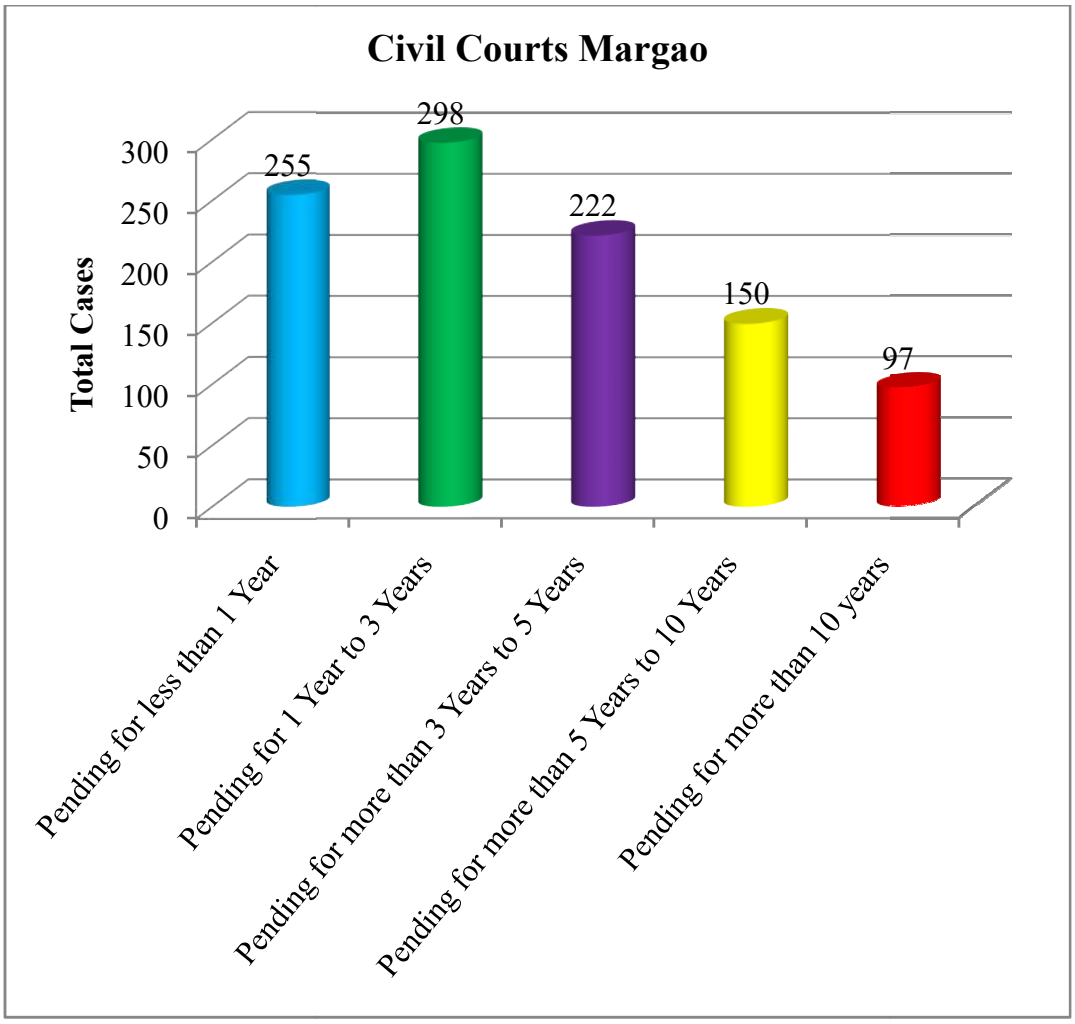

Figure 56: Pendency Period of Inventory Proceeding Cases at Civil Courts Margao

The above Table No. 28 and Figure No. 56 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Margao. The pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. it can be seen that the total number of cases that are pending for less than one year before civil courts in Margao are 255. The total number of cases that are pending for more than 1 year upto 3 years are 298. The total number of cases that are pending for more than 3 years upto 5 years are 222. Further, the total number of cases that are pending for more than five years up to ten years are 150. The total number of cases that are pending for more than 10 years are 97 before the Civil courts in Margao.

Table 29: Pendency Period of Inventory Proceeding Cases at Civil Courts Vasco

Name of Court	Period				
	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Courts Vasco	21	45	14	14	5

Source: Data collected from Courts situated in South Goa

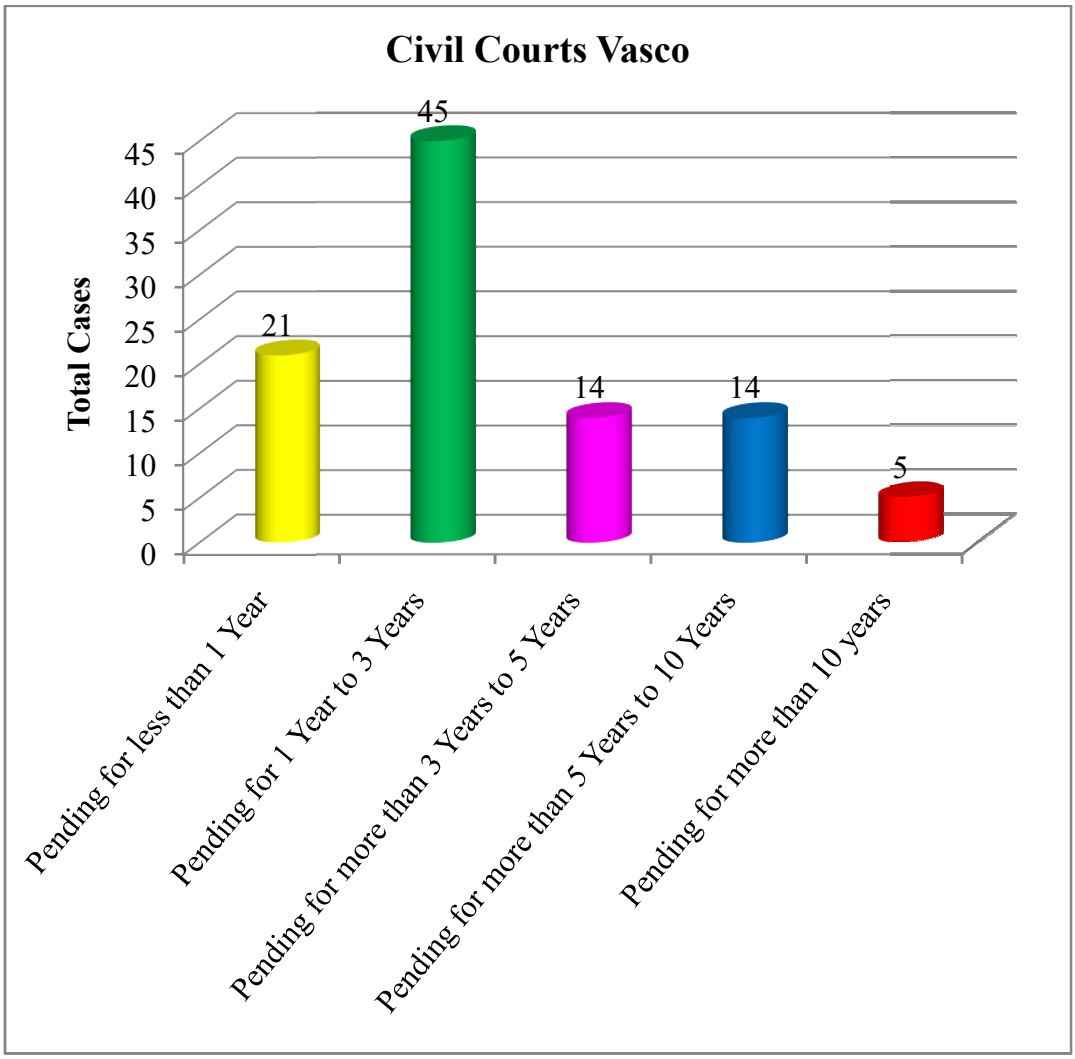

Figure 57: Pendency Period of Inventory Proceeding Cases at Civil Courts Vasco

The above Table No. 29 and Figure No. 57 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Vasco. The pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. It can be seen that the total number of cases that are pending for less than one year before civil courts in Vasco are 21. The total number of cases that are pending for more than 1 year upto 3 years are 45. The total number of cases that are pending for more than 3 years upto 5 years are 14. Further, the total number of cases that are pending for more than five years up to ten years are 14. The total number of cases that are pending for more than 10 years are 05 before the Civil courts in Vasco.

Table 30: Pendency Period of Inventory Proceeding Cases at Civil Courts Quepem

Name of Court	Study of Pendency Period of Inventory Proceeding Cases				
	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Courts Quepem	9	32	28	13	3

Source: Data collected from Courts situated in South Goa

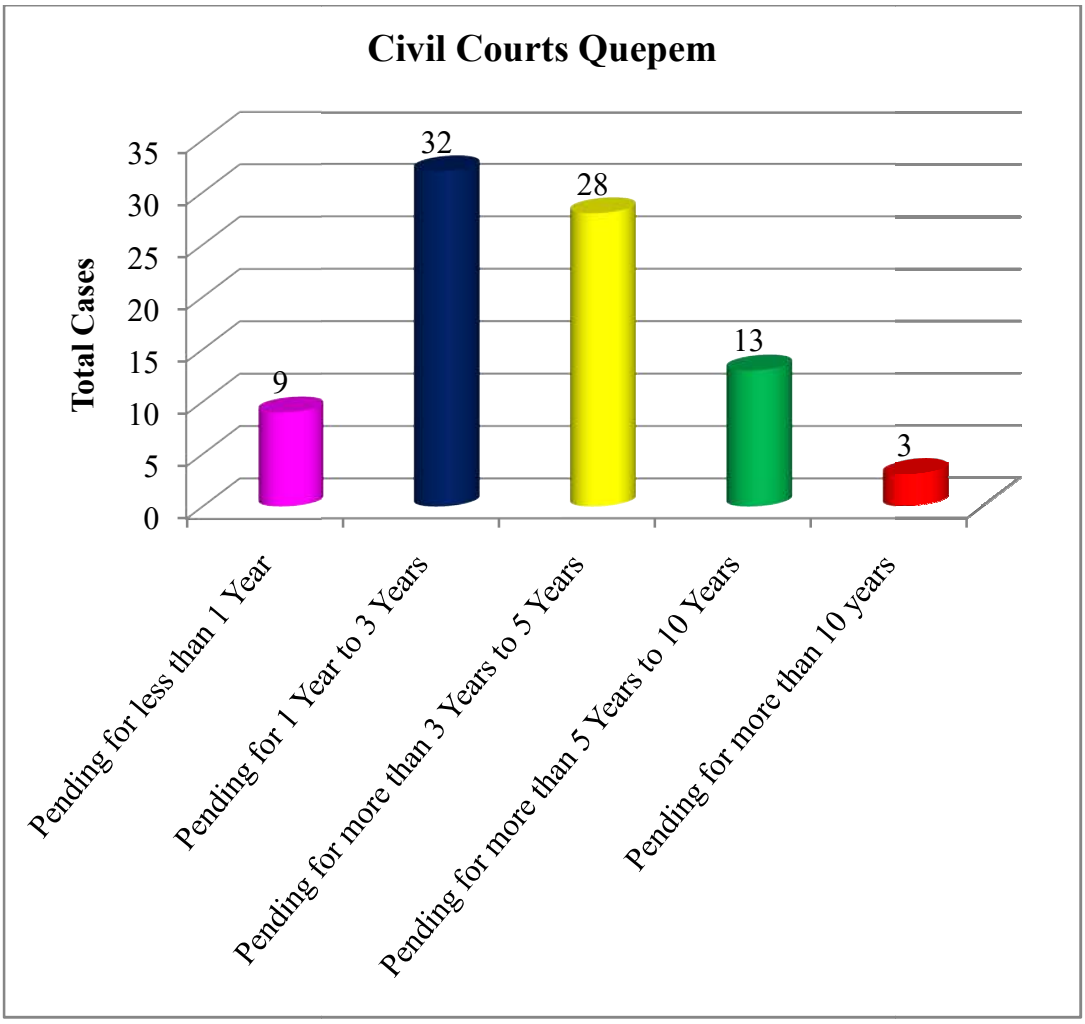

Figure 58: Pendency Period of Inventory Proceeding Cases at Civil Courts Quepem

The above Table No. 30 and Figure No. 58 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Quepem. The pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. it can be seen that the total number of cases that are pending for less than one year before civil courts in Quepem are 09. The total number of cases that are pending for more than 1 year upto 3 years are 32. The total number of cases that are pending for more than 3 years upto 5 years are 28. Further, the total number of cases that are pending for more than five years up to ten years are 13. The total number of cases that are pending for more than 10 years are 03 before the Civil courts in Quepem.

Table 31: Pendency Period of Inventory Proceeding Cases at Civil Courts Sanguem

Name of Court	Study of Pendency Period of Inventory Proceeding Cases				
	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Court Sanguem	19	8	5	6	-

Source: Data collected from Courts situated in South Goa

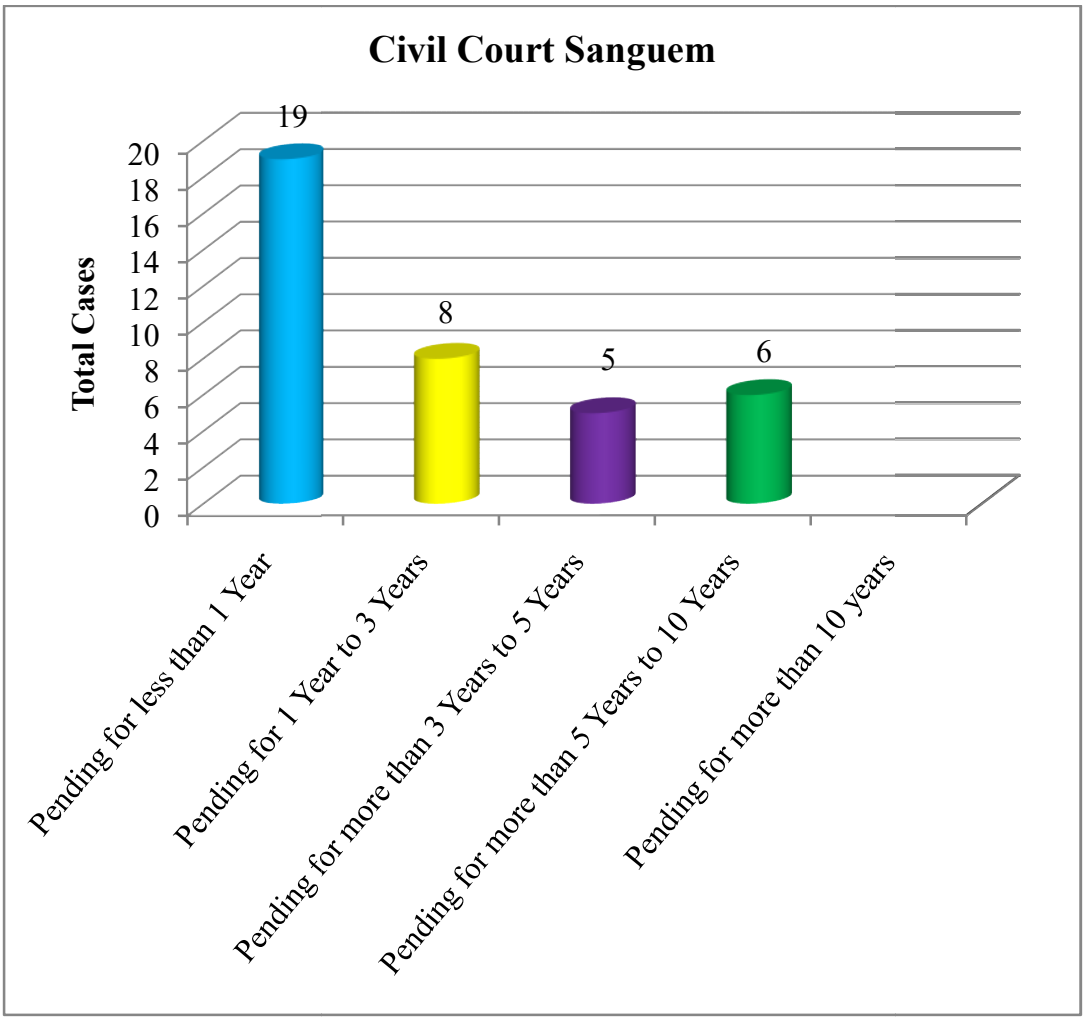

Figure 59: Pendency Period of Inventory Proceeding Cases at Civil Courts Sanguem

The above Table No. 31 and Figure No. 59 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Sanguem. the pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. it can be seen that the total number of cases that are pending for less than one year before civil courts in Sanguem are 19. The total number of cases that are pending for more than 1 year upto 3 years are 08. The total number of cases that are pending for more than 3 years upto 5 years are 05. Further, the total number of cases that are pending for more than five years up to ten years are 06. The total number of cases that are pending for more than 10 years are Nil before the Civil courts in Sanguem.

Table 32: Pendency Period of Inventory Proceeding Cases at Civil Courts Canacona

Name of Court	Study of Pendency Period of Inventory Proceeding Cases				
	Pending for less than 1 Year	Pending for 1 Year to 3 Years	Pending for more than 3 Years to 5 Years	Pending for more than 5 Years to 10 Years	Pending for more than 10 years
Civil Court Canacona	10	23	11	6	3

Source: Data collected from Courts situated in South Goa

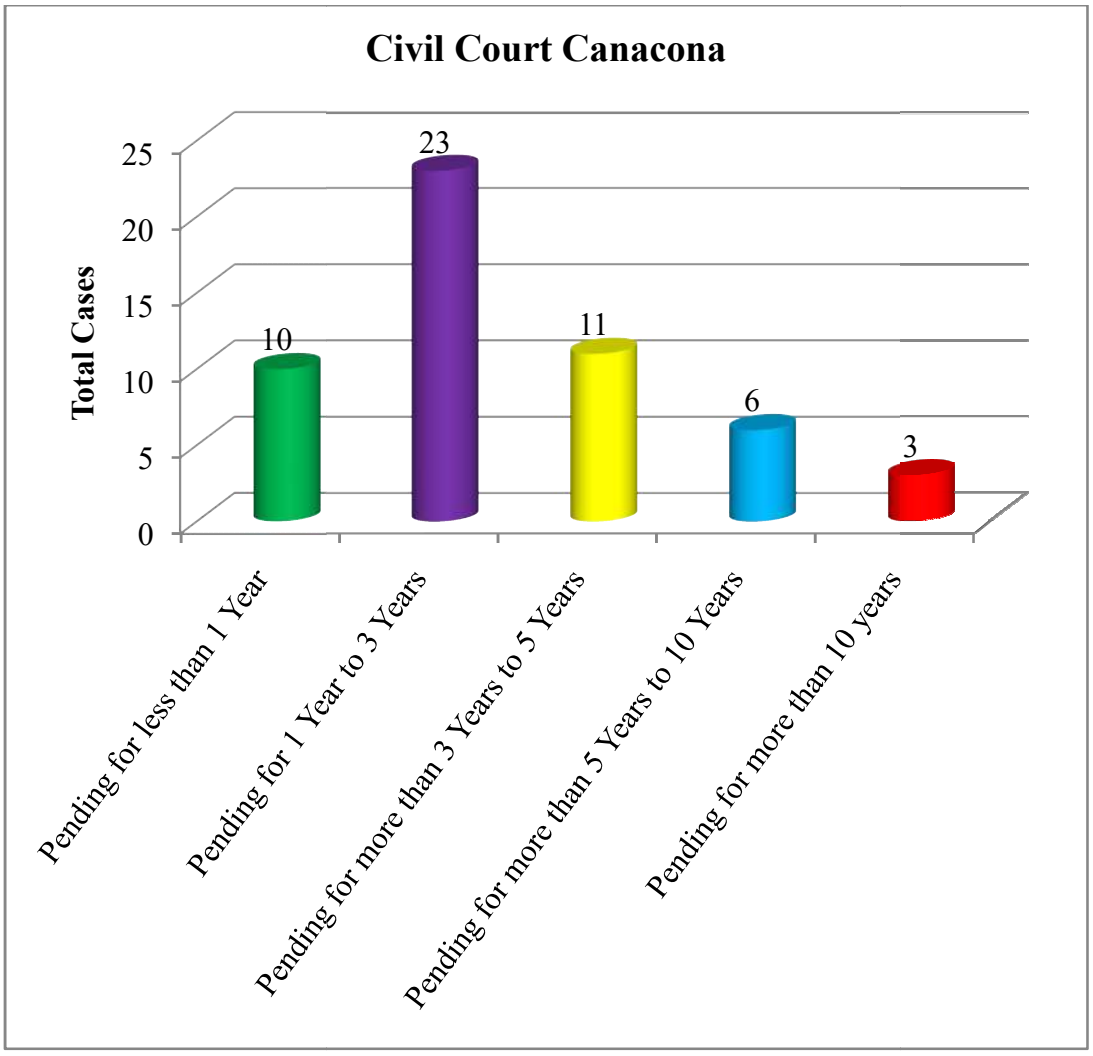

Figure 60: Pendency Period of Inventory Proceeding Cases at Civil Courts Canacona

The above Table No. 32 and Figure No. 60 depicts the study of pendency period of inventory proceeding cases before the Civil courts in Canacona. The pendency period is divided into five categories which are less than 1 year, from one year to three years, from 3 years to 5 years, from 5 years to 10 years and lastly the cases that are pending for more than 10 years. it can be seen that the total number of cases that are pending for less than one year before civil courts in Canacona are 10. The total number of cases that are pending for more than 1 year upto 3 years are 23. The total number of cases that are pending for more than 3 years upto 5 years are 11. Further, the total number of cases that are pending for more than five years up to ten years are 06. The total number of cases that are pending for more than 10 years are 03 before the Civil courts in Canacona.

5.22 Comparative Analysis of Total Inventory Cases filed vis a vis Total Cases disposed in North Goa Courts for the period from 2010 to 2020

The below mentioned Table and Chart studies the total Inventory Cases filed in comparison to total Inventory cases disposed in all the Courts in entire North Goa.[620]

Table 33: Inventory Cases filed and disposed in North Goa District for the period from 2010 to 2020

Total Cases Filed before Courts in North Goa	Total Cases Disposed before Courts in North Goa
12073	11040

Source: Analysis from Data collected from Courts in North Goa

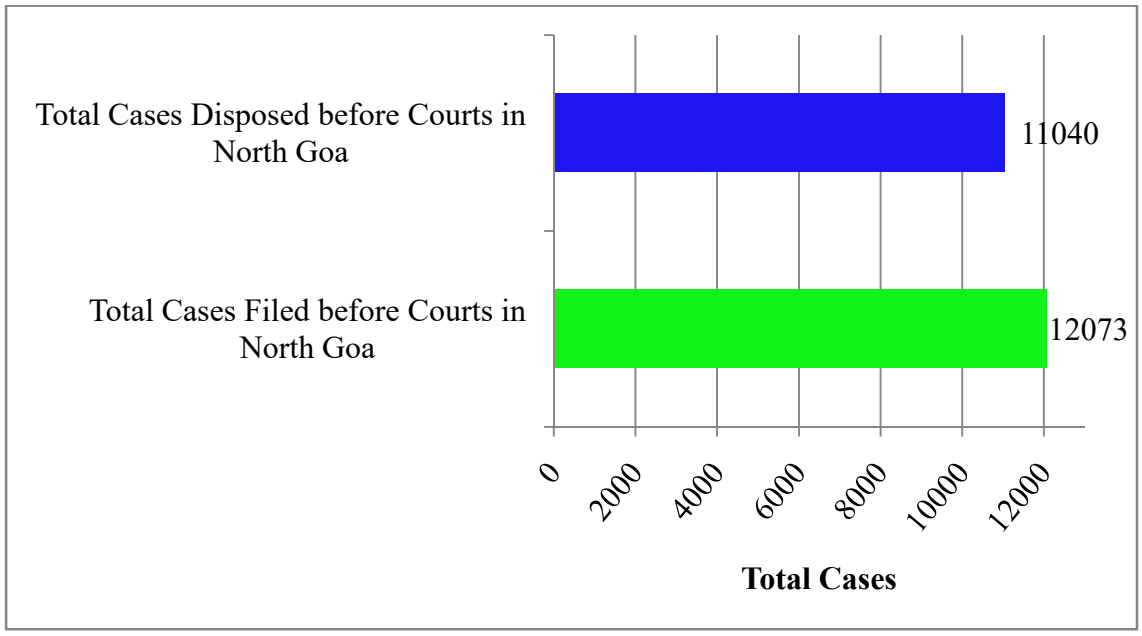

Figure 61: Cases filed and disposed in North Goa District for the period from 2010 to 2020

The above Table No. 33 and Figure No. 61 depicts the total number of Inventory proceeding Cases filed as compared to that disposed in all the Courts in North Goa. This will help to know the pendency of Cases before the Courts. It is seen that the total cases filed over a period of eleven years from 2010 to 2020 is 12073 while those disposed for the said period is only 11040. Hence there is deficit in disposal of cases which results in increasing the pendency over a period of time. There is a total deficit of 1033 cases which means to address the problem of pendency, Courts are required to take extra

[620] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

efforts to dispose around 95 cases more every year from now onwards and further to clear the backlog undertake a special drive.

5.23 Comparative Analysis of Total Cases filed vis a vis Total Cases Disposed in South Goa Courts for the period from 2010 to 2020

The below mentioned Table and Chart studies the total Inventory Cases filed in comparison to total Inventory cases disposed in all the Courts in entire South Goa.[621]

Table 34: Cases filed and disposed in South Goa District for the period from 2010 to 2020

Total Cases Filed before Courts in South Goa	Total Cases Disposed before Courts in South Goa
4124	3853

Source: Analysis from Data collected from Courts in South Goa

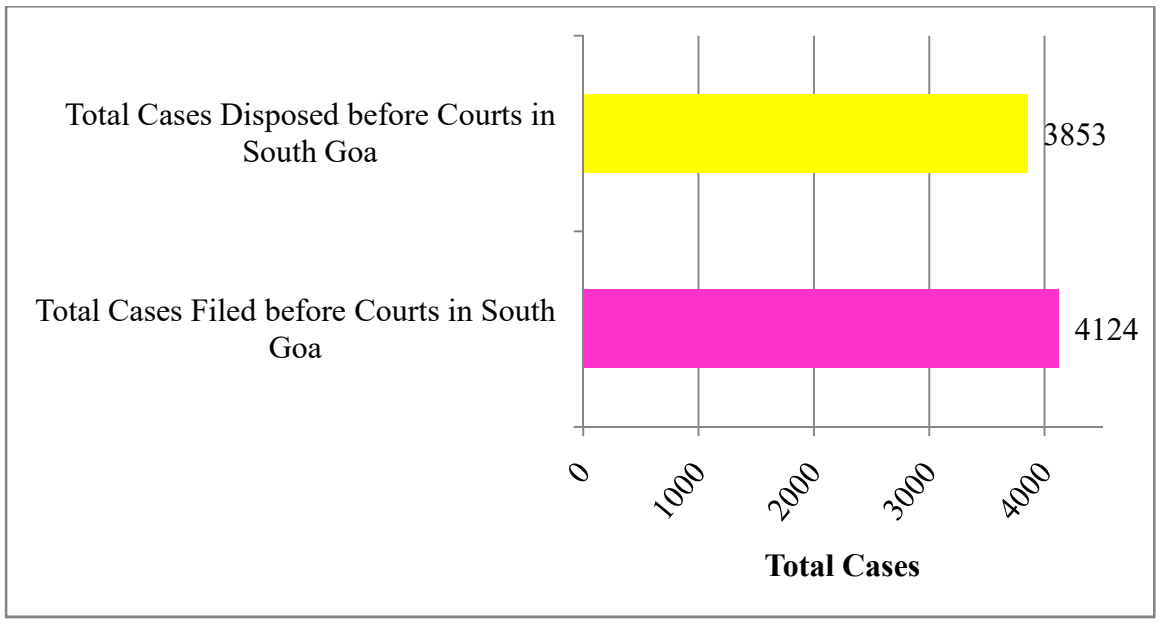

Figure 62: Cases filed and disposed in South Goa District for the period from 2010 to 2020

The above Table No. 34 and Figure No. 62 studies the total number of Inventory proceeding Cases filed as compared to that disposed in all the Courts in South Goa. This will help to know the pendency of Cases before the Courts in South Goa. It is seen that the total cases filed over a period of eleven years from 2010 to 2020 in all the Courts in South Goa is 4124 while those disposed for the said period is only 3853. Hence there is

[621] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 4 mentioned at Sub Chapter 1.13 of Chapter One

deficit in disposal of cases which results in increasing the pendency over a period of time. There is a total deficit of 271 cases which means to address the problem of pendency, Courts are required to take some extra efforts to dispose around 25 cases more every year from now onwards. Similarly should take steps to clear the backlog cases.

5.24 Analysis of data collected from Advocates, Litigants, Public

The data collected from Litigants, Advocates, Public is tabulated and analyzed inorder to study their views on the Goan Succession law.[622]

i) Whether there are any difficulties faced as regards finding case laws since the uniform civil code is applicable only to the State of Goa?

Table 35: Depicting response pertaining to difficulties faced as regards finding case laws

Yes	No
16	4

Source: Data collected from Questionnaire cum Interview method

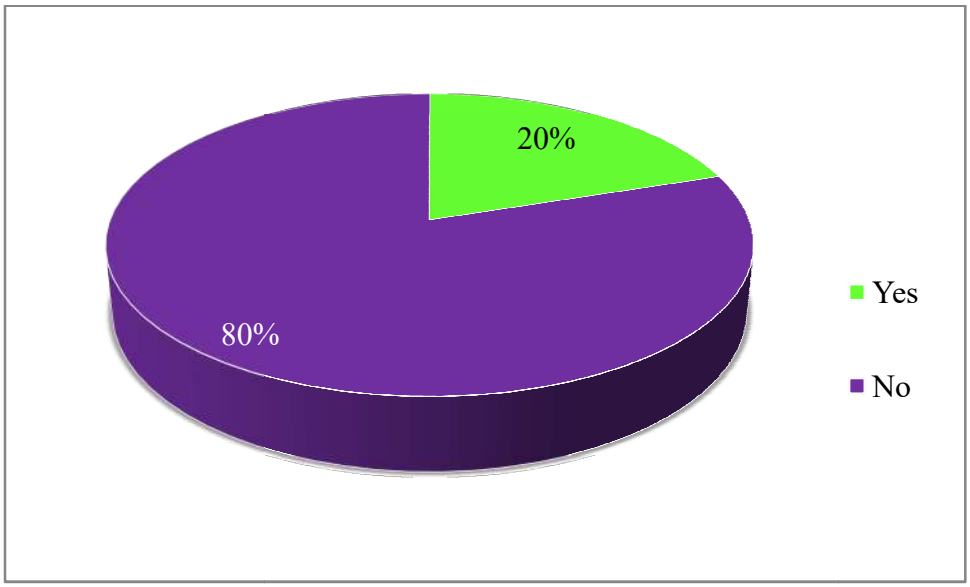

Figure 63: Depicting response pertaining to difficulties faced as regards finding case laws

The above Table No. 35 and Figure No. 63 shows the analysis of data collected from litigants, advocates, and general public by way of questionnaires cum interview method.

[622] The Charts and Figures under this Sub Chapter are used to test the Hypothesis No. 1, 3 and 4 mentioned at Sub Chapter 1.13 of Chapter One

The participants were asked as regards whether they are facing any difficulties as regards finding case laws since the uniform civil code is applicable only to the State of Goa. In response 16 persons corresponding to 80% answered that there is no problem for finding case laws pertaining to Inventory Proceedings. On the other hand, 4 persons corresponding to 20% stated that they find it difficult to find case laws since the law is applicable only to Goa. Hence we can conclude that there is no major problem faced to find case laws.

ii) Reasons for delay in disposal Inventory Proceedings?

Table 36: Depicting response pertaining to delay in disposal Inventory Proceedings

Frivolous Objections and disputes	Lack of Awareness on succession laws	Overburden on Judiciary	Formalities and technicalities	No delay
7	1	2	6	4

Source: Data collected from Questionnaire cum Interview method

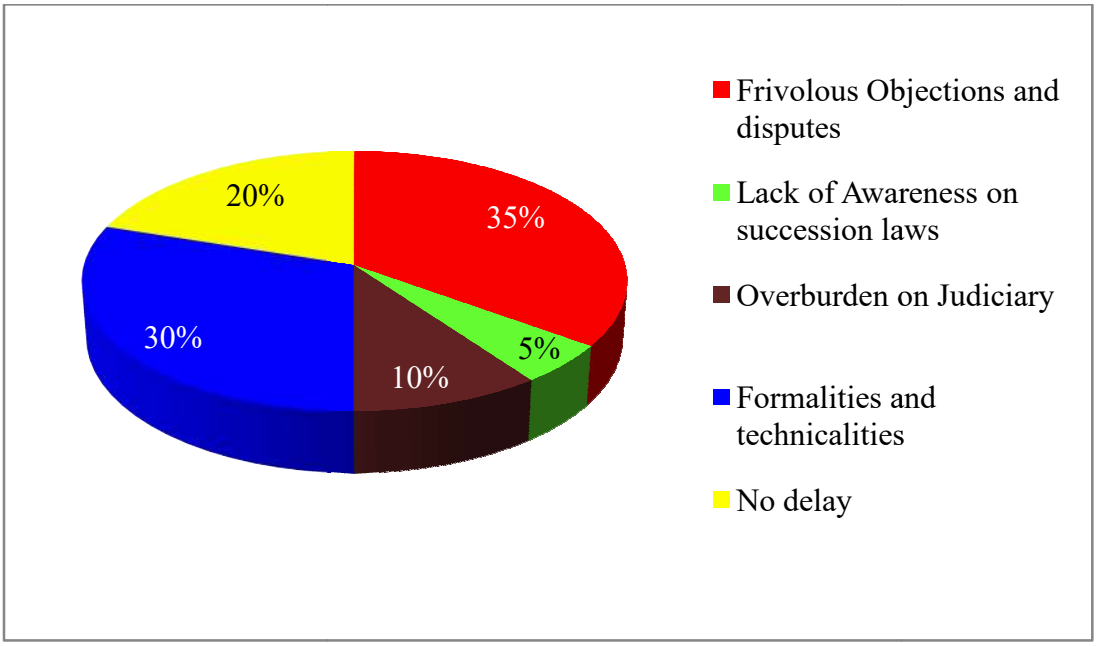

Figure 64: Depicting response pertaining to delay in disposal Inventory Proceedings

The above Table No. 36 and Figure No. 64 studies the analysis of data collected from litigants, advocates, and general public as regards reasons for delay in disposal Inventory Proceedings is due to Frivolous Objections and disputes by the parties. In

response 7 persons corresponding to 35% answered that the delay in Inventory Proceedings. Further, 6 persons corresponding to 30% stated that delay is due to presence of formalities and technicalities. On the other hand, 4 persons corresponding to 20% stated that there is no delay. While 5% and 10% of the people attributed the delay to Lack of Awareness on succession laws and Overburden on Judiciary respectively. Hence we can say that there is delay in disposal of Inventory cases.

iii) Can the role of Lok Adalats be increased to achieve faster disposal of Inventory Proceeding Cases?

Table 37: Depicting response pertaining to role of Lok Adalats in Inventory Proceedings

Yes	No
17	3

Source: Data collected from Questionnaire cum Interview method

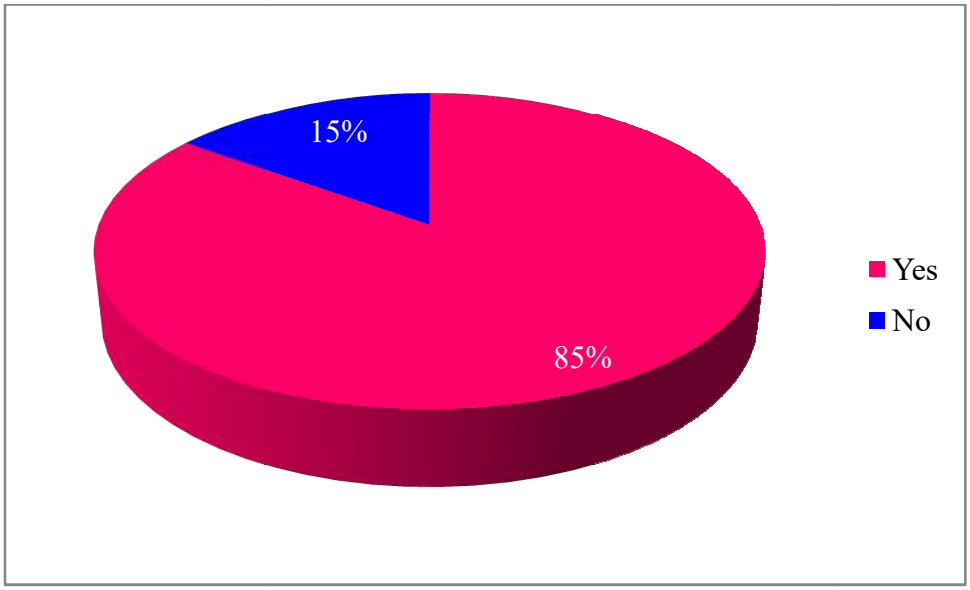

Figure 65: Depicting response pertaining to role of Lok Adalats in Inventory Proceedings

The above Table No. 37 and Figure No. 65 shows the analysis of data collected from litigants, advocates, and general public pertaining to role of L*ok Adalats in Inventory Proceedings*. In response 17 persons corresponding to 85% answered that the role of Lok Adalats can be increased to achieve faster disposal of Inventory Proceeding Cases. On the other hand, 3 persons corresponding to 15% stated that the present scenario is

satisfactory. Hence we can conclude that there is need to increase the role of alternate dispute resolution system in Inventory Proceedings.

iv) Whether computerization of Special Notary offices for drawing of Notarial deeds help in better implementation of the Goa Succession, Special Notaries and Inventory Proceedings Act 2012?

Table 38: Response pertaining to computerization of Special Notary offices

Yes	No
17	3

Source: Data collected from Questionnaire cum Interview method

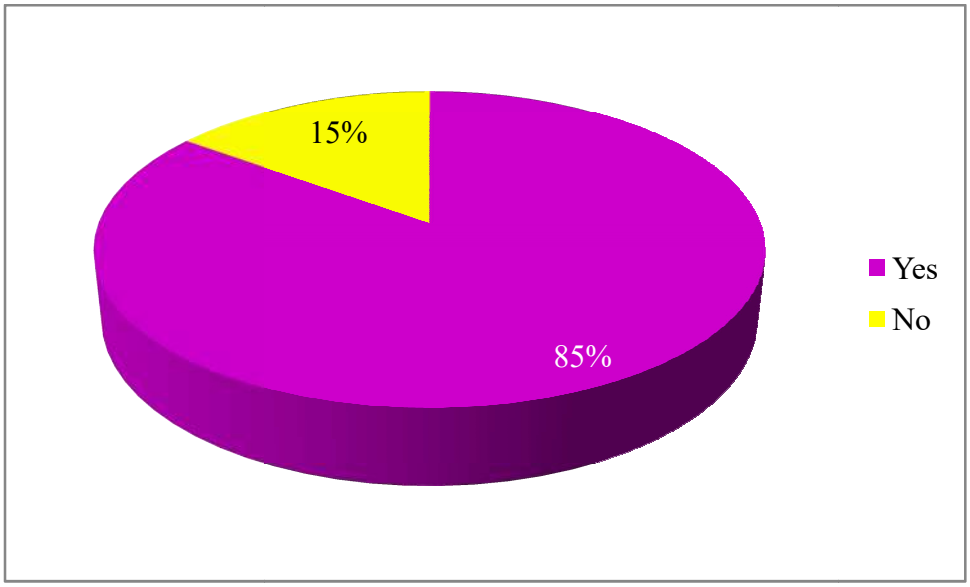

Figure 66: Response pertaining to computerization of Special Notary offices

The above Table No. 38 and Figure No. 66 studies the analysis of data collected from litigants, advocates, and general public pertaining to need for computerization of Special Notary offices. In response 17 persons corresponding to 85% answered that there is need for computerization of Special Notaries Offices for better service delivery. On the other hand, 3 persons corresponding to 15% stated that there is no need for computerization of Special Notary Offices and present system is satisfactory. Hence we can conclude that there is need to urgent need for bringing in modernization in the functioning of Special Notary Offices.

v) Can the Goan Civil Code help in implementing Uniform Civil Code in rest of India in view of Article 44 of the Constitution?

Table 39: Response pertaining to Goan Civil Code as a base for implementation of Uniform Civil Code in India

Yes	No
18	2

Source: Data collected from Questionnaire cum Interview method

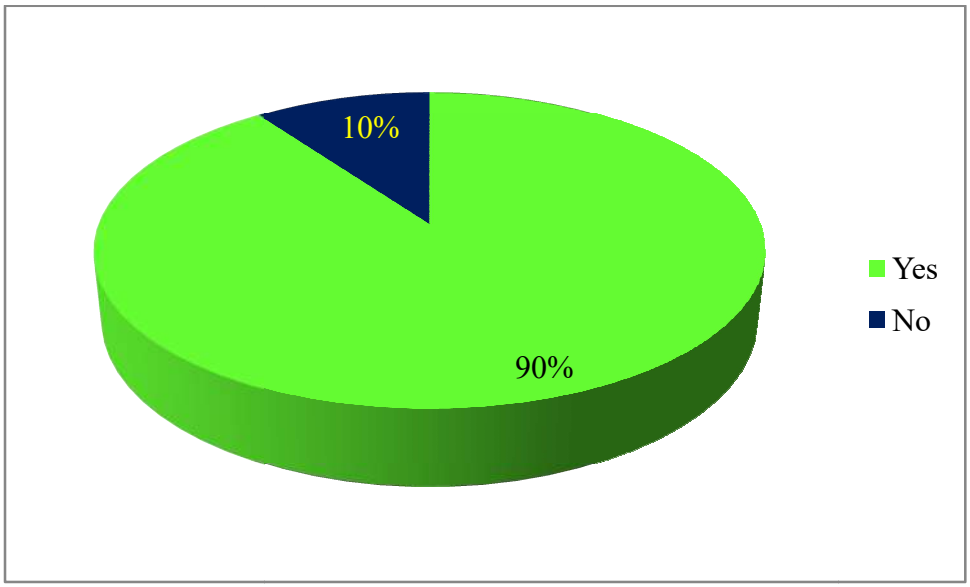

Figure 67: Response pertaining to Goan Civil Code as a base for implementation of Uniform Civil Code in India

The above Table No. 39 and Figure No. 67 studies the analysis of data collected pertaining whether Goan Civil Code help in implementing Uniform Civil Code in rest of India in view of Article 44 of the Constitution. In response 18 persons corresponding to 90% answered in the affirmative by saying that Goan succession law can help as a base to formulate common family law for people across communities in rest of India. On the other hand, 2 persons corresponding to 10% did not favour the idea of using Goan Succession law as a base for enacting the Uniform Civil Code in rest of India. Hence we can say that Goan Succession law has the strength and capacity for becoming a model to enact a Common Civil law pertaining to family matters in rest of India.

vi) **Do you think there is Equality in succession for sons and daughters in Goa under the Goa Succession, Special Notaries and Inventory Proceedings Act 2012?**

Table 40: Response pertaining to Equality in Succession in Goa

Yes	No
19	1

Source: Data collected from Questionnaire cum Interview method

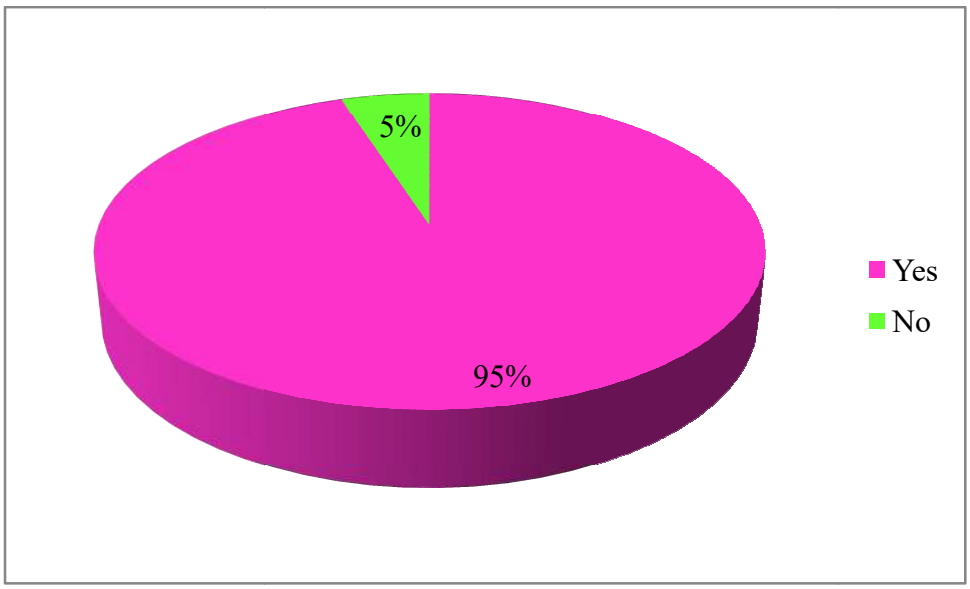

Figure 68: Response pertaining to Equality in Succession in Goa

The above Table No. 40 and Figure No. 68 depicts the analysis of data collected pertaining whether there is Equality in succession for sons and daughters in Goa. In response 19 persons corresponding to 95% answered in the affirmative by saying that there is Equality in succession for sons and daughters in Goa. On the other hand, 1 person corresponding to 5% was of the opinion there is absence of equality in succession among sons and daughters in Goa. Hence we can say that Goan Succession law has ensured that there is no discrimination based on gender in matters of succession. In fact, we can say that the Goan succession law is beneficial to females since they can claim their share in father's estate as well as have a share as moiety holder in husband's estate.

vii) Is Specialized courts for inventory proceedings a good solution for fast disposal of Inventory Proceeding cases in Goa?

Table 41: Response pertaining to Specialized Courts for Inventory Proceedings

Yes	No
18	2

Source: Data collected from Questionnaire cum Interview method

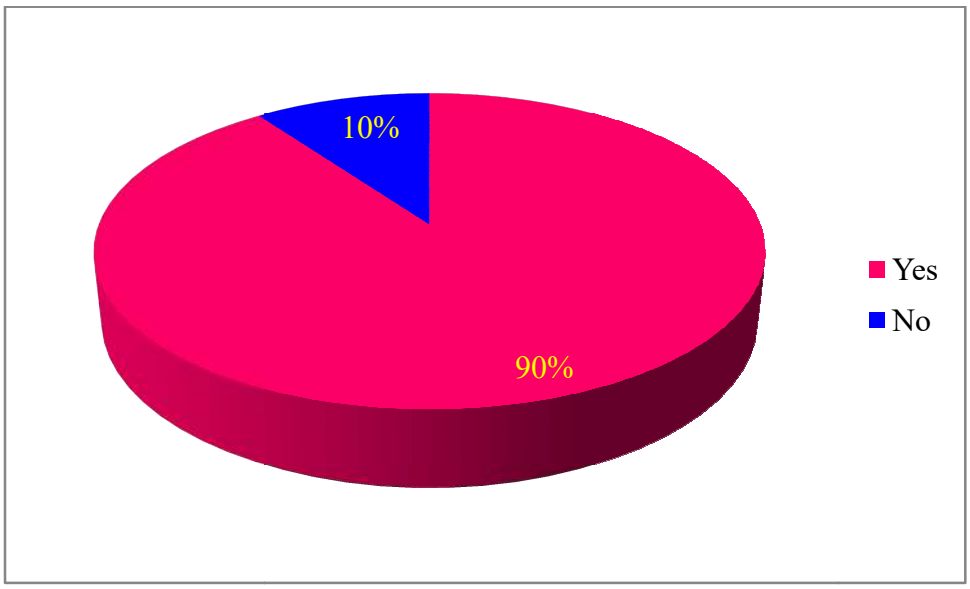

Figure 69: Response pertaining to Specialized Courts for Inventory Proceedings

The above Table No. 41 and Figure No. 69 studies the data collected pertaining to whether there is need for specialized courts for fast disposal of Inventory Proceeding cases in Goa. In response 18 persons corresponding to 90% answered in the affirmative by saying that there is a need for Specialized Courts for speedy disposing Inventory Proceedings. On the other hand, 2 person corresponding to 10% were of the opinion there is no need for specialized courts for Inventory Proceedings. Looking at the number of cases pending especially in North Goa Courts, as well as the aforesaid response, it can be safely said that establishing fast track courts to dispose the pending Inventory cases is a necessity in Goa.

viii) Whether there are any drawbacks in the Goa Succession, Special Notaries and Inventory Proceedings Act 2012?

Table 42: Response pertaining to drawbacks in the Goa Succession, Special Notaries and Inventory Proceedings Act 2012

Yes	No	Can't Say
7	12	1

Source: Data collected from Questionnaire cum Interview method

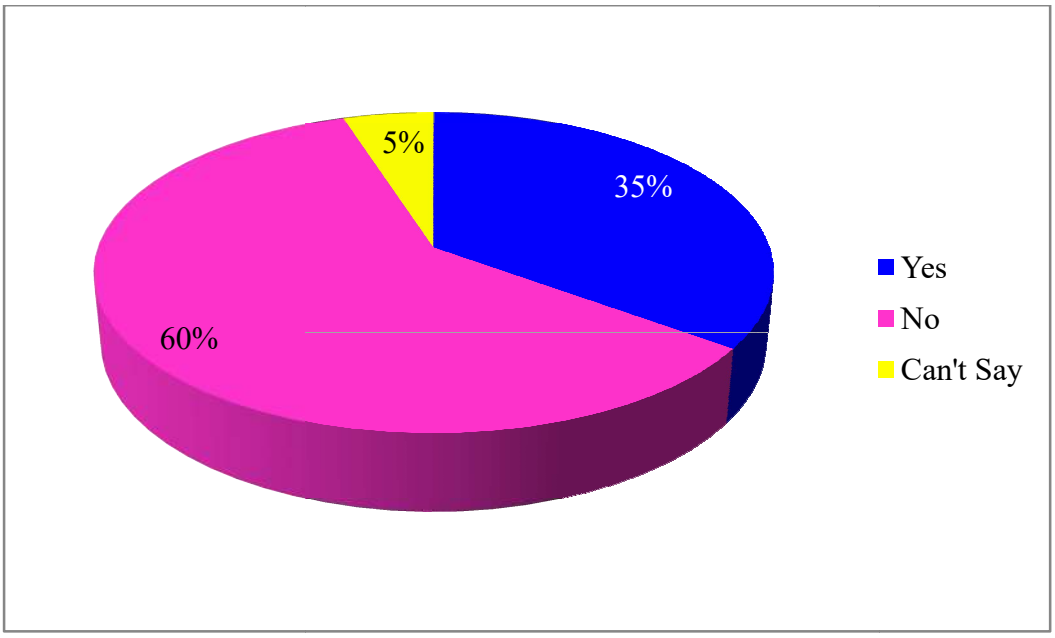

Figure 70: Response pertaining to drawbacks in the Goa Succession, Special Notaries and Inventory Proceedings Act 2012

The above Table No. 42 and Figure No. 70 studies the analysis of data collected to find out whether there are any drawbacks in the Goa Succession, Special Notaries and Inventory Proceedings Act 2012. From the response, it can be seen that 12 persons corresponding to 60% are of the opinion that there are no drawbacks in the current Succession law applicable to Goa. 7 persons corresponding to 35% feel that there is scope for improvement in succession matters in Goa while 1 person corresponding to 5% is neutral as regards need for improvement. Hence it can be said that though there are no major problems in succession laws applicable to Goa, but there is scope for improvement to make the inheritance process smooth and faster.

5.25 Notable Observations on Data analysis

There are very less number of Special Notaries in Goa and out of the available Special Notaries, more than half of them are not law graduates. It is also seen that the Notaries appointed by the Central Government under Notaries Act of 1956 and functioning in Goa are all law graduates.

As regards Inventory Proceedings before Courts, it is seen that large number of cases are filed every year. However the disposal of cases is less than the number of cases filed every year. Hence there is an increase in the pendency of Inventory cases before the Courts in Goa which includes both North Goa Courts as well as South Goa Courts.

The role played by Lok Adalats in disposal of inventory proceeding cases is very limited. Hardly any matters are being referred to the Lok Adalats for out of court settlement and out of those that are referred to the Lok Adalats, not many are disposed.

It is seen that there is a general demand from the litigants, public and advocates to have specialized Courts for disposal of inventory proceedings in a time bound manner.

People feel that there is equality in succession among Sons and daughters in Goa. The Civil Code applicable in Goa is seen as a model code based on which equality in succession laws can be achieved in rest of India.

The public feel that there is a need for computerisation of special notary offices for bringing in more efficiency and for carry out the work in a smooth time bound manner.

The data analysis show that there is more pendency in urban area courts than compared to remote areas in Goa.

The number of Special Notaries that are appointed through direct mode are less has compared to the promotees. It is essential to know that qualification for direct recruitment is being law graduate however there is no such qualification prescribed in recruitment rules of Sub Registrars that mandate law degree for promotees. This affects the work under the Goa succession law since Sub Registrars are functioning in Ex officio capacity as the Special Notaries in Goa.

It is also observed from the data analysis that not much Appeals are preferred from the Inventory Proceeding cases which is a satisfying aspect of Goan Succession laws.

The data collected and analysed shows that the delay in disposal of inventory proceedings is largely attributed to needless and pointless objections being filed by the interested parties and also relates to the numerous formalities and technical steps involved in the actual processing of the inventory proceeding cases before the courts.

Also the statistical and data analysis show that the Inventory Proceeding Cases filed before Courts in North Goa is around three times as compared to the cases filed in South Goa Courts which further supports the demand to have specialized courts especially in North Goa.

Chapter - VI

Conclusion, Findings and Suggestions

6.1 Conclusion

This Concluding Chapter deals with the overall analysis and inferences that can be drawn from the entire study conducted in the present Thesis. The conclusions drawn are then used to prove or disprove the hypothesis, as the case may be. Hence, the present Chapter is very important to understand the final outcome of the Research Thesis. The conclusion is based on theoretical aspects as well as Statistical data analysis done in the preceding Chapters. The data collected is analyzed to come to a conclusion pertaining to the area of study in the present Thesis.

We can say that the Directive principle contained in Article 44 of our Constitution has seen successful implementation in Goa. The present Act has brought about some landmark improvements in the erstwhile law aiming to bring about upliftment in the status of women and to ensure that there are no hardships faced by the citizens.[623] Government exists to promote the social, political, and economic welfare of the people, and the use of legislative and executive power makes this possible. Fundamental rights and Directive Principles are compared to two wheels of a chariot, and if one wheel breaks, the other loses its effectiveness.

India is signatory to various International Instruments which mandates gender equality in all the national laws and prevention of any bias based on religion, caste, creed, etc.[624] However, it is seen that in Rest of India, the religious following of a person determines his line of Heirship. There is no uniformity in determination of Heirs. Different rules are applicable to different communities.[625] This in turn becomes a hurdle for successful implementation of Article 44 of the Constitution. It is necessary to integrate various legislations established to execute Directive Principles with Fundamental Rights because they are both parts of the same Constitution, having distinct legal statuses.[626] Constitution contains directive principles to help the Government to run our country as a "welfare State". The State is morally guided by directive principles while creating laws. It has also been seen that the Fundamental Rights come before Directive Principles and that, in the event of a disagreement, the former takes precedence over the latter. It is seen that personal laws relating to marriages, succession, etc. are being

[623] Please see sub chapter 6.3.1
[624] Please see sub chapter 2.5
[625] Please see sub chapter 2.11
[626] Please see sub chapter 2.7

confused with Right to profess religion when the fact remains that there is absolutely no conflict and both can co-exist simultaneously without any problem.

In the Chapter One, a General introduction is seen about the Thesis subject and primarily about the concept of equality enshrined under article 44 of the constitution. This Chapter primary dealt with the introductory part relating to the Thesis so has to get a better understanding about the general line on which the Thesis has proceeded in the subsequent Chapters. This Chapter also dealt about the scheme of Chapterization that is followed for the Thesis. The meaning and importance of having a Uniform Civil Code for the country is also discussed in this introductory Chapter which gives a base for further detailed study on the subject. We have also seen the role of secularism under the Constitution under this Chapter. Similarly the various constitutional assembly debates that happened on the topic of Uniform Civil Code were also discussed in this Chapter so as to give a brief background of the subject. This also includes subsequent developments pertaining to inclusion of word secular and amendments of the Constitution by the subsequent Governments. The various Landmark Supreme Court judgments are also dealt with under this Chapter which forms a core point on the debate of having a Uniform Civil Code for the country. In this Chapter some of the landmark International instruments are also discussed pertaining to the concept of gender equality and human rights. These International instruments included the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights, 1966, Declaration on the Right to Development, 1986, Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1979, etc.[627] Similarly we have also seen the status of personal laws at the time of Ancient India, Medieval India and also in British India. The limited codification that the British carried out in India pertaining to personal laws was also discussed. We also saw the importance of the subject under consideration in this Thesis alongwith the scope and limitations pertaining to the present Thesis. The primary objectives that are required to be achieved in the present study was also dealt with under this Chapter. Further we have also drawn the Research Hypothesis[628] pertaining to the study in this Chapter and also mentioned about the various source of information that is available for conducting the study on the topic. Thus the Chapter one

[627] Please see sub chapter 1.4
[628] Please see sub chapter 1.13

gives a brief Idea on the entire Thesis and the path that is to be taken in the subsequent Chapters.

In the Chapter Two, we have studied about the law of succession that is followed in Rest of India, which is primarily based on personal laws that are applicable to the various members of the society. We have also seen about the role of religion in matters of succession. An overview of succession that is followed under different systems throughout the globe is also discussed in this Chapter. We have also studied about the personal laws that are followed in Rest of India which includes Hindu law, Muslim law, Christian law, Parsi law etc. The historical Constituent Assembly Debates are also discussed in this Chapter which primarily focuses on the concept of Uniform Civil Code. The various International instruments pertaining to gender equality are discussed under this Chapter focusing on the concept of gender equality that is followed in various distinct legal systems across the globe. The views of eminent personalities like Rosco Pound on the concept of codification of laws are also discussed in this Chapter. We have also seen about the gender justice that prevailed during the ancient Indian period. Here we have also come across the position of women that was existing during the Ancient period which by far was no where close to being at par with males. In this Chapter, we have studied the role of Fundamental Rights and the Directive Principles vis a vis Article 21 of the Constitution. Similarly the relationship of Directive principles and Article 21 have also been discussed in this Chapter whereby it seen that there should be a harmonious construction of Article 21 with the Directive Principles in order to achieve the ultimate aim of the Constitution of India.[629]

It is seen that the freedom of professing religion and the personal laws governing marriage, succession, maintenance, etc. are mistakenly assumed to be same and co-related. This has resulted in conflict of opinions as regards implementation of Uniform Civil Code in our country. We have also seen about the Right to Equality and the Freedom of Religion under this Chapter. The concept of equality that was prevalent during the ancient period is also studied in this Chapter. Further under this Chapter the law of succession that is followed under the Hindu Succession act of 1956, Muslim personal law, the Indian Succession Act of 1925 has been discussed. The role of women

[629] Please see sub chapter 2.8

under the personal laws is also discussed in this Chapter.[630] This also includes inheritance rights that are available to women under the various personal laws in rest of India. Gender plays a pivotal role in determination of Heirship especially under Hindu Law and Muslim Law. We have also done a study of the Hindu Succession Act, the Muslim personal law and the Indian Succession Act in this Chapter.[631] Further, we have gone into the concept of Article 44 under the Constitution in the Chapter wherein we have seen the origin and idea pertaining to the Uniform Civil Code, the various Constituent Assembly Debates, the objectives that are to be achieved by way of Uniform Civil Code, etc. We have also seen about the conceptions and misconceptions surrounding the concept of the Uniform Civil Code and Freedom of Religion under the Constitution of India.[632] We have also discussed in this Chapter about the various Landmark judgments pertaining to the Uniform Civil Code and personal law. After studying the Chapter II we can say that the current position of women is way better as compared to that in the ancient and pre independence period.

Chapter Three has focused on the Goa Succession, Special Notary and Inventory Proceedings Act 2012 and the core provisions which regulate Succession, inheritance in Goa. In this Chapter we have dealt with the concept of succession that is applicable in Goa. The study is based on the Goan Succession law that came into force from 21 December 2016. This law replaced the Portuguese Civil Code that was in force from the year 1867. In this Chapter we have seen about the concept of succession in Goa and the transmission of Heirship from the deceased to his heirs. We have also discussed about the various types of succession and kinds of successor under the Civil Code applicable in Goa. We have discussed in detail about the concept of testamentary succession and the legal succession in this Chapter.[633] Similarly the need importance and advantages of having timely succession procedures were studied in this Chapter. We have seen about the opening of the succession alongwith jurisdiction where the succession would open when a person dies. We have also seen about the rights available to the Heirs under the Civil Code in Goa. The detailed procedure that is followed as regards the acceptance and the renunciation of the inheritance of the deceased is discussed in this Chapter at

[630] Please see sub chapter 2.12
[631] Please see sub chapter 2.11
[632] Please see sub chapter 2.13
[633] Please see sub chapter 3.10

length. The sequential order of succession is discussed in this Chapter whereby we have studied that the line of succession as determined by the statute. Similarly the procedure that is adopted during institution of heir under testamentary succession was also discussed in this Chapter. The concept of legacy and its distinction from Heirship was also dealt with in detail under this Chapter including the rights and obligations of the creditors of the deceased. An indepth analysis of the line of succession that is to be followed when succession is pertaining to the ascendants, descendants, collaterals is done under this Chapter.[634] The unique feature of collation that is available under the Civil Code in Goa is discussed at length in the Chapter including the concept of reduction of gifts that are given in violation of the mandatory share prescribed by law. We have also seen about the right of accretion, concept of substitution and disinheritance provided under the Act. We have also discussed about the drawing of Wills under the Goa Succession Law and the detail procedure that is involved and the mandatory formalities that are required to be complied under the Act.[635] Similarly power of the testator to freely revoke his Will is also discussed in detail in this Chapter. We have also seen as regards qualifications to make Will under the Goan civil law. There are various kinds of Wills under the Goa succession law that can be drawn by the Special Notary which are also discussed is Chapter. The power of the testator to appoint his Executor for the Will and the provisions relating thereto is also discussed here.

Chapter Four primary deals with the judicial and quasi judicial authorities, their role functions and the procedure involved in various acts performed by them. In this Chapter we have studied the functions and the jurisdiction under which various authorities function. We have dealt in detail about the detail types of documents that are drawn by the Special Notary and the mode and method of preservation of the records for perpetuity.[636] All the required books maintained by the Special Notary are discussed along with the method of maintaining them by the concerned offices. We have studied the various powers of the Special Notary being a public servant authorised by law to draw authentic instruments. We have also studied about the role played by Special Notary in drawing of instruments and the effect of his refusal to perform any act and the remedies available to the applicants when the acts are refused by the Special Notary. We have also dealt in detail about the powers vested in the District Special Notary and

[634] Please see sub chapter 3.10.2
[635] Please see sub chapter 3.16
[636] Please see sub chapter 4.3

the State Special Notary under the Act. The qualifications for being witnesses, translators were also discussed in this Chapter. We have seen at length about the role played by the witnesses, translators and their importance in the process of drawing of Deed of Succession, Wills, Renunciation deed etc.[637] There are certain necessary formalities there are mandated by law which needs to be compulsorily followed at the time of drawing of deeds. All these mandatory formalities were studied since the same gives final validity to the instruments drawn and absence of which can lead to the instrument being declared null and void. All the detail procedure followed by the Special Notary step by step was discussed in this Chapter.[638] There are certain special provisions pertaining to drawing of Wills which were also discussed in this Chapter since Wills are considered as an important document in the determination of Heirship during testamentary succession. All the procedures involved in drawing of various types of Wills are discussed in detail in this Chapter. Further the Deed of Declaration of Heirship also called as Succession deed is discussed in detail in this Chapter along with its importance in matters of succession. All the documents required for drawing of Deed of Declaration of Heirship is discussed in detail along with the procedure followed in drawing the said instruments.[639] In certain matters the Acts drawn by the Special Notary can be declared as void by the Court. In such a situation the procedure to be followed was also discussed in this Chapter. We also studied the provisions relating to Inventory Proceedings before the Courts and the procedure involved before the Courts. The detail procedure involved in such petitions is discussed. The role played by the Head of the family and the Interested parties is also studied here. Hence from the starting point of filing of Inventory proceedings till the point where the Final Chart of Partition is drawn is discussed here.[640] After the Chart of Partition is drawn, the respective heirs became the sole owners of their respective shares.

The Chapter Five of the Thesis is pertaining to empirical study based on the data collected on the topic of succession in Goa. The data is collected from Government offices, Gazette notifications and from Courts also since the study is pertaining to functioning of the Special Notaries and the Inventory proceeding filed before the Courts. The data collected from the study is tabulated and presented in the form of chart

[637] Please see sub chapter 4.8
[638] Please see sub chapter 4.10
[639] Please see sub chapter 4.11
[640] Please see sub chapter 4.18

along with the analysis of the data. The data collected is used for the purpose of proving or disproving the hypothesis. The data collected pertains to various sections of law including the establishment wing which is involved in the actually implementation of the Act. The data is also collected pertaining to the Notaries appointed under the Notaries Act of 1956 for the purpose of enabling study pertaining to the educational qualifications prescribed under the Act. The data is also collected pertaining to the number of cases filed before the various Courts in North as well as South Goa.[641] Similarly the data is also collected pertaining to the number of cases that are pending before the various Courts in Goa. Study is also made on data collected pertaining to the rate of disposal of cases pertaining to Inventory proceedings in Goa. So also the data is also collected pertaining to the Appellate Courts in Goa as regards Inventory proceeding.[642] A detailed analysis is also done pertaining to the cases referred to Alternate Dispute Resolution System that is Lok Adalats in the State of Goa along with the cases that are disposed by the Lok Adalats.[643] A detailed study is also made pertaining to the data collected as regards the pendency period before the Courts. The period is categorised as less than 1 year, from 1 year to 3 years, from 3 years to 5 years, from 5 years to 10 years, and lastly for cases pending for more than 10 years before the Courts in Goa.[644] The data collected is pertaining to the entire State of Goa and a detailed analysis is done of the data in order to come to a conclusion and thereafter for enabling to provide appropriate suggestions for the shortcomings. Data from various sources is analysed and studied in detail in order to prove or disprove the hypothesis. Detail analysis is also done with the help of diagrams and charts. Similarly a comparative analysis of the data is also done pertaining to all the Courts in North Goa as well as South Goa.[645] Not only Courts, the data is also collected from the Quasi Judicial functionaries in order to know the staff strength of the Registration Department since the said Department is responsible for drawing various deeds such as succession Deeds, Wills, Relinquishment Deeds, Adoption Deeds, Ante-Nuptial Deeds etc. This has helped to study the actual implementation of the Act. The focus of Data Collection has been entire state of Goa as the data collection and analysis of the data helps to know the

[641] Please see sub chapter 5.8 and 5.14
[642] Please see sub chapter 5.11 and 5.20
[643] Please see sub chapter 5.12 and 5.17
[644] Please see sub chapter 5.13 and 5.21
[645] Please see sub chapter 5.22 and 5.23

actual implementation of the Act and also to know whether the same is implemented in its true letter and spirit.

6.2 Testing of Hypothesis

As regards Hypothesis which were laid down in the previous Chapters, the same are analyzed hereunder based on the study done from preceding Chapters II to V. After analyzing the same, we can come to a conclusion as regards whether the Hypothesis stands proved or disproved.

1. **The spirit of Article 44 of the Constitution is successfully adopted by the Goa Succession, Special Notaries and Inventory Proceedings Act 2012**

Article 44 of the Constitution talks about the obligation of the Government to enact a Uniform Civil Code for all of its Citizens. The basic idea of having a Uniform Civil Code is that there should be no inequality in matters of marriage, succession, maintenance, etc. among the citizens of the country. From 1867 onwards Goa has been governed by a common Civil Code for all its citizens irrespective of their religion. There is no distinction done based on religion gender, race, caste etc.[646] The daughters are given equal right in the inheritance of the parents which is at par with the sons. The marriages are compulsorily registered in Goa. There is no restriction based on religion during the registration of marriage and any person is free to marry any person of any religion in Goa provided both are of opposite sex, major and mentally sound. After the death of a person, his estate devolves upon his heirs irrespective of the faith and religion that the deceased practiced during his lifetime. In Rest of India succession is governed based on the personal law. There is no uniformity in succession and there are separate laws which govern the matters of Heirship among the citizens based on their religion.[647] For instance, there is Hindu Succession Act which govern the Hindus. Similarly there is Muslim personal law which is based on Holy Quran which governs the Muslim community in India. Further there is Indian Succession Act which governs the Christians in India. Hence, it can be seen that there is no universal law of succession in Rest of India and the successor is determined by the personal laws which are distinct from each other. The basic objective of having a Uniform Civil Code is to overcome

[646] Please see sub chapter 3.10.2.1
[647] Please see sub chapter 2.11 and 2.12

this very difficulty.[648] On the similar lines there are other difficulties such as no codification in cases of Muslim personal law which is yet another problem faced due to non existence of a Uniform Civil Code. Uncodified law leads to different interpretations which add up to the confusions. In Goa there is specific written law which governs its subjects and there is no question of ambiguity in its application. The daughters are treated at par with sons. Similarly there is right given to all the heirs to either accept or renounce the inheritance.[649] Unregistered marriages are not recognized in Goa. The Civil Registrars are appointed as the competent authorities for registration of all marriages in Goa. This helps in maintaining up to date records which further helps in drawing of Succession Deeds, Relinquishment Deeds, Wills etc. Hence the system followed in Goa is properly laid down as envisaged under the Constitution of India. This system has been followed right from 1867 onwards and still continuing. Due to this system, it can be seen that the records can be traced back 150 years ago also in Goa. The Codigo do Registo Civil 1912 which is also known as the Civil Registration Code 1912 was implemented from the year 1914 onwards. This Code empowers the Civil Registrars as the authorities for maintaining the records pertaining to marriages which are registered before them. All this process of having a Civil Code to govern marriages and inheritance help in keeping a proper track of the matters pertaining to the succession and Heirship in Goa. Hence it can be safely concluded that hypothesis is proved since the basic idea of having a Uniform Civil Code is achieved under the Civil Code applicable in Goa.

2. **The mandatory provision which directs all Special Notaries to be law graduates is not implemented strictly.**

The Goa Succession Special Notaries and Inventory Preceding Act 2012 specifically states that the Special Notary, District Special Notary and the State Special Notary should be law graduates. However from the data collected through empirical investigation, it is seen that only seven Special Notaries are law graduate whereas 10 are non-law graduates and non graduates.[650] The idea of having qualifications laid down for the post of Special Notary is to ensure compliance of provisions laid down by the statute. Since there is absence of basic qualifications among 58.82% of the Special

[648] Please see sub chapter 2.13.3
[649] Please see sub chapter 3.7 and 3.9
[650] Please see sub chapter 5.4

Notaries who are non graduates, the very purpose of the provision relating to qualification is defeated. There is provision in the Act which states that the Sub Registrars will exercise ex officio powers of a Special Notary. The Recruitment Rules of Sub Registrars, District Registrars and State Registrar are seen to be contradicting the Succession law. There is a need to devise a permanent solution because the Recruitment Rules pertaining to the post of Sub Registrar does not mandate the promotees to be Law graduates. The Special Notaries through promotion are 58.82% who are all non graduates. This situation will continue till the time Recruitment Rules are not amended. Since there is provision under the law which is with a definite purpose the same should be complied in its true letter and spirit. Only 7 out of the 10 Special Notaries are Law graduates which can be said to be very less. This ambiguity leads to defeat the provisions in the Goa Succession Law. This is a serious lacuna that is present in the current system since knowledge of law is very essential in matters pertaining to law of succession. From the data collected, it is seen that 7 out of the 17 Special Notaries are direct recruits and 10 are promotees.[651] The essential qualification for direct recruits includes being law graduate. However in cases of promotees the said qualification of being a law graduate is not there. The Goa succession, Special Notaries and Inventory proceeding Act was implemented from around December 2016 and it is also seen from the data collected that only one Special Notary was recruited from the year 2016 to 2020. Whereas total 5 Special Notaries retired during the said period.[652] Hence it can be said that there is a need of creation of more posts of Special Notary in Goa.

To do a comparative analysis, data was also collected pertaining to the Notaries appointed under the Notaries Act of 1956 and as regards the qualifications held by them. It is also seen that Notaries appointed by the Law Department under the Notaries Act of 1956 are 301 in Goa. It is seen that all the 301 Notaries are Law graduates.[653] On the same lines the provision pertaining to qualifications of Special Notaries should be complied strictly. It can be safely concluded that Hypothesis is proved as seen from the data analyzed.

[651] Please see sub chapter 5.5
[652] Please see sub chapter 5.6
[653] Please see sub chapter 5.7

3. The role played by Lok Adalats in settling Inventory matters is very limited.

The role played by Alternative Dispute Resolution System in any country is very important since it helps in reducing the burden on the judiciary thereby resulting in speedy delivery of justice. However it is seen that the number of disposal of cases through Lok Adalats pertaining to Inventory matters is very less. The number of cases that were referred to the Lok Adalat are also negligible. From the data collected for the year 2010 to 2020, it is seen that the total cases that was referred to Lok Adalat from all Civil Courts across South Goa were only 97.[654] Further only 07 were disposed by Lok Adalat pertaining to entire south Goa for the period from 2010 to 2020.[655] The total number of cases referred to Lok Adalat from the entire district of North Goa including the Civil Courts and the District Courts is Nil.[656] Hence it can be seen that Alternative Dispute Redressal System does not play vital role in disposal of cases which further leads to increase in the pendency of the cases before the Civil Courts.

From the Analysis of data collected, it can be seen that the Civil Courts in Margao, Quepem and Sanguem have referred cases to Lok Adalat pertaining to Inventory matters. The rest of the Courts in South Goa i.e Canacona and Vasco have not referred a single case to Lok Adalat from the year 2010 to 2020. The total number of cases referred to Lok Adalat from Civil Courts in Margao is only 24 where is the same pertaining to Quepem and Sanguem are merely 33 and 40 respectively. If we look at the said data in comparison with the number of cases that are pending before the Courts as regards the Inventory matters it can be seen that the cases referred to lok Adalat are negligible as compared to the pendency before the Court. As regards the cases disposed by Lok Adalat if we look at the analysis of data collected, we can see that the maximum number of cases disposed in a year by Lok Adalat is merely 2 which is pertaining to the year 2014 and 2017 the same pertains to Civil Court Sanguem. Rest all of the Courts in South Goa shows the tally Nil as regards the number of cases disposed by Lok Adalat for a span of 11 years from 2010 to 2020. The data was collected pertaining to Civil Courts as well as the District Courts and hence it can be said that the role played by Lok Adalats in settling Inventory matters as well as pertaining to appeals filed relating to Inventory cases is extremely negligible and limited.

---

[654] Please see sub chapter 5.17

[655] Please see sub chapter 5.18

[656] Please see sub chapter 5.12

4. Though the Succession law in Goa prescribes summary trial, the devolution of Heirship takes longer time due to non-existence of specialized Courts.

From the analysis of data collected we can safely conclude that the pendency before the Courts is enormous. The period of study is from 2010 to 2020 and we have seen that the year wise number of Inventory proceeding cases that are filed before the Courts are also huge.[657] Similarly the number of cases that are pending at the end of the calendar years from 2010 to 2020 are also enormous.[658] The Goan Succession law prescribes summary trial. However it is seen that the Inventory cases goes on for years without any outcome. The total cases that were pending at the end of calendar year 2020 in North Goa were 2238 while that in South Goa were 1108. So the total cases comes to whopping 3346. We have also seen that there are many of these cases that are pending for more than 10 years also. We have also seen that there are huge number of cases that are pending for more than 5 years up to 10 years. Data shows that provision pertaining to summary trial as not been implemented successfully.[659] Non existence of specialized Courts can be seen as a major reason for failure to dispose the cases in a summary manner since the Inventory cases are taken on board with regular Civil and Criminal cases which leads to delay in disposal of cases. Had there been specialized Courts exclusively to try the Inventory preceding cases in a summary manner, the load on the regular Civil Courts would have been much less. It need not be a Judicial Court to try the Inventory proceeding cases but a Quasi Judicial Court can be established being a specialized Court to try Inventory cases for their speedy disposal as mandated by the Act. However non existence of such type of Courts have resulted in mixing of these cases with regular Civil and Criminal matters thereby delaying the final outcome of Inventory cases as their disposals does not happen within the specific time frame as laid down by the Act.[660] From the entire study, we have seen that Inventory cases cannot be treated at par with other type of Civil cases. Inventory cases pertain to family matters which requires human touch at the time of dealing with them, at the same time keeping in mind the objective of disposing the matters promptly as well as to ensure that proper justice is done to the estate of the deceased person and to the

[657] Please see sub chapter 5.8 and 5.14
[658] Please see sub chapter 5.10 and 5.16
[659] Please see sub chapter 5.13 and 5.21
[660] Please see sub chapter 5.22 and 5.23

heirs of the deceased. The regular Civil Courts have to go through the entire process of Civil Procedure Code while handling different type of cases alongwith all the formalities contained therein. The Act itself prescribes summary trial and hence there is ample scope for appointment of specialized Courts to try these types of cases for their quick disposal. Hence it can be said that the said provision of summary trial is not implemented properly and the same has resulted in backlog of pendency which could have been much less had there been specialized Courts. This Hypothesis also stands proved based on the data collected and the study made.

6.3 Findings

Further the following findings are derived from the present study which is conducted to understand the basic intricacies with respect to Succession law in Goa. From the study conducted, it can be safely concluded that Goa is lucky to have law dealing with succession which is based on uniformity and not on the basis of religion. There is uniform application of the succession law over religion barriers.

A) Key Findings on Succession law in Goa

1) The Goan succession law is Gender neutral. There is gender justice in matters of succession in Goa since rules are same for the succession of male and female estate leavers. There is no bias done on any of the heirs based on their gender. Rights to inheritance are not affected by the gender of the Heir.[661]
2) There is equality in succession amount sons and daughter in Goa. Gender does not affect the right of any person to inherit in Goa. Religion also does not affect the right of the heirs. Hence the general perception is that Goan Succession Law has the potential to become a model code for implementation of Uniform Civil Code in Rest of India.[662]
3) There is lacuna under Goan Succession law as regards Wills executed outside Goa but within India. The law states that Wills executed outside Goa are valid if it confirms with the law of the land where it is made. Registration of Wills is not compulsory in Rest of India.[663] Hence if a person executes a Will outside Goa but within India and does not get it registered before the Sub Registrar of the concerned Taluka, then the Will cannot be said to be invalid on ground of non-

[661] Please see sub chapter 3.10.2.1
[662] Please see sub chapter 5.24
[663] Please see sub chapter 3.16.3.4

registration even when Goan Succession law prescribes compulsory registration of Wills.

4) The persons under disability includes within its definition Deaf and dumb persons also. Hence they are not competent to manage their assets. This happens to be a vague provision whereby a deaf and dumb person who possesses vision and can write cannot be debarred from administering and managing their estate.
5) Contractual succession is banned under Goan Succession law. However, the definition of Contractual succession is nowhere found in the Act.
6) Due to the fact that there is no Uniform Civil Code in Rest of the India, there is difficulty faced pertaining to determining the law applicable to persons who were born in Goa but subsequently settled and died outside Goa.
7) In case the legitimacy is disputed then the option for the children is to file is civil suit. Even when the legitimacy is proved after Order in the said Civil Suit, the children can participate in the ongoing Inventory Proceeding from the stage that it has reached. This is disadvantageous provision pertaining to children who are held as legitimate children of the deceased but still cannot participate in the ongoing Inventory Proceedings till the disposal of Civil Suit.
8) There is no Legitime guaranteed for the siblings of the deceased person who fall under the collateral line of inheritance. Hence the deceased person can totally disinherit the said collaterals by transferring all property during his lifetime or by executing Will of entire estate.[664]
9) When there are children, spouse or parents, the concept of Legitime ensures that there is no injustice done to the said heirs. The deceased person cannot disinherit them from inheritance.
10) Heirs and Legatees are distinct categories of successors under Goan Succession law. The estate leaver cannot dispose entire property by legacy if descendants, spouse, parents are present. Hence all these relations are protected from arbitrary disposal of estate by the estate leaver.
11) Right to representation provided under the Goa Succession Law ensures that there is proper distribution of estate of the deceased person even when there is a

[664] Please see sub chapter 3.10.2.2

pre deceased child and his heirs. There is no problem of injustice being done to heirs of pre deceased children even when they are minors.[665]

12) Any of co-heirs cannot individually sell the specific properties of the deceased persons without obtaining consent of other co-heirs. Hence all heirs of deceased person are protected including minors, disabled and absent heirs.[666]
13) Even when the deceased person makes a gift of the Legitime, the same can be brought back by way of collation and reduction thereby guaranteeing the right of the rightful legal heirs.[667]
14) Females enjoy better position since they inherit as daughters as well as daughter in laws under the Goan Succession law. Hence the law can be said to more beneficial to women.
15) Even the in-laws such as son in law, daughter in law have a direct right to inherit under the Goa Succession Law based on marriage with the legal heir and without any distinction on basis of gender.
16) There is no problem faced in determining the total assets of the deceased person since there is no differentiation between ancestral property and self acquired property under Goan Succession Law.
17) The aged parents are duly protected under the Goan Succession law since they have guaranteed Legitime in the inheritance which cannot be disposed by the estate leaver.[668]
18) Different personal laws treat legitimate children differently in India even when the children are no fault for the same. Under Goan Succession law, if legitimacy is acknowledged by the parents in their lifetime then the illegitimate children gets all the rights at par with legitimate children. In case of dispute as regards filiation, the concerned children have to approach Civil Courts for obtaining declaratory decree.
19) There is no mechanism to check inofficious gifts at the time of making gifts. The subsequent process of Collation and Reduction results in slow disposal of Inventory cases.

[665] Please see sub chapter 3.9.1
[666] Please see sub chapter 4.17.2
[667] Please see sub chapter 3.11 and 3.12
[668] Please see sub chapter 3.10.2.2

20) The spouse of the deceased person enjoys a better position in Goa as compared to Rest of India since it has a guaranteed right to the estate as half sharer as well right to habitation in the residential house.
21) The descendants in same degree inherit per capita and hence there cannot be any problem of increase or decrease of shares of the Heirs.
22) The Act provides that the Power of Attorney for drawing instruments by Special Notary should be drawn before Special Notary. This happens to be vague provision since Power of Attorneys are required when the person is unable to appear before the Special Notary and hence if the Principal is required to be present before Special Notary then there is no point in executing a Power of Attorney.
23) On one hand, right to habitation is guaranteed to the spouse of the deceased while on the other hand the spouse is required to deposit owelty money when her right exceeds her share of inheritance which results in diluting the aforesaid safeguard provided to the moiety holder.[669]
24) Conversion of any of heirs cannot affect their right to inheritance under Goan Succession law since religion is not a relevant factor in determination of Heirship.
25) The persons governed by Goan Succession law are entitled to execute different types of Wills as per their wishes. However, there is no possibility of rectification in a Will already executed. The person has to execute a new Will or execute a Deed to revoke earlier Will either partly or fully.[670]
26) Rights of minors and persons under disability are fully protected under the succession law applicable in Goa by way of Family Councils as well the mandatory requirement to file Inventory proceedings before Courts.
27) The compulsory registration of Notarial documents like Wills, Succession deeds has ensured reliability and guaranteed authenticity. Lot of time is saved since there is no need to obtain a Probate for the Will.
28) The Goan Family law still cannot be said to be a single Code because even the Civil Code of 1867, the Codigo do Registo Civil have not been repealed totally. Only the corresponding provisions are repealed by the Goa Succession, Special Notaries and Inventory Proceedings Act 2012. It is still a scattered piece of

[669] Please see sub chapter 3.17.1
[670] Please see sub chapter 3.16.4

legislation since the provisions relating to marriage, legitimacy of children are governed by aforesaid Codes of the Portuguese era.

29) Accordingly as per the Codigo Civil 1867, though the wife has half share and ownership to the husbands properties, as per Article 1117 of the said Code, the administration of the properties is with the husband entirely which even includes leasing, mortgaging properties without the consent of wife.
30) The marital regimes once chosen by the parties at the time of marriage cannot be subsequently changed by the spouses in their entire lifetime during the subsistence of the marriage.
31) There is ambiguity as regards the provisions repealed by the new Act since neither specific Articles of the erstwhile Code are quoted nor the entire Codigo Civil 1867 is repealed by the new Act. The Repealing provision only states that any corresponding provisions stands repealed which creates difficulty since there were several laws which were prevalent till 2016 like the Codigo Civil 1867, Codigo do Processo Civil 1939, Notarial Decree No. 8373, Codigo do Registo Civil 1912, etc.

Key Findings on Special Notary Offices:

1) The mandatory qualification for Special Notaries prescribed by Act is not being complied since it is seen that about 59% of the total Special Notaries are not having minimum qualification of a Law Degree.[671]
2) The Recruitment Rules pertaining to Sub Registrar, District Registrars are contradictory to the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 since there is no essential qualification of having a Law degree in cases of promotees to these posts. Incase of State Registrar the same is filled from Goa Civil Service cadre wherein the essential qualification for direct recruits also does not have Law degree as a mandatory requirement. It is seen that about 59% of the Special Notaries are promotees which is a prime cause for non compliance of provision pertaining to minimum qualifications for Special Notaries.

[671] Please see sub chapter 5.4

3) It is observed that there is about 26% vacancy of Special Notaries in Goa which means that about one fourth of the total strength of the Special Notaries are not available to the service of the public.[672]
4) The Promotees are more than Direct recruits pertaining to posts of Special Notaries in the Registration Department. The number of Special Notaries that retired are more than those recruited from the year 2010 to 2020. Hence has lead to more vacancy in posts of Special Notaries.[673]
5) All Notaries under Notaries Act 1952 which are appointed by the Central Government are having minimum qualification of a Law degree.[674]
6) The statutory provision pertaining to transfer of records that are more than 30 years old to the Archives Department has not been complied.
7) Due to the presence of Special Notaries in Goa, the workload of Judiciary has reduced since all the Deed of Declaration of Heirship can be drawn before Special Notary offices in Goa without having the need to obtain probate.
8) The present Act has overcome the lacuna in erstwhile Code by prescribing specific jurisdiction for Special Notaries which has helped in ensuring that all records are available in concerned Taluka office only. Further, if any person wants to search for any records, he is not required to apply in all offices.[675]
9) It is observed that the fireproof boxes as mandated by the Act are not provided to the offices of the Special Notaries. This can be seen as a major shortcoming since the Records maintained by Special Notaries all over Goa have enormous importance and any untoward incident can lead to non reversible and disastrous consequences.
10) People are facing hardship when there is non availability of Birth/Marriage/ Death Certificates since they have to obtain Court Order in such cases for the purpose of drawing of Deed of Declaration of Heirship.
11) When the documents/deeds/instruments executed by Special Notaries are termed as Void due to the procedural lapses on the part of the Special Notaries, the validation power is given to the Courts rather than the District Special Notary which creates difficulties to the public.[676]

[672] Please see sub chapter 5.3
[673] Please see sub chapter 5.5 and 5.6
[674] Please see sub chapter 5.7
[675] Please see sub chapter 4.2.1
[676] Please see sub chapter 4.6.1

12) The law mandates that the Declarants and Witnesses should be credit worthy persons. However, the definition of credit worthy person is neither found in the Act nor under the Rules framed. This creates scope for different interpretation by different Special Notaries for admitting any person as Declarant or Witness.
13) The law of succession give Right of Pre-emption to co-heirs. However, there are loopholes in said provision since sale of undivided share is allowed. The Pre-emption right is meaningless when the co-heir is allowed to sell his undivided share in inheritance.[677]
14) There is no provision for publication of Deed of Declaration of Heirship on the official website of the Registration Department, even in present technological world.
15) The Special Notaries do not have any power to enquire as regards the valuation declared by the interested parties at the time of drawing Declaration of Heirship even when it has direct impact on the invitation of objections to the Deed. The party is not required to publish the extract of the Deed on Newspaper if he declares the value of inheritance upto Ten Lakhs.[678]
16) There was provision for depositing the Closed Will with the Special Notary. However, the said provision was repealed by amendment which is unfavorable to the Testator when he does not have any place for its safe custody.
17) The Special Notaries do not have any powers to purchase the required Registers/Books from the Open Market even incase of emergencies.
18) The Official Translation of Codigo do Registo Civil/Civil Registration Code 1912 is still not available which results in hardship to the Litigants/Advocates/Judiciary/Special Notaries in Goa.
19) The jurisdiction prescribed for drawing Wills does not take into consideration a situation where a person who is governed by Goan Law but settled in Rest of India and wish to draw his Will.
20) The degree of documents that will be applicable pertaining to succession of ascendants is unclear. The law states that the Heirship will devolve upon ascendants of first degree, and in absence of it, then on the second degree, and in absence of same, then on the third degree, and so on. The Act does not specify the exact degree till which the applicable documents will be required to be

[677] Please see sub chapter 4.17.2
[678] Please see sub chapter 4.11.2

submitted by the parties. If we go strictly by the wording of the Act then the list is endless and the death, marriage certificates that will be required for drawing Declaration of Heirship by Special Notary pertaining to the said degrees of ascendants is unclear.[679]

21) Though the Goan Succession law states that the parties can submit a draft of proposed Deed/Will to the Special Notary, there are no model formats of Deed that are made available by the Special Notary offices.
22) The Special Notaries have no power to take evidence for determining whether the properties that are being mentioned by the Testator in his Will, constitutes his disposable quota or the Legitime. This is the primary cause of inofficious gifts which results in prolonging Inventory matters subsequently after the death of the Testator.
23) There are no specialized officers such as Special Notary, District Special Notary, State Special Notary in Goa. All the aforesaid posts are held in Ex-Officio capacity by the Sub Registrar, District Registrar and State Registrar in Goa respectively. All these functionaries already function under various other capacities such as Civil Registrar, Registrar of Firms, Inspector General of Societies, Head of Notary Services, etc. Hence, even when the Act has provision to appoint specialized officers, there are no such specialized officers in Goa.[680]
24) The Special Notaries have the discretion to determine 'creditworthy persons' for admitting them as Declarants, Witnesses while drawing Declaration of Heirship. This leads to ambiguity and lack of uniformity as regards all 12 offices of the Special Notaries in Goa.
25) There are no specific criteria laid down as regards persons eligible to stand as Declarants. The Declarants play pivotal role in drawing Declarationof Heirship. Though the law prescribes general conditions as regards qualifications of witnesses/declarants, there are no specific guidelines laid down for Declarants.
26) If the parties do not have any of the mandatory certificates then the Notarial Deeds cannot be drawn unless there is Order by the Court. Hence the parties have to approach the Court which is a hurdle in smooth and fast drawing of Declaration of Heirship by Special Notary.

[679] Please see sub chapter 3.10.2.1
[680] Please see sub chapter 4.2

27) Since parties have to approach Courts when there is absence of even one document such as Marriage Certificate, Birth Certificate, it results in increasing unnecessary pendency before Courts.
28) The Act states the Will is a private Document until death of the Tesator. However, the Printed Open Wills, Public Open Wills are read loudly in the presence of all parties by the Special Notaries which can be seen as a violation of privacy of the Testator since the Will is his private document and needs to be kept secret until his death.
29) The process of recording Deed of Declaration of Heirship is still done manually in Special Notary Offices.[681]
30) Even in the present era of internet and digital signatures, the public have to visit the offices personally for recording Declaration of Heirship. There is no facility for taking online appointments also.
31) There is absence of link between the Inventory Courts and the Special Notary Offices. Both function separately though the subject matter is linked to each other.

B) Key Findings on Judiciary

1) There is huge pendency of Inventory Cases in North Goa District as well as South Goa District.[682]
2) The number of cases filed in North Goa Courts are about three times as compared to those filed in South Goa Courts.[683]
3) The appeals filed pertaiing to Inventory cases are very less in both the Districts in Goa. This shows that once the Chart of partition is confirmed, there is no much dispute on the same.
4) The Lok Adalats being Alternate Dispute Resolution System is not functioning properly in Goa as regards Inventory Cases. The cases disposed by Lok Adalat are negligible. To be specific only 7 cases were disposed over a period of 11 years by Lok Adalats.[684]

[681] Please see sub chapter 4.11.1
[682] Please see sub chapter 5.10 and 5.16
[683] Please see sub chapter 5.22 and 5.23
[684] Please see sub chapter 5.12, 5.17 and 5.18

5) Numerous cases are pending for more than ten years in several Courts in North Goa as well as South Goa.[685] Technicalities and frievolous objections is seen as the major reasons for prolonged litigation in Courts.[686]
6) There is no limitation period prescribed for filing Inventory Cases in Goa.
7) In both the Districts of Goa, the number of Inventory cases that are disposed are less as compared to those filed which is increasing pendency such cases every year.[687]
8) The Inventory cases are handled by the regular Civil Courts, which are already overburdened with all other type of cases pending before them. There are no specialized Family Courts in Goa and hence the Civil Courts function as Inventory Courts which leads to slow disposal of Inventory cases.
9) The multiple stages in Inventory cases are leading to prolonging the matters before the Courts which is a hurdle to summary proceeding. The procedure of Drawing of Chart of partition is tedious and complicated.[688]
10) The time frame laid under the law for disposing Inventory Proceedings is not being followed. Accordingly it is seen that many cases are pending before the Courts which are more than 10 years old. The pendency of Inventory cases in urban areas is more than rural areas in Goa.[689]
11) The Inventory Cases eventually turns out to be a costly and time consuming affair due to the fact that many cases are pending for more than ten years, thus putting the parties at a discomfort and agony.

6.3.1 Prominent changes introduced by the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 over the earlier Portuguese Civil Code:

1) It is interesting to know that the word Succession was not defined in the Civil Code 1867. However in the present Act, the term Succession has been defined.
2) In the earlier code, there was no specific provision as regards applicability of the Code. The earlier law only defined who Portuguese nationals were. However, the present Act specifies the persons who are governed by the Goan civil law.

[685] Please see sub chapter 5.13 and 5.21
[686] Please see sub chapter 5.24
[687] Please see sub chapter 5.9 and 5.15
[688] Please see sub chapter 4.18
[689] Please see sub chapter 5.13 and 5.21

3) Under the present Act, the status of women has been improved. In the earlier Code, spouse of deceased was placed at forth position. However at present, she is listed at second position after the descendents.
4) The earlier Civil Code did not specify right to sisters. It only mentioned brothers and their descendants in the line of succession. There was no mention of sisters. However at present brothers and sisters are specified in the list of collaterals.
5) The present law specifically mentions that all Inventory Proceedings are summary proceedings. There is a specific time limit set for conducting various stages of Inventory Cases.
6) Now, the work of attestation of Notarial Books is performed by District Special Notaries. The earlier Code specified that the work of attestation of notarial books was to be done by the judges due to which a lot of unnecessary burden was placed on the judiciary. At present work of attestation of Books is given to the District Special Notary within the Registration Department which has resulted in saving lot of precious time of judiciary.
7) Appeals can be preferred in the Registration Department instead of going to judiciary. In the earlier Code there was no provision for filing appeals against the orders of the Special Notary within the Department since the appeals were required to be filed directly in the Civil Courts. At present the District Special Notary is empowered to hear Appeals.
8) Specific authorities have been created to deal with administration and appeals as well as smooth implementation of the succession law in Goa. In the earlier code, there existed only the Notary Ex-officio. There was neither District Special Notary nor State Special Notary.
9) At present, the records are maintained at Taluka level as well as at Headquarter level. There is provision for transmitting of the record to the Archives Departments after 30 years. In the earlier Code there was no such provision to maintain the records at Headquarter level nor at Archives Department with up-to-date scientific techniques.
10) In the earlier Code there was no provision for executing Printed Wills. The general options available to Testator were Public Will, External Will, Maritime Will and Closed Will which all were handwritten Wills. In view of present age

of modernisation and computerization, the law has introduced the concept of Printed Open Wills

11) There is also provision for drawing printed Declaration of Heirship. In the earlier Code, there was no such provision and all the succession deeds were required to be manually written in the Books of the Notary.

12) Under the present law there is specific notification specifying the area of operation of the Special Notaries. Under the earlier Notarial Decree, the Notary Ex-officio was required to act in his respective judicial division but there was no specific bar for drawing instruments outside his jurisdiction since there was no Taluka wise notification prescribing the territorial limits of Special Notaries.

13) The present law specifically empowers the Special Notaries to administer oath to the persons appearing before him in the exercise of his statutory functions. The previous Notarial Decree did not have a specific provision in this regards. The parties are thus criminally liable for any false statements made before the Special Notary.

14) Valuation by Court in Inventory proceedings is now required to be done by Officer of Court instead of clerk. As pointed out in several judgments also, there was a major lacuna in previous Code as regards the process of valuation to be done in Inventory proceedings. In the previous Code, the Clerks of the Court were empowered to conduct the valuation in Inventory Cases which was even held improper in several judgments. However under the present law, such procedures are to be done by an Officer of Inventory Court.

15) In the present Act, Birth Certificate is made compulsory document for the purpose of drawing succession deeds. There is no other alternative document for Birth Certificate except Court order. In the previous Code, there was provision for submission of Baptism Certificate or School Leaving Certificate. However the said provision is removed to avoid any sort of malpractices.

16) All interested parties are required to be provided with copies of whatever is filed in Court records by any of the parties. Hence the process of Inspections of Court files is discontinued thereby saving time of the judiciary.

17) There was no concept of preparation of preliminary chart of partition in the earlier Code. The present Act has made a provision whereby the Court can prepare preliminary chart of partition in case the shares are seen to be unequal.

18) Under the present Act, there have been substantial changes effected in the Legitime of the spouse as well as the ascendant parents and grandparents. Earlier the spouse and parents were only entitled to Legitime of half of the estate which is now changed to the entire inheritance.
19) Under the previous Code, there was a Register of Record of Signature maintained by the Notary Ex-officio. However, the said Register has not found a place in the present Act and is discontinued.
20) There was a requirement of three witnesses for executing Wills. However, the present law prescribes only two witnesses for any type of document including Wills.
21) Under the previous Notarial Decree, when the officers were transferred, they were required to prepare a list of Registers/Books that have been handed over to the incoming Officer. However, under the present Act, there is no such provision to list out the Registers of office while handing over charge to new Special Notary.
22) The time frame prescribed by the present Act is practical as compared to earlier Code which provided time limit in hours rather than days. The time frame laid down by the present Act is also feasible.
23) The stages in Inventory Cases have been substantially reduced as compared to the earlier Code.
24) Similarly, the role of Assistant Public Prosecutor is absent in the present law even in case of minors and persons under disability. The said function is given to the Family Council and court appointed Guardians.
25) There were different laws that governed succession in Goa. There was Codigo Civil, Codigo do Processo Civil, Notarial Decree No. 8373 which all related to succession law and the functioning of Notary Ex-officio. At present, all relevant provisions of these laws have been brought under one Act.

6.4 Suggestions

Based on the study conducted, the following can be suggested for further improvements in Succession law applicable to Goa.

A) To the Government

1) Since majority of the Sub Registrars do not posses the essential qualification of having a Law degree, and further since all Notaries appointed under the Notaries Act 1952 are Law graduates, it is suggested that Notaries appointed under the Notaries Act 1952 should be designated as Special Notaries. This will also help the Government to generate more revenue. The State Registrar is also the Head of Notary Services in Goa for Notaries appointed under Notaries Act 1952. Hence to keep proper checks and balances, the functions of the District Special Notary and State Special Notary should be maintained by the present officers only i.e. the District Registrar and State Registrar.
2) The Recruitment Rules of the District Registrar and the State Registrar should be amended to include Law degree as an essential qualification for Promotees.
3) There must be amendment to the Act to empower the Inventory Court to convert an application for Inventory Proceedings to a Suit of Declaration, whenever it is learnt that the Inventory Proceedings were only filed due to lack of necessary certificates to draw Deed of Declaration of Heirship.
4) It is suggested that whenever, there is absence of any documents to prove Heirship like Birth Certificate, Marriage Certificate, then the District Special Notary should be empowered to conduct an inquiry and pass appropriate Order to direct the Special Notary to draw the Declaration of Heirship.
5) Looking at the quantum of pendency of Inventory Cases especially in North Goa, it is suggested that the Government should constitute Specialized Courts to deal with Inventory Cases especially in North Goa at the earliest. It need not be a Judicial Court but can be a Quasi-Judicial Court. It is suggested that all Inventory cases should be transferred to the Courts of Deputy Collectors in Goa being Group A Rank Officers under Government of Goa.
6) An amendment must be carried out to the Act whereby any Will made outside Goa but within India must be compulsorily registered under the Registration Act 1908 failing which it should not be taken as valid evidence.

7) Persons who are deaf and dumb should not be treated as incompetent to administer their estate. It is suggested to allow such person to administer and manage their estate if otherwise not disqualified.
8) There must be clarity on the concept of contractual succession. First of all, the definition of Contractual Succession and its essential ingredients must be specified in the Act.
9) If legitimacy is disputed, then the alleged Heir should be allowed to participate in the process of Inventory Proceedings and his share should be kept aside till the Civil Suit is disposed. After disposal of the Civil Suit, if filiation in proved then the same should be allotted to the said Heir. If filiation is not proved then the share should be proportionately distributed to all other co-heirs.
10) There must be fifty percent Legitime guaranteed for the siblings of the deceased person. The same is more applicable in cases where the deceased child was the only bread-earner of the family and there is no source of income for siblings of deceased persons. In such cases, the siblings must have at least half Legitime when there are no descendants, ascendants, moiety holder of the deceased person.
11) To avoid delay in Inventory proceedings due to inofficious gifts, there should be determination of exact disposable share before the Testator and Testatrix Gifts their specific properties to the Testamentary Heir. The Government approved valuer report should be made compulsory when the parties wish to gift specific properties in their Wills.
12) Sale of share by any of co-heir before partition must be allowed only after concurrence from all co-heirs and it should be allowed with Court permission incase there is dissent among co-heirs. The right of pre-emption is of no use after the co-heir sells his undivided right to outsider. Hence all sale of undivided share by co-heir without consent or court permission should be prohibited.
13) It is suggested that amendment should be brought about in the Act to provide for limitation period to file Inventory Proceedings. There must be penalty levied for delay in filing Inventory Proceedings beyond five years from death of the deceased.
14) The Act provides that the Power of Attorney for drawing instruments by Special Notary should be drawn before Special Notary. This happens to be vague provision since Power of Attorneys are required when the person is unable to

appear before the Special Notary and hence if the Principal is required to be present before Special Notary then there is no point in executing a Power of Attorney. Hence it is suggested that this provision should be repealed.

15) On one hand, right to habitation is guaranteed to the spouse of the deceased while on the other hand, the spouse is required to deposit owelty money when the right exceeds her share of inheritance which results in diluting the aforesaid safeguard provided to the moiety holder. There should not be any owelty money applicable for occupation of house by the spouse of the deceased since ownership is not transferred.

16) The persons governed by Goan Succession law are entitled to execute different types of Wills as per their wishes. However, there is no possibility of rectification in a Will already executed. The person has to execute a new Will or execute a Deed to revoke earlier Will either partly or fully. It is suggested that any Rectification to the Wills should be allowed by executing separate Rectification Deed by the party and without making any alteration of the Original Will.

17) The Goan Family law still cannot be said to be a single Code because even the Civil Code of 1867, Codiogo do Processo Civil, Notarial Decree 8373, the Codigo do Registo Civil have not been repealed totally. Only the corresponding provisions are repealed by the Goa Succession, Special Notaries and Inventory Proceedings Act 2012. It is still a scattered piece of legislation since the provisions relating to marriage, legitimacy of children are still governed by aforesaid Codes of the Portuguese era. Hence, it is suggested that all laws pertaining to Succession should be brought under present Act.

18) Accordingly as per the Codigo Civil 1867, though the wife has half share and ownership to the husbands properties, as per Article 1117 of the said Code, the administration of the properties is with the husband entirely which even includes leasing, mortgaging properties without the consent of wife. It is suggested that the said Article should be expressly repealed and wife should be given equal rights.

19) There is ambiguity as regards the provisions repealed by the new Act since neither specific Articles of the erstwhile Code are quoted nor the entire Codigo Civil 1867 is repealed by the new Act. The Repealing provision only mentions that the corresponding provisions are repealed. This is creating difficulty since

there were several laws which were prevalent till 2016 like the Codigo Civil 1867, Codigo do Processo Civil 1939, Notarial Decree No. 8373, Codigo do Registo Civil 1912, etc. Hence it is suggested that all redundant provisions should be expressly repealed.

20) Under the previous Code, there was a Register of Record of Signature maintained by the Notary Ex-officio. However, the said Register has not found a place in the present Act and is discontinued. It is suggested that the provision pertaining to Record of Signature of all parties should be revived which will help in keeping all record of signatures of parties including witnesses in single Book. This will even help in investigation by police and other agencies whenever need arises.

21) There was a requirement of three witnesses for executing Wills. However, the present law prescribes only two witnesses for any type of document including Wills. It is suggested that the earlier practice of having three witnesses for Wills should be revived since Witnesses play a crucial role when the Wills are challenged in Courts.

22) Under the previous Notarial Decree, when the Notary was transferred, he was required to prepare a list of Registers/Books being handed over to the incoming Notary. However, under the present Act, there is no such provision to list out the Registers of office while handing over charge to new Special Notary. Since the record maintained is of extremely high importance, the earlier provision should be revived in the present Act.

23) The Recruitment Rules pertaining to Sub Registrar, District Registrars are contradictory to the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 since there is no essential qualification of having a Law degree in cases of promotees to these posts. Incase of State Registrar the same is filled from Goa Civil Service cadre wherein the essential qualification for direct recruits also does not have Law degree as a mandatory requirement. It is seen that about 59% of the Special Notaries are promotees which is a prima cause for non compliance of provision pertaining to minimum qualifications for Special Notaries. Hence it is suggested that the Government should urgently amend the Recruitment Rules of Sub Registrars, District Registrars and State Registrar to make Law degree compulsory for Promotees.

24) Since there is about 26% vacancy of Special Notaries in Goa, it is suggested that the State Registrar should conduct six monthly checks of Special Notaries that retired during the said period. There must be immediate steps taken for filling the vacant posts of Special Notary so that no posts are kept vacant.

25) It is suggested that the Government should urgently direct the Registration Department to transfer all the records that are more than 30 years old to the Archives Department. The Notarial documents which are more than thirty years old should not be kept in the office of the Special Notary and there should be yearly dispatch of documents to the Archives Department henceforth.

26) It is suggested that the Government should provide the fireproof boxes as mandated by the Act to the offices of the Special Notaries on priority.

27) When the documents/deeds/instruments executed by Special Notaries are termed as Void due to the procedural lapses on the part of the Special Notaries, the validation power should be given to the respective District Special Notary instead of the Courts. This will help reduce burden on judiciary as well as facilitate public.

28) It is suggested that the State Special Notary should issue a Circular for determining which persons can be considered as credit worthy persons for drawing Declaration of Heirship. This will stop different interpretations by different Special Notaries for admitting any person as Declarants or Witnesses

29) It is suggested that there must be up-to-date uploading of all extracts of Deed of Declaration of Heirship drawn by Special Notaries on the official website of the Registration Department inorder to invite objections from any interested parties. Hence there must be full use of available technology.

30) The interested party is not required to publish the extract of the Deed of Declaration of Heirship on local newspaper if he declares the value of inheritance upto Ten Lakhs. Hence it is suggested that all Deeds of Declaration of Heirship should be compulsorily published on the Official Website, Official Gazette and local Newspaper to invite objections.

31) There was provision for depositing the Closed Will with the Special Notary. However, the said provision was repealed by amendment which is unfavorable to the Testator when he does not have any place for its safe custody. Hence it is suggested that the earlier provision allowing deposit of Closed Will with the Special Notary should be revived.

32) It is suggested that the Special Notaries should be empowered to purchase the required Registers/Books from the Open Market incase of emergencies and allowing ex-post facto approval from Government.
33) It is suggested that that Government should carry out the Official Translation of Codigo do Registo Civil/Civil Registration Code 1912 on urgent basis since the same is still applicable to Goa. This is help to reduce hardship to the Litigants/Advocates/Judiciary/Special Notaries in Goa.
34) Whenever a person who is governed by Goan Succession Law with his permanent residence outside Goa but wishes to make a Will in Goa then his temporary residence in Goa should be considered as the place for determining the jurisdiction of Special Notary to draw his Will. The temporary residence can be proved by way of Residence Certificate obtained from respective taluka Mamlatdar.
35) As regards succession of ascendants, it is suggested that the State Special Notary should issue a Circular to prescribe the degrees pertaining to which the death certificates/marriage certificates is required to be obtained by the Special Notaries taking into consideration the general life span of human beings.
36) Though the Goan Succession law states that the parties can submit a draft of proposed Deed/Will to the Special Notary, there are no model formats of Deed that are made available by the Special Notary offices. Hence it is suggested that the Registration Department should upload the model formats for all Notarial Deeds on its official Website. Drafts of model Formats for various Deeds/Wills are suggested herewith and incorporated as Annexure to this Thesis.
37) Since Will is private Document until death of the Testator, the Special Notary should obtain the consent of the Testator to read the Will infront of Witnesses. The Special Notary should read the Will loudly in the presence of all the parties after when the Testator gives the permission. Incase the Testator does not give consent then the Testator should be allowed to read the Will and the Special Notary should read the Will in presence of the Testator only.
38) It is suggested to implement online system for drawing of all Notarial Documents before the Special Notary. The records should be electronically transmitted on Central Server for proper safety and availability of the same at all times.

39) It is suggested to stop the process of manually recording Deed of Declaration of Heirship. All processes should be computerized which will help to complete the process efficiently and promptly. The records of the Special Notaries should be digitized at the earliest.

40) The public should be allowed to submit draft and take online appointment before the Special Notary. Total Computerization of Special Notary office is a must whereby the parties can apply through online mode for recording Notarial acts. The system of using SMS and Whatsapp Numbers /Apps should be used to give appointments to the public for drawing the Declaration of Heirship. This process should be automated without human intervention.

41) It is suggested to simplify the technical jargons used in the Act so that the any layman can easily understand his rights and obligations under the Act.

42) It is suggested that Collectors of both the Districts should maintain a record of properties which does not have any heir. The possession of such properties should be taken over by the Government without unnecessary delay to avoid unauthorized encroachments.

43) It is suggested that there must be yearly audit of all the books maintained by Special Notaries. The Internal Audit should be conducted under the direct supervision of the respective District Special Notary.

B) To the Judiciary

1) In view of huge pendency of Inventory Cases in North Goa District, it is suggested that the Hon'ble High Court should constitute a Committee comprising of all District Judges to monitor the pendency of the aforesaid cases before all the Civil Courts in both the Districts.

2) It is suggested that in major towns in Goa wherein there is majority of pendency, the High Court should appoint one Judge exclusively to hear Inventory cases pending for more than three years on fast track basis for three days in a week.

3) It is suggested that the High Court should issue directions to all subordinate Courts to explore the possibility of referring the Inventory cases to Lok Adalats being Alternate Dispute Resolution System. There must be efforts made by the Judiciary to convince litigants to opt for Alternate Dispute Resolution System such as Lok Adalats. There must be Lok Adalats held every two months so that

more and more people will be able to understand that such mechanism is for their benefit.

4) It is suggested that the High Court should ensure that there are periodic Lok Adalats held every two months so that there is large awareness and also prompt disposal of cases that are referred to Lok Adalats..
5) It is suggested that the Inventory Courts should enquire with the parties as regards whether they wish to draw Declaration of Heirship after obtaining Declaratory Order certifying death, marriage, birth. If the parties agree, then the cases where Deed of Succession can be drawn should be disposed and referred to Special Notaries.
6) The Inventory Courts should be vigilant and ensure that mere technicalities and frivolous objections put forth by the parties do not delay the matters. Such objections should be rejected at the very outset so that it does not prolong the Inventory Cases.
7) It is suggested that there should not be repetition of steps in Inventory Proceedings. For instance, there is no need to do a Second Valuation if the Court appoints a Committee of three Certified Valuers in the first instance itself. The valuation of properties should be done at the first instance itself wholly and fully which will avoid the necessity of a Second Valuation. The Inventory Courts should ensure that all objections are filed by the parties at the very first instance itself.
8) The Inventory Courts should ensure that the time frame laid down under the law for various stages in Inventory Proceedings is compulsorily followed by the Advocates/Litigants. The present law specifically mentions that all Inventory Proceedings are summary proceedings. There should be specific implementation of this provision.
9) The Inventory Courts have the power to skip Preliminary Chart and draw final chart of partition The Courts should ensure that in feasible cases, the Preliminary Chart of Partition drawn by the Court Officer can be discarded to reduce wastage of time. Preliminary Chart of Partition should be an exception.
10) It is suggested that the Inventory Courts should ensure that the Family Council functions in the best possible interest of minors and persons under disability. The Court should immediately reappoint members of Family Council incase they fail to perform their duties. This attains more significance because in the

present law, the role of Assistant Public Prosecutor is absent even in case of minors and persons under disability. The said functions of Assistant Public Prosecutor is given to the Family Council and court appointed Guardians.

11) There should necessarily be established a direct link between the Courts and the Special Notary offices which will help in quick delivery of services to the public at large. So also the number of cases filed before Courts can decrease if the parties opt for drawing of Deed of Declaration of Heirship.
12) The Courts as well as the Special Notary Offices can work jointly to educate the masses by organizing various Seminars/Workshops etc.
13) The Inventory Courts should ensure that the Chart of Partition is prepared as per its Order and the Officer handling the said work should be given proper training and guidance in the matter.
14) It is suggested that the High Court should monitor the working of Civil Courts and the number of cases that are disposed by them.
15) It is suggested to implement E-Courts with regards to Inventory Cases. The applications filed by the parties can be made available to the opposite parties electronically. This will save a lot of time and resources. Similarly, unwarranted adjournments will be avoided since the electronic system will work 24x7.
16) It is suggested that the Inventory Court should come down heavily on parties/litigants/advocates who try to purposefully delay the matters. Exemplary costs should be levied on such acts which are detrimental to the swift delivery of justice.

C) To the Legal Fraternity/Litigants/ Educational Institutions:

1) The role of Schools, Law Colleges and Non Government Organizations is crucial in bringing a change in the process of Inventory Proceedings and Succession law applicable to Goa as they can include a variety of public awareness programs in their school curriculum so that there is enough awareness among public about the importance of Succession proceedings. Judges, advocates, staff of the Court, litigants, general public should be invited for such awareness sessions.
2) The role played by the Advocates is also very crucial in the sense that the Advocates are in a better position to make the litigants understand the need of

disposing cases like the Inventory Proceedings quickly and smoothly without any unwanted hindrance.

3) In Inventory Proceedings the parties are free to arrive at a settlement and thus there should be encouragement for promoting compromise and out of Court settlement of issues among the parties instead of having conflict of egos.
4) It can be also suggested that there should be more encouragement given to Alternate Dispute Redressal System like Lok Adalats, mediation, arbitration, conciliation, etc. instead of having regular Court hearings as Inventory Proceedings and Succession are delicate issues concerning family bonding and family ties and hence issues can more aptly be solved through out of Court settlement.
5) It is suggested that various members of the Bar and Bench can take proactive steps to make a compilation of case laws on the subject of Goan Succession law which is a local piece of legislation and which will facilitate large awareness among legal fraternity and also to bring more uniformity in application of law.
6) It is suggested to make large scale awareness among the Litigants about their right to get a Deed of Declaration of Heirship registered before the Special Notary instead of filing Inventory Cases.

The nation's founding fathers incorporated in our Constitution, Article 44, declaring that the nation ought to have its own Uniform Civil Code. Seventy Three years later all we have are debates, political controversy, press notes, articles in law journals, a few books, mutual suspicion, occasional admonitions from the judiciary, and worst of all, legal darkness over the subject. In my opinion, the seed of trouble is the prefix "uniform" qualifying civil code. Uniformity is one of the qualities of a Civil Code but it is certainly not the only quality. The primary attribute of a Code is that it organizes the law in a systematic manner coordinated together by logical, psychological and juristic rules. The main endeavor therefore should be to draft an Indian Civil Code governing family law wherein all the positive aspects are gathered from all the prevailing personal laws.

It was 155 years ago when the Civil Code of 1867 was first extended to Goan territory by the Portuguese regime. The Goa Succession, Special Notaries and Inventory Proceeding Act 2012 now contain Goan Succession Law thereby repealing the colonial legislation. The law has also undergone some very significant changes due to various

social and political changes over the past 155 years. However, the core aspect of equality is still the fundamental feature of the Goan Succession law till today. It is a shining example of modernization of law while maintaining its core characteristics including being compatible with the Article 44 of the Constitution of India.

The Portuguese Civil Code has governed Goa from mid 1867 till almost end of 2016 being an important, functional and operative part of the Goan Heritage. It has deeply impacted the mindset and hearts of Goans like the use of day to day Konkani language, folklore, food habits, etc.

It can be said that the Succession law deals with family ties and hence such cases should be handled with humanitarian perspective. It is different from other ordinary cases where there is hardly any personal touch involved. In Succession matters, there is family bonding involved since generally all the parties are related by blood. Hence care should be taken to see that the personal ties are not adversely affected due to inheritance proceedings that take place within the family. Family is of primary importance and conflicts should not lead to disassociation of family bonding.

It can be said that the law applicable in Goa in unique when compared with the other States. There are various provisions which can be said to be beneficial to the society at large. It can be concluded from the study conducted that the Uniform Civil Code which has been mentioned in the Constitution of India has been aptly followed in Goa.

We are the only State in India to implement Uniform Civil Code and hence we should be proud of this fact. However, to bring more efficacy in the actual process followed, certain steps should be taken to bring suitable changes in the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 as suggested above to bring about further improvements to suit the present day requirements as well as to benefit all the Goans who are fondly referred as **'*Goemkars*'**.

Bibliography

1. Usgaocar M.S., Family Laws of Goa, Daman and Diu Volume I (4th Edition, Vela Associates, 2009)
2. Usgaocar M.S., Family Laws of Goa, Daman and Diu Volume II (2nd Reprint, Vela Associates, 1994)
3. Da Costa Mario Bruto, Law of Succession, (Published by Mario Bruto da Costa, Panjim Goa)
4. Da Costa Mario Bruto, Matrimonial Regimes and Inventory, (Published by Mario Bruto da Costa, Panjim Goa, 2000)
5. Afonso Ave Cleto, The 'Portuguese' Law of Goa (Succession and Inventory, (Broadway Book Centre, Goa, 2009)
6. Translation by Ferro Miguel, Family Succession Law in the Portuguese Civil Code of 1867: A 21st Century Approach, (AAFDL, Alameda da Universidade-1649-014 LISBOA, 2008)
7. De Lima Doutor Pires & Varela Doutor Joao De Matos Antunes, Fundamental Concepts of Civil Law, (English-Portuguese Bilingal Edition, Printed by MIRANDELA-Artes Graficas, SA)
8. Law Commission Reports
9. Prasad V., Indian Succession Act, (3rd Edition, Allahaad Law Agency, Faridabad (Haryana) 1999)
10. Chaturvedi Archna, Muslim Women and Law, (Commonwealth Publishers, New Delhi, 2004)
11. Singh Shiv Sahai, Unification of Divorce Law in India (Deep & Deep Publications, New Delhi, 1993)
12. Mathew Babu and others, Cases and Materials on Family Law – I (Revised Edition, National Law School of India University Bangalore, Oct. 1994)
13. Singh Chauhan S.P., Sources & Framing of the Constitution of India, (Universal Law Publishing Co. Pvt. Ltd., 2015)
14. Chawla Monica, Gender Justice-Women and Law in India, (Deep & Deep Publications, New Delhi, 2006)
15. Pandey J.N., The Constitutional Law of India, (50th Edition,Central Law Agency, Allahabad, 2013)
16. Bakshi P.M., The Constitution of India, (11th Edition, Universal Law Publishing Co., New Delhi, 2011)

17. Singh Rattan, Legal Research Methodology, (Reprint, LexisNexis, Haryana, 2014)
18. Sharma K.R., Research Methodology, (National Publishing House, Jaipur, 2002)
19. Purohit Mona, Legal Education & Research Methodology, (Reprint, Central Law Publications, Allahabad, 2014)
20. Myneni, S.R., Legal Research Methodology, (5th Edition, Allahabad Law Agency, Haryana, 2012)
21. Noronha F.E., Portuguese Civil Code, 1867, (Published by F.E. Noronha, Padmavati Towers, Panaji Goa, 2016)
22. Kohli Hari Dev, Supreme Court on Hindu Law (Universal Law Publishing Co. Pvt. Ltd., 2010)
23. Nazare B.D. & Awasthi S.K., Goa Law Digest, (Valsad Book House-Goa Law Reporter, Panaji Goa, 2014)
24. H.M. Seervai, Constitutional Law of India, (4th Edition (Reprint), Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2012)
25. Yogendra Singh, Social Stratification and Change in India, (Manohar Publishers & Distributors, New Delhi, 1999)
26. Paras Diwan, Muslim Law in Modern India (12 Edition, Allahabad Law Agency, 2016)
27. Balbir Sahai Sinha, Law and Social Change in India, (Deep & Deep Publications New Delhi, 1983)
28. N.V. Paranjape, Studies in Jurisprudence and Legal Theory (Central Law Agency, Allahabad, 2016)
29. V. D. Mahajan, Jurisprudence and Legal theory (5th Edition, Eastern Book Company,2012)
30. Hinduism in India edited by Will Seetman and Aditya Malik, (Sage Publications India Pvt. Ltd. New Delhi , 2016)
31. LS Shastri, Hindu Law Digest (5th Edition, Butterworths India, New Delhi)
32. H.K. Saharay Family Law in India, (Eastern Book Company, 2011)
33. Paras Diwan, Family Law, (9th Edition, Allahabad Law Agency, Faridabad, 2009)
34. G.C.V. Subba Rao's Family Law in India (10th Edition, Narender Gogia & Company, 2018)

35. Flavia Agnes, Family Laws and Constitutional Claims, (Oxford University Press, 2011)

Webliography

1. https://www.thehindu.com/news/national/what-is-debate-on-uniform-civil-code-all-about/article24903560.ece
2. https://www.thehindu.com/news/national/other-states/Goa-passes-bill-to-replace-Portugese-succession-law/article14556836.ece
3. https://www.scconline.com/blog/post/2019/09/16/portuguese-civil-code-applicable-to-succession-of-all-the-properties-whether-within-goa-or-outside-goa/
4. https://timesofindia.indiatimes.com/city/goa/apex-court-order-ensures-certainty-of-succession-of-goan-owned-properties/articleshow/71175053.cms
5. https://www.thehindu.com/news/cities/mumbai/president-hails-goas-uniform-civil-code/article24362492.ece
6. http://www.navhindtimes.in/difficult-dialogues-returns-for-fifth-edition/
7. https://www.thehansindia.com/hans/opinion/news-analysis/ucc-implementation-can-be-a-tricky-affair-608044
8. https://www.indialegallive.com/constitutional-law-news/supreme-court-news/uniform-civil-code-a-shining-example-72467
9. https://www.indiatvnews.com/news/india/goan-civil-code-indian-democracy-uniform-civil-code-549807
10. https://www.daijiworld.com/news/newsDisplay.aspx?newsID=667418
11. https://indianexpress.com/article/opinion/columns/uniform-civil-code-supreme-court-article-44-6004340/
12. feminisminindia.com/2018/11/09/goa-civil-code/
13. https://www.heraldgoa.in/Review/Goa-A-shining-example-of-Uniform-Civil-Code/151472
14. https://economictimes.indiatimes.com/news/politics-and-nation/no-attempt-to-enact-uniform-civil-code-despite-repeated-court-appeals-supreme-court/printarticle/71120973.cms
15. http://www.legalservicesindia.com/article/2157/Uniform-Civil-Code-in-Goa.html
16. https://blog.ipleaders.in/goa-civil-code/

17. https://www.telegraphindia.com/opinion/the-goa-way/cid/1436605#.V4KEprh97IU
18. https://thelogicalindian.com/exclusive/everything-you-need-to-know-about-uniform-civil-code
19. http://mmascgoa.tripod.com/id12.html
20. https://www.thehindu.com/opinion/op-ed/legal-pluralism-in-personal-law/article29825335.ece
21. https://www.outlookindia.com/newsscroll/goan-civil-code-a-shining-example-of-indian-democracy/1619379
22. https://www.news18.com/news/india/supreme-court-bats-for-framing-uniform-civil-code-cites-goa-as-shining-example-2308285.html
23. https://thewire.in/law/goas-uniform-civil-code-is-not-the-greatest-model-to-follow
24. https://www.hindustantimes.com/india-news/all-in-the-family-is-the-goa-civil-code-a-model-for-the-rest-of-the-country/story-4ImvwP0OrAST2hUnsZxtiL.html
25. https://www.scconline.com/blog/post/2019/09/16/portuguese-civil-code-applicable-to-succession-of-all-the-properties-whether-within-goa-or-outside-goa/
26. https://theprint.in/thought-shot/tahir-mahmood-argues-against-goas-uniform-civil-code-r-jagannathan-wants-a-powerful-pmo/293417/
27. https://www.thehinducentre.com/publications/issue-brief/article29796731.ece
28. https://www.deccanherald.com/national/west/goa-hc-annuls-article-19-of-portuguese-law-on-marriage-769677.html

Annexure

Questionnaire for Research Thesis

1. Whether there are any difficulties faced as regards finding case laws since the uniform civil code is applicable only to the State of Goa?

YES		NO	

2. Whether there happens to be any delay in disposal Inventory Proceedings?

YES		NO	

3. Main causes for delay in disposal Inventory Proceedings?

_____

4. Can the role of Lok Adalats be increased to achieve faster disposal of Inventory Proceeding Cases ?

YES		NO	

5. Whether computerization of Special Notary offices for drawing of Notarial deeds help in better implementation of the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 ?

YES		NO	

6. Can the Goan Civil Code help in implementing Uniform Civil Code in rest of India in view of Article 44 of the Constitution?

YES		NO	

7. Do you think there is Equality in succession for sons and daughters in Goa under the Goa Succession, Special Notaries and Inventory Proceedings Act 2012?

YES		NO	

8. Is Specialized courts for inventory proceedings a good solution for fast disposal of Inventory Proceeding cases in Goa?

YES		NO	

9. Whether there are any drawbacks in the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 ?

YES		NO	

10. Any suggestions for improving the Goa Succession, Special Notaries and Inventory Proceedings Act 2012

_____

Name & Address: _____

Proposed Model Standard Formats

Deed of Declaration of Heirship

On ____ this ____ day of the month of _____ of year _____ in this Judicial Division of _____ Taluka, and in the Notorial office functioning at _____,before me Shri _____ Special Notary Ex-Officio of _____ Taluka, before two fit, creditworthy and reliable witnesses named hereinafter and signing at the end, appeared as "Declarants" (One) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address (Two) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address and (Three) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address, and as "lnterested party" Name, father/husband name, age, marital status, identification card number, occupation, nationality, address . I do hereby certify the identity of the declarants and the interested parties on the guarantee of the below mentioned witnesses and also based on their photo identity documents. The Declarants to whom I admit to this act as persons worthy of credit, and without any legal impediments to this act stated on oath before me as follows: That on_____ at_____ expired _____ without making any testamentary disposition, nor a gift nor any other disposition of his/her last wish and leaving behind as moeity-holder _____ resident of _____ and their children namely One) _____ age _____, married to _____, both residing at_____ Two) _____ age _____, married to _____, both residing at_____ Three) _____, unmarried, age _____, residing at _____. Further the Declarants and the Interested party clearly stated on oath that there is no one else and no other person or persons who could prefer or concur to the inheritance left by the aforementioned deceased Estate Leaver. The declarants further stated that they are perfectly aware of all the facts stated by them above since they are in full knowledge of the family of the deceased person. The declarants stated that they are not related to the deceased persons nor they are relatives nor they are interested parties as regards the estate left by the deceased person and they are making this declaration on solemn oath and they take the responsibility for their statements. The Declarants further state that they are fully aware that they would be criminally liable incase they make any false statements. The Declarants state that whatever is stated by them is true and correct and nothing has been concealed by them. The interested party also accepts the Declaration made by the Declarants as true and correct. The Declarants further stated that the

deceased has left inheritance, value of which exceeds Rupees Ten Lakhs and as such this Deed is subject to publication in Official Gazette of Goa Government and Local newspaper. The interested party has submitted Eight certificates which are as follows: one death certificate, 3 birth certificates, three marriage certificates, one Divergence certificate which are being filed in office records pertaining to this deed to be used for the purpose of transcribing in the certified copies of this deed. The two fit witnesses present for this act are One) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address , Two) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address who are going to sign this Deed along with the Declarants, interested party and with me the said Special Notary Ex officio after this Deed was read loudly and audibly by me in the simultaneous presence of all and also read by the interested party and the Declarants and found to be correct by all. All legal formalities are completed in continuous manner without any break one after another. This Deed bears notarial stamps of Rupees ____ *Corrections, Interlineations, Erasures to be stated here before signatures*

Deed of Relinquishment

On ____ this ____ day of the month of _____ of year _____ in this Judicial Division of _____ Taluka, and in the Notorial office functioning at _____,before me Shri _____ Special Notary Ex-Officio of _____ Taluka before two fit, creditworthy and reliable witnesses named hereinafter and signing at the end, appeared as Releasing party/ies namely (One) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address (Two) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address whose identity I do hereby certify based on the guarantee and assurance of the below mentioned Witnesses and also based on their photo identity documents. In the presence of the said Witnesses the party stated clearly that they hereby relinquish, release, renounce gratuitously in the precise terms of section 35 of the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 all their undivided and illiquid rights to the Inheritance left by their father/mother/parrents/father-in-law/mother in law namely_____ who died on_____ at_____ and _____ who died on_____ at_____. The two fit witnesses present for this act are One) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address , Two) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address who are going to sign this Deed along with the Releasing Parties and with me the said Special Notary Ex Officio after this Deed was read loudly and audibly by me in the simultaneous presence of all and also read by the Releasing party/ies and found to be correct by all. All legal formalities are completed in continuous manner without any break one after another. This Deed bears notarial stamps of Rupees ____ *Corrections, Interlineations, Erasures to be stated here before signatures*

Will

(Model draft incase of testator/testatrix is conversant with English)

On ____ this ____ day of the month of _____ of year _____ in this Judicial Division of On ____ this ____ day of the month of _____ of year _____ in this Judicial Division of _____ Taluka, and in the Notorial office functioning at _____,before me Shri _____ Special Notary Ex-Officio of _____ Taluka before two fit, creditworthy and reliable witnesses named hereinafter and signing at the end, appeared as Testator/Testatrix Name, father/husband name, age, marital status, identification card number, occupation, nationality, address whose identity I do hereby certify based on the guarantee and assurance of the below mentioned Witnesses and also based on his/her photo identity documents. Further I and all the below mentioned witnesses ascertained that the Testator/Testatrix is in his/her perfect and sound disposing state of mind, in full perfect senses, free from any coercion, undue influence, pressure from anybody whatsoever and in the presence of the said Witnesses, the Testator/Testatrix stated clearly and audibly as follows:

(The Statements of the Testator/Testatrix is to be recorded here
one after another without any blanks and interruption.)

The Testator/Testatrix stated the above mentioned statements in the presence of the following Witnesses namely (one) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address, and (two) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address, who are going to sign this Will along with the Testator/Testatrix and with me the said Special Notary Ex Officio after this Will was read audibly and loudly by me in the presence of all and found to be correct by all. I informed the Testator/Testatrix that he/she is entitled by law to read this Will by himself/herself or by any person of his/her choice. The Testator read this Will himself/herself and found to be correct as per His/her Wish. Further. All legal formalities are completed in continuous manner without any break one after another. This Will bears notarial stamps of Rupees ____ *Corrections, Interlineations, Erasures to be stated here before signatures*

Will

(Model draft incase of testator/testatrix is not conversant with English)

On ____ this ____ day of the month of _____ of year _____ in this Judicial Division of On ____ this ____ day of the month of _____ of year _____ in this Judicial Division of _____ Taluka, and in the Notorial office functioning at _____,before me Shri _____ Special Notary Ex-Officio of _____ Taluka before two fit, creditworthy and reliable witnesses named hereinafter and signing at the end, appeared as Testator/Testatrix Name, father/husband name, age, marital status, identification card number, occupation, nationality, address whose identity I do hereby certify based on the guarantee and assurance of the below mentioned Witnesses and also based on his/her photo identity documents. As the testator does not know English and habitually talks in and understands Konkani/Marathi/Hindi, he/she has brought with him/her as his translator Name, father/husband name, age, marital status, identification card number, occupation, nationality, address who has sworn on oath that he/she will translate the contents of this Will to the Testator/Testatrix and further write the statements of the Testator in the language spoken by him in the side column provided for. Further I and all the below mentioned witnesses ascertained that the Testator/Testatrix is in his/her perfect and sound disposing state of mind, in full perfect senses, free from any coercion, undue influence, pressure from anybody whatsoever. And in the presence of the said Witnesses the Testator/Testatrix stated clearly and audibly as follows:

(The Statements of the Testator/Testatrix is to be recorded here one after another without any blanks and interruption.)

The Testator/Testatrix stated the above mentioned statements in the presence of the following Witnesses namely (one) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address, and (two) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address, who are going to sign this Will along with the Translator and with me the said Special Notary Ex Officio after this Will was read audibly and loudly by me in the presence of all and found to be correct by all. The Testator/Testatrix is affixing his/her left hand thumb impression since she does not know to sign. I informed the Testator/Testatrix that he/she is entitled by law to read this Will by any person of his/her choice. The Testator stated that the Translator should read this Will on her

behalf. As such the Translator read this Will loudly and audibly in presence of all and the Testator stated that this Will is recorded as per his/her wishes. The Testator was informed that the fees will increase by fifty percent due to the intervention of the translator. All legal formalities are completed in continuous manner without any break one after another. This Will bears notarial stamps of Rupees ____. *Corrections, Interlineations, Erasures to be stated here before signatures*

Deed of Consent

On ____ this ____ day of the month of _____ of year _____ in this Judicial Division of _____ Taluka, and in the Notorial office functioning at _____,before me Shri _____ Special Notary Ex-Officio of _____ Taluka before two fit, creditworthy and reliable witnesses named hereinafter and signing at the end, appeared as party/ies namely (One) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address (Two) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address whose identity I do hereby certify based on the guarantee and assurance of the below mentioned Witnesses and also based on their photo identity documents. In the presence of the said Witnesses the party stated clearly that their marriage is governed by the Regime of General Communion of Assets and hence they hereby give consent to each other in the precise terms of section 219 of the Goa Succession, Special Notaries and Inventory Proceedings Act 2012 to execute separate Wills as per their respective free wish. The two fit witnesses present for this act are One) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address , Two) Name, father/husband name, age, marital status, identification card number, occupation, nationality, address are you going to sign this deed along with the parties and with me the said Special Notary Ex Officio after this deed was read loudly and audibly by me in the simultaneous presence of all and also read by the party/ies and found to be correct by all. All legal formalities are completed in continuous manner without any break one after another. This Deed bears notarial stamps of Rupees ____ *Corrections, Interlineations, Erasures to be stated here before signatures*