

Amendment in Section 2 of the Succession Act, 1925

Report No. 96

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AMENDMENT IN SECTION 2 OF THE SUCCESSION ACT 1925

The Succession Act 1925 was promulgated by the Britishers for providing a consolidated law of intestate and testamentary succession to its colonial subjects who belonged to various religious communities. This law was adopted after the partition of India vide the Adaptation of Acts and Ordinances Order 1949 and the Act continued to be applicable on different religious communities of this land. The Christian Citizens of Pakistan are also governed by this Act for the purposes of their succession and inheritance.

The rules for determination of heirs of Pakistani Christians and their shares have been determined in sections 31-49 of the Act. These provisions have no gender discrimination. According to section 37 where the intestate has left surviving him a child or children but no more remote lineal descendents through a deceased child the property shall belong to his surviving child if there is only one, or shall be equally divided among all the surviving children. There is also no distinction between maternal kindred and paternal kindred or between full blood and half blood relations. The Act also provide $\frac{1}{3}$ share to the widow and even to the widower.

Some quarters from the Christian Community in Pakistan have objected on the said law of inheritance and declared it as against the teachings of the old testament according to which only sons can inherit the father's estate and the first born son receives a double portion. And that daughters become entitled to inheritance only if the person died had no son with the promise that they will be married to men from their fathers tribe. However, the provisions regulating the rules of distribution of shares for Christians have been declared to be in consonance with the scriptural spirit not only by the Christian clergy and Christian leadership but by the Supreme Court of Pakistan in its judgment in the case of Ms. Inayat Bibi vs Issac Nazirullah (PLD 1992 /355) by allowing the Christian females to inherit in presence of male heirs under the said provisions of the Succession Act, 1925 and made the law very clear by observing that the Succession Act did alter the customary succession in so far as Christians are concerned and also for them it abolished the customary law in Punjab, therefore, the same would not be applicable.

In a consultation on the Christian law of Inheritance organized by Idara Amn-o-Insaf the Christian clergy and other speakers of the consultation were of the view that the Succession Act was enforced by the Britishers who themselves were supposedly Christians therefore, there is nothing in the law which is against

the Holy Bible. However, there is need to aware the Christian community especially the Christian women of there right of equal share in inheritance with male relations.

In view of the above the law of inheritance, which is based on gender equality, is not against the teachings of the Holy Bible and need no amendment especially in this era when a worldwide campaign is going on against gender discrimination. However, the following definition of the term “Pakistani Christian” in clause (d) of section 2 of the Succession Act, 1925 is discriminatory and offending for the Christian community.

Section 2(d).- Pakistani Christian means a citizen of Pakistan who is, or in good faith claims to be, of un-mixed Asiatic descent and who professes any form of the Christian religion.

In spite of the fact that the above mentioned provision smacks of prejudices of the colonial rulers towards the people of the land, however, it was to some extent relevant in the colonial era when white Christians were also domiciled in this part of the world and the native Christians could claim to be of unmixed Asiatic descent. The said provision in the existing form seems to be a memory of the colonial past, which has been declared by the Christian community also as discriminatory and offending. It is therefore, proposed that the words in the said clause (d) “**who is, or in good faith claims to be, of un-mixed Asiatic descent and**” may be deleted.

The amended provision will be as under: -

Section 2(d).- Pakistani Christian means a citizen of Pakistan who professes any form of the Christian religion.

A comparative table of existing provision and proposed amendment is as under:

Existing provision	Proposed
Section 2(d).- Pakistani Christian means a citizen of Pakistan who is, or in good faith claims to be, of un-mixed Asiatic descent and who professes any form of the Christian religion.	Section 2(d).- Pakistani Christian means a citizen of Pakistan, who professes any form of the Christian religion.

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further to amend the Succession Act 1925

WHEREAS it is expedient to amend the Succession Act 1925 (Act XXXIX of 1925) for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement.- (1) This Act may be called the Succession (Amendment) Act 2006.

(2) It shall come into force at once.

2. Amendment of section 2, Act XXXIX of 1925.- In the said Act, in section 2, clause (d) the words " **who is, or in good faith claims to be, of un-mixed Asiatic descent and**" shall be omitted.

Commission's deliberations

The working paper was considered by the Commission in its meeting held on 27.7.2007 and the following are the deliberations:-

The Commission considered the pre-independence reference contained in the Succession Act 1925 about the Christians of unmixed Asiatic descent which class no more exist at the present in Pakistan and all the Christians in the country are native Pakistani Christians therefore, reference of the pre-partition period requires to be deleted from Section 2 of the Succession Act 1925. The Commission agreed with the proposal to delete the above reference from Section 2 (d) of the Succession Act 1925.