(7.1) Conclusion

At present, there prevails different personal laws in India to regulate the personal issues like marriage, divorce, maintenance, adoption, guardianship, succession, inheritance, will, gift, etc. Under these personal laws, the parameters to decide these rights differ religion to religion, community to community and place to place. Hence, there prevails no equality of law for all the citizens, in reference of personal laws.

Mainly from the period of Britishers, written personal laws were introduced. Looking to the sensitivity of the issue of personal law, they kept themselves away from codifying the personal laws. Though they codified and uniformed many legislations, but they decided not to interfere with the personal laws because, that area was the only place for them to keep the people calm at least regarding an issue.

However, there was nothing, either in Government of India Act 1915, or Government of India Act 1955, which could preclude legislature from uniforming or reforming the personal laws.

It was Constituent Assembly where the issue of UCC was legally mooted. After long hours debate, it was incorporated under Part IV of the Constitution of India. The founding parents of Constitution, were of the view that, this country does need a UCC but that was not the time to enforce UCC, because the citizens of this country were not mentally prepared for that. Whatever, they were assured that on a point of time, the government would enforce this Constitutional mandate.
Art. 44 is incorporated under Part IV of the Constitution of India. Hence, it cannot be enforced by the direction of the court. It comes only in purview of the legislature. The duty is cast upon legislature to reform, amend or make any law.

In several of verdicts, the judiciary of this country has tried to make the government remember about this Constitutional mandate which has remained a dead letter till yet. Several intellectuals have tried to bring it in notice to the governments in many manners but the Governments have remained silent for many reasons.

There are several misconceptions and myths regarding personal laws and UCC amongst the citizens of this country, but they are of the nature which could be easily erased by making them aware regarding these issues.

What exist in the name of the personal law, is an unequal and biased legal system, which has led the personal law system to create several ambiguities and injustice to the citizens. At so many instances, it has proved to be a matter of shame for this country.

Just because, a particular community does not want reform in its personal law, the personal laws have become, matter of injustice to all. There are many voices, coming from the different minority communities against uniformity of personal laws. But, the main objection comes from Muslim community, which without understanding the Quranic Verses, in their true sense, or to dominate their people in the name of religion, raises objection against UCC.

All India Muslim Personal Law Board, has always shown its strict objection against UCC. Whenever and wherever, such instances have occurred it has filed its negative view towards UCC.
The voice of few leaders cannot be voice of the general public. The voice of real victims should be heard, before taking any decision in this regard. In Muslim community, the women are the most vulnerable group. Nowhere in Quran, it can be seen that, the Prophet Mohammed was against the rights of women or he was gender bias. In fact, he was the first to recognize women’s rights. Without understanding his concept, true justice cannot be ensured to Muslim women. At present, the Muslim Law, practiced in India, is totally gender biased. The Prophet Mohammed never intended this for women.

In personal laws related to Christians and Parsis too, there exist several unnecessary and unjust provisions which badly require reform. Though personal law for Hindus, is reformed to an extent with the tune of present social demands but, there are several areas which still require careful attention and approach.

The Indian society has suffered a lot and social demands are neglected enough, in the absence of UCC. Now, there is no time to wait more for enactment of UCC. The UCC has become unavoidable in present circumstances. To curtail the hardships caused in the name of personal laws, India badly needs a UCC for all its citizens.

(7.2) Suggestions for forming draft of UCC

UCC has become the need to fulfill the present social demand. Following are the essential ingredients which are necessary to consider while drafting UCC.

(1) The best provisions of existing personal laws should be the base of forming the UCC.
(2) Marriage and Divorce: There is only Special Marriage Act, 1954, under which anyone can get married and such marriages are known as “Civil Marriages”. Marriages solemnized in any other form, can also be registered under this legislation and once the parties get registered under this Act, they are bound to follow the rules laid down under this legislation.

There are different personal laws under which the obligations and rights of the marriage parties are also mentioned, following which, different discrepancies are occurred. To absolve such discrepancies and inequalities, all the communities should be brought under the provisions of SMA, some better provisions from other personal laws can also be taken in view to form the Code.

No provision from the Muslim personal law should be taken into consideration except the ceremony of marriage. And that too, should be made subject to the registration under this Code and should be covered under proviso of provision for conditions of marriage.

Concept of “Polygamy” and “Halala” should be fully thrown out of marriage system among Muslims. Other castes, sub-castes or creeds which follow the custom of “Polygamy” should also be prevented from that. This should not get legal protection in any manner. From the date of the commencement of UCC, it should be made illegal and any marriage solemnized in contravention of such provision, should be placed under ss. 494 and 495 of IPC.

“Age of Puberty” is regarded as the age of marriage among Muslims. But in present era, this cannot be accepted as age of marriage. Getting married at the age of puberty, has caused several socio-political problems and ambiguities. Early marriages affect the human resources adversely. Hence the concept of age of puberty requires to be removed from the marriage system. All
the citizens should be allowed to get married, only after attaining the age of majority, as prescribed under SMA.

Registration of marriage should be made compulsory for all.

Hence, the provisions from SMA and PMDA can be the base to form the code regarding marriage and divorce.

(3) Adoption: Adoption is one of the most challenging socio-legal issues for this country. On one hand, only Hindus have legal right to adopt, and they too, prefer to adopt child from within the family and, on the other hand the ratio of orphan and abandoned children is very high. Such unbalancing situation has given rise to the ratio of orphan and abandoned children. A child has the right to have a family. But, when there is no one to adopt him or her, he or she (the child) is forced to lead a life in which there is no or rare chance of having a family. Sometimes due to the legal incapacity and sometimes due to the orthodox mindset, people except Hindus, stay away from adopting child. Such instances are also witnessed where people want to adopt orphan child but, because their personal law do not allow for adoption, they cannot. In such examples, both, child who needs family and family who needs child, are forced to suffer injustice in the name of religion or a particular personal law.

CHAPTER IV of the JJAct, "Rehabilitation And Social Reintegration" provides for the "adoption".

S.41 reads as:"Adoption. (1) The Primary responsibility for providing care and protection to children shall be that of his family. (2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.
(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a court after satisfying itself regarding the investigations having been carried out as are required for giving such children in adoption.

(4) The State Government shall recognize one or more of its institutions or voluntary organizations in each district as specialized adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3):

Provided that the children's homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3).

(5) No child shall be offered for adoption:

a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,
b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and
c) without his consent in the case of a child who can understand and express his consent.

(6) The court may allow a child to be given in adoption-

(a) to a person irrespective of marital status or:

(b) to parents to adopt a child of same sex irrespective of the member of living biological sons or daughters; or

(c) to childless couples."
This entire legislation is made to secure the welfare of the children who are separated from the main stream due to one or another reason. But some of the provisions of this law, reveal the deep concern of the legislature towards the rights of the children.

Even the plain reading of s.41 of JJ Act, clears that the legislation has made a very sincere effort for the rehabilitation and social reintegration of the children, who are orphan, and abandoned, and are in need of the special care and protection of the law. In this Act, the legislature has not only laid down the procedure of adoption of orphan and abandoned children but has also made a committed step to secure the child rights in its true sense. The most important part of this section is sub-s.(6) of s. 41.

In *Andrew Mendez v. State of Kerala*265, a case before High Court of Kerala, while dealing with Provisions and Rules of JJ Act, Justice R. Basant observed, JJ Act, contains provisions relating to adoption. Adoption as a legal concept was available only among the members of the Hindu Community except where custom permits such adoption for any section of the polity. But in chapter IV of the Act dealing with rehabilitation and social re-integration of children we find the Legislature accepting the concept of secular adoption whereby without any reference to the community or the religions persuasions of the parents or the child concerned, a right appears to have been granted to all citizens to adopt and all children to be adopted. The history of the attempt to bring in the concept of secular adoption in our system of laws narrates a sod tale of in action and action without conviction on the part of the Legislature. It is perhaps unfortunate that even now the republic of India does not have a codified law of adoption applicable to all Indians. The attempts of the Indian parliament in this direction did not bear fruit. The history of the Adoption of Children's Bill, 1972 and Adoption of Children's Bill, 1980 do not, of court, bring credit to the secular credentials of the Indian polity. Let us accept the

265 2008 Cri LJ 2368.
reality. Awareness and acceptance of failure can be the stepping stones to eventual success. We have not been able to bring in a secular law of adoption applicable to all Indians so far. It is in this context that a laudable attempt is undertaken by the Legislature by the stipulations which have been made in chapter IV of the JJ Act. There was still confusion as the concept of adoption was not defined in the Act. The provisions were criticized to be in adequate as the legal status of the adopted child has not by law been declared to be equal to that of a biological legitimate child. It is in this context that Act 33 of 2006 was introduced under which the concept of adoption was defined by enacting s. 2(aa) of the Act. "It is also observed that, "Let it be noted that there is no common law of adoption. The customary Hindu Law as modified and codified by the Hindu Adoptions and Maintenance Act recognizes the rights of Hindu parents and Hindu children to adopt and be adopted. Except when customary law permits adoption those of other faiths had no legal option of adoption a child and conferring on such child all rights of a biological legitimate child. JJ Act, made it possible for Indian children to be adopted and Indian parents to adopt. Initially it was stipulated that the Juvenile Justice Board may allow the child to be adopted."

The need of changing attitude towards adoption, welfare of children and inter-country adoption and the procedure of adoption is well discussed in *LakshmiKant Pandey v. Union of India*266, bench consisting of P.N. Bhagwati, R. S. Pathak and Amarendra Nath Sen JJ., while deciding writ petition regarding inter-country adoption, discussed ss. 7, 9 and 11 of GWA and Arts. 15, 39 and 24 of the Constitution of India, and laid down normative and procedural, Safeguards, to be followed while performing inter-country adoption.

Procedure and norms, laid down by the bench, in this judgment, have, played immense role in framing the policies and safeguards for adoption and

266 AIR 1984 SC 469.
inter-country adoption which are in practice even today too, because till yet no any secular legislation is enacted by the legislature in this area. The observations made in this judgment show deep sensitive concern of entire judicial system of this country, in context of adoption as well as regarding inter country adoption.

Adoption is generally carried out among Hindus only under and as per the provisions of HAMA. Though adoption is made in accordance with the provisions of HAMA, but this Act too, allows adoption with some conditions, incorporated under ss. 6, 7, 8, 9, 10 and 11. No adoption can be made under HAMA, or under any other branch of law for Hindus, in contradiction with these conditions. But, sub-s. (6) of s.41 of JJAct, provides that, the court may allow adoption to a person not only irrespective of his or her marital status but also a child of same sex irrespective of the number of living biological sons or daughters. This itself is a revolutionary provision in the area of laws relating to children, because as far as the personal laws are concerned, there is no any uniformed policy regarding adoption. Though, in personal laws relating to Muslim, Christian, Parsis, there is no provision regarding adoption but whenever required, they make adoption in the name of custom or usage.

On 20th November, 1989, The Convention on the Rights of the Child was adopted by the General Assembly of the United Nations. This Convention was mainly held to emphasize on the rights of children and different aspects and groups of rights of children. Welfare of the children can not be secured without providing family to orphan, abandoned, neglected and separated children. General practice regarding adoption clears that the ratio of children taken in adoption is very low because people do not think positively in this direction. And if they think, their personal law prohibits them, and in this way the negative mind-set towards adoption continues. This scenario requires immediate attention, if the system really wants healthy future of India, because future lies with today's children.
In *Shabnam Hashmi v. Union of India*\(^{267}\), the Supreme Court bench has mainly emphasized on the provisions of JJ Act and has shown deep concern regarding forming a UCC so that, the children of this country can get shelter and the needy parents get the children.

In context to the provisions of HAMA, Sub-s. 6 of s.41 of JJAct creates contradictory view and it also challenges the view of adoption under different personal laws of India. It not only raises question against personal law system of India but also suggests that, the personal laws of India do need changes, as per social requirements and demands. If personal laws remain the same as they are today, sub-s. 6 of s.41 of JJ Act can not be practically applied. And if the legislature wants to implement s.41(6) seriously, it has to amend personal laws of different religions accordingly.

The welfare of orphan, abandoned, separated and neglected children, can not be left on technicality of laws only. When all the religions produce the basic principles of love, care, courtesy, kindness towards children, how can they refuse their people to refuse helpless children, for providing home and shelter of love and care.

In *Tibetan children village school v. Karma Lama*,\(^{268}\) single judge bench of Vipin Sanghi J. of High Court of Delhi, dealt with different aspects of Art. 227 of the Constitution of India, ss. 9, 26, 10, 7, 8, 11 of GWA, ss. 9(4) and 7 of HAMA, ss. 7(1) and 7 (1)(a) of Family Court Act, 1984, and Rules 33(2), 33(3), 33, 33(4) and 35 of Juvenile Justice (Care and Protection of Children) Rules, 2007 and held that the compliance of the CARA guidelines, before the minor children is given in adoption, is prima facie mandatory and cannot be bypassed.

\(^{267}\) (2014) 4 SCC 1  
\(^{268}\) 2015 LawSuit (Del)3736
Hence, for adoption, the provisions of HAMA and JJAct can be the base, with some amendments. The guidelines of CARA should also be taken into consideration while drafting the code.

(4) Guardianship and Wards: There are mainly two legislations to regulate these issues. First is the GWA and second is the HMGA. The provisions of HMGA are mainly extracted from the GWA only. They are proved to be best in practice. Though GWA is a secular law but some of its provisions are in accordance with the personal law of the ward, and the HMGA is specially for Hindus. After omitting the personal law related part from the provisions of GWA and HMGA, they can be the best base to form code on these issues.

(5) Maintenance: Under all the personal laws, including s.125 of Cr.PC, provisions are incorporated regarding maintenance. But they do not provide the same and equal base. Moreover, on some part, they are not up to the standards to meet the present social demands.

Most of the personal laws, provide very limited scope of dependent but under HAMA, the definition for dependent is better to meet the social demand of present time. But there too, some corrections are required.

Hence, the provisions from HAMA, along with other personal laws and also the Maintenance and Welfare of Parents and Senior Citizen’s Act, 2007, can be the base to form law regarding maintenance for different relations.

(6) Inheritance and Succession: All the personal laws have different rule in this regard. ss. from 50 to 56 of ISA along with some provisions of HSA, are of such nature which are capable to meet the present social need. Hence, ss. 50 to 56 of ISA can be the base while uniforming the law in this regard.
(7) **Will**: There are specific provisions for will under ISA. With some modification, provisions regarding will, under ISA, can be the foundation in this regard. The same set of rules should be applied in reference of Will executed in favour of any religious or charitable purpose too. The limit prescribed under Muslim law, for the share of, how much can be bequeathed is in fact nowhere mentioned in holy Quran. In practice too, it makes no sense in casting such limit.

(8) **Gift**: Specific chapter is incorporated under TPA in this regard. Provisions of TPA, can be made the base for court in this reference. ss. 112 to 129 of TPA are very clear and are of nature which can be applied to all the citizens. However, s. 129 of the said legislation should be struck down because, it again creates limitation for the gift made by a Muslim. The limitation of the gift property should be struck down, except the ancestral property.

(9) **Religious Endowments**: Limitations cast upon making religious endowments should be struck down from s.118 of ISA. There should be no limit either for time or for quantum of the property, except the ancestral property.

(10) **Women's Property**: Women's property rights should be given equal weightage as of men's rights. Their property should be treated as their absolute property as incorporated under s. 14 of HSA, the modified version of s. 14 of HSA, in context of UCC can be as under;

"Property of a female to be her absolute property.- (1) Any property possessed by a female, whether acquired before or after the commencement of this code, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, "property" includes both movable and immovable property acquired by a female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from
any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held her as *stridhana* immediately before the commencement of this code.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.  

Proviso of s.10 of Transfer of Property Act, 1882 (*TPA*) also casts limitation for women on the ground of religion. It is also desired to struck it down to maintain the uniformity.

(11) Administration of Estates and Payments of Debts: There are distinct provisions for administration of estates and payments of debts under different personal laws, but they should be brought under and made as per the provisions of ISA only, because provisions of ISA in this regard are proved to be the best.

(12) Infirmities in ISA should be omitted: Several provisions of ISA also differs religion to religion. Some of its provisions provide exceptions for certain religions. Such provisions should be removed from ISA. Equal and uniform provisions of ISA should be applied to all the citizens. The provisions which consist bifurcation in context to religions but also are of great utility, should be incorporated under the UCC, after removing such parts which bifurcates it on the ground of religion.

---

269 See, s. 14 of HSA.
(13) Removal of contrary provisions of any other law: Any provision placed under any law, which affects civil rights covered by UCC, and contrary to the object of UCC, should be struck down, also from the legislations which are not covered under the definition of “personal laws”.


(15) Miscellaneous: Issues like Bequests, election, protection of the properties of the diseased, probate, letters of administration, grants, executor or administrator, legacies, succession certificate and different schedules of ISA, are proved to be the best in practice. Hence, after omitting such provisions which are regarding religion, provisions for above issues can be directly taken while forming the code.

Many of the concepts of Hindu law as well as Muslim law has gone through drastic changes. They also require to be based on same principles of law. Concept of dower, Wakf, legitimacy and parentage of children, pre-emption of Muslim law and concept of son’s liability to pay father’s debt, partition, damdupat of Hindu law requires to be based on same set of laws. However, “Dower”, is an amount which is given as a token of respect for women among Muslims, and it is admired by Prophet Mohammed also, hence it can be allowed, but not the dowry.
(7.3) Model Draft for UCC

After analyzing the different personal laws and also some Secular laws, it can be concluded that, there are such provisions under different personal laws and some Secular laws, which are adequate to constitute a UCC. Hence such provisions are chosen from different Statutes and also some provisions with some modifications are taken in view to fulfill the concept and object of UCC. And the suggested model draft for UCC is made from the best existing provisions under different Statutes. The Researcher, suggests following model draft code for UCC, which can be applied to all the citizens of India, irrespective of their religion, caste, sub-caste and creed.

Uniform Civil Code

Introduction

Present personal law system of India, provides different set of laws to the citizens, as per their religion. The available remedy under a specific personal law is different, than the relief available under other personal law. There are four major religions in India, for which, there are different personal laws. There are separate personal laws for Hindus, Muslims, Christians and Parsis. As India is a multi-religion country, there exist other religions also, but their personal civil issues are regulated as per their customs.

Civil issues, such as marriage, divorce, maintenance, adoption, guardianship, succession, gift, will, etc. are governed by different personal laws. Codification is carried out in many areas of laws but yet too, the personal law system has remained totally uncodified which has led several ambiguities for justice delivery system, and has caused hardship and injustice to crores of people of this country.
India is a signatory to many international instruments and has abided itself to provide equal and just justice system to its citizens.

In several of its reports, National Law Commission of India has made suggestions to bring amendments, as required for society, and the legislature has tried to fulfill it. But nothing could be done in direction of Art. 44 of the Constitution of India, which cast duty upon the legislature to enact a UCC for the citizens of India.

Art. 44 reads as,

“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”

But due to social difficulties, till yet India could not fulfill this obligation which is not only the wish of the founding parents of the constitution but also the need of the hour to bring the justice system of this country upto the standards of international parameter of justice delivery system.

Religion acts as an important cultural factor, which reinforces the traditional perception of women as subordinate to males and under male control. The unequal position of women in the family is determined and reinforced by the dictates of the organized religion. None of the major religions-Hinduism, Buddhism, Islam and Christianity ever conceded complete equality to women and have in fact institutionalized the secondary position of women versus men through written and oral interpretations by the male clergy. The ideal of womanhood is still modeled on the Brahmical tradition and linked to a strongly patriarchal culture assigning a secondary position to women. Also within each of the religious groups, there is no homogeneity as regards women's status.²⁷⁰

Though there are several objections against the enforcement of UCC, but the demands and support for UCC is much more than the objections. For a long time, the demand for UCC is raised by many socio-legal and political thinkers. Several proposals are also made to the government by such institutes and entities. Many times, the judiciary of this country has expressed, its regret regarding non implementation of Art. 44, in many forms.

Hence, this model draft code is proposed to introduce to the legislature.

**Statement of objects and reasons**

The object of this model draft code is to consolidate and codify the existing personal law system of India, which has caused several injustice and inequalities to the citizens of India, which is also contrary to the fundamental rights incorporated under Arts. 14 and 15 of the Constitution of India. The separate existence of number of personal laws renders the present personal law system difficult to ascertainment and therefore, there is every justification for an attempt to consolidate and codify it. Though present personal law system has caused several ambiguities and difficulties, present model draft code is formed from the best provisions of the existing personal laws only. Every attempt is made to provide equal law for all to maintain “EQUALITY BEFORE LAW”.
## INDEX

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part I</td>
<td>Title, Extent and Commencement</td>
</tr>
<tr>
<td></td>
<td>Definitions</td>
</tr>
<tr>
<td>Part II</td>
<td>Marriage and Divorce</td>
</tr>
<tr>
<td></td>
<td>Solemnization of Marriages</td>
</tr>
<tr>
<td></td>
<td>Restitution of Conjugal Rights</td>
</tr>
<tr>
<td></td>
<td>Nullity of Marriage and Divorce</td>
</tr>
<tr>
<td></td>
<td>Jurisdiction and Procedure for this Part</td>
</tr>
<tr>
<td>Part III</td>
<td>Adoption, Guardianship and Wards</td>
</tr>
<tr>
<td></td>
<td>Adoption</td>
</tr>
<tr>
<td></td>
<td>Guardianship and Wards</td>
</tr>
<tr>
<td>Part IV</td>
<td>Maintenance</td>
</tr>
<tr>
<td></td>
<td>Entitlement for Maintenance</td>
</tr>
<tr>
<td></td>
<td>Amount of Maintenance</td>
</tr>
<tr>
<td></td>
<td>Maintenance as Charge</td>
</tr>
<tr>
<td>Part V</td>
<td>Succession</td>
</tr>
<tr>
<td></td>
<td>Domicile</td>
</tr>
<tr>
<td></td>
<td>Consanguinity</td>
</tr>
<tr>
<td></td>
<td>Intestate Succession</td>
</tr>
<tr>
<td></td>
<td>Wills and Codicils</td>
</tr>
<tr>
<td></td>
<td>The Execution of Unprivileged Wills</td>
</tr>
<tr>
<td></td>
<td>Privileged Wills</td>
</tr>
<tr>
<td></td>
<td>The Attestation, Revocation, Alteration and Revival of Wills</td>
</tr>
<tr>
<td>Chapter</td>
<td>Title</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>VIII</td>
<td>Construction of Wills</td>
</tr>
<tr>
<td>IX</td>
<td>Void Bequests</td>
</tr>
<tr>
<td>X</td>
<td>Vesting of Legacies</td>
</tr>
<tr>
<td>XI</td>
<td>Onerous Bequests</td>
</tr>
<tr>
<td>XII</td>
<td>Contingent Bequests</td>
</tr>
<tr>
<td>XIII</td>
<td>Conditional Bequests</td>
</tr>
<tr>
<td>XIV</td>
<td>Bequests with Directions as to Application or Enjoyment</td>
</tr>
<tr>
<td>XV</td>
<td>Bequests to an Executor</td>
</tr>
<tr>
<td>XVI</td>
<td>Specific Legacies</td>
</tr>
<tr>
<td>XVII</td>
<td>Demonstrative Legacies</td>
</tr>
<tr>
<td>XVIII</td>
<td>Ademption of Legacies</td>
</tr>
<tr>
<td>XIX</td>
<td>The Payment of Liability in Respect of the Subject of a Bequest</td>
</tr>
<tr>
<td>XX</td>
<td>Bequests of Things Described in General Terms</td>
</tr>
<tr>
<td>XXI</td>
<td>Bequests of the Interest or Produce of a Fund</td>
</tr>
<tr>
<td>XXII</td>
<td>Bequests of Amenities</td>
</tr>
<tr>
<td>XXIII</td>
<td>Legacies to Creditors And Portioners</td>
</tr>
<tr>
<td>XXIV</td>
<td>Election</td>
</tr>
<tr>
<td>XXV</td>
<td>Gifts in Contemplation of Death</td>
</tr>
</tbody>
</table>

**Part VI**

**Protection of Property of Deceased**

**Part VII**

**Representative Title to Property of Deceased on Succession**

**Part VIII**

**Probate, Letters of Administration And Administration of Assets of Deceased**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Grant of Probate and Letters of Administration</td>
</tr>
<tr>
<td>II</td>
<td>Limited Grants</td>
</tr>
<tr>
<td>III</td>
<td>Alteration and Revocation of Grants</td>
</tr>
<tr>
<td>Chapter IV</td>
<td>The Practice Granting and Revoking Probates and Letters of Administration</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Chapter V</td>
<td>Executors of Their Own Wrong</td>
</tr>
<tr>
<td>Chapter VI</td>
<td>The Powers of an Executor or Administrator</td>
</tr>
<tr>
<td>Chapter VII</td>
<td>The Duties of an Executor or Administrator</td>
</tr>
<tr>
<td>Chapter VIII</td>
<td>Assent to a Legacy by Executor or Administrator</td>
</tr>
<tr>
<td>Chapter IX</td>
<td>The Payment and Apportionment of Annuities</td>
</tr>
<tr>
<td>Chapter X</td>
<td>The Investments of Funds to Provide for Legacies</td>
</tr>
<tr>
<td>Chapter XI</td>
<td>The Produce and Interest of Legacies</td>
</tr>
<tr>
<td>Chapter XII</td>
<td>The Refunding of Legacies</td>
</tr>
<tr>
<td>Chapter XIII</td>
<td>The Liability of an Executor or Administrator for Devastation</td>
</tr>
</tbody>
</table>

**Part IX**

Succession Certificates

**Part X**

Gift

**Part XI**

Counter claim

**Part XII**

Miscellaneous
Uniform Civil Code

A code to consolidate and codify the existing personal law system of India. Be it enacted by the parliament in the year of the Republic of India as follows:-

Preliminary

Be it enacted by Parliament in the year of the Republic of India as follows:-

Part I

Preliminary

Sections

1. Short title, extent and commencement — (1) this Code may be called the Uniform Civil Code.
   (2) It extends to the whole of India and applies to all the citizens.
   (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette appoint.

2. Definitions:

   (a) "India" means the territory of India excluding the State of Jammu and Kashmir;

   (b) “Minor” means any person subject to the Indian majority Act, 1875 (9 of 1875) who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and “minority” means the status of any such person;

   (c) The expression "Custom" and "Usage" signify any rule which having been continuously and uniformly observed for a long time, has obtained the force of law in any local area, tribe, community, group or family:

---

271 s. 2(cc) of ISA.
272 s. 2(e) of ISA.
Provided that the rule is certain and not unreasonable or opposed to public policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;\textsuperscript{273}

Provided further that no custom or usage which is contrary to the provisions of this Code or contrary to the public interest, morality and health of the society, shall get any kind of protection under this term. No ill-social practiced in any part of this country shall be protected by the law.

(d) "Degrees of prohibited relationship"- a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship;

\textit{Explanation I.}- Relationship includes,-

a) relationship by half or uterine blood as well as by full blood;

b) illegitimate blood relationship as well as legitimate;

c) relationship by adoption as well as by blood;

and all terms of relationship in this Act shall be construed accordingly.

\textit{Explanation II.}- "Full blood" and "half blood"- two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives.

\textit{Explanation III.}- "Uterine blood"- two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands.

\textit{Explanation IV.}- In Explanations II and III, "ancestor" includes the father and "ancestress" the mother;\textsuperscript{274}

(e) "District" means the local limit of the jurisdiction of a Principal Civil Court of original jurisdiction, and includes the local limits of the original civil

\textsuperscript{273}See, s. 3(d) of HSA.
\textsuperscript{274} s. 2(b) of SMA.
jurisdiction of a High Court. \textsuperscript{275} It also includes the area for which a marriage officer is appointed under sub section (1) or sub section (2) of s. 3 of SMA; \textsuperscript{276}

(f) "District Court" means, in any area for which there is a city civil court, that court, and in any other area, the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government by notification in the Official Gazette as having jurisdiction in respect of the matters dealt with in this code; \textsuperscript{277} It also includes Family Court for the purpose of part II, III and IV of this code.

Provided that, places where Family Courts are not constituted till yet, the matters relating to part II, III and IV shall be tried by the district court or the court appointed by the Competent Authority in this reference.

Provided that, "Court" shall include district court and Family Court for the purpose of part II, III and IV of this court. And also the Supreme Court, High Court or any such authority which is constituted to execute the duties and powers of this Code.

(g) "District Judge" means the Judge of a Principal Civil Court of original jurisdiction; \textsuperscript{278}

(h) "Family Court" means a court established under S. 3 of the Family Court Act, 1984;

(i) "State" includes any division of India having a Court of the last resort; \textsuperscript{279}

(j) "State Government", means government of a State and in relation to a Union Territory, means the administrator thereto; \textsuperscript{280}
(k) "Adoption" means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.\textsuperscript{281}

(l) "Guardian" means a person having the care of the person of a minor or of his property or of both his person and property, and includes-

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor's father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any court of wards.\textsuperscript{282}

(m) "Wards" means a minor for whose person or property, or both, there is a guardian.\textsuperscript{283}

(n) "Dependants" mean the following relatives of the deceased:-

(i) his or her father;

(ii) his or her mother.

(iii) his widow, so long as she does not re-marry;

(iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor; provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great grand-son, from the estate of his father or mother or father's father or father's mother;

(v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent

\textsuperscript{281} s. 2(aa) of JJ Act\textsuperscript{282} See, s. 4(2) of GWA, s. 4(b) of HMGA, s. 2(j) of JJ Act.\textsuperscript{283} s. 3 of GWA
that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;

(vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance-

(a) from the estate of her husband, or
(b) from her son or daughter if any, or his or her estate, or
(c) from her father-in-law or his father or the estate of either of them;

(vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;

(viii) his or her minor illegitimate son, so long as he remains a minor;

(ix) his or her illegitimate daughter, so long as she remains unmarried;

(o) "Maintenance" includes-

i. in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

ii. in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

(p) "Agnate"- one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males;

(q) "Cognate"- one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males;

---

284 See, s. 21 of HAMA
285 s. 3(b) of HAMA
286 s. 3(a) of HSA
287 s. 3(c) of HSA
(r) "Related" means related by legitimate kinship:
Provided that illegitimate children shall be deemed to be related to their mothers and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly;\(^{288}\)

(s) "Heir" means any person, male or female, who is entitled to succeed to the property of an intestate;\(^{289}\)

(t) "Intestate"- a person is deemed to die intestate in respect of properly of which he or she has not made a testamentary disposition capable of taking effect;\(^{290}\)

(u) "Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor;\(^{291}\)

(v) "Codicil" means an instrument made in relation to a Will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the Will;\(^{292}\)

(w) "Executor" means a person to whom the execution of the last Will of a deceased person is, by the testator’s appointment, confided;\(^{293}\)

(x) "Probate" means the copy of a Will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator;\(^{294}\)

\(^{288}\) s. 3(j) of HSA
\(^{289}\) See, s. 3(f) of HSA.
\(^{290}\) s. 3(g) of HSA
\(^{291}\) s. 2(a) of ISA
\(^{292}\) s. 2(b) of ISA
\(^{293}\) s. 2(c) of ISA
\(^{294}\) s. 2(f) of ISA
(y) "Will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death;\textsuperscript{295}

(z) "Collector" means the chief officer in charge of the revenue administration of a district and includes any officer whom the State Government, by notification in the Official Gazette may, by name or in virtue of his office, appoint to be a Collector in any local area or with respect to any class of persons, for all or any of the purposes of this Code;\textsuperscript{296}

(zz) "Prescribed" means prescribed by rules made under this code;\textsuperscript{297}

(zzz) "Code" means a uniform civil code in this reference;

All other words and expressions used, but not defined in this code but defined under any other law for the time being enforced, shall have the meaning respectively assigned to them in that legislation.

\textsuperscript{295} s. 2(h) of ISA
\textsuperscript{296}See, s. 4(6) of GWA
\textsuperscript{297}See, s. 2(1) of SMA.
3. **Marriage Officers.**— (1) For the purpose of this part the State Government may, by notification in the Official Gazette, appoint one or more Marriage Officers for the whole or any part of the State.

(2) For the purposes of this part, in its application to citizens of India domiciled in the territories to which this Code extends who are in the State of Jammu and Kashmir, the Central Government may, by notification in the Official Gazette, specify such officers of the Central Government as it may think fit to be the Marriage Officers for the State or any part thereof.\(^{298}\)

4. **Conditions relating to solemnization of marriages.**— Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this part, if at the time of the marriage the following conditions are fulfilled, namely:-

   (a) neither party has a spouse living;

   (b) neither party—

      (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

      (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

     (iii) has been subject to recurrent attacks of insanity;

\(^{298}\)See, s. 3 of SMA.
(c) the male has completed the age to twenty-one years and the female the age of eighteen years;

(d) the parties are not within the degrees of prohibited relationship:

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Code extends.

[Explanation.- In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied-

(i) that such rule has been continuously and uniformly observed for a long time among those members;
(ii) that such rule is certain and not unreasonable or opposed to public policy; and
(iii) that such rule, if applicable only to a family, has not been discontinued by the family.

Provided that, any marriage, on or before the commencement of this Code solemnized in any other form; except under the provisions of Foreign Marriage Act, 1969, shall be considered to have been solemnized as per the provisions of this section for the purpose of any proceeding in future.

Provided that, all the rights and obligations of marriage parties, shall be governed as per the provisions of this Code only.299

299 See, s. 4 of SMA.
5. Notice of intended marriage.- When a marriage is intended to be solemnized under this part, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Scheduled to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.300

6. Marriage Notice Book and publication.- (1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.301

7. Objection to marriage.- (1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

(2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of section 6,
the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf.302

8. Procedure on receipt of objection.- (1) If an objection is made under section 7 to an intended marriage, the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.

(2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of thirty days from the date of such refusal, prefer an appeal to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer shall act in conformity with the decision of the court.303

9. Powers of Marriage Officers in respect of inquiries.- (1) For the purpose of any inquiry under section 8, the Marriage Officer shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:-

302 s. 7 of SMA
303 s. 8 of SMA
(a) summoning and enforcing the attendance of witnesses and examining them on oath;
(b) discovery and inspection;
(c) compelling the production of documents;
(d) reception of evidence on affidavits; and
(e) issuing commissions for the examination of witnesses;
and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (45 of 1860).

Explanation.- For the purpose of enforcing the attendance of any person to give evidence, the local limits of the jurisdiction of the Marriage Officer shall be the local limits of his district.

(2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith, he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof, to the parties to the intended marriage, and any order for costs so made may be executed in the same manner as a decree passed by the district court within the local limits of whose jurisdiction the Marriage Officer has his office.\(^\text{304}\)

10. Procedure on receipt of objection by Marriage Officer abroad.- Where an objection is made under section 7 to a Marriage Officer [in the State of Jammu and Kashmir in respect of an intended marriage in the State], and the Marriage Officer, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give

\(^{304}\) s. 9 of SMA.
its decision thereon in writing to the Marriage Officer who shall act in conformity with the decision of the Central Government.  

11. Declaration by parties and witnesses.- Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this part, and the declaration shall be countersigned by the Marriage Officer.

12. Place and form of solemnization.- (1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance there from as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that marriages solemnized in any other form for which the customs and usage of any intended party allows customarily, may be the valid format of marriage and any such marriage shall be complete and binding on the parties.

Provided that where the marriage is solemnized before marriage officer, it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties, "I, (A), take the (B), to be my lawful wife (or husband)."

13. Certificate of marriage.- (1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

305 See, s. 11 of SMA.
306 See, s. 12 of SMA.
(2) On a certificate being entered in the Marriage Certificate Book by
the Marriage Officer, the Certificate shall be deemed to be conclusive evidence
of the fact that a marriage under this part has been solemnized and that all
formalities respecting the signatures of witnesses have been complied with.\textsuperscript{308}

14. New notice when marriage not solemnized within three months.-
Whenever a marriage is not solemnized within three calendar months from the
date on which notice thereof has been given to the Marriage Officer as required
by section 5, or where an appeal has been filed under sub-section (2) of section
8, within three months from the date of the decision of the district court on such
appeal or, where the record of a case has been transmitted to the Central
Government under section 10, within three months from the date of decision of
the Central Government, the notice and all other proceedings arising therefrom
shall be deemed to have lapsed, and no Marriage Officer shall solemnize the
marriage until a new notice has been given in the manner laid down in this
part.\textsuperscript{309}

15. Registration of marriages celebrated in other forms.- Any marriage
celebrated, whether before or after the commencement of this code, other than
a marriage solemnized under this Code, may be registered under this part by a
Marriage Officer in the territories to which this Code extends if the following
conditions are fulfilled, namely:-
a) a ceremony of marriage has been performed between the parties and they
have been living together as husband and wife ever since;
b) neither party has at the time of registration more than one spouse living;
c) neither party is an idiot or a lunatic at the time of registration;
d) the parties have completed the age of twenty-one years at the time of
registration;
e) the parties are not within the degrees of prohibited relationship:

\textsuperscript{308}See, s.13 of SMA.
\textsuperscript{309}See, s. 14 of SMA.
Provided that in the case of a marriage celebrated before the commencement of this code, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

16. Procedure for registration.- Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this part the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in section 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.

17. Appeals from orders under section 16.- Any person aggrieved by any order of a Marriage Officer refusing to register a marriage under this part many, within thirty days from the date of the order, appeal against that order to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer to whom the application was made shall act in conformity with such decision.

18. Effect of registration of marriage under this Part.- Subject to the provisions contained in sub-section (2) of section 20, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this

---

310 See, s. 15 of SMA.
311 See, s. 16 of SMA.
312 See, s. 17 of SMA.
Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this part, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents.

Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Code, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.313

Chapter — II

Restitution of Conjugal Rights

19. Restitution of conjugal rights.— When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district/family court, for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

[Explanation.— Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]314

313See, s. 18 of SMA.
314See, s. 22 of SMA.
20. Void marriages.- (1) Any marriage solemnized under this part shall be null and void [and may, on a petition presented by either party thereto against the other party, be so declared] by a decree of nullity if-

(i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or

(ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this part within the meaning of section 18, but the registration of any such marriage under Chapter I may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.315

21. Voidable marriages.- Any marriage solemnized under this part shall be voidable and may be annulled by a decree of nullity if,-

(i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or

(ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872):

315See, s. 24 of SMA.
Provided that, in the case specified in clause (ii), the court shall not grant a decree unless it is satisfied,—

a) that the petitioner was at the time of the marriage ignorant of the facts alleged;

b) that proceedings were instituted within a year from the date of the marriage; and

c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

Provided further that in the case specified in clause (iii), the court shall not grant a decree if,—

a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or

b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.316

22. Legitimacy of children of void and voidable marriages.— (1) Notwithstanding that a marriage is null and void under section 20, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this part and whether or not the marriage is held to be void otherwise than on a petition under this chapter.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 21, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it has been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

316 See, s. 25 of SMA.
Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 21, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Code, such child would have been incapable of possessing or acquiring any such rights by reason of not his being the legitimate child of his parents.\footnote{See, s. 26 of SMA.}

23. Divorce.- [(1)] Subject to the provisions of this part and to the rules made thereunder, a petition for divorce may be presented to the district/family court either by the husband or the wife on the ground that the respondent-

(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860);

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.- In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia:
(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or

(f) has been suffering from venereal disease in a communicable form; or

g) has been suffering from leprosy, the disease not having been contacted from the petitioner; or

(h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;

[Explanation.- In this sub-section, the expression "desertion" means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly;]

(1A) A wife may also present a petition for divorce to the district court on the ground,-

(i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;

(ii) that in a suit for maintenance, or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.]

(2) Subject to the provisions of this part and to the rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act,
1970 (29 of 1970), may present a petition for divorce to the district/family court on the ground—

(i) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.\textsuperscript{318}

24. Divorce by mutual consent.- (1) Subject to the provisions of this part and to the rules made thereunder, a petition for divorce may be presented to the district/family court by both the parties together on the ground that they have been living separately for the reasons that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties and on the presentation of the petition, the family court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this part, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.\textsuperscript{319}

25. Re-Marriage of divorced persons.- Where a marriage has been dissolved by a decree of divorce; and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed either party to the marriage may marry again.\textsuperscript{320}

\textsuperscript{318}See, s. 27 of SMA.
\textsuperscript{319}See, s. 28 of SMA
\textsuperscript{320} s. 30 of SMA.
26. Custody of children.- In any proceeding under Chapter II or Chapter III of this part the district/family court, may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending.

Provided that the application with respect to the maintenance and education of the minor children, during the proceeding, under Chapter II or Chapter III, shall, as far as possible, be disposed of within sixty days from the date of service or notice on the respondent.321

27. Disposal of joint property.- In any suit under this part, the court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.322

28. Settlement of wife's property for benefit of children.- In any case in which the court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the court that the wife is entitled to any property either in possession or reversion, the court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one half thereof, for the benefit of the children of the marriage or any of them.323

321 See, s. 38 of SMA.
322 See, s. 42 of PMDA.
323 s. 50 of PMDA.
29. **Alimony pendente lite.**- Where in any proceedings under chapter II or chapter III it appears to the district/family court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband's income, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under chapter II or chapter III, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.\(^{324}\)

30. **Permanent alimony and maintenance.**- (1) Any court exercising jurisdiction under Chapter II and III may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case, it may seem to the court to be just.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the court is satisfied that the wife in whose favour an order has been made under this section has re-married or is not leading a chaste life, it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.\(^{325}\)

\(^{324}\)See, s. 36 of SMA.

\(^{325}\)See, s. 37 of SMA.
Chapter – IV  
Jurisdiction and Procedure for this Part

31. Court to which petition should be made.- (1) Every petition under
Chapter II or Chapter III shall be presented to the district/family court within
the local limits of whose original civil jurisdiction-

(i) the marriage was solemnized; or

(ii) the respondent, at the time of the presentation of the petition
    resides; or

(iii) the parties to the marriage last resided together; or

(iv) in case the wife is the petitioner, where she is residing on the date
    of presentation of the petition; or

(v) the petitioner is residing at the time of the presentation of the
    petition, in a case where the respondent is at that time residing outside the
    territories to which this Code extends, or has not been heard of as being alive
    for a period of seven years by those who would naturally have heard of him if
    he were alive.

(2) Without prejudice to any jurisdiction exercisable by the court under
sub-section (1), the court may, by virtue of this sub-section, entertain a petition
by a wife domiciled in the territories to which this Code extends for nullity of
marriage or for divorce if she is resident in the said territories and has been
ordinarily resident therein for a period of three years immediately preceding the
presentation of the petition and the husband in not resident in the said territories. 326

32. Contents and verification of petitions.- (1) Every petition under Chapter
II or Chapter III shall state, as distinctly as the nature of the case permits the
facts on which the claim to relief is founded, and shall also state that there is no
collusion between the petitioner and the other party to the marriage.

326See, s. 31 of SMA
(2) The statements contained in every such petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.\(^{327}\)

33. Proceedings to be in camera and may not be printed or published.- (1)

Every proceeding under this part shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.\(^{328}\)

34. Duty of court in passing decrees.- (1) In any proceeding under chapter II or chapter III, whether defended or not, if the court is satisfied that,-

(a) any of the grounds for granting relief exists; and

(b) where the petition is founded on the ground specified in clause (a) of sub-section (1) of section 23, the petitioner has not in any manner been accessory to or connived at or condoned the act of sexual intercourse referred to therein, or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and

(c) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and

(d) the petition is not presented or prosecuted in collusion with the respondent; and

(e) there has not been any unnecessary or improper delay in instituting the proceedings; and

\(^{327}\) See, s. 32 of SMA

\(^{328}\) See, s. 33 of SMA
(f) there is no other legal ground why the relief should not be granted; then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this part, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (c), clause (e), clause (f), clause (g) and clause (h) of sub-section (1) of section 23.

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.329

35. Appeals from decrees and orders.- (1) All decrees made by the court in any proceeding under Chapter II or Chapter III shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

329 See, s. 34 of SMA.
(2) Orders made by the court in any proceeding under this part, under section 26 or section 30 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of ninety days from the date of the decree or order.330

36. Enforcement of decrees and orders.- All decrees and orders made by the court in any proceeding under Chapter II or Chapter III shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.331

37. Application of Act 5 of 1908.- Subject to the other provisions contained in this part, and to such rules as the High Court may make in this behalf, all proceedings under this part shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (5 of 1908).332

38. Power to transfer petitions in certain cases.-

(1) Where-

a) a petition under this part has been presented to the district court having jurisdiction, by a party to the marriage praying for a decree for divorce under section 23, and

b) another petition under this Chapter has been presented thereafter by the other party to the marriage praying for decree for divorce under section 23 on any ground whether in the same district court, or in a

330See, s. 39 of SMA.
331See, s. 39A of SMA.
332See, s. 40 of SMA.
different district court, in the same State or in a different State, the petition shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,-
   a) if the petitions are presented to the same district/family court, both the petitions shall be tried and heard together by that district/family court;
   b) if the petitions are presented to different family courts, the petitions presented later shall be transferred to the district/family court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district/family court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district/family court in which the later petition has been presented to the district/family court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.\(^{333}\)

39. Special provisions relating to trial and disposal of petitions under the Part.- (1) The trial of a petition under this part shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day, until its conclusions, unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this part shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this part shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.\(^{334}\)

\(^{333}\text{See, s. 40A of SMA.}\)

\(^{334}\text{See, s. 40B of SMA.}\)
40. **Documentary evidence.**- Notwithstanding anything contained in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Chapter on the ground that it is not duly stamped or registered.\textsuperscript{335}

41. **Penalty on married person marrying again under this part.**- Save as otherwise provided in Chapter II, every person who, being at the time married, procures, a marriage of himself or herself to be solemnized under this part shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, 1860 (45 of 1860), as the case may be, and the marriage so solemnized shall be void.\textsuperscript{336}

42. **Punishment of bigamy.**- Every person whose marriage is solemnized under this part or in any other legal manner and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code, 1860 (45 of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.\textsuperscript{337}

43. **Penalty for signing false declaration or certificate.**- Every person making, signing or attesting any declaration or certificate required by or under this part containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in section 199 of the Indian Penal Code, 1860 (45 of 1860).\textsuperscript{338}

\textsuperscript{335}See, s. 40C of SMA.
\textsuperscript{336}See, s. 43 of SMA.
\textsuperscript{337}See, s. 44 of SMA.
\textsuperscript{338}See, s. 45 of SMA.
44. Penalty for wrongful action of Marriage Officer.- Any Marriage Officer who knowingly and willfully solemnized a marriage under this part,-

(1) without publishing a notice regarding such marriage as required by section 5, or
(2) within thirty days of the publication of the notice of such marriage, or
(3) in contravention of any other provision in this part,

shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.339

45. Marriage Certificate Book to be open to inspection.- (1) The Marriage Certificate Book kept under this part shall at all reasonable times be open for inspection and shall be admissible as evidence of the statements therein contained,

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.340

46. Transmission of copies of entries in marriage records.- Every Marriage Officer in a State shall send to Registrar-General of Births, Deaths and Marriages of that State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals, and, in the case of Marriage Officers outside the territories to which this Code extends, the true copy shall be sent to such authority as the Central Government may specify in the behalf.341

---

339 See, s. 46 of SMA.
340 See, s. 47 of SMA.
341 See, s. 48 of SMA.
47. Correction of errors.- (1) Any Marriage Officer who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alternation of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Officer shall make the like marginal entry in the certificate thereof.

(2) Every correction made under this section shall be attested by the witnesses in whose presence it was made.

(3) Where a copy of any entry has already been sent under section 46 to the Registrar-General or other authority the Marriage Officer shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.342

48. Power of Supreme Court and High Court to make rules regulating procedure.- (1) The Supreme Court and High Court shall, by notification in the Official Gazette, make such rules consistent with the provisions contained in this part and the Code of Civil Procedure, 1908 (5 of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of Chapters II, III and IV of part II and, also for the part III and part IV of this Code.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for,-

a) the impleading by the petitioner of the adulterer as a co-respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so;

b) the awarding of damages against any such co-respondent;

c) the intervention in any proceeding under Chapter II or Chapter III by any person not already a party thereto;

342See, s. 49 of SMA.
d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions; and

e) any other matter for which no provision or no sufficient provisions is made in this part II, part III and part IV of this Code.\textsuperscript{343}

49. Power to make rules.- (1) The Central Government, in the case of officers of the Central Government, and the State Government, in all other cases, may, by notification in the Official Gazette, make rules for carrying out the purposes of this part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the duties and powers of Marriage Officers and the areas in which they may exercise jurisdiction;

(b) the manner in which a Marriage Officer may hold inquiries under this part and the procedure therefor;

(c) the form and manner in which any books required by or under this part shall be maintained;

(d) the fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this part;

(e) the manner in which public notice shall be given under section 16;

(f) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of section 46;

(g) any other matter which may be or requires to be prescribed.

(3) Every rule made by the Central Government under this part shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions

\textsuperscript{343}See, s. 41 of SMA.
aforesaid, both Houses agree in making any modification in the rule or both
Houses agree that the rule should not be made, the rule shall thereafter have
effect only in such modified form or be of no effect, as the case may be; so,
however, that any such modification or annulment shall be without prejudice to
the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this part shall be
laid, as soon as it is made before the State Legislature.\textsuperscript{344}

Part III
Adoption, Guardianship and Wards

Chapter – I
Adoption

50. Adoptions to be regulated by this Chapter.- (1) No adoption shall be
made after the commencement of this Code, by or to a citizen or any other
person, except in accordance with the provisions contained in this Chapter, and
any adoption made in contravention of the said provisions shall be void.
(2) An adoption which is void shall neither create any rights in the adoptive
family in favour of any person which he or she could not have acquired except
by reason of the adoption, nor destroy the rights of any person in the family of
his or her birth.\textsuperscript{345}

51. Requisites of a valid adoption.- No adoption shall be valid unless-

(i) the person adopting has the capacity, and also the right, to take in
adoption;

(ii) the person giving in adoption has the capacity to do so;

\textsuperscript{344}See, s. 50 of SMA
\textsuperscript{345}See, s. 5 of HAMA
(iii) the person adopted is capable of being taken in adoption; and
(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.346

52. Capacity of a male to take in adoption.- Any male who is of sound mind and is not minor has the capacity to take a son or a daughter in adoption.

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has been declared by a court of competent jurisdiction to be of unsound mind.347

53. Capacity of a female to take in adoption.- Any female who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has been declared by a court of competent jurisdiction to be of unsound mind.348

54. Persons capable of giving in adoption.- (1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has been declared by a court of competent jurisdiction to be of unsound mind.

346 s. 6 of HAMA
347 See, s. 7 of HAMA
348 See, s. 8 of HAMA.
(3) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

(4) Before granting permission to a guardian under sub-section(3), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation: For the purpose of this section—

(i) the expression "father" and "mother" do not include an adoptive father and an adoptive mother.  

55. Persons who may be adopted.- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-

(i) he or she has not already been adopted;

(ii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iii) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

349 See, s. 9 of HAMA.
350 See, s. 10 of HAMA.
56. Other conditions for a valid adoption.- In every adoption, the following conditions must be complied with:-

(i) The court may allow a child to be given in adoption —
(a) To a person irrespective marital status; or
(b) To parents to adopt the child of same sex irrespective of the number of living biological sons and daughters; or
(c) To childless couples

Provide that, (A) how many children to be given in adoption shall be decided by a court of competent jurisdiction. Court while making any order of adoption shall take into consideration all those factors essential for the welfare of the child.

(B) the same child may not be adopted simultaneously by two or more persons;

(C) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth [or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

(D) all the conditions prescribed under this chapter shall be equally applicable to the inter-country adoptions too, made from India.

(E) the performance of any religious ceremony shall not be essential to the validity of adoption.351

57. Effects of adoption.- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

351See, s. 11 of HAMA.
Provided that-

a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.  

58. Right of adoptive parents to dispose of their properties.- Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.  

59. Determination of adoptive mother in certain cases.- (1) Where a person who has a wife living adopts a child, she shall be deemed to be the adoptive mother.  

(2) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be step-mother of the adopted child.  

(3) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.  

---

352 s. 12 of HAMA.
353 s. 13 of HAMA.
354 See, s. 14 of HAMA.
60. **Valid adoption not to be cancelled.** - No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.\(^{355}\)

61. **Presumption as to registered documents relating to adoption.** - Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this chapter unless and until it is disproved.\(^{356}\)

62. **Prohibition of certain payments.** - (1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.

   (2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

   (3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorized by the State Government in this behalf.\(^{357}\)

---

\(^{355}\) s. 15 of HAMA.

\(^{356}\) See, s. 16 of HAMA.

\(^{357}\) s. 17 of HAMA.
63. Natural guardians of a minor.- The natural guardian of a minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are:

(a) in the case of a boy or an unmarried girl- the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father;

(c) in the case of a married girl- the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section:

(a) if he has completely and finally renounced the world by following religious way of any kind.

Explanation.- In this section, the expression "father" and "mother" do not include a step-father and a step-mother.\textsuperscript{358}

64. Natural guardianship of adopted son.- The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.\textsuperscript{359}

\textsuperscript{358} See, s. 6 of HMG
\textsuperscript{359} s. 7 of HMG
65. **Powers of natural guardian.**— (1) The natural guardian of a minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) In this section "court" means the city civil court or a district court within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.\(^{360}\)

66. **Testamentary guardians and their powers.**— (1) A father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 67) or in respect of both.

\(^{360}\)See, s. 8 of HMGA.
(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

(3) A widow entitled to act as the natural guardian of her minor legitimate children, and a mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 67) or in respect of both.

(4) A mother entitled to act as the natural guardian of her minor illegitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

(5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Chapter to such extent and subject to such restrictions, if any, as are specified in this Chapter and in the will.

(6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.361

67. Guardian not to be appointed for minor's undivided interest in joint family property.— Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.362

361 See, s. 9 of HMGA.
362 s. 12 of HMGA.
Division – II
Appointment and Declaration of Guardians

68. Power of the court to make order as to guardianship.-(1) Where the court is satisfied that it is for the welfare of a minor that an order should be made-

(a) appointing a guardian of his person or property or both, or

(b) declaring a person to be such a guardian, the court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this chapter.363

69. Persons entitled to apply for order.- An order shall not be made under the last forgoing section except on the application of—

a) the person desirous of being, or claiming to be, the guardian of the minor, or

b) any relative or friend of the minor, or

c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or

d) the Collector having authority with respect to the class to which the minor belongs.364

363 s. 7 of GWA.
364 s. 8 of GWA
70. **Court having jurisdiction to entertain application.**—(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the district/family court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the district/family court having jurisdiction in the place where the minor ordinarily resides, or to a district/family court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a district/family court other than that having jurisdiction in the place where the minor ordinarily resides, the court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other district/family court having jurisdiction.365

71. **Form of application.**—(1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of a plaint, and stating, so far as can be ascertained,—

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is female, whether she is married and if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor;

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has and where they reside;

(f) whether a guardian of the person or property or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

---

365 s. 9 of GWA.
(g) whether an application has at any time been made to the court or to any other court with respect to the guardianship of the person or property or both, of the minor and if so, when, to what court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the application; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the court and forwarded by post or in such other manner may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.366

72. Procedure on admission of application- (1) If the court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing-

(a) to be served in the manner directed in the Code of Civil Procedure, 1908 (5 of 1908) on- (i) the parents of the minor if they are residing in any State to which this Code extends; (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor; (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

366See, s. 10 of GWA.
(iv) any other person to whom, in the opinion of the court special notice of the applicant should be given; and

(b) to be pasted on some conspicuous part of the court-house and of the residence of the minor, and otherwise published in such manner as the court, subject to any rules made by the High Court under this chapter, thinks fit.

(2) The State Government may, by general or special order, require that when any part of the property described in a petition under section 71, sub-section (1), is land of which a Court of Wards could assume the superintendence, the court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides and on every Collector in whose district any portion of the land is situated, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the court or the Collector for the service or publication of any notice served or published under sub-section(2).367

73. Power to make interlocutory order for production of minor and interim protection of person and property.- (1) The court may direct that the person, if any, having the custody of the minor, shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise-

(a) the court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

367See, s. 11 of GWA.
(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.368

74. Hearing of evidence before making of order.- On the day fixed for the hearing of the application or as soon afterwards as may be, the court shall hear such evidence as may be adduced in support of or in opposition to the application.369

75. Simultaneous proceedings in different Courts.- (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more courts than one, each of those courts shall, on being apprised of the proceedings in the other court or courts, stay the proceedings before itself.
(2) If the courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.
(3) In any other case in which proceedings are stayed under sub-section (1), the courts shall report the case to, and be guided by such orders as they may receive from, their respective State Governments.370

76. Appointment or declaration of several guardians.- (1) the court may, if it thinks fit, appoint or declare two or more joint guardians of minor’s person or property or both.
(2) Separate guardians may be appointed or declared of the person and of the property of a minor.
(3) If a minor has several properties, the court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.371

368 s. 12 of GWA.
369 s. 13 of GWA.
370 s. 14 of GWA.
371 See, s. 15 of GWA
77. Appointment or declaration of guardian for property beyond jurisdiction of the Court.- If the court appoints or declares a guardian for any property situated beyond the local limits of its jurisdiction, the court having jurisdiction in the place where the property is situated shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

78. Matter to be considered by the Court in appointing guardian.- (1) In appointing or declaring the guardian of a minor, the court shall, subject to the provisions of this section, be guided by what, consistently for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the courts shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is mature enough to form an intelligent preference, the court may consider that preference.

(4) The court shall not appoint or declare any person to be a guardian against his will.

79. Appointment or declaration of Collector in virtue of office.- Where a Collector is appointed or declared by the court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property or both, as the case may be.

---

372 s. 16 of GWA
373 See, s. 17 of GWA
374 s. 18 of GWA
80. Guardian not to be appointed by the Court in certain cases.- Nothing in this Chapter shall authorise the court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a court of Wards, or to appoint or declare a guardian of the person –
   a) of a minor who is a married female and whose husband is not, in the opinion of court, unfit to be guardian of her person; or
   b) of a minor whose father is living and is not in the opinion of the court, unfit to be guardian of the person of the minor; or
   c) of a minor whose property is under the superintendence of a court of Wards competent to appoint a guardian of the person of the minor.375

Division – III
Duties, Rights and Liabilities of Guardians General

81. Fiduciary relation of guardian to ward.- (1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this chapter, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.376

82. Capacity of minors to act as guardians.- A minor is incompetent to act as guardian of any minor except his own wife or child or where he is the managing member of an undivided family, the wife or child of another minor member of that family.377

375 See, s. 19 of GWA
376 See, s. 20 of GWA
377 See, s. 21 of GWA
83. Remuneration of guardian.- (1) A guardian appointed or declared by the court shall be entitled to such allowance, if any, as the court thinks fit for his care and pains in the execution of his duties.
(2) When an officer of the Government, as such officer, is so appointed or declared to be the guardian, such fees shall be paid to the Government out of the property of the ward as the State Government, by general or special order, directs.378

84. Control of Collector as guardian.- A Collector appointed or declared by the court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the State Government or of such authority as that Government, by notification in the Official Gazette, appoints in this behalf.379

85. Duties of guardian of the person.- A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law requires.380

86. Title of guardian to custody of ward.- (1) If a ward leaves or is removed from the custody of a guardian of his person, the court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return and for the purpose of enforcing the order, may cause the ward to be arrested and to be delivered into the custody of the guardian.
(2) For the purpose of arresting the ward, the court may exercise the power conferred on a Magistrate of the First class by the Code of Criminal Procedure, 1973.
(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.381

378 s. 22 of GWA
379 s. 23 of GWA
380 See, s. 24 of GWA
87. Removal of ward from jurisdiction.- (1) A guardian of the person appointed or declared by the court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the court under sub-section (1) may be special or general and may be defined by the order granting it.\textsuperscript{382}

88. Duties of guardian of property.- A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it, if it were his own and subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realization, protection or benefit of the property.\textsuperscript{383}

Provided that, no \textit{de facto} guardian shall be entitled to dispose off or deal with the property of a minor merely on ground of his or her being the \textit{de facto} guardian of a minor.

89. Power of testamentary guardian- Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this chapter been declared guardian and the court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.\textsuperscript{384}

\textsuperscript{381}See, s. 25 of GWA
\textsuperscript{382} s. 26 of GWA
\textsuperscript{383} s. 27 of GWA
\textsuperscript{384} See, s. 28 of GWA.
90. Limitation of powers of guardian of property appointed or declared by the court- Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the court to be guardian of the property of a ward, he shall not without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.\(^{385}\)

91. Voidability of transfers made in contravention of section 89 or section 90.- A disposal of immovable property by a guardian in contravention of either of the two last foregoing section is voidable at the instance of any other person affected thereby.\(^{386}\)

92. Practice with respect to permitting transfer under section 90.- (1) Permission to the guardian to do any of the acts mentioned in section 90 shall not be granted by the court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which that act permitted is to be done, and specify such conditions, if any, as the court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The court may in its discretion attach to the permission the following among other conditions, namely,-

\(^{385}\) s. 29 of GWA.

\(^{386}\) See, s. 30 of GWA.
(a) that a sale shall not be completed without the sanction of the court;

(b) that a sale shall be made to the highest bidder by public auction before the court or some person specially appointed by the court for that purpose, at a time and place to be specified by the court, after such proclamation of the intended sale as the court subject to any rules made under this chapter by the High Court, directs;

(c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the court directs; 387

(d) that the whole or any part of the proceeds of that act permitted shall be paid into the court by the guardian, to be disturbed therefrom or to be invested by the court on prescribed securities or to be otherwise disposed off as the court directs.

(4) Before granting permission to a guardian to do and act mentioned in section 90, the court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

93. Variation of powers of guardian of property appointed or declared by the court.- Where a guardian of the property of a ward has been appointed or declared by the court and such guardian is not the Collector, the court may from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extend as it may consider to be for the advantage of the ward. 388

387 See, s. 31 of GWA.
388 s. 32 of GWA
94. Right of guardian so appointed or declared or apply to the Court for opinion in management of property of ward.— (1) A guardian appointed or declared by the court may apply by petition to the court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by such of the persons, interested in the application as the court thinks fit.

(3) The guardians stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject matter of the application.  

95. Obligations on guardian of property appointed or declared by the court.— Where a guardian of the property of a ward has been appointed or declared by the court and such guardian is not the Collector, he shall—

(a) if so required by the court, give a bond, as nearly as may be in the prescribed form, to the Judge of the court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed engaging duly to account for what he may receive in respect of the property of the ward;

(b) if so required by the court, deliver to the court, within six months from the date of his appointment or declaration by the court, or within such other time as the court directs, a statement of the immovable property belonging to the ward, of the money and other movable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

(c) if so required by the court, exhibit his accounts in the court at such times and in such form as the court from time to time directs;

389 s. 33 of GWA
(d) if so required by the court, pay into the court at such time as the court directs the balance due from him on those accounts, or so much thereof the court directs; and

(e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income, of the property of the ward as the court from time to time directs, and, if the courts so directs, the whole or any part of that property.\(^{390}\)

96. **Power to award remuneration for auditing accounts**- When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 95 or otherwise, the court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property.\(^{391}\)

97. **Suit against guardian where administration-bond was taken**- Where a guardian appointed or declared by the court has given a bond duly to account for what he may receive in respect of the property of his ward, the court may on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the court, or otherwise as the court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the court, and shall be entitled to recover thereon, as trustee for the ward, in respect of any breach thereof.\(^{392}\)

\(^{390}\) s. 34 of GWA.
\(^{391}\) s. 34A of GWA.
\(^{392}\) s. 35 of GWA.
98. Suit against guardian where administration- bond was not taken- (1)
Where a guardian appointed or declared by the court has not given a bond as
aforesaid, any person, with the leave of the court, may, as next friend, at any
time during the continuance of the minority of the ward, and upon such terms
as aforesaid, institute a suit against the guardian, or, in case of his death,
against his representative, for an account of what the guardian has received in
respect of the property of the ward, and may recover in the suit, as trustee for
the ward, such amount as may be found to be payable by the guardian or his
representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a
suit against a guardian, be subject to the provisions of the Code of Civil
Procedure, 1908 (5 of 1908).393

99. General liability of guardian as trustee.- Nothing in either of the two last
foregoing sections shall be construed to deprive a ward or his representative of
any remedy against his guardian, or the representative of the guardian, which,
not being expressly provided in either of those sections, any other beneficiary
or his representative would have against his trustee or the representative of the
trustee.394

Division – IV
Termination of Guardianship

100. Right of survivorship among joint guardians.- On the death of one of
two or more joint guardians, the guardianship continues to the survivor or
survivors until a further appointment is made by the court.395

393 See, s. 36 of GWA.
394 s. 37 of GWA.
395 s. 38 of GWA.
101. Removal of guardian.- The court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the court, or a guardian appointed by will or other instrument, for any of the following causes, namely,-

(a) for abuse of his trust;
(b) for continued failure to perform the duties of this trust;
(c) for incapacity to perform the duties of his trust;
(d) for ill-treatment, or neglect to take proper care, of his ward;
(e) for contumacious disregard of any provision of this chapter or of any order of the court;
(f) for conviction of an offence implying, in the opinion of the court, a defect of character which unfits him to be guardian of his ward;
(g) for having an interest adverse to the faithful performance of his duties;
(h) for ceasing to reside within the local limits of the jurisdiction of the court;
(i) in the case of a guardian of the property, of bankruptcy or insolvency;

Provided that a guardian appointed by will or other instrument, whether he has been declared under this chapter or not, shall not be removed-

(a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that the person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the court, renders it impracticable for him to discharge the functions of guardian.396

396 See, s. 39 of GWA.
102. Discharge of guardian—(1) If a guardian appointed or declared by the court desires to resign his office, he may apply to the court to be discharged.

(2) If the court finds that there is sufficient reason for the application, it shall discharge him, and if the guardian making the application is the Collector and the State Government approves of his applying to be discharged, the court shall in any case discharge him.397

103. Cessation of authority of guardian.—(1) The powers of a guardian of the person cease—

(a) by his death, removal or discharge;
(b) by the Court of Wards assuming superintendence of the person of the ward;
(c) by the ward ceasing to be a minor;
(d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the court, by her marriage to a husband who is not, in the opinion of the court, so unfit; or
(e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the court to be so unfit, by his ceasing to be so in the opinion of the court.

(2) The powers of the guardian of the property cease—
(a) by his death, removal or discharge;
(b) by the Court of Wards assuming superintendence of the property of the ward; or
(c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

397 s. 40 of GWA.
(4) When he has delivered the property or accounts as required by the court, the court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.398

104. Appointment of successor to guardian dead, discharged or removed.- When a guardian appointed or declared by the court is discharged, or, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the court, of its own motion or on application under this chapter, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.399

Division – V
Supplemental Provisions

105. Orders for regulating conduct or proceedings of guardian, and enforcement of those orders.- (1) The court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the court.

(2) Where there are more guardians than one of a ward and they are unable to agree upon a question affecting his welfare, any of them may apply to the court for its direction, and the court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the court shall, before making the order, direct notice of the application therefore or of the intention of the court to make it, as the case may be, to be given in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

398 s. 41 of GWA.
399 See, s. 42 of GWA.
(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.400

106. Penalty for removal of ward from jurisdiction.—If, for the purpose or with the effect of preventing the court from exercising its authority with respect to a ward, a guardian appointed or declared by the court removes the ward from the limits of the jurisdiction of the court in contravention of the provisions of section 87, he shall be liable, by order of the court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.401

107. Penalty for contumacy.—(1) In the following cases, namely,—

(a) If a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 73, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 86, sub-section (1); or

(b) if a guardian appointed or declared by the court fails to deliver to the court, within the time allowed by or under clause (b) of section 95, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section;

400 See, s. 43 of GWA.
401 See, s. 44 of GWA.
(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with the requisition under section 103, sub-section (3), the person, guardian or representative, as the case may be, shall be liable, by order of the court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first recusancy during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the court, the court may cause him to be arrested and recommitted to the civil jail.402

108. Reports by Collectors and subordinate courts.- (1) The court may call upon the Collector, or upon any court subordinate to the court, for a report on any matter arising in any proceeding under this Act, and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the subordinate court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a court by the Code of Civil Procedure, 1908 (5 of 1908).403

402 See, s. 45 of GWA.
403 See, s. 46 of GWA.
109. Orders appealable.- An appeal shall lie to the High Court from an order made by a court –
(a) under section 68, appointing or declaring or refusing to appoint or declare a guardian; or
(b) under section 70, sub-section (3), returning an application; or
(c) under section 86, making or refusing to make an order for the return of a ward to the custody of his guardian; or
(d) under section 87, refusing leave for the removal of a ward from the limits of the jurisdiction of the court, or imposing conditions with respect thereto; or
(e) under section 89 or section 90, refusing permission to a guardian to do an act referred to in the section; or
(f) under section 93, defining, restricting or extending the powers of a guardian; or
(g) under section 101, removing a guardian; or
(h) under section 102, refusing to discharge a guardian; or
(i) under section 105, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians or enforcing the order; or
(j) under section 106 or section 107, imposing a penalty

110. Finality of other order.- Save as provided by the last foregoing section and by provisions of the Code of Civil Procedure, 1908 (5 of 1908), an order made under this chapter shall be final, and shall not be liable to be contested by suit or otherwise.

111. Costs.- The costs of any proceeding under this chapter, including the costs of 'maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this chapter, be in the discretion of the court in which the proceeding is held.
112. Maintenance of wife.- (1) Subject to the provisions of this part, a wife, whether married before or after the commencement of this Code, shall be entitled to be maintained by her husband during her life time.

(2) A wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if there is any other cause justifying living separately.

(3) A wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste.\textsuperscript{407}

113. Maintenance of children, and aged parents and grandparents.- (1) Subject to the provisions of this section a citizen is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents and grand parents.

\textsuperscript{407}See, s. 18 of HAMA.
(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged and infirm parents and grandparents or a daughter who is unmarried extends in so far as the parents or grandparents or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.  

Explanation – In this section “parent” includes a childless step mother and step grand mother.

114. Maintenance of dependants.- (1) Subject to the provisions of sub-section (2) the heirs of a deceased are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a deceased dying after the commencement of this code, the dependant shall be entitled, subject to the provisions of this part, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this part.

115. Maintenance of widowed daughter-in-law.- (1) A wife, whether married before or after the commencement of this Code, shall be entitled to be maintained after the death of her husband by her father-in-law:

---

408 See, s. 20 of HAMA.
409 See, s. 22 of HAMA.
Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance—

(a) from the estate of her husband or her father or mother, or
(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any undivided property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.410

Chapter II

Amount of Maintenance

116. Amount of maintenance.— (1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this part, and in doing so, the court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged infirm parents under this Act, regard shall be had to—

(a) the position and status of the parties;
(b) the reasonable wants of the claimant;
(c) if the claimant is living separately, whether the claimant is justified in doing so;
(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
(e) the number of persons entitled to maintenance under this part.

410 See, s. 19 of HAMA.
(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Chapter, regard shall be had to -

(a) the net value of the estate of the deceased after providing for the payment of his debts;

(b) the provision, if any, made under a will of the deceased in respect of the dependant;

(c) the degree of relationship between the two;

(d) the reasonable wants of the dependant;

(e) the past relations between the dependant and the deceased;

(f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other source;

(g) the number of dependants entitled to maintenance under this part.411

117. Amount of maintenance may be altered on change of circumstances. - The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Code, may be altered subsequently if there is a material change in the circumstances justifying such alteration.412

Chapter III

Maintenance as Charge

118. Debts to have priority. - Subject to the provisions contained in section 119 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this part.413

411 See, s. 23 of HAMA.
412 See, s. 25 of HAMA.
413 See, s. 26 of HAMA.
119. Maintenance when to be a charge.- A dependant's claim for maintenance under this code, shall not be a charge on the estate of the deceased of any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.\textsuperscript{414}

120. Effect of transfer of property on right to maintenance.- Where a dependant has a right to receive maintenance out of an estate, and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.\textsuperscript{415}

\textbf{Part V}

\textbf{Inheritance and Succession}

\textbf{Chapter – I}

\textbf{Domicile}

121. Law regulating succession to deceased person's immovable and movable property, respectively.- (1) Succession to the immovable property in India of a person deceased shall be regulated by the law of India, wherever such person may have had his domicile at the time of his death.

(2) Succession to the movable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.\textsuperscript{416}

122. One domicile only affects succession to movables.- A person can have only one domicile for the purpose of the succession to his movable property.\textsuperscript{417}

\textsuperscript{414} See, s. 27 of HAMA.
\textsuperscript{415} s. 28 of HAMA.
\textsuperscript{416} s. 5 of ISA.
\textsuperscript{417} s. 5 of ISA.
123. **Domicile of origin of person of legitimate birth.** - The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.\(^{418}\)

124. **Domicile of origin of illegitimate child.** - The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.\(^{419}\)

125. **Continuance of domicile of origin.** - The domicile of origin prevails until a new domicile has been acquired.\(^{420}\)

126. **Acquisition of new domicile.** - A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

   **Explanation.** - A man is not to be deemed to have taken up his fixed habitation in India merely by reason of his residing therein the civil, military, naval or air force service of Government, or in the exercise of any profession or calling.\(^{421}\)

127. **Special mode of acquiring domicile in India.** - Any person may acquire a domicile in India by making and depositing in some office in India appointed in this behalf by the State Government, a declaration in writing under his hand of his desire to acquire such domicile; provided that he has been resident in India for one year immediately preceding the time of his making such declaration.\(^{422}\)

---

\(^{417}\) s. 6 of ISA.  
\(^{418}\) s. 7 of ISA.  
\(^{419}\) s. 8 of ISA.  
\(^{420}\) s. 9 of ISA.  
\(^{421}\) s. 10 of ISA.  
\(^{422}\) s. 11 of ISA.
128. Domicile not acquired by residence as representative of foreign Government, or as part of his family.- A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with such first-mentioned person as part of his family, or as a servant.423

129. Continuance of new domicile.- A new domicile continues until the former domicile has been resumed or another has been acquired.424

130. Minor's domicile.- The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

   Exception.- The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of Government, or has set up, with the consent of the parent, in any distinct business.425

131. Domicile acquired by woman on marriage.- By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.426

132. Wife's domicile during marriage.- A wife's domicile during her marriage follows the domicile of her husband.

   Exception.- The wife's domicile no longer follows that of her husband if they are separated by the sentence of a competent court, or if the husband is undergoing a sentence of transportation.427

423 s. 12 of ISA.
424 s. 13 of ISA.
425 s. 14 of ISA.
426 s. 15 of ISA.
427 s. 16 of ISA.
133. Minor's acquisition of new domicile.- Save as hereinbefore otherwise provided in this chapter, a person cannot, during minority, acquire a new domicile.428

134. Lunatic's acquisition of new domicile.- An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.429

135. Succession to movable property in India in absence of proof of domicile elsewhere.- If a person dies leaving moveable property in India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of India.430

136. Interests and powers not acquired nor lost by marriage.- (1) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.431

137. Effect of marriage between person domiciled and one not domiciled in India.- If a person whose domicile is not in India marries in India a person whose domicile is in India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in India at the time of the marriage.432

---

428 See, s. 17 of ISA.
429 s. 18 of ISA.
430 s. 19 of ISA.
431 See, s. 20 of ISA.
432 s. 21 of ISA.
138. **Settlement of minor's property in contemplation of marriage.**— (1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from India with the approbation of the High Court.433

Chapter II

Consanguinity

139. **Kindred or consanguinity.**— Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.434

140. **Lineal consanguinity.**— (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line, or between a man and his son, grandson, great-grandson and so downwards in direct descending line.

(2) Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.435

141. **Collateral consanguinity.**— (1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

(2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is necessary to reckon upwards from the person deceased to the common stock and then downwards

---

433 s. 22 of ISA.
434 s. 24 of ISA.
435 s. 25 of ISA.
to the collateral relative, a degree being allowed for each person, both ascending and descending.\textsuperscript{436}

142. Persons held for purpose of succession to be similarly related to deceased.- For the purpose of succession, there is no distinction-

(a) between those who are related to a person deceased through his father; and those who are related to him through his mother; or

(b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or

(c) between those who were actually born in the lifetime of a person deceased, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.\textsuperscript{437}

143. Mode of computing of degrees of kindred.- Degrees of kindred are computed in the manner set forth in the table of kindred set out in Schedule 1.\textsuperscript{438}

Chapter – III

Intestate Succession

144. As to what property deceased considered to have died intestate.- A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.\textsuperscript{439}

\textsuperscript{436} s. 26 of ISA.
\textsuperscript{437} s. 27 of ISA.
\textsuperscript{438} s. 28 of ISA.
\textsuperscript{439} s. 30 of ISA.
145. General Principles relating to intestate succession.- For the purpose of intestate succession –

a) Nearer relation shall exclude the remote relations.

b) Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.\(^{440}\)

c) If two or more heirs succeed together to the property of an intestate, they shall take the property –
   i. save as otherwise expressly provided in this part, *per capita* and not *per stirpes*; and
   ii. as tenants-in-common and not as joint tenants.\(^{441}\)

d) Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived that other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved that the younger survived the elder.\(^{442}\)

e) A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.\(^{443}\)

f) If any person is disqualified from inheriting any property under this part, it shall devolved as if such person had died before the intestate.\(^{444}\)

g) No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Code, on any other ground whatsoever.\(^{445}\)

h) There shall be no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of his death

---

\(^{440}\) s. 18 of HSA.
\(^{441}\) See, s. 19 of HSA.
\(^{442}\) s. 21 of HSA.
\(^{443}\) s. 25 of HSA.
\(^{444}\) s. 27 of HSA.
\(^{445}\) See, s. 28 of HSA.
were only conceived in the womb, but who have been subsequently born alive;

i) A lineal descendant of an intestate who has died in the lifetime of the intestate without leaving a widow or widower or any lineal descendant of a widow or widower of any lineal descendant shall not be taken into account indetermining the manner in which the property of which the intestate has died intestate shall be divided; and

j) Where a widow or widower of any relative of an intestate has married again in the life time of the intestate, such widow or widower shall not be entitled to receive any share of the property of which the intestate has died intestate, and such widow or widower shall be deemed not to be existing at the intestate's death.  

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

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

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

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

\[446\text{See, s. 50 of ISA.}\]
\[447\text{See, s. 51 of ISA}\]
147. Division of share of predeceased child of intestate leaving lineal descendants.- In all cases where a deceased dies leaving any lineal descendant, if any child of such intestate has died in the lifetime of the intestate, the division of the share of the property of which the intestate has died intestate which such child would have taken if living at the intestate's death shall be in accordance with the following rules, namely:-

(a) If such deceased child was a son, his widow and children shall take shares in accordance with the provisions of this chapter as if he had died immediately after the intestate's death:

Provided that where such deceased son has left a widow or a widower of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made shall be divided in accordance with the provisions of this chapter as property of which the intestate has died intestate, and in making the division of such residue the said deceased son of the intestate shall not be taken into account.

(b) If such deceased child was a daughter, her share shall be divided equally among her children.

(c) If any child of such deceased child has also died during the lifetime of the intestate, the share which he or she would have taken if living at the intestate's death, shall be divided in like manner in accordance with clause (a) or clause (b) as the case may be.

(d) Where a remoter lineal descendant of the intestate has died during the lifetime of the intestate, the provisions of clause (c) shall apply mutatis mutandis to the division of any share to which her or she would have been entitled if living at the intestate's death by reason of the pre-decease of all the intestate's lineal descendants directly between him or her and the intestate.448

448 See, s. 53 of ISA.
148. Division of property where intestate leaves no lineal descendant but leaves a widow or widower or a widower of any lineal descendant.- Where a deceased dies without leaving any lineal descendant but leaving a widow or widower or a widow or widower of a lineal descendant, the property of which the intestate dies intestate shall be divided in accordance with the following rules, namely:-

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

(b) if the intestate leaves a widow or widower and also a widow or widower of any lineal descendant, his widow or her widower shall receive one-third of the said property and the widow or widower of any lineal descendant shall receive another one-third or if there is more than one such widow or widower of lineal descendants, the last mentioned one-third shall be divided equally among them;

(c) if the intestate leaves no widow or widower, but one widow or widower of a lineal descendant, such widow or widower of the lineal descendant shall receive one-third of the said property or, if the intestate leaves no widow or widower but more than one widow or widower of lineal descendants, two thirds of the said property shall be divided among such widows or widowers of the lineal descendants in equal shares;

(d) the residue after the division specified in clause (a), or clause (b) or clause (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II; and the next-of-kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares;
(e) if there are no relatives entitled to the residue under clause (d), the whole of the residue shall be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.\textsuperscript{449}

149. Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow of any lineal descendant.- When a deceased dies leaving neither lineal descendants nor a widow or widower nor a widow or widower of any lineal descendant, his or her next-of-kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property of which he or she dies intestate. The next-of-kin standing first in Part II of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares.\textsuperscript{450}

150. Division of property where there is no relative entitled to succeed under the other provisions of this Chapter.- Where there is no relative entitled to succeed under the other provisions of this chapter to the property of which deceased has died intestate, the said property shall be divided equally among those of the intestate's relatives who are in the nearest degree of kindred to him.\textsuperscript{451}

151. Failure of Heirs.- If an interstate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Code, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.\textsuperscript{452}

\textsuperscript{449}See, s. 54 of ISA
\textsuperscript{450}See, s. 55 of ISA.
\textsuperscript{451}See, s. 56 of ISA.
\textsuperscript{452}See, s. 29 of HSA.
Chapter – IV
Wills and Codicils

152. Person capable of making Wills.- Every person of sound mind not being a minor may dispose of his property by Will.

   Explanation 1.- A woman may dispose by will of any of her absolute property which she could alienate by her own act during her life.

   Explanation 2.- No man can dispose by Will of any property, which are not his self-acquired property and also the property which is not of his share in any kind of property, except he has no direct heir.

   Explanation 3.- Persons who are deaf or dumb or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

   Explanation 4.- A person who is ordinarily insane may make a Will during interval in which he is of sound mind.

   Explanation 5.- No person can make a Will while he, is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.453

153. Testamentary guardian.- A father, whatever his age may be, may by Will appoint a guardian or guardians for his child during minority.454

154. Will obtained by fraud, coercion or importunity.- A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.455

155. Will may be revoked or altered.- A Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.456

453 See, s. 59 of ISA.
454 s. 60 of ISA.
455 s. 61 of ISA.
456 s. 62 of ISA.
Chapter - V
The Execution of Unprivileged Wills

156. Execution of unprivileged Wills.- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.\[457\]

157. Incorporation of papers by reference.- If a testator, in a Will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions, such document shall be deemed to form a part of the Will or codicil in which it is referred to.\[458\]

\[457\] s. 63 of ISA.
\[458\] s. 64 of ISA.
Chapter – VI

Privileged Wills

158. Privileged Wills.- Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Will made in the manner provided in section 159. Such Wills are called privileged Wills.459

159. Mode of making, and rules for executing, privileged Wills.- (1) Privileged Wills may be in writing, or may be made by word of mouth.

(2) The execution of privileged Wills shall be governed by the following rules:

(a) The Will may be written wholly by the testator, with his own hand. In such case it need not be signed or attested.

(b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

(c) If the instrument purporting to be a Will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his Will, if it is shown that it was written by the testator's directions or that he recognised it as his Will.

(d) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

(e) If the soldier, airman or mariner has written instructions for the preparation of his Will, but has died before it could be prepared and executed such instructions shall be considered to constitute his Will.

459 See, s. 65 of ISA.
(f) If the soldier, airman or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his Will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him.

(g) The soldier, airman or mariner may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time.

(h) A Will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged Will.\(^{460}\)

Chapter – VII

The Attestation, Revocation, Alteration and Revival of Wills

160. Effect of gift to attesting witness.- A Will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband; but the bequest or appointment shall be void so far as concerns the person so attesting or the wife or husband of such person or any person claiming under either of them.

Explanation.- A legatee under a Will does not lose his legacy by attesting a codicil which confirms the Will.\(^{461}\)

161. Witness not disqualified by interest or by being executor.- No person, by reason of interest in, or of his being an executor of, a Will shall be

\(^{460}\) s. 66 of ISA.
\(^{461}\) s. 67 of ISA.
disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof.\textsuperscript{462}

162. Revocation of Will by testator's marriage.- Every Will shall be revoked by the marriage of the maker, except a Will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Explanation.- Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.\textsuperscript{463}

163. Revocation of unprivileged Will or codicil.- No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.\textsuperscript{464}

164. Effect of obliteration, interlineations or alteration in unprivileged Will.- No obliteration, interlineations or other alteration made in any unprivileged Will after the execution thereof shall have any effect, except so far as the words or meaning of the Will have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the Will:

Provided that the Will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the Will opposite or near to such

\textsuperscript{462} s. 68 of ISA.
\textsuperscript{463} s. 69 of ISA.
\textsuperscript{464} s. 70 of ISA.
alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will.\textsuperscript{465}

\textbf{165. Revocation of privileged Will or codicil.-} A privileged Will or codicil may be revoked by the testator by an unprivileged Will or codicil, or by any act expressing an intention to revoke it and accompanied by such formalities as would be sufficient to give validity to a privileged Will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.- In order to the revocation of a privileged Will or codicil by an act accompanied by such formalities as would be sufficient to give validity to a privileged Will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged Will.\textsuperscript{466}

\textbf{166. Revival of unprivileged will.- (1)} No unprivileged Will or codicil, nor any part thereof, which has been revoked in any manner, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same.

\textbf{(2)} When any Will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the Will or codicil.\textsuperscript{467}

\textsuperscript{465} s. 71 of ISA.
\textsuperscript{466} s. 72 of ISA.
\textsuperscript{467} s. 73 of ISA.
Chapter – VIII
Construction of Wills

167. Wording of will.- It is not necessary that any technical words or terms of art be used in a Will, but only that the wording be such that the intentions of the testator can be known therefrom.\(^{468}\)

168. Inquiries to determine questions as to object or subject of Will.- For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a court shall inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduct to the right application of the words which the testator has used.\(^{469}\)

169. Misnomer or misdescription of object.- (1) Where the words used in a Will to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name of description shall not prevent the legacy from taking effect.

(2) A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.\(^{470}\)

170. When words may be supplied.- Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.\(^{471}\)

\(^{468}\) s. 74 of ISA.
\(^{469}\) s. 75 of ISA.
\(^{470}\) s. 76 of ISA.
\(^{471}\) s. 77 of ISA.
171. Rejection of erroneous particulars in description of subject.- If the thing which the testator intended to bequeath can be sufficiently indentified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.472

172. When part of description may not be rejected as erroneous.- If a Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exits, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.- In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 171 shall be deemed to have been struck out of the Will.473

173. Entrinsic evidence admissible in cases of patent ambiguity.- Where the words of a Will are unambiguous, but it is found by extrinsic evidence that they admit of application, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.474

174. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.- Where there is an ambiguity or deficiency on the face of a Will, no extrinsic evidence as to the intentions of the testator shall be admitted.475

472 s. 78 of ISA.
473 s. 79 of ISA.
474 s. 80 of ISA.
475 s. 81 of ISA.
175. Meaning of clause to be collected from entire Will. - The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.\textsuperscript{476}

176. When words may be understood in restricted sense, and when in sense wider than usual. - General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.\textsuperscript{477}

177. Which of two possible constructions preferred. - Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred.\textsuperscript{478}

178. No part rejected, if it can be reasonably construed. - No part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.\textsuperscript{479}

179. Interpretation of words repeated in different parts of Will. - If the same words occur in different parts of the same Will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.\textsuperscript{480}

\textsuperscript{476} s. 82 of ISA.\textsuperscript{477} s. 83 of ISA.\textsuperscript{478} s. 84 of ISA.\textsuperscript{479} s. 85 of ISA.\textsuperscript{480} s. 86 of ISA.
180. Testator's intention to be effectuated as far as possible.- The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.\textsuperscript{481}

181. The last of two inconsistent clauses prevails.- Where two clauses of gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.\textsuperscript{482}

182. Will or bequest void for uncertainty.- A Will or bequest not expressive of any definite intention is void for uncertainty.\textsuperscript{483}

183. Words describing subject refer to property answering description at testator's death.- The description contained in a Will of property, the subject of gift, shall, unless a contrary intention appears by the Will, be deemed to refer to and comprise the property answering that description at the death of the testator.\textsuperscript{484}

184. Power of appointment executed by general bequest.- Unless a contrary intention appears by the Will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power.\textsuperscript{485}

\textsuperscript{481} s. 87 of ISA.
\textsuperscript{482} s. 88 of ISA.
\textsuperscript{483} s. 89 of ISA.
\textsuperscript{484} s. 90 of ISA.
\textsuperscript{485} s. 91 of ISA.
185. Implied gift to objects of power in default of appointment.- Where property is bequeathed to or for the benefit of certain objects as a specified person may appoint or for the benefit of certain objects in such proportions as a specified person may appoint, and the Will does not provide for the event of no appointment being made; if the power given by the Will is not exercised, the property belongs to all the objects of the power in equal shares.\textsuperscript{486}

186. Bequest to "heirs", etc., of particular person without qualifying terms.- Where a bequest is made to the "heirs" or "right heirs" or "relations" or "nearest relations" or "family" or "kindred" or "nearest of kin" or "next-of-kin" of a particular person without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.\textsuperscript{487}

187. Bequest to "representatives", etc., of particular person.- Where a bequest is made to the "representatives" or "legal representatives" or "personal representatives" or "executors or administrator" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed, shall be distributed as if it had belonged to such person and he had died intestate in respect of it.\textsuperscript{488}

188. Bequest without words of limitation.- Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him.\textsuperscript{489}

\textsuperscript{486} s. 92 of ISA.
\textsuperscript{487} s. 93 of ISA.
\textsuperscript{488} s. 94 of ISA.
\textsuperscript{489} s. 95 of ISA.
189. Bequest in alternative.- Where a property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy if he is alive at the time when it takes effect; but if he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.490

190. Effect of words describing a class added to bequest to person.- Where property is bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will.491

191. Bequest to class of persons under general description only.- Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.492

192. Construction of terms.- In a Will-

(a) the word "children" applies only to lineal descendants in the first degree of the person whose "children" are spoken of;

(b) the word "grand-children" applies only to lineal descendants in the second degree of the person whose "grand-children" are spoken of;

(c) the words "nephews" and "nieces" apply only to children of brothers or sisters;

(d) the words "cousins", or "first cousins", or "cousins-german", apply only to children of brothers or of sisters of the father or mother of the person whose "cousins", or "first cousins", or "cousins-german", are spoken of;

490 s. 96 of ISA.
491 s. 97 of ISA.
492 s. 98 of ISA.
(e) the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

(f) the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

(g) the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of;

(h) words expressive of collateral relationship apply alike to relatives of full and of half blood; and

(i) all words expressive of relationship apply to a child in the womb who is afterwards born alive.493

193. Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate.- In the absence of any intimation to the contrary in a Will, the word "child", the word "son", the word "daughter", or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative.494

194. Rules of construction where Will purports to make two bequests to same person.- Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the Will to show what he intended, the following rules shall have effect in determining the construction to be put upon the Will:-

493 s. 99 of ISA.
494 s. 100 of ISA.
(a) If the same specific thing is bequeathed twice to the same legatee in the same Will or in the Will and again in the codicil, he is entitled to receive that specific thing only.

(b) Where one and the same Will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

(c) Where two legacies of unequal amount are given to the same person in the same Will, or in the same codicil, the legatee is entitled to both.

(d) Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a Will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation :- In clauses (a) to (d) of this section, the word "Will" does not include a codicil.495

195. Constitution of residuary legatee.- A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.496

196. Property to which residuary legatee entitled.- Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.497

197. Time of vesting legacy in general terms.- If a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.498

495 s. 101 of ISA.
496 s. 102 of ISA.
497 s. 103 of ISA.
498 s. 104 of ISA.
198. In what case legacy lapses.- (1) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the Will that the testator intended that it should go to some other person.

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.\textsuperscript{499}

199. Legacy does not lapse if one of two joint legatees die before testator.- If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole.\textsuperscript{500}

200. Effect of words showing testator's intention to give distinct shares.- If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.\textsuperscript{501}

201. When lapsed share goes as undisposed of.- Where a share which lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.\textsuperscript{502}

202. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.- Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives the testator, the bequest shall not lapse, but shall take effect as if the death or the legatee

\textsuperscript{499} s. 105 of ISA.
\textsuperscript{500} s. 106 of ISA.
\textsuperscript{501} s. 107 of ISA.
\textsuperscript{502} s. 108 of ISA.
had happened immediately after the death of the testator, unless a contrary intention appears by the Will.\textsuperscript{503}

\textbf{203. Bequest to A for benefit of B does not lapse by A' death.} Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.\textsuperscript{504}

\textbf{204. Survivorship in case of bequest to described class.} Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as are alive at the testator's death.

\textit{Exception.} If property is bequeathed to a class or persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of testator.\textsuperscript{505}

\textbf{Chapter – IX}

\textbf{Void Bequests}

\textbf{205. Bequest to person by particular description, who is not in existence at testator's death.} Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

\textit{Exception.} If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise; and if a person answering the description is alive at the

\textsuperscript{503} s. 109 of ISA.
\textsuperscript{504} s. 110 of ISA.
\textsuperscript{505} s. 111 of ISA.
death of the testator, or comes into existence between that event, and such later
time, the property shall, at such later time, go to that person, or, if he is dead, to
his representatives.\footnote{506}{s. 112 of ISA.}

206. Bequest to person not in existence at testator's death subject to prior
bequest.- Where a bequest is made to a person not in existence at the time of
the testator's death, subject to a prior bequest contained in the Will, the later
bequest shall be void, unless it comprises the whole of the remaining interest of
the testator in the thing bequeathed.\footnote{507}{s. 113 of ISA.}

207. Rule against perpetuity.- No bequest is valid whereby the vesting of the
thing bequeathed may be delayed beyond the life-time of one or more persons
living at the testator's death and the minority of some person who shall be in
existence at the expiration of that period, and to whom, if he attains full age,
the thing bequeathed is to belong.\footnote{508}{s. 114 of ISA.}

208. Bequest to a class some of whom may come under rules in sections
206 and 207.- If a bequest is made to a class of persons with regard to some of
whom it is inoperative by reason of the provisions of section 206 or section
207, such bequest shall be void in regard to those persons only, and not in
regard to the whole class.\footnote{509}{s. 115 of ISA.}

209. Bequest to take effect on failure of prior bequest.- Where by reason of
any of the rules contained in section 206 and 207, any bequest in favour of a
person or of a class of persons is void in regard to such person or the whole of
such class, any bequest contained in the same Will and intended to take effect
after or upon failure of such prior bequest is also void.\footnote{510}{s. 116 of ISA.}
210. Effect of direction for accumulation.- (1) Where the terms of a Will
direct that the income arising from any property shall be accumulated either
wholly or in part during any period longer than a period of eighteen years from
the death of the testator, such direction shall, save as hereinafter provided, be
void to the extent to which the period during which the accumulation is
directed exceeds the aforesaid period, and at the end of such period of eighteen
years the property and the income thereof shall be disposed of as if the period
during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for
the purpose of-

(i) the payment of the debts of the testator or any other person
taking any interest under the Will, or

(ii) the provision of portions for children or remoter issue of
the testator or of any other person taking any interest under the Will, or

(iii) the preservation or maintenance of any property
bequeathed, and such direction may be made accordingly.\(^{511}\)

211. Bequest to religious or charitable uses.- No man having a nearer relative
or a nephew or a niece shall have power to bequeath any property to religious
or charitable uses, except by Will or Gift.\(^{512}\)

Chapter – X
Vesting of Legacies

212. Date of vesting of legacy when payment or possession postponed.-
Where by the terms of a bequest the legatee is not entitled to immediate
possession of the thing bequeathed, a right to receive it at the proper time shall,
unless a contrary intention appears by the Will, become vested in the legatee on
the testator's death, and shall pass to the legatee's representatives if he dies

\(^{511}\) s. 117 of ISA.
\(^{512}\) See, s. 118 of ISA.
before that time and without having received the legacy, and in such cases the
legacy is from the testator's death said to be vested in interest.

Explanation.- An intention that a legacy to any person shall not become
vested in interest in him is not to be inferred merely from a provision whereby
the payment or possession of the thing bequeathed is postponed, or whereby a
prior interest therein is bequeathed to some other person, or whereby the
income arising from the fund bequeathed is directed to be accumulated until the
time of payment arrives, or from a provision that, if a particular event shall
happen, the legacy shall go over to another person.513

213. Date of vesting when legacy contingent upon specified uncertain
event.- (1) A legacy bequeathed in case a specified uncertain event shall
happen does not vest until that event happens.

(2) A legacy bequeathed in case a specified uncertain event shall not
happen does not vest until the happening of that event becomes impossible.

(3) In either case, until the condition has been fulfilled, the interest of
the legatee is called contingent.

Exception.- Where a fund is bequeathed to any person upon his attaining
a particular age, and the Will also gives to him absolutely the income to arise
from the fund before he reaches that age, or directs the income, or so much of it
as may be necessary, to be applied for his benefit, the bequest of the fund is not
contingent.514

214. Vesting of interest in bequest to such members of a class as shall have
attained particular age.- Where a bequest is made only to such members of a
class as shall have attained a particular age, a person who has not attained that
age cannot have a vested interest in the legacy.515

513 s. 119 of ISA.
514 s. 120 of ISA.
515 s. 121 of ISA.
Chapter – XI
Onerous Bequests

215. Onerous bequests.- Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.516

216. One of two separate and independent bequests to same person may be accepted, and other refused.- Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the later onerous.517

Chapter – XII
Contingent Bequests

217. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.- Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.518

218. Bequest to such of certain persons as shall be surviving at some period not specified.- Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the Will.519

516 s. 122 of ISA.
517 s. 123 of ISA.
518 s. 124 of ISA.
519 s. 125 of ISA.
Chapter – XIII
Conditional Bequests

219. Bequest upon impossible condition.- A bequest upon an impossible condition is void.520

220. Bequest upon illegal or immoral condition.- A bequest upon a condition, the fulfillment of which would be contrary to law or to morality is void.521

221. Fulfilment of condition precedent to vesting of legacy.- Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.522

222. Bequest to A and on failure of prior bequest to B.- Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator.523

223. When second bequest not to take effect on failure of first.- Where the Will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.524

520 s. 126 of ISA.
521 s. 127 of ISA.
522 s. 128 of ISA.
523 s. 129 of ISA.
524 s. 130 of ISA.
224. Bequest over conditional upon happening or not happening of specified uncertain event.- (1) A bequest may be made to any person with the condition super-added that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.  

(2) In each case the ulterior bequest is subject to the rules contained in sections 213, 214, 215, 216, 217, 218, 219, 220, 222 and 223.  

225. Condition must be strictly fulfilled.- An ulterior bequest of the kind contemplated by section 224 cannot take effect, unless the condition is strictly fulfilled.  

226. Original bequest not affected by invalidity of second.- If the ulterior bequest be not valid the original bequest is not affected by it.  

227. Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen, or not happen.- A bequest may be made with the condition super-added that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.  

228. Such condition must not be invalid under section 213.- In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 213.  

525 See, s. 131 of ISA.  
526 See, s. 132 of ISA.  
527 s. 133 of ISA.  
528 s. 134 of ISA.  
529 See, s. 135 of ISA.
229. Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.- Where a bequest is made with a condition super-added that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.530

230. Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.- Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfillment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.531

Chapter – XIV
Bequests with Directions as to Application or Enjoyment

231. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.- Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee

530 s. 136 of ISA.
531 s. 137 of ISA.
shall be entitled to receive the fund as if the Will had contained no such direction. 532

232. Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.- Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the Will had contained no such direction. 533

233. Bequest of fund for certain purposes, some of which cannot be fulfilled.- Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the Will, remains a part of the estate of the testator. 534

Chapter – XV

Bequests to An Executor

234. Legatee named as executor cannot take unless he shows intention to act as executor.- If a legacy is bequeathed to a person who is named an executor of the Will, he shall not take the legacy, unless he proves the will or otherwise manifests an intention to act as executor. 535

532 s. 138 of ISA.
533 s. 139 of ISA.
534 s. 140 of ISA.
535 s. 141 of ISA.
235. Specific legacy defined.- Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.\textsuperscript{536}

236. Bequest of certain sum where stocks, etc., in which invested are described.- Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will.\textsuperscript{537}

237. Bequest of stock where testator had, at date of Will, equal or greater amount of stock of same kind.- Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.\textsuperscript{538}

238. Bequest of money where not payable until part of testator's property disposed of in certain way.- A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator has been reduced to a certain form, or remitted to a certain place.\textsuperscript{539}

239. When enumerated articles not deemed specifically bequeathed.- Where a Will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.\textsuperscript{540}

\textsuperscript{536} s. 142 of ISA.
\textsuperscript{537} s. 143 of ISA.
\textsuperscript{538} s. 144 of ISA.
\textsuperscript{539} s. 145 of ISA.
\textsuperscript{540} s. 146 of ISA.
240. **Retention, in form, of specific bequest to several persons in succession.**- Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.  

241. **Sale and investment of proceeds of property bequeathed to two or more persons in succession.**- Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may by any general rule authorise or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will.  

242. **Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.**- If there is a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.  

**Chapter – XVII**

**Demonstrative Legacies**

243. **Demonstrative legacy defined.**- Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same, the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.- The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.  

---

541 s. 147 of ISA.
542 s. 148 of ISA.
543 s. 149 of ISA.
244. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.- Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund and, so far as the residue shall be deficient, out of the general assets of the testator.545

Chapter – XVIII
Ademption of Legacies

245. Ademption explained.- If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the Will.546

246. Non-ademption of demonstrative legacy.- A demonstrative legacy is not adeemed by reason that the property on which it is charged by the Will does not exist at the time of the death of the testator, or has been converted into property of a different kind, but it shall in such case be paid out of the general assets of the testator.547

247. Ademption of specific bequest of right to receive something from third party.- Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.548

544 s. 150 of ISA.
545 s. 151 of ISA.
546 s. 152 of ISA.
547 s. 153 of ISA.
548 s. 154 of ISA.
248. **Ademption pro tanto** by testator’s receipt of part of entire thing specifically bequeathed.- The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.  

549 s. 155 of ISA.

249. **Ademption pro tanto** by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.- If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.  

550 s. 156 of ISA.

250. **Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.**- Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.  

551 s. 157 of ISA.

251. **Ademption where stock, specifically bequeathed, does not exist at testators' death.**- Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.  

552 s. 158 of ISA.
252. Ademption pro tanto where stock specifically bequeathed, exists in part only at testator's death.- Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.\footnote{553 s. 159 of ISA.}

253. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.- A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.\footnote{554 s. 160 of ISA.}

254. When removal of thing bequeathed does not constitute ademption.- The removal of the thing bequeathed from the place in which it is stated in the Will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.\footnote{555 s. 161 of ISA.}

255. When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.- Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which may be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption, but if he mixes it up with the general mass of his property, the legacy is adeemed.\footnote{556 s. 162 of ISA.}

256. Change by operation of law of subject of specific bequest between date of will and testator's death.- Where a thing specifically bequeathed...
undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.\textsuperscript{557}

\textbf{257. Change of subject without testator's knowledge.-} Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.\textsuperscript{558}

\textbf{258. Stock specifically bequeathed lent to third party on condition that it be replaced.-} Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.\textsuperscript{559}

\textbf{259. Stock specifically bequeathed sold but replaced, and belonging to testator at his death.-} Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.\textsuperscript{560}

\textbf{Chapter – XIX}

\textbf{The Payment of Liability in Respect of the Subject of a Bequest}

\textbf{260. Non-liability of executor to exonerate specific legatees.-} (1) Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the Will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or

\textsuperscript{557} s. 163 of ISA.
\textsuperscript{558} s. 164 of ISA.
\textsuperscript{559} s. 165 of ISA.
\textsuperscript{560} s. 166 of ISA.
incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

(2) A contrary intention shall not be inferred from any direction which the Will may contain for the payment of the testator's debts generally.

Explanation.- A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.561

261. Completion of testator's title to things bequeathed to be at cost of his estate.- Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.562

262. Exoneration of legatee's immovable property for which land-revenue or rent payable periodically.- Where there is a bequest of any interest in immovable property in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of his death.563

263. Exoneration of specific-legatee's stock in joint stock company.- In the absence of any direction in the Will, where there is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of the stock, such call or payment shall, as between the testator's estate and the legatee, be borne by the estate; but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accepts the bequest.564

561 s. 167 of ISA.
562 s. 168 of ISA.
563 s. 169 of ISA.
564 s. 170 of ISA.
Chapter – XX
Bequests of Things Described in General Terms

264. Bequest of thing described in general terms.- If there is a bequest of something described in general terms the executor must purchase for the legatee what may reasonably be considered to answer the description.\(^{565}\)

Chapter – XXI
Bequests of the Interest or Produce of a Fund

265. Bequest of interest or produce of fund.- Where the interest or produce of a fund is bequeathed to any person, and the Will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal, as well as the interest, shall belong to the legatee.\(^ {566}\)

Chapter – XXII
Bequests of Amenities

266. Annuity created by Will payable for life only unless contrary intention appears by Will.- Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will, notwithstanding that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.\(^ {567}\)

\(^{565}\) s. 171 of ISA.
\(^{566}\) s. 172 of ISA.
\(^{567}\) s. 173 of ISA.
267. Period of vesting where Will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.- Where the Will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death, the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the Will.568

268. Abatement of annuity.- Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all legacies given by the Will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the Will.569

269. Where gift of annuity and residuary gift, whole annuity to be first satisfied.- Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.570

Chapter – XXIII
Legacies to Creditors And Portioners

270. Creditor prima facie entitled to legacy as well as debt.- Where a debtor bequeaths a legacy to his creditor, and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy, as well as to the amount of the debt.571

568 s. 174 of ISA.
569 s. 175 of ISA.
570 s. 176 of ISA.
571 s. 177 of ISA.
271. Child *prima facie* entitled to legacy as well as portion.- Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his Will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy, as well as the portion.\(^{572}\)

272. No ademption by subsequent provision for legatee.- No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.\(^{573}\)

Chapter – XXIV

Election

273. Circumstances in which election takes place.- Where a person, by his will professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and, in the latter case, he shall give up any benefit which may have been provided for him by the Will.\(^{574}\)

274. Devolution of interest relinquished by owner.- An interest relinquished in the circumstances stated in section 273 shall devolve as if it had not been disposed of by the Will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the Will.\(^{575}\)

\(^{572}\) s. 178 of ISA.
\(^{573}\) s. 179 of ISA.
\(^{574}\) s. 180 of ISA.
\(^{575}\) See, s. 181 of ISA.
275. **Testator's belief as to his ownership immaterial.**- The provisions of sections 273 and 274 apply whether the testator does or does not believe that which he professes to dispose of by his Will to be his own.576

276. **Bequest for man's benefit how regarded for purpose of election.**- A bequest for a person's benefit is, for the purpose of election, the same thing as a bequest made to himself.577

277. **Person deriving benefit indirectly not put to election.**- A person taking no benefit directly under a Will, but deriving a benefit under it indirectly, is not put to his election.578

278. **Person taking in individual capacity under Will may in other character elect to take in opposition.**- A person who in his individual capacity takes a benefit under a Will may, in another character, elect to take in opposition to the Will.579

279. **Exception to provisions of last six sections.**- Notwithstanding anything contained in sections 273 to 278, where a particular gift is expressed in the Will to be in lieu of something belonging to the legatee which is also in terms disposed of by the Will, then, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will.580

---

576 s. 182 of ISA.
577 s. 183 of ISA.
578 s. 184 of ISA.
579 s. 185 of ISA.
580 See, s. 186 of ISA.
280. When acceptance of benefit given by Will constitutes election to take under Will.- Acceptance of a benefit given by a Will constitutes an election by the legatee to take under the Will, if he had knowledge of his right to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.\textsuperscript{581}

281. Circumstances in which knowledge or waiver is presumed or inferred.- (1) Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the Will without doing any act to express dissent.

(2) Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.\textsuperscript{582}

282. When testator's representatives may call upon legatee to elect.- If the legatee does not, within one year after the death of the testator signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the Will.\textsuperscript{583}

283. Postponement of election in case of disability.- In case of disability the election shall be postponed until the disability ceases, or until the election is made by some competent authority.\textsuperscript{584}

\textsuperscript{581} s. 187 of ISA.
\textsuperscript{582} s. 188 of ISA.
\textsuperscript{583} s. 189 of ISA.
\textsuperscript{584} s. 190 of ISA.
Chapter – XXV
Gifts in Contemplation of Death

284. Property transferable by gift made in contemplation of death.- (1) A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by Will.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers, to another the possession of any movable property to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.585

Part VI
Protection of Property of Deceased

285. Person claiming right by succession to property of deceased may apply for relief against wrongful possession.- (1) If any person dies leaving property, moveable or immoveable, any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

(2) Any agent, relative or near friend, or the Court of Wards in cases within their cognizance, may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief.586

---

585 s. 191 of ISA.
586 s. 192 of ISA.
286. Inquiry made by Judge.- The District Judge to whom such application is made shall, in the first place, examine the applicant on oath, and may make such further inquiry, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made bona fide.587

287. Procedure.- If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, he shall summon the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly:

   Provided that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the inquiry necessary for summoning the party complained of or not.588

288. Appointment of curator pending determination of proceeding.- If it further appears upon such inquiry as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary proceeding can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators whose authority shall continue according to the terms of his or their respective appointment, and in no case

587 s. 193 of ISA.
588 s. 194 of ISA.
beyond the determination of the summary proceeding and the confirmation or deliver of possession in consequence thereof.

Provided that, in the case of land, the Judge may delegate to the Collector, or to any officer subordinate to the Collector, the powers of a curator:

provided, further, that every appointment of a curator in respect of any property shall be duly published.\textsuperscript{589}

289. Powers conferrable on curator.- The District Judge may authorize the curator to take possession of the property either generally, or until security is given by the party in possession, or until inventories of the property have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession:

Provided that it shall be in the discretion of the Judge to allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.\textsuperscript{590}

290. Prohibition of exercise of certain powers by curators.- (1) Where a certificate has been granted under Part IX of this Code, or a grant of probate or letters of administration has been made, a curator appointed under this Part shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

(2) Payment of debts, etc., to curators.- All persons who have paid debts or rents to a curator authorised by a court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.\textsuperscript{591}

\textsuperscript{589} s. 195 of ISA.
\textsuperscript{590} s. 196 of ISA.
\textsuperscript{591} See, s. 197 of ISA.
291. Curator to give security and may receive remuneration.- (1) The District Judge shall take from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter provided, and may authorise him to receive out of the property such remuneration in no case exceeding five per centum on the moveable property and on the annual profits of the immoveable property, as the District Judge thinks reasonable.

(2) All surplus money realized by the curator shall be paid into court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary proceeding.

(3) Security shall be required from the curator with all reasonable dispatch, and where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator; but no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.\textsuperscript{592}

292. Report from Collector where estate includes revenue-paying land.- (1) Where the estate of the deceased person consists wholly or in part of land paying revenue to Government, in all matters regarding the propriety of summoning the party in possession, of appointing a curator, or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector, and the Collector shall thereupon furnish the same:

Provided that in cases of urgency the Judge may proceed, in the first instance, without such report.

(2) The Judge shall not be obliged to act in conformity with any such report, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it is dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.\textsuperscript{593}

\textsuperscript{592} s. 198 of ISA.

\textsuperscript{593} s. 199 of ISA.
293. **Institution and defence of suits.**- The curator shall be subject to all orders of the District Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate:

Provided that an express authority shall be requisite in the order of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof. 594

294. **Allowances to apparent owners pending custody by curator.**- Pending the custody of the property by the curator, the District Judge may make such allowances to parties having a *prima facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he considers necessary, and may, at his discretion, take security for the repayment thereof with interest, in the event of the party being found, upon the adjudication of the summary proceeding, not to be entitled thereto. 595

295. **Accounts to be filed by curator.**- The curator shall file monthly accounts in abstract, and shall, on the expiry of each period of three months, if his administration lasts so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the District Judge. 596

296. **Inspection of accounts and right of interested party to keep duplicate.**- (1) The accounts of the curator shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator.

---

594 s. 200 of ISA.
595 s. 201 of ISA.
596 s. 202 of ISA.
(2) If it is found that the accounts of the curator are in arrear, or that they are erroneous or incomplete, or if the curator does not produce them whenever he is ordered to do so by the District Judge, he shall be punishable with fine not exceeding one thousand rupees for every such default.597

297. Bar to appointment of second curator for same property.- If the Judge of any district has appointed a curator, in respect of the whole of the property of a deceased person, such appointment shall preclude the Judge of any other district within the same State from appointing any other curator, but the appointment of a curator in respect of a portion of the property of the deceased shall not preclude the appointment within the same State of another curator in respect of the residue or any portion thereof:

Provided that no Judge shall appoint a curator or entertain a summary proceeding in respect of property which is the subject of a summary proceeding previously instituted under this Part before another Judge:

Provided, further, that if two or more curators are appointed by different Judges for several parts of an estate, the High Court may make such order as it thinks fit for the appointment of one curator of the whole property.598

298. Limitation of time for application for curator.- An application under this Part to the District Judge must be made within six months of the death of the proprietor whose property is claimed by right in succession.599

299. Bar to enforcement of Part against public settlement or legal directions by deceased.- Nothing in this Part shall be deemed to authorise the contravention of any public act of settlement or of any legal directions given by a deceased proprietor of any property for the possession of his property after his decease in the event of minority or otherwise, and, in every such case, as

597 s. 203 of ISA.
598 s. 204 of ISA.
599 s. 205 of ISA.
soon as the Judge having jurisdiction over the property of a deceased person is satisfied of the existence of such directions, he shall give effect thereto.  

300. Court of Wards to be made curator in case of minors having property subject to its jurisdiction.- Nothing in this Part shall be deemed to authorise any disturbance of the possession of a Court of Wards of any property; and in case of a minor, or other disqualified person whose property is subject to the Court of Wards, is the party on whose behalf application is made under this Part, the District Judge, if he determines to summon the party in possession and to appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the proceeding without taking security as aforesaid; and if the minor or other disqualified person, upon the adjudication of the summary proceeding, appears to be entitled to the property, possession shall be delivered to the Court of Wards.  

301. Saving of right to bring suit.- Nothing contained in this Part shall be any impediment to the bringing of a suit either by the party whose application may have been rejected before or after the summoning of the party in possession, or by the party who may have been evicted from the possession under this Part.  

302. Effect of decision of summary proceeding.- The decision of a District Judge in a summary proceeding under this Part shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review.  

600 s. 206 of ISA.  
601 s. 207 of ISA.  
602 s. 208 of ISA.  
603 s. 209 of ISA.
303. Appointment of public curators.- The State Government may appoint public curators for any district or number of districts; and the District Judge having jurisdiction shall nominate such public curators in all cases where the choice of a curator is left discretionary with him under this Part.604

Part VII
Representative Title to Property of Deceased on Succession

304. Character and property of executor or administrator as such.- (1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.605

305. Right to intestate's property.- (1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.606

306. Right as executor or legatee when established.- (1) No right as executor or legatee can be established in any court of Justice, unless a court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.607

307. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.- (1) No court shall-

604 s. 210 of ISA.
605 See, s. 211 of ISA.
606 See, s. 212 of ISA.
607 See, s. 213 of ISA.
(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of-

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under the Administrator-General's Act, 1963 (45 of 1963), and having the debt mentioned therein, or

(iii) a succession certificate granted under Part IX and having the debt specified therein, or

(iv) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889, having the debt specified therein.

(2) The word "debt" in sub-section(1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

308. Effect on certificate of subsequent probate or letters of administration.- (1) A grant of probate or letters of administration in respect of an estate shall be deemed to supersede any certificate previously granted under Part IX of this Code, or Bombay Regulation No. VIII of 1827, in respect of any debts or securities included in the estate.

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding:

608 s. 214 of ISA.
Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.\textsuperscript{609}

309. Grantee of probate of administration alone to sue, etc., until same revoked.- After any grant of probate or letters of administration, no other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the State in which the same may have been granted, until such probate or letters of administration has or have been recalled or revoked.\textsuperscript{610}

Part VIII

Probate, Letters of Administration And Administration of Assets of Deceased

310. Application of Part.- Save as otherwise provided by this Code or by any other law for the time being in force, all grants of probate and letters of administration with the Will annexed and the administration of the assets of the deceased in cases of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part.\textsuperscript{611}

Chapter-I

Grant of Probate and Letters of Administration

311. To whom administration may be granted, - (1) If the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the deceased, would be entitled to the whole or any part of such deceased's estate.

\textsuperscript{609} See, s. 215 of ISA.
\textsuperscript{610} s. 216 of ISA.
\textsuperscript{611} s. 217 of ISA.
(2) When several such persons apply for such administration, it shall be in the discretion of the court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.\footnote{358}{See, s. 218 of ISA.}

312. \textbf{Effect of letters of administration}.– Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.\footnote{312}{s. 220 of ISA.}

313. \textbf{Acts not validated by administration}.– Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.\footnote{313}{s. 221 of ISA.}

314. \textbf{Probate only to appointed executor}.– (1) Probate shall be granted only to an executor appointed by the Will.

(2) The appointment may be expressed or by necessary implication.\footnote{314}{s. 222 of ISA.}

315. \textbf{Persons to whom probate cannot be granted}.– Probate cannot be granted to any person who is a minor or is of unsound mind nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by notification in the Official Gazette, by the State Government, in this behalf.\footnote{315}{s. 223 of ISA.}

316. \textbf{Grant of probate to several executors simultaneously or at different times}.– (1) When several executors are appointed, probate may be granted to them all simultaneously or at different times.\footnote{316}{s. 224 of ISA.}
317. Separate probate of codicil discovered after grant of probate.- (1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will. (2) If different executors are appointed by the codicil, the probate of the Will shall be revoked, and a new probate granted of the Will and the codicil together.618

318. Accrual of representation to surviving executor.- When probate has been granted to several executors, and one of them dies the entire representation of the testator accrues to the surviving executor or executors.619

319. Effect of probate.- Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.620

320. Administration, with copy annexed, of authenticated copy of Will proved abroad.- When a Will has been proved and deposited in a court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.621

321. Grant of administration where executor has not renounced.- When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship:

618 s. 225 of ISA.
619 s. 226 of ISA.
620 s. 227 of ISA.
621 s. 228 of ISA.
Provided that, when one or more of several executors have proved a Will, the court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.\textsuperscript{622}

\textbf{322. Form and effect of renunciation of executorship.}– The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the Will appointing him executor.\textsuperscript{623}

\textbf{323. Procedure where executor renounces or fails to accept within time limited.}– If an executor renounces or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy.\textsuperscript{624}

\textbf{324. Grant of administration of universal or residuary legatees.}– When–

(a) the deceased has made a Will, but has not appointed an executor, or

(b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the Will, or

(c) the executor dies after having proved the will, but before he has administered all the estate of the deceased, an universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.\textsuperscript{625}

\textsuperscript{622} s. 229 of ISA.
\textsuperscript{623} s. 230 of ISA.
\textsuperscript{624} s. 231 of ISA.
\textsuperscript{625} s. 232 of ISA.
325. Right to administration of representative of deceased residuary legatees.- When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the Will annexed as such residuary legatee.626

326. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.- When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly.627

327. Citation before grant of administration to legatee other than universal or residuary.- Letters of administration with the Will annexed shall not be granted to any legatee other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.628

328. To whom administration may not be granted.- Letters of administration cannot be granted to any person who is a minor or is of unsound mind, [nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by notification in the Official Gazette, by the State Government] in this behalf.629

626 s. 233 of ISA.
627 s. 234 of ISA.
628 s. 235 of ISA.
629 s. 236 of ISA.
329. Laying of rules before State Legislature.- Every rule made by the State Government under section 315 and section 328 shall be laid, as soon as it is made, before the State Legislature.\(^{630}\)

Chapter- II
Limited Grants

Division – I
Grants Limited in Duration

330. Probate of copy or draft of lost Will.- When a Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced.\(^{631}\)

331. Probate of contents of lost or destroyed Will.- When a Will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents if they can be established by evidence.\(^{632}\)

332. Probate of copy where original exists.- When the Will is in the possession of a person residing out of the State in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it is produced.\(^{633}\)

\(^{630}\) s. 236A of ISA.
\(^{631}\) s. 237 of ISA.
\(^{632}\) s. 238 of ISA.
\(^{633}\) s. 239 of ISA.
333. Administration until Will produced.- Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will or an authenticated copy of it is produced.634

Division – II
Grants for the use and benefit of others having right

334. Administration, with Will annexed, to attorney of absent executor.- When any executor is absent from the State in which application is made, and there is no executor within the State willing to act, letters of administration, with the Will annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.635

335. Administration, with Will annexed, to attorney of absent person who, if present, would be entitled to administer.- When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the State, letters of administration, with the will annexed may be granted to his attorney or agent, limited as mentioned in section 334.636

336. Administration, to attorney of absent person entitled to administer in case of intestacy.- When a person entitled to administration in case of intestacy is absent from the State, and no person equally entitled is willing to act, letters of administration may be granted to the attorney or agent of the absent person, limited as mentioned in section 334.637

634 s. 240 of ISA.
635 s. 241 of ISA.
636 See, s. 242 of ISA.
637 See, s. 243 of ISA.
337. Administration, during minority of sole executor or residuary legatee.- When a minor is sole executor or sole residuary legatee, letters of administration, with the Will annexed, may be granted to the legal guardian of such minor or to such other person as the Court may think fit until the minor has attained his majority at which period, and not before, probate of the Will shall be granted to him. 638

338. Administration, during minority of several executors or residuary legatees.- When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have attained his majority. 639

339. Administration, for use and benefit of lunatic or minor.- If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestate's estates, is a minor or lunatic, letters or administration, with or without the Will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there is no such person, to such other person as the court may think fit to appoint, for the use and benefit of the minor or lunatic until he attains majority or becomes of sound mind, as the case may be. 640

340. Administration, pendent lite.- Pending any suit touching the validity of the Will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration the court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every

638 s.244 of ISA.
639 s.245 of ISA.
640 s.246 of ISA.
such administrator shall be subject to the immediate control of the court and shall act under its direction.  

Division – III
Grants for Special Purposes

341. Probate limited to purpose specified in Will.- If an executor is appointed for any limited purpose specified in the Will, the probate shall be limited to that purpose, and if he should appoint an attorney or agent to take administration on his behalf, the letters of administration, with the will annexed, shall be limited accordingly.  

342. Administration, with Will annexed, limited to particular purpose.- If an executor appointed generally gives an authority to an attorney or agent to prove a Will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the Will annexed, shall be limited accordingly.

343. Administration, limited to property in which person has beneficial interest.- Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

---

641 s. 247 of ISA.
642 s. 248 of ISA.
643 s. 249 of ISA.
644 s. 250 of ISA.
344. Administration limited to suit.- When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor, or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.\textsuperscript{645}

345. Administration limited to purpose of becoming party to suit to be brought against administrator.- If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the State within which the court which has granted the probate or letters of administration exercises jurisdiction, the court may grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.\textsuperscript{646}

346. Administration limited to collection and preservation of deceased's property.- In any case in which it appears necessary for preserving the property of a deceased person, the court within whose jurisdiction any of the property is situate may grant to any person, whom such court may think fit, letters of administration limited to the collection and preservation of the property of the deceased and to the giving of discharges for debts due to his estate, subject to the directions of the court.\textsuperscript{647}

\textsuperscript{645} s.251 of ISA.
\textsuperscript{646} s.252 of ISA.
\textsuperscript{647} s.253 of ISA.
347. Appointment, as administrator, of person other than one who, in ordinary circumstances, would be entitled to administration.-(1) When a person has died intestate, or leaving a Will or which there is no executor willing and competent to act or where the executor is, at the time of the death of such person, resident out of the State, and it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, in ordinary circumstances, would be entitled to a grant of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be an administrator.

(2) In every such case letters of administration may be limited or not as the court thinks fit.648

Division – IV
Grants with Exception

348. Probate or administration, with Will annexed, subject to exception.- Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted subject to such exception.649

349. Administration with exception.- Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.650

648 s.254 of ISA.
649 s.255 of ISA.
650 s. 256 of ISA.
Division – V
Grants of the Rest

350. Probate or administration of rest.- Whenever a grant with exception of probate, or of letters of administration with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.651

Division - VI
Grant of effects Unadministered

351. Grant of effects unadministered.- If an executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.652

352. Rules as to grant of effects unadministered.- In granting letters of administration of an estate not fully administered, the court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.653

353. Administration when limited grant expired and still some part of estate unadministered.- When a limited grant has expired, by efflux of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.654

651 s. 257 of ISA.
652 s. 258 of ISA.
653 s. 259 of ISA.
654 s. 260 of ISA.
Chapter – III
Alteration and Revocation of Grants

354. What errors may be rectified by Court.- Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court and the grant of probate or letters of administration may be altered and amended accordingly.\textsuperscript{655}

355. Procedure where codicil discovered after grant of administration with Will annexed.- If, after the grant of letters of administration with the Will annexed, a codicil is discovered, it may be added to the grant on due proof and identification, and the grant may be altered and amended accordingly.\textsuperscript{656}

356. Revocation or annulment for just cause.- The grant of probate or letters of administration may be revoked or annulled for just cause.

\textit{Explanation}.- Just cause shall be deemed to exist where-
(a) the proceedings to obtain the grant were defective in substance; or
(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case; or
(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
(d) the grant has become useless and inoperative through circumstances; or
(e) the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.\textsuperscript{657}

\textsuperscript{655} s. 261 of ISA.
\textsuperscript{656} s. 262 of ISA.
\textsuperscript{657} s. 263 of ISA.
Chapter – IV
The Practice Granting and Revoking Probates and Letters of Administration

357. Jurisdiction of District Judge in granting and revoking probates, etc.- The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.658

358. Power to appoint Delegate of District Judge to deal with non-contentious cases.- (1) The High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe:

    (2) Persons so appointed shall be called "District Delegates".659

359. District Judge's powers as to grant of probate and administration.- The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding pending in his court.660

360. District Judge may order person to produce testamentary papers.- (1) The District Judge may order any person to produce and bring into court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

    (2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the court may direct such person to attended for the purpose of being examined respecting the same.

658 See, s. 264 of ISA.
659 s. 265 of ISA.
660 s. 266 of ISA.
(3) Such person shall be bound to answer truly such questions as may be put to him by the court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, 1860 (45 of 1860), in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit and had made such default.

(4) The costs of the proceeding shall be in the discretion of the Judge.661

361. Proceedings of District Judge's Court in relation to probate and administration.- The proceedings of the court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided; be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908 (5 of 1908).662

362. When and how District Judge to interface for protection of property.- (1) Until probate is granted of the Will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situated, is authorized and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property.663

363. When probate or administration may be granted by District Judge.- Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his court, if it

661 s. 267 of ISA.
662 s. 268 of ISA.
663 s. 269 of ISA.
appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.664

364. Disposal of application made to Judge of district in which deceased had no fixed abode.- When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.665

365. Probate and letters of administration may be granted by Delegate.- Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition, verified as hereinafter provided, that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.666

366. Conclusiveness of probate or letters of administration.- Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:

664 s. 270 of ISA.
665 s. 271 of ISA.
666 s. 272 of ISA.
Provided that probates and letters of administration granted-

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the other States.

The proviso to this section shall apply in India after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.

The proviso shall also apply in India after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.  

367. Transmission to High Courts of certificate of grants under proviso to section 366.- (1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 366, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:-

(a) when the grant has been made by a High Court, to each of the other High Courts;

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be made as nearly as circumstances admit in the form set forth in Schedule IV, and such certificate shall be filed by the High Court receiving the same.

667 S. 273 of ISA.
368. Conclusiveness of application for probate or administration if properly made and verified.- The application for probate or letters of administration, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorising the grant of probate or administration; and no such grant shall be impeached by reason only that the testator or intestate had no fixed place of abode or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the court.669

369. Petition for probate.- (1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the court in which the application is made, with the Will or, in the cases mentioned in sections 330, 331 and 332, a copy, draft, or statement of the contents thereof, annexed, and stating-

(a) the time of the testator's death,
(b) that the writing annexed is his last Will and testament,
(c) that it was duly executed,
(d) the amount of assets which are likely to come to the petitioner's hands, and
(e) when the application is for probate, that the petitioner is the executor named in the Will.

668 See, s. 274 of ISA.
669 s. 275 of ISA.
In addition to these particulars, the petition shall further state,-

(a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and

(b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Where the application is to a District Judge and any portion of the assets likely to come to the petitioner's hands is situated in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.670

In what cases translation of Will to be annexed to petition.
Verification of translation by person other than Court translator.- In cases wherein the Will, copy or draft, is written in any language other than English or than that in ordinary use in proceedings before the court, there shall be a translation thereof annexed to the petition by a translator of the court, if the language be one for which a translator is appointed; or, if the Will, copy or draft, is in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner, namely:-

"I (A.B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."671

Petition for letters of administration.- (1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating-

670 See, s. 276 of ISA.
671 s. 277 of ISA.
(a) the time and place of the deceased's death;
(b) the family or other relatives of the deceased, and their respective residences;
(c) the right in which the petitioner claims;
(d) the amount of assets which are likely to come to the petitioner's hands;
(e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
(f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(2) Whether the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situated.672

372. Addition to statement in petition.etc., for probate or letters of administration in certain cases.- (1) Every person applying to any of the courts mentioned in the proviso to section 366 for probate of a Will or letters of administration of an estate intended to have effect throughout India, shall state in his petition, in addition to the matters respectively required by section 369 and section 337, that to the best of his belief no application has been made to any other court for a probate of the same Will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the court to which it was made, the person or person by whom it was made and the proceedings (if any) had thereon. (2) The court to which any such application is made under the proviso to section 366 may, if it thinks fit, reject the same.673

672 s. 278 of ISA.
673 See, s. 279 of ISA.
373. Petition for probate, etc., to be signed and verified.- The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, namely:-

"I (A.B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."  

374. Verification of petition for probate, by one witness to Will.- Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner or to the effect following, namely:-

"I (C.D.), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (or that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence)."

375. Punishment for false averment in petition or declaration.- If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be deemed to have committed an offence under section 193 of the Indian Penal Code, 1860 (45 of 1860).

376. Powers of District Judge.- (1) In all cases the District judge or District Delegate may, if he thinks proper,-

(a) examine the petitioner in person, upon oath;

(b) require further evidence of the due execution of the Will or the right of the petitioner to the letters of administration, as the case may be;

674 s. 280 of ISA.
675 s. 281 of ISA.
676 s. 282 of ISA.
(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the court-house, and also the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situated within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.677

377. Caveats against grant of probate or administration.- (1) Caveats against the grant of probate or administration may be lodged with a District Judge or a District Delegate.

(2) Immediately on any caveat being lodged with any District Delegate, he shall send copy thereof to the District Judge.

(3) Immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had a fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

(4) Form of caveat.- The caveat shall be made as nearly as circumstances admit in the form set forth in Schedule V.678

677 s. 283 of ISA.
678 See, s. 284 of ISA.
378. After entry of caveat, no proceeding taken on petition until after notice to caveator.- No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the court may think reasonable.679

379. District Delegate when not to grant probate or administration.- A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his court.
Explanation: "Contention" means the appearance of anyone in person or by his recognised agent, or by the pleader duly appointed to act on his behalf, to oppose the proceeding.680

380. Power to transmit statement to District Judge in doubtful cases where no contention.- In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such

679 s. 285 of ISA.
680 s. 286 of ISA.
application, leaving the party applying for the grant in question to make application to the Judge.\textsuperscript{681}

381. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.- In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his court, the petition, with any documents which may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purpose of justice, to impound the same, which he is hereby authorised to do; and, in that case, the same shall be sent by him to the District Judge.\textsuperscript{682}

382. Grant of probate to be under seal of Court.- When it appears to the District Judge or District Delegate that probate of a Will should be granted, he shall grant the same under the seal of his court in the form set forth in Schedule VI.\textsuperscript{683}

383. Grant of letters of administration to be under seal of Court.- When it appears to the District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his court in the form set forth in Schedule VII.\textsuperscript{684}

384. Administration bond.- Every person to whom any grant of letters of administration, other than a grant under section 334, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the

\textsuperscript{681} s. 287 of ISA.
\textsuperscript{682} s. 288 of ISA.
\textsuperscript{683} See, s. 289 of ISA.
\textsuperscript{684} See, s. 290 of ISA.
due collection, getting in, and administering the estate of the deceased, which
bond shall be in such form as the Judge may, by general or special order,
direct.\textsuperscript{685}

385. Assignment of administration-bond.- The court may, on application
made by petitioner and on being satisfied that the engagement of any such bond
has not been kept, and upon such terms as to security, or providing that the
money received be paid into court, or otherwise, as the court may think fit,
assign the same to some person, his executors or administrators, who shall
thereupon be entitled to sue on the said bond in his or their own of the court,
and shall be entitled to recover thereon, as trustees for all persons interested,
the full amount recoverable in respect of any breach thereof.\textsuperscript{686}

386. Time for grant of probate and administration.- No probate of a Will
shall be granted until after the expiration of seven clear days, and no letters of
administration shall be granted until after the expiration of fourteen clear days
from the day of the testator or intestate's death.\textsuperscript{687}

387. Filing of original Wills of which probate or administration with Will
annexed granted.- (1) Every District Judge, or District Delegate, shall file and
preserve all original Wills, of which probate or letters of administration with
the Will annexed may be granted by him, among the records of his court, until
some public registry for Wills is established.

(2) The State Government shall make regulations for the preservation
and inspection of the Wills so filed.\textsuperscript{688}

\textsuperscript{685} See, s. 291 of ISA.
\textsuperscript{686} s. 292 of ISA.
\textsuperscript{687} S. 293 of ISA.
\textsuperscript{688} s. 294 of ISA.
388. **Procedure in contentious cases.**- In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.\(^{689}\)

389. **Surrender of revoked probate or letters of administration.**- (1) When a grant of probate or letters of administration is revoked or annulled under this Code, the person to whom the grant was made shall forthwith deliver up the probate or letters to the court which made the grant.

   (2) If such person willfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.\(^{690}\)

390. **Payment to executor or administrator before probate or administration revoked.**- When a grant of probate or letters of administration is revoked, all payments *bonafide* made to any executor or administrator under such grant before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who has acted under any such revoked grant may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made.\(^{691}\)

\(^{689}\) s. 295 of ISA.

\(^{690}\) See, s. 296 of ISA.

\(^{691}\) s. 297 of ISA.
391. **Power to refuse letters of administration.** - Notwithstanding anything hereinbefore contained, it shall be in the discretion of the court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Code.\(^692\)

392. **Appeals from orders of District Judge.** - Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals.\(^693\)

393. **Concurrent jurisdiction of High Court.** - (1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

   (2) No High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay shall, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do.\(^694\)

394. **Removal of executor or administrator and provision for successor.** - The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate.\(^695\)

\(^{692}\) See, s. 298 of ISA.
\(^{693}\) s. 299 of ISA.
\(^{694}\) See, s. 300 of ISA.
\(^{695}\) s. 301 of ISA.
395. **Direction to executor or administrator.**- Where probate or letters of administration in respect of any estate has or have been granted under this Code, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.\textsuperscript{696}

**Chapter- V**

**Executors of Their Own Wrong**

396. **Executor of his own wrong.**- A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

*Exceptions.*- (1) Intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

(2) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.\textsuperscript{697}

397. **Liability of executor of his own wrong.**- When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in due course of administration.\textsuperscript{698}

\textsuperscript{696} s. 302 of ISA.
\textsuperscript{697} s. 303 of ISA.
\textsuperscript{698} s. 304 of ISA.
Chapter VI
The Powers of an Executor or Administrator

398. In respect of causes of action surviving deceased and debts due at death.- An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same power for the recovery of debts as the deceased had when living.699

399. Demands and rights of action of or against deceased survive to and against executor or administrator.- All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, 1860 (45 of 1860) or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.700

400. Power of executor or administrator to dispose of property.- (1) Subject to the provisions of sub-section (2), an executor or administrator has power to dispose of the property of the deceased, vested in him under section 304, either wholly or in part, in such manner as he may think fit.701

401. General powers of administration.- An executor or administrator may, in addition to, and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure-

(a) on such acts as may be necessary for the proper care or management of any property belonging to any estate administered by him; and

699 s. 305 of ISA.
700 s. 306 of ISA.
701 See, s. 307 of ISA.
(b) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.\textsuperscript{702}

402. \textbf{commission or agency charges}.- An executor or administrator shall not be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator-General by or under the Administrator-General's Act, 1963 (45 of 1963).\textsuperscript{703}

403. \textbf{Purchase by executor or administrator of deceased's property}.- If any executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.\textsuperscript{704}

404. \textbf{Powers of several executors or administrators exercisable by one}.- When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will or taken out administration.\textsuperscript{705}

405. \textbf{Survival or powers on death of one of several executors or administrators}.- Upon the death of one or more of several executors or administrators, in the absence of any direction to the contrary in the Will or grant of letters of administration, all the powers of the office become vested in the survivors or survivor.\textsuperscript{706}

\textsuperscript{702} s. 308 of ISA.
\textsuperscript{703} See, s. 309 of ISA.
\textsuperscript{704} s. 310 of ISA.
\textsuperscript{705} s. 311 of ISA.
\textsuperscript{706} s. 312 of ISA.
406. Powers of administrator of effects unadministered.- The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.\footnote{707}

407. Powers of administrator during minority.- An administrator during minority has all the powers of an ordinary administrator.\footnote{708}

408. Powers of married executrix or administratrix.- When a grant of probate or letters of administration has been made to a married woman, she has all the powers of an ordinary executor or administrator.\footnote{709}

Chapter VII
The Duties of an Executor or Administrator

409. As to deceased's funeral.- It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.\footnote{710}

410. Inventory and account.- (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may appoint, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said court may appoint, exhibit an account of the estate, showing the

\footnote{707}{s. 313 of ISA.}
\footnote{708}{s. 314 of ISA.}
\footnote{709}{s. 315 of ISA.}
\footnote{710}{s. 316 of ISA.}
assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code, 1860 (45 of 1860).

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.711

411. Inventory to include property in any part of India in certain cases.- In all cases where a grant has been made of probate or letters of administration intended to have effect throughout India, the executor or administrator shall include in the inventory of the effects of the deceased all his movable and immovable property situated in India and the value of such property situate in each state shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situated within India.712

412. As to property of, and debts owing to, deceased.- The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.713

711 See, s. 317 of ISA.
712 s. 318 of ISA.
713 s. 319 of ISA.
413. Expenses to be paid before all debts.- Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance and board and lodging for one month previous to his death, shall be paid before all debts.  

414. Expenses to be paid next after such expenses.- The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, shall be paid next after the funeral expenses and death-bed charges.

415. Wages for certain services to be next paid, and then other debts.- Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant shall next be paid, and then the other debts of the deceased according to their respective priorities (if any).

416. Save as aforesaid, all debts to be paid equally and rateably.- Save as aforesaid, no creditor shall have a right of priority over another, but the executor or administrator, shall pay all such debts as he knows of, including his own, equally and rateably as far as the assets of the deceased will extend.

417. Application of movable property to payment of debts where domicile not in India.- (1) If the domicile of the deceased was not in India, the application of his movable property to the payment of his debts is to be regulated by the law of India.

---

714 s. 320 of ISA.
715 s. 321 of ISA.
716 s. 322 of ISA.
717 s. 323 of ISA.
(2) No creditor who has received payment of a part of his debt by virtue of sub-section (1) shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.718

418. Debts to be paid before legacies.- Debts of every description must be paid before any legacy.719

419. Executor or administrator not bound to pay legacies without indemnity.- If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.720

420. Abatement of general legacies.- If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and, in the absence of any direction to the contrary in the Will, the executor has no right to pay one legatee in preference to another, or to retain any money on account of a legacy to himself or to any person for whom he is a trustee.721

421. Non-abatement of specific legacy when assets sufficient to pay debts.- Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.722

718 s. 324 of ISA.
719 s. 325 of ISA.
720 s. 326 of ISA.
721 s. 327 of ISA.
722 s. 328 of ISA.
422. Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.— Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid reminder. 723

423. Rateable abatement of specific legacies.— If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts. 724

424. Legacies treated as general for purpose of abatement.— For the purpose of abatement, a legacy for life, a sum appropriated by the Will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies. 725

Chapter - VIII
Assent to a Legacy by Executor or Administrator

425. Assent necessary to complete legatee's title.— The assent of the executor or administrator is necessary to complete a legatee's title to his legacy. 726

426. Effect of executor's assent to specific legacy.— (1) The assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator therein, and to transfer the subject of the

---

723 s. 329 of ISA.
724 s. 330 of ISA.
725 s. 331 of ISA.
726 s. 332 of ISA.
bequest of the legatee, unless the nature or the circumstances of the property
require that it shall be transferred in a particular way.

(2) This assent may be verbal, and it may be either express or
implied from the conduct of the executor or administrator.727

427. Conditional assent.- The assent of an executor or administrator to a
legacy may be conditional and if the condition is one which he has a right to
enforce, and it is not performed, there is no assent.728

428. Assent of executor to his own legacy.- (1) When the executor or
administrator is a legatee, his assent to his own legacy is necessary to complete
his title to it, in the same way as it is required when the bequest is to another
person, and his assent may, in like manner, be expressed or implied.

(2) Assent shall be implied if in his manner of administering the
property he does any act which is referable to his character of legatee and is not
referable to his character of executor or administrator.729

429. Effect of executor's assent.- The assent of the executor or administrator
to a legacy gives effect to it from the death of the testator.730

430. Executor when to deliver legacies.- An executor or administrator is not
bound to pay or deliver any legacy until the expiration of one year from the
testator's death.731

727 s. 333 of ISA.
728 s. 334 of ISA.
729 s. 335 of ISA.
730 s. 336 of ISA.
731 s. 337 of ISA.
Chapter IX
The Payment and Apportionment of Annuities

431. Commencement of annuity when no time fixed by Will.- Where an annuity is given by a Will and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.732

432. When annuity, to be paid quarterly or monthly, first falls due.- Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter, or first month, as the case may be, after the testator's death; and shall, if the executor or administrator thinks fit, be paid when due, but the executor or administrator shall not be bound to pay it till the end of the year.733

433. Dates of successive payments when first payment directed to be made within a given time or on day certain: death of annuitant before date of payment.- (1) Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made.

(2) If the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.734

732 s. 338 of ISA.
733 s. 339 of ISA.
734 s. 340 of ISA.
Chapter - X
The Investments of Funds to Provide for Legacies

434. Investment of sum bequeathed, where legacy, not specific given for life.- Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may by any general rule authorise or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.735

435. Investment of general legacy, to be paid at future time, disposal of intermediate interest.-(1) Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in section 434.

(2) The intermediate interest shall form part of the residue of the testator's estate.736

436. Procedure when no fund charged with, or appropriated to annuity.- Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a Government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in securities of the kind mentioned in section 434.737

437. Transfer to residuary legatee of contingent bequest.- Where a bequest is contingent, the executor or administrator is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee, if any, on his giving sufficient security for the payment of the legacy, if it shall become due.738

735 s. 341 of ISA.
736 See, s. 342 of ISA.
737 See, s. 343 of ISA.
738 s. 344 of ISA.
438. Investment of residue bequeathed for life, without direction to invest in particular securities.- (1) Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in securities of the kind mentioned in section 434 shall be converted into money and invested in such securities.\(^739\)

439. Investment of residue bequeathed for life, with direction to invest in specified securities.- Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.\(^740\)

440. Time and manner of conversion and Investment.- Such conversion and investment as are contemplated by sections 438 and 439 shall be made at such times and in such manner as the executor or administrator thinks fit; and, until such conversion and investment are completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of 9 per cent. per annum upon the market-value (to be computed as at the date of the testator's death) of such part of the fund as has not been so invested.\(^741\)

441. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.- (1) Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the Will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the court of the

\(^{739}\) See, s. 345 of ISA.  
\(^{740}\) s. 346 of ISA.  
\(^{741}\) See, s. 347 of ISA.
District Judge, by whom or by whose District Delegate the probate was, or letters of administration with the Will annexed were, granted, to the account of the legatee, unless the legatee is a ward of the Court of Wards.

(2) If the legatee is a ward of the Court of Wards, the legacy shall be paid to the Court of Wards to his account.

(3) Such payment into the Court of the District Judge, or to the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid.

(4) Money when paid in under this section shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.\textsuperscript{742}

\textbf{Chapter - XI}

\textit{The Produce and Interest of Legacies}

\textbf{442. Legatee's title to produce of specific legacy.-} The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

\textit{Exception.-} A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.\textsuperscript{743}

\textbf{443. Residuary legatee's title to produce of residuary fund.-} The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

\textit{Exception.-} A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the

\textsuperscript{742} s. 348 of ISA.

\textsuperscript{743} s. 349 of ISA.
death of the testator and the vesting of the legacy. Such income goes as undisposed of.\textsuperscript{744}

444. Interest when no time fixed for payment of general legacy.- Where no time has been fixed for the payment of a general legacy, interest begins to run from expiration of one year from the testator's death.

Exception.- (1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.\textsuperscript{745}

445. Interest when time fixed.- Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.- Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance, or unless the Will contains a direction to the contrary.\textsuperscript{746}

446. Rate of Interest.- The rate of interest shall be nine per cent per annum.\textsuperscript{747}

\textsuperscript{744} s. 350 of ISA.
\textsuperscript{745} s. 351 of ISA.
\textsuperscript{746} s. 352 of ISA.
\textsuperscript{747} See, s.353 of ISA.
447. No interest on arrears of annuity within first year after testator's death.- No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the Will for making the first payment of the annuity.\textsuperscript{748}

448. Interest on sum to be invested to produce annuity.- Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.\textsuperscript{749}

Chapter - XII
The Refunding of Legacies

449. Refund of legacy paid under Court's orders.- When an executor or administrator has paid a legacy under the order of a court, he is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.\textsuperscript{750}

450. No refund if paid voluntarily.- When an executor or administrator has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.\textsuperscript{751}

451. Refund when legacy has become due on performance of condition within further time allowed under section 230.- When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor or administrator has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under section 230 for the performance of the condition, and the

\textsuperscript{748} s. 354 of ISA.
\textsuperscript{749} s. 355 of ISA.
\textsuperscript{750} s. 356 of ISA.
\textsuperscript{751} s. 357 of ISA.
condition has been performed accordingly, the legacy cannot be claimed from the executor or administrator, but those to whom he has paid it are liable to refund the amount.\(^{752}\)

452. **When each legatee compellable to refund in proportion.**- When the executor or administrator has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.\(^{753}\)

453. **Distribution of assets.**- Where an executor or administrator has given such notices as the High Court may, by any general rule, prescribe or, if no such rule has been made, as the High Court would give in an administration-suit; for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution:

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.\(^{754}\)

454. **Creditor may call upon legatee to refund.**- A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor or administrator was voluntary or not.\(^{755}\)

\(^{752}\)See, s. 358 of ISA.
\(^{753}\) s. 59 of ISA.
\(^{754}\) s. 360 of ISA.
\(^{755}\) s. 361 of ISA.
455. When legatee, not satisfied or compelled to refund under section 454, cannot oblige one paid in full to refund.—If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under section 454, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.756

456. When unsatisfied legatee must first proceed against executor, if solvent.—If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor or administrator if he is solvent; but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.757

457. Limit to refunding of one legatee to another.—The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.758

458. Refunding to be without interest.—The refunding shall in all cases be without interest.759

459. Residue after usual payments to be paid to residuary legatee.—The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the Will.760

756 See, s. 362 of ISA.
757 s. 363 of ISA.
758 s. 364 of ISA.
759 s. 365 of ISA.
760 s. 366 of ISA.
460. Transfer of assets from India to executor or administrator in country of domicile for distribution.- Where a person not having his domicile in India has died leaving assets both in India and in the country in which he had his domicile at the time of his death and there has been a grant of probate or letters of administration in India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in India, after having given such notices as are mentioned in section 453, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.761

Chapter XIII
The Liability of an Executor or Administrator for Devastation

461. Liability of executor or administrator for devastation.- When an executor or administrator misapplies the estate of the deceased or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.762

462. Liability of executor or administrator for neglect to get any part of property.- When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.763

761 See, s. 367 of ISA.
762 s. 368 of ISA.
763 s. 369 of ISA.
Part -IX
Succession Certificates

463. Restriction on grant of certificates under this Part.- (1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 305 or section 306 to be established by letters of administration or probate;

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Code.

(2) For the purposes of this Part, "security" means-

(a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;

(b) any bond, debenture, or annuity charged by Act of Parliament of the United Kingdom on the revenues of India;

(c) any stock or debenture of, or share in, a company or other incorporated institution;

(d) any debenture or other security for money issued by, or on behalf of, a local authority;

(e) any other security which the State Government may, by notification in the Official Gazette, declare to be a security for the purposes of this Part.764

764 See, s. 370 of ISA.
464. Court having jurisdiction to grant certificate.- The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part.765

465. Application for certificate.- (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—

(a) the time of the death of the deceased;
(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
(c) the family or other near relatives of the deceased and their respective residences;
(d) the right in which the petitioner claims;
(e) the absence of any impediment under section 463 or under any other provision of this Act or any other enactment, to the grant of the certificate to the validity thereof if it were granted; and
(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

765 s. 371 of ISA.
(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.766

466. Procedure on application.- (1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing-

(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respect of the applicants.767

766 See, s. 372 of ISA.
767 s. 373 of ISA.
467. **Contents of certificate.**- When the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted-

(a) to receive interest or dividends on, or  
(b) to negotiate or transfer, or  
(c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.\(^{768}\)

468. **Requisition of security from grantee of certificate.**- (1) The District Judge shall in any case in which he proposes to proceed under sub-section (3) or sub-section (4) of section 466, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Judge may, on application made by petitioner and on cause shown to his satisfaction, and upon such terms as to security, or providing that the money received be paid into court, or otherwise, as he thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.\(^{769}\)

---

\(^{768}\) s. 374 of ISA.  
\(^{769}\) See, s. 375 of ISA.
469. **Extension of certificate.**—(1) A District Judge may, on the application of the holder of a certificate under this Part, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in section 468 may be required, in the same manner as upon the original grant of a certificate.\(^{770}\)

470. **Forms of certificate and extended certificate.**—Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in Schedule VIII.\(^{771}\)

471. **Amendment of certificate in respect of powers as to securities.**—Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security the Judge may, on application made by petitioner and on cause shown to his satisfaction, amend the certificate by conferring any of the powers mentioned in section 467 or by substituting any one for any other of those powers.\(^{772}\)

472. **Mode of collecting Court-fees on certificates.**—(1) Every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court-Fees Act, 1870 (7 of 1870), in respect of the certificate or extension applied for.

\(^{770}\)See, s. 376 of ISA.

\(^{771}\)See, s. 377 of ISA.

\(^{772}\)See, s. 378 of ISA.
(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it. 773

473. Local extent of certificate.- A certificate under this Part shall have effect throughout India.

This section shall apply in India after the separation of Burma and Aden from India to certificates granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.

It shall also apply in India after the separation of Pakistan from India to certificates granted before the date of the separation, or after that date in proceedings pending at that date in any of the territories which on that date constituted Pakistan. 774

474. Effect of certificate.- Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 463, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted. 775

475. Effect of certificate granted or extended by Indian representative in Foreign State and in certain other cases.- Where a certificate in the form, as nearly as circumstances admit, of Schedule VIII-

(a) has been granted to a resident within a foreign State by an Indian representative accredited to that State, or

773 s. 379 of ISA.
774 See, s. 380 of ISA.
775 See, s. 381 of ISA.
(b) has been granted before the commencement of the Part B States (Laws) Act, 1951 (3 of 1951), to a resident within any part B State by a District judge of that State or has been extended by him in such form, or

(c) has been granted after the commencement of the Part B States (Laws) Act, 1951 (3 of 1951), to a resident within the State of Jammu and Kashmir by the district judge of that State or has been extended by him in such form.

the certificate shall, when stamped in accordance with the provisions of the Court-Fees Act, 1870 (7 of 1870), with respect to certificates under this Part, have the same effect in India as a certificate granted or extended under this Part.776

476. **Revocation of certificate.**- A certificate granted under this Part may be revoked for any of the following causes, namely:-

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the court of something material to the case;

(c) that the certificate was obtained means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.777

---

776 See, s. 382 of ISA.
777 s. 383 of ISA.
477. **Appeal.**—(1) Subject to the other provisions of this Part, an appeal shall lie to the High court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District judge, on application being made therefore, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.778

478. **Effect on certificate of previous certificate, probate or letters of administration.**—Save as provided by this Code, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.779

479. **Validation of certain payments made in good faith to holder of invalid certificate.**—Where a certificate under this Part has been superseded or is invalid by reason of the certificate having been revoked under section 476, or by reason of the grant of a certificate to a person named in an appellate order under section 477, or by reason of a certificate having been previously granted, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder

---

778 See, s. 384 of ISA.
779 See, s. 385 of ISA.
of that certificate in ignorance of its suppression or invalidity, shall be held good against claims under any other certificate.\textsuperscript{780}

480. Effect of decisions under this Code, and liability of holder of certificate thereunder.- No decision under this Part upon any question or right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefore to the person lawfully entitled thereto.\textsuperscript{781}

481. Investiture of inferior courts with jurisdiction of District Court for purpose of this Code.- (1) The State Government may by notification in the Official Gazette, invest any court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior court as if it were a District Judge:

Provided that an appeal from any such order of an inferior court as is mentioned in sub-section (1) of section 477 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of

\textsuperscript{780}See, s. 386 of ISA.  
\textsuperscript{781}See, s. 387 of ISA.
judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Part from an inferior court, and may either himself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any interior court specially or any class of such courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a court inferior in grade to a District Judge.782

482. Surrender of superseded and invalid certificates.- (1) When a certificate under this Part has been supersede or is invalid from any of the causes mentioned in section 386, the holder thereof shall, on the requisition of the court which granted it, deliver it up to that court.

(2) If he willfully and without reasonable cause omits so to deliver it up, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months or with both.783

483. Provisions with respect to certificates under Bombay Regulation VIII of 1827.- Notwithstanding anything in Bombay Regulation No.VIII of 1827, the provisions of section 463, sub-section (2), section 465, sub-section (1), clause (f), and sections 467, 468, 469, 470, 471, 472, 474, 476, 477, 480, 481 and 482 with respect to certificates under this Part and applications therefor, and of section 410 with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made

782 See, s. 388 of ISA.
783 See, s. 389 of ISA.
applicable, apply, respectively, to certificates granted under that Regulation and applications made for certificates thereunder, after the 1st day of May, 1889 and to the exhibition of inventories and accounts by the holders of such certificates so granted.  

Part – X
Gift

484. Of Gifts.- Sections 122 to 128 of Transfer of Property Act, 1882, shall be equally applicable in this regard to all the citizens of this country.

Part – XI
Counter Claim

485. Counter-claim by defendant for any relief.- In any suit under this Code, the defendant may make a counter-claim for any relief he or she may be entitled to under this Code.

Part - XII
Miscellaneous

486. Property of a female to be her absolute property.- (1) Any property possessed by a female, whether acquired before or after the commencement of this code, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, "property" includes both movable and immovable property acquired by a female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner

---

784 See, s. 390 of ISA.
785 See, s. 37 of PMDA.
whatsoever, and also any such property held her as stridhana immediately before the commencement of this code.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.\textsuperscript{786}

487. Jurisdiction and Procedure.- The district court or the family court or any other court appointed by the Competent Authority shall try the matters related with issues incorporated in this Code.

All proceedings under this Code shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (5 of 1908).

488. Enforcement of decrees and orders.- All decrees and orders made by the court in any proceeding under this Code shall be enforced in the like manner as decree and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.

489. Power of the Supreme Court and High Court to make rules regulating procedure of this Code.- (1) The Supreme Court and the High Court of all States, shall by notification in the official gazette, make such rules consistant with the provisions contained in this Code and the Code of Civil Procedure, 1908 (5 of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of this Code.

490. Power of Government to make rules.- (1) The Central Government and the State Government, may by notification in the official gazette, make rules for carrying out the purposes of this Code.

\textsuperscript{786}See, s. 14 of HSA.
(2) Every rule made by the Central Government under this part shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(3) Every rule made by the State Government under this part shall be laid, as soon as it is made before the State Legislature. 787

491. Repeals and Savings.—(1) All the personal laws of all the religions in reference of the issues incorporated under this Code are hereby repealed.

(2) All the laws in force in the territory of India immediately before the commencement of this Code, is so far as they are inconsistent with the provisions of this Code, shall, to the extent of such inconsistency are hereby repealed. 788

(3) The State shall not make any law which takes away or up-bridges the rights and duties conferred by this Code and any law made in contravention of this Code shall, to the extent of the constitution, be void. 789

(4) Any act which is completed before the commencement of this Code shall be treated and regulated by the concerned legislation which had been otherwise applied to such person in the absence of this Code.

(5) This Code shall not have retrospective effect in any manner.

787 See, s. 50 of SMA.
788 See, Art. 13 (1) of the Constitution of India.
789 See, Art. 13 (2) of the Constitution of India.
SCHEDULES

In any law, some specifications are reflected or incorporated under various schedules. While drafting this model code, such schedules are mentioned at appropriate places. In its reference, the particulars regarding schedules are found appropriate as exist in different legislations. Following is the list of schedules which may be referred from the concern legislation while analysing or using the sections;
- Schedule I, “Degrees of Prohibited Relationships” (s. 2 (b) ) of SMA.
- Schedule II, “Form of Notice of Intended Marriage” (s. 5) of SMA.
- Schedule III, “Declaration to be made by the Bridegroom” and “Declaration to be made by the Bride” (s. 11) of SMA.
- Schedule IV, “Certificate of Marriage” (s. 13) of SMA.
- Schedule V, “Certificate of Marriage Celebrated in other forms” (s. 16) of SMA.
- Schedule I (s. 28), ISA, Table of Consanguinity Part – I (s. 54 of ISA) and Part – II (s. 55 of ISA)
- Schedule II of ISA.
- Schedule IV (s. 274(2)) of ISA, Form of Certificate.
- Schedule V (s. 284(4)) of ISA, Form of Caveat.
- Schedule VI (s. 289) of ISA, Form of Probate.
- Schedule VII (s. 290) of ISA, Form of Letters of Administration.
- Schedule VIII (s. 377) of ISA, Forms of Certificate and Extended Certificate.
(7.4) Suggestions for Enforcement of the UCC

It is oftenly observed that, most of the people who object the enforcement of UCC, do not have any or rarely have any idea regarding the objects and utility of UCC. Without understanding its importance and utility, it is rejected by most of the people. The history of Art. 44 has made it very clear that, it is and it will be not an easy task to implement UCC for all the citizens of India. But any how this constitutional mandate has to be given breath by the legislature of this country, if it really wishes to have an uniformed personal law system in India.

In this research work, an attempt has been made to form model draft code of UCC. But it is also a matter of deep concern that now the time is much ripe to enact UCC. Now there is no time to enact UCC in parts or installments because, it will again create ambiguities and it will again take and probably will rarely bring any change in existing personal law system. Looking to the present scenario of the mindset of Indian society, the suggestions regarding how UCC can be enacted, are as under;

(1) Introduction of UCC

People have several misconceptions and myths regarding UCC and hence, to introduce them with UCC, should be taken as the first step towards this direction. In democracy, there are several ways and means to communicate with the citizens directly. Media of any kind can play an immense role in this direction. Model draft of UCC should be directly placed before the people through media. Discussions and talk shows with general public should be held on different media channels. Through newspapers and TV Channels, its advertisement consisting of its benefit and utility may be communicated to people.
(2) Education through NALSA, DLSA and TLSA

Through District Legal Services Authority (DLSA) and Taluka Legal Services Authority (TLSA), National Legal Services Authority (NALSA) and different State Legal Services Authorities, conduct several legal education programmes, including legal literacy camps in different areas. Judges, students of law faculty and Para Legal Volunteers play very important role in this procedure. More and more literacy camps should be arranged in different areas at taluka, district, state and also at national level to introduce the UCC to the citizens of this country.

Under the head of Legal Service Authority Act, 1987, National Legal Services Authority and State Legal Authorities, have enacted several schemes, through which legal aid is made easily accessible to all. One of such schemes is, National Legal Services Authority (Legal Aid Clinics) Regulation, 2011. The basic object behind this scheme is to establish a legal aid clinic in all the villages. Such legal aid clinics basically run with the help of selected lawyers and Para Legal Volunteers. Such legal aid clinics can easily reach to the people and can directly communicate with the people regarding the benefits and the objects of UCC.

One of such another scheme is, National Legal Services Authority (Legal Service Clinics in Universities, Law College and other Institutions) scheme, 2013. The basic objectives of this scheme are,\(^{790}\)

a. To set up nation wide collegiate Legal Services Clinics to familiarize law students of the country to the problems faced by the masses ignorant about their rights and remedies under the law.

b. To attain the ideals of "Social Economic and Political" justice as enshrined in the Constitution, in the backdrop of poverty and inequality, by reaching out to the marginalized and the vulnerable communities through the collegiate Legal Services Clinics.

\(^{790}\text{Regulation, Schemes And Guidelines of National Legal Services Authority, National Plan of Action for 2013-14 & Calendar of Activities at pp. 28 - 29}\)
c. To spread legal awareness among students and people at large through aware camps, seminars, debates, legal counselling, poster making and street plays.

d. To expose students to community services

e. To introduce the students to socio-economic impediments to access to justice.

f. To provide the students a platform for the empowerment of socially and economically backward groups or individuals.  

Moreover, to execute the legal aid services, different legal services authorities conduct several type of programmes for the awareness to educate people regarding legal provisions and their rights. A system should be developed at such offices, where legal services authorities have their permanent office, so that people who approach such offices for any purpose, may be provided with pamphlets and informations regarding UCC, too. There should be made a separate counter in each legal services authority which can provide information about UCC. Though, the people may be approaching legal services authorities with any purpose, they may be provided information about UCC also, along with the help and information for which they basically approached the legal services authority.

(3) UCC should be made a part of education

A model draft of UCC must immediately be made a part of education, at least in law stream. So that, more and more people can directly understand it.

(4) Live telecast of talks with religious leaders

It is an admitted fact that main objection against UCC comes from religious leaders of different communities. At several instances, it is noted that such religious leaders have misinterpreted the term "Religion" and "Law". Hence, whatever talk is carried out with them, should be directly live

---

791 Supra 790.
telecasted on different channels of television and, in other electronic and social media because in present time, electronic media is the most effective medium to communicate any information to people. If the objection of religion leaders would be directly communicated with people, they would themselves understand that the existing personal laws are not of purely "Divine Origin". Once, this misconception gets clear in the mindsets of people, their objection towards UCC would automatically resolve.

(5) **Live Telecast of talks with scholars**

There are also some objections from several scholars and intellectuals, regarding UCC. To change their attitude and mindset towards UCC, they should be made a part when such kind of talk shows are organised. This way of informing or educating people is a less time consuming process. Being an interesting way of communication, people get attracted towards such mediums very easily.

(6) **Securing availability of Different type of materials**

Different materials such as magazines and booklets, consisting the facts regarding UCC should be kept in libraries for the perusal and understanding of people.

(7) **Frequent Education programmes**

It is observed that the people who are illiterate, and blindly follow the religion leaders, are the main victims of misconceptions of any fact regarding any ways and means of society. Such groups of people should be given more priority, and programmes to educate and communicate them, the concept and object of UCC, should be organised very frequently. The team, educating them should be enough knowledgeable to reply all the questions regarding misconception about UCC. Seminars at different level, should be organized to create positive atmosphere among the educated people.
(8) Telefilms and Dramas

Making telefilm and dramas on the theme of UCC and telecasting them by different kinds of media, will also be an effective instrument in direction of introducing UCC to the People.

(9) Mediation

Mediation for such people who do not want to understand anyhow, the concept of UCC, should be organized at any place, provided by the government. Mediation at different level, would be definitely proved to be very effective medium.

(10) Informing the people regarding changes

It is observed that the main objection against UCC, is from Muslim community. Hence, it is very necessary to create the trust regarding UCC, amongst the Muslims. To change their mindset towards UCC, the facts regarding changes and amendments brought in personal laws of different Muslim countries, should be communicated to Muslims. To Christians and Parsees too, changes brought in personal laws in different countries can be explained. This can be done effectively through different electronic media and also through other ways and means as mentioned in previous suggestions.

(11) Reminding People their duty towards Constitution

People should be made realise their duty towards the Preamble and different concepts of the Constitution of India.

(12) To Form a Collective view

By activating above all the mediums, a collective view towards UCC can be formed easily. Once such collective view would be formed, then there would not be any hurdle in the way of enactment of UCC.
The UCC should be enacted in straightforward manner than too, introducing in piecemeals as done in past at several instances in reference of some personal laws.

(13) Enhancement of Political will Power

As per the Constitution of India, making of laws regarding family laws comes within the ambit of both, the Central Government and the State Government. Hence, first of all, the government has to develop strong political will power in favour of enacting UCC. And also the government, at both the level, have to make very sincere efforts to introduce UCC to the citizens of India, and to create and develop their mindset in its favour. Above mentioned all the ways and means can play their role effectively, only when, the government wishes truly. Legislature has to take bold initiatives towards making and enacting of UCC.

(7.5) Testing of Hypothesis

After studying all the aspects of the subject, the Researcher, found following solutions of the testing of Hypothesis;

(1) Indian Personal Law System is based on religion.

As discussed is chapters II and IV of this research work and also in other chapters, and from the study of different research works carried out in this area, it is very clear that non of the personal laws are purely in nature of "divine". They are customary laws and at present only in Muslim personal law, few provisions are taken from religious books but they are also not in their original forms. They are in fact twisted versions of Quran or Hadith, or any other ancient sources. Hence, though separate personal laws are there for different religion people but it is not true that the Indian personal law system is based on religious abstracts and religion.
(2) Existing Personal Law System of India is unhealthy and the citizens of this country, neither appreciate it nor are satisfied with it:

The Personal laws of India, have caused many inequalities and injustice among and to the citizens. Different disputes coming before the courts, and also telecasted on social media and through any other media, and also can be easily observed in our surrounding area, prove that citizens are not satisfied because, if it would have been the fact such instances would never had been occurred. Such incidents prove that there are several infirmities in existing personal laws. Though people advocate for their personal laws, but when any specific legal issue arises against them, they criticise it. Objection against different personal laws is always raised from all the corners of the society. Activities taken up by different social and legal institutes against this system, proves this system to be outdated and unwanted. Hence, overall observation proves that existing personal law system of India is unhealthy and the citizens of this country, neither appreciate it and are nor satisfied with it.

(3) All the Personal Laws are gender-bias and they have caused grave injustice to women:

It is claimed that after the enactment of Hindu Succession (Amendment) Act, 2005, near about all the property rights of Hindu women, are equal to men but still inequality occurs in many areas of Hindu Personal law too, because this scenario differs place to place. All the personal laws are formed in such a way that they are, more or less unjust to women rights. Hence, not only Hindu women but also Muslim, Christian and Parsi and women of other religion or sects are forced to suffer several injustice, just because they are women. Hence, certainly the personal laws are gender-bias.

(4) Uniform Civil Code would eradicate existing practices in different personal laws due to different usages and customs.

UCC not only intends to provide a common and uniformed set of laws to all the citizens, but also intends to eradicate ill-practices going on in
different personal laws. Many ill-practices are going on in the name of religion and customs in different areas of this country. People interpret the law, as they want and not exactly what is meant by law. In this research, through, facts and arguments, the Researcher has proved that present personal laws are basically customary laws. On several instances they are proved to be illogical and against the existing social values. Such ill practices can be vanished through law only. UCC would be based on same set of laws of equal standards. Hence, it is definite that UCC would eradicate existing ill-practices in different personal laws due to different usages and customs.

(7.6) Further Scope of the study

Through present study, the Researcher has tried to give a model draft code of UCC. In this model draft code, the Researcher has tried to cover most of the areas of personal laws. The Researcher has mainly depended on the best provisions of existing personal laws, to form the model draft.

Though the Researcher has tried to incorporate present social needs in the Code, but, there can be found more changes, if this model code is viewed, observed and discussed by more stakeholders and scholars of law and specifically from personal law fraternity. Suggestions which come directly from the mouth of the people can also be studied through non-doctrinal and doctrinal studies and such suggestion, if practicable can be incorporated in the model draft Code of UCC in future.

Looking to the wider field of present study, the origin of different religion and myths or misconception regarding religious verses are discussed with very limited illustrations. Hence, there is scope for research on each of the topic.

This research work is carried out for the issues such as marriage, divorce, adoption, guardian and wards, maintenance, inheritance, succession, will, administration of property, religious endowments and gift. But other areas are not covered in this work exclusively so there is scope for further study.
The Researcher do not claim that this can be the only code which can be applied to all the citizens but, it can definitely be a base for further study to make code complete from others point of view.
BIBLIOGRAPHY

Books

Adil, M.S., Raheja, Rajiv, Legal and Social Ramification of Live-in-Relationship in India, Capital Law House, Delhi, 2011.

Agnes, Flavia, Family Law Volume-2, Marriage, Divorce, and Matrimonial Litigation, Oxford University Press, New Delhi, 1st edn, 2011.


Agnes, Flavia, Law and Gender Inequality: The Politics of Women's Rights in India, Oxford University Press, New Delhi, 2010.


Barak, Aharon, Purposive Interpretation in Law, Universal Law publishing Co. Pvt. Ltd., Delhi, 1st Indian reprint, 2007

Bala, Raj, The Legal And Political Status of Women In India, Mohit Publication, New Delhi, 1st edn., 1999.


Dwivedi, Pankaj, Uniform Civil Code, Vayu Education of India, New Delhi, 1st edn., 2016.


India Policy Foundation (IPF), Judiciary, Gender & Uniform Civil Code, India Policy Foundation, New Delhi, 1st edn., 2012.


Kothari, Rajni (ed.), Revised by Manor James, Caste in Indian Politics, Orient Blackswan Private Ltd., Hyderabad, 2nd edn., 2010.


Noronha, F. E., Outline Goa Civil Code, F. E. Noronha, Punjim, Goa, 2011.


Raina, Dinanath, Uniform Civil Code And Gender Justice, Reliance Publishing House, New Delhi, 1996.


Rao, Nitya, 'Good women do not Inherit Land.' Politics of Land and Gender in India, Social Science Press & Orient Blackswan, New Delhi, 2008.

Rashid, Syed Khalid, Revised by Bhartiya, V. P., Muslim Law, Eastern Book Co., Lucknow, 2009.


Zarquani, Maulana Ghulam, Marriage and Divorce, Darul Kitab, Delhi, 2010.

**Referred Articles**

Ahmad, Furqan, Understanding The Islamic Law Of Divorce, 45:3&4 JILI 484 (2003).


Karia, Ashwin N., Uniform Civil Code, Need Of The Hour, 2002(2) GLH 14.

Kusum, Marital-Status Based Discrimination, 45: 3 & 4 JILI 388 (2003).


Pandya, Mayuri, Uniform Civil Code, A Need Of The Hour, 2009 (2) GLH 1.


Wani, M. Afzal, Maintenance Of Women And Children In Muslim Countries, 45: 3&4 JILI 409 (2003)

Yadav, Shivlal, Some Reasons for a Uniform Civil Code, 1995(1) GCD 25 (Guj) (Journal).

**Bare Acts**

Hindu Laws, Universal Law Publishing Co., New Delhi, 2015,

Muslim Laws, Universal Law Publishing Co; New Delhi, 2015,

The Child Marriage Restrain Act, 1929, Universal Law Publishing Co; New Delhi, 2010,


The Constitution of India, Current Publication, Mumbai, 2014,

The Dowry Prohibition Act, 1961, Current Publication, Mumbai, 2014,

The Guardians and wards Act, 1890, Kamal Publishers, New Delhi, 2014,

The Indian Christian Marriage Act, 1872, Universal Law Publishing Co., New Delhi, 2015,

The Indian Succession Act, 1925, Universal Law Publishing Co., New Delhi, 2015,
The Juvenile Justice (Care and Protection of Children) Act, 2000, Universal Law Publishing Co. New Delhi, 2011,


The Parsi Marriage and Divorce Act, 1936, Universal Law Publishing Co; New Delhi, 2015,


The Special Marriage Act, 1954, Universal Law Publishin Co., New Delhi, 2015,

The Transfer of Property Act, 1882, Current Publications, Mumbai, 2014,

Webliography

A truly democratic and equalitarian uniform civil code can only be involved in the course of people's struggles!, www.unipure.ac.in, last visited on 16/08/14.


Bramanian, Narendra S., "Legal Change and Gender Inequality: Changes in Muslim Family Law in India" 2, Legal+change+&+Gender+Inequality+_+2008.pdf, casi.sas.upenn.edu, last visited on 04/11/12.

Sinha, Bhadra Take decision on uniform civil code quickly: SC tells Center, Hindustan Times, New Delhi, http://m.hindustantimes.com/ India/take-decision-on-uniform-civilcode-quickly-sc-tells-centre/story-Lc1PLXaPGm3KBo19jQKlso.html, last visited on 26/12/2015.


Garg, Sushma, Gender Inequality and women In India, GENDER INEQUALITY AND WOMEN IN INDIA.pdf, memak.org.in, last visited on 04/11/13.


Krishna, Atul, Uniform Civil Code, Uniform Civil CoDE-2.pdf, unmuktbharat.org, last visited on 20/10/14.


Pal, Ruma, Secularism And the Law, Showfile.pdf, www.kolkataporttrust.gov.in, last visited on 16/06/2015.


Parashar, Archana, Gender Inequality and Religious Personal Laws in India, BJWA_GenderInequalityReligiousPersonalLaws_INDIA-1pdf, dlha.org, last visited on 08/01/14.
Property laws of Indian women, www.wizard-legal25.blogspot.in, last visited 14/01/14.


Razvi, Meena, Roth, Gene, Socio-economic Development and Gender Inequality in India, development and genderinequality in india.pdf, ibgeography_lancaster.wikispaces.com, last visited on 04/11/13.


Report of the standing committee of parliament on Law and Justice, Report_of_the_Parliamentary_standing_committee_05may-1.pdf, hrln.org, last visited on 16/06/2015.

Report of the steering committee on 'Empowerment of Minorities', str_minorities2304-1.pdf, planning-commission.gov.in, last visited on 17/06/2015.


Sabarwal, Y. K., Role of Judiciary in Good governance, highcourtchd.gov.in, last visited on 14/11/14.

Semwal, Ritika, Good Governance : Avenue to a fair Legal System, ujala.uk.gov.in, last visited on 14/11/14.


Status of women in India : The Empirical context for Bailancho saad, 14_chapter 5.pdf, shodhganga.inflibnet.ac.in, last visited on 25/05/2015.

The Goa, Daman & Diu (Laws) Regulation, 1962, Goa-Daman-and-Diu-laws-Act1... indianbarassociation.org, last visited on 01/06/2015.
THE NEW INDIAN EXPRESS, August 29, 2014, Uniform Civil Code Debate:

DO Not Confuse Religion with Personal Law,
www.newindianexpress.com/magazine/voices, last visited on 29/08/14.

Topic Guide: Uniform Civil Code, ATT- 1422889954456- revised

Anand, Utkarsh, Uniform Civil Code: SC refuses to interfere, won’t issue
directive to Center. Indian Express, New Delhi,
googleweblight.com/?lite_url=http://Indianexpress.com/
article/India/India-new-India, last visited on 26/12/2015.

www.bgverghese.com, last visited on 29/08/14.

Verghese, B. G., Writings and Commentaries, www.bgverghese.com/code.htm,
last visited on 19/06/2015.

Williamson, John, Greenberg, Aaron, FAMILIES, NOT ORPHANAGES,
Families_Not_orphanages_j_Williamson.pdf,
www.thinkchildsafe.org, last visited on 09/10/14.

Websites

www.indianchristianity.org/
www.indianonlinepages.com/religions/christianity.html
www.srite.de/index?id=2 & cikk = 84
www.myjewishlearning.com/article/ancient_medical_history/
www.ancienthistory.about.com/od/biblicalhistory/ss/Erasjewishiist.html
www.religionfacts.com/judaism/history
www.science.co.il/Israel-history.php
www.google.co.in

**Referred Dictionaries**

Encyclopedia Americana
Judicial Officer’s Law Lexicom
The Oxford Companion to Law
List of Contribution and Publication by the Researcher

1. Participation and paper presentation details:

<table>
<thead>
<tr>
<th>S/No</th>
<th>Title of Articles</th>
<th>Presented At</th>
<th>Held on Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal laws and women’s Right to Property</td>
<td>University School of Law, Gujarat University, Ahmedabad</td>
<td>20/01/2013</td>
</tr>
<tr>
<td>2</td>
<td>Personal laws in changing Times</td>
<td>Auro University, Surat</td>
<td>14-15/09/2013</td>
</tr>
<tr>
<td>3</td>
<td>Effects of Globalization on Legal Education</td>
<td>University School of Law, Gujarat University, Ahmedabad</td>
<td>20/10/2013</td>
</tr>
<tr>
<td>4</td>
<td>Legal framework for anti-corruption in India : their impact and challenges</td>
<td>NLU, Delhi</td>
<td>15-16/11/2013</td>
</tr>
<tr>
<td>5</td>
<td>Protecting consumer through statues : An Analysis</td>
<td>Auro University, Surat</td>
<td>23-24/11/2013</td>
</tr>
<tr>
<td>6</td>
<td>Human Rights : Its Development and Present Scenario</td>
<td>VNSGU, Surat</td>
<td>21/12/2013</td>
</tr>
<tr>
<td>7</td>
<td>Legal Aid Services : Strengthening the weaker sections</td>
<td>Auro University, Surat</td>
<td>04-05/01/2014</td>
</tr>
<tr>
<td>8</td>
<td>Family Laws in India : Need to in justify the Gender Injustice</td>
<td>NLU, Jodhpur, Centre for Gender Studies</td>
<td>08-09/02/2014</td>
</tr>
<tr>
<td>9</td>
<td>Minority Rights and Personal Laws in India : An Analysis</td>
<td>Bharati Vidyapith, Deemed University, New Law College, Pune</td>
<td>22/02/2014</td>
</tr>
<tr>
<td>10</td>
<td>Protecting Environment through statutes : An Analysis of Legal Structure in India</td>
<td>Nirma University Ahmedabad</td>
<td>17-18/02/2014</td>
</tr>
<tr>
<td>11</td>
<td>Media and Ethics : Necessity for the Best Protection of Societal Interest</td>
<td>Faculty of Law, M.S. University, Baroda</td>
<td>07-08/03/2014</td>
</tr>
<tr>
<td>12</td>
<td>Uniformity in Family Laws in India : An Analysis</td>
<td>Auro University, Surat</td>
<td>27-28/09/2014</td>
</tr>
<tr>
<td>13</td>
<td>Necessity to Reform Adoption Laws of India: An Analysis</td>
<td>School of Law, Gujarat University, Ahmedabad</td>
<td>17-18/01/2015</td>
</tr>
<tr>
<td>14</td>
<td>Forensic Science And Criminal Investigation: An Analysis</td>
<td>Nirma University, Ahmedabad</td>
<td>30-31/01/2015</td>
</tr>
</tbody>
</table>

2. Publication of Papers: 11 Papers
<table>
<thead>
<tr>
<th>S/No</th>
<th>Paper Titled</th>
<th>Presented At</th>
<th>Date and Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal laws in changing Times</td>
<td>Auro University, Surat</td>
<td>14-15/09/2013</td>
</tr>
<tr>
<td></td>
<td>ISBN 13 : 978-81-928189-0-0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Protecting consumer through statues : An Analysis</td>
<td>Auro University, Surat</td>
<td>23-24/11/2013</td>
</tr>
<tr>
<td></td>
<td>ISSN 2348-0718</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Legal Aid Services : Strengthening the weaker sections</td>
<td>Auro University, Surat</td>
<td>04-05/01/2014</td>
</tr>
<tr>
<td>5</td>
<td>Minority Rights and Personal Laws in India : An Analysis</td>
<td>Bharati Vidyapith, Deemed University, New Law College, Pune</td>
<td>22/02/2014</td>
</tr>
<tr>
<td></td>
<td>ISSN 2278-6996</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Uniformity in Family Laws in India : An Analysis</td>
<td>Auro University, Surat</td>
<td>27-28/09/2014</td>
</tr>
<tr>
<td></td>
<td>ISBN 13 : 978-81-928189-3-1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>ISSN 2348-0718</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Protecting Environment through Statutes: An Analysis of Legal Structure in India (Published in two parts)</td>
<td>2015(1) GCD 4(J)-8(J) &amp; 2015(1) GCD (J)9-14(J)</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>The Role of Press And Media in Indian Democracy: An Analysis (Published in two parts)</td>
<td>2015(1) GCD (J)15-16(J) &amp; 2015(1) GCD (J)17-22(J)</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Media &amp; Ethics : Necessity for the Protection of the best societal interest (Published in three parts)</td>
<td>2015(1) GCD (J)23-24(J), 2015(1) GCD (J)25-32(J) &amp; 2015(1) GCD (J)33-40(J)</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Necessity to Reform Adoption Laws of India: An Analysis</td>
<td>School of Law, Gujarat University, Ahmedabad, March-2015 Vidya</td>
<td>17-18/01/2015</td>
</tr>
<tr>
<td></td>
<td>ISSN NO.2321/1520</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>