IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 81 OF 2025

Xavier Agnelo Minguel Jose Gracias .. Petitioner

Versus

The State of Goa, Thr. The Chief Secretary and Anr .. Respondents

WITH
MISC. CIVIL APPLICATION NO. 2610 OF 2025 (F)
IN
WRIT PETITION NO. 81 OF 2025

Arjun Chandrakant Gaude .. Applicant

Versus

Xavier Agneloa Minguel Jose Gracias .. Respondent

WITH
MISC. CIVIL APPLICATION NO.2666 OF 2025 (F)
IN
WRIT PETITION NO.81 OF 2025

Bhuvaneshwar Faterpekar and 3 Ors .. Applicant

Versus

Xavier Agneloa Minguel Jose Gracias .. Respondent

WITH
WRIT PETITION NO.2486 OF 2025 (F)

Shantaram Jaywant Chanekar and anr .. Petitioners

Versus

Rushina Siddesh Chanekar and anr .. Respondents

Appearance in Writ Petition No.81 of 2025

Mr.Ashwin Ramani, Advocate for the Petitioner.
Mr.Devidas Pangam, Advocate General with Mr. N. Vernekar, Additional Government Advocate for Respondent No.1.
Mr. Rohit Bras De Sa, Advocate for Respondent No.2.

Arati/ Rajeshree/ Ashish

Mr. Shivan Desai with Ms. A. Thorat and Ms. Riya Amonkar, Advocates for the Applicant in MCA No.2610 of 2015 (F).
Mr. Gauravvardhan Nadkarni, Advocate for the Applicant in MCA No.2666 of 2025 (F).

Appearance in Writ Petition No. 2486 of 2025 (F)

Mr. Nigel Da Costa Frias with Mr. Shane Coutinho, Advocates for the Petitioners.
Mr. Somnath Karpe with Ms. S. Vaigankar and Ms. Siddhi Parodkar, Advocates for Respondent No.1.
Mr. Devidas Pangam, Advocate General a/w Ms. Maria Simone Correia, Additional Government Advocate for Respondent No.2.

CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.
RESERVED : 18th MARCH, 2026
PRONOUNCED : 8th MAY, 2026

JUDGMENT (Per Bharati Dangre, J) :-

1. The two Writ Petitions, namely, WP No. 81 of 2025 and WP – F – 2486 of 2025 placed before us raise a challenge to the Goa Succession, Special Notaries and Inventory Proceedings (Amendment) Act, 2022, and the Goa Succession, Special Notaries and Inventory Proceedings (Amendment) Act, 2023, which has resulted in amending and substituting Section 52, 72, 76, 77 and 83 of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 (Act of 2012). The Petitioners seek a declaration that the amendments in the Act of 2012 are *ultra vires* the Constitution, as it has resulted in imposition of absolute and arbitrary restrictions on the right of a person to bequeath or gift any property constituting his estate. Challenge is also raised to the retrospective effect of the said amendment as it is contended that the amendment Act of 2023 has the

effect of taking away ‘Vested rights,’ that are accrued and this being done without any nexus, object or purpose, it is, arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

2. Along with the two Writ Petitions, we have Miscellaneous Civil Applications filed by individual parties seeking intervention/ impleadment being MCA-F- 2610 of 2025 and MCA-F- 2666 of 2025 in WP No. 81 of 2025.

3. On the pleadings being completed and a request being made that the Petitions be taken up for final hearing, we have heard the arguments advanced on behalf of the Petitioners/interveners and the private respondent in support of the challenge. We have also extensively heard the learned Advocate General, Mr. Devidas Pangam, who has defended the said challenge by strenuously urging that there exists a presumption in favour of the constitutionality of a statute and unless and until the parameters for striking a provision in a statute, which being well settled are made out, the Court shall not entertain such a challenge.

By consent of the respective counsel representing the parties, on the pleadings being completed, we issue ‘Rule’, which is made returnable forthwith.

For the sake of convenience, the Judgment is divided in the following parts:-

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[A] BACKGROUND FACTS IN THE TWO WRIT PETITIONS

4. In order to appreciate the legal challenge, we must briefly refer to the facts involved, as the challenge in the Petition apart from the legal aspect has arisen in the peculiar factual backgrounds set out therein.

(1) WP No. 81 of 2025

Writ Petition No. 81 of 2025, is filed by Xavier Agnelo Minguel Jose Gracias, who claim his entitlement to the estate left behind by his brother late Fransico Maximiano Menilo Costa e Gracias, who demised on 31/05/2022. As per the Petition, late Fransico expired intestate, without leaving behind any Will or disposition of his last wish. He left behind immovable properties situated at Velsao, Cansaulim, Cuelim and Pale, of Mormugao Taluka, in the State of Goa.

According to the Petition, in view of the law of succession in force, as on the demise of late Fransico, on 31/05/2022, the ownership and possession of the inheritance is transmitted to the Petitioner and his siblings in terms of Section 13 read with Section 52 of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012, in the absence of any descendants and ascendants of late

Fransico surviving at the time of his demise.

However, the existing position, according to the Petitioner was altered by the (Amendment) Act 2022, as it brought amendment in Section 52, which altered the order of succession by placing the surviving spouse after the descendants. In other words, according to the Petitioner, by virtue of the amendment, the surviving spouse become entitled to the estate, in the absence of a descendant and prior to the Amendment Act of 2022, this entitlement was of the ascendant(s).

5. The Petitioner make a further grievance that the State brought in another (Amendment) Act of 2023, on 05/09/2023, and this Act, substituted section 52 of the parent Act that was already amended by the Amendment Act of 2022 by introducing an explanation. It also amended sections 72, 76 and 77 of the parent Act and this amendment corresponded to the changes brought about by the Amendment Act of 2022 to section 52 of the parent Act. Pertinently, it also altered the concept of legitime by amending section 83 of the parent act to now provide that the legitime of the surviving spouse and of parents would be the entire estate, whereas that of the other ascendants would be 1/3rd.

6. The Petition raise a serious objection to the provision in form of Section 1(2) of the Amendment Act of 2023 which provided that it shall be deemed to have come into force on 21st day of December, 2016, indicating its retrospective operation, having the effect of effacing rights that had vested in the Petitioner i.e. on 31/05/2022, i.e. prior to the enactment of the Amendment Act of 2023.

The Writ Petition filed by Xavier Agnelo Minguel Jose Gracias, therefore, raises a challenge to the Amendment Act of 2022 and the Amendment Act of 2023 by pleadings thus:-

> *"9. The said Amendment Act of 2022 and the Amendment Act of 2023 are not only ultra vires of the Constitution of India and violative of the rule of law, but also results in arbitrarily depriving the Petitioner of his right to the estate that vested in him in terms of the parent Act, and to the property, under the Constitution of lndia."*

7. The Petition has raised the following grounds:-

I

"*The Amendment Act of 2022 and the Amendment Act of 2023 is in contravention of Article 14 of the Constitution of India.*

II

The Amendment Act of 2023 has the effect of taking away vested rights accrued to the Petitioner without any nexus, object or purpose, and is, therefore, arbitrary, discriminatory and violative of rights guaranteed under Article 14 of the Constitution of India.

III

The Amendment Act of 2023 is susceptible to judicial review and warrants a declaration of unconstitutionality from this honourable Court in terms of the law laid down by the Constitutional Bench of the honourable Supreme Court in the case of ***Chairman, Railway Board & Others. v. C. R. Rangadhamaiah & Others. (1997) 6 SCC 623*** *and later followed in the case of* ***Punjab State Cooperative Agricultural Development Bank Ltd. v. Registrar, Cooperative Societies & Others (2024) 4 SCC 363.***

IV

The Amendment Act of 2023 runs contrary to, and is in the teeth of, cardinal principle of jurisprudence that rights vested and accrued under the existing laws cannot be taken away or impaired by an amendment with a retrospective effect.

V

The amendment to section 52, as initially brought about by section 4 of the Amendment Act of 2022, and the same section 52 as substituted by the Amendment Act of 2023, overlooks the antecedent enactments on the subject.

A Decree has earlier come to be enacted on 31.10.1910 whereby the order of succession was altered by entitling spouse to the Estate, in absence of ascendants and descendants. The change brought about by the said Decree dated 31.10.1910 came to be withdrawn by virtue of Decree No. 19.126 dated 16.12.1930, which was brought into force with effect from 01.01.1931.

VI

The 2023 Amendment imposes absolute and arbitrary restriction on the right of a person to bequeath or gift any property constituting his estate if does not have a descendant as on the date of his demise. Such restriction is arbitrary and

causes an unintelligible differentiation which is contrary to the constitutional scheme, and more particularly Article 14 of the Constitution of India."

8. Another significant aspect, which is highlighted in the Petition is, the inventory proceedings which were instituted by the Petitioner before the Civil Judge, at Vasco-da-Gama, being registered as Inventory Proceedings No. 4 of 2023.

It is stated that in the wake of the Amendment Act, 2023, an issue was raised about the maintainability of the proceedings by the surviving spouse, who claimed to be now exclusively entitled to the estate left behind the deceased. The Petition pleads that by judgment and order dated 27/02/2024, the Court rejected the inventory proceeding in view of Section 1(2) of the Amendment Act of 2023, which declared that the amendment shall be deemed to have come into force on 21/12/2016.

The Petition however proceed to state that the Petitioner has assailed the said judgment in first appeal, which is founded on the ground that the Civil Judge has committed an error in interpreting the Amendment Act of 2023, by effacing rights vested in the Petitioner prior to its enactment.

(2) <u>WP No. 2486 of 2025</u>

9. In the second Writ Petition, the Petitioners, two senior citizens, Shantaram Jaywant Chanekar and Shubhangi Shantaram Chanekar, are the parents of Late Shri. Siddesh Shantaram Chanekar, who demised on 22/03/2019. The Respondent No.1 to the Petition is Smt. Rushina Siddesh Chanekar, widow of their son.

The Petitioners claim that since there was no offspring out of the marriage and they are the legal ascendants and 'heirs' in terms of the law of succession prevailing at the time of his death.

The Respondent No.1, the widow and moiety holder of their late son, instituted inventory proceedings for partition of the estate left behind by her husband, the proceedings being registered as Regular Inventory Proceeding No. 414/2019/D before the Civil Judge, Junior Division, 'D' Court at Mapusa, Goa.

The Petitioners were named as interested parties in the said proceedings, being legal heirs of the deceased.

10. It is the case of the Petitioners, that under the unamended Section 52 of the Goa Succession, Special Notaries, and Inventory Proceedings Act, 2012, which determine the order of legal succession, they were entitled for precedence over the surviving spouse i.e. Respondent No.1.

Upon the introduction of the Amendment Act of 2022, the Respondent No.1 filed an application seeking deletion of the Petitioners impleaded as interested parties nos.1 and 1(a) by contending that by virtue of the amended provision, the estate of the deceased devolved exclusively upon her, as the surviving spouse.

According to the Petitioners, the 2022 amendment came into effect from 8/11/2022 but by the (Amendment) Act, 2023, which further substituted sub-section (1) of Section 52, was given a retrospective effect in terms of sub-section (2) of Section 1 of the Act, and it was deemed to have come into force on 21/12/2016.

The aforesaid development, therefore, resulted in the

application filed by Respondent No.1 being allowed on 10/04/2024, directing the Petitioners to be dropped from the inventory proceedings.

The said order being challenged before the District Judge – 2, Mapusa, resulted into dismissal of the appeal, thereby confirming the order passed by the Civil Judge.

The further development set out in the Petition is the institution of First Appeal before the High Court of Bombay at Goa.

11. The Petitioners claim that they are gravely prejudiced by the amendment to Section 52 of the Act of 2012 and the impugned order passed by the Civil Judge, in the Inventory Proceeding which is upheld in an Appeal.

The Petition has categorically set out the grounds in support of its relief, seeking a declaration and specific reference is made to the various provisions in the Portuguese Civil Code, 1867, which had provided for devolution of intestate succession. The Petition has also traced the scheme of succession in Goa and it is pleaded that for more than a century the law has been, that the parents are next in the line of succession in the absence of any descendants of a deceased estate-leaver. According to the Petitioners, the unique system of marriage, and the law governing the property of spouses, in Goa, which recognized the system of communion of assets, where the spouses are joint owners and sharers of the property held by them, i.e. self acquired, jointly acquired, or brought into communion through succession, gift, or otherwise.

The Petition makes reference to the relevant articles in the

Portuguese Civil Code, and on the basis of which, according to the Petition, marriage is an essential contract between two consenting parties and it is with intention and keeping in consonance with the law recognizing marriage as purely a civil contract, the surviving spouse was placed below the descendants, ascendants, and siblings and their descendants, if they predeceased the estate-leaver. Thus, according to the Petitioners, the amendment in Section 52 of the Goa Succession, Special Notaries and Inventory Proceedings Act of 2012 runs contrary to the concept of legal heirship and the historical order of succession as followed by the Portuguese Civil Code, 1867 in Goa for more than a century which is otherwise a just, equitable and sound law.

(3) <u>Miscellaneous Civil Application Nos. 2610 /2025 & 2666 / 2025</u>

12. In Writ Petition No. 81 of 2025, a Civil Application is taken out by Arjun Chandrakant Gaude, seeking his impleadment, as he claims to be a interested party in Inventory Proceeding No. 87 of 2025, which is filed upon the death of Late. Raghunath Atmaram Shetgaonkar and late Mahalaxmi Raghunath Shetgaonkar who are the in-laws of the Applicant. Since the Applicant gained knowledge about the Petition being filed raising a challenge to the (Amendment) Act, 2022 and the (Amendment) Act, 2023 by which amendments are brought in Act of 2012, which has altered the order of succession, thereby placing the surviving spouse after descendants, on the basis that the outcome of the Petition will also have bearing on the Applicant’s case, the Applicant seeks intervention.

13. Another Application is filed by Mr. Bhuvaneshwar Faterpekar and three others. The Application proceed to state that the Applicants

being residents of Goa are practicing Advocates before the Court and Applicant no.1 has been recently elected as people's representative i.e. ward member of village Panchayat of Carambolim.

According to the Applicants, the amendment introduced in the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012, had amended the waterfall mechanism in pertinence to succession to estate, whereby the surviving spouse earlier was at serial no. (iv), but now placed at serial no.(iii). The Applicant specifically plead that the amendment though pertaining to succession, has a direct connection and bearings to the rights under the Civil Code in as much as it pertain to civil marriage, and therefore, the Applicants deemed it appropriate to intervene and request for being heard in the Petition which has raised a challenge to the Amendment Act, 2022 and 2023, as even according to them, the amendments are contrary to law and they are manifestly arbitrary, irrational and *ex-facie* based on whims / preferences rather than reason and principle.

[B] STATUTORY SCHEME OF GOA SUCCESSION, SPECIAL NOTARIES AND INVENTORY PROCEEDINGS ACT, 2012

14. With the above background of the proceedings before us, we must refer to the statutory scheme under the Goa Succession Act of 2012.

The Goa Succession, Special Notaries and Inventory Proceedings Act, 2012, was passed by the Legislative Assembly of Goa on 5/08/2016 and received assent of the Governor on 19/09/2016.

The said Act consolidate and amend the law of intestate and testamentary succession, notarial law and the laws relating to partition of an inheritance. It extend to the whole of the State of Goa and is applicable to the category of persons, who are specified in clause (4) of Section 1 of the Act, 2012.

15. The Statement of Objects and Reasons (SOR) of the 2012 Act has set out its purport, being the need to consolidate various provisions of law into one comprehensive, rational and integrated legislation, to facilitate their application and its implementation by the Bench, the Bar and the litigants.

Statement of Objects and Reasons of the 2012 Act record thus:-

> *"Considering the need to take into account the social changes and the new situations arising from the fact that Goa is now a State of the Union of India and Goans are citizens of India and considering also that the Laws which in force were applicable to an altogether different set of political circumstances, it has become necessary to amend the Law to meet the present day requirements and to make it workable.*
>
> *Further, in view of noteworthy new principles that have evolved, a more humane and fair outlook is now taken on illegitimacy, on mentally challenged persons and on such other persons upon whom a stigma was cast in the past for no fault of theirs. These principles and outlook have been adopted in framing the present law.*
>
> *That object is sought to be achieved by this Bill which deals with the Law of Succession, Special Notaries and the Inventory proceedings.*
>
> *While drafting the Bill, the following Legislations have been kept in view:*
>
> *(a) The provisions of the Portuguese Civil code enacted in Portugal in 1966, replacing the Civil Code of 1867 and the Code of Civil Procedure of 28-12-2961, replacing the Code of Civil Procedure of 1939, as well as Decrees amending from time to time many provisions of the aforesaid Code on the subject of succession and inventory and Notarial Law, and the Law approved by Decree Law No. 207 dated 14-08-1995 and amendments thereto.*
>
> *(b) The Provisions of Louisianan Civil Code, 1870 (based on Napoleon Code), in force in the state of Louisiana of the United States of America as originally enacted, and the subsequent amendment included by Act of 1981 No. 919 effective after 31-12-1981 and Act of 1990 No. 147 with effect from 1-7-1990.*

(c) Legislation in force in the rest of India.

(d) There are some original provisions which have been incorporated bearing in mind the present circumstances.

The subject of succession, partition, execution of wills with corresponding notarial acts and inventory proceeding meant for partition of the estate through the Court fall within the purview of entry 5 of List III-Concurrent List of the seventh schedule to the Constitution of India and in view of section 5 of the aforesaid Goa, Daman and Diu (Administration) Act, 1962, the Legislature of the State of Goa is competent to enact Law on the subject."

16. One of the key feature of the Act of 2012 is its provision for succession as contained in Part II. As per Section 3, 'Succession' is the transmission of the estate of a deceased person in favour of his successors, and successor is the person who is called to succeed the juridical relations of the deceased person and upon whom the assets and liabilities devolve.

For the purpose of Part II succession may be intestate or legal and testamentary.

Testamentary succession is described to be the succession which results from a will left by the estate leaver and a testamentary heir is a heir instituted by a will.

Intestate succession is either free or forced and forced succession is the one which is reserved by law to the forced heirs and places restrictions on the freedom of the estate leaver to dispose of his estate.

17. According to the Act of 2016, the 'Successors' are Heirs and Legatees and 'Heir' is the person who inherits or succeeds to the totality of the estate of the estate leaver or to an undefined share thereof, without specifying the assets constituting it, whereas 'Legatee' is the one who succeeds to specific and determined assets. A person who succeeds to the remainder of the estate when the assets

constituting the remainder are not determined, is an ‘Heir’.

According to Section 6, Inheritance or succession of a deceased would comprise of all the properties, rights and obligations which he leaves upon death, though it is clarified that a person’s right which by their very nature or by operation of law, extinguish upon death of the title holder, and do not form part of the inheritance.

18. In terms of the Act of 2016, the succession opens upon the death of the estate leaver and Section 8 prescribes the place where the succession opens.

All persons, who are born or conceived at the time of opening of the succession are competent to succeed, unless the law provides otherwise.

The statute also prescribe a disqualification to succeed, by reason of unworthiness like a person convicted for commission of murder, a person convicted for defamation or for giving false evidence, a person who by deceit or coercion, induce a estate leaver to make, revoke or modify a will, or obstruct him from doing so etc.

As per Section 13, the moment the estate leaver dies, the ownership and possession of the inheritance is transmitted to the heirs, whether testamentary or intestate.

19. Chapter IV of the Act provide for Acceptance of inheritance, which shall be unconditional and it prescribe that the acceptance or renunciation of an inheritance is entirely voluntary and free act, with a clarification that a person who renounces inheritance which devolves on him by one title is not, for that reason, debarred from accepting inheritance, which devolves on him by another title. However, Section 24 of the Act declare that it is not lawful for a

person to accept or renounce an inheritance in part, or for a certain time limit or conditionally. Section 45 included in Chapter V has set out the liabilities of inheritance and Section 46 prescribe that the creditors of the inheritance and the legatees have priority over the personal creditors of the heir and the creditors of the inheritance.

Under this scheme, the 'Heir' shall retain, as against the inheritance, till partition, all the rights and obligations vis-a-vis the deceased, with the exception of those who get extinguished upon the death of the estate leaver.

20. For the purposes of the challenge before us, we must take note of Chapter VI, under the heading of 'Legal Succession', as Section 51 prescribe that where any person dies without making a disposition of his assets or making disposition of only a part thereof or, having made a will, and the will is annulled, revoked, reduced or it lapses, his legal heirs shall inherit the assets or part thereof.

Section 52, which is the subject matter of challenge in the present writ petitions, prescribe the order of legal succession and the said section introduced in the Act of 2016 read thus:-

> *"52. Order of legal succession.- (1) The legal succession shall devolve in the following order:-*
>
> *(i) On the descendants;*
>
> *(ii) On the ascendants, subject to the provisions of sub-section (2) of section 72;*
>
> *(iii) on the brothers and their descendants;*
>
> *(iv) on the surviving spouse;*
>
> *(v) on the collaterals not comprised in clause (iii) upto the 6th degree;*
>
> *(vi) on the State, provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner.*
>
> *(2) In respect of persons referred to in clauses (i), (ii) and (iii) of sub-section (1), the agricultural produce or fruits, gathered or growing, meant and necessary for the maintenance of the couple shall be deemed to be the personal*

property of the surviving spouse, provided that on the date of the opening of the inheritance there is no suit for divorce or separation of persons and properties, pending or decreed."

21. The Act of 2016 in Chapter VIII provide the Order of Succession of children and their descendants/ascendants as well as the Ascendants of Second Degree and the Succession of brothers/sisters and their descendants. Section 77 in the Act is the provision for succession of surviving spouse, which read thus:-

"77. Succession of Surviving Spouse.- In default of descendants, ascendants, brothers, sisters and their descendants, the surviving spouse shall succeed, provided that at the time of the death of the other spouse, they were not divorced or there had been no judicial separation of spouses and assets by a decision which had become final."

22. Similarly, Section 82 included in Chapter IX is a provision prescribing Preferential right of habitation and use of the surviving spouse and it read thus:-

"82. Preferential right of habitation and use of surviving spouse. - (1) The surviving spouse of the estate leaver shall have the right to exclusive habitation of the residential house of the family and the right to use the movables and other objects or utensils intended for the comfort, service and decoration of the house. If such claim is made, the value of the right of habitation and use shall be determined and the surviving spouse shall pay owelty to the heirs if the value of right of habitation and use exceeds the value of her moiety and share, if any."

23. Although, the Act refer to certain other important provision, in form of inventory proceedings, at this juncture, it is not necessary for us to make a reference to the same, as we would be referring to them at the relevant stage of our discussion.

[C] THE GOA (AMENDMENT ACT) 13 OF 2022

24. The Goa Succession Special Notaries and Inventory Proceedings (Amendment) bill 2022, was introduced by the legislative assembly of Goa for amending the Act of 2012.

This bill amended Section 52 of the Principle Act by inserting the following item (a) after item (i),the following item shall be inserted, namely:- "(ia) on the surviving spouse;";

The amending Act substituted the following (b) for item (iii) namely "(iii) on the brothers and sisters and their descendants;"; (c) item (iv) came to be amended. Upon enactment of the amendment Act, the surviving spouse followed the descendants and the existing clause (iii) was substituted by brothers and sisters and their descendants and clause (iv) surviving spouse, since transposed above was deleted.

The SOR of the amending Act, which sought to amend Section 52 of the Act of 2016, expressed its intention to rectify the order of legal succession, and several other provisions in the Act, were also amended, as it sought to achieve the object set out therein.

[D] <u>THE GOA (AMENDMENT) BILL NO.26 OF 2023</u>

25. The Goa Succession Special Notaries and Inventory Proceedings Act, bill 2023 was further enacted by the legislative assembly of Goa and sub-section (2) of Section 1, prescribed that the amendment shall be deemed to have come into force on 21/12/2016 and in Section 52 of the Act of 2012 for sub-section (1), the following sub-section was substituted;

'(1) The legal succession shall devolve in the following order:-

(i) on the descendants;

(ii) on the surviving spouse;

(iii) on the ascendants, subject to the provisions of sub-section (2) of section 72;

(iv) on the brothers and sisters and their descendants;

(v) on the collaterals not comprised in clause (iv) upto the 6th degree; (vi) on the State, provided that, in the absence of testamentary or intestate heir of a

beneficial owner or of an emphyteusis, the property shall revert to the direct owner.

Explanation:- The provisions of this sub-section as amended by Goa Succession, Special Notaries and Inventory Proceeding (Amendment) Act, 2023 shall be applicable to the cases/appeals pending before different courts, however the said amendment shall not disturb the rights which got crystallized before the enactment of the said Act, 2023.

The amending Act also introduced amendment in Section 83 of the principal Act, with relation to the disposable portion and the existing provision stood substituted by the following provision:-

"83. Disposable portion.- The portion which the testator may freely dispose off shall be called the disposable portion and it shall consist of half of the estate of the estate leaver, except as provided hereunder:-

(a) Legitime of the descendants: Where the estate leaver has children or descendants at the time of his death, their legitime shall consist of half of the inheritance.

(b) Legitime of the spouse: Where the estate leaver has no children or descendants at the time of his death but his spouse is alive, her legitime shall consist of entire inheritance.

(c) Legitime of the parents: Where the estate leaver has no children or descendants and spouse at the time of his death but either his mother or father is alive, their legitime shall consist of entire inheritance.

(d) Legitime of other ascendants: Where the estate leaver has at the time of his death ascendants other than the father or mother, their legitime shall consist of one third of the inheritance."

26. The statements of objects and reasons of the said amending Act 2023 read thus:-

*"**STATEMENT OF OBJECTS AND REASONS***

The order of legal succession as laid down under sub-section (1) of section 52 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (Goa Act 23 of 2016) (hereinafter referred to as the "said Act") was rectified by carrying out an amendment to said sub-section (1) of section 52 vide the Goa Succession, Special Notaries and Inventory Proceeding (Amendment) Act, 2022 (Goa Act 13 of 2022). The said Amendment Act, 2022 came into force with effect from 8th Day of November, 2022. The Bill now seeks to make provision for making applicable amendment to said sub-section (1) of section 52 to pending cases/appeals, however the sai amendment shall not disturb the rights which got crystallized before the enactment of this legislation. The amendments as proposed to sections 72,76,77 and 83 of the said Act are consequential amendments which are made to bring the provisions contained in said sections in consonance with the provisions of section 52 of the said Act as amended."

[E] THE EFFECT OF AMENDING ACTS ON THE EXISTING ACT OF 2012

27. The Goa Succession, Special Notaries and Inventory proceedings (Amendment) Act 2022, and the (Amendment) Act 2023, brought in the amendments to the Act of 2012, which cumulatively has the following effect:- (a) The order of succession contemplated in section 52 of the Act of 2012 has now been altered to place the surviving spouse, second in the order of succession i.e. to succeed to the estate in the absence of descendants. The spouse under the original section 52 was placed fourth in order of succession i.e. to succeed in absence of descendants, ascendants and brothers/sisters (b) It alters the concept of legitime, in the event of a spouse succeeding to the estate. The legitime of the spouse as in the amended Section 83 of the Parent Act is the entire inheritance.

This legitime under the unamended law was one half of the inheritance.

(c) The Amendment Act of 2023 which has brought in the amendments are deemed to have come into force on 21/12/2016.

A comparative chart showing the change in the original Section 52 of the Goa Succession Act, 2012 is drawn below to depict the changes.

Section 52

Of the Parent Act, as it originally stood	As amended by the Amendment Act of 2022	After substitution by Amendment Act of 2023
Sub-section (1)	**Sub-section (1)**	**Sub-section (1)**

(1) The legal succession shall devolve in the following order:- (i) on the **descendants;** (ii) on the **ascendants**, subject to the provisions of sub-section (2) of Section 72; (iii) on the **brothers** and their descendants; (iv) on the **surviving spouse;** (v) on the **collaterals** not comprised in clause (iii) upto the 6th degree; (vi) on the **State,** provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner.	**(1)** The legal succession shall devolve in the following order :- (i) on the **descendants;** (ia) on the **surviving spouse;** (ii) on the **ascendants,** subject to the provisions of sub-section (2) of section 72; (iii) on the **brothers and sisters** and their descendants (v) on the **collaterals** not comprised in clause (iii) upto the 6th degree; (vi) on the **State,** provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner.	(1) The legal succession shall devolve in the following order :- (i) on the **descendants**; (ii) on the **surviving spouse**; (iii) on the **ascendants**, subject to the provisions of sub-section (2) of section 72; (iv) on the **brothers and sisters** and their descendants; (v) on the **collaterals** not comprised in clause (iv) upto the 6th degree; (vi) on the **State,** provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner. *Explanation* – The provisions of this sub-section is amended by the Goa Succession, Special Notaries and Inventory Proceeding (Amendment) Act, 2023 shall be applicable to the cases/appeals pending before different courts, however the said amendment shall not disturb the rights which got crystallized before the enactment of the said Act, 2023.”

[F] CONTENTIONS ADVANCED BY THE RESPECTIVE COUNSEL REPRESENTING THE CONTENDERS

(I) Submissions advanced in support of the invalidation of the Amending Act of 2022 & Act of 2023.

28. Mr. Ramani appearing for the Petitioner in Writ Petition No. 81 of 2025 has mounted a challenge to the amending Acts on three counts; the challenge to the alteration of the order of succession, the retrospective application of the provision amounting to divestiture of vested rights and thirdly on the ground of alteration in the concept of legitime.

Mr. Ramani would explicate his challenge to the variance in the order of succession, by submitting that Section 52 has created class of heirs to succeed to the estate, in order of preference as set out in the Act of 2016. According to him, in the wake of the amendment, the surviving spouse originally placed at fourth step, in the order of succession has moved to second.

He would submit that the order of succession which was originally contemplated in the parent Act which existed in the State of Goa at least ever since 01/07/1870 i.e. when the Civil Code of 1867 was extended to overseas territories including Goa and as such for a period of more than 150 years, prior to the impugned amendments being introduced, and the asset owned by the deceased estate leaver would be dealt by the same order.

It is his contention that the spouse was conferred with the following rights:-

(a) The surviving spouse would be entitled for 50 % of the share (Article 1108 of the Civil Code); (b) Right to exclusive habitation and

use of residential house and movables was reserved to the spouse (Section 82 of the Act of 2016); (c) Agricultural produce necessary for maintenance shall be deemed as personal property of the spouse (Section 52 (2) of the Parent Act, erstwhile Article 1969 of the Civil Code); (d) Remaining 50% would constitute the estate of the deceased and would devolve (in absence of a will) in the order of legal succession set out in Article 1969 of the Civil Code, which now is substituted by the amendment.

29. In support of the Petitioners, in WP No. 81 of 2025, Mr. Ramani would submit that, the provision as it existed prior to the impugned amendments, the surviving spouse was adequately safeguarded by vesting of 50 % of the assets of the deceased spouse and by reservation of produce from lands that constituted the estate, and only on satisfying the above, the estate devolved upon the descendant, the ascendants or brothers/sisters. However, in order to rectify the order of succession, the amending Act of 2022 brought a change which according to him, do not reflect any conceivable legitimate object nor does it intend to remedy any mischief. It is his specific submission that the classification of spouse now in second degree by taking precedence over 'Ascendants' and 'Brothers/Sisters,' the direct blood relation do not serve any legitimate object.

The learned counsel would place reliance upon the decision of the Apex Court in ***John Vallamattom and anr vs. Union of India***[1], where the Apex Court declared Section 118 of the Succession Act of 1925 to be unconstitutional, when the Court rendered a finding that

1 (2023) 6 SCC, 611

although Indian Christians formed a class by themselves, but there is no justiciable reason to hold that the classification made is either based on intelligible differentia or the same has any nexus with the object sought to be achieved. Reliance is also placed upon the decision in case of ***Dr. K. R. Lakshmanan vs. State of Tamil Nadu and Anr***[2] to submit that if the provision in statute is discriminatory and arbitrary it violate and infract right of equality enshrined under Article 14 of the Constitution.

30. Pressing the second point of challenge about the retrospective effect given to the provision, Mr. Ramani would place reliance upon the decision in case of ***Chairman, Railway Board and ors vs. C.R. Rangadhamaiah and Ors***[3]**,** in support of his submission that, divestiture of vested rights without any nexus to the object of the amendment made with retrospective operation is violative of Article 14. He would submit that the retrospective operation results in creation of a class of persons who would stand arbitrarily divested of the vested rights accrued by previous operation of the Act of 2016 particularly Section 8 and 13 thereof. According to Mr. Ramani, the Rule against Retrospectivity is the bedrock of not only fairness, but also the 'Rule of Law' which constitutes basic structure of the Constitution.

He would invoke the principle laid down in the said decision, as regards the expression 'Vested rights' or 'Accrued rights' where the Apex Court has held that while striking down the impugned provisions which was given retrospective operation, so as to have an adverse effect in the matter of promotion, seniority, substantive

2 (1996) 2 SCC 226.
3 (1997) 6 SCC 623

appointment, etc. of the employees, the expression have been used in the context of a right flowing under the relevant rule, which was sought to be altered with effect from an anterior date, thereby taking away the benefits available under the rule in force at that time, and it is held that such an amendment which has the effect of taking away of benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution of India.

31. With reference to the facts involved, he would submit that the estate leaver, subject to the legitime, has the authority and vested right to determine the destiny of his properties/assets and retrospective effect given to the impugned amendment resulting in violation of the vital right, long after the estate leaver has expired, which is capricious and unjusticiable. According to him, the argument that vested right to inheritance accrues only on conclusion of inventory proceedings is unfounded and incorrect. According to him, the right of the heir to the estate which is transmitted, accrues no sooner the estate leaver dies, and it take shape of a ‘vested right’.

According to Mr. Ramani, from the point of an Heir, the right is transmitted, the moment an estate leaver expire, when the inheritance opens and this transmission is as regards not only ownership but also possession. The right to inherit is an alienable and marketable right and any argument that vested right of inheritance accrues only on the conclusion of inventory proceedings according to Mr. Ramani is unfounded and incorrect as, through the said proceedings the estate is only apportioned and has no bearing on the vesting/transmission, as contemplated under Section 13 of the Act of 2016.

32. Mr. Nigel Costa Frias, representing the Petitioner Shantaram Jaywant Chanekar and Ors., in WP No. 2486 of 2025 has also assailed the amendment in Section 52 of the Act of 2012 as according to him, the effect given to the amendment retrospectively is completely unjustified. Apart from this, he would submit that the justiciable reason for the amendment being introduced by stating that the amendment seeks to iron out inconsistencies between the provisions of Portuguese Civil Code of 1867 and Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 is completely misplaced, as there exists no such inconsistency.

According to him, the provisions of Section 8, 13 and 52 of the Act of 2012 are practically pari materia with the provisions of Articles 2009, 2011 and 1969 of the Portuguese Civil Code, 1867. In his view, the justification that the impugned amendment seek to protect the interest of the surviving spouse is also misplaced as the interest of surviving spouse is taken care of by the law of communion of assets except when the spouses voluntarily opt for an ante nuptial agreement or opt for a regime of complete separation of assets or of acquired assets, where once again adequate protection can be ensured as regards the civil rights.

33. According to Mr. Costa Frias, corresponding to Section 8 (1) of the Act of 2012, under Article 2009 of the Civil Code of 1867, the succession opens on the death of the estate leaver and as per Section 3 of the Act of 2012, succession is the transmission of the estate of a deceased person in favour of his successors and upon death of an estate leaver his heirs succeed to his estate, which include his assets and liabilities and all the rights, which he may possess and the

obligations which he owe, as recognized by law. According to him, Section 6 of the Act of 2012 has defined 'Inheritance' to mean inheritance or succession of a deceased person comprising of all the properties, rights and obligations, which he leaves upon death. It is his specific submission that transmission of ownership and possession of inheritance is not contingent on the acceptance of inheritance by the heirs as according to Section 21, an acceptance of inheritance has to be unconditional.

In the wake of Section 13 of the Act, it is the contention of Mr. Frias that transmission of ownership and possession of inheritance imply that what is transmitted is the ownership and possession of the entire estate to the heirs of the estate leaver whether testamentary or intestate and this is indicative of an absolute indefeasible right, which is not a contingent or an inchoate right. According to Mr. Frias, every word used in a provision in a statute must be given its full meaning, keeping in mind the legislative intent, otherwise the purpose of framing and enacting the provision by legislature would itself be defeated and from the provisions in the Act of 2012, the intent of the legislature is evidently clear, that the ownership and possession of the inheritance of the deceased estate leaver should vest in his/her heirs from the moment of his death and there is nothing in the Act of 2012, which suggest otherwise.

34. While mounting a challenge to the amendment in Section 52 of the Act of 2012 with retrospective effect, according to Mr. Frias the provision is manifestly arbitrary, unjust and unconstitutional as it attempt to take away vested rights of ownership and possession which have already accrued in favour of persons who qualify in line

of succession as per the unamended Section 52. According to him, the order of succession as per the unamended Section 52 corresponds to Article 1969 of the Civil Code 1867. As per Mr. Frias that the entire scheme of succession as per the Portuguese Civil Code, concerning law of inheritance and succession finds place in the Act of 2012 (unamended) and the order of succession is continued as in the Code, depending upon the principle of kinship.

Mr. Frias would also invite our attention to various provision in form of Articles in the Code, which has contemplated marriage to be a contract solemnized between persons of two different sex with the aim of legitimately constituting a family and according to him this contractual relationship and the rights of the spouses emanating therefrom is governed by the provisions of the Portuguese Civil Code, which also contain a provision of Ante-Nuptial contracts, which give the option to the spouses to choose the effect / operation of the regime qua their property in their marital relationship.

35. Tracking the rights of a spouse under the Act of 2012, as contained in Section 82 which gives the preferential right of habitation and use to the surviving spouse, he would submit that by no stretch of imagination, the amendment is aimed at eradicating any gender discrimination or correcting any historical wrong.

In other words, he would submit that there is no mischief that is to be remedied or any social justice being attained or public interest being served by the amending Act.

Moreso, according to him, there is absolutely no justification for giving any effect to the amendment retrospectively from

21/12/2016 i.e. nearly seven years prior, apart there is no justification for fixing the date on which the amended provision would come into force, thereby creating a class of persons who would be benefited by the impugned amendment.

36. According to Mr. Frias, the impugned amendment, is, manifestly arbitrary, disproportionate, irrational and liable to be struck down, as being violative of Article 14 of the Constitution of India, as it divest the persons of vested rights to ownership and possession of the property and therefore, also violate Article 300A of the Constitution of India. According to him, the amendment will prejudicially affect large number of senior citizens, who would be dependent on the estate of their deceased children, in the unfortunate event where their child/children predecease them and in such cases the aged parents would be virtually left without any means of support.

Since the amendment lack any rational basis and it is not based upon any justiciable ground whatsoever, according to Mr.Frias the same is liable to be struck down.

He would place reliance upon the decision in case of ***Shayara Bano v Union of India & Ors***[4] , in support of the submission that the action is arbitrary and the Constitution Bench in Shayara Bano (supra) has tracked the development of the doctrine of arbitrariness and its application to the state action.

According to Mr. Frias, since Article 14 strikes arbitrariness in executive/ administrative action, as any action that is arbitrary will involve negation of equality and an action per se arbitrary itself denies equal protection of law. It is also his submission that the principle of

4 (2017) 9 SCC 1.

reasonableness, which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omni-presence as held by the Apex Court in ***Maneka Gandhi vs. Union of India***[5]

37. Mr. Frias would also place reliance upon the following decisions:-

1 ***J.S. Yadav vs. State of UP and Anr***[6]**.**

2 ***State of Gujarat & Anr. vs. Raman Lal Keshav Lal Soni & ors***[7]

3 ***Howrah Municipal Corporation & Ors. vs. Ganges Rope Company Ltd***[8]**.**

4 ***Manish Kumar vs. Union of India and anr***[9]

The principle of law flowing from the decision in Howrah Municipal Corporation (supra) is invoked by Mr. Frias in support of his submission that 'vested right' is an absolute or indefeasible right and such right cannot be trampled upon.

(II) <u>Submissions on behalf of Interveners in the two Miscellaneous Civil Applications</u>

38. We have also heard the learned counsel Mr. Shivan Desai representing Mr. Arjun Gaude (MCA No. 2610 of 2025), who has sought intervention in the proceedings and he would place before us a comparative analysis of the provisions contained in the Portuguese Civil Code with the corresponding provisions in the Act of 2016. Provision by Provision he has drawn a comparison with various Articles in the Civil Code, as against the provisions in the Act of 2016, right from the stage when the inheritance/succession opens with the presence of common features in both the statutory regime.

5 (1978) 1 SCC 248.
6 (2011) 6 SCC 570.
7 (1983) 2 SCC 33.
8 (2004) 1 SCC 663.
9 (201) 5 SCC 1.

According to Mr.Desai, when Section 13 provides for transmission of ownership and possession of the inheritance to the heirs, whether instituted or legal. As Section 13 corresponding to Article 2011 provide that the transmission takes place from the moment of the death of the estate leaver, according to him, the word 'Transmission' in its strictest sense is the devolution of property upon some person by operation of law, unconnected with any direct act of the party to whom the property is transmitted.

39. Mr. Desai would place reliance upon the decision in case of ***Lekh Raj (dead) through legal representatives & Ors. vs. Ranjit Singh and Ors***[10], and rely upon the following observations in the law report.

> *"17. It is clear from the fact that the suit was filed in 1962 whereas the appellate court passed the decree in 1965 and the amendment in the Act was introduced and came into force in 1973. So the lis had already attained the finality much before the amendment came into force.*
>
> *Second, the amendment was held retroactive in nature as would be clear from para 4 of Kesar Singh, which reads as under: (SCC P. 713)*
>
> *'4. The controversy is no longer res integra. This Court in Darshan Singh v. Ram Pal Singh considered the effect of the Amendment Act, 1973 on the customary right of the Punjab Custom (Power to Contest) Act, 1920 and held that: (SCC p. 219, para 51)*
>
> *51. Considering the above principles, the provisions of the principal Act, the Statement of Objects and Reasons and the provisions of the Amendment Act and the decisions of the Punjab High Court and of this Court, we are of the view that Section 7 of the Principal Act as amended by the Amendment Act is retroactive and is applicable to pending proceedings. The decisions of this Court dated 28-11-1986 in Ujaggar Singh v. Dharam Singh and in Udham Singh v. Tarsem Singh do not need reconsideration.'*
>
> *19. Third, the amendment being retroactive, it was applicable only to those proceedings, which were pending on the date when the amendment came into force i.e. 1973, or where the proceedings were initiated after the date of amendment.*
>
> *20….*
>
> *21. If the right of the parties had already been crystallised then, in our opinion, subsequent change in law would not take away such rights which had attained finality due to lis coming to an end inter se the parties prior to such change."*

10 (2018) 12 SCC 750.

40. Mr. Desai has also invoked the principle laid down in ***S. Sundaram Pillai vs. V.R. Pattabiraman***[11] , which has highlighted the scope of the explanation appended to a provision as in this, we are called upon to decide the scope of the explanation appended to Section 52, and the argument of the Petitioners is, that it is given effect to retrospectively. According to him, when the Apex Court examined the object of an explanation to a statutory provision, it culled out its purpose being; a) to explain the meaning and intendment of the Act itself, b) when there is obscurity or vagueness, to clarify the same so as to make it consistent with the dominant object which it seems to subserve or, c) to provide additional support to the dominant object of the Act. However, it is submitted by Mr. Desai that an 'Explanation' only explain and does not expand or add to the scope of original Section. Ultimately, according to Mr. Desai, an 'Explanation' must be interpreted according to its own tenor.

41. For the proposition that 'vested right' is permitted to be taken away only if the law specifically or by necessary implication provides for such course, he would also place reliance upon the decision in case of **J.S. Yadav** (supra) which is also invoked by Mr. Frias, in support of his submission. Reliance is also placed on the decision of the Apex Court in ***SEBI vs. RajKumar Nagpal and Ors***[12] , which has explained the concept of 'retroactivity' and which has held that merely because a law operates on certain circumstances, which are antecedent to its passing, does not mean that it is retrospective.

11 (1985) 1 SCC 591.
12 (2023) 8 SCC 274.

Lastly he would also place reliance upon the decision in case of ***Vineeta Sharma vs. Rakesh Sharma and Ors***[13]**,** when the Constitution Bench of the Apex Court while answering a reference regarding the interpretation of amended Section 6 of the Hindu Succession Act, 1956, has held that, though the rights conferred under the amended Section can be claimed from the date of the amendment, the provisions have retroactive application i.e. they confer benefits based on the antecedent right i.e., rights given by birth and the Mitakshara Coparcenary law shall be deemed to include a reference to a daughter as a coparcener. According to him, it is authoritatively held that the provision is not retrospective as the rights and liabilities thereunder are to exist from the commencement of the amendment Act.

From the submissions of Mr. Desai, we find him to be partly supporting the case of the Petitioner and partly opposing it.

42. Mr. Gauravvardhan Nadkarni has filed application MCA No. 2666 of 2025, for intervention in support of the Petitioner in raising a challenge to the validity of the amendments and he has restricted his submissions to the effect of amendment on the matrimonial regime of ‘separation of assets’.

According to him, in the State of Goa, the Civil Court has recognized marriage between two adults to be a contract, giving choice to the two consenting adults, prior to solemnization of marriage, to execute and register a marriage with their choice of matrimonial regime, which can be either ‘communion of assets’ or ‘separation of assets’. In case of separation of assets, the spouses

13 (2020) 9 SCC 1.

enter into an binding agreement that either of them will not have any ownership right/interest/title qua the individual assets of other, either inherited or self acquired. This is also referred to as a prenuptial agreement, which according to Mr. Nadkarni is *sui generis* to the State of Goa, and is premised on the principle of 'decisional autonomy', where the consenting adults have right to choose the matrimonial regime, which not only govern the relationship between the parties during the marriage, but also continue to govern them, even after the death of either spouse.

43. His submission revolve around the concept of legitime and disposable portion envisaged under Section 83. He would submit that prior to the amendment 2023, the legitime was in favour of the descendants, to the extent of the half of the inheritance and in the event, there were no descendants, legitime in favour of the ascendants was also half the inheritance. Therefore, according to Mr. Nadkarni in case of separation of assets in a matrimonial regime, the estate leaver had a right to dispose of minimum half (50%) of his/her estate as per his/her personal autonomy, while under the communion of assets, matrimonial regime, such minimum disposable portion was one fourth and this provision ensured that the estate leaver had right to exercise the personal autonomy qua the restricted disposable portions. However, because of the amending Act 2023, the legitime of descendants has continued to be half, but in case there are no descendants than the legitime of the surviving spouse is kept as the entirety of the inheritance (100%). In case there are no descendants and surviving spouse, than the legitime of the parents is also in entirety in terms of the amended provision. Therefore, according to

him, the amendment is contrary to the principle of personal autonomy as the estate leaver has been deprived of his/her right to dispose a minimum portion of his/her estate as per his wishes, irrespective of the matrimonial regime. In short, according to Mr. Nadkarni, the amendment to Section 83 is arbitrary, as it deny the basic right to the estate leaver to dispose any single portion or percentage of any inheritance as per his wish and has deprived him of his personal and decisional autonomy.

44. It is the submission of Mr. Nadkarni that prior to amendment, the surviving spouse was at serial no. (iv) in the order of succession, which in effect protected the sanctity of prenuptial agreement for separation of assets and this provision which was applicable in the State of Goa for decades, and even codified in the Act of 2016, however, after the Amendment Act of 2022 and 2023, the re-arrangement of the order of succession has in effect rendered the implementation of separation of assets regime redundant on death of any spouse, which deprive the spouses of their 'decisional autonomy' and this according to him, is manifestly arbitrary. The amendments according to him, do not envisaged any exception or classification between the matrimonial regimes of 'communion of assets' and 'separation of assets'.

The submission of Mr. Nadkarni, therefore is, that though the amendments do not in object or form affect the right of the individual but in effect it deprives the right of the individual in a prenuptial agreement who have agreed for separation of assets matrimonial regime.

Mr. Nadkarni would invoke the principle laid down by the Apex Court in the 9 Judges decision in case of ***K.S. Puttuswamy vs. Union of India***[14], where it is held that a right to make choices is innate to dignity, and without such ability to make choices, inviolability of the personality would be in doubt. As per the said decision, autonomy of the individual is the ability to make decisions on vital matters like family, marriage, procreation, sexual orientation etc, which is integral to dignity, and based on the principle of privacy in conjunction with Article 21. According to Mr. Nadkarni, it is by this time well settled that privacy and autonomy are intrinsically linked and the amendments under challenge, in effect has deprived the individual of the object of the decisional authority as, when the adults consenting spouses, out of free will and in exercise of fundamental right of decisional autonomy agreed to the matrimonial regime of the separation of assets, the amendment in Section 52 and 83 has nullified such object/purpose by operation of law, thereby completely negating the autonomy of the spouse.

It is also his submission that if there are no descendants and there is a surviving spouse as well as surviving parents than the entirety of inheritance is legitime of the spouse and the estate leaver has no right to leave anything for his/her parents and this is arbitrary as it is contrary to the basic duty of every child to maintain and secure the life of his/her parents.

(III) <u>Submissions of Private Respondent in WP No. 81 of 2025</u>

45. We have also heard Mr. Rohit Bras De Sa, who has advanced exhaustive submissions on crystallization of rights under the Act of

14 (2017) 10 SCC 1

2012, by juxtaposing to the key provisions in the Portuguese Civil Code.

Through his submissions, he seek a declaration that under the Goa Succession, Special Notaries and Inventory Proceedings, 2012, (as amended), individual inheritance rights do not crystallise at death but only upon completion of partition through court decree/ confirmation or registered deed. He request the Court to hold that the amended order of succession under Section 52(1) applies to all partition proceedings pending at the time of 2023 amendment and further confirm that only rights already perfected through final decree/confirmation or registered partition deed prior to 2023 are protected as 'crystallized rights' by virtue of the explanation to Section 52(1). According to Mr. De Sa, under the Act of 2012 the individual inheritance right do not crystallize upon death, but they crystallize only upon completion of statutory partition process.

According to him, the Act of 2012 creates a legal framework that marks a distinction between: a) the opening of succession and universal transmission at death, and b) the subsequent determination and separation of individual shares either through judicial inventory proceedings culminating in a final decree/confirmation or a registered deed of partition following declaration of ownership. According to Mr. De Sa, the 2023 amending act, is the definitive evidence of this distinction by expressly applying the amended succession order to 'cases/appeals pending' while preserving 'the crystallized rights' and therefore, according to him, the rights are not crystallized upon death.

46. For the aforesaid proposition formulated, Mr. De Sa would invite our attention to the statutory framework contained in Act of

2016 covering Section 8 for opening of succession and Section 13, for the transmission of inheritance. According to him, both the provisions establish the triggering event i.e. death and transmission, but neither provision determines or separate individual entitlement. It is his submission that the indivisibility continues till partition and that the inheritance remains indivisible until partition is effected and this inference is drawn by him based on Section 16 and 17. The statute according to him provides two comprehensive ways which lead to crystallization of rights of individuals, but both of them require formal process beyond the mere fact of death and this according to him covers (1) Partition by Inventory (Section 14) and (2) Partition by Deed (Section 15).

In both the processes, according to him, there is involvement of judicial proceedings, declarations, registrations and confirmations and therefore, he would submit that the legislature envisaged crystallization as occurring through these culminating acts and not automatically upon death.

47. Mr. De Sa has also taken us through the provisions of declaration of heirship and the structure of the inventory proceedings. He would submit that the elaborate procedural framework prescribed would be rendered redundant if the rights crystallize automatically on death, and the existence of the exhaustive framework according to Mr. De Sa, would demonstrate the legislature's understanding by determination and separation of an individual right requires formal process beyond the mere fact of death. According to him, the Act of 2016 has integrated succession principles with that of Partition, so as to crystallize the rights and according to him, the structure of the enactment progresses from

opening of succession to transmission and further to indivisibility, until partition. According to him, a bare look at Section 17 and 18 gives a clear indication as Section 17 prohibits transfer of specific assets until partition and Section 18 prescribes that an heir may recover the whole of the estate or part thereof in possession of a third party confirming collective rights before partition. Thus, according to him, while status of a 'Heir originate upon death, the determination and separation of specific shares (crystallization) occurs only through partition.

Therefore, according to Mr. De Sa, the court should hold that the rights do not crystallize upon death but only upon final decree/ confirmation in inventory proceedings or upon execution of a registered deed of partition following declaration of heirship and his request is to apply the amendment provision to all matters pending at the time of its enactment.

[G] SUBMISSIONS OF THE LEARNED ADVOCATE GENERAL ON BEHALF OF THE STATE.

48. The learned Advocate General Mr.Pangam, by invoking the principle of law laid down in ***Union of India & Ors. Vs. Exide Industries Limited & Anr.***[15], at the outset, would submit that reliance on the Statement of Objects and Reasons (SOR) set out by the legislature, in enacting a provision in a statute, may not be the only guiding factor, when the Court consider its validity. He would submit that it would signify intention of the legislature behind the enactment and it can lead the Court in discerning the true intent of the legislature and would be useful in understanding the import of an enacted provision, as and when the Court is called upon to interpret

15 (2020) 5 SCC 274

the same. However, according to him, the SOR appended to the Bill are not admissible as an aid in construction of the Act to be passed, but it can be used for limited purpose of ascertaining the condition, which prevailed at the time which necessitated making of the law and the mischief which is sought to be remedied. Thus, it can be used for the purpose of ascertaining the objective in enacting the statute or a particular provision and it can serve a limited purpose of deciphering the object and purport of the Act.

He would invoke the principle laid down by the Apex Court in ***Sanjeev Coke Mfg.Co. Vs. Bharat Coking Coal Ltd.***[16], where the Apex Court observed thus :-

> *"25. ...No one may speak for Parliament and Parliament is never before the court. After Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids."*

49. According to Mr.Pangam, there is presumption about the constitutionality of a statute and the constitutional validity of a provision can be challenged on very limited grounds; the foremost being the legislative competence of the legislature in enacting the statute and secondly in testing whether it is violative of the fundamental rights. He would submit that when there is no ambiguity about the legislative competence and of the import of the enactment, the SOR serve the limited purpose and can be looked into by restricting its use for ascertaining the intention of the legislature.

The learned Advocate General would also urge that it is impermissible to strike down a statute or a provision in statute by

16 (1983) 1 SCC 147

attributing non application of mind or *malafides* to the legislature or by alleging that the prevailing circumstances did not warrant the introduction of the provision. According to him, the legislative action under the Constitution is subject only to the limitations prescribed by the Constitution and to none other.

He would invoke the principle laid down by the Constitution Bench decision in the case of ***T.Venkata Reddy & Ors. Vs. State of Andhra Pradesh***[17], while testing the validity of an Ordinance issued under Articles 213 and 123 and he would submit that the principle laid down, which is applicable to Ordinance, shall apply with equal force to a Statute and he would invoke the following passage from the said decision:-

> *"14. The above view has been approved by another Constitution Bench of this Court in A.K. Roy v. Union of lndia. Both these decisions have firmly established that an ordinance is a 'law' and should be approached on that basis. The language of clause (2) of Article 123 and of clause (2) of Article 213 of the Constitution leaves no room for doubt. An ordinance promulgated under either of these two articles has the same force and effect as an Act of Parliament or an Act of the State Legislature, as the case may be. When once the above conclusion is reached the next question which arises for consideration is whether it is permissible to strike down an Ordinance on the ground of non-application of mind or mala fides or that the prevailing circumstances did not warrant the issue of the Ordinance. In other words, the question is whether the validity of an Ordinance can be tested on grounds similar to those on which an executive or judicial action is tested. The legislative action under our Constitution is subject only to the limitations prescribed by the Constitution and to no other. Any law made by their legislature, which it is not competent to pass, which is violative of the provisions in Part III of the Constitution or any other constitutional provision is ineffective. It is a settled rule of constitutional law that the question whether a statute is constitutional or not is always a question of power of the Legislature concerned, dependent upon the subject matter of the statute, the manner in which it is accomplished and the mode of enacting it. While the courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the legislative discretion is properly exercised. The motives of the Legislature in passing a statute is beyond the scrutiny of courts. Nor can the courts examine whether the Legislature had applied its mind to the provisions of a statute before passing it. The propriety, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the courts. An Ordinance passed either under*

17 (1985) 3 SCC 198

> *Article 123 or under Article 213 of the Constitution stands on the same footing. When the Constitution says that the Ordinance-making power is legislative power and an Ordinance shall have the same force as an Act, an Ordinance should be clothed with all the attributes of an Act of Legislature carrying with it all its incidents, immunities and limitations under the Constitution. It cannot be treated as an executive action or an administrative decision."*

50. Mr.Pangam has also asseverated that the motive of the legislature in passing a statute is beyond the scrutiny of the Courts and by no means, the Courts can infer legislative malice in enacting a statute, as what can be tested is only the constitutional aspect of a provision/statute i.e. whether it was within the limits of the legislature to enact the law and whether it violate the fundamental rights enshrined in Part III or it is *ultra vires* the Constitution.

Definitely, according to Mr.Pangam, while the Courts can declare a Statute unconstitutional, when it transgresses the constitutional limit, but the propriety of exercise of the legislative power is beyond the scope of the Courts exercising writ jurisdiction and there is a assumption that the legislative discretion is properly exercised. Thus, it is the submission of Mr.Pangam that the intention of the legislature in bringing the Amendments in the Act of 2012 is beyond the pale of judicial review and its validity cannot be tested by considering its after effect, by holding that the provision is unconscionable or arbitrary or it deprives one class of beneficiaries and confer the benefit on the other, as this is not sufficient to hold a provision unconstitutional. The examination by the Court to determine the validity of a provision is restricted only to constitutional infirmity, but in no way, the wisdom of the legislature can be called into question, according to Mr.Pangam.

51. Coming to the Act of 2012, Mr.Pangam would submit that the existing order of legal succession placed the ascendants as well as the brothers and sisters and their descendants over the spouse and, therefore, he/she would take a back seat over the category of persons entitled to succeed the deceased, and this order and disadvantage to the spouse is sought to be overcome by the State Legislature.

Meeting the contention raised on behalf of the petitioners that the provision is retrospective in operation, he would submit that merely because a provision in law is given retrospective effect, *per se* do not make it bad. He would submit that whenever an amendment is introduced retrospectively or any provision of the Act is deleted retrospectively, rights of some are bound to be affected one way or the other, but that by itself do not constitute violation of Article 14, making the provision arbitrary. Mr.Pangam would place reliance upon the decision in the case of ***State Bank's Staff Union (Madras Circle) Vs. Union of India & Ors***.[18] and he would rely upon the following observations :-

> *"19. Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes the power to give it retrospective effect. Craies on Statute Law (7th Edn.) at p. 387 defines retrospective statutes in the following words:*
>
> *"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past."*
>
> *20. Judicial Dictionary (13th Edn.) by K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (I) affecting an existing contract; or (ii)reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation,*

18 (2005) 7 SCC 584

imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.

21. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edn., 2005) the expressions "retroactive" and "retrospective" have been defined as follows at p. 4124, Vol. 4:

"Retroactive.—Acting backward; affecting what is past.

(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. — Also termed retrospective. (Black's Law Dictionary, 7th Edn., 1999)

"Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion.... The foundation of these concepts is the distinction between completed and pending transactions...' T.C. Hartley, Foundations of European Community Law, p. 129(1981).

* * *

Retrospective.-Looking back; contemplating what is past.

Having operation from a past time.

'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing."
(Vol. 44, Halsbury's Laws of England, 4th Edn., p. 570, para 921.)

52. The learned Advocate General, would submit that when it is competent for the legislature to change the basis on which the decision is given by the Court and the changed law will affect class of persons and events at large, it is not uncommon to give effect to the same retrospectively. In the light of the status conferred upon the spouse i.e. husband or wife under the Portuguese Civil Code as well

as under the Goa Succession Act, 2012, where there is a concept of communion of properties and with this concept ingrained since considerable length of time, recognising the communion between spouses of all their assets, present and future in the marriage, the learned Advocate General would submit that a spouse stands on a different footing than a co-owner, as conjugal communion is dissolved only by death or divorce and also by separation. According to him, the spouses married under the regime of communion under the Portuguese Civil Code are owners in common and not the joint owners. Co-ownership is permitted to be partitioned at any time, when the party desires, but conjugal communion can only be dissolved for the causes and reasons stipulated in the Code i.e. dissolution of marriage (death or divorce) or by separation, in accordance with law.

As per Article 1122, Mr.Pangam would submit that in the case of death of either spouse, the survivor shall continue in the possession and the administration of the matrimonial estate till finalization of partition, except in respect of incommunicable assets of the deceased, where the legal successor is a minor, the father or the mother shall continue the administration. According to Mr.Pangam, the legislature thought it appropriate to bring the surviving spouse up in the order of legal succession after the descendants to be followed by the ascendants, the brothers and sisters and their descendants, and on the collaterals not comprised in clause 4 upto six degree. According to Mr.Pangam, the legislature has thought it appropriate to confer the surviving spouse its due.

53. The learned Advocate General deal with the argument advanced on behalf of the Petitioners, that the vested right in the heirs as per the succession order is taken away. He would invite our attention to the inventory proceedings under the Act of 2012 and submit that the proceedings are mandatory, when the deceased leave the surviving spouse or heir, who is a minor, interdict, absent person or unknown as provided under Section 366 of the Act. However, under Section 367, the inventory proceedings are optional at the election of the interested parties or they opt to partition the estate by way of Deed of Partition, with consensus. According to him, Section 368 apply for partition upon divorce, separation or annulment of marriage while Section 376 governs dissolution of joint families.

According to Mr.Pangam, the jurisdiction to entertain inventory proceedings vests in the Court, when succession opens as determined under Section 373, and pursuant thereto, any interested party, as defined in Section 375(3), may institute inventory proceedings.

It is upon the receipt of such petition, the Court shall proceed to exercise the power under Section 376 to appoint the 'Head of the family' in accordance with the priority prescribed under Section 247 and within each category, according to Mr.Pangam, there is a provision for preference to the heirs residing with the deceased and to the elderly heirs.

54. Inviting our attention to the entire procedure to be followed by the Court, including issuance of summons to the Moiety holder, Heirs, Spouses, Legatees and Creditors, it is pointed out to us that the procedure would result in preparation of initial list of assets and

inviting objections to the same to be followed by deletion and decision on the ownership disputes, if they could be summarily determined or else permitting the parties to file civil suits.

The aforesaid is followed by valuation of the inheritance as on the date of opening of succession to be followed by the finalization of list of assets and liabilities by the Court incharge of inventory proceedings, to be followed by the division of the immovable properties by metes and bounds by means of allotment by drawing of lot and appointment of commissioner to assess divisibility of the property as per subdivision and the execution of the subdivision, with indivisible proceeding to licitation.

Mr.Pangam has also invited our attention to the scheme of partition, as contemplated under the Act and the methodology prescribed for the finalization of the scheme and it is his specific submission that it is only upon this entire process being followed, the 'Vesting' of the property takes place and as opposed to the submission of the learned counsel for the Petitioners, that the moment the estate leaver dies, the right of inheritance is 'vested'. According to him, after the death of the estate leaver, the proceedings are to travel ahead as contemplated under the Act and the right of the successor is crystallization, only on going through the entire process. That is why, according to Mr.Pangam, Section 13 of the Act has applied the term "transmitted", which in no case, is equivalent to vesting or crystallizing. According to him, succession is transmission of estate, but inheritance as defined in Section 6 is a wider term, as it comprises of all the properties, rights and obligations, which are left behind the deceased.

In the alternative, he would submit that even if a right is vested, there is no prohibition in taking away the right. He has relied upon the authoritative decisions, to establish what amounts to a 'Vested right' and it is his submission that a vested right is the one, which is not contingent and it must be crystallized on the date on which it is conferred, but in the present case, it is his submission that merely because there is a transmission of the estate, it is not equivalent to vesting of it in the successor.

55. On the aspect of retrospectivity, the learned Advocate General would rely upon the decision in case of ***Manish Kumar*** (supra), and in particular paragraph no. 404 and 406, where the Apex Court has clarified that a statute is not retrospective merely because it affects existing rights and if the existing right is modified or taken away and it is to have operation only from the date of new law, it would obviously have prospective operation. He has also invoked the observations of the Apex Court in paragraphs 434 to 437, where it is categorically held as below:-

> *"A vested right under a statute can be taken away by a retrospective law. A right given under a statute can be taken away by another statute. We cannot ignore the fact that there was considerable public interest behind such a law"*

56. According to Mr. Pangam, if the validity of a statutory provision is called in question, the burden lies upon the party who calls the same in question, to satisfy that the provision is manifestly arbitrary. What is manifest arbitrariness, according to Mr.Pangam, is well settled and by referring to the submissions advanced on behalf of the Petitioners raising a challenge to its validity, he would submit

that none of the argument advanced has made out a case for manifest arbitrariness. The argument advanced, according to Mr.Pangam, is merely based on some hardships and harsh consequences for a particular class, who has been pushed below, cannot be a ground to call it in question. It is his submission that when the legislature enacts a law, it is the duty of the Court to discern its intention and merely because it would put one class to a disadvantageous position or cause hardship, it cannot be a ground to declare it unconstitutional. Further according to him, it is impossible for the legislature to anticipate fully the varied situation arising in future in which the application of the legislation in hand may be called for and the Courts are not entitled to usurp the legislative function under the disguise of interpretation and would normally avoid the danger of determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. Any hardship or inconvenience on implementation of provision is not the test by which the validity of a legislation can be tested, according to Mr.Pangam.

He would rely upon the following observations of the Bombay High Court in the case of ***Best Worker's Union Vs. Union of India & Ors***.[19]***:-***

> *"16. When a legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on consideration of the provisions of the particular Act with which the court has to deal with including its Preamble. In order to strike down a legislation, the party has to satisfy that the legislation is totally unreasonable or manifestly arbitrary. The expression of 'arbitrary' means act done in an unreasonable manner, capriciously or at pleasure without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. The law cannot*

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be declared ultra vires on grounds of hardship but can be done so on the ground of total unreasonableness. In order to declare an act ultra vires, under Article 14, the court must be satisfied that there is substantive unreasonableness in the statute."

57. Mr.Pangam would also invite our attention to the decision in the case of ***Vineeta Sharma Vs. Rakesh Sharma*** *(supra)* and the spirit underlying the said decision, the pronouncement involving Section 6 of the Hindu Succession Act, 1956, substituted by the Hindu Succession (Amendment) Act, 2005 w.e.f. 09/09/2005, when the Apex Court determined the Daughter's right in Coparcenary property under substituted Section 6 and held that the daughter born before the date of enforcement of 2005 Amendment Act shall enjoy the same rights as daughter born on or after the amendment and held that it is not necessary that the coparcener father shall be alive on the date of coming into force of the said amendment and if a daughter is alive on the date of the enforcement of the amending Act i.e. 09/09/2005, she becomes a coparcener with effect from the said date, irrespective of whether she was born before the said amendment.

58. Dealing with the argument of Mr. Nadkarni that if a prenuptial agreement is entered into by a couple, but on death the succession shall be as per the order of succession as prescribed, he would invite our attention to Article 1096 included in Section 5 of the Portuguese Civil Code, 1867 and the presumed regime of assets, under the communion of the acquired assets. He would rely upon the observations of the Division Bench in the case of ***Palmira Cota E Dias (deceased) Vs.Odette Irene Dias Rodrigues & Ors***.[20] to buttress his submission that in such a scenario Article 2003 of Portuguese Civil Code shall come into force and he would rely upon the

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following observations of the Division Bench.-

"9. Article 2003 of the Portuguese Civil Code provides as under :

"In the absence of descendants or ascendants and of siblings and their descendants, the surviving spouse shall succeed if, at the time of the other spouse's death, they were not divorced or separated of persons and property by a judgment in a condition of res judicata.

Single unico, in the absence of descendants and of ascendants, in accordance with Articles 2000 and 2002, the surviving spouse shall have the right of usufruct over the deceased spouse's inheritance, if at the time of latter's death they were not divorced or separated of persons and property by a judgment in a condition of res judicata." (Emphasis supplied)

10. There is no dispute that the marriage between the deceased appellant and the said Antonio Climaco Gavinho Dias was governed by separation of assets in view of the Ante-nuptial Agreement dated 8th February, 1960 executed by them at the time of their marriage which is at Exhibit Pw.1/B collectively. The said Agreement has been executed in terms of Article 1096 of the Portuguese Civil Code, which provides that it is lawful for the spouses to stipulate, before the solemnization of their marriage and within the bounds of law, whatever they think fit in respect of their properties.

11. The execution of such Ante-nuptial Agreement between the couple, does not deprive any of them the benefits of the provisions of the Code relating to successions. Article 1096 of the Code gives full liberty to the couple to make an arrangement with regard to their respective properties with a clog that they cannot make any agreement which is contrary to the provisions of law. On a plain reading of Article 2003 of the Portuguese Civil Code, in the absence of any descendants or ascendants and of siblings and their descendants, the surviving spouse shall succeed if at the time of the other spouse's death, they were not divorced or separated of persons and property by a Judgment in condition of res judicata. It further provides that in the absence of descendants and ascendants in accordance with Articles 2000 and 2002, the surviving spouse shall have the right of usufruct over the deceased spouse's inheritance, if at the time of latter's death they were not divorced or separated of persons and property by a judgment in a condition of res judicata."

Thus the learned Advocate General assertively submit that the challenge to the validity of Amending Act of 2022 and 2023 must be negated, it being without any substantial merit.

[H] ANALYSIS OF THE RIVAL SUBMISSIONS AND THE DECISION

(I) Understanding the provisions of the Act of 2012 in the backdrop of the Portuguese Civil Code.

59. The Goa, Daman and Diu (Administration) Act, 1962, is a

special law dealing with the domiciles of Goa and this special law makes the Portuguese Civil Code applicable to the Goans, who are carved out of the General laws of succession i.e. the Indian Succession Act, 1925, Hindu Succession Act, 1956 and the Muslim Personal Law (Shariat) Application Act, 1937 and other laws. Upto to the conquest of Goa, the Parliament permitted the personal matters of the domiciles of Goa to be governed by the Portuguese Civil Code, and this included subjects like marriage, succession etc. By virtue of the Act of 1962, the laws applicable in Goa prior to 20/12/1961, when Goa was liberated from Portuguese rule were continued to remain in force until it is amended or repealed by the competent legislature.

Portuguese Civil Code, 1867 was applicable in the State of Goa before its liberation and it continued to govern the subject of succession, marriage, etc. When the Goa Succession Special Notaries Inventory and Proceedings Act, 2012 was enacted, covering one of the subjects of persona law i.e. succession, with the Act being brought into force in State of Goa in the year 2012, Section 460 thereof repealed all provisions of the laws in force corresponding to any provisions in the Act and therefore, from the date of coming into force of the Act 2012, the subject of succession; intestate and testamentary is governed by the Act of 2012.

It is in this background, the Hon'ble Apex Court in ***Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira***[21] observed thus:-

> *"21. It is important to note that this Court held that insofar as the continuance of old laws is concerned, the new sovereign is not bound to follow the old laws. It is at liberty to adopt the old laws wholly or in part. It may totally reject the old laws and replace them with laws which apply in the other territories of the new sovereign. It is for the*

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new sovereign to decide what action it would take with regard to the application of laws and from which date which law is to apply. As far as the present case is concerned, firstly the President by an Ordinance and later Parliament by an Act of Parliament decided that certain laws, as applicable to the territories of Goa, Daman and Diu prior to its conquest, which may be referred to as the erstwhile Portuguese laws, would continue in the territories. It was, however, made clear that these laws would continue only until amended or repealed by competent legislature or by other competent authority.

22. We are clearly of the view that these laws would not have been applicable unless recognised by the Indian Government and the Portuguese Civil Code continued to apply in Goa only because of an Act of the Parliament of India. Therefore, the Portuguese law which may have had foreign origin became a part of the Indian laws, and, in sum and substance, is an Indian law. It is no longer a foreign law. Goa is a territory of India; all domiciles of Goa are citizens of India; the Portuguese Civil Code is applicable only on account of the Ordinance and the Act referred to above. Therefore, it is crystal clear that the Code is an Indian law and no principles of private international law are applicable to this case. We answer question number one accordingly."

60. The Act of 2012, which has codified the law relating to succession is preceded by provisions in the Civil Code as regards intestate succession and Article 1968, in Chapter III Section 1 to 9 provided for the order of succession in case of intestate succession and Article 1969 prescribe thus :

"Intestate succession shall occur in the following order, 1) to the descendants ; 2) to the ascendants except in case of Article 1236; 3) to the siblings and their descendants; 4) to the surviving spouse; 5) to colateral relatives not included in No.3 upto to 10th decree; 6) to the State treasury, with the exception of provisions of Article 1663."

Article 1968 to Article 1979 collated the provisions governing intestate succession and as per Article 1973 each generation constituted a degree and a series of degrees constituted linen of kinship.

Intestate succession as per the Code occur automatically *ipso jure* and for it to comply, there must be total or partial absence of will and the successor in question must bear some legal relationship to the deceased. The Code provided for the line of inheritance with

specific enumeration of the degrees of the kinship and prescribing the lineal line of ascendant of the descendant.

Chapter IV of the Code contains the provisions common to testamentary succession and intestate succession and the prominent Article 2009 declare that the inheritance is opened as a result of death of its author and it determine the place of opening of the inheritance.

Article 2011 read thus :

> *"The transmission of ownership and possession of the inheritance to the testamentary or intestate heirs shall occur at the moment of the death of its author."*

Under the Code, if the heir is an absentee, a minor or an inter dictated, or unknown person, the Court was authorized to carry out inventory and the partition, if it has to be carried out, but if the heirs are major, they may agree, as they deem fit on partition as long as it is done by Deed or document executed under Seal. Under Article 2014, the heirs succeed to all the rights and obligations of the author of the inheritance as long as they are not strictly personal or excluded by law or by the author. By virtue of Article 2015, if several persons are entitled simultaneously to the same inheritance, their right over it shall be indivisible, regarding both, possession and ownership, as long as there is no partition.

61. The provisions of the Goa Succession Special Notaries and Inventory Proceedings Act, 2012, which has codified the law of intestate and testamentary succession and the law relating to partition of an inheritance in the State of Goa must be understood against the law governing the State of Goa through the Portuguese Civil Code. The provisions contained in Portuguese Civil Code, 1867 has found its way in the Act of 2012 in relation to marriage and succession, and

we have noted that the Civil Code comprise of provisions relating to marriage in Articles 1056-1239.

62. As per Article 1056, marriage is a perpetual contract between two persons of different sex with the aim of legitimately constituting a family. Under the Code, marriage is viewed as secular and contractual legal relationship.

Section IV of the said Chapter is a provision for annulment of catholic marriage, and by the ecclesiastical Court and in the circumstances contemplated by the laws of the Church followed in the country. The execution of the decrees annulling the marriage pronounced by a competent Court and its enforcement is also specifically provided in the Code. Article 1095 prescribe the effect of annulment on the assets of the spouse as equivalent to the dissolution of the marriage as far as the properties are concerned.

Article 1108, introduce the concept of communion of matrimonial assets by providing that the marriage as per the custom of the country consisting communion between spouses of all their assets, present and future, not excluded by law.

Section V of the Chapter, provide for ante nuptial conventions and it is lawful for the spouses to stipulate before solemnization of their marriage whatever they think fit in respect of their assets. This permitted the spouses to exit from the matrimonial regime involving communion of acquired assets as in absence of any Contract, in a marriage done as per the custom of the country it is deemed that the spouses are married under simple communion of acquired assets as per Article 1098.

63. The income accruing to the couple pursuant to a marital tie, a special feature under the Code, of dividing their property in equal shares in form of communion of husband and wife, although Article 1109 exclude certain assets from the communion.

The spouses married under regime of communion under the Portuguese Civil Code thus become the owners in common though they are differentiated from joint owners as an ownership may be partitioned at any time when the parties desire, but conjugal communion can only be dissolved for the causes and reasons stated in the law (Article 1121) that is dissolution of marriage (death or divorce or by separation) in accordance with law.

The Civil Code contain various provisions dealing with the ownership and possession of the common property belonging to the spouses with certain rights to manage the property being exclusively vested in the husband. Whenever the spouses declare their intention through the Contract that they desire to marry as per custom of the country, the provisions of Article 1108 to 1124 become applicable to them and when they declare that they want to marry under simple communion of acquired assets, the provisions of Article 1130 to 1133 are attracted.

There is also provision in form of Article 1101 which provide that where the spouses declare that they want to marry under separation of assets then the provisions of Article 1125 to 1129, providing for separation of assets shall become applicable to them. One relevant provision in form of Article 1103 in the Code prescribe

as below :-

> *"Any contract which may change the legal order of succession of legal heirs or the paternal and conjugal rights and obligations, laid down by law shall be deemed as not returned".*

Such a contract under the Code is void.

64. The provisions in the Act of 2012, are lifted from the Civil Code and included in the Statute which has defined succession as transfer of estate of the deceased in favour of his successors and successor is the person under the Act who is called to succeed to the juridical relations of the deceased person and upon whom the assets and liabilities devolve.

Chapter II of the Act on the lines of the Civil Code provide that succession shall open upon the death of the estate leaver and Section 13, contemplate that the ownership and possession of the inheritance is transmitted to the heirs, the moment the estate leaver dies, both in case of testamentary or intestate succession.

65. The Act of 2012 contain specific provisions for partition of the inheritance as prescribed in form of mandatory inventory and optional inventory under Section 366 and 367.

Section 368 contain a provision for inventory upon divorce or separation or annulment of marriage, as it permit the spouses to partition their assets by instituting inventory proceedings in form of miscellaneous proceedings appended to the Suit for divorce, separation of persons or annulment.

Section 369 and 370 are the specific provisions as regards inventory where a party dies leaving no assets other than those allotted in the inventory and these two provisions read thus :

"369. Inventory where a party dies after allotment in inventory proceeding which were finally disposed of - Where, after the partition is effected in any inventory, any interested party dies leaving no assets other than those that have been allotted in the inventory, such inheritance shall be partitioned in the same inventory proceeding that was finally disposed. The person to whom the office of head of family belongs shall take oath of office and the procedure set out hereafter shall be applicable."

"370. Inventory upon death of the surviving spouse. (1) Where the inventory of a predeceased spouse is concluded, the inventory on the death of the surviving spouse shall be continued in the former inventory proceeding.

(2) In the event there are additional assets in the proceeding referred to in sub-section (1), their serial number shall be in continuation of the last item in the former inventory proceeding.

(3) Where, after allotment or after the death of the surviving spouse, inventory proceeding is instituted, the assets which have been already valued in the prior inventory need not be valued again in the subsequent inventory, unless there are strong grounds to believe that their value has changed. In the event of change of value of currency, such change shall be taken into consideration. In addition to the valuation already made, due description of assets previously made shall be retained. If separate inventory is filed, the description shall be reproduced in the separate inventory."

The Act of 2012 also contain provisions as regards acceptance of inheritance which shall be unconditional and right to renounce the inheritance by prescribing that acceptance or renunciation of an inheritance is an entirely voluntary and free act.

(II) <u>The Change in the order of succession, the subject matter of challenge.</u>

Chapter VI of the Act of 2012, is the provision for legal succession and this chapter include Section 52 prescribing the order of legal succession. The Section as it stood originally, is already reproduced in the earlier part of the judgment and it reveal that the surviving spouse stood at Serial No.(iv) below the ascendant and the brother and sisters and their descendants.

The Amendment act, 13 of 2022, brought about the changes where the surviving spouse comes after the descendants and above the ascendants and the challenge is raised to this upgradation of the

surviving spouse who now is entitled to succeed after the descendants and before the ascendants, as well as the brothers and sisters and their descendants.

By the Amending Act 26 of 2023, in Section 52 of the Act of 2012, stood amended :-

"(1) The legal succession shall devolve in the following order:-

(i) on the descendants;

(ii) on the surviving spouse;

(iii) on the ascendants, subject to the provisions of sub-section (2) of section 72;

(iv) on the brothers and sisters and their descendants;

(v) on the collaterals not comprised in clause (iv) upto the 6th degree;

(vi) on the State, provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner."

Similarly, there is corresponding amendment in Section 72 of the Act when sub-section (1) is substituted to read thus :-

"Where a person dies without descendants, and spouse, his father and mother shall succeed to him in equal shares or to the entire inheritance where only one of them is living.

Similarly sub-section 3 after the amendment reads as below :-

"(3) Where the parents have acknowledged that they are the parents of a child during the lifetime of the child, and the child dies without issue and spouse, the inheritance shall devolve upon his parents or one of them, as the case may be; where, in the circumstances mentioned above, such child dies without issue but leaving a surviving spouse, the surviving spouse shall succeed to the entire inheritance."

Section 76 in the Principal Act is also amended and pursuant thereto it read thus :-

"76. Succession of brothers, sisters and their descendants – In default of descendants, spouse and ascendants and where the estate leaver has not disposed off his assets, his brothers, sisters and, in a representative capacity, their descendants, shall inherit the assets."

Another consequential amendment is effected in Section 77,

which now read thus :-

> *"In default of descendants, ascendants, brothers, sisters and their descendants, the surviving spouse shall succeed" the expression "In default of descendants, the surviving spouse shall succeed," shall be substituted."*

Similarly Section 83, providing for the disposable portion, is also amended and we have already reproduced the amended provision in the beginning itself.

66. The amendment Act of 2022 has changed the order of succession by bringing the surviving spouse at serial no.(ii) after the descendants and the statement of objects and reasons accompanying the bill introducing the amendment stated that Section 52 is sought to be amended so as to rectify the order of legal succession.

The consequence of the aforesaid amendment has simply changed the order of succession and take an example, where there exists a couple who is married under the Portuguese law and govern by the Act of 2012, and one of the spouse demise, the other spouse being a moiety shareholder, in the wake of communion of assets has already taken 50% of the share. What remains available to be succeeded is the balance 50% and in case if there are children born up to the couple, the children will inherit the estate of their father. If there are no children, then the estate shall now devolve upon the surviving spouse and the objection of the Petitioners is that the surviving spouse has now taken a position ahead of the ascendants i.e. the parents of the deceased, and in both the Petitions before us, it is sought to be urge that the right of succession which the parents would have availed on the demise of their son are deprived and after the children i.e. the descendant of their son, it is the surviving spouse

i.e. his widow who will take the share and nothing would come to them.

67. We must note that the right of succession in a peculiar order was conferred initially by the Civil Court and thereafter by the Act of 2012 which when enacted followed the order of succession in the Code. However, the legislature, with a view to rectify the order of legal succession has amended the provision, where next to the children of the deceased, the surviving spouse take precedence and the ascendants take a backseat.

(III) Guiding principles while testing validity of a law made by the Competent Legislature

68. A statute is an edict of the legislature and the ideal way of construing a statute is to seek the intention of its maker. A statute, as enacted, cannot be explained by the individual opinion of the legislator, nor is it permissible to ascertain its intention by seeking feedback from the legislature, when it comes for interpretation. After a statute is enacted, the legislature becomes *functus officio* and there is no role for it to play when it comes before the Court for its interpretation or to deal with the challenge to its constitutionality.

In the Constitutional scheme of this country, the Constitution has assigned to the Courts the function of testing the validity of a statute, when subjected to challenge, by considering whether it was within the competence of the legislature to enact the law and it is in conformity with the constitutional provisions.

In order to give meaning to the intention of the legislature, it is expected for the Constitutional Court to step into the shoes of the legislature to ascertain what was its intention in rolling out the

statute, which is brought into force to do away with some evil or for advancing some public interest or benefit. The intention of the law maker can be discerned from the surrounding circumstances prevailing when the statute was enacted, and the words, used are 'presumed to be carefully chosen' by the legislature, as it intend to achieve a specific object by bringing it into force. At the foremost, the Court shall make every endeavor to achieve the 'purpose and object' or 'reasons and spirit' pervading through the statute. The true legal meaning of an enactment is thus derived by considering the meaning of the words applied in the enactment, in light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed.

The Courts shall strongly lean in favour of the constitutionality rather than the construction which reduces the statute to a futility. A statute or any enacted provision therein must be so construed so as to make it effective and operative, on the principle expressed in the maxim; '*Ut ress magis valeat quam pereat*'. It is an application of this principle that Courts while pronouncing upon the constitutionality of a statute, begin presumption in favour of constitutionality, prefer a construction which keep the statute within the competence of the legislature. That is the precise reason why the constitutional courts should be slow in declaring a statute invalid for sheer vagueness, non application of mind etc.

69. In case of ***R.K. Garg vs. Union of India***[22] while examining the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981, which was replaced by the Special

22 (1981) 4 SCC 675.

Bearer Bonds (Immunities and Exemptions) Act, 1981, it is held that, while considering the constitutional validity of a statute, it is necessary to bear in mind the well established principle, which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is, that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A presumption also exists that the legislature understands and correctly appreciate the needs of its own people and the laws made by it are directed to the problems made manifest by experience and when it discriminates between two classes or confer benefit on one and deny the same to other, such distinction made by it is based on adequate grounds. The legislature is free to recognize the degrees of harm and may confine its restrictions to those, where the need is deemed to be the clearest. The presumption of constitutionality is indeed so strong that in order to sustain it, the court may take into consideration matters of common knowledge, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

In examining the challenge to the validity of a statute or a provision in a statute, the judicial scrutiny in exercise of the power under Article 226 of the Constitution by the High Court is restricted only to two consideration; whether the legislature i.e. either the parliament as well as the State legislature has enacted the law by confining itself to the sphere of its respective jurisdiction and secondly, on the ground whether on account of implementation of such legislation which has been validly enacted, has resulted into

violation of fundamental rights or any provision in the Constitution.

In dealing with a challenge to the constitutional validity of a provision of law, the Court is not concerned with the wisdom or unwisdom, the justice or injustice as the presumption exist in favour of the Parliament and the State legislature that it is alive to the needs of the people and the legislature is the best judge of the needs of the community and hardship is not relevant in pronouncing on the constitutional validity. In any case, ***State of AP vs. P. Laxmi Devi (2008) 4 SCC 720,*** the Apex Court observed thus:-

> *"19.It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly. As often said, there is no equity in a tax vide CIT v. V.MR.P. Firm Muar [AIR 1965 SC 1216] . If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute. Hence the High Court fell in error in trying to go by the supposed object and intendment of the Stamp Act, and by seeking to find out the hardship which will be caused to a party by the impugned amendment of 1998.*
>
> *20.In Partington v. Attorney General [(1869) LR 4 HL 100] Lord Cairns observed as under:*
>
> *"If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind. On the other hand if the court seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be."*
>
> *The above observation has often been quoted with approval by this Court, and we endorse it again. In Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661] this Court held that if there is hardship in a statute it is for the legislature to amend the law, but the court cannot be called upon to discard the cardinal rule of interpretation for mitigating a hardship."*

70. Equally true it is that it is not permissible for the Court to interfere with an enactment enacted by a competent legislature only on the ground that it is susceptible of a possible misuse and the challenge raised is to the likelihood of the misuse of power.

When the validity of a law is tested, it must take into consideration the existing circumstances and a mere possibility of its

conspectus in the future, is not a ground for it being declared as invalid.

71. In **The *East Indian Company vs. Oditchurn Paul*[23]** Lord Campbell declared; it is the duty of all Courts of justice to take care for the general good of the community, that hard cases do not make bad law'. As per principle of statutory interpretation Justice G.P Singh, 13 Edition 2012 'it is often found that laws enacted for general advantage do result in individual hardship; for example laws of limitation, registration, attestation although enacted for public benefit, may work injustice in particular cases, but that is hardly any reason to depart from the normal rule to relief the supposed hardship or injustice in such cases.' It is the duty of the Court to give effect to the intention of the legislature and this duty cannot be avoided on the ground that it is likely to cause hardship to one class on which the benefit was conferred but the legislature deemed it appropriate to deprive the class of this benefit and confer it on another and in such a case, if the legislature was competent to confer the said benefit, it definitely cannot be denuded of its power to withdraw the same.

72. In determining the validity of the law, the Court shall not restrict itself to the stand adopted by the State and would be free to satisfy itself whether under any provision of the Constitution the law cannot be sustained. In determining the validity, the guidance is provided by the 7 Judge Bench in ***Patthumma and ors vs. State of Kerala and Ors***[24] , when it held thus, 'the judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It must take into consideration the changing trends

23 (1849) 5 MIA 43
24 (1978) 2 SCC 1

of economic thought, the temper of the times and the living aspirations and feelings of the people. This Court while acting as sentinel on the quivive to protect fundamental rights guaranteed to the citizens of the country must try to strike a just balance between the fundamental rights and broader interest of the society, so that when such a right clashes with the larger interest of the country, it must yield to the latter.'

It is obvious that that the legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution and since it shoulder the responsibility to bring about social reforms for the upliftment of the backward and weaker sections of the society and for the improvement of the lot of poor people. A constitutional court will therefore, interfere in this process only when the statute is clearly violative of the rights conferred on the citizen under part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds.

The constitutional proposition enunciated by the US Supreme Court in '**Munn vs. Illinois**,' "that the Courts do not substitute their social or economic briefs for the judgment of legislative bodies" continue to be the guiding factor for the Courts in this Country, while dealing with the challenge to the constitutional validity, by evolving the principle that the presumption of constitutionality must colour judicial construction, and the factors recognized by the courts are essential to the modus vivendi between the judicial and legislative branches of the State, both working beneath the canopy of the Constitution.

(IV) <u>Challenge to the statute or statutory provision based on Article 14 of the Constitution</u>

73. While testing the challenge to the Constitutional Validity of the law enacted, the fundamental nature and importance of the legislative process deserve due consideration by the Court and where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court shall be cognizant of the principle relating to the applicability of Article 14 in relation to invalidation of the legislation or a provision enacted by the legislature. The two dimensions of Article 14 in its application to legislation and rendering the legislation invalid, are well settled and it may be struck down on the ground of; (i) discrimination, based on impermissible or invalid classification and (ii) arbitrariness, which is well recognized as a facet of discrimination as the arbitrariness is antithesis to the provision of equality and such provision of law is permitted to be tested qua Article 14.

74. Article 14 of the Constitution of India guarantees equality before law and equal protection of laws, acting as safeguard against any arbitrary State action. It prohibits discriminatory, unreasonable and capricious State action or laws that treat equals unequally.

The doctrine of non-arbitrariness established in ***E Royappa vs. State of Tamil Nadu***[25], expanded the scope of Article 14, declaring that any State action that is arbitrary, irrational or capricious violates Right to Equality. The doctrine of manifest arbitrariness, primarily used against legislation, propound that if the law enacted is capricious, irrational or lacks a rational determining principle, then it is void.

25 (1974) 4 SCC 3.

In case of ***Shayara Bano*** (supra), the Constitution Bench of the Apex Court adverted to the development of doctrine of arbitrariness and its application to State action as a distinct doctrine on which the State action may be struck down as being violative of Rule of Law contained in Article 14. The observation of Justice Bhagwati in ***EP Royappa*** (supra) is gainfully relied upon, to conclude that malafide exercise of power and arbitrariness are different lethal radiations emanating from the same vice and both are inhibited by Article 14 and 16. The enunciation of law is worded as below:-

> *"85…. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."*

75. By this time, through the authoritative pronouncement from the Apex Court, it is a well accepted principle, that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as

philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 by its brooding omnipresence and the procedure contemplated under Article 21 is held to mandatorily answering the test of reasonableness so as to be in conformity with Article 14.

76. In ***Ajay Hasia v. Khalid Mujib Sehravardi***[26], the Constitution bench pertinently held as below:-

> *"16...Wherever therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action."*

The arbitrariness doctrine contained in Article 14 is therefore applicable to a legislation, a sub-ordinate legislation and an executive action.

Though traditional, the concept of Article 14 was made co-terminus with the doctrine of classification, as the Article favoured discrimination and the classification, fulfilling the two tests mainly; (i) it being founded on an intelligible differentia distinguishing the persons or things that are grouped together from others left out of the group and (ii) the differentia bearing a rational relation to the object sought to be achieved and it was held to meet the requirement of Article 14.

77. However, on passage of time, a new dimension of equality emerged in Article 14, which embodies a guarantee against arbitrariness.

No other ground, even including a challenge that a statute violate basic structure of the Constitution is held to be not

26 (1981) 1 SCC 722

permissible if the statute is within the legislative competence and it advance the right under Article 21 and 21-A of the Constitution.

A decision by the High Court, recording that the courses conducted by the Madarsa as prescribed under the U.P Board of Madarsa Education Act, 2004, included religious instructions and teachings and hence it was not secular and therefore it violated one of the basic principle of constitution namely viz. Secularism and the finding rendered that Madarsa Act violated Article 14, 21 and 21-A of the Constitution was dealt by the three judges bench in ***Anjum Kadri and anr vs. Union of India and ors***[27]**.** Declaring that the Constitutional scheme allows the State to strike a balance between two objectives; firstly ensuring the standard of excellence of minority educational institution and secondly preserving the right of the minority to establish and administer its educational institution, it is held by the Apex Court that the State must strive to strike a balance by enacting regulations accompanying the recognition of minority educational institution.

On examination of the provisions of the Act, and on finding that the Act furthering substantive equality for the minority community in the State of UP and secure their interest, it is held that the Madarsa Act is consistent with the positive obligation of the State to ensure that students studying in the recognized Madarsa attain a minimum level of competency which will allow them to effectively participate in the Society and earn a living.

The provisions of the Act are held to be reasonable as they subserve the object of recognition i.e. they ensure academic

27 (2025) 5 SCC 53

excellence of students in the recognized Madrasa and since the provisions of the Act were consistent with the positive obligation of the State, it is held that the concept of positive secularism was in consonance with the principle of substantive equality, the ruling of the High Court invalidating the statute on the ground that it violated the basic structure did not find favour with the Apex Court and it is held that the mere fact that the education which is sought to be regulated include some religious teaching or instructions, did not automatically push the legislation outside the legislative competence of the State and it is held that the Act was within the legislative competence of State legislature and traceable to Schedule VII List 3 Entry 25.

78. In conclusion, it is held that the High Court had erred in holding that a statute is bound to be struck down if it is violative of the 'Basic Structure' and it is held that invalidation of a statute on the ground of violation of secularism has to be traced to the express provision of the Constitution. By analysis the interplay between Article 21-A which cast a duty on the State to provide free and compulsory education to all children of the age of 6 to 14 years, and which imposes a constitutional obligation to impart elementary and basic education with Article 30, which guaranteed the right to establish and administer educational institutions of their choice to the religious and linguistic minorities, it is held that the constitutional scheme allows the State to strike a balance between the two objectives and the education provided under the 2004 Act, can no way violate Article 21-A as the RTE Act enacted by taking recourse to the said provision facilitate the fulfilment of fundamental rights

and contain a specific provision making it inapplicable to minority educational institution and this right of the religious minority institution is protected under Article 30. Thus, while upholding the validity of the Madarsa Act, the Apex Court concluded that the Act was well within the legislative competence of State legislature and it is consistent with the positive obligation of the State ensuring a minimum level of competency to the students studying in recognised Madarsa.

(V) <u>New Dimension of Article 14 - 'Manifest Arbitrariness'</u>

79. With passage of time, the newly evolved dimension of Article 14 came to be expanded through various authoritative pronouncements based on the principles that Article 14 strike at arbitrariness at State action and it ensure fairness and equality of treatment. By this time, it is a well embodied principle in Indian Law that an action that is arbitrary necessarily involve negation of equality and wherever there is arbitrariness in State action, whether it is the action of the legislature or of the executive, it is hit by violation of Article 14.

80. In ***Shayara Bano*** (Supra), the Apex Court has made reference to the discordant note struck in ***State of A.P. v. McDowell & Co.***[28], when a three Judge Bench, repelled the argument based on the arbitrariness facet of Article 14, and held that the power of Parliament or for that matter the State legislature is restricted in two ways, and the law made by the Parliament or the legislature can be struck down on two grounds alone viz. (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the

28 (1996) 3 SCC 709

Constitution or of any of the Constitutional provision and that there is no third ground.

The three Judge Bench in McDowell specifically recorded thus:-

> *" The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating the Act. An enactment cannot be struck down on the ground that court thinks it is unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."*

81. In ***Shayara Bano*** (supra), the Constitution Bench expressed that in ***McDowell*** (supra), two decisions of the Constitution Bench, the first in ***Ajay Hasia*** (supra) and the second in ***K.R. Laxhmanan v. State of Tamil Nadu***(supra), were not noted apart from the fact that the reasoning contained as to why arbitrariness cannot be used to strike down legislation as opposed to both executive action and subordinate legislation was also not considered.

Recording that as per the Bench in McDowell, substantive due process is not something accepted either by American courts or our courts and, therefore, this being a reiteration of substantive due process being read into Article 14 cannot be applied. However, with reference to another Constitution Bench in ***Mohd. Arif v. Supreme Court of India***[29], which followed the decision in ***Maneka Gandhi*** (supra), it was noted that Article 21 is to be read along with other

29 (2014) 9 SCC 737

Fundamental Rights, and so read not only it contemplate the procedure established by law to be just fair and reasonable but also the law itself has to be reasonable as Article 14 and 19 have now to be read into Article 21.

With reference to the decision in ***Bachan Singh v. State of Punjab***[30]**,** which upheld the constitutional validity of the death penalty, where it is held that no person shall be deprived of life and personal liberty except according to fair, just and reasonable procedure established by valid law, the Constitution Bench held that 'substantive due process is now to be applied to the fundamental right of life and liberty'. Noting that the three Judge bench in McDowell did not notice Maneka Gandhi cited in Mohd. Arif, to show that the wheel has turned full circle and substantive due process received recognition as a part of Article 21 which is to be read with Articles 14 and 19.

In paragraph No.82, it is therefore, held as below:

> *"82. It is, therefore, clear from a reading of even the aforesaid two Constitution Bench judgments in Mithu case and Sunil Batra case that Article 14 has been referred to in the context of the constitutional invalidity of statutory law to show that such statutory law will be struck down if it is found to be 'arbitrary'."*

82. Taking note of the absence of the reasoning by the three Judge Bench in ***McDowell*** (supra), the Constitution Bench also found the reasoning that Courts cannot sit in Judgment over Parliamentary wisdom to be not the correct approach as it is noted that the law reports are replete with instance after instance where Parliamentary wisdom has been successfully set at naught by the Court because

30 (1980) 2 SCC 684

such laws did not pass muster on account of they being 'unreasonable'.

83. In the wake of in depth deliberation of the concept of arbitrariness and unreasonableness being considered as facet of Article 14, a reference is made to the decision of the Constitution Bench in case of ***Subramanian Swamy v. CBI***[31], as to whether it is a ground available to invalidate the legislation.

The observation in the decision of ***Subramanian Swamy*** (supra) to the following effect is gainfully reproduced:

> *"49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders—if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is."*

84. It is on in-depth consideration of the earlier rulings, revolving around Article 14 held that the test of manifest arbitrariness would apply to invalidate the legislation as well as subordinate legislation under Article 14, manifest arbitrariness being described in the following words:-

> *'101...Manifest arbitrariness, therefore, must be something done by the*

31 (2005) 2 SCC 317

> *legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.'*

85. It is in light of the aforesaid reasoning and by applying the test of 'manifest arbitrariness', the form of Triple Talaq, instant and irrevocable was tested and the majority view expressed this form of Talaq is manifestly arbitrary, in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt of reconciliation to save it. Triple Talaq is therefore held violative of the fundamental right contained in the Article 14 of the Constitution of India, and the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, it was struck down being void to the extent that it recognizes and enforces Triple Talaq.

86. In ***Re : Section 6A of the Citizenship Act, 1995***[32]**,** the Constitution Bench after the decision in ***Shayara Bano***, was confronted with a challenge to the constitutional validity of Section 6A of the Citizenship Act, 1985, the provision being incorporated to establish a framework and to delineate criteria of granting Indian citizenship to migrants who enter Assam before 25/03/1971. The provision created categories of conferring of citizenship to immigrants who enter Assam by classifying in; i) deemed citizenship to immigrants who entered prior to 01/01/1966 and ii) the process of registration for immigrants who entered between 01/01/1966 and 25/03/1971. No protection was granted to those who entered in Assam after 25/03/1971, rendering their presence in India illegal and

32 (2024) 16 SCC 105

liable for deportation under the existing legislation.

A challenge being raised on the backdrop of Article 14 and the classification contemplated therein, it was argued that the exclusive application of Section 6A to Assam violated Article 14 since Article 14 require legislature to treat equals equally and though it allows differential treatment, if the characteristics of classes differ , but treating unequal entities alike and subjecting them to same laws would potentially lead to greater injustice. It was urged on behalf of the Petitioner that the classification should not be based on arbitrary criteria and must instead be based on logic, which distinguishes individual with similar characteristics from the persons who do not share the equals i.e. distinguishing the equals from the persons who do not share those characteristics – the unequals. The test laid down so as to sustain the classification as reasonable was pressed into service which necessarily require consideration of all relevant similarities and disregard insubstantial and microscopic differences.

It is in the background of submissions, while laying down the the yardstick regarding the classification while gauging its reasonableness, the Apex Court noted thus :-

> *"179. Second, when gauging the reasonableness of classification, the Court must adopt a pragmatic view and refrain from deeming a classification unconstitutional solely because it is marginally under-inclusive. In adjudicating the validity of a statute, the concept of under-inclusiveness arises when a classification within the law fails to encompass all individuals similarly situated with respect to the law's intended purpose. The approach of Indian courts towards under-inclusive legislation generally exhibits tolerance on the premise that the legislature is "free to recognize degrees of harm" and is allowed to "hit evil where it is most felt". Moreover, this Court has also justified some under-inclusive classifications on the grounds of administrative convenience and legislative experimentation."*

87. While determining the fourfold issue that fell for consideration, one of the issue being whether Section 6A is so 'manifestly arbitrary' that it offends Part III of the Constitution, the Constitution Bench applied the test of 'manifest arbitrariness' crystalised in ***Shayara Bano*** (supra) and set out the facets of the test of 'manifest arbitrariness' in the following words :-

> *"214. The term 'irrationality" refers to the lack of reason or logic. While highlighting the need for the presence of clear reason or logic, this Court in Cellular Operators Assn. of India v. TRAI, determined that the legislation, statute or provision being challenged must be supported by a rationale. The rationale demonstrates the application of intelligent care and observation in the enactment of such laws or provisions. To this end, it was held that:*
>
> > *48. (...) We cannot forget that when viewed from the angle of manifest arbitrariness or reasonable restriction, sounding in Article 14 and Article 19(1)(9) respectively, the Regulation must, in order to pass constitutional muster, be as a result of intelligent care and deliberation, that is, the choice of a course which reason dictates. Any arbitrary invasion of a fundamental right cannot be said to contain this quality. (...)"*
>
> *[Emphasis applied]*

216. Still further, while the test of manifest arbitrariness requires the presence of logicality, such reasoning does not have to be stated explicitly and can be discernable from the facts and circumstances, However, it should be noted that the converse may not hold. In other words, even if the reason or rationale behind the impugned provision is expressly stated, it does not automatically guarantee non-arbitrariness. Such reason also needs to align with constitutional morality and public interest, and must bear a nexus with the object of the statute. The aspect of irrationality, as found in the test for 'manifest arbitrariness, thus, does not solely imply the absence of reason but also requires alignment with constitutional morality. Hence, the legitimacy of the reason or logic behind the impugned legislation should be viewed from the lens of constitutional ideals. This was so observed by this Court in Joseph Shine (supra), wherein it was clarified that irrationality does not merely denote the absence of reason but also requires that such reasoning be in harmony with constitutionalism.

> *217. We may hasten to add that, the legitimacy of the reason behind the legislation that has been impugned must be viewed from the lens of public interest also. This*

Court, in Hindustan Construction Co. Ltd. v. Union of India, struck down Section 87 of the Arbitration and Conciliation Act, 1996, on the ground of manifest arbitrariness by observing that it was against public interest. This was also observed in Manish Kumar v. Union of India (supra), that the golden thread running through this ground, making up the doctrine of manifest arbitrariness, is the absence of public interest."

88. The Constitution Bench also determined the extent of review under 'manifest arbitrariness' and observed that while applying the test, the use of the word 'manifest' signify that the arbitrariness should be palpable and visible on the face of it and while examining whether the provision is manifestly arbitrary the Court should practice judicial restraint and must not substitute their view against that of law makers as the Courts cannot question the wisdom of the Policy, but is only expected to test its legality.

If a particular norm set out by the legislature is backed by a Policy decision, the Court must refrain from excessively questioning the specific standard and shall exercise power of judicial review cautiously.

Holding that the cut off date was not set arbitrarily but was based on proper application of mind, in the historic backdrop it was concluded that the same was backed by a well considered rationale and since the determination of cut off date fall within the ambit of the policy makers, where the Court would be reluctant to indulge in such fixation, unless the date has vitiated the arbitrary consideration, it was held not to offend Article 14 and no interference was warranted.

(VI) <u>Applicability of the Principle of 'Arbitrariness' contemplated under Article 14 - in testing the amendments to the Act of 2012</u>

89. The challenge in the petitions to the amended provisions is premised on the facet of Article 14 and Mr.Frais has contended that the Apex Court in ***Shayara Bano*** *(supra)*, has evolved one additional ground of testing the validity of a statute being that of manifest arbitrariness. The amending Acts which are alleged to have curtailed the 'vested rights' of those who prior to the amendment, received precedence in the order of succession over the 'surviving spouse' are challenged on the ground of 'manifest arbitrariness', being capricious, unreasonable and we are called upon to decide the validity of the amending Act by applying the parameters set out by the Hon'ble Apex Court in ***Shayara Bano*** (supra), to be followed by another Constitution Bench In Re : Section 6A of the Citizenship Act, 1995.

90. The aforesaid observation of the Apex Court is strongly relied upon by Mr. Frias, who submit that the statutory provision has been struck down on the ground of it being manifestly arbitrary and we therefore examine the ground of the amending Act, changing the sequence of legal succession on the ground of arbitrariness.

91. When the law is challenged on ground that it is violative of Article 14, it necessitate the Court to inquire whether it is capricious, irrational, disproportionate excessive and finally without any determining principle. The golden thread which runs through the grounds making up the doctrine of manifest arbitrariness, consist of total absence of public interest of which the sovereign legislature as the supreme law giver is the undoubted custodian and it is on these

parameters laid down by the Apex Court in ***Manish Kumar*** (supra), the learned counsel Mr.Frias expect us to consider the challenge.

92. The test of 'Manifest arbitrariness' crystalised in ***Shayara Bano*** (supra) dealing with the challenge to the practice of triple Talaq as recognized in the Muslim Personal Law (Shariyat Application Act, 1957), the Apex Court overruled its previous decision in ***Mcdowell*** where it is held that an enactment cannot be strucked down on the ground of it being arbitrary or unreasonable and it is necessary to establish some constitutional infirmity before invalidating the Act.

The test of 'manifest arbitrariness' set out in Shayara Bano (supra) necessarily contemplate something done by legislature capriciously, irrationally and/or without adequate determining principle. Similarly something which is done which is excessive and disproportionate, it would be manifestly arbitrary.

93. An action is Arbitrary; if….

"1. Depending on individual direction; specific, determined by a Judge rather than by fixed rules, procedures, or law. 2. (of a judicial decision) founded on prejudice or preference rather than on reason of fact. This type of decision is often termed arbitrary and capricious." [Black's Law Dictionary as cited in East Coast Railway v Mahadev Appa Rao, (2010) 7 SCC 678, para 19].

It is also 'arbitrary' if;

2. Based upon one's will, and not upon any course of reason and exercise of judgment; bound by no law; capricious; exercised

according to one's will or caprice and therefore conveying a notion or a tendency to abuse possession of power; fixed or done capriciously or at pleasure, without adequate determining principle, non-rational, or not done or acting according to reason or judgment; not based upon actually but beyond a reasonable extent; not founded in the nature of things; not governed by any fixed rules or standard; also, in a somewhat different sense, absolute in powers despotic, or tyrannical; harsh and unforbearing.

When applied to acts, 'arbitrary,' has been held to connote a disregard of evidence or of the proper weight thereof; to express an idea opposed to administrative, executive, judicial or legislative discretion; and to imply at least an element of bad faith, and has been compared with 'wilful'.

94. As per Advanced Law lexicon, P. Ramanatha Aiyar, Seventh Edition, Volume 1, an obvious test to apply to ascertain whether any act or option is arbitrary or not, is ultimately to be answered on the facts in circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of unreasonableness. In order to be described as ‘arbitrary’, it must be shown that it is not reasonable and manifestly arbitrary.

When the decision making process and the decision, both are based on irrelevant facts and they ignore relevant consideration, such action shall be termed as ‘arbitrary’. An action is arbitrary and

capricious where a person, in particular, a person in authority does any action based on individual discretion, by ignoring prescribed rules, procedure or law, and the action or decision is founded on prejudice or preference rather than the reason or fact. To be termed as arbitrary and capricious, the action must be illogical, whimsical, something without reasonable explanation.

95. On examining the intention of the state legislature in enacting the amending Acts 2022 and 2023, we do not find any arbitrariness in resetting the order of succession, as we find that the surviving spouse was found to be more suited for taking the share of the deceased estate leaver by immediately succeeding the children. The right of succession is vested in the heirs by a statutory provision and while conferring the said right, when the legislature decided a particular sequence to be followed, while conferring the right to succeed, the very same legislature is entitled to change the order of succession as the legislature was of the view that the existing order deserve rectification.

Very peculiar to the State of Goa, because of the communion of assets unless and until the parties have entered into an ante-nuptial agreement, where the Default regime, is general communion of assets, the present and future asset are shared equally on the contract of marriage being entered into. The surviving spouse as a moiety holder takes 50% of the share in the estate, not because of his/her right to succession, but it is on account of communion of assets, in accordance with the matrimonial regime in which the parties are married. However, when it comes to the succession of the estate of

the descendant/the children/the grandchildren deserve priority over anyone else. However, the surviving spouse, according to the legislature, must take the whole share in the estate of the deceased husband/wife, if there are no descendants. However, if there are no descendants and even there is no spouse than obviously the ascendants that is the parents, grandparents are entitled to succeed to the property of estate leaver.

The surviving spouse definitely occupies a position superior than any other relationship apart from the children and the legislature deemed it appropriate to introduce the spouse in the order of immediately succession next to the children/ descendants.

96. When we compared the aforesaid line of succession with the succession under the Hindu Succession Act of 1956, we find the legislature perfectly justified in resetting the order of succession.

Under the Hindu Succession Act, 1956 which govern the succession of a Hindu, including Buddhist, Jain, or Sikh by religion and any other person, who is not a Muslim, Christian, Parsi and Jew, the 'Heir' is a person, male or female entitled to succeed to the property of an intestate.

Section 8 of the said Act has prescribed the rule of succession in case of Males and it reads thus:-

> *"**8. General rules of succession in the case of males.**—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—*
>
> *(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;*
>
> *(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*
>
> *(c) thirdly, if there is no heir of any of the two classes, then upon the agnates*

of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

97. Amongst the heirs specified in Schedule, Section 9 prescribe that those in Schedule-I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Schedule-I appended to the Act, includes the heirs in class-I and class-II.

Class-I heirs include Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son. Class-II heirs are found to be placed in the following manner:-

"I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood."

98. As per Section 10 of the Hindu Succession Act, the property of a intestate shall be divided among the heirs in class-I of the schedule

in the following manner:-

"Rule 1.—The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.—The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.—The distribution of the share referred to in Rule 3"

However as fare as the heirs in class-II are concerned, the property shall be divided between the heirs in a way that they share equally.

99. Section 15 govern the succession of the property of a female Hindu, and her property shall devolve in the following sequence;

> *(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*
>
> *(b) secondly, upon the heirs of the husband;*
>
> *(c) thirdly, upon the mother and father;*
>
> *(d) fourthly, upon the heirs of the father; and*
>
> *(e) lastly, upon the heirs of the mother."*

100. Nothwithstanding the above, subsection (2) of Section 15 has carved out a distinction between the property inherited by a female Hindu from her father when it shall devolve upon the heirs of her father in absence of any son or daughter of the deceased but when the property is inherited by her from her husband or her father in law then it shall devolve upon the heirs of the husband.

The order of succession and the manner of distribution among the heirs of a female Hindu is prescribed in Section 16 and the distribution of the intestate property among the heirs shall be in the

following manner:-

> *"Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.*
>
> *Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.*
>
> *Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."*

101. The comparison of the right of a surviving spouse from the Hindu Succession Act, would simply reflect that the widow along with the mother, finds place in class-I, whereas the father is placed in class-II. While distributing the property amongst the heirs; the widow, the surviving sons and daughter, the widow takes one share, surviving sons and daughters and mother of the intestate are entitled for one share and the heirs in the branch of each predeceased son or each predeceased daughter shall take between themselves one share.

When it comes to the distribution of the estate of a female Hindu on her demise, amongst the heirs, the sons and daughters and the husband take preference over all other heirs including the heirs of the husband, the father and the mother etc and the sons and daughter and husband inherits simultaneously.

102. In the order of succession prescribed under the Hindu Succession Act, 1956, the husband/the widow stands along with the children and both of them stand on a higher position than the other heirs.

Peculiar in Goa, which is governed by communion of assets by

default unless there exists an ante-nuptial agreement, where the spouses had agreed for absolute separation of assets or simple separation of acquired property or another situation of total regime, the wife as a moiety sharer, on account of her marriage become the equal shareholder in the property of the husband, during their lifetime, both act as joint owner and this communion survives till the parties are separated by annulment /decree of divorce.

Therefore, the contention advanced on behalf of the Petitioners while raising a challenge to the up-gradation of surviving spouse in the order of succession under Section 52, based on a presumption that the surviving spouse has otherwise on account of he / she being a moiety holder is entitled to 50% of the estate and therefore, in absence of the children/ the descendants being available to succeed, the surviving spouse will take the balance 50% and this will keep the ascendants i.e. the parents, grandparents out of the order of succession failed to impress us.

As a spouse, who had shared a marital tie with the estate leaver, definitely deserve precedence over any other relationship of the estate leaver except the children i.e. the descendants and if the descendants are surviving, then the surviving spouse shall take a backseat.

If with this intention, the State Legislature has deemed it appropriate to rectify the order of legal succession, we do not find it to suffer from ‘manifest arbitrariness’; we do not find it to be irrational or that it lack rational determining principle.

103. We have also perused the scheme contemplated under the Indian Succession Act 1925, which govern the intestate and testamentary succession of the deceased who is not Hindu, Mohammedan, Buddhist, Sikh or Jain and even it has conferred the right on the widow, in priority over the kindred or consanguinity. As per Section 32, the property of an intestate devolves upon the wife or husband, or upon those who are the kindred of the deceased, in the order and according to the Rules set out in Chapter II. Section 33 is the provision prescribed in a manner in which the property would devolve when the intestate has left the widow and the said provision reads thus:-

> ***"33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred***. -*Where the intestate has left a widow--*
>
> *(a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;*
>
> *(b) [save as provided by section 33A], if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;*
>
> *(c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow."*

104. Section 33-A is a special provision, where the intestate has left the widow but no lineal descendants and if the net value of the property do not exceed to Rs. 5000/-, the whole property shall belong to the widow but where the property exceeds to the sum of Rs. 5000/- she shall be entitled for the whole amount and shall have a charge upon the whole of such property in the sum of Rs. 5000/- with interest thereon from the date of the death of intestate.

The provision for the widow in the said subsection is in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of Rs. 5000/- and such residue shall be distributed in accordance with the provision of Section 33 as if it was the whole of such intestate property.

When there is no widow left by the intestate, the property shall then go to lineal descendants or to those who are of kindred to him not being the lineal descendants and if he has left none, who are kindred to him, it shall go to the government.

The widower, i.e. husband surviving his wife enjoy the same rights in respect of her property if she died intestate, as the widow has in respect of her husband's property if he die intestate.

Thus, even under the Indian Succession Act, the widow/widower take precedence over the kindred i.e. the relatives of the deceased descended from the same stock of common ancestor. The widow and the lineal descendants take their respective share, where the intestate is left behind by widow and lineal descendants. But if there are no lineal descendants but there are kindred then one half of the property belongs to the Widow and other half go to the kindred but if there is none then the whole of the property shall belong to the widow.

105. Applying the test of arbitrariness/ manifest arbitrariness, evolved by the Apex Court, a statute to be declared to be so must exhibit exercise of discretion in an arbitrary manner, not based upon actually but beyond the reasonable extent, in a tyrannical manner. A law or a provision shall be declared arbitrary if there is no discernible

principle emerging therefrom and if it fail to satisfy the test of reasonableness. In our view, by comparing the provisions relating to succession under the special statutes like the Indian Succession Act, or the Hindu Succession Act, we have noted that the surviving spouse - widow/widower have been assigned a superior position as compared to the other heirs and if the State Legislature deemed it necessary to rectify the order of succession which was prevailing in State of Goa through the Portuguese Civil Code, which found its way in the Goa Succession Act, 2012, we do not find that the action is 'arbitrary' or 'manifestly arbitrary' for the reasoning stated by us above.

(VII) Retrospective effect of the Amending Act whether result in deprivation of 'Vested' and 'Crystallised' Rights.

106. Another common submission canvassed is, that on account of (Amendment) Act, 2023, declaring that the Amending Act (2022) has come into effect on 21/12/2016, has given effect to Section 52 retrospectively and the argument advanced is the rights which are already vested in accordance with the order of succession as per Section 52, are denuded as the surviving spouse take precedence over the ascendants, thus depriving them of their right of succession which is already vested. It is urged on behalf of the Petitioners that the amendment to Section 52 has been given effect from 21/12/2016 i.e. from a date antecedent.

The submission canvassed to raise a challenge to the amending Act is that by virtue of Section 13 of the Act of 2012, the moment the estate leaver dies, the ownership and possession of inheritance is transmitted to the heirs whether testamentary or intestate and it vest

in them, the said provision correspond to Article 2011 in the Portuguese Civil Code.

In terms of the aforesaid provision, the transmission of ownership and possession is not contingent on the acceptance of inheritance and this create an indefeasible right in the heirs/the successor. Based on the aforesaid provision, it is canvassed before us that the intention of the legislature is very clear when it prescribed that the ownership and possession of the inheritance of the deceased estate leaver shall vests in the heir at the moment of his death. Upon inheritance being transmitted to the legal heirs they become the owners of the property of estate leaver but in case, where the heir desire to enjoy the property to the exclusion of another, in that case, he/she shall definitely seek a partition and have the shares segregated to claim exclusivity qua, the other heirs.

Since, as per Section 13, the right that is transmitted to the legal heirs is not contingent but it vests in the heir by operation of law, it is urged before us that the right is ‘vested’ and therefore, giving retrospective effect to Section 52 is unjust, arbitrary, and hence unconstitutional as it has the effect of taking away vested rights of ownership and possession, which have already accrued in favour of the persons to qualify in the line of succession as per unamended Section 52.

107. It is a fundamental rule of law that no statute shall be construed to have retrospective operation unless such construction appears very clearly in terms of the Act or arises by necessary or distinct implication.

In the case of ***Govind Das Vs. Income Tax Officer***,[33] while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1/4/1962, the date on which the Income Tax Act came into force; the observations of the Apex Court deserve reproduction :-

> *'11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that "all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."*

108. It is the cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. The rule in general is applicable where the object of the statute is to affect vested rights or to impose new burden or to impair existing obligations. Unless the words in the statute sufficiently display the intention of the legislature to affect existing rights, it is deemed to be prospective only, "*nova constitutio futuris formam imponere debet non praeteritis*" - a new law ought to regulate what is to follow, not the past'.

It is not necessary that an express provision shall be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication, especially

33 (1976)1 SCC 906

in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole.

It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect.

Though retrospectivity is not to be presumed and rather there is a presumption against retrospectivity, according to Craies (Statute Law, 7th Edn), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed.

In the absence of a retrospective operation being expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving a statute retrospectivity. Four factors are suggested as relevant: (i) General scope and purview of the statute; (ii) The remedy sought to be applied; (iii) The former state of the law; and (iv) What it was the legislature contemplated.

109. The term ‘Vested Rights’ has a definite connotation and as per Black’s law dictionary, it is defined as ‘A right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person’s consent’.

Before us, the claim of the Petitioners is based on succession and it is the Statute, i.e. the Goa Succession Act of 2012, which has determined the order of succession amongst the heirs of the estate

leaver, as on account of his demise, his estate/ property is available for inheritance. Various authoritative pronouncements are cited before us in support of the proposition that, the law must satisfy the requirements of the Constitution by taking into account the accrued or acquired rights of the parties. It being an well accepted position that a legislature cannot legislate today with reference to a situation that existed 20 years ago and in ignorance of the mark of events and the rights that are accrued in the course of these years, as doing so would be utmost arbitrary, and unreasonable.

In case of ***State of Gujarat & Anr. vs. Raman Lal Keshav Lal Soni & ors*** (supra), the Constitution Bench was confronted with the question whether the status of ex-registeral employees who had been allocated to the Panchayat service under the Gujarat Panchayat Act, 1961, as government servants, could be extinguished by making retrospective amendment in the Act in 1978. Striking down the amendment on the ground that it offended Article 311 and 14 of the Constitution, the Court observed thus:-

> *"52…..The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights."*

110. In case of ***Chairman, Railway Board*** (supra) it is noted that the expression, 'vested rights' or 'accrued rights' have been used while striking down the provisions, which were given retrospective operation so as to have an adverse effect on the matter of promotions, seniority, substantive appointment etc., of the employees.

It is elucidated that the said expressions have been used in a

context of a right flowing under the relevant Rule, which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the Rule in force at that time. An amendment having retrospective operation has the effect of taking away a benefit which is already made available and this would violate the right guaranteed under Article 14 and 16 of the Constitution.

111. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which necessarily must form the basis of every Legal Rule. One established principle in interpreting a legislation or a provision in it is well settled; unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. In ***CIT vs. Vatika Township (P) Ltd***[34] , the Constitution Bench while setting out the general principles concerning retrospectivity worded its formulation on the point as below:-

> *"**28.** Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law."*

34 (2015) 1 SCC 1

112. However, what is most relevant is the observation of the larger bench of the Apex Court in para 30, which reads as below:

> *"30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. [(2005) 7 SCC 396] , the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [(2006) 6 SCC 289] . It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here."*

113. A statute or provision of law enacted for the benefit of a community as a whole, thus may be held to be retrospective in nature. In certain areas like the legislation in relation to fiscal matters, the legislations creating a penal effect, stand on a different footing, and in the words of Lord Wilberforce in ***Inland Revenue Commissioners vs Joiner***[35] , the principle to be applied is loud and clear, "that in a civilized society which acknowledges the Rule of Law, individual members of that society are entitled to know when they embark upon a course of conduct what the legal consequences of their doing so will be, so they may regulate their conduct accordingly"

114. In accordance with the general principle of the retrospectivity, even in a case where it might be thought unfair to legislate with retrospective effect on a fiscal matter, it is open for the legislature to do so, that effect will be given to their intention by the Courts only if it be indicated in a manner which leads no room for doubt. The legal impediments in enacting a statute and giving effect to it with a

35 [1975] 1 WLR 1701

retrospective date in presuming that the provision of a statute has come into effect prior to its enactment, the relevant test is whether it destroy or impair vested rights.

Retrospectivity or retroactivity is understood to mean laws which destroy or impair vested rights. Retro active laws apply where the status or character of a thing or situation arose prior to passage of the law but merely because a law operates on certain circumstances, which are antecedent to its passing, does not mean that it is retrospective.

Retroactive, the term which comes from latin roots meaning 'drive or turn back' describe laws or actions that take effect from a date in the past, impacting conditions that already occurred and it indicate a retrospective, backdated act. Retrospectivity refer to a completed act, whereas retroactivity is a law applicable to an act or transaction i.e. still underway and is in the process of completion. Retroactive laws apply, where the status or character of a thing or situation arose prior to the passage of law but merely because law operates on certain circumstances which are antecedents to its passing does not necessarily mean that it is retrospective.

115. Maxwell on Interpretation of Statutes (Twelfth Edition) has para-phrased the Rule regarding retrospectivity by quoting the passage from the judgment of R.S. Wright J. in ***Rey Athlumney***[36] and it is so reflected below:-

> *"One of the most well-known statements of the rule regarding retrospectivity is contained in this passage from the judgment of R. S. Wright J. in Re Athlumney 'Perhaps no rule of construction is more firmly established than this-that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as*

36 [1898] 2 Q.B. 551.

regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.' The rule has, in fact, two aspects, for it 'involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.'

If, however, the language or the dominant intention of the enactment so demands, the Act must be construed so as to have a retrospective operation, for 'the rule against the retrospective effect of statutes is not a rigid or inflexible rule but is one to be applied always in the light of the language of the statute and the subject-matter with which the statute is dealing.' Those situations in which Acts will be construed so as to have a retrospective operation will be discussed later in this chapter.

Before the presumption against retrospectivity is applied, a court must be satisfied that the statute is in fact retrospective. In the words of Craies on Statute Law, a statute is retrospective 'which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.' Other statutes, though they may relate to acts or events which are past, are not retrospective in the sense in which the word is used for the purpose of the rule under consideration. The following cases illustrate this point."

116. When the substantive law is altered during the pendency of an action the rights of the parties are decided according to the law, as it existed when the action began, unless a new statute shows a clear intention to vary such right. If a necessary intendment of a statute is to effect the rights of parties to pending actions, the Court must give effect to the intention of the legislature and apply the law as it stands at the time of judgment. Maxwell has further elaborated the principle in the following words:-

"The effect of a change in the law between a decision at first instance and the hearing of an appeal from that decision was discussed by the House of Lords in Att.-Gen. V. Vernazza. Lord Denning [1960] A.C. 965 said (at p.978) that it was 'clear that in the ordinary way the Court of Appeal cannot take into account a statute which has been passed in the interval since the case was decided at first instance, because the rights of litigants are generally to be determined according to the law in force at the date of the earlier proceedings. But it is different when the statute is retrospective either because it contains clear words to that effect or because it deals with matters of procedure only, for then Parliament has shown an intention that the Act should operate on pending proceedings, and the Court of Appeal are entitled to give effect to this retrospective intent as well as a court of first instance.

For this purpose, however, a statute which actually takes away the right of appeal is not to be regarded as affecting mere matters of procedure."

As expressed by Lon Fuller, -- the Mortality of Law (1960) :

"It is when things go wrong that the retroactive validating statute often becomes indispensable as a curative measure; though the proper movement of law is forward in time, we sometimes have to stop and turn about and pick up the pieces"

117. With this well settled principle being kept in mind, we have examined the Amendment Act of 2023, which was based on bill no.26 of 2023 and sub-section (2) of the said Act set out that the amending Act shall come into force on 21/12/2016.

By the Amendment Act, the order of legal succession as it originally stood, was substituted by providing that the legal succession shall devolve firstly on the descendants then on the surviving spouse, to be followed by the ascendants, brother and sisters and their descendants and on the collaterals. However, the said provision is appended with an explanation, which clarified that the provision of the substituted sub-section (1) as amended by the Amendment Act, 2023 shall not disturb the rights which got crystallized before the enactment of the Act of 2023, but it shall be applicable to the cases/appeals pending before different Courts.

The legislature, by the amendment has therefore, clarified that the rights which are crystallized i.e. which have become clear and fixed will not disturbed by the Amending Act i.e. change in the order of succession, but those rights which are still open on account of pendency of the cases/appeals before different Courts in contrast to the rights beings crystallized would continue to be governed by the new Act.

Though the Amending Act provide that it shall be deemed to come into force on 21st Day of December, 2016, the explanation has saved it from being entirely restrospective, as it provide that before the enactment of the Act of 2023, if the rights are crystallized i.e. taken a concrete form, they shall not be disturbed, but those which are not yet crystallized and are pending for adjudication before the competent court i.e. in form of cases or appeals on the date of enactment of the Act of 2023, then such rights shall be governed by the new order of succession.,

118. Corresponding to the order of succession under Section 52, there is also an amendment in Section 72, which is the consequences of the change in the order of succession in Section 52, as there is a change in the succession of ascendants i.e. parents and as per the amended provision, when a person dies without descendants and the spouse, since the spouse has now taken precedence over the parents, the inheritance of the deceased shall be succeeded by his father and mother i.e. the ascendants. Similarly, in respect of the succession of brothers and sisters and their descendants, the consequential amendment pursuant to the change in the order of succession, now brought change in Section 76 by providing that in default of the descendants, spouse and the ascendants, his brothers, sisters and in a representative capacity, their descendants shall inherit the assets. Similarly, Section 77 which was a provision for succession of surviving spouse, is also amended to the effect that in default of the descendants, the surviving spouse shall succeed, as this category of heir now immediately fall in line of succession after the descendants.

119. The consequences to the change in the order of succession in Section 52, there is a amendment in Section 83 as far as disposable portion of the estate is concerned and the legitime also has now changed the sequence, where the legitime of descendants is followed by the legitime of the spouse, to be followed by the legitime of the parents and the legitime of the other ascendants. Thus, the amended Section 83 contemplate that where the estate leaver has children or descendants at the time of his death, their legitime shall consist of half of the inheritance, as the half portion is the estate leavers disposable portion. However, as far as the spouse is concerned, where the estate leaver has no descendants, but the spouse is alive, her legitime shall consists of his entire inheritance. The legitime of the parents, when the estate leaver has not left behind any descendants or spouse and father or mother is alive, then their legitime shall consists of entire inheritance.

(VIII) Effect of Explanation appended to Section 52 by the Amending Act of 2023

120. It is because of the change in the order of succession, in Section 52, the consequential provisions in the Act of 2012 also received consequential amendment.

The explanation appended to Section 52, has explained the effect of the Amending Act, where it is provided that it shall deem to have been come into force on 21/12/2016. An explanation appended to a Section offers to explain the meaning of the words contained in that Section and it becomes part and parcel of the enactment.

As per the principle of statutory interpretation by Justice G.P.Singh, 13th Edition 2012, “the meaning to be given to an

'Explanation' must depend upon its terms and 'no theory of its purpose can be entertained unless it is to be inferred from the language used'. But if the language of the Explanation shows a purpose and a construction consistent with that purpose can be reasonably placed upon it, that construction will be preferred as against any other construction which does not fit in with the description or the avowed purpose."

In ***Sundaram Pillai Vs. Pattabiraman*** (Supra), Fazal Ali, J., culled out from the earlier cases the following as objects of an Explanation to a statutory provision :

> *"(a) to explain the meaning and intendment of the Act itself,*
>
> *(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve.*
>
> *(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.*
>
> *(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*
>
> *(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."*

121. It can be thus seen that the 'Explanation' is capable of providing an additional support to the dominant object of the Act in order to make it meaningful and purposeful. Since, the meaning to be given to an explanation will really depend upon its terms and when the intention of the legislature can be clearly discerned with no ambiguity, but emerging with clarity and certainty, definitely the explanation appended to a provision act as an aid in construction of

the statute or a particular provision therein.

122. The Amendment Act of 2023, which is deemed to have come into force on 21/12/2016, by the explanation appended to the provision, the legislature has made it clear that those rights, which are crystallized before the enactment of Act of 2023, they shall not be disturbed i.e. the rights conferred on the line of successors, which preceded the surviving spouse will not be writ of or divested, but where the rights are not yet crystallized and are pending in form of cases/appeals in different Courts, then the order of succession and the entitlement of heirs shall be governed by the amended Section 52.

There is no complete embargo, as sought to be canvassed before us, on the legislature that it cannot make retrospective legislation and the power to make laws include the power to give it retrospective effect. A statute or provision is retrospective, when it has the effect of taking away or impairing any vested right acquired under the existing laws or creating a new application or imposition of a new duty or attach a new liability in respect of transactions, which have taken place in the past. Retrospectivity, therefore, convey impacting the existing right by reopening up of the past, closed and completed transactions. It also mean deprivation of accrued rights.

The explanation appended to Section 52, however, has clarified that the Amending Act, no way has any impact on the rights, which are crystallized.

A succession, which has opened up on the death of the estate leaver and the heirs have already become the owners of the estate on account of its inheritance, before the Act of 2023 came into effect,

according to the legislature, are not to be divested of their rights. However, in respect of those whose rights are not crystallized, but are still subjected to some proceedings, pending in the Court in form of cases/appeals i.e. where the finality is not attached to those rights, they being not 'crystallized' would be governed by the law, which has come into effect from 2016, though by the Amending Act of 2023.

123. Craies on Statute Law (7th Edn.) at p.396 has clearly prescribed that, if a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right.

The larger public interest is one of the relevant considerations in determining the constitutional validity of a retrospective legislation.

124. In ***Virender Singh Hooda & Ors. Vs. State of Haryana & Anr.***[37]**,** with reference to the provisions of Haryana Civil Service (Executive Branch) and Allied Services and Other Services, Common/Combined Examination Act, 2002, which was assailed on the ground that it amounted to usurpation of judicial power by the legislature with a view to overrule the decision of the Apex Court, the contention was rejected by holding that the Act removed the basis of the decision in the said cases by repealing the circulars.

The challenge to the law on the ground of it being retrospective was also negated by holding that a valid law, prospective or retrospective, cannot be declared as ultra vires on the ground that it would nullify the benefit which would otherwise have been available

37 (2004) 12 SCC 588

as a result of applicability of the interpretation placed by a superior court. The pertinent observations in this regard are to be found in paragraphs 33 to 35 and read thus :-

> *"33. The legislative power to make law with retrospective effect is well recognised. It is also well settled that though the legislature has no power to sit over court's judgment or usurp judicial power, but, it has, subject to the competence to make law, power to remove the basis which led to the court's decision. The legislature has power to enact laws with retrospective effect but has no power to change a judgment of court of law either retrospectively or prospectively. The Constitution clearly defines the limits of legislative power and judicial power. None can encroach upon the field covered by the other. The laws made by the legislature have to conform to the constitutional provisions. Submissions have also been made on behalf of the petitioners that by enacting law with retrospective effect, the legislature has no power to take away vested rights. The contention urged is that the rights created as a result of issue of writ of mandamus cannot be taken away by enacting laws with retrospective effect. On the other hand, it was contended on behalf of the respondent State that the power of the legislature to enact law with retrospective effect includes the power to take away vested rights including those which may be created by issue of writs.*
>
> *34. Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes power to give it retrospective effect. Craies on Statute Law (7th Edn.) at p. 387 defines retrospective statutes in the following words:*
>
> *"A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past."*
>
> *Judicial Dictionary (13th Edn.), K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.*
>
> *35. In Harvard Law Review, Vol. 73, p. 692 it was observed that*
>
> *"it is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government outweighs the individual's interest in benefiting from the defect".*

The prohibition of the passage of 'retroactive laws' refers only to retroactive laws that injuriously affect some substantial or vested right, and does not refer to those remedies adopted by a legislative body for the purpose of providing a rule to secure for its citizens the enjoyment of some natural right, equitable and just in itself, but which they were not able to enforce on account of defects in the law or its omission to provide the relief necessary to secure such right.

125. In ***Vijay Vs. State of Maharashtra & Ors***[38], where a provision of disqualification introduced in the Bombay Village Panchayats Act, 1958, as amended w.e.f. 08/08/2003, provided that a person, who "has been elected as a Councilor of Zila Parishad or as a member of the Panchayat Samiti" is disqualified from being member of a Panchayat. The Act in form of disqualifying statute disclose the intention of the legislature to have a retrospective effect. The appellant, who was elected in terms of the provisions of the statute and since his right to be elected was created by a statute, it is held that it can be taken away by a statute. The Apex Court in this context observed thus :-

> *"8. The general rule that a statute shall be construed to be prospective has two exceptions: It should be expressly so stated in the enactment or inference in relation thereto becomes evident by necessary implication.*
>
> *9. In the instant case it is stated expressly that the amendment would apply also to a case where the elected candidate had been elected as a member of the Panchayat earlier thereto. It not only incorporates within its purview all persons who would be members of the Panchayat in futuro, but also those who were sitting members. In other words, the bar created to hold the post of member of the Panchayat would bring within its purview also those who were continuing to hold post.*
>
> *10. It may be true that the amendment came into effect on 8-8-2003. The legislative policy emanating from the aforesaid provision, in our opinion, is absolutely clear and unambiguous. By introducing the said provision, the legislature,inter alia, intended that for the purpose of bringing*

38 (2006) 6 SCC 289.

> *grassroot democracy, a person should not be permitted to hold two posts created in terms of the Constitution (73rd Amendment) Act. It is true that ordinarily a statute is construed to have prospective effect, but the same rule does not apply to a disqualifying provision. The inhibition against retrospective construction is not a rigid rule. It does not apply to a curative or a clarificatory statute. If from a perusal of the statute, intendment of the legislature is clear, the court will give effect thereto. For the said purpose, the general scope of the statute is relevant. Every law that takes away a right vested under the existing law is retrospective in nature. (See Govt. of India v. Indian Tobacco Assn.)*

126. Holding that since a right to be elected was created by a statute and it can be taken away by a statute, on reading of the provision, which intended that it should be given effect retrospectively and since it did not produce any absurdity or ambiguity, it was held that it would not be construed as prospective.

Justice S.B.Sinha, speaking for the Bench, pertinently observed thus :-

> *"The negation is not a rigid rule and varies with the intention and purpose of the legislature, but to apply it in such a case is a doctrine of fairness. When a law is enacted for the benefit of the community as whole,even in the absence of a provision, the statute may be held to be retrospective in nature. The appellant does not and cannot question the competence of the legislature in this behalf."*

127. In ***State Bank's Staff Union (Madras Circle)*** (supra), the decision relied upon by the learned Advocate General towed the above reasoning where the amendment by the Banking Laws (Amendment) Act, 1983, by virtue of Section 43-A was the subject matter of challenge. The Amendment Act amended the law on the foundation whereof the award was made and holding that it was within the legislative competence of the Parliament and merely because the rights of some persons such as right to customary bonus was affected by retrospective effect of the amendment was held to be not per se violative of Article 14 of the Constitution.

128. In light of the aforesaid position emerging in law, we do not find merit in the contention of the Petitioners alleging that on account of the retrospective effect given to Section 62, the amendment is liable to be invalidated.

[I] <u>CONCLUSION OF OUR ANALYSIS</u>

129. There always exists a presumption in favour of the constitutionality of an enactment, as it is presumed that the legislature understands and correctly appreciates the needs of its own people and the laws made are directed to problems made manifest by experience. When the Constitutionality of an enactment is challenged on the ground that it violate the fundamental rights enshrined in Part III of the Constitution, it becomes necessary to ascertain its true nature and character that is its subject matter, the area in which it is intended to operate, its purport and intent. In doing so it is perfectly justiciable to take into consideration the factors like the history of the legislation, the purpose thereof, the surrounding circumstances, the mischief which it intended to suppress, and the cure which it offers. The law will not be declared unconstitutional unless the case is so clear as to be free from doubt; 'to doubt the constitutionality of a law is to resolve it in favour of its validity'.

If the law enacted is within the scope of the power conferred on a legislature and do not violate any fundamental right, such law must be upheld and irrespective of the resulting consequences.

130. In ***Vineeta Sharma vs. Rakesh Sharma*** *(supra),* when the question concerning interpretation of Section 6 of the Hindu Succession Act, 1956, as substituted by Hindu Succession

(Amendment) Act, 2005 arose for consideration and was determined by the larger bench in the wake of the conflicting verdicts rendered by the two division bench judgments of the Apex Court.

Section 6 of the Act, dealing with devolution of interest in coparcenary property of a joint Hindu Family, governed by Mitakshara law, it was noted that the Section originally excluded the rule of succession concerning Mitakshara Coparcenary Property. It provided that the interest of a coparcener male Hindu who died after the commencement of 1956 Act, shall be governed by survivorship upon surviving members of the coparcenary. The exception was provided by the proviso appended to the Section that if the deceased had left surviving a female relative specified in Class I of Schedule or a male relative specified in that class who claims to be the female relative, the interest of such coparcener shall devolve by testamentary or intestate succession, as the case may be, in order to ascertain the share of the deceased coparcener, the partition has to be deemed before his death. The substituted provision of Section 6 (1) of the Act of 1956, provided on and from the commencement of the 2005 Act, the daughter is conferred the right of coparcener.

Clause (a) of subsection (1) of Section 6, made the daughter, a coparcener by birth, ‘in her own right’ and ‘ in the same manner as the son’.

The aforesaid provision was based on concept of unobstructed heritage of Mitakshara coparcenary, by virtue of birth. Clause (b) of subsection (1) of section 6 conferred the same rights in the coparcenary property upon the daughter ‘as she would have had if she had been a son.’

The conferral right is held by the Apex Court is by birth and she being introduced in the coparcenary, enjoyed the same status as that of a son, as she is treated as as coparcener.

131. The amended provision of Section 6(1) providing that on and from the commencement of the amendment Act, the daughter is conferred the right, and when the question arose was about the date of effect of such a right being introduced by the amending Act, it is held by the three Judge Bench that though the rights can be claimed with effect from 09/09/2005, the provisions are of retroactive application, as they confer benefits based on the antecedent event and the Mitakshara Coparcenary Law shall be deem to include a reference to a daughter as coparcener. At the same time, the legislature provided saving by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20/12/2004, the date on which the bill was presented in Rajya Sabha, the same shall not be invalidated. In specific words, the Apex Court observed thus:-

> *"61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backward and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended section 6, since the right is given by birth, that is an antecedent event, and the provisions operate concerning claiming rights on and from the date of Amendment Act."*

132. Holding that the concept of un codified Hindu law of unobstructed heritage was given a concrete shape by Section 61(a) and 61(b), it is noted that coparcener's right is by birth and hence it is not at all necessary that the father of the daughter should be living as

on the date of amendment, as she has not being conferred the right of coparcener by obstructed heritage. According to the Mitakashara coparcenary Hindu Law, which was recognized in Section 6(1). It is held that it is not necessary that there should be a living coparcener or father as on the date of the amendment to whom the daughter would succeed, as the daughter would step into the coparcenary as that of a son by taking birth before or after the act. However, daughter born before can claim the right only with effect from the date of the amendment i.e. 9/09/2005 with saving of past transactions as provided in the proviso to Section 6(1) r/w Section 6(5).

The effect of the amendment is construed by the Apex Court by holding that a daughter is made coparcener with effect from the date of amendment and she can also claim partition. Since Section 6(1) recognizes a joint Hindu Family governed by Mitakshara Law the only essential ingredient is, that the coparcenary must exist on 9/09/2005 to enable the daughter of a coparcener to enjoy the rights conferred on him. It is clearly declared that as the right conferred is by birth and not by way of inheritance, it is irrelevant that a coparcener whose daughter is conferred with rights is alive or not as the conferment of benefit is not based on the death of her father. In case of a living coparcener dies after 9/09/2005,the inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6 (3). In conclusion, the reference was answered, it is declared that the rights can be claimed by the daughter born earlier with effect from 09/09/2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition, or

testamentary disposition, which have taken place before 20/12/2004. In order to give full effect to the substituted Section 6, it is also declared that 'notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of son in pending proceedings for final decree or in an appeal.' This conclusion was drawn in the backdrop that the statutory fiction of partition created by proviso to Section (6) of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or division of coparcenary. The fiction was only for the purpose of ascertaining the share of deceased coparcener when he was survived by a female of class I as specified in Schedule of 1956 Act or male relative of such female, but since the provision stands substituted, the daughter is entitled for her share, when the proceedings are pending for final decree or they are in an appeal.

133. Under the Act of 2012, the succession opens upon the death of the estate leaver as per Section 8. Every person, who is born or conceived at the time of opening of succession is competent to succeed unless specifically prohibited. Under the Act, the moment the estate leaver dies, the ownership and possession of the inheritance is transmitted to the heir. Heir is the person who inherits or succeeds to the totality of the estate of the estate leaver or to an undefined share thereof without specifying the assets constituting it. Once there is transmission of inheritance on death of the estate leaver and if there are more than one person who has claim of inheritance, their rights remain indefeasible, both in respect of ownership and possession, till the partition is effected. A co-heir who has been bestowed with inheritance, is however, not entitled to dispose of any

specific asset of inheritance or part of such an asset to a stranger until and unless it is allotted to him in partition and any such transfer made is inoperative and void.

In light of the Scheme of the Goa Succession Act of 2012 in the backdrop of the Civil Code, the learned Advocate General and Mr. De Sa have urged before us that the right which is transmitted to an heir is not vested or crystallized on the death, but it becomes vested or crystallized only when the share devolve on him through the inventory proceedings.

We have been taken through the inventory proceedings contemplated in Part IV of the Act, in form of mandatory and optional inventory and the Scheme of Partition, as contemplated under Section 435(1). When a Scheme of partition furnished is accepted and the property is partitioned, the Court shall issue final order within 10 days from payment of stamp duty, declaring the successors and confirming the chart of partition.

It is, thus, submitted before us that unless and until the inventory proceedings reach at this stage, no right is vested in a legal heir.

We do not subscribe to the said submission, as we find that the statutory indication is otherwise.

As per the Scheme of Chapter II the succession opens upon the death of the estate leaver and the moment the estate leaver dies, the ownership and possession of inheritance is transmitted to the heirs. This inheritance may be partitioned by a mandatory inventory or optional inventory. When an estate leaver leaves behind the

surviving spouse or an heir any of whom is an interdict, absent person unknown or a minor, then the inheritance shall be partitioned only through the inventory proceedings which are mandatory inventory proceedings. But in absence of any such heir, the Parties may institute optional inventory proceedings. The inventory proceedings under the Act of 1962 can be initiated by a legal heir, a moiety holder (spouse) , executor of a Will or, legatee or an usufruct.

The right to demand partition is conferred on any of the co-heir who has succeeded the estate of the deceased or it may be a moiety holder or so. However, by virtue of Section 3 of Section 19 the Parties may agree to keep the inheritance undivided for a certain period which shall not exceed five years. It is also possible for the heirs to partition the inheritance by consent by executing a Deed of Partition under the Registration Act, 1908, which is preceded by a Deed of Declaration of heirship. But where there is more than one person who claim inheritance, they may choose to institute inventory proceedings to partition the inheritance, when there is no consensus and a contest is expected.

Till the time the partition is effected, the rights of the heirs remain indivisible and there is an embargo on the co-heir not to dispose of any specific assets of inheritance which is not allotted to him in partition and if he does so, such a transaction is inoperative and void.

Perusal of Part IV in form of inventory proceedings to be followed by the subsequent provisions, pertaining to the procedure to be followed in conduct of the inventory proceedings, with the confirmation of partition through a final order by the Court under

Section 442 would reveal that it is a process to be followed, when the heirs or surviving spouse succeed to inheritance and no consensus can be arrived sufficient enough to execute a Partition Deed and the shares of the parties in the inheritance are to be determined.

In the said proceedings of inventory, which are instituted by presenting a Petition, by appointing the head of the family and the Court before whom the Petition is instituted shall conduct the hearings which shall include the preparation of list of assets, preparation of chart of partition and after issuing summons/process to the concerned i.e. moiety holder, heir or spouse, the Court shall determine the share of those who have inherited the estate of the estate leaver. The Court shall permit the right of preemption, consider the objections to the list of assets prepared and also take into consideration the payment of debts of inheritance, creditors claim and value the assets left behind by the estate leaver and to prepare a final list of assets and liabilities. The Court is also competent to divide immovable properties except residential houses by metes and bounds in accordance with the shares to be allotted to the respective interested parties.

The whole inventory procedure contemplated under the Act would, therefore, entitle the heirs/the moiety holder or other interested party , who has succeeded the estate of the deceased to have his/her share carved out, so that the shackles of indefeasibleility of the estate are shelled out and every heir, moiety holder becomes an absolute and exclusive owner of his share transmitted to him by succession.

Thus, according to us, for enjoying the exclusivity of the

property in our view the inventory proceedings are initiated and concluded, but succession opens on the death of the estate leaver and the right definitely vest once the succession opens, but the actual demarcation/identification of the share of individual heir gets crystalized only upon completion of the inventory proceedings. We, therefore, do not find substance in the submission of the learned Advocate General that no right is vested in an heir unless the whole process of partition is completed through inventory proceedings.

The contention advanced on behalf of the State that there is no vested right in an heir unless upon acceptance of the inheritance, the process of inventory and crystalization of the rights is undergone. However, from reading of the provisions relating to acceptance and renunciation of succession, we can easily infer that acceptance need not be expressed and it can be inferred even from the Tacit Act. On the other hand, 'renunciation' has to be expressed in form of a public document, drawn before a Notary public or through the proceedings instituted for this purpose before the Civil Court. Thus, acceptance of inheritance is not a juridical act that has a result of vesting rights in property constituting the estate. Thus, vesting of right do not depend upon acceptance of inheritance and merely because stage of acceptance is not crossed according to us it cannot be said that the transmission/vesting of ownership and possession of inheritance as set out in Section 13 do not take place.

On the other hand, even in terms of Article 2011 of the Civil Code and Section 13 of the Act, transmission / vesting of ownership and possession took place no sooner the estate leaver expires and the inheritance is opened. The process of inheritance has to be followed

for the purpose of partition of estate, is only to confer exclusive ownership right on the heirs, but it is completely unjusticiable to assume that unless and until the property is partitioned, the right is not vested. In fact, existence of a vested right itself is a pre-requisite for seeking partition.

134. On testing the arguments advanced by the learned respective counsel in assailing the validity of the amending Acts and upon consideration of the arguments of the learned Advocate General, in light of the well settled principles revolving around Article 14 of the Constitution of India and on consideration of another facet pressed into service about the amending Act of 2022, being given retrospective effect, we record our conclusion that we do not find merit in either of the contentions.

We do not find that the amending Act of 2022 changing the order of succession to be arbitrary as contended by Mr.Ramani and Mr.Frias. On the other hand by applying the test of 'manifest arbitrariness' as enunciated by the Hon'ble Apex Court, we do not find that the change brought in Section 52 of the Act of 2012 and the consequential amendment in the constitute in any way leads to arbitrariness. On the other hand, we find the legislature acting in larger interest of the spouse, who under the Portuguese Civil Code enjoyed a distinct position in marriage and even while sharing the property of another spouse and in our view the amendment has advanced this principle prevailing in the city of Goa since the Portuguese rule.

Similarly, we also do not find that the amending Act of 2023 is retrospective in operation and would rob of those rights which are

vested and crystalized as the explanation appended to Section 52 has clarified that the crystalized rights shall not be disturbed and only those rights which are open in some proceedings before the Court will be governed by the amending Act.

The submission of Mr.Nadkarni about the autonomy of the parties who had resorted to ante-nuptial agreement, being defeated also do not appeal to us as though during the subsistence of the marriage, the Parties will be governed by the contract which they have entered into, upon death of one of the spouse, the other spouse shall inherit and succeed in accordance with the provisions of the Act of 2012 without any discrimination.

We, therefore, even reject the challenge on the ground raised by Mr.Nadkarni.

Finding no merit and substance in the challenge raised before us in the two Writ Petitions alongwith the Applications filed by the Intervenors, we are not persuaded to entertain the challenge to the validity of the Goa amending Act 2022 and the Goa amending Act of 2023 on either of the grounds raised before us. For this reason, we dismiss the Writ Petitions alongwith the Miscellaneous Civil Applications.

Rule is discharged.

Easy on costs.

(ASHISH S. CHAVAN, J.) **(BHARATI DANGRE, J.)**

Arati/ Rajeshree/ Ashish