Muslim inheritance laws in India

Why in news?

The Supreme Court of India will examine if former Muslims should be governed by Muslim personal law or secular laws in succession matters.

What is the case before Supreme Court?

- A petitioner representing former Muslims in Kerala, has filed a plea with the court seeking that individuals who choose not to be governed by Muslim Personal Law should have the option to be governed by secular law specifically Indian Succession Act, 1925.
- **Succession-** In India, issues related to succession are governed by the Indian Succession Act of 1925, the Hindu Succession Act of 1956 and the Muslim personal law or Shariat.
- **Sabarimala verdict-** The petitioner cited the Supreme Court's 2018 ruling in the Sabarimala temple entry case, which highlighted the right to freedom of religion under Article 25 of the Indian Constitution.
- **Shariat law-** The petitioner approached the the court seeking a declaration to not be governed by the Shariat for matters under Sections 2 and 3 of the 1937 Act.

Shariat law in question
• **Section 2-** It deals with the application of personal laws in interstate succession and special property for female, it states that the rules of decision in case where the parties are Muslims, shall be the Muslim Personal Law. • **Shayara Bano vs Union of India**- In 2017 the Supreme Court has struck down the practice of triple talaq as unconstitutional, the court reaffirmed that Section 2 would be exclusively adopted as "the rule of decision" in matters listed under Section 2. • **Section 3** - It provides a provision for individuals to opt for the application of Shariat law to themselves and their descendants.

- The petitioner claimed that the Indian Succession Act, 1925 can be applied for both intestate (without a will) and testamentary (with a will) succession.
- This plea is rooted in the right to freedom of religion as per Article 25 of the Indian Constitution.

Article 25 emphasizes the right to not follow any religion and the associated civil rights, such as inheritance, without facing discrimination.

- The case is significant as it addresses the legal challenges faced by those who leave their faith but are still subject to religious laws in personal matters.

What are the Muslim inheritance law in India?

Key aspects	About
Governed by	• Muslim personal laws in India are primarily governed by the *Muslim Personal Law (Shariat) Application Act, 1937.* • The law is primarily based on Islamic principles derived from the *Quran, Hadith* (sayings and actions of Prophet Muhammad), and customary practices.
Coverage	• The act deals with various aspects of personal life among Muslims, including marriage, succession, inheritance, and charities. • The act covers marriage (*Nikah*), divorce (*Talaq*) and maintenance (*Nafkah*).
Marriage	• Islamic law recognizes marriage as a *civil contract* between a man and a woman. • The essentials of a valid marriage include offer and acceptance (proposal and acceptance), competent parties (both parties must be of sound mind and have reached puberty), and witnesses.
Divorce	• Muslim personal law allows for various forms of divorce, including talaq (pronouncement of divorce by the husband), khula (divorce initiated by the wife), and mubarat (mutual consent divorce). • The *practice of triple talaq* where a husband could unilaterally divorce his wife by pronouncing talaq three times in on sitting declared *unconstitutional* by the Supreme Court in 2017.
Inheritance	• The rules of inheritance are defined under this law, where property is distributed among *12 categories of legal heirs*. • The daughters cannot inherit more than half of what their brothers inherit.
Successions	• Certain relatives (sharers) are entitled to fixed shares of the deceased's estate, while others (residuaries) may inherit the remainder. • The act is applicable in cases of both intestate (without a will) and testamentary (with a will) succession.
Maintenance	• Islamic law imposes an obligation on individuals to provide maintenance to their spouses, children, and other dependents. • Maintenance may include *financial support* for basic necessities such as food, clothing, and shelter.
Adoption and guardianship	• Unlike Hindu law, Islamic law *does not recognize adoption* in the same way. • However, guardianship (custody) of children is an important aspect of Muslim personal law, and specific rules govern the rights and responsibilities of guardians.
Renounce faith	• Muslims who wish to renounce their faith are also bound by Shariat law – unless they formally declare that they wish to opt out under the 1937 Act. • But, doing so would render them *without a law to govern* aspects of inheritance and succession, because Indian Succession Act specifically excludes Muslims from its purview.
Exclusion	• These law does not apply to Muslims who are married under the *Special Marriage Act, 1954*. • It is not applicable in Goa, where the *Goa Civil Code* is applicable to all persons irrespective of religion. • Testamentary succession- If the subject matter of property is an *immovable property* situated in the states of West Bengal, Chennai, and Bombay, Muslims are bound by the Indian Succession Act, 1925.

What does the court decide?

- The Supreme Court, initially indicating that Muslims are governed by Shariat regardless of their beliefs, eventually agreed to hear the case.
- The court noted the absence of a secular law on wills and legacies for Muslims and directed responses from the Central and Kerala governments.

Reference

Indian Express- SC on Shariat law