



**Study Notes**

**The Indian Succession Act, 1925**

**Part 1**

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## Introduction

- The origin of Indian succession laws can be traced back to the year **1865** when a draft of the Indian Succession Bill was first submitted by the **third law commission** in its first report for the year 1854-55.
- Originally it was proposed as the Indian Civil Code, a title which was later altered to Indian Succession Act, 1865.
- A number of legislations relating to succession were passed from the year 1865 to 1925 and **all these legislations were consolidated in the year 1925 and the Indian Succession Act, 1925 (Succession Act) was enacted.**
- The Indian Succession Act, 1925 broadly deals with the two categories of succession, viz. **testamentary succession and intestate succession.**
- In a case where there is a **written will testamentary succession is applicable.**
- On the other hand, when there is **no will** and the properties of the deceased need to be distributed as per the religious laws, **intestate succession is applicable.**
- Laws of Succession relate to **legal principles of distribution of assets of a deceased individual.**
- These include the order in which one person in preference of any or one person after another or any one person in particular share with any other person succeeds to the property/estate of the deceased person.
- **Note:** Corporate persons having perpetual existence are not covered in this and have separate laws relating to Winding up, Reorganization and Closure.

## Applicability

- **Succession Laws operative in India :**
- *Indian Succession Act, 1925.*
- *Hindu Succession Act, 1956*
- *Muslim Textual Law of Inheritance.*
- *Hanfi School and Shia School.*

	<i>Testamentary Succession</i>	<i>Intestate Succession</i>
<i>Hindus</i>	<b>Indian Succession Act 1925</b>	<b>Hindu Succession Act 1956</b>
<i>Sikh</i>	<b>Indian Succession Act 1925</b>	<b>Hindu Succession Act 1956</b>
<i>Jains</i>	<b>Indian Succession Act 1925</b>	<b>Hindu Succession Act 1956</b>
<i>Buddhists</i>	<b>Indian Succession Act 1925</b>	<b>Hindu Succession Act 1956</b>
<i>Christians</i>	<b>Indian Succession Act 1925</b>	<b>Indian Succession Act 1925</b>
<i>Parsis</i>	<b>Indian Succession Act 1925</b>	<b>Indian Succession Act 1925</b>
<i>Jews</i>	<b>Indian Succession Act 1925</b>	<b>Indian Succession Act 1925</b>
<i>Muslims</i>	<b>Mohammad Law</b>	<b>Mohammad Law</b>
<i>Persons married under Special Marriage Act 1954</i>	<b>Indian Succession Act 1925</b>	<b>Indian Succession Act 1925</b>
<i>Persons married under Special Marriage Act 1954 but: belong to Hindus, Sikhs, Jains and Buddhists.</i>	<b>Indian Succession Act 1925</b>	<b>Hindu Succession Act 1956</b>

### Some Important Definitions

- **S.2 (h) Will** :“will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.
- **'Testator'** : A person making a Will.
- **Legatee or beneficiary** : A person to whom property is given under the Will.
- **Legacy** : A benefit under the Will.
- **S.2 (c) Executor** : A person appointed by the testator to execute the Will as per the provisions of the Will.
- **Attestation** : An act of witnessing the execution of the Will.
- **S.2 (a) Administrator** : A person appointed by a competent authority to administer the estate when no executor is appointed or an executor appointed refuses to act as an executor.
- **S.2 (f) Probate** : A copy of a Will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate.

- **S. 2 (b) Codicil** : A document which modifies or alters the provisions of the original Will and forms part of it.
- **Letter of Administration** : A letter of the court appointing an administrator to the estate.
- **Succession Certificate** : As issued by a Civil Court of competent jurisdiction in respect of the property of a person who has died intestate, that is without making a Will and where letter of administration or probate is not compulsory.

## Part 5 - Intestate Succession

### Chapter 1 – Preliminary:

- **S. 29. Application of Part.—**
  - ✓ This Part **shall not apply to** any intestacy occurring before the first day
  - ✓ of January, 1866, or to the **property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.**
  - ✓ Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of [India] in all cases of intestacy.
- **S.30. As to what property deceased considered to have died intestate.—**
  - ✓ A person is deemed to die intestate in respect of **all property** of which he has **not made a testamentary disposition** which is capable of taking effect.

### Chapter 2 – Rules in cases of Intestates other than Parsis

- **S.31. Chapter not to apply to Parsis.—**
  - ✓ Nothing in this Chapter shall apply to Parsis.
- **S.32. Devolution of such property.—**
  - ✓ The property of an intestate **devolves upon the wife or husband,**
  - ✓ **or** upon those who are of the **kindred** of the deceased,

✓ in the **order and according to the rules hereinafter** contained in this Chapter.

- **S.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**.

- **[S. 33A. Special provision where intestate has left widow and no lineal descendants.—**

(1) Where the intestate has left a **widow but no lineal descendants** and the **nett value** of his property **does not exceed five thousand rupees**, the **whole** of his property shall belong to the widow.

(2) Where the **nett value** of the property **exceeds the sum of five thousand rupees**, the **widow** shall be **entitled to five thousand rupees** thereof and shall **have a charge upon the whole of such property** for such sum of five thousand rupees, **with interest** thereon from the date of the death of the intestate at 4 per cent per annum until payment.

(3) The provision for the widow made by this section shall be in addition and without prejudice to

her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property.

(4) The nett value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject.

- **S. 34. Where intestate has left no widow, and where he has left no kindred.—**

- ✓ Where the intestate has left no widow,
- ✓ his property **shall go to his lineal descendants or to those** who are of **kindred** to him, not being lineal descendants, according to the rules hereinafter contained; and,
- ✓ if he has left **none** who are of kindred to him,
- ✓ it shall **go to the Government**.

- **S.35. Rights of widower.—**

- ✓ A husband surviving his wife has the **same rights in respect of her property, if she dies intestate,**
- ✓ as a widow has in respect of her husband's property, if he dies intestate.

- **Rules of Distribution:**
  - **When there are lineal descendants**

**S.36. Rules of distribution.—**

The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in **sections 37 to 40.**

S.37	Where intestate has left child or children only	Equally divided in intestate's surviving children or surviving child.
S.38	Where intestate has left no child, but grandchild or grandchildren.	To surviving grandchild or grandchildren.
S.39	Where intestate has left only great-grandchildren or remoter lineal descendants.	surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.
S.40	Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.	property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

➤ Where there are no lineal descendants

**S.41. Rules of distribution where intestate has left no lineal descendants.—**

Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in **sections 42 to 48.**

S.42	Where intestate's father living	Father shall succeed to property
S.43	Where intestate's father dead, but his mother, brothers and sisters living.	Mother, brothers and sisters shall succeed to property in equal shares.
S.44	Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.	intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, entitled to the property in equal shares
S.45	Where intestate's father dead and his mother and children of any deceased brother or sister living.	Intestate's Mother and children of deceased brothers and sisters shall be entitled to equal shares.
S.46	Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.	Mother entitled to property.
S.47	Where intestate has left neither lineal descendant, nor father, nor mother.	property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him.
S.48	Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.	divided equally among those of his relatives who are in the nearest degree of kindred to him.



### Chapter III Special Rules for Parsi Intestate

- **S. 50. General principles relating to intestate succession.—**

For the purpose of intestate succession  
**among Parsis —**

- (a) there is **no distinction between those who were actually born in the lifetime** of a person deceased and **those who at the date of his death were only conceived in the womb**, but who have been subsequently born alive,
- (b) a **lineal descendant of an intestate who has died in the lifetime** of the intestate **without leaving a widow or widower or any lineal descendant** or [a widow or widower of any lineal descendant] shall **not be taken into account** in determining the manner in which the property of which the intestate has died intestate shall be divided; and
- (c) where a [widow or widower of any relative] of an intestate has **married again in the lifetime** of the intestate, [such widow or widower] shall **not be entitled to receive** any share of the property of which the intestate has died intestate, and [such widow or widower] shall be deemed not to be existing at the intestate's death.

- **s.51. Division of intestate's property among widow, widower, children and parents.—**

- ✓ Subject to the provisions of sub-section (2), the property of which a Parsi dies intestate shall be divided,—
  - where such Parsi dies **leaving a widow or widower and children**, among the widow or
  - ✓ widower, and children so that the widow or widower and each child **received equal shares**;
  - where such Parsi dies **leaving children, but no widow or widower**, among the children in
  - ✓ equal shares.
  - ✓ Where a Parsi dies leaving **one or both parents in addition to children or widow or widower and children**, the property of which such Parsi dies intestate shall be so divided that the parent or each of the parents shall receive a share equal to half the share of each child.

- **S.53. Division of share of predeceased child of intestate leaving lineal descendants.—**
  - ✓ In all cases *where a Parsi dies leaving any lineal descendant*, if *any child of such intestate has died in the lifetime of the intestate*,
  - ✓ the **division of the share of the property of which the intestate has died intestate which such**
  - ✓ **child would have taken if living at the intestate's death shall be in accordance with the following rules**, namely:—
    - ✓ If such deceased child was a son, his widow and children shall take shares in accordance with the provisions of this Chapter as if he had died immediately after the intestate's death:
    - ✓ Provided that where such deceased son has left a widow or a widow of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made
    - ✓ shall be divided in accordance with the provisions of this Chapter as property of which the intestate has died intestate,
    - ✓ and in making the division of such residue the said deceased son of the intestate shall not be taken into account.
    - ✓ If such deceased child was a daughter, her share shall be divided equally among her children.
    - ✓ If any child of such deceased child has, also died during the lifetime of the intestate, the share which he or she would have taken if living at the intestate's death, shall be divided in like manner in accordance with clause (a) or clause (b), as the case may be.
    - ✓ Where a remoter lineal descendant of the intestate has died during the lifetime of the intestate,
    - ✓ the provisions of clause (c) shall apply mutatis mutandis to the division of any share to which he or she would have been entitled if living at the intestate's death by reason of the predecease of all the-intestate's lineal descendants directly between him or her and the intestate.
- **S.54. Division of property where intestate leaves no lineal descendant but leaves a widow or**
  - **widower or a widow or widower of any lineal descendant.—**
    - ✓ Where a Parsi *dies without leaving any*
    - ✓ *lineal descendant but leaving a widow or widower or a widow or widower of a lineal descendant, the property of which the intestate dies intestate shall be divided in accordance with the following rules*, namely:—
      - ✓ if the intestate leaves a widow or widower but no widow or widower of a lineal descendant,
      - ✓ the widow or widower shall take half the said property;

- ✓ if the intestate leaves a widow or widower and also a widow or widower of any lineal descendant, his widow or her widower shall receive one-third of the said property and the widow or
  - ✓ widower of any lineal descendant shall receive another one-third or if there is more than one such widow or widower of lineal descendants, the last mentioned one-third shall be divided equally among them;
  - ✓ if the intestate leaves no widow or widower, but one widow or widower of the lineal descendant, such widow or widower of the lineal descendant shall receive one-third of the said property or,
  - ✓ if the intestate leaves no widow or widower but -more than one widow or widower of lineal descendants, two-thirds of the said property shall be divided among such widows or widowers of the lineal descendants in equal shares;
  - ✓ the residue after the division specified in clause (a), or clause (b) or clause (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II;
  - ✓ and the next-of-kin standing first in Part I of that Schedule shall be preferred to those standing
  - ✓ second, the second to the third and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares;
  - ✓ if there are no relatives entitled to the residue under clause (d), the whole of the residue shall
  - ✓ be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.
- **S.55. Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow or widower of any lineal descendant.—**
  - ✓ When a Parsi dies leaving *neither lineal descendants nor a widow or widower nor [a widow or widower of any lineal descendant] his or her next-of-kin*, in the order set forth in Part II of Schedule II,
  - ✓ *shall be entitled to succeed to the whole of the property of which he or she dies intestate.*
  - ✓ The next-of-kin standing first in Part II of that Schedule shall
  - ✓ be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that
  - ✓ [each male and female standing in the same degree of propinquity shall receive equal shares.]

- **S.56. Division of property where there is no relative entitled to succeed under the other provisions of this Chapter.—**
  - ✓ Where there is no relative entitled to succeed under the other provisions of this
  - ✓ Chapter to the property of which a Parsi has died intestate, the said property shall be ***divided equally among those of the intestate's relatives who are***

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