



Study Notes

The Hindu Succession Act, 1956

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The Hindu Succession Act 1956

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Extent and Application of the Act

- This Act extends to the whole of India (Section 1)
- This Act **applies to**
 - ✓ Any person who is a Hindu by religion including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.
 - ✓ any person who is a Buddhist, Jain or Sikh by religion
 - ✓ any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion
- The following persons are Hindus, Buddhists, Jains, or Sikhs by religion
 - ✓ any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion
 - ✓ any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged
 - ✓ any person who is convert or re-convert to the Hindu, Buddhist, Jain or Sikh religion
- This Act **shall not apply to**
 - ✓ the members of any scheduled Tribe within the meaning of article 366 of the Constitution

Important Definitions (Section 3)

- **Agnate** – one person is said to be an “agnate” of another if the two are related by blood or adoption **wholly through males**
- **Cognate** - one person is said to be a “cognate” of another if the two are related by blood or adoption but not wholly through males
- **Custom and Usage** - any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family. This rule should be certain and not opposed to public policy and it should not have been discontinued by the family.
- **Full Blood** - two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife
- **Half Blood** - two persons are said to be related to each other by half blood when they are descended from a common ancestor but by the different wife
- **Uterine Blood** - two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands

- **Heir** - means any person, male or female, who is entitled to succeed to the property of an intestate under this Act
- **Intestate** - a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect
- **Related**- means related by legitimate kinship: Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly

Intestate Succession

Section 6 – Devolution of Interest in coparcenary property

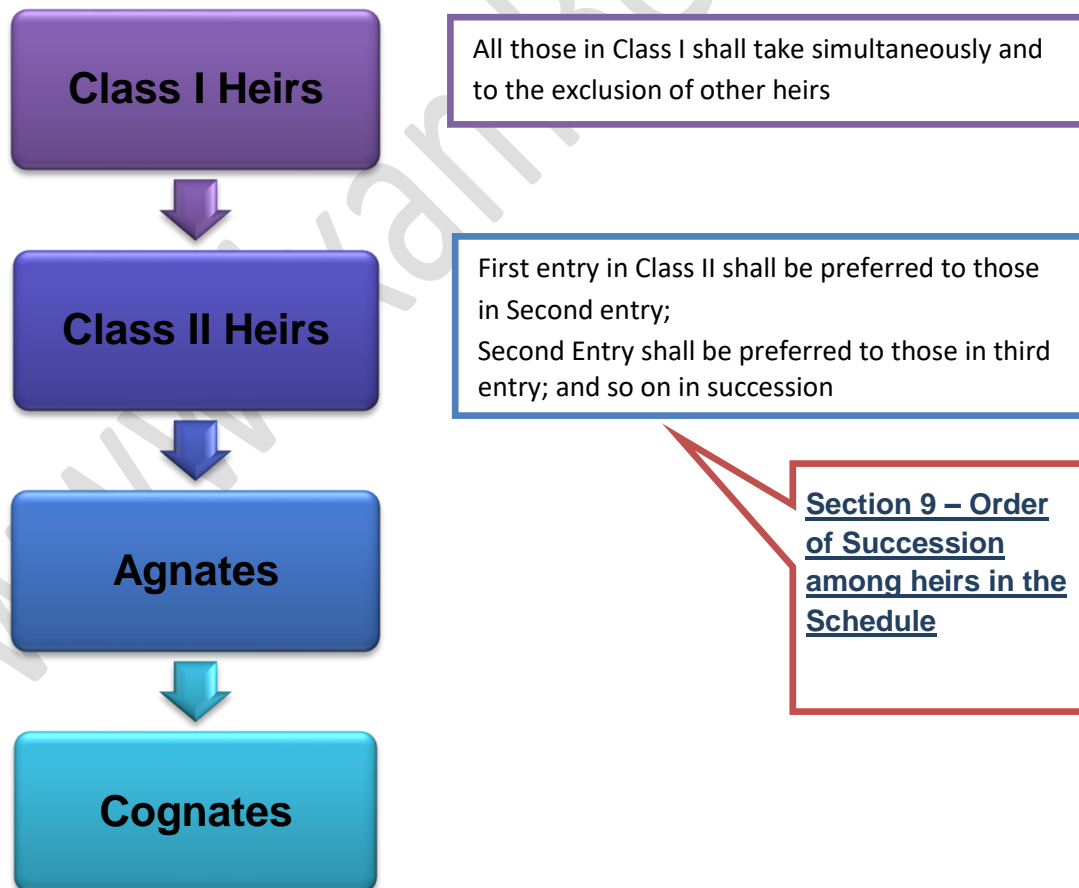
- As per Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, **the daughter of a coparcener** shall
 - by birth become a coparcener in her own right the same manner as the son;
 - have the same rights in the coparcenary property as she would have had if she had been a son;
 - be subject to the same liabilities in respect of the said coparcenary property as that of a son
 - and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener
- **Nothing** contained in this sub-section **shall affect or invalidate any disposition or alienation** including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.
- Any such property shall be held by the female with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by testamentary disposition
- Where **a Hindu dies** after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall **devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship**, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and
 - **the daughter is allotted the same share** as is allotted to a son
 - the **share of the pre-deceased son or a pre-deceased daughter**, as they would have got had they been alive at the time of partition, shall be allotted **to the surviving child** of such pre-deceased son or of such pre-deceased daughter; and

- the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the **child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter**, as the case may be
- After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather **solely on the ground of the pious obligation** under the Hindu law, of such son, grandson or great-grandson to discharge any such debt

Succession In Case of Males

Section 8 – General rules of succession in the case of males

- The property of a male Hindu dying intestate shall devolve in the following order



The Schedule – Heirs in Class I and Class II

Class I

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 of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son ; son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son

Class II

- 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.

Section 10 – Distribution of property among heirs in Class I of the Schedule

Rule 1

- The intestate's widow or if there are more widows than one, all widows together **shall take one share**

Rule 2

- The surviving sons and daughters and the mother 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

- Distribution referred to in Rule 3-
- Pre-deceased son's heirs**- His widow, surviving sons and daughters get equal proportions and branch of his pre-deceased sons gets the same proportion
- Pre- deceased Daughter's heirs** - Surviving sons and daughters get equal proportions

Section 11 – Distribution of property among heirs in Class II of the Schedule

- The property of an intestate shall be divided between the heirs **specified in any one entry** in class II of the Schedule so that **they, share equally**.

Section 12 – Order of succession among agnates and cognates

Rule 1

- Of two heirs, the one **who has fewer or no degrees of ascent** is preferred.

Rule 2

- Where the number of degrees of ascent is the same or none, that heir is preferred who has **fewer or no degree**

Rule 3

- When neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 , **they take simultaneously**

Section 13 – Computation of degrees

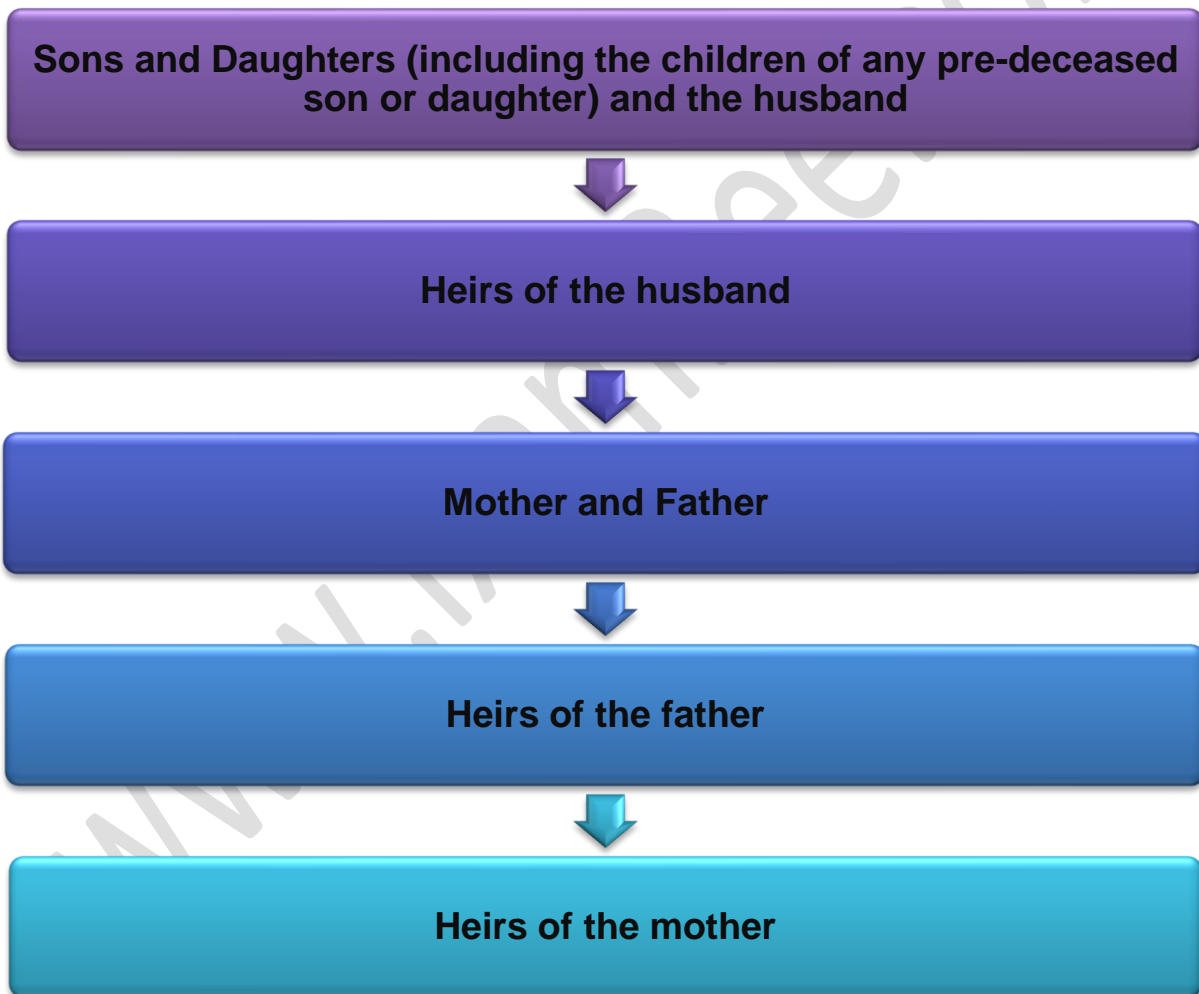
- For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned **from the intestate to the heir** in terms of **degrees of ascent or degrees of descent or both**, as the case may be.
- Degrees of ascent and degrees of descent shall be computed **inclusive of the intestate**.
- Every generation constitutes a degree either ascending or descending.

Succession In Case of Females

Section 14 – Property of a female Hindu to be her absolute property

- Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her **as full owner** thereof and **not as a limited owner**

Section 15 – General rules of succession in the case of female Hindus



- In the absence of any son or daughter of the deceased(including the children of any pre-deceased son or daughter), any property inherited by a female Hindu
 - ✓ From her father or mother, shall devolve upon the heirs of father.

- ✓ From her husband or father-in law, shall devolve upon the heirs of the husband

Section 16 – Order of succession and manner of distribution among heirs of a female Hindu

Rule 1

- As per order in Section 15, those in one entry shall be preferred to those in any succeeding entry
- Those included **in same entry shall take simultaneously**

Rule 2

- Son/Daughter of the pre-deceased son/daughter of the intestate, **shall take between them the share which intestate's son/daughter would have taken** if living at the time of intestate's death

Rule 3

- If the property has to devolve upon the heirs of father/mother/husband, **it shall be in the same order and according to the same rules** as would have applied if the property had belonged to the father/mother/husband and they had died intestate

General Provisions relating to Succession

- **Section 18 – Full Blood preferred to Half Blood**, if the nature of the relationship is the same in every other respect
- **Section 19 - Mode of succession of two or more heirs**
 - ✓ They shall take the property per capital and not per stripes.
 - ✓ As tenants-in-common and not as joint tenants
- **Section 20- Right of child in womb**- —A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate
- **Section 21 – Presumption in case of simultaneous death**- Younger survived the elder in case of circumstances rendering it uncertain as to who died later.
- **Section 22 - Preferential right to acquire property in certain cases**
 - ✓ Where, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, **the other heirs shall have a preferential right to acquire the interest proposed to be transferred.**
 - ✓ The **consideration** for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, **be determined by the court on application being made to it in this behalf**, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.
 - ✓ If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, **that heir who offers the highest consideration for the transfer shall be preferred**

Disqualification

- **Section 25- Murderer disqualified**—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder
- **Section 26 - Convert's descendants disqualified**- Where a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens

- **Section 27- Succession when heir disqualified**—If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate
- **Section 28 - Disease, defect, etc., not to disqualify**—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever

Escheat

Section 29 - Failure of heirs—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject

Testamentary Succession

Section 30 - Testamentary succession—Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 , or any other law for the time being in force and applicable to Hindu