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HINDU SUCCESSION ACT

CONTENTS	PAGE NO.
The Hindu Succession Act, 1956	36
Overriding Effect of Act	37
Chapter 2 - Intestate Succession	38
Chapter 3 - Testamentary Succession	41

LEARNING OBJECTIVE

After studying this chapter, you should be able to:

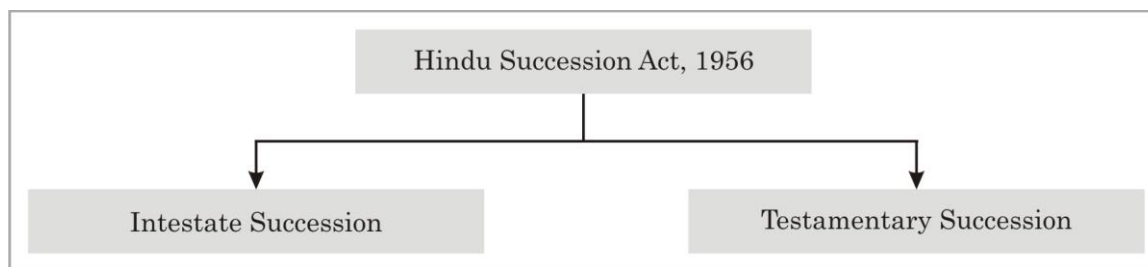
- Define various sections of Hindu Succession Act
- Describe Intestate Succession
- Understand Testamentary Succession
- Describe Right of Child in Womb
- Describe where the Act does not apply



KEY TERMS

This chapter features these terms which you should strive to do more research about:

Agnate	Cognate	Heirs
Descendants	Testamentary	Dwelling Houses

The Hindu Succession Act, 1956.**Exhibit 3.1:** Division of Hindu Succession Act**Chapter I- Preliminary****Short title and extent:**

1. This Act may be called the Hindu Succession Act, 1956
2. It extends to the whole of India except the State of Jammu and Kashmir.

Objective

To amend and codify the law relates to Intestate Succession among Hindus.

This Act applies to (Sec. 2)

- (a) To any person, who is a Hindu by religion including a Virashaiva, a Lingayat or a follower of the Brahmo, Prathana or AryaSamaj.
- (b) To any person who is a Buddhist, Jain or Sikh by religion and
- (c) To any other person who is not a Muslim, Christian, Parsi or Jew by religion.

Explanation: The following persons are Hindus, Buddhist, Jains or Sikhs by religion, as the case may be

- (a) Any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jains 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.
- (b) Any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jains or Sikh and
- (c) Any person who converts or reconverts to the Hindu, Buddhist, Jains or Sikh religion.
- (d) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

Definitions and interpretations

1. In this Act, unless the context otherwise requires;
 - (a) “Agnate” - one person is said to be an “agnate” of another if the two are related by blood or adoption wholly through males;
 - (b) “Aliyasantana law” means, if this Act had not been passed, the system of law applicable to the persons who would have been governed by the Madras Aliyasantana Act, 1949, or by the customary Aliyasantana law with respect to the matters for which provision is made in this Act;
 - (c) “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;
 - (d) The expressions “custom” and “usage” signify 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:
 - (i) Provided that the rule is certain and not unreasonable or opposed to public policy;

- (ii) Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;
 - (e) “Full blood”, “half-blood” and “uterine blood”-
 - (i) Two persons said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half-blood when they are descended from a common ancestor but by different wives;
 - (ii) 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;
 - Note:** In this clause “ancestor” includes the father and “ancestress” the mother,
 - (f) “Heir” means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;
 - (g) “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;
 - (h) “Marumakkattayam law” means the system of law applicable to persons:
 - (a) who, if this Act had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932; the Travancore Nayar Act; the Travancore Ezhava Act; the Travancore NanjinadVellala Act; the Travancore Kshatriya Act; the Travancore Krishnanvaka Marumakkathayee Act; the Cochin Marumakkattayam Act; or the Cochin Nayar Act with respect to the matters for which provision is made in this Act; or
 - (b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras 1[as it existed immediately before the 1st November, 1956, and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line; but does not include the Aliyasantana law;
 - (i) “Nambudri law” means the system of law applicable to persons who if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932; the Cochin Nambudri Act; or the Travancore Malayala Brahmin Act with respect to the matters for which provision is made in this Act;
 - (j) “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.
2. In this Act, unless the context otherwise requires, words imparting the masculine gender shall not be taken to include females.

Overriding effect of Act (Sec. 4)

- (a) Any rule or any custom or interpretation of Hindu law or usage of any part of that law in force immediately before the commencement of this Act shall have no effect with respect to any matter for which provision is made in this Act.
- (b) Any other law in force immediately before the commencement of this Act shall have no effect, so far as it is inconsistent with any of the provisions contained in this Act.
- (c) However, the Act is not retrospective in its operation. It does not effect succession to the property of a Hindu dying before 17th June, 1956. In such a case, where succession has already opened and the estate has already vested in certain persons according to the law in force before passing of the Act and such an estate cannot be divested.

Chapter II – Intestate Succession**Act not to apply to certain properties (Sec. 5)****This Act shall not apply to-**

- (i) Any property succession to which is regulated by the Indian Succession Act, 1925, by reason of the provisions contained in Section 21 of the Special Marriage Act, 1954;
- (ii) Any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;
- (iii) The Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.

Amendment brought in the act upon the interest of women in the property (section 6)

This created a history in terms of women's right in property under hindu law. The impact of this amendment was that the secondary or substituted position of which the women were usually subject to under Hindu law was removed and created similar rights or position of a daughter that of a son. As per section 6, daughters were recognized as coparcener since birth, thereby she exercises all rights of a coparcener and by virtue of that she can also become a Karta, if she is the senior-most member of the family.

With this new provision, the daughter becomes coparceners in the property of the Joint Hindu Family by birth, acquiring similar rights and liabilities to that of a son. As women's right in property i.e. undivided property was quite alienated and highly fragmented in the Hindu law. Not dwelling deep into the ancient and medieval practices and sticking to the recognition brought in by the legislature by way of introduction to laws protecting the same. Property rights of Hindu women vary depending on the status of the woman in the family and her marital status as whether the woman is a daughter, married or unmarried or deserted; wife or widow or mother. It also depends on the kind of property one is looking at whether the property is hereditary/ ancestral or self-acquired, land or dwelling house or matrimonial property.

Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom (Section 7)

1. When a Hindu to whom the Marumakkattayam or nambudri law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a tarwad, tavazhi or illom, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the Marumakkattayam or nambudri law.

Explanation: For the purposes of this sub-section, the interest of a Hindu in the property of a tarwad, tavazhi or illom shall be deemed to be the share in the property of the tarwad, tavazhi or illom, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of tarwad, tavazhi or illom, as the case may be, then living, whether he or she was entitled to claim such partition or not under the marumakkattayam or nambudri law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

2. When a Hindu to whom the aliyasantana law would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a kutumba or kavaru, as the case may be his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the aliyasantana law.

Explanation: For the purposes of this sub-section, the interest of a Hindu in the property of kutumba or kavaru shall be deemed to be the share in the property of the kutumba or kavaru as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the kutumba or kavaru, as the case may be, then living, whether he or she was entitled to claim such partition or not under the aliyasantana law, and such share shall be deemed to have been allotted to him or her absolutely.

3. Notwithstanding anything contained in sub-section (1), when a sthanamdar dies after the commencement of this Act, sthanam property held by him shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar as if the sthanam property had been divided per capita immediately before the death of the sthanamdar among himself and all the members of his family then living, and the shares falling to the members of his family and the heirs of the sthanamdar shall be held by them as their separate property.

Explanation: For the purposes of this sub-section, the family of a sthanamdar shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of sthanamdar if this Act had not been passed.

Full blood preferred to half-blood (Sec. 18)

Heirs related to an intestate by full blood shall be preferred first than whoever related by half blood,

This rule applies only when the nature of relationship is same according to the rules of preference laid down in the Act.

Mode of succession of two or more heirs (Sec. 19)

If two or more heirs succeed together to the property of an intestate, they shall take the property:-

- (a) Save as otherwise expressly provided in this Act, per capita and not per stripes and
- (b) As tenants-in- common and not as joint tenants.

Examples:

- (a) A dies leaving B (his son). C&D are the sons of another son(X) of A, X is died before A. If the distribution of A's property is to take place *per capita*, the estate will have to be divided into three shares and each heir will get one share. In this example B,C and D each will get 1/3rd of the estate.
- (b) When property is jointly held, it may be held by the owners, either as tenants-in-common or as joint tenants. In case of tenants-in-common, on the death of one of them, the share of the deceased would go to the heirs but in case of joint tenants, the heirs of the deceased will not get anything and his share devolves upon the remaining joint owner or owners.

Right of child in womb (Sec. 20)

A child who was in the womb at the time of the death of an intestate and who is subsequently born alive 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 devolve in such as case with effect from the date of the death of the intestate.

Presumption in cases of simultaneous deaths (Sec. 21)

Where two persons have died in circumstances rendering it uncertain whether either of them survived the other then, for the purposes of succession to the property, it shall be presumed that the younger survived the elder until and unless the contrary is proved.

Example: If Husband and Wife died in the same accident. In such cases the question may arise as to who died later in time. As this would be the base for the purposes of succession. If it is uncertain, the presumption can be invalidated by leading evidence to show that the elder of the two had in fact survived the younger. It is only in the absence of such evidence, the Court shall presume that the younger survived the elder.

Preferential right to acquire property in certain cases (Sec. 22)

1. After the commencement of this Act, an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in combination 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.
2. The consideration for which any interest in the property of the deceased may be transferred under this section shall be determined by the Court on application being made to it in this behalf in the absence of any agreement between the parties. 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.
3. 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.

Explanation: In this section, Court means the Court within the limits of whose jurisdiction the immovable property is situate or the business is carried on and includes any other Court which the State Government may by notification in the Official Gazette, specify in this behalf.

Special provision respecting dwelling-houses (Sec. 23) and certain widows remarrying may not inherit as widows (Sec. 24)

Sec. 23 and Sec. 24 are omitted by the Hindu Succession (Amendment) Act, 2005.

Disqualification/Exclusion of Heirs (Sec. 25-28)

From Section 25 to Section 28 of this Act specify certain grounds on which heirs will be disqualified from succeeding the estate of an intestate.

Murderer disqualified (Sec. 25)

A person who commits murder or supports the commission of murder shall be disqualified from inheriting the property of the person murdered or any other property of which he/she may become allowed to succeed by reason of the succession resulting from the murder.

Converts descendants disqualified (Sec. 26)

Where, before or after the commencement of this Act, 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.

Succession when heir disqualified (Sec. 27)

If any person is disqualified from inheriting any property under this Act, it shall devolve as "if such person had died before the intestate"

Disease, defect, etc., not to disqualify (Sec. 28)

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 ground whatsoever.

Failure of heirs (Sec. 29)

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 focused.

CHAPTER III – Testamentary Succession**Testamentary Succession (Sec. 30)**

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 Hindus.

Explanation: The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.