

# HINDU SUCCESSION ACT, 1956

[ 30 of 1956, dt. 17-6-1956]

An Act to amend and codify the law relating to intestate succession among Hindus.  
Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:-

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## **HINDU SUCCESSION ACT,1956**

### **CHAPTER I PRELIMINARY**

#### **1. 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

## 2. Application of Act

(1) This Act applies-

- (a) to any person, who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or follower of the Brahmo, Prarthana or Arya Samaj;
- (b) to any person who is Buddhist, Jaina or Sikh by religion; and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu Law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

**Explanation:** The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

- (a) any child, legitimate or illegitimate, one of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina 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;
- (c) any person who is convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1) nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) 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.

## 3. 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 the system of law applicable to persons who, if this Act had not been passed, 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: PROVIDED that the rule is certain and not unreasonable or opposed to public policy:

PROVIDED FURTHER that in 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;

Explanation: 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 Nanjinad Vellala Act; the Travancore Kshatriya Act, the Travancore Krishnanvaka Marumakkathayee Act; the Cochin Marumakkathayam 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 <sup>[1]</sup> [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.

#### **4. Overriding effect of Act**

(1) Save as otherwise expressly provided in this Act ,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have 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 cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

## COMMENTS

A reading of s.4 makes it clear that provision in s.8 are to prevail over principles of Hindu law. Applying the principle it comes to conclusion that a son inheriting separate property of his father, separate property of the father is his separate and individual property and not joint family property.- Addl. Commissioner of Income Tax v. Karuppan Chettiar AIR 1979 Mad 1

As per the language of s. 14 of the Hindu Succession Act, any property possessed by a female Hindu, shall be held by her as full owner and not as a limited owner. By applying the provisions of s.2 of the Hindu Widow's Remarriage Act,1856,a widow cannot be divested of the property as then it would be an inconsistency with the provisions of this Act.-AIR 1973 Pat.170

Where the marriage of a widow took place prior to the coming into force of this Act, as because of marriage her rights to property had already been lost ,provisions of this Act did not apply.-Sankar Prasad v. Usha Bala AIR 1978 Cal. 525

Mode of devolution as laid down under section 36(5) of the Madras Aliyasantana Act has to give a way to what is laid down in s.8 of the Hindu Succession Act as regard separate property and to s.7 (2) where the property is undivided interest- Sundari v. Laxmi AIR 1980 SC 198

Prior to the present Hindu Succession Act came into force, there was a custom prevailing in Punjab, disentiing daughters to inherit. But now the legal position different according to which where the last male holder died after the Act, the previous law disentiing the

daughters to succeed, is no more valid.- *Manshan v. Tejram* AIR 1980 SC 558.

Act being only of prospective nature so where the heir is not a limited owner, this Act would in no way affect his succession; but it is essential that succession should have taken place prior to the commencement of this Act.-*Rameshwar v. Hemant Kumar* AIR 1985 Pat.168.

## **CHAPTER II**

### **INTESTATE SUCCESSION**

#### **GENERAL**

#### **5. Act not to apply to certain properties**

This Act shall not apply to -

- (i) any property succession to which is regulated by the Indian Succession Act, 1925 by reason of the provision 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.

#### **COMMENTS**

Where the son is brought up a Hindu, the Act in no way puts obstacle before the son being treated as member of the Hindu undivided family.-*Maneka Gandhi v. Indira Gandhi* AIR 1985 Del 114

#### **6. Devolution of interest of coparcenary property**

When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

PROVIDED that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

*Explanation I:* For the purposes of this section, the interest of Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

*Explanation 2:* Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

## COMMENTS

Property that is in the hands of the son can not amount to coparcenary property, the reason behind being that nature and character of ancestral property as far as Mitakshara law is concerned is completely abrogated- Malchand Thirani & Sons v. CIT 1980 (121) ITR 976 In order to ascertain the nature of property within the meaning of s.6 relevant date is the date on which the father acquired the property whether by succession or by dissolution- Ram Singh v. Badhu Sen AIR 1981 All 126.

Where the separate property it got by the father in partition with his sons; the property is not to be taken as coparcenary property in the hands of father. On father becoming dead each son takes as a tenant-in-common and not as joint tenant-Satya Narayana v. Rameshwer AIR 1982 Pat 44.

In the case, actual partition takes place, share of the person, widow or the mother, entitled

is to be consider so as to ascertain the share of the deceased coparcener.-Viruprakash v. Bole dawwa 1981 (1) Kar LJ 433

Share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which has taken place during the life time of the deceased. The allotment of his share is not a processual step devised merely for the purpose of working out some other conclusion. Heir will get his or her shall in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the rational partition-Gurupada v.Heera Bai AIR 1978 SC 1239

Where upon the partition taking place, the widowed mother is allotted a share, she cannot be deprived of her right to inheritance on the death of the son. She is entitled to have a share in the interest of the son in the co-parcenary property-Savitri v. Devaki AIR 1982 Kar 67

## **7. Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom**

(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 marumkkattayam or numbudri 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 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.

## COMMENTS

The mode of devolution which s.36 (5) of the Aliyasanthana Act prescribes has to give way to the provisions of s.8 of the Hindu Succession Act prescribing a different mode of succession.-Ramanaraj v. Jagannath AIR 1982 Kar 270

Devolution of the undivided interest of the deceased or the separate property of the deceased is to be in accordance with the s.7 (2) and s.17 of the Hindu Succession Act only.- Ramanaraj v. Jagannath AIR 1982 Kar 270

## **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 two classes, then upon the agnates of the deceased; and
- (d) lastly , if there is no agnate, then upon the cognates of the deceased.

### **COMMENTS**

Subsequent to the compromises decree, property would revert back to the estate of the donor after his lifetime, and it is the Hindu Succession Act that is to govern the succession to the property.-Maushan v. Taj Ram AIR 1980 SC 558

Where a partition of a joint family property takes place and a separate share is given to the mother, then in the case of death of one of the sons the mother would be entitled to have a share in the separate property of her son. Fact that earlier when the partition took place she was given a share would not place any bar.-Savitri v. Devaki AIR 1982 Kar. 67

In the case of a Hindu male governed by Mitakshara under s.8 of the Act, the property that devolves on him will be his separate property. Such a property would never amount to join family property in his hands as against his son.-Yudhishtir v. Ashok Kumar AIR 1987 SC 558

In case the widow remarries, she would not be divested of the property inherited by her simply on account of her remarrying.-Udham Kaur v. Harbans 1983 HLR 579

## **9. Order of succession among heirs in the Schedule**

Among the heirs specified in the Schedule, those in class 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 the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

## **10. Distribution of property among heirs in class I of the Schedule**

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules :

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-

(i) among the heirs in the branch of pre-deceased son shall be so made that his widow (or widow together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

## **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.

## **12. Order of succession among agnates and cognates**

The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule1-Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule2- Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule3- Where neither heirs is entitled to be preferred to the other Rule 1 or Rule 2 they take simultaneously.

### **13. Computation of degrees**

(1) 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

(1) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate

(3) Every generation constitutes a degree either ascending or descending.

### **14. Property of a female Hindu to be her absolute property**

(1) 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.

Explanation:- In this sub-section "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

## **COMMENTS**

This section recognises equality of sexes and elevates the women from subservient position in the field of economy to a higher pedestal. Now the women can enjoy and have full powers as regards disposal of property held by them. They are to be taken as owners without putting any artificial limitations on their right of ownership.- Bai Vijaya v. Thakuribai Chela Bhai AIR 1979 SC 993

Where the death of the husband took place in the year 1936, before the Hindu Women's Right to Property Act came into force, as at that time only right of maintenance was conferred upon the widow, there would not be any application of s.14 (1)- Suraj Mul v. Babulal AIR 1985 Del 95

Besides possessing an existing right of maintenance, a woman in the Hindu family is also conferred right in the family property. It cannot be said that partition deed is something creating a new right in her in so far as the property is concerned; nor it amounts to acquiring of the property by her by virtue of partition deed when the facts are so, there would be the application of sub-s. (1) of s.14 and not of sub-s.(2) of the said section.- Tulasamma v. Seshareddi AIR 1977 SC 1944

Where the property is acquired by the Hindu female under a written instrument or decree and such acquisition is not traceable to any antecedent title, there would be the application of sub-s. (2) and when antecedent title is traceable, a document like will is of no consequence and sub s. (1) would come into operation-Jaswant Kaur v. Majid Harpal Singh 1990(1) MLJ SC 1.

In the instant case mutation took place and the records showed as widow of the last male holder. When present Hindu Succession Act came into force, collaterals raised the contention that mutation was without any right in the property and the collaterals had the right in the property it was held that as s.14 (1) conferred absolute right on the widow, collaterals had nothing to say.-Bishwanath Pandey v. Badami Kaur AIR 1980 SC 1329

Application of the provision of s. 14 (2) is confined to causes where on account of some grant or disposition, a right is conferred with certain restrictions on the widow for the first

time and not in recognition of any pre-existing right-*Abirami v. Mathuram* 1984 (2) MLJ 391

Where a stipulation in the will suggested the wife to enjoy the property for her life and thereafter the property had to revert back to the successors of the testator, it was held that the widow had an absolute estate and there was the application of s. 14 (1) *Pritam Singh v. Bachan Kaur* AIR 1985 Punj 4

Where the Hindu female in possession of the property of her husband becomes absolute owner and the property is subsequently sold by her, the purchaser would get absolute right in the property despite the fact that there was no such necessity or benefit before the family requiring the disposal.-*Veerangowda v. Basant Gowda* 1981(2) Kar LJ 385

## 15. General rules of succession in the case of female Hindus

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16:

- (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.

(2) Notwithstanding anything contained in sub-section (1)-

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

## COMMENTS

Within the expression " son and daughter" there is no inclusion of step-son and step daughter.-Visalakshi v. Chelliah Pillai 1988 (2) MLJ 511

Clause (a) of the sub s. (1) does not include the widow of a predeceased son and the husband of a predeceased daughter in the category of heirs. On the death of a female intestate, the daughter of the predeceased son is given the preference over the sister of her husband.-Mohindero v. Kartar Singh AIR 1991 SC 257.

### **16. Order of succession and manner of distribution among heirs of a female Hindu**

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:-

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 including 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.

## COMMENTS

Where there was the pendency of the suit filed by a female Hindu against the family of her father for the partition of the family property but the female filling the suit died issueless, her husband was not granted permission to enter as her legal representative for the fact that the property devolved upon the father of the deceased under s. 15 (2) (a)- Raghuvar v.

Jhaniki Prasad AIR 1981 MP 39

## **17 Special provisions respecting persons governed by Marumakkattayam and Aliyasantana laws**

The provisions of section 8,10,15 and 23 shall have effect in relation to persons who would have been governed by the marumakkattayam law or aliyasantana law if this Act had not been passed as if-

- (i) for sub-clauses (c) and (d) of section 8, the following had been substituted namely:-
  - "(c) thirdly, if there is no heir of any of the two clauses, then upon is relatives, whether agnates or cognates";
- (ii) for clauses (a) to (e) of sub section (1) of section 15, the following had been substituted namely:-
  - (a) "firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the mother ;
  - (b) secondly, upon the father and the husband;
  - (c) thirdly, upon the heirs of the mother;
  - (d) fourthly, upon the heirs of the father; and
  - (e) lastly, upon the heirs of the husband";
- (iii) clause (a) of sub-section (2) of section 15 had been omitted;
- (iv) section 23 had been omitted.

## **GENERAL PROVISIONS RELATING TO SUCCESSION**

### **18. Full blood preferred to half blood**

Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

### **COMMENTS**

Brothers and sisters, when some of them are son of the same mother as that of the intestate

and some not, may be related by full blood while some by half blood. When that is so, heirs by full blood exclude the heirs by half blood.- Narayanan v. Pushparajini AIR 1991 Ker 10

## **19. Mode of succession of two or more heirs**

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.

### **COMMENTS**

Upon the death of the father leaving behind his son, widow and a daughter, all of them would take as tenant-in-common in the joint family property. Son, in spite of the fact, that is the karta of the family would not be having any right to alienate the property and where the alienation takes place that would not be binding value upon the widow and the daughter.- Usha Singh v. Virendra Kumar 1981 (7) All LR 364

## **20. Right of child in womb**

A child who was in the womb at the time of death of an intestate and who is subsequently born alive has 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.

## **21. Presumption in cases of simultaneous deaths**

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

elder.

## 22. Preferential right to acquire property in certain cases

(1) Where, after the commencement of this Act, 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, devolve 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 sub 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.

(2) 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.

### COMMENTS

Agricultural land is excluded from the expression "immovable property" as used in this section therefore the preferential right is confined only to the business and to the immovable property of the kind which does not include agricultural lands.-Jeewanram v. Lichmadevi AIR 1981 Raj 16. An application for fixing the consideration can not be maintained after the transfer is given effect, that is different thing that application is permitted to be converted into a suit.-Ghewari Wala Jain v. Hanuman Prasad AIR 1981 MP 250. Where an application is moved under this section and a decision taken thereupon, there is no provision for appeal either under this section or some where else under this Act.

The decision taken as such is not a decree so as to prefer an appeal. Even order 43 rule 1 of CPC does not make it an appealable order-Tarakadas Ghosh v. Sunil Kumar Ghosh AIR 1980 Cal 53

### **23. Special provision respecting dwelling houses**

Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

PROVIDED that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

#### **COMMENTS**

Selling of half share by sole male heir is an indication of his desire to partition and there cannot operate any restriction on the female heirs.-Mooka Ammal v. Chitradeva Ammal 1980 HLR 353

### **24. Certain widows remarrying may not inherit as widows**

Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a predeceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.

#### **COMMENTS**

Where on the date the succession opens, the widow is not remarried, she would succeed to the property. But the fact of her remarriage after the succession opens would not disentitle

her to the property for the fact that s.14 would have conferred on absolute right in the property so taken by the widow.-Chanda v. Khusala AIR 1983 Patna 33

## **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.

### **COMMENTS**

Even though conviction is within the meaning of s. 304 IPC there is a bar for the person convicted and he would be disentitled to inherit.-Biro v. Banta Singh AIR 1980 Punj 164

## **26. Convert's descendants disqualified**

Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be 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.

## **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.

## **28 Disease, defect etc. not to disqualify**

No person shall be disqualified from succeeding to any property on the ground of any disease, defects or deformity, or save as provided in this Act, on any other ground whatsoever.

## ESCHEAT

### 28. 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 subjected.

## Chapter III

### TESTAMENTARY SUCCESSION

### 29. Testamentary succession

[1](#)<sup>[\*\*\*]</sup> Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, 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 [2](#) [section]

[3](#)<sup>[\*\*\*]</sup>

## Chapter IV

### REPEAL

### 31. Repeal

[Rep. By Repealing and Amending Act, 1960 (58 of 1960)]

**THE SCHEDULE**  
**[Section 8]**  
**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.

**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; fathers' sister.
- VIII. Mother's father; mother's mother.
- IX. Mother's brother, mother's sister.

Explanation:- In this Schedule, reference to a brother or sister do not include reference to a brother or sister by uterine blood.

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<sup>[1]</sup> Inserted by the Adaptation of Laws (No.3) Order, 1956.

<sup>1</sup> Brackets and figures “(1)” omitted by Act 58 of 1960

<sup>2</sup> Substituted by Act 56 of 1974, for the word “Sub-section”

<sup>3</sup> Sub-s.(2) omitted by Act 78 of 1956.

