

B A-2<sup>nd</sup> semester

SOC-GE202

Prepared by

Tahera khatoon

**The Hindu Succession Act, 1956** is an Act relating to the succession and inheritance of property. This Act lays down a comprehensive and uniform system which incorporates both succession and inheritance. This Act also deals with intestate or unwilled (testamentary) succession. Therefore, this Act combines all the aspects of Hindu succession and brings them into its ambit.

## Applicability

**Section 2** of this Act lays down the applicability of this Act. This Act is applicable to:

- Any person who is Hindu by religion or any of its forms or developments, including a Virashaiva, Lingayat, or a Brahmo, Prarthna or Arya Samaj follower.
- Any person who is a Buddhist, Sikh or Jain by religion.
- Any other person who is not a Muslim, Christian, Parsi, Jew, unless it is proved that such person would not be governed by Hindu law or custom.
- This Act shall also extend to the whole of India.

However, this Section shall not apply to any Scheduled Tribes covered under the meaning of Article-366 of the Constitution, unless otherwise directed by the Central Government by a notification in the Official Gazette.

## Who qualifies as a Hindu, Sikh, Jain or Buddhist?

- A legitimate or illegitimate child, where both of his parents are either Hindus, Buddhists, Jains or Sikhs.
- A legitimate or illegitimate child, one of whose parents is a Hindu, Buddhist, Jain or Sikh and is brought up as a member of the tribe, community, group or family to which such parent belongs.
- Any person who is a convert or reconvert to the Hindu, Sikh, Jain or Buddhist religion.

## Basic terms and definitions

### Agnate

A person is said to be an agnate of another if the two are related by blood or adoption wholly through males.

### Cognate

A person to be a 'cognate' of another if such a person is related to the other by blood or through adoption but not wholly through males.

### Heir

'Heir' is any male or female person, who is entitled to receive the property of the intestate.

### Intestate

A person who dies without leaving behind a will is referred to as intestate.

### Related

'Related' means the relationship between kin( kinship), which should be legitimate. 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.

## Which properties does this Act not apply to?

**Section 5** lays down the properties that this Act does not apply to:

- Any property whose succession comes under the regulation of the Indian Succession Act, 1925 by reason of the provision under Section 21 of the Special Marriage Act, 1954. Section 21 of the Special Marriage Act states that succession to the property of any person whose marriage is solemnized under this Act and the property of the issue of such marriage shall be governed by the Special Marriage Act.
- Any estate or property which goes to the single heir through the terms of any agreement or covenant formed between the Ruler of an Indian State and the Government or through any enactment formed and passed before the commencement of this Act.

## Types of succession

### Testamentary Succession

When the succession of the property is governed by a testament or a will, then it is referred to as testamentary succession. Under Hindu law, a Hindu male or female can make the will for the property, including that of a share in the undivided Mitakshara coparcenary property, in favour of anyone. This should be valid and legally enforceable. The distribution will be under the provisions of the will and not through the laws of inheritance. Where the will is not valid, or not legally enforceable, then property can devolve through the law of inheritance.

# Intestate Succession

Intestate has already been defined above as someone who dies leaving behind no will or testament. When such a situation happens, then this property will be distributed among the legal heirs by following the laws of inheritance.

## Rules for ownership in the case of males

Section 8 lays down the general rules for the succession in the case of males. Section 8 applies in cases where succession opens after the commencement of the Act. It is not necessary that the death of the male Hindu, whose property has to be devolved by inheritance, should take place after the commencement of this Act. For example: if a father, during his lifetime, settles his property in favour of his wife and after the death of his wife, wishes that it should pass to his daughter, and the daughter dies after the commencement of this Act, then the succession will open and the property would devolve according to Section 8.

## Classification of heirs

Heirs are classified into four categories:

- Class I
- Class II
- Class III (Agnates)
- Class IV (Cognates)

### Class I heirs

- Sons
- Daughters
- Widows
- Mothers

- Sons of a predeceased son
- Widows of a predeceased son
- Son of a predeceased son of a predeceased son
- Widows of a predeceased son of a predeceased son
- Daughter of a predeceased son
- Daughter of a predeceased daughter
- Daughter of a predeceased son of a predeceased son
- Son of a predeceased daughter
- Daughter of a predeceased daughter of a predeceased daughter
- Son of a predeceased daughter
- Son of a predeceased daughter of a predeceased daughter
- Daughter of a predeceased daughter of a predeceased son
- Daughter of a predeceased son of a predeceased daughter

All of them will inherit simultaneously and even if any of them is present, then the property will not go to the Class II heirs. All Class I heirs have absolute rights in the property and the share of a Class I heir is separate, and no person can claim a right by birth in this inherited property. A Class I heir cannot be divested of his/her property, even by remarriage or conversion etc.

Until the Hindu Succession (Amendment) Act, 2005, the Class I heirs consisted of twelve heirs, eight of which were females and four were males, but after 2005, four new heirs were added, of which eleven are female and five are male.

Now we will observe who classifies as son, mother, daughter or widow and what kind of interests they have in the property.

## Son

The expression 'son' can include both a natural born son or adopted son but does not include a stepson or illegitimate child. In *Kanagavalli v. Saroja* AIR 2002 Mad 73, the appellants were the legal heir of one Natarajan. Natarajan was earlier married to the first respondent, the second respondent was the son and the third respondent was the mother of Natarajan. The first

respondent obtained a decree of restitution of conjugal rights but still no reunion occurred between them. The first appellant claimed to have married Natarajan in 1976 and the appellants 2 to 5 were born through them. Natarajan died afterwards. The suit was filed for declaration that the appellants were the legal heirs of the said Natarajan along with respondents 1 to 3, and they were entitled to the amounts due from the Corporation where Natarajan worked. The Court held that a son born of a void or voidable marriage that is declared to be annulled by the Court, will be a legitimate child and would thus inherit the property of his father. A son has absolute interest in the property and his son cannot claim birthright in it. Therefore, 'son' does not include grandson, but does include a posthumous son.

## Daughter

The term 'daughter' includes a natural or adopted daughter, but not a stepdaughter or illegitimate daughter. The daughter of a void or voidable marriage annulled by the Court would be a legitimate daughter and thus would be eligible to inherit the father's property. The daughter's marital status, financial position etc is of no consideration. The share of the daughter is equal to that of the son.

## Widow

The widow gets a share that is equal to that of the son. If there exists more than one widow, they collectively take one share that is equal to the son's share and divide it equally among themselves. This widow should have been of a valid marriage. In the case of *Ramkali v. Mahila Shyamwati* AIR 2000 MP 288, it was held that a woman who was in a voidable or void marriage, and that marriage was nullified by the Court on the death of the husband, would not be called his widow and would not have rights to succeed to his property.

If the widow of a predeceased son, widow of a predeceased son of a predeceased son or the widow of a brother has remarried, then she shall not be given the term of 'widow', and will not have the inheritance.

## Class II heirs

The Class II heirs are categorized and are given the property in the following order:

- Father
- Son's Daughter's son
- Son's daughter's daughter
- Brother
- Sister
- Daughter's son's son, daughter's son's daughter, daughter's daughter's son, daughter's daughter's daughter
- Brother's son, sister's son, brother's daughter, sister's daughter
- Father's father, father's mother
- Father's widow, brother's widow
- Father's brother, father's sister
- Mother's father, mother's mother
- Mother's brother, mother's sister

If no one from the Class I heirs takes the property, then Class II heirs fall in line to get the property. In *Kalyan Kumar Bhattacharjee v. Pratibha Chakraborty* AIR 2010 (NOC) 646 (Gau), the property fell into the share of the defendant brother named Ranjit, who was unmarried. However, he became traceless and the property was divided amongst two other brothers in equal shares. The plaintiff's brother called Jagadish then executed a will in favour of both the plaintiff and died afterwards. However, the defendants then asked them to vacate the land, contending that *inter alia* that the land has been purchased in the name of three brothers; namely Jagadish, Ranjit and Kalyan, the defendant number 1. It was held that when a Hindu male is unmarried and he dies, and is not survived by a Class I heir, the Class II heirs would get the property.

Similarly, when heirs in Class III and IV are there, the property would only go to them if no one from the Class II is present.

## Class III heirs

This consists of the agnates of the deceased. Class III heirs only inherit the property when none from the earlier classes gets the property.

An agnate is a person who is related to the intestate only through male relatives. An agnate can be a male or a female.

## Rules of preference among agnates

- Each generation is referred to as a degree. The first degree is intestate.
- Degrees of ascent mean ancestral or upwards directions.
- Degrees of descent means in the descendants or downwards direction.
- Where an agnate has both ascent and descent degrees, each has to be considered separately.
- An agnate having descent degree will be preferred over the one having ascent degree.
- When two agnates have ascent and descent degrees, the one having lesser number of ascent degrees will be preferred.

## Class IV heirs

A cognate (Class IV) is someone who was related to the intestate through mixed relatives, in terms of sex. For example, an intestate's paternal aunt's son is his cognate, but his paternal uncle's daughter will be an agnate.

Therefore, to sum up it can be said that the property of the Hindu male devolves in the following manner:

- First, to the heirs in Class I.
- Second, if there exists no heir of Class I, then it goes to Class II heirs.
- Third, if none from the Class I or II exists, then it goes to the agnates (Class III).
- Fourth, if no one from the earlier three classes exists, then it goes to the cognates (Class IV).



# Rules for ownership in the case of females

With the coming of The Hindu Succession Act, 1956, women are granted ownership of property, whether it was acquired before or after the commencement of the Act, thus abolishing their 'limited owner' status. But it was only in the Hindu Succession (Amendment) Act, 2005 that it was decided that daughters would be entitled to an equal share in the property as the son. Therefore, the 2005 Amendment serves as a defender for female rights.

The property in case of a female Hindu intestate dying will devolve through:

- Firstly, through the sons and daughters, which would also include the children of a predeceased son or a predeceased daughter) and the husband.
- Secondly, on the heirs of the husband.
- Third, upon the mother or the father.
- Fourth, on the father's heirs.
- Fifth, on the heirs of the mother.

In the case of any property being inherited by a female Hindu by her father or mother and there is no son or daughter of the deceased (including a child of predeceased son or daughter), then it shall devolve in favour of the heirs of the father.

Similarly, in the case of any property being inherited by a female Hindu by her husband or her father in law, and there is no son or daughter of the deceased (including the child of a predeceased son or daughter), it shall devolve in favour of the heirs of the husband.

## Conclusion

So we can say that in the Hindu Succession Act, 1956, there are four classes of heirs to which property devolves in case if a Hindu dies leaving behind a

will, in which case he becomes intestate. This property devolves through these classes. If no one from the earlier class is present, then it devolves to the next class and so on. Lastly, this article also explored the 2005 Amendment to this Act, which brought much needed protection to women rights regarding property.