

Succession as a subject:

- Article 246 – subject matter of laws made by parliament and state legislatures
- 7th schedule of the constitution contain 3 list,
- List I Union- total entries 97 , List II state – total entries 66 and List III concurrent- total entries 47
- Succession as subject falls in concurrent list entry 5
- LIST III ENTRY 5 - Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
- Other related subject
- List I Entry 88 – duties in respect of succession of property other than agricultural land
- List II entry 47 – duties in respect of succession other than agricultural land

(MT- Entry no. 5 –hence 5 factors: 1. Marriage ,2. Divorce, 3. Adoption, 4. Will, 5. Partition)

Origin of word:

- Succession Early 14th century – meaning fact or right of succeeding
- Latin word successionem meaning nominative succession – a following or coming into another's place

Legislation

The Indian Succession Act, 1925 & the Hindu Succession Act, 1956

- Law of succession = legal distribution of assets of deceased individuals
- The Indian Succession Act, 1925
- Deals with testamentary succession other than muslim and intestate succession other than muslims and hindus
- Composition of act
- Total parts : XI
- Total chapters : III in part V; XXIII in part VI, XIII in part IX (MT 3, 23, 13- all ending with 3)
- Total section : 391 (earlier 392)
- Total schedule : VIII
- Total definitions : 10 [from section 2 (a) to (h)]

(MT for parts and chapters)

- I. Preliminary
- II. Domicile
- III. Marriage
- IV. Consanguinity
- V. Intestate succession : total Chap III
- VI. Testamentary succession : total chap XXIII
- VII. Protection of property of deceased
- VIII. Representative title to property of deceased on succession
- IX. Probate, letter of administration and administration of assets of deceased : total Chap XIII
- X. Succession certificates
- XI. Miscellaneous – saving provision S. 391 & IX schedules

(MT: chronology of life cycle – domicile- you reside permanently somewhere, marriage, same relation- may be in same family, intestate- without making will, testamentary- by making will, protection of your property, representation- by person of your property, probate, and certificate)

- About act: combined provision of earlier legislation b/w 1841 to 1905 and made on comprehensive legislation such as
- 1. Indian Succession Act 1865, 2. Parsees Intestate Succession Act, 3. the Hindus Wills Act 1870 and 4. Probate and Administration Act 1881
- Predecessor was the Indian Succession Act, 1865
- Effective since 30th September 1925

Provisions of the act:

- **Definitions**
- Section 2 (h) Will – legal declaration of testator’s intention w.r.t property after his death
- Section 2 (c) Executor- person entrusted with the work of execution of last will of deceased
- Section 2 (f) Probate : certified copy of will by competent court with grant of administration
- Section 2 (e) Minor : person not attaining age of majority as per the Indian Majority Act 1875- until person complete age of 18 years not before

- Part II

- S. 4 Application – not to apply to hindu, muslim, buddhist, jain, sikh
- S. 5 succession of immoveable property of person domicile in india be as per indian law and succession to moveable property be as per law of that country wherever he had domicile
- S. 19 if no proof of domicile the moveable property apply indian law of succession
- Illustration: T having Immoveable property in India , moveable in france /englad , succession law of india will apply. Other hand if T domiciled of france having immoveable property in india will govern by law of france
- S. 7 domiciled of person by legitmate birth- as per domiciled of his father
- S. 8 domiciled of person by illegitmate birth- as per domiciled of his mother
- S. 11 acquiring domicile in India – by making declaration of his desire to acquire domicile – requirement he has to resident of India for one year

Part V:

- S. 29 this part not apply to hindu, muslim, buddhist, sikh, jain
- S. 30 person is deemed to die intestate in the absence of any testatmentary disposition which he is capable to made of
- Chap II of part V wont apply to parsis
- S. 32 the property of deceased devolved upon wife/husband or those kindered to deceased as per further rules
- In case of widow and lineal descendants – $1/3^{\text{rd}}$ of the share will go to widow of intestate and remaining $2/3^{\text{rd}}$ to the lineal descendants
- In the absence of lineal descendants then half to widow and half to kindered of intestate
- If no lineal or no kindered then all will go to widow
- S. 34 in the absence of widow property will go to lineal descendants or to the kindered if none is their then it will go to the government
- S. 35 all rights of widow will apply to husband if he survives his wife
- S. 36 rules of distribution
- S. 37 if intestate left only children the property be divided equaully among them
- S.38 if intestate left only grand child/children then it be divided equally among them
- S. 41 rules of distribution if no lineal descendants are there (after deducting widow's share the property shall be distributed as per ss. 42 to 48)
- S. 42 if father is living then to him

- S. 43 when father is not there but he intestate survives by mother, brother and sister then equal distribution
- S. 43 if father dies but instestant survies by his mother, brother, sister or child/children of intestates deceased brother sister, then property be divided equally.
- Chap III of part V special rules for parsi
- S. 50
 - a. Person actually born = person merely conceived in womb and born alive there after
 - b. Lineal descendants dying in the lifetime of intesator wihtout living any widow/widower not be considered in division of property
 - c. The widow/widower of relative married again in the lifetime of intestate not be considered in division of property
- S. 51 division of property in equal share in case intestate survive by widow and children, If no widow only childre then also eqaul division, if parents are also there then eqaul share
- S. 54 $\frac{1}{3}$ rd division share be given to widow/widower of intestate and widow/widower of lineal descendants each
- S. 56 when no relative then property be divided to nearest degreed of kindered to intestate

Part X- succession certificate

- Ss. 370 to 390
- Succession certificate- documents making disposition of deceased's property
- It may be used in situations where banks, financial and private institutions release funds to the nominee (where such nominee is not the legal beneficiary of the asset) and the nominee refuses to cooperate in distribution of the asset to the legal beneficiary
- It may be to prove genuineness of the claimant where the inheritance amount is substantial
- Certain state make the probate and Succession certificate mandatory to transfer the title of an immovable property
- Below person may apply for certificate
- (i) Sound mind person (ii) Major person (iii) Person having an interest in estate of deceased (iv) Secretary of state (v) Person having beneficial interest in the debt or security of deceased person
- Application before district judge containing below particulars s. 372

- (I) Date of death of deceased (ii) Place of residence of deceased (iii) Family of Deceased and their respective residences. (iv) Right of Petitioner - The application must show some title or interest in the debt or security, in respect of which they has applied for the certificate. If two or more persons apply, the court must decide who has the preferential claim. (v) Absence of any impediment (vi) Debts or security in respect of which the certificate is applied for.
- Under the following circumstances, no succession certificate can be granted.
 - I) under section 370 (1) of the Act, as to any debt or security to which a right is required to be established by probate or letters of administration;
 - II) that too, if sections 212 of the Act applies;
 - III) if section 213 of the Act applies;
 - IV) that is to say that where law requires probates or letters of administration as mandatory to establish right to property as in the cases of Parsis, Jews, East Indians, Europeans and Americans.
 - V) Provided that nothing will prevent as to granting a succession certificate to any person entitle to the effects of a deceased Indian Christian or any part thereto pertaining to any debt or security, that the right can be established by letters of administration.
- Effect of succession certificate:
- In Muthia vs Ramnatham, 1918 MWN 242 court declare such be used to title to recover the debt due to the deceased, and payment to the grantee is a good discharge of the debt
- Other document such as legal heirship , nomination or death certificate as alternative to succession certificate for purpose of inheritance or transferring assets of deceased
- Legal heirship be obtained from revenu officer, tahsildars, revenue mandal officers or talukdars, in every taluka
- Certainly it is not as conclusive as succession certificate

The Hindu Succession Act, 1956:

- Composition
- Total sections : 30
- Total chapters : IV
- Total definition : 10 [section 2(a) to (j)]
- Notified on 17th june 1956

- Chap I – preliminary
- Chap II - Intestate succession
- Chap III - Testamentary succession
- S. 2 application of act: person belonging to Hindu, Budhist, Jain, Sikh and other person not belonging to muslim, parsi, christain, jew
- Chap II provision explanation
- S. 5: act won't apply to certain properties
 - (i) Property regulated by the Indian Succession Act,1925 by reason of section 21 of the Special Marriage Act, 1954
- S. 6 amended by the Hindu Succession (Amendment) Act, 2005
- As per section the joint hindu family governed by Mitkarsha law
- Daughter of cooparcener by birth become cooparcener in the same manner as son
- Have same right in cooparcenary property as same of son
- Subject to same liabilities as of son
- Proviso nothing shall affect or invalidate any disposition of proerty before 20th december 2004
- Certain state statements
- Karnataka : section 6A inserted – equal rights to daughters in cooparcenary property
 - (a) Equal share in cooparcenary property
 - (b) Equal share in partition in joint hindu family – the cooparcenary property
 - Provided the share of predeceased son/daughter be allotted to their surviving child
- S. 8 rules of succession in the case of males –
 - Heirs being relative under class I of schedule
 - If no heirs in first class then heirs in class II
 - If no heirs of both two classess then to the agnates of deceased
 - If no agnate then upon the cognate
 - Agnate : two person related by blood or adoption wholly through male
 - Cognate : two person related by blood or adoption but not wholly through male
- S. 9 order of success as per classes in the schedule
- S. 10 distribution property among heirs of class I
 - Rule 1. Intestate's widow
 - Rule 2. Daughter son and mother of intestate each take one share

Rule 3. Heirs of predeceased son or predeceased daughter of intestate shall take one share

Rule 4. Distribution be such that widow, son and daughter shall get equal shares and branch of predeceased son get same portion

For branch of predeceased daughter property be so divided that son, daughter and heirs of predeceased daughter shall get equal share

- S. 11 equal distribution property among heirs of class II
- S. 12 order of succession among agnates or cognates

Rule 1: out of two heir one who has fewer or no degrees of ascent (meaning: an heir claiming descendent of hindu male dying intestate or anyone nearer in line to him

- Hence son's son's son being descendent in line is to be preferred against brother's son's son)

Rule 2: when number of degrees of ascent same then heir having fewer or no degrees of descent

(meaning: father's brother's son is nearer than father's brother's grandson

Rule 3: when neither heir entitled to preferred then to take simultaneously

(meaning: father's father's father to be taken equally to father's father's mother)

- Kerala
- S. 15 rule of succession in case of hindu female:
- Among
 - (a) Son, daughter (including children of predeceased son or daughter) and husband
 - (b) Father and husband
 - (c) Heirs of mother
 - (d) Heirs of father
 - (e) Heirs of husband
- S. 20 right of child in womb
- S. 21 presumption at simulataneous death- it is assumed that younger survive the elder
- S. 26 converter's descendants: if he converts then children born to him and their descendant deemed to be disqaulified
- S. 29 in case of no heir, descendant the property devovle to the govt
- Tamil Nadu

- Chapt IIA
- S. 29A equal right to daughter in coparcenary property
- S. 29B interest to be devolve upon survivorship on death
- Chapter III
- S. 30 testamentary succession
- Hindu may dispose his property by will or testamentary disposition in accordance with provision of Indian Succession Act 1925
- Schedule I
- Heirs in class I and class II

Class I heirs	Class II heirs
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 1 [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 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	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

Comparative provision of acts

	The Indian Succession Act, 1925	The Hindu Succession Act, 1956
To whom applicable :	all Indians other than Muslims.	applies to any person who is a Hindu, Buddhist, Sikh, Jain and to any other person who is not a Muslim, Christian,

	<p>However certain provisions are not applicable to Hindus and apply only to non-Hindus such as Christians, Parsis and Jews.</p> <p>Intestate succession to properties of any person other than Hindu, Mohammedan, Buddhist, Sikh or Jain is governed by Part V (i.e., Intestate Succession)</p> <p>Rules for Parsis are contained in sections 50 to 56</p>	<p>Parsi or Jew by religion.</p> <p>Clause (i) of section 5 of Act provides that the said Act does not apply to any property, succession of which is regulated by the IS Act by reason of the provisions contained in section 21 of the Special Marriage Act, 1954.</p> <p>Sec. 21 of the Special Marriage Act, 1954- succession of the proeprty of parties married under the act-</p> <p>Despite any restriction contained under indian succession act regard to applicability for its provision, the succession of property of person married as per 1954 act shall be govern by 1925 act</p> <p>and for the purposes of this section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom.”</p>
<p>Attesting witness to a Will :</p>	<p>In case of Wills executed by Christians, Jews and Parsis a person named as executor in the Will can be an attesting witness.</p> <p>Attestation by a legatee under the Will is a good attestation.</p> <p>But the bequest in favour of such a legatee or his spouse becomes void.</p>	<p>In case of Wills executed by Hindus, Buddhists, Sikhs and Jains, the bequest in favour of a legatee is valid though he has attested the said Will.</p> <p>So a legatee under the Will of a Hindu will not lose his legacy by attesting the Will.</p>

	<p>A gift to an attesting witness is void though there may be a sufficient number of attesting witnesses without him, and the undisposed portion of the devised property will devolve according to the law of inheritance. (Section 67 of Indian Succession Act)</p>	
<p>Probate :</p>	<p>In the case of Wills made by Christians and Jews and by Hindus, Buddhists, Sikhs and Jains [as provided in clauses (a) and (b) of section 57 of the Indian Succession Act,] no right as an executor or a legatee can be established in a Court of Justice unless Probate is granted by a Court of competent jurisdiction u/s. 213 of the Indian Succession Act.</p> <p>Wills executed outside the cities of Calcutta, Madras and Bombay in</p>	<p>No probate is required to establish right as an executor or a legatee in case of Wills made by Hindus, Buddhists, Sikhs and Jains.</p> <p>The exception to the above rule is provided in clauses (a) and (b) of section 57 of the IS Act which is to the following effect:</p> <p>All Wills and codicils made by Hindus, Buddhists, Sikhs and Jains within the territories of the Lieutenant Governor of Bengal and within the local limits of the ordinary original civil jurisdiction of the High Courts at Madras and Bombay have to be probated.</p> <p>All Wills and codicils made outside the territories or limits mentioned in clause (i) above so far as relates to immovable property situate within those territories or limits have to be probated.</p>

	<p>respect of immovable properties situate outside these cities are not subject to the condition of obtaining probate before getting advantage of any such Will.</p>	
<p>Letter of Administration:</p>	<p>Where a person dies intestate who was governed by the IS Act, it is obligatory for the executors or legatee to obtain a Letter of Administration.</p>	<p>Where a Hindu dies intestate it is not necessary in every case to obtain a Letter of administration to the estate of the deceased to establish a right to any part of the property of the deceased.</p>
<p>Revocation of Will by testator's marriage :</p>	<p>Every Will shall be revoked on the marriage by the maker u/s. 69 of Indian Succession Act.</p> <p>Revocation results not only from first marriage but any subsequent marriage also.</p> <p>The exception to this rule is that a Will made in exercise of a power of appointment, when the property over which the power of</p>	<p>This provision does not apply to Hindus, Buddhists, Sikhs and Jains who are governed by the Hindu Succession Act. The statement of objects and reasons of the Hindu Wills Act, 1870 (now repealed) brings out the reasons for a marriage amongst the Hindus, Buddhists, Sikhs or Jains not having the effect of revoking a Will as the marriage does not create such a change in the testator's condition as to raise a presumption that he would not adhere to a Will made previously.</p> <p>This presumption is based upon the principle of monogamous marriage (the practice of having only one husband or wife at any one time) in England.</p>

	<p>appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator or to the person entitled in case of intestacy.</p>	
<p>Revocation of Privileged Will or Codicil :</p>	<p>Under section 72 of IS Act, a privileged Will or codicil may be revoked by the testator by an unprivileged Will or codicil, or by any act expressing an intention to revoke it and accompanied by such formalities as would be sufficient to give validity to a privileged Will or by the burning, tearing or destroying the same with the intention of revoking the same.</p>	<p>Section 72 of IS Act, 1925 is not applicable to Hindus, Buddhists, Sikhs and Jains.</p>
<p>Construction of terms/ definitions and interpretation :</p>	<p>Section 97 of IS Act lays down the general principles of interpretation of Wills. Though this section is not applicables to Hindus, it can still be equally applied to a Will by a Hindu, if</p>	<p>Under Hindu Succession Act, 1956 following words are defined and interpreted u/s. 3 of the Act:</p> <p>(a) agnate (b) aliyasantana law</p> <p>(c) cognate (d) custom and usage</p> <p>(e) full blood, (f) heir and uterine half blood blood</p>

	<p>the clear intention of the testator cannot be gathered from such Will. It may, however, be noted that the principle of interpretation enacted by this section, in terms, is applicable to testamentary dispositions and not to gifts or settlement.</p>	<p>(g) intestate law (h) marumakkattayam law (i) nambudri law (j) related</p>
<p>Bequest to religious or charitable use :</p>	<p>Section 118 of IS Act provides that no person having nephew or niece or any nearer relation, shall have power to bequeath any property to religious or charitable uses except the following two conditions are satisfied:</p> <p>a Will by which the testator bequeathed his property to religious or charitable uses was executed not less than twelve months before the death of the testator, and</p> <p>such Will was deposited within six</p>	<p>Section 118 of the IS Act is not applicable in case of Hindus, Buddhists, Sikhs and Jains. In other words, a Will of a Hindu though not executed before twelve months of his death and though not deposited within six months from its execution for the safe custody, is a valid will which is containing a bequest of his property for religious or charitable uses.</p>

	months from its execution in some place provided by law for the safe custody.	
Words expressing relationship :	Section 100 of the IS Act provides that in absence of any intimation to the contrary in a Will the word child, son or daughter would mean legitimate child, son or daughter. The principles laid down in this section is that a testator must be presumed to intend his legitimate relations unless the Will itself contains an intimation to the contrary.	The word son, daughter or child means legitimate as well as illegitimate child. The illegitimate son of a male Hindu of any caste is entitled to claim maintenance from the father and in case of death of the father from his heirs out of his estate inherited by them so long as the illegitimate son remains a minor and does not cease to be a Hindu.
Testamentary guardian :	A father, whatever his age may be, may by Will appoint a guardian or guardians for his child during minority. This section provides that a father though he may be a minor may appoint a guardian by Will for his child.	Under sec. 9 of the Minority and Guardianship Act, a Hindu father, mother and widow may by Will appoint a guardian for his minor legitimate as well as illegitimate children or in respect of minor's property or in respect of both, subject to the conditions laid down in that section.

	(Section 60 of IS Act, 1925)	
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