

OVERVIEW OF THE INDIAN SUCCESSION ACT, 1925



CA Hetal Gada

Email : hetal.maru@gmail.com

A. BACKGROUND

India with its huge population is a country with people coming from various communities. It predominantly has 2 major classes of communities being the Hindus and the Muslims. There are various other communities, to name a few being Christians, Jews, Parsis etc. Before the enactment of the Indian Succession Act, 1925 (ISA), the Hindus and the Muslims were governed by their respective personal laws for the purpose of inheritance and succession.

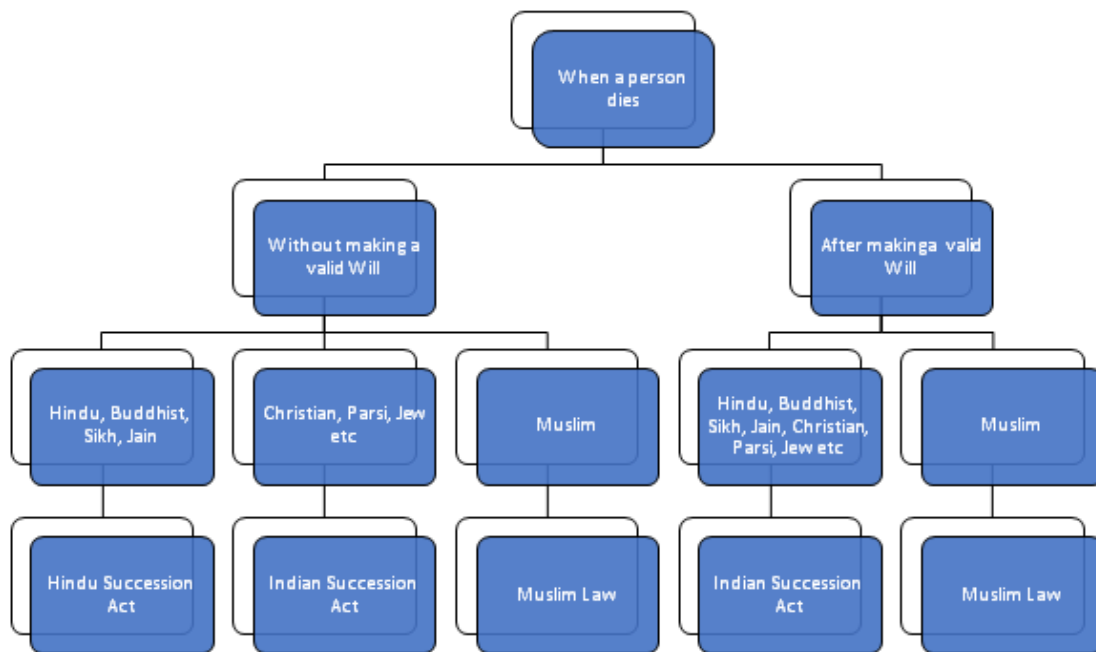
However, there were a lot of uncertainties in respect of inheritance and succession in case of other religions. Various different laws were enacted to cater to the needs of the different sects and different situations. To fill in the gaps under various acts, the Indian Succession Act was enacted in 1865. However, the said Act did not serve its purpose and was completely repealed. There were a variety of Acts like The Succession (Property Protection) Act, The Parsi Intestate Succession Act, The Hindu Wills Act, The Probate and Administration Act etc. which addressed different scenarios of inheritance and succession. With multiple laws to look into while dealing with the inheritance and succession issues, a need was felt to bring in uniformity. Accordingly, all of these acts were consolidated under one Act, the Indian Succession Act, 1925 as we see it today.

The very meaning of the word "Succession" means inheritance of the property – moveable and immovable, the rights and the obligations of a person after his death. Succession can be of 2 types

- a. Intestate succession i.e. succession by operation of law
- b. Testamentary succession i.e. succession by way of will

The Hindus in case of Intestate succession are governed by Hindu Succession Act, 1956 and in case of testamentary succession are governed by Indian Succession Act, 1925. The Muslims in case of both intestate or testamentary succession are governed by the Muslim Law. The other communities are governed by the Indian Succession Act, 1925 both for intestate and testamentary succession.

An illustration of the above position for better understanding is as follows:



B. DOMICILE

- a. The Dictionary meaning of the word “Domicile” means the country that a person treats as their permanent home, or lives in and has a substantial connection with. Domicile of a person becomes relevant to decide which country's succession law applies to the property of the deceased. The provisions of the Domicile under ISA are as follows:

<p>Applicability</p>	<p>As per the ISA, the domicile of the deceased person at the time of his death shall be relevant to decide as to which country's succession law shall apply to the property of the deceased person.</p> <p>The said provision of domicile shall not apply to Hindu, Muhammadan, Buddhist, Sikhs and Jains</p>
<p>Exception to the domicile Rule</p>	<p>Succession of Immovable Property. If a deceased person owned an immovable property in India, the provisions of ISA shall apply irrespective of the domicile of the deceased person at the time of his death.</p>
<p>Succession of Moveable Property</p>	<p>Succession in case of moveable property, shall be governed by the country in which the deceased person was domiciled at the time of his / her death.</p>

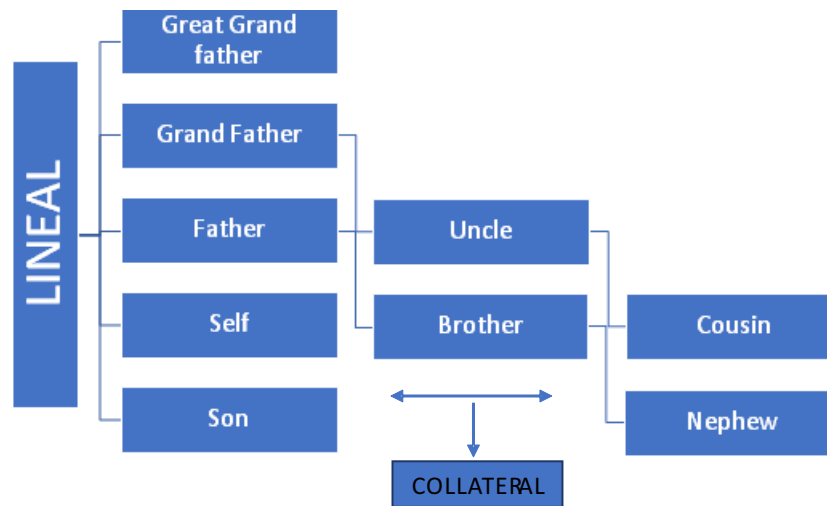
<p>Domicile of origin</p>	<p>A domicile of origin of every legitimate birth shall be the country in which his / her father was domiciled at the time of his / her birth or if a child is born after his father death, than the domicile of the father at the time of his death.</p> <p>A domicile of origin of every illegitimate birth shall be the country in which his / her mother was domiciled at the time of his / her birth</p> <p>A domicile of origin shall continue till the time a new domicile is acquired.</p>
<p>Acquisition of new domicile</p>	<p>A person can acquire a new domicile other than a domicile of his / her origin if he / she changes his / her fixed habitation / permanent home. If a person wants to acquire his domicile in India, he / she has to give a declaration to the concerned authorities in writing of his / her desire to acquire such domicile and he / she further has to satisfy that he / she was a resident in India for at least 1 immediate year preceding the date of his / her declaration.</p> <p>However a person residing in India for the purpose of their profession / service shall not be said to be domiciled in India. Eg : Persons of another country working in the embassy / consulate / as a representative along with the family members and servant shall not be said to be domiciled in India.</p>
<p>Minor's domicile</p>	<p>Minor's domicile shall be the domicile of origin and shall not change with that of his parents.</p>
<p>Domicile of woman on marriage</p>	<p>A woman on marriage shall acquire the domicile of her husband. Even during her marriage, her domicile follows her husbands domicile.</p> <p>Exception : If the wife is legally separated then, her domicile does not follow that of her husband</p>
<p>In the absence of proof of domicile</p>	<p>If there is no proof of the domicile of a deceased person at the time of his death, then the succession of his / her moveable property in India shall be regulated by succession laws of India.</p>

C. CONSANGUINITY

Consanguinity is the relation with a person descended from the common ancestors. Kindred is the term used alternatively to consanguinity.

Applicability	<p>The said Consanguinity does not apply to</p> <ol style="list-style-type: none"> Will made or Intestate occurring <u>before</u> 1st January, 1866 Intestate or will made by Hindu, Muhammadan, Buddhist, Sikhs and Jains
Lineal Consanguinity	<p>Lineal Consanguinity is</p> <ol style="list-style-type: none"> one person who has descended in direct line from the common ancestor i.e. a man and his father, grandfather, great grandfather and so on upwards one person who has ascended in direct line from the common ancestor i.e. a man and his son, grandson , great grandson and so on downwards <p>Every generation ascending or descending is a degree. So a father and a son to a man are 1st degree kindred. Likewise a grandfather and grandson to a man are 2nd degree kindred and so on</p>
Collateral Consanguinity	<p>Collateral Consanguinity is a person connected to descending or ascending individuals from a common ancestor but not connected from a direct line.</p> <p>For eg : A person's father's brother's son i.e. his / her cousin is a collateral consanguinity as the person and his / her cousin are connected not by a direct line of descendant or ascendant, however the person's father and the cousins father have descended from a common ancestor i.e. their grandfather.</p>
No distinction between certain relations	<p>No Distinction has been made between the following persons under the ISA provisions</p> <ol style="list-style-type: none"> Between persons related <u>through father</u> and persons related <u>through mother</u> Between persons related through <u>full blood</u> and <u>half blood</u>(one parent in common) Between persons born in the lifetime of deceased person or conceived in the womb at the time of his death (Exception being persons born subsequently)

The Consanguinity is better understood in the form of an illustration which is as below



D. **INTESTATE SUCCESSION (for Indian Christians)**

Indian Christians as defined under the ISA means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion. The rules of distribution for succession of property of the Indian Christians who die intestate are as follows.

Heirs	a. Wife or Husband b. Lineal Descendants c. Kindred (Distribution to be in the order given above)
Distribution where the deceased is survived by a widow and lineal descendants	a. $\frac{1}{3}^{\text{rd}}$ share to the Widow b. $\frac{2}{3}^{\text{rd}}$ share to the Lineal descendants $\frac{2}{3}^{\text{rd}}$ share of the Lineal descendants shall be divided among them equally.
Distribution where the deceased is survived by a widow and kindred but there are no lineal descendants	a. $\frac{1}{2}$ to the Widow b. $\frac{1}{2}$ to the Kindred The distribution among the Kindreds would be as under: <ol style="list-style-type: none"> i. Surviving Kindred in the nearest degree shall be entitled to the $\frac{1}{2}$ share, all the kindreds in the same degree shall have equal share. ii. If the kindred in the nearest degree is dead and is survived by his / her children or grandchildren, they shall be take their parents share which their parents would have been entitled to if they were alive. iii. If the kindred in the nearest degree is dead and is not survived by any child or grandchild, then the Kindreds of the next degree would be entitled to the above share

	<ul style="list-style-type: none"> iv. The order of the Kindred shall be as follows: <ul style="list-style-type: none"> a. Father of the deceased b. Mother and brothers and sisters of the deceased c. Kindreds in the nearest degrees
Distribution where the deceased is survived by a widow but there are no lineal descendants nor any kindred	The whole of the property shall belong to the Widow
Distribution where the deceased is survived by neither a widow nor any lineal descendants nor any kindred	In a situation where a person dies intestate and is not survived by widow, lineal descendants, kindreds then his estate shall revert to the State.

E. **INTESTATE SUCCESSION (for Parsis)**

The rules of distribution for succession of property of the Parsis who die intestate are as follows.

General Rules	<ul style="list-style-type: none"> a. If a child predeceases a Parsi intestate then his share shall not be taken into consideration if he does not leave behind <ul style="list-style-type: none"> i. A widow or widower nor ii. Any lineal descendant nor iii. Any widow or widower of lineal descendant b. A widow or widower of any relative of a deceased person, who has remarried in the lifetime of the deceased person, shall not be entitled to a share of the deceased person who has died intestate.
Distribution where the deceased is survived by a widow or widower and children	The widow or the widower and the children shall receive equal share
Distribution where the deceased is survived by children and not a widow or widower	Each child shall receive equal share
Distribution where the deceased is survived by parents, widow or widower and children	Widow or widower and children shall get equal share and each of the parent shall get half the share of each child.
Predeceased son of the intestate having lineal descendants	Widow and children of the predeceased son shall take share as if the son had died immediately after intestate's death

Predeceased daughter of the intestate having lineal descendants	Predeceased daughter's share shall be divided among her children equally
Child of deceased child has died before the intestate	The share of the child of the deceased child shall be computed in similar manner as computed in the case of the predeceased son / daughter
Remote lineal descendant has died before the intestate	The share of the remote lineal descendant shall be computed in similar manner as computed in the case of the predeceased son / daughter
Intestate survived by widow or widower but no lineal descendant or their respective widow or widower	Widow or Widower shall receive half share and the residue shall be given to relatives as mentioned in PART I of Schedule II of ISA (given below)
Survived by only 1 widow or widower of the lineal descendant	Widow or Widower of the lineal descendant shall receive $1/3^{\text{rd}}$ share and the residue shall be given to relatives as mentioned in PART I of Schedule II of ISA (given below)
Survived by more than 1 widow or widower of the lineal descendant	Widows or Widowers of the lineal descendant shall receive $2/3^{\text{rd}}$ share, divided equally among them and the residue shall be given to relatives as mentioned PART I in Schedule II of ISA (given below)
No relative entitled to residue	Whole shall be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.
Intestate survived neither by the widow or widower nor lineal descendant or their respective widow or widower	Relatives as mentioned in PART II of Schedule II of ISA (given below) in the order given, where 1^{st} in the order shall be preferred to the 2^{nd} , 2^{nd} to 3^{rd} and son on. Relatives in one order shall be entitled to equal shares
Not survived by any relative as defined	Relative who are in the nearest degree of kindred to him shall be entitled to equal share

Relative as mentioned in Schedule II of ISA**PART I**

- a. Father and mother.
- b. Brothers and sisters (other than half brothers and sisters) and lineal descendants of such of them as shall have predeceased the intestate.
- c. Paternal and maternal grandparents.
- d. Children of paternal and maternal grandparents and the lineal descendants of such of them as have predeceased the intestate.
- e. Paternal and maternal grandparents' parents.
- f. Paternal and maternal grandparents' parents' children and the lineal descendants of such of them as have predeceased the intestate.

PART II

- a. Father and mother.
- b. Brothers and sisters (other than half brothers and sisters) and lineal descendants of such of them as shall have predeceased the intestate.
- c. Paternal and maternal grandparents.
- d. Children of paternal and maternal grandparents and the lineal descendants of such of them as have predeceased the intestate.
- e. Paternal and maternal grandparents' parents.
- f. Paternal and maternal grandparent's parent's children and the lineal descendants of such of them as have predeceased the intestate.
- g. Half brothers and sisters and the lineal descendants of such of them as have predeceased the intestate.
- h. Widows of brothers or half brother's and widowers of sisters or half sisters.
- i. Paternal or maternal grandparent's children's widows or widowers.
- j. Widows or widowers of deceased lineal descendants of the intestate who have not married again before the death of the intestate.

F. CONCLUSION

The other provisions of ISA pertaining to Testamentary Succession i.e. Succession by way of will shall be covered under the next Article in detail and accordingly is not covered in here. As seen every community has different order of hierarchy to whom the properties shall succeed in case of intestate succession and hence it becomes very important to determine the community to which the person belongs and know the applicable laws before commencing his / her estate planning.

