
HINDU SUCCESSION ACT, 1956

Act No. XXXVIII of 1956

THE JAMMU AND KASHMIR HINDU SUCCESSION ACT, 1956

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THE SCHEDULE

THE JAMMU AND KASHMIR HINDU SUCCESSION ACT, 1956

(Act No. XXXVIII of 1956)

[Received the assent of the Sadar-i-Riyasat on 6th November, 1956 and published in Government Gazette dated 28th December, 1956 (Extraordinary).]

An Act to amend and codify the law relating to intestate succession among Hindus.

Be it enacted by the Jammu and Kashmir State Legislature in the Seventh Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. *Short title and extent.* —(1) This act may be called the Jammu and Kashmir Hindu Succession Act, 1956.

(2) It extends to the whole of 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 a follower of the Brahmo, Prarthana or Arya Samaj ;
- (b) to any person who is a 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, Jains or Sikhs by religion, as the case may be :—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion ;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain 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 a convert or reconvert to the Hindu, Buddhist, Jain or Sikh religion.

(2) 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 interpretation.* —(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) “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 ;
- (c) the expressions “customs” 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 ; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family ;

- (d) “full blood”, “half blood” and “uterine blood”—
- (i) two persons are 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 ;

- (e) “heir” means any person, male or female, who is entitled to succeed to the property of an intestate under this Act ;
- (f) “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 ;
- (g) “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 importing the masculine gender shall not be taken to include females.

4. *Over-riding effect of Act.* —(1) Save as otherwise expressly provided in this Act,—

- (a) any text, rules 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 in so far 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.

CHAPTER II

Intestate Succession

General

5. *Devolution of interest in coparcenary property.*—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a 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 1.—For the purposes of this section the interest of a 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.

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

7. *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.

8. *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 the pre-deceased son shall be so made that his widow (or widows together) and the

surviving sons and daughters get equal portions ; and the branch of his pre-deceased 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.

9. *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.

10. *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 :—

Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

11. *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.

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

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

12. *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 prescribed a restricted estate in such property.

13. *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 14—

- (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.

14. *Order of succession and manner of distribution among heirs of a female Hindu.*—The order of succession among the heirs referred to in section 13 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 13, 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 13 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.

General Provisions Relating to Succession

15. *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.

16. *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 stirpes ; and
- (b) as tenants-in-common and not as joint tenants.

17. *Right of child in womb.*— A child who in the womb at the time of death of an intestate and who is subsequently born alive shall 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 vest in such a case with effect from the date of the death of the intestate.

18. *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.

19. *Preferential right to acquire property in certain cases.*—
(1) Where, 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 conjunction 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, 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.

(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 Government may, by notification in the Government Gazette, specify in this behalf.

20. *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.

21. *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 pre-deceased 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 remarried.

22. *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.

23. *Converts’ descendants disqualified.*— 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 Hindu at the time when the succession opens.

24. *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.

25. *Disease, defect, etc., not to disqualify.*— 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 other ground whatsoever.

Escheat

26. *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 subject.

CHAPTER III

27. *Testamentary succession.*—(1) Any Hindu may dispose of by will or other testamentary disposition any property, which is capable so disposed by him, in accordance with any law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property 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 within the meaning of the sub-section.

¹[(2) Repealed.]

1. Sub-section (2) of section 27 repealed by Act II of 1960.

CHAPTER IV

Repeals

28. *Repeal.*— The Hindu law of Inheritance Act, 1997, is hereby repealed.

THE SCHEDULE

(See Section 6.)

Heirs in Class I and Class II

CLASS I

Son ; daughter ; widow ; mother ; son of 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 ; father's 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 references to a brother or sister by uterine blood.
