



ODISHA

Judicial Services Exam

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The Indian Succession Act

THE INDIAN SUCCESSION ACT, 1925
A CT NO. 39 OF 1925

PART I
P RELIMINARY

1. Short title

This Act may be called the Indian Succession Act, 1925.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,—

- (a) "Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor;
 - (b) "Codicil" means an instrument made in relation to a Will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the Will;
 - (Bb) "District Judge" means the Judge of a Principal Civil Court of original jurisdiction;
 - (c) "Executor" means a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided;
 - (cc) "India" means the territory of India excluding the State of Jammu and Kashmir;
 - (d) "Indian Christian" 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;
 - (e) "minor" means any person subject to the Indian Majority Act, 1875 (9 of 1875) who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and "minority" means the status of any such person;
 - (f) "Probate" means the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator;
 - (g) "State" includes any division of India having a court of the last resort; and
 - (h) "Will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.
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3. Power of State Government to exempt any race, sect or tribe in the State from operation of Act

- (1) The State Government may, by notification in the Official Gazette, either retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any of the following provisions of this Act, namely, sections 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe in the State, or of any part of such race, sect or tribe, to whom the State Government considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order.
- (2) The State Government may, by a like notification, revoke any such order, but not so that the Revocation shall have retrospective effect.
- (3) Persons exempted under this section or exempted from the operation of any of the provisions of The Indian Succession Act, 1865 1 (10 of 1865), under section 332 of that Act are in this Act referred to as "exempted persons".

PART II OF DOMICILE

4. Application of Part

This Part shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jain.

5. Law regulating succession to deceased person's immoveable and moveable property, Respectively

- (1) Succession to the immoveable property in 2 India, of a person deceased shall be Regulated by the law of 2 India, wherever such person may have had his domicile at the time of his death.
- (2) Succession to the moveable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

Illustrations

- (i) A, having his domicile in 2 India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in 2 India. The succession to the whole is regulated by the law of 2 India.
- (ii) A, an Englishman, having his domicile in France, dies in 2 India, and leaves property, both moveable and immoveable, in 2 India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of 2 India.

6. One domicile only affects succession to moveable

A person can have only one domicile for the purpose of the succession to his moveable property.

7. Domicile of origin of person of legitimate birth

The domicile of origin of every person of Legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous

child, in the country in which his father was domiciled at the time of the father's death.

Illustration

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is England, whatever may be the country in which he was born.

8. Domicile of origin of illegitimate child

The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

9. Continuance of domicile of origin

The domicile of origin prevails until a new domicile has been acquired.

10. Acquisition of new domicile

A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be deemed to have taken up his fixed habitation in India merely by reason of his residing therein if he is in the civil, military, naval or air force service of Government, or in the exercise of any profession or calling.

Illustrations

- (i) A, whose domicile of origin is in England, proceeds to India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in India.
 - (ii) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired a domicile in Austria.
 - (iii) A, whose domicile of origin is in France, comes to reside in India under an engagement with the Central Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in India.
 - (iv) A, whose domicile is in England, goes to reside in India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He
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does not by such residence acquire a domicile in 1 India, however, long the residence may last.

- (v) A, having gone to reside in 1 India in the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in 1 India. A has acquired a domicile in 1 India.
- (vi) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in 1 India.
- (vii) A, having come to Calcutta in the circumstances stated in the last preceding illustration, continues to reside thereafter such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A, has acquired a domicile in 1 India.

11. Special mode of acquiring domicile in India

Any person may acquire a domicile in 1 India by making and depositing in some office in 1 India appointed in this behalf by the State Government, a declaration in writing under his hand of his desire to acquire such domicile; provided that he has been resident in 1 India for one year immediately preceding the time of his making such declaration.

12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.

A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with such first-mentioned person as part of his family, or as a servant.

13. Continuance of new domicile

A new domicile continues until the former domicile has been Resumed or another has been acquired.

14. Minor's domicile

The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of Government, or has set up, with the consent of the parent, in any distinct business.

15. Domicile acquired by woman on marriage

By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

16. Wife's domicile during marriage

A wife's domicile during her marriage follows the domicile of her husband.

Exception —The wife's domicile no longer follows that of her husband if they are separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Minor's acquisition of new domicile

Save as hereinbefore otherwise provided in this Part, a person cannot, during minority, acquire a new domicile.

18. Lunatic's acquisition of new domicile

An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

19. Succession to moveable property in India in absence of proof of domicile elsewhere

If a person dies leaving moveable property in 1 India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of 1 India.

PART III

MARRIAGE

20. Interests and powers not acquired nor lost by marriage

- (1) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.
- (2) This section— shall not apply to any marriage contracted before, the first day of January, 1866; shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jain religion.

21. Effect of marriage between person domiciled and one not domiciled in India.

If a person whose domicile is not in 1 India marries in 1 India a person whose domicile is in 1 India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in 1 India at the time of the marriage.

22. Settlement of minor's property in contemplation of marriage.—

- (1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from India, with the approbation of the High Court.
 - (2) Nothing in this section or in section 21 shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jain.
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PART IV OF CONSANGUINITY

23. Application of Part

Nothing in this Part shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jain or Parsi.

24. Kindred or consanguinity

Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

25. Lineal consanguinity

- (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, Great-grandson and so downwards in the direct descending line.
- (2) Every generation constitutes a degree, either ascending or descending.
- (3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.

26. Collateral consanguinity

- (1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.
 - (2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is necessary to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, a degree being allowed for each person, both ascending and descending.
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27. Persons held for purpose of succession to be similarly related to deceased

For the purpose of succession, there is no distinction—

- (a) between those who are related to a person deceased through his father, and those who are related to him through his mother; or
- (b) between those who are related to a person deceased by the full blood, and those who are related to him by the half-blood; or
- (c) Between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

28. Mode of computing of degrees of kindred

Degrees of kindred are computed in the manner set forth in the table of kindred set out in Schedule I.

Illustrations

- (i) The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german, making in all four degrees.
 - (ii) A grandson of the brother and a son of the uncle, i.e., a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.
 - (iii) A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.
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PART V
INTESTATE S UCCESSION
CHAPTER I.—Preliminary

29. Application of Part

- (1) This Part shall not apply to any intestacy occurring before the first day of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jain.
- (2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of 1 India in all cases of intestacy.

30. As to what property deceased considered to have died intestate

A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect,

Illustrations

- (i) A has left no will. He has died intestate in respect of the whole of his property.
 - (ii) A has left a will, whereby he has appointed B his executor; but the will contains no other provision. A has died intestate in respect of the distribution of his property.
 - (iii) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.
 - (iv) A has bequeathed 1,000 rupees to B and 1,000 rupees to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000 rupees and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000 rupees.
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CHAPTER II

Rules in cases of Intestates other than Parsis

31. Chapter not to apply to Parsis

Nothing in this Chapter shall apply to Parsis.

32. Devolution of such property

The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter.

33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred

Where the intestate has left a widow

- (a) If he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;
- (b) 2 save as provided by section 33A, if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;
- (c) If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

33A. Special provision where intestate has left widow and no lineal descendants

- (1) Where the intestate has left a widow but no lineal descendants and the nett value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow.
 - (2) Where the nett value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per annum until payment.
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- (3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property.
- (4) The nett value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject.
- (5) This section shall not apply—
- (a) To the property of—
 - (i) any Indian Christian,
 - (ii) Any child or grandchild of any male person who is or was at the time of his death an Indian Christian, or
 - (iii) any person professing the Hindu, Buddhist, Sikh or Jain religion the succession to whose property is, under section 24 of the Special Marriage Act, 1872 (3 of 1872), regulated by the provisions of this Act;
 - (b) Unless the deceased dies intestate in respect of all his property.

34. Where intestate has left no widow, and where he has left no kindred

Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained; and, if he has left none who are of kindred to him, it shall go to the Government.

35. Rights of widower

A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate. Distribution where there are lineal descendants

36. Rules of distribution

The rules for the distribution of the intestate's property (after deducting The widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in Sections 37 to 40.

37. Where intestate has left child or children only

Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.

38. Where intestate has left no child, but grandchild or grandchildren.

Where the intestate has not left surviving him any child but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is one, or shall be equally divided among all his surviving grandchildren.

39. Where intestate has left only great-grandchildren or remoter lineal descendants

In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

40. Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead

- (1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.
 - (2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or
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parents would have been entitled to respectively if such parent or parents had survived the intestate.

Distribution where there are no lineal descendants

41. Rules of distribution where intestate has left no lineal descendants

Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in sections 42 to 48.

42. Where intestate's father living

If the intestate's father is living, he shall succeed to the property.

43. Where intestate's father dead, but his mother, brothers and sisters living

If the intestate's father is dead, but the intestate's mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

44. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living

If the intestate's father is dead but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

45. Where intestate's father dead and his mother and children of any deceased brother or sister living

If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

46. Where intestate's father dead, but his mother living and no brother, sister, nephew or niece

If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

47. Where intestate has left neither lineal descendant, nor father, nor mother

Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

48. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.

Where the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

49. Children's advancements not brought into hotchpot

Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.
