

# **The Hindu Succession Act 1956 - 2005**

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# Intestate Succession

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- ❑ When a person dies without making a ‘will’ or if his ‘will’ is found to be invalid, his property devolves by the rules of **intestate succession**.
  - ❑ The law of intestate succession is properly called the law of **inheritance**.
  - ❑ The terms ‘succession’ and ‘inheritance’ are often used interchangeably, but there is a distinction between the two.
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# Succession and Inheritance

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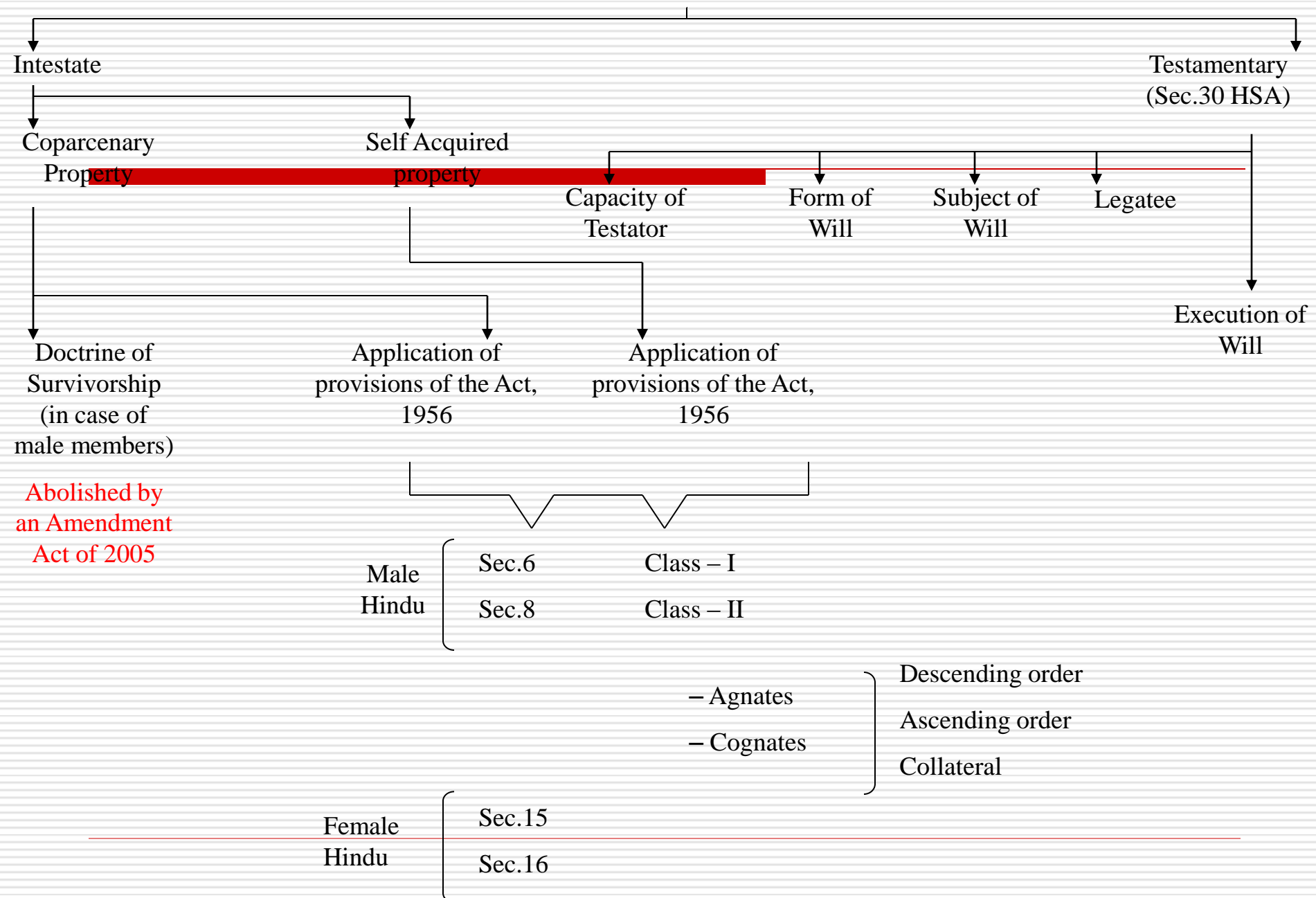
- ❑ When the property devolves on the relations of a person on his death, it is called **inheritance**.
  - ❑ The term ‘**succession**’ is wider and includes devolution of property on the death of a person—both on relations as well as non-relations.
  - ❑ Thus, the term ‘**inheritance**’ can be applied only to intestate succession, but the term ‘**succession**’ applies to both **testamentary** and **intestate succession**.
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# Intestate Succession

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- The law of intestate succession is concerned with the question of determining as to among the relations of the deceased who are his heirs, i.e., who are those relations who are entitled to take his property, and what will be the share of each heir, i.e., in what manner and in what proportion property is to be distributed among the heirs.
  - Since the property cannot remain ownerless even for a moment, immediately on the death of a person (owner) it vests in the heirs.
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# Succession



# The Hindu Succession (Amendment) Act 2005 (Act No. 39 of 2005)

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## Devolution of interest in coparcenary property:

- **Section (6) 1-**On and from the commencement (**September 9, 2005**) of the Hindu Succession (Amendment) Act 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall-
    - (a) by birth become a coparcener in her own right in the same manner as the son;
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# Devolution of interest in coparcenary property

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(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

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# Devolution of interest in coparcenary property

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**Provided** that nothing contained in this subsection shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20<sup>th</sup> day of December, 2004.

(20<sup>th</sup> day of December, 2004 is the date when the Hon'ble Union Law Minister, Mr. H. R. Bhardwaj, introduced the original Bill before the Lok Sabha).

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# Devolution of interest in coparcenary property

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- 2. Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.
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# Devolution of interest in coparcenary property

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- 3. Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-
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# Devolution of interest in coparcenary property

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- (a) the daughter is allotted the same share as is allotted to a son;
  - (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
  - (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.
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# Devolution of interest in coparcenary property

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**Explanation:** For the purposes of this subsection, 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.

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# Devolution of interest in coparcenary property

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- 4. After the commencement of the Hindu Succession (Amendment) Act, 2005 no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt.
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# Devolution of interest in coparcenary property

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**Provided** that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act 2005, nothing contained in this subsection shall affect-

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
  - (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act 2005 had not been enacted.
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# Devolution of interest in coparcenary property

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**Explanation:** For the purposes of clause (a), the expression “son”, “grandson”, “great-grandson” shall be deemed to refer to as son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act 2005.

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# Devolution of interest in coparcenary property

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- **5.** Nothing contained in this section shall apply to a partition, which has been effected before the 20<sup>th</sup> day of December, 2004.

**Explanation:** For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act 1908 (16 of 1908) or partition effected by a decree of a Court.

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## 8. General Rules of Succession in the case of Males

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- 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.
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# The Schedule - (See Section 8): Principal Act 1956

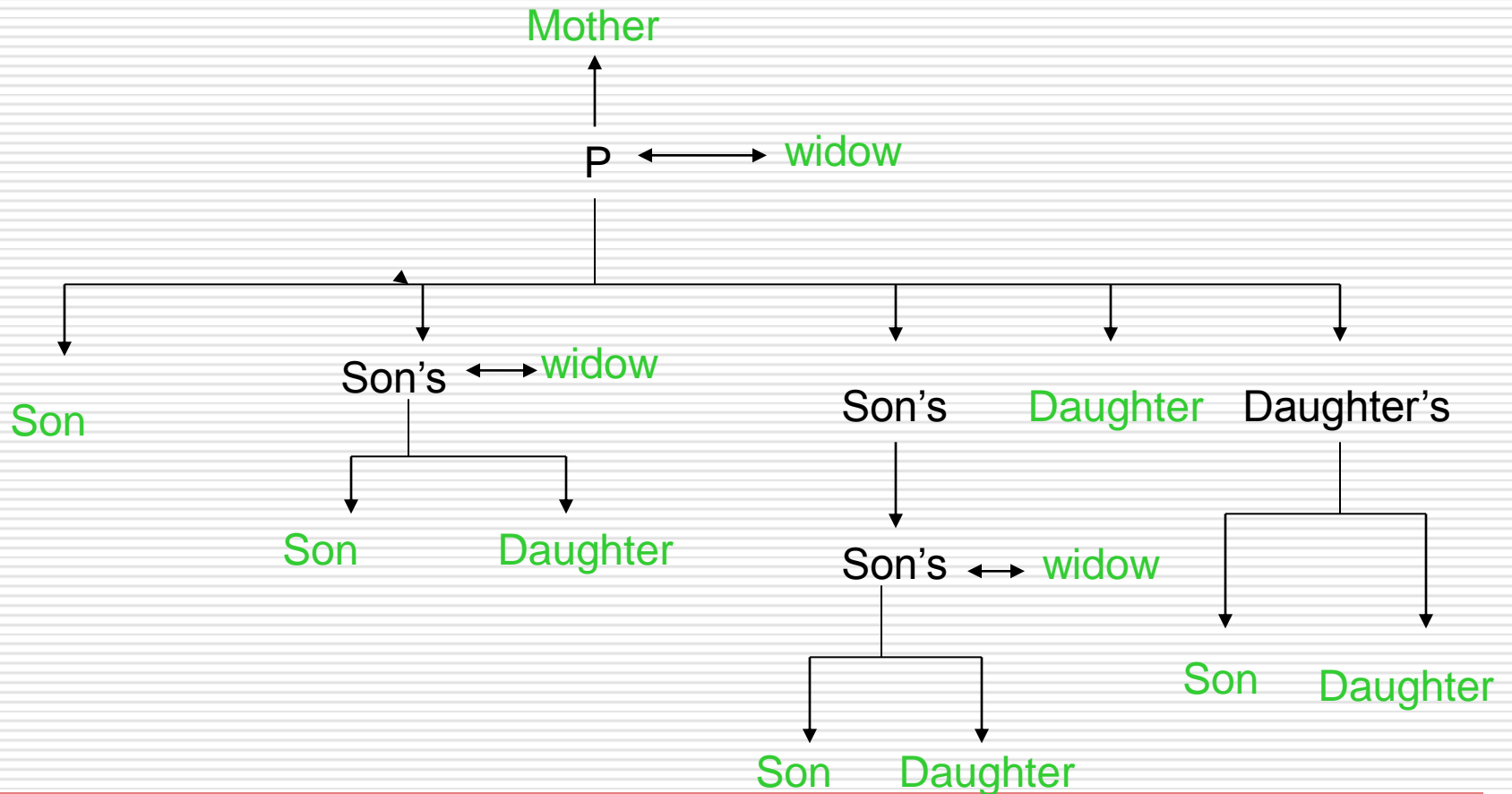
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## Heirs in Class - I

- 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.
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# Class - I Heirs

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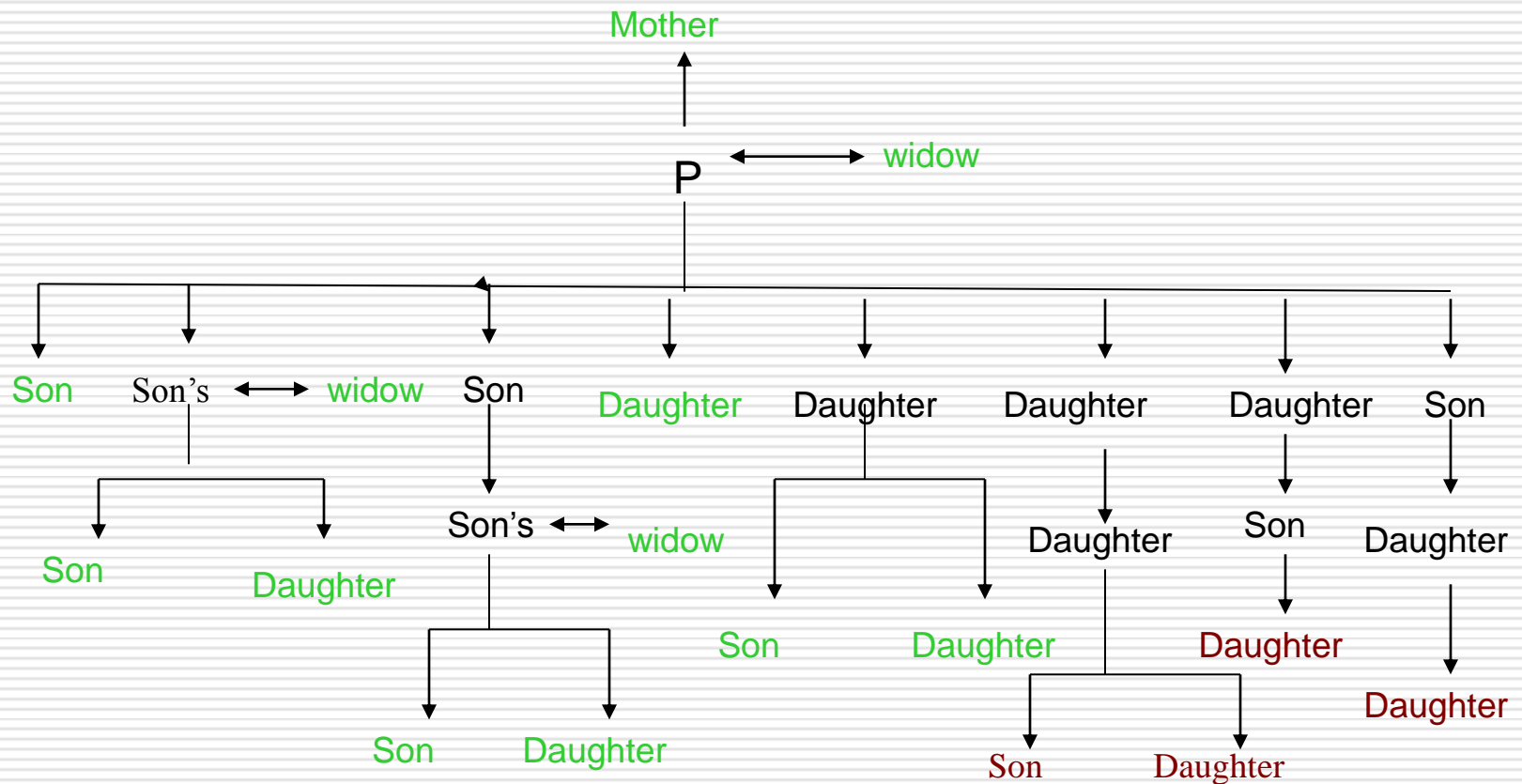


# New addition to Class-I of the Schedule of the Principal Act 1956

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- son 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.
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# Class - I Heirs



# Orders of Succession among heirs in the Schedule

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- **Section 9** - 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.
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# Distribution of property among heirs in Class-I of the Schedule

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**□ Section 10** - 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.

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# Distribution of property among heirs in Class-I of the Schedule

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**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 gets equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

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# Distribution of property among heirs in Class-II of the Schedule

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- **Section 11** - 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.
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# Order of Succession among Agnates and Cognates

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- **Section 12** - 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.

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# Order of Succession among Agnates and Cognates

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

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

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# Computation of degrees

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- **Section 13 - (1)** For the purpose 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.
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# General Provisions Relating to Succession

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- **Section 18 - 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.
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# General Provisions Relating to Succession

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- **Section 19-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 stripes*; and
    - (b) as tenants-in-common and not as joint tenants.
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# General Provisions Relating to Succession

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- **Section 20 - Right of child in womb** - A child who was in the womb at the time of the death of an intestate and who is subsequently born alive 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.
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# General Provisions Relating to Succession

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- **Section 21-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.
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# General Provisions Relating to Succession

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- **Section 22 - Preferential right to acquire property in certain cases:**(1) Where, after the commencement of this Act, 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, devolve upon two or more heirs specified in Class-I of the Schedule, and any one of such heirs purposes 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.
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# General Provisions Relating to Succession

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(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.

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# General Provisions Relating to Succession

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(3) If there are two or more heirs specified in Class-I of the Schedule proposing to acquire any interest under this section, that heirs 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 State Government may, by notification in the Official Gazette, specify in this behalf.

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# General Provisions Relating to Succession

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- ❑ **Section 25 - 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.

**Vallikannu v. Singaperumal** AIR 2005 SC 2587  
(Murderer disqualified)

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# General Provisions Relating to Succession

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- ❑ **Section 26-Convert's descendants disqualified-**  
Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be 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 Hindus at the time when the succession opens.
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# General Provisions Relating to Succession

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- **Section 27-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.
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# General Provisions Relating to Succession

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- **Section 28-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.
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# Escheat

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- **Section 29 - 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.
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# Chapter-III, Testamentary Succession

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- **Section 30 - Testamentary Succession** - Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him **or by her**, in accordance with the provisions of the Indian Succession Act 1925, or any other law for the time being in force and applicable to Hindus.
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## Chapter-III, Testamentary Succession

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- **Explanation** - The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru 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 **or by her** within the meaning of this Section.
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# Chapter – IV, Repeals

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- **Section 31 - Repeals** - [Repealed by Repealing and Amending Act, 1960 (58 of 1960)].
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