



Key aspects in Hindu Succession Act, 1956

SUCCESSION PLANNING SERIES #08

Preface

Succession planning refers to the passing of assets, properties, investments, etc., from the legal owner to the intended beneficiaries. If a deceased Hindu does not leave behind a valid Will, the Hindu Succession Act (HSA) applies. In the HSA, there is a hierarchy specified in a chronological manner for intestate succession for male. In our previous alerts, we have given a brief understanding of intestate succession for a Hindu female which included different classes of heirs, order and rules for distribution among the heirs of a Hindu female

With this alert, we conclude our discussion on the Hindu Succession Act. From next week onwards, our alerts would cover inheritance through a Will.



In case you have missed the previous alerts, click on the hyperlink given on the right to refer the same.

- 01 [Basics of succession planning.](#)
- 02 [Basic rules of intestate succession as provided in the Hindu Succession Act.](#)
- 03 [An overview of the different classes of heirs for a Hindu Male.](#)
- 04 [The first two classes of intestate succession for males \(Class I and Class II\)](#)
- 05 [Agnates & Cognates](#)
- 06 [Illustrations on Intestate Succession for Hindu Male](#)
- 07 [Intestate Succession for Hindu Female](#)

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Full blood vs Half-blood

Rule of succession: When the nature of relationship of two persons with the deceased intestate is same in every aspect, then the one related through full blood shall be preferred over the one related through half blood.

Full Blood

Two persons are said to be related to each other by full blood when they are descended from a common ancestor¹ by the same wife

Half Blood

Two persons are said to be related to each other by half-blood when they are descended from a common ancestor¹ but by different wives

¹ancestor includes the father

Examples

1

Mr. A dies intestate, leaving behind his sister, brother and a step-brother. In such a case, the property will be equally shared between his brother and sister only and the step-brother (being related through half-blood) shall not receive any share.

2

Mr. P dies intestate, leaving behind a full blood brother's son, a half blood brother and a half blood sister. The full blood brother's son comes under Entry III of Class II of the Schedule whereas the half-brother and half-sister are heirs specified in Entry II.

Therefore, half blood brother and a half blood sister will be entitled to be preferred irrespective of being related to the intestate by half blood.

Mode of succession of two or more heirs

When two or more heirs succeed together to the property of an intestate, they shall take the property : **(A)** Per capita and not per stripes (when the Act does not provide for mode of succession) **(B)** As tenants-in-common and not as joint tenants

Per capita Vs Per stripes

- Under per capita distribution, each heir gets a share as per his/her right in the property.
- Whereas, in per stripes distribution, the heirs inherit the property on a representative basis (let's say, distribution to son of predeceased son or son of predeceased son of predeceased son in case of intestate male).
- The general thumb rule is that **the inheritance is on a per capita basis** unless provided otherwise.

Tenants in common Vs Joint tenants

- After the death of an intestate, the property shall be taken by his / her heirs as per the respective share they are eligible and **not hold the property together**.
- E.g., If the shares of an intestate are worth 100 rupees and he leaves behind four eligible heirs, each heir shall hold 25 rupees worth of stock and not 100 rupees worth of stock jointly. **The same should be evidenced by the share certificate etc.**



Unborn Child's Right



If a child was in the womb of his / her mother at the time of the death of an intestate and such child is subsequently born alive, then such child shall have the same inheritance rights as if such child were born before the death of the intestate. Further, the inheritance would be deemed to have been vested with effect from the death of the intestate.



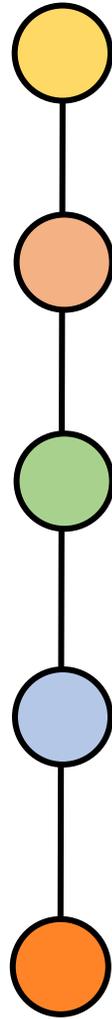
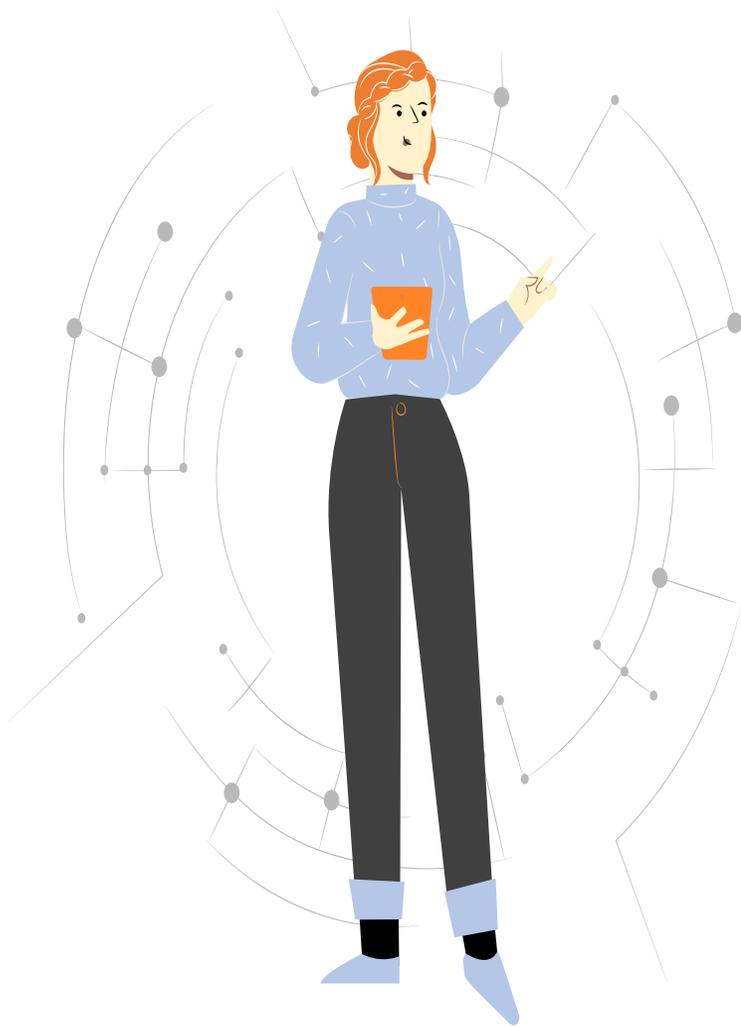
In case the child is a stillborn child, then it cannot be claimed that the property which such child was entitled to would devolve upon the heirs of the child because the condition is that the child must be born alive.



If the child dies at any time after being born alive, then the property which the child was entitled to would devolve upon his / her heirs.



Preferential right to acquire property



Interest in any immovable property or business carried on by an intestate (individually or jointly) devolves (transfer) to two or more heirs specified in Class I of the Schedule.

When one of the heirs proposes to transfer his interest in such immovable property or business, the other heirs shall have a preference to purchase such interest.

The consideration for such transfer can be determined by the heirs through an agreement and in the absence of any agreement, the court can determine the consideration based on an application made by the heirs.

However, if the heir is not interested to acquire such interest based on the price determined by the court, then such heir should bear all costs incurred for the application. In such a case, the heir can transfer his interest in such immovable property or business to a third party.

When there are two or more heirs interested to acquire such property, then the property is transferred to the one who is willing to offer the highest consideration

Presumption In Case of Simultaneous Deaths

In a given circumstance, if two persons have died simultaneously and it is not possible to determine who died first, it is presumed that the **younger survived the elder.** (i.e.. the elder died first).



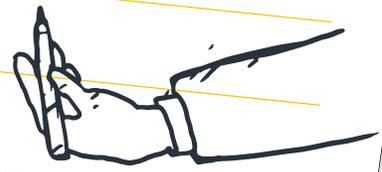
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However, if there is any **valid proof** of the timing of death of each person (eyewitness or through a post-mortem report) then such a **presumption is not required to be made**

Failure of Heirs

If an intestate has left no heir qualified to succeed to his or her property as per HSA, 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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